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THIS INDEX is based on a consolidation of contents entries appearing in the January-June subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the **Federal Register** where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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Department of the Interior, National Park Service, Administrative Program Center	Electronic Director Orders/Procedures	No charge	www.nps.gov/refdesk/Refdesk.htm
Department of the Interior, National Park Service, Office of Policy	Listing of Director's orders, handbooks, reference manuals, and other documents that guide employees in managing parks/programs administered by the NPS. List of guidelines, special directives, and staff directives still in effect.	Chief, Office of Policy, MS 2414, Main Interior Building, Washington, DC 20240. Telephone 202–208–7456.	Chief, Office of Policy, MS 2414, Main Interior Building, Washington, DC 20240. Telephone 202–208–7456. www.nps.gov/refdesk/policie.html
Department of the Interior, Office of Hearings and Appeals	Index-Digest. Index of synopses for all decisions decided by Office of Hearings and Appeals Boards of Appeal and published Solicitor's decisions under specific topical headings. Useful in researching legal holdings of Department of the Interior. Published quarterly, annually and on 5-year basis.	Editorial Branch, Office of Hearings & Appeals, 4015 Wilson Blvd. Arlington, VA 22203. Telephone 703–235–3791 Price: $495.00 annually for quarterly issues and bound cumulative issue at end of calendar year. Checks made payable to "Department of the Interior." Price for photocopies as prescribed in Department fee schedule for Freedom of Information Act information (43 CFR Part 2, Appendix A). Checks made payable to "Department of the Interior." Price on Quinquennial issue is set by Government Printing Office and available from that agency.	Editorial Branch, Office of Hearings and Appeals, 4015 Wilson Blvd. Arlington, VA 22203. Telephone 703–235–3791

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Indian Citator. Index of authorities cited in decisions of the Interior Board of Indian Appeals (IBIA). Initial publication covers volumes 1-15 of IBIA decisions. Updated annually.	Administrative Division Subscription Service, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703–235–3799 Price: $40.00 for Citator. Checks made payable to: Department of the Interior.	Administrative Division Subscription Service, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703–235–3799
	Administrative Manual. Index related to administrative policies, procedures and standards as contained in the Administrative Manual	Administrative Division, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Price for photocopies as prescribed in Department fee schedule for Freedom of Information Act information (43 CFR Part 2, Appendix A). Checks made payable to Department of the Interior.	Administrative Division, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703–235–3793
Department of the Interior, Office of Inspector General	Inspector General Manual Index Numeric and subject listing of internal policies and procedures by volume, chapter, section, and subsection	Available at no cost from Office's Internet site at www.oig.doi.gov/ldst.pdf Paper copies available at 13 cents per page from: Department of the Interior, Office of Inspector General, 1849 C Street NW, Mail Stop 5341, Washington, DC 20240	Sandra L. Evans, Acting Information Manager, Department of the Interior, Office of Inspector General, 18th and C Street, Washington, DC 20240 Telephone 202–219–1387
Department of the Interior, Office of Surface Mining	Listing of Directives which are considered in effect with respect to current operations of the Bureau. Historical listing of Directives not currently in effect. Internet address: www.osmre.gov/directiv.htm	Office of Surface Mining, Office of Administration, ms-222-SIB ATTN: Directives Coordinator, 1951 Constitution Ave., NW., Washington, DC 20240 One copy only, no charge. Telephone 202–208–2593	Office of Surface Mining, Office of Administration, ms-222-SIB ATTN: Directives Coordinator, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone 202–208–2593
Department of Labor	Department of Labor Freedom of Information Act Index Overview and Guide to DOL agencies and subagencies with information on how to obtain more detailed indexes to records maintained by each subagency; includes cross-reference to agencies by statute or executive order; 28 pages	Mail $4.20 check payable to DEPARTMENT OF LABOR to: FOIA Index Request, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210.	Administrator, FOIA/PA, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210 Telephone 202–523–9277
Legal Services Corporation	LSC Index lists decisions, opinions, statements of policy, manuals, and other records of general interest to members of the public in understanding the activities of the Corporation. The index contains records from 1975 to date.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250. No charge.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250.
Department of Transportation, Federal Highway Administration (FHWA)	Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administrator: 1969-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Opinions and Final Orders of the FHWA in Regard to the Regulation of Toll Bridges: 1968-1984 listing of opinions and final orders regarding regulation of toll bridges issued by the Federal Highway Administrator, which identifies the case and the date issued	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Treasury, Departmental Offices	Index of Selected Records, July 1967 to Dec. 31, 1994. Index either contains the following information or indicates where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; a description of the central and field offices; rules of procedure, descriptions of forms; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and administrative staff manuals and instructions to staff that affect a member of the public for the Departmental Offices, Internal Revenue Service, United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Financial Management Service, United States Mint, Bureau of the Public Debt, Office of the Comptroller of the Currency, Federal Law Enforcement Training Center, Office of Thrift Supervision.	Library, Room 5010-MT, Department of the Treasury, Washington, DC 20220, Reproduced upon request; fees charged per page copied in accordance with fee schedule at 31 CFR 1.7. Make checks payable to Treasury of the United States	Treasury Department Library, Room 5010, Main Treasury Bldg., 15th and Pennsylvania Ave., NW., Washington, DC 20220 Telephone 202–622–0990
Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index; June 1978 through November 1982: Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports; pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW. Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC Telephone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202 Telephone 202–245–1591
Committee for Purchase From the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List: (a) Procurement List 1990 incorporates all additions and deletions through Nov. 3, 1989; (b) Current index November 1989-December 1991.	Order from: Executive Director, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3509. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States	Committee for Purchase From the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer
Commodity Futures Trading Commission	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases. Apr. 21, 1975 to date. (This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission) Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register. Apr. 21, 1975 to date	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Price: 10 cents per page	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Telephone 202–254–6314

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Index of Commission administrative manuals and instructions to staff that affect a member of the public. Apr. 21, 1975 to date. (Commission instructions no longer in use are not included in this index)		
General Services Administration (GSA)	GSA Freedom of Information index; July 4, 1967 through June 30, 1984. Category A information which is final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases. Category B information which is those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER. Category C information which is administrative staff manuals and instructions to staff that affect members of the public	GSA, Freedom of Information Officer (ATRAR), Washington, DC 20405. Price: $4.75. Make checks payable to: General Services Administration	GSA Central Office Library and the business service centers located in each regional office listed below: Central Office Library, 18th & F Sts., NW., Rm. 1033, Washington, DC 20405 Business Service Centers: National Capital Region: 7th & D Sts., SW., Washington, DC 20407 Region 1: John W. McCormack Post Office and Courthouse, Boston, Mass. 02109 Region 2: 26 Federal Plaza, New York, NY 10278 Region 3: 9th & Market Sts., Philadelphia, PA, 19107 Region 4: Richard B. Russell Bldg., 75 Spring St., Atlanta, GA 30303 Region 5: 230 So. Dearborn St., Chicago, IL, 60604 Region 6: 1500 East Bannister Rd., Kansas City, MO 64131 Region 7: 819 Taylor St., Ft. Worth, TX 76102 Region 8: Building 41, Denver Federal Center, Denver, CO 80225 Region 9: 525 Market St., San Francisco, CA 94105 Region 10: GSA Center, Auburn, WA 98002
International Boundary and Water Commission, United States and Mexico, U.S. Section	Brochure: Amistad Dam and Reservoir	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840. No charge	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840
	Brochure: Falcon Dam and Power Plant	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545. No charge	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545
	Water Bulletins: Containing data for 1 year covering flow of Rio Grande and related data from Elephant Butte, NM, to Gulf of Mexico, re storage in major reservoirs, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas–for years 1931 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $4.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Water Bulletins: Containing data for 1 year covering flow of Colorado River and other Western Boundary streams, and related data (including Tijuana, Santa Cruz, and San Pedro Rivers, and Whitewater Draw) for years 1960 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $5.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map – Lower Rio Grande Valley United States and Mexico	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Prices: 14≥x36≥ $4.00 per map; 10≥x28≥ $3.00 per map. Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Annual Report: Operation of Rio Grande Dams and Reservoirs. This report provides data concerning the operation of the international dams and reservoirs constructed by the Governments of the United States and Mexico on the reach of the Rio Grande which forms the boundary between the two countries	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. No charge	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map: El Paso Rio Grande Projects, Canalization and Rectification Projects	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $10.00 per map. Payable to International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Brochure: Joint Projects of the United States and Mexico through the International Boundary and Water Commission	Section Secreatry, U.S. Sec., IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $6.00 per brochure. Payable to International Boundary and Water Commission, U.S. Section	Section Secretary, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
National Archives and Records Administration (NARA)	NARA FOIA Index lists the following materials which have been adopted by NARA since Apr. 1, 1985, and which are not published in the Federal Register: NARA final opinions and orders, statements of policy and interpretations, and administrative staff manuals and instructions to staff that affect a member of the public	Policy and Program Analysis Division (NAA), National Archives, College Park, MD 20740-6001 One copy only (free).	Policy and Program Analysis Division (NAA), Room 3200, National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740-6001. Telephone 301-713-6730
National Science Foundation (NSF)	Reviewer panelist, alphabetical listing contains name, State, and institution of individuals who have reviewed proposals for the National Science Foundation for the previously completed fiscal year		NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Numerical index of the following NSF agency-wide issuances and Important Notices in effect as of Jan. 24, 1986: (1) Office of the Director Staff Memoranda (O/D's); (2) NSF Bulletins; (3) NSF Manuals/Circulars; (4) NSF Handbooks; and (5) NSF Important Notices. O/D's are used by the NSF Director and Deputy Director to communicate information to the staff. O/D's also may be used to convey short-term policy statements or the initial statement of long-term policy. NSF Bulletins transmit approved changes to policy and convey administrative or "housekeeping" information. Significant NSF policy and procedure are located in NSF Manuals. NSF Circulars (historically used to communicate policies and procedures of a continuing nature) are being converted to Manuals and will be discontinued. Handbooks, less formal than Manuals, provide compendia of information concerning NSF programs, i.e., they do not establish NSF policy. Important Notices are the Director's primary means of communicating with organizations receiving or eligible for NSF support. Important Notices are issued over the Director's signature and convey information on NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.		
	Index of NSF regulations promulgated in the Code of Federal Regulations under Title 48, Public Contracts and Property Management; and Title 45, Public Welfare. A listing, by subject title, of current Foundation regulations with a brief description of the content of each		Office of the General Counsel, Room 501, 1800 G St., NW., Washington, DC 20550
	Publications of the National Science Foundation. An index by topical classification, as of April 1986, of current NSF publications issued and available to the public. Listing include annual reports, specific program announcements, and brochures, science resources studies pamphlets, special studies publications, and NSF periodicals. In addition to Titles, provides NSF publication numbers and copy prices. (NSF Publication 86-18)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy only (free)	For inspection or copying: NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550. For additional information: Public Affairs Group, room 527, 1800 G St., NW., Washington, DC 20550

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	NSF Guide to Programs, A composite listing of summary information about NSF support programs, as of October 1985. Provides general guidance and information describing the principal characteristics and basic purposes of each activity; eligibility requirements; closing dates (where applicable); and the address where more detailed information or applications may be obtained. (NSF Publication 85-40)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy gratis; or Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-00458-1. Unit price $5.00	
	NSF Grant Policy Manual. A compendium of basic NSF grant policies and procedures for use by the grantee community and NSF Staff. The Manual implements OMB Circular No. A-110, which is directed toward standardizing and simplifying the various accountability and reporting requirements amoung Federal granting agencies. (NSF Publication 77-47)	Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-81001-4. Unit Price $13.00	NSF Division of Grants and Contracts. Room 1150, 1800 G St., NW., Washington, DC 20550
Office of Personnel Management	Handbook of Publications, Periodicals, and Operating Manuals, OPM-OCAS-PSD-01. As of September 1996. A listing of publications, periodicals, and operating manuals arranged in alphabetical order by title within each OPM issuing organization. This handbook contains some information formerly published in the Index to Information (no longer published)..	Publishing Management Branch, Office of Personnel Management, Room 5H35, 1900 E St. NW., Washington, DC 20415-0001.	OPM Library or any OPM Office, including regional and area offices
Pennsylvania Avenue Development Corporation	PADC Freedom of Information Act (FOIA) Index; this index contains numeric and subject listings of PADC policy statements; public improvement policies; development guidelines; final opinions and cases interpreting PADC enabling legislation; and internal policies, guidelines and administrative procedures. Contains records originated since Oct. 27, 1972, to date. The index is updated semi-annually (Mar. and Sept.).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004-1703. Fees charged for research and reproduction of information are based upon the current Corporation fee schedule for information under FOI regulations (36 CFR Part 902, Subpart I).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004-1703.
Pension Benefit Guaranty Corporation, Office of the General Counsel	Index to Pension Benefit Guaranty Corp. Opinion Manual; Sept. 2, 1974 to present; interpretive letters addressing the provisions of Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005; Charge $0.15 per page; payable to Pension Benefit Guaranty Corp.; or contact Disclosure Officer for information regarding a subscription to the Opinion Manual	Disclosure Officer, Communications and Public Affairs Department, Suite 240, 1200 K St., NW., Washington, DC 20005 Telephone 202–326–4040 (202–326–4179 for TTY and TDD)
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. Operating Policy Manual; Oct. 1, 1984, to present; contains basic policy statements used by the PBGC staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page. Payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operating Policy Manual	

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. OPO Operations Manual; Part 1 from Sept. 2, 1974, to Oct. 1, 1984, and additional Parts as adopted; contains basic policies and procedures used by Insurance Operations Department staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page, payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operations Manual	
Pension Benefit Guaranty Corporation, Participant and Employer Appeals Department	Index to Pension Benefit Guaranty Corp. Appeals Board decisions; from Feb. 28, 1980, to present; contains closed appeal case decision letters that are final decisions of the Appeals Board made pursuant to PBGC regulation, 29 CFR Part 2606, Rules for Administrative Review of Agency Decisions	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page, payable to Pension Benefit Guaranty Corp.	
Department of Veterans Affairs	Board of Veterans' Appeals Index I–01–1, an index to appellate decisions. Decisions of the BVA that were written prior to 1977 are available only in a "digest" form that consists of summaries of decisions, organized by subject. Final decisions are published in redacted form from 1977 through 1993. The text of these decisions are on microfiche and may be retrieved by subject matter through the use of BVA Decisions Index I-01-1 for the following years: 1977 through 1993.	The microfiche index may be purchased for approximately $22.50 per copy from: Promisel & Korn, Inc., 7201 Wisconsin Ave., Suite 620, Bethesda, MD 20814. Make check payable to: Promisel & Korn, Inc.	The index is available for inspection at Department of Veterans Affairs regional offices.
	Board of Veterans' Appeals Decisions CD-ROM are available in CD-ROM format. Decisions from 1992 through 1995 may be searched by subject or by any word that appears in them. Included in this format are BVA Indexes for 1993 and 1994 decisions; and a subject index, identified as "VOCABULARY" that pertains to the following years: 1993, 1994 and 1995.	The Board of Veterans' Appeals Decisions CD-ROM may be purchased for $19.00 from: Superintendent of Documents, P.O. Box 371954, Pittsburg, PA 15250-7954. Make check payable to: Superintendent of Documents.	The CD-ROM is available for copying and inspection at Department of Veterans' Affairs regional offices or at the Board of Veterans' Appeals Research Center, 811 Vermont Avenue, NW., Washington, DC 20420.
Department of Veterans Affairs	Department of Veterans Affairs Publication I–03–1. All information is current as of April 1991. Classification subject and numeric listing of manuals, VA Regulations, circulars, interim issues, handbooks, bulletins, pamphlets, and guides, conveying agency policies, regulations and procedures of a continuing nature	The public may obtain a copy of the index without charge from the VA Service and Distribution Center, Forms and Publications Services (901P), P.O. Box 7010, Hines, IL 60141.	VA Central Office, IRM Policies and Standards Service (045A3), Room 583, 810 Vermont Ave., NW., Washington, DC 20420. Telephone: 202–273–8129 -OR- Administrative Officer at nearest VA facility. Check your local Telephone Directory under United States Government, Department of Veterans Affairs, or ask your Directory Assistance Operator for the number in your area.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE188, Special Condition 23–131–SC]

Special Conditions; Rockwell Collins, Incorporated on the Raytheon Model B300/B300C; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Rockwell Collins, Cedar Rapids, Iowa 52498 for a Supplemental Type Certificate for the Raytheon Model B300/B300C airplanes. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of a ProLine 21 avionics system, which includes an electronic flight instrument system (EFIS) display for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to this airplane.

DATES: The effective date of these special conditions is December 18, 2002. Comments must be received on or before February 3, 2003.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE188, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE188. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE188." The postcard will be date stamped and returned to the commenter.

Background

On November 7, 2001, Rockwell Collins, Incorporated, Cedar Rapids, Iowa 52498 made an application to the FAA for a new Supplemental Type Certificate for the Raytheon Aircraft Model B300/B300C airplanes. The airplane is currently approved under TC No. A24CE. The proposed modification incorporates the installation of the Rockwell Collins ProLine 21 Display System. The ProLine 21 system will replace the EFIS originally installed on the airplane. Like the original EFIS, the new system has the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Rockwell Collins must show that the Raytheon Model B300/B300C aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to the Raytheon Model B300/B300C. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate Data Sheet A24CE are as follows:

Certification Basis FAR Part 23 effective February 1, 1965, as amended by Amendments 23–1 through 23–34; Federal Aviation Regulations part 36 effective December 1, 1969, as amended by Amendment 36–1 through 36–15; SFAR 27 effective February 1, 1974, as amended by Amendments 27–1 through 27–6 and Exemption No. 5077 from compliance with § 23.207(c). Federal Aviation Regulations part 23, §§ 23.201, 23.203, and 23.205 through Amendment 23–45 (S/N FN–1 and up only). Effective January 20, 1994, Federal Aviation Regulations § 23.1457 as amended by Amendment 23–35. Exemption 5599 from compliance with § 23.53(c)(1), for use of ground minimum control speed (V_{MCG}) for determination of takeoff decision speed (V1), (Serials FL–111, FM–9, FN–2 and after, or prior airplanes modified by Beech Kit No. 130–3004).

Compliance with ice protection has been demonstrated in accordance with § 23.1419 when ice protection equipment is installed in accordance with the Equipment List. Equivalent Safety Findings: § 23.781(b) for shape of the propeller control knob; § 23.1305(g)

for use of fuel low pressure warning annunciators in lieu of the fuel pressure indicators; § 23.1321(d) for the basic "T" instrument panel arrangement.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with 14 CFR part 21 § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Rockwell Collins will incorporate certain novel and unusual design features into the Raytheon Model B300/B300C airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features, including EFIS, are susceptible to the HIRF environment and were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laborat y tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz ...	50	50
100 kHz–500kHz ..	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz ...	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz ...	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz ...	2000	200
18 GHz–40 GHz ...	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values over the complete modulation period.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts rms per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Raytheon Model B300/B300C airplanes. Should Rockwell Collins apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the

notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, § 21.16 and § 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Raytheon Aircraft Company Model B300/B300C airplanes modified by Rockwell Collins to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on December 18, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–33126 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE193, Special Condition 23–133–SC]

Special Conditions: S–TEC Corporation; Various Airplane Models; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to S–TEC Corporation, One S–TEC Way Municipal Airport, Mineral Wells, TX 76067, for a Supplemental Type Certificate for the models listed under the heading "Type Certification Basis." These special conditions include various airplane models to streamline the certification process as recommended from completed Safer Sky Programs. The primary objective of streamlining the certification process is to improve the safety of the airplane fleet by fostering the incorporation of both new technologies that can be certificated affordably under 14 CFR part 23.

The airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of single or dual Meggitt Avionics Magic electronic flight instrument system (EFIS) manufactured by Meggitt Avionics, for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is December 18, 2002. Comments must be received on or before before February 3, 2003.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE193, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE193. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE193." The postcard will be date stamped and returned to the commenter.

Background

On September 16, 2002, S–TEC Corporation, One S–TEC Way, Mineral Wells Airport, Mineral Wells, Texas 76067, made an application to the FAA for a new Supplemental Type Certificate for the Raytheon (Beech) 65–90, 55–A90, 65–A90–1, 65–A90–4, B90, and C90 airplane models. They have also identified future STC projects that need the special conditions. All models are currently approved under the type

certification basis listed in the paragraph headed "Type Certification Basis." The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, S–TEC Corporation must show that affected airplane models, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Numbers listed below or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the original "type certification basis" and can be found in the Type Certificate Numbers listed below. In addition, the type certification basis of airplane models that embody this modification will include § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–49; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Aircraft model	Type certificate number
Raytheon (Beech) 65–90, 65–A90, 65–A90–1, 65–A90–4, B90, C90, and E90	3A20, Rev. 60, 9/10/01
Raytheon (Beech) King Air 200	A24CE, Rev. 82, 4/23/02
Twin Commander Aircraft Corporation 690C, 695, 695A, and 695B	2A4, Rev. 46, 4/3/00
Cessna 425 Conquest I	A7CE, Rev. 45, 7/12/02
Piper PA–31T Cheyenne II	A8EA, Rev. 21, 4/8/98

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101(b)(2) of Amendment 21–69.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

S–TEC Corporation plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from HIRF: Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)*	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100

Frequency	Field strength (volts per meter)*	
	Peak	Average
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

* The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical field strength from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or by any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to one modification to the airplane models listed under the heading "Type Certification Basis." Should S–TEC Corporation apply to extend this modification to include additional airplane models, the special conditions would extend to these models as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of one modification to several models of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of some airplane models, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, and 44701; 14 CFR part 21, §§ 21.16 and 21.101; and 14 CFR part 11, §§ 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for airplane models listed under the "Type Certification Basis" heading modified by S–TEC Corporation to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on December 18, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–33131 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–216–AD; Amendment 39–12912; AD 2002–21–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), (DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83

(MD–83), DC–9–87 (MD–87), and MD–88 airplanes. That AD currently requires revisions to the Airplane Flight Manual; installation of inspection aids on the wing upper surfaces; and, among other actions, installation of an overwing heater blanket system or primary upper wing ice detection system, and installation of a heater protection panel or an equipment protection device on certain overwing heater blanket systems. That AD also requires disabling the anti-ice systems for the upper wing surface on certain airplanes. This document corrects incorrect paragraph references in two paragraphs. This correction is necessary to ensure that operators are aware of an incorrect reference in paragraphs (1)(2)(i) and (1)(2)(ii) of the existing AD.

DATES: Effective November 8, 2002.

In incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of November 8, 2002, (67 FR 65298, October 24, 2002).

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as January 17, 1992 (57 FR 2014, January 17, 1992).

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 7, 2001 (66 FR 17499, April 2, 2001).

The comment period specified for the existing rule remains December 23, 2002.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Daniel Bui, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5339; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227p–1232, Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: On October 9, 2002, the Federal Aviation Administration (FAA) issued AD 2002–21–06, amendment 39–12912 (67 FR 65298, October 24, 2002), which applies to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. That AD requires revisions to the Airplane Flight Manual; installation of inspection aids on the wing upper surfaces; and, among actions, other actions, installation of an overwing heater blanket system or primary upper wing ice detection system, and installation of a heater protection panel or an equipment protection device on certain overwing heater blanket systems. That AD also requires disabling the anti-ice systems for the upper wing surface on certain airplanes. The actions requires by that AD are intended to prevent ice ingestion into one or both engines and consequent loss of thrust from one or both engines; and damage to the upper wing skin surface and its structure, due to prolonged short-circuit electrical arcing of certain anti-ice systems.

Need for the Correction

The FAA notes that an inadvertent transpositions of paragraph identifiers occurred in paragraphs (1)(2)(i) and (1)(2)(ii) of AD 2002–21–06. Paragraph (1) of that AD specifies information regarding alternative methods of compliance (AMOCs) for the requirements of that AD. Specifically, paragraph (1)(2)(i) states that installation of a non-skid, striped triangular symbol per Option 5 of McDonnell Douglas Service Bulletin MD80–30–059, Revision 4 through Revision 7, is approved as an AMOC with paragraphs (b) and (i)(2) of that AD. While paragraph (i)(2) of that AD is a correct reference, the reference to paragraph (b) is incorrect and should read paragraph "(c)" of the AD. Conversely, paragraph (1)(2)(ii) of that AD states that revision of the Configuration Deviation List (CDL) Appendix of the AFM by inserting a copy of CDL Appendix, Section I, Page 2A, dated March 10, 1993, into the AFM, is approved as an AMOC with paragraphs (c) and (i)(3) of the AD. While paragraph (i)(3) of that AD is correct reference, the reference to paragraph (c) is incorrect and should read paragraph "(b)" of that AD.

The FAA has determined that a correction to AD 2002–21–06 is necessary to revise incorrect paragraph references in paragraphs (1)(2)(i) and (1)(2)(ii) of that AD. This correction specifies the appropriate paragraphs for which the specified AMOCs apply.

Correction of Publication

This document corrects the errors and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains November 8, 2002.

Since this action only corrects two incorrect paragraph references for AMOCs, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39–AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2002–21–06 McDonnell Douglas: Amendment 39–12912. Docket 2002–NM–216–AD.

Applicability: All Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the ara subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (1)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

The prevent damage to the upper wing skin surface and its structure, due to prolonges short-circuit electrical arcing of the anti-ice system; accomplish the following:

Restatement of AD 2001–06–16 COR

Airplane Flight Manual Revision

(a) Within 10 days after January 17, 1992 (the effective date of AD 92–03–02,

amendment 39–8156), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"*Ice on Wing Upper Surfaces*

Caution

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [End of Cautionary Note]

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, *etc.*) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

Note

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [end of Note]"

AFM Configuration Deviation List Revision

(b) Within 10 days after January 17, 1992, revise the Configuration Deviation List (CDL) Appendix of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"*30–80–01 Triangular Decal and Tuft Assemblies*

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist; or

(b) When the ambient temperature is more than 50 degrees F."

Installation of Inspection Aids

(c) Within 30 days after January 17, 1992, install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

Repetitive Tests and One-Time Inspection

(d) For airplanes on which an overwing heater blanket system was installed without installation of a heater protection panel (HPP) or an equipment protection device (EPD) prior to May 7, 2001 (the effective date of 2001–06–16 COR, amendment 39–12163): Within 60 days days after May 7, 2001, accomplish the actions specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For airplanes on which the overwing heater blanket system was installed in accordance with McDonnell Douglas Service Bulletin MD80–30–071, Revision 02, dated February 6, 1996; or McDonnell Douglas Service Bulletin MD80–30–078, Revision 01, dated April 8, 1997: Accomplish paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Remove secondary access covers, and perform a one-time detailed visual inspection to detect discrepancies (mechanical damage or punctures in the upper skin of the blanket, prying damage on the panel, and fuel leakage) of the overwing heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. And,

(ii) Accomplish paragraph (d)(1)(ii)(A) or (d)(1)(ii)(B) of this AD.

(A) Perform dielectric withstanding voltage and resistance tests in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. Repeat the tests thereafter at intervals not to exceed 150 days, until installation of an HPP in accordance with paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable.

(B) Deactivate the overwing heater blanket system until accomplishment of dielectric withstanding voltage and resistance tests specified in paragraph (d)(1)(ii)(A). If the overwing heater blanket system is deactivated as provided by this paragraph, continue to accomplish the requirements of paragraphs (a), (b), and (c) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) For airplanes on which the overwing heater blanket system was installed in accordance with TDG Aerospace, Inc., STC SA6042NM: Accomplish paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Remove secondary access covers, and perform a one-time detailed visual inspection to detect discrepancies (mechanical damage or punctures in the upper skin of the blanket, prying damage on the panel, and fuel leakage) of the overwing heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. And,

(ii) Accomplish paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this AD.

(A) Perform dielectric withstanding voltage and resistance tests in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. Repeat the tests thereafter at intervals not to exceed 150 days, until installation of an EPD in accordance with paragraph (f)(2)(i) of this AD.

(B) Deactivate overwing heater blanket system until accomplishment of dielectric withstanding voltage and resistance tests specified in paragraph (d)(2)(ii)(A). If the overwing heater blanket system is deactivated as provided by this paragraph, continue to accomplish the requirements of paragraphs (a), (b), and (c) of this AD.

Corrective Action

(e) If any discrepancy is detected during any inspection or test performed in accordance with paragraph (d) of this AD, prior to further flight, repair or replace the affected heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997; except as provided in paragraph (h) of this AD.

Note 3: McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997, references TDG Aerospace Document E95–451, Revision B, dated January 31, 1996, as an additional source of service information for accomplishment of repair or replacement of the overwing heater blanket.

Installation of Overwing Heater Blanket or Primary Upper Wing Ice Detection System

(f) Within 3 years after May 7, 2001, do the requirements of either paragraph (f)(1) or (f)(2) of this AD.

(1) Do the actions specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable.

(i) For airplanes listed in Group 1 in McDonnell Douglas Service Bulletin MD80–30–090, dated October 19, 1999: Install n overwing heater blanket system in accordance with McDonnell Douglas Service Bulletin MD80–30–071, Revision 02, dated February 6, 1996; and modify and reidentify the existing HPP in accordance with McDonnell Douglas Service Bulletin MD80–30–090. Modification of the existing HPP in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(1)(ii)(A) of this AD.

(ii) For airplanes listed in Group 2 in McDonnell Douglas Service Bulletin MD80–30–090, dated October 19, 1999: Install an overwing heater blanket system in

accordance with McDonnell Douglas Service Bulletin MD80–30–078, Revision 01, dated April 8, 1997; and install an HPP and associated wiring in accordance with McDonnell Douglas Service Bulletin MD80–30–090. Installation of an HPP and associated wiring in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(1)(ii)(A) of this AD.

Note 4: For other airplanes, accomplishment of the requirements of paragraph (f)(1)(i) or (f)(1)(ii) of this AD may be acceptable per paragraph (i)(1) of this AD.

(2) Accomplish the actions specified in either paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this AD.

(i) Install an overwing heater blanket system, and install an EPD that provides a circuit protection function to the overwing heater blanket, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Installation of an EPD in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(2)(ii)(A) of this AD.

Note 5: Installation of an overwing heater blanket system and installation of an EPD that provides a circuit protection function to the overwing heater blanket, in accordance with TDG Aerospace, Inc., SA 6042NM, or TDG Master Drawing List (MDL) E93–104, Revision R, dated October 25, 2000; is an approved means of compliance with the requirements of paragraph (f)(2)(i) of this AD.

(ii) Install an overwing heater blanket system in accordance with a method approved by the Manager, Los Angeles ACO.

(iii) Install an FAA-approved primary upper wing ice detection system in accordance with a method approved by the Manager, Los Angeles ACO.

Note 6: Boeing (McDonnell Douglas) has received FAA approval of a primary upper wing ice detection system that is considered to be an alternative method of compliance (AMOC) with the requirements of paragraph (f)(2)(iii) of this AD. Information concerning such AMOCs may be obtained from the Los Angeles ACO.

AFM Revision

(g) Except as provided by paragraph (h) of this AD, prior to further flight after accomplishment of the installation required by paragraph (f)(1) or (f)(2) of this AD, revise the Limitations Section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM. After accomplishment of the installation required by paragraph (f)(1) or (f)(2) of this AD and this AFM revision, the AFM revisions required by paragraphs (a) and (b) of this AD may be removed from the AFM, and the inspection aids required by paragraph (c) of this AD may be removed from the airplane.

"Ice on Wing Upper Surfaces

Caution

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [End of Cautionary Note]"

MMEL Provision

(h) An airplane may be operated with an inoperative overwing heater blanket or primary upper wing ice detection system for 10 days per the Master Minimum Equipment List (MMEL), provided that the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD are done before further flight.

(1) Revise the Limitations Section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Ice on Wing Upper Surfaces

Caution

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, *etc.*) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

Note

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [End of Note]"

(2) Revise the CDL Appendix of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"30–80–01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar lien; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist; or

(b) When the ambient temperature is more than 50 degrees F."

(3) Install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

New Requirements of This Ad

Note 7: The Honeywell Anti-Ice System specified in paragraphs (i), (j), and (k) of this AD, is also known and specified as an overwing heater blanket system installed in accordance with AlliedSignal Supplemental Type Certificate (STC) STC SA6061NM.

For Airplanes Equipped With a Honeywell Anti-Ice System Installed Per STC SA6061NM

(i) For airplanes equipped with a Honeywell Anti-Ice System installed per STC SA6061NM: Accomplish the actions specified in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD, at the times specified in those paragraphs.

(1) Within 72 hours after the effective date of this AD, disable the Honeywell Anti-Ice System installed per STC SA6061NM, per Honeywell Alert Service Bulletin 109XXXX–30–38, dated August 8, 2002.

(2) Within 72 hours after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

"Ice on Wing Upper Surfaces

Caution

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and different to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [End of Cautionary Note]

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or

visible moisture (rain, drizzle, sleet, snow, fog, *etc.*) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing. When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

Note

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [End of Note]"

AFM Configuration Deviation List Revision

(3) Within 72 hours after the effective date of this AD, revise the CDL Appendix of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

"30–80–01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist; or

(b) When the ambient temperature is more than 50 degrees F."

Installation of Inspection Aids

(4) Within 30 days after the effective date of this AD, install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

Note 8: Operators should note that certain AMOCs have been approved as acceptable methods of compliance with paragraph (i)(4) of this AD. Information concerning such AMOCs may be obtained from the Manager, Los Angeles ACO.

Installation of Overwing Heater Blanket or Primary Upper Wing Ice Detection System

(j) For airplanes equipped with disabled Honeywell Anti-Ice Systems installed per STC SA6061NM: Within 3 years after May 7, 2001, accomplish the requirements of paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Install an overwing heater blanket system, and install an EPD that provides a circuit-protection function to the overwing heater blanket, in accordance with a method approved by the Manager, Los Angeles ACO, FAA.

Note 9: Installation of an overwing heater blanket system and installation of an EPD that provides a circuit-protection function to the overwing heater blanket, in accordance with TDG Aerospace, Inc., SA60242NM, or TDG Master Drawing List (MDL) E93–104, Revision R, dated October 25, 2000; is an approved means of compliance with the requirements of paragraph (j)(1) of this AD.

(2) Install an overwing heater blanket system in accordance with a method approved by the Manager, Los Angeles ACO.

(3) Install an FAA-approved primary upper wing ice detection system in accordance with a method approved by the Manager, Los Angeles aCO.

Note 10: Boeing (McDonnell Douglas) has received FAA approval of an acceptable primary upper wing ice detection system, which is considered to be an acceptable method of compliance with the requirements of paragraph (j)(3) of this AD when accomplished in accordance with a method approved by the Manager, Los Angeles ACO.

AFM Revision

(k)(1) For airplanes equipped with ■ disabled Honeywell Anti-Ice Systems installed per STC SA6061NM: Prior to further flight after accomplishment of the installation required by paragraph (j)(1), (j)(2), or (j)(3) of this AD, revise the Limitations Section of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

"Ice on Wing Upper Surfaces

Caution

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [End of Cautionary Note]"

(2) After accomplishment of the installation required by paragraph (j)(1) of this AD and this AFM revision, the AFM revisions and CDLs required by paragraphs (i)(2) and (i)(3) of this AD may be removed from the AFM, and the inspection aids required by paragraph (i)(4) of this AD may be removed from the airplane.

Alternative Methods of Compliance (AMOCs)

(l)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) The following AMOCs were approved previously per AD 92–03–02, amendment 39–8156, and are approved as AMOCs with the indicated paragraphs of this AD:

(i) Installation of a non-skid, striped triangular symbol per Option 5 of McDonnell Douglas Service Bulletin MD80–30–059, Revision 4 though Revision 7, is approved as an AMOC with paragraphs (c) and (i)(2) of this AD; and

(ii) Revision of the Configuration Deviation List (CDL) Appendix of the AFM by inserting a copy of CDL Appendix, Section I, page 2A, dated March 10, 1993, into the AFM, is approved as an AMOC with paragraphs (b) and (i)(3) of this AD.

Note 11: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(m) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to ■ location where the requirements of this AD can be accomplished.

Incorporation by Reference

(n) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable service document identified in the following table:

Service document	Revision level	Date
Honeywell Alert Service Bulletin 109XXXX–30–38	Original	August 8, 2002.
McDonnell Douglas Alert Service Bulletin MD80–30A087	Original	September 22, 1997.
McDonnell Douglas Service Bulletin 30–59	Original	September 18, 1989.
McDonnell Douglas Service Bulletin 30–59	1	January 5, 1990.
McDonnell Douglas Service Bulletin 30–59	2	August 15, 1990.
McDonnell Douglas Service Bulletin MD80–30–071	02	February 6, 1996.
McDonnell Douglas Service Bulletin MD80-30–078	01	April 8, 1997.
McDonnell Douglas Service Bulletin MD80–30–090	Original	October 19, 1999.

(1) The incorporation by reference of Honeywell Alert Service Bulletin 109XXXX–30–38, dated August 8, 2002, was approved previously by the Director of the Federal Register as of November 8, 2002 (67 FR 65298, October 24, 2002).

(2) The incorporation by reference of McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; McDonnell Douglas Service Bulletin 30–59, Revision 1, dated January 5, 1990; and McDonnell Douglas Service Bulletin 30–59, Revision 2, dated August 15, 1990; was approved previously by the Director of the Federal Register as of January 7, 1992 (57 FR 2014, January 17, 1992).

(3) The incorporation by reference of the remaining service bulletins listed in Table 1 of this AD, was approved previously by the Director of the Federal Register as of May 7, 2001 (66 FR 17499, April 2, 2001).

(4) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(o) The effective date of this amendment remains November 8, 2002.

Issued in Renton, Washingfon, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32881 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–271–AD; Amendment 39–12970; AD 2002–24–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2002–24–05 that was published in the **Federal Register** on December 3, 2002 (67 FR 71808). The typographical error resulted in identification of certain airplanes in the applicability of the AD as having serial numbers instead of line numbers. This AD is applicable to certain Boeing Model 727 series airplanes. This AD requires detailed inspections to detect cracking and corrosion of the upper chord of the rear spar of the wing; and repair, if necessary. This action also requires detailed inspections to detect and permanently repair any cracking that has been previously repaired by stop-drilling.

DATES: Effective December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2131; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2002–24–05, amendment 39–12970, applicable to certain Boeing Model 727 series airplanes, was published in the **Federal Register** on December 3, 2002 (67 FR 71808). That AD requires detailed inspections to detect cracking and corrosion of the upper chord of the rear spar of the wing; and repair, if necessary. That AD also requires detailed inspections to detect and permanently repair any cracking that has been previously repaired by stop-drilling.

As published, the applicability section of the AD specifies, "Model 727 series airplanes, serial numbers 1 through 1832 inclusive; certificated in any category." Identification of the airplanes was inadvertently specified as "serial numbers 1 through 1832 inclusive." The correct identification if "line numbers 1 through 1832 inclusive."

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective of this AD remains December 18, 2002.

§ 39.13 [Corrected]

On page 71809, in the third column, "Applicability" of AD 2002–24–05 is corrected to read as follows:

* * * * *

"*Applicability:* Model 727 series airplanes, line numbers 1 through 1832 inclusive; certificated in any category."

* * * * *

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32882 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–309–AD; Amendment 39–12992; AD 2002–24–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes; Model 747 Series Airplanes; and Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–24–51 that was sent previously to all known U.S. owners and operators of the airplane models described previously by individual notices. This AD requires revising the Airplane Flight Manual to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks and, for certain airplanes, to prohibit the use of the horizontal stabilizer fuel tank and the certain center auxiliary fuel tanks. This action is prompted by reports indicating that two fuel tank pumps showed evidence of extreme localized overheating of parts in the priming and vapor pump section of the fuel pump; such overheating provides an ignition source in the fuel tank during dry running of the pump, which could result in fire/explosion of the fuel tank. The actions specified by this AD are intended to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks and, for certain airplanes and, for certain airplanes to prohibit the use of the horizontal stabilizer fuel tank and certain center auxiliary fuel tanks.

DATES: Effective January 7, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–24–51, issued November 23, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–309–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this

location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–309–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bernie Gonzalez, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2682; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On November 23, 2002, the FAA issued emergency AD 2002–24–51, which is applicable to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes; Model 747 series airplanes; and Model 757 series airplanes.

The FAA has received reports indicating that two fuel tank pumps from different Model 747 series airplanes showed evidence of extreme localized overheating of parts in the priming and vapor pump section of the fuel pump. The priming and vapor pump section of the pump is open to the fuel tank via the pump inlet line and the vapor vent of the pump. The cause of this overheating is believed to be friction between the pump parts; however, the specific cause of the friction is unknown at this time.

One of the two pumps was an override/jettison pump of the inboard main tank. The pump had been removed so that X-ray inspections specified in AD 2002–19–52, amendment 39–12900 (67 FR 61253, September 30, 2002), could be performed. The pump had been installed on the airplane for 6,000 flight hours. Since scoring was found on the inducer housing of the pump, the pump was disassembled, at which time evidence of severe overheating of the priming and vapor pump section was found. The Stellite (cobalt/chrome/nickel/iron alloy) end plates of the priming and vapor section of the pump were blued and cracked from thermal stress, and the steel pump shaft in that same area was also blued. According to the pump manufacturer, bluing of the steel and/or Stellite materials is evidence of temperatures in excess of 1,100 degrees Fahrenheit. It is believed that such temperatures could only be reached during dry running of the pump. The previous operational history of this pump is under investigation to determine how dry running could have occurred. Adjacent areas of the shaft were blackened. In addition, the aluminum bearing housing adjacent to the back side of the end plate had melted.

The other pump was an override/jettison pump of the center tank, which had been removed from a Model 747–400 series airplane due to a low pressure warning received in the flight deck. The pump had been installed on the airplane for 3,500 flight hours. The pump was found with the thermal fuses of the electrical motor winding open, which indicates an overheat condition in the motor section. Such overheating may be due to the pump rotor dragging or locking. Evidence of severe overheating of the priming and vapor pump section was found. The end plates of the priming and vapor section of the pump were blued and cracked from thermal stress, and the pump shaft in that same area was blued.

Such overheating of the parts in the priming and vapor pump section of the fuel pump provides an ignition source in the fuel tank during dry running of the pump, which could result in fire/explosion of the fuel tank.

Similar Parts

The pumps involved in the two reports described previously have the same part numbers as those that were addressed in AD 2002–19–52. The fuel pumps installed on Model 737–600, –700, –700C, –800, and –900; Model 747; and Model 757 series airplanes are all potentially affected since the pumps are almost identical in design.

FAA's Determination

In light of these reports, we find that procedures must be included in the Airplane Flight Manual (AFM) to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank (for Model 747–400 series airplanes) and certain center auxiliary fuel tanks (on Model 747 series airplanes). Those procedures specify crew monitoring of fuel levels and shutoff of center fuel tank pumps at specified levels that ensure the pump inlet remains covered during pump operation. Covering the pump inlet prevents fuel vapors from coming into contact with potentially overheated parts in the priming and vapor pump section of the fuel pump, and likely prevents the overheating condition itself. Those procedures also require deactivation of the horizontal stabilizer tank on Model 747–400 series airplanes and certain auxiliary fuel tanks of Model 747 series airplanes because the small size of the tank and the high flow rate of the pumps make it impractical to effectively apply an early shutoff procedure.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2002–24–51 to revising the AFM to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank (for Model 747–400 series airplanes) and certain center auxiliary fuel tanks (on Model 747 series airplanes).

Some operators may already have accomplished the AFM revisions required by this AD since those revisions are identical to the AFM revisions required by AD 2002–19–52. However, the terminating action (*i.e.*, X-ray inspections of the fuel pumps) provided by AD 2002–19–52 allows operators to remove those AFM revisions. The unsafe condition addressed in AD 2002–19–52 was caused by chafed wiring, so the terminating action for that AD is not effective in eliminating the unsafe condition addressed in this AD. Therefore, for operators that have accomplished the terminating action specified in AD 2002–19–52, this new AD requires that those AFM revisions be reinstated.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on November 23, 2002, to all known U.S. owners and operators of all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes; Model 747 series airplanes; and Model 757 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation

Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–309–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–24–51 Boeing: Amendment 39–12992. Docket 2002–NM–309–AD.

Applicability: Model 737–600, –700, –700C, –800, and –900 series airplanes; Model 747 series airplanes; and Model 757 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank (for Model 747–400 series airplanes) and certain center auxiliary fuel tanks (on Model 747 series airplanes), accomplish the following:

Note 1: Accomplishment of the actions required by paragraphs (a) through (d) of AD 2002–19–52, amendment 39–12900, is acceptable for compliance with the requirements of paragraphs (b) through (e) of this AD. This AD does not require that those actions be repeated unless the terminating actions specified in paragraphs (g) and (h) of AD 2002–19–52 have been accomplished and the AFM revisions and placard(s) have been removed.

(a) Accomplishment of the terminating actions specified in paragraphs (g) and (h) of AD 2002–19–52, amendment 39–12900, does not allow removal of the AFM revisions required by paragraphs (a), (b), (c), and (d) of AD 2002–19–52, or paragraphs (b), (c), (d), and (e) of this AD.

Airplane Flight Manual (AFM) Revision: Model 737–600, –700, –700C, –800, and –900

(b) For Model 737–600, –700, –700C, –800, and –900 series airplanes: Within 4 days after receipt of this AD, revise the Limitations Section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

"Certificate Limitations

The center tank fuel pumps must be OFF for takeoff if center tank fuel is less than 5,000 pounds (2,300 kilograms) with the airplane readied for initial taxi.

Both center tank fuel pump switches must be selected Off when center tank fuel quantity reaches approximately 1,000 pounds (500 kilograms) during climb and cruise or 3,000 pounds (1,400 kilograms) during descent and landing. The fuel pumps must be positioned Off at the first indication of fuel pump low pressure.

The CWT fuel quantity indication system must be operative to dispatch with CWT mission fuel.

Note

The CONFIG indicator will annunciate when center tank fuel exceeds 1,600 pounds (800 kilograms) and the center tank fuel pump switches are Off. Do not accomplish the CONFIG non-normal procedure prior to or during takeoff with less than 5,000 pounds (2,300 kilograms) of center tank fuel or during descent and landing with less than 3,000 pounds (1,400 kilograms) of center tank fuel.

Note

In a low fuel situation, both center tank pumps may be selected On and all center tank fuel may be used.

If the main tanks are not full, the zero fuel gross weight of the airplane plus the weight of center tank fuel may exceed the maximum zero fuel gross weight by up to 5,000 pounds (2,300 kilograms) for takeoff, climb and cruise and up to 3,000 pounds (1,400 kilograms) for descent and landing, provided that the effects of balance (CG) have been considered.

If a center tank fuel pump fails with fuel in the center tank, accomplish the Fuel Pump Low Pressure non-normal procedure.

When defueling center or main wing tanks, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to Off at the first indication of fuel pump low pressure. Defueling with passengers on board is prohibited.

The limitations contained in this AD supersede any conflicting basic airplane flight manual limitations."

AFM Revision: Model 747–100, –200B, –200F, –200C, –100B, –300, –100B SUD, 747SR, and 747SP

(c) For Model 747–100, –200B, –200F, –200C, –100B, –300, –100B SUD, 747SR, and 747SP series airplanes: Within 4 days after receipt of this AD, revise the Limitations Section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

"Certificate Limitations

Fueling and use of the center auxiliary fuel tank and auxiliary fuel tanks 1 and 4 (if installed) is prohibited.

The center wing tank (CWT) must contain a minimum of 17,000 pounds (7,700 kilograms) of fuel prior to engine start, if the CWT override/jettison pumps are to be selected On during flight.

The CWT fuel quantity indication system must be operative to dispatch with CWT mission fuel.

Both CWT override/jettison pump switches must be selected Off at or before the CWT fuel quantity reaches 7,000 pounds (3,200 kilograms), if the CWT fuel quantity is less than 50,000 pounds (22,700 kilograms) prior to engine start. The CWT override pumps may be selected On during stabilized cruise conditions. Both CWT override/jettison pump switches must be selected Off at or before the CWT fuel quantity reaches 3,000 pounds (1,400 kilograms).

Both CWT override/jettison pump switches must be selected Off at or before the CWT fuel quantity reaches 3,000 pounds (1,400 kilograms), if the CWT fuel quantity is greater than or equal to 50,000 pounds (22,700 kilograms) prior to engine start.

Both CWT override/jettison pumps must be selected Off when either CWT override/jettison fuel pump low pressure light illuminates.

Warning

Do not reset a tripped fuel pump circuit breaker.

Warning

Do not cycle the CWT pump switches from On to Off to On with any continuous low pressure indication present.

Note

The CWT may be emptied normally in an emergency fuel jettison.

Note

In a low fuel situation, both CWT override/jettison pumps may be selected On and all CWT fuel may be used.

If a center wing tank pump fails with fuel in the center tank, shut off the affected fuel pump.

If the main tanks are not full, the zero fuel gross weight of the airplane plus the weight of CWT tank fuel may exceed the maximum zero fuel gross weight by up to 7,000 pounds (3,200 kilograms) for takeoff, climb, cruise, descent, and landing, provided that the effects of balance (CG) have been considered.

When defueling center or main wing tanks, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to Off at the first indication of fuel pump low pressure. Defueling with passengers on board is prohibited.

The limitations contained in this AD supersede any conflicting basic airplane flight manual limitations."

AFM Revision: Model 747–400, –400D, and –400F

(d) For Model 747–400, –400D, and –400F series airplanes: Within 4 days after receipt of this AD, revise the Limitations Section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

"Certificate Limitations

Fueling and use of the horizontal stabilizer tank (if installed) is prohibited if a placard prohibiting its use is installed.

The center wing tank (CWT) must contain a minimum of 17,000 pounds (7,700 kilograms) prior to engine start, if the CWT override/jettison pumps are to be selected On during flight.

The CWT fuel quantity indication system must be operative to dispatch with CWT mission fuel.

Both CWT override/jettison pump switches must be selected Off at or before CWT fuel quantity reaches 7,000 pounds (3,200 kilograms), if CWT fuel quantity is less than 50,000 pounds (22,700 kilograms) prior to engine start. The CWT override pumps may be selected On during stabilized cruise conditions. Both CWT override/jettison pump switches must be selected Off at or before the CWT fuel quantity reaches 3,000 pounds (1,400 kilograms).

Note

With CWT override/jettison pumps selected Off and CWT fuel quantity greater than 6,000 pounds (2,800 kilograms), the Fuel OVRD CTR L & R EICAS messages will be displayed. Do not accomplish the associated non-normal procedure.

Both CWT override/jettison pump switches must be selected Off at or before CWT fuel quantity reaches 3,000 pounds (1,400 kilograms), if CWT fuel quantity is greater than or equal to 50,000 pounds (22,700 kilograms) prior to engine start.

Both CWT override/jettison pumps must be selected OFF when either CWT override/jettison fuel pump low pressure light illuminates.

Warning

Do not reset a tripped fuel pump circuit breaker.

Warning

Do not cycle CWT override/jettison pump switches from On to Off to On with any continuous low pressure indication present.

Note

The center wing tank may be emptied normally during an emergency fuel jettison.

Note

In a low fuel situation, both CWT override/jettison pumps may be selected On and all CWT fuel may be used.

If a center wing tank pump fails with fuel in the center tank, accomplish the Fuel OVRD CTR L, R non-normal procedure.

If the main tanks are not full, the zero fuel gross weight of the airplane plus the weight of CWT tank fuel may exceed the maximum zero fuel gross weight by up to 7,000 pounds (3,200 kilograms) for takeoff, climb, cruise, descent, and landing, provided that the effects of balance (CG) have been considered.

When defueling any fuel tanks, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to Off at the first indication of fuel pump low pressure. Defueling with passengers on board is prohibited.

The limitations contained in this AD supersede any conflicting basic airplane flight manual limitations."

AFM Revision: Model 757

(e) For Model 757 series airplanes: Within 4 days after receipt of this AD, revise the Limitations Section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

"Certificate Limitations

The center tank fuel pumps must be Off for takeoff if center tank fuel is less than 5,000 pounds (2,300 kilograms) with the airplane readied for initial taxi.

Both center tank fuel pump switches must be selected Off when center tank fuel quantity reaches approximately 1,000 pounds (500 kilograms) during climb, cruise, or descent. The center tank fuel pumps must be positioned Off at the first indication of fuel pump low pressure.

The CWT fuel quantity indication system must be operative to dispatch with CWT mission fuel.

Warning

Do not reset a tripped fuel pump circuit breaker.

Note

The Fuel CONFIG light will illuminate when there is fuel in the center tank that exceeds 1,200 pounds (600 kilograms) and the center tank fuel pump switches are Off. Do not accomplish the associated non-normal procedure prior to or during takeoff with less than 5,000 pounds (2,300 kilograms) of center tank fuel, unless there is an imbalance between main tanks or fuel is low in either main tank. After canceling the Fuel CONFIG light, monitor fuel quantity indications and accomplish the appropriate non-normal procedure if a main tank imbalance or main tank low fuel quantity occurs.

Note

In a low fuel situation, both center tank pumps may be selected On and all center tank fuel may be used.

If the main tanks are not full, the zero fuel gross weight of the airplane plus the weight of center tank fuel may exceed the maximum zero fuel gross weight by up to 5,000 pounds (2,300 kilograms) for takeoff, climb, cruise, descent, and landing, provided that the effects of balance (CG) have been considered.

If a center tank fuel pump fails or indicates low pressure with fuel in the center tank; accomplish the Fuel Pump non-normal procedure.

When defueling center or main wing tanks, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to Off at the first indication of fuel pump low pressure. Defueling with passengers on board is prohibited.

The limitations contained in this AD supersede any conflicting basic airplane flight manual limitations."

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2002–19–52, amendment 39–12900, are not considered to be approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(h) This amendment becomes effective on January 7, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–24–51, issued on November 23, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32883 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–314–AD; Amendment 39–12993; AD 2002–24–52]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–24–52 that was sent previously to all known U.S. owners and operators of all Boeing Model 747–400, –400D, and –400F series airplanes by individual notices. This AD continues to require revising the Airplane Flight Manual to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank. This AD also removes the reference to placards that was specified in the operating limitations required by another AD. This action is prompted by reports indicating that two fuel pumps showed evidence of extreme localized overheating of parts in the priming and vapor pump section of the fuel pump. Such overheating provides an ignition source in the fuel tank during dry running of the pump, which could result in fire/explosion of the fuel tank. The actions specified by this AD are intended to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank.

DATES: Effective January 6, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–24–52, issued November 24, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–314–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–314–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bernie Gonzalez, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2682; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On November 24, 2002, the FAA issued emergency AD 2002–24–52, which is applicable to all Boeing Model 747–400, –400D, and –400F series airplanes.

On November 23, 2002, the FAA issued emergency AD 2002–24–51, applicable to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes; Model 747 series airplanes; and Model 757 series airplanes. That AD was prompted by reports indicating that two fuel pumps from different Model 747 series airplanes showed evidence of extreme localized overheating of parts in the priming and vapor pump section of the fuel pump. Such overheating provides an ignition source in the fuel tank during dry running of the pump, which could result in fire/explosion of the fuel tank.

AD 2002–24–51 reinstated operating limitations originally imposed by AD 2002–19–52, amendment 39–12900 (67 FR 61253, September 30, 2002). Specifically for Model 747–400, –400D, and –400F series airplanes, AD 2002–24–51 includes a provision that prohibits fueling and use of the horizontal stabilizer tank "* * * if a placard prohibiting its use is installed." (That phrase appears in the first paragraph of the required operating limitation.)

Actions Since Issuance of Previous Rule

Since the issuance of that AD, we have become aware that the reference to placards in the Airplane Flight Manual (AFM) revision for Model 747–400, –400D, and –400F series airplanes should not have been restated because, unlike AD 2002–19–52, AD 2002–24–51 does not require installation of placards. Therefore, if an operator has done the terminating actions specified in AD 2002–19–52 and removed the placards required by that AD, the limitation imposed by AD 2002–24–51 would not prohibit fueling and use of the horizontal stabilizer tank. This would be contrary to the intent of AD 2002–24–51.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2002–24–52 to continue to require revising the AFM to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank. However, this AD removes the reference to placards that was specified in the operating limitations required by AD 2002–24–51.

The compliance time of this AD remains the same as that specified in AD 2002–24–51 ("within 4 days after receipt" of AD 2002–24–51). In addition, paragraph (b) of this AD states that, if an operator has already complied with AD 2002–24–51, it can comply

with this AD simply by deleting the phrase "if a placard prohibiting its use is installed" from the first paragraph of the operating limitation required by AD 2002–24–51.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on November 24, 2002, to all known U.S. owners and operators of all Boeing Model 747–400, –400D, and –400F series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–314–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–24–52 Boeing: Amendment 39–12993. Docket 2002–NM–314–AD.

Applicability: All Model 747–400, –400D, and –400F series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank, accomplish the following:

Airplane Flight Manual (AFM) Revision: Model 747–400, –400D, and –400F

(a) For Model 747–400, –400D, and –400F series airplanes: Within 4 days after receipt of emergency AD 2002–24–51, instead of complying with the requirements of paragraph (d) of AD 2002–24–51, revise the Limitations Section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

Certificate Limitations

Fueling and use of the horizontal stabilizer tank (if installed) is prohibited.

The center wing tank (CWT) must contain a minimum of 17,000 pounds (7,700 kilograms) prior to engine start, if the CWT override/jettison pumps are to be selected On during flight.

The CWT fuel quantity indication system must be operative to dispatch with CWT mission fuel.

Both CWT override/jettison pump switches must be selected Off at or before CWT fuel quantity reaches 7,000 pounds (3,200 kilograms), if CWT fuel quantity is less than 50,000 pounds (22,700 kilograms) prior to engine start. The CWT override pumps may be selected ON during stabilized cruise conditions. Both CWT override/jettison pump switches must be selected Off at or before the CWT fuel quantity reaches 3,000 pounds (1,400 kilograms).

Note

With CWT override/jettison pumps selected Off and CWT fuel quantity greater than 6,000 pounds (2,800 kilograms), the FUEL OVRD CTR L & R EICAS messages will be displayed. Do not accomplish the associated non-normal procedure.

Both CWT override/jettison pump switches must be selected Off at or before CWT fuel quantity reaches 3,000 pounds (1,400 kilograms), if CWT fuel quantity is greater than or equal to 50,000 pounds (22,700 kilograms) prior to engine start.

Both CWT override/jettison pumps must be selected Off when either CWT override/jettison fuel pump low pressure light illuminates.

Warning

Do not reset a tripped fuel pump circuit breaker.

Warning

Do not cycle CWT override/jettison pump switches from On to Off to On with any continuous low pressure indication present.

Note

The center wing tank may be emptied normally during an emergency fuel jettison.

Note

In a low fuel situation, both CWT override/jettison pumps may be selected On and all CWT fuel may be used.

If a center wing tank pump fails with fuel in the center tank, accomplish the FUEL OVRD CTR L, R non-normal procedure.

If the main tanks are not full, the zero fuel gross weight of the airplane plus the weight

of CWT tank fuel may exceed the maximum zero fuel gross weight by up to 7,000 pounds (3,200 kilograms) for takeoff, climb, cruise, descent, and landing, provided that the effects of balance (CG) have been considered.

When defueling any fuel tanks, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to Off at the first indication of fuel pump low pressure. Defueling with passengers on board is prohibited.

The limitations contained in this AD supersede any conflicting basic airplane flight manual limitations."

(b) If an operator has already complied with AD 2002–24–51, it can comply with this AD by deleting the phrase "if a placard prohibiting its use is installed" from the first paragraph of the AFM revision required by paragraph (d) of AD 2002–24–51.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2002–19–52, amendment 39–12900, are not considered to be approved as alternative methods of compliance with this AD.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(e) This amendment becomes effective on January 6, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–24–52, issued on November 24, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32884 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–67–AD; Amendment 39–12999; AD 2002–26–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that currently requires an inspection of the parking brake operated valve (PBOV) of the main landing gear to identify the part and serial numbers, and follow-on actions if necessary. That AD also provides for optional terminating action for the requirements of that AD. This amendment requires accomplishment of the previously optional terminating action. The actions specified by this AD are intended to prevent leakage of the PBOV and consequent failure of the "blue" hydraulic system and alternate parking brake and emergency braking systems, which could affect elements of the hydraulics for flaps, stabilizer, certain spoilers, elevator, rudder, and aileron. This action is intended to address the identified unsafe condition.

DATES: Effective February 6, 2003.

The incorporation by reference of the publications listed in the regulations was approved previously by the Director of the Federal Register as of May 8, 2002 (67 FR 19650, April 23, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2002–08–12, amendment 39–12720 (67 FR 19650, April 23, 2002), which is applicable to certain Airbus Model A330 and A340 series airplanes, was published in the **Federal Register** on August 16, 2002 (67 FR 53523). The action proposed to continue to require an inspection of the parking brake operated valve (PBOV) of the main landing gear to identify the part and serial numbers, and follow-on actions if necessary. That action also proposed to require accomplishment of the previously optional terminating action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 9 airplanes of U.S. registry that are affected by this AD.

The inspection that is currently required by AD 2002–08–12, and retained in this AD, takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $120 per airplane.

The new modification/replacement required by this AD will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $2,160, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12720 (67 FR 19650, April 23, 2002), and by adding a new airworthiness directive (AD), amendment 39–12999, to read as follows:

2002–26–11 Airbus: Amendment 39–12999. Docket 2002NM–67–AD. Supersedes AD 2002–08–12, Amendment 39–12720.

Applicability: Model A330 and A340 series airplanes as listed in Airbus Service Bulletin A330–32A3139 or A340–32A4176, both Revision 01, dated November 23, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent leakage of the parking brake operated valve (PBOV) and consequent failure of the "blue" hydraulic system and alternate parking brake and emergency braking systems, which could affect elements of the hydraulics for flaps, stabilizer, certain spoilers, elevator, rudder, and aileron, accomplish the following:

Restatement of Requirements of AD 2002–08–12, Amendment 39–12720

Inspections/Follow-On Actions

(a) Within 7 days after May 8, 2002 (the effective date of AD 2002–08–12): Do a one-time detailed inspection to determine the part number (P/N) and serial number (S/N) of the PBOV of the main landing gear, according to Airbus Service Bulletin A330–32A3139 (for Model A330 series airplanes) or A340–32A4176 (for Model A340 series airplanes), both Revision 01, dated November 23, 2001; as applicable.

(1) If no P/N or S/N is identified as affected equipment according to the applicable service bulletin, no further action is required by this AD.

(2) If any P/N or S/N is identified as affected equipment according to the applicable service bulletin: Before further flight, perform the follow-on actions (which may include a visual inspection for hydraulic fluid leakage at the PBOV, repair or replacement of the PBOV with a new or serviceable part if leakage is found, and an operational test) according to the applicable service bulletin. If the affected PBOV is not replaced, or if the PBOV is replaced with a part having the same P/N or S/N, repeat the inspection thereafter at the time specified by and according to the service bulletin, as applicable, until the part is replaced.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

New Requirements of This AD

PBOV Modification/Replacement

(b) Within 10 months after the effective date of this AD: Modify affected PBOVs, or replace them with new PBOVs, according to Airbus Service Bulletin A330–32A3139 (for Model A330 series airplanes) or A340–32A4176 (for Model A340 series airplanes), both Revision 01, dated November 23, 2001, as applicable. This modification terminates the requirements of this AD.

Actions Accomplished Per Previous Issue of Service Bulletins

(c) Accomplishment of the actions before the effective date of this AD according to Airbus Service Bulletin A330–32A3139 or A340–32A4176, dated September 14, 2001, as applicable, is acceptable for compliance with the requirements of paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A330–32A3139, Revision 01, including Appendix 01, dated November 23, 2001; or Airbus Service Bulletin A340–32A4176, Revision 01, including Appendix 01, dated November 23, 2001; as applicable. (Although the service bulletins reference a reporting requirement in Appendix 01 of the service bulletin, such reporting is not required by this AD). This incorporation by reference was approved previously by the Director of the Federal Register as of May 8, 2002 (67 FR 19650, April 23, 2002). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–516(B) R1 and 2001–517(B) R1, both dated February 6, 2002.

Effective Date

(g) This amendment becomes effective on February 6, 2003.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32880 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–54–AD; Amendment 39–12991; AD 2002–26–05]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–502, AT–502A, AT–502B, and AT–503A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 2002–11–03, which applies to certain Air Tractor, Inc. (Air Tractor) Models AT–502, AT–502A, AT–502B, and AT–503A airplanes. AD 2002–11–03 lowered the safe life for the wing lower spar cap and further reduced the safe life for airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets. AD 2002–11–03 also currently requires you to eddy-current inspect the wing lower spar cap immediately prior to the replacement/modification to detect and correct any crack in a bolthole before it extends to the modified center section of the wing and report the results of this inspection to the Federal Aviation Administration (FAA). Field inspections on the affected airplanes have revealed wings with cracks below the currently established safe life. This AD would further reduce the safe life of the Models AT502, AT–502B, and AT–503A airplanes and would add airplanes recently manufactured to the Applicability of the AD. The actions specified by this AD are intended to prevent fatigue cracks from occurring in the wing lower spar cap before the established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in the wing separating from the airplane during flight.

DATES: This AD becomes effective on January 15, 2003.

The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulation as of June 8, 2001 (66 FR 27014, May 16, 2001).

The FAA must receive any comments on this rule on or before February 14, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–54–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–54–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374; or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801; telephone: (800) 893–1420 or (701) 774–0230; facsimile: (701) 572–2602. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–54–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Direct all questions to:

—For the airplanes that do not incorporate and never have incorporated Marburger Enterprises, Inc. winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960; and

—For airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5228; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? On December 17, 2001, FAA issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor, Inc. (Air Tractor) AT–400, AT–500, and AT–800 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 27, 2001 (66 FR 66823). The NPRM proposed to supersede AD 2001–10–04 R1 with a new AD that would retain the safe life for the wing lower spar cap and require you to eddy-current inspect the wing lower spar cap immediately prior to the replacement/modification to detect and correct any crack in a bolthole before it extends to the modified center section of the wing. The NPRM also proposed to further reduce the safe life for those AT–400 and AT–500 series airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets.

After issuing that NPRM, we received reports of several cracks originating in the outboard ⅜-inch hole of the main spar lower cap on Air Tractor Models AT—502, AT–502A, and AT–502B airplanes at hours time-in-service (TIS) lower than the established safe life. This caused us to issue AD 2002–11–03, Amendment 39–12764 (67 FR 38371, June 4, 2002). AD 2002–11–03 lowers the safe life for the wing lower spar cap established in AD 2001–10–04 R1 on Air Tractor Models AT–502, AT–502A, AT–502B, and AT–503A airplanes and further reduces the safe life for airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets.

We issued a separate AD for the Air Tractor AT–400 and AT–800 series airplanes.

What has happened since AD 2002–11–03 to initiate This action? Field inspections have revealed wings with cracks below the currently established safe life on Air Tractor Models AT 502, AT–502B, and AT–503A airplanes.

In addition, the Applicability of AD 2002–11–03 only covered serial number airplanes of the Models AT–502A and AT–502B that were already manufactured. The Applicability did not account for airplanes manufactured after the issuance of the AD.

The FAA's Determination and an Explanation of the Provisions of This AD

What has FAA decided? The FAA has reviewed all available information and determined that:

—The unsafe condition referenced in this document exists or could develop on other Air Tractor Models AT–502, AT–502A, AT–502B, and AT–503A airplanes of the same type design;

—The safe life on the Models AT–502, AT–502B, and AT–503A airplanes should be further reduced;

—The serial number range of the Models AT–502A and AT–502B airplanes should be expanded to

include future manufactured airplanes; and

—Final rule; request for comments (immediately adopted rule) AD action should be taken to address this condition.

What does this AD require? This AD will supersede AD 2002–11–03 and will:

—Maintain the requirements of a lowered safe life, inspection, replacement/modification, and reporting the results to FAA;

—Further lower the safe life for the wing lower spar cap established in AD 2002–11–03 for the Models AT–502, AT–502B, and AT–503A airplanes; and

—Expand the applicability of the Models AT–502A and AT–502B airplanes to account for future manufactured airplanes.

You must accomplish these actions in accordance with Snow Engineering Service Letter #197 or #205, both Revised March 26, 2001, as applicable.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in the wing separating from the airplane during flight, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard: On the postcard, write "Comments to Docket No. 2002-CE–54-AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does this AD impact various entities? These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866, It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–11–03, Amendment 39–12764 (67 FR 38371, June 4, 2002), and by adding a new AD to read as follows:

2002–26–05 Air Tractor, Inc.: Amendment 39–12991; Docket No. 2002–CE–54–AD. Supersedes AD 2002–11–03, Amendment 39–12764.

(a) *What airplanes are affected by this AD?* This AD applies to certain Models AT–502, AT–502A, AT–502B, and AT–503A airplanes. Use paragraph (a)(1) of this AD for airplanes that do not incorporate and never have incorporated winglets. Use paragraph (a)(3) of this AD for certain AT–500 series airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets.

(1) The following presents airplanes (certificated in any category) that are affected by this AD, along with the new safe life (presented in hours time-in-service (TIS)) of the wing lower spar cap for all affected airplane models and serial numbers:

Model	Serial Nos.	Safe life
AT–502	0003 through 0236	1,650 hours TIS
AT–502A	All serial numbers beginning with 0158	1,650 hours TIS
AT–502B	All serial numbers beginning with 0187	1,650 hours TIS
AT–503A	All serial numbers beginning with 0067	1,650 hours TIS

(2) If piston powered aircraft have been converted to turbine power, you must use the limits for the corresponding serial number turbine-powered aircraft.

(3) The following presents airplanes (certificated in any category) that could incorporate or could have incorporated Marburger Enterprises, Inc. winglets. These winglets are installed in accordance with Supplemental Type Certificate (STC) SA00490LA. Use the winglet usage factor in the table below, the safe life specified in paragraph (a)(1) of this AD, and the instructions included in the Appendix to this AD to determine the new safe life of these airplanes:

Model	Serial Nos.	Winglet usage factor
AT–502	0003 through 0236	1.6
AT–502A	0158 through 0238	1.6
AT–502A	All serial numbers beginning with 0239	1.2
AT–502B	All serial numbers beginning with 0187	1.2

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent fatigue cracks from occurring in the wing lower spar cap before the established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in the wing separating from the airplane during flight.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Modify the applicable aircraft records (logbook) as follows to show the reduced safe life for the wing lower spar cap (use the information from paragraphs (a)(1) and (a)(3) of this AD and the Appendix to this AD, as applicable):. (i) Incorporate the following into the Aircraft Logbook "In accordance with AD 2002–26–05, the wing lower spar cap is life limited to __." Insert the applicable safe life number from the applicable tables in paragraphs (a)(1) and (a)(3) of this AD and the Appendix to this AD. (ii) If, as of the time of the logbook entry requirement of paragraph (d)(1)(i) of this AD, your airplane is over or within 50 hours of the safe life, an additional 50 hours TIS is allowed to accomplish the replacement/modification.	Accomplish the logbook entry within the next 10 hours TIS after January 15, 2003 (the effective date of this AD).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may modify the aircraft records as specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Accomplish the actual replacement/modification in accordance with Snow Engineering Service Letter #197 or #205, both Revised March 26, 2001, as applicable. The owner/operator may not accomplish the replacement/modification, unless he/she holds the proper mechanic authorization.
(2) You may eddy-current inspect the wing lower spar cap instead of accomplishing the replacement/modification provided you have ordered parts from the factory and scheduled a replacement/modification date when it is time to replace the wing lower spar cap (as required when you reach the established safe life). These inspections are allowed until one of the following occurs, at which time the replacement/modification must be accomplished:. (i) Crack(s) is/are found; or (ii) Not more than three inspections or 1,200 hours TIS go by: the first inspection would have to be accomplished upon accumulating the safe life; the second inspection would have to be accomplished within 400 hours TIS after accumulating the safe life; the third inspection would have to be accomplished 400 hours TIS after the second inspection; and the replacement/modification would have to be accomplished within 400 hours TIS after the third inspection (maximum elapsed time would be 1,200 hours TIS).	Inspect prior to further flight after ordering the parts and scheduling a replacement/modification date, and inspect thereafter at intervals not to exceed 400 hours TIS until one of the criteria in paragraphs (d)(2)(i) and (d)(2)(ii) of this AD is met.	In accordance with the procedures in Snow Engineering Service Letter #197 or #205, both Revised March 26, 2001, as applicable.

Actions	Compliance	Procedures
(3) Eddy-current inspect the wing lower spar cap in order to detect any crack before it extends to the modified center section of the wing and repair any crack or replace the wing section. The inspection must be accomplished by one of the following:. (i) A Level 2 or Level 3 inspector that is certified for eddy-current inspection using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410; or (ii) A person authorized to perform AD work who has completed and passed the Air Tractor, Inc. training course on Eddy Current Inspection on wing lower spar caps.	Immediately prior to the replacement/modification required when you reach the new safe life. For airplanes that had this replacement/modification accomplished in accordance with either AD 2001–10–04 or AD 2001–10–04 R1, accomplish this inspection and any necessary corrective action within the next 400 hours TIS after June 14, 2002 (the effective date of AD 2002–11–03), unless already accomplished (have the mechanic who accomplished the work mark the logbooks accordingly).	In accordance with the procedures in Snow Engineering Service Letter #197 or #205, both Revised March 26, 2001, as applicable.
(4) Report to FAA the results of each inspection required by paragraph (d)(3) of this AD. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 10 days after the inspection required in paragraph (d)(3) of this AD or within 10 days after June 14, 2002 (the effective date of AD 2002–11–03), whichever occurs later.	Submit the form (Figure 1 of this AD) to FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960.

Note 1: Upon completion of the replacement/modification required by this AD, the safe life of the new/modified wing spar is limited to the applicable hours listed in paragraph (a)(1) of this AD. This new life limit starts at the time of the replacement/modification.

AD 2002–26–05 INSPECTION REPORT

1. Inspection Performed By: 3. Aircraft Model	2. Phone: 4. Aircraft Serial Number:
5. Engine Model Number:	6. Aircraft Total TIS:
7. Wing Total TIS:	8. Lower Spar Cap TIS:
9. Has the lower spar cap been inspected before? (Eddy-current, Dye penetrant, magnetic particle, ultrasound) ☐Yes ☐No	9a. If yes, Date: _____ Inspection Method: _____ Lower Spar Cap TIS: _____ Cracks found? ☐ ☐No
10. Has there been any major repair or alteration performed to the spar cap? ☐Yes ☐No	10a. If yes, specify (Description and TIS)
11. Date of AD inspection: _____	
12. Inspection Results: Note: Indicate even if no cracks are found.	12a. ☐Left Hand ☐Right Hand
12b. Crack Length: _____	12c. Does drilling hole to next larger size remove all traces of the crack(s)? ☐Yes ☐No
12d. Corrective Action Taken:	

Figure 1 of paragraph (d)(4) of this AD

(e) *Can I comply with this AD in any other way?*

(1)You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Fort Worth or Los Angeles Airplane Certification Office (ACO), as applicable, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector. The inspector may add comments before sending it to the Manager, Fort Worth or Los Angeles ACO.

(2) Alternative methods of compliance approved for AD 2001–10–04 and/or AD 2000–14–51 are not considered approved for this AD.

(3) Alternative methods of compliance approved for AD 2001–10–04 R1 or AD 2002–11–03 are considered approved for this AD.

Note 2: This AD applies to each airplane identified in paragraphs (a)(1) and (a)(3) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Who can I contact with questions about this AD?* For more information about the subject matter specified in this AD, contact:

(i) For the airplanes that do not incorporate and never have incorporated Marburger Enterprises, Inc. winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960; and

(ii) For the airplanes that incorporate or have incorporated winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5228; facsimile: (562) 627–5210.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 GFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD provided that the following is adhered to:

(1) Only operate in day visual flight rules (VFR) only.

(2) Ensure that the hopper is empty.

(3) Limit airspeed to 135 miles per hour (mph) indicated airspeed (IAS).

(4) Avoid any unnecessary g-forces.

(5) Avoid areas of turbulence.

(6) Plan the flight to follow the most direct route.

(h) *Are any service bulletins incorporated into this AD by reference?* Replacement and inspection actions required by this AD must be done in accordance with Snow Engineering Service Letter #197 or #205, both Revised March 26, 2001, as applicable. The Director of the Federal Register previously approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51, as of June 8, 2001 (66 FR 27014, May 16, 2001). You can get copies from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374; or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801. You may view copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 15, 2003.

Appendix to AD 2002–26–05

The following provides procedures for determining the safe life for Models AT–502, AT–502A, and AT–502B airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets. These winglets are installed in accordance with Supplemental Type Certificate (STC) SA00490LA.

What If I Removed the Marburger Winglets Prior to Further Flight After the Effective Date of This AD or Prior to the Effective Date of This AD?

1. Review your airplane's logbook to determine your airplane's time-in-service (TIS) with winglets installed per Marburger Enterprises STC SA00490LA. This includes all time spent with the winglets currently installed and any previous installations where the winglet was installed and later removed.

Example: A review of your airplane's logbook shows that you have accumulated 350 hours TIS since incorporating the Marburger STC. Further review of the airplane's logbook shows that a previous owner had installed the STC and later removed the winglets after accumulating 150 hours TIS. Therefore, your airplane's TIS with the winglets installed is 500 hours.

If you determine that the winglet STC has never been incorporated on your airplane, then your safe life is presented in paragraph (a)(1) of this AD. Any future winglet installation will be subject to a reduced safe life per these instructions.

2. Determine your airplane's unmodified safe life from paragraph (a)(1) of this AD.

Example: Your airplane is a Model AT–502B, serial number 0292. From paragraph (a)(1) of this AD, the safe life of your airplane is 1,650 hours TIS.

All examples from hereon will be based on the Model AT–502B, serial number 0292 airplane.

3. Determine the winglet usage factor from paragraph (a)(3) of this AD.

Example: Again, your airplane is a Model AT–502B, serial number 0292. From paragraph (a)(3) of this AD, your winglet usage factor is 1.2.

4. Adjust the winglet TIS to account for the winglet usage factor. Multiply the winglet TIS (result of Step 1 above) by the winglet usage factor (result of Step 3 above).

Example: Winglet TIS is 500 hours X a winglet usage factor of 1:2. The adjusted winglet TIS is 600 hours.

5. Calculate the winglet usage penalty. Subtract the winglet TIS (result of Step 1 above) from the adjusted winglet TIS (result of Step 4 above).

Example:
Adjusted winglet TIS—the winglet TIS = winglet usage penalty.
(600 hours) — (500 hours TIS) =(100 hours TIS).

6. Adjust the safe life of your airplane to account for winglet usage. Subtract the winglet usage penalty (result of Step 5 above) result from the unmodified safe life from paragraph (a)(1) of this AD (result of Step 2 above).

Example:
Unmodified safe life—winglet usage penalty = adjusted safe life.
(1,650 hours TIS)—(100 hours TIS) = (1,550 hours TIS).

7. If you remove the winglets from your airplane prior to further flight or no longer have the winglets installed on your airplane, the safe life of your airplane is the adjusted safe life (result of Step 6 above). Enter this number in paragraph (d)(1)(i) of this AD and the airplane logbook.

What If I have the Marburger Winglet Installed as of the Effective Date of This AD and Plan To Operate My Airplane Without Removing the Winglet?

1. Review your airplane's logbook to determine your airplane's TIS without the winglets installed.

Example:
A review of your airplane's logbook shows that you have accumulated 1,500 hours TIS, including 500 hours with the Marburger winglets installed. Therefore, your airplane's TIS without the winglets installed is 1,000 hours.

2. Determine your airplane's unmodified safe life from paragraph (a)(1) of this AD.

Example: Your airplane is a Model AT–502B, serial number 0292. From paragraph (a)(1) of this AD, the safe life of your airplane is 1,650 hours TIS.

All examples from hereon will be based on the Model AT–502B, serial number 0292 airplane.

3. Determine the winglet usage factor from paragraph (a)(3) of this AD.

Example: Again, your airplane is a Model AT–502B, serial number 0292. From paragraph (a)(3) of this AD, your winglet usage factor is 1.2.

4. Determine the potential winglet TIS. Subtract the TIS without the winglets installed (result of Step 1 above) from the unmodified safe life (result of Step 2 above).

Example:
Unmodified safe life—TIS without winglets = Potential winglet TIS.
(1,650 hours TIS) " (1,000 hours TIS) = (650 hours TIS).

5. Adjust the potential winglet TIS to account for the winglet usage factor. Divide the potential winglet TIS (result of Step 4 above) by the winglet usage factor (result of Step 3 above).

Example:
Potential winglet TIS divided by usage factor = Adjusted potential winglet TIS.
(650 hours TIS) ÷ (1.2) = (542 hours TIS).

6. Calculate the winglet usage penalty. Subtract the adjusted potential winglet TIS (result of Step 5 above) from the potential winglet TIS (result of Step 4 above).

Example:
Potential winglet TIS—Adjusted potential winglet TIS = Winglet usage penalty.
(650 hours TIS) — (542 hours TIS) = (108 hours TIS).

7. Adjust the safe life of your airplane to account for the winglet installation. Subtract the winglet usage penalty (result of Step 6 above) from the unmodified safe life from paragraph (a)(1) of this AD (result of Step 2 above).

Example:
Unmodified safe life—Winglet usage penalty = Adjusted safe life.

(1,650 hours TIS)—(108 hours TIS) = (1,542 hours TIS).

8. Enter the adjusted safe life (result of Step 7 above) in paragraph (d)(1)(i) of this AD and the airplane logbook.

What If I Install or Remove the Marburger Winglet From My Airplane in the Future?

If, at anytime in the future, you install or remove the Marburger winglet STC from your airplane, you must repeat the procedures in this Appendix to determine the airplane's safe life.

Issued in Kansas City, Missouri, on December 20, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32684 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–29–AD; Amendment 39–12990; AD 2002–26–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited., Aero Division-Bristol, S.N.E.C.M.A. Olympus 593 Mk. 610–14–28 Turbojet Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain serial number (SN) Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbojet engines, installed in BAe/SNIAS Concorde Type 1 airplanes. This action requires second stage fuel pump endurance bench-testing if the pump has not yet accumulated 50 flight hours since last installed and the bearing assembly and or the rotating assembly were removed or re-fitted during last pump removal. This amendment is prompted by a report of second stage fuel pumps that were not endurance bench-tested after having the bearing assembly and or the rotating assembly removed or re-fitted, and then installed on engines in service. The actions specified in this AD are intended to prevent a fuel leak resulting in a sustained engine fire.

DATES: Effective January 17, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 17, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–29–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *"9-ane-adcomment@faa.gov"*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England, telephone 011 7979 6060; fax 011 7979 7234. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the FAA that an unsafe condition may exist on certain SN Olympus 593 Mk. 610–14–28 turbojet engines, installed in SN BAe/SNIAS Concorde Type 1 airplanes. The CAA advises that some Lucas second stage fuel pumps that were not endurance bench-tested after having the bearing assembly and or the rotating assembly removed or re-fitted, were installed on engines in service. The manufacturer states that a fuel leak can occur within the first 10 hours of pump operation after having the bearing assembly and or the rotating assembly removed or re-fitted, and that endurance bench-testing is required on those pumps that have not yet accumulated 50 flight hours. That condition, if not corrected, could cause a fuel leak resulting in a sustained engine fire.

Manufacturer's Service Information

RR has issued Olympus 593 Mandatory Service Bulletin (MSB) No. OL.593–73–9075–103, dated November 17, 2000, that specifies instructions for endurance bench-testing of Lucas second stage pumps Types 105, 105M, 106, and 106M that are installed on Olympus 593 Mk. 610–14–28 turbojet engines, SN's CBE . 021 to CBE . 094 inclusive, and CBX . 101 and above. The endurance bench-testing is to be done if the second stage pump bearing assembly and or the rotating assembly were removed or re-fitted and the pump has not yet accumulated 50 flight hours-since-last-installed. The CAA classified this service bulletin as mandatory and issued AD 005–11–2000 in order to ensure the airworthiness of these RR engines in the UK.

Bilateral Airworthiness Agreement

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Although none of these affected engines are used on any airplanes that are registered in the United States, the possibility exists that these engines could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other RR Olympus 593 Mk. 610–14–28 turbojet engines of the same type design, this AD is being issued to prevent a fuel leak, resulting in a sustained engine fire. This AD requires endurance bench-testing if the pump has not yet accumulated 50 flight hours since last installed and the second stage pump bearing assembly and or the rotating assembly was removed or re-fitted during last pump removal. The actions must be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–29–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–04 Rolls-Royce Limited Aero Division-Bristol, S.N.E.C.M.A.: Amendment 39–12990. Docket No. 2002–NE–29–AD.

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbojet engines, serial numbers (SN's) CBE . 021 to CBE . 094 inclusive, and CBX . 101 and above. These engines are installed on, but not limited to BAe/SNIAS Concorde Type 1 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent a fuel leak, resulting in a sustained engine fire, do the following:

(a) Perform endurance bench-testing of Lucas Types 105, 105M, 106, and 106M second stage pumps if the pump has not yet accumulated 50 flight hours since last installed and the bearing assembly and or the rotating assembly was removed or re-fitted during last pump removal. Do this in accordance with paragraph 2.A. of the Accomplishment Instructions of RR Mandatory Service Bulletin OL.593–73–9075–103, dated November 17, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(d) The endurance testing must be done in accordance with Rolls-Royce Olympus 593 Mandatory Service Bulletin OL.593–73–9075–103, dated November 17, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England, telephone 011 7979 6060; fax 011 7979 7234. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 005–11–2000, dated November 2000.

Effective Date

(e) This amendment becomes effective on January 17, 2003.

Issued in Burlington, Massachusetts, on December 20, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–32660 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–28–AD; Amendment 39–12956; AD 2002–23–12]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. Olympus 593 Mk. 610–14–28 Turbojet Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A (RR) Olympus 593 Mk. 610–14–28 turbojet engines. This action requires a one-time fluorescent penetrant inspection (FPI) of certain rebroached stage 5 high pressure compressor (HPC) disks, inspecting for cracks, and if necessary, removing cracked disks from service. This amendment is prompted by a manufacturer's analysis that concluded that the rebroaching process failed to achieve the anticipated life before being rejected for cracks and that the original cracks are not being removed. The actions specified in this AD are intended to prevent failure of the HPC stage 5 disk which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective January 17, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 17, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–28–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England; telephone 011 7979 6060; Fax 011 7979 7234. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the FAA that an unsafe condition may exist on Bae/SNIAS Concorde Type 1 airplanes with RR Olympus 593 Mk. 610–14–28 turbojet engines. The CAA advises that if the disks were not rebroached correctly, certain HPC stage 5 disks may fail to achieve their anticipated cyclic life limit before cracking. Service experience with HPC stage 6 disks that were rebroached using a similar process demonstrated that the disks failed to achieve the anticipated life limit before being rejected for cracks. Further investigation revealed that original cracks were not being removed by the rebroaching. Therefore, a review of the HPC stage 5 disks was done. The analysis indicated that certain HPC stage 5 disks needed to be inspected between specific cyclic intervals to ensure that they have no cracks and that they can then achieve their previously anticipated life. At the time the CAA AD was originally written, there were a number of uninspected disks. Currently, there are only two HPC stage 5 disks that have not been inspected.

Manufacturer's Service Information

RR has issued Olympus 593 MSB No. OL.593–72–8951–364, Revision 7, dated November 23, 2001, that specifies the inspection requirements for certain HPC stage 5 disks. The CAA classified this service bulletin as mandatory and issued AD 006–07–98 in order to ensure the airworthiness of these RR engines in the UK.

Differences Between the Manufacturers Service Information and This AD

RR has issued Olympus 593 MSB No. OL.593–72–9051–428, Revision 1, dated November 16, 2001, that requires disk P/N B510911, SN J14CA, to be inspected within 200 to 958 cycles-in-service (CIS) after rebroaching and disk P/N B510909, SN JZJ66, to be inspected within 200 to 931 CIS after rebroaching. However, since none of these engines are installed on airplanes of the U.S. registry, the FAA requires that they be inspected before further flight.

Bilateral Airworthiness Agreement

This engine model is manufactured in the UK, and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other RR Olympus 593 Mk. 610–14–28 turbojet engines of the same type design, this AD is being issued to prevent failure of the HPC stage 5 disk, which could result in an uncontained engine failure and damage to the airplane. This AD requires a one-time fluorescent penetrant inspection (FPI) of certain rebroached HPC stage 5 disks, inspecting for cracks, and if necessary, removing cracked disks from service. The actions must be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–28–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–23–12 Rolls-Royce Limited Aero Division-Bristol, S.N.E.C.M.A.: Amendment 39–12956. Docket No. 2002–NE–28–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbojet engines with high pressure compressor (HPC) stage 5 disk part number (P/N) B510911, serial number (SN) J14CA and P/N B510909, SN JZJ66. These engines are installed on, but not limited to, BAe/SNIAS Concorde Type 1 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required before further flight after the effective date of this AD, unless already done.

To prevent failure of the HPC stage 5 disk due to cracking, which could result in an uncontained engine failure and damage to the airplane, do the following:

(a) Before further flight, inspect HPC stage 5 disks P/N B510911, SN J14CA and P/N B510909, SN JZJ66, in accordance with Accomplishment Instructions 2.A.(1) through 2.A.(2) of Rolls-Royce (RR) Olympus 593 Mandatory Service Bulletin (MSB) OL.593–72–8951–364, Revision 7, dated November 23, 2001.

(b) If the stage 5 HPC disk is found cracked, it must be removed and replaced with a serviceable part.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(e) The inspection must be done in accordance with Rolls-Royce Olympus 593 Mandatory Service Bulletin (MSB) OL.593–72–8951–364, Revision 7, dated November 23, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England; telephone 011 7979 6060; Fax 011 7979 7234. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 006–07–98.

Effective Date

(f) This amendment becomes effective on January 17, 2003.

Issued in Burlington, Massachusetts, on November 15, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–32888 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–293–AD; Amendment 39–12994; AD 2002–26–06]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Dornier Model 328–300 series airplanes. This action requires revising the Airplane Flight Manual to incorporate revised performance data for certain operations. This action is necessary to prevent operation in weight/altitude/temperature conditions that exceed the performance capabilities of the airplane, which could result in impact with terrain during engine out performance-limited operations. This action is intended to address the identified unsafe condition.

DATES: Effective January 17, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 2003.

Comments for inclusion in the Rules Docket must be received on or before February 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–293–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–293–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the *Office of the Federal Register*, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Dornier Model 328–300 series airplanes. The LBA advises that the engine performance data has been revised by the engine manufacturer, Pratt & Whitney Canada. The engine thrust has been reduced for certain operations at pressure altitudes in excess of 5,000 feet. Operation in conditions that exceed the performance capabilities of the airplane, if not corrected, could result in impact with terrain during engine out performance-limited operations.

Explanation of Relevant Service Information

The manufacturer has issued Dornier 328 J All Operators Telefax (AOT) AOT–328J–00–006, dated October 1, 2002, which describes procedures for revising the Performance Section of the Airplane Flight Manual (AFM) to incorporate revised performance data for certain operations. The LBA classified the AOT as mandatory and issued German airworthiness directive 2002–355, dated November 14, 2002, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent operation in weight/altitude/temperature conditions that exceed the performance capabilities of the airplane, which could result in impact with terrain during engine out performance-limited operations. This AD requires revising the Performance Section of the AFM to incorporate revised performance data for certain operations.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–293–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–06 Dornier Luftfahrt GMBH: Amendment 39–12994. Docket 2002–NM–293–AD.

Applicability: All Model 328–300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent operation in weight/altitude/temperature conditions that exceed the performance capabilities of the airplane, which could result in impact with terrain during engine out performance-limited operations; accomplish the following:

Airplane Flight Manual Revision

(a) Within 7 days after the effective date of this AD: Revise the Performance Section of the Dornier 328–300 Airplane Flight Manual (AFM) to incorporate revised performance data for certain operations; as specified in Dornier 328 J All Operators Telefax (AOT) AOT–328J–00–006, dated October 1, 2002. This may be accomplished by inserting a copy of the AOT into the AFM.

(b) The AOT may be removed from the AFM when the revised performance data in the AOT specified in paragraph (a) of this AD has been incorporated into a general revision of the AFM.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The AFM revision required by paragraph (a) of this AD shall be done in accordance with Dornier 328 J All Operators Telefax AOT–328J–00–006, dated October 1, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the *Office of the Federal Register*, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in German airworthiness directive 2002–355, dated November 14, 2002.

Effective Date

(f) This amendment becomes effective on January 17, 2003.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32879 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–44–AD; Amendment 39–12989; AD 2000–16–02R1]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4164, PW4168, and PW4168A Series Turbofan Engines

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), that is applicable to Pratt & Whitney PW4164, PW4168, and PW4168A series turbofan engines. That AD currently requires initial and repetitive torque checks for loose or broken front pylon mount bolts made from INCO 718 material and MP159 material. That AD also requires initial and repetitive visual inspections of the primary mount thrust load path. This amendment requires extension of the cycles accumulated before performing the initial inspection, reduces the frequency of repetitive inspections for MP159 material bolts, and adds a terminating action to the primary mount thrust load path inspections by introducing a new increased durability forward engine mount bearing housing. This amendment is prompted by component testing to assess the low cycle fatigue (LCF) life of the MP159 material bolts and the development of a new design forward engine mount bearing housing that meets the 8,000 flight cycle design intent for inspection. The actions specified by this AD are intended to prevent front pylon mount bolt and primary mount thrust load path failure, which could result in an engine separating from the airplane.

DATES: Effective February 6, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2003. The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of

October 16, 2002 (65 FR 49730; August 15, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8860; fax (860) 565–4503. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 239–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 2000–16–02, Amendment 39–11856 (65 FR 49730, August 15, 2000), which is applicable to Pratt & Whitney PW4164, PW4168, and PW4168A series turbofan engines was published in the **Federal Register** on September 13, 2002 (67 FR 57987). That action proposed to require an extension of the cycles accumulated before performing the initial inspection for the MP 159 material bolts, reduce the frequency of repetitive inspections for MP159 material bolts, and add a terminating action to the primary mount thrust load path inspections by introducing a new increased durability forward engine mount bearing housing in accordance with Pratt & Whitney alert service bulletins (ASB's) PW4G–100–A71–9, Revision 1, dated November 24, 1997; ASB PW4G–100–A71–20, Revision 1, dated January 15, 2002; ASB PW4G–100–A71–18, Revision 2, dated January 15, 2002; and service bulletin (SB) PW4G–100–A71–22, dated January 15, 2002.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter concurs with the proposed AD and states that the proposed AD is consistent with all appropriate PW service bulletins. The FAA agrees.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 226 engines of the affected design in the worldwide fleet. The FAA estimates that 21 engines installed on aircraft of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 3 work hours per engine to perform the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $19,000 per engine. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $402,780.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11856 (65 FR 49730, August 15, 2000) and by adding a new airworthiness directive, Amendment 39–12989, to read as follows:

2000–16–02R1 Pratt & Whitney: Amendment 39–12989. Docket No. 97–ANE–44–AD. Revises AD 2000–16–02, Amendment 39–11856.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney PW4164, PW4168, and PW4168A series turbofan engines, with front pylon mount bolts, part numbers (P/N's) 54T670 or 51U615, installed. These engines are installed on but not limited to Airbus Industrie A330 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent front pylon mount bolt and primary mount thrust load path failure, which could result in engine separation from the airplane, do the following:

INCO 718 Material Bolts Torque Checks

(a) Perform initial and repetitive torque checks of INCO 718 material front pylon mount bolts, P/N 54T670, and replace, if necessary, with new bolts, in accordance with the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. PW4G–100–A71–9, Revision 1, dated November 24, 1997, as follows:

(1) For front pylon mount bolts, P/N 54T670, with fewer than 1,000 cycles-in-service-since-new (CSN) on the effective date of this AD, accomplish the following in accordance with Part (A) of the Accomplishment Instructions of the ASB:

(i) Perform an initial torque check prior to accumulating 1,250 CSN or at the next engine removal for cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals of not less than 750 or greater than 1,250 cycles in service (CIS) since last torque check, not to exceed 11,000 CSN.

(2) For front pylon mount bolts, P/N 54T670, with 1,000 or more CSN but less than 5,750 CSN on the effective date of this AD, accomplish the following in accordance with Part (A) of the Accomplishment Instructions of the ASB:

(i) Perform an initial torque check within 250 CIS after the effective date of this AD, or

at the next engine removal for any cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals of not less than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN.

(3) For front pylon mount bolts, P/N 54T670, with 5,750 or more CSN on the effective date of this AD, accomplish the following in accordance with Part (B) of the Accomplishment Instructions of the ASB:

(i) Perform an initial torque check within 250 CIS after the effective date of this AD, or prior to the next engine removal for any cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals of not less than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN.

(4) Prior to further flight, replace all four bolts in accordance with Part (A), Paragraph 1(D) of the Accomplishment Instructions of the ASB, if any of the bolts are loose or broken.

INCO 718 Material Bolts Life Limit

(b) This AD establishes a new life limit of 11,000 CSN for front pylon mount bolts, P/N 54T670. Except as provided in paragraph (f) of this AD, no front pylon mount bolts, P/N 54T670, may exceed this new life limit after the effective date of this AD.

MP159 Material Bolts Inspections

(c) Perform initial and repetitive torque inspections of front pylon mount bolts, P/N 51U615, in accordance with the Accomplishment Instructions of Pratt & Whitney ASB PW4G–100–A71–20, Revision 1, dated January 15, 2002, as follows:

(1) For front pylon mount bolts with less than 4,100 CSN on the effective date of this AD, perform the initial torque inspection at the earlier of the following:

(i) Before accumulating 4,350 CSN; or

(ii) The next engine removal for any cause.

(2) For front pylon mount bolts with 4,100 or more CSN on the effective date of this AD, perform the initial torque check at the earlier of the following:

(i) Within 250 CIS after the effective date of this AD; or

(ii) The next engine removal for any cause.

(3) Thereafter, perform torque inspections at intervals not to exceed 4,350 CIS since last torque inspection.

(4) Prior to further flight, replace all four bolts, in accordance with Paragraph 1(D) of the Accomplishment Instructions of the ASB, if any are loose or broken.

Primary Mount Thrust Load Path Inspections

(d) Perform initial and repetitive visual inspections of the primary mount thrust load path, in accordance with the Accomplishment Instructions of PW ASB PW4G–100–A71–18, Revision 2, dated January 15, 2002, as follows:

(1) For forward engine mount assemblies with fewer than 1,000 CSN on the effective date of this AD, perform the initial visual inspection at the earlier of the following:

(i) Before accumulating 1,250 CSN; or

(ii) The next engine removal for any cause.

(2) For forward engine mount assemblies with 1,000 or more CSN on the effective date of this AD, perform the initial visual inspection at the earlier of the following:

(i) Within 250 CIS after the effective date of this AD; or

(ii) The next engine removal for any cause.

(3) Thereafter, perform visual inspections at intervals of not less than 750 or greater than 1,250 CIS since last visual inspection.

(4) Prior to further flight, replace all cracked parts with serviceable parts and inspect the primary thrust load path components in accordance with Paragraph 4 of the accomplishment instructions of the SB.

Terminating Action

(e) Replacement of the forward engine mount bearing housing, P/N 59T794 or P/N 54T659 with P/N 52U420 in accordance with Service Bulletin (SB) PW 4G–100–71–22, dated January 15, 2002, constitutes terminating action to the inspection requirements of paragraph (d) of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(h) The inspections must be done in accordance with the following Pratt & Whitney (PW) alert service bulletins (ASB's) and service bulletin (SB):

Document No.	Pages	Revision	Date
ASB PW4G–100–A71–9	1	1	Nov. 24, 1997.
	2	Original	July 31, 1997.
	3	1	Nov. 24, 1997.
	4–7	Original	July 31, 1997.
	8–9	1	Nov. 24, 1997.
	10–11	Original	July 31, 1997.
Total Pages: 11			
ASB PW4G–100–A71–20	1	1	Jan. 15, 2002.
	2	Original	Dec. 9, 1999.
	3–5	1	Jan. 15, 2002.
	6–7	Original	Dec. 9, 1999.
	8	1	Jan. 15, 2002.
	9	Original	Dec. 9, 1999.
	10	1	Jan. 15, 2002.
Total Pages: 10			
ASB PW4G–100–A71–18	1–2	2	Jan. 15, 2002.
	3	1	Dec. 9, 1990.
	4	2	Jan. 15, 2002.
	5–6	Original	Sept. 15, 1999.
	7	2	Jan. 15, 2002.
	8–12	Original	Sept. 15, 1999.
Total Pages: 12			
SB PW4G–100–71–22	All	Original	Jan. 15, 2002.
Total Pages: ▮			

This incorporation by reference of certain publications was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of PW ASB PW4G–100–A71–9, Revision 1, dated November 24, 1997, was approved by the Director of the Federal Register on October 16, 2000 (65 FR 49730; August 15, 2002).

Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8860; fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on February 6, 2003.

Issued in Burlington, Massachusetts, on December 19, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–32664 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–269–AD; Amendment 39–12995; AD 2002–26–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) Series Airplanes

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes. This action requires revising the airplane flight manual (AFM) to advise the flightcrew to limit use of the auxiliary power unit (APU) to ground operation only, except for those in-flight emergencies described in the AFM when use of the APU is specified. This action also provides for optional terminating action for the requirements of this AD. This action is necessary to prevent fuel from being sprayed throughout the APU compartment and drawn out of the APU exhaust duct due to a cracked APU fuel nozzle, which could result in a fire or explosion in the APU compartment during flight. This action is intended to address the identified unsafe condition.

DATES: Effective January 17, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 2003.

Comments for inclusion in the Rules Docket must be received on or before February 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2002–NM–269–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, PO Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the *Office of the Federal Register*, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For questions regarding the AFM revision, contact James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716. For questions regarding the APU replacement, contact Roger Pesuit, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5251; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes. TCCA advises that fuel nozzles installed on the auxiliary power unit (APU) on these airplanes may crack and leak fuel into the APU compartment. According to the APU manufacturer, the cracks develop during APU start. Cracks are not readily detectable when the APU is installed in the airplane. An APU fuel nozzle can crack due to fatigue, and the resulting leak could cause fuel to spray throughout the APU compartment and be drawn out of the APU exhaust duct. This condition, if not corrected, could result in a fire or explosion in the APU compartment during flight.

Explanation of Relevant Service Information.

Bombardier has issued Temporary Revision (TR) RJ 700/28–2, dated November 5, 2002, to the Canadair Regional Jet Series 700 Airplane Flight Manual. The TR advises the flightcrew to limit use of the APU to ground operation only, except for those in-flight emergencies described in the AFM when use of the APU is specified. TCCA has approved the TR for these airplanes in Canada. By approving the TR, TCCA also mandates its immediate incorporation into the AFM; therefore, TCCA did not issue a Canadian airworthiness directive to specifically mandate incorporation of the TR.

The FAA has reviewed Honeywell Alert Service Bulletin RE220–49–A7714, dated November 4, 2002, which describes procedures for replacing all APU fuel nozzles with new fuel nozzles (including installing new seals and washers; reidentifying the APU; and torqueing the bolts and fuel manifold connector within specified ranges). The service bulletin specifically cautions against intermixing fuel nozzle part numbers on an APU or interchanging the subject ("–2") fuel nozzles on a modified APU.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has reviewed all available information and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. TCCA fully agrees with the requirements and compliance time specified in this AD.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United

States, this AD is being issued to prevent fuel from being sprayed throughout the APU compartment and drawn out of the APU exhaust duct due to a cracked APU fuel nozzle, which could result in a fire or explosion in the APU compartment during flight. This AD requires revising the AFM to advise the flightcrew to limit use of the APU to ground operation only, except for those in-flight emergencies described in the AFM when use of the APU is specified.

This AD also provides for optional terminating action for the actions required by this AD. In accord with TCCA's findings, the FAA has determined that the operating limitations imposed by this AD can remain in place in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, implementing the AFM limitations will adequately ensure long-term continued operational safety before the unsafe condition could present a safety risk to the airplane.

Difference Between AD and Service Bulletin

Although the service bulletin recommends that operators send all removed fuel nozzles to Honeywell, this AD does not require operators to do so.

Interim Action

This is considered to be interim action. The FAA may consider requiring eventual replacement of the APU fuel nozzles, which would allow operators to remove the AFM limitation required by this AD. However, the planned compliance time for APU fuel nozzle replacement, if required, would be long enough to practicably provide notice and opportunity for public comment before the final rule is issued.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped, postcard on which the following statement is made: "Comments to Docket Number 2002–NM–269–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–07 Bombardier, Inc. (Formerly Canadair): Amendment 39–12995. Docket 2002–NM–269–AD.

Applicability: Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes, certificated in any category, on which auxiliary power unit (APU) Model RE220(RJ), part number WE3800770–2, is installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel from being sprayed throughout the APU compartment and drawn out of the APU exhaust duct due to a cracked APU fuel nozzle, which could result in a fire or explosion in the APU compartment during flight, accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Within 1 day after the effective date of this AD, revise the "Limitations—Power Plant" section of the FAA-approved Canadair Regional Jet Series 700 (AFM) to include the information specified in Temporary Revision RJ 700/28–2, dated November 5, 2002, which advises the flightcrew to limit use of the APU to ground operation only, except for those in-flight emergencies described in the AFM when use of the APU is specified. This may be accomplished by inserting a copy of Temporary Revision RJ 700/28–2 into the AFM.

Optional Terminating Action

(b) Replacement of all APU fuel nozzles with new fuel nozzles (including installing new seals and washers; torqueing the bolts and fuel manifold connector within specified ranges; and then reidentifying the APU) in accordance with Honeywell Alert Service Bulletin RE220–49–A7714, dated November 4, 2002, terminates the requirements of paragraph (a) of this AD. After the replacement, the limitations required by paragraph (a) of this AD may be removed from the AFM.

Note 2: The "Limitations—Power Plant" procedures specified by paragraph (a) of this AD are required to be implemented only on affected airplanes, *i.e.*, those with APU Model RE220(RJ), part number WE3800770–2, installed. However, individual pilots may operate other airplanes that do not have the subject APU installed, and that are not subject to those limitations and procedures. Therefore, to avoid any confusion or misunderstanding, it is important that airlines have communication mechanisms in place to ensure that pilots are aware, for each flight, whether the limitations apply.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators must submit their requests through an appropriate FAA Principal Maintenance/Operations Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The required actions shall be done in accordance with Canadair Regional Jet Series 700 Airplane Flight Manual Temporary Revision RJ 700/28–2, dated November 5, 2002. The replacement, if accomplished, shall be done in accordance with Honeywell Alert Service Bulletin RE220–49–A7714, dated November 4, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, PO Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the *Office of the Federal Register*, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 17, 2003.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32878 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–90–AD; Amendment 39–13001; AD 2002–26–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–11, –12, –13, –14, –15, and –15F Airplanes; Model DC–9–21 Airplanes; Model DC–9–31, –32, –32 (VC–9C), –32F, –32F (C–9A, C–9B), –33F, –34, and –34F Airplanes; Model DC–9–41 Airplanes; Model DC–9–51 Airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas airplanes, that requires replacement of certain power relays, and subsequent repetitive cleaning, inspecting, repairing, and testing of certain replaced power relays. This amendment is prompted by reports indicating that the alternating current (AC) cross-tie relay shorted out internally, which caused severe smoke and burn damage to the relay, aircraft wiring, and adjacent panels. The actions specified by this AD are intended to prevent internal arcing of the left and right generator power relays, auxiliary power relays, and external power relays, and consequent smoke and/or fire in the cockpit and cabin.

DATES: Effective February 6, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplanes was published as a second supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 1, 2002 (67 FR 44119). That action proposed to require replacement of certain power relays, and subsequent repetitive cleaning, inspecting, repairing, and testing of certain replaced power relays.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Reduce the Compliance Time

One commenter, the National Transportation Safety Board (NTSB), agrees with the proposed replacement and repetitive maintenance requirements. However, the commenter does not agree with the proposed 24-month compliance time, because it "is a longer compliance time than is either necessary or prudent." The commenter states that it was informed by the FAA that the originally proposed 12-month compliance time was extended to 24 months because of the limited supply of replacement relays and the absence of any reports of failure of the power relays having part number (P/N) 914F567–3 in the six positions (left and right generator power, auxiliary power, and external power). The commenter notes that the power relay manufacturer has recommended replacement of P/N 914F567–3 power relays in those six positions and the cross-tie position (total of seven positions) since 1976.

From this comment, we infer that the commenter requests that the compliance time be reduced from the proposed 24 months to 12 months. We do not agree. Concerning the power relay manufacturer's 1976 recommendation, Sundstrand (Westinghouse) has re-reviewed all field data for power relays having P/N 914F567–3. It concluded that, in its opinion, the identified unsafe condition exists in the cross-tie position only. The power relays installed at the AC cross-tie position are more susceptible to phase-to-phase short than the other six positions (left and right generator power, auxiliary power, and external power) due to the installation orientation in an airplane. Its horizontal orientation allows for the buildup of conductive particle material between phase-to-phase circuits. Sundstrand (Westinghouse) also recommended that we not issue an AD for power relays having P/N 914F567–3 that are in the left and right generator power, auxiliary power, and external power positions. Due to the lower likelihood of a short circuit resulting in internal arcing, we have determined that a 24-month compliance time is appropriate to address the identified unsafe condition.

However, as discussed in the preamble of the second supplemental NPRM, we have determined that the potential for an electrical short still exists when a power relay, Sundstrand (Westinghouse) P/N 914F567–3, is installed in those six positions, though not as likely as in the cross-tie position. The accumulation of conductive particle material on any power relays, Sundstrand (Westinghouse) P/N 914F567–3, can build an electrical path to its adjacent terminal and cause a phase-to-phase short circuit. Such a short circuit will result in internal arcing of the power relays and consequent smoke and/or fire in the cockpit and cabin. This final rule addresses that potential unsafe condition by replacing the generator power relays, auxiliary power relays, and external power relays having Sundstrand (Westinghouse) P/N 914F567–3 with a Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4, and periodically removing the build-up of conductive particle material from the generator power relays, auxiliary power relays, and external power relays, having Sundstrand (Westinghouse) P/N 914F567–4.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

After careful review of the available data, including the comment noted above, we have determined that air safety and the public interest require the adoption of the rule with the change previously described. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,991 Model DC–9–11, –12, –13, –14, –15, and –15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, –32, –32 (VC–9C), –32F, –32F (C–9A, C–9B), –33F, –34, and –34F airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes; of the affected design in the worldwide fleet. The FAA estimates that 1,219 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $146,280, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–13 McDonnell Douglas: Amendment 39–13001. Docket 99–NM–90–AD.

Applicability: This AD applies to the following airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002:

McDonnell Douglas Model

DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes
DC–9–21 airplanes
DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, and DC–9–34F airplanes
DC–9–41 airplanes
DC–9–51 airplanes
DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes
MD–88 airplanes

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent internal arcing of the left and right generator power relays, auxiliary power relays, and external power relays, and consequent smoke and/or fire in the cockpit and cabin, accomplish the following:

Inspection

(a) Within 24 months after the effective date of this AD, perform a one-time inspection of the left and right generator power relays, auxiliary power relays, and external power relays, to determine if Sundstrand (Westinghouse) part number (P/N) 914F567–3 or –4 is installed, per Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002.

Replacement or Modification/Reidentification of Any Generator Power Relay, Auxiliary Power Relay, or External Power Relay, P/N 914F567–3

(b) If any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–3, is found installed during the inspection required by paragraph (a) of this AD, within 24 months after the effective date of this AD, do either action specified in paragraph (b)(1) or (b)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002.

(1) Replace power relay having Sundstrand (Westinghouse) P/N 914F567–3 with either a serviceable power relay having Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4.

(2) Modify the power relay, Sundstrand (Westinghouse) P/N 914F567–3, to a –4 configuration.

Maintenance or Replacement of Any Generator Power Relay, Auxiliary Power Relay, or External Power Relay, P/N 914F567–4

(c) If any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, is found installed during the inspection required by paragraph (a) of this AD, clean, inspect, repair, and test the relay, or replace the power relay with a serviceable power relay having Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4; per Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002; at the time specified in paragraph (c)(1) of this AD, except as provided by paragraph (c)(2) of this AD.

(1) Within 7,000 flight hours after installation of the generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, or within 24 months after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the flight hours since installation of any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, cannot be determined: Within 24 months after the effective date of this AD.

Repetitive Maintenance of Generator Power Relay, Auxiliary Power Relay, or External Power Relay, Sundstrand (Westinghouse) P/N 914F567–4

(d) Before or upon the accumulation of 7,000 flight hours on any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4 since accomplishing the action(s) required by either paragraph (b) or (c) of this AD, as applicable, clean, inspect, repair, and test; per Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002. Thereafter, repeat these actions at intervals not to exceed the accumulation of 7,000 flight hours on the power relay.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on February 6, 2003.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32865 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–45–AD; Amendment 39–12987; AD 2002–26–02]

RIN 2120–AA64

Airworthiness Directives; Univair Aircraft Corporation Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A; and Mooney M10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Univair Aircraft Corporation (Univair) Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A, and Mooney M10 airplanes. This AD requires you to repetitively inspect the wing center section for evidence of corrosion through the installation of

inspection openings, through the use of a specified scope and light source, or through the removal of the outer wing panels. This AD also requires you to repair or replace any parts where corrosion or corrosion damage is found, install cover plates if inspection openings were made, and send inspection results to Federal Aviation Administration (FAA). This AD is the result of several reports of corrosion being found throughout the wing center section structure. The actions specified by this AD are intended to detect and correct corrosion in the wing center section which could result in failure of the wing center section structure during flight. Such failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on February 14, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 14, 2003.

ADDRESSES: You may get the service information referenced in this AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011, telephone: (303) 375–8882; facsimile: (303) 375–8888. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–45–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received several reports of severe corrosion being found throughout the wing center section of Univair Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A, and Mooney M10 airplanes. We have determined that the original design configuration of these airplanes does not provide adequate means for routine visual inspection of the wing center section wing walkway boxes. The inability to inspect this area has resulted in corrosion being undetected on these airplanes.

What is the potential impact if FAA took no action? If corrosion is not detected and corrected, the wing center section structure could fail during flight. Such failure could lead to loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Univair Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A; and Mooney M10 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 3, 2002 (67 FR 15763). The NPRM proposed to require the following:

—Repetitively inspect the wing center section for evidence of corrosion through the installation of inspection openings, through the use of a specified scope and light source, or through the removal of the outer wing panels;
—Install cover plate assemblies if inspection openings were made; and
—Repair or replace any parts where corrosion or corrosion damage was found.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Add Additional Method for Accomplishing the Inspection

What is the commenter's concern? Several commenters state that the two methods specified in the NPRM are an economic burden, impact the aesthetic and structural appearance of the airplane, and/or reduce the structural integrity of the wings. Several of the commenters state that the cost of the scope and light source necessary to perform the inspection is much more expensive than that stated in the NPRM, and that installing inspection openings in the wings will reduce the structural integrity of the wings.

The commenters request to have a third method added to the AD that allows for removing the outer wing panels from the airplane to accomplish the inspections. The commenters also state that this method is less of an economic burden and feel it is more effective than the two methods proposed in the NPRM.

What is FAA's response to the concern? We concur that a third inspection method option should be added to the AD.

The manufacturer has revised the service bulletin to incorporate this additional method, and we will incorporate the new service bulletin into the final rule AD action.

We also have verified that the Olympus OSF Endoscope (sigmoidoscope) with a Fujinon FIL–150 light source, as specified in Note 1 of the NPRM, is available for the cost stated in the NPRM.

We will change the final rule AD action to incorporate Revision 1 of Univair Service Bulletin 31.

Comment Issue No. 2: Change the Repetitive Inspection Compliance Time

What is the commenter's concern? Several commenters state that the majority of the airplanes affected by this AD are over 40 years old with no history of corrosion problems in the wing center section. Therefore, once the initial inspection has been performed and no corrosion is found, the commenters do not believe that corrosion would become an unsafe condition within the next 12 months or 100 hours time-in-service (TIS). The commenters suggest that a 3 year or a 5 year repetitive interval will be more than adequate.

What is FAA's response to the concern? We agree with the commenters. The initial inspection compliance time will remain the same; however, we will change the repetitive inspection intervals to be every 3 years.

We will change the final rule AD action to incorporate this change.

Comment Issue No. 3: Service Bulletin Unavailable

What is the commenter's concern? Several commenters state that Univair was unable to provide them with a copy of the service bulletin referenced in the NPRM. Therefore, the commenters were unable to provide comments related to the actions required by the service bulletin as stated in the NPRM. We infer that the commenters want the NPRM withdrawn because they could not obtain the service bulletin.

What is FAA's response to the concern? We do not concur. We understand the concerns of the commenters. However, we cannot require accomplishment of any action in accordance with a supplemental document, *i.e.*, manufacturer's service bulletin, unless we have an approved original copy submitted to FAA from the manufacturer. The service bulletin referenced in the NPRM is an official part of the rules docket and was available during the comment period at the offices specified in the **ADDRESSES** paragraph in the NPRM.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 4: Remove the Mooney Model M10 Airplanes From the Applicability

What is the commenter's concern? The commenter states that the Mooney rear spar can be readily inspected after the seats and baggage compartment floor are removed. This makes it is unnecessary to install inspection holes in the skin on this airplane. The commenter wants Mooney Model M10 airplanes removed from the applicability section of the final rule AD action.

What is FAA's response to the concern? We do not concur. Corrosion or corrosion damage can occur on the Mooney Model M10 airplanes, and owners/operators of the affected airplanes have two other methods to use for accomplishing the inspection requirements of this AD without installing inspection holes.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 5: AD Is Not Warranted

What is the commenter's concern? Several commenters state that, as long as the airplane has been properly maintained (using existing procedures) and properly stored, there should not be a problem with corrosion build-up in the wing center section. Also, the commenters state that the NPRM was issued based on an isolated case of corrosion being found on an airplane that was improperly maintained and stored. The commenters don't believe there is enough evidence to warrant AD action against the entire fleet. Therefore, the commenters recommend that FAA withdraw the NPRM.

What is FAA's response to the concern? We do not concur that the NPRM should be withdrawn. We have 27 documented cases, from 1974 to the present, of corrosion found throughout the wing components and other parts of the airframe. Our analysis indicates that normal maintenance procedures and methods do not allow for the detection of corrosion in the wing center section of the affected airplanes.

We are not changing the final rule AD based on these comments.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of another method to be used for accomplishing the inspection, changing the compliance time for the repetitive inspection intervals, and minor editorial corrections. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 2,600 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affect airplanes? We estimate the following costs to accomplish the installation of the inspection openings:

Labor cost	Parts cost	Total cost per airplane
10 workhours × $60 per hour = $600	$175	$775

We estimate the following costs to accomplish the inspection using a scope and light source:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120.	$450 for purchase of a borescope or an endoscope, if applicable.	$120 or $570	$120 × 2,600 = $312,000 or $570 × 2,600 = $1,482,000.

We estimate the following costs to accomplish the inspection by removing the outer wing panel:

Labor cost	Parts cost	Total Cost per airplane	Total Cost on U.S. operators
5 workhours × $60 per hour = $300	Not applicable	$300	$300 × 2,600 = $780,000.

The FAA has no method of determining the number of repetitive inspections each owner/operator will incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs or replacements each owner/operator will incur over the life of each of the affected airplanes based on the results of the inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Compliance Time of This AD

What would be the compliance time of this AD? The compliance time of this AD is "within the next 12 calendar months after the effective date of this AD and thereafter at intervals not to exceed 3 years."

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The unsafe condition specified by this AD is caused by corrosion. Corrosion can occur regardless of whether the airplane is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this AD does not go

undetected for a long period of time, the compliance is presented in calendar time instead of hours TIS.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–26–02 Univair Aircraft Corporation: Amendment 39–12987; Docket No. 2001–CE–45–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Models	Serial Numbers
Alon A–2 and A2–A	All.
ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G.	All.
Forney F–1 and F–1A	All.
Mooney M10	All.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion in the wing center section which could result in failure of the wing center section structure during flight. Such failure could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the wing center section for corrosion or corrosion damage by accomplishing one of the following: (i) Install inspection openings to gain access to the wing walkway box structure and inspect the wing center structure for corrosion or corrosion damage; (ii) Use a scope and light source, *e.g.*, fiberscope borescope or an endoscope (as specified in paragraph (e) of this AD) to inspect the wing center structure for corrosion or corrosion damage); or (iii) Remove the outer wing panels to gain visual access to the wing walkway box structure for corrosion or corrosion damage.	Within the next 12 calendar months after February 14, 2003 (the effective date of this AD) and thereafter at intervals not to exceed 3 years.	In accordance with the Procedures section of Univair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002; or Univair Aircraft Corporation Service Bulletin No. 31, Revision 1, dated June 14, 2002; and Advisory Circular 43–4A, Corrosion Control for Aircraft.
(2) If corrosion or corrosion damage is found during any inspection required in paragraph (d)(1) of this AD, repair or replace damaged components of the wing center section.	Prior to further flight after any inspection in which the corrosion or corrosion damage is found.	In accordance with the Procedures section of Univair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002; or Univair Aircraft Corporation Service Bulletin No. 31, Revision 1, dated June 14, 2002; the applicable maintenance manual; and Advisory Circular 43–4A, Corrosion Control for Aircraft.
(3) If inspection openings are installed in accordance with paragraph (d)(1)(i) of this AD, install cover plate assemblies.	Prior to further flight after each inspection or repair required in paragraphs (d)(1) and (d)(2) of this AD.	In accordance with the Procedures section of Univair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002; or Univair Aircraft Corporation Service Bulletin No. 31, Revision 1, dated June 14, 2002.

Actions	Compliance	Procedures
(4) If any damage is found during any inspection required by this AD, submit a Malfunction or Defect Report (M or D), FAA Form 8010–4, to the FAA. (i) Include the airplane model and serial number, the extent of the damage (location and type), and the total number of hours TIS on the damaged area. (ii) You may submit M or D reports electronically by accessing the FAA AFS–600 Web page at *http://av-info.faa.gov/isdr*. You will lose access to the report once electronically submitted. We recommend you print two copies prior to submitting the report. Forward one copy to the Denver Aircraft Certification Office (ACO) and keep the one copy for your records. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Nubmer 2120–0056.	Within 10 days after the inspection in which the corrosion or damage was found or within 10 days after February 14, 2003 (the effective date of this AD), whichever occurs later.	Send the report to Roger Caldwell, FAA, at the address in paragraph (g) of this AD. You may also file electronically as discussed in this AD.

(e) *What kind of scope or light source must I use to accomplish the inspection required in paragraph (d)(1)(ii) of this AD?* We have determined that Olympus OSF Endoscope (sigmoidoscope) with a Fujinon FIL–150 light source is acceptable for the inspections option chosen in paragraph (d)(1)(ii) of this AD. Other scopes and light sources are acceptable and must meet the following minimum characteristics:

(1) Must be a remote high intensity light source of 150 Watts halogen or better.

(2) The optical system must be of a quality such that it remains constantly in focus from about 4 millimeters (0.16 inch) to infinity.

(3) When the tip is approximately 4 millimeters from the inspected surface, a magnification of about 10X must be achieved.

(4) The image guide and protective sheath length must be at least 2 feet for more, and the distal tip diameter must be 0.450 inch or larger.

(5) There must be control handles for four-way tip articulation of the last 4 to 5 inches for a minimum of 100 degrees for each direction.

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Denver Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Denver ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Univair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002; or Univair Aircraft Corporation Service Bulletin No. 31, Revision 1, dated June 14, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) *When does this amendment become effective?* This amendment becomes effective on February 14, 2003.

Issued in Kansas City, Missouri, on December 23, 2002.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32885 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2002–13744; SFAR No. 73–1]

RIN: 2120–AH94

Robinson R–22/R–44 Special Training And Experience Requirements

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule extends the expiration date of Special Federal Aviation Regulation (SFAR) 73. SFAR 73 requires special training and experience for pilots operating the Robinson model R–22 or R–44 helicopters in order to maintain the safe operation of Robinson helicopters. It also requires special training and experience for certified flight instructors conducting student instruction or flight reviews in R–22 or R–44 helicopters.

EFFECTIVE DATE: December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Robert J. O'Haver, Operations Branch, AFS–820, General Aviation and Commercial Division, 800

Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267–7031.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search).*

(2) On the search page type in the last five digits (13744) of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the *Government Printing Office's* Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any entity that has a question regarding this document may contact a local FAA office, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our Web page, *www.gov/avr/arm/sbrefa.htm.* If you have questions, send us an e-mail at *9-AWA-SBREFA@faa.gov.*

Background

Part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) details the certification requirements for pilots and flight instructors. Particular requirements for pilots and flight instructors in rotorcraft are found in Subparts C through G, and Appendix B of part 61. These requirements do not address any specific type or model of rotorcraft. However, in 1995 the Federal Aviation Administration (referred to as "we") determined that specific training and experience requirements are necessary for the safe operation of Robinson R–22 and R–44 model helicopters.

The R–22 is a 2-seat, reciprocating engine powered helicopter that is frequently used as a low-cost initial student training aircraft. The R–44 is a 4-seat helicopter with operating characteristics and design features that are similar to the R–22. The R–22 is the smallest helicopter in its class and incorporates a unique cyclic control and rotor system. Certain aerodynamic and design features of the aircraft cause specific flight characteristics that require particular pilot awareness and responsiveness.

We found that the R–22 met 14 CFR part 27 certification requirements and issued a type certificate in 1979. The small size and relatively low operating costs of this helicopter made it popular as a training or small utility aircraft. Thus, a significant number of the pilots operating R–22 helicopters were relatively inexperienced. Prior to issuance of SFAR 73, the Robinson R–22 experienced a higher number of fatal accidents due to main rotor/airframe contact than other piston-powered helicopters. Many of these accidents were caused by low rotor revolutions per minute (RPM) or low "G" conditions that resulted in mast bumping or main rotor-airframe contact accidents. Aviation safety authorities attributed this to pilot error by inexperienced pilots.

In our analysis of accident data, we found that apparently qualified pilots may not be properly prepared to safely operate the R–22 and R–44 helicopters in certain flight conditions. We determined that additional pilot training, originally established by SFAR 73, as modified in SFAR 73–1, continues to be needed for the safe operation of these helicopters.

Previous Regulatory Action

To address the safety issues, on March 1, 1995, we published SFAR 73 (60 FR 11256). This SFAR required certain experience and training to perform pilot-in-command (PIC) and/or certified flight instructor (CFI) duties. SFAR 73 was issued on an emergency basis, with an expiration date of December 31, 1997. On November 21, 1997 (62 FR 62486), we published an NPRM to extend SFAR 73 to December 31, 2002, with a minor amendment. The final rule extending SFAR 73 to December 31, 2002 was published on January 7, 1998 (63 FR 660). On November 14, 2002, we published an NPRM proposing to extend SFAR 73 an additional 5 years to December 31, 2007 (67 FR 69106). This final rule responds to the comments received on the most recent NPRM and extends SFAR 73 to March 31, 2008.

FAA response to comments on the NPRM that proposed extension of SFAR 73

We received six comments in response to the NPRM that was published in the **Federal Register** on November 14, 2002. Two of the comments were from the Robinson Helicopter Company. The other four comments were from three individuals. Several of the commenters addressed similar issues. Our response to the comments follows.

1. Should We Exclude the Robinson R44 Helicopter From the Requirements of SFAR 73?

Mr. Frank Robinson, President of the Robinson Helicopter Company; Mr. Sherwood A. Bresler, Chief Accident Investigator for the Robinson Helicopter Company; Mr. Timothy C. Tucker, an FAA Designated Pilot Examiner for helicopters; and Mr. Martin E. Weaver requested the FAA to remove the R44 helicopter from SFAR 73. The principal arguments in favor of removing the R44 helicopter are:

- The Robinson Helicopter Company has made significant changes to the R44 helicopter since 1995 that reduce its vulnerability to low-G mast bumping and low-RPM rotor stall.
- The flight and handling characteristics of the R44 are closer to the Bell 206 Jetranger helicopter than the smaller R22.
- The FAA revised the Helicopter Practical Test Standards for private, commercial and flight instructor certificates to include "Low RPM Recovery" and "Low G" conditions.

Response: Since the issuance of SFAR 73, there has been a drop in the accident rate of Robinson helicopters associated with low "G" maneuvers (low rotor RPM) resulting in main rotor/tailboom contact. Between the publication of SFAR 73 in 1995 and the first extension of the SFAR in 1997 no accidents occurred in the R–22 or R–44 that were

related to low rotor RPM and tailboom/main rotor contact. There have been two accidents since the first extension in 1997. Design changes in the R–44 have improved the aircraft performance and handling characteristics of recently manufactured R–44 helicopters but these changes were not applied to older R–44s. The Robinson R–44 helicopter is generally of the same design as the R–22, and although larger uses a teetering rotor system with a high mounted tail rotor. These design characteristics make the rotorcraft susceptible to mast bumping and fuselage rolling tendencies under low-G conditions. Since the design characteristics of the R–44 are similar to the R–22, we believe that SFAR 73 should apply to both models. We further believe that SFAR 73 has been effective in improving the safe operation of these helicopters. SFAR 73 will continue to apply to the R–22 and the R–44.

2. Should We Modify SFAR 73 To Allow Flight Training for Student Pilots in the R–22 and R–44 Before Requiring the Specific Training Called for in SFAR 73?

Mr. Martin E. Weaver asked us to change the wording in Section 2, paragraph (a)(1) from "* * * no person may manipulate the controls of a Robinson * * *" to "* * * no person may solo or perform duties as pilot-in-command of a Robinson * * *" and paragraph (a)(2) from "* * * may not manipulate the controls of a Robinson * * *" to "* * * may not solo or perform duties as pilot-in-command of a Robinson * * *". Mr. Weaver states that the current rule does not consider the effectiveness of providing the special training to someone with no experience in helicopters. He believes it would be better to wait until the student pilot has some flight experience with helicopter flight controls and basic understanding of aerodynamic principles before learning the specific limitations established in SFAR 73.

Response: We reviewed this issue after the initial release of SFAR 73 and found that continuous awareness training was preferable to changing the fundamental requirement of the rule. Flight instructors who routinely provide initial flight training in the R–22 begin discussing mast bumping preventive procedures and hazards of low-G maneuvers early in the training program. Qualified instructors have found that continuing education throughout the training program reinforces the precautions that need to be learned. Early training on these skills and knowledge can begin on a very basic level and increase in detail and difficulty as the student develops the appropriate knowledge, skill, and experience. We will therefore continue to require continuous awareness training on mast bumping preventive procedures and hazards of low-G maneuvers.

3. Should We Extend the Flight Review Requirements From 12 to 24 Months for the R22 and the R44?

Mr. Weaver believes that extending the flight review required by paragraphs 2(b)(1)(ii) and 2(b)(2)(ii) of the SFAR to 24 months would not increase the accident rate.

Response: We believe requiring an annual flight review improves the safe operation of these helicopters. The requirements for the flight review in the R–22 helicopter were established by the R–22 Flight Standardization Board (FSB) Report dated February 15, 1995. This report states in paragraph 8.2, "All pilots who wish to act as pilot in command of a Robinson R–22 aircraft should complete a flight review as required by FAR part 61.56 in a Robinson R–22 model helicopter." We believe that an annual review of the areas addressed by SFAR 73 is necessary.

4. Should We Reduce the Required Hours in Helicopters From 200 to 150?

Mr. Martin Thysell believes that 200 hours of helicopter experience required by paragraph 2(b)(1)(i) of the SFAR may not be required if a substantial part of the flying has been in the Robinson R–22. He recommends changing the language that states "* * * has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–22 * * *" to "* * * has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–22 or at least 150 hours in helicopters, at least 100 flight hours of which were in the Robinson R–22 * * *"

Response: The recommended change, if adopted, would reduce the total number of required flight hours for a qualified R–22 flight instructor from 200 flight hours to 150 flight hours if 100 hours were acquired in a Robinson R–22. The commenter does not state any safety benefit that would result from the proposed change. We believe a clear relationship exists between pilot inexperience in helicopters and main rotor to airframe contact accidents. In 23 of the 30 fatal accidents originally investigated that led to the implementation of SFAR 73, the pilots apparently manipulating the controls had less than 200 flight hours in helicopters. We have determined that 200 flight hours are needed for the safe operation of either helicopter.

5. Should We Reduce the Extension of SFAR 73 From 5 years to 2 years?

Mr. Sherwood A. Bresler of the Robinson Helicopter Company believes that 2 years is sufficient time to permanently address regulations and policies about helicopter pilot and flight instructor training and experience requirements.

Response: We are working on regulations and policies to govern pilot and certified flight instructor training and experience, based on experience gained from SFAR 73. We intend to implement these in 2007 or before. Considering the time needed to complete the public rulemaking process, other agency priorities and available resources, we believe the 5-year extension to coincide with new rules is appropriate. Also, we are adding 3 months so the expiration of the SFAR does not coincide with the end of the year.

6. Should Helicopter Pilots and Flight Instructors Be Allowed to Use Fixed Wing Time in Meeting Requirements for Helicopter Ratings?

Mr. Bresler believes we should harmonize our rules with international standards that do not allow fixed wing time in meeting requirements for helicopter ratings. He believes this change would eliminate the need for SFAR 73.

Response: Mr. Bresler's suggestion would require a substantial change to FAA qualification standards for all helicopter training. Such a suggestion is beyond the scope of this rulemaking. As discussed above, we are working on a separate project dealing with the regulations and policies governing pilot and certified flight instructor training and experience. We will evaluate Mr. Bresler's comment in that project.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that a Federal agency may propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires

agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this final rule: (1) Will generate benefits that exceed costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not constitute a barrier to international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

This final rule will extend the requirements of SFAR 73–1, which will expire on December 31, 2002, for an additional 5 years. It will impose costs on those receiving instruction in Robinson model R–22 and R–44 helicopters. Affected individuals will be required to receive additional model-specific training and experience for each model of Robinson helicopter before they can be certificated. The individuals affected include flight instructors and students seeking to be certified to operate Robinson model helicopters. These individuals can avoid the costs of this final rule by receiving their instruction in a helicopter other than a Robinson model. However, they will not be certificated for Robinson model helicopters.

Regarding benefits, this final rule will continue the observed reduction in the number of fatal accidents that occur in Robinson helicopters associated with low "G" maneuvers that can result in main rotor contact with the airframe. Prior to the issuance of SFAR 73 there were 15 accidents and 24 fatalities due to main rotor contact with the airframe. Since the SFAR was issued in 1995, however, there have been only two accidents and only one fatality involving R–22 or R–44 aircraft associated with low "G" operations and main rotor contact with the airframe.

Even though two accidents involving low "G" operations have occurred since SFAR 73 was extended in 1997, we find that the potential safety benefits still exceed costs and justify the adoption of this final rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will require students and rated pilots seeking to conduct student instructions or flight reviews in a Robinson helicopter to incur added costs. Thus, the requirements of the SFAR impact individuals rather than entities. For these reasons, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small operators.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The final rule imposes costs on those receiving instruction on Robinson helicopters. These costs have been in effect for almost 7 years and apparently have not affected sales of the aircraft. The FAA has assessed the potential effect of the final rule and determined that it will have a neutral impact on foreign trade and, therefore, create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Federalism Implications

This final rule will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this final rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

The OMB control number assigned to the collection of information for this final rule is 2120–0021.

Conclusion

For the reasons previously discussed in the preamble, the FAA has determined that this SFAR is not significant under Executive Order 12866. Based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA certifies that this final rule will not have a significant

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This SFAR is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Plain Language

In response to the June 1, 1998 Presidential Memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http:www.plainlanguage.gov*.

List of Subjects in 14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

The Final Rule

In consideration of the foregoing, the Federal Aviation Administration amends part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Revise section 3 of SFAR No. 73 to read as follows:

Special Federal Aviation Regulations

* * * * *

Special Federal Aviation Regulation No. 73—Robinson R–22/R–44 Special Training and Experience Requirements

* * * * *

3. *Expiration date.* This SFAR terminates on March 31, 2008, unless sooner superceded or rescinded.

Issued in Washington, DC on December 27, 2002.

Marion C. Blakey,

Administrator.

[FR Doc. 02–33143 Filed 12–30–02; 1:47 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14076; Airspace Docket No. 02–AAL–6]

Revision of Class E Airspace; Point Hope, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace extending upward from 1,200 feet above the surface at Point Hope, AK. The FAA has developed two new Standard Instrument Approach Procedures (SIAP) for the Point Hope Airport. Class E airspace upward from 1,200 feet above the surface is necessary to ensure that Instrument Flight Rules (IFR) operations remain within controlled airspace when executing the new SIAPs. The current Class E airspace is not sufficient to contain the two new SIAPs. The intended effect of this rule is to create additional controlled Class E airspace necessary to contain the new SIAPs.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

History

On September 27, 2002, a proposal to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace at Point Hope, AK, was published in the **Federal Register** (67 FR 61046–61047). The proposal was necessary because two new SIAPs have been developed to the Point Hope Airport and current Class E airspace is not sufficient to contain the new SIAPs. The new SIAPs are the *Area Navigation (Global Positioning System) (RNAV/GPS) Runway 1 and the RNAV (GPS) Runway 19* approaches. This action will extend Class E airspace, upward from 1,200 feet above the surface, to contain the new SIAPs. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 adds additional Class E airspace upward from 1,200 feet above the surface at Point Hope, Alaska. Additional Class E airspace is being created to contain aircraft executing two new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Point Hope Airport, Point Hope, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority : 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, is to amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Point Hope, AK [Revised]

Point Hope Airport, AK
(Lat. 68° 20′ 56″ N, long. 166° 47′ 58″ W)
Point Hope NDB
(Lat. 68 20′ 41″ N, long. 166 47′ 51″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Point Hope Airport and within 3 miles each side of the 207 bearing of the Point Hope NDB extending from the 6.4-mile radius to 10.3 miles southwest of the airport and within 3 miles either side of the Point Hope NDB 017 bearing extending from the 6.4-mile radius to 9.9 miles northeast of the airport; and that airspace extending upward from 1,200 feet above the surface within lat. 68°45′00″ N, long. 166°00′00″ W; to lat. 68°15′00″ N, long. 165°53′00″ W; to lat. 67°55′00″ N, long. 166deg;03′00″ W; to lat. 68 deg;01′30″ N, long. 167 deg;65′00″ W; to lat. 68°45′00″ N, long. 166°52′30″ W to the point of beginning.

* * * * *

Issued in Anchorage, AK, on December 20, 2002.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–33128 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14075; Airspace Docket No. 02–AAL–07]

Establishment of Class E Airspace; Wasilla, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes new Class E airspace extending upward from 700 feet above the surface at Wasilla, AK. The FAA has developed a new Standard Instrument Approach Procedure (SIAP) for the Wasilla Airport. Class E airspace upward from 700 feet above the surface is necessary to ensure that Instrument Flight Rules (IFR) operations remain within controlled airspace when executing the new SIAP. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Wasilla Airport, Wasilla, AK.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2002, a proposal to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to add Class E airspace at Wasilla, AK, was published in the **Federal Register** (67 FR 62410–62412) on October 7, 2002. The FAA has developed a new Standard Instrument Approach Procedure (SIAP) for the Wasilla Airport. The approach is designated *Area Navigation (Goblal Positioning System) (RNAV GPS) Runway 3, original*. The new Class E airspace is necessary to contain aircraft executing the *RNAV (GPS) Runway 3* approach within controlled airspace. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be added to the Order.

The Rule

This revision to 14 CFR part 71 establishes new Class E airspace upward from 700 feet above the surface at Wasilla, Alaska. Additional Class E airspace is established to contain aircraft executing a new SIAP and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Wasilla Airport, Wasilla, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore'(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Wasilla, AK [NEW]

Wasilla Airport, AK
(Lat. 61° 34′ 08″ N, long. 149° 32′ 25″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Wasilla Airport excluding Big Lake Class E Airspace.

* * * * *

Issued in Anchorage, AK, on December 24, 2002.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–33129 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM02–9–001; Order No. 626]

Electronic Filing of Form 1, and Elimination of Certain Designated Schedules in FERC Form Nos. 1 and 1–F

December 26, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: In this correction, the Federal Energy Regulatory Commission is correcting its Final Rule and identifying what designated lines and schedules in Form No. 1–F should be retained or eliminated.

EFFECTIVE DATE: Effective on January 2, 2003.

FOR FURTHER INFORMATION CONTACT:
Kevin A. Jones (Technical Information), Office of Markets, Tariffs and Rates, FERC, 888 First Street, NE., Washington, DC 20426, (202) 502–6185, *Kevin.Jones@ferc.gov.*
Bolton Pierce (Electronic System), Office of Markets Tariffs and Rates, FERC, 888 First Street, NE., Washington, DC 20426, (202) 502–8803, *bolton.pierce@ferc.gov.*
Julia Lake (Legal Information), Office of General Counsel, FERC, 888 First Street, NE., Washington, DC 20426, (202) 502–8370, *julia.lake@ferc.gov.*

SUPPLEMENTARY INFORMATION:
Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

Correction of Final Rule

On May 16, 2002, the Commission issued Order No. 626, a Final Rule that provided for electronic filing of FERC Form No. 1 and the elimination of certain designated schedules in FERC Form Nos. 1 and 1–F.[1] In this correction, the Commission is correcting its Final Rule and identifying what designated lines and schedules in Form No. 1–F (Form 1–F), principally in the Comparative Balance Sheet and the Statement of Income for the Year, should be retained or eliminated.

The following schedules or parts of schedules are eliminated from Form 1–F:

- Data on Security Holders and Voting Powers (Part X, P. 18). (Nonmajor utilities should continue to report Data on Officers and Directors (Part XI, P. 18), however.)
- Number of Electric Department Employees (P. 323).

The Commission corrects the Final Rule by not eliminating the following from the Form 1–F: Nonutility Property (121, P. 110); Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and Installments Received on Capital Stock (252, P. 112); Discount on Capital Stock (254, P. 112); Particulars Concerning Certain Income Deduction and Interest Charges (340, P. 117); Electric Distribution Meters and Line Transformers (429, lines 63 & 65, P. 206); and Allowance for Borrowed Funds Used During Construction in Construction Overheads—Electric (217, P. 8). These line items contain accounts reflected in the Commission's Uniform System of Accounts that are needed to provide an accurate and complete reporting of a utility's accounting for transactions and events, and to provide relevant non-financial information related to its operations.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33091 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC93

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Document Incorporated by Reference—API RP 14C

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to the final regulations published on August 9, 2002 (67 FR 51757). The final rule related to updating one document incorporated by reference in regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS). The final rule updated the American Petroleum Institute (API) Recommended Practice (RP) 14C document to the Seventh Edition, March 2001. The new edition allows lessees to use updated industry standard technologies while operating in the OCS. The corrections being made are non-substantive and are necessary for clarification purposes only.

EFFECTIVE DATE: September 9, 2002.

FOR FURTHER INFORMATION CONTACT:
Wilbon A. Rhome, (703) 787–1587.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections revised the incorporated-by-reference API document RP 14C, for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, to incorporate the new Seventh Edition of API RP 14C. MMS determined that:

- Incorporating into regulations the Seventh Edition that specifies a reduced testing frequency will not jeopardize the use of the best and safest technologies.
- The changes between the old and new editions represent new industry standard technology and will not impose undue cost on the offshore oil and gas industry.
- The changes to our regulations will eliminate the need for industry to request certain departures from the regulations.

Based on the determinations, the final rulemaking incorporated the new Seventh Edition of API RP 14C. The final rule also made corresponding revisions to the appropriate regulatory sections that reference API RP 14C.

The 30 CFR part 250 regulations incorporate many industry standards. Section 250.198 describes our documents incorporated by reference policy and procedures, and meets the **Federal Register** (FR) legal requirements for incorporating documents by reference. Section 250.198 also provides a complete list of all incorporated documents and the corresponding regulatory cites.

The legal department of the FR reviews all Final Rulemaking actions when they incorporate documents by reference into agencies' regulations. Upon review of the final rule that is the subject of this correction, the FR legal department advised us that whenever our regulations cite a document incorporated by reference, the regulation must refer readers to § 250.198. The FR specified that the statement "incorporated by reference as specified in § 250.198" be inserted

[1] 67 FR 36093 (May 23, 2002), III FERC Stats. & Regs. ¶ 31,130 (May 16, 2002).

following the cited document. The FR allowed that we could revise our regulations to incorporate this insertion as part of final rulemaking actions that affect specific documents incorporated by reference. In this case, a final rulemaking action affected API 14C.

Need for Correction

On page 51760 of the FR publication of the final rule, "instruction number 5.C" redesignated the previously designated §§ 250.804(a)(4) through (a)(11) to §§ 250.804 (a)(5) through (a)(12). To accommodate the FR requirements previously discussed, the subsequent instruction number 5.E specified that the second sentence in the newly redesignated paragraph (a)(5) be revised. This instruction contained a typographical error in that the revision should have been made to the newly redesignated paragraph (a)(6) instead. Consequently the redesignated paragraph (a)(5) was incorrectly revised and the redesignated paragraph (a)(6) did not contain the FR required reference to § 250.198.

On page 51759 of the FR publication of the final rule, the revision to the table in § 250.198(e) also incorrectly cited § 250.804(a)(5) instead of (a)(6).

Correction of Publication

PART 250—[CORRECTED]

Part 250 is corrected by making the following correcting amendments:

1. In § 250.198, in the table in paragraph (e), the entry for "API RP 14C" is corrected by revising citation "(a)(5)" in the second column to read "(a)(6)".

2. Section 250.804 is corrected by revising the second sentence in paragraphs (a)(5) and (a)(6) as follows:

§ 250.804 Production safety-system testing and records.

(a) * * *

(5) * * * The SSV's and USV's must be tested in accordance with the test procedures specified in API RP 14H (incorporated by reference as specified in § 250.198). * * *

(6) * * * The FSV's must be tested for leakage in accordance with the test procedures specified in API RP 14C, Appendix D, section D4, table D2, subsection D (incorporated by reference as specified in § 250.198). * * *

* * * * *

Dated: December 10, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 02–32937 Filed 12–31–02; 8:45 am]

BILLING CODE 4310–MR–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003–2; Order No. 1357]

Electronic Filing

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This rule identifies certain categories of documents that may be filed using temporary, rather than permanent, Filing Online accounts. This provides a filing option for situations that may not warrant obtaining permanent account holder status and risking the potential delay or other consequences that may be associated with that effort.

DATES: This change takes effect January 7, 2003.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system, which may be accessed at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–780–6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

See 66 FR 33034 (June 20, 2001).
See 67 FR 35766 (May 21, 2002).
See 67 FR 67552 (November 6, 2002).

Introduction

On October 21, 2002, the Commission issued order no. 1349 amending its rules of practice. This order made submitting documents via the Internet using the Commission's Filing Online system the standard method for filing documents in Commission proceedings. The effective date of the new filing system is January 7, 2003.

Under this new filing system, each person intending to participate in Commission proceedings is required to set up a Filing Online account prior to using the Filing Online system to file documents. In order to become an account holder in the Filing Online system, a person must complete, sign, and mail to the Secretary, a hardcopy application. This process requires a modest amount of effort by the applicant, and involves a modest amount of delay. The effort and delay is necessary to effectively link documents with those that file them, to allow principal, agent, and client relationships to be tracked in an orderly way, to ensure that documents are authorized and authentic, and to provide adequate security for the system.

Application and Approval Process

Obtaining a permanent Filing Online account requires the applicant to undertake a number of commitments, and usually takes several days. In addition to providing identifying and contact information, the applicant must request status as a principal account holder or an agent account holder. A person applying to become a principal account holder must assume a contractual duty to ensure that each document that he or she files online is authentic, accurate, and authorized by the participant that the account holder purports to represent. A principal account holder is obligated to notify the Commission when there are changes in his or her authority to file documents on behalf of another participant.

After a person has completed and signed the account holder application, he or she must mail it to the Commission. When the Commission accepts the application, it e-mails the applicant his or her user name and a temporary password. Both are required to log in to Filing Online. After logging in, the account holder selects a permanent password. Several days may elapse between the time that a person applies to become an account holder and the receipt of his permanent password.

The Commission recognizes that this amount of effort and delay might not be necessary or appropriate for certain categories of documents that are filed with the Commission. It has decided to allow such documents to be filed under temporary Filing Online accounts which people may obtain through a simplified and expedited procedure.

Temporary Account Option Available for Certain Documents

The Commission has added rule 9(e) to its rules of practice [39 CFR 3001.9(e)]. This rule allows two categories of documents to be filed under temporary Filing Online accounts. The first category is notices of intervention. A notice of intervention is typically the first document submitted by a participant in a formal hearing. The Commission is aware that those who have not applied for permanent Filing Online accounts might assume that they will be able to apply for a permanent account, gain access to Filing Online, and file a notice of intervention all on the day that notices of intervention are due. First-time participants in a Commission hearing and first-time users of Filing Online may not realize that it could take several days for their signed, hardcopy application for a permanent Filing Online account to be delivered to

the Secretary and processed. If they are not aware of this requirement, they risk missing the deadline for filing their notice of intervention. In order to reduce this risk, the Commission has designated notices of intervention as a category of document that a prospective participant may file under a temporary account. This dispenses with the requirement to complete and sign a hardcopy application and undertake the duties inherent in the subscription requirement. In deciding to dispense with this requirement for notices of intervention, the Commission has considered that the representations of affected interests that are provided in notices of intervention are not the kind that require the safeguards of the subscription requirement. If there were material misrepresentations of fact in a notice of intervention, the Commission is aware that such misrepresentations may be brought to its attention by others in a motion to deny intervention.

The second category of documents that may be filed under a temporary Filing Online account is comments that have been solicited by the Commission. This includes comments that the Commission solicits in informal inquiries, such as its inquiry in the Petition for Review of Unclassified Services, instituted on November 21, 2002, and comments that the Commission solicits in rulemaking proceedings. As with notices of intervention, there may be first-time users of Filing Online who wish to file comments in a rulemaking or other Commission proceeding who assume that they may apply for a permanent account, gain access to Filing Online, and file comments, all on the day that comments are due. If they are not aware that a signed, hardcopy application must be delivered to the Commission and processed before they become permanent account holders, they risk missing the deadline for comments. In order to reduce this risk, the Commission allows comments that it solicits to be filed under a temporary Filing Online account.

The Commission has not included statements of views submitted under rule 20b among the categories of documents that may be filed online under temporary accounts. Rule 20b is designed to allow the public to submit unsolicited comments on issues raised in formal record hearings that have been noticed under rule 17 of the Commission's rules of practice. Rule 20b provides an even less formal procedure for communicating with the Commission than the temporary Filing Online account provides. Statements submitted under rule 20b may be mailed or e-mailed to the Commission. The preferred method is using the form provided under the "Contact Us" link on the Commission's Web site, at *http://www.prc.gov*. The language of rule 20b has been revised to clarify the procedural options that are available to filers of rule 20b comments.

Under new rule 9(e), the Commission will entertain motions to allow other categories of documents to be filed under temporary Filing Online accounts under extraordinary circumstances for good cause shown.

Temporary Account Procedures

The procedure required to obtain a temporary account is determined by the Secretary. Currently, an applicant for a temporary account may submit a form online that contains the applicant's identity and contact information, and the identity of the participant on whose behalf the document is submitted. After providing this information, the applicant for a temporary account will choose a User Name and a password that will allow him or her to log in to Filing Online and file a document of the type that the Commission has designated. This will establish the temporary account. The applicant need not mail a signed hardcopy form to the Secretary. The applicant will not be asked to undertake the obligations that accompany the subscription requirement, or to request status as a principal account holder or an agent account holder. The user name and password that the applicant selects will be valid for a limited time that the Commission determines. Currently a temporary account is valid for ten days. Since a temporary account cannot be renewed, a temporary account holder who wishes to file a series of documents in a proceeding will need to obtain a permanent Filing Online account. Because the revisions made in this order to rules 9 and 20b of the Commission's rules of practice simplify the procedures for filing some documents with the Commission, they are presumed not to be prejudicial to the interests of any prospective participant in Commission proceedings. For this reason, the Commission considers it appropriate to make these revisions without first issuing a notice of proposed rulemaking. These revisions to rules 9 and 20b of the Commission rules of practice will take effect on January 7, 2003, concurrently with the implementation of the rules governing Filing Online adopted in order no. 1349.

Ordering Paragraphs

It is ordered:

1. The addition of § 3001.9(e) and the revision of § 3001.20b of the Commission's rules of practice, as set forth below, shall take effect on January 7, 2003.

2. The Secretary shall cause this to be published in the **Federal Register**.

Authority: 39 U.S.C. 3603.

By the Commission.

Order No. 1357 issued December 23, 2002; errata issued December 27, 2002.

Garry J. Sikora,

Acting Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons stated in the accompanying Order, the Commission adopts the following amendments to 39 CFR part 3001.

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24; 3661; 3662; 3663.

Subpart A—Rules of General Applicability

2. Amend § 3001.9 by adding paragraph (e) to read as follows:

§ 3001.9 Filing of Documents.

* * * * *

(e) *Account holder exemptions.* Notices of intervention and comments solicited by the Commission may be filed under temporary Filing Online accounts. Temporary Filing Online accounts may be obtained without meeting all of the requirements of paragraphs (b) and (c) of this section, and the subscription requirements of § 11. Other categories of documents may be filed under temporary Filing Online accounts under extraordinary circumstances, for good cause shown.

3. Revise § 3001.20b by redesignating paragraphs 3001.20b(a), (b) and (c) as paragraphs 3001.20b(b), (c) and (d), and adding new paragraph 3001.20b(a) to read as follows:

§ 3001.20b. Informal expression of views by persons not parties or limited participators (commenters).

* * * * *

(a) *Form of statement.* A statement filed pursuant to this section may be submitted as a hardcopy letter mailed to the Secretary or an electronic message entered on the form provided for this purpose under the "Contact Us" link on

the Commission's Web site, *http://www.prc.gov.*

[FR Doc. 02–33142 Filed 12–31–02; 8:45 am]
BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7004a; DE068–7004a; PA186–7004a; FRL–7434–3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, the District of Columbia, and Philadelphia, Pennsylvania; Control of Emissions From Existing Commercial/Industrial Solid Waste (CISWI) Incinerator Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that commercial/industrial solid waste incinerator (CISWI) units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within its air pollution control jurisdiction.

DATES: This final rule is effective March 3, 2003 unless within February 3, 2003 adverse or critical comments are received. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate EG for CISWI units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 1, 2000 (65 FR 75338), EPA promulgated CISWI unit new source performance standards and EG, 40 CFR part 60, subparts CCCC and DDDD, respectively.

The designated facility to which the EG apply is each existing CISWI unit, as defined in subpart DDDD, that commenced construction on or before November 30, 1999.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan.

II. Final EPA Action

The District of Columbia, the State of Delaware, and the City of Philadelphia, Pennsylvania have determined that there are no designated facilities, subject to the CISWI unit EG requirements, in their respective air pollution control jurisdiction. Accordingly, each air pollution control agency has submitted to EPA a negative declaration letter certifying this fact. The submittal dates of these letters are November 27, November 16, and February 9, 2001, respectively.

Therefore, EPA is amending part 62 to reflect the receipt of these negative declaration letters from the noted air pollution control agencies. Amendments are being made to 40 CFR part 62, subparts J (District of Columbia), I (Delaware), and NN (Pennsylvania). With respect to subpart NN, this action is only applicable to the City of Philadelphia air pollution control agency's jurisdiction; it does not include the remaining geographical areas of Pennsylvania.

After publication of this **Federal Register** notice, if a CISWI facility is later found within either one of the three noted jurisdictions, then the overlooked facility will become subject to the requirements of the Federal CISWI 111(d)/129 plan, including the compliance schedule, when promulgated. The Federal plan would no longer apply if EPA subsequently receives and approves a 111(d)/129 plan from the jurisdiction with the overlooked CISWI facility.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies under 40 CFR parts 60 and 62. In the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve each negative declaration should relevant adverse or critical comments be filed.

This rule will be effective March 3, 2003 without further notice unless the Agency receives relevant adverse comments by February 3, 2003. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, and the City of Philadelphia, Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Subpart I is amended by adding an undesignated center heading and § 62.1985 to read as follows:

Emissions From Existing Commercial/Industrial Solid Waste Incineration Units

§ 62.1985 Identification of plan—negative declaration.

Letter from the Delaware Department of Natural Resources and Environmental Control submitted November 16, 2001, certifying that there are no existing commercial/industrial solid waste incineration units within the State of Delaware that are subject to 40 CFR part 60, subpart DDDD.

Subpart J—District of Columbia

3. Subpart J is amended by adding an undesignated center heading and § 62.2155 to read as follows:

Emissions From Existing Commercial/Industrial Solid Waste Incineration Units

§ 62.2155 Identification of plan—negative declaration.

Letter from the District of Columbia Department of Health, Environmental Health Administration, submitted November 27, 2001, certifying that there are no existing commercial/industrial solid waste incineration units within the District of Columbia that are subject to 40 CFR part 60, subpart DDDD.

Subpart NN—Pennsylvania

4. Subpart NN is amended by adding an undesignated center heading and § 62.9670 to read as follows:

Emissions From Existing Commercial/Industrial Solid Waste Incineration Units

§ 62.9670 Identification of plan—negative declaration.

Letter from the City of Philadelphia, Department of Public Health, submitted February 9, 2001, certifying that there are no existing commercial/industrial

solid waste incineration units within the City of Philadelphia, Pennsylvania that are subject to 40 CFR part 60, subpart DDDD.

[FR Doc. 02–33094 Filed 12–31–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7003a; DE068–7003a; PA187–7003a, PA186–7003a ; FRL–7434–5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, the District of Columbia, Allegheny County and Philadelphia, Pennsylvania; Control of Emissions From Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, Allegheny County and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that small municipal waste combustion (MWC) units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within its air pollution control jurisdiction.

DATES: This final rule is effective March 3, 2003 unless within February 3, 2003 adverse or critical comments are received. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate EG for small MWC units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 6, 2000 (65 FR 76350, and 76378), EPA promulgated small municipal waste combustion unit new source performance standards, 40 CFR part 60, subparts AAAA, and emission guidelines (EG), subpart BBBB, respectively.

The designated facility to which the EG apply is each existing small MWC unit that has a design combustion capacity of 35 to 250 tons per day of municipal solid waste (MSW) and commenced construction on or before August 30, 1999.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan.

II. Final EPA Action

The District of Columbia, the State of Delaware, Allegheny County and the City of Philadelphia, Pennsylvania have determined that there are no designated facilities, subject to the small MWC unit EG requirements, in their respective air pollution control jurisdiction. Accordingly, each air pollution control agency has submitted to EPA a negative declaration letter certifying this fact.

The submittal dates of these letters are November 27, November 16, November 21, and February 9, 2001, respectively.

Therefore, EPA is amending part 62 to reflect the receipt of these negative declaration letters from the noted air pollution control agencies. Amendments are being made to 40 CFR part 62, subparts J (District of Columbia), I (Delaware), and NN (Pennsylvania). With respect to subpart NN, this action is only applicable to Allegheny County and the City of Philadelphia air pollution control agency jurisdictions, and does not include the remaining geographical areas of Pennsylvania which will be covered in the future by either a Pennsylvania or Federal plan.

After publication of this **Federal Register** notice, if a small MWC facility is later found within either one of the four noted jurisdictions, then the overlooked facility will become subject to the requirements of the Federal small MWC 111(d)/129 plan, including the compliance schedule, when promulgated. The Federal plan would no longer apply if EPA subsequently receives and approves a 111(d)/129 plan from the jurisdiction with the overlooked facility.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies under 40 CFR parts 60 and 62. In the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve each negative declaration should relevant adverse or critical comments be filed.

This rule will be effective March 3, 2003 without further notice unless the Agency receives relevant adverse comments by February 3, 2003. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph,

or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, Allegheny County and the City of Philadelphia, Pennsylvania may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Subpart I is amended by adding an undesignated center heading and § 62.1980 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.1980 Identification of plan—negative declaration.

Letter from the Delaware Department of Natural Resources and Environmental Control submitted November 16, 2001, certifying that there are no existing small municipal waste combustion units within the State of Delaware that are subject to 40 CFR part 60, subpart BBBB.

Subpart J—District of Columbia

3. Subpart J is amended by adding an undesignated center heading and § 62.2145 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.2145 Identification of plan—negative declaration.

Letter from the District of Columbia Department of Health, Environmental Health Administration, submitted November 27, 2001, certifying that there are no existing small municipal waste combustion units within the District of Columbia that are subject to 40 CFR part 60, subpart BBBB.

Subpart NN—Pennsylvania

4. Subpart NN is amended by adding an undesignated center heading and §§ 62.9645 and 62.9646 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.9645 Identification of plan—negative declaration.

Letter from the Allegheny County Health Department submitted November 21, 2001, certifying that there are no existing small municipal waste combustion units within Allegheny County, Pennsylvania that are subject to 40 CFR part 60, subpart BBBB.

§ 62.9646 Identification of plan—negative declaration.

Letter from the City of Philadelphia, Department of Public Health, submitted February 9, 2001, certifying that there are no existing small municipal waste combustion units within the City of Philadelphia, Pennsylvania that are subject to 40 CFR part 60, subpart BBBB.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7002a; FRL–7434–7]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; the District of Columbia; Control of Emissions From Existing Hospital/Medical/ Infectious Waste Incinerator (HMIWI) Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the section 111(d)/129 negative declaration submitted by the District of Columbia Department of Health, Environmental Health Administration. The negative declaration certifies that HMIWI units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within the District of Columbia.

DATES: This final rule is effective March 3, 2003 unless within February 3, 2003 adverse or critical comments are received. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate EG for HMIWI units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On September 15, 1997 (62 FR 48348), EPA promulgated EG, subpart Ce, that are applicable to all existing HMIWI units (*i.e.*, the designated facilities). An existing HMIWI unit is one which construction commenced on or before June 20, 1996.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan.

II. Final EPA Action

On June 25, 1999, the District of Columbia Department of Health, Environmental Health Administration, submitted to EPA a negative declaration letter certifying that there are no known HMIWI units within its jurisdiction.

Therefore, EPA is amending part 62 to reflect the receipt of the negative declaration letter from the District of Columbia Department of Health, Environmental Health Administration. After publication of this **Federal Register** notice, if a HMIWI facility is later found within the District of Columbia, then the overlooked facility is subject to the Federal HMIWI 111(d)/129 plan (65 FR 49868), including the compliance schedule, promulgated on August 15, 2000. The Federal plan would no longer apply if EPA subsequently receives and approves a 111(d)/129 plan from the District of Columbia.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies under 40 CFR parts 60 and 62. In the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the negative declaration should relevant adverse or critical comments be filed.

This rule will be effective March 3, 2003 without further notice unless the Agency receives relevant adverse comments by February 3, 2003. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is

not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the District of Columbia Department of Health, Environmental Health Administration, negative declaration for HMIWI units may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

2. Subpart J is amended by adding an undesignated center heading and § 62.2150 to read as follows:

Emissions From Existing Hospital/ Medical/Infectious Waste Incinerator (HMIWI) Units

§ 62.2150 Identification of plan—negative declaration.

Letter from the Department of Health, Environmental Health Administration, submitted to EPA on June 25, 1999, certifying that there are no known existing HMIWI units in the District of Columbia.

[FR Doc. 02–33098 Filed 12–31–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7001a; PA186–7001a; FRL–7434–9]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; the District of Columbia, and the City of Philadelphia, Pennsylvania; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the section 111(d) negative declarations submitted by the District of Columbia, and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that municipal solid waste (MSW) landfills, subject to the requirements of section 111(d) of the Clean Air Act (CAA), do not exist within its air pollution control agency's jurisdiction.

DATES: This final rule is effective March 3, 2003 unless within February 3, 2003 adverse or critical comments are received. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*.

SUPPLEMENTARY INFORMATION

I. Background

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

On March 12, 1996 (61 FR 9905), EPA promulgated MSW landfill new source performance standards and emission guidelines (EG). Later, EPA promulgated landfill rule amendments on June 16, 1998 (63 FR 32743), February 24, 1999 (64 FR 9258), April 10, 2000 (65 FR 18906), and proposed amendments on May 23, 2002 (67 FR 36476). The EG are applicable to existing municipal solid waste (MSW) landfills (*i.e.*, the designated facilities) that emit landfill gas (LFG), which consists primarily of carbon dioxide, methane, and nonmethane organic compounds (NMOC). MSW landfills are the largest manmade source of methane emissions in the United States. The designated pollutant, NMOC, is a mixture of more than 100 different compounds, including volatile organic compounds (VOC), and hazardous pollutants (HAPs), such as vinyl chloride, toluene, and benzene. A collateral benefit in the control of NMOC is the control of methane.

The designated facility to which the EG apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991, and has accepted municipal solid waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition. Landfill emission controls are not required, unless the designated facility has a capacity greater than or equal to 2.5 million megagrams (Mg) and 2.5 million cubic meters, and a calculated NMOC emissions rate of 50 Mg/Yr, or greater.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans to EPA for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may then submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d) plan.

II. Final EPA Action

The District of Columbia, and the City of Philadelphia, Pennsylvania have determined that there are no existing designated facilities (MSW landfills), in their respective air pollution control jurisdiction. Each agency has submitted to EPA a negative declaration letter certifying this fact. The letters are dated September 11; 1997, and February 27, 1996, respectively.

Therefore, EPA is amending 40 CFR part 62 to reflect the receipt of these negative declaration letters from both air pollution control agencies. Amendments are being made to 40 CFR part 62, subparts J (District of Columbia), and NN (Pennsylvania). With respect to subpart NN, this action is only applicable to the City of Philadelphia air pollution control agency's jurisdiction. Allegheny County, Pennsylvania is covered by its own EPA approved plan (64 FR 13075), while the remainder of the state is covered by a Federal plan (64 FR 60689) until such time as EPA approves the submitted state plan from the Pennsylvania Department of Environmental Protection.

After publication of this **Federal Register** document, if a designated facility is found within either one of the two noted jurisdictions, then the overlooked landfill is subject to the requirements of the Federal landfill 111(d) plan, including the compliance schedule, which was promulgated on November 8, 1999 (64 FR 60689). The Federal plan would no longer apply if EPA subsequently receives and approves a 111(d) plan from the jurisdiction with the overlooked designated landfill.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies under 40 CFR parts 60 and 62. In the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve each negative declaration should relevant adverse or critical comments be filed.

This rule will be effective March 3, 2003 without further notice unless the Agency receives relevant adverse comments by February 3, 2002. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose

any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the District of Columbia and City of Philadelphia, Pennsylvania negative declarations for municipal solid waste landfills may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

2. Subpart J is amended by adding an undesignated center heading and § 62.2140 to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.2140 Identification of plan—negative declaration.

Letter from the Department of Consumer and Regulatory Affairs submitted September 11, 1997, certifying that there are no existing municipal solid waste landfills in the District of Columbia that are subject to 40 CFR part 60, subpart Cc.

Subpart NN—Pennsylvania

3. Section 62.9633 is added to Subpart NN, "Landfill Gas Emissions From Existing Municipal Solid Waste Landfills" to read as follows:

§ 62.9633 Identification of plan—negative declaration.

Letter from the City of Philadelphia, Department of Public Health, submitted February 27, 1996, certifying that there are no existing municipal solid waste landfills in the City of Philadelphia that are subject to 40 CFR part 60, subpart Cc.

[FR Doc. 02–33100 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Parts 904, 952, and 970

RIN 1991–AB42

Acquisition Regulation: Security Amendments To Implement Executive Order 12829, National Industrial Security Program

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is adopting as final without change an Interim Final Rule amending the Department of Energy Acquisition Regulation (DEAR) to ensure a uniform and simplified security system for contractors and others requiring access authorization for classified national security or restricted atomic energy information. The Final Rule also adopts the provision in the Interim Final Rule which allows the Secretary of Energy to waive the prohibition on award of a national security contract to an entity controlled by a foreign government if an environmental restoration requirement is involved.

DATES: This rule was effective May 28, 2002 pursuant to the interim final rule published March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Richard B. Langston, Office of Procurement and Assistance Policy (ME–61), 202–586–8247; *richard.langston@pr.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is adopting as final the Interim Final Rule published on March 28, 2002, at 67 FR 14873 amending the DEAR to

implement Executive Order 12829, National Industrial Security Program (January 6, 1993), and Section 828 of the National Defense Authorization Act for Fiscal Year 1997, and to bring the DEAR into conformance with existing practices.

Background

Executive Order 12829 requires a uniform system for classifying, safeguarding, and declassifying national security information. The Federal agencies are adopting the National Industrial Security Program as the uniform Federal industrial security program within the limitations of their separate statutory requirements. Among the more significant features of the program is the use of a Standard Form 328, Certificate Pertaining to Foreign Interests, to gather information relative to foreign ownership, control or influence. Previously, DOE used a separate questionnaire of its own with more and somewhat different questions. Now all agencies will collect the same information. This feature will result in the greatest savings for both contractors and Federal agencies because agencies will accept each others' clearances on a reciprocal basis, in most circumstances. The Final Rule makes changes to the DEAR to bring it into conformance with the new program.

The Final Rule also includes a provision (revised section 904.7102 of the DEAR) to allow the Secretary of Energy to waive a prohibition on award of a national security contract to an entity controlled by a foreign government if an environmental restoration requirement is involved. Section 2536(b)(1)(B) of title 10 U.S.C. provides waiver authority for a contract for environmental restoration, remediation, or waste management at a DOD or DOE facility. For such a contract, the prohibition on award of a contract under a national security program to an entity controlled by a foreign government that requires access to a proscribed category of information to perform the contract may be waived only if the Secretary concerned determines that: (1) A waiver will advance the environmental restoration, remediation, or waste management objectives of the cognizant Department; (2) a waiver will not harm the national security interests of the United States; and (3) the entity to which the contract is to be awarded is controlled by a foreign government with which the cognizant Secretary has authority to exchange Restricted Data under section 144.c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)).

DOE invited comments from the public, which were to be submitted on or before April 29, 2002. No comments were received. DOE has determined that no changes are needed to the Interim Final Rule and adopts the DEAR amendments as final without change.

Issuance of this Final Rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 904, 952 and 970

Government procurement.

Issued in Washington, DC, on December 20, 2002.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, OMBE, Department of Energy.

Robert C. Braden, Jr.,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

For the reasons set forth in the preamble, the interim final rule amending 10 CFR Parts 904, 952, and 970 which was published at 67 FR 14873 on March 28, 2002, is adopted as a final rule without change.

[FR Doc. 02–32994 Filed 12–31–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

49 CFR Parts 192 and 195

Pipeline Safety: Qualification of Pipeline Personnel

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) will conduct a public meeting to discuss progress in implementing the operator personnel qualification (OQ) rule for gas and hazardous liquid pipelines. OPS will introduce and describe the operator qualification inspection protocol development process and provide an opportunity for public comment. A panel of experts will respond to questions from the public.

DATES: The public meeting will be held on January 22, 2003, beginning promptly at 9 a.m. and will continue until 5 p.m. Persons wishing to make a presentation or statement at the meeting should notify Janice Morgan, (202) 366–2392, no later than January 15, 2003.

ADDRESSES: The public meeting will be held at the Hyatt Regency San Antonio (Riverwalk), 123 Losoya Street, San Antonio, TX 78205 (Tel: 210–222–1234; Fax: 210–227–4928; Web: *http://www.sanantonioregency.hyatt.com*. This meeting is free and open to the public. You may register electronically for this meeting at: *http://primis.rspa.dot.gov/meetings/MtgHome.mtg?&mtg=5*.

Following presentations by OPS on operator qualification compliance and inspection protocols, the public will have the opportunity to provide comments and to submit documents for the record. Preregistered organizations and individuals will be afforded the first opportunity to make their presentations.

Although we encourage persons wishing to comment on operator qualification compliance and inspection protocols to participate in the public meeting, written comments will be accepted. You may submit written comments on operator qualification implementation and compliance issues to Richard Huriaux, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: You may contact Richard Huriaux at (202) 366–4565, regarding the agenda of this public meeting. General information about OPS programs may be obtained by accessing OPS's Internet home page at *http://ops.dot.gov*.

Information on Services for Individuals with Disabilities. For information on facilities or services for individuals with disabilities or to request special assistance, contact Janice Morgan, (202) 366–2392.

SUPPLEMENTARY INFORMATION: The operator qualification rules at 49 CFR 192.801 (for gas pipelines) and at 49 CFR 195.501 (for hazardous liquid pipelines) require every pipeline operator to have and follow a written personnel qualification program that includes provisions to identify covered tasks and to ensure that all persons performing these tasks are qualified to safely and effectively complete the tasks. By October 28, 2002, all gas and hazardous liquid pipeline operators should have completed the qualification of all individuals performing covered tasks on pipeline facilities.

On January 22, 2003, OPS will conduct a public meeting to discuss progress in implementing the operator personnel qualification rule for gas and hazardous liquid pipelines. OPS will present a detailed review of the development of the operator qualification inspection protocols.

The meeting will provide an opportunity to review compliance with the operator qualification rule, to clarify operator qualification requirements, and to hear compliance issues from Federal and State pipeline safety personnel, industry, and the public. All persons attending the meeting will have an opportunity to comment on operator qualification compliance issues and to question the expert panel on the new operator qualification compliance protocols.

Issued in Washington, DC on December 13, 2002.

Richard D. Huriaux,

Manager, Regulations, Office of Pipeline Safety.

[FR Doc. 02–32270 Filed 12–27–02; 4:07 pm]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 2]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2003

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2001 rail industry random testing positive rate was 0.77 percent for drugs and 0.21 percent for alcohol. Since the industry-wide random drug testing positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2003 through December 31, 2003 will remain at 25 percent of covered railroad employees. Since the random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2003 through December 31, 2003.

DATES: This notice of determination is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20005, (Telephone: (202) 493–6313).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2003 Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (*see* 49 CFR 219.602, 608).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 industry drug testing data indicated a random drug testing positive rate below 1.0 percent; since then FRA has continued to set the minimum random drug testing rate at 25 percent as the industry positive rate has consistently remained below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2003 through December 31, 2003, since the industry random drug testing positive rate for 2001 was 0.77 percent.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, if the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will be 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate. Since the industry-wide violation rate for alcohol has remained below 0.5 percent for the last two years, FRA is maintaining the minimum random alcohol testing rate at 10 percent of covered railroad employees for the period January 1, 2003 through December 31, 2003.

This notice sets the minimum random testing rates required next year. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on December 20, 2002.

Alan Rutter,

Administrator.

[FR Doc. 02–33108 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648

[Docket No. 021017239–2322–02 ; I.D. 091902F]

RIN 0648–AQ15

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule and 2003 specifications.

SUMMARY: NMFS announces final initial specifications for the 2003 fishing year for Atlantic mackerel, squid, and butterfish (MSB); including an in-season adjustment provision for the 2003 mackerel joint venture processing (JVP) annual specification. This action also specifies a method for carrying over *Loligo* squid Quarter I underages into Quarter III. The intent of this final rule is to promote the development and conservation of the MSB resource.

DATES: Effective February 3, 2003.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), are available from: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–

281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Regulations implementing the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require NMFS to publish annual initial specifications for maximum optimum yield (Max OY), allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), JVP, and total allowable level of foreign fishing (TALFF) for the species managed under the FMP. In addition, regulations implemented under Framework Adjustment 1 to the FMP allow the specification of quota set-asides to be used for research purposes.

Proposed 2003 initial specifications were published on October 29, 2002 (67 FR 65934). Public comments were accepted through November 27, 2002. The final specifications are unchanged from those that were proposed. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

2003 Final Initial Specifications

The following table contains the final initial specifications and research set-aside (RSA) for the 2003 MSB fisheries.

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS AND RSA, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2003

Specifications	Squid		Alantic	
	Loligo	*Illex*	Mackerel	Butterfish
Max OY	26,000	24,000	N/A[1]	16,000
ABC	17,000	24,000	347,000	7,200
IOY	16,872.5[5]	24,000	175,000[2]	5,900
DAH	16,872.5	24,000	175,000[3]	5,900
DAP	16,872.5	24,000	150,000	5,900
JVP	0	0	10,000[4]	0
TALFF	0	0	0	0
RSA	127.5	0	0	0

[1] Not applicable.
[2] IOY may be increased during the year, but the total ABC will not exceed 347,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 20,000 mt at discretion of Regional Administrator.
[5] Excludes 127.5 mt for RSA.

2003 Final Specifications

Atlantic Mackerel

This final rule specifies an Atlantic mackerel JVP of 10,000 mt for the 2003 fishery, with a possible increase of up to 10,000 mt (for a total JVP of up to 20,000 mt) later in the fishing year, should additional applications for JVP be received. This adjustment would be made by NMFS, in consultation with the Council, through publication of notification in the **Federal Register**. The action also specifies an Atlantic mackerel DAP of 150,000 mt and a DAH of 175,000 mt, which includes a 15,000–mt recreational component.

Four special conditions recommended by the Council and imposed by NMFS in previous years continue to apply to the 2003 Atlantic mackerel fishery, as follows: (1) JVPs would be allowed south of 37°30′ N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Administrator, Northeast Region, NMFS (Regional Administrator) should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but it should not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JVP allocation for 2003 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Atlantic Squids

Loligo

This final rule specifies a *Loligo* squid IOY of 16,898 mt, which is equal to ABC minus the RSA, and subdivides the annual quota into quarterly periods. The 2003 quarterly allocations are as follows:

Quarter		Percent	Metric Tons[1]	Research Set–aside
I	(Jan–Mar)	33.23	5,606.7	N/A
II	(Apr–Jun)	17.61	2,971.3	N/A
III	(Jul–Sep)	17.3	2,918.9	N/A
IV	(Oct–Dec)	31.86	5,375.6	N/A
Total		100	16,872.5	127.5

[1] Quarterly allocations after 127.5 mt RSA deduction.

Carry-over of Quarterly Quota Underages

In 2002, by default, quarterly underages from Quarters II and III carried over into Quarter IV, because Quarter IV does not close until 95 percent of the total annual quota has been harvested. Additionally, if the Quarter I landings for *Loligo* squid were less than 70 percent of the Quarter I allocation, the underage below 70 percent was to be applied to the Quarter III allocation. For 2003, the Council recommended that, in the event that the Quarter I landings for *Loligo* squid are

less than 80 percent of the Quarter I allocation, the underage below 80 percent should be added to the Quarter III allocation. In a November 20, 2002, letter to NMFS, the Council confirmed its intent relative to the transfer of underage of *Loligo* squid in Quarter I to Quarter III. The Council believes the proposed rule accurately reflected the intent of the Council with regard to this issue. Therefore, this final rule modifies the allocation method such that, if the Quarter I landings of *Loligo* squid are less than 80 percent of the Quarter I allocation, the underage below 80 percent will be added to the Quarter III allocation.

Comments and Responses

Three commenters commented on a total of two issues in the proposed specifications.

Comment 1: Three commenters expressed support for the proposed zero allocation of Atlantic mackerel TALFF.

Response 1: This final rule implements the proposed zero allocation of Atlantic mackerel TALFF.

Comment 2: Two commenters opposed the proposed Atlantic mackerel JVP specification of 10,000 mt because they believe shore-based processors would be negatively affected by foreign joint ventures that would compete with the U.S. domestic mackerel harvest.

Response 2: The Council relied on testimony presented by domestic processors during its May 2, 2002, meeting concerning their current and projected shoreside processing capacity for Atlantic mackerel in 2003. While domestic processing capacity is increasing, the Council believes, based on the best data available, that the capacity of the domestic fleet to harvest mackerel still exceeds the domestic processors' capacity to process mackerel. As a result, the Council recommended, and NMFS is implementing, the 10,000–mt JVP allocation to provide additional opportunity for U.S. vessels to sell mackerel.

Classification

This final rule has been determined to be not significant for purposes of E. O. 12866.

NMFS prepared a FRFA for this action. The FRFA includes a summary of the analyses done in support of these specifications. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

The reasons why this action is being taken by the agency, and the objectives of this final rule are explained in the preamble to the proposed rule and are not repeated here. This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Three comments were submitted on the proposed rule, but none of them were specific to the initial regulatory flexibility analysis. However, two individuals commented on the economic impacts of the measures on the fishing industry; NMFS has responded to those comments (Comment 2) in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

The numbers of potential fishing vessels in the 2003 fisheries are 384 for *Loligo* squid/butterfish, 73 for *Illex* squid, 2,242 for Atlantic mackerel, and 1,828 vessels with incidental catch permits for squid/butterfish. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The final DAH specifications of 175,000 mt for Atlantic mackerel, 24,000 mt for *Illex* squid, and 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The level of landings allowed under the final specifications for 2003 has not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of the final action.

From 1997–2001, *Loligo* squid landings averaged 16,771 mt annually. If the 2003 final DAH specification of 16,872.5 mt for *Loligo* squid is achieved, there would be an increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1997–2001. One alternative would have set ABC, DAH, DAP, and IOY at 18,300 mt. Under this alternative, the quota would be specified at a level that is 1,300 mt higher than is specified by the overfishing definition control rule in the FMP. Since the stock would not be protected from overfishing under this alternative, some negative economic and social impacts could be expected from this alternative in the long term, if the stock did become overfished. The vessel owners, crews, dealers, processors and fishing communities associated with these ports would be expected to be affected the most by this alternative when compared to the final 2003 annual specifications for *Loligo*. This action also modifies the provision for carrying over Quarter I *Loligo* squid underages. Under the new measure, *Loligo* squid Quarter I underages less than 80 percent of the Quarter I allocation would be applied to Quarter III. Currently, all underages from Quarter I less than 70 percent are applied to the Quarter III allocation. By making the increased underage available during Quarter III, *Loligo* squid permit holders could continue to fish during a time when that quarter may have otherwise been closed. This could provide an added economic benefit to fishers during Quarter III. However, because this provision would only shift a limited amount of quota from one period to another, and does not modify the *Loligo* squid annual quota, no overall change in revenue is expected.

One alternative considered for the Atlantic mackerel fishery was to set the 2003 specifications at the same level as 2002 (ABC = 347,00 mt, IOY = 85,000 mt, DAH = 85,000 mt, DAP = 50,000 mt, JVP = 20,000 mt and TALFF = 0 mt). This alternative would have increased JVP by 10,000 mt and decreased DAP by 100,000 mt. This alternative was rejected because of concerns associated with the potential for rapid expansion of the shoreside processing sector of this industry in 2003. If rapid expansion of the processing sector did occur early in 2003, and landings exceeded 85,000 mt, an inseason adjustment to IOY would be necessary. However, the majority of mackerel landings occur from January through March, and it is unlikely that an inseason adjustment could be made in time for quota to be available to the industry for that period. The result would be the unnecessary closure of the fishery that could result in negative economic and/or social impacts to the U.S. mackerel industry. Some or all of the vessel owners, crews, dealers, processors or fishing communities associated with the Atlantic mackerel fishery could be adversely affected by maintaining the 2002 annual specifications for Atlantic mackerel in 2003.

For *Illex* squid, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt. This specification would be far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with these specifications. However, the alternative was found unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid.

For butterfish, the Council considered two alternatives; the first set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second set

a Max OY of 16,000 mt and a ABC, IOY, DAH, and DAP at 10,000 mt. These specifications far exceed recent harvests in the butterfish fishery and would not constrain or impact the industry; however, they could lead to overfishing of the stock and, thus, were rejected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as the small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits issued for the mackerel, squid, and butterfish fisheries. The guide and this final rule will be available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 24, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.21, paragraph (f)(3) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) * * *

(3) Beginning January 1, 2003, if commercial landings in Quarter I are determined to be less than 80 percent of the Quarter I quota allocation, any remaining Quarter I quota that is less than 80 percent will be reallocated to Quarter III (e.g., if the Quarter I quota was 100,000 lb (220,462 kg) and 50,000 lb (110,231 kg) was landed, then the remaining Quarter I quota, up to 80 percent, or 30,000 lb (66,139 kg), would be reallocated to Quarter III. A balance of 20 percent, or 20,000 lb (44,092 kg), would remain in Quarter I).

* * * * *

[FR Doc. 02–33038 Filed 12–31–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021122284–2323–02; I.D. 110602A]

RIN 0648–AQ30

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2003 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, final 2003 specifications, and preliminary commercial quota adjustment; notification of 2003 commercial summer flounder quota harvest for the states of Maine and Delaware.

SUMMARY: NMFS issues final specifications for the 2003 summer flounder, scup, and black sea bass fisheries and makes preliminary adjustments to the 2003 commercial quotas for these fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, as well as other commercial management measures, including scup and black sea bass possession limits and scup observer coverage. This action also prohibits federally permitted commercial vessels from landing summer flounder in the States of Maine and Delaware in 2003. Regulations governing the summer flounder fishery require publication of this notification to advise these states, Federal vessel permit holders, and Federal dealer permit holders that no commercial quota is available for landing summer flounder in Maine and Delaware in 2003. The intent of this action is to establish allowed 2003 harvest levels and other measures to attain the target fishing mortality or exploitation rates, as specified for these species in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

DATES: The 2003 final specifications are effective from January 2, 2003 through December 31, 2003. The prohibition on landings of summer flounder in Maine and Delaware by Federal permit holders is effective 0001 hours January 1, 2003, through 2400 hours December 31, 2003. Amendments to sections 648.14(a)(122), 648.14(a)(127), 648.122(a), 648.122(b), and 648.122(d) require approval by the Office of Management and Budget (OMB) under the Paperwork reduction Act (PRA). When OMB approval is received , the effective date will be announced in the **Federal Register**.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA); and the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

Pursuant to §§ 648.100 (summer flounder), 648.120 (scup), and 648.140 (black sea bass), the Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the fishing year intended to achieve the annual targets set forth for each species in the FMP, specified either as a fishing mortality rate (F) or as an exploitation rate (the proportion of fish available at the beginning of the year that are

removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP. The management measures (*e.g.*, commercial quotas, recreational harvest limits, minimum mesh requirements, minimum fish sizes, possession limits, and other gear restrictions) are summarized below, by species. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2003 specifications for these species was provided in the proposed specifications (67 FR 70904, November 27, 2002). That information is not repeated here. NMFS makes three corrections to the text published in the proposed 2003 specifications in this final rule. The term ½ B_{msy} used for summer flounder and scup indicates the biomass threshold below which the stock is considered overfished. This term was inadvertently published as B_{msy} in the proposed specifications (B_{msy} is the biomass level at which maximum sustainable yield (MSY) can be achieved), but because an accurate numeric range of yields at ½ B_{msy} was included, the information was not misleading. The 2003 commercial scup quotas by period (with research set-aside deducted) are corrected to reflect the percent share of the total quota less the research set-aside; the changes are slight, measuring less than one percent of the published figure in each case. Finally, as discussed in greater detail below, the cost to a fishing vessel of one at-sea observer day is estimated to be approximately $600, subject to finalization of observer program details, which would be paid by the vessel owner intending to fish in the scup Gear Restricted Areas (GRAs) under the scup GRA Exemption Program (see below for additional information).

NMFS will establish the 2003 recreational management measures for summer flounder, scup, and black sea bass by publishing a proposed and final rule in the **Federal Register** at a later date, following receipt of the Council's recommendations as specified in the FMP.

Summer Flounder

The FMP specifies a target F for 2003 of F_{max}, that is, the level of fishing that produces maximum yield per recruit. The best available scientific information indicates that F_{max} is currently equal to 0.26 (equal to an exploitation rate of about 22 percent from fishing). The Total Allowable Landings (TAL) associated with the target F is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP. The recreational harvest limit is specified on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2003.

This final rule implements the specifications contained in the proposed rule. This implementation results in a 23.3-million lb (10,569-mt) summer flounder TAL, which is allocated 13.98 million lb (6,341 mt) to the commercial sector and 9.32 million lb (4,227 mt) to the recreational sector. This TAL was determined by the Council's Summer Flounder Monitoring Committee (MC) to have at least a 50-percent probability of achieving the target F (0.26) that is specified in the FMP if the 2002 TAL and anticipated discard levels are not exceeded.

The proposed rule reflected the Council's and Board's recommendation to set aside 91,163 lb (41.4 mt) of the summer flounder TAL for research activities. The research set-aside process included the publication of a Request for Proposals that solicited proposals for 2003, based upon the research priorities identified by the Council (67 FR 13602, March 25, 2002). The deadline for submission of proposals was May 13, 2002. The Council recommended the approval of two research projects that would utilize the full summer flounder research quota. The summer flounder TAL having been adjusted to reflect this research set-aside, is divided into a commercial quota of 13.92 million lb (6,314 mt) and a recreational harvest limit of 9.28 million lb (4,209 mt). If any of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the summer flounder TAL through publication of a notice in the **Federal Register** by NMFS.

Table 1 presents the final 2002 commercial summer flounder quota for each state, the reported 2002 landings for each state through October 31, 2002, and the resultant 2002 quota overages.

TABLE 1.—SUMMER FLOUNDER PRELIMINARY COMMERCIAL 2002 LANDINGS BY STATE

State	2002 Quota [1]		Reported 2002 landings through 10/31/02		Preliminary 2002 overage	
	lb [2]	kg [2,3]	lb	kg [3]	lb	kg [3]
ME	(12,938)	(5,868)	575	261	13,513	6,129
NH	67	30	22	10	0	0
MA	938,765	425,817	981,263	445,098	42,498	19,277
RI	2,286,310	1,037,053	2,490,431	1,129,652	204,121	92,589
CT	329,044	149,252	342,227	155,233	13,183	5,980
NY	1,114,800	505,665	946,584	429,368	0	0
NJ	2,438,217	1,105,957	2,373,209	1,076,481	0	0
DE	(43,647)	(19,798)	4,439	2,014	48,086	21,812
MD	297,266	134,838	268,574	121,824	0	0
VA	3,107,619	1,409,592	3,183,643	1,444,091	76,024	34,484
NC	4,001,133	1,814,883	3,808,380	1,727,470	0	0
Total [4]	14,456,636	6,557,421	14,399,347	6,531,501	397,425	180,271

[1] Reflects quotas as published on December 26, 2001 (66 FR 66348).
[2] Parentheses indicate a negative number.
[3] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[4] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal the overage because they reflect positive quota balances in several states.

Based upon 2002 landings through October 31, 2002, NMFS adjusts the 2003 commercial quotas for 2002 quota overages. The commercial summer flounder percent share, 2003 initial quota (with and without the research set-aside deduction), 2002 quota overages, and the adjusted quotas (with and without the research set-aside deduction) for 2003, by state, are presented in Table 2.

TABLE 2.—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2003

State	Percent share	2003 Initial quota		2003 Initial quota, less research set-aside		2002 Quota overages (through 10/31/02) [2]		Adjusted 2003 quota [3]		Adjusted 2003 quota, less research set-aside	
		lb	kg [1]	lb	kg [1]	lb	kg [1]	lb	kg [1]	lb	kg [1]
ME	0.04756	6,649	3,016	6,623	3,004	13,513	6,129	(6,864)	(3,113)	(6,890)	(3,125)
NH	0.00046	64	29	64	29	0	0	64	29	64	29
MA	6.82046	953,502	432,501	949,772	430,809	42,498	19,277	911,004	413,229	907,274	411,537
RI	15.68298	2,192,485	994,494	2,183,907	990,603	204,121	92,589	1,988,364	901,916	1,979,786	898,025
CT	2.25708	315,540	143,127	314,306	142,567	13,183	5,980	302,357	137,148	301,123	136,588
NY	7.64699	1,069,051	484,914	1,064,869	483,016	0	0	1,069,051	484,918	1,064,869	483,021
NJ	16.72499	2,338,158	1,060,571	2,329,010	1,056,421	0	0	2,338,158	1,060,582	2,329,010	1,056,432
DE	0.01779	2,487	1,128	2,477	1,124	48,086	21,812	(45,599)	(20,684)	(45,609)	(20,688)
MD	2.03910	285,067	129,304	283,951	128,798	0	0	285,067	129,306	283,951	128,799
VA	21.31676	2,980,089	1,351,746	2,968,429	1,346,457	76,024	34,484	2,904,065	1,317,275	2,892,405	1,311,986
NC	27.44584	3,836,936	1,740,405	3,821,924	1,733,596	0	0	3,836,936	1,740,423	3,821,924	1,733,613
Total [4]	100.00	13,980,028	6,341,235	13,925,332	6,316,424	397,425	180,271	13,582,603	6,161,029	13,527,907	6,136,218

[1] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[2] For Maine and Delaware, includes continued repayment of overharvest from 2001.
[3] Parentheses indicate a negative number.
[4] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0).

The Commission has established a system whereby 15 percent of each state's quota may be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in these 2003 final specifications because NMFS does not have authority to establish such subcategories.

Maine and Delaware Summer Flounder Closures

Table 2 above indicates that, for the States of Maine and Delaware, the amount of the 2002 summer flounder quota overage (inclusive of overharvest from 2001) is greater than the amount of commercial quota allocated to those states for 2003. As a result, there is no quota available for 2003 in either Maine or Delaware. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, must not land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2003, landings of summer flounder in Delaware and Maine by vessels holding commercial Federal fisheries permits are prohibited for the 2003 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Maine or Delaware for the 2003 calendar year, unless additional quota becomes available through a transfer.

Scup

The target exploitation rate for scup in 2003 is 21 percent. The FMP allocates 78 percent of the total allowable catch (TAC) associated with the exploitation rate to the commercial sector and 22 percent of the TAC to the recreational sector. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector. The commercial TAL is then allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January–April)—45.11 percent; Summer (May–October)—38.95 percent; and Winter II (November– December)—15.94 percent. The recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2003.

This final rule implements the annual quota specifications contained in the proposed rule. This implementation results in a 18.65-million lb (8,459-mt) scup TAC and in a 16.5-million lb (7,484-mt) TAL. Three research projects that would utilize the full scup research quota, 66,650 lb (30.2 mt), have been recommended for approval. The scup TAL, having been adjusted to reflect this research set-aside, is divided into a commercial quota of 12.42 million lb (5,634 mt) and a recreational harvest limit of 4.01 million lb (1,819 mt). If any of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the scup TAL through publication of a notice in the **Federal Register** by NMFS.

Table 3 presents the final 2002 commercial scup quota for each period, the reported 2002 landings for the 2002 Winter I and Summer periods, and the resultant 2002 quota overages.

TABLE 3.—SCUP PRELIMINARY 2002 COMMERCIAL LANDINGS BY QUOTA PERIOD AND 2002 OVERAGES

Quota period	2002 Quota [1]		Reported 2002 landings through 10/31/02		Preliminary overages as of 10/31/02	
	lb	kg [2]	lb	kg [2]	lb	kg [2]
Winter I	3,517,300	1,595,420	3,159,999	1,433,366	0	0
Summer	2,556,595	1,159,652	2,959,349	1,342,352	402,754	182,688

TABLE 3.—SCUP PRELIMINARY 2002 COMMERCIAL LANDINGS BY QUOTA PERIOD AND 2002 OVERAGES—Continued

Quota period	2002 Quota [1]		Reported 2002 landings through 10/31/02		Preliminary overages as of 10/31/02	
	lb	kg [2]	lb	kg [2]	lb	kg [2]
Winter II	1,179,502	535,019	n/a [3]	n/a [3]	n/a [3]	n/a [3]
Total	7,253,397	3,290,091	6,119,351	2,775,723	.....	.....

[1] Winter I and Summer Quotas as published on December 26, 2001 (66 FR 66348); Winter II quota as published on July 31, 2002 (67 FR 49621).
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] Not applicable.

Table 4 presents the commercial scup percent share, 2003 TAC, projected discards, 2003 initial quota (with and without the research set-aside deduction), and possession limits. To achieve the commercial quotas, this final rule implements a Winter I period (January–April) per trip possession limit of 15,000 lb (6.8 mt), and a Winter II period (November–December) per trip possession limit of 1,500 lb (680 kg). The Winter I per trip possession limit will be reduced to 1,000 lb (454 kg) when 80 percent of the commercial quota allocated to that period is projected to be harvested. See Response to Comment 1 (below) for additional information about the Winter I possession limit.

TABLE 4.—INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2003 BY QUOTA PERIOD

Period	Percent share	Total allowable catch		Discards		Initial quota w/o research set-aside		Initial quota, less research set-aside		Possession limits (per trip) [2]	
		lb	kg [1]	lb	kg [1]	lb	kg [1]	lb	kg [1]	lb	kg [1]
Winter I	45.11	6,562,152	2,976,542	936,935	424,987	5,625,217	2,551,555	5,602,495	2,541,275	15,000	6,804
Summer	38.95	5,666,056	2,570,080	808,991	366,952	4,857,065	2,203,128	4,837,445	2,194,251	n/a [3]	n/a [3]
Winter II	15.94	2,318,792	1,051,786	331,074	150,173	1,987,718	901,614	1,979,689	897,981	1,500	680
Total	100.00	14,547,000	6,598,408	2,077,000	942,111	12,470,000	5,656,297	12,419,629	5,633,507	.....	.....

[1] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[2] The Winter I landing limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation.
[3] Not applicable.

Table 5 presents the initial 2003 commercial scup quota allocations (with the research set-aside deductions), 2002 commercial quota overages for Winter I and Summer periods, as of October 31, 2002, and the adjusted 2003 commercial scup quotas, by period.

TABLE 5.—FINAL 2003 COMMERCIAL SCUP QUOTA ALLOCATIONS BY PERIOD

Quota period	2003 initial quota, less research set-aside		2002 quota overages through 10/31/02		2003 Adjusted quota	
	lb	kg [1]	lb	kg [1]	lb	kg [1]
Winter I	5,602,495	2,541,275	0	0	5,602,495	2,541,275
Summer	4,837,445	2,194,251	402,754	182,688	4,434,691	2,011,563
Winter II	1,979,689	897,981	[2] n/a	[2] n/a	1,979,689	897,981
Total	12,419,629	5,633,507	402,754	182,688	12,016,875	5,450,819

[1] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[2] Not applicable.

Scup Gear Restricted Areas (GRAs)

In the preamble to the proposed rule, NMFS explained the reasons for its disapproval of the Council's recommendation to allow vessels to fish for non-exempt species with small mesh in the GRAs, provided that they use modified trawl nets and carry observers, consistent with Atlantic Coastal Cooperative Statistics Program (ACCSP) observer standards. That rationale continues to apply and is not repeated here. In the proposed rule, NMFS requested comment on an alternative whereby all vessels fishing for non-exempt species (*Loligo* squid, black sea bass, and silver hake (whiting)) with mesh less than the minimum mesh size required to fish for scup (specified at § 648.123) in the GRAs (described at § 648.122) for any portion of a trip would be required to use modified trawl gear (possessing an escapement extension of 45 meshes of 5.5-inch (13.97-cm) square mesh between the body of the net and the codend), and also would be required to carry a NMFS-certified observer. The alternative would require an initial enrollment be made through a phone call and that NMFS issue a Letter of Authorization to each participating vessel. Obtaining and paying for the observer would be the responsibility of the participating vessel. NMFS clarifies in this final rule that the cost to the fishing vessel of one at-sea observer day is estimated to be approximately $600, subject to finalization of observer program details, which would be paid by the vessel owner intending to fish in the GRAs. The proposed rule indicated an estimate of $1,150 per observer day, but this figure reflected the total program costs

per at-sea observer day, including administrative and other costs associated with the observer program that will be paid for by NMFS.

Black Sea Bass

Amendment 9 to the FMP, which was approved in 1996, established a recovery schedule to reduce overfishing on black sea bass over an 8-year timeframe. In 2003, the target exploitation rate is scheduled to drop from 37 percent to 25 percent, which is the exploitation rate associated with F_{max} (0.32). The FMP allocates 49 percent of the TAL associated with the exploitation rate to the commercial sector and 51 percent of the TAL to the recreational sector. The commercial TAL then is divided on a coastwide basis into four quarterly periods: Quarter 1 (January–March)—38.64 percent; Quarter 2 (April–June)—29.26 percent; Quarter 3 (July–September)—12.33 percent; and Quarter 4 (October–December)—19.77 percent. The recreational TAL is specified as a coastwide harvest limit. Recreational measures will be the subject of a separate rulemaking early in 2003.

This final rule implements the specifications contained in the proposed rule. This implementation results in a TAL of 6.8 million lb (3,084 mt). Three research projects that would utilize the full black sea bass research quota have been recommended for approval by the Council. The black sea bass TAL, having been adjusted to reflect this research set-aside, is divided into a commercial quota of 3.3 million lb (1,496 mt) and a recreational harvest limit of 3.43 million lb (1,557 mt). If any of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the black sea bass TAL through publication of a notice in the **Federal Register** by NMFS.

Table 6 presents the final 2002 commercial black sea bass quota for each quarter, the reported 2002 landings for Quarters 1 through 3, and the resultant 2002 quota overages.

TABLE 6.—BLACK SEA BASS PRELIMINARY 2002 COMMERCIAL LANDINGS BY QUARTER AND 2002 OVERAGES

Quarter	2002 Quota [1]		Reported 2002 landings through 10/31/02		2002 overages as of 10/31/02	
	lb	kg [2]	lb	kg [2]	lb	kg [2]
Quarter 1	1,220,052	553,406	1,297,059	588,342	77,007	34,930
Quarter 2	856,208	388,369	1,070,546	485,596	214,338	97,223
Quarter 3	400,101	181,483	405,560	183,961	5,459	2,476
Quarter 4	656,274	297,681	[3] n/a	[3] n/a	[3] n/a	[3] n/a
Total	3,132,635	1,420,939	2,773,165	1,257,899	.....	.....

[1] Quarter 1 through 3 quotas as published on December 26, 2001 (66 FR 66348); Adjusted Quarter 4 quota as published on September 3, 2002 (67 FR 56229).
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] Not applicable.

Table 7 presents the initial 2003 commercial black sea bass quota allocations, with and without the research set-aside deduction, and the commercial possession limits being implemented through this final rule.

TABLE 7.—INITIAL COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS AND POSSESSION LIMITS FOR 2003 BY QUARTER

Quarter	Percent share	Commercial quota w/o research set-aside		Commercial quota, less research set-aside		Possession limits	
		lb	kg [1]	lb	kg [1]	lb	kg [1]
1	38.64	1,287,485	583,993	1,274,671	578,181	7,000	3,175
2	29.26	974,943	442,227	965,240	437,826	5,000	2,268
3	12.33	410,836	186,352	406,747	184,497	5,000	2,268
4	19.77	658,736	298,798	652,180	295,824	5,000	2,268
Total	100.00	3,332,000	1,511,370	3,298,838	1,496,328	.....	.....

[1] Kilograms are as converted from pounds and may not necessarily add due to rounding.

Table 8 presents the initial 2003 commercial black sea bass quota allocations (with the research set-aside deductions), 2002 commercial quota overages for Quarters 1–3 as of October 31, 2002, and the adjusted 2003 commercial black sea bass quotas, by period.

TABLE 8.—FINAL 2003 COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS BY PERIOD

Quarter	2003 Initial quota, less research set-aside		2002 Quota Overages through 10/31/02		2003 Adjusted quota	
	lb	kg [1]	lb	kg [1]	lb	kg [1]
Quarter 1	1,274,671	578,181	77,007	34,930	1,197,664	543,257
Quarter 2	965,240	437,826	214,338	97,223	750,902	340,607
Quarter 3	406,747	184,497	5,459	2,476	401,288	182,023
Quarter 4	652,180	295,824	n/a [2]	n/a [2]	652,180	295,824

TABLE 8.—FINAL 2003 COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS BY PERIOD—Continued

Quarter	2003 Initial quota, less research set-aside		2002 Quota Overages through 10/31/02		2003 Adjusted quota	
	lb	kg[1]	lb	kg[1]	lb	kg[1]
Total	3,298,838	1,496,328	.....	.....	3,002,034	1,361,711

[1] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[2] Not applicable.

Changes From Proposed Rule

For the Winter I scup fishery, NMFS is implementing a possession limit of 15,000 lb (6.8 mt) per trip rather than a possession limit of 10,000 lb (4.5 mt) per trip as originally proposed. This final rule includes the final adjusted commercial quotas for 2003, after accounting for overages in 2002 (through October 31, 2002).

Comments and Responses

Comments were received on the proposed measures from an organization representing the commercial fishing industry and a state marine fisheries agency.

Comment 1: Both commenters expressed concern with NMFS' disapproval of the Council's and Board's recommendation for a 15,000-lb (6.8-mt) per week landing limit for the scup Winter I period (January-April). The commenters indicated that several states are in the process of amending their regulations to implement a weekly limit and that, if NMFS implements the 10,000-lb (4.5-mt) per trip possession limit, the quota would be exhausted quickly and there would be confusion in the commercial fishery regarding compliance. The commenters indicated that the majority of the states are willing and able to share the enforcement burden associated with monitoring a weekly landing limit, and encouraged NMFS to implement the measure for the 2003 season and later assess whether additional enforcement efforts are required, should there be infractions. The commenters stressed that the commercial scup industry has requested the weekly limit to assure availability of quota throughout the fishing year and that its members will comply with the measure, as it is in their own interest to do so. The industry group comment states that the adoption of the weekly limit would also reduce regulatory discards associated with the final tow of each fishing trip (made to fill the limit).

Response: In the proposed rule, NMFS articulated its concern regarding the increased resources required to monitor and enforce a weekly limit. However, NMFS recognizes the efforts of industry to extend fishing opportunities, improve market conditions in the scup fishery, and to reduce regulatory discards, as well as the intent of the majority of the affected states to enforce a 15,000-lb (6.8-mt) per week landing limit. Therefore, based on comments received and on discussions with the states, NMFS has determined that implementation of a 15,000-lb (6.8-mt) possession limit per trip would be compatible with the states' 15,000-lb (6.8-mt) weekly landing limits, would be enforceable, and would benefit the industry. Landings will continue to be constrained by the Winter I quota, so overall landings and effects on the resource will not change.

In cases where state regulations regarding trip limits are more restrictive than this 15,000-lb (6.8-mt) trip limit, the state regulations would apply. That is, vessels landing scup in states with more restrictive possession limits may need to make more than one trip to reach the weekly limit, if that state is enforcing a 15,000-lb (6.8-mt) weekly landing limit.

Comment 2: A commercial fishing industry group indicated that a recent study demonstrated that the discard of scup in the *Loligo* fishery was less than 1 percent of the *Loligo* catch. The commenter stated that, as the small mesh Loligo fishery is not responsible for a significant portion of the scup discard problem, the fishery should be exempted from the GRA restrictions. The commenter further suggested that GRAs should be ended as a management tool for all small mesh fisheries. Until such time, the group suggested that NMFS require the use of 5.5-inch (13.97-cm) escapement panels in the GRAs and allow vessels using the gear access to the GRAs.

Response: NMFS supports the use of gear modifications for bycatch reduction as a potential replacement for area-based restrictions; however, at this time, the use of 5.5-inch (13.97-cm) escapement panels has not been demonstrated to reduce the bycatch of scup relative to the catch of non-exempt species, including *Loligo*. Until such time as gear modifications, or other suitable measures, are demonstrated to reduce sufficiently the bycatch of scup in the fisheries for non-exempt species, the GRAs will be considered to be a necessary measure. NMFS recognizes the need to collect information to clarify this issue and is implementing the Scup GRA Exemption Program in order to facilitate the collection of information necessary to evaluate the effectiveness of the 5.5-inch (13.97-cm) escapement panel in reducing the bycatch of scup in the fisheries for non-exempt species.

Comment 3: The same commenter opposed the proposed 100-percent observer coverage requirement in the scup GRAs because too large of a portion of the vessel's gross revenues per trip would be required to pay for the observer. The group also indicated that the $1,150 per day cost is not consistent with observer costs in other fisheries, such as the scallop fishery ($590/day) or the Northeast distant water longline experimental fishery ($800/day), and is not justifiable. The commenter suggested that NMFS provide observers at no cost to the vessels fishing in the GRAs using the Congressional funds allocated to the NMFS observer program, and that 5–10 percent coverage be implemented.

Response: NMFS explained in the proposed rule that implementation of 100-percent observer coverage would impose significantly fewer administrative and enforcement complexities, and provide more data to evaluate the effectiveness of the gear modifications than a lower level of observer coverage would. NMFS has clarified in the preamble of this final rule that the cost to a fishing vessel of one at-sea observer day is estimated to be approximately $600, subject to finalization of observer program details, and which would be paid by the vessel owner intending to fish in the GRAs. This program, which was requested by the industry to provide NMFS more complete data to evaluate the effectiveness of gear modifications in reducing discards, is dependent on observer coverage. The provision that vessels pay for observers was discussed at the August 2002 Council meeting.

Comment 4: The same commenter requested that NMFS increase the scup research set-aside to 3 percent of the

TAL or, at the minimum, to the full amount of the group's initial request.

Response: The overall proportion of the scup TAL to be set aside for research was determined by the Council, and specific amounts to be awarded for individual projects were recommended by the Council's Ecosystems Planning Committee and subsequently approved by the Regional Administrator. Initiation of research activities is ultimately contingent on the issuance of an award by the NOAA Grants Management Division. The Director of the NMFS Northeast Region State, Federal, and Constituent Programs Office has previously indicated in a letter to the commenter that estimated research set-aside values for the project appeared to far exceed research costs, and that approval of the project would be contingent upon reduction of the amount of the set-aside to a level commensurate with overall research costs.

During the comment period, NMFS also received a petition for rulemaking in a letter cosigned by the United Boatmen of New Jersey and New York, New York Fishing Tackle Trade Association, and Cape May Party and Charter Boat Association. The petition is for NMFS to recalculate the 2003 summer flounder, scup, and black sea bass quotas in light of the discovery of problems with trawl survey equipment on the NOAA R/V Albatross IV. Currently, NMFS does not have complete information regarding the effect of the trawl warp calibration issue on the stock assessments of Mid-Atlantic species under Council management. NMFS intends to evaluate all possible impacts of trawl gear warp offsets on the last 2 years of summer flounder, scup, and black sea bass surveys as soon as possible. NMFS intends to address this issue prior to preparing the summer flounder, scup, and black sea bass quota specifications for the 2004 fishing year. In the meantime, NMFS is considering the petition for rulemaking, and may publish a notice of receipt of the petition in the **Federal Register**, if appropriate, as a separate action.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This action establishes annual quotas and related management measures for the summer flounder, scup, and black sea bass fisheries. If implementation of the quota provisions and other management measures is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of these three species. The fisheries covered by this action will begin making landings on January 1, 2003. If a delay in effectiveness is required, and a quota were to be harvested during a delayed effectiveness period, the lack of effective quota specifications would prevent NMFS from closing the fishery. The scup and black sea bass fisheries are expected to be active during the first few months of 2003, especially following a long period of closure for black sea bass during Quarter 4 of 2002. In addition, the States of Maine and Delaware would be open for summer flounder fishing but in a negative quota situation. These factors would likely result in large overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Therefore, with the exception of the sections pertaining to gear modifications, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the quotas and other management measures, and for the closures of the fisheries in the States of Maine and Delaware.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. The guide will be available on the Internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (*see* **ADDRESSES**).

The Council and NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action. The FRFA includes a summary of the analysis done in support of these specifications. A copy of the analysis is available from the Regional Administrator (*see* **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analysis contained in the IRFA, and that discussion is not repeated in its entirety here. A summary of the FRFA follows:

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here. This final rule does not duplicate, overlap, or conflict with any other Federal rules.

Public Comments

Two comments were received on the measures contained in the proposed rule. Comments did not refer specifically to the IRFA, but were related to economic impacts on small entities, especially as they relate to scup observer coverage and trip limits. NMFS clarifies in this final rule the cost to the fishing vessel of one at-sea observer day, and, in order to implement a measure that would be compatible with the states' 15,000-lb (6.8-mt) weekly landing limits, would be enforceable, and would benefit the industry, is implementing a 15,000-lb (6.8-mt) possession limit per trip.

Number of Small Entities

The Council estimates that the proposed 2003 quotas and management measures could affect 1,830 vessels with a Federal summer flounder, scup, and/or black sea bass permit, as of July 15, 2002. However, the more immediate impact of this rule will likely be felt by the 1,073 vessels that actively participated (*i.e.*, landed these species) in these fisheries in 2001, including vessels holding only state permits.

Minimizing Significant Economic Impact on Small Entities

In the FRFA, NMFS analyzed the measures being implemented in this action. Economic impacts are being minimized to the extent practicable with the measures being implemented in this final rule, while being consistent with the target fishing mortality rates or target exploitation rates specified in the FMP.

The economic analysis assessed the impacts of the various management alternatives. In the EA, the no action alternative is defined as follows: (1) No proposed specifications for the 2003 summer flounder, scup, and black sea bass fisheries would be published; (2) the indefinite management measures (minimum sizes, bag limits, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2003; and (4) there would be no specific cap on the allowable annual landings in these fisheries (*i.e.*, there would be no quotas). Because implementation of the no action alternative would be

inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Fishery Conservation and Management Act; would substantially complicate the approved management program for these fisheries; and would very likely result in overfishing of the resources, the no action alternative is not considered to be a reasonable alternative to the preferred action and it is not analyzed in the EA/RIR/FRFA.

Alternative 1 consists of the harvest limits proposed by the Council and Board for summer flounder, scup, and black sea bass. Alternative 2 consists of the most restrictive quotas (*i.e.*, lowest landings) considered by the Council and the Board for all of the species. Alternative 3 consists of the least restrictive quotas (*i.e.*, highest landings) considered by the Council and Board for all three species. Although Alternative 3 would result in higher landings for 2003, it would also likely exceed the biological targets specified in the FMP.

Table 9 evaluates three alternative combinations of summer flounder, scup, and black sea bass landings (commercial and recreational).

TABLE 9.—COMPARISON OF THE ALTERNATIVES OF COASTWIDE COMMERCIAL QUOTA AND RECREATIONAL HARVEST LIMITS REVIEWED, UNADJUSTED FOR RESEARCH SET-ASIDE OR 2002 OVERAGES. ("FLK" IS SUMMER FLOUNDER)

	Commercial quota		Recreational harvest limit	
	million lb	metric tons	million lb	metric tons
Quota Alternative 1 (Preferred Alternative):				
FLK Preferred Alternative	13.98	6,341	9.32	4,227
Scup Preferred Alternative	12.47	5,656	4.03	1,828
Black Sea Bass Perferred Alternative	3.33	1,510	3.47	1,574
Quota Alternative 2 (Most Restrictive):				
FLK Non-Selected Alternative 2	12.9	5,851	8.6	3,907
Scup Non-Selected Alternative 2	8.0	3,629	2.77	1,256
Black Sea Bass Non-Selected Alternative 2	2.25	1,021	2.35	1,066
Quota Alternative 3 (Least Restrictive):				
FLK Non-Selected Alternative 3	14.58	6,613	9.72	4,409
Scup Non-Selected Alternative 3	16.76	7,602	5.24	2,377
Black Sea Bass Non-Selected Alternative 3	3.53	1,601	3.67	1,665

In summary, the 2003 commercial quotas and recreational harvest limits contained in the Preferred Alternative would result in small decreases in summer flounder and black sea bass landings and substantially higher scup landings, relative to 2002. The proposed specifications contained in the Preferred Alternative were chosen because they provide for the maximum level of landings that still achieve the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP.

The possession limits for scup and black sea bass were chosen because they are enforceable and are intended to provide for economically viable fishing trips that will be equitably distributed over the entire quota period.

The economic effects of the existing GRAs will not change as a result of this final rule. The alternative to allow small-mesh vessels to fish voluntarily for non-exempt species in the GRAs if they deploy modified trawl gear and carry a NMFS-certified observer is being implemented to give vessels an opportunity to fish with small-mesh trawl gear in the GRAs while providing much-needed data on the selectivity of the modified trawl gear. Although the Scup GRA Exemption Program does impose additional voluntary compliance and operating costs, this alternative is expected to minimize both the reporting burden on small enfities and the administrative support required of NMFS to oversee the program. The Scup GRA Exemption Program will keep intact the scup conservation benefits associated with the GRAs, but provide important selectivity information that can be evaluated in future management decisions regarding the GRAs.

Finally, the revenue decreases associated with the research set-asides are expected to be minimal, and are expected to yield important long-term benefits associated with improved data. It should also be noted that fish harvested under the research set-asides would be sold. As such, total gross revenue to the industry would not decrease if the research set-asides are utilized. In fact, because participants may have the ability to harvest and sell research set-aside catches when the season is otherwise closed to the rest of the fishery, they may obtain higher prices, which would increase the gross revenue to the industry.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average approximately 2 minutes per vessel (twice a year), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. When OMB approves the new collection-of-information requirement, NMFS will issue a notification in the **Federal Register**.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 27, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraph (a)(122) is revised, and paragraph (a)(127) is added, to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(122) Fish for, catch, possess, retain or land *Loligo* squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b), or unless the vessel is in compliance with the Gear Restricted Area Exemption Program requirements specified at § 648.122(d).

* * *

(127) Fail to comply with the terms of the Gear Restricted Area Exemption Program requirements specified at § 648.122(d), if subject to the provisions of the Southern and Northern Gear Restricted Areas at § 648.122, (a) and (b).

3. In § 648.122, paragraphs (a)(1), (b)(1) are revised and paragraph (d) is added to read as follows:

§ 648.122 Season and area restrictions.

(a) * * *

(1) *Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section, except for vessels participating in the Gear Restricted Area Exemption Program that are fishing with modified trawl gear and carrying a NMFS-certified observer as specified in paragraph (d) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. lat.	W. long.
SGA1	39°20′	72°50′
SGA2	39°20′	72°25′
SGA3	38°00′	73°55′
SGA4	37°00′	74°40′
SGA5	36°30′	74°40′
SGA6	36°30′	75°00′
SGA7	37°00′	75°00′
SGA8	38°00′	74°20′
SGA1	39°20′	72°50′

* * * * *

(b) * * *

(1) *Restrictions.* From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section, except for vessels participating in the Gear Restricted Area Exemption Program that are fishing with modified trawl gear and carrying a NMFS-certified observer as specified in paragraph (d) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area I is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA I

Point	N. lat.	W. long
NGA1	41°00′	71°00′
NGA2	41°00′	71°30′
NGA3	40°00′	72°40′
NGA4	40°00′	72°05′
NGA1	41°00′	71°00′

* * * * *

(d) *Gear Restricted Area Exemption Program.* Vessels that are subject to the provisions of the Southern and Northern Gear Restricted Areas, as specified in paragraphs (a) and (b) of this section, respectively, may fish for, or possess, non-exempt species using trawl nets having a minimum mesh size less than that specified in paragraphs (a) and (b) of this section, provided that the following requirements are met:

(1) The vessel carries on board all required Federal fishery permits and a Scup GRA Exemption Program Authorization issued by the Regional Administrator, Northeast Region;

(2) The vessel carries a NMFS-certified observer on board if any portion of the trip will be, or is, in a GRA; and, (3) The vessel fishes in a GRA only with a specially modified trawl net that has an escapement extension consisting of a minimum of 45 meshes of 5.5-inch (13.97-cm) square mesh that is positioned behind the body of the net and in front of the codend.

* * * * *

[FR Doc. 02–33135 Filed 12–31–02; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 68, No. 1
Thursday, January 2, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300

[Docket No. 02–026–3]

Hot Water Dip Treatment for Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, by amending the hot water dip treatment schedule for rounded varieties of mangoes imported into the United States from Mexico or Central America to provide for the treatment of mangoes weighing between 701 and 900 grams. Currently, that hot water dip treatment schedule provides only for the treatment of mangoes weighing up to 700 grams. This action would allow larger, rounded varieties of mangoes from Mexico or Central America to be imported into the United States. We also propose to make other changes to the treatment, including the extension of the treatment time if the mangoes are to be hydrocooled within 30 minutes of the treatment.

DATES: We will consider all comments that we receive on or before February 18, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–026–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–026–3. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–026–3" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

To prevent the introduction of plant pests into the United States, the Animal and Plant Health Inspection Service (APHIS) restricts the importation of many articles, including fruits. As a condition of importation, some fruits are required to be treated for plant pests, in accordance with our regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8, referred to below as the regulations). The Plant Protection and Quarantine (PPQ) Treatment Manual contains approved treatment schedules and is incorporated by reference into the regulations in 7 CFR 300.1.

The regulations in § 319.56–2i provide, in part, that mangoes may be imported into the United States from Central America, South America, and the West Indies if they are treated in accordance with the PPQ Treatment Manual. Similarly, mangoes from Mexico are listed in § 319.56–2x as being eligible for importation if treated in accordance with the PPQ Treatment Manual; if they are grown in a fruit-fly-free area listed in § 319.56–2(h), they do not need to be treated. Treatment is required to address the risks presented by the Mediterranean fruit fly (Medfly, *Ceratitis capitata*) and fruit flies of the genus *Anastrepha*, including the Mexican fruit fly (*A. ludens*).

The PPQ Treatment Manual currently provides a hot water dip treatment (treatment schedule T102–a) for mangoes from Mexico or Central America weighing up to 700 grams. Treatment schedule T102–a currently specifies that:

1. The mangoes must be treated in the country of origin at a certified facility under the monitoring of APHIS personnel.

2. Pulp temperature must be 70 °F or above before starting the treatment.

3. Fruit must be submerged at least 4 inches below the water's surface.

4. Water must circulate constantly and be kept at 115 °F throughout the treatment with the following tolerances:

- During the first 5 minutes of a treatment, temperatures below 113.7 °F are allowed if the temperature is at least 115°F at the end of the 5-minute period.
- For treatments lasting 65–75 minutes, temperatures may fall as low as 113.7 °F for no more than 10 minutes under emergency conditions.
- For treatments lasting 90 minutes, temperatures may fall as low as 113.7 °F for no more than 15 minutes under emergency conditions.

5. The duration of the hot water dip treatment is determined based on the origin, shape, and weight of the mangoes. For mangoes from Mexico or Central America, treatment schedule T102-a provides the following dip times:

Shape of mango	Weight (in grams)	Dip time (in minutes)
Flat, elongated varieties (such as Frances, Carrot, Zill, Ataulfo, Carabao, Irwin, and Manila)	Up to 375	65
	375–570	75
Rounded varieties (such as Tommy Atkins, Kent, Hayden, and Keitt)	Up to 500	75
	500–700	90

As indicated in the table, the upper weight limit for rounded varieties of mangoes offered for treatment is 700 grams. In order to provide exporters in Mexico and Central America with the ability to ship rounded varieties of mangoes weighing more than 700 grams to the United States, we are proposing to amend treatment schedule T102–a to provide for its use on mangoes weighing between 701 and 900 grams. Specifically, for rounded varieties of mangoes from Mexico and Central America, we would provide a dip time of 110 minutes for fruit weighing between 701 and 900 grams. We would also amend the tolerance for the 90-minute treatment, as described in item 4 above, to include the proposed 110-minute treatment so that for treatments lasting 90 to 110 minutes, temperatures may fall as low as 113.7 °F for no more than 15 minutes under emergency conditions.

Research conducted by the Department's Agricultural Research Service (ARS) has shown that the hot water dip treatment administered at 115 °F for 110 minutes to mangoes weighing 701–900 grams will kill the larvae of Medfly, *Anastrepha obliqua*, and *A. ludens*.

We are also proposing other changes to the treatment schedule based on an ARS report completed in February 2001 that states that hydrocooling immediately after hot water dip treatment compromises treatment efficacy. The report indicates that treatment efficacy can be maintained by requiring cooling of fruits in air for 30 minutes after the completion of the treatment, after which the fruit could be hydrocooled. Therefore, we propose to amend the treatment schedule by adding a note that the dip times of 65, 75, 90, and 110 minutes are valid if the fruit is not hydrocooled or is hydrocooled no sooner than 30 minutes after the completion of the hot water dip treatment. When hydrocooling is to be used within 30 minutes of treatment, an additional 10 minutes would have to be added to the treatment time. We would amend the treatment schedule to state that hydrocooling is optional and may be done for any length of time and that the temperature of the water used in hydrocooling cannot be less than 70 °F in order to minimize the risk of fruit fly survival. A copy of the ARS research data and report on which these proposed changes are based may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

We would also amend the treatment schedule by adding provisions that mangoes must be pre-sorted by weight class and that treatment of mixed loads is not allowed. These proposed changes would clarify how the treatment is conducted. Finally, where the treatment schedule now states that water must circulate constantly and be kept at 115 °F throughout the treatment, we would state that the water temperature must be kept at 115 °F or above throughout the treatment. Adding "or above" would clarify that increases in temperature could occur in the normal course of the treatment without reducing its effectiveness.

In addition to amending treatment schedule T102-a in the PPQ Treatment Manual, we would also amend 7 CFR part 300 to update the PPQ Treatment Manual's incorporation by reference in 7 CFR 300.1 to reflect the date of the amended treatment's inclusion in the manual.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process under Executive Order 12866.

We are proposing to amend the PPQ Treatment Manual, which is incorporated by reference at 7 CFR 300.1, to allow mangoes from Mexico or Central America weighing from 701–900 grams to be treated for Medfly and fruit flies of the genus *Anastrepha* with a hot water dip. Currently, the PPQ Treatment manual contains a hot water dip treatment for mangoes from Mexico or Central America that weigh up to 700 grams.

According to data from the Food and Agriculture Organization of the United Nations, the U.S. production of mangoes is supplemented with mango imports in order to satisfy the domestic demand, and that demand appears to be increasing:

PRODUCTION, IMPORT, AND EXPORT DATA FOR MANGOES FROM THE UNITED STATES, MEXICO, AND CENTRAL AMERICA

[In metric tons]

Country and activity	1997	1998	1999	2000
U.S. production	2,720	2,720	2,720	3,000
U.S. exports	0	0	0	0
U.S. imports	186,520	197,393	219,144	235,080
Mexico production	1,500,317	1,473,852	1,508,468	1,559,351
Mexico exports	187,127	209,426	204,002	206,782
Mexico imports	60	28	167	1,007
Central America production	1,712,251	1,686,828	1,728,457	1,787,151
Central America exports	204,177	225,406	220,595	228,653
Central America imports	727	801	1,034	2,424

As shown in the table, U.S. mango imports are far greater than domestic production. U.S. production of mangoes has primarily been in southern Florida, with a smaller quantity grown in Hawaii and a negligible amount produced in California. According to the 1997 Census of Agriculture, there were 218 mango farms in Florida, 171 in Hawaii, and 2 in California. Florida accounted for about 97 percent of domestic production in that census year, while

Hawaii accounted for about 3 percent of production. There are no U.S. mango exports.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. Whether affected entities may be considered small in this case depends on their annual gross receipts. Annual receipts of $750,000 or less is the small entity criterion set by the Small Business Administration for establishments primarily engaged in "other noncitrus fruit farming" (NAICS code 111339). As noted previously, Florida accounted for about 97 percent of mango production in 1997, thus mango producers in that State are the entities most likely to be affected by this proposed rule. Most, if not all, mango producers in Florida are small entities. According to information provided by the University of Florida's Institute of Food and Agricultural Sciences (IFAS), about 10 to 15 growers manage the bulk of the producing mango acreage in Florida. According to IFAS, about 25 percent of Florida growers produce mangoes alone, while the remaining 75 percent are diversified operations growing other tropical fruits in addition to mangoes. Florida growers occupy niche markets in the State by providing green fruit for processing into chutney and other products and by providing fresh, untreated, tree-ripened fruit for consumption. The availability of larger mangoes from Mexico and Central America in the larger U.S. market is expected to have little to no impact on Florida producers who occupy those niche markets, as producers in Mexico and Central America are not expected to be shipping green fruit for processing and would be unable to provide untreated, tree-ripened fruit to U.S. markets.

The availability of a treatment for larger mangoes of the rounded varieties is not expected to significantly affect U.S. mango producers, as the amount of those larger mangoes likely to be imported from Mexico and Central America would represent a fraction of current import levels. Moreover, much of Florida's harvest (the source of about 97 percent of domestic production in 1997) is consumed within that State or is processed into chutney and other products; these markets are unlikely to be affected by the availability of larger mangoes from Mexico and Central America. Therefore, we do not expect that the economic effects of this proposed rule on U.S. entities, large or small, would be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

Accordingly, 7 CFR part 300 is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a) would be amended as follows:

a. In paragraph (a)(4), by removing the word "and".

b. In paragraph (a)(5), by removing the period and adding the word "; and" in its place.

c. By adding a new paragraph (a)(6) to read as follows:

§ 300.1 Plant Protection and Quarantine Treatment Manual.

(a) * * *

(6) Treatment T102-a, dated _____.

* * * * * *

Done in Washington, DC, this 23rd day of December 2002.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–33049 Filed 12–31–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–40–AD]

Airworthiness Directives; Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) Series and HA–A2V20–1B Series Propellers with Aluminum Blades

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to revise an existing airworthiness directive (AD), applicable to Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) series and HA–A2V20–1B series propellers with aluminum blades. That AD currently requires initial and repetitive dye penetrant and eddy current inspections of the blade and an optical comparator inspection of the blade retention area, and, if necessary, replacement with serviceable parts. In addition, that AD currently requires initial and repetitive visual and magnetic particle inspection of the blade clamp, dye penetrant inspection of the blade internal bearing bore, and, if necessary, replacement with serviceable parts. Also, for all HC–(1,4,5,8)(2,3)(X,V)( )–( ) steel hub propellers, that AD currently requires an additional initial and repetitive visual and magnetic particle inspection of the hub, and, if necessary, replacement with serviceable parts. This proposal would revise that AD by introducing as an optional terminating action for the initial and repetitive inspections of that AD, replacement of affected propellers with Hartzell Propeller Inc. model "MV" series propellers. This proposal is prompted by type certification approval of the Hartzell "MV" series propellers that are direct replacements for the affected propellers, and service bulletin approval to allow modification of affected propellers to the "MV" type design configuration. The Hartzell "MV" series propellers were certified as Hartzell propeller models ( )HC–( )(2,3)MV( )–( ) and HA–A2MV20–1B. The actions specified by the proposed AD are intended to prevent blade separation due to cracked blades, hubs, or blade clamps, which can result in loss of control of the airplane.

DATES: Comments must be received by March 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–ANE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634, ATTN: Product Support; telephone (937) 778–4200, fax (937) 778–4321. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–ANE–40–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–ANE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On August 15, 1997, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 97–18–02, Amendment 39–10112 (62 FR 45309, August 27, 1997), applicable to Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) series propellers and HA–A2V20–1B series propellers, to require initial and repetitive dye penetrant and eddy current inspections of the blade and an optical comparator inspection of the blade retention area, and, if necessary, replacement with serviceable parts. In addition, that AD was issued to require initial and repetitive visual and magnetic particle inspections of the blade clamp, dye penetrant inspections of the blade internal bearing bore, and, if necessary, replacement with serviceable parts. Also, that AD was issued to require for all HC–(1,4,5,8)(2,3)(X,V)( )–( ) steel hub propellers, an additional initial, and repetitive visual and magnetic particle inspections of the hub and, if necessary, replacement with serviceable parts. That action was prompted by reports of cracked blades, blade clamps, and hubs and reports of blade separations. That condition, if not corrected, could result in loss of control of the airplane.

Hartzell Certification Efforts To Create Optional Terminating Action To Address AD 97–18–02

Since issuance of that AD, Hartzell Propeller Inc. has received type certification approval of the Hartzell "MV" series of propellers that are direct replacements for the affected propellers. The Hartzell "MV" series propellers were certified as Hartzell propeller models ( )HC–( )(2,3)MV( )–( ) and HA–A2MV20–1B. Also, Hartzell Propeller Inc. service bulletins (SB's) HC–SB–61–232, dated March 20, 1998, and HC–SB–61–233, dated April 17, 1998, have been approved to allow modification of affected propellers to the "MV" type design configuration. This proposal would introduce as an optional terminating action, for the initial and repetitive inspections of this proposal, replacement of affected propellers with Hartzell Propeller Inc. model "MV" series propellers.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. SB No. HC–SB–61–217, Revision 1, dated July 11, 1997, that describes procedures for fluorescent dye penetrant and eddy current inspections of the blade and an optical comparator inspection of the blade retention area, and, if necessary, replacement with serviceable parts. In addition, this SB describes procedures for visual and magnetic particle inspection of the blade clamp, dye penetrant inspection of the blade internal bearing bore and, if necessary, replacement with serviceable parts. For all HC–(1,4,5,8)(2,3)(X,V)( )( ) steel hub propellers, this SB describes an additional visual and magnetic particle inspection of the hub, and, if necessary, replacement with serviceable parts.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) series and HA–A2V20–1B series propellers of this same type design, the proposed AD would revise AD 97–18–02 to continue to require:

- Initial and repetitive dye penetrant and eddy current inspections of the blade and an optical comparator inspection of the blade retention area, and, if necessary, replacement with serviceable parts.
- Initial and repetitive visual and magnetic particle inspection of the blade clamp, and, if necessary, replacement with serviceable parts.
- Initial and repetitive dye penetrant inspection of the blade internal bearing bore, and, if necessary, replacement with serviceable parts.
- For all HC–(1,4,5,8)(2,3)(X,V)( )–( ) steel hub propellers, an additional initial and repetitive visual and magnetic particle inspection of the hub, and, if necessary, replacement with serviceable parts.
- A reporting requirement to obtain additional data and determine if adjustment can be made to the repetitive inspection intervals, with possible relief.

This proposal also adds as an optional terminating action for the initial and repetitive inspections of this proposal, replacement of affected propellers with Hartzell Propeller Inc. model MV propellers.

Economic Analysis

Since the proposed revision to AD 97–18–02 is to add an optional terminating action, the total cost of the proposed revised AD on U.S. operators can be estimated to be $0.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10112 (62 FR 45309, August 27, 1997), and by adding a new airworthiness directive, to read as follows:

Hartzell Propeller Inc.: Docket No. 96–ANE–40–AD. Revises AD 97–18–02, Amendment 39–10112.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) series and HA–A2V20–1B series propellers with aluminum blades. These propellers are installed on but not limited to the aircraft listed in the following Table 1:

TABLE 1.—AFFECTED AIRCRAFT

Manufacturer	Aircraft model
Aero Commander (Twin Commander)	500
	500A
	500B, 500S, and 500U
	520
	560
	560A, 560E
	680, 680E, 720
	680F, 680FP, 680FL, 680FLR
	B1 (Callair)
Aeromere	Falco F.8.L
Aeronautica Macchi	AL60–F5
	AM–3
Bauger	Sail Plane
Beech	35 Series Bonanza
	35–C33 Debonair
	35–C33A, E33A, F33A
	50 Series Twin Bonanza
	58P, 58TC Baron
	95–55; 95–A55, 95–B55 Baron
	65, A65, 65–(B)80, 65–A80, A65–8200, 70
Bellanca	14–13
	14–19
	14–19–2
	14–19–3
	7GCA, 7GCB, 7GCC
	DW–1 Eagle
Camair	480
Cessna	170
	170A
	172 Skyhawk
	175
	180, A, B, C, D, E, F, G, H
	182, A, B, C, D, E, G, H, J, K, L, M
	210, A, B, C, 5, 5A
	310, A, B, C, D, E, F ,G, H, E310H
	320, 320–1 Skyknight
	320A, 320B
	402 Businessliner
	411
	Wren 460
	Wren 460H, J, K, L, M
deHavilland	DH104 Dove
	DH114 Heron

TABLE 1.—AFFECTED AIRCRAFT—Continued

Manufacturer	Aircraft model
Dornier	DO27Q–6
	DO28A–1
	DO28B–1
Fuji	T–3, LM–2
GAF—Gov't. Aircraft Factories	N22B, N24A, N22S, N22C
Goodyear	(Loral)
	GA22A Goodyear Blimp
	GZ19, 19A Goodyear Blimp
Great Lakes	2T–1A–2
Grumman	G44, G44A Widgeon
	G21C, D Goose
Helio	H–391 Courier
	H–391B Courier
	H–395A Courier
Luscombe	11
	11A
Mooney	M20
Multitech (Temco)	D16 Twin Navion
	D16A Twin Navion
Nardi	FN–333
Navion	Navion B
	Navion, Navion A
Pacific Aerospace (Fletcher)	FU–24, FU–24A
Piaggio	P–149D
	P136–L1 Royal Gull
	P136–L2 Royal Gull
	P149D
	P166 Royal Gull
Pilatus	PC–3
	PC–6
	PC–6–H1, –H2 Porter
Piper	PA–E23–250 Aztec
	PA14 Family Cruiser
	PA18(A)(S)–150 Super Cub
	PA18A–150 Super Cub
	PA22–150, PA22S–150 Tripacer
	PA23 Series Apache
	PA23–160 Apache
	PA23–235 Aztec
	PA23–250 Aztec
	PA24–250 Comanche
	PA24–400 Comanche
	PA24S Comanche
	PA28 Cherokee
	PA28–140 Cherokee
Prop Jets Inc.	200
	200A,B,C
Republic (STOL Amphibian)	RC3 Seabee
Scottish Aviation (BAE)	B.206 Series 2 Beagle
Stinson	L–5
	108, –1, –2, –3
	108–2–3
Sud Aviation (SOCATA)	GY.80–150 Gardan
	GY.80–160 Gardan Horizon
Swift	GC–1B
Taylorcraft	20
Texas Bullet	205
Windecker	Eagle

Note 1: The above is not a complete list of aircraft which may contain the affected Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) series and HA–A2V20–1B series propellers with aluminum blades because of installation approvals made by, for example, Supplemental Type Certificate or field approval under FAA Form 337 "Major Repair and Alteration." It is the responsibility of the owner, operator, and person returning the aircraft to service to determine if an aircraft has an affected propeller.

Note 2: The parentheses that appear in the propeller models indicate the presence or absence of additional letter(s) which vary the basic propeller hub model designation. This airworthiness directive is applicable regardless of whether these letters are present or absent on the propeller hub model designation.

Note 3: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent blade separation due to cracked blades, hubs, or blade clamps, which can result in loss of control of the airplane, accomplish the following:

(a) On Hartzell propeller models with hub models ( )HC-(1,4,5,8)(2,3)(X,V)( )-( ) perform initial and repetitive inspections and, if necessary, replace with serviceable parts in accordance with Hartzell Propeller Inc. Service Bulletin (SB) No. HC-SB-61-217, Revision 1, dated July 11, 1997, as follows:

(1) Initially perform a fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, a dye penetrant inspection of the blade internal bearing bore, and a visual and magnetic particle inspection of the blade clamp and of the hub. The initial inspection is required within the following:

(i) 1,000 hours time since new (TSN) for propellers with less than 900 hours TSN on September 11, 1997, provided that the initial inspections are performed within 60 calendar months TSN or 24 calendar months after September 11, 1997, whichever calendar time occurs later, or

(ii) 100 hours time in service (TIS) for propellers with 900 or more hours TSN, or unknown TSN, on September 11, 1997, provided that the initial inspections are performed within 24 calendar months after September 11, 1997.

(2) Thereafter, perform repetitive fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, and a visual and magnetic particle inspection of the blade clamp. The repetitive inspection is required at intervals not to exceed 500 hours TIS or 60 calendar months, whichever occurs first, since last inspection.

(3) Thereafter, perform a repetitive visual and magnetic particle inspection of the hub. This repetitive hub inspection is required at intervals not to exceed 250 hours TIS or 60 calendar months, whichever occurs first, since last inspection.

(4) Thereafter, perform repetitive dye penetrant inspections of the blade internal bearing bore. This repetitive blade internal bearing bore inspection is required at intervals not to exceed 60 calendar months since last inspection.

(b) On Hartzell propeller models with hub models ( )HC-(A,D)(2,3)(X,V)( )-( ), and HA-A2V20-1B, except HC-A3VF-7( ), perform initial and repetitive inspections and, if necessary, replace with serviceable parts in accordance with Hartzell SB No. HC-SB-61-217, Revision 1, dated July 11, 1997, as follows:

(1) Initially perform a fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, a visual and magnetic particle inspection of the blade clamp, and a dye penetrant inspection of the blade internal bearing bore. The initial inspection is required within the following:

(i) 1,000 hours TSN for propellers with less than 800 hours TSN on September 11, 1997, provided that the initial inspections are performed within 60 calendar months TSN or 24 calendar months after September 11, 1997, whichever calendar time occurs later; or

(ii) 200 hours TIS for propellers with 800 or more hours TSN, or unknown TSN, on September 11, 1997, provided that the initial inspections are performed within 24 calendar months after September 11, 1997.

(2) Thereafter, perform repetitive fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, and a visual and magnetic particle inspection of the blade clamp. The repetitive inspection is required at intervals not to exceed 500 hours TIS or 60 calendar months, whichever occurs first, since last inspection.

(3) Thereafter, perform repetitive dye penetrant inspections of the blade internal bearing bore. This repetitive blade internal bearing bore inspection is required at intervals not to exceed 60 calendar months since last inspection.

(c) On Hartzell propeller models with hub models HC-A3VF-7( ) perform initial and repetitive inspections and, if necessary, replace with serviceable parts in accordance with Hartzell SB No. HC-SB-61-217, Revision 1, dated July 11, 1997, as follows:

(1) Initially perform a fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, a visual and magnetic particle inspection of the blade clamp, and a dye penetrant inspection of the blade internal bearing bore. The initial inspection is required within the following:

(i) 3,000 hours TSN for propellers that have never been overhauled and have less than 2,500 hours TSN on September 11, 1997, provided that the initial inspections are performed within 60 calendar months TSN or 24 calendar months after September 11, 1997, whichever calendar time occurs later, or

(ii) 3,000 hours TIS since last overhaul for propellers that have been overhauled but have less than 2,500 hours TIS since last overhaul on the September 11, 1997, provided that the initial inspections are performed within 60 calendar months TIS since last overhaul or 24 calendar months after September 11, 1997, whichever calendar time occurs later, or

(iii) 500 hours TIS, for propellers that have never been overhauled and have 2,500 or more hours TSN on September 11, 1997, or propellers which have been overhauled and have 2,500 or more hours TIS since last overhaul on September 11, 1997, or propellers with unknown TSN, provided that the initial inspections were performed within 24 calendar months after September 11, 1997.

(2) Thereafter, perform repetitive fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, and a visual and magnetic particle inspection of the blade clamp. The repetitive inspection is required at intervals not to exceed 3,000 hours TIS or 60 calendar months, whichever occurs first, since last inspection.

(3) Thereafter, perform repetitive dye penetrant inspections of the blade internal bearing bore. This repetitive blade internal bearing bore inspection is required at intervals not to exceed 60 calendar months since last inspection.

(d) The initial inspection of the internal blade bearing bore required by paragraphs (a)(1), (b)(1), or (c)(1) of this AD need not be done again if previously done in accordance with page 4 of Hartzell SB No. HC-SB-61-217, Revision 1, dated July 11, 1997.

(e) If not previously done, shot peen the propeller blade shank area during the initial inspection required by paragraphs (a)(1), (b)(1), or (c)(1) of this AD, as appropriate, and perform the shot peening in accordance with Hartzell SB No. HC-SB-61-217, Revision 1, dated July 11, 1997. Re-shot peening of the propeller blade shank area during the initial or repetitive inspections required by paragraphs (a)(1), (b)(1), or (c)(1) or (a)(2), (b)(2), or (c)(2) of this AD, as appropriate, is required only if the propeller blade shank area has been repaired or has excessive wear or damage in accordance with Hartzell SB No. HC-SB-61-217, Revision 1, dated July 11, 1997.

Reporting Requirements

(f) Report inspection results to the Manager, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018, within 15 working days of the inspection. Reporting requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 2120-0056.

Optional Terminating Action

(g) Replacement of affected propellers with, or modification to Hartzell Propeller Inc. model "MV" series propellers constitutes terminating action for the initial and repetitive inspections specified in paragraphs (a) through (e) of this AD. The Hartzell "MV" series of propellers were certified as Hartzell propeller models ( )HC-( )(2,3)MV( )-( ) and HA-A2MV20-1. Modification of affected propellers to "MV" series propellers must be done in accordance with Hartzell SB No.'s HC-SB-61-232, dated March 20, 1998, and HC-SB-61-233, dated April 17, 1998.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office. Compliance with Hartzell SB No. HC-SB-61-217, Revision 2, dated October 7, 1999, is an alternative method of compliance to Hartzell SB No. HC-SB-61-217, Revision 1.

Note 4: Information concerning the existence of approved alternative methods of

compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on December 24, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–33074 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7002b; FRL–7434–8]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; the District of Columbia; Control of Emissions From Existing Hospital/Medical/ Infectious Waste Incinerator (HMIWI) Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the HMIWI section 111(d)/129 negative declaration submitted by the District of Columbia Department of Health, Environmental Health Administration. The negative declaration certifies that HMIWI units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist in the District of Columbia air pollution control jurisdiction. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 3, 2003.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*. Please note that while questions may be posed via phone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–33099 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7003b; DE068–7003b; PA187–7003b, PA186–7003b; FRL–7434–6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, the District of Columbia, Allegheny County and Philadelphia, Pennsylvania; Control of Emissions From Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, Allegheny County and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that small municipal waste combustion (MWC) units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within its air pollution control jurisdiction. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 3, 2003.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*. Please note that while questions may be posed via phone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–33097 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7001b; PA186–7001b; FRL–7435–1]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; the District of Columbia, and the City of Philadelphia, Pennsylvania; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the municipal solid waste (MSW) landfill section 111(d) negative declarations submitted by the District of Columbia, and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that MSW landfills, subject to the requirements of section 111(d) of the Clean Air Act (CAA), do not exist in its air pollution control jurisdiction. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 3, 2003.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*. Please note that while questions may be posed via phone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–33101 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7004b; DE068–7004b; PA186–7004b; FRL–7434–4]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, the District of Columbia, and Philadelphia, Pennsylvania; Control of Emissions From Existing Commercial/Industrial Incineration (CISWI) Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that CISWI units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within its air pollution control jurisdiction. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 3, 2003.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*. Please note that while questions may be posed via phone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–33095 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7429–2]

RIN 2060–AG99, 2060–AG52, 2060–AG69, 2060–AG67, 2060–AG96, 2060–AH03

National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of proposed rules and changes to public comment periods.

SUMMARY: This document is to inform the public that the proposed national emission standards for hazardous air pollutants (NESHAP) for Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining have been signed by the Administrator and are scheduled to be published as proposed rules in the **Federal Register** within a few weeks. Copies are available on EPA's website. We typically allow a 60-day public comment period after publication of proposed NESHAP in the **Federal Register**; however, we are providing advance notice that when these proposed rules are published in the **Federal Register**, the comment period will be 30 days after publication.

FOR FURTHER INFORMATION CONTACT: Mr. Keith W. Barnett, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, facsimile number (919) 541–5600, telephone number (919) 541–5605, electronic mail *barnett.keith@epa.gov*.

SUPPLEMENTARY INFORMATION: An electronic copy of today's notice is

available on the Worldwide Web through the Technology Transfer Network (TTN). Following the Assistant Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. In addition, electronic versions of all these proposed NESHAP that are affected by this notice are also currently available on the TTN at *http://www.epa.gov/ttn/oarpg/new.html*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

In accordance with section 112(e)(1) of the Clean Air Act (CAA), EPA issued a schedule for promulgation of NESHAP that specified that the NESHAP for Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining were to be promulgated as final rules by November 15, 2000. We are now considerably past that date. In addition, the requirements of section 112(j) of the CAA specify that all sources in these source categories must submit permit applications for case-by-case determinations of the maximum achievable emissions reductions of hazardous air pollutants in the absence of a final rule. It is imperative that these proposed rules be finalized as soon as possible to avoid the unnecessary expenditure of resources by affected sources and permitting authorities.

The proposed NESHAP were signed by the Administrator on November 26, 2002, and were available on the TTN on the same day. Therefore, the proposed NESHAP have been widely available to the public since that time. We do not anticipate that any of the proposed NESHAP will be published in the **Federal Register** prior to December 26, 2002. If we allow a comment period of 30 days from actual publication in the **Federal Register**, the proposed NESHAP will still have been widely available to the public for 60 days or more.

Dated: December 20, 2002.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 02–33102 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7435–6]

RIN 2060–AG99

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of change to public comment period.

SUMMARY: This document is to inform the public of a correction to the proposed national emission standards for hazardous air pollutants (NESHAP) for surface coating of automobiles and light-duty trucks that were published in the **Federal Register** on December 24, 2002 (67 FR 78612). As published, written comments on the proposed rule were to be submitted to EPA on or before February 7, 2003. Today, we are providing notice that the period for public comment is being extended and will end on February 24, 2003 (a 60-day public comment period).

Additionally, the December 24, 2002 **Federal Register** document stated that if anyone contacts EPA requesting to speak at a public hearing, they should do so by January 3, 2003. We are extending the period to request a public hearing to January 13, 2003 (20 days).

Finally, the **Federal Register** document stated that, if requested, a public hearing would be held approximately 15 days after the date of publication of the notice in the **Federal Register**. Today's document corrects the date of the hearing. It will be held, if requested, on January 27, 2003 (approximately 30 days after the date of publication of the proposal in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711, facsimile number (919) 541–5689, telephone number (919) 541–7946, electronic mail *eck.janet@epa.gov*.

SUPPLEMENTARY INFORMATION: An electronic copy of today's document is available on the Worldwide Web through the Technology Transfer Network (TTN). Following the Assistant Administrator's signature, a copy of this document will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. In addition, an electronic version of the proposed NESHAP is currently available on the TTN at *http://www.epa.gov/ttn/oarpg/new.html*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Dated: December 27, 2002.

Thomas W. Eagles,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–33144 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 68, No. 1
Thursday, January 2, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Stamp Program—Store Applications, Form FNS–252, Food Stamp Application for Stores

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: USDA's Food and Nutrition Service (FNS) has revised its Food Stamp Program Application for Stores, Form FNS–252, the application for retailers who wish to participate in the Food Stamp Program. The form was revised to simplify and streamline information collected from retailers on the application and make it easier to read. We are soliciting public comments on the content, format and design of the revised Form FNS–252. For consistency purposes, we will not use the revised Form–252 until the new Store Tracking and Redemption Subsystem (STARS) is in operation, around the third quarter of 2004. The current Form FNS–252 will be effective until the STARS system is operational and we are ready to use the revised Form FNS–252. In addition, FNS is drafting an addendum to the revised Form FNS–252. Corporations (chain stores) will use the addendum to submit information to FNS that is unique to each store under the corporation. The addendum will not collect new types of information other than those collected on the revised Form FNS–252.

DATES: Written comments must be submitted on or before March 3, 2003.

ADDRESSES: Comments are invited on the content, format and design of the revised Form FNS–252, Food Stamp Program Application for Stores, and the proposed addendum to this form. Comments may be sent to Karen Walker, Chief, Retailer Management Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 404, Alexandria, VA 22302; FAX number (703) 305–1863; E-mail: *BRDHQ-WEB@fns.usda.gov*. All submitted comments should refer to the title of this proposal and/or the OMB approval number.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, or copies of the revised Form FNS–252, should be directed to Karen Walker at (703) 305–2418 or *BRDHQ-WEB@fns.usda.gov*. Requests submitted over e-mail should refer to the title of this proposal and/or the OMB approval number in the subject line.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program: Food Stamp Program Application for Stores, Form FNS–252.

OMB Number: 0584–0008.

Expiration Date: May 31, 2003.

Type of Request: Revision of a currently approved collection.

Abstract: Section 9 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2011 *et seq.*) requires retail food stores to submit applications to FNS for approval prior to participating in the Food Stamp Program. FNS field offices review retailer applications to ensure that the store is eligible and then authorize or deny a store to accept and redeem Food Stamp Program benefits. We know that many retailers submit incomplete or erroneous applications to the field office. This can be attributed, in part, to the complexity and length of the current form and the technical language used. It is our belief that a simpler application will result in fewer mistakes upfront and will reduce the time it takes for a field office to process an incomplete or incorrect application. Retailers will also benefit from the simplified, revised Form FNS–252 because they will better understand what information is being asked of them initially. Therefore, it is more likely that retailers will submit a complete application the first time.

As part of this effort, reengineering teams at FNS were charged with identifying areas where the current Form FNS–252 could be improved to reduce and streamline information collected on the application. Additionally, field offices provided their feedback on how the current Form FNS–252 can be improved. Based on these recommendations, FNS contracted with the Office of Personnel Management's Forms Processing Center in Macon, Georgia to revise the current Form FNS–252 into a customer- and computer-friendly format.

The revised Form FNS–252 offers a significant improvement over the current Form FNS–252 while adhering to the regulatory requirements for the authorization process for retailers. The design of the revised Form FNS–252 is superior over the current Form FNS–252 because it can be scanned and easily converted into an online application in the future. Additionally, the language on the revised Form FNS–252 is clearer and shorter which should result in fewer errors and omissions on incoming applications. In summary, the revised Form FNS–252:

- Utilizes plain language;
- Deletes redundant questions and questions that solicit information which can be collected from other FNS sources such as store visits and databases;
- Improves the accuracy of submitted information through better targeted questions; and
- Supports the Department's efforts to comply with the E–GOV requirements by making the form compatible with current technology.

Finally, FNS is in the process of developing an addendum to the revised Form FNS–252. The addendum will not collect new types of information other than those collected on the revised Form FNS–252. A corporation operating chain stores will use the addendum to submit specific information to FNS on each store, such as the store's location and hours of operation. The new STARS system will be able to accept both electronic and paper submissions of the addendum.

Burden Estimates: The burden associated with the revised Form FNS–252 is determined from information available in the STARS database on initial authorizations and reauthorizations. For the burden associated with initial authorizations, we have used Fiscal Year (FY) 2001 data as the base number for FY 2002 estimates for all newly authorized applicants. Based on current economic conditions, we believe this number will increase or remain constant for the present year. We will use 18,888 as the base number for FY 2002 for all newly

authorized stores. We have further increased this number by 3% (566) to account for applications that are processed by field offices but are not authorized, and decreased this number by 9.8% (1,851) to account for chain stores that participate in the Food Stamp Program. A corporation operating chain stores will only need to complete one revised Form FNS–252 for all of its stores and the (shorter) addendum for each individual store. Thus, the total number of initial applications expected to be received and processed for FY 2002 is estimated to be 17,603 (18,888 + 566—1,851). We further estimate that ninety-eight percent (17,251) of the 17,603 applications will be submitted using the Form FNS–252. The remaining applications will be submitted on another form such as the Form FNS–252–2, Meal Service Application.

For burden estimates associated with applications for reauthorization, we have used FY 2001 data as the base number for FY 2002 estimates because we do not anticipate any radical variation in the number of stores to be reauthorized for the current year. Program regulations require that participating stores be reauthorized at least every five years. Of the stores to be reauthorized, only 3% will have to complete a new Form FNS–252 due to recent procedural changes. Stores that do not complete a new Form FNS–252 are reauthorized using information available from other FNS sources such as the store visit form. Of the 151,716 stores that were authorized in FY 2001, approximately 20,938 were subject to reauthorization. Therefore, for FY 2002, we estimate the number of stores to be reauthorized that will use the Form FNS–252 to be 628 (3% of 20,938). It is important to note that corporations, and the stores under the corporation, are not included in reauthorization estimates because they are usually exempt from completing additional paperwork after the corporation has been authorized.

The hourly burden rate per response for the current Form FNS–252, as approved by OMB, is 20 to 68 minutes, with the average being 27 minutes. Hourly burden time per response varies and includes the time to review instructions, search existing data resources, gather and copy records, complete and review the application and submit the form and documentation to FNS. We estimate the burden rate per response for the revised Form FNS–252 to be an average of 19 minutes (.32 hour)—an estimated, average reduction of 8 minutes over the current Form FNS–252. Our estimates are based on projections that included in formal time studies conducted at FNS by staff who were not involved in the redesign efforts of the form or who are not familiar with the retailer application process. We estimate the burden rate per response for the addendum to the revised Form FNS–252 to be an average of 5 minutes (.08 hour). Because corporations account for 9.8 percent of all authorized stores, more than 1,851 chain stores will benefit from completing the shorter addendum to the revised Form FNS–252, on an annual basis.

As noted above, we will evaluate the revised Form FNS–252 on the appropriateness and clarity of the form's content, format and design. Before making final changes to the revised Form FNS–252, we will consider feedback from the public. If the results of the evaluation are positive, we will finalize the revised Form FNS–252 and the addendum to this form. We will begin using both forms when the new STARS system is operational; we will use the current Form FNS–252 during the interim period, until we are ready to use the revised Form FNS–252.

The estimated burden computation is provided below:

New Authorizations—17,251 (17,603 × 98%); Reauthorizations—628 (20,938 × 3%);

Total Responses = 17,879 (17,251 + 628)

We estimate the annual burden hours to be 5,721 hours for the revised Form FNS–252. The computation is provided below:

Estimated Total Annual Burden: FNS–252: 5,721 (17,879 × .32 hour).

Total Annual Hours: 5,721.

Affected Public: Retail food stores.

Estimated Number of Respondents: 17,879.

Estimated Annual Number of Responses Per Respondent: 1.

Estimated Total Annual Responses: 17,879.

Estimate of Burden: 5,721.

Estimated Total Annual Burden: 5,721.

We estimate the annual burden hours to be 148 hours for the addendum to the revised Form FNS–252. The computation is provided below:

Estimated Total Annual Burden: Addendum to Revised FNS–252: 148 (1,851 × .08 hour).

Total Annual Hours: 148.

Affected Public: Retail food stores under a corporation.

Estimated Number of Respondents: 1,851.

Estimated Annual Number of Responses Per Respondent: 1.

Estimated Total Annual Responses: 1,851

Estimate of Burden: 148.

Estimated Total Annual Burden: 148.

Dated: December 18, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–33112 Filed 12–31–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of January 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Duty Proceedings	
Brazil:	
Brass Sheet and Strip, A–351–603	1/1/02–12/31/02
Stainless Steel Wire Rod, A–351–819	1/1/02–12/31/02
Canada: Brass Sheet and Strip, A–122–601	1/1/02–12/31/02
France:	
Anhydrous Sodium Metasilicate (ASM), A–427–098	1/1/02–12/31/02

	Period
Stainless Steel Wire Rods, A–427–811	1/1/02–12/31/02
Taiwan: Top-of-the-Stove Stainless Steel Cooking Ware, A–583–603	1/1/02–12/31/02
The People's Republic of China:	
Folding Gift Boxes, A–570–866	8/6/01–12/31/02
Potassium Permanganate, A–570–001	1/1/02–12/31/02
The Republic of Korea: Top-of-the Stove Stainless Steel Cooking Ware, A–580–601	1/1/02–12/31/02
Countervailing Duty Proceedings	
Brazil: Brass Sheet and Strip, C–351–604	1/1/02–12/31/02
Taiwan: Top-of-the-Stove Stainless Steel Cooking Ware, C–583–604	1/1/02–12/31/02
The Republic of Korea: Top-of-the-Stove Stainless Steel Cooking Ware, C–580–602	1/1/02–12/31/02

Suspension Agreements

None.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of January 2003. If the Department does not receive, by the last day of January 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 23, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–33133 Filed 12–31–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–827]

Notice of Final Rescission of Antidumping Duty Administrative Review: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Rescission of Antidumping Duty Administrative Review.

SUMMARY: We have determined that the first administrative review of Tubos de Acero de Mexico, S.A. ("TAMSA") should be rescinded.

EFFECTIVE DATE: (Insert date of publication in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: James Terpstra, Mark Young, or George McMahon, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3965, (202) 482–6397, or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Case History

On September 4, 2002, the Department published the preliminary notice of intent to rescind this administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe ("SLP") from Mexico, with respect to Tubos de Acero de Mexico, S.A. ("TAMSA"). *See Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Preliminary Notice of Intent to Rescind Administrative Review*, 67 FR 56531 (September 4, 2002). As discussed in the preliminary notice, this review is intended to cover shipments of subject merchandise by TAMSA, during the period of review ("POR") February 4, 2000, through July 31, 2001. However, based upon our shipment data query and examination of entry documents, we determined that TAMSA was a non-shipper for the purpose of this review in our preliminary results. We invited parties to comment on our preliminary results (67 FR at 56533). However, interested parties did not submit case briefs or request a hearing. In summary, there have been no changes since the Department published its preliminary notice of intent to rescind this administrative review.

Scope of the Review

The products covered are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials ("ASTM") A-53,

ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and the American Petroleum Institute ("API") 5L specifications and meeting the physical parameters described below, regardless of application, with the exception of the exclusions discussed below. The scope of this review also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of this review are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this review are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and insome oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from the scope of this review are:

A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications.

B. Finished and unfinished oil country tubular goods ("OCTG"), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

C. Products produced to the A-335 specification unless they are used in an application that would normally utilize ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications.

D. Line and riser pipe for deepwater application, *i.e.*, line and riser pipe that is (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.*, "API 5L").

With regard to the excluded products listed above, the Department will not instruct Customs to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered

application. If such information is provided, the Department will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-335 specification is being used in an A-106 application, it will require end-use certifications for imports of that specification. Normally the Department will require only the importer of record to certify to the end-use of the imported merchandise. If it later proves necessary for adequate implementation, the Department may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("Customs") purposes, the written description of the merchandise subject to this scope is dispositive.

Rescission of First Administrative Review

We provided interested parties with an opportunity to comment on the preliminary results. As noted above, however, we received no comments from any party. As discussed in detail in the preliminary results, because TAMSA made no entries, exports or sales of the subject merchandise to the U.S. during the POR, we determined that it was a non-shipper. In accordance with 19 CFR 351.213(d)(3) and consistent with Department practice, we are rescinding our review of TAMSA (*see, e.g., Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results of 1999–2001 Administrative Review and Partial Rescission of Review*, 67 FR 68987 (November 14, 2002); *see also, Frozen Concentrated Orange Juice From Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 40913 (June 14, 2002)).

This notice also serves as a reminder to parties subject to an administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

This determination is issued and published pursuant to sections 751(a) and 777(i) of the Act.

Dated: December 24, 2002.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–33134 Filed 12–31–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Channel Islands National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Channel Islands National Marine Sanctuary (CINMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Business Representative and Tourism Representative. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the Council's Charter.

DATES: Applications are due by January 10, 2003.

ADDRESSES: Application kits may be obtained from Nancy Berenson at Channel Islands National Marine Sanctuary, 115 Harbor Way, Suite 150, Santa Barbara, CA 96825. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Michael Murray at (805) 884–1464, or *michael.murray@noaa.gov*, or visit the CINMS Web site at: *http://www.cinms.nos.noaa.gov*.

SUPPLEMENTARY INFORMATION: The CINMS Advisory Council was originally established in December 1998 and has a broad representation consisting of 20 members, including ten government agency representatives and ten members from the general public. The Council functions in an advisory capacity to the Sanctuary Manager. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources, and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting in developing an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the National Marine Sanctuary Program.

Authority: 16 U.S.C. 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 18, 2002.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–33137 Filed 12–31–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001206342–2305–03; I.D. 102802A]

RIN 0648–ZB00

Financial Assistance for Community-based Habitat Restoration Projects

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The purpose of this document is to invite the public to submit proposals for available funding to implement grass-roots habitat restoration projects that will benefit living marine resources, including anadromous fish, under the NOAA Community-based Restoration Program (CRP). This document describes the conditions under which applications (project proposals) will be accepted under the CRP, and describes criteria under which applications will be evaluated for funding consideration.

Projects funded through the CRP will be expected to have strong on-the-ground habitat restoration components that provide educational and social benefits for people and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. Proposals selected for funding through this solicitation will be implemented through a project grant, cooperative agreement, or interagency transfer.

DATES: Applications for funding under the CRP will be accepted upon publication of this document in the **Federal Register** and must be received by or postmarked by March 3, 2003. Applications received or postmarked after that time will not be considered for funding. Applications submitted via the U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. Applications delivered by a delivery service after the postmark date will be accepted for review if the applicant can document that the application was provided to the delivery service on or prior to the specified postmark cut-off date. In any event, applications received later than 15 business days following the closing date will not be accepted. No facsimile or electronic mail applications will be accepted.

ADDRESSES: Send applications to Christopher D. Doley, Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910–3282; ATTN: CRP Project Applications.

See **SUPPLEMENTARY INFORMATION** section under *Electronic Access* for additional information on the CRP and for application form information.

FOR FURTHER INFORMATION CONTACT: Robin J. Bruckner or Alison Ward at(301)713–0174, or by e-mail at *Robin.Bruckner@noaa.gov* or *Alison.Ward@noaa.gov*.

SUPPLEMENTARY INFORMATION

I. Program Description

The CRP, a financial and technical Federal assistance program, promotes strong partnerships at the national, regional and local level to fund grass-roots, community-based activities that restore living marine resources and their habitats and promote stewardship and a conservation ethic for NOAA trust resources. NOAA trust resources are living marine resources that include commercial and recreational fishery resources (marine fish and shellfish and their habitats); anadromous species (fish, such as salmon and striped bass that spawn in freshwater and then migrate to the sea); endangered and threatened marine species and their habitats; marine mammals, turtles, and their habitats; marshes, mangroves, seagrass beds, coral reefs, and other coastal habitats; and resources associated with National Marine Sanctuaries and National Estuarine Research Reserves. Habitats in the Great Lakes region are not covered by this solicitation.

The CRP's objective is to bring together citizen groups, public and nonprofit organizations, watershed groups, industry, corporations and businesses, youth conservation corps, students, landowners, academics, and local government, state, and Federal agencies to cooperatively implement habitat restoration projects. Partnerships developed at national, regional and local levels contribute funding, land, technical assistance, workforce support or other in-kind services to promote citizen participation in the improvement of locally important living marine resources, as well as develop local stewardship and monitoring activities to sustain and evaluate the success of the restoration.

The CRP recognizes the significant role that communities can play in habitat restoration, and acknowledges that habitat restoration is often best implemented through technical and monetary support provided at a community level. Community-based restoration projects supported by the CRP are successful because they have significant local backing, depend upon citizens hands-on involvement, and typically involve NOAA technical assistance or oversight. The role of NOAA in the CRP is to help identify potential restoration projects, strengthen the development and implementation of sound restoration projects and science-based monitoring of such projects within communities, and develop long-term, ongoing national and regional partnerships to support community-based restoration efforts of living marine resource habitats across a wide geographic area. For more information on the CRP, see *Electronic Access*.

II. Authority

The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the Reorganization Plan No. 4 of 1970, to provide grants or cooperative agreements for fisheries habitat restoration.

III. Catalogue of Federal Domestic Assistance

The CRP is described in the "Catalogue of Federal Domestic Assistance," under program number 11.463, Habitat Conservation.

IV. Eligible Applicants

Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Applications from Federal agencies will be considered. Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis. Although Federal agencies are eligible to apply under this solicitation, they are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others that are eligible to apply, rather than seeking project funding directly from the CRP. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this document. For applications funded through cooperative agreements, substantial involvement of the Federal government in the project may include, but is not limited to, activities such as hands-on technical or permitting assistance, monitoring the progression of the restoration through site visits, and involvement in public events to highlight restoration activities. Proposals selected for funding from a non-NOAA Federal agency will be funded through an interagency transfer.

The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal financial assistance programs. DOC/

NOAA encourages proposals for habitat restoration projects involving MSIs according to the criteria in this document.

V. Eligible Restoration Activities

NOAA is interested in funding projects that will result in on-the-ground restoration of habitat to benefit living marine resources, including anadromous fish species. Restoration is defined here as activities that contribute to the return of degraded or altered marine, estuarine, coastal and freshwater anadromous fish habitats to a close approximation of their condition prior to disturbance. Restoration may include, but is not limited to, improvement of coastal wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passage; reef/substrate/habitat creation; establishment of riparian buffer zones and improvement of freshwater habitat features that support anadromous fishes; exclusionary fencing and planting; planting of native coastal wetland and submerged aquatic vegetation; and enhancement of feeding, spawning and growth areas essential to marine or anadromous fish. NOAA recognizes that accomplishing restoration is a multi-faceted effort involving project design, engineering services, permitting, construction, oversight and monitoring.

In general, proposed projects should clearly demonstrate anticipated benefits to habitats, such as salt marshes, seagrass beds, coral reefs, mangrove forests, and riparian habitat near rivers, streams and creeks used by anadromous fish, or where fish passage is certain to be restored to habitat formerly used by anadromous fish. Priorities for habitat restoration activities include: areas identified by NOAA Fisheries as essential fish habitat (EFH) and areas within EFH identified as Habitat Areas of Particular Concern; areas identified as critical habitat for federally or state listed marine and anadromous species; areas identified as important habitat for marine mammals and turtles; watersheds or such other areas under conservation management as special management areas under state coastal management programs; and other important commercial or recreational marine fish habitat, including degraded areas that historically were important habitat for living marine resources. To protect the Federal investment, projects on private lands need to provide assurance that the project will be maintained for its intended purpose for the life of the project. Projects must involve significant community support through an educational and/or volunteer component tied to the restoration activities. Implementation of on-the-ground habitat restoration projects must involve community outreach and monitoring to assess project success, and may involve limited pre-implementation activities, such as engineering and design and short-term baseline studies. Proposals emphasizing a singular restoration component, such as only outreach or program coordination are discouraged, as are applications that propose to expand an organization's day-to-day activities, or that primarily seek support for administration, salaries, overhead and travel. The CRP anticipates the availability of limited funds for high quality, quantitative monitoring projects to advance the science and technology of coastal and marine habitat restoration. Proposals emphasizing science-based monitoring of existing or simultaneously proposed CRP projects are encouraged.

Although NOAA recognizes that water quality and land use issues may impact habitat restoration efforts, this initiative is intended to fund physical habitat restoration projects. The following restoration projects will not be eligible for funding: (1) Activities that constitute legally required mitigation for the adverse effects of an activity regulated or otherwise governed by state or Federal law; (2) activities that constitute restoration for natural resource damages under Federal or state law, (3) activities that are required by a separate consent decree, court order, statute or regulation, and (4) direct water quality improvement measures, including wastewater treatment plant upgrades or combined sewer outfall improvements. Funds from the CRP may be sought to enhance restoration activities beyond the scope legally required by these activities. Because funds are limited, funding land purchase agreements, conservation easements, and artificial reef projects to create habitat where it did not exist historically will be a low priority.

VI. Funding Availability

This solicitation announces that funding of up to $2,000,000 is expected to be available for community-based habitat restoration in FY 2003. The NOAA Restoration Center anticipates that typical project awards will range from $50,000 to $200,000; NOAA will not accept proposals for under $25,000 or proposals for over $250,000 under this solicitation. There is no guarantee that sufficient funds will be available to make awards for all proposals. The number of awards to be made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested for initiating restoration projects by the applicants, the merit and ranking of the proposals, and the amount of funds made available to the CRP by Congress. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this document does not obligate NOAA to award any specific project or obligate all or any parts of any available funds.

VII. Matching Requirements

The overall focus of the CRP is to provide seed money to individual projects that leverage funds and other contributions from a broad public and private sector to implement locally important habitat restoration to benefit living marine resources. To this end, applicants are encouraged to demonstrate a minimum 1:1 non-Federal match for CRP funds requested to complete the proposed project. NOAA strongly encourages applicants to leverage as much investment as possible; applicants with less than 1:1 match will not be disqualified.

For non-Federal applicants, the match can come from a variety of public and private sources and can include in-kind goods and services; cash match is highly encouraged. Federal funds may not be considered matching funds. Applicants are permitted to combine contributions from additional non-Federal partners in order to meet the 1:1 match expected. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer.

VIII. Award Period

Generally, the CRP will make awards only to those projects where requested funding will be used to complete proposed restoration activities, with the exception of post-construction monitoring, within a period of 24 months from the approved start date of the project. If an application is selected for funding, NOAA has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Any subsequent proposal to continue work on an existing project must be submitted to the competitive process for consideration and will not receive preferential treatment. Renewal of an award to increase funding or to extend the period of performance is at the total discretion of NOAA.

IX. Electronic Access

Information on the CRP, including examples of community-based habitat restoration projects that have been funded to date, can be found on the world wide web at *http://www.nmfs.noaa.gov/habitat/restoration/community*. The standard NOAA application forms and instructions for applicants are accessible through this web site, or they can be obtained from the NOAA Restoration Center (see **ADDRESSES**). Potential applicants are invited to contact NOAA Restoration Center staff before submitting an application to discuss the applicability of project ideas to the CRP's goals and objectives, and to request an application package that contains instructions for submitting NOAA standard grants applications and supplementary instructions specific to the NOAA Community-based Restoration Program.

X. Application Process

To submit a proposal, a complete NOAA standard grants application package should be filed in accordance with the guidelines in this document. Each application should include all specified sections as follows: Cover sheet-an applicant must use Office of Management and Budget (OMB) Standard Form 424 as the cover sheet for each project; budget detail (SF 424A and budget justification narrative); grant assurances SF424B and CD–511, and SF-LLL and CD–346 if applicable; narrative project description, and curriculum vitae or resume of primary project personnel. Budgets must include a detailed breakdown by category of cost (object class) separated into Federal and non-Federal shares as they relate to specific aspects of the project, with appropriate justification for both the Federal and non-Federal shares.

In general, applications should clearly demonstrate the broad-based benefits expected to specific habitats, and how these benefits will be achieved through the proposed restoration activities. The narrative project description should be no more than 12 double-spaced pages long, in 12–point font, and should give a clear presentation of the proposed work. It should identify the problems the project will address and describe short- and long-term objectives and goals, the methods for carrying out and monitoring the project, and the project's relevance to enhancing habitat to benefit living marine resources. The project narrative should describe the organizational structure of the applicant group, detail its qualifications, and identify proposed project staff; participants (project partners) other than the applicant, and their contributions should be identified. Applicants should indicate if the project has been submitted for funding consideration elsewhere, whether the funds requested are Federal or non-Federal, and what amount has been requested or secured from other sources. The need for assistance should be demonstrated, and the narrative should provide assurance that all necessary environmental permits and consultations will be secured prior to the use of Federal funds for construction. Applicants should not assume prior knowledge on the part of NOAA as to the relative merits of the project described in the application.

Applications should not be bound in any manner and should be printed on one side only. Three hard copies (including one signed original) of each application are required and must be submitted to the NOAA Restoration Center (see **ADDRESSES**). Applicants may opt to submit additional hard copies (seven are needed for reviewing purposes) if it does not cause a financial hardship; an additional copy only may also be submitted electronically in either Microsoft Word or WordPerfect formats on a PC-compatible floppy disk or CD ROM. Applications for multiple projects submitted by the same applicant must be submitted in separate envelopes.

XI. Indirect Costs

The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Indirect costs are essentially overhead costs for basic operational functions (e.g., lights, rent, water, insurance) that are incurred for common or joint objectives and therefore cannot be identified specifically within a particular project. For this solicitation, the Federal share of the indirect costs must not exceed the lesser of either the indirect costs the applicant would be entitled to if the negotiated Federal indirect cost rate were used or 25 percent of the direct costs proposed. For those situations in which the use of the applicant's indirect cost rate would result in indirect costs greater than 25 percent of the Federal direct costs, the difference may be counted as part of the non-Federal share. A copy of the current, approved negotiated indirect cost agreement with the Federal Government should be included with the application. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

XII. Project Selection Process

Applications will be screened by CRP staff to determine if they are eligible, complete and in accordance with instructions detailed in the standard NOAA Grants Application Package. Eligible restoration proposals will undergo a technical review, ranking, and selection process. As appropriate during this process, the NOAA Restoration Center will solicit individual technical evaluations of each project proposed and may request evaluations from other NOAA offices, the Regional Fishery Management Councils, other Federal and state agencies, such as state coastal management agencies and state fish and wildlife agencies, and private and public sector restoration experts who have knowledge of a specific applicant, program or its subject matter. Proposals also will be reviewed by NOAA regional and headquarters staff to determine how well they meet the stated aims of the CRP, and how well the proposal meets the goals of the NOAA RC.

Applications for habitat restoration projects will be evaluated by individual technical reviewers, including those mentioned in the above paragraph, according to the criteria and weights described in this solicitation. The proposals will be rated, and reviewer comments and composite project ranks will be presented to the Director of the NOAA Restoration Center (Director). The Director, in consultation with CRP staff, will consider the evaluations and may take into account the following: (a) Diversity of geographic location and habitat types to be restored; (b) diversity of applicants; (c) degree of duplication of proposed actiyities with other projects that are currently in effect or approved for funding by NOAA and other Federal agencies; (d) factors that may not be known by technical reviewers, including past performance of the applicant, that would affect achievement of the CRP's objectives as described in this announcement and the CRP Guidelines (65 FR 16890, March 30, 2000); and (e) the availability of funds. Hence, awards may not necessarily be made to the highest scored proposals. The Director, in consultation with CRP staff, will select the proposals to be recommended to the Grants Management Division for funding and determine the amount of funds available for each approved proposal. Unsuccessful applicants will be notified in writing that their proposal was not among those recommended for funding, and unsuccessful applications will be kept on file until the close of the following fiscal year then destroyed.

Successful applicants may be asked to modify objectives, work plans, or budgets prior to final approval of an award. The exact amount of funds to be awarded, the final scope of activities, the project duration, and specific NOAA cooperative involvement with the activities of each project will be determined in pre-award negotiations among the applicant, the NOAA Grants Office, and the NOAA CRP staff. Projects should not be initiated in expectation of Federal funding until a notice of award document is received from the NOAA Grants Office.

Successful applicants generally will be selected approximately 60 days after the close of this solicitation. The earliest date for receipt of awards will be approximately 120 days after the close of this solicitation, when all NOAA/applicant negotiations of cooperative activities have been completed. Applicants should consider this selection and processing time in developing requested start dates for proposed restoration activities.

XIII. Evaluation Criteria

Reviewers will assign scores to proposals ranging from 0 to 60 points based on the following four evaluation criteria and respective weights.

(1) *Potential of the Project to Benefit Living Marine Resources (15 points)*

Proposals will be evaluated on the extent of proposed habitat restoration activities and the type(s) of habitat(s) that will be restored. In particular, NOAA will evaluate proposals based on the amount and type of habitat proposed for restoration and the potential of the applicant to restore, protect, conserve, and enhance habitats and ecosystems vital to self-sustaining populations of living marine resources under NOAA Fisheries stewardship; whether the habitat(s) to be restored will benefit commercial, recreational, threatened or endangered species; whether the proposal addresses a priority habitat, restoration need, special consideration, or is part of a watershed or community stewardship plan; whether the effects of restoration are expected to persist; and whether the proposed project will complement or encourage other local restoration activities. Projects on permanently protected lands may be given priority consideration. Proposals for science-based monitoring of existing or simultaneously proposed CRP projects will be evaluated on the extent to which the potential results advance restoration methods, techniques, and project implementation.

(2) *Technical Merit and Adequacy of Project Implementation Plan (15 points)*

Proposals will be evaluated on the technical feasibility of the project from both biological and engineering perspectives, and on the qualifications and past experience of the project leaders and/or partners in designing, implementing and effectively managing and overseeing projects that benefit living marine resources, including anadromous fish species. Communities and/or organizations developing their first locally-driven restoration project may not be able to document past experience and, therefore, will be evaluated on the basis of their potential to effectively manage and oversee all project phases and on the availability of NOAA or other technical expertise to guide the project to a successful completion.

Proposals also will be evaluated on the adequacy of the implementation plan and the applicant's ability to: deliver the restoration objective stated in the proposal; demonstrate that the proposed activity will result in tangible benefits to living marine resources and will be sustainable and long-lasting; provide for long-term management of the restored resource, including adequate monitoring and a method for evaluating project success; and provide assurance that implementation of the project will meet all Federal and state environmental laws by obtaining applicable permits.

(3) *Community Commitment and Partnership Development (15 points)*

Proposals will be evaluated on activities proposed to involve citizens and broaden their participation in coastal habitat restoration or science-based monitoring and the depth and breadth of community support, as reflected by the diversity and strength of project partners. Community participation may include: (a) hands-on training, restoration and monitoring activities undertaken by volunteers; (b) sponsorship by local entities, either through in-kind goods and services (earth-moving services, technical expertise, conservation easements) or cash contributions; (c) public education and outreach; (d) support from state and local governments; and (e) ability to achieve long-term stewardship for restored living marine resources and to generate a community conservation ethic.

(4) Cost-effectiveness and Budget Justification (15 points)

Proposals will be evaluated on the percentage of funds that will be dedicated to all phases of project implementation including physical, on-the-ground coastal habitat restoration and/or science-based monitoring, compared to the percentage that is for administration, salaries, overhead and travel. Applications proposing to use restoration funds to expand an organization's day-to-day activities are unlikely to obtain a high score under this criterion. To encourage on-the-ground restoration, funding for salaries must be used to support staff directly involved in accomplishing the restoration work. Proposals also will be evaluated on the need for funding and the overall leverage of NOAA funds anticipated, including the amount of cash match; the potential for, or demonstrated NOAA involvement in, the project; the ability to which the proposed project is likely to catalyze future restoration and protection of living marine resources; and the ability of the applicant to demonstrate that a significant benefit will be generated for a reasonable cost. NOAA will expect cost-sharing to leverage funding and to further encourage partnerships among government, industry, and academia.

XIV. Allowable Costs

Funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the project. Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are "necessary and reasonable." Allowable costs are determined by reference to the OMB Circulars A–122, "Cost Principles for Non-profit Organizations" A–21, "Cost Principles for Education Institutions" A–87, "Cost Principles for State, Local and Indian Tribal Governments" and Federal Acquisition Regulation, codified at 48 Code of Federal Regulations, subpart 31.2 "Contracts with Commercial Organizations."

XV. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

Applications under this program are subject to the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Classification

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act [5 U.S.C. 553 (a) (2)] or by any other law for this document concerning grants, benefits, and contracts. Accordingly, a regulatory flexibility analysis is not required by the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The CRP will determine National Environmental Policy Act compliance on a project by project basis.

This action has been determined to be not significant for purposes of Executive Order 12866.

The use of the standard NOAA grants application package referred to in this notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A. 424B, SF-LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: December 27, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–33136 Filed 12–31–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2170–000 and ER02–2170–001]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell: Aquila, Inc.; Order Accepting for Filing and Suspending Power Sales and Purchase Agreement, Establishing Hearing Procedures, and Providing Guidance on Affiliate Sales Policy

December 20, 2002.

1. In this order, we will accept, suspend, make effective subject to refund, and set for hearing, Aquila Inc.'s (Aquila) executed Master Power Sales and Purchase Agreement (Agreement) for the sale of electric energy to its affiliated power marketer, Aquila Merchant Services (AMS). This order establishes an evidentiary hearing to determine whether the price charged by Aquila for the affiliate sale to AMS under the Agreement addresses the Commission's affiliate abuse concerns; *i.e.*, was not below the relevant market price. This order benefits customers because it provides guidance on the Commission's affiliate sales policy and ensures that customers are protected from affiliate abuse.

Background

2. On June 26, 2002, Aquila filed the Agreement with the Commission for the sale of up to 70 MWh per hour of electric energy from Aquila to its affiliated power marketer, AMS, for the period June 28, 2002 through August 31, 2002.[1] The Agreement established the sale price as the highest of: (1) $32.00 per MWh; (2) 110 percent of the seller's incremental cost; (3) the seller's highest hourly priced sale during the hour; or (4) an hourly price tied to the "Into Cinergy" trading hub prices for that day, as published by Megawatt Daily.[2] According to Aquila, this would ensure that the sale price under the Agreement would not be too low and could not result in harm to Aquila's captive ratepayers. Aquila requested an effective date of June 28, 2002.

3. On August 23, 2002, Commission staff issued a deficiency letter requesting that Aquila: (1) Provide cost support for the $32.00 per MWh rate; (2) explain why "Into Cinergy" as published by Megawatt Daily is an appropriate index; and (3) further explain the 70 percent and 130 percent multiplier. The deficiency letter also required that the Agreement be filed as a stand-alone rate schedule.

4. During the period June 28, 2002 through August 31, 2002, Aquila went forward with the affiliate sale to AMS pursuant to the Agreement.

5. On October 22, 2002, Aquila filed its response to the deficiency letter. It explains that the $32.00 per MWh rate was a negotiated rate floor to be utilized only during an hour when the "Into Cinergy" price, 110 percent of Aquila's incremental cost and the price in the highest priced Aquila off-system sale were all below $32.00 in a given hour. Aquila also claims that "Into Cinergy" is the appropriate index for the Aquila system because it represents the closest liquid trading point to the market in Missouri. According to Aquila, the only other alternative, the "Into Entergy" trading hub, is not liquid and there are frequent transmission constraints between Entergy and Missouri which cause a separation of market prices. In addition, Aquila explains that the 70 percent and 130 percent multipliers were developed as a proxy for converting the average 16-hour "Into Cinergy" trading hub market price into useful hourly prices.[3] Further, Aquila states that in every one of the 36 hours of the Agreement under which energy was purchased, the sales price was higher than the relevant adjusted "Into Cinergy" price.[4] Aquila also designates the Agreement as Aquila's FERC Rate Schedule No. 120.

Notice of Filing

6. Notice of Aquila's June 26, 2002 filing was published in the **Federal Register**, 67 FR 45,716 (2002), with comments, interventions or protests due on or before July 17, 2002. None was filed. Notice of Aquila's October 22, 2002 filing was published in the **Federal Register**, 67 FR 67,165 (2002), with comments, interventions or protests due on or before November 12, 2002. None was filed.

Discussion

7. A traditional public utility with market-based rate authority is prohibited from making sales to an affiliate absent prior approval from the Commission in a separate filing under section 205 of the Federal Power Act (FPA).[5] The Commission requires that this prohibition be included in the utility's market-based rate tariff unless the Commission has otherwise authorized the utility to transact with its affiliates.[6]

8. The Commission has also stated that affiliate abuse takes place when a traditional public utility and its affiliated power marketer transact in ways that result in a transfer of benefits from the traditional public utility (and its captive customers) to the affiliated power marketer (and its shareholders).[7] Because sales of power between an

[1] Aquila stated that it filed the Agreement with the Commission because it involves a sale of electric energy from Aquila to an affiliated power marketer.

[2] Aquila stated that the sale price would be no lower than 70 percent of the "Into Cinergy" index for hours between 6 a.m. and noon and between 8 p.m. and 10 p.m.; and 130 percent of the "Into Cinergy" index for hours between noon and 8 p.m. *See* June 26 Transmittal at 2.

[3] Aquila states that the 70 percent multiplier discounts the 16-hour "Into Cinergy" Hub price for the morning and evening hours when the typical hourly market is lower than the 16-hour average while the 130 percent multiplier applies a premium for the peak hours when the hourly market is above the average. It asserts that while it did not use a study to determine the 70 percent and 130 percent multipliers, it determined that these numbers were conservative based on the actual hourly prices in the market. *See* October 22 Transmittal at 3.

[4] Aquila states that energy was scheduled during only five percent of the hours when the Agreement was operative, which it claims demonstrates that the pricing was not favorable to the purchaser. *See* October 22 Transmittal at 4. Aquila attaches an after-the-fact analysis of the hourly energy prices for the "Into Cinergy" hub as reported in Megawatt Daily for the 16-hour period of 6 a.m. through 10 p.m. for June, July and August 2002. *See* Attachment A, October 22 Transmittal.

[5] 16 U.S.C. 824d (2000).

[6] *See, e.g.*, AES Placerita, Inc. *et al.*, 89 FERC ¶ 61,202 at 61,613 (1999).

[7] *See, e.g.*, Heartland Energy Services Inc., 68 FERC ¶ 61,223 at 62,062 (1994).

affiliated power marketer and an affiliated public utility are not at arms-length and present the situations in which affiliate abuse may be the most prevalent, the Commission requires that no sale of power occur unless the Commission approves the transaction in a separate rate filing under section 205.[8] In evaluating whether to approve a request to sell power to an affiliate where a traditional public utility, such as Aquila, makes sales to an affiliated power marketer, the Commission is concerned that such sales not be made at a rate that is too low (*i.e.*, below market price).[9]

9. In the instant case, Aquila filed under section 205 of the FPA for authority to make sales to its affiliated power marketer pursuant to the terms and conditions of the Agreement. However, Aquila submitted its proposal two days prior to the service commencement date and proceeded to transact under the Agreement without prior Commission approval. As noted, initiating such a sale before receiving our authorization is not consistent with our precedent.

10. Aquila submits that the sale price as established in the Agreement addresses the Commission's affiliate abuse concerns because it sets the sale price at the highest of: (1) $32.00 per MWh; (2) 110 percent of the seller's incremental cost; (3) the seller's highest hourly priced sale during the hour or; (4) an hourly price tied to the "Into Cinergy" trading hub prices for that day, as published by Megawatt Daily. Although Aquila attempts to demonstrate why the pricing protections proposed in the Agreement would produce a sales price that is not below the market price, the more appropriate question at this point in time, given that the term of the Agreement has concluded, is what harm, if any, captive customers have experienced as a result of the transactions. In particular, the key issue is whether the price actually charged for the sales in question under the Agreement satisfied the Commission's affiliate abuse concerns; *i.e.*, was not below the relevant market price.

11. Because we are unable to resolve this issue based on the record before us, we will require an evidentiary hearing. We encourage the parties to provide a diverse range of evidence for purposes of establishing relevant market prices. This should include benchmark evidence which shows the prices, terms and conditions of sales made by non-affiliated sellers or evidence of the prices that non-affiliated buyers were willing to pay for similar services from Aquila. Accordingly, we will accept the Agreement for filing, suspend it for a nominal period to become effective June 28, 2002, subject to refund, and establish an evidentiary hearing on the pricing issue. If Aquila is found to have transacted at a price below the relevant market price, the Commission will consider, among other remedies, requiring a surcharge up to the market price with interest.[10]

12. Finally, we reaffirm that sales of power between a traditional public utility and its affiliates are not permitted without first receiving Commission approval of the transaction under section 205 of the FPA.[11]

The Commission orders:

(A) The Agreement is hereby accepted for filing and suspended for a nominal period, to become effective June 28, 2002, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR chapter 1), a public hearing shall be held in Docket No. ER02–2170–001, as discussed in the body of this order.

(C) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief Administrative Law Judge for that purpose, pursuant to 18 CFR 375.304 (2002), must convene a prehearing conference in this proceeding to be held within approximately fifteen (15) days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(D) The Secretary is hereby directed to publish a copy of this order in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 02–33093 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

[8] *See, e.g.*, Heartland Energy Services, Inc., 68 FERC ¶ 61,223 at 62,064 (1994); Southern Company Services, Inc., 72 FERC ¶ 61,324 at 62,047 (1995); Tucson Electric Power Company, 81 FERC ¶ 61,131 at 61,623 (1997); Central and South West Services, Inc., 82 FERC ¶ 61,001 at 61,003 (1998), *reh'g denied*, 85 FERC ¶ 61,444 (1998).

[9] *See, e.g.*, Pinnacle West Capital Corp., *et al.*, 91 FERC 61,290 (2000); *reh'g denied*, 95 FERC ¶ 61,300 (2001). *See also* Detroit Edison Co., 80 FERC ¶ 61,348 (1997) (*Detroit Edison*), where the Commission allowed sales by a public utility to its affiliated power marketer subject to the following conditions: (1) The sale must be at a rate that is no lower than the rate it charges non-affiliates; (2) the public utility must make the same offer to unaffiliated entities at the same time through its electronic bulletin board; (3) the public utility must simultaneously post the actual price charged to its affiliate for all transactions. *Id.* at 62,198.

[10] We note that we have the statutory authority to order such remedies as we may deem appropriate. 16 U.S.C. 825h (2000).

[11] See *supra* ¶ 7 & 9.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–090]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 23, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective as of November 4, 2002:

Substitute Original Sheet No. 461.
Substitute Original Sheet No. 654.

CEGT states that the purpose of this filing is to comply with the Commission's order issued October 31, 2002 in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings.

See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33058 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–329–003]

Great Lakes Gas Transmission Limited Partnership; Notice of Compiance Filing

December 26, 2002.

Take notice that on December 23, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets, proposed to be effective October 1, 2002:

Substitute First Revised Sheet No. 14A.
Substitute First Revised Sheet No. 15.
Substitute Fourth Revised Sheet No. 39A.
Substitute First Revised Sheet No. 39B.
Seventh Revised Sheet No. 40A.

Great Lakes states that these tariff sheets are being filed in compliance with the Commission's November 21, 2002 Order on Clarification and Rehearing in Docket No. RP00–329–002 (November 21 Order), wherein the Commission denied rehearing and clarified that shippers may add or change to primary points within the zones for which they are paying, to the extent there is available capacity. Great Lakes was directed to file revised tariff sheets within thirty (30) days of the November 21 Order consistent with the modifications set forth in that Order. The tariff sheets included in this compliance tariff filing reflect those required modifications.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33059 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–530–001]

Guardian Pipeline, L.L.C.; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 20, 2002 Guardian Pipeline, L.L.C. (Guardian), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets, as listed in Appendix A attached to the filing, to be effective February 1, 2003.

Guardian states that in the Order issued November 29, 2002, the Commission generally accepted Guardian's filing, including pro forma tariff sheets, made on September 3, 2002, in Docket No. RP02–530–000 in compliance with Order No. 637 (Order No. 637, Regulations of Short Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs. (CCH) 31,091, Order No. 637–A, FERC Stats. & Regs. (CCH) 31,099, Order No. 637–B, 92 F.E.R.C. (CCH) 61,062 (2000), aff'd in part and remanded in part sub nom., Interstate Natural Gas Ass'n of America v. FERC, 285 F.3d 18 (DC Cir. 2002)) and directed Guardian to file actual tariff sheets, consistent with the directives in the Order, to implement Guardian's Order No. 637 compliance filing. Guardian states that this filing is to comply with the directives set forth in the Order.

Guardian states that copies of this tariff filing are being served on its shippers, the Wisconsin and Illinois public service commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 2, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33063 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docekt No. RP03–210–000]

Guardian Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 26, 2002.

Take notice that on December 20, 2002, Guardian Pipeline, L.L.C. (Guardian), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets as listed in Appendix A attached to the filing, to be effective February 1, 2003.

Guardian states that the purpose of this filing is to two fold. First, Guardian is proposing to modify its cash-out mechanism to include a weekly pricing mechanism. Second, Guardian is proposing to strike certain language from its Pro Forma Service Agreement that prevents shippers that receive service at negotiated rates under Section 26.2 of the GT&C from protesting or otherwise contesting any filing by Transporter to adjust its rates and charges.

Guardian states that copies of this tariff filing are being served on its shippers and the Wisconsin and Illinois public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention Date: January 2, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33064 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–56–001]

Guardian Pipeline, L.L.C.; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 20, 2002, Guardian Pipeline, L.L.C. (Guardian), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets as listed in Appendix A attached to the filing, to be effective December 1, 2002.

Guardian states that in the Order issued November 29, 2002, the Commission, inter alia, accepted, subject to certain modifications, tariff sheets filed by Guardian on October 31, 2002, in Docket No. RP03–56–000 to implement an interruptible park and loan service under new Rate Schedule PAL and an enhanced aggregation and wheeling service under new Rate Schedule EAW. Guardian states that the Commission accepted those tariff sheets filed in Docket No. RP03–56–000 effective December 1, 2002, subject to Guardian making a compliance filing within thirty (30) days of the date of the Order. Guardian states that this filing is intended to comply with the directives set forth in the Order with respect to Docket No. RP03–56–000.

Guardian states that copies of this tariff filing are being served on its shippers, the Wisconsin and Illinois public service commissions and parties to this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 2, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33070 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–155–001]

In the Matter of Gulf South Pipeline Company, L.P.; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 20, 2002, Gulf South Pipeline Company (Gulf South), 20 East Greenway, Houston, Texas 77046, filed in the referenced proceeding, pursuant to section 7(c) of the Natural Gas Act, as amended, a compliance filing as required by the Commission's Order Issuing Certificate, issued November 21, 2001, (101 FERC 61,204 (2002). In this filing, Gulf South is submitting pro forma tariff sheets to revise its FSS-M Rate Schedule for the Magnolia Gas Storage Facility and providing an explanation of how it is marketing the firm storage capacity at Magnolia, along with a copy of the information package sent to interested parties. The filing is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link (please call (202) 502–8423 for assistance).

The name, address, and telephone number of the person to whom correspondence and communications concerning this application should be addressed is: J. Kyle Stephens, Director of Certificates; Gulf South Pipeline Company, L.P., 20 East Greenway Plaza, Houston, Texas, 77046; phone: (713) 544–7309; fax: (713) 544–3540; e:mail: *kyle.stephens@gulfsouthpl.com.*

Any person desiring to be heard or to make any protest with reference to said application should on or before January 16, 2003, file with the Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C F R 385.211 or 385.214, and the Regulations under the Natural Gas Act, 18 CFR 157.10. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. Instructions may be found on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33050 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–213–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes in FERC Gas Tariff

December 26, 2002.

Take notice that on December 20, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective January 19, 2003.

Second Revised Sheet No. 1
Third Revised Sheet No. 2
First Revised Sheet No. 25
First Revised Sheet No. 303
Second Revised Sheet No. 400
First Revised Sheet No. 401
First Revised Sheet No. 402
First Revised Sheet No. 403
Second Revised Sheet No. 404
Second Revised Sheet No. 405
Sheet Nos. 406–449
Sheet Nos. 456–499
Third Revised Sheet No. 502
First Revised Sheet No. 504
Original Sheet No. 1417
Original Sheet No. 1418
Original Sheet No. 1419
Original Sheet No. 1420
Original Sheet No. 1421
Sheet Nos. 1422–1499
Second Revised Sheet No. 1905
Second Revised Sheet No. 2002
Third Revised Sheet No. 2701
Fourth Revised Sheet No. 2702
Fourth Revised Sheet No. 3613
Second Revised Sheet No. 3705
Third Revised Sheet No. 3706
Second Revised Sheet No. 4010
Third Revised Sheet No. 4400

Gulf South states that it is proposing to modify various aspects of its tariff to recognize that firm storage services will be offered at both its Bistineau and Magnolia storage facilities. In addition, Gulf South states that it is proposing to establish guidelines under which the initial Magnolia firm storage capacity will be sold and additional auction procedures that will be followed by Gulf South to market available firm storage capacity from Magnolia after August 1, 2003 and Bistineau that is not subject to contractual right of first refusal.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676. or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention Date: January 2, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33067 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–153–003]

Horizon Pipeline Company, L.L.C.; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 23, 2002, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, with an effective date of December 23, 2002.

Horizon states that the purpose of this filing is to comply with the Commission's Order on Compliance with Order No. 637 issued in Docket Nos. RP02–153–000, *et al.*, on November 21, 2002 (Order). The Order approved, subject to a number of modifications, Horizon's Order No. 637 compliance plan submitted herein on January 30, 2002.

Horizon states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP02–153–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33061 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–214–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

December 26, 2002.

Take notice that on December 23, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, Third Revised Sheet No. 37, to become effective January 23, 2003.

KMIGT states that the purpose of this filing is to revise Section 18.5 of KMIGT's General Terms and Conditions (GT&C) in order to eliminate the five-year term matching cap concerning the exercise of the right of first refusal in compliance with the Commission Order on Remand issued October 31, 2002.

KMIGT states that a copy of this filing has been served upon all of its

customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33068 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–409–004 and RP00–631–003]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 23, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, with a effective date of December 23, 2002.

Natural states that the purpose of this filing is to comply with the Commission's Order on Compliance with Order Nos. 637, 587–G and 587–L, issued in Docket Nos. RP00–409–000 and RP00–631–000, *et al.*, on November 21, 2002. The Order approved, subject to a number of modifications, Natural's Revised and Restated Order No. 637 Compliance Plan submitted herein on September 28, 2001.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket Nos. RP02–409–000 and RP00–631–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33060 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–70–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Technical Conference

December 26, 2002.

In the Commission's order issued on December 6, 2002,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Friday, January 10, 2003, at 10:30 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33071 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

[1] PG&E Gas Transmission, Northwest Corporation, 101 FERC 61,280 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docekt No. RP02–445–002]

Sea Robin Pipeline Company; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 20, 2002, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 2, to be effective October 1, 2002.

Sea Robin states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to conform the pagination and content of Tariff Sheet No. 2 to reflect the Commission's acceptance of tariff revisions in Docket Nos. RP00–470–001 and RP02–445–000. Sea Robin is proposing no change to the content on Sheet No. 2 that has been accepted by the Commission in these two separate filings.

Sea Robin's states that copies of this filing are being served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS"

link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 2, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33062 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–212–000]

Sea Robin Pipeline Company; Notice of Flowthrough Crediting Mechanism

December 26, 2002.

Take notice that on December 20, 2002, Sea Robin Pipeline Company (Sea Robin) submitted its Annual Flowthrough Crediting Mechanism Filing. Sea Robin states that the purpose of this filing was made pursuant to Section 27 of the General Terms and Conditions of Sea Robin's FERC Gas Tariff which requires the crediting of certain amounts received as a result of resolving monthly imbalances between its gas and liquefiables shippers and under its operational balancing agreements as described in Section 6 of its Tariff, and to accumulate amounts received as a result of imposing scheduling penalties as described in section 5.8 of its Tariff.

Sea Robin reports that it received $665,506.21 in excess of amounts paid to shippers for the twelve months ended October 31, 2002. In accordance with Section 27.1, this excess amount will be credited to shippers, based upon shippers' transportation volumes for the twelve months ended October 31, 2002.

Sea Robin further states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 3, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33066 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516]

South Carolina Electric and Gas Company; Notice of Meetings to Discuss Three Filings Before the Commission and Soliciting Comments

December 26, 2002.

The Federal Energy Regulatory Commission (FERC or Commission) will hold meetings in the project area to discuss three matters pending before the Commission associated with the South Carolina Electric and Gas Company's (license or SCE&G) Saluda Project No. 516. The Saluda Project is located on the Saluda River in Richland, Lexington, Saluda, and Newberry counties, near Columbia, South Carolina.

The three matters are as follows: (1) The Commission's request for comments on the September 4, 2002, Environmental Assessment (EA), on SCE&G's applications to sell project lands for future development (subdockets –319, –321, –326, –329, –330, –330, –331, –332, –333, –354, –355, –356, –357, –358, and –359); (2) the Land Use and Shoreline Management Plan update (LUSMP) filed by the licensee on February 1, 2000, and supplemented on March 28, 2002, for Commission review and approval (subdocket –318); and (3)the investigation of alleged unauthorized clearing of lands within the project boundary (subdocket –353).

We invite the written and oral comments from federal and state resource agencies, non-governmental organizations, and the general public at the meetings. We will hold two meetings, one on January 21, 2003, from 6:30–9 p.m. at the Irmo Elementary School, 7401 Gibbes Street, Irmo, SC 29063 and the second meeting on January 22, 2003, from 8:30 a.m.–11:30 a.m. at the Embassy Suites Hotel, Columbia-Greystone, 200 Stoneridge Drive, Columbia, SC 29210. The public and agencies may attend either or both meetings.

SCE&G has requested that the meeting address: (1) A brief history and overview of Lake Murray shoreline management; (2) the status of FERC review of the LUSMP update; (3) the Commission's October 9, 2002, letter regarding shoreline vegetation; (4) the proposed recommendations of the land-sale EA; (5) the factual and scientific basis cited for FERC-imposed shoreline conditions; (6) the standard of proof required to refute allegations of LUSMP violations; (7) the appropriate means for determining factual and scientific basis for evaluation of project lands and waters; and (8) miscellaneous issues as they relate to the three matters.

While we appreciate the suggestions of the licensee, Commission staff will limit comments and discussions to the three maters identified above, and the upcoming licensing process. We also request that the licensee and/or state representative provide a status update on the proposed land swap/donation with the State of South Carolina.

The meetings will be recorded by a stenographer and will become part of the record for this project. An agenda for the meeting is attached.

Interested parties may also file written comments. All such comments (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–516 and appropriate subdocket) on any comments.

The deadline for filing comments is February 28, 2003.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Please direct any questions about this meeting to Jack Hannula at (202) 502–8917 or Elizabeth Jones at (202) 502–8246. Licensee contact is Mr. Brian McManus, (202) 879–5452, Attorney on behalf of SCE&G.

Linwood A. Watson, Jr.,
Deputy Secretary.

Saluda Project No. 516; South Carolina Gas & Electric Company

January 21 and January 22, 2002

Meeting Agenda

Irmo School, Tuesday, January 21:

6:30 Introduction and meeting procedures (FERC)
7 History and Overview of Shoreline Management (SCE&G)
7:30 Discussions on SCE&G's applications to sell project lands for future private development; the LUSMP filed for Commission review and approval, and the investigation of alleged unauthorized clearing of lands (All)
8:30 Status of proposed land swap/ donation to the state (SCE&G) 8:45 Status of SCE&G's relicensing plans (SCE&G)

Embassy Suites Hotel, Wednesday, January 22

8:30 Introduction and meeting procedures (FERC)
9 History and Overview of Shoreline Management (SCE&G)
9:40 Discussions on SCE&G's applications to sell project lands for future private development; the LUSMP filed for Commission review and approval, and the investigation of alleged unauthorized clearing of lands (All)
10:50 Status of proposed land swap/ donation to the state (SCE&G)
11:10 Status of SCE&G's relicensing plans (SCE&G)

Magalie R. Salas,
Secretary.
[FR Doc. 02–33054 Filed 12–31–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–211–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 26, 2002.

Take notice that on December 20, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective on January 1, 2003:

Sixth Revised Sheet No. 193.
First Revised Sheet No. 193A.
Sixth Revised Sheet No. 236.
First Revised Sheet No. 237.

Texas Gas states that the purpose of the instant filing is to comply with the Order on Remand issued by the Commission on October 31, 2002, which affirmed its determination on Order No. 637 that pipelines must permit a segmented transaction that consists of a backhaul and a forward haul to the same point that exceeds the shipper's maximum contract demand at that point.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the official service list, to Texas Gas's jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention Date: January 2, 2003.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–33065 Filed 12–31–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–215–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

December 26, 2002.

Take notice that on December 23, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective January 23, 2003:

Original Sheet No. 0
Original Sheet No. 10
Original Sheet No. 229
Original Sheet No. 258
Original Sheet No. 265

TransColorado states that the purposes of this filing are to reflect a transfer of ownership of an interest in the partnership, state a new issuing officer for the tariff, make some housekeeping changes, and to revise Section 18.5 of TransColorado's General Terms and Conditions (GT&C) in order to eliminate the five-year term matching cap concerning the exercise of the right of first refusal in compliance with the Commission Order on Remand issued October 31, 2002.

TransColorado states that a copy of this filing has been served upon all of its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33069 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–33–000, et al.]

Idaho Power Company, IDACORP Energy, L.P, et al.; Electric Rate and Corporate Filings

December 23, 200.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification:

1. Idahó Power Company, IDACORP Energy L.P.

[Docket No. EC03–33–000]

Take notice that on December 18, 2002, Idaho Power Company (Idaho Power) and IDACORP Energy, L.P. (IELP, collectively Applicants) filed an Application for Commission Approval of Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act. The jurisdictional facilities that are the subject of the Application are certain wholesale power sales transactions (Grays Harbor Transactions) between Idaho Power and Grays Harbor County Public Utility District No. 1. By their Application, Applicants seeks Commission approval for the assignment of the Grays Harbor Transactions from Idaho Power to IELP.

Comment Date: January 8, 2003.

2. Idaho Power Company, IDACORP Energy, L.P.

[Docket No. EC03–34–000]

Take notice that on December 18, 2002, Idaho Power Company (Idaho Power) and IDACORP Energy, L.P. (IELP, collectively Applicants) filed an Application for Commission Approval of Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act. The jurisdictional facilities that are the subject of the Application are certain wholesale power sales transactions (Overton Transactions) between Idaho Power and Overton Power District No. 5. By their Application, Applicants seeks Commission approval for the assignment of the Overton Transactions from Idaho Power to IELP.

Comment Date: January 8, 2003.

3. Mountain View Power Partners, LLC, San Gorgonio Power Corporation, Centennial Power, Inc., Mountain View Power Partners, LLC

[Docket Nos. EC03–35–000 and ER01–751–002]

Take notice that on December 19, 2002, Mountain View Power Partners, LLC (Mountain View), San Gorgonio Power Corporation (San Gorgonio) and Centennial Power, Inc. (Centennial) tendered for filing an application pursuant to Section 203 of the Federal Power Act for authorization to dispose of jurisdictional facilities. San Gorgonio will transfer 100% of the membership interests in Mountain View to Centennial. Mountain View owns and operates an approximately 66.6 MW wind power generating plant (Project) located in San Gorgonio Pass of Riverside County, California, near the city of Palm Springs. Mountain View is currently wholly owned by San Gorgonio. Pursuant to an acquisition agreement, the proposed transaction will result in the disposition of FERC-jurisdictional facilities consisting of Mountain View's market-based rate tariff, related power sales agreement, and minor interconnection facilities connecting the Project to the transmission grid. Mountain View also requests that the Commission accept this filing as a notice of change in status with respect to its market-based rate authorization.

Comment Date: January 9, 2003.

4. San Diego Gas & Electric Company

[Docket No. ER02–1790–001]

Take notice that on December 16, 2002, pursuant to Commission Order dated June 24, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its First Revised Service Agreement No. 1 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6., incorporating revisions to the Interconnection Facilities Agreement with Otay Mesa Generating Company, LLC (OMG). The revised Service Agreement implements Internal Revenue Service Notice 2001–82, "Expansion of Safe Harbor Provisions Under Notice 88–129", which provides in certain circumstances, regulated public utilities, such as SDG&E will not realize income upon contributions by interconnecting electric generators of certain interconnection facilities. The amendment further clarifies terms pertaining to creditworthiness requirements of OMG and the guarantor of OMG's financial obligations as contemplated by Section 10.22. The amendments were approved in the June 24, 2002 Letter Order, conditioned on SDG&E's filing of the Revised Service Agreement within thirty days. SDG&E requests that the filing be accepted out-of-time.

SDG&E states that copies of the filing have been served on OMG and on the California Public Utilities Commission.

Comment date: January 6, 2003.

5. New England Power Company

[Docket No. ER02–2568–002]

Take notice that on December 19, 2002, in compliance with the Commission's November 19, 2002 "Order Accepting Unexecuted Related Facilities Agreement, As Modified For Filing" (New England Power Company, 101 FERC 61,183), New England Power Company (NEP) submitted for filing First Revised Service Agreement No. 214 between NEP and Lake Road Generating Company, L.P. under NEP's open access transmission tariff, New England Power Company, FERC Electric Tariff, Original Volume No. 9.

Comment Date: January 9, 2003.

6. Commonwealth Edison Company

[Docket No. ER02–2598–001]

Take notice that on December 18, 2002, Commonwealth Edison Company (ComEd) tender for filing a refund report in compliance with the Commission's Order issued on November 21, 2002.

ComEd states that a copy of this filing is being served upon NRG Power Marketing, Inc.

Comment Date: January 8, 2003.

7. PJM Interconnection, L.L.C.

[Docket No. ER03–262–001]

Take notice that on December 19, 2002, the New PJM Co panies and PJM Interconnection, L.L.C. (PJM) submitted a filing to include the New PJM Companies as transmission owners

within PJM and to make associated revision to the PJM Transmission Owners Agreement, the PJM West Transmission Owners Agreement (West TOA), the PJM Operating Agreement, and the PJM Open Access transmission Tariff (PJM Tariff).

Comment Date: January 9, 2003.

8. Arizona Public Service Company

[Docket No. ER03–294–000]

Take notice that on December 19, 2002, Arizona Public Service Company submitted a Notice of Cancellation effective January 1, 2002, Service Agreement No. 60, FERC Electric Tariff, Volume No. 3 dated December 4, 2001.

Comment Date: January 9, 2003.

9. SESCO Enterprises, LLC.

[Docket No. ER03–295–000]

Take notice that on December 18, 2002, SESCO Enterprises, LLC. (SESCO) petitioned the Commission for acceptance of SESCO Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

SESCO intends to engage in wholesale electric power and energy purchases and sales as a marketer. SESCO is not in the business of generating or transmitting electric power.

Comment Date: January 9, 2003.

10. Southern Company Services, Inc.

Docket Nos. ER03–298–000]

Take notice that on December 18, 2002, Southern Company Services, Inc. (SCS) acting on behalf of Alabama Power Company (APC), filed the Interconnection Agreement (Agreement) between Mobile Energy Services, L.L.C. and APC. The Agreement allows Mobile Energy to interconnect its facility in Mobile, Alabama and to operate in parallel with APC's electric system. The Agreement is dated as of November 18, 2002 and terminates in one (1) year.

An effective date of November 18, 2002 has been requested.

Comment Date: January 8, 2003.

11. American Transmission Company LLC

[Docket No. ES03–18–000]

Take notice that on December 18, 2002, American Transmission Company LLC (ATCLLC) tendered for an Application Under Section 204 of the Federal Power Act for Authorization to Issue notes and debt securities with a total amount outstanding at one time not to exceed $710,000,000, to issue $393,000,000 in additional equity interests and for waiver of certain part 34 requirements.

Comment Date: January 8, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33076 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–36–000, et al]

Northwestern Wind Power, LLC, et al.; Electric Rate and Corporate Filings

December 24, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification:

1. Northwestern Wind Power, LLC

[Docket No. EC03–36–000]

Take notice that on December 20, 2002, Northwestern Wind Power, LLC (Northwestern) and Klondike Wind Power LLC (Klondike) filed an application for authorization pursuant to Section 203 of the Federal Power Act for Northwestern to sell, and for Klondike to purchase, certain assets of Northwestern's Klondike Project in Oregon. The transaction would transfer ownership of a 24 megawatt wind electric generation facility at the Klondike Project. Jurisdictional assets included in the transaction are a long-term power purchase agreement for the facility's entire output, and limited substation transmission facilities necessary to interconnect the facility's power to a transmitting utility.

Comment Date: January 7, 2003.

2. Flying Cloud Power Partners, LLC

[Docket No. EG02–32–000]

Take notice that on December 20, 2002, Flying Cloud Power Partners, LLC (Flying Cloud), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Flying Cloud, a Delaware limited liability company, will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities, and selling electric energy at wholesale. Flying Cloud is developing a 43.5 megawatt wind power generation facility to be located in Dickinson County, Iowa (the "Facilities"). The Facilities will be eligible facilities pursuant to Section 32(a)(2) of PUHCA. Flying Cloud states that it has served a copy of the filing on the Securities and Exchange Commission and the Iowa Utilities Board.

Comment Date: January 14, 2003.

3. Just Energy, LLC

[Docket No. ER02–2134–002]

Take notice that on December 19, 2002, Just Energy, LLC (Just Energy) tendered for filing a compliance filing in the above-referenced docket involving Just Energy, LLC Tariff Sheet No. 1.

Comment Date: January 10, 2003.

4. Virginia Electric and Power Company

[Docket No. ER03–106–002]

Take notice that on December 20, 2002, Virginia Electric and Power Company (the Dominion Virginia Power or Company), respectfully tendered for filing the second amended filing in this proceeding. Dominion Virginia Power respectfully requests a waiver of the Commission's regulations and permit an effective date of January 1, 2003, as requested in the filing of October 31, 2002.

Dominion Virginia Power states that copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, Old Dominion Electric Cooperative, and all customers under the wholesale cost based tariff.

Comment Date: January 10, 2003.

5. Flying Cloud Power Partners, LLC

[Docket No. ER03–296–000]

Take notice that on December 19, 2002, Flying Cloud Power Partners, LLC (Flying Cloud) tendered for filing pursuant to 18 CFR 385.205, an Application for Order Accepting Initial Rate Schedule, Granting Authorizations and Blanket Authority and Waving Certain Requirements.

Comment Date: January 9, 2003.

6. New York Independent System Operator, Inc.

[Docket No. ER03–297–000]

Take notice that on December 19, 2002, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Market Administration and Control Area Services Tariff (Services Tariff). The proposed filing would amend the TCC credit policy. The NYISO has requested that the Commission make the filing effective on January 10, 2003.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 9, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

[FR Doc. 02–33077 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request to Amend License and Solicit Comments, Motions to Intervene, and Protests

December 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to delete license article 434.

b. *Project No:* 2058–027.

c. *Date Filed:* April 11, 2002.

d. *Applicant:* Avista Corporation.

e. *Name of Project:* Clark Fork.

f. *Location:* The Clark Fork Project is located on the Clark Fork River in Bonner County, Idaho and Sanders County, Montana.

g. *Filed Pursuant to:* Federal Power Act, (16 U.S.C. 791(a) 825) and 799 and 801.

h. *Applicant Contact:* Steven Fry, Avista Corporation, 1411 East Mission, P.O. Box 3727, Spokane, WA 99220–0500, (509) 495–4084.

i. *FERC Contact:* Any questions regarding this notice should be addressed to Thomas LoVullo at (202) 502–8900, or e-mail address: *thomas.lovullo@ferc.gov.*

j. *Deadline for filing comments and or motions:* January 27, 2003.

All documents (an original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please reference the project number (P–2058) on any comments or motions filed with the Commission.

k. *Description of Request*: Article 434 requires Avista Corporation (licensee) to file a plan, with the Commission, to conduct seasonal, site-specific monitoring of bank profiles in the lower Clark Fork River. The licensee indicated that prior to relicensing of the project, it initiated easement discussions with the individual landowners. As of December 2001, the licensee indicated, it acquired 69 out of a possible 87 easements. The licensee stated that the erosion issues of the landowners group have been adequately addressed and, therefore, requested that license article 434 be deleted. The Clark Fork Management Committee, which is comprised of one representative from each of the 27 parties (the licensee, state and federal resource agencies, Native American tribes and non-governmental organizations) to the licensing Settlement Agreement, concurred that article 434 was no longer necessary and should be deleted.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FER Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives. q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33051 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection

December 26, 2002.

a. *Type of Application:* New Major License.

b. *Project No.:* 2105–089.

c. *Date Filed:* October 23, 2002.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Upper North Fork Feather River Project.

f. *Location:* On the North Fork Feather River, in the vicinity of the community of Chester, Plumas County, California, T28N, R7E. The project occupies 1,500 acres of land administered by the Forest Supervisors of the Lassen and Plumas National Forests.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Randal Livingston, Lead Director, Hydro Generation Department, Pacific Gas and Electric Company, P.O. Box 770000 (N11C), San Francisco, CA, 94177, (415) 973–6950, and Ms. Janet Loduca, Attorney, Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, CA, 94120–7442, (415) 973–0174.

i. *FERC Contact:* John Mudre, (202) 502–8902 or *john.mudre@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Upper North Fork Feather River Project consists of three dams and reservoirs, five powerhouses, tunnels and penstocks connecting the reservoirs to the powerhouses, 230–kV and 115–kV transmission facilities, and various roads, recreation facilities, and administrative facilities. Project reservoirs include Lake Almanor (1,142,251 acre-feet), Butt Valley Reservoir (49,891 acre-feet), and Belden Forebay (2,477 acre-feet). Powerhouses include Butt Valley Powerhouse (41 MW), Caribou No. 1 Powerhouse (75 MW), Caribou No. 2 Powerhouse (120 MW), Oak Flat Powerhouse (1.3 MW), and Belden Powerhouse (125 MW). The applicant proposes no new facilities, but proposes to add 33.73 acres of lands of the Plumas National Forest to the project because of historical and future project use of these lands.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33052 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

December 26, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2207–009.

c. *Date Filed:* December 18, 2002.

d. *Applicant:* Mosinee Paper Corporation.

e. *Name of Project:* Mosinee Hydroelectric Project.

f. *Location:* On the Wisconsin River in the town of Mosinee, Marathon County, Wisconsin. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Jeff Verdoorn, Mosinee Paper Corporation, 100 Main Street, Mosinee, Wisconsin. 54455 (715) 693–2111.

i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* February 16, 2003.

All documents (original and eight copies) should be filed with: Magalie Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Website at (*http://www.ferc.gov*) under the "e-filing link.

m. This application is not ready for environmental analysis at this time.

n. *Description of Project:* The existing Mosinee Project consists of: (1) Three dam sections spanning between bedrock islands; (2) a 1,277-acre reservoir; (3) a powerhouse with an total installed capacity of 3,050-kilowatts and (4) appurtenant facilities. The applicant estimates that the average annual generation is 23,680 megawatthours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY (202) 502–6157. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Note: The above paragraph initiating consultaion with the SHPOs may be unnecessary if that language was included in the pre-filing notice requesting preliminary terms and conditions.

q. *Procedural schedule and final amendments:* The application should be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter—February 2003
Issue Acceptance Letter—May 2003
Issue Scoping Document for Comments—June 2003
Request Additional Information—August 2003
Issue Scoping Document 2 for Comments—September 2003
Notice of application is ready for environmental analysis—March 2004
Notice of the availability of the EA—September 2004
Ready for Commission's decision on the Application—December 2004
Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33053 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 26, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12328–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Michael J. Kirwan Dam Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Michael J. Kirwan Dam on the Mahoning River, near the Town of Wayland, Portage County, Ohio.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio, 44301 (330) 535–7115.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12328–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Michael J. Kirwan Dam, and would consist of: (1) A proposed 96-inch-diameter steel penstock approximately 50 feet long, (2) a proposed powerhouse containing one turbine/generator unit having a total installed capacity of 1.323 MW, (3) a proposed .25-mile-long, 14.7 kV transmission line, and (4) appurtenant facilities. The project would have an annual generation of 8.11 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the

Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the project number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33055 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

December 26, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12353–000.

c. *Date filed:* August 21, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Green River Lake Dam Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Green River Lake Dam on the Green River, near the Towns of Campbellsville, Columbia, and Elkhorn, Taylor County, Kentucky.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C.§§ 791(a)–825(r).

h. *Applicant Contact:* Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio, 44301 (330) 535–7115.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12353–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers'

Green River Lake Dam, and would consist of: (1) Two proposed 48-inch-diameter steel penstock approximately 50 feet long, (2) a proposed powerhouse containing two turbine/generator units having a total installed capacity of 5.5 MW, (3) a proposed 4-mile-long, 14.7 kV transmission line, and (4) appurtenant facilities. The project would have an annual generation of 34 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33056 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

December 26, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12416–000.

c. *Date filed:* November 14, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Kentucky L&D #11 Hydroelectric Project would be located on the Kentucky River in Estill County, Kentucky. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12416–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Kentucky Lock and Dam No. 11 and Reservoir, would consist of: (1) Six proposed 50-foot-long, 8-foot-diameter steel penstocks, (2) a proposed powerhouse containing six generating units with a combined installed capacity of 8 megawatts, (3) a proposed 300-foot-long, 14.7–kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 49 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3678 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33057 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0322; FRL–7282–5]

Fosetyl-Al; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0322, must be received on or before February 3, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may incude, but are not limited to:

- Crop production (NAICS Industry 111)
- Animal production (NAICS 112)

- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0322. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI, or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0322. The system is an "anonymous access" system, which means, EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2002–0322. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and

made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0322.

3. *By hand delivery or courier.* Deliver your comments to: PIRIB, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2002–0322. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI, or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time, or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2002

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by the FFDCA section 408(d)(3). The summary of the petition was prepared by Bayer CropScience Company and represents the view of the company. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

PP 2E6366

EPA has received a pesticide petition (PP 2E6366) from the Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, Rutgers University, New Brunswick, NJ 08903 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.415 by establishing a tolerance for residues of the fungicide, fosetyl-al (aluminum tris O-ethylphosphonate), in or on the raw agricultural commodity onion, green, at 10 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of fosetyl-al in plants is adequately understood. Adequate data on the nature of the residues in plants, including identification of major metabolites and degradates of fosetyl-al, are available. Radiolabeled studies on the uptake, translocation and metabolism in plants show that the chemical proceeds through hydrolytic cleavage of the ethyl ester. The major residues are fosetyl-al, phosphorus acid, and ethanol. The tolerances are established for the parent only, that is fosetyl-al.

2. *Analytical method.* Adequate methods are available for enforcement purposes. There are two analytical methods acceptable for determining residues of fosetyl-al in plants: a gas chromatography method is available for enforcement of tolerance in pineapple and is listed as Method I in Pesticide Analytical Manual (PAM), Vol. II; a gas chromatography/phosphorus specific flame photometric detector (FPD-P) method (Rhone-Poulenc Method No. 163) for citrus has undergone a successful method tryout on oranges and has been sent to the Food and Drug Administration (FDA) for inclusion in PAM as Method II.

3. *Magnitude of residues.* Magnitude of residue data on green onions were collected form field trials conducted in Texas (Region 6) and California (Region 10). Each treated plot received seven foliar broadcast applications of the test substance at a rate of approximately 4.0 pounds active ingredient/acre (lb a.i./acre), for a total of approximately 28.0 lb a.i./acre. All applications were made 6 to 8 days apart, and marketable green

onions were collected 2 to 3 days following the final application. Residues of fosetyl-al in green onions ranged from 0.39 ppm to 7.75 ppm.

B. Toxicological Profile

EPA has evaluated the available fosetyl-al toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fosetyl-al is discussed in the **Federal Register** of August 18, 2000 (65 FR 50431) (FRL–6599–4), as well as the no observed adverse effect level (NOAEL), and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed. Please refer to this document should you desire detailed toxicological information on fosetyl-al.

1. *Carcinogenicity.* Long-term feeding studies were conducted with technical grade fosetyl-al in mice and rats and with monosodium phosphite, the primary urinary metabolite of fosetyl-al, in rats. These studies, in addition to a mechanistic study in rats, are described below:

i. *Rat.* Fosetyl-al was administered via admixture in the diet to CD rats at target levels of 0, 2,000, 8,000, and 30,000/40,000 ppm for approximately 2 years. After 2 weeks at 40,000 ppm, this dietary level was reduced to 30,000 ppm due to the occurrence of red coloration of the urine and a decrease in body weight gain. Although, these findings were no longer apparent after week 2, analytical verification of dietary levels revealed that the highest dietary level ranged from approximately 38,000 to 61,000 ppm during the first 32 weeks of the study. Calculi in the urinary bladder were observed for several male and female rats at 30,000/40,000 ppm. Microscopic examination revealed transitional cell carcinomas and papillomas in the urinary bladders of high dose males. In addition, a statistically significant increase in adrenal pheochromocytomas (benign and malignant combined) was observed in males at 8,000 and 30,000/40,000 ppm. The adrenal slides were independently reread by two consulting pathologists who found no significant dose-related increases in the incidence of pheochromocytomas or hyperplasia.

The NOAEL for fosetyl-al in the chronic rat study was 8,000 ppm. A subsequent mechanistic study in rats conducted with dietary levels of 8,000, 30,000 and 50,000 ppm demonstrated that the massive doses of 30,000 and 50,000 ppm fosetyl-al alter calcium/phosphorous homeostasis resulting in severe acute renal injury, similar to that observed in the chromic rat study, and the formation of calculi in kidneys, ureters, and bladder. Under conditions of chronic exposure, these effects could lead to the formation of bladder tumors as seen in the chronic rat study. At 8,000 ppm, no evidence of renal injury was observed, a result consistent with the absence of bladder tumors. Thus, the bladder tumors induced by fosetyl-al were the result of acute renal injury followed by a chronic toxic reaction rather than a true carcinogenic effect. An carcinogenicity study in rats was conducted with monosodium phosphite administered via dietary mixture at levels of 2,000, 8,000, and 32,000 ppm. No evidence of carcinogenicity was observed in this study.

ii. *Mouse.* A 2–year feeding/carcinogenicity study was conducted in mice fed diets containing fosetyl-al at 0, 2,500, 10,000, or 20,000/30,000 ppm. The 20,000 ppm dose was increased to 30,000 ppm during week 19 of the study. The NOAEL for all effects was 20,000/30,000 ppm (3,000/4,500 milligrams/kilogram (mg/kg/day)). There were no carcinogenic effects observed under the conditions of this study.

iii. EPA's Carcinogenicity Peer Review Committee (CPRC) concluded in their report of June 29, 1993 that the pesticidal use of fosetyl-al is unlikely to pose a carcinogenic hazard for humans given that: (a) Tumors develop in rats under extreme conditions that are unlikely to be achieved other than under laboratory conditions (at a dose in excess of the EPA dose limit for carcinogenicity studies); (b) tumors in rats are believed to develop only at doses that produce stones; (c) human dietary exposure to fosetyl-al is only about one-500,000th of the NOAEL for stone formation in the rat (the most sensitive experimental model); and (d) the dose of fosetyl-al which can be absorbed dermally by applicators is also probably too low to result in stone formation. Therefore, a cancer dietary exposure analysis for fosetyl-al is not performed.

2. *Animal metabolism.* Rat metabolism studies showed that most of the radiolabel rapidly appeared in exhaled carbon dioxide. There was also some radiolabel excreted in the urine as phosphite, along with a smaller amount as the unchanged parent compound. It appears that fosetyl-al is essentially completely absorbed after ingestion and extensively hydrolyzed to carbon dioxide which is exhaled. The phosphite is excreted in the urine without further oxidation to phosphate. Aluminum does not appear to be absorbed to a significant extent from the gastrointestinal tract.

3. *Metabolite toxicology.* There are no metabolites of toxicological concern. The tolerances are established for the parent only, that is fosetyl-al.

4. *Endocrine disruption.* No evidence of estrogenic or androgenic effects were noted in any study with fosetyl-al. No adverse effects on mating or fertility indices and gestation, live birth, or weaning indices were noted in a three-generation rat reproduction study at doses well above EPA's limit of 1,000 mg/kg/day. Therefore, Bayer CropScience concludes that fosetyl-al does not have any effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* EPA has established the chronic reference dose (RfD) for fosetyl-al at 2.5 mg/kg/day. This reference dose (RfD) is based on a NOAEL of 250 mg/kg/day from a 2–year feeding study in dogs and the use of a 100 fold safety factor to account for interspecies and intraspecies differences. No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD was not established and there is no expectation of acute risk. Since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21–day toxicity study using rats, no endpoint value was calculated for short- and intermediate-term exposure and risk. The Agency has concluded that fosetyl-al is unlikely to pose a carcinogenic hazard to humans. Therefore, a cancer exposure and risk assessment is not appropriate.

i. *Food.* For all currently registered uses of fosetyl-al, chronic food exposure for various subgroups of the U.S. population was estimated by EPA through the use of the Dietary Exposure Evaluation Model (DEEM) software. The DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide continuing surveys of food intake by individuals. As the risk estimate was low for even the most highly exposed subpopulation, no anticipated residues were used. One hundred percent crop treated and tolerance level residues were assumed for all crops. EPA has concluded that exposure to fosetyl-al from food utilizes 4.0% of the chronic population adjusted dose (cPAD) for the U.S. population, 5% of the cPAD for infants, and 8% of the cPAD for children 1–6 years old, the

subpopulation at greatest exposure. Based on the results of this conservative analysis, exposure to fosetyl-al residues from the proposed uses is expected to be minimal. Bayer CropScience concludes that dietary exposure to fosetyl-al resulting from the currently registered uses and the proposed use of the product will be well below the Agency's level of concern.

ii. *Drinking water.* The potential for ground water and/or surface water contamination by fosetyl-al and its degradates is expected to be very low, in most cases, due to the rapid degradation of the compound in soil to non-toxic degradates under both aerobic and anaerobic conditions. Under aerobic laboratory conditions, the half-life of fosetyl-al is between 1 and 1.5 hours in loamy sand, silt loam, and clay loam and 20 minutes in sandy loam soil. The degradation proceeds through the hydrolysis of the ethyl ester bond, resulting in the formation of phosphorous acid and ethanol. The ethanol is further degraded into carbon dioxide. Based on the short half-life of fosetyl-al and the known fate of phosphates under anaerobic conditions, EPA determined that an anaerobic soil metabolism study was not necessary. An anaerobic aquatic soil metabolism study was conducted. When anaerobic conditions were established by flooding soil, the half-life was 40 hours with silty clay loam, and 14 hours with sandy loam soil. Bayer CropScience expects that potential fosetyl-al residues in drinking water are not a significant contribution to aggregate exposure.

2. *Non-dietary exposure.* Fosetyl-al is currently registered for residential use on turf and ornamental plants. Chronic exposure is not expected for residential uses. There is also no expectation of acute risk. No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies and consequently, an acute RfD cannot be calculated. No endpoint value is calculable for short- and intermediate-term exposure and a risk analysis cannot be performed since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21–day toxicity study using rats. The Agency has previously concluded that fosetyl-al is unlikely to pose a carcinogenic hazard to human. Therefore, a cancer exposure and risk assessment is not appropriate. Thus, Bayer CropScience concludes that the ornamental and turf uses do not add significantly to the aggregate exposure for fosetyl-al.

D. Cumulative Effects

Effects associated with fosetyl-al are unlikely to be cumulative with any other compound. The formation of calculi and bladder tumors in rats is the only significant toxicological effect observed with fosetyl-al. These effects were observed in rat only at a dose which not only exceeds estimated human exposure by several orders of magnitude but is in excess of the OPP dose limit for carcinogenicity studies. Therefore, an aggregate assessment based on common mechanisms of toxicity is not appropriate as exposure to humans will be well below the levels producing calculi and bladder tumors in rats. Further, considering the rapid elimination of fosetyl-al in the rat metabolism study, any effects associated with fosetyl-al are unlikely to be cumulative with any other compound. Based on these reasons, only the potential risks of fosetyl-al are considered in the exposure assessment.

E. Safety Determination

1. *U.S. population.* Chronic risk estimates associated with exposure to fosetyl-al in food and water are expected to be well below the Agency's level of concern. The Tier I chronic exposure analysis performed by the Agency for all currently registered food uses shows that exposure to fosetyl-al utilizes 4.0% of the cPAD for the U.S. population, 5% of the cPAD for infants, and 8% of the cPAD for children 1–6 years old, the subpopulation at greatest exposure. This analysis was conducted assuming 100% crop treated and tolerance level residue values for all crops. The contribution of fosetyl-al residues in surface water and ground water to chronic aggregate exposure is expected to be minimal. Therefore, Bayer CropScience concludes that even when considering the potential incremental risk resulting from the proposed use on green onion, there is a reasonable certainty that no harm will result from aggregate exposure to fosetyl-al residues.

2. *Infants and children.* No indication of increased susceptibility of rat or rabbit fetuses to *in utero* and/or postnatal exposure was noted in the developmental and reproductive toxicity studies. The Agency has previously determined that no additional safety factor to protect infants and children is necessary for this product.

Using the conservative assumptions described in the exposure section above, aggregate exposure to fosetyl-al from currently registered food uses will utilize up to 8% of the RfD for children 1–6 years old, the subpopulation at greatest exposure. Even when considering the potential incremental dietary risk resulting from the proposed use on green onion, the potential for exposure to residues in drinking water and from non-dietary, non-occupational exposure, the aggregate exposure to fosetyl-al is expected to be well below the level of concern. Bayer CropScience concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fosetyl-al residues.

F. International Tolerances

There are no Codex Alimentarius Commission (CODEX) maximum residue limits established for residues of fosetyl-al in or on green onion.

[FR Doc. 02–33107 Filed 12–31–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7431–9]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of sixteenth update of the Federal Agency Hazardous Waste Compliance Docket, pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket. The docket is to contain certain information about Federal facilities that manage hazardous waste or from which hazardous substances have been or may be released. (As defined by CERCLA section 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every six months, as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in this sixteenth update of the docket and includes facilities not previously listed on the docket and reported to EPA since the last update of the docket, 67 FR 44200, July 2, 2002, which was current as of January 31, 2002. SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each

Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Such site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the list of additions to the docket, this notice includes a section that comprises revisions (that is, corrections and deletions) of the previous docket list. This update contains 8 additions and 11 deletions since the previous update, as well as numerous other corrections to the docket list. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 2,228.

DATES: This list is current as of August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the docket may be obtained at *http://www.epa.gov/compliance/cleanup/federal/index.html*.

SUPPLEMENTARY INFORMATION:

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1.0 Introduction
2.0 Revisions of the Previous Docket
3.0 Process for Compiling the Updated Docket
4.0 Facilities Not Included
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1.0 Introduction

Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 United States Code (U.S.C.) 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), required the establishment of the Federal Agency Hazardous Waste Compliance Docket. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency (EPA) under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators and transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires that the National Response Center (NRC) be notified of a release. CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated, or disposed of and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the docket was published on February 12, 1988 (53 FR 4280). Updates of the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); June 27, 1997 (62 FR 34779); November 23, 1998 (63 FR 64806); June 12, 2000 (65 FR 36994); December 29, 2000 (65 FR 83222), October 2, 2001 (66 FR 50185), and July 1, 2002 (67 FR 44200). This notice constitutes the sixteenth update of the docket.

Today's notice is divided into three sections: (1) Additions, (2) deletions, and (3) corrections. The additions section lists newly identified facilities that have been reported to EPA since the last update and that now are being included on the docket. The deletions section lists facilities that EPA is deleting from the docket. The corrections section lists changes in information about facilities already listed on the docket.

The information submitted to EPA on each Federal facility is maintained in the docket repository located in the EPA Regional office of the Region in which the facility is located (*see* 53 FR 4280 (February 12, 1988) for a description of the information required under those provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. Contact the following docket coordinators for information on Regional docket repositories:

Gerardo Millán-Ramos (HBS), US EPA Region 1, #1 Congress St., Suite 1100, Boston, MA 02114–2023, (617) 918–1377

Helen Shannon (ERRD), US EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4260

Alida Karas (ERRD), US EPA Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4276

Cesar Lee (3HS50), US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3205

Gena Townsend (4WD–FFB), US EPA Region 4, 61 Forsyth St., SW., Atlanta, GA 30303, (404) 562–8538

Laura Ripley (SE–5J), US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–6040

Philip Ofosu (6SF–RA), US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178

D. Karla Asberry (FFSC), US EPA Region 7, 901 N. Fifth Street, Kansas City, KS 66101, (913) 551–7595

Stan Zawistowski (EPR–F), US EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6255

Philip Armstrong (SFD–9–1), US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3098

Ken Marcy (ECL–115), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–2782

Monica Lindeman (ECL, SACU2), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–5113

2.0 Revisions of the Previous Docket

Following is a discussion of the revisions of the previous docket, including additions, deletions, and corrections.

2.1 Additions

Today, 8 facilities are being added to the docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule.

Of the eight facilities being added to the docket, none are facilities that have reported to the NRC the release of a reportable quantity (RQ) of a hazardous substance. Under section 103(a) of CERCLA, a facility is required to report

to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Reports of releases received by the NRC, the U.S. Coast Guard (USCG), and EPA are transmitted electronically to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket for which an ERNS report has been filed are identified by the notation "103(a)" in the "Reporting Mechanism" column.

It is EPA's policy generally not to list on the docket facilities that are small-quantity generators (SQG) and that have never generated more than 1,000 kilograms (kg) of hazardous waste in any single month. If a facility has generated more than 1,000 kg of hazardous waste in any single month (that is, if the facility is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs and have reported releases under CERCLA section 103 or hazardous waste activities pursuant to RCRA section 3016 will be listed on the docket and will undergo site evaluation activities, such as a PA and, when appropriate, an SI. All such facilities will be listed on the docket, whether or not they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is adding to the docket today are SQGs that had not been listed on the docket but that have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted PA reports, SI reports, Department of Defense (DoD) Installation Restoration Program (IRP) reports, or reports under another Federal agency environmental restoration program, but do not appear to have notified EPA under CERCLA section 103. Section 120(c)(3) of CERCLA requires that EPA include on the docket, among other things, information submitted under section 103. In general, section 103 requires persons in charge of a facility to provide notice of certain releases of hazardous substances. The reports under various Federal agency environmental restoration programs may contain information regarding releases of hazardous substances similar to that provided pursuant to section 103. EPA believes that CERCLA section 120(c) authorizes the agency to include on the docket a facility that has provided information to EPA through documents such as a report under a Federal agency environmental restoration program, regardless of the absence of section 103 reporting. Therefore, some of the facilities that EPA is adding today are being placed on the docket because they have submitted the documents described above that contain reports of releases of hazardous substances.

EPA also includes privately owned, government-operated (POGO) facilities on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016 and CERCLA section 103, all of which impose duties on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities "owned or operated" by an agency or other instrumentality of the Federal government. That terminology clearly includes facilities that are operated by the Federal government, even if they are not owned by it. Specifically, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility has been listed on the NPL, refers to the Federal agency that "owns or operates" the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required when a facility is listed on the docket, is Executive Order 12580, which assigns that responsibility to the Federal agency having "jurisdiction, custody, or control" over a facility. An operator may be deemed to have jurisdiction, custody, or control over a facility.

2.2 Deletions

Today, 11 facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous waste activity, change in ownership, and exemption as an SQG under RCRA (40 CFR 262.44). Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d).

2.3 Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. The changes needed varied from simple changes in addresses or spelling to corrections of the recorded name and ownership of a facility. In addition, some changes in the names of facilities were made to establish consistency in the docket. Many new entries are simply corrections of typographical errors. For each facility for which a correction has been entered, the original entry (designated by an "O"), as it appeared in the February 12, 1988 notice or subsequent updates, is shown directly below the corrected entry (designated by a "C") for easy comparison.

3.0 Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRIS), and the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the databases identified above to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, state-owned or privately owned facilities that are not operated by the Federal government may have been included. Such problems are caused by procedures historically used to report and track data on Federal facilities; EPA is working to resolve them. Representatives of Federal agencies are asked to write to EPA's docket coordinator at the following address if revisions of this update information are necessary: Augusta K. Wills, Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Enforcement Office (Mail Code 2261A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20004.

4.0 Facilities Not Included

As explained in the preamble to the original docket (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, when appropriate, be listed on the NPL):

- Facilities formerly owned by a Federal agency and now privately owned will not be listed on the docket. However, facilities that are now owned by another Federal agency will remain on the docket and the responsibility for conducting PAs and SIs will rest with the current owner.
- SQGs that have never produced more than 1,000 kg of hazardous waste in any single month and that have not reported releases under CERCLA section

103 or hazardous waste activities under RCRA section 3016 will not be listed on the docket.

- Facilities that are solely transporters, as reported under RCRA section 3010, will not be listed on the docket.

5.0 Facility Status Reporting

EPA has expanded the docket database to include information on the NFRAP status of listed facilities. Indicating NFRAP status allows easy identification of facilities that, after submitting all necessary site assessment information, were found to warrant no further involvement on the part of EPA at the time of the status change. Accordingly, the docket database includes the following facility status codes:

U=Undetermined
N=No further remedial action planned (NFRAP)

NFRAP is a term used in the Superfund site assessment program to identify facilities for which EPA has found that currently available information indicates that listing on the NPL is not likely and further assessment is not appropriate at the time. NFRAP status does not represent an EPA determination that no environmental threats are present at the facility or that no further environmental response action of any kind is necessary. NFRAP status means only that the facility does not appear, from the information available to EPA at this time, to warrant listing on the NPL and that, therefore, EPA anticipates no further involvement by EPA in site assessment or cleanup at the facility. However, additional CERCLA response actions by the Federal agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility that has NFRAP status. The status information contained in the docket database is the result of Regional evaluation of information taken directly from CERCLIS. (CERCLIS is a database that helps EPA Headquarters and Regional personnel manage sites, programs, and projects. It contains the official inventory of all CERCLA (NPL and non-NPL) sites and supports all site planning and tracking functions. It also integrates financial data from preremedial, remedial, removal and enforcement programs.) The status information was taken from CERCLIS and sent to the Regional docket coordinators for review. The results of those reviews were incorporated into the status field in the docket database. Subsequently, an updated list of facilities having NFRAP status (those for which an "N" appears in the status field) was generated; the list of updates since the previous publication of the docket is being published today.

Important limitations apply to the list of facilities that have NFRAP status. First, the information is accurate only as of August 12, 2002. Second, a facility's status may change at any time because of any number of factors, including new site information or changing EPA policies. Finally, the list of facilities that have NFRAP status is based on Regional review of CERCLIS data, is provided for information purposes only, and should not be considered binding upon either the Federal agency responsible for the facility or EPA.

The status information in the docket database will be reviewed and a new list of facilities classified as NFRAP will be published at each docket update.

6.0 Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities that are being deleted from the docket. The third section comprises corrections of information included on the docket. Each facility listed for the update has been assigned a code(s) that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Therefore, all facilities on the additions list to this fifteenth docket update must submit a PA and, if warranted, an SI to EPA. The PA must include existing information about a site and its surrounding environment, including a thorough examination of human, food-chain, and environmental targets, potential waste sources, and migration pathways. From information in the PA or other information coming to EPA's attention, EPA will determine whether a follow-up SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that are used to determine whether further action or investigation is appropriate. This policy includes any facility for which there is a change in the identity of the responsible Federal agency. The reports should be submitted to the Federal facilities coordinator in the appropriate EPA Regional office.

The facilities listed in each section are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and the correction code(s).

The statutory provisions under which a facility reported are listed in a column titled "Reporting Mechanism." Applicable mechanisms are listed for each facility: for example 3010, 3016, and 103(c).

The complete list of Federal facilities that now make up the docket and the complete list of facilities classified as no further remedial action planned (NFRAP) are not being published today. However, the lists are available to interested parties and can be obtained at *http://www.epa.gov/compliance/cleanup/federal/index.html* or by calling the HQ Docket Coordinator at (202) 564–2468. As of today, the total number of Federal facilities that appear on the docket is 2,228.

Dated: December 19, 2002.

David J. Kling,

Director, Federal Facilities Enforcement Office.

Docket Revisions

Categories of Revisions for Docket Update by Correction Code

Categories for Deletion of Facilities

(1) Small-Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This correction code is no longer used.)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/Entries Combined
(8) Does Not Fit Facility Definition
(9) (This correction code is no longer used.)
(10) (This correction code is no longer used.)
(11) (This correction code is no longer used.)
(12) (This correction code is no longer used.)
(13) (This correction code is no longer used.)
(14) (This correction code is no longer used.)

Categories for Addition of Facilities

(15) Small-Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split Into Two/Federal Agency Responsibility Being Split

(17) New Information Obtained Showing That Facility Should Be Included
(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility
(19) Sites Were Combined Into One Facility
(19A) New Facility

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/ Address Change
(21) Changing Responsible Federal Agency (New Responsible Federal Agency Must Submit proof of previously performed PA, which is subject to approval by EPA)
(22) Changing Responsible Federal Agency and Facility Name (New Responsible Must Submit proof of previously performed PA, which is subject to approval by EPA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined to Be Not Applicable After Review of Regional Files

Note: Further information on definitions of categories can be obtained by calling Augusta K. Wills, the HQ Docket Coordinator at (202) 564–2468.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—ADDITIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
FS-Tongass NF: Tonka Log Transfer Facility.	7.75 Mi SW of Petersburg.	Petersburg	AK	99833	Agriculture	3010	19A
FWS—AK Maritime NWR.	Yakak Peninsula SW.	Adak	AK	99546	Interior	103c	19A
Cape Yakak AWS Site Former Lowry Training Annex Air Force EOD Range.	½ Mile North of East Quincy Ave on Watkins Road.	Aurora	CO	80019	Air Force	103c	19A
FS-Targhee NF: Chemical Warfare Service Test Site.	Fremont County	Island Park	ID	83429	Agriculture	103c	19A
BLM-Glenns Ferry Strychnine Site.	T5S R10E SEC20 NESE.	Glenns Ferry	ID	83623	Interior	3010	19A
BIA-Coeur D'Alene Field Office.	Agency Rd 4 Mi W of Hwy 95.	Plummer	ID	83851–0408	Interior	3010	19A
Sundance Air Force Station–Gatr Site.	Seven Miles North By Northwest of Sundance.	Sundance	WY	82729	Air Force	103c	19A
Sundance Air Force Station Operations Area.	7 Miles North by Northwest of Sundance.	Sundance	WY	82729	Air Force	103c	19A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—DELETIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
Bonanza Mining District.		Bonanza	CO	81149	Agriculture	103c 3016	6
US National Photo Interpretation Center.	1st & M St SE	Washington	DC	20374	National Imagery and Mapping.	3010	7
Ames Lab #1	1915 N. Scholl Road, Iowa State University.	Ames	IA	50011–3020	Energy	3016	1
Clairborne Range, England Air Force Base.	LA Hwy 488 13m SW of Alexandria.	Alexandria	LA	71301	Agriculture	3010	2
Mark Twain National Forest.	401 Fairgounds Road.	Rolla	MO	65401	Agriculture	103c 3010	4
Flying J Petroleums Inc Williston Refine.	1 Mi E of Williston Hwy 1804.	Williston	ND	58801		103c	2
Hallam Nuclear Power Facility.	NE¼ Sec 19 T7N R6E.	Hallam	NE	68368	Energy	103c	3

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—DELETIONS—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
Dona Anna Range Camp Mates.	20 Miles East	Las Cruces	NM	88001	Army	3016	6
Franklin D Roosevelt Library.	511 Albany Post Rd.	Hyde Park	NY	12538	General Services Administration.	3010	4
Niagara Station ..	.....	Youngstown	NY	14174	General Services Administration.	103c	1
USCG—Station Jones Beach.	Westend Boat Basin off Ocean.	Freeport	NY	11520–5001	Transportation	3010	1

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	Chugach NF: Grantie Mine.	T10N R7E S9, SM, NR Port Wells Bay, 20 MI N of.	Whittier	AK	99693	Agriculture	103c	20A
o	Chugach NF: Grantie Mine.	T10 R7 S9 Seward Meridian.	Port Wells	AK	99664	Agriculture	103c.	
c	Tongass NF: Gold Standard Mine.	W Side Helm Bay, 10 MI SE of Meyers Chuck On.	Meyers Chuck	AK	99903	Agriculture	103c	20A
o	Tongass NF: Gold Standard Mine.	W Side of Helm Bay, 25 MI N of City.	Ketchikan	AK	99919	Agriculture	103c.	
c	North River White Alice Communications.	T18S R10W S36 KRM.	Unalakleet	AK	99684	Air Force	3016 103c	20A, 23
o	North River White Alice Communications.	8 MI E of Unalakleet.	Unalakleet	AK	99684	Air Force	3016.	
c	Alaska Tok Fuel Terminal.	7 MI W of Tok, Alaska Hwy 2.	Tok	AK	99780	Army	3010 103c	12
o	Alaska Tok Fuel Terminal.	7 MI W of Tok, Alaska Hwy 2.	Tok	AK	99780	Army	3010.	
c	BLM-Kogru River Dewline Site.	West Side of Harrison Bay 60 MI NW of Nuiqsut.	Nuiqsut	AK	99789	Interior	103c	20A
o	BLM-Kogru River Dewline Site.	West Side of Harrison Bay.	Barrow & Prudhoe Bay	AK	99723	Interior	103c.	
c	CG-Edna Bay Entrance Light.	Edna Bay, 32 MI NW of City.	Craig	AK	99921	Transportation	3010 103c	23
o	CG-Edna Bay Entrance Light.	Edna Bay, 32 MI NW of City.	Craig	AK	99921	Transportation	3010.	
c	Plumas NF Whitehorse Landfill.	T23N R8AE S6, TA24N R8E S7.	Quincy	CA	95971	Agriculture	103a 103c	23
o	Plumas NF Whitehorse Landfill.	T23N R8AE S6, TA24N R8E S7.	Quincy	CA	95971	Agriculture	103a 103c.	
c	Lake Tahoe Basin MU: Meyers Landfill.	870 Emerald Bay Rd.	South Lake Tahoe	CA	96150	Agriculture	103a 103c	23
o	Lake Tahoe Basin MU: Meyers Landfill.	870 Emerald Bay Rd.	South Lake Tahoe	CA	96150	Agriculture	103a.	
c	BLM-Swansea Site.	T 16S, R. 36E., Sec 24, SE SW, Mt Diablo M.	Keeler	CA	93530	Interior	103c 3016	20A
o	BLM-Swansea Site.	T 16S, R. 36E., Sec 24, SE SW, Mt Diablo M.	Keeler	CA		Interior	103c 3016.	
c	NPS-Golden Gate National Recreation.	Building 201 Fort Mason.	San Francisco	CA	94123	Interior	103c	20A
o	NPS-Golden Gate National Recreation.	Building 201 Fort Mason.	San Francisco	CA		Interior	103c.	
c	BLM-Stateline Dump (Landfill).	10 M E of Town of Tulelake.	Tulelake	CA	96134	Interior	3016 103c	20A
o	BLM-Stateline Dump (Landfill).	of Tulelake		CA		Interior	3016 103c.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	Boeing North American, Inc.	12214 Lakewood Blvd.	Downey	CA	90241	NASA	3010 103c	23
o	Boeing North American, Inc.	12214 Lakewood Blvd.	Downey	CA	90241	NASA	3010.	
c	NASA Santa Susana Field Laboratory.	Woodlsey Canyon Road.	Simi Valley	CA	91304	NASA	3005 3010 3016 103c	20A
o	USNASA Boeing SSFL Area II.	Santa Susana Field Lab NASA.	Simi Hills	CA	91311	NASA	3005 3010 3016 103c	
c	Oakland Naval Supply Center, Alameda.	2155 Mariner Square Loop.	Alameda	CA	94501	Navy	103c 3010 3005	20A
o	Oakland Naval Supply Center, Alameda.		Alameda	CA	94501	Navy	103c 3010 3005	
c	Former NAVFAC Engineering Field.	900 Commodore Drive.	San Bruno	CA	94066	Navy	103c	20A
o	Western Division, Naval Facilities.	900 Commodore Drive.	San Bruno	CA		Navy	103c.	
c	Grand Junction Office.	2597 B 3/4 Road	Grand Junction	CO	81503	Energy	3016 103c 3005 3010	20A
o	Grand Junction Projects Office.	3597 B–3/4 RD PO2567.	Grand Junction	CO	81502–5504	Energy	3016 103c 3005 3010	
c	BLM-San Miguel Landfill #2.	T44N R17W Sec 18.	Slick Rock	CO	81333	Interior	103c	20A
o	BLM-San Miguel Landfill #2.	T44N R17W Sec 18.	Slick Rock	CO		Interior	103c.	
c	BLM-Walden Landfill.	Approximately 3 MI. NE of Walden.	Walden	CO	80480	Interior	103c	20A
o	BLM-Walden Landfill.	T9N R79W Sec 24, 6THPM.	Walden	CO		Interior	103c.	
c	Army Engine Plant Stratford.	550 South Main Street.	Stratford	CT	06497	Army	3005 3010 3016 103c	20A
o	Stratford Army Engine Plant.	550 South Main Street.	Stratford	CT	06497	Army	3005 3010 3016 103c	
c	Former NUSC New London Laboratory.	900 Bank Street	Fort Trumbull	CT	06320	Navy	3010 103c 103a.	20A
o	New London Naval Underwater Systems.	New London Laboratory.	New London	CT	06320	Navy	3010 103c 103a	
c	National Imagery and Mapping Agency.	1st St & M St SE	Washington	DC	20374	National Imagery and	3010	22
o	National Photographic.	1st St & M St SE	Washington	DC	20374	EPA	3010.	
c	Miami Coast Guard Air Station.	OPA Locka Airport	Opa Locka	FL	33054	Transportation	103c	20A
o	Miami Coast Guard Air Station.	OPA Locka Airport	Opa Locka	FL		Transportation	103c 3010.	
c	Lualualei National Response Team.	Lualualei Valley Oahu Island.	Wahiawa	HI	96786	Navy	103c	20A
o	Lualualei National Response Team.	Lualualei Valley Oahu Island.	Lualualei	HI		Navy	103c.	
c	Sac City Army Reserve Center.	1801 Gishwiller Rd	Sac City	IA	50583	Army	3010 103c	23
o	Sac City Army Reserve Center.	1801 Gishwiller Rd	Sac City	IA	50583	Army	3010.	
c	Waverly (EX) Air Station Z–81.	1 MI S of Waverly	Waverly	IA	50677	Army	103c	20A
o	Waverly (EX) Air Station (ARNG).	1 MI S of Waverly	Waverly	IA		Army	103c.	
c	Caribou NF: S Mabey Canyon.	T8S R44E S10, 11, 14 & 15 BM.	Conda	ID	83230	Agriculture	103c	20A
o	Caribou NF: S Mabey Canyon Cross Valley.	T8S R44E S10, 11, 14 & 15 BM.	Conda	ID	83230	Agriculture	103c.	
c	FS-Lazy C H Ranch.	Star Rt 1, 15 MI SW of City.	Montpelier	ID	83254	Agriculture	3010 103c	23
o	FS-Lazy C H Ranch.	Star Rt 1, 15 MI SW of City.	Montpelier	ID	83254	Agriculture	3010.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	BLM-Cream Can Junction Pesticide.	T5S R26E S35 SW¼ SW¼ BM.	Minidoka	ID	83343	Interior	3010 103c	20A, 23
o	BLM-Cream Can Junction.	T5S R26E S35 SW¼ SW¼ BM.	Minidoka	ID	83343	Interior	3010.	
c	BLM-Dobson Pass.	T48N R4E S1 Lot 9.	Wallace	ID	83873	Interior	3010 103c	23
o	BLM-Dobson Pass.	T48N R4E S1 Lot 9.	Wallace	ID	83873	Interior	3010.	
c	Army Reserve Personnel Command.	East of Intersection of D St & 1st St.	Granite City	IL	62040	Army	3010 103c	20A, 23
o	Army Reserve Personnel Command.	Rte 3 & Neidringhaus.	Granite City	IL	62040	Army	3010.	
c	Hoosier NF: Branchville Site.	811 Constitution Avenue.	Bedford	IN	47421	Agriculture	103c 3016	20A
o	Wayne-Hoosier NF: Branchville Site.	811 Constitution Avenue.	Bedford	IN	47421	Agriculture	103c 3016.	
c	Carl J. Shelter Army Reserve Center.	2300 10th Street	Lake Charles	LA	70601	Army	3010 103c	23
o	Carl J. Shetler Army Reserve Center.	2300 10th St	Lake Charles	LA	70601	Army	3010.	
c	Natick Lab. Army Research,.	Kansas St.	Natick 0	MA	01760	Army	3010 3016 103c	20A
o	Natick Research Development and.	Kansas St.	Natick	MA	01760	Army	3010 3016 103c	
c	Nyanza Chemical Waste Dump.	Megunko Rd	Ashland	MA	01721	EPA	3010	20A
o	Nyanza Superfund Site.	Megunko Rd	Ashland	MA	01721	EPA	3010.	
c	Doi Parker River Refuge.	Northern Boulevard, Plum Island.	Newburyport	MA	01950	Interior	3016 103c	20A
o	FWS-Parker River National Wildlife.	Northern Boulevard, Plum Island.	Newburyport	MA	01950	Interior	3016 103c.	
c	U.S. Postal Service.	135 A Street	Boston	MA	02210	Postal Service	3010 103c	20A
o	Boston Postal Service.	135 A Street	Boston	MA	02210	Postal Service	3010 103c.	
c	U.S. Postal Service Incoming Mail Center.	307 Becham St	Chelsea	MA	02150	Postal Service	103c	20A
o	Chelsea Postal Service Incoming Mail.	307 Becham St	Chelsea	MA	02150	Postal Service	103c.	
c	U.S. Coast Guard Buoy, Depot South.	Trotter Road	South Weymouth	MA	02190	Transportation	3005 3010 103c	20A
o	South Weymouth, Coast Guard Buoy.	Trotter Road	South Weymouth	MA	02190	Transportation	3005 3010 103c	
c	Naval Communication, Unit Washington.	Dangerfield & Commo Road.	Clinton	MD	20735	Navy	103c 103a 3010.	20A, 23
o	Cheltenham Naval Communications Unit.		Cheltenham	MD	20623	Navy	103a.	
c	Bloodsworth Island Bombardment Range.	Chesapeake Bay, 4 MI. South of Crocheron.	Crocheron	MD	21627	Navy	103c	20A
o	Bloodsworth Archipelago.	N Potomac Runs Chesapea.	N/A	MD		Navy	103c.	
c	US Coast Guard Yard.	Hawkins Point Rd	Baltimore	MD	21226	Transportation	3010 103c	20A
o	Baltimore Coast Guard Yard.	Hawkins Pt Rd	Baltimore	MD	21226	Transportation	3010 103c.	
c	Maine Air National Guard-BIA.	Bangor Int'l Arprt Rt 222/Geofrey Blvd.	Bangor	ME	04401	Air Force	103c	20A
o	Bangor Maine Air National Guard-BIA.	Bangor Int'l Arprt Rt 222/Geofrey Blvd.	Bangor	ME	04401	Air Force	103c.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	U.S. Defense Fuel Support Point Casco.	RT 123	Harpswell (South)	ME	04079	Defense Logistics	3010 3016 103c	20A
o	Casco Bay Defense Fuel Support Point.	RT 123	Harpswell (South)	ME	04079	Defense Logistics	3010 3016 103c	
c	U.S. Defense Fuel Support Support Point.	Trundy Road Box 112.	Searsport	ME	04974	Defense Logistics	3010 3016 103c	20A
o	Searsport Defense Fuel Support Point.	Trundy Road Box 112.	Searsport	ME	04974	Defense Logistics	3010 3016 103c	
c	Brunswick Naval Air Station.	1251 Orion Street	Brunswick	ME	04011–5009	Navy	3005 3010 3016 103c	20A
o	Naval Air Station Brunswick.	1251 Orion Street	Brunswick	ME	04011–5009	Navy	3005 3010 3016 103c	
c	Cutler Naval Computer & Telecommunication AM.	Off Rt 191	Cutler	ME	04626–9608	Navy	3010 3016 103c	20A
o	Cutler Naval Computer &.	Off Rt 191	East Machias	ME	04630	Navy	3010 3016 103	
c	Former Gouldsboro NSGA Operations Site.	Route 195	Gouldsboro	ME	04624	Navy	103c	20A
o	Gouldsboro Naval Security Group.	Bldg 41 (Operations site).	Gouldsboro	ME	04624	Navy	103c.	
c	South Portland Coast Guard Base.	259 High St	South Portland	ME	04106	Transportation	3010 103c	20A
o	U.S. Coast Guard Base South Portland.	259 High St	South Portland	ME	04106	Transportation	3010 103c	
c	Desoto National Forest Access Roads.	100 W. Capitol St., Suite 1141.	Jackson	MS	39269	Agriculture	103c 3016	20A
o	Desoto National Forest Access Roads.	100 W. Capitol St., Suite 1141.	Jackson	MS	39269	Agriculture	103c 3016	
c	Belton Communication Facility.	SE¼ & Part SW¼, Sec 25, T46N, R33W.	Belton	MO	64012	Energy	103c	20A
o	Belton Communication Facility.	Hwy 71 at Belton 2.5 Miles 187th Street.	Belton	MO		Energy	103c	
c	BLM-Londonderry Mine/ Maxville Tailings.	NW¼ SW¼ Sec. 4 T8N R13W.	Maxville	MT	82007	Interior	103c	20A
o	BM-Londonderry Mine.	NW¼ SW¼ Sec. 4 T8N R13W.	Maxville	MT		Interior	103c	
c	U.S. Army Cold Regions Research and.	Route 10	Hanover	NH	03755	Army	103c 3016 103a	20A
o	Cold Regions Research Laboratory.	Route 10	Hanover	NH	03755	Army	103c 3016 103a	
c	Boulder CY Engineering Lab (BR-.	500 Date St.	Boulder City	NV	89005	Interior	3005 3010 103c	20A
o	BM-Date Street Complex (Boulder City.	500 Date St.	Boulder City	NV	89005	Interior	3005 3010 103c	
c	Gus Kefurt Army Reserve Center.	399 Miller Street ...	Youngstown	OH	44507–1591	Army	3010 103c	23
o	Gus Kefurt Army Reserve Center.	399 Miller Street ...	Youngstown	OH	44507	Army	3010	
c	U.S. Armed Forces Reserve Center.	1101 North 6th Street.	Broken Arrow	OK	74012	Army	3010 103c	23
o	Broken Arrow Army Reserve Center—20.	1101 N 6th Ste 4 ..	Broken Arrow	OK	74012,	Army	3010	
c	Tracy W. Young U.S. Army Reserve.	805 West Hartford Avenue.	Ponca City	OK	74601	Army	3010 103c	20A, 23

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	Ponca City Army Reserve Center.	805 West Hartford Ave.	Ponca City	OK	74601	Army	3010	
c	Bia-Caddo County Landfill #1.	SE/4 Sec 7 T5N R11W SW/4 Sec 8.	Apache	OK	73006	Interior	103c	20A
o	Bia-Caddo County Landfill #1.	SE/4 Sec 7 T5N R11W SW/4 Sec 8.	Apache	OK		Interior	103c	
c	Bia-Caddo County Landfill #5.	W/2 SW/4 Sec 16 T6N R11.	Apache	OK	73006	Interior	103c	20A
o	Bia-Caddo County Landfill #5.	W/2 SW/4 Sec 16 T6N R11.	Apache	OK		Interior	103c	
c	Bia-Caddo County Landfill #2.	S2 SE4 Sec 4 T7N R13W.	Carnegie	OK	73015	Interior	103c	20A
o	Bia-Caddo County Landfill #2.	S2 SE4 Sec 4 T7N R13W.	Carnegie	OK		Interior	103c	
c	Bia-Caddo County Landfill #3.	NE/4 NE4 Sec 10 T7N R13W.	Carnegie	OK	73015	Interior	103c	20A
o	Bia-Caddo County Landfill #3.	NE/4 NE4 Sec 10 T7N R13W.	Carnegie	OK		Interior	103c	
c	Bia-Caddo County Landfill #4.	W2 NW4 Sec 35 T8N R13W.	Carnegie	OK	73015	Interior	103c	20A
o	Bia-Caddo County Landfill #4.	W2 NW4 Sec 35 T8N R13W.	Carnegie	OK		Interior	103c	
c	Bia-Caddo County Landfill #6.	SE4 SE4 Sec 34 T9N R12.	Fort Cobb	OK	73038	Interior	103c	20A
o	Bia-Caddo County Landfill #6.	SE4 SE4 Sec 34 T9N R12.	Fort Cobb	OK		Interior	103c	
c	Bia-Caddo County Landfill #7.	SW4 NE4 Sec 14 T9N R12W.	Fort Cobb	OK	73038	Interior	103c	20A
o	Bia-Caddo County Landfill #7.	SW4 NE4 Sec14 T9N R12W.	Fort Cobb	OK		Interior	103c	
c	BIA-Caddo County Landfill #8.	NE4 NE4 Sec 22 T9N R12W.	Fort Cobb	OK	73038	Interior	103c	20A
o	BIA-Caddo County Landfill #8.	NE4 NE4 Sec 22 T9N R12W.	Fort Cobb	OK		Interior	103c	
c	Elk Creek Dam Project.	Elk Creek Rd, 4.8 MI NE OF, Trail.	Trail	OR	97541	Corps of Engineers, Civil	103c	20A
o	Elk Creek Dam	27 MI N of City	Medford	OR	97503	Corps of Engineers, Civil	103c	
c	Albany Research Center.	1450 SW Queen Ave.	Albany	OR	97321	Energy	3010 3016	22
o	BM-Albany Research Center.	1450 SW Queen Ave.	Albany	OR	97321	Interior	3010 3016 103c	
c	BLM-Glass Buttes Mine & Retorts Site.	3 MI S of Milepost 82 off Hwy 20, T23S R23E S27&34, & T24S R23E S3, WM, 20 MI.	Brothers	OR	97712	Interior	103a 103c	23
o	BLM-Glass Buttes.	3 MI S of Milepost 82 off Hwy 20, 20 MI SE of.	Brothers	OR	97712	Interior	103a	
c	U.S. Army Reserve Maintenance Facility.	Albion Road	Smithfield	RI	02917	Army	103c	20A
o	Smithfield Army Reserve Maintenance.	Albion Road	Smithfield	RI	02917	Army	103c.	
c	Black Hills NF: Spokane Munitions.	R6E, T25, SW¼, Sec 26.	Spokane	SD	57730	Agriculture	103c3016	20A
o	Black Hills NF: Spokane Munitions.	RGE, T25, SW¼, Sec 26.	Spokane	SD		Agriculture	103c 3016	
c	Manti-Lasal NF: Bears Ears #11 Rex Group.		Old La Sal	UT	84530	Agriculture	3016 103c	20A
o	Manti-Lasal NF: Bears Nars-Rex Group.		Old La Sal	UT	84530	Agriculture	3016 103c	
c	Manti-Lasal NF: Brushy Basin #31 Alias Pretty.		Old La Sal	UT	84530	Agriculture	103c 3016	20A
o	Manti-Lasal NF: Brushy Basin #31.		Old La Sal	UT	84530	Agriculture	103c 3016	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	BLM-Worland Landfill.	West of Wyoming Street 433.	Worland	WY	82401	Interio	103c	20A
o	BLM-Worland Landfill.	T47NR93WSEC23	Worland	WY		Interior	103c	
c	BLM-Birch Creek Site.	State Rt.235 at Calpet.	Calpet	WY	82923	Interior	103c	20A
o	BLM-Birch Creek Site.	T27NR13WSEC34	Worland	WY		Interior	103c	
c	BLM-Old Lysite Landfill.	Badwater Road	Lysite	WY	82642	Interior	103c	20A
o	BLM-Old Lysite Landfill.	T30NR9WSEC1		WY		Interior	103c	
c	BLM-Boulder Landfill.	Wyoming State Rt 23–106.	Sublette	WY	82923	Interior	103c	20A
o	BLM-Boulder Landfill.	T31NR108WSEC3	Boulder	WY		Interior	103c	
c	BLM-South Bighorn County Landfill.	Off of US 20	Greybull	WY	82410	Interior	103c	20A
o	BLM-South Bighorn County Landfill.	T52NR93WSEC20		WY		Interior	103c	
c	U.S. Army Ethan Allen Firing Range.	Lee River Road	Jericho	VT	05465	Army	3010103c	20A
o	Ethan Allen Firing Range.	Lee River Road	Jericho	VT	05465	Army	3010103	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16 NFRAP STATUS UPDATES

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism
Fresno Horticultural Field Station.	2021 South Peach Ave	Fresno	CA	93727	Agriculture	3016 103c
Former NAVFAC Engineering Field.	900 Commodore Drive	San Bruno	CA	94066	Navy	103c
San Diego Naval Medical Center.	34800 Bob Wilson Dr, Suite 1800.	San Diego	CA	92314–5001	Navy	103a 103c 3010
Bloomfield Naval Weapons Industrial.	Old Windsor Avenue, P.O. Box 2.	Bloomfield	CT	06002	Navy	103c
New London Naval Submarine Base.	Route 12 Crystal Lake Road.	Groton	CT	06349	Navy	3005 3010 3016 103c
Hoosier NF: Branchville Site.	811 Constitution Avenue.	Bedford	IN	47421	Agriculture	103c 3016
Carl J. Shelter Army Reserve Center.	2300 10th Street	Lake Charles	LA	70601	Army	3010 103c
Truro Inst STP	Off Aldrich Rd	N Truro	MA	02666	Air Force	103c 3010
Massachusetts Air National Guard.	Skyline Dr	Worcester	MA	01605	Air Force	103c
Fort Devens	Buena Vista St.	Ayer-Shirley	MA	01432	Army	3005 3010 3016 103c 103a
Lt John A. Ferra US Army Reserve Center.	North St	Danvers	MA	01923	Army	103c
Natick Lab. Army Research, Development.	Kansas St.	Natick	MA	01760	Army	3010 3016 103c
Materials Technology Laboratory.	405 Arsenal St	Watertown	MA	02172	Army	3005 3010 3016 103c 103a
Nyanza Chemical Waste Dump.	Megunko Rd	Ashland	MA	01721	EPA	3010
DOI Parker River Refuge	Northern Boulevard Plum Island.	Newburyport	MA	01950	Interior	3016 103c
Bedford Naval Weapons Industrial Reserve.	Hartwell Road	Bedford	MA	01730	Navy	3016 103c 103a
South Weymouth Naval Air Station.	Nas S. Weymouth Pwd Code 72.3.	South Weymouth	MA	02190	Navy	3005 3010 3016 103c
U.S. Coast Guard Buoy Depot South Weymouth.	Trotter Road	South Weymouth	MA	02190	Transportation	3005 3010 103c
Boston Veterans Affairs Hospital.	150 S Huntington Rd	Boston	MA	02130	Veterans Affairs	103c
Maine Air National Guard-Bia.	Bangor Int'l Arprt Rt 222/Geofrey Blvd.	Bangor	ME	04401	Air Force	103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16 NFRAP STATUS UPDATES—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism
Loring Air Force Base	42 CSG/CC	Limestone	ME	04751	Air Force	3005 3010 3016 103c 103a
Auburn Training Site Organizational Maint.	Stevens Mill Road	Auburn	ME	04210	Army	3016
Caswell Training Site	5 Miles	Caribou	ME	04750	Army	3016
Brunswick Naval Air Station.	1251 Orion Street	Brunswick	ME	04011–5009	Navy	3005 3010 3016 103c 103a
Cutler Naval Computer & Telecommunication AM.	Off Rt 191	Cutler	ME	04626–9608	Navy	3010 3016 103c
Portsmouth Naval Shipyard.	Seavy Island	Kittery	ME	03904	Navy	3005 3010 3016 103c 103a
Hiawatha NF: Byers Lake Resort.	1.22 mi W & 1.22 mi N of Stueben.	W Section of Schoolcraft City.	MI	49829	Agriculture	103c 3016
Battle Creek Medical Center.	5600 Armstrong Road ..	Battle Creek	MI	49016	Veterans Affairs	3010
Desoto National Forest Access Roads: Road 415.	100 W. Capital St., Suite 1141.	Jackson	MS	39269	Agriculture	3016 103c
Pease Air Force	509 CSG/CC	Portsmouth	NH	03801	Air Force	3005 3010 3016 103c
U.S. Army Cold Regions Research and.	Route 10	Hanover	NH	03755	Army	103c 3016 103a
Keene Army Reserve Center.	682 Main Street	Keene	NH	.....	Army	103c .....
Grenier Field Army Reserve Center.	Galaxy Drive	Manchester	NH	.....	Army	103c .....
Otter Brook Lake Property.	Old Concord Rd	Keene	NH	03431	Corps of Engineers, Civil.	103c .....
Surry Mountain Shooting Range.	East Surry Rd	Surry	NH	03431	Corps of Engineers, Civil.	103c .....
Manchester Medical Center Ash Dump.	718 Smyth Road	Manchester	NH	03104	Veterans Affairs	103c
Manchester Housing and Development.	83 Trahan Street	Manchester	NH	03103	.....	3010 .....
Fort Bliss Air Defense Center.	McGregor Range FAW 10.	McGregor Range	NM	88003	Army	3005 3010 .....
Ross Aviation, Inc	Hangar 481	Kirtland AFB	NM	87117	Energy	103c 3016 .....
U.S. Postal Service—JAF Bldg.	8th Ave & 33rd Street ..	New York	NY	10199	Postal Service	3010 .....
U.S. Armed Forces Reserve Center.	1101 North 6thO='.' Street.	Broken Arrow	OK	74012	Army	3010 103c .....
Tracy W. Young, U.S. Army Reserve.	805 West Hartford Avenue.	Ponca City	OK	74601	Army	3010 103c .....
North Smithfield Nike Control Area.	274 Old Oxford Road ...	North Smithfield	RI	02876	Air Force	103c .....
U.S. Army Reserve Maintenance Facility.	Albion Road	Smithfield	RI	02917	Army	103c .....
Davisville Naval Construction Battalion.	Off Sanford Road	North Kingstown	RI	02871	Navy	3016 103c 103a 3010 3005.
Manti-Lasal NF: Brushy Basin #31 Alias Pretty.	.....	Old La Sal	UT	84530	Agriculture	103c 3016 .....
Manti-Lasal NF: Mt. Linnaeus #1 Laura.	.....	Old La Sal	UT	84530	Agriculture	103c 3016 .....
Manti-Lasal NF: Bears Ears #11 Rex Group Alias.	.....	Old La Sal	UT	84530	Agriculture	103c 3016 .....
Chester Army Reserve Center.	Route 11	Chester	VT	.....	Army	103c .....
T.S. Ethan Allen Air Force Base, RS.	Bldg. #5, Camp Johnson.	Colchester	VT	05446	Army	3016 .....

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FEDERAL COMMUNICATONS COMMISSION

[WC Docket No. 02–314; FCC 02–332]

Application by Qwest Communications International Inc., Pursuant to Section 271 of the Telecommunications Act of 1996, For Authorization To Provide In-Region, InterLATA Service in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants the section 271 application of Qwest Communications International Inc. for authority to enter the interLATA telecommunications market in the states of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming. The Commission grants Qwest's application based on its conclusion that Qwest has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

DATES: Effective January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, Attorney-Advisor, Wireline Competition Bureau, at 202–418–0026 or via the Internet at *mcarowit@fcc.gov*. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in WC Docket No. 02–314, FCC 02–332, adopted December 20, 2002, and released December 23, 2002. This full text may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/verizon_vt/welcome.html*.

Synopsis of the Order

1. *History of the Application.* On September 30, 2002, Qwest filed an application, pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the states of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming.

2. *The State Commissions' Evaluations.* The Colorado Public Utilities Commission (Colorado Commission), the Idaho Public Utilities Commission (Idaho Commission), the Iowa Utilities Board (Iowa Board), the Montana Public Service Commission (Montana Commission), the Nebraska Public Service Commission (Nebraska Commission), the North Dakota Public Service Commission (North Dakota Commission), the Public Service Commission of Utah (Utah Commission), the Washington Utilities and Transportation Commission (Washington Commission), and the Wyoming Public Service Commission (Wyoming Commission), (collectively, state commissions), following an extensive review process over a number of years, advised Commission that Qwest met the checklist requirements of section 271 and has taken the statutorily required steps to open its local markets in each state to competition. Consequently, the state commissions recommended that the Commission approve Qwest's in-region, interLATA entry in its evaluations.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation of Qwest's Application on October 22, 2002. It recommended approval of the application subject to Qwest's submission of supplemental evidence addressing certain pricing issues.

Primary Issues in Dispute

4. *Compliance with section 271(c)(1)(A).* The Commission concludes that Qwest demonstrates that it satisfies the requirements of section 271 (c) (1) (A) based on the number of interconnections agreements it has implemented with competing carriers in all nine states.

5. *Checklist Item 2—Unbundled Network Elements.* Based on the record, the Commission finds that Qwest has provided "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act in compliance with checklist item 2.

6. *Operating Support Systems (OSS).* The Commission finds that Qwest provides non-discriminatory access to its OSS. The Commission also concludes that Qwest provides nondiscriminatory access to its OSS—the systems, databases, and personnel necessary to support network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Qwest regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that, for each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management), Qwest provides access to its OSS in a manner that enables competing carriers to perform the functions in substantially the same time and manner as Qwest does or, if no appropriate retail analogue exists within Qwest's systems, in a manner that permits competitors a meaningful opportunity to compete. In particular, the Commission finds that Qwest provides access to loop qualification information consistent with requirements in the *UNE Remand Order*. In addition, regarding specific areas where the Commission identifies issues with Qwest's OSS performance in the nine-state region—order processing notifiers, accuracy of manual processing, flow-through, and billing accuracy—these problems are not sufficient to warrant a finding of checklist noncompliance.

7. *UNE Combinations.* Pursuant to section 271(c)(2)(B)(ii) and BOC must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already combined elements, except at the specific request of the competing carrier. The Commission concludes, based on the performance data in the record, that Qwest meets its obligation to provide access to UNE combinations in compliance with the Commission's rules.

8. *Pricing of Unbundled Network Elements.* Checklist item 2 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c) (3) and 252(d) (1)" of the Act. Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Section 252(d) (1) provides that a state

commission's determination of the just and reasonable rates for network elements, must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit. Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements. Based on the evidence in the record, the Commission finds that Qwest's UNE rates in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming are just, reasonable, and nondiscriminatory, and are in accordance with section 252(d)(1). Thus, Qwest's UNE rates in these states satisfy checklist item 2. Qwest has taken a different approach to pricing issues compared to other BOCs whose applications we previously have approved under section 271. Qwest made a series of voluntary rate reductions in Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming prior to filing its section 271 applications. Those reductions were specifically calculated to produce rates that would enable those states to pass a benchmark comparison to rates in Colorado. The Commission first evaluated Qwest's UNE rates in Colorado and found them to be TELRIC-compliant. The Commission next conducted a benchmark analysis comparing Qwest's Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming UNE rates to the Colorado UNE rates. This analysis compares the difference between the benchmark state's rates and Colorado's rates to the difference between the benchmark state's and Colorado's costs according to the Synthesis Model. Because the percentage differences between Qwest's Colorado rates and the benchmark state rates do not exceed the percentage differences between Qwest's Colorado costs and the benchmark state's costs according to the Synthesis Model, the Commission found that Qwest's rates in Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming satisfy our benchmark analysis.

Other Checklist Items

9. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission concludes that Qwest provides interconnection in accordance with the requirements of section 251(c)(2) and as specified in section 271 and applied in the Commission's prior orders. Based on its review of the record, the Commission concludes, that Qwest complies with the requirements of this checklist item. In reaching this conclusion, the Commission examined Qwest's performance in providing collocation and interconnection trunks to competing carriers, as it has done in prior section 271 proceedings.

10. *Checklist Item 4—Unbundled Local Loops.* Qwest provides unbundled local loops in accordance with the requirements of section 271 and the Commission's rules. The Commission's conclusion is based on its review of Qwest's performance for all loop types, which include voice grade loops, xDSL-capable loops, and high capacity loops, as well as hot cut provisioning and our review of Qwest's processes for line sharing and line splitting.

11. *Checklist Item 5—Unbundled Local Transport.* Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." Based on our review of the record, the Commission concludes that Qwest complies with the requirements of this checklist item.

12. *Checklist Item 6—Unbundled Local Switching.* Based on the Commission's review of the record, it concludes that Qwest demonstrates that it provides: (1) line-side and trunk-side facilities; (2) basic switching functions; (3) vertical features; (4) customized routing; (5) shared truck ports; (6) unbundled tandem switching; (7) usage information for billing exchange access; and (8) usage information for billing for reciprocal compensation in compliance with checklist item 6.

13. *Checklist Item 7—911/E911 Access and Directory Assistance/ Operator Services.* Based on the Commission's review of the record, it finds that Qwest provides non-discriminatory access to 911 and E911 services and access to directory assistance services to allow the other carrier's customers to obtain telephone numbers and operator call completion services in compliance with checklist item 7.

14. *Checklist Item 10—Databases and Signaling.* Section 271(c)(2)(B)(x) of the 1996 Act requires a BOC to provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion. Qwest states that it provides competitive LECs in each of the five application states with unbundled, nondiscriminatory access to its signaling network, including signaling links and transfer points, and to Qwest's call-related databases and service management systems. Based on the evidence in the record, the Commission finds that Qwest complies with the requirements of checklist item 10.

15. *Checklist Item 11—Number Portability.* Section 251(b)(2) requires all LECs to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission. Qwest states that it satisfies the requirements of checklist item 11 as it complies with the Commission's (a) long term number portability ("LNP") implementation schedule; (b) performance criteria; (c) technical, operational, architectural and administrative requirements and (d) cost recovery rules for number portability. Based on the evidence in the record, the Commission concludes that Qwest has satisfied the requirements of checklist item 11.

16. *Checklist Item 14—Resale.* Based on the record in this proceeding, the Commission concludes that Qwest demonstrates that it makes telecommunications services available for resale in accordance with the requirements of section 251(c)(4) and section 252(d)(3), and thus satisfies the requirements of checklist item 14.

17. *Remaining Checklist Items.* An applicant for section 271 authority must demonstrate that it complies with checklist item 3 (poles, ducts, and conduits), item 8 (white pages), item 9 (numbering administration), item 12 (local dialing parity), and item 13 (reciprocal compensation). Based on the evidence in this record, the Commission concludes that Qwest complies with the requirements of all of the checklist items: 3, 8, 9, 12, and 13.

Other Statutory Requirements

18. *Section 272 Compliance.* Commission standards for compliance with Section 272 are set forth in the *Accounting Safeguards Order* (61 FR 41208, August 7, 1996) and the *Non-Accounting Safeguards Order* (61 FR 39397, July 29, 1996). Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate and ensure that BOCs do not discriminate in favor of these section 272 affiliates. Based on the record, the Commission concludes that Qwest and QLDC, its section 272 affiliate, have demonstrated compliance with the requirements of section 272.

19. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From the Commission's extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, it finds that barriers to competitive entry

in the application states' local exchange markets have been removed, and that these local exchange markets are open to competition. It further finds that the record confirms the Commission's view that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist. Notwithstanding its concern about discrimination in interconnection agreements and potential violations of the Act as a result, the Commission finds that Qwest's previous failure to file certain interconnection agreements with the application states does not warrant a denial of this application. The Commission concludes that concerns about any potential ongoing checklist violation (or discrimination) are met by Qwest's submission of agreements to the commissions of the application states pursuant to section 252 and by each state acting on Qwest's submission of those agreements. Based on the limited circumstances established in the record, the Commission does not find that the allegations concerning Qwest's compliance with section 271 relate to openness of the local telecommunications markets to competition. Instead, it defers any enforcement action pending the Enforcement Bureau's investigation of the matter.

20. *Section 271(d) (6) Enforcement Authority.* Working with the state commissions, the Commission intends to closely monitor Qwest's post-approval compliance to ensure that Qwest continues to meet the conditions required for section 271 approval. It stands ready to exercise its various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in each of the states.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–33043 Filed 12–31–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The FDIC is soliciting comment concerning its information collection titled, "Privacy of Consumer Financial Information (12 CFR 332)."

DATES: You should submit written comments by March 3, 2003.

ADDRESSES: You should direct comments and requests for further information to Steven F. Hanfit, (202) 898–3907, Legal Division (Consumer and Compliance Unit), Room MB–3064, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number 3064–0136. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. to 5 p.m.

A copy of the comments should also be sent to the OMB Desk Officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or by e-mail to *jlackeyj@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The FDIC is proposing to extend OMB approval of the following information collection:

Title: Privacy of Consumer Financial Information (12 CFR 332).

OMB Control Number: 3064–0136.

Description: This submission covers a collection for an existing regulation.

The Gramm-Leach-Bliley Act (Pub. L. 106–102) requires the information collection, and mandates that the federal banking agencies issue regulations as necessary to implement notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties.

The information collection requirements in part 332 are as follows:

Section 332.4(a) requires a bank to provide an initial notice to consumers that accurately reflects its privacy policies and practices.

Section 332.5(a) requires a bank to provide a notice annually to customers during the continuation of the customer relationship that accurately reflects the bank's privacy policies and practices.

Section 332.7(a)(1) requires a bank to provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out. The notice must state that the bank discloses or reserves the right to disclose nonpublic personal information to certain categories of nonaffiliated third parties; that the consumer has the right to opt out of that disclosure; and a reasonable means by which the consumer may exercise the opt out right. Section 332.10(c) states that a bank may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out (partial opt-out).

Section 332.8(a) requires a bank to provide consumers with a revised notice of the bank's policies and procedures and a new opt out notice, if the bank wishes to disclose information in a way that is inconsistent with the notices previously given to a consumer.

Part 332 also contains affirmative actions that consumers must take to exercise their rights. In order for consumers to prevent banks from sharing their information with nonaffiliated parties, they must opt out (§§ 332.7(a)(2)(ii), 332.10(a)(2) and 332.10(c)).

Consumers also have the right at any time during their continued relationship with the bank to change or update their opt out status with the bank (§§ 332.7(f) and (g)).

These information collection requirements ensure bank compliance with applicable Federal law.

The most recently published (65 FR 8783) estimation of the number of the paperwork burden associated with this collection follows:

Estimated Number of Respondents: 5,764.

Estimated Total Annual Responses: 5,764.

Estimated Time Per Response: 43 hours (disclosure burden, includes initial notice).

Estimated Burden Hours Per Response: 2 Hours (reporting burden)

Frequency of Response: Annually.

Estimated Total Annual Burden: 259,380 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated at Washington, DC this 24th day of December, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–33044 Filed 12–31–02; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 16, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Russell W. Davis, David M. Davis, both of Mount Vernon, Illinois, James K. Davis, Salem, Illinois, the David M. Davis Family Trust, James K. Davis Family Trust, and Lynne M. Mills Family Trust, all of Mount Vernon, Illinois; to retain 76.74 percent of Dix Bancshares, Inc., and thereby indirectly retain voting shares of First State Bank of Dix, both of Dix, Illinois.

In connection with this notice, David M. Davis, Mount Vernon, Illinois; to acquire direct and indirect control of 53.90 percent of Dix Bancshares, Inc., and for James K. Davis, Salem, Illinois, to acquire direct and indirect control of 44.10 percent of Dix Bancshares, Inc.

Board of Governors of the Federal Reserve System, December 26, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–33045 Filed 12–31–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Buford Banking Group, Inc., Buford, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Lanier Community Bank (in organization), Buford, Georgia.

2. F.N.B. Corporation, Naples, Florida; to acquire up to 20 percent of the voting shares of Sun Bancorp, Inc., and thereby indirectly acquire Sun Bank, both of Selinsgrove, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Century Bancshares, Inc., Gainesville, Missouri; to acquire 24.8 percent of Ozarks Heritage Financial Group, Inc., Gainesville, Missouri, and thereby indirectly acquire Bank of Plato, Plato, Missouri.

2. Ozarks Heritage Financial Group, Inc., Gainesville, Missouri; to become a bank holding company by acquiring 100 percent of Community First Financial Corporation, Plato, Missouri, and thereby indirectly acquire Community First Financial Corporation and its subsidiary, Bank of Plato, both of Plato, Missouri.

Board of Governors of the Federal Reserve System, December 26, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–33046 Filed 12–31–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 28, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Century Bancshares, Inc., Gainesville, Missouri; to acquire 24.8 percent of Ozarks Heritage Financial Group, Inc., Gainesville, Missouri, and thereby indirectly acquire Community First Financial Corporation and its subsidiary, Bank of Plato, both of Plato, Missouri.

2. Ozarks Heritage Financial Group, Inc., Gainesville, Missouri; to become a bank holding company by acquiring 100 percent of Community First Financial Corporation, Plato, Missouri, and thereby indirectly acquire Bank of Plato, Plato, Missouri.

Board of Governors of the Federal Reserve System, December 27, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–33140 Filed 12–31–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of November 6, 2002

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on November 6, 2002.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with reducing the federal funds rate to an average of around 1¼ percent.

[1] Copies of the Minutes of the Federal Open Market Committee meeting on November 6, 2002, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

By order of the Federal Open Market Committee, December 23, 2002.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 02–33141 Field 12–31–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on January 16–17, 2003

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics will hold its ninth meeting, at which it will discuss, among other things the ethics of organ procurement and the role of the U.S. Food and Drug Administration (FDA) in public policy related to biotechnology. Subjects discussed at past Council meetings include: human cloning; embryonic stem cell research; the patentability of human organisms; extratherapeutic powers to enhance or improve human mood, memory, and muscles; research to extend the human lifespan; current and projected uses of preimplantation genetic diagnosis and screening (PGD); new techniques for choosing the sex of children; prospects for inheritable genetic modification (IGM); international models of biotech regulation; and the use of stimulants and related drugs to affect the behavior of children.

DATES: The meeting will take place Thursday, January 16, 2003, from 9 a.m. to 5:15 p.m. ET; and Friday, January 17, 2003, from 8:30 a.m. to 12:30 p.m. ET.

ADDRESSES: Grand Hyatt Washington at Washington Center, 1000 H Street, NW, Washington, DC 20001.

Public Comments: The meeting agenda will be posted at *http://www.bioethics.gov*. Members of the public may submit written statements for the Council's records. Please submit statements to Ms. Diane Gianelli, Director of Communications (tel. 202/296–4669 or e-mail *info@bioethics.gov*). The public may also express comments during the time set aside for this purpose, beginning at 11 a.m. ET, on Friday, January 17, 2003. Comments will be limited to no more than five minutes per speaker or organization. Please give advance notice of such statements to Ms. Gianelli at the phone number given above, and be sure to include name, affiliation, and a brief description of the topic or nature of the statement.

FOR FURTHER INFORMATION CONTACT: Diane Gianelli, 202/296–4669, or visit *http://www.bioethics.gov*.

Dated: December 23, 2002.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 02–33116 Filed 12–31–02; 8:45 am]

BILLING CODE 4161–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Michael E. Ganz, M.D., Case Western Reserve University: Based on the report of an investigation conducted by Case Western Reserve University (CWRU Report) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Dr. Ganz, Associate Professor of Medicine, CWRU, engaged in scientific misconduct by falsification and fabrication of research in grant application R01 DK058674–01A2, "The role of protein kinase C and shuttling proteins in diabetic kidney disease," submitted to the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH).

Specifically, PHS found that Dr. Ganz engaged in scientific misconduct by:

(1) Falsifying Figure 16 in NIH grant application R01 DK058674–01A2 by claiming that photomicrographs of glomeruli were from a streptozotocin model of induced diabetes in rat, while the photomicrographs were actually from tissue of human or other primate origin;

(2) Falsifying Figure 16 of this NIH grant application by claiming that six photomicrographs all represented glomeruli from different animals, whereas they actually were from only three different glomeruli, with each glomerulus being shown in two images with different orientations and/or magnifications; and

(3) Falsifying and fabricating documents, purportedly showing the source of the falsified Figure 16 in the NIH grant application, which the

Respondent provided to the CWRU inquiry committee.

The research was significant because it was designed to develop a therapy to prevent the progressive glomerular hypertrophy and matrix deposition that occur with the renal disease associated with diabetes in animals and humans.

Dr. Ganz has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed for a period of five (5) years, beginning on December 18, 2002:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (*e.g.*, grants and cooperative agreements) of the United States Government referred to as "covered transactions" as defined in 45 CFR part 76 (Debarment Regulations); and

(2) To exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 02–33079 Filed 12–31–02; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02060]

National Cancer Prevention and Control Program Notice of Availability of Funds; Amendment 2

A notice announcing the availability of fiscal year (FY) 2002 funds for cooperative agreements for the National Cancer Prevention and Control Program (NCPCP) was published in the **Federal Register** April 23, 2002, Volume 67, Number 78, pages 19932–19950. The notice is amended as follows:

Delete Sections A. through F.; page 19932, first column, through page 19934, second column. The information provided in these sections will be replaced in an open season announcement that will be published annually.

Page 19934, first and second column, section "G.2 Availability of Funds", delete all specific dollar amounts listed. New dollar amounts will be published in the annual open season announcement.

Page 19935, first column, section "G.2.d Funding Preference", delete the phrase "There are no funding preferences applicable to this component" and replace it with the phrase "Funding preference may be given to applicants from the prior year's applications who were considered Approved but Unfunded (ABU). Those applicants will be named in the annual open season announcement."

Page 19937, first column, section "G.4.a.(3)(b)", delete the phrase "letters of support must be (in a separate tabbed section of the application) that indicate the nature and extent of existing or planned collaborative support" and replace it with the phrase "letters of support that indicate the nature and extent of existing or planned collaborative support may be included in the appendices."

Page 19937, third column, section "G.4.a(7)(b) Travel", first paragraph, correct the typographical error "NCPCP" to read "NCCCP."

Page 19938, first column, section "G.4.b", second paragraph, after the phrase "For each proposal, the following information should be submitted:" insert the phrase "An Executive Summary consisting of a brief summary of proposed project, including goals, objectives, and description of who will complete the work."

Page 19938, second column, section "G.5.a", delete the phrase "(1 of 2)" from the header. Delete the first sentence "In addition to the general guidance provided in Section J-Other Requirements, the first two required progress reports should include a description of :" and replace it with "In addition to the guidance provided in Section J-Progress Reports 1 and 2 should include a description of:"

Page 19939, second column, section "G.6.a.(3)(f)", delete this entire section.

Page 19939, second column, section "H.2. Availability of Funds", delete all specific dollar amounts listed. New dollar amounts will be published in the annual open season announcement.

Page 19939, third column, section "H.2.b.(1)", reads "Not less than 60 percent of cooperative agreement funds must be spent for screening, tracking, follow-up* * *"" Delete the term "tracking" and replace it with "case management."

Page 19940, third column, section "H.4.Content", second paragraph, delete "* * * 65 double spaced pages * * *" and replace it with "* * * 53 double spaced pages * * *"

Page 19941, second column, section "H.4.a.(4)(f) Overall measures of success/effectiveness", second paragraph, delete "* * * fiscal year 2002–2003 * * *" and replace with "* * * proposed project year * * *"

Page 19941, third column, section "H.4.a.(5)(a) Travel", insert the following requirements:

H.4.a.(5)(a)[5] Up to two staff members to participate in the NCCDPHP Annual Chronic Disease Conference (4 days).

H.4.a.(5)(a)[6] On alternating years, starting with 2003, up to two staff members to participate in the National Cancer Conference in Atlanta (5 days).

Page 19943, third column, section "I.1. Eligible Applicants", third paragraph, add the following sentences: "However, after five consecutive years of NPCR funding as planning, applicants are expected to have achieved progress toward the Enhancement level of operations. If applicants have not been able to achieve this level of progress toward meeting NPCR standards, they may wish to designate another organization to operate the State or Territory's cancer registry."

Page 19943, third column, section "I.2. Availability of Funds", delete all specific dollar amounts listed. New dollar amounts will be published in the annual open season announcement.

Page 19944, first column, first paragraph, delete the phrase "* * * original five year project period." and replace it with "* * * original project period."

Page 19944, third column, section "I.3.a.(1)" contains a note. After the first sentence in the notation, add the sentence "Benign brain-related tumors will be included in the required data collection set for cases diagnosed on or after January 1, 2004."

Page 19944, third column, and Page 19945, first column, section "I.3.a.(2) Collect all required data items.", delete the first paragraph and replace with "A complete listing of required and supplementary/recommended data to be collected or derived for invasive and in-situ cancers diagnosed on or after January 1, 2003 can be found in NAACCR Standards for Cancer Registries, Volume II Data Standards and Data Dictionary, Chapter IX; Required Status Table."

Page 19945, first column, section "I.3.a.(5)", second sentence, add the word "demonstrated", so that the sentence reads "Performance will be measured by the extent to which the program has documented and demonstrated their ability to store required data."

Page 19945, second column, section "I.3.a.(11)", second paragraph, delete

the first sentence and replace with "Annually link registry files with those of the State's NBCCEDP."

Page 19946, second column, section "I.4.a.(4)(c)[1]", after the first sentence, add "In addition, please include a listing of any NPCR required data items that are not currently being collected. For each item not being collected, include an explanation of why it is not being collected."

Page 19946, second column, section "I.4.a.(4)(c)[2]", delete the first sentence.

Page 19946, second column, section "I.4.a.(4)(c)[3]", last sentence, delete "quarter for applicants currently funded by NPCR.", and replace with "year from the assessment of the NPCRCSS data submission."

Page 19946, second column, section "I.4.a.(4)(c)[4]", first sentence, add the phrase "if available" so that the sentence reads, "An assessment of the quality of data for diagnosis years 1995 through 2001, if available, and a description of the method for measuring specific quality indicators."

Page 19946, third column, section "I.4.a.(4)(d)", after the first sentence, add the sentence "(Note: Inclusion of an annual report will not be counted against the 20 page limit for appendices.)"

Page 19947, first column, section "I.4.a.(5)(a)", after the first sentence, add the sentence "A copy of the organizational chart indicating the placement of the proposed program, abbreviated (one page) resumes for the designated staff, and job descriptions for the proposed staff should be included in the application as an appendix."

Page 19947, first column, section "I.4.a.(5)(d)", delete the second sentence.

Page 19947, third column, section "I.4.a.(9)(a)", add the following phrase to the end of the sentence, "to be achieved with the requested funding."

Page 19947, third column, section "I.4.a.(9)(e)", delete the phrase "* * * responsible for activities." and replace it with "* * * responsible for each activity."

Page 19947, third column, section "I.4.a.(9)(i)[1]", delete the sentence " If appropriate, the plan may include improving the completeness or quality of past years * * *"

Page 19948, first column, section "I.4.a.(10)(b)[3]", delete the first sentence and replace with "Travel funds for up to two persons to make one, two-day, trip to Atlanta, GA for a reverse site visit."

Page 19948, second column, section "I.5.a.", in the header, correct the spelling of the word "Requirements."

Page 19948, second column, section "I.5.a.(1)", correct the third sentence to read "Cumulative data will be requested from the reference year to 12 months past the close of the most recent diagnosis year."

Page 19948, second column, section "I.5.a.(2)", second paragraph, first sentence, delete "* * * NPCR's Planning Program's attainment of goals * * *" and replace with "* * * an NPCR Planning Program's attainment of goals * * *"

Page 19948, second column, section "I.5.a.(2)(b)", second paragraph, delete the third sentence and replace with "Applications must be received by February 28 of the fiscal year in which the applicant wishes to be considered for Enhancement funding."

Page 19949, second column, section "J.1.a.(3)", first sentence. Delete this sentence.

Page 19949, second column, section "J.1.a.(4)(b) NBCCEDP:", delete the sentence and replace with "An example that demonstrates the impact of the NBCCEDP, and updated list of the screening and diagnostic procedures paid for by the program, the amount paid and the maximum amount allowed by Medicare within the State. Also include an updated letter of assurance regarding Medicaid coverage for CBE, screening mammograms, Pap smears and pelvic exams."

Page 19949, second column, section "J.1.a.(4)(b) NPCR:", correct typographical error in section title. Section title should read "J.1.a.(4)(c) NPCR:" Before the first sentence in this section, add the sentence "A hard copy of the State's most recent annual report on cancer incidence is required."

Page 19950, first column, first paragraph, add the sentence "Updated contact information and appendices will be published annually in the open season announcement."

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–33073 Filed 12–31–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0109]

Agency Information Collection Activities; Announcement of OMB Approval; Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 16, 2002 (67 FR 58429), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0390. The approval expires on November 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 26, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–33138 Filed 12–31–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0308]

Agency Information Collection Activities; Announcement of OMB Approval; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and "Lookback" Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and 'Lookback' Requirements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 8, 2002 (67 FR 62727), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0116. The approval expires on November 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 26, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–33139 Filed 12–31–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0518]

Preparation for International Conference on Harmonisation Meetings in Tokyo, Japan, Including Progress on Implementation of the Common Technical Document and Update on New Topics

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration is announcing the following meeting: "Preparation for ICH Meetings in Tokyo, Japan, February 3 through 6, 2003, Including Progress on Implementation of the Common Technical Document (CTD) and Update on New Topics" to solicit information and receive comments on the International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use (ICH) as well as the upcoming meetings in Tokyo, Japan. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Group meetings in Tokyo, Japan, February 2003, at which discussion of the CTD and the future of ICH will continue.

Date and Time: The meeting will be held on January 21, 2003, from 10:30 a.m. to 2 p.m. Submit registration material by January 14, 2003.

Location: The meeting will be held at 5630 Fishers Lane, rm. 1066, Rockville, MD 20875.

Contact Person: Kimberly L. Topper, Center for Drug Evaluation and Research, Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20857, 301–827–7001, FAX 301–827–6801, e-mail: Topperk@cder.fda.gov.

SUPPLEMENTARY INFORMATION: The ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labor and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and representatives of the observers: WHO, Health Canada and the European Free Trade Area. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: http://www.ich.org.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by January 14, 2003.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 1 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by January 14, 2003, and submit a brief statement of the general nature of the evidence or arguments they which to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

If you need special accommodations due to a disability, please contact Kimberly L. Topper at least 7 days in advance.

Agenda: The agenda for the public meeting will be made available on January 14, 2003, at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, under docket number 02N–0518.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: December 26, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–33075 Filed 12–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Professions and Nurse Education Special Emphasis Panel; Notice of Partially Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Health Professions and Nurse Education Special Emphasis Panel meetings by teleconference. The meetings will be partially closed to the public. The public can join the open session of the meetings in person at the address listed below. The closed session of the meetings is in accordance with the provision set forth in section 552(b)(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Name: Field Experience in Public Health Nursing in State and Local Health Departments for Baccalaureate Nursing Students (Section 831 D52).

Date and Time: January 6–10, 2003.; January 13–15, 2003.

Place: DHHS, Parklawn Building, 5600 Fishers Lane, Room 11A–33, Rockville, MD 20857.

Open on: January 6, 2003, 12 p.m. to 1 p.m.

Closed on: January 6–10, 2003, 1 p.m. to 6 p.m.; January 13–15, 2003, 1 p.m. to 6 p.m.

Name: Basic Nurse Education and Practice: Geriatric Nursing Knowledge and Experiences in Long Term Care Facilities for Nursing Students (Section 831 D53).

Date and Time: January 6–8, 2003.

Place: DHHS, Parklawn Building, 5600 Fishers Lane, Room 11A–33, Rockville, MD 20857.

Open on: January 6, 2003, 11 a.m. to 12 p.m.

Closed on: January 6, 2003, 12 a.m. to 6 p.m.; January 7–8, 2003, 12 p.m. to 6 p.m.

Purpose: The Health Professions and Nurse Education Special Emphasis Panel shall advise the Associate Administrator for Health Professions on the technical merit of grants to improve the training, distribution, utilization, and quality of personnel required to staff the Nation's health care delivery system.

Agenda: The open portion of each meeting will cover introductions, opening remarks, housekeeping details, and an orientation to the review process. The closed portion of each meeting will involve the review, discussion, and evaluation of grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

For Further Information Contact: Anyone wishing to obtain a roster of members or other relevant information should write or contact Ms. Wilma Johnson, Acting Director, Office of Peer Review, Bureau of Health Professions, Parklawn Building, Room 11A–33, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6339.

Dated: December 26, 2002.

Jon L. Nelson,

Associate Administrator for Management and Program Support.

[FR Doc. 02–33078 Filed 12–31–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability. Final Restoration Plan and Environmental Assessment

AGENCY: U.S. Fish and Wildlife Service, U.S. Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish & Wildlife Service (Service), on behalf of the U.S. Department of the Interior (DOI), as a Natural Resource Trustee (Trustee), announces the release of the Final Restoration Plan and Environmental Assessment (RP/EA) for the Charles George Land Reclamation Trust Superfund Site in Tyngsborough, Massachusetts. The Final RP/EA describes the Trustees' selected action to restore natural resources injured as a result of chemical contamination at the Charles George Landfill.

ADDRESSES: Requests for copies of the Final RP/EA may be made to: Laura Eaton-Poole, U.S. Fish and Wildlife Service, New England Field Office c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776. Copies are also available on the Internet at: *http://greatmeadows.fws.gov/charlesgeorge.html.*

FOR FURTHER INFORMATION CONTACT: Laura Eaton-Poole, U.S. Fish and Wildlife Service, New England Field Office c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776. Interested parties may also call 978–443–4661, extension 17, or send e-mail to *Laura_Eaton@fws.gov* for further information.

SUPPLEMENTARY INFORMATION: Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*). "* * * [Trustees] may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages." Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste site, and provide a process whereby the Trustees can determine the proper compensation to the public for injury to natural resources.

Three natural resource trustees settled with the Potentially Responsible Parties for injuries to natural resources due to releases of hazardous substances from the Charles George Landfill Superfund Site: DOI recovered $299,916 for injuries to migratory birds that use wetlands; National Oceanic Atmospheric Administration recovered $134,624 for potential injuries to anadromous and catadromous fish in the Merrimack River; and the Commonwealth of Massachusetts recovered $918,900 for injuries to wetlands and groundwater. The total recovery of damages and future oversight expenses for all the Trustees was $1,353,440. The three Trustees signed a memorandum of Agreement (MOA) in recognition of the common interests to restore, replace and/or acquire the equivalent natural resources which were injured, destroyed, or lost by the releases of hazardous substances. The MOA provides a framework for the development of a Trustee Council that cooperatively develops and implements a Restoration Plan.

The Final RP/EA is being released in accordance with Section 111(i) of CERCLA, 42 U.S.C. 9611(i) and the National Environmental Policy Act (NEPA). The Final RP/EA describes a

number of natural resource restoration, acquisition, and protection alternatives identified by the Charles George natural Resources Trustee Council (Trustee Council), and evaluates each of the possible alternatives based on all relevant consideration. The Trustee Council's Preferred Alternative has three parts: (1) The settlement funds will be used to protect properties adjacent to or near the areas of impact; (2) the settlement funds will be used to contribute to the anadromous fish restoration effort in the Merrimack River Watershed through the funding of stocking and monitoring of herring in the Concord River in Massachusetts, and contributing to the funding of the construction of a fish ladder at a dam on the Concord River which is an impediment to upstream migration of migratory fish; and (3) pending engineering estimates that determine that the work is cost-effective, the Upper Flint Pond Dam will be repaired to prevent migration of contaminated sediments into the Merrimack River. Details regarding the proposed projects are contained in the Final RP/EA.

The Final Revised Procedures for the DOI in implementing the NEPA were published in the **Federal Register** on January 16, 1997. Under those procedures, the DOI has determined that the Preferred Alternative will not have significant environmental effects as described in the Draft RP/EA an the attached Finding of No Significant Impact statement. Accordingly, the Preferred Alternative described in the draft RP/EA will not require preparation of an Environmental Impact Statement.

Author: The primary author of this notice is Laura Eaton-Poole, U.S. Fish and Wildlife Service, New England Field Office, c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776.

Authority: The authority for this action is the Comprehensive Environmental response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*).

Dated: October 18, 2002.

Mamie A. Parker,

Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 02–32257 Filed 12–31–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Availability for Public Comment of the Draft Decision on Implementation of Section 3406(b)(2) of the Central Valley Project Improvement Act (CVPIA) (Hereinafter Draft (b)(2) Decision), Central Valley Project (CVP), California

AGENCY: Bureau of Reclamation and Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Availability for public comment.

SUMMARY: CVPIA Section 3406(b)(2) authorized and directed the Secretary to dedicate and manage annually eight hundred thousand (800,000) acre-feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by CVPIA; to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento San Joaquin Delta Estuary; and to help to meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of enactment of CVPIA, including but not limited to additional obligations under the Federal Endangered Species Act.

The U.S. Department of the Interior through the U.S. Bureau of Reclamation (Reclamation) and the U.S. Fish and Wildlife Service has developed the Draft (b)(2) Decision to implement CVPIA

Section 3406(b)(2). Public comment on the Draft (b)(2) Decision is invited at this time.

DATES: Submit written comments on the Draft (b)(2) Decision on or before February 3, 2003.

ADDRESSES: Copies of the Draft (b)(2) Decision may be retrieved from the Web site at *http://www.mp.usbr.gov/cvpia/3406b2/index.html*. Copies may also be requested by contacting Lynnette Wirth at (916) 978–5102 or via her email address *lwirth@mp.usbr.gov*, or by writing her at the below address.

Written comments on the Draft (b)(2) Decision should be addressed to the Bureau of Reclamation, Attention: Lynnette Wirth, MP–140, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Lynnette Wirth at (916) 978–5102, or e-mail *lwirth@mp.usbr.gov*.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on Interior's Draft (b)(2) Decision. Interior has been dedicating and managing water pursuant to Section 3406(b)(2) beginning in 1993, the first water year following passage of the CVPIA. Since enactment of the statute, Interior has pursued ways to utilize (b)(2) water in conjunction with reoperation and water acquisitions to meet the goals of the CVPIA. Through this decision, Interior seeks to exercise Secretarial discretion to implement Section 3406(b)(2) in accordance with the language of CVPIA, the intent of Congress, as well as to make this decision consistent with the rulings of the *District Court in San Luis & Delta Mendota Water Authority, et al* v. *United States,* (CIV F 97–6140 OWW DLB) ((b)(2) litigation). This decision incorporates parts of the October 5, 1999, Final Decision upheld by the District Court, modifies others and adds new components. The intent of these changes is to simplify and clarify the accounting process for (b)(2) uses and to integrate its dedication and management with CVP operations for other CVP purposes.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, and we will honor such requests to the extent allowed by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowed by law. If you wish Interior to withhold your name and/or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: December 12, 2002.

Kirk C. Rodgers,

Regional Director, Mid-Pacific Region.

[FR Doc. 02–33111 Filed 12–31–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed consent decree in *United States* v. *Aerosystems, et al.*, Civ. No. 89–1780 (D.N.J.), was lodged with the United States District Court for the District of New Jersey on December 10, 2002

("Consent Decree"). The Consent Decree resolves the liability of all of the defendants, against whom the United States asserted a claim on behalf of the United States Environmental Protection Agency ("EPA") under sections 106 and 107(a) of the Comprehensive Environmental Response, Compresentation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607(a), and the New Jersey Uniform Fraudulent Transfer Act, N.J.S. §§ 25:2–20 *et seq* for injunctive relief and recovery of costs incurred by the United States in connection with the Metaltec/Aerosystems Superfund Site, located in Franklin, New Jersey.

This is an ability to pay settlement based upon expert review of financial documentation provided to the United States by the defendants. This settlement calls for the liquidation of the Superfund Site property, in addition to an up-front cash payment to the United States of $60,000.00 and an additional $480,000.00 in installment payments over the next five years. These funds will be deposited into a special account to pay for response activities at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Aerosystems, et al.*, DOJ Ref. #90–11–3–416.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of New Jersey, 502 Federal Building, 970 Broad Street (contact Assistant United States Attorney Susan Cassell); and the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866 (contact Assistant Regional Counsel, Amelia Wagner). A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, PO Box 7611. Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $10.00 (25 cents per page reproduction costs) for the Consent Decree, payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–33082 Filed 12–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; National Marine Sanctuaries Act

Notice is hereby given that the United States, on behalf of the United States District Court for the Southern District of Florida, in *United States* v. *Great Lakes Dredge and Dock Company,* Civil Action No. 97–2510, consolidated with 97–10075, on December 4, 2002. This Consent Decree resolves the claims of the United States against Great Lakes Dredge and Dock Company ("Great Lakes"), pursuant to the National Marine Sanctuaries Act, 16 U.S.C. 1431, *et seq.* The Consent Decree concerns the grounding of a vessel owned by Coastal Marine Towing and the dragging of a dredge pipe for 13 miles through the Florida Keys National Marine Sanctuary west of Marathon, Florida.

The Consent Decree provides that Great Lakes will purchase an annuity from Allstate Life Insurance Company ("Allstate") which will provide for the payment of $969,000 to the National Oceanic and Atmospheric Administration ("NOAA") over a period of five years from December 16, 2002. The funds will be used by NOAA to repay damage assessment costs, compensatory or loss use values, and for the primary on-site restoration of the grounding site. The Consent Decree further provides that the United States covenants not to bring a civil action or take administrative action against Great Lakes pursuant to the NMSA for violations of the Act alleged in the Amended Complaint.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Great Lakes Dredge and Dock Company,* DOJ #90–11–3–1636.

The proposed Consent Decree may be examined at the United States Attorney's Office, Southern District of Florida, 99 NE. 4th St., Suite 328, Miami, FL 33132. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the reference number given above and enclose a check in the amount of $8.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–33080 Filed 12–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that a proposed Settlement Agreement, with respect to a Proof of Claim filed by the United States in *In re Irving Tanning Co.*, Case No. 01–10586 (Bankr. D. Me.), was lodged on December 17, 2002, with the United States Bankruptcy Court for the District of Maine. The proposed Settlement Agreement resolves claims of the United States against Irving Tanning Company ("Irving") at the Peter Cooper Landfill Site located in the Village of Gowanda, New York and at the Peter Cooper (Markhams) Site located in Dayton, New York, under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* The Settlement Agreement includes a covenant not to sue by the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

Under the proposed Settlement Agreement, the Proof of Claim filed by the United States on March 15, 2002, will be treated as an allowed unsecured claim in the amount of $140,000. The Settlement Agreement provides that this allowed claim will be paid in accordance with the treatment of Class 7 claims pursuant to the Plan of Reorganization approved by the Bankruptcy Court on August 13, 2002. The amount of the dividend to be paid with respect to this allowed claim will depend upon the total amount of allowed unsecured claims and the total amount of money available to the unsecured creditors.

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed Settlement Agreement. Any comments

should be addressed to Donald G. Frankel, Trial Attorney, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, One Gateway Center, Suite 616, Newton, Massachusetts 02458 and should refer to *In re Irving Tanning Co.*, D.J. Ref. #90–11–2–06887/3.

The proposed Settlement Agreement may be examined at EPA Region 2, 290 Broadway, New York, NY 10007–1866 (contact George Shanahan, 212–637–3171). A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $2.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–33083 Filed 12–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7 and 42 U.S.C. 9622(d), notice is hereby given that on December 19, 2002, a proposed Consent Decree ("Consent Decree") in *United States* v. *NL Industries, Inc. et al.*, Civil Action No. 91–CV–578–JLF, was lodged with the United States District Court for the Southern District of Illinois.

The United States filed the above-referenced civil action under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), against NL Industries, Inc. ("NL") and others in 1991. The complaint seeks injunctive relief to compel defendants to perform remedial actions at the NL Industries/Taracorp Superfund Site, as well as civil penalties and punitive damages for failure to comply with a 1990 administrative order issued pursuant to section 106 of CERCLA. In addition, the complaint seeks to recover response costs incurred by the United States in connection with the Site.

Under the proposed consent decree. In additon, NL will pay $29.78 million to the Superfund within 30 days of entry of the consent decree. In addition, NL will pay up to an additional $710,000 to the Superfund, depending on the outcome of an audit of certain response costs relating to the Site. Finally, the proposed consent decree requires NL to pay a penalty of $1 million for failure to comply with the 1990 administrative order. Because another group of potentially responsible parties committed to complete the implementation of remedial action at the Site, the proposed consent decree does not include any requirements for NL to perform remedial action.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *NL Industries, Inc., et al.*, D.J. Ref. 90–11–3–608A.

The Consent Decree may be examined at the Office of the United States Attorney, Nine Executive Drive, Fairview Heights, Illinois 62208–1344, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–33084 Filed 12–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation and Order of Judgment Under the Clean Air Act

Notice is hereby given that on December 12, 2002, a proposed Stipulation and Order for Judgment, (Stipulation) in *United States* v. *Sierra Rock, et al.*, Civil Action No. S–00–2117 GEB DAD was lodged with the United States District Court for the Eastern District of California.

In this action the United States sought civil penalties and injunctive relief for violation of the Clean Air Act against Defendants Sierra Rock, and Loring and Thelma Brunius as owners and operators of the Weber Creek Quarry, located in El Dorado County, California. The complaint alleges that defendants are liable for violating section 114(a)(1), and (3), and 113 (b)(1) of the Clean Air Act and the California State Implementation Plan (California SIP) by failing to adequately respond to an Administrative Order requiring compliance with an Information Request, and for violating numerous provisions of the California SIP and defendants' operating permits, especially as they relate to the duty to control and suppress dust during quarry operations. Pursuant to the Stipulation between the parties, Defendants agree to pay a civil penalty of $69,729. Because of defendants' limited ability to pay, the civil penalty will be made in three installments over a two-year period and interest will accrue on the delayed installment payments. In addition, defendants agree to implement specific and substantial injunctive provisions aimed at reducing dust at the quarry.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Stipulation. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Sierra Rock, et al.*, D.J. Ref. 90–5–2–1–07194.

The Stipulation may be examined at the Office of the United States Attorney, 501 "I" Street, 10th Floor, Sacramento, CA 95814, and at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. A copy of the Stipulation may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $3.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–33081 Filed 12–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed consent decree in *United States and State of Rhode Island* v. *Town of South Kingstown, R.I., and Town of Narragansett, R.I.*, Civil Action 02–535 ML (D.R.I.), was lodged with the United States District Court for the District of Rhode Island on December 19, 2002 ("Consent Decree"). The Consent Decree resolves the claims of the United States and the State of Rhode Island (the "State") against the Town of South Kingstown, R.I., and the Town of Narragansett, R.I. (the "Towns"), for past response costs and for implementation of the source control remedy at the Rose Hill Regional Landfill Superfund Site ("Rose Hill Landfill Site" or "Site"). The United States' claims are under section 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606, 9607, and the State's claims are under section 107 of CERCLA, 42 U.S.C. 9607, and R.I.G.L. chapters 23–18.9, 23–19.1, and 23–19.14. The Rose Hill Landfill Site is located in the Village of Peace Dale, Town of South Kingstown, Washington County, Rhode Island.

Under the Consent Decree, the Towns will pay $4,000,000, plus interest from March 31, 2002, to a Superfund special account in settlement of past costs incurred by the United States and future costs relating to the Operable Unit One—Source Control ("OU1") remedy to be incurred by the United States. The OU1 remedy provides for excavation of the bulky waste at the Site and consolidating the bulky waste onto the solid waste area, followed by capping of the waste, along with leachate collection, landfill gas treatment, institutional controls, and monitoring. The Consent Decree provides that the State will implement the OU1 remedy and be responsible for 50% of the cost of construction and 100% of the cost of operation and maintenance of that remedy. Under the Consent Decree, the Towns are to eventually reimburse the State for 30 percent of the State's OU1 remedy costs through a combination of cash payments and in-kind operation and maintenance services.

Furthermore, the Consent Decree resolves the Towns' liability to the United States and the State for natural resource damages relating to the Rose Hill Landfill Site, subject to a reopener for unknown conditions and new information. The Towns will pay $122,000 to the National Oceanic and Atmospheric Administration ("NOAA") and $3,000 to the Department of the Interior ("DOI") in settlement of Federal claims for natural resources damages and/or natural resource damage assessment costs. The Towns will also repair or replace the Indian Run Reservoir Dam and the Asa Pond Dam, both in the Town of South Kingstown, R.I., in settlement of the State's claims for natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Rhode Island* v. *Town of South Kingstown, R.I., and Town of Narragansett, R.I.*, DOJ Ref. #90–11–3–06626.

Under R.I.G.L. § 23–19.14–11, the State will also receive, for a period of fourteen (14) days, written comments relating to the proposed Consent Decree. Comments should be addressed to the Director, Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908, and should refer to *United States and State of Rhode Island* v. *Town of South Kingstown, R.I., and Town of Narragansett, R.I.*

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Rhode Island, Fleet Center, 50 Kennedy Plaza, Providence, R.I. 02903 (contact Assistant United States Attorney, Michael P. Iannotti); the Region I Office of the U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Boston, MA 02114–2023 (contact Senior Enforcement Counsel, Amelia Welt Katzen); and the office of the Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908 (contact Senior Legal Counsel, John A. Langlois). A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $21.25 (25 cents per page reproduction costs) for the Consent Decree, without appendices, or $150.25 (25 cents per page reproduction costs) for the Consent Decree, with appendices, payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–33085 Filed 12–31–02; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL COUNCIL ON DISABILITY

Cultural Diversity Advisory Committee Meeting (Teleconference)

Time and Date: 3:00 p.m. EST, February 10, 2003.

Place: National Council on Disability, 1331 F Street, NW, Suite 850, Washington, DC.

AGENCY: National Council on Disability (NCD).

Status: All parts of this meeting will be open to the public. Those interested in participating in this meeting should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the conference call.

Agenda: Roll call, announcements, reports, new business, adjournment.

CONTACT PERSON FOR MORE INFORMATION: Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), ghawkins@ncd.gov (e-mail).

Cultural Diversity Advisory Committee Mission: The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

Dated: December 26, 2002.

Mark S. Quigley,

Director of Communications and Acting Executive Director.

[FR Doc. 02–33086 Filed 12–31–02; 8:45 am]

BILLING CODE 6820–MA–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Draft Review Standard for Early Site Permit Applications

The U.S. Nuclear Regulatory Commission (the Commission) has published a draft review standard for early site permit (ESP) applications. The ESP process is intended, under Title 10 of the Code of Federal Regulations (10 CFR) Part 52, to permit resolution of site-related issues regarding possible future construction and operation of a nuclear power plant at a site that is the subject of the ESP application. The draft review standard is primarily intended to guide the Commission staff in its review of an ESP application, with a secondary purpose of informing potential applicants for an ESP and other stakeholders of information the staff needs to perform its review. The Commission is publishing this draft version of the review standard for public comment and interim use. The Commission plans to issue a final version of the review standard by the end of 2003.

The draft review standard is available electronically for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS # ML023530045). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room).

Any interested party may submit comments on the draft review standard for consideration by the NRC staff. To be certain of consideration, comments on the draft review standard must be received by March 31, 2003. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the review standard should be sent to:

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation, Mailstop O–4D9A, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Comments may be hand-delivered to the NRC at 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically by the Internet to the NRC at *esprs@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's Public Document Room in Rockville, Maryland or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS).

FOR FURTHER INFORMATION, CONTACT: Mr. Michael L. Scott, Project Manager, New Reactor Licensing Project Office, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Mr. Scott may be contacted at (301) 415–1421 or by e-mail at *mls3@nrc.gov*.

Dated at Rockville, Maryland, this 26th day of December 2002.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 02–33113 Filed 12–31–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (HSBC Bank plc, To Withdraw From Listing and Registration Its $500M 7.625% Subordinated Notes (Due June 15, 2006) and $300M 6.95% Subordinated Notes (Due March 15, 2011)) From the New York Stock Exchange, Inc. File No., 1–87110

December 27, 2002.

HSBC, a public limited company incorporated under the laws of England and Wales ("Issuer" or "Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2d(d) thereunder,[2] to withdraw its $500m 7.625% Subordinated Notes (due June 15, 2006) and $300m 6.95% Subordinated Notes (due March 15, 2011) (together, the "Debt Securities"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Issuer stated in its application that is has complied with all applicable laws in effect in the state of California, in which it is incorporated, and with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(d) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

The Board of Directors ("Board") of the Issuer approved a resolution on November 27, 2002 to withdraw the Issuer's Debt Securities from listing on the NYSE. In making the decision to withdraw its Debt Securities from the NYSE, the Board states that it intends to withdraw its Debt Securities from listing on the NYSE as they are not widely held in the United States and the ongoing burdens associated with maintaining the listing are considered onerous and of little benefit to investors. In addition, the Board states that it intends to consolidate, as far as possible, the listings of all its debt securities on a single stock exchange and be subject to the ongoing reporting requirements of that exchange. All the terms and conditions of the Debt Securities will remain unchanged. The Company intends to list the Debt Securities on the London Stock Exchange (the "LSE") and they are expected to begin trading on December 20, 2002.

Any interested person may, on or before January 21, 2003 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–33117 Filed 12–31–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47091; File No. SR–NYSE–2002–55]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Dissemination of Liquidity Quotations

December 23, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2], notice is hereby given that on October 28, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 20, 2002, the Exchange filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 19, 2002 ("Amendment No. 1"). Amendment No. 1 replaces the filing in its entirety and provides, in the proposed rule text and the purpose section of the filing, further details on the display of additional quotations in stocks to show market depth.

[4] The Commission has received one comment letter on the proposed rule change. *See* letter from Thomas F. Secunda, Bloomberg, L. P., to Jonathan G. Katz, Secretary, Commission, dated December 16, 2002 ("Bloomberg Letter"). The commenter notes that the NYSE intends to disseminate liquidity quotations under the vendor and subscriber contracts that govern NYSE OpenBook service. The commenter believes that these contracts should be filed as a proposed rule change, pursuant to Section 19(b) of the Act. 15 U.S.C. 78s(b). The commenter also believes that these contracts inappropriately discriminate against vendors and that the dissemination of liquidity quotations under such agreements raises greater substantive issues than those raised by the NYSE's restrictions on redissemination of its NYSE's OpenBook service because liquidity quote information is "* * * as critical as the national best bid and offer to those wishing to submit orders."

The Commission notes that in approving the NYSE's OpenBook service, the Commission did not also consider and approve the vendor agreements because such agreements were not a part of the NYSE's OpenBook proposal. Indeed, in its order approving the NYSE's OpenBook service, the Commission stated that the NYSE's restrictions on vendor redissemination and enhancement, integration or consolidation of OpenBook data are on their face discriminatory, and may raise fair access issues under the Act. *See* Securities Exchange Act Release No. 45138 (December 18, 2001), 66 FR 66491 (December 26, 2001). We do not believe that it is necessary to resolve the issue of whether the contracts need to be filed under 19(b) prior to publishing this proposed rule change for comment because the NYSE's proposal on liquidity quotations, like its previous proposal on the OpenBook service, does not include, and therefore does not seek approval of, the agreements to which the commenter objects.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to permit the display and use of quotations in stocks traded on the Exchange to show additional depth in the market for those stocks. The additional quotations will be referred to as "liquidity quotes." Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Dissemination of Quotations

Rule 60 (a)(1) For purposes of this rule, the terms "quotation vendor", "bid", "offer", "reported security", "quotation size", "published bid", "published offer", "published quotation size", "make available", "aggregate quotation size" and "specified persons" shall have the meaning given to them in SEC Rule 11Ac1–1.

(2) For the purposes of this rule and SEC Rule 11Ac1–1 as applied to the Exchange and members on the Floor, the term "responsible broker or dealer" shall mean, with respect to any bid or offer for any reported security made available by the Exchange to quotation vendors, the specialist in such reported security, who shall be the responsible broker or dealer to the extent of the quotation size he specifies.

(b) Each member who is a responsible broker or dealer on the Floor shall, in addition to meeting his obligations as set forth in paragraph (c) of SEC Rule 11Ac1–1 as applicable to such member under this rule, also abide by such rules and procedures adopted by the Exchange, in order to enable the Exchange to meet its quotation dissemination requirements under paragraph (b) of SEC Rule 11Ac1–1 as applicable to the Exchange under this rule.

(c) With respect to paragraph (b) of SEC Rule 11Ac1–1, the Exchange shall, at all times it is open for trading, collect, process and make available to quotation vendors the highest bid and the lowest offer, and the quotation size or the aggregate quotation size associated therewith, in each reported security in accordance with paragraphs (e) *and (g)* below (excluding any such bid or offer which is executed immediately after being made in the crowd and any such bid or offer which is cancelled or withdrawn if not executed immediately after being made) except during any period when trading in such reported security has been suspended or halted, or prior to the commencement of trading in such reported security on any trading day. Bids and offers on the Exchange, and associated quotation sizes and aggregate quotations sizes, shall be collected, processed and made available to quotation vendors as follows:

(1) Normal Mode—Unless otherwise designated pursuant to the provisions of subparagraphs (c)(2), the market on the Floor for each reported security shall be considered to be in a "normal mode". While such market is in a normal mode, only the specialist shall determine the size to be communicated to the Reporter and shall be deemed the "responsible broker or dealer" with respect to any bid or offer made available by the Exchange to quotation vendors.

(2) Non-Firm Mode—With respect to subparagraph (b)(3) of SEC Rule 11Ac1–1, a Floor Governor, Senior Floor Official, or Executive Floor Official (or two Floor Officials in the event a Floor Governor, Senior Floor Official, or Executive Floor Official is not available) shall have the power to determine that the level of trading activity or the existence of unusual market conditions are such that the Exchange is incapable of collecting, processing and making available to quotation vendors bids, offers and quotation sizes with respect to one or more reported securities in a manner which accurately reflects the current state of the market on the Floor. Such officials are sometimes referred to in this subparagraph (2) as the "Initiating Official(s)". Upon making of such a determination, the specialist shall designate the market in such security to be in a "non-firm mode", which shall remain in effect for a period not to exceed 30 minutes pending review as described below.

Whenever a Floor Governor, Senior Floor Official, or Executive Floor Official or two Floor Officials make any such determination with respect to any reported security, he or they shall immediately notify the Market Surveillance Division of the Exchange. During any period that the market in a reported security is in a non-firm mode, members on the Floor shall be relieved of their obligations under SEC Rule 11Ac1–1 as applicable to such members under this Rule 60 with respect to such reported security, but the specialist shall report bids and offers or revised bids and offers in such reported security, for publication, on a "best efforts" basis.

During any period that the market in a reported security is in a non-firm mode, the Initiating Official(s) shall

monitor the activity or condition which formed the basis for his or their determination. No more than 30 minutes after such market has been designated to be in a non-firm mode, the specialist shall review the condition of such market with the Initiating Official(s). In the event that the Initiating Official(s) are not available, the specialist shall review such condition with another Floor Governor, Senior Floor Official, or Executive Floor Official (or two Floor Officials if a Floor Governor, Senior Floor Official, or Executive Floor Official is not available). Continuation of the non-firm mode for longer than 30 minutes shall require the reaffirmation of the reviewing Floor Governor, Senior Floor Official, or Executive Floor Official or Floor Officials. Such review and reaffirmation shall occur not less frequently than every 30 minutes thereafter while the non-firm mode is in effect.

When the Exchange is once again capable of collecting, processing and making available to quotation vendors bids, offers, quotations sizes and aggregate quotation sizes with respect to a reported security that is in a non-firm mode in a manner which accurately reflects the current state of the market on the Floor, the Initiating Official(s) or, in the event he or they are not available, another Floor Governor, Senior Floor Official, or Executive Floor Official (or two Floor Officials if a Floor Governor, Senior Floor Official, or Executive Floor Official is not available) shall immediately renotify the Market Surveillance Division and the specialist in such reported security shall designate the market therein to be in a normal mode. Members on the Floor shall thereupon once again be obligated under SEC Rule 11Ac1–1 as applicable to such members under this Rule 60 with respect to such reported security.

(d) *In addition, the Exchange may disseminate a "liquidity bid" (at a price and size below the highest bid) and/or a "liquidity offer" (at a price and size above the lowest offer). The liquidity bid and liquidity offer shall reflect all trading interest represented in the highest bid and lowest offer, as well as trading interest (represented by orders on the specialist's book, members in the Crowd, and the specialist as dealer) executable at prices down to (in the case of a liquidity bid) the liquidity bid price, or up to (in the case of a liquidity offer) the liquidity offer price. Depending on market conditions in any particular security, the highest bid or offer and the liquidity bid or offer may be the same. The liquidity bid and offer shall be "firm quotations" available for orders to trade with. The specialist shall be the "responsible broker-dealer," for all liquidity bids and offers. The Exchange shall not disseminate a liquidity bid or offer during any period when trading in the subject security has been suspended or halted, or prior to the commencement of trading in such security on any trading day. The provisions of Rule 60(c)(1) and (2) shall be applicable to liquidity bids and liquidity offers.*

(i) *Execution of Market Orders When Liquidity Bid or Offer Is Disseminated*

In the case of a market order to sell of a size greater than the highest bid size, the order shall be executed against such highest bid (or crossed by the specialist if agent for the order) with the balance of the order being executed (to the extent possible based on the size of the liquidity bid) at the higher of the liquidity bid price or the price at which orders on the book would not be traded-through. Auction market crossing procedures should be followed, as appropriate, to ensure proper execution of orders. The same principles apply in the case of a market order to buy.

(ii) *Execution of Limit Orders When Liquidity Bid or Offer Is Disseminated*

In the case of a limit order to sell whose size is greater than the highest bid size, but which is limited to a price executable at or above the liquidity bid price, the order shall be executed first against the highest bid price (or crossed by the specialist if agent for the order), with the balance of the order being executed (to the extent possible based on the size of the liquidity bid) within its limit price at a price at which orders on the book would not be traded-through. Auction market crossing procedures should be followed, as appropriate, to ensure proper execution of orders. The same principles apply in the case of a limit order to buy.

(iii) *Execution of XPress Orders When Liquidity Bid or Offer Is Disseminated*

An XPress order may be priced at either the highest bid or offer price if XPress eligible) or the liquidity bid or offer price (if XPress eligible). An XPress order priced at the highest bid or offer price shall be executed in accordance with the Exchange's XPress order execution procedures. An XPress order to buy priced at the liquidity offer price shall be executed at the lower of the liquidity offer price or the price at which the XPress order can be filled without trading through orders on the book, unless price improvement can be offered to the XPress order in accordance with the Exchange's XPress order execution procedures. The same principles shall apply in the case of an XPress order to sell priced at the liquidity bid price.

If the specialist receives two XPress orders within a nearly simultaneous time frame, one priced at the best bid (offer), and the other priced at the liquidity bid (offer), both orders shall be executed in accordance with the Exchange's procedures for the execution of XPress orders. Both orders shall be exposed to the Crowd for price improvement. Those portions of the orders that do not receive price improvement shall be executed against the XPress bids (offers), which may not then be traded against by other members pursuant to the Exchange's procedures for the execution of XPress orders.

(e) *Autoquoting of highest bid/lowest offer and automated adjustment of size of liquidity bid and offer. The Exchange will autoquote the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer). When the NYSE's highest bid or lowest offer has been traded with in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders on the specialist's book at the next highest (in the case of a bid) or lowest (in the case of an offer) price. The size of any liquidity bid or offer shall be systemically increased to reflect any additional limit orders transmitted to the specialist's book at prices ranging from the liquidity bid or offer price to the highest bid (lowest offer). The size of any liquidity bid or offer shall be systematically decreased to reflect the execution of any limit orders on the specialist's book at prices ranging from the liquidity bid or offer price to the highest bid (lowest offer). However, de minimis increases or decreases in the size of limit orders on the book, as determined by the specialist, will not result in automated augmenting or decrementing of the size of the liquidity bid or offer where such bid or offer continues to reflect the actual size of limit orders on the book.*

In any instance where the specialist disseminates a proprietary bid (offer) of 100 shares on one side of the market, the bid or offer on that side of the market shall not be autoquoted. In such an instance, any better-priced limit orders received by the specialist shall be manually displayed, unless they are executed at a better price in a transaction being put together in the auction market at the time that the order is received.

[(d)] *(f)* In addition to meeting its obligations as set forth in paragraph (b) of SEC Rule 11Ac1–1 as applicable to

the Exchange under this Rule 60, the Exchange shall make available to quotation vendors and shall communicate to other specified persons the appropriate mode identifier in effect as to each reported security which shall, in the case of the initiation and termination of non-firm modes, effect the requisite notification and re-notification of specified persons under subparagraph (b)(3) of SEC Rule 11Ac1–1.

[(e)] *(g)* (1) Each specialist shall promptly report in each reported security in which he is registered the highest bid and lowest offer made in the trading crowd in such security and the associated quotation size that he wishes to make available to quotation vendors.

(2) Each specialist who is a responsible broker or dealer on the Floor shall:

(i) Promptly report as to the reported security whenever a bid, offer or quotation size he previously reported is to be revised; and

(ii) Promptly report as to the reported security whenever a bid and/or offer he previously reported is to be cancelled or withdrawn.

Supplementary Material

.10 No specialist shall be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the specialist who is responsible for the published bid or published offer shall be obligated to the extent set forth in paragraph (c) of Rule 11Ac1–1 but only to the extent of one unit of trading in the reported security in question.

.20 While the market for a reported security is in a "normal mode", the specialist shall honor any bid or offer then being displayed by quotation vendors which is erroneous, up to the quotation size then being so displayed, which has been displayed for six minutes or more on the Price Display Unit at the post. Provided, however, that the specialist shall not be required to honor such a bid or offer which is erroneous as to either price or size or both if:

(i) As a matter or record, an execution, cancellation or update of such bid or offer was in effect or in process;

(ii) In honoring such a bid or offer, the resulting transaction would violate applicable Exchange rules or federal regulations;

(iii) Equipment failure prevents the specialist from monitoring such bid or offer; or

(iv) The price sought upon such quotation is above the current bid or below the current offer, on the Floor, by (a) one-half point or more in the case of a reported security trading at $50 or less or (b) one point or more in the case of a reported security trading at more than $50.

* * * * *

Definitions of Orders

Rule 13

.40 The minimum number of shares for an XPress order is [15,000 shares] *(i) 15,000 shares for an XPress order seeking to trade with the best bid or offer, and (ii) the size of the liquidity bid or offer for an XPress order seeking to trade with such liquidity bid or offer. With respect to the best bid or offer, the* [The] published bid or offer must be at the same price for no less than 15,000 shares for at least 15 seconds in order to be indicated as an XPress Quote. *With respect to the liquidity bid or offer, the published bid or offer must be the same price for at least 15 seconds in order to be indicated as an XPress Quote.*

* * * * *

Miscellaneous Requirements

Rule 123A

Supplementary Material

.10 through .25—No Change.

.30 A specialist may accept one or more percentage orders.—When accepting more than one order, the specialist must make every effort to inform the entering brokers that they will be participating with another order or orders. Information of this type would alert brokers to the fact that each order will do less than 50% of the volume. When the specialist is handling more than one percentage order, each such order will be on parity with the other. When an odd amount of shares is involved, for example, 300 shares, and a specialist holds two percentage orders, he must give the extra 100 shares to the broker having priority on a time basis. Therefore, all percentage orders given to a specialist must be time-stamped by the specialist at his Post location.

If a specialist feels he cannot properly handle a number of percentage orders at one time, he should call in a Floor Official to discuss the situation.

If so instructed by the entering broker(s), percentage orders to buy will be converted into regular limit orders for transactions effected on "minus" or "zero minus" ticks. Conversely, if so instructed by the entering broker(s), percentage orders to sell will be converted into regular limit orders for transactions effected on "plus" or "zero plus" ticks.

Special Conversion Instructions. In addition to the conversion instructions discussed immediately above, the entering broker(s) may further instruct the specialist that he may, but shall not be required to, convert a percentage order to buy into a regular limit order for transactions effected on "zero plus" and "plus" ticks. Conversely, the entering broker(s) may further instruct the specialist that he may, but shall not be required to, convert a percentage order to sell into a regular limit order for transactions effected on "zero minus" or "minus" ticks. (These ticks are hereinafter collectively referred to as "destabilizing ticks".) Pursuant to these special conversion instructions, the specialist may convert a percentage order on a destabilizing tick only where *(i) the transaction for which the order is being converted is for less than 10,000 shares or a quantity of stock having a market value of less than $500,000 and the price at which the converted percentage order is to be executed is no more than 0.10 away from the last sale price; or (ii) the transaction for which the order is being converted is for 10,000 shares or more or a quantity of stock having a market value of $500,000 or more and the price at which the converted percentage order is to be executed is no more than 0.25 away from the last sale price.* [(i) the transaction for which the order is being converted is for 10,000 shares or more or a quantity of stock having a market value of $500,000 or more (whichever is less); and (ii) the price at which the converted percentage order is to be executed is no more than 0.25 point away from the last sale price; provided, however, that this price parameter may be modified, in appropriate cases, with the prior approval of a Floor Official and the written consent of the broker who entered the order.]

The specialist shall not execute a converted percentage order pursuant to the preceding paragraph at consecutively higher or lower prices such that consecutive up or down ticks (as the case may be), follow one another in rapid succession, unless he obtains the prior approval of a Floor Governor, Senior Floor Official, or Executive Floor Official. In determining whether to grant such prior approval, the Floor Governor, Senior Floor Official, or Executive Floor Official shall consider any changes in overall market conditions, and any changes in buying or selling interest in

the stock in question. Where a specialist reasonably believes, based on prevailing market conditions (for example, a brief period of time where there is an influx of buying/selling interest and a "fast market" condition) that it may be appropriate and necessary for him to convert percentage orders, on destabilizing ticks, in a series of trades which, while not consecutive, may be effected within a short period of time, the specialist shall first seek the approval of a Floor Governor, Senior Floor Official, or Executive Floor Official. In granting such approval, the Floor Governor, Senior Floor Official, or Executive Floor Official should, based on his evaluation of the buying/selling and contra-side interest in the market, determine a price a reasonable amount away from the market, to which price the specialist may convert percentage orders in a series of non-consecutive trades. As this price is approached, the specialist shall again consult with a Floor Governor, Senior Floor Official, or Executive Floor Official, who will re-evaluate the situation at that time. Any subsequent approvals by the Floor Governor, Senior Floor Official, or Executive Floor Official shall follow the principles discussed immediately above.

The specialist may convert a percentage order on a stabilizing tick to make a bid or offer in such size as he deems appropriate. The specialist may convert a percentage order on a destabilizing tick to make a bid or offer in such size as he deems appropriate to add size to prevailing bid or offer.

In addition, the specialist may, except as provided below, convert a percentage order on a destabilizing tick to establish a new bid in such size as he deems appropriate, (i) immediately following a transaction where such transaction has cleared the Floor of bids and offers, or (ii) to narrow the quotation spread, provided that no such bid may be more than 0.10 of a point higher than the last sale. The specialist's conversion of a percentage order to establish a new bid pursuant to (i) and (ii) above shall be further subject to the following conditions:

(1) Where the specialist has converted a percentage order to buy on a destabilizing tick [to participate in a transaction of at least 10,000 shares or in a transaction with a quantity of stock having a market value of $500,000 or more (whichever is less)] as otherwise permitted by this rule, he may not convert a percentage order to buy to establish a new bid at a price which is higher than the price of the transaction, unless there is an intervening transaction at a price that is independent of the price established by the specialist through the conversion of a percentage order.

(2) Where the specialist has converted a percentage order to buy to establish a new bid that is higher than the last sale price, with the result that a transaction is effected at the bid price, he may not convert a percentage order to buy to participate in a trade [of at least 10,000 shares or a quantity of stock having a market value of $500,000 or more (whichever is less)] as otherwise permitted by this rule, unless there is an intervening transaction at a price that is independent of the price established by the specialist through the conversion of a percentage order.

(3) Where the specialist has converted a percentage order to buy to establish a new bid that is higher than the last sale, he may not convert a percentage order to subsequently establish a higher bid, unless there is an intervening transaction at a price independent of the price established by the specialist through the conversion of a percentage order.

The same principles shall apply in the case of a specialist's conversion of percentage orders to sell. With the prior approval of a Floor Governor, Senior Floor Official, or Executive Floor Official, the specialist may convert a percentage order to make a destabilizing bid or offer at a price which would otherwise be prohibited under the limitations and conditions stated above.

Any percentage order or portion thereof converted to make a bid or offer shall be considered as a limit order on the book and will be ahead of other limit orders subsequently received by the specialist at that price, and any such bid or offer made pursuant to such order shall have the same standing in the market as would be provided any other bid or offer under the Exchange's auction market rules and procedures dealing with priority, parity, and precedence. Where the specialist has converted a percentage order to make or add to a bid (offer) as permitted by this rule, and subsequently additional buying or selling interest enters the market and establishes a different higher bid (lower offer), the original converted order or portion thereof shall retain its status on the book as a limit order at the price at which it was converted. However, unless the order has been converted at its maximum limit price, if a transaction is effected upon such higher bid (lower offer), and another bid (offer) is made at a price higher (lower) than such transaction, the original converted order or portion thereof shall be treated as a cancelled order on the book and revert to its original status as a percentage order subject to subsequent election or further conversion as permitted by this rule. Where the specialist has converted a percentage order to make or add to a bid or offer as permitted by this rule, and subsequently additional size is added to a prevailing bid or offer on the opposite side of the market from the converted percentage order, or a different bid or offer is established on the opposite side of the market from the converted percentage order, the specialist may cancel the converted order or portion thereof if he intends to reconvert the order to trade with the interest on the opposite side of the market, and such trade is otherwise permitted by this rule. The specialist must document the status of a converted percentage order on the book as a limit order at the price it was converted.

Notwithstanding the provisions of this Rule permitting percentage orders to be converted on destabilizing ticks, where a member holds orders of 10,000 shares or more or a quantity of stock having a market value of $500,000 or more (whichever is less) to buy or sell a particular stock which he proposes to cross at or within the prevailing market, the specialist may not, unless asked to do so by the member with the cross (assuming the cross is at or within the 0.25 point price parameter of this Rule), convert any percentage order on a destabilizing tick for execution in such proposed cross transaction unless the specialist can (at or within the 0.25 of a point price parameter specified in this Rule, and within the limit price of the order) provide a better price to one side or the other of the proposed cross.

When the specialist is holding one or more percentage orders with special instructions permitting conversions on destabilizing ticks as provided in this Rule, and a member who holds orders to buy and sell 10,000 shares or more or a quantity of stock having a market value of $500,000 or more (whichever is less) proposes to cross such orders at or within the prevailing market, the specialist shall not, unless asked to do so by the member with the cross, trade for his own account with either the bid or the offer side of such cross (as the case may be), where the effect of such proprietary trade would be to establish a new last sale price, and thereby extend the 0.25 point price parameter specified in this Rule.

In any situation where the specialist is taking or supplying for his own account the security named in a percentage order entrusted to him, the specialist and the entering broker shall comply with the procedures for

confirmation of transactions specified in Exchange Rule 91.10.

When converting a percentage order into a limit order, the specialist shall give priority to conventional limit orders on his book at that price on the same side of the market, which orders were entered before the conversion. This means that the converted percentage order may receive an execution at any particular price only after all such conventional limit orders on the book at that price are satisfied.

The entering broker may permit the specialist to be on parity with his order. However, when the specialist is handling more than one percentage order, he may not be on parity with any such order unless permission has been obtained from all brokers for whom he is holding percentage orders in the particular stock. If a specialist is on parity with one or more percentage orders, at no time may the specialist participate for his own account in an amount in excess of what each percentage order would receive, except that the specialist may participate for his own account to an extent greater than any particular percentage order where the size specified on such order has been satisfied. A specialist on parity with a percentage order remains subject to the limitations in Exchange Rule 104.10 as to transactions for his own account effected on destabilizing ticks. A specialist on parity with a percentage order shall inform the entering broker at the time the order is entered, whether or not he intends to buy or sell, as the case may be, along with the order. Specialists must make every effort to execute percentage orders in amounts which correspond as nearly as possible to the percentage specified therein.

The elected portion of a percentage order shall be handled as a new limited price order and shall take its place on the specialist's book as though it were a new order received at the time of the electing transaction. When a specialist holds more than one percentage order each individual order shall be elected to the extent of the full amount of the electing transaction; except that percentage orders held by a specialist shall not be elected by any portion of volume which results from the execution of a previously elected or converted portion of a percentage order that is on the same side of the market.

All percentage orders and special instructions related thereto, and any modifications or cancellations thereof shall be in writing. (See also Rule 13 and "Records of Specialists" at Rule 121.)

* * * * *

Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation

Rule 1000 Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid. An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and shall be immediately reported as NYSE transactions, unless:

(i) The NYSE's published quotation is in the non-firm quote mode;

(ii) The NYSE's published quotation has been gapped for a brief period because of an influx of orders on one side of the market, and the NYSE's published quotation size is one hundred shares at the bid and/or offer;

(iii) With respect to a single-sided auto ex order, a better price exists in another ITS participating market center;

(iv) With respect to a single-sided auto ex order, the NYSE's published bid or offer is 100 shares;

(v) A transaction outside the NYSE's published bid or offer pursuant to Rule 127 is in the process of being completed, in which case the specialist should publish a 100-share bid and/or offer;

(vi) Trading in the subject security has been halted.

Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market. *An auto ex order equal to or greater than the size of the NYSE's published bid or offer shall trade against the entire published bid or offer, and a new bid or offer shall be published pursuant to Rule 60(e). The unfilled balance of the auto ex order shall be displayed as a limit order in the auction market.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is required by SEC Rule 11Ac1–1 under the Act[5] to disseminate the highest bid and lowest offer in its market (*i.e.*, the "best quote" available for dissemination). The Exchange believes that the advent of decimal trading has resulted in many more price intervals which can be the best quote, with the result that the highest bid and lowest offer may not reflect the true depth of the market at prices reasonably related to the last sale.

The Exchange is proposing to address this issue by providing for the dissemination, in selected securities as appropriate, of a "liquidity bid" and a "liquidity offer," which would reflect aggregated trading interest at a specific price interval below the best bid (in the case of a liquidity bid) or at a specific price interval above the best offer (in the case of a liquidity offer). The specific price interval above or below the best bid and offer, as well as the minimum size of the liquidity bid or offer, would be established by the specialist in the subject security. Liquidity bids and offers would include orders on the specialist's book, trading interest of brokers in the trading crowd, and the specialist's dealer interest, at prices ranging from the best bid (offer) down to the liquidity bid (up to the liquidity offer).

According to the Exchange, it would not be mandatory to disseminate a separate liquidity bid and/or offer. In certain instances, depending on the depth of the market, the Exchange represents that the best bid (offer) and the liquidity bid (offer) may converge. In such case, the Exchange would make available the same price and size both as the best (bid) offer over the Consolidated Quotation System ("CQS") and as the liquidity bid (offer) via the Exchange's Common Access Point ("CAP"). In any event, all disseminated bids and offers (best and liquidity) would be deemed to be "firm quotations" that are available for interaction with trading interest. Orders seeking to trade against the best and liquidity bids/offers would be executed in accordance with NYSE auction procedures and NYSE procedures governing the execution of XPress orders.

The NYSE proposes to amend NYSE Rule 60 ("Dissemination of Quotations") to provide for the dissemination of

[5] 17 CFR 240.11Ac1–1.

liquidity bids and offers. The proposed amended rule contains a discussion of how market and limit orders, as well as XPress orders, would be executed against best and liquidity bids and offers.

Market Orders

When a liquidity bid is published in addition to a best bid, a market order to sell of a size greater than the size of the best bid will be executed to the extent possible against the best bid (or the order will be crossed by the specialist when he or she is acting as agent for the order using the auction market procedures in NYSE Rule 76, which calls for the member to publicly bid and offer on behalf of the orders before making a transaction with him—or herself) with the balance of the sell order being executed at the higher price of the liquidity bid or at the price of other orders on the book below the best bid, but above the liquidity bid. For example, assume the best bid is $20.10 for 200 shares, while the liquidity bid is $20.05 for 10,000 shares, with no other bids in between the best and liquidity bids. If a market order to sell 1,000 shares is received by the specialist, 200 shares would trade at the best bid price of $20.10, and 800 shares would trade at $20.05, the liquidity bid price, unless the specialist in crossing the order obtains price improvement for it. If there were other bids on the book between the best and liquidity bids, the sell market order could receive executions at those prices. For example, if, in addition to the best and liquidity bids of $20.10 and $20.05 in the previous example, there were also a bid of $20.07 for 300 shares, the market order to sell would be executed as follows—200 shares at the best bid of $20.10, 300 shares at $20.07 and 500 shares at the liquidity bid of $20.05, unless the specialist in crossing the order obtains price improvement for it. Market orders to buy would follow the same principles using the best and liquidity offers.

Limit Orders

NYSE is proposing that similar procedures would be used for the execution of limit orders when there are liquidity bids and offers as well as best bids and offers. In that regard, when a liquidity bid is published in addition to a best bid, a limit order to sell of a size greater than the size of the best bid, but which is limited to a price executable at or above the liquidity bid price, would be executed first against the best bid (or crossed as explained above), with the balance of the order being executed within its limit price at a price at which orders on the book will not be traded through. For example, assume there is a best bid for 200 shares of $20.10 and a liquidity bid of $20.05 for 10,000 shares. In addition, there is a bid for 500 shares at $20.07. If a limit order to sell 1,000 shares at $20.05 is received by the specialist, it would be executed as follows—200 shares at $20.10, 500 shares at $20.07 and 300 shares at the liquidity bid of $20.05. In all these examples, however, as with market orders, the specialist would follow NYSE auction market crossing procedures in an effort to obtain price improvement for the order. Limit orders to buy would follow the same principles.

Execution of XPress Orders

An XPress order is an order of a specified minimum size that is to be executed against a displayed XPress quote, or at an improved price, if obtainable. In order to be indicated as an XPress quote, a published bid or offer must be for no less than the minimum share size, currently 15,000 shares, at the same price for no less than 15 seconds.

With respect to liquidity quotes, the Exchange proposes to amend Supplementary Material .40 of NYSE Rule 13 ("Definitions of Orders") to provide that a liquidity bid or offer, regardless of size, will be XPress eligible if it has been published for at least 15 seconds. The Exchange expects that the size of liquidity bids and offers will be of a size that represents significant interest for a stock and will, in many stocks, be greater than 15,000 shares. However, where the share size of the liquidity bid or offer does not equal 15,000 shares, the Exchange believes that institutional interest in trading at the liquidity price may still be present, and that utilizing the XPress trading protocol will be an appropriate way for this interest to access such displayed greater liquidity. A liquidity quote will still be required to be at the same liquidity price for at least 15 seconds to be eligible as a quotation against which an XPress order may be executed.

Further, the Exchange proposes to amend NYSE Rule 60 to provide that an XPress order may be priced at either the best bid or offer price if XPress eligible (*i.e.*, for at least 15,000 shares for at least 15 seconds), or priced at the liquidity bid or offer price, if, again, XPress eligible. An XPress order to buy priced at the liquidity offer price will be either executed at that price, or a price that will allow an XPress order to be filled without trading through orders on the book. The Exchange represents that specialists will seek price improvement for XPress orders in accordance with the Exchange's procedures for the execution of XPress orders.

The Exchange proposes that if a specialist receives two XPress orders within a nearly simultaneous time frame, one priced at the best bid (offer), and the other priced at the liquidity bid (offer), both orders will be executed in accordance with the Exchange's procedures for the execution of XPress orders.[6] Both orders will also be exposed to the trading crowd for price improvement. Those portions of the orders that do not receive price improvement will be executed against the XPress bids (offers), which may not then be traded against by other members pursuant to the Exchange's procedures for the execution of XPress orders.

Automated Dissemination of Quotations

In conjunction with the dissemination of dual quotations, the Exchange proposes to provide for the automated dissemination of the best bid and offer as SuperDOT limit orders are received systemically. The Exchange notes that this is a change to the current practice whereby specialists are responsible for disseminating bids and offers. NYSE Rule 60 would be amended to provide that the Exchange will autoquote the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer). When the NYSE's highest bid or lowest offer has been traded with, in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders on the specialist's book at the next highest (in the case of a bid) or lowest (in the case of an offer) price. NYSE Rule 60 would also be amended to provide that autoquoting will include: (i) Adding size to the best and liquidity bids/offers as additional limit orders are received; and (ii) reducing the size of the best and liquidity bids/offers as limit orders on the book are executed or cancelled. However, the Exchange notes that *de minimis* increases or decreases in the size of limit orders on the book, as determined by the specialist, will not result in automated augmenting or decrementing of the size of the liquidity bid or offer where such bid or offer continues to reflect the actual size of limit orders on the book.

In any instance where the specialist disseminates a proprietary bid (offer) of 100 shares on one side of the market, the bid or offer on that side of the market shall not be autoquoted. In such an instance, any better-priced limit

[6] *See* Amendment No. 1, *supra* note 3.

orders received by the specialist shall be manually displayed, unless they are executed at a better price in a transaction being put together in the auction market at the time that the order is received.

In conjunction with autoquoting of bids and offers, NYSE Rule 1000 ("Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation") would be amended to provide that a NYSE Direct+® ("NYSE Direct+") order equal to or greater than the size of the published bid/offer will exhaust the entire bid/offer, rather than decrease it to 100 shares as is the case today.[7] The purpose of this change is to facilitate the autoquoting of the next highest bid/lowest offer. The unfilled balance of the NYSE Direct+ order would be displayed in the auction market as a SuperDOT limit order.

The Exchange believes that the proposed automated dissemination of the best bid and offer suggests a need to amend Supplementary Material .30 to NYSE Rule 123A ("Miscellaneous Requirements") to enable specialists to trade percentage orders against incoming SuperDOT orders. Currently, specialists may bid or offer (within $0.10 of the last sale) on behalf of a percentage order, and an incoming SuperDOT order may then trade against such bid or offer. The specialist may not "reach across the market" to trade a percentage order against a bid or offer in a "destabilizing" transaction (bid above the last sale or sell below the last sale) unless the trade is for at least 10,000 shares or a quantity of stock with a market value of at least $500,000. With the automating of SuperDOT bids and offers, specialists would not be permitted to interact with such orders on behalf of percentage orders as they do today because they cannot "reach across the market" to effect smaller size trades. Thus, the Exchange is proposing to amend NYSE Rule 123A.30 to permit specialists to "reach across the market" with percentage orders to effect trades of less than 10,000 shares or a quantity of stock having a market value of less than $500,000. Specialists could not "reach across the market" more than $0.10 from the last sale to effect these smaller size trades if the trade would be destabilizing. This $0.10 limitation is the same as the current limitation on making destabilizing bids or offers against which incoming orders may trade.

2. Statutory Basis

The Exchange believes that the statutory basis for this proposed rule change is in Section 6(b)(5) of the Act,[8] which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change also supports the principles of Section 11A(a)(1) of the Act,[9] in that it seeks to assure the availability to market participants of information with respect to market interest in securities traded on the Exchange, and thereby promote economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the file number in the caption above and should be submitted by January 23, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–33118 Filed 12–31–02; 8:45 am]

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[7] NYSE Rule 1001(c) currently provides that if executions of auto ex orders have traded with all trading interest reflected in the Exchange's published bid or offer, the Exchange will disseminate a bid or offer at that price of 100 shares until the specialist requotes that market. *See* Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR–NYSE–2000–18). The NYSE Direct+ pilot was subsequently extended for an additional year, *see* Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR–NYSE–2001–50); and, recently extended until December 23, 2003, *see* Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR–NYSE–2002–47). The Exchange recognizes that the proposed language in NYSE Rule 1000 will have the effect of superseding the provisions of NYSE Rule 1001(c). The Exchange represents that it will submit an amendment to delete Rule 1001(c) before approval of the proposed rule change. The Exchange also represents that, if approved, amended NYSE Rule 1000 will be part of the pilot program for NYSE Direct+ rules.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47089; File No. SR–NYSE–2002–43]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration

December 23, 2002.

On September 4, 2002, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposed rule change to: Increase the ceilings for claims eligible for simplified arbitration and arbitration claims between members to be decided by one arbitrator; clarify that both a filing fee and a hearing deposit must be submitted with a claim; increase a pre-hearing conference fee and the maximum adjournment fee; and make certain technical changes to fee schedules.

The proposed rule was published for comment in the **Federal Register** on November 20, 2002.[3] No comments were received on the proposal. In this order, the Commission is approving the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, with the requirements of section 6(b)(5).[5]

In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5)[6] of the Act in that it is designed to promote just and equitable principles of trade and is consistent with section 6(b)(4)[7] in that it provides for equitable allocation of reasonable dues, fees, and other charges.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2002–43), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[FR Doc. 02–33123 Filed 12–31–02; 8:45 am]

BILLING CODE 8010–01–P

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–46824 (November 13, 2002), 67 FR 70098.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200–30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47088; File No. SR–PCX–2002–78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Six-Month Extension of the Automatic Execution System Incentive Pilot Program

December 24, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The proposed rule change has been filed by the PCX as a "non-controversial" rule change under rule 19b–4(f)(6) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to extend the Automatic Execution System ("Auto-Ex") Incentive Pilot Program for six months. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 7, 2002, the Commission approved, on a six-month pilot basis, the Exchange's proposal to amend PCX rule 6.87, which governs the operation of Auto-Ex[4] to provide an Auto-Ex Incentive Program for apportioning Auto-Ex trades among Market Makers.[5] The pilot program is currently set to expire on December 24, 2002.[6]

The Auto-Ex Incentive Program allows the Exchange to assign Auto-Ex orders to logged-on Market Makers according to their percentage of their in-person agency[7] contracts traded in an issue (excluding Auto-Ex contracts traded) compared to all of the Market Maker in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period is determined by the Options Floor Trading Committee ("OFTC") and may be for any period of time not in excess of two weeks.[8] The percentage distribution determined for a review period will be effective for the succeeding review period.

The Exchange is requesting an additional extension of the pilot program for six months from December 24, 2002, through June 24, 2003. The added time permits the Exchange to finalize a proposed amendment to its program in order that the participation percentages of Market Makers who are temporarily away from the trading floor may be reinstated in some fashion. Therefore, the Exchange believes that a six-month extension of the program is warranted.

[4] Auto-Ex is the Exchange's Automated Execution system feature of the Pacific Options Exchange Trading System ("POETS") for market or marketable limit orders. POETS is the Exchange's automated trading system comprised of an options order routing system, Auto-Ex, an on-line limit order book system, and an automatic market quote update system. Option orders may be sent to POETS via the Exchange's Member Firm Interface ("MFI"). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet order type and size requirements of the Exchange.

[5] *See* Securities Exchange Act Release No. 46115 (June 25, 2002), 67 FR 44494 (July 2, 2002).

[6] The proposed rule changes were, in part, based on CBOE rule 6.8 *Interpretations and Policies* .06(c) "100 Spoke RAES Wheel".

[7] Agency contracts are those contracts that are represented by an agent and do not include contracts traded between Market Makers in person in the trading crowd.

[8] The OFTC has set a two-week review period for all options classes and the OFTC will not vary the term of the review period except for exigent circumstances.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5),[10] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act [11] and rule 19b–4(f)(6) thereunder.[12] Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [13] and rule 19b–4(f)(6)[14] thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay requirement, to permit the Exchange to implement the proposal immediately. Under rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow for the continued operation of PCX's Auto-Ex Incentive Pilot Program without interruption.[15] For this reason, the Commission designates the proposed rule change to be effective and operative upon its filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–2002–78 and should be submitted by January 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47090; File No. SR–Phlx–2002–75]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Its Payment for Order Flow Program

December 23, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which the Phlx has prepared. On December 23, 2002, the Phlx filed Amendment No. 1 to the proposed rule change, which replaced the original filing in its entirety. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees, and charges to reinstate an options payment for order flow program. The text of the proposed rule change is available at the principal offices of the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to generate a source of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

revenue that specialists may use to attract order flow to the Phlx, and to maintain and enhance the Phlx's competitive position. The Phlx notes that two other options exchanges currently have payment for order flow programs.[3]

The Phlx first instituted a payment for order flow fee in August 2000, imposing a $1.00 per contract fee, with some exceptions, on transactions of Phlx specialists and ROTs in the top 120 options on the Phlx.[4] The top 120 options were the 120 most actively traded equity options, based on national trading volume. The Phlx recalculated the list of top 120 options every six months, based on volume information that the Options Clearing Corporation provided.[5] The payment for order flow fee did not apply to index or foreign currency options. The Phlx later suspended the imposition of payment for order flow fees.[6]

The Phlx is now proposing to impose a payment for order flow fee, per-contract, per-issue, on the transactions of Phlx Registered Options Traders ("ROTs"),[7] as set forth in the Phlx's ROT Equity OptionPayment for Order Flow Charges Schedule and subject to the exceptions listed below. The fee would be assessed on ROTs on the top 120 most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation.[8] Initially, for trade months November, December, and January, the payment for order flow fee assessed on ROTs would be $1.00 on the top-ranked option, the Nasdaq-100 Index Tracking Stock℠ (which trades under the symbol "QQQ").[9] The fee on the next 49 options would be $0.50, and the remaining top 120 options would be assessed $0.00.[10] After the January 2003 trade month, the Chairman of the Phlx would establish the fees in $0.05 increments after receiving recommendations from a payment for order flow subcommittee of the Finance Committee and a payment for order flow subcommittee of the Options Committee.[11]

In its original proposal, filed with the Commission on November 15, 2002, the Phlx proposed to impose a 500-contract cap per individual cleared side of a transaction. In this Amendment No. 1, which replaces the original filing in its entirety, the Phlx proposes to remove the 500 contract cap after December 31, 2002. Accordingly, the 500 contract cap would be in effect for trades executed on or after November 18, 2002 and settling through December 31, 2002. The Phlx believes that keeping the contract cap through December 31, 2002 should minimize member confusion as to the applicable date for the contract cap and will avoid making costly changes to the billing system for the last six trading days of the month of December. The Phlx intends to file a separate proposal pursuant to Section 19(b)(2) of the Act to impose the 500 contract cap for trades settling on or after January 2, 2003.

The proposed payment for order flow fee would not apply to transactions between: (1) A specialist and a ROT; (2) a ROT and a ROT; (3) a ROT and a firm;[12] and (4) a ROT and a broker-dealer.[13] The Phlx continues to believe that these are not the transactions the fee is designed to attract. Indeed, because the primary focus of the program is to attract order flow from customers, the proposed fee would not be imposed on the above-specified transactions. The payment for order flow fee would also not apply to index or foreign currency options.

The Phlx would bill and collect the fee on a monthly basis and account for the funds received from the ROTs by option. The specialist units would be able to use the funds collected in relation to a given option to make payments to order flow providers for the purpose of attracting options orders to the Phlx.[14] The specialist units for each option would establish the amounts to be paid to order flow providers in respect of order flow for that option. The specialist units would receive these funds after submitting a Phlx form identifying the amount of the requested funds.[15] Because the specialist units are not being charged the payment for order flow fee for their own transactions, they may not request reimbursement or payment for order flow funds in

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[3] The Phlx states that two other options exchanges currently have payment for order flow programs. *See* Securities Exchange Act Release Nos. 46485 (September 10, 2002), 67 FR 58668 (September 17, 2002) (SR–PCX–2002–59); and 45857 (May 1, 2002), 67 FR 30988 (May 8, 2002) (SR–ISE–2002–12).

[4] *See* Securities Exchange Acf Release No. 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR–Phlx–00–77). Transactions in top 120 options that were excepted from the $1.00 fee were transactions between: (1) a specialist and a ROT; (2) a ROT and a ROT; (3) a specialist and a firm; (4) a ROT and a firm; (5) a specialist and a broker-dealer; and (6) a ROT and a broker-dealer. *See* Securities Exchange Act Release Nos. 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR–Phlx–00–77); 43480 (October 25, 2000), 65 FR 66275 (November 3, 2000) (SR–Phlx–00–86 and SR–Phlx–00–87); and 43481 (October 25, 2000), 65 FR 66277 (November 3, 2000) (SR–Phlx–00–88 and SR–Phlx–00–89).

[5] For the period from April 2, 2001 through June 30, 2001, there was a total of 121 Options on the Exchange's list of the top 120 options when the QQQ options were added to the Exchange's payment for order flow fee program prior to the next six-month measuring period. *See* Securities Exchange Act Release No. 44237 (April 30, 2001), 66 FR 23308 (May 8, 2001) (SR–Phlx–2001–43).

[6] *See* Securities Exchange Act Release No. 44716 (August 16, 2001), 66 FR 44393 (August 23, 2001) (SR–Phlx–2001–73).

[7] ROT transactions include those identified as "on-floor ROT orders" entered through a hand-held device for execution on the Phlx trading floor. *See* Phlx Rule 1080.

[8] The measuring periods for the top 120 options would be calculated every three months. For example, for trade months November, December, and January, the measuring period to determine the top 120 options would be based on volume statistics from July, August, and September. The subsequent measuring period would be October, November, and December for trade months February, March, and April. This cycle would continue every three months. Members would be notified of the top 120 options and applicable fees approximately two weeks before the beginning of a new three-month trading period.

[9] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. The Phlx represents that Nasdaq has complete control and sole discretion in determining or calculating the Index or in modifying in any way its method for determining or calculating the Index in the future.

[10] To avoid confusion, the ROT Equity Option Payment for Order Flow Charges Schedule reflects only those options being charged more than $0.00.

[11] The Phlx will file with the Commission a proposed rule change addressed to any changes in its fee schedule. The subcommittees and Chairman of the Phlx may take into account the following factors when setting payment for order flow rates: (1) Trading volume per issue; (2) Phlx market share per option; (3) disposition of previous payment for order flow fees collected; (4) relative size of the trading crowd; and (5) other such information as deemed necessary.

[12] For purposes of this filing, a firm is defined as a proprietary account of a member firm, and not the account of an individual member. Therefore, if a ROT trades with a member firm that was effecting trades for its proprietary account and not on behalf of customers, the payment for order flow fee would not apply.

[13] For purposes of this filing, broker-dealer orders are orders, entered from other than the floor of the Phlx, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off-the-floor.

[14] The Phlx is using the terms "specialist" and "specialist unit" interchangeably here.

[15] The purpose of the form is to assist the Phlx in accurately accounting for and tracking funds transferred to specialists consistent with normal bookkeeping and auditing practices. The specialists will certify on the form that the funds requested and received are used to reimburse the specialist for payments made in connection with attracting order flow to the Phlx, consistent with this filing. However, as discussed below, all determinations concerning the amount that will be paid for orders and which order flow providers shall receive these payments will be made by specialists.

connection with any transactions to which they were a party.

Under the Phlx's proposed payment for order flow program, specialists would request reimbursement for funds that they have paid to order flow providers for order flow. Under the Phlx's original payment for order flow program, both specialists and ROTs paid the payment for order flow fee and then were reimbursed these funds at a later date.[16] Under that program, the specialist both expended funds to pay for order flow and also paid into the payment for order flow pool by paying the payment for order flow fee, only to request reimbursement at a later date, thereby reimbursing themselves, in part, for funds collected from themselves. The Phlx believes that this resulted in an unfair and unnecessary burden on specialists because they expended funds twice, until they were able to claim reimbursement.

Under the proposed program, the Phlx would not charge the specialists the payment for order flow. The Phlx believes that the proposed program would achieve an economic effect similar to the old program, without the financial burden on specialists. Under the terms of the proposed program, specialists may request reimbursement for payment for order flow funds in connection with any transactions to which they were not a party, based on the percentage of ROT monthly volume to total specialist and ROT monthly volume. For example, if the monthly volume in an option to which the specialist was a party was 100,000 contracts and the monthly volume in that same option to which ROTs were a party was 75,000 contracts, the specialist may receive up to 43 percent of the total requested reimbursement amount (75,000/175,000). This amount may be further limited by the amount collected in the payment for order flow pool for that option, as specialists may not receive more than the amount collected from the ROTs. The Phlx believes that this methodology should help to ensure that ROTs are not unfairly burdened by paying the payment for order flow fee.

In the proposed program, the specialists would make all determinations concerning the amount to be paid for orders and the order flow providers that should receive the payments. The specialists would account to the Phlx for the use they make of the funds. The Phlx believes that this would help it to determine the effectiveness of the proposed fee. In addition, the Phlx would provide certain administrative duties to assist the specialists, including keeping track of the number of qualified transactions[17] that firms execute on the Phlx and performing any necessary accounting functions.

In addition, in connection with its payment for order flow program, the Phlx intends to rebate to ROTs, on a monthly basis, the amount of payment for order flow fees that the specialists have not requested for use in paying order flow providers.[18] The amount to be refunded to each ROT would be based on the percentage of the total payment for order flow charges the ROT paid for each option during the rebate time period. The ROTs percentage of the total payment for order flow charges for each option would then be multiplied by the rebate amount. For example, if a ROT contributed 5% of the total payment for order flow charges for a particular option during the rebate time period, the ROT would receive 5% of that option's overall rebate amount for that month.

The Phlx will continue to implement a quality of execution program.[19] Any changes to the options to which this proposed fee applies, to the rate or rates at which the fee is assessed, or to the Phlx's disposition of funds generated by the fee will be the subject of separate filings with the Commission. The Phlx intends to implement the payment for order flow fee for trades executed on and after November 18, 2002.[20]

2. Statutory Basis

The Phlx believes that its proposal to amend its schedule of dues, fees, and charges is an equitable allocation of reasonable fees among Phlx members consistent with Section 6(b) of the Act[21] and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act.[22] The Phlx believes that the ROTs paying the proposed payment for order flow fee will also receive the benefits of increased order flow. Moreover, the Phlx believes that attracting more order flow to the Phlx should result in increased liquidity, tighter markets, and more competition among exchange members, and thereby serve to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[23]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx received a petition signed by various Phlx members who requested a formal vote of the Phlx Board of Governors on the appropriateness of implementing "payment for order flow" and "urge[d] the Board of Governors to vote against such implementation."[24] As stated above, the Executive Committee, pursuant to delegated authority, authorized the filing of this proposed rule change.

The Phlx also received a letter from a Phlx member who questioned the procedures relating to the accounting by specialists for the funds that they receive from the Phlx, including that this information is not publicly available, and the possible appearance that one group of members is being favored over another group.[25] The Phlx believes that its accounting and certification procedures as discussed herein are necessary and appropriate and that the individual relationships between the specialists and order flow providers should remain confidential in order to preserve the integrity of the contractual business relationship between those parties. In addition, the Phlx believes that the proposed fee is an equitable allocation of fees among Phlx ROTs because the ROTs paying the payment for order flow fee should also receive the benefits of increased order flow. Also, specialists are not allowed to request reimbursement for payment for order flow funds in connection with any transactions to which they were a party.

The Phlx states that it has been and continues to be a vocal opponent to any exchange-sponsored payment for order flow programs. The Phlx believes,

[16] *See* Securities Exchange Act Release No. 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR–Phlx–00–77)).

[17] The term "qualified transactions" refers to transactions by ROTs on which a payment for order flow fee is assessed.

[18] The Phlx will not rebate more than the amount that has actually been collected from the ROTs.

[19] *See e.g.*, Securities Exchange Act Release No. 43436 (October 11, 2000), 65 FR 63281 (October 23, 2000) (SR–Phlx–2000–83).

[20] This fee is not eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues, and charges and other amounts that certain members owe to the Phlx. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4) and 78f(b)(5).

[23] 15 U.S.C.78f(b)(5).

[24] Petition from Phlx members to the Chairman and the Board of Governors of the Phlx, dated October 2002.

[25] Correspondence from Gary R. Smolen to Meyer S. Frucher, dated November 12, 2002.

however, that it must reinstate a payment for order flow program to remain competitive. As previously discussed, two exchanges currently have a payment for order flow program.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Phlx has designated the proposal as changing a Phlx due, fee, or other charge. Accordingly, the proposed rule change, as amended, has become immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act[26] and Rule 19b–4(f)(2) thereunder.[27] At any time within 60 days after the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–75 and should be submitted by January 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–33119 Filed 12–31–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47086; File No. SR–Phlx–2002–81]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Option Charges

December 23, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to increase the Options Floor Brokerage Assessment Fee ("Assessment Fee") from 5% of a firm's monthly net floor brokerage income[3] to a tiered rate ranging from 5.5% to 7.5% of a firm's monthly net floor brokerage income, and to institute a monthly $100,000 cap on such assessment fee.[4] The revised Assessment Fee is scheduled to be implemented respecting transactions settling on or after January 2, 2003.[5] The text of the proposed rule change is set forth below. New text is in italics. Deleted text is in brackets.

SUMMARY OF EQUITY OPTION CHARGES

Option Comparison Charge I (applicable to all trades—except specialist trades):	
Registered Option Trader	$.03 per contract.
Firm/Proprietary[6]	$.04 per contract.
Customer Executions	No charge.
Option Transaction Charge I:	
Customer Executions	No charge.
Firm/Proprietary[7]	$.15 per contract.
Firm/Proprietary Facilitation Transaction[8]	$.08 per contract.
Registered Option Trader (on-floor)	$.16 per contract.
Specialist	$.18 per contract.
Broker/Dealer[9]	$.35 per contract.
Option Floor Brokerage Assessment I [5% of net floor brokerage income.]	
Monthly Net Floor Brokerage Income:	*Assessment*
First $0—$300,000	*5.5%*
Next $300,001—$500,000	*6.5% (excess over $300,000).*
Balance—Over $500,001	*7.5% (excess over $500,000).*

[26] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[27] 17 CFR 240.19b–4(f)(2).

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Floor Brokerage Transaction Fee (for both Equity and Index Options) will continue to apply to floor brokers executing transactions for their own member firms.

[4] *See* Exchange Rules 714 and 715.

[5] The Assessment Fee will continue to be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

SUMMARY OF EQUITY OPTION CHARGES—Continued

Monthly Cap: $100,000.

[6] For the purpose of this Summary of Equity Option Charges, the Firm/Proprietary comparison or transaction charge applies to members for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customer. Firms will be required to verify this amount to the Exchange by certifying that they have reached this threshold and by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a firm has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted.

[7] *See supra* note 3.

[8] Equity Option Transaction Charges continue to apply to facilitation transactions involving Exchange-traded options subject to licensing agreements.

[9] For the purpose of this Summary of Equity Option Charges, this charge applies to members for orders, received from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off-floor.

Floor Brokerage Transaction Fee I

$.05 per contract, for floor brokers executing transactions for their own member firms

Specialist Deficit (Shortfall) Fee I

$.35 per contract for specialists trading any Top 120 Option if the cafollowing total national monthly contract volume for such Top 120 Option is not effected on the Phlx: 11% for the period January through March 2002; 12% for the period April through June 2002; 13% for the period July through September 2002; and 14% for the period October through December 2002.

Summary of Equity Option Charges

Specialist Deficit (Shortfall) Fee Credit

A credit of $.35 per contract may be earned by options specialists for all contracts traded in excess of the following volume thresholds in eligible issues for the monthly periods commencing September 1, 2001. These credits may be applied against previously imposed "shortfall fees" for the preceding six months for issues that in the month the deficit occurred, the equity option traded in excess of 10 million contracts per month: 11% for the period January through March 2002; 12% for the period April through June 2002; 13% for the period July through September 2002; and 14% for the period October through December 2002.

Real-Time Risk Management Fee I

$.0025 per contract for firms/members receiving information on a real-time basis

See Appendix A for additional fees.
I denotes fee eligible for monthly credit of up to $1,000.

SUMMARY OF INDEX OPTION CHARGES

Option Comparison Charge I (applicable to all trades—except specialist trades):		
Registered Option Trader	$.03 per contract.	
Firm (Proprietary and Customer Executions)	$.04 per contract.	
Option Transaction Charge I:		
Customer Executions:		
Market value less than $1.00[1]	$.20 per contract.	
Market value $1.00 or over[1]	$.40 per contract.	
Firm[2]	$.10 per contract.	
Registered Option Trader and Specialist	$.14 per contract.	
Option Floor Brokerage Assessment I [5% of net floor brokerage income.]		
Monthly Net Floor Brokerage Income:		*Assessment*
First $0—$300,000		*5.5%.*
Next $300,001—$500,000		*6.5% (excess over $300,000).*
Balance—Over $500,001		*7.5% (excess over $500,000).*
Monthly Cap: $100,000.		

Floor Brokerage Transaction Fee I

$.05 per contract, for floor brokers executing transactions for their own member firms.

Real-Time Risk Management Fee I

$.0025 per contract for firms/members receiving information on a real-time basis

See Appendix A for additional fees.
I denotes fee eligible for monthly credit of up to $1,000.

[1] Block transaction for customer executions of 500 to 999 contracts and 1,000 contracts and more are eligible for a discount to such charges of 15% and 25% respectively from the stated rates upon submission to the Phlx of a customer option block discount request form with supportive documentation within thirty (30) days of monthly billing date.

[2] Non-clearing firm members' proprietary transactions are eligible for the "firm" rate based upon submission of a PHLX rebate request form with supportive documentation within thirty (30) days of invoice date.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B; and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase the Assessment Fee to generate revenue, which should help offset rising Exchange costs. The tiered structure and cap should generate additional income without being overly burdensome to the floor brokers. A description of the proposal is below:

Monthly Net Floor Brokerage Income	Assessment
First $0—$300,000	5.5%.
Next $300,001—$500,000	6.5% (excess over $300,000).
Balance Over $500,001	7.5% (excess over $500,000).

Monthly Cap: $100,000.

The tiered rate amount is applied to each tier of monthly net floor brokerage income separately; for instance, if the monthly net floor brokerage income is $400,000, then the first $300,000 is assessed at a rate of 5.5%, and the remainder ($99,999) is assessed at the rate of the next tier—6.5%.

The Exchange believes that the proposed tiered Assessment Fee structure is reasonable and equitable because the amount a floor broker is assessed is directly related to such floor broker's monthly net floor brokerage income, which roughly correlates to such floor broker's overall activity on the Exchange. Therefore, those floor brokers who use a greater percentage of the Exchange's resources are assessed at a higher level. In order to balance the increase in the Assessment Fee, the Exchange intends to cap such assessment at $100,000 per month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b–4(f)(2) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–81 and should be submitted by January 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–33120 Filed 12–31–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47087; File No. SR–Phlx–2002–80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Option Charges

December 23, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges by: (1) increasing the Registered Option Trader ("ROT") Index Option Transaction Charge from $0.14 per contract to $0.19 per contract; [3] and (2) assessing an Index Option Book Charge of $1000 per month on Phlx specialists in the Exchange's Sector Index Options ("Index Options"), except for the KBW Bank SectorSM ("BKXSM"), the Oil Service SectorSM ("OSXSM"), the Semiconductor SectorSM ("SOXSM") and the Gold and Silver SectorSM ("XAUSM"), which will be assessed a $2,000 per month Index Option Book Charge.[4] Any newly-listed Index Options will be assessed at $1,000 per

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The $0.03 per contract Index Option Comparison Charge will continue to apply to ROT transactions.

[4] The Index Option Transaction Charge for Specialists will remain at $.14 per contract. The ROT Index Option Transaction Charge and the Index Option Book Charge will be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

month, beginning with the first full month of trading.

The $0.19 per contract ROT Index Option Transaction Charge is scheduled to be implemented on transactions settling on or after January 2, 2003. The Index Option Book Charge is scheduled to become effective on January 2, 2003.

The text of the proposed rule change is set forth below. New text is in italics. Deleted text is in brackets.

SUMMARY OF INDEX OPTION CHARGES

Option Comparison Charge I (Applicable to All Trades—except specialist trades):	
Registered Option Trader	$.03 per contract
Firm (Proprietary and Customer Executions)	$.04 per contract
Option Transaction Charge I:	
Customer Executions	
Market value less than $1.00*	$.20 per contract
Market value $1.00 or over*	$.40 per contract
Firm**	$.10 per contract
Registered Option Trader [and Specialist]	$[.14] *.19* per contract
Specialist	*$.14 per contract*
Option Book Charge I:	
KBW Bank Sector℠	*$2,000 per month*
Oil Service Sector℠	
Semiconductor Sector℠	
Gold and Silver Sector℠	
All other Index Options	*$1,000 per month*
Option Floor Brokerage Assessment I: 5% of net floor brokerage income.	
Floor Brokerage Transaction Fee I: $.05 per contract, for floor brokers executing transactions for their own member firms.	
Real-time Risk Management Fee I: $.0025 per contract for firms/members receiving information on a real-time basis See Appendix A for additional fees. I denotes fee eligible for monthly credit of up to $1,000.	

*Block transaction for customer executions of 500 to 999 contracts and 1000 contracts and more are eligible for a discount to such charges of 15% and 25% respectively from the stated rates upon submission to the PHLX of a customer option block discount request form with supportive documentation within thirty (30) days of monthly billing date.

**Non-clearing firm members' proprietary transactions are eligible for the "firm" rate based upon submission of a PHLX rebate request form with supportive documentation within thirty (30) days of invoice date.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to raise revenue for the Exchange. In addition, there are certain costs associated with the calculation of underlying index values. Because BKX℠, OSX℠, SOX℠ and XAU℠ have the highest trading interest and volume of all of the Exchange's Index Options, these Index Options will be assessed a higher Index Option Book Charge than other Index Options.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[5] 15 U.S.C. 78f(b).
[6] 15 U.S.C. 78f(b)(4).
[7] 15 U.S.C. 78(s)(b)(3)(A)(ii).
[8] 17 CFR 240.19b–4(f)(2).

available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–80 and should be submitted by January 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–33121 Filed 12–31–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4246]

60-Day Notice of Proposed Information Collection: Form DS–2029, Application for Consular Report of Birth Abroad of a Citizen of the United States of America (Includes SS–5); OMB Control Number 1405–0011

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Reinstatement of a previously approved collection.

Originating Office: CA/OCS, all U.S. Embassies and Consulates abroad.

Title of Information Collection: 1405–0011, Application for Consular Report of Birth Abroad of a Citizen of the United States.

Frequency: Occasionally.

Form Number: DS–2029.

Respondents: Parents or legal guardians of American citizen children born overseas.

Estimated Number of Respondents: approximately 46,000 per year.

Average Hours Per Response: approximately 20 minutes.

Total Estimated Burden: 15,333 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the Proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed colLection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Michael Meszaros, who may be reached on 202–312–9722.

Dated: December 24, 2002.

Daniel B. Smith,

Assistant Secretary, Acting, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–33124 Filed 12–31–02; 8:45 am]

BILLING CODE 4710–06–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4244]

Culturally Significant Objects Imported for Exhibition Determinations: "Leonardo da Vinci, Master Draftsman"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Leonardo da Vinci, Master Draftsman," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about January 21, 2003, to on or about March 30, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: December 24, 2002.

Thomas A. Farrell,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–33125 Filed 12–31–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Propeller Instructions for Continued Airworthiness

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed Advisory Circular (AC) Number 35.4–1, Propeller Instructions for Continued Airworthiness.

DATES: Comments must be received on or before February 14, 2003.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Jay Turnberg, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, Engine and Propeller Standards Staff, ANE–110, at the above address; telephone: (781) 238–7116; fax: (781) 238–7199; e-mail: *jay.turnberg@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT** or by downloading the proposed AC from the following Internet Web site: *http://www.airweb.faa.gov/rgl*. The FAA invites interested parties to comment on the proposed AC. Comments should identify the subject of the AC and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all

communications received by the closing date before issuing the final AC.

Background

The propeller type certification process requires the applicant to prepare Instructions for Continued Airworthiness (ICA) under § 35.4. The ICA provides information for proper maintenance that ensures that propellers of that type design are airworthy. This AC addresses preparing ICA for propellers.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on December 19, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–33127 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revision to Advisory Circular (AC) 25.562–1A, Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed revision to advisory circular.

SUMMARY: The Federal Aviation Administration invites public comment on a proposed revision to Advisory Circular 25.561–1A, Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes. The revision provides updated guidelines for demonstrating compliance with the airworthiness standards applicable to dynamic testing of seats.

DATES: Comments must be received on or before April 2, 2003.

ADDRESSES: You should send your comments on the proposed revision to the Federal Aviation Administration, Attention: Jeff Gardin, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW., Renton, WA 98055–4056. You may also submit comments electronically to: *jeff.gardlin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin at the above address, telephone (425) 227–2136, facsimile (425) 227–1149, or e-mail *jeff.gardlin@faa.gov.*

SUPPLEMENTARY INFORMATION:

How Do I Obtain a Copy of the Proposed Advisory Circular Revision?

You may obtain an electronic copy of the draft advisory circular identified in this notice at the following Internet address: *http://www.airweb.faa.gov/DraftAC* If you do not have access to the Internet, you may request a copy by contacting Jeff Gardlin at the address or phone number listed earlier in this announcement.

How Do I Submit Comments on the Draft Advisory Circular?

You are invited to comment on the proposed advisory material by submitting written comments, data, or views. You must identify the title of the AC and submit your comments in duplicate to the address specified above. We will consider all comments received on or before the closing date for comments before issuing the final advisory material.

Discussion

This revision to Advisory Circular 25.562–1A provides an improved procedure for selection of test articles, as well as criteria for determining whether analysis or testing is appropriate for substantiation.

Issued in Renton, Washington, on December 20, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–33132 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revisions to Advisory Circular 25–7A, Flight Test Guide for Certification of Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed advisory circular revisions and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) requests comments on proposed revisions to Advisory Circular (AC) 25–7A, "Flight Test Guide for Certification of Transport Category Airplanes." The proposed revisions provide revised guidance on a means of demonstrating compliance with the new requirements of part 25 as presented in Amendment 25–108 (67 FR 70812, November 26, 2002), entitled "1-g Stall Speed as the Basis for Compliance with Part 25 of the Federal Aviation Regulations." This notice provides interested persons an opportunity to comment on the proposed revisions to the AC. The guidance will be included in the next revision to AC 25–7A.

DATES: Comments must be received on or before March 3, 2003.

ADDRESSES: Send all comments on the proposed AC revisions to the Federal Aviation Administration, Attention: Don Stimson, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments may be examined at the above address between 7:30 a.m., and 4 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Standardization Branch, ANM–113, at the above address, telephone (425) 227–2127, or facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC revisions by submitting such written data, views, or arguments, as they may desire. You must identify the title of the AC and submit comments in duplicate to the address specified above. The Transport Airplane Directorate will consider all comments received on or before the closing date for comments before issuing the revision to the AC. You may view the complete text of AC 25–7A on the Internet at: *http://www.faa.gov/certification/aircraft/air_index.htm,* at the link titled "Advisory Circulars," or at the Regulatory and Guidance Library Web site at *http://www.airweb.faa.gov/rgl,* at the link titled "Advisory Circulars."

Discussion

By Amendment 25–108 (67 FR 70812, November 26, 2002), the FAA revised the airworthiness standard for transport category airplanes to redefine the reference stall speed for transport category airplanes to a speed not less than the 1-g stall speed instead of the minimum speed obtained in a stalling maneuver. The FAA took this action to provide for a consistent, repeatable reference stall speed; ensure consistent and dependable maneuvering margins; provide for adjusted multiplying factors to maintain approximately the current requirements in areas where use of the minimum speed in the stalling maneuver has proven adequate; and harmonize the applicable regulations with those currently adopted in Change 15 to the European Joint Aviation

Requirements, JAR–25. The changes provide a higher level of safety for those cases in which the current methods result in artificially low operating speeds. To address these new requirements to part 25, the FAA is proposing to revise AC 25–7A to describe acceptable means of showing compliance with the new rules.

Proposed Revisions to AC 25–7A

Revise paragraph 3a(3)(i) by replacing "$1.4V_{S1}$" with "$1.3\ V_{SR1}$" (three occurrences).

Revise paragraph 3a(3)(ii)(B) by replacing "$.12V_{S1}$" with "$0.11\ V_{SR1}$."

Revise paragraph 10b(3)(i)(B) by replacing "1.2 times V_S" with "1.13 times V_{SR}." "V_S" with "V_{SR}." and "stall speed" with "reference stall speed."

Revise paragraph 10b(3)(ii) by replacing "1.15 times V_S" with "1.08 times V_{SR}."

Revise paragraph 10b(4) as follows:

(4) *Section 25.107(c)—Takeoff Safety Speed* (V_2). V_2 is the calibrated airspeed that is attained at or before the airplane reaches a height of 35 ft. above the takeoff surface after an engine failure at V_{EF} using an established rotation speed (V_R). During the takeoff speeds demonstration, V_2 should be continued to an altitude sufficient to assure stable conditions beyond the 35 ft. height. V_2 cannot be less than V_{2MIN}. In addition, V_2 cannot be less than the liftoff speed, V_{LOF}, as defined in § 25.107(f). In accordance with § 25.107(c), V_2 in terms of calibrated airspeed "* * * may not be less than V_R plus the speed increment attained before reaching a height of 35 feet above the takeoff surface" and "that provides the maneuvering capability specified in § 25.143(g)." * * *

Revise Figure 14–1 by replacing "$\geq 1.25\ V_S$" with "V_{FTO}."

Revise paragraph 16b(2) by replacing "$1.3V_{S0}$" with "V_{REF}."

Revise paragraph 16b(3) by replacing "$1.3V_{S0}$" with "V_{REF}" (two occurrences).

Revise paragraph 17b(6) as follows:

(6) *Section 25.121(d) requires* that the stall speed for the configuration used to show compliance with this requirement not exceed 110 percent of the stall speed for the related landing configuration. This stall speed ratio requirement is to ensure that an adequate margin above the stall speed in the selected approach configuration is maintained during flap retraction. To achieve this stall speed ratio requirement, it is permissible to arbitrarily increase the landing flap stall speed, V_{SR0}, to show compliance. Of course, the landing approach speed used to comply with § 25.125(a)(2) must be based on the declared stall speed and the stall warning requirements of § 25.207 must be met at the declared stall speed. However, the § 25.203 stall characteristics requirements must still be met at the speed at which the stall is identified (as defined in § 25.201(d)). (An alternative to raising the landing flap stall speed, V_{SR0}, is to simply increase V_{REF}.)

Revise paragraph 19a(2) as follows:

(2) The minimum value of V_{REF} is specified in § 25.125(a)(2) and is intended to provide an adequate margin above the stall speed to allow for likely speed variations during an approach in low turbulence. If the landing demonstrations are unable to show the acceptability of the minimum approach speed, and the tests are predicated on the use of a higher approach speed, the landing distance data presented in the AFM must be based upon the higher approach speed.

Revise paragraph 20a as follows:

a. *Explanation.* The purpose of § 25.143 is to verify that any operational maneuvers conducted within the operational envelope can be accomplished smoothly with average piloting skill and without encountering stall warning or other characteristics that might interfere with normal maneuvering, or exceeding any airplane structural limits. Control forces should not be so high that the pilot cannot safely maneuver the airplane. Also, the forces should not be so light it would take exceptional skill to maneuver the airplane without over-stressing it or losing control. The airplane response to any control input should be predictable to the pilot.

Add a new paragraph 20a(5) to read as follows:

(5) Modern wing designs can exhibit a significant reduction in maximum lift capability with increasing Mach number. The magnitude of this Mach number effect depends on the design characteristics of the particular wing. For wing designs with a large Mach number effect, the maximum bank angle that can be achieved while retaining an acceptable stall margin can be significantly reduced. Because the effect of Mach number can be significant, and because it can also vary greatly for different wing designs, the multiplying factors applied to V_{SR} may be insufficient to ensure that adequate maneuvering capability exists at the minimum operating speeds. To address this issue, § 25.143(g) was added by Amendment 25–108 to require a minimum bank angle capability in a coordinated turn without encountering stall warning or any other characteristic that might interfere with normal maneuvering. The maneuvering requirements consist of the minimum bank angle capability the FAA deems adequate for the specified regimes of flight combined with a further 15 degrees of bank angle to provide a safety margin for various operational factors. These operational factors include both potential environmental conditions (*e.g.*, turbulence, wind gusts) and an allowance for piloting imprecision (*e.g.*, inadvertent overshoots).

Revise the first sentence of paragraph 20b and reformat paragraph 20b as follows:

b. *General Test Requirements.* (1) Compliance with §§ 25.143(a) through (f) is primarily a qualitative determination by the pilot during the course of the flight test program. * * *

Add a new paragraph 20b(2) to read as follows:

(2) Since § 25.143(g) involves a target speed, bank angle, and maximum value of thrust, not all flight test conditions to demonstrate compliance will necessarily result in a constant-altitude, thrust-limited turn. In cases with positive excess thrust, a climbing condition at the target bank and speed is acceptable. Alternately, if desired, the thrust may be reduced to less than the maximum allowed, so that compliance is shown with a completely stabilized, constant-altitude turn. For cases with negative excess thrust (*e.g.*, the landing configuration case), a constant-altitude slow-down maneuver at the target bank angle has been shown to be a suitable technique. With the airplane descending at V_{REF} in wings-level flight on a three degree glide path, trim and throttle position is noted. The airplane is then accelerated to V_{REF} + 10–20 knots in level flight. The original trim and throttle conditions are reset as the airplane is rolled into a constant-altitude slow-down turn at the target bank angle. Throttles can be manipulated between idle and the marked position to vary slow-down rate as desired. Compliance is shown when the airplane decelerates through V_{REF} in the turn without encountering stall warning. Revise paragraph 20c(2) by replacing "$1.3\ V_S$" with "$1.23\ V_{SR}$." Add a new paragraph 20f(2)(v) to read as follows:

(v) Thrust or Power Setting for Maneuver Capability Demonstrations. The effect of thrust or power on maneuver capability is normally a function of only the thrust-to-weight ratio. Therefore, for those configurations in which the weight, altitude, temperature (WAT)-limited thrust or power setting is prescribed, it is usually acceptable to use the thrust or power setting that is consistent with a WAT-limited climb gradient at the test

conditions of weight, altitude, and temperature. However, if the maneuver margin to stall warning (or other characteristic that might interfere with normal maneuvering) is reduced with increasing thrust or power, the critical conditions of both thrust or power and thrust-to-weight ratio must be taken into account when demonstrating the required maneuvering capabilities.

Revise paragraph 21a(1) as follows:

Section 25.145(a) requires that there be adequate longitudinal control to promptly pitch the airplane nose down from at or near the stall to return to the original trim speed. The intent is to ensure sufficient pitch control for a prompt recovery if inadvertently slowed to the point of stall. Although this requirement must be met with power off and at maximum continuous thrust or power, there is no intention to require stall demonstrations with thrust or power above that specified in § 25.201(a)(2). Instead of performing a full stall at maximum continuous power or thrust, compliance may be assessed by demonstrating sufficient static longitudinal stability and nose down control margin when the deceleration is ended at least one second past stall warning during a one knot per second deceleration. The static longitudinal stability during the maneuver and the nose down control power remaining at the end of the maneuver must be sufficient to assure compliance with the requirement. Revise paragraph 21b(1)(ii) as follows:

(ii) *Test procedure:* The airplane should be trimmed at the speed for each configuration as prescribed in § 25.103(b)(6). * * *

Revise paragraph 21b(2)(ii) by replacing "$1.4V_S$" with "$1.3\ V_{SR}$" (two occurrences).

Revise paragraph 21b(3)(ii) by replacing "$1.4V_S$" with "$1.3\ V_{SR}$" (two occurrences).

Revise paragraph 21b(4)(ii) by replacing "$1.4V_S$" with "$1.3\ V_{SR}$" (two occurrences).

Revise paragraph 21b(5)(ii) by replacing "$1.4V_S$" with "$1.3\ V_{SR}$," "$1.1V_S$" with "V_{SW}," and "$1.7V_S$" with "$1.6\ V_{SR}$."

Revise paragraphs 21b(6)(i)(E) and 21b(6)(ii) by replacing "$1.1V_S$" with "$1.08\ V_{SR}$" and "$1.2V_S$" with "$1.13\ V_{SR}$."

Revise paragraph 22b(1)(i)(F) by replacing "$1.4v_S$" with "$1.3\ V_{SR}$."

Revise paragraph 22b(2)(i)(F) by replacing "$1.4V_{S1}$" with "$1.3\ V_{SR1}$."

Revise paragraph 22b(3)(ii) by replacing "$1.4V_S$" with "$1.3\ V_{SR}$" and "$1.4V_{S1}$" with "$1.3\ V_{SR1}$."

Revise paragraph 23b(2)(ii)(A) by replacing "$1.2V_S$" with "$1.13\ V_{SR}$."

Revise paragraph 23b(2)(iii)(B) by replacing "$1.1V_S$" with "$1.08\ V_{SR}$."

Revise paragraphs 27a(1), (2), and (3)(i) by replacing "$1.2V_{S1}$" with "$1.13\ V_{SR1}$."

Revise paragraph 28a(1) by replacing "$1.2V_{S1}$" with "$1.13\ V_{SR1}$."

Revise paragraph 29b(1)(i) as follows:

(i) To define the reference stall speeds and how they vary with weight, altitude, and airplane configuration.

Revise paragraph 29b(2) as follows:

(2) *During this testing,* the angle-of-attack should be increased at least to the point where the behavior of the airplane gives the pilot a clear and distinctive indication through the inherent flight characteristics or a stall identification device (*e.g.*, stick pusher) that the airplane is stalled.

Revise paragraph 29b(3) as follows:

(3) *The airplane is considered* to be fully stalled when any one or a combination of the characteristics listed below occurs to give the pilot a clear and distinctive indication to cease any further increase in angle of attack, at which time recovery should be initiated using normal techniques.

Revise paragraph 29c(1) as follows:

(1) *Background.* (i) Since many of the regulations pertaining to performance and handling qualities specify trim speeds and other variables that are functions of stall speeds, it is desirable to accomplish the stall speed testing early in the program, so the data are available for subsequent testing. Because of this interrelationship between the stall speeds and other critical performance parameters, it is essential that accurate measurement methods be used. Most standard airplane pitot-static systems have not been found to be acceptable for stall speed determination. These tests require the use of properly calibrated instruments and usually require a separate test airspeed system, such as a trailing bomb, a trailing cone, or an acceptable nose or wing boom.

(ii) Prior to Amendment 25–108, the stall speed defined in § 25.103 was the minimum speed attained in the stalling maneuver. For many high speed swept wing transport category airplanes the resulting stall speed often occurs at a load factor normal to the flight path considerably less than one, which leads to inconsistent and unrepeatable reference stall speeds. Pilot technique can also significantly influence the rate and magnitude of any spontaneous nose down pitch occurring at the stall, thereby contributing to inconsistencies in the determination of the minimum speed obtained in the stalling maneuver. Since Part 25 defines operating speeds as multiples of the stall speed, the resulting operating speed margins to stall may not be representative of the actual lift margin available (*i.e.*, the margin to the speed at which wing lift alone can support the weight of the airplane in 1-g flight); the net result of this inadequate lift margin being inconsistent operating speed margins and maneuvering margins. To ensure that operating speed and maneuvering margins are directly related to wing lift margin, Amendment 25–108 redefined the reference stall speed as the 1-g stall speed, which is the speed at which the wing is generating maximum usable lift in a 1-g flight condition.

(iii) Since the 1-g stall speed is generally higher than the minimum speed obtained in the stalling maneuver, retaining the existing multiplying factors for determining the minimum operating speeds would have resulted in higher minimum operating speeds. However, increasing the minimum operating speeds could have imposed costs on operators because of a reduction in payload capability to comply with the regulations at the higher operating speeds. Based on the service experience of the transport airplane fleet, the costs imposed would not have been offset by a commensurate increase in safety. A survey of various swept wing transport category airplanes was conducted to come up with revised multiplying factors that would provide essentially the same operating speeds regardless of the basis used for determining the reference stall speeds. From the survey, the average load factor at the minimum speed obtained in the stalling maneuver was determined to be 0.88, which means that the minimum speed obtained in the stalling maneuver was, on average, 94 percent of the 1-g stall speed. For that reason, in Amendment 25–108 the multiplying factors applied to the reference stall speed were reduced by approximately six percent.

(iv) Although the reduced multiplying factors were intended to result in roughly equivalent operating speeds, there is one class of airplanes for which a significantly lower operating speed would be obtained. Airplanes equipped with a device that abruptly pushes the nose down (*e.g.*, a stick pusher) near the angle of attack for maximum lift would be operated at speeds and angles-of-attack closer to the pusher activation point than has been experienced in operational service. For these airplanes, the minimum speed obtained in the stalling maneuver is closer to 96 to 97 percent of the 1-g stall speed. Therefore, to maintain equivalency in operating speeds for these airplanes, a supplementary margin has been

established such that V_{SR} must not be less than the greater of 2 knots or 2 percent above the speed at which the device activates. In addition, *see* paragraph 228 of this AC for guidance material regarding the design and function of such systems.

Revise paragraph 29c(3)(i) as follows:

(i) The airplane should be trimmed for hands-off flight at a speed 13 percent to 30 percent above the anticipated V_{SR} with the engines at idle and the airplane in the configuration for which the stall speed is being determined. Then, using only the primary longitudinal control for speed reduction, a constant deceleration (entry rate) is maintained until the airplane is stalled, as defined in § 25.201(d) and paragraph 29b(3) of this AC. Following the stall, engine thrust may be used as desired to expedite the recovery.

Revise paragraph 29c(3)(ii) as follows:

(i) A sufficient number of stalls (normally four to eight) should be accomplished at each critical combination of weight, c.g., and external configuration. The intent is to obtain enough data to define the stall speed at an entry rate of 1.0 knot/second.

Revise paragraph 29c(4) as follows:

(4) *Thrust Effects on Stall Speed.* (i) Stall speeds are typically determined with the thrust levers at idle; however, it is necessary to verify by test or analysis that engine idle thrust does not result in stall speeds that are appreciably lower than would be obtained at zero thrust. Prior to Amendment 25–108, a negative thrust at the stall, which slightly increases stall speeds, was considered acceptable, but it was not required to be taken into account. With the adoption of Amendment 25–108, it became a requirement to take into account idle thrust except where that thrust level results in a significant decrease in stall speed.

(ii) To determine whether thrust effects on stall speed are significant, at least three stalls should be conducted at one flap setting, with thrust set to approximately the value required to maintain level flight at 1.5 V_{SR} in the selected configuration.

(iii) These data may then be extrapolated to a zero thrust condition to determine the effect of idle thrust on stall speeds. (*See* Figure 29–1.) If the difference between idle thrust and zero thrust stall speed is 0.5 knots or less, the effect may be considered insignificant.

(iv) The effects of engine power on stall speeds for a turbopropeller airplane can be evaluated in a similar manner. Stall speed flight tests should be accomplished with engines idling and the propellers in the takeoff position. Engine torque, engine r.p.m., and estimated propeller efficiency can be used to predict the thrust associated with this configuration.

Revise paragraph 29c(5) as follows:

(5) *Data Reduction and Presentation.* The following is an example of how the data obtained during the stall speed testing may be reduced to standard conditions. Other methods may be found acceptable.

(i) Indicated airspeed from the flight test airspeed system is recorded throughout the stall, and these values are corrected to equivalent airspeed. Load factor normal to the flight path must also be recorded. Typically the load factor data would be obtained from a sufficient number of accelerometers capable of resolving the flight path load factor. At the bare minimum, one accelerometer aligned along the expected 1-g stall pitch angle may provide acceptable data.

(ii) The airplane corrected lift coefficient ($C_{L_{CORR}}$) is calculated from the equation given below and plotted as a time history throughout the stall.

$$C_{L_{CORR}} = \frac{n_{zw}W}{qS} = \frac{295.37n_{zw}W}{V^2S}$$

Where:

n_{zw} = airplane load factor normal to the flight path
W = airplane test weight—lbs.
q = dynamic pressure—lbs./ft.^{2}
S = reference wing area—ft.^{2}
V = knots equivalent airspeed.

(iii) The maximum lift coefficient ($C_{L_{MAX}}$) is defined as the maximum value of $C_{L_{CORR}}$ achieved during the stall test. Where the plot of $C_{L_{CORR}}$ exhibits multiple peak values, $C_{L_{MAX}}$ corresponds to the first maximum. There should also typically be a noticeable break in a plot of the load factor normal to the flight path near the point at which $C_{L_{MAX}}$ is reached. The analysis to determine $C_{L_{MAX}}$ should disregard any transient or dynamic increases in recorded load factor, such as might be generated by abrupt control inputs, that do not reflect the lift capability of the airplane. The load factor normal to the flight path should be maintained at nominally 1.0 until $C_{L_{MAX}}$ is reached. (*See* Figure 29–1.)

(iv) The $C_{L_{MAX}}$ obtained for each stall is then corrected, if necessary, from the test c.g. position to the targeted c.g. position using the equation:

$$C_{L_{MAX_{CG}}} = C_{L_{MAX}}\{1+(MAC/l_t)(CG_{std}-CG_{test})\}-\Delta C_{L_T}$$

Where

MAC= Wing mean aerodynamic chord length—inches.
l_t = Effective tail length, measured between the wing 25 percent MAC and the stabilizer 25 percent MAC—inches.
CG_{std} = C.G. position resulting in the highest value of reference stall speed (normally the forward c.g. limit at the pertinent weight)—percent MAC/100
CG_{test} = Actual test c.g. position—percent MAC 100
ΔC_{LT} = Change in C_L due to engine thrust (if significant).

(v) Stall entry rate, which is defined as the slope of a straight line connecting the stall speed and an airspeed 10 percent above the stall speed, should be determined for each stall test. Because $C_{L_{MAX}}$ is relatively insensitive to stall entry rate, a rigorous investigation of entry rate effects should not be necessary. Test data should bracket a 1.0 knot/second entry rate such that the value of $C_{L_{MAX}CG}$ corresponding to an entry rate of 1.0 knot/second can be determined. This value of $C_{L_{MAX}CG}$ should be used to determine the reference stall speed defined in § 25.103(a).

(vi) For each approved configuration, a plot of $C_{L_{MAX}}$ versus weight is constructed. (*See* Figure 29–2.) An initial negative slope of this plot may be caused by several factors:

(A) A decrease in CLMAX due to increasing Mach number (which increases as the stall speed goes up with weight);

(B) The fact that C_{LMAX} is proportional to the rate of change of angle of attack, whereas the data are plotted at a fixed airspeed bleed rate; and

(C) Minor adverse aeroelastic effects on the wings and high lift devices as weight (and therefore speed) increases. An inflection in the plot is typically caused by a variation in the forward c.g. limit with weight.

(vii) In the measurement of stall speeds, the lowest test altitude is usually dictated by flight test safety concerns. This test data must then be expanded to lower altitudes, and hence, lower Mach numbers to cover the operational envelope of the airplane. Since C_{LMAX} increases as the Mach number is reduced, simple expansion of the flight test data could result in extrapolating to a higher C_{LMAX} than tested. Expansion of C_{LMAX} versus Mach number data is only permitted up to the highest C_{LMAX} within the range of W/δ's tested.

(viii) The reference stall speed is a calibrated airspeed, not less than the 1–g stall speed, and is expressed as:

$$V_{SR} \geq \frac{V_{CL_{MAX}}}{\sqrt{n_{zw}}}$$

Where:

V_{CLMAX} =

$$\sqrt{295.37(W)/(C_{L_{MAX}}S)+\Delta V_C}.$$

If the stalling maneuver is limited by a device that commands an abrupt nose down pitch (*e.g.*, a stick pusher), V_{CLMAX} may not be less than the speed existing at the instant the device operates.

ΔV_C = compressibility correction (*i.e.*, the difference between equivalent airspeed and calibrated airspeed).

W = airplane weight—lbs.

C_{LMAX} = value of C_{LMAX} corresponding to the chosen weight (see Figure 29–3).

S = reference wing area—ft^2.

(ix) For airplanes equipped with a device that abruptly pushes the nose down at a selected angle-of-attack (*e.g.*, a stick pusher), VSR must not be less than the greater of 2 knots or 2 percent above the speed at which the device activates.

(x) In showing compliance with § 25.103(d), in the case where a device that abruptly pushes the nose down at a selected angle of attack (*e.g.*, a stick pusher) operates after C_{LMAX}, the speed at which the device operates need not be corrected to 1 g. Otherwise, it would be possible for the device activation speed to be assessed as higher than VSR (or at least closer to VSR than would be obtained without correcting for load factor). Requiring the correction of the device activation speed to the 1–g condition would unnecessarily increase the stringency of § 25.103(d). Test procedures should be in accordance with paragraph 29c(3)(i) to ensure that no abnormal or unusual pilot control input is used to obtain an artificially low device activation speed.

Revise paragraph 29d(2)(v) as follows:

(v) For power-on stalls, thrust should be set to the value required to maintain level flight at a speed of 1.5 VSR at maximum landing weight with flaps in the approach position, and the landing gear retracted. The approach flap position referred to is the maximum flap deflection used to show compliance with § 25.121(d), which specifies a configuration in which the reference stall speed does not exceed 110 percent of the reference stall speed for the related landing configuration.

Revise paragraph 29d(2)(ix) as follows:

(ix) For abnormal aerodynamic configurations covered by AFM procedures, high angle-of-attack characteristics should be evaluated down to either stall warning, or to an angle-of-attack equivalent to the AFM recommended landing approach speed divided by 1.23. * * *

Revise paragraph 29d(3) as follows:

(3) *Procedures.* (i) The airplane should be trimmed for hands-off flight at a speed 13 percent to 30 percent above the reference stall speed, with the appropriate power setting and configuration. Then, using only the primary longitudinal control, establish and maintain a deceleration (entry rate) consistent with that specified in §§ 25.201(c)(1) or 25.201(c)(2), as appropriate, until the airplane is stalled. Both power and pilot selectable trim should remain constant throughout the stall and recovery (angle of attack has decreased to the point of no stall warning).

(ii) The same trim reference (for example, 1.23 VSR) should be used for both the stall speeds and characteristics testing. For all stall testing, the trim speed is based on the performance stall speeds provided in the AFM.

Revise paragraph 29f(2) as follows:

(ii) Timeliness. For one knot per second entry rate stalls, the stall warning must begin at a speed, VSW, not less than five knots or five percent CAS (whichever is greater) above the speed at which the stall is identified in accordance with § 25.201(d). For straight flight stalls, at idle thrust and with the center-of-gravity at the position specified in § 25.103(b)(5), the stall warning must begin at a speed not less than three knots or three percent (whichever is greater) above the reference stall speed. These speed margins should be in terms of the same units of measurement as VSR (*i.e.*, calibrated airspeed).

(iii) Consistency. The stall warning must be reliable and repeatable. The warning must occur with flaps and gear in all normally used positions in both straight and turning flight and must continue throughout the stall demonstration until the angle of attack is reduced to approximately that at which the stall warning was initiated. The warning may be furnished naturally through the inherent aerodynamic characteristics of the airplane, or artificially by a system designed for this purpose. If artificial stall warning is provided for any airplane configuration, it must be provided for all configurations.

Add paragraph 29f(2)(vi) as follows:

(vi) If the stall warning required by § 25.207 is provided by an artificial stall warning system (*e.g.*, a stick shaker), the effect of production tolerances on the stall warning system should be considered when evaluating the stall warning margin required by §§ 25.207(c) and (d) and the maneuver capabilities required by § 25.143(g).

(A) The stall warning margin required by §§ 25.207(c) and (d) should be available with the stall warning system set to the most critical setting expected in production. Unless another setting would provide a lesser margin, the stall warning system should be operating at its high angle of attack limit. For airplanes equipped with a device that abruptly pushes the nose down at a selected angle-of-attack (*e.g.*, a stick pusher), the stall warning margin may be evaluated with both the stall warning and stall identification (*e.g.*, stick pusher) systems at their nominal angle of attack settings unless a lesser margin can result from the various system tolerances.

(B) The maneuver capabilities required by § 25.143(g) should be available assuming the stall warning system is operating on its nominal setting. In addition, when the stall warning system is operating at its low angle of attack limit, the maneuver capabilities should not be reduced by more than 2 degrees of bank angle from those specified in § 25.143(g).

(C) The stall warning margin and maneuver capabilities may be demonstrated by flight testing at the settings specified above for the stall warning and, if applicable, stall identification systems. Alternatively, compliance may be shown by applying adjustments to flight test data obtained at a different system setting.

Revise paragraph 29f(3) as follows:

(3) *Procedures.* Stall warning tests are normally conducted in conjunction with the stall testing required by §§ 25.103 (stall speeds), 25.201 (stall demonstration), and 25.203 (stall characteristics), including consideration of the prescribed bank angles, power settings, and center-of-gravity position. In addition, if the stall warning margin may be affected by a system (*e.g.*, a stall warning or stick pusher system that modifies the stall warning or stall identification speed as a function of thrust, bank angle, angle-of-attack rate, *etc.*), compliance with § 25.207(c) should be demonstrated at the most critical conditions in terms of stall warning margin. However, bank angles greater than 40 degrees and power or thrust exceeding maximum continuous power or thrust need not be demonstrated. If the effect of the stall identification or stall warning system compensation is to increase the stall warning margin relative to the nominal values demonstrated during the testing required by §§ 25.103, 25.201, and

25.203, no further stall warning margin demonstrations need to be done.

Revise paragraph 29f(4) as follows:

(4) *Data Acquisition and Reduction.* The stall warning speed and type and quality of warning should be noted. The speed at which acceptable stall warning begins should then be compared to the stall identification speed and, for the conditions under which VSR is defined, VSR, to determine if the required margin exists. The stall warning speed margin required by § 25.207(d) should be determined at a constant load factor.

Revise paragraph 29g as follows:

g. *Accelerated Stall Warning.* (1) *Explanation.* Section 25.207(e) requires that, in slow-down turns with at least a 1.5g load factor normal to the flight path and an airspeed deceleration rate greater than 2 knots per second, sufficient stall warning is provided to prevent stalling when the pilot takes recovery action not less than one second after recognition of stall warning. The purpose of the requirement is to ensure that adequate stall warning exists to prevent an inadvertent stall under the most demanding conditions that are likely to occur in normal flight. The conditions of 1.5g and an airspeed deceleration rate greater than 2 knots per second correspond to the steep turn maneuver prescribed in Part 121, Appendices E and F for pilot initial and proficiency training, respectively, plus some margin for error (3 degrees more bank and a decreasing airspeed). The elevated load factor will emphasize any adverse stall characteristics, such as wing drop or asymmetric wing flow breakdown, while also investigating Mach and potential aeroelastic effects on available lift. The greater than 2 knot per second deceleration rate is intended to result in a reasonable penetration beyond the onset of stall warning.

(2) *Procedures.* (i) Trim at 1.3 V_{SR}. Once trimmed, accelerate to a speed that will allow enough time to set up and complete the maneuver at the specified load factor and airspeed deceleration rate. Power or thrust should be set appropriate to the power for level flight at 1.3 V_{SR} and not adjusted during the maneuver. In a level flight maneuver, 1.5g equates to a bank angle of 48 degrees. To prevent an excessive deceleration rate (*e.g.*, greater than 3 knots per second), a descent may be used. Conversely, if the deceleration rate is too low, the maneuver should be conducted in a climbing turn.

(ii) After the onset of stall warning, continue the maneuver without releasing stick force for one second before attempting recovery. Normal low speed recovery techniques should be used. If any of the indications of a stall prescribed in § 25.201(d) (see paragraph 29b(3) of this AC) occur during the accelerated stall warning demonstration, compliance with § 25.207(d) will not have been demonstrated.

Revise paragraph 29h as follows:

h. *Maneuver Margins.* See paragraph 20 of this AC for guidance material associated with demonstrating compliance to the maneuvering capability requirements of § 25.143(g).

Redesignate existing paragraph 29i as 29j and add a new paragraph 29i as follows:

i. *Tolerance Considerations for Airplanes Equipped with Stall Identification Systems.* For airplanes equipped with a stall identification device, the applicant should consider the combined effects of the variables listed in paragraphs (1) through (4) below to determine the critical configuration for stall testing. A maximum deviation in stall speed of ±1 knot, from that defined in the nominal configuration, is considered acceptable for the combined effects of the items listed in paragraphs (1) through (3). The deviation in stall speed due to stall identification system tolerances (paragraph 3), alone, should not exceed ±0.5 knots. (The stall identification system consists of everything from the angle of attack sensing device to the connection of the force application actuator to the longitudinal control system.) It should be verified that threshold tolerances and system design features (*e.g.*, filtering, phase advancing) will not result in an unsafe diminishing of the margin between stall warning and pusher activation, or pusher activation and some dangerous airplane characteristic. Investigations should include the demonstration of maneuver margins, dynamic stall entries, the effects of atmospheric turbulence, and operation in windshear environments where the airplane will be flown at, or very near, stall warning. These flying conditions should not result in unwanted activation of the stall identification system or aerodynamic stall prior to, or close to, activation of the stall warning system. This verification may be provided by a combination of analysis, simulation, and flight test.

(1) High lift device and control surface rigging—at the limits of their respective tolerance bands that is most detrimental to the production of lift;

(2) Airframe build tolerances—the impact of wing angle of incidence variation relative to stall identification system vane angle;

(3) Stall identification system tolerances—activation vane angles should be at the low end of the tolerance band for stall speed testing, and at the high end for stall characteristics testing; and

(4) Wing leading edge condition—the effect of wing leading edge contamination (*e.g.*, insects) on stall speeds should be determined and accounted for if significant. The critical height and density of the contaminant should be substantiated by Generic. This testing may be accomplished using an artificial contaminant.

Remove existing Figure 29–1, renumber Figure 29–5 as Figure 29–1, add a new Figure 29–2, and reorder the remaining figures appropriately.

Revise paragraphs 30c(2)(i), 30e(1)(iii), and 30e(2)(ii) by replacing "V_{S0}" with "V_{SR0}."

Revise Page 2 of Appendix 4 by replacing "$1.2V_S$" with "1.13 V_{SR}" (two occurrences).

Remove Appendix 5.

Issued in Renton, Washington, on December 20, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 02–33130 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

DATES: The FAA will hold the meeting on January 22 and 23, 2003, in Savannah, Georgia from 8:30 a.m. to 4:30 p.m. on the 22nd and from 8:30 a.m. to noon on the 23rd.

ADDRESSES: Hyatt Regency Savannah, 2 West Bay Street, Savannah, Georgia, 31401.

FOR FURTHER INFORMATION CONTACT: Shirley Stroman, Office of Rulemaking, ARM–208, FAA, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202)267–7470; fax (202)267–5075; or e-mail *shirley.stroman@faa.gov.*

SUPPLEMENTARY INFORMATION: The ATSRAC will meet at the Hyatt Regency Savannah at the address shown under the **ADDRESSES** heading in this notice. The meeting agenda will include the following:

- Presentation of Working Group 10's (Small Transport Airplane

Harmonization Working Group) final report

- Discussion of comments on the FAA's Intrusive Inspection Recommendations Final Report
- Discussion of ATSRAC's recommendation to the FAA on an Enhanced Zonal Analysis Procedure implementation schedule
- Update on FAA's Research and Development Program
- Presentation by Robins Air Force Base: Lubricant Effectiveness Study for Corrosion Protection and Improved Reliability of Avionics

The meeting is open to the public, but attendance will be limited to the availability of meeting room space. The FAA will make the following services available if you request them by January 14, 2003:

- Teleconferencing
- Sign and oral interpretation
- A listening device

Individuals using the teleconferencing service and calling from outside the Washington, DC metropolitan area will be responsible for paying long distance charges. To arrange for any of the above services, contact the person listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

The public may present written statements to the Committee at any time by providing 20 copies to the Committee's Executive Director or by bringing the copies to the meeting. Public statements will be considered if time permits.

Issued in Washington, DC on December 23, 2002.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–33110 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–02–14079; Notice 1]

Pipeline Safety: Pipeline Communications (Natural Gas and Hazardous Liquid Pipelines)

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: RSPA/OPS invites the public to a meeting on pipeline communications, including current RSPA initiatives, the development of American Petroleum Institute Recommended Practice 1162, integrity management communications, and pipeline performance metrics. This meeting is a continuation of a meeting held on February 12–14, 2001, to discuss pipeline integrity management and integrity management communications.

DATES: The public meeting will be on January 29, 2003, from 9 a.m. to 7 p.m.

ADDRESSES: Bellevue Community College, Carlson Theater, 3000 Landerholm Circle SE, Bellevue WA 98007–6484, (425) 564–2376. Driving directions and a map of the college can be found on Bellevue Community College's Web site: *http://www.bcc.ctc.edu*. To ensure sufficient seating, persons wishing to attend are encouraged to register for the meeting through the following Internet Web site: *http://primis.rspa.dot.gov/meetings*. The public will have an opportunity to make short statements on the topics under discussion. Members of the public who are unable to attend in person can view the meeting over the Internet and submit questions through the RSPA/OPS Web site: *http://ops.dot.gov*. In addition, a transcript will be available approximately 30 days after the meeting.

Persons wishing to submit comments relating to the public meeting may do so by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. You should submit the original and one copy. Anyone who wants confirmation of receipt of their comments must include a stamped, self-addressed postcard. You may also submit comments to the docket electronically. To do so, log on to the Internet Web address *http://dms.dot.gov* and click on "Help" for instructions on electronic filing of comments. All written comments should identify the docket number RSPA–02–14079; Notice 1.

Information on Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance during the telephone conference calls, contact Christina Sames (tel: 202–366–4561; E-mail: *christina.sames@rspa.dot.gov*).

FOR FURTHER INFORMATION CONTACT: Christina Sames (tel: 202–366–4561; E-mail: *christina.sames@rspa.dot.gov*). You can read comments and other material in the docket on the Internet at: *http://dms.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

RSPA/OPS's communication initiatives are intended to improve safety and environmental protection and to provide better assurance to the public about the safety of pipelines.

On February 14, 2001, RSPA/OPS held a public meeting to discuss pipeline integrity management and integrity management communications. Meeting attendees provided input on how State and local officials and the public could use and benefit from risk assessment information, how the consequences of potential pipeline failures should be characterized, how risk control actions should be described, and what operational information would be meaningful.

Additional information on that workshop can be found in the Dockets Facility at the Internet Web Site listed above and under Docket RSPA–00–7408.

Since the February 2001 meeting, RSPA/OPS has been exploring communication requirements for all pipeline operators to share information with community and State officials and the public about risks from pipelines, how pipeline risks can be managed and controlled, and how we know the pipelines are being operated safely. RSPA/OPS has also begun several initiatives to provide the public and local officials with pipeline educational material, training material for emergency officials responding to a pipeline accident, public outreach on damage prevention, and community assistance and technical service inspectors to assist communities with current and upcoming integrity management regulations.

The January 29, 2003, public meeting will be divided into three sessions. Each session will include presentations by RSPA/OPS, a panel discussion on that session's topic, and an open question and answer period. Panelists will include representatives from various communities, environmental organizations, first responders, city/county government, state government, and pipeline companies.

Session 1 will address the need for communications in regard to the integrity management programs. The panelists will provide their viewpoints on what information should be exchanged between pipeline operators and community officials and how this information should be provided. This session will include a discussion of a new RSPA/OPS program to provide community assistance and technical services to State and local officials, to assist with community damage

prevention efforts, and to address questions about the safety of pipelines, research and development, and other program activities.

Session 2 will address pipeline performance metrics and will include a discussion on performance tracking and monitoring initiatives, RSPA/OPS data initiatives, and concepts in performance metrics on both a per company and industry aggregate basis. Panelists will discuss indicators that would be useful to judge the safety and reliability of a specific operator's program and the pipeline industry as a whole.

Session 3 will focus on adequacy of an initiative to develop a national consensus standard for pipeline operators to use in developing public awareness programs. This standard has been developed by the oil and gas industry and observed by OPS and NAPSR. This consensus standard, American Petroleum Institute Recommended Practice 1162 ("RP 1162"), and additional information on the project can be viewed on the following Internet Web Site: *http://www.api.org/pipelinepublicawareness*. RSPA/OPS is particularly interested in hearing the public's views on the completeness of RP 1162's sections on the information provided to local officials and on effectiveness measures. The session will also address additional RSPA/OPS communication initiatives, the development of RSPA/OPS online source of information about pipelines ("Pipeline 101"), the National Pipeline Mapping System, a collaborative project with the National Association of State Fire Marshals to develop a first responder training program, and a project with the National Academy of Science/Transportation Research Board on the study of measures to prevent encroachment on pipelines.

All presentations and a meeting transcript will be available subsequent to the meeting in the docket at *http://dms.dot.gov* as well as at *http://primis.rspa.dot.gov*.

Issued in Washington, DC, on December 27, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–33109 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 19, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 3, 2003 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0078.

Form Number: ATF Form 5000.18.

Type of Review: Revision.

Title: Change of Bond (Consent of Surety).

Description: A Change of Bond (Consent of Surety) is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. A bond is necessary to over specific liabilities on the revenue produced from untaxpaid commodities. The Change of Bond (Consent of Surety) is filed with ATF and a copy is retained by ATF as long as it remains current and in force.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion, Other (with application and permit changes).

Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1512–0119.

Form Number: ATF Form 5200.14.

Type of Review: Revision.

Title: Taxable Articles Without Payment of Tax.

Description: ATF needs this information to protect the revenue. If this ATF Form is not properly completed, ATF will assess the tax on the manufacturer of tobacco products or cigarette papers and tubes or the proprietor of the export warehouse or customs manufacturing warehouse.

Respondents: Business or other for-profit, individuals or households, Federal Government.

Estimated Number of Respondents: 272.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 15,000 hours.

Clearance Officer: Jacqueline White (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–33115 Filed 12–31–02; 8:45 am]

BILLING CODE 4810–31–P

Corrections

Federal Register

Vol. 68, No. 1

Thursday, January 2, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

National Infrastructure Advisory Council; Notice of Open Meeting

Correction

In notice document 02–32435 appearing on page 78415 in the issue of Tuesday, December 24, 2002 make the following correction:

On page 78415, in the first column, in the first paragraph, in the eigth and ninth lines, "1–899–7785" should read, "1–888–899–7785".

[FR Doc. C2–32435 Filed 12–31–02; 8:45 am]

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Federal Register

Thursday,
January 2, 2003

Part II

Securities and Exchange Commission

17 CFR Parts 210, 239, 249, 270, and 274
Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 239, 249, 270, and 274

[Release Nos. 33–8164; 34–47023; IC–25870; File No. S7–51–02]

RIN 3235–AG64

Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing rule and form amendments under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to improve the periodic disclosure provided by registered management investment companies about their portfolio investments, costs, and past performance. The proposed amendments would permit a registered management investment company to include a summary portfolio schedule of investments in its reports to shareholders, provided that the complete schedule is filed with the Commission and is provided to shareholders upon request, free of charge. The proposals also would require a registered management investment company to include a tabular or graphic presentation of its portfolio holdings in its reports to shareholders. In addition, the proposed amendments would require a registered management investment company to disclose its complete portfolio schedule on a quarterly basis in filings with the Commission that would be available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System. The proposed amendments also would require a registered open-end management investment company to include in its shareholder reports disclosure of fund expenses borne by shareholders during the reporting period. Finally, the proposals would require a registered open-end management investment company to include Management's Discussion of Fund Performance in its annual report to shareholders.

DATES: Comments must be received on or before February 14, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or electronic mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–51–02; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: David S. Schwartz, Senior Counsel, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") is proposing for comment new rule 30b1–4 (17 CFR 270.30b1–4) and new Form N–Q (17 CFR 274.129) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("Investment Company Act"); amendments to Forms N–1A (17 CFR 239.15A; 17 CFR 274.11A), N–2 (17 CFR 239.14; 17 CFR 274.11a–1), and N–3 (17 CFR 239.17; 17 CFR 274.11b) under the Investment Company Act and the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"); amendments to proposed Form N–CSR (17 CFR 249.33; 17 CFR 274.128) under the Investment Company Act and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act"); and amendments to Article 6 (17 CFR 210.6) and Article 12 (17 CFR 210.12) of Regulation S–X (17 CFR 210).

Executive Summary

We are proposing rule and form amendments that would:

- Permit a management investment company registered under the Investment Company Act ("fund") to include a summary portfolio schedule in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission on proposed Form N–CSR semi-annually and is provided to shareholders upon request, free of charge;[2]
- Exempt money market funds from including a portfolio schedule in reports to shareholders, provided that this information is filed with the Commission on proposed Form N–CSR and is provided to shareholders upon request, free of charge;
- Require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories;
- Require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new proposed Form N–Q;
- Require open-end management investment companies ("mutual funds") to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders; and
- Require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.[3]

These proposed amendments are intended to provide better information to investors about fund investments, costs, and performance.

I. Background

The Investment Company Act and rules thereunder require each fund to

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] A management investment company is an investment company other than a unit investment trust or face-amount certificate company. *See* Section 4 of the Investment Company Act (15 U.S.C. 80a–4). Management investment companies typically issue shares representing an undivided proportionate interest in a changing pool of securities, and include open-end and closed-end companies. *See* T. Lemke, G. Lins, A. Smith III, Regulation of Investment Companies, Vol. I, ch. 4, section 4.04, at 4–5 (2002). An open-end company is a management company that is offering for sale or has outstanding any redeemable securities of which it is the issuer. A closed-end company is any management company other than an open-end company. *See* Section 5 of the Investment Company Act (15 U.S.C. 80a–5). Open-end companies ("mutual funds") generally offer and sell new shares to the public on a continuous basis, while closed-end companies generally engage in traditional underwritten offerings of a fixed number of shares and in most cases do not offer their shares to the public on a continuous basis.

Proposed Form N–CSR would be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002. *See* Investment Company Act Release No. 25723 (Aug. 30, 2002) (67 FR 57298 (Sept. 9, 2002)); Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745 (2002). The Commission proposed amendments to Form N–CSR in Investment Company Act Release No. 25739 (Sept. 20, 2002) (67 FR 60828 (Sept. 26, 2002)); Investment Company Act Release No. 25775 (Oct. 22, 2002) (67 FR 66208 (Oct. 30, 2002)); Investment Company Act Release No. 25838 (Dec. 2, 2002) (67 FR 76780 (Dec. 13, 2002)); and Investment Company Act Release No. 25845 (Dec. 10, 2002).

[3] Item 5 of Form N–1A.

transmit a report to its shareholders semi-annually, within 60 days of the end of the period for which the shareholder report is made, and to file the report with the Commission no later than 10 days after it is transmitted to shareholders.[4] Reports to shareholders currently are required to contain financial statements and other financial information,[5] as well as information about the fund's officers and directors.[6] Annual reports to shareholders of mutual funds typically also contain Management's Discussion of Fund Performance ("MDFP"), although they are not required to do so.[7] MDFP includes narrative disclosure of the factors that materially affected the fund's performance during the fiscal year, a line graph comparing the fund's performance over 10 years to that of an appropriate broad-based market index, and a table of the fund's average annual total returns for 1-, 5-, and 10-year periods.

Shareholder reports are one of the principal means by which funds provide periodic information to their investors. Fund shareholder reports historically have served primarily as a vehicle to provide financial statements and other financial information to shareholders.[8] We believe that, with some modifications, fund shareholder reports could become a more effective vehicle for communicating information to investors. Today's proposals principally address disclosure of fund portfolio holdings and expenses, two significant areas for improvement that have been identified by investor groups, members of the fund industry, and others.

A. Disclosure of Fund Portfolio Holdings

Currently, funds are required to include their complete portfolio holdings in the reports that are delivered to all shareholders twice a year.[9] Investor groups, members of the fund industry, and others have suggested ways in which this current disclosure regime could be improved, both by making the portfolio schedule that is required to be delivered to investors more streamlined, useful, and understandable and by increasing the frequency with which funds disclose their entire portfolio holdings.

First, some have argued that permitting funds to include a summary portfolio schedule in lieu of a complete portfolio schedule in their shareholder reports would simplify those reports, enable investors to focus on a fund's principal holdings, and thereby better evaluate the fund's risk profile and investment strategy.[10] At the same time, the fund's full portfolio schedule could remain available, upon request, to those investors who find this information useful. Because of its size or investment strategy, a fund may hold securities in hundreds, or even thousands, of portfolio companies, which may require as many as 35 or 40 pages to list. For many funds, such as index funds, providing a lengthy portfolio schedule may not contribute significantly to investor understanding regarding the fund's primary investment focus. It may, however, result in significant printing and mailing costs, which are ultimately borne by investors. Similarly, because of the high turnover of portfolio holdings by money market funds, and the fact that money market funds' portfolios are circumscribed by the credit quality, maturity, and portfolio diversification requirements of rule 2a–7 under the Investment Company Act, some have also argued that such funds should be exempt from the requirement to list portfolio holdings in their reports to shareholders.[11]

Advocates of this position have asserted that investors would be better served if fund shareholder reports contained a summary portfolio schedule listing a fund's most significant holdings, coupled with a chart, table, graph, or other graphical presentation breaking down a fund's investments by category. For example, a domestic equity fund might provide a graphical presentation that shows its portfolio investments broken down by industry sector, while a corporate or municipal bond fund might present its holdings broken down by credit quality or maturity.

Second, others have argued that investors would benefit if funds were required to disclose their complete portfolio schedules more frequently than semi-annually. The Commission has received six rulemaking petitions in the past several years that advocate more frequent disclosure of funds' portfolio holdings.[12] The petitioners argue that increasing the frequency of portfolio disclosure by funds will allow investors to better monitor the extent to which their funds' portfolios overlap, and hence will enable investors to make

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[4] *See* Section 30(e) of the Investment Company Act (15 U.S.C. 80a–29(e)); Rule 30e–1 under the Investment Company Act (17 CFR 270.30e–1) (transmission of report to shareholders); Section 30(b)(2) of the Investment Company Act (15 U.S.C. 80a–30(b)(2)); Rule 30b2–1 under the Investment Company Act (17 CFR 270.30b2–1) (filing of shareholder report with the Commission); proposed Form N–CSR (proposed Form to be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002).

[5] *See* Item 22(b)(1), (b)(2), (c)(1), and (c)(2) of Form N–1A (registration statement of open-end management investment companies); Instructions 4.a, 4.b, 5.a, and 5.b to Item 23 of Form N–2 (registration statement of closed-end management investment companies); Instructions 4(i), 4(ii), 5(i), and 5(ii) to Item 27(a) of Form N–3 (registration statement of separate accounts organized as management investment companies that offer variable annuity contracts).

[6] Items 13(a)(1) and 22(b)(5) of Form N–1A; Item 18.1 and Instruction 4.e to Item 23 of Form N–2; Item 20(a) and Instruction 4(v) to Item 27(a) of Form N–3.

[7] Item 5 of Form N–1A (MDFP required in prospectus unless included in annual report to shareholders).

[8] Section 30(e) of the Investment Company Act (15 U.S.C. 80a–29(e)) (requiring a fund to transmit to its stockholders, at least semi-annually, reports containing financial statements and other financial information as the Commission may prescribe by rules and regulations); National Securities Markets Improvement Act of 1996, Pub. L. 104–290, Section 207, 110 Stat. 3416, 3430 (Oct. 11, 1996) (adding Section 30(f) to the Investment Company Act, which allows the Commission to require that semi-annual reports "include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors").

[9] Rule 6–10(c)(1) of Regulation S–X (17 CFR 210.6–10(c)(1)) requires that a portfolio schedule be filed in support of the balance sheet entry for investments in securities of unaffiliated issuers. The form of the portfolio schedule is specified in Rule 12–12 of Regulation S–X (17 CFR 210.12–12). This list of portfolio securities also is required to be included with the financial statements in the Statement of Additional Information ("SAI") of a fund, which is part of the registration statement filed with the Commission under both the Securities Act and the Investment Company Act. *See* Item 22 of Form N–1A; Item 23 of Form N–2; Item 27(a) of Form N–3.

[10] *See* Letter from Craig S. Tyle, General Counsel, Investment Company Institute ("ICI"), to Barry P. Barbash, Director, Division of Investment Management, Securities and Exchange Commission ("SEC") (Aug. 11, 1998); Letter from Heidi Stam, Principal, Securities Regulation, The Vanguard Group, to Cynthia Fornelli, Deputy Director, Division of Investment Management, SEC (Oct. 13, 1999); Letter from Robert C. Pozen, General Counsel and Managing Director, Fidelity Investments, to The Honorable Steven Wallman, Commissioner, SEC (May 5, 1995). The letters are available for inspection and copying in File No. S7–51–02 in the Commission's public reference room.

[11] 17 CFR 270.2a–7. *See* Letter from Craig S. Tyle, General Counsel, ICI, to Barry P. Barbash, Director, Division of Investment Management, SEC (Aug. 11, 1998) at 2.

[12] *See* Rulemaking Petition by the International Brotherhood of Teamsters (Jan. 18, 2001) (disclose portfolio holdings monthly); Rulemaking Petition by the American Federation of Labor and the Congress of Industrial Organizations (Dec. 20, 2000) (disclose portfolio holdings monthly); Rulemaking Petition by the National Association of Investors Corporation (Oct. 9, 2000) (disclose portfolio holdings monthly); Rulemaking Petition by the Consumer Federation of America, *et al.* (Aug. 8, 2000) (disclose portfolio holdings monthly and on random days throughout year); Rulemaking Petition by the Financial Planning Association (June 28, 2000) (increase frequency of portfolio holdings disclosure); Rulemaking Petition by Fund Democracy, LLC (June 28, 2000) (disclose portfolio holdings monthly). The petitions are available for inspection and copying in File No. S7–51–02 in the Commission's public reference room.

more informed asset allocation decisions. In addition, the petitioners argue that more frequent disclosure would expose "style drift" (when the actual portfolio holdings of a fund deviate from its stated investment objective) and provide investors with greater information about how a fund is complying with its stated investment objective. The petitioners also argue that more frequent disclosure would help to shed light on and prevent several potential forms of portfolio manipulation. These include "window dressing" (buying or selling portfolio securities shortly before the date as of which a fund's holdings are publicly disclosed, in order to convey an impression that the manager has been investing in companies that have had exceptional performance during the reporting period) and "portfolio pumping" (buying shares of stocks the fund already owns on the last day of the reporting period, in order to drive up the price of the stocks and inflate the fund's performance results). Those who seek more frequent portfolio disclosure advocate that this information be made readily available to shareholders, not that the information be separately delivered to each fund shareholder.

B. Disclosure of Fund Expenses

Potential mutual fund investors receive significant disclosure about fund fees and expenses. Since 1988, the Commission has required the mutual fund prospectus to include a fee table that shows all fees and charges associated with a mutual fund investment as a percentage of net assets.[13] In addition, the Commission has undertaken efforts to educate investors about the significance of the costs that they pay in connection with mutual fund investments. In 1999, for example, the Commission introduced the Mutual Fund Cost Calculator, an Internet-based tool available on the Commission's website that enables investors to compare the costs of owning different funds.[14] In addition, the fund industry has undertaken efforts to educate investors and increase their awareness and understanding of mutual fund fees.[15]

Despite existing disclosure requirements and educational efforts, the degree to which investors understand mutual fund fees and expenses remains a significant source of concern. Mutual fund fees are of two types, transactional (*e.g.*, sales loads, redemption fees) and ongoing (*e.g.*, asset-based charges such as management fees and 12b–1 fees).[16] While transactional fees are relatively transparent, ongoing fees are less evident because they are deducted from fund assets and are reflected in reduced account balances rather than being separately stated. Significant concerns have been raised regarding the degree to which investors understand the nature and effect of these ongoing fees.[17]

A joint report of the Commission and the Office of the Comptroller of the Currency, for example, found that fewer than one in five fund investors could give any estimate of expenses for their largest mutual fund and fewer than one in six fund investors understood that higher expenses can lead to lower returns.[18] These ongoing fees can have a dramatic effect on an investor's return. A 1% annual fee, for example, will reduce an ending account balance by 18% on an investment held for 20 years.

In an important contribution to the public dialogue on fund fees, the United States General Accounting Office ("GAO") issued a report in 2000, prepared pursuant to a request by Representative Michael G. Oxley, then Chairman of the Subcommittee on Finance and Hazardous Materials, House Committee on Commerce, and Representative John D. Dingell, Ranking Member of the Committee on Commerce, that analyzed mutual fund fees and the market forces that influence those fees.[19] The report's principal conclusion was that additional disclosure could help to increase investor awareness and understanding of mutual fund fees and, thereby, promote additional competition among funds on the basis of fees.[20] The GAO Report asserted that although mutual funds do not provide individual shareholders with information on the specific dollar amount of fees paid on their account statements, most other financial products and services (*e.g.*, bank deposit accounts, stock or bond transactions through a securities broker) are required to make such disclosures, and that these disclosures may be one reason for the apparently vigorous price competition among firms offering these other products and services.[21] The GAO Report therefore recommended that the Commission require funds to provide each investor with an exact dollar figure for fees paid in each quarterly account statement. However, the GAO Report acknowledged the potential costs associated with accounting for, and reporting, costs on an individual basis and encouraged the Commission to consider the cost and burden that various alternative means of making such disclosures would impose on the industry and investors. The GAO specifically discussed less costly alternatives, including providing the dollar amount of fees paid for preset

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[13] Item 3 of Form N–1A; Investment Company Act Release No. 16244 (Feb. 1, 1988) (53 FR 3192 (Feb. 4, 1988)) (release adopting mutual fund fee table); Investment Company Act Release No. 15932 (Aug. 18, 1987) (52 FR 32018 (Aug. 25, 1987)) (release proposing mutual fund fee table).

[14] *Mutual Fund Cost Calculator* (last modified Sept. 6, 2000), *http://www.sec.gov/mfcc-int.htm*. *See also Invest Wisely: An Introduction to Mutual Funds* (last modified Apr. 4, 2001), *http://www.sec.gov/investor/pubs/inwsmf.htm* (investor brochure describing types of mutual fund fees and expenses).

[15] *See, e.g.*, ICI, *Frequently Asked Questions About Mutual Fund Fees*, *http://www.ici.org/aboutfunds/bro_mf_fees_faq.htm* (visited Nov. 27, 2002); Fidelity Research & Management, *How to Buy Funds Overview*, *http://www.fidelity.com/products/funds* (calculator for comparing the impact of fees and expenses from one fund to another) (visited Nov. 29, 2002); The Vanguard Group, *How to Select a Mutual Fund*, *http://www.vanguard.com/VGApp/hnw/FundsCompareCostsIntro?entryPoint=PandA* (calculator showing the impact of mutual fund loads, sales charges, fees, and other expenses on investment returns) (visited Nov. 29, 2002).

[16] A 12b–1 fee is a fee charged by some mutual funds against fund assets to pay for marketing and distribution activities. See Section 12(b) of the Investment Company Act (80 U.S.C. 80a–12(b)); Rule 12b–1 under the Investment Company Act (17 CFR 270.12b–1).

[17] *See, e.g.*, Theo Francis, *Getting the Most From Fund Costs*, Wall street Journal, Dec. 2, 2002, at R1 (discussing the importance of considering fees and expenses when investing in mutual funds, and explaining how to use the SEC's cost calculator); James Glassman, *A Failing Grade for Mutual Funds*, Washington Post, Dec. 1, 2002, at H1 (discussing importance of differences in expenses to fund returns, and using examples from SEC's cost calculator); Neil Weinberg, *Fund Manager Knows Best; As Corporations are Fessing Up to Investors, Mutual Funds Still Gloss Over Costs*, Forbes Magazine, Oct. 14, 2002 (84% of investors believe higher expenses result in higher performance); *Investors Need to Bone Up on Bonds and Costs, According to Vanguard/Money Investor Literacy Test*, Press Release, Business Wire , Sept. 25, 2002 (75% of survey respondents could not accurately define fund expense ratio and 64% did not understand the impact of expenses on fund returns); Liz Pulliam Weston, *Fees Making Matters Worse as Funds' Performance Drops*, Chicago Tribune, Jan. 1, 2002, at C5 (some investors are not aware of the impact of fund expenses on returns, while others do not realize that lower-cost alternatives are available); Michelle Singletary, *Are Our Funds Milking Us? Who Can Tell?*, Washington Post, Apr. 4, 1999, at H1 (studies show that a great number of mutual fund investors do not understand what funds are costing them); Charles Gasparino, *Go Figure: Investors Should Take a Close Look at the Fees Their Funds Are Charging*, Chicago Tribune, Sept. 15, 1998, at C1 (investors often do not realize how fees affect their fund's performance).

[18] Securities and Exchange Commission and Office of the Comptroller of the Currency, *Report on the OCC/SEC Survey of Mutual Fund Investors* (June 26, 1996).

[19] GAO, Mutual Fund Fees: Additional Disclosure Could Encourage Price Competition (June 7, 2000) ("GAO Report").

[20] *Id.* at 97–98.

[21] *Id.* at 70–72.

investment amounts, such as $1,000, which investors could use to estimate the amount that they paid on their own accounts.

In December 2000, the Commission staff issued a report on mutual fund fees and expenses ("Commission Staff Report"), which considered, among other issues, the recommendations in the GAO Report, and concluded that disclosure of the dollar amount of fees paid for a preset investment amount would likely have the most favorable trade-off between costs and benefits.[22] The Commission Staff Report recommended requiring mutual funds to include in shareholder reports the cost in dollars associated with an investment of $10,000 that earned the fund's actual return for the period and incurred the fund's actual expenses for the period. Coupled with an investor's average account balance over the period, this would permit an individual investor to estimate the dollar costs that he or she incurred during the period. The staff also recommended that mutual funds disclose the cost in dollars, based on the fund's actual expenses, associated with an investment of $10,000 that earned a standardized return (*e.g.*, 5%) for the period. This would permit investors to compare the relative magnitudes of the ongoing costs of different funds.

Today's proposals address these important issues. They are intended to improve the information disclosed to investors about a fund's investments, by enhancing and streamlining the information provided in reports to shareholders about a fund's portfolio holdings and by requiring funds to disclose their portfolio holdings quarterly rather than semi-annually. In addition, our proposals are targeted at heightening investors' understanding of ongoing fund fees and expenses.

II. Discussion

A. Disclosure of Portfolio Holdings

The Commission is proposing rule and form amendments that would: (1) Permit a fund to include a summary portfolio schedule in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission semi-annually on proposed Form N-CSR and is provided to shareholders upon request, free of charge; (2) exempt money market funds from including a portfolio schedule in reports to shareholders, provided that this information is filed with the Commission on proposed Form N-CSR and is provided to shareholders upon request, free of charge; (3) require reports to shareholders to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable category; and (4) require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new proposed Form N-Q. Together, these proposals would replace a one-size-fits-all approach to portfolio holdings disclosure, where all funds deliver their full portfolio schedules to all their shareholders twice a year, with a "layered" approach that would make more information available while permitting funds to tailor their shareholder reports to their particular circumstances and investors to tailor the amount of information they receive to meet their particular needs.[23] This "layered" approach is intended to result in the availability of enhanced portfolio information at reduced cost.

1. Summary Portfolio Schedule

We are proposing to permit funds to include in their reports to shareholders a summary portfolio schedule, in lieu of a complete portfolio schedule. The complete portfolio schedule would, however, continue to be available, free of charge, to those investors who are interested in this more detailed information. Our proposal is intended to address concerns that the current requirement for a fund to include in its shareholder reports a schedule that lists all investments held by the fund results, in many cases, in long lists of securities that do not provide meaningful information to most investors, and in substantial printing and mailing costs that are borne by fund investors.[24] Permitting funds to provide a summary portfolio schedule in lieu of a complete portfolio schedule in required reports to shareholders could streamline these reports and help investors to focus on a fund's principal holdings, and thereby better evaluate the fund's risk profile and investment strategy.

Our proposed amendments to Regulation S–X would permit a fund to include in its reports to shareholders a summary portfolio schedule, *Schedule VI—Summary schedule of investments in securities of unaffiliated issuers*, in lieu of the full schedule contained in *Schedule I—Investments in securities of unaffiliated issuers*.[25] The proposed summary portfolio schedule would include—in order of descending value—each of the fund's 50 largest holdings in unaffiliated issuers and each investment that exceeds one percent of the fund's net asset value. For purposes of determining whether the value of a security exceeds one percent of net asset value, a fund would be required to aggregate and treat as a single issue all securities of any one issuer. However, each issue would be required to be listed separately in the schedule, whether or not issued by a single issuer. Restricted securities could not be combined with unrestricted securities of the same issuer.[26] All securities not separately listed in the summary schedule would be required to be listed in a category labeled "Other Securities."[27] Funds would continue to be required to include in their reports to shareholders the other schedules currently required by Regulation S–X.[28]

We are recommending that the summary portfolio schedule include the fund's 50 largest holdings and each investment that exceeds one percent of net assets, because we believe that this would result in inclusion of the most significant portfolio holdings information in shareholder reports.[29]

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[22] Division of Investment Management, SEC, Report on Mutual Fund Fees and Expenses (Dec. 2000).

[23] *Cf.* Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments, Securities Act Release No. 8144 (Nov. 4, 2002) [67 FR 68054, 68063 (Nov. 8, 2002)] (separate disclosure required in Management's Discussion and Analysis ("MD&A") with respect to off-balance sheet arrangements would layer the MD&A, which would enable investors with varying levels of interest and financial acumen to easily obtain desired information); Chairman Harvey L. Pitt, SEC, Remarks before the Investment Company Institute, 2002 General Membership Meeting (May 24, 2002) (producing and disclosing financial information in layers benefits investors by yielding clear and concise financial statements that allow readers to explore whatever layer of detail they wish).

[24] See text accompanying note 10, *supra*.

[25] Schedule I of Regulation S–X (17 CFR 210.12–12); proposed Schedule VI of Regulation S–X (17 CFR 210.12–12C); proposed rule 6–10(c)(2) of Regulation S–X (17 CFR 210.6–10(c)(2)); proposed Instruction 1 to Item 21(b)(1) and Instruction to Item 21(c)(1) of Form N–1A; proposed Instructions 4.a., 5.a., and 7 to Item 23 of Form N–2; proposed Instructions 4.(i), 5.(i), and 7 to Item 27(a) of Form N–3.

[26] Proposed Note 1 to Schedule VI.

[27] Proposed Note 2 to Schedule VI.

[28] In addition to *Schedule I—Instruments in securities of unaffiliated issuers*, Article 6–10(c) of Regulation S–X (17 CFR 210.6–10(c)) requires the following schedules to be filed: *Schedule II—Investments-other than securities* (17 CFR 210.12–13); *Schedule III—Investments in and advances to affiliates* (17 CFR 210.12–14); *Schedule IV—Investments-securities sold short* (17 CFR 210.12–12A); and *Schedule V—Open option contracts written* (17 CFR 210.12–12B).

[29] *Cf.* The American Institute of Certified Public Accountants ("AICPA") Audit and Accounting Guide, Audits of Investment Companies section 7.10 (Dec. 2000) (requiring funds to disclose each investment whose fair value constitutes more than one percent of net assets, all investments in any one issuer whose fair values aggregate more than one percent of net assets, and the fifty largest investments).

However, we note that if funds were required to disclose a somewhat higher number of securities, such as 150, this could result in a significant majority of funds including their complete schedules in their shareholder reports, while still allowing the minority of funds with lengthy portfolio schedules to limit their portfolio disclosure to two or three printed pages. We estimate that as of October 2002, almost 75% of all funds had portfolio holdings exceeding 50 securities, but only 25% of all funds had portfolio holdings exceeding 150 securities, and fewer than 10% of all funds had portfolio holdings exceeding 350 securities.[30]

The format of our proposed summary portfolio schedule would be similar to that of the complete schedule of investments in unaffiliated issuers currently contained in reports to shareholders. Thus, with respect to each issue required to be listed, the schedule would show (1) the name of the issuer and title of the issue; (2) the balance held at the close of the period (*i.e.*, the number of shares or the principal amount of bonds and notes); and (3) the value of each item at the close of the period.[31] Unlike the complete schedule, however, the summary schedule would also show the percentage value of the issue compared to net assets.[32] The summary schedule would also show the total value of all investments in securities of unaffiliated issuers.[33]

Because the proposed summary portfolio schedule would require investments to be listed in order of descending value, the requirement in the complete portfolio schedule that investments be listed separately by type (*e.g.*, common shares, preferred shares, bonds and notes, time deposits, and put and call options purchased) would be inapplicable.[34] However, the proposals would require each type of instrument to be identified by an appropriate symbol or footnote.[35] As with the current requirements for disclosure of the complete portfolio schedule, the summary schedule would require funds to identify by appropriate symbols each issue of securities that is non-income producing, each issue of securities held in connection with open put or call option contracts or loans for short sales, and each issue of restricted securities.[36] Short-term debt instruments of the same issuer (with disclosure indicating the range of interest rates and maturity dates), and fully collateralized repurchase agreements (with footnote disclosure indicating the range of dates of the repurchase agreements, the total purchase price of the securities, the total amount to be received upon repurchase, the range of repurchase dates, and a description of the securities subject to the repurchase agreements) would be required to be aggregated and treated as a single issue.[37] As in the current complete schedule, a fund also would be required to state in a footnote to the summary schedule the following amounts based on cost for Federal income tax purposes: (i) Aggregate gross unrealized appreciation for all securities in which there is an excess of value over tax cost; (ii) aggregate gross unrealized depreciation for all securities in which there is an excess of tax cost over value; (iii) net unrealized appreciation and depreciation; and (iv) the aggregate cost of securities for Federal income tax purposes.[38]

To ensure that shareholders have continued access to a complete schedule of the fund's portfolio holdings, any fund that uses a summary portfolio schedule would be required to file its complete portfolio schedule with the Commission on proposed Form N–CSR, which would be available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR").[39] In addition, any fund that uses a summary portfolio schedule would be required to send its complete schedule of investments in securities of unaffiliated issuers to shareholders upon request within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery, and to disclose in its reports to shareholders that this complete portfolio schedule is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's Web site, if applicable; and (iii) on the Commission's Web site.[40]

We believe that permitting the use of a summary portfolio holdings schedule potentially could enable funds to provide more meaningful information in their annual and semi-annual reports to shareholders, and encourage investors to focus on a fund's most significant holdings in evaluating its risk profile and investment strategy. In addition, the costs of printing and mailing of shareholder reports should be reduced. At the same time, the proposals would require that the fund's complete portfolio schedule continue to be readily available, without charge, to shareholders who are interested in this information, and that the fund provide disclosure in its reports to shareholders of how this information may be obtained. This "layered" disclosure approach is intended to enable investors with varying degrees of interest in a fund's portfolio holdings to easily obtain the desired level of information about the fund. Thus, the proposals attempt to strike a balance that would result in maximum availability of information in a useful format and at minimum cost.

We request comment on our proposal to permit funds to deliver a summary portfolio schedule in their reports to

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[30] This estimate is based on the Commission staff's analysis of data from the *Morningstar Principia Plus* database (Nov. 2002) (data as of Oct. 2002).

[31] Columns A, B, and C of proposed Schedule VI of Regulation S–X.

[32] Column D of proposed Schedule VI.

[33] Proposed Note 4 to proposed Schedule VI.

[34] Note 2 to Schedule I (17 CFR 210.12–12).

[35] Proposed Note 2 to proposed Schedule VI.

[36] Proposed Notes 3, 5 and 6 to proposed Schedule VI; Notes 5, 6, and 7 to Schedule I (17 CFR 210.12–12).

[37] Proposed Note 2 to proposed Schedule VI.

[38] Proposed Note 7 to proposed Schedule VI; note 8 to Schedule I (17 CFR 210.12–12).

[39] Proposed Item 7 of proposed Form N—CSR. Funds that include the complete portfolio schedule in their shareholder reports would also file this schedule on Form N–CSR, as part of the shareholder report. This schedule must be audited, except in the case of a report on Form N—CSR as of the end of a fiscal half-year. Proposed Instruction to Item 7 of proposed Form N–CSR.

[40] Proposed Instruction 1 to Item 21(b)(1) and proposed Instruction to Item 21(c)(1) of Form N–1A; proposed Instruction 7 to Item 23 of Form N–2; proposed Instruction 7 to Item 27(a) of Form N–3.

A fund may incorporate its financial statements by reference into its registration statement. A fund that includes a summary portfolio schedule in its reports to shareholders, and that chooses to incorporate its financial statements in its Statement of Additional Information ("SAI") by reference, would be expected to incorporate by reference its full portfolio schedule from Form N–CSR, along with the other financial statements and supporting schedules in its annual report to shareholders. See General Instruction D.1.(c) to Form N–1A (permitting incorporation by reference into the SAI generally); proposed General Instruction F to Form N–2 (permitting incorporation by reference of information from Form N–CSR in response to Item 23 ("Financial Statements")); proposed General Instruction G to Form N–3 (permitting incorporation by reference of information from Form N–CSR in response to Item 27 ("Financial Statements")). Such a fund would be required to deliver the full portfolio schedule from Form N–CSR, as well as the shareholder report, upon a shareholder request for the SAI. See Instruction to Item 10(a)(2)(iii) of Form N–1A (requiring any information incorporated by reference into the SAI to be delivered with the SAI unless the information has been previously delivered in a shareholder report and the fund states that the shareholder report is available, without charge, upon request); General Instruction F to Form N–2 (requiring any information incorporated by reference into the SAI to be delivered with the SAI unless the person to whom the SAI is sent or given holds securities of the fund and otherwise has received copies of the material, and fund states that the material is available, without charge, upon request); General Instruction G to Form N–3 (same).

shareholders and specifically on the following issues.

- Are the proposals to require funds to disclose their 50 largest holdings and holdings accounting for one percent (and greater) of net assets appropriate? Should a smaller or larger number of holdings (*e.g.*, 25, 100, 150, etc.) or a higher or lower percentage threshold (*e.g.*, 0.5%, 2%, etc.) be used?
- As proposed, securities disclosed in the summary schedule would be identified in order of descending value (largest holding to smallest). Should we adopt a different approach (*e.g.*, listing portfolio securities by identifiable category)?
- Should we require that a fund have a minimum number of securities to utilize a summary portfolio schedule (*e.g.*, 150 or 250 securities)? If so, should we select a number that is intended to ensure that the majority of funds continue to include their complete schedules of portfolio holdings?
- Should we allow the use of a summary portfolio schedule with respect to other investments in addition to investments in securities of unaffiliated issuers (*e.g.*, investments in securities sold short, open option contracts written, investments other than securities, and investments in and advances to affiliates)?[41] If so, what modifications to the proposed summary portfolio schedule would be necessary?
- As proposed, the summary portfolio schedule would require short-term debt instruments of the same issuer, and fully collateralized repurchase agreements, to be aggregated and treated as a single issue. Should aggregation be optional or mandatory? If fully collateralized repurchase agreements are permitted or required to be aggregated, what information about aggregate repurchase agreements of a fund should be required in the summary schedule?
- Are there any modifications in the format of the proposed summary portfolio schedule that would be appropriate, such as eliminating or revising the requirements to indicate by appropriate symbols non-income producing securities and restricted securities?
- Should we exempt index funds from the requirement to include their portfolio holdings in their reports to shareholders, as long as the holdings are filed with the Commission and made available to investors upon request and free of charge, on the grounds that delivery of this information to all shareholders is unnecessary as long as an index fund tracks its designated index? If so, how should we determine whether a fund tracks a designated index sufficiently closely to qualify for this exemption?
- Should we require a shareholder report covering more than one fund to use the same type of portfolio schedule (summary or complete) for all funds included in the report?
- Is Form N–CSR the appropriate location for funds that include a summary portfolio schedule in their shareholder reports to disclose their complete portfolio schedules? We have proposed, but not yet adopted, Form N–CSR to implement the certification requirement of section 302 of the Sarbanes-Oxley Act of 2002.[42] If we ultimately do not adopt Form N–CSR to implement the Sarbanes-Oxley Act, should we nevertheless adopt Form N–CSR as a vehicle for a fund to disclose its complete portfolio holdings schedule? If not, how should a fund file its complete portfolio holdings schedule with the Commission?
- Should a fund that uses a summary portfolio schedule be permitted to provide its complete portfolio schedule to investors exclusively through posting this information on its Web site?

2. Exemption of Money Market Funds From Portfolio Schedule Requirements in Shareholder Reports

We are proposing to permit money market funds to omit Schedule I, the schedule of investments in securities of unaffiliated issuers, from their reports to shareholders, provided that they make this schedule available to shareholders upon request and free of charge, and disclose the availability of the schedule in their reports to shareholders.[43] Currently, money market funds, like other funds, are required to include their portfolio schedules in the shareholder reports that are delivered to all investors. The investments of money market funds are, however, circumscribed by the credit quality, maturity, and portfolio diversification requirements of rule 2a–7 under the Investment Company Act.[44] Portfolio holdings schedules of money market funds typically contain a list of short-term government and corporate debt securities that may not assist the average investor in evaluating the money market fund, or in distinguishing one money market fund from another. Moreover, investors generally treat money market funds as cash investments, and therefore may be less interested in the composition of money market fund portfolios than other types of funds.

Our proposals would require money market funds to file their complete portfolio holdings schedules semi-annually with the Commission on proposed Form N–CSR, however, so that complete information about their portfolios would remain available to interested investors.[45] We also are proposing to require any money market fund that does not include its complete portfolio schedule in its reports to shareholders to disclose in its shareholder reports that its complete schedule of investments in unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov*.[46] The proposals also would require a money market fund to send its complete schedule of investments in securities of unaffiliated issuers within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.[47]

We request comment generally on whether money market funds should be permitted to omit their portfolio schedules from reports to shareholders and specifically on the following issues.

- Would the proposed exemption be necessary or appropriate if the Commission permits, as also proposed, all funds to use summary portfolio schedules?
- Is the information with respect to a money market fund in either a complete or the proposed summary portfolio schedule sufficiently important that it should be delivered to all investors in the fund?
- Should the exemption for money market funds from the requirement to include a portfolio schedule in its reports to shareholders apply to all of the required schedules, or only the schedule of investments in unaffiliated issuers?[48]

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[41] *Schedule II—Investments-other than securities* (17 CFR 210.12–13); *Schedule III—Investments in and advances to affiliates* (17 CFR 210.12–14); *Schedule IV—Investments-securities sold short* (17 CFR 210.12–12A); and *Schedule V—Open option contracts written* (17 CFR 210.12–12B).

[42] Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002).

[43] 17 CFR 210.12–12. *See* Proposed Instruction 2 to Item 21(b)(1) and proposed Instruction to Item 21(c)(1) of Form N–1A; proposed Instruction 7(ii) to Item 27(a) of Form N–3.

[44] 17 CFR 270.2a–7.

[45] Proposed Item 7 of proposed Form N–CSR.

[46] Proposed Instruction 2 to Item 21(b)(1) and proposed Instruction to Item 21(c)(1) of Form N–1A; proposed Instruction 7 to Item 27(a) of Form N–3.

[47] *Id.*

[48] *See Schedule II—Investments-other than securities* (17 CFR 210.12–13); *Schedule III—Investments in and advances to affiliates* (17 CFR 210.12–14); *Schedule IV—Investments-securities sold short* (17 CFR 210.12–12A); and *Schedule V—Open option contracts written* (17 CFR 210.12–12B).

3. Tabular or Graphic Presentation of Portfolio Holdings

We also are proposing to require funds to include in their annual and semi-annual reports to shareholders a presentation using tables, charts, or graphs that depicts a fund's portfolio holdings by reasonably identifiable categories (*e.g.*, industry sector, geographic region, credit quality, or maturity).[49] This presentation would show the percentage of net asset value attributable to each category. We believe that such a presentation could illustrate, in a concise and user-friendly format, the allocation of a fund's investments across asset classes. We believe that this presentation, coupled with a summary portfolio schedule, has the potential to effectively convey to investors key information about a fund's investments. Particularly in the case of a fund with a large number of holdings, the combination of a summary portfolio schedule and a tabular or graphic asset allocation presentation could be significantly more useful to many investors than the fund's complete portfolio schedule standing alone.

Under our proposals, a fund would have the flexibility to determine both the categories to be used (*e.g.*, industry sector, geographic region, credit quality, maturity, etc.) and the format (*e.g.*, tables, charts, graphs, etc.) of the presentation. The categories should be selected, and the format of the presentation designed, to provide the most useful information to investors about the types of investments made by the fund, given its investment objectives. For example, a domestic equity fund could choose to categorize its investments by attributes such as industry sector, market capitalization, or price-earnings ratio. A bond fund could choose to categorize its investments by attributes such as credit quality or maturity or government versus non-government securities.[50] Permitting a fund to determine the most useful means of presenting this portfolio information would allow each fund to tailor the presentation in a manner that is appropriate to its holdings. Further, over time, this flexible approach could enable both funds and the Commission to determine whether certain types of presentations are more effective for different types of funds.

We request comment generally on the appropriateness of the proposed tabular or graphic presentation of fund holdings.

- Would the proposed presentation be useful to shareholders? Should such a presentation be required or optional?
- Are there any particular types of funds (*e.g.*, money market funds or index funds) that should be exempt from the requirement to provide the tabular or graphic presentation of fund holdings? On what basis should such categories of funds be exempted?
- Are there any alternative presentations that should be required for certain types of funds? For example, should an index fund by required to show the extent to which it tracks the designated index ("tracking error")?
- Would a tabular or graphic presentation be useful for a fund with a small number of holdings or should funds with, *e.g.*, less than 25 or 50 or 100 securities (or some other number) be exempt from this requirement?
- Should a fund that includes its full portfolio schedule, rather than a summary portfolio schedule, in its shareholder reports be exempt from the tabular or graphic presentation requirement since the full portfolio schedule requires classification of securities according to type of business or type of instrument?[51] Is the tabular or graphic presentation necessary in a shareholder report that contains a summary portfolio schedule, where the holdings would be listed in order of descending value, with percentage of net assets identified?
- What alternative presentations should we permit funds to use to illustrate the percentage and categories of securities they hold?
- Should we mandate the format of presentation?
- Should we mandate identifiable categories of holdings for any or all types of funds (*e.g.*, bond funds—credit quality or maturity; international funds—region, etc.)?

4. Quarterly Filing of Complete Portfolio Schedule

We propose to require funds to file their complete portfolio holdings schedules with the Commission on a quarterly basis, rather than semi-annually as currently required. As described above, funds would be required to file their complete portfolio schedules for the second and fourth fiscal quarters on proposed Form N–CSR.[52] In addition, funds would be required to file their portfolio schedules for the first and third fiscal quarters on new Form N–Q under the Investment Company Act, within 60 days of the end of the quarter.[53] Form N–Q would require funds to file the same schedules of investments that are currently required in annual and semi-annual reports to shareholders. These schedules could be unaudited.[54] Form N–Q would be a reporting form required under the Investment Company Act only, unlike proposed Form N–CSR, which is a combined Exchange Act and Investment Company Act form.[55] Form N–Q would be required to be signed by the fund, and on behalf of the fund by its principal financial officer or officers.[56]

Our proposals are intended to provide greater transparency of fund portfolio holdings, without imposing significant costs on funds and, ultimately, their shareholders. The proposals would enable interested investors, through more frequent access to portfolio information, to monitor whether, and how, a fund is complying with its stated investment objective. Given the significant interest in more frequent portfolio information that has been expressed in rulemaking petitions to the Commission by investors groups and others,[57] we believe that it is appropriate to propose more frequent portfolio reporting by funds for public comment at this time. We note, however, that the proposals would only require the *filing* of a fund's portfolio schedule on Form N–Q with the Commission on EDGAR and not actual delivery of that information to shareholders. A fund would be required to include in its annual and semi-annual

[49] Proposed Item 21(d)(2) of Form N–1A; proposed Instruction 6.a to Item 23 of Form N–2; proposed Instruction 6(i) to Item 27(a) of Form N–3.

[50] Credit quality would be required to be the ratings grade assigned by a nationally recognized statistical rating organization ("NRSRO"), as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of Rule 15c3–1 under the Exchange Act (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)). The fund could use ratings of only one NRSRO. Proposed Item 21(d)(2) of Form N–1A; proposed Instruction 6.a to Item 23 of Form N–2; proposed Instruction 6(i) to Item 27(a) of Form N–3.

[51] Note 2 to *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12).

[52] Proposed Item 7 of proposed Form N–CSR. *See* note *supra* and accompanying text.

[53] Proposed Form N–Q; proposed rule 30b1–4 under the Investment Company Act. Small business investment companies ("SBICs") registered with the Commission on Form N–5 would not be required to file Form N–Q. General Instruction A to proposed Form N–Q. Although they are management investment companies, SBICs are not currently required to deliver reports to shareholders containing financial statements, and hence are not required to deliver schedules of investments to their shareholders.

[54] *See* Proposed Item 1 of proposed Form Q; *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12); *Schedule II—Investments-other than securities* (17 CFR 210.12–13); *Schedule III—Investments in and advances to affiliates* (17 CFR 210.12–14); *Schedule IV—Investments-securities sold short* (17 CFR 210.12–12A); and *Schedule V—Open option contracts written* (17 CFR 210.12–12B).

[55] *See* Investment Company Act Release No. 25723, *supra* note 2 (proposed form N–CSR).

[56] General Instruction F.2.(a) to Form N–Q.

[57] *See supra* note 12.

reports to shareholders a statement that: (i) The fund files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N–Q; (ii) the fund's Forms N–Q are available on the Commission's Web site at *http://www.sec.gov;* (iii) the fund's Forms N–Q may be reviewed and copied at the Commission's Public Reference Room, and how information on the operation of the Public Reference Room may be obtained; and (iv) if the fund makes the information on Form N–Q available to shareholders on its Web site or upon request, a description of how the information may be obtained from the fund.[58] This proposal is intended to strike an appropriate balance between investors' interest in more frequent portfolio information and the costs associated with disclosing and making that information available to investors, which are ultimately borne by investors.

We are cognizant of concerns raised by some members of the fund industry that mandating more frequent portfolio disclosure would harm fund shareholders by expanding the opportunities for professional traders to exploit this information by engaging in predatory trading practices, such as trading ahead of funds, often called "front-running."[59] They assert that more frequent portfolio disclosure would facilitate the ability of outside investors to "free ride" on a mutual fund's investment strategies, by obtaining for free the benefits of fund research and investment strategies that are paid for by fund shareholders.[60]

At this time, we are not persuaded that these concerns are significant enough to prevent our proposal from being put forward for public comment. We have endeavored to address those concerns by proposing a 60-day delay for the filing of the required additional quarterly disclosure. We believe that a 60-day filing delay would limit the ability of professional traders to engage in these harmful trading practices. In this regard, we note that a significant majority of funds already make their full portfolio schedules publicly available at least quarterly, apparently without concern about predatory trading practices.[61]

We also note that currently, fund managers and other institutional investment managers exercising investment discretion over $100 million or more in certain equity securities must disclose information about portfolios that they manage on Form 13F within 45 days of the end of each quarter.[62] Reports on Form 13F disclose a fund manager's aggregate holdings in each security required to be reported; the holdings of each individual mutual fund or other account over which an investment manager has discretion are not broken out separately.[63] To the extent that required quarterly disclosure about a fund's portfolio investments raises concerns about predatory trading practices, these concerns are not new, since fund portfolio holdings have been disclosed on Form 13F, aggregated by investment manager, since 1979.[64]

We request comment generally on whether more frequent portfolio holdings disclosure should be required and specifically on the following issues.

- With regard to the proposed Form N–Q filing requirement, we request public comment on feasible alternatives that minimize the reporting burdens on registered management investment companies. In addition, we request comment on the utility to investors of the reports to the Commission in relation to the costs to registered management investment companies of providing those reports.
- Are there less burdensome alternatives than requiring quarterly disclosure of a fund's full portfolio schedule of investments, as proposed?
- What, if any, additional costs would funds incur as a result of filing their complete portfolio holdings schedules with the Commission via EDGAR on a quarterly basis with a 60-day delay?
- How frequently should funds be required to disclose information about their portfolios? Monthly, quarterly, semi-annually, or some other frequency? In addressing this question, commenters should address both the benefits to investors from more frequent disclosure and the detriments to funds, and their shareholders, from predatory trading practices that could accompany more frequent disclosure.
- Would a 60-day delay sufficiently discourage or impair the ability of third parties to "front-run" and "free ride" or should the period be longer, *e.g.*, 75 days or 90 days? Would a 30- or 45-day or some other delay sufficiently discourage or impair the ability of third parties to engage in predatory trading practices? Is there any evidence that the current quarterly disclosure required by Form 13F either facilitates or does not facilitate predatory trading practices, such as "front-running?"
- Shareholder reports are currently required to be filed with the Commission within 70 days of the end of each semi-annual reporting period; reports on Form 13F are required to be filed within 45 days of the end of each quarter; and proposed Form N–Q would

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[58] Proposed Item 21(d)(3) of Form N–1A; proposed Instruction 6.b. to Item 23 of Form N–2; proposed Instruction 6.(ii) to Item 27(a) of Form N–3.

[59] *See* Letter from Craig S. Tyle, General Counsel, ICI, to Paul F. Roye, Director, Division of Investment Management, SEC (July 17, 2001), *available at http://www.ici.org/port_holdings_com.html;* Russ Wermers, *The Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance,* ICI Perspective (June 2001), *available at http://www.ici.org/pdf/per07–03.pdf.* (increasing the frequency of portfolio holdings disclosure may increase the likelihood of predatory trading practices, such as "front-running"). These materials are available for inspection and copying in File No. S7–51–02 in the Commission's public reference room.

[60] *Id.*

[61] *See* Scott Cooley, *Tell Investors What They Own,* Morningstar Online, Feb. 6, 2002 (more than 70% of funds currently provide monthly or quarterly portfolio disclosure to Morningstar). *See also* Tom Lauricella and Aaron Lucchetti, *To Industry, Silence is Golden—Mutual Funds Embrace Disclosure Rules—As Long as it Doesn't Involve Them,* Wall Street Journal Europe, Aug. 1, 2002, at M1 (roughly 200 fund firms and 17 of the top 20 largest funds provide quarterly or monthly holdings updates to investors); *Survey of Fund Groups' Portfolio Disclosure Policies Summary of Results,* Investment Company Institute (2001), *available at http://www.ici.org/port_holdings_appdxa.html.*

[62] *See* Section 13(f) of the Exchange Act (15 U.S.C. 78m(f)); Rule 13f–1 under the Exchange Act (17 CFR 240.13f–1). Securities required to be reported on Form 13F include, among other securities, all exchange-traded or NASDAQ-quoted securities. Rule 13f–1 under the Exchange Act (17 CFR 240.13f–1); Section 13(d)(1) of the Exchange Act (15 U.S.C. 78m(d)(1)). Congress enacted Section 13(f) in order to create a central depository of historical and current data about the investment activities of institutional investment managers that would be available to individuals, federal and state regulators, and other institutional investment managers. Report of Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 85 (1975). The dissemination of this data was intended to increase confidence among all investors in the integrity of the securities markets. *Id.* at 82.

[63] *See* Special Instruction 12 to Form 13F (17 CFR 249.325).

[64] Institutional investment managers may request confidential treatment of information in filings on Form 13F pursuant to Section 13(f)(3) of the Exchange Act (15 U.S.C. 78m(f)(3)), on the basis, among others, that the information would reveal an investment manager's ongoing program of acquisition or disposition. *See* Report of Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 87 (1975) (describing intended exemption). An application for confidential treatment on this basis must, among other requirements: (a) describe the investment strategy being followed with respect to the relevant securities holdings; (b) explain why public disclosure of the securities would, in fact, be likely to reveal the investment strategy; (c) demonstrate that such revelation of an investment strategy would be premature, and indicate whether the manager was engaged in a program of acquisition or disposition of the security both at the end of the quarter and at the time of the filing; and (d) demonstrate that failure to grant the request for confidential treatment would be likely to cause substantial harm to the manager's competitive position. Instructions for Confidential Treatment Requests, Form 13F (17 CFR 249.325).

be required to be filed within 60 days of each semi-annual reporting period. Should the filing periods for these three forms be identical? If so, what period is appropriate, 30 days, 45 days, 60 days, 70 days, or some other period? Are concerns about predatory trading practices more or less significant in the context of disclosure about aggregate holdings in equity securities managed by an institutional investment manager (Form 13F), as opposed to disclosure of the securities in each fund (proposed Form N–Q)?

- If we extended the time period for filing Form 13F to, for example, 60 days, would there continue to be a need for institutional investment managers to be able to request confidential treatment of filings on Form 13F on the basis of a manager's ongoing investment strategy? Are there other changes that should be made to Form 13F, such as, for example, modifying the $100 million filing threshold?

- Would quarterly disclosure of portfolio holdings deter portfolio manipulation, such as "window dressing" and "portfolio pumping?" Are there additional ways to inhibit or curb these practices? For example, should we require the proposed summary portfolio schedule and/or the complete portfolio schedule to identify securities acquired within a designated number of days before the end of the reporting period (*e.g.*, 20 days, 10 days, 5 days, 2 days)?

- Should Form N–Q require disclosure of less than a fund's complete portfolio schedule (*e.g.*, information comparable to that permitted in the proposed summary portfolio schedule, top 25 holdings, top 10 holdings, etc.)?

- As proposed, Form N–Q would require quarterly disclosure of all of the schedules of investments required for funds by Regulation S–X. Should any of this information be deleted from Form N–Q? Is there additional information that should be required on Form N–Q?

- As proposed, Form N–Q would be filed under the Investment Company Act only. Should Form N–Q also be a reporting form under sections 13(a) and 15(d) of the Exchange Act, subject to certification under section 302 of the Sarbanes-Oxley Act of 2002?

- As proposed, Form N–Q would be required to be signed by the fund, and on behalf of the fund by its principal financial officer or officers. Are the principal financial officer(s) the appropriate persons to be required to sign proposed Form N–Q? Should the chief executive officer(s) sign proposed Form N–Q?

B. Disclosure of Fund Expenses

We are proposing to require mutual funds to disclose in their reports to shareholders fund expenses borne by shareholders during the reporting period. Fund shareholder reports would be required to include: (1) The cost in dollars associated with an investment of $10,000, based on the fund's actual expenses and return for the period; and (2) the cost in dollars, associated with an investment of $10,000, based on the fund's actual expenses for the period and an assumed return of 5 percent per year.[65] The first figure is intended to permit investors to estimate the actual costs, in dollars, that they bore over the reporting period. The second figure is intended to provide investors with a basis for comparing the level of current period expenses at different funds. Together, the two expense figures in the proposed example are designed to increase investor understanding of the fees that they pay on an ongoing basis for investing in a fund.

The proposed disclosure in shareholder reports would supplement the fee disclosure required in the mutual fund prospectus. Funds are currently required to include in their prospectuses a fee table that includes, as a percentage of fund assets, all fees and charges associated with a mutual fund investment.[66] The fee table reflects both (1) charges paid directly by a shareholder out of his or her investment, such as front- and back-end sales loads, and (2) recurring charges deducted from fund assets, such as management and 12b–1 fees.[67] The fee table is accompanied by a numerical example that illustrates the aggregate expenses that an investor could expect to pay over time on a $10,000 investment if he or she received a 5 percent annual return and remained in the fund for 1-, 3-, 5-, and 10-year periods.

The numbers that we are proposing be disclosed in mutual fund shareholder reports are intended to provide information to investors about actual current period expenses. This disclosure would respond to concerns that have been raised regarding the degree to which investors understand the nature and effect of these ongoing fees.[68] While some have advocated that this information should be provided on an individualized basis in shareholder account statements, our proposals are intended to strike an appropriate balance between investors' need for this information and the costs and burdens that would be associated with providing this information on an individualized basis.

The methodology for calculation of the proposed fee disclosure would be similar to that required for the expense example in the fee table of the mutual fund prospectus, with modifications to reflect the fact that the example in shareholder reports is intended to reflect actual historical expenses borne by an investor, rather than hypothetical future expenses. In determining its actual operating expenses during the reporting period, a fund would be required to include all expenses that are deducted from its assets or charged to all shareholder accounts, including management fees, distribution (12b–1) fees, and other expenses.[69] The example would not reflect any exchange fees, redemption fees, or sales charges (loads).[70]

Our proposal would require a fund to use its actual operating expenses (after expense reimbursement or fee waiver arrangements that reduced expenses) for the reporting period in calculating the example.[71] Expenses that would be deducted from the fund's assets for the purposes of the required example would be the amounts shown as expenses in the fund's statement of operations.[72] If there were any increases or decreases in fund operating expenses that occurred during the reporting period (or that occurred or would be expected to occur during the current fiscal year) that would have materially affected the information in the example had those changes been in place throughout the reporting period, the fund would be

[65] Proposed Item 21(d)(1) of Form N–1A.

[66] Item 3 of Form N–1A.

[67] *Id.*

[68] *See* discussion in Section I, "Disclosure of Fund Expenses," *supra*.

[69] Proposed Instructions 2(a)(i) and 2(d) to Item 21(d)(1) of Form N–1A. "Other expenses" would include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected a fund's "other expenses," the fund would be permitted to disclose in a footnote to the required example what "actual operating expenses" would have been had the extraordinary expenses not been included. *See* proposed Instruction 2(a)(ii) to Item 21(d)(1) of Form N–1A. If the fund is a feeder fund it would be required to reflect the aggregate expenses of the feeder fund and master fund, and to state in a footnote to the example that the example reflects the expenses of both the feeder and master fund. Proposed Instruction 1(c)(i) to Item 21(d)(1) of Form N–1A. If the report covers more than one class of multiple class fund or more than one feeder fund that invests in the same master fund, a separate example would be required for each class or feeder fund. Proposed Instruction 1(c)(ii) to Item 21(d)(1) of Form N–1A.

[70] Proposed Instruction 2(a)(i) to Item 21(d)(1) of Form N–1A.

[71] Proposed Instruction 2(c)(i) to Item 21(d)(1) of Form N–1A.

[72] Proposed Instruction 2(a)(i) to Item 21(d)(1) of Form N–1A.

required to restate in a footnote to the example the expense information using the current fees as if they had been in effect throughout the entire reporting period.[73] Account fees that are collected by more than one fund would be required to be allocated among the funds in proportion to the relative average net assets.[74] The example would assume the reinvestment of all dividends and distributions.[75]

The proposed numerical expense disclosure would be accompanied by a prescribed narrative explanation.[76] The narrative would explain that mutual funds charge both transaction costs and ongoing costs and that the example is intended to help a shareholder understand his or her ongoing costs and to compare these costs with the ongoing costs of investing in other mutual funds. The narrative also would explain the assumptions used in the example, note that the example does not reflect any transactional costs, and caution that the example is useful in comparing ongoing costs but not total costs of different funds. A fund would be permitted to modify the narrative explanation if the narrative contained comparable information to that prescribed, and a fund could eliminate any part of the narrative that is inapplicable.[77] For example, a fund that did not charge loads could omit the statement that the example does not reflect loads.

As an alternative to our proposed approach, we considered the recommendation of the GAO Report that the Commission require mutual funds to provide each investor with an exact dollar figure for expenses paid in each quarterly account statement that the investor receives.[78] The GAO Report's alternative would have the benefit of providing cost disclosure tailored to each investor. However, we have concerns about the cost and logistical complexity that this requirement might entail.[79] Mutual fund expenses are charged against fund assets and are not currently accounted for on an individual account basis. Moreover, in many cases fund shares are held by broker-dealers, financial advisers, and other third-party financial intermediaries, which must prepare accurate and timely customer account statements by integrating data supplied by many unrelated fund groups. In addition to the systems changes necessary for the fund itself, these financial intermediaries would need to implement new systems in order to calculate and report personalized expense information for each fund held in an account each quarter. Because we believe that the costs of requiring this expense disclosure in quarterly account statements may outweigh the benefits, we determined that it would be more appropriate to propose including additional expense information in shareholder reports.[80]

We request comment generally on our proposal to require mutual funds to include in reports to shareholders the dollar cost associated with a $10,000 investment and specifically on the following issues.

- Is the disclosure of actual costs paid over the current period useful to investors? If so, is there a better approach to providing this disclosure than that proposed?
- Are there better vehicles than annual and semi-annual reports to shareholders in which to include additional disclosure about fund expenses? In particular, would requiring disclosure of the actual costs paid by an individual investor in his or her account statements be preferable? If so, what benefits would individualized cost disclosure in account statements provide to investors that disclosure in shareholder reports of the fees paid on an initial $10,000 investment would not?
- What would be the costs of requiring expense disclosure in quarterly account statements, compared to the costs of the proposed expense disclosure requirement in shareholder reports? How would these costs be different for funds sold through and held by third-party intermediaries, such as broker-dealers? Would there be any ways to reduce these costs?
- Does the proposed example provide useful information as to current period costs? Does the first number required in the example, showing the cost in dollars associated with a $10,000 investment that earned the fund's actual return for the period and incurred the fund's actual expenses, appropriately convey to investors the actual fees that they have paid? Will investors understand how to estimate their own actual costs by using this number and the average assets they invested in the fund over the reporting period?
- Does the second required number, showing the cost in dollars associated with a $10,000 investment that earned a standardized 5% return for the period, provide an appropriate means for investors to compare the ongoing costs of different funds? Would the fact that this number does not reflect certain costs (*e.g.*, exchange fees, sales charges (loads), redemption fees) cause shareholders to draw inappropriate conclusions about the relative costs of various funds? For example, would the proposed requirement to show the ongoing cost in dollars using a standardized return present funds with a front-end load in an unduly favorable light as compared to funds that impose distribution costs through asset-based 12b–1 fees? Is it useful to investors to compare current period costs, as opposed to total costs of fund ownership? If so, how should this number be presented and explained so that investors will understand that it does not reflect total costs?
- Will our proposed disclosure lead to better cost comparisons among funds and between funds and other investment vehicles? How would our proposed disclosure affect the cost competition among mutual funds and between mutual funds and other savings and investment vehicles, such as bank certificates of deposit? Will mutual fund investors understand that the ongoing costs shown have already been deducted from returns shown by a fund?[81]

[73] *See* proposed Instruction 2(c)(ii) to Item 21(d)(1) of Form N–1A. A change in actual operating expenses would not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the fund's assets.

[74] Proposed Instruction 2(d) to Item 21(d)(1) of Form N–1A.

[75] Proposed Instruction 2(b) to Item 21(d)(1) of Form N–1A.

[76] Proposed Item 21(d)(1) and proposed Instruction 1(b) to Item 21(d)(1) of Form N–1A.

[77] *Id.*

[78] *See* GAO Report, *supra* note 19.

[79] *See* Letter from Colette D. Kimbrough, Chair, Investment Committee, Securities Industry Association, to Paul F. Roye, Director, Division of Investment Management, SEC (Dec. 7, 2000); Letter from Paul G. Haaga, Jr., Executive Vice President, Capital Research, to The Honorable Arthur Levitt, Jr., Chairman, SEC (Oct. 27, 2000); Letter from John J. Brennan, Chairman and Chief Executive Officer, Vanguard, to The Honorable Arthur Levitt, Jr., Chairman, SEC (Oct. 13, 2000); Letter from David S. Pottruck, President and Co–CEO, The Charles Schwab Corporation, to The Honorable Arthur Levitt, Jr., Chairman, SEC (Sept. 7, 2000). The letters are available for inspection and copying in File No. S7–51–02 in the Commission's public reference room.

[80] The GAO Report estimated that the costs of personalized disclosure in account statements "might be a few dollars or less per investor" in one-time and annual costs. GAO Report, *supra* note 19, at 97. As of year-end 2001, there were approximately 248 million shareholder accounts invested in funds. Investment Company Institute, Mutual Fund Fact Book 63 (42nd ed. 2002). At a cost of $1 per shareholder account, this would be a cost of approximately $248 million.

[81] *See* Instruction 3 to Item 21(b)(1); Instruction 5 to Item 21(b)(2); and Instruction 5 to Item 21(b)(3) of Form N–1A (calculation of average annual total return requires deduction of all recurring fees); Rule 482(e)(3)(i) and (e)(4)(i) under the Securities Act (17 CFR 230.482(e)) (requiring calculation of average annual total return in a performance advertisement

Continued

• Will the proposed computation methodology help us to achieve the objective of permitting investors to estimate the actual costs, in dollars, that they bore over the reporting period and also provide them with a basis for comparing the level of current period expenses at different funds? What, if any, modifications to the proposed computation methodology are appropriate?

C. Management's Discussion of Fund Performance ("MDFP")

We are proposing to require that MDFP, which is currently required for all mutual funds other than money market funds, be included in annual reports to shareholders.[82] Currently, a mutual fund is required to include MDFP in its prospectus unless the information is included in the fund's latest annual report to shareholders.[83] At the time we adopted MDFP, our authority to directly require information in annual reports was circumscribed.[84] Mutual funds, however, typically include MDFP in their annual reports, and we believe that requiring MDFP to be included in the annual report would aid investors in assessing the fund's performance over the prior year, and would fit naturally with other "backward looking" information contained in the annual report, such as the fund's financial statements. We now have broad authority to prescribe the content of shareholder reports, and we propose to require MDFP in annual reports to shareholders.[85]

We wish to remind funds of their obligation to use MDFP to provide a complete and accurate discussion of the factors that affected fund performance over the past year. In its integrated reviews of mutual fund prospectuses and shareholder reports, the staff has identified instances where MDFP has provided insufficient substantive discussion of the factors that affected the fund's performance during the most recent fiscal year.[86] The Commission has asked the staff, in its review of a fund's disclosure documents, to continue to focus on areas where funds' MDFP disclosure has been deficient. We expect that our proposed revisions to shareholder reports, coupled with improved MDFP disclosure by funds, should enhance the usefulness of shareholder reports and result in improved disclosure by funds about their operations.

We request comment generally on our proposal to require mutual funds to include MDFP in their annual reports to shareholders.

• Should we require MDFP in annual reports to shareholders?

• Are there changes that we should make to the content of MDFP?

D. Compliance Date

If we adopt the proposed amendments, we would expect to require all fund reports to shareholders filed for periods ending on or after the effective date of the amendments to comply with the proposed amendments. In addition, we would expect to require funds to file quarterly reports on Form N–Q with respect to any fiscal quarter ending on or after the effective date. The Commission requests comment on these proposed compliance dates.

III. General Request for Comments

The Commission requests comment on the amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might have an effect on the proposals contained in this release.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, *et seq.*), and the Commission is submitting the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (1) "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies"; (2) "Form N–2—Registration Statement of Closed-End Management Investment Companies"; (3) "Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies"; (4) "Form N–CSR—Certified Shareholder Report of Registered Management Investment Companies"; (5) "Rule 30e–1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies"; and (6) "Form N–Q—Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form N–1A (OMB Control No. 3235–0307), Form N–2 (OMB Control No. 3235–0026), and Form N–3 (OMB Control No. 3235–0316) were adopted pursuant to Section 8(a) of the Investment Company Act (15 U.S.C. 80a–8) and Section 5 of the Securities Act (15 U.S.C. 77e). We issued a release proposing Form N–CSR on August 30, 2002 (67 FR 57298 (Sept. 9, 2002)), pursuant to Section 30 of the Investment Company Act (15 U.S.C. 80a–8) and Sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m and 78o(d)). We proposed amendments to Form N–CSR on September 20, 2002 (Investment Company Act Release No. 25739) (67 FR 60828 (Sept. 26, 2002)); October 22, 2002 (Investment Company Act Release No. 25775) (67 FR 66208 (Oct. 30, 2002)); December 2, 2002 (Investment

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by a mutual fund to be based on methods of computation prescribed in Form N–1A).

[82] Proposed Item 21(b)(7) of Form N–1A.

[83] Item 5 of Form N–1A. A fund that includes MDFP in its annual report must disclose in its prospectus that its annual report contains a discussion of the market conditions and investment strategies that significantly affected the fund's performance during its last fiscal year and that this discussion will be made available upon request and without charge. Item 1(b)(1) of Form N–1A. Because we are proposing to require MDFP in a fund's annual report, we are proposing to amend Instruction 5 to Item 1(b)(1) to require all funds except money market funds, which are not required to provide MDFP, to include this disclosure.

[84] *See* 15 U.S.C. 80a–29(d) (1988) (permitting the Commission to require that investment companies transmit to shareholders, at least semi-annually, reports containing the following information and financial statements: (1) A balance sheet accompanied by a statement of the aggregate value of investments; (2) a list showing the amount and value of securities owned; (3) a statement of income; (4) a statement of surplus; (5) a statement of aggregate remuneration paid by the company during the period to officers, directors, and certain affiliated persons; and (6) a statement of the aggregate dollar amounts of purchase and sales of investment securities, other than government securities, made during the period covered by the report); Investment Company Act Release No. 19382 (Apr. 6, 1993) (58 FR 19050, 19052 (Apr. 12, 1993)) (permitting a fund to include MDFP in its prospectus or annual report to shareholders, but requiring a fund that placed MDFP in an annual report to disclose in its prospectus that its annual report contained additional performance information that would be made available upon request and without charge).

[85] The National Securities Markets Improvement Act of 1996 ("NSMIA") added Section 30(f) to the Investment Company Act, authorizing the Commission to require that reports to shareholders include information that "the Commission deems necessary or appropriate in the public interest or for the protection of investors." National Securities Markets Improvement Act of 1996, Pub. L. 104–290, 207, 110 Stat. 3416 (Oct. 11, 1996); 15 U.S.C. 80a–29(f).

[86] *See In the Matter of Davis Selected Advisers-NY, Inc.*, Investment Advisers Act Release No. 2055 (Sept. 4, 2002) (fund violated Section 34(b) of the Investment Company Act (15 U.S.C. 80a–34(b)) by failing to disclose the material impact that investments in initial public offerings had on its performance during its previous fiscal year in its MDFP); Tom Lauricella and Aaron Lucchetti, *What's Your Fund Doing? Some Managers Don't Say*, The Wall Street Journal, Oct. 7, 2002, at R23 (describing inadequate discussions in funds' MDFP).

Company Act Release No. 25838); and December 10, 2002 (Investment Company Act Release No. 25845). Rule 30e–1 (OMB Control No. 3235–0025) was promulgated under section 30(e) of the Investment Company Act (15 U.S.C. 80a–29(e)). New Form N–Q is being proposed under Section 30 of the Investment Company Act (15 U.S.C. 80a–29(e)).

We are proposing a new rule and form, and rule and form amendments, that are intended to improve the periodic disclosure provided by registered management investment companies ("funds") to their investors about fund investments, costs, and performance. The proposed amendments would:

- Permit a fund to include a summary portfolio schedule in its reports to shareholders, and exempt a money market fund from the requirement to include a portfolio schedule of investments in securities of unaffiliated issuers in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission on proposed Form N–CSR semi-annually and is provided to shareholders upon request, free of charge;
- Require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories;
- Require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new proposed Form N–Q;
- Require open-end management investment companies ("mutual funds") to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders; and
- Require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

These proposed amendments are intended to significantly improve the periodic disclosure that fund investors receive, particularly with respect to portfolio holdings and expenses, while reducing the costs of producing and delivering funds' annual and semi-annual reports to shareholders.

Form N–1A

Form N–1A contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission on Form N–1A. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

We estimate that the proposed amendments to Form N–1A would have no impact on the hour burden for filing registration statements on Form N–1A. The amendments to Form N–1A relate solely to the contents of shareholder reports for funds registered on Form N–1A, and the additional burden hours imposed by these amendments are reflected in the collection of information requirements for shareholder reports required by rule 30e–1 under the Investment Company Act.

Form N–2

Form N–2 contains collection of information requirements. The likely respondents to this information collection are closed-end funds registering with the Commission on Form N–2. Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements are not confidential.

We estimate that the proposed amendments to Form N–2 would have no impact on the hour burden for filing registration statements on Form N–2. The amendments to Form N–2 relate solely to the contents of shareholder reports for funds registered on Form N–2, and the additional burden hours imposed by these amendments are reflected in the collection of information requirements for shareholder reports required by rule 30e–1 under the Investment Company Act.

Form N–3

Form N–3, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission on Form N–3. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

We estimate that the proposed amendments to Form N–3 would have no impact on the hour burden for filing registration statements on Form N–3. The amendments to Form N–3 relate solely to the contents of shareholder reports for funds registered on Form N–3, and the additional burden hours imposed by these amendments are reflected in the collection of information requirements for shareholder reports required by rule 30e–1 under the Investment Company Act.

Form N–CSR

Proposed Form N–CSR, including the proposed amendments, contains collection of information requirements. The respondents to this information collection would be management investment companies subject to rule 30e–1 under the Investment Company Act of 1940 registering with the Commission on Form N–1A, N–2, or N–3. Compliance with the disclosure requirements of Form N–CSR is proposed to be mandatory. Responses to the disclosure requirements are not confidential.

We previously estimated that the weighted average hour burden for preparing a proposed Form N–CSR would be 16.38 hours per filing. We also estimated that 3,700 funds would file Form N–CSR on a semi-annual basis for a total of 7,400 filings. Thus, we estimated that the total annual hour burden for the preparation and filing of Form N–CSR would be 121,195 hours.[87] We estimate that the 3,700 funds filing reports on Form N–CSR include 9,850 portfolios, including 9,100 portfolios of mutual funds registered on Form N–1A, 630 closed-end funds registered on Form N–2, and 120 sub-accounts of managed separate accounts registered on Form N–3.[88]

The proposed amendments would require a fund that has used a summary portfolio schedule in its reports to shareholders in lieu of including a complete schedule of investments in securities of unaffiliated issuers, or a money market fund that has omitted its schedule of investments in securities of unaffiliated issuers from its reports to

[87] *See* Certification of Management Investment Company Shareholder Reports and Designation of Certified Shareholder Reports as Exchange Act Periodic Reporting Forms, Investment Company Act Release No. 25723 (Aug. 30, 2002) (67 FR 57298 (Sept. 9, 2002)); Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act Release No. 25739 (Sept. 20, 2002) (67 FR 60828 (Sept. 26, 2002)); Disclosure Required by Sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002, Investment Company Act Release No. 25775 (October 22, 2002) (67 FR 66208 (Oct. 30, 2002)); Strengthening the Commission's Requirements Regarding Auditor Independence, Investment Company Act Release No. 25838 (Dec. 2, 2002) (67 FR 76780 (Dec. 13, 2002)); Rule 10b–18 and Purchases of Certain Equity Securities by the Issuer and Others, Investment Company Act Release No. 25845 (Dec. 10, 2002).

[88] The estimates of the number of mutual fund portfolios registered on Form N–1A and the number of closed-end funds registered on Form N–2 are based on the Commission staff's analysis of reports filed on Form N–SAR in 2002. The estimate of the number of sub-accounts of managed separate accounts registered on Form N–3 is based on the staff's analysis of reports filed on Form N–SAR in 2002, and the staff's estimate, based on its experience with Form N–3, of four sub-accounts per managed separate account.

shareholders, to file its complete schedule of investments in securities of unaffiliated issuers pursuant to Item 7 of Form N–CSR. We estimate that 7,195 fund portfolios, including 1,000 money market fund portfolios that would be exempt from including a portfolio schedule in their shareholder reports, and 6,195 portfolios (or 70% of the fund portfolios remaining) would take advantage of one of these provisions, and hence would be required to file a complete portfolio schedule on Item 7 of Form N–CSR.[89] We estimate that the requirements of Item 7 of Form N–CSR would increase the hour burden for filing Form N–CSR by 5 hours per portfolio per filing, or 71,950 hours (7,195 portfolios × 5 hours per portfolio × 2 filings per year). Thus, if the proposed amendments to Form N–CSR are adopted, the total annual hour burden for all funds for preparation and filing of Form N–CSR would be 193,145 hours (121,195 hours + 71,950 hours). The weighted average burden per filing on Form N–CSR would be 26.1 hours.

Shareholder Reports

Rule 30e–1, including the proposed amendments to Forms N–1A, N–2, and N–3, contains collection of information requirements.[90] The respondents to this collection of information requirement are funds registered on Forms N–1A, N–2, and N–3. Compliance with the disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements will not be kept confidential.

There are approximately 3,700 funds subject to rule 30e–1. We estimate that the current hour burden for preparing and filing semi-annual and annual shareholder reports in compliance with rule 30e–1 is 212.5 hours per fund, for a total annual burden to the industry of 786,250 hours. We estimate that the 3,700 funds filing annual and semi-annual shareholder reports pursuant to rule 30e–1 include 9,850 portfolios, including 9,100 portfolios of mutual funds registered on Form N–1A, 630 closed-end funds registered on Form N–2, and 120 sub-accounts of managed separate accounts registered on Form N–3.[91]

We estimate that there are 1,000 money market fund portfolios that would take advantage of the provision permitting a money market fund to omit its schedule of investments in securities of unaffiliated issuers from its shareholder reports. This would decrease the hour burden of complying with rule 30e–1 for these funds by 5 hours per portfolio per filing, or 10,000 hours (1,000 portfolios × 5 hours × 2 filings per year).

We estimate that of the remaining 8,850 portfolios of funds filing shareholder reports, 70%, or 7,095 portfolios, would choose to take advantage of the provisions permitting use of a summary portfolio schedule. However, we estimate that use of the summary portfolio schedule provisions would have no net effect on the burden hours of complying with rule 30e–1. The estimated time necessary to prepare a summary portfolio schedule will be equivalent to the time currently required to prepare a complete portfolio schedule, because a fund will still need to evaluate the size of each of its investments in securities of unaffiliated issuers in order to prepare the summary portfolio schedule.

Further, we estimate that the proposed requirement to include a tabular or graphic presentation in shareholder reports, which would apply to all funds, will increase the estimated burden hours for complying with rule 30e–1 by 3 hours per portfolio per filing, or 59,100 hours (9,850 portfolios × 3 hours × 2 filings per year). We estimate that the requirement to disclose in shareholder reports the dollar cost of investing in the fund over the reporting period, which would apply only to mutual funds, will increase the estimated burden hours for complying with rule 30e–1 by 5 hours per portfolio per filing, or 91,000 hours (9,100 mutual fund portfolios × 5 hours × 2 filings per year).[92] Finally, we estimate that the requirement for mutual funds to include MDFP in annual reports to shareholders would have a negligible effect on the estimated burden hours for complying with rule 30e–1, because over 90% of mutual funds, in the staff's experience, already include MDFP in annual reports to shareholders.

Thus, the proposed amendments would have a net increase on the burden hours of complying with rule 30e–1 of 140,100 hours (–10,000 hours + 59,100 hours + 91,000 hours), for a new total burden of 926,350 hours.

Rule 30b1–4

The purpose of proposed Rule 30b1–4 is to improve transparency of information about funds' portfolio holdings. Proposed Rule 30b1–4 would require funds to file a quarterly report via the Commission's EDGAR system on proposed Form N–Q, not more than sixty calendar days after the close of each first and third fiscal quarter, containing their complete portfolio holdings. The likely respondents to Rule 30b1–4 would be registered management investment companies, other than small business investment companies registered with the Commission on Form N–5.

We estimate that there are approximately 3,700 funds that would be affected by the proposed rule. Each of those 3,700 funds would be required by proposed Rule 30b1–4 to file a complete portfolio holdings schedule via EDGAR on proposed Form N–Q. For purposes of this Paperwork Reduction Act analysis, the burden associated with the requirements of proposed Rule 30b1–4 has been included in the collection of information requirements of proposed Form N–Q, rather than the proposed Rule.

Compliance with rule 30b1–4 is mandatory for every registered fund. Responses to the disclosure requirements will not be kept confidential.

Form N–Q

Proposed Form N–Q contains collection of information requirements. The respondents to this information collection would be management investment companies subject to rule 30e–1 under the Investment Company Act of 1940 registering with the Commission on Forms N–1A, N–2, or N–3. Compliance with the disclosure requirements of Form N–Q would be mandatory. Responses to the disclosure requirements would not be kept confidential.

Every registered management investment company, other than a small business investment company registered on Form N–5, would be required to file a quarterly report on Form N–Q disclosing the information required therein, not more than sixty calendar days after the close of the first and third quarters of each fiscal year. We estimate that there are approximately 3,700 funds that would be affected by the proposal, which include 9,850 fund portfolios. We therefore estimate that for each of those

[89] This is based on the Commission staff's estimate that more than 70% of funds had more than 50 securities in their portfolios, according to the staff's analysis of data from the *Morningstar Principia Pro* database.

[90] The proposed amendments are to the shareholder reports requirements in Forms N–1A, N–2, and N–3. Rule 30e–1(a) under the Investment Company Act of 1940 (17 CFR 270.30e–1(a)) requires funds to include in the shareholder reports the information that is required by the fund's registration statement form.

[91] This estimate is based on the Commission staff's analysis of reports filed on Form N–SAR in 2002.

[92] The estimate of the number of mutual funds is based on data derived from the Commission's EDGAR filing system of the number of mutual funds filing shareholder reports pursuant to rule 30e–1.

funds the disclosure of their portfolio holdings schedules in filings on Form N–Q as of the end of each first and third fiscal quarter would require, on average, 10 hours per portfolio per filing,[93] for a total annual hour burden of 197,000 hours (10 hours per filing × 2 filings per year × 9,850 fund portfolios).

Request for Comments

We request your comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609, with reference to File No. S7–51–02. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–51–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filing and Information Services, 450 Fifth Street NW., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

[93] This estimate is based on a review of the estimated hour burdens currently associated with other rules and forms under the Investment Company Act that impose similar disclosure requirements.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. Our proposed amendments are intended to improve the periodic disclosure provided by registered management investment companies ("funds") about their portfolio investments, costs, and past performance. The proposed amendments would:

- Permit a fund to include a summary portfolio schedule in its reports to shareholders, and exempt a money market fund from the requirement to include a portfolio schedule of investments in securities of unaffiliated issuers in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission on proposed Form N–CSR semi-annually and is provided to shareholders upon request, free of charge;
- Require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories;
- Require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new proposed Form N–Q;
- Require open-end management investment companies ("mutual funds") to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders; and
- Require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

These proposed amendments are intended to significantly improve the periodic disclosure that fund investors receive, particularly with respect to portfolio holdings and expenses, while reducing the costs of producing and delivering funds' annual and semi-annual reports to shareholders.

A. Benefits

Use of Summary Portfolio Schedule and Exemption of Money Market Funds from Portfolio Schedule Requirements in Shareholder Reports. The Commission estimates that more than 70% of all funds may realize at least some cost savings, through reduced printing and mailing expenses, by use of a summary portfolio holdings schedule in their shareholder reports.[94] Money market funds would realize similar benefits with respect to the proposed exemption from the requirement to include the schedule of investments in unaffiliated issuers in their reports to shareholders. In addition, for purposes of the Paperwork Reduction Act, we have estimated that this exemption for money market funds would reduce the burden hours for compliance with shareholder reports requirements by 10,000 hours, translating into a cost savings of $689,400 annually.[95]

For funds with large numbers of holdings, such as index funds, the cost savings in printing and mailing could be substantial. As of year-end 2001, there were approximately 248 million shareholder accounts invested in funds.[96] For each account, funds are required to provide an annual and semi-annual shareholder report, although our rules allow the delivery of a single shareholder report to investors who share an address ("householding") under certain conditions. We estimate that, as a result, funds may print and deliver approximately 347.2 million and 446.4 million shareholder reports annually.[97] Annually, use of a summary portfolio schedule could therefore impact approximately 243.0 million to 312.5 million shareholder reports.[98] Although we are unable to precisely quantify the overall cost savings, at a minimum, if funds could reduce their printing and distribution expenses by one page per shareholder report, at a cost of 2¢ per page, shareholders could

[94] This is based on the Commission staff's estimate that more than 70% of funds had more than 50 securities in their portfolios, according to the staff's analysis of data from the *Morningstar Principia Pro* database.

[95] *See* Section IV., *supra* (estimating that 1,000 money market fund portfolios would take advantage of the provision permitting a money market fund to omit its schedule of investments in securities of unaffiliated issuers from its shareholder reports, resulting in an estimated decrease of 5 hours per portfolio per filing). The estimated cost savings is derived from the estimated reduction in burden hours, and an estimated hourly wage rate for professional and non-professional staff of $68.94. This estimated wage rate is a blended rate, based on published hourly wage rates for compliance attorneys in New York City ($74.22) and programmers ($27.91), and the estimate that professional and non-professional staff would divide time equally on compliance with the proposed disclosure requirements, yielding a weighted wage rate of $68.94 (($74.22 × .50) + ($27.91 × .50)) = $51.065). *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $68.94 ($51.065 × 1.35) = $68.94.

[96] Investment Company Institute, Mutual Fund Fact Book 63 (42nd ed. 2002).

[97] *See* Delivery of Disclosure Documents to Households, Investment Company Act Release No. IC–24123 (64 FR 62540, 62543 (Nov. 16, 1999)) (estimating that householding rules would produce a decline in the number of shareholder reports required to be delivered of between 10 and 30 percent).

[98] This number reflects the estimated 70% of funds that would use a summary portfolio schedule and hence may benefit from reduced printing costs.

save approximately $4.9 million to $6.3 million per year.[99] The Commission believes, however, that some funds may be able to reduce the length of their shareholder reports by more than a single printed page and we therefore expect the cost savings to funds may exceed these estimates.[100] These potential savings may be passed on to fund shareholders.[101]

Apart from savings in printing and distribution costs, use of a summary portfolio schedule may benefit investors by helping them focus on a fund's principal holdings, and thereby better evaluate a fund's risk profile and investment strategy. These benefits to investors are difficult to quantify, however. We request comment on the extent and magnitude of the benefits to funds and investors that would result from permitting use of a summary portfolio schedule in shareholder reports, and permitting money market funds to omit a schedule of investments in securities of unaffiliated issuers from shareholder reports.

Tabular or Graphic Presentation of Portfolio Holdings. The proposed requirements for funds to provide a tabular or graphic presentation of their portfolio holdings in their annual and semi-annual reports to shareholders should benefit fund investors by illustrating, in a concise and user-friendly format, the allocation of a fund's investments across asset classes. This presentation, coupled with a summary portfolio schedule, may more effectively convey key information about a fund's investments than would the fund's complete portfolio schedule standing alone, particularly in the case of funds with large numbers of holdings. These benefits to investors resulting from the use of a tabular or graphic presentation are difficult to quantify, however. We request comment on the extent and magnitude of the benefits to funds and investors that would result from use of a summary portfolio schedule in shareholder reports.

Quarterly Filing of Complete Portfolio Schedule. The proposal to require the quarterly filing of a fund's complete portfolio schedule via EDGAR, within 60 days after the end of the first and third fiscal quarters, should benefit investors by providing them with greater information about whether, and how, a fund is complying with its stated investment objective. The proposal would allow investors, and their advisers or other investment professionals, to better monitor the extent to which the portfolios of the funds that investors hold overlap, and hence should promote more informed asset allocation decisions. In addition, quarterly disclosure of a fund's portfolio holdings may expose instances of "style drift," when the actual portfolio holdings of a fund deviate from its stated investment objective. The increased transparency resulting from quarterly disclosure may also deter several forms of portfolio manipulation by portfolio managers, including "window dressing" (buying or selling portfolio securities shortly before the date as of which a fund's holdings are publicly disclosed, in order to convey an impression that the manager has been investing in companies that have had exceptional performance during the reporting period) and "portfolio pumping" (buying shares of stocks the fund already owns on the last day of the reporting period, in order to drive up the price of the stocks and inflate the fund's performance results).[102] Any of these forms of portfolio manipulation enhance the apparent composition of the portfolio at the expense of portfolio returns. By increasing the frequency of reporting, engaging in these activities becomes more expensive in terms of returns. Therefore, we would expect fewer funds to engage in these activities. To the extent that portfolio managers currently engage in these activities, shareholders would be better off as a result of the proposed amendments. More broadly, the increased frequency of disclosure will permit investors to better link the composition of a fund portfolio to fund performance.

We request comment on the benefits to investors of quarterly portfolio disclosure, and in particular on whether, and to what extent, quarterly portfolio disclosure might deter forms of portfolio manipulation.

Disclosure of Fund Expenses in Shareholder Reports. The proposed requirement for mutual funds to disclose in their reports to shareholders fund expenses borne by shareholders during the reporting period should benefit investors by increasing their awareness and understanding of the fees that they pay on an ongoing basis for investing in a mutual fund. The benefits of the improved transparency of funds' ongoing fees and expenses are difficult to quantify, however. We request comment on the extent and magnitude of these benefits, as well as the benefits of alternative means of disclosure of the ongoing costs of funds.

Inclusion of MDFP in Annual Reports to Shareholders by Mutual Funds. The proposals to require funds to include MDFP in their annual reports to shareholders should assist investors in assessing the fund's performance over the prior year. Requiring MDFP in the annual report, as opposed to the fund's prospectus, may benefit shareholders by enabling them to assess information provided in the MDFP together with other "backward looking" information contained in the annual report. We note, however, that to the extent that, based on the staff's experience, over 90% of mutual funds already include this information in their annual reports to shareholders, these benefits are already being realized.

B. Costs

The proposed amendments may lead to some additional costs for funds, which could be passed on to fund shareholders. In the case of the additional disclosure requirements being proposed, these costs would include both internal costs (for attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for printing and typesetting of the disclosure).

Use of Summary Portfolio Schedule and Exemption of Money Market Funds from Portfolio Schedule Requirements in Shareholder Reports. Our proposals to allow funds to include summary portfolio schedules in reports to shareholders, and to exempt money market funds from the requirement to include a portfolio schedule of investments in securities of unaffiliated issuers in their reports to shareholders,

[99] This is based on an estimate that the typical shareholder report is approximately 25 pages long and costs $.52 to print and deliver. *See* Delivery of Disclosure Documents to Households, Securities Act Release No. 33–7766 (Nov. 4, 1999) (64 FR 62540, 62543 (Nov. 16, 1999)).

[100] *See e.g.*, Letter from Craig S. Tyle, General Counsel, ICI, to Barry P. Barbash, Director, Division of Investment Management, SEC, *supra* note 10, at 2 (portfolio holdings schedule contained in one large equity fund's March 31, 1998 annual report was nineteen pages long and listed approximately 480 securities); Letter from Heidi Stam, Principal, Securities Regulation, Vanguard, to Cynthia Fornelli, Division of Investment Management, SEC, *supra* note 10, at 1–2 (portfolio holdings schedule in the Vanguard Total Stock Market Index Fund June 30, 1999 semi-annual report was 29 pages long and listed 3,204 securities).

[101] The provision permitting use of a summary portfolio schedule in shareholder reports, and the exemption for money market funds from the requirement to include in shareholder reports a complete schedule of investments in securities of unaffiliated issuers, are not expected to result in any reduction in internal costs for funds, because funds that utilize these provisions would still be required to file their complete portfolio schedules on Item 7 of Form N–CSR.

[102] *See* Rulemaking Petition by the American Federation of Labor and the Congress of Industrial Organizations, *supra* note 12 at 2–3; Rulemaking Petition by the Consumer Federation of America, *et al.*, *supra* note 12 at 2; Rulemaking Petition by Fund Democracy, LLC, *supra* note 12, "Memorandum in Support of Rulemaking Petition" at 7–8, 15–21.

may result in some costs to funds. For purposes of the Paperwork Reduction Act, we estimate that these proposals would not increase the hour burden for completing a shareholder report in compliance with rule 30e-1 under the Investment Company Act. However, we estimate that use of either the provision permitting use of a summary portfolio schedule or the provision permitting a money market fund to omit its schedule of investments in securities of unaffiliated issuers would increase the hour burden for filing Form N–CSR by 5 hours per portfolio per filing, or 71,950 hours (7,195 portfolios × 5 hours per portfolio × 2 filings per year), resulting in an additional cost of filing Form N–CSR of $4,960,233.[103]

Further, under our proposals, to the extent that investors want to see a complete portfolio schedule, investors would incur search costs to gather this information (*i.e.*, requesting the information from the fund). However, since funds will be required to deliver the complete portfolio schedule within three days and free of charge to all investors who request it, we expect these costs to be very small. We request comment on these estimates.

Tabular or Graphic Presentation of Portfolio Holdings. The proposals would require funds to provide one or more tables, charts, or graphs depicting the securities holdings of the fund by reasonably identifiable categories (*e.g.*, type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value attributable to each. We estimate that these costs would be limited, however, because a fund could select the most appropriate means by which it would convey information to investors about the types of investments made by the fund, given its investment objectives, and because a majority of funds, according to the staff's estimate, already provide some type of tabular or graphic depiction of their holdings in shareholder reports. For purposes of the Paperwork Reduction Act, we have estimated that the disclosure requirements would add 3 hours per portfolio to the burden of completing each annual and semi-annual report to shareholders, or 59,100 hours total (3 hours per portfolio × 2 reports per year × 9,850 portfolios of funds required to provide reports to shareholders). We estimate that this additional burden would equal total internal costs of $4,074,354 annually.[104] Further, because most funds already include a similar type of presentation voluntarily in shareholder reports, we estimate that this new disclosure requirement will not increase printing and mailing costs of shareholder reports for most funds, and hence the external costs to funds of the tabular and graphic disclosure requirement would be minimal. We request comment on these estimates.

Quarterly Filing of Complete Portfolio Schedule. Our proposals to require funds to file with the Commission for the first and third fiscal quarters of each fiscal year their complete portfolio holdings schedule on proposed Form N–Q, and to disclose the availability of the filing on the Commission's website, would impose certain costs on funds. We estimate that for purposes of the Paperwork Reduction Act, these disclosure requirements would impose 10 burden hours per portfolio per filing on Form N–Q. We estimate that the total burden would therefore be 197,000 hours, or $13,581,180 in total internal costs annually, based on an estimate of 3,700 funds filing reports on Form N–Q for 9,850 fund portfolios.[105] Because this quarterly disclosure would only be required to be filed on EDGAR, and not actually delivered to shareholders, we estimate that the external costs per fund, for typesetting, printing, and mailing, of this additional disclosure would be negligible.

Mandating quarterly portfolio disclosure may impose other costs on funds and their shareholders. Arguments have been made that more frequent disclosure of portfolio holdings may expand the opportunities for professional traders to exploit this information by engaging in predatory trading practices, such as trading ahead of funds, often called "front-running."[106] However, in order for "front-running" to significantly decrease investment returns under the proposed quarterly reporting requirements, it appears that the following conditions may have to be present:

1. To accomplish the goals of the trade that might be front run, the fund manager has limited discretion over the timing of the trade.

2. The trade occurs during a quarter at the end of which the fund otherwise would not have had to report its portfolio holdings.

3. The order is so large that it cannot be reasonably completed within the disclosure window.

4. The market is sufficiently illiquid so that large orders may be reasonably expected to have a substantial impact on price.

5. When the fund's portfolio is revealed, the size of the remaining order is sufficiently large that it is worth front-running.

6. Other traders recognize the front-running opportunity.

7. Other traders are willing to assume the risks of trading on the front-running opportunity.

8. The fund manager cannot delay the trade without a significant effect on performance.

It appears that front running may be a profitable strategy if all of these conditions hold simultaneously. It also appears that these conditions may rarely be met. If this is correct, the resulting costs of front-running under our proposals should be minimal.[107]

Furthermore, there are two additional potential costs that may be associated with these proposals. First, it has been argued that, given public data about aggregate flows of new cash to funds, more frequent disclosure of portfolio holdings would allow traders to effectively identify the securities in which the fund(s) will transact to accommodate this flow. This may, in turn, provide a potentially profitable front-running strategy to these traders.[108] Second, a requirement for more frequent disclosure may disrupt trades that are made for potential tax-

[103] These figures are based on an estimated hourly wage rate of $68.94. See *supra* note (explaining calculation of wage rate).

[104] These figures are based on an estimated hourly wage rate of $68.94. See *supra* note 95 (explaining calculation of wage rate).

[105] This estimate is based on data from the Commission's EDGAR system of the number of registered management investment companies, and an estimated hourly wage rate of $68.94; *see supra* note 95.

[106] *See* Letter from Craig S. Tyle, General Counsel, ICI to Paul F. Roye, Director, Division of Investment Management, SEC, *supra* note 59; Russ Wermers, *Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance*, ICI Perspective, *supra* note 59.

[107] A delay of 60 days in reporting is intended to significantly mitigate the potential costs to funds caused by quarterly portfolio disclosure. The Commission staff estimates that approximately 99% of fund portfolio holdings represent an average of nine days of trading volume or less in the securities held. Thus, even if a fund decided it needed to significantly alter or exit a position at the end of a reporting period, it appears likely that the fund generally could unwind that position in the time between the end of the reporting period and the date of disclosure with only minimal price impact.

[108] *See, e.g.*, Russ Wermers, *Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance*, ICI Perspective, *supra* note , at 9–10. Some empirical evidence suggests that portfolio holdings are correlated across all funds. *See* Paul A. Gompers and Andrew Metrick, *Institutional Investors and Equity Prices*, National Bureau of Economic Research Working Paper 6723 (Sept. 1998), *available at http://www.nber.org/papers/w6723*. If this is correct, more frequent disclosure of individual holdings is unlikely to make current trading strategies more profitable, since quarterly aggregate holdings data is currently available through 13F filings.

timing advantages.[109] These potential costs are particular cases of front-running, and it appears that they may require the same conditions to hold as those described above, along with additional conditions specific to these strategies.

We request comment on the analysis above, and on the nature and magnitude of any potential costs of front-running resulting from more frequent disclosure of portfolio holdings.

Arguments have also been made that more frequent portfolio disclosure may facilitate the ability of outside investors to "free ride" on a mutual fund's investment strategies, by obtaining for free the benefits of fund research and investment strategies that are paid for by fund shareholders.[110] The extent to which our proposed quarterly disclosure requirement, with a 60 day lag, would result in these types of costs is difficult to quantify, and may depend on a number of assumptions. In general, it appears that the following conditions must be satisfied for free-riding to be a profitable strategy:

1. The market is able to consistently identify skilled fund managers.[111]

2. The trading information of skilled fund managers remains valuable from 2 to 5 months after the trade is initiated.

It appears that a fund may be damaged by free-riding if its trading positions are incomplete when the fund's portfolio is disclosed and the front-running conditions discussed above are met. In addition, it appears that the market for the securities being traded pursuant to the strategy must be sufficiently illiquid to generate price impacts such that completion of the trading strategy is more costly to the fund manager. It appears that these conditions may not often simultaneously hold, although when they do, funds may be adversely impacted.

We also note, however, that once the fund adviser has completed its trading strategy, it may hope that other traders will follow it because the price impacts of their trading will make the fund's trades profitable. The net effect of "free riding" therefore is not necessarily negative.

We request comment on this analysis and on the nature and magnitude of any potential costs of free-riding that may result from more frequent disclosure of portfolio holdings.

We request comment generally on whether, and to what extent, our proposals would impose costs resulting from predatory trading practices, and on any other costs that would be imposed by our proposed quarterly portfolio disclosure requirement.

Disclosure of Fund Expenses in Shareholder Reports. We estimate that in order for mutual funds to comply with the proposed requirement to include in annual and semi-annual reports disclosure of the dollar cost associated with investing a standardized amount in a fund, a typical mutual fund would need to add two additional pages to its annual and semi-annual reports, at a cost of $0.02 per page.[112] We estimate that a typical fund may have, on average, 30,000 shareholder accounts, and will send out between 42,000 and 54,000 reports to shareholders annually.[113] Therefore, this additional disclosure in shareholder reports would cost approximately $2,400 (($0.04 × 30,000 shareholder accounts) × 2 reports per year) in external costs per fund annually. Based on an estimate of 3,100 mutual funds filing annual and semi-annual reports with the Commission pursuant to rule 30e–1, we estimate these external costs would be $7,440,000 for the industry as a whole. In addition, we estimate for purposes of the Paperwork Reduction Act that these disclosure requirements would add 91,000 burden hours for mutual funds required to transmit shareholder reports, or 10 hours per mutual fund portfolio, equal to internal costs of $6,273,540 for the industry annually.[114] We request comment on these estimates.

As the Commission considered how to best disclose to investors the fees and expenses that they incur with investment in a fund, it considered the costs and benefits of various alternatives, including providing fund shareholders with individualized cost information (in dollars) as to the fees and expenses that they paid in quarterly account statements. We estimate that the cost of providing this individualized cost disclosure would greatly exceed the cost of our proposal. According to the GAO Report which recommended requiring individualized cost disclosure in account statements, one broker-dealer with approximately 6.5 million customer accounts estimated that for it to develop the systems necessary to produce such statements might cost as much as $4 million, with additional annual costs of $5 million.[115] Given that as of year-end 2001, there were approximately 248 million shareholder accounts invested in funds, estimated industry-wide costs could easily exceed $100 million annually.[116] We request comment on the costs of alternative methods of increasing investors' awareness of fund fees and expenses.

Inclusion of MDFP in Annual Reports to Shareholders by Mutual Funds. We estimate that the proposed requirement that mutual funds include MDFP in their annual reports to shareholders would not impose any costs on funds or shareholders. The staff estimates that over 90% of mutual funds already include MDFP in their annual reports to shareholders. Further, a fund that does not include MDFP in its annual reports must include MDFP in its prospectus. Thus, this proposed amendment would not impose any new disclosure requirement on funds, but rather would only mandate a change in the location of the required disclosure, for the minority of funds that do not already include MDFP in their annual reports. To the extent, however, that a fund does not already include MDFP in its annual report to shareholders, the fund may incur additional printing and mailing costs. We request comment on this estimate.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

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[109] Russ Wermers, *Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance*, ICI Perspective, *supra* note 59, at 10–11.

[110] *See* Letter from Craig S. Tyle, General Counsel, ICI to Paul F. Roye, Director, Division of Investment Management, SEC, *supra* note 59; Russ Wermers, *Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance*, ICI Perspective, *supra* note 59.

[111] Some empirical studies of mutual fund performance evaluation have suggested that the consistent identification of skilled mutual fund managers is not likely. *See* Mark Carhart, *On the Persistence of Mutual Fund Performance*, Journal of Finance, March 1997, at 57–82.

[112] *See supra* note 99.

[113] The estimate regarding the average number of shareholder accounts per typical fund is derived from data provided in the Mutual Fund Fact Book, *supra* note 96, at 63, 64. The estimates that 42,000 to 54,000 reports to shareholders must be delivered to shareholders annually are derived from the number of shareholder accounts, the requirement that each fund must deliver an annual and a semi-annual report to each account-holder, and an estimated 10 to 30 percent savings in the number of reports that must be delivered to shareholders due to householding rules. *See supra* note 97.

[114] These figures are based on the staff's estimate, derived from data from the Commission's EDGAR filing system, that approximately 3,100 mutual funds file shareholder reports with the Commission and hence would be subject to the proposed amendments, and an estimated hourly wage rate of $68.94. *See supra* note 104.

[115] GAO Report, *supra* note 19, at 79.

[116] *See* Investment Company Institute, Mutual Fund Fact Book, *supra* note 96, at 63.

VI. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[117] In addition, Section 2(c) of the Investment Company Act, Section 2(b) of the Securities Act, and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[118]

The proposed amendments are intended to provide greater transparency for fund shareholders regarding their investments in funds. These proposed amendments may improve efficiency. The enhanced disclosure requirements may provide shareholders with more frequent access to portfolio holdings of the funds in which they invest, which may promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. The proposed amendments may also improve competition, as enhanced disclosure may lead to better-informed investors and may prompt funds to seek to provide better-informed investors with improved products and services. In addition, permitting funds to deliver summary portfolio schedules in shareholder reports may provide a significant reduction in printing and delivery costs ultimately borne by shareholders. Finally, the effects of the proposed amendments on capital formation are unclear. Although, as noted above, we believe that the proposed amendments would benefit investors, the magnitude of the effect of the proposed amendments on efficiency, competition, and capital formation is difficult to quantify, particularly given that many funds do not currently provide the type of disclosure contemplated by the proposed amendments.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. We also request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis ("Analysis") has been prepared in accordance with 5 U.S.C. 603, and relates to the Commission's proposed rule and form amendments under the Securities Act, the Exchange Act, and the Investment Company Act to improve the quality of periodic disclosure provided by registered management investment companies ("funds") about their portfolio investments, costs, and past performance. These proposed amendments are intended to enable funds to provide more meaningful information to shareholders while reducing the costs of producing and delivering annual and semi-annual reports to shareholders.

A. Reasons for, and Objectives of, Proposed Amendments

Shareholder reports are one of the principal means by which funds provide periodic information to their investors. Fund shareholder reports historically have served primarily as a vehicle to provide financial statements and other financial information to shareholders.[119] The Commission believes that, with some modifications, fund shareholder reports could become a more effective vehicle for communicating information to investors. The proposed amendments principally address disclosure of fund portfolio holdings and expenses, two significant areas for improvement that have been identified by investor groups, members of the fund industry, and others.

B. Legal Basis

The Commission is proposing amendments to Regulation S–X pursuant to authority set forth in sections 5, 6, 7, 8, and 19(a) of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77h, and 77s(a)), sections 12, 13, 15(d) and 23(a) of the Exchange Act (15 U.S.C. 78*l*, 78m, 78o(d), and 78w(a)) and sections 8, 24(a), 30, 31, and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–24(a), 80a–29, 80a–30, and 80a–37). The Commission is proposing new rule 30b1–4 and new Form N–Q pursuant to authority set forth in sections 8, 30, 31, and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37). The Commission is proposing amendments to Forms N–1A, N–2, and N–3 pursuant to authority set forth in sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3) and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37). The Commission is proposing amendments to proposed Form N–CSR pursuant to authority set forth in sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act (15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm) and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37).

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[120] Approximately 205 out of 3700 investment companies that would be affected by this rule meet this definition.[121]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would:

- Permit a fund to include a summary portfolio schedule in its reports to shareholders, and exempt a money market fund from the requirement to include a portfolio schedule of investments in unaffiliated issuers in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission on proposed Form N–CSR semi-annually and is provided to shareholders upon request, free of charge;

[117] 15 U.S.C. 78w(a)(2).

[118] 15 U.S.C. 77(b), 78c(f), and 80a–2(c).

[119] Section 30(e) of the Investment Company Act (15 U.S.C. 80a–29(e)] (requiring a fund to transmit to its stockholders, at least semi-annually, reports containing financial statements and other financial information as the Commission may prescribe by rules and regulations); National Securities Markets Improvement Act of 1996, Pub. L. 104–290, 207, 110 Stat. 3416 (Oct. 11, 1996) (adding Section 30(f) to the Investment Company Act, which allows the Commission to require that semi-annual reports "include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors.")

[120] 17 CFR 270.0–10.

[121] This estimate is based on figures compiled by Division of Investment Management staff regarding investment companies registered on Form N–1A, Form N–2, and Form N–3. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Investment Company Act rule 0–10(b) (17 CFR 270.0–10(b)).

- Require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories;
- Require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new proposed Form N–Q;
- Require open-end management investment companies ("mutual funds") to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders; and
- Require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

The proposed amendments would apply equally to funds that are small entities and to other funds. The Commission estimates that the proposed amendments may result in some one-time formatting and ongoing costs and burdens that would be imposed on all funds, but which may have a relatively greater impact on smaller firms. These include the costs related to disclosing the dollar cost associated with investing a standardized amount in a fund; and the requirement that funds file their complete portfolio schedules with the Commission on a quarterly basis. These costs also could include expenses for computer time, legal and accounting fees, information technology staff, and additional computer and telephone equipment. However, we believe the benefits that will result to shareholders through better information about their funds' investments, costs, and past performance justify these potential costs.

The Commission solicits comment on the effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

There are no rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed disclosure amendments would provide shareholders with greater transparency regarding a fund's investments, costs, and performance. Different disclosure requirements for small entities, such as reducing the frequency of portfolio holdings reports that small entities would have to file with the Commission, may create the risk that shareholders of those small entities would not have access to sufficient information to make an informed evaluation as to whether the fund is complying with its stated investment objective. We believe it is important that the disclosure that would be required by the proposed amendments be provided to shareholders by all funds, not just funds that are not considered small entities.

We have endeavored throughout these proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the proposed amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

G. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. To help us process and review your comments more efficiently, comments should be sent by hard copy or electronically, but not by both methods. All comment letters should refer to File No. S7–51–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[122]

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Enforcement Fairness Act of 1996,[123] a rule is "major" if it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IX. Statutory Authority

The Commission is proposing amendments to Regulation S–X pursuant to authority set forth in sections 5, 6, 7, 8, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77h, and 77s(a)]; sections 12, 13, 15(d), and 23(a) of the Exchange Act [15 U.S.C. 78*l*, 78m, 78o(d), and 78w(a)]; and sections 8, 24(a), 30, 31, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29, 80a–30, and 80a–37]. The Commission is proposing new rule 30b1–4 and new Form N–Q pursuant to authority set forth in sections 8, 30, 31, and 38 of the

[122] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[123] Pub. L. 104–21, Title II, 110 Stat. 857 (1996).

Investment Company Act (15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37]. The Commission is proposing amendments to Forms N–1A, N–2, and N–3 pursuant to authority set forth in sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3] and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37]. The Commission is proposing amendments to proposed Form N–CSR pursuant to authority set forth in sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act (15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm] and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37].

List of Subjects

17 CFR Parts 210, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 239 and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, Title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11 unless otherwise noted.

2. Paragraph (c) of § 210.6–10 is revised to read as follows:

§ 210.6–10 What schedules are to be filed.

* * * * *

(c) *Management investment companies.* (1) Except as otherwise provided in the applicable form, the schedules specified in this paragraph shall be filed for management investment companies as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

Schedule I—Investments in securities of unaffiliated issuers. The schedule prescribed by § 210.12–12 shall be filed in support of caption 1 of each balance sheet.

Schedule II—Investments—other than securities. The schedule prescribed by § 210.12–13 shall be filed in support of caption 3 of each balance sheet. This schedule may be omitted if the investments, other than securities, at both the beginning and end of the period amount to less than one percent of the value of total investments (§ 210.6–04.4).

Schedule III—Investments in and advances to affiliates. The schedule prescribed by § 210.12–14 shall be filed in support of caption 2 of each balance sheet.

Schedule IV—Investments—securities sold short. The schedule prescribed by § 210.12–12A shall be filed in support of caption 10(a) of each balance sheet.

Schedule V—Open option contracts written. The schedule prescribed by § 210.12–12B shall be filed in support of caption 10(b) of each balance sheet.

(2) When permitted by the applicable form, the schedule specified in this paragraph may be filed for management investment companies as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

Schedule VI—Summary schedule of investments in securities of unaffiliated issuers. The schedule prescribed by § 210.12–12C may be filed in support of caption 1 of each balance sheet.

* * * * *

3. Add § 210.12–12C to read as follows:

§ 210.12–12C Summary schedule of investments in securities of unaffiliated issuers.

Column A	Column B	Column C	Column D
Name of issuer and title of issue [1, 2]	Balance held at close of period. Number of shares—principal amount of bonds and notes [3].	Value of each item at close of period [4, 5, 6, 7].	Percentage value compared to net assets

[1] List the 50 largest issues and any other securities the value of which exceeded one percent of net asset value of the registrant as of the close of the period in order of descending value. For purposes of determining whether the value of a security exceeds one percent of net asset value, aggregate and treat as a single issue all securities of any one issuer. List each issue separately, whether or not issued by a single issuer, except as provided in note 2. Restricted securities shall not be combined with unrestricted securities of the same issuer.

[2] Identify by an appropriate symbol or footnote the type of instrument. For purposes of the list, aggregate and treat as a single issue, respectively, (a) short-term debt instruments of the same issuer (indicating the range of interest rates and maturity dates), and (b) fully collateralized repurchase agreements (indicate in a footnote the range of dates of the repurchase agreements, the total purchase price of the securities, the total amount to be received upon repurchase, the range of repurchase dates, and description of securities subject to the repurchase agreements). Group all securities not separately listed in a category labeled "Other Securities."

[3] Indicate by an appropriate symbol each issue of securities which is non-income producing. Evidences of indebtedness and preferred shares may be deemed to be income producing if, on the respective last interest payment date or date for the declaration of dividends prior to the date of the related balance sheet, there was only a partial payment of interest or a declaration of only a partial amount of the dividends payable; in such case, however, each such issue shall be indicated by an appropriate symbol referring to a note to the effect that, on the last interest or dividend date, only partial interest was paid or partial dividends declared. If, on such respective last interest or dividend date, no interest was paid or no cash or in kind dividends declared, the issue shall not be deemed to be income producing. Common shares shall not be deemed to be income producing unless, during the last year preceding the date of the related balance sheet, there was at least one dividend paid upon such common shares.

[4] Total Column C. The total of column C should equal the total shown on the related balance sheet for investments in securities of unaffiliated issuers.

[5] Indicate by an appropriate symbol each issue of restricted securities. State the following in a footnote: (a) as to each such issue: (1) acquisition date, (2) carrying value per unit of investment at date of related balance sheet, *e.g.*, a percentage of current market value of unrestricted securities of the same issuer, *etc.*, and (3) the cost of such securities; (b) as to each issue acquired during the year preceding the date of the related balance sheet, the carrying value per unit of investment of unrestricted securities of the same issuer at: (1) the day the purchase price was agreed to; and (2) the day on which an enforceable right to acquire such securities was obtained; and (c) the aggregate value of all restricted securities and the percentage which the aggregate value bears to net assets.

[6] Indicate by an appropriate symbol each issue of securities held in connection with open put or call option contracts or loans for short sales.

[7] State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all securities in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all securities in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of securities for Federal income tax purposes.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

6. The general authority citation for part 270 is revised to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

7. Section 270.30b1–4 is added to read as follows:

§ 270.30b1–4 Quarterly report.

Every registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), shall file a quarterly report on Form N–Q (§ 274.129 of this chapter) not more than sixty calendar days after the close of the first and third quarters of each fiscal year. A registered management investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

8. The authority citation for part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, and sections 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745, unless otherwise noted.

Section 274.128 is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

8a. Section 274.129 is added to read as follows:

§ 274.129 Form N–Q, quarterly schedule of portfolio holdings of registered management investment company.

This form shall be used by registered management investment companies, other than small business investment companies registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), for quarterly reports to be filed for the first and third quarters of each fiscal year, pursuant to seciton 30 of the Investment Company Act of 1940 and § 270.30b1–4 of this chapter.

9. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. Removing Item 5 and redesignating Items 6 through 30 as Items 5 through 29;

b. In paragraph B.2(b) of the General Instructions, revising the phrase "(except Items 1, 2, 3, 5, and 9), B, and C (except Items 23(e) and (i)–(k))" to read "(except Items 1, 2, 3, and 8), B, and C (except Items 22(e) and (i)–(k))";

c. In paragraph C.3(a) of the General Instructions, revising the reference "Item 8" to read "Item 7";

d. In paragraph C.3(d)(i), introductory text, of the General Instructions and in newly redesignated Item 6, the introductory text of paragraph (f), revising the reference "Items 7(b)–(d) and 8(a)(2)" to read "Items 6(b)–(d) and 7(a)(2)";

e. In paragraph (b)(1) of Item 1, removing the phrase ", if required by Item 5";

f. Removing Instruction 5 to Item 1(b)(1) and redesignating Instruction 6 to Item 1(b)(1) as Instruction 5 to Item 1(b)(1);

g. In newly redesignated Instruction 5 to Item 1(b)(1) and paragraph (a)(2) of newly redesignated Item 7, revising the reference "Item 7(f)" to read "Item 6(f)";

h. In newly redesignated Instruction 5 to Item 1(b)(1), revising the reference "Item 7(f)(3)" to read "Item 6(f)(3)";

i. In Item 2(c)(2)(iii), revising the phrase "Instruction 5 to Item 5(b)" to read "Instruction 5 to Item 21(b)(7)";

j. In Instruction 1(a) to Item 2(c)(2), revising the reference "Item 9(a)" to read "Item 8(a)";

k. In Instruction 2(a) to Item 2(c)(2), revising the references "Item 21(a)", "Item 21(b)(1)", and "Items 21(b)(2) and (3)" to read "Item 20(a)", "Item 20(b)(1)", and "Items 20(b)(2) and (3)", respectively;

l. In Instruction 2(b) to Item 2(c)(2), revising the phrase "Instruction 6 to Item 5(b)" to read "Instruction 6 to Item 21(b)(7)";

m. In Instruction 2(d) to Item 2(c)(2), revising the references "Item 21(b)(2)" and "Item 21" to read "Item 20(b)(2)" and "Item 20", respectively;

n. In Instruction 4 to Item 2(c)(2), revising the phrase "Instruction 11 of Item 5(b)" to read "Instruction 11 to Item 21(b)(7)";

o. In Instruction 2(a)(i) to Item 3, revising the reference "Item 8(a)" to read "Item 7(a)";

p. In Instruction 5 to Item 4(b)(1), revising the reference "Item 12(c)(1)" to read "Item 11(c)(1)"; q. In paragraph (e) of newly redesignated Item 11, revising the reference "Item 9" to read "Item 8";

r. Revising the reference "Item 13" to read "Item 12" in the following places:

i. Instruction 1 to newly redesignated Item 12;

ii. Paragraph (a)(2) of newly redesignated Item 12;

iii. Paragraph (b)(3) of newly redesignated Item 12;

iv. Paragraph (b)(6) of newly redesignated Item 12;

v. Instructions 6, 8, and 10 to newly redesignated Item 12(b)(7) each time it appears;

vi. Paragraph (b)(8) of newly redesignated Item 12 each time it appears;

vii. Instructions 2, 4, 6, 7, and 8 to newly redesignated Item 12(b)(8) each time it appears; and

viii. Paragraph (b)(9)(iii) of newly redesignated Item 12.

s. In Instruction to paragraph (a) of newly redesignated Item 17, revising the reference "Item 18(a)" to read "Item 17(a)";

t. In Instruction 4 to paragraph (c) of newly redesignated Item 17 and paragraph (k) of newly redesignated Item 22, revising the reference "Item 22" to read "Item 21";

u. In Instruction 1 to paragraph (c) of newly redesignated Item 19, revising the references "Item 8(b)(2)", "Item 15(d)", and "Item 30" to read "Item 7(b)(2)", "Item 14(d)", and "Item 29", respectively;

v. In paragraph (b) of newly redesignated Item 26, revising the reference "Item 20" to read "Item 19";

w. In Instruction 2 to paragraph (c) of newly redesignated Item 26, revising the reference "Item 20(c)" to read "Item 19(c)";

x. In Instruction 1 to newly redesignated Item 28, revising the reference "Item 15" to read "Item 14"; and

y. Revising Instruction 5 to Item 1(b)(1) and newly redesignated Item 21.

The revisions read as follows.

Note: The text of Form N–1A does not and this amendment will not appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Item 1. Front and Back Cover Pages

* * * * *

(b) * * *

(1) * * *

Instructions.

* * * * *

5. A Money Market Fund may omit the sentence indicating that a reader will find in the Fund's annual report a discussion of the market conditions and investment strategies that significantly affect the Fund's performance during its last fiscal year.

* * * * *

Item 21. Financial Statements

(a) *Registration Statement.* Include, in a separate section following the responses to the preceding Items, the financial statements and schedules required by Regulation S–X. The specimen price-make-up sheet required by Instruction 4 to Item 17(c) may be provided as a continuation of the balance sheet specified by Regulation S–X.

Instructions

1. The statements of any subsidiary that is not a majority-owned subsidiary required by Regulation S–X may be omitted from Part B and included in Part C.

2. In addition to the requirements of rule 3–18 of Regulation S–X (17 CFR 210.3–18), any Fund registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act must include in its initial registration statement under the Securities Act any additional financial statements and condensed financial information (which need not be audited) necessary to make the financial statements and condensed financial information included in the registration statement current as of a date within 90 days prior to the date of filing.

(b) *Annual Report.* Every annual report to shareholders required by rule 30e-1 must contain the following:

(1) *Financial Statements.* The audited financial statements required, and for the periods specified, by Regulation S–X.

Instructions.

1. *Schedule VI—Summary schedule of investments in securities of unaffiliated issuers* (17 CFR 210.12–12C) may be included in the financial statements in lieu of *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12) if: (a) the Fund states in the report that the Fund's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov;* and (b) whenever the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's schedule of investments in securities of unaffiliated issuers, the Fund (or financial intermediary) sends a copy of *Schedule I—Investments in securities of unaffiliated issuers* within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

2. In the case of a Money Market Fund, *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12C) may be omitted from its financial statements, provided that: (a) the Fund states in the report that the Fund's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov;* and (b) whenever the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's schedule of investments in securities of unaffiliated issuers, the Fund (or financial intermediary) sends a copy of *Schedule I—Investments in securities of unaffiliated issuers* within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

(2) *Condensed Financial Information.* The condensed financial information required by Item 8(a) with at least the most recent fiscal year audited.

(3) *Remuneration Paid to Directors, Officers, and Others.* Unless shown elsewhere in the report as part of the financial statements required by paragraph (b)(1), the aggregate remuneration paid by the Fund during the period covered by the report to:

(i) All directors and all members of any advisory board for regular compensation;

(ii) Each director and each member of an advisory board for special compensation;

(iii) All officers; and

(iv) Each person of whom any officer or director of the Fund is an affiliated person.

(4) *Changes in and Disagreements with Accountants.* The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K (17 CFR 229.304).

(5) *Management Information.* The management information required by Item 12(a)(1).

(6) *Availability of Additional Information about Fund Directors.* A statement that the SAI includes additional information about Fund directors and is available, without charge, upon request, and a toll-free (or collect) telephone number for shareholders to call to request the SAI.

(7) *Management's Discussion of Fund Performance.* Disclose the following information unless the Fund is a Money Market Fund:

(i) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the Fund's investment adviser.

(ii)(A)Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed 10 fiscal years of the Fund (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Assume a $10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

(B) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10-year periods as of the end of the last day of the most recent fiscal year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Average annual total returns should be computed in accordance with Item 20(b)(1). Include a statement accompanying the graph and table to the effect that past performance does not predict future performance and that the graph and table do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the redemption of fund shares.

Instructions.

1. *Line Graph Computation.*

(a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

(b) Base subsequent account values on the net asset value of the Fund last calculated on the last business day of the first and each subsequent fiscal year.

(c) Calculate the final account value by assuming the account was closed and redemption was at the price last calculated on the last business day of the most recent fiscal year.

(d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds $10,000.

2. *Sales Load.* Reflect any sales load (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (*i.e.*, assume that the maximum sales load, and other charges deducted from payments, is deducted from the initial $10,000 investment). For a Fund whose shares are subject to a contingent deferred sales load, assume the deduction of the maximum deferred sales load (or other charges) that would apply for a complete redemption that received the price last calculated on the last business day of the most recent fiscal year. For any other deferred sales load, assume that the deduction is in the amount(s) and at the time(s) that the sales load actually would have been deducted.

3. *Dividends and Distributions.* Assume reinvestment of all of the Fund's dividends and distributions on the reinvestment dates during the period, and reflect any sales load imposed upon reinvestment of dividends or distributions or both.

4. *Account Fees.* Reflect recurring fees that are charged to all accounts.

(a) For any account fees that vary with the size of the account, assume a $10,000 account size.

(b) Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

(c) Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: Divide the total amount of account fees collected during the year by the Funds' total average net assets, multiply the resulting percentage by the average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

5. *Appropriate Index.* For purposes of this Item, an "appropriate broad-based securities

market index" is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser, or principal underwriter, unless the index is widely recognized and used. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

6. *Additional Indexes.* A Fund is encouraged to compare its performance not only to the required broad-based index, but also to other more narrowly based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (*e.g.*, the Consumer Price Index), so long as the comparison is not misleading.

7. *Change in Index.* If the Fund uses an index that is different from the one used for the immediately preceding fiscal year, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

8. *Other Periods.* The line graph may cover earlier fiscal years and may compare the ending values of interim periods (*e.g.*, monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

9. *Scale.* The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

10. *New Funds.* A New Fund (as defined in Instruction 5 to Item 3) is not required to include the information specified by this Item in its prospectus (or annual report), unless Form N–1A (or the annual report) contains audited financial statements covering a period of at least 6 months.

11. *Change in Investment Adviser.* If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date that the current adviser began to provide advisory services to the Fund so long as:

(a) Neither the current adviser nor any affiliate is or has been in "control" of the previous adviser under section 2(a)(9) (15 U.S.C. 80a–2(a)(9)];

(b) The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

(c) The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

(iii) Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the Fund's investment strategies and per share net asset value during the last fiscal year. Also discuss the extent to which the Fund's distribution policy resulted in distributions of capital.

(c) *Semi-Annual Report.* Every semi-annual report to shareholders required by rule 30e–1 must contain the following (which need not be audited):

(1) *Financial Statements.* The financial statements required by Regulation S–X for the period commencing either with:

(i) The beginning of the Fund's fiscal year (or date of organization, if newly organized); or

(ii) A date not later than the date after the close of the period included in the last report under rule 30e–1 and the most recent preceding fiscal year.

Instruction. Instructions 1 and 2 to Item 21(b)(1) also apply to this Item 21(c)(1).

(2) *Condensed Financial Information.* The condensed financial information required by Item 8(a), for the period of the report as specified by paragraph (c)(1), and the most recent preceding fiscal year.

(3) *Remuneration Paid to Directors, Officers, and Others.* Unless shown elsewhere in the report as part of the financial statements required by paragraph (c)(1), the aggregate remuneration paid by the Fund during the period covered by the report to the persons specified under paragraph (b)(3).

(4) *Changes in and Disagreements with Accountants.* The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K (17 CFR 229.304).

(d) *Annual and Semi-Annual Reports.* Every annual and semi-annual report to shareholders required by rule 30e–1 must contain the following:

(1) *Expense Example.* The following information regarding expenses for the period:

Example:

As a shareholder of the Fund, you incur two types of costs: (1) transaction costs, including sales charges (loads) on purchase payments, reinvested dividends, or other distributions, redemption fees, and exchange fees; and (2) ongoing costs, including management fees, distribution (and/or service) (12b–1) fees, and other Fund expenses. This Example is intended to help you understand your ongoing costs (in dollars) of investing in the Fund and to compare this cost with the ongoing cost of investing in other mutual funds.

The Example assumes that you had a $10,000 investment in the Fund at the beginning of the reporting period and continued to hold your shares at the end of the reporting period. The Example uses the Fund's actual operating expenses for the period [insert dates], including account fees.

The Example contains two numbers. The first number uses the actual return earned by the Fund during the period from [insert dates] to show the actual ongoing costs incurred on a $10,000 investment.

The second number uses a hypothetical 5% annual return. You may use this number to compare the ongoing costs of investing in the Fund over the current period with the ongoing costs of investing in other Funds, which appear in their shareholder reports. Please note that the Example does not reflect any transactional costs, such as sales charges (loads), redemption fees, or exchange fees. Therefore, the Example is useful in comparing ongoing costs only, and will not help you determine the relative total costs of owning different funds. In addition, if these transactional costs were included, your costs would have been higher.

Although your actual ongoing costs may have been higher or lower, based on the assumptions described, the costs would have been:

$____ (using the Fund's actual return for the reporting period); and

$____ (using a hypothetical 5% return for the reporting period).

Instructions.

1. General.

(a) Round all dollar figures to the nearest dollar.

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown. A Fund may eliminate any parts of the narrative explanations that are inapplicable. For example, a Fund that does not charge loads need not include the statement that the Example does not reflect loads or that costs would be higher if loads were included.

(c)(i) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund. In a footnote to the Example, state that the Example reflects the expenses of both the Feeder and Master Funds.

(ii) If the report covers more than one Class of a Multiple Class Fund or more than one Feeder Fund that invests in the same Master Fund, provide a separate Example for each Class or Feeder Fund.

2. Computation

(a)(i) In determining the Fund's "actual operating expenses" for purposes of this example, include all expenses that are deducted from the Fund's assets or charged to all shareholder accounts, including "Management Fees," "Distribution (and/or Service) (12b–1) Fees," and "Other Expenses" as those terms are defined in Instruction 3 to Item 3 of this form as modified by Instructions 2(a)(ii) and (c)(i) to this Item. Reflect recurring and non-recurring fees charged to all investors other than any exchange fees, sales charges (loads), or fees charged upon redemption of the Fund's shares. The amount of expenses deducted from the Fund's assets are the amounts shown as expenses in the Fund's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X (17 CFR 210.6–07)).

(ii) For purposes of this Item 21(d)(1), "Other Expenses" include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the Fund's "Other Expenses," the Fund may disclose in a footnote to the Example what "actual operating expenses" would have been had the extraordinary expenses not been included.

(b) Assume reinvestment of all dividends and distributions.

(c)(i) Base the percentages of "actual operating expenses" on amounts incurred during the reporting period. "Actual operating expenses" should reflect actual expenses after expense reimbursement or fee

waiver arrangements that reduced expenses during the reporting period.

(ii) If there have been any increases or decreases in Fund operating expenses that occurred during the reporting period (or that have occurred or are expected to occur during the current fiscal year) that would have materially affected the information in the Example had those changes been in place throughout the reporting period, restate in a footnote to the Example the expense information using the current fees as if they had been in effect throughout the entire reporting period. A change in Fund operating expenses does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Fund's assets.

(d) Reflect any shareholder account fees collected by more than one Fund by allocating the total amount of the fees collected during the reporting period for all such Funds to each Fund in proportion to the relative average net assets of the Fund. A Fund that charges account fees based on a minimum account requirement exceeding $10,000 may adjust its account fees based on the amount of the fee in relation to the Fund's minimum account requirement.

(2) *Graphical Representation of Holdings.* One or more tables, charts, or graphs depicting the securities holdings of the Fund by reasonably identifiable categories (*e.g.*, type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value attributable to each. The categories should be selected, and the format of the presentation designed, to provide the most useful information to investors about the types of investments made by the Fund, given its investment objectives. Credit quality should be the ratings grade assigned by a nationally recognized statistical rating organization ("NRSRO"), as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of Rule 15c3–1 under the Exchange Act (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)). The fund should use ratings of only one NRSRO.

(3) *Statement Regarding Availability of Quarterly Portfolio Schedule.* A statement that: (i) the Fund files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N–Q; (ii) the Fund's Forms N–Q are available on the Commission's Website at *http://www.sec.gov;* (iii) the Fund's Forms N–Q may be reviewed and copied at the Commission's Public Reference Room in Washington, DC, and that information on the operation of the Public Reference Room may be obtained by calling 1–800–SEC–0330; and (iv) if the Fund makes the information on Form N–Q available to shareholders on its website or upon request, a description of how the information may be obtained from the Fund.

10. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by:

a. Revising the fourth paragraph and subparagraph 2 of General Instruction F;

b. Revising Instructions 4.a. and 5.a. to Item 23;

c. Redesignating Instruction 6 to Item 23 as Instruction 8; and

d. Adding new Instructions 6 and 7 to Item 23.

The additions and revisions read as follows:

Note: The text of Form N–2 does not and this amendment will not appear in the Code of Federal Regulations

Form N–2

* * * * *

General Instructions

* * * * *

F. Incorporation by Reference

A Registrant may incorporate by reference into the prospectus or the SAI in response to Item 4.1 or 23 of this form the information contained in Form N–CSR (17 CFR 249.331 and 274.128) or any report to shareholders meeting the requirements of section 30(e) of the 1940 Act (15 U.S.C. 80a–29(e)] and Rule 30e–1 (17 CFR 270.30e–1) thereunder (and a Registrant that has elected to be regulated as a business development company may so incorporate into Items 4.2, 8.6.c, or 23 of this form the information contained in its annual report under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Exchange Act")), provided:

* * * * *

2. The Registrant states in the prospectus or the SAI, at the place where the information required by Items 4.1, 4.2, 8.6.c., or 23 of this form would normally appear, that the information is incorporated by reference from a report to shareholders or a report on Form N–CSR. (The Registrant also may describe briefly, in either the prospectus, the SAI, or Part C of the registration statement (in response to Item 24.1) those portions of the report to shareholders or report on Form N–CSR that are not incorporated by reference and are not a part of the registration statement.); and

* * * * *

Item 23. Financial Statements

* * * * *

Instructions.

* * * * *

4. * * *

a. The audited financial statements required by Regulation S–X for the periods specified by Regulation S–X, modified to permit the omission of the statements and schedules that may be omitted from Part B of the registration statement by Instruction 2 above and as permitted by Instruction 7 below;

* * * * *

5. * * *

a. The financial statements required by Regulation S–X for the period commencing either with (1) the beginning of the company's fiscal year (or date of organization, if newly organized); or (2) a date not later than the date after the close of the period included in the last report conforming with the requirements of Rule 30e–1 and the most recent preceding fiscal year, modified to permit the omission of the statements and schedules that may be omitted from part B of the registration statement by Instruction 2 above and as permitted by Instruction 7 below;

* * * * *

6. Every annual and semi-annual report to shareholders required by Section 30(e) of the 1940 Act and Rule 30e–1 thereunder shall contain the following information:

a. One or more tables, charts, or graphs depicting the securities holdings of the Registrant by reasonably identifiable categories (*e.g.*, type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value attributable to each. The categories should be selected, and the format of the presentation designed, to provide the most useful information to investors about the types of investments made by the Registrant, given its investment objectives. Credit quality should be the ratings grade assigned by a nationally recognized statistical rating organization ("NRSRO"), as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the Exchange Act (17 CFR 240.15c3–1(c)(2)(vi)(E), (F) and (H)). The Registrant should use ratings of only one NRSRO; and

b. A statement that: (i) The Registrant files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N–Q; (ii) the Registrant's Forms N–Q are available on the Commission's Web site at *http://www.sec.gov;* (iii) the Registrant's Forms N–Q may be reviewed and copied at the Commission's Public Reference Room in Washington, DC, and that information on the operation of the Public Reference Room may be obtained by calling 1–800–SEC–0330; and (iv) if the Registrant makes the information on Form N–Q available to shareholders on its website or upon request, a description of how the information may be obtained from the Registrant.

7. *Schedule VI—Summary schedule of investments in securities of unaffiliated issuers* (17 CFR 210.12–12C) may be included in the financial statements required under Instructions 4.a. and 5.a. of this Item in lieu of *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12) if: (a) The Registrant states in the report that the Registrant's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Registrant's website, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov;* and (b) whenever the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's schedule of investments in securities of unaffiliated issuers, the Registrant (or financial intermediary) sends a copy of *Schedule I—Investments in securities of unaffiliated issuers* within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

* * * * *

11. Form N–3 (referenced in §§ 239.17 and 274.11b) is amended by:

a. Revising the fourth paragraph and subparagraph 2 of General Instruction G;

b. Revising Instructions 4.i. and 5.i. to Item 27(a);

c. Redesignating Instruction 6 to Item 27(a) as Instruction 8 to Item 27(a);

d. Adding new Instructions 6 and 7 to Item 27(a); and

e. Revising newly redesignated Instruction 8 to Item 27(a).

The additions and revisions read as follows.

Note: The text of Form N–3 does not and this amendment will not appear in the Code of Federal Regulations.

Form N–3

* * * * *

General Instructions

* * * * *

G. Incorporation by Reference

Subject to these rules, a Registrant may incorporate by reference into the prospectus or the Statement of Additional Information in response to Items 4(a) or 27 of Form N–3 the information in Form N–CSR (17 CFR 249.331 and 274.128) or any report to contractowners meeting the requirements of Section 30(e) of the 1940 Act (15 U.S.C. 80a–29(e)) and Rule 30e–1 (17 CFR 270.30e–1) provided:

* * * * *

2. The Registrant states in the prospectus or the Statement of Additional Information, at the place where the information would normally appear, that the information is incorporated by reference from a report to securityholders or a report on Form N–CSR. The Registrant may also describe, in either the prospectus, the Statement of Additional Information, or Part C of the Registration Statement (in response to Item 28(a)), any parts of the report to securityholders or the report on Form N–CSR that are not incorporated by reference and are not a part of the Registration Statement; and

* * * * *

Item 27. Financial Statements

(a) * * *

Instructions:

* * * * *

4. * * *

(i) The audited financial statements required by Regulation S–X for the periods specified by Regulation S–X, as modified by Instruction 2 above and as permitted by Instruction 7 below;

* * * * *

5. * * *

(i) The financial statements required by Regulation S–X for the period commencing either with (A) the beginning of the separate account's fiscal year (or date of organization, if newly organized); or (B) a date not later than the date after the close of the period included in the last report conforming with the requirements of Rule 30e–1 and the most recent preceding fiscal year, as modified by Instruction 2 above and as permitted by Instruction 7 below;

* * * * *

6. Every report required by Section 30(e) of the 1940 Act and Rule 30e–1 under it (17 CFR 270.30e–1) shall contain the following information:

(i) One or more tables, charts, or graphs depicting the securities holdings of the Registrant by reasonably identifiable categories (*e.g.*, type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value attributable to each. If the Registrant has sub-accounts, provide the information separately for each sub-account. The categories should be selected, and the format of the presentation designed, to provide the most useful information to investors about the types of investments made by the Registrant, given its investment objectives. Credit quality should be the ratings grade assigned by a nationally recognized statistical rating organization ("NRSRO"), as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of § 240.15c3–1 of Rule 15c3–1 under the Exchange Act (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)). The Registrant should use ratings of only one NRSRO; and

(ii) A statement that: (A) The Registrant files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N–Q; (B) the Registrant's Forms N–Q are available on the Commission's Web site at *http://www.sec.gov;* (C) the Registrant's Forms N–Q may be reviewed and copied at the Commission's Public Reference Room in Washington, DC, and that information on the operation of the Public Reference Room may be obtained by calling 1–800–SEC–0330; and (D) if the Registrant makes the information on Form N–Q available to contractowners on its website or upon request, a description of how the information may be obtained from the Registrant.

7.(i) *Schedule VI—Summary schedule of investments in securities of unaffiliated issuers* (17 CFR 210.12–12C) may be included in the financial statements required under Instructions 4.(i) and 5.(i) of this Item in lieu of *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12) if: (A) the Registrant states in the report that the Registrant's complete schedule of investments in securities of unaffiliated issuers is available (*1*) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (*2*) on the Registrant's Web site, if applicable; and (*3*) on the Commission's Web site at *http://www.sec.gov;* and (B) whenever the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's schedule of investments in securities of unaffiliated issuers, the Registrant (or financial intermediary) sends a copy of *Schedule I—Investments in securities of unaffiliated issuers* within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

(ii) In the case of a Registrant or sub-account of a Registrant that holds itself out as a money market account or sub-account and meets the maturity, quality, and diversification requirements of rule 2a–7 (17 CFR 270.2a–7) under the 1940 Act, *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12C) may be omitted from the financial statements required under Instructions 4.(i) and 5.(i) of this Item, provided that: (A) the Registrant states in the report that the Registrant's complete schedule of investments in securities of unaffiliated issuers is available (*1*) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (*2*) on the Registrant's website, if applicable; and (*3*) on the Commission's Web site at *http://www.sec.gov;* and (B) whenever the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's schedule of investments in securities of unaffiliated issuers, the Registrant (or financial intermediary) sends a copy of *Schedule I—Investments in securities of unaffiliated issuers* within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

8. See General Instruction G regarding incorporation by reference.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT

Company Act of 1940

12. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by:

a. Redesignating Items 7 and 8 as Items 8 and 9; and

b. Adding new Item 7 to read as follows:

Note: The text of Form N-CSR does not and this amendment will not appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 7. Schedule of Investments.

File *Schedule I–Investments in securities of unaffiliated issuers* as of the close of the reporting period as set forth in § 210.12–12 of Regulation S–X (17 CFR 210.12–12), unless the schedule is included as part of the report to shareholders filed under Item 9(a) of this Form.

Instruction.

Schedule I—Investments in securities of unaffiliated issuers filed under this Item must be audited, except that in the case of a report on this Form N–CSR as of the end of a fiscal half-year *Schedule I—Investments in securities of unaffiliated issuers* need not be audited.

13. Add Form N–Q (referenced in § 274.129) to read as follows:

Note: The text of Form N–Q will not appear in the Code of Federal Regulations.

United States Securities and Exchange Commission, Washington, DC 20549

Form N–Q—Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company

Investment Company Act file number _____

_____

(Exact name of registrant as specified in charter)

_____

(Address of principal executive offices)

_____

(Zip code)

_____

(Name and address of agent for service)
Registrant's telephone number, including area code: _____
Date of fiscal year end: _____
Date of reporting period: _____

Form N–Q is to be used by registered management investment companies, other than small business investment companies registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), to file reports with the Commission, not later than sixty days after the close of the first and third fiscal quarters, containing a schedule of portfolio holdings pursuant to section 30 of the Investment Company Act of 1940 and rule 30b1–4 thereunder (17 CFR 270.30b1–4). The Commission may use the information provided on Form N–Q in its regulatory, disclosure review, inspection, and policymaking roles.

A registrant is required to disclose the information specified by Form N–Q, and the Commission will make this information public. A registrant is not required to respond to the collection of information contained in Form N–Q unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.

General Instructions

A. Rule as to Use of Form N–Q

Form N–Q is to be used for quarterly reports pursuant to Section 30 of the Investment Company Act of 1940 (the "Act") and Rule 30b1–4 under the Act (17 CFR 270.30b1–4) by all registered management investment companies, other than small business investment companies registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), to file their complete portfolio holdings as of the close of the first and third quarters of each fiscal year. A report on this form shall be filed not later than sixty days after the close of the covered reporting period.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Preparation of Report

1. This Form is not to be used as a blank form to be filled in, but only as a guide in preparing the report in accordance with Rules 8b–11 (17 CFR 270.8b–11) and 8b–12 (17 CFR 270.8b–12) under the Act. The Commission does not furnish blank copies of this form to be filled in for filing.

2. These general instructions are not to be filed with the report.

D. Incorporation by Reference

A registrant may incorporate by reference information required by the Form. All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 10(d) of Regulation S–K under the Securities Act of 1933 (17 CFR 229.10(d)) (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); Rule 303 of Regulation S–T (17 CFR 232.303) (specific requirements for electronically filed documents); Rules 12b–23 and 12b–32 under the Securities Exchange Act of 1934 (additional rules on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934); and Rules 0–4, 8b–23, and 8b–32 under the Act (17 CFR 270.0–4, 270.8b–23, and 270.8b–32) (additional rules on incorporation by reference for investment companies).

E. Definitions

Unless the context clearly indicates the contrary, terms used in this Form N–Q have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

F. Signature and Filing of Report

1. If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*)), eight complete copies of the report shall be filed with the Commission. At least one complete copy of the report filed with the Commission must be manually signed. Copies not manually signed must bear typed or printed signatures.

2.(a) The report must be signed by the registrant, and on behalf of the registrant by its principal financial officer or officers.

(b) The name and title of each person who signs the report shall be typed or printed beneath his or her signature. Attention is directed to Rule 8b–11 under the Act (17 CFR 270.8b–11) concerning manual signatures and signatures pursuant to powers of attorney.

Item 1. Schedule of Investments

File the schedules as of the close of the reporting period as set forth in §§ 210.12–12—12–14 of Regulation S–X (17 CFR 210.12–12—12–14). The schedules need not be audited.

SIGNATURES

(*See* General Instruction F)

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____
By (Signature and Title)* _____
Date _____

*Print the name and title of each signing officer under his or her signature.

By the Commission.
Dated: December 18, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32470 Filed 12–31–02; 8:45 am]

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Federal Register

Thursday,
January 2, 2003

Part III

Securities and Exchange Commission

17 CFR Parts 230 and 240

Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33–8171; 34–47082; File No. S7–29–02]

RIN 3235–AI55

Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting new exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for most standardized options. The rules adopted today exempt standardized options issued by registered clearing agencies and traded on a registered national securities exchange or a registered national securities association from all provisions of the Securities Act, other than the section 17 antifraud provision, as well as the Exchange Act registration requirements. The rules also clarify that a security futures product that is cleared by a registered clearing agency or that is exempt from registration and traded on a registered national securities exchange or a registered national securities association is exempt from the registration requirements of Exchange Act section 12(g). The rules ensure comparable regulatory treatment of standardized options and security futures products.

EFFECTIVE DATE: The rules are effective January 2, 2003.

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, Office of Rulemaking, Division of Corporation Finance at (202) 942–2910, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are adopting new rule 238 [1] under the Securities Act of 1933 [2] and new rule 12a–9 [3] under the Securities Exchange Act of 1934.[4] We also are amending Exchange Act rules 9b–1[5] and 12h–1.[6]

I. Background

In July 2002, we proposed amendments that would exempt standardized options issued by registered clearing agencies and traded on a registered national securities exchange or an automated quotation system of a registered national securities association from all provisions of the Securities Act, other than the section 17 antifraud provision, as well as the Exchange Act registration requirements.[7] The purpose of the proposals was to harmonize the treatment of standardized options with security futures products under the Securities Act and the Exchange Act, and to remedy the longstanding paradox of applying the registration provisions to standardized options.

In 1973, we first permitted national securities exchanges to establish pilot programs for the trading of standardized options.[8] The Commission determined that the Options Clearing Corporation ("OCC") [9] should be deemed to be the issuer of the standardized options to be listed on the Chicago Board Options Exchange ("CBOE").[10] Therefore, OCC registered standardized options under both the Securities Act and the Exchange Act. At that time, all transactions in standardized options were registered under the Securities Act on form S–1, our general registration form. OCC filed a registration statement on form 10 [11] to register standardized options under the Exchange Act.[12]

In 1982, following recommendations of the Report of the Special Study of Options Markets ("Options Study"),[13] we extensively revised our system of regulation of standardized options.[14] First, we adopted form S–20 as a simplified Securities Act registration form customized for standardized options.[15] Form S–20 requires limited information about the clearing agency registrant and the options being registered.[16] We also adopted Securities Act rule 153b [17] to provide that the prospectus delivery requirement in Securities Act section 5(b)(2) [18] is satisfied by delivery of copies of the form S–20 prospectus to each options market trading the options covered by the prospectus.[19] These changes simplified the registration process for options and eliminated some of the costs associated with the distribution and annual redistribution of options prospectuses to investors.

The central element of the reformed registration system was the newly

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[1] 17 CFR 230.238.

[2] 15 U.S.C. 77a *et seq.*

[3] 17 CFR 240.12a–9.

[4] 15 U.S.C. 78a *et seq.*

[5] 17 CFR 240.9b–1.

[6] 17 CFR 240.12h–1.

[7] Release No. 33–8114 (July 25, 2002) (67 FR 50326).

[8] *See* Release No. 34–9985 (February 1, 1973). Section 9(b) of the Exchange Act (15 U.S.C. 78i(b)) prohibits the trading of options, by use of any facility of a national securities exchange, "in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." CBOE established the first of these pilot programs. *See* Release No. 34–9985. The American Stock Exchange (*see* Release No. 34–11144 (December 19, 1974) (40 FR 3258)), Philadelphia Stock Exchange (*see* Release No. 34–11423 (May 15, 1975)), Pacific Exchange (*see* Release No. 34–12283 (March 30, 1976) (41 FR 14454)) and the Midwest Stock Exchange (*see* Release No. 34–13045 (December 8, 1976) (41 FR 54783)) also later began to list standardized options. In 1974, OCC became the common clearing agency for all exchange listed options (*see* Release No. 34–11146 (December 19, 1974)).

[9] Founded in 1973, OCC was the successor to CBOE's original clearing agency, the Chicago Board Options Exchange Clearing Corporation. OCC, which is a registered clearing agency under section 17A of the Exchange Act (15 U.S.C. 78q–1), is the issuer and clearing facility for all U.S. exchange listed securities options. The American Stock Exchange, Chicago Board Options Exchange, Pacific Exchange, Philadelphia Stock Exchange and International Securities Exchange share equal ownership of OCC.

[10] *See* Release No. 33–6411 (June 24, 1982) (47 FR 28688).

[11] 17 CFR 249.210.

[12] Registration of a class of securities under section 12 of the Exchange Act (15 U.S.C. 78l) generally imposes several reporting duties on the registrant, including the duty to file periodic and current reports under section 13(a) (15 U.S.C. 78m(a)). Additionally, the rules under Exchange Act sections 13(d), 13(e), 13(g), 14(d) and section 16 (15 U.S.C. 78m(d), 78m(e), 78m(g), 78n(d) and 78p) apply to classes of equity securities registered under section 12. Because the securities underlying standardized options are issued by persons other than the clearing agency and are themselves registered under section 12, it serves no purpose to require the clearing agency to file Exchange Act reports. The value of standardized options derives primarily from the value of the underlying security or index, not from matters peculiar to the issuing clearing agency. Moreover, because there is no possibility that a purchaser of standardized options could gain control over the clearing agency, there is no need for the disclosure mandated by sections 13(d) and 14(d) of the Exchange Act, which govern stock accumulations and tender offers. Clearing agency insiders have no informational advantages with respect to the issuers of the securities underlying standardized options. In recognition of these unique circumstances, we issued an order under section 12(h) (15 U.S.C. 78*l*(h)) exempting OCC from sections 13(a), 13(d), 13(e), 14(d), 15(d) and 16 of the Exchange Act. *See* Release No. 34–10483 (Nov. 7, 1973). This order will remain in effect to prevent OCC from becoming subject to reporting obligations pursuant to Exchange Act section 15(d) (15 U.S.C. 78o(d)). OCC would incur a reporting obligation under section 15(d) in the event that standardized options issued under a previously filed registration statement were held of record by more than 300 persons.

[13] 96th Cong., 1st Sess. (Comm. Print 1978).

[14] *See* Release No. 33–6426 (September 16, 1982) (47 FR 41950).

[15] 17 CFR 239.20.

[16] Part I of form S–20 requires the prospectus to include a description of the registrant and a brief summary of the securities being registered. Part II specifies information required to be included in the registration statement but not in the prospectus, including information as to the directors and executive officers of the registrant, material legal proceedings involving the registrant, certain exhibits and undertakings, and the registrant's financial statements.

[17] 17 CFR 230.153b.

[18] 15 U.S.C. 77e(b)(2).

[19] The options market must deliver the prospectus to any investor requesting it.

created options disclosure document ("ODD"), required by Exchange Act rule 9b–1.[20] The ODD discloses information relevant to standardized options trading generally, instead of information about the issuing clearing agency.[21] Broker-dealers are precluded from accepting orders to purchase or sell standardized options from a customer or from approving a customer's account for trading in these options unless the broker-dealer has furnished the customer with the ODD. The ODD is the only document required to be provided to options investors and thus has become the primary disclosure document with respect to trading in standardized options.[22] After today's adoption of the exemptions for standardized options, broker-dealers will continue to be required to furnish the ODD to their customers investing in standardized options.

Although our 1982 rulemaking streamlined and improved disclosure regarding standardized options, the Securities Act registration requirement continued to apply to offers and sales of standardized options. While this result was dictated by the statutory scheme, under which options are securities, it was anomalous because, in its role as an issuer of standardized options, a registered clearing agency is fundamentally different from a conventional issuer that registers transactions in its securities under the Securities Act. For example, the purchaser of a standardized option does not, except in the most formal sense, make an investment decision regarding the clearing agency that registers transactions in standardized options. As a result, information about the registrant's business, its officers and directors, and its financial statements, is less relevant to investors in standardized options.[23] In standardized option transactions, the investment risk is determined by the market performance of the underlying security rather than the performance of the clearing agency. Moreover, registered clearing agencies are self-regulatory organizations subject to Commission oversight under section 17A of the Exchange Act. Furthermore, unlike a conventional issuer, a registered clearing agency does not receive the proceeds from sales of the standardized options that it issues.[24] Registration does not appear to provide any additional protections to investors in standardized options.[25]

Compliance with Exchange Act registration requirements also has been more burdensome for the clearing agency issuer of standardized options than for a conventional issuer. Section 12(a) of the Exchange Act makes it unlawful for any broker or dealer to effect a transaction in a non-exempt security on a national securities exchange unless the security has been registered for trading on that exchange. Section 12(g)(1),[26] as modified by rule, requires any issuer with more than $10,000,000 in total assets and a class of equity securities held by 500 or more persons to register such security with the Commission.

Rule 12b–1 of the Exchange Act[27] prescribes the procedures for registration under both section 12(b) and section 12(g).[28] Standardized options are listed on national securities exchanges and, therefore, must be registered under section 12(b) of the Exchange Act. As the issuer of standardized options, OCC has registered the options on form 8–A.[29] Whenever an exchange has introduced options on a new underlying security or index of securities, OCC has filed an amended form 8–A to identify the underlying security or index of securities and the exchange or exchanges on which the option is to be traded. OCC also has provided an updated list of all classes of options being traded on all exchanges as part of the amendment. Because it has had to file a form 8–A amendment every time a new class of options has opened for trading, OCC typically has filed more than 200 form 8–A amendments each year. It is not clear that these numerous amendments have benefited investors.

The National Securities Markets Improvement Act of 1996[30] conferred on the Commission authority to adopt exemptive rules under the Securities Act and the Exchange Act. By virtue of this authority, we are now able to resolve the anomalies associated with registration of standardized options that we were unable to resolve when standardized options began to trade nearly three decades ago or when we streamlined the registration of standardized options 20 years ago. Section 28 of the Securities Act authorizes us to exempt any person, security or transaction from any provision of the Securities Act by rule or regulation to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.[31] Similarly, section 36 of the Exchange Act gives us the authority to exempt any person, security or transaction from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.[32]

The enactment of the Commodity Futures Modernization Act of 2000 ("CFMA")[33] is another significant factor

[20] 17 CFR 240.9b–1. Rule 9b–1 requires an options market, defined in rule 9b–1(a)(1) as a national securities exchange, an automated quotation system of a registered securities association or a foreign securities exchange on which standardized options are traded, to file the ODD with the Commission at least 60 days before the date that definitive copies are furnished to customers, or at least 30 days before that date with respect to an amended ODD if the information contained in the ODD becomes or will become materially inaccurate or incomplete or there is or will be an omission of material information necessary to make the ODD not misleading. Form S–20 prohibits the issuance of an option registered on the form unless a definitive ODD meeting the requirements of rule 9b–1 for the options class is available. As a practical matter, OCC works with the options markets to prepare and file the ODD. Rule 9b–1 allows an options exchange to use an ODD only if there is also an effective form S–20 registration statement for the same options classes that are the subject of the ODD. We are revising rules 9b–1(b)(1) and 9b–1(c)(8) (17 CFR 240.9b–1(b)(1) and 9b–1(c)(8)) to permit use of the ODD if the option class is the subject of an effective form S–20 registration statement or is exempt from registration.

[21] The ODD describes: The mechanics of buying, writing and exercising standardized options; the risks of trading these options; the market for the options; the tax consequences of standardized options trading; the issuer of standardized options; the instruments underlying an options class; the form S–20 registration process; and the availability of the options prospectus. We revised rule 9b–1 to explicitly state that amendments and supplements to the ODD are part of the ODD, and to describe more clearly the type of information to be included in the ODD. *See* Release No. 34–43461 (October 19, 2000) (65 FR 64137).

[22] Securities Act rules 134a and 135b also are part of the revised options disclosure regime (17 CFR 230.134a and 135b). Rule 134a provides that written materials, including advertisements, containing limited information concerning standardized options may be disseminated without being deemed to be a prospectus. Rule 135b provides that, solely for purposes of section 5 of the Securities Act, materials meeting the requirements of rule 9b–1 of the Exchange Act will not be deemed an "offer to sell" or "offer to buy" a security, nor will the materials be deemed a prospectus for purposes of sections 2(a)(10) and 12(a)(2) of the Securities Act. Rule 135b remains unchanged. Similarly, although rule 134a does not apply to standardized options exempted under rule 238, it continues to apply to any standardized options that remain subject to the registration provisions of the Securities Act.

[23] Options Study at 378.

[24] OCC does receive a clearing fee of up to $0.09 per option contract from its members.

[25] Information that is required in the form S–20 registration statement but is not required in the ODD, such as OCC's financial statements and a description of OCC's backup system, is publicly available on OCC's website, located at *www.optionsclearing.com*.

[26] 15 U.S.C. 78*l*(g)(1).

[27] 17 CFR 240.12b–1.

[28] 15 U.S.C. 78*l*(b) and (g).

[29] 17 CFR 240.208a.

[30] Pub. L. 104–290, 110 Stat. 3416 (1996).

[31] 15 U.S.C. 77z–3.

[32] 15 U.S.C. 78mm.

[33] Pub. L. No. 106–554 Stat. 2763 (2000).

motivating the adoption of these exemptions. The CFMA addressed the regulation of security futures products,[34] and permits the trading of futures on individual securities and on narrow-based security indices. The CFMA, among other things:

- Exempted from all provisions of the Securities Act, except the antifraud provisions of section 17 of the Securities Act; [35] any security futures product that is traded on a national securities exchange or a national securities association registered under section 15A(a) of the Exchange Act [36] and cleared by a clearing agency that is registered under section 17A of the Exchange Act or exempt from registration under section 17A(b)(7);
- Exempted security futures products from the provisions of section 12(a) of the Exchange Act; [37]
- Amended section 12(g)(5) of the Exchange Act [38] to state that, for purposes of section 12(g) of the Exchange Act, a security futures product will not be considered a class of equity security of the issuer of the securities underlying the security futures product; and
- Amended section 2(a)(3) of the Securities Act [39] to ensure that a security futures product could not be used by an issuer, affiliate of an issuer or underwriter to circumvent the registration requirements of section 5 with respect to an issuer's securities underlying the security futures product.[40]

Because security futures products can be used for financial purposes similar to those served by standardized options, we believe that it is appropriate to establish comparable regulatory treatment for standardized options by adopting parallel exemptions under the Securities Act and Exchange Act. By doing so, we eliminate any unjustified or unintended consequences that could result from differing regulatory treatment of these two types of securities.

II. Discussion of the Amendments

We are adopting the new exemptions under the Securities Act and the Exchange Act for most standardized options substantially as proposed. The amendments:

- Exempt standardized options that are issued by a registered clearing agency and traded on a national securities exchange registered under section 6(a) of the Exchange Act, or on a national securities association registered under section 15A(a) of the Exchange Act, from all provisions of the Securities Act except the antifraud provisions of section 17 of the Securities Act; [41] and
- Make clear that any offer or sale of a standardized option by or on behalf of the issuer of the securities underlying the standardized option, an affiliate of the issuer, or an underwriter, will constitute a contract for sale of, sale of, offer for sale, or offer to sell (as these terms are defined in section 2(a)(3) of the Securities Act) the underlying securities.[42]

We also are adopting new Exchange Act rule 12a–9 [43] and revisions to rule 12h–1 to exempt standardized options from the registration requirements of section 12 of the Exchange Act,[44] and to clarify that any security futures product that is traded on a registered national securities exchange or on a national securities association registered pursuant to section 15A(a) of the Exchange Act and cleared by a clearing agency that is registered under section 17A of the Exchange Act or is exempt from registration under section 17A(b)(7) of the Exchange Act is exempt from registration under section 12(g).[45] The revisions to rule 12h–1 relating to security futures products have been modified slightly from the proposal so that the exemption under the rule is consistent with the statutory exemption from Securities Act registration for security futures products.

We received four letters of comment on the proposals.[46] Each commenter supported the proposals and our objective to establish comparable regulatory treatment of security futures and standardized options. One commenter, however, advocated a broadening of the proposed exemptions to cover standardized options issued by foreign clearing agencies and traded on foreign exchanges that are subject to the oversight of a foreign regulatory authority that is acceptable to the Commission.[47] We have considered the views of the commenters and are adopting the proposed amendments substantially as proposed.[48]

The terms of the adopted rules are substantively comparable to the Securities Act and Exchange Act exemptions provided by the CFMA for security futures products. New Securities Act rule 238 does not make form S–20 obsolete. We are retaining form S–20 for use by an issuer of standardized options that is not a clearing agency registered under section 17A of the Exchange Act, such as a

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[34] Securities Act section 2(a)(16) (15 U.S.C. 77b(a)(16)), Exchange Act section 3(a)(56) (15 U.S.C. 78c(a)(56)), and CEA section 1a(32) (7 U.S.C. 1a(32)) define "security futures product" as a security future or an option on a security future.

[35] Section 17(c) of the Securities Act (15 U.S.C. 77q(c)) states that the exemptions provided in section 3 of the Securities Act, including the exemption for security futures products, do not apply to the provisions of section 17.

[36] 15 U.S.C. 78o–3.

[37] 15 U.S.C. 78*l*(a).

[38] 15 U.S.C. 78*l*(g)(5).

[39] 15 U.S.C. 77b(a)(3).

[40] As amended, section 2(a)(3) provides "Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities."

[41] Securities Act rule 238(a) and (b) (17 CFR 230.238(a) and (b)).

[42] Securities Act rule 238(c) (17 CFR 230.238(c)). Consequently, a transaction in a standardized option on the securities of an issuer by such persons also is a transaction in the issuer's securities that must be registered under the Securities Act unless an exemption from registration is available.

[43] Rule 12a–9 provides an exemption from section 12(a) of the Exchange Act for standardized options.

[44] Rule 12h–1(d) (17 CFR 240.12h–1(d)] provides an exemption from Exchange Act section 12(g) for standardized options. The exemption is necessary, even though standardized options currently are registered only pursuant to section 12(b) of the Exchange Act, because standardized options issued by a registered clearing agency and traded on a national securities exchange will no longer qualify for the exemption in section 12(g)(2)(A) (15 U.S.C. 78*l*(g)(2)(A)), which exempts any security listed and registered on a national securities exchange from registration under section 12(g). Pursuant to rule 12g–2 (17 CFR 240.12g–2), a class of securities that no longer is entitled to the section 12(g)(2)(A) exemption is deemed to automatically be registered under section 12(g) if, at the time that its section 12(b) registration terminates, the securities are not exempt from registration under section 12 or rules thereunder, and are held of record by 300 or more persons. Even if standardized options were not held of record by 300 or more persons when their section 12(b) registration terminated (OCC currently has only 126 clearing members that would be considered record holders for purposes of rule 12g–2), standardized options nevertheless would be required to be registered under section 12(g) if, at the end of any fiscal year, standardized options issued by the registered clearing agency were held of record by 500 or more persons. Rule 12h–1(d) exempts standardized options from section 12(g), thereby avoiding the possibility that standardized options might automatically be registered or required to be registered under that section.

[45] Rule 12h–1(e) (17 CFR 240.12h–1(e)) eliminates any uncertainty concerning the application of the section 12(g) registration requirements to security futures products. *See* note above.

[46] *See* comment letters of OCC, CBOE, the Canadian Derivative Clearing Corporation ("CDCC"), and Mr. Bernard E. Klein. These letters are available in our Public Reference Room at 450 Fifth Street, NW., Washington, DC, 20549, in File No. S7–29–02. Public comments submitted by electronic mail also are available on our website, *www.sec.gov*.

[47] *See* comment letter of CDCC.

[48] We are not extending the new exemptions to standardized options issued by a foreign clearing agency and traded on a foreign exchange at this time. We believe that the issues involving standardized options that are not issued by a registered clearing agency or traded on a registered national securities exchange are sufficiently different to warrant separate study. Nevertheless, once we have gained experience with the new exemptions, we may consider the issue further.

foreign clearing agency,[49] or for use by issuers of standardized options that do not trade on a registered national securities exchange or on a registered national securities association.

Similarly, new Exchange Act rule 12a–9 states that the provisions of Exchange Act section 12(a) do not apply in respect of any standardized option, as defined in rule 9b–1(a)(4),[50] that is issued by a clearing agency registered under section 17A of the Exchange Act and traded on a national securities exchange registered pursuant to section 6(a) of the Exchange Act. Exchange Act rule 12h–1(d) exempts issuers from the provisions of section 12(g) of the Exchange Act with respect to a standardized option, as defined by rule 9b–1(a)(4), that is issued by a clearing agency registered under section 17A of the Exchange Act and traded on a national securities exchange registered pursuant to section 6(a) of the Exchange Act or a national securities association registered pursuant to section 15A(a) of the Exchange Act.

The amendments do not affect the requirements under Exchange Act rule 9b–1(d)(1)[51] that preclude broker-dealers from accepting orders to purchase or sell standardized options from a customer or from approving a customer's account for trading in standardized options unless the broker-dealer has furnished the customer with an ODD, other than to make conforming changes to reflect the fact that some standardized options are exempt from Securities Act registration.

For the reasons stated above, including that investors will still receive the ODD informing them about standardized options trading in general, and that Securities Act registration provides little benefit relative to its costs, we believe that the amendments are in the public interest and consistent with the protection of investors.

III. Paperwork Reduction Act

The amendments affect "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[52] The title for the collection of information affected by the amendments is "Form 8–A" (OMB Control No. 3235–0056).[53] We published a notice requesting comment on the proposed change to the form 8–A collection of information requirements, and submitted a request to the Office of Management and Budget for approval of the change in accordance with the PRA.[54] The Office of Management and Budget approved the proposed change. We did not receive any comments on the PRA analysis contained in the proposing release. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number.

There is no mandatory retention period for the information disclosed and form 8–A is not kept confidential. We currently estimate that form 8–A results in a total annual compliance burden of 5,934 hours. The burden was calculated by multiplying the actual number of respondents filing form 8–A annually (1,978) by the estimated average number of hours each entity spends completing the form (3 hours).

The amendments will eliminate the need for OCC, the only clearing agency currently registered under Exchange Act section 17A that issues standardized options, to file form 8–A and amendments thereto. During fiscal year 2001, OCC filed four form 8–A registration statements and 214 form 8–A amendments. Therefore, we estimate that the total annual burden for form 8–A is 5,280 hours, a decrease of 654 hours.

IV. Cost-Benefit Analysis

The amendments are intended to harmonize the regulatory treatment of standardized options and security futures products under the Securities Act and the Exchange Act. It is anticipated that these amendments will benefit registered clearing agencies that issue standardized options covered by the exemptions by eliminating form S–20 and form 8–A filing requirements currently applicable to issuers of standardized options. We solicited comment to assist us in our evaluation of the costs and benefits associated with the amendments. In response, we received four comment letters.[55] All of the commenters supported the amendments. Two noted that the amendments would eliminate unnecessary regulatory filings and reduce costs imposed on persons engaged in standardized options trading without compromising investor protection.[55]

The Securities Act and Exchange Act exemptions we are adopting today reflect our view that registration provides little useful information to investors in standardized options issued by registered clearing agencies and traded on a national securities exchange or on a registered national securities association and imposes costs on options market participants that are not justified by the marginal benefits to investors.

V. Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), the Commission has certified that rule 238 under the Securities Act, rule 12a–9 under the Exchange Act, and amendments to rules 9b–1 and 12h–1 under the Exchange Act, will not have a significant economic impact on a substantial number of small entities. This certification, including our basis for requesting the certification, was included in the proposing release. We solicited comments on the potential impact of the amendments on small entities, but received none.

VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[56] requires us to consider the anti-competitive effects of any rules that we adopt under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, section 2(b) of the Securities Act[57] and section 3(f) of the

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[49] Presently, no foreign clearing agencies are registered under section 17A. Securities Act rule 153b prospectus delivery requirements currently apply and will continue to apply in connection with standardized option transactions registered on form S–20.

[50] Rule 9b–1(a)(4) under the Exchange Act (17 CFR 240.9b–1(a)(4)) defines standardized options as "options contracts trading on a national securities exchange, an automated quotations system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate."

[51] 17 CFR 240.9b–1(d)(1).

[52] 44 U.S.C. 3501 *et seq.*

[53] The PRA defines a "collection of information" as "the obtaining, causing to be obtained, soliciting or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for * * * answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons * * *" The form S–20 does not constitute a "collection of information" under the PRA because fewer than ten entities file form S–20 registration statements.

[54] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[55] *See* comment letters of CBOE and OCC. OCC estimates that form 8–A filings, and amendments to form 8–A, result in an annual compliance cost to it of $23,000. It further estimates that form S–20 filings, and post-effective amendments to form S–20, result in a total annual compliance cost to it of $50,538 which includes $17,500 of in-house costs and $33,038 in fees for outside counsel and other expenses.

[56] 15 U.S.C. 78w(a)(2).

[57] 15 U.S.C 77b(b).

Exchange Act[58] require us, when engaging in rulemaking to consider or determine whether an action is necessary or appropriate in the public interest, and consider whether the action will promote efficiency, competition, and capital formation.

We requested comment on any anti-competitive effects of the proposals. One commenter indicated that, without the exemptions, dissimilar regulatory treatment between standardized options and security futures products would result in a competitive advantage for security futures products. Another suggested that the exemptions would improve efficiency by eliminating the costs associated with compliance with the Securities Act registration requirements. The purpose of these amendments is to harmonize the treatment of standardized options with security futures products under the Securities Act and the Exchange Act. We think that the amendments will promote efficiency by eliminating the potential for regulatory arbitrage opportunities that could result from discordant treatment of security futures products and standardized options, and by removing regulatory obstacles to trading of these securities. We believe the amendments will have a positive, but unquantifiable, effect on efficiency, competition, and capital formation.

VII. Effective Date

The new rules are effective upon publication in the **Federal Register**. Generally, the Administrative Procedure Act requires that, unless an exception applies, a substantive rule be published in the **Federal Register** at least 30 days prior to its effective date.[59] One exception to the 30-day publication requirement is if a substantive rule grants or recognizes an exemption or relieves a restriction.[60] New Securities Act rule 238 and Exchange Act rule 12a–9 would exempt certain standardized options from most of the provisions of the Securities Act and the registration provisions of the Exchange Act. The effect of the exemptions would be to remove most of the registration restrictions currently placed on covered issuers of standardized options that trade on a national securities exchange or registered national securities associations. In addition, new Exchange Act rule 12h–1(e) provides that covered security futures products are exempt from registration under section 12(g). The rule is intended to clarify that security futures products are not subject to the registration requirements of section 12(g).

[58] 15 U.S.C. 78c(f).
[59] 5 U.S.C. 553(d).
[60] 5 U.S.C. 553(d)(1).

VIII. Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in sections 19 and 28 of the Securities Act and sections 12(h), 23(a) and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.238 is added to read as follows:

§ 230.238 Exemption for standardized options.

(a) *Exemption.* Except as expressly provided in paragraphs (b) and (c) of this section, the Act does not apply to any standardized option, as that term is defined by section 240.9b–1(a)(4) of this chapter, that is:

(1) Issued by a clearing agency registered under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1); and

(2) Traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–3(a)).

(b) *Limitation.* The exemption provided in paragraph (a) of this section does not apply to the provisions of section 17 of the Act (15 U.S.C. 77q).

(c) *Offers and sales.* Any offer or sale of a standardized option by or on behalf of the issuer of the securities underlying the standardized option, an affiliate of the issuer, or an underwriter, will constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities as defined in section 2(a)(3) of the Act (15 U.S.C. 77b(a)(3)).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–l, 78k, 78k–l, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.9b–1 is amended by:

a. Removing the authority citation following § 240.9b–1;

b. Revising the phrase "under the Securities Act" in the last sentence of paragraph (b)(1) to read "under the Securities Act of 1933, or is exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*)"; and

c. Revising paragraph (c)(8).

The revisions read as follows:

§ 240.9b–1 Options disclosure document.

* * * * *

(c) * * *

(8) If the options are not exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the registration of the options on form S–20 (17 CFR 239.20) and the availability of the prospectus and the information in part II of the registration statement; and

* * * * *

5. Section 240.12a–9 is added to read as follows:

§ 240.12a–9 Exemption of standardized options from section 12(a) of the Act.

The provisions of section 12(a) of the Act (15 U.S.C. 78*l*(a)) do not apply in respect of any standardized option, as defined by section 240.9b–1(a)(4), issued by a clearing agency registered under section 17A of the Act (15 U.S.C. 78q–1) and traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)).

6. Section 240.12h–1 is amended by:

a. Removing the authority citation following § 240.12h–1;

b. Removing "and" at the end of paragraph (b)(2);

c. Removing the period at the end of paragraph (c) and adding a semicolon; and

d. Adding paragraphs (d) and (e).

The addition reads as follows:

§ 240.12h–1 Exemptions from registration under section 12(g) of the Act.

* * * * *

(d) Any standardized option, as that term is defined in section 240.9b–1(a)(4), that is issued by a clearing

agency registered under section 17A of the Act (15 U.S.C. 78q–1) and traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 780–3(a)); and

(e) Any security futures product that is traded on a national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 780–3(a)) and cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or is exempt from registration under section 17A(b)(7) of the Act (15 U.S.C. 78q–1(b)(7)).

Dated: December 23, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32912 Filed 12–31–02; 8:45 am]

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Federal Register

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January 2, 2003

Part IV

General Services Administration

41 CFR Chapter 301

Federal Travel Regulation; Maximum Per Diem Rates for Massachusetts, Michigan, Missouri, New Mexico, North Carolina, and Pennsylvania; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 111]

RIN 3090–AH75

Federal Travel Regulation; Maximum Per Diem Rates for Massachusetts, Michigan, Missouri, New Mexico, North Carolina, and Pennsylvania

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate for the State of Massachusetts, city of Boston, including Suffolk County, and city of Cambridge, including Middlesex Counties (except for the city of Lowell); State of Michigan, city of Detroit, including Wayne County; State of Missouri, city of St. Louis, including St. Louis and St. Charles Counties; State of New Mexico, city of Albuquerque, including Bernalillo County; State of North Carolina, city of Charlotte, including Mecklenburg County; State of Pennsylvania, city of Pittsburgh, including Allegheny County, should be adjusted to provide for the reimbursement of Federal employees' lodging expenses covered by the per diem. This final rule amends the final rule published in the **Federal Register** on August 30, 2002 and amended on November 18, 2002 by adjusting the maximum lodging amounts in the prescribed areas.

DATES: This final rule is effective December 15, 2002, and applies to travel performed on or after that date.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–4857. Please cite FTR Amendment 111.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, the General Services Administration (GSA) established the Federal Premier Lodging Program (FPLP) to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amounts published in the **Federal Register** at 67 FR 56160, August 30, 2002 and amended at 67 FR 69634, November 18, 2002 are being changed in Boston and Cambridge, Massachusetts; Detroit, Michigan; St. Louis, Missouri; Charlotte, North Carolina; Albuquerque, New Mexico; and Pittsburgh, Pennsylvania.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

Dated: December 16, 2002.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR chapter 301 as set forth below:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

1. Amend the table in Appendix A to chapter 301 as follows:

a. Under the State of Massachusetts, revise the entry for the city of Boston, including Suffolk County.

b. Under the State of Massachusetts, revise the entry for city of Cambridge, including Middlesex County (except Lowell).

c. Under the State of Michigan, city of Detroit, including Wayne County, amend the maximum lodging amount by removing "109" and adding "108" in its place; and amend the maximum per diem rate by removing "159" and adding "158" in its place.

d. Under the State of Missouri, city of St. Louis, including St. Louis and St. Charles Counties, amend the maximum lodging amount by removing "90" and adding "102" in its place; and amend the maximum per diem rate by removing "140" and adding "152" in its place.

e. Under the State of New Mexico, city of Albuquerque, including Bernalillo County, amend the maximum lodging amount by removing "65" and adding "72" in its place; and amend the maximum per diem rate by removing "107" and adding "114" in its place.

f. Under the State of North Carolina, city of Charlotte, including Mecklenburg County, amend the maximum lodging amount by removing "71" and adding "81" in its place; and amend the maximum per diem rate by removing "113" and adding "123" in its place.

g. Under the State of Pennsylvania, city of Pittsburgh, including Allegheny County, amend the maximum lodging amount by removing "79" and adding "90" in its place; and amend the maximum per diem rate by removing "125" and adding "136" in its place.

The revised pages containing the amendments to the table set forth above read as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

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Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Leonardtown/Lusby						
Ocean City	Worcester					
(June 15-October 31)		144		46		190
(November 1-June 14)		59		46		105
St. Michaels	Talbot	100		46		146
MASSACHUSETTS						
Andover	Essex	109		42		151
Boston	Suffolk					
(May 1-November 30)		192		50		242
(December 1-April 30)		159		50		209
Cambridge	Middlesex (except Lowell)					
(May 1-November 30)		192		50		242
(December 1-April 30)		159		50		209
Falmouth	City limits of Falmouth					
(June 1-September 30)		105		38		143
(October 1-May 31)		70		38		108
Hyannis	Barnstable	94		42		136
Lowell	City limits of Lowell (except Cambridge) (see Middlesex County)	99		38		137
Martha's Vineyard	Dukes					
(June 1-October 15)		150		46		196
(October 16-May 31)		85		46		131
Nantucket	Nantucket					
(June 15-October 15)		150		46		196
(October 16-June 14)		75		46		121
New Bedford	City limits of New Bedford (see Bristol County)					
(May 15-October 15)		75		38		113
(October 16-May 14)		65		38		103
Northampton	Hampshire	72		38		110
Pittsfield	Berkshire	65		42		107
Plymouth	Plymouth					
(June 15-October 15)		119		38		157
(October 16-June 14)		99		38		137
Quincy	Norfolk	74		42		116
Springfield	Hampden	99		38		137
Taunton	Bristol (except New Bedford)	74		34		108
Worcester	Worcester	79		38		117
MICHIGAN						
Ann Arbor	Washtenaw	75		42		117
Berrien County	Berrien	59		34		93
Charlevoix	Charlevoix					
(June 1-August 31)		105		42		147
(September 1-May 31)		59		42		101
Detroit	Wayne	108		50		158
East Lansing/Lansing	Ingham	65		42		107
Frankenmuth	Saginaw	69		34		103
Frankfort	Benzie	62		34		96
Gaylord	Otsego	65		38		103
Grand Rapids	Kent	62		38		100

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Holland	Ottawa	60		38		98
Leland	Leelanau	75		38		113
Mackinac Island	Mackinac	165		46		211
Midland	Midland	72		38		110
Mount Pleasant	Isabella	65		38		103
Muskegon	Muskegon					
(May 1-August 31)		79		34		113
(September 1-April 30)		59		34		93
Ontonagon	Ontonagon	65		34		99
Petoskey	Emmet					
(June 1-October 31)		65		42		107
(November 1- May 31)		55		42		97
Pontiac/Troy/Auburn Hills	Oakland	94		42		136
Sault Ste Marie	Chippewa					
(May 15-October 15)		63		38		101
(October 16-May 14)		55		38		93
South Haven	Van Buren	76		38		114
Traverse City	Grand Traverse	125		46		171
Warren	Macomb	79		38		117
MINNESOTA						
Anoka County	Anoka	65		38		103
Dakota County	Dakota	80		38		118
Duluth	St. Louis					
(June 1-October 31)		85		42		127
(November 1-May 31)		56		42		98
Minneapolis/St. Paul	Hennepin County and Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), and Ramsey County	110		50		160
Rochester	Olmsted	73		38		111
MISSISSIPPI						
Bay St. Louis	Hancock					
(April 1-October 31)		69		38		107
(November 1-March 31)		55		38		93
Biloxi/Gulfport	Harrison	61		42		103
Robinsonville	Tunica	59		34		93
MISSOURI						
Branson	Taney					
(April 1-December 31)		62		38		100
(January 1-March 31)		55		38		93
Hannibal	Marion	57		34		91
Jefferson City	Cole	60		34		94
Kansas City	Jackson, Clay and Kansas City International Airport	84		46		130
Osage Beach	Camden	89		34		123
Platte	Platte (except Kansas City International Airport)	84		38		122
Springfield	Greene	63		34		97
St. Louis	St. Louis and St. Charles	102		50		152
St. Robert/Ft. Leonardwood	Pulaski	74		34		108

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Freehold	City limits of Freehold (see Monmouth County)	85		38		123
Millville	Cumberland	58		34		92
Newark	Essex, Bergen, Hudson and Passaic	125		46		171
Ocean City	City limits of Ocean City (see Cape May County)					
(June 15-September 15)		215		42		257
(September 16-June 14)		80		42		122
Parsippany/Picatinney Arsenal/Dover	Morris	114		42		156
Piscataway/Belle Mead	Somerset; and City limits of Piscataway	144		42		186
Princeton/Trenton	Mercer	139		46		185
Tom's River	Ocean					
(May 15-September 15)		89		42		131
(September 16-May 14)		79		42		121
Union County	Union	107		42		149
NEW MEXICO						
Albuquerque	Bernalillo	72		42		114
Cloudcroft	Otero					
(June 1-October 31)		74		34		108
(November 1-May 31)		65		34		99
Las Cruces	Dona/Ana	60		34		94
Los Alamos	Los Alamos	71		38		109
Santa Fe	Santa Fe	99		46		145
Taos	Taos	75		38		113
NEW YORK						
Albany	Albany	96		46		142
The Bronx/Brooklyn/Queens	The boroughs of The Bronx, Brooklyn and Queens	168		46		214
Buffalo	Erie	78		42		120
Glens Falls	Warren					
(June 1-September 30)		74		38		112
(October 1-May 31)		55		38		93
Ithaca	Tompkins	69		38		107
Kingston	Ulster	79		42		121
Lake Placid	Essex					
(June 15-October 15)		86		42		128
(October 16-June 14)		59		42		101
Manhattan	The borough of Manhattan	208		50		258
Nassau County/Great Neck	Nassau	190		46		236
Niagara Falls	Niagara					
(May 1-October 31)		89		38		127
(November 1-April 30)		55		38		93
Nyack/Palisades	Rockland					
(April 1-September 30)		67		42		109
(October 1-March 31)		57		42		99
Owego	Tioga	73		34		107
Poughkeepsie	Dutchess	74		42		116
Rochester	Monroe	83		46		129
Saratoga Springs	Saratoga					

Per diem locality:		Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2, 3]					
(July 1-October 31)		95		42		137
(November 1-June 30)		75		42		117
Staten Island	Richmond	120		46		166
Suffolk County	Suffolk	149		42		191
Syracuse	Onondaga	70		38		108
Tarrytown	Westchester (except White Plains)	114		46		160
Waterloo/Romulus	Seneca					
(June 15-September 15)		89		34		123
(September 16-June 14)		69		34		103
Watkins Glen	Schuyler	59		38		97
West Point	Orange	121		38		159
White Plains	City limits of White Plains (see Westchester County)	165		46		211
NORTH CAROLINA						
Atlantic Beach	Carteret					
(June 1-August 31)		64		34		98
(September 1-May 31)		55		34		89
Chapel Hill	Orange	80		42		122
Charlotte	Mecklenburg	81		42		123
Cherokee	Swain					
(April 1-October 31)		62		34		96
(November 1-March 31)		55		34		89
Fayetteville	Cumberland	63		38		101
Greensboro	Guilford	87		42		129
Greenville	Pitt	64		34		98
Kill Devil	Dare					
(May 1-September 30)		114		42		156
(October 1-February 28)		75		42		117
(March 1-April 30)		55		42		97
New Bern/Havelock	Craven	62		38		100
Raleigh	Wake	74		42		116
Research Triangle Park/Durham	Durham	85		46		131
Wilmington	New Hanover					
(April 1-September 15)		65		38		103
(September 16-March 31)		58		38		96
Winston-Salem	Forsyth	64		42		106
NORTH DAKOTA (See footnote 5)						
OHIO						
Akron	Summit	72		42		114
Bellevue	Huron	72		34		106
Cambridge	Guernsey	60		34		94
Cincinnati	Hamilton and Warren	69		50		119
Cleveland	Cuyahoga	86		46		132
Columbus	Franklin	75		42		117
Dayton	Montgomery, Wright-Patterson AFB	65		34		99
Fairborn	Greene	66		38		104

Per diem locality: Key city[1]	County and/or other defined location[2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Mechanicsburg	Cumberland	74		34		108
Philadelphia	Philadelphia	124		50		174
Pittsburgh	Allegheny	90		46		136
Reading	Berks	75		42		117
Scranton	Lackawanna	60		34		94
Warminster	Bucks County; Naval Air Development Center	75		38		113
Wayne	City limits of Wayne (see Delaware County)	100		46		146
RHODE ISLAND						
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville	79		42		121
Newport	Newport					
(April 1-December 31)		111		46		157
(January 1-March 31)		79		46		125
North Kingstown	Washington	89		30		119
Providence	Providence	89		46		135
SOUTH CAROLINA						
Aiken	Aiken	65		34		99
Charleston/Berkeley County	Charleston and Berkeley	106		42		148
Columbia	Richland	65		34		99
Greenville	Greenville	65		42		107
Hilton Head	Beaufort					
(March 15-September 30)		95		46		141
(October 1-March 14)		75		46		121
Myrtle Beach	Horry County; Myrtle Beach AFB					
(March 1-November 30)		99		46		145
(December 1-February 28)		59		46		105
SOUTH DAKOTA						
Custer	Custer					
(June 15-August 19)		70		34		104
(August 20-June 14)		55		34		89
Hot Springs	Fall River					
(June 15-October 15)		108		34		142
(October 16-June 14)		79		34		113
Rapid City	Pennington					
(May 15-September 30)		99		34		133
(October 1-May 14)		55		34		89
Sturgis	Meade					
(June 15-August 15)		79		30		109
(August 16-June 14)		55		30		85
TENNESSEE						
Alcoa/Townsend	Blount	63		34		97
Gatlinburg	Sevier					
(May 1-October 31)		78		42		120
(November 1-April 30)		70		42		112
Memphis	Shelby	75		42		117
Murfreesboro	Rutherford	57		34		91

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Federal Register

Thursday,
January 2, 2003

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020718172–2303–02; I.D. 051402C]

RIN 0648–AQ08

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Steller sea lion protection measures to avoid the likelihood that the groundfish fisheries off Alaska will jeopardize the continued existence of the western distinct population segment (DPS) of Steller sea lions or adversely modify its critical habitat. These management measures will disperse fishing effort over time and area to provide protection from potential competition for important Steller sea lion prey species in waters adjacent to rookeries and important haulouts. The intended effect of this final rule is to protect the endangered western DPS of Steller sea lions, as required under the Endangered Species Act (ESA), and to conserve and manage the groundfish resources in the Bering Sea/Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA) in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective January 1, 2003.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) for the regulatory amendment to permit an investigation of the effect of commercial fishing on Walleye pollock distribution and abundance in localized areas off the east side of Kodiak Island; the supplemental environmental impact statement on Steller Sea Lion protection measures in the Federal groundfish fisheries off Alaska (SEIS), including the 2001 biological opinion (2001 BiOp) and regulatory impact review; the November 30, 2000, biological opinion (FMP BiOp); the final regulatory flexibility analysis; and the 2002 Stock Assessment and Fisheries Evaluation report for the BSAI Groundfish Fisheries may be obtained from the National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668. The SEIS is also available on the NMFS Alaska Region home page at http://www.fakr.noaa.gov. Send comments on collection-of-information requirements to NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Sustainable Fisheries Division, Alaska Region, 907–586–7228 or email at melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679. NMFS also has management responsibility for certain threatened and endangered species, including Steller sea lions, under the ESA of 1973, 16 U.S.C. 1531, *et seq.*, and the authority to promulgate regulations to enforce provisions of the ESA to protect such species.

Background

On November 30, 2000, NMFS issued a biological opinion on the FMPs, which determined that the pollock, Pacific cod, and Atka mackerel fisheries were likely to jeopardize the continued existence of the western DPS of Steller sea lions and to adversely modify its critical habitat. It contained a reasonable and prudent alternative (RPA) that included large fishery closure areas, harvest limits, and seasonal distribution of harvest for the pollock, Pacific cod, and Atka mackerel fisheries. Before the RPA could be implemented, the President signed Public Law 106–554 on December 21, 2000, which contained a 1–year timetable to phase in the RPA. This year provided the Council with time to develop alternative protection measures that would avoid jeopardy and adverse modification of critical habitat for Steller sea lions.

The Council appointed an RPA Committee consisting of a variety of members including commercial fishery interests, the environmental community, the Alaska Department of Fish and Game (ADF&G), and NMFS. The RPA Committee, which met numerous times throughout 2001 to evaluate the best scientific and commercial data available developed, with the assistance of NMFS expertise, recommendations for Steller sea lion protection measures for the pollock, Pacific cod, and Atka mackerel fisheries. More details on the protection measures development process and the status of Steller sea lions are contained in the preamble to the proposed rule published September 4, 2002 (67 FR 56692).

In a section 7 consultation under the ESA, NMFS issued a 2001 BiOp, which determined that the groundfish fisheries managed under the protection measures in this final rule are unlikely to jeopardize the continued existence of the western DPS of Steller sea lions or adversely modify its critical habitat. Following this determination, the Council adopted and forwarded to NMFS the protection measures contained in this final rule, which are necessary to comply with section 7(a)(2) of the ESA. These measures were implemented in 2002 by emergency interim rule (67 FR 956, January 8, 2002; amended 67 FR 21600, May 1, 2002; corrected 67 FR 45671, July 10, 2002, 67 FR 47472, July 19, 2002, and 67 FR 64315, October 18, 2002; and extended 67 FR 34860, May 16, 2002).

A detailed history on past biological opinions and court cases regarding Steller sea lions and the Alaska groundfish fisheries and a description of how the protection measures meet the national standards in the Magnuson-Stevens Act are presented in the preamble to the January 8, 2002, emergency interim rule (67 FR 956).

Summary of the 2002 Protection Measures

For more detailed descriptions by topic, fishery, and area, see the preamble to the proposed rule (67 FR 56692, September 4, 2002). Closure areas apply to vessels named on a Federal Fisheries Permit issued under § 679.4(b) in the groundfish fisheries in the BSAI and GOA reporting areas, including the State waters within those reporting areas. The following is a summary of protection measures:

1. Area closures for all groundfish fishing within 0–3 nm of 39 rookery sites. These sites are considered the most sensitive for females with pups, and the nearshore marine critical habitat is the most important to protect from interactions between groundfish fisheries and Steller sea lions.

2. Protection measures for the Atka mackerel, pollock, and Pacific cod directed fisheries in the waters off Alaska, which include the following: (a)

a modified harvest control rule to prohibit directed fishing when the spawning biomass falls below 20 percent of the projected unfished spawning biomass, (b) closures within 10 or 20 nm of selected haulout and rookery sites to directed fishing for Atka mackerel, pollock, and Pacific cod in the GOA and BSAI, (c) closure of the Seguam foraging area and most of the Bogoslof area to all gear types, (d) a Vessel Monitoring System (VMS) requirement to facilitate enforcement of closed areas, (e) closure of the Chignik area to pot, trawl, and hook-and-line gears, (f) closure within 10 or 20 nm of 46 rookeries and haulouts to hook-and-line fishing for Pacific cod and 44 rookeries and haulouts to pot fishing for Pacific cod, (g) modifications to the Community Development Quota (CDQ) groundfish program, (h) revisions to the Federal Fisheries Permit requirements, and (i) changes to the catcher vessel fishing trip definition.

3. Aleutian Island subarea protection measures include the following: (a) conduct of any pollock directed fishery authorized in the Aleutian Islands subarea outside of critical habitat and apportionment to two seasons (40:60 percent), (b) Pacific cod total allowable catch (TAC) apportionment by season and gear, as well as gear specific area restrictions that alternate with the Atka mackerel fishery in critical habitat in waters west of 178° W long., (c) closure of the Seguam foraging area to pollock, Atka mackerel, and Pacific cod directed fishing by all gear types, (d) critical habitat harvest limit of 60 percent for Atka mackerel in waters west of 178° W long., (e) grouping of vessels for Atka mackerel fishing in critical habitat in waters west of 178° W long., (f) requirements for two observers for critical habitat Atka mackerel directed fishing, (g) closures of at least 0–3 nm around all haulouts for Atka mackerel and Pacific cod trawl fishing, and (h) closure to Atka mackerel critical habitat directed fishing with trawl gear east of 178° W long.

4. Bering Sea protection measures include the following: (a) two seasons (40:60 percent apportionment) for the pollock fishery with no more than 28 percent of the annual directed fishing allowance taken from the Steller sea lion conservation area (SCA) before April 1, (b) establishment of the Bering Sea Pollock Restriction Area (BSPRA) during the A season, (c) closure of the Catcher Vessel Operation Area (CVOA) to non-CDQ pollock trawl catcher/processors during the B season, (d) Pacific cod TAC apportionments by season and gear, as well as gear specific area restrictions, and (e) closure of all Bering Sea subarea critical habitat within 20 nm of rookeries and haulouts to Atka mackerel trawl fishing.

5. Gulf of Alaska protection measures include the following: (a) distribution of pollock harvest evenly among 4 seasons, (b) closure of directed fishing for pollock in areas that vary from 0–20 nm to 0–3 nm around rookeries and haulouts, (c) two seasons (60:40 percent apportionment) for Pacific cod fishing and area restrictions that are dependent on gear type and vessel size, and (d) continuation of the NMFS Chiniak Gully research project to explore the effects of commercial fisheries on pollock abundance and distribution in the GOA.

In November 2002, the State of Alaska Board of Fisheries (BOF) adopted the same protection measures for the State parallel fisheries, with two exceptions in the GOA Pacific cod pot fishery. The ADF&G should be contacted for details on Steller sea lion protection measures inside State waters. Under the Steller sea lion protection measures implemented in 2002 and in this final rule, Caton Island and Cape Barnabas are closed from 0–3 nm to Pacific cod fishing with pot gear by vessels named on a Federal Fisheries Permit issued under 50 CFR 679.4(b). The State did not adopt these closures. In October 2002, the Council recommended to open waters from 0–3 nm around Cape Barnabas and Caton Island to directed Pacific cod pot fishing by vessels named on a Federal Fisheries Permit. Opening these areas for the Pacific cod pot fishery will ensure consistency between State and Federal groundfish fisheries regulations and prevent unnecessary constraint on the Pacific cod pot fishery. NMFS will publish a notice of proposed rulemaking proposing the opening of these areas in early 2003.

Changes to the Steller Sea Lion Protection Measures From the Proposed Rule

The notice of proposed rulemaking explained that NMFS would use CDQ catch reports to determine when catch limits have been reached, when area closures should occur, and how pollock catch should be accounted for in the groundfish CDQ fisheries. See 67 FR 56698, column 1 (September 4, 2002). In order to use the CDQ catch reports to manage the CDQ fisheries as proposed, NMFS must be able to assign reported CDQ catch to the reporting vessels' target fisheries. However, the proposed rule text omitted a necessary provision specifically requiring vessels participating in CDQ fisheries to indicate their intended target species on the CDQ catch reports submitted to NMFS. This omission is corrected in this final rule at § 679.5(n)(2)(iii)(B)(4). This requirement was implemented by emergency interim rule in 2002 (67 FR 956, January 8, 2002) and was included in the Paperwork Reduction Act clearance submission prepared for the proposed rule.

The notice of proposed rulemaking specified that any vessel using pot, hook-and-line, or trawl gear in directed fisheries for Atka mackerel, Pacific cod, or pollock would have to register with NMFS and obtain endorsements for these directed fisheries on the vessel's Federal Fisheries Permit (FFP). A vessel would be prohibited from directed fishing for Atka mackerel, Pacific cod, or pollock without an endorsed FFP as described above. See 67 FR 56698, column 2, September 4, 2002. Although this language published in the proposed rule clearly indicates that the endorsement requirement and prohibition should apply only to vessels using pot, hook-and-line, or trawl gear, the proposed rule text would erroneously apply the prohibition to vessels using any type of gear. This error is corrected in this final rule at § 679.7(a)(1)(ii) by limiting this prohibition only to vessels using pot, hook-and-line, or trawl gear.

The proposed rule did not specify a first seasonal allowance of Pacific cod that would be available for harvest as an interim harvest specification at the beginning of a fishing year. Interim harvest specifications are established by regulations at § 679.20(c) to manage the annual fisheries during the period prior to the effective date of the final annual harvest specifications, which typically are not published until February or March. Pollock, Atka mackerel, and Pacific cod fisheries yield high economic value in the period from January through March because of the quality of the fish and high catch per unit of effort on spawning aggregations.

The interim specifications for pollock and Atka mackerel are specified by regulations as the first seasonal allowances for these species proposed in the annual notice of proposed harvest specifications. Although the proposed Steller sea lion protection measures explained that 60 percent of the Pacific cod TAC is allocated to the A season beginning in January each year (see 67 FR 56701, Table 2, September 4, 2002), the proposed rule text does not specifically make this first seasonal allowance of Pacific cod available for harvest under the interim specifications. This omission is corrected in the final rule at §§ 679.20(c)(2) and 679.20(c)(2)(ii)(B) by specifying that the interim harvest specification for Pacific

cod fisheries will be the first seasonal allowance of Pacific cod proposed in the annual notice of proposed harvest specifications. A similar omission relating to the CDQ Atka mackerel and CDQ Pacific cod fisheries is corrected at § 679.20(c)(2)(ii)(B) in the final rule. These changes are necessary to achieve temporal dispersion of the pollock, Atka mackerel, and Pacific cod fisheries, as described in the notice of proposed rulemaking implementing the Steller sea lion protection measures.

In § 679.20(d)(4), the term "biomass" is changed to "spawning biomass" to clarify the type of biomass that is considered in the harvest control rule.

Text in § 679.22 is changed to clarify application of closure areas. The term "federally permitted vessels" is replaced with "by vessels named on a Federal Fisheries Permit issued under § 679.4(b)". NMFS may issue a number of different permits to owners of vessels for fishing activities in the BSAI and GOA. The permits are issued to an owner, and a vessel is named on the permit. This change will identify the vessels, and the type of permitting that is affected by the Steller sea lion protection measures, thereby reducing confusion.

Footnote 4 to Table 5 is changed in the final rule from the proposed rule to clarify the location of waters closed to pot and hook-and-line directed fishing for Pacific cod. Closures for these gear types are applicable to critical habitat in waters east of 173° W long. Amlia I./East and Tanadak I. (Amlia) haulouts are located at nearly 173° W long., and Footnote 4 to Table 5 in the final rule is corrected to indicate that the 20–nautical mile (nm) closures for these haulouts applies only to waters east of 173° W long., as described in the preamble to the proposed rule.

The regulatory text in the emergency interim rule implementing 2002 Steller sea lion protection measures did not include applicability date language for Tables 21, 22, 23, and 24. Without applicability date language, the tables appeared to be a permanent regulatory amendment, which cannot be accomplished by emergency interim rule. This final rule replaces these tables with Tables 4, 5, 6, and 12. Tables 21, 22, 23, and 24 are removed to prevent confusion.

Response to Comments

NMFS received 2 letters with comments in response to the May 16, 2002, extension of the emergency interim rule (67 FR 34860) that implemented the Steller sea lion protection measures and the 2002 harvest specifications.

One letter supported the extension of the emergency interim rule to protect Steller sea lions. The writer agreed with the temporary constraint on the fisheries and was concerned about overexploitation of marine resources.

The second letter was a copy of the comments submitted by the writer regarding the January 8, 2002, emergency interim rule. Responses to these comments were provided in the preamble to the proposed rule (67 FR 56692, September 4, 2002) and no further response is needed.

One letter of comment was received before the proposed rule was published concerning the VMS requirements that this rule will implement. The letter made three points. First, VMS should only be required on vessels that had previous fishing violations. Second, VMS should not be required when vessels are engaged in fishing operations other than directed fishing for Pacific cod, Atka mackerel or pollock or when the vessel is being used for personal uses such as hunting. Third, VMS should not be required when a fishery is only open in another area. For example, if a fishery is only open in the BSAI, the vessel should not be required to use a VMS if it only fishes in the GOA.

NMFS disagrees with all three suggestions to relax VMS requirements. VMS is a tool to determine in near real time whether a violation may be occurring. If only those vessels with previous fishing violations were required to participate in a VMS program, NMFS would be unable to determine whether violations by vessels without previous violations were occurring. Using other traditional methods of enforcement, significantly less of the illegal incursions are likely to be discovered. While under most circumstances it is possible to determine from a vessel's VMS transmissions whether the vessel is fishing, it is not possible to determine what the vessel is harvesting. Enforcement would be most effective if all fishing vessels were required to operate a VMS at all times. However, in order to reduce impact on those vessels that do not engage in the Pacific cod, Atka mackerel, or pollock fisheries with pot, hook-and-line, or trawl gear, operating a VMS will only be required for those vessels that do participate in these fisheries, and only when these fisheries are open. Vessel owners intending to use their boats for purposes other than directed fishing for Pacific cod, Atka mackerel, or pollock may have NMFS remove the endorsement for those species from their FFP. Concerning the third point, the boundary between the Gulf of Alaska and the Bering Sea is long and many of the critical habitat areas straddle that boundary. If VMS were not required in both areas when a fishery is open in either area, enforcement would be unnecessarily complicated. Vessels that had turned their VMS transmitters off would be able to "hide" in the area where VMS was not required and enter the area where VMS was required making effective surveillance difficult or impossible.

NMFS received three letters with comments regarding the proposed rule for Steller sea lion protection measures. Two letters recommended that NMFS approve software-based VMS technologies that integrate electronics already on the vessel, at least as backup systems. NMFS believes that the modification of VMS standards is outside the scope of this rulemaking. First, NMFS did not propose this measure for public comment. Second, VMS standards are promulgated and amended on a national level and VMS components are approved for use off Alaska based on those standards. At this time, the software-based systems referred to in the comment do not meet the current standards. The comments from the third letter and responses are summarized below.

Comment 1. In general, the commentor disagreed that the groundfish fisheries are likely to jeopardize the continued existence of the western DPS of Steller sea lions or adversely affect its critical habitat. Little, if any, scientific evidence exists of competition between groundfish fisheries and Steller sea lions. NMFS is acting in a highly conservative and precautionary manner by imposing Steller sea lion protection measures contained in the proposed rule.

Response. The ESA requires NMFS to ensure the protection of endangered and threatened species. Sufficient evidence exists of the potential for competition for prey between the groundfish fisheries and Steller sea lions to warrant restrictions on the groundfish fisheries. The protection measures in the final rule ensure that the groundfish fisheries will be unlikely to jeopardize the continued existence of the western DPS of Steller sea lions or destroy or adversely modify its critical habitat.

Comment 2. The zonal approach of restricted fishing areas should not be changed until an evaluation is done. The year 2002 should be used as a baseline.

Response. The effectiveness of the protection measures will be evaluated before any changes are made.

Comment 3. The 2002 pup and non-pup Steller sea lion aerial survey results do not support the concept of groundfish fishery interaction leading to Steller sea lion declines. The locations of increases and decreases in counts are not consistent with areas of more or less amounts of fishing. This again demonstrates that NMFS is acting in a highly conservative and precautionary manner.

Response. NMFS is unable to draw conclusions about the effectiveness of Steller sea lion protection measures using the recent Steller sea lion survey estimate. NMFS has a number of research programs under way that are intended to provide further information about possible groundfish fishery interactions with Steller sea lions. The recently measured increase in the population may indicate the effects of protection measures implemented since 1999, natural environmental changes, or merely a statistical anomaly. In the 2002 FMP BiOp (see **ADDRESSES**), NMFS determined that we would need 6–10 years (roughly 3–5 surveys) to positively determine a change in the population trajectory given uncertainty in the estimates. NMFS will continue to evaluate this information as it becomes available and will use it to determine the relationship between Steller sea lion population trends and fisheries.

Comment 4. Table 5 should be corrected for five haulouts located just east of 173° West long. The closure areas for these sites only apply to those waters located east of 173° West long. and a footnote should be added to the table to indicate this.

Response. Two of the five haulouts should be corrected. Accordingly, Table 5 is changed from the proposed rule for Amlia I./East and Tanadak I. (Amlia). Footnote 4 to the Table has a sentence added indicating that the 20–nm closure for these haulouts for the hook-and-line and pot Pacific cod fisheries applies only to those waters located east of 173° West long. Other Steller sea lion sites near the 173° West long. are either rookeries with 10 or 20 nm closures or haulouts with 20 nm closures that are overlapped by the Seguam foraging area closure.

Comment 5. The word "spawning" should be inserted immediately before the term "biomass" whenever that term occurs in the regulatory text at § 679.20(d)(4) for the harvest control rule to be consistent with the preamble.

Response. The change is made in the final rule.

On October 5, 2002, the Council provided comment on the proposed rule by recommending the continued closure of the Aleutian Islands subarea to directed fishing for pollock in 2003 and the opening of this subarea in 2004 and beyond to directed fishing for pollock outside the critical habitat, apportioned seasonally (40:60 percent). The Council requested this change to allow for additional analysis of the potential effects of opening the pollock fishery. The Council recommended that NMFS analyze effects of the Aleutian Islands subarea directed pollock fishery on Steller sea lions, bycatch, and other fisheries, including cumulative effects.

The 2001 BiOp found that opening the seasonally apportioned pollock fishery outside of critical habitat in the Aleutian Islands subarea would not likely cause jeopardy or adverse modification of critical habitat for the western DPS of Steller sea lions. At this time, NMFS has no new information that would change the conclusion in the 2001 BiOp concerning the Aleutian Islands subarea directed pollock fishery.

The 2002 Stock Assessment and Fisheries Evaluation report for BSAI pollock (see **ADDRESSES**) provides an acceptable biological catch level for a directed pollock fishery in the Aleutian Islands subarea based on the condition of the pollock stock.

This final rule provides that any directed pollock fishery authorized in the Aleutian Islands subarea must be conducted outside of critical habitat with seasonal apportionments to temporally disperse the harvest. The pollock fishery conducted in this manner will meet the temporal and spatial dispersion of harvest required by the 2001 BiOp and FMP BiOp.

However, NMFS does acknowledge the concerns expressed by the Council regarding potential impacts of a new directed pollock fishery in the Aleutian Islands subarea on other ecosystem components and on other components of the fishing industry. As such, the 2003 harvest specifications for the BSAI will close the Aleutian Islands subarea to directed fishing for pollock and establish an Aleutian Islands subarea pollock TAC that allows only incidental catch of pollock in other Aleutian Islands subarea groundfish fisheries. NMFS will continue analysis of the potential impacts of a new Aleutian Islands subarea directed pollock fishery and will provide the Council with updated information.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws. No relevant Federal rules exist that duplicate, overlap, or conflict with this action.

The Steller sea lion protection measures have been determined to be significant for purposes of Executive Order 12866.

NMFS prepared two final regulatory flexibility analyses (FRFA) that described the economic impact this final rule would have on small entities. Copies of these FRFAs are available from NMFS (see **ADDRESSES**). A description of the final action, the reason the action is being considered, and the legal basis for this action are contained at the beginning of this preamble.

One FRFA analyzed the Steller sea lion protection measures. NMFS received no comments on the Initial Regulatory Flexibility Analysis (IRFA). This FRFA concluded, based on the numbers of operations in 2000, that approximately 590 small entities would be directly regulated by the rule. This includes 514 catcher vessels, 33 catcher/processors, 37 shoreside processors, and 6 CDQ groups. The action will create the following new recordkeeping and reporting requirements: (a) questions will be added to the annual FFP renewal application and renewal forms to enable NMFS to identify which vessels will be directed fishing in the Pacific cod, pollock, and Atka mackerel fisheries; (b) vessels, other than jig vessels, will be required to operate a VMS while they are operating in the BSAI or GOA reporting areas when the pollock, Atka mackerel, or Pacific cod fishery they are permitted for is open; (c) an additional question asking CDQ operators to report target species has been added to each CDQ catch report; and (d) Atka mackerel vessels will have to carry additional observers when fishing in Aleutian Islands subarea critical habitat.

The Council and NMFS considered five regulatory alternatives. These were analyzed at length in the final SEIS. Three of these, Alternatives 2, 3 and 5, have adverse impacts on small entities that are greater than those in Alternative 4 (the preferred alternative). Alternative 2 dramatically reduced the TACs available to the fisheries. All three alternatives placed far more of the fisheries gross revenues "at risk" due to restrictions on fishing in closed or restricted critical habitat. These revenue reductions would have led to lower revenues for small entities in the fishery than the revenue reduction in Alternative 4. Alternative 1 had smaller adverse impacts on small entities than those in Alternative 4. However, this

alternative was the "no action" alternative under which regulatory measures, which were implemented by emergency rule and designed to protect Steller sea lions, would expire (note that not all regulations to protect the Steller sea lions had been implemented by emergency rule). This alternative was not adopted because the Council found it inadequate to avoid the likelihood that the groundfish fisheries would jeopardize the continued existence of the western DPS of Steller sea lions and adversely modify its critical habitat. Two additional options to Alternative 4 might have produced a reduced impact on the small vessel fleets. The first option would have exempted certain classes of small vessels from fishing restrictions in the vicinities of Chignik, and the second one would have established a system of "gear zones" along the coast in the GOA and would have restricted larger vessels to a greater extent than small ones in the zones closer to the shore. The additional small boat exemptions for Chignik were not included because opening these areas would reduce the value as a control site for evaluating management measures and increase the likelihood for competitive interactions with Steller sea lions, and also because this site has not been economically important to the small boat fleets. The Council decided not to include the GOA "gear zone" option due to potential conflicts with Magnuson-Stevens Act national standards 8 and 10 (i.e., local community access to fishing resources and safety). However, vessel owners' costs associated with VMS purchases required under the preferred alternative will be reimbursed through a NMFS grant to the Pacific States Marine Fisheries Commission.

A second FRFA has been prepared for the Chiniak Gully experiment implemented by this final rule. NMFS received no comments on the Initial Regulatory Flexibility Analysis (IRFA). This FRFA concluded that most of the vessels that would trawl for groundfish in the proposed Chiniak Gully area during late summer are small entities. This included 145 small entities. Most of these affected vessels are homeported in and operate out of the city of Kodiak, adjacent to the proposed closure area. Although vessels will be able to harvest in other locations in the vicinity of Kodiak Island and should be able to recover most of their lost revenues, they would be expected to incur some additional costs as a result of traveling greater distances to alternative fishing areas. Because harvest may be taken elsewhere and the restriction will last no more than 3 years, the overall impact on the affected vessels should not be large. As these small vessels potentially experience higher costs, they may see some reduction in their cash flow and profits while the program is in effect. Since the affected vessels are mostly small entities, and large trawl entities would not be affected by this trawl closure, the impact may be disproportionately large on small entities. This action imposes no additional reporting requirements on small entities. The alternatives of no action and of excluding small entities from the action were considered and would have reduced the burden on small entities, compared to the preferred alternative. However, the no action alternative would have prevented the experiment from proceeding. Excluding small entities would have eliminated most of the vessels active in the experimental area. Therefore these alternatives would not meet the objective of the action.

Pursuant to the National Environmental Policy Act, NMFS prepared an SEIS for the Steller sea lion protection measures; a notice of availability of the draft SEIS was published in the **Federal Register** on August 31, 2001 (66 FR 45984). Comments were received and responded to in the final SEIS, and the final document was issued November 23, 2001 (66 FR 58734). An analysis of the Chiniak experiment is provided in the EA/RIR/FRFA for the regulatory amendment to permit an investigation of the effect of commercial fishing on Walleye pollock distribution and abundance in localized areas off the east side of Kodiak Island. The final SEIS and EA/RIR/FRFA are available from NMFS (see **ADDRESSES**). No significant impacts on the human environment were anticipated from the Chiniak Gully experiment based on the analysis in the EA/RIR/FRFA. Based on a comparison of the effects of the other alternatives in the SEIS, NMFS determined that this action complies with ESA requirements. Potential impacts on marine mammals resulting from fishing activities conducted under this final rule are discussed in the SEIS for this action.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by OMB. Public reporting burden for these collections is listed by OMB control number below.

OMB No. 0648–0206: for a Federal Fisheries Permit application (including the information necessary to register a vessel using trawl gear to conduct directed fishing operations for Atka mackerel in the harvest limit area), 21 minutes per response; OMB No. 0648–0445: 6 hours to install a VMS unit; 12 minutes to fax a check-in report that the VMS is operational; 5 seconds per automated position report; and 4 hours per year for VMS maintenance; and OMB No. 0648–0269: for CDQ target species reporting; 15 minutes per catch report.

These response time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Formal and informal section 7 consultations under the ESA were completed for this final rule under the FMPs for the groundfish fisheries of the BSAI and the GOA. In the 2001 BiOp and memorandum dated December 11, 2001, from the Office of Protected Resources (OPR) to the Office of Sustainable Fisheries, the Director of the OPR determined that fishing activities described in this final rule are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

On December 18, 2002, the United States District Court for the Western District of Washington entered an Order remanding the biological opinion prepared for the groundfish fisheries managed pursuant to this rule. *Greenpeace, et al.* v. *National Marine Fisheries Service,* No. C98–492Z (W.D. Wash.). The Court held that the biological opinion's findings of no jeopardy to the continued existence of endangered Steller sea lions and no adverse modification of their critical habitat were arbitrary and capricious. NMFS is seeking Plaintiff's agreement that the 2003 fisheries will commence pursuant to the Steller sea lion protection measures specified in the 2001 BiOp and implemented by this final rule pending completion of the remand. If such agreement is reached, it will be filed with the Court. If agreement is not reached, NMFS will take such other action as is necessary to ensure the fisheries' compliance with

section 7(a)(2) of the ESA pending completion of the remand.

The Steller sea lion protection measures in this rule must be effective by January 1, 2003, the date on which the emergency interim rule implementing these measures expires and the 2003 groundfish fisheries will open. The measures contained in this rule are substantially the same as those contained in the emergency interim rule dated January 8, 2002 (67 FR 956 and extended May 16, 2002, 67 FR 34860), and therefore this rule is largely a continuation of the status quo. Because the industry is already complying with similar measures, additional time is not required for compliance. Accordingly, there is good cause to waive the requirement of a 30–day delay in the effective date for this rule pursuant to 5 U.S.C. 553(d)(3). However, NMFS will make this rule effective on January 1, 2003, thereby providing a short delay in the effective date.

List of Subjects in 15 CFR Part 902 and 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 23, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

15 CFR Chapter IX

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, is amended as follows:

PART 902— NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by adding under 50 CFR the following entries in numerical order:

§ 902.1 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * *	*
50 CFR	
679.4(b)(5)(vi)	–0206
679.20(a)(8)(iii)	–0269
679.28(f)(4), (f)(5), (f)(6)	–0445
* * * *	*

50 CFR Chapter VI

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 57 Stat. 113; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554.

2. In § 679.2, the definition for "Steller Sea Lion Protection Areas" is removed, paragraph (1) of the definition for "Fishing trip" is revised, and the definition for "harvest limit area (HLA) for Atka mackerel directed fishing" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means:

(1) Retention requirements (MRA, IR/IU, and pollock roe stripping).

(i) With respect to retention requirements of MRA, IR/IU, and pollock roe stripping, an operator of a catcher/processor or mothership processor vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area until:

(A) The effective date of a notification prohibiting directed fishing in the same area under § 679.20 or § 679.21;

(B) The offload or transfer of all fish or fish product from that vessel;

(C) The vessel enters or leaves an area where a different directed fishing prohibition applies;

(D) The vessel begins fishing with a different type of authorized fishing gear; or

(E) The end of a weekly reporting period, whichever comes first.

(ii) With respect to retention requirements of MRA, IR/IU, and pollock roe stripping, an operator of a catcher vessel is engaged in a fishing trip from the time the harvesting of groundfish is begun until the offload or transfer of all fish or fish product from that vessel.

* * * * *

Harvest limit area (HLA) for Atka mackerel directed fishing for the purposes of §§ 679.4(b)(5)(vi)(B), 679.20(a)(8)(ii) and (iii), and 679.22(a)(8)(iv)(A), means the waters of statistical areas 542 and 543 that are (1) west of 178° W long. and (2) within 20 nm seaward of sites listed in Table 6 of this part that are located west of 177°57.00′ W long.

* * * * *

3. In § 679.4, paragraph (b)(5)(vi) is revised to read as follows:.

§ 679.4 Permits.

* * * * *

(b) * * *

(5) * * *

(vi) *Atka Mackerel, Pollock, and Pacific Cod Directed Fisheries.* (A) Indicate use of pot, hook-and-line, or trawl gear in the directed fisheries for pollock, Atka mackerel, or Pacific cod.

(B) Indicate directed fishing for Atka mackerel in the harvest limit area, as defined in § 679.2.

* * * * *

4. In § 679.5 paragraph (n)(2)(iii)(B)(*4*) is revised to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(n) * * *

(2) * * *

(iii) * * *

(B) * * *

(*4*) Indicate the intended target species.

* * * * *

5. In § 679.7, paragraph (c)(3) is removed, paragraphs (a)(1), (a)(17), (a)(18), (a)(19), and (b) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(1) *Federal Fisheries Permit.* (i) Fish for groundfish in the BSAI or GOA with a vessel of the United States that does not have on board a valid Federal Fisheries Permit issued under § 679.4.

(ii) Conduct directed fishing for Atka mackerel, Pacific cod, or pollock with pot, hook-and-line, or trawl gear from a vessel of the United States that does not have on board a valid Federal Fisheries Permit issued under § 679.4 and endorsed for Atka mackerel, Pacific cod, or pollock under § 679.4(b)(5)(vi).

* * * * *

(17) *Tender vessel.* (i) Use a catcher vessel or catcher/processor as a tender

vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

(ii) Use a catcher vessel or catcher/processor to harvest groundfish while operating as a tender vessel.

(18) *Pollock, Pacific Cod, and Atka Mackerel Directed Fishing and VMS.* Operate a vessel in any Federal reporting area when a vessel is authorized under § 679.4(b)(5)(vi) to participate in the Atka mackerel, Pacific cod, or pollock directed fisheries and the vessel's authorized species and gear type is open to directed fishing, unless the vessel carries an operable NMFS-approved Vessel Monitoring System (VMS) and complies with the requirements in § 679.28(f).

(19) *Atka Mackerel HLA Groundfish Prohibition.* For vessels registered for directed fishing for Atka mackerel HLA under § 679.20(a)(8)(iii), conduct directed fishing for groundfish, other than for Atka mackerel in an assigned HLA directed fishery under § 679.20(a)(8)(iii), during the time period that the first Atka mackerel HLA directed fishery to which the vessel is assigned under § 679.20(a)(8)(iii)(B) is open.

(b) *Prohibitions specific to the GOA.* (1) *Southeast outside trawl closure.* Use trawl gear in the GOA east of 140° W long.

(2) *Catcher vessel trip limit for pollock.* Retain on board a catcher vessel at any time during a trip, more than 300,000 lb (136 mt) of unprocessed pollock.

(3) *Tender vessel restrictions for pollock.* (i) Operate as a tender vessel east of 157°00′ W long. for pollock harvested in the GOA.

(ii) Operate as a tender vessel west of 157°00′ W long. while retaining on board at any time more than 600,000 lb (272 mt) of unprocessed pollock.

* * * * *

6. In § 679.20:

a. Remove paragraphs (a)(7)(iii)(B) and (f)(3), and redesignate paragraph (a)(7)(iii)(C) and (D) as (a)(7)(iii)(B) and (C).

b. Revise paragraphs (a)(5)(i)(A), (a)(5)(i)(B), (a)(5)(ii)(B), (a)(6)(ii), (a)(6)(iii), (a)(7)(i)(C)(*2*) and (*3*), (a)(7)(ii)(A), (a)(7)(ii)(D), (a)(7)(iii)(A), the newly designated paragraph (a)(7)(iii)(B), (a)(8)(ii)(C), (a)(8)(iii), (a)(11), (b)(2)(i), (b)(2)(ii), (c)(2)(i) and (c)(2)(ii), and (d)(4).

c. Add paragraph (e)(2)(iv) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(A) *BSAI seasonal allowances—(1) Inshore, catcher/processor, mothership, and CDQ components.* The portions of the BSAI area pollock directed fishing allowances allocated to each component under Sections 206(a) and 206(b) of the AFA will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(2), as follows: A Season, 40 percent; B Season, 60 percent.

(*2*) *Inseason adjustments.* Within any fishing year, the Regional Administrator may add or subtract any under harvest or over harvest of a seasonal allowance for a component to the subsequent seasonal allowance for the component through notification published in the **Federal Register**.

(B) *Steller sea lion conservation area (SCA) harvest limit.* For each component under Sections 206(a) and 206(b) of the AFA and for the open access fishery, no more than 28 percent of the annual pollock directed fishery allowance may be taken from the SCA before April 1. The SCA is defined at § 679.22(a)(7)(vii).

* * * * *

(ii) * * *

(B) GOA Western and Central Regulatory Areas seasonal apportionments. Each apportionment established under paragraph (a)(5)(ii)(A) of this section will be divided into four seasonal apportionments corresponding to the four fishing seasons set out at § 679.23(d)(2) as follows: A Season, 25 percent; B Season, 25 percent; C Season, 25 percent; and D Season, 25 percent. Within any fishing year, under harvest or over harvest of a seasonal apportionment may be added to or subtracted from remaining seasonal apportionments in a manner to be determined by the Regional Administrator, provided that any revised seasonal apportionment does not exceed 30 percent of the annual TAC apportionment for a GOA regulatory area.

* * * * *

(6) * * *

(ii) *GOA pollock.* The apportionment of pollock in all GOA regulatory areas and for each seasonal apportionment described in paragraph (a)(5)(ii) of this section will be allocated entirely to vessels catching pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

(iii) *GOA Pacific cod.* The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component in the GOA and 10 percent to vessels catching Pacific cod for processing by the offshore component in the GOA.

* * * * *

(7) * * *

(i) * * *

(C) * * *

(*2*) Harvest of Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using pot gear:

(*i*) Will accrue against the 18.3 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iii*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is open.

(*ii*) Will accrue against the 1.4 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is closed.

(*3*) Harvest of Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line gear:

(*i*) Will accrue against the 0.3 percent specified in paragraph (a)(7)(i)(C)(*1*)(*ii*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear is open.

(*ii*) Will accrue against the 1.4 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear is closed.

* * * * *

(ii) * * *

(A) *Reallocation within the trawl sector.* If, during a fishing season, the Regional Administrator determines that either component of catcher vessels using trawl gear or catcher/processors using trawl gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraph (a)(7)(i), (a)(7)(ii)(C), or (a)(7)(iii)(A) of this section, he/she may reallocate the projected unused amount of Pacific cod to vessels using trawl gear in the other component through notification in the **Federal Register** before any reallocation to vessels using other gear type(s).

* * * * *

(D) *Unused seasonal allowance for trawl.* Any unused portion of a seasonal allowance of Pacific cod for vessels using trawl gear under paragraph (a)(7)(ii) or (a)(7)(iii)(A) of this section may be reapportioned by the Regional

Administrator to the subsequent seasonal allocations for vessels using trawl gear.

(iii) * * *

(A) *Seasonal apportionment and gear allocations.* The Pacific cod BSAI gear allocations and apportionments by seasons, as specified in § 679.23 (e)(5), are as follows:

Gear Type	A season	B season	C season
(1) trawl	60 percent	20 percent	20 percent
(i) trawl CV	70 percent	10 percent	20 percent
(ii) trawl CP	50 percent	30 percent	20 percent
(2) hook-and-line ≥ 60 ft (18.3 m) LOA, non-CDQ pot vessels ≥ 60 ft (18.3 m) LOA, and jig vessels	60 percent	40 percent	
(3) all other nontrawl vessels	no seasonal apportionment		

(B) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) of this section will be reallocated to the remaining seasons during the current fishing year in a manner determined by NMFS, after consultation with the Council.

(8) * * *

(ii) * * *

(C) *Harvest limit area (HLA) limits.* Atka mackerel harvest is limited in the HLA, as defined in § 679.2, as follows:

(*1*) The Regional Administrator will establish an HLA harvest limit of no more than 60 percent of the seasonal TAC as specified in paragraph (a)(8)(ii)(A) of this section.

(*2*) *CDQ fishing.* A CDQ group is prohibited from exceeding the CDQ portion of the percentage of annual Atka mackerel in areas 542 and/or 543 specified in paragraph (a)(8)(ii)(C)(1) of this section for the HLA.

(iii) *Atka mackerel HLA directed fishing*--(A) *Registration.* All vessels using trawl gear to conduct directed fishing for Atka mackerel in the HLA, as defined in § 679.2, are required to register with NMFS. To register, the vessel owner or operator must provide information required by § 679.4(b)(5)(vi) for an endorsement to the vessel's Federal Fisheries Permit issued under § 679.4.

(*1*) To participate in the A season HLA fishery, registration information must be received by NMFS, Restricted Access Management Program, by 4:30 p.m., A.l.t., of the first working day following January 1.

(*2*) To participate in the B season HLA fishery,

(*i*) The vessel must be registered for the A season HLA fishery and must maintain registration for the HLA fishery through the first working day following July 31, or

(*ii*) The vessel must be registered for the HLA fishery with NMFS, Restricted Access Management Program, by 4:30 p.m., A.l.t., of the first working day following July 31.

(B) *HLA assignment.* For each season, NMFS will manage the HLA directed fishery for the vessels registered to fish in areas 542 or 543 under paragraph (a)(8)(iii)(A) of this section as follows:

(*1*) *Lottery.* The Regional Administrator or his/her designee will randomly assign each vessel to one of two directed fisheries for each statistical area in which the vessel is registered under paragraph (a)(8)(iii)(A) of this section. Each HLA directed fishery within a statistical area will be assigned an equal number of vessels unless there is an odd number of vessels under paragraph (a)(8)(iii)(A) of this section. In the case of an odd number of vessels, the Regional Administrator or his/her designee will assign one additional vessel to one HLA directed fishery. Vessels registering under paragraph (a)(8)(iii)(A) of this section to fish in both area 542 and area 543 will be randomly assigned to an HLA directed fishery in area 542 and will be placed in the area 543 HLA directed fishery occurring at an alternate time during the season.

(*2*) *Notification.* The Regional Administrator will provide the results of the lottery under (a)(8)(iii)(B)(1) of this section by notification published in the **Federal Register** and other means of practicable notification.

(C) *HLA directed fisheries.* 48 hours after a prohibited directed fishing for Atka mackerel in area 541, the Regional Administrator will allow directed fishing within the HLA in areas 542 and 543. The Regional Administrator will provide notification by publication in the **Federal Register** of the opening and closure dates of the HLA directed fisheries, as determined by paragraph (a)(8)(iii)(E) of this section. Closures specified in Table 6 to this part and in § 679.22(a)(8) will remain in effect.

(D) *HLA harvest limit.* The Regional Administrator will establish the harvest limit for each HLA directed fishery for each area based on the seasonal apportionment at paragraph (a)(8)(ii)(C) of this section and in proportion to the number of vessels in an HLA directed fishery compared to the total number of vessels fishing in the HLA of an area during a season.

(E) *HLA directed fishery closure.* The Regional Administrator will establish the closure date of the Atka mackerel

HLA directed fishery for each statistical area based on the estimated fishing capacity of vessels registered to fish in the area and assigned to the HLA directed fishery under paragraph (a)(8)(iii)(B) of this section. Each HLA directed fishery will last no longer than 14 days.

(F) *Groundfish directed fishery prohibition.* Vessels registering under paragraph (a)(8)(iii)(A) of this section are prohibited from participating in any groundfish directed fishery other than the one assigned under paragraph (a)(8)(iii)(B) of this section during the opening of the first HLA directed fishery assigned to the vessel in a season, as specified in § 679.7(a)(19).

* * * * *

(11) *GOA Pacific cod TAC*—(i) *Seasonal apportionment.* The TAC established for Pacific cod in the Western and Central Regulatory Areas of the GOA will be divided 60 percent to the A season and 40 percent to the B season, as specified in § 679.23(d)(3).

(ii) The Regional Administrator may apply any underage or overage of Pacific cod harvest from one season to the subsequent season. In adding or subtracting any underages or overages to the subsequent season, the Regional Administrator shall consider bycatch needed to optimize catch by gear groups and sectors.

(iii) Pacific cod catch between the A and B seasons. Pacific cod harvested between the closure of the A season and opening of the B season shall be deducted from the B season TAC apportionment.

* * * * *

(b) * * *

(2) * * *

(i) *Pollock inshore-offshore reapportionment.* Any amounts of the GOA reserve that are reapportioned to pollock as provided by paragraph (b) of this section must be apportioned for processing by the inshore component in the GOA and the offshore component in the GOA in the same proportions specified in paragraph (a)(6)(ii) of this section.

(ii) *Pacific Cod inshore-offshore reapportionment.* Any amounts of the GOA reserve that are reapportioned to Pacific cod as provided by paragraph (b) of this section must be apportioned for processing by the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(iii) of this section.

* * * * *

(c)

(2)

(i) GOA. One-fourth of each proposed TAC and apportionment thereof (not including the reserves or the first seasonal allowances of pollock or Pacific cod), one-fourth of the proposed halibut prohibited species catch amounts, and the proposed first seasonal allowances of pollock and Pacific cod.

(ii) *BSAI.* Except for pollock, Pacific cod, Atka mackerel, and the hook-and-line and pot gear allocation of sablefish, one quarter of each proposed initial TAC and apportionment thereof, one quarter of each CDQ reserve established by paragraph (b)(1)(iii) of this section, and one quarter of the proposed PSQ reserve and prohibited species catch allowances established by § 679.21.

(A) The interim specifications for pollock, Pacific cod, and Atka mackerel will be equal to the first seasonal allowances for pollock, Pacific cod, and Atka mackerel that are published in the proposed specifications under paragraph (c)(1) of this section.

(B) The interim specifications for CDQ pollock, CDQ Atka mackerel, and CDQ Pacific cod will be equal to the first seasonal allowances that are published in the proposed specifications under paragraph (c)(1) of this section.

* * * * *

(d) * * *

(4) *Harvest control for pollock, Atka mackerel, and Pacific cod.* If a biological assessment of stock condition for pollock, Pacific cod, or Atka mackerel within an area projects that the spawning biomass in that area will be equal to or below 20 percent of the projected unfished spawning biomass during a fishing year, the Regional Administrator will prohibit the directed fishery for the relevant species within the area. The Regional Administrator will prohibit the directed fishery under this paragraph by notification published in the **Federal Register**. The directed fishery will remain closed until a subsequent biological assessment projects that the spawning biomass for the species in the area will exceed 20 percent of the projected unfished spawning biomass during a fishing year.

* * * * *

(e) * * *

(2) * * *

(iv) The maximum retainable amount for vessels fishing during an individual fishing trip in areas closed to directed fishing and in areas open to directed fishing is the lowest maximum retainable amount applicable to the prohibited species or species group in any of these areas, and this maximum retainable amount must be applied for the duration of the individual fishing trip.

* * * * *

7. In § 679.22, paragraphs (a)(5), (a)(7), (a)(8), (b)(2), and (b)(3) are revised to read as follows:

§ 679.22 Closures.

(a) * * *

(5) *Catcher Vessel Operational Area (CVOA)*—(i) *Definition.* The CVOA is defined as that part of the BSAI that is south of 56°00′ N lat. and between 163°00′ W long. and 167°30′ W long., and north of the Aleutian Islands (Figure 2 to part 679).

(ii) *Catcher/processor restrictions.* A catcher/processor vessel authorized to fish for BSAI pollock under § 679.4 is prohibited from conducting directed fishing for pollock in the CVOA during the B pollock season defined at § 679.23(e)(2)(ii), unless it is operating under a CDP approved by NMFS.

* * * * *

(7) *Steller sea lion protection areas, Bering Sea subarea*—(i) *Bogoslof area*—(A) *Boundaries.* The Bogoslof area consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00′ N lat./170°00′ W long., and 55°00′ N lat./168°11′4.75″ W long.;

(B) *Fishing prohibition.* All waters within the Bogoslof area are closed to directed fishing for pollock, Pacific cod, and Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b), except as provided in paragraph (a)(7)(i)(C) of this section.

(C) *Bogoslof Pacific cod exemption area.* (*1*) All catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear for directed fishing for Pacific cod are exempt from the Pacific cod fishing prohibition as described in paragraph (a)(7)(i)(B) of this section in the portion of the Bogoslof area south of a line connecting a point 3 nm north of Bishop Point (54°01′25″ N lat./166°57′00″ W long.) to Cape Tanak (53°33′50″ N lat./168°00′00″ W long.), not including waters of the Bishop Point Pacific cod fishing closures as described in Table 5 of this part.

(*2*) If the Regional Administrator determines that 113 mt of Pacific cod have been caught by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the exemption area described in paragraph (a)(7)(i)(C)(1) of this section, the Regional Administrator will prohibit directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the exemption area by notification published in the **Federal Register**.

(ii) *Bering Sea Pollock Restriction Area.* (A) *Boundaries.* The Bering Sea Pollock Restriction Area consists of all waters of the Bering Sea subarea south

of a line connecting the points 163°0′00″ W long./55°46′30″ N lat., 165°08′00″ W long./54°42′9″ N lat., 165°40′00″ W long./54°26′30″ N lat., 166°12′00″ W long./54°18′40″ N lat., and 167°0′00″ W long./54°8′50″ N lat.

(B) *Fishing prohibition.* All waters within the Bering Sea Pollock Restriction Area are closed during the A season, as defined at § 679.23(e)(2), to directed fishing for pollock by vessels named on a Federal Fisheries Permit under § 679.4(b).

(iii) *Groundfish closures.* Directed fishing for groundfish by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited within 3 nm of selected sites. These sites are listed in Table 12 of this part and are identified by "Bering Sea" in column 2.

(iv) *Pollock closures.* Directed fishing for pollock by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited within pollock no-fishing zones around selected sites. These sites are listed in Table 4 of this part and are identified by "Bering Sea" in column 2.

(v) *Pacific cod closures.* Directed fishing for Pacific cod by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl, hook-and-line, or pot gear is prohibited within the Pacific cod no-fishing zones around selected sites. These sites and gear types are listed in Table 5 of this part and are identified by "BS" in column 2.

(vi) *Atka mackerel closures.* Directed fishing for Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl gear is prohibited within Atka mackerel no-fishing zones around selected sites. These sites are listed in Table 6 to this part and are identified by "Bering Sea" in column 2.

(vii) *Steller sea lion conservation area (SCA)*—(A) *General.* Directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, motherships in the offshore component, or directed fishing for CDQ pollock, is prohibited within the SCA until April 1 when the Regional Administrator announces, by notification in the **Federal Register**, that the criteria set out in paragraph (a)(7)(vii)(C) of this section have been met by that industry component.

(B) *Boundaries.* The SCA consists of the area of the Bering Sea subarea between 170°00′ W long. and 163°00′ W long., south of straight lines connecting the following points in the order listed:

55°00′ N lat. 170°00′ W long.;
55°00′ N lat. 168°00′ W long.;
55°30′ N lat. 168°00′ W long.;
55°30′ N lat. 166°00′ W long.;
56°00′ N lat. 166°00′ W long.; and,
56°00′ N lat. 163°00′ W long.

(C) *Criteria for closure—1) General.* The directed fishing closures identified in paragraph (a)(7)(vii)(A) of this section will take effect when the Regional Administrator determines that the harvest limit for pollock within the SCA, as specified in § 679.20(a)(5)(i)(B) is reached before April 1. The Regional Administrator shall prohibit directed fishing for pollock in the SCA by notification published in the **Federal Register.**

(*2*) *Inshore catcher vessels greater than 99 ft (30.2 m) LOA.* The Regional Administrator will prohibit directed fishing for pollock by vessels greater than 99 ft (30.2 m) LOA, catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit before April 1 to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA until April 1. The Regional Administrator will estimate how much of the inshore seasonal allowance is likely to be harvested by catcher vessels less than or equal to 99 ft (30.2 m) LOA and reserve a sufficient amount of the inshore SCA allowance to accommodate fishing by such vessels after the closure of the SCA to inshore vessels greater than 99 ft (30.2 m) LOA. The Regional Administrator will prohibit directed fishing for all inshore catcher vessels within the SCA when the harvest limit specified in § 679.20(a)(5)(i)(B) has been met before April 1.

(8) *Steller sea lion protection areas, Aleutian Islands subarea*—(i) *Seguam Foraging area.* (A) The Seguam foraging area is all waters within the area between 52°N lat. and 53° N lat. and between 173°30′ W long. and 172°30′ W long.

(B) Directed fishing for pollock, Pacific cod, and Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited in the Seguam Foraging area as described in paragraph (a)(8)(i)(A) of this section.

(ii) *Pollock Closure.* Directed fishing for pollock by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited within the pollock no-fishing zones around selected sites. These sites are listed in Table 4 of this part and are identified by "Aleutian I." in column 2.

(iii) *Groundfish closures.* Directed fishing for groundfish by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited within 3 nm of selected sites. These sites are listed in Table 12 of this part and are identified by "Aleutian Islands" in column 2.

(iv) *Pacific cod closures*—(A) *HLA Closure.* Directed fishing for Pacific cod by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl gear is prohibited in the HLA in area 542 or area 543, as defined in § 679.2 when the Atka mackerel HLA directed fishery in area 542 or area 543 is open.

(B) *Gear specific closures.* Directed fishing for Pacific cod by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl, hook-and-line, or pot gear is prohibited within the Pacific cod no-fishing zones around selected sites. These sites and gear types are listed in Table 5 of this part and are identified by "AI" in column 2.

(v) *Atka mackerel closures.* Directed fishing for Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl gear is prohibited within Atka mackerel no-fishing zones around selected sites. These sites are listed in Table 6 of this part and are identified by "Aleutian Islands" in column 2.

* * * * *

(b) * * *

(2) *Steller sea lion protection areas*—(i) *Groundfish closures.* Directed fishing for groundfish by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited within 3 nm of selected sites. These sites are listed in Table 12 of this part and are identified by "Gulf of Alaska" in column 2.

(ii) *Pollock closures.* Directed fishing for pollock by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited within pollock no-fishing zones around selected sites. These sites are listed in Table 4 of this part and are identified by "Gulf of Alaska" in column 2.

(iii) *Pacific cod closures.* Directed fishing for Pacific cod by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl, hook-and-line, or pot gear in the federally managed Pacific cod or State of Alaska parallel groundfish fisheries, as defined in Alaska Administrative Code (5 AAC 28.087(c), January 3, 2002), is prohibited within Pacific cod no-fishing zones around selected sites. These sites and gear types are listed in Table 5 of this part and are identified by "GOA" in column 2.

(iv) *Atka mackerel closure.* Directed fishing for Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b) within the Gulf of Alaska subarea is prohibited at all times.

(3) *Chiniak Gully Research Area* (applicable through December 31, 2004).

(i) *Description of Chiniak Gully Research Area.* The Chiniak Gully Research Area is defined as that part of area 630 bounded by straight lines connecting the coordinates in the order listed:

57.81° N lat., 152.37° W long.;
57.81° N lat., 151.85° W long.;
57.22° N lat., 150.64° W long.;
56.98° N lat., 151.27° W long.;
57.62° N lat., 152.16° W long.; and hence counterclockwise along the shoreline of Kodiak Island to 57.81° N lat., 152.37° W long.

(ii) *Closure*—(A) The Chiniak Gully Research Area is closed to vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl gear from August 1 to a date no later than September 20, except that trawl gear may be tested in the manner described at § 679.24(d)(2) in the Kodiak Test Area defined at § 679.24 (d)(4)(i) and illustrated in Figure 7 to this part.

(B) Prior to September 20, the Regional Administrator may publish notification in the **Federal Register** rescinding the trawl closure in the Chiniak Gully Research Area described in paragraph (b)(3)(ii)(A) of this section.

* * * * *

8. In § 679.23, paragraphs (d)(2), (d)(3), (e)(2), (e)(3), (e)(4)(iii), (e)(5) and (i) are revised to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(2) *Directed fishing for pollock.* Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following four seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., February 25;

(ii) *B season.* From 1200 hours, A.l.t., March 10 through 1200 hours, A.l.t., May 31;

(iii) *C season.* From 1200 hours, A.l.t., August 25 through 1200 hours, A.l.t., September 15; and

(iv) *D season.* From 1200 hours, A.l.t., October 1 through 1200 hours, A.l.t., November 1.

(B) B season. From 1200 hours, A.l.t., September 1 through 2400 hours, A.l.t., December 31.

(ii) *Trawl gear.* Subject to other provisions of this part, directed fishing for Pacific cod with trawl gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10; and

(B) B season. From 1200 hours, A.l.t., September 1 through 1200 hours, A.l.t., November 1.

* * * * *

(e) * * *

(2) *Directed fishing for pollock in the Bering Sea/Aleutian Islands area by inshore, offshore catcher/processor, and mothership components and pollock CDQ fisheries.* Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, and motherships in the offshore component in the Bering Sea/Aleutian Islands area or directed fishing for CDQ pollock in the Bering Sea/Aleutian Islands area is authorized only during the following two seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10; and

(ii) *B season.* From 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

(3) *Directed fishing for Atka mackerel with trawl gear.* Subject to other provisions of this part, non-CDQ directed fishing for Atka mackerel with trawl gear in the Aleutian Islands subarea is authorized only during the following two seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., April 15; and

(ii) *B season.* From 1200 hours, A.l.t., September 1 through 1200 hours, A.l.t., November 1.

* * * * *

(4) * * *

(iii) *Groundfish CDQ.* Fishing for groundfish CDQ species, other than CDQ pollock; hook-and-line, jig, or trawl CDQ Pacific cod; and fixed gear CDQ sablefish under subpart C of this part, is authorized from 0001 hours, A.l.t., January 1 through the end of each fishing year, except as provided under paragraph (c) of this section.

(5) *Directed fishing for Pacific cod*—(i) *Hook-and-line and jig gear.* Subject to other provisions of this part, directed fishing for CDQ and non-CDQ Pacific cod with vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear and with vessels using jig gear in the BSAI is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., June 10 through 2400 hours, A.l.t., December 31.

(ii) *Trawl gear.* Subject to other provisions of this part, directed fishing for CDQ and non-CDQ Pacific cod with trawl gear in the BSAI is authorized only during the following three seasons:

(A) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., April 1;

(B) *B season.* From 1200 hours, A.l.t., April 1 through 1200 hours, A.l.t., June 10; and

(C) *C season.* From 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

(iii) *Pot gear.* Subject to other provisions of this part, non-CDQ directed fishing for Pacific cod with vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear in the BSAI is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., September 1 through 2400 hours, A.l.t., December 31.

* * * * *

(i) *Catcher vessel exclusive fishing seasons for pollock.* Catcher vessels are prohibited from participating in directed fishing for pollock under the following conditions. Vessels less than 125 ft (38.1 m) LOA are exempt from this restriction when fishing east of 157°00′ W long. GOA and BSAI seasons are specified at § 679.23(d)(2) and § 679.23(e)(2).

(3) *Directed fishing for Pacific cod* (i) *Hook-and-line, pot, or jig gear.* Subject to other provisions of this part, directed fishing for Pacific cod with hook-and-line, pot, or jig gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

	If you own or operate a catcher vessel and engage in directed fishing for pollock in the	During the...	Then you are prohibited from subsequently engaging in directed fishing for pollock with that catcher vessel in the...
(1)	BSAI	(i) A season	GOA until the following C season
		(ii)B season	GOA until the A season of the next year
(2)	GOA	(i) A season	BSAI until the following B season
		(ii) B season	BSAI until the following B season
		(iii) C season	BSAI until the A season of the following year
		(iv) D season	BSAI until the A season of the following year

9. In § 679.28, paragraphs (f)(3)(ii) and (f)(3)(iii) are revised, and paragraphs (f)(4), (f)(5), and (f)(6) are added to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(3) * * *

(ii) Activate the VMS transmitter and receive confirmation from NMFS that the VMS transmissions are being received before engaging in operations when a VMS is required.

(iii) Continue the VMS transmissions until no longer engaged in operations requiring VMS.

* * * * *

(4) What must the vessel owner do before activating a VMS transmitter for the first time? If you are a vessel owner who must use a VMS and you are activating a VMS transmitter for the first time, you must:

(i) Contact the NMFS enforcement division by FAX at 907–586–7703 and provide: the VMS transmitter ID, the vessel name, the Federal Fisheries Permit number, and approximately when and where the vessel will begin fishing.

(ii) Call NMFS enforcement at 907–586–7225, Monday through Friday, between the hours of 0800 hours, A.l.t., and 1630 hours, A.l.t., at least 72 hours before leaving port and receive confirmation that the transmissions are being received.

(5) *What must the vessel owner do when the vessel replaces a VMS transmitter?* If you are a vessel owner who must use a VMS and you wish to replace a transmitter, you must either:

(i) Have followed the reporting and confirmation procedure for the replacement transmitter, as described above in paragraph (f)(4) of this section, or

(ii) Contact the NMFS Enforcement Division by phone or FAX and provide: the replacement VMS transmitter ID, the vessel name and the vessel's Federal Fisheries Permit Number and receive confirmation that the transmissions are being received before beginning operations.

(6) *When must the VMS transmitter be transmitting?* Your vessel's transmitter must be transmitting if the vessel is operating in any Reporting Area (see definitions at § 679.2) off Alaska while any fishery requiring VMS, for which the vessel has a species and gear endorsement on its Federal Fisheries Permit under § 679.4(b)(5)(vi), is open.

§ 679.32 [Amended]

10. In § 679.32, paragraph (e) is removed and reserved.

11. In § 679.50, paragraph (c)(1)(x) is revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(c) * * *

(1) * * *(x) A vessel directed fishing with trawl gear for Atka mackerel in the Aleutian Islands subarea must carry two NMFS-certified observers at all times while directed fishing for Atka mackerel in the HLA directed fishery, as specified in § 679.20(a)(8).

* * * * *

12. In 50 CFR part 679, Tables 21, 22, 23, and 24 are deleted, Tables 4, 5, and 6 are revised, Table 12 is added, and Table 13 is removed and reserved to read as follows:

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Table 4 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pollock Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St. Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			3
St. Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			3
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			3
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			3
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Attu I./Cape Wrangell	Aleutian I.	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20
Agattu I./Gillon Pt.	Aleutian I.	52 24.13 N	173 21.31 E			20
Attu I./Chirikof Pt.	Aleutian I.	52 49.75 N	173 26.00 E			20
Agattu I./Cape Sabak	Aleutian I.	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20
Alaid I.	Aleutian I.	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20
Shemya I.	Aleutian I.	52 44.00 N	174 08.70 E			20
Buldir I.	Aleutian I.	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20
Kiska I./Cape St. Stephen	Aleutian I.	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20
Kiska I./Sobaka & Vega	Aleutian I.	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20
Kiska I./Lief Cove	Aleutian I.	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20
Kiska I./Sirius Pt.	Aleutian I.	52 08.50 N	177 36.50 E			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Tanadak I. (Kiska)	Aleutian I.	51 56.80 N	177 46.80 E			20
Segula I.	Aleutian I.	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20
Ayugadak Point	Aleutian I.	51 45.36 N	178 24.30 E			20
Rat I./Krysi Pt.	Aleutian I.	51 49.98 N	178 12.35 E			20
Little Sitkin I.	Aleutian I.	51 59.30 N	178 29.80 E			20
Amchitka I./Column Rocks	Aleutian I.	51 32.32 N	178 49.28 E			20
Amchitka I./East Cape	Aleutian I.	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20
Amchitka I./Cape Ivakin	Aleutian I.	51 24.46 N	179 24.21 E			20
Semisopochnoi/Petrel Pt.	Aleutian I.	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20
Semisopochnoi I./Pochnoi Pt.	Aleutian I.	51 57.30 N	179 46.00 E			20
Amatignak I. Nitrof Pt.	Aleutian I.	51 13.00 N	179 07.80 W			20
Unalga & Dinkum Rocks	Aleutian I.	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20
Ulak I./Hasgox Pt.	Aleutian I.	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20
Kavalga I.	Aleutian I.	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20
Tag I.	Aleutian I.	51 33.50 N	178 34.50 W			20
Ugidak I.	Aleutian I.	51 34.95 N	178 30.45 W			20
Gramp Rock	Aleutian I.	51 28.87 N	178 20.58 W			20
Tanaga I./Bumpy Pt.	Aleutian I.	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20
Bobrof I.	Aleutian I.	51 54.00 N	177 27.00 W			20
Kanaga I./Ship Rock	Aleutian I.	51 46.70 N	177 20.72 W			20
Kanaga I./North Cape	Aleutian I.	51 56.50 N	177 09.00 W			20
Adak I.	Aleutian I.	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20
Little Tanaga Strait	Aleutian I.	51 49.09 N	176 13.90 W			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Great Sitkin I.	Aleutian I.	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20
Anagaksik I.	Aleutian I.	51 50.86 N	175 53.00 W			20
Kasatochi I.	Aleutian I.	52 11.11 N	175 31.00 W			20
Atka I./North Cape	Aleutian I.	52 24.20 N	174 17.80 W			20
Amlia I./Sviech. Harbor[11]	Aleutian I.	52 01.80 N	173 23.90 W			20
Sagigik I.[11]	Aleutian I.	52 00.50 N	173 09.30 W			20
Amlia I./East[11]	Aleutian I.	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20
Tanadak I. (Amlia[11])	Aleutian I.	52 04.20 N	172 57.60 W			20
Agligadak I.[11]	Aleutian I.	52 06.09 N	172 54.23 W			20
Seguam I./Saddleridge Pt.[11]	Aleutian I.	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20
Seguam I./Finch Pt.	Aleutian I.	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20
Seguam I./South Side	Aleutian I.	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	20
Amukta I. & Rocks	Aleutian I.	52 27.25 N	171 17.90 W			20
Chagulak I.	Aleutian I.	52 34.00 N	171 10.50 W			20
Yunaska I.	Aleutian I.	52 41.40 N	170 36.35 W			20
Uliaga[3]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			20
Kagamil[3]	Bering Sea	53 02.10 N	169 41.00 W			10
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			20
Adugak I.[3]	Bering Sea	52 54.70 N	169 10.50 W			10
Umnak I./Cape Aslik[3]	Bering Sea	53 25.00 N	168 24.50 W			BA
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			20
Bogoslof I./Fire I.[3]	Bering Sea	53 55.69 N	168 02.05 W			BA

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			20
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			20
Unalaska/Cape Izigan	Gulf of Alaska	53 13.64 N	167 39.37 W			20
Unalaska/Bishop Pt.[9]	Bering Sea	53 58.40 N	166 57.50 W			10
Akutan I./Reef-lava[9]	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10
Unalaska I./Cape Sedanka[6]	Gulf of Alaska	53 50.50 N	166 05.00 W			20
Old Man Rocks[6]	Gulf of Alaska	53 52.20 N	166 04.90 W			20
Akutan I./Cape Morgan[6]	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20
Akun I./Billings Head[9]	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10
Rootok[6]	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20
Tanginak I.[6]	Gulf of Alaska	54 12.00 N	165 19.40 W			20
Tigalda/Rocks NE[6]	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20
Unimak/Cape Sarichef[9]	Bering Sea	54 34.30 N	164 56.80 W			10
Aiktak[6]	Gulf of Alaska	54 10.99 N	164 51.15 W			20
Ugamak I.[6]	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20
Round (GOA)[6]	Gulf of Alaska	54 12.05 N	164 46.60 W			20
Sea Lion Rock (Amak)[9]	Bering Sea	55 27.82 N	163 12.10 W			10
Amak I. And rocks[9]	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			10
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			3
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			10
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			10
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			3
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			10
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			20
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			3
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	3
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			3
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			3
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			20
Spit I.	Gulf of Alaska	55 46.60 N	158 53.90 W			3
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			3
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			20
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			20
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	55 00.30 N	156 41.60 W	20
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			20
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20
Puale Bay	Gulf of Alaska	57 40.60 N	155 23.10 W			10
Kodiak/Cape Ikolik	Gulf of Alaska	57 17.20 N	154 47.50 W			3
Takli I.	Gulf of Alaska	58 01.75 N	154 31.25 W			10
Cape Kuliak	Gulf of Alaska	58 08.00 N	154 12.50 W			10
Cape Gull	Gulf of Alaska	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			10
Sitkinak/Cape Sitkinak	Gulf of Alaska	56 34.30 N	153 50.96 W			10
Shakun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			10
Twoheaded I.	Gulf of Alaska	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10
Cape Douglas (Shaw I.)	Gulf of Alaska	59 00.00 N	153 22.50 W			10
Kodiak/Cape Barnabas	Gulf of Alaska	57 10.20 N	152 53.05 W			3
Kodiak/Gull Point[4]	Gulf of Alaska	57 21.45 N	152 36.30 W			10, 3
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			10
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			10
Ugak I.[4]	Gulf of Alaska	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			10
Long I.	Gulf of Alaska	57 46.82 N	152 12.90 W			10
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			10
Kodiak/Cape Chiniak	Gulf of Alaska	57 37.90 N	152 08.25 W			10
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			20
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			10
Marmot I.[5]	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20
Nagahut Rock	Gulf of Alaska	59 06.00 N	151 46.30 W			10
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			10
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			10
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			10
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			10
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	10
Point Elrington[7, 10]	Gulf of Alaska	59 56.00 N	148 15.20 W			20
Perry I.[7]	Gulf of Alaska	60 44.00 N	147 54.60 W			
The Needle[7]	Gulf of Alaska	60 06.64 N	147 36.17 W			
Point Eleanor[7]	Gulf of Alaska	60 35.00 N	147 34.00 W			
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			20
Glacier Island[7]	Gulf of Alaska	60 51.30 N	147 14.50 W			
Seal Rocks (Cordova)[10]	Gulf of Alaska	60 09.78 N	146 50.30 W			20
Cape Hinchinbrook[10]	Gulf of Alaska	60 14.00 N	146 38.50 W			20
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			10
Hook Point[10]	Gulf of Alaska	60 20.00 N	146 15.60 W			20
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			20

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(iv), (a)(8)(ii) and (b)(2)(ii).

[3] This site lies within the Bogoslof area (BA). The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00' N/170°00' W, and 55°00' N/168°11'4.75" W.

[4] The trawl closure between 0 nm to 10 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 3 nm is effective from August 25 through November 1.

[5] Trawl closure between 0 nm to 15 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 20 nm is effective from August 25 to November 1.

[6] Restriction area includes only waters of the Gulf of Alaska Area.

[7] Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[8] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the BA.

[9] This site is located in the Bering Sea Pollock Restriction Area, closed to pollock trawling during the A season. This area consists of all waters of the Bering Sea subarea south of a line connecting the points 163° 0'00" W long./55°46'30" N lat., 165°08'00" W long./54°42'9" N lat., 165°40'00" long./54°26'30" N lat., 166°12'00" W long./54°18'40" N lat., and 167°0'00" W long./54°8'50" N lat.

[10] The 20 nm closure around this site is effective in federal waters outside of State of Alaska waters of Prince William Sound.

[11] Some or all of the restricted area is located in the Seguam Foraging area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

Table 5 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
St. Lawrence I./S Punuk I.	BS	63 04.00 N	168 51.00 W			20	20	20
St. Lawrence I./SW Cape	BS	63 18.00 N	171 26.00 W			20	20	20
Hall I.	BS	60 37.00 N	173 00.00 W			20	20	20
St. Paul I./Sea Lion Rock	BS	57 06.00 N	170 17.50 W			3	3	3
St. Paul I./NE Pt.	BS	57 15.00 N	170 06.50 W			3	3	3
Walrus I. (Pribilofs)	BS	57 11.00 N	169 56.00 W			10	3	3
St George I./Dalnoi Pt.	BS	56 36.00 N	169 46.00 W			3	3	3
St. George I./S. Rookery	BS	56 33.50 N	169 40.00 W			3	3	3
Cape Newenham	BS	58 39.00 N	162 10.50 W			20	20	20
Round (Walrus Islands)	BS	58 36.00 N	159 58.00 W			20	20	20
Attu I./Cape Wrangell[11]	AI	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20, 10	3	3
Agattu I./Gillon Pt.[11]	AI	52 24.13 N	173 21.31 E			20, 10	3	3
Attu I./Chirikof Pt.[11]	AI	52 49.75 N	173 26.00 E			20, 3		
Agattu I./Cape Sabak[11]	AI	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20, 10	3	3
Alaid I.[11]	AI	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20, 3		
Shemya I.[11]	AI	52 44.00 N	174 08.70 E			20, 3		
Buldir I.[11]	AI	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20, 10	10	10
Kiska I./Cape St. Stephen[11]	AI	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20, 10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kiska I. Sobaka & Vega[11]	AI	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20, 3		
Kiska I./Lief Cove[11]	AI	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20, 10	3	3
Kiska I./Sirius Pt.[11]	AI	52 08.50 N	177 36.50 E			20, 3		
Tanadak I. (Kiska)[11]	AI	51 56.80 N	177 46.80 E			20, 3		
Segula I.[11]	AI	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20, 3		
Ayugadak Point[11]	AI	51 45.36 N	178 24.30 E			20, 10	3	3
Rat I./Krysi Pt.[11]	AI	51 49.98 N	178 12.35 E			20, 3		
Little Sitkin I.[11]	AI	51 59.30 N	178 29.80 E			20, 3		
Amchitka I./Column[11]	AI	51 32.32 N	178 49.28 E			20, 10	3	3
Amchitka I./East Cape[11]	AI	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20,10	3	3
Amchitka I./Cape Ivakin[11]	AI	51 24.46 N	179 24.21 E			20, 3		
Semisopochnoi/Petrel Pt.[11]	AI	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20, 10	3	3
Semisopochnoi I./Pochnoi Pt.[11]	AI	51 57.30 N	179 46.00 E			20, 10	3	3
Amatignak I./Nitrof Pt.[11]	AI	51 13.00 N	179 07.80 W			20, 3		
Unalga & Dinkum Rocks[11]	AI	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20, 3		
Ulak I./Hasgox Pt.[11]	AI	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20, 10	3	3
Kavalga I.[11]	AI	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20, 3		
Tag I.[11]	AI	51 33.50 N	178 34.50 W			20, 10	3	3
Ugidak I.[11]	AI	51 34.95 N	178 30.45 W			20, 3		
Gramp Rock[11]	AI	51 28.87 N	178 20.58 W			20, 10	3	3
Tanaga I./Bumpy Pt.	AI	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	3		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Bobrof I.	AI	51 54.00 N	177 27.00 W			3		
Kanaga I./Ship Rock	AI	51 46.70 N	177 20.72 W			3		
Kanaga I./North Cape	AI	51 56.50 N	177 09.00 W			3		
Adak I.	AI	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	10	3	3
Little Tanaga Strait	AI	51 49.09 N	176 13.90 W			3		
Great Sitkin I.	AI	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	3		
Anagaksik I.	AI	51 50.86 N	175 53.00 W			3		
Kasatochi I.	AI	52 11.11 N	175 31.00 W			10	3	3
Atka I./N. Cape	AI	52 24.20 N	174 17.80 W			3		
Amlia I./Sviech. Harbor[4]	AI	52 01.80 N	173 23.90 W			3		
Sagigik I.[4]	AI	52 00.50 N	173 09.30 W			3		
Amlia I./East[4]	AI	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	3	20	20
Tanadak I. (Amlia)[4]	AI	52 04.20 N	172 57.60 W			3	20	20
Agligadak I.[4]	AI	52 06.09 N	172 54.23 W			20	20	20
Seguam I./Saddleridge Pt.[4]	AI	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	10	20	20
Seguam I./Finch Pt.	AI	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	3	20	20
Seguam I./South Side	AI	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	3	20	20
Amukta I. & Rocks	AI	52 27.25 N	171 17.90 W			3	20	20
Chagulak I.	AI	52 34.00 N	171 10.50 W			3	20	20
Yunaska I.	AI	52 41.40 N	170 36.35 W			10	20	20
Uliaga[5, 14]	BS	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10	BA	BA
Chuginadak[14]	GOA	52 46.70 N	169 41.90 W			20	10	20

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kagamil[5, 14]	BS	53 02.10 N	169 41.00 W			10	BA	BA
Samalga	GOA	52 46.00 N	169 15.00 W			20	10	20
Adugak I.[5]	BS	52 54.70 N	169 10.50 W			10	BA	BA
Umnak I./Cape Aslik[5]	BS	53 25.00 N	168 24.50 W			BA	BA	BA
Ogchul I.	GOA	52 59.71 N	168 24.24 W			20	10	20
Bogoslof I./Fire I.[5]	BS	53 55.69 N	168 02.05 W			BA	BA	BA
Polivnoi Rock[9]	GOA	53 15.96 N	167 57.99 W			20	10	20
Emerald I.[13, 9]	GOA	53 17.50 N	167 51.50 W			20	10	20
Unalaska/Cape Izigan[9]	GOA	53 13.64 N	167 39.37 W			20	10	20
Unalaska/Bishop Pt.[6, 13]	BS	53 58.40 N	166 57.50 W			10	10	3
Akutan I./Reef-lava[6]	BS	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	10	3
Unalaska I./Cape Sedanka[9]	GOA	53 50.50 N	166 05.00 W			20	10	20
Old Man Rocks[9]	GOA	53 52.20 N	166 04.90 W			20	10	20
Akutan I./Cape Morgan[9]	GOA	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	10	20
Akun I./Billings Head	BS	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	3	3
Rootok[9]	GOA	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20	10	20
Tanginak I.[9]	GOA	54 12.00 N	165 19.40 W			20	10	20
Tigalda/Rocks NE[9]	GOA	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	10	20
Unimak/Cape Sarichef	BS	54 34.30 N	164 56.80 W			10	3	3
Aiktak[9]	GOA	54 10.99 N	164 51.15 W			20	10	20
Ugamak I.[9]	GOA	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20	10	20
Round (GOA)[9]	GOA	54 12.05 N	164 46.60 W			20	10	20
Sea Lion Rock (Amak)	BS	55 27.82 N	163 12.10 W			10	7	7

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Amak I. And rocks	BS	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	3	3
Bird I.	GOA	54 40.00 N	163 17.2 W			10		
Caton I.	GOA	54 22.70 N	162 21.30 W			3	3	3
South Rocks	GOA	54 18.14 N	162 41.3 W			10		
Clubbing Rocks (S)	GOA	54 41.98 N	162 26.7 W			10	3	3
Clubbing Rocks (N)	GOA	54 42.75 N	162 26.7 W			10	3	3
Pinnacle Rock	GOA	54 46.06 N	161 45.85 W			3	3	3
Sushilnoi Rocks	GOA	54 49.30 N	161 42.73 W			10		
Olga Rocks	GOA	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10		
Jude I.	GOA	55 15.75 N	161 06.27 W			20		
Sea Lion Rocks (Shumagins)	GOA	55 04.70 N	160 31.04 W			3	3	3
Nagai I./Mountain Pt.	GOA	54 54.20 N	160 15.40 W	54.56.00 N	160.15.00 W	3	3	3
The Whaleback	GOA	55 16.82 N	160 05.04 W			3	3	3
Chernabura I.	GOA	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20	3	3
Castle Rock	GOA	55 16.47 N	159 29.77 W			3	3	3
Atkins I.	GOA	55 03.20 N	159 17.40 W			20	3	3
Spitz I.	GOA	55 46.60 N	158 53.90 W			3	3	3
Mitrofania	GOA	55 50.20 N	158 41.90 W			3	3	3
Kak	GOA	56 17.30 N	157 50.10 W			20	20	20
Lighthouse Rocks	GOA	55 46.79 N	157 24.89 W			20	20	20
Sutwik I.	GOA	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20	20	20
Chowiet I.	GOA	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20	20	20

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Nagai Rocks	GOA	55 49.80 N	155 47.50 W			20	20	20
Chirikof I.	GOA	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20	20	20
Puale Bay	GOA	57 40.60 N	155 23.10 W			10		
Kodiak/Cape Ikolik	GOA	57 17.20 N	154 47.50 W			3	3	3
Takli I.	GOA	58 01.75 N	154 31.25 W			10		
Cape Kuliak	GOA	58 08.00 N	154 12.50 W			10		
Cape Gull	GOA	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10		
Kodiak/Cape Ugat	GOA	57 52.41 N	153 50.97 W			10		
Sitkinak/Cape Sitkinak	GOA	56 34.30 N	153 50.96 W			10		
Shakun Rock	GOA	58 32.80 N	153 41.50 W			10		
Twoheaded I.	GOA	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10		
Cape Douglas (Shaw I.)	GOA	59 00.00 N	153 22.50 W			10		
Kodiak/Cape Barnabas	GOA	57 10.20 N	152 53.05 W			3	3	3
Kodiak/Gull Point[7]	GOA	57 21.45 N	152 36.30 W			10, 3		
Latax Rocks	GOA	58 40.10 N	152 31.30 W			10		
Ushagat I./SW	GOA	58 54.75	152 22.20 W			10		
Ugak I.[7]	GOA	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3		
Sea Otter I.	GOA	58 31.15 N	152 13.30 W			10		
Long I.	GOA	57 46.82 N	152 12.90 W			10		
Sud I.	GOA	58 54.00 N	152 12.50 W			10		
Kodiak/Cape Chiniak	GOA	57 37.90 N	152 08.25 W			10		
Sugarloaf I.	GOA	58 53.25 N	152 02.40 W			20	10	10
Sea Lion Rocks (Marmot)	GOA	58 20.53 N	151 48.83 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Marmot I.[8]	GOA	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20		
Nagahut Rocks	GOA	59 06.00 N	151 46.30 W			10		
Perl	GOA	59 05.75 N	151 39.75 W			10		
Gore Point	GOA	59 12.00 N	150 58.00 W			10		
Outer (Pye) I.	GOA	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20	10	10
Steep Point	GOA	59 29.05 N	150 15.40 W			10		
Seal Rocks (Kenai)	GOA	59 31.20 N	149 37.50 W			10		
Chiswell Islands	GOA	59 36.00 N	149 34.00 W			10		
Rugged Island	GOA	59 50.00 N	149 23.10 W			10		
Point Elrington[10, 12]	GOA	59 56.00 N	148 15.20 W			20		
Perry I.[10]	GOA	60 44.00 N	147 54.60 W					
The Needle[10]	GOA	60 06.64 N	147 36.17 W					
Point Eleanor[10]	GOA	60 35.00 N	147 34.00 W					
Wooded I. (Fish I.)	GOA	59 52.90 N	147 20.65 W			20	3	3
Glacier Island[10]	GOA	60 51.30 N	147 14.50 W					
Seal Rocks (Cordova)[12]	GOA	60 09.78 N	146 50.30 W			20	3	3
Cape Hinchinbrook[12]	GOA	60 14.00 N	146 38.50 W			20		
Middleton I.	GOA	59 28.30 N	146 18.80 W			10		
Hook Point[12]	GOA	60 20.00 N	146 15.60 W			20		
Cape St. Elias	GOA	59 47.50 N	144 36.20 W			20		

BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only

one set of coordinates is listed, that location is the base point.
[2] Closures as stated in 50 CFR 679.22(a)(7)(v), (a)(8)(iv) and (b)(2)(iii).
[3] No-fishing zones are the waters between 0 nm and the nm specified in columns 7, 8, and 9 around each site and within the Bogoslof area (BA) and the Seguam Foraging Area (SFA).
[4] Some or all of the restricted area is located in the SFA which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long. Amlia I./East, and Tanadak I. (Amlia) haulouts 20 nm hook-and-line and pot closures apply only to waters located east of 173° W longitude.
[5]This site lies within the BA which is closed to all gear types. The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W, and 55°00' N/168°11'4.75" W.
[6]Hook-and-line no-fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line and jig vessels.
[7]The trawl closure between 0 nm to 10 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 3 nm is effective from September 1 through November 1.
[8] The trawl closure between 0 nm to 15 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 20 nm is effective from September 1 through November 1.
[9]Restriction area includes only waters of the Gulf of Alaska Area.
[10]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.
[11]Directed fishing for Pacific cod using trawl gear is prohibited in the harvest limit area (HLA) as defined at § 679.2 until the HLA Atka mackerel directed fishery in the A or B seasons is completed. The 20 nm closure around Gramp Rock applies only to waters west of 178°W long. After closure of the Atka mackerel HLA directed fishery, directed fishing for Pacific cod using trawl gear is prohibited in the HLA between 0 nm to 10 nm of rookeries and between 0 nm to 3 nm of haulouts.
[12] The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.
[13] See 50 CFR 679.22(a)(7)(i)(C) for exemptions for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.
[14]Trawl closure around this site is limited to waters east of 170°0'00" W long.

Table 6 to 50 CFR Part 679 Steller Sea Lion Protection Areas Atka Mackerel Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St. Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			20
St. Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			20
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N.	169 56.00 W			20
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			20
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			20
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Attu I./Cape Wrangell	Aleutian Islands	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	10
Agattu I./Gillon Pt.	Aleutian Islands	52 24.13 N	173 21.31 E			10
Attu I./Chirikof Pt.	Aleutian Islands	52 49.75 N	173 26.00 E			3
Agattu I./Cape Sabak	Aleutian Islands	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	10
Alaid I.	Aleutian Islands	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	3
Shemya I.	Aleutian Islands	52 44.00 N	174 08.70 E			3
Buldir I.	Aleutian Islands	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	15
Kiska I./Cape St. Stephen	Aleutian Islands	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	10
Kiska I./Sobaka & Vega	Aleutian Islands	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	3
Kiska I./Lief Cove	Aleutian Islands	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude	
Kiska I./Sirius Pt.	Aleutian Islands	52 08.50 N	177 36.50 E			3
Tanadak I. (Kiska)	Aleutian Islands	51 56.80 N	177 46.80 E			3
Segula I.	Aleutian Islands	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	3
Ayugadak Point	Aleutian Islands	51 45.36 N	178 24.30 E			10
Rat I./Krysi Pt.	Aleutian Islands	51 49.98 N	178 12.35 E			3
Little Sitkin I.	Aleutian Islands	51 59.30 N	178 29.80 E			3
Amchitka I./Column Rocks	Aleutian Islands	51 32.32 N	178 49.28 E			10
Amchitka I./East Cape	Aleutian Islands	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	10
Amchitka I./Cape Ivakin	Aleutian Islands	51 24.46 N	179 24.21 E			3
Semisopochnoi/Petrel Pt.	Aleutian Islands	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	10
Semisopochnoi I./Pochnoi Pt.	Aleutian Islands	51 57.30 N	179 46.00 E			10
Amatignak I. Nitrof Pt.	Aleutian Islands	51 13.00 N	179 07.80 W			3
Unalga & Dinkum Rocks	Aleutian Islands	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	3
Ulak I./Hasgox Pt.	Aleutian Islands	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	10
Kavalga I.	Aleutian Islands	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	3
Tag I.	Aleutian Islands	51 33.50 N	178 34.50 W			10
Ugidak I.	Aleutian Islands	51 34.95 N	178 30.45 W			3
Grump Rock[7]	Aleutian Islands	51 28.87 N	178 20.58 W			10, 20
Tanaga I./Bumpy Pt.	Aleutian Islands	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20
Bobrof I.	Aleutian Islands	51 54.00 N	177 27.00 W			20
Kanaga I./Ship Rock	Aleutian Islands	51 46.70 N	177 20.72 W			20
Kanaga I./North Cape	Aleutian Islands	51 56.50 N	177 09.00 W			20
Adak I.	Aleutian Islands	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude	
Little Tanaga Strait	Aleutian Islands	51 49.09 N	176 13.90 W			20
Great Sitkin I.	Aleutian Islands	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20
Anagakmik I.	Aleutian Islands	51 50.86 N	175 53.00 W			20
Kasatochi I.	Aleutian Islands	52 11.11 N	175 31.00 W			20
Atka I./North Cape	Aleutian Islands	52 24.20 N	174 17.80 W			20
Amlia I./Sviech. Harbor[5]	Aleutian Islands	52 01.80 N	173 23.90 W			20
Sagigik I.[5]	Aleutian Islands	52 00.50 N	173 09.30 W			20
Amlia I./East[5]	Aleutian Islands	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20
Tanadak I. (Amlia)[5]	Aleutian Islands	52 04.20 N	172 57.60 W			20
Agligadak I.[5]	Aleutian Islands	52 06.09 N	172 54.23 W			20
Seguam I./Saddleridge Pt.[5]	Aleutian Islands	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20
Seguam I./Finch Pt.[5]	Aleutian Islands	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20
Seguam I./South Side[5]	Aleutian Islands	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	20
Amukta I. & Rocks	Aleutian Islands	52 27.25 N	171 17.90 W			20
Chagulak I.	Aleutian Islands	52 34.00 N	171 10.50 W			20
Yunaska I.	Aleutian Islands	52 41.40 N	170 36.35 W			20
Uliaga[6]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	20
Kagamil[6]	Bering Sea	53 02.10 N	169 41.00 W			20
Adugak I.[6]	Bering Sea	52 54.70 N	169 10.50 W			20
Umnak I./Cape Aslik[6]	Bering Sea	53 25.00 N	168 24.50 W			BA
Bogoslof I./Fire I.[6]	Bering Sea	53 55.69 N	168 02.05 W			BA
Unalaska/Bishop Pt.	Bering Sea	53 58.40 N	166 57.50 W			20
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	20

Column Number 1	2	3	4	5	6	7
Site Name[1]	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude	
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	20
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			20
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			20
Amak I. And rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	20

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates.

[2] Closures as stated in 50 CFR 679.22 (a)(7)(vi) and (a)(8)(v).

[3] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the Bogoslof area (BA).

[4] The 20 nm Atka mackerel fishery closure around the Tanaga I./Bumpy Pt. Rookery is established only for that portion of the area east of 178° W longitude.

[5] Some or all of the restricted area is located in the Seguam Foraging Area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

[6] This site lies in the BA, closed to all gear types. The BA consists of all waters of Area 518 described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W and 55°00'N/168°11'4.75" W.

[7]Directed fishing for Atka mackerel by vessels using trawl gear is prohibited in waters located 0-20 nm seaward of Gramp Rock and east of 178°W long.

* * * * *

Table 12 to 50 CFR Part 679 Steller Sea Lion Protection Areas 3nm No Groundfish Fishing Sites

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		No transit[2]
		Latitude	Longitude	Latitude	Longitude	3 nm
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			Y
Attu I./Cape Wrangell	Aleutian I.	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	Y
Agattu I./Gillon Pt.	Aleutian I.	52 24.13 N	173 21.31 E			Y
Agattu I./Cape Sabak	Aleutian I.	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	Y
Buldir I.	Aleutian I.	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	Y
Kiska I./Cape St. Stephen	Aleutian I.	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	Y
Kiska I./Lief Cove	Aleutian I.	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	Y
Ayugadak Point	Aleutian I.	51 45.36 N	178 24.30 E			Y
Amchitka I./Column Rock	Aleutian I.	51 32.32 N	178 49.28 E			Y
Amchitka I./East Cape	Aleutian I.	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	Y
Semisopochnoi/Petrel Pt.	Aleutian I.	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	Y
Semisopochnoi I./Pochnoi Pt.	Aleutian I.	51 57.30 N	179 46.00 E			Y
Ulak I./Hasgox Pt.	Aleutian I.	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	Y
Tag I.	Aleutian I.	51 33.50 N	178 34.50 W			Y
Gramp Rock	Aleutian I.	51 28.87 N	178 20.58 W			Y
Adak I.	Aleutian I.	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	Y
Kasatochi I.	Aleutian I.	52 11.11 N	175 31.00 W			Y
Agligadak I.	Aleutian I.	52 06.09 N	172 54.23 W			Y
Segumm I./Saddleridge Pt.	Aleutian I.	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	Y
Yunaska I.	Aleutian I.	52 41.40 N	170 36.35 W			Y
Adugak I.	Bering Sea	52 54.70 N	169 10.50 W			Y
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			Y
Bogoslof I./Fire I.	Bering Sea	53 55.69 N	168 02.05 W			Y

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		No transit[2]
		Latitude	Longitude	Latitude	Longitude	3 nm
Akutan I./Cape Morgan	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	Y
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	Y
Ugamak I.	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	Y
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			Y
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			Y
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			Y
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			Y
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	Y
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			Y
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	55 00.30 N	156 41.60 W	Y
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	Y
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			Y
Marmot I.	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	Y
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	Y
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			
Seal Rocks (Cordova)	Gulf of Alaska	60 09.78 N	146 50.30 W			

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] See 50 CFR 223.202(a)(2)(i) for regulations regarding 3 nm no transit zones.

Note: No groundfish fishing zones are the waters between 0 nm to 3 nm surrounding each site.

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January 2, 2003

Part VI

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Applications of Methyl Bromide; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7434–1]

Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Applications of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this rulemaking, EPA is taking final action to amend the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer under the authority of Title VI of the Clean Air Act Amendments of 1990 (CAA or the Act). Today's amendments incorporate an exemption permitted under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and required by changes in Title VI of the CAA. Specifically, EPA is creating an exemption from the consumption and production phaseout for quantities of Class I, Group VI controlled substances (methyl bromide) that are used for quarantine and preshipment.

DATES: This rule is effective January 1, 2003.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–2000–24. The Docket is located at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202)–566–1742, Fax: (202)–566–1741. The materials may be inspected from 8:30 a.m. until 4:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Kate Choban, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 202–564–3524.

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Entities potentially regulated by this action are those associated with methyl bromide that is used for quarantine and preshipment applications. In addition, this action potentially regulates entities importing and exporting methyl bromide. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers, Importers and Exporters of methyl bromide. Distributors of methyl bromide used for quarantine and preshipment. Applicators of methyl bromide used for quarantine and preshipment. Commodity Owners or Shippers of Goods that request the quarantine or preshipment application of methyl bromide in accordance with official controls or requirements.

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc. is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION 000000CONTACT** section.

I. What Is the Background of the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances were promulgated by the Environmental Protection Agency (EPA or the Agency) in the **Federal Register** on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625), and October 5, 1998 (63 FR 53290). The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).[1] The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the Clean Air Act Amendments of 1990 (CAA or the Act) that included Title VI on Stratospheric Ozone Protection.

Today's action amends the existing EPA regulations published under Title VI of the CAA that govern the production and consumption of ozone-depleting substances. Today's action establishes an exemption from the methyl bromide production and import reduction and phaseout schedule for quantities to be used for quarantine and preshipment applications. Today's amendments are intended to implement requirements of the Protocol and the CAA, including amendments to Title VI as created by Section 764 of the 1999 Omnibus Consolidated and Emergency

[1] Several revisions to the original 1988 rule were issued on the following February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28062), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812) July 30, 1992 (57 FR 33754), December 10, 1993 (58 FR 65018).

Supplemental Appropriations Act (Public Law 105–277, October 21, 1998) (section 604(d)(5) of the Clean Air Act).

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 and May 10, 1995 establish an Allowance Program. The Allowance Program and its history are described in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of production and consumption of ozone-depleting substances, as required under the Protocol and CAA, are accomplished through the Allowance Program.

In developing the Allowance Program, EPA collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed within the United States for specific baseline years for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. For methyl bromide, 1991 was the baseline year used to establish the ceiling and assign company-specific production and import rights. Production or import rights are called "allowances." Production allowances and consumption allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide. All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, save for a few exemptions. For methyl bromide, the remaining schedule for the phaseout of production and consumption allowances is as follows: 50 percent reduction of baseline beginning January 29, 2001, 70 percent reduction of baseline beginning January 1, 2003, and a 100 percent reduction of baseline beginning January 1, 2005, with narrow exemptions for critical uses and emergencies, as well as for quarantine and preshipment uses.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as the formula: consumption = production + imports—exports, of controlled substances (Article 1 of the Protocol and section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under these regulations, unless otherwise precluded under separate regulations.

The specific names and chemical formulas for the controlled ozone-depleting substances in Groups of class I controlled substances are in appendix A and appendix F in subpart A of 40 CFR part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in appendix B and appendix F in subpart A.

II. What Is the Background for Today's Action?

EPA published an interim final rule in the **Federal Register** on July 19, 2001 (66 FR 37752) to provide methyl bromide users in the United States with an exemption to the phaseout of methyl bromide for quarantine and preshipment applications. The interim final rule solicited public comment on a number of issues related to EPA's implementation of the Quarantine and Preshipment Exemption. Today's action responds to public comment and finalizes the specifications for the exemption.

III. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas, which is used as a broad-spectrum pesticide. Methyl bromide is used in the United States and throughout the world as a fumigant to control a variety of pests, such as insects, weeds, rodents, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide can be found in the proposed rule published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018). Information on methyl bromide can be found at the following sites of the World Wide Web: *http://www.epa.gov/ozone/mbr/* and *http://www.teap.org* or by contacting the Stratospheric Ozone Protection Hotline at 1–800–296–1996.

IV. What Are Examples of Quarantine and Preshipment Uses of Methyl Bromide?

An example of a quarantine application of methyl bromide is the fumigation of a commodity, such as rice and spices, which are subject to infestation by a specific and officially recognized quarantine pest, such as the khapra beetle (Trogoderma granarium Everts) when the fumigation is conducted before transport of the commodity to meet official quarantine requirements (see discussion in part VI below). The purpose of quarantine fumigation is to prevent the introduction of specific quarantine pest(s) into a defined geographical area, such as an importing country. An example of a preshipment use of methyl bromide is the application to wheat immediately before shipment (see discussion in part VI below) because of official phytosanitary requirements of the destination country.

In 1998, the Methyl Bromide Technical Options Committee (MBTOC), a sub-group under the independent advisory body of the Technical and Economic Assessment Panel (TEAP) to the Montreal Protocol, published an assessment that gives further details about uses of methyl bromide and possible alternatives and substitutes for controlling pests. The MBTOC and TEAP assessments can be found on the web at *http://www.teap.org/html/methyl_bromide_reports.html* and *http://www.teap.org/*.

V. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Use in Quarantine and Preshipment Applications?

In Article 2H of the Montreal Protocol, which establishes the phaseout schedule for methyl bromide for developed countries, paragraph 6 states that, "[t]he calculated levels of consumption and production under this Article shall not include the amounts used by the Party for quarantine and pre-shipment applications." EPA notes that paragraph 6, of Article 2H indicates that the exemption is to exclude from the U.S.'s calculation of methyl bromide consumption and production the amounts used by the U.S. for quarantine and preshipment applications. In addition, Article 7 requires each Party to report on, "the annual amount used for quarantine and preshipment applications." Beyond the critical uses allowed in Article 2H, Paragraph 5, quarantine and preshipment uses are the only exemptions explicitly allowed for under the Montreal Protocol.

In 1998 Congress added several provisions to the Clean Air Act regarding methyl bromide including a provision title "Sanitation and Food Protection," which is related to the Protocol exemption for quarantine and preshipment. This provision, which was codified as section 604(d)(5) of the CAA, was added by section 764(b) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277). Section 604(d)(5) says, "To the extent consistent with the Montreal Protocol's quarantine and

preshipment provisions, the Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements or with any international, Federal, State or local sanitation or food protection standard." Prior to Congressional passage of section 604(d)(5), the CAA did not provide authority for creating such an exemption to the methyl bromide phaseout schedule. In today's final regulation, EPA is implementing the express language provided in Article 2H, paragraph 6, of the Protocol under the authority provided by section 604(d)(5) of the CAA. EPA is also acting in a manner consistent with, and to fulfill the obligations of, section 614(b) of the CAA. Section 614(b) of the CAA states that, "[t]his title as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of a conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern."

EPA's interim final rule related to the process for exempting quarantine and preshipment applications of methyl bromide, published in the **Federal Register** on July 19, 2001 (66 FR 37752), defined quarantine and preshipment applications as agreed by the Parties to the Montreal Protocol in Decisions VII/5 and XI/12, respectively. EPA received ten comments regarding our decision to adhere to the language of the Parties' Decisions. All commenters stated that Decisions of the Parties do not have the same force of law as the Protocol itself, its amendments, or adjustments adopted by the Parties and, as such, EPA is not bound to their language. The comments submitted to EPA in response to the interim final rule echo a legal memorandum submitted to EPA by the legal counsel of the Methyl Bromide Industry Panel at a July 1999 meeting. A more detailed discussion of the arguments made in this memorandum can be found in the interim final rule published in the **Federal Register** on July 19, 2001 (66 FR 37752).

EPA responded directly to the legal memorandum submitted by the Methyl Bromide Industry Panel in the interim final rule. EPA has reconsidered the issue as it was raised by the comments submitted in response to the interim final rule and has concluded that its approach reflects widely accepted principles of customary international law. The provisions of the Vienna Convention on the Law of Treaties (VCLT), 8 International Legal Materials 679 (1969), that concern treaty interpretation generally reflect customary international law. Paragraph 1 of Article 31 of the VCLT provides that a treaty "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Paragraph 3 of Article 31 of the VCLT states, "[t]here shall be taken into account, together with any context: * * * (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions." Decisions VI/11, VII/5, XI/12 and XI/13 constitute subsequent consensus agreements among the Parties to the Montreal Protocol (including the United States) regarding the interpretation and application of the quarantine and preshipment provision of Article 2H. Therefore it is appropriate for EPA, when determining what is consistent with the "Montreal Protocol's quarantine and preshipment provisions," to take into account the Decisions of the Parties.

Furthermore, in amending the CAA, Congress specifically cited the plural "quarantine and preshipment provisions." If Congress intended for this phrase to be limited to the single provision in the Protocol referencing quarantine and preshipment in Article 2H, and not the subsequent Decisions between the Parties regarding interpretation or application of the treaty, Congress would have presumably directed the Agency to be consistent with the singular provision.

Precedents within the current regulations (40 CFR part 82) demonstrate that the United States has routinely considered Decisions that clarify and interpret obligations under the Montreal Protocol to be authoritative and that such Decisions of the Parties are currently implemented through regulations under the CAA. Examples of such regulatory implementation of Decisions of the Parties include the current U.S. definitions of "controlled substance" (based on Decision IV/12) and "essential use". Additional examples of how U.S. regulations incorporate Decisions by the Parties to the Protocol can be found in the preamble of the interim final rule published in the **Federal Register** on July 19, 2001 (66 FR 37752) and in 40 CFR part 82, subpart A.

VI. What Are the Definitions of Quarantine and Preshipment Applications?

In today's final action, EPA is defining quarantine applications and preshipment applications, as agreed by the Parties to the Montreal Protocol. The Parties to the Protocol agreed to the following definition of "quarantine applications" in Decision VII/5: "quarantine applications, with respect to methyl bromide, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (i) Official control is that performed by, or authorized by, a national plant, animal, or environmental protection or health authority; (ii) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present by not widely distributed and being officially controlled."

The Parties to the Protocol first agreed to the following definition for preshipment applications of methyl bromide in Decision VI/11 and VII/5: "preshipment applications are those treatments applied directly preceding and in relation to export, to meet the phytosanitary or sanitary requirements of the importing country or existing phytosanitary or sanitary requirements of the exporting country." At the 11th Meeting of the Parties in December 1999, the Parties further clarified the intent of the term preshipment by agreeing to the following definition in Decision XI/12: "* * * preshipment applications are those non-quarantine applications within 21 days prior to export to meet the official requirements of the importing country or the existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority."

EPA adopted the above definition of preshipment applications in the interim final rule and received nine related comments. All of the commenters raised the concern that the 21-day limitation on treatments to qualify as a preshipment application is unduly restrictive and arbitrary. One commenter stated that the time restriction is unrelated to the purpose of the preshipment exemption and that so long as a treatment is done to meet the official non-quarantine requirements of

the importing or exporting country it ought to qualify as a preshipment application.

EPA believes that the incorporation of a time restriction within the definition of preshipment application is necessary to meet the purpose of this exemption as intended by the Parties to the Montreal Protocol. The preshipment exemption applies to treatments of commodities near the time of export to meet the official non-quarantine requirements of the exporting or importing country. Eliminating the time requirement would invite misuse of the exemption. With no established time window, the argument could be made that a pre-plant soil application of methyl bromide qualifies as a preshipment application because the crop being cultivated would eventually be exported from U.S. soil. By imposing a time restriction, Decision XI/12 of the Parties demonstrates that their intent was not to imbue the preshipment exemption with a lifecycle-wide scope. The 21-day restriction was agreed upon by the Parties (based on the advice of global experts) as a reasonable time limitation for the preshipment exemption. EPA has received no comment indicating that another time limitation would be better justified and meet the intent of the Parties in implementing the preshipment exemption.

In addition to the above, the definition of quarantine applications is qualified by the scope of the exemption as stated in the CAA. As passed by Congress, the CAA specifically applies the quarantine and preshipment exemption to quantities of methyl bromide used to "fumigate commodities entering or leaving the United States or any State (or political subdivision thereof)* * *"(CAA section 504(d)(5)). This language makes clear Congress's intent to apply the exemption only where there is the transport of goods from one distinct locality to another, and thus to prevent the potential for the geographic spread of pests. As a result, today's action adds the following sentence to the definition of quarantine applications: "This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof)." Section III.D. further discusses the uses of methyl bromide that are excluded from today's exemption for quarantine applications.

With today's final action, EPA is defining quarantine applications and preshipment applications as follows:

Quarantine applications, with respect to class I, Group VI controlled substances, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (i) Official control is that performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection or health authority; (ii) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof).

Preshipment applications, with respect to class I, Group VI controlled substances, are those non-quarantine applications within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.

As specified in the above definitions, a quarantine application of methyl bromide must be "performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection, or health authority." In addition, as delineated in the above definition, quarantine applications must be directed at quarantine pests. Today's definition of preshipment applications is limited to applications "to meet the official requirements of the importing country or existing official requirements of the exporting country." The definition of preshipment applications specifies that the phrase "official requirements" means "those which are preformed by, or authorized by, a national plant, animal, environmental, health or stored product authority."

A. Are There Clarifications Regarding Trade Within the U.S.?

The interim final rule interpreted "quarantine applications" as including interstate and inter-county treatments required to control quarantine pests. This interpretation is consistent with the Technical and Economic Assessment Panel's (TEAP) recommendation that the Parties of the Protocol interpret Decision VII/5 to include officially required treatments for intra-country trade within the territory of the Party and reconciles the language of the Montreal Protocol with section 604(d)(5) of the CAA on Sanitation and Food Protection, which refers to international, Federal, state and local requirements.

In recognizing official state, county, tribal, and local quarantine requirements, EPA's final rulemaking interprets the definition of quarantine applications such that an intra-country quarantine treatment required by state, county, tribal, or local plant, animal, environmental, or health government authorities constitutes an official control. Today's action adds parenthetically that "national" is meant to include state, tribal or local authorities for purposes of the definition of quarantine applications.

In contrast to the definition of quarantine applications, which accommodates intra-country trade, the Protocol definition of preshipment applications is specific to trade between countries because of the phrase "applications within 21 days prior to export." This distinction was noted in the interim final rule and EPA received no comment. Therefore, for the purposes of today's final action, the exemption for preshipment applications remains limited to the movement of goods from the U.S. to another country, and does not include movement of goods within the U.S.

B. Are There Additional Qualifiers Associated With the Definition of Preshipment Applications?

The interim final rule noted, in agreement with the 1998 TEAP interim explanatory notes for the Parties, the focus within the definition of "preshipment applications" on applications to meet "official requirements" and not "informal or purely contractual or commercial arrangements not required under official regulations" (April 1998 TEAP Report, page 145). EPA is continuing to stress the importance of this limitation in the scope of the preshipment exemption. The definition of preshipment applications specifies that the phrase "official requirements" means, "those which are performed by, or authorized by, a national plant, animal, environmental, health, or stored product authority."

The interim final rule's definition of preshipment applications further qualifies the term "official requirements" as it relates to exporting countries to include only "existing official requirements". EPA interpreted this phrase to imply the need to establish a cutoff date. EPA asked for comment on four possible interpretations for the term "existing official requirements of the exporting country". The options listed were to exempt applications pursuant to official

preshipment requirements of the exporting country that were: (1) In effect prior to the date the Parties to the Protocol adopted Decision XI/12, which was December 3, 1999, (2) in effect at the time the interim final rule was published in the **Federal Register**, which was July 19, 2001, (3) in place at the time this final rule on the quarantine and preshipment exemption is published in the **Federal Register**, or (4) existing at the time of the methyl bromide application (since it would be an "existing" requirement of the exporting country upon going into effect).

EPA received eight comments related to the interpretation of "existing official requirements." All commenters supported the fourth option, which is to exempt applications pursuant to official preshipment requirements of the exporting country that exist at the time of the methyl bromide application. Commenters noted that this interpretation recognizes the possibility of future outbreaks of new pests requiring official action. EPA notes the value to such flexibility within the rule and believes that this interpretation is consistent with the intended purpose of the exemption.

It should be noted that the qualifier "existing", as used within the preshipment application definition, applies only to the official requirement of the exporting country (the U.S.) and not to the preshipment requirements of importing countries. Thus, if an importing country were to establish a new official requirement for the preshipment application of methyl bromide, nothing in this rule would prevent a U.S. exporter from using methyl bromide to meet the new requirement of the importing country.

C. Are There Additional Qualifiers Associated With the Definition of Quarantine Applications?

With today's final action EPA is establishing the following parameters for the quarantine exemption. For commodities imported to, exported from, and transported within the U.S., the exemption for quarantine applications will apply when: (1) Methyl bromide is identified within quarantine regulations as the unique treatment option for specific quarantine pests; (2) methyl bromide is identified within quarantine regulations as one among a list of treatment options for specific quarantine pests; and (3) methyl bromide is required for an emergency quarantine application. Under section 3, section 18, and section 24a of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA is notified of emergency quarantine applications of methyl bromide in accordance with specific requirements published under FIFRA. In addition to the above, for commodities being exported from the U.S. to a foreign nation, the exemption applies to quarantine applications when there is a broad performance-based quarantine requirement. In other words, the exemption applies when an importing country has quarantine regulations which broadly require U.S. exported commodities to be free of quarantine pests without specifying the types of treatments.

The above follows EPA's decision in the interim final rule. The Agency received 12 comments on the scope of the quarantine exemption. Every commenter said that the broadest possible option should be implemented by the Agency. EPA believes that the scope of the exemption described above is the broadest interpretation that it can reasonably adopt for each given type of commodity. For example, for imports, USDA/APHIS requirements are explicit regarding treatment options acceptable for the control of specific crop/pest combinations. EPA considered limiting the scope of the quarantine exemption to only those instances where APHIS lists methyl bromide as the only acceptable treatment option for a given pest. However, as many commenters noted, variations in climate, etc. can affect the level of efficacy of treatment options in different regions. Thus, EPA chose to adopt a broader definition of the quarantine exemption which applies to quantities of methyl bromide used to meet quarantine requirements where fumigation with methyl bromide is the listed, or one of the listed, treatment options.

While EPA believes that such an interpretation is sufficiently broad for the purposes of imported and domestically traded commodities given the applicable U.S. regulations, the Agency recognizes that some foreign countries lack such specificity within their quarantine regulations for imported commodities. EPA chose to create even greater flexibility within the quarantine exemption in order to accommodate the broad, performance-based quarantine requirements of these foreign trade partners.

D. How Does the Exemption for Quarantine Applications Apply to Commodities Issued "Phytosanitary Certificates"?

Today's final action exempts methyl bromide in situations when a foreign country's regulations require a certification that U.S. commodities be exported free of quarantine pests. EPA understands that both USDA/APHIS and State agencies issue "phytosanitary certificates" that accompany U.S. commodities exported to foreign countries. These phytosanitary certificates are often required by importing foreign countries to ensure that U.S. exports are free of quarantine pests. To the extent that methyl bromide is used by a U.S. exporter to meet a foreign quarantine requirement, the phytosanitary certificates (PPQ Form 577, PPQ Form 578, and PPQ Form 579) issued by USDA/APHIS or an authorized State agency will be an additional means for EPA to cross-check quarantine applications of methyl bromide under today's exemption.

As was noted in the interim final rule, and for this final action, EPA is not exempting methyl bromide used for non-quarantine applications, even if the foreign country requires the U.S. exporter to obtain a phytosanitary certificate. Today's exemption applies to the use of methyl bromide to meet an official foreign quarantine requirement. If PPQ Forms or other types of certificates are issued for commodities meeting state or local quarantine requirements then methyl bromide used in these cases is considered exempt under today's action, provided that methyl bromide is one of the listed treatment options.

E. How Do the Definitions of Preshipment and Quarantine Applications Apply to Food Sanitation?

The language of the Clean Air Act related to the quarantine and preshipment exemption explicitly limits the exemption to quantities of methyl bromide used "to fumigate commodities *entering or leaving* the United States or any State (or political division thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements * * *" (emphasis added). By applying the quarantine and preshipment exemption only to quantities of methyl bromide used to fumigate commodities being transported from one geographical location to another, Congress imposed limitations on how the definitions of preshipment and quarantine applications apply to food sanitation.

As defined in today's action, preshipment applications are those non-quarantine applications within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product

authority. Methyl bromide used any time within 21 days prior to export of a commodity to meet "official requirements" related to food sanitation would qualify under the preshipment exemption. Any treatment performed outside of this 21 day window, by definition, does not qualify for the preshipment exemption.

The exemption of methyl bromide for quarantine applications, as defined by the interim final action, did not apply to preventative treatments to meet food sanitation standards. EPA received 4 comments about the interaction between food sanitation standards and the quarantine exemption. All commenters asserted that preventative treatments of commodities with methyl bromide to meet food sanitation requirements should qualify as "quarantine applications" because "such standards are geared to preventing the dissemination of pests, although admittedly for human health and food sanitation purposes."

EPA's final action is bound by the limitations imposed on the quarantine exemption by the definitions and determination of scope agreed upon by the Parties to the Montreal Protocol and adopted by Congress in the Clean Air Act. EPA understands that certain industries often use methyl bromide as a prophylactic treatment for periodic quality control fumigations associated with food sanitation. Stored commodities, such as dried fruits, nuts, and cocoa beans, as well as grain mills and pasta manufacturing facilities are often fumigated periodically with methyl bromide to prevent populations of pests, such as insects and rodents, from increasing to a point where they would adversely affect food quality. Such *in situ* population control measures do not qualify as quarantine applications since they are not performed on "commodities entering or leaving the United States or any state (or political subdivision thereof) * * *"

Additionally, food sanitation requirements that are directed at controlling population levels of pests endemic to the region would not qualify under the definition of "quarantine applications". The quarantine definition, as established in today's final action, stresses that exempt applications of methyl bromide are "to prevent the introduction, establishment and/or spread of quarantine pests (including diseases)." Quarantine pests are defined as "pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled." Endemic pests are not quarantine pests.

The above limitations were noted in the interim final version of this rule. Likewise, the Agency noted in that publication its interest in comments related to prophylactic uses of methyl bromide to meet food sanitation standards in order to use this information in the Agency's development of the Critical Use Exemption to the phaseout of methyl bromide. Please see the discussion below (Section VIIIA) related to the Critical Use Exemption.

F. How Do These Definitions Apply to "Propagative Material"?

The use of methyl bromide to fumigate the soil for growing propagative material, such as strawberry rhizomes, differs from many quarantine applications of methyl bromide. The Agency sought comment on the use of methyl bromide for propagative materials and received a variety of information on relevant quarantine regulations, planting and fumigating practices, and propagative materials (other than strawberry rhizomes) that use methyl bromide to meet quarantine requirements.

With today's final action, the exemption for quarantine applications applies to methyl bromide used for growing propagative material if the methyl bromide is being used to grow propagative material to meet official quarantine requirements of the destination to which the propagative material will be transported. Although the interim final rule only cited strawberry rhizomes in the discussion of the exemption for propagative material, with today's action EPA wishes to clarify that the exemption also covers other propagative material, including tree seedlings, when the methyl bromide is used to meet an official quarantine requirement of the destination to which the propagative material will be transported.

EPA notes the following qualifiers in the application of the quarantine exemption to methyl bromide used to grow propagative material (also referred to as "plants for planting"). First, as noted above (see discussion in part VI.C.), the Clean Air Act language specifies that the scope of the quarantine exemption is limited to use of methyl bromide for fumigation of goods for transport from one distinct locality to another. Thus, the exemption for propagative materials only applies for use with "plants for planting" that are to be transported (complete with rootstock) from one distinct locality to another. Second, today's action only exempts the use of methyl bromide for pre-plant fumigation of soil to meet official quarantine requirements specifying that the underground portions of the propagative material are to be free from quarantine pests. The purpose of such regulations is ensuring that quarantine pests are not spread to the region where the regulated rootstock will be replanted. This exemption does not apply to pre-plant soil treatment for commodities transported without their attached rootstock, or commodities transported for any purpose other than for replant.

Finally, with this action, EPA is only exempting quantities of methyl bromide used to grow propagative material to meet official quarantine requirements of the destination to which such material will be transported. If the material is transported to a destination that has no applicable official quarantine requirements, then the methyl bromide used does not qualify for this exemption. This is true even in an instance where a farmer legitimately justified using exempted methyl bromide to meet a quarantine requirement for propagative materials, yet due to economic or market conditions the farmer does not send the seedlings to the planned destination, and instead sends the seedlings to a region without relevant quarantine requirements. EPA recognizes that many of the propagative materials for which this exemption applies are planted far in advance of their trade and transplant and that farmers face some difficulty in accurately predicting their commodities' ultimate destination. The Agency reminds methyl bromide users that non-exempted quantities will be available until the January 1, 2005 phaseout date and that the Critical Use Exemption will become available after the phaseout (see discussion in part VIII.A. below).

The use of exempted methyl bromide to grow propagative material that the grower planned to ship to a destination with a propagative material quarantine requirement, but which the grower ultimately shipped to a destination without such a requirement, may raise compliance issues for the United States under the Protocol. Such quantities of methyl bromide would count against the U.S. cap for domestic methyl bromide consumption. The U.S. could exceed its control obligations under the Protocol if all U.S. production and consumption allowances for methyl bromide were expended in a particular control period (calendar year) and some methyl bromide in the same control period was mistakenly exempted for quarantine applications when, in fact, the propagative material was sent to a place without quarantine requirements. With this action, EPA is implementing the

following options for rectifying such discrepancies. The methyl bromide user found to be incorrectly using exempt quantities of methyl bromide for propagative uses as described above may choose either of the following options to rectify their actions. First, a methyl bromide user in the above situation may choose to buy an equivalent amount of production allowances for any ozone-depleting substance, on an ozone-depleting potential (ODP) weighted basis, and retire those allowances, thus rendering them unable to be expended for new production in accordance with subpart A of 40 CFR part 82. Alternatively, a person who uses exempted methyl bromide to meet a propagative material quarantine requirement, and who ultimately changes the material's destination to one without a quarantine requirement, can choose to destroy an amount of any ozone-depleting substance that is equivalent on an ODP-weighted basis to the amount of methyl bromide used. This approach differs from the first option, in that it requires the person to physically destroy an existing quantity of an ozone-depleting chemical rather than reduce the overall quantity produced in the future.

Those users of methyl bromide required to perform one of the compensatory measures described above to rectify a non-compliance situation must submit to EPA a letter of certification detailing the following information: (1) The quantity of exempt methyl bromide used on propagative materials that were shipped to a destination lacking a quarantine requirement; (2) the compensatory option chosen (see discussion above); (3) the ozone-depleting substance destroyed or the type of production allowance obtained; and (4) the quantity of ozone-depleting substance destroyed or production allowances retired. See the section above entitled **FOR FURTHER INFORMATION CONTACT** for submittal information.

Monitoring and compliance issues are a concern associated with the use of methyl bromide for pre-plant propagative material uses. EPA expressed a concern in the interim final rule about situations where propagative materials are grown in proximity to crops that do not qualify for quarantine and preshipment exemption. EPA believed that it would be difficult to ensure that exempted quantities of methyl bromide were being properly used. However, the Agency received input from 3 commenters that state that propagative material is rarely, if ever, grown in proximity to other crops, which alleviates the Agency's concern. The Agency will continue to monitor this possibility.

G. How Do These Definitions Apply to In-Transit Applications?

EPA understands that some users of methyl bromide may be testing and/or using "on-ship" fumigation of commodities while they are "in-transit." With today's final action, EPA is interpreting the definition of quarantine application to apply to these quantities of methyl bromide used "in-transit" when the use is to meet an official U.S. quarantine requirement and is in accordance with other U.S. regulations for commodities being imported into the U.S., (see discussion in part VI.C. above for more information on what is considered an official quarantine requirement for an imported commodity) or for commodities moving from one location to another within the U.S. However, today's action does not exempt quantities of methyl bromide used outside of U.S. jurisdiction on U.S. exported commodities to meet the importing country's official quarantine requirements while the commodities are "in-transit." Today's action, likewise, does not exempt quantities of methyl bromide used on U.S. exported commodities when they are being transshipped through a foreign country en route to the destination importing country. Finally, today's action does not exempt quantities of methyl bromide used to meet an importing country's requirements when a commodity is simply being transshipped through the U.S. from the exporting foreign country en route to the importing foreign country.

It should be noted that use of methyl bromide after a shipment leaves the Unites States is not an exempt preshipment application because the application did not occur "within 21 days prior to export" from the U.S., where the word "export" is interpreted to mean the departure of a commodity from the Unites States.

VII. What Is the Process for Exempting Methyl Bromide for Use in Quarantine and Preshipment Applications?

With this action, EPA is establishing a process to exempt methyl bromide used for quarantine and preshipment applications from the Allowance Program's control measures that phase out production and consumption of methyl bromide (described in Part I. Background above). Today's action exempts quantities of methyl bromide used for quarantine and preshipment applications from the production and consumption reduction steps between now and 2005, as well as beyond the final phaseout of production and consumption under the Montreal Protocol and Clean Air Act on January 1, 2005.

EPA is creating a recordkeeping and reporting process that is flexible enough to respond to demands arising when commodities need to be protected from infestations by quarantine pests and when commodities need to be treated immediately prior to shipment in accordance with official requirements. Such flexibility needs to be balanced with the U.S. Government's reporting requirements under the Montreal Protocol. Today's action includes a certification and reporting procedure under authority of the Clean Air Act (CAA) for exempted production and consumption of methyl bromide for quarantine and preshipment applications.

A. What Recordkeeping and Reporting Must Producers and Importers Perform?

Until the January 1, 2005 phaseout date for methyl bromide, U.S. companies will continue to hold production and consumption allowances, calculated as a percentage of their baseline production and consumption. After January 1, 2005, there will not be production allowances and consumption allowances for methyl bromide. The relationship between each company's baseline production allowance and baseline consumption allowances and the reduction steps in these allowances is in accordance with the control measures under the Montreal Protocol and the Clean Air Act as described in part I of today's rule and in the direct final rule published in the **Federal Register** on November 28, 2000 (65 FR 70795).

Because quarantine and preshipment applications are exempted from the phaseout, the total quantities of methyl bromide produced and imported that are specifically designated for quarantine and preshipment will not be counted as net production or net import for the purposes of the Allowance Program. In order for EPA to ensure that qualifying quarantine and preshipment quantities of methyl bromide are being properly exempted from companies' total allowed production/import, the Agency must have a record of those exempted quantities.

Currently, § 82.13 requires producers and importers to submit quarterly reports to EPA with information on the gross quantity of methyl bromide produced or imported in that quarter. In that same report, producers and importers indicate the quantity specifically designated for transformation and for destruction and,

thus, exempted from the reduction steps and phaseout of methyl bromide. EPA subtracts these quantities for transformation and for destruction from the gross quantity reported to obtain the company's net production or import. The interim final rule required producers and importers to include the quantities of methyl bromide specifically designated for quarantine and preshipment applications on these same quarterly reports. Quantities of methyl bromide used for quarantine and preshipment applications are also subtracted from the gross quantity of production or import because of their exempted status and, thus, are not counted against a company's production and consumption allowances.

In addition to the reporting requirements outlined above, the interim final rule established the following recordkeeping requirements for producers and importers. Domestic purchasers (distributors or customers) must provide producers and importers with certifications that a designated quantity is being purchased solely for quarantine and preshipment applications (discussion of requirements for foreign purchasers appears below in part VII.D.) Certifications from distributors will attest that the material will be sold only for quarantine and preshipment applications, and certifications from applicators purchasing directly from a producer or importer will attest that the material will be used only for quarantine and preshipment applications.

While EPA received no comments on the specific recordkeeping and reporting procedures described in the interim final rule, several commenters submitted general feedback. All comments on this topic focused on the burden of recordkeeping and reporting and suggested that the creation of a FIFRA label specific to quarantine and preshipment would help to ease that burden. EPA recognizes the potential utility of a quarantine and preshipment specific FIFRA label (see full discussion below in part VII.E.). However, until such a label can be established, EPA must rely on another means of obtaining the information it needs to meet the U.S.'s reporting obligations under the Montreal Protocol and to ensure domestic compliance with the phasedown and phaseout schedule for production and import. The requirements created by the interim final rule were discussed with many industry representatives and represent one of the least burdensome options available. Thus, with this final action EPA is continuing the recordkeeping and reporting requirements for producers and importers established by the interim final rule and described in the above text.

B. Are Methyl Bromide Applicators Required To Report?

Today's action includes a certification requirement for purchases of methyl bromide by applicators. Applicators must submit a certification to the seller of the methyl bromide when they want to purchase a specific quantity of methyl bromide explicitly for quarantine and preshipment applications. The applicator will certify that the quantity purchased will be used solely for quarantine and preshipment applications. The applicator must send the certification to the company selling the methyl bromide before the seller ships the cylinders of methyl bromide (*i.e.*, certification before shipment).

The applicator can obtain the certification form at EPA's Web site at *http://www.epa.gov/ozone/mbr* or from their methyl bromide distributor. The applicator must check the box indicating that the particular quantity being ordered is solely for quarantine and preshipment applications as defined on the form (see the definition above in Part VI) and will neither be sold nor used for any other purpose. The applicator must sign the form certifying, under penalty of law, that the quantity of methyl bromide purchased will be used solely for quarantine and preshipment applications in accordance with the definitions. The applicator must return the completed and signed form to the distributor. The distributor retains the certification form in order to compile data that they will submit to EPA on the quantity of methyl bromide sold under the exemption for quarantine and preshipment applications. The certification form ensures that quantities of methyl bromide produced or imported under the exemption for quarantine and preshipment applications are used only in accordance with the strict requirements of the exemption. It is important to note that the applicator will also be able to purchase non-exempt methyl bromide until the phaseout date for methyl bromide.

For quarantine applications, the applicator must collect documentation citing the regulatory requirement or other official requirement that justifies the use of exempted methyl bromide. Acceptable documentation for a quarantine application includes the forms provided directly to the applicator by an official from a national plant, animal, environmental protection or health authority (*e.g.* USDA/APHIS) requesting the treatment of commodities to control quarantine pests. In the absence of official documentation from a plant, animal, environmental protection or health authority, the commodity owner, shipper or their agent must provide a letter to the methyl bromide applicator requesting the use of methyl bromide that explicitly cites the regulation requiring a quarantine treatment or quarantine official control. Likewise, the applicator must collect documentation citing the official requirement calling for a preshipment application. The commodity owner, shipper or their agent must provide a letter to the methyl bromide applicator requesting the use of methyl bromide that explicitly cites the official requirement for a preshipment application. The letter that the commodity owner, shipper or their agent presents to the applicator must include the following statement: "I certify knowledge of the requirements associated with the exempted quarantine and preshipment applications published in 40 CFR part 82, including the requirement that this letter cite the treatments or official controls for quarantine applications or the official requirements for preshipment requirements." Both the commodity owner, shipper or their agent and the applicator must maintain this letter for three years in accordance with current recordkeeping requirements in 40 CFR part 82, subpart A. Neither the applicator nor the commodity owner, shipper or their agents are required to submit the letter to EPA.

The requirements established by today's final action exactly match the requirements of the interim final rule. EPA received one comment related to these reporting requirements. The commenter raised the concern that requiring distributors to send and recover Certification Forms prior to every sale could cause supply delays and backlog of commodities needing fumigation at ports. EPA does not believe that the above requirements will cause such a backlog if efficiently managed. While the above protocol explicitly requires that distributors must receive completed Certification Forms prior to distributing the order of methyl bromide, there is flexibility regarding when distributors must provide the blank forms to their customers. In fact, a distributor may send a blank Certification Form to every applicator with instructions to make many copies of the blank form, so each applicator is ready to place immediate, "rush" orders for methyl bromide for quarantine and preshipment applications. However, in

situations when an applicator needs to have methyl bromide on-hand to fumigate a shipment hours after it arrives, EPA understands applicators strive to anticipate these busy seasons and accordingly place large orders well in advance. Under today's exemption, when an applicator places a large order in anticipation of future needs for methyl bromide for quarantine and preshipment applications, the applicator can and must submit the Certification Form for the quantity that will be stored to be used solely for quarantine and preshipment applications in the future.

C. Are Distributors Required To Report?

With today's action, EPA is requiring that a person who distributes methyl bromide to applicators (the distributor) compile all the information from applicator certifications (as described in part VII.B above) on a quarterly basis and submit the summary data to EPA. In administering other parts of the stratospheric ozone protection program over the past decade, regulated companies have often expressed an appreciation for the submission of smaller, quarterly reports, rather than one large, end-of-year report. EPA also believes that regular, quarterly tracking by distributors will increase the accuracy of reporting. Since EPA received no comments objecting to the submission of quarterly reports, we are requiring distributors to submit quarterly reports that summarize the total quantity of methyl bromide sold over a quarter to applicators who submitted certifications described in part VII.B above.

The collection of information on the quantity of methyl bromide sold and certified for quarantine and preshipment applications is needed so that the U.S. can respond to a recent amendment to the Protocol. The amendment, to which the Parties agreed at their Eleventh Meeting in Beijing in 1999, adds a provision to Article 7 (Reporting of Data), requiring Parties to submit information on the amounts of methyl bromide used for quarantine and preshipment applications. Reporting by the distributors will allow a comparison between the quantities of methyl bromide sold and certified for quarantine and preshipment applications with the amount of methyl bromide produced and imported for quarantine and preshipment applications, as reported in the producers'/importers' report as described in part VII.A above.

D. What About Methyl Bromide Exported for Quarantine and Preshipment Applications?

With today's action, producers and others that export methyl bromide must report the total quantity of methyl bromide explicitly exported to individual foreign countries for quarantine and preshipment applications on a quarterly basis. Under § 82.13, producers and exporters already distinguish other exempted quantities of methyl bromide explicitly exported for transformation or destruction. For each export of methyl bromide for quarantine and preshipment applications, as for exports for transformation or destruction, the exporter must obtain a certification from the foreign person (entity) importing the methyl bromide stating that the material will be used only for quarantine and preshipment applications. These certifications must be submitted with the quarterly reports. These certifications will then be shared with the appropriate foreign government officials in the importing country and the compiled data will be shared with UNEP advisory bodies to the Protocol. Certifications must accompany the reporting on quantities exported for quarantine and preshipment applications because of a concern that the U.S., as one of the largest worldwide producers of methyl bromide, could potentially contribute to the creation of a loophole for non-exempt uses of methyl bromide around the globe. EPA feels it will be important to closely monitor and track production of methyl bromide that is exported for quarantine and preshipment applications because these uses are exempt from Protocol control measures.

The above requirements are consistent with those created by the interim final rule. EPA received no comments related to this issue.

E. Will There Be a FIFRA Pesticide Label Change?

The interim final rule introduced the possibility of EPA's Office of Pesticide Programs developing, under the authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), a unique label for methyl bromide specifically designated for quarantine and preshipment use. The Agency received five comments in support of such an action. Commenters advocated that EPA replace the record keeping and reporting requirements established by the interim rule (and continued with today's action) with such a label in order to reduce the burden on users associated with the Quarantine and Preshipment Exemption.

EPA recognizes the potential burden reduction that creating a new QPS-specific FIFRA label could offer, however, the Agency also remains cognizant of the need to retain access to the information it needs to meet the U.S. government's own international reporting requirements as established by the Montreal Protocol. Thus, after the Office of Pesticide Programs finishes the process of making changes that create a new QPS-specific FIFRA label for methyl bromide, the Office of Air and Radiation will consider ways to simplify today's recordkeeping and reporting requirements but likely retain some of these requirements to ensure the accurate submission of data in accordance with U.S. obligations under the Montreal Protocol.

A registration/label change would designate individual cylinders of methyl bromide specifically for quarantine and preshipment applications and it would be illegal to use the material in these cylinders for other uses. Under an approved registration/label change there would be unique registration numbers for the new labels that would accompany each cylinder through the chain of commerce from producers or importers to the end-user (the applicator). As currently required under FIFRA, establishments would report total quantities of methyl bromide under this new quarantine and preshipment registration/label to EPA's Office of Pesticide Programs on an annual basis. Following a change in the FIFRA authorized registration/label, it would be possible for the Agency to reconcile the total quantity of methyl bromide certified to be solely for quarantine and preshipment applications under procedures described in parts VII.B and VII.C above, the total quantity of methyl bromide produced or imported for quarantine and preshipment applications under today's part VII.A above, and the annual FIFRA establishment reports on methyl bromide, which reference specific products by registration number.

EPA's Office of Pesticide Programs is continuing to work with the Methyl Bromide Industry Panel to develop a registration and label change for methyl bromide products. EPA reserves the ability to reevaluate the record keeping and reporting requirements established in today's action if and when such a label is created.

VIII. What Were Other Considerations and Situations on Which EPA Sought or Received Comment?

In the interim final rule, EPA sought comment on a number of possible variations on the exemption that were

not incorporated into the interim rule as it was published. The Agency received comment on some of these items, as well as on other topics for which comment was not expressly sought.

EPA recognizes that additional questions may arise regarding aspects of today's final action. If a person has a question about whether a certain aspect of today's final action applies to their situation, EPA is encouraging the submissions of written questions accompanied by a detailed description of how methyl bromide relates to the person's particular enterprise. The Agency will consider questions about whether aspects of today's final action apply in the context of EPA's regular process for issuing written determinations.

A. Methyl Bromide Is the Only Feasible Treatment Option

EPA received 31 comments in response to the interim final rule that addressed the lack of feasible alternatives available for specific uses of methyl bromide and the economic impact of the phaseout on sectors of the agricultural industry. In response to such comments, EPA notes that there is no "critical need" requirement associated with the Quarantine and Preshipment Exemption at this juncture. The exemption applies only to uses of methyl bromide that qualify as a quarantine or preshipment application, as defined by this final action, regardless of the availability of alternatives.

The Montreal Protocol and the CAA created two distinct exemptions to the methyl bromide phaseout: (1) The Quarantine and Preshipment Exemption, and (2) the Critical Use Exemption. The Critical Use Exemption was created by the Parties to the Protocol to address the possibility that substitutes and alternatives may not be available for all methyl bromide uses by the January 1, 2005 phaseout date. The term "critical use" is defined, in part, by the lack of technically or economically feasible alternatives. For more information about the Critical Use Exemption please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or visit *http://www.epa.gov/ozone/mbr/cueqa.html.*

B. Has the Agency Considered Definitions Under the International Plant Protection Convention (IPPC)?

Under the International Standards for Phytosanitary Measures (ISPMs) adopted by members of the International Plant Protection Convention (IPPC) on April 22, 2001, the definition of "official control" is different than the definition that was agreed to by the Parties to the Montreal Protocol and adopted by EPA in the interim final rule. The IPPC definition of the phrase "official control" is, "the active enforcement of mandatory phytosanitary regulations and the applications of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or the management of regulated non-quarantine pests." The IPPC glossary of phytosanitary terms defines "official" as "established, authorized or performed by a National plant protection Organization (NPPO)." In the United States, the NPPO is the USDA Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ) Program.

Further, under the ISPMs adopted by the IPPC, the phrase "regulated non-quarantine pests" is defined as, "a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contacting party."

EPA sought comment in the interim final rule on this IPPC definition of "official control" and received 3 comments. All commenters stated that EPA ought to adopt the IPPC definition because it is broader than that adopted in the interim final rule.

In this final action, EPA is adopting the definition of "official control" found in the interim final rule and agreed upon by the Parties to the Montreal Protocol. The IPPC definition is broader, insofar as includes within its scope not only regulated quarantine pests but also regulated "non-quarantine pests", an addition not found in EPA's definition. However, IPPC defines the phrase "non-quarantine pests" as being applicable only to "plants for planting". [With this final action, EPA explicitly applies the quarantine exemption to use of methyl bromide for growing propagative material if it is being used to meet official quarantine requirements of the destination to which the propagative materials are being transported. However, the IPPC's definition is much narrower than the Protocol's, because the word "official" under the IPPC is limited only to national plant protection organization, and the Protocol's quarantine definition refers to "plant, animal or environmental protection or health authority" and the preshipment definition refers to "national plant, animal, environmental, health or stored product authority".

Additionally, in 1998, the TEAP explicitly laid out the differences between the IPPC's and the Montreal Protocol's definitions of "official control" for consideration by the Parties. The Parties rejected making any changes to the Protocol's definition of "official control" even when presented with the IPPC language (See discussion in section IV above). The Agency is acting in conformity with customary international law by adhering to the decision of the Parties on this matter.

C. What Action Is the Agency Taking Regarding Prophylactic Fumigation of U.S. Exports When the Fumigation Is Not Mandated by Import Regulations?

U.S. businesses sometimes use methyl bromide against non-quarantine pests for a commodity that is being exported because it is known that the importing country will treat with methyl bromide at the port of entry if the detected level of these non-quarantine pests during port-of-entry inspection exceeds that country's standards. Some U.S. exporters give their commodities a prophylactic treatment in the U.S. to prevent a much more damaging treatment in the receiving country that could occur if non-quarantine pests were found, possibly reducing the quality of the commodity. In cases where an official foreign Party requirement is specific to quarantine pests, or there is a general performance-based quarantine requirement, the use of methyl bromide under the exemption for quarantine applications would be appropriate. In addition, fumigation with methyl bromide to meet U.S. government or foreign non-quarantine requirements 21 days prior to export of the commodity would also be exempt under the definition of preshipment applications. The Agency reminds methyl bromide users that non-exempted quantities will be available until the January 1, 2005 phaseout date and that the Critical Use Exemption will become available after the phaseout (see section VII.A. above).

D. What Action is the Agency Taking Regarding the Exclusion of Specific Quarantine and Preshipment Applications From the Exemption at Some Future Time?

The Parties to the Protocol in Decision XI/13 request Parties to "review their national plant, animal, environmental, health an stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and preshipment where technically and economically feasible alternatives exist." The reason for a review process

would be to limit the production and import of methyl bromide to only those cases where no other "technologically and economically feasible alternatives exist." Through time, it is likely that the use of methyl bromide will be less and less necessary for quarantine and preshipment applications. When technically and economically feasible alternatives to methyl bromide are available, a process will be devised that will allow the U.S. to limit the use of this ozone-depleting substance while taking into account the need to protect international trade. In the years beyond the methyl bromide production and consumption phaseout, there will continue to be an exemption for quarantine and preshipment applications but there may no longer be price pressures for moving away from these quarantine and preshipment applications of methyl bromide. Therefore, the Parties to the Protocol emphasize the importance of reviewing quarantine and preshipment applications and identifying when technically and economically feasible alternatives exist, and removing these applications from the exemption.

EPA offered several options for implementing such a review process in the interim final rule. The Agency received 5 comments related to this issue. All commenters asserted that the option to eliminate the Quarantine and Preshipment Exemption after the phaseout and ask users to apply for critical-use exemptions where no technically or economically feasible alternatives exist offered by EPA in the interim final rule was contrary to the provisions of the Montreal Protocol and could not be pursued without an amendment to the agreement. Given the request by the Parties for a future contraction of the Quarantine and Preshipment Exemption, EPA does not agree that the Protocol prohibits such a course of action. However, the Agency agrees that this option may impose the burden of completing a Critical Use Exemption Application on users where it may not be necessary. Thus, with this action, EPA sets forth its intent to meet the Parties' request for a domestic review process for quarantine and preshipment applications of methyl bromide by establishing a procedure for excluding specific quarantine and preshipment applications from the exemption when EPA determines by notice and comment rulemaking that alternatives are in significant international use for the specific applications. In undertaking the process of notice and comment rulemaking, EPA will consult with USDA/APHIS regarding alternatives that are efficacious for quarantine and preshipment and are in significant international use for specific quarantine and preshipment applications. Such a notice and comment rulemaking process will allow U.S. users of methyl bromide for quarantine and preshipment applications to make the case that although alternative(s) are in significant international use, the specific circumstances of their U.S. applications are unique (*e.g.*, the alternatives are not feasible or commercially available in the U.S.) and continue to warrant the use of methyl bromide.

EPA considered relying on market prices to guide methyl bromide use as an alternative to the formal review process described above. However, the Agency was unable to gather adequate information to determine whether the price of methyl bromide would be sufficiently likely to provide an incentive for the development and use of alternatives. Without adequate economic analysis, the Agency is unable to rely on market forces to meet the U.S.'s international commitment.

IX. What Are the Steps To Conform the U.S. Methyl Bromide Phaseout Schedule and Exemptions to the Montreal Protocol and Amended Clean Air Act?

During stakeholder meetings, and in the proposed and final rules that established the 25 percent reduction in methyl bromide baseline allowances beginning in 1999 (64 FR 9290, 64 FR 29240), EPA described its intention to follow with separate rulemakings that would include the additional phaseout steps for methyl bromide and establish additional exemptions in accordance with the Protocol and the CAA. The rule establishing the remaining reduction and phaseout schedule for methyl bromide was published November 28, 2000 (65 FR 70795). The reduction and phaseout schedule is listed above at the end of part I.

After the phaseout on January 1, 2005, critical-use exemptions are permitted under the Montreal Protocol and the Clean Air Act when nominated by the United States and approved by the Parties. In addition, an emergency use exemption of no more than 20 metric tonnes is available after the phaseout on January 1, 2005. In 2001, EPA initiated stakeholder meetings to develop a process for an emergency use exemption and for critical use exemptions, which is designed to ensure that the U.S. meets its obligations under the Montreal Protocol consistent with statutory requirements in the Clean Air Act. On May 10, 2002 EPA published a **Federal Register** document (67 FR 31798) asking for people to submit Critical Use Exemption Applications. At this time no final decision has been published regarding what uses will be exempted as "critical." Sometime in advance of 2005, EPA will establish a process for an emergency use exemption through notice and comment rulemaking.

X. Administrative Requirements

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with the applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective of least burdensome alternatives if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The rule imposes no enforceable duty on any

State, local, or tribal government. The recordkeeping and reporting requirements are the only mandates imposed on those members of the private sector that choose to take advantage of the exemption to the methyl bromide phaseout established by this rulemaking, which EPA calculated to be under $100 million per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

B. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System code (NAICS) in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Type of enterprise	NAICS Code	Size standard (number of employees)	Size standard (millions of dollars)
Pesticide and Other Agricultural Chemical Manufacturing	32532	500	.....
Support Activities for Agriculture and Forestry	115	.....	$6.0
Exterminating and Pest Control Services	56171	.....	$6.0

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that although some small percentage of distributors may be small entities and many of the applicators are too, that all entities regulated by today's action receive a benefit through the exemption, which allows them to continue to obtain quantities of methyl bromide outside of the reduction schedule and phaseout controls. We estimate that these benefits are equal to approximately 7 to 10% of the U.S. baseline of methyl bromide, annually, or about 1,787 to 2,552 metric tonnes, which at current prices for methyl bromide of approximately $3.00/pound would be equal to an estimated annual benefit of $12 to $17 million. The costs of this exemption arise from the limited recordkeeping and reporting requirements which are estimated to be less than $53 thousand per year for the entire industry that uses methyl bromide for quarantine and preshipment applications.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. EPA held several stakeholder meetings to explore options for establishing a reasonable record keeping and reporting system that would allow the Agency to monitor and collect information for the U.S. reporting obligations to the Montreal Protocol. One option considered would have asked for certifications from applicators to be submitted to producers or importers prior to exempted production or import. This and other options were not only administratively too burdensome, but would also be too disruptive of normal commerce. In today's action, for each level in the methyl bromide market chain, the Agency chose the least burdensome method for collecting the minimum amount of information that would allow the U.S. to accurately fulfill its Protocol reporting requirements.

C. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations on the original rule submitted to them will be documented in the public record.

D. Applicability of Executive Order 13045 (Children's Health Protection)

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885 (April 23, 1997)) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements a specific exemption set forth by Congress in section 604(d)(5) of the Clean Air Act.

E. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule for three years under the provisions of the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* The OMB control number is 2060–0170.

In relation to the expected benefits of today's exemption from the phaseout schedule for methyl bromide, this action is maintaining the additional reporting and record keeping requirements required in the interim final rule. This action requires reporting by distributors of methyl bromide regarding the total quantity sold that is certified to be solely for quarantine and preshipment applications. This action also requires applicators of methyl bromide to certify that specified quantities purchased will be used solely for quarantine and preshipment applications. Producers and importers of methyl bromide must include additional information in existing quarterly reports. As in the interim final rule, producers that export and third-party exporters must submit additional information regarding quantities of methyl bromide exported for quarantine and preshipment applications. Today's action also maintains the record keeping requirements of the interim final rule associated with the reporting listed above and for commodity owners or shippers who must formally request methyl bromide use citing the official control or official requirement for the quarantine and preshipment application.

EPA is making the reporting forms associated with this rule available electronically as a first step. In addition, EPA is working to make it possible for people to complete the forms electronically with special guidance on a "file naming protocol." EPA wants to create this "file naming protocol" so forms completed electronically by producers and importers can be saved with similar nomenclature for transmission to EPA by email. For example, the company, Acme Ltd., might complete the third-quarter importer's report electronically and save the document with the name 3Q_ImpR_Acme and send it, by email, to EPA. The Agency believes guidance on a "file naming protocol" will ease the process for electronically filing, searching and identifying forms for both the Agency and companies, and be especially helpful if a question arises about information in a specific form. EPA will strive to have forms available that can be completed electronically by the regulatory deadline for submission of the first-quarter reports (30 days after the end of the quarter in 2003), and will make every effort to have them available no later than for submission of second-quarter reports. Concurrent with the process for making it possible to electronically complete forms for submission by email, EPA is pursuing technical and logistical questions about creating a secure Web-based system for direct electronic reporting of data. If EPA deems that it is feasible and efficient to create a secure Web-based database for direct electronic reporting, then EPA will work to bring such a system online by 2004.

The information collection under this action is designed to implement the exemption in paragraph 6 under article 2H of the Montreal Protocol for quantities of methyl bromide used for quarantine and preshipment applications as well as the exemption under 604(d)(5) of the CAA. The information collection under this rule is authorized under section 603(b) and 603(d) of the CAA. This information collection is conducted to meet U.S. obligations under Article 7, Reporting Requirements, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); and to carry out the requirements of Title VI of the CAA, including sections 603 and 614. The reporting requirements included in this rule are intended to: (1) Allow exempted production and import for a specific exemption and the consequent tracking of that production and import; (2) respond to industry comments on the functioning of the program to streamline reporting and eliminate administrative inefficiencies; (3) satisfy U.S. obligations under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7; (4) fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 for reporting and monitoring; and (5) provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in section 603(d) of Title VI of the CAA.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, Subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when EPA receives the information it may be made available to the public without further notice to the respondents (40 CFR 2.203).

The information collection requirements for this action have an estimated reporting burden averaging 1.38 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing the collection of information. The estimate includes the time needed to comply with EPA's reporting requirements, as well as that used for the completion of reports.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Collection activity	No. of respondents	Responses/ respondent	Total responses	Hours per response	Total hours
Producers & Importers Report	4	4	16	1	16
Exporters Report	2	4	8	8	64
Applicator Certification	15	6	90	0.5	45
Distributor Report	15	4	60	4	240
Commodity Owner, Shipper or Agent Record keeping	500	10	500	1	500
Total burden hrs					865

F. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national governmental and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not in any way restrict States from continuing to operate their plant, animal, environmental, health or stored product protection programs associated with quarantine and preshipment applications. Thus, Executive Order 13132 does not apply to this rule.

G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249 (November 9, 2000)), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. There is no enforceable mandate imposed on tribal governments within this regulation. Thus, Executive Order 13175 does not apply to this rule.

H. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13211 (Energy Effects)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

XI. Congressional Review

A. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating that rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective January 1, 2003.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: December 23, 2002.

Christine Todd Whitman,

Administrator.

For reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for subpart 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.3 is amended by adding new definitions in alphabetical order for the terms, "Applicator," "Commodity Owner, Shipper or their Agent," "Distributor of methyl bromide," "Preshipment applications," and "Quarantine applications."

§ 82.3 Definitions.

As used in this subpart, the term:

Applicator means the person who applies methyl bromide.

* * * * *

Commodity Owner, Shipper or their Agent means the person requesting that an applicator use methyl bromide for quarantine or preshipment applications.

* * * * *

Distributor of methyl bromide means the person directly selling a class I, Group VI controlled substance to an applicator.

* * * * *

Preshipment applications, with respect to class I, Group VI controlled substances, are those non-quarantine applications applied within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.

* * * * *

Quarantine applications, with respect to class I, Group VI controlled substances, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (1) Official control is that performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection or health authority; (2) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof).

* * * * *

3. Section 82.4 is amended by redesignating paragraphs (a) as (a)(1) and republishing the text, adding (a)(2), redesignating paragraphs (c) as (c)(1) and republishing the text, adding (c)(2),

redesignating (k) as (k)(1) and republishing the text, and adding (k)(2) as follows:

§ 82.4 Prohibitions.

(a)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of unexpended production allowances or unexpended Article 5 allowances for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

(2) Effective January 1, 2003, production of class I, Group VI controlled substances is not subject to the prohibitions in paragraph (a)(1) of this section if it is solely for quarantine or preshipment applications as defined in this subpart.

* * * * *

(c)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, no person may produce or (except for transhipments, heels or used controlled substances) import, at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended consumption allowances held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production or importation (other than transhipments, heels or used controlled substances) constitutes a separate violation of this subpart.

(2) Effective January 1, 2003, production and import of class I, Group VI controlled substances is not subject to the prohibitions in paragraph(c)(1) of this section if it is solely for quarantine or preshipment applications as defined in this subpart.

* * * * *

(k)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, prior to January 1, 1996, for all class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, only consumption allowances are required to import, with the exception of transhipments, heels, and used controlled substances. Effective January 1, 1996, for all Groups of class I controlled substances, except Group VI, only essential-use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels and used controlled substances.

(2) Notwithstanding paragraph (k)(1) of this section, effective January 1, 2003, for class I, Group VI controlled substances, consumption allowances are not required to import quantities solely for quarantine or preshipment applications as defined in this subpart.

* * * * *

4. Section 82.13 is amended by:

a. Adding paragraphs (f)(2)(xvii) through (f)(2)(xix), and (f)(3)(xiii) through (f)(3)(xv),

b. Adding paragraphs (g)(1)(xvii) through (g)(1)(xix), and (g)(4)(xv) through (g)(4)(xvii),

c. Revising paragraph (h),

d. Adding paragraphs (aa), (bb), and (cc).

The revisions and additions read as follows:

§ 82.13 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(2) * * *

(xvii) For class I, Group VI controlled substances, dated records of the quantity of controlled substances produced for quarantine and preshipment applications and quantity sold for quarantine and preshipment applications;

(xviii) Written certifications that quantities of class I, Group VI controlled substances produced solely for quarantine and preshipment applications were purchased by distributors or applicators to be used only for quarantine and preshipment applications in accordance with the definitions in this subpart; and

(xix) Written verifications from a U.S. purchaser that class I, Group VI controlled substances produced solely for quarantine and preshipment applications, if exported, will be exported solely for quarantine and preshipment applications upon receipt of a certification in accordance with the definitions of this subpart and requirements in paragraph (h) of this section.

(3) * * *

(xiii) The amount of class I, Group VI controlled substances sold or transferred during the quarter to a person other than the producer solely for quarantine and preshipment applications;

(xiv) A list of the quantities of class I, Group VI controlled substances produced by the producer and exported by the producer and/or by other U.S. companies, to a Party to the Protocol that will be used solely for quarantine and preshipment applications and therefore were not produced expending production or consumption allowances; and

(xv) For quarantine and preshipment applications of class I, Group VI controlled substances in the United States or by a person of another Party, one copy of a certification that the material will be used only for quarantine and preshipment applications in accordance with the definitions in this subpart from each recipient of the material and a list of additional quantities shipped to that same person for the quarter.

* * * * *

(g) * * *

(1) * * *

(xvii) For class I, Group VI controlled substances, dated records of the quantity of controlled substances imported for quarantine and preshipment applications and quantity sold for quarantine and preshipment applications;

(xviii) Written certifications that quantities of class I, Group VI controlled substances imported solely for quarantine and preshipment applications were purchased by distributors or applicators to be used only for quarantine and preshipment applications in accordance with the definitions in this subpart; and

(xix) Written verifications from a U.S. purchaser that class I, Group VI controlled substances imported solely for quarantine and preshipment applications, if exported, will be exported solely for quarantine and preshipment applications upon receipt of a certification in accordance with the definitions of this Subpart and requirements in paragraph (h) of this section.

* * * * *

(4) * * *

(xv) The amount of class I, Group VI controlled substance sold or transferred during the quarter to a person other than the importer solely for quarantine and preshipment applications;

(xvi) A list of the quantities of class I, Group VI controlled substances exported by the importer and or by other U.S. companies, to a Party to the Protocol that will be used solely for quarantine and preshipment applications and therefore were not imported expending consumption allowances; and

(xvii) For quarantine and preshipment applications of class I, Group VI controlled substances in the United States or by a person of another Party, one copy of a certification that the material will be used only for quarantine and preshipment applications in accordance with the definitions in this subpart from each recipient of the material and a list of additional quantities shipped to that same person for the quarter.

(h) Reporting Requirements—Exporters.

(1) For any exports of class I controlled substances (except Group VI) not reported under § 82.10 of this subpart (additional consumption allowances), or under paragraph (f)(3) of this section (reporting for producers of controlled substances), the exporter who exported a class I controlled substance (except Group VI) must submit to the Administrator the following information within 45 days after the end of the control period in which the unreported exports left the United States:

(i) The names and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employee Identification Number;

(iii) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed;

(iv) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(v) The country to which the controlled substances were exported;

(vi) The amount exported to each Article 5 country;

(vii) The commodity code of the controlled substance shipped; and

(viii) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported controlled substances intends to transform those substances, or destruction verifications (as in paragraph(k) of this section) showing that the purchaser or recipient intends to destroy the controlled substances.

(2) For any exports of class I, Group VI controlled substances not reported under § 82.10 of this subpart (additional consumption allowances), or under paragraph (f)(3) of this section (reporting for producers of controlled substances), the exporter who exported a class I, Group VI controlled substance must submit to the Administrator the following information within 45 days after the end of each quarter in which the unreported exports left the United States:

(i) The names and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employee Identification Number;

(iii) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed;

(iv) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(v) The country to which the controlled substances were exported;

(vi) The amount exported to each Article 5 country;

(vii) The commodity code of the controlled substance shipped; and

(viii) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported controlled substances intends to transform those substances, the destruction verifications (as in paragraph (k) of this section) showing that the purchaser or recipient intends to destroy the controlled substances, or the certification that the purchaser or recipient and the eventual applicator will only use the material for quarantine and preshipment applications in accordance with the definitions in this subpart.

* * * * *

(aa) Every distributor of methyl bromide (class I, Group VI controlled substances) who purchases or receives a quantity produced or imported solely for quarantine or preshipment applications under the exemptions in this subpart must comply with recordkeeping and reporting requirements specified in this paragraph (aa) of this section.

(1) Every distributor of methyl bromide must certify to the producer or importer that quantities received that were produced or imported solely for quarantine and preshipment applications under the exemptions in this subpart will be used only for quarantine applications or preshipment applications in accordance with the definitions in this subpart.

(2) Every distributor of a quantity of methyl bromide that was produced or imported solely for quarantine or preshipment applications under the exemptions in this subpart must receive from an applicator a certification of the quantity of class I, Group VI controlled substances ordered, prior to delivery of the quantity, stating that the quantity will be used solely for quarantine or preshipment applications in accordance with definitions in this subpart.

(3) Every distributor of methyl bromide who receives a certification from an applicator that the quantity ordered and delivered will be used solely for quarantine and preshipment applications in accordance with definitions in this subpart must maintain the certifications as records for 3 years.

(4) Every distributor of methyl bromide who receives a certification from an applicator that the quantity ordered and delivered will be used solely for quarantine and preshipment applications in accordance with definitions in this subpart must report to the Administrator within 45 days after the end of each quarter, the total quantity delivered for which certifications were received that stated the class I, Group VI controlled substance would be used solely for quarantine and preshipment applications in accordance with definitions in this Subpart.

(bb) Every applicator of class I, Group VI controlled substances who purchases or receives a quantity produced or imported solely for quarantine and preshipment applications under the exemptions in this subpart must comply with recordkeeping and reporting requirements specified in this paragraph (bb) of this section.

(1) Recordkeeping—Applicators. Every applicator of class I, Group VI controlled substances produced or imported solely for quarantine and preshipment applications under the exemptions of this subpart must maintain, for every application, a document from the commodity owner, shipper or their agent requesting the use of class I, Group VI controlled substances citing the regulatory requirement that justifies its use in accordance with definitions in this subpart. These documents shall be retained for 3 years.

(2) Reporting—Applicators. Every applicator of class I, Group VI controlled substances who purchases or receives a quantity of class I, Group VI controlled substance that was produced or imported solely for quarantine and preshipment applications under the exemptions in this subpart shall provide the distributor of the methyl bromide, prior to shipment of the class I, Group

VI controlled substance, with a certification that the quantity of controlled substances will be used only for quarantine and preshipment applications as defined in this subpart.

(cc) Every commodity owner, shipper or their agent requesting an applicator to use a quantity of class I, Group VI controlled substance that was produced or imported solely for quarantine and preshipment applications under the exemptions of this subpart must maintain a record for 3 years, for each request, certifying knowledge of the requirements associated with the exemption for quarantine and preshipment applications in this subpart and citing the regulatory requirement that justifies the use of the class I, Group VI controlled substance in accordance with definitions in this subpart. The record must include the following statement: "I certify knowledge of the requirements associated with the exempted quarantine and preshipment applications published in 40 CFR part 82, including the requirement that this letter cite the treatments or official controls for quarantine applications or the official requirements for preshipment requirements."

[FR Doc. 02–32986 Filed 12–31–02; 8:45 am]

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Friday, January 3, 2003

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM242, Special Conditions No. 25–225–SC]

Special Conditions: Raytheon Aircraft Company Model HS.125 Series 700A Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Elliott Aviation Technical Products Development, Inc. These modified airplanes will have a novel and unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an Electronic Flight Instrument System (EFIS) for display of critical flight parameters (altitude, airspeed, and attitude) to the crew. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 23, 2002. Comments must be received on or before February 3, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM242, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM242.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On July 25, 2002, Elliott Aviation Technical Products Development, Inc., Quad City Airport, Moline, Illinois 61266–0100, applied for a supplemental type certificate (STC) to modify Raytheon Aircraft Company Model HS.125 Series 700A airplanes approved under Type Certificate No. A3EU. The HS.125 Series 700A airplanes are executive type transports that have two aft mounted turbine engines, a maximum passenger load of 15 passengers, and a maximum operating speed of 280 to 320 KTS depending on the fuel loading configuration. The modification incorporates the installation of the Rockwell Collins FDS 2000 Electronic Flight Instrument System (EFIS). This system uses flat information display panels for display of critical flight parameters (heading and attitude) to the crew. These displays can be susceptible to disruption to both command and response signals as a result of electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. This disruption of signals could result in the loss of all critical flight information displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Elliott Aviation Technical Products Development, Inc., must show that the Raytheon Aircraft Company Model HS.125 Series 700A airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified Raytheon Aircraft Company Model HS.125 Series 700A airplanes include 14 CFR part 25 effective February 1, 1965, as amended

by Amendments 25–2 and 25–20, as described in Type Certificate Data Sheet A3EU.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon Aircraft Company Model HS.125 Series 700A airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Raytheon Aircraft Company Model HS.125 Series 700A airplanes must comply with the fuel vent and exhaust emission requirement of 14 CFR part 34 and the noise certification requirement of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Elliott Aviation Technical Products Development, Inc., apply at a later date for a supplemental type certificate to modify any other model included Type Certificate No. A3EU to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

As noted earlier, the modified Raytheon Aircraft Company Model HS.125 Series 700A airplanes will incorporate the Rockwell Collins FDS 2000 Electronic Flight Instrument System (EFIS). Because these advanced systems use electronics to a far greater extent than the original flight and navigation systems, they may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Elliott Aviation Technical Products Development, Inc. These special conditions will require that the new EFIS that performs critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionic/electronic and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz ...	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz ...	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz ...	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz ...	2000	200
18 GHz–40 GHz ...	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability: As discussed above, these special conditions are applicable to Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Elliott Aviation Technical Products Development, Inc. Should Elliott Aviation Technical Products Development, Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A3EU to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Elliott Aviation Technical Products Development, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on this airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been

submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Elliott Aviation Technical Products Development, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on December 23, 2002.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–63 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–84–AD; Amendment 39–13005; AD 2002–26–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires a one-time inspection to identify all alloy steel bolts on the body station 1480 bulkhead splice, and corrective action if necessary; and provides for optional terminating action for certain requirements of that AD. This amendment requires accomplishment of the previously optional terminating action. The actions specified by this AD are intended to prevent cracked or broken bolts, which could result in structural damage and rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 7, 2003.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 8, 2002 (67 FR 19641, April 23, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2002–08–10, amendment 39–12718 (67 FR 19641, April 23, 2002), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on June 21, 2002 (67 FR 42204). The action proposed to continue to require a one-time inspection to identify all alloy steel bolts on the body station (BS) 1480 bulkhead splice, and corrective action if necessary. That action also proposed to mandate the previously optional terminating action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Remove Paragraph (f)

One commenter asks that paragraph (f) of the proposed AD be removed. The commenter states that paragraph (c) of the proposed AD conflicts with paragraph (f) because paragraph (f) states, "As of the effective date of this AD, no person may install an alloy steel bolt on the BS 1480 bulkhead splice on any airplane." The commenter notes that Boeing Alert Service Bulletin 747–53A2390, Revision 1, is referenced as the applicable source of service information in AD 2001–11–06, amendment 39–12248 (66 FR 31124, July 16, 2001); that AD is specified in paragraph (c) of the proposed AD. The commenter adds that paragraph (c) allows reinstallation of alloy steel bolts following a magnetic particle inspection, which creates the conflict between paragraphs (c) and (f).

The FAA partially agrees with the commenter. We agree that there is some inconsistency between the requirements of paragraphs (c) and (f) of the proposed AD, but we do not agree that paragraph (f) should be removed. The inspections to identify alloy steel bolts, as required by paragraph (a) of the proposed AD, are one-time only. An operator could install new alloy steel bolts in areas previously identified as having Inconel 718 bolts after doing the inspection. Unless proper records are maintained, an operator will not know whether the repetitive inspections of alloy steel bolts with no cracking, which is corrective action for the inspection required by paragraph (a), would apply. For clarification, we have changed paragraph (f) in this final rule to state, "Except as provided by paragraph (c) of this AD: As of the effective date of this AD, no person may install an alloy steel bolt on the BS 1480 bulkhead splice on any airplane."

Request to Change Paragraph (a)

One commenter asks that paragraph (a) of the proposed AD be changed to remove the term "detailed methods" as an inspection that can be used for identification of an alloy steel bolt. The commenter states that the referenced service bulletin contains no detailed instructions for identifying the bolts by a detailed visual inspection. The commenter adds that an operator may be able to identify the bolt by a visual inspection, but only if the operator knows the bolt codes marked on the heads of the alloy steel bolts.

We do not agree with the commenter. On page 34 of the referenced service bulletin, instructions are provided for a detailed inspection, including the bolt codes for identifying alloy steel bolts for

Groups 3 and 4 airplanes. No change to the final rule is necessary in this regard.

Request to Change Paragraph (d)

One commenter asks that paragraph (d) of the proposed AD be changed so the wording is similar to that specified in paragraphs (b)(2) and (b)(3) of the proposed AD. The commenter states that paragraph (d) would require installation of Inconel 718 bolts per Boeing Alert Service Bulletin 747–53A2477. This requirement could contradict the requirements in AD 2001–11–06, which requires that inspections and repairs be done per Boeing Alert Service Bulletin 747–53A2390, Revision 1. Service Bulletin 747–53A2390, Revision 1, provides for the installation of several different sizes of Inconel 718 bolts, depending on which level of repair may be required, but the bolts may not be the same bolts specified in Service Bulletin 747–53A2477. The commenter adds that such inconsistency will lead to many requests for alternative methods of compliance.

We do not agree with the commenter that paragraph (d) of the proposed AD could contradict the requirements in AD 2001–11–06. The applicability section of this AD excludes airplanes on which the bulkhead splice areas have been modified in accordance with Plan "B" of AD 2001–11–06. If an operator has replaced alloy steel bolts with Inconel 718 bolts per Plan "B," no further action is required by this final rule. No change to the final rule is necessary in this regard.

Reporting Requirement

The service bulletin recommends that inspection findings be submitted to the manufacturer. However, this AD does not require that operators submit reports of inspection findings.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 582 airplanes of the affected design in the worldwide fleet. The FAA estimates that 178 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 2002–08–10 takes approximately 58 work hours per airplane to accomplish (including access and close), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $619,440, or $3,480 per airplane.

The terminating action required in this AD action will take approximately 86 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts could cost as much as approximately $1,414 per airplane. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $1,170,172, or $6,574 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12718 (67 FR 19641, April 23, 2002), and by adding a new airworthiness directive (AD), amendment 39–13005, to read as follows:

2002–26–17 Boeing: Amendment 39–13005. Docket 2002–NM–84–AD. Supersedes AD 2002–08–10, Amendment 39–12718.

Applicability: Model 747 series airplanes, certificated in any category, line numbers 1 through 750 inclusive, excluding airplanes on which the bulkhead splice areas have been modified in accordance with Plan "B" of AD 2001–11–06, amendment 39–12248.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracked or broken bolts, which could result in structural damage and rapid depressurization of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 2002–08–10

Inspection

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Inspect the BS 1480 bulkhead splice to identify all alloy steel bolts by using a magnet or, if applicable, detailed methods, in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally

supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For airplanes on which the bulkhead splice inspection specified by AD 2001–11–06 has NOT been accomplished within 15 months before May 8, 2002 (the effective date of AD 2002–08–10, amendment 39–12718): Inspect within 90 days after May 8, 2002.

(2) For airplanes on which the bulkhead splice inspection specified by AD 2001–11–06 HAS been accomplished within 15 months before May 8, 2002: Inspect within 18 months since the most recent inspection.

Corrective Actions

(b) For each alloy steel bolt found during the inspection required by paragraph (a) of this AD: Before further flight, inspect those bolts using torque test or ultrasonic methods to detect cracks or breakage, in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, except as required by paragraph (e) of this AD.

(1) For each uncracked and unbroken alloy steel bolt found: Repeat the inspection specified by paragraph (b) of this AD thereafter at least every 18 months, until the terminating action of paragraph (d) of this AD is accomplished.

(2) For any cracked or broken bolt found: Before further flight, replace it with an Inconel 718 bolt. Such replacement terminates the requirements of this AD for that bolt only.

(3) If any cracked or broken bolt is found anywhere along the splice during any inspection required by paragraph (b) of this AD: Before further flight, reinspect, using ultrasonic methods, any remaining alloy steel bolts that were initially inspected using torque test methods, and replace any cracked or broken bolt with an Inconel 718 bolt. Such replacement terminates the requirements of this AD for that bolt only.

Magnetic Particle Inspection

(c) Plan "A" inspections required by AD 2001–11–06 are acceptable for compliance with the inspection requirements of paragraph (b) of this AD, provided a magnetic particle inspection and applicable corrective actions are performed on any alloy steel bolt removed during any Plan "A" inspection before the bolt is reinstalled. The magnetic particle inspection and corrective actions must be performed in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, except as required by paragraph (e) of this AD.

New Requirements of This AD

Terminating Action

(d) Within 6 years after the effective date of this AD: Replace all alloy steel bolts in the BS 1480 bulkhead splice with Inconel 718 bolts, in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, except as required by paragraph (e) of this AD. Replacement of all alloy steel bolts terminates the requirements of this AD.

Exceptions to Service Information

(e) If Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, specifies to contact Boeing for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Part Installation

(f) Except as provided by paragraph (c) of this AD: As of the effective date of this AD, no person may install an alloy steel bolt on the BS 1480 bulkhead splice on any airplane.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002. This incorporation by reference was approved previously by the Director of the Federal Register as of May 8, 2002 (67 FR 19641, April 23, 2002). Although the service bulletin references a reporting requirement and completion of the attached Evaluation Form, such reporting and evaluation are not required by this AD. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on February 7, 2003.

Issued in Renton, Washington, on December 24, 2002.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–27 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13980; Airspace Docket No. 02–AEA–12]

Amendment of Class D Airspace; Norfolk NAS, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at Norfolk NAS, Norfolk, VA by lowering the upper limits. This action is necessary to insure continuous altitude coverage for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC April 17, 2003

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 24, 2002 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by lowering the upper limit of Class D airspace from 2500 feet mean sea level (MSL) up to but no including 2,000 feet MSL at Norfolk NAS, Norfolk, VA, was published in the **Federal Register** (67 FR 65323–6524). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace area designations for airspace extending upward from the surface are published in Paragraph 5000 of FAA Order 7400.9K, dated august 30, 2002 and effective September 16, 2002. The Class D airspace designation listed in this document will be published in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) extends Class D airspace from the surface of the earth up to but not including 2,000 feet MSL for aircraft conducting IFR operations at Norfolk NAS, Norfolk, VA. The previous Class D airspace ceiling was 2,500 feet.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

2. The incorporation by reference in CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated august 30, 2002, and effective September 16, 202, is amended as follows:

Paragraph 5000 Class D Airspace Areas Extending Upward From the Surface of the Earth

* * * * *

AEA VA D Norfolk NAS, VA [REVISED]

NAS Norfolk (Chambers), Norfolk, VA
(Lat. 36°56′15″N., long. 76°17′25″W.)

That airspace extending upward from the surface to but no including 2,000 feet MSL within a 4.3-mile radius of NAS Norfolk (Chambers) excluding that airspace southeast of a line connecting the 4.3-mile radius of Norfolk NAS and the 5-mile radius of Norfolk International Airport.

* * * * *

Issued in Jamaica, New York on December 13, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–66 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13945; Airspace Docket No. 02–AEA–15]

Amendment of Class E Airspace; Wrightstown, NJ

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action removes the description of the Class E airspace designated for Flying W Airport from the Wrightstown, NJ Class E Airspace description. The affected Class E–5 airspace for the airport will be consolidated into the Philadelphia, PA Class E Airspace description contained in Docket No. FAA–2002–13944; Airspace Docket No. 02–AEA–03, effective March 20, 2003.

DATES: Effective date: March 20, 2003.

Comment Date: Comments must be received on or before January 10, 2003.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seveth Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13945/Airspace Docket No. 02–AEA–15 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4890.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION: Although this action is a final rule, which involves the amendment of Wrightstown, NJ Class E Airspace, by deleting Flying W Airport and incorporating that airspace into the Philadelphia, PA class E Airspace description, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the description of Wrightstown, NJ Class E airspace area by removing the airspace designations for Flying W Airport and consolidating that airspace areas into the Philadelphia, PA description. The proliferation of airports with Instrument Flight Rule (IFR) operations in the vicinity of Philadelphia, PA has resulted in overlap of numerous Class E airspace areas and confused charting. This action clarifies the airspace and diminishes the scope and complexity of charting. The IFR airports within those areas would be incorporated into the Philadelphia, PA class E airspace area. Accordingly, since this action merely consolidates airspace areas into one airspace designation and has no consequential impact, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will

be published subsequently in the Order. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

Inconsideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[Amended]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002 and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending From 700 Feet or More Above the Surface of the Earth

* * * * *

AEA NJ E5 Wrightstown, NJ [Revised]

Lakewood Airport, NJ
(Lat. 40°04′00″N., long. 74°10′40″W.)
McGuire AFB, NJ
(Lat. 40°00′56″N., long. 74°35′37″W.)
Trenton-Robbinsville Airport, NJ
(Lat. 40°12′50″N., long. 74°36′07″W.)
Allaire Airpot, NJ
(Lat. 40°11′13″N., long. 74°07′30″W.)
Robert J. Miller Airpark, NJ
(Lat. 39°55′39″N., long. 74°17′33″W.)
Lakehurst (Navy) TACAN
(Lat. 40°02′13″N., long. 74°21′12″W.)
Colts Neck VOR/DME
(Lat. 40°18′42″N., long. 74°09′36″W.)
Coyle VORTAC
(Lat. 39°49′02″N., long. 74°25′54″W.)
Robbinsville VORTAC
(Lat. 40°12′08″N., long. 74°29′43″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lakewood Airport and within a 10.5-mile radius of McGuire AFB and within an 11.3-mile radius of the Lakehurst (Navy) TACAN extending clockwise from the Lakehurst (Navy) TACAN 310° radial to the 148° radial and within 4.4 miles each side of the Coyle VORTAC 031° radial extending from the VORTAC to 11.3 miles northeast and within 2.6 miles southwest and 4.4 miles northeast of the Lakehurst (Navy) TACAN 148° radial extending from the TACAN to 12.2 miles southeast and within a 6.4-mile radius of Trenton-Robbinsville Airport and within 5.7 miles north and 4 miles south of the Robbinsville VORTAC 278° and 098° radials extending from 4.8 miles west to 10 miles east of the VORTAC and within a 6.7-mile radius of Allaire Airport and within 1.8 miles each side of the Colts Neck VOR/DME 167° radial extending from the Allaire Airport 6.7-mile radius to the VOR/DME and within 4 miles each side of the 312° bearing from the Allaire airport extending from the 6.7-mile radius of the airport to 9 miles northwest of the airport and within a 6.5-mile radius of Robert J. Miller Air Park and within 1.3 miles each side of the Coyle VORTAC 044° radial extending from the 6.5-mile radius of Robert J. Miller Air Park to the VORTAC, excluding the portions that coincide with the Atlantic City, NJ, Princeton, NJ. Old Bridge NJ, Philadelphia, PA, Class E airspace areas.

* * * * *

Dated: Issued in Jamaica, New York on December 13, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–65 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–8]

Establishment of Class E2 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace designated as a surface area (E2) for Ainsworth Municipal Airport, NE and modifies Class E airspace extending upward from 700 feet above the surface of the earth (E5) at Ainsworth, NE. Class E2 and additional E5 controlled airspace are needed to contain aircraft executing instrument flight procedures and provide a safer operating environment at Ainsworth, NE. This action establishes Class E airspace designated as a surface area and modifies Class E airspace extending upward from 700 feet above the surface of the earth at Ainsworth, NE.

EFFECTIVE DATE: 0901 UTC, February 20, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 23, 2002, the FAA proposed to amend 14 CFR part 71 to establish and modify Class E airspace at Ainsworth, NE (67 FR 21576). The proposal was to establish Class E2 and Class E4 airspace and to modify Class E5 airspace at Ainsworth, NE. A correction to this proposal was issued on Wednesday, November 13, 2002, that combined proposed Class E2 and Class E4 airspace areas under the single heading of Class E2 (67 FR 28832). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E2 airspace designations are published in paragraph 6002 and Class E5 airspace designations in paragraph 6005, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes and modifies Class E airspace at Ainsworth, NE to provide adequate controlled airspace for aircraft executing instrument flight procedures. The areas will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated

impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE NE E2 Ainsworth, NE

Ainsworth Municipal Airport, NE
(Lat. 42°34′45″ N., long. 99°59′35″ W.)

Within a 4.3-mile radius of Ainsworth Municipal Airport; within 2.4 miles each side of the Ainsworth VOR/DME 197° radial extending from the 4.3-mile radius of Ainsworth Municipal Airport to 7 miles south of the airport; and within 2.4 miles each side of the Ainsworth VOR/DME 348° radial extending from the 4.3-mile radius of Ainsworth Municipal Airport to 7 miles north of the airport.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ACE NE E5 Ainsworth, NE [Revised]

Ainsworth Municipal Airport, NE
(Lat. 42°34′45″ N., long. 99°59′35″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Ainsworth Municipal Airport and within 3.9 miles each side of the 179° bearing from the airport extending from the 7.4-mile radius to 9.6 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on December 19, 2002.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–62 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13981; Airspace Docket No. 02–AEA–18]

Establishment of Class E Airspace; Crisfield, MD

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Crisfield, MD. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Crisfield Municipal Airport, Crisfield, MD under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 1, 2002, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet above the surface within a 6-mile radius of Crisfield Municipal Airport, Crisfield, MD was published in the **Federal Register** (67 FR 66592–66593). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before December 2, 2003. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 6-mile radius of Crisfield Municipal Airport, Crisfield, MD.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administrations Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA MD E5, Crisfield, MD [NEW]

Crisfield Municipal Airport, MD
(Lat. 38°01′01″N, long. 75°49′44″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Crisfield Municipal Airport, Crisfield, MD.

* * * * *

Issued in Jamaica, New York on December 18, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–64 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13944; Airspace Docket No. 02–AEA–03]

Amendment of Class E Airspace; Philadelphia, PA

AGENCY: Federal Aviation Administration [FAA] DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Philadelphia, PA. The proliferation of airports within a thirty mile radius of Philadelphia International Airport with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace has made this action necessary. This action consolidates the Class E–5 airspace designations for twenty six airports and results in the recision of fourteen separate Class E–5 descriptions through separate rulemaking action. The area will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 24, 2002, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by consolidating existing Class E–5 airspace designations in the Philadelphia complex and incorporating those areas into the Philadelphia, PA descriptions was published in the **Federal Register** (67 FR 65324–65325). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from the surface are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002 and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 ft above the surface for aircraft conducting IFR operations within the Philadelphia, PA Class E–5 airspace description.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulations: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation at the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 ft above the surface of the earth.

* * * * *

AEA PA E5 Philadelphia, PA (Revised)

Philadelphia International Airport
(Lat. 39°52′19″N., long. 75°14′28″W.)
Chester County G. O. Carlson Airport, PA
(Lat. 39°58′44″N., long. 75°51′56″W.)
New Castle County Airport, DE
(Lat. 39°40′43″N., long. 75°36′24″W.)
Summit Airpark, DE
(Lat. 39°31′13″N., long. 75°43′14″W.)
Millville Municipal Airport, NJ
(Lat. 39°22′04″N., long. 75°04′20″W.)

That airspace extending upward from 700 feet above the surface within a 31-mile radius of Philadelphia International Airport extending clockwise from a 225° bearing to a 307° bearing from the airport and within a 37-mile radius of Philadelphia International Airport extending from a 307° bearing to a 053° bearing from the airport and within a 33-mile radius of Philadelphia International Airport extending from a 053° bearing to a 173° bearing from the airport and within a 10-mile radius of Philadelphia International Airport extending from a 173° bearing from the airport to a 225° from the airport and within a 7-mile radius of Chester County G.O. Carlson Airport and within a 6.7 mile radius of New Castle County Airport and within a 8-mile radius of Summit Airpark and within a 6.5-mile radius of Millville Municipal Airport, excluding the airspace that coincides with the Wrightstown, NJ; Pittstown, NJ; Princeton, NJ; Reading, PA; Allentown, PA; and Elkton, MD Class E airspace areas.

* * * * *

Issued in Jamaica, New York on December 13, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–67 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13947; Airspace Docket No. 02–AEA–14]

Amendment of Class E Airspace; Pennsylvania, New Jersey, Delaware

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final Rule; request for comments.

SUMMARY: This action removes the description of the Class E airspace designated for Wilmington, DE; Coatsville, PA; Toughkenamon, PA;

Pottstown, PA; Doylestown, PA; Quakertown, PA; Collegeville, PA; North Philadelphia, PA; Perkasie, PA; Berlin, NJ, Cross Keys, NJ; Vincentown, NJ; Hammonton, NJ; and Millville, NJ. The affected Class E–5 airspace for the airports included in these descriptions will be consolidated into the Philadelphia, PA airspace description contained in Docket No. FAA–2002–13944; Airspace Docket No. 02–AEA–03, effective March 20, 2003.

DATES: Effective date: March 20, 2003.

Comments Date: Comments must be received on or before January 10, 2003.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13497/Airspace Docket No. 02–AEA–14 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Docket Office between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4890.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Although this action is a final rule, which involves the amendment of Class E airspace within Delaware, Pennsylvania, and New Jersey, by consolidating that airspace into one description, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the description of Class E airspace in the Philadelphia, PA area by removing the airspace designations for Wilmington, DE; Coatsville, PA; Toughkenamon, PA; Pottstown, PA; Doylestown, PA; Quakertown, PA; Collegeville, PA; North Philadelphia, PA; Perkasie, PA; Berlin, NJ; Cross Keys, NJ; Vincentown, NJ; Hammonton, NJ; and Millville, NJ and consolidating those airspace areas into the Philadelphia, PA description. The proliferation of airports with Instrument Flight Rule (IFR) operations in the vicinity of Philadelphia, PA has resulted in overlap of numerous Class E airspace areas and confused charting. This action clarifies the airspace and diminishes the scope and complexity of charting. The IFR airports within those areas will be incorporated into the Philadelphia, PA Class E airspace area. Accordingly, since this action merely consolidated these airspace areas into one airspace designation and has inconsequential impact on aircraft operations in the area, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[Amended]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002 and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

AEA DE E5 Wilmington, DE [Removed]
AEA PA E5 Coatsville, PA [Removed]
AEA PA E5 Toughkenamon, PA [Removed]
AEA PA E5 Pottstown, PA [Removed]
AEA PA E5 Doylestown, PA [Removed]
AEA PA E5 Quakertown, PA [Removed]
AEA PA E5 Collegeville, PA [Removed]
AEA PA E5 North Philadelphia, PA [Removed]
AEA PA E5 Perkasie, PA [Removed]
AEA–NJ E5 Berlin, NJ [Removed]
AEA NJ E5 Cross Keys, NJ [Removed]
AEA NJ E5 Vincentown, NJ [Removed]
AEA NJ E5 Hammonton, NJ [Removed]
AEA NJ E5 Millville, NJ [Removed]

* * * * *

Issued in Jamaica, New York on December 13, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–69 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30346; Amdt. No. 3037]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 3, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 3, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on December 20, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, and 44721–44722.

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective January 23, 2003*

Naples, FL, Naples Muni, RNAV (GPS) RWY 5, Amdt 1
Brunswick, GA, Malcolm McKinnon, RNAV (GPS) RWY 4, Orig
Brunswich, GA, Malcolm McKinnon, RNAV (GPS) RWY 22, Orig
Brunswich, GA, Malcolm McKinnon, GPS RWY 4, Orig, CANCELLED
Brunswich, GA, Malcolm McKinnon, GPS RWY 22, Orig, CANCELLED
Rexburg, ID, Rexburg-Madison County, RNAV (GPS) RWY 35, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/ Wold Chamberlain, ILS RWY 12R, Amdt 7
Newburgh, NY, Stewart Intl, ILS RWY 9, Amdt 10
Kinston, NC, Kinston Rgnl Jetport at Stallings Field, VOR RWY 23, Amdt 15
Maxton, NC, Laurinburg-Maxton, NDB RWY 5, Amdt 1
Maxton, NC, Laurinburg-Maxton, ILS RWY 5, Amdt 1
Maxton, NC, Laurinburg-Maxton, RNAV (GPS) RWY 5, Orig
Maxton, NC, Laurinburg-Maxton, RNAV (GPS) RWY 23, Orig
Pinehurst/Southern Pines, NC, Moore County, ILS RWY 5, Orig
Pinehurst/Southern Pines, NC, Moore County, RNAV (GPS) RWY 23, Orig
Southern Pines, NC, Moore County, ILS RWY 5, Orig, CANCELLED
Southern Pines, NC, Moore County, GPS RWY 23, Orig-B, CANCELLED
Washington, NC, Warren Field, RNAV (GPS) RWY 5, Orig
Washington, NC, Warren Field, RNAV (GPS) RWY 17, Orig
Washington, NC, Warren Field, RNAV (GPS) RWY 23, Orig
Washington, NC, Warren Field, RNAV (GPS) RWY 35, Orig
Washington, NC, Warren Field, GPS RWY 5, Orig, CANCELLED
Manchester, NH, Manchester, ILS RWY 35, Orig
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 5, Orig
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 7, Amdt 1
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 23, Orig
Farmington, NM, Four Corners Regional, VOR RWY 23, Orig
Farmington, NM, Four Corners Regional, VOR RWY 25, Amdt 10
Farmington, NM, Four Corners Regional, VOR/DME RWY 5, Orig
Akron, OH, Akron-Canton Regional, ILS RWY 1, Amdt 37
North Bend, OR, North Bend Muni, MLS RWY 22, Orig, CANCELLED
Newport News, VA, Newport News/ Williamsburg Intl, LOC BC RWY 25, Amdt 13E, CANCELLED
Newport News, VA, Newport News/ Williamsburg Intl, ILS RWY 7, Amdt 31
Newport News, VA, Newport News/ Williamsburg Intl, RNAV (GPS) RWY 7, Amdt 1
Gillette, WY, Gillette-Campbell County, LOC/ DME BC RWY 16, Amdt 3A, CANCELLED

** * * Effective March 20, 2003*

Hays, KS, Hays Regional, NDB RWY 34, Amdt 3
Hays, KS, Hays Regional, RNAV (GPS) RWY 34, Amdt 1
Humboldt, TN, Humboldt Muni, VOR/DME–A, Amdt 5

The FAA published the following procedure in Docket No. 30343; Amdt No. 3035 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 240, Page 76678; dated Friday, December 13, 2002) under section 97.23 effective January 23, 2003 which is hereby rescinded:

Crisfield, MD, Crisfield Muni, VOR–A, Orig

[FR Doc. 03–97 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 260, 357 and 385

[Docket No. RM03–3–000; Order No. 628]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell; Elimination of the Paper Filing Requirements of FERC Form Nos. 2, 2–A and 6; Order No. 628

Issued December 26, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to eliminate the paper filing requirements of Form Nos. 2 (Form 2), 2–A (Form 2–A), and 6 (Form 6). Commencing with the calendar year 2002 report filing due March 31, 2003 for the Form 2–A and Form 6, and April 30, 2003 for the Form 2, only electronic submission using Commission-provided software will be required. The elimination of the paper submissions yields significant benefits to the respondents and the Commission. These benefits include reduced printing and handling costs and an overall reduction in filing burden for the respondents, and a reduction in processing and maintenance costs incurred by the Commission.

EFFECTIVE DATE: This final rule is effective February 3, 2003.

FOR FURTHER INFORMATION CONTACT:
James M. Krug (Technical Information), Office of Markets, Tariffs and Rates, FERC, 888 First Street, NE., Washington, DC 20426, (202) 502–8419, *james.krug@ferc.gov*.
Bolton Pierce (Electronic System), Office of Markets Tariffs and Rates, FERC, 888 First Street, NE., Washington, DC 20426, (202) 502–8803, *bolton.pierce@ferc.gov*.
Julia Lake (Legal Information), Office of General Counsel, FERC, 888 First Street, NE., Washington, DC 20426, (202) 502–8370, *julia.lake@ferc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. This Final Rule revises parts 260, 357 and 385 of the Commission's regulations to require only the electronic filing of the FERC Form No. 2 "Annual Report for Major Natural Gas Companies" (Form 2), FERC Form No. 2–A "Annual Report for Nonmajor Natural Gas Companies" (Form 2–A) and FERC Form No. 6 "Annual Report of Oil Pipeline Companies" (Form 6). Commencing with the reports for calendar year 2002, due no later than March 31, 2003 for the Form 2–A and Form 6, and April 30, 2003 for the Form 2, there will be no further requirement for paper copy filings. The Commission has determined that the elimination of the paper copies of the Forms 2, 2–A and 6 will provide significant benefits to both the respondents and the Commission. These benefits include reduced printing and handling costs and an overall reduction in filing burden for the respondents, and a reduction in processing and maintenance costs incurred by the Commission.

II. Background

Forms 2 and 2–A

2. Forms 2 and 2–A data are collected pursuant to Sections 8 and 10 of the Natural Gas Act (NGA). Section 8 of the NGA [1] gives the Commission the authority to issue regulations and rules requiring natural gas companies to make, keep and preserve accounts, records, correspondence, memoranda, papers and books. Section 10 of the NGA [2] gives the Commission authority through rules and regulations to require periodic and special reports. The Commission's Forms 2 and 2–A filing requirements are found at 18 CFR 260.1 and 260.2.

3. Forms 2 and 2–A collect general corporate information that includes: Summary financial information, balance sheets and income statements and supporting information, gas plant information, operating expenses and statistical data. The information is used in the continuous review of the financial condition of jurisdictional natural gas companies, in various rate proceedings and in the Commission's audit program. Forms 2 and 2–A data

[1] 15 U.S.C. 717g.
[2] 15 U.S.C. 717i.

are also used to compute annual charges which are assessed against each jurisdictional natural gas company and which are necessary to recover the Commission's annual costs.

4. Form 2 is filed by respondents determined to be "Major Companies." A respondent is defined as a "Major Company" if it meets the following requirement: having combined gas transported or stored for a fee that exceeds 50 million Dth in each of the three previous calendar years. For the Form 2–A, a respondent is defined as a "Non Major Company" if it meets the following requirement: has total annual gas sales or volume transactions exceeding 200,000 Dth in each of the three previous calendar years, and it is not classified as "Major."

5. The Forms 2 and 2–A are annual submissions from approximately 62 and 48, jurisdictional natural gas companies, respectively. Earlier this year, the Office of Management and Budget (OMB) approved 3-year extensions for both Forms.

Form 6

6. In 1977, the responsibility to regulate oil pipeline companies was transferred to the Commission from the Interstate Commerce Commission (ICC).[3] In accordance with the transfer of authority, the Commission was delegated the responsibility under section 1 of the Interstate Commerce Act (ICA)[4] to regulate the rates and charges for transportation of oil by pipeline and establish the valuation of those pipelines, and under section 20 of the ICA to require pipelines to file annual and other reports of information necessary to exercise its statutory responsibilities.[5]

7. Section 357.2 of the Commission's regulations requires every pipeline carrier subject to the provisions of section 20 of the ICA to file, on or before March 31 of each year, copies of Form 6 "Annual Report of Oil Pipeline Companies."[6] The amount of information a Form 6 respondent submits is based on its jurisdictional operating revenues for each of the three preceding calendar years:

(a) Those carriers having annual jurisdictional operating revenues of $500,000 or more for each of the three previous calendar years must prepare and file with the Commission a complete Form 6.

(b) Those carriers having annual jurisdictional operating revenues greater than $350,000 but less than $500,000 for each of the three previous calendar years must prepare and file page 1 of Form 6, "Identification and Attestation Schedule," page 301, "Operating Revenue Accounts (Account 600)," and page 700, "Annual Cost of Service Based Analysis Schedule."

(c) Those carriers having annual jurisdictional operating revenues of $350,000 or less for each of the three previous calendar years must prepare and file page 1 of Form 6, "Identification and Attestation Schedule" and page 700, "Annual Cost of Service Based Analysis Schedule."

8. The Form 6 collects general corporate information that includes: summary financial information, balance sheets and income statements and supporting information, operating expenses and plant statistical data. The information is used in the continuous review of the financial condition of jurisdictional companies, in various rate proceedings and in the Commission's audit program. Form 6 data is also used to compute annual charges which are assessed against each jurisdictional oil pipeline and which are necessary to recover the Commission's annual costs.

9. The Form 6 is an annual submission from approximately 171 jurisdictional oil pipeline companies. In 2001, the Office of Management and Budget (OMB) approved a 3-year extension for the Form.

III. Discussion

10. In this Final Rule, the Commission is eliminating the requirement to file paper copies of Forms 2, 2–A and 6, and now will require only electronic copies.

11. Current filing regulations for the Forms 2, 2–A and 6 require the respondents to use Commission-distributed submission software[7] to produce both electronic and paper submissions of the forms. The submission software provides a user interface for data entry, printing, and uploading of the electronic filing to the Commission. The electronic submission—which is in a database format that is compatible with many off-the-shelf commercial software programs—is processed and made available to staff and the public within 24 hours after filing. The electronic filing is then used to create an electronic version (PDF) of the paper forms that can be accessed through the Commission's document retrieval system (the Federal Energy Regulatory Records Information System (FERRIS)). Alternatively, interested persons can view and print paper copies of the electronically filed data by using the Commission's Form 2/2–A or Form 6 viewer software which is also available for download on the FERC's Web site.

12. With the availability of the Form 2/2–A and Form 6 submission software, the Form 2/2–A and Form 6 viewer software and FERRIS, there is no need for paper submissions of Forms 2, 2–A and 6. The Commission will continue to provide staff and the public access and the ability to print copies of these Forms, however. The Commission's elimination of the paper submissions of the Forms 2, 2–A and 6 thus should not have an adverse impact on users of the Forms.

13. This Final Rule is part of the Commission's ongoing efforts to revise and streamline its existing reporting requirements, reduce the filing burden on reporting companies, and meet the Paperwork Reduction Act of 1995.

14. Notice and comment procedures are not necessary in this rulemaking docket because the Commission is not changing the contents of the Forms 2, 2–A and 6, but merely eliminating the paper filing requirements.

IV. Environmental Statement

15. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[8] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended,[9] and also for information gathering, analysis, and dissemination.[10] This Final Rule does not substantially change the effect of the regulations being amended. In addition, this Final Rule involves information gathering, analysis and dissemination. Therefore, this Final Rule falls within the categorical exemption provided in the Commission's regulations. Consequently, neither an environmental

[3] Section 402(b) of the Department of Energy Reorganization Act (DOE Act) 42 U.S.C. 7172(b), provides that: "there are hereby transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer of component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline."

[4] 49 App. U.S.C. 1 (1998).

[5] 49 App. U.S.C. 20 (1988).

[6] 18 CFR 357.2

[7] Forms 2/2A and 6 submission software are Windows 95/98/2000/ME/NT/XP compatible and can be downloaded from the FERC's Web site at: *http://www.rimsweb2.ferc.fed.us/form2* and *http://www.rimsweb2.ferc.fed.us/form6*.

[8] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[9] 18 CFR 380.4(a)(2)(ii).

[10] 18 CFR 380.4(a)(5).

impact statement nor an environmental assessment is required.

V. Regulatory Flexibility Act

16. In *Mid-Tex Elect. Coop.* v. *FERC*, 773 F.2d 327 (DC. Cir. 1985), the court found that Congress, in passing the Regulatory Flexibility Act (RFA),[11] intended agencies to limit their consideration under the RFA "to small entities that would be directly regulated" by proposed rules. *Id.* at 342. The court further concluded that "the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities." *Id.*

17. This Final Rule will reduce the reporting burden for all reporting companies, including small reporting companies. The Commission also finds that most of the filing companies regulated by the Commission do not fall within the RFA's definition of a small entity.[12] The Commission therefore certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

VI. Information Collection Statement

18. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (collections of information) imposed by an agency. The information collection requirements in this Final Rule are contained in Form 2, "Annual Report for Major Natural Gas Companies" (OMB Control No. 1902–0028), FERC Form 2–A "Annual Report for Nonmajor Natural Gas Companies" (OMB Control No. 1902–0030), and Form 6 "Annual Report of Oil Pipeline Companies" (OMB Control No. 1902–0022). Form 2 most recently received OMB approval on March 29, 2002, for the period through March 31, 2005. Form 2–A received OMB approval on April 2, 2002, for the period through April 30, 2005. Form 6 received OMB approval on March 29, 2001, for the period through March 31, 2004.

19. The elimination of the paper submissions is part of the Commission's ongoing program to reduce reporting burdens. As explained below, the shift to a paperless filing of the Forms 2, 2–A and 6 will reduce the burden on regulated companies for reporting and maintaining information under the Commission's Forms 2, 2–A and 6 regulations.

20. The regulated entity shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Title: FERC Form No. 2, "Annual Report for Major Natural Gas Companies"; FERC Form No. 2–A, "Annual Report for Nonmajor Natural Gas Companies"; FERC Form No. 6, "Annual Report of Oil Pipeline Companies".

Action: Revision of Currently Approved Collections of Information.

OMB Control Nos.: 1902–0022, 1902–0028 and 1902–0030.

Respondents: Jurisdictional Natural Gas and Oil Pipeline Companies.

Frequency of Responses: Annually.

Reporting Burden: Form 2: With the elimination of the paper submission, the Commission estimates a savings of $560 per respondent due to reduced printing and handling costs. For the Federal government, the cost savings for the Form 2 will be $10,000 due to a reduction in processing and maintenance costs.

Form 2–A: With the elimination of the paper submission, the Commission estimates a savings of $354 per respondent due to reduced printing and handling costs. For the Federal government, the cost savings for the Form 2–A will be $6,000 due to a reduction in processing and maintenance costs.

Form 6: With the elimination of the paper submission, the Commission estimates a savings of $369 per respondent due to reduced printing and handling costs. For the Federal government, the cost savings for the Form 6 will be $3,748 due to a reduction in processing and maintenance costs.

21. The proposed paperless filing requirements conform to the Commission's plan for efficient information collection, communication and management within the natural gas and oil pipeline industries. These changes will continue to contribute to well-informed decision-making and streamlined workload processing.

22. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 502–8415; Fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*.

23. For the submission of comments concerning the collection of information and the associated burden estimates, please send your comments to the contact listed above or to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–7856; Fax: (202) 395–7285).

VII. Document Availabilty

24. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

25. From the Commission's Home Page on the Internet, this information is available in FERRIS. The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number (excluding the last three digits of this document) in the document number field.

26. User assistance is available for FERRIS and the Commission's Web site during regular business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Please e-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

VIII. Effective Date and Congressional Notification

27. This Final Rule will take effect February 3, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[13] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[14]

List of Subjects

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

[11] 5 U.S.C. 601–612.

[12] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

[13] 5 U.S.C. 804(2).

[14] 5 U.S.C. 801(a)(1)(A).

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends parts 260, 357 and 385, Chapter I, Title 18, of the Code of Federal Regulations, as follows:

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

1. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 260.1, paragraph (b) is revised to read as follows:

§ 260.1 FERC Form No. 2, Annual report for Major natural gas companies

* * * * *

(b) *Filing requirements.* Each natural gas company, as defined in the Natural Gas Act (15 U.S.C. 717, *et seq.*) which is a major company (a natural gas company whose combined gas transported or stored for a fee exceeded 50 million Dth in each of the three previous calendar years) must prepare and file with the Commission, on or before April 30 following the close of each calendar year, FERC Form No. 2. Newly established entities must use projected data to determine whether FERC Form No. 2 must be filed. The form must be filed in electronic format only, as indicated in the general instructions set out in that form. The format for the electronic filing can be obtained at the Federal Energy Regulatory Commission, Division of Information Services, Public Reference and Files Maintenance Branch, Washington, DC 20426. One copy of the report must be retained by the respondent in its files.

3. In § 260.2, paragraph (b) is revised to read as follows:

§ 260.2 FERC Form No. 2–A, Annual report for Nonmajor natural gas companies

* * * * *

(b) *Filing requirements.* Each natural gas company, as defined by the Natural Gas Act, not meeting the filing threshold for FERC Form No. 2, but having total gas sales or volume transactions exceeding 200,000 Dth in each of the three previous calendar years, must prepare and file with the Commission, on or before March 31 following the close of each calendar year, FERC Form No. 2–A. Newly established entities must use projected data to determine whether FERC Form No. 2–A must be filed. The form must be filed in electronic format only, as indicated in the general instructions set out in that form. The format for the electronic filing can be obtained at the Federal Energy Regulatory Commission, Division of Information Services, Public Reference and Files Maintenance Branch, Washington, DC 20426. One copy of the report must be retained by the respondent in its files.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

4. The authority citation for part 357 continues to read as follows:

Authority: 42 U.S.C. 7101–7352, 49 U.S.C. 60502, 49 App. U.S.C. 1–85 (1988).

5. In § 357.2, paragraph (c)(3) is revised to read as follows:

§ 357.2 FERC Form No. 6, Annual Report of Oil Pipeline Companies

* * * * *

(c) *What to submit.* * * *

(3) The form must be filed in electronic format only pursuant to § 385.2011 of this chapter, beginning with report year 2002, due on or before March 31, 2003.

PART 385—RULES OF PRACTICE AND PROCEDURE

6. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

7. In § 385.2011, paragraph (c)(3) is revised to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

* * * * *

(c) *What to file.* * * *

(3) With the exception of the Form Nos. 1, 2, 2–A and 6, the electronic media must be accompanied by the traditional prescribed number of paper copies.

* * * * *

[FR Doc. 03–153 Filed 1–2–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0303; FRL–7282–4]

Mesotrione; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of mesotrione in or on corn, pop, grain and corn, pop, stover. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective January 3, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0303, must be received on or before March 4, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NAICS 111, 112, 311, 32532), Crop production, Animal production, Food manufacturing, Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult

the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0303. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of August 7, 2002 (67 FR 51270) (FRL–7186–5), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 2F6443 and 2E6465) by IR-4, 681 US Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petitions prepared by Sygenta Crop Protection Inc., the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.571 be amended by establishing a tolerance for residues of the herbicide mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on corn, pop grain and corn, pop stover at 0.01 parts per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *"

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of mesotrione on corn, pop grain and corn, pop stover at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by mesotrione is discussed in Unit III.A. of the final rule on the Mesotrione Pesticide Tolerance published in the **Federal Register** of June 21, 2001 (66 FR 33187) (FRL–6787–7).

B. Toxicological Endpoints

A summary of the toxicological endpoints for mesotrione used for human risk assessment is discussed in Unit III.B. of the final rule on Mesotrione Pesticide Tolerance published in the **Federal Register** of June 21, 2001 (66 FR 33187). A chronic aggregate risk assessment is appropriate for mesotrione and was performed by EPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.517) for the residues of mesotrione, in or on the following raw agricultural commodities: Field corn: Grain, fodder and forage, each at 0.01 ppm. A section 18 registration was granted to the State of Wisconsin for time-limited tolerances (expires June 2004) for sweet corn: Kernel, forage and stover at 0.01, 0.5 and 2.0, respectively. Risk assessments conducted by EPA to assess dietary exposures from mesotrione are discussed in Unit III C.1 on the final rule of Mesotrione Pesticide Tolerance published in the **Federal Register** of June 21, 2001 (66 FR 33187).

2. *Dietary exposure from drinking water.* GENEEC and SCI-GROW models were used for the estimated environmental concentrations (EECs) of mesotrione for acute and chronic exposures. See Unit III C.2 for discussion in the final rule of Mesotrione Pesticide Tolerance published in the **Federal Register** of June 21, 2001 (66 FR 33187).

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Mesotrione is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether mesotrione has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, mesotrione does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that mesotrione has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is quantitative evidence of increased susceptibility demonstrated in the oral prenatal developmental toxicity studies in rats, mice, and rabbits. Delayed ossification was seen in the fetuses at doses below those at which maternal toxic effects were noted. Maternal toxic effects in the rat were decreased body weight gain during treatment and decreased food consumption and in the rabbit, abortions and GI effects.

3. *Conclusion.* There is a complete toxicity data base for mesotrione and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA safety factor (10x) is retained in assessing the risk posed because there is quantitative evidence of increased susceptibility of the young exposed to mesotrione in the prenatal developmental toxicity studies in mice, rats, and rabbits and in the multi-generation reproduction study in mice, there is qualitative evidence of increased susceptibility of the young exposed to mesotrione in the multi-generation reproduction study in rats; and a Developmental Neurotoxicity Study is required to assess the effects of tyrosinemia on the developing nervous system exposed to mesotrione.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate- term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Acute doses and endpoints were not selected for the general U.S. population (including infants and children) or the females 13-50 years old population subgroup for mesotrione; therefore, acute dietary risk is not expected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to mesotrione from food will utilize 2.1% of the cPAD for the U.S. population, 4.4% of the cPAD for infants (<1 year old) and 5.0% of the cPAD for children 1-6 years old. There are no residential uses for mesotrione that result in chronic residential exposure to mesotrione. In addition, there is potential for chronic dietary exposure to mesotrione in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table:

AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO MESOTRIONE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.0 007	2.1	4.3	0.1 5	24
Infants (<1 year old)	0.0 007	4.4	4.3	0.15	6.7
Children (1-6 years old)	0.0 007	5.0	4.3	0.15	6.7

AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO MESOTRIONE—Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Females (13-50 years old)	0.0 007	1.6	4.3	0.15	20.7

3. *Aggregate cancer risk for U.S. population.* In accordance with the EPA Draft Guidelines for Carcinogen Risk Assessment (July, 1999), the Agency classified mesotrione as "not likely to be carcinogenic to humans" by all routes of exposure based upon lack of evidence of carcinogenicity in rats and mice; therefore, cancer risk is not expected.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to mesotrione residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high pressure liquid chromatography) is available to enforce the tolerance expression. Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Francis Griffith, Analytical Chemistry Branch, Environmental Science Center, Environmental Protection Agency, 701 Mapes Road, Fort George G. Mead, MD 20755–5350; telephone number (410) 305–2905; griffith.francis@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances/Maximum Residue Levels for mesotrione residues. Thus, harmonization is not an issue at this time.

V. Conclusion

Therefore, the tolerance is established for residues of mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on corn, pop, grain and corn, pop, stover at 0.01 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0303 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 4, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0303, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII

file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.571 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.571 Mesotrione.

(a) * * *

Commodity	Parts per million
* * *	* *
Corn, pop, grain	0.01
Corn, pop, stover	0.01

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0331; FRL–7283–2]

S-metolachlor; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for the combined residues (free and bound) of the herbicide s-metolachlor [(S)-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on sweet potatoes. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sweet potatoes. This regulation establishes a maximum permissible level for residues of s-metolachlor in this food commodity. The tolerance will expire and is revoked on December 31, 2004. Although the exemption was granted for the active ingredient s-metolachlor and the time-limited tolerance is being set for s-metolachlor, the Agency has determined that residues of concern for s-metolachlor are the same as those for metolachlor, and therefore, the tolerance is being included under 40 CFR 180.368 but under its own section in paragraph (b). Metabolites of metolachlor are assumed to be toxicologically equivalent to parent metolachlor. The Agency has determined that the residues of concern for plant and animal commodities are metolachlor and its metabolites, determined as the derivatives CGA-37913 and CGA-49751.

DATES: This regulation is effective January 3, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0331, must be received on or before March 4, 2003.

ADDRESSES: Written objections and hearing requests –may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman,Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:(703)308–9367; e-mail address: sec-18-mailbox@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), Departments of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0331. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the" **Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_(_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for the combined residues (free and bound) of the herbicide s-metolachlor [(S)-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on sweet potatoes at 0.2 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for S-metolachlor on Sweet Potatoes and FFDCA Tolerances

The States of Louisiana and Mississippi requested the use of s-metolachlor on sweet potatoes to control sedges due to an increased pressure from these weed species and a lack of effective registered alternatives. EPA has authorized under FIFRA section 18 the use of s-metolachlor on sweet potatoes for control of sedges in Louisiana and Mississippi. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of s-metolachlor in or on sweet potatoes. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2004, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sweet potatoes after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether s-metolachlor meets EPA's registration requirements for use on sweet potatoes or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of s-metolachlor by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Louisiana and Mississippi to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for s-metolachlor, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

The Agency has determined that the residues of concern for plant and animal commodities are metolachlor and its metabolites, determined as the derivatives CGA-37913 and CGA-49751. Metabolites of metolachlor are assumed to be toxicologically equivalent to parent metolachlor. The residues of concern for s-metolachlor are the same as those for metolachlor.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of s-metolachlor and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for the combined residues (free and bound) of the herbicide s-metolachlor [(S)-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on sweet potatoes at 0.2 ppm.

EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL

to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

S-metolachlor, [2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], is a member of the chloroacetanilide class of herbicides. In this risk assessment the term s-metolachlor will refer to a metolachlor product which is enriched in the S-isomer. The term metolachlor will refer to a racemic mixture of the R and S isomers.

Toxicological endpoints have been selected for metolachlor and s-metolachlor for use in human health risk assessments. The Agency has determined that metolachlor and s-metolachlor are of comparable toxicity, and therefore, studies with both chemicals were used interchangeably for toxicology endpoint selection.

A summary of the toxicological endpoints for s-metolachlor used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR S-METOLACHLOR FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-50 years of age)	NOAEL = 300 mg/kg/day UF = 100 Acute RfD = 3.0 mg/kg/day	FQPA SF = 1x aPAD = acute RfD/FQPA SF = 3.0 mg/kg/day	Prenatal developmental toxicity study in rats LOAEL = 1,000 mg/kg/day based on death, clinical signs of toxicity (clonic and/or tonic convulsions, excessive salivation, urine-stained abdominal fur and/or excessive salivation) and decreased body weight gain
Acute Dietary (General population including infants and children)	NOAEL = 300 mg/kg/day UF = 100 Acute RfD = 3.0 mg/kg/day	FQPA SF = 1x aPAD = acute RfD/FQPA SF = 3.0 mg/kg/day	Prenatal developmental toxicity study in rats LOAEL = 1,000 mg/kg/day based on death, clinical signs of toxicity (clonic and/or tonic convulsions, excessive salivation, urine-stained abdominal fur and/or excessive salivation) and decreased body weight gain
Chronic Dietary (All populations)	NOAEL = 9.7 mg/kg/day UF = 100 Chronic RfD = 0.1 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD/FQPA SF = 0.1 mg/kg/day	Chronic study in dogs LOAEL = 33.0 mg/kg/day based on decreased body weight gain in females
Short-Term Dermal (1 to 7 days) (Residential)	Hazard was not identified for quantification of risk. No systemic toxicity was seen at the limit dose (1,000 mg/kg/day) following dermal applications and there is no concern for developmental toxicity in rats or rabbits.		
Intermediate-Term Dermal (1 week to several months) (Residential)	Hazard was not identified for quantification of risk. No systemic toxicity was seen at the limit dose (1000 mg/kg/day) following dermal applications and there is no concern for developmental toxicity in rats or rabbits.		
Long-Term Dermal (several months to lifetime) (Residential)	dermal (or oral) study NOAEL= 9.7 mg/kg/day (dermal absorption rate = 58% when appropriate)	LOC for MOE = 100 (Residential)	Chronic toxicity study in dogs LOAEL = 33.0 mg/kg/day based on decreased body weight gain in females
Short-Term Inhalation (1 to 7 days) (Residential)	Inhalation (or oral) study NOAEL= 50 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Prenatal developmental toxicity study in rats LOAEL = 500 mg/kg/day based on increased incidence of clinical signs, decreased body weight/body weight gain, food consumption, and food efficiency
Intermediate-Term Inhalation (1 week to several months) (Residential)	Inhalation (or oral) study NOAEL = 8.8 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Subchronic (6 month) toxicity study in dogs LOAEL based on decreased body weight gain

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR S-METOLACHLOR FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment; UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Long-Term Inhalation (several months to lifetime) (Residential)	Inhalation (or oral) study NOAEL= 9.7 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Chronic toxicity study in dogs LOAEL = 33.0 mg/kg/day based on decreased body weight gain in females
Cancer (oral, dermal, inhalation)	Metolachlor has been classified as a Group C, possible human carcinogen. This classification was based on the occurrence of liver tumors in rats at the highest dose level tested (150 mg/kg/day). The carcinogenic risks for metolachlor have been quantitated using a non-linear approach, with a NOAEL of 15 mg/kg/day. However, the NOAEL of 15 mg/kg/day that was established based on liver tumors in rats is comparable to the NOAEL of 9.7 mg/kg/day selected for establishing the chronic reference dose for metolachlor. It is assumed that the chronic dietary endpoint is protective for cancer dietary exposure. Therefore, a separate cancer aggregate risk assessment was not conducted, and cancer DWLOC values were not calculated.		

* The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* S-metolachlor, [2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], is a member of the chloroacetanilide class of herbicides. In this risk assessment the term s-metolachlor will refer to a metolachlor product which is enriched in the S-isomer. The term metolachlor will refer to a racemic mixture of the R and S isomers. Currently, there are permanent tolerances for metolachlor (40 CFR 180.368) on a variety of crops and animal commodities. These tolerances range from 0.02 ppm to 30 ppm. There are also time-limited tolerances (in conjunction with section 18 uses) on grass, spinach, and tomatoes. Risk assessments were conducted by EPA to assess dietary exposures from metolachlor and s-metolachlor in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The analyses assumed tolerance-level residues (with the exception of those with DEEM default processing factors) and 100% crop treated for all commodities.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The analyses assumed tolerance-level residues (with the exception of those with DEEM default processing factors) and 100% crop treated for all commodities.

iii. *Cancer.* Metolachlor has been classified as a Group C, possible human carcinogen. This classification was based on the occurrence of liver tumors in rats at the highest dose level tested (150 mg/kg/day). The carcinogenic risks for metolachlor have been quantitated using a non-linear approach, with a NOAEL of 15 mg/kg/day. However, the NOAEL of 15 mg/kg/day that was established based on liver tumors in rats is comparable to the NOAEL of 9.7 mg/kg/day selected for establishing the chronic reference dose for metolachlor. It is assumed that the chronic dietary endpoint is protective for cancer dietary exposure. Therefore, a separate cancer aggregate risk assessment was not conducted, and cancer DWLOC values were not calculated.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for s-metolachlor in drinking water. Because the Agency does not have comprehensive monitoring data for both parent and the degradates of concern in drinking water, exposure from drinking water is being addressed through modeled estimated environmental concentrations (EECs) and the use of drinking water levels of comparison (DWLOCs). This assessment includes concentrations of parent metolachlor and the degradates metolachlor ethanesulfonic acid (ESA) and metolachlor oxanilic acid (OA). Although it was determined by the Agency that the ESA and OA metabolites appear to be less toxic than parent metolachlor, they are included in this risk assessment because they were found in greater abundance than the parent in water monitoring studies.

The surface water EECs were derived from the National Water Quality Assessment Database (parent) and the FIRST Model (ESA and OA metabolites). The SCI-GROW Model was used to generate all ground-water EECs For a screening-level assessment for surface water EPA will generally use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk

assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to metolachlor and s-metolachlor they are further discussed in the aggregate risk sections below.

Based on the National Water Quality Assessment Database (parent) and the FIRST Model (ESA and OA metabolites) and SCI-GROW models the estimated environmental concentrations (EECs) of parent metolachlor and its degradates for acute exposures are estimated to be 201 parts per billion (ppb) (parent: 77.6 ppb, ESA: 31.9 ppb, and OA: 91.4 ppb) for surface water and 103 ppb (parent: 5.5 ppb, ESA: 65.8 ppb, and OA: 31.7 ppb) for ground water. The EECs for chronic exposures are estimated to be 92 ppb (parent: 4.3 ppb, ESA: 22.8 ppb, and OA: 65.1 ppb) for surface water and 103 ppb (parent: 5.5 ppb, ESA: 65.8 ppb, and OA: 31.7 ppb) for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

i. *Handlers.* Metolachlor and s-metolachlor are registered (as an emulsifiable concentrate formulation) for use on lawn, turf (including sod farms), golf courses, sports fields, and ornamental gardens. Although metolachlor is not labeled as a restricted-use pesticide, it is not intended for homeowner purchase or use. On this basis, a residential handler is not expected to be exposed to residues of metolachlor and s-metolachlor. Therefore, a residential handler assessment was not conducted.

ii. *Postapplication.* There is potential for postapplication exposure to adults and children resulting from the use of metolachlor/s-metolachlor on residential lawns. Although the use sites for metolachlor and s-metolachlor vary from golf courses to ornamental gardens, the residential lawn scenario represents what the Agency considers to be the likely upper-end of possible exposure. Postapplication exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings.

Postapplication exposure is considered to be short-term (one to 30 days of exposure) only, based on a label specification of a six week interval before the re-application of metolachlor/s-metolachlor. The registrant has also indicated a label revision to limit application to one time per season.

A short-term dermal endpoint was not selected because no systemic toxicity was seen at the limit dose of 1,000 mg/kg/day. As a result, a dermal risk assessment was not conducted and dermal risks are assumed to be minimal. Postapplication inhalation exposure is expected to be minimal since metolachlor and s-metolachlor are only applied in an outdoor setting, the vapor pressure is low (2.8×10^{-5} mm Hg at 25°C), and the label specifies that residents should not re-enter treated areas until after sprays have dried.

The following postapplication incidental oral scenarios which result from application to lawns and turf have been identified:

a. Short-term oral exposure to toddlers and children following hand-to-mouth exposure;

b. Short-term oral exposure to toddlers and children following object-to-mouth exposure; and

c. Short-term oral exposure to toddlers and children following soil ingestion. The term "incidental" is used to distinguish the inadvertent oral exposure of small children from exposure that may be expected from treated foods or residues in drinking water.

As the FQPA safety factor for the protection of children and infants was reduced to 1x, a target MOE value of 100 has been identified for residential assessments. MOE values greater than 100 are not considered to be of concern to the Agency. MOE estimates are based on the dose level of 50 mg/kg/day established for short-term oral risk assessment.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether s-metolachlor has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, s-metolachlor does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that s-metolachlor has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*—i. *Prenatal developmental toxicity study—Metolachlor—Rat.* The maternal toxicity LOAEL was 1,000 mg/kg/day based on an increased incidence of death, clinical signs of toxicity (clonic and/or toxic convulsions, excessive salivation, urine-stained abdominal fur and/or excessive lacrimation) and decreased body weight gain. The NOAEL was 300 mg/kg/day.

The developmental toxicity LOAEL was conservatively established at 1,000 mg/kg/day based on slightly decreased number of implantations per dam, decreased number of live fetuses/dam, increased number of resorptions/dam and significant decrease in mean fetal body weight. The NOAEL was 300 mg/kg/day.

ii. *Prenatal developmental toxicity study—S-metolachlor—Rat.* The maternal toxicity NOAEL was 50 mg/kg/day with a LOAEL of 500 mg/kg/day based on increased clinical signs of toxicity, decreased body weights and body weight gains and reduced food consumption and reduced food efficiency.

No significant treatment related developmental toxicity was noted at the dose levels tested. The developmental toxicity NOAEL was equal to or greater

than 1,000 mg/kg/day, the highest dose tested (HDT); a LOAEL was not reached.

iii. *Prenatal developmental toxicity study—Metolachlor—Rabbit.* The maternal toxicity LOAEL was 360 mg/kg/day based on an increased incidence of clinical observations (persistent anorexia) and decreased body weight gain. The NOAEL was 120 mg/kg/day. The developmental toxicity LOAEL was not established. The NOAEL was 360 mg/kg/day.

iv. *Prenatal developmental toxicity study—S-metolachlor—Rabbit.* The maternal toxicity NOAEL was 20 mg/kg/day with a LOAEL of 100 mg/kg/day based on clinical signs of toxicity.

No significant treatment related developmental toxicity was noted at the dose levels tested. The developmental toxicity NOAEL was equal to or greater than 500 mg/kg/day, HDT; a LOAEL was not reached.

3. *Reproductive toxicity study.* No reproduction studies with s-metolachlor are available, however, in the two-generation reproduction study with metolachlor in rats, there was no evidence of parental or reproductive toxicity at approximately 80 mg/kg/day, HDT. At this dose, there was a minor decrease in fetal body weight beginning at lactation day 4; the NOAEL was approximately 25 mg/kg/day. Since a similar body weight decrease was not seen on lactation day 0, the cause of the effect on later lactation days was most likely due to exposure of the pups to metolachlor in the diet and/or milk and therefore is not evidence of an increased quantitative susceptibility in post-natal animals.

The parental toxicity LOAEL was not established. The NOAEL was 1000 ppm (F0 males/females: 75.8/85.7 mg/kg/day; F1males/females: 76.6/84.5 mg/kg/day).

The reproductive toxicity LOAEL was not established. The NOAEL was 1000 ppm (F0 males/females: 75.8/85.7 mg/kg/day; F1males/females: 76.6/84.5 mg/kg/day).

The offspring LOAEL was conservatively established at 1000 ppm (F0 males/females: 75.8/85.7 mg/kg/day; F1males/females: 76.6/84.5 mg/kg/day) based on decreased body weight in F1 and F2 litters. The NOAEL is 300 ppm (F0 males/females: 23.5/ 26.0 mg/kg/day; F1males/females: 23.7/25.7 mg/kg/day).

4. *Prenatal and postnatal sensitivity.* The data bases for prenatal developmental toxicity for metolachlor and s-metolachlor are considered complete. The prenatal developmental studies in the rat and rabbit with both metolachlor and s-metolachlor revealed no evidence of a qualitative or quantitative susceptibility in fetal animals. No significant developmental toxicity was observed in most studies even at the HDT.

The data base for reproductive toxicity of metolachlor is considered complete. No reproduction studies with s-metolachlor are available. In the two-generation reproduction study with metolachlor in rats, there was no evidence of parental or reproductive toxicity at approximately 80 mg/kg/day, HDT. At this dose, there was a minor decrease in fetal body weight beginning at lactation day 4; the NOAEL was approximately 25 mg/kg/day. Since a similar body weight decrease was not seen on lactation day 0, the cause of the effect on later lactation days was most likely due to exposure of the pups to metolachlor in the diet and/or milk and therefore is not evidence of an increased quantitative susceptibility in post-natal animals.

5. *Conclusion.* There is a complete toxicity data base for s-metolachlor when bridged with the database for metolachlor and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because:

i. The toxicological database is complete for FQPA assessment;

ii. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to in utero and/or postnatal exposure;

iii. A developmental neurotoxicity study is not required; and

iv. The dietary (food and drinking water) and residential exposure assessments will not underestimate the potential exposures for infants and children.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to s-metolachlor in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of s-metolachlor on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to s-metolachlor will occupy <1 % of the aPAD for the U.S. population, <1 % of the aPAD for females 13 years and older, <1 % of the aPAD for all infant and children subpopulations. In addition, despite the potential for acute dietary exposure to s-metolachlor in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of s-metolachlor in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 2 of this unit:

TABLE 2.— AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO S-METOLACHLOR

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)*	Ground Water EEC (ppb)*	Acute DWLOC (ppb)
U.S. Population	3.0	< 1	201	103	1.0 x 105
All Infants (< 1 year old)	3.0	<1	201	103	3.0 x 104
Children (1-6 years old)	3.0	<1	201	103	3.0 x 104
Children (7-12 years old)	3.0	<1	201	103	3.0 x 104
Females (13-50 years old)	3.0	<1	201	103	9.0 x 104
Males (13-19 years old)	3.0	<1	201	103	1.0 x 105
Males (20+ years old)	3.0	<1	201	103	1.0 x 105
Seniors (55+ years old)	3.0	<1	201	103	1.0 x 105

* Represents the combined value of parent plus the ESA and OA degradates.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to s-metolachlor from food will utilize 2 % of the cPAD for the U.S. population, 2 % of the cPAD for all infants < 1 year old and 3 % of the cPAD for children 1-6 years old. Based the use pattern, chronic residential exposure to residues of s-metolachlor is not expected. In addition, despite the potential for chronic dietary exposure to s-metolachlor in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of s-metolachlor in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO S-METOLACHLOR

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.1	2	92	103	3400
All Infants (< 1 year old)	0.1	2	92	103	980
Children (1-6 years old)	0.1	3	92	103	970
Children (7-12 years old)	0.1	2	92	103	980
Females (13-50 years old)	0.1	1	92	103	3000
Males (13-19 years old)	0.1	2	92	103	3400
Males (20+ years old)	0.1	1	92	103	3500
Seniors (55+ years old)	0.1	1	92	103	3500

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

For metolachlor and s-metolachlor, potential short-term, non-occupational risk scenarios include oral exposure of children to treated lawns. In this aggregate short-term risk assessment, exposure from food, drinking water, and residential lawns has been considered. Since only children have the potential for non-occupational, short-term risk, they are the only population subgroup included below. Short-term DWLOC values have been calculated for both metolachlor and s-metolachlor, with the only difference in the calculations being different oral exposure values for metolachlor vs. s-metolachlor (based on different application rates).

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 640 for metolachlor and 1000 for s-metolachlor for children 1-6 years old (the only population sub-group of concern. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of s-metolachlor in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 4 of this unit:

TABLE 4.— AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO METOLACHLOR AND S-METOLACHLOR

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Children (1-6); Metolachlor	640	100	92	103	4,200
Children (1-6); S-Metolachlor	1,100	100	92	103	4,500

4. *Intermediate-term risk.* An intermediate-term aggregate risk assessment considers potential exposure from food, drinking water, and non-occupational (residential) pathways of exposure. However, for metolachlor, no intermediate-term non-occupational exposure scenarios (greater than 30 days exposure) are expected to occur. Therefore, intermediate-term DWLOC values were not calculated, and an intermediate-term aggregate risk assessment is not required.

5. *Aggregate cancer risk for U.S. population.* An aggregate cancer risk assessment considers potential carcinogenic exposure from food, drinking water, and non-occupational (residential) pathways of exposure. Metolachlor has been classified as a Group C, possible human carcinogen. This classification was based on the occurrence of liver tumors in rats at the highest dose level tested (150 mg/kg/day). The HED Cancer Assessment Review Committee has recommended that carcinogenic risks for metolachlor be quantitated using a non-linear approach, with a NOAEL of 15 mg/kg/day. However, the NOAEL of 15 mg/kg/day that was established based on liver tumors in rats is comparable to the NOAEL of 9.7 mg/kg/day selected for establishing the chronic reference dose for metolachlor. It is assumed that the chronic dietary endpoint is protective for cancer dietary exposure. Therefore, a separate cancer aggregate risk assessment was not conducted, and cancer DWLOC values were not calculated.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to s-metolachlor residues.

V. Other Considerations

A. Analytical Enforcement Methodology

The Pesticide Analytical Manual (PAM) Vol. II, lists a GC/NPD method (Method I) for determining residues in/on plants and a GC/MSD method (Method II) for determining residues in livestock commodities. These methods determine residues of metolachlor and its metabolites as either CGA-37913 or CGA-49751 following acid hydrolysis.

B. International Residue Limits

No maximum residue limits (MRLs) for either metolachlor or S-metolachlor have been established or proposed by Codex, Canada, or Mexico for any agricultural commodity; therefore, no compatibility questions exist with respect to U.S. tolerances.

VI. Conclusion

Therefore, the tolerance is established for the combined residues (free and bound) of the herbicide s-metolachlor [(S)-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on sweet potatoes at 0.2 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0331 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 4, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box

360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305--5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2002–0331, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.368 is amended by designating the existing paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2) to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*

(1) * * *

(2) Time-limited tolerances are established for the combined residues (free and bound) of the herbicide s-metolachlor [(S)-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in connection with the use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance is specified in the following table. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/ Revocation Date
Sweet potato	0.2	12/31/04

* * * * *

[FR Doc. 03–5 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0335; FRL–7285–2]

Lambda-cyhalothrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of the pyrethroid lambda-cyhalothrin, 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of (S)-α-cyano-3- phenoxybenzyl-(Z)-(1S,3S) -3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3- phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate in or on wild rice, grass forage, and grass hay. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on wild rice and pasture grass. This regulation establishes maximum permissible levels for residues of lambda-cyhalothrin and its epimer in these food commodities. The tolerances will expire and are revoked on December 31, 2005.

DATES: This regulation is effective January 3, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0335, must be received on or before March 4, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703)308–9367; e-mail address: sec-18-mailbox@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federal or State government agency involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

• Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0335. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the" **Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_(_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's

electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the insecticide lambda-cyhalothrin and its epimer, in or on wild rice at 1.0 parts per million (ppm), grass forage at 5.0 ppm and grass hay at 6.0 ppm. These tolerances will expire and are revoked on December 31, 2005. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Lambda-Cyhalothrin on Wild Rice and Pasture Grass and FFDCA Tolerances

The State of Minnesota requested the use of lambda-cyhalothrin on wild rice to control unusually high populations of riceworms because the registered alternatives were ineffective. The State of New York requested the use of lambda-cyhalothrin to control alfalfa weevil (*Hypera postica*), Armyworms (*Spodoptera spp.*) and Potato leafhopper (*Empoasca fabae*) on alfalfa/clover/grass mixed stands. The use of insecticides is the only practical means of controlling the three major pests that infest alfalfa/clover/grass mixed stands and there are no pesticides registered to control insect pests in these stands of mixed of alfalfa/clover/grass. Experts estimate a 35% yield loss if these mixed stands are not protected. EPA has authorized under section 18 of FIFRA the use of lambda-cyhalothrin on wild rice for control of rice borers in Minnesota and pasture grass for control of alfalfa weevil, armyworms and potato leafhoppers on alfalfa/clover/grass mixed stands in New York. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of lambda-cyhalothrin in or on wild rice and grass forage and grass hay. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with section 18 of FIFRA. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances will expire and are revoked on December 31, 2005, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on wild rice, grass forage and grass hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether lambda-cyhalothrin meets EPA's registration requirements for use on wild rice and pasture grass or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of lambda-cyhalothrin by a State for special local needs under section 24(c) of FIFRA. Nor do these tolerances serve as the basis for any States other than Minnesota and New York to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 of FIFRA as identified in 40 CFR part 166. For additional information regarding the emergency exemption for lambda-cyhalothrin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

Consistent with section 408(b)(2)(D) of the FFDCA , EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of lambda-cyhalothrin and to make a determination on aggregate exposure, consistent with section

408(b)(2) of the FFDCA, for time-limited tolerances for the combined residues of lambda-cyhalothrin and its epimer in or on wild rice at 1.0 ppm, grass forage at 5.0 ppm and grass hay at 6.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA/SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for lambda-cyhalothrin used for human risk assessment is shown in the following Table 1:

TABLE 1.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR LAMBDA-CYHALOTHRIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (General population including infants and children)	NOAEL = 0.5 mg/kg/day UF = 100 Acute RfD = 0.005 mg/kg/day	FQPA SF = 1 aPAD = acute RfD/FQPA SF = 0.005 mg/kg/day	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 3.5 mg/kg/day based on clinical signs of neurotoxicity (ataxia) observed from day 2, three to seven hours post-dosing.
Chronic Dietary (All populations)	NOAEL = 0.1 mg/kg/day UF = 100 Chronic RfD = 0.001 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.001 mg/kg/day	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 0.5 based on gait abnormalities observed in 2 dogs
Incidental Oral Short- and Intermediate-Term (1–30 Days and 1–6 Months) Residential Only	NOAEL = 0.1	LOC for MOE = 100 (Residential)	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 0.5 based on gait abnormalities observed in 2 dogs
Dermal (All Durations;- Short-Term (1 to 7 days) - Intermediate- Term (1 week to several months) - Long-Term (several months to lifetime) (Residential)	dermal (or oral) study NOAEL= 10 mg/kg/day	LOC for MOE = 100 (Residential)	21–Day dermal toxicity study in the rat (lambda-cyhalothrin) LOAEL = 50 mg/kg/day based on clinical signs of neurotoxicity (observed from day 2) and decreased body weight and body weight gain
Inhalation (All Durations; - Short-Term (1 to 7 days) - Intermediate-Term (1 week to several months) - Long-Term (several months to lifetime) (Residential)	inhalation (or oral) study NOAEL= 0.3 µg/L (0.08 mg/kg/day) (inhalation absorption rate = 100%).	LOC for MOE = 100 (Residential)	21–Day inhalation study in rats (lambda-cyhalothrin) LOAEL = 3.3 µg/L (0.90 mg/kg/day) based on clinical signs of neurotoxicity, decreased body weight gains, increased incidence of punctuate foci in the cornea, slight reductions in cholesterol in females and slight changes in selected urinalysis parameters.
Cancer (oral, dermal, inhalation)			Classification: Group D chemical (not classifiable as to human carcinogenicity)

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Currently established tolerances for residues of lambda-cyhalothrin are listed under 40 CFR 180.438 and include permanent tolerances on plants ranging from 0.01 ppm on soybeans to 6.0 ppm on alfalfa hay, corn forage, and tomato pomace (dry or wet). Tolerances are also established on animal commodities ranging from 0.01 ppm in eggs, poultry meat, and poultry meat by-products (mbyp) to 5.0 ppm in milk fat (reflecting 0.2 ppm in whole milk). The Agency has recently established additional tolerances for lambda-cyhalothrin on a number of commodities ranging from 0.05 ppm on sugarcane to 3.0 ppm on peanut hay. Risk assessments were conducted by EPA to assess dietary exposures from lambda-cyhalothrin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. A refined Tier 3 probabilistic acute dietary risk assessment was conducted for all currently registered and proposed lambda-cyhalothrin food uses. For the acute dietary risk analysis the entire distribution of residue field trial data was used for not-blended or partially-blended commodities; average residue field trial data was used for blended commodities; information from cooking and processing studies were used when available; and market share data for proposed and established tolerances was used.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. For the chronic dietary risk analysis the average of the residue field trials, information from cooking and processing studies, and market share data were used.

iii. *Cancer.* The data base for carcinogenicity is considered complete, and no additional studies are required at this time. The requirements for oncogenicity studies in the rat and the mouse with lambda-cyhalothrin have been satisfied by a combined chronic/oncogenicity study in rats and an oncogenicity study in mice, both conducted with cyhalothrin. Lambda-cyhalothrin has been classified as a Group D chemical (not classifiable as to human carcinogenicity) with regards to its carcinogenic potential.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

A detailed description of how the Agency used PCT information in this assessment can be found in the lambda-cyhalothrin pesticide tolerance document published on September 27, 2002 (67 FR 60902; FRL–7200–1) in Unit III.C.1.iv.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which lambda-cyhalothrin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for lambda-cyhalothrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of lambda-cyhalothrin.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to

produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will generally use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to lambda-cyhalothrin they are further discussed in the aggregate risk sections below. The compounds to be regulated in drinking water are lambda-cyhalothrin and degradate XV (parent hydroxylated in the 4-position of the phenoxy ring).

Based on the FIRST, PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of lambda-cyhalothrin and its degradate XV for acute exposures are estimated to be 0.62 parts per billion (ppb) for surface water (0.51 ppb lambda-cyhalothrin and 0.11 ppb degradate XV) and 0.012 ppb (0.006 ppb lambda-cyhalothrin and 0.006 ppb degradate XV) for ground water. The EECs for chronic exposures are estimated to be 0.098 ppb for surface water (0.09 ppb lambda-cyhalothrin and 0.008 ppb degradate XV) and 0.012 ppb for ground water (0.006 ppb lambda-cyhalothrin and 0.006 ppb degradate XV).

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). The residential exposure/risk assessment evaluated both proposed and existing uses for lambda-cyhalothrin. Existing uses on turf, in gardens, on golf courses, and for structural pest control were qualitatively assessed, but a quantitative calculation was only completed for postapplication exposure on treated turf because this scenario is expected to have the highest associated exposures. This screening level tool is protective for all residential exposures, even the handler scenarios, because the dose levels for children playing on treated lawns are thought to exceed those expected for all other scenarios. For postapplication exposure, all residential MOEs were well above the Agency target MOE of 100 for the inhalation, dermal, and oral routes and therefore do not exceed EPA's level of concern (range 700 to 14,700). Additionally, when total MOEs were aggregated, MOEs were still not of concern (MOEs for children = 500 and for adults = 3,000).

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether lambda-cyhalothrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, lambda-cyhalothrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that lambda-cyhalothrin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies.* In a developmental toxicity study in rats, the maternal NOAEL was 10 mg/kg/day and the LOAEL was 15 mg/kg/day based on uncoordiniated limbs, reduced body weight gain and food consumption. The developmental NOAEL was 15 mg/kg/day, highest dose tested (HDT) and the developmental LOAEL was >15 mg/kg/day.

In a developmental toxicity study in rabbits, the maternal NOAEL was 10 mg/kg/day and the LOAEL was 30 mg/kg/day based on reduced body weight gain and food consumption. The developmental NOAEL was 30 mg/kg/day, HDT and the developmental LOAEL was >30 mg/kg/day.

3. *Reproductive toxicity study.* In a 3–generation reproduction study in rats, the parental/offspring NOAEL was 1.5 mg/kg/day and the LOAEL was 5.0 mg/kg/day based on decreased parental body weight and body weight gain during premating and gestation periods and reduced pup weight and weight gain during lactation. The reproductive NOAEL was 5.0 mg/kg/day (HDT)

4. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with cyhalothrin and there is no evidence of increased susceptibility of young rats in the reproduction study with cyhalothrin.

5. *Conclusion.* Through the use of bridging data, the toxicology database for lambda-cyhalothrin is complete. The Agency has determined that the special FQPA safety factor should be reduced to 1x because as noted above, there is no evidence of increased susceptibility of rat or rabbit fetuses following in utero exposure in the developmental studies with cyhalothrin and there is no evidence of increased susceptibility of young rats in the reproduction study

with cyhalothrin. The Agency concluded there are no residual uncertainties for pre- and/or postnatal exposure. The RfDs and other endpoints established for risk assessment are protective of pre-/postnatal toxicity following exposure to cyhalothrin.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to lambda-cyhalothrin in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of lambda-cyhalothrin on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to lambda-cyhalothrin will occupy 41% of the aPAD for the U.S. population, 24% of the aPAD for females 13 years and older, 71% of the aPAD for all infants <1 year old and 82% of the aPAD for children 1-6 years old. In addition, despite the potential for acute dietary exposure to lambda-cyhalothrin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of lambda-cyhalothrin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 2 of this unit:

TABLE 2.— AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	aPAD mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population (total)	0.005	40.86	0.62	0.012	103
All Infants (<1 year)	0.005	71.22	0.62	0.012	14
Children 1-6 years	0.005	82.36	0.62	0.012	9
Children 7-12 years	0.005	46.09	0.62	0.012	27
Females 13-50	0.005	23.83	0.62	0.012	114
Males 13-19	0.005	27.61	0.62	0.012	127
Males 20+ years	0.005	21.69	0.62	0.012	137
Seniors 55+	0.005	21.85	0.62	0.012	137

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to lambda-cyhalothrin from food will utilize 8.2% of the cPAD for the U.S. population, 11.7% of the cPAD for all infants < 1 year old and 21.8% of the cPAD for children 1-6 years old. Based the use pattern, chronic residential exposure to residues of lambda-cyhalothrin is not expected. In addition, despite the potential for chronic dietary exposure to lambda-cyhalothrin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of lambda-cyhalothrin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population (total)	0.001	8.2	0.098	0.012	32
All Infants (< 1 year)	0.001	11.7	0.098	0.012	9

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO LAMBDA-CYHALOTHRIN— Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Children 1-6 years	0.001	21.8	0.098	0.0 12	8
Children 7-12 years	0.001	12.9	0.098	0.012	9
Females 13-50	0.001	5.7	0.098	0.012	28
Males 13-19	0.001	7.9	0.098	0.012	32
Males 20+ years	0.001	6.0	0.098	0.012	33
Seniors 55+	0.001	5.8	0.098	0.012	33

3. *Short and intermediate-term risk.* Aggregate risk for short- and intermediate-term durations of exposure includes food, drinking water, and residential exposure pathways. The residential exposure pathway includes dermal, inhalation, and incidental oral (hand-to-mouth-type inadvertent exposure) routes of exposure. This aggregate risk assessment included lawn post-application exposure, considered the scenario with the highest potential for exposure and is a day 0 screening level assessment.

Lambda-cyhalothrin is currently registered for use(s) that could result in short and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for lambda-cyhalothrin.

Using the exposure assumptions described in this unit for short and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 879 for adults, 239 for children 1-6, and 302 for infants <1 year old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of lambda-cyhalothrin in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 4 of this unit:

TABLE 4.— AGGREGATE RISK ASSESSMENT FOR SHORT AND INTERMEDIATE-TERM EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short and Intermediate-Term DWLOC (ppb)
Adults	879	100	0.098	0.012	31
Child (1-6)	239	10 0	0.0 98	0 .012	6
Infant (<1 yr)	302	100	0.098	0.012	7

5. *Aggregate cancer risk for U.S. population.* Lambda-cyhalothrin has been classified as a Group D chemcial (not classifiable as to human carcinogenicity) with regards to its carcinogenic potential.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to lambda-cyhalothrin residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

There are no Codex, Canadian, or Mexican MRLs established for residues of lambda-cyhalothrin in plant or animal commodities. Codex MRLs for cyhalothrin are established for several commodities which are unrelated to this action. Therefore, a discussion of compatibility with U.S. tolerances is not relevant at this time.

VI. Conclusion

Therefore, the tolerances are established for the combined residues of lambda-cyhalothrin and its epimer in or on wild rice at 1.0 ppm, grass forage at 5.0 ppm and grass hay at 6.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made.

The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0335 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 4, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–-5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2002–0335, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10,

1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.438 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.438 Lambda-cyhalothrin; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*

* * *

Commodity	Parts per million	Expiration/ Revocation Date
* * *	* *	* *
Grass, forage	5.0	12/31/05
Grass, hay	6.0	12/31/05
Rice, wild	1.0	12/31/05

* * * * *

[FR Doc. 03–6 Filed 1–2–03; 8:45am]

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Proposed Rules

Federal Register
Vol. 68, No. 2
Friday, January 3, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 217, 231 and 251

[INS No. 2182–01]

RIN 1115–AG57

Manifest Requirements Under Section 231 of the Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173), which requires the submission of arrival and departure manifests electronically in advance of an aircraft or vessel's arrival in or departure from the United States. This rule also proposes to require manifest data on certain passengers and voyages previously exempt from this requirement. This rule is necessary to provide the U.S. Immigration and Naturalization Service (Service) with advance notification of information necessary for the identification of passengers, crewmembers and any other occupant transported. This information will assist in the efficient inspection of passengers and crewmembers, and is necessary for the effective enforcement of the immigration laws.

DATES: Written comments must be submitted on or before February 3, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2182–01 on your correspondence. Comments may be submitted electronically to the Service at *insregs@usdoj.gov*. Comments submitted electronically must include INS No. 2182–01 in the subject heading so that the comments can be electronically transmitted to the appropriate program office for review. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael J. Flemmi, Assistant Chief Inspector, Office of Inspections, Immigration and Naturalization Service, 425 I Street NW., Room 5237, Washington, DC 20536, telephone number (202) 305–9247.

SUPPLEMENTARY INFORMATION:

What Manifest Requirements Are Imposed By Section 231 of the Immigration and Nationality Act (Act)?

On November 28, 2001, Congress passed section 115 of the Department of Justice Appropriations Act of 2002 (Title I of Pub. L. 107–77), which authorized the Attorney General to impose by regulation requirements for submitting electronic arrival and departure lists or manifests by any public or private carrier transporting persons to and from the United States. Prior to the passage of section 115 of Public Law 107–77, section 231 of the Act did not explicitly address the electronic submission of such information. On May 14, 2002, section 115 of Public Law 107–77 was superseded when Congress enacted section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173).

Section 402 of Public law 107–173 amended section 231 of the Act by requiring that commercial carriers transporting passengers to or from the United States deliver arrival and departure manifest information electronically to the Service, beginning no later than January 1, 2003. The carrier must submit an arrival manifest prior to the commercial vessel or aircraft's arrival at a port-of-entry in the United States. In addition, with certain exceptions, carriers must provide departure manifest information before the departure of a commercial vessel or aircraft from the United States.

Section 231(c) of the Act, as amended by section 402, provides specific elements that must be included in arrival and departure manifests. Section 402 also eliminated prior statutory exemptions from the manifest requirements of section 231 of the Act previously applicable to alien crewmembers and persons arriving from or departing to foreign contiguous territory by air.

Finally, section 402 raised the penalty for failure to comply with manifest requirements to $1,000 per violation. Under section 231(f) of the Act, as amended, the Service may impose a fine on a carrier for each person for whom an accurate and full manifest is not submitted.

How Are Arrival and Departure Manifests and Lists Currently Collected for Passengers?

Arrival and departure manifests are currently submitted as follows: in the form of a separate Form I–94, Arrival-Departure Record, or as a Form I–94W, Nonimmigrant Visa Waiver Arrival-Departure Record, or as a Form I–94T, Arrival-Departure Record (Transit Without Visa) (collectively Form I–94) for each passenger not exempt from the manifest requirements. The Form I–94 is a perforated numbered card and is composed of an arrival portion collected by the Service at the time of arrival and a departure portion that is returned to the alien passenger. Upon departure, the reverse-side of the departure portion must be completed by the departure carrier at the time of the alien's departure and submitted to the Service at the port-of-departure. In accordance with 8 CFR 231.2, the outbound carrier currently has 48 hours to submit the departure Form I–94 to the Service. The Service enters Form I–94 data into the Nonimmigrant Information System (NIIS), thus recording the alien's arrival and departure into and out of the United States.

Which Passengers Are Currently Exempt From the Passenger Manifest Requirements?

Service regulations at 8 CFR part 231 currently provide that manifests in the form of a Form I–94 do not have to be submitted for the following passengers: United States citizens, lawful permanent resident aliens of the United States, immigrants to the United States, and certain in-transit passengers. Service regulations also exempt the manifest requirements for aircraft and vessels arriving in the United States directly from Canada, or departing to Canada. Vessels or aircraft arriving in the U.S. Virgin Islands directly from the British Virgin Islands, or departing the U.S. Virgin Islands directly to the

British Virgin Islands, are similarly exempt from the manifest requirements.

What Are the Current Arrival and Departure Manifest Requirements for Crewmembers?

Currently, crew arrival and departure manifest requirements are governed solely by section 251 of the Act and Service regulations at 8 CFR part 251. Arrival and departure manifests for vessels may be submitted on Form I–418, Passenger List-Crew List, while aircraft may satisfy this requirement by submission of a United States Customs Service Form 7507 or on the International Civil Aviation Organization's General Declaration. Pursuant to section 251(d) of the Act, the Service may impose a fine of $220 (as adjusted for inflation) for each crewmember for whom an accurate and full manifest is not submitted

How Does the New Law Change the Requirements for Crewmembers?

Prior to the enactment of section 115 of the Department of Justice Appropriations Act of 2002, and later, section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002, the scope of section 231 of the Act was limited to alien and U.S. citizen passengers. Section 231 of the Act, as amended by section 402, no longer contains such restrictions. Section 402 authorizes the collection of information not only on passengers being transported to or from the United States on commercial aircraft or vessels but on crewmembers and other occupants transported on such conveyances. Accordingly, the Service is using its authority under section 231 of the Act, as amended, to require electronic arrival and departure manifest information on crewmembers of commercial aircraft or vessels that are transporting passengers to or from the United States.

Will Carriers Be Required To Submit Electronic Manifest Information for Other Classes of Individuals Who Are Not Currently Included in the Manifest Requirement?

Yes. This rule proposes to require that electronically transmitted arrival and departure manifests be submitted for all passengers and crewmembers transported on commercial aircraft or vessels, including passengers who are United States citizens, Canadian citizens, lawful permanent resident aliens of the United States, immigrants to the United States, in-transit passengers, and persons on vessels or aircraft arriving in the United States directly from Canada or departing the United States directly to Canada as well as persons arriving in the U.S. Virgin Islands directly from the British Virgin Islands or departing the U.S. Virgin Islands directly to the British Virgin Islands.

What Is the Advance Passenger Information System (APIS)?

The APIS is a system where commercial air carriers collect and submit biographical data from a passport, visa or other travel document at a foreign port and transmit this information electronically to the Service and the United States Customs Service (USCS) in advance of the commercial aircraft's arrival in the United States. The Service began implementing APIS in conjunction with the USCS in 1989 as an effort to meet airport inspection challenges which included increased passenger volumes, especially during peak hours and seasons, combined with staffing and facilities limitations.

A Memorandum of Understanding (MOU) governs the administration of the APIS program and is a formal agreement between the three U.S. Federal Inspection Services (FIS) agencies (USCS, the Service, and the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA–APHIS)) and participating air carriers. The APIS MOU specifies national performance standards for all parties. Under this MOU, the airlines agreed to send advance passenger information to the Government agencies and in return, the FIS agencies agreed to expedite the processing of APIS flights. Pursuant to the MOU, as carriers provided additional and more accurate passenger information, the FIS agencies would improve their processing times.

Currently, over 140 carriers are signatories to the APIS MOU, and two Governments (Australia and New Zealand) electronically transmit APIS data to the USCS Data Center in Newington, Virginia. Once this rule becomes effective, the need for this MOU will be superceded.

Prior to the enactment of section 115 of the Aviation and Transportation Security Act, Public Law 107–71, 115 Stat. 597 (2001), the electronic transmission of such manifest data was voluntary.

What Data Elements Must Be Submitted by a Carrier?

Section 231(c) of the Act, as amended, provides that the following information must be provided for each person listed on a manifest required to be submitted in accordance with section 231 (a) or (b): Complete name; date of birth; citizenship; sex; passport number and country of issuance; country of residence; United States visa number, date, and place of visa issuance, where applicable; alien registration number, where applicable; United States address while in the United States; and such other information as the Attorney General, in consultation with the Secretaries of State and the Treasury, determines is necessary for the identification of the persons transported, for the enforcement of the immigration laws, and to protect public safety and national security.

Under some circumstances, however, not all of this information must be submitted. For example, a passport number and visa information may be omitted in the event a Canadian national is exempt from the passport and visa requirement under 8 CFR 212.1. The visa information may be omitted in the event a passenger under the Visa Waiver Program is exempt from the visa requirement under 8 CFR part 217. A passport number and visa information may be omitted in the event a U.S. citizen is exempt from the passport and visa requirement under 22 CFR part 53. All of the other data elements, however, will be required. The Service will notify the carrier industry of any policy or operational issues that affect the APIS program.

Will the Transmission of Data in Accordance With the Current APIS Program Satisfy the Proposed Rule's Electronic Manifest Requirement?

As noted previously, section 231(c) of the Act, as amended by the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173), prescribes specific information that must be included in arrival and departure manifests. The current data elements transmitted via APIS do not contain all of the elements that are statutorily required by section 231(c) of the Act, as amended.

The proposed rule includes the following statutorily-mandated manifest information that is not currently collected under the APIS system:

(1) Place of visa issuance;

(2) The United States address while in the United States; and

(3) The country of residence.

It is important to note, however, that all items listed above are currently required on the paper Form I–94, which has legally sufficed for this arrival manifest. This rule proposes to amend only the format and time frame by which this information must be provided. The proposed rule requires that this information be submitted by the air and sea carriers to the Service via the USCS APIS system..

What Is EDIFACT?

The Electronic Data Interchange for Administration, Commerce, and Trade (EDIFACT) is the technical message format that allows for the transmission of the APIS data elements to the U.S. government in a standardized way. There are two EDIFACT versions, (1) The United States EDIFACT format (US EDIFACT); and (2) the United Nations EDIFACT (UN EDIFACT) format. The USCS developed the US EDIFACT message format between 1989 and 1992 in cooperation with the governments of Australia and New Zealand during the initial implementation of the Advance Passenger Information System. The US EDIFACT standard is being used to transmit the current APIS information. The following US EDIFACT technical documentation and guidelines are available from the USCS: (1) Advanced Passenger Information for Airlines; (2) Advance Passenger Information (API) Guidelines for Customs and Air Carriers, and (3) US EDIFACT Overview. Carriers currently transmit APIS information using the US EDIFACT format. The amount of information that can be transmitted through the APIS system, via the US EDIFACT for now is limited. This format cannot accommodate the new data elements such as US address, visa number, date, and place of issuance, and country of issuance that are required by section 402 of Public Law 107–173. Given these limitations in the US EDIFACT format, the Service anticipates the carriers will convert their reservation or computer systems to the UN EDIFACT format which can accommodate the required additional data elements. Additional information on UN EDIFACT can be located at the following Web site: *http://www.unece.org/trade/untdid/welcome.htm*.

Converting to the UN EDIFACT format will improve the accuracy and efficiency of data, and comply with the new additional data element requirements. The USCS expects to upgrade the APIS system to accept the UN EDIFACT format in January 2003. The USCS will provide UN EDIFACT documentation and guidelines in the near future.

The Air Transport Association (ATA), International Air Transport Association (IATA), and the governments of Canada, Mexico, New Zealand, Australia, and United Kingdom all support the conversion to APIS UN EDIFACT format in an effort to establish a worldwide format standard for the electronic transmission of arrival and departure manifests.

In 2003, the Service anticipates the carriers will convert their systems from the US EDIFACT format to the UN EDIFACT format to facilitate their transmission of the new data element requirements. Until carriers convert their systems to the UN EDIFACT format, the APIS system will be able to accommodate both the US EDIFACT and the UN EDIFACT format transmissions. This conversion is not expected to affect small entities since the USCS is developing a Web-based APIS UN EDIFACT system, that is expected to be complete in April 2003.

Will the Service Impose Any Fines on the Carriers for Not Submitting the New Data Elements on January 1, 2003?

No. The Service will not impose any fines until the regulation is published as a final rule. The Service may impose fines under section 231 of the Act in cases where the carrier fails to transmit an electronic record after the final rule becomes effective. However, before issuing any fines during the conversion period (from the effective date of the final rule through December 31, 2003), the Service will evaluate a carrier's performance to determine whether it has made a good faith effort to comply with the electronic transmission requirement. The Service will consider the following factors: (1) Whether the carrier notified the Service of any problems it was experiencing in submitting the information; (2) whether the carrier has a backorder for the purchase of additional equipment, such as document readers; (3) the completion of the APIS UN EDIFACT format by the Service and the USCS; and (4) the totality of circumstances of each carrier's attempt to comply with this regulation. The Service has the authority to mitigate or remit fines under 8 CFR 280.5.

The Service will continue to accept the current APIS arrival and departure data elements in the US EDIFACT format until carriers can convert to the UN EDIFACT format, through at least the end of 2003. The Service will require that the carriers notify the Service of when they will be able to comply with the UN EDIFACT format.

Does the Service Propose To Require Any Other Additional Electronic Information?

Yes. The Attorney General, in consultation with the Secretaries of State and the Treasury, may also require additional manifest information if the information is deemed necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security. Pursuant to that authority, the proposed rule prescribes adding a Passenger Name Record (PNR) locator or a unique identifier or reservation number. The PNR locator is a unique passenger identifier that is specific to the airline industry in their reservation systems. This does not require carriers to create new identifying systems. In any database system a unique identifier is not difficult to create. This identifier is very important to the Service because this will assist the Service in matching an arrival record with a departure record. The Service is particularly interested in comments by the carrier industry to the proposal that carriers submit the PNR locator number or unique identifier electronically as part of the manifest requirement.

The Service has consulted with the USCS, the U.S. Coast Guard (USCG), and the U.S. Department of State on this proposed additional data element.

When Are Carriers Required To Submit the Electronic Arrival and Departure Manifests?

This rule proposes to require commercial carriers transporting any person by air to any port within the United States from any place outside the United States to submit electronic arrival passenger manifests to the Service no later than 15 minutes after the flight departs from the last foreign port or place. This will allow the Service to check the manifest information against appropriate security databases prior to arrival. This rule further proposes that air carriers be required to submit the arrival crew manifest electronically to the Service in advance of departure from the last foreign port or place. This is the current transmission requirement for air carriers submitting electronic arrival information under the APIS program, and this requirement will also conform to the USCS' rule published at 66 FR 67482 (December 31, 2001).

In consultation with the USCG and the cargo and cruise line industry, the Service proposes to require that a vessel on a voyage of: (1) 96 hours or more must submit the information required in the crewmember and passenger manifests at least 96 hours before entering the port or place of destination; (2) less than 96 hours but not less than 24 hours must submit the crewmember and passenger manifests not less than 24 hours before entering the port or place of destination; or (3) less than 24 hours must submit the crewmember and passenger manifests prior to departing the port or place of departure. These requirements will conform to 33 CFR

160.207(a) in the USCG's Notice of Proposed Rule Making (NPRM) published at 67 FR 41659 (June 19, 2002). These timeframes will provide the Service and USCG with adequate time to review the electronic arrival manifests for arriving vessels. In addition, these requirements are more in accord with commercial maritime operations, which differ greatly from those of the airline industry. This alignment of submission time requirements will facilitate the Government's ongoing efforts to develop a system that eliminates multiple transmissions of manifest information to both the Service and the USCG.

The proposed rule requires that carriers transporting persons to points outside of the United States submit electronic departure passenger and crewmember data lists or manifests to the Service no later than 15 minutes before the flight or vessel has departed from the United States. This will allow the Service to check the manifest information against the appropriate security databases prior to departure. If additional passengers or crewmembers board after the original manifest has been submitted, or if passengers or crewmembers exit after boarding but prior to departure, carriers will also be required to submit amended or updated passenger and crewmember manifest information electronically to the Service no later than 15 minutes after the flight or vessel has departed from the United States. This will allow the Service to continue to check any new information against the appropriate security databases. Although the number of last minute passengers will vary, the Service believes that carriers will be able to provide electronic departure passenger and crewmember data lists or manifests on approximately 80 to 95 percent of their total number of passengers when submitting the required information 15 minutes prior to departure. Failure to submit an amended manifest 15 minutes after departure, if necessary, may result in a fine.

For purposes of determining the time of departure for purposes of submitting electronic manifest information under this rule, the Service will use the same definitions already used by other agencies. For air carriers, the time of departure is the point at which the wheels are up on the aircraft and the aircraft is directly en route to or from the United States. For vessels, the time of departure is that time when the vessel gets under way on its outward voyage and proceeds on the voyage without, thereafter, coming to rest in the harbor from which it is going. *See* 19 CFR chapter I, part 4 (August 30, 2002).

Will Transmission of Data in Accordance With the Proposed Rule Satisfy the Electronic Transmission Requirements Prescribed Under Section 217(h)(2)(B) of the Act?

Yes. Section 217 of the Act, relating to the Visa Waiver Program, contains similar requirements for the electronic submission of arrival and departure information pertaining to visa waiver program passengers. This rule proposes to amend 8 CFR part 217 to provide that an alien who applies for admission under the provisions of section 217 of the Act after arriving via sea or air at a port-of-entry, will not be admitted under the Visa Waiver Program unless the carrier transporting such an alien electronically transmits passenger arrival and departure data in accordance with 8 CFR 231.1, for each Visa Waiver Program passenger being transported.

What Manifest Information Will Carriers Be Responsible for Submitting Between January 1, 2003, and the Publication of a Final Rule?

In accordance with section 402 of Public Law 107–173, not later than January 1, 2003, the master or commanding officer, or authorized agent, owner, or consignee of a commercial aircraft or vessel to transmit electronically arrival and departure manifests to the Service for each passenger not currently exempt from the manifest requirements pursuant to 8 CFR 231.1, or 231.2. These manifests must contain the data elements specified in section 231(c) of the Act as amended, for each passenger listed on the manifest. In accordance with section 231(a) of the Act, arrival manifests must be electronically submitted to the Service prior to the arrival of the commercial aircraft or vessel. In addition, carriers may electronically submit departure data up to 48 hours after departure, exclusive of Saturdays, Sundays and legal holidays in accordance with 8 CFR 231.2

Until a final regulation is published, however, the Service will not require the electronic transmission of arrival or departure manifests for crewmembers because the submission of manifests containing crewmember information was not contemplated by the current regulations promulgated under section 231 of the Act.

Will Manifests in Paper Form Still Be Required on January 1, 2003?

As of January 1, 2003, carriers will no longer be required to submit Forms I–94 to the Service for the passengers they transport to or from the United States if they are electronically submitting arrival and departure manifests that include all of the data elements mandated by Section 231(c) of the Act. The carriers in full compliance with their obligations to transmit the prescribed manifest information electronically should still distribute Forms I–94 to their passengers who will be responsible for completing and submitting the Form I–94 to the Service to facilitate the inspections process. The Service will then compare and analyze the accuracy and efficiency of matching the electronic arrival and departure information with the paper arrival and departure information. In addition, not all travelers enter and exit the United States at the same location. A traveler may enter the United States at an air port-of-entry and leave at a land border port-of-entry. In this scenario, the Service will not be able to match the record of arrival with the record of departure electronically. A traveler who enters the United States via the air or sea port-of-entry may exit at a land border port-of-entry; therefore, this traveler will need a copy of the Form I–94. The traveler is required to return the departure Form
I–94 at the land border port-of-entry; otherwise the Service would not know that they had exited the United States.

Until those provisions of the Service's regulations in 8 CFR part 251 requiring the submission of crew manifests in paper format are rescinded, commercial air and sea carriers transporting passengers to or from the United States shall continue to submit the Form I–418. Carriers also should continue to submit USCS Form 7507 and/or the International Civil Aviation Organization's (ICOA) General Declaration, as appropriate. Any determinations to eliminate these forms will be made by the proper agency.

The Service is requiring both an electronic and paper format to compare and analyze the accuracy and completeness of the electronic passenger manifest with the current paper process. The Service will randomly select data from the paper I–94 input manually into the Non-Immigrant Information System (NIIS) and compare that data to the same record that was input electronically and received from the airlines. The Service will compare the accuracy, time of availability of the data, and completeness of the data. If the data received through the electronic manifest is superior to that of the manually input data, then a policy decision will be made as to whether or not to continue the use of the paper Form I–94 as a manifest.

In addition, the paper Form I–418 is currently used when vessels arrive in the United States and continue coastwise to other ports within the United States (for example, from Baltimore, Maryland to Newark, New Jersey to Boston, Massachusetts). The paper Form I–418 is still required because the Service and USCS have not developed an APIS-like system for carriers that continue coastwise to other ports within the United States. Therefore, an electronic manifest is required when a commercial carrier arrives in and departs from the United States, but an electronic manifest is not required when vessels are traveling between the ports-of-entry in the United States. The Service currently is assessing the continued value of the paper Form I–418. Carriers, however, will have to continue to submit this form, when required under 8 CFR 251.1(a), until such time that the technical infrastructure is in place between ports-of-entry.

Are There Any Penalties for Submitting an Incomplete or Inaccurate Electronic Arrival or Departure Manifest?

Yes. Section 231(g) of the Act, as amended, provides that if any public or private carrier, or the agent of any transportation line, has refused or failed to provide manifest information as required, or the manifest information provided is not accurate and full, such carrier, or agent shall pay the Commissioner the sum of $1,000 for each person with respect to whom accurate and full manifest information is not provided, or with respect to whom the manifest information is not prepared as prescribed. Fines for violations of section 231 and 251 of the Act may be imposed and collected in accordance with 8 CFR part 280. However, the Service, as a matter of discretion, does not intend to impose fines against carriers for violations of section 231 of the Act until a final regulation is published.

Are Ferries Required To Submit Electronic Arrival and Departure Manifests?

No. This proposed rule adds a definition of the term "ferry" based on the existing USCG maritime safety regulations at 46 CFR 70.10–15. The determination of whether a particular service is "ferry" service is a case-by-case determination in which, should the question arise, the Service will refer to the USCG classification of the vessel or vessels providing the service.

The Service will also refer to other relevant definitions from the USCG regulations that are applicable to the definition of "ferry." In particular, the USCG regulations define "coastwise" service as navigation in the ocean or Gulf of Mexico 20 nautical miles or less offshore (46 CFR 70.10–13), and "ocean" service as navigation in the ocean or the Gulf of Mexico more than 20 nautical miles offshore (46 CFR 70.10–31). Vessels in ocean or coastwise service are not ferries and, therefore, the Service proposes that sea carriers must submit electronic arrival and departure manifests for those vessels. This includes all vessels that travel between the United States and foreign adjacent islands.

However, otherwise qualifying services in "lakes, bays, and sounds" such as Puget Sound or the Great Lakes will be considered ferries (see 46 CFR 70.10–23) and therefore are not required to submit electronic arrival and departure manifests.

In order to qualify as a ferry, a vessel's service must be over the most direct water route and only make provisions for deck passengers and vehicles. The Service is aware that some vessels may offer extended dining services, even overnight accommodations or gambling, that are commonly associated with the operation of a cruise ship rather than a ferry. The Service will not extend this exemption to such vessels.

Regulatory Flexibility Act

The Service drafted this rule in consideration of the need to minimize its impact on small businesses. Based upon preliminary information available, the Service is unable to state with certainty that this rule, if promulgated, will not have the effect on small businesses of the type described at 5 U.S.C. 605. Accordingly, the Service has prepared the following Regulatory Flexibility Act (RFA) analysis in accordance with 5 U.S.C. 603.

A. Need for and Objectives of This Proposed Rule

This proposed rule will implement section 231 of the Act as amended by section 402 of Public Law 107–73. Section 231 of the Act provides, among other things, that commercial vessels or aircraft transporting passengers to and from the United States must electronically transmit to the appropriate immigration officer not later than January 1, 2003, arrival and departure manifests containing such information and delivered in such a manner and timeframe as may be prescribed in accordance with section 231.

The enactment of section 402 of Public Law 107–173 reflects Congress' desire to ensure that commercial air and sea carriers submit to immigration officials passenger and crewmember information within a timeframe and in a particular format in order to maximize the Government's efforts to (1) identify persons being transported to and from the United States, (2) enforce the immigration laws, and (3) protect public safety and national security.

B. Description and Estimates of the Number of Small Entities Affected By This Proposed Rule

A "small business" is defined by the RFA to be the same as a "small business concern" under the Small Business Act (SBA), 15 U.S.C. 632. Under the SBA, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. It will be the duty of the appropriate officer of any commercial aircraft or vessel regardless of ownership, size or dominance in the field to provide the information prescribed in the proposed rule in the timeframe and format proposed therein.

Based upon the information available to the Service, there appear to be two distinct groups of businesses that will be affected by this proposed rule: (1) Larger commercial air and sea carriers, and (2) smaller commercial air and sea carriers (*e.g.*, air carriers that employ not more than 1,500 employees and sea carriers that employ not more than 500 employees) as defined by the United States Small Business Administration.

The Service estimates that there are approximately 108 large commercial carriers. Data provided by the United States Small Business Administration suggests that at least 446 small carriers will be affected by this rule. In addition, data provided by the USCG suggests that as many as 14,000 small commercial carriers potentially could be affected. Although the Service consulted with a number of the affected entities, including ATA, IATA, and the International Council of Cruise Lines (ICCL), the Service realizes that not all interested persons and entities may have been fully represented prior to the publication of this proposal. Therefore, the Service is requesting that comments be submitted to help ensure that the concerns of all interested parties are considered. Commenters may wish to identify the type of industry; including the number of companies/individuals involved and the annual income conducted; how the proposed regulatory requirements would impact that industry; and any suggestions on how the final regulations might be better tailored to the industry without

compromising the intent of the statute which is to enhance national security, public safety, and the enforcement of the immigration laws through timely identification of persons being transported to and from the United States.

Commenters should note that the submission of any comments or information on these or other matters addressed by this proposed rule is entirely voluntary and the Service is not prescribing the use of any form for this information.

Pursuant to the RFA and public policy concerns, the Service encourages all affected entities to provide specific estimates, wherever possible, of the economic costs that this rule will impose and the benefits that it will bring. The Service asks affected small businesses to estimate what these regulations will cost as a percentage of their total revenues, to enable the Service to ensure that small businesses are not unduly burdened.

1. Large Commercial Carriers

The Service has drafted this proposed rule to ensure the minimum possible impact on these businesses while complying with the statutory requirements. To ensure flexibility, the regulation does not mandate a specific electronic data interchange system that must be used. The regulation provides only that the transportation provider use a system that is approved by the Service.

The carriers must contact the USCS for additional technical information. The USCS and Service have APIS account managers to work with the carriers at the San Francisco, California, Houston, Texas, and Newark, New Jersey ports-of-entry. The APIS account managers have informed and notified the carriers of the new requirements, and will respond to any APIS issues, and act as a liaison between the carriers and the Service/USCS Headquarters. The USCS also provides APIS guidelines and documentation for the air carriers' technical staff. The USCS is currently updating a guideline for the sea carriers.

The Service and USCS have been working with the carrier industry for the past 10 years developing, implementing, and improving the arrival APIS information. The Service does not know how many systems are incompatible with APIS. However, EDIFACT is an international standard with which most carriers will be able to comply. For carriers that cannot comply with this requirement, alternatives are available. The Service believes that the EDIFACT system is flexible because it is an international standard with which all carriers and other governments can comply.

Because the information must be transmitted via the USCS Data Center, it is anticipated that carriers will transmit this data via the EDIFACT message format that was developed by the USCS in connection with the initial implementation of the APIS. The USCS has specified the data elements and codes to be used. The Service and USCS are currently working with the World Customs Organizations (WCO) to inform, update, and develop international electronic arrival and departure manifest standards for all carriers. The USCS is currently in the process of converting from the US EDIFACT message format to the UN EDIFACT format.

Moreover, commercial air carriers operating passenger flights have been required to electronically submit many of the data elements prescribed in the proposed rule to the USCS in advance of arrival since December 21, 2001. Other data elements in this proposed rule are statutorily mandated and, in accordance with statute, must be provided both upon arrival and departure. The Service and USCS have consulted with ATA, IATA, and ICCL on the current and additional data elements for the arrival and departure manifests. Where the proposed rule requires data elements that are not mandated by statute, the opinions of the industry representatives were taken into consideration so as to impose no greater burden than is necessary.

The requirement in this proposed rule that carriers submit specific manifest information electronically may require large commercial carriers to purchase equipment or develop integrated systems for that purpose. As discussed below in the section on Executive Order 12866, the Service estimates that larger commercial carriers may incur programming costs of $400,000 to implement these requirements, with an ongoing operational cost of $1 per passenger.

2. Small Commercial Carriers

In addition to large commercial carriers, the Service believes that there may be a large number of smaller commercial aircraft and vessel operators that will be affected by the proposed rule. The Service does not have specific information about how much of an economic impact this rule might have on smaller commercial carriers. According to the United States Small Business Administration, there are 383 scheduled air passenger transportation companies with less than 1,500 employees and 63 deep sea passenger transportation companies with less than 500 employees. The information provided by the United States Small Business Administration suggests that these 446 companies have average annual receipts of approximately $16 million. The Service believes that this rule will have a proportionally smaller economic impact upon smaller rather than larger carriers because of the volume of passengers they carry. In addition, smaller commercial carriers should not have to incur substantial initial programming costs. As discussed in the Executive Order 12866 section below, the Service estimates that the average reprogramming costs are approximately $400,000 per carrier for large carriers. A comparable conversion for a small carrier would be much less. Some vendors currently are providing equipment and software utilizing the US EDIFACT standard for small commercial carriers in the range of $6,800 to $7,200 per machine. One vendor has estimated that his conversion costs would be approximately $1,200 for his customers. This equipment automates much of the data submission process and performs functions comparable to equipment used by large commercial carriers, albeit on a much smaller scale. The Service estimates that new equipment and software that utilizes the UN EDIFACT standard should cost approximately as much as the current equipment and software.

The USCS also has an e-mail system that allows small entities to submit arrival and departure data electronically. In addition, the USCS is in the process of developing a Web-based APIS specifically for small entities, with an estimated completion date in April 2003. For either system, all that is required is a computer, e-mail, or access to the internet by the small entities to transmit the electronic arrival and departure manifests. This cost is minimal to the small entities. Indeed, the Service believes that most small carriers already will possess the necessary equipment and will not have to incur any additional costs. A carrier that decided to purchase a new personal computer should be able to do so for under $1,000. Access to the internet is estimated to cost approximately $20 per month.

While small entities will be required to submit new additional data (such as the United States address while in the United States, visa number, and place of issuance, where applicable, and country of residence), the collection of this information should not impose a significant burden on small entities. Therefore, the economic impact on

small entities by this rule will be minimal.

The ongoing costs to small carriers of submitting this information to the Service is difficult for the Service to quantify. The Service believes that the number of passengers that small commercial carriers transport in a given year may vary greatly. The IATA, however, estimates this rule will cost large commercial carriers approximately $1 per transaction per passenger for additional time costs. The Service believes that this estimate also may be applicable to small commercial carriers.

The Service is requesting comment on the impact that this proposed rule would have on small commercial carriers. The Service is particularly interested in comments concerning the number of these smaller entities transporting passengers, the number of passengers they transport each year, the ongoing costs this rule would impose (including any incremental cost per passenger), and their estimates on the economic impact of this rule.

C. Recordkeeping and Reporting Requirements

The purpose of this rule is to implement an ongoing reporting requirement for carriers. All small entities that transport passengers and crew to any seaport or airport of the United States from outside the United States will be required to comply with the arrival and departure manifest requirements. The submission of the required data elements will not require any unusual professional skills. The data that must be collected are basic and its submission should not be difficult. For purposes of complying with its Paperwork Reduction Act, the Service has estimated that 600 respondents will spend approximately 10 minutes a day in order to provide the required data. The Service based its estimate of 10 minutes on its experience in connection with the transmission of data elements under the Visa Waiver Program. See 67 FR 63246 (October 11, 2002).

D. Other Federal Regulations

This proposed rule does not duplicate, overlap, or conflict with other federal regulations. The rule was drafted after consultation with the USCS and the USCG and designed to work in coordination with their regulations. The Service, USCG, and USCS are currently coordinating their efforts to develop an electronic arrival and departure manifest system that meets the requirements of all three agencies. Submitting APIS meets the requirements of both the Service and USCS. The marine industry will have to continue to forward a separate Notice of Arrival (NOA) submission to the USCG, until such time that the technical infrastructure is in place to ensure that the USCG can obtain electronic data from APIS and import this data into a Coast Guard database.

As discussed above, the Service will require the continued submission of the paper Form I–94 in order to compare and analyze the accuracy and completeness of the electronic passenger manifest with the current paper process. The paper Form I–418 also is still required because the Service and USCS have not developed an APIS-like system for carriers that continue coastwise to other ports within the United States.

E. Issues Raised and Alternatives Suggested

The Service has little discretion regarding the scope of this rule and its impact on small entities because of explicit requirements in section 402 of Public Law 107–173. While consulting with ATA, IATA, and ICCL, a number of issues were raised concerning the impact on passenger check-in times resulting from the collection of the data required by this proposed rule. These requirements are, with only one exception (PNR locator or unique number), statutorily required. The Service considered the need for the inclusion of the PNR, and determined that it was necessary to simplify the data submission process. The use of an unique identifier is a standard data processing tool and is extremely useful both to the Service and to commercial carriers. Its elimination would only serve to make the submission and tracking of manifests more difficult.

The Service also considered different electronic data submission requirements. The Service could not continue with the US EDIFACT standard because it will not support the data elements called for by section 402 of Public Law 107–173. The UN EDIFACT standard was selected because it will be the dominant standard throughout the world and its use will simplify the data submission process for commercial carriers. The use of another standard would only serve to balkanize the data submission process.

The Service, however, has decided to allow commercial carriers to utilize alternative methods for the electronic submission of the manifests, as long as they are approved by the Service. For example, small carriers may use a USCS e-mail system. In addition, the USCS also is in the process of developing a Web-based APIS specifically for small entities which can be used for data submission when it is available. The purpose of these options is to reduce the possible economic impact the manifest reporting requirements will have on small commercial carriers. The use of these alternatives will benefit small commercial carriers who may not have access to the resources available to large carriers. The Web-based APIS and e-mail options eliminate the need for small commercial carriers to adopt data submission processes similar to those utilized by large commercial carriers.

Large commercial carriers also may utilize these options, but because of the volume of passengers whose arrival and departure data they may be submitting, the Service does not anticipate that these options will be used frequently by large carriers. The Service continues to entertain carrier proposals for pilot projects involving the collection of the required information electronically.

F. Conclusion

The Service believes that, given the statutory mandate in section 231 of the Act requiring that manifests containing certain prescribed data elements be electronically transmitted to the Service no later than January 1, 2003, this proposed rule meets the stated objectives while reducing as much as possible the burden imposed on affected transportation providers. The Service consulted with the air and sea carrier industries in developing this rule. The Service took into account their concerns in drafting the proposed rule. The Service intends to maintain an on-going dialogue with the affected industries.

The Service welcomes comments on its analysis under the RFA.

Unfunded Mandates Reform Act of 1995

This rule may result in approximately $124 million in operational costs and one-time programming costs of approximately $42 million on the private sector. Therefore, under the Unfunded Mandates Reform Act of 1995, this is a private sector mandate. Accordingly, the Service has conducted a cost/benefit assessment which is set forth in the Executive Order 12866 section below. This discussion assesses the costs and benefits resulting from the implementation of section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173). This rule, however, will not result in the expenditure by state, local and tribal governments, in the aggregate, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. The Service is requesting that comments be submitted

to help ensure that the concerns of all interested parties are considered.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule may result in an annual effect on the economy of $100 million or more and is therefore considered a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule, however, will not result in a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be an economically significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

1. This Rule Does Not Require Carriers To Switch to the UN EDIFACT Standard

Carriers currently submit arrival and departure manifests electronically to APIS. In accordance with section 402 of Public Law 107–173, this proposed rule also requires carriers to transmit additional data elements (*e.g.*, U.S. address, visa information, PNR locator). These additional data elements are not currently included in the APIS data being transmitted and carriers would have to incur some costs adapting their systems to include these elements.

However, many of the carriers with which the Service consulted, informed the Service that they have decided not to add the additional data elements to their APIS submissions. Rather, carriers plan on converting their systems from the US EDIFACT format to the UN EDIFACT format.

Carriers are making this change in data format for their own business reasons because it is the format being adopted in several foreign countries, such as Canada, Mexico, Australia, New Zealand, and United Kingdom. The Service wants to emphasize that neither section 231 of the Act nor this proposed rule require carriers to convert to the UN format. This movement to the UN format was based upon international agreements between the Immigration and Customs Services of several countries and is an international standard adopted by the IATA and ATA.

2. Estimated Costs

A. One Time Programming Costs

The conversion in EDIFACT data formats which the carriers are undertaking on their own initiative makes it difficult for them to provide the Service with the actual costs to them resulting from the new additional data elements required by the statute and this proposed rule. The estimated cost range has been from thousands of dollars for the smaller carriers with a low volume of passengers to several million dollars for a larger carriers with a high volume number of passengers. The high-end estimates include the conversion of the US/UN EDIFACT reprogramming costs to the carrier's existing reservation systems and the hiring of additional personnel.

Carriers have informed the Service regarding the cost of new equipment they will be purchasing on their own initiative as part of their conversion to the UN EDIFACT format. Since the additional data elements this rule requires carriers to collect are not, at present, machine-readable, the Service has not included new equipment costs in its estimates below. The reprogramming costs below include both the cost of changing from the US to the UN EDIFACT format (which is not required by this rule) and the costs of processing the new data elements required by this rule, but the estimates below are the best that the carriers have been able to provide the Service regarding their non-equipment related costs of complying with this rule.

According to IATA, the average reprogramming costs are estimated at $400,000 per carrier. The total reprogramming costs are estimated at $36,800,000 (92 air carriers x $400,000).

The International Council of Cruiselines (ICCL) represents 16 passenger cruiselines. The estimated reprogramming costs reported by ICCL members is $2,000,000 (16 x $125,000).

92 IATA carriers	$36,800,000	
16 ICCL carriers	2,000,000	
IATA and ICCL carriers	38,800,000	
Other carriers	2,716,000	($38,800,000 x 20% of remaining carriers = 7,760,000 x 35% of IATA/ICCL carrier costs).
Total	41,516,000	Estimated total one-time programming costs.

The 108 carriers represented by IATA and ICCL account for the vast majority (75–80 percent) of passengers covered by this rule. Therefore, the Service has estimated that the remaining 20 percent of the passengers transported by other carriers at a cost of $7,760,000 ($38,800,000 × 20 percent). The Service then estimated that these other carrier (non-IATA and ICCL carriers) costs at approximately 35 percent of the IATA and ICCL carrier costs. Since, the USCS already provides an e-mail APIS account and will be developing a Web-Base APIS system for the small entities, the Service estimates that the reprogramming costs for the small and medium size entities will be much lower than the IATA and ICCL carrier costs. Therefore, the other carriers estimated reprogramming costs are calculated at $2,716,000 ($7,760,000 × 35 percent).

B. Operational Costs

The IATA estimates this rule will cost carriers approximately $1 per transaction per passenger for additional time costs. The IATA has estimated that this will amount to approximately $62 million for the inbound and the same for outbound with total estimated annual costs at $124 million.

However, the Service believes that some of these processing costs can be deferred or reduced by travelers providing these additional data elements to the travel agencies, Web-based/Internet or kiosk type reservations systems; thereby reducing the check-in time.

3. Much of the Information Required By This Rule is Already Being Submitted Electronically to the Service

USCS regulations already require all air carriers to submit arrival manifests electronically. In addition, Service regulations already require air and sea carriers to submit arrival and departure manifests electronically, for passengers traveling pursuant to the Visa Waiver Program. However, carriers have informed the Service that it is more

efficient for them to transmit electronic manifest information for all (not just Visa Waiver Program) passengers. Over 80 percent of these carriers currently submit arrival and departure manifests electronically for all passengers. This fact suggests that the costs of this rule will not be great since a substantial majority of the carriers already provide most of the information this rule would require.

4. Benefits This Rule Provides

Advanced electronic manifest provide the Service with the ability to conduct advance record checks of passengers entering and departing the United States. This allows the Service to check and pre-screen the names of known inadmissible aliens, terrorists, and other dangerous criminals prior to entering the United States. With the recent improvements and enhancements to the APIS and other enforcement database(s), which can identify high-risk passengers for more intensive questioning upon arrival, the Service has been able to prevent an increase in the number of aliens attempting to enter the United States illegally.

APIS also allows the Service to check for removable aliens, terrorists, and other dangerous criminals prior to exiting the United States. With advance prescreening of passengers, the Service will be able to process low-risk travelers with minimum delay and concentrate on high-risk travelers who may pose a threat to national security. APIS allows immigration intelligence officers to analyze the patterns and associations of alien smugglers on a real-time basis.

The Service and the USCS are in the process of including the USCG's vessel crewmember manifest requirements into the APIS. Currently, the cargo industry must submit separate paper manifests, one to the Service and one to the USCG. The carrier associations have indicated that they prefer to transmit one manifest electronically that meets all of the requirements for the Service, USCS, and USCG, thereby reducing the need to submit three separate paper manifests. APIS is a joint effort supported by the Service, USCS, USCG, foreign governments, World Customs Organization (WCO), ATA, IATA, ICCL, and other intereste stakeholders.

The UN EDIFACT format will improve the transmission of the electronic arrival and departure data. Currently, all of the carriers cannot submit 100 percent of the required APIS data in the US EDIFACT format. In addition, passenger data elements sometimes get lost in the APIS transmission. The US EDIFACT does not allow the carrier to receive a confirmation message that the APIS transmission was submitted and received by the system (for example, if an e-mail message is sent, a receipt is sent back to the original sender to confirm that the e-mail was received and opened by the intended user). The potential exists that any lost records of a passenger will not be searched in the appropriate database(s), and the absence of such checks on a particular alien in advance of arrival could pose a threat to national security. In addition, each loss of records in the transmission will cause a delay in the inspection processing of passengers because the immigration inspector will have to manually enter each passenger's name in the database(s), process the information, and ask any additional immigration related questions. This delay may have an impact on the wait time of the other passengers waiting to be inspected at primary inspection for admission to the United States. These delays may cause some of the passengers to miss their connecting flights, thereby causing an additional expense to the carriers. Therefore, conversion to the UN EDIFACT is expected to greatly enhance and improve the transmission of the electronic arrival and departure manifests.

The Service welcomes comments on its assessment under Executive Order 12866.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule requires that carriers provide arrival and departure manifests electronically to the Service. This requirement is considered an information collection requirement under the Paperwork Reduction Act.

Accordingly, the Service has submitted an information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to the Immigration and Naturalization Service, Regulations and Forms Services Division, 425 I Street NW., Suite 4034, Washington, DC 20536; Attention: Richard A. Sloan, Director, (202) 514–3291.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Any comments on the information collection must be submitted on or before March 4, 2003. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* New.

(2) *Title of Form/Collection:* Electronic arrival-departure manifests.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form number (File number OMB–32), Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Business or Individuals. Section 402 of the Enhanced Border Security and Visa Entry Reform Act requires arrival and departure manifests to be delivered electronically no later than January 1, 2003. The information collection is necessary to comply with section 402 and to ensure that the Service receives accurate passenger and crewmember arrival and departure information in a timely manner.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600 respondents at 10 minutes multiplied by 365 days.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 36,500 burden hours.

If additional information is required contact Richard A. Sloan, Director, (202) 514–3291.

List of Subjects

8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and Visas.

8 CFR Part 231

Air carriers, Aliens, Maritime carriers, Reporting and recordkeeping requirements

8 CFR Part 251

Vessels, Alien crewmembers, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, chapter I of the title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—VISA WAIVER PROGRAM

1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. Section 217.7 is revised to read as follows:

§ 217.7 Electronic data transmission requirement.

(a) An alien who applies for admission under the provisions of section 217 of the Act after arriving via sea or air at a port-of-entry will not be admitted under the Visa Waiver Program unless the carrier transporting such an alien electronically transmits passenger arrival and departure data in accordance with 8 CFR 231.1, for each Visa Waiver Program passenger being transported on the aircraft or vessel.

(b) For those carriers that fail to submit electronic arrival and departure manifests electronically, the Service will evaluate the carrier's compliance with immigration requirements as a whole. The Service will inform the carrier of any noncompliance and then may revoke any contract agreements between the Service and the carrier. The carrier may also be subject to fines for violations of manifest requirements or other statutory provisions. The Service will also review each Visa Waiver Program applicant who applies for admission and on a case-by-case basis, may authorize a waiver under current Service policy and guidelines or deny the applicant admission into the United States.

PART 231—ARRIVAL AND DEPARTURE MANIFESTS

3. The heading for part 231 is revised as set forth above.

4. The authority citation for part 231 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1221, 1228, 1229; 8 CFR part 2.

5. Section 231.1 is revised to read as follows:

§ 231.1 Electronic arrival and departure manifests for passengers and crew.

(a) *Definitions.* As used in this part, the terms:

Appropriate official means the master or commanding officer, or authorized agent, owner, or consignee of a commercial aircraft or vessel.

Commercial aircraft means commercial aircraft as defined in § 286.1(c) of this chapter.

Commercial vessel means commercial vessel as defined in § 286.1(d) of this chapter.

Crewmember has the same meaning as the term crewman defined in section 101(a)(10) of the Act.

Ferry means a commercial vessel that has provisions only for deck passengers and/or vehicles, operating on a short run on a frequent schedule between two points over the most direct water route, and offering a public service of a type normally attributed to a bridge or tunnel. Vessels in coastwise or ocean service, as defined in the regulations of the USCG, 46 CFR part 70, are not ferries and, accordingly, are required to transmit electronic arrival and departure manifests.

Passenger means any person being transported on a commercial aircraft or commercial vessel who is not a crewmember.

United States means United States as defined in section 101(a)(38) of the Act.

(b) *Electronic arrival manifest.* An appropriate official of every commercial vessel or aircraft arriving in the United States from any place outside of the United States shall transmit electronically to the Service a passenger arrival manifest and a crewmember arrival manifest. The electronic arrival manifest must contain the data elements set forth in paragraph (e) of this section for each passenger and crewmember.

(1) For aircraft, an appropriate official must transmit the passenger arrival manifest no later than 15 minutes after the flight has departed from the last foreign port or place. The crewmember arrival manifest must be transmitted electronically to the Service in advance of departure from the last foreign port or place.

(2) For vessels, an appropriate official must transmit the passenger and crewmember arrival manifests:

(i) at least 96 hours before entering the port or place of destination, for voyages of 96 hours or more;

(ii) at least 24 hours before entering the port or place of destination, for voyages of less than 96 hours but not less than 24 hours; or

(iii) prior to departing the port or place of departure, for voyages of less than 24 hours.

(c) *Electronic departure manifests.* An appropriate official of every commercial vessel or aircraft departing from the United States to any place outside of the United States shall transmit electronically to the Service a passenger departure manifest and a crewmember departure manifest. The electronic departure manifest must contain the data elements set forth in paragraph (e) of this section for each passenger and crewmember.

(1) An appropriate official of a commercial vessel or aircraft must transmit both the passenger departure manifest and the crewmember departure manifest to the Service no later than 15 minutes before the flight or vessel departs from the United States.

(2) If additional passengers or crewmembers board or disembark after the original manifest has been submitted, an appropriate official of the vessel or aircraft concerned will also be required to submit amended or updated passenger and crewmember information electronically to the Service no later than 15 minutes after the flight or vessel has departed from the United States. An appropriate official of the aircraft or vessel concerned must also notify the Service electronically if a flight or voyage has been cancelled after a departure manifest has been submitted.

(d) *Electronic format.*

(1) The arrival and departure manifests for passengers and crewmember must be transmitted electronically to the Service via the USCS, by means of an electronic data interchange system that is approved by the Service.

(2) The passenger arrival and departure manifests must be transmitted separately from the crewmember arrival and departure manifests. To distinguish the two manifests transmitted for a given flight or vessel, the crewmember arrival and departure manifests must have the alpha character "C" included in the transmission to denote that the manifest information pertains to the crewmembers for the flight or vessel.

(e) *Contents of arrival and departure manifests.* Each electronic arrival or departure manifest must contain the following information for all passengers or crewmembers:

AIR carrier information	SEA carrier Information
Complete name (Last name, first name, and middle name or initial)	Complete name (Last name, first name, and middle name or initial).
Date of birth	Date of birth.
Citizenship (Country of document issuance)	Citizenship (Country of document issuance).
Gender (F=Female; M=Male)	Gender (F=Female; M=Male).
Passport number and country of issuance, if a passport is required	Passport number and country of issuance, if a passport is required.
Country of residence	Country of residence.
United States visa number, date, and place of issuance, where applicable (arrivals only).	United States visa number, date, and place of issuance, where applicable (arrivals only).
Alien registration number, where applicable	Alien registration number, where applicable.
United States address while in the United States (number and street, city, state, zip code).	United States address while in the United States (number and street, city, state, zip code).
International Air Transport Association (IATA) Arrival Port Code	Arrival Port Code.
IATA Departure Port Code	Departure Port Code.
Flight Number	Voyage number.
Date of Flight Arrival	Date of Vessel Arrival.
Date of Flight Departure	Date of Vessel Departure.
Airline Carrier Code	Country of Registry/Flag.
Document Type (*e.g.*, P=Passport; V=Visa; A=Alien Registration)	Document Type (*e.g.*, P=Passport; V=Visa; A=Alien Registration).
Date of Document Expiration	Date of Document Expiration.
A unique passenger identifier, or reservation number or Passenger Name Record (PNR) locator.	A unique passenger identifier, or reservation number or Passenger Name Record (PNR) locator.
	Vessel Name.
	International Maritime Organization (IMO) number or the official number of the vessel.

(f) *Ferries.* The provisions of this part relating to the transmission of electronic arrival and departure manifests shall not apply to a ferry (if the passengers are subject to a land-border inspection by the Service upon arrival in the United States).

(g) *Progressive clearance.* Inspection of arriving passengers may be deferred at the request of the carrier to an onward port of debarkation. Authorization for this progressive clearance may be granted by the Regional Commissioner when both the initial port-of-entry and the onward port are within the same regional jurisdiction, but when the initial port-of-entry and onward port are located within different regions, requests for progressive clearance must be authorized by the Assistant Commissioner for Inspections. When progressive clearance is requested, the carrier shall present Form I–92 in duplicate at the initial port-of-entry. The original Form I–92 will be processed at the initial port-of-entry, and the duplicate noted and returned to the carrier for presentation at the onward port of debarkation.

PART—251 ARRIVAL AND DEPARTURE MANIFESTS AND LISTS: SUPPORTING DOCUMENTS

7. The heading for part 251 is revised as set forth above.

8. The authority citation for part 251 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1221, 1281, 1282; 8 CFR part 2.

§ 251.5 [Redesignated as § 251.6]

9. Section 251.5 is redesignated as § 251.6.

10. Section 251.5 is added to read as follows:

§ 251.5 Electronic arrival and departure manifest for crew member.

In addition to submitting arrival and departure manifests in a paper format in accordance with §§ 251.1, 251.3, and 251.4, the master or commanding officer, or authorized agent, owner, or consignee of any aircraft or vessel transporting passengers to any airport or seaport of the United States from any place outside of the United States or from any airport or seaport of the United States to any place outside of the United States must submit electronic arrival and departure manifests for all crewmembers on board in accordance with 8 CFR 231.1.

11. Newly redesignated § 251.6 is revised to read as follows:

§ 251.6 Exemptions for private vessels and aircraft.

The provisions of this part relating to the presentation of arrival and departure manifests shall not apply to a private vessel or private aircraft not engaged directly or indirectly in the carrying of persons or cargo for hire.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–33145 Filed 12–30–02; 4:31 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that would have required modification of the down drive brackets of the left- and right-hand sides of the inboard flap track 1 assembly and installation of bigger bolts and washers. This new action revises the proposed AD by expanding the applicability and, for certain airplanes, adding improved

torque requirements specifying the correct torque value of the nuts. The actions specified by this new proposed AD are intended to prevent failure of the bolts due to flexural loads caused by transmission jam loading, which could lead to a "flap-locked" condition, causing reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–142–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–142–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 4, 2001 (66 FR 50580). That NPRM would have required modification of the down drive brackets of the left- and right-hand sides of the inboard flap track 1 assembly and installation of bigger bolts and washers. That NPRM was prompted by a report that, for certain airplanes on which Airbus Modification 45326 has been accomplished, the strength of the connection bolts at the down drive bracket of the track 1 assembly on the inboard flap is not sufficient. Failure of the bolts due to flexural loads caused by transmission jam loading, if not corrected, could lead to a "flap-locked" condition, causing reduced controllability of the airplane.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

Request to Reference A Revised Service Bulletin

One commenter requests that the original NPRM be revised to reference Airbus Service Bulletin A330–57–3067, Revision 02, dated February 2, 2002 (for Model A330 series airplanes), which increases hole tolerances, and corrects improper nut torque conversions. The commenter states that the existing tolerances in Revision 01 of the service bulletin are not obtainable when reaming the existing production fastener holes on an affected airplane.

The FAA partially agrees. Since issuance of the original NPRM, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued French airworthiness directives 2002–368(B) (for Model A330 series airplanes), and 2002–369(B) (for Model A340 series airplanes); both dated August 7, 2002. These French airworthiness directives replace French airworthiness directives 2001–125(B) (for Model A330 series airplanes), and 2001–123(B) (for Model A340 series airplanes); both dated April 4, 2001; respectively (which were referenced in the original NPRM).

French airworthiness directive 2002–368(B) states that a conversion error with regard to applied torque values (metric units to U.S. Customary Units) specified in Airbus Service Bulletin A330–57–3067, dated October 12, 2000; and Revision 01, dated April 10, 2001; has been identified. This error might lead the operators using U.S. Customary Units to apply a torque value being less than those required, which could lead to a loose nut. Revision 02 of the service bulletin, dated February 2, 2002, takes into account the right torque values, but does not mention additional work that is necessary. The applicability of this French airworthiness directive has also been revised to include additional airplanes on which these improper procedures may have been done.

French airworthiness directive 2002–369(B) states that an identical conversion error with regard to applied torque values has also been identified in Airbus Service Bulletin A340–57–4075, dated October 12, 2000; and Revision 01, dated April 10, 2001. The applicability of that French airworthiness directive has also been revised to include additional airplanes on which these improper procedures may have been done.

Airbus has issued Service Bulletin A330–57–3067, Revision 03, dated

August 7, 2002 (for Model A330 series airplanes); and Service Bulletin A340–57–4075, Revision 02, dated August 7, 2002 (for Model A340 series airplanes). These service bulletins describe procedures for, among other things, modifying the down drive brackets of the left- and right-hand inboard flap track 1 assembly; re-identifying the tracks; installing bigger bolts and washers to improve the strength of the connection at the down drive brackets; and testing the torque value of the nuts.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in France.

Therefore, we have revised this supplemental NPRM to reference these service bulletins as the appropriate sources of service information for accomplishing the proposed actions. We have also revised the applicability of the supplemental NPRM to include the additional airplanes listed in the French airworthiness directives.

Conclusion

Since these changes expands the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13 work hours per airplane to accomplish the proposed modifications and installations, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,020, or $780 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2001–NM–142–AD.

Applicability: The airplanes specified in Table 1 of this AD, certificated in any category. Table 1 is as follows:

TABLE 1.—APPLICABILITY

Model	Which have received—	Excluding airplanes—
A330 series airplanes	Airbus Modification 45326 in production	Modified in production per Airbus Modification 47619, or modified in service per Airbus Service Bulletin A330–57–3067, Revision 03, dated August 7, 2002.
A340 series airplanes	Airbus Modification 45326 in production	Modified in production per Airbus Modification 47619, or modified in service per Airbus Service Bulletin A340–57–4075, Revision 02, dated August 7, 2002.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bolts due to flexural loads caused by transmission jam loading, which could lead to a "flap-locked" condition, causing reduced controllability of the airplane, accomplish the following:

Modification and Testing

(a) At the times specified in Table 2 of this AD, modify the down drive brackets of the left- and right-hand inboard flap track 1 assembly and test the torque value of the nuts by accomplishing all actions specified in the Accomplishment Instructions of Airbus Service Bulletin A330–57–3067, Revision 03, dated August 7, 2002 (for Model A330 series airplanes); or Airbus Service Bulletin A340–57–4075, Revision 02, dated August 7, 2002 (for Model A340 series airplanes); as applicable. Table 2 is as follows:

TABLE 2.—COMPLIANCE TIME

Compliance time	Action	For model	On which—
(1) Within 36 months since date of manufacture of the airplane, or within 6 months from the effective date of this AD, whichever occurs Later.	(i) Modify	A330 series airplanes.	Airbus Service Bulletin A330–57–3067, dated October 12, 2000; Revision 01, dated April 10, 2001; or Revision 02, dated February 2, 2002; has not been done.
	(ii) Modify	A340 series airplanes.	Airbus Service Bulletin A340–57–4075, dated October 12, 2000; or Revision 01, dated April 10, 2001; has not been done.
(2) Within 700 flight hours from the effective date of this AD.	(i) Modify	A330 series airplanes.	Airbus Service Bulletin A330–57–3067, dated October 12, 2000; Revision 01, dated April 10, 2001; has been done using U.S. Customary Units.
	(ii) Test	4A330 series airplanes.	Airbus Service Bulletin A340–57–4075, dated October 12, 2000; or Revision 01, dated April 10, 2001; has been done using U.S. Customary Unit.

Parts Installation

(b) As of the effective date of this AD, no person shall install, on any airplane inboard flap track I assembly unless it has been modified and its associated nuts have been torqued in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 2002–368(B) (for Model A330 series airplanes), and 2002–369(B) (for Model A340 series airplanes); both dated August 7, 2002.

Issued in Renton, Washington, on December 24, 2002.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–99–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10 and DC–10–10F Airplanes; Model DC–10–15 Airplanes; Model DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) Airplanes; Model DC–10–40 and DC–10–40F Airplanes; and Model MD–10–10F and –30F Airplanes

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas airplane models, that would have required an inspection of the throttle control module on the center pedestal in the flight deck compartment to determine its part number and configuration, and modification of the throttle control module. This new action revises the proposed rule by adding additional repetitive inspections for chafing of the throttle control module wiring and adding additional airplanes to the applicability of this AD. The actions specified by this new proposed AD are intended to prevent chafing of wiring inside the throttle control module, fuel shutoff lever lights, and/or aft pedestal lightplates due to degradation of protective sleeving, which could result in electrical arcing and failure of the auto throttle/speed control system and consequent smoke and/or fire in the cockpit.

DATES: Comments must be received by January 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425)–227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–99–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard; Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the

Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–99–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–30F airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 24, 2001 (66 FR 44562). That NPRM would have required an inspection of the throttle control module (TCM) on the center pedestal in the flight deck compartment to determine its part number and configuration, and modification of the TCM. Those actions are necessary to prevent chafing of wiring inside the TCM, fuel shutoff lever lights, and/or aft pedestal lightplates due to degradation of protective sleeving, which could result in electrical arcing and failure of the auto throttle/speed control system and consequent smoke and/or fire in the cockpit.

Since the Issuance of the NPRM

Since the issuance of that NPRM, the FAA has reviewed and approved Boeing Alert Service Bulletin (ASB) DC10–76A049, including Appendix and Evaluation Form, all dated January 29, 2002. That ASB describes procedures for repetitive visual inspections for chafing or potential chafing of wiring of the TCM module located on the center pedestal in the flight compartment. That ASB also describes procedures for repairing or repositioning electrical wiring, as applicable, if necessary.

In addition, the FAA has reviewed and approved Boeing ASB DC10–76A048, Revision 01, dated January 29, 2002, including Evaluation Form. (Boeing ASB DC10–76A048, dated August 6, 2001, was specified as the appropriate source of service information in the NPRM.) Boeing ASB DC10–76A048, Revision 01, dated January 29, 2002, adds two airplanes to the effectivity and describes procedures that are generally the same as the original service bulletin. The procedures described in Revision 01 of the ASB are for an inspection of the TCM on the center pedestal in the flight deck compartment to determine its part number and configuration, and modification of the TCM. The modification includes removing material from the throttle lever and cover plates (as applicable) for engines 1, 2, and 3; replacing the existing guide assembly with an improved guide assembly inside the TCM; replacing the existing protective sleeving on the wire bundles; removing previously installed spiral wrap tubing on the auto throttle/takeoff/go around (TOGA) wiring; and reidentifying the coverplates and TCM; as applicable.

Accomplishment of the actions specified in those service bulletins is intended to adequately address the identified unsafe condition.

Comments

Due consideration has been given to the comments received in response to the NPRM.

Requests To Extend Compliance Time

Three commenters request that the compliance time for the modification that would be required by paragraph (a) of the proposal be extended from 18 months to 5 years. Two commenters state that there may be a problem with parts availability, and that they would be unable to meet an 18-month compliance time. Additionally, the commenters note that a 5-year compliance time would also align with the modification of the thrust reverser activation system (TRAS) that is required by AD 2001–17–19, amendment 39–12410 (65 FR 44950, August 27, 2001). That AD requires the TCM to be removed in order to access the TRAS. One commenter requests that, for certain airplanes, the compliance time be extended to 36 months. That commenter did not provide any justification for the extension. One commenter, the manufacturer, states that it has released a new service bulletin (Boeing ASB DC10–76A049, including Appendix and Evaluation Form, all dated January 29, 2002, as described earlier in this Supplemental Notice of Proposed Rulemaking (SNPRM)) that specifies repetitive visual inspections for chafing or potential chafing of the TCM wiring located on the center pedestal in the flight compartment. The manufacturer states that, if the repetitive inspections described in the new service bulletins are accomplished every 18 months, a 5-year compliance time for the modification should be adequate to ensure operational safety of the affected airplanes.

The FAA agrees with certain commenters that the compliance time may be extended for the reasons they specified. We have revised the original NPRM to extend the compliance time for the modification until 5 years after the effective date of the AD. Additionally, we have added a new paragraph (a) to this SNPRM that specifies repetitive visual inspections for chafing or potential chafing of the wiring every 18 months, until the modification is accomplished.

Requests to Withdraw the NPRM

Two commenters disagree with a need for the rule as proposed. The commenters state that they are unaware of any report of smoke or fire in the cockpit of the Model DC–10 fleet that resulted from wire chafing in the TCM. The commenters conclude that supporting documentation of such incidents of smoke or fire is absent. The FAA infers that the commenters are requesting that the original NPRM be withdrawn.

The FAA does not agree. We acknowledge that we are unaware of any specific reports of smoke or fire due to wire arcing or chafing associated with the TCM on the airplanes specified in this SNPRM. However, we find that there have been numerous incident reports describing wire chafing that emanated from other systems, which has been identified as the ignition source for some in-flight smoke and/or fires. Therefore, we consider that an unsafe condition has been identified that is likely to exist or develop on other products of these type designs, and that issuance of this SNPRM is warranted.

Requests to Revise the Cost Impact Section

The commenters request that the Cost Impact section be revised to reflect a more realistic work hour estimate of 24 hours for the accomplishment of the modification. (The original NPRM estimates between 4 and 7 hours.)

The FAA agrees that the cost information should be revised. However, we have revised the estimated cost for accomplishing the modification based on the current work hours estimated in Boeing ASB DC10–76A048, Revision 01, dated January 29, 2002. The estimated work hours to accomplish the modification specified in that service bulletin (excluding work hours to remove, install, and test) are approximately 15 work hours. We estimate that the average labor rate is $60 per work hour, and that required parts would cost approximately $1,712 per airplane. Based on those figures, we estimate that the modification cost impact of the proposed AD would be $2,612 per airplane.

Additionally, we have added an estimated cost of the inspection specified in Boeing ASB DC10–76A049, dated January 29, 2002. We estimate that each inspection would take 2 work hours to perform, at an estimated average labor rate of $60 per work hour, per inspection. Based on those figures, we estimate that each inspection would cost approximately $120 per airplane, per inspection cycle.

Explanation of New Requirements of Proposal

Since an unsafe condition has been identified that is likely to exist or develop on other products of these type designs, this SNPRM would continue to require an inspection of the TCM on the center pedestal in the flight deck compartment to determine its part number and configuration, and modification of the TCM. This SNPRM also would add repetitive inspections for chafing or potential chafing of the TCM wiring, and corrective actions if necessary. This SNPRM also would require adding airplanes to the applicability of this AD. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Explanation of Change to Applicability

The FAA has revised the applicability of the original NPRM to identify model designations as published in the most recent type certificate date sheet for the affected models.

Cost Impact

There are approximately 401 McDonnell Douglas Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and "MD–10–30F airplanes; of the affected design in the worldwide fleet. The FAA estimates that 321 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,712 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $838,452 or $2,612 per airplane.

We estimate that it would take approximately 2 work hours per airplane to perform the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $38,520, or $120 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–99–AD.

Applicability: Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; Model MD–10–10F and MD–10–30F airplanes; as listed in Boeing Alert Service Bulletin DC10–76A048, Revision 01, dated January 29, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of wiring inside the throttle control module, fuel shutoff lever lights, and/or aft pedestal lightplates due to degradation of protective sleeving, which could result in electrical arcing and failure of the auto throttle/speed control system and consequent smoke and/or fire in the cockpit; accomplish the following:

Repetitive Inspections for Chafing

(a) Within 18 months after the effective date of this AD, perform a general visual inspection for chafing or potential chafing of the wiring of the throttle control module located on the center pedestal in the flight compartment, per Boeing Alert Service Bulletin (ASB) DC10–76A049, excluding the Appendix and Evaluation Form, all dated January 29, 2002. Thereafter, repeat the inspection at intervals not to exceed 18 months, until the actions specified in paragraph (c) of this AD are accomplished.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) If any evidence of chafing or potential chafing is found during any inspection required by paragraph (a) of this AD, before further flight, repair the chafed wires or reposition wires, as applicable, per Boeing ASB DC10–76A049, excluding the Appendix and Evaluation Form, all dated January 29, 2002.

Inspection and Modification

(c) Within 5 years after the effective date of this AD, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD, per Boeing ASB DC10–76A048, excluding the Evaluation Form, both dated August 6, 2001; or Revision 01, excluding the Evaluation Form, both dated January 29, 2002.

(1) Do an inspection of the throttle control module on the center pedestal in the flight deck compartment to determine its part number and configuration, which will identify the group applicability information.

(2) Modify the throttle control module on the center pedestal in the flight deck compartment per the applicable figure in the service bulletin. Accomplishment of the modification constitutes terminating action for the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 24, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–54–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes Modified by Supplemental Type Certificate ST01783AT–D

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767–300 series airplanes modified by Supplemental Type Certificate ST01783AT–D. This proposal would require modifying the in-flight entertainment (IFE) system and revising the airplane flight manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the IFE system when necessary and is advised of appropriate procedures for such action. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–54–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from TIMCO Engineered Systems, Inc., 623 Radar Road, Greensboro, North Carolina 27410. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Robert Chupka, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6070; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–54–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Federal Aviation Administration (FAA) recently completed a review of in-flight entertainment (IFE) systems certified by supplemental type certificate (STC) and installed on transport category airplanes. The review focused on the interface between the IFE system and airplane electrical system, with the objective of determining if any unsafe conditions exist with regard to the interface. STCs issued between 1992 and 2000 were considered for the review.

The type of IFE systems considered for review were those that contain video monitors (cathode ray tubes or liquid crystal displays; either hanging above the aisle or mounted on individual seat backs or seat trays), or complex circuitry (*i.e.*, power supplies, electronic distribution boxes, extensive wire routing, relatively high power consumption, multiple layers of circuit protection, etc.). In addition, in-seat power supply systems that provide power to more than 20 percent of the total passenger seats were also considered for the review. The types of IFE systems not considered for review include systems that provide only audio signals to each passenger seat, ordinary in-flight telephone systems (*e.g.*, one telephone handset per group of seats or bulkhead-mounted telephones), systems that only have a video monitor on the forward bulkhead(s) (or a projection system) to provide passengers with basic airplane and flight information, and in-seat power supply systems that provide power to less than 20 percent of the total passenger seats.

Items considered during the review include the following:

- Can the electrical bus(es) supplying power to the IFE system be deenergized when necessary without removing power from systems that may be required for continued safe flight and landing?
- Can IFE system power be removed when required without pulling IFE system circuit breakers (*i.e.*, is there a switch (dedicated to the IFE system or a combination of loads) located in the flight deck or cabin that can be used to remove IFE power?)?
- If the IFE system requires changes to flight crew procedures, has the airplane flight manual (AFM) been properly amended?
- If the IFE system requires changes to cabin crew procedures, have they been properly amended?
- Does the IFE system require periodic or special maintenance?

In all, approximately 180 IFE systems approved by STC were reviewed by the FAA. The review results indicate that potential unsafe conditions exist on some IFE systems installed on various transport category airplanes. These conditions can be summarized as:

- Electrical bus(es) supplying power to the IFE system cannot be deenergized when necessary without removing power from systems that may be required for continued safe flight and landing.
- Power cannot be removed from the IFE system when required without pulling IFE system circuit breakers (*i.e.*, there is no switch dedicated to the IFE system or combination of systems for the purpose of removing power).
- Installation of the IFE system has affected crew (flight crew and/or cabin crew) procedures, but the procedures have not been properly revised.

FAA's Determination

As part of its review of IFE systems, the FAA has determined that an unsafe condition exists on all Boeing Model 767–300 series airplanes modified by STC ST01783AT–D. The IFE system on these airplanes is connected to an electrical bus that cannot be deactivated without also removing power from airplane systems necessary for safe flight and landing. There is no other means to remove power from the IFE system. Additionally, the airplane manufacturer's published flight crew and cabin crew emergency procedures do not advise the flight crew and cabin crew that power cannot be removed from the IFE system. This condition, if not corrected, could result in inability to remove power from the IFE system during a non-normal or emergency situation, and consequent inability to control smoke or fumes in the airplane flight deck or cabin.

Explanation of Relevant Service Information

The FAA has reviewed and approved TIMCO Service Bulletin TSB–767–23–009, Revision IR, dated August 22, 2001. That service bulletin describes procedures for modifying the IFE system by installing two new relays to control power inputs to the IFE system, and a new circuit breaker to protect the wiring of the IFE system. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The FAA also has reviewed and approved TIMCO AFM Supplement TIM–AFM–01035, dated March 13, 2002, which revises the procedures under the heading "Electrical Smoke or Fire" in the "Emergency Procedures" section of the AFM to provide instructions for the cabin crew to remove power from the various components of the IFE system in an emergency.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. The proposed AD also would require revising procedures to be followed in the event of smoke or fire in the airplane by including the information in the AFM supplement

described previously. Accomplishment of these actions is intended to adequately address the identified unsafe condition.

In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the amount of time necessary to accomplish the proposed actions, and the practical aspect of accomplishing the proposed actions within an interval of time that parallels normal scheduled maintenance for the affected operators. In consideration of these factors, the FAA has determined that 18 months after the effective date of this AD represents an appropriate interval of time allowable wherein an acceptable level of safety can be maintained.

Clarification of Airplane Model Designation

While TIMCO Service Bulletin TSB–767–23–009, Revision IR, and TIMCO AFM Supplement TIM–AFM–01035 specify that they are effective for "Boeing Model 767–300ER" series airplanes, this proposed AD would apply to Boeing Model 767–300 series airplanes. The model designation in this proposed AD is consistent with the most recent type certificate data sheet for the affected model.

Other Relevant Rulemaking

The FAA has previously issued several ADs that address unsafe conditions and require corrective actions similar to those that would be required by the proposed AD. These other ADs, and the airplane models and STCs to which they apply, are as follows:

Model/Series—	STC Number—	AD Reference—
Airbus A340–211	ST0902AC–D	AD 2001–18–01, amendment 39–12427 (66 FR 46939, September 10, 2001).
Boeing 737–300	ST00171SE	AD 2001–14–10, amendment 39–12321 (66 FR 36455, July 12, 2001).
Boeing 737–700	ST09100AC–D	AD 2001–14–12, amendment 39–12323 (66 FR 36452, July 12, 2001).
	ST09104AC–D	
	ST09105AC–D	
	ST09106AC–D	
Boeing 747–100 and –200	SA8622SW	AD 2001–14–11, amendment 39–12322 (66 FR 36453, July 12, 2001).
Boeing 747–100 and –200	ST00196SE	AD 2001–16–19, amendment 39–12388 and (66 FR 43068, August 17, 2001)
Boeing 747–400	SA8843SW	AD 2001–14–15, amendment 12326 (66 FR 36447, July 12, 2001).
Boeing 747SP	ST09097AC–D	AD 2001–14–14, amendment 39–12325 (66 FR 36449, July 12, 2001).
Boeing 757–200	SA1727GL	AD 2001–14–01, amendment 39–12311 (66 FR 36149, July 11, 2001).
Boeing 767–200	SA4998NM	AD 2001–16–21, amendment 39–12390 (66 FR 43072, August 17, 2001).
Boeing 767–200	SA5134NM	AD 2001–16–20, amendment 39–12389 (66 FR 43066, August 17, 2001).
Boeing 767–200	ST09022AC–D	AD 2001–14–13, amendment 39–12324 (66 FR 36450, July 12, 2001).
Boeing 767–300	SA5765NM	AD 2001–16–17, amendment 39–12386 (66 FR 42937, August 16, 2001).
	SA5978NM	
Boeing 767–300	SA7019NM–D	AD 2001–18–08, amendment 39–12434 (66 FR 46517, September 6, 2001).
Boeing 767–300	ST00118SE	AD 2001–14–04, amendment 39–12314 (66 FR 36699, July 13, 2001).
Boeing 767–300	ST00157SE	AD 2001–16–18, amendment 39–12387 (66 FR 43070, August 17, 2001).
McDonnell Douglas DC–9–51 and DC–9–83.	SA8026NM	AD 2001–14–02, amendment 39–12312 (66 FR 36456, July 12, 2001).
McDonnell Douglas DC–10–30	SA8452SW	AD 2001–16–22, amendment 39–12391 (66 FR 43074, August 17, 2001).
McDonnell Douglas DC–10–30	ST00054SE	AD 2001–13–03, amendment 39–12313 (66 FR 36150, July 11, 2001).

Cost Impact

There are approximately 37 airplanes of the affected design in the worldwide fleet. The FAA estimates that 37 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 66 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $146,520, or $3,960 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AFM revision on U.S. operators is estimated to be $2,220, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–54–AD.

Applicability: Model 767–300 series airplanes modified by Supplemental Type Certificate (STC) ST01783AT–D, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the in-flight entertainment (IFE) system when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the IFE system installed on the airplane by installing two new relays and a new circuit breaker, according to TIMCO Service Bulletin TSB–767–23–009, Revision IR, dated August 22, 2001.

(2) Revise the procedures under "Electrical Smoke or Fire" in the "Emergency Procedures" section of the airplane flight manual (AFM) to include TIMCO AFM Supplement TIM–AFM–01035, dated March 13, 2002. When the information in that AFM supplement has been incorporated into the FAA-approved general revisions of the AFM, the general revisions may be incorporated into the AFM, and the AFM supplement may be removed from the AFM.

Part Installation

(b) As of the effective date of this AD, no person may install an IFE system according to STC ST01783AT–D on any airplane, unless the IFE system is modified and the AFM is revised according to this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 26, 2002.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–19–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 737–100, 737–200, and 737–200C Series Airplanes

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 727, 737–100, 737–200, and 737–200C series airplanes. That proposed AD would have required a one-time inspection to determine the part number of hydraulic accumulators installed in various areas of the airplane, and follow-on corrective actions if necessary. This new action revises the proposed rule by adding an inspection of an additional area of the airplane, and follow-on corrective actions if necessary. This new action also clarifies what actions are necessary for accumulators with certain part numbers. This action is necessary to prevent high-velocity separation of a barrel, piston, or end cap from a hydraulic accumulator. Such separation could result in injury to personnel in the accumulator area; loss of cabin pressurization; loss of affected hydraulic systems; or damage to plumbing, electrical installations, or structural members. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–19–AD" in the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–19–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 200–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 727, 737–100, 737–200, and 737–200C series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 20, 2002 (67 FR 35464). That NPRM would have required a one-time inspection to determine the part number of hydraulic accumulators installed in various areas of the airplane, and follow-on corrective actions if necessary. That NPRM was prompted by reports of several incidents on various Boeing Model 747 series airplanes, and one incident on a Boeing Model 737–200 series airplane, in which aluminum end caps on hydraulic accumulators have fractured. That condition, if not corrected, could result in high-velocity separation of a barrel, piston, or end cap from a hydraulic accumulator. Such separation could result in injury to personnel in the accumulator area; loss of cabin pressurization; loss of affected hydraulic systems; or damage to plumbing, electrical installations, or structural members.

Comments

Due consideration has been given to the comments received in response to the NPRM. Certain comments, as discussed below, have resulted in changes to the proposed AD.

Support for the Proposed AD

One commenter concurs with the proposed AD, and another commenter states that it has no technical objection to the proposed AD because it does not operate any affected airplanes.

Include Additional Requirements

One commenter, the airplane manufacturer, requests that the FAA revise the proposed AD to include additional requirements. The commenter points out that Boeing Special Attention Service Bulletin 737–78–1068, Revision 1, dated March 1, 2001, addresses a hydraulic accumulator, Boeing part number (P/N) BACA11E2 (vendor P/N 2660472–2 or 2660472M2), installed in the thrust reverser actuation system on certain Boeing Model 737–100, –200, and "200C series airplanes. Boeing Special Attention Service Bulletin 737–32–1334, Revision 1, dated March 1, 2001, which is one of the service bulletins that would be required by the proposed AD, addresses the same hydraulic accumulator as installed in the landing gear brake system.

The FAA concurs with the commenter's request. We have reviewed and approved Boeing Special Attention Service Bulletin 737–78–1068, Revision 1. That service bulletin describes procedures for a one-time inspection to determine the part number of the hydraulic accumulator in the thrust reverser actuation system, and follow-on corrective actions. Corrective actions include replacing the existing hydraulic accumulator with an improved or modified accumulator having stainless steel end caps. The service bulletin refers to Parker Service Bulletin 2660472–29–63, dated December 12, 2000, as the appropriate source of service information for modification of the hydraulic accumulator.

We have added a new paragraph, paragraph (e), to this supplemental NPRM to propose to require accomplishment of the actions in Boeing Special Attention Service Bulletin 737–78–1068, Revision 1. Also, we have added Note 6 to this supplemental NPRM to state that the service bulletin refers to Parker Service Bulletin 2660472–29–63 as the appropriate source of service information for modification of the hydraulic accumulator.

Remove Requirement to Replace Certain Accumulators

One commenter requests that we revise paragraphs (b)(2) and (c)(2) of the proposed AD to remove certain P/Ns. The commenter points out that the accumulators with those particular P/Ns have steel end caps. The only necessary action is installation of new accumulator clamps and mounting hardware. The commenter suggests that we move the specified P/Ns to a separate paragraph to clarify that replacement of these accumulators with new accumulators is not necessary.

We concur that moving the specified part numbers to separate paragraphs would more clearly state our intent. We acknowledge that the P/Ns identified by the commenter do not need to be replaced. Therefore, we have revised paragraphs (b)(2) and (c)(2) of this supplemental NPRM to remove the subject P/Ns, and have included those P/Ns in new paragraphs (b)(3) and (c)(3) of this supplemental NPRM. Those paragraphs would require replacing existing accumulator clamps and mounting hardware with stronger accumulator clamps and mounting hardware, per the referenced service bulletin.

Remove a Certain Accumulator

The same commenter requests that we remove a certain accumulator, P/N BACA11E4S, from paragraphs (b)(2) and (c)(2) of the proposed AD. The commenter states that, while that accumulator has aluminum end caps, the end caps are thicker and the design of the accumulator is different from that of the accumulators that have failed in service. The commenter notes that there have been no reported failures of that accumulator. The commenter asserts that no action is necessary if this accumulator is installed.

We partially concur. We do not agree that no action is necessary if an accumulator with the subject P/N is installed. However, if an accumulator with the subject P/N is installed, it is necessary only to replace existing accumulator clamps and mounting hardware with new, stronger clamps and hardware. Therefore, we have removed the subject P/N from paragraphs (b)(2) and (c)(2) of the proposed AD and instead have included it in new paragraphs (b)(3) and (c)(3) of this supplemental NPRM, which were described previously.

Explanation of Additional Changes

Because the language in Notes 2 and 6 of the proposed AD is regulatory in nature, those notes have been

redesignated as paragraphs (f) and (g) of this supplemental NPRM. Remaining notes have been renumbered accordingly.

Also, paragraphs (a), (b), (c), (d), and (e), have been revised in this supplemental NPRM to clarify that we do not intend to require completing the Evaluation Form attached to the service bulletin.

Conclusion

Since certain changes described previously expand the scope of the originally proposed AD, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 1,832 Model 727 series airplanes and 1,033 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,294 Model 727 series airplanes and 376 Model 737 series airplanes of U.S. registry would be affected by this proposed AD.

We estimate that it would take approximately 1 work hour per airplane to accomplish the proposed one-time inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed one-time inspection on U.S. operators is estimated to be $100,200, or $60 per airplane.

Cost Impact: On-Condition Actions

For an airplane subject to the replacement per Boeing Service Bulletin 727–29–0064, we estimate that it would take approximately 5 work hours per accumulator (two hydraulic system accumulators per airplane), at an average labor rate of $60 per work hour. Required parts would cost between $1,400 (new part) and $2,810 (vendor-modified part) per accumulator. Based on these figures, the cost impact of this replacement, if necessary, would be between $1,700 and $3,110 per accumulator.

For an airplane subject to the replacement of both the mounting clamps and hardware and the hydraulic accumulator per Boeing Service Bulletin 727–32–0410, we estimate that it would take approximately 6 work hours per airplane to accomplish (one landing gear brake accumulator per airplane), at an average labor rate of $60 per work hour. Required parts would cost between $2,500 (new part) and $3,975 (vendor-modified part) per airplane. Based on these figures, the cost impact of this replacement, if necessary, would be between $2,860 and $4,335 per airplane.

For an airplane subject to the replacement of both the mounting clamps and hardware and the hydraulic accumulator per Boeing Service Bulletin 727–52–0148, we estimate that it would take approximately 6 work hours per airplane (one aft airstairs hydraulic accumulator per airplane) to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $2,500 (new part) and $3,975 (vendor-modified part) per airplane. Based on these figures, the cost impact of this replacement, if necessary, would be between $2,860 and $4,335 per airplane.

For an airplane subject to the replacement per Boeing Service Bulletin 737–32–1334, we estimate that it would take approximately 5 work hours per accumulator (two landing gear hydraulic brake accumulators per airplane) to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $2,175 (operator-modified part) and $2,410 (vendor-modified part) per accumulator. Based on these figures, the cost impact of this replacement, if necessary, would be between $2,475 and $2,710 per accumulator.

For an airplane subject to the replacement per Boeing Special Attention Service Bulletin 737–78–1068, we estimate that it would take approximately 5 work hours per accumulator to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $2,175 (operator-modified part) and $2,410 (vendor-modified part) per accumulator. Based on these figures, the cost impact of this replacement, if necessary, would be between $2,475 and $2,710 per accumulator.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–19–AD.

Applicability: Model 727 series airplanes, line numbers (L/N) 1 through 1832 inclusive; and Model 737–100, –200, and –200C series airplanes, L/N 1 through 1033 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high-velocity separation of a barrel, piston, or end cap from a hydraulic accumulator, which could result in injury to personnel in the accumulator area; loss of cabin pressurization; loss of affected hydraulic systems; or damage to plumbing, electrical installations, or structural members; accomplish the following:

Inspection/Corrective Action: Service Bulletin 727–29–0064

(a) For airplanes listed in Boeing Special Attention Service Bulletin 727–29–0064, Revision 1, dated May 3, 2001: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the part numbers (P/Ns) of hydraulic accumulators in hydraulic systems "A" and "B," per the Accomplishment Instructions of the service bulletin, excluding the Evaluation Form.

(1) If no hydraulic accumulator with Parker P/N 1356–603303 is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with Parker P/N 1356–603303 is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace the subject hydraulic accumulator with a new or modified accumulator, per the service bulletin, excluding the Evaluation Form.

Note 2: Boeing Special Attention Service Bulletin 727–29–0064, Revision 1, refers to Parker Service Bulletin 1356–603303–29–60, dated January 9, 2001, as the appropriate source of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 727–29–0064, Revision 1.

Inspection/Corrective Action: Service Bulletin 727–32–0410

(b) For airplanes listed in Boeing Special Attention Service Bulletin 727–32–0410, Revision 2, dated January 24, 2002: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the P/N of the hydraulic accumulator in the landing gear brake system, per the service bulletin, excluding the Evaluation Form.

(1) If no hydraulic accumulator with P/N 1356–603399, 3780078–104, BACA11E4S, BACA11E4SA, 60857–4–1, or BACA11E4 (vendor P/N 2660472–4 or 2660472M4) is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with P/N 1356–603399 or BACA11E4 (vendor P/N 2660472–4 or 2660472M4) is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace existing accumulator clamps and mounting hardware with new, stronger accumulator clamps and mounting hardware, and replace the subject hydraulic accumulator with a new or modified accumulator, per the service bulletin, excluding the Evaluation Form.

(3) If any hydraulic accumulator with P/N 3780078–104, BACA11E4S, BACA11E4SA, or 60857–4–1 is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace existing accumulator clamps and mounting hardware with new, stronger accumulator clamps and mounting hardware, per the service bulletin, excluding the Evaluation Form.

Note 3: Boeing Special Attention Service Bulletin 727–32–0410, Revision 2, refers to Parker Service Bulletins 1356–603399–29–61 and 2660472–29–63, both dated December 12, 2000, as the appropriate sources of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 727–32–0410, Revision 2.

Inspection/Corrective Action: Service Bulletin 727–52–0148

(c) For airplanes listed in Boeing Special Attention Service Bulletin 727–52–0148, Revision 2, dated January 24, 2002: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the P/N of the hydraulic accumulator in the aft airstairs, per the service bulletin, excluding the Evaluation Form.

(1) If no hydraulic accumulator with P/N 1356–603399, 3780078–104, BACA11E4S, BACA11E4SA, 60857–4–1, or BACA11E4 (vendor P/N 2660472–4 or 2660472M4) is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with P/N 1356–603399 or BACA11E4 (vendor P/N 2660472–4 or 2660472M4) is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace existing accumulator clamps and mounting hardware with new, stronger accumulator clamps and mounting hardware, and replace the subject hydraulic accumulator with a new or modified accumulator, per the service bulletin, excluding the Evaluation Form.

(3) If any hydraulic accumulator with P/N 3780078–104, BACA11E4S, BACA11E4SA, or 60857–4–1 is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace existing accumulator clamps and mounting hardware with new, stronger accumulator clamps and mounting hardware, per the service bulletin, excluding the Evaluation Form.

Note 4: Boeing Special Attention Service Bulletin 727–52–0148, Revision 2, refers to Parker Service Bulletins 1356–603399–29–61 and 2660472–29–63, both dated December 12, 2000, as the appropriate sources of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 727–52–0148, Revision 2.

Inspection/Corrective Action: Service Bulletin 737–32–1334

(d) For airplanes listed in Boeing Special Attention Service Bulletin 737–32–1334, Revision 1, dated March 1, 2001: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the P/Ns of the hydraulic accumulators in the landing gear brake system, per the service bulletin, excluding the Evaluation Form.

(1) If no hydraulic accumulator with P/N BACA11E2 (vendor P/N 2660472–2 or 2660472M2) is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with P/N BACA11E2 (vendor P/N 2660472–2 or 2660472M2) is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace the subject hydraulic accumulator with a new or modified accumulator, per the service bulletin, excluding the Evaluation Form.

Note 5: Boeing Special Attention Service Bulletin 737–32–1334, Revision 1, refers to Parker Service Bulletin 2660472–29–63, dated December 12, 2000, as the appropriate source of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 737–32–1334, Revision 1.

Inspection/Corrective Action: Service Bulletin 737–78–1068

(e) For airplanes listed in Boeing Special Attention Service Bulletin 737–78–1068, Revision 1, dated March 1, 2001: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the P/Ns of the hydraulic accumulators in the thrust reverser actuation system, per the service bulletin, excluding the Evaluation Form.

(1) If no hydraulic accumulator with P/N BACA11E2 (vendor P/N 2660472–2 or 2660472M2) is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with P/N BACA11E2 (vendor P/N 2660472–2 or 2660472M2) is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace the subject hydraulic accumulator with a new or modified accumulator, per the service bulletin, excluding the Evaluation Form.

Note 6: Boeing Special Attention Service Bulletin 737–78–1068, Revision 1, refers to Parker Service Bulletin 2660472–29–63, both dated December 12, 2000, as the appropriate source of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 737–78–1068, Revision 1.

Inspections Accomplished Per Previous Issues of Service Bulletins

(f) Inspections and replacements accomplished before the effective date of this AD per Boeing Special Attention Service Bulletin 727–29–0064, dated June 8, 2000, are considered acceptable for compliance with the corresponding action required by paragraph (a) of this AD.

(g) Inspections and replacements accomplished before the effective date of this AD per Boeing Special Attention Service Bulletin 737–32–1334, dated May 11, 2000, are considered acceptable for compliance with the corresponding actions required by paragraph (d) of this AD.

(h) Inspections and replacements accomplished before the effective date of this AD per Boeing Special Attention Service Bulletin 737–78–1068, dated June 8, 2000, are considered acceptable for compliance

with the corresponding action required by paragraph (e) of this AD.

Part Installation

(i) As of the effective date of this AD, no one may install a hydraulic accumulator with a P/N listed in paragraph (a)(2), (b)(2), (c)(2), (d)(2), or (e)(2) of this AD on any airplane.

Alternative Methods of Compliance

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(k) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 24, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–23 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2, A300 B4, A300 B4–600, A300 B4–600R, A300 F4–600R, A310, A330, and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus airplanes, that would have required repetitive inspections for foreign objects between the slider and the girt bar attachment fittings of the emergency escape slides; a one-time inspection for correct adjustment of the slide release mechanism and the girt bar attachment fittings, which would terminate the repetitive inspections; a one-time test for correct extension of the girt bar through the sliders; and corrective action, if necessary. This new action adds airplanes to the proposed applicability. The actions specified by this new proposed AD are intended to prevent failure of an emergency escape slide, which could result in a delayed evacuation in an emergency and consequent injury to passengers or crew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–154–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–154–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 12, 2001 (66 FR 52066). That NPRM would have required repetitive inspections for foreign objects between the slider and the girt bar attachment fittings of the emergency escape slides; a one-time inspection for correct adjustment of the slide release mechanism and the girt bar attachment fittings, which would terminate the repetitive inspections; a one-time test for correct extension of the girt bar through the sliders; and corrective action, if necessary. The original NPRM was prompted by a report indicating that, during escape slide deployment tests on a Model A330 series airplane, the girt bar of the emergency escape slide became detached from the airplane when the

escape slide was deployed. That condition, if not corrected, could result in failure of an emergency escape slide, which could result in a delayed evacuation in an emergency and consequent injury to passengers or crew.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, operators have reported difficulty with certain inspection procedures described in the service bulletins. Problems encountered in measuring the gap between the sliders and the girt bar in some cases resulted in asymmetrical adjustment of the girt bar assembly. The manufacturer has since revised the service bulletins to improve the rigging procedures.

In addition, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised that the identified unsafe condition may apply to additional airplanes. Airbus Model A300, A300–600, and A310 series airplanes are equipped with the same escape slide installation as that on Model A330 and A340 series airplanes.

Explanation of Relevant Service Information

The original NPRM cited Airbus Service Bulletins A330–52–3064 and A340–52–4076, both dated April 4, 2001, as the appropriate sources of service information for the proposed actions. Since the original NPRM was issued, Airbus issued Revision 01 of each service bulletin on June 12, 2002, to revise certain inspection procedures and add airplanes to the effectivity. The remaining procedures are essentially unchanged.

Airbus has also issued Service Bulletins A300–52–0174, A310–52–2066, and A300–52–6062, all Revision 01, all dated August 23, 2002, which describe essentially the same procedures as those described in revised Service Bulletins A330–52–3064 and A340–52–4076.

Accomplishment of the actions specified in the revised service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory. To ensure the continued airworthiness of these airplanes in France, the DGAC issued French airworthiness directives 2002–296(B) and 2002–297(B), both dated June 12, 2002; and 2002–525(B), dated October 16, 2002.

Changes to Original NPRM

Based on the DGAC's findings, the FAA has determined that it is necessary to revise the applicability of the original NPRM to add certain Model A300, A300–600, and A310 series airplanes.

For clarification, the FAA has also revised the definition of a "general visual inspection" (Note 2) in this supplemental NPRM.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 103 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to inspect for foreign objects between the slider and the girt bar attachment fittings, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $12,360, or $120 per airplane, per inspection cycle.

It would take approximately 4 work hours per airplane to determine whether the slide mechanism and girt bar attachment fittings are adjusted correctly, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $24,720, or $240 per airplane.

It would take approximately 4 work hours per airplane to determine whether the girt bar extends through the sliders correctly, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $24,720, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if the AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2001–NM–154–AD.

Applicability: The following airplanes, certificated in any category:

TABLE 1.—APPLICABILITY

Model	Listed in Airbus Service Bulletin
A300 B2 and A300 B4 series airplanes	A300–52–0174, Revision 01, dated August 23, 2002.

TABLE 1.—APPLICABILITY—Continued

Model	Listed in Airbus Service Bulletin
A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes	A300–52–6062, Revision 01, dated August 23, 2002.
A310 series airplanes	A310–52–2066, Revision 01, dated August 23, 2002.
A330 series airplanes	A330–52–3064, Revision 01, dated June 12, 2002.
A340 series airplanes	A340–52–4076, Revision 01, dated June 12, 2002.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the emergency escape slide, which could delay evacuation in an emergency and result in injury to passengers or crew, accomplish the following:

Repetitive Inspections for Foreign Objects

(a) At the applicable time specified in paragraph (a)(1) or (a)(2) of this AD: Perform a general visual inspection for foreign objects between the slider and the girt bar attachment fittings of the emergency escape slides according to the applicable service bulletin listed in Table 2 of this AD. Repeat the inspection at least every 7 days until the actions required by paragraph (b) of this AD are done. If any foreign object is found during any inspection required by paragraph (a) of this AD: Before further flight, remove the object and ensure that the girt bar attachment fittings are clean, according to the applicable service bulletin. Table 2 follows:

TABLE 2.—SERVICE BULLETIN REFERENCES FOR REQUIRED ACTIONS

For model	Do the actions in accordance with Airbus Service Bulletin
A300 B2 and A300 B4 series airplanes	A300–52–0174, Revision 01, dated August 23, 2002.
A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes	A300–52–6062, Revision 01, dated August 23, 2002.
A310 series airplanes	A310–52–2066, Revision 01, dated August 23, 2002.
A330 series airplanes	A330–52–3064, Revision 01, dated June 12, 2002.
A340 series airplanes	A340–52–4076, Revision 01, dated June 12, 2002.

(1) For Model A330 and A340 series airplanes: Inspect within 7 days after the effective date of this AD.

(2) For Model A300, A300–600, and A310 series airplanes: Inspect within 550 flight hours after the effective date of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removing or opening access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

One-Time Inspection of Slide Release Mechanism and Girt Bar Attachment Fittings

(b) Within 18 months after the effective date of this AD, perform a one-time general visual inspection for correct adjustment of the emergency escape slide release mechanism and the girt bar attachment fittings according to the service bulletin listed in Table 2 of this AD, as applicable. If the slide mechanism or girt bar attachment fittings are not adjusted correctly: Before further flight, adjust them according to the applicable service bulletin. Accomplishment of this inspection and any required corrective actions terminates the repetitive inspections required by paragraph (a) of this AD.

One-Time Inspection of Girt Bar Attachment Fittings

(c) Within 18 months after the effective date of this AD, perform a one-time general visual inspection for correct extension of the emergency escape slide girt bar through the sliders, according to the service bulletin listed in Table 2 of this AD, as applicable. If the girt bar does not extend correctly: Before further flight, rework the girt bar or replace the girt bar assembly with a new assembly, according to the applicable service bulletin.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 2002–296(B) and 2002–297(B), both dated June 12, 2002; and 2002–525(B), dated October 16, 2002.

Issued in Renton, Washington, on December 24, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–301–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

directive (AD) that is applicable to certain Airbus Model A319 and A320 series airplanes. This proposal would require an inspection of the clearance space between the fuel quantity indication (FQI) probes located in the center fuel tank and the adjacent structure; an inspection of the position of the support bracket for each probe; an inspection of the part number for each support bracket; and corrective action if necessary. This action is necessary to prevent the loss of FQI of the center fuel tank, and electrical arcing between the FQI probes and the adjacent structure in the event the airplane is struck by lightning. Such arcing could create a potential ignition source within the center fuel tank and an increased risk of a fuel tank explosion and fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–301–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–301–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056: telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–301–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–301–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319 and A320 series airplanes. The DGAC advises that it has received reports from operators of loss of fuel quantity indications (FQI) of the center fuel tank. Investigation of the inside of the center fuel tank revealed that the source of the fault was an FQI probe touching the adjacent structure. Further investigation revealed that, during production of these airplanes, the support bracket for FQI probe 38QT had been installed in the position for FQI probe 39QT, and the support bracket for FQI probe 39QT had been installed in the position for FQI probe 38QT, which resulted in inadequate clearance. These conditions, if not corrected, could result in loss of FQI of the center fuel tank, and electrical arcing between the FQI probes and the adjacent structure in the event the airplane is struck by lightning. Such arcing could create a potential ignition source within the center fuel tank and an increased risk of a fuel tank explosion and fire.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–28A1096 including Appendix 01 and Reporting Sheet, all Revision 01, all dated July 4, 2001. The service bulletin describes procedures for an inspection for proper clearance space between the FQI probes located in the center fuel tank and the adjacent structure; an inspection of the position of the support bracket for each probe; an inspection of the part number for each support bracket; and corrective action if necessary. The corrective action includes removal and re-installation of the probe and its support bracket. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2001–271(B), dated June 27, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations.(14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified

in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for the completion and submission of an inspection report (Appendix 01 and Reporting Sheet), this proposed AD would not require such reporting.

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,440, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2001–NM–301–AD.

Applicability: Model A319 and A320 series airplanes, as listed in Airbus Service Bulletin A320–28A1096, Revision 01, dated July 4, 2001, certificated in any category; except for those airplanes on which the actions specified in Airbus Service Bulletin A320–28A1096, dated March 23, 2001, or Airbus Service Bulletin A320–28A1096, Revision 01, dated July 4, 2001, have been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of fuel quantity indication (FQI) of the center fuel tank, and to reduce the potential for an ignition source and possible explosion within the center fuel tank due to electrical arcing between the FQI probes and the adjacent structure, in the event the airplane is struck by lightning, accomplish the following:

Inspection

(a) Within 4,000 flight hours after the effective date of this AD, perform the actions specified in paragraphs (a)(1) and (a)(2) of this AD per Airbus Service Bulletin A320–28A1096, Revision 01, dated July 4, 2001; excluding Appendix 01 and Reporting Sheet, both Revision 01, both dated July 4, 2001.

(1) Perform a one-time detailed inspection for proper clearance space between each FQI probe located in the center fuel tank and the adjacent structure; and a one-time detailed inspection of the position of the support bracket for each probe.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Inspect the support bracket for each probe to determine the part number.

Corrective Action

(b) During the inspections required by paragraph (a) of this AD, if the clearance between any FQI probe and the adjacent structure is determined to be less than 6.00 millimeters (0.236 inch), or if the position or part number of any probe support bracket is not correct, before further flight, remove and re-install the probe and its support bracket, per Airbus Service Bulletin A320–28A1096, Revision 01, dated July 4, 2001; excluding Appendix 01 and Reporting Sheet, both Revision 01, both dated July 4, 2001.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–271(B), dated June 27, 2001.

Issued in Renton, Washington, on December 24, 2002.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas DC–10–30 Airplane

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to a single McDonnell Douglas Model DC–10–30 airplane. This proposal would require repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary. This action is necessary to prevent arcing of connectors in the fuel boost/transfer pump circuit, which could result in a fire or explosion of the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–134–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–134–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has previously received reports of five instances of failed connectors in the fuel boost/transfer pump circuit on certain McDonnell Douglas Model DC–10 and MD–11 series airplanes. The connectors returned for evaluation exhibited arcing of the contacts to the shell in the back side of the connector and between the glass insert and potting material. Arcing also caused the potting material to be displaced from the glass seal in the connector backshell, which separated the contacts and wiring. Typically, the circuit breaker was not actuated, as the arcing event was faster than the time required for the circuit breaker to detect the event. The only indication has been that failed connectors cause loss of the fuel boost/transfer pump circuit. The cause of the connector failures is under investigation. Arcing of connectors of the fuel boost/transfer pump, if not corrected, could result in a fire or explosion of the fuel tank.

Other Relevant Rulemaking

We previously issued AD 2002–13–10, amendment 39–12798 (67 FR 45053, July 8, 2002), to require repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary. That AD applies to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes; Model MD–10–10F and –30F airplanes; and Model MD–11 and –11F airplanes.

In the final rule for AD 2002–13–10, we note that, subsequent to the issuance of the notice of proposed rulemaking (NPRM) for that AD, the manufacturer issued Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001. Revision 02 of the service bulletin contains no new procedures beyond those in previous revisions of the service bulletin, but adds a single airplane, fuselage number 0106, to the effectivity listing. That airplane had been inadvertently omitted from the previous issue of the service bulletin.

We state in AD 2002–13–10 that we may consider additional rulemaking to require accomplishment of the actions in that AD on the airplane added to Revision 02 of the referenced service bulletin. We have determined that such rulemaking is indeed necessary, and this proposed AD follows from that determination. We have included Note 1 in this proposed AD to clarify that this

proposed AD is related to AD 2002–13–10.

Explanation of Relevant Service Information

As specified previously in AD 2002–13–10, we previously reviewed and approved Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, which describe procedures for repetitive tests (using a digital multimeter and Quadtech 1864 megohm meter) for electrical continuity and resistance and repetitive general visual inspections to detect discrepancies (*e.g.*, damage, arcing, loose parts, wear) of the fuel boost/transfer pump connectors (alternating current pumping unit); and corrective actions, if necessary. The corrective actions include replacement of the connector/wire assembly with a serviceable connector/wire assembly, and replacement of the pump with a serviceable fuel boost/transfer pump, as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and Service Information

Although the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, refer to a reporting requirement using the form in the Appendix of the service bulletin, this proposed AD would not require such reporting. We do not need the information described in the Appendix to the service bulletin.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Cost Impact

This proposed AD applies to one airplane and that airplane is of U.S. registry. It would take approximately 65 work hours to accomplish the proposed tests and inspections on that airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on the single U.S. operator is estimated to be $3,900, per test or inspection cycle.

The cost impact figure discussed above is based on assumptions that the operator has not yet accomplished any of the proposed requirements of this AD action, and that the operator would not accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2002–NM–134–AD.

Applicability: Model DC–10–30 airplane, fuselage number 0106, certificated in any category.

Note 1: The requirements of this AD are identical to those in AD 2002–13–10, amendment 39–12798, which applies to Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes, and Model MD–10–10F and –30F airplanes; as listed in Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 01, dated July 16, 2001; and Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–28A112, including Appendix, dated December 11, 2000.

Note 2: Airplane fuel tanks on which the fuel/boost pump and wiring connector have been physically removed and the fuel tank made inoperable are not subject to the requirements of this AD.

Note 3: This AD applies to the airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. If the airplane has been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing of connectors of the fuel boost/transfer pump, which could result in a fire or explosion of the fuel tank, accomplish the following:

Repetitive Tests and Inspections

(a) Within 6 months after the effective date of this AD, do tests (using a digital multimeter and Quadtech 1864 megohm meter or an equivalent megohm meter that meets current and voltage requirements, as specified in the service bulletin) for electrical continuity and resistance and a general visual inspection to detect discrepancies (*e.g.*, damage, arcing, loose parts, wear) of the fuel boost/transfer pump (alternating current pumping unit) by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001. Repeat the tests and inspection thereafter every 18 months. Although the service bulletin refers to a reporting requirement using the Appendix of the service bulletin, such reporting is not required.

Note 4: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions, If Necessary

(b) If the result of any test required by paragraph (a) of this AD is outside the limits specified in the service bulletin identified in that paragraph, or if any discrepancy is detected during any inspection required by paragraph (a) of this AD, before further flight, accomplish corrective actions (*e.g.*, replacement of connector/wire assembly with serviceable connector/wire assembly, and replacement of the pump with a serviceable fuel boost/transfer pump), as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001. Although the service bulletin refers to a reporting requirement using the Appendix of the service bulletin, such reporting is not required.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 27, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–47 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–268–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe.125 Series 800A, 800A (C–29A), 800A (U–125), and 800B Airplanes; Model BH.125 Series 400A Airplanes; Model DH.125 Series Airplanes; Model Hawker 800, 800 (U–125A), and 800XP Airplanes; and Model HS.125 Series F3B, F3B/RA, F400B, F403B, 1B, 1B–522, 1B/R–522, 1B/S–522, 3B, 3B/R, 3B/RA, 3B/RB, 3B/RC, 400B, 400B/1, 401B, 403A(C), and 403B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon airplanes. This proposal would require inspection of the main landing gear (MLG) wheels to determine the part numbers of the tie-bolt nuts, and replacement of nuts that have the incorrect part number with nuts that have the correct part number. This action is necessary to prevent separation of an MLG wheel due to loose or missing tie-bolts or tie-bolt nuts, with consequent damage to airplane structure or systems, decompression, loss of full braking ability, or injury to personnel on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 7227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–268–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this proposed rule may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4129; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–268–AD."

The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that two tie-bolt nuts were missing from a main landing gear (MLG) wheel, and that the remaining nuts were loose on a Raytheon Model Hawker 800XP airplane. Investigation revealed that the airplane manufacturer supplied to operators tie-bolt nuts with an incorrect part number, which were then installed on the MLG wheel tie-bolts. Tie-bolt nuts that have the incorrect part number have a lesser locking capability than the correct tie-bolt nuts. Installing incorrect tie-bolt nuts could lead to the nuts loosening due to the nuts not locking properly, which could result in the failure of the tie-bolts on the MLG wheel. This condition, if not corrected, could result in separation of an MLG wheel due to loose or missing tie-bolts or tie-bolt nuts, with consequent damage to airplane structure or systems, decompression, loss of full braking ability, or injury to personnel on the ground.

The tie-bolt nuts installed on the MLG wheels of the Raytheon Model BAe.125 series 800A, 800A (C–29A), 800A (U–125), and 800B airplanes; Model BH.125 series 400A airplanes; Model DH.125 series airplanes; Model Hawker 800, 800 (U–125A), and 800XP airplanes; Model HS.125 series F3B, F3B/RA, F400B, F403B, 1B, 1B–522, 1B/R–522, 1B/S–522, 3B, 3B/R, 3B/RA, 3B/RB, 3B/RC, 400B, 400B/1, 401B, 403A(C), and 403B airplanes may be identical to those installed on the affected Raytheon Model Hawker 800XP airplanes. Therefore, all of these airplane models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB 32–3522, dated September 2002, including Service Bulletin/Kit Drawing Report Fax, which describes procedures for inspecting the MLG wheels to determine the part numbers of the tie-bolt nuts, and replacing the tie-bolt nuts with new nuts if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for the completion and submission of a Service Bulletin/Kit Drawing Report Fax for reporting the relevant airplane and modification details, this proposed AD does not include such a reporting requirement.

Cost Impact

There are approximately 166 airplanes of the affected design in the worldwide fleet. The FAA estimates that 84 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,040, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company: Docket 2002–NM–268–AD.

Applicability: The following airplanes, certificated in any category:

TABLE.—AIRPLANE MODELS, SERIAL NUMBERS, AND EQUIPMENT

Model	Serial numbers	Equipped with—
BAe.125 series 800A	All	[Reserved].
BAe.125 series 800A (C–29A)	All	[Reserved].

TABLE.—AIRPLANE MODELS, SERIAL NUMBERS, AND EQUIPMENT—Continued

Model	Serial numbers	Equipped with—
BAe.125 series 800A (U–125)	All	[Reserved].
BAe.125 series 800B	All	[Reserved].
BH.125 series 400A	All	[Reserved].
DH.125 series airplanes	All	[Reserved].
Hawker 800	All	[Reserved].
Hawker 800 (U–125A)	Up to and including serial numbers 258493.	[Reserved].
Hawker 800XP	Up to and including serial numbers 258581.	Dunlop wheels part numbers AH51909, AH52075, AH52286, AH52206, AHA1287, AHA1606, or AHA1814.
HS.125 series F3B	All	[Reserved].
HS.125 series F3B/RA	All	[Reserved].
HS.125 series F400B	All	[Reserved].
HS.125 series F403B	All	[Reserved].
HS.125 series 1B	All	[Reserved].
HS.125 series 1B–522	All	[Reserved].
HS.125 series 1B/R–522	All	[Reserved].
HS.125 series 1B/S–522	All	[Reserved].
HS.125 series 3B	All	[Reserved].
HS.125 series 3B/R	All	[Reserved].
HS.125 series 3B/RA	All	[Reserved].
HS.125 series 3B/RB	All	[Reserved].
HS.125 series 3B/RC	All	[Reserved].
HS.125 series 400B	All	[Reserved].
HS.125 series 400B/1	All	[Reserved].
HS.125 series 401B	All	[Reserved].
HS.125 series 403A(C)	All	[Reserved].
HS.125 series 403B	All	[Reserved].

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of a main landing gear (MLG) wheel due to loose or missing tie-bolts or tie-bolt nuts, with consequent damage to airplane structure or systems, decompression, loss of full braking ability, or injury to personnel on the ground, accomplish the following:

Inspection

(a) Within 10 landings or 12 days after the effective date of this AD, whichever comes first, inspect the MLG wheels to determine the part numbers (P/Ns) of the tie-bolt nuts; per Raytheon Service Bulletin SB 32–3522, dated September 2002, excluding Service Bulletin/Kit Drawing Report Fax.

Replacement

(b) If any tie-bolt nut having P/N NAS1804 is found installed during the inspection required by paragraph (a) of this AD, before further flight, replace the tie-bolt nut with a new nut having P/N FN22A524, (or with a new tie-bolt nut having a Dunlop P/N H5227C–5CW, SN407C–054, or LH13318–5, which are P/Ns authorized by Raytheon); per Raytheon Service Bulletin SB 32–3522, dated September 2002, excluding Service Bulletin/Kit Drawing Report Fax.

Parts Installation

(c) As of the effective date of this AD, no person shall install any MLG wheel having a tie-bolt nut with P/N NAS1804, on any airplane.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 27, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–49 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–395–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires repetitive detailed inspections to detect cracked, corroded, or stained collar fittings on both inboard trailing edge flaps; and follow-on corrective actions, if necessary. This action would expand the applicability in the existing AD, and would add

repetitive inspections for discrepancies of the collar fittings, torque tube, and splined bushings on both inboard trailing edge flaps; and follow-on and corrective actions, if necessary. The actions specified by the proposed AD are intended to prevent failure of the collar fittings, which could result in separation of the inboard trailing edge flap and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–395–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–395–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–395–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–395–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 21, 1998, the FAA issued AD 98–22–12, amendment 39–10859 (63 FR 57577, October 28, 1998), applicable to certain Boeing Model 767 series airplanes, to require repetitive detailed inspections to detect cracked, corroded, or stained collar fittings on both inboard trailing edge flaps; and follow-on corrective actions, if necessary. That action was prompted by a report indicating that a collar fitting suffered a complete fracture as a result of stress corrosion cracking. The requirements of that AD are intended to prevent separation of the inboard trailing edge flap from the airplane due to fractured collar fittings.

In the preamble to AD 98–22–12, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. We now have determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Actions Since Issuance of Previous Rule

Since the issuance of AD 98–22–12, the airplane manufacturer has received reports indicating corrosion of the splined components of the inboard support of the trailing edge flap. The root cause of the corrosion was determined to be a breakdown of the MIL–G–23827 grease in the joint, which subsequently allowed moisture to enter the joint. Eventually, the splined components corroded and, in two instances, stress corrosion cracking of one component occurred. We now have determined that it is necessary to require additional inspections on airplanes affected by the existing AD and to expand the applicability of the existing AD to include airplanes that were assembled with the corrosion inhibiting compound (CIC) BMS 3–27 and delivered before the Maintenance Planning Document (MPD) was revised by the manufacturer in April 1999. The MPD was revised to include the 12-year/24,000-flight-cycle teardown inspection as part of normal airplane maintenance for airplanes assembled with BMS 3–27.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 767–57A0066, Revision 3, including Appendices A and B, dated December 19, 2001, and Evaluation Form. (The existing AD shows Boeing Alert Service Bulletin 767–57A0066, Revision 1, dated August 6, 1998, as the appropriate source of service information for accomplishment of the actions required by that AD.) Revision 3 of the service bulletin adds Part 5—Titanine Inspection and Rework, which describes procedures for doing Part 1-Inspection, Part 3-Spline Inspection, and Part 4-Spline Rework; then repeating the spline inspection at the intervals specified if it is determined that the CIC Titanine JC5A was used per Revision 2 of the service bulletin, dated February 18, 1999, or if the maintenance records are inconclusive on the type of CIC used. Subsequent to issuance of Revision 2 of the service bulletin, it was determined that Titanine JC5A does not provide adequate corrosion protection for the joints specified in the service bulletin. Revision 3 of the service bulletin also describes procedures for light wear rework of the splines if no corrosion or corrosion pits are found, in lieu of a complete spline evaluation and overhaul. Appendix A, titled "Guide for Determining the Level of Rework Required," was added to assist operators

in determining if the light wear rework procedure can be used. Part 3—Spline Inspection describes procedures for repetitive spline inspections in lieu of terminating action as routine scheduled maintenance, and defines procedural clarifications and changes. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–22–12 to continue to require repetitive detailed inspections to detect cracked, corroded, or stained collar fittings on both inboard trailing edge flaps; and follow-on corrective actions, if necessary. This new action would expand the applicability in the existing AD, and would add repetitive inspections for discrepancies of the collar fittings, torque tube, and splined bushings on both inboard trailing edge flaps; and follow-on and corrective actions, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between Service Information and This Proposed AD

Operators should note that the number of airplanes to which this proposed AD is applicable is larger than that published in the service bulletin. Additional line numbers of airplanes have been included (line numbers 1 through 749 inclusive), as advised in Boeing Letter B–H210–01–0432, dated December 14, 2001.

Explanation of Changes Made to Existing Requirements

We have changed all references to a "detailed visual inspection" in the existing AD to a "detailed inspection" in this AD. We also have added Part 4-Spline Rework, specified in Revision 3 of the service bulletin, to paragraphs (a)(3) and (a)(4)(ii) of the existing AD for the repair of corrosion, as an alternative to repairing per the Manager, Seattle Aircraft Certification Office.

Cost Impact

There are approximately 738 airplanes of the affected design in the worldwide fleet. The FAA estimates that 306 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 98–22–12 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $120 per airplane, per inspection cycle.

The new inspections and refinishing that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $36,720, or $120 per airplane, per cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to do the replacement proposed in this AD action, it would take approximately 63 work hours per wing, at an average labor rate of $60 per work hour. Parts costs are not available at this time. Based on these figures, the cost impact of the replacement is estimated to be $3,780 per wing, per airplane.

Should an operator be required to do the rework proposed in this AD action, it would take approximately 63 work hours per wing, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the rework is estimated to be $3,780 per wing, per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10859 (63 FR 57577, October 28, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–395–AD. Supersedes AD 98–22–12, Amendment 39–10859.

Applicability: Model 767 series airplanes, line numbers 1 through 749 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the collar fittings on the inboard trailing edge flaps, which could result in separation of the flap and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 98–22–12

Detailed Inspections/Corrective Actions

(a) For airplanes having line numbers 1 through 721 inclusive, except as provided by

paragraphs (c) and (e) of this AD: Within [redacted] years since the date of manufacture of the airplane, or within 90 days after November 12, 1998 (the effective date of AD 98–22–12, amendment 39–10859), whichever occurs later; perform a detailed inspection of the collar fittings of both inboard trailing edge flaps to detect cracks, corrosion, or staining, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 1, dated August 6, 1998; or Revision 3, dated December 19, 2001; including Appendices A and B, and excluding Evaluation Form. As of the effective date of this AD, only Revision 3 shall be used.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracked, corroded, or stained collar fitting is found, repeat the detailed inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 120 days.

(2) If any cracked collar fitting is found, prior to further flight, install a new collar fitting in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

(3) If any corroded collar fitting is found, prior to further flight, repair the corrosion in accordance with Part 4 of the Accomplishment Instructions of Revision 3 of the service bulletin; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(4) If any stained collar fitting is found, accomplish the requirements of paragraphs (a)(4)(i) and (a)(4)(ii) of this AD at the compliance times specified.

(i) Repeat the detailed inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 45 days; and

(ii) Within 18 months after finding the stained collar fitting, accomplish Part 2 of the Accomplishment Instructions of the alert service bulletin. If any corroded collar fitting is found, before further flight, repair the corrosion in accordance with Part 4 of the Accomplishment Instructions of Revision 3 of the service bulletin; or in accordance with a method approved by the Manager, Seattle ACO.

New Requirements of This AD

Detailed Inspection

(b) For airplane line number 723: Within 8 years since the date of manufacture of the airplane, or within 90 days after the effective date of this AD, whichever is later; do a detailed inspection of the collar fittings of both inboard trailing edge flaps to detect cracks, corrosion, or staining, as specified in paragraph (a) of this AD, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 3, dated December 19, 2001; including Appendices A and B, and excluding Evaluation Form. Then do the applicable actions specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

Repetitive Inspections/Follow-On and Corrective Actions

(c) For airplanes having line numbers 1 through 703 inclusive, 705 through 715 inclusive, 717, 718, 721, and 723; and for the right-hand side of the airplane on line number 716: Within 10 years since the date of manufacture of the airplane, or within 4 years after the effective date of this AD, whichever is later; do a detailed (spline) inspection of the collar fittings, torque tube, and splined bushings for discrepancies (including cracks, fractures, corrosion, corrosion pits, and light wear), in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 3, dated December 19, 2001; including Appendices A and B, and excluding Evaluation Form. Accomplishment of the inspections required by this paragraph, before the initial inspection required by paragraph (a) of this AD, meets the inspection requirements in paragraph (a) of this AD.

(d) If no discrepancy is found during any inspection required by paragraph (c) or (g) of this AD, before further flight, refinish the parts in accordance with Boeing Alert Service Bulletin 767–57A0066, Revision 3, dated December 19, 2001; including Appendices A and B, and excluding Evaluation Form; and repeat the inspection every 24,000 flight cycles or 12 years, whichever is first. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (a) of this AD.

(e) If any discrepancy is found during any inspection required by paragraph (c) or (g) of this AD, before further flight, do the actions specified in either paragraph (e)(1) or (e)(2) of this AD in accordance with Boeing Alert Service Bulletin 767–57A0066, Revision 3, dated December 19, 2001; including Appendices A and B, and excluding Evaluation Form. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (a) of this AD.

(1) Replace the affected part with a new part, and reassemble the joint with liberal coatings of corrosion inhibiting compound (CIC) BMS 3–27 or BMS 3–38, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the applicable inspection every 24,000 flight cycles or 12 years, whichever is first.

(2) Rework the affected part, and reassemble the joint with liberal coatings of CIC BMS 3–27 or BMS 3–38, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the applicable inspection as specified in paragraph (e)(2)(i), (e)(2)(ii), or (e)(2)(iii) of this AD, as applicable.

(i) If five or fewer spline lengths are reworked per Figure 8 of the service bulletin, repeat the inspection every 24,000 flight cycles or 12 years, whichever is first.

(ii) If more than five spline lengths, but fewer than or equal to the maximum number of spline lengths allowed per Figure 8 of the service bulletin are reworked, repeat the inspection every 12,000 flight cycles or [redacted] years, whichever is first.

(iii) If more than the maximum number of spline lengths allowed per Figure 8 of the service bulletin are reworked, before further flight, replace the splined component and repeat the inspection every 24,000 flight cycles or 12 years, whichever is first.

Additional Inspections for Airplanes Inspected per Revision 2 of the Service Bulletin

(f) For any airplane on which the inspection required by paragraph (a) of this AD was done in accordance with Boeing Alert Service Bulletin 767–57A0066, Revision 2, dated February 18, 1999; and on which the CIC Titanine JC5A was used, or the maintenance records are inconclusive of the type of CIC used: Do the initial inspection and follow-on actions specified in paragraph (c) of this AD within 3 years after the most recent inspection done in accordance with Revision 2 of the service bulletin, or within 90 days after the effective date of this AD, whichever is later.

Airplanes Assembled With BMS 3–27

(g) For airplanes having line numbers 704, 719, and 720, 722, and 724 through 749 inclusive; and for the left-hand side of the airplane on line number 716: Within 12 years since the date of manufacture of the airplane, or within 24,000 flight cycles after the effective date of this AD, whichever is first; do a detailed (spline) inspection of the collar fittings, torque tube, and splined bushings for discrepancies (including cracks, fractures, corrosion, corrosion pits, and light wear). Do the inspection in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 3, dated December 19, 2001; including Appendices A and B, and excluding Evaluation Form, then, before further flight, do the applicable actions specified in either paragraph (d) or (e) of this AD.

(h) If the initial inspection required by paragraph (a) of this AD has not been done as of the effective date of this AD, operators may do the inspection required by paragraph (g) of this AD in lieu of the inspection required by paragraph (a) of this AD, at the time specified.

Use of Titanine JC5A Prohibited

(i) As of the effective date of this AD, no person shall use the CIC Titanine JC5A on the collar fittings, torque tube, and splined bushings on any airplane.

Alternative Methods of Compliance

(j)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–22–12, Amendment 39–10859, are not

considered to be approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(k) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 27, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–48 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13936; Airspace Docket No. 02–AEA–22]

Establishment of Class E Airspace; Ridgely, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Ridgely Airpark (RJD), Ridgely, MD. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) to serve flights operating into Ridgely Airpark under Instrument Flight Rules (IFR) makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before February 3, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13936/ Airspace Docket No. 02–AEA–22 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Frances T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4089, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-regulated aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–13936/Airspace Docket No. 02–AEA–22". The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Documents web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace area at Ridgely, MD. The development of SIAPs to serve flights operating IFR into Ridgely Airpark makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K dated August 30, 2002 and effective September 16, 2002, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA MD E5 Ridgely, MD [NEW]

Ridgely Airpark

(Lat. 35°58′12″ N., long. 75°51′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Ridgely Airpark, excluding that portion that coincides with the Centerville, MD Class E airspace area.

* * * * *

Issued in Jamaica, New York on December 13, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–68 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL 7429.2]

RIN 2060–AG99, 2060–AG52, 2060–AG69, 2060–AG67, 2060–AG96, 2060–AH03

National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of proposed rules and changes to public comment periods.

SUMMARY: This document is to inform the public that the proposed national emission standards for hazardous air pollutants (NESHAP) for Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining have been signed by the Administrator and are scheduled to be published as proposed rules in the **Federal Register** within a few weeks. Copies are available on EPA's Web site. We typically allow a 60-day public comment period after publication of proposed NESHAP in the **Federal Register**; however, we are providing advance notice that when these proposed rules are published in the **Federal Register**, the comment period will be 30 days after publication.

FOR FURTHER INFORMATION CONTACT: Mr. Keith W. Barnett, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, facsimile number (919) 541–5600, telephone number (919) 541–5605, electronic mail *barnett.keith@epa.gov*.

SUPPLEMENTARY INFORMATION: An electronic copy of today's notice is available on the Worldwide Web through the Technology Transfer Network (TTN). Following the Assistant Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. In addition, electronic versions of all these proposed NESHAP that are affected by this notice are also currently available on the TTN at *http://www.epa.gov/ttn/oarpg/new.html*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

In accordance with section 112(e)(1) of the Clean Air Act (CAA), EPA issued a schedule for promulgation of NESHAP that specified that the NESHAP for Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining were to be promulgated as final rules by November 15, 2000. We are now considerably past that date. In addition, the requirements of section 112(j) of the CAA specify that all sources in these source categories must submit permit applications for case-by-case determinations of the maximum achievable emissions reductions of hazardous air pollutants in the absence of a final rule. It is imperative that these proposed rules be finalized as soon as possible to avoid the unnecessary expenditure of resources by affected sources and permitting authorities.

The proposed NESHAP were signed by the Administrator on November 26, 2002, and were available on the TTN on the same day. Therefore, the proposed NESHAP have been widely available to the public since that time. We do not anticipate that any of the proposed NESHAP will be published in the **Federal Register** prior to December 26, 2002. If we allow a comment period of 30 days from actual publication in the **Federal Register**, the proposed NESHAP will still have been widely available to the public for 60 days or more.

Dated: December 20, 2002.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 02–32718 Filed 12–31–02; 10:34 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–7434–2]

Pennsylvania Approval of Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of tentative determination on Pennsylvania's application for approval of its Underground Storage Tank Program, public hearing and public comment period.

SUMMARY: The Commonwealth of Pennsylvania (Commonwealth or State) has applied for approval of its underground storage tank (UST) program under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State's application and has made the tentative determination that the State's UST program satisfies all of the requirements necessary to qualify for approval. The State's application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application unless insufficient public interest is expressed.

DATES: Unless insufficient public interest is expressed in holding a hearing, a public hearing will be held on February 19, 2003. However, EPA reserves the right to cancel the public hearing if sufficient public interest in a hearing is not communicated to EPA in writing by February 13, 2003. EPA will determine by February 14, 2003, whether there is sufficient interest to warrant a public hearing. The State will participate in any public hearing held by EPA on this subject. All written comments on the State's application for program approval must be received by February 13, 2003.

ADDRESSES: Copies of the State's application for program approval are available between 8:30 a.m. to 4 p.m. at the following locations for inspection and copying:

Location: Pennsylvania Department of Environmental Protection, Division of

Storage Tanks, Rachel Carson State Office Building, 400 Market Street, Harrisburg, Pennsylvania.

Contact: James C. Adair, Telephone: (717) 772–5551.

Location: Pennsylvania Department of Environmental Protection, Southwest Regional Office, Central Services, 400 Waterfront Drive, Pittsburgh, Pennsylvania.

Contact: Edward Duval, Telephone: (412) 442–4000.

Location: United State Environmental Protection Agency, Region III, Library, 1650 Arch Street, Philadelphia, Pennsylvania. Telephone: (215) 814–5254.

Written comments should be sent to Carletta Parlin, Program Manager, RCRA State Programs Branch, Waste & Chemicals Management Division (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, telephone: (215) 814–3380. Comments may also be submitted electronically through the Internet to: *parlin.carletta@epamail.epa.gov* or by facsimile at (215) 814–3163.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State's application for program approval on February 19, 2003, at 7 p.m. at the United States Environmental Protection Agency, 1650 Arch Street, 2nd Floor, Joan Goodis Room, Philadelphia, Pennsylvania.

It is EPA's policy to make reasonable accommodation to persons with disabilities wishing to participate in the Agency's programs and activities, pursuant to the Rehabilitation Act of 1973, 29 U.S.C. 791, *et seq.* Any request for accommodation should be made to Carletta Parlin, preferably a minimum of two weeks in advance of the public hearing date, so that EPA will have sufficient time to process the request.

Anyone who wishes to learn whether or not the public hearing on the Commonwealth's application has been cancelled should telephone the EPA Program Manager, Carletta Parlin, at (215) 814–3380 on February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Carletta Parlin, RCRA State Programs Branch (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, telephone: (215) 814–3380. Also, a copy of a fact sheet on today's action is available on the EPA Web Site at *www.epa.gov/reg3wcmd/public_notices.htm.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c, authorizes EPA to approve state underground storage tank programs to operate in lieu of the Federal UST program. EPA may approve a State program if the Agency finds pursuant to RCRA section 9004(b), 42 U.S.C. 6991c(b), that the state's program is "no less stringent" than the Federal program in all seven elements set forth at RCRA section 9004(a) (1) through (7), 42 U.S.C. 6991c(a) (1) through (7), meets the notification requirements of RCRA section 9004(a)(8), 42 U.S.C. 6991c(a)(8), and also provides for adequate enforcement of compliance with UST standards in accordance with RCRA section 9004(a), 42 U.S.C. 6991c(a).

B. Pennsylvania

The Pennsylvania Department of Environmental Protection (PADEP) is the implementing agency for UST activities in the State. PADEP's Underground Storage Tank Program is dedicating a substantial effort to prevent, control and remediate UST-related contamination. PADEP's Underground Storage Tank Program maintains a strong field presence and works closely with the regulated community to ensure compliance with regulatory requirements.

C. Where Are the State Rules Different From the Federal Rules?

The Commonwealth's regulations contain several requirements that are broader in scope than the Federal program which are not part of the program being authorized by today's action. EPA cannot enforce these broader in scope requirements. Although compliance with these provisions is required under Commonwealth law, they are not RCRA requirements. Such provisions include, but are not limited to, the following:

(1) Unlike the Federal program, Pennsylvania's program includes a definition of, and imposes obligations on, a "responsible party." To the extent that Pennsylvania's definition of a "responsible party" includes entities that go beyond the owner and operator of an UST, it is in this respect, broader in scope than the Federal program.

(2) Unlike the Federal program, the Commonwealth's statute establishes a certification program for installers of underground storage tanks. In this respect, the Commonwealth's program is broader in scope than the Federal program.

(3) Pennsylvania's regulations require a person to obtain a "Site Specific Installation Permit" from PADEP prior to installing a field-constructed UST. Additionally, these systems need a "General Operating Permit." Because the Federal program does not require any type of permit for tank installations or operations, the Commonwealth's program, in this respect, is broader in scope.

(4) Under Pennsylvania's regulations, underground storage tank owners or operators must have their underground storage tank facilities inspected by a state-certified inspector at the frequency established by Pennsylvania's regulations. The Federal regulations do not require third-party inspections, nor do they provide for a certified inspector program; therefore, in this regard, the Commonwealth's program is broader in scope than the Federal program.

(5) Unlike the Federal program, section 1311 ("Presumption") of Pennsylvania's Storage Tank and Spill Prevention Act establishes a rebuttable presumption that a person who owns or operates a storage tank shall be liable, without proof of fault, for all damages, contamination or pollution within 2,500 feet of the perimeter of the site of an UST that contained a regulated substance of the type which caused the damage, contamination or pollution. This provision of Pennsylvania's program is broader in scope than the Federal program.

The Pennsylvania Department of Environmental Protection submitted to EPA a final application for approval on November 25, 2002. Prior to its submission, the State provided an opportunity for public notice and comment in the development of its underground storage tank program, as required by 40 CFR 281.50(b). EPA has reviewed the State's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final approval. However, EPA intends to review all timely public comments prior to making a final decision on whether to grant approval to the State to operate its program in lieu of the Federal program.

In accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR 281.50(e), the Agency will hold a public hearing on its tentative determination on February 19, 2003, at 7 p.m. at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until February 13, 2003. Copies of the State's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

EPA will consider all public comments on its tentative determination received at the public hearing, if a

hearing is held, and during the public comment period. Issues raised by those comments may be the basis for a decision to deny approval to the State. EPA will give notice of its final decision in the **Federal Register**; the notice will include a summary of the reasons for the final determination and a response to all significant comments.

Statutory and Executive Order Reviews

This proposed rule will only approve State underground storage tank requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (*see* **SUPPLEMENTARY INFORMATION,** section A. Background). Therefore, this proposed rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this proposed rule from its review under Executive Order 12866. *2. Paperwork Reduction Act*—This proposed rule will not impose an information collection burden under the Paperwork Reduction Act. *3. Regulatory Flexibility Act*—After considering the economic impacts of today's proposed rule on small entities under the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. *4. Unfunded Mandates Reform Act*—Because this proposed rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. *5. Executive Order 13132: Federalism*—Executive Order 13132 does not apply to this proposed rule because it will not have federalism implications (*i.e.*, substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). *6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—Executive Order 13175 does not apply to this proposed rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes). *7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*—This proposed rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks. *8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This proposed rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866. *9. National Technology Transfer Advancement Act*—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advance Act does not apply to this proposed rule.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedures, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This document is issued under the authority of section 9004 of the Resource Conservation and Recovery Act as amended 42 U.S.C. 6991c.

Dated: December 20, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–34 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI51

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Flat-tailed Horned Lizard as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the Fish and Wildlife Service (Service), have determined that the action of listing the flat-tailed horned lizard (*Phrynosoma mcallii*) as threatened, pursuant to the Endangered Species Act (Act) of 1973, as amended, is not warranted, and we consequently withdraw our proposed rule. We have made this determination because threats to the species as identified in the proposed rule are not as significant as earlier believed, and current available data do not indicate that the threats to the species and its habitat, as analyzed under the five listing factors described in section 4(a)(1) of the Act, are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.

ADDRESSES: Supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92009.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, at the above address (telephone, 760–431–9440, or fax, 760–431–9618).

SUPPLEMENTARY INFORMATION:

Background

The flat-tailed horned lizard (*Phrynosoma mcallii*) is a small phrynosomatid lizard that reaches a maximum adult body length of 8.4 centimeters (cm) (3.3 inches [in]) (Muth and Fisher 1992). The flat-tailed horned lizard has a dorso-ventrally flattened body; long, broad flattened tail; and dagger-like head spines common to horned lizards. The species is cryptic in color, ranging from pale gray to light rust brown dorsally, and white or cream ventrally. It can be distinguished from the only other horned lizard known to occur within its range, the desert horned lizard (*Phrynosoma platyrhinos*), by its dark vertebral stripe, two rows of fringed scales on each side of the body, lack of external ear openings, and unmarked white ventral surface in most individuals (Foreman 1997). Apparent hybrids between the two species, exhibiting a mix of morphological characteristics, have been observed in the vicinity of Ocotillo, California (Stebbins 1985), and southeast of Yuma, Arizona (K. Young, Utah State University, pers. comm. 2002).

The flat-tailed horned lizard is endemic (restricted) to the Sonoran Desert in southern California, southwestern Arizona, and adjoining portions of Sonora and Baja California, Mexico (Turner and Medica 1982). Within California, the flat-tailed horned lizard ranges from the Coachella Valley, the northernmost extent of its range, south along both sides of the Salton Sea and Imperial Valley. On the west side of the Salton Sea and Imperial Valley, the species ranges into the Borrego Valley, Ocotillo Wells area, West Mesa, and the Yuha Desert (Yuha Basin). On the east side of Imperial Valley, the species occurs in the vicinity of the Dos Palmas Bureau of Land Management (BLM)

Area of Critical Environmental Concern (ACEC), but predominantly occurs in East Mesa and in areas adjoining the Algodones Dunes (*i.e.*, Imperial Sand Dunes, Glamis Sand Dunes). In Arizona, the flat-tailed horned lizard is found in the Yuma Desert south of the Gila River and west of the Gila and Butler Mountains (Rorabaugh *et al.* 1987). The flat-tailed horned lizard is patchily distributed throughout its range, and has been recorded at elevations as high as 520 meters (m) (1,706 feet [ft]) above sea level, but is more commonly found below 250 m (820 ft) in areas with flat-to-modest slopes (Turner *et al.* 1980).

The range of the flat-tailed horned lizard extends into Mexico from the international border in the Yuha Desert in California, south to Laguna Salada in Baja California, and from the international border in the Yuma Desert in Arizona, south and east through the Pinacate Region to the sandy plains around Puerto Penasco and Bahia de San Jorge, Sonora (Johnson and Spicer 1985, Gonzales-Romero and Alvarez-Cardenas 1989).

The distribution of the flat-tailed horned lizard is not contiguous across its range, because of fragmentation by large-scale agricultural and urban development, primarily in the Imperial Valley and the Coachella Valley. In addition, the Salton Sea, Colorado River, East Highline Canal, New Coachella Canal, and All American Canal are barriers to movement of flat-tailed horned lizards.

Due to this habitat fragmentation and existing geographic barriers, the distribution of flat-tailed horned lizards appears to be currently divided on a broad scale into at least four geographically discrete populations: three in California and one in Arizona. The three populations in California are located in the Coachella Valley, the west side of the Salton Sea/Imperial Valley, and the east side of the Imperial Valley.

The Coachella Valley population of flat-tailed horned lizards was likely much more extensive and connected to other populations in California in the past. Now it is isolated by extensive agricultural development in the southern half of the Coachella Valley and by the Salton Sea. The other two populations of flat-tailed horned lizards, on the west side of the Salton Sea/Imperial Valley and the east side of the Imperial Valley, are isolated from the Coachella Valley population and each other by agricultural and urban development of the Imperial Valley and by the Salton Sea. The Arizona population is isolated from populations in California by agricultural and urban development around Yuma, and ultimately by the Colorado River.

Hodges (1997) estimated that the flat-tailed horned lizard historically (prior to agricultural or urban development of either the Coachella or Imperial Valleys) occupied up to 979,037 hectares (ha) (2,419,200 acres [ac]) in Arizona and California. Approximately 51 percent (503,173 ha [1,243,340 ac]) of this historical habitat remains in the United States, with about 56,770 ha (140,300 ac) in Arizona and 446,390 ha (1,103,040 ac) in California (Hodges 1997). The Salton Sea area could arguably be considered ephemeral historical habitat, present at some points and absent at others, as the area changed through time. Hodges (1977) included the Salton Sea as historical habitat. If the area the Salton Sea currently occupies is not considered historical habitat, then approximately 57 percent (557,072 ha [1,376,525 ac]) of historical habitat remains in the United States.

Johnson and Spicer (1985) estimated that in 1981 approximately 59 percent of the species range occurred in Mexico, with the majority of the range in Mexico occurring in the state of Sonora. However, the distribution of the species in Mexico is poorly understood because few surveys have been conducted to determine where the species occurs in Mexico (CEDO 2001). In Sonora, about 14 percent of the habitat was estimated to be threatened by urban, agricultural or recreational use, and habitat degradation in 1981 (Johnson and Spicer 1985). In Baja California Norte, considerable habitat loss has occurred in the Mexicali Valley, where urban and agricultural development extends from Mexicali to the Colorado River (Johnson and Spicer 1985, Foreman 1997).

The majority (about 60 percent) of the species' range in Mexico lies within two federally protected areas: (1) The Upper Gulf of California and Colorado Delta Biosphere Reserve, and (2) the Pinacate and Gran Desierto de Altar Biosphere Reserve (CEDO 2001). The National Park of Pinacate is an area administered by the Mexican government with use restrictions similar to those in a national park in the United States. The Pinacate area is primarily a volcanic zone within which flat-tailed horned lizard habitat is probably limited to the sandy perimeters of Volcan Pinacate. The Upper Gulf of California Biosphere Reserve includes flat-tailed horned lizard habitat in the vicinity of the Colorado River Delta in Sonora, Mexico.

The flat-tailed horned lizard is most commonly found in sandy flats and valleys in a creosote (*Larrea tridentata*)—white bursage (*Ambrosia dumosa*) plant association (Turner *et al.* 1980; Muth and Fisher 1992; Foreman 1997). Turner *et al.* (1980) stated the best habitats are generally low-relief areas with surface soils of fine packed sand or pavement, overlain with loose, fine sand. Flat-tailed horned lizards are also known to occur at the edges of vegetated sand dunes, on barren clay soils, and sparse saltbush communities, but Turner *et al.* (1980) suspected that these recorded occurrences were actually individuals that had dispersed from more suitable habitats. Within a creosote plant community in West Mesa, California, Muth and Fisher (1992) found that flat-tailed horned lizards preferred sandy substrates with white bursage and Emory dalea (*Psorothamnus emoryi*), and avoided creosote and *Tequilia plicata*. In Arizona, Rorabaugh *et al.* (1987) found flat-tailed horned lizard abundance correlated with big galleta grass (*Hilaria rigida*) and sandy substrates, but suggested that the presence of sandy substrates were more important than that of big galleta grass.

Several researchers have investigated the relationship between density of perennial plants and flat-tailed horned lizard abundance. The relationships observed varied among studies (Altman *et al.* 1980, Turner and Medica 1982, Beauchamp *et al.* 1998). Altman *et al.* (1980) and Turner and Medica (1982) found the relative abundance of horned lizards was significantly and positively correlated with perennial plant density in creosote-white bursage plant communities. However, Beauchamp *et al.* (1998) found flat-tailed horned lizards to be present in higher relative densities in sparsely vegetated areas with large patches of concretions, gravel, and silt, than they were in sandy or densely vegetated areas. Altman *et al.* (1980) also reported finding flat-tailed horned lizards in desert pavement areas. Foley (2002) found little correlation in substrate texture and distribution of flat-tailed horned lizards when using three experimental treatments consisting of sandy, rocky and mixed substrates. However, Grant and Wright (2002) found flat-tailed horned lizard abundance was positively correlated with percentage of sand cover.

Information concerning population dynamics of flat-tailed horned lizard populations is limited and inconclusive. Since 1979, population trends were monitored using a combination of scat counts and lizards observed along transects (Wright 2002). Different methods of transect selection, numbers and experience of observers, numbers of repetitions, and lengths and shapes of transects have been used from year to year (Wright 2002).

The relationship between scat counts and lizard abundance is unclear, or weak at best (Wright 2002). Wright (2002) states that while differences in scat abundance could indicate differences in lizard abundance, the observed decline in the rate at which scat is found could also be a result of an increase in Off-Highway Vehicle (OHV) activity resulting in crushed or buried scat, lower deposition rates, greater wind eradication, different observers, or additional factors. Furthermore, the use of scat counts does not account for variations in lizard activity, misidentification of scat from other species, scat production due to fluctuating food resources, weather conditions that affect scat production or longevity in the field, observer differences, and small sample sizes (Muth and Fisher 1992, Rorabaugh 1994). Consequently, scat abundance may not be positively correlated with lizard abundance under varying conditions (Rorabaugh 1994, Beauchamp *et al.* 1998). In addition, the use of a relative index, such as scat counts, to indicate population trends is not reliable due to uncorrected bias that exists (discussed further below). Relative index techniques assume that any changes or differences in survey results are proportional to true changes or differences in the populations of interest (Thompson *et al.* 1998). Thus, due to the significant limitations of scat count data, we consider the use of scat count information useful primarily in determining the distribution and presence of flat-tailed horned lizards.

Two measures of abundance trends (*i.e.*, lizards detected per 10 hours, and lizards per transect) used between 1979 and 2001 for the East Mesa, West Mesa, and Yuha Basin, did not include scat data (Wright 2002). No statistically significant trends were found in the rate at which lizards were detected or the number of lizards per transect on any of the areas from 1979 to 2001 (Wright 2002). The measure of lizards per transect has inherent error due to differences in transect lengths surveyed among years. More importantly, the methodologies used between 1979 and 2001 have varied and the data have not incorporated detection probabilities (see Thompson *et al.* 1998). Because flat-tailed horned lizards are very difficult to find in the field due to their cryptic coloration and behavioral characteristics, incorporating the probability of detecting them into survey results is very important.

Detectability is a common source of bias that is ignored for relative index techniques, such as the techniques used to collect the data between 1979 and 2001. Numerous factors may affect the detectability of animals within selected sampling plots. These include physical structure and cover, weather, individual behavior, and survey methodology. However, it is possible that differences in relative abundance found using uncorrected data may result from only a difference in detectability of animals between areas or within the same area across time (Thompson *et al.* 1998). Uncorrected bias could seriously affect the validity and usefulness of data in indicating abundance trends (Thompson *et al.* 1998).

The BLM recently estimated the population size on the Yuha Basin Management Area (MA) (one of five management areas identified in a management strategy for the species) by using capture-mark-recapture (CMR) techniques incorporating detection probabilities (see Thompson *et al.* 1998, Williams *et al.* 2002). In the summer (June to August) of 2002, the population of flat-tailed horned lizards for the Yuha Basin MA (24,122 ha [59,605 ac]) was estimated at 18,494 adults (95 percent CI = 14,596 to 22,391) (Grant and Wright 2002) and 8,685 juveniles (95 percent CI = 6,860 to 10,510) (derived from Grant and Wright 2002). "Adults" included all lizards greater than 60 millimeters (mm) (Young and Young 2000), while "juveniles" included all lizards 60 mm or less in snout-to-vent length. Population estimates for the other four MAs using a CMR methodology will be conducted soon, for the first time (Gavin Wright, BLM biologist, pers. comm. 2002).

Greater than 95 percent of the diet of flat-tailed horned lizards consists of ants of the genera *Messor, Pogonomyrmex, Conomyrma,* and *Myrmecocystus* (Turner and Medica 1982, Pianka and Parker 1975). Flat-tailed horned lizards are oviparous (egg-laying), early maturing, and may produce multiple clutches within a breeding season (Howard 1974). Flat-tailed horned lizards produce relatively small egg clutches (N = 31; mean clutch size = 4.7; range = 3 to 7; Howard 1974), compared to most other horned lizards (Pianka and Parker 1975). The first cohort hatches in July to August (Muth and Fisher 1992; Young and Young 2000), and in some years a second cohort may be produced (Howard 1974, Young and Young 2000). Hatchlings from the first cohort may reach sexual maturity after their first winter season, whereas hatchlings born later may require an additional growing season to mature (Howard 1974, Young and Young 2000). Flat-tailed horned lizards can live up to at least 6 years in the wild (FTHL–ICC 2002), and up to 9 years in captivity (Baur 1986).

Flat-tailed horned lizards can have relatively large home ranges (Foreman 1997). Muth and Fisher (1992) found the mean home range for lizards (N = 22) was 2.7 ha (6.7 ac) from a minimum of 19 locations in West Mesa. In the Yuma Desert of Arizona, Young and Young (2000) found mean home ranges for males differed between drought and wet years, while those of females did not. The mean home range for males was 2.5 ha (6.2 ac) during a dry year versus 10.3 ha (25.5 ac) during a wet year. Female mean home ranges were smaller at 1.3 ha (3.2 ac) and 1.9 ha (4.7 ac) in dry and wet years, respectively (Young and Young 2000). Young and Young (2000) noted a wide variation in movement patterns, with a few home ranges estimated at greater than 34.4 ha (85 ac).

Flat-tailed horned lizards generally lie close to the ground and remain motionless when approached (Wone 1995); however, but on occasion they may bury themselves in loose sand if it is available (Norris 1949). More rarely they may flee. Their propensity to remain motionless and bury themselves in the sand, along with their cryptic coloration and flattened body, make them very difficult to find in the field (Foreman 1997). During the summer, a flat-tailed horned lizard may escape extreme surface temperatures either by burying the main part of its body below the surface layer (Norris 1949) or by retreating to a burrow (Rorabaugh 1994, Young and Young 2000).

Adult flat-tailed horned lizards are reported to be obligatory hibernators (Mayhew 1965), although individuals have been noted on the surface during January and February (Eric Hollenbeck, Ocotillo Wells SVRA biologist, pers. comm. 2002). Hibernation may begin as early as October and end as late as March (Muth and Fisher 1992). Hibernation burrows appear to be self-constructed (constructed by the lizards themselves versus using burrows constructed by other animals) and are within 10 cm (3.9 in) of the surface (Muth and Fisher 1992). Mayhew (1965) found that the majority of lizards hibernated within 5 cm (2.0 in) of the surface. The greatest depth recorded was 20 cm (7.9 in) below the surface. While most adults apparently hibernate during winter months, some juveniles may remain active (Muth and Fisher 1992).

In June of 1997, seven Federal and State agencies signed a Flat-Tailed Horned Lizard Conservation Agreement (CA) to implement a Flat-tailed Horned Lizard Rangewide Management Strategy (Management Strategy). The purpose of

the Management Strategy is to provide a framework for conserving sufficient habitat to maintain several viable populations of the flat-tailed horned lizard throughout the range of the species in the United States. The Management Strategy was developed by an interagency working group over a two-year period. As part of the CA, agencies delineated specific areas under their jurisdiction as Management Areas (MAs). Approximately 181,100 ha (447,600 ac) of the remaining flat-tailed horned lizard habitat managed by signatories of the CA exists within five MAs, which occur in the Borrego Badlands, West Mesa, Yuha Desert, East Mesa, and the Yuma Desert. These managed areas are believed to represent approximately 35 percent of flat-tailed horned lizard habitat remaining in the United States.

The five MAs were designed to identify large areas of public land where flat-tailed horned lizards have been found, as well as to include most flat-tailed horned lizard habitat identified as key areas in previous studies (Turner *et al.* 1980, Turner and Medica 1982, Rorabaugh *et al.* 1987, Foreman 1997). MAs were proposed based on accepted principles of good preserve design, utilizing the best information available at the time (FTHL–ICC 2002). Furthermore, the MAs were delineated to include areas as large as possible, while avoiding extensive, existing and predicted management conflicts (*e.g.*, OHV open areas). The MAs are meant to be the core areas for maintaining self-sustaining populations of flat-tailed horned lizards in the U.S. (FTHL–ICC 2002).

The flat-tailed horned lizard commonly occurs in additional areas outside of the MAs. These areas include the Ocotillo Wells State Vehicle Recreation Area (Ocotillo Wells SVRA), Coachella Valley, the areas adjoining the Algodones Dunes, and east of the Algodones Dunes between Ogilby and the Mexican border (Norris 1949, Turner *et al.* 1980, Turner and Medica 1982). The Ocotillo Wells SVRA is currently a Research Area under the Management Strategy, and studies on the flat-tailed horned lizard have been encouraged and funded by the California Department of Parks and Recreation (CDPR) Division of Off-Highway Motor Vehicle Recreation (Foreman 1997).

The majority of the potential flat-tailed horned lizard habitat is within and adjacent to the Algodones Dunes is within the Imperial Sand Dunes Recreation Area. Over 47,754 ha (118,000 ac) of the Imperial Sand Dunes Recreation Area is used as an OHV open area. The majority of the Algodones Dunes north of Highway 78 is a designated wilderness area.

The Coachella Valley has been developed to a much larger extent than any other geographic area within the flat-tailed horned lizard's current range, and does not have nearly as much Federal land as the other areas in which the MAs were established. There are only about 16,610 ha (41,040 ac) of flat-tailed horned lizard habitat remaining, representing 19 percent of the approximately 86,820 ha (214,540 ac) of historical habitat in the Coachella Valley (Katie Barrows, pers. comm. 2002), about 3 percent of the current habitat rangewide in the U.S., and roughly 1 percent of the species range overall, including Mexico (we derive these figures using Hodges' 1997 figure for current habitat within the U.S., and Johnson and Spicer's [1985] estimate of overall range). Of the remaining habitat in the Coachella Valley, only about 2,150 ha (5,314 ac) of suitable flat-tailed horned lizard habitat is estimated to be protected as part of the Coachella Valley Fringe-Toed Lizard Preserve System (Coachella Valley Mountains Conservancy 2001).

Approximately 75 percent of the flat-tailed horned lizard habitat in the Coachella Valley is either private or Tribal land and subject to development in the near future. An area with the largest amount of remaining habitat outside the fringe-toed lizard preserve system is the Big Dune area between Palm Springs and Indian Wells, south of I–10. However, this area is fragmented with major roads and new development (*e.g.*, residential housing, shopping centers, Agua Caliente Casino, and California State University of San Bernardino Extension) and is increasingly subject to new development because of its central location within the Coachella Valley.

Signatories of the CA, which include the Service, Bureau of Reclamation (BOR), BLM, U.S. Marine Corps, U.S. Navy, Arizona Game and Fish Department (AGFD), California Department of Fish and Game (CDFG), and CDPR, committed to implementation of conservation measures for the species over the life of the CA. These measures included: (1) Continued monitoring of lizard populations and new surface disturbance within MAs; (2) limitation of new surface-disturbing projects within MAs to 1 percent of the area of MAs between 1997–2002; (3) collection of compensation fees from project proponents who conduct activities within and outside of MAs; (4) reduction in off-highway vehicle (OHV = all vehicles used off-road, including automobiles, dune buggies, motorcycles, all-terrain-cycles, four-wheelers, etc.) routes within MAs; (5) prohibition of off-highway competitive events within MAs; (6) support of continued flat-tailed horned lizard monitoring and research; (7) mitigation for surface-disturbing activities in lizard habitat; and (8) attempting to acquire all private inholdings within MAs. An Interagency Coordination Committee (ICC) and a Management Oversight Group, composed of biologists and managers from CA signatory agencies, respectively, were established to formulate and oversee implementation of the Management Strategy. The signatories agreed to review the CA and its effectiveness annually to determine whether it should be revised. Within a year of completing the tasks identified in the implementation schedule, the involved parties shall review the CA and either modify, renew, or terminate it. The CA may at any time be amended, extended, modified, supplemented, or terminated by mutual concurrence. Participation in the CA/Management Strategy is voluntary, and agencies may withdraw from participation with 60 days' notice. The Management Strategy is currently being revised.

A flat-tailed horned lizard Population Viability Analysis (PVA) was conducted by a conservation team convened both to share research results involving this species and to evaluate the Management Strategy. The preliminary PVA provided no estimate of the minimum viable population size and did not determine whether populations contained within the MAs were viable, due to a lack of population demographic and stochastic (*i.e.*, random events relevant to a population) information. However, the analysis illustrated the sensitivity of flat-tailed horned lizard population viability to certain factors, particularly changes in mortality and fecundity. Recommendations in the PVA report included controlling activities that result in mortality of flat-tailed horned lizards and degradation of their habitat. Large management areas were found to be desirable as a conservative approach to ensuring the long-term population persistence.

Based on information obtained since the withdrawal of the proposed listing rule in 1997 and information documented in the proposed rule, we have identified potential threats to the flat-tailed horned lizard, including the following: urban development, agricultural development, OHV activity, energy developments, military activities, introduction of non-native plants, pesticide use, and habitat degradation due to Border Patrol and

illegal drive-through traffic along the United States-Mexico border. These threats and their effects on flat-tailed horned lizards and their habitat are discussed in further detail in the section "Summary of Factors Affecting the Species."

Previous Federal Action

In 1982, we first identified the flat-tailed horned lizard as a category 2 candidate species for listing under the Act (47 FR 58454). Service regulations defined category 2 candidate species as "taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support proposed rules." In 1989, we elevated the species to category 1 status (54 FR 554). Category 1 included species "for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule." Subsequently, on November 29, 1993, we published a proposed rule to list the flat-tailed horned lizard as a threatened species pursuant to the Act (58 FR 62624).

On May 16, 1997, in response to a lawsuit filed by the Defenders of Wildlife to compel us to make a final listing determination on the flat-tailed horned lizard, the District Court in Arizona ordered us to issue a final listing decision within 60 days. A month after the District Court's order, several State and Federal agencies signed a CA implementing a recently completed rangewide management strategy to protect the flat-tailed horned lizard. Pursuant to the CA, cooperating parties agreed to take voluntary steps aimed at "reducing threats to the species, stabilizing the species" populations, and maintaining its ecosystem."

On July 15, 1997, we issued a final decision to withdraw the proposed rule to list the flat-tailed horned lizard as a threatened species (62 FR 37852). We based the withdrawal on three factors: (1) Population trend data did not conclusively demonstrate significant population declines; (2) some of the threats to the flat-tailed horned lizard habitat had grown less serious since the proposed rule was issued; and (3) we believed that the recently approved "conservation agreement w[ould] ensure further reductions in threats."

Six months following our withdrawal of the proposed listing rule, the Defenders of Wildlife filed a lawsuit challenging our decision. On June 16, 1999, the District Court for the Southern District of California granted summary judgement in our favor upholding our decision not to list the flat-tailed horned lizard. However, on July 31, 2001, the Ninth Circuit Court of Appeals reversed the lower court's ruling and directed the District Court to remand the matter back to us for further consideration in accordance with the legal standards outlined in its opinion. The case was remanded back to us because (1) the withdrawal did not expressly consider whether the flat-tailed horned lizard is likely to become an endangered species within the foreseeable future in a significant portion of its range; and (2) the withdrawal did not "address the lizard's viability in a site-specific manner with regard to the putative benefits of the Conservation Agreement."

On October 24, 2001, the District Court ordered us to reinstate the previously effective proposed listing rule within 60 calendar days and, thereafter, commence a 12-month statutory time schedule for a final listing decision, and render our final listing determination in compliance with the mandate of the Ninth Circuit Court's order. Accordingly, we published a notice on December 26, 2001, announcing the reinstatement of the 1993 proposed listing of the flat-tailed horned lizard as threatened and the opening of a 120-day public comment period on the reinstated proposed rule (66 FR 66384).

In compliance with our requirements and for the purpose of adequately soliciting public comment, we published legal notices of the reinstatement of the 1993 proposed rule and the opening of the public comment period in the *San Diego Union Tribune* on January 7, 2002; *Imperial Valley Press* on January 7, 2002; *The Desert Sun* on January 8, 2002; and *The Yuma Daily Sun* on January 7, 2002; inviting the general public to comment. On May 30, 2002, we published a notice reopening the public comment period for an additional 60 days (67 FR 37752) and announced that we would be holding public hearings from 1 to 3 p.m. and from 6 to 8 p.m. on June 19, 2002, in El Centro, California. Additionally, on May 30, 2002, we published public notices in the *San Diego Union Tribune*, *Imperial Valley Press*, and *The Desert Sun*, announcing the June 19, 2002, public hearings in El Centro, California.

On September 24, 2002, we published an additional notice (67 FR 59809) announcing the reopening of the public comment period for 15 days to allow for peer review, additional public comment on the proposed rule, and submittal of information that has become available since our 1997 withdrawal. In this current final determination to withdraw our proposal to list the flat-tailed horned lizard as threatened, we address the Court's order that we determine: (1) Whether the flat-tailed horned lizard is likely to become an endangered species within the foreseeable future in a significant portion of its range; and (2) the lizard's viability in a site-specific manner with regard to the putative benefits of the CA.

Summary of Comments and Recommendations

In the 3 notices announcing the public comment periods, we requested all interested parties to submit the following types of information pertaining to the flat-tailed horned lizard: current status, ecology, distribution, threats, and management/conservation efforts in place. We requested this information in order to make a new final listing determination based on the best scientific and commercial data currently available. During the three public comment periods, we received written comments from a total of 58 entities, and 10 speakers gave verbal comments at the public hearings.

Substantive information provided in all public comments either has been incorporated directly into this withdrawal or is addressed below. Similar comments are grouped together.

Comment 1: One commenter supported the listing of several populations of flat-tailed horned lizards, including the population in the Coachella Valley and Arizona. The commenter further stated that independent of the proposal to list the flat-tailed horned lizard as a threatened species rangewide, the Coachella Valley population must be listed as an endangered species.

Our Response: In our 1993 proposed rule, we proposed to list the flat-tailed horned lizard as a threatened species throughout its range.

However, under the Act and our regulations, a species will still warrant listing if it is threatened or endangered in a significant portion of its range. As discussed in the "Finding" section of this withdrawal, we have determined that the flat-tailed horned lizard is not threatened throughout all or a significant portion of its range.

We considered whether the flat-tailed horned lizard population in the Coachella Valley would warrant listing pursuant to our joint Service and National Marine Fisheries Service Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). According to this policy,

to be listed as distinct vertebrate population segments populations have to qualify as both "discrete" and "significant."

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delineated by international government boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. If a population segment is considered discrete under one or more of the above conditions, its biological and ecological significance will then be considered. Significance is determined by the importance or contribution, or both, of a discrete population to the species throughout its range. The policy (61 FR 4722) lists four examples of factors that may be used to determine significance: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only known surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the taxon in genetic characteristics. In carrying out this analysis, the Service will consider available scientific evidence of the discrete population segment's importance to the species as a whole.

If a population segment is found to be discrete and significant (*i.e.*, it is a DPS) its evaluation for endangered or threatened status will be based on the Act's definitions of those terms and on a review of the species' status relative to the factors described in section 4(a)(1) of the Act for listing a species as endangered or threatened.

As outlined in this withdrawal, we currently believe there are four disjunct geographic areas occupied by flat-tailed horned lizards. They are disjunct due to fragmentation of habitat by agricultural and urban development, the Salton Sea, and the Colorado River. We recognize that of the four geographically discrete populations, the Coachella Valley population is the smallest and most fragmented by development and roads, and faces existing and future threats to the remaining habitat. Current scientific evidence does not suggest that the Coachella Valley population is genetically, behaviorally, or ecologically unique; is a large population of flat-tailed horned lizards; or contributes individuals to other geographic areas through emigration. Therefore, we conclude that this population, even if discrete, is not significant within the meaning of the DPS policy. If additional information becomes available that indicates the Coachella Valley population is biologically or ecologically significant pursuant to the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722), we may reconsider the status of the Coachella Valley population for the purpose of listing under the Act. At this time, the threats to the remaining populations (as described below) do not suggest that they warrant consideration for listing as a separate DPS.

Comment 2: One commenter noted that the population of flat-tailed horned lizards in the Coachella Valley is isolated from all other populations and is at the northern limit of the species range, and that preliminary genetic work being conducted at Utah State University suggests that the Coachella Valley population has a unique genetic structure.

Our Response: We agree that the population of flat-tailed horned lizards in the Coachella Valley is isolated from all other populations, and is at the northern limit of the species range. We have contacted the Utah State University scientist who is conducting the genetic research on the species, and he indicated that the work is still ongoing and that no conclusions have been drawn yet on the genetic structure of flat-tailed horned lizard populations.

Comment 3: Several commenters have remarked on the apparent lack of implementation of the planning actions in the Management Strategy, and its overall ineffectiveness with regards to conservation of flat-tailed horned lizard populations.

Our Response: There are nine planning actions with associated subactions. The Management Strategy states that it is understood among the signatories that implementation of these actions is subject to availability of funds and compliance with all applicable regulations. The implementation of the planning actions from May 1997 through June 2002 was as follows.

Planning Action 1: Delineate and designate five flat-tailed horned lizard MAs and one flat-tailed horned lizard research area. Management Areas have not been fully designated, although participating agencies have continued to recognize the boundaries of MAs. Precise boundary descriptions have been completed. Naval Air Facility-El Centro has designated the portions of the MAs under Department of Defense jurisdiction through the Naval Air Facility-El Centro Integrated Natural Resources Management Plan. In order to implement the Management Strategy, the Yuma and El Centro BLM field offices have drafted a document entitled "The Proposed Amendment to the California Desert Conservation Area Plan and the Yuma District Resource Management Plan to Expand the East Mesa ACEC, West Mesa ACEC, and Gran Desierto Dunes ACEC Boundaries and To Implement the Flat-Tailed Horned Lizard Rangewide Management Strategy in Imperial County, California and Yuma County, Arizona." An Environmental Assessment (EA No. CA–067–EA–1998–023) was associated with the proposed amendment, and is still in the process of being finalized. Public scoping meetings concerning the proposed amendment were held. While the environmental assessment has not been completed, the Conservation Agreement has been signed and the Management Strategy has been implemented to the degree mentioned below.

Planning Action 2: Define and implement management actions necessary to minimize loss or degradation of habitat. Most subactions were implemented as follows. Appropriate mitigation measures were enforced for all authorized projects that impacted flat-tailed horned lizards or their habitat. Compensation funds were required for most projects that had residual impacts to flat-tailed horned lizard habitat. The limit of discretionary land use authorizations (not including impacts from OHV activity) to 1 percent cumulatively for each MA was not exceeded. No disposal of lands within MAs occurred. No new roads were authorized in MAs. Members of the ICC for the Management Strategy held several flat-tailed horned lizard orientation sessions with Border Patrol agents in the Yuma and El Centro sectors to reduce impacts to flat-tailed horned lizard habitat along the international border. The BLM El Centro office implemented an aggressive education strategy with Border Patrol to reduce impacts to flat-tailed horned lizard habitat. Competitive off-highway vehicle races have not been permitted in MAs. No new recreation facilities were allowed in MAs. A camping closure was implemented and enforced as mitigation in the East Mesa MA. However,

important subactions to designate routes "open," "closed," or "limited;" to reduce route density; and to limit camping to within 15 m (50 ft) from the centerline of a designated open route in MAs were not implemented; or were implemented to a limited degree. The effects of this inaction are discussed under Factor A of the section "Summary of Factors Affecting the Species."

Planning Action 3: Rehabilitate damaged and degraded habitat in MAs. BLM staff have been rehabilitating routes inside the Yuha Basin MA. They have focused on proliferation (unauthorized development of new routes by users) and parallel routes off of designated routes; and have rehabilitated approximately 32 to 40 km (20 to 25 mi) of non-designated routes.

Planning Action 4: Attempt to acquire through exchange, donation, or purchase from willing sellers all private lands within MAs. Lists prioritizing parcels for acquisition have been maintained by the California OHV Division office headquarters in Sacramento and by BLM's El Centro office. BLM's El Centro office has contacted all landowners within the East Mesa MA to advise them of BLM's desire to acquire their lands through purchase or exchange. Approximately 6,273 ha (15,500 ac) of Arizona State land within the Yuma Desert MA was acquired by the Department of Defense, a signatory to the Management Strategy. Consequently, all land within this MA is owned by signatory agencies. Anza Borrego Desert State Park acquired private lands totaling 299 ha (740 ac) within and adjacent to the Borrego Badlands MA. BLM-El Centro acquired 97 ha (240 ac) within the East Mesa MA and 32 ha (80 ac) within the West Mesa MA. California Department of Transportation has purchased one section (259 ha [640 ac]) in the northern portion of the West Mesa MA as compensation for a project outside the MAs. This section may be conveyed to BLM in the future.

Planning Action 5: Maintain or establish effective habitat corridors between naturally adjacent populations. No new corridors have been established, but no new projects were authorized that would block movement across existing corridors between MAs. Currently, MAs that may still be connected by corridors include the Borrego Badlands MA, West Mesa MA, and Yuha MA. An OHV open area and I–8 lie between West Mesa and the Yuha MAs, but two underpasses may facilitate some movement between these MAs. All corridors across the U.S.-Mexico border are currently intact, according to the ICC.

Planning Action 6: Coordinate activities and funding among the participating agencies and Mexican agencies. The signatory agencies formed the ICC, which has met quarterly to discuss implementation of planning actions under the Management Strategy. The signatory agencies also formed a Management Oversight Group to provide management-level leadership, coordination, and oversight in the implementation of the Management Strategy. A study to investigate the distribution of flat-tailed horned lizards in Sonora and Baja California, Mexico, was initiated with funding from BOR and BLM.

Planning Action 7: Promote the purposes of the strategy through law enforcement and public education. Annual reports (ICC 1999*a*, ICC 1999*b*, ICC 2002) stated that insufficient law enforcement personnel were available to prevent most of the illegal off-highway vehicle traffic and illegal dumping that occurs in the West Mesa, Yuha Basin, and East Mesa MAs. The annual reports state that given the funding situation of most of the agencies involved, sufficient law enforcement is unlikely to occur. Information pamphlets addressing the flat-tailed horned lizard were prepared by the CDPR staff at Ocotillo Wells SVRA and Naval Air Facility El Centro and distributed to relevant agencies and the public. Flat-tailed horned lizard signs were posted on most access points into the Yuma Desert and East Mesa MAs. BLM's El Centro office produced range-user brochures and wallet cards to educate all range users of the presence of flat-tailed horned lizards and procedures to avoid impacting lizards and to report any accidental impacts to lizards.

Planning Action 8: Encourage and support research that will promote the conservation of flat-tailed horned lizards or desert ecosystems and will effectively define and implement necessary management actions, both within and outside of MAs and the Research Area. Ocotillo Wells SVRA funded four studies (Young 1999, Setser and Young 2000, Setser 2001, and Gardner 2002) to collect information on flat-tailed horned lizard demographics, habitat use, and the effects of OHV activity. Various sampling methodologies to assess population trends were tested. ICC members consulted with Colorado State University regarding monitoring population trends. Flat-tailed horned lizard life history and demographic data were collected by several researchers from Utah State University. In 2001, BLM's El Centro office conducted a pilot CMR study that led to a population estimate study in 2002 for the Yuha Basin MA. Tissue samples were taken from the disjunct populations throughout the range of the flat-tailed horned lizard and are to be analyzed by Utah State University to determine any genetic differences between populations.

Planning Action 9: Continue Inventory and Monitoring. BLM's Palm Springs office conducted surveys in the Coachella Valley. Surveys were also conducted across Baja Norte and Sonora, Mexico, with the help of ICC personnel and funding from BOR and BLM. Additional surveys were conducted along the peripheral areas of the Borrego Badlands MA. Surveys of flat-tailed horned lizards and their scat continued on MAs each year between 1997 and 2001. ICC annual reports monitored the habitat loss authorized by Management Strategy/CA signatories. The Navy contracted Tierra Data Systems in 1997 to take aerial photographs and digitally map the five MAs and the Research Area to document habitat loss and disturbance. The El Centro BLM office quantified vehicular impacts at a finer resolution than Tierra Data Systems by using a step-point method on the West Mesa, Yuha Basin, and East Mesa MAs. A similar analysis was conducted in the Yuma MA by the Service and the Arizona Game and Fish Department.

In conclusion, while the Management Strategy has resulted in actions that provide protections for the flat-tailed horned lizard and has contributed to reductions in particular threats to the species (see Factor D below), the stated objectives of the Management Strategy have not yet been fully achieved. Specifically, the four of the Management Strategy's priority 1 planning subactions have not been fully implemented. These are the following: (1) Finalizing the designations of the MAs; (2) reducing route densities in MAs; (3) signing routes closed, limited, or open; and (4) providing adequate law enforcement.

Comment 4: One commenter stated that one of the management areas is within the boundaries of an ORV Open Area (Ocotillo Wells SVRA) and asked what has been done on the ground in the Ocotillo Wells SVRA to actually protect the lizard's habitat.

Our Response: None of the Management Areas contains OHV open areas. The Ocotillo Wells SVRA is designated as a Research Area and is not a designated Management Area under the Management Strategy. The Ocotillo Wells SVRA was not established to protect the flat-tailed horned lizard's habitat. It is one of six State Vehicular Recreation Areas within California that

serve as OHV parks for the public. While OHV freeplay, racing, and touring are permitted, the Ocotillo Wells SVRA prohibits most permanent surface disturbing activities. In order to encourage studies on the flat-tailed horned lizard, the Ocotillo Wells SVRA was proposed as a Research Area in the Management Strategy. Funding was to be provided by the California Department of Parks and Recreation Division of Off-Highway Motor Vehicle Recreation.

Comment 5: One commenter stated that large areas within the BLM-managed deserts of California and Arizona, as well as significant portions of Anza-Borrego Desert State Park and the Ocotillo Wells SVRA, have been closed to protect the flat-tailed horned lizard and its habitat from OHV intrusion.

Our Response: No areas have been closed to OHV use to protect the flat-tailed horned lizard or its habitat. Within the Anza-Borrego Desert State Park, OHV activity is limited to designated routes. Most of the BLM managed lands within the range of the flat-tailed horned lizard are currently open to OHV use in some capacity. The entire Ocotillo Wells SVRA is open to OHV use in some form, and the majority is completely open to freeplay (unlimited access and use). The Ocotillo Wells SVRA is in fact the largest of the State Vehicular Recreation Areas in California, comprising approximately 85 percent of land in the program. In addition, there are two BLM Open Areas that have unrestricted OHV use, the BLM's Plaster City (16,592 ha [41,000 ac]) and Superstition Hills (5,261 ha [13,000 ac]) Open Areas.

Comment 6: One commenter mentioned that the data show a weak, almost nonexistent correlation between OHV use and alleged declines in flat-tailed horned lizard populations, and that by contrast, other threats such as predation by ravens, shrikes, and round-tailed squirrels have been substantiated with hard evidence.

Our Response: Past indices of population abundance of the flat-tailed horned lizard have not used similar methodologies, nor have they incorporated detection probabilities. Population trends based on such data potentially include error related to numerous variables, including variation in detectability, scat counts, sampling methods, study areas sampled, number of transects surveyed, number of observers, temperature, year, etc. The BLM (Wright 2002) reported data that can be used as an indication of abundance from 1979 to 2001 and the correlation of OHV activity and population abundance, conditional on a number of assumptions.

Wright (2002) reported that flat-tailed horned lizards were encountered at the highest rates in the Navy and Limited use areas of West Mesa, at intermediate rates in the Yuha Desert and East Mesa, and at the lowest rates in the West Mesa ACEC, Plaster City, and Superstition Mountains Open Areas. If detection rates were assumed to be equal across all variables involved, then an inference could be made that the areas used most by OHVs, the open areas, have the lowest abundance of flat-tailed horned lizards. If we assume that the main difference between open and the other areas is a higher rate of use of open areas by OHVs, we could reasonably conclude that OHV impacts were responsible for this difference. However, the previously mentioned bias and error associated with the data collection make this inference weak and unreliable.

Further hypothesis testing of the relationship of OHV use and flat-tailed horned lizard abundance incorporating detection probabilities in a rigorous sampling design would be valuable. The BLM has recognized the importance of incorporating detection probability into their flat-tailed horned lizard sampling designs and has recently employed such a design to estimate population size in the Yuha Basin MA, referred to previously in the "Background" section of this notice.

OHV activity has also been documented as the direct cause of mortality of individual flat-tailed horned lizards (Luckenbach 1975; Luckenbach and Bury 1983; Muth and Fisher 1992). However, the number of documented flat-tailed horned lizard mortalities due to OHVs is limited.

The fact that ravens, shrikes, and round-tailed squirrels have been documented as predators of flat-tailed horned lizards does not make them threats to the survival of the species. We assume that flat-tailed horned lizards have coevolved in a predator-prey relationship with most of the predators they encounter in the Sonoran Desert. There are no data showing that round-tailed ground squirrels or other predators depend on flat-tailed horned lizards as a primary food source. To the contrary, round-tailed ground squirrels are omnivorous and rely on plant material for a major part of their diet (Ernest and Mares 1987).

Anthropogenic threats (*i.e.*, human caused habitat destruction and degradation; *e.g.*, OHV activity) and introduced predators or competitors are generally regarded as more severe threats to the survival of native species than are predators or interspecific competition with which the species has coevolved (Pimm *et al.* 1995). There is also the potential for natural predators to increase their predation rate on certain prey given human subsidies available. For example, increased predation rates on flat-tailed horned lizards by loggerhead shrikes and American kestrels have been reported in localized areas where human-provided perches (*e.g.*, power lines or planted palm trees) have been used by shrikes and kestrels as points from which to hunt (Young and Young 2000, Cameron Barrows pers. comm, 2002). However, areas in which these increased predation rates occur are small in size and occur within relatively short distances of the perches in the abovementioned examples.

Comment 7: One commenter stated that it is absolutely critical that we not issue a final decision until after we have conducted the studies necessary to address flat-tailed horned lizard abundance and viability on private lands. The commenter further recommended that all future studies do the following: (1) Abandon scat counts as a way of deriving species densities, (2) use different, more reliable methods for counting flat-tailed horned lizards, and (3) be repeatable over time, so that trend data on the lizard can be developed.

Our Response: The schedule for the final listing determination was mandated by the Southern District Court of California under the direction of the Ninth Circuit Court of Appeals, to be made within 12 months of reinstating the proposed listing. A notice announcing the reinstatement of the 1993 proposed rule was published in the **Federal Register** on December 26, 2001. Consequently, on the basis of the best scientific and commercial data currently available, we must make a final listing determination for the flat-tailed horned lizard by December 26, 2002.

While our listing determination undoubtedly would be aided by further studies on flat-tailed horned lizards, we can not delay the decision. Additionally, we do not currently have the funding to conduct additional research prior to making our decision. Despite this shortcoming, several of the commenter's recommendations have already been enacted. We have not used any scat count information to derive lizard density or abundance estimates, and the BLM has begun to use the previously mentioned CMR methodology to conduct population estimates on the MAs, which can then be replicated in the future to gain information on population trends.

Comment 8: One commenter remarked that a large flaw in the management strategy was that little or no baseline data were gathered on the abundance of the lizard or the condition of its habitat at the time the conservation agreement was put in place.

Our Response: While there were no data leading to population estimates, there were data gathered on flat-tailed horned lizard abundance using transects between 1979 and 1997, as discussed previously. In addition, the U.S. Navy (signatory agency) funded aerial photography of the MAs, and Tierra Data Systems subsequently analyzed the photographs to establish baseline levels of surface disturbance within MAs. We have since analyzed aerial photos taken in 2002 in an attempt to document disturbance on MAs using a methodology similar to that used by Tierra Data Systems in 1997. We then compared the 1997 disturbance information to that of 2002 to assess the change in amount of disturbance during that time period. The results of this comparative analysis can be found under our discussion of Factor A in the Summary of Factors Affecting the Species.

Comment 9: Several commenters have expressed concern that Border Patrol is not a signatory to the Conservation Agreement associated with the Management Strategy, and that its activities pose one of the main threats to the flat-tailed horned lizard.

Our Response: The Border Patrol declined the opportunity to sign the CA, but has encouraged education of new agents and continues to coordinate with signatory agencies to identify ways to reduce the impacts of Border Patrol activities. ICC members held several flat-tailed horned lizard orientation sessions with Border Patrol agents in the Yuma and El Centro sectors to reduce impacts to flat-tailed horned lizard habitat along the international border. These briefings were designed to familiarize Border Patrol agents with flat-tailed horned lizard natural history, habitat requirements, and the importance of minimizing vehicular traffic off of designated patrol routes/roads, and were well received by Border Patrol personnel. However, the Border Patrol's OHV activities and their impacts on flat-tailed horned lizard conservation have not been monitored and assessed.

Comment 10: One commenter remarked that while the MAs may be large enough to ensure viability of the species, because only approximately 35 percent of the current range of the flat-tailed horned lizard is included in the MAs, the species will at some point cease to be a part of the ecological community.

Our Response: Assessing a species' role in an ecosystem is often a complex task. We believe that the flat-tailed horned lizard will continue to be a self-sustaining, functioning component of their ecosystem into the foreseeable future. The roughly 65 percent of the current range of the flat-tailed horned lizard found outside of the MAs, if not developed, may continue to serve as habitat for flat-tailed horned lizard populations.

Much of the habitat outside the MAs is managed by Federal agencies such as the BLM, or the State. These agencies have the capacity to manage their lands to conserve flat-tailed horned lizard habitat into the future. The Management Strategy is applied to lands owned or managed by Federal signatories outside MAs as well, albeit to a lesser degree than is done for lands inside MAs. BLM lands outside of designated open areas are managed for limited use under the California Desert Conservation Area Plan. The flat-tailed horned lizard is also a sensitive species in the California Desert Conservation Area Plan, which states the goal for such designated species is to manage the species and their habitats so that the potential for Federal or State listing is minimized. In addition, the BLM must adhere to directives such as Executive Orders 11644 and 11989, which established policies and provided for procedures to control and direct, among other things, the use of OHVs on Federal lands in order to protect the resources of those lands.

Any habitat within the current range of the flat-tailed horned lizard that is in the Anza-Borrego Desert State Park is managed favorably for the conservation of the flat-tailed horned lizard, because of the emphasis placed on resource protection and regulations limiting OHV activity to designated trails. Some of the California state land outside the MAs is in the Ocotillo Wells SVRA. The mission of the Off-Highway Motor Vehicle Recreation Division (CSDPR 2002) includes insuring "that quality recreational opportunities remain available for future generations by providing for education, conservation, and enforcement efforts that balance OHV recreation impact with programs that conserve and protect cultural and natural resources." In addition, projects on State lands must adhere to the California Environmental Quality Act (CEQA). CEQA requires a full public disclosure of the potential environmental impact of proposed projects. Moreover, there is no evidence of private lands in flat-tailed horned lizard habitat being developed at a rate that would pose a significant threat to the species or its habitat, except in the Coachella Valley.

In the Coachella Valley, Regional Habitat Conservation Plans in preparation by the Coachella Valley Association of Governments and the Agua Caliente Band of Cahuilla Indians would conserve a yet-to-be-determined amount of flat-tailed horned lizard habitat, leaving the rest subject to development. However, these Habitat Conservation Plans are in progress and are subject to approval in the future; therefore, their completion and implementation cannot be relied upon for conservation purposes.

Comment 11: One commenter responded that BLM studies have shown that flat-tailed horned lizard populations have remained at levels found in the 1970s, regardless of the increased use of the desert by Border Patrol, OHVs, and other development.

Our Response: The BLM population trend data from the 1970s until 2001 used scat counts, which have been acknowledged to be unreliable indicators of lizard abundance (Muth and Fisher 1992, Rorabaugh 1994, Beauchamp *et al.* 1998) that should not be used to analyze population trends. Other problems associated with these studies have been stressed in our response to comment 6. In 2002, the BLM started to use the CMR methodology (described previously) incorporating detection probability to estimate population sizes on the MAs. This is a much more reliable and promising methodology that BLM will continue using in the future to monitor population trends. The increased use of the desert by Border Patrol, OHVs, and other development and the resulting effects on flat-tailed horned lizard populations has been difficult to monitor. Intuitively, we know these impacts cannot keep increasing without resulting in negative impacts to habitat. However, based on the best available information, we have determined that such possible negative impacts do not currently, or in the foreseeable future, pose a threat to the species. Land use thresholds resulting in population declines can only be derived through sound research and monitoring. See also discussion in Factor A below.

Comment 12: Several commenters stated that we should take economic impacts into consideration when we decide whether to list the flat-tailed horned lizard, because the areas surrounding the lizard's habitat are in danger of suffering economic harm.

should the listing and any resulting land use restrictions occur.

Our Response: The Act requires us to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species (section 4(b) of the Act). Congress also made it clear in the Conference Report accompanying the 1982 amendments to the Act that "economic considerations have no relevance to determinations regarding the status of species." We do not consider economic impacts in the listing process, except when designating critical habitat; during this latter process, we conduct an economic analysis.

Comment 13: One commenter noted that reported habitat loss resulting from urbanization may not be accurate, because cities such as Imperial, El Centro, and Brawley have alkali, heavy clay, and silty clay soils, respectively; and these soil types are not preferred habitat for the flat-tailed horned lizard.

Our Response: These soils and habitats in Imperial Valley may not have been preferred or high quality habitat for the flat-tailed horned lizard, but they still more than likely provided habitat of some quality. Historically, the Imperial Valley may not have consisted of contiguous habitat quality but probably consisted of a patchy mosaic of different qualities of flat-tailed horned lizard habitat, as is seen today in the different geographic areas. Flat-tailed horned lizards do not require fine sandy habitats as was described in the past, but appear to be more flexible in their use of different soil types (Beauchamp *et al.* 1998). They have been found to occur on clay soils (Turner *et al.* 1980); concretions, gravel, and silt (Beauchamp *et al.* 1998); and desert pavement areas (Altman *et al.* 1980); in addition to the fine sandy habitats in which they are commonly found. They have even been found on the rocky lower slopes of Superstition Mountain coexisting with chuckwallas (Turner *et al.* 1980). Furthermore, the areas the commenter notes above may have been beneficial to populations for reasons other than providing quality habitat (*e.g.*, corridors or "stepping stones" providing gene flow among populations). Flat-tailed horned lizards have been documented in what are now the towns of Westmorland, Seeley, and Holtville (Klauber 1932).

Comment 14: A few commenters noted that although the Management Strategy and Conservation Agreement were produced in 1997, an environmental assessment to officially authorize the Management Areas has not been completed.

Our Response: While this is true, the Yuma and El Centro BLM field offices drafted a document to implement the Management Strategy. This document is "The Proposed Amendment to the California Desert Conservation Area Plan and the Yuma District Resource Management Plan to Expand the East Mesa ACEC, West Mesa ACEC, and Gran Desierto Dunes ACEC Boundaries and to Implement the Flat-tailed Horned Lizard Rangewide Management Strategy in Imperial County, California, and Yuma County, Arizona." An environmental assessment (EA No. CA–067–EA–1998–023) is attached to this proposed amendment. Public scoping meetings concerning this proposed amendment have been held, and work is in progress to finalize the environmental assessment. While the environmental assessment has not been completed, the Conservation Agreement has been signed, and the Management Strategy has been implemented to the degree mentioned previously.

Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited the expert opinions of six independent specialists. The Policy for Peer Review states that it is the policy of the Service to incorporate independent peer review in listing decisions during the public comment period in the following manner: (1) Solicit the expert opinions of a minimum of three appropriate and independent specialists regarding pertinent scientific and commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing; and (2) summarize in the final decision document the opinions of all independent peer reviewers received on the species under consideration. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

We specifically asked the reviewers to review both our proposal to list the flat-tailed horned lizard as threatened (58 FR 62624) and our subsequent withdrawal of the proposed rule (62 FR 37852), and also to provide comments and information on the following issues: (1) Any additional data that may assist us in making our listing decision, (2) the status and threats to the species—in particular, the four geographic areas in which the species occurs in the United States, and (3) the effectiveness of the conservation strategy to provide adequate protection and management for the species. Four peer reviewers responded to our solicitation.

One reviewer noted that his comments are limited to the Coachella Valley population and stated that the Coachella Valley has experienced higher levels of urbanization and habitat fragmentation than any of the five MAs identified in the Management Strategy. The reviewer mentioned that the Coachella Valley historically had a substantial flat-tailed horned lizard population and that the largest remaining unfragmented habitat patch represents just 3 to 4 percent of its original extent. The reviewer stated that the Management Strategy has had no apparent benefit within the Coachella Valley, because there is no MA established within the Coachella Valley due to the lack of public land containing flat-tailed horned lizard habitat.

Two reviewers recommended the species be listed as threatened, as proposed in 1993, and the fourth reviewer recommended the species not be listed. The two reviewers who recommended listing the species stated that more research was necessary on the demographics of flat-tailed horned lizard populations.

One reviewer's opinion was that if immediate and strong action is not taken, the species is likely to disappear in most or all of its range in the immediate future. However, this reviewer noted that critical demographic data necessary to demonstrate population stability are still lacking. The reviewer remarked that the quality of data on flat-tailed horned lizards is so poor that all analyses are suspect. The following recommendations for continued research relevant to developing the necessary information to make a convincing argument for listing this species were offered: (1) Long-term capture-recapture data; (2) phylogeography studies to determine historic patterns of dispersal and present effects of fragmentation; (3) comparative ecological studies in areas impacted by chemicals that might affect ant populations versus areas where no detectable affects of insecticide exist; (4) physiological studies to determine whether dietary shifts (away from ants) might negatively effect growth rates and size at sexual maturity; and (5) close examination of the illegal OHV threat with the intent of developing a strategy of effective enforcement.

One reviewer, who has conducted research on flat-tailed horned lizards in

Arizona and California, expressed that the designated MAs and the current protective measures are adequate, and the species does not warrant Federal listing as threatened. This reviewer stated that the main reason that the species does not warrant Federal listing is that even without population estimates for the MAs, it is reasonable to believe there are large, viable, self-sustaining populations that are being protected in the MAs.

We respectfully disagree with the two reviewers who recommended listing the flat-tailed horned lizard rangewide, because we do not feel the available data indicate that the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. While one reviewer stated that critical demographic data necessary to demonstrate population stability are still lacking, reliable demographic data showing population declines are also lacking.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1531 *et seq.*) and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the flat-tailed horned lizard rangewide are discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

United States

There were some threats of habitat loss and modification identified in the 1993 proposed rule that have been reduced since 1993 or for which we have limited new information since 1993. The proposed rule stated that 95 percent of the remaining optimal habitat in California is threatened by one or more impacts, and that urban growth is an important component of these threats. At this time, habitat loss due to urbanization does not appear to be a significant threat in the foreseeable future, due to Federal and State land ownership of most of the remaining habitat, with the exception of that in the Coachella Valley and Borrego Valley. The Imperial Valley has been developed up against the borders of MAs, and additional BLM lands on both sides of the Imperial Valley largely prevent further urban and agricultural development. The proposed rule also mentioned gold mining as a potential threat. There are currently no gold mines in flat-tailed horned lizard habitat, and gold mines are not expected to become a threat in the foreseeable future.

The relative abundance index that was used in the 1993 proposed rule to document a decline in the Yuha Desert has since been found to be based on erroneous assumptions and inconclusive data. The information on population trends presented in the proposed rule was derived in part from scat count data collected between 1979 and 1991. The use of scat counts for this purpose has problems that were previously mentioned in the Background section of this rule, and therefore we do not consider scat counts scientifically reliable as indicators of population abundance. At this time, the available data do not indicate that populations of flat-tailed horned lizard are declining or threatened in any of the geographic areas, with the exception of the Coachella Valley, discussed later.

The distribution of the flat-tailed horned lizard was described by Turner and Medica (1982) as the desert areas of southeastern California and southwestern Arizona and adjoining portions of Sonora and Baja California Norte, Mexico. The historical distribution of the flat-tailed horned lizard in California was arguably connected to an unknown extent from the Imperial Valley north through the Coachella Valley. Locality records report flat-tailed horned lizards occurring within the Imperial Valley in the towns of Westmorland, Seeley, and Holtville (Klauber 1932). Bryant (1911) reported locality records from Mecca (southern end of Coachella Valley) and "Salton Lake." The development of the Imperial Valley and southern half of the Coachella Valley for agriculture and urbanization, and the filling up of the Salton Sea, have essentially fragmented the range of the flat-tailed horned lizard in California into the following disjunct areas: (1) Coachella Valley, (2) west side of Salton Sea and Imperial Valley, and (3) the east side of the Imperial Valley. Additionally, the Colorado River separates the Arizona population of flat-tailed horned lizards from populations in California. Consequently, we will further analyze Factor A using the four disjunct areas within the United States: (1) Coachella Valley, (2) west side of Salton Sea/Imperial Valley, (3) east side of Imperial Valley, and (4) Arizona.

Coachella Valley (California)

There has been substantial loss and fragmentation of flat-tailed horned lizard habitat within the Coachella Valley. We use the term fragmentation to refer to the breaking up of a habitat or ecosystem into smaller parcels (Foreman 1997). Fragmentation stems from Interstate 10 (I–10), which runs through the middle of the Coachella Valley; an associated network of roads south of I–10; and associated urban and agricultural development. An important effect of habitat fragmentation is the decreased movement of a species (*i.e.*, the flat-tailed horned lizard) across a landscape. Some highways, such as I–10, act as complete barriers to movement of flat-tailed horned lizards. Other roads may decrease the probability that flat-tailed horned lizards will cross the road, or may result in increased mortality rates for flat-tailed horned lizards within an unknown distance of roads. The decrease in movement of flat-tailed horned lizards due to roads can have negative impacts to local populations, including: (1) Decreased dispersal rates of juveniles, (2) decreased likelihood for rescue of small populations due to immigration, (3) decreased genetic flow between local populations, and (4) other unknown impacts to a population's spatial structure.

The amount of contiguous and total habitat remaining in the Coachella Valley is far less than that found in the other three geographic areas. There are about 16,610 ha (41,040 ac) remaining, which represent 19 percent of the approximately 86,820 ha (214,540 ac) of historical habitat in the Coachella Valley (Barrows, pers. comm. 2002), and about 3 percent of the current habitat rangewide in the U.S. (We derive these figures using Hodges 1997 figure for current habitat within the U.S.) Approximately 75 percent of the flat-tailed horned lizard habitat in the Coachella Valley is either private or Tribal land and subject to development in the near future. The remainder is either in Federal or State ownership. Between 1996 and 2002, an estimated 2,428 ha (6,000 ac) of flat-tailed horned lizard habitat was developed in the Coachella Valley (Kim Nicol, CDFG biologist, pers. comm. 2002).

The largest patch of habitat is on the Coachella Valley Preserve and consists of about 1,480 ha (3,660 ac). In total, there are about 2,150 hectares (5,314 acres) of suitable flat-tailed horned lizard habitat that are protected as part of the Coachella Valley Fringe-Toed Lizard Preserve System (Coachella Valley Mountains Conservancy 2001).

An area with the largest amount of remaining habitat outside the fringe-toed lizard Preserve System is the Big Dune area between Palm Springs and Indian Wells, south of I–10. However, this area is fragmented with major roads and new development (*e.g.*, residential housing, shopping centers, Agua Caliente Casino, and California State University of San Bernardino Extension) and is increasingly subject to new development because of its central location within the Coachella Valley.

Regional Habitat Conservation Plans in preparation by the Coachella Valley Association of Governments and the Agua Caliente Band of Cahuilla Indians would conserve a yet-to-be-determined amount of flat-tailed horned lizard habitat and the rest would be subject to development. However, these Habitat Conservation Plans are in progress and are subject to approval in the future; therefore their completion and implementation cannot be relied upon for conservation purposes.

West Side of Salton Sea/Imperial Valley (California)

This geographic area spans from Borrego Valley east to Salton Sea, and south to the border with Mexico, bounded on the west by the Peninsular Mountain ranges and to the east by the Salton Sea and agricultural development of the Imperial Valley. The majority of the private land that is potential flat-tailed horned lizard habitat is in the Borrego Valley and Ocotillo Wells area just south of State Route (SR) 78, west of the West Mesa MA. The geographic area contains three MAs (Borrego Badlands, West Mesa, and Yuha Basin) and the Ocotillo Wells SVRA research area.

This geographic area is fragmented from north to south by SR22, SR78, Interstate 8 (I–8), and SR98. Habitat loss has also resulted from the towns of Borrego Springs, Salton City, Ocotillo Wells, and Ocotillo. The largest of these towns is Borrego Springs, with a population of approximately 3,000 people. Due to the small size of these towns, it is unlikely that urban or agricultural development in or around these small towns is a significant threat to the flat-tailed horned lizard or its habitat in the foreseeable future.

Borrego Badlands MA

The Borrego Badlands MA is composed of about 17,159 ha (42,400 ac), of which 14,771 ha (36,500 ac) is habitat managed by signatories to the Management Strategy/CA, and 2,388 ha (5,900 ac) are private land. When we compared habitat disturbance and loss from aerial photographs taken in 2002 with the habitat loss and disturbance documented by Tierra Data Systems in 1997, we found that the length of dirt roads had slightly increased from 154 kilometers (km) (96 miles [mi]) to 192 km (120 mi), and the area disturbed had increased from 142 ha (351 ac) to 761 ha (1,881 ac). However, this increase in disturbed area may have been an artifact of what we designated disturbed versus what Tierra Data Systems called disturbed. The majority of the increase in disturbed habitat was attributed to an area that appeared to be an abandoned airfield.

West Mesa MA

The West Mesa MA consists of approximately 55,079 ha (136,100 ac), of which 46,257 ha (114,300 ac) is habitat managed by signatories to the Management Strategy/CA, and 8,822 ha (21,800 ac) are private land. No geothermal activity was found during BLM disturbance surveys, but about 2 percent of the surface has been affected by mining. In 2001, the BLM estimated that 11.4 percent of the West Mesa MA was covered with vehicle tracks (Wright 2002). Wright (2002) reported that the West Mesa and Yuha Basin MAs have relatively high levels of vehicular disturbance throughout and lack protected core habitats when compared with the East Mesa MA. The number of OHV routes in the West Mesa MA increased roughly fourfold from 1985 to 2001 (Wright 2002).

Yuha Basin MA

The Yuha Basin MA consists of about 24,363 ha (60,200 ac), of which 23,149 ha (57,200 ac) of habitat is managed by signatories to the Management Strategy/CA. This MA is bounded by I–8 to the north and fragmented by SR98 running east to west across the entire MA. In 2001, the BLM estimated that 10.5 percent of the eastern Yuha Basin MA was covered with vehicle tracks (Wright 2002). Wright (2002) estimated there was a 23 percent increase in routes and graded roads on this MA from 1994 to 2001, and commented that the vehicle track levels along SR98 in the eastern Yuha Basin MA are more consistent with an Open Area than they are with a limited area. Part of the high level of vehicle track disturbance in this area can be attributed to the increase in illegal drive-through traffic in the recent past from the border into the U.S. (BLM 2002). Drive-through traffic consists of vehicles that drive illegally across the International boundary, the majority off-road, without being inspected by Federal officers. The Border Patrol is planning to erect an "Anti-Vehicle Barrier System" along the international order that will decrease this specific OHV threat in the future. This system has been effective in reducing illegal drive-through traffic near the Algodones Dunes.

The primary reason for the proliferation of trails in limited use areas is most likely due to the lack of route signing and law enforcement available not only on the Yuha Basin MA, but across all MAs. "Federal Lands: Information on the Use and Impact of Off-highway Vehicles," a U.S. General Accounting Office (USGAO) report to Congress (USGAO 1995), reported that BLM has "not completed inventories of their OHV areas, roads, and trails, and they have not finished preparing maps and posting signs to indicate where OHVs may or may not be used. Without such inventories, maps, and signs, neither the public nor the staff can be certain whether specific areas, roads, or trails are available for OHV use." The report did not specifically look at the resource areas containing flat-tailed horned lizard habitat, but it does illustrate the difficulty BLM offices across the western United States have in complying with their agency's own regulations requiring the designation of lands for OHV use be communicated to the public. Without maps and signs to identify OHV routes, the USGAO (1995) concluded that restricted-use areas are, in effect, used and managed as open-use areas.

Our analysis showed that, between 1997 to 2002, the percentage of area disturbed increased from 6.6 to 9.7, the area of disturbance increased from 1,376 ha (3,400 ac) to 2,145 ha (5,300 ac), and the length of roads increased from 394 km (246 mi) to 655 km (409 mi). We consider the BLM figures for vehicle track coverage to be more accurate for strictly measuring vehicle tracks, because of the finer resolution in sampling. BLM measured track coverage on the ground, while our measurements were derived from aerial photographs with obviously much coarser resolution.

Outside MAs

The Ocotillo Wells SVRA manages about 31,040 ha (76,700 ac) between the Borrego Badlands MA and the West Mesa MA, west of SR86. The Ocotillo Wells SVRA allows unrestricted use by OHVs across approximately 20,640 ha (51,000 ac) of this area, while the remaining land is a restricted area zone limited to OHV use on designated trails only (Hollenbeck, pers. comm. 2002). In addition to the Ocotillo Wells SVRA, in this geographic area unrestricted OHV use is also allowed in the BLM's Plaster City (approximately 6,070 ha [15,000 ac]) and Superstition Hills

(approximately 14,164 ha [35,000 ac]) Open Areas.

The California State Department of Parks and Recreation (CSDPR 2002) has reported an increasing popularity of OHV activity in California, with a 30 percent increase in dirt bike registrations, a 96 percent increase in the number of All-Terrain Vehicle registrations, and a 96 percent increase in Dune Buggy and Sand Rail registrations from 1983 to 2000. The number of 4 wheel-drive vehicles registered in the state increased 74 percent from 1994 to 2001. The visitation rate to State Vehicular Recreation Areas in California increased 52 percent from 1985 to 2000. The Ocotillo Wells SVRA contains the majority of the greater than 36,423 ha (90,000 ac) in California's six SVRAs. These upward trends in OHV use in California can be expected to continue as the U.S. Census Bureau estimates California's population to increase by 39 percent, from 32 million to 45 million people by the year 2020.

OHV activity can result in direct mortality of flat-tailed horned lizards and other sand dwelling lizards (Luckenbach 1975; Luckenbach and Bury 1983; Muth and Fisher 1992). Road mortality has also been documented to occur (Turner and Medica 1982, Muth and Fisher 1992, ICC 1999*b*, Young and Young 2000). Flat-tailed horned lizards may be more prone to road and OHV caused mortality than other lizards due their tendency to remain motionless when approached. OHV activity can also crush burrows used by flat-tailed horned lizards and modify habitat because of impacts to vegetation (Luckenbach 1975, Vollmer *et al.* 1976, Bury *et al.* 1977, Luckenbach and Bury 1983, Wilshire 1983), soil disturbance (Luckenbach 1975, Bury *et al.* 1977, Webb 1983, Stritholt *et al.* 2000); and introduction of non-native plants.

Past studies of OHV impacts on lizards (Busack and Bury 1974, Bury *et al.* 1977, Luckenbach and Bury 1983, Klinger *et al.* 1990, Beauchamp *et al.* 1998, Setser and Young 2000, Setser 2001, Gardner 2002, Grant and Wright 2002, Knauf 2002) have been largely inconclusive or cannot be readily applied across the species' range (*i.e.*, have limited inference space; Ratti and Garton 1994). Luckenbach and Bury (1983) reported that a pronounced reduction in flat-tailed horned lizard abundance around the Algodones Dunes had been anecdotally noted by scientists. Marked declines in herbaceous and perennial plants, arthropods, lizards and mammals in OHV-used areas compared with nearby control areas were also reported by Luckenbach and Bury (1983). The declines, however, were for the Colorado Desert fringe-toed lizard (*Uma notata*) and beetles, and did not include flat-tailed horned lizards or ants. Similarly, the BLM (Knauf 2002) found that preliminary results from a comparative study on fringe-toed lizard abundance in OHV open and closed areas showed that abundance of fringe-toed lizards in the OHV-used areas of the Algodones Dunes was significantly lower than in areas closed to OHVs.

Research was conducted in creosote-dominated habitats in the Mojave Desert. Researchers compared reptile metrics (measures) between sites used differentially by OHVs and control sites (Bury *et al.* 1977). Bury *et al.* (1977) found a significant decrease in numbers of reptiles on ORV-used areas compared with numbers on control sites in the Mojave Desert. However, the highest number of desert horned lizards (*Phrynosoma platyrhinos*) on any one plot occurred on a moderately used OHV site. In research conducted by both Busack and Bury (1974) and Bury *et al.* (1977), there appeared to be an inverse relationship between increased use of OHVs and the abundance of lizards. Grant and Wright (2002) reported that OHV use was negatively correlated with flat-tailed horned lizard abundance on 12 plots on the Yuha Basin MA; however, the correlation was not statistically significant.

Research in the Ocotillo Wells SVRA found flat-tailed horned lizards at higher densities in non-sandy habitats than sandy habitats within the SVRA, which differed from most other research findings (Beauchamp *et al.* (1998). It was unclear, however, if flat-tailed horned lizards were found in these atypical habitat types because they are more plastic in habitat use than previously thought, these habitat types are more available in the Ocotillo Wells SVRA than other areas in which flat-tailed horned lizards have been studied, or as a response to OHV activity (Beauchamp *et al.* 1998). Beauchamp *et al.* (1998) stated that most of the sandy areas were heavily affected by OHV activity compared to the habitat types where flat-tailed horned lizards were more dense.

Setser and Young (2000) and Setser (2001) found flat-tailed horned lizards avoided OHV disturbed areas. However, there was no difference in flat-tailed horned lizard habitat use between areas within 10 m (33 ft) of OHV trails and sites further away from OHV trails (Setser and Young 2000, Setser 2001). Setser and Young (2000) and Setser (2001) concluded that (1) OHV use might render sites less suitable to flat-tailed horned lizard use, because of the impacts of OHV activity on vegetation and soil characteristics; or (2) OHV trails occur on sites not preferred by flat-tailed horned lizards (*e.g.*, barren ground with no plants or rocks). However, Gardner (2002) suggested that OHV activity did not have an effect on flat-tailed horned lizards at two different areas in the Ocotillo Wells SVRA, on the basis of observations. Similarly, Grant and Wright (2002) found that abundance of flat-tailed horned lizards was more correlated with percentage of sand cover than level of OHV disturbance.

In conclusion, while there has been some research on the adverse effects of OHV activity on vegetation, soils, and flat-tailed horned lizards, its applicability to flat-tailed horned lizard populations is limited and unreliable, because of the lack of scientific rigor associated with the research designs. Additionally, the effects of OHV activity on flat-tailed horned lizard populations were not the primary research questions. Nevertheless, these studies have utility in generating hypotheses concerning variation in degree of OHV use and flat-tailed horned lizard abundance. At this time, we feel that the available studies do not collectively show that OHV activity causes declines in flat-tailed horned lizard populations in the four different geographic areas in the United States, or that adverse OHV impacts pose a significant threat to these populations. Management activities, including efforts to reduce conflicts with actions that impact flat-tailed horned lizard habitats, would be enhanced by focused research. Impacts of OHV activity on flat-tailed horned lizard populations should be studied using rigorous research designs to yield conclusions with high degrees of certainty (Ratti and Garton 1994) regarding the effects of OHV activity on flat-tailed horned lizard populations across the geographic areas previously mentioned.

The Management Strategy includes specific planning actions to "Maintain information exchange and coordination of monitoring, management activities, and research" and "Encourage and support research that will promote the conservation of [flat-tailed horned lizards] or desert ecosystems." Research priorities include techniques for assessing abundance, life history, demographics, and effects of activities (including OHV use and associated activities). The research is conducted by the appropriate land management agency. We expect that future studies on these research priorities will provide the Service with the information necessary

to reevaluate the status of the flat-tailed horned lizard and threats at a population level.

East Side of Imperial Valley (California)

This geographic area is fragmented north to south by the New Coachella Canal, which separates the East Mesa populations from peripheral Algodones Dunes populations. Additional fragmentation is caused by SR78, I–8, and the All American Canal running mostly in an east to west direction. On the east side of the Algodones Dunes, Ogilby Road further fragments the area, although to a far lesser degree, running from I–8 to SR78.

East Mesa MA

The East Mesa MA is 46,661 ha (115,300 ac) in size, and consists of 43,869 ha (108,400 ac) managed by signatories to the Management Strategy/CA, and 2,792 ha (6,900 ac) of private land. In 2001, BLM estimated that about 4.8 percent of the surface area in the southern portion of the East Mesa MA was covered with OHV tracks (Wright 2002). Our disturbance analysis showed that, between 1997 and 2002, the percentage area disturbed increased from 7.3 to 7.8, acreage of disturbance increased from 3,278 ha (8,099 ac) to 3,311 ha (8,181 ac), and length of roads increased from 224 km (140 mi) to 944 km (590 mi).

In 2001, BLM disturbance surveys detected about 5 percent of the surface area in the southern East Mesa MA to be affected by agriculture, mining, and geothermal activity (Wright 2002). A live bombing area controlled by the U.S. Navy, El Centro Naval Air Facility is located in the northernmost portion of the MA. Based on our review of currently available information, we believe the limited nature of the activities discussed above, do not individually or collectively pose a significant threat to the species and/or its habitat such that the species warrants listing under the Act.

Outside MA

The Imperial Sand Dunes Recreation Area is over 60,704 ha (150,000 ac) of habitat directly to the east of the East Mesa MA. Unrestricted OHV activity is permitted on more than 47,754 ha (118,000 ac) of the area, while about 12,950 ha (32,000 ac) are designated as a wilderness area, with no vehicle use allowed. Habitat has been degraded in the open area of the Imperial Sand Dunes Recreation Area by OHV activity and associated camping. The main impacts to the population in this area are most likely along the western periphery of the Dunes, where people camp and ride OHVs to and from the Dunes and around camp, and to a lesser extent on the eastern periphery. The Dunes have heavy OHV use; however, surveys have shown that the Dunes have a low abundance of flat-tailed horned lizards (Turner *et al.* 1980, Luckenbach and Bury 1983, Wright 2002), even in the wilderness area of the Dunes (Luckenbach and Bury 1983, Wright, pers. comm. 2002).

There has been loss of flat-tailed horned lizard habitat on the west side of East Mesa due to geothermal development on both BLM and private land in an area termed the Known Geothermal Resource Area (KGRA). Historically, approximately 28,240 ha (69,760 ac) of potential flat-tailed horned lizard habitat were subject to geothermal development in the form of construction, maintenance and operation of geothermal powerplants within the KGRA. Ormesa LLC currently operates six geothermal power plants and 80 geothermal wells on nearly 5,463 ha (13,500 ac) of BLM land in the KGRA (D. Campbell, Ormesa LLC Plant Manager, *in litt.* 2002).

Based on our review of currently available information, we believe the limited nature of the geothermal activities discussed above and their location on the periphery of East Mesa, do not constitute a significant threat to the species and/or its habitat such that the species warrants listing under the Act.

Yuma Desert (Arizona)

The historic range of the species in Arizona was estimated at approximately 82,360 ha (203,520 ac) by Hodges (1997), and 89,455 ha (221,043 ac) by the AGFD (Duane Shroufe, AGFD Director, *in litt.* 2002). By 1997, Hodges (1997) estimated about 69 percent (56,780 ha [140,301 ac]) of the species' historic range remained. Habitat losses resulted from conversion to agriculture, urbanization, and military use. AGFD similarly estimates about 72 percent (64,283 ha [158,844 ac]) of the historic range currently remains in Arizona. AGFD reported that approximately 3.7 percent of historic habitat has been lost since 1996. Conversion of habitat to agriculture has been the primary land use responsible for the loss of habitat in Arizona, eliminating about 17.5 percent of historic habitat by 1997. Conversion of habitat for urban and military use accounted for the loss of approximately 11.1 percent and 2.5 percent of historic habitat, respectively (Hodges 1997). The 1993 proposed rule noted that urban and agricultural expansion into flat-tailed horned lizard habitat on the part of the communities of San Luis, Yuma, and the Foothills was a threat. While the expansion of these communities will convert some flat-tailed horned lizard habitat, 77 percent of the remaining habitat is within the MA and 87 percent is managed by signatories to the CA. The remaining private land subject to development is adjacent to existing urban and agricultural areas and is fragmented. In addition, the potential development of this land will not fragment or degrade the contiguous habitat remaining in the Yuma Desert MA, which comprises the majority of the flat-tailed horned lizard habitat in Arizona. For these reasons, the remaining private land does not constitute a significant portion of the range of the flat-tailed horned lizard in this geographic area.

Yuma Desert MA

Of the current habitat, 50,384 ha (124,500 ac) are within the MA. Recently, 6,273 ha (15,500 ac) of suitable habitat owned by the State of Arizona within the Yuma Desert MA was acquired by the Department of Defense, a signatory to the Conservation Agreement. Consequently, the Management Area is completely owned by signatories to the Management Strategy.

A proposal for an Area Service Highway on the west side of the MA would reduce the MA by about 405 ha (1,000 ac), because it would revise the MA boundary. The Area Service Highway would further fragment habitat on the west side of the MA by dividing it from the adjoining habitat outside the MA. Because the Area Service Highway will only contract the MA boundary on one side by less than 1 percent, leaving the habitat in the MA contiguous, this impact does not constitute a significant threat to the species or its habitat such that the species warrants listing under the Act.

The Yuma Desert MA is relatively undisturbed compared to the Management Areas in California. Rorabaugh *et al.* (2002) randomly surveyed the Management Area to assess human disturbance and found the most common form was off-road-vehicle tracks, which covered 2.9 to 3.4 percent of the surface area. The Marine Corps Air Station-Yuma has a 66 ha (162 ac) target area called the "Moving Sands Target" within the MA. Based on our review of currently available information, we believe the limited nature of the activities discussed above, do not individually or collectively pose a significant threat to the species and/or its habitat such that the species warrants listing under the Act.

Outside MA

Currently, there is an estimated 14,876 ha (36,758 ac) of flat-tailed horned lizard habitat outside the MA. Of this habitat, 8,376 ha (20,697 ac) are owned by either the Arizona State Land Department, private interests, or the Cocopah Tribe. No immediate plans for development of this land are known; however, AGFD considers the land to be vulnerable to development. The other 44 percent is owned primarily by the BOR, which is a signatory agency of the Conservation Agreement, so the land is less likely to be developed (Shroufe in litt. 2002). However, approximately 6,475 ha (16,000 ac) of habitat managed by the BOR are within the "5-Mile Zone" of the international border with Mexico, which has been identified by the City of San Luis in their General Management Plan for potential development (Robert Kritzstein, BLM, *in litt.* 2002). These lands do not comprise a significant percentage of the flat-tailed horned lizard habitat in this geographic area, and the potential development of this land will not fragment or degrade the contiguous habitat remaining in the Yuma Desert MA. Therefore, these activities do not constitute a significant threat to the species or its habitat such that the species warrants listing under the Act.

Invasion of non-native plants into the desert systems has been noted as a threat (Hodges 1997, Shroufe in litt. 2002). Non-native species that have become prevalent in certain areas of the Sonoran Desert include *Schismus barbatus* (Mediterranean grass) and *Brassica* spp. (mustard). In Arizona, high densities of Mediterranean grass currently appear limited to disturbed areas in proximity to Yuma (Shroufe *in litt.* 2002). These species can become dense and effectively stabilize substrates that were once loose sand, likely reducing flat-tailed horned lizard habitat quality. Increased fuel load for fire is also a concern with these non-native plant species, and the effects of a new fire regime on the desert ecosystems and ultimately the flat-tailed horned lizard is unknown. Because of the limited extent to which non-native plants have established themselves in flat-tailed horned lizard habitat in this geographic area, this threat does not warrant listing the species under the Act.

Mexico

At this time, much less is known about the threats of habitat loss and modification in Mexico. Urban and agricultural farming are the most immediate threats to the species in Mexico (CEDO 2001). Considerable habitat loss has occurred in the Mexicali Valley in Baja California Norte where urban and agricultural development extends from Mexicali to the Colorado River (Johnson and Spicer 1985, Foreman 1997). This development from Mexicali to the Colorado River together with the All American Canal, has isolated flat-tailed horned lizard habitat on the Andrade Mesa in Mexico from East Mesa in the U.S. and also from the Yuha Desert in Mexico. Habitat fragmentation also has resulted from a variety of human activities, such as the creation of roads and highways. Other potential threats to the habitat of the flat-tailed horned lizard include invasion of non-native plants such as Russian thistle (*Salsola kali*), mustards (*Brassica* spp.), and salt cedar; cattle grazing in the Gran Desierto/Pinacate region; and the increasing use of OHVs in sandy plains, dunes, and back-roads (CEDO 2001). However, the effects of these threats have not been adequately documented (CEDO 2001).

In conclusion, after considering all the current available information, we have determined that the threats identified under Factor A are not significant enough to conclude that the flat-tailed horned lizard is likely to become endangered throughout all or a significant portion of its range in the foreseeable future. However, the Coachella Valley has experienced a significant amount of habitat curtailment and there is the potential for significant habitat destruction in the immediate future, because of the predominant private ownership of habitat and the rate of development in the Coachella Valley. The available data do not suggest that habitat modification by OHV use threatens the flat-tailed horned lizard on the west side of the Salton Sea/Imperial Valley and east side of the Imperial Valley. We conclude that the Arizona population is not likely to become endangered within the foreseeable future, because the low percentage of lands in private ownership makes for a low degree of threat from development. Further, OHV use has not been shown to be a threat to populations here and this geographic area experiences a relatively low level of OHV activity.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In the past, scientists have reported on collection of flat-tailed horned lizards. The most noted example was the collection of 381 flat-tailed horned lizards along an 11.3 km (7 mi) stretch of SR78 between the Coachella and East Highline Canals between 1961 to 1964 (Bolster and Nicol 1989). Norris (1949) noted that near Palm Springs the capture of flat-tailed horned lizards was not a common occurrence, and that collecting was good if it yielded two flat-tailed horned lizards in one day. Collection of flat-tailed horned lizards has not been reported since 1964. Because of the difficulty in locating these lizards, due to their cryptic coloration and tendency to remain motionless when approached, no threat of overutilization of this species is known or expected in the future on either public or private lands. Collection for the pet trade has not been identified as a threat to the species.

C. Disease or Predation

While disease is not known to be a threat to flat-tailed horned lizard persistence, flat-tailed horned lizards are depredated by a variety of predators. Flat-tailed horned lizard predators include loggerhead shrikes, round-tailed ground squirrels, grasshopper mice, snakes, canids, American kestrels, common ravens, and burrowing owls (Muth and Fisher 1992, Duncan *et al.* 1994, Young and Young 2000). Round-tailed ground squirrels were documented as the main predator of flat-tailed horned lizards during research conducted in California (N = 19; Muth and Fisher 1992) and Arizona (N = 26; Young and Young 2000), with loggerhead shrikes being the second most common predator. The 1993 proposed rule noted that Bolster and Nicol (1989) suggested that predation of flat-tailed horned lizards near agricultural areas and urban areas may be elevated because of the presence of house cats in urban areas and the abundance of loggerhead shrikes and other predatory birds in croplands. We were unable to find any documentation suggesting that house cats increased mortality rates for flat-tailed horned lizards adjacent to urban areas. Increased predation rates on flat-tailed horned lizards by loggerhead shrikes and American kestrels have been reported in localized areas where human-provided perches (*e.g.*, power lines or palm trees) have been used by shrikes and kestrels as points from which to hunt (Young and Young 2000, Barrows pers. comm. 2002). Despite this, available evidence does not suggest that predation has caused a significant threat to the persistence of the species in any part of its range, public or private.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing mechanisms that could provide some protection for the flat-tailed horned lizard include the following: (1) State laws, including the California Endangered Species Act (CESA) and CEQA, and the Arizona State List of Wildlife of Special Concern and Arizona Game and Fish Commission Order 43; (2) Federal laws and regulations, including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat occupied by other listed species, and the Fish and Wildlife Coordination Act; (3) local land use processes and ordinances; (4) the Flat-Tailed Horned Lizard Rangewide Management Strategy and associated Conservation Agreement; (5) regional planning efforts such as the Coachella Valley Multi-Species Habitat Conservation Plan; and (6) foreign laws and regulations in Mexico, including the Mexican Endangered Species List.

The State of California considers the flat-tailed horned lizard a species of special concern, but it is not listed as threatened or endangered under CESA. Consequently, the species receives no protection under CESA. In California, the management of Anza-Borrego Desert State Park is favorable for the conservation of the flat-tailed horned lizard because of the emphasis placed on resource protection and regulations limiting OHV activity to designated trails.

The States of California and Arizona prohibit the collection of flat-tailed horned lizards pursuant to California Code of Regulations, Title 14, Section 5.60, and Arizona Game and Fish Commission Order 43, except by permit. The AGFD has included the species on the draft List of Wildlife of Special Concern in Arizona, which Arizona uses to prioritize species for planning and funding purposes. No state regulations in Arizona protect the habitat of this species at this time.

CEQA requires review of any project that is undertaken, funded, or permitted by a State or local governmental agency. If a project with potential impacts on the flat-tailed horned lizard were reviewed, CDFG personnel could determine that, although not listed, the lizard is a *de facto* endangered, threatened, or rare species under section 15380 of CEQA. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or deciding that overriding considerations make mitigation infeasible (CEQA Sec. 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed endangered species or their habitat. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

The flat-tailed horned lizard may receive some level of protection through the Act because of overlapping ranges or proximity to other federally listed species in California. These species include Coachella Valley fringe-toed lizard (*Uma inornata*), Coachella Valley milk-vetch (*Astragalus lentiginosus* var. *coachellae*), Pierson's milk-vetch (*Astragalus magdalenae* var. *peirsonii*), bighorn sheep in the Peninsular Ranges (*Ovis canadensis*), and desert tortoise (*Gopherus agassizii*).

The federally threatened Coachella Valley fringe-toed lizard is restricted to the Coachella Valley, but its distribution overlaps with the northern portion of the flat-tailed horned lizard's range in the Coachella Valley. However, the flat-tailed horned lizard may use additional habitat within the Coachella Valley in which the fringe-toed lizard does not occur. In addition, the majority of suitable habitat in the Coachella Valley in which both the fringe-toed lizard and flat-tailed horned lizard occur is not protected. Only 2,150 ha (5,314 ac) of suitable flat-tailed horned lizard habitat is protected as part of the Coachella Valley Fringe-toed Lizard Preserve System (Coachella Valley Mountains Conservancy 2001). The federally endangered Coachella Valley milk-vetch also co-occurs with the flat-tailed horned lizard only within the Coachella Valley and offers no additional conservation beyond that provided by the fringe-toed lizard. However, projects in which there is a Federal action that may affect one or both these species are subject to Section 7 consultation with the Service under the Act. Section 7 consultations on the Coachella Valley fringe-toed lizard and/or Coachella Valley milk-vetch may indirectly provide ways to avoid or minimize adverse impacts to the flat-tailed horned lizard in addition to the targeted species.

The federally endangered bighorn sheep of the Peninsular Ranges and flat-tailed horned lizards may overlap in habitat use at the edge of both of their ranges, where there is suitable habitat for both species in close proximity to the toe of slope of the mountains. However, the benefit to the flat-tailed horned lizard provided by the protection of bighorn sheep in the Peninsular Ranges is inconsequential.

The federally endangered Pierson's milk-vetch is restricted to the Algodones Dunes, in which the flat-tailed horned lizard occurs in low numbers (Wright 2002), therefore offering little protection to the flat-tailed horned lizard. The range of the federally threatened desert tortoise may marginally overlap with the flat-tailed horned lizard in certain parts of the Coachella Valley, near the east side of the Salton Sea and the east side of the Algodones Dunes; however, no conservation value to the flat-tailed horned lizard should be expected.

Through NEPA and the Fish and Wildlife Coordination Act, we may recommend discretionary conservation measures to avoid, minimize, and offset impacts to fish and wildlife resources resulting from Federal projects and water development projects authorized by the U.S. Army Corps of Engineers.

The Management Strategy/CA has been the main regulatory mechanism established for the conservation of the flat-tailed horned lizard throughout its range. The Management Strategy/CA was signed in 1997 and included an extensive list of planning actions developed as recommendations to management agencies to ensure population viability within each MA (Foreman 1997). A caveat of the Management Strategy, however, was that the implementation of these actions is subject to availability of funds and compliance with all applicable regulations. In addition, the CA is a voluntary agreement to implement the Management Strategy; a signatory agency may withdraw from the CA after giving the other signatories 60 days' notice.

Some of the planning actions have not yet been implemented. The planning action to "limit vehicle access and limit route proliferation within MAs," has not been achieved. No action has been taken regarding the planning subactions to designate all routes either open, closed, or limited; and to reduce open and limited route density in MAs (Shroufe in litt. 2002, Wright in litt. 2002), despite these subactions' being "priority 1" actions. Priority 1 actions are defined in the Management Strategy (Foreman 1997) as "action[s] that must be taken in the near term to conserve the species and prevent irreversible population declines." The lack of enforcement to ensure closed and limited use areas is the primary deficiency of Management Strategy implementation. Should future research demonstrate that OHV use poses a significant threat to the species, these deficiencies may need to be corrected to avoid the species being listed in the future.

While some important planning actions in the Management Strategy have not yet been implemented, the

actions that have been and are being implemented do provide protection for the flat-tailed horned lizard and its habitat and have contributed to reductions in specific threats to the species. Most planning actions listed in the Management Strategy were implemented between the period of May 1997 and June 2002 (see our response to comment 3). The Management Strategy actions that contributed the most to the conservation of flat-tailed horned lizards were the exclusion of pesticide spraying within MAs, exclusion of competitive recreational events within MAs, efforts to develop and implement a monitoring strategy, and compensation for project impacts to flat-tailed horned lizard habitat.

The actions that have been and are being implemented on the MAs do provide protection for the flat-tailed horned lizard and its habitat in each of the four geographic areas, except the Coachella Valley, in which the flat-tailed horned lizard occurs. Additionally, the Management Strategy has contributed to reductions in specific threats to the species, and to the viability of the flat-tailed horned lizard in each of the five MAs and ultimately the four geographic areas. Current available information does not indicate that the viability of the flat-tailed horned lizard in each of the geographic areas in which it occurs, with the exception of the Coachella Valley, is dependent on full implementation of the Management Strategy.

Regional Habitat Conservation Plans in preparation by the Coachella Valley Association of Governments and the Agua Caliente Band of Cahuilla Indians would conserve a yet-to-be-determined amount of flat-tailed horned lizard habitat, leaving the rest subject to development. These Habitat Conservation Plans are in progress and are subject to approval in the future; therefore, their completion and implementation cannot be relied upon for conservation purposes.

The species is listed in the official Mexican Endangered Species List as threatened (CEDO 2001). Consequently, the species is protected from collection, sale, and commerce, and its habitat is afforded special protection in Mexico. The majority (about 60 percent) of the species' range in Mexico lies within two Mexican Federal natural protected areas: The Upper Gulf of California and Colorado Delta Biosphere Reserve, and the Pinacate and Gran Desierto de Altar Biosphere Reserve (CEDO 2001). The National Park of Pinacate is an area administered by the Mexican government with use restrictions similar to those of a national park in the United States. However, the boundaries are not well established, and enforcement of regulations is minimal.

In conclusion, currently available information does not indicate that inadequate regulatory mechanisms necessitate listing the species under the Act. However, if flat-tailed horned lizard populations are found to be declining in the future, it would be prudent to revisit the adequacy of the regulatory mechanisms mentioned above, including the Management Strategy.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Pesticide spraying associated with the Curlytop Virus Control Program to control the beet leafhopper (*Circulifer tenellus*) (Curlytop Program) on the east and west sides of the Salton Sea and Imperial Valley, is a threat because of its effects on the ant prey base for flat-tailed horned lizards. In the 1993 proposed rule, this threat was identified as having an impact mainly the East Mesa and Yuha Desert. Since the proposed rule, the threat from pesticide spraying has been reduced by a BLM Record of Decision on the Curlytop Program in 1997 and 2002 to prohibit pesticide spraying within MAs. The Curlytop Program or a similar program has not been conducted in the Arizona geographic area of the species range (Minch, Arizona Department of Food and Agriculture, pers. comm. 2002). However, the Curlytop Program persists outside MAs and its direct, and indirect effects on flat-tailed horned lizard populations outside the MAs are not known in any detail. Foreman (1997) stated that the effects of applying broad-spectrum insecticide to desert scrub communities over many years are potentially many and complex. Pesticide/herbicide drift from croplands also has the potential to adversely affect plant communities adjacent to agricultural areas (Foreman 1997).

The California Department of Food and Agriculture's Joint Environmental Assessment proposed that the Curlytop Program is likely to have no direct adverse effect to flat-tailed horned lizard populations, because studies (Hall and Clark 1982, Peterle and Giles 1964, and Giles 1970; all cited in CDFA 2000) have shown various lizard species have a high tolerance of malathion. However, indirect effects of the Curlytop Program to ant populations were noted as being a concern in the associated Biological Opinion (11430–2002–7FCC–2365.1). The Curlytop Program included monitoring of ant colonies in 1991. Malathion was found to negatively affect ant colonies temporarily; however, ant colonies rapidly recovered (Peterson *in litt.* 1991). The Biological Opinion estimated the program could affect up to 141,643 ha (350,000 ac) of flat-tailed horned lizard habitat outside the MAs; however, most treatments are localized.

Historically, treatments in the Imperial Valley are necessary 1 out of every 3 years, and the area treated may vary from 50 to a few thousand hectares (100 to several thousand acres) (CDFA 2000). The most recent treatments in the Imperial Valley were in 1998 and 1991, when 2,388 ha (5,900 ac) and 2,891 ha (7,143 ac), respectively, of flat-tailed horned lizard habitat were sprayed (CDFA 2000).

Because of the limited extent of area sprayed, the prohibition of spraying on MAs, the long intervals between applications, and the apparently temporary nature of the adverse affects, we do not believe the Curlytop Program to be a threat to the species throughout all or a significant portion of its range to the extent that the flat-tailed horned lizard would be likely to become in danger of extinction in the foreseeable future. However, because the study conducted by CDFA (mentioned earlier) was cursory, we recommend further monitoring of ant colonies and flat-tailed horned lizard populations in treated and adjacent areas.

The potential adverse impacts associated with drought were mentioned in the 1993 proposed rule. The threat that localized areas may experience long-term drought resulting in decreased local flat-tailed horned lizard populations still exists.

In our 1993 proposal to list the flat-tailed horned lizard as threatened, we identified numerous potential threats to the species and its habitat as the rationale for believing that the listing of the flat-tailed horned lizard was warranted. In this withdrawal, we have spoken directly to many of the threats discussed in our 1993 proposal in addition to other information that has become available since the publication of that proposal. We did not, however, speak directly to all threats because we believe, based on our review of currently available and credible information, that the threats not directly discussed here no longer pose a significant threat to the species and/or its habitat individually or in combination such that the species warrants listing under the Act.

Finding

The species was proposed as threatened in 1993 because much of the habitat of this species was reported to have been lost, fragmented, or degraded

by human use; and relative densities were reported to have declined in at least one of five optimal habitat areas. Much of the species' habitat has been lost, fragmented, or degraded, but available data concerning population abundance, trends, and threats do not indicate that because of this habitat loss and degradation the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

The information on population trends presented in the 1993 proposed rule was derived in part from scat count data collected between 1979 and 1991. We no longer consider the use of these scat counts reliable for this purpose, as previously discussed in this rule. Therefore, we do not consider scat counts useful or reliable indicators of population abundance. Currently available data do not suggest that flat-tailed horned lizard populations are declining in any of the geographic areas.

On the basis of the analysis of the five factors for the four different geographic areas in which the flat-tailed horned lizard occurs in the U.S., we conclude that the species is in danger of extirpation within the Coachella Valley, because of the large amount of habitat loss, the drastic curtailment of its range, a high degree of fragmentation of remaining habitat, and the threat of habitat loss in the foreseeable future.

While we have determined that the population of flat-tailed horned lizards in the Coachella Valley is endangered with extinction within the foreseeable future, we have concluded that the current distribution of the flat-tailed horned lizard in the Coachella Valley does not constitute a significant portion of the species' range. We have made this determination based on the following: (1) Small extent of flat-tailed horned lizard habitat in the Coachella Valley relative to the overall range of the species (approximately 3 percent of the range in the U.S., and roughly 1 percent of the species range overall, including Mexico); and (2) high level of habitat fragmentation. In addition, current scientific evidence does not suggest that the Coachella Valley population is genetically, behaviorally, or ecologically unique; nor does it appear to be a large population of flat-tailed horned lizards or contribute individuals to other geographic areas through emigration.

Currently, the only geographic areas that have relatively large amounts of flat-tailed horned lizard habitat on private lands are the Coachella Valley and the west side of Salton Sea/Imperial Valley. The Coachella Valley is discussed above. Currently available information does not suggest that development of private lands on the west side of Salton Sea/Imperial Valley poses a threat in the foreseeable future. The only towns in this geographic area are Borrego Springs, Ocotillo, Ocotillo Wells, and Salton City. The largest of these towns is Borrego Springs with a population of approximately 3,000 people. It is likely the size of these towns will not change significantly in the foreseeable future. Therefore, we conclude that the threat of development of private lands in areas other than the Coachella Valley is not significant enough to endanger the species within the foreseeable future throughout a significant portion of its range.

In addition, currently available data do not suggest that the flat-tailed horned lizard is likely to become an endangered species within the foreseeable future on the west side of the Salton Sea/Imperial Valley and east side of Imperial Valley. The primary potential threat to the flat-tailed horned lizard identified for these areas is OHV use. As discussed under Factor A in the "Summary of Factors Affecting the Species" section, we believe the available studies do not collectively show that OHV activity causes declines in flat-tailed horned lizard populations, or that adverse OHV impacts pose a significant threat to these populations.

We conclude the Arizona population is not likely to become endangered within the foreseeable future, because of the relatively low level of OHV activity in this geographic area and the low degree of threats from development due to the low percentage of lands in private ownership.

Following our above analysis and discussion, we have determined that the action of listing the flat-tailed horned lizard as threatened throughout its range as proposed in 1993 is not warranted. We have made this determination because the threats to the species, as identified in the proposed rule, are not as significant as earlier believed, and current available data do not indicate that the threats to the species and its habitat are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range. Consequently, we withdraw our 1993 proposal to list the flat-tailed horned lizard as threatened throughout its range.

References Cited

A complete list of all references cited is available at the Carlsbad Fish and Wildlife Office (see **ADDRESSES** above).

Author

The primary author of this document is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** above).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 24, 2002.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–19 Filed 1–2–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 68, No. 2
Friday, January 3, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

McNally Fire/Sherman Pass Restoration Project

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of agriculture, forest Service is preparing an environmental impact statement (EIS) to address the impacts of the McNally Fire. In July and August of 2002, the Sequoia National Forest experienced the largest wildfire in its history. The Sequoia National Forest proposes to begin long-term ecological restoration on portions the fire damaged areas on the Cannell Meadow Ranger District that are outside of inventoried roadless areas. The McNally Fire/Sherman Pass Restoration Project would implement restoration measures on those watersheds containing conifer habitats that are outside the roadless areas and that burned with a moderate to high severity leading to heavy tree mortality. The fire produced adverse effects to forest resources such as soils, riparian areas, and wildlife habitat. The fire also killed thousands of trees that if left untreated will contribute to high loading over time and re-create high risks for another catastrophic fire. The goal of the project is to move the burned areas toward the desired conditions described in the Sequoia National Forest Land and Resource Management Plan (Forest Plan) as amended by the Sierra Nevada Forest Plan Amendment (SNFPA).

DATES: The public is asked to submit any issues (points of concern, debate, dispute, or disagreement) regarding potential effects of the proposed action by February 12, 2003. The draft EIS is expected to be available for public comment in August 2003 and the final EIS is expected to be published in November 2003.

ADDRESSES: Send written comments to: McNally Fire/Sherman Pass Restoration Project USDA Forest Service, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257.

FOR FURTHER INFORMATION CONTACT: Tom Simonson, Ecosystem Manager, Sequoia National Forest, at the Address listed above. The phone number is (559) 784–1500.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

In light of desired conditions specified in our Forest Plan and the existing conditions within the project area outlined above, there is an immediate need to:

1. Re-establish burned conifer stands to provide important habitat for such old forest species as the spotted owl, fisher, marten, and goshawk within 250 years.

2. Restore ground cover to soils left unprotected by the fire in order to minimize erosion in the short term, to protect from catastrophic fires and to replace organic material over the long term,

3. Reduce existing fuels to 10–15 tons per acre in order to reduce the risk of another stand-replacing fire which would damage recovering habitats and riparian condition, thereby setting back the clock on development of old forest habitat and riparian restoration.

Proposed Action

This project proposes to restore approximately 6,000 acres of conifer habitat and riparian areas with a combination of treatment methods. Within these 6,000 acres, approximately 1,600 acres are within Riparian Conservation Areas (RCA). All the areas proposed for treatment are to be managed as either RCAs or Old Forest Emphasis (OFE) areas following direction in the Forest Plan as amended.

Treatments that would be applied in a specific area depend upon the specific restoration need, the slope of the terrain, the degree of confer mortality, and the land management allocation. Where possible, dead trees that have commercial value and that are not needed to meet resource objectives would be removed from the site through a commercial timber sale, as fuelwood, or as other products. This commercial component is important both to ensure viability of the operation and to generate funds to finance related restoration activities within the project area.

Felling of dead trees across the contour of the slope is proposed to stabilize sediment. Reforestation with conifers is proposed to re-establish habitats occupied by late seral species prior to the fire and in order to link together suitable remnant habitats and restore large expanses of old forest habitat. Large-diameter snags and logs will be retained in sufficient quantity to maintain legacy structures for both the late-seral species and their prey. Vegetation control by hand removal is proposed during the first five years after planting to help ensure survival of planted trees.

Riparian Conservation Areas (RCA) would also be treated to restore riparian values by re-establishing vegetation, reducing excessive fuel loadings, stabilizing stream channels and sediment, and improving ground cover conditions. Contour felling of dead trees is proposed to stabilize sediment. Planting of native plants such as conifers, willows, and alders is proposed to re-establish the riparian corridor.

Responsible Official

The responsible official is Forest Supervisor Arthur L. Gaffrey, Sequoia National Forest, 900 West Grand Ave., Porterville, California 93257.

Comment Requested

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes that, at this early stage, it is very important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and

Wisconsin Heritages, Inc. v. *Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that persons interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

Dated: December 23, 2002.

Arthur L. Gaffrey,

Forest Supervisor, Sequoia National Forest, USDA, Forest Service.

[FR Doc. 03–1 Filed 1–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayto, Oregon on Monday, January 13, 2003. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. Tentative agenda items include the following topics: Discuss project work plans and timelines, continue developing monitoring and transportation plans, and give update on management plan appeal status.

A direct public comment period is tentatively scheduled to begin at 8 p.m. Time alloted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to January 13 meeting by sending them to Designated Federal Official Rodney Stewart at the address given below.

FOR FURTHER INFORMATION CONTACT: For more informqation regarding this meeting, contact Designated Federal Official Rodney Steward; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97630; (505) 853–3366.

Dated: December 24, 2002.

Y. Robert Iwamoto,

Deputy Forest Supervisor.

[FR Doc. 03–18 Filed 1–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on January 13, February 3, March 3, and April 7, 2003 at 6:30 p.m. in Libby, Montana for business meetings. The meetings are open to the public.

DATES: January 13, February 3, March 3, and April 7, 2003.

ADDRESSES: The meetings will be held at the Kootenai National Forest Supervisor's Office, located at 1101 U.S. Highway 2 West, Libby, MT.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include status of approved projects, accepting project proposals for consideration and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Intertake based in Kalispell, MT.

Dated: December 23, 2002.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 03–32 Filed 1–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of Meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold meetings on: January 10, 2003, in Greenville, California; February 21, 2003, in Portola, California; and a third on March 7, 2003, at a location to be announced at a later date. The purpose of the January meeting will be to discuss the Cycle 3 funding process and to review the progress of Cycle 1 projects under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000. The purpose of the February meeting will be to select Cycle 2 projects for recommendation to the Plumas National Forest Supervisor for funding consideration, while the meeting in March will be to review and discuss the Forest Service approved Cycle 2 projects.

DATES AND ADDRESSES: The January 10 meeting will take place from 9 a.m.–1:30 p.m., at the Catholic Church Social Hall, 209 Jesse Street, Greenville, California. The February 21 meeting will take place from 9 a.m.–4 p.m., at the Eastern Plumas Health Care Educational building, 500 First Avenue, Portola, California, The March 7 meeting will start at 9 a.m., at a location to be announced at a later date.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA, 95971; (530) 283–7850; or by E-MAIL *eataylor@fs.fed.us.* Final agendas are posted one week prior to the meeting on the Internet at: *http://www.fs.r5.fs.fed.us/pay2states/plumas.* Prior meeting minutes and agendas are available on the same site.

SUPPLEMENTARY INFORMATION: Agenda items for the January 10 meeting include: (1) Forest Service update regarding RAC general administration, (2) Review Cycle 1 project accomplishments to date; (3) Consider

and make decision on Cycle 3 funding cycle; and, (4) Future meeting schedule/logistics/agenda.

The agenda for the February 21 meeting will focus on the review and selection of Cycle 2 projects for recommendation to the Plumas National Forest Supervisor for funding consideration. General RAC administration and future meeting logistics will also be included.

The agenda for the March meeting will include a review and discussion with the Forest Service regarding the approved Cycle 2 projects, along with other items to be determined at the February meeting. The meetings are open to the public and individuals may address the Committee after being recognized by the Chair.

Dated: December 26, 2002.

Robert G. Macwhorter,

Deputy Forest Supervisor.

[FR Doc. 03–44 Filed 1–2–03; 8:45 am]

BILLING CODE 0511–02–M

ARCTIC RESEARCH COMMISSION

Notice of Meeting

December 19, 2002.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 63rd Meeting in Arlington, VA on January 27 and 28, 2003. The Business Session open to the public will convene at 9 a.m. Monday, January 27, in the Agenda items include:

(1) Call to order and approval of the Agenda.

92) Approval of the Minutes of the 62nd Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will reconvene at 9 a.m. Tuesday, January 28. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, (703) 525–0111 or TDD (703) 306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 03–73 Filed 1–2–03; 8:45 am]

BILLING CODE 7555–01–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

Agency: Commission on Civil Rights.

Date and Time: Friday, January 10, 2003, 8:30 a.m.

Place: Hyatt Regency Albuquerque, 330 Tijeras Avenue, NW., Albuquerque, NM 87102.

Status:

Agenda

I. Approval of Agenda.
II. Approval of Minutes of December 13, 2002 Meeting.
III. Announcements.
IV. Staff Director's Report.
V. State Advisory Committee Appointments for Connecticut.
VI. Program Planning.
VII. Presentations from State Advisory Committee Chairs from the Rocky Mountain Region.
VIII. Presentations from Individual and Organizational Representatives on Civil Rights Issues Facing New Mexico.
IX. Future Agenda Items.

Contact Person for Further Information: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–33151 Filed 12–31–02; 2:36 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On September 27, 2002, the Department published in the **Federal Register** the preliminary results of this new shipper review of certain forged stainless steel flanges from India (67 FR 61069). This review covers one manufacturer/exporter, Metal Forgings Pvt. Ltd. (Metal Forgings) and sales of the subject merchandise to the United States during the period January 1, 2001 through July 31, 2001. The final results do not differ from the preliminary results of review, in which we found that the respondent made no sales in the United States at prices below normal value.

EFFECTIVE DATE: January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–5222 or (202) 482–0649, respectively

SUPPLEMENTARY INFORMATION:

Background

On September 27, 2002, the Department published in the **Federal Register** the preliminary results of this new shipper review of certain forged stainless steel flanges from India (67 FR 61069). We invited interested parties to comment on our preliminary results of review. We received no comments. The Department has now completed the new shipper review in accordance with section 751 of the Tariff Act.

Scope of Review

The products covered by this order are certain forged stainless steel flanges both finished and not-finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connections, threaded, used for threaded line connections, slip-on and lap joint, used with stub ends/butt-weld line connections, socket weld, used to fit pipe into a machined recession, and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheading 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The

written description of the scope of this order remains dispositive.

Final Results of the Review

No changes to our analysis in the preliminary results are warranted for purposes of these final results. Accordingly, the weighted-average dumping margin for Metal Forgings for the period January 1, 2001 through July 31, 2001, is as follows:

Manufacturer/exporter	Margin
Metal Forgings Pvt. Ltd	0.00%

Cash Deposit Requirements

Bonding is no longer permitted to fulfill security requirements for shipments from Metal Forgings of certain forged stainless steel flanges from India entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of new shipper review. The following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise entered or withdrawn from warehouse for consumption on or after the publication date as provided for by section 751(a)(2)(C) of the Tariff Act:

- For subject merchandise manufactured and exported by Metal Forgings, no cash deposit is required. In accordance with the practice established in *Fresh Garlic From The People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) and *Notice of Preliminary Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China*, 67 FR 52442 (August 12, 2002), the new shipper cash deposit rate will only apply to the merchandise subject to this new shipper review, *i.e.*, merchandise produced and exported by Metal Forgings.
- For subject merchandise exported by Metal Forgings but not manufactured by Metal Forgings, the cash-deposit rate will be the rate applicable to the manufacturer.
- If the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer in the most recent segment of these proceedings in which that manufacturer participated.
- Finally, if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 162.14 percent, the all others rate established in the less-than-fair-value investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act, and 19 CFR 351.214.

Dated: December 18, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–78 Filed 1–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–803]

Heavy Forged Hand Tools from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Thomas Futtner, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3936 and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2002, the Department of Commerce (the Department) published a notice of opportunity to request administrative reviews of the antidumping duty orders on heavy forged hand tools from the People's Republic of China covering the period February 1, 2001 through January 31, 2002 (67 FR 4945). On February 28, 2002, Tianjin Machinery Import & Export Corporation (TMC), Shandong Machinery Import & Export Corporation (SMC), and Liaoning Machinery Import & Export Corporation (LMC) requested administrative reviews in the above-referenced proceedings. Specifically, TMC requested reviews of the hammers/sledges, bars/wedges, picks/mattocks and axes/adzes orders, SMC requested reviews of the hammers/sledges, bars/wedges, picks/mattocks orders, and LMC requested a review of the bars/wedges order. Based on these requests, the Department initiated the current administrative reviews of TMC, SMC and LMC under the requested orders on March 20, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 14696 (March 27, 2002). The petitioner, Ames True Temper, did not submit any requests for reviews of these orders.

On May 3, 2002, LMC withdrew its request for review of the bars/wedges order. On May 10, 2002, TMC withdrew its requests for review of the hammers/sledges and picks/mattocks orders. On June 7, 2002, SMC withdrew its request for review under the picks/mattocks order. Additionally, on September 26, 2002, TMC withdrew its requests for review of the axes/adzes order and bars/wedges order, and SMC withdrew its requests for review of the bars/wedges and hammers/sledges orders.

On October 9, 2002, the petitioner filed comments in opposition to these withdrawal requests made on September 26, 2002.

Rescission of Review

According to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if the party that requested the review withdraws its requests within 90 days of the date of publication of the notice of initiation of such review, or at a later date if the Department determines that such an extended time is reasonable. TMC's withdrawal requests for the reviews of

the axes/adzes and bars/wedges orders, and SMC's withdrawal requests for reviews of the bars/wedges and hammers/sledges orders were submitted after the 90 day deadline provided by 19 CFR 351.213(d)(1). We note, however, section 351.213(d)(1) permits the Department to extend the deadline if "it is reasonable to do so." The Department has determined that a deadline extension is reasonable in the instant review. See Memorandum from Holly Kuga to Bernard T. Carreau, dated December 24, 2002, on file in the Central Records Unit (CRU) located in B-099 of the main Department of Commerce building. Therefore, the Department is rescinding the current administrative reviews of the orders on heavy forged hand tools with respect to TMC, SMC and LMC covering the period, February 1, 2001, through January 31, 2002 .

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 24, 2002.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–77 Filed 1–2–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–507–502]

Notice of Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results in the antidumping duty new shipper review of certain in-shell raw pistachios from Iran.

SUMMARY: On August 6, 2002, the Department of Commerce (Department) published the preliminary results of this new shipper review of the antidumping duty order on certain in-shell raw pistachios from Iran. *See Certain In-Shell Raw Pistachios from Iran: Preliminary Results of Antidumping Duty New Shipper Review*, 67 FR 50863 (August 6, 2002) (*Preliminary Results*). This review covers one exporter, Tehran Negah Nima Trading Company, Inc. (Nima). The period of review (POR) is July 1, 2000, through June 30, 2001. Comments were submitted by the parties and we have made changes to the margin calculation. The final weighted average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Donna Kinsella at (202) 482–1398, or (202) 482–0194, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the *Preliminary Results*, the following events have occurred. On October 17, 2002, the Department postponed the final results of the review until no later than 150 days from the date of issuance of the preliminary results. *See Administrative Review of Certain In-Shell Raw Pistachios From Iran: Extension of Time Limit for Final Results of New Shipper Review*, 67 FR 65337 (October 24, 2002). A request for a public hearing was received by the Department from petitioner (California Pistachio Commission) on August 13, 2002. On August 14, 2002, respondent submitted information in response to a supplemental cost of production questionnaire. On September 5, 2002, respondent filed its case brief. On September 6, 2002, petitioner and Western Pistachio Association (WPA), an interested party, filed case briefs. On September 12, 2002, the Department rejected both petitioner's and WPA's case briefs. On September 13, 2002, the Department received comments from petitioner regarding respondent's August 14, 2002 submission. On September 18, 2002, petitioner and WPA resubmitted their case briefs. On September 30, 2002, respondent submitted a supplemental case and rebuttal brief. On October 9, 2002, the Department rejected respondents' supplemental and rebuttal case brief. Respondent resubmitted a supplemental case brief and a rebuttal case brief on October 15, 2002. On October 17, 2002, the Department rejected respondents' October 15, 2002, supplemental case brief. On October 21, 2002, respondent submitted a revised supplemental case brief. On October 28, 2002, petitioner and Cal Pure Pistachios, Inc. (Cal Pure), an interested party, submitted rebuttal briefs. On October 31, 2002, the Department rejected petitioners' rebuttal brief. On November 1, 2002, petitioner submitted a revised rebuttal brief. On December 9, 2002, petitioner, Cal Pure and respondent submitted comments on the Department's December 4, 2002, verification reports in the new shipper reviews, C–507–501 and C–507–601, copies of which were placed on the record of this proceeding. The public hearing in this proceeding was held on December 12, 2002.

Scope of Review

Imports covered by this review are raw, in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meats, from Iran. The merchandise under review is currently classifiable under item 0802.50.20.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Facts Available

Section 776(a) of the Tariff Act of 1930 (the Act) provides that "if any interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified subject to sections 782(d), and (e) facts otherwise available in reaching the applicable determination. In this review, respondent failed to provide requested information (*i.e.*, cost information for all production facilities). In failing to disclose the existence of a production facility, respondent did not provide information that had been requested, leaving the Department unable to perform a proper analysis of the cost of producing the subject merchandise. Because the failure to provide the cost information was revealed five weeks prior to the final results, time constraints do not permit the Department to request the necessary information. Finally, as the absence from the record of complete cost information renders the reported per-unit costs unreliable, we conclude that, pursuant to section 776(a) of the Act, use of partial use of facts otherwise available is appropriate.

The statute also requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d)

of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. In this case, the Department requested that the producer provide the weighted-average cost of all facilities producing the product, and to report all affiliated producers. In responding to our requests for information, contrary to these instructions, respondent failed to disclose the additional production facility. Because disclosure of the existence of the additional production facility did not occur until verification in the concurrent CVD proceeding, approximately five weeks prior to the deadline for these final results and fourteen months after this review began, we had no opportunity to inform respondent of any deficiency in its responses or to request additional information. Prior to the disclosure at verification, the Department appropriately relied upon respondent's assertions that it had disclosed all relevant cost information.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so. In this proceeding, the proper, complete cost data was not provided, which renders the costs as reported so incomplete and unreliable as to be unusable.

Therefore, in these final results, the Department will resort to the partial use of facts available as the respondent's reported costs cannot be relied upon, in accordance with section 776(a)(2)(A) of the Act. In doing so, the Department must then determine whether the use of an adverse inference in applying facts available is warranted under section 776(b) of the Act. In the instant review, we find that an adverse inference is warranted given that the respondent withheld critical information with respect to the existence of the additional production facility. This omission renders the reported cost data so incomplete as to prevent the Department from determining the proper basis for constructed value (CV). Moreover, the significance of this omission is seriously compounded by the fact that normal value in this review is based entirely on CV. For further discussion of application of adverse facts available see comment 1 of the "Issues and Decision Memorandum" (Issues and Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Susan H. Kuhbach, Acting Assistant Secretary for Import Administration, dated December 26, 2002 and the Memorandum to Neal M. Halper from Gina K. Lee, RE: Constructed Value Adjustments for Final Results, dated December 26, 2002.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this new shipper review are addressed in the Issues and Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Susan H. Kuhbach, Acting Assistant Secretary for Import Administration, dated December 26, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Issues and Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/summary/list.htm. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes since the Preliminary Determination

To determine whether sales of certain in-shell raw pistachios from Iran to the United States were made at less than normal value, we compared export price to normal value. Based on our analysis of comments received, we have made certain changes in the margin calculation. See Analysis Memorandum dated December 26, 2002.

Final Results of Review

We determine that the following percentage weighted-average margin exists for the period July 1, 2000, through June 30, 2001:

Exporter/Manufacturer	Weighted-Average Margin
Tehran Negah Nima Trading Company, Inc. (Nima)	144.05 percent

Assessment

The Department shall determine, and U.S. Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b) (2002), we have calculated exporter/importer-specific assessment rates. We calculated importer-specific duty assessment rates on a unit value per kilogram basis and then divided this sum by the entered value for that sale. Based on our determination in this review, we will instruct Customs to assess antidumping duties on the merchandise subject to review. The Department is currently conducting a new shipper review of the countervailing duty order on raw in-shell pistachios from Iran involving Nima. The Department will adjust both the antidumping duty assessment rate and cash deposit rate for Nima/Maghsoudi Farms to offset any export subsidies found at the conclusion of the countervailing new shipper review.

Cash Deposit Requirements

Bonding is no longer permitted to fulfill security requirements for shipments from Nima of certain in-shell raw pistachios from Iran entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of new shipper review. As Nima is the exporter but not the producer of subject merchandise, the Department's final results will apply to subject merchandise exported by Nima and produced by Maghsoudi Farms. *See* 19 CFR 351.107(b). Therefore, the following deposit requirements will be effective upon publication of this notice of final results of this new shipper review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(B) of the Act: (1) For the merchandise exported by Tehran Negah Nima Trading Company; Inc. (Nima) and produced by Maghsoudi Farms, the cash deposit rate will be 144.05 percent; (2) for subject merchandise exported by Nima but not produced by Maghsoudi Farms, moreover, the cash deposit rate will be the "all others" rate established in the original less than fair value (LTFV) investigation. *See* 51 FR 25922 (July 17, 1986); (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV

investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor manufacturer is a firm covered in this review or the original investigation, the cash deposit rate will continue to be the "all others" rate of 184.28 percent established in the LTFV investigation. This "all others" rate reflects the amount of export subsidies found in the final countervailing duty determination in the investigation subtracted from the dumping margin found in the less than fair value determination. *See* 51 FR 8344 (March 11, 1986). The Department will adjust the cash deposit rate for Nima/Maghsoudi Farms to offset any export subsidies found at the conclusion of the countervailing new shipper review. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 26, 2002.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memo

Comments and Responses

1. Adverse Facts Available
2. Bona Fide Sale
3. Verification
4. Exchange Rate
5. Home Market Selling Expenses
6. Disclosure at CVD Verification of Additional Farm
7. Fallah Sales/Expense Data
8. Other Cost Issues
9. Preferential Treatment
10. Combination Rate

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020325069–2311–02]

Request for Proposals for FY 2003—NOAA Educational Partnership Program With Minority Serving Institutions: Environmental Entrepreneurship Program

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of request for preliminary proposals and subsequent full proposals.

SUMMARY: The Office of Oceanic and Atmospheric Research (OAR) of the National Oceanic and Atmospheric Administration (NOAA), United States Department of Commerce is soliciting preliminary proposals and subsequent full proposals for the NOAA Educational Partnership Program with Minority Serving Institutions (EPP/MSI): Environmental Entrepreneurship Program: For the purposes of this program, Environmental Entrepreneurship is defined as an education and training mechanism to engage students in applyng the necessary skills, tools, methods and technologies is sciences directly related to NOAA's mission. This includes fostering educational opportunities in coastal, oceanic, atmospheric, environmental, and remote sensing sciences coupled with training in economics, marketing, product development, and services to create jobs, businesses and economic development opportunities. The Environmental Entrpreneurship Program promotes partnerships with MSIs, NOAA and the public-private sector. The goal of the program is to strengthen the capacity of Minority Serving Institutions to foster student careers, entrepreneurship opportunities and advanced academic study in the sciences directly related to NOAA.

In Fiscal Year 2003, NOAA expects to make available a total of $3,300,000 (subject to congressional appropriations) to support the EPP/MSI Environmental Entrepreneurship Program. The program will provide funds, on a competitive basis, to support programs and projects at eligible Minority Serving Institutions, for a minimum of one year and a maximum of three years duration, in the following two categories:

(1) Program Development and Enhancement—approximately six grants or cooperative agreement awards, each up to a total of $250,000 for a period of one, two or three years to support the capacity of MSIs in the development and enhancement of entrepreneurship training and educational opportunities for students directly related to the NOAA sciences.

(2) Environmental Demonstration Projects—approximately six grants or cooperative agreement awards, each up to a total of $300,000 for a period of one, two or three years to support MSI students and faculty in hands-on demonstration projects focused on applying environmentally sound methods and technologies to address real world environmental issues in local communities directly related to the NOAA sciences.

DATES: Preliminary Proposals must be received by 5 p.m. (Eastern Standard Time) on February 17, 2003. After evaluation by the National Oceanic and Atmospheric Administration, acceptable proposals will be recommended to prepare full proposals, which must be received by 5 p.m. (Eastern Daylight Savings Time) on April 17, 2003. (See Section VI. Instructions for Application: Timetable). Facsimile transmissions and electronic mail submission of proposals will not be accepted.

ADDRESSES: Preliminary proposals and full proposals must be submitted to:

Jewel G. Linzey, Program Manager, Environmental Entrepreneurship Program, National Oceanic and Atmospheric Administration, Educational Partnership Program with Minority Serving Institutions, Room 10725, SSMC III, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jewel G. Linzey, NOAA. *EPP/MSI:* Environmental Entrepreneurship Program, National Oceanic and Atmospheric Administration, Room 10725, SSMC III, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–9437 x 118; e-mail: *jewel.griffin-linzey@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Program Authority:

Authority: 15 U.S.C. 1540. Catalog of Federal Assistance Number: 11.481—Educational Partnership Program with Minority Serving Institutions:

II. Program Description

Background

NOAA provides science, technology and services to describe and predict changes in the Earth's environment, and conserve and manage wisely the Nation's coastal and marine resources to ensure sustainable economic

opportunities. The agency has made a commitment to expand and strengthen its partnerships with Minority Serving Institutions that will serve as a means to meet its principal goals of environmental stewardship, assessment, and prediction. In accordance with the policy of the U.S. Department of Commerce and NOAA to foster environment education and economic sustainability and the agency's mission, the purposes of the NOAA EPP/MSI Environmental Entrepreneurship Program are to support:

(1) *Educational and Training Opportunities.* To prepare students with the necessary compliment of educational opportunities, business acumen and technical skills that will enable them to pursue careers, entrepreneurship opportunities and advanced academic study in sciences directly related to NOAA's mission.

(2) *Capacity Building.* To develop or enhance the capacity of academic programs at MSIs, directly related to the NOAA sciences, to ensure they are effective pipelines through which students and faculty can gain the necessary experience as a baseline for both educational and training opportunities.

(3) *Partnerships.* To facilitate or strengthen MSI partnerships between NOAA programs, laboratories and facilities, community colleges and universities, industry, governments (state, local, commonwealth, territorial and tribal), and organizations (public, nonprofit, or private) that foster cooperative educational and training opportunities for students and facilities.

(4) *Community Economic Development.* To support MSIs and partners in preparing students with the necessary knowledge, skills, tools and technologies that may be applied outside the classroom to create minority business enterprise and foster environmentally sustainable and economically viable local communities.

Rationale

The recruitment of minorities, particularly underrepresented minorities, in the fields of science and engineering, lags behind national expectations. Statistics from the National Science Foundation (NSF) show that of the 17, 347 doctoral degrees granted in NOAA-related sciences in 2000 (the most recent data available as of July 2002), 1.9 percent were granted of African Americans, 2.3 percent were granted to Hispanics, and 0.3 percent were granted to American Indians and Alaska Natives. NOAA statistics also indicate that 3.8 percent of scientist and engineers employed by NOAA are African Americans, 1.8 percent are Hispanics, and .25 percent are American Indians and Alaska Natives. In contrast, these groups make up 26 percent of the U.S. population (African Americans, 12.3 percent, Hispanics, 12.5 percent, and American Indians and Alaska Natives, 1.2 percent). The quality and nature of academic experiences at each point of the educational pipeline are crucial to bringing more minorities into earth and environmental science and engineering fields. Bachelors, Masters and Doctoral degrees are the underpinnings of environmental science career achievement and employment.

NOAA EPP/MSI Environmental Entrepreneurship Program

The goal of the NOAA EPP/MSI Environmental Entrepreneurship Program is to strengthen the capacity of Minority Serving Institutions to foster student careers, entrepreneurship opportunities, and advanced academic study in sciences directly related to NOAA. Proposals must be firmly grounded in "environmental fields" directly related to NOAA's mission. The term "environmental fields" is defined as those environmental, natural sciences (i.e., biology, earth sciences), physical and social sciences (i.e., economics, anthropology, geography, and history), engineering, professional and technical fields that are directly related to NOAA's mission which is to "describe and predict changes in the Earth's environment, and conserve and manage wisely the Nation's coastal and marine resources." (See *http://www.noaa.gov/*)

Proposals should identify mechanisms to be employed that involve an interdisciplinary approach to enhancing MSIs capacity to foster student opportunities, interest in, and pursuit of careers, entrepreneurship and advanced study in the NOAA sciences.

Proposals will be accepted that address one of the following categories:

(i) Program Development and Enhancement—approximately six grants or cooperative agreement awards, each up to a total of $250,000 for a period of one, two or three years to support the capacity of MSIs in the development and enhancement of entrepreneurship training and educational opportunities for students directly related to the NOAA sciences. Developing and enhancing outreach, education, applied research and training capabilities at MSIs is intended to expand opportunities for students to develop the technical skills, entrepreneurial training, and experiences needed to pursue careers, entrepreneurship opportunities and advanced academic study in NOAA-related environmental fields. Activities funded under this element should include an interdisciplinary approach to developing or enhancing: coastal, oceanic, atmospheric, environmental and remote sensing science courses coupled with entrepreneurship training through curriculum enhancement in economics, marketing, product development and services, practical learning experiences for students, applied research or hands-on training. These activities a re designed to foster student careers, entrepreneurship opportunities and advanced academic study directly related to NOAA's mission.

(ii) Environmental Demonstration Projects—approximately six grants or cooperative agreement awards, each up to a total of $300,000 for a period of one, two or three years, to support the engagement of MSI students and faculty in hands-on demonstration projects that apply environmentally sound methods and technologies to address real world environmental issues in local communities that directly relate to the NOAA sciences. Field demonstration projects should encourage partnerships that enable students to address challenging environmental issues such as, enhancing and restoring coastal and estuarine habitats, preventing marine pollution, reducing coastal hazards, assessing marine protected areas, protecting coral reefs, reducing the spread of invasive species, restoring fisheries and fisheries habitat, developing and expanding aquaculture, planning community waterfront revitalization, improving the prediction of weather and climate phenomena, or employing remotely sensed data and information systems to support environmental monitoring and prediction. The demonstration projects should involve students in collaborative field projects that will empower them to pursue careers, entrepreneurship opportunities and advanced academic study. Projects should train students with the necessary knowledge, skills, tools and technology that may be applied outside the classroom to create minority business enterprise and promote environmental sustainability and economic viability in their local communities. Projects should engage students in applied research to understand the nature and extent of environmental degradation within communities and to test and monitor methods for preventing, controlling, and reducing the degradation of natural environments.

Partnerships

Strong linkages or collaborations with NOAA programs, laboratories and facilities are required. Innovative approaches to training students are sought that take maximum advantage of the synergies and partnerships with other universities, community colleges, research institutions, industry, government and nongovernmental agencies, and other organizations (public, nonprofit, or private). Partnerships should engage students in applied research projects, internships, entrepreneurial and hands-on training experiences, mentored by academic and industry professionals, that will facilitate the entry of MSI students into careers, advanced study and environmental entrepreneurship directly related to NOAA's mission. There is no requirement for a MSI or partner to provide matching funds. NOAA retains the right to allocate funds differently than indicated above if the number of proposals received is not balanced across these two categories, or the proposal quality does not warrant the stated allocation. In such cases, funds may be shifted between the two funding categories.

Proposals

Preliminary Proposals must not exceed five pages and must clearly articulate how the MSI and partners will foster student careers, entrepreneurship opportunities and advanced academic study directly related to NOAA sciences.

Full Proposals must be submitted by an eligible MSI (see Section III. Eligibility) and must submit a rigorous work plan, a strong rationale, and clearly identified and achievable goals. Proposals must identify strong linkages or collaborations with NOAA programs, laboratories and facilities. Proposals should emphasize innovative approaches to encouraging, preparing, and graduating MSI students for environmental entrepreneurial careers and opportunities. Direct student support must be at least twenty-five percent [25%] of the total budget. Projects must contain multiple-year participation by students and include effective use of role models and mentors from academia and partner organizations. A plan for evaluating the outcome of the project must be included. Proposals must identify the Principal Investigator and Co-Principal Investigator(s) who will be significantly involved in carrying out the proposal. At least one Co-Principal Investigator must be identified who is experienced enough to assume the responsibility of carrying out the proposal in the absence of the Principal Investigator.

III. Eligibility

Minority Serving Institutions eligible to submit proposals include institutions of higher education identified by the Department of Education as:

(i) Historically Black Colleges and Universities,
(ii) Hispanic-Serving Institutions,
(iii) Tribal Colleges and Universities,
(iv) Alaska Native or Native Hawaiian Serving Institutions

on the most recent "2002 United States Department of Education Accredited Post-Secondary Minority Institutions" list: *http://www.ed.gov/offices/OCR/minorityinst.html*

IV. Evaluation Criteria

The evaluation criteria for proposals submitted under the NOAA EPP/MSI Environmental Entrepreneurship Program are weighted as follows:

(1) *Technical and Educational Merit (40 percent):* The degree to which the activity will advance or transfer knowledge and understanding of environmental fields, education, or professional fields directly related to NOAA's mission; the qualifications and capability of the MSI (including sufficient time for the Principal Investigator, Co-Principal Investigator and other pertinent individuals and partners) to conduct the project, the ability to involve a significant number of individuals from the MSI's student population successfully in the project (including at least 25% in direct student support), and multi-year participation by students that includes the effective use of role models and mentors from academia and partner organizations; the degree to which the activity explores creative and original concepts; the overall design and organizations of the planned activity; the strength of proposed partnerships between the MSI, NOAA and the public-private sector to help meet the goals of the project (including sufficient travel funds directed for the Principal Investigator to participate in the NOAA Educational Partnership Program annual meeting).

(2) *Impact of Proposed Project (60 percent):* The contributions the project will make to enhancing the capability of the MSI to bring education, applied research or hands-on training opportunities to its student and faculty populations in the environmental fields directly related to NOAA's mission; the benefit accruing to the institution from participation in the NOAA EPP/MSI: Environmental Entrepreneurship Program; the degree to which the proposed activity develops mechanisms that will broaden and sustain the capacity of MSIs to prepare students for careers, advanced academic study and entrepreneurship opportunities in environmental fields directly related to NOAA's mission; the extent to which the proposed activity will enhance and improve outreach, education, training, and applied research at MSIs; and the adequacy of the plan for evaluating the outcome of the project. For environmental demonstration projects, the degree to which the project is expected to prevent, control, and reduce environmental degradation to communities.

V. Selection Procedures

Preliminary proposals will be reviewed by NOAA. NOAA will conduct a review to assess which preliminary proposals best meet the program goals and objectives and eligibility criteria (stated in Section IV). NOAA will make a determination of the preliminary proposals and recommend which preliminary proposals should be fully developed for evaluation. On the basis of these recommendations, the Director of the EPP/MSI program will advise proposers whether or not the submission of full proposal is recommended for consideration. Invitation to submit a full proposal does not constitute an indication that proposal will be funded. Preliminary proposals are required and must be submitted by the deadline prior to full proposal. A full proposal cannot be submitted if a preliminary proposal has not been submitted. Interested parties who submitted preliminary proposals in accordance with the procedure described in this notice may, if they wish, submit full proposals even if the Director of the EPP/MSI program does not encourage full proposal submission.

Full proposals submitted by April 17, 2003 will be reviewed by an independent peer review panel comprised of a broad representation of government, industry and academic experts. The panel members will rank proposals in accordance with the above evaluation criteria (Section IV). The panel members will provide individual evaluations on proposals, but there will be no consensus recommendation. The panel rankings and evaluations will be considered by NOAA in the final selection of proposals to be funded. NOAA may also consider programmatic or geographic balance and budget availability in the final selection of proposals, hence, awards may not necessarily be made to the highest-scored proposal.

Unsuccessful preliminary proposals and applications will be held in the program office for a period not to exceed three years. Unsuccessful applications will be notified and provided with feedback by e-mail to the Principal Investigator that may assist applicants in developing improved proposals in the future. Successful applications may be asked to modify objectives, work plans, budget levels, or project duration prior to final approval of financial assistance award. Financial Assistance awards may be a grant (e.g., whereby no substantial involvement is anticipated between NOAA and the recipient during the project performance) or cooperative agreement award that requires substantial involvement (e.g., significant collaboration, participation, or intervention by NOAA in the management of the project).

VI. Instructions for Application

Timetable

February 17, 2003—Preliminary Proposals due: Preliminary Proposals must be mailed (no attachments) to Jewel G. Linzey. Information contained should include a brief description of the scope of the work, the parties involved, and an estimated budget. Preliminary Proposals must not exceed five pages and must clearly articulate how the MSI and partners will foster student careers, entrepreneurship opportunities and advanced academic study directly related to NOAA sciences.

April 17, 2003—Full Proposals are due no later than 5 p.m. (Eastern Standard Time), April 17, 2003. (See Section VII. HOW TO SUBMIT for further details.). Facsimile transmissions and electronic mail submission of proposals will not be accepted.

May 2003—Applicants will be reviewed—Successful applicants may be asked to provide revised narratives and/or budgets.

July 1; 2003—Funds will be awarded through a grant or cooperative agreement with an expected start date July 1, 2003.

Full Proposal Guidelines

All full proposals must be typewritten on 8½ × 11 paper in 12-point font and may not exceed 20-pages. The 20 page limit includes signed title page, abstract, project description including all text and any tables and visual materials (such as charts, graphs, maps, photographs and other pictorial presentations), budget and budget justification and all standard application forms. The 20 page limitation does not include literature citation, current and pending support, curriculum vitae and letters of commitment. All information needed for review of the proposal is indicated below; no appendices are permitted.

The following information is included in the 20 page limitation:

(1) *Signed title page*: The title page must be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title with "NOAA EPP/MSI: Environmental Entrepreneurship Program" followed by either "Program Development and Enhancement" or "Environmental Demonstration Project," depending upon the type of financial assistance award application that is submitted. The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, fax number, e-mail and mailing address. The federal funding for each year of the project and total funding being requested must be listed.

(2) *Abstract*: It is critical that the abstract accurately describe the essential elements of the project being proposed. The abstract should include: 1. *Title*—Use the exact title as it appears in the application. 2. *Investigators*—List the names and affiliations of each investigator who will significantly contribute to the project. The Principal Investigator should be listed first followed by the Co-Principal Investigator that will assume the responsibility of carrying out the proposal in the absence of the Principal Investigator. 3. *Funding request* for each year of the project as well as total funding requested. 4. *Project Period*—Start and completion dates. Proposals should request a start date of July 1, 2003. 5. *Objectives, Methodology, and Rationale*—This should include a concise statement of the objectives of the project, the scientific or educational methodology to be used, and the rationale for the work proposed.

(3) *Project Description*

(a) *Introduction/Background/Justification:* How will the MSI foster student careers, entrepreneurship opportunities and advanced academic study directly related to the NOAA sciences? What is the problem or issue being addressed directly related to the NOAA sciences and what is its scientific, technical, educational, or socioeconomic importance to the region or nation?

(b) *Technical Plan:* What are the goals, objectives, and anticipated approach of the proposed project? While a detailed work plan is not expected, the proposal should present evidence that there has been thoughtful consideration of the approach to the problem under study. What capabilities do the partners possess that will benefit the project, faculty member and students?

(c) *Output/Anticipated Benefits:* What measures will be used to evaluate the outcome of the proposed project? Upon completion of the project, what are the anticipated benefits to the MSI, its students, NOAA and the environmental community?

(4) *Budget and Budget Justification:* Form SF424A Budget Information Non-Construction Programs and budget justification narrative are required. There should be an annual budget for each year of the project as well as a cumulative budget for the entire project. Subcontracts should include a separate budget justification page that itemizes all budget items in sufficient detail to enable reviewers to evaluate the appropriateness of the funding requested. The budget must include at least twenty-five percent [25%] directed to student support including travel to attend relevant conferences, site visits to NOAA programs, laboratories, facilities or other training experiences. The budget must include sufficient travel funds directed for the Principal Investigator to participate in the NOAA Educational Partnership Program annual meeting. (Please see the NOAA budget guidelines at *http://www.rdc.noaa.gov/~grants/BUDGTGUD.PDF*).

(5) *Standard Application Forms:* Proposals submitted in response to this solicitation must be complete and submitted in accordance with instructions in the standard NOAA Grants Application package. Applicants may obtain all required application forms through the NOAA internet site *http://www.rdc.noaa.gov/~grants/pdf* or from Ms. Arlene Simpson Porter, NOAA Grants Management Division, (301) 713–0926 ext. 152, *Arlene.S.Porter@noaa.gov*.

(a) *Standard Forms 424*. Application for Federal Assistance; SF424A Budget Information Non-Construction Programs; SF424B Assurances Non-Construction, (Rev 4–88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424 or Section 10, applicants should enter "11.481" for the CFDA Number and "NOAA Educational Partnership Program with Minority Serving Institutions" for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) *Primary Applicant Certifications.* All primary applicants must submit a completed Form CD–511,

"Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(i) *Non-Procurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) *Drug-Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) *Anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000; and

(iv) *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

(c) *Lower Tier Certifications.* Recipients shall require applicants/bidders for sub grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." ORM CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or sub recipient should be submitted to DOC in accordance with the instructions contained in the award document.

The following information is not included in the 20 page limitation:

(6) *Literature Citation:* Literature cited should be included here.

(7) *Current and Pending Support:* Applicants must provide information on all their current and pending Federal support for ongoing projects and proposals, including potential subsequent funding in the case of continuing grants. The proposed project and all other projects or activities using Federal assistance or that require a portion of time of the principal investigator or other senior personnel should be included. The relationship between the proposed project and these other projects should be described, and the number of person-months per year to be devoted to the projects must be stated.

(8) *Curriculum Vitae* two pages maximum per all Principal and Co-Principal Investigator(s) involved in carrying out the proposal.

(9) *Letters of commitment from partnering organizations.* Letters of commitment from partners must be included. The letters from partnering organizations should describe the type of commitment, identify key participants, and state their role in the project.

VII. How To Submit

The eligible MSI must submit three copies of the full proposal including all standard application forms (stated in Section VI, 8). Although investigators are not required to submit more than three copies of the proposal, the normal review process utilizes 12 copies. If investigators wish all reviewers to receive color materials submitted as part of the proposal, they should submit sufficient proposal copies for the full review process.

Full Proposals must be received no later than 5 p.m. (Eastern Daylight Savings Time) on April 17, 2003 to: Jewel G. Linzey, NOAA EPP/MIS: Environmental Entrepreneurship Program, National Oceanic and Atmospheric Administration, Room 10725, SSMC3, 1315 East-West Highway, Silver Spring, MD 20910. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

VIII. Other Requirements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreement contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** published on October 30, 2002 (66 FR 66109), is applicable to this solicitation.

For awards receiving funding for the collection or production of geospatial data (*e.g.*, GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906, Coordinating Geographic Data Acquisition and Access, The National Spatial Data Infrastructure, 59 FR 17671 (April 11, 1994). The award recipient shall document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center, and make that standardized documentation electronically accessible. The standard can be found at the following Internet Web site: *(http://www.fqdc.gov/standards/standards/html).*

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collections of information requirements subject to the Paperwork Reduction Act. Standard Forms 424, 424A, 424B and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 03–58 Filed 1–2–03; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021114275–2275–01]

Joint Hurricane Testbed (JHT) Opportunities for Transfer of Research and Technology Into Tropical Cyclone Analysis and Forecast Operations

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), is soliciting preapplications (Letters of Intent) under

the United States Weather Research Program (USWRP), established under section 108 of the NOAA Authorization Act of 1992 (15 U.S.C. 313 note), as governed by the USWRP Joint Hurricane Testbed (JHT). The JHT is operated by NOAA in cooperation with the National Aeronautics and Space Administration (NASA) and the United States Navy. This notice also provides guidelines for the submission of full proposals. This notice describes opportunities and application procedures for the transfer of relevant research and technology advances into tropical cyclone analysis and forecast operations. Eligible applicants include institutions of higher education, other non-profit, and commercial organizations, state, local and Indian tribal governments. This notice calls for researchers to submit proposals to test and evaluate, and modify if necessary, in a quasi-operational environment, their own scientific and technological research applications. Projects satisfying metrics for success and operational constraints may be selected for operational implementation after the completion of the JHT-funded work. The period of the award is from one up to two years.

DATES: Preapplications submitted by Principal Investigators (PIs) must be received at the Tropical Prediction Center in Miami, Florida (address provided below) no later than 5 p.m. Eastern Standard Time (EST) on February 3, 2003. Response letters will be sent from NOAA no later than 5 p.m. EST on March 4, 2003.

PIs will be informed of the submittal deadline for full proposals in the response letter.

ADDRESSES: Preapplication and full proposals must be submitted, in accordance with the requirements described in Section VIII of this notice, to: Dr. Jiann-Gwo Jiing, Director, Joint Hurricane Testbed, Tropical Prediction Center, 11691 SW. 17th Street, Miami, FL 33165. Full proposals must be submitted as printed hard copies to the above address. Preapplications may be sent as printed hard copies to the above address, or they may be submitted electronically by sending in portable document format (PDF) via e-mail to: *Jiann-Gwo.Jiing@noaa.gov*.

The standard NOAA Grants and Cooperative Agreement Application Package, which contains required forms to be submitted with a full proposal (but not with a preapplication), and other important supplemental information to this notice (an overview of the JHT and operational Tropical Prediction Center IT environments), can be obtained by contacting Karen King, DOC/NOAA, Office of Weather & Air Quality Research, Routing Code R/WA, 1315 East-West Highway, Room 11216, Silver Spring, MD 20910, phone (301) 713–0460 ext. 202, e-mail *Karen.King@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Karen King, DOC/NOAA, Office of Weather & Air Quality Research, Routing Code R/WA, 1315 East-West Highway, Room 11216, Silver Spring, MD 20910, phone (301) 713–0460 ext. 202, e-mail *Karen.King@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 15 U.S.C. 2904(c)(3).

II. Catalog of Federal Domestic Assistance (CFDA)

11.431—Climate and Atmospheric Research

III. Program Description

The USWRP, via the JHT, seeks to accelerate the rate at which promising research and technology benefit operational tropical cyclone analysis and forecasting. The goal of this notice is to identify such promising research and technology, and to support the testing and evaluation, in a quasi-operational environment, of techniques and applications developed and provided by PIs to responding to this notice. Federal assistance is provided to PIs allow them to tailor their techniques for the operational environment. Depending upon the nature of the proposed research and technology, PIs are asked to provide documentation and instructions to facilitate the testing and evaluation of their techniques by operational center staff. Projects satisfying metrics for success and operational constraints may be selected for operational implementation after the completion of the JHT-funded work.

JHT Projects: Whereas the operational forecast center where JHT projects will be tested and evaluated could be the NOAA Tropical Prediction Center/ National Hurricane Center (TPC/NHC), the Joint Typhoon Warning Center (JTWC) operated by the United States Navy and Air Force, or the NOAA Central Pacific Hurricane Center (CPHC), TPC/NHC will be specified in this document, both for brevity and to acknowledge the current focus of the JHT on that operational center. Use of other facilities is possible depending on requirements, workload, and opportunity.

The JHT mission is to facilitate the rapid and smooth transfer of new technology, research results, and observational advances of the USWRP, its sponsoring agencies, the academic community, and other groups into improved tropical cyclone analysis and prediction at operational centers. This mission will be accomplished by funded PIs and their support staffs, in collaboration with operational center forecasters and other staff, and facilitated by JHT staff, via the following JHT project activities (as relevant to each project):

(1) Utilizing a quasi-operational environment to facilitate the testing and evaluation by operational center forecasters and support staff of research products and techniques provided by the PIs, subject to metrics that mandate good scientific performance while meeting forecaster ease-of-use needs and time constraints.

(2) Preparation for funded researchers of scientific and technical documentation that is sufficient to facilitate the testing and evaluation of the new product or technique.

(3) Utilizing advanced statistical and numerical model output and stimulating model improvement in tropical cyclone analysis and forecast applications.

(4) Completing tests of codes provided by the PIs that preferably follow established and open programming standards for ease of portability.

(5) Facilitating the transfer of tested and evaluated forecast guidance products, research codes, and observations into the computer, communication, and display systems of the operational forecast center, while incorporating adjustments necessary to generate forecast guidance products that are forecaster-friendly and time-efficient.

Upon acceptance of a proposal, JHT staff will provide project administration and facilitation. The JHT Director will coordinate with each project PI, prior to initiation, a time line and well-defined operational metric(s) for success in terms of scientific performance, ease of use, and time constraints. The time line and progress toward success will be monitored and updated during the project. Additionally, the TPC/NHC Director will designate for the project the forecaster and/or technical point(s) of contact from the TPC/NHC staff.

The JHT will provide to the funded projects access to the JHT IT infrastructure (computer hardware, software, and data) to facilitate the testing and evaluation in an environment that closely matches that of the operational center. An overview of the JHT and TPC/NHC operational IT environments can be obtained along with the standard NOAA Grants and Cooperative Agreement Application Package, as described previously in the

ADDRESSES section following the **SUMMARY** of this notice. Copies of operational codes may be made available to prospective applicants as needed, but without guaranteed support.

The PI and his/her research staff, working with JHT personnel, will modify (if necessary) their proposed system so that it may be run during the hurricane season, utilized by the operational center forecasters, and tested and evaluated quantitatively and qualitatively in a quasi-operational environment. In preparation for testing and evaluation, the funded researcher must provide sufficient documentation and instructions to the JHT staff and TPC/NHC forecasters and technical point(s) of contact to enable them to conduct the tests and evaluations. Following any necessary modifications to make the researcher's proposed system functional in the JHT environment, initial testing and evaluation will be conducted, but not necessarily in real-time or during hurricane season. When the results of these initial tests and evaluations show sufficient progress, the TPC/NHC and JHT Directors, with input from the TPC/NHC point(s) of contact, may make the decision for the proposed system to be configured for quasi-operational, real-time testing and evaluation during hurricane season in the JHT environment. Researchers should anticipate that their funded work period will include their involvement during quasi-operational testing where tuning and adjustment may be required. Experience gained from current JHT projects indicates that the process of testing and evaluation often uncovers opportunities to make modest improvements to a project during its lifetime, and a project advances most rapidly when researchers, the JHT staff, and TPC/NHC forecasters and technical points of contact remain flexible an collaborate closely.

A successful JHT project will result in one or more of the following: (1) A forecast guidance product or technique leading to improved tropical cyclone analyses and/or forecasts; (2) operational availability of data from a new observational system that has provided documented evidence of positive diagnostic or forecast impact; and/or (3) a converted research code that, running with an operational data stream on forecast center computers and display systems, is effectively utilized by the operational forecasters to improve products and services. Final testing, validation, and acceptance of the new product will be the responsibility of, and at the discretion of, the operational forecast center. When the operationally capable system is demonstrated to provide improved forecast guidance according to the agreed-upon metric(s) for success and meets operational constraints, the operational forecast center Director may make the decision for full operational implementation. The JHT-funded researcher and the JHT staff will then provide materials for the operational center to develop its own documentation and training for the new technique or product. Long-term maintenance and support of the new technique or product will then become the responsibility of the operational forecast center. Codes resulting from JHT work accepted for operational implementation will be the property of the U.S. government and will be in the public domain, which will readily facilitate cooperative work between research, educational, governmental, and other organizations.

Program Priorities: The USWRP has established the following goals for its Hurricane Landfall program:

A. Reduce landfall track and intensity errors by 20 percent.

B. Extend track forecasts to 120 hours with an average error less than 250 nautical miles.

C. Increase warning lead time to 24 hours and beyond with 95% confidence.

D. Make skillful forecasts (compared to persistence) of gale- and hurricane-force wind radii out to 48 hours with 95% confidence.

E. Extend quantitative precipitation forecasts to three days and improve skill of day-three forecasts to improve inland flooding forecasts.

The Tropical Prediction Center/National Hurricane Center (TPC/NHC) of the National Centers for Environmental Prediction (NCEP) has identified its operational forecast improvement needs, which are closely related to the USWRP goals. The highest TPC/NHC hurricane forecaster priorities involve the following six areas of need:

(TPC A–1) Improve guidance for tropical cyclone intensity change, with highest priority on the onset, duration, and magnitude of rapid intensification events.

(TPC A–2) Develop statistically-based real-time "guidance on guidance" for track, intensity and precipitation (*e.g.*, multi-model consensus approaches) and provide guidance to forecasters in probabilistic and other formats.

(TPC A–3) Improve guidance for tropical cyclone precipitation amount and distribution.

(TPC A–4) Identify and then reduce the occurrence of guidance and official track outliers, focusing on both large speed errors (*e.g.*, accelerating "recurvers" and stalling storms) and large direction errors (*e.g.*, loops and tropical cyclone tracks such as those of Mitch (1998) and Keith (2000)).

(TPC A–5) Implement improved observational systems in the storm and its environment that provide data for forecaster analysis and model initialization.

(TPC A–6) Develop guidance for changes in tropical cyclone size and related parameters, including combined sea heights.

Additional TPC/NHC areas of need include, but are not limited to:

(TPC B–1) Improve operational analysis and forecast guidance for the surface wind field, including maximum sustained winds, during tropical cyclone landfall.

(TPC B–2) Develop probabilistic forecast guidance for tropical cyclone surface wind speed.

(TPC B–3) Develop guidance for tropical cyclone genesis that exhibits a high probability of detection and a low false alarm rate.

(TPC B–4) Improve numerical and statistical guidance on specific forecast problems, including the following: interactions between upper-level troughs and tropical cyclones, track forecasts near mountainous areas, and extratropical transition.

(TPC B–5) Develop analysis techniques, which improve upon the Dvorak technique, for surface winds in tropical cyclones passing over and north of the sea-surface temperature gradient in the eastern North Pacific Ocean.

(TPC B–6) Develop generalized strike probability programs applicable to all tropical cyclone basins for which the TPC/NHC, CPHC, and JTWC are responsible.

(TPC B–7) Develop improved storm surge guidance models, including guidance on breaking waves and featuring high resolution input and output.

(TPC B–8) Improve the utility of microwave satellite and radar data in tropical cyclone analysis.

Much of the improvement in tropical cyclone forecasting is attributed to advances in numerical weather prediction (NWP). These advances are mainly the result of improvements in observations, data assimilation techniques, and improved model physics in global forecast systems and high resolution regional models, in addition to the development of ensemble-based model guidance. Individual proposals directed toward the NWP issues will be expected to be closely coordinated with the Environmental Modeling Center (EMC)

of NCEP. Work should be concluded within a two year period.

High priority areas of work associated with NWP advancements for tropical cyclone forecasting are:

(EMC 1) General model improvements to advance track and intensity forecasts.

(EMC 2) Improved boundary layer representation for coupled air/sea/land models by, for example, exploiting results from field projects such as C–BLAST (for improved parameterization of surface fluxes in high wind regimes, and effects of sea spray on transfer coefficients).

(EMC 3) Improved targeting strategies for hurricane surveillance missions to improve model track forecasts.

(EMC 4) Model validation techniques suitable for 3D high resolution verification for storms in the process of extratropical transition or storms at landfall.

(EMC 5) Diagnostic techniques to further increase the utility of global models (*e.g.*, NCEP, UKMO, NOGAPS) in forecasting tropical cyclone genesis.

IV. Funding Availability

The estimate for total JHT funding that will be available in FY 2003 is $1,500,000. Funding of any JHT proposals is contingent upon availability of these funds. NOAA issues this notice subject to appropriations made available under the current continuing resolution (CR), H.J. Res. 111, "Making continuing appropriations for the fiscal year 2003, and for other purposes," Public Law 107–229, as amended by H.J. Res. 112, Public Law 107–235, H.J. Res. 122, Public Law 107–240, H.J. Res. 123, Public Law 107–224, and H.J. Res. 124, Public Law 107–294. NOAA anticipates making awards under this program provided that funding for the USWRP is continued beyond January 11, 2003, the expiration of the current continuing resolution. Issuance of awards, however, is subject to the future availability of fiscal year 2003 funds. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is canceled because of other agency priorities.

V. Funding Instrument

The funding instrument will be a Cooperative Agreement based on the envisioned substantial involvement of NOAA scientists in projects funded by this notice. NOAA collaborates on cooperative research activities and provides financial support to enhance the public benefits to be derived from these research activities. NOAA envisions that JHT project testing and evaluation will involve close collaboration, facilitated by the JHT staff, between JHT-funded researchers and operational center forecasters and point(s) of contact.

VI. Eligibility

Eligible applicants include institutions of higher education, other non-profit, and commercial organizations, state, local and Indian tribal governments. Funding for contractual arrangements for services and products for delivery to NOAA are not available under this notice.

VII. Award Period

The period of awards is from one up to two years. All funded PIs are required to submit written semiannual reports during the project to describe the progress made toward the goals and deliverables established in the original proposal and agreed-upon time line. A final report must also be submitted at the conclusion of the project. The due dates for these reports will be coordinated with the JHT Director upon project initiation. Two-year projects will be reviewed by the JHT Steering Committee, and/or other designated reviewers, and the JHT and TPC/NHC Directors near the end of the first year for suitability for continuation into the second year. PIs are required to submit a renewal proposal along with the second semiannual report for this review. The renewal proposal must provide updates to the project work plan, deliverables, time line. IT requirements, budget, documentation and training plans, etc. This review is also based upon the semiannual reports and upon feedback received from the TPC/NHC point(s) of contact. The criteria upon which the renewal review is based are: (1) The progress toward milestones in the original time line, (2) the potential for completing the testing and evaluation process and providing the stated deliverables by the end of the second year, and (3) appropriateness and reasonableness of the budget with respect to available JHT funds. Given a favorable review, each project may be funded for a second year.

A JHT project reaches its completion in one of two ways. A two-year project may end at any time, particularly after appropriately one year if the TPC/NHC and JHT Directors and the JHT Steering Committee (and/or other designated reviewers) decide, as described above, that insufficient progress has been made to justify continuation of the project into year two. A JHT project ends more conventionally with the submission of a final report at the conclusion of the original agreed-upon project duration, with the subsequent action being the decision by the TPC/NHC Director on whether or not operational implementation of the project deliverables will occur.

VIII. Submission Requirements

The guidelines for preparation of preapplications and full proposals provided below are mandatory (except where otherwise noted). Failure to adhere to these guidelines will result in preaplications and/or full proposals being returned without review. See the "Dates" and "Addresses" sections following the "Summary" earlier in this notice for submission deadlines and addresses.

A. Preapplications (PA)

(1) Prior to submitting a full proposal, PIs are strongly encouraged to submit a PA for each planned proposal. However, PIs who do not submit a PA will not be precluded from submitting a full proposal.

(2) The PA must be no more than two pages in length, using a 12-point font and one inch margins, and it must include the name(s) of the PI(s) and their home institution(s).

(3) The PA must contain a brief description of the intended project.

(4) The PA must include a brief budget which summarizes how resources will be allocated [*e.g.*, salaries, computing and communications, equipment (provide justification), indirect charges, and travel]. Note that funding for secretarial support and IT improvements at the PI's home institution is not generally available.

(5) Each PA will be reviewed, following the criteria specified below in Section IX of this notice, by members of the JHT Steering Committee and/or other designated reviewers, who will make their recommendations to the JHT Director and TPC/NHC Director.

(6) PIs will not be encouraged to submit a full proposal for any PA deemed to be unresponsive to this notice. However, they will not be precluded from submitting a full proposal for any such PA.

B. Full Proposals

(1) The proposal must include a title page signed by the PI(s) and the appropriate representatives(s) of their home institution(s). Each PI and institutional representative should be identified by full name, title, organization, telephone number, mailing address, and e-mail address.

(2) A one page abstract must be included and must contain a brief summary of the work to be completed. The abstract must appear on a separate

page, headed with the proposal title and the name(s) of the PI(s) and their home institution(s).

(3) All proposals must provide a Statement of Work that includes:

a. The proposed duration of the project, from one up to two years;

b. If known, suggested forecaster and/or technical point(s) of contact at TPC/NHC and, if necessary, other operational center(s);

c. A brief description of the project, with prior research results (including references) to demonstrate sufficient maturity and potential for a successful transition to operations at TPC/NHC and other operational forecast centers (*e.g.*, CPHC, JTWC) and/or, if applicable, at a numerical weather prediction center;

d. A work plan for the project, including hardware and software needs, the testing and evaluation approach, metric(s) for success, project deliverables, a time line with key milestones, real-time operational data needed as input, and a plan to port necessary codes to the operational environment of TPC/NHC and/or NCO (an overview of the JHT and TPC/NHC operational IT environments can be obtained along with the standard NOAA Grants and Cooperative Agreement Application Package, as described previously in the **ADDRESSES** section following the **SUMMARY** of this notice);

e. A time line for delivering scientific and technical documentation and training materials over the course of the project that are sufficient to enable testing and evaluation of the proposed techniques. If the proposal is funded, researchers are expected to coordinate with the JHT Director to formalize this time line;

f. Schedule and needs for expected travel (PIs are strongly encouraged to plan and budget during each year of the project to describe their work at the annual Interdepartmental Hurricane Conference (IHC), sponsored by the Office of the Federal Coordinator for Meteorological Services and Supporting Research, and visits by PIs and/or their support staff to the TPC/NHC, and any other operational center(s) as necessary, may be beneficial for training JHT staff and the forecaster and technical point(s) of contact in preparation for project testing and evaluation); and

g. Estimates of JHT staff requirements in terms of on-site (or off-site) JHT Facilitator efforts, and estimated computational, communication, and/or display requirements at the researcher's home institution and/or at JHT via remote access and data transfer.

(4) Applicants must submit a budget using the Standard Form 424A (4–92), Budget Information—Non-Construction Programs. This form is included in the standard NOAA Grants and Cooperative Agreement Application Package (see **ADDRESSES** section that follows the **SUMMARY** earlier in this notice). The budget must include PI and scientific and technical support staff salaries, JHT facility requirements, computing and communications funding, equipment funding (provide justification), indirect charges, and travel. Note that funding for secretarial support and IT improvements at the PI's home institution is not generally available.

(5) Applicants must also use the following forms when applying for financial assistance: Standard Forms 424, Application for Federal Assistance, 424B, Assurances—Non-Construction Programs, and SF–LLL (Rev. 7–97); Department of Commerce forms CD–346, Applicant for Funding Assistance, and CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility matters: Drug-Free Workplace Requirements and Lobbying. These forms are also included in the standard NOAA Grants and Cooperative Agreement Application Package (see **ADDRESSES** section that follows the **SUMMARY** earlier in this notice).

(6) An abbreviated Curriculum Vita for the PI must be included. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(7) Current and pending Federal support: Each investigator must submit a list that includes project title; supporting agency with grant number, investigator months, dollar value and duration. Requested amounts should be listed for pending Federal support.

(8) Additional proposal requirements include:

a. One signed original and two hard copies of the complete proposal must be submitted (submission of five additional hard copies is encouraged, to expedite the review process, but is not required);

b. Each proposal must be dated with pages numbers;

c. Items 3a through 3g above must be contained within no more than ten pages, using a 12-point font and one-inch margins.

IX. Evaluation Criteria

The JHT Steering Committee, and/or other designated reviewers, and the JHT and TPC/NHC Directors will base their recommendations regarding each preapplication and each full proposal upon the extent to which the following criteria (listed with assigned weights and in order of decreasing importance) are satisfied:

A. (25% weight) Consistency with one or more of the USWRP goals, and consistency with one or more of the priorities and needs of the TPC/NHC (especially the highest priority "TPC A–1 through A–6" items) and/or EMC, as listed in Section III of this notice (**Note:** proposals with exceptional promise for improving operational tropical cyclone forecasting, but that do not fall within the scope of the listed TPC/NHC or EMC needs and priorities, will still be considered.)

B. (25% weight) Potential for improving operational tropical cyclone analysis and forecast accuracy.

C. (20% weight) Promise for a successful transition to operations within one to two years, and readiness for testing and evaluation in a quasi-operational environment.

D. (15% weight) Appropriations and reasonableness of the budget with respect to available JHT funds.

E. (10% weight) Compatibility with the communications, computing, data, and display environments of TPC/NHC and/or NCEP Central Operations (NCO) (note that in cases where the technological advances of the project require cutting-edge hardware or software not yet in place at the JHT and at TPC/NHC and/or NCO, support for such enhancement from the USWRP may be considered).

F. (5% weight) Applicability to other operational forecast centers (*e.g.*, CPHC, JTWC).

X. Selection Procedures

All full proposals will receive an independent, objective review in accordance with the criteria specified above in Section IX of this notice. Such review will be conducted by the JHT Steering Committee, and/or other designated reviewers, consisting of at least three federal and/or non-federal experts. Each member of the independent review panel will individually evaluate and rank the proposals. The reviewers will provide their rankings and recommendations to the JHT Director and TPC/NHC Director. The JHT Director and TPC/NHC Director will together decide whether to endorse each proposal based upon the rankings and recommendations from the reviewers and based upon the availability of TPC/NHC resources to support each project. The JHT Director and TPC/NHC Director will then together present their recommendations on favorably reviewed and endorsed proposals to the Directors, Office of Weather and Air Quality Research (W&AQR) of NOAA's Office of Oceanic and Atmospheric Research.

The Director of W&AQR makes the final recommendation to the NOAA Grants Officer regarding the funding of

applications, taking into account the following program policy factors: (a) Availability of funding, (b) duplication with ongoing Federal support, (c) institutional diversity and (d) inter-institutional collaboration. Successful applicants are then notified. Funded projects become a JHT activity with a duration of one to two years. Note that two-year proposals are initially funded for one year, with funding for a second year contingent upon a favorable review near the end of the first year and upon available W&AQR funds. Unsuccessful applications will be notified of the final selection upon completion of the review and selection process. Copies of all submitted preapplications and proposals will be retained by the JHT staff and will become the property of the U.S. Government.

Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 (66 FR 49917), as amended by 67 FR 66109 (October 30, 2002), are applicable to this solicitation.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Services for the Deaf

The NOAA Office of Oceanic and Atmospheric Research does not have direct Telephone Device for the Deaf (TDD) capabilities, but can be reached through the State of Maryland-supplied TDD contact number, 800–735–2258, between the hours of 8 a.m. and 4:30 p.m.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and SF–LLL has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person by subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Regulatory Flexibility Act

Because notice and comment are not required under 5 USC 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 USC 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 USC 601 *et seq.*, pursuant to Executive Orders 13256, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration.

In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance.

Dated: December 30, 2002.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 03–57 Filed 1–2–03; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement for Proposed Military Operational Increases and Implementation of Associated Comprehensive Land Use Management and Integrated Natural Resources Management Plan, Naval Air Weapons Station China Lake, China Lake, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act, of 1969 and the regulations implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), the Department of the Navy (Navy) in cooperation with the Bureau of Land Management (BLM) prepared and filed with the U.S. Environmental Protection Agency (EPA) a Draft Environmental Impact Statement (DEIS) on November 15, 2002, to evaluate proposed military operational increases and implementation of associated Comprehensive Land Use Management (CLUMP) and Integrated Natural Resources Management Plan (INRMP) at Naval Air Weapons Station China Lake, CA. A Notice of Intent for this DEIS was published in the **Federal Register** on April 1, 1997, (62 FR 20160). Six public scoping meetings were held between May–June 1997. The Navy and BLM will conduct five public hearings to receive oral and written comments on the DEIS. Federal, state, and local agencies, as well as interested individuals are invited to be present or represented at the public hearings. This notice announces the dates and locations of the public hearings for this DEIS.

DATES AND ADDRESSES: An open information session will precede the scheduled public hearing at each of the locations listed below. The open information session will begin at 6 p.m., followed by the public hearing beginning at 7 p.m. and ending at 9 p.m. Public hearings will be held at the following dates and locations:

—Tuesday, January 21, 2003, Kerr McGee Community Center, 100 West California Avenue, Ridgecrest, CA.
—Wednesday, January 22, 2003, Inyokern Elementary, 6601 Locust Avenue, Inyokern, CA.
—Thursday, January 23, 2003, City of Barstow Council Chamber, 220 East Mountain View Street, Suite A, Barstow, CA.
—Tuesday, January 28, 2003, Owens Valley Unified School District, 202 South Clay Street, Independence, CA.
—Wednesday, January 29, 2003, Trona School, 93600 Trona Road, Trona, CA.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Gara, Environmental Planning and Management Department, Naval Air Weapons Station China Lake, China Lake, CA. Telephone (760) 939–3213, facsimile (760) 939–2980, or e-mail: *ogaraje@navair.navy.mil.*

SUPPLEMENTARY INFORMATION: The proposed action includes a moderate increase of military operations, continuation of current non-military activities, and implementation of the CLUMP and INRMP. The preferred alternative presented in the DEIS would allow approximately a 25 percent increase in the type, tempo, and location of military testing and evaluation and training operations. There are no significant environmental impacts associated with any of the alternatives, including the preferred alternative.

The DEIS has been distributed to various Federal, state, and local

agencies, elected officials, and special interest groups, and is available for public review at the following public libraries:

—Kern County Library, Ridgecrest Branch (Document Display Shelf), 131 East Las Flores, Ridgecrest, CA.

—Inyo County Free Library, Independence Branch (Reference Section), 168 North Edwards, Independence, CA.

—San Bernardino Library, Trona Branch, 82805 Mountain View, Trona, CA.

In addition, the DEIS is available for review at the Public Affairs Office at Naval Air Warfare Center, Weapons Division, Room 1015, Building 1, 1 Administration Circle, China Lake, CA. The Executive Summary of the DEIS and other information may be viewed at the following Internet address: *http://www.nawcwpns.navy.mil/~cllump/cllump.html.*

The Navy will conduct five public hearings to receive oral and written comments concerning the DEIS at each of the locations previously listed. At each hearing location, information poster stations will be available from 6 p.m. to 7 p.m., followed by the official hearing beginning at 7 p.m. and ending at 9 p.m. Navy and BLM representatives will be available during the information session to clarify information related to the DEIS. Federal, state, and local agencies, as well as interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the DEIS and will be responded to in the Final Environmental Impact Statement (FEIS). Equal weight will be given to both oral and written statements.

In the interest of available time and to ensure that all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three (3) minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing, or mailed, or faxed to: Mr. John O'Gara, Environmental Planning and Management Department, Naval Air Weapons Station China Lake, China Lake, CA. Telephone (760) 939–3213, facsimile (760) 939–2980. All written comments postmarked by February 21, 2003, will become a part of the official public record and will be responded to in the FEIS.

Dated: December 23, 2002.

R. E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–54 Filed 1–2–03; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6636–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed December 23, 2002, through December 27, 2002, pursuant to 40 CFR 1506.9.

EIS No. 020528, DRAFT EIS, AFS, WY, Medicine Bow National Forest, Implementation, Draft Revised Land and Resource Management Plan, Albany, Carbon and Laramie Counties, WY, Comment Period Ends: April 04, 2003, Contact: Lynn Jackson (307) 745–2472. This document is available on the Internet at: *http://www.fs.fed.us/r2/mbr.*

EIS No. 020529, DRAFT EIS, FHW, MO, Interstate 64/U.S. Route 40 Corridor, Reconstruct the Existing 1–64/U.S. Route 40 Facility with New Interchange Configurations and Roadway, City of St. Louis, St. Louis County, MO, Comment Period Ends: February 28, 2003, Contact: Don Neumann (573) 638–2607.

EIS No. 020530, DRAFT EIS, COE, CA, Port of Long Beach Pier J South Terminal Development, Dredging and Landfilling to Expand and Modernize Port Terminals, Implementation, Facilities Master Plan (FMP), Section 10 and 404 Permits, City of Long Beach, CA, Comment Period Ends: February 18, 2003, Contact: Dr. Aaron O. Allen (805) 585–2148.

EIS No. 020531, DRAFT EIS, AFS, ID, Middle Little Salmon Vegetation Management Project, To Improve the Current Condition of Timber Stands, Payette National Forest, New Meadows Ranger District, Adam County, ID, Comment Period Ends: February 24, 2003, Contact: Sue Dixon (208) 247–0300. This document is available on the Internet at: *http://www.fs.fed.us/r4/Payette/main.html.*

EIS No. 020532, FINAL EIS, DOE, WA, Maiden Wind Farm Project, Proposes to Construct and Operate up to 494 megawatts (MW) Wind Generation on Privately- and Publicly-owned Property, Conditional Use Permits, Benton and Yakima Counties, WA , Wait Period Ends: February 03, 2003, Contact: Sarah Branum (503) 230–5115.

EIS No. 020533, FINAL SUPPLEMENT, NRC, SC, GENERIC EIS—Catawba Nuclear Station, Unit 1 and 2 (Catawba), Renewal of the Operating Licenses OLs) for an Additional 20-Year Period, Supplement 9 to NUREG–1437, York County, SC , Wait Period Ends: February 03, 2003, Contact: James Wilson (301) 415–1108.

EIS No. 020534, FINAL EIS, NRC, NC, GENERIC EIS—McGuire Nuclear Power Station Units 1 and 2, Supplement 8 to NUREG–1437, Located on the Shore of Lake Norman, Mecklenburg County, NC, Wait Period Ends: February 03, 2003, Contact: James Wilson (301) 415–1108.

Dated: December 30, 2002.

Joseph C. Montgomery,

Office of Federal Activities.

[FR Doc. 03–108 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6636–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–F65033–IL Rating EC2, Kudzu Eradication, Proposal to Eradicate Known Kudzu Infestations in the Shawne National Forest, Application for Herbicide and Mechanical Treatment, Jackson, Alexander and Pope Counties, IL.

Summary: EPA expressed environmental concerns that the draft EIS did not include pesticide risk mitigation measures, especially for triclopyr. These should be included in the final EIS.

ERP No. D–COE–E39060–GA Rating LO, Lake Sidney Lanier Project to Continue the Ongoing Operation and Maintenance Activities Necessary for Flood Control, Hydropower Generation, Water Supply, Recreation, Natural Resources Management and Shoreline Management, US Army COE Section 10 and 404 Permits, Dawson, Forsyth, Lumpkin, Hill and Gwinnett Counties, GA.

Summary: EPA has no significant objections to the various management/operational changes being proposed.

ERP No. D–COE–G32056–LA Rating LO, Bayou Sorrel Lock Replacement (formerly IWW Locks) Feasibility Study to Relieve Navigation Delays and/or Provide Adequate Flood Protection, Atchafalaya Basin Floodway, Iberville Parish, LA.

Summary: EPA expressed a lack of objections to the preferred alternative.

ERP No. D–FHW–H40176–00 Rating LO, US–81 Highway, Yankton Bridge Replacement, Missouri River Crossing between the City of Yankton, Yankton County, South Dakota and Cedar County, Nebraska, Funding and Permit Issuance, SD and NB.

Summary: EPA expressed a lack of objections to the project as proposed but offered clarification on disposal requirements for lead-based coatings if removed during the demolition phase.

ERP No. D–FTA–K54028–CA Rating LO, Transbay Terminal/Caltrain Development Downtown Extension/Redevelopment Project, New Multi-Modal Terminal Construction, Peninsula Corridor Service Extension and Establishment of a Redevelopment Plan, Funding, San Francisco, San Mateo and Santa Clara Counties, CA.

Summary: EPA found that the document adequately discussed the environmental impacts of the proposed project.

ERP No. DS–FHW–L50009–WA Rating LO, Elliott Bridge No. 3166 Replacement, Updated and Reevaluated Information, Proposal to Replace the 149th Avenue SE Crossing the Cedar River, Funding, U.S. CGD Bridge Permit and U.S. Army COE Section 404 Permit Issuance, City of Renton, King County, WA.

Summary: EPA has no objections to the project as proposed but recommends that the Final SEIS contain a Purpose and Need statement and improve discussion on how the proposed alternative will address old footing foundations.

Final EISs

ERP No. F–AFS–H65012–MO

Rams Horn Project to Accomplish the Direction and Desired Conditions Identified in the Mark Twain National Forest, Land and Resource Management Plan, Houston/Rolla/Creek Ranger District, Phelps and Pulaski Counties, MO.

Summary: EPA has a lack of objections to the proposed project. Issues identified by EPA in the Draft EIS have been adequately addressed.

ERP No. F–COE–C35014–NJ

Meadowlands Mills Project, Construction of a Mixed-Use Commercial Development, Permit Application Number 95–07–440–RS, U.S. Army COE Section 10 and 404 Permit Issuance, Boroughs of Carlstadt and Monnachie, Township of South Hackensack, Bergen County, NJ.

Summary: EPA continued to raise environmental objections to the project and the alternatives, citing that there were offsite alternatives available that needed to be examined.

ERP No. F–COE–E35021–FL

Miami River Dredged Material Management Plan, River Sediments Dredging and Disposal Maintenance Dredging, Biscayne Bay, City of Miami, Miami-Dade County, FL.

Summary: EPA continues to have environmental concerns about the project's potential impacts.

ERP No. F–COE–G35020–TX

Texas City's Proposed Shoal Point Container Terminal Project, Containerized Cargo Gateway Development, U.S. Army COE Section 404 and 10 Permits Issuance, Material Placement Area (DMPA), City of Texas, Galveston County, TX.

Summary: EPA has no objections to the selection of the preferred alternative.

ERP No. F–FRC–L05226–ID

C.J. Strike Hydroelectric Project (FERC NO. 2055), New License Issuance, Snake and Bruneau Rivers, Owyhee and Elmore Counties, ID.

Summary: EPA continues to have environmental objections with the No Action Alternative, the Idaho Power Proposal and the Idaho Power Proposal with Modifications Alternative as they would not result in appreciable improvements to instream and riparian conditions. EPA believes that the Run-of-River Alternative provides the only strategy for improving aquatic and riparian conditions. EPA also raised concerns with the lack of an identified agency-preferred alternative in the EIS.

ERP No. FS–AFS–F05123–00

Bond Falls Hydroelectric Project related to Terms and Conditions for Geology and Soils, Water Quality and Quantity, Fisheries, Terrestrial, Recreation, Aesthetic, Cultural, Socioeconomic and Land Use Resources, Ontonagon River Basin, Valas County, WI and Ontonagon and Gogebic Counties, MI.

Summary: EPA believes the specified terms and conditions will adequately protect the natural resources in the project area for this relicensing project on the Ottawa National Forest.

Dated: December 30, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–109 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7435–4]

The Commonwealth of the Northern Mariana Islands; Full Program Adequacy Determination of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy of the Commonwealth of the Northern Mariana Islands (CNMI) municipal solid waste landfill permit program.

SUMMARY: Section 4005 (c) (1) (B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945 (1) (B), requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or conditionally exempt small quantity generator waste, comply with the revised Federal MSWLF Criteria. Section 4005 (c) (1) (C) of RCRA requires the Environmental Protection Agency (EPA) to determine whether States have adequate permit programs for MSWLFs. Approval of State permit programs allows the State to tailor permits to include site-specific conditions. Only those owners/operators located in States with approved permit programs can use the site-specific flexibilities provided by 40 CFR part 258 to the extent the State permit program allows such flexibility. EPA notes that, regardless of the approval status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The CNMI is defined as a "State" in 40 CFR 258.2. The CNMI has applied for a determination of adequacy under section 4005 (c) (1) (C) of RCRA, 42 U.S.C. 6945 (c) (1) (C). EPA Region IX has reviewed the CNMI's MSWLF permit program application and has made a final determination that all portions of the CNMI's permit program application are adequate to ensure compliance with the revised MSWLF criteria.

On February 27, 2002, EPA published in the **Federal Register** its tentative determination that the CNMI MSWLF permit program would ensure compliance with the revised Federal Criteria. In the notice of tentative determination, EPA announced that the CNMI application would be available for public review during EPA's public comment period. Although not required by RCRA, EPA offered to hold a public hearing if there was sufficient public interest. EPA determined that there was not sufficient public interest to hold a public meeting, and the public comment period ended on April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Doordan, Office of Pollution Prevention and Solid Waste, mail code WST–7, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, telephone 415–972–3383, or via the Internet: *doordan.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 (c) (1) (C), 42 U.S.C. 6945 (c) (1) (C), that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the EPA has promulgated the Final State Implementation Rule (SIR), which can be found at 40 CFR part 239. The rule specifies the requirements which State programs must satisfy to be determined adequate.

EPA interprets the requirement for states to develop "adequate" programs for permits or other forms of prior approval and conditions to impose several minimum requirements. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in it jurisdiction. The State also must provide for public participation in permit issuance and enforcement, as required in section 7004 (b) of RCRA, 42 U.S.C. 6974 (b). Finally, the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State has submitted an "adequate" program based on the requirements of the SIR. EPA expects States to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. CNMI

On September 19, 2001, EPA Region IX received the CNMI's MSWLF Permit Program application for adequacy determination. Region IX reviewed the application, submitted comments to the CNMI, and requested supplementary information about the state program implementation. The CNMI addressed EPA's comments, provided the requested additional information, and submitted a revised narrative portion of the final application for adequacy determination on January 4, 2002. EPA reviewed the CNMI's final application and on February 27, 2002, published in the **Federal Register** its tentative determination that the CNMI MSWLF permit program met the requirements necessary to qualify for full program approval and ensure compliance with the revised Federal Criteria.

In the notice of tentative determination, EPA announced the availability of the application for public comments. Although not required by RCRA, EPA offered to hold a public hearing if there was sufficient public interest. The public comment period ended on April 29, 2002, and EPA determined that there was not sufficient public interest to hold a public meeting.

The CNMI has three municipal solid waste dumps that are currently out of compliance with the federal criteria for MSWLFs: the Puerto Rico Dump (PRD) on Saipan, one dump on Tinian, and one dump on Rota. The CNMI has developed a schedule for closure of the PRD and construction of a new MSWLF on Saipan. The federal regulations do not allow location of a landfill in a seismic zone without an approved State program. As the entire island of Saipan is considered a seismic zone, the CNMI intends to utilize the flexibility provisions afforded to approved states under particular circumstances to construct a new MSWLF in a seismic impact zone and to use an alternative landfill liner.

During the application review process, EPA expressed concern about the CNMI's staffing capacity and anticipated schedule for bringing the dumps on Tinian and Rota into compliance with federal criteria. On January 4, 2002, the CNMI sent EPA a supplement to the original application with additional information on CNMI commitments to maintaining adequate staffing levels to oversee the program and to developing integrated solid waste management and dump closure plans for Tinian and Rota. Today's document gives public notice of EPA's final determination of full program adequacy for the CNMI MSWLF permit program.

Section 4005 (a) of RCRA, 42 U.S.C. 6945 (a), provides that citizens may use the citizen suit provisions of section 7002 of RCRA, 42 U.S.C. 6972, to enforce the Federal Criteria in 40 CFR part 258 independent of any State enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Administrative Requirements

A. Compliance With Executive Order 12866

Executive Order 12866 requires Office of Management and Budget review of "significant regulatory actions." Significant regulatory actions are defined as those that (1) have an annual effect on the economy $100 Million or more or adversely affect a sector of the economy, including state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients; or (4) raise novel legal or policy issues. This tentative decision is a not a "significant regulatory action," and is not subject to the requirements of Executive Order 12866.

B. Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605 (b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not

impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates and Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state or local governments in the aggregate, or to the private sector, of $100 million or more. The EPA has determined that the approval action being promulgated does not include a federal mandate that may result in costs of $100 million or more to either state or local governments in the aggregate, or to the private sector. This federal action approves preexisting requirements under state law, and imposes no new requirements. Accordingly, no additional costs to state or local governments, or to the private sector, result from this action.

D. Executive Order 12875

Executive Order 12875 is intended to develop an effective process to permit elected officials and other representatives of state or local governments to provide meaningful input in the development of regulatory proposals containing significant unfunded mandates. Since this final federal action approves preexisting requirements of state law, no new unfunded mandates result from this action. See also the discussion under C, above, Unfunded Mandates Act.

E. Executive Order 13045

Executive Order 13045, effective April 21, 1997, concerns protection of children from environmental health and safety risks, and applies to regulatory action that is "economically significant" in that such action may result in an annual effect on the economy of $100 million or more. The EPA has determined that the approval action being promulgated will not have a significant effect on the economy. This federal action approves preexisting requirements under state law, and imposes no new requirements. Accordingly, Executive Order 13045 does not apply to this action.

G. Executive Order 12898

Executive Order 12898 requires agencies to consider impacts on the health and environmental conditions in minority and low-income communities with the goal of achieving environmental justice. This tentative determination is consistent with Executive Order 12898.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6946.

Dated: December 23, 2002.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 03–107 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0338; FRL–7284–1]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0338, must be received on or before February 3, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0338. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made

available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

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1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0338 The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0338. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0338.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0338. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

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1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 264–TNL. *Applicant*: Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product Name*: SCALA Brand SC Pyrimethanil Fungicide. Fungicide. *Active ingredient*: Pyrimethanil at 37.4%. *Proposed classification/Use*: None. For control of plant diseases on tree nuts, bulb vegetables, grapes, stone fruits (except cherries) pome fruits, tuberous and corm vegetables, strawberries, and tomatoes.

2. *File Symbol*: 264–TNU. *Applicant*: Bayer CropScience. *Product Name*: PYRIMETHANIL Technical. Fungicide. *Active ingredient*: Pyrimethanil at 98.5%. *Proposed classification/Use*: None. For formulation of fungicides only.

3. *File Symbol*: 43813–EI. *Applicant*: Janssen Pharmaceutica, Inc., 1125 Trenton-Harbourton Road, Titusville, NJ 08560–0200. *Product Name*: PH066. Fungicide. *Active ingredient*: Pyrimethanil at 37.4%. *Proposed classification/Use*: None. For postharvest use on citrus and pome fruit.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–8 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0212; FRL–7283–4]

Imazethapyr; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of imazethapyr in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0212, must be received on or before February 3, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: Tompkins.Jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0212. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket.

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

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4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number

assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP 1E6268

EPA has received a pesticide petition (PP 1E6268) from BASF Corporation, P.O. Box 400, Princeton, NJ 08543–0400 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an import tolerance for the sum of the residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid) as its free acid or its ammonium salt (calculated as the acid), and its metabolite 2-[4,5-dihydro-4-methyl-4-(1-methylethyl-5-oxo-1*H*-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridinecarboxylic acid in or on the raw agricultural commodity canola seed at 0.1 part per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of imazethapyr in canola is adequately understood. Based on studies conducted on soybean, edible and forage legumes, corn and canola, parent imazethapyr and common metabolite CL 288511 are the only residues of concern for tolerance setting purposes.

2. *Analytical method.* Practical analytical methods for detecting and measuring imazethapyr residues of concern in canola are submitted to EPA with this petition. The analytical methods for canola seed are based on gas chromatography and capillary electrophoresis with limits of quantitation (LOQ) of 0.05 ppm. Measurement of imazethapyr residues in canola oil and meal are accomplished by gas chromatography with LOQ of 0.05 ppm. These validated methods are appropriate for the enforcement purposes of this petition.

3. *Magnitude of residues.* A total of 13 field trials were conducted with imazethapyr and its metabolite on canola in 1992, 1993, 1994, and 1999 at several different use rates and timing intervals to represent the use patterns, conditions and areas of use of this product in Canada. Apparent residues of imazethapyr (CL 263499) and metabolite CL 288511 in all canola seed samples were below the LOQ of 0.05 ppm regardless of rate or days after treatment sampled.

B. Toxicological Profile

A complete, valid and reliable database of mammalian and genetic toxicology studies supports the proposed tolerance for imazethapyr on canola. This database was previously reviewed by EPA in support of the tolerance petitions and registration of imazethapyr on soybeans, legume vegetables, corn, alfalfa, and peanuts.

1. *Acute toxicity.* Imazethapyr technical is considered to be nontoxic (Toxicity Category IV) to the rat by the oral route of exposure. In an acute oral toxicity study in rats, the LD_{50} value of imazethapyr technical was greater than 5,000 milligrams/kilogram body weight (mg/kg bwt) for males and females. The results from an acute dermal toxicity study in rabbits indicate that imazethapyr is slightly toxic (Toxicity Category III) to rabbits by the dermal route of exposure. The dermal LD_{50} value of imazethapyr technical was greater than 2,000 mg/kg bwt for both male and female rabbits. Imazethapyr technical is considered to be non-toxic (Toxicity Category IV) to the rat by the respiratory route of exposure. The 4–hour LC_{50} value was greater than 3.27 milligram/liter (mg/L) (analytical) and greater than 4.21 mg/L (gravimetric) for both males and females.

Imazethapyr technical was shown to be non-irritating to rabbit skin (Toxicity Category IV) and mildly irritating to the rabbit eye (Toxicity Category III). Based on the results of a dermal sensitization study (Buehler), imazethapyr technical is not considered a sensitizer in guinea pigs.

2. *Genotoxicity.* Imazethapyr technical was tested in a battery of four *in vitro* and one *in vivo* genotoxicity assays measuring several different endpoints of potential genotoxicity. Collective results from these studies indicate that imazethapyr does not pose a mutagenic or genotoxic risk.

3. *Reproductive and developmental toxicity.* The developmental toxicity study in Sprague Dawley rats conducted with imazethapyr technical showed no evidence of developmental toxicity or teratogenic effects in fetuses. Thus, imazethapyr is neither a developmental toxicant nor a teratogen in the rat. The no observable adverse effect level (NOAEL) for maternal toxicity was 375 mg/kg bwt/day, based on clinical signs of toxicity in the dams (e.g., excessive salivation) at 1,125 mg/kg bwt/day. Imazethapyr technical did not exhibit developmental toxicity or teratogenic effects at maternal dosages up to and including 1,125 mg/kg bwt/day, the highest dose tested.

Results from a developmental toxicity study in New Zealand White rabbits with imazethapyr technical also indicated no evidence of developmental toxicity or teratogenicity. Thus, imazethapyr technical is neither a developmental toxicant nor a teratogen in the rabbit. The NOAEL for maternal toxicity was 300 mg/kg bwt/day, based on decreased food consumption and body weight gain, abortion, gastric ulceration and death at 1,000 mg/kg bwt/day, the next highest dose tested. The NOAEL for developmental toxicity and teratogenic effects was determined to be > 1,000 mg/kg bwt/day based on no developmental toxicity or fetal malformations associated with the administration of all doses.

The results from the 2–generation reproduction toxicity study in rats with imazethapyr technical support a NOAEL for reproductive toxicity of 10,000 ppm (equivalent to 800 mg/kg bwt/day). The NOAEL for non-reproductive parameters (i.e. decreased weanling body weights) is 5,000 ppm.

4. *Subchronic toxicity.* A short-term (21–day) dermal toxicity study in rabbits was conducted with imazethapyr technical. No dermal irritation or abnormal clinical signs were observed at dose levels up to and including 1,000 mg/kg bwt/day (highest dose tested), supporting a NOAEL for dermal irritation and systemic toxicity of 1,000 mg/kg bwt/day.

In a subchronic (13–week) dietary toxicity study in rats with imazethapyr technical, no signs of systemic toxicity were noted, supporting a NOAEL of 10,000 ppm the highest concentration tested (equivalent to 820 mg/kg bwt/day).

In a subchronic (13–week) dietary toxicity study in dogs with imazethapyr technical, no signs of systemic toxicity were noted, supporting a NOAEL of 10,000 ppm (equivalent to 250 mg/kg bwt/day), the highest concentration tested.

5. *Chronic toxicity.* A 1–year dietary toxicity study was conducted with imazethapyr technical in Beagle dogs at dietary concentrations of 0, 1,000, 5,000, and 10,000 ppm. In this study, the NOAEL for systemic toxicity was 1,000 ppm (equivalent to 25 mg/kg bwt/day), based on slight anemia, i.e., decreased red cell parameters observed at 5,000 and 10,000 ppm concentrations. No treatment-related histopathological lesions were observed at any dietary concentration, including the highest concentration tested (10,000 ppm).

In a 2–year chronic dietary oncogenicity and toxicity study in rats conducted with imazethapyr technical, the NOAEL for oncogenicity and chronic systemic toxicity was 10,000 ppm (equivalent to 500 mg/kg bwt/day), the highest concentration tested. An 18–month chronic dietary oncogenicity and toxicity study in mice with imazethapyr technical supports a NOAEL for oncogenicity of 10,000 ppm, the highest concentration tested (equivalent to 1,500 mg/kg bwt/day), and a NOAEL for chronic systemic toxicity of 5,000 ppm (equivalent to 750 mg/kg bwt/day), based on decreased body weight gain in both sexes).

EPA has classified imazethapyr as negative for carcinogenicity (evidence of non-carcinogenicity for humans) based on the absence of treatment-related tumors in acceptable carcinogenicity studies in both rats and mice.

6. *Animal metabolism.* The rat, goat, and hen metabolism studies indicate that the qualitative nature of the residues of imazethapyr in animals is adequately understood.

In three rat metabolism studies conducted with radiolabeled imazethapyr technical, the major route of elimination of the herbicide was through rapid excretion in urine and to a much lesser extent in feces. In the first study, almost 100% of the administered material was recovered in excreta within 96 hours (89–95% in urine, 6–11% in feces). The major residue in urine and feces was parent compound. Approximately 2% of the dose was metabolized and excreted as the α-hydroxyethyl derivative of imazethapyr. In the second study, the test material was rapidly and completely eliminated unchanged in the urine within 72 hours of dosing. After 24 hours, 92.1% of radioactivity was excreted in the urine with 4.67% in the feces. There was no significant bioaccumulation of radioactivity in the tissues from this rat metabolism study (< 0.01 ppm after 24 hours). In the third study, four groups treated with radiolabeled imazethapyr readily excreted > 95% of the test material in the urine and feces within 48 hours. A high percentage (97–99%) of the test material was excreted in the urine as unchanged parent, the remainder as the α-hydroxyethyl derivative of imazethapyr. For all three studies, the major route of elimination of the herbicide in rats was through rapid excretion of unchanged parent compound in urine. It is clear that imazathapyr and its related residues do not accumulate in tissues and organs.

In the goat metabolism study, parent ^{14}C-imazethapyr was dosed to lactating goats at 0.25 ppm and 1.25 ppm. Results showed ^{14}C-residues of < 0.01 ppm in milk and < 0.05 ppm in leg muscle, loin muscle, blood, fat, liver and kidney. Laying hens dosed at 0.5 ppm and 2.5 ppm with ^{14}C-imazethapyr showed ^{14}C-residues of < 0.05 ppm in eggs and all tissues (blood, muscle, skin/fat, liver and kidney).

Additional animal metabolism studies have been conducted with CL 288511 (main metabolite in treated crops fed to livestock) in both laying hens and lactating goats. These studies have been repeated to support subsequent use extensions on crops used as livestock feed items which would theoretically result in a higher dosing of imazethapyr derived residues to livestock (i.e., corn, alfalfa). In these studies, lactating goats dosed at 42 ppm of ^{14}C-CL 288511 showed ^{14}C-residues of < 0.01 ppm in milk, leg muscle, loin muscle and omental fat. ^{14}C-Residues in blood were mostly < 0.01 ppm but reached 0.01 ppm on two of the treatment days. ^{14}C-Residue levels in the liver and kidney were 0.02 and 0.09 ppm, respectively. Laying hens dosed at 10.2 ppm of ^{14}C-imazethapyr showed ^{14}C-residues of < 0.01 ppm in eggs and all tissues (blood, muscle, skin/fat, liver and kidney). ^{14}C-imazethapyr or ^{14}C-CL 288511 ingested by either laying hens or lactating goats was excreted within 48 hours of dosing. These studies indicate that parent imazethapyr and CL 288511-related residues do not accumulate in milk or edible tissues of the ruminant.

7. *Metabolite toxicology.* Metabolism studies in soybean, peanut, corn, alfalfa, and canola indicate that the only significant metabolites are the α-hydroxyethyl derivative of imazethapyr, CL 288511 and its glucose conjugate CL 182704. The α-hydroxyethyl metabolite has also been identified in minor quantities in the previously submitted rat metabolism studies and in goat and hen metabolism studies. No additional toxicologically significant metabolites were detected in any of the plant or animal metabolism studies.

8. *Endocrine disruption.* Collective organ weight data and histopathological findings from the 2–generation rat reproductive study, as well as from the subchronic and chronic toxicity studies in three different animal species demonstrate no apparent estrogenic effects or treatment-related effects of imazethapyr on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* The potential dietary exposure to imazethapyr has been calculated from the proposed tolerance for use on rice and previously established tolerances for peanuts, legume vegetables, soybeans, alfalfa, endive, lettuce, and corn. This very conservative chronic dietary exposure estimate used the proposed tolerance of 0.5 ppm for rice, and tolerance values of 0.1 ppm for peanuts, 0.1 ppm for legume vegetables, 0.1 ppm for soybeans, 3.0 ppm for alfalfa, 0.1 ppm for endive (escarole), 0.1 ppm for lettuce, and 0.1 ppm for corn. In addition, these estimates assume that 100% of these crops contain imazethapyr residues. In support of this import tolerance petition, a proposed tolerance of 0.1 ppm for canola would not be expected to contribute significantly to this dietary risk assessment.

i. *Food.* Potential exposure to residues of imazethapyr in food will be restricted to intake of rice, peanuts, legume vegetables, soybeans, alfalfa (sprouts), endive, lettuce, and corn. Using the assumptions discussed above, the

Theoretical Maximum Residue Concentration (TMRC) values of imazethapyr were calculated for the U.S. general population and subgroups. Based on the tolerances given above, the TMRC values for each group are:

- 0.000419 mg/kg bwt/day for the general U.S. population;
- 0.001104 mg/kg bwt/day for all infants (< 1 year);
- 0.001298 mg/kg bwt/day for non-nursing infants;
- 0.000870 mg/kg bwt/day for children 1 to 6 years of age; and
- 0.000610 mg/kg bwt/day for children 7 to 12 years of age.

The TMRC values indicate that non-nursing infants are the most highly exposed population subgroup.

ii. *Drinking water.* As a screening-level assessment for aggregate exposure, EPA evaluates a Drinking Water Level of Comparison (DWLOC), which is the maximum concentration of a chemical in drinking water that would be acceptable in light of total aggregate exposure to that chemical. In 1990, EPA set the Reference Dose (RfD) for imazethapyr at 0.25 mg/kg bwt/day, based on the NOAEL from the 1–year dietary toxicity study in dogs of 25 mg/kg bwt/day and a 100-fold uncertainty factor. Based on the chronic RfD of 0.25 mg/kg bwt/day and EPA's default factors for body weight and drinking water consumption, the DWLOCs have been calculated to assess the potential dietary exposure from residues of imazethapyr in water. For the adult population, the chronic DWLOC was 8,735 parts per billion (ppb) and for children the DWLOC was estimated to be 2,491 ppb.

Chronic drinking water exposure analyses were calculated for imazethapyr using EPA screening models Screening Concentration in Ground Water (SCI-GROW) for ground water and Generic Expected Environmental Concentration (GENEEC) for surface water). The SCI-GROW value is 16.54 ppb and the calculated peak GENEEC value is 5.96 ppb by aerial application. For the U.S. adult population, the estimated exposures of imazethapyr residues in ground water and surface water are approximately 0.19% and 0.07%, respectively, of the DWLOC. The estimated exposures of children to imazethapyr residues in ground water and surface water are approximately 0.66%, and 0.24%, respectively, of the DWLOC. Therefore, the exposures to drinking water from imazethapyr use are negligible.

2. *Non-dietary exposure.* Imazethapyr products are not currently registered or requested to be registered for residential use; therefore the estimate of residential exposure is not relevant to this tolerance petition.

D. Cumulative Effects

Imazethapyr is a member of the imidazolinone class of herbicides. Other compounds of this class are registered for use in the U.S. However, the herbicidal activity of the imidazolinones is due to the inhibition of acetohydroxyacid synthase (AHAS), an enzyme only found in plants. AHAS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack AHAS and this biosynthetic pathway. This lack of AHAS contributes to the low toxicity of the imidazolinone compounds in animals. BASF is aware of no information to indicate or suggest that imazethapyr has any toxic effects on mammals that would be cumulative with those of any other chemical. Therefore, for the purposes of this tolerance petition no assumption has been made with regard to cumulative exposure with other compounds having a common mode of action.

E. Safety Determination

1. *U.S. population.* The RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. In 1990, EPA set the RfD for imazethapyr at 0.25 mg/kg bwt/day, based on the NOAEL from the 1–year dietary toxicity study in dogs of 25 mg/kg bwt/day and a 100-fold uncertainty factor. The chronic dietary exposure of 0.000419 mg/kg bwt/day for the general U.S. population will utilize only 0.2% of the RfD of 0.25 mg/kg bwt/day. EPA generally has no concern for exposures below 100% of the RfD. Due to the low toxicity of imazethapyr, an acute exposure dietary risk assessment is not warranted. The complete and reliable toxicity database, the low toxicity of the active ingredient, and the results of the chronic dietary exposure risk assessment support the conclusion that there is a "reasonable certainty of no harm" from the proposed use of imazethapyr on imidazolinone tolerant rice and canola.

2. *Infants and children.* The conservative dietary exposure estimates of all registered uses including the proposed tolerance for rice show exposures of 0.001104, 0.000440, 0.000870, and 0.000610 mg/kg bwt/day which will utilize 0.4, 0.2, 0.3, and 0.2% of the RfD for all infants (< 1 year), nursing infants, children 1-6 years, and children 7-12 years, respectively. The chronic dietary exposures for non-nursing infants, the most highly exposed subgroup, will utilize only 0.5% of the RfD. Results from the 2–generation reproduction study in rats and the developmental toxicity studies in rabbits and rats indicate no increased sensitivity to developing offspring when compared to parental toxicity. These results also indicate that imazethapyr is neither a developmental toxicant nor a teratogen in either the rat or rabbit. Therefore, an additional safety factor is not warranted, and the RfD of 0.25 mg/kg bwt/day, which utilizes a 100-fold safety factor is appropriate to ensure a reasonable certainty of no harm to infants and children.

F. International Tolerances

There are no Codex maximum residue levels established or proposed for residues of imazethapyr on canola.

[FR Doc. 03–7 Filed 1–2–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7435–5]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Costs for the Johnstown Landfill Site, Town of Johnstown, Fulton County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the Johnstown Landfill Site ("Site") located in the Town of Johnstown, Fulton County, New York. The settlement requires the settling parties, the City of Johnstown, New York; Gloversville-Johnstown Joint Sewer Board; Milligan & Higgins, Division of Hudson Industries; Simco Leather Corporation; Johnstown Leather Corporation; Crescent Leather Finishing Co., Inc.; and Pearl Leather Finishers, Inc., to pay the sum total of $202,125 in reimbursement of EPA's past response costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for their payment of monies. For thirty (30) days following

the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments receive disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before February 3, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Johnstown Landfill Site located in the Town of Johnstown, Fulton County, New York, Index No. CERCLA–02–2003–2001. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Henry Guzmán, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3166.

Dated: December 18, 2002.

George Pavlou,

Division Director, Emergency and Remedial Response Division, Region II.

[FR Doc. 03–106 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: Tuesday, January 7, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, telephone: (202) 694–1220.

Darlene, Harris,

Secretary of the Commission.

[FR Doc. 02–33149 Filed 12–31–02; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Bancroft State Bancshares, Inc., Bancroft, Wisconsin; to form Hometown Insurance Agency L.L.C., Bancroft, Wisconsin, which will acquire all the assets of Rayome Insurance Agency, Inc., Bancroft, Wisconsin, and thereby engage in insurance agency activities in a town with a population not exceeding 5,000.

Board of Governors of the Federal Reserve System, December 30, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–112 Filed 1–2–03; 8:45 am]

BILLING CODE 6210–01–S

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Harry S. Truman Scholarship 2003 Competition

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Notice of closing for nominations from eligible institutions of higher education.

SUMMARY: Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Public Law 93–642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for 2003 Truman Scholarships. Procedures are prescribed at 45 CFR 1801.

In order to be assured consideration, all documentation in support of nominations must be received by the Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006 no later than January 27, 2003 from participating institutions.

Dated: December 17, 2002.

Louis H. Blair,

Executive Secretary.

[FR Doc. 03–72 Filed 1–2–03; 8:45 am]

BILLING CODE 6820–AD–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collection; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 1. Leading Health Indicators Survey—NEW—The Office of Public Health and Science's Office of Disease Prevention and Health Promotion (ODPHP) proposes to conduct a survey of the Leading Health Indicators (LHIs). The survey seeks to measure how the LHIs are viewed by the public and explore what actions the public needs to take to improve their health and that of the community and the Nation.

Respondents: Individuals.

Number of Respondents: 8,000.

Estimated Burden per Response: 15 minutes.

Total Burden: 2,000 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201. Comments should be received within 60 days of this notice.

Dated: December 19, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 03–59 Filed 1–2–03; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 1. Monitoring the United States Blood Supply—New—The Office of Public Health and Science will monitor the nation's blood supply by gathering daily supply status information from 29 select sites including 26 sentinel transfusion services and three community-wide blood banks.

Respondents: hospitals or blood banks.

Number of Respondents: 29.

Number of Responses: 5,800.

Average Burden per Response: one hour.

Total Burden: 5,800 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201. Written comments should be received within 60 days of this notice.

Dated: December 19, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 03–60 Filed 1–2–03; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Council on Public Health Preparedness; Notice of Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the Secretary's Council on Public Health Preparedness.

The purpose of this public meeting is to convene the Council to discuss issues related to preparing the nation to respond to public health emergencies in general and bioterrorism in particular. Major areas to be considered by the Council at this meeting may include but are not restricted to the following: a status report on the CDC and HRSA cooperative agreements awarded to states and other jurisdictions for bioterrorism preparedness and response programs, overview of states' smallpox vaccination programs, update on the development of vaccines, and discussions of the role of academic health centers in local/regional public health preparedness.

Name of Committee: Secretary's Council on Public Health Preparedness.

Date: January 14–15, 2003.

Time: January 14, 10 a.m.–5:30 p.m., January 15, 9 a.m. to 3:30 p.m.

Place: Marriott Key Bridge, 1401 Lee Highway, Arlington, Virginia 22209, 703–524–6400.

Contact Person: Lily Engstrom, Executive Director, Secretary's Council on Public Health Preparedness, Office of the Assistance Secretary for Public Health Emergency Preparedness, 200 Independence Avenue, SW., Room 638G, Washington, DC 20201, 202–690–6629.

SUPPLEMENTARY INFORMATION: The Secretary's Council on Public Health Preparedness was established on October 22, 2001, by the Secretary of Health and Human Services under authorization of Section 319 of the Public Health Service Act (42 U.S.C. § 247d); Section 222 of the Public Health Preparedness will be to advise the Secretary on appropriate actions to prepare for and respond to public health emergencies including acts of bioterrorism. The function of the Council is to advise the Secretary regarding steps that the U.S. Department of Health and Human Services can take to (1) improve the public health and health care infrastructure to better enable Federal, State, and local governments to respond to a public health emergency and, specifically, a bio-terrorism event; (2) ensure that there are comprehensive contingency plans in place at the Federal, State, and local levels to respond to a public health emergency and, specifically, a bio-terrorism event; and (3) improve public health preparedness at the Federal, State, and local levels.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first served basis. Members of the public who wish to attend the meeting may register by emailing *publichealth@iqsolutions.com* no later than close of business, Monday, January 6, 2003. All requests should include the name, address, telephone number, and business or professional affiliation of those registering.

Opportunities for oral statements by the public will be provided on January 14 at 4:30 p.m. (Time approximate). Oral comments will be limited to five minutes, three minutes to make a

statement and two minutes to respond to questions from Council members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotment may also be limited by the number of registrants. Members of the public who wish to present oral comments at the meeting may register by emailing *publichealth@iqsolutions.com* no later than close of business, Monday, January 6, 2003. All requests to present oral comments should include the name, addressed, telephone number, and business or professional affiliation of the interested party, and should indicate the areas of interest or issue to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by e-mail to *publichealth@iqsolutions.com* for inclusion in the public record no later than close of business, Monday, January 6, 2003.

When mailing written comments, please provide your comments, if possible, as electronic version or on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact staff at the address and telephone number listed above no later than close of business, Monday, January 6, 2003.

Dated: December 26, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

This notice is being published less than 15 days in advance of the meeting due to scheduling conflicts.

[FR Doc. 03–42 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0362]

"Guidance for Industry: Recommendations for Deferral of Donors and Quarantine and Retrieval of Blood and Blood Products in Recent Recipients of Smallpox Vaccine (Vaccinia Virus) and Certain Contacts of Smallpox Vaccine Recipients;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Recommendations for Deferral of Donors and Quarantine and Retrieval of Blood and Blood Products in Recent Recipients of Smallpox Vaccine (Vaccinia Virus) and Certain Contacts of Smallpox Vaccine Recipients," dated December 2002. The guidance document provides guidance on quarantine of blood and blood products previously collected from such donors. Because of the likelihood of vaccination of many people with smallpox, these measures are intended to reduce the possibility of vaccinia virus transmission by blood and blood products.

DATES: Submit written or electronic comments on agency guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Recommendations for Deferral of Donors and Quarantine and Retrieval of Blood and Blood Products in Recent Recipients of Smallpox Vaccine (Vaccinia Virus) and Certain Contacts of Smallpox Vaccine Recipients," dated December 2002. The guidance document provides information that would help in instances related to the possible risk of vaccinia virus transmission by blood or blood products. Although the presence of vaccinia virus in blood has rarely been documented, this possibility has not been assessed using laboratory techniques. Therefore, the risk of vaccinia transmission by blood and blood products is uncertain. In addition, unlike many vaccines, the smallpox vaccine causes a scab, which can contain infectious vaccinia virus. It is prudent, therefore, to temporarily defer donors for an appropriate period of time. This guidance applies to collections of Whole Blood, blood components (including recovered plasma), Source Leukocytes, and Source Plasma intended for use in transfusion or for further manufacturing into injectable products. FDA developed the recommendations in this guidance in consultation with experts on vaccinia virus at the Centers for Disease Control and at the Department of Defense. This document is intended to provide guidance pertaining to pre-event, nonemergency, smallpox vaccination. In the event of widespread emergency vaccination due to an actual or impending smallpox outbreak, the risk-benefit situation may differ significantly, and these recommendations for donor deferrals, and for product quarantine and retrieval may need to be modified according to the circumstances and available scientific information.

This guidance is being issued in accordance with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The agency is soliciting public comment, but is implementing this guidance immediately because the agency has determined that prior public participation is not feasible or appropriate. FDA made this determination because vaccination programs may start soon, and blood establishments need to clarify the suitability of donors who have been recently vaccinated or who have been infected through close contact with a recently vaccinated person. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/ohrms/dockets/default.htm or www.fda.gov/cber/guidelines.htm.

Dated: August 13, 2002.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–113 Filed 1–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Emergency Medical Services for Children (EMSC) Grantee Survey—NEW

HRSA is planning to conduct a needs assessment to obtain information about the characteristics of State EMS systems, and the degree to which they have been adapted to address the needs of children. The results of this assessment will be used to determine funding priorities, including development of appropriate guidelines and provision of technical assistance to States, demonstration grants, information collection and sharing among State agencies, and training programs for health professionals.

HRSA has included national performance measures for EMSC in this survey in accordance with the requirements of the "Government Performance and Results Act (GPRA) of 1993" (Pub. L. 103–62). This act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance.

The estimated response burden is as follows:

Collection activity	Number of respondents	Responses per respondent	Total responses	Average time per response	Total burden hours
Questionnaire	56	1	56	10	560

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 27, 2002.

Jon L. Nelson,

Associate Administrator for Management and Program Support.

[FR Doc. 03–114 Filed 1–2–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Epidemiological Studies of Cancer Among Atomic Bomb Survivors (RFP NO1–CP–31012–66).

Date: January 16, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Health, 6116 Building, 6116 Executive Boulevard, Room 8061, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kirt Vener, PhD, Branch Chief, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8061, Bethesda, MD 20892, (301) 496–7174, *venerk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 27, 2002.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–39 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. CIPRA U01 Exploratory Developmental Grant Program.

Date: January 16, 2003.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Roberta Binder, PHD, Scientific Review Administrator, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, Rm 2155, Bethesda, MD 20892, 301–496–7966, *rb169n@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 26, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–36 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, HIV Clinical Research Management Support.

Date: February 6–7, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: To review and Evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert C. Goldman, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2219, 6700-B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–8424, *rg159w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 26, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–37 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of RFP–NIH–ES–03–01.

Date: January 23, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709.

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, PO Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: December 27, 2002.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–40 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the

National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: January 26–28, 2003.

Closed: January 26, 2003, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Open: January 27, 2003, 8:30 a.m. to 9:40 a.m.

Agenda: to discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: January 27, 2003, 9:40 a.m. to 10:15 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Open: January 27, 2003, 10:15 a.m. to 11:55 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: January 27, 2003, 11:55 a.m. to 1:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Open: January 27, 2003, 1:45 p.m. to 4:30 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: January 27, 2003, 4:30 p.m. to 5:20 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: January 27, 2003, 6 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: January 27, 2003, 8:30 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Story C. Landis, PhD, Director, Division of Intramural Research, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, (301) 435–2232.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Nauroscienses, National Institutes of Health, HHS)

Dated: December 27, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–41 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of PO1 Applications.

Date: January 29–31, 2003.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Key Bridge, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Janice B Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: December 27, 2002.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–43 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prostate Brachytherapy.

Date: January 8, 2003.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Heath, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vision Research and Technology.

Date: January 10, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Weijia Ni, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, B-Lymphocite Development.
Date: January 10, 2003.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: George W. Chacko, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892, (301) 435–1220, *chackoge@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, chemical Pathology Study Section.
Date: January 15–17, 2003.
Time: 5 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Four Points Ventura, 1050 Schooner Drive, Ventura, CA 93001.
Contact Person: Victor A. Fung, Ph.D, Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room, 6178, MSC 7804, Bethesda, MD 20814–9692, (301) 435–3504, *vf6n@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–W (02)M;SB Member Conflict: Intestine Surgery.
Date: January 16, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Dharam S. Dhindsa, DVM, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Program Project Sepsis Immunopathology.
Date: January 22, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Teresa Nesbitt, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–X (40) Site Visit.
Date: January 26–28, 2003.
Time: 7 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Millennium Hotel Durham, 2800 Campus Walk Avenue, Durham, NC 27705.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Emphasis Panel: Hearing Mechanisms.
Date: January 28, 2003.
Time: 10 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jim Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Structural Genomics Program Review.
Date: January 29, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnership: Genetics.
Date: January 31, 2003.
Time: 3 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael R. Schaefer, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6116, MSC 7890, Bethesda, MD 20892, (301) 435–2477, *schaefem@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 26, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–38 Filed 1–2–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program, National Institute of Environmental Health Sciences, National Institutes of Health: Notice of Workshop

Summary

The National Toxicology Program (NTP) is sponsoring a workshop entitled "Genetically Modified Rodent Models for Cancer Hazard Identification: Selecting Substances for Study and Interpreting and Communicating Results' on February 21, 2003, at the Hamilton Crowne Hotel, 14th and K Street, NW., Washington, DC. Registration starts at 8 a.m. and the meeting begins at 8:30 a.m. and is open to the public with attendance limited only by the available space. Persons interested in attending are asked, if possible, to preregister with the NTP Liaison and Scientific Review Office (contact information below). As information about this workshop becomes available, it will be posted on the NTP web site (*http://ntp-server.niehs.nih.gov*).

Background

The NTP has invested considerable time and resources in addressing whether cancer bioassay results from studies conducted in genetically modified or "transgenic" rodent models are useful for identifying chemicals presumed to be of carcinogenic risk to humans, in order to determine whether these models might be integrated into NTP research and testing activities. After reviewing available information on the use of selected models in carcinogen identification, the NTP recognizes that important issues of experimental design and data interpretation need further attention to enable future regulatory acceptance and

eventual use in human risk assessment. Therefore, to begin to address these areas the NTP is sponsoring a workshop with the following objectives:

- Solicit comment on a process for selection of appropriate nominated substances to undergo cancer hazard evaluation in genetically modified or "transgenic" models.
- Solicit comment on issues related to the proper interpretation of results of "transgenic" cancer models, the implications of these findings for public health decisions, and the most appropriate interpretive language to describe the results of such studies to the scientific/regulatory communities and the public.

Preliminary Agenda

8 a.m. Registration
8:30 a.m. Introduction and Welcome
8:45 a.m. Plenary Session
- Overview of Selected Transgenic Models
- Experience with Transgenic Models in the NTP Bioassay
- Workshop Charge
- Public Comment

10 a.m. Break
10:30 a.m. Breakout Groups
- Group 1: Solicit comment on a process for selection of appropriate nominated substances to undergo cancer hazard evaluation in genetically modified or "transgenic" models.
- Group 2: Solicit comment on issues related to the proper interpretation of results of "transgenic" cancer models, the implications of these findings for public health decisions, and the most appropriate interpretive language to describe the results of such studies to the scientific/regulatory communities and the public.

Noon Lunch (on your own)
1:00 p.m. Breakout Groups continued
2:30 p.m. Break
3:15 p.m. Plenary Session
- Breakout Group Reports
- Open Discussion

4:30 p.m. Adjourn

As additional details and materials for this workshop become available, they will be posted on the NTP web site (*http://ntp-server.niehs.nih.gov*) or can be obtained by contacting Ms. Diane Spencer, NTP Liaison and Scientific Review Office (T: 919–541–2759, F: 919–541–0295, *spencer2@niehs.nih.gov*).

Registration and Public Comment

The workshop is open to the public and interested individuals are invited to attend as observers. The number of observers will be limited only by the space available. Due to space limitations, persons interested in attending are asked to pre-register by contacting Ms. Spencer (contact information above).

The NTP invites public comment and time is set-aside during the morning session for presentation of oral comments. Persons wishing to make oral comment are asked to contact Ms. Spencer in advance of the meeting and provide contact information (name, affiliation, telephone, e-mail, and sponsoring organization, if any); however, registration for oral comments will also be accepted on-site. Observers are also welcome to participate in the open discussion in the afternoon plenary session.

The NTP also welcomes receipt of written comments. If sending written comments, please include contact information (name, affiliation, telephone, e-mail, and sponsoring organization, if any) and send to Dr. Mary S. Wolfe, NTP Executive Secretary (P.O. Box 12233, MD A3–01. 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 or *wolfe@niehs.nih.gov*) by Friday, February 14, 2003. Any comments received will be provided to invited attendees at the meeting and made available for the public.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 03–35 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at the following Web sites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900
Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750
Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917
Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers)
Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468
DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522, (Formerly: Alabama Reference Laboratories, Inc.)
DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories*, 10150–102 Street, Suite 200, Edmonton, Alberta, Canada TJ5 5E2, 780–451–3702/800–661–9876
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609
Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500
Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)
Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991/800–541–7891 x8991
PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010,

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 2, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

(Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176x276.

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507 / 800–279–0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Sure-Test Laboratories, Inc., 2900 Broad Avenue, Memphis, Tennessee 38112, 901–474–6028

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260,

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–3714

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–141 Filed 1–2–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for The Centers for the Application of Prevention Technologies (Short Title: CAPTs).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Request for Applications (RFA), including Part I, *The Centers for the Application of Prevention Technologies (SP 03–002) (Short Title: CAPTs)*, and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements*, before preparing and submitting an application.

Activity	Application deadline	Est. Funds FY 2003	Est. No. of awards	Project period
The Centers for the Application of Prevention Technologies.	March 10, 2003	$8,000,000	5	5 years.

The actual amount available for the award may vary depending on unanticipated program requirements and actual SAMHSA appropriations. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of State Training and Evaluation of Evidence-Based Practices grants. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund the grants. This program is authorized under Section 516 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from:

The National Clearinghouse for Alcohol and Drug Information (NCADI): (800) 789–2647 or (800–487–4889 TDD).

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention (CSAP) is accepting applications for Fiscal Year 2003 cooperative agreements for five regional Centers for the Application for Prevention Technologies or CAPTs. The CAPTs are SAMHSA/CSAP's primary knowledge application and capacity expansion program supporting CSAP's mission to bring effective substance abuse prevention to every community. As such, the CAPTs form the cornerstone of CSAP's efforts to move science into services. Under the guidance of CSAP, the CAPTs work to expand the capacity of the substance abuse prevention field through the application of effective evidence/science-based programs, practices, and policies within every State prevention service system and community. To accomplish this, the CAPTs provide their clients with timely and effective technical assistance, training, dissemination, and communication

services that increase the transfer and application of substance abuse prevention knowledge and skills.

Eligibility: Applications may be submitted by public and domestic private non-profit entities (*e.g.*, universities, faith-based organizations, etc.). It is required that applicants have offices physically located within the CAPT region to be served. Applicants must also be experienced in the delivery of prevention technical assistance and training. Applicants are required to include a certification with their application to certify that—for a minimum of two years prior to the date of the application—the organization has been providing the general types of training and technical assistance services being proposed for this RFA.

Availability of Funds: It is expected that Approximately $8 million will be available for five awards in FY 2003. The annual award will be $1.5 million in total costs (direct and indirect). Applications with proposed Federal budgets that exceed $1.5 million will not be reviewed.

Period of Support: Awards may be requested for up to 5 years.

Criteria for Review and Funding:General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions on program issues, contact: Jon Rolf, Ph.D., CSAP/SAMHSA, Rockwall II, Room 800, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0380 (direct), (301) 443–7072 (fax), e-mail: *jrolf@samhsa.gov.*

For questions on grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, e-mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under "Assistance with Grant Applications". The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: December 30, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–115 Filed 1–2–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–19]

Notice of Proposed Information Collection for Public Comment-Public Housing Reform-Admission and Occupancy Requirement on Residency Preferences, Individual Savings Accounts for Residents, FSS Action Plan, Over-Income Small PHAs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 4, 2003

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW.,

Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Reform-Admission and Occupancy Requirements for Residency Preferences, Community Services, Individual Savings Accounts for Residents, FSS Action Plan, Over-Income Small PHAs.

OMB Control Number: 2577–0230.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) will submit to HUD information on admission and occupancy requirements to ensure statute mandates are implemented. The Act allows PHAs to establish their own system for making dwelling units or Section 8 assistance available to families having certain characteristics. For public housing, the 1998 Act created optional deductions for PHAs to use to promote self-sufficiency; permissive deductions must be described in the agency's written policies. PHAs may establish and maintain individual savings accounts for public housing residents who pay income-based rents. The PHA's Annual Plan (2577–0226) must include a description of the community service and self-sufficiency requirements (8 hours per month).

Agency form numbers, if applicable: None.

Members of affected public: State, or Local Government.

Estimation of the total number of hours needed to pare the information collection including number of respondents, frequency of response, and hours of responses:

3,400 respondents, annually, 50 average hours per response, 169,300 total reporting burden.

Status of the proposed information collection: Extension of a currently approved collection, without change.

Authority: Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 27, 2002.

William Russell,

Deputy Assistant Secretary for Public Housing and Voucher Programs.

[FR Doc. 03–31 Filed 1–2–03; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–01]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, (HUD).

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 3, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 26, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–03 Filed 1–2–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Sonora Tiger Salamander Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability

SUMMARY: The U.S. Fish and Wildlife Service announces the availability of the final Recovery Plan for the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*). The species occurs on lands managed by the U.S. Forest Service, Coronado National Forest; U.S. Department of the Army, Fort Huachuca, Arizona State Parks, and private lands in the San Rafael Valley and adjacent portions of the Huachuca and Patagonia mountains in southeastern Santa Cruz and southwestern Cochise counties, Arizona.

ADDRESSES: Persons wishing to obtain a copy of the Recovery Plan may contact Jim Rorabaugh, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951 (602/640–2720 x238, *Jim_Rorabaugh@fws.gov).* The Plan is also available at *http://arizonaes.fws.gov.* The complete administrative record supporting the development of the Recovery Plan is available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Rorabaugh (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant species to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the

recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. On June 16, 2000, the Service published a notice of document availability in the **Federal Register** announcing the availability for public review of the draft Recovery Plan for the Sonora tiger salamander. Public comments were accepted through August 15, 2000. Three letters of comment were received during the comment period. The draft recovery plan was revised and finalized based on this input.

The Sonora tiger salamander Recovery Plan describes the status, current management, recovery objectives and criteria, and specific actions needed to reclassify the Sonora tiger salamander from endangered to threatened, and to ultimately delist it. The Recovery Plan was developed by Dr. James P. Collins and Jonathan Snyder, Arizona State University, Tempe, Arizona, in coordination with the Service and a team of stakeholders (the Participation Team), which included ranchers, land owners and managers, agency and organization representatives, and herpetologists. The salamander currently only breeds in livestock watering tanks in the San Rafael Valley of southeastern Arizona. Its natural breeding habitats are no longer present or are now unsuitable. The salamander is threatened by loss of natural habitats; predation by nonnative fish, bullfrogs, and crayfish; genetic swamping by nonnative barred tiger salamanders; disease; low genetic diversity; and collection for bait or translocation by anglers. Actions needed to recover the salamander include maintenance and enhancements of habitats, control of nonnative organisms, control of collection and transport of tiger salamanders, actions to reduce spread of disease, monitoring, research, public education and information, and adaptive management. The Recovery Plan includes a Participation Plan, prepared by the Participation Team, which details how the plan should be implemented to minimize social and economic impacts while still providing for the prompt recovery of the salamander. The Service worked with Dr. Collins and the Participation Team to address comments received on the draft Plan during the comment period.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 2002.

H. Dale Hall,

Regional Director.

[FR Doc. 03–45 Filed 1–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take by the Leander Rehabilitation PUD

SUMMARY: Fleur Land, Ltd., c/o Stone Haven Partners (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–065323–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction and operation of commercial and multi-use development on 209 acres of the Leander Rehabilitation PUD, Cedar Park, Williamson County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received within 60 days of the date of this publication.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, PO Box 1306, Room 4012, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Sybil Vosler, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512 490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8 a.m. to 4:30 p.m.) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service Office, Austin, Texas at the above address. Please refer to permit number TE–065323–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Sybil Vosler at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Fleur Land Ltd., c/o Stone Haven Partners, plans to construct and operate commercial and multi-use development on 209 acres of the Leander Rehabilitation PUD, Cedar Park, Williamson County, Texas. This action would eliminate approximately 165.8 acres of habitat resulting in take of the golden-cheeked warbler. The Applicant proposes to compensate for this incidental take of the golden-cheeked warbler by purchasing mitigation credits for 96.8 acres in a conservation bank which will be managed in perpetuity for the benefit of the golden-cheeked warbler.

Susan MacMullin,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 03–24 Filed 1–2–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 17, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of

Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or E-mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Independent Contractor Register.

OMB Number: 1219–0040.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Type of Response: Recordkeeping.

Number of Respondents: 15,292.

Number of Annual Responses: 99,398.

Average Response Time: 8 minutes.

Total Estimated Burden Hours: 13,250.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $174,789.

Description: 30 CFR 45.4(a) requires that each independent contractor provide the production-operator in writing the trade name, business address, and telephone number; a description and location at the mine where the work is to be performed; MSHA identification number, if any; and the contractor's business address of record. 30 CFR 45.4(b) requires each production-operator to maintain in writing the information required by paragraph (a) at the mine and to make this information available to any authorized representative of the Secretary upon request.

Type of Review: Extension of a currently approved collection.

Agency: Training Plans, New Miner Training, Newly-Hired Experienced Miner Training.

OMB Number: 1219–0131.

Affected Public: Business or other for-profit.

Frequency: On occasion and annually.

Type of Response: Recordkeeping; reporting; and third party disclosure.

Number of Respondents: 10,305.

Number of Annual Response: 167,340.

Average Response Time: Varies considerably by task and mine size; however, the total average time for all mines is approximately 1.6 hours per response.

Total Estimated Burden Hours: 263,274.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $520,683.

Description: Paragraph 9a) of § 46.3 requires mine operators to develop and implement a written training plan approved by MSHA that contains effective programs for training new miners and experienced miners, training miners for new tasks, annual refresher training, and hazard training.

Paragraph (b) requires the following information, at a minimum, to be included in a training plan:

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person designated by the operator who is responsible for the health and safety training at the mine. This person may be the operator;

(3) A general description of the teaching methods and the course materials that are to be used in providing the training, including the subject areas to be covered and the approximate time to be spent on each subject area;

(4) A list of the persons who will provide the training, and the subject areas in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of training.

Paragraph (c) requires a plan that does not include the minimum information specified in paragraph (b) to be approved by MSHA. For each size category, the Agency estimates that 20 percent of mine operators will choose to write a plan and send it to MSHA for approval.

Paragraph (d) requires mine operators to provide miners' representatives with a copy of the training plan. At mines where no miners' representatives has been designated, a copy of the plan must be posted at the mine or a copy must be provided to each miner.

Paragraph (e) provides that within 2 weeks following receipt or posting of the training plan, miners or their representatives may submit written comments on the plan to mine operators, or to the Regional Manager, as appropriate. The burden hours and costs of this provision are not borne by mine operators, but my miners and their representatives.

Paragraph (g) requires that the miners' representative with a copy of the approved plan within one week after approval. At mines where no miners' representatives has been designated, a copy of the plan must be posted at the mine or a copy must be provided to each miner.

Paragraph (h) allows mine operators, miners, and miners' representatives to appeal a decision of the Regional Manager in writing to the Director for Education Policy and Development. The Director would issue a decision on the appeal within 30 days after receipt of the appeal.

Paragraph (i) requires mine operators to make available at the mine site a copy of the current training plan for inspection by MSHA and for examination of miners and their representatives. If the training plan is not maintained at the mine site, mine operators must have the capability to provide the plan upon request by MSHA, miners, or their representatives.

Paragraph (a) of § 46.5 requires mine operators to provide each new miner with no less than 24 hours of training. Miners who have not received the full 24 hours of new miner training must work where an experienced miner can observe that the new miner is working in a safe manner.

Paragraph (a) of § 46.6 requires mine operators to provide each newly hired experienced miner with certain training before the miner begins work.

Paragraph (a) of § 46.7 requires, before a miner performs a task for which he or she has no experience, that the mine operator training the miner in the safety and health aspects and safe work procedures specific to that task. If changes have occurred in a miner's regularly assigned task, the mine operator must provide that miner with training that addresses the changes.

Paragraph (a) of § 46.8 requires, at least every 12 months, that the miner operator provide each miner with no less than 8 hours of refresher training.

Paragraph (a) of § 46.9 requires the mine operators upon completion of each

training program, to record and certify on MSHA Form 5000–23 (OMB Control No. 1219–0070/Expiration Date: 11/30/2004), or on a form that contains the required information, that the miner has completed the training.

Paragraph (a) of § 46.11 requires the mine operator to provide site-specific hazard training to non-miners, including the following persons: scientific workers; delivery workers and customers; occasional, short-term maintenance or service workers, or manufacturers' representatives; and outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 03–10 Filed 1–2–03; 8:45 am]
BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)of* the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 24th day of December 2002.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–2 Filed 1–2–03; 8:45 am]

BILLING CODE 4510–27–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Wednesday, January 15, 2003, and Thursday, January 16, 2003, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 9:30 a.m. on January 15, and at 9 a.m. on January 16.

Topics for discussion include: Payment adequacy and updating Medicare payments; paying for new technologies; PPS for inpatient

psychiatric facilities; expanded transfer policy for hospital inpatient services; indirect medical education payments above the costs of teaching; MedPAC's previous recommendations on payments to rural hospitals; alternatives to administered pricing; methods used by private payers to pay for physician-administered drugs, and developing incentives to improve quality of care in Medicare.

Agendas will be e-mailed on January 7, 2003. The final agenda will be available on the Commission's Web site (*www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 03–33 Filed 1–2–03; 8:45 am]

BILLING CODE 6820–BW–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26–ISFSI, ASLBP No. 02–801–01–ISFSI]

Atomic Safety and Licensing Board; Pacific Gas and Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation); Notice of Hearing (Application To Construct and Operate an Independent Spent Fuel Storage Installation)

December 27, 2002.

Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Jerry R. Kline and Dr. Peter S. Lam.

This proceeding concerns the December 21, 2001 application of Pacific Gas and Electric Company (PG&E) under 10 CFR part 72 for permission to construct and operate an independent spent fuel storage installation (ISFSI) at its Diablo Canyon Power Plant (DCPP) site near San Luis Obispo, California. On April 12, 2002, the NRC staff issued a notice that the agency is (1) considering this license amendment application; and (2) affording the opportunity for an adjudicatory hearing on the PG&E application. That notice was published in the **Federal Register** on April 22, 2002. (67 FR 19600 (Apr. 22, 2002).) Responding to the April 2002 notice of opportunity for a hearing, various petitioners, including the San Luis Obispo Mothers for Peace (SLOMFP), which by consent is acting as a lead petitioner, Peg Pinard, the Avila Valley Advisory Council, and nine other organizations, including the Santa Lucia Chapter of the Sierra Club, San Luis Obispo Cancer Action Now, the Cambria Legal Defense Fund, the Central Coast Peace and Environmental Council, the Environmental Center of San Luis Obispo, Nuclear Age Peace Foundation, the San Luis Obispo Chapter of Grandmothers for Peace International, Santa Margarita Area Residents Together, and the Ventura County Chapter of the Surfrider Foundation filed timely requests for hearing and petitions to intervene in accordance with 10 CFR 2.714 that, as supplemented, seek to interpose various joint contentions challenging the application. In response to those hearing requests, on May 29, 2002, the Secretary of the Commission referred the petitions to the Atomic Safety and Licensing Board Panel to conduct any subsequent adjudication. On May 31, 2002, this Licensing Board was appointed to preside over this proceeding. (67 FR 39073 (June 6, 2002).) The Board consists of Dr. Jerry R. Kline, Dr. Peter S. Lam, and G. Paul Bollwerk, III, who serves as Chairman of the Board. In addition, San Luis Obispo County, California (SLOC), the Port San Luis Harbor District (PSLHD), the California Energy Commission, the Diablo Canyon Independent Safety Committee (DCISC), and the Avila Beach Community Services District (ABCSD) filed requests to participate in any hearing as interested governmental entities in accordance with 10 CFR 2.715(c) and, in the case of SLOC and PSLHD, proffered particular issues they wished to have litigated in the proceeding.

Beginning on September 10, 2002, the Board conducted a two-day initial prehearing conference, during which it heard oral presentations regarding the standing of each of the petitioners, the participation of DCISC as an interested governmental entity, and the admissibility of the eight contentions and four issues raised by the section 2.714 intervenors and section 2.715(c) interested governmental entities SLOC and PSLHD. Additionally, in response to an appearance at the initial prehearing conference by an ABCSD representative regarding the status of a request for admission as a section 2.715(c) participant that it previously had submitted to the agency, the Board requested that ABCSD resubmit such a request directly to the Board, which it subsequently did, stating that it did not have any new issues it wished to raise on its own. Thereafter, in a December 2, 2002 issuance the Board ruled on the various outstanding matters, concluding that (1) although some of the section 2.714 petitioners lacked standing, the remainder not only fulfilled that jurisprudential requirement, but also set forth one admissible contention so as to warrant admission as parties, with SLOMFP as the lead intervenor; and (2) with the exception of DCISC, section 2.715(c) interested government entity status should be afforded to those requesting that designation, but that the SLOC and PSLHD-proffered issues did not meet the section 2.714 standards governing contention admissibility. (*Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP–02–23, 56 NRC__(Dec. 2, 2002), *requests for partial referral and reconsideration denied*, LBP–02–25, 56 NRC__(Dec. 26, 2002).)

In light of the foregoing, please take notice that a hearing will be conducted in this proceeding. This hearing will be governed by the formal hearing procedures set forth in 10 CFR part 2, subpart G (10 CFR 2.700 through 2.790), subject to the election that has been made by applicant Pacific Gas & Electric Company and the NRC staff to utilize the hybrid hearing procedures in 10 CFR part 2, subpart K (10 CFR 2.1101 through 2.1117).

During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 CFR. 2.755 and 2.1113, may hold additional prehearing conferences pursuant to 10 CFR 2.752, and may conduct evidentiary hearings in accordance with 10 CFR 2.750, 2.751, and 2.1115. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *http://www.nrc.gov*.

Additionally, as provided in 10 CFR 2.715(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence, but may assist the Board and/or parties in defining the issues being considered. Persons wishing to submit a written limited appearance statement should send by mail to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or by e-mail to *hearingdocket@nrc.gov*. A

copy of the statement also should be served on the Chairman of this Atomic Safety and Licensing Board by mail to the Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or by e-mail to *gpb@nrc.gov*. At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the Diablo Canyon facility. Notice of any oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC PDR and on the NRC Web site, *http://www.nrc.gov*.

Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

It is so *ordered*.

Dated in Rockville, Maryland, on December 27, 2002.

For the Atomic Safety and Licensing Board*

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. 03–79 Filed 1–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–2259]

Notice of Request to Terminate Source Material, License SUA–1524, for the Green Mountain Ion-Exchange Site in Fremont County, WY and Opportunity to Provide Comments and to Request a Hearing

I. Introduction

The U. S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 24, 2002, a final status survey (completion) report for the decommissioned Green Mountain Ion-Exchange (GMIX) site near Jeffrey City, Wyoming, and a request to terminate the U.S. Energy Corporation (USEC) license SUA–1524 for the site.

The GMIX site is located in the Crooks Gap Mining District in Fremont County. The facility consisted of two buildings and two settling ponds and separated uranium from mine water by the ion-exchange process. The facility ceased operation in 1987. When USEC bought the property in 1988, the NRC granted a "possession only" source material license. The facility remained in stand-by status and USEC submitted a decommissioning plan in 1993 that was approved, after modifications, in 1996. USEC requested a delay in initiation of decommissioning that was granted September 20, 1999. Building demolition and soil removal was accomplished in 2001.

The NRC staff has initiated review of the completion report and indicated, by electronic mail on November 25, 2002, that the submittal was incomplete. The licensee provided additional data by letter dated November 26, 2002, that completes the report. The NRC staff is now preparing a technical evaluation report for the decommissioning activities and will determine if all the applicable regulations have been met for license termination. Letters have been received from the site land managers, Bureau of Land Management (November 27, 2002) and the Wyoming Department of Environmental Quality, Land Quality Division (December 4, 2002) that indicate no objection to termination of the USEC license.

II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this request, and will accept comments concerning this action within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room T–6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, from 7:30 a.m. until 4:15 p.m. on Federal workdays.

III. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for termination of a license falling within the scope of subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register notice.**

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, U.S. Energy Corporation, 877 North 8th Street, Riverton, WY 82501, Attention: Fred Craft; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

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* Copies of this notice of hearing were sent this date by Internet e-mail transmission to counsel for (1) applicant PG&E; (2) petitioners SLOMFP, *et al.*; (3) SLOC, PSLHD, CEC, ABCSD, and DCISC; and (4) the staff.

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Other Information

The application for license termination is available for inspection at NRC's Public Electronic Reading Room at http://www.nrc.gov/reading-rm/adams.html (ADAMS Accession Numbers: ML023180642 and ML023440223). Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Elaine Brummett, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6606; Fax: (301) 415–5390.

Dated at Rockville, Maryland, this 24th day of December, 2002.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–83 Filed 1–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Energy Corporation, McGuire Nuclear Station, Units 1 and 2; Notice of Availability of the Final Supplement 8 to the Generic Environmental Impact Statement Regarding License Renewal for the McGuire Nuclear Station, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a final plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses NPF–9 and NPF–17 for the McGuire Nuclear Station, Units 1 and 2, for an additional 20 years of operation. The McGuire Nuclear Station units are located in Mecklenburg County, North Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

As discussed in Section 9.3 of this final Supplement 8 to the GEIS, the staff recommends that the Commission determine that the adverse environmental impacts of license renewal for McGuire Nuclear Station, Units 1 and 2, are not so great that preserving the option of license renewal for energy planning decision makers would be unreasonable. This recommendation is based on (1) The analysis and findings in the GEIS; (2) the Environmental Report submitted by Duke; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments.

The final Supplement 8 to the GEIS is available electronically for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Wilson, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Wilson may be contacted at 301–415–1108 or by writing to James H. Wilson, U.S. Nuclear Regulatory Commission, Mail Stop O 12–D–1.

Dated at Rockville, Maryland, this 24th day of December, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–80 Filed 1–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation, Catawba Nuclear Station, Units 1 and 2; Notice of Availability of the Final Supplement 9 to the Generic Environmental Impact Statement Regarding License Renewal for the Catawba Nuclear Station, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a final plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses NPF–35 and NPF–52 for the Catawba Nuclear Station, Units 1 and 2, for an additional 20 years of operation. The Catawba Nuclear Station units are located in York County, South Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

As discussed in Section 9.3 of this final Supplement 9 to the GEIS, the staff recommends that the Commission determine that the adverse environmental impacts of license renewal for Catawba Nuclear Station, Units 1 and 2, are not so great that preserving the option of license renewal for energy planning decision makers would be unreasonable. This recommendation is based on (1) the analysis and findings in the GEIS; (2) the Environmental Report submitted by Duke; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments.

The final Supplement 9 to the GEIS is available electronically for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Wilson, License Renewal and Environmental Impacts Program,

Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Wilson may be contacted at 301–415–1108 or by writing to James H. Wilson, U.S. Nuclear Regulatory Commission, Mail Stop O 12–D–1.

Dated at Rockville, Maryland, this 24th day of December, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–81 Filed 1–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989]

Environmental Assessment and Finding of No Significant Impact for Envirocare of Utah, Inc.'s Request to Amend NRC Source Material License SMC–1559

I. Introduction

The NRC is considering an amendment to Envirocare of Utah's (Envirocare) NRC Source Material License SMC–1559. The proposed amendment will revise the methods used to suppress dust on haul roads in Envirocare's Clive, Utah facility for the disposal of byproduct material as defined in section 11e.(2) of the Atomic Energy Act. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of Envirocare's license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

II. Supplementary Information

Background

Envirocare requested NRC approval to revise the methods used to suppress dust on facility haul roads, by replacing the requirement to apply magnesium chloride twice a year with a requirement to scrape the roads quarterly. The NRC staff reviewed the proposed revision and concludes that it will be effective in controlling dust from the haul roads.

By letters dated July 12, 2002 (Envirocare, 2002a) and September 4, 2002 (Envirocare, 2002b), the licensee requested NRC approval to revise its license application. The requested change would remove the requirement, in Section 17 and Appendix Z, for semi-annual application of magnesium chloride to facility haul roads and replace it with a requirement to scrape the roads at least quarterly.

Currently, the licensee is required to have a water truck on site on days when the facility is operating, to apply water to the haul roads, and to keep a record of water applications. Additionally, the licensee is required to apply magnesium chloride solution, which is a surfactant, to the haul roads twice a year.

The requested revision will not change the requirement to apply water to the roads. It would replace the requirement to semi-annually apply magnesium chloride to the haul roads with a requirement to scrape the roads quarterly. The licensee states that scraping the roads is superior to application of magnesium chloride because the radiological contaminants from the road surfaces will be disposed of in a timely manner rather than being trapped on the road surface with a potential for gradual buildup. The licensee also states that scraping the roads will preserve its condition, reducing the potential for spillage of contaminated material from equipment due to uneven road surfaces.

The proposed licensing action meets the conditions for a categorical exclusion under 10 CFR 51.22(c)(11) because the staff has determined that the following conditions have been met:

1. There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite,
2. There is no significant increase in individual or cumulative occupational radiation exposure,
3. There is no significant construction impact, and
4. There is no significant increase in the potential for or occurrences from radiological accidents.

However, because the proposed revision to the licensee's dust suppression program does not comply with the statement in Section 5.5, "Mitigative Measures" of the licensee's Final Environmental Statement (NUREG–1476–August 1993) issued in support of the original license for the facility, the staff determined that an environmental assessment was necessary. That section requires Envirocare to achieve a high level of dust suppression through watering of the roads and *application of chemical dust suppressants* [emphasis added].

Identification of the Proposed Action

The proposed action would replace the requirement for the licensee to semi-annually apply magnesium chloride to the facility haul roads with a requirement to scrape the roads quarterly. The material scraped off the roads, including the contamination contained in the material, would be put into one of the facility's disposal cells.

Purpose and Need for the Proposed Action

The proposed action would remove contaminated material from the surface of facility haul roads and put it into disposal cells. It would also improve the surface of the haul roads, thus reducing the potential of spillage of contaminated material from equipment using the roads.

Cumulative Impacts

NRC has found no other current or planned activities in the area that could result in cumulative impacts.

Alternatives to the Proposed Action

An alternative to the proposed action would be for the staff to deny the licensee's request. The licensee would then continue to apply magnesium chloride to road surfaces semi-annually and not remove soil from the road.

Affected Environment

NUREG–1476 provides detailed descriptions of the Envirocare facility and the nearby environment.

Environmental Impacts of the Proposed Action

The environmental impacts of the proposed action are minimal. The potential for dust blowing from the haul roads will continue to be controlled by the application of water. There is a potential for a minor increase in dust during the actual scraping of the roads but the licensee will perform the scraping in a manner that minimizes the creation of airborne dust. The proposed action will remove contaminated material from the surface of the road and thus reduce the potential for the contaminated material to be carried away from the site. The proposed action will also eliminate the application of magnesium chloride and thus eliminate the potential of a spill or other inadvertent release of this chemical to the environment.

State Consultation

NRC provided a draft version of the EA to William J. Sinclair, Director of the Utah Division of Radiation Control (DRC), for comment. The DRC is in agreement with the proposed action and has no additional comments.

III. Finding of No Significant Impact

Based upon the environmental assessment, the staff concludes that the proposed action will not have a

significant effect on the quality of the human environment. Accordingly, the staff has determined that preparation of an environmental impact statement is not warranted.

IV. Further Information

The following documents are related to the proposed action:

References

Code of Federal Regulations (CFR), Title 10, Chapter I—Nuclear Regulatory Commission, Part 51, revised as of January 1, 2002.

Envirocare of Utah, Inc. 2002a. Request to amend Material License No. SMC–1599. Letter from Tye Rogers, Envirocare of Utah to Melvin Leach, Fuel Cycle Licensing Branch, NRC, dated July 12, 2002. Accession Number ML021990436.

Envirocare of Utah, Inc. 2002b. Request to amend Material License No. SMC–1599. Revised Section 17 of the license application. Letter from Tye Rogers, Envirocare of Utah to Daniel Gillen, Fuel Cycle Licensing Branch, NRC, dated September 4, 2002. Accession Number ML022680025.

NRC (U.S. Nuclear Regulatory Commission). 1993. Final Environmental Impact Statement to Construct and Operate a Facility to Receive, Store, and Dispose of 11e.(2) Byproduct Material Near Clive, Utah. NUREG–1476.

These references may be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. Some of the references may also be viewed in the NRC's Public Document Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. Any questions with respect to this action should be referred to Mr. Myron Fliegel, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6629.

Dated at Rockville, Maryland, this 24th day of November, 2002.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–82 Filed 1–2–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 6, 2003:

Closed Meetings will be held on Tuesday, January 7, 2003, at 10 a.m., and Thursday, January 9, 2003, at 9 a.m., and an Open Meeting will be held on Wednesday, January 8, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, January 7, 2003 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Adjudicatory matters; and

Opinion.

The subject matter of the Open Meeting scheduled for Wednesday, January 8, 2003 will be:

1. The Commission will consider whether to adopt new Rule 17a–10 and amendments to Rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 under the Investment Company Act of 1940. The rule and amendments would eliminate the need for investment companies, and their portfolio affiliates and subadvisers, to obtain individual exemptive relief from the Commission to enter into transactions and arrangements that are not likely to raise the concerns that the Act was intended to address. The amendments to Rules 17a–6 and 17d–1 would expand the current exemptions for investment companies to enter into principal transactions and joint arrangements with portfolio companies that are affiliated with an investment company because the investment company controls the portfolio company, or owns more than five percent of the portfolio company's voting securities. New Rule 17a–10 and the amendments to Rules 10f–3, 12d3–1, and 17e–1 would permit investment companies to enter into a variety of transactions with subadvisers that are affiliated with the investment company but not in a position to influence the investment company's decision to enter into the transaction.

2. The Commission will consider whether to issue proposals to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements established by the Sarbanes-Oxley Act of 2002. These requirements relate to: The independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee. The proposals would implement the requirements of Section 10A(m)(1) of the Securities Exchange Act of 1934, as added by Section 301 of the Sarbanes-Oxley Act of 2002.

The subject matter of the Closed Meeting scheduled for Thursday, January 9, 2003 will be:

Litigation matters;

Institution and settlement of administrative proceedings of an enforcement nature; and

Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 31, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–33148 Filed 12–31–02; 12:05 pm]

BILLING CODE 8010–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Laurinburg-Maxton Airport, Laurinburg, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Laurinburg-Maxton Airport Commission to waive the requirement that a 8.342-acre parcel of surplus property, located at the Laurinburg-Maxton Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before February 3, 2003.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Tracie D. Kleine, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Larry Barnett, Executive Director of the Laurinburg-Maxton Airport Commission at the following address: 16701 Airport Road, Maxton, NC 28364.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Laurinburg-Maxton Airport Commission to release 8.342 acres of surplus property at the Laurinburg-Maxton Airport. The property will be purchased by Crestview Residential Properties, LLC so that they might expand their existing property to facilitate a planned expansion of their business. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Laurinburg-Maxton Airport Commission.

Issued in Atlanta, Georgia on December 26, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 03–71 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Piedmont Triad International Airport, Greensboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Piedmont Triad Airport Authority to waive the requirement that a 18.58-acre parcel of surplus property, located at the Piedmont Triad International Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before February 3, 2003.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airport District Office, Attn: Tracie D. Kleine, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mickie L. Elmore, Director of Development of the Piedmont Triad Airport Authority at the following address: Post Office Box 35445, Greensboro, NC 27425.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Piedmont Triad Airport Authority to release 18.58 acres of surplus property at the Piedmont Triad International Airport. The North Carolina Department of Transportation (NCDOT) will purchase the property. The land will be used in connection with the Greensboro Western Urban Loop, a multi-lane, limited access highway that will provide more efficient access to the airport. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Piedmont Triad Airport Authority.

Issued in Atlanta, Georgia on December 26, 2002.

Scott L. Seritt,

Manager, Atlanta Airport District Office, Southern Region.

[FR Doc. 03–70 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34244]

Portland & Western Railroad, Inc.—Lease and Operations Exemption—The Burlington Northern and Santa Fe Railway Company

Portland & Western Railroad, Inc. (P&WR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 76.75 miles of rail line currently owned and operated by The Burlington Northern and Santa Fe Railway Company (BNSF) from milepost 64.70 located between Quinaby and Salem, OR, to the End of Track at milepost 141.45 near Eugene, OR.[1] In comments filed December 23, 2002, the Oregon Department of Transportation generally supports the transaction.

P&WR certifies that is projected annual revenues will not exceed those that would qualify it as a Class III rail

[1] Originally, as part of the transaction, P&WR stated that it intended to grant what it called "incidental" overhead trackage rights to BNSF over the rail line between Bush (milepost 68.6) and Albany (milepost 96.5), and to Central Oregon & Pacific Railroad, Inc. (CORP), between Albany (milepost 96.5) and Eugene (milepost 141.5). Based upon a decision served on December 12, 2002 (December 12 decision), which questioned whether the trackage rights were incidental to the transaction, BNSF, on December 20, 2002, filed a separate trackage rights notice of exemption, accompanied by a motion to dismiss, in STB Finance Docket No. 34304, *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—The Portland & Western Railroad, Inc.*;, and P&WR, on December 23, 2002, withdrew its request to grant trackage rights to CORP. Also on December 23, 2002, John D. Fitzgerald, on behalf of the United Transportation Union-General Committee of Adjustment, filed a petition for stay of both exemptions, which was denied in *Portland & Western Railroad, Inc;—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34255, *et al.* (STB served Dec. 26, 2002.)

carrier. Because P&WR's projected annual revenues will exceed $5 million, P&WR has certified to the Board on October 28, 2002, that the required notice of the transaction was posted at the workplace of the employees on the affected line on October 25, 2002. *See* 49 CFR 1150.42(e). The transaction is scheduled to be consummated on or after December 27, 2002 (60 days after the labor certification was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34255, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 West Miner St., PO Box 796, West Chester, PA 19381–0796.

Board decisions and notice are available on our Web site at "*www.stb.dot.gov*."

Decided: December 27, 2002.

By the Board, Beryl Gordon, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–9 Filed 1–2–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices/Federal Consulting Group; Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)). Currently, the Federal Consulting Group within the Department of the Treasury is soliciting comments concerning the American Customer Satisfaction Index (ACSI).

DATES: Written comments should be received on or before March 4, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to the Federal Consulting Group, Attention: Bernard Lubran, 1700 G Street, NW., Washington DC 20552, (202) 906–5642, *Bernie.Lubran@ots.treas.gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Federal Consulting Group, Attention: Bernard Lubran, 1700 G Street, NW., Washington DC 20552, (202) 906–5642, *Bernie.Lubran@ots.treas.gov*

SUPPLEMENTARY INFORMATION:

Title: American Customer Satisfaction Index Survey.

OMB Number: 3090–0271.

Abstract: The following summary of the proposed renewal of an information collection activity is designed to continue to support a means to consistently measure and compare customer satisfaction with federal government agency programs and/or services within the Executive Branch. The Federal Consulting Group of the Department of the Treasury serves as the executive agent for this project, and has partnered with the CFI Group to offer the ACSI to federal government agencies ("the partnership").

The General Services Administration selected the ACSI in 1999 through a competitive procurement process as the vehicle for obtaining the required information. From 1999 to 2001, the General Services Administration served as the executive agent for the ACSI, and in 2001, the General Services Administration transferred the OMB clearance to the Department of the Treasury.

The CFI Group, a leader in customer satisfaction and customer experience management, offers a comprehensive system that quantifies the effects of quality improvements on citizen satisfaction. The CFI Group has developed the software and licenses it to the National Quality Research Center at the University of Michigan which produces the American Customer Satisfaction Index (ACSI). This national economic indicator, published quarterly in the Wall Street Journal, was introduced in 1994 by Professor Claes Fornell under the auspices of the University of Michigan, the American Society for Quality (ASQ), and the CFI Group. IT monitors and benchmarks customer satisfaction across more than 200 companies and U.S. federal agencies.

The ACSI is the only cross-industry, cross-agency methodology for obtaining comparable measures of customer satisfaction with federal government programs and/or services. Along with other economic objectives—such as employment and growth—the quality of output (goods and services) is a part of measuring living standards. The ACSI's ultimate purpose is to help improve the quality of goods and services available to American citizens.

The surveys that comprise the federal government's portion of the ACSI will be completely subject to the Privacy Act 1074, Public Law 93–579, December 31, 1974 (5 U.S.C. 522a). The agency information collection will be used solely for the purpose of the survey. The ACSI partnership will not be authorized to release any agency information upon completion of the survey without first obtaining permission from the Federal Consulting Group and the participating agency. In no case shall any new system of records containing privacy information be developed by the Federal Consulting Group, participating agencies, or the contractor collecting the data. In addition, participating federal agencies may only provide information used to randomly select respondents from among established systems of records provided for such routine uses.

This survey asks no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Proposed renewal of collection of information.

Type of Review: Renewal.

Affected Public: Individuals or households/business or other for-profit/not-for-profit institutions/farms/Federal Government/State, Local, or Tribal Government.

Estimated Number of Respondents

Participation by federal agencies in the ACSI is expected to vary as new customer segment measures are added or deleted. However, based on historical records, projected estimates for fiscal years 2003 through 2005 are as follows:

Fiscal Year 2003—35 Customer Satisfaction Surveys

Respondents: 9,100; annual responses: 9,100; average minutes per response: 17.0; burden hours: 2,578.

Fiscal Year 2004—50 Customer Satisfaction Surveys

Respondents: 13,000; annual responses: 13,000; average minutes per response: 17.0; burden hours: 3,683.

Fiscal Year 2005—100 Customer Satisfaction Surveys

Respondents: 26,000; annual responses: 26,000; average minutes per response: 17.0; burden hours: 7,367.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of pubic record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 26, 2002.

Bernard A. Lubran

Project Manager, Federal Consulting Group.

[FR Doc. 03–74 Filed 1–2–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the names of four additional persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: The designations by the Secretary of the Treasury of additional persons identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 13224 are effective on November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov*. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac*, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notice of these additional blockings have been published in the **Federal Register**.

Additional Designations. On November 6, 2002, the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, acting pursuant to authorities set forth in the Order designated four additional persons whose property and interests in property are blocked. The names of these additional persons are set forth in the list below. Persons, and their known aliases, will be added to appendix A to 31 CFR chapter V, through a separate **Federal Register** document, as "specially designated global terrorists" identified by the initials "[SDGT]". Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control.

The designations by the Secretary of the Treasury pursuant to Executive Order 13224 of these additional persons listed below are effective on November 6, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

In Section 10 of the Order, the President determined that because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to, or determined to be subject to, the Order who might have a constitutional presence in the United States, would render ineffectual the blocking and other measures authorized in the Order. The President further determined that no prior notification of a determination need be provided to any person who might have a constitutional presence in the United States. In furtherance of the objectives of the Order, the Secretary of the Treasury has determined that no prior notice should be afforded to the subjects of the determinations reflected in this notice because to do so would give the subjects the opportunity to evade the measures described in the Order and, consequently, render those measures ineffectual toward addressing the national emergency declared in the Order.

The list of additional designations follow:

1. Echeberria Simarro, Leire; member ETA; DOB 20 Dec 1977; POB Basauri (Vizcaya Province), Spain; D.N.I. 45.625.646 (individual).

2. Echegaray Achirica, Alfonso; member ETA; DOB 10 Jan 1958; POB Plencia (Vizcaya Province), Spain; D.N.I. 16.027.051 (individual).

3. Iztueta Barandica, Enrique; member ETA; DOB 30 Jul 1955; POB Santurce (Vizcaya Province), Spain; D.N.I. 14.929.950 (individual).

4. Vallejo Franco, Inigo; member ETA; DOB 21 May 1976; POB Bilbao (Vizcaya Province), Spain; D.N.I. 29.036.694 (individual).

Dated: November 8, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 18, 2002.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–11 Filed 1–2–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the names of three additional entities whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: The designation by the Office of Foreign Assets Control of three additional entities identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective on November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat ® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov*. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac*, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In the annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notices of these additional blockings have been published in the **Federal Register**.

Additional Designations. On November 18, 2002, the Office of Foreign Assets Control, acting pursuant to authorities set forth in the Order, designated three additional entities whose property and interests in property are blocked. The names of these additional entities are set forth in the list below. Persons, and their known aliases, will be added to appendix A to 31 CFR chapter V, through a separate **Federal Register** notice, as "specially designated global terrorists" identified by the initials "[SDGT]". Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control.

The designation by the Office of Foreign Assets Control pursuant to Executive Order 13224 of these additional entities listed below is effective on November 18, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

The list of additional designations follow:

1. Benevolence International Foundation (a.k.a. Al Bir Al Dawalia; a.k.a. BIF; a.k.a. BIF–USA; a.k.a. Mezhdunarodnyj Blagotvoritel'Nyj Fond), 8820 Mobile Avenue, 1A, Oak Lawn, IL 60453, U.S.A.; P.O. Box 548, Worth, IL 60482, U.S.A.; formerly at 9838 S. Roberts Road, Suite 1W, Palos Hills, IL 60465, U.S.A.; formerly at 20–24 Branford Place, Suite 705, Newark, NJ 07102, U.S.A.; Bashir Safar Ugli 69, Baku, Azerbaijan; 69 Boshir Safaroglu St., Baku, Azerbaijan; Sarajevo, Bosnia-Herzegovina; Zenica, Bosnia-Herzegovina; "last known address," 3 King Street, South Waterloo, Ontario, N2J 3Z6 Canada; "last known address," P.O. Box 1508 Station B, Mississauga, Ontario, L4Y 4G2 Canada; "last known address," 2465 Cawthra Rd., #203, Mississauga, Ontario, L5A 3P2 Canada; Ottawa, Canada; Grozny, Chechnya; 91 Paihonggou, Lanzhou, Gansu, China 730000; Hrvatov 30, 41000, Zagreb, Croatia; Makhachkala, Daghestan; Duisi, Georgia; Tbilisi, Georgia; Nazran, Ingushetia; Burgemeester Kessensingel 40, Maastricht, Netherlands; House 111, First Floor, Street 64, F–10/3, Islamabad, Pakistan; P.O. Box 1055, Peshawar, Pakistan; Azovskaya 6, km. 3, off. 401, Moscow, Russia 113149; Ulitsa Oktyabr'skaya, dom. 89, Moscow, Russia 127521; P.O. Box 1937, Khartoum, Sudan; P.O. Box 7600, Jeddah 21472, Saudi Arabia; P.O. Box 10845, Riyadh 11442, Saudi Arabia; Dushanbe, Tajikistan; United Kingdom; Afghanistan; Bangladesh; Bosnia-Herzegovina; Gaza Strip; Yemen; U.S. FEIN: 36–3823186 (entity).

2. Benevolence International Fund (a.k.a. Benevolent International Fund; a.k.a. BIF-Canada), "last known address," 2465 Cawthra Rd., Unit 203, Mississauga, Ontario, L5A 3P2 Canada; "last known address," P.O. Box 1508, Station B, Mississauga, Ontario, L4Y 4G2 Canada; "last known address," P.O. Box 40015, 75 King Street South, Waterloo, Ontario, N2J 4V1 Canada; "last known address," 92 King Street, 201, Waterloo, Ontario, N2J 1P5 Canada (entity).

3. Bosanska Idealna Futura (a.k.a. BECF Charitable Educational Center; a.k.a. Benevolence Educational Center; a.k.a. BIF-Bosnia; a.k.a. Bosnian Ideal Future), Salke Lagumdzije 12, 71000 Sarajevo, Bosnia-Herzegovina; Hadzije Mazica Put 16F, 72000 Zenica, Bosnia-Herzegovina; Sehidska Street, Breza, Bosnia-Herzegovina; Kanal 1, 72000 Zenica, Bosnia-Herzegovina; Hamze Celenke 35, Ilidza, Sarajevo, Bosnia-Herzegovina (entity).

Dated: December 2, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: December 8, 2002.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–12 Filed 1–2–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the name of one additional

person whose property and interests in property has been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: The designation by the Office of Foreign Assets Control of one additional person identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective on October 17, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat ® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov*. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac*, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notices of these additional blockings have been published in the **Federal Register**.

Additional Designation. On October 17, 2002, the Office of Foreign Assets Control, acting pursuant to authorities set forth in the Order, designated one additional person whose property and interests in property are blocked. The name of this additional person is set forth in the list below. Persons, and their known aliases, will be added to appendix A to 31 CFR chapter V, through a separate **Federal Register** notice, as "specially designated global terrorists" identified by the initials "[SDGT]". Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control.

The designation by the Office of Foreign Assets Control pursuant to Executive Order 13224 of this additional person listed below is effective on October 17, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

The additional designation follows:

Global Relief Foundation, Inc., (a.k.a. Fondation Secours Mondial, A.S.B.L; a.k.a. Fondation Secours Mondial—Belgique A.S.B.L.; a.k.a. Fondation Secours Mondial VZW; a.k.a. FSM; a.k.a. Stichting Wereldhulp—Belgie, V.Z.W.; a.k.a. Fondation Secours Mondial—Kosova; a.k.a. Fondation Secours Mondial "World Relief"; a.k.a. Secours Mondial de France), Rruga e Kavajes, Building No. 3, Apartment No. 61, P.O. Box 2892, Tirana, Albania; Vaatjesstraat, 29, 2580 Putte, Belgium; Rue des Bataves 69, 1040 Etterbeek, Brussels, Belgium; P.O. Box 6, 1040 Etterbeek 2, Brussels, Belgium; Mula Mustafe Baseskije Street No. 72, Sarajevo, Bosnia; Put Mladih Muslimana Street 30/A, Sarajevo, Bosnia; 49 Rue du Lazaret, 67100 Strasbourg, France; Rr. Skenderbeu 76, Lagjja Sefa, Gjakova, Kosovo; Ylli Morina Road, Djakovica, Kosovo; House 267 Street No. 54, Sector F—11/4, Islamabad, Pakistan; Saray Cad. No. 37 B Blok, Yesilyurt Apt. 2/4, Sirinevler, Turkey; P.O. Box 1406, Bridgeview, Illinois 60455, U.S.A.; Afghanistan; Azerbaijan; Bangladesh; Chechnya, Russia; China; Eritrea; Ethiopia; Georgia; India; Ingushetia, Russia; Iraq; Jordan; Kashmir; Lebanon; Sierra Leone; Somalia; Syria; West Bank and Gaza; V.A.T. Number: BE 454,419,759; Federal Employer Identification Number: 36–3804626. (entity).

Dated: December, 2, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–13 Filed 1–2–03; 8:45 am]

BILLING CODE 4810–25–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Draft Environmental Assessment for the Rehabilitation or Replacement of Diversion Dams on the Duchesne and Strawberry Rivers in UT

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice of Availability of the Draft Environmental Assessment for the Rehabilitation or Replacement of Diversion Dams on the Duchesne and Strawberry Rivers in Utah.

SUMMARY: The Central Utah Project Completion Act (Pub. L. 102–575) authorized federal funds to rehabilitate diversion dams on the Duchesne and Strawberry Rivers in Utah. The project is needed to reduce adverse affects on fish and wildlife resources.

The Draft Environmental Assessment (DEA) was prepared as a Programmatic document. It discusses potential environmental impacts associated with reconstructing and operating an unspecified diversion dam on the Duchesne or Strawberry River. The new diversion dam could serve single or multiple diversion rights. Potential environmental impacts addressed in the document are those impacts that would be expected regardless of which diversion dam is rehabilitated. Potential impacts to wetlands, threatened and endangered species, and cultural resources are generally site specific and/or require special permits. Potential impacts to these environmental disciplines would be addressed in a Supplemental Environmental Assessment, if needed.

The DEA provides the public and decision makers information to understand and evaluate potential environmental consequences. The DEA was developed with the public in accordance with the Commissions National Environmental Policy Act (NEPA) Rule (43 CFR part 10010.20).

The DEA is related to other potential future actions, specifically the detailed design and implementation of diversion dam replacements or rehabilitation. The programmatic perspective has been considered in the document. Future

construction projects may require separate or supplemental NEPA compliance.

DATES: Written comments on the Draft Environmental Assessment are invited until January 31, 2003.

ADDRESSES: Address all comments and/or requests for further information to Mark Holden, Projects Manager, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, UT, 84101.

FOR FURTHER INFORMATION CONTACT: Mark Holden, Projects Manager, 801–524–3146. *mholden@uc.usbr.gov.*

Dated: December 23, 2002.

Michael C. Weland,

Executive Director.

[FR Doc. 03–75 Filed 1–2–03; 8:45 am]

BILLING CODE 4310–05–P

Corrections

Federal Register

Vol. 68, No. 2

Friday, January 3, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

17 CFR Part 420

RIN 1515–AA88

Government Securities Act Regulations: Large Position Rules

Correction

In rule document 02–31837 beginning on page 77411 in the issue of Wednesday, December 18, 2002 make the following corrections:

Appendix B to Part 420 [Corrected]

1. On page 77415, in Appendix B, in the second column, in the first line, remove the "$".

2. On the same page, in the same appendix, in the same column, in the second line, remove the "$".

3. On the same page, in the same appendix, in the same column, in the 12th line, add a "+" before the "$".

4. On the same page, in the same appendix, in the same column, in the 13th line, and a "+" before the "$".

[FR Doc. C2–31837 Filed 1–2–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
January 3, 2003

Part II

Federal Election Commission

11 CFR Part 100, et al.
Bipartisan Campaign Reform Act of 2002
Reporting; Coordinated and Independent Expenditures; Final Rules

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104, 105, 108 and 109

[Notice 2002—26]

Bipartisan Campaign Reform Act of 2002 Reporting

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is promulgating new and revised rules regarding the reporting of electioneering communications and independent expenditures, monthly reporting by national political party committees and quarterly reporting by the principal campaign committees of candidates for the House of Representatives and Senate, as well as reporting related to party committee building funds. These rules implement several provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA") that amend the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

EFFECTIVE DATE: February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. J. Duane Pugh Jr., Acting Special Assistant General Counsel, Ms. Mai T. Dinh, Acting Assistant General Counsel, or Ms. Cheryl A. F. Hemsley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107–155, 116 Stat. 81 (2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This is one in a series of rulemakings the Commission is undertaking to implement the provisions of BCRA. The deadline for the promulgation of these rules is 270 days after the date of enactment, which is December 22, 2002.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on BCRA Reporting were transmitted to Congress on December 18, 2002.

Introduction

These final rules address: (1) Reporting of electioneering communications; (2) reporting of independent expenditures; (3) quarterly reporting by the principal campaign committees of candidates for the House of Representatives and the Senate; (4) monthly reporting by political party committees; and (5) the reporting of funds for political party committee office buildings. See 2 U.S.C. 434(a), (e), (f) and (g); BCRA sec. 103, 201, 212, 501 and 503, 116 Stat. at 87–90, 93–94, and 114–115.

The Commission issued a Notice of Proposed Rulemaking ("NPRM") addressing many of BCRA's reporting requirements. See 67 FR 64,555 (Oct. 21, 2002) ("Reporting NPRM"). The Commission also previously sought comments on two of these topics in Notices of Proposed Rulemakings on Electioneering Communications, 67 FR 51,131 (Aug. 7, 2002), and Coordinated and Independent Expenditures, 67 FR 60,042 (Sept. 24, 2002). The Commission based the rules for another topic, the reporting of funds for the purchase or construction of party office buildings, on recently published final rules. See Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rules, 67 FR 49,123 (July 29, 2002).

The Commission received four comments on this rulemaking. In addition, comments responding to the reporting issues in the previous NPRMs regarding electioneering communications and independent expenditures were considered by the Commission in developing these final reporting rules and are discussed in more detail below. The Commission received fifteen comments on electioneering communications reporting and two comments on coordinated and independent expenditures reporting. In addition, the Commission received testimony during the public hearings on electioneering communications on August 28 and 29, 2002, and on coordinated and independent expenditures on October 23 and 24, 2002.

The Commission also recently issued a Statement of Policy, explaining that during the transition period following BCRA's effective date, the Commission intends to refrain from pursuing reporting entities for violations of the reporting requirements if they comply with Interim Reporting Procedures, which are specified in the Statement of Policy. FEC Policy Statement: Interim Reporting Procedures, 67 FR 71,075 (Nov. 29, 2002). All comments received, hearing transcripts, NPRMs, Final Rules, and the Statement of Policy are on the Commission's Web site at *http://www.fec.gov*. The development of new reporting forms and instructions is underway, and the new materials will be posted on the Commission's Web site as they are completed. The Commission intends to have the new forms and instructions completed for reports due March 20, 2003, covering February 2003.

BCRA requires the Commission to promulgate standards for reporting computer software and also imposes certain other requirements on the Commission and on various persons who file reports with the Commission, which will take effect when that computer software becomes available. 2 U.S.C. 434(a)(12). Although these Congressional mandates are related to reporting, which is the subject of these final rules, the Commission does not propose to address computer software standards in these final rules. The computer software standards need to be developed in conjunction with revisions to the Commission's reporting forms. Therefore, the Commission proposes to address computer software standards as soon as possible and will solicit public comments on the software standards at that time.

Explanation and Justification

11 CFR 100.19 File, Filed, or Filing (2 U.S.C. 434(a))

The Commission's regulations at 11 CFR 100.19 define *file*, *filed*, and *filing*. The Commission proposed revisions in the NPRM to section 100.19 to redefine when 24-hour reports of independent expenditures would be considered filed and when the new 48-hour reports of independent expenditures and 24-hour reports of electioneering communications would be considered filed. The Commission received no comments on these proposed rules. The final rules are substantially similar to the proposed rules in the NPRM, with the changes noted below. The Commission notes that the paragraphs in 11 CFR 100.19 should be read together, and the entire section should be reviewed for applicable requirements.

Paragraph (a) of section 100.19 is unaffected by this rulemaking, except for a new heading. It retains the pre-BCRA general rule that a document is considered timely filed if it is delivered to the appropriate filing office (either the Commission or the Secretary of the Senate) by the close of business on the prescribed filing date. Paragraph (b) of section 100.19 retains the pre-BCRA

rule that a document is also considered timely filed if it is sent by registered or certified mail and postmarked by 11:59 p.m. Eastern Standard/Daylight Time on the prescribed filing date—except for pre-election reports. Pre-election reports must be filed no later than the 12th day before the relevant election or posted by registered or certified mail no later than the 15th day before the relevant election. See, *e.g.*, 2 U.S.C. 434(a)(2)(A)(i). The references to midnight in paragraph (b) are being changed to 11:59 PM Eastern Standard/Daylight Time, whichever is applicable, consistent with paragraphs (c), (d), and (f) of this section. The revisions to paragraph (b) of section 100.19 clarify that paragraph (b) does not apply to reports addressed by paragraph (c) through new paragraph (f). The proposed new subtitle for paragraph (b) of "general rule" is not included in the final rules because paragraphs (a) and (b) of section 100.19 could both be considered part of the general rule.

Those exceptions are as follows: Paragraph (c) for electronic filing—"filed" means received and validated by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the filing date; paragraph (d) for 24-hour and 48-hour reports of independent expenditures—"filed" means received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following (24-hour reports) or the second day following (48-hour reports) the date on which the spending threshold is reached in accordance with 11 CFR 104.4(f); paragraph (e) for 48-hour notices of last-minute contributions—"filed" means received by the Commission or the Secretary of the Senate within 48 hours of the receipt of a "last-minute" contribution of $1,000 or more, which can be accomplished by using a facsimile transmission or the Commission's website; paragraph (f) for 24-hour statements of electioneering communications—"filed" means received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time of the day following the disclosure date. *See* 11 CFR 104.20.

Paragraphs (c) and (e) of section 100.19 remain substantially unchanged, except for new headings.

Revised paragraph (d) of section 100.19 requires that both the new 48-hour reports of independent expenditures and the 24-hour reports of independent expenditures must be received by the Commission by the filing deadline. 2 U.S.C. 434(g)(4). Because the reasons behind the filing requirements for 24-hour reports apply equally to the essentially similar 48-hour reports, the final rules treat 48-hour reports the same as 24-hour reports with regard to permissible means of filing. The 24-hour and 48-hour reporting provisions allow reporting entities to submit their reports using facsimile machines or electronic mail, as long as they are not required under 11 CFR 104.18 to file electronically. Paragraph (d)(3) has also been revised since the NPRM to state that the Commission's website may be used to file 24-hour and 48-hour reports of independent expenditures. Use of the Commission's website, facsimile machines or electronic mail for such purposes or for electioneering communication statements under section 100.19(f), discussed below, does not constitute electronic filing under 11 CFR 104.18, so such use will not constitute mandatory or voluntary electronic filing under 11 CFR 104.18(a) or (b). Sending 24-hour reports by mail is not a viable option because it is unlikely these reports will be received by the Commission within 24 hours of the independent expenditures. See Independent Expenditure Reporting; Final Rules, 67 FR 12,834, at 12,835 (Mar. 20, 2002).

New paragraph (f) of section 100.19 addresses electioneering communications, which must be reported within 24 hours of the "disclosure date." See 2 U.S.C. 434(f)(1) and 11 CFR 104.20 below. The Commission is adding new paragraph (f) to 11 CFR 100.19 to require these 24-hour statements be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date, rather than filed by that time. To assist reporting entities with meeting this deadline, the final rule specifically allows filing by facsimile machine or electronic mail in addition to any other delivery method that accomplishes Commission receipt before the conclusion of the day following the disclosure date. For the same reasons that are discussed with regard to paragraph (d) of 11 CFR 100.19, new paragraph (f) follows the timing and filing methods of 24-hour and 48-hour reports for independent expenditures.

11 CFR 104.3(g) Funds for Party Office Buildings

Before BCRA, the Act and Commission regulations provided an exception to the definition of contribution for donations to a national or State party committee that were specifically designated to defray any cost incurred for the construction or purchase of its office facility. Pre-BCRA 2 U.S.C 431(8)(B)(viii); pre-BCRA 11 CFR 100.7(b)(12); 11 CFR 100.84. This exception is reflected in previous 11 CFR 104.3(g), which provided that funds or anything of value that were given to defray the costs of a party office facility and received by a political party committee must be reported as memo entries on Schedule A.

BCRA repealed the building fund exception to the definition of contribution for national party committees. BCRA, sec. 103(b)(1)(A), 116 Stat. at 87. Subsequent technical amendments at 2 U.S.C. 453(b) permit State and local political party committees to purchase or construct State and local party office buildings with non-Federal funds, subject to State law. BCRA, sec. 103(b)(2), 116 Stat. at 87–88. To implement these provisions of BCRA, the Commission promulgated new regulations at 11 CFR 300.12(b)(3) and (d), which eliminate this former exception for national party committees, and at 11 CFR 300.35, which provides that the source and reporting of donations used for the costs incurred by a State or local party committee for the purchase or construction of its office building are subject to State law if donated to a non-Federal account of the party committee. Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule, 67 FR 49,064, at 49,123 and 49,127 (July 29, 2002). However, if funds or things of value are contributed to or used by the Federal account of a State or local party committee for the purchase or construction of its office building, then these amounts or items are contributions under the Act. Consequently, new paragraph (g)(1) of 11 CFR 104.3 makes it clear that any funds or things of value received by a Federal account and used for the purchase or construction of an office building, regardless of contributor-specified purposes, are contributions and are not treated differently from other funds or things of value received by a Federal account. New paragraph (g)(2) states that gifts, subscriptions, loans, advances, deposits of money, or anything of value donated to a non-Federal account of a State or local party committee that are used for the purchase or construction of its office building are not contributions subject to the reporting requirements of FECA, but are subject to applicable State law reporting requirements. New paragraph (g)(3) specifies that national party committees' receipts used to defray the costs of the construction or purchase of its office building are contributions subject to paragraph (g)(1). Thus, the memo entries required under previous

11 CFR 104.3(g) are no longer appropriate. New section 104.3(g) should be read in conjunction with 11 CFR 300.12(b)(3) and (d), 300.13, and 300.35. The Commission received no comments on this section.

11 CFR 104.4 Independent Expenditures by Political Committees (2 U.S.C. 434(b), (d) and (g))

1. Introduction

Prior to BCRA, the Commission had established reporting requirements for political committees making independent expenditures in accordance with 2 U.S.C. 434(b) and (g). See pre-BCRA 11 CFR 104.4. In the NPRM, the Commission proposed to revise the rules for political committees reporting independent expenditures made less than 20 days but more than 24 hours before an election and proposed to add new rules regarding the 48-hour reports of independent expenditures during the rest of the calendar year to implement BCRA's new reporting requirements for such independent expenditures. *See* 2 U.S.C. 434g.

The Commission received one comment on this section in the Reporting NPRM and one, from the same commenter, when these rules were published for comment in the Coordinated and Independent Expenditures NPRM, 67 FR 60,042 (Sept. 25, 2002). The commenter agreed with the proposal that 24-hour and 48-hour reports of independent expenditures need not be filed until the communications are publicly distributed or otherwise publicly disseminated. With the exception of certain clarifying changes suggested by the commenter, the final rules mirror those proposed in the NPRM.

2. 11 CFR 104.4(a) Regularly Scheduled Reporting

Paragraph (a) of section 104.4 is unaffected, other than the addition of a new heading, minor clarifications, a grammatical correction, and an updated cross-reference.

3. 11 CFR 104.4(b) Reports of Independent Expenditures Made at Any Time Up To and Including the 20th Day Before an Election

New paragraph (b) addresses reports of independent expenditures made by a political committee at any point in the campaign up to and including the 20th day before an election.

A. 11 CFR 104.4(b)(1) Independent Expenditures Aggregating Less Than $10,000

New paragraph (b)(1) addresses independent expenditures aggregating less than $10,000 with respect to a given election during the calendar year, up to and including the 20th day before an election. This calendar-year aggregation is based on 2 U.S.C. 434(b)(4), which requires calendar-year aggregation for reports of independent expenditures by political committees. Under the new rule, political committees must report the independent expenditures on Schedule E of FEC Form 3X, filed no later than the regular reporting date under 11 CFR 104.5. The Commission interprets 2 U.S.C. 434(g), added to the Act by BCRA, to require aggregation toward the various thresholds for independent expenditure reporting to be calculated on a per-election basis within the calendar year. For example, if a political committee makes $5,000 in independent expenditures with respect to a Senate candidate, and $5,000 in independent expenditures with respect to a House of Representatives candidate, and both of these ads are publicly distributed before the 20th day before the primary election, that political committee is not required to file 48-hour reports, but must disclose the independent expenditures on its regularly scheduled reports. If the political committee makes $5,000 in independent expenditures with respect to a clearly identified candidate in the primary, and an additional $5,000 in independent expenditures with respect to the same candidate in the general election but outside the 20-day window, no 48-hour reports are required; but again the political committee must disclose the independent expenditures on its regularly scheduled reports. If, however, the political committee made $6,000 in independent expenditures supporting a Senate candidate in the primary election, and $4,000 in independent expenditures opposing that Senate candidate's opponent in the primary, and these communications are published in a newspaper more than twenty days before the primary, the political committee must file a 48-hour report. The Commission received no comments on the interpretation implemented by this paragraph.

B. 11 CFR 104.4(b)(2) Independent Expenditures Aggregating $10,000 or More

New paragraph (b)(2) addresses independent expenditures aggregating $10,000 or more during the calendar year up to and including the 20th day before an election. Political committees must file these reports on Schedule E of FEC Form 3X. These reports must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Further, political committees must file an additional 48-hour report each time subsequent independent expenditures reach or exceed the $10,000 threshold with respect to the same election to which the first report related.

4. 11 CFR 104.4(c) Reports of Independent Expenditures Made Less Than 20 Days, But More Than 24 Hours Before the Day of an Election

Revisions to renumbered paragraph (c) (which was pre-BCRA 11 CFR 104.4(b)) state that 24-hour reports must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which the $1,000 threshold is reached during the final 20 days before the election. Further, revisions to this paragraph also indicate that additional 24-hour reports must be filed each time during the 24-hour reporting period in which subsequent independent expenditures reach or exceed the $1,000 threshold with respect to the same election to which the previous report related.

5. 11 CFR 104.4(d) Verification

New paragraph (d) contains the report verification information previously found in pre-BCRA paragraph (b) of section 104.4. There are non-substantive grammatical changes to conform this paragraph to the rest of section 104.4.

6. 11 CFR 104.4(e) Where to File

New paragraph (e) largely restates pre-BCRA paragraph (c) of section 104.4. However, this paragraph has been reorganized since it was published in the Reporting NPRM. In the Reporting NPRM, paragraph (e)(2) would have addressed independent expenditures related to both Senate and House of Representatives candidates, and it would have omitted reference to the Secretary of Senate. In the final rule, paragraph (e)(2) addresses independent expenditures related to Senate candidates, and it retains the former requirement in 11 CFR 104.4(c) that regularly scheduled reports of independent expenditures related to Senate candidates must be filed with the Secretary of Senate. 11 CFR 104.4(e)(2)(i). However, with respect to

24-hour and 48-hour reports of independent expenditures relating to Senate candidates under BCRA, the Commission and not the Secretary of the Senate is the place of filing. 11 CFR 104.4(e)(2)(ii); see 2 U.S.C. 434(g)(3); see also the discussion of 11 CFR 105.2, below.

Proposed paragraph (e)(3) in the Reporting NPRM is being renumbered paragraph (e)(4), and it provides that if a State has obtained a waiver under 11 CFR 108.1(b), then reports of independent expenditures are not required to be filed with that State's Secretary of State.

7. 11 CFR 104.4(f) Aggregating Independent Expenditures for Reporting Purposes

Paragraph (f) of 11 CFR 104.4 addresses aggregation of independent expenditures for reporting purposes. The provisions of pre-BCRA 11 CFR 109.1(f) are being moved to this section and revised to explain when and how political committees and other persons making independent expenditures must aggregate independent expenditures for purposes of determining whether 48-hour and 24-hour reports must be filed. Note that this aggregation rule applies to independent expenditures by political committees, as well as other persons; new 11 CFR 109.10(c) and (d) cross-reference this paragraph. Paragraph (f) establishes that every date on which a communication that constitutes an independent expenditure is "publicly distributed" or otherwise publicly disseminated serves as the date used to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amounts ($1,000 for 24-hour reports or $10,000 for 48-hour reports). The term "publicly distributed" has the same meaning as provided in new 11 CFR 100.29(b)(3), which the Commission promulgated as part of the electioneering communications rulemaking. Electioneering Communications Final Rules, 67 FR 65,190, 65,192, 65,211 (Oct. 23, 2002). The term "publicly disseminated" refers to communications that are made public via other media, *e.g.*, newspaper, magazines, handbills. Thus, paragraph (f) sets the same date as the starting date from which a person would have one or two days, where applicable, to file a 24-hour or 48-hour report of independent expenditures.

Congress changed the reporting requirements for independent expenditures by adding the phrase "or contracts to make" in 2 U.S.C. 434(g)(1) and (2). By doing so, BCRA ties 24-hour and 48-hour reporting of independent expenditures to the time when a person "makes or contracts to make independent expenditures" aggregating at or above the $1,000 and $10,000 thresholds, respectively. Therefore, under new 11 CFR 104.4(f), each person must include in the calculation of the aggregate amount of independent expenditures, both disbursements for independent expenditures and all contracts obligating funds for disbursements for independent expenditures. Under this new rule and the timing requirements described above, when a communication that constitutes an independent expenditure is publicly distributed or publicly disseminated, the person who paid for, or who contracted to pay for, the communication is able to determine whether the communication satisfies the "express advocacy" requirement of the definition of an independent expenditure (*see* 11 CFR 100.16) and therefore must determine whether the disbursement for that communication constitutes an independent expenditure. A person reaching or exceeding the applicable reporting threshold is required to submit a report by 11:59 p.m. Eastern Standard/Daylight Time on the day after, for 24-hour reporting, or two days after, for 48-hour reporting, the date of the public distribution or public dissemination of that communication. Please note that under these rules, independent expenditures must be reported by political committees after a disbursement is made, or a debt reportable under 11 CFR 104.11(b) is incurred, for an independent expenditure, but no later than 11:59 p.m. on the day following the date on which the independent expenditure is first publicly distributed or otherwise publicly disseminated.

In some situations, a political committee does not make a payment or incur a reportable debt before the communication that constitutes the independent expenditure is publicly distributed or otherwise publicly disseminated. If the communication is both publicly distributed or otherwise publicly disseminated and paid for in the same reporting period, then the political committee must report the independent expenditure on Schedule E for that reporting period. If the communication is aired in one reporting period (*e.g.*, during August for a monthly filer) and payment is made in a later reporting period (*e.g.*, during September), then the political committee must report the independent expenditure as a memo entry on Schedule E on its August report if the $10,000 threshold has been exceeded and on Schedule D if it is a reportable debt under 11 CFR 104.11. The September report should show a payment on Schedule E and the same payment on Schedule D, if applicable.

In other situations, however, a political committee may pay the production and distribution costs associated with an independent expenditure in one reporting period, but not publicly distribute or otherwise publicly disseminate it until a later reporting period. In this case, the political committee must report the payment as a disbursement on Schedule B for operating expenditures. When, in a subsequent reporting period, the communication is publicly distributed or otherwise publicly disseminated, the political committee must file a Schedule E for the independent expenditure referencing the earlier Schedule B transaction. The political committee must also report the disbursement for the independent expenditure as a negative entry on Schedule B so the total disbursements are not inflated. Alternatively, if the political committee wishes to disclose the independent expenditure before the communication is publicly disseminated, it could report the independent expenditure on Schedule E for the reporting period in which the disbursement is made, with no further reporting obligation except for the 48-hour report if the total amount of disbursements for independent expenditures equals or exceeds $10,000 on the day the communication is publicly distributed or otherwise publicly disseminated.

Obligations incurred, but not yet paid that are reportable debts, must be reported on Schedule D. For independent expenditures once the $10,000 threshold is exceeded, political committees must also report memo entries on Schedule E. When, in a subsequent reporting period, the communication is publicly distributed or otherwise publicly disseminated, the political committee must file a Schedule E referencing the debt on Schedule D. The political committee must continue to report the debt on Schedule D and any payment on the debt on Schedules D and E, until the debt is extinguished.

The Commission received one comment supporting this proposal to base reporting of independent expenditures on the date of public distribution or public dissemination, rather than on the date a contract is executed. The policy reasons for adopting this reading of BCRA are the same as those set forth in the Explanation and Justification below for the reporting of electioneering communications.

8. Additional Requirements in the Internal Revenue Code

The Commission received one comment from the Internal Revenue Service ("IRS") on the coordinated and independent expenditure NPRM, which noted generally that even though some entities that are political organizations within the meaning of section 527 of the Internal Revenue Code may not be obliged to report contributions or expenditures to the Commission, these entities may still be required to report to the IRS. The IRS offered the following explanation, which the Commission is including here to provide additional guidance regarding the potential overlap between the Internal Revenue Code and the Commission's regulations. Section 527(j) of the Internal Revenue Code requires the reporting on IRS Form 8872 of certain contributions received and expenditures made by a tax-exempt political organization unless (i) the organization reports under the FECA as a political committee; (ii) the organization is a State or local committee of a political party or political committee of a State or local candidate; (iii) the organization is a qualified State or local political organization within the meaning of section 527(e)(5) of the Internal Revenue Code; (iv) the organization reasonably anticipates that it will not have gross receipts of $25,000 or more for any taxable year; (v) the organization is otherwise exempt from Federal income taxation under section 501(a) of the Internal Revenue Code because it is described in section 501(c) of the Internal Revenue Code; or (vi) the expenditure made is treated as an independent expenditure under the FECA. In certain situations this could require a tax-exempt political organization making coordinated expenditures to report such expenditures on IRS Form 8872 even though that organization would not be required to report such items to the Commission. Moreover, a tax-exempt political organization that is required to report one or more independent expenditures to the Commission might also have to report certain contributions received and other expenditures to the IRS.

11 CFR 104.5 Filing Dates (2 U.S.C. 434(a)(2))

Section 104.5 sets forth filing dates for all reporting entities, including political committees. The NPRM proposed revisions to the rules for 24-hour reports of independent expenditures and proposed adding provisions for 24-hour reports of electioneering communications and 48-hour reports of independent expenditures. The final rules in section 104.5 track the proposed rules, with the changes described below.

Section 104.5(a) is being revised to set forth the new reporting schedule for the principal campaign committees of House of Representatives and Senate candidates. Prior to BCRA, the principal campaign committees of these candidates were allowed to file semi-annually in non-election years. After November 5, 2002, excluding reports for 2002 runoff elections, principal campaign committees of House of Representatives and Senate candidates must file quarterly reports in non-election years, as well as in the election year. 2 U.S.C. 434(a)(2)(B). Revised paragraphs (a) and (a)(1) of section 104.5 now state that these committees must file quarterly reports. Like other quarterly reports, these must be complete as of March 31, June 30, September 30, and December 31, and must be filed by April 15, July 15, October 15, and January 31 of the following year, respectively. Paragraph (a)(2) of 11 CFR 104.5 sets forth the requirements for pre-election and post-general election reports in the election year and is identical to paragraphs (a)(1)(i) and (ii) of pre-BCRA 11 CFR 104.5. The rules regarding semi-annual reporting from pre-BCRA section 104.5(a) are being deleted. Please note that these new reporting dates do not affect the principal campaign committees or other authorized committees of Presidential candidates.

Revisions to paragraph (c) state that while unauthorized political committees may choose to file quarterly or monthly, a national committee of a political party must report monthly under new 11 CFR 104.5(c)(4), which is discussed below. Consequently, national party committees are no longer permitted to change their filing frequency. Paragraphs (c) and (c)(4) have been revised since the NPRM to consolidate the references to the national party committees, including the national congressional campaign committees.

Paragraph (c)(4) of 11 CFR 104.5 is a new provision implementing the BCRA requirement that all national political party committees must report on a monthly basis. 2 U.S.C. 434(a)(4)(B). Previously, national party committees were allowed to file quarterly in the election year and semi-annually in the non-election years. Under the changes to the Act made by BCRA, national political party committees must file monthly, and must file pre-general election and post-general election reports. BCRA's changes to FECA in this regard may be intended to remove any doubt as to whether national political party committees that file quarterly must file these pre-election reports if they do not make any contributions or expenditures on behalf of candidates in these elections during pre-election reporting periods. These rules implement BCRA's amendment. No commenters addressed this topic.

The Commission sought, but received no comments on whether the national Congressional campaign committees of the political parties should be included in this new monthly filing requirement for national political party committees. The final rules require the Congressional campaign committees of national parties to file monthly for several reasons. First, Congressional campaign committees are treated as committees of a national political party elsewhere in the Act and the regulations. For example, 11 CFR 110.1 specifically includes the Congressional campaign committees as committees that are "established and maintained by a national political party." Further, the Supreme Court in *FEC* v. *Democratic Senate Campaign Committee*, 454 U.S. 27, 39 (1981), stated that the National Republican Senatorial Committee is part of the Republican Party organization. By analogy, the other Congressional campaign committees are also a part of their national party organizations. Moreover, the Commission notes that BCRA included a committee of a national political party in this monthly filing requirement, rather than the committee of a national political party. The wording seems to foreclose the argument that Congress intended to include only the national committees of the political parties in the monthly filing requirement.

Paragraph (g) of 11 CFR 104.5 moves the pre-BCRA contents of paragraph (g) to new paragraph (g)(2) with revisions, and adds a new paragraph (g)(1), which requires that 48-hour reports of independent expenditures must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated.[1] The Commission received one comment on paragraph (g) of section 104.5, which urged the Commission to clarify that the filing requirements for subsequent reports of independent expenditures (24-hour and 48-hour reports) would be triggered by the public dissemination or distribution of the communication (as with the initial reports). Note that the term "publicly distributed" refers to communications distributed by radio or

television (*see* 11 CFR 100.29(b)(3)) and the term "publicly disseminated" refers to communications that are made public via other media, *e.g.*, newspaper, magazines, handbills. New paragraph (g)(4) explains when communications that are mailed are considered to be "publicly distributed."

New paragraph (j) of section 104.5 addresses the filing dates for electioneering communications. Specifically, it provides that the 24-hour statements must be received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date.

11 CFR 104.19 [Reserved]

Section 104.19 of 11 CFR is added and reserved for future use.

11 CFR 104.20 Reporting Electioneering Communications

1. Introduction

In the Explanation and Justification for the Electioneering Communications Final Rules, the Commission stated it would revise the proposed rules on reporting electioneering communications and re-propose the rules as part of this rulemaking.[1] 67 FR at 65,209. Consequently, the NPRM for this reporting rulemaking included the revised proposed rules for the reporting requirements for electioneering communications at proposed 11 CFR 104.20. The following explanation and justification for 11 CFR 104.20 discusses comments resulting from the Reporting NPRM and the Electioneering Communications NPRM. Although the Electioneering Communications NPRM would have designated the reporting of electioneering communications as section 104.19, the proposed rules in the Reporting NPRM designated reporting of electioneering communications as proposed section 104.20. In the following explanation and justification, citations to 104.19 refer to the original proposed rules in the Electioneering Communications NPRM, and citations to 104.20 refer to the proposed rules in the Reporting NPRM and the final rules.

2. 11 CFR 104.20(a) Definitions

New section 104.20(a) includes the definitions for the relevant terms that are used throughout new section 104.20. These terms are: (1) Disclosure date; (2) direct costs of producing or airing electioneering communications; (3) persons sharing or exercising direction or control; (4) identification; and (5) publicly distributed.

[1] The original proposed rules were part of the Electioneering Communications NPRM. *See* 67 FR at 51,145.

A. 11 CFR 104.20(a)(1) Definition of "Disclosure Date"

BCRA requires persons who make electioneering communications that cost more than $10,000 to file disclosure statements with the Commission within 24 hours of the disclosure date. 2 U.S.C. 434(f)(1). In the Electioneering Communications NPRM, proposed section 104.19(b) would have defined "disclosure date" as "the first date by which a person has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000." 67 FR at 51,145. The Electioneering Communications NPRM, however, also sought comment on whether the disclosure date should be the date on which the electioneering communication aired. Thus, under this proposal, an organization could make disbursements or enter into a contract to make disbursements that exceed $10,000, but would not be required to disclose the disbursements or contract until the electioneering communication is aired. Although BCRA uses the term "airing," the Commission has determined that "publicly distributed" more accurately encompasses how electioneering communications are disseminated to the public, including the airing of these communications. *See* below for discussion of the definition of "publicly distributed."

All of the commenters who addressed this issue disagreed with the proposed rule in the Electioneering Communications NPRM and advocated adopting a final rule that would define "disclosure date" as the date of the public distribution of the electioneering communication. They argued that there is no electioneering communication, and therefore no reporting requirement, until the communication is actually publicly distributed.

Taking into consideration the comments described above, proposed section 104.20(a)(1) in the Reporting NPRM would have defined "disclosure date" as the date on which an electioneering communication is publicly distributed where there have been disbursements, or executed contracts for disbursements, for the direct costs of producing or airing an electioneering communication aggregating in excess of $10,000. The Commission received one comment on the revised proposed definition of "disclosure date" at section 104.20(a)(1), which supported this approach. The final rule in section 104.20(a)(1) is similar to the proposed rule. This date reflects the Commission's concerns that there are legal and practical issues associated with compelling disclosure of potential electioneering communications before they are finalized and publicly distributed, and premature disclosure may require reporting entities to divulge confidential strategic and political information about their possible future activities.

Consequently, under new section 104.20(a)(1)(i), "disclosure date" means the first time in a calendar year that an electioneering communication is publicly distributed where the maker of the electioneering communications has also surpassed the $10,000 disbursement threshold. Counting toward the threshold are disbursements made at any time for the direct costs of producing or airing either that communication or any other previously unreported electioneering communication. Thus, even disbursements for the direct costs of producing or airing the electioneering communication made in calendar years prior to the public distribution of the electioneering communication are aggregated toward the $10,000 threshold. Conversely, any costs already reported for earlier electioneering communications are not aggregated toward the $10,000 threshold. After the first disclosure date, subsequent disclosure dates occur in the same calendar year in which an electioneering communication is publicly distributed, if that person has made additional disbursements for the direct costs of producing or airing an electioneering communication that, in the aggregate, exceed $10,000. 11 CFR 104.20(a)(1)(ii). The following example illustrates how the definition of "disclosure date" operates. From November of one year to March of the next year, Person X spends $25,000 in direct costs to produce and air an electioneering communication, and the communication is publicly distributed on March 15. Thus, March 15 is the initial disclosure date under 11 CFR 104.20(a)(1)(i). Person X then pays another $5000 to publicly distribute the same communication on April 1. April 1 is not a disclosure date because the subsequent disbursement does not exceed $10,000. On April 15, Person X publicly distributes a different electioneering communication for which she spent $7000 in direct costs to produce and air. April 15 is a disclosure date under 11 CFR 104.20(a)(1)(ii) because that is the date on which the communication was publicly distributed and the aggregation of the

disbursements for the direct costs after the initial disclosure date ($5000 plus $7000) exceeds $10,000.

B. 11 CFR 104.20(a)(2) Definition of "Direct Costs of Producing or Airing Electioneering Communications"

In the Electioneering Communications NPRM, proposed section 104.19(a) would have required every person who makes a disbursement, or executes a contract, for the direct costs of producing or airing electioneering communications that aggregate in excess of $10,000 during a calendar year, to file a statement with the Commission. Electioneering Communications NPRM, 67 FR at 51,145–46. Furthermore, proposed section 104.19(a)(2) would have included a non-exhaustive list of what constitutes direct costs of electioneering communications. *Id.* The Commission sought comment on two issues relating to this proposed requirement. The first was whether the list in proposed section 104.19(a)(2) was adequate and whether the list should be exhaustive. The second issue was whether the direct costs of producing an electioneering communication and the direct costs of airing it should be aggregated separately or together to determine whether such costs exceed $10,000. The second issue is discussed in further detail in the explanation and justification for new section 104.20(b).

The commenters on the Electioneering Communications NPRM were split on the issue of whether the list of direct costs in proposed section 104.19(a)(2) should be exhaustive or non-exhaustive. One commenter who supported an exhaustive list argued that it is clear what is involved in producing a communication, and the proposed rule adequately addresses those costs. Another commenter recommended a non-exhaustive list so that the Commission could retain flexibility to identify other costs associated with producing and airing communications not listed in the proposed rules.

In order to provide clear guidance on this issue, proposed 11 CFR 104.20(a)(2) in the Reporting NPRM included an exhaustive list of direct costs associated with producing or airing an electioneering communication. The Commission sought comments on whether the proposed definition should include any other direct costs associated with producing or airing electioneering communications. In particular, the Commission sought comment on what, if any, additional in-house production costs should be considered direct costs.

The final rule in new section 104.20(a)(2) is similar to the proposed rule in the Reporting NPRM, and defines "direct costs of producing or airing" with an exhaustive list. Paragraph (a)(2)(i) has been clarified to include "costs charged by a vendor" to show that the nature of service, not the nature of the vendor providing the service, controls whether its cost should be included. (The NPRM version listed "costs charged by a production company," which unduly focused on the type of company providing the service.) Paragraph (a)(2)(ii) has been revised to include the cost of studio time and material costs, which are in-house out-of-pocket production costs. The Commission understands "direct cost of producing or airing electioneering communications" as used in 2 U.S.C. 434(f)(4)(A) and (B) to include all such out-of-pocket costs and to not distinguish between those provided by vendors or those provided by in-house resources.

One commenter addressed the issue of what should be included in an exhaustive list. The commenter supported an exhaustive list and agreed with the items on the list in proposed section 104.20(a)(2). The commenter also suggested that the Commission make clear in the final rule that the definition does not "include planning or preparatory costs such as polling and focus groups, or in-house costs such as staff compensation and other overhead."

Paragraph (a)(2)'s list of vendor production costs, in-house production costs, and airtime costs is exhaustive. Only costs that fit within these categories are included. Illustrative examples of costs charged by a vendor are also included in the regulation, and these examples are not exhaustive. Paragraph (a)(2)(ii) makes clear that part of the costs addressed by the commenter, which are described as "in-house costs such as staff compensation and other overhead," are not among the enumerated out-of-pocket costs, so they will not be included in paragraph (a)(2)(ii). The other of the commenter's examples of polling and focus groups are not production costs as they are too attenuated from the resulting communication to be considered "direct costs of producing or airing an electioneering communication" under 2 U.S.C. 434(f)(4).

The final rule requires statements of electioneering communications to be filed when the direct costs of producing or airing electioneering communications exceed $10,000. In both the Reporting NPRM and the Electioneering Communications NPRM, the Commission sought comment on how to aggregate the direct costs of producing or airing an electioneering communication to determine whether the $10,000 threshold has been exceeded. The commenters on the Electioneering Communications NPRM disagreed on this issue. Some commenters argued that BCRA should be read to require that production costs should be aggregated separately for the airtime costs. Under this interpretation, if it costs a person $7,000 to produce the electioneering communication and $7,000 to air it, the threshold is not met because neither the direct costs of producing or airing the electioneering communication exceeded $10,000. In contrast, other commenters argued that BCRA mandates that the direct costs of producing and airing the electioneering communication be aggregated. Under this approach, the example above would result in the $10,000 threshold being met because the direct costs of producing and airing are $14,000.

The Commission has decided that it is appropriate to require that the costs of producing and the costs of airing be added together, rather than counted separately, to determine whether the threshold has been met. Thus, when the direct costs of producing or airing an electioneering communication exceed $10,000 when combined, the person who makes the electioneering communication would be required to file a statement with the Commission when the electioneering communication is publicly distributed. Additionally, the Commission agrees with a commenter who noted that, as a practical matter, for most electioneering communications, the $10,000 threshold will be exceeded, regardless of whether the production costs and the airing costs are aggregated separately or together.

C. 11 CFR 104.20(a)(3) Definition of "Persons Sharing or Exercising Direction or Control"

The Electioneering Communications NPRM included two proposed alternatives, identified as Alternative 4–A and Alternative 4–B, to implement the BCRA requirement to disclose "any person sharing or exercising direction or control over the activities" of the person making the disbursement for electioneering communications. See 2 U.S.C. 434(f)(2)(A). Many of the commenters asserted that both alternatives were vague and could encompass a large number of people, especially for electioneering communications made by membership organizations. Some of the commenters were also concerned that disclosing this information may reveal sensitive or confidential information and the decision-making processes of organizations, especially non-profit organizations, thereby placing them at a

competitive disadvantage. For these reasons, these commenters argued that the Commission should require limited, if any, disclosure of persons who share or exercise direction or control over the person who makes disbursements for electioneering communications or the activities involved in making electioneering communications.

In contrast, several commenters, including the Congressional sponsors of BCRA, disagreed with both alternatives because in their view neither would disclose sufficiently the information required by BCRA. *See* 2 U.S.C. 434(f)(2)(A). They asserted that BCRA requires disclosure of not only those who have direction or control over the electioneering communications, but also those who have direction or control over the organization that makes the electioneering communications.

While the Commission recognizes the concerns of those who objected to disclosure of the decision-making process of their organizations, BCRA requires persons who make electioneering communications to disclose those who share or exercise direction or control over the person making the disbursement for electioneering communications. 2 U.S.C. 434(f)(2)(A). Because neither Alternative 4–A nor Alternative 4–B in the Electioneering Communications NPRM appeared to encompass the disclosure required by BCRA, proposed section 104.20(c)(2) in the Reporting NPRM did not incorporate either of the two alternatives. Instead, proposed paragraph (c)(2) followed the wording of 2 U.S.C. 434(f)(2)(A).

To provide further guidance on proposed section 104.20(c)(2), the proposed rules included a definition of "sharing or exercising direction or control." Because it appears that the term "direction or control" in 2 U.S.C. 434(f)(2)(A) refers to the management or decision-making process of an organization, including a qualified nonprofit corporation ("QNC"), proposed section 104.20(a)(3) would have defined "sharing or exercising direction or control" to mean exercising authority or responsibility for policy formulation, day-to-day management, obligation of funds, or hiring or firing employees.

The Commission also sought comment on an alternative definition of "sharing or exercising direction or control" that was not in the proposed rule. Reporting NPRM, 67 FR at 64,560. Under the alternative definition described in the NPRM, the term would mean the officers, directors, partners, or any other individuals who have the authority to bind the organization; entity, or person making the disbursement for electioneering communication. With this alternative the Commission sought a more objective, bright-line definition of "direction or control" that focused the definition on those persons who have the authority to act on behalf of the organization. One commenter addressed this issue. The commenter supported the alternative definition arguing that proposed section 104.20(a)(3) was overly broad and that the alternative definition better captured the requirements of BCRA. The commenter also suggested that the alternative definition be further narrowed to include only officers, directors, and partners.

The Commission is adopting this bright-line alternative approach described in the NPRM, with the clarifications described below, as new section 104.20(a)(3) because it properly encompasses BCRA's clear requirement to identify persons who exercise direction or control over the person making the electioneering communication. The Commission prefers the clarity of the bright-line approach to what may be the broader coverage of the NPRM's proposed rule text in order to avoid the vagueness involved in describing the functions that the rule intended to capture. New section 104.20(a)(3) defines "persons sharing or exercising direction or control" with a list of organizational positions that are readily known and verifiable: officer, director, executive director, partner, and in the case of unincorporated organizations, owner. In addition to this list, new section 104.20(a)(3) includes the "equivalent" of executive director. This term is intended to include the senior staff position in an organization, whatever its title, that functions as an executive director does. Thus, the Commission believes that the positions named or described in new section 104.20(a)(3) provide sufficient scope to capture responsible persons without sweeping too broadly.

D. 11 CFR 104.20(a)(4) Definition of "Identification"

New section 104.20(a)(4) incorporates the definition of the term "identification" in 11 CFR 100.12. This definition is identical to the proposed definition. No commenter discussed this definition.

E. 101 CFR 104.20(a)(5) Definition of "Publicly Distributed"

In the Electioneering Communications Final Rules, the Commission defines "publicly distributed" to mean "aired, broadcast, cablecast, or otherwise disseminated through the facilities of a television station, radio station, cable television system, or satellite system." 11 CFR 100.29(b)(6). Therefore, new section 104.20(a)(5) adopts the definition of "publicly distributed" in 11 CFR 100.29(b)(6). The term "publicly distributed" is used throughout the final rules instead of "airing," except in the definition of "direct costs of producing or airing."

3. 11 CFR 104.20(b) Who Must Report and When

New section 104.20(b) details who must report electioneering communications to the Commission and when those statements are due. The final rule states that every person who makes a disbursement or executes a contract to make a disbursement for electioneering communications that exceeds $10,000 in direct costs must file a statement with the Commission by the end of the day following the disclosure date. The various elements of this final rule are discussed in further detail below.

The definitions of "electioneering communication" in 11 CFR 100.29 and "disclosure date" in 11 CFR 104.20(a)(1) must be satisfied in order for an electioneering communication reporting obligation to arise. Thus, for example, because expenditures are exempted from the definition of "electioneering communication" by 2 U.S.C 434(f)(3)(B)(ii) and 11 CFR 100.29(c)(3), political committees that pay for communications with funds reportable as expenditures do not report these payments under 11 CFR 104.20. Similarly, a "disclosure date" must have occurred, so the provisions of 11 CFR 104.20(a)(1)(i) or (ii) must have been satisfied.

BCRA requires that statements of electioneering communications be filed within 24 hours of the disclosure date, that is the date on which an electioneering communication is publicly distributed, assuming the $10,000 threshold has been exceeded. 11 CFR 104.20(a)(1). One witness at the August 28, 2002 public hearing on electioneering communications acknowledged that in some cases it may be difficult to ascertain when an electioneering communication is publicly distributed for purposes of triggering the 24-hour reporting period. This is because the contract may not specify a precise time that the communication will be publicly distributed or because in some instances the broadcaster does not air the communication during the block of time specified in the contract, although the

day of initial broadcast will generally be known. To address the concern that a person may not know the exact time an electioneering communication is publicly distributed during the day that it is scheduled to air, the Commission is interpreting the 24-hour period in which to report the electioneering communication as starting at the end of the day in which the communication is publicly distributed. Therefore, new section 104.20(b) requires reporting of an electioneering communication by the end of the following day. The Commission did not receive any comments on this rule.

The last sentence of proposed section 104.20(b) stated that "[p]ersons *other than political committees* must file these 24-hour statements on FEC Form 9" (emphasis added). One commenter correctly noted that the highlighted language may be misleading because the Commission had stated in the Electioneering Communications Final Rules that, by operation of the expenditure and independent expenditure exemption from the definition of "electioneering communications," political committees do not make disbursements for electioneering communications. See 67 FR at 65,197–98. Therefore, the final rule includes a sentence that makes clear that political committees report communications that are described in 11 CFR 100.29(a) as expenditures or independent expenditures and not as an electioneering communication. For those persons who are required to report electioneering communications, new section 104.20(b) requires all the information specified in new section 104.20(c) be reported on FEC Form 9.

4. 11 CFR 104.20(c) Contents of Statements

New section 104.20(c) lists eight items that must be included in the statements of electioneering communications that must be filed with the Commission. No commenters addressed the introductory part of paragraph (c). The final rule slightly rewords the proposed rule to clarify that the information to be reported on FEC Form 9 pertains to electioneering communications.

A. 11 CFR 104.20(c)(1) Identification of the Person Making the Disbursements

New section 104.20(c)(1) requires identification of the persons who make a disbursement, or execute a contract to make a disbursement, for an electioneering communication. Under 11 CFR 100.12, as incorporated by new section 104.20(a)(4), "identification" means an individual's first name, middle name or initial, if available, and last name; mailing address; occupation; and the name of his or her employer; and, if the person is not an individual, the person's full name and address. New section 104.20(c)(1) additionally requires a person that is not an individual to list its principal place of business. This rule implements the requirements in BCRA at 2 U.S.C. 434(f)(2)(A) and (B). The Commission did not receive any comments concerning this paragraph.

B. 11 CFR 104.20(c)(2) Identification of Persons Sharing or Exercising Direction or Control

As mandated by BCRA at 2 U.S.C. 434(f)(2)(A), new section 104.20(c)(2) requires identification of persons sharing or exercising direction or control over persons described in paragraph (c)(1), disclosing the same type of information. While one commenter addressed the definition of "sharing or exercising direction or control," *see* above, no commenter specifically discussed this rule.

C. 11 CFR 104.20(c)(3) Identification of the Custodian of the Books and Accounts

BCRA at 2 U.S.C. 434(f)(2)(A) requires disclosure of the person who is the custodian of the books and accounts from which electioneering communication disbursements are made. New section 104.20(c)(3) implements this new provision. The information that must be disclosed about that person under BCRA and the new rules is the same as the information that must be disclosed about the persons described in paragraphs (c)(1) and (c)(2), except for paragraph (c)(1)'s requirement that a person that is not an individual state its principal place of business. The Commission did not receive any comments on this rule.

D. 11 CFR 104.20(c)(4) Disclosure of the Amount of Each Disbursement

BCRA also requires disclosure of disbursements of more than $200 during the period covered by the statement, the date the disbursement was made, and the identification of the person who receives the disbursement. 2 U.S.C. 434(f)(2)(C). The final rule in new section 104.20(c)(4) follows the wording of the proposed rule without change in implementing this BCRA provision. No commenter discussed this provision in the proposed rules.

E. 11 CFR 104.20(c)(5) Disclosure of Candidates and Elections

Under 2 U.S.C. 434(f)(2)(D), the elections to which electioneering communications pertain, as well as the names of all clearly identified candidates referred to in the electioneering communications, must be disclosed. The Electioneering Communications NPRM provided two alternatives to proposed 11 CFR 104.19(b)(5), identified as Alternative 5–A and Alternative 5–B, which would have implemented this statutory provision. 67 FR 51,146. Both alternatives would have required disclosure of the elections and all clearly identified candidates who are referred to in the electioneering communication, but would have contained different wording. Commenters preferred the wording of Alternative 5–B because it was easier to read and was more consistent with 2 U.S.C. 434(f)(2)(D). Because Alternative 5–B arguably was more consistent with the definition of "disclosure date," see above, leaving no doubt as to which clearly identified candidates appear in an electioneering communication, proposed section 104.20(c)(5) in the Reporting NPRM incorporated the wording of Alternative 5–B. As such, the final rule remains unchanged from the proposed rule. No comments were received in response to the Reporting NPRM concerning proposed section 104.20(c)(5).

F. 11 CFR 104.20(c)(6) Disclosure Date

New section 104.20(c)(6) requires that electioneering communications statements list the disclosure date, as defined in section 104.20(a)(1), of each electioneering communication. While BCRA does not specifically require the disclosure date to be reported, this information is necessary as it is the triggering mechanism for filing the statement. This is similar to requiring the disclosure of the date an independent expenditure aggregating $1,000 or more is made during the 24-hour reporting period. The Commission did not receive any comments on this requirement.

G. 11 CFR 104.20(c)(7) Disclosure of Donors to a Segregated Bank Account

BCRA requires persons who make disbursements for electioneering communications exclusively from segregated bank accounts to disclose the names and addresses of contributors who contribute an aggregate of $1,000 or more to that segregated account. 2 U.S.C. 434(f)(2)(E). In the Electioneering Communications NPRM, the Commission sought comment on whether amounts given to persons who make disbursements for electioneering communications are contributions subject to the limitations, prohibitions, and reporting requirements of the Act.

In the new reporting provisions for electioneering communications in BCRA, the statute uses the terms "contributor" and "contributed," but it does not use the term "contribution." 2 U.S.C. 434(f)(2)(E) and (F). BCRA uses the more general "disbursement" more frequently. 2 U.S.C. 434(f)(2)(A), (B), (C), (E), and (F). Nor does BCRA amend the definition of "contribution." *See* 2 U.S.C. 431(8). Additionally, the Commission concluded that political committees do not make disbursements for electioneering communications by operation of the expenditure and independent expenditure exemptions. Based on this analysis, the Commission proposed to treat funds given to persons who make electioneering communications as "donations." *See* also Reporting NPRM, 67 FR at 64,560–61. One commenter agreed with the Commission's approach and none opposed it. At this point, the Commission concludes that its analysis of the statutory wording is correct. Accordingly, the final rules treat these funds as "donations" and not as "contributions."

In reading 2 U.S.C. 434(f)(2)(E) and (F) together with 2 U.S.C. 441b(c)(3)(B), the Commission stated in the Electioneering Communications NPRM that the disclosure requirements for segregated bank accounts appear to apply only to qualified nonprofit corporations (QNCs) organized under 26 U.S.C. 501(c)(4). *See* 67 FR at 51,143 and 11 CFR 114.10. Therefore, proposed 11 CFR 104.19(b)(6) would have permitted only QNCs to use segregated bank accounts to limit disclosure of their donors to only those who donate $1000 or more to that account. Commenters on the Electioneering Communications NPRM urged that this option be made available to all persons who make electioneering communications, and not just QNCs. Because the Commission agreed with this suggestion, proposed 104.20(c)(7) in the Reporting NPRM made this option available to all persons.

The Commission continues to agree with this approach. Accordingly, new section 104.20(c)(7) in the final rules allows all persons who establish a separate bank account consisting of funds provided solely by individuals who are United States citizens, nationals, or permanent residents to limit their reporting of the identities of their donors of $1,000 or more to those donors who have given directly to that bank account, as long as only funds from the separate bank account are used to pay for electioneering communications. Please note that the final rules at 11 CFR 114.14(d)(2), as published previously in the Electioneering Communications Final Rules, provide such persons that are not QNCs with the option of establishing a segregated bank account similar to that allowed to QNCs. 67 FR 65,212.

Although no commenter addressed this provision specifically, one joint comment questioned the requirement that QNCs disclose their donors. The joint commenter made constitutional arguments and cited *FEC* v. *Massachusetts Citizens for Life*, 479 U.S. 238 (1986) (*"MCFL"*) and other cases in support of the assertions that disclosure of its donors imposes a burden on its free speech rights. They also stated that the segregated bank account option creates an administrative burden and would still require disclosure of some of their donors. The joint comment suggested that, with regard to QNCs, the Commission impose the same requirements for disclosure of electioneering communication as it does for independent expenditures arguing that legislative history indicates that Congress intended them to be treated similarly.

In some respects, the reporting rules applicable to QNCs' electioneering communications require less disclosure than those applicable to QNCs' independent expenditures. Electioneering communication rules require disclosure of donors of $1,000 or more, while independent expenditure rules require disclosure of contributors of more than $200. Compare new 11 CFR 104.20(c)(7) or (8) with new 11 CFR 109.10(e)(1)(vi). Additionally, electioneering communications are not subject to disclosure until disbursements related to them exceed $10,000, and the similar threshold for independent expenditures is $250. See 11 CFR 104.20(a)(1). While reporting of independent expenditure contributors is limited to those who contributed specifically for independent expenditures, 11 CFR 109.10(e)(1)(vi), QNCs can also reduce their reporting obligations by using separate bank accounts pursuant to 11 CFR 104.20(c)(7).

More generally, a commenter on the Electioneering Communications NPRM and the joint comment on the Reporting NPRM argued that the members of the organizations they represent could be subject to negative consequences if their names are disclosed in connection with an electioneering communication. The FECA provides for an advisory opinion process concerning the application of any of the statutes within the Commission's jurisdiction or any regulations promulgated by the Commission, and such groups could also seek an advisory opinion from the Commission to determine if the groups would be entitled to an exemption from disclosure that would be analogous to the exemption provided to the Socialist Workers Party. See Advisory Opinions 1990–13 and 1996–46 (both of which allowed the Socialist Workers Party to withhold the identities of its contributors and persons to whom it had disbursed funds because of a reasonable probability that the compelled disclosure of the party's contributors' names would subject them to threats, harassment, or reprisals from either Government officials or private parties). BCRA's legislative history shows that some in Congress recognized the need for limited exceptions in these circumstances. See 148 Cong. Rec. S2136 (daily ed. Mar. 20, 2002) (remarks of Sen. Snowe). The Commission disagrees with the joint commenters' assertion that the standard for obtaining a waiver is too high, given the significant disclosure interests Congress sought to protect in the political arena.

Nevertheless, *MCFL* status does not exempt a corporation from the independent expenditure reporting requirements. It only exempts the *MCFL* corporation's use of its own funds from the prohibitions of 2 U.S.C. 441b. The Supreme Court in *MCFL* specifically noted the reporting requirements of 2 U.S.C. 434(c) and stated that "these reporting obligations provide precisely the information necessary to monitor MCFL's independent spending activity and its receipt of contributions." *MCFL*, 479 U.S. at 262. Thus, the Commission's extension of the exemption of *MCFL* does not apply to reporting requirements for electioneering communications. Therefore, the Commission declines to create separate electioneering communication reporting requirements for QNCs.

H. 11 CFR 104.20(c)(8) Disclosure of Donors When Not Using a Segregated Bank Account

The Electioneering Communications NPRM explaining proposed section 104.19(b)(7) clearly stated that all persons who make electioneering communications, including QNCs that do not use segregated bank accounts, would be required to disclose their contributors who contribute an aggregate of $1,000 or more during the prescribed time period. 67 FR 51,143. Nevertheless, some commenters interpreted proposed section 104.19(b)(7) to apply only to QNCs and objected to limiting the disclosure requirements to only QNCs. They argued that BCRA does not limit the requirements of 2 U.S.C. 434(f)(2)(E) and (F) to just QNCs. Consequently, they

recommended that all persons who make electioneering communications should be required to disclose their contributors under proposed section 104.19(b)(7). Additionally, some commenters expressed concern as to the requirement that organizations would be required to disclose their donors because donors may become inhibited from making donations aggregating $1,000 or more.

In order to eliminate the confusion, proposed 11 CFR 104.20(c)(8) in the Reporting NPRM differed from proposed section 104.19(b)(7) in the Electioneering Communications NPRM in that it removed the reference to QNCs. Thus, proposed section 104.20(c)(8) sought to clarify that all persons who make electioneering communications would be required to disclose their donors who donate $1,000 or more in the aggregate during the prescribed period, if they do not use segregated bank accounts. Other than the commenters that objected to disclosure of their donors, discussed above, the Commission did not receive any comments on this requirement. Because BCRA at 2 U.S.C. 434(f)(2)(F) specifically mandates disclosure of this information, the final rule at 11 CFR 104.20(c)(8) is identical to the proposed rule in the Reporting NPRM.

I. Disclosure Requirements for Individuals Who Make Electioneering Communications

The Commission also sought comments on how the proposed rules would apply to individuals making electioneering communications. The Commission did not receive any comments on this topic. The Commission concludes that, in instances where an individual makes a disbursement for an electioneering communication, 11 CFR 104.20(c)(1) requires disclosure of the identification of the individual, which means his or her name, address, occupation, and employer.

New 11 CFR 104.20(c)(2) requires the identification of any person sharing or exercising direction or control over the activities of the person who made the disbursement, or who executed a contract to make a disbursement, which implements 2 U.S.C. 434(f)(2)(A). The term "direction or control" in 2 U.S.C. 434(f)(2)(A) refers to the management or decision-making process of an organization, as the Commission has noted. See Explanation and Justification for 11 CFR 104.20(c)(2), above, and Reporting NPRM, 67 FR at 64,560. Therefore, the Commission defines "sharing or exercising direction or control" in new 11 CFR 104.20(a)(3) with a four-part test applicable only to organizations and entities. Individuals are required to disclose any person sharing or exercising direction or control over their electioneering communication activities.

For purposes of new 11 CFR 104.20(c)(7) and (8), individuals are required to disclose donations received, which does not include salary, wages, or other compensation for employment. Donations required to be disclosed do include, however, gifts of $1,000 or more from any source. The remainder of 11 CFR 104.20(c) applies to individuals in the same manner it applies to any other persons making electioneering communications. See 11 CFR 104.20(c)(3) through (6).

8. 11 CFR 104.20(d) Recordkeeping Requirement

The final rules at 11 CFR 104.20(d) require all persons who make electioneering communications or accept donations for the purpose of making electioneering communications to maintain records in accordance with 11 CFR 104.14. In the Electioneering Communications NPRM, proposed section 104.19(c) would have exempted QNCs from the recordkeeping requirements. The commenters who addressed this issue were split on whether QNCs should be exempted from the recordkeeping requirements. A commenter who did not support the exemption argued that because these entities are required to report their electioneering communications, they should also be required to maintain records that relate to the electioneering communications to support their reports.

In determining that all of the reporting and recordkeeping requirements for political committees were too burdensome for QNCs making independent expenditures, the Supreme Court in *MCFL* noted that MCFL, Inc. was subject to more "extensive requirements and more stringent restrictions" than unincorporated nonprofit organizations. 479 U.S. at 254–255. For this reason, proposed section 104.20(d) in the Reporting NPRM required QNCs to maintain only those records that pertain to their electioneering communications, which is a much reduced obligation. Additionally, this recordkeeping requirement is identical to what is required of any other person, including unincorporated nonprofit organizations, that make disbursements for electioneering communications. Furthermore, the availability of these records is necessary to assess the accuracy of the electioneering communications reports filed by QNCs. Thus, proposed paragraph (d) in the Reporting NPRM did not include an exemption for QNCs. No subsequent comments were received concerning this paragraph. After consideration of the reasons stated above and in the NPRM, the Commission has concluded that a QNC exemption from recordkeeping is unwarranted. Therefore, new section 104.20(d) requires all persons, including QNCs, who make or accept donations for electioneering communications to maintains records in accordance with 11 CFR 104.14.

9. 11 CFR 104.20(e) State Waivers

Paragraph (e), which was not included in the NPRM, repeats the information in 11 CFR 104.20(b) that the place of filing for statements of electioneering communications is the Commission. This paragraph also states that like all other reports or statements, copies of the statement filed with the Commission must also be filed with the appropriate State official unless the state has obtained a waiver under 11 CFR 108.1(b). The NPRM sought comment on whether this waiver should apply to statements of electioneering communications. The Commission received no comments on this issue. Because section 108.1 of 11 CFR applies to all reports and statements filed with the Commission (and when appropriate the Secretary of the Senate), statements of electioneering communications clearly fall within its rubric. See discussion of 11 CFR 108.1, below.

11 CFR 105.2 Place of Filing; Senate Candidates, Their Principal Campaign Committees, and Committees Supporting Only Senate Candidates (2 U.S.C. 434(g)(3))

The Commission's pre-BCRA regulations required that 24-hour reports of independent expenditures supporting or opposing Senate candidates be filed with the Secretary of the Senate. See pre-BCRA 11 CFR 104.4(c)(2), 105.2, and 109.2(b). Revisions to 11 CFR 105.2 place the text of pre-BCRA 11 CFR 105.2 in paragraph (a), and add the heading, "General Rule."

New paragraph (b) of 11 CFR 105.2, headed, "Exceptions," implements exceptions to this general rule created by BCRA. BCRA establishes the Commission as the place of filing for both 24-hour and 48-hour reports of independent expenditures, regardless of the office sought by the clearly identified candidate. 2 U.S.C. 434(g)(3)(A). In the Reporting NPRM, the proposed revisions to section 105.2

would have made the Commission the point of filing for all 24-hour and 48-hour reports of independent expenditures. The Commission received no comments on this section, and the final rules follow the proposed rules regarding independent expenditures.

Similarly, BCRA establishes the Commission as the place of filing for electioneering communication statements, regardless of the office sought by the clearly identified candidate. 2 U.S.C. 434(f)(1). In the Electioneering Communications NPRM, proposed revisions to section 105.2 would have made the Commission the point of filing for all electioneering communication statements. 67 FR at 51,146. However, the Reporting NPRM proposed that 11 CFR 105.2(b) would not mention electioneering communication statements because section 105.2 only discusses reporting by political committees. 67 FR at 64,562. By operation of 2 U.S.C. 434(f)(3)(B)(ii) and 11 CFR 100.29(c)(3), communications paid for with expenditures and independent expenditures are excluded from the definition of "electioneering communications." Therefore, revised section 105.2(b), as proposed in the Reporting NPRM and as promulgated in these final rules, does not mention statements of electioneering communications. Nonetheless, electioneering communications by others may refer to Senatorial candidates. Under 11 CFR 104.20(b), electioneering communication statements related to electioneering communications that refer to a clearly identified candidate for Senate must be filed with the Commission, not the Secretary of the Senate.

11 CFR 108.1 Filing Requirements

Paragraph (a) of 11 CFR 108.1 contains the general rule that a copy of each report and statement that is required to be filed with the Commission or the Secretary of the Senate must be filed with the Secretary of State for the appropriate State. The Commission is not making any changes to this general rule.

The rules at 11 CFR 108.1(b) provide an exception to the requirement that reporting entities must file copies of their reports with the Secretary of State for the appropriate State. This exception is allowed in States that have received a waiver from the Commission because the State can electronically receive and duplicate reports and statements filed with the Commission. The reporting requirements for both independent expenditures and electioneering communications specifically explain that if a State has obtained a waiver under 11 CFR 108.1(b), then reporting entities are not required to file reports or statements with the Secretary of State for that State. See 11 CFR 104.4(e)(4) and 104.20(e). In the NPRM, the Commission proposed adding to paragraph (b) a statement that the list of States that have obtained waivers under this section is available on the Commission's website. The Commission received no comments on this proposal, and the final rule follows the proposed rule.

11 CFR 109.2 [Reserved]

Section 109.2 of 11 CFR is removed and reserved for future use.

11 CFR 109.10 Independent Expenditure by Persons Other Than Political Committees

The NPRM proposed to move the reporting requirements for persons other than political committees who make independent expenditures from pre-BCRA 11 CFR 109.2 to new 11 CFR 109.10. Other proposed revisions to this section generally followed the proposals regarding independent expenditure reporting by political committees, which are discussed above in the Explanation and Justification for 11 CFR 104.4. The Commission received no comments on this section. The final rules generally follow the proposed rules except as explained below.

Under new section 109.10, persons other than political committees must report their independent expenditures on either FEC Form 5 or in a signed statement containing certain information regarding the person who made the independent expenditure and the nature of the independent expenditure itself.

Paragraph (a) of new 11 CFR 109.10 states that political committees must report independent expenditures under 11 CFR 104.4.

Section 109.10(b) contains the general reporting requirement for persons other than political committees previously found in 11 CFR 109.2(a). New paragraph (b) states that persons other than political committees must report independent expenditures in excess of $250 in a calendar year. New paragraph (b) specifically states that these reports must be filed in accordance with the quarterly reporting schedule specified in 11 CFR 104.5(a)(1)(i) and (ii). Paragraph (b) has been revised since the NPRM to establish that reporting entities must follow the quarterly reporting schedule.

Paragraph (c) addresses reports of independent expenditures aggregating $10,000 or more with respect to a given election from the beginning of the calendar year up to and including the 20th day before an election. This paragraph requires that 48-hour reports of independent expenditures be received rather than filed by 11:59 pm on the second day after the date on which the $10,000 threshold is reached.

Revisions to paragraph (d) of new 11 CFR 109.10 (which was pre-BCRA 11 CFR 109.2(b)) also follow the changes in 11 CFR 104.4(c) regarding 24-hour reports of independent expenditures aggregating $1,000 or more after the 20th day before the election.

Paragraph (e) of new 11 CFR 109.10 (which was pre-BCRA 11 CFR 109.2(a)(1) and (c)) addresses the contents and verification of statements and reports filed under this section. Paragraph (e) has been clarified so that the information required to be disclosed applies to those using FEC Form 5 or a verified statement. Paragraph (e) includes one significant change from pre-BCRA section 109.2(a)(1) and (c): a person making an independent expenditure is now required to certify that the expenditure was made independently from a political party committee and its agents, in addition to pre-BCRA requirement of certification that the expenditure was not coordinated with a candidate, a candidate's authorized committee, or an agent of either of the foregoing. This change reflects the addition of political party committees to the definition of "independent expenditure" in 2 U.S.C. 431(17) and the description of coordination in 2 U.S.C. 441a(a)(7)(B)(ii) under BCRA.

In BCRA, Congress deleted the term "consultation" from the list of activities that compromise the independence of expenditures. *See* 2 U.S.C. 431(17)(B). Notwithstanding that change, in the Reporting NPRM the Commission proposed the retention of the term "consultation" because it remains, post-BCRA, in other related provisions of the Act. Reporting NPRM, 67 FR at 64,558 and 64,568. For the same reasons explained with reference to the definition of "independent expenditure" in 11 CFR 100.16, *see Coordinated and Independent Expenditures, NPRM*, 67 FR 60,042, 60,061 (Sept. 24, 2002); *Coordinated and Independent Expenditures, Final Rules*, 67 FR (forthcoming Dec. 2002), the Commission is continuing to include "consultation" in the description of activity that would cause an expenditure to lose its independence (*i.e.*, "in cooperation, *consultation*, or concert with" a candidate or political party committee), even though the

statutory definition in 2 U.S.C. 431(17) does not retain the term.

The comment from the Internal Revenue Service, which is described in the Explanation and Justification of 11 CFR 104.4, above, will be of interest to political organizations within the meaning of section 527 of the Internal Revenue Code.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules do not have a significant economic impact on a substantial number of small entities. The bases of this certification are several. There are four areas in which new rules are being promulgated. The economic impact on small entities of each new rule is addressed below.

1. Independent Expenditure Reporting

First, with regard to the final rules addressing independent expenditures, the national, State, and local party committees of the two major political parties, and other political committees, are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. Further, individuals operating under these rules are not small entities.

The small entities to which the rules do apply will not be unduly burdened by the final rules because there is no significant extra cost involved, as independent expenditures must already be reported. Collectively, the differential costs will not exceed $100 million per year. In addition, new reporting requirements will not significantly increase costs, as they only apply to those spending $10,000 or more on independent expenditures, and the actual reporting requirements are the minimum necessary to comply with the new statute enacted by Congress.

2. Electioneering Communications

Second, with regard to the final rules addressing electioneering communications, the only burden the final rules impose is on persons who make electioneering communications, and that burden is a minimal one, requiring persons who make such communications to provide the names and addresses of those who made donations of $1000 or more to that person when the costs of the electioneering communication exceed $10,000 per year. If that person is a corporation that qualifies as a QNC, then it must also certify that it meets that status. The number of small entities affected by the final rules is not substantial.

In addition, the Commission is promulgating several rules that reduce any burden that might be placed on persons who must file electioneering communication reports. First, the Commission interprets the reporting requirement such that no reporting is required until after an electioneering communication is publicly distributed. More than likely, this will only require that person to file one report with the Commission. Also, the Commission is allowing all persons paying for electioneering communications to establish segregated bank accounts, and to report the names and addresses of only those persons who contributed to those accounts. Further, the Commission interprets the statute to not require that a certification of QNC status be filed until the person is also required to file a disclosure report. These are significant steps the Commission is taking to reduce the burden on those who make electioneering communications. The overall burden on the small entities affected by these final rules for reporting electioneering communications will not be $100 million on an annual basis. Moreover, these final rules are no more than what is strictly necessary to comply with the new statute enacted by Congress.

3. Reporting Schedules for House of Representatives and Senate Candidates

Third, regarding the new rules requiring a new reporting schedule for non-election years for the authorized committees of House of Representatives and Senate candidates, the frequency of reports has increased. However, the additional cost will not reach $100 million on an annual basis. Moreover, these final rules are no more than what is strictly necessary to comply with the new statute enacted by Congress.

4. Reporting Schedules for National Committees of Political Parties

Fourth, regarding the new rules requiring a different reporting schedule for national committees of political parties, as noted above, the two major national party committees are not small entities under 5 U.S.C. 601. In addition, the new reporting schedule applicable to other national party committees will not result in a cost of $100 million per year, and is no more than what is strictly necessary to comply with the new statute enacted by Congress.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 105

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. Section 100.19 is revised as follows:

(a) Revising the introductory text and paragraphs (b) through (e).

(b) Adding a heading to paragraph (a) and adding paragraph (f).

The revisions and additions read as follows.

§ 100.19 File, filed, or filing (2 U.S.C. 434(a)).

With respect to documents required to be filed under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109, and any modifications or amendments thereto, the terms *file, filed,* and *filing* mean one of the actions set forth in paragraphs (a) through (f) of this section. For purposes of this section, document means any report, statement, notice, or designation required by the Act to be filed with the Commission or the Secretary of the Senate.

(a) *Where to deliver reports.* * * *

(b) *Timely filed.* A document, other than those addressed in paragraphs (c) through (f) of this section, is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the filing date, except that pre-election reports so mailed must be postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the fifteenth day before the date of the election. Documents sent by first class mail must be received by the close of business on the prescribed filing date to be timely filed.

(c) *Electronically filed reports.* For electronic filing purposes, a document is timely filed when it is received and validated by the Federal Election Commission by 11:59 p.m. Eastern Standard/Daylight Time on the filing date.

(d) *48-hour and 24-hour reports of independent expenditures.*

(1) *48-hour reports of independent expenditures.* A 48-hour report of independent expenditures under 11 CFR 104.4(b) or 109.10(c) is timely filed when it is received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which independent expenditures aggregate $10,000 or more in accordance with 11 CFR 104.4(f), any time during the calendar year up to and including the 20th day before an election.

(2) *24-hour reports of independent expenditures.* A 24-hour report of independent expenditures under 11 CFR 104.4(c) or 109.10(d) is timely filed when it is received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which independent expenditures aggregate $1,000 or more, in accordance with 11 CFR 104.4(f), during the period less than 20 days but more than 24 hours before an election.

(3) *Permissible means of filing.* In addition to other permissible means of filing, a 24-hour report or 48-hour report of independent expenditures may be filed using a facsimile machine or by electronic mail if the reporting entity is not required to file electronically in accordance with 11 CFR 104.18. Political committees, regardless of whether they are required to file electronically under 11 CFR 104.18, may file 24-hour reports using the Commission's website's on-line program.

(e) *48-hour statements of last-minute contributions.* In addition to other permissible means of filing, authorized committees that are not required to file electronically may file 48-hour notifications of contributions using facsimile machines. All authorized committees that file with the Commission, including electronic reporting entities, may use the Commission's website's on-line program to file 48-hour notifications of contributions. *See* 11 CFR 104.5(f).

(f) *24-hour statements of electioneering communications.* A 24-hour statement of electioneering communications under 11 CFR 104.20 is timely filed when it is received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. (*See* 11 CFR 104.20(a)(1) and (b)). In addition to other permissible means of filing, a 24-hour statement of electioneering communications may be filed using a facsimile machine or by electronic mail if the reporting entity is not required to file electronically in accordance with 11 CFR 104.18.

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), and 439a.

4. In § 104.3, paragraph (g) is revised to read as follows:

§ 104.3 Contents of reports (2 U.S.C. 434(b), 439a).

* * * * *

(g) *Building funds.*

(1) A political party committee must report gifts, subscriptions, loans, advances, deposits of money, or anything of value that are used by the political party committee's Federal accounts to defray the costs of construction or purchase of the committee's office building. See 11 CFR 300.35. Such a receipt is a contribution subject to the limitations and prohibitions of the Act and reportable as a contribution, regardless of whether the contributor has designated the funds or things of value for such purpose and regardless of whether such funds are deposited in a separate Federal account dedicated to that purpose.

(2) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that are donated to a non-Federal account of a State or local party committee and are used by that party committee for the purchase or construction of its office building are not contributions subject to the reporting requirements of the Act. The reporting of such funds or things of value is subject to State law.

(3) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that are used by a national committee of a political party to defray the costs of construction or purchase of the national committee's office building are contributions subject to the requirements of paragraph (g)(1) of this section.

* * * * *

5. Section 104.4 is revised to read as follows:

§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(b), (d), and (g)).

(a) *Regularly scheduled reporting.* Every political committee that makes independent expenditures must report all such independent expenditures on Schedule E in accordance with 11 CFR 104.3(b)(3)(vii). Every person that is not a political committee must report independent expenditures in accordance with paragraphs (e) and (f) of this section and 11 CFR 109.10.

(b) *Reports of independent expenditures made at any time up to and including the 20th day before an election.*

(1) *Independent expenditures aggregating less than $10,000 in a calendar year.* Political committees must report on Schedule E of FEC Form 3X at the time of their regular reports in accordance with 11 CFR 104.3, 104.5 and 104.9, all independent expenditures aggregating less than $10,000 with respect to a given election any time during the calendar year up to and including the 20th day before an election.

(2) *Independent expenditures aggregating $10,000 or more in a calendar year.* Political committees must report on Schedule E of FEC Form 3X all independent expenditures aggregating $10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election. Political committees must ensure that the Commission receives these reports by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $10,000 or more, the political committee must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which the communication is publicly distributed or otherwise publicly disseminated. (*See* paragraph (f) of this section for aggregation.) Each 48-hour report must contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. In addition to other permissible means of filing, a political committee may file the 48-hour reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(c) *Reports of independent expenditures made less than 20 days, but more than 24 hours before the day of an election.* Political committees must ensure that the Commission

receives reports of independent expenditures aggregating $1,000 or more with respect to a given election, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of the election, by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $1,000 or more, the political committee must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. (See paragraph (f) of this section for aggregation.) Each 24-hour report shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. Political committees may file reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(d) *Verification.* Political committees must verify reports of independent expenditures filed under paragraph (b) or (c) of this section by one of the methods stated in paragraph (d)(1) or (2) of this section. Any report verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(1) For reports filed on paper (*e.g.*, by hand-delivery, U.S. Mail or facsimile machine), the treasurer of the political committee that made the independent expenditure must certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(2) For reports filed by electronic mail, the treasurer of the political committee that made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(e) *Where to file.* Reports of independent expenditures under this section and 11 CFR 109.10(b) shall be filed as follows:

(1) For independent expenditures in support of, or in opposition to, a candidate for President or Vice President: with the Commission and the Secretary of State for the State in which the expenditure is made.

(2) For independent expenditures in support of, or in opposition to, a candidate for the Senate:

(i) For regularly scheduled reports, with the Secretary of the Senate and the Secretary of State for the State in which the candidate is seeking election; or

(ii) For 24-hour and 48-hour reports, with the Commission and the Secretary of State for the State in which the candidate is seeking election.

(3) For independent expenditures in support of, or in opposition to, a candidate for the House of Representatives: with the Commission and the Secretary of State for the State in which the candidate is seeking election.

(4) Notwithstanding the requirements of paragraphs (e)(1), (2), and (3) of this section, political committees and other persons shall not be required to file reports of independent expenditures with the Secretary of State if that State has obtained a waiver under 11 CFR 108.1(b).

(f) *Aggregating independent expenditures for reporting purposes.* For purposes of determining whether 24-hour and 48-hour reports must be filed in accordance with paragraphs (b) and (c) of this section and 11 CFR 109.10(c) and (d), aggregations of independent expenditures must be calculated as of the first date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated, and as of the date that any such communication with respect to the same election is subsequently publicly distributed or otherwise publicly disseminated. Every person must include in the aggregate total all disbursements during the calendar year for independent expenditures, and all enforceable contracts, either oral or written, obligating funds for disbursements during the calendar year for independent expenditures, where those independent expenditures are made with respect to the same election for Federal office.

6. In § 104.5, paragraph (a), the intro text and heading of paragraph (c), and paragraph (g) are revised to read as follows, and paragraphs (c)(4) and (j) are added to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

(a) *Principal campaign committee of House of Representatives or Senate candidate.* Each treasurer of a principal campaign committee of a candidate for the House of Representatives or for the Senate must file quarterly reports on the dates specified in paragraph (a)(1) of this section in both election years and non-election years, and must file additional reports on the dates specified in paragraph (a)(2) of this section in election years.

(1) *Quarterly reports.*

(i) Quarterly reports must be filed no later than the 15th day following the close of the immediately preceding calendar quarter (on April 15, July 15, and October 15), except that the report for the final calendar quarter of the year must be filed no later than January 31 of the following calendar year.

(ii) The report must be complete as of the last day of each calendar quarter.

(iii) The requirement for a quarterly report shall be waived if, under paragraph (a)(2) of this section, a pre-election report is required to be filed during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(2) *Additional reports in the election year.*

(i) *Pre-election reports.*

(A) Pre-election reports for the primary and general election must be filed no later than 12 days before any primary or general election in which the candidate seeks election. If sent by registered or certified mail, the report must be mailed no later than the 15th day before any election.

(B) The pre-election report must disclose all receipts and disbursements as of the 20th day before a primary or general election.

(ii) *Post-general election report.*

(A) The post-general election report must be filed no later than 30 days after any general election in which the candidate seeks election.

(B) The post-general election report must be complete as of the 20th day after the general election.

* * * * *

(c) *Political committees that are not authorized committees of candidates.* Except as provided in paragraph (c)(4) of this section, each political committee that is not the authorized committee of a candidate must file either: Election year and non-election year reports in accordance with paragraphs (c)(1) and (2) of this section; or monthly reports in accordance with paragraph (c)(3) of this section. A political committee reporting under paragraph (c) of this section may elect to change the frequency of its reporting from monthly to quarterly and semi-annually or *vice versa.* A political committee reporting under this paragraph (c) may change the frequency of its reporting only after notifying the Commission in writing of its intention at the time it files a required report

under its current filing frequency. Such political committee will then be required to file the next required report under its new filing frequency. A political committee may change its filing frequency no more than once per calendar year.

* * * * *

(4) *National party committee reporting.* Notwithstanding anything to the contrary in this paragraph, a national committee of a political party, including a national Congressional campaign committee, must report monthly in accordance with paragraph (c)(3) of this section in both election and non-election years.

* * * * *

(g) *Reports of independent expenditures.*

(1) *48-hour reports of independent expenditures.* Every person that must file a 48-hour report under 11 CFR 104.4(b) must ensure the Commission receives the report by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate $10,000 or more, that person must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which the $10,000 threshold is reached or exceeded. (*See* 11 CFR 104.4(f) for aggregation.)

(2) *24-hour reports of independent expenditures.* Every person that must file a 24-hour report under 11 CFR 104.4(c) must ensure that the Commission receives the report by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate $1,000 or more, that person must ensure that the Commission receives a 24-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which the $1,000 threshold is reached or exceeded. (*See* 11 CFR 104.4(f) for aggregation.)

(3) Each 24-hour or 48-hour report of independent expenditures filed under this section shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

(4) For purposes of this part and 11 CFR part 109, a communication that is mailed to its intended audience is publicly disseminated when it is relinquished to the U.S. Postal Service.

* * * * *

(j) *24-hour statements of electioneering communications.* Every person who has made a disbursement or who has executed a contract to make a disbursement for the direct costs of producing or airing electioneering communications as defined in 11 CFR 100.29 aggregating in excess of $10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. The statement shall be filed under penalty of perjury and in accordance with 11 CFR 104.20.

§ 104.19 [Reserved.]

7. Section 104.19 is added and reserved.

8. Section 104.20 is added to read as follows:

§ 104.20 Reporting electioneering communications (2 U.S.C. 434(f)).

(a) *Definitions.*

(1) *Disclosure date* means:

(i) The first date on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of $10,000; or

(ii) Any other date during the same calendar year on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of $10,000 since the most recent disclosure date during such calendar year.

(2) *Direct costs of producing or airing electioneering communications* means the following:

(i) Costs charged by a vendor, such as studio rental time, staff salaries, costs of video or audio recording media, and talent; or

(ii) The cost of airtime on broadcast, cable or satellite radio and television stations, studio time, material costs, and the charges for a broker to purchase the airtime.

(3) *Persons sharing or exercising direction or control* means officers, directors, executive directors or their equivalent, partners, and in the case of unincorporated organizations, owners, of the entity or person making the disbursement for the electioneering communication.

(4) *Identification* has the same meaning as in 11 CFR 100.12.

(5) *Publicly distributed* has the same meaning as in 11 CFR 100.29(a)(3).

(b) *Who must report and when.* Every person who has made an electioneering communication, as defined in 11 CFR 100.29, aggregating in excess of $10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. The statement shall be filed under penalty of perjury, shall contain the information set forth in paragraph (c) of this section, and shall be filed on FEC Form 9. Political committees that make communications that are described in 11 CFR 100.29(a) must report such communications as expenditures or independent expenditures under 11 CFR 104.3 and 104.4, and not under this section.

(c) *Contents of statement.* Statements of electioneering communications filed under paragraph (b) of this section shall disclose the following information:

(1) The identification of the person who made the disbursement, or who executed a contract to make a disbursement, and, if the person is not an individual, the person's principal place of business;

(2) The identification of any person sharing or exercising direction or control over the activities of the person who made the disbursement or who executed a contract to make a disbursement;

(3) The identification of the custodian of the books and accounts from which the disbursements were made;

(4) The amount of each disbursement, or amount obligated, of more than $200 during the period covered by the statement, the date the disbursement was made, or the contract was executed, and the identification of the person to whom that disbursement was made;

(5) All clearly identified candidates referred to in the electioneering communication and the elections in which they are candidates;

(6) The disclosure date, as defined in paragraph (a) of this section;

(7) If the disbursements were paid exclusively from a segregated bank account consisting of funds provided solely by individuals who are United States citizens, United States nationals, or who are lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20), the name and address of each donor who donated an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year; and

(8) If the disbursements were not paid exclusively from a segregated bank account described in paragraph (c)(7) of this section, the name and address of each donor who donated an amount aggregating $1,000 or more to the person making the disbursement, aggregating since the first day of the preceding calendar year.

(d) *Recordkeeping.* All persons who make electioneering communications or who accept donations for the purpose of making electioneering communications must maintain records in accordance with 11 CFR 104.14.

(e) *State waivers.* Statements of electioneering communications that must be filed with the Commission must also be filed with the Secretary of State of the appropriate State if the State has not obtained a waiver under 11 CFR 108.1(b).

PART 105—DOCUMENT FILING (2 U.S.C. 432(g))

9. The authority citation for part 105 is revised to read as follows:

Authority: 2 U.S.C. 432(g), 434, 438(a)(8).

10. Section 105.2 is revised to read as follows:

§ 105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (2 U.S.C. 432(g), 434(g)(3)).

(a) *General Rule.* Except as provided in paragraph (b) of this section, all designations, statements, reports, and notices as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a candidate for nomination or election to the office of United States Senator, by his or her principal campaign committee or by any other political committee(s) that supports only candidates for nomination for election or election to the Senate of the United States shall be filed in original form with, and received by, the Secretary of the Senate, as custodian for the Federal Election Commission.

(b) *Exceptions.* 24-hour and 48-hour reports of independent expenditures must be filed with the Commission and not with the Secretary of the Senate, even if the communication refers to a Senate candidate.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

11. The authority citation for part 108 would continue to read as follows:

Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

12. Paragraph (b) of § 108.1 is revised to read as follows:

§ 108.1 Filing Requirements (2 U.S.C. 439(a)(1))

* * * * *

(b) The filing requirements and duties of State officers under this part 108 shall not apply to a State if the Commission has determined that the State maintains a system that can electronically receive and duplicate reports and statements filed with the Commission. Once a State has obtained a waiver pursuant to this paragraph, the waiver shall apply to all reports that can be electronically accessed and duplicated from the Commission, regardless of whether the report or statement was originally filed with the Commission. The list of States that have obtained waivers under this section is available on the Commission's website.

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a, Pub. L. 107–155 sec. 214(c) (March 27, 2002))

13. The authority citation for part 109 continues to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 441a; Pub. L. 155–107 sec. 214(c).

§ 109.2 [Removed and Reserved]

14. Section 109.2 is removed and reserved.

15. Section 109.10 is added to read as follows:

§ 109.10 How do political committees and other persons report independent expenditures?

(a) Political committees, including political party committees, must report independent expenditures under 11 CFR 104.4.

(b) Every person that is not a political committee and that makes independent expenditures aggregating in excess of $250 with respect to a given election in a calendar year shall file a verified statement or report on FEC Form 5 in accordance with 11 CFR 104.4(e) containing the information required by paragraph (e) of this section. Every person filing a report or statement under this section shall do so in accordance with the quarterly reporting schedule specified in 11 CFR 104.5(a)(1)(i) and (ii) and shall file a report or statement for any quarterly period during which any such independent expenditures that aggregate in excess of $250 are made and in any quarterly reporting period thereafter in which additional independent expenditures are made.

(c) Every person that is not a political committee and that makes independent expenditures aggregating $10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election, must report the independent expenditures on FEC Form 5, or by signed statement if the person is not otherwise required to file electronically under 11 CFR 104.18. (See 11 CFR 104.4(f) for aggregation.) The person making the independent expenditures aggregating $10,000 or more must ensure that the Commission receives the report or statement by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $10,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures. Each 48-hour report must contain the information required by paragraph (e)(1) of this section.

(d) Every person making, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of an election, independent expenditures aggregating $1,000 or more with respect to a given election must report those independent expenditures and ensure that the Commission receives the report or signed statement by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate $1,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures. (See 11 CFR 104.4(f) for aggregation.) Such report or statement shall contain the information required by paragraph (e) of this section.

(e) *Content of verified reports and statements and verification of reports and statements.*

(1) *Contents of verified reports and statement.* If a signed report or statement is submitted, the report or statement shall include:

(i) The reporting person's name, mailing address, occupation, and the name of his or her employer, if any;

(ii) The identification (name and mailing address) of the person to whom the expenditure was made;

(iii) The amount, date, and purpose of each expenditure;

(iv) A statement that indicates whether such expenditure was in support of, or in opposition to a candidate, together with the candidate's name and office sought;

(v) A verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents; and

(vi) The identification of each person who made a contribution in excess of $200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.

(2) *Verification of independent expenditure statements and reports.* Every person shall verify reports and statements of independent expenditures filed pursuant to the requirements of this section by one of the methods stated in paragraph (2)(i) or (ii) of this section. Any report or statement verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(i) For reports or statements filed on paper (*e.g.*, by hand-delivery, U.S. Mail, or facsimile machine), the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by paragraph (e)(1)(v) of this section.

(ii) For reports or statements filed by electronic mail, the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by paragraph (e)(1)(v) of this section.

Dated: December 17, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 03–91 Filed 1–2–03; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 109, 110, and 114

[Notice 2002—27]

Coordinated and Independent Expenditures

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is issuing final rules regarding payments for communications that are coordinated with a candidate, a candidate's authorized committee, or a political party committee. The final rules also address expenditures by political party committees that are made either in coordination with, or independently from, candidates. These final rules implement several requirements in the Bipartisan Campaign Reform Act of 2002 ("BCRA") that significantly amend the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"). Further information is contained in the Supplementary Information that follows.

EFFECTIVE DATE: February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. John Vergelli, Acting Assistant General Counsel, or Attorneys Mr. Mark Allen (coordinated party expenditures), and Mr. Richard Ewell (coordinated communications paid for by other political committees and other persons), 999 E Street NW., Washington, DC, 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Public Law 107–155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971 ("FECA" or "the Act"), as amended, 2 U.S.C. 431 *et seq.* This is one in a series of rulemakings the Commission is undertaking in order to implement the provisions of BCRA and to meet the rulemaking deadlines set out in BCRA.

Section 402(c)(1) of BCRA establishes a general deadline of 270 days for the Commission to promulgate regulations to carry out BCRA, which is December 22, 2002. The final rules do not apply with respect to runoff elections, recounts, or election contests resulting from the November 2002 general election. 2 U.S.C. 431 note.

Because of the brief period before the statutory deadline for promulgating these rules, the Commission received and considered public comments expeditiously. The Notice of Proposed Rulemaking ("NPRM"), on which these final rules are based, was published in the **Federal Register** on September 24, 2002. 67 FR 60,042 (September 24, 2002). The written comments were due by October 11, 2002. The Commission received 27 comments from 21 commenters. The names of the commenters and their comments are available at *http://www.fec.gov/register.htm* under "Coordinated and Independent Expenditures." A public hearing was held on Wednesday, October 23, 2002, and Thursday, October 24, 2002, at which 14 witnesses testified. A transcript of those hearings is also available at *http://www.fec.gov/register.htm.*

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on coordinated and independent expenditures were transmitted to Congress on December 18, 2002.

Introduction

These final rules primarily address communications that are made in coordination with a candidate, an authorized committee of a candidate, or a political party committee. The regulations set forth the meaning of "coordination." They also set forth statutory requirements for political party committees with respect to the permitted timing of independent and coordinated expenditures, and transfers and assignments.

Explanation and Justification

1. Statutory Overview

FECA limits the amount of contributions to Federal candidates, their authorized committees, and other political committees. 2 U.S.C. 441a(a). Under FECA and the Commission's regulations, these contributions may take the form of money or "anything of value" (the latter is an "in-kind contribution" provided to a candidate or political committee.) *See* 11 CFR 100.52(d)(1). Candidates must disclose

all contributions they receive. 2 U.S.C. 434(b)(2). Since the recipient does not actually receive a cash payment from an in-kind contribution, the recipient must report the value of an in-kind contribution as both a contribution received and an expenditure made so that the receipt of the contribution will be reported without overstating the cash-on-hand in the committee's treasury. *See* 11 CFR 104.13.

2. Overview of BCRA's Changes to the FECA and Commission Regulations

In BCRA, Congress revised the FECA's definition of "independent expenditure" in 2 U.S.C. 431(17). The revision added a reference to political party committees and their agents and reworked other aspects of the former definition. Corresponding revisions are being made to the regulations in 11 CFR 100.16.

Congress repealed the Commission's pre-BCRA regulations regarding "coordinated general public political communications" at former 11 CFR 100.23, and directed the Commission to adopt new regulations on "coordinated communications" in their place. Public Law 107–155, sec. 214(b), (c) (March 27, 2002). A new section 11 CFR 109.21 implements this Congressional mandate.

In addition, the new and revised rules implement several new restrictions found in BCRA on the timing of independent and coordinated expenditures made by committees of political parties. 2 U.S.C. 441a(d)(4). Those regulations are located in new 11 CFR part 109, subpart D. Similarly, Congress established new restrictions on transfers between committees of a political party. 2 U.S.C. 441a(d)(4). Those changes, as well as amendments to the rules on the assignment of coordinated party expenditure authority in pre-BCRA 11 CFR 110.7, are reflected in new 11 CFR part 109, subpart D.

Finally, Congress established new reporting obligations for independent expenditures. 2 U.S.C. 434(a)(5) and (g). These reporting obligations have been addressed in a separate rulemaking. *See* Final Rules and Explanation and Justification for Bipartisan Campaign Reform Act of 2002 Reporting, published elsewhere in this issue of the **Federal Register**. The comments received regarding the reporting of independent expenditures have been addressed separately in the Explanation and Justification for the amended reporting rules.

11 CFR 100.16 Definition of Independent Expenditure

In light of several Congressional changes to the statutory definition of "independent expenditure" at 2 U.S.C. 431(17), the Commission is making several corresponding changes to the definition of the same term in 11 CFR 100.16. Most significantly, the statutory definition of "independent expenditure" is modified to exclude expenditures coordinated with a political party committee or its agents (in addition to the pre-BCRA exclusion of coordination with candidates). 2 U.S.C. 431(17).

Paragraph (a) of section 100.16 contains the revised pre-BCRA section 100.16. The first sentence of paragraph (a) is being changed by adding a reference to political party committees and their agents, thereby tracking BCRA's changes in 2 U.S.C. 431(17).

In BCRA, Congress deleted the term "consultation" from the list of activities that compromise the independence of expenditures. See 2 U.S.C. 431(17)(B). Notwithstanding that change, in the NPRM the Commission proposed the retention of the term "consultation" because it remains, post-BCRA, in other related provisions of the Act. Most importantly, the term "consultation" was used in a closely related provision added by BCRA itself. See 2 U.S.C. 441a(a)(7)(B)(ii) as amended by Public Law 107–155, sec. 214(a) (expenditures made in "cooperation, *consultation*, or concert, with, or at the request or suggestion of, a national, State, or local committee of a political party"); see also 2 U.S.C. 441a(a)(7)(B)(i) (expenditures that are made in "cooperation, consultation, or concert with, or at the request or suggestion of" candidates, political committees, and agents thereof are contributions) (emphasis added).

Similarly, while Congress referred to expenditures "not made in concert or cooperation with * * * a political party committee or its agents" in 2 U.S.C. 431(17) (emphasis added), it did not refer to agents of a party committee in 2 U.S.C. 441a(a)(7)(B)(ii) when describing coordination with a party committee. The Commission proposed in the NPRM including agents of political party committees as persons who might take actions that would cause a communication to be coordinated with that party committee.

The Commission received one joint comment from two commenters [1] on each of the two proposals above, urging the Commission to include in the final rules both terms as proposed. The final rules retain the term "consultation" in paragraph (a) as an element in the regulatory definition of "independent expenditure," for the reasons outlined in the NPRM. The Commission is similarly including agents of a political party within the scope of its independent expenditure definition. 11 CFR 100.16(a).

In BCRA, Congress repealed the pre-BCRA regulatory definition of "coordinated general public political communication." See former 11 CFR 100.23 (January 1, 2001), repealed by Public Law 107–155, section 214(b) (March 27, 2002). Therefore, in one additional change to paragraph (a) of section 100.16, the Commission is deleting the term "coordinated general public political communication," and replacing it with references to a "coordinated communication" from section 109.21 and a "party coordinated communication" from 11 CFR 109.37.

The Commission is also moving pre-BCRA 11 CFR 109.1(e), which clarifies the basic definition of "independent expenditure," to paragraph (b) of section 100.16, without other changes. This rule provides that expenditures made by a candidate's authorized committee on behalf of that candidate never qualify as independent expenditures.

The Commission is adding a new paragraph (c) to provide examples of activities that would disqualify a communication from being treated as an independent expenditure. This provision does not in any way change the scope of the definition of coordinated communication in 11 CFR 109.21; it is merely intended to provide additional guidance.

11 CFR 100.23 [Removed and Reserved]

Prior to the enactment of BCRA, the Commission initiated a series of rulemakings in response to the Supreme Court's ruling on the appropriate application of the so-called "coordinated party expenditure" provisions of FECA. *See Colorado Republican Federal Campaign Committee* v. *Federal Election Commission*, 518 U.S. 604 (1996) (*"Colorado I"*). For example, the Commission addressed the issue of coordination when it promulgated former 11 CFR 100.23 (January 1, 2001) in December 2000. See Explanation and Justification of General Public Political Communications Coordinated with Candidates and Party Committees; Independent Expenditures, 65 FR 76,138 (Dec. 6, 2000). Former section 100.23 defined a new term, "coordinated general public political communication," drawing from judicial guidance in *Federal Election*

[1] For the purposes of this Explanation and Justification, all persons who expressed their views on the rules proposed in the NPRM are referred to as "commenters" without regard to whether those views were expressed to the Commission in writing or through testimony at the hearing.

Commission v. *The Christian Coalition*, 52 F.Supp.2d 45, 85 (D.D.C. 1999) (*"Christian Coalition"*), to determine whether expenditures for communications by unauthorized committees, advocacy groups, and individuals were coordinated with candidates or qualified as independent expenditures. Consistent with *Christian Coalition, id.* at 92, the Commission's regulations stated that such coordination could be found when candidates or their representatives influenced the creation or distribution of the communications by making requests or suggestions regarding, or exercising control or decision making authority over, or engaging in "substantial discussion or negotiation" regarding, various aspects of the communications. Former 11 CFR 100.23(c)(2) (January 1, 2001). The regulations explained that "substantial discussion or negotiation may be evidenced by one or more meetings, conversations or conferences regarding the value or importance of the communication for a particular election." Former 11 CFR 100.23(c)(2)(iii) (January 1, 2001). The Commission provided an exception, however, for a candidate's or political party's response to an inquiry regarding the candidate's or party's position on legislative or public policy issues. *See* former 11 CFR 100.23(d) (January 1, 2001).

As explained above, Congress repealed 11 CFR 100.23 in BCRA and directed the Commission to promulgate new regulations to address coordinated communications. Those new regulations are discussed below in the Explanation and Justification for 11 CFR part 109. Accordingly, the Commission is now removing former section 100.23 from Title 11, Chapter 1, of the Code of Federal Regulations.

11 CFR 102.6(a)(1)(ii) Transfers

As a result of the enactment of 2 U.S.C. 441a(d)(4) and other provisions from BCRA affecting transfers between political party committees, the Commission revises 11 CFR 102.6(a)(1)(ii) to clarify the interaction of this section with those provisions of BCRA. Before BCRA, the Commission permitted unlimited transfers between or among national party committees, State party committees and/or any subordinate committees. See pre-BCRA 11 CFR 102.6(a)(1)(ii).

First, in BCRA, Congress provided that a national committee of a political party, including a national Congressional campaign committee of a political party, may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of FECA. 2 U.S.C. 441i(a); *see* Explanation and Justification for 11 CFR 300.10(a), 67 FR 49,122 (July 29, 2002).

Second, in BCRA's "Levin Amendment," Congress placed restrictions on how State, district, and local party committees raise "Levin funds" and prohibited certain transfers between political party committees. *See* 2 U.S.C. 441i(b)(2)(C)(i); Explanation and Justification for 11 CFR 300.31, 67 FR 49,124 (July 29, 2002).

Third, also in the Levin Amendment, Congress provided that a State, district, or local committee of a political party that spends Federal funds and Levin funds for the newly defined term, Federal election activity, must raise those funds solely by itself. These committees may not receive or use transferred funds for this purpose. 2 U.S.C. 441i(b)(2)(B)(iv); *see* Explanation and Justification for 11 CFR 300.34(a) and (b), 67 FR 49,127 (July 29, 2002).

Fourth, Congress provided in BCRA that a committee of a political party that makes coordinated party expenditures under 2 U.S.C. 441a(d) in connection with the general election campaign of a candidate shall not, during that election cycle, transfer any funds to, assign authority to make coordinated party expenditures under this subsection to, or receive a transfer from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate. 2 U.S.C. 441a(d)(4)(C); *see* Explanation and Justification for 11 CFR 109.35(c), below.

The Commission adds a new opening clause in paragraph (a)(1)(ii) of section 102.6 incorporating these restrictions by reference into the rules regarding the transfer of funds and the use of transferred funds.

The Commission received no comments on this section, and the final rule is unchanged from the proposed rule.

Part 109—Coordinated and Independent Expenditures (2 U.S.C. 431(17), 441a(a) and (d), and Pub. L. 107–155 Sec. 214(c))

The Commission is reorganizing 11 CFR part 109 into four subparts in an effort to simplify and clarify its regulations while implementing the Congressional mandates in BCRA regarding payments for coordinated communications and coordinated expenditures by political party committees. Subpart A explains the scope of part 109 and defines the key term "agent." Subpart B, which addresses the reporting and recordkeeping requirements for independent expenditures, has been addressed in a separate rulemaking. *See* Final Rules and Explanation and Justification for Bipartisan Campaign Reform Act of 2002 Reporting, published elsewhere in this issue of the **Federal Register**. Subpart C addresses coordination between a candidate or a political party and a person making a communication. Subpart D sets forth provisions applicable only to political party committees, including those pertaining to independent expenditures and support of candidates through coordinated party expenditures. *See* 2 U.S.C. 441a(d). The special authority for coordinated expenditures by political party committees, previously set forth in pre-BCRA 11 CFR 110.7, is being relocated to 11 CFR 109.32 and other sections in subpart D.

11 CFR Part 109, Subpart A—Scope and Definitions

11 CFR 109.1 When Will This Part Apply?

New section 109.1 introduces the scope of part 109. Section 109.1 explains that the regulations in part 109 set forth the general reporting requirements for both "independent expenditures" and "coordinated communications." Note that the definition of "agent" found in pre-BCRA section 109.1 is being revised and moved to section 109.3. No comments were received regarding this section.

11 CFR 109.3 Definitions

The Commission proposed new 11 CFR 109.3 to define the term "agent," which is used throughout 11 CFR part 109. This definition of agent is based on the same concept that the Commission used in framing the definition of "agent" in the revised "soft money" rules. *See* Final Rules and Explanation and Justification on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49,081 (July 29, 2002). The definition of "agent" proposed in the NPRM focused on whether a purported agent has "actual authority, either express or implied," to engage in one or more specified activities on behalf of specified principals.

In the NPRM, the Commission listed those specific sets of activities, which vary slightly depending on whether the agent engages in those activities on behalf of a national, State, district, or local committee of a party committee, or on behalf of a Federal candidate or

officeholder. See proposed 11 CFR 109.3(a) and (b), respectively. The activities specified in the NPRM closely paralleled the conduct activities associated with coordinated communications, as described in 11 CFR 109.21(b). These activities included requesting or suggesting that a communication be created, produced, or distributed; making or authorizing certain campaign-related communications; and being materially involved in decisions regarding specific aspects of communications. See proposed 11 CFR 109.3(a)(1) through (5) and (b)(1) through (5).

Several commenters requested additional clarification of the meaning of "material involvement," while other commenters suggested broadening this provision to include authority to be "materially involved" in discussions, in addition to decisions, regarding a communication. The Commission notes that the term "materially involved" is merely incorporated into the specified activities of an agent to preserve the parallel structure between the definition of "agent" and the coordination conduct standards in 11 CFR 109.21. See Explanation and Justification of 11 CFR 109.21(d)(2), below.

One commenter noted that because the proposed regulations contemplate the possibility that one candidate for Federal office might pay for a communication that is coordinated with a different candidate for Federal office, proposed 11 CFR 109.3(a)(5) should also be included as a specified activity in 11 CFR 109.3(b). The Commission agrees and is adding a new paragraph (b)(6) to 11 CFR 109.3 to make it clear that a person who works for one candidate and is authorized by that candidate to make a communication on behalf of other candidates based on material information derived from those other candidates, is to be considered an agent.

A number of commenters addressed the general scope of the definition. Seven commenters argued that the proposed definition would be overly broad because it would not expressly limit the definition of "agent" to situations where the person is acting within the scope of his or her "actual authority" as an agent. These commenters also urged the addition of a requirement that an agent's "coordination" conduct (see 11 CFR 109.21(d), below) toward a third party be based on information that was gained only due to his or her role as an agent. One of these commenters asserted that a person should not be considered an "agent" solely based on his or her authority to act, but should only become an agent when he or she takes some action. Two commenters expressed their opposition to any attempt to categorize specific campaign positions or groups of people as agents *per se*, and one additional commenter suggested that if the Commission does include a class of *per se* agents, it should identify the specific persons within the campaign who would be placed in this category.

Several commenters expressed concern as to a candidate's or political party committee's "liability" for a person who qualifies as an agent but takes actions beyond the scope of his or her actual authority. Two other commenters expressed concerns that a principal would assume "liability" for a person who represents more than one candidate or group engaged in specified conduct while "wearing a different hat" (acting on behalf of a different person or group.) One of these commenters recommended an amendment to the rule text to provide that actions must be undertaken "on behalf of the principal" in order for liability to attach to the principal. Another commenter raised a particular concern with respect to common vendors that an "agent" who wears different hats for different groups might be deemed to engage in coordination *per se* by essentially sharing information within his or her own head.

On the other hand, eight commenters, including BCRA's principal sponsors, expressed concern that the scope of the proposed definition was underinclusive and would allow candidates or political parties to effectively coordinate communications with an outside spender through the use of conduits, including lower-level employees, consultants, or others with "apparent authority," who could sit in on a discussion and receive important information and convey that information to the third-party spender. BCRA's principal sponsors and two other commenters asserted that the definition of "agent" should not be drawn too narrowly because the analysis of whether a communication is coordinated should focus on whether the information was conveyed, not who conveyed it, or whether the conveyance was authorized. A different commenter suggested that the Commission's approach would create an incentive for a candidate, authorized committee, or a political party committee to share material information with staff members but make no effort to control the staff members' disclosures to outside entities. Three commenters urged that a person be deemed an agent if he or she discloses information to an outside entity in the absence of a strictly enforced policy against such disclosure. One of these commenters indicated that a non-disclosure agreement might be employed to rebut the presumption of agency.

In the final rules, the Commission recognizes the Congressional determination that a spender can effectively coordinate a communication by acting in cooperation, consultation, or concert, with, or at the request or suggestion of, an agent as well as directly with a candidate, authorized committee, or political party committee. See, *e.g.*, 2 U.S.C. 431(17) and 2 U.S.C. 441a(a)(7)(B)(i). In recognition of the concerns about overbreadth, the Commission is limiting the scope of the definition of "agent" in three ways. For the purposes of a coordination analysis under 11 CFR part 109, a person would only qualify as an "agent" when he or she: (1) Receives actual authorization, either express or implied, from a specific principal to engage in the specific activities listed in 109.3; (2) engages in those activities on behalf of that specific principal; and (3) those activities would result in a coordinated communication if carried out directly by the candidate, authorized committee staff, or a political party official. Contrary to the assertions of several commenters, a principal would not assume "liability" for agents who act outside the scope of their actual authority, nor would a person be considered an "agent" of a candidate if that person approaches an outside spender on behalf of a different organization or person. See Restatement (Second) of Agency § 219(1). The Commission rejects, however, the argument that a person who has authority to engage in certain activities should be considered to be acting outside the scope of his or her authority any time the person undertakes unlawful conduct. It is a settled matter of agency law that liability may exist "for unlawful acts of [] agents, provided that the conduct is within the scope of the agent's authority, whether actual or apparent." *U.S.* v. *Investment Enterprises, Inc.*, 10 F.3d 263, 266 (5th Cir. 1993).

One commenter specifically requested an exemption for "all persons in the legislative offices of federal officeholders" unless the "person dealing with them knows that they are acting on behalf of the officeholder in her capacity as a candidate." The Commission has intentionally avoided promulgating a regulation based on apparent authority, which is the authority of an actor as perceived by a third party, because such authority is often difficult to discern and would place the definition of "agent" in the

hands of a third party. Therefore, in the Commission's judgment, apparent authority is not a sufficient basis for agency for the purposes of revised 11 CFR part 109. The commenter's suggested approach would necessitate a determination of agency solely on the basis of apparent authority and is therefore inconsistent with the structure and purpose of the regulations.

These limitations, however, are not intended to establish any presumption against the creation of an agency relationship. The grant and scope of the actual authority, whether the person is acting within the scope of his or her actual authority, and whether he or she is acting on behalf of the principal or a different person, are factual determinations that are necessarily evaluated on a case-by-case basis in accordance with traditional agency principles. For example, the issue of whether or not an authorized person is acting on behalf of the principal is an objective, fact-based examination that is not dependent on that person's own characterization of whether he or she is acting in an individual capacity or on behalf of a different principal.

As explained in the NPRM, the Commission's pre-BCRA regulations include a special definition of "person" for 11 CFR part 109. See pre-BCRA 11 CFR 109.1(b)(1). The Commission did not include this separate definition of the term "person" in the NPRM because the term is already defined in pre-BCRA 11 CFR 100.10 and the Commission was concerned that a separate definition of "person" in 11 CFR part 109 might be confusing or misinterpreted as permitting labor organizations, corporations not qualified under 11 CFR 114.10(c), or other entities or individuals otherwise prohibited from making contributions or expenditures under the Act and Commission regulations, to pay for coordinated communications or to make independent expenditures. See, *e.g.*, 11 CFR 110.20 and 114.2. The Commission has specifically addressed these prohibitions in 11 CFR 109.22, below, and the Commission did not receive any comments on the inclusion of a separate definition of "person" in 11 CFR part 109. Therefore, no new definition of "person" is included in the final rules.

11 CFR Part 109, Subpart B—Independent Expenditures

11 CFR 109.10 How Do Political Committees and Other Persons Report Independent Expenditures?

In the NPRM, the Commission included proposed 11 CFR 109.10 on reporting requirements for independent expenditures. The Commission announced in the NPRM its expectation that these rules would not be included in the final rule of this rulemaking but would instead be finalized in a separate rulemaking. The Commission has subsequently promulgated 11 CFR 109.10 as part of a separate rulemaking. See Final Rules and Explanation and Justification for Bipartisan Campaign Reform Act of 2002 Reporting, published elsewhere in this issue of the **Federal Register**. There are no changes to 11 CFR 109.10 in this rulemaking.

11 CFR 109.11 When is a Non-Authorization Notice (Disclaimer) Required? (2 U.S.C. 441d)

The Commission is moving the disclaimer requirements for independent expenditures from pre-BCRA 11 CFR 109.3 to new 11 CFR 109.11. There are no substantive changes to this section. Additional changes to disclaimer requirements are provided at 11 CFR 110.11, which the Commission addressed in a separate rulemaking in light of BCRA's changes to the statutory disclaimer requirement. See 2 U.S.C. 441d and Final Rules and Explanation and Justification for Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76,962 (Dec. 13, 2002).

11 CFR Part 109, Subpart C—Coordination

11 CFR 109.20 What Does "Coordinated" Mean?

Congress did not define the term "coordinated" in FECA or in BCRA, but it did provide that an expenditure is considered to be a contribution to a candidate when it is "made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of," that candidate, the authorized committee of that candidate, or their agents. 2 U.S.C. 441a(a)(7)(B)(i). Similarly, in BCRA, Congress added a new paragraph to section 441a(a)(7)(B) to require that expenditures "made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert, with, or at the request or suggestion of, a national, State, or local committee of a political party shall be considered to be contributions made to such party committee." 2 U.S.C. 441a(a)(7)(B)(ii). Also, as explained above, an expenditure is not "independent" if it is "made in cooperation, consultation, or concert, with, or at the request or suggestion of," a candidate, authorized committee, or a political party committee. See 11 CFR 100.16.

New section 109.20(a) implements 2 U.S.C. 441a(a)(7)(B)(i) and (ii) by defining "coordinated" to mean "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents." While the definition of "coordinated" in 11 CFR 109.20(a) potentially encompasses a variety of payments made by a person on behalf of a candidate or political party committee, paragraph (a) is not intended to change current Commission interpretations other than to recognize the addition of the concept of coordination with political party committees under 2 U.S.C. 441a(a)(7)(B)(ii). The Commission notes that it may provide additional guidance in this area through a subsequent rulemaking.

The Commission recognizes, however, that many issues regarding coordination involve communications, and in BCRA Congress required the Commission to address coordinated communications. Public Law 107–155, sec. 214(c) (March 27, 2002). Therefore, the regulations in 11 CFR 109.21, explained below, specifically address the meaning of the phrase "made in cooperation, consultation, or concert, with, or at the request or suggestion of" in the context of communications paid for by a person other than the candidate with whom the communication was coordinated, that candidate's authorized committee, or a political party committee. Similarly, the regulations in 11 CFR 109.37, explained further below, specifically address the meaning of the phrase "made in cooperation, consultation, or concert with, or at the request or suggestion of" in the context of communications paid for by a political party committee.

In addition, paragraph (b) of section 109.20 addresses expenditures that are not made for communications but that are coordinated with a candidate, authorized committee, or political party committee. It is the successor to pre-BCRA 11 CFR 109.1(c). Paragraph (b) is being revised from its predecessor to reflect the addition of the concept of coordination with political party committees under 2 U.S.C. 441a(a)(7)(B)(ii), as well as the replacement of the reference to former 11 CFR 100.23, see Public Law 107–155, section 214(b) (March 27, 2002), and grammatical changes to reflect the new location of the rule. The Commission emphasizes that the relocation of paragraph (b) is not intended to change or alter current Commission interpretations of its predecessor in pre-BCRA section 109.1(c). One commenter asserted that only express advocacy

communications can constitute coordination, and urged the Commission to provide explicitly that non-communication expenditures will *not* be considered to be coordination. The Commission disagrees with the commenter's assertion because Congress has not so limited the statutory provisions relating to coordination. See 2 U.S.C. 431(17) and 441a(a)(7)(B)(i) and (ii). Therefore, the Commission is moving pre-BCRA 11 CFR 109.1(c), to section 109.20(b) with revisions to make it clear that these other expenditures, when coordinated, are also in-kind contributions (or coordinated party expenditures, if a political party committee so elects) to the candidate or political party committee with whom or with which they are coordinated. The exceptions contained in 11 CFR part 100, subpart C (exceptions to the definition of "contribution") and subpart E (exceptions to the definition of "expenditure") continue to apply.

11 CFR 109.21 What Is a "Coordinated Communication"?

In BCRA, Congress expressly repealed 11 CFR 100.23, Public Law 107–155, sec. 214(b) (March 27, 2002), and instructed the Commission to promulgate new regulations on "coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees." Public Law 107–155, sec. 214(c) (March 27, 2002). Congress also mandated that the new regulations address four specific aspects of coordinated communications: (1) Republication of campaign materials; (2) the use of a common vendor; (3) communications directed or made by a former employee of a candidate or political party; and (4) communications made after substantial discussion about the communication with a candidate or political party. See Public Law 107–155, sec. 214(c)(1) through (4) (March 27, 2002).

The Commission is promulgating new 11 CFR 109.21 to comply with this Congressional mandate. This rule applies to communications coordinated with candidates, their authorized committees, political party committees, or the agents of any of the foregoing. Paragraph (a) of this section begins by defining "coordinated communication." Paragraph (b) spells out the treatment of "coordinated communications" as in-kind contributions, which must be reported. Next, paragraph (c) sets out the content standard for coordinated communications. Paragraph (d) establishes conduct standards for the coordination analysis. Paragraph (e) addresses the Congressional guidance that an agreement or formal collaboration is not required for a communication to be considered "coordinated." Paragraph (f) provides a safe harbor for certain inquiries as to legislative and policy issues.

The Commission notes that Congress has provided that candidates and any entity "acting on behalf of 1 or more candidates" must not "solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act. * * *" 2 U.S.C. 441i(e)(1)(A). The Commission has addressed this restriction in a separate rulemaking (see Final Rules and Explanation and Justification on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49,081 (July 29, 2002)), and does not necessarily equate activity resulting in a coordinated communication under 11 CFR 109.21 with "acting on behalf of 1 or more candidates" in 2 U.S.C. 441i(e)(1). Therefore, a determination of whether a coordinated communication exists must be made separately from, and without reference to, a determination of whether an entity is "acting on behalf of 1 or more candidates" under 2 U.S.C. 441i(e)(1)(A).

1. 11 CFR 109.21(a) Definition

Paragraph (a) of new section 109.21 sets forth the required elements of a "coordinated communication," which comprise a three-pronged test. For a communication to be "coordinated," all three prongs of the test must be satisfied. While no one of these elements standing alone fully answers the question of whether a communication is for the purpose of influencing a Federal election, see 11 CFR 100.52(a), 100.111(a). the satisfaction of all three prongs of the test set out in new 11 CFR 109.21 justifies the conclusion that payments for the coordinated communication are made for the purpose of influencing a Federal election, and therefore constitute in-kind contributions. Nevertheless, the Commission notes that the inclusion of one prong of its test, the content standard, could function efficiently as an initial threshold for the coordination analysis.

Under the first prong, in paragraph (a)(1), the communication must be paid for by someone other than a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing. However, a person's status as a candidate does not exempt him or her from this section with respect to payments he or she makes for communications on behalf of a different candidate. Under paragraph (a)(2), the second prong of the three-pronged test is a "content standard" regarding the subject matter of the communication. Under paragraph (a)(3), the third prong of the test is a "conduct standard" regarding the interactions between the person paying for the communication and the candidate or political party committee. A sentence proposed in the NPRM regarding republication of campaign materials is being moved from proposed paragraph (a)(3) in the NPRM to paragraph (c)(2) in the final rules.

Of the seven commenters who specifically commented on this three-part structure for the regulations, two expressed general support for the approach. The other five, including BCRA's principal sponsors, urged the Commission to emphasize the actual conduct and minimize the importance of any content standard. The final rules, however, maintain the same structure as the proposed rules for the reasons described below. The Commission recognizes that a content requirement may serve to exclude some communications that are made with the subjective intent of influencing a Federal election, thereby potentially narrowing the reach of 2 U.S.C. 441a(a)(7)(B)(i) and (ii), but the Commission believes that a content standard provides a clear and useful component of a coordination definition in that it helps ensure that the coordination regulations do not inadvertently encompass communications that are not made for the purpose of influencing a federal election.

2. 11 CFR 109.21(b) Treatment as an In-Kind Contribution; Reporting

Under the Act and the Commission's regulations, a "contribution" is defined as "a gift, subscription, loan ... advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office," subject to a number of specific exceptions. See 11 CFR 100.52(a), *et seq.*; see also 2 U.S.C. 431(8)(A), *et seq.* An "expenditure" is similarly defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office," and is also subject to a list of specific exceptions. See 11 CFR 100.111(a), *et seq.*; see also 2 U.S.C. 431(9)(A), *et seq.* Thus, a "payment" that is "made for the purpose of influencing any election for Federal

office" qualifies as either an "expenditure," a "contribution," or both, unless it is specifically excepted.

As explained above, the coordination provisions in the statute, 2 U.S.C. 441a(a)(7)(B)(i) and (ii), state that "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of," a candidate or a political party committee "shall be considered to be a contribution" to that candidate or political party committee. Several commenters argued that the Commission must first determine whether or not the payment for a communication constitutes an "expenditure" before proceeding to a coordination analysis. The Commission concludes that, when read as whole sentences, 2 U.S.C. 441a(a)(7)(B)(i) and (ii) require that for a contribution to exist, three requirements must be met: (1) There must be some conduct to differentiate the activity from an "independent expenditure," *see* 2 U.S.C. 431(17); (2) there must be some form of payment; and (3) that payment must be made for the purpose of influencing any election for Federal office. The Commission has determined that a payment that satisfies the content and conduct standards of 11 CFR 109.21 satisfies the statutory requirements for an expenditure in the specific context of coordinated communications, and thereby constitutes a contribution under 2 U.S.C. 441a(a)(7)(B)(i) and (ii).

A. 11 CFR 109.21(b)(1) General Rule

Paragraph (b)(1) of section 109.21 provides that a payment for a coordinated communication is made "for the purpose of influencing" an election for Federal office, the same phrase used by Congress in the definition of both "expenditure" and "contribution." 2 U.S.C. 431(8)(A) and (9)(A). Paragraph (b)(1) also states the general rule that a payment for a coordinated communication constitutes an in-kind contribution to the candidate, authorized committee, or political party committee with whom or with which it is coordinated, unless excepted under subpart C of 11 CFR part 100. Please note that this section encompasses electioneering communications under 11 CFR 100.29(a)(1), in addition to other communications. Congress expressly provided that when these communications are coordinated with a candidate, authorized committee, or political party committee, they must be treated like other coordinated communications in that disbursements for these communications are in-kind contributions to the candidate or party committee with whom or which they were coordinated. See 2 U.S.C. 441a(a)(7)(C). Under BCRA, these coordinated electioneering communications, like other coordinated communications, must be treated as expenditures by the candidate, authorized committee, or political party committee with whom or with which they are coordinated. *Id.*

B. 11 CFR 109.21(b)(2) In-Kind Contributions Resulting From Conduct Described in Paragraphs (d)(4) or (d)(5) of This Section

Paragraph (b)(2) clarifies the application of the general rule of paragraph (b)(1) in a particular circumstance. Under the general rule in paragraph (b)(1), a candidate's authorized committee or a political party committee receives an in-kind contribution, subject to the contribution limits, prohibitions, and reporting requirements of the Act. As explained below, two of the conduct standards, found in paragraphs (d)(4) and (d)(5) of section 109.21, do not focus on the conduct of the candidate, the candidate's authorized committee or agents, but focus instead on the conduct of a common vendor or a former employee with respect to the person paying for the communication. To avoid the result where a candidate, authorized committee, or political party committee might be held responsible for receiving or accepting an in-kind contribution that did not result from its conduct or the conduct of its agents, the Commission explicitly provides that the candidate, the candidate's authorized committee, or political party committee does not receive or accept in-kind contributions that result from conduct described in the conduct standards of paragraphs (d)(4) and (d)(5) of this section. This treatment is generally analogous to the handling of republished campaign materials under new 11 CFR 109.23 and the Commission's pre-BCRA regulations. See former 11 CFR 109.1(d)(1). However, please note that the person paying for a communication that is coordinated because of conduct described in paragraphs (d)(4) or (d)(5) still makes an in-kind contribution for purposes of the contribution limitations, prohibitions, and reporting requirements of the Act.

One commenter suggested that the text of paragraph (b)(2) should be clarified to indicate that a candidate or political party committee receives and accepts an in-kind contribution resulting from a coordinated communication in which an agent of either engages in the conduct described in paragraphs (d)(1) through (d)(3). The Commission agrees and is incorporating that suggested change into the final rules.

C. 11 CFR 109.21(b)(3) Reporting of Coordinated Communications

Paragraph (b)(3) of 11 CFR 109.21 provides that a political committee, other than a political party committee, must report payments for coordinated communications as in-kind contributions made to the candidate or political party committee with whom or which they are coordinated. Paragraph (b)(3) also clarifies that the recipient candidate, authorized committee, or political party committee with which a communication is coordinated must report the payor's payment for that communication as an in-kind contribution received under 11 CFR 104.13 and must also report making a corresponding expenditure in the same amount. 11 CFR 104.13.

3. 11 CFR 109.21(c) Content Standards

The NPRM sought comments as to whether content standards should be included in the coordinated communications rules, and if so, what the appropriate standard should be. A number of alternative content standards were included in the NPRM. Two commenters opposed the inclusion of any content standard, arguing that to do so would inappropriately narrow the scope of the rules when the conduct of the person paying for the communication and the candidate or political party committee is sufficient, by itself, to eliminate the independence of the communication, thereby creating an in-kind contribution under 2 U.S.C. 441a(a)(7)(B)(i) and (ii). Several other commenters, however, generally supported the inclusion of a content standard, although they disagreed as to what that standard should be.

The Commission is including content standards in the final rules on coordinated communications to limit the new rules to communications whose subject matter is reasonably related to an election. In the NPRM, the Commission proposed three distinct content standards, in paragraph (c), along with three alternatives for a fourth standard. The three proposed standards were an "electioneering communication" standard, a standard encompassing the republication of candidate campaign materials, and a standard for communications that "expressly advocate" the election or defeat of a clearly identified candidate for Federal office. In addition, the three alternative content standards ranged

from a minimal threshold that would have encompassed any "public communication" that refers to a "clearly identified candidate" (Alternative A), a public communication that "promoted, supported, attacked, or opposed" a candidate for Federal office (Alternative B), and a public communication that was made during a specific time period shortly before an election, was directed to a specific group of voters, and discussed the views or record of a candidate (Alternative C). The Commission proposed that a communication that satisfies any one of the standards would satisfy the "content" requirement of 11 CFR 109.21.

Commenters expressed a wide range of views as to the appropriate content standard. One commenter attempted to craft a stand-alone unitary content standard through a combination of the electioneering communication and republication standards. Four commenters argued that an "express advocacy" content standard is necessary to provide clear guidance and to ensure that the regulation is not vague or overly broad. Most other commenters acknowledged that the three standards of electioneering, republication, and express advocacy clearly comport with guidance from Congress and the courts, but three commenters argued that no additional content standards are warranted in the absence of any further directive from Congress. A joint comment by three commenters urged the Commission to focus the content standard on the content of the communication, rather than "external criteria" such as the timing or distribution of the communication. The same commenters also requested that the Commission adjust its content standard to ensure that communications between a political party committee and its "affiliates" are not covered.

Based generally on the approach taken by Congress with respect to electioneering communications, five commenters recommended a dual time-period approach to the content standard in which communications made 30 to 60 days before an election would be subject to lesser, if any, content restrictions than communications made outside of that time period. BCRA's principal sponsors agreed with this approach in their comments and observed that communications made within 30 days of a primary or 60 days of a general election are usually campaign related. A different commenter also recommended temporal limits, but suggested that any communications made outside the 30 or 60 days should be completely excluded from being treated as coordinated communications. BCRA's principal sponsors specifically rejected this approach in their comments.

After considering the concerns raised by the commenters about overbreadth, vagueness, underinclusiveness, and potential circumvention of the restrictions in the Act and the Commission's regulations, the Commission is setting forth four content standards to implement the statutory requirements. These standards all provide bright-line tests and subject to regulation only those communications whose contents, in combination with the manner of its creation and distribution, indicate that the communication is made for the purpose of influencing the election of a candidate for Federal office.

A. 11 CFR 109.21(c)(1) Electioneering Communications

Congress provided in BCRA that when "any person makes * * * any disbursement for any electioneering communication * * * and such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, state, or local political party committee thereof, or an agent or official of any such candidate, party or committee * * * such disbursement shall be treated as a contribution to the candidate supported by the electioneering communication * * * and as an expenditure by that candidate." 2 U.S.C. 441a(a)(7)(C). To implement that statutory directive, the Commission proposed in the NPRM that the first content standard paragraph (c)(1) simply focus on whether the communication is an "electioneering communication" under 11 CFR 100.29. See Final Rule on Electioneering Communications, 67 FR 51,131 (Oct. 23, 2002). Although the proposed rule in the NPRM described a communication "that would otherwise be an electioneering communication," this indirect reference has been removed and replaced with a direct reference to an electioneering communication.

Four commenters opined that the electioneering communication provisions in BCRA are unconstitutional, and opposed their inclusion as a content standard. One of these commenters argued that the electioneering communication content standard should be limited to include only communications containing "express advocacy." The Commission concludes, however, that such an interpretation would undermine the scope of Congress's definition of an electioneering communication, 2 U.S.C. 434(f)(3)(A), especially in light of the Congressional mandate in 2 U.S.C. 441a(a)(7)(C). Another commenter argued that the Commission should nonetheless exclude the electioneering communications from the content standards because Congress did not specifically require its inclusion in that exact manner. In the Commission's judgment, however, including the electioneering communication standard specifically authorized by Congress as one of the content standards in the definition of "coordinated communication" is a simple and straightforward way to implement 2 U.S.C. 441a(a)(7)(C). As one commenter noted, the inclusion of electioneering communications as a content standard promotes consistency because the term is already defined by Congress at 2 U.S.C. 434(f)(3)(A) and in the Commission's new rules at 11 CFR 100.29.

The Commission considered and rejected constructing a separate definition of "coordination" that would have applied specifically to electioneering communications. A separate construction would be redundant because the relevant conduct under it would be identical to the conduct standards for other coordinated communication containing other types of content. Similarly, the Commission notes that Congress provided that an electioneering communication could be coordinated with an "official" of a candidate, party, or committee, in addition to the candidate, committees, and their agents. 2 U.S.C. 41a(a)(7)(C)(ii). The Commission is not, however, separately addressing coordination with an official in the final rule because such an official is subsumed within the definition of "agent" in 11 CFR 109.3.

B. 11 CFR 109.21(c)(2) Dissemination, Distribution, or Republication of Campaign Material

The second content standard implements the Congressional mandate that the Commission's new rules on coordinated communications address the "republication of campaign materials." See Public Law 107–155, sec. 214(c)(1) (March 27, 2002). The Commission's former rule on republication of campaign materials, which has been moved from former 11 CFR 109.1(d) to new section 109.23 with minor changes explained below, sets out the required treatment of both the coordinated and uncoordinated dissemination, distribution, or republication of campaign material prepared by a candidate, an authorized committee, or an agent of either. Under section 109.23, discussed below, the

reporting responsibilities of candidates, authorized committees, and political party committees vary depending on whether they "coordinate" with a person financing the dissemination, distribution, or republication of a candidate's campaign material.

In the final rules the "republication" content standard in paragraph (c)(2) of section 109.21 expressly links to paragraph (d)(6) of section 109.21. This link is important because paragraph (d)(6) of this section clarifies the application of the conduct standards of paragraph (d) of this section to the unique circumstances of republication. This change from the NPRM is intended to emphasize the relationship between paragraphs (c)(2) and (d)(6) of section 109.21. In addition, section 11 CFR 109.21(c)(2) includes a cross-reference to 11 CFR 109.23 to ensure that certain uses of campaign material exempted by 11 CFR 109.23(b) from the definition of "contribution" will not satisfy the content standard in 11 CFR 109.21(c)(2).

The Commission is making one change to the republication content standard from the rule proposed in the NPRM. In the NPRM, a communication would have satisfied the content standard proposed in 11 CFR 109.21(c)(2) when "the communication" disseminated, distributed, or republished campaign materials prepared by a candidate. The Commission is changing the standard so that the content standard will only be satisfied when "the public communication" disseminates, distributes, or republishes campaign materials. Although the Commission did not receive specific comments on this point, the Commission is employing the term "public communication," as defined at 11 CFR 100.26, to conform the scope of this standard with the approach the Commission has consistently taken for the other content standards discussed below, with the exception of the "electioneering communication" standard.

C. 11 CFR 109.21(c)(3) Express Advocacy

The third content standard in paragraph (c)(3) of section 109.21 states that a communication also satisfies the content standard if it "expressly advocates" the election or defeat of a clearly identified candidate for Federal office. Although the commenters expressed widely differing opinions about whether this "express advocacy" standard should be the sole content standard, none of the commenters opposed including "express advocacy" as a content standard in the regulations.

D. 11 CFR 109.21(c)(4) Additional Content Standard

In addition to electioneering communications described in 11 CFR 100.29, communications that republish campaign materials, and communications that "expressly advocate" the election or defeat of a clearly identified candidate, the Commission proposed three other possible content standards in the NPRM and requested comment on additional alternatives. Each of these alternatives was premised on the communication qualifying as a "public communication," with additional requirements. Alternative A required only that the communication qualify as a public communication and contain a reference to a clearly identified candidate for Federal office. Alternative B provided that the communication must also promote, support, attack, or oppose the clearly identified candidate. Alternative C required that the public communication refer to a clearly identified candidate, be made within 120 days of an election, be directed to voters within the jurisdiction of that candidate, and include an "express statement about the record or position or views on an issue, or the character, or the qualifications or fitness for office, or party affiliation," of the clearly identified candidate.

Several commenters criticized Alternative A as overly broad, asserting that a clearly identified candidate is the minimal standard necessary to distinguish "issue ads" from communications made for the purpose of influencing an election. In contrast, several different commenters argued that the requirement of a clearly identified candidate was too restrictive because it would fail to encompass communications urging recipients to "vote Democrat" or "vote Republican." These commenters suggested that at a minimum the Commission expand the reference to include a reference to a "clearly identified political party." Furthermore, two commenters argued that the requirement of a clearly identified candidate also fails to encompass communications that "reflect and reinforce the themes and messages of the campaign."

Five commenters criticized Alternative B, arguing that the terms "promote, support, attack, or oppose" are overly broad. Two different commenters suggested that the proposed standard relied on subjective criteria and would discourage public speech and weaken the value of having a content standard.

Several commenters also criticized Alternative C as overly broad and containing subjective criteria. One commenter specifically objected to including communications containing statements about a candidate's positions on an issue. A different commenter cited a lack of a statutory basis or empirical support for the 120-day time limit and pointed out that the rule might be applied to cover communications made in a jurisdiction other than the jurisdiction of the clearly identified candidate.

In contrast, four commenters expressed general support for this standard, but with the removal of the 120 day limit, which they believed would exclude many coordinated communications made early in the election cycle. Two of these commenters also suggested that the Commission remove the word "express" from the requirement of an "express statement." In addition, a different commenter proposed an alternative standard to cover a communication that (1) "expressly refers to" a candidate in his capacity as a candidate; (2) refers to the next election; and (3) is publicly disseminated and actually reaches 100 eligible voters.

The Commission is including a modified version of Alternative C in the final rules at 11 CFR 109.21(c)(4). Taking into consideration the suggestions of the commenters, this content standard is largely based on, but is somewhat broader than, Congress's definition of an electioneering communication. A communication meets this content requirement if (1) it is a public communication; (2) it refers to a clearly identified candidate or political party; (3) it is directed to voters in the jurisdiction of the clearly identified Federal candidate; and (4) it is publicly distributed or publicly disseminated 120 days or fewer before a primary or general election.

The term "publicly distributed" refers to communications distributed by radio or television (*see* 11 CFR 100.29(b)(3)) and the term "publicly disseminated" refers to communications that are made public via other media, *e.g.*, newspaper, magazines, handbills. In this respect, paragraph (c)(4) reflects the fact that coordinated communications can occur through media other than television and radio. Moreover, for purposes of establishing a content standard in a coordination rule, there is no reason to exclude communications that meet the content requirements of an electioneering communication, but fail to constitute an electioneering communication only because of the media chosen for the communication.

Perhaps most importantly, paragraph (c)(4) creates parallel requirements for those whose communications do not technically qualify as electioneering communications. Because electioneering communications are by definition limited to broadcast, cable, or satellite communications (see 11 CFR 100.29), communications made through other media, such as print communications, are not included under the electioneering communication-based content standard of paragraph (c)(1). Similarly, political committees such as separate segregated funds or non-connected committees do not make electioneering communications because their payments are treated as expenditures. Therefore, under new paragraph (c)(4), for example, where a candidate and the separate segregated fund paying for the communication satisfy the conduct requirements of new 11 CFR 109.21(d), the separate segregated fund makes a coordinated communication if it pays for a newspaper advertisement. Thus, to avoid an arbitrary distinction in the content standards, paragraph (c)(4) applies to all "public communications," a term defined and set forth in BCRA by Congress. 2 U.S.C. 431(22); 11 CFR 100.26. The use of the term "public communication" provides consistency within the regulations and distinguishes covered communications from, for example, private correspondence and internal communications between a corporation or labor organization and its restricted class. The three commenters who specifically addressed the proposed use of this term expressed support for its inclusion. One of these commenters pointed out that the use of "public communication" provides "helpful consistency within the regulations." In addition, a different commenter suggested that the Commission "completely exempt" e-mail and Internet communications from its coordination regulations. By framing the content standard in terms of a "public communication," the Commission addresses that comment. Although the term "public communication" covers a broad range of communications, it does not cover some forms of communications, such as those transmitted using the Internet and electronic mail. 11 CFR 100.26.

This new standard focuses as much as possible on the face of the public communication or on facts on the public record. This latter point is important. The intent is to require as little characterization of the meaning or the content of communication, or inquiry into the subjective effect of the communication on the reader, viewer, or listener as possible. *See Buckley* v. *Valeo*, 424 U.S. 1, 42–44 (1976). The new paragraph (c)(4) is applied by asking if certain things are true or false about the face of the public communication or with limited reference to external facts on the public record. This fourth content standard does not require a description of a candidate's views or positions, a requirement in the proposed rules that raised objections from commenters.

Paragraph (c)(4)(ii) of section 109.21 requires that the public communication must be publicly distributed or publicly disseminated 120 days or fewer before a primary election or a general election. The 120-day time frame is based on 2 U.S.C. 431(20)(A)(i) (see 11 CFR 100.24(b)(1)) and has several advantages. First, it provides a "bright-line" rule. Second, it focuses the regulation on activity reasonably close to an election, but not so distant from the election as to implicate political discussion at other times. As noted, Congress has, in part, defined "Federal election activity" in terms of a 120-day time frame, deeming that period of time before an election to be reasonably related to that election. See 2 U.S.C. 431(20)(A)(i). In contrast, the "express advocacy" content standard in paragraph (c)(3) of section 109.21 applies without time limitation. Similarly, this 120-day time frame is more conservative than the treatment of public communications in the definition of Federal election activity, which regulates public communications without regard to timeframe. 2 U.S.C. 431(20)(A)(iii); 11 CFR 100.24(b)(3).

The Commission has considered, but rejected, the use of a shorter time-frame, specifically, thirty days before a primary election and sixty days before a general election. This shorter time-frame would have been derived by analogy from the definition of "electioneering communication." See 2 U.S.C. 434(f)(3)(A). The shorter time-frames would have had the advantage of symmetry with the electioneering communication definition. There is, however, an important difference between the electioneering communication concept and the paradigm adopted here for regulating coordination. Although this content standard (*i.e.*, paragraph (c)(4)(ii)) is obviously similar to the definition of "electioneering communication," this content standard is only one part of a three-part test (see discussion of paragraph (a) of section 109.21, above), whereas the definition of "electioneering communication" is complete in itself. Under this final rule, even if a political communication satisfies the content standard, the conduct standards must still be satisfied before the political communication is considered "coordinated." In this light, the content standard may be viewed as a "filter" or a "threshold" that screens outs certain communications from even being subjected to analysis under the conduct standards.[2] Thus it is appropriate to consider a broader time-frame when applying this content standard because it serves only to identify political communications that may be coordinated if other conditions (*i.e.*, the conduct standards) are satisfied, and thus may be inappropriately underinclusive if too narrow.

The new standard also encompasses communications that refer to political parties as well as those that identify candidates, as suggested by several commenters. This extension of the content standards implements 2 U.S.C. 441a(a)(7)(B)(ii), added by section 214(c) of BCRA, which provides that expenditures made by any person in coordination with a political party committee is considered to be a contribution to that party committee.

Several commenters said that there should be an exception to the content standards for communications that refer to the "popular name" of a bill or law that includes the name of a Federal candidate who was a sponsor of the bill or law. In addition to questions whether such an exception is necessary in light of the other restrictions explained above, the Commission believes that the "popular name" proposal would also open new avenues for the circumvention of the Act and the Commission's regulations. Because the "popular name" of a bill is not a defined term, and is not subject to specific restrictions by Congress, an exemption for the use of a candidate's name in the popular name of a bill might shield a communication that clearly attacks or supports a candidate by naming the bill in a way that associates the candidate with a popular or disfavored stance. The Commission concludes that if one or more of the conduct standards is met and the communication is directed to voters in that candidate's jurisdiction and made within 60 days of general election, Congress does not intend for such a communication to be exempted from the statutory requirements merely

[2] In effect, the content standard of paragraph (c)(4)(ii) operates as a "safe harbor" in that communications that are publicly disseminated or distributed more than 120 days before the primary or general election will not be deemed to be "coordinated" under this particular content standard under any circumstances.

because the communication contains a reference to a crafted name for a piece of legislation in addition to the name of the clearly identified candidate.

The new standard also incorporates the concept of the "targeting" of the communication as an indication of whether it is election-related. BCRA's principal sponsors commented that a "key factor" in determining whether a communication should be covered under these rules is whether the communication is "targeted" to a specific voter audience. By requiring that the communication be "directed to voters in the jurisdiction of the clearly identified Federal candidate," the Commission is addressing this concern. In order to encompass communications that are coordinated with a political party committee and refer to a political party, but do not refer to a candidate, the Commission also provides that the content standard in paragraph (c)(4) would be satisfied when the communication is directed "to voters in a jurisdiction in which one or more candidates of the political party appear on the ballot." The "directed to voters" requirement focuses on the intended audience of the communication, rather than a quantitative analysis of the number of possible recipients or the expected geographic limits of a particular media, that will be determined on a case-by-case basis from the content of the communication, its actual placement, and other objective indicators of the intended audience. For example, a public communication that otherwise makes express statements about promoting or attacking Representative X or Senator Y for their stance on the "X–Y Bill" does not satisfy this requirement if it is only broadcast in Washington, DC, and not in either Member's district or State. For purposes of new paragraph (c)(4), "jurisdiction" means a member of Congress' district, the State of a U.S. Senator, and the entire United States for the President and Vice President in the general election or before the national nominating convention.

4. 11 CFR 109.21(d) Conduct Standards

Paragraph (d) of section 109.21 lists five types of conduct that satisfy the "conduct standard" of the three-part coordination test. Under these rules, if one of these types of conduct is present, and the other requirements described in paragraphs (a) and (c) are satisfied, the communication is not made "totally independently" from the candidate, the candidate's authorized committee, or the political party committee, *see Buckley*, 424 U.S. at 47, and thus is coordinated. The introductory sentence of paragraph (d) implements the Congressional mandate in BCRA that the coordination regulation not require "agreement or formal collaboration." Pub. L. 107–155, sec. 214(c) (March 27, 2002); *see* more complete discussion below.

In the NPRM, the Commission proposed five categories of conduct that would each satisfy the conduct standard when material information is conveyed or used: (1) A request or suggestion; (2) material involvement in decisions; (3) a substantial discussion; (4) use of a common vendor; and (5) use of a former employee or independent contractor of a campaign committee or political party. Several commenters offered general observations regarding the Commission's approach to a conduct standard in the NPRM. One commenter applauded the Commission's decision to focus on specific transactions leading to a coordinated communication, rather than general contacts between an organization and a campaign. That same commenter, however, complained along with three other commenters that the standards still operated to establish a presumption of coordination and should be further narrowed to require a direct causal link between the sharing of information and its use in a particular communication. One other commenter expressed a concern that the proposed rules would operate to unduly restrict corporations or labor organizations from preparing voter guides or "scorecards" to reflect the positions of candidates on specific legislation or issues.

BCRA's principal sponsors urged the Commission to ensure that lobbying activities would not result in a finding of coordination under the final rules. Similarly, a different commenter suggested that the conduct standards be limited to contacts with a candidate in his or her role as a candidate, rather than simply in the capacity of a legislator. That commenter indicated that without such a restriction the conduct rules would improperly restrict the ability of organizations to coordinate issue advocacy with elected officials. "An action alert from a nonprofit asking the public to call their Senators and urge them to pass McCain-Feingold," the commenter argued, "is more effective if the timing and content can be coordinated with Senator McCain."

A. 11 CFR 109.21(d)(1) Request or Suggestion

Under the Act, as amended by BCRA, an expenditure made by any person at the "request or suggestion" of a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing is a contribution to the candidate or political party committee. 2 U.S.C. 441a(a)(7)(B)(i), (ii). The first conduct standard, in 11 CFR 109.21(d)(1), implements this "request or suggestion" statutory provision. This standard has two prongs and satisfying either prong satisfies the conduct standard.

Three commenters requested in a joint comment that the term "suggest" be given additional definition or explanation, proposing that the definition should reflect a suggestion as a "a palpable communication intended to, and reasonably understood to, convey a request for some action." The Commission notes that the "request or suggest" standard is derived from the Supreme Court's Buckley decision and has existed in the Commission's regulations without further definition for over two decades. See *Buckley* v. *Valeo*, 424 U.S. at 47 (finding that "the 'authorized or requested' standard of the Act operates to treat all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate as contributions"); see also H.R. Doc. No. 95–44, at 55 (Jan. 12, 1977) (Explanation and Justification for 11 CFR 109.1, defining independent expenditure as an "expenditure . . . which is not made * * * at the request or suggestion of" a candidate, authorized committee, or their agents). A determination of whether a request or suggestion has occurred requires a fact-based inquiry that, even under the commenters' proffered explanation, can not be easily avoided through further definition.

A different commenter expressed concern that the proposed rule would have broadly affected communications made with respect to all candidates after the person paying for such communications has received a request or suggestion from any candidate. In this final rule, the Commission does not intend such an application. Neither of the two prongs of this conduct standard can be satisfied without some link between the request or suggestion and the candidate or political party who is, or that is, clearly identified in the communication. Where Candidate A requests or suggests that a third party pay for an ad expressly advocating the election of Candidate B, and that third party publishes such a communication with no reference to Candidate A, no coordination will result between Candidate B and the third party payor. However, a candidate is not removed from the provisions of the conduct standards merely by virtue of being a candidate. If Candidate A is an "agent"

for Candidate B in the example above, then the communication would be coordinated. Similarly, if Candidate A requests that Candidate B pay for a communication that expressly advocates the election of Candidate A, and Candidate B pays for such a communication, that communication is a coordinated communication and Candidate B makes an in-kind contribution to Candidate A.

The first type of conduct, in paragraph (d)(1)(i), is satisfied if the person creating, producing, or distributing the communication does so at the request or suggestion of a candidate, authorized committee, political party committee, or agent of any of the foregoing. The *Buckley* court originally drew on the 1974 House and Senate Reports accompanying the 1974 amendments to the Act when it upheld the section in FECA that distinguished a communication made "at the request or suggestion" of the candidate or political party committee from those that are made "totally independently from the candidate and his campaign." *Buckley*, 424 U.S. at 47 (citing H.R. Rep. No. 93–1239, at 6 (1974) and S. Rep. No. 93–689, at 18 (1974)). A "request or suggestion" is therefore a form of coordination under the Act, as approved by *Buckley*. A request or suggestion encompasses the most direct form of coordination, given that the candidate or political party committee communicates desires to another person who effectuates them.

In the NPRM, the Commission noted that this provision, for example, would not apply to a speech at a campaign rally, but, in appropriate cases, would apply to requests or suggestions directed to specific individuals or small groups for the creation, production, or distribution of communications. One commenter agreed with this approach, requesting that the rule itself more clearly reflect this explanation. However, the Commission is not amending its rules because it could be potentially confusing to delineate in a rule every conceivable situation that could arise. Instead, the Commission offers the following explanation of the new rule. The "request or suggestion" conduct standard in paragraph (d)(1) is intended to cover requests or suggestions made to a select audience, but not those offered to the public generally. For example, a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the conduct standard in paragraph (d)(1), but a request posted through an intranet service or sent via electronic mail directly to a discrete group of recipients constitutes a request to a select audience and thereby satisfies the conduct standard in paragraph (d)(1). Similarly, a request in a public campaign speech or a newspaper advertisement is a request to the general public and is not covered, but a request during a speech to an audience at an invitation-only dinner or during a membership organization function is a request to a select audience and thereby satisfies the conduct standard in paragraph (d)(1).

The second way to satisfy the "request or suggestion" conduct standard (paragraph (d)(1)(ii)) is for a person paying for a communication to suggest the creation, production, or distribution of the communication to the candidate, authorized committee, political party committee, or agent of any of the foregoing, and for the candidate, authorized committee, political party committee, or agent to assent to the suggestion. The NPRM explained that this second way of satisfying the conduct standard is intended to prevent circumvention of the statutory "request or suggestion" test (2 U.S.C. 441a(a)(7)(B)(i), (ii)) by, for example, the expedient of implicit understandings without a formal request or suggestion. Two commenters supported the addition of this new prong in order to prevent such circumvention of the Act. Two different commenters suggested that only affirmative assent should satisfy the conduct standard, although one of these commenters proposed that the rule should also cover situations where the parties have a prior agreement that a certain response be taken as an affirmative answer. Three other commenters opposed an assent standard entirely as overly complex and dependent on subjective criteria. One of these commenters argued that such an approach would undermine the Commission's efforts to create bright lines with respect to conduct resulting in coordination, and joined with another of these commenters in expressing concern that such a standard would be too easily triggered in the context of lobbying or other discussions with elected representatives. Another of these commenters also questioned whether certain responses, such as silence or "when a Congressman's eyes light up at the mention of a certain communication," constitute assent. One commenter also questioned whether evidence of circumvention exists to justify this approach. This commenter warned that the assent standard could run afoul of the district court's decision in *Christian Coalition*, which, in the commenter's words, determined that "coordination does not exist where a union or corporation merely informs a candidate about its own political plans."

The Commission recognizes that the assent of a candidate may take many different forms, but it disagrees that a standard encompassing assent to a suggestion is overly complex. Assent to a suggestion is merely one form of a request; it is "an expression of a desire to some person for something to be granted or done." *See Black's Law Dict.* (6th ed. 1990) p. 1304 (definition of "request"). A determination of whether assent to a suggestion occurs is necessarily a fact-based determination, but no more so than a determination of whether other forms of a request or suggestion occur. The Commission therefore also disagrees with the commenter who suggested that the approach in the NPRM might not be permissible in light of the *Christian Coalition* decision. The Commission did not, as that commenter suggested, propose that coordination could result where a payor "merely informs" a candidate or political party committee of its plans. Rather, under the proposed rule, a candidate or a political party committee will have accepted an in-kind contribution only if there is assent to the suggestion; by rejecting the suggestion, the candidate or political party committee may unilaterally avoid any coordination.

It is the Commission's judgment that the assent to a suggestion must be encompassed by this conduct standard to prevent the circumvention of the requirements of the Act in this area. Therefore, and in light of the reasons set forth in the NPRM and above, the Commission is promulgating the request or suggestion standard without change from its form in the NPRM.

One commenter suggested that the Commission should permit a person to rebut the "presumption" of coordination after a request or suggestion "by demonstrating that the organization had decided to make that communication prior to the contact with the candidate, campaign, or party." The Commission does not agree with the creation of such a "presumption." Instead, a request or suggestion must be based on specific facts, rather than presumed, to satisfy this conduct standard. Thus, the absence of a presumption obviates the need to establish a mechanism for rebuttal.

As discussed above, the *Buckley* Court expressly recognized a request or suggestion by a candidate as a direct form of coordination resulting in a contribution. *Buckley*, 424 U.S. at 47. In the NPRM, the Commission sought

comment on whether the unique nature of requests or suggestions by candidates or political party committees indicates that such conduct should be handled differently under the coordination regulations. Specifically, the Commission asked whether a request or suggestion for a communication by a candidate or political party committee should be viewed as a special case, and as sufficient, in and of itself, regardless of the contents of the communication, to establish coordination. Three commenters opposed any rule in which a request or suggestion, without any content standard, could constitute a coordinated communication. One of these commenters argued that such an approach would permit a "false positive," such as when a group that has long planned a lobby effort meets with a legislator, and the legislator "expresses her hope" that the group will publicize a particular piece of legislation bearing her name. Similarly, another of these commenters asserted that there are "numerous communications that may be made at the request or suggestion of a candidate that have no relationship to any election." The Commission agrees with these commenters' concerns. Even supporters of this approach appeared to acknowledge in their testimony that a request to run an advertisement well before the next election might not be in an "electoral context" and therefore should not necessarily be treated as a coordinated communication under the Commission's regulations. Therefore, the final rules do not create any exception from the content standard for the "request or suggestion" conduct standard.

B. 11 CFR 109.21(d)(2) Material Involvement

The second conduct standard, 11 CFR 109.21(d)(2), addresses situations in which a candidate, authorized committee, or a political party committee is "materially involved in decisions" regarding specific aspects of a public communication paid for by someone else. Those specific aspects are listed in paragraphs (i) through (vi) of paragraph (d)(2): (i) The content of the communication; (ii) the intended audience; (iii) the means or mode of the communication; (iv) the specific media outlet used; (v) the timing or frequency of the communication; or (vi) the size or prominence of a printed communication or duration of a communication by means of broadcast, cable, or satellite. Please note that "the specific media outlet used" includes those listed in the definition of "public communication" in 11 CFR 100.26, including the broadcast and print media, mass mailings, and telephone banks. The "content of the communication" would include the script of telephone calls.

One commenter argued that this conduct standard should be limited to situations in which a candidate or political party has "significant control or influence over decisions" regarding the communication. The Commission disagrees, as such a standard would do little to clarify the rule or its application. The same commenter expressed concern about the scope of the "material involvement" standard, arguing that one candidate's actions with respect to a third-party spender might "taint" all of that third-party's communications with respect to different candidates. For the same reasons discussed above in the context of the "request or suggestion" standard, the Commission is not tailoring its rules to address that perceived potential outcome.

Two other commenters characterized the material involvement standard as redundant in light of the "substantial discussion" conduct standard, and one also opposed its inclusion because of vagueness and because Congress did not mandate this specific approach in BCRA, nor was it mandated by *Christian Coalition*. In contrast, four commenters indicated general support for the inclusion of this standard in the final rules and urged the Commission to expand it to cover material involvement in "discussions," in addition to decisions, regarding a communication. The Commission recognizes that there is a potential overlap between the "material involvement" standard and the "substantial discussion" standard explained below. Many activities that satisfy the "substantial discussion" conduct standard will also satisfy the "material involvement" standard, but the "material involvement" standard encompasses some activities that would not be encompassed by the "substantial discussion" standard or any of the other conduct standards. For example, a candidate is materially involved in a decision regarding the content of a communication paid for by another person if he or she has a staffer deliver to that person the results of a polling project recently commissioned by that candidate, and the polling results are material to the payor's decision regarding the intended audience for the communication. However, as explained below, the "substantial discussion" standard would not be satisfied by such delivery without some "discussion" or some form of interactive exchange between the candidate and the person paying for the communication. The Commission thus believes that the "material involvement" standard is necessary to address forms of "real world" coordination that would not be addressed in any of the other conduct standards.

One commenter advised against any interpretation of the rule that would define "material" to require a showing of direct causation. For the purposes of 11 CFR part 109, "material" has its ordinary legal meaning, which is "important; more or less necessary; having influence or effect; going to the merits." *Black's Law Dict.* (6th ed. 1990) p. 976. Thus, the term "materially involved in decisions" does not encompass all interactions, only those that are important to the communication. The term "material" is included to safeguard against the inclusion of incidental participation that is not important to, or does not influence, decisions regarding a communication. The factual determination of whether a candidate's or authorized committee's involvement is "material" must be made on a case-by-case basis.

The "material involvement" standard does not provide a "bright-line" because its operation is necessarily fact-based. Nevertheless the inclusion of a "materiality" requirement serves to protect against overbreadth, consistent with Supreme Court jurisprudence. In construing the meaning of "material" in the context of Securities Exchange Commission regulations, the Supreme Court specifically rejected a "bright-line rule" for materiality:

> A bright-line rule indeed is easier to follow than a standard that requires the exercise of judgment in the light of all the circumstances. But ease of application alone is not an excuse for ignoring the purposes of the Securities Acts and Congress' policy decisions. Any approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be overinclusive or underinclusive.

Basic v. Levinson, 485 U.S. 224, 236 (1988). Therefore, the "material involvement" standard does not impose a requirement of direct causation, but focuses instead on the nature of the information conveyed and its importance, degree of necessity, influence or the effect of involvement by the candidate, authorized committee, political party committee, or their agents in any of the communication decisions enumerated in 11 CFR 109.21(d)(2)(i) through (vi).

The Commission has considered and rejected the suggestion of the commenter who recommended that "material involvement" be narrowed to

a "but-for" test, which would require proof that the communication would not have occurred *but for* the material involvement of a candidate, authorized committee, political party committee, or agent. The Commission is not adopting this approach or any similar requirement of direct causation in its final rules. Under such an analysis, information would only be "material" if all other potential influences on the content of the communication, its intended audience, its means or mode, the specific media outlet used, the timing or frequency of the communication, or the size, prominence, or duration of the communication could be eliminated. This would result in an extremely intrusive factual determination. For example, under the commenter's suggested approach, a candidate might propose a specific date for publication of a communication, but that candidate would not be materially involved in the decision regarding the timing of the communication unless the Commission could prove that no alternate factor could have led to the same timing decision. Such an approach is also unworkable because foreclosing all potential alternatives imposes an unnecessarily high burden of proof. The Commission also believes that such an approach would be unwarranted because the plain meaning of "material," as explained above, provides sufficient guidance for an inherently fact-based determination. For the same reasons, the Commission rejects any interpretation of "material involvement" that would require a showing that the communication is made "as a result of" the involvement of a candidate, an authorized committee, a political party committee, or an agent.

Instead, a candidate, authorized committee, or political party committee is considered "materially involved" in the decisions enumerated in paragraph (d)(2) after sharing information about plans, projects, activities, or needs with the person making the communication, but only if this information is found to be material to any of the above-enumerated decisions related to the communication. Similarly, a candidate or political party committee is "materially involved in decisions" if the candidate, political party committee, or agent conveys approval or disapproval of the other person's plans. The candidate or representatives of an authorized committee or political party committee need not be present or included during formal decisionmaking process but need only participate to the extent that he or she assists the ultimate decisionmaker, much like a lawyer who provides legal advice to a client is materially involved in a client's decision even when the client ultimately makes the decision.

The Commission notes that as with the "request or suggest" standard, the "material involvement" standard would not be satisfied, for example, by a speech to the general public, but is satisfied by remarks addressed specifically to a select audience, some of whom subsequently create, produce, or distribute public communications. However, it is not necessary that the involvement of the candidate or political party committee be traced directly to one specific communication. Rather, a candidate's or political party committee's involvement is material to a decision regarding a particular communication if that communication is one of a number of communications and the candidate or political party committee was materially involved in decisions regarding the strategy for those communications. For example, if a candidate is materially involved in a decision about the content or timing of a 10-part advertising campaign, then each of the 10 communications is coordinated without the need for further inquiry into the decisions regarding each individual ad on its own.

In order to respond to requests by several commenters for additional clarification about how the standard would operate, the Commission is providing the following hypothetical: Candidate A reads in the newspaper that the Payor Group is planning an advertising campaign urging voters to support Candidate A. Candidate A faxes over her own ad buying schedule to Payor Group, hoping that Payor Group will plan its own ad buying schedule around Candidate A's schedule to maximize the effect of both ad campaigns. The Payor Group subsequently runs ads that are all on NBC and ABC during the 6:00 news hour and during the most expensive weekday timeslot on NBC, whereas Candidate A's ads are run on CBS during the 6:00 news hour and during the most expensive time slot on CBS. When asked, Payor Group acknowledges that it received the fax from Candidate A, but says only that its plans for the timing of the campaign were in flux at the time they received the fax. The analysis under the "materially involved" conduct standard focuses on whether the fax constituted material involvement by the candidate in a decision regarding the timing of the Payor Group communications. Significant facts might include that the Payor Group changed its previously planned schedule, or that Payor Group had not yet made plans and had factored in the fax in its decision to choose CBS and the same time slot, or show in some other way that the fax was "important; more or less necessary, having influence or effect, [or] going to the merits" with respect to the Payor Group's decisions about the timing of its ads. The transmission and receipt of the fax in combination with the correlation of the two ad campaigns gives rise to a reasonable inference that Candidate A's involvement was material to the Payor Group's decision regarding the timing of its ad campaign. If, on the other hand, the example is changed so that the Payor Group's ads run on the same channel right after the candidate's ads in a way that lessens the effect of both ad campaigns, it may be appropriate to conclude that Candidate A's involvement was *not* material to the Payor Group's decision regarding the timing of its ad campaign. In other words, the degree to which the communications overlapped or did not overlap is one indication of whether Candidate A's involvement was material to the timing of the Payor Group communications.

C. 11 CFR 109.21(d)(3) Substantial Discussion

In BCRA, Congress also directed the Commission to address "payments for communications made by a person after substantial discussion about the communication with a candidate or political party." Public Law 107–155, sec. 214(c)(4) (March 27, 2002). In the NPRM, the Commission proposed a third conduct standard that would apply when a communication satisfying one or more of the content standards "is created, produced, or distributed after one or more substantial discussions about the communication between the person paying for the communication" and a candidate, authorized committee, political party committee, or an agent of any of the foregoing. 67 FR at 60,065 (September 24, 2002). The proposed rule also specified that a discussion is substantial "if information about the plans, projects, or needs of the candidate or political party committee is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication." 67 FR at 60,066 (September 24, 2002).

Three commenters supported the inclusion of this standard exactly as proposed in the NPRM. Two different commenters, however, characterized this standard as redundant in light of the "material involvement" standard

and suggested that they be combined into a single standard. One other commenter asserted that there was "insufficient quantification" as to the meaning of a "substantial" discussion and recommended that "substantial discussion" join "material involvement" as subjects for future rulemaking consideration. A different commenter advised that "material" should be further defined in the context of this standard. Two commenters advocated a return to the *Christian Coalition* test of whether or not the candidate and the spender emerge as "partners or joint venturers," while one of these commenters urged the Commission to specifically exclude discussions about policy and legislation in this context.

The Commission is including the "substantial discussion" standard in the final rules on coordinated communications because, as stated above, Congress required it to address this issue. Public Law 107–155, sec. 214(c)(4) (March 27, 2002). Under paragraph (d)(3) of 11 CFR 109.21, a communication meets the conduct standard if it is created, produced, or distributed after one or more substantial discussions between the person paying for the communication, or the person's agents, and the candidate clearly identified in the communication, his or her authorized committee, his or her opponent, or the opponent's authorized committee, a political party committee, or their agents. While the Commission recognizes the commenter's concerns that "substantial" and "material" are not set forth as bright-line tests, the Commission views an analysis of a "substantial discussion" as necessarily fact-specific and not naturally conducive to a meaningful bright-line analysis. Nevertheless, the Commission is providing an analytical framework in which a finder of fact determines whether a discussion occurred, whether certain information was conveyed, and whether that information is material to the creation, production, or distribution of the communication. The *Christian Coalition* suggestion that a candidate and spender emerge as "joint venturers" would only serve to confuse readers. The "substantial discussion" conduct standard in this final rule addresses a direct form of coordination between a candidate, authorized committee, political party committee, or their agents and a third-party spender, and the Commission is narrowing the scope of this standard through the additional requirements that the discussion be "substantial" and the information conveyed be "material." Paragraph (d)(3) explains that a "discussion" is "substantial" if information about the plans, projects, activities, or needs of the candidate, authorized committee, or political party committee that is material to the creation, production or distribution of the communication is conveyed to a person paying for the communication. "Discuss" has its plain and ordinary meaning, which the Commission understands to mean an interactive exchange of views or information. "Material" has the meaning explained above in the context of the "materially involved" standard. In other words, the substantiality of the discussion is measured by the materiality of the information conveyed in the discussion.

D. 11 CFR 109.21(d)(4) Common Vendor

In BCRA, Congress required the Commission to address "the use of a common vendor" in the context of coordination. Public Law 107–155, sec. 214(c)(2) (March 27, 2002). In the NPRM, the Commission proposed the conduct standard in paragraph (d)(4) of section 109.21 to implement this Congressional mandate. Proposed paragraphs (d)(4)(i) and (ii) provide that a common vendor is a commercial vendor who is contracted to create, produce, or distribute a communication by the person paying for that communication after that vendor has, during the same election cycle, provided any one of a number of listed services to a candidate who is clearly identified in that communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing. Under proposed paragraph (d)(4)(iii), the conduct standard would be satisfied if the common vendor conveys material information about the plans, projects, or needs of a candidate, authorized committee, or political party committee to the person paying for the communication, or if the vendor uses that material information in the creation, production, or distribution of a covered communication.

Many commenters addressed the "common vendor" standard proposed in the NPRM. One commenter asserted that this rule would not be enforceable because the term "common vendor" was "inadequately defined" to cover most vendors. This commenter warned that proposed standard would not reach many vendors who continuously re-organize personnel, merge, or dissolve and reorganize as different entities during or between election cycles. The same commenter believed it was important to include in the list of covered services media production vendors, pollsters, and media buying firms (for purchasing time slots) because they work closely together.

The Commission recognizes the possibility that commercial vendors may attempt to circumvent the new rules by re-organizing as different entities or replacing personnel. However, the Commission notes that the final rules focus on the use or conveyance of information used by a vendor, including its owner, officers, and employees, in providing services to a candidate, authorized committee, or political party committee, rather than the particular structure of the vendor. The specific reference to a vendor's owners and officers was not included in the proposed rule, but is being added to the final rule to address the commenter's concern. Therefore, if an individual or entity qualifies as a commercial vendor at the time that individual or entity contracts with the person paying for a communication to provide any of the specified services, then the individual or entity qualifies as a common vendor to the extent that the same individual or entity, "or any owner, officer, or employee" of the commercial vendor, has provided any of the enumerated services to the candidate during the specified time period. Thus, a commercial vendor may qualify as a common vendor under 11 CFR 109.21(d)(4) even after reorganizing or shifting personnel.

Five commenters argued that the Commission should presume that the conduct standard is satisfied whenever a candidate and an outside spender use the same common vendor. According to these commenters, the rule proposed by the Commission in the NPRM would create an "impossibly high standard to meet" if it required a showing that the common vendor actually "uses" particular information.

In contrast, five different commenters asserted that any such presumption would be overly broad and "taint" the vendor, or submit the candidate, political party committee, vendor, or spender to unwarranted "liability" for communications presumed to be coordinated merely because of the use of the vendor. Several commenters in this latter group were concerned that an overly broad rule would chill speech and discourage vendors from providing services to candidates or political party committees, which the commenters warned would be particularly troublesome in areas where only a limited number of vendors provide specific services. One commenter

argued that the proposed standard could lead to extensive and burdensome investigations that would place spenders at a disadvantage because it would be difficult for them to show that the vendor had not used certain information from a candidate's campaign committee or political party committee to create a communication. One commenter, who described himself as being in the business of "buying media spot time on behalf of various political clients," stated that he had spent a substantial sum of money responding to investigations, and opposed any rule in which "merely associating" with a common vendor might expose the person paying for a communication to the risk of enforcement proceedings. Four of these commenters, however, were generally supportive of the Commission's proposal to require that the common vendor "use or convey" material information to the person making the communication at issue, as opposed to simply providing services to both a candidate or party and the spender.

Similarly, three other commenters expressed concern about the "*per se* inclusion of vendors by class" and suggested that the inclusion of specific types of vendors should merely raise a "rebuttable presumption." These three commenters further noted that the proposed reference to "material information" would include information "used previously" in providing services to the candidate or party. These commenters questioned how a vendor might account for the "use" of material information.

After considering the wide range of comments, the Commission has decided to promulgate a final rule that is similar in many respects to the proposed rule, with certain modifications discussed below. It disagrees with those commenters who contended the proposed standard created any "prohibition" on the use of common vendors, and likewise disagrees with the commenters who suggested it established a presumption of coordination. Instead, the Commission notes that a different group of commenters urged the Commission to adopt such a presumption precisely because they believed the proposed standard did not already contain a presumption and would therefore be difficult to meet. The final rules in 11 CFR 109.21(d)(4) restrict the potential scope of the "common vendor" standard by limiting its application to vendors who provide specific services that, in the Commission's judgment, are conducive to coordination between a candidate or political party committee and a third party spender. But under this final rule, even those vendors who provide one or more of the specified services are not in any way prohibited from providing services to both candidates or political party committees and third-party spenders. This regulation focuses on the sharing of information about plans, projects, activities, or needs of a candidate or political party through a common vendor to the spender who pays for a communication that could not then be considered to be made "totally independently" from the candidate or political party committee.

The only commenter who identified himself as providing vendor services indicated that it is not the common practice for vendors to make use of one client's media plans in executing the instructions of a different client, and sharing "any client information given by another" would "compromise the professional relationship" that is at the "core of any service business." That commenter observed that "[c]ommon vendors, at whatever tier, who avoid such conduct should never be at risk of being deemed an instrument of coordination." No other commenters offered conflicting information on these points. Thus, because the Commission addresses only the use or conveyance of information material to the communication, the final rules narrowly target the coordination activity without unduly intruding into existing business practices.

The common vendor rule is carefully tailored to ensure that all four of the following conditions must be met. First, under 11 CFR 109.21(d)(4)(i), the person paying for the communication, or the agent of such a person, must contract with, or employ, a "commercial vendor" to create, produce, or distribute the communication. The term "commercial vendor" is defined in the Commission's pre-BCRA regulations at 11 CFR 116.1(c) as "any person[] providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease, or provision of those goods or services." Thus, this standard only applies to a vendor whose usual and normal business includes the creation, production, or distribution of communications, and does not apply to the activities of persons who do not create, produce, or distribute communications as a commercial venture.

The second condition, in paragraph (d)(4)(ii), is that the commercial vendor must have provided certain services to the candidate or political party committee that puts the commercial vendor in a position to acquire information about the campaign plans, projects, activities, or needs of the candidate or political party committee that is material to the creation, production or distribution of the communication. Nine specific services are enumerated in paragraphs (d)(4)(ii)(A) through (I). Providing these services places the "common vendor" in a position to convey information about the candidate's or party committee's campaign plans, projects, activities, or needs to the person paying for the communication where that information is material to the communication.

The third condition is that the new rule only applies to common vendors who provide the specified services during the current election cycle. "Election cycle" is defined in 11 CFR 100.3. The Commission sought comment on whether a different time period, such as a fixed two-year period, would more accurately align the rule with existing campaign practices. One commenter responded that a two-year period would be too long and suggested that the standard should pertain "only to vendors who were common during the election year," or possibly further limited to vendors who provide services during the 30-day period before a primary election or the 60-day period before an election. That commenter also suggested that a time limit be placed on the use or conveyance of information received from a candidate or political party in recognition that such information would eventually become stale and unworthy of restriction. A different commenter, however, suggested that a two-year time limit would be too short because it would not appropriately encompass election activity that takes place throughout the six-year Senate election cycle. Another commenter advised that the time limit for common vendor activities should be limited to the period "during the calendar year in which the candidate's name is on the ballot for election to Federal office." One commenter proposed an alternative in which a vendor's services would not be covered by the rule outside of the 30 days following the time the vendor ceased working for the candidate or political party committee.

The Commission is retaining "election cycle" as the temporal limit in the final rules. The election cycle provides a clearly defined period of time that is reasonably related to an election: The mixture of an election cycle with a calendar year cutoff would likely cause confusion.

The fourth condition, in paragraph (d)(4)(iii), requires that the commercial

vendor "uses or conveys information about the candidate's campaign plans, projects, activities, or needs" or the political party committee's campaign plans, projects, activities, or needs where that information is material to the creation, production, or distribution of the communication. This requirement encompasses situations in which the vendor assumes the role of a conduit of information between a candidate or political party committee and the person making or paying for the communication, as well as situations in which the vendor makes use of the information received from the candidate or political party committee without actually transferring that information to another person. By referring in the final rule to the candidate's "campaign" plans, projects, activities, or needs, the Commission clarifies that this conduct standard is not intended to encompass lobbying activities or information that is not related to a campaign. The Commission notes, however, that to the extent information relates to campaign plans, projects, activities, or needs, that information would be covered by this provision even if that information also related to non-campaign plans, projects, activities, or needs of the candidate.

Several commenters opposed the inclusion of the "use or convey" requirement as being exceedingly difficult to prove, while other commenters viewed it as necessary protection against an unduly burdensome rule. Two of the commenters who supported a general presumption of coordination suggested that a confidentiality agreement might be used to rebut the presumption, while three others opposed a general presumption suggested that the Commission establish a safe harbor for spenders who enter into a confidentiality agreement filed under seal with the Commission. A different commenter suggested that the "use or convey" provision would be "unworkable" unless it provided for some form of exception for the use of an "ethical screen." Otherwise, according to that commenter, a single employee might "disqualify" an entire firm from providing services to both a candidate and a third-party spender.

The final rule does not require the use of any confidentiality agreement or ethical screen because it does not presume coordination from the mere presence of a common vendor. The final rule also does not dictate any specific changes to the business relationship between a vendor and its clients. The Commission does not anticipate that a person who hires a vendor and who, irrespective of BCRA's requirements, follows prudent business practices, will be inconvenienced by the final rule. Nevertheless, the Commission does not agree that the mere existence of a confidentiality agreement or ethical screen should provide a *de facto* bar to the enforcement of the limits on coordinated communication imposed by Congress. Without some mechanism to ensure enforcement, these private arrangements are unlikely to prevent the circumvention of the rules.

The Commission also sought comment on the list of common vendor services covered in paragraph (d)(4)(ii), and specifically whether purchasing advertising time slots for television, radio, or other media should be added to that list. Several commenters recommend excluding the following groups of vendor classes from those listed in the proposed rules on the principle that they lack adequate control as decisionmakers or they have little knowledge of communications: (1) "Media time buyers and others where the technical nature of their services diminishes their role in controlling the content of strategically sensitive communications;" (2) fundraisers; (3) vendors involved in selecting personnel, contractors, or subcontractors; (4) vendors involved in consulting; and (5) vendors involved in identifying or developing voter lists, mailing lists, or donor lists. A media buyer urged the Commission not to include media buyers in the list of covered activities because they have little decisionmaking authority and act within "predetermined strategic parameters including timing, geographic and demographic target audiences, and budget," but do not "create, produce, or distribute" a communication by themselves.

The Commission is incorporating the list of covered common vendor services into the final rules without change from its form in proposed section 109.21(d)(4)(ii) of the NPRM. The Commission recognizes that media buyers might potentially serve a number of different roles at the direction of various clients. Therefore, the Commission is not including "purchasing advertising time slots for television, radio, or other media" as a distinct category in the list of common vendor services covered in paragraph (d)(4)(ii). However, media buyers and other similar service providers are included to the extent that their services fit within one of the other categories already listed in paragraph (d)(4)(ii).

E. 11 CFR 109.21(d)(5) Former Employee/Independent Contractor

In BCRA, Congress required the Commission to address in its revised coordination rules "persons who previously served as an employee of" a candidate or political party committee." Public Law 107–155, sec. 214(c)(3) (March 27, 2002). In the NPRM, the Commission proposed 11 CFR 109.21 (d)(5) to implement this Congressional requirement. Proposed paragraph (d)(5) would have applied to communications paid for by a person who was previously an employee or an independent contractor of a candidate, authorized committee, or political party committee, or by the employer of such a person. Under the rule proposed in the NPRM, the "former employee" conduct standard would be satisfied if the former employee or independent contractor "makes use of or conveys" "material information" about the candidate's or political party committee's plans, projects, or needs to the person paying for the communication.

Commenters responding to the proposed rules made many of the same points about the "former employee" standard as they made with respect to the "common vendor" standard. One commenter opposed the proposal in the NPRM that covered the "use" of material information provided by a former employee. Such a standard, that commenter asserted, would be too broad and would amount to a "*per se*" rule that would lead to overly intrusive investigations. In contrast, four commenters argued that the proposed standard was not broad enough and suggested that the Commission establish a presumption of coordination when a former employee or an independent contractor of a campaign committee or political party committee pays for, or his or her current employer pays for, a communication that satisfies the content requirements of this section. These commenters argued that without such a presumption, it would be far too difficult to prove that an employee used material information or conveyed information to the new employer. In addition, however, three of these commenters suggested that the Commission limit the application of this presumption of coordination to a specified class of employees who are likely to "possess material political information." A different commenter indicated that it would be difficult to enforce this conduct standard because the definition of "independent contractor" in the NPRM was underinclusive in that it failed to account for the fact that an independent

contractor might reorganize or change names, making it difficult to verify the identity of the independent contractor or former employee. As with the potential reorganization of common vendors discussed above, the Commission does not believe that new requirements are necessary at this time to address the commenter's concerns. Employees and independent contractors are natural persons, rather than corporations or other entities or legal constructs, so the Commission anticipates that reorganization for the purpose of circumventing the new rules is even less likely than in the context of common vendors.

Three other commenters asserted that Congress had not mandated the proposed rule and expressed concern about the "increased risk of legal liability" for both party committees and former employees" that they believed would "stigmatize" the former employee and make it difficult for that person to find subsequent employment.

This proposed rule would have required that the employment or independent contractor relationship exist during the current election cycle. As discussed above with regard to paragraph (d)(4) on common vendors, the Commission requested comments on whether this time period should be a fixed two-year period, or the same election cycle, but not more than two years. Most comments on this provision were identical to the comments on the temporal requirements in paragraph (d)(4). One commenter believed the two-year time frame was "inappropriate and overly injurious both to corporations trying to communicate about legislative topics and to those former employees of candidates seeking employment with such corporations." In contrast, a different commenter suggested a six-year time period and asserted that the two-year period was too short to fully address the real-world practices in this area. Another commenter offered the same proposal the commenter had offered with respect to common vendors: the former employee should be covered during the calendar year in which the candidate's name is on the ballot for election to Federal office. A fourth commenter suggested that the time frame be limited to the previous two years of the current election cycle.

The final rule in paragraph (d)(5) incorporates the temporal limit of the "election cycle," which is defined in 11 CFR 100.3. This time limit establishes a clear boundary based on an existing definition and ensures that there is a clear link between the conveyance or use of the material information and the time period in which that material might be relevant. In addition, the Commission disagrees with the single commenter who claimed that the two-year limit would harm the job prospects of former employees or inhibit discussions between corporations and candidates or political party committees. The Commission notes that the final rule focuses only on the use or conveyance of information that is material to a subsequent communication and does not in any way prohibit or discourage the subsequent employment of those who have previously worked for a candidate's campaign or a political party committee.

One commenter proposed a "cooling off period" for a former employee instead of a temporal limit based on a calendar year or an election cycle. Under that proposed approach, the former employee or independent contractor of a candidate or political party would have to wait for a certain time period, which the commenter proposed as 30–60 days, before providing services to a person paying for a communication covered by section 109.21(c). After that period, the former employee or independent contractor would not trigger the proposed conduct standard. The Commission is unwilling to impose a complete ban on an individual's employment opportunities, as a "cooling off period" requirement would function. Instead, the Commission views the narrowly tailored approach proposed in the NPRM as preferable and is therefore not incorporating a "cooling off period" into the final rules.

This conduct standard expressly extends to an individual who had previously served as an "independent contractor" of a candidate's campaign committee or a political party committee. One commenter opposed the inclusion of independent contractors, arguing that an "independent contractor" is legally distinct from an "employee" and Congress, recognizing this distinction in other statutes, must have made an intentional decision to exclude independent contractors by using the term "employee" in section 214(c)(3). The Commission disagrees with this assumption and instead notes that the inclusion of independent contractors is entirely consistent with the use of "employee" because both groups receive some form of payment for services provided to the candidate, authorized committee or political party committee. Therefore, the Commission includes the term "independent contractor" in the final rule to preclude circumvention by the expedient of characterizing an "employee" as an "independent contractor" where the characterization makes no difference in the individual's relationship with the candidate or political party committee. This coordination standard also applies to the employer of an individual who was an employee or independent contractor of a candidate, authorized committee, or political party committee. The Commission interprets the Congressional intent behind section 214(c)(3) of BCRA to encompass situations in which former employees, who by virtue of their former employment have been in a position to acquire information about the plans, projects, activities, or needs of the candidate's campaign or the political party committee, may subsequently use that information or convey it to a person paying for a communication. The Commission has added the requirement that the information must be material to the subsequent communication in order to ensure that the conduct standard is not overly broad.

One commenter argued that the proposed rule's incorporation of the phrase "material information used * * * in providing services to the candidate" was vague and overly broad, and should be limited to material information about "campaign strategy and tactics," excluding policy views. This commenter also questioned whether the information must be material to the communication itself, or whether the information used to serve the candidate was material to those services. The Commission notes that in many cases the information may be material to both, but for the purposes of this final rule the Commission is only concerned with whether the information is material to the communication, not to the services previously provided to the candidate. As with the common vendor standard, this requirement encompasses both situations in which the former employee assumes the role of a conduit of information and situations in which the former employee makes use of the information but does not share it with the person who is paying for the communication.

The Commission is including this conduct standard to address what it understands to be Congress' primary concern, which is a situation in which a former employee of a candidate goes to work for a third party that pays for a communication that promotes or supports the former employer/candidate or attacks or opposes the former employer/candidate's opponent. One commenter proposed that the former employer (*i.e.*, the candidate's campaign or a political party committee) must be shown to exercise ongoing control over its former employee. A different

commenter, however, recognized that the Commission's proposed rules would address such a concern by removing the reporting duties that might otherwise be triggered by the actions of the former employee who acted without the knowledge of his or her former employer. This reporting rule is included in the final rules in 11 CFR 109.21(b)(2). This commenter, however, raised a similar concern by suggesting that the final rule should be limited to cover only former employees when they are acting under the direction or control of their new employer, the third-party spender, to ensure that the former employee does not use or convey material information without the spender's knowledge. The Commission notes, however, that such a limitation is unnecessary and confusing in cases where the former employee or independent contractor pays for the communication by himself or herself.

The conduct standard in the final rule in 11 CFR 109.21(d)(5) does not require that the former employee act under the continuing direction or control of, at the behest of, or on behalf of, his or her former employer. This is because a former employee who acts under such circumstances is a present agent, and the revised rules covering agents apply to this individual. See 11 CFR 109.3. To give effect to the statutory language requiring that the Commission's coordination regulations address "former employees" (*see* Pub. L. 107–155, sec. 214(c)(3)) the Commission concluded that a "former employee," as that term is used in the statute, must be different from "agent." Furthermore, the Commission does not find in BCRA, the FECA, or the general legal principles of employer-employee law, a need or justification for such an exception that would, in essence, categorically free employers from responsibility for the actions of their employees. Instead, the Commission reiterates its observation offered above with respect to the "common vendor" standard. Irrespective of the Congressional requirements in BCRA, employers may elect to clearly define the scope of employee responsibilities and to institute prudent policies or practices to ensure that the employee adheres to the scope of those expectations.

One commenter supported an exception to the "common vendor" and "former employee" conduct standards to permit persons in either of those classes to use or convey information if that vendor or former employee "makes use of information in a manner that is adverse to the candidate or political party committee without any coordination with the candidate benefiting from the communication." In the Commission's judgment, such an exception would obfuscate otherwise bright lines and provide a clear path for the circumvention of the Act and the Commission's regulations without offering a discernible benefit. Under the proposed exception, "use of information in a manner that is adverse to the candidate or political party committee" requires a subjective determination of both the interests of the candidate or political party and the effect that the "information" has on those interests.

The Commission also sought comment as to whether this conduct standard should be extended to volunteers, such as "fundraising partners," who by virtue of their relationship with a candidate or a political party committee, have been in a position to acquire material information about the plans, projects, activities, or needs of the candidate or political party committee. Three commenters opposed the inclusion of volunteers. One of these commenters argued that volunteers traditionally participate in more than one campaign at a time and "as a matter of practice, campaigns attempt to make volunteers feel more involved in the campaign by the intentional communication of 'insider' information." While the FECA exempts campaign volunteers from certain requirements, this "practice" of sharing "insider" information is not adequate justification to exclude volunteers. Rather, the Commission recognizes that some, but not all, "volunteers" operate as highly placed consultants who might be given information about the plans, projects, activities, or needs of the candidate or political party committee with the expectation that the "volunteer" will use or convey that information to effectively coordinate a communication paid for by that "volunteer" or by a third-party spender. Nevertheless, the Commission is not extending the scope of the "former employee" standard in its final rules to encompass volunteers for a different reason. The Commission views the choice of the word "employee" in section 214(c)(3) as a significant indication of Congressional intent that the regulations be limited to individuals who were in some way employed by the candidate's campaign or political party committee, either directly or as an independent contractor. The Commission also notes that even though volunteers are not subject to the "former employee" conduct standard, their actions could nonetheless come within a different conduct standard in new 11 CFR 109.21(d). For example, if a candidate requests that a volunteer pay for a communication, and the volunteer does so, the communication is coordinated if the content of the communication satisfies one or more of the content standards in new 11 CFR 109.21(c). Also, in some cases a volunteer may qualify as an agent of a candidate or a political party under the definition in new 11 CFR 109.3.

F. 11 CFR 109.21(d)(6) Dissemination, Distribution, or Republication of Campaign Materials

Paragraph (d)(6) clarifies the application of the conduct standards to a candidate or authorized committee after the initial preparation of campaign materials when those materials are subsequently disseminated, distributed, or republished, in whole or in part, by another person. In light of the candidate's initial role in preparing the campaign material that is subsequently incorporated into a republished communication, it is possible that the candidate's involvement in the original preparation of part or all of that content might be construed as triggering *per se* one or more of the conduct standards in paragraph (d) of 11 CFR 109.21. To avoid this result, the Commission is including 11 CFR 109.21(d)(6) in the final rules to clarify that the candidate's actions in preparing the original campaign materials are not to be considered in the conduct analysis of paragraph (d)(1) through (d)(3) of section 109.21. (See above). Instead, 11 CFR 109.21(d)(6) explains that the focus is on the conduct of the candidate that occurs after the initial preparation the campaign materials. For example, if a candidate requests or suggests that a supporter pay for the republication of a campaign ad, the resulting communication paid for by the supporter satisfies both a content standard (republication) and conduct standard (request or suggestion), and is therefore a coordinated communication. However, without that request or suggestion, and assuming no other contacts with the candidate, the candidate's authorized committee, or their agents, the communication does not satisfy the "request or suggestion" conduct standard and is not a coordinated communication even though it contains campaign material prepared by the candidate.

The final rules are being changed from the proposed rules to explain more clearly the application of the conduct standards in paragraphs (d)(4) and (d)(5) to republished campaign materials, as well as to clarify the relationship between paragraph (c)(2) and (d)(6) of

section 109.21 as well as between 11 CFR 109.37(a)(2)(i) and paragraph (d)(6) of section 109.21. The conduct standards in paragraph (d)(4) and (d)(5) would not be affected by (d)(6). Whereas a candidate's or authorized committee's original preparation of campaign materials might have possibly been misconstrued as satisfying the conduct standards in (d)(1) through (d)(3) without the addition of (d)(6), there is no such danger that the (d)(4) "common vendor" standard or the (d)(5) "former employee" standard would be satisfied by the candidate's or authorized committee's original preparation of campaign materials. However, to avoid any potential confusion, the second sentence in paragraph (d)(6) clarifies that a communication that satisfies the conduct standards in (d)(4) or (d)(5) is still a coordinated communication even if the communication only satisfies the content standard in paragraph (c)(2).

5. 11 CFR 109.21(e) No Requirement of Agreement or Formal Collaboration

When Congress, in BCRA, required the Commission to promulgate new regulations on coordinated communications, it specifically barred any regulatory requirement of "agreement or formal collaboration" to establish coordination. Public Law 107–155, sec. 214(c) (March 27, 2002). In the NPRM, the Commission noted that although Congress did not define this phrase, earlier versions of BCRA stated that "collaboration or agreement" was not required to show coordination. See S. 27, 107th Cong., 1st Sess. (as passed by the Senate and transferred to the House, 478 Cong. Rec. H2547 (May 22, 2001)). The phrase "agreement or formal collaboration" reached its final form through a substitute amendment to H.R. 2356 offered by Representative Shays. See H. Amdt. 417, 478 Cong. Rec. H393 through H492 (February 13, 2002). New 11 CFR 109.21(d) provides that each of the five conduct standards can be satisfied "whether or not there is agreement or formal collaboration, which is defined in paragraph (e)," thereby implementing the Congressional prohibition against any requirement of agreement or formal collaboration in the coordination analysis. The final rule follows the proposed rule, with only a small grammatical change.

One commenter supported a distinction between "formal collaboration" and "collaboration." Two other commenters strongly supported this paragraph as proposed in the NPRM. Another commenter recognized the Congressional prohibition on a requirement of agreement or formal collaboration, but urged the Commission to establish clear guidelines as to what is and is not permissible activity. The Commission attaches significance to the addition of the term "formal" as it modifies the term "collaboration." Thus, paragraph (e) states that the conduct standards in paragraph (d) of section 109.21 require some degree of collaboration, but not "formal" collaboration in the sense of being planned or systematically approved or executed.

New paragraph (e) also explains the term "agreement." Coordination under section 109.21 does not require a mutual understanding or meeting of the minds as to all, or even most, of the material aspects of a communication. Any agreement means the communication is not made "totally independently" from the candidate or party. See *Buckley*, 424 U.S. at 47. In the case of a request or suggestion under paragraph (d)(1) of section 109.21, agreement is not required at all.

A fourth commenter suggested that there should be no finding of coordination where "the organization was not seeking the candidate's agreement and would have run the ad anyway." This commenter recommended that the Commission further refine the requirement so that a communication is considered coordinated only if the request, agreement or collaboration of the candidate or political party is shown to lead the organization to change some aspect of the communication.

The Commission is not adopting either of these suggestions as they require a subjective determination of the intent of the spender and are therefore inconsistent with the Commission's approach of establishing clear guidance through objective determinations where possible. Paragraph (e) therefore does not require any particular form of investigation or finding, but simply implements the judgment of Congress by clarifying the two criteria that are not required.

6. 11 CFR 109.21(f) Safe Harbor for Responses to Inquiries About Legislative or Policy Issues

In the NPRM, the Commission requested comment on whether any specific "safe harbor" provisions or exceptions to the conduct or content standards should be included in the final rules. Commenters recommended a number of possible exceptions and safe harbors. As explained below, the Commission is including one of the proposed exceptions in its final rules in 11 CFR 109.21(f).

Several commenters urged the Commission to adopt an exception to the conduct standards for a candidate's response to an inquiry, whether in writing or other form, regarding his or her position on legislative or policy issues. These responses are helpful in preparing voter guides, voting records, in debates or other communications. One commenter cited constitutional considerations and argued that such an exception is required by *Clifton* v. *FEC*, 114 F.3d 1309 (1st Cir. 1997). Another advised that this exception would provide notice that the regulation is not intended to deter certain activities that groups or individuals "might otherwise avoid out of an abundance of caution." A different commenter advocated an exemption for any public communications, including republication of materials from candidates, their committees or political parties, that meet the criteria of 11 CFR 110.13 regarding candidate debates and forums, and 11 CFR 114.4(c) regarding voter registration drives and voter education.

In new section 109.21(f) the Commission is providing a "safe harbor" to address the commenters' concerns that the preparation of a voter guide or other inquiries about the views of a candidate or political party committee might satisfy one of the conduct standards in section 109.21(d). This safe harbor applies to inquiries regarding views on legislation or other policy issues, but does not include a response that conveys information about the candidate's or political party's campaign plans, projects, activities, or needs that is material to the creation, production, or distribution of a subsequent communication.

This exception satisfies the requirements of *Clifton* v. *FEC*, 114 F.3d 1309. See also new 11 CFR 114.4(c)(5), explained below. In *Clifton*, the Court examined the Commission's then-new regulations at 11 CFR 114.4(c)(4) and (5). The Commission's old regulations permitted corporations and labor organizations to prepare and produce "voter guides" to the general public, subject to the following prohibition:

> [T]he corporation or labor organization shall not contact or in any other way act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter guide, except that questions may be directed in writing to the candidates included in the voter guide and the candidates may respond in writing;

11 CFR 114.4(c)(5)(ii)(A) (1996). While *Clifton* invalidated that regulation as unauthorized by the Act, 927 F. Supp. at 500, the Court nevertheless suggested that a safe harbor might have survived.

The safe harbor in new 11 CFR 109.21(f) is more permissive than the regulations at issue in *Clifton* in several respects. First, the regulations in section 109.21 do not institute a general prohibition on *any* contact with the candidate or political party committee, so paragraph (f) functions as a safe harbor from less-restrictive regulations. For example, organizations whose activities are confined to producing voter guides may contact a candidate and discuss aspects of that candidate's campaign plans, projects, activities, or needs without making a coordinated communication so long as the voter guide does not contain express advocacy and it is not directed to voters in a specific jurisdiction and made available within the designated time period directly before an election, as provided in paragraphs 109.21(c)(1) and (4). In addition, whereas the regulations at issue in *Clifton* specifically required that both the inquiry and the response be written, paragraph (f) does not.

Three commenters urged the Commission to adapt its rules to exclude lobbying contacts with a candidate. Similarly, a different commenter proposed an exception for any legislative communication made prior to a vote, hearing, or other legislative consideration of the issue, and that "coincidentally" occurs prior to an election. Another commenter also urged the Commission to exempt grassroots communications that urge the people to contact state, local or national officials urging them to take action in their official capacity so long as they do not refer to the election or an official's status or qualifications as a federal candidate.

The Commission has considered these possible exceptions as well as the statements of BCRA's principal sponsors that the Commission's regulations should not interfere with lobbying activities. Therefore, these final rules are not intended to restrict communications or discussions regarding pending legislation or other issues of public policy. The Commission has determined, however, that sufficient safeguards exist in the final rules to ensure that lobbying and other activities that are not reasonably related to elections will not be unduly restricted. Additional exceptions are unnecessary and inappropriate because they could be exploited to circumvent the requirements of 11 CFR part 109.

One commenter proposed an exemption for a "legislative communication" made during legislative consideration of an issue when the communication "coincidentally" occurs just before an election. This exemption is neither necessary nor workable, as it hinges on a complex analysis of several separate factors, as well as a determination of what qualifies as a "legislative communication." The potential number of communications that might satisfy the content standard, satisfy the conduct standard, and "coincidentally" occur just before an election is likely to be quite small in comparison to the potential number of communications that would actually be made for the purpose of influencing an election but carefully tailored to fit within the proposed exemption.

In addition, one commenter cautioned that exceptions are not appropriate to the extent that they apply to communications that meet the "electioneering communication" content standard. This commenter asserted that the plain language of the BCRA provides the Commission with little to no room to craft exceptions with respect to electioneering communications. The Commission disagrees that any such Congressional directive can be derived from plain language of BCRA in the context of coordinated electioneering communications.

11 CFR 109.22 Who Is Prohibited From Making Coordinated Communications?

The Commission requested comment on whether to include a separate section to clarify that any person who is otherwise prohibited under the Act from making a contribution or expenditure is also prohibited from making a coordinated communication. No comments addressed this provision. Section 109.22 is included in the final rules to avoid any potential misconception that 11 CFR 100.16, 11 CFR 109.23, or any portion of 11 CFR part 109 in any way permit a corporation, labor organization, foreign national, or other person to make a contribution or expenditure when that person is otherwise prohibited by any provision of the Act or the Commission's regulations from doing so.

11 CFR 109.23 How Are Payments for the Dissemination, Distribution, or Republication of Candidate Campaign Materials Treated and Reported?

The Commission has decided to implement only those regulatory changes that are necessary to implement section 214 of BCRA at this time. In the NPRM, the Commission proposed moving former 11 CFR 109.1(d) to proposed new section 11 CFR 100.57, along with several substantive changes. To whatever extent that proposed 11 CFR 100.57 would have elaborated on former 11 CFR 109.1(d), the Commission has reconsidered and instead is addressing the payments for the republication of campaign materials in new 11 CFR 109.23, which more closely follows former section 109.1(d). New section 109.23 implements post-BCRA 2 U.S.C. 441a(a)(7)(B)(iii), with several changes made to reflect new requirements in BCRA. Paragraph (a) of section 109.23 corresponds to former 11 CFR 109.1(d)(1), and paragraph (b) of section 109.23 addresses the exceptions in former 11 CFR 109.1(d)(2), in addition to several new exceptions.

1. 11 CFR 109.23(a) Financing of the Dissemination, Distribution, or Republication of Campaign Materials Prepared by a Candidate

Paragraph (a) of 11 CFR 109.23 addresses the financing of the dissemination, distribution, or republication of campaign materials prepared by the candidate, the candidate's authorized committee, or their agents and is the successor to former 11 CFR 109.1(d)(1). The only changes from the former rule are the replacement of one cross-reference to former 11 CFR 100.23 (repealed by Congress in BCRA), a clarification that a candidate does not receive or accept an in-kind contribution unless there is coordination, and minor grammatical changes. Paragraph (a) provides that the financing of the distribution, or republication of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either is considered a contribution for the purposes of the contribution limitations and reporting responsibilities by the person making the expenditure but is not considered an in-kind contribution received or an expenditure made by the candidate or the candidate's authorized committee unless the dissemination, distribution, or republication of campaign materials is coordinated.

Under former 11 CFR 109.1(d)(1), coordination was determined by whether the dissemination, distribution, or republication of the campaign material qualified as a "coordinated general public political communication" under former 11 CFR 100.23, which was repealed by Congress in BCRA. Therefore, under new 11 CFR 109.23, whether the dissemination, distribution, or republication is coordinated is determined by reference to the new coordinated communication rules in 11 CFR 109.21 and 109.37.

As discussed above in the Explanation and Justification for 11 CFR 109.21(c)(2) and 109.21(d)(6), a

communication that disseminates, distributes, or republishes campaign material prepared by a candidate, the candidate's authorized committee, or an agent of either, and that satisfies one of the conduct standards in section 109.21(d), is a coordinated communication. Under 11 CFR 109.21(b), and by implication from paragraph (a) of section 109.23, the financing of such a "coordinated communication" is an in-kind contribution received by the candidate, authorized committee, or political party committee with whom or with which it was coordinated. In other words, the person financing the dissemination, distribution, or republication of candidate campaign material has provided something of value to the candidate, authorized committee, or political party committee. See 2 U.S.C. 431(8)(A)(i). Note that this is the same result under former section 109.1(d)(1). Even though the candidate, authorized committee, or political party committee does not receive cash-in-hand, the practical effect of this constructive receipt is that the candidate, authorized committee, or political party committee must report the in-kind contribution in accordance with 11 CFR 104.13, meaning that it must report the amount of the payment as a receipt under 11 CFR 104.3(a) and also as an expenditure under 11 CFR 104.3(b).

To the extent that the financing of the dissemination, distribution, or republication of campaign materials finances does not qualify as a coordinated communication, the candidate or authorized committee that originally prepared the campaign materials has no reporting responsibilities and has not received or accepted an in-kind contribution. However, whether or not the dissemination, distribution, or republication qualifies as a coordinated communication under 11 CFR 109.21, paragraph (a) of section 109.23, like former section 109.1(d)(1), requires the person financing such dissemination, distribution, or republication always to treat that financing, for the purposes of that person's contribution limits and reporting requirements, as an in-kind contribution made to the candidate who initially prepared the campaign material. In other words, the person financing the communication must report the payment for that communication if that person is a political committee or is otherwise required to report contributions. Furthermore, that person must count the amount of the payment towards that person's contribution limits with respect to that candidate under 11 CFR 110.1 (persons other than political committees) or 11 CFR 110.2 (multicandidate political committees), and with respect to the aggregate bi-annual contribution limitations for individuals set forth in 11 CFR 110.5.

Although paragraph (a) of 11 CFR 109.23 is nearly otherwise unchanged from former 11 CFR 109.1(d)(1), the new reference to 11 CFR 109.21 has an important impact because new section 109.21 reflects Congress's decision in post-BCRA 2 U.S.C. 441a(a)(7)(B)(ii) that expenditures may be coordinated with a political party committee. Therefore, the republication of campaign material may be coordinated with a political party committee. As explained above, the financing "*by any person* of the dissemination, distribution, or republication of campaign material prepared by a candidate *qualifies as an expenditure for the purposes of 2 U.S.C. 441a(a)(7)(B)(ii).*" *See* 2 U.S.C. 441a(a)(7)(B)(iii) (emphasis added.) Under 2 U.S.C. 441a(a)(7)(B)(ii), "expenditures" that are coordinated with a political party committee "shall be considered to be contributions made to such party committee." Thus, reading 2 U.S.C. 441a(a)(7)(B)(ii) and (iii) together, the Commission concludes that when a person coordinates with a political party committee to finance the dissemination, distribution, or republication of a candidate's campaign material, that financing constitutes a contribution to the political party committee. Therefore, under paragraph (a) of section 109.23, the financing of the dissemination, distribution, or republication of campaign material prepared by a candidate constitutes an in-kind contribution to a political party committee with which it was coordinated, and the amount of that financing must be reported by that political party committee as both an in-kind contribution received and an expenditure made. See 11 CFR 104.13. The Commission notes that section 109.23 does not encompass in this respect the dissemination, distribution, or republication of campaign material prepared by the political party committee, but only campaign material prepared by a candidate.

2. 11 CFR 109.23(b) Exceptions

In the NPRM, the Commission proposed several exceptions to the general "republication" rule proposed 11 CFR 100.57. Proposed 11 CFR 100.57(b) would have clarified that five listed uses of campaign material prepared by a candidate would not qualify as a contribution under proposed 11 CFR 100.57(a). The exceptions were largely drawn from uses already permitted by other rules.

Several commenters focused on the proposed exceptions or proposed additional exemptions. One commenter proposed that republication should not be considered a contribution unless there is coordination. The Commission does not discern any instruction from Congress, nor any other basis, that justifies such a departure from the Commission's longstanding interpretation of the underlying republication provision in the Act, now set forth at 2 U.S.C. 441a(a)(7)(B)(iii). The same commenter also inquired as to whether a corporation or labor organization may pay for the republication of campaign materials for use outside its restricted class, so long as that republication is not coordinated with a candidate under the applicable conduct standards set forth in 11 CFR 109.21(d) (see below). The Commission normally addresses specific inquiries about the application of particular provisions through its Advisory Opinion process, rather than in the rulemaking context, but the Commission takes this opportunity to emphasize that this rulemaking is not intended to change existing law with respect to the practices of corporations or labor organizations. See 11 CFR 109.22. Both the pre- and post-BCRA regulations provide that the financing of the dissemination, distribution, or republication of a candidate's campaign material constitutes a contribution to that candidate. Furthermore, such financing for activities outside the restricted class of a corporation or labor organization would also constitute an expenditure by the labor organization or corporation made in connection with an election for Federal office that would therefore be prohibited by 2 U.S.C. 441b(a). Therefore, a corporation or labor organization may not disseminate, distribute, or republish campaign materials except as provided in 11 CFR 114.3(c)(1).

The same commenter also proposed additional exceptions for paragraph (b) to cover republication and distribution of original campaign material that already exists in the public domain, such as presentations made by candidates, biographies, positions on issues or voting records. The Commission declines to promulgate a "public domain" exception because such an exception could "swallow the rule," given that virtually all campaign material that could be republished could be considered to be "in the public domain." In the event that a campaign retains the copyright to its campaign materials, and the campaign materials

are thus not in the public domain as a matter of law, this means that the republisher would presumably have to obtain permission from the campaign to republish the campaign materials, raising issues of authorization or coordination. See 11 CFR 110.11.

Similarly, a commenter suggested an exception to permit the "fair use" of campaign materials, which would presumably permit the republication of campaign slogans and other limited portions of campaign materials for analysis and other uses provided under the legal tests developed with respect to intellectual property law. This commenter also argued that the "fair use" exception should be available to supporters of the candidate who originally produced the materials, as well as that candidate's opponents.

The Commission, however, believes that a "fair use" exception could swallow the rule. Furthermore, the Commission notes that "fair use" is an exception in the intellectual property arena intended to protect literary, scholastic, and journalistic uses of material without infringing upon the intellectual property rights of those who created the material. The Commission declines to import this concept into the political arena where it would not serve to promote the same important purposes, and where the exceptions to the definitions of "contribution" and "expenditure" already address these concerns. See, *e.g.*, 11 CFR 100.73 and 100.132 (exceptions to the definition of "contribution" and "expenditure," respectively, for news stories, commentary, and editorials.) In the context of intellectual property law, the republication of another person's work is generally viewed as undesirable by the original author, thus the "fair use" exception provides a limited exception to the general limitations on such republication. In contrast, Congress has addressed republication of campaign materials through 2 U.S.C. 441a(a)(7)(B)(iii) in a context where the candidate/author generally views the republication of his or her campaign materials, even in part, as a benefit. Given the different purpose served by intellectual property law and campaign finance law, a "fair use" exception would be inappropriate and unworkable in the campaign arena. Additionally, the Commission believes that such legitimate benefits as would flow from a fair use exception are met through application of 11 CFR 109.23(b)(4).

The Commission is including the exceptions proposed in 100.57(b) in its final rules at CFR 109.23(b). Under 11 CFR 109.23(b)(1), a candidate or political party committee is permitted to disseminate, distribute, or republish its own materials without making a contribution. Paragraph (b)(2) exempts the use of material in a communication advocating the defeat of the candidate or party who prepared the material. For example, Person A does not make a contribution to Candidate B if Person A incorporates part of Candidate B's campaign material into its own public communication that advocates the defeat of Candidate B. However, if the same public communication also urged the election of Candidate B's opponent, Candidate C, and incorporated a picture or quote that had been prepared by Candidate C's campaign, then the result does constitute a contribution to Candidate C.

A third exception, in paragraph (b)(3), makes it clear that campaign material may be republished as part of a *bona fide* news story as provided in 11 CFR 100.73 or 11 CFR 100.132. In paragraph (b)(4), the Commission allows limited use of candidate materials in communications to illustrate a candidate's position on an issue.

Finally, in paragraph (b)(5), the Commission recognizes that a national, State, or subordinate committee of a political party makes a coordinated party expenditure rather than an in-kind contribution when it uses its coordinated party expenditure authority under 11 CFR 109.32 to pay for the dissemination, distribution, or republication of campaign material. This rule is based on former 11 CFR 109.1(d)(2), which provided that a State or subordinate party committee could engage in such dissemination, distribution, or republication as an agent designated by a national committee pursuant to former 11 CFR 110.7(a)(4), but is somewhat broader than former 11 CFR 109.1(d)(2).

11 CFR Part 109, Subpart D—Special Provisions for Political Party Committees

11 CFR 109.30 How Are Political Party Committees Treated for Purposes of Coordinated and Independent Expenditures?

A national, State, or subordinate committee of a political party may make expenditures up to prescribed limits in connection with the general election campaign of a Federal candidate that do not count against the committees' contribution limits. See 2 U.S.C. 441a(d). These expenditures are commonly referred to as "coordinated party expenditures." Political party committees, however, need not demonstrate actual coordination with their candidates to avail themselves of this additional spending authority. Nor are political party committees restricted as to the nature of the expenditures they may make on behalf of a candidate that are treated as coordinated party expenditures. Political party committees may also make independent expenditures. See *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission*, 518 U.S. 604 (1996) ("Colorado I").

In BCRA, Congress set certain new restrictions on these "coordinated party expenditures" and related restrictions on political party committee independent expenditures. There are also certain new restrictions on transfers and assignments of coordinated party expenditure authorizations between party committees. 2 U.S.C. 441a(d)(4)(A) through (C).

Section 109.30 provides an introduction to subpart D of part 109 that states how political party committees are treated for purposes of coordinated and independent expenditures. This new section first clarifies that political party committees may make independent expenditures subject to the provisions of sections 109.35 and 109.36. (See discussion below.) Second, section 109.30 explains that political party committees may support candidates with coordinated party expenditures and states that these coordinated party expenditures are subject to limits that are separate from and in addition to the contribution limits at 11 CFR 110.1 and 110.2.

No comments were received on this section, and the final rule is unchanged from the proposed rule in the NPRM except that the reference to other 11 CFR part 109, subpart D provisions has been revised to exclude section 109.31.

11 CFR 109.31 [Reserved]

The Commission in the NPRM proposed rules at 11 CFR 109.30 to 109.37 regarding political party committees. The Commission is issuing final rules at 11 CFR 109.30 and 109.32 to 109.37, but not at 11 CFR 109.31. The reasons regarding proposed section 109.31 are set forth below.

Under FECA, certain political party committees have long been authorized to make what have come to be known as "coordinated party expenditures." 2 U.S.C. 441a(d). Although this term is used extensively (see, *e.g.*, the Commission's Campaign Guides), it is not formally defined in the Commission's regulations.

The Commission in the NPRM proposed a rule which would have defined "coordinated party expenditure" at 11 CFR 109.31. That proposed definition included payments

made by a national committee of a political party, including a national Congressional campaign committee, or a State committee of a political party, including any subordinate committee of a State committee, under 2 U.S.C. 441a(d) for anything of value in connection with the general election campaign of a candidate, including party coordinated communications defined at 11 CFR 109.37.

The Commission received two comments on section 109.31 in support of the proposed rule. One witness at the hearing criticized this provision, asserting that in conjunction with 11 CFR 109.20 this provision would subject everything political parties do to the coordinated party expenditure limits.

In light of the concern raised, the Commission's recognition that this rule is not required by BCRA, and in order to devote the Commission's resources to the rules that are most directly required by BCRA to be completed this calendar year, the Commission is not issuing a final rule at 11 CFR 109.31. Instead, the Commission is adding and reserving this section and may revisit the "coordinated party expenditures" definition in the future.

The Commission notes, however, that the term "coordinated party expenditures" does appear in the final rules at 11 CFR 109.23(b), 109.20(b), 109.30, 109.32, 109.33, 109.34, and 109.35. To prevent any confusion, the Commission clarifies in the absence of a definition at section 109.31 that the term "coordinated party expenditure" refers to an expenditure made by a political party committee pursuant to 2 U.S.C. 441a(d). The Commission stresses that it is not restricting the traditional flexibility political parties have had in making coordinated expenditures in support of their candidate.

11 CFR 109.32 What Are the Coordinated Party Expenditure Limits?

The Commission's restructuring of 11 CFR part 109 includes moving the coordinated party expenditure limits found at former 11 CFR 110.7(a) and (b) to 11 CFR 109.32. This new section retains the basic organizational structure of paragraphs (a) and (b) of former section 110.7, while making the revisions explained below. The final rule is unchanged from the proposed rule in the NPRM except where noted below.

1. 11 CFR 109.32(a) Coordinated Party Expenditure Limits for Presidential Elections

The Commission sets forth in paragraph (a) of section 109.32, in amended fashion, the coordinated party expenditure limit for the national committee of a political party for Presidential elections that appeared at former section 110.7(a). Because political party committees may also make independent expenditures, *Colorado I*, 518 U.S. at 618, the heading of paragraph (a) clarifies that the "expenditures" referred to in section 109.32 are "coordinated party expenditures." See 2 U.S.C. 441a(d). This clarification also appears in paragraphs (a)(1), (2), (3), and (4) of section 109.32.

Paragraph (a)(1) authorizes the national committee of a political party to make coordinated party expenditures in connection with the general election campaign of any candidate for President of the United States affiliated with the party. The final rule deletes the words "the party's" as surplusage that was inadvertently added into the proposed rule. Paragraph (a)(1) is the successor to former 11 CFR 110.7(a)(1) and is unchanged from that rule except for the clarification noted above.

Paragraph (a)(2) sets out the coordinated party expenditure limit, which is two cents multiplied by the voting age population of the United States, following former 11 CFR 110.7(a)(2). Paragraph (a)(2) of section 109.32 also states that this spending limit shall be increased in accordance with 11 CFR 110.17, which the Commission is adding to clarify that this spending limit is subject to increase. Section 110.17 is the successor to former 11 CFR 110.9(c). See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002). Paragraph (a)(2) of section 109.32 also refers to 11 CFR 110.18, the definition of the term "voting age population," which is discussed below.

Paragraph (a)(3) provides that any coordinated party expenditure under paragraph (a) of this section is in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for President of the United States, as well as any contribution by the national committee to the candidate permissible under 11 CFR 110.1 or 110.2. Paragraph (a)(3) is the successor to former 11 CFR 110.7(a)(3) and is substantively unchanged from that rule.

Paragraph (a)(4) provides that any coordinated party expenditures made by the national committee of a political party pursuant to paragraph (a) of this section, or made by any other party committee under authority assigned by a national committee of a political party under 11 CFR 109.33, on behalf of that party's Presidential candidate shall not count against the candidate's expenditure limitations under 11 CFR 110.8. The only change to paragraph (a)(4) from the proposed rule is that the term "designated" has been changed to "assigned" in order to be consistent with the terminology applied in section 109.33.

Paragraph (a)(4) is the successor to former 11 CFR 110.7(a)(6), and is revised to clarify that only the national party committee has coordinated party expenditure authority for Presidential general elections and that any other political party committee making a coordinated party expenditure in such an election must be so assigned by the national committee.

2. 11 CFR 109.32(b) Coordinated Party Expenditure Limits for Other Federal Elections

Paragraph (b) of section 109.32 addresses coordinated party expenditures in other Federal elections, and is the successor to former 11 CFR 110.7(b). Paragraph (b) applies to the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, for Federal elections other than Presidential elections. As in paragraph (a) above, paragraph (b) clarifies that the "expenditures" referred to in paragraphs (b)(1), (2), and (4) are coordinated party expenditures.

Paragraph (b)(1) authorizes the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, to make coordinated party expenditures in connection with the general election campaign of a candidate for Federal office in that State who is affiliated with the party. The phrase "a candidate for Federal office in that State who is affiliated with the party" is changed from the phrase "the party's candidate for Federal office in that State" that was inadvertently included in the proposed rule. Paragraph (b)(1) is the successor to former 11 CFR 110.7(b)(1) and is unchanged from the previous rule except for the clarification noted above.

Paragraph (b)(2)(i) sets out the coordinated party expenditure limit for Senate candidates and for House candidates from a State that is entitled to only one Representative at the greater of two cents multiplied by the voting age population of the State or $20,000. Paragraph (b)(2)(ii) sets out the coordinated party expenditure limit for House candidates from any other State at $10,000. Paragraph (b)(2) follows

former 11 CFR 110.7(a)(2). Paragraph (b)(2) of section 109.32 also refers to 11 CFR 110.18, the definition of the term "voting age population," which is discussed below.

Paragraph (b)(3) provides that the spending limitations in paragraph (b)(2) shall be increased in accordance with 11 CFR 110.17, which is the successor to former 11 CFR 110.9(c). See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002). The Commission is adding paragraph (b)(3) to the rule in order to clarify that this limit is subject to increase. The Commission is changing the citation to 11 CFR 110.17(c), as proposed in the NPRM, to a citation to 11 CFR 110.17, to make it consistent with the reference to section 110.17 in paragraph (a)(2) described above.

Paragraph (b)(4) provides that any coordinated party expenditure under paragraph (b) of this section shall be in addition to any contribution by a political party committee to the candidate permissible under 11 CFR 110.1 or 110.2. Paragraph (b)(4) of 11 CFR 109.32 is the successor to former 11 CFR 110.7(b)(3), and is unchanged apart from the clarification noted above and a clarification that the contributions referenced are those made by a political party committee.

The Commission received two comments on this section, one which supported the rule proposed in the NPRM and another which stated the commenter's agreement with the statement of the coordinated party expenditure limits set forth in 2 U.S.C. 441a(d).

11 CFR 109.33 May a Political Party Committee Assign Its Coordinated Party Expenditure Authority to Another Political Party Committee?

Section 109.33 restates and clarifies the pre-BCRA rule permitting assignment of coordinated party expenditure authority between political party committees. Section 109.33 replaces the authorizing provisions found in the pre-BCRA regulations at 11 CFR 110.7(a)(4) and (c); further changes to section 110.7 are addressed below.

In light of the new statutory restrictions on coordination and independent expenditures in BCRA, such assignments of coordinated party expenditure authority are prohibited under certain circumstances in which the assigning political party committee has made coordinated party expenditures (using part of the spending authority) and the intended assignee political party committee has made or intends to make independent expenditures with respect to the same candidate during an election cycle. See 2 U.S.C. 441a(d)(4)(C) and 11 CFR 109.35(c). Therefore, paragraph (a) of section 109.33 begins with a cross-reference to 11 CFR 109.35(c), which implements the statutory restrictions on assignments and transfers.

Paragraph (a) of section 109.33 restates the Commission's longstanding policy that a political party committee with authority to make coordinated party expenditures may assign all or part of that authority to other political party committees, and that this interpretation extends to both national and State committees of political parties. See Campaign Guide for Political Party Committees at p.16 (1996). Paragraph (a) of section 109.33 provides that coordinated party expenditure authority may be assigned only to other political party committees. See 2 U.S.C. 441a(d). Pre-BCRA 11 CFR 110.7(a)(4) indicated that coordinated expenditures may be made "through any *designated agent*, including State and subordinate party committees." [Emphasis added.] This limitation of assignment to other political party committees precludes possible circumvention of the new restrictions on transfers and assignments between political party committees found in BCRA. 2 U.S.C. 441a(d)(4)(B), (C). It is the Commission's understanding that, historically, political party committees have not assigned coordinated spending authority to entities that are not party committees, and thus this prophylactic measure should not adversely affect party committees.

Paragraph (a) provides that whenever a political party committee authorized to make coordinated party expenditures assigns another political party committee to use part or all of its spending authority, the assignment must be in writing, must specify a dollar amount, and must be made before the party committee receiving the assignment actually makes the coordinated party expenditure. In this respect, the rule codifies longstanding Commission interpretation. See Campaign Guide for Political Party Committees at p.16 (1996). This provision applies to both national and State party committees wishing to assign their 2 U.S.C. 441a(d) authority.

Paragraph (b) of section 109.33 is the successor to pre-BCRA 11 CFR 110.7(c). It provides that, for purposes of the coordinated spending limits, a State committee includes subordinate committees of the State committee. Unlike its predecessor, pre-BCRA section 110.7(c), paragraph (b) of section 109.33 covers district and local political party committees (see 11 CFR 100.14(b)) to the extent that a State committee assigns to them its coordinated spending authority, given that these district or local committees may not qualify as "subordinate State committees."

Paragraphs (b)(1) and (2) of section 109.33 restate with only minor non-substantive revision the pre-BCRA rule in 11 CFR 110.7(c)(1) and (2) setting out the State committees' methods of administering the coordinated party expenditure authority.

Paragraph (c) of section 109.33 sets forth recordkeeping requirements. This new paragraph (c) provides that a political party committee that assigns its authority to make coordinated party expenditures under this section, or that receives an assignment of coordinated expenditure authority, must maintain the written assignment for at least three years in accordance with 11 CFR 104.14. This three-year requirement is consistent with other recordkeeping requirements in the Act and in the Commission's regulations. See 2 U.S.C. 432(d); 11 CFR 102.9(c).

Although the Commission did not include this precise recordkeeping requirement in proposed section 109.33 in the NPRM, it sought comment more generally on whether to require political party committees to attach copies of written assignments to reports they file with the Commission, or to fax or e-mail them if they are electronic filers. The comments received regarding section 109.33, as described below, did not address the reporting issue.

The Commission has decided to require recordkeeping rather than reporting in section 109.33. Recordkeeping is less burdensome for political party committees and should provide sufficient documentation of assignments of coordinated party expenditure authority should questions subsequently arise. Indeed, the required maintenance of such documentation may serve a political party committee's own interest. See MUR 5246.

The Commission received two comments on this section as proposed in the NPRM. The commenters, while supporting the rule proposed in the NPRM, asserted that it should be made clear that nothing in the rule supersedes the prohibition on political party committees making both coordinated and independent expenditures with respect to a candidate after nomination. See 2 U.S.C. 441a(d)(4)(A); 11 CFR 109.35(b). The Commission does not intend for section 109.33 to supersede that prohibition, which is in the final rules at section 109.35(b). The Commission believes that section

109.35(b), in its final rule formulation, and section 109.35(c) referenced within section 109.33, serve to maintain the prohibition against circumvention through assignments of coordination party expenditure authority under section 109.33.

Finally, the Commission is making a non-substantive change from the NPRM in the title of section 109.33 in the final rule. The Commission is changing the word "limit" to "authority" in order to match the text of the rule. The only other changes to the NPRM aside from the addition of paragraph (c) are non-substantive changes to paragraphs (a) and (b).

11 CFR 109.34 When May a Political Party Committee Make Coordinated Party Expenditures?

Section 109.34 restates without substantive revision the pre-BCRA rule in 11 CFR 110.7(d) permitting a political party committee to make coordinated party expenditures in connection with the general election campaign before or after its candidate has been nominated. All pre-nomination coordinated expenditures continue to be subject to the coordinated party expenditure limitations, whether or not the candidate on whose behalf they are made receives the party's nomination. The Commission received one comment on this section, which supported the proposed rule.

11 CFR 109.35 What Are the Restrictions on a Political Party Committee Making Both Independent Expenditures and Coordinated Party Expenditures in Connection With the General Election of a Candidate?

In BCRA, Congress prohibits political party committees, under certain conditions, from making both coordinated party expenditures and independent expenditures with respect to the same candidate, and from making transfers and assignments to other political party committees. 2 U.S.C. 441a(d)(4). A critical threshold issue is identifying the political party committees to which these prohibitions apply. Congress provided that for the purposes of these new prohibitions, "all political committees established and maintained by a national political party (including all Congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee." 2 U.S.C. 441a(d)(4)(B). Congress plainly intended to combine certain political party committees into a collective entity or entities for purposes of these prohibitions. 2 U.S.C. 441a(d)(4)(B).

1. 11 CFR 109.35(a) Applicability

In the NPRM, the Commission proposed a rule that divided a political party into a national group of political committees and various State and local groups of political committees for the purposes of implementing the BCRA provisions governing independent and coordinated expenditures by a political party. See 2 U.S.C. 441a(d)(4). The NPRM acknowledged the legislative history supporting a "single committee" interpretation that combined the national, State and local party committees, but proposed the "dual groups" interpretation in order to give the fullest possible effect to the transfer and assignment provision of the same statute. 67 FR at 60,054 (September 24, 2002). Under the transfer and assignment provision, a "committee of a political party" that makes coordinated party expenditures under 2 U.S.C. 441a(d) in connection with the general election campaign of a candidate must not, during that election cycle, transfer any funds to, assign authority to make coordinated party expenditures to, or receive a transfer from, "a committee of the political party" that has made or intends to make an independent expenditure with respect to that candidate. 2 U.S.C. 441a(d)(4)(C). The NPRM questioned whether, without more than one group or aggregation of political party committees, transfers or assignments between political party committees could occur as contemplated in section 441a(d)(4)(C).

Several commenters, including BCRA's principal sponsors, urged that the Commission adopt the "single committee" approach, asserting that it followed from the statutory language as well as the legislative history.

One commenter criticized the "single committee" approach as contrary to *Colorado I*, asserting that this Supreme Court decision permitted political party committees to make both coordinated and independent expenditures.

Several witnesses testifying at the hearing argued that treating all party committees as a single entity is impractical because party committees at the national or State level do not control party committees at lower levels in their organizations. These commenters complained that a local party committee under the "single committee" approach, by making an independent expenditure with respect to a candidate, could preclude the State or national party committee from making coordinated party expenditures with respect to that candidate.

No comments were received that supported the NPRM's "dual groups" approach, although two witnesses testified at the hearing that the dual approach would be preferable to the "single committee" approach (one of these commenters, however, also testified that the BCRA sponsors intended the "single committee" approach).

Commenters favoring the "single committee" approach suggested examples of how the transfer and assignment provision could be given meaningful effect. One commenter proposed that the transfer and assignment provision may apply prior to nomination, unlike the prohibition on making both coordinated and independent expenditures with respect to a candidate, which applies only after nomination. Two commenters suggested that the transfer and assignment provision could be read to prohibit a national party from making coordinated party expenditures with respect to a candidate prior to nomination and then transferring funds to a State party committee that would then try to make supposedly independent expenditures with respect to that candidate.

In the final rules, paragraph (a) of 11 CFR 109.35 generally tracks the statutory language in 2 U.S.C. 441a(d)(4)(B).

2. 11 CFR 109.35(b) Restrictions on Certain Coordinated and Independent Expenditures

Congress provided in BCRA that on or after the date on which a political party nominates a candidate, no "committee of the political party" may make: (1) Any coordinated expenditure under 2 U.S.C. 441a(d) with respect to the candidate during the election cycle at any time after it makes any independent expenditure with respect to the candidate during the election cycle; or (2) any independent expenditure with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under 2 U.S.C. 441a(d) with respect to the candidate during the election cycle. 2 U.S.C. 441a(d)(4)(A).

Section 109.35(b) generally tracks the statute.

As noted above, the result that any political party committee within the "single committee" could bind all the political party committees within the "single committee" was criticized by several commenters at the hearing. These commenters asserted that this result would preclude a national or State committee of a political party from making a coordinated party expenditure with respect to a nominee if a local

party committee first made an independent expenditure with respect to that same nominee, even of small size and without the State or national committee's prior knowledge or consent. The Commission notes the commenters' concerns, but points out that just that result is the apparent aim of the statute. 2 U.S.C. 441a(d)(4)(A).

3. 11 CFR 109.35(c) Restrictions on Certain Transfers and Assignments

Congress provided in BCRA that a "committee of a political party" that makes coordinated party expenditures with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated party expenditures under 2 U.S.C. 441a(d) to, or receive a transfer of funds from, a "committee of the political party" that has made or intends to make an independent expenditure with respect to the candidate. 2 U.S.C. 441a(d)(4)(C).

In the final rules, paragraph (c) of 11 CFR 109.35 generally tracks the statutory language in 2 U.S.C. 441a(d)(4)(C).

Finally, the Commission noted in the NPRM that it was not proposing specific rules to implement the statutory language in the transfer and assignment provision that a political party committee "intends to make" an independent expenditure with respect to a candidate. 2 U.S.C. 441a(d)(4)(C). The Commission received no comments on this issue and incorporates no specific language into section 109.35.

4. Impact of Political Party Committee Activity Carried Out Pursuant to Contribution Limits and Coordinated Party Expenditure Authority

2 U.S.C. 441a(d)(4) applies to coordinated party expenditures and to political party committee independent expenditures. Congress did not directly address political party committees' monetary and in-kind contributions to candidates that are subject to the contribution limits under 2 U.S.C. 441a(a) and 441a(h). See 2 U.S.C. 441a(d)(1) ("*Notwithstanding any other provision of law with respect to * * * limitations on contributions,* [political party committees] may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained [in this subsection]" [emphasis added]); 2 U.S.C. 441a(d)(4)(A) (addresses coordinated party expenditures made under section 441a(d) and does not directly address contributions). See also 11 CFR 109.30, 109.32.

Political party committees may make in-kind contributions to a candidate in the form of coordinated activity. See 2 U.S.C. 441a(a)(7)(B)(i) and 11 CFR 109.20, discussed above. The Commission notes that such coordination between a political party committee and a candidate may compromise the actual independence of any simultaneous or subsequent independent expenditures the political party committee may attempt with respect to that candidate. Similarly, coordinated party expenditures made by a political party committee with respect to a candidate prior to nomination, see 11 CFR 109.34, may be considered evidence that could compromise the actual independence of any simultaneous or subsequent independent expenditures the political party committee may attempt with respect to that candidate. See 11 CFR 109.35; *Buckley* v. *Valeo*, 424 U.S. at 47 (in striking down limits on independent expenditures, the Court described such expenditures as made "*totally* independently of the candidate and his campaign" [emphasis added]).

Finally, the title of section 109.35 in this Explanation and Justification has been altered from the NPRM to match the title in the rule.

11 CFR 109.36 Are There Additional Circumstances Under Which a Political Party Committee Is Prohibited From Making Independent Expenditures?

Prior to the enactment of BCRA, the Commission's rules prohibited a national committee of a political party from making independent expenditures in connection with the general election campaign of a candidate for President. See former 11 CFR 110.7(a)(5). In the NPRM, the proposed rule at 11 CFR 109.36 would have largely deleted this prohibition. The NPRM limited the remaining application of the prohibition to certain circumstances in which the national committee of a political party serves as the principal campaign committee or authorized committee of its Presidential candidate, as permitted under 2 U.S.C. 432(e)(3)(A)(i) and 441a(d)(2). See 11 CFR 102.12(c)(1) and 9002.1(c). Such a prohibition is consistent with 11 CFR 100.16(b) (redesignated from former section 109.1(e)) providing that no expenditure by an authorized committee of a candidate on behalf of that candidate shall qualify as an independent expenditure.

The Commission received several comments on this section, each of which urged the Commission to retain the prohibition at former 11 CFR 110.7(a)(5) regarding national party committee independent expenditures with respect to Presidential nominees. One commenter asserted that neither *Colorado I* nor BCRA require the deletion of the prohibition, and that in light of the significance of this issue, Congress would have expressly addressed it if Congress desired a change in the current regulation. The commenter noted that such a change in the rule is based upon a misinterpretation of BCRA, which should not be read as affirmatively authorizing political party committees to engage in any particular activity. Another commenter claimed that to allow in a broad fashion national party committees to make independent expenditures on behalf of their Presidential candidates is to invite abuse. The commenter stated that Presidential candidates and their parties are so inextricably intertwined as to preclude any meaningful possibility that one can operate "independently" of the other, and that the degree of coordination that exists between a national party committee and its Presidential candidate typically far exceeds even the level of coordination between a party committee and its congressional candidates.

The Commission acknowledges the concerns expressed in the comments but for the following reasons is including 11 CFR 109.36 in the final rules. First, the Commission does not believe it appropriate to retain in its rules a conclusive presumption of coordination after *Colorado I*. Even though *Colorado I* expressly involved only Congressional races, and arguably the likelihood of coordination may be greater between a national party committee and its Presidential nominee, the rule at section 109.36 is consistent with the Supreme Court's decision.

Second, the Commission concludes that Congress in BCRA effectively repealed the prohibition at 11 CFR 110.7(a)(5). See 2 U.S.C. 441a(d)(4). Under a new statutory provision, Congress prohibits political party committees from making both post-nomination independent expenditures and post-nomination coordinated expenditures in support of a candidate. See 2 U.S.C. 441a(d)(4)(A). A national party committee could thus make independent expenditures with respect to a candidate after nomination, if not prohibited under section 441a(d)(4)(A). See 11 CFR 109.35(a). Because this provision appears to apply equally to party committee expenditures on behalf of either Presidential or Congressional candidates, a national party committee may be able to make independent expenditures with respect to a

Presidential candidate under certain circumstances. Thus, while Congress did not specifically require the deletion of the prohibition at former 11 CFR 110.7(a)(5), the Commission has concluded that a provision within BCRA is consistent with that result. To the extent that BCRA, and *Colorado I* as discussed above, do not require the Commission to promulgate the rule at section 109.36, the Commission nonetheless exercises its discretion to do so as a permissible interpretation of BCRA and *Colorado I*.

Finally, the Commission notes that if coordination occurs between a national party committee and its Presidential nominee, it would negate the actual independence of independent expenditures the national party committee attempted with respect to that candidate. See *Buckley* v. *Valeo*, 424 U.S. at 47 (in striking down limits on independent expenditures, the Court described such expenditures as made "totally independently of the candidate and his campaign" [emphasis added]). The Commission recognizes that the ability of a national party committee to make such independent expenditures may be unlikely in practice, but the Commission's rules must allow for such a possibility, and as noted above, must reject a conclusive presumption that such expenditures are always coordinated.

Finally, section 109.36 contains one non-substantive change from the NPRM, and the title of section 109.36 in this Explanation and Justification has been slightly altered from the NPRM to match the title in the rule.

11 CFR 109.37 What Is a "Party Coordinated Communication"?

In BCRA, Congress required the Commission to promulgate new regulations on "coordinated communications" that are paid for by persons other than candidates, authorized committees of candidates, and party committees. Public Law 107–155, sec. 214(b), (c); see 11 CFR 109.21 above. Although Congress did not specifically direct the Commission to address coordinated communications paid for by political party committees, the Commission is doing so to give clear guidance to those affected by BCRA.

The Commission in the NPRM proposed a rule which would have been at 11 CFR 109.37, political party coordinated communications, using the same content and conduct standards as proposed in section 109.21 for coordinated communications by other persons.

The Commission received a number of comments on this proposal. The comments fall into two general categories. One group of commenters urged the Commission to defer this party coordinated communication rulemaking, arguing (1) that it is not strictly required by BCRA, (2) that the Commission should be focusing its resources at this time on the rulemaking most directly required by BCRA, and (3) that the comment period was a difficult time for the political parties to focus on the rulemaking because it was shortly before the 2002 general election. These commenters also asserted that party coordinated communications is a complicated subject area, citing the many questions posed in the NPRM in their claim that the Commission should defer this rulemaking.

On the substance of the proposed rule, this group of commenters testified at the hearing that the proposed content and conduct standards were both overbroad. (See the discussion above regarding 11 CFR 109.21). These commenters noted that any coordination standard for political party committees must allow for the regular contacts between a political party committee and its candidates. Another commenter raised an equal protection argument, asserting that a regulation that on its face appears to treat political party committees the same as other persons may as a practical matter have an unequal impact on the political parties.

The other group of commenters relied on the relationship between a political party committee and its candidates for the assertion that the Commission should promulgate a party coordinated communication rule using a rebuttable presumption that the communications are coordinated with candidates. These commenters stated that this presumption could be rebutted by a showing of actual independence. One commenter believed that the Commission's rule should describe ways in which a political party committee could establish its independence from a candidate. Another commenter noted that *Colorado I*, which struck down a conclusive presumption of coordination, does not prevent the use of a rebuttable presumption, and that such a rule is necessary to ensure that political party committee independent expenditures are in fact "totally independent" from candidates as required by the Supreme Court in *Buckley*.

While the Commission recognizes that Congress in BCRA did not specifically direct the Commission to address coordinated communications paid for by political party committees, the Commission is doing so to give clear guidance to those affected by BCRA. Congress determined to regulate political party committees' independent expenditures and coordinated party expenditures, and thus it is appropriate and useful for the Commission to promulgate rules at this time detailing standards for party coordinated communications. See 2 U.S.C. 441a(d)(4) and 11 CFR 109.35, discussed above.

The Commission is promulgating final rules similar to those in proposed section 109.37, generally applying the same regulatory analysis to communications paid for by the political party committees that is applied to communications paid for by other persons. See 11 CFR 109.21(a) through (f). This analysis determines when communications paid for by a political party committee are considered to be coordinated with a candidate, a candidate's authorized committee, or their agents.

Following 11 CFR 109.21(a), section 109.37(a) defines the circumstances in which communications paid for by political party committees are considered to be coordinated with a candidate, a candidate's authorized committee, or agents of any of the foregoing. Under 11 CFR 109.37(a)(1) through (3), such communications are deemed to be "party coordinated communications" when they were paid for by a political party committee or its agent, satisfy at least one of the content standards in section 109.37(a)(2)(i) through (iii), and satisfy at least one of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR 109.21(e) and other conditions.

The party coordinated communication content standards in section 109.37(a)(2)(i) through (iii) are adopted from 11 CFR 109.21(c)(2) through (c)(4). The first content standard, at paragraph (a)(2)(i) of section 109.37, is a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing, unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b). The Commission also provides in this content standard that for a communication that satisfies this standard, see the conduct standard in 11 CFR 109.21(d)(6), under which the communication is evaluated. See the discussion above of 11 CFR 109.21(c)(2). This content standard at 11 CFR 109.37(a)(2)(i) for party coordinated communications is the same as the standard set forth for coordinated

communications by other persons in 11 CFR 109.21(c)(2).

The second content standard, at paragraph (a)(2)(ii) of section 109.37, is a public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office. This content standard for party coordinated communications is identical to the standard set forth for coordinated communications by other persons in 11 CFR 109.21(c)(3).

The third content standard, at paragraph (a)(2)(iii) of section 109.37, is a public communication that (1) refers to a clearly identified candidate for Federal office; (2) is publicly distributed or otherwise publicly disseminated 120 days or fewer before a general, special, or runoff election, or 120 days or fewer before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate; and (3) is directed to voters in the jurisdiction of the clearly identified candidate. 11 CFR 109.37(a)(2)(iii)(A)–(C). See the discussion above of 11 CFR 109.21(c)(4). This content standard at section 109.37(a)(2)(iii) is based on the content standard at section 109.21(c)(4) but limits its coverage to communications that refer to a clearly identified candidate for Federal office.

Finally, the Commission notes that the content standard at 11 CFR 109.21(c)(1), coordinated electioneering communications, is not applied to party coordinated communications because electioneering communications, as defined, exclude communications which constitute expenditures under the Act, which includes political party committee expenditures. See 2 U.S.C. 434(f)(3)(B)(ii); 11 CFR 100.29(c)(3).

For the conduct standards for party coordinated communications, in paragraph (a)(3) of section 109.37, the Commission refers to the conduct standards set forth in 11 CFR 109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR 109.21(e) and other conditions. As in 11 CFR 109.21(d), agreement or formal collaboration is not necessary for a finding that a communication is coordinated. See the discussion above of 11 CFR 109.21(d) and (e). Further, paragraph (a)(3) of section 109.37 provides that a candidate's response to an inquiry about that candidate's positions on legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs, does not satisfy any of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6). This safe harbor parallels the safe harbor at 11 CFR 109.21(f). See the discussion above of 11 CFR 109.21(f).

The Commission also addresses in paragraph (a)(3) of section 109.37 circumstances in which the in-kind contribution results solely from conduct in 11 CFR 109.21(d)(4) or (d)(5). Under these circumstances, the candidate does not receive or accept an in-kind contribution and is not required to report an expenditure. See the discussion above regarding 11 CFR 109.21(b)(2).

Paragraph (b) of section 109.37 explains the treatment of party coordinated communications. This paragraph provides that political party committees must treat payments for communications coordinated with candidates as either in-kind contributions or coordinated party expenditures.

The Commission excepts from 11 CFR 109.37(b) such payments that are otherwise excepted from the definitions of "contribution" and "expenditure" found at 11 CFR part 100 subparts C and E. For example, the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not a contribution or an expenditure. 11 CFR 100.80 and 100.140. Thus, if such communications were coordinated with candidates, the payments for such communications would not be treated as either in-kind contributions or as coordinated party expenditures.

For such a payment that a political party committee treats as an in-kind contribution, paragraph (b)(1) of section 109.37 states that it is made for the purpose of influencing a Federal election. See the discussion above regarding 11 CFR 109.21(b).

For such a payment that a political party committee treats as a coordinated party expenditure, paragraph (b)(2) of section 109.37 states that such expenditure is made pursuant to coordinated party expenditure authority under 11 CFR 109.32 in connection with the general election campaign of the candidate with whom it was coordinated.

Finally, paragraphs (b)(1) and (b)(2) of section 109.37 each refer to the reporting obligations flowing from party coordinated communications under 11 CFR part 104.

11 CFR 110.1 Contributions by Persons Other Than Multicandidate Political Committees

The Commission clarifies that the section 110.1 limitations on contributions to political committees making independent expenditures apply to contributions made by persons other than multicandidate committees to political party committees that make independent expenditures. See 11 CFR 110.1(n). Paragraph 110.1(n) replaces pre-BCRA paragraph (d)(2) of section 110.1 regarding the application of the contribution limits to contributions to committees that make independent expenditures.

This section is being updated because under pre-BCRA paragraph (d)(2) of section 110.1, the Commission recognized that political committees other than party committees may make independent expenditures, but did not contemplate party committees doing so. See *Colorado I*, 518 U.S. at 618. For example, national party committees may receive contributions aggregating $20,000 per year from individuals, a contribution limit that Congress increased to $25,000 for contributions made on or after January 1, 2003. See 2 U.S.C. 441a(a)(1)(B). Consequently, under BCRA, the $20,000 ($25,000) contribution limit continues to apply when the recipient national party committee uses the contribution to make independent expenditures. The Commission notes that 11 CFR 110.1(h) regarding contributions to political committees supporting the same candidate, remains unchanged except to state that the support to candidates by political party committees may include independent expenditures. The Commission received no comments on this section.

Additional changes to 11 CFR 110.1 are addressed in a separate rulemaking on BCRA's increased contribution limits. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002).

11 CFR 110.2 Contributions by Multicandidate Political Committees

The Commission clarifies that the section 110.2 limitations on contributions to political committees making independent expenditures apply to contributions made by multicandidate committees to political party committees that make independent expenditures. See 11 CFR 110.2(k). Paragraph 110.2(k) replaces pre-BCRA paragraph (d)(2) of section 110.2 regarding the application of the contribution limits to contributions to

committees that make independent expenditures.

This section is being updated for the reasons set forth above in the discussion regarding 11 CFR 110.1. The Commission received no comments on this section.

Additional changes to 11 CFR 110.2 were addressed in a separate rulemaking on BCRA's increased contribution limits. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002).

11 CFR 110.7 Removed and Reserved

The pre-BCRA regulations at 11 CFR 110.7 contained the coordinated party expenditure limits and related provisions. As explained above, the Commission is moving section 110.7, in amended form, to 11 CFR part 109, subpart D. Specifically, the provisions in section 110.7 are revised and redesignated as follows: 11 CFR 110.7(a) and (b) to 11 CFR 109.32(a) and (b) and 109.36; 11 CFR 110.7(c) to 11 CFR 109.33; and 11 CFR 110.7(d) to 11 CFR 109.34.

11 CFR 110.8 Presidential Candidate Expenditure Limitations

As in 11 CFR 109.32(a) and (b) discussed above, the Commission clarifies that the expenditure limits for publicly funded Presidential candidates are increased in accordance with 11 CFR 110.17. See 11 CFR 110.8(a)(2). To accommodate this new section 110.8(a)(2), the Commission is re-designating pre-BCRA paragraphs (a)(1) and (a)(2) as (a)(1)(i) and (a)(1)(ii), respectively.

In 11 CFR 110.8(a)(3), the Commission references the definition of "voting age population" at 11 CFR 110.18. The voting age population is a factor in the calculation of expenditure limitations in 11 CFR 110.8(a). No commenters addressed this section.

The Commission also made additional changes to 11 CFR 110.9(c) in a separate rulemaking, including moving it to 11 CFR 110.17. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002).

11 CFR 110.14 Contributions to and Expenditures by Delegates and Delegate Committees

In light of the Congressional repeal of former 11 CFR 100.23, the removal of the separate definition of "independent expenditure" under 11 CFR 109.1, and the removal of 11 CFR 109.2, see Final Rules and Explanation and Justification for Bipartisan Campaign Reform Act of 2002 Reporting, published elsewhere in this issue of the **Federal Register**, the Commission is making several necessary technical revisions to 11 CFR 110.14. These technical revisions were not originally proposed in the NPRM. Within 11 CFR 110.14, the Commission is replacing all references to a "coordinated general public political communication under 11 CFR 100.23" with references to "coordinated communication under 11 CFR 109.21." In addition, the Commission is replacing all citations to former 11 CFR 109.2 with citations to 11 CFR 109.10. Finally, the Commission is replacing all references to independent expenditures under 11 CFR part 109 with references to independent expenditures under 11 CFR 100.16 to reflect the removal of the definition of "independent expenditure" in former 11 CFR 109.1.

11 CFR 110.18 Voting Age Population

The Commission is moving pre-BCRA section 110.9(d) regarding voting age population ("VAP") to 11 CFR 110.18 as part of a reorganization of section 110.9. This provision is referenced in sections 109.32(a) and (b) (coordinated party expenditure limits) and 110.8(a)(3) (Presidential candidate expenditure limits) where the VAP is used as a factor in calculating the limits. Section 110.18 is revised from pre-BCRA section 110.9(d) to clarify that the Secretary of Commerce each year certifies to the Commission and publishes in the **Federal Register** an estimate of the VAP pursuant to 2 U.S.C. 441a(e). No comments addressed this provision.

Changes to the other provisions of section 110.9, including paragraph (c) of this section, are addressed in a separate rulemaking. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002).

11 CFR 114.4 Disbursements for Communications Beyond the Restricted Class in Connection With a Federal Election

Paragraph (c)(5) of section 114.4 pertains to voter guides paid for by corporations and labor organizations. The Commission makes several changes to this paragraph to conform with other regulatory changes in response to BCRA.

The pre-BCRA version of paragraphs (c)(5)(i) and (ii) of section 114.4 provided that a corporation or labor organization must not, among other things, "contact" a candidate in the preparation of a voter guide, except in writing. In this rulemaking, the Commission is promulgating a safe harbor in the coordination rules that allows a person, such as a corporation or labor union, to contact a candidate to inquire about the candidate's positions on legislative or policy issues without a subsequent communication paid for by that person being deemed coordinated with the candidate (assuming there are no other actions resulting in coordination). See 11 CFR 109.21(f) and the above discussion relating to this provision.

Accordingly, paragraph (c)(5)(i) of section 114.4 is being amended to delete the prohibition against any contact with a candidate in the preparation of a voter guide.

Paragraph (c)(5)(ii) of section 114.4 is being amended to delete the requirement that contact with the candidate be in writing.

The Commission is also making several non-substantive changes to paragraphs (c)(5)(i) and (ii) of section 114.4 to conform these provisions to the statutory provisions on which they are based. Compare 2 U.S.C. 441a(a)(7)(B) with 11 CFR 114.5(c)(5)(i) and (ii).

The Commission received three comments on this section, all of which urged the Commission to include an exception to the coordination standard at 11 CFR 109.21 for inquiries to candidates in connection with voter guides. The Commission is including the described safe harbor at 11 CFR 109.21(f) to address this concern.

The Commission notes that an appeals court in one circuit invalidated portions of pre-BCRA 11 CFR 114.4(c)(5). See *Clifton* v. *Federal Election Commission*, 927 F. Supp. 493 (D. Me. 1996), *modified in part and remanded in part*, 114 F.3d 1309 (1st Cir. 1997), *cert. denied*, 522 U.S. 1108 (1998). Subsequently a Petition for Rulemaking asked the Commission to repeal its voter guide regulation. See Notice of Availability, 64 FR 46,319 (Aug. 25, 1999). The Commission's present rulemaking consists of changes necessitated by BCRA, although any additional changes to the voter guide regulations could be addressed in a future rulemaking.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The Commission certifies that the attached rules will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the national, State, and local party committees of the two major political parties, and other political committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental

jurisdictions. Further, individual citizens operating under these rules are not small entities.

To the extent that any political committee may fall within the definition of "small entities," their numbers are not substantial, particularly the number that would coordinate expenditures with candidates or political party committees in connection with a Federal election.

In addition, the small entities to which the rules apply will not be unduly burdened by the proposed rules because there is no significant extra cost involved, as any new potential recordkeeping responsibilities would be minimal and optional. Any commercial vendors whose clients include campaign committees or political party committees were previously subject to different rules regarding coordination, and will not experience a significant economic impact as a result of the new rules because the requirements of these new rules are no more than what is necessary to comply with the new statute enacted by Congress.

Derivation Table

The following derivation table identifies the new sections in parts 100, 109, and 110 and the corresponding pre-BCRA rules that addressed those subject areas.

New section	Old section
100.16(b)	109.1(e).
109.1	New.
109.3	109.1(b)(5).
109.11	109.3.
109.20	109.1(c).
109.21	New.
109.22	New.
109.23	109.1(d).
109.30	New.
109.31	New—Reserved.
109.32(a)	110.7(a) (except para. (a)(4) and para. (a)(5)).
109.32(b)	110.7(b).
109.33	110.7(a)(4) and (c).
109.34	110.7(d).
109.35	New.
109.36	110.7(a)(5).
109.37	New.
110.1(n)	New.
110.2(k)	New.
110.8(a)(2)	New.
110.8(a)(3)	New.
110.18	110.9(d).

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 109

Elections, reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, political committees and parties.

11 CFR Part 114

Business and industry, elections, labor.

For the reasons set out in the preamble, subchapter A of chapter 1 of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS

1. The authority citation for part 100 is revised to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. Section 100.16 is revised to read as follows:

§ 100.16 Independent expenditure (2 U.S.C. 431(17)).

(a) The term *independent expenditure* means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents. A communication is "made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents" if it is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.

(b) No expenditure by an authorized committee of a candidate on behalf of that candidate shall qualify as an independent expenditure.

(c) No expenditure shall be considered independent if the person making the expenditure allows a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents to become materially involved in decisions regarding the communication as described in 11 CFR 109.21(d)(2), or shares financial responsibility for the costs of production or dissemination with any such person.

§ 100.23 [Reserved.]

3. Remove and reserve § 100.23.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

4. The authority citation for Part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), and 441d.

5. Section 102.6(a)(1)(ii) is revised to read as follows:

§ 102.6 Transfers of funds; collecting agents.

(a) * * *

(1) * * *

(ii) Subject to the restrictions set forth at 11 CFR 109.35(c), 300.10(a), 300.31 and 300.34(a) and (b), transfers of funds may be made without limit on amount between or among a national party committee, a State party committee and/or any subordinate party committee whether or not they are political committees under 11 CFR 100.5 and whether or not such committees are affiliated.

* * * * *

6. Part 109 is revised to read as follows:

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a(a) and (d), and Pub. L. 107–155 sec. 214(c))

Sec.

Subpart A—Scope and Definitions

109.1 When will this part apply?
109.2 [Reserved]
109.3 Definitions.

Subpart B—Independent Expenditures

109.10 How do political committees and other persons report independent expenditures?
109.11 When is a "non-authorization notice" (disclaimer) required?

Subpart C—Coordination

109.20 What does "coordinated" mean?
109.21 What is a "coordinated communication"?
109.22 Who is prohibited from making coordinated communications?
109.23 Dissemination, distribution, or republication of candidate campaign materials.

Subpart D—Special Provisions for Political Party Committees

109.30 How are political party committees treated for purposes of coordinated and independent expenditures?
109.31 [Reserved]
109.32 What are the coordinated party expenditure limits?
109.33 May a political party committee assign its coordinated party expenditure authority to another political party committee?

109.34 When may a political party committee make coordinated party expenditures?
109.35 What are the restrictions on a political party making both independent expenditures and coordinated party expenditures in connection with the general election of a candidate?
109.36 Are there additional circumstances under which a political party committee is prohibited from making independent expenditures?
109.37 What is a "party coordinated communication"?

Authority: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441a, 441d; Sec. 214(c) of Pub. L. 107–155, 116 Stat. 81.

Subpart A—Scope and Definitions

§ 109.1 When will this part apply?

This part applies to expenditures that are made independently from a candidate, an authorized committee, a political party committee, or their agents, and to those payments that are made in coordination with a candidate, an authorized committee, a political party committee, or their agents. The rules in this part explain how these types of payments must be reported and how they must be treated by candidates, authorized committees, and political party committees. In addition, subpart D of part 109 describes procedures and limits that apply only to payments, transfers, and assignments made by political party committees.

§ 109.2 [Reserved]

§ 109.3 Definitions.

For the purposes of 11 CFR part 109 only, agent means any person who has actual authority, either express or implied, to engage in any of the following activities on behalf of the specified persons:

(a) In the case of a national, State, district, or local committee of a political party, any one or more of the activities listed in paragraphs (a)(1) through (a)(5) of this section:

(1) To request or suggest that a communication be created, produced, or distributed.

(2) To make or authorize a communication that meets one or more of the content standards set forth in 11 CFR 109.21(c).

(3) To create, produce, or distribute any communication at the request or suggestion of a candidate.

(4) To be materially involved in decisions regarding:

(i) The content of the communication;

(ii) The intended audience for the communication;

(iii) The means or mode of the communication;

(iv) The specific media outlet used for the communication;

(v) The timing or frequency of the communication; or,

(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(5) To make or direct a communication that is created, produced, or distributed with the use of material or information derived from a substantial discussion about the communication with a candidate.

(b) In the case of an individual who is a Federal candidate or an individual holding Federal office, any one or more of the activities listed in paragraphs (b)(1) through (b)(6) of this section:

(1) To request or suggest that a communication be created, produced, or distributed.

(2) To make or authorize a communication that meets one or more of the content standards set forth in 11 CFR 109.21(c).

(3) To request or suggest that any other person create, produce, or distribute any communication.

(4) To be materially involved in decisions regarding:

(i) The content of the communication;

(ii) The intended audience for the communication;

(iii) The means or mode of the communication;

(iv) The specific media outlet used for the communication;

(v) The timing or frequency of the communication;

(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(5) To provide material or information to assist another person in the creation, production, or distribution of any communication.

(6) To make or direct a communication that is created, produced, or distributed with the use of material or information derived from a substantial discussion about the communication with a different candidate.

Subpart B—Independent Expenditures

§ 109.10 How do political committees and other persons report independent expenditures?

(a) Political committees, including political party committees, must report independent expenditures under 11 CFR 104.4.

(b) Every person that is not a political committee and that makes independent expenditures aggregating in excess of $250 with respect to a given election in a calendar year shall file a verified statement or report on FEC Form 5 in accordance with 11 CFR 104.4(e) containing the information required by paragraph (e) of this section. Every person filing a report or statement under this section shall do so in accordance with the quarterly reporting schedule specified in 11 CFR 104.5(a)(1)(i) and (ii) and shall file a report or statement for any quarterly period during which any such independent expenditures that aggregate in excess of $250 are made and in any quarterly reporting period thereafter in which additional independent expenditures are made.

(c) Every person that is not a political committee and that makes independent expenditures aggregating $10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election, must report the independent expenditures on FEC Form 5, or by signed statement if the person is not otherwise required to file electronically under 11 CFR 104.18. (See 11 CFR 104.4(f) for aggregation.) The person making the independent expenditures aggregating $10,000 or more must ensure that the Commission receives the report or statement by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $10,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures. Each 48-hour report must contain the information required by paragraph (e)(1) of this section.

(d) Every person making, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of an election, independent expenditures aggregating $1,000 or more with respect to a given election must report those independent expenditures and ensure that the Commission receives the report or signed statement by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate $1,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures. (See 11 CFR 104.4(f) for aggregation.) Such report or statement shall contain the information required by paragraph (e) of this section.

(e) Content of verified reports and statements and verification of reports and statements.

(1) *Contents of verified reports and statement.* If a signed report or statement is submitted, the report or statement shall include:

(i) The reporting person's name, mailing address, occupation, and the name of his or her employer, if any;

(ii) The identification (name and mailing address) of the person to whom the expenditure was made;

(iii) The amount, date, and purpose of each expenditure;

(iv) A statement that indicates whether such expenditure was in support of, or in opposition to a candidate, together with the candidate's name and office sought;

(v) A verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents; and

(vi) The identification of each person who made a contribution in excess of $200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.

(2) *Verification of independent expenditure statements and reports.* Every person shall verify reports and statements of independent expenditures filed pursuant to the requirements of this section by one of the methods stated in paragraph (e)(2)(i) or (ii) of this section. Any report or statement verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(i) For reports or statements filed on paper (*e.g.*, by hand-delivery, U.S. Mail, or facsimile machine), the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by paragraph (e)(1)(v) of this section.

(ii) For reports or statements filed by electronic mail, the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by paragraph (e)(1)(v) of this section.

§ 109.11 When is a "non-authorization notice" (disclaimer) required?

Whenever any person makes an independent expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such person shall comply with the requirements of 11 CFR 110.11.

Subpart C—Coordination

§ 109.20 What does "coordinated" mean?

(a) *Coordinated* means made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents.

(b) Any expenditure that is coordinated within the meaning of paragraph (a) of this section, but that is not made for a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37, is either an in-kind contribution to, or a coordinated party expenditure with respect to, the candidate or political party committee with whom or with which it was coordinated and must be reported as an expenditure made by that candidate or political party committee, unless otherwise exempted under 11 CFR part 100, subparts C or E.

§ 109.21 What is a "coordinated communication"?

(a) *Definition.* A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication:

(1) Is paid for by a person other than that candidate, authorized committee, political party committee, or agent of any of the foregoing;

(2) Satisfies at least one of the content standards in paragraph (c) of this section; and

(3) Satisfies at least one of the conduct standards in paragraph (d) of this section.

(b) *Treatment as an in-kind contribution and expenditure; Reporting.*

(1) *General rule.* A payment for a coordinated communication is made for the purpose of influencing a Federal election, and is an in-kind contribution under 11 CFR 100.52(d) to the candidate, authorized committee, or political party committee with whom or which it is coordinated, unless excepted under 11 CFR part 100, subpart C, and must be reported as an expenditure made by that candidate, authorized committee, or political party committee under 11 CFR 104.13, unless excepted under 11 CFR part 100, subpart E.

(2) *In-kind contributions resulting from conduct described in paragraphs (d)(4) or (d)(5) of this section.* Notwithstanding paragraph (b)(1) of this section, the candidate, authorized committee, or political party committee with whom or which a communication is coordinated does not receive or accept an in-kind contribution, and is not required to report an expenditure, that results from conduct described in paragraphs (d)(4) or (d)(5) of this section, unless the candidate, authorized committee, or political party committee, or an agent of any of the foregoing, engages in conduct described in paragraphs (d)(1) through (d)(3) of this section.

(3) *Reporting of coordinated communications.* A political committee, other than a political party committee, that makes a coordinated communication must report the payment for the communication as a contribution made to the candidate or political party committee with whom or which it was coordinated and as an expenditure in accordance with 11 CFR 104.3(b)(1)(v). A candidate, authorized committee, or political party committee with whom or which a communication paid for by another person is coordinated must report the usual and normal value of the communication as an in-kind contribution in accordance with 11 CFR 104.13, meaning that it must report the amount of the payment as a receipt under 11 CFR 104.3(a) and as an expenditure under 11 CFR 104.3(b).

(c) *Content standards.* Each of the types of content described in paragraphs (c)(1) through (c)(4) satisfies the content standard of this section.

(1) A communication that is an electioneering communication under 11 CFR 100.29.

(2) A public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing, unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b). For a communication that satisfies this content standard, see paragraph (d)(6) of this section.

(3) A public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office.

(4) A communication that is a public communication, as defined in 11 CFR 100.26, and about which each of the following statements in paragraphs (c)(4)(i), (ii), and (iii) of this section are true.

(i) The communication refers to a political party or to a clearly identified candidate for Federal office;

(ii) The public communication is publicly distributed or otherwise publicly disseminated 120 days or fewer before a general, special, or runoff election, or 120 days or fewer before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate; and

(iii) The public communication is directed to voters in the jurisdiction of the clearly identified candidate or to voters in a jurisdiction in which one or more candidates of the political party appear on the ballot.

(d) *Conduct standards.* Any one of the following types of conduct satisfies the conduct standard of this section whether or not there is agreement or formal collaboration, as defined in paragraph (e) of this section:

(1) *Request or suggestion.*

(i) The communication is created, produced, or distributed at the request or suggestion of a candidate or an authorized committee, political party committee, or agent of any of the foregoing; or

(ii) The communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, political party committee, or agent of any of the foregoing, assents to the suggestion.

(2) *Material involvement.* A candidate, an authorized committee, a political party committee, or an agent of any of the foregoing, is materially involved in decisions regarding:

(i) The content of the communication;

(ii) The intended audience for the communication;

(iii) The means or mode of the communication;

(iv) The specific media outlet used for the communication;

(v) The timing or frequency of the communication; or

(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(3) *Substantial discussion.* The communication is created, produced, or distributed after one or more substantial discussions about the communication between the person paying for the communication, or the employees or agents of the person paying for the communication, and the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing. A discussion is substantial within the meaning of this paragraph if information about the candidate's or political party committee's campaign plans, projects, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication.

(4) *Common vendor.* All of the following statements in paragraphs (d)(4)(i) through (d)(4)(iii) of this section are true:

(i) The person paying for the communication, or an agent of such person, contracts with or employs a commercial vendor, as defined in 11 CFR 116.1(c), to create, produce, or distribute the communication;

(ii) That commercial vendor, including any owner, officer, or employee of the commercial vendor, has provided any of the following services to the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing, in the current election cycle:

(A) Development of media strategy, including the selection or purchasing of advertising slots;

(B) Selection of audiences;

(C) Polling;

(D) Fundraising;

(E) Developing the content of a public communication;

(F) Producing a public communication;

(G) Identifying voters or developing voter lists, mailing lists, or donor lists;

(H) Selecting personnel, contractors, or subcontractors; or

(I) Consulting or otherwise providing political or media advice; and

(iii) That commercial vendor uses or conveys to the person paying for the communication:

(A) Information about the clearly identified candidate's campaign plans, projects, activities, or needs, or his or her opponent's campaign plans, projects, activities, or needs, or a political party committee's campaign plans, projects, activities, or needs and that information is material to the creation, production, or distribution of the communication; or

(B) Information used previously by the commercial vendor in providing services to the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing, and that information is material to the creation, production, or distribution of the communication.

(5) *Former employee or independent contractor.* Both of the following statements in paragraph (d)(5)(i) and (d)(5)(ii) of this section are true:

(i) The communication is paid for by a person, or by the employer of a person, who was an employee or independent contractor of the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing, during the current election cycle; and

(ii) That former employee or independent contractor uses or conveys to the person paying for the communication:

(A) Information about the clearly identified candidate's campaign plans, projects, activities, or needs, or his or her opponent's campaign plans, projects, activities, or needs, or a political party committee's campaign plans, projects, activities, or needs, and that information is material to the creation, production, or distribution of the communication; or

(B) Information used by the former employee or independent contractor in providing services to the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing, and that information is material to the creation, production, or distribution of the communication.

(6) *Dissemination, distribution, or republication of campaign material.* A communication that satisfies the content standard of paragraph (c)(2) of this section or 11 CFR 109.37(a)(2)(i) shall only satisfy the conduct standards of paragraphs (d)(1) through (d)(3) of this section on the basis of conduct by the candidate, the candidate's authorized committee, or the agents of any of the foregoing, that occurs after the original preparation of the campaign materials that are disseminated, distributed, or republished. The conduct standards of paragraphs (d)(4) and (d)(5) of this section may also apply to such communications as provided in those paragraphs.

(e) *Agreement or formal collaboration.* Agreement or formal collaboration between the person paying for the communication and the candidate clearly identified in the communication, his or her authorized committee, his or her opponent, or the opponent's authorized committee, a political party committee, or an agent of any of the foregoing, is not required for a

communication to be a coordinated communication. *Agreement* means a mutual understanding or meeting of the minds on all or any part of the material aspects of the communication or its dissemination. *Formal collaboration* means planned, or systematically organized, work on the communication.

(f) *Safe harbor for responses to inquiries about legislative or policy issues.* A candidate's or a political party committee's response to an inquiry about that candidate's or political party committee's positions on legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs, does not satisfy any of the conduct standards in paragraph (d) of this section.

§ 109.22 Who is prohibited from making coordinated communications?

Any person who is otherwise prohibited from making contributions or expenditures under any part of the Act or Commission regulations is prohibited from paying for a coordinated communication.

§ 109.23 Dissemination, distribution, or republication of candidate campaign materials

(a) *General rule.* The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure. The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.

(b) *Exceptions.* The following uses of campaign materials do not constitute a contribution to the candidate who originally prepared the materials:

(1) The campaign material is disseminated, distributed, or republished by the candidate, the candidate's authorized committee, or an agent of either of the foregoing who prepared that material;

(2) The campaign material is incorporated into a communication that advocates the defeat of the candidate or party that prepared the material;

(3) The campaign material is disseminated, distributed, or republished in a news story, commentary, or editorial exempted under 11 CFR 100.73 or 11 CFR 100.132;

(4) The campaign material used consists of a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views; or

(5) A national political party committee or a State or subordinate political party committee pays for such dissemination, distribution, or republication of campaign materials using coordinated party expenditure authority under 11 CFR 109.32.

Subpart D—Special Provisions for Political Party Committees

§ 109.30 How are political party committees treated for purposes of coordinated and independent expenditures?

Political party committees may make independent expenditures subject to the provisions in this subpart. See 11 CFR 109.35 and 109.36. Political party committees may also make coordinated party expenditures in connection with the general election campaign of a candidate, subject to the limits and other provisions in this subpart. See 11 CFR 109.32 through 11 CFR 109.35.

§ 109.31 [Reserved]

§ 109.32 What are the coordinated party expenditure limits?

(a) *Coordinated party expenditures in Presidential elections.*

(1) The national committee of a political party may make coordinated party expenditures in connection with the general election campaign of any candidate for President of the United States affiliated with the party.

(2) The coordinated party expenditures shall not exceed an amount equal to two cents multiplied by the voting age population of the United States. See 11 CFR 110.18. This limitation shall be increased in accordance with 11 CFR 110.17.

(3) Any coordinated party expenditure under paragraph (a) of this section shall be in addition to—

(i) Any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for President of the United States; and

(ii) Any contribution by the national committee to the candidate permissible under 11 CFR 110.1 or 110.2.

(4) Any coordinated party expenditures made by the national committee of a political party pursuant to paragraph (a) of this section, or made by any other party committee under authority assigned by a national committee of a political party under 11 CFR 109.33, on behalf of that party's Presidential candidate shall not count against the candidate's expenditure limitations under 11 CFR 110.8.

(b) *Coordinated party expenditures in other Federal elections.*

(1) The national committee of a political party, and a State committee of a political party, including any subordinate committee of a State committee, may each make coordinated party expenditures in connection with the general election campaign of a candidate for Federal office in that State who is affiliated with the party.

(2) The coordinated party expenditures shall not exceed:

(i) In the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(A) Two cents multiplied by the voting age population of the State (see 11 CFR 110.18); or

(B) Twenty thousand dollars.

(ii) In the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

(3) The limitations in paragraph (b)(2) of this section shall be increased in accordance with 11 CFR 110.17.

(4) Any coordinated party expenditure under paragraph (b) of this section shall be in addition to any contribution by a political party committee to the candidate permissible under 11 CFR 110.1 or 110.2.

§ 109.33 May a political party committee assign its coordinated party expenditure authority to another political party committee?

(a) *Assignment.* Except as provided in 11 CFR 109.35(c), the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may assign its authority to make coordinated party expenditures authorized by 11 CFR 109.32 to another political party committee. Such an assignment must be made in writing, must state the amount of the authority assigned, and must be received by the assignee committee before any coordinated party expenditure is made pursuant to the assignment.

(b) *Compliance.* For purposes of the coordinated party expenditure limits, *State committee* includes a subordinate committee of a State committee and includes a district or local committee to which coordinated party expenditure authority has been assigned. State committees and subordinate State

committees and such district or local committees combined shall not exceed the coordinated party expenditure limits set forth in 11 CFR 109.32. The State committee shall administer the limitation in one of the following ways:

(1) The State committee shall be responsible for insuring that the coordinated party expenditures of the entire party organization are within the coordinated party expenditure limits, including receiving reports from any subordinate committee of a State committee or district or local committee making coordinated party expenditures under 11 CFR 109.32, and filing consolidated reports showing all coordinated party expenditures in the State with the Commission; or

(2) Any other method, submitted in advance and approved by the Commission, that permits control over coordinated party expenditures.

(c) *Recordkeeping.*

(1) A political party committee that assigns its authority to make coordinated party expenditures under this section must maintain the written assignment for at least three years in accordance with 11 CFR 104.14.

(2) A political party committee that is assigned authority to make coordinated party expenditures under this section must maintain the written assignment for at least three years in accordance with 11 CFR 104.14.

§ 109.34 When may a political party committee make coordinated party expenditures?

A political party committee authorized to make coordinated party expenditures may make such expenditures in connection with the general election campaign before or after its candidate has been nominated. All pre-nomination coordinated party expenditures shall be subject to the coordinated party expenditure limitations of this subpart, whether or not the candidate on whose behalf they are made receives the party's nomination.

§ 109.35 What are the restrictions on a political party committee making both independent expenditures and coordinated party expenditures in connection with the general election of a candidate?

(a) *Applicability.* For the purposes of this section, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

(b) *Restrictions on certain coordinated and independent expenditures.* On or after the date on which a political party nominates a candidate for election to Federal office, no committee of the political party may make:

(1) Any coordinated party expenditure under 11 CFR 109.32 with respect to the candidate during the election cycle at any time after it makes any independent expenditure with respect to the candidate during the election cycle; or

(2) Any independent expenditure with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under 11 CFR 109.32 with respect to the candidate during the election cycle.

(c) *Restrictions on certain transfers and assignments.* A committee of a political party that makes coordinated expenditures under 11 CFR 109.32 with respect to a candidate shall not, during the election cycle, transfer any funds to, assign authority to make coordinated expenditures under 11 CFR 109.32 to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.

§ 109.36 Are there additional circumstances under which a political party committee is prohibited from making independent expenditures?

The national committee of a political party must not make independent expenditures in connection with the general election campaign of a candidate for President of the United States if the national committee of that political party is designated as the authorized committee of its Presidential candidate pursuant to 11 CFR 9002.1(c).

§ 109.37 What is a "party coordinated communication"?

(a) *Definition.* A political party communication is coordinated with a candidate, a candidate's authorized committee, or agent of any of the foregoing, when the communication satisfies the conditions set forth in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) The communication is paid for by a political party committee or its agent.

(2) The communication satisfies at least one of the content standards described in paragraphs (a)(2)(i) through (a)(2)(iii) of this section.

(i) A public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing, unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b). For a communication that satisfies this content standard, see 11 CFR 109.21(d)(6).

(ii) A public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office.

(iii) A communication that is a public communication, as defined in 11 CFR 100.26, and about which each of the following statements in paragraphs (a)(2)(iii)(A) through (a)(2)(iii)(C) of this section are true.

(A) The communication refers to a clearly identified candidate for Federal office;

(B) The public communication is publicly distributed or otherwise publicly disseminated 120 days or fewer before a general, special, or runoff election, or 120 days or fewer before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate; and

(C) The public communication is directed to voters in the jurisdiction of the clearly identified candidate.

(3) The communication satisfies at least one of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR 109.21(e). A candidate's response to an inquiry about that candidate's positions on legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs, does not satisfy any of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6). Notwithstanding paragraph (b)(1) of this section, the candidate with whom a party coordinated communication is coordinated does not receive or accept an in-kind contribution, and is not required to report an expenditure, that results from conduct described in 11 CFR 109.21(d)(4) or (d)(5), unless the candidate, authorized committee, or an agent of any of the foregoing, engages in conduct described in 11 CFR 109.21(d)(1) through (d)(3).

(b) *Treatment of a party coordinated communication.* A payment by a political party committee for a communication that is coordinated with a candidate, and that is not otherwise exempted under 11 CFR part 100, subpart C or E, must be treated by the political party committee making the payment as either:

(1) An in-kind contribution for the purpose of influencing a Federal election under 11 CFR 100.52(d) to the candidate with whom it was coordinated, which must be reported under 11 CFR part 104; or

(2) A coordinated party expenditure pursuant to coordinated party expenditure authority under 11 CFR 109.32 in connection with the general election campaign of the candidate with whom it was coordinated, which must be reported under 11 CFR part 104.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

7. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k.

8. In section 110.1, paragraph (d) is revised and paragraph (n) is added to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees.

* * * * *

(d) *Contributions to other political committees.* No person shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

* * * * *

(n) *Contributions to committees making independent expenditures.* The limitations on contributions of this section also apply to contributions made to political committees making independent expenditures under 11 CFR Part 109.

9. In section 110.2, paragraph (d) is revised and paragraph (k) is added to read as follows:

§ 110.2 Contributions by multicandidate political committees.

* * * * *

(d) *Contributions to other political committees.* No multicandidate political committee shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

* * * * *

(k) *Contributions to multicandidate political committees making independent expenditures.* The limitations on contributions of this section also apply to contributions made to multicandidate political committees making independent expenditures under 11 CFR Part 109.

§ 110.7 [Reserved].

10. Remove and reserve § 110.7.

11. In section 110.8, paragraph (a) is amended as follows:

(a) Paragraph (a)(1) is redesignated as paragraph (a)(1)(i);

(b) The introductory text is redesignated as paragraph (a)(1);

(c) Paragraph (a)(2) is redesignated as paragraph (a)(1)(ii);

(d) Paragraph (a)(2) is revised; and

(e) A paragraph (a)(3) is added.

The revised text reads as follows:

§ 110.8 Presidential candidate expenditure limitations.

(a) * * *

(2) The expenditure limitations in paragraph (a)(1) of this section shall be increased in accordance with 11 CFR 110.17.

(3) Voting age population is defined at 11 CFR 110.18.

* * * * *

12. Section 110.14 is amended as follows:

(a) Paragraph (f)(2)(i) intro text is revised;

(b) Paragraph (f)(2)(ii) intro text is revised;

(c) Paragraph (f)(3)(iii) is revised;

(d) Paragraph (i)(2)(i) intro text is revised;

(e) Paragraph (i)(2)(ii) is revised;

(f) Paragraph (i)(3)(iii) is revised.

The revised text reads as follows:

§ 110.14 Contributions to and expenditures by delegates and delegate committees.

(f) * * *

(2) * * *

(i) Such expenditures are independent expenditures under 11 CFR 100.16 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated communication under 11 CFR 109.21.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR 100.16 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated communication under 11 CFR 109.21.

* * * * *

(B) The delegate shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.10.

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated communications under 11 CFR 109.21.

* * * * *

(i) *Expenditures by a delegate committee referring to a candidate for public office*—* * *

(2) * * *

(i) Such expenditures are in-kind contributions to a Federal candidate if they are coordinated communications under 11 CFR 109.21.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR 100.16 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated communication under 11 CFR 109.21.

(A) Such independent expenditures must be made in accordance with the requirements of 11 CFR part 100.16.

(B) The delegate committee shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.10.

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated communications under 11 CFR 109.21.

* * * * *

13. Section 110.18 is added to read as follows:

§ 110.18 Voting Age Population.

There is annually published by the Department of Commerce in the **Federal Register** an estimate of the voting age population based on an estimate of the voting age population of the United States, of each State, and of each Congressional district. The term *voting age population* means resident population, 18 years of age or older.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

14. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8), and 441b.

15. In section 114.4, paragraphs (c)(5)(i) and (c)(5)(ii)(A) are revised to read as follows:

§ 114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

* * * * *

(c) *Communications by a corporation or labor organization to the general public.* * * *

(5) *Voter guides.* * * *

(i) The corporation or labor organization must not act in cooperation, consultation, or concert with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the

preparation, contents and distribution of the voter guide, and no portion of the voter guide may expressly advocate the election or defeat of one or more clearly identified candidate(s) or candidates of any clearly identified political party.

(ii) (A) The corporation or labor organization must not act in cooperation, consultation, or concert with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter guide;

* * * * *

Dated: December 17, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 03–90 Filed 1–2–03; 8:45 am]

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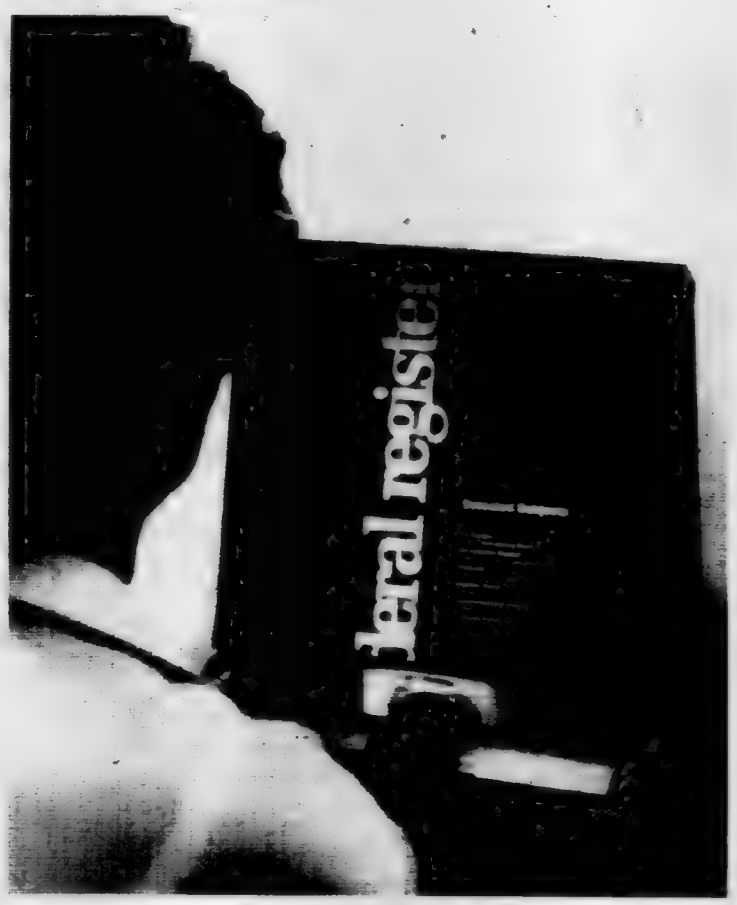

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ64

Prevailing Rate Systems; Redefinition of the Scranton-Wilkes-Barre, PA, Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to redefine Tioga County, Pennsylvania, from the Scranton-Wilkes-Barre, PA, appropriated fund Federal Wage System (FWS) wage area to the Rochester, New York, FWS wage area. This redefinition will better reflect economic trends in the area, which indicate that a linkage exists between Tioga County and the Rochester wage area. The change also will conform more accurately to the regulatory criteria we use to define FWS wage areas.

DATES: Effective Date February 5, 2003. Affected employees will be moved to the wage schedule for the Rochester wage area on the first day of the first applicable pay period beginning on or after the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: Chenty I. Carpenter at (202) 606–2838; FAX at (202) 606–4264; or e-mail at *cicarpen@opm.gov*.

SUPPLEMENTARY INFORMATION: On August 1, 2002, the Office of Personnel Management (OPM) published a proposed rule to redefine Tioga County, Pennsylvania, from the Scranton-Wilkes-Barre, PA, appropriated fund Federal Wage System (FWS) wage area to the Rochester, New York, FWS wage area (67 FR 49878). The proposed rule provided a 30-day period for public comment, during which OPM received no comments.

Tioga County is currently an area of application in the Scranton-Wilkes-Barre wage area. This change to redefine the county to the Rochester wage area is necessary because economic trends indicate more linkage between Tioga County and the Rochester survey area than between Tioga County and the Scranton-Wilkes-Barre survey area.

OPM considers the following regulatory criteria in 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Based on our analysis of the regulatory criteria for defining appropriated fund FWS wage areas, we find that Tioga County would be more appropriately defined as part of the Rochester wage area. The distance criterion favors the Rochester wage area more than the Scranton-Wilkes-Barre wage area. The commuting patterns criterion favors the Rochester wage area. An additional factor we considered was that Tioga County is adjacent to the Rochester survey area, but not to the Scranton-Wilkes-Barre survey area. This change will affect about 10 Department of the Army employees and 1 Department of the Interior employee.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, recommended this change by consensus. Based on its review of the regulatory criteria for defining FWS wage areas, FPRAC recommended no other changes in the geographic definitions of the Rochester or Scranton-Wilkes-Barre FWS wage areas.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix C to subpart B, the wage area listing for the State of New York is amended by revising the listing for Rochester; and for the State of Pennsylvania, by revising the listing for Scranton-Wilkes-Barre, to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

New York

* * * * *

Rochester

Survey Area

New York:
- Livingston
- Monroe
- Ontario
- Orleans
- Steuben
- Wayne

Area of Application. Survey Area Plus

New York:
- Allegany
- Chemung
- Genesee
- Schuyler
- Seneca
- Wyoming
- Yates

Pennsylvania:
- Tioga

* * * * *

Pennsylvania

* * * * *

Scranton–Wilkes–Barre

Survey Area

Pennsylvania:
- Lackawanna
- Luzerne
- Monroe

Area of Application. Survey Area Plus

Pennsylvania:
Bradford
Carbon
Lycoming (Excluding Allenwood Federal Prison Camp)
Pike
Sullivan
Susquehanna
Wayne
Wyoming

* * * * * *

[FR Doc. 03–215 Filed 1–3–03; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ63

Prevailing Rate Systems; Change in Federal Wage System Survey Job

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule that will allow the Department of Defense to use the Maintenance Mechanic Federal Wage System (FWS) survey job without having to seek OPM's approval on a case-by-case basis. This change will improve the local FWS wage survey process.

DATES: Effective Date February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Chenty I. Carpenter, (202) 606–2848, FAX: (202) 606–0824, or e-mail *cicarpen@opm.gov*.

SUPPLEMENTARY INFORMATION: On August 1, 2002, the Office of Personnel Management (OPM) issued a proposed rule to permit the Department of Defense (DOD) to use the Maintenance Mechanic Federal Wage System (FWS) survey job on an optional basis without having to seek OPM's advance approval. The Maintenance Mechanic survey job is now used routinely in many FWS wage areas because of changes in the structure of both Federal and private sector maintenance work. The proposed rule provided a 30-day period for public comment, during which OPM received no comments.

OPM's regulations contain required and optional survey jobs. If a particular survey job does not appear on either list, but is needed for a local wage survey, an agency must request OPM's written approval. The Federal Prevailing Rate Advisory Committee (FPRAC) established a Survey Job Work Group (SJWG) to review FWS survey job descriptions. The SJWG recommended that OPM add the Maintenance Mechanic survey job to the list of optional FWS survey jobs. Adding the Maintenance Mechanic survey job to the list of optional survey jobs would enable DOD to use the survey job at its discretion without having to ask OPM for prior approval. This will allow DOD to save time when conducting FWS wage surveys. FPRAC agreed with its working group and recommended that OPM make this change.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; "532.707 also issued under 5 U.S.C. 552.

§ 532.217 [Amended]

2. In §532.217, paragraph (c) is amended by adding the job "Maintenance Mechanic" and grade "10" after Television Station Mechanic.

[FR Doc. 03–216 Filed 1–3–03; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 02–025IF]

RIN 0583–AC93

Food Labeling; Nutrient Content Claims, Definition of the Term: Healthy

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending until January 1, 2006, the effective date for the requirements: That individual meat and poultry products bearing the claim "healthy" (or any other derivative of the term "health") contain no more than 360 milligrams (mg) of sodium; and that meal-type products bearing the claim "healthy" (or any other derivative of the term "health") contain no more than 480 mg of sodium.

DATES: Effective date: January 6, 2003.

Comment date: Written comments must be received February 5, 2003.

ADDRESSES: Submit written comments to the FSIS Docket Clerk, Docket #02–025IF, 300 12th Street, SW., Room 102 Cotton Annex Building, Washington, DC 20250–3700. All comments submitted in response to this interim final rule will be made available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy and Program Development, Food Safety and Inspection Service, 300 12th Street, SW., Room 602 Cotton Annex Building, Washington, DC 20250–3700, (202) 205–0279.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1994, FSIS published a final rule to establish a definition of the term "healthy" or any other derivative of the term "health" and similar terms on meat and poultry product labeling (59 FR 24220).[1] Under 9 CFR 317.363(b)(3) and 381.463(b)(3), after November 10, 1997, an individual meat or poultry product qualifying to use the term "healthy" or any other derivative

[1] Final Rule, Nutrition Labeling; Use of "Healthy" and Similar Terms on Meat and Poultry Product Labeling, 59 FR 24220–24229, May 10, 1994. This document may be viewed in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m., or accessed via the World Wide Web at *http://www.access.gpo.gov*.

of that term on its label, or in its labeling, must not contain more than 360 mg of sodium: (a) per reference amount customarily consumed (RACC); (b) per labeled serving size; and (c) per 50 grams (g) for products with reference amounts customarily consumed of 30 g or less or 2 tablespoons or less. Further, under 9 CFR 317.363(b)(3)(i) and 381.463(b)(3)(i), after November 10, 1997, a meal-type product qualifying to use the aforementioned term or any other derivative of the term on its label or in its labeling must not contain more than 480 mg of sodium per labeled serving size.

During the initial 24 months of the requirement's implementation date, which is defined as the time period prior to November 10, 1997, the maximum sodium level for individual meat and poultry products would be allowed to reach 480 mg, and the maximum sodium level for meal-type products would be allowed to reach 600 mg. This time period and its correlating maximum levels are referred to as the "first-tier sodium level." After November 10, 1997, the maximum sodium level for individual meat and poultry products would be decreased to 360 mg, and the maximum sodium level for meal-type products would be decreased to 480 mg. This time period and its correlating maximum levels are referred to as the "second-tier sodium level."

Within the same **Federal Register** publication, the Food and Drug Administration (FDA) published a final rule (59 FR 24232) to define the term "healthy" under section 403(r) of the Federal, Food, Drug and Cosmetic Act (21 U.S.C. 343(r)).[2] FDA's rule established the same sodium levels associated with the use of the "healthy" claim that FSIS' rule established for two separate timeframes. However, the timeframes in FDA's rule differed from those established by FSIS' rule.

On December 17, 1996, ConAgra, Inc., petitioned FSIS to "eliminate the sliding scale sodium requirement for foods labeled 'healthy' by eliminating the entire second-tier levels of 360 mg sodium requirement for individual foods and 480 mg sodium for meal-type products."[3] In response to the petition, FSIS published an interim final rule on February 13, 1998 (63 FR 7279), which amended §§ 317.363(b)(3) and 381.463(b)(3) by extending the effective date for the second-tier sodium levels (360 mg for individual meat and poultry products and 480 mg for meal-type products) associated with the term "healthy" until January 1, 2000.[4] The Agency extended the effective date for the following reasons: (1) To allow time for FSIS to reevaluate the standard, including the data contained in ConAgra's petition and any additional data that the Agency received; (2) to conduct any necessary rulemaking; and finally (3) to allow time for industry to respond to the rule or to any change in the rule that may have resulted from the Agency's reevaluation.

FDA also received a petition from ConAgra, Inc., requesting that the second-tier sodium levels associated with use of the term "healthy" be removed from the regulations. In response to this petition, FDA announced a stay of the provisions relating to the lower sodium standards until January 1, 2000 (62 FR 15390).[5]

In its interim final rule, FSIS asked the public for data and comments in regard to the second-tier sodium levels in the "healthy" definition and other approaches to reduce the amount of sodium in meat and poultry products labeled "healthy." FSIS received 20 responses to the February 13, 1998, interim final rule, which presented strong and opposing views on whether the Agency should let the second-tier sodium levels take effect, and provided a significant amount of data relating to the use of the term "healthy." Based on the information available, the Agency concluded that, in some cases, the second-tier sodium levels may be overly restrictive, thereby eliminating a term that may potentially assist consumers in maintaining a healthy diet. Accordingly, FSIS published a subsequent interim final rule on December 28, 1999 (64 FR 72490), further extending the second-tier sodium levels' effective date until January 1, 2003.[6] Similarly, FDA published a final rule (64 FR 12886), which extended the stay on their provisions in regard to the lower sodium levels through January 1, 2003, as well.[7]

FSIS received 8 responses to its December 28, 1999, interim final rule. Six responses conveyed support for extending the effective date of the second-tier sodium level until adequate medical and technological research can be conducted to demonstrate that lowering the maximum amount of sodium used to produce these types of products will contribute to or enhance a "healthy" diet. The commenters stated that a "healthy" diet can not be solely defined or maintained by consuming lower amounts of sodium. Instead, a "healthy" diet must rely on maximizing and minimizing a consumer's intake of all nutrients, including sodium, based on the individuality of the consumer. In addition, the commenters stated that lowering the sodium level would affect the products' palatability, which would negatively impact the demand for such products. Further, consumers would be forced to add salt to these products to enhance their taste prior to consumption, which negates the premise of lowering sodium intake as a means of lowering the health risks associated with consuming high levels of sodium. One commenter asserted that establishing a maximum level of sodium contained in meat and poultry products labeled as "healthy" does not correlate to the definition of "healthy" with respect to positive health benefits. Another commenter stated that the lowest achievable sodium level should be used as the maximum limit when producing individual or meal-type meat and poultry products, and that FSIS should proceed with the intended effective date for the second-tier sodium level requirements.

As of this date, FSIS and FDA are continuing their efforts: (1) To reevaluate appropriate sodium levels associated with the use of the term "healthy"; and (2) to fully consider all options that preserve the public health

[2] Final Rule, Food Labeling: Nutrient Content Claims, Definition of Term: Healthy, 59 FR 24232–24249, May 10, 1994. This document may be accessed via the World Wide Web at *http://www.access.gpo.gov*.

[3] FSIS Petition #96–08, ConAgra, Inc.; received December 17, 1996. This document may be viewed in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m., or accessed via the World Wide Web at *http://www.fsis.usda.gov/FOIA/popular.htm* as a related document under the Notice, Directives, and **Federal Register** Publications section.

[4] Interim Final Rule, Food Labeling: Nutrient Content Claims, Definition of Term; Healthy, 63 FR 7279–7281, February 13, 1998. This document may be viewed in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m., or accessed via the World Wide Web at *http://www.fsis.usda.gov/FOIA/popular.htm* under the Notices, Directives, and **Federal Register** Publications section.

[5] Final Rule; partial stay, Food Labeling: Nutrient Content Claims, Definition of Term: Healthy, 62 FR 15390–15391, April 1, 1997. This document may be accessed via the World Wide Web at *http://www.access.gpo.gov*.

[6] Interim Final Rule, Food Labeling; Nutrient Content Claims, Definition of Term: Healthy, 64 FR 72490–72491, December 28, 1999. This document may be viewed in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m., or accessed via the World Wide Web at *http://www.fsis.usda.gov/FOIA/popular.htm* under the Notices, Directives, and **Federal Register** Publications section.

[7] Final Rule; extension of partial stay, Food Labeling; Nutrient Content Claims, Definition of Term: Healthy; Extension of Partial Stay, 64 FR 12886, March 16, 1999. This document may be accessed via the World Wide Web at *http://www.access.gpo.gov*.

intent while providing manufacturers with the opportunity to use the term on food labeling consistently with dietary guidelines. Therefore, as the agencies consider whether alternative levels may be more appropriate, it would be contrary to the public interest to require manufacturers to comply with the second-tier sodium levels within the "healthy" definition by the current effective date of January 1, 2003. Moreover, FSIS is taking this action so that its labeling regulations remain consistent with those promulgated by FDA. In the **Federal Register** dated May 8, 2002, FDA further extended the partial stay on their provisions to coincide with the aforementioned effective date of January 1, 2006 (67 FR 30795).[8] Accordingly, further extending the second-tier sodium level requirements' effective date for meat and poultry products is warranted.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

This interim final rule is not intended to have retroactive effect.

If this interim final rule is adopted, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this interim final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

[8] Final Rule: extension of partial stay, Food Labeling; Nutrient Content Claims, Definition of Sodium Levels for the Term "Healthy;" Extension of Partial Stay, 67 FR 30795, May 8, 2002. This document may be accessed via the World Wide Web at *http://www.access.gpo.gov*.

Executive Order 12866 and the Regulatory Flexibility Act

This interim final rule has been determined to be non-significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

The Administrator has made an initial determination that this interim final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This interim final rule will impose no new requirements on small entities.

FSIS is initiating this action so that its labeling regulations remain consistent with those promulgated by FDA. Moreover, FSIS needs time to conclude its reevaluation of the impact imposed by further reducing limits on sodium contents of foods labeled as "healthy" to determine if the costs of such an action exceed the benefits. The petitioner requesting the extension presented data to support that lowering the sodium content on foods labeled as "healthy" could result in fewer "healthy" foods being consumed or consumers adding table salt to improve the products' palatability. In addition, the petitioner suggested that lack of available substitutes for sodium would impair the industry's ability to continue manufacturing "healthy" foods as currently defined. However, information collected by the Agency continues to support our belief that it is feasible to produce individual meat and poultry products with a sodium level of 360 mg or less at this time.

FSIS will use the time allotted by the extension to initiate the appropriate rulemaking, and respond to its comments. Industry's constituents will be afforded ample time to reformulate their products (a critical consideration since product reformulation may not be a simple task for products such as hot dogs) and modify labeling.

Five commenters to the December 28, 1999, FSIS interim final rule agreed with the petitioner that lowering the sodium level would affect the products' palatability. One commenter posited that establishing a maximum level of sodium contained in meat and poultry products labeled as "healthy" does not correlate to the definition of "healthy" with respect to positive health benefits. Another commenter supported the implementation of the second-tier sodium level with the intended effective date. The last commenter stated that the health risk focus should not be directed towards sodium, and the effective date should be extended to allow FSIS "time to conduct a review of the science on this issue to establish the basis for removing altogether any sodium-related disqualification for the term 'healthy'."

FSIS continues to believe that further health benefits could be achieved by lowering the sodium content of foods labeled as "healthy". However, the Agency needs time: (1) To conclude its reevaluation process in conjunction with FDA; and (2) to initiate the appropriate rulemaking. Therefore, as the agencies consider whether alternative levels may be more appropriate it would be contrary to the public interest to require manufacturers to comply with the lower sodium levels in the "healthy" definition by the current effective date of January 1, 2003.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedures Act (5 U.S.C. 553) it is the practice of the Administrator to offer interested parties the opportunity to comment on proposed regulations. However, the extended effective date in this interim final rule does not establish any new rules. In addition, this interim final rule must be published in the **Federal Register** prior to January 1, 2003, because that is the current effective date in the regulations. Therefore, the Administrator has determined that publication of a proposed rule is impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B). For the same reasons, the Administrator waives the 30-day delayed effective date under 5 U.S.C. 553(d).

Paperwork Requirements

There is no paperwork associated with this action.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice; FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv

consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection, Nutrition.

9 CFR Part 381

Food labeling, Nutrition, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS is amending parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 317.363 [Amended]

2. Section 317.363 is amended by removing the phrase "through January 1, 2003" in paragraph (b)(3) introductory text and (b)(3)(i) and replacing it with "through January 1, 2006".

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.463 [Amended]

4. Section 381.463 is amended by removing the phrase "through January 1, 2003" in paragraph (b)(3) introductory text and (b)(3)(i) and replacing it with "through January 1, 2006".

Done at Washington, DC, on: December 30, 2002.

Dr. Garry L. McKee,

Administrator.

[FR Doc. 02–33150 Filed 12–31–02; 3:25 pm]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG74

List of Approved Spent Fuel Storage Casks: Standardized Advanced NUHOMS®–24PT1; Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add the Standardized Advanced NUHOMS® System to the list of approved spent fuel storage casks. The Standardized Advanced NUHOMS® System has improved shielding and the ability to withstand a higher seismic spectra than the Standardized NUHOMS® System; otherwise, the cask designs are the same. This amendment allows the holders of power reactor operating licenses to store spent fuel in this approved cask system under a general license.

EFFECTIVE DATE: This final rule is effective on February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Jayne McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs.

Discussion

This rule will add the Standardized Advanced NUHOMS® System (Standardized Advanced NUHOMS®–24PT1) to the list of approved cask designs. Following the procedures specified in 10 CFR 72.230 of subpart L, Transnuclear, Inc., (TN) submitted an application for NRC approval together with the Safety Analysis Report (SAR) entitled, "Final Safety Analysis Report for the Standardized Advanced NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel." The NRC evaluated the TN submittal and issued a preliminary Safety Evaluation Report (PSER) and a proposed Certificate of Compliance (CoC) for the Standardized Advanced NUHOMS® System. The NRC published a proposed rule in the **Federal Register** (67 FR 6203; February 11, 2002) to add the Standardized Advanced NUHOMS®–24PT1 cask system to the listing in 10 CFR 72.214. The comment period ended on April 29, 2002. Seven comment letters were received on the proposed rule.

Based on its review and analysis of public comments, the NRC staff has determined that no modifications will be made to the proposed CoC, including its appendices, the Technical Specifications, and the Approved Contents and Design Features, for the Standardized Advanced NUHOMS® System. No modifications will be made to the PSER.

The NRC finds that the Standardized Advanced NUHOMS®–24PT1 cask system, as designed and when fabricated and used in accordance with the conditions specified in its CoC, meets the requirements of part 72. Thus, use of the TN Standardized Advanced NUHOMS®–24PT1 cask system, as approved by the NRC, will provide adequate protection of public health and safety and the environment. With this final rule, the NRC is approving the use of the Standardized Advanced NUHOMS®–24PT1 cask system under

the general license in 10 CFR part 72, Subpart K, by holders of power reactor operating licenses under 10 CFR part 50. Simultaneously, the NRC is issuing a final SER and CoC that will be effective on February 5, 2003. Single copies of the CoC and SER are available for public inspection and/or copying for a fee at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD.

Summary of Public Comments on the Proposed Rule

The NRC received seven comment letters on the proposed rule. The commenters included a public citizens' petition, two public citizens, two public interest organizations, one environmental justice organization, and one health professional organization. Copies of the public comments are available for review at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. The comments received are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments on the Transnuclear, Inc., Standardized Advanced NUHOMS® System

The proposed listing of the TN Standardized Advanced NUHOMS® System within 10 CFR 72.214, "List of approved spent fuel storage casks," has not been changed as a result of the public comments. A review of the comments and the NRC staff's responses follow:

Comment 1: Several commenters strongly opposed the storage or transportation of spent fuel as proposed by Southern California Edison (SCE) at the San Onofre Nuclear Generating Station (SONGS). These commenters raised a number of site-specific issues relating to the SONGS site and the potential storage of spent fuel at the site. One commenter stated that the development and operation of a "nuclear dump" in a highly populated, dangerously seismically active geological region, without a site-specific examination of critical, scientific, technical, economic, and other relevant issues, is unconscionable as an arrogant and indifferent treatment of the local population's welfare and safety in both short- and long-term effects. The site-specific issues raised by the commenters included comments related to costs to ratepayers, exact transportation routes for removal of spent fuel from SONGS, notification of public officials along transportation routes, number of shipments, total population along transportation routes, cost of transportation, training of SONGS employees, creation of jobs at SONGS and in the vicinity, decrease in property values near SONGS, concern over the increased capacity of the spent fuel pool, etc. The comments also included several related to emergency planning at SONGS. One commenter stated that the proposed NUHOMS casks that SCE intends to bring onsite at SONGS were not the safest and most secure casks available on the market and that the NRC must force SCE to use the safest cask design for a site that sits in an earthquake fault zone. The commenters believed that the seismic issue must be addressed and independently reviewed by the United States Geological Survey and the NRC and that the issues should be aired in public forums in Southern California. One commenter made reference to several California laws and actions that California should require SONGS to implement. One commenter stated that all television stations should conduct an emergency broadcast check announcement for SONGS.

Response: The site-specific issues related to SCE potentially using the Standardized Advanced NUHOMS® System are beyond the scope of this rulemaking. Similarly, transportation issues are beyond the scope of this rulemaking. This rulemaking is focused solely on whether to add a particular design, the Standardized Advanced NUHOMS® System, to the list of approved casks. The rulemaking will enable licensees to use this cask system under the general license provisions of 10 CFR part 72. By rulemaking, in § 72.210, the NRC granted a general license to all reactor facilities to operate an independent spent fuel storage installation (ISFSI). For SCE to be able to operate an ISFSI at SONGS under a general license, certain conditions in Part 72 must be met, which include using casks which have been approved by the NRC via rulemaking, and performing written evaluations which establish, among other things, that the reactor site parameters, including analyses of earthquake intensity, are enveloped by the cask design bases.

This rulemaking is the authority for general licensees and not specific licensees. Any licensee who chooses to use this cask under a general license will need to comply with the Technical Specifications (TS) and the Certificate of Compliance (CoC) conditions, such as training of staff. Decisions made by specific utilities on why a specific cask is chosen over another design are beyond the scope of this rulemaking. If SCE chooses to use the Standardized Advanced NUHOMS® System at the San Onofre site, the licensee will be required to perform an evaluation in accordance with § 72.212 to determine whether activities related to storage of spent fuel under the general license would involve any changes, tests, or experiments under § 50.59. In addition, licensees would evaluate programs, such as emergency planning, as a part of their evaluations under § 72.212. In accordance with § 50.59, the licensee would make changes as necessary to existing systems and any physical changes to the facility as necessary to accommodate new cask designs. Each of these changes would need to be evaluated per § 50.59 to determine the impact on other systems and on existing safety analyses.

Comment 2: One of the commenters stated that all meetings regarding high-level waste storage at SONGS or the transportation of irradiated fuel casks off site must be public and be held near the site and that all documents should be made public.

Response: This comment is beyond the scope of this rulemaking. However, it is NRC policy that meetings with licensees be noticed in advance and be open to the public, unless proprietary, safeguards, or other protected information is to be discussed. It is also NRC policy that documents be made public through the Agencywide Document Access and Management System (ADAMS), unless they contain proprietary, safeguards, or other protected information.

Comment 3: One commenter recommended that no transportation be allowed without limitation or phase out of the production of the high-level radioactive waste at SONGS. The commenter further recommended that the NRC, Southern California Counties, and the State of California require SCE to replace and phase out energy that increases production of high-level waste with increased renewable sources and conservation technologies ideally before irradiated fuel pools are full in 2006. The commenter believed that any spent fuel stored at SONGS will never leave the site. One commenter stated that the license for SONGS should not be approved until the health effects of offsite radioactive exposure are included in a risk analysis by the

California Coastal Commission, State of California, or the NRC. The commenter recommended that the Coastal Commission and the State of California research the legality of SCE's proposed storage site at SONGS.

Response: This comment is beyond the scope of this rulemaking. The NRC approval process for a dry cask CoC does not require site-specific actions such as an independent approval or analysis by a State government or entity.

Comment 4: One commenter supported the view that the structure and financing of the Nuclear Waste Fund requires a major overhaul.

Response: This comment is beyond the scope of this rulemaking. The decision to initiate a major overhaul of the Nuclear Waste Fund is a policy matter for the current Administration to consider in conjunction with Congress. The NRC does not oversee the Nuclear Waste Fund.

Comment 5: One commenter stated that the technical analyses, which are required under § 72.212 to demonstrate how proposed casks will be capable of safely storing spent fuel, being monitored, and safely transporting the fuel and how the public health, safety, and welfare will be maintained, must be made public. The commenter stated that withholding these important technical analyses is a serious breach of faith and the rules. Several commenters requested that the public comment period be extended until all of the technical analyses and reports have been made fully and publicly available.

Response: The NRC agrees that all documents that support the approval of the cask design must be made public. The documents referenced in the proposed rule which provide the basis for the rule are publicly available. Documents related to SONGS are not part of and do not support this rulemaking and, therefore, a request for those documents is beyond the scope of this rulemaking. The request to extend the public comment period until all of SCE's § 72.212 technical analyses and reports have been made fully and publicly available is beyond the scope of this rulemaking, since it deals with site-specific issues. The availability of the studies is not relevant to the question on which public comment is invited; *i.e.*, whether this generic cask design should be certified by the NRC. A request for extension of the comment period filed by Ms. Patricia Borchmann was denied by letter dated March 27, 2002, from Dr. Donald A. Cool, Director of the NRC's Division of Industrial and Medical Nuclear Safety.

Comment 6: One commenter stated that the NRC's risk assessment and its methodology needs another look and is outdated. The commenter stated that the probability of an extreme hazard (such as tsunami, earthquake, and terrorist attack) is not as low as the outcome of computer modeling and simulations indicate. The commenter stated that during the entire history of the nuclear industry in the United States, the NRC has been in denial about the real risks of operating nuclear generating stations, especially the sites located in highly populated, seismically active areas, as well as the sites that are in areas that make them totally vulnerable to tsunamis.

Response: The commenter did not specifically identify what NRC risk assessment was of concern, hence this comment is beyond the scope of this rulemaking which is related to the safety review of a storage cask. Risk assessment and methodology development are an evolving process in the NRC. Thus, the risk insights obtained from this process are based on many quantitative and qualitative factors, such as statutory requirements and public and stakeholder interests, before conclusions and recommendations affecting safety are made. Comments about terrorist attacks and seismic conditions are also beyond the scope of this rulemaking. The consideration of seismic conditions at or near a spent fuel storage facility, where a storage cask would be placed, must be addressed by the licensee who uses the casks. Prior to use, each licensee must evaluate the seismic and other site-specific conditions at the site to determine that the design of the cask is suited to the conditions it would be expected to experience during its operational lifetime. This would include seismic loads. The site-specific parameters are delineated in TS 4.4.3.

Comment 7: One commenter strongly believed that dry cask storage raises many troubling public health questions. However, the commenter did not provide any specific examples.

Response: The mission of the NRC is to provide reasonable assurance that the health and safety of the general public will be protected from the dangers involved in the commercial use of radioactive materials. The rulemaking process involves a detailed technical review of the storage cask design to ensure the safety of the cask for storage of spent fuel.

Comment 8: One commenter asked that NRC reconsider the refusal to require or provide a site-specific consideration of this extensive modification of an existing license and its related nuclear facility. The residents of Southern California have a right to formal, legal, and fully adjudicated hearings in any such critical and extensive change at San Onofre.

Response: This comment is beyond the scope of this rulemaking. This rulemaking is focused solely on whether to add a particular design, the Standardized Advanced NUHOMS® System, to the list of approved casks. The rulemaking will enable licensees to use this cask system under the general license provisions of Part 72. The rulemaking does not address site-specific issues related to potential users. This design could be used by any general licensee. By rulemaking, in § 72.210, NRC granted a general license to all reactor facilities to operate an ISFSI without any further site-specific licensing actions.

Comment 9: A commenter raised the question that, while bolting NUHOMS casks to the pad may prevent tipping, what will keep the concrete pad from cracking leading to possible offsite radioactive exposure.

Response: The concrete storage pad is a site-specific design component of a storage facility, which is beyond the scope of this cask design rulemaking. In accordance with § 72.212, the cask operators (licensees) are required to perform written evaluations to ensure that storage pads have been designed to adequately support the storage casks. See TS Section 4.4.3, Item #8, which provides the seismic parameter that would need to be evaluated. The earthquake motions are defined for the top surface of the concrete storage pad. A specific ISFSI site utilizing the cask system must demonstrate that the design seismic condition for that facility does not produce seismic effects greater than those specified for the top of the storage pad. Further, the pads provide a flat, stable surface for resting the storage casks, and any cracks in the pads would have no effect on cask integrity.

Comment 10: One commenter stated that withholding from the public important technical analyses which would demonstrate how proposed casks will be capable of safely storing spent fuel for the entire lifetime that spent fuel will be stored on site, how it will be monitored, how casks can later be safely transported at some time in the distant future, and how the public health, safety, and welfare will be fully maintained is a serious breach of faith and the rules. Another commenter stated that currently casks are licensed (approved) for 20 years, and was concerned that many utilities, including SCE, have stated in their applications that the casks may remain on site for up to 100 years.

Response: Technical documents related to this rulemaking are publicly available for inspection and copying at the NRC Public Document Room and may also be viewed and downloaded electronically via the rulemaking website. In accordance with current NRC regulations, a site may store spent nuclear fuel in a given cask for a period of 20 years. Storage of spent nuclear fuel for a period beyond 20 years is beyond the scope of this rulemaking. TS Section 5.2.5 includes a requirement to monitor the thermal performance of each cask, and Section 5.2.3 includes a requirement to develop a radiological environmental monitoring program.

Comment 11: One commenter asked who at the NRC has approved cranes, other moving equipment, and casks, and what independent verification process was used.

Response: The equipment qualification for lifting and moving heavy loads is addressed in the CoC for the cask design as Condition #5. This item states that a plant-specific safety review (under § 50.59 or § 72.48) is required to show operational compliance with plant-specific heavy load requirements. Each licensee who uses the storage cask is responsible for ensuring that any moving equipment that will be used meets NRC regulatory requirements. The NRC conducts inspections of licensees' loading activities, and such inspections would verify that heavy load issues would be addressed by licensees. The NRC approves cask designs for spent nuclear fuel storage in accordance with the requirements of Part 72.

Comment 12: One commenter asked how the NRC's independent verification process for the proposed NUHOMS casks has changed to address problems that arose with other cask designs. Problems included flammable hydrogen gas bubbles, zinc interactions that can cause an explosion, welding problems, procedure adherence, quality control, cracking, helium leaks, cask loading, flaws in neutron shielding material, faulty O-rings, unloading procedures, and cask deterioration within a few years of installation.

Response: When problems have arisen, the NRC has taken appropriate action to avoid future problems. The NRC staff conducted its independent safety review of the proposed cask design, keeping in mind design issues that have occurred in other cask designs over the past several years. It found no evidence of design-specific characteristics or issues that could lead to repeat of the design concerns raised in this comment.

Comment 13: One commenter stated that the NRC must guarantee the public that the following will not occur if NUHOMS casks are allowed for storage of high-level radioactive waste: (a) Design flaws; (b) vents cut off from air flow due to debris; (c) faulty parts and equipment; (d) cracking; (e) casks approved without NRC's CoC; and (f) exemptions from NRC policies granted to any casks or cask siting, loading, transferring, or transportation procedures.

Response: The NRC takes its responsibility as a regulatory agency very seriously along with its mission to protect the health and safety of the public from dangers associated with the use of radioactive materials. The NRC staff of technical experts has completed a thorough review of the Standardized Advanced NUHOMS® System cask design. As needed, NRC may conduct inspections of vendors and contractors and may witness dry run exercises and the first fuel loading of the cask when it occurs to verify that the design methods were acceptable, that cooling capability will be maintained, and that proper parts have been used in the fabrication process. No casks can be approved without a CoC being issued, and any exemptions from NRC regulations must be justified and approved by the NRC. In addition, any licensee that uses one of these casks in the future must purchase, use, and maintain the casks in accordance with an NRC-approved Quality Assurance (QA) program. A QA program provides checks and balances to ensure that the quality of the casks is addressed during all stages of design, fabrication, use, maintenance, loading, and unloading (if required).

Comment 14: One commenter asked if there is video footage demonstrating an actual fuel removal into NUHOMS casks at any other nuclear facility? If so, where can the public view a copy? If not, the commenter requested that one be required and sent to all communities that will use NUHOMS casks to store high level radioactive waste onsite for 10–100 years, if not permanently.

Response: The commenter's request for such a video is beyond the scope of this rulemaking. There are no NRC regulatory requirements for licensees to use, or submit as part of an application, video footage demonstrating the loading of spent nuclear fuel into a NUHOMS cask.

Comment 15: One commenter believed that all information, including the NRC independent verification of SCE's studies, demonstrating that NUHOMS casks are capable of withstanding a 7.5-magnitude earthquake should be made available to communities within a 50-mile radius of SONGS.

Response: The comment about verification of SCE's studies is a site-specific issue and therefore beyond the scope of this rulemaking. It is NRC policy that documents be made public through ADAMS, unless they contain proprietary, safeguards, or other protected information. In this case, NRC staff completed its review of the seismic capability of the cask design to withstand the forces of an earthquake that produces accelerations in two horizontal directions of 1.5 g and a vertical acceleration of 1.0 g acting simultaneously, as documented in the SER.

Comment 16: One commenter stated that, according to the NRC in 1990, the "conservative" approach to financing assumptions would entail no repository until 2025, and onsite dry cask storage in the interim. The commenter questioned what assurances (real tests) do residents near the reactor have that casks will not leak, corrode, or in any way negatively impact safety, as the casks are only certified for 20 years and taking into consideration the NRC quote above. The commenter asked what state-of-the-art testing has been done to assure residents within 50 miles of the ISFSI that NUHOMS casks can withstand earthquakes, faulty welds, corroded welds, fuel leakage, and/or terrorism for 100 years, if not permanently.

Response: The NRC staff completed its review of the seismic capability of the cask design to withstand the forces of an earthquake, and this is documented in the SER. The capability to deal with security threats or terrorism attacks is addressed under Part 73 and is beyond the scope of this rulemaking. Problems with welds and fuel leaking would be addressed by procedures and the QA program of the licensee and implemented during fabrication and loading which is beyond the scope of this rulemaking as well. Dry casks are designed to maintain their confinement integrity for the licensed period; *i.e.*, 20 years. During the life of a cask, the licensee must conduct periodic inspections and maintenance to ensure that the cask design functions remain as specified in the CoC. Storage of spent fuel in this cask design, beyond 20 years, is beyond the scope of this rulemaking. A separate NRC review and approval would be needed for storage beyond the 20-year period.

Comment 17: One commenter asked how damaged fuel assemblies will be handled and what independent verification has the NRC done to assure

that this is the safest method of handling damaged fuel assemblies. The commenter asked where the public can view this independent verification.

Response: NRC Spent Fuel Project Office Interim Staff Guidance—1 (ISG–1) states that spent nuclear fuel with known or suspected cladding defects greater than a hairline crack or a pinhole leak (damaged fuel) should be canned for storage. TS 2.1.a states that damaged fuel assemblies shall be placed in confinement cans. The purpose of canning is to confine gross fuel particles to a known, subcritical volume during off-normal and accident conditions, and to facilitate handling and retrievability. ISG–1 is publicly available on the NRC Web site.

Comment 18: One commenter asked what risk analysis studies the NRC did to assure that high level radioactive waste can be safely transferred to barges, trains, and/or trucks for eventual transportation. The analysis should have included seismic issues regarding an earthquake during transfer of radioactive fuel from pools to casks and from casks to transportation modes. The commenter further stated that if no risk analysis was done, one must be completed before high level radioactive waste is allowed to be transferred from irradiated fuel pools to NUHOMS casks, much less transferred to transportation modes.

Response: Transportation comments are beyond the scope of this Part 72 rulemaking. The NRC has performed a number of transportation risk studies, and currently the Package Performance Study is in progress to study what the effects of impact and fire conditions beyond current regulations would be for a recently approved transportation cask design. The effects of the forces from an earthquake during transfer of radioactive fuel from a spent fuel pool to a storage cask would have to be considered in the procedures and the design of handling equipment in accordance with Part 50 requirements that would be in effect by the licensed utility that would be conducting fuel movement. Dealing with the impact of an earthquake during the movement of casks to a truck or train would be addressed by the requirements of Part 71 which specifies that a number of tests and analyses be performed to determine that the cask can withstand the forces expected to be seen during normal and accident conditions. The forces that a transportation cask can withstand exceed those that would be experienced during an earthquake.

Comment 19: One commenter stated that the NRC has issued a report admitting that irradiated fuel assemblies can still spontaneously combust even after cooling 5 years in pools. The commenter questioned what assurances are there that fuel being transferred into dry casks has been cooled for the minimum 5 years.

Response: The CoC includes TS that state that the fuel that will be loaded in the casks must be cooled a minimum of 10 years. The loading of casks and the records thereof will be subject to NRC inspection for verification that the TS have been met.

Comment 20: One commenter stated that the NRC must demonstrate that the storage casks can be safely opened after loading, if necessary, before allowing the cask to be filled with radioactive waste.

Response: There are no regulatory requirements for a licensee to demonstrate that fuel can be safely unloaded from a cask prior to the actual loading of fuel. The CoC does, however, specify that the licensee conduct a dry run of an unloading operation. That exercise would not be performed with spent nuclear fuel but would be conducted using "dummy" assemblies.

Comment 21: One commenter stated that the design basis for the proposed casks must be verifiably certified to withstand a 9/11 style terrorist attack (a minimum of one kiloton) and that the cask should not be approved unless it can withstand a 9/11 type terrorist attack.

Response: This comment is beyond the scope of this rulemaking. The design basis of the casks must address the Part 72 criteria to withstand a number of hypothetical accidents. Currently, there are no regulatory requirements for a storage cask to withstand a 9/11 style terrorist attack. Since 9/11, the NRC has issued advisories to licensees who operate storage facilities to augment certain aspects of their security plans and capability. Further, the NRC has issued orders to impose certain security requirements beyond current regulations on these licensees. In addition, the NRC is conducting a thorough review of its current security regulations and is conducting a vulnerability study for spent fuel storage cask designs to determine what the effects would be from a terrorist attack of a different nature, including the crash of a jumbo jet filled with fuel. After completion of these efforts, the NRC will determine what changes are needed to its security regulations and will make them as appropriate.

Comment 22: One commenter stated that no casks have been tested for their anticipated lifetime on site at nuclear plants.

Response: Spent fuel storage casks are designed to withstand normal and hypothetical accident conditions for their license period of 20 years, in accordance with Part 72 requirements. Licensees must also periodically monitor and inspect casks to verify that safety functions are maintained during operational lifetime. Storage of spent nuclear fuel beyond the 20-year license period is beyond the scope of this rulemaking.

Comment 23: A commenter stated that, in 1984, the NRC issued its waste confidence decision. A summary of the findings includes the temporary storage of spent fuel after cessation of reactor operations and generic determination of no significant environmental impact. The Commission also announced that although it could reach favorable conclusions, it recognized that significant and unexpected events might affect its decision. The commenter stated that it should be obvious to all Americans that the events of 9/11 meet the criteria of "unexpected events" to revisit the NRC's Waste Confidence Decision.

Response: This request to revisit the Waste Confidence Decision is beyond the scope of this rulemaking. Since 9/11, the NRC has taken a number of actions that have affected its licensees. Specifically in the area of spent fuel interim storage, the NRC has issued advisories to licensees who operate storage facilities to augment certain aspects of their security plans and capability. Further, the NRC has issued orders to impose certain security requirements beyond current regulations on these licensees. In addition, the NRC is conducting a thorough review of its current security regulations and is conducting a vulnerability study for spent fuel storage cask designs to determine what the effects would be from a terrorist attack of a different nature, including the crash of a jumbo jet filled with fuel. After completion of these efforts, the NRC will determine what changes are needed to its security regulations and will make them as appropriate.

Comment 24: One commenter asked for information about the number of additional personnel necessary to prepare for an ISFSI.

Response: There is no requirement for a particular level of staffing in the CoC. The question raised by the commenter is unclear and lacks specificity as to what is being requested. The NRC believes the comment is beyond the scope of this rulemaking.

Comment 25: One commenter recommended that all training of personnel be reviewed and

independently verified by experts outside the cask designers and the utility.

Response: TS 5.2.2 requires licensees to train and verify the expertise of personnel to maintain and operate the Standardized Advanced NUHOMS® System at nuclear plants. CoC Condition #8 requires that the licensee perform a full dry run of loading and unloading operations prior to first fuel loading of the cask. The NRC conducts independent inspections of dry run activities at ISFSIs.

Comment 26: One commenter asked what agency approves transportation methods.

Response: Transportation issues are beyond the scope of this rulemaking. The NRC is not certain of the commenter's request when it refers to "transportation methods." For the selection of routes, mode of transportation, or physical protection and control of material, the NRC, in conjunction with the Department of Transportation (DOT) and the Department of Energy (DOE), regulates the safe transport of high level radioactive material from beginning to final destination. It is, however, the responsibility of the shipper to choose the mode of transportation along with routes to be used in accordance with applicable regulations and guidance.

Comment 27: One commenter asked for information as to how transportation methods are independently confirmed to be safe. The commenter cited an incident which occurred in late March in which a truck hauling radioactive waste blew over in Wyoming. The incident was supposedly due to high winds. Regarding this incident, the commenter questioned what would happen in an earthquake and if high winds are considered when licenses for transport are granted. The commenter questioned that if this were considered, how did the incident happen. If it were not considered, why wasn't it?

Response: This comment, which deals with transportation issues, is beyond the scope of this rule which is for approval of a storage cask design. The NRC, DOE, and DOT have comprehensive and stringent regulations for the safe transport of high level radioactive waste. These regulations address the packaging that must be used and, in the case of spent nuclear fuel, a package would be a cask that would need to be reviewed and approved for safety considerations by the NRC. Choosing a mode of transportation (rail, truck, or barge) would be made by the shipper, and safety in each mode is addressed by DOT and its independent activities. However, the NRC and DOT rely on the robust design of shipping packages to provide reasonable assurance of safe transportation during routine or accident conditions. The packages protect the contents from damage and release and protect the public from unnecessary exposure to radiation. (*See also* Comment 26.)

Comment 28: One commenter stated that transportation of high level radioactive waste has been postponed several times since 9/11 due to possible terrorist threats. The commenter also stated that one shipment, in the planning stages for years, to ship 125 spent fuel rods on a 2,360-mile journey, was delayed due to 9/11. The casks, unable to be certified in temperatures below 10 degrees Fahrenheit, had to be removed from the train and stored inside for the winter. The commenter stated that the NRC has approved casks for storage and transportation that are unable to hold up to wind and temperature. The commenter questioned how transportation out of their earthquake-prone coastal zone will ever be assured by SCE, by DOE, or by the NRC.

Response: Transportation and site-specific issues are beyond the scope of this rulemaking which deals with the approval of a design for dry storage of spent nuclear fuel. *See* response to Comments 21 and 23, above, for a discussion of security concerns. The NRC has reviewed the cask design capability to withstand forces of wind and temperature during storage as documented in the SER.

Comment 29: One commenter questioned how leaking casks could be unloaded if the spent fuel pool were no longer available after the reactor shut down operations.

Response: A licensee who uses an approved spent fuel cask at its storage facility is responsible for continually monitoring the conditions of each of its casks and the radiation levels around the casks. In addition, it must develop procedures to deal with off-normal events and accidents including dealing with the event of a cask that has lost its confinement capability. In the situation where a plant was decommissioned and no longer had a spent fuel pool available, the licensee would have contingency plans in place to deal with a leaking cask on site. Such a plan would include actions to minimize dose to workers and to the public in accordance with NRC regulations.

Comment 30: The commenter asked if the design basis for the outer cement covering for NUHOMS casks has been approved for transportation.

Response: The Standardized Advanced NUHOMS® System is designed for dry storage of spent nuclear fuel, and not for transportation of spent nuclear fuel. If a component of the Standardized Advanced NUHOMS® System were to be transported, it would need to be approved by the NRC for use in the transportation system being used.

Comment 31: One commenter requested that NRC address the concerns about the risks of operating nuclear generating stations, especially spent fuel pools which will remain totally vulnerable to terrorist attack. Another commenter referenced a September 2000 report by the National Council on Radiation Protection and Measurements dealing with the threat of nuclear terrorism that warned that "Targeting nuclear spent fuel elements kept in a storage facility would be an easier target than an operating plant." A successful attack on such a facility using 1,000 pounds of high explosives could cause radiation contamination over a wide area. This commenter asked what the additional costs and requirements of county, State, and military personnel would be should there be a terrorist attack of vulnerable irradiated fuel pools. The commenter also asked who will bear the additional costs should there be a terrorist attack, especially after termination of operations when irradiated fuel must remain in pools for at least 5 years for cooling.

Response: Comments related to spent fuel pools and security provisions for protection of licensed facilities are beyond the scope of this rulemaking. The NRC reviewed potential issues related to possible radiological sabotage of storage casks at reactor site ISFSIs in the 1990 rulemaking that added Subparts K and L to Part 72 (55 FR 29181; July 18, 1990). NRC regulations in Part 72 establish physical protection requirements for an ISFSI located within the owner-controlled area of a licensed power reactor site. Spent fuel in the ISFSI is required to be protected against radiological sabotage using provisions and requirements as specified in § 72.212(b)(5). Further, specific performance criteria are specified in Part 73. Each utility licensed to have an ISFSI at its reactor site is required to develop physical protection plans, response plans, and to install systems that provide high assurance against unauthorized activities that could constitute an unreasonable risk to public health and safety.

The physical protection systems at an ISFSI and its associated reactor are similar in design features to ensure the detection and assessment of unauthorized activities. Alarm annunciations at the general license

ISFSI are monitored by the alarm stations at the reactor site. Response to intrusion alarms is required. Each ISFSI is subject to inspection by NRC. The licensee ensures that the physical protection systems are operating within their design limits. It is the ISFSI licensee who is responsible for protecting spent fuel in the casks from sabotage rather than the certificate holder.

Comment 32: One commenter quoting Ray Shadis stated that the public must be informed of all potential radiological consequences, including radioactive dose levels and dose distribution, that would result from massive releases or dispersal of radioactive material.

Response: This comment is beyond the scope of this rulemaking. However, Chapter 10 of the SER documents the staff's review of the cask design to ensure that its use will meet the regulatory dose requirements of Parts 20 and 72.

Comment 33: One commenter asked about the proposed security at the high level radioactive waste site (both reactor and irradiated fuel pools) during operation and after retirement.

Response: This comment is beyond the scope of this rulemaking which is focused solely on whether to place the Standardized Advanced NUHOMS® System on the list of approved casks. *See* response to Comment 31, above.

Comment 34: One commenter asked how SCE and the NRC provide assurance to the public that terrorism cannot occur or cause a radioactive release.

Response: This comment is beyond the scope of this rulemaking. *See* response to Comment 31, above.

Comment 35: One commenter stated that the Holtec and NUHOMS casks (both steel liner and concrete) could be penetrated by 757 and 767 aircraft and that the NRC must address this issue before any permits are granted and questioned how this concern has been addressed by SCE and the NRC.

Response: The NRC considers the comment to be beyond the scope of this rulemaking which is focused solely on whether to place the Standardized Advanced NUHOMS® cask system on the list of approved casks for storage. *See* response to Comment 21, above.

Comment 36: One commenter stated that because the spent fuel pools contain many reactor cores, the amount of radioactive material available for release to the environment and therefore the anticipated consequences, are much greater than for a reactor meltdown, and that "* * * dispersal of just one portion of one spent fuel assembly by means of high explosives would have radiological consequences much greater than those of a Hiroshima-sized nuclear weapon and would yield near term lethal doses ranging downwind over 60 miles." However, emergency response planning, aimed at reactor accidents, has not been adjusted accordingly. The commenter believed that the issues must be addressed in a risk analysis by the NRC.

Response: Comments related to spent fuel pools and security issues are beyond the scope of this rulemaking. *See* response to Comment 31, above.

Comment 37: One commenter stated that the design basis threat must encompass not only a 9/11 air assault, but a ground-based assault for more than 10 people, a truck-bomb assault, or weapons launched from a truck or water craft. The commenter stated that nuclear reactors, adjacent spent fuel storage deposits, nuclear fuel reprocessing facilities, transport vehicles, or any high-level waste site are potential targets for the use of high explosives to disperse into the atmosphere the very high levels of radioactivity associated with materials at these facilities. A successful incursion into a nuclear power reactor would require a very heavily armed force, since commercial reactors are very well protected. The core of a commercial reactor is protected by a containment structure sufficient to prevent atmospheric release even if a large airplane were to crash into the facility. Only when the reactor is being refueled and the containment structure is open would atmospheric dispersion of the reactor's nuclear fuel be likely as a result of the use of high explosives. The commenter stated that targeting spent nuclear fuel elements kept in a storage facility would be an easier target than an operating nuclear plant.

Response: This comment is beyond the scope of this rulemaking. *See* response to Comment 31, above.

Summary of Final Revisions

Based on public comments, no changes from the proposed rule were made to the final CoC for the Standardized Advanced NUHOMS® cask system, nor its appendices, the Technical Specifications, and the Approved Contents and Design Features. In addition, no changes were made to the PSER.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is adding the TN Standardized Advanced NUHOMS® cask system to the list of NRC-approved cask systems for spent fuel storage in § 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. This final rule adds an additional cask to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals from the Commission. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, O–1F23, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection

requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR Part 72. The amendment provided for the storage of spent nuclear fuel in cask systems with designs approved by the NRC under a general license. Any nuclear power reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be routinely added to the listing in § 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in Part 72, Subpart L.

The alternative to this action is to withhold approval of this new design and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rulemaking will eliminate the above problems and is consistent with previous Commission actions. Further, the rule will have no adverse effect on public health and safety.

The benefit of this rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. The new cask vendors with casks to be listed in § 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plants in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA direction to certify and list approved casks. This rule has no significant identifiable impact or benefit on other Government agencies.

Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear, Inc. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (§ 50.109 or § 72.62) does not apply to this final rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance (CoC) 1029 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1029.

Initial Certificate Effective Date: February 5, 2003.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized Advanced NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1029.

Certificate Expiration Date: February 6, 2023.

Model Number: Standardized Advanced NUHOMS® –24PT1.

Dated at Rockville, Maryland, this 17th day of December, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–155 Filed 1–3–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–53–AD; Amendment 39–12996; AD 2002–26–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. This amendment requires replacement of the emergency power switch knob on the overhead switch panel in the flight compartment with a new, improved knob made of non-conductive material. The actions specified by this AD are intended to prevent the knob from conducting electricity, which could result in delivery of an electrical shock and consequent injury to flightcrew or maintenance personnel. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes was published in the **Federal Register** on August 16, 2002 (67 FR 53527). That action proposed to require replacement of the emergency power switch knob on the overhead switch panel in the flight compartment with a new, improved knob made of non-conductive material.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Withdraw Proposed AD or Extend Compliance Time

One commenter asks the FAA to withdraw the proposed AD for the following reasons:

• The proposed AD states that one mechanic received a shock during maintenance, and the commenter notes that it is not likely that the problem exists or will develop in other switches. The commenter operates 74 Model DC–9 series airplanes, and over the past 21 years in service there have been no reported incidents by pilots or mechanics while operating the emergency power switch. The pilots and mechanics have operated the emergency power switches over half a million times.

• Receiving a shock from the power switch does not pose a substantial hazard to the continued airworthiness of the aircraft. The reason for this is that 99 percent of power switch operations are performed while the airplane is parked at the gate, when the pilot performs a pre-flight check, or when a mechanic performs a maintenance service check. If the pilot or mechanic did receive a shock from the power switch, a discrepancy form would be filled out and the switch would be replaced.

The same commenter asks that, as an alternative to withdrawing the proposed AD, the compliance time for replacement of the switch be extended from 6 months to 24 months, using the lead-time of the parts and scheduled maintenance interval criteria, as follows:

• In the proposed AD the FAA estimates that 1,079 airplanes of U.S.-registry are affected. At the time the proposed AD was issued, the manufacturer had no knobs in stock, and 374 on order, with a due date near the end of 2002. There is a 160-day lead time on orders for the power switch knob; therefore, the fleet cannot be outfitted until the knobs are received.

• Because the commenter's C-check is performed at 20-month intervals, it would have less impact on operations if the knobs could be changed during a C-check. This would eliminate special routing of airplanes or special distribution of the knobs. In addition, as stated in Boeing Alert Service Bulletin DC9–24A189 (referenced in the proposed AD as the appropriate source of service information for accomplishment of the actions), the opening of the forward overhead switch panel would not be required, "based on knowledge of mechanic performing replacement of knob assembly on emergency power switch." This would allow one set of mechanics to replace the knobs and would eliminate unnecessary steps.

We partially agree with the commenter, as follows:

• We do not agree to withdraw the proposed AD. As specified in the Discussion section of the proposed AD, "Investigation revealed that terminals within the switch had shorted to the switch shaft. Due to the design of the emergency power system, this switch is not grounded. The capacity of the emergency power switch knob to conduct electricity, if not corrected, could result in delivery of an electrical shock and consequent injury to flightcrew or maintenance personnel." Further, the existing power switch must be replaced with a non-conductive material in order to preclude the possibility of an electrical shock to personnel, which could happen either in flight or before takeoff. The final rule will be issued accordingly.

• We do agree to extend the compliance time somewhat for the replacement of the switch. We have reviewed and approved Boeing Alert Service Bulletin DC9–24A189, Revision 01, dated August 5, 2002, excluding Evaluation Form; and Revision 02, dated October 8, 2002, excluding Evaluation Form; as additional sources of service information for accomplishment of the actions. Revision 02 extends the compliance time recommended in the original issue of the service bulletin from 6 to 12 months, as parts will be available within that timeframe. The changes in Revisions 01 and 02 are not substantive, meaning that airplanes modified per those service bulletins are not subject to any additional work. However, we have changed paragraph (a) of this final rule to refer to Revision 02 of the service bulletin as the appropriate source of service information for the actions in that paragraph. In addition, we have added a new paragraph (b) to the final rule (and reordered subsequent paragraphs accordingly) to give credit for replacements done before the effective date of this AD according to the original issue and Revision 01 of the service bulletin. To follow the compliance time specified in Revision 02 of the service bulletin, we have extended the compliance time for the replacement to within 12 months after the effective date of this AD. Paragraph (a) of this final rule has been changed accordingly.

Request To Extend Compliance Time

Two commenters ask that the compliance time specified in the proposed AD be extended from 6 to 12 months. A third commenter states that, although there are concerns about parts availability, if Boeing can provide an adequate supply of parts to meet the overnight inspection schedule, a compliance time of 6 months can be met. The two commenters note that although Revision 01 of the referenced service bulletin was released on August 5, 2002, to reset the start date of the original issue of the service bulletin, only 300 parts were available at that time. One commenter adds that the FAA is currently reviewing Revision 02 of the service bulletin which extends the compliance time to 12 months to accommodate availability of parts. Both commenters state that the proposed AD should be changed to reflect the latest revision of the service bulletin with the extended compliance time, which allows time for Boeing to produce an adequate number of parts.

As described previously, we have reviewed and approved Revision 02 of the service bulletin and agree to extend the compliance time for the replacement required by this final rule to within 12 months after the effective date of this AD.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,904 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,079 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $250 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $334,490, or $310 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–08 McDonnell Douglas: Amendment 39–12996. Docket 2002–NM–53–AD.

Applicability: Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F,

DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; as listed in Boeing Alert Service Bulletin DC9–24A189, dated December 12, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the emergency power switch knob from conducting electricity, which could result in delivery of an electrical shock and consequent injury to flightcrew or maintenance personnel, accomplish the following:

Replacement

(a) Within 12 months after the effective date of this AD, replace the emergency power switch knob on the overhead switch panel in the flight compartment with a new, improved knob, having part number 4957249–9, made of non-conductive material, according to the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A189, Revision 02, dated October 8, 2002; excluding Evaluation Form.

(b) Replacements done before the effective date of this AD according to Boeing Alert Service Bulletin DC9–24A189, dated December 12, 2001; or Revision 01, dated August 5, 2002; both excluding Evaluation Form, are acceptable for compliance with the replacement required by paragraph (a) of this AD.

Part Installation

(c) As of the effective date of this AD, no person shall install an emergency power switch knob having part number 4957249–1, 4957249–501, or 4957249–503, on the overhead switch panel in the flight compartment of any airplane.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The replacement shall be done in accordance with Boeing Alert Service Bulletin DC9–24A189, Revision 02, dated October 8, 2002, excluding Evaluation Form. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 10, 2003.

Issued in Renton, Washington, on December 24, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–78–AD; Amendment 39–12998; AD 2002–26–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas DC–9–10, –20, –30, –40, and –50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas DC–9–10, –20, –30, –40, and –50 series airplanes, that currently requires a one-time visual inspection to determine the modification status of the corners of the forward lower cargo doorjamb; low-frequency eddy current or X-ray inspections to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb; various follow-on repetitive inspections; and modification, if necessary. This amendment retains those requirements but requires certain high-frequency, rather than low-frequency, eddy current inspections for certain conditions. The actions specified by this AD are intended to detect and correct cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of McDonnell Douglas Service Bulletin DC9–53–277, Revision 01, dated June 16, 1999, excluding Evaluation Form, as listed in the regulations, is approved by the Director of the Federal Register as of February 10, 2003.

The incorporation by reference of McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996, was approved previously by the Director of the Federal Register as of May 22, 1998 (63 FR 19180, April 17, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–08–24, amendment 39–10473 (63 FR 19180, April 17, 1998), which is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and Model C–9 (military) airplanes, was published in the **Federal Register** on August 30, 2002 (67 FR 55732). The action proposed to require

a one-time visual inspection to determine the modification status of the corners of the forward lower cargo doorjamb; low-frequency eddy current (LFEC) inspections to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb; various follow-on repetitive inspections; and modification, if necessary. The action also proposed to retain the existing requirements, but require certain high-frequency, rather than low-frequency, eddy current inspections for certain conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Extend Repetitive Inspection Interval

One commenter asks that the repetitive inspection interval specified in paragraph (b)(1)(i)(A) of the proposed AD be extended from 3,500 landings to 3,860 landings. The commenter states that this would permit inspection of affected areas during a scheduled maintenance visit.

The FAA does not agree with the commenter's request. Insufficient supporting data were provided to us to substantiate the request. In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, and the practical aspect of accomplishing the required inspections within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. No change to the final rule is necessary in this regard.

Request for Deferral of Upgrade or Replacement of Previously Approved Repairs

The same commenter asks that upgrade or replacement of certain repairs, as specified in paragraph (c) of the proposed AD, be deferred for a period of 24 months, providing the high frequency eddy current (HFEC) inspections find no evidence of cracking. The commenter states that this would pertain to an existing repair or modification that is not in accordance with the published structural repair manual (SRM) or rework drawing specifications, but has been approved for static strength by an original equipment manufacturer or FAA Designated Engineering Representative (DER).

We do not agree with the commenter. We have conducted further analysis of this issue in conjunction with the manufacturer, and we have determined that, for the corners of the forward lower cargo door jamb that have been modified, but not in accordance with the DC–9 SRM or service rework drawing, an initial HFEC inspection of the fuselage skin adjacent to the existing repairs would not detect any cracking under the repairs. The absence of cracking outside a repaired area does not indicate that an acceptable level of safety is being maintained, since possible cracking under the repairs could grow rapidly and extend out from under the repaired area. No change to paragraph (c) of the final rule is necessary in this regard.

Request To Change Certain Language in Preamble

The same commenter states that the proposed AD should explicitly state that the new AD supersedes and cancels the requirements of the existing AD, to avoid a duplicate compliance requirement.

We do not agree with the commenter; the requested language is already in the proposed AD. The Summary section of the proposed AD states, "This document proposes the supersedure of an existing airworthiness directive * * * The Summary section also specifies that the proposed AD retains the requirements in the existing AD, but requires HFEC rather than low frequency eddy current inspections for certain conditions. No change to the final rule is necessary in this regard.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Explanation of Changes to Final Rule

In the Summary section of the proposed AD, we inadvertently omitted identification of the X-ray inspection to detect cracks, which was required by AD 98–08–24. That inspection was, however, identified in the actions required by the proposed AD. We have changed the Summary section of this AD to include the following phrase: "* * * low-frequency eddy current or X-ray inspections to detect cracks * * *"

The language in paragraph (f)(3) of the proposed AD has been changed from "An alternative method of compliance for any inspection or repair * * *" to "An alternative method of compliance that provides an acceptable level of safety may be used for any repair * * *" to clarify that a DER is not permitted to approve an inspection method.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 899 airplanes of the affected design in the worldwide fleet. The FAA estimates that 622 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 98–08–24, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $60 per airplane.

Should an operator be required to accomplish an eddy current inspection, it will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of an eddy current inspection required by this AD is estimated to be $60 per airplane.

Should an operator be required to accomplish the modification, it will take approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $936 or $2,807 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the modification required by this AD is estimated to be $1,776 or $3,647 per airplane.

No change to the parts cost or work hour estimate is anticipated as a result of the new actions included in this AD.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking

actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10473 (63 FR 19180, April 17, 1998), and by adding a new airworthiness directive (AD), amendment 39–12998, to read as follows:

2002–26–10 Boeing: Amendment 39–12998. Docket 2001–NM–78–AD. Supersedes AD 98–08–24, Amendment 39–10473.

Applicability: Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; DC–9–41 airplanes; and DC–9–51 airplanes; certificated in any category; as listed in McDonnell Douglas Service Bulletin DC9–53–277, Revision 01, dated June 16, 1999, excluding Evaluation Form.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the fuselage skin or doubler at the corner of the forward lower cargo doorjamb, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: This AD is related to AD 96–13–03, amendment 39–9671; and AD 94–03–01, amendment 39–8807. This AD will affect Principal Structural Element (PSE) 53.09.001 of the DC–9 Supplemental Inspection Document (SID).

One-time Inspection

(a) Prior to the accumulation of 48,000 total landings, or within 3,500 landings after May 22, 1998 (the effective date of AD 98–08–24, amendment 39–10473), whichever occurs later: Perform a one-time general visual inspection to determine if the corners of the forward lower cargo doorjamb have been modified.

Note 4: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Follow-On Actions: Unmodified Doorjamb

(b) If the general visual inspection required by paragraph (a) of this AD reveals that the corners of the forward lower cargo doorjamb have not been modified: Before further flight, perform a low-frequency eddy current (LFEC) or X-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996; or Revision 01, dated June 16, 1999, excluding Evaluation Form. After the effective date of this AD, Revision 01 of the service bulletin must be used.

(1) If no cracking is detected during the LFEC or X-ray inspection required by this paragraph, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(i) *Option 1.* Repeat the inspections as follows until the actions specified in paragraph (b)(1)(ii) of this AD are accomplished:

(A) If the immediately preceding inspection was conducted using LFEC techniques, conduct the next inspection within 3,500 landings; or

(B) If the immediately preceding inspection was conducted using X-ray techniques, conduct the next inspection within 2,850 landings.

(ii) *Option 2.* Before further flight, modify the corners of the forward lower cargo doorjamb, in accordance with the service bulletin. Within 28,000 landings after accomplishment of that modification, perform a high-frequency eddy current (HFEC) inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin. Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(A) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph: Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

(2) If any crack is found during any LFEC or X-ray inspection required by this paragraph and the crack is 2 inches or less in length: Before further flight, modify it in accordance with the service bulletin. Within 28,000 landings after accomplishment of the modification, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by this paragraph: Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected during the HFEC inspection required by this paragraph: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) If any crack is found during any LFEC or X-ray inspection required by this paragraph and the crack is greater than 2 inches in length: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Follow-On Actions: Doorjamb Modified per Other Than Structural Repair Manual/ Drawing

(c) If the general visual inspection required by paragraph (a) of this AD reveals that the corners of the forward lower cargo doorjamb have been modified, but not in accordance with the DC–9 SRM or Service Rework Drawing: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Follow-On Actions: Doorjamb Modified per SRM/Drawing

(d) If the general visual inspection required by paragraph (a) of this AD reveals that the corners of the forward lower cargo doorjamb have been modified in accordance with the DC–9 SRM or Service Rework Drawing: Within 28,000 landings since accomplishment of that modification, or within 3,500 landings after May 22, 1998, or before the accumulation of 48,000 total landings, whichever occurs latest, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996; or Revision 01, dated June 16, 1999, excluding Evaluation Form. After the effective date of this AD, Revision 01 of the service bulletin must be used. Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(1) If no crack is detected during any HFEC inspection required by this paragraph: Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected during any HFEC inspection required by this paragraph: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(e) Accomplishment of the actions required by this AD constitutes terminating action for inspections of PSE 53.09.001 (reference McDonnell Douglas Model DC–9 SID) required by AD 96–13–03, amendment 39–9671.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance approved in accordance with AD 98–08–24, amendment 39–10473; AD 94–03–01, amendment 39–8807; or AD 96–13–03, amendment 39–9671; are acceptable for compliance with the applicable requirements of this AD.

(3) An alternative method of compliance that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Unless otherwise provided in this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996; or McDonnell Douglas Service Bulletin DC9–53–277, Revision 01, dated June 16, 1999, excluding Evaluation Form.

(1) The incorporation by reference of McDonnell Douglas Service Bulletin DC9–53–277, Revision 01, dated June 16, 1999, excluding Evaluation Form, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996, was approved previously by the Director of the Federal Register as of May 22, 1998 (63 FR 19180, April 17, 1998).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on February 10, 2003.

Issued in Renton, Washington, on December 24, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–29 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–85–AD; Amendment 39–13003; AD 2002–26–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive inspections to detect evidence of wear damage in the area at the interface between the vertical stabilizer and fuselage skin, and corrective actions, if necessary. This amendment also provides for an optional terminating action for the repetitive inspections. The actions specified by this AD are intended to detect and correct wear damage of the fuselage skin, which could result in thinning and cracking of the fuselage skin, and consequent in-flight depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on May 30, 2002 (67 FR 37734). That action proposed to require repetitive inspections to detect evidence of wear damage in the area at the interface between the vertical stabilizer and fuselage skin, and corrective actions, if necessary. That action also proposed to provide for an optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Change Cost Impact

One commenter states that the work hours cited in the cost impact section of the proposed AD are significantly understated. The commenter notes that the hours for access and restoration have been omitted from the cost figures, so the true cost impact is not specified. The commenter states that access and restoration tasks do not routinely occur during scheduled maintenance visits in this instance. The commenter adds that 18 hours are necessary to gain access, perform the inspection and terminating action, and restore the airplane. The commenter asks that the cost impact section be changed to 18 hours for these actions.

The FAA agrees that access to the area under the vertical seal is not a task normally accomplished during routine maintenance, and the work hours required for access and closeup should be added. We have changed the work hours for the inspection specified in the cost impact section to 12 work hours; the optional terminating action will remain at 6 work hours, as it can be done immediately following the inspection, before closeup.

Request To Change Limits for Allowable Wear Damage

One commenter states that the definition for the limits for allowable skin damage as specified in the structural repair manual (SRM) was recently revised, and the damage limits have been reduced. The commenter adds that Section 3 of the referenced service bulletin specifies these new allowable damage limits in the Accomplishment Instructions. The commenter asks that the proposed AD be changed to refer to the service bulletin or list the revision date of the appropriate SRM to assure operators use the new limits for allowable damage.

We do not agree with the commenter. Operators should use the new allowable damage limits cited in the service bulletin or they may not be evaluating existing blendouts against the proper limits. However, we have determined that evaluation of existing blendouts against the old damage limits will not compromise an acceptable level of safety. Regarding new repairs, paragraph (a)(2) of the proposed AD requires that operators repair and refinish the skin per the service bulletin. In order to comply with this requirement, operators must use the allowable limits specified in the service bulletin. No change to the final rule is necessary in this regard.

Request Credit for Previous Inspections and Terminating Action

One commenter asks that credit be given for the inspections and terminating action required by the proposed AD, if done before the effective date of the proposed AD per Boeing Service Bulletin 747–53–2192, dated July 21, 1981. The commenter states that the service bulletin referenced in the proposed AD includes a provision that specifies such credit.

We agree that credit can be given under certain explicit conditions. Service Bulletin 747–53–2192 specifies that, for airplanes having line numbers 0001 through 0414 inclusive, there is an option of using enamel coating or BMS 10–86 Teflon-filled coating. If operators can confirm that BMS 10–86 Teflon-filled coating was used, and the new allowable damage limits specified in Boeing Alert Service Bulletin 747–53A2478 (referenced in the proposed AD as the appropriate source of service information for accomplishment of the actions specified) are met, then no more work is necessary. A new paragraph (c) has been added to this final rule to provide credit if the conditions are met.

Request Credit for Inspections Done per Certain Maintenance Procedures

One commenter states that the Boeing Model 747 Maintenance Planning Document (MPD) recommends inspections of the affected areas of the fuselage skin at no greater than "D" check intervals. The commenter adds that the Corrosion Prevention and Control Program (CPCP) recommends inspections of the exterior surface of the fuselage skin for corrosion and other discrepancies at 5-year intervals. Based on these requirements, the commenter does the inspections required by the proposed AD earlier than the 6,000-flight-cycle compliance time specified for the repetitive inspections. The commenter also adds that, since the existing inspection programs already require inspections more frequently, there is no additional safety to be gained from promulgation of the proposed AD. The commenter asks that credit be given for the repetitive inspections required by paragraph (a)(1) of the proposed AD if done as part of these maintenance programs.

Based on operator reports of wear damage of the fuselage skin at the interface area of the vertical stabilizer seal and fuselage skin, we do not agree with the commenter that existing maintenance programs are providing acceptable levels of safety. Additionally, this area is not accessed by all operators during scheduled maintenance visits, as specified previously under "Request to Change Cost Impact," so no change to the final rule is necessary in this regard. However, under the provisions of paragraph (d) of the final rule, we may approve requests for alternate inspections if data are submitted to substantiate that the inspections are equivalent and that repairs and any existing wear meet the allowable damage limits specified in the referenced service bulletin.

Request To Change Paragraphs (a)(2) and (b)

One commenter states that paragraph (b) of the proposed AD allows refinishing of the fuselage skin with BMS 10–86 Teflon-filled coating as terminating action for the proposed inspections. The commenter notes that there are other Teflon-filled coatings that are equivalent or better than BMS 10–86, and operators may already be using these "equivalent" coatings in their paint specifications. The commenter asks that, if the proposed AD is deemed necessary, paragraphs (a)(2) and (b) be changed to allow the use of other Teflon-filled coatings with equivalent abrasion resistant properties.

We do not agree with the commenter's request, as no supporting data were provided to us to substantiate the request. However, under the provisions of paragraph (d) of the final rule, we may approve requests for the use of other Teflon-filled coatings if data are submitted to substantiate that such coatings would provide an acceptable level of safety.

Request To Reconsider Terminating Action

One commenter states that paragraphs (a)(2) and (b) of the proposed AD allow the one-time application of Teflon-filled paint coating as terminating action for the repetitive inspections required by paragraph (a)(1) of the proposed AD. The commenter states that the proposed AD seems to indicate that the external paint will never again be removed and replaced, but is reapplied on an irregular basis. The commenter adds that, if this problem is as serious as alleged, a one-time application of a Teflon-filled paint coating to the exterior of the airplane would not provide a realistic terminating action. The paint will have to be reapplied whenever the external paint is stripped and refinished.

We do not agree with the commenter. If the external paint is stripped, refinishing the skin with BMS 10–86 Teflon-filled coating is required to remain in compliance with paragraph (a)(2) of this AD. Therefore, no change

to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,104 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 253 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane (including time required to gain access and to close up) to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $182,160, or $720 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to accomplish the proposed optional terminating action per paragraph (b) of this AD, it would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the optional termination action would be $360 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–15 Boeing: Amendment 39–13003. Docket 2002–NM–85–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct wear damage of the fuselage skin in the area at the interface between the vertical stabilizer and fuselage skin, which could result in thinning and cracking of the fuselage skin, and consequent in-flight depressurization of the airplane, accomplish the following:

Inspections for Damage/Corrective Actions

(a) Prior to the accumulation of 15,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed inspection to detect evidence of wear damage of the fuselage skin at the interface area of the vertical stabilizer seal and fuselage skin, per Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002.

(1) If no wear damage of the fuselage skin is detected or any existing blendout is within the structural repair manual (SRM) allowable damage limits: Repeat the detailed inspection at intervals not to exceed 6,000 flight cycles.

(2) If any wear damage of the fuselage skin is detected or any existing blendout exceeds the allowable damage limits specified in the SRM: Before further flight, repair the vertical stabilizer seal interface and refinish the skin with BMS 10–86 Teflon-filled coating, per the alert service bulletin. Accomplishment of the repair and refinishing is terminating action for the repetitive inspections required by paragraph (a)(1) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Optional Terminating Action

(b) Refinishing the fuselage skin with BMS 10–86 Teflon-filled coating, per Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002, terminates the repetitive inspections required by paragraph (a)(1) of this AD.

Previously Accomplished Inspections and Terminating Action

(c) Inspections and terminating action done before the effective date of this AD per Boeing Service Bulletin 747–53–2192, dated July 21, 1981, are acceptable for compliance with the corresponding actions required by this AD, provided BMS 10–86 Teflon-filled coating was used, and the new allowable damage limits specified in Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002, are met.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 10, 2003.

Issued in Renton, Washington, on December 24, 2002.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–26 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–402–AD; Amendment 39–12997; AD 2002–26–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes with stowage bins installed forward of door 2 at Station 680. This AD requires a one-time inspection to determine if a certain intercostal is installed for support of the overhead stowage bin(s) at Station 680, and follow-on actions, if necessary. This action is necessary to prevent failure of the stowage bin attachment fitting at Station 680, which could result in the overhead stowage bin falling onto the passenger seats below and injuring passengers or impeding the evacuation of passengers in an emergency. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Crotty, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1675; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes with stowage bins installed forward of door 2 at Station 680 was published in the **Federal Register** on May 15, 2002 (67 FR 34639). That action proposed to require a one-time inspection to determine if a certain intercostal is installed for support of the overhead stowage bin(s) at Station 680, and follow-on actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter states that it offers no comments because it does not operate any affected airplanes.

Extend Compliance Time for Installation of Intercostal(s)

Several commenters request that the FAA extend the compliance time for installation of the intercostal(s), if necessary, from 24 months to 60 months after the effective date of the AD. The commenters point out that the time required to gain access for installing the intercostal(s) is significant (the commenters estimate 65 work hours is needed to gain access, install, and close up), and the proposed 24-month compliance time would not allow most operators to accomplish the proposed actions during a heavy maintenance visit. The commenters also state that, based on preliminary inspections, a significant portion of the airplane fleet may be without the subject intercostal. To ensure that an acceptable level of safety is maintained if the compliance time is extended to 60 months, the commenters recommend accomplishment of repetitive inspections for cracking every 18 months.

The FAA concurs that extending the compliance time for the installation of the intercostal(s) is an acceptable alternative to requiring installation of the intercostal(s) within 24 months after the effective date of this AD, provided that repetitive inspections for cracking are performed until the intercostal is installed. Therefore, we have revised paragraph (b) in this final rule to add subparagraphs (b)(1) and (b)(2), which specify the compliance alternatives.

Reduce Compliance Time for One-Time Inspection

The same commenters who request extension of the compliance time for installing the intercostal also request that we reduce the compliance time from 24 months to 12 months for the one-time inspection to determine if the subject intercostal is installed. One of the commenters explains that reducing the compliance time in this way would ensure that any structural damage is found and fixed in a timely manner.

We do not concur with the request to reduce the compliance time for the one-time inspection. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the time necessary to perform the inspection. In light of all of these factors, we find a 24-month compliance time for completing the required inspection to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. No change is necessary in this regard.

Request To Allow Stop-Drilling of Cracks

Two commenters request that we revise paragraph (c) of the proposed AD to allow stop-drilling of any crack that is found, instead of requiring repair before further flight. The commenters state that, following stop-drilling of the crack, the affected overhead stowage bin could be blocked out until an interim repair is installed within 90 days. The commenters state no justification for

this request, but one commenter notes that the stowage bins at Station 680 on its airplanes are above a galley, so no passenger sits under the subject stowage bins.

We do not concur with the commenters' request. The commenters provide no data to substantiate that their request would provide an acceptable level of safety. However, an affected operator may request approval of an alternative method of compliance as provided by paragraph (d) of this AD. We may consider approving such an alternative method of compliance if data are submitted to support that an alternative repair method would provide an acceptable level of safety. No change is necessary in this regard.

Request To Issue Supplemental NPRM

The commenters who request extension of the compliance time for installation of the intercostal, reduction of the compliance time for the initial inspection, and inclusion of a provision for stop-drilling cracks, recommend that we issue a supplemental NPRM, supported by a revised service bulletin.

We do not concur with the commenters' request. Under the provisions of the Administrative Procedure Act, we issue a supplemental NPRM and reopen the period for public comment when we determine that a change to a proposed AD will either increase the economic burden on an operator or increase the scope of the proposed AD. The change that we are making to this AD—extension of the compliance time for installing the intercostal—does not increase the economic burden on any operator nor does it expand the scope of the proposed AD. Also, the airplane manufacturer has not issued a revised service bulletin. For these reasons, as well as the potentially adverse effect on safety that delaying issuance of this final rule may cause, we find it unnecessary to issue a supplemental NPRM. Thus, no change has been made in this regard.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the change previously described. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 403 Model 757–200 series airplanes of the affected design in the worldwide fleet. We estimate that 219 airplanes of U.S. registry will be affected by this AD.

The required inspection will take up to 2 work hours per airplane (1 work hour per side of the airplane), at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be up to $26,280, or $120 per airplane.

Should an operator be required to do the installation, it will take up to 2 work hours per airplane (1 work hour per side of the airplane), at the average labor rate of $60 per work hour. Required parts will cost approximately $1,310 per airplane. Based on these figures, the cost impact of this installation is estimated to be $1,430 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons described above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulation (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–09 Boeing: Amendment 39–12997. Docket 2000–NM–402–AD.

Applicability: Model 757–200 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 757–25–0194, dated February 11, 1999, and having stowage bins installed forward of door 2 at Station 680.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the stowage bin attachment fitting at Station 680, which could result in the overhead stowage bin falling onto the passenger seats below and injuring passengers or impeding the evacuation of passengers in an emergency, accomplish the following:

One-Time Inspection

(a) Within 24 months after the effective date of this AD, do a one-time general visual inspection to determine if an intercostal is installed between stringers 8 and 9 for support of the overhead stowage bin at Station 680, on the left and right sides of the airplane, as applicable, according to Boeing Service Bulletin 757–25–0194, dated February 11, 1999. If an intercostal is installed on each side that has an overhead stowage bin at Station 680, no further action is necessary.

Note 2: For the purpose of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Follow-On Actions

(b) For each side of the airplane that has an overhead stowage bin at Station 680 but no intercostal installed: Before further flight after the inspection required by paragraph (a) of this AD, do a detailed inspection for cracking or damage of stringer 8 and the tie rod mounting assembly according to Boeing Service Bulletin 757–25–0194, dated February 11, 1999. Then, do either paragraph (b)(1) or (b)(2) of this AD.

Note 3: For the purpose of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) Repeat the detailed inspection for cracking or damage of stringer 8 and the tie rod mounting assembly every 18 months, and within 60 months after the effective date of this AD, do paragraph (b)(2) of this AD.

(2) Before further flight, install a new intercostal between stringers 8 and 9, according to the service bulletin. This installation terminates the repetitive inspections specified in paragraph (b)(1) of this AD.

Repair of Cracking or Damage

(c) If any cracking or damage is found during any detailed inspection required by paragraph (b) of this AD: Before further flight, and before installation of the intercostal, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 757–25–1094, dated February 11, 1999, excluding Evaluation Form. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained form Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 10, 2003.

Issued in Renton, Washington, on December 24, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–44–AD; Amendment 39–13006; AD 2002–26–18]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, that requires replacement of the existing fueling float switch and conduit assemblies in the main and center fuel tanks with new, improved assemblies. The actions specified by this AD are intended to prevent fluid contamination inside the fueling float switch or chafing of the wiring to the in-tank conduit, which could generate an ignition source and consequent fire and explosion in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1446; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes was published in the **Federal Register** on August 20, 2002 (67 FR 53893). That action proposed to require replacement of the existing fueling float switch and conduit assemblies in the main and center fuel tanks with new, improved assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Add Revised Service Information

One commenter, the manufacturer, asks that Boeing Alert Service Bulletin 737–28A1142, Revision 2, dated November 26, 2002, be added to the proposed AD as another source of service information for accomplishment of the specified actions. Boeing Alert Service Bulletin 737–28A1142, dated February 7, 2002, was referenced in the proposed AD as the appropriate source of service information for accomplishment of the actions.

The FAA agrees with the commenter. We have reviewed and approved Boeing Alert Service Bulletin 737–28A1142, Revision 2, dated November 26, 2002.

We find that the changes incorporated in Revision 2 of the service bulletin are not substantive, meaning that airplanes modified per the original issue of the service bulletin are not subject to any additional work under Revision 2 of the service bulletin. Therefore, we have revised paragraph (a) of this final rule to refer to Revision 2 of the service bulletin as the appropriate source of service information for the actions in that paragraph. In addition, we have added a new paragraph (b) to this final rule (and reordered subsequent paragraphs accordingly) to give credit for replacements accomplished before the effective date of this AD according to the original issue of the service bulletin.

Request To Change Number of Airplanes Affected

The same commenter asks that the number of affected airplanes that is specified in the Cost Impact section of the proposed AD be changed. The commenter provided supporting data which confirms that the number of airplanes in the worldwide fleet is 927, and the number of U.S.-registered airplanes is 421.

We agree with the commenter, as we inadvertently specified the incorrect numbers of affected airplanes in the proposed AD. We have changed the Cost Impact section in this final rule to reflect the correct numbers of airplanes.

Request To Change Work Hours

One commenter states that the man hours specified in the Cost Impact section of the proposed AD are conservative, and notes that the actual man hours will be higher and will increase the out-of-service time for its airplanes.

Although the commenter does not request a change, we infer that the commenter would like the number of work hours specified in the Cost Impact section to be increased.

We do not agree to change the work hours for the replacements. The number of work hours necessary to accomplish the replacements, as specified in the Cost Impact section, is consistent with the service bulletin. The number represents the time necessary to perform only the replacements actually required by this AD. We recognize that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Therefore, no change is made to the final rule in this regard.

Explanation of Change to Final Rule

We have changed the compliance time terminology specified in paragraphs (a)(1), (a)(2), and (a)(3) of the proposed AD from flight cycles to flight hours in the final rule. We inadvertently used the term "flight cycles," in the proposed AD; however, the referenced service bulletin specifies "flight hours," and the proposed AD also should have specified "flight hours."

Conclusion

After careful review of the available data, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 927 airplanes of the affected design in the worldwide fleet. The FAA estimates that 421 airplane of U.S. registry will be affected by this AD.

It will take approximately 56 work hours per airplane to accomplish the replacement in the two main fuel tanks, as specified in Work Page I, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the work hours for this required replacement on U.S. operators is estimated to be $1,414,560, or $3,360 per airplane.

It will take approximately 23 work hours per airplane to accomplish the replacement in the center fuel tank, as specified in Work Package II, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the work hours per this required replacement on U.S. operators is estimated to be $580,980, or $1,380 per airplane.

The kit required to accomplish the replacement in all three fuel tanks will cost approximately $5,116 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–18 Boeing: Amendment 39–13006. Docket 2002–NM–44–AD.

Applicability: Model 737–600, -700, -700C, -800, and -900 series airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin 737–28A1142, Revision 2, dated November 26, 2002.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fluid contamination inside the fueling float switch or changing of the wiring to the in-tank conduit, which could generate an ignition source and consequent fire and explosion in the fuel tank, accomplish the following:

Replacement

(a) Replace the existing fueling float switch and conduit assemblies in the main and center fuel tanks with new, improved assemblies (includes a new float switch and a new conduit assembly with a liner system inside the conduit), at the applicable time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, per Work Packages I and II of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1142, Revision 2, dated November 26, 2002.

Note 2: Due to the lack of sleeving on the existing electrical wire installations of the center fuel tank, it is recommended that Work Package II be completed before Work Package I.

(1) For airplanes that have accumulated fewer than 5,000 total flight hours as of the effective date of this AD: Within 2 years after the effective date of this AD.

(2) For airplanes that have accumulated 5,000 total flight hours or more, but fewer than 10,000 total flight hours as of the effective date of this AD: Within 1 year after the effective date of this AD.

(3) For airplanes that have accumulated 10,000 total flight hours or more as of the effective date of this AD: Within 180 days after the effective date of this AD.

(b) Replacements done before the effective date of this AD per Boeing Alert Service Bulletin 737–28A1142, dated February 7, 2002, are considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airport Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requests of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the replacement shall be done in accordance with Boeing Alert Service Bulletin 737–28A1142, Revision 2, dated November 26, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on February 10, 2003.

Issued in Renton, Washington, on December 26, 2002.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–290–AD; Amendment 39–13004; AD 2002–26–16]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, that requires measurement of the over-center force of the thrust reverser operating levers, a functional test of the secondary lock solenoid of the thrust reversers, and corrective actions if necessary. The actions specified by this AD are intended to detect and correct an insufficient over-center force in the corresponding thrust reverser operating lever, and incorrect setting of the thrust reverser selector switch (S9), which could result in uncommanded deployment of the thrust reversers during flight and consequent reduced controllability of the airplane. This AD is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes was published in the **Federal Register** on April 5, 2002 (67 FR 16333). That action proposed to require measurement of the over-center force of the thrust reverser operating levers; a functional test to verify proper energizing of the secondary lock solenoid of the thrust reversers; and corrective actions, if necessary.

Explanation of Relevant Service Information

In the proposed AD, the FAA identified Fokker Service Bulletin SBF100–76–015, dated January 15, 2001, as the appropriate source of service information for the proposed requirements. Since the proposed AD was issued, Fokker issued Service Bulletin Change Notification (SBCN) SBF100–76–015/01, dated May 1, 2001, and Manual Change Notification—Maintenance Documentation (MCNM) F100–060, Revision 1, dated March 19, 2001. The revised MCNM provides wording that is consistent with the existing maintenance manual wording to clarify the procedures; the procedures otherwise remain unchanged. The SBCN advises that the MCNM changes have been incorporated into the service bulletin.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

One commenter fully supports the proposed AD.

Request To Cite Revised Service Documents

The manufacturer requests that the proposed AD be revised to cite the most recent versions of the relevant service documents.

Based on a review of the document revisions, the FAA concurs with the request. Paragraphs (a) and (b) of this AD have been revised accordingly.

Request To Clarify Certain Requirements

The manufacturer requests that paragraph (b) of the proposed AD be revised for several reasons. First, the proposed language suggests that the functional test is intended to verify proper energizing of the secondary lock solenoid, whereas the solenoids are not supposed to energize during the test. Second, the reference to movement of the "thrust reverser operating lever" in paragraphs (b)(1), (b)(2), (b)(2)(i), and (b)(2)(ii) of the proposed AD suggests that the thrust reverser operating levers are operated during the functional test. The manufacturer advises that the thrust levers, not the thrust reverser operating levers, are operated during the functional test. Third, the manufacturer suggests that paragraph (b)(2) of the proposed AD, which would require operators to repeat the functional test "one more time," could be misinterpreted. The service bulletin provides instructions to perform the functional test at least five times before, and (if necessary) after, a rigging check of the thrust lever switchbox. The functional test involves "slamming" the thrust levers with the thrust reverser operating levers in the stowed position. The commenter suggests a reader could infer that a single "slam" is sufficient.

The FAA agrees with the requests for the reasons provided by the commenter and has made the following changes in this final rule: First, the phrase "to verify proper energizing" has been removed from the summary and paragraphs (b) and (b)(2) of this AD. Second, the phrase "movement of thrust reverser operating levers" has been changed to "movement of the thrust levers" in paragraphs (b)(1), (b)(2), (b)(2)(i), and (b)(2)(ii). Third, the phrase "one more time" has been removed from paragraph (b)(2).

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,680, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD; and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–16 Fokker Services B.V.: Amendment 39–13004. Docket 2001–NM–290–AD.

Applicability: All Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct an insufficient over-center force in the corresponding thrust reverser operating lever, and incorrect setting of the thrust reverser selector switch (S9), which could result in uncommanded deployment of the thrust reversers during flight and consequent reduced controllability of the airplane, accomplish the following:

Over-Center Force Measurement and Readjustment

(a) Within 6 months after the effective date of this AD, measure the over-center force of the left- and right-hand thrust reverser operating levers, per paragraph 2.A. of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–015, dated January 15, 2001, including Service Bulletin Change Notification (SBCN) SBF100–76–015/01, dated May 1, 2001, and Manual Change Notification—Maintenance Document

(MCNM) F100–060, Revision 1, dated March 19, 2001.

(1) If the over-center force is equal to or higher than 4.5 pounds, but not higher than 5.5 pounds, no further action is required by this paragraph.

(2) If the over-center force is less than 4.5 pounds or higher than 5.5 pounds, before further flight, readjust the over-center force and accomplish the corrective actions (including measuring and readjusting the minimum stop of the reverse-thrust lever and over-center force of the thrust reverser), per the service bulletin.

Functional Test and Corrective Actions

(b) Within 6 months after the effective date of this AD, perform a functional test of the secondary lock solenoid of the left- and right-hand thrust levers, per paragraph 2.B. of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–015, dated January 15, 2001, including SBCN SBF100–76–015/01, dated May 1, 2001, and MCNM F100–060, Revision 1, dated March 19, 2001.

(1) If the secondary lock solenoid does NOT (momentarily or continuously) energize with movement of the thrust levers as described in paragraph 2.B.(9) of the service bulletin, no further action is required by this paragraph.

(2) If the secondary lock solenoid (momentarily or continuously) energizes with movement of the thrust levers as described in paragraph 2.B.(9) of the service bulletin, before further flight, perform a rigging check of the thrust reverser switchbox and repeat the functional test of the secondary lock solenoid, per paragraph 2.B.(9) of the service bulletin.

(i) If the solenoid does NOT (momentarily or continuously) energize with movement of the thrust levers as described in paragraph 2.B.(9) of the service bulletin, no further action is required by this paragraph.

(ii) If the secondary lock solenoid still (momentarily or continuously) energizes with movement of the thrust levers as described in paragraph 2.B.(9) of the service bulletin, before further flight, replace the thrust reverser switchbox with a new or serviceable switchbox, per the service bulletin.

Credit for Accomplishment per Prior Version of Service Information

(c) Accomplishment, before the effective date of this AD, of the actions specified in paragraphs (a) and (b) of this AD in accordance with Fokker Service Bulletin SBF100–76–015, dated January 15, 2001, including MCNM F100–060, dated January 1, 2001, is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Fokker Service Bulletin SBF100–76–015, dated January 15, 2001, including Service Bulletin Change Notification SBF100–76–015/01, dated May 1, 2001, and Manual Change Notification MCNM F100–060, Revision 1, dated March 19, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 2001–040, dated March 30, 2001.

Effective Date

(g) This amendment becomes effective on February 10, 2003.

Issued in Renton, Washington, on December 26, 2002.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–16 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–104–AD; Amendment 39–13007; AD 2002–26–19]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000, SAAB SF340A, and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Saab Model SAAB 2000, SAAB SF340A, and SAAB 340B series airplanes, that requires replacing the main pitot static tube on each side of the airplane with a new improved pitot static tube, and installing a gasket between the tube and the airplane structure. The actions specified by this AD are intended to prevent ice from blocking the pitot system, due to the pitot tube not having enough heating capacity to stay above freezing temperature, which could result in erroneous airspeed indications. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Saab Model SAAB 2000, SAAB SF340A, and SAAB 340B series airplanes was published in the **Federal Register** on July 19, 2002 (67 FR 47491). That action proposed to require replacing the main pitot static tube on each side of the airplane with a new improved pitot static tube, and installing a gasket between the tube and the airplane structure.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 312 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $13,400 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,330,560, or $13,880 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–19 Saab Aircraft AB: Amendment 39–13007. Docket 2002–NM–104–AD.

Applicability: All Model SAAB 2000, SAAB SF340A, and SAAB 340B series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice from blocking the pitot system, due to the pitot tube not having enough heating capacity to stay above freezing temperature, which could result in erroneous airspeed indications, accomplish the following:

Replacement

(a) Within 12 months from the effective date of this AD, replace the main pitot static tube on each side of the airplane with a new improved pitot static tube, and install a gasket between the tube and the airplane structure; per the Accomplishment Instructions of Saab Service Bulletin 340–34–145 (for Model SF340A and 340B series airplanes); or Saab Service Bulletin 2000–34–060 (for Model 2000 series airplanes); both dated October 1, 2001; as applicable.

Part Installation

(b) As of the effective date of this AD, no person shall install any static pitot tube having part number 856ML1 or 856ML2, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement and installation shall be done in accordance with Saab Service Bulletin 340–34–145, dated October 1, 2001; or Saab Service Bulletin 2000–34–060, dated October 1, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directives 1–166 and 1–167, both dated October 1, 2001.

Effective Date

(f) This amendment becomes effective on February 10, 2003.

Issued in Renton, Washington, on December 26, 2002.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–396–AD; Amendment 39–13000; AD 2002–26–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A330 and A340 series airplanes, that requires a one-time inspection to determine the manufacturer's name, part number, and date code of certain circuit breakers; and replacement of any suspect circuit breaker with a new improved circuit

breaker. The actions specified by this AD are intended to ensure that proper circuit breakers are installed for the fire extinguishing system or part of the supplemental oxygen supply. A defective circuit breaker, if not corrected, could trip without the cockpit indication light illuminating. If the flightcrew is unaware of this situation while operating the airplane, this latent failure in combination with other failures could present an immediate hazard to the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on August 9, 2002 (67 FR 51789). That action proposed to require a one-time inspection to determine the manufacturer's name, part number, and date code of certain circuit breakers; and replacement of any suspect circuit breaker with a new improved circuit breaker.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Changes to the Final Rule

Since the language in Note 2 of the proposed AD is regulatory in nature, that note has been redesignated as paragraph (c) of this final rule.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 8 Model A330 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $960, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Currently, there are no Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 2 work hours to accomplish the required action, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD will be $120 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–12 Airbus: Amendment 39–13000. Docket 2001–NM–396–AD.

Applicability: All Model A330 and A340 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that proper circuit breakers are installed for the fire extinguishing system or part of the supplemental oxygen supply, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD, inspect to determine the manufacturer's name, part number, and date code of circuit breakers 1WX, 2WX, and 5WR

through 12WR inclusive, located in the 722VU and 742VU panels; per Airbus Service Bulletin A330–92–3034, Revision 03 (for Model A330 series airplanes); or Airbus Service Bulletin A340–92–4042, Revision 03 (for Model A340 series airplanes); both dated November 13, 2001; as applicable.

Corrective Action

(b) If any Texas Instruments circuit breaker having part number (P/N) E0730–005A7A5A, E0730–005A05AA, E0730–005A7A5B, or E0730–005A05AB, with any date code 96/01 through 98/52 inclusive, is found during the inspection required by paragraph (a) of this AD, before further flight, replace the circuit breaker with a new improved circuit breaker, either having the proper date code or from another manufacturer, per Airbus Service Bulletin A330–92–3034, Revision 03 (for Model A330 series airplanes); or Airbus Service Bulletin A340–92–4042, Revision 03 (for Model A340 series airplanes); both dated November 13, 2001; as applicable.

(c) Inspections and corrective actions accomplished before the effective date of this AD per Airbus Service Bulletin A330–92–3034, dated February 9, 2001; Revision 01, dated April 11, 2001; or Revision 02, dated August 14, 2001 (for Model A330 series airplanes); and Airbus Service Bulletin A340–92–4042, dated February 9, 2001; Revision 01, dated April 11, 2001; or Revision 02, dated August 14, 2001 (for Model A340 series airplanes); are considered acceptable for compliance with the applicable inspections and corrective actions required by this AD.

Part Installation

(d) As of the effective date of this AD, no person shall install any Texas Instruments circuit breaker having P/N E0730–005A7A5A, E0730–005A05AA, E0730–005A7A5B, or E0730–005A05AB with any date code 96/01 through 98/52 inclusive, on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with Airbus Service Bulletin A330–92–3034, Revision 03, dated November 13, 2001; or Airbus Service Bulletin A340–92–4042, Revision 03, dated November 13, 2001 excluding Appendix 01, Reporting Sheet, and quality perception form, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 2001–468(B) and 2001–469(B), both dated October 3, 2001.

Effective Date

(h) This amendment becomes effective on February 10, 2003.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–140 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–348–AD; Amendment 39–13008; AD 2002–26–51]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–26–51 that was sent previously to all known U.S. owners and operators of certain EMBRAER Model EMB–135 and –145 series airplanes by individual notices. This AD requires revising the Limitations Section of the Airplane Flight Manual to advise the flightcrew of the possibility of locking of the elevator during takeoff and to provide the appropriate procedures to prevent it. This action is prompted by a report indicating that the elevator locked during the takeoff run on a Model EMB–145 series airplane. The actions specified by this AD are intended to prevent locking of the elevator during takeoff, which could result in loss of controllability of the airplane.

DATES: Effective January 13, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–26–51, issued December 20, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 5, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–348–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–348–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Bob Breneman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On December 20, 2002, the FAA issued emergency AD 2002–26–51, which is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes.

Background

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC received a report indicating that the elevator locked during the takeoff run on a Model EMB–145 series airplane. The locking was caused by a restart of the locking sequence, which was initiated by a rearward movement of the gust lock lever (and aggravated by a possible ineffective plunger spring) after the elevator had been unlocked. Locking

of the elevator during takeoff could result in loss of controllability of the airplane.

The DAC issued Brazilian airworthiness directive 2002–12–03, dated December 20, 2002, in order to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination

In light of this information, the FAA finds that certain procedures must be included in the AFM for Model EMB–135 and –145 series airplanes to provide the flightcrew with appropriate procedures for preventing a locked elevator during takeoff. The FAA has determined that such procedures currently are not defined adequately in the AFM for these airplanes.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 2002–26–51 to prevent locking of the elevator during takeoff, which could result in loss of controllability of the airplane. The AD requires revising the Limitations Section of the Airplane Flight Manual to advise the flightcrew of the possibility of locking of the elevator during takeoff and to provide the appropriate procedures to prevent it. This AD is consistent with the Brazilian airworthiness directive.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider additional rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on December 20, 2002, to all known U.S. owners and operators of certain EMBRAER Model EMB–135 and –145 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–348–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–51 Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–13008. Docket 2002–NM–348–AD.

Applicability: Model EMB–135 and –145 series airplanes, certificated in any category, equipped with an electromechanical gust lock system.

Compliance: Required as indicated, unless accomplished previously.

To prevent locking of the elevator during takeoff, which could result in loss of controllability of the airplane, accomplish the following:

(a) Within 24 clock hours after receipt of this AD, revise the Limitations Section of the Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Every single time the gust lock lever is set to the unlocked position, the elevator movement must be checked. This check must be performed no sooner than 10 seconds after positioning the gust lock lever to the fully forward unlocked position by moving the

control column from the full up stop and to the full down stop and back to the full up stop."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2002–12–03, dated December 20, 2002.

(d) This amendment becomes effective on January 13, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–26–51, issued December 20, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 30, 2002.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–149 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14089; Airspace Docket No. 02–ACE–13]

Modification of Class E Airspace; Caruthersville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace at Carthersville, MO. The FAA has developed Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 36 ORIGINAL Standard Instrument Approach procedure (SIAP), RNAV (GPS) RWY 18 ORIGINAL SIAP and VHF Omni-directional Range (VOR)/Distance Measuring Equipment (DME) RWY 18 ORIGINAL SIAP to serve Caruthersville Memorial Airport, Caruthersville, MO. Current Class E airspace at Caruthersville, MO was designed to contain these SIAPs. A recent survey has established a new Airport Reference Point (ARP) for Caruthersville Memorial Airport. This requires that controlled airspace extending upward from 700 feet Above Ground Level (AGL) at Caruthersville, MO be redefined in order to accommodate the SIAPs.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAPs and to aggregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, April 17, 2003.

Comments for inclusion in the Rules Docket must received on or before February 28, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Departmental of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–14089/ Airspace Docket No. 02–ACE–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA has RNAV (GPS) RWY 36 ORIGINAL SIAP, RNAV (GPS) RWY 18 ORIGINAL SIAP and VOR/DME RWY 18 ORIGINAL SIAP to serve Caruthersville Memorial Airport, Caruthersville, MO. The amendment to Class E airspace at Caruthersville, MO will provide controlled airspace at and above 700 feet AGL to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designation an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified below. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking will be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basic supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–14089/Airspace

Docket No. 02–ACE–13" The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Caruthersville, MO,

Caruthersville Memorial Airport, MO

(Lat. 36°10′09″ N., long. 89°40′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Caruthersville Memorial Airport.

* * * * *

Issued in Kansas City, MO, on December 20, 2002.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–61 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30347; Amdt. No. 3038]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigaitonal facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 6, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regionl Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney, Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR

part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on December 20, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, and 44721–44722.

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DEM, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME/ § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPSs; § 97.33 RNAV SIAPs; AND § 97.35 COPTER SIAPs, Identified as follows:

* * * Effective Upon Publication

FDC date	State	City	Airport	FDIC No.	Subject
11/14/02	NY	Albany	Albany Intl	2/1946	GPS RWY 19, ORIG–A. This Corrects FDC 2/1946 Published in TL 03–01 Dated 12/6/02.
11/14/02	NY	Albany	Albany Intl	2/1947	GPS RWY 1, ORIG–A. This Corrects FDC 2/1947 Published in TL 03–01 Dated 12/6/02.
1/14/02	NY	Albany	Albany Intl	2/1949	VOR RWY 28, ORIG–A. This Corrects FDC 2/1949 Published in TL 03–01 Dated 12/6/02.
11/14/02	NY	Albany	Albany Intl	2/1950	GPS RWY 28, ORIG–A. This Corrects FDC 2/1950 Published in TL 03–01 Dated 12/6/02.
12/03/02	AR	West Memphis	West Memphis Muni	2/2466	NDB–B, AMDT 3.
12/04/02	AR	Rogers	Rogers Muni-Carter Field	2/2483	VOR/DME RWY 19, AMDT 10.
12/04/02	AR	Fayetteville	Drake Field	2/2484	LDA/DME RWY 34, AMDT 2.
12/04/02	AR	Fayetteville	Drake Field	2/2485	VOR/DME–B, Orig.
12/04/02	AR	Fayetteville/Springdale/Rogers.	Northwest Arkansas Regional.	2/2486	ILS/DME RWY 16, ORIG.
12/04/02	AR	Fayetteville/Springdale/Rogers.	Northwest Arkansas Regional.	2/2487	ILS/DME RWY 34, ORIG.
12/04/02	AR	Springdale	Springdale Muni	2/2488	VOR RWY 18, AMDT 15.
12/04/02	AR	Springdale	Springdale Muni	2/2489	VOR/DME RWY 36, AMDT 9.
12/04/02	AR	Springdale	Springdale Muni	2/2490	ILS RWY 18, AMDT 7.
12/04/02	AR	Fayetteville	Drake Field	2/2491	LOC RWY 16, AMDT 16.
12/04/02	AR	Fort Smith	Fort Smith Regional	2/2494	VOR or TACAN RWY 25, AMDT 20D
12/04/02	OH	Cleveland	Cleveland Hopkins Intl	2/2507	ILS RWY 6L, ORIG.
12/04/02	NC	Wilmington	Wilmington Intl	2/2516	RNVA (GPS) RWY 6, ORIG.
12/05/02	IA	Waterloo	Waterloo Muni	2/2538	RNAV (GPS) RWY 36, ORIG.
12/05/02	IA	Waterloo	Waterloo Muni	2/2539	RNAV (GPS) RWY 18, ORIG.
12/05/02	IA	Waterloo	Waterloo Muni	2/2540	VOR RWY 36, AMDT 17.
12/05/02	IA	Waterloo	Waterloo Muni	2/2541	VOR RWY 18, AMDT 8.

FDC date	State	City	Airport	FDIC No.	Subject
12/05/02	CO	Grand Junction	Grand Junction/Walker Field.	2/2548	LDA/DME RWY 29, ORIG–A.
12/05/02	MI	Grayling	Grayling AAF	2/2558	VOR RWY 14, AMDT 1B.
12/05/02	MI	Grayling	Grayling AAF	2/2562	GPS RWY 14, ORIG.
12/05/02	MI	Grayling	Grayling AAF	2/2563	NDB RWY 14, AMDT 7.
12/05/02	TX	Houston	West Houston	2/2570	RNAV (GPS) Y RWY 33, ORIG.
12/05/02	MS	Tupelo	Tupelo RGNL	2/2710	ILSRWY 36, AMDT 7.
12/06/02	OH	Cleveland	Cleveland Hopkins Intl	2/2506	ILS RWY 6R, AMDT 18.
12/06/02	OH	Cleveland	Cleveland Hopkins Intl	2/2617	RNAV (GPS) Z RWY 6L, ORIG.
12/06/02	OH	Cleveland	Cleveland Hopkins Intl	2/2618	RNAV (GPS) Y RWY 6L, ORIG.
12/13/02	TX	McKinney	McKinney Muni	2/2769	ILS RWY 17, AMDT 1C.
12/13/02	SC	Greenwood	Greenwood County	2/2787	VOR RWY 27, AMDT 12.
12/13/02	ND	Bismarck	Bismarck Muni	2/2810	ILS RWY 13, AMDT 2B.
12/13/02	ND	Bismarck	Bismarck Muni	2/2812	RNAV (GPS) RWY 3, ORIG–A.
12/13/02	ND	Bismarck	Bismarck Muni	2/2813	RNAV (GPS) RWY 21, ORIG–B.
12/13/02	ND	Bismarck	Bismarck Muni	2/2815	RADAR–1, AMDT 3.
12/17/02	AR	Rogers	Rogers Muni-Carter Field	2/2889	VOR RWY 1, AMDT 13A.
12/18/02	ND	Bismarck	Bismarck Muni	2/2898	ILS RWY 31, AMDT 32B.
12/19/02	PA	Philadelphia	Wings Field	2/2934	RNAV (GPS) RWY 24, Orig. This Notam Replaces FDC 2/2329 Intl03–01.

[FR Doc. 03–96 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1505–AA35

Financial Crimes Enforcement Network; Anti-Money Laundering Requirements—Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks; Correction

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule; correction.

SUMMARY: FinCEN published in the **Federal Register** of September 26, 2002, a document (67 FR 60562) finalizing a rule to require certain financial institutions to obtain information from each foreign bank for which they maintain a correspondent account concerning (1) the foreign bank's status as "shell" bank, (2) whether the foreign bank provides banking services to foreign shell banks, (3) certain owners of the foreign bank, and (4) the identity of a person in the United States to accept service of legal process. The document contained an incorrect citation to a website maintained by the Federal Reserve Bank.

DATES: This correction is effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections provides guidance under 31 U.S.C. 5318(j).

Need for Correction

As published, the final rule contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

In final rule FR Doc. 02–24142, published on September 26, 2002 (67 FR 60562), make the following correction:

On page 60568, in column 1, correct footnote 25 to read as follows:

"[25] A covered financial institution may verify that a foreign bank is required to file an FR Y–7 by checking the list of foreign banks with U.S. offices at *http://www.federalreserve.gov/releases/iba/default.htm*."

Dated: December 30, 2002.

Cynthia L. Clark,

Deputy Chief Counsel, Financial Crimes Enforcement Network, Federal Register Liaison.

[FR Doc. 03–192 Filed 1–3–03; 8:45 am]

BILLING CODE 4810–02–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 112]

RIN 3090–AH77

Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule decreases the mileage reimbursement rate for use of a privately owned vehicle (POV) on official travel to reflect current costs of operation as determined in cost studies conducted by the General Services Administration (GSA). The governing regulation is revised to decrease the mileage allowance for advantageous use of a privately owned airplane from 97.5 to 95.5 cents per mile, the cost of operating a privately owned automobile from 36.5 to 36.0 cents per mile; and the cost of operating a privately owned motorcycle from 28.0 to 27.5 cents per mile.

DATES: *Effective Date:* January 1, 2003.

Applicability Date: This final rule applies to travel performed on or after January 1, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GSA Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Devoanna R. Reels, Program Analyst, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–3781. Please cite FTR Amendment 112.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707(b), the Administrator of General Services has the responsibility to establish the privately owned vehicle (POV) mileage reimbursement rates. Separate rates are set for airplanes, automobiles (including trucks), and motorcycles. In order to set these rates, GSA is required to conduct periodic investigations. Subsection (b) of section 5707 of title 5, U.S.C., requires the Administrator of General Services, in consultation with the

Secretaries of Defense and Transportation, and representatives of Government employee organizations, to periodically investigate the cost of travel and the operation of POVs to employees while engaged on official business. As required, GSA conducted an investigation of the costs of operating a POV and is reporting the cost per mile determination. The results of the investigation have been reported to Congress, and a copy of the report appears as an attachment to this document. The report is being published to comply with the requirements of the law. GSA's cost studies show the Administrator of General Services has determined the per-mile operating costs of a POV to be 95.5 cents for airplanes, 36.0 cents for automobiles, and 27.5 cents for motorcycles. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 36.0 cents effective January 1, 2003.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

Dated: December 24, 2002.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, amend 41 CFR part 301–10 as set forth below:

PART 301–10—TRANSPORTATION EXPENSES

1. The authority citation for 41 CFR part 301–10 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118.

2. Revise section 301–10.303 to read as follows:

§ 301–10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?

For use of a	Your reimbursement is
Privately owned aircraft (*e.g.*, helicopter, except an airplane)	Actual cost of operation (*i.e.*, fuel, oil, plus the additional expenses listed in § 301–10.304).
Privately owned airplane	195.5.[1]
Privately owned automobile	136.0.[1]
Privately owned motorcycle	127.5.[1]

[1] Cents per mile.

Attachment to Preamble—Report to Congress on the Costs of Operating Privately Owned Vehicles

Subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, requires that the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of travel and the operation of privately owned vehicles (POVs) (airplanes, automobiles, and motorcycles) to Government employees while on official business and report the results to Congress at least once a year. Subparagraph (b)(2)(B) of section 5707 of Title 5, United States Code, further requires that the Administrator of General Services determine the average, actual cost per mile for the use of each type of POV based on the results of the cost investigation. Such figures must be reported to Congress within 5 working days after the cost determination has been made in accordance with 5 U.S.C. 5707(b)(2)(C).

Pursuant to the requirements of subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, the General Services Administration (GSA), in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conducted an investigation of the cost of operating a privately owned automobile (POA). As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 36.0 cents effective January 1, 2003.

As required, GSA is reporting the results of the investigation and the cost per mile determination. Based on cost studies conducted by GSA, I have determined the per-mile operating costs of a POV to be 95.5 cents for airplanes, 36.0 cents for automobiles, and 27.5 cents for motorcycles.

I have issued a regulation decreasing the current 97.5 to 95.5 cents for privately owned airplanes, 36.5 to 36.0 cents for privately owned automobiles, and 28.0 to 27.5 cents for privately owned motorcycles. This report to Congress on the cost of operating POVs will be published in the **Federal Register**.

[FR Doc. 03–136 Filed 1–3–03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1860

[WO–350–1864–24 1A]

RIN 1004–AD50

Conveyances, Disclaimers and Correction Documents

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) amends its regulations pertaining to recordable disclaimers of interest in land. We are amending the regulation by: removing the 12-year regulatory filing deadline for states; removing the requirement that an applicant be a "present owner of record" to be qualified under the Act; allowing any entity claiming title, not just current owners of record, to apply for a disclaimer of interest; defining the term "state" as it is used in this rule; clarifying how we will approve

disclaimer applications involving another Federal land managing agency.

DATES: This rule is effective February 5, 2003. Any application for a recordable disclaimer pending on the effective date of this final rule will be subject to this final rule.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren 202 452–7779. Individuals who use a telecommunications device for the deaf may contact Mr. Holdren through the Federal Information Relay Service at 1–800–877–8339 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. What Is the Background of This Rulemaking?
II. How Did BLM Change the Proposed Rule in Response to Comments?
III. Responses to Comments
IV. How Did BLM Fulfill Its Procedural Obligations?

I. What Is the Background of This Rulemaking?

Section 315 of the Federal Land Policy and Management Act (FLPMA) authorizes the Secretary of the Interior, through a delegation of authority to BLM, to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where the Secretary determines a record interest of the United States in lands has terminated by operation of law or is otherwise invalid (43 U.S.C. 1745(a)). BLM may issue recordable disclaimers to disclaim Federal title in a wide variety of instances, including avulsion, reliction, or accretion of lands, survey errors, clerical errors, or when applicants assert title previously created under now expired authority.

The following statutory requirements must be met before the Secretary can issue a disclaimer:

1. An applicant must file a written application with the Secretary.
2. The Secretary must publish a notice in the **Federal Register** of the application setting forth the grounds supporting it at least ninety days before the issuance of the disclaimer.
3. The applicant must pay the Secretary the administrative costs associated with issuance of the disclaimer. The Secretary determines the amount of the costs.
4. The Secretary must consult with any affected Federal agency.

BLM published regulations implementing the Secretary's authority under section 315 of FLPMA to issue recordable disclaimers in 1984 (49 FR 35296). These regulations imposed requirements in addition to those identified in the statute. Specifically, the regulations restrict applicants for a disclaimer to "any present owner of record" (43 CFR 1864.1–1). The regulations also specify information the applicant must submit in the application and the costs associated with submitting an application. For example, an applicant is required to submit "[a]ll documents which show to the satisfaction of the authorized officer the applicant's title to the lands." (43 CFR 1864.1–2(c)(3)) This requirement may be waived if BLM believes it is not needed to properly adjudicate the application. The regulation requires that BLM deny an application if more than 12 years have passed since the owner knew or should have known of the alleged claim of the United States (43 CFR 1864.1–3(a)(1)).

"Interest in land" can pertain to various situations because there are different types of interests a property owner can hold. For example, for a specific parcel of land, interests could include surface rights, subsurface rights, mineral interests, timber interests and various other interests which, when combined, equate to a fee simple interest for that parcel. Interests in land can be sold, given away, leased, or otherwise transferred from one entity to another by means of various conveyance documents (*e.g.*, deed or patent). They may also be temporarily transferred from the one entity to another by means of a lease, permit, license, or other such document.

Some Federal property interests may transfer by operation of law to another entity. For example, the Submerged Lands Act (43 U.S.C. 1301–1315), provides that title to the bed of navigable water bodies passes from Federal to state ownership when the state is admitted to the Union. The Act does not require that BLM either initiate or complete this title transfer of land, but by providing a recordable disclaimer of interest, BLM may lessen future disputes.

On February 22, 2002, we published in the **Federal Register** (67 FR 8216) a proposed rule to amend our regulations pertaining to Conveyances, Disclaimers, and Corrections Documents. The proposal sought to amend certain provisions of the regulations originally published in 1984. The proposed rule would further the purpose of section 315 of FLPMA to remove clouds on title to lands or interests in lands by allowing any entity claiming title, rather than only a present owner of record, to apply for a recordable disclaimer of interest. The proposed rule also sought to eliminate the application deadline in section 1864.1–3, as it applies to states. This change would conform the regulations more closely to the Quiet Title Act (28 U.S.C. 2409a(g)) which, in most instances, exempts states from the 12-year statute of limitations under that act. These two technical changes are the only ones that BLM proposed in February 2002 to the 1984 regulations.

Basis and Purpose for the Final Rule

This final rule removes certain restrictions from the current rule that are not required by section 315 of FLPMA (43 U.S.C. 1745). The final rule also reflects a change that Congress made to the Quiet Title Act in 1986 (28 U.S.C. 2409a). These amendments to 43 CFR subpart 1864 will make the recordable disclaimer regulations more consistent with both section 315 of FLPMA and the Quiet Title Act. This rule will reduce the potentially inconsistent administrative interpretations and application of the recordable disclaimer regulations by eliminating the requirement that an applicant be a "present owner of record."

Specifically, this final rule amends the regulations by incorporating the following changes to the way we process disclaimers of interest. The rule:

- Eliminates the application deadline in 43 CFR 1864.1–3 as it applies to "states."
- Allows any entity claiming title, not just current owners of record, to apply for a recordable disclaimer of interest.
- Defines state as used in this rule.
- Clarifies how BLM will evaluate disclaimer of interest applications pertaining to non-BLM federally managed lands.

II. How Did BLM Change the Proposed Rule in Response to Comments?

In this preamble, we respond to significant comments we received on the February 22, 2002, proposed rule (67 FR 8216). Because a majority of responses were form letters opposing the rule, we address those comments generally. We have directly responded to individual substantive comments in support of or in opposition to the rule. In response to several comments we have:

1. Included a definition of "state," as it is used in this rule, and
2. Clarified how BLM will process disclaimer of interest applications affecting non-BLM managed lands.

III. Responses to Comments

During the 60-day comment period BLM received about 18,000 comments in support of, or in opposition to, the proposed rule. Most of the correspondence consisted of form letters

expressing opposition to the proposed rule for a variety of reasons.

General Comments Opposing the Proposed Rule

Letters opposing the rule generally stated the rule would:

- Enable BLM to transfer large tracts of public lands to states;
- Impact sensitive wilderness and roadless areas; and
- Adversely affect wildlife and habitats by allowing states to build major thoroughfares through wild land areas.

General Comments Supporting the Proposed Rule

Letters supporting the rule generally stated the rule would:

- Maintain access to public lands on existing routes in rural areas;
- Support state control over routes in rural places; and
- Ease the process whereby BLM could transfer public land to states.

We are responding to these general comments as they arise in the context of more specific substantive comments on the proposed rule.

Several commenters claimed that the proposed rule is illegal because 43 U.S.C. 1745 does not allow BLM to alter the intent of the statute from the present owner of record to "any entity claiming title to lands." Other commenters asserted that the proposed changes are inconsistent with 43 CFR Subpart 1864 because they do not further the purpose of 43 U.S.C. 1745 and would lead to an increase in inconsistent administrative interpretations, and would allow anyone to make a claim, not just the existing owners of record.

We disagree. The term "present owner of record" is not found in FLPMA. In the existing regulations, published in 1984, BLM required the applicant to be a present owner of record to prelude third parties having no property interest in the lands in question from applying for a recordable disclaimer. We think this present-owner-of-record requirement is inconsistent with the actual language of section 315 of FLPMA. The present-owner-of-record concept artificially limits FLPMA's goal of eliminating clouds on title. A cloud on title is less likely when there is also an actual present owner of record. Land title disputes often arise with parties who have gained title by operation of law, such as states that obtained title under the Submerged Lands Act to lands under navigable bodies of water. For example, a state applying for a recordable disclaimer may not have a record of the state's title to the lands in question in a county clerk's office. Nevertheless, Congress has passed title to the state by virtue of the Submerged Lands Act. Moreover, today's rule does not increase the potential for inconsistent administrative interpretations. Applications containing invalid claims will be rejected regardless of whether they were filed by present owners of record or others.

A significant number of comments asked about the relationship between the proposed rule and R.S. 2477. A coalition of California conservation organizations expressed concern that the proposed rule was intended to facilitate disclaimers by the United States of its interest in lands that are used for recreation, conservation, wilderness and other public purposes, as a result of R.S. 2477 right-of-way claims by individuals and local and state governments. The commenters believe that the FLPMA disclaimer-of-interest procedure was not intended to include R.S. 2477 claims within its scope and that BLM has no legal authority to employ the disclaimer provisions to process, acknowledge or determine the existence or extent of R.S. 2477 rights-of-way.

Revised Statutes (R.S.) 2477, first enacted as section 8 of the Mining Act of 1866, states that "the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." 43 U.S.C. 932 (repealed 1976). R.S. 2477 was repealed by FLPMA on October 21, 1976 (Pub. L. 94–579, Sec. 706(a), 90 Stat. 2744, 2793). FLPMA did not terminate valid rights-of-way existing on the date of its approval (Sec. 509(a), 90 Stat. 2781, 43 U.S.C. 1769; Sec. 701(a), 90 Stat. 2786, 43 U.S.C. 1701 note). In most instances, R.S. 2477 rights-of-way were not recorded on the public land records or in official county records because R.S. 2477 did not require any formal approval from the Secretary of the Interior or other Federal government official. The uncertainty resulting from unrecorded rights-of-way under R.S. 2477 has created clouds on title.

FLPMA authorizes the Secretary of the Interior to issue recordable disclaimers of interest in lands in specified cases if the disclaimer will help remove a cloud on the title to lands or interests in lands and if the Secretary finds no Federal interest (43 U.S.C. 1745(a)). Recordable disclaimers may be issued where applicants assert title previously created under now expired authorities. For example, after adjudicating the claim, BLM may issue a recordable disclaimer of interest to disclaim the United States' interest in a highway right-of-way under R.S. 2477.

Many commenters, including a consortium of 14 environmental groups, expressed concern about the relationship of this rulemaking to the 1996 Congressional moratorium placed on the Department and other Federal agencies on R.S. 2477 rulemakings. The commenters expressed the view that the proposed rule would be illegal because section 108 of the Omnibus Interior Appropriations Act for Fiscal Year 1997 prohibits Federal agencies from placing into effect any final rule or regulation pertaining to the recognition, management or validity of a right-of-way pursuant to R.S. 2477 unless expressly authorized by an Act of Congress (110 Stat. 3009–200).

We do not believe that the Congressional moratorium on R.S. 2477 rulemaking precludes BLM from making effective this final rule implementing the Secretary of the Interior's authority to issue recordable disclaimers of interest in lands. On August 1, 1994, the Department of the Interior proposed new regulations (59 FR 39216) to create an administrative process for resolving right-of-way claims made under R.S. 2477. Before the R.S. 2477 proposed rule was published as a final rule, Congress enacted a moratorium prohibiting any Federal agency from preparing, promulgating, or implementing any rule or regulation regarding R.S. 2477 rights-of-way until September 30, 1996. This provision was an amendment to the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568, 617–18 (1995)). Congress extended the prohibition on "developing, promulgating, and thereafter implementing a rule concerning rights-of-way under section 2477 of the Revised Statutes' in the Fiscal Year 1996 Interior and Related Agencies Appropriations Act (Pub. L. 104–134, 110 Stat. 1321, 1321–177 (1996)). In section 108 of the Fiscal Year 1997 Department of the Interior and Related Agencies Appropriations Act (Interior Appropriations Act, 1997) (Pub. L. 104–208, 110 Stat. 3009, 3009–200 (1996)), Congress stated that:

No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act.

Section 108 could be construed as either permanent legislation or as having expired at the end of fiscal year 1997. If section 108 is construed as permanent legislation, it would prohibit the Department from making effective a

final rule or regulation pertaining to the "recognition, management, or validity" of a right-of-way pursuant to R.S. 2477. In 1997, the General Counsel of the General Accounting Office (GAO) issued an opinion concluding that section 108 is permanent law and did not expire at the end of the 1997 fiscal year (Letter of Robert P. Murphy, General Counsel, GAO, B–277719, at 1 (Aug. 20, 1997)).

Even if section 108 is permanent legislation, it only applies to "final rules or regulations" relating to the "recognition, management, or validity of a right-of-way" pursuant to R.S. 2477. Because today's final rule merely amends BLM's existing regulations, which define the administrative process by which an entity can apply for a recordable disclaimer of interest under section 315 of FLPMA, the section 108 moratorium does not apply to this final rule.

If section 108 were interpreted to prevent BLM from promulgating a regulation relating to recordable disclaimers of interest, section 108 would, in essence, partially repeal sections 310 and 315 of FLPMA (43 U.S.C. 1740, 1745). Under section 310, BLM is authorized to "promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands." Section 315 is the specific substantive authority for BLM's disclaimer regulations (43 U.S.C. 1745(c)). As a general rule, courts do not favor repeals by implication. In *Morton* v. *Mancari* (417 U.S. 535, 550 (1974)), the Supreme Court stated: "In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable." In *Tennessee Valley Authority* v. *Hill* (437 U.S. 153, 190 (1978)), the Supreme Court stated that the doctrine disfavoring repeals by implication applies with even greater force when the claimed repeal rests solely on an appropriations act.

Although repeals by implication are especially disfavored in the appropriations context, Congress nonetheless may amend substantive law in an appropriations statute if Congress does so clearly. (*Robertson* v. *Seattle Audubon Society*, 503 U.S. 429, 440 (1992)). The question depends on the intention of Congress as expressed in the statute. See *United States* v. *Mitchell*, 109 U.S. 146, 150 (1883). Therefore, unless Congress clearly intended to amend sections 310 and 315 of FLPMA, section 108 of the Interior Appropriations Act, 1997, and sections 310 and 315 of FLPMA are all effective.

Section 108 contains broad language and does not indicate which final rules or regulations are encompassed by the words "pertaining to the recognition, management, or validity of a right of way pursuant to Revised Statute 2477." The legislative history, however, indicates that Congress enacted section 108 to prevent the Department of the Interior from promulgating final rules and regulations setting out specific standards for R.S. 2477 rights-of-way. (See H.R. Rep. No. 104–625, at 58 (1996)). Instead, Congress itself wanted to enact legislation defining the key terms and scope of grants for R.S. 2477 rights-of-way. The House Committee on Appropriations stated that:

[T]he public interest will be better served if these grants [for highway rights-of-way across Federal land] to States and their political subdivisions are not put in jeopardy by the Department pending Congressional clarification of these issues. Section 109 does not limit the ability of the Department to acknowledge or deny the validity of claims under RS 2477 or limit the right of grantees to litigate their claims in any court.

Section 109 of H.R. 3662, the Department of the Interior and Related Agencies Appropriations Bill, 1997, was renumbered section 108 after the Senate Appropriations Committee deleted section 107, an unrelated section of H.R. 3662, in its entirety (S. Rep. No. 104–319, at 56 (July 16, 1996)). The Appropriations Committee reported the bill to the Senate and recommended it pass, as amended. Accordingly, when Congress enacted section 108, it did not intend to prohibit the promulgation of all final rules and regulations that may, directly or indirectly, address R.S. 2477 rights-of-way but, rather, those that provide standards for recognizing, managing or validating an R.S. 2477 right-of-way.

Today's rule on recordable disclaimers does not provide standards for recognizing managing, or validating an R.S. 2477 right-of-way. Rather, BLM's rule merely makes technical changes to the existing regulations under which an applicant may submit an application to remove a cloud on title to lands to which the United States asserts no ownership or interest. First, the rule amends the existing regulations to allow any entity claiming title, as opposed to only present owners of record, to apply for a recordable disclaimer of interest. This change eliminates inconsistent administrative interpretations of the owner-of-record requirement, a term that is not defined in the existing 1984 regulations. Second, the final rule eliminates the application deadline in section 1864.1–3, as it applies to states. This change conforms the regulations to the Quiet Title Act, 28 U.S.C. 2409a(g), which exempts states, in most instances, from the twelve-year statute of limitations under that Act. These changes to the existing regulations do not expand the kinds of circumstances in which a disclaimer could be issued, expand or modify any rights created, or create any new rights under R.S. 2477. BLM may issue recordable disclaimers relating to valid R.S. 2477 rights-of-way under the existing 1984 regulations, and this capability will continue under today's final rule.

Even if BLM were to issue a disclaimer of the United States' interest in a valid right-of-way under R.S. 2477, the recognition of such right-of-way would not be the result of this notice-and-comment rulemaking but, rather, an informal agency adjudication resulting in a final decision. (See 5 U.S.C. 551(7)) The legislative history of section 108 expressly states that Congress "does not limit the ability of the Department to acknowledge or deny the validity of claims under RS 2477 or limit the right of grantees to litigate their claims in any court." (H.R. Rep. No. 104–625, at 58 (1996)). Because BLM's rule is not a final rule or regulation relating to the "recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477," this rule is not subject to the moratorium in section 108 of the 1997 Interior Appropriations Act.

Several commenters expressed concerns that today's rule will enable states to make "illegal" R.S. 2477 claims on "cow paths" and "foot trails" and turn them into major thoroughfares in sensitive areas.

We disagree that the changes to the existing rule will allow illegal claims. If an applicant does not have a valid, legal title, BLM will reject the disclaimer application. The existing 1984 rule and today's final rule are the same in this regard.

The Southern Utah Wilderness Alliance (SUWA) opposed the rulemaking because it did not mention any case law, particularly *SUWA and Sierra Club* v. *BLM*, (96–CV–836C (D. Utah); appeal pending, No. 01–4173 (10th Cir.)). SUWA believes this omission invites attempts to evade application of this case and others in an effort to validate R.S. 2477 claims which could never meet the legal prerequisites. The group also asserted that the proposed rule did not describe the standards BLM would apply in determining whether to grant recordable disclaimers.

This rulemaking pertains only to disclaimers and not to any assertions

made by various entities for R.S. 2477 claims. Therefore, a discussion of this case law is not germane to today's rulemaking.

An Alaskan environmental group believes the proposed rule is not necessary to provide appropriate access across Alaska lands because there exist statutory processes to determine rights-of-way for roads and other access across most of the land affected by R.S. 2477 assertions. The group also states that recognizing R.S. 2477 assertions under the proposed rule will undermine these established processes and frustrate land management efforts of responsible public and private landowners.

The existing regulations already allow applications for disclaimers for R.S. 2477 rights-of-way, and this has not undermined established processes for determining access. This rulemaking makes technical changes to the existing rule.

Many commenters, including the Idaho County Farm Bureau, and the consortium of environmental groups, expressed concern that BLM is proposing the rule to circumvent FLPMA and Congressional restrictions against implementing R.S. 2477 rights-of-ways. The commenters assert that Congress provided a means to grant rights-of-way under FLPMA, negating the need for R.S. 2477. The focus of their concern is that this proposed rule will allow states to acquire sensitive lands, the BLM to circumvent the environmental impact review process, and the BLM's ability to charge fair market value rentals under Title V of FLPMA.

FLPMA repealed R.S. 2477 and provided for applications for new rights-of-way. Sections 509(a) and 701(h) of FLPMA also preserved valid existing rights-of-way. Therefore, although FLPMA created more flexible authority to address right-of-way issues, it did not displace existing rights-of-way authorized by Congress.

States may seek disclaimers to sensitive lands for which they already hold title. For example, submerged lands under navigable bodies of water may be environmentally sensitive. Congress, however, granted states title to these lands. A disclaimer would merely provide evidence of an existing title. Because the state already owns such lands, there would be no need for environmental studies or rental payments.

A commenter opposed the proposed rule because the commenter believes that the proposed rule change is not necessary. The commenter also stated the BLM Questions and Answer sheet and press release accompanying the rule were confusing and obfuscated facts relating to R.S. 2477. The commenter also expressed concern that the proposed rule could allow "counties and other 'sagebrush rebel' entities in the West to file claims for public lands, with minimal processing of claims and no time limitations." Lastly, the commenter believes the rule will result in increased trespass incidents and other illegal activity by those wishing to lay claim under the proposed rule change to public lands, creating long term effects on the entire western ecosystem and native species.

BLM regrets that the Question and Answer document was confusing to the commenter and did not create the clarity we intended. BLM intends that this preamble will clear up any misunderstanding regarding this rulemaking. As we have stated, this rulemaking does not change the requirements for asserting title to an R.S. 2477 right-of-way. The rulemaking is intended only to make it easier for BLM to clear up clouded titles when the United States has no interest in the lands in dispute. A disclaimer of interest does not convey an interest in land. It is an administrative determination that the United States does not have an interest in land.

The Local Highway Technical Assistance Council of Boise, Idaho, asked BLM to clarify the current means besides FLPMA that can be used to secure a right to an R.S. 2477 highway reservation.

FLPMA repealed R.S. 2477 in 1976. There is no longer any way to secure a new right to an R.S. 2477 right-of-way. An existing owner of an R.S. 2477 right-of-way may apply for a recordable disclaimer under existing regulations or as amended in this final rule. A quiet title action in federal court is the only other way to resolve R.S. 2477 claims with finality. The purpose of section 315 of FLPMA is to avoid litigation in Federal court.

The Nye County Commissioners, Nevada, believe that the proposed rule may resolve some questions relating to R.S. 2477 rights-of-way but are concerned that the proposed rule is inapplicable to R.S. 2477 rights-of-way (or any other rights-of-way), because the United States continues to hold a valid interest in underlying lands. The Commissioners expressed support for BLM's effort but did not support the proposed rule.

If a state made a valid R.S. 2477 right-of-way claim on public land, only the rights pertaining to the right-of-way are authorized for use. The commenter is correct that the BLM would retain all other rights, such as the right to sell the land, allow mining claims to be filed, or administer the lands for appropriate purposes. BLM may issue recordable disclaimers for interests in land and is not limited to disclaiming only fee simple title.

An environmental group believes BLM has purposefully and incorrectly stated the purpose and intent of the proposed rule by citing it as a relatively minor revision to an obscure regulation with little substantive impact. The group believes this hampered the public review process by not informing the public about the importance of this proposed rule.

We disagree that this rulemaking is a major regulatory action. We believe that we adequately and accurately presented the purpose and intent of the proposed rule. The rulemaking makes technical changes to the existing rule. These changes are outlined within the **SUMMARY** section of this preamble. BLM has issued 62 recordable disclaimers since the enactment of FLPMA in 1976; on average, fewer than 3 recordable disclaimers annually.

The Blue Ribbon Coalition supported the proposed rule and asked BLM to clarify whether a disclaimer of interest process must be followed for each and every right-of-way under consideration. The group also asked BLM to explain how difficult and complex the process would be for the applicant and the BLM for other types of interest that may be disclaimed under section 315.

An applicant may apply for as many disclaimers as it has clouded titles which may benefit from the process. The complexity of the process depends upon the nature of the ownership sought. Titles clouded by avulsion, reliction or accretion may require historic maps and patents and newly-created data, such as aerial photographs. State applications for disclaimers for submerged lands may require detailed studies of water levels and commercial traffic at the time of statehood.

A consortium of environmental groups believes the proposed rule changes would have a direct effect on private property land rights because it would lead to numerous rights-of-way crossing state and private land. The commenters also believe the proposed rule will "cloud title" to large amounts of public and private land by extending the time that states are allowed to file claims. The commenters are concerned that the rulemaking will affect private property owners and title insurance companies because BLM has not made any effort to notify them of these potential impacts.

Today's rule will not adversely affect private property land rights. As we have

stated, this rulemaking pertains to disclaimers of interest in federal lands. It does not apply to private or state lands. BLM does not anticipate that title to private land will become clouded by implementation of this final rule. We expect the opposite to occur—title issues arising from a variety of issues may now be resolved by means of issuing a disclaimer of interest.

Commenters asserted that the proposed rule would enable BLM to transfer large tracts of public lands to states and increase environmental impacts on sensitive areas.

BLM may issue a disclaimer only when an applicant can show that a specific property right is not held by the United States and the applicant has requested that BLM document this by means of a recordable disclaimer. The rule would not enable BLM to transfer vast tracts of land to states. Any land disclaimed would already be owned by the applicant, with or without the disclaimer. This rule would not result in either an increase or decrease in environmental impacts.

States may apply for recordable disclaimers for valid R.S. 2477 claims. Applications will be evaluated on their merits and, if the claims are valid, BLM may issue a disclaimer of interest.

Another environmental group was concerned that the rulemaking will circumvent the public comment procedure by placing the determination of "interest" in the hands of the agency. The group does not believe BLM has made provisions for public notice, comment, participation, or appeal of its disclaimers which they believe deprives the public of protections during the process of determining the ownership of federal lands.

Today's rule does not impede or remove opportunities for public notice or appeal provisions for disclaimers. The existing regulations at Subpart 43 CFR 1864 address the group's concerns about public input. Specifically, section 1864.2 provides that BLM must file a notice of the application and the grounds supporting it in the **Federal Register** at least 90 days before a decision is made on the application. Also, BLM publishes a notice describing the application and its justification in a newspaper serving the general vicinity of the lands that are the subject of application for three consecutive weeks during the 90-day time period. Today's rule does not address this section. Under 43 CFR 1864.4, "an applicant or claimant adversely affected by a written decision of the authorized officer" may appeal to the Interior Board of Land Appeals under 43 CFR part 4.

Regarding the group's suggestion that BLM seek public input to determine ownership of public lands, the point is not determining ownership of lands, but rather how to remove clouds on title to land to which the United States disclaims title. In this case we continue the existing process.

The Gilpin County Commissioners, Colorado, expressed concern about the rule's potential to open "historic roads and tracks," increase threats of erosion, and introduce noxious weeds into unroaded areas. The commissioners believe this rule could harm small ranchers who have rights on BLM lands.

This final rule will not result in the situations the commenters pose. The applicant would already own any land or interests disclaimed. With or without the disclaimer the same impacts would occur, so there is no environmental impact from this rule. The rule does not apply to private lands and does not affect grazing permits.

The San Bernardino County, Department of Public Works, California, and others, asked whether an applicant must apply and be denied a right-of-way under the FLPMA or other statute before requesting a disclaimer of interest.

The denial of a right-of-way application under FLPMA has no bearing on a request for a disclaimer of interest.

Several commenters, including The National Parks Conservation Association, and the Nye County Commissioners, Nevada, asked how the BLM can process disclaimers of interest on behalf of another surface management agency because BLM's mandate may differ from that of other agencies. The commenters raised the following concerns:

- The final rule may alienate thousands of acres of park lands and instigate construction of roads and other structures on NPS lands.
- The proposed rule could frustrate Congressional intent for the protection and management of resources contained within the National Park system.
- It is not clear how the rule will apply to lands under the jurisdiction of DOI agencies other than BLM.
- How will the rule pertain to lands that were under BLM jurisdiction in 1976, but which have since been transferred by Congress to other DOI agencies?

Section 315 gives the Secretary of the Interior the authority to issue recordable disclaimers when a record interest of the United States in lands, whether managed by Interior or not, has terminated by operation of law or is otherwise invalid. The Secretary has delegated the authority to BLM to issue disclaimer documents when BLM determines that a disclaimer of interest application is valid. Under the existing 1984 regulations, BLM will refer an application involving lands administered by another agency to that agency for review and comment.

The U.S. Forest Service provided comments generally supporting the proposed rule. We believe its comments are also helpful in responding to the above concerns. The Forest Service stated:

If implemented the proposed rule could improve our abilities to resolve certain forms of land title claims by states, such as title to the beds and banks of navigable streams, and for rights-of-way for highways under the Revised Statute ("RS") 2477 (repealed). Currently there is no administrative process available for states or land management agencies like the Forest Service, to resolve such title claims; the process is time consuming and requires expensive litigation in Federal Courts. * * * [T]he proposed rule for recordable disclaimers of title would provide a useful tool in resolving some state land title claims. With the addition of a provision stating BLM will not authorize any application over the objections of the Forest Service for claims on National Forests, we would strongly support the proposal.

BLM has responded to the Forest Service's comments by adding language to the final rule clarifying that BLM will not issue a disclaimer of interest over the valid objections of the surface managing agency having jurisdiction over the affected lands.

Gilpin County, Colorado, and Valley County, Idaho, expressed concern that the proposed $100 fee is ambiguous and excessive. Valley County asked if the application fee would apply to each route upon which an assertion is made. They are concerned that this could result in hundreds of dollars in fees for large counties. Gilpin County requests that BLM consider a one-time processing fee for a block of applications.

We disagree that the $100 application fee, which exists in the current regulations, is ambiguous and excessive. The existing regulations at 43 CFR 1864.1–2(b) provide that "a nonrefundable fee of $100 shall accompany the application." This fee will not change as a result of this rulemaking. Subpart 1864 distinguishes between filing fees and administrative processing costs. Neither the proposed rule nor today's final rule alter these requirements.

The San Bernardino County Department of Public Works in.

California criticized any potential cost recovery that the rulemaking may impose because the number of claims the county might potentially file could create a financial burden on San Bernardino County.

This rulemaking does not change BLM's application procedures or fee structures and does not involve cost recovery. Each application would be subject to the $100 application fee unless BLM waives it. Section 304(c) of FLPMA authorizes the Secretary, through BLM, to either reduce or eliminate charges for administrative costs. BLM will continue to place the money it collects into the U.S. Treasury for use for various public purposes. If BLM receives multiple applications, the individual case costs should be less, or BLM may waive the processing costs if many applications cover similar types of filings.

A commenter stated the proposed rule does not specify how to process the application or reference what the application requirements will be. The commenter says BLM must be specific about these and reference them in the final rule.

BLM has addressed the application requirements in the existing regulations at 43 CFR 1864.1–2. The final rule does not alter these requirements.

Another commenter asked how the public will know whether the fee and deposit are fair, if only BLM determines what fees the applicant must pay.

BLM is planning to issue guidance to field offices on how to establish fees and parameters to ensure fairness. The guidelines will include a provision that returns a portion of the fee if the application is denied. (Until those guidelines are completed, 43 U.S.C. 1735(a) provides an explanation of how BLM handles deposits and forfeitures.)

43 CFR 1864.1–3(c) (Action on application) and 43 CFR 1864.2(a) (Decision on application) explain BLM's procedure for billing an applicant for a disclaimer of interest application. BLM has chosen not to estimate an average cost to process a disclaimer of interest application because of the variable factors in each application. However, on a case-by-case basis, we inform the applicant of the estimated costs. When the application processing is completed, BLM will give the applicant a final accounting, which will either require payment of additional fees, or, if an applicant has overpaid BLM, we will issue a refund. Today's rule does not change the process.

A commenter asked whether BLM State Directors should have the authority to issue disclaimers of interest. Otherwise, subsequent administrations will have the authority to change the rule.

The Secretary has already delegated the authority to process disclaimers of interest to the BLM Director, who in turn has delegated this authority to State Directors. Delegations of authority are always subject to change.

A commenter asked if the rule would apply to unpatented mining claims or other mineral interests.

The rule will not apply to a mining claim title. Title to mining claims is determined under the General Mining Law of 1872, as amended, and BLM regulations at 43 CFR Part 3800. BLM will determine whether the rule applies to clouded private mineral interests on a case-by-case basis. In general, the public obtains Federal mineral interests through leases BLM issues under the Mineral Leasing Act (30 U.S.C. 181 *et seq.*), or sales authorized by the Materials Act of 1947 (30 U.S.C. 601 *et seq.*).

Section 1864.0–5 Definitions

In response to several comments we are adding language to section 1864.0–5 in today's rule to clarify that the term "state." As used in this rule, we define "state" as "the state and any of its creations including any governmental instrumentality, within a state, including cities, counties, or other official local governmental entities."

The Commissioners of Valley County, Idaho, believe the term "state" as used in the proposed rule to determine who would receive the benefit of the waiver of the 12-year filing deadline, is too restrictive because the state may not always support local government assertions and could prevent local government's from filing applications for disclaimers of interest. The Commissioners recommended that the regulations provide for local governments to apply directly.

We have defined the term "state" to include local governments. We do not believe the rule will create restrictions upon states or other governmental instrumentalities within the state. States may file an application for a disclaimer where a title defect appears to exist. Because counties and other entities of local government are within the jurisdiction of a state, they will have the same rights as a state. The waiver applies to counties by definition.

Section 1864.1–1 Filing of Application

Current section 1864.1–1 (a) provides, in part, that any "present owner of record may file an application to have a disclaimer of interest issued." The phrase "present owner of record" is not defined in Subpart 1864.

FLPMA neither uses nor defines this phrase. In real property parlance, the term "present owner of record" usually refers to a property owner in whose name the title appears in the official records of a county recorder's office or other office of record. Thus, it appears that the phrase "present owner of record" in section 1864.1–1 potentially could limit applications for a disclaimer of interest in a way that would unduly restrict the Secretary's broad authority under section 315 of FLPMA.

Today's rule amends this paragraph by removing the phrase "present owner of record" and replacing it with "any entity claiming title to lands." This change clarifies that it is the interest in the lands, rather than record ownership, that determines whether an entity is eligible to apply for a disclaimer of interest. This change also broadens the class of potential applicants for disclaimers of interest, which could include, among others, a state, corporation, county, or a single individual. The language is unchanged from the proposed rule.

Several commenters did not think BLM was clear on the standards we will apply when determining whether or not to issue a disclaimer of interest. The commenters urged BLM to apply standards that are "crisp, rigorous, and conform to recent federal case law." The commenters believe that because an applicant doesn't need to have color of title to request a disclaimer of interest, this makes the proposed rule an "illegal land granting statute." The commenters state that BLM must also correct the language of the original 1984 regulation (section 1864.0–5) purporting to define lands to include lands "now or formerly forming a part of the reserved or unreserved public lands."

We disagree with the commenters. BLM did not identify specific standards because applicants can make a wide variety of disclaimer applications. The issuance of a disclaimer does not grant land to anyone. It merely documents that the United States has no valid interest in the land. Requirements for how and what an applicant must file are found in the existing regulations at 43 CFR 1864.1–2.

We also disagree that we should change our definition of "lands." Often lands have been transferred from Federal to private ownership, but a residual interest in the lands remains with the Federal government either by design or error. The disclaimer of interest rule is in place to correct such errors if they are found to cause a cloud on a title.

Section 1864.1–3 Action on Application

Section 1864.1–3(a)(1) currently provides, in part, that the BLM will deny an application for a disclaimer if "[m]ore than 12 years have elapsed since the owner knew or should have known of the alleged claim attributed to the United States." This deadline was modeled after the statute of limitations in the Quiet Title Act, which also includes a disclaimer provision (28 U.S.C. 2409a(e)). The Quiet Title Act now provides that "any civil action under this section, except for an action brought by a state, will be barred unless it is commenced within twelve years of the date upon which it accrued. Such action will be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." (28 U.S.C. 2409a(g)).

As enacted in 1972, the Quiet Title Act subjected all parties, including states, to the 12-year limitation period. In 1986, Congress amended the Quiet Title Act to exempt states from this 12-year statute of limitations in most instances. However, BLM has not updated 43 CFR 1864.1–3(a), issued in 1984, to reflect the 1986 change in the Quiet Title Act. Thus, today's rule amends this section to be more consistent with the Quiet Title Act.

Today's rule adds language exempting states from the 12-year filing deadline to allow states, as we have defined this term in this rule, to apply for disclaimers of interest under FLPMA at any time. We also made editorial changes to this section and brought up-to-date a reference to another section.

Section 1864.1–4 Consultation With Other Agencies

The existing regulations at 43 CFR 1864.1–4 direct BLM to refer disclaimer applications to the affected Federal agency for comment before making a decision on the application. As a result of comments BLM added provisions to today's rule stating that if a surface management agency has a valid objection to an application, BLM will reject the application. If the application is approved by the surface management agency, then BLM can issue a recordable disclaimer of interest.

We specifically made the change in reponse to the U.S. Forest Service comments by clarifying in this final rule how BLM will handle disclaimer of interest applications for lands managed by another land managing agency.

IV. How Did BLM Fulfill Its Procedural Obligations?

E.O. 12866, Regulatory Planning and Review

This regulation is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866. Therefore it does not require an assessment of potential benefits and costs, nor does it require an explanation pertaining to the manner in which the regulatory action is consistent with a statutory mandate and, to the extent allowed by law, promotes the President's priorities and avoids undue interference with state, local, and tribal governments in the exercise of their governmental functions. Because this rule is not a "significant regulatory action" the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

Commenters asserted that the rulemaking is a significant regulatory action because it relates directly to R.S. 2477 claims and will, therefore, cause adverse impacts to the environment; presents novel legal issues; and is inconsistent with the actions of another agency.

We disagree and stand by our analysis that the rule is not a significant regulatory action. Today's rule does not change the basic process for issuing recordable disclaimers and will not have additional environmental impact, will better conform to existing statutes, and better explains how the disclaimer process relates to other agencies.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). The changes to the current rules will have no impact on an applicant's costs for filing or processing an application for a disclaimer of interest which currently consist of a one-time filing fee of $100 and fact-specific processing costs with provisions for a fee waiver.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This regulation is not a "major rule" as defined at 5 U.S.C. 804(2) because it will not have an annual effect on the economy greater than $100 million, nor will it result in major cost or price increases for consumers, industries, government agencies, or regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, because it will not result in state, local and tribal government, or private sector expenditures of $100 million or more in any one year. This rule will not significantly or uniquely affect small governments.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)

In accordance with Executive Order 12360, BLM has found that the rule does not have significant takings implications. No takings of personal or real property will occur as a result of this rule. The rule broadens the opportunity for the United States to issue disclaimers of interest in land, thereby making it easier to remove clouds on title to certain lands. A takings implication analysis is not required.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, BLM finds that the rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact assessment. The rule does not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt state law. The rule broadens the opportunity for states and other entities to apply for a disclaimer of interest in land, thereby removing clouds on the title to certain lands.

A commenter believes the rulemaking will impact the public under Executive Order 13132 because the rulemaking would change Federal and state land ownership.

We disagree. Although states will gain an additional ability to apply for disclaimers because we are removing the states' 12-year filing deadline, no substantive changes in ownership would occur because recordable disclaimers may only be issued for

interests which the Federal government no longer claims.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, BLM finds that this rule does not propose significant changes to BLM policy and that Tribal Governments will not be unduly affected by this rule.

The State of Alaska supported the proposed rule and asked if a disclaimer of interest could be applied to Indian trust or restricted Indian lands.

BLM will reject all applications for a disclaimer of interest on trust or restricted Indian lands (43 CFR 1864.1–3(b)(2) of today's rule). Indian trust lands are defined in 25 CFR 150.2(h) as "an inclusive term describing all lands held in trust by the United States for Individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to the Federal restrictions against alienation or encumbrance, for all lands which are subject to the rights of use, occupancy, and/or benefit of certain tribes." For purposes of this part, the term "Indian land" also includes land for which title is held in fee status by Indian tribes and U.S. Government-owned lands under the Bureau of Indian Affairs jurisdiction. This rulemaking has no bearing on these lands.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

BLM has determined this rulemaking does not contain any new information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

BLM has determined that this rulemaking is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, under 516 Departmental Manual (DM), Chapter 2, Appendix I, Item 1.10, and has concluded that the rule does not meet any of the ten exceptions to the categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Under 516 DM, Chapter 2, Appendix 1, § 1.10, this rule is categorically excluded because it is procedural in nature, therefore its environmental effect is too broad, speculative or conjectural to analyze.

A commenter believes BLM was incorrect in asserting that the proposed rule is categorically excluded from review under NEPA, arguing that there are several exceptions requiring the proposed rule to undergo NEPA review, including the potential adverse effects on parks, recreation, wilderness, and refuge lands, and the proposed rule's potentially controversial environmental effects.

We disagree. BLM believes that the rule, as written, is exempt from NEPA for the reasons stated in the proposed rulemaking. It is not possible to determine the number of filings under the FLPMA provision, nor can BLM determine where such filings will be made.

Executive Order 13211, Action Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, BLM finds that this rule will not have a significant adverse effect on the supply, distribution, or use of energy. The supply, distribution or use of energy will not be unduly affected by this rule.

Clarity of the Regulations

Each Federal agency is required to write regulations that are simple and easy to understand and to solicit comments and suggestions from the public on the readability of the rule.

A commenter stated the rulemaking was unclear because it does not mention R.S. 2477, although BLM's Questions and Answers and Press Release pertain specifically to R.S. 2477.

We disagree. This rulemaking pertains to the issues of recordable disclaimers and, therefore, we saw no need to address specific R.S. 2477 rights-of way types of recordable disclaimers in the preamble to the proposed rule. Our mention of R.S. 2477 in BLM's Questions and Answers and Press Release generated significant comments about the relationship of this rule to R.S. 2477, which we have addressed in today's preamble.

List of Subjects in 43 CFR Part 1860

Administrative practice and procedure, Public lands.

Dated: December 31, 2002.

Rebecca W. Watson,

Assistant Secretary of the Interior.

Accordingly, for the reasons stated in the preamble and under the authority of the FLPMA (43 U.S.C. 1740), BLM amends Subpart 1864 of Title 43 of the Code of Federal Regulations as set forth below:

PART 1860—CONVEYANCES, DISCLAIMERS, AND CORRECTIONS DOCUMENTS

Subpart 1864—Recordable Disclaimers of Interest in Land

1. The authority citation for subpart 1864 is added to read as follows:

Authority: 43 U.S.C. 1201, 1740, and 1745.

2. Amend Section 1864.0–5, by adding paragraph (h) to read as follows:

§ 1864.0–5 Definitions.

* * * * *

(h) *State* means "the state and any of its creations including any governmental instrumentality within a state, including cities, counties, or other official local governmental entities."

3. Revise § 1864.1–1 to read as follows:

§ 1864.1–1 Filing of application.

(a) Any entity claiming title to lands may file an application to have a disclaimer of interest issued if there is reason to believe that a cloud exists on the title to the lands as a result of a claim or potential claim of the United States and that such lands are not subject to any valid claim of the United States.

(b) Before you actually file an application you should meet with BLM to determine if the regulations in this subpart apply to you.

(c) You must file your application for a disclaimer of interest with the proper BLM office as listed in § 1821.10 of this title.

4. Revise § 1864.1–3 to read as follows:

§ 1864.1–3 Action on application.

(a) BLM will not approve an application, except for applications filed by a state, if more than 12 years have elapsed since the applicant knew, or should have known, of the claim of the United States.

(b) BLM will not approve an application if:

(1) The application pertains to a security interest or water rights; or

(2) The application pertains to trust or restricted Indian lands.

(c) BLM will, if the application meets the requirements for further processing, determine the amount of deposit we need to cover the administrative costs of processing the application and issuing a disclaimer.

(d) The applicant must submit a deposit in the amount BLM determines.

(e) If the application includes what may be omitted lands, BLM will process

it in accordance with the applicable provisions of part 9180 of this title. If BLM determines the application involves omitted lands, BLM will notify the applicant in writing.

5. Revise § 1864.1–4 to read as follows:

§ 1864.1–4. Consultation with other Federal agencies.

BLM will not issue a recordable disclaimer of interest over the valid objection of another land managing agency having administrative jurisdiction over the affected lands. A valid objection must present a sustainable rationale that the objecting agency claims United States title to the lands for which a recordable disclaimer is sought.

[FR Doc. 02–33147 Filed 12–31–02; 12:48 pm]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3484, MB Docket No. 02–20, RM–10368]

Digital Television Broadcast Service; Traverse City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Central Michigan University, allots DTV channel *23 at Traverse City, Michigan. *See* 67 FR 6905, February 14, 2002. DTV channel *23 can be allotted to Traverse City in compliance with the geographic spacing criteria of Section 73.623(d) and the principle community coverage requirements of Section 73.625(a) at coordinates (45–10–40 N. and 85–05–57 W). Due to a short-spacing conflict, the Canadian government has concurred with the allotment of DTV channel *23 as a specially negotiated allotment limited to l kW ERP and 390 meter HAAT or the equivalent in order to avoid prohibited overlap in the direction of DTV channel 23B at Sault Ste. Marie, Ontario, Canada. With this action, this proceeding is terminated.

DATES: Effective February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–20, adopted December 17, 2002, and released December 20, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Michigan, is amended by adding DTV channel *23 at Traverse City.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–163 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3505; MB Docket No. 02–274, RM–10560; MB Docket No. 02–275, RM–10561]

Radio Broadcasting Services; Jasper, FL and Tigerton, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Powerline NA, Inc., allots Channel 298A at Jasper, Florida, as the community's first local FM transmission service. *See* 67 FR 63876, October 16, 2002. Channel 298A can be allotted to Jasper in compliance with the Commission's minimum distance separation requirements with a site restriction 2.2 kilometers (1.4 miles) northwest of the community to avoid a short-spacing to the vacant allotment site of Channel 299C3, Perry, Florida. The reference coordinates for Channel 298A at Jasper are 30–31–49 North Latitude and 82–57–58 West Longitude. The Audio Division, at the request of Starboard Broadcasting, Inc. allots Channel 295A at Tigerton, Wisconsin, as the community's first local FM transmission service. *See* 67 FR 63876, October 16, 2002. Channel 295A can be allotted to Tigerton in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.1 kilometers (8.7 miles) northeast to avoid a short-spacing to the license sites of Station WLJY, Channel 293C1, Marshfield, Wisconsin, Station WJLW, Channel 294C3, Allouez, Wisconsin, and Station WUPM, Channel 295C1, Ironwood, Michigan. The reference coordinates for Channel 295A at Tigerton are 44–50–07 North Latitude and 88–56–41 West Longitude. Filing windows for Channel 298A at Jasper, Florida and Channel 295A at Tigerton, Wisconsin, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective February 3, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–274 and 02–275, adopted December 18, 2002, and released December 20, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Jasper, Channel 298A.

3. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Tigerton, Channel 295A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–169 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3420; MB Docket No. 02–225; RM–10517]

Radio Broadcasting Services; Crawfordville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 234A to Crawfordville, Georgia, in response to a petition filed by Ritz Radio. *See* 67 FR 53901, August 20, 2002. The coordinates for Channel 234A at Crawfordville, Georgia, are 33–31–18 and 82–56–52. There is a site restriction 3.7 kilometers (3.7 miles) northeast of the community. With this action, this proceeding is terminated. A filing window for Channel 234A at Crawfordville will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 02–225, adopted December 13, 2002, and released December 16, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Crawfordville, Channel 234A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–165 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3418; MB Docket No. 02–143; RM 10392]

Radio Broadcasting Services; Lebanon and Speedway, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reallots Channel 265A from Lebanon to Speedway, Indiana, as the community's first local aural transmission service and modifies the license for Station WYJZ(FM) to reflect the changes. *See* 67 FR 42216 (06/21/2002). Station WYJZ(FM), currently operating as a short-spaced station, will be able to operate as a fully spaced station and will eliminate two short-spacings. Channel 265A is allotted at Speedway at petitioner's requested transmitter site which is 4.9 kilometers (3.0 miles) southeast of the community. Coordinates for Channel 265A at Speedway are NL 39–46–10 and WL 86–13–45.

DATES: Effective January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–143, adopted December 13, 2002, and released December 16, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Speedway, Channel 265A and removing Lebanon, Channel 265A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–164 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 02–14165; Notice 1]

RIN 2127–AI85

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds, in part, to petitions for reconsideration of the amendments we made in December 2001 to our May 2000 Federal motor vehicle safety standard (FMVSS) No. 208 advanced air bag final rule. Because of the time constraints faced by vehicle manufacturers in certifying a portion of their fleet to the advanced air bag requirements, we are bifurcating our response. This document addresses those portions of the petitions that we believe are the most time sensitive or that address minor, easily resolved technical issues. In particular, we are responding to those portions regarding the length of time during which data will be collected during low risk deployment tests, a change in dummy positioning procedure for one of the driver position low risk deployment tests, and issues related to the air bag warning label and the telltale that indicates when the passenger air bag has been automatically suppressed. A second document addressing the remaining issues raised by the petitioners will be issued at a later date.

DATES: *Effective Date:* The amendments made in this rule are effective February 5, 2003.

Petitions: Petitions for reconsideration of the amendments made by this rule must be received by February 20, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Lori Summers, Chief, Light Duty Vehicle Division, Rulemaking, NVS–112. Telephone: (202) 366–1740. Fax: (202) 493–2739. E-mail: *Lori.Summers@NHTSA.dot.gov.*

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I. Background: The Advanced Air Bag Final Rule

On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a final rule and an interim final rule to require advanced air bags (Docket No. NHTSA 00–7013; Notice 7) (May 2000 final rule). The rule amended FMVSS No. 208, Occupant Crash Protection, to require that future air bags be designed so that they create less risk of serious air bag-induced injuries than current air bags, particularly for small women and young children, and provide improved frontal crash protection for all occupants by means that include advanced air bag technology.

The issuance of the May 2000 final rule completed the implementation of our 1996 comprehensive plan for reducing air bag risks. The Transportation Equity Act for the 21st Century (TEA 21), which was enacted in 1998, required us to issue a rule amending Standard No. 208:

> to improve occupant protection for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags, by means that include advanced air bags.

Eight petitions for reconsideration of the May 2000 final rule were submitted to the Agency (*see* Docket No. 7013). Four of the petitions were from manufacturers of vehicles or air bags. Petitions were also filed by three industry associations representing vehicle manufacturers, and by a coalition of four consumer groups. In addition, NHTSA received two requests for clarification within the time period for filing petitions and three comments that would have been considered petitions for reconsideration had they been timely filed. All submissions were addressed in the Agency response published in the **Federal Register** on December 18, 2001 that made several changes to the May 2000 final rule (66 FR 65376, Docket No. NHTSA 01–11110) (December 2001 final rule).

These changes included a number of refinements to the dummy positioning procedures for the low risk deployment tests and, to a lesser degree, for the automatic suppression tests. In the December 2001 final rule, the Agency also modified the period of time during which the injury criteria must be met for the low risk deployment tests from 300 milliseconds (ms) to 125 ms after initiation of the final stage of an air bag designed to deploy in a 26 km/h (16 mph) rigid barrier crash. We also corrected an error in the regulatory text of the May 2000 final rule regarding the exclusivity of the new advanced air bag warning label on the sun visor and clarified that information regarding air bags or seat belts may be placed elsewhere in the vehicle as long as the information in those warnings is consistent with the information contained in the required label. Additionally, the regulatory text concerning the telltale light required for automatic suppression systems was changed to be more consistent with the requirements of FMVSS No. 101, Controls and Displays. Other changes that are not the subject of today's rule were also made.

II. Petitions for Reconsideration

We have received eight petitions for reconsideration of the December 2001 final rule. These petitions were filed by the Alliance of Automotive Manufacturers (Alliance), Mitsubishi, Volkswagen, Honda, Porsche, DaimlerChrysler, Ford, and Toyota. Additionally, BMW and Ferrari filed petitions shortly after the deadline for filing petitions for reconsideration had passed. Under agency regulations (49 CFR 553.35(a)), late-filed petitions for reconsideration are treated as petitions for rulemaking. However, neither of these two petitions raised issues that had not also been addressed by the other timely petitioners for reconsideration. Thus, as a practical matter, the issues in the two petitions will be considered as part of the agency response to the timely-filed petitions for reconsideration. TRW submitted a request for clarification and a comment on one of the issues raised by all petitioners, namely the time-duration for meeting the injury criteria during the passenger-side low risk deployment tests. Several supplemental submissions were also submitted to the docket after the deadline for filing petitions for reconsideration.

In this document, we are responding to those portions of the petitions regarding the time duration for collecting injury criteria data during the low risk deployment tests, a change in dummy positioning procedure for one of the driver position low risk deployment tests, and issues related to the air bag warning label and the automatic suppression telltale. Only those portions of the petitions directly related to these matters will be discussed in this

document. The remaining issues will be addressed in a subsequent document.

III. Summary of Response to Petitions for Reconsideration

As noted above, today's rule addresses only those issues raised in the petitions for reconsideration that are likely to have an important, immediate impact on vehicle manufacturers or that correct inadvertent changes that were made to the regulatory text in the December 2001 final rule.

Two significant issues are resolved by this document. First, we address the time duration for collecting injury criteria data during the tests to determine whether a low risk deployment air bag system complies with the standard. We have decided to grant the petitioners' request that the period for the three-year-old and six-year-old low risk deployment tests end at 100 ms after the air bag first starts to deploy instead of 125 ms after the final stage of the air bag starts to deploy. The longer time duration for low risk deployment tests specified in the December 2001 final rule will continue to apply to the driver position low risk deployment tests and to the infant low risk deployment tests.

The second major issue involves the labeling requirements associated with all advanced air bag requirements. We have made changes to the current label, depicted in Figure 8 of the standard, and have decided to reinstate our prohibition against placing additional information regarding air bags on the sun visor. The current label will be allowed for vehicles certified to the advanced air bag requirements before September 1, 2003, although vehicle manufacturers may choose to use the new label, which is depicted in Figure 11, on those vehicles under the existing provision allowing early compliance. Notwithstanding the prohibition, we have also established a procedure under which a manufacturer may request permission to add design-specific information to the sun visor label with the Agency's approval. Today's rule also corrects an error in the regulatory text that suggested the new advanced air bag labels are only required for vehicles certified to the automatic suppression options.

Finally, the rule makes a correction to the chin-on-module low risk deployment test position, corrects a couple of errors related to the telltale requirement for vehicles certified to the automatic suppression requirements, and makes a few minor, non-substantive changes.

IV. Time Duration for Low Risk Deployment Tests

We adopted a specific period of time for meeting the injury criteria in the May 2000 final rule. In that rule, we required that all injury criteria be met for the first 300 ms of the test, a time period that we believed would encompass any air bag-related risk of injury. Several petitioners for reconsideration of that rule argued against adopting a 300 ms period for the low risk deployment tests.

While rejecting the recommendation made by the Alliance that injury criteria be met for 300 ms or until the dummy is no longer in contact with the air bag, whichever occurs first, as inherently non-objective, we did modify the test duration for the low risk deployment tests in the December 2001 final rule.

As discussed in that rule, the test duration for low risk deployment tests should accurately reflect the propensity of the deploying air bag to harm an occupant while it is deploying. Thus, we adopted a time duration for the low risk deployment test of 125 ms from the initiation of deployment of the final air bag stage that will fire in a 0–26 km/h (16 mph) crash. We believed this time frame would adequately measure air bag-related injuries without reflecting injuries due to secondary vehicle interior impacts (referred to below as "secondary impacts") that are unrelated to air bag deployment. We noted that we intend to monitor our test data to determine whether the specified time period is, in fact, sufficient to include all air bag-related injuries, leaving open the possibility of increasing the time duration if needed. We also noted that the 300 ms time duration remains in full effect for all barrier tests.

In October 2001, the Alliance petitioned NHTSA to limit the time period to 100 ms from the initial deployment of the air bag. Alternatively, it suggested developing an algorithm that would determine when the forces imposed on the dummy by the air bag no longer significantly influences the movement of the dummy. In a supplemental submission, dated April 29, 2002, the Alliance dropped its support of this alternative approach.

The Alliance argued that both the original 300 ms time frame and the new 125 ms after the initiation of the final stage of air bag deployment effectively prevent vehicle manufacturers from certifying compliance with the advanced air bag requirements using low risk deployment technologies. It stated that both time periods capture non-representative secondary impacts with vehicle interior components (primarily the seat back on the passenger side). It argued that these interior vehicle impacts are artifacts of the test, which is static, and are not representative of what happens in real world crashes. It provided sled test data simulating a dynamic crash test compared to a low risk deployment test, suggesting that the interactions of test dummies with the vehicle's interior components during dynamic tests are not significant.

The Alliance also claimed that the final stage of most multi-stage air bag systems that is not deployed in a crash to provide occupant protection is only deployed to expense the remaining air bag propellant, not to provide any additional protection for the affected occupant. It stated that this final "dispensing" stage would generally expense approximately 100 to 300 ms after the initial deployment of the air bag, a time delay which, it argued, is sufficiently late to prevent any risk of air bag-related injury. In addressing the agency's concerns with the injury potential of a secondary impact, the Alliance noted that it did not believe NHTSA's reliance on reports of secondary impacts in existing special crash investigation (SCI) cases was warranted since those cases involved air bags that would not meet the low risk deployment criteria. Accordingly, it did not believe the SCI cases were indicative of future air bag performance. Finally, the Alliance stated that a time duration of 125 ms from the initial deployment of the air bag was too long to eliminate injuries attributable solely to secondary impacts.

Toyota, Mitsubishi, DaimlerChrysler, Honda, Volkswagen, and Porsche all supported the Alliance request to end the period during which data are collected for compliance purposes at 100 ms after the initial deployment of the air bag. DaimlerChrysler also suggested that the seat back be adjusted to its fully reclined position (or the seat be removed) to avoid any possibility of a secondary impact.[1] Honda suggested an alternative requirement under which the collection of data for compliance purposes would cease 10 ms after the dummy head no longer interacted with the air bag. It maintained that the maximum injury values, other than those related to secondary impacts, generally occurred during dummy head interaction with the air bag or very shortly (*i.e.*, within 10 ms) thereafter,

[1] In October 2001, DaimlerChrysler submitted a petition for rulemaking asking, in part, that the time duration for data collection be less than 100 ms after initiation of air bag deployment. However, in its petition for reconsideration, it supported the proposal set forth by the Alliance.

and therefore asked us to limit the period during which the injury criteria must be met and data are collected for the low risk deployment tests to 10 ms after dummy interaction with the air bag ceases. This approach had been presented earlier by the Alliance in an October 2001 petition for rulemaking. Volkswagen and BMW suggested an alternative means of limiting the collection of compliance data would be to review the test video and data traces to separate air bag-induced injury readings from secondary impacts. They stated that such a method would most effectively ensure that all air bag-related injuries were captured without penalizing manufacturers for secondary impacts. BMW noted that NHTSA has established a precedent for using film analysis to determine compliance in FMVSS No. 201, Occupant protection in interior impact. TRW offered a similar alternative, under which film and data channel analyses would be used to limit the collection of compliance data. It also advocated a 300 ms time-frame for all rear-facing child seat testing. Autoliv advocated a much more basic approach under which NHTSA could make a case-by-case determination that the secondary impact was unrelated to the air bag.

This is a complex issue. As we noted in the preamble to both our May 2000 and the December 2001 final rules, we do not believe that all dummy contact with the vehicle interior would necessarily be the result of dummy interaction with an overly aggressive air bag. This is because a dummy subjected to the deployment of any air bag in a low risk deployment test will continue to move rearward until it strikes some object, and because the low risk deployment test does not take into account the forward momentum of the dummy that would typically be present in a real world crash in which the frontal impact air bags deploy. For these reasons, we are reluctant to retain the existing compliance data collection period, particularly because it may effectively preclude manufacturers from complying with the rule through the use of low risk deployment technologies. Nevertheless, we remain concerned that an air bag propelling the dummy backward with excessive force could result in secondary impacts relatively early in the crash event. These new low risk air bag technologies remain relatively untested by NHTSA, and we are somewhat dependent on the manufacturers' experience in the testing and development of their own systems.

Accordingly, we have decided to limit the data collection for compliance purposes to 100 ms after initial deployment of the air bag for systems that are certified to either S21.4 (3-year-old) or S23.4 (6-year-old), as requested by the Alliance and supported by other petitioners. All injury measurements recorded during that time that exceed the allowable values, regardless of the source of injury, will be considered noncompliances. We continue to believe that setting a specific time period is the simplest, most appropriate, and most objective way to determine which data to collect for compliance purposes. The basis for our decision is set forth below. However, as discussed in the December 2001 final rule, we will actually record the dummy injury measurements for a longer time period dependent upon the data collection system. If there is any indication that peak injury measurements recorded after 100 ms are the result of an air bag's aggressiveness, we may choose to initiate rulemaking to increase the period of time that data will be considered for compliance purposes.

The primary thrust of the Alliance's petition is that, in a real world crash, a child would have sufficient forward momentum relative to the vehicle, and thus experience a lower change in velocity due to the air bag interaction, to prevent serious injuries resulting from secondary impacts with the interior of the vehicle. Thus, the high injury readings associated with secondary impacts in the static low risk deployment tests (primarily high neck injury readings) are artifacts of those tests and do not represent a real world condition. The Alliance presented one set of sled test results, comparing one low risk deployment test (6-year-old dummy in position 1) to a 26 km/h (16 mph) dynamic sled test to support its position.

We agree that the rebound velocity of a dummy in the static low risk deployment test does not replicate the rebound velocity of an out-of-position occupant in a real world crash in which the occupant moves forward as a result of vehicle braking and crash dynamics. The forward momentum of the occupant in such a crash will reduce the velocity with which the occupant is thrown back into the seat. The amount of this forward momentum (and the resulting reduction in rearward momentum) is impact velocity-dependent. In low speed crashes, the forward momentum will be less than in higher speed crashes. Since air bags may be designed to deploy at impact speeds considerably less than the 26 km/h (16 mph) used in the Alliance sled test, we are uncertain that forward momentum alone will be sufficient to prevent rebound injuries that are the result of the air bag's propelling an individual rearward. Likewise, our experience with the SCI data indicates that secondary impacts are not limited to seat backs, but could be into the B-pillar, the door, or even the header. However, the SCI cases are inconclusive as to whether or not the secondary impacts result in more serious injury than those produced by the air bag.

The Alliance also suggested that the agency's reliance on SCI data to justify our concern that secondary impacts could be the result of air bag interaction depended on old air bag designs that could not meet the low risk deployment requirements. The Alliance's point is well taken. We note that no vehicles in the SCI database were designed to meet the advanced air bag requirements. Indeed, to the best of our knowledge, there is only one SCI case of a "lower powered" (*i.e.*, model year 1998 or later) air bag-equipped vehicle that resulted in a critical injury (AIS 5) and was also reported to have seat back contact. That case involved a 1999 Ford Contour. We do not believe the passenger air bag in that vehicle would be sufficiently benign to meet the low risk deployment requirements. We also have some concerns about our ability to attribute the serious injuries to seat back contact, as the subject case involved a crash in which the delta-V has been determined to be around 48 km/h (30 mph).

The Alliance also indicated that the typical low risk deployment systems that are likely to be used in future vehicles would consist of an initial, benign deployment with a secondary "expensing stage" that would occur at least 100 ms after the initial deployment. It maintained that this "expensing stage" would occur so late in the crash event that it could not be the source of air bag interaction or rebound injury. It also provided data using an inflator designed to expense 40% of the air bag's propellant initially and 60% secondarily (40/60 air bag design). In that instance, the secondary deployment occurred 200 ms after the initial deployment and did not result in any excessive injury response measurements at the end of the crash event. As noted in the December 2001 final rule, our concern is with 40/60 air bag designs for which the second deployment has the propensity to cause injury. We do not find persuasive the Alliance's contention that the second stage of deployment will always be benign, but believe that injury measurement assessment for 100 ms will ensure that a second stage deployment does not occur during significant occupant engagement with the air bag.

Finally, the Alliance stated that a 125 ms fixed time duration is too long to exclude secondary impacts. To the extent we believe the majority of secondary impacts are not representative of what happens in real world crashes, the test duration should be sufficiently short to limit significantly the potential for secondary impacts while being of sufficient duration to capture the full air bag deployment. We believe a 100 ms time duration will capture the full air bag deployment and induce manufacturers to reduce the dummy rebound velocities into the seat back and cap the rebound velocity to some degree. There is no evidence that suggests that a 125 ms data collection would reduce the likelihood of injuries more than a 100 ms collection.

We agree with manufacturers that high injury measurements due to secondary impacts can be an artifact of the low risk deployment test. The 100 ms time frame adopted today will minimize the likelihood that a vehicle occupant will be thrown into the seat back or other vehicle component prior to 100 ms, as vehicle manufacturers will need to ensure that their air bags are sufficiently benign to avoid such contacts during that time frame. This is because any failure of the injury criteria, regardless of whether it is the result of direct air bag interaction or a secondary interaction with another vehicle component, will be considered a noncompliance. It is for this reason that we are denying DaimlerChrysler's petition for an explicit exclusion of air bag stages that are not required to provide occupant protection and for performing the test with the seat back fully reclined or removed. However, as noted above, we will continue to monitor the test results, and initiate rulemaking if we determine that injury measures beyond 100 ms are due to overly aggressive air bags.

Vehicle manufacturers have not demonstrated that secondary impacts are a compliance problem on the driver side of the vehicle or with a rear-facing child restraint on the passenger side. Additionally, unlike the 3-year-old and 6-year-old dynamic tests relied on by the Alliance to support its position that secondary impacts are a test anomaly, there will not be a significant amount of forward momentum relative to the vehicle in a dynamic test with an infant dummy in a rear-facing child restraint. The infant dummy is restrained in a rear-facing child restraint that is coupled to the vehicle chassis via the vehicle seat belt system. Thus, the static test condition is more representative of the real world crash event. Accordingly, we are retaining the specification that data be collected for compliance purposes in S19.3 (12-month-old) and S25.3 (driver-side) for 125 ms after initiation of the final stage of deployment for crashes up to 64 km/h (40 mph) and 26 km/h (16 mph), respectively.

We are rejecting the other suggestions offered by petitioners because we believe they are insufficiently objective. Honda's suggestion that data collection for compliance purposes end 10 ms after head interaction with the air bag ceases suffers from the same lack of objectivity as the Alliance petition that we denied in the December 2001 final rule. It is simply not possible to determine with any assurance exactly when that interaction ceases. The suggestion of a film analysis is likewise impractical. Autoliv's suggestion that NHTSA make a case-by-case determination as to when the secondary impact is air bag-related would likely result in significant debate and pose legitimate concerns about objectivity, repeatability, and enforceability.

We have changed S4.11(b) of the regulatory text to specify injury criteria will be considered for "100 milliseconds after the initial deployment of the air bag" rather than "100 milliseconds after the air bag is signaled to deploy." The reason for this change is to be more precise about when the 100 ms time-frame begins. Manufacturers may, for very valid reasons, build time delay circuitry into their air bag systems. If the test duration began at the signaling of air bag deployment, the data acquisition period would be shortened by the period of the delay. Changing the regulatory text to "initial deployment of the air bag" is intended to capture that moment in time when the chemical or other process begins to inflate the air bag. If there is no designed delay built into the electrical circuitry, then the signal for air bag deployment and the initiation of deployment will effectively be coincident.

V. Test Procedure for the Driver Air Bag Systems

As part of the December 2001 final rule, the agency made several changes to the regulatory text governing dummy positioning procedures. In many instances, these changes were intended to be substantive in nature. For example, we changed the location for positioning the dummy chin on the steering wheel in the driver chin-on-rim test (position 2) because we believed the change would lead to a more repeatable test procedure and would minimize the risk that the dummy chin would become lodged over the steering wheel, potentially distorting the dummy kinematics.

However, many of the changes were made purely to improve the logic of how the test was to be performed and to create greater consistency among the various tests. For example, changes were made in the sequencing of the test procedure so that one could follow the procedure step-by-step. Likewise, terminology was made more uniform among the various tests. The agency did not intend these changes to have a substantive effect. Accordingly, the preamble to the December 2001 final rule did not discuss the changes.

Mitsubishi, Volkswagen, and Autoliv stated in their petitions that one of the changes to the driver chin-on-module test (position 1) (S26.2.6) made a substantive change to the test procedure that was not justified, or even discussed in the preamble. Follow-up letters by the Alliance, Ford and GM reiterated this concern. The position aligns the chin with the center of the area where the air bag deploys. The original position aligned the chin with the top of the air bag module. Petitioners have argued that the new specification lowers the dummy head position and could make the test more stringent and unrealistic. Additionally, Autoliv and Ford asked if the seat height could be adjusted to achieve the desired dummy height.

Petitioners are correct that the change was not discussed. It was intended to create consistency between this test and other tests in which a portion of the dummy was to be positioned in alignment with the place in the vehicle where the air bag initially deploys. It was not intended to have a substantive effect. We do not know at this time whether lowering the dummy head a couple of inches will have a significant effect on recorded injury measurements. However, we recognize it could. Since no substantive change was intended, we have reverted back to the positioning language that was in the May 2000 final rule. This language places the chin on the top of the air bag module. It also states that the dummy height can be adjusted using either the seat height adjustments or spacer blocks. All other changes to the chin-on-module positioning procedure adopted by the December 2001 final rule are retained, at least at this time. However, other changes may be made in our second response to the petitions for reconsideration.

VI. Issues Related to Warning Labels and Telltale Requirements

A. Warning Labels

In the May 2000 final rule, we added a new warning label that must be used in vehicles with advanced air bags to replace the warning label currently required. The warning on the new label deleted the earlier label's statement: "Never put a rear-facing child seat in the front" in recognition that the advanced air bag requirements are intended specifically to minimize the risk related to air bag deployments. We also removed the statement on the label that is required in earlier motor vehicles that one should sit as far away from the air bag as possible because while this information is helpful, we did not believe it merited overcrowding the label. We added an instruction to read the vehicle owner's manual to learn more about the advanced air bag systems in the vehicle.

We also stated in the preamble that we would not prohibit additional labels on the sun visor that provided design-specific information on how to use a vehicle's advanced air bag technology. As stated in the preamble to the May 2000 final rule, we intended to allow additional, design-specific information on the sun visor and near the new air bag warning label. However, the amendments to the regulatory text mistakenly maintained the existing prohibition against adding additional information on the sun visor.

Accordingly, in the December 2001 rule, we amended the regulatory text to clarify that a label with such design specific information could be placed, at the manufacturer's option, on the sun visor alongside the air bag warning label. Alternatively, the manufacturer could determine that an additional label placed elsewhere in the vehicle, either permanently or temporarily, could best inform vehicle occupants about a particular characteristic of the vehicle's air bag system. We noted that advanced air bag systems are different from traditional air bag systems in that there is likely to be a variety of advanced air bag systems with differing and/or unique design characteristics. Thus, there may be instances in which a manufacturer determines that particular information should be conveyed regarding vehicle occupant behavior as it affects the performance of that vehicle's air bag system. We believe that the owner's manual alone may not be an adequate means of communicating that information to the vehicle owner and chose not to foreclose such communications through our rule.

No change was made to the regulatory text regarding the placement of labels elsewhere in the vehicle because historically there has been no express prohibition against labels that convey specific, accurate information about air bags or seat belts in locations other than the sun visor. However, we did amend the regulatory text to clarify that any additional labels, regardless of where they are placed in the vehicle, cannot be confusing or misleading when read in conjunction with other labels required by this or other standards.

The Alliance petitioned NHTSA to amend the labeling requirements of the December 2001 final rule in three respects. First, it asked NHTSA to reinstate its prohibition against other labels regarding air bags or seat belts on the sun visor. It claimed that we had not provided an adequate justification for reversing the position we adopted in 1993 that additional information on the sun visor would contribute to information overload for the consumer, resulting overall in a less effective warning. Second, it petitioned the agency to reconsider its position on permitting other labels elsewhere within the vehicle interior (*i.e.*, not located on the sun visor), urging us to adopt a blanket prohibition on additional air bag-related labels within the vehicle interior. Finally, it asked that the advanced air bag label be modified by adding a bulleted statement discouraging front seat installation of rear-facing infant seats.

In its supplemental submission, the Alliance suggested additional changes that it believes would strengthen the required label. In its petition, the Alliance also noted an apparent error in the regulatory text that only mandated the use of the new label in vehicles with automatic suppression systems. DaimlerChrysler raised similar concerns. In addition, DaimlerChrysler noted an incorrect reference in the regulatory text governing labels to a previous section of the regulation that had been repealed. That change has been made.

On April 26, 2002, GM requested that the revised effective date for any new label adopted by NHTSA be no sooner than September 1, 2003, with early compliance permitted. This request was made because GM is currently producing vehicles certified to the advanced air bag requirements which have the label required by the May 2000 and December 2001 final rules. The Alliance reiterated GM's request in its supplemental submission.

NHTSA always intended the new advanced air bag label, depicted in Figure 8, to be required in all vehicles certified to the advanced air bag requirements. Due to an error, the amended regulatory text that was adopted in the December 2001 final rule stated that the new label was only required for systems that use automatic suppression systems. We have amended the text to require that the required label be placed in all vehicles certified to the advanced air bag requirements, regardless of the technology used to meet the requirements.[2]

We have decided to change the required label for vehicles certified to the advanced air bag requirements. This new label is depicted in Figure 11. It differs from the label in Figure 8 in that it includes a bullet statement that states "never put a rear-facing child seat in the front". The bullet will not be required in those vehicles that meet the requirements for an air bag on-off switch, *i.e.*, the vehicle has no rear seat or a rear seat that is too small to accommodate a rear-facing child restraint. Although the advanced air bag systems are intended to minimize the risk of injury or death to infants in rear-facing child restraints, the only means to completely eliminate the risk is to never place a child or infant in a rear-facing child seat in the vehicle's front seat. We believe it is important to continue to highlight the especially high risk of air bag-related injury or death to children in rear-facing child restraints and, indeed, to continue to educate the public about the need to ensure that all children ride properly restrained in the back seat, since this is the safest place for children, irrespective of air bag risks.

We have not made the other changes advocated by the Alliance, namely the replacement of the phrase "even with advanced air bags" with the phrase "death or serious injury can occur" and the addition of the qualifier in the first bullet that the referenced children are "children 12 and under." As noted above, it is critical that vehicle occupants understand how their advanced systems work if they are to provide consistent protection—particularly those systems, such as automatic suppression, whose effectiveness could be directly affected by occupant behavior. By highlighting

[2] As a practical matter, we do not believe any manufacturers will use an advanced air bag system that does not utilize an automatic suppression system for rear-facing child restraints, at least in the near future. Accordingly, all vehicles certified to the advanced air bag requirements would have the required label. However, at some point in the future manufacturers may choose to meet all of the passenger air bag requirements through some technology other than automatic suppression. Under the regulatory text erroneously adopted in the December 2001 final rule, no advanced air bag label would be required for those vehicles.

the advanced air bag features on the warning label, we believe vehicle owners will be more likely to heed the final bullet on the label, which is to consult their owner's manual for full details about the advanced air bag system.

We have decided against adding the "12 and under" qualifier because we believe the qualifier has served its originally intended purpose, which was to educate the public to the size of occupant that may be at risk from an air bag deployment. We will continue to use the qualifier in our educational literature, and continue to believe it is a useful tool for helping distinguish those particularly at risk, but have chosen in the interest of brevity and clarity to make reference to "children" on the sun-visor label rather than "children 12 and under."

We are granting GM's request that the new label not be required until September 1, 2003, the first day of the phase-in implementing the advanced air bag requirements. This should provide vehicle manufacturers sufficient time to order and install the new labels without penalizing them for early compliance with the advanced air bag requirements. The current label will be allowed for vehicles certified to the advanced air bag requirements before September 1, 2003, although vehicle manufacturers may choose to use the new label depicted in Figure 11 on those vehicles under the existing provision allowing early compliance.

As discussed above, the Alliance seeks reinstatement of a prohibition against supplemental air bag information on sun visors and the adoption of a prohibition against such information anywhere in the occupant compartment. The Alliance argues that these actions are necessary to prevent problems of dilution of message and information overload. It argues further that these problems are as large today as they were in the mid-late 1990s at the height of the air bag injury problem.

The question of whether information overload may tend to dilute the message should be considered in light of changing technology and maturing communication needs. In the rulemakings addressing the air bags of the mid 1990s, the agency focused on the twin messages of moving away from air bags and properly using seat belts and other restraints. In considering what messages should be placed on the label, the Agency recognized that, from the point of view of occupant behavior, all airbag systems of that generation operated similarly. Vehicle occupants could not control how or whether an air bag would deploy, but could control whether they were properly seated within the vehicle and properly restrained.

The messages of the 1990s remain critical. The incorporation of technologies to minimize the risks of air bags to occupants should not detract from the primary message that proper occupant seating and restraint use are the most critical factors in minimizing air bag induced injuries. However, the communication needs surrounding advanced air bags, while including the same needs as before, also involve additional complexities. The advent of advanced air bag technology may include air bag systems that respond differently based on the location or characteristics of a particular occupant. While the owner's manuals should contain detailed descriptions of each particular airbag system and how an occupant can best utilize it, the Agency remains convinced that there is benefit to permitting such information to be visible to occupants while riding in the vehicle.

In the December 2001 final rule we tried to balance the potential need for additional design-specific information with the possibility of confusion by prohibiting labels with the potential to confuse or mislead a consumer when read in conjunction with the required label. The Alliance argues that the balance we tried to strike eliminates or reduces the benefits of consistency and repeated exposure that led us originally to mandate particular words and format and to avoid the possibility of diluting these important messages through too many or differing messages.

We agree that a better balance can be struck. While the prohibition against potentially confusing or misleading labels remains, we will continue to permit manufacturers to add design specific information to their sun visor labels. However, to avoid the possibility of information overload, manufacturers must first seek the Agency's approval and may place additional design specific information on the label only after the Agency has granted them permission to do so.

We have set up a procedure under which a vehicle manufacturer can ask for agency authorization to add specific language to the required sun visor warning label addressing the air bag system's unique features. The agency will only authorize or reject the label submitted by the manufacturer. It will not make any judgment as to whether one or more of a variety of labels best prevents information overload, or whether the new information best addresses a particular air bag risk, and it will not suggest alternative language if it rejects a manufacturer's request. Moreover, the agency will not verify or vouch for the accuracy of the information. The agency decision will be limited to a determination that the additional information is not confusing or misleading when the entire label is read as a whole and does not result in information overload; that is to say, the label is not conveying so much information that it is unlikely to be read or taken seriously. We believe this procedure will allow for the provision of design-specific warnings without diminishing the label's effectiveness due to information overload.

In order to obtain NHTSA's authorization, the manufacturer's proposal must meet the following criteria:

- The information that would be added must be design-specific and not applicable to all or most air bag systems;
- The additional information must address situations in which foreseeable occupant behavior can affect air bag performance; and
- The manufacturer's request must provide a mock-up of the label with the specific language that would be added to the label.

Although this procedure places a burden on the agency to determine what constitutes information overload, we believe it will allow us to control the potential for information overload without substituting our judgment for the manufacturer's as to what information vis-á-vis a particular system is most important or germane. Because the information will be specific to the implementation of a particular air bag system in a particular vehicle, and not applicable to all or most airbag systems, we do not believe public comment would be helpful or necessary before making the determination.

The Alliance also requests that we further prohibit any other labels or information elsewhere in the interior compartment of the vehicle. Standard No. 208 has not historically contained any such express prohibition. This lack has not led to increasing numbers of labels and confusing messages, perhaps because the question of whether labels could be placed elsewhere in the vehicle had not been debated. While we do not today extend the prohibition throughout the occupant compartment, should information overload from such additional labels threaten to become a problem, we may reconsider this decision.

The procedure through which additional information can be placed on the sun visor label does not apply to additional labels or information placed elsewhere in the interior of the vehicle.

However, our position on this matter should not be interpreted as a determination by us that the additional labels are needed or even particularly helpful. Rather, our decision reflects our belief that while the sun visor label is the best and most important way to communicate with the public, manufacturers should have the option of including additional information in the occupant compartment, on either a temporary or permanent basis, if they deem it appropriate to do so.

B. Telltale Requirements

The May 2000 final rule required a telltale for vehicles with automatic suppression systems. The telltale has a specified message and must be positioned in a location forward of and above the H-point of the driver's and passenger's seat in their forwardmost position. The final rule allowed for multiple levels of illumination as long as the telltale remains visible at all times to front-seat occupants of all ages. The agency was petitioned to revise the May 2000 requirement that the telltale be visible to occupants of all ages, and to apply the requirements of Standard No. 101. We also received requests that the regulatory text be clarified to assure that the telltale would not be obstructed by a rear-facing child restraint, and that manufacturers be allowed to use the abbreviation "pass" in lieu of "passenger" in the message text. Based on a review of these petitions, we made changes to the regulatory text in the December 2001 final rule that brought the telltale requirements more in line with the requirements of FMVSS No. 101, that relaxed the message requirement to allow an abbreviation of "passenger," and that required the telltale be placed so that rear-facing child restraints could not obscure it.

In its petition for reconsideration, the Alliance argued that the requirement that the telltale not be blockable by a rear-facing child restraint was too broad, although it supported the premise that a properly installed child restraint should not obscure the telltale. It maintained that the new requirement would make it necessary for manufacturers to test visibility using all possible child seats. It urged the agency to limit the requirement to those child seats listed in Appendix A of the standard.

DaimlerChrysler requested additional flexibility in the wording of the required telltale message. Specifically, it has asked that manufacturers be allowed to use "pass." rather than "pass" or "passenger," and that it be allowed to use "airbag" rather than "air bag". It stated that it believes these changes would better clarify the telltale, particularly since "air bag" is generally spelled as a single word outside of the United States and Canada. It also requested that it be allowed to use lower case letters.

In a request for clarification, Jaguar asked whether it was required to have the required telltale message backlit or otherwise illuminated, a result it said was necessitated by the regulatory text adopted in the December 2001 final rule.

We believe the Alliance position on the telltale visibility has merit. Our primary concern is that a correctly installed child restraint should not restrict the visibility of the telltale. The original language, as adopted in the May 2000 final rule, required the telltale not be located in a position where the temporary or permanent storage of an object could obscure the telltale from either the driver's or right front passenger's view. The language was amended in the December 2001 final rule at the request of DaimlerChrysler. We agree that the placement of a child restraint would not necessarily be considered temporary or permanent storage of the restraint. The change was intended to address a likely condition that was not sufficiently described, not to impose any additional burden on the vehicle manufacturers. As noted by the Alliance, NHTSA does not require vehicle manufacturers to certify compliance of their automatic suppression systems using every child restraint on the market. While we expect these systems to work with all available child restraints, requiring manufacturers to actually demonstrate compliance with all child restraints would be unwieldy. This issue was discussed thoroughly in the May 2000 final rule. We believe it would be inappropriate to impose a greater burden on manufacturers vis-á-vis child restraints and telltale visibility than we have imposed on them for the actual suppression device. Accordingly, the regulatory text has been amended to reference only those child restraints in Appendix A that are designed to be installed in a rear-facing mode.

We are denying DaimlerChrysler's request that manufacturers be provided with greater latitude in meeting the telltale's specified form and format requirements. The current requirements are not onerous and mirror the requirements that have been in place for manufacturer-installed air bag on-off switches since 1995. We have already accommodated the manufacturers' space concerns, as well as their concerns regarding the sale of vehicles in Canada or Europe by allowing the abbreviation of "passenger." Additionally, while it is true that the term "air bag" is typically spelled as a single word outside of the United States and Canada, we note that these vehicles are manufactured for the U.S. market. While manufacturers may choose to export vehicles with advanced air bag systems to other countries, those vehicles will not have to meet the requirements of FMVSS No. 208. We also note that only Canada and the United States have adopted any advanced air bag requirements. The changes made in the December 2001 final rule adequately address the U.S. and Canadian markets.

As noted by Jaguar, the changes made in the December 2001 final rule had the effect of requiring the telltale message to be backlit or otherwise illuminated, even though the regulatory text specifically allows telltales that are not backlit. As noted above, the telltale requirements for automatic suppression systems were based on the existing telltale requirements for air bag on-off switches found at S4.5.4. We note that the earlier rule, published in the **Federal Register** on May 23, 1995 (60 FR 27233), directly addressed the issue raised by Jaguar. In that rulemaking, NHTSA had originally proposed that the identifying message be located on the telltale, *i.e.*, the language would be backlit. In the final rule, we amended the proposed regulatory language to allow the required message to be either on the telltale or adjacent to it (within 25 mm). We stated that we believed having the required message adjacent to the telltale would be as effective a means of informing the driver or passenger of the purpose of the telltale as having the words located directly on the telltale. The same rationale applies to the telltale requirement for vehicles with automatic suppression systems.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Although this document amends the agency's May 2000 final rule, which was economically significant, NHTSA has determined that this document does not affect the costs and benefits analysis for that final rule. Readers who are interested in the overall costs and benefits of advanced air bags are referred to the agency's Final Economic Assessment for the May 2000 FMVSS

No. 208 final rule (NHTSA Docket No. 7013). This rulemaking document has also been determined not to be significant under the Department's regulatory policies and procedures. The amendments made by this document impose no additional costs on manufacturers. Their impacts are so minimal that a full regulatory evaluation is not merited.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This action will not have a significant economic impact on a substantial number of small businesses because it does not significantly change the requirements of the May 2000 final rule or the December 2001 final rule. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this rule should only slightly affect the price of new motor vehicles, if at all.

C. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

The final rule is not intended to preempt state tort civil actions, except that the required labels must contain the required text, and no additional text (unless approved by the agency in response to a manufacturer request), and any additional labels cannot be misleading or confusing, as specified in the regulatory text.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). While the May 2000 final rule is likely to result in over $100 million of annual expenditures by the private sector, today's final rule makes only small adjustments to the December 2001 rule, which, in turn, made only small adjustments to the May 2000 rule. Accordingly, this final rule will not result in a significant increase in cost to the private sector.

F. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not establish any new information collection requirements. The new label, depicted in 49 CFR 571.208, Figure 11, merely replaces the label currently depicted in 49 CFR 571.208, Figure 8. Since the contents of both labels are standardized, neither label constitutes an "information collection."

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Standard No. 208 is extremely difficult to read as it contains multiple cross-references and has retained all of the requirements applicable to vehicle of different classes at different times. Because portions of today's rule amend existing text, much of that complexity remains. Additionally, the availability of multiple compliance options, differing injury criteria and a dual phase-in have added to the complexity of the regulation, particularly as the various requirements and options are accommodated throughout the initial phase-in. Once the initial phase-in is complete, much of the complexity will disappear. At that time, it would be appropriate to completely revise Standard No. 208 to remove any options, requirements, and differentiations as to vehicle class that are no longer applicable.

J. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking directly involves decisions based on health risks that disproportionately affect children, namely, the risk of deploying air bags to children. However, this rulemaking serves to reduce, rather than increase, that risk.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [3] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or

[3] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NHTSA as "a performance-based or design-specific technical specifications and related management systems practices. They pertain to products and processes, such as size, strength, or technical performance of a product, process or material."

otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The agency is not aware of any new voluntary consensus standards addressing the changes made to the May 2000 final rule or the December 2001 final rule as a result of this final rule.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended as follows:

A. By removing the introductory text to S4.5.1,

B. By revising S4.5.1 (a)(b), and (c), S4.11, S19.2.2, and S26.2.6, and

C. By adding Figure 11 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.5.1 *Labeling and owner's manual information.*

(a) *Air bag maintenance or replacement information.* If the vehicle manufacturer recommends periodic maintenance or replacement of an inflatable restraint system, as that term is defined in S4.1.5.1(b) of this standard, installed in a vehicle, that vehicle shall be labeled with the recommended schedule for maintenance or replacement. The schedule shall be specified by month and year, or in terms of vehicle mileage, or by intervals measured from the date appearing on the vehicle certification label provided pursuant to 49 CFR Part 567. The label shall be permanently affixed to the vehicle within the passenger compartment and lettered in English in block capital and numerals not less than three thirty-seconds of an inch high. This label may be combined with the label required by S4.5.1(b) of this standard to appear on the sun visor. If some regular maintenance or replacement of the inflatable restraint system(s) in a vehicle is recommended by the vehicle manufacturer, the owner's manual shall also set forth the recommended schedule for maintenance or replacement.

(b) *Sun visor air bag warning label.* (1) Except as provided in S4.5.1(b)(2), each vehicle shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in either Figure 6a or 6b of this standard, as appropriate, and shall comply with the requirements of S4.5.1(b)(1)(i) through S4.5.1(b)(1)(iv).

(i) The heading area shall be yellow with the word "WARNING" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm (1.2 in) in diameter.

(iv) If the vehicle does not have a back seat, the label shown in Figure 6a or 6b may be modified by omitting the statements: "The BACK SEAT is the SAFEST place for children."

(2) Vehicles certified to meet the requirements specified in S19, S21, or S23 before September 1, 2003 shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown either in Figure 8 or Figure 11 of this standard, at the manufacturer's option, and shall comply with the requirements of S4.5.1(b)(2)(i) through S4.5.1(b)(2)(iv).

(i) The heading area shall be yellow with the word "WARNING" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) The pictogram shall be black on a white background. The pictogram shall be no less than 30 mm (1.2 in) in length.

(iv) If the vehicle does not have a back seat, the label shown in the figure may be modified by omitting the statement: "The BACK SEAT is the SAFEST place for CHILDREN."

(v) If the vehicle does not have a back seat or the back seat is too small to accommodate a rear-facing child restraint consistent with S4.5.4.1, the label shown in the figure may be modified by omitting the statement: "Never put a rear-facing child seat in the front."

(3) Vehicles certified to meet the requirements specified in S19, S21, or S23 on or after September 1, 2003 shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in Figure 11 of this standard and shall comply with the requirements of S4.5.1(b)(3)(i) through S4.5.1(b)(3)(iv).

(i) The heading area shall be yellow with the word "WARNING" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) The pictogram shall be black on a white background. The pictogram shall be no less than 30 mm (1.2 in) in length.

(iv) If the vehicle does not have a back seat, the label shown in the figure may be modified by omitting the statement: "The BACK SEAT is the SAFEST place for CHILDREN."

(v) If the vehicle does not have a back seat or the back seat is too small to accommodate a rear-facing child restraint consistent with S4.5.4.1, the label shown in the figure may be modified by omitting the statement: "Never put a rear-facing child seat in the front."

(4) Design-specific information.

(i) A manufacturer may request in writing that the Administrator authorize additional design-specific information to be placed on the air bag sun visor label for vehicles certified to meet the requirements specified in S19, S21, or S23. The label shall conform in content to the label shown in Figure 11 of this standard and shall comply with the requirements of S4.5.1(b)(3)(i) through S4.5.1(b)(3)(iv), except that the label may contain additional, design-specific information, if authorized by the Administrator.

(ii) The request must meet the following criteria:

(A) The request must provide a mock-up of the label with the specific language or pictogram the manufacturer requests permission to add to the label.

(B) The additional information conveyed by the requested label must be specific to the design or technology of

the air bag system in the vehicle and not applicable to all or most air bag systems.

(C) The additional information conveyed by the requested label must address a situation in which foreseeable occupant behavior can affect air bag performance.

(iii) The Administrator shall authorize or reject a request by a manufacturer submitted under S4.5.1(b)(4)(i) on the basis of whether the additional information could result in information overload or would otherwise make the label confusing or misleading. No determination will be made as to whether, in light of the above criteria, the particular information best prevents information overload or whether the information best addresses a particular air bag risk. Moreover, the Administrator will not verify or vouch for the accuracy of the information.

(5) Limitations on additional labels.

(i) Except for the information on an air bag maintenance label placed on the sun visor pursuant to S4.5.1(a) of this standard, or on a utility vehicle warning label placed on the sun visor that conforms in content, form, and sequence to the label shown in Figure 1 of 49 CFR 575.105, no other information shall appear on the same side of the sun visor to which the sun visor air bag warning label is affixed.

(ii) Except for the information in an air bag alert label placed on the sun visor pursuant to S4.5.1(c) of this standard, or on a utility vehicle warning label placed on the sun visor that conforms in content, form, and sequence to the label shown in Figure 1 of 49 CFR 575.105, no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

(c) *Air bag alert label.* If the label required by S4.5.1(b) is not visible when the sun visor is in the stowed position, an air bag alert label shall be permanently affixed to that visor so that the label is visible when the visor is in that position. The label shall conform in content to the sun visor label shown in Figure 6(c) of this standard, and shall comply with the requirements of S4.5.1(c)(1) through S4.5.1(c)(3).

(1) The message area shall be black with yellow text. The message area shall be no less than 20 square cm.

(2) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 20 mm in diameter.

(3) If a vehicle does not have an inflatable restraint at any front seating position other than that for the driver, the pictogram may be omitted from the label shown in Figure 6c.

* * * * *

S4.11 *Test duration for purpose of measuring injury criteria.*

(a) For all barrier crashes, the injury criteria specified in this standard shall be met when calculated based on data recorded for 300 milliseconds after the vehicle strikes the barrier.

(b) For the 3-year-old and 6-year-old child dummy low risk deployment tests, the injury criteria specified in this standard shall be met when calculated on data recorded for 100 milliseconds after the initial deployment of the air bag.

(c) For 12-month-old infant dummy low risk deployment tests, the injury criteria specified in the standard shall be met when calculated on data recorded for 125 milliseconds after the initiation of the final stage of air bag deployment designed to deploy in any full frontal rigid barrier crash up to 64 km/h (40 mph).

(d) For driver-side low risk deployment tests, the injury criteria shall be met when calculated based on data recorded for 125 milliseconds after the initiation of the final stage of air bag deployment designed to deploy in any full frontal rigid barrier crash up to 26 km/h (16 mph).

(e) The requirements for dummy containment shall continue until both the vehicle and the dummies have ceased moving.

* * * * *

S19.2.2 The vehicle shall be equipped with at least one telltale which emits light whenever the passenger air bag system is deactivated and does not emit light whenever the passenger air bag system is activated, except that the telltale(s) need not illuminate when the passenger seat is unoccupied. Each telltale:

(a) Shall emit yellow light;

(b) Shall have the identifying words "PASSENGER AIR BAG OFF" or "PASS AIR BAG OFF" on the telltale or within 25 mm (1.0 in) of the telltale; and

(c) Shall not be combined with the readiness indicator required by S4.5.2 of this standard.

(d) Shall be located within the interior of the vehicle and forward of and above the design H-point of both the driver's and the right front passenger's seat in their forwardmost seating positions and shall not be located on or adjacent to a surface that can be used for temporary or permanent storage of objects that could obscure the telltale from either the driver's or right front passenger's view, or located where the telltale would be obscured from the driver's view if a rear-facing child restraint listed in Appendix A is installed in the right front passenger's seat.

(e) Shall be visible and recognizable to a driver and right front passenger during night and day when the occupants have adapted to the ambient light roadway conditions.

(f) Telltales need not be visible or recognizable when not activated.

(g) Means shall be provided for making telltales visible and recognizable to the driver and right front passenger under all driving conditions. The means for providing the required visibility may be adjustable manually or automatically, except that the telltales may not be adjustable under any driving conditions to a level that they become invisible or not recognizable to the driver and right front passenger.

(h) The telltale must not emit light except when the passenger air bag is turned off or during a bulb check upon vehicle starting.

* * * * *

S26.2.6 While maintaining the spine angle, adjust the height of the dummy so that the bottom of the chin is in the same horizontal plane as the highest point of the air bag module cover (dummy height can be adjusted using the seat height adjustments and/or spacer blocks). If the seat prevents the bottom of the chin from being in the same horizontal plane as the module cover, adjust the dummy height to as close to the prescribed position as possible.

* * * * *

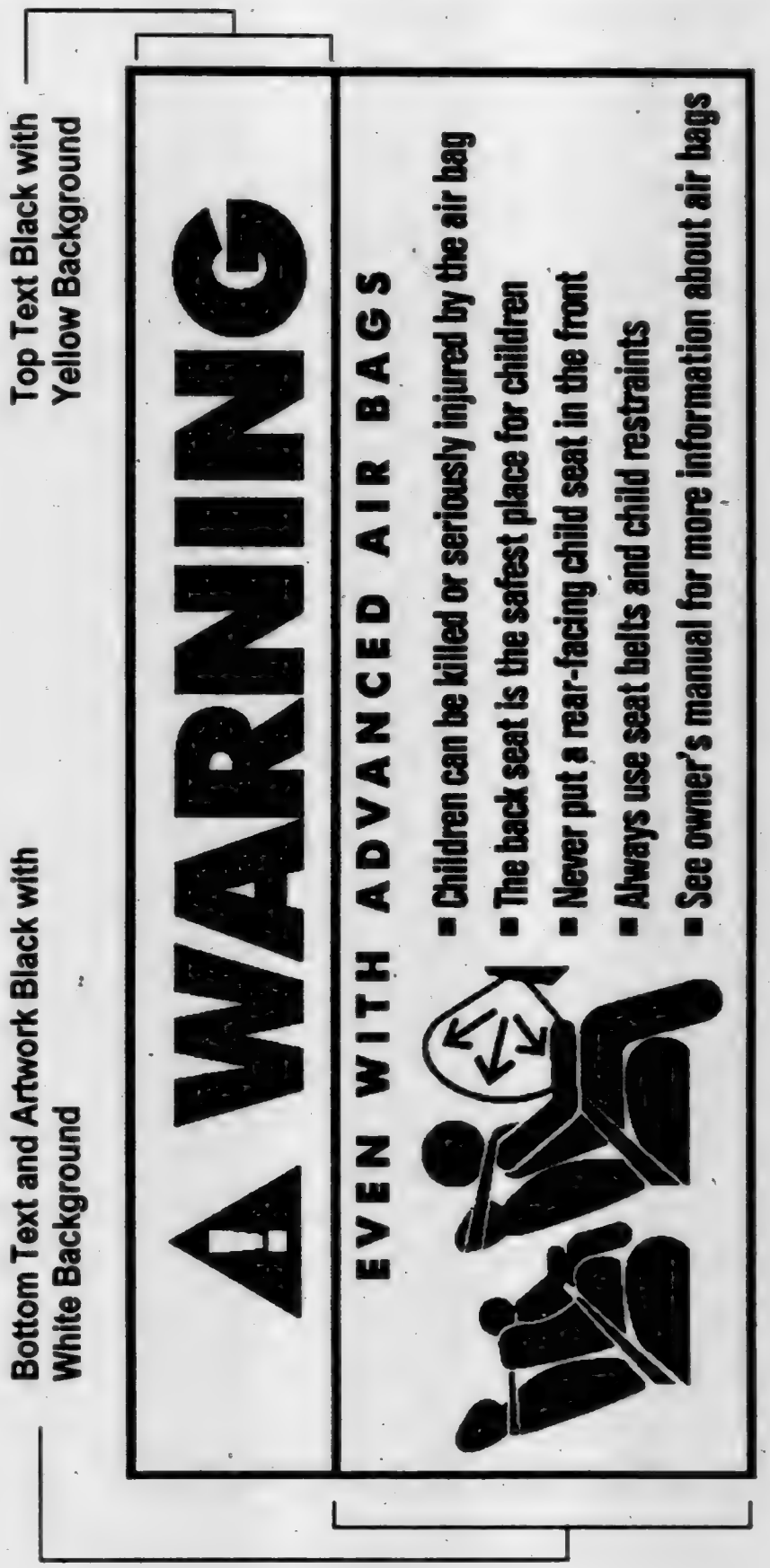

Figure 11. Sun Visor Label Visible when Visor is in Down Position.

Issued on: December 31, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–33146 Filed 12–31–02 2:31 pm]

BILLING CODE 4910–59–C

Proposed Rules

Federal Register

Vol. 68, No. 3

Monday, January 6, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–55–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier-Werke G.m.b.H. Model Do 27 Q–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Dornier-Werke G.m.b.H. (Dornier) Model Do 27 Q–6 airplanes. This proposed AD would require you to inspect the aileron and flap control cables for proper clearance from the fuel lines in the fuselage and make necessary adjustments; and inspect the fuel lines for damage and correct routing. This proposed AD would also require you to replace all damaged fuel lines and reroute incorrectly routed fuel lines. After all other corrective action is taken, this proposed AD would also require you to install protective sleeves on the fuel lines. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this proposed AD are intended to detect and correct damaged fuel lines and prevent the potential for further damage occurring to the fuel lines in the fuselage. Damage to the fuel lines could result in fuel leaking into the fuselage which could cause a fire or explosion.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 14, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–55–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–55–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Fairchild Dornier GmbH, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (011) 49 81 53–30 1; facsimile: (011) 49 81 53–30 29 01. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4143; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–55–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Dornier Model Do 27 Q–6 airplanes. The LBA reports that, during an annual maintenance inspection, a damaged fuel line was found in the area between the firewall and the instrument panel in the fuselage.

Further inspection revealed that the damaged fuel line was incorrectly routed and not properly secured. Incorrect installation of the fuel line allowed the aileron control cable to chafe the fuel line, which caused the fuel line to leak.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not detected, corrected, and prevented, could result in fuel leaking into the fuselage. This could cause a fire or explosion.

Is There Service Information That Applies to This Subject?

Fairchild Dornier has issued Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.

What Are the Provisions of This Service Information?

The service bulletin specifies the following:

—Inspecting the aileron and flap control cables for proper clearance from the fuel lines and making necessary adjustments;

—Inspecting the fuel lines for damage and correct routing;

—Replacing all damaged fuel lines and rerouting all incorrectly routed fuel lines; and

—Installing protective sleeves on the fuel lines.

What Action Did the LBA Take?

The LBA classified this service bulletin as mandatory and issued German AD 2002–240, dated July 26, 2002, in order to ensure the continued airworthiness of these airplanes in Germany.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the LBA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Dornier Model Do 27 Q–6 airplanes of the same type design that are on the U.S. registry;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to inspect the aileron and flap control cables in the fuselage for proper clearance from the fuel lines and make any necessary adjustments; and inspect the fuel lines for damage and correct routing. This proposed AD would also require you to replace all damaged fuel lines and reroute incorrectly routed fuel lines. After all other corrective action is taken, this proposed AD would also require you to install protective sleeves on the fuel lines.

What Is the Difference Between This Proposed AD, the LBA AD, and the Service Information?

The LBA AD and the service information requires (on German-registered airplanes) inspection and, if necessary, adjustments and/or replacement within the next 10 hours time-in-service (TIS) after the effective date of the AD. We propose a requirement that you inspect and, if necessary, adjust and/or replace within the next 55 hours TIS after the effective date of this proposed AD. We do not have justification to require this action within the next 10 hours TIS.

We use compliance times such as 10 hours TIS when we have identified an urgent safety of flight situation. We believe that 55 hours TIS will give the owners or operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 2 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	Not applicable	$60	$60 × 2 = $120

We estimate the following costs to reroute any fuel line that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such rerouting:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 = $120	No parts required	$120

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacements:

Labor cost	Parts cost	Total cost per airplane
6 workhours × $60 = $360	$140	$360 + $140 = $500

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Dornier-Werke G.M.B.H.: Docket No. 2002–CE–55–AD

(a) *What airplanes are affected by this AD?* This AD affects Model Do 27 Q–6 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damaged fuel lines and prevent the potential for further damage occurring to the fuel lines in the fuselage. Damage to the fuel lines could result in fuel leaking into the fuselage which could cause a fire or explosion.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following, unless already accomplished:

Actions	Compliance	Procedures
(1) Inspect the following: ..... (i) the aileron and flap control cable for proper clearance from the fuel lines in the fuselage; and (ii) the fuel lines between the firewall and instrument panel for damage and correct routing.	Within the next 55 hours time-in-service (TIS) after the effective date of this AD.	In accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.
(2) Make adjustments and/or replacements if: .. (i) improper clearance is detected between the aileron and control cable and the fuel lines;. (ii) any fuel line is found damaged; or (iii) any fuel line is incorrectly routed	Prior to further flight after the inspection required in paragraph (d)(1) of this AD and if any of the conditions specified in paragraph (d)(2) of this AD are met.	In accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.
(3) Install a protective sleeve around the fuel lines.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD and when all corrective actions have been accomplished.	In accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Dornier GmbH, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (011) 49 81 53–30 1; facsimile: (011) 49 81 53–30 29 01. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in German AD 2002–240, dated July 26, 2002.

Issued in Kansas City, Missouri, on December 30, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–146 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–143–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require an inspection to detect cracks and fractures of the outboard hinge fitting assemblies on the trailing edge of the inboard main flap, and follow-on and corrective actions if necessary. For certain airplanes, this proposal would also require a one-time inspection to determine if a tool runout procedure has been performed in the area. This action is necessary to prevent the inboard aft flap from separating from the wing and

potentially striking the airplane, which could result in damage to the surrounding structure and potential personal injury. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 20, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–143–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group; P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–143–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during a routine maintenance inspection, fractured lugs were found on both hinge fittings of the outboard hinge assembly mounted to the inboard main flap on a Boeing Model 767–300 series airplane. That airplane had accumulated 9,598 total flight hours and 5,393 total flight cycles. An optional "tool runout" procedure, which allows the part to be machined thicker and reinforces the area, had not been performed on the fitting assembly that was damaged. No cracks or fractures have been reported on fittings on which the optional tool runout procedure had been performed.

Cracked or fractured hinge fittings, if not corrected, could result in the inboard aft flap separating from the wing and potentially striking the airplane, and consequent damage to the surrounding structure and potential personal injury.

The hinge fittings on Model 767–400ER series airplanes are similar in design to those on Model 767–200, –300, and –300F series airplanes. Although the Model 767–400ER fittings are wider and thicker, this area is subject to higher fatigue loads on Model 767–400ER series airplanes. As a result, those fittings could be susceptible to early fatigue cracking or fractures. Therefore, Model 767–400ER series airplanes are also subject to the unsafe condition identified in this proposed AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, including Evaluation Form (for Model 767–200, –300, and 300F series airplanes); and Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002 (for Model 767–400ER series airplanes). (Although both service bulletins contain evaluation forms, only Service Bulletin 767–57A0076 states that the evaluation form is "attached." This proposed AD would not require that any evaluation form be completed and submitted.) The service bulletins describe procedures for a detailed inspection to detect cracks and fractures of the outboard hinge fitting assemblies on the trailing edge of the inboard main flap. Alternatively, the service bulletins provide procedures for performing a combination of a detailed inspection and an eddy current inspection to detect cracks and fractures of the same area. Boeing Service Bulletin 767–57A0076 (for Model 767–200, –300, and –300F series airplanes) also describes procedures for determining whether a tool runout procedure has been done in the area, which would eliminate the need for the terminating action and further inspection, provided no cracks or fractures are found. Follow-on and corrective actions include repetitive inspections and a "Terminating Action" that involves replacing the outboard hinge fittings of the trailing edge of the inboard main flap with new fittings. Accomplishment of the detailed and eddy current inspections would extend the interval for the next inspection (if necessary) beyond the interval for the detailed inspection alone. Accomplishment of the "Terminating Action" would eliminate the need for repetitive inspections. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletins

described previously, except as discussed below.

Difference Between Proposed AD and Relevant Service Information

Although Service Bulletin 767–57A0076 specifies that the manufacturer may be contacted for instructions for certain corrective actions, this proposed AD would require those corrective actions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 783 airplanes of the affected design in the worldwide fleet. The FAA estimates that 354 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed detailed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action is estimated to be $120 per airplane, per inspection cycle.

It would take approximately 5 work hours per airplane to accomplish the proposed detailed visual and eddy current inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions is estimated to be $300 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The terminating action, if accomplished, would take approximately 24 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action is estimated to be $1,440 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–143–AD.

Applicability: Model 767 series airplanes; certificated in any category, line numbers 1 through 826 inclusive, 830, 842, 855, 856, 859, 862, 864 through 866 inclusive, 868, 869, 870 through 874 inclusive, and 876.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inboard aft flap from separating from the wing and potentially striking the airplane, which could result in damage to the surrounding structure and potential personal injury, accomplish the following:

Inspection

(a) Perform either a detailed inspection, or a detailed inspection plus an eddy current inspection, of the outboard hinge fitting assemblies on the trailing edge of the inboard main flap to detect cracks and fractures and evidence of a tool runout procedure, as applicable.

(1) For Model 767–200, –300, and –300F series airplanes: Inspect before the airplane accumulates 2,700 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, in accordance with Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, excluding Evaluation Form.

(2) For Model 767–400ER series airplanes: Inspect before the airplane accumulates 12,000 total flight cycles, in accordance with Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Follow-on/Corrective Actions

(b) Following the initial inspection(s) required by paragraph (a) of this AD: Perform applicable follow-on and corrective actions at the time(s) specified in Figure 1 of Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, excluding Evaluation Form (for Model 767–200, –300, and –300F series airplanes); or Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002 (for Model 767–400ER series airplanes). Do the follow-on and corrective actions (including repetitive inspections and replacement of the fittings with new fittings) in accordance with Part 1 or Part 2 of the service bulletin, as applicable, except as required by paragraph (d) of this AD. For Model 767–200, –300, and –300F series airplanes: If the fitting has the tool runout, and no cracking or fracture is found during the inspection, this AD requires no further action for that hinge fitting.

Exceptions to Service Bulletin Procedures

(c) Where the terminating action in Part 3 of the service bulletin is specified as corrective action in Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, excluding Evaluation Form; and Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002: This AD requires that the terminating action, if required, be accomplished before further flight.

(d) Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, excluding Evaluation Form, specifies to contact Boeing before the terminating action is done as corrective action for any cracking or fracture found on a Model 767–200, –300, or –300F series airplane with the tool runout. This AD requires that any such crack or fracture on those airplanes be reported to the FAA in accordance with paragraph (e) of this AD and repaired in accordance with Part 3 of the service bulletin.

Reporting Requirement

(e) For any Model 767–200, –300, or –300F series airplane with the tool runout, on which any cracking or fracture is found during the inspection(s) required by paragraph (a) of this AD: Submit a report of the inspection findings to the Manager, Seattle Aircraft Certification Office (ACO), FAA, at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the initial inspection is done after the effective date of this AD: Submit the report within 30 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the initial inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Terminating Action

(f) Unless required to do so by paragraph (b) of this AD: Operators may choose to accomplish the terminating action (including replacement of the fittings with new fittings, and reinstallation of existing upper skin access panels and fairing midsections on the trailing edge of the main flap) in accordance with Part 3 of the Work Instructions of Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, excluding Evaluation Form; or Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002; as applicable. Accomplishment of the terminating action terminates the repetitive inspection requirements of paragraph (b) of this AD.

Credit for Prior Accomplishment Per Earlier Service Information

(g) Accomplishment before the effective date of this AD of an inspection, associated follow-on and corrective actions, and terminating action in accordance with Boeing Service Bulletin 767–57A0076, dated October 26, 2000, is acceptable for compliance with the corresponding requirements of this AD for applicable airplanes.

Part Installation

(h) As of the effective date of this AD, no person may install on any airplane a hinge fitting assembly that has any part number listed in Table 1 of this AD, unless the applicable requirements of this AD have been accomplished for that fitting. Table 1 follows:

TABLE 1.—HINGE FITTING ASSEMBLY PART NUMBERS

113T2271–13	113T2271–14
113T2271–23	113T2271–24
113T2271–29	113T2271–30
113T2271–33	113T2271–34
113T2271–401	113T2271–402

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 odf the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 30, 2002.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–152 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SATS No. UT–042–FOR]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The State proposes to revise provisions of the Utah Code Annotated (UCA) that pertain to submitting permit applications and reclamation plans, and to add new provisions for providing certain assistance to operators who mine no more than 300,000 tons of coal. Utah intends to revise its program to be consistent with SMCRA, to clarify wording, and to recodify parts of the Utah Code.

This document gives the times and locations that the Utah program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., mountain standard time February 5, 2003. If requested, we will hold a public hearing on the amendment on January 31, 2003. We will accept requests to speak until 4:00 p.m., mountain standard time on January 21, 2003.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to James F. Fulton at the address listed below.

You may review copies of the Utah program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting Office of Surface Mining Reclamation and Enforcement (OSM's) Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733, Telephone: (303) 844–1400, extension 1424, E-mail: *jfulton@osmre.gov.*

Lowell P. Braxton, Director, Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah 84114–5801, Telephone: (801) 538–5340, E-mail: *lowellbraxton@utah.gov.*

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, telephone: (303) 844–1400, extension 1424. Internet: *jfulton@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15 and 944.30.

II. Description of the Proposed Amendment

By letter dated October 22, 2002, Utah sent us a proposed amendment to its program (UT–042–FOR, administrative record number UT–1171) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the amendment in response to a June 19, 1997, letter (administrative record number UT–1093) that we sent to the State in accordance with 30 CFR 732.17(c). The State previously addressed most of the topics included in our June 19, 1997, letter in amendment UT–038–FOR, which we approved in the April 24, 2001, **Federal Register** (66 FR 20600). Some of the topics described in that letter changed the small operator assistance program (SOAP) by raising the limit on coal production from 100,000 tons to 300,000 tons and describing changes in the type of assistance available to eligible operators under that program. We noted in our letter that those changes might require changes in State statutes. In Utah's case, it must change the SOAP provisions in the Utah Code Annotated before it can change its corresponding rules. This amendment proposes to make those SOAP changes in Utah's Code. In addition, the State proposes to make other changes at its own initiative throughout the same section of its Code that clarify the wording and recodify certain parts. The proposed clarifications involve rewording and restructuring sentences and phrases and changing punctuation. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Specific changes Utah proposes to make to UCA 40–10–10 in this amendment include: Clarifying 40–10–10–(1), which describes application fees; designating new 40–10–10(2)(a) and clarifying it and (2)(a)(ii), (iii), (iv) and (vi), which generally describe how permit applications and reclamation plans are to be submitted to the State as well as ownership and right of entry information to be included with permit applications and reclamation plans; clarifying 40–10–10(2)(b), (c), and (d) and recodifying subordinate parts of those subsections, which describe the maps and information about legal right of entry, probable hydrologic consequences and other hydrology information, and characteristics of the coal to be mined that must be included in permit applications; removing existing 40–10–10(3) and replacing it with new 40–10–10(3)(a), (a)(i) through (a)(vi), (b), and (c), all of which pertain to assistance available to eligible small operators to gather and pay for certain baseline and survey data and limitations on that assistance; clarifying and recodifying 40–10–10(4)(a) and (b), which address availability of information pertaining to the coal; clarifying 40–10–10(5), which describes how to file a permit application; clarifying and recodifying 40–10–10(6)(a), (b), (b)(i) and (ii), which describe the proof and type of insurance required to accompany a permit application; and clarifying 40–10–10(7), which requires a blasting plan to be part of a permit application.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Utah program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see Dates). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Denver Field Division may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. UT–042–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at (303) 844–1400, extension 1424.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., mountain standard time, by January 21, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 and determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based on Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect on a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based on Federal regulations for which an analysis was prepared and a determination made that the Federal regulations were not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based on Federal regulations for which an analysis was prepared and a determination made that the Federal regulations did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 31, 2002.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–158 Filed 1–3–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[USCG–2002–13147]

RIN 2115–AG50

Penalties for Non-submission of Ballast Water Management Reports

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes penalty provisions for non-submission of Ballast Water Management Reports. The Coast Guard also proposes widening the applicability of the reporting and recordkeeping requirements to all vessels bound for ports or places within the United States, with minor exceptions. The proposed actions would increase the Coast Guard's ability to protect against introductions of new aquatic invasive

species via ballast water discharges, as required by the Nonindigenous Aquatic Nuisance Prevention and Control and the National Invasive Species Acts.

DATES: Comments and related material must reach the Docket Management Facility on or before April 7, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before April 7, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2002–13147), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Bivan Patnaik, G–MSO–4, Coast Guard, telephone 202–267–1744. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2002–13147), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Congress, in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), as amended by the National Invasive Species Act of 1996 (NISA), directed the Coast Guard to issue regulations and guidelines for ballast water management (BWM). The goal of BWM is to prevent the introduction and dispersal of nonindigenous species (NIS) to U.S. waters via ballast water discharges. This proposed rule would amend U.S. regulations by promulgating penalty provisions for those who fail to submit reports of their BWM activities in conjunction with their voyages to U.S. ports.

Responding to NANPCA's directive, the Coast Guard published a Final Rule (58 FR 18330, April 8, 1993) mandating BWM for the Great Lakes (33 CFR part 151, subpart C), and later extended the provisions to include the Hudson River north of the George Washington Bridge (59 FR 67632, Dec. 30, 1994). In 1999, responding to NISA's directive, we published an interim rule (64 FR 26672, May 17, 1999) that set voluntary BWM guidelines for most vessels entering all other U.S. waters, and mandated BWM reporting and recordkeeping requirements, without penalty provisions. Our Final Rule implementing these NISA-required regulations was published on November 21, 2001 (66 FR 58381).

In NISA, Congress also instructed the Secretary of Transportation (Secretary) to submit a Report to Congress evaluating the effectiveness of the voluntary program. Congress anticipated that, in this Report, the Secretary might determine that either compliance with the voluntary guidelines was inadequate, or the rate of reporting was too low to allow for a valid assessment of the compliance. In either case, Congress stipulated the development of additional regulations to make the voluntary guidelines a mandatory BWM program, and providing penalties for violations of these regulations. The Secretary's report, signed June 3, 2002, concluded that compliance with the reporting requirement of 33 CFR part 151, subpart D was insufficient to allow for an accurate assessment of the voluntary BWM regime. Accordingly, the Secretary stated his intention to make the voluntary BWM requirements mandatory and include sanctions as an enforcement tool. A copy of the Report to Congress has been placed in the docket for this rulemaking (USCG–2002–13147) and is available at *http://dms.dot.gov*.

In carrying out Congress' intent of a stepped approach, the Coast Guard, as the Secretary's delegate, is moving forward with the promulgation of penalty provisions for those who fail to submit reports of their BWM activities in conjunction with their voyages to U.S. ports. This step will also include broadening the class of vessels required to submit and keep, respectively, ballast water management reports and records.

This proposed rule will not broaden the class of vessels required to conduct ballast water exchange. The Coast Guard will address this subject in a separate rulemaking that is under development.

Related Projects

The Coast Guard is currently working on a number of other projects related to addressing the aquatic invasive species problem in U.S. waters. As mentioned

above, the Coast Guard is developing regulations to convert the voluntary guidelines in 33 CFR part 151, subpart D to a mandatory BWM program.

NANPCA and NISA authorize the Coast Guard to approve alternate ballast water treatment (BWT) methods that are found to be at least as effective as ballast water exchange (BWE) in preventing and controlling infestations of aquatic nuisance species (ANS). Therefore, in order to evaluate the effectiveness of alternative BWT methods, the Coast Guard must first define for programmatic purposes what "as effective as [BWE]" means. On March 4, 2002, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) titled "Standards for Living Organisms in Ship's Ballast Water Discharged in U.S. Waters" (67 FR 9632). Along with proposing BWT goals and standards, one of the purposes of the ANPRM was to present our approach to clarifying this term. The comment period on the ANPRM closed on June 3, 2002, and the Coast Guard is now analyzing the comments.

The Coast Guard is also planning on promulgating rules to allow for approval of ship-board installation of experimental BWT technologies.

Discussion of Proposed Rule

The proposed amendments to 33 CFR part 151 would achieve two objectives. First, penalty provisions would be clearly spelled out in both subparts C and D, in accordance with NANPCA and NISA. Violators of either the mandatory exchange provisions (for vessels bound for the Great Lakes or portions of the Hudson River) or the mandatory reporting and recordkeeping provisions (for all vessels bound for ports or places within the United States) would be liable for a civil penalty of up to $25,000 for each violation, with each day of a continuing violation equaling a separate violation. Knowing violations of either provision would be class C felonies. These changes can be found in proposed sections 151.1518 and 151.2007.

The second change would increase the number of vessels subject to the reporting and recordkeeping provisions of subpart D. This expansion of the reporting population is being proposed in order to generate the data that will allow for a more thorough understanding of ballast water delivery and management practices and how these relate to invasions of ANS from ships' ballast water on both a national and regional basis. This information should provide a clearer picture of the realities of BWM and ANS invasions over time and lead to a more effective and efficient program.

Currently, only those vessels entering United States waters after operating outside of the EEZ (which for the purposes of NANPCA as amended by NISA includes the equivalent zone of Canada) must submit ballast water management reports and keep accurate ballast water management records. Under the proposed changes, all vessels operating in United States waters bound for ports or places in the United States would have to submit these reports and keep records, regardless of whether they operated outside of the EEZ. The proposed reporting requirements are detailed in Tables 1 and 2, below. Only crude oil tankers engaged in coastwise trade, Department of Defense and Coast Guard vessels, and those vessels operating solely within one Captain of the Port (COTP) zone would be exempt from the reporting and recordkeeping requirements.

The proposed changes to the regulatory text in subpart D (with the exception of section 151.2007) would achieve this second objective, while improving the readability of the subpart. One proposed change that should be highlighted is in sections 151.2010(b) and (d), where we are proposing the deletion of the exemptions for "a passenger vessel equipped with a functioning treatment system designed to kill aquatic organisms in the ballast water" and "a vessel that will discharge ballast water or sediments only at the same location where the ballast water or sediments originated". These exemptions were intended to apply to a requirement to conduct a ballast water exchange (BWE). As there are no requirements for BWE outside of the Great Lakes and Hudson River North of George Washington Bridge, there is nothing in 33 CFR 151 Subpart D to be exempted from and the continued inclusion of this wording only leads to confusion. Requiring these previously exempted vessels to submit BWM reports will allow the U.S. Coast Guard to gain a more thorough understanding of ballast water delivery and management practices. In the future, when ballast water exchange becomes mandatory (as we expect it will), we will ensure that these exemptions are re-inserted into the regulations as appropriate.

TABLE 1.—WHERE AND WHEN MUST A VESSEL SUBMIT A REPORT IF THEY ARE ENTERING THE WATERS OF THE UNITED STATES AFTER OPERATING OUTSIDE THE EEZ?

Bound for:	You must submit your report as detailed below:
The Great Lakes	Fax the information to the U.S. Coast Guard COTP Buffalo, Massena Detachment (315–764–3283) or to the St. Lawrence Seaway Development Corporation (315–764–3250) at least 24 hours before the vessel arrives in Montreal, Quebec. In lieu of faxing, vessels that are not U.S. or Canadian flagged vessels may complete the ballast water information section of the St. Lawrence Seaway "Pre-entry Information from Foreign Flagged Vessel Form".
Hudson River north of the George Washington Bridge	Fax the information to the COTP New York at (718–354–4249) at least 24 hours before the vessel arrives at New York, New York. ***Note:** Vessels entering COTP New York Zone which are not proceeding up the Hudson River north of George Washington Bridge should submit their reports in accordance with the instructions in the following block.
All U.S. ports other than the Great Lakes or the Hudson River North of the George Washington Bridge.	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and Submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Internet at *http://invasions.si.edu/ballast.htm;* E-mail to ballast@serc.si.edu; Fax to 301–261–4319; or Mail to U.S. Coast Guard, c/o SERC, P.O. Box 28, Edgewater, MD 21037–0028.

TABLE 2.—WHERE AND WHEN MUST A VESSEL SUBMIT A REPORT IF THE VESSEL DID NOT OPERATE OUTSIDE THE EEZ?

Bound for:	You must submit your report as detailed below:
All U.S. ports including the Great Lakes and Hudson River North of George Washington Bridge.	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and Submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Internet at *http://invasions.si.edu/ballast.htm;* E-mail to ballast@serc.si.edu; Fax to 301–261–4319; or Mail to U.S. Coast Guard, c/o SERC, P.O. Box 28, Edgewater, MD 21037–0028.

We would appreciate any comments on whether these proposed changes have unintentionally changed the voluntary guidelines in a manner not discussed above.

Regulatory Evaluation

This proposed rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, regulatory Planning and Review. The Office of Management and Budget has reviewed it under that order. It is "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. A draft Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT follows:

This Regulatory Evaluation estimates the costs and benefits of the proposed rule for civil penalties and new reporting requirements for vessels arriving from domestic ports of origin. The costs of collecting and reporting ballast water information for vessels arriving from foreign ports of origin have already been accounted for in previous Regulatory Evaluations and an OMB-approved collection of information (OMB 2115–0598). Therefore, in this Regulatory Evaluation, we account only for the costs of reporting that will be incurred by vessels arriving in U.S. ports from other U.S. ports (*i.e.*, domestic voyages).

According to data from the Coast Guard, the U.S. Customs Service, and the U.S. Maritime Administration, there are approximately 70,000 arrivals in U.S. ports annually. Of these, 50,000 have a foreign port of origin and the remaining 20,000 have a domestic port of origin. Those vessels arriving from foreign ports of origin have already been reporting ballast water management practices under existing regulations. Under the proposed rule, the 20,000 arrivals from domestic ports will now submit ballast water reports.

Based on the current collection, we estimate that each ballast water report takes 40 minutes (0.666 hours) to complete the form and submit it to the Coast Guard. We estimate that it costs $35 per hour for the labor to complete and submit each form. If there are 20,000 arrivals from domestic ports annually, this means the annual cost of the proposed rule is $466,667 ($35 × 0.666 hours × 20,000 ballast water reports).

The benefit of the proposed rule is an increase in the amount and quality of BWM information provided to the Coast Guard. This will allow the Coast Guard to more accurately analyze and assess the BWM practices and delivery patterns of vessels navigating in U.S. waters and take appropriate programmatic action.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We do not expect that a substantial number of small businesses will be significantly affected by this rulemaking. The final rule implementing NISA, published in November of 2001 (66 FR 58381), was able to certify that a significant number of small entities were not substantially affected by that rule. We do not expect that this will change by increasing the number of vessels subject to the reporting requirements, to cover all vessels equipped with ballast water tanks that are bound for ports or places within the United States, since the cost per ballast water report is only $23 (40 minutes x $35/hours).

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Mary Pat McKeown at 202–267–0500.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

Title: Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters

Summary of the Collection of Information: The proposed rule will require 46,833 hours of labor burden annually for mandatory reporting and recordkeeping requirements.

Need for Information: The information collection requirement described in this section is necessary to carry out the reporting requirement of title 16 U.S.C. 4711, which concerns the

management of ballast water to prevent the introduction of aquatic nuisance species into U.S. waters.

Proposed Use of Information: The purpose of the information collection is to more fully understand and respond to the threat posed by ballast water. The Coast Guard and researchers, from both private and other governmental agencies, will use the information to assess the effectiveness of the voluntary ballast water management guidelines.

The collection of information for the proposed rule modifies an existing OMB-approved collection (OMB 2115–0598).

Description of the Respondents: Under the current collection, respondents are vessel owners and operators that make ports of call in the United States after departing a foreign port. Under the proposed rule, respondents will also include vessel owners and operators that make ports of call in the United States after departing another U.S. port.

Number of Respondents: The existing OMB-approved collection number of respondents is 50,000 (respondents are owners/operators of the vessels calling on U.S. ports annually). This proposed rule will increase the number of respondents by 20,000, since now owners and operators of vessels arriving from domestic ports will submit ballast water reports.

Frequency of Response: Owners/operators of vessels making calls in U.S. ports will submit ballast water reports as necessary. The existing OMB-approved collection number of responses is 50,000 (responses are arrivals at U.S. ports). This proposed rule will increase the number of responses by 20,000 (reports for vessels arriving from domestic ports of origin) for a net total of 70,000 responses.

Burden of Response: The existing OMB-approved collection burden of response is approximately 40 minutes (0.666 hours) (burden of response is the time required to complete the paperwork requirements of the rule for a single response). This proposed rule will not increase the burden of response.

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 33,500 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This proposed rule will increase the total annual burden by 13,333 hours for a net total of 46,833 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

We have analyzed this rule under Executive Order 13132. The Aquatic Nuisance Prevention and Control Act contains a "savings provision" that saves to the states their authority to "adopt or enforce control measures for aquatic nuisance species, [and nothing in the Act will] diminish or affect the jurisdiction of any States over species of fish and wildlife." 16 U.S.C. 4725. It also requires that "all actions taken by Federal agencies in implementing the provisions of [the Act] be consistent with all applicable Federal, State and local environmental laws." Thus, the congressional mandate is clearly for a Federal-State cooperative regime in combating the introduction of aquatic nuisance species into U.S. waters from ship's ballast tanks. This makes it unlikely that preemption, which would necessitate consultation with the States under Executive Order 13132, will occur. If, at some later point in the rulemaking process we determine that preemption may become an issue, we will develop a plan for consultation with affected states/localities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under

paragraph 6(b) of the Appendix to "National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48243), this rule is categorically excluded from further environmental documentation. This rule falls under congressionally mandated regulations. Analyses of these types of regulations and their respective environmental reviews have determined these actions do not normally have significant effects either individually or cumulatively on the human environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

Subpart C—Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River

1. The authority citation for part 151 subpart C continues to read as follows:

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

2. Add § 151.1518 to read as follows:

§ 151.1518 Penalties for failure to conduct ballast water exchange.

(a) A person who violates this subpart is liable for a civil penalty in an amount not to exceed $25,000. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subpart for that violation.

(b) A person who knowingly violates the regulations of this subpart is guilty of a class C felony.

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

3. The authority citation for 33 CFR part 151 subpart D continues to read as follows:

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

4. Revise § 151.2005 to read as follows:

§ 151.2005 To which vessels does this subpart apply?

Unless exempted in §§ 151.2010 or 151.2015, this subpart applies to all vessels, U.S. and foreign, equipped with ballast tanks, that operate in the waters of the United States and are bound for ports or places in the United States.

5. Add § 151.2007 to read as follows:

§ 151.2007 What are the penalties for violations of the mandatory provisions of this subpart?

(a) A person who violates this subpart is liable for a civil penalty not to exceed $25,000. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subpart for that violation.

(b) A person who knowingly violates the regulations of this subpart is guilty of a class C felony.

§ 151.2010 [Amended]

6. In § 151.2010:

(a) remove from the introductory text, the word "Four" and add, in its place, the word "Three";

(b) remove paragraphs (b) and (d);

(c) redesignate paragraph (c) as (b);

(d) and add new paragraph (c) to read as follows:

§ 151.2010 Which vessels are exempt from the mandatory requirements?

(c) A vessel that operates exclusively within one Captain of the Port (COTP) Zone.

§ 151.2015 [Amended]

7. In § 151.2015 remove the number "151.2040" and add in its place the number "151.2041".

§ 151.2025 [Revised]

8. Amend § 151.2025(b) by adding, in alphabetical order, the definitions for "Exclusive Economic Zone (EEZ)", "port or place of departure" and "port or place of destination", and revise the definitions of "Captain of the Port (COTP)" and "Voyage". The new and revised definitions read as follows:

§ 151.2025 What definitions apply to this subpart?

(a) * * *

(b) * * *

Captain of the Port (COTP) means the Coast Guard officer designated as the COTP, or a person designated by that officer, for the COTP zone covering the U.S. port of destination. These COTP zones are listed in 33 CFR part 3.

* * * * *

Exclusive Economic Zone (EEZ) means the area established by Presidential Proclamation Number 5030, dated March 10, 1983 (48 FR 10605, 3 CFR, 1983 Comp., p. 22) which extends from the base line of the territorial sea of the United States seaward 200 miles, and the equivalent zone of Canada.

* * * * *

Port or place of departure means any port or place in which a vessel is anchored or moored.

Port or place of destination means any port or place to which a vessel is bound to anchor or moor.

* * * * *

Voyage means any transit by a vessel destined for any United States port or place.

* * * * *

9. Revise § 151.2040 and its section heading to read as follows:

§ 151.2040 What are the mandatory Ballast Water Management requirements for vessels equipped with ballast tanks that operate in the waters of the United States and are bound for ports or places in the United States?

(a) A vessel bound for the Great Lakes or Hudson River, which has operated beyond the EEZ (which includes the equivalent zone of Canada) during any part of its voyage regardless of intermediate ports of call within the waters of the United States or Canada, must comply with §§ 151.2041 and 151.2045 of this subpart, as well as with the provisions of subpart C of this part.

(b) A vessel engaged in the foreign export of Alaskan North Slope Crude Oil must comply with §§ 151.2041 and 151.2045 of this subpart, as well as with the provisions of 15 CFR 754.2(j)(1)(iii). That section (15 CFR 754.2(j)(1)(iii)) requires a mandatory program of deep water ballast exchange unless doing so would endanger the safety of the vessel or crew.

(c) A vessel not included in paragraphs (a) or (b) of this section that operates in the waters of the United States and is bound for ports or places in the United States must comply with §§ 151.2041 and 151.2045 of this subpart.

(d) This subpart does not authorize the discharge of oil or noxious liquid substances (NLS) in a manner prohibited by United States or international laws or regulations. Ballast water carried in any tank containing a residue of oil, NLS, or any other pollutant must be discharged in accordance with applicable regulations.

(e) This subpart does not affect or supercede any requirement or prohibition pertaining to the discharge of ballast water into the waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 to 1376).

§ 151.2041 [Redesignated]

10. Redesignate the old § 151.2041 as the new § 151.2043.

11. Add new § 151.2041 to read as follows:

§ 151.2041 What are the Mandatory Ballast Water Reporting Requirements for all vessels equipped with ballast tanks bound for ports or places in the United States?

(a) Reporting requirements exist for each vessel bound for ports or places in the United States regardless of whether vessel operated outside of the EEZ (which includes the equivalent zone of Canada), unless exempted in §§ 151.2010 or 151.2015.

(b) The master, owner, operator, agent, or person-in-charge of a vessel to whom this section applies must provide the information required by § 151.2045 in electronic or written form to the Commandant, U.S. Coast Guard or the appropriate COTP as follows:

(1) For any vessel bound for the Great Lakes from outside the EEZ (which includes the equivalent zone of Canada).

(i) You must fax the required information at least 24 hours before the vessel arrives in Montreal, Quebec to either the USCG COTP Buffalo, Massena Detachment (315–764–3283), or the St. Lawrence Seaway Development Corporation (315–764–3250); or

(ii) If you are not a U.S. or Canadian Flag vessel, you may complete the ballast water information section of the St. Lawrence Seaway required "Pre-entry Information from Foreign Flagged Vessels Form" and submit it in accordance with the applicable Seaway Notice in lieu of this requirement.

(2) For a vessel bound for the Hudson River north of the George Washington Bridge entering from outside the EEZ (which includes the equivalent zone of Canada). You must fax the information to the COTP New York (718–354–4249) at least 24 hours before the vessel enters New York, New York.

(3) For any vessel not addressed in paragraphs (b)(1) and (b)(2) of this section, which is equipped with ballast water tanks and bound for ports or places in the United States. If your voyage is less than 24 hours, you must report before departing your port or place of departure. If your voyage exceeds 24 hours, you must report at least 24 hours before arrival at your port or place of destination. All required information is to be sent to the National Ballast Information Clearinghouse (NBIC) using only one of the following means:

(i) Internet at *http://invasions.si.edu/ballast.htm;* or

(ii) E-mail to ballast@serc.si.edu; or

(iii) Fax to 301–261–4319; or

(iv) Mail to U.S. Coast Guard, c/o SERC (Smithsonian Environmental Research Center), P.O. Box 28, Edgewater, MD 21037–0028.

(c) A single report that includes the ballast discharge information for consecutive voyages between U.S. ports, or between U.S. and Canadian ports on the Great Lakes, will be accepted.

(d) If the information submitted in accordance with this section changes, you must submit an amended form before the vessel departs the waters of the United States.

§ 151.2043 [Amended]

12. In newly designated § 151.2043:

(a) In the section heading, after the words "Hudson River," add the words "after operating outside the EEZ or Canadian equivalent"; and

(b) In paragraphs 151.2043(a) and 151.2043(a)(1) remove the number "§ 151.2040(c)(4)" and add in its place the number, "§ 151.2041".

§ 151.2045 [Amended]

13. In § 151.2045(a) remove the phrase "entering the waters of the United States after operating beyond the EEZ" and add in its place, the phrase "bound for a port or place in the United States".

14. Amend Appendix to Subpart D of Part 151—BALLAST WATER REPORTING FORM AND INSTRUCTIONS FOR BALLAST WATER REPORTING FORM by revising the "Where to send this form" instructions to read as follows:

* * * * *

Where To Send This Form

[Vessels equipped with ballast water tanks bound for all ports or places within the waters of the United States after operating outside the EEZ (which includes the equivalent zone of Canada).]

Bound for:	You must submit your report as detailed below:
The Great Lakes	Fax the information at least 24 hours before the vessel arrives in Montreal, Quebec, to the USCG COTP Buffalo, Massena Detachment (315–764–3283) or to the Saint Lawrence Seaway Development Corporation (315–764–3250). In lieu of faxing, vessels that are not U.S. or Canadian flagged may complete the ballast water information section of the St. Lawrence Seaway "Pre-entry Information from Foreign Flagged Vessel Form".
Hudson River north of the George Washington Bridge.	Fax the information to the COTP New York at (718–354–4249) at least 24 hours before the vessel arrives at New York, New York. ***Note:** Vessels entering COTP New York Zone which are not bound up the Hudson River north of George Washington Bridge should submit the form in accordance with the instructions in the following block.
All other U.S. Ports	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Via the Internet at *http://invasions.si.edu/ballast.htm;* E-mail to ballast@serc.si.edu; Fax to 301–261–4319; or Mail the information to U.S. Coast Guard, c/o SERC. P.O. Box 28, Edgewater, MD 21037–0028.

[Vessels that have not operated outside the EEZ, which are equipped with ballast water tanks and are bound for all ports or places within the waters of the United States.]

Bound for:	You must submit your report as detailed below:
All U.S. ports including the Great Lakes and Hudson River North of George Washington Bridge.	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Via the Internet at *http://invasions.si.edu/ballast.htm;* E-mail to ballast@serc.si.edu; Fax to 301–261–4319; or Mail to U.S. Coast Guard, c/o SERC, PO Box 28, Edgewater, MD 21037–0028.

If any information changes, send an amended form before the vessel departs the waters of the United States.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The Coast Guard estimates that the average burden for this report is 35 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G–MSO), U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593–0001, or Office of Management and Budget, Paperwork Reduction Project (2115–0598), Washington, DC 20503.

Dated: December 23, 2002.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 03–100 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Standards Governing the Design of Apartment House Mailboxes

AGENCY: Postal Service.

ACTION: Notice of intent to establish a Consensus Committee and notice of first meeting.

SUMMARY: The Postal Service intends to establish a Consensus Committee to develop recommendations for revision of USPS STD 4B, which governs the design of apartment house mailboxes. The committee will develop and adopt its recommendations through a consensus process. The committee will consist of persons who represent the interests affected by the proposed rule, including apartment house type mailbox manufacturers, mailbox distributors, mailbox installers and servicers, postal customers, and apartment house builders, owners and managers. The purpose of this Notice is to apprise the public of the intent to establish the committee; provide the public with information regarding the committee; solicit public comment on the proposal to establish the committee and the proposed membership of the committee; explain how persons may apply or nominate others for membership on the committee; and announce the approximate date of the first committee meeting.

DATES: The Postal Service must receive written comments, requests for representation or membership on the committee, and nominations for membership on the committee no later than February 5, 2003. The first committee meeting is tentatively scheduled for some time during the first two weeks of February 2003.

ADDRESSES: The first committee meeting is tentatively scheduled to be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260. Mail comments and all other communications regarding the committee to Jeffery W. Lewis, Room 7142, at the same address. Comments transmitted by fax or email will not be accepted. Committee documents will be available for public inspection and copying between 9 a.m. and 4 p.m. weekdays on the 11th floor at the address above.

FOR FURTHER INFORMATION CONTACT: Jeffery W. Lewis (202) 268–4757.

SUPPLEMENTARY INFORMATION:

I. Background

U.S. Postal Service Standard 4B (USPS STD 4B), *Receptacles, Apartment House, Mail,* governs the design of apartment house mailboxes. The current standard, adopted in 1975, prescribes design limitations in terms that are no longer consistent with the operational requirements of the Postal Service. Primary issues to be addressed by the committee will include increasing design flexibility within the Postal Service's operational requirements; improving safety and mail security; and replacing existing mailboxes that do not satisfy the requirements of the new standard. The committee may also consider other issues at its discretion and within the scope set forth in paragraph II.

II. Scope of the Rule

The contents of the new standard will consist of regulations on apartment house and office building mailbox design characteristics and the replacement of existing mailboxes that do not satisfy the requirements of the new standard.

III. New and Pending Applications

Beginning on February 5, 2003, the Postal Service will take no further action on new or pending applications for approval of apartment house type mailbox designs, or on applications for modifications to approved apartment house type mailbox designs, until the revision of the standard is complete. This action is consistent with past practice, and is necessary to avoid approving designs under the current standard that may not be permissible under the new standard, or disapproving applications under the current standard that would be approved under the new standard.

IV. Consensus Process

In a consensus process, representatives of interests that would be substantially affected by the new rule meet as an advisory committee to negotiate among themselves and with the agency to reach a consensus on a proposed rule. As part of the consensus process, the agency agrees to use the committee's recommendation as the basis of the proposed rule, and each private interest agrees to support the committee's recommendation and the proposed rule to the extent that it reflects the recommendation.

A feasibility study, performed by a neutral convenor, and using the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* as a guide, recommended that the Postal Service initiate a consensus process. In reaching this

recommendation, the convenor determined that: (1) There is a need for the rule; (2) there are a limited number of identifiable interests significantly impacted by the rule; (3) a committee can be created with balanced representation which can represent the identified interests and can negotiate in good faith; (4) consensus on the issues appears likely; (5) the consensus process will not unduly delay the issuance of the rule; (6) the agency has resources and is willing to assist the consensus process; and (7) the agency, within the constraints of the law, will use the advisory committee's consensus as the basis of the rule for notice and comment.

V. Participants

The committee will include a representative from the Postal Service and representatives, to be selected by the Postal Service, from persons and/or organizations that will be significantly affected by this rule. Each representative may also name an alternate who may attend all committee meetings and will serve in place of the primary representative if necessary. The designated Postal Service representative will be authorized to represent the agency in the committee, and will participate in its activities, discussions, and deliberations.

The convenor has recommended that the Postal Service invite certain organizations to participate in the consensus process. The convenor has contacted these organizations, which have indicated their willingness to serve on the committee. Therefore, the Postal Service proposes to invite the following organizations to participate in the consensus process:

Representing approved apartment house-type mailbox manufacturers:

1. American Eagle Manufacturing Co.
2. American Locker Security Systems
3. Auth-Florence Manufacturing Co.
4. Bommer Industries, Inc.
5. Jensen Industries, Inc.
6. Mail Security
7. Salsbury Industries

Representing apartment house-type mailbox distributors, installers, and servicers:

8. Postal Products, Inc.

Representing management, construction, and consumer interests:

9. Associated Builders & Contractors
10. Association of General Contractors
11. Building Owners & Managers Association International
12. Direct Marketing Association
13. Magazine Publishers of America
14. National Association of Homebuilders
15. National Association of Housing & Redevelopment Officials
16. National Association of Realtors
17. National Multi-Housing Council
18. Parcel Shippers Association

VI. Tentative Schedule

The first committee meeting is tentatively scheduled for some time during the first 2 weeks of February 2003, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. Subsequent meetings will be scheduled by the committee, at the same location, and are expected to occur approximately 4 to 6 weeks apart.

VII. Nominations and Applications

Persons and organizations that will be significantly affected by this rule may apply for membership on the committee or nominate another person or organization for membership. Each nomination or application must include: (1) The name of the applicant or nominee and a description of the interests that person or organization represents; (2) evidence that the applicant or nominee is authorized to represent the interests the person proposes to represent; (3) the reasons the applicant or nominator believes its interests or those of its nominee are sufficiently different from the those of organizations listed above that those interests would not be adequately represented by the members of the committee as proposed. All nominations and applications must be received by the Postal Service at the address above no later than February 5, 2003. The Postal Service reserves the right to refuse nominations and applications that do not fulfill these requirements. The Postal Service, with the advice of the convenor, will select committee members that provide adequate representation of each significantly affected interest rather than every individual and organization affected by the rule.

VIII. Procedures and Guidelines

(A) Facilitator

The Postal Service has selected a neutral, impartial facilitator to serve as chairman of the committee meetings. The facilitator will assist committee members conduct discussions; help committee members define issues and reach consensus; and manage the minutes, agendas, and other records of the committee.

(B) Good Faith

Committee members must be committed to negotiate in good faith and be authorized by the individuals and/or organization(s) they represent to do so. Therefore, senior individuals within each interest group should be designated to serve on the committee. Also, committee members must commit to support the final consensus recommendation of the committee.

(C) Administrative Support

Administrative support will be provided by the Postal Service at its headquarters offices.

(D) Consensus

"Consensus" is defined for the purposes of this rulemaking as the unanimous concurrence among the committee members unless the committee explicitly adopts a different definition.

(E) Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the committee will establish procedures and ground rules.

(F) Records

The facilitator will prepare minutes of all committee meetings. These minutes will be available for public inspection and copying as stated above.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–139 Filed 1–3–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7435–3]

Reopening of Comment Period for Proposed Exclusion for Identifying and Listing Hazardous Waste and A Determination of Equivalent Treatment; Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Environmental Protection Agency (EPA, also, 'the Agency' or 'we') is reopening the period for submitting public comments on our previous proposal to approve two petitions submitted by the University of California—E.O. Lawrence Berkeley National Laboratory (or LBNL). The Agency initially announced this proposed decision in the July 31, 2002 **Federal Register** (67 FR 49649). The first petition requested EPA to grant a one-time, generator-specific exclusion

(or 'delisting') of certain LBNL treatment residues from the list of RCRA hazardous waste. The second petition requested EPA to grant a "determination of equivalent treatment" (DET) for a catalytic chemical oxidation (CCO) technology that LBNL used to treat their original mixed waste.

For the first petition, EPA reviewed all of the waste-specific information provided by LBNL and determined that the petitioned waste (tritiated water with no detectable organic chemical constituents) was non-hazardous. For the second petition, EPA reviewed all of the specific CCO treatment information provided by LBNL and determined that the CCO treatment was equivalent to combustion.

EPA received a written request for an informal public hearing. Exercising the discretion set forth in the rules for rulemaking petitions, EPA has granted the request and will hold a public hearing. The purpose of the hearing will be to hear oral comments on our tentative decision.

DATES: The public hearing will be held on January 23, 2003 at 7 p.m. EPA is reopening the public comment period and we will accept public comments on these proposed decisions until February 6, 2003. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decisions.

ADDRESSES: The public hearing will be held at the North Berkeley Senior Center at 1901 Hearst Avenue, Berkeley, California. Please send two copies of your comments to Rich Vaille, Associate Director, Waste Management Division (WST–1), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency Records Center, 75 Hawthorne Street, San Francisco, CA 94105, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition. Call the EPA Region 9 RCRA Record Center at (415) 947–4596 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346. For technical information on specific aspects of these petitions, contact Cheryl Nelson at the address above or at 415–972–3291, e-mail address: *nelson.cheryl@epa.gov*.

Dated: December 20, 2002.

Richard Vaille,

Acting Director, Waste Management Division, Region IX.

[FR Doc. 03–174 Filed 1–3–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02 02–3504, MB Docket No. 02–283, RM–10614]

Radio Broadcasting Services; Buffalo, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Robert Fabian proposing the allotment of Channel 224C2 at Buffalo, Oklahoma, as that community's first local FM service. The coordinates for Channel 224C2 at Buffalo are 36–50–36 North Latitude and 99–24–30 West Longitude. There is a site restriction 19.8 kilometers (12.3 miles) east of the community.

DATES: Comments must be filed on or before February 10, 2003, and reply comments on or before February 25, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Robert Fabian, 4 Hickory Crossing Lane, Argyle, Texas 76226.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–383, adopted December 18, 2002, and released December 20, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Buffalo, Channel 224C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–168 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3456; MB Docket No. 02–282; RM–10615]

Radio Broadcasting Services; Bridgeton, and Pennsauken, NJ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on a petition for rulemaking filed on behalf of Cohanzick Broadcasting Corp., licensee of Station WSNJ–FM and New Jersey Radio Partners, LLC, assignee of Station WSNJ–FM, requesting the substitution of Channel 300A for Channel 299B at Bridgeton, New Jersey, and reallotment of Channel 300A from Bridgeton to Pennsauken, New Jersey, as the

community's first local aural transmission service, and modification of Station WSNJ–FM's authorization to reflect the changes. This petition was originally filed as an amended proposal in MB Docket 02–26 which was terminated. Channel 300A can be allotted at a site 6.1 kilometers (3.8 miles) northeast of Pennsauken at coordinates 40–00–12 NL and 75–01–19 WL.

DATES: Comments must be filed on or before, February 10, 2003, and reply comments on or before February 25, 2003.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–382, adopted December 13, 2002, and released December 16, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR §§ 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Jersey, is amended by adding Pennsauken, Channel 300A and removing Bridgeton, Channel 299B.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–167 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3455; MB Docket No. 02–26; RM–10362]

Radio Broadcasting Services; Bridgeton and Elmer, NJ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: In this document, the Commission dismisses the petition for rulemaking filed by Cohanzick Broadcasting Corporation requesting the reallotment of Channel 299B from Bridgeton, New Jersey, to Elmer, New Jersey. Petitioner, by filing amended proposal requesting the substitution of Channel 300A for 299B at Bridgeton and reallotment of Channel 300A from Bridgeton to Pennsauken, New Jersey, has abandoned interest in original proposal.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–26, adopted December 4, 2002, and released December 6, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–166 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021223329–2329–01; I.D. 121302A]

RIN 0648–AQ26

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2003 specifications for the Atlantic bluefish fishery; request for comments.

SUMMARY: NMFS proposes 2003 specifications for the Atlantic bluefish fishery, including total allowable landings (TAL), state-by-state commercial quotas, and recreational harvest limits and possession limits for Atlantic bluefish off the East Coast of the United States. The intent of the specifications is to conserve and manage the bluefish resource and provide for sustainable fisheries.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on January 21, 2003.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA), Initial Regulatory Flexibility Analysis (IRFA), and the Essential Fish Habitat Assessment (EFHA) are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA, IRFA, and EFHA are accessible via the Internet at *http://www.nero.noaa.gov*.

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, "Comments—2003 Bluefish Specifications." Comments also may be sent via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul Perra, Fishery Policy Analyst, (978) 281–9153, e-mail at *Paul.Perra@noaa.gov*, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION:
Regulations implementing the Atlantic Bluefish Fishery Management Plan (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The FMP requires that the Council recommend, on an annual basis, a TAL, which is comprised of a commercial quota and a recreational harvest limit.

The FMP also requires that: (1) The TAL for any given year be set based on the fishing mortality rate (F) resulting from the stock rebuilding schedule contained in the FMP, or the estimated F in the most recent fishing year, whichever is lower; and (2) a total of 17 percent of the TAL be allocated to the commercial fishery, as a quota, with the remaining 83 percent allocated as a recreational harvest limit, with the stipulation that, if 17 percent of the TAL is less than 10.50 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.50 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed TAL.

The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**. After considering public comment, NMFS will publish final specifications in the **Federal Register**.

Proposed 2003 Specifications

Proposed TAL

On August 9, 2002, the Council adopted specifications for the 2003 Atlantic bluefish fishery. NMFS has reviewed the Council's recommendation and has found it complies with the FMP objectives. Therefore, NMFS is proposing to implement the Council's recommended specifications.

For the 2003 fishery, the stock rebuilding program in the FMP would restrict F to 0.41. However, the 2001 fishery (the most recent fishing year for which F can be calculated) produced an F of only 0.246. So, in accordance with the FMP, the TAL proposed for 2003 was set to achieve F=0.246. The resulting TAC recommended by the Council and proposed by NMFS is 39.5 million lb (17.9 million kg). The TAL is calculated by deducting discards, estimated at 2.2 million lb (0.99 million kg) for 2003, from the TAC. Therefore, the proposed TAL for 2003 is 37.293 million lb (16.916 million kg).

Proposed Commercial Quota and Recreational Harvest Limit

If the TAL for the 2003 fishery were allocated based on the percentages specified in the FMP, the commercial quota would be 6.339 million lb (2.875 million kg), with a recreational harvest limit of 30.953 million lb (10.500 million kg). However, recreational landings from the last several years were much lower than the recreational allocation for 2003, ranging between 8.30 and 15.5 million lb (3.74 and 7.05 million kg). Since the recreational fishery is not projected to land its 30.953 million-lb (12.153 million-kg) harvest limit in 2003, this allows the specification of a commercial quota of up to 10.5 million lb (4.76 million kg). NMFS proposes to transfer 4.161 million lb (1.887 million kg) from the initial 2003 recreational allocation of 30.953 million lb (12.153 million kg), resulting in 26.793 million lb (12.153 million kg) for the 2003 recommended recreational harvest limit and a proposed commercial quota of 10.5 million lb (4.744 million kg). The proposed 2003 commercial quota would be the same amount as was allocated in 2002 and implemented by NMFS and the states under the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Bluefish. A recreational possession limit of 15 fish/person (same as in 2002) is proposed, and also, 141,900–lb (64,365–kg) research set-aside (RSA) is proposed. Some or all of the RSA amount will be allocated if research proposals to utilize it are approved for award. A Request for Proposals was published to solicit proposals for 2003, based on research priorities identified by the Council (67 FR 13602, March 25, 2002). The deadline for submission was May 13, 2002. One research project that would utilize bluefish RSA has been conditionally approved by NMFS, and is under final review by the NOAA Grants Office. The Council and NMFS have recommended an RSA allocation of 141,900 lb (64,365 kg), for that project.

If all of the bluefish RSA is allocated, the commercial quota would be 10.460 million lb (4.745 million kg) and the recreational harvest limit would be 26.691 million lb (12.107 million kg). The RSA, the commercial quota, and the recreational harvest limit will be adjusted in the final rule establishing the annual specifications for the bluefish fishery, if necessary, to reflect RSA allocations to projects forwarded to the NOAA Grants Office for award. If the awards are not made for any reason, NMFS will publish notification in the **Federal Register** to restore the unused set-aside amount to the annual commercial and recreational allocations.

Proposed State Commercial Allocations

Proposed state commercial allocations for the recommended 2003 commercial quotas are shown in the table below, based on the percentages specified in the FMP less the proposed RSA allocation.

State	% of quota	2003 Commercial Quota (lb)	2003 Commercial Quota (kg)	2003 Commercial Quota (lb)	2003 Commercial Quota (kg)
				With Research Set-Aside	With Research Set-Aside
ME	0.6685	70,193	31,839	6,992	31,718
NH	0.4145	43,523	19,741	43,357	19,667
MA	6.7167	705,254	319,898	702,570	318,684
RI	6.8081	714,851	324,251	712,131	323,021
CT	1.2663	132,962	60,310	132,456	60,082
NY	10.3851	1,090,436	494,613	1,086,286	492,736
NJ	14.8162	1,555,701	705,654	1,549,782	702,977
DE	1.8782	197,211	89,453	196,461	89,114
MD	3.0018	315,189	142,967	313,990	142,425

State	% of quota	2003 Commercial Quota (lb)	2003 Commercial Quota (kg)	2003 Commercial Quota (lb) With Research Set-Aside	2003 Commercial Quota (kg) With Research Set-Aside
VA	11.8795	1,247,348	565,787	1,242,601	563,640
NC	32.0608	3,366,384	1,526,966	3,353,575	1,521,172
SC	0.0352	3,696	1,676	3,682	1,670
GA	0.0095	998	452	994	451
FL	10.0597	1,056,269	479,115	1,052,249	477,297
Total	100.0000	10,500,000	4,762,720	10,460,058	4,744,652

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866. The Council prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for the action are provided in the preamble for the proposed rule, and in the **SUMMARY** section of the preamble, and in the IRFA. A summary of the IRFA follows.

An active participant in the commercial sector was defined as being any vessel that reported having landed one or more pounds of bluefish to NMFS-permitted dealers during calendar year 2001. All vessels are considered to be small entities. Of the active vessels in 2001, 846 landed bluefish from Maine to North Carolina. The dealer data do not cover vessel activity in the South Atlantic. State trip ticket report data indicate that 1,092 vessels landed bluefish in North Carolina. Bluefish landings in South Carolina and Georgia represented less than 1/10 of 1 percent of total landings. Therefore, it was assumed that no vessels landed bluefish from those states. In addition, 214 vessels landed bluefish to dealers on Florida's east coast in 2001. In recent years, approximately 2,063 party/charter vessels caught bluefish.

The Council analyzed three TAL alternatives. The preferred alternative examined the impacts on the industry that would result from a TAL of 37.293 million lb (16.916 million kg), allocated to the commercial and recreational sectors (10.460 million lb (4.74 million kg) commercial; 26.691 million lb (12.107 million kg) recreational), and an RSA of 141,900 million lb (64,356 kg). Alternative 2 considered a TAL of 37.293 million lb (16.916 million kg), allocated to the commercial and recreational sectors (6.315 million lb (2,864 million kg) commercial; 30.835 million lb (13.986 million kg, recreational), and an RSA of 141,900 lb (64,365 kg). Alternative 3, provides for a lower commercial quota than Alternative 1, considers a TAL of 37.293 million lb (16.916 million kg) 9.546 million lb (4.329 million kg) commercial; 27.604 million lb (12.521 million kg) recreational), and an RSA of 141,900 lb (64,365 Kg).

On a coastwide basis, the preferred alternative would allow for less than a 1–percent decrease in total allowable commercial landings for bluefish in 2003 versus the 2002 commercial quota, due to the amount specified for the RSA. The 2003 recreational harvest limit would be 63 percent higher than the estimated recreational landings in 2002. Under this alternative, no vessels would realize significant revenue reductions. According to dealer data, 650 federally permitted commercial vessels would be expected to incur revenue losses of 5 percent or less, and 193 commercial vessels would incur revenue gains. The affected entities would be mostly smaller vessels that land bluefish in Massachusetts, New Jersey, New York and North Carolina. The revenue increase is primarily due to the fact that the New York quota was adjusted downward in 2002 due to overages in 2001. Thus, that state shows a positive proportional change in quota from 2002 to 2003 (see section 5.3 of the RIR/IRFA). In addition, economic analysis of South Atlantic Trip Ticket Report data indicated that, on average, reduction in revenues due to the change in quota levels from 2002 to 2003 are expected to have small reductions in revenue for fishermen that land bluefish in North Carolina (1.44 percent) and minimal for fishermen that land bluefish in Florida (0.07 percent).

Alternative 2 would result in a 40–percent decrease in the total allowable commercial landings for bluefish in 2003 versus 2002. The 2003 recreational harvest limit would be 88 percent higher than the estimated recreational landings in 2002. Under this scenario, according to Northeast dealer data, a total of 103 vessels would incur revenue losses from 5 to 39 percent, and 740 vessels would incur revenue losses of less than 5 percent of their total ex-vessel revenue. Also, evaluation of South Atlantic Trip Ticket Reports indicate an average of 6.1 and 0.03–percent reductions in revenue for fishermen that land bluefish in North Carolina and Florida, respectively.

Alternative 3 would result in a 9–percent decrease in the total allowable commercial landings for bluefish in 2003 versus 2002. The 2003 recreational harvest limit would be 69 percent higher than the estimated recreational landings in 2002. Under this scenario, based on Northeast dealer data, a total of 28 vessels would incur revenue losses from 5 to 10 percent, 626 commercial vessels would incur revenue losses of less than 5 percent of their total ex-vessel revenue, and 189 vessels would incur an increase in revenue. The revenue increase is primarily due to the fact that the New York quota was adjusted downward in 2002 due to overages in 2001. Thus, that state shows a positive proportional change in quota from 2002 to 2003 (see section 5.3 of the RIR/IRFA). Also, evaluation of South Atlantic Trip Ticket Reports indicate reduction in revenues of 1.44 and 0.07–percent for fishermen that land bluefish in North Carolina and Florida, respectively.

The Council further analyzed the impacts on revenues of the proposed RSA amount for all three alternatives. The social and economic impacts of this proposed RSA are minimal. Assuming the full RSA is allocated for bluefish, the set-aside amount could be worth as much as $45,480 dockside, based on a 2001 price of $0.32 per pound. Assuming an equal reduction among all 834 active dealer reported vessels, this could mean a reduction of about $55 per individual vessel. Changes in the recreational harvest limit would be insignificant (less than 1 percent decrease), if 2 percent of the TAL is used for research. It is unlikely that there would be negative impacts. A copy of this analysis is available from the Council (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 27, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory ProgramsNational Marine Fisheries Service.

[FR Doc. 03–179 Filed 1–3–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 3
Monday, January 6, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary

Notice of Solicitation for Membership to the Forestry Research Advisory Council

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of solicitation for membership to the Forestry Research Advisory Council.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture announces solicitation for nominations to fill eight vacancies on the Forestry Research Advisory Council.

DATES: Nominations must be received on or before February 15, 2003.

ADDRESSES: Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Office of the Forestry Research Advisory Council; Mail Stop 2210; 1400 Independence Avenue, SW., Washington, DC 20250–2210. Nominations delivered by express mail or overnight courier service should be sent to: Office of the Forestry Research Advisory Council; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 3213, Waterfront Centre; 800 9th Street, SW., Washington, DC 20024.

FOR FUTHER INFORMATION CONTACT: Catalino A. Blanche, Designated Federal Officer, Forestry Research Advisory Council; telephone: (202) 401–4190; fax: (202) 401–1706; e-mail: *cblanche@reeusda.gov*, or Dr. Hao Tran, Staff Assistant, Research and Development, Forest Service; telephone: (202) 205–1293; fax: (202) 205–1530; e-mail: *htran@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Section 1441 (c) of the Agriculture and Food Act of 1981 requires the establishment of the Forestry Research Advisory Council to provide advice to the Secretary of Agriculture on accomplishing efficiently the purposes of the Act of October 10, 1962 (16 U.S.C. 582a, *et seq.*), known as the McIntire-Stennis Act of 1962. The Council also provides advice related to the Forest Service research program, authorized by the Forest and Rangeland Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600 (note)). The Council is composed of 20 voting members from the following membership categories:

- Federal and State agencies concerned with developing and utilizing the Nation's forest resources, in particular committee membership, will include representation from the National Forest System and Forest and Range Experiment Stations leaders, Forest Service;
- The forest industries;
- The forestry schools of the State certified eligible institutions, and State agricultural experiment stations; and
- Volunteer public groups concerned with forests and related natural resources.

Nomination of members representing the forestry schools will be sent to the Secretary by State-certified eligible forestry schools. This notice does not seek nominations representing those institutions.

The Council membership is appointed with staggered terms of one, two, and three years. As a result of the staggered appointments, the terms of six members expire December 31, 2002. Nominations for a three-year appointment for the six positions and two unfilled positions last year are sought. Nominees will be carefully reviewed for their broad expertise, leadership, and relevancy to a membership category. Nominations for one individual who fits several of the categories, or for more than one person who fits one category will be accepted.

Each nominee must submit and complete a current resume and Form AD–755, Advisory Committee Membership Background Information (which can be obtained from the contact person) and will be vetted before selection. Applicants are strongly encouraged to submit nominations via overnight mail or delivery service to ensure timely receipt by the USDA.

Please indicate the specific membership category for each nominee.

Done at Washington, DC this 24th day of December 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 03–211 Filed 1–3–03; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary

Notice of Appointment of Members to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Appointment of members.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces the appointments to the 11 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Appointments are for a three-year term, effective October 1, 2002, until September 30, 2005, with the exception of one one-year appointment resulting from a member resignation after serving two years.

ADDRESSES: National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office, Room 344A, Jamie L. Whitten Building; U.S. Department of Agriculture, STOP 2255; 1400 Independence Avenue, SW., Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, telephone: (202) 720–3684; fax: (202) 720–6199; e-mail: *dhanfman@reeusda.gov*.

SUPPLEMENTARY INFORMATION: Section 802 of the Federal Agricultural Improvement and Reform Act of 1996 authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to agriculture. The Board was first appointed in September 1996 and at that time one-third of the original 30 members were appointed for

a one, two, and three-year term, respectively. Due to the staggered appointments, the terms for 11 of the 30 members who represent 11 specific categories expired September 30, 2002. The Secretary of Agriculture has made appointments for all 11 of the vacant categories. Appointees by category of the 10 new members and one re-appointment are as follows: Representing Category B. "Farm Cooperatives," David Graves, President of the National Council of Farmer Cooperatives, Washington, DC; Category D. "Plant Commodity Producers," Tonya Antle, Vice President, Natural Selection Foods, San Juan Bautista, California; Category G. "National Aquaculture Associations," Ronald W. Hardy, Director of the Hagerman Fish Culture Experiment Station, University of Idaho, Hagerman, Idaho; Category J. "National Food Science Organizations," Phillip E. Nelson, Head of the Department of Food Science at Purdue University, West Lafayette, Indiana; Category L. "National Nutritional Science Societies," John W. Suttie, Professor at the University of Wisconsin, Madison, Wisconsin; Category M. "1862 Land-Grant Colleges and Universities," Thomas Alvin Fretz, Dean and Director of the College of Agriculture and Natural Resources, University of Maryland, College Park, Maryland; Category R. "Scientific Community Not Closely Associated with Agriculture," Ghassem Asrar, Associate Administrator for Earth Science at NASA, Washington, DC; Category U. "Food and Fiber Processors", Gilbert Leveille (one year term), Vice President of Technology and Food Systems Design at Cargill, Inc., and President of the Riley Memorial Foundation, Wayzata, Minnesota; Category AA. "An Agency of USDA Lacking Research Capabilities," Homer Wilkes (re-appointed), State Conservationist for the Natural Resources Conservation Service, U.S. Department of Agriculture, Jackson, Mississippi; Category BB. "Research Agency of the Federal Government other than USDA," Clifford Gabriel, Deputy Associate Director for Science at the Executive Office of the President, White House Office of Science and Technology Policy, Washington, DC; and Category DD. "National Organization Directly Concerned with Research, Education, and Extension," Krishna Rao Dronamraju, President of the Foundation for Genetic Research, Houston, Texas.

Done at Washington, DC this 24th day of December 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 03–210 Filed 1–3–03; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–113–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Veterinary Accreditation Program.

DATES: We will consider all comments that we receive on or before March 7, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–113–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–113–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–113–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the Veterinary Accreditation Program, contact Dr. Quita Bowman, National Veterinary Accreditation Program Coordinator, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–6188. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS" Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Veterinary Accreditation Program.

OMB Number: 0579–0032.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for, among other things, protecting the health of our Nation's livestock and poultry populations by preventing the spread of contagious, infectious, or communicable diseases of livestock and poultry and for eradicating such diseases from the United States when feasible.

However, because APHIS does not have sufficient personnel to perform all necessary animal disease prevention activities, we rely heavily on assistance from veterinarians in the private sector.

Veterinary Services (VS), APHIS, administers the Veterinary Accreditation Program that authorizes private veterinary practitioners to work cooperatively with VS, as well as with State animal health officials, to carry out regulatory programs that ensure the health of the Nation's livestock and poultry.

Operating this program requires us to engage in a number of information gathering activities, including:

- Conducting veterinary accreditation orientation and training.
- Completing animal health certificates.
- Applying and removing official seals.
- Completing test reports.
- Reviewing applications for veterinary accreditation and reaccreditation.
- Recordkeeping.
- Updating information on accredited veterinarians.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.477348 hours per response.

Respondents: Accredited veterinarians, candidates for the Veterinary Accreditation Program, and State animal health officials who review applications for veterinary accreditation and reaccreditation.

Estimated annual number of respondents: 63,000.

Estimated annual number of responses per respondent: 2.095936.

Estimated annual number of responses: 132,044.

Estimated total annual burden on respondents: 63,031 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of December 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–214 Filed 1–3–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–116–1]

Oriental Mealybug; Notice of Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the control program of the Oriental mealybug (*Planococcus lilacinus*). The environmental assessment documents our review and analysis of environmental impacts associated with five alternatives for control of Oriental mealybug, as well as a recommendation for the use of biological control agents in the event Oriental mealybug is detected in the United States. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before February 5, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–116–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–116–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–116–1" on the subject line.

You may read any comments that we receive on the draft environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Dale Meyerdirk, Agriculturalist, National Biological Control Institute, PPQ, APHIS, 4700 River Road Unit 135, Riverdale, MD 20737–1236; (301) 734–5220.

SUPPLEMENTARY INFORMATION:

Background

Oriental mealybug (*Planococcus lilacinus*) is a foreign plant pest that attacks at least 96 different species of plants, including agricultural and ornamental plants. Oriental mealybug is widely distributed in the Eastern Hemisphere. In the Western Hemisphere, Oriental mealybug is found in the Dominican Republic, El Salvador, Guam, and Haiti. Susceptible areas include coastal locations in Mexico as well as the area abutting the Rio Grande Valley. In the United States, an area including all of the south, and extending north and west as far as Pennsylvania; lower Ohio, Indiana, and Missouri; and eastern Texas, is susceptible. Even in cold regions, certain greenhouse crops would be at risk of infestation. For these reasons, Oriental mealybug could become a serious agricultural threat if it were to enter and become established in the United States.

The Animal and Plant Health Inspection Service (APHIS) has completed an environmental assessment that considers various methods of suppression for Oriental mealybug in the event this pest is detected in the United States. Based on our findings, we believe that the most effective alternative available is the use of biological control agents in the form of encrytid wasps of the genera *Aenasius, Anagyrus, Aphycus, Gyranusoidea, Leptomastix, Pseudaphyscus, Taftia, Tetracnemoidea,* and *Promuscidae* in the family Aphelinidae. Therefore, we propose to import these biological control agents and rear them on Oriental mealybug in U.S. Department of Agriculture-certified insect quarantine facilities in preparation for their dissemination into the ecosystem in the event of an infestation of Oriental mealybug.

It is expected that the biological control agents would be introduced into areas where the Oriental mealybug occurs and reproduce naturally without further human intervention, and that these stingless, parasitic wasps would become established throughout the

eventual geographical distribution of Oriental mealybug in the United States. The biological characteristics of the organisms under consideration preclude any possibility of harmful effects on human health.

APHIS' review and analysis of the potential environmental impacts associated with each of the possible alternatives are documented in detail in an environmental assessment entitled "Control of Oriental Mealybug, *Planococcus lilacinus* (Homoptera: Pseudococcidae)" (October 2002). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

You may request copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS" NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 30th day of December 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–213 Filed 1–3–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–014N]

Residue Testing Procedures; Response to Comments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is issuing this notice to address comments that it received on its August 6, 2001 **Federal Register** notice, "Residue Testing Procedures." That notice announced that FSIS was changing the action that it would take when livestock or poultry that are presented for slaughter come from producers and others who have previously marketed such animals that contain violative levels of chemical residues. FSIS will now post on its website, the names and addresses of the sellers of livestock and poultry who the Food and Drug Administration (FDA) has determined are responsible for the repeated sale of livestock or poultry that contain violative levels of chemical residues. FSIS instituted this action partly in response to a petition submitted by a number of trade associations. The repeat violators alert list (RVAL) may be found at *http://www.fsis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Carole Thomas, Technical Analysis Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 405, Cotton Annex, Washington, DC 20250–3700, (202) 205–0210.

SUPPLEMENTARY INFORMATION:

Background

FSIS conducts both ante-mortem and post-mortem inspection of all livestock and poultry presented for slaughter at each official establishment. As part of ante-mortem inspection, FSIS personnel inspect animals to determine whether they exhibit behaviors or conditions that are indicative of illegal chemical use. If such behaviors or symptoms are exhibited the animals are tagged "U.S. Suspect" and are further examined at post-mortem inspection.

During post-mortem inspection, FSIS veterinarians examine carcasses and their organs to determine whether the animals they came from had pathological diseases or other conditions that could have warranted the use of drugs or other chemicals and whether there are any indications of illegal chemical use. In addition, FSIS conducts laboratory analysis of sample organ tissues that have been taken from carcasses that have pathologies or other conditions indicative of chemical use to determine whether they contain violative chemical residues.

On August 6, 2001, FSIS issued a **Federal Register** notice entitled, "Residue Testing Procedures" (66 FR 40965). The notice announced that, in cooperation with FDA, FSIS would make publicly available a list of repeat chemical residue violators by posting the list on the FSIS Homepage (*http://www.fsis.usda.gov*). The Agency stated that the list would contain the names and addresses of the sellers of livestock and poultry that FDA had investigated and determined to be responsible for more than one chemical residue violation in a 12-month period. The names and addresses of violators will remain on the list for a year from the time that the violation is confirmed by FDA. For any subsequent violation, the time period would be extended for a year from the date that the violation is confirmed by FDA.

This new procedure replaces FSIS' previous policy of testing livestock and poultry carcasses derived from animals marketed by producers or sellers who were previously the source of an animal with a violative chemical residue at an official establishment (*i.e.*, FSIS "5/15" policy).

FSIS received several comments about the policy change that it made effective on September 5, 2001. FSIS has carefully considered the comments and is now responding to them.

One commenter asked FSIS to evaluate the role that livestock markets play in the marketing chain and to provide the necessary resources to ensure that only the actual violator is identified.

FSIS will work closely with the Food and Drug Administration, Center for Veterinary Medicine, to identify the source of an animal that contains a violative chemical residue. If testing shows that a carcass contains a violative chemical residue, the Slaughter Operations Staff at FSIS' Technical Service Center (TSC) will open a case file and attempt to determine the source of the livestock or poultry. The source is the farmer, hauler, or auction market that sold the animal for slaughter.

The TSC staff will try to obtain from the official establishment the name of the seller (*e.g.*, farmer, hauler, producer or auction house) of the livestock or poultry. If the source of the animal is identified, FSIS will send an "FSIS Violation Notification Letter" to the identified entity. The letter will provide the results of the residue tests taken.

Additionally, pursuant to an October 1984, Memorandum of Understanding, FSIS will transmit to FDA information about the violative chemical residue found, including the name of the official establishment where the livestock or poultry was presented for slaughter. Transmission to FDA is through the Residue Violation Information System (RVIS).

FDA uses the information that it receives from RVIS to conduct an investigation to confirm a violation and to determine whether the source of the violative livestock or poultry is a repeat

violator. A repeat violator is an individual or firm who repeatedly (*i.e.*, on more than one occasion) within a 12-month period sells an animal for slaughter whose carcass is found to contain a violative level of a drug, pesticide, or other chemical residue.

One commenter requested that FSIS work closely with the U.S. Animal Health Association to develop a quality assurance and food safety certification program that could be used by federal and state agencies to assist producers in developing certification and compliance procedures. The commenter also requested that FSIS develop and implement a national animal identification program to facilitate rapid traceback for animal disease and food safety issues.

FSIS believes that quality assurance programs can have significant value. Thus, through its Animal and Egg Production Food Safety Staff, it encourages States and private groups like the U.S. Animal Health and Education Association to develop them. Moreover, packers may want to require that their suppliers provide food safety certifications to ensure that the packers do not receive animals with violative residues.

FSIS, in February 2002, issued a notice, FSIS Notice 5–02, to its field personnel that emphasized the importance of animal identification and current regulatory requirements (9 CFR 310.2) on this subject. Section 310.2 requires that establishments handle severed parts of a carcass that are to be used in the preparation of meat food products in a manner that identifies them with the rest of the carcass and as being derived from the particular animal involved until the post mortem examination of the carcass and its parts have been completed. Thus, establishments are required to remove and present to FSIS program personnel, ear tags, backtags, implants, and other identifying devices in a manner that will provide a ready means of identifying a specific carcass until post-mortem examination has been completed, or to have alternative measures in place that accomplish the required identification. Additionally, 9 CFR 310.2(b)(5)(i) and (ii) require inspection program personnel to collect all IDs associated with animals to obtain the traceback information necessary for the proper disposition of an animal or carcass.

Two commenters asked whether FSIS has conducted studies that correlate target tissue collection with the actual source of the sample or correct carcass identification.

FSIS is not aware of any problems with its collection practices for target tissue samples and carcass identification. Thus, it has not conducted a study of the type described in the comment.

Some commenters asked whether FSIS would issue instructions or conduct training for all inspectors. They suggested that the instructions or training address such issues as standardized sample collection procedures for both monitoring and enforcement residue testing, and a standardized protocol for what tissue samples should be collected from each carcass to be tested.

FSIS conducts training for its personnel. The training for sample collection and sample identification that FSIS personnel receive is sufficient and provides the proper collection and sample identification methodologies. FSIS' Center for Learning conducts training for FSIS personnel that are responsible for sample collection, particularly on aseptic techniques and tissue collection for chemical residue testing. The TSC has provided hands-on, in-plant correlation training sessions with FSIS personnel that are responsible for sample collection and identification. Additionally, a computer-based training program is available to assist the in-plant inspection team on sample collection procedures.

Several commenters raised questions concerning the FSIS Web site presentation of the list of repeat violators, the residue violators alert list (RVAL). Questions included who has the responsibility for updating the list on the Web site, and how frequently FSIS will update it. Commenters also asked when the 12-month identification period on the RVAL begins if a seller is found to be a repeat violator.

The 12-month listing period on the RVAL will begin once a second violation has been confirmed by FDA. FDA, or a state government acting under FDA's authority, will conduct an on-site investigation. If FDA finds that a seller is responsible for a second violative sample, it will notify FSIS. The TSC will then notify the FSIS Webmaster to post the name and address of the repeat violator on the FSIS Web site. The Web site will be updated as violations are confirmed, and the names of the violators will be deleted once the 12-month period has passed. For subsequent violations, the time period will be extended by a year from the time the additional violation is confirmed by FDA.

One commenter asked whether there was an appeal process available to a producer who is assigned the responsibility of a violation.

An appeal can be made to FSIS and, if necessary, FSIS will consult with FDA about the appeal.

Two commenters asked what type of economic impact there would be on the average pork producer and on current marketing practices from the posting of repeat violators on the FSIS Web site.

FSIS cannot anticipate what precise economic impact might be for pork producers. FSIS anticipates, however, that the impact will be minimal because, historically, FSIS has found few chemical residue violations in pork products. Also, if drugs are used properly and the proper withdrawal time is followed, there will be no residue violation.

One commenter suggested that FSIS change the number of violations to five instead of two. The commenter argued that a repeat violation by a livestock market is not the same as a repeat violation by a single, individual producer.

FSIS believes that when there is a second chemical residue violation, regardless of who is responsible for it, there is just cause to make information about the violation available to help better ensure that meat and poultry products distributed in commerce are not adulterated with violative chemical residues.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS webpage located on the Internet at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, farm groups, and consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included on the list. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: December 30, 2002.

Garry L. McKee,

Administrator.

[FR Doc. 03–212 Filed 1–3–03; 8:45 am]

BILLING CODE 3410–DM–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: January 8, 2003; 11:30 a.m.–2:30 p.m.

PLACE: RFE/RL Headquarters, 1201 Connecticut Avenue, NW., Suite 400, Washington, DC 20036.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c) (2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: December 30, 2002.

Carol Booker,

Legal Counsel.

[FR Doc. 03–274 Filed 1–2–03; 12:10 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty reviews: fresh garlic from the People's Republic of China.

EFFECTIVE DATE: January 6, 2003.

SUMMARY: The Department of Commerce has received requests to conduct four new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating three new shipper reviews and not initiating one new shipper review.

FOR FURTHER INFORMATION CONTACT: Jeffrey Frank or Mark Ross at (202) 482–0090 and (202) 482–4794, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 26, 2002, we received a request for a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China from Shandong Heze International Trade and Developing Company ("Shandong Heze"). In its request for review, Shandong Heze submitted copies of the invoice and bill of lading associated with the first sales that it made to the United States. However, the dates of sale and entry listed in the submitted documentation indicate that Shandong Heze's first sale to the United States was made more than one year before its November 26, 2002, request for a new shipper review. Thus, Shandong Heze's request was untimely filed pursuant to the deadline established in 19 CFR 351.214(c) and we will not initiate a new shipper review based on that request.

Instead, pursuant to its request in the alternative, we have initiated an administrative antidumping duty review of sales of subject merchandise made by Shandong Heze during the period of review, November 1, 2001 through October 31, 2002. *See* § 751 of the Tariff Act of 1930, as amended (the Act). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 78772 (December 26, 2002).

On November 21, 2002, we received a request for a new shipper review from Zhengzhou Harmoni Spice Co., Ltd. ("Zhengzhou"). On November 27, 2002, the Department received a request for a new shipper review from Xiangcheng Yisheng Foodstuffs Co., Ltd. ("Xiangcheng"). Also on November 27, 2002, we received a request for a new shipper review from Jining Trans-High Trading Co., Ltd. ("Jining Trans-High"). Zhengzhou identified itself as a Chinese producer and exporter of fresh garlic from the People's Republic of China. Xiangcheng and Jining Trans-High are Chinese exporters of fresh garlic from the People's Republic of China. The garlic exported by Xiangcheng was produced by Henan Yuyu Fruits & Vegetables Products Co., Ltd. ("Henan"). The garlic exported by Jining Trans-High was produced by Jining Yun Feng Agricultural Products Co., Ltd. ("Jining Yun Feng").

Initiation of Review

Pursuant to 19 CFR 351.214(b)(2)(i), Zhengzhou provided certifications that it had not exported subject merchandise to the United States during the period of investigation. Pursuant to 19 CFR 351.214(b)(2)(ii)(A), Xiangcheng and Jining Trans-High provided certifications that they had not exported subject merchandise to the United States during the period of investigation. Pursuant to 19 CFR 351.214(b)(2)(ii)(B), Henan and Jining Yun Feng, producers of garlic for Xiangcheng and Jining Trans-High, respectively, provided certifications that they had not exported subject merchandise to the United States during the period of investigation.

In accordance with 19 CFR 351.214(b)(2)(iii)(A), each of the three exporters, Zhengzhou, Xiangcheng, and Jining Trans-High, certified that, since the initiation of the original investigation, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation. Also, each of the two producers, Henan and Jining Yun Feng, certified that, since the initiation of the original investigation, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation.

As required by 19 CFR 351.214(b)(2)(iii)(B), each of the three exporters, Zhengzhou, Xiangcheng, and Jining Trans-High, certified that its export activities were not controlled by the central government. Also, each of the two producers, Henan and Jining Yun Feng, certified that its export activities were not controlled by the central government. Thus, the requests from Zhengzhou, Xiangcheng, and Jining Trans-High meet the content requirements set forth under 19 CFR 351.214(b)(2)(i)–(iii).

In addition, the companies submitted documentation establishing the following: (i) The date on which their subject merchandise was first entered, or withdrawn from warehouse, for consumption or the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States. Thus, the requests for review meet the content requirements set forth under 19 CFR 351.214(b)(2)(iv). Accordingly, pursuant to section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews for shipments of fresh garlic from the People's Republic of China exported by Zhengzhou, Xiangcheng, and Jining Trans-High. The period of review covers the period November 1, 2001, through October 31, 2002. *See* 19 CFR 351.214(g). We intend to issue final results of this review no later than 270 days after the day on which these new shipper reviews are initiated. *See* 19 CFR 351.214(i).

We will instruct the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the companies named above, until the completion of the review. As Zhengzhou has certified that it both produced and exported the subject merchandise exported to the United States during the relevant period of review, we will apply the bonding option under 19 CFR 351.107(b)(1)(i) only to subject merchandise for which it is both the producer and exporter. For both Jining Trans-High and Xiangcheng, we will apply the bonding option under 19 CFR 351.107(b)(1)(i) only to entries of subject merchandise from these two exporters for which the respective producers under review are the suppliers.

The interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: December 31, 2002.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–190 Filed 1–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 2001 through September 30, 2002. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Alicia Kinsey, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) ("the Act") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on articles of cheese that were imported during the period October 1, 2001 through September 30, 2002.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: December 31, 2002.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
Austria	European Union Restitution Payments	0.12	0.12
Belgium	EU Restitution Payments	0.02	0.02
Canada	Export Assistance on Certain Types of Cheese	0.22	0.22

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY—Continued

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
Denmark	EU Restitution Payments	0.05	0.05
Finland	EU Restitution Payments	0.14	0.14
France	EU Restitution Payments	0.10	0.10
Germany	EU Restitution Payments	0.08	0.08
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.07	0.07
Italy	EU Restitution Payments	0.08	0.08
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Resfitution Payments	0.03	0.03
Norway	Indirect (Milk) Subsidy Consumer Subsidy	0.33 0.15	0.33 0.15
Total		0.48	0.48
Portugal	EU Restitution Payments	0.04	0.04
Spain	EU Restitution Payments	0.05	0.05
Switzerland	Deficiency of Payments	0.07	0.06
U.K	EU Restitution Payments	0.16	0.16

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 03–191 Filed 1–3–03; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.121802B]

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of reports; public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 2003 ocean salmon fisheries. This document announces the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management options must be received by April 2, 2003, at 4:30 p.m. Pacific Time.

ADDRESSES: Documents will be available from and written comments should be sent to Dr. Hans Radtke, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220–1384, 503–820–2280 (voice) or 503–820–2299 (fax). For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy telephone 503–820–2280.

SUPPLEMENTARY INFORMATION:

Schedule for Document Completion and Availability

March 4, 2003: "Review of 2002 Ocean Salmon Fisheries" and "Preseason Report I-Stock Abundance Analysis for 2003 Ocean Salmon Fisheries" will be available to the public from the Council office and posted on the Council website at *http://www.pcouncil.org.*

March 25, 2003: "Preseason Report II-Analysis of Proposed Regulatory Options for 2003 Ocean Salmon Fisheries" and public hearing schedule will be mailed to the public and posted on the Council website at *http://www.pcouncil.org.* The report will include a description of the adopted salmon management options and a summary of their biological and economic impacts.

April 8, 2003: "Draft Environmental Assessment for the Proposed 2003 Management Measures for the Ocean Salmon Fishery Managed under the Pacific Coast Salmon Plan" will be available at the Council meeting at the Red Lion Hotel at the Quay, Vancouver, WA and posted on the Council website at *http://www.pcouncil.org.*

April 25, 2003: Council adopted ocean salmon fishing management measures will be posted on the Council website at *http://www.pcouncil.org.*

May 1, 2003: Federal regulations will be implemented and "Preseason Report III-Analysis of Council Adopted Ocean Salmon Management Measures for 2003 Ocean Salmon Fisheries" will be available from the Council office and posted on the Council web site at *http://www.pcouncil.org.*

Meetings and Hearings

January 21–24, 2003: The Salmon Technical Team (STT) will meet at the Council office in a public work session to draft "Review of 2002 Ocean Salmon Fisheries" and to consider any other estimation or methodology issues pertinent to the 2003 ocean salmon fisheries.

February 18–21, 2003: The STT will meet at the Council office in a public work session to draft "Preseason Report I-Stock Abundance Analysis for 2003 Ocean Salmon Fisheries" and to consider any other estimation or methodology issues pertinent to the 2003 ocean salmon fisheries.

March 10–14, 2003: The Council and advisory entities will meet at the Red Lion Hotel Sacramento, Sacramento, CA to adopt the 2003 salmon management options for public review.

March 31 - April 1, 2003: Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified here.

March 31, 2003: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA, 98595, telephone 360–268–9101.

March 31, 2003: Red Lion Hotel, South Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR, 97420, telephone 541–269–4099.

April 1, 2003: Red Lion Hotel Eureka, Evergreen Room, 1929 Fourth Street, Eureka, CA, 95501, telephone 707–441–4712.

April 7–11, 2003: Council and advisory entities meet at the Red Lion Hotel at the Quay, 100 Columbia St. Vancouver, WA, 98660, telephone 694–8341, to adopt 2003 management measures for implementation by NMFS.

April 8, 2003: Testimony on the management options is taken during the Council meeting at the Red Lion Hotel at the Quay, Vancouver, WA.

Although nonemergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 (voice), or 503–820–2299 (fax) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 et. seq.

Dated: December 30, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–178 Filed 1–3–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Request of the New York Mercantile Exchange (NYMEX) for Approval of the New NYMEX PJM Calendar-Month Daily-LMP Swap (PJM Interconnection, LLC) Futures Contract; New NYMEX PJM Calendar-Week Daily-LMP Swap (PJM Interconnection, LLC) Futures Contract; and New NYMEX PJM Day-Ahead LMP Swap (PJM Interconnection, LLC) Futures Contract

AGENCY: Commodity Futures Trading Commission

ACTION: Notice of availability of terms and conditions of proposed commodity futures contracts.

SUMMARY: The New York Mercantile Exchange (NYMEX of Exchange) has proposed three (3) new futures contracts: the PJM Calendar-Month Daily-LMP Swap (PJM interconnection, LLC) futures contract; NYMEX PJM Calendar-Week Daily-LMP Swap (PJM interconnection, LLC) futures contract; and NMEX PJM Day-Ahead LMP Swap (PJM interconnection, LLC) futures contract. The Director of the Division of Market Oversight (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that the proposed new NYMEX futures contracts are of major economic significance, and that publication for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 21, 2003.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to the PJM Calendar-Month Daily-LMP Swap (PJM interconnection, LLC) futures contract; NYMEX PJM Calendar-Week Daily-LMP Swap (PJM interconnection, LLC) futures contract; and NMEX PJM Day-Ahead LMP Swap (PJM interconnection, LLC) futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph B. Storer of the Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: *jstorer@cftc.gov*.

SUPPLEMENTARY INFORMATION: Copies of the proposed terms and conditions for the three new futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC Web site at *www.cftc.gov* under "What's New & Pending".

Other materials submitted by the NYMEX in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (2000)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposals, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 by the specified data.

Issued in Washington, DC, on December 30, 2002.

Michael Gorham,

Director.

[FR Doc. 03–181 Filed 1–3–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 21–23 January 2003.

Time(s) of Meeting: 0800–1700, 21 January 2003, 0800–1700, 22 January 2003, 0800–1700, 23 January 2003.

Place: The Crystal City Marriott, Crystal City, VA.

Agenda: The Force Protection Study of the Army Science Board is holding a meeting on 21–23 January 2003. The meeting will be held at The Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202. The meeting will begin at 0800 hrs on the 21st and will end at approximately 1600 hrs on the 23rd. For further information, please contact: Major Bob Grier—703–604–7478 or email *robert.grier@saalt.army.mil.*

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 03–144 Filed 1–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 14–16 January 2003.

Time(s) of Meeting: 0800–1700, 14 January 2003, 0800–1700, 15 January 2003, 0800–1700, 16 January 2003.

Place: The Hilton Hotel, Crystal City, VA.

Agenda: The FCS Summer Study Plenary Session of the Army Science Board is holding a meeting on 14–16 January 2002. The meeting will be held at The Hilton Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202. The meeting will begin at 0800 hrs on the 14th and will end at approximately 1600 hrs on the 16th. For further information, please contact: Major Bob Grier—703–604–7478 or e-mail *robert.grier@saalt.army.mil.*

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 03–145 Filed 1–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 7, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 30, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Fiscal Operations Report for 2002–2003 and Application to Participate for 2004–2005 (FISAP) and Reallocation Form E40–4P.

Frequency: Annually.

Affected Public:

Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 25,876.

Burden Hours: 25,876.

Abstract: This application data will be used to compute the amount of funds needed by each school for the 2004–2005 award year. The Fiscal Operations Report data will be used to assess program effectiveness, account for funds expended during the 2002–2003 award year, and as part of the school funding process. The Reallocation form is part of the FISAP on the web. Schools will use it in the summer to return unexpended funds for 2002–2003 and request supplemental Federal Work-Study (FWS) funds for 2003–2004.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–137 Filed 1–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO: 84.349A]

Early Childhood Educator Professional Development Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed achievement indicators.

SUMMARY: The Assistant Secretary for the Office of Elementary and Secondary Education announces proposed achievement indicators for the Early Childhood Educator Professional Development Program (ECEPD), for fiscal year (FY) 2003 and future year grants.

This professional development program is authorized by section 2151(e) of the Elementary and Secondary Education Act (ESEA), as added by the No Child Left Behind Act 2001, Public Law 107–110. The ECEPD program is a discretionary grant program under which funded projects provide high-quality, sustained, and intensive professional development to improve the knowledge and skills of early childhood educators who work in high-poverty communities, particularly with disadvantaged young children. The purpose of the professional development is to enhance the school readiness of young children to prevent them from encountering difficulties once they enter school, based on the best available research on early childhood pedagogy and on child development and learning. These grants are part of the President's early childhood initiative, Good Start, Grow Smart, and complement the Department of Education's early learning programs, such as Early Reading First, by helping States and local communities strengthen early learning for young children.

DATES: We must receive your comments on or before February 5, 2003.

ADDRESSES: Address all comments about these proposed achievement indicators to Patricia McKee, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W106 FB–6, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *eceprofdev@ed.gov.*

You must include the term "Comments on Early Childhood Educator Professional Development" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Patricia McKee. Telephone (202) 260–0991 or via Internet: *Patricia.McKee@ed.gov.* Or Melanie Kadlic, U.S. Department of Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C138, FB–6, Washington, DC 20202–2645. Telephone (202) 260–3793 or via Internet: *Melanie.Kadlic@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments about these proposed achievement indicators. To ensure that your comments have maximum effect in developing the notice of final indicators, we urge you to be specific about any recommended changes. We are particularly interested in receiving comments on whether the proposed indicators are sufficiently specific and clear.

During and after the comment period (until publication of the final achievement indicators), you may inspect all public comments about these proposed achievement indicators in room 3W100 FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays. To obtain access to the building and room, please contact in advance one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact one of the individuals listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final achievement indicators in a notice in the **Federal Register**. We will determine those final indicators after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional indicators in the future, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed achievement indicators, we will invite applications through a notice in the **Federal Register**.

Background: The ECEPD program provides funds for projects that carry out activities to improve the knowledge and skills of early childhood educators working in programs that are located in high-need communities and particularly serve disadvantaged young children. These programs are based upon the best available research on early childhood pedagogy and on child development and learning, including early language and literacy development. The grants serve an important purpose because high-quality, intensive, research-based professional development is critical for implementing effective early childhood programs that enhance the school readiness of young children.

ECEPD grants are made to partnerships of: providers of professional development for early childhood educators; State or local public agencies or private organizations; and if feasible, a provider experienced in training early childhood educators to identify and prevent behavior problems or work with children identified as or suspected to be victims of abuse.

Section 2151(e)(6) of the ESEA requires the Secretary to announce achievement indicators for the ECEPD program. These achievement indicators must be designed: (1) To measure the quality and accessibility of the professional development provided; (2) to measure the impact of that professional development on the early childhood education provided by the individuals who receive the professional development; and (3) to provide any other measures of program impact that the Secretary determines to be appropriate. The statute requires each partnership receiving an ECEPD grant to report annually to the Secretary on the partnership's progress toward attaining these achievement indicators. In addition, the statute provides that the Secretary may terminate an ECEPD grant if the Secretary determines that the partnership receiving the grant is not making satisfactory progress toward attaining the achievement indicators.

The Secretary may use these achievement indicators for the ECEPD grant competition for FY 2003 and

future years. The achievement indicators proposed in this notice are the same as the achievement indicators that the Secretary announced in the **Federal Register** and used for the FY 2002 ECEPD grant competition (67 FR 37406, May 29, 2002).

Achievement Indicators: The Secretary announces the following proposed achievement indicators for the ECEPD program, as required by section 2151(e)(6) of the ESEA:

Indicator 1: Increasing numbers of hours of high quality professional development will be offered. High-quality professional development must be ongoing, intensive, classroom-focused, and based on scientific research on cognitive and social development in early childhood and effective pedagogy for young children.

Indicator 2: Early childhood educators who work in early childhood programs serving low-income children will participate in greater numbers, and in increasing numbers of hours, in high-quality professional development.

Indicator 3: Early childhood educators will demonstrate increased knowledge and understanding of effective strategies to support school readiness based on scientific research on cognitive and social development in early childhood and effective pedagogy for young children.

Indicator 4: Early childhood educators will more frequently apply research-based approaches in early childhood pedagogy and child development and learning domains, including using a content-rich curriculum and activities that promote language and cognitive development.

Indicator 5: Children will demonstrate improved readiness for school, especially in the areas of appropriate social and emotional behavior and early language and literacy competencies.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our proposed achievement indicators for this program.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.349A, Early Childhood Educator Professional Development Program)

Program Authority: 20 U.S.C. 6651(e).

Dated: December 30, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 03–159 Filed 1–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–111–002; Docket No. EL01–84–000]

Cities of Anaheim, Azusa, Banning, Colton and Riverside, California. v. California Independent System Operator Corporation; Salt River Project Agricultural Improvement and Power District v. California Independent System Operator Corporation; Order Providing Guidance on the Appropriate Procedures for Approval of Settlement

Issued December 30, 2002.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. This order provides guidance on procedural questions raised by certain parties in this proceeding relating to an Offer of Settlement filed while settlement judge procedures were ongoing.

Background

2. There is a lengthy procedural history in this case, some of which is not pertinent to the questions raised in the instant request for guidance; this order will relate only those events and facts necessary to address the request before us.

3. On September 15, 2000, the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities) filed a complaint against the California Independent System Operator Corporation (Cal ISO) regarding costs incurred by the Cal ISO and passed on to customers as neutrality adjustment charges. The Commission acted on the complaint on March 14, 2001, dismissing it in part and granting it in part.[1] Subsequently, the Commission granted in part and denied in part rehearing.[2] Parties sought further rehearing.

4. On June 1, 2001, the Salt River Project Agricultural Improvement and Power District (SRP) filed a complaint against the Cal ISO in Docket No. EL01–84–000 challenging several aspects of the Cal ISO's neutrality adjustment charges. On June 22, 2001, the Cal ISO, Southern Cities, and SRP filed a motion to institute settlement judge procedures to resolve the issues raised in the two complaints and shortly thereafter, the Commission issued an order initiating settlement judge procedures.[3] The order did not institute hearing proceedings or authorize designation of a presiding administrative law judge.

5. The parties participated in numerous settlement conferences to resolve the complaints, and on July 31, 2002, Southern Cities, SRP and Cal ISO (Settling Parties) submitted to the Commission an Offer of Settlement and Settlement Agreement (Offer of Settlement). In addition to comments supporting the Offer of Settlement from the Settling Parties and trial staff, Pacific Gas and Electric Co. (PG&E) filed comments opposing the Offer of Settlement, and the Commission received motions to intervene out-of-time, and protests or comments in opposition, from Enron Power Marketing, Inc. (Enron), Puget Sound Energy, Inc. (Puget Sound), IDACORP Energy, L.P. (IDACORP), and California Generators.[4] Subsequently, participants

[1] Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corp., 94 FERC ¶61,268 (2001).

[2] Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corp., 95 FERC ¶61,197 (2001).

[3] Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corp., 96 FERC ¶61,024 (2001).

[4] The California Generators are: Duke Energy North America, LLC; Duke Energy Trading and Marketing, L.L.C.; Dynegy Power Marketing, Inc.; El Segundo Power LLC; Long Beach Generation LLC; Cabrillo Power I LLC; Cabrillo Power II LLC; Mirant Americas Energy Marketing, LP; Mirant California, LLC; Reliant Energy Power Generator, Inc.; Reliant Energy Services, Inc.; and Williams Energy Marketing & Trading Company. The California Generators took no position on the Offer of Settlement.

filed reply comments. Enron filed a conditional withdrawal of its motion to intervene out-of-time; IDACORP and Puget Sound conditionally withdrew their protests. The Settling Parties and the California Department of Water Resources (DWR) opposed the interventions.

6. On November 1, 2002, the Settlement Judge issued an order granting the motions to intervene. The order noted that it appears the Offer of Settlement cannot be certified to the Commission if, as alleged by PG&E and trial staff, there are material issues of fact to be resolved. The judge determined that an additional settlement conference should be convened to clarify whether there are any material issues of fact remaining. The judge stated that the motions to intervene out-of-time were granted so that the additional intervenors could be included in the next settlement conference.

7. The November 1 Order prompted the Settling Parties to file a request for guidance from the Commission, on an expedited basis, regarding the appropriate procedures to be followed to approve the Offer of Settlement. The Settling Parties state that they are concerned that, without guidance from the Commission on the appropriate decisional authority, action on the Offer of Settlement will be delayed or will become sidetracked if the negotiation process is to begin again before a new settlement judge and to include additional parties.

8. The request for guidance posits that, under the Commission's Rules of Practice and Procedure, settlement judges are not authorized to certify a settlement or to make other substantive rulings, and that the Commission is the appropriate authority to act on the Offer of Settlement because the proceedings were never set for hearing before a presiding administrative law judge. The Settling Parties also question the settlement judge's authority to act on the motions to intervene out-of-time, and they state that the Commission should have ruled on the motions.

9. PG&E and IDACORP and Puget filed answers to the request for guidance, PG&E states that it does not take issue with the procedural questions raised in the request, but objects that the Settling Parties have attempted to reargue the merits of the Offer of Settlement. IDACORP and Puget remark that the Offer of Settlement fails to ensure that all entities who are owed refunds, and not just the Settling Parties, will receive them. They continue that denial of their motions to intervene in this proceeding would be shortsighted because, if excluded, they could simply file complaints and seek consolidation with the ongoing proceeding.

Discussion

10. Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.602 (2002), provides procedures for the submission of offers of settlement. An uncontested offer of settlement may be certified to the Commission upon a finding that the offer is not contested by any participant.[5] Where an offer of settlement is contested, it may be certified to the Commission if there is no genuine issue of material fact or if the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues.[6] The section does not expressly discuss settlement judges, the role they play in the settling of cases, or the handling of such settlements.

11. Rule 603 provides procedures for negotiating settlements before a settlement judge. The powers and duties of settlement judges include convening and presiding over conferences and settlement negotiations, assessing the practicalities of a potential settlement, reporting to the Chief Administrative Law Judge or the Commission describing the status of the negotiations, and recommending the termination or continuation of settlement negotiations.[7] The section does not expressly discuss certification of settlements to the Commission.

12. As stated above, the Commission set this case for settlement judge procedures under Rule 603. Although settlement judges typically will certify to the Commission uncontested settlements,[8] the substantive determinations necessary to certify a contested settlement, as described in Rules 602(h)(2)(ii) and (iii), are not appropriately made by a settlement judge. Given that the settlement judge may well be privy to confidential, non-record information and given that the settlement judge may have had off-the-record discussions about the merits of issues and not all parties may have been present, Rule 603 does not empower settlement judges to make substantive findings regarding a contested offer of settlement or to certify a contested offer of settlement.[9] Further, it is not necessary that the settlement judge do so. Where a contested settlement is filed in a case that is pending solely before a settlement judge, the contested settlement is already before the Commission itself.[10] (We add that, insofar as the settlement judge is to report to the Chief Judge and/or the Commission, in the future when a settlement is contested the settlement judge should report the fact that a filed settlement has been contested, and identify what the matters at issue may be.[11]

13. The Commission thus does not need the settlement judge in this case to pursue the question of whether, in fact, any genuine issues of material fact remain. The Commission will consider the record in this proceeding as it has been developed to date, address the merits of the issues presented, and also determine what, if any, additional procedures may be necessary. At the same time, the Commission will address the motions to intervene out-of-time, and oppositions thereto, filed by Enron, Puget Sound, IDACORP, and the California Generators. Rule 603 does not empower settlement judges to rule on motions to intervene; these will be addressed by the Commission in this case (and interventions sought in similar circumstances in future cases should be addressed by the Chief Judge[12]), as appropriate.

The Commission orders:

(A) The Commission hereby responds to the Settling Parties' request for guidance, as set forth in the body of this order.

(B) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–195 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–M

[5] 18 CFR § 385.602(g) (2002).

[6] 18 CFR § 385.602(h)(2)(ii) and (iii) (2002).

[7] 18 CFR § 385.603(g) (2002).

[8] We find that their doing so is appropriate and not inconsistent with our regulations.

[9] *See* American Electric Power Service Corp. and American Electric Power Company, Inc., 100 FERC ¶ 61,346 at P 41–42 (2002), *reh'g pending.*

[10] *See* 18 CFR 385.602(b) (2002).

[11] However, the settlement judge, as noted, should not make substantive findings on the matters at issue.

[12] *See* 18 CFR 375.304(a), 385.102(a), 385.214(c) and (d), and 385.504(b)(12) (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–30–000]

BP West Coast Products, LLC, Atlantic Richfield Company, Intalco Aluminum Corporation; Notice of Filing

December 30, 2002.

Take notice that on December 18, 2002, BP West Coast Products, LLC (BP), Atlantic Richfield Company (Atlantic Richfield) and Intalco Aluminum Corporation (Intalco) jointly filed an amendment, pursuant to section 3 of the Natural Gas Act (NGA) and section 153 of the Federal Energy Regulatory Commission's regulations, 18 CFR 153 and Executive Order No. 10485, as amended by Executive Order No. 12038, to the section 3 Authorization and Presidential Permit (Permit) issued by the Commission in Docket No. CP89–267–000 to Atlantic Richfield and Intalco for the Ferndale Pipeline.[1] The purpose of the amendment is to insert BP's name into the Permit in lieu of Atlantic Richfield due to transferring of Atlantic Richfield's interest in the Ferndale Pipeline to BP.[2] The application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

BP and Intalco propose to continue to operate and maintain the existing facilities at the U.S./Canada border as authorized by the 1989 Permit. No additional facilities are proposed by this amendment. The filing does not seek any change in the terms and conditions of the Permit for the Ferndale Pipeline.

Any questions regarding the application are to be directed to Daniel M. Adamson, Davis Wright Tremaine LLP, 1500 K Street, NW., Suite 450, Washington, DC, 20005.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: January 21, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–124 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

[1] 49 FERC ¶ 61,294 (1989).

[2] Atlantic Richfield's interest in the Ferndale Pipeline became assets of BP on January 1, 2002.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–32–000]

Northwest Pipeline Corporation; Notice of Application

December 30, 2002.

Take notice that on December 23, 2002 Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, 84158 filed in Docket No. CP03–32–000, an abbreviated application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for its "White River Pipeline Replacement Project" requesting the Commission to grant:

(i) A certificate of public convenience and necessity authorizing Northwest to construct and operate approximately 4,300 feet each of relocated replacement 26-inch pipeline and 30-inch pipeline loop in King County, Washington;

(ii) approval for Northwest to abandon, partially by removal and partially in place, approximately 3,300 feet each of 26-inch pipeline and 30-inch pipeline loop being replaced by the relocated facilities; and

(iii) approval to remove 665 feet of 26-inch pipeline crossing the White River that was previously retired in place.

All as more fully set forth in its petition which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Any questions regarding this application should be directed to Gary Kotter, Manager, Certificates and Tariffs, at (801) 584–7117, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158.

Northwest states that as a result of high flows and erosion in the White River over the past several years it has installed temporary structures and sheet piling to the banks of the river to maintain the integrity of the 26-inch and 30-inch pipeline crossings. Northwest asserts that the proposed replacement project is necessary to provide a more permanent solution for improved pipeline safety and integrity, while

restoring the natural environment of the river and floodplains at the pipeline crossing location.

Northwest states that construction of the project is scheduled to occur over a two-year period to accommodate anticipated permitting requirements and environmental limitations on construction windows. Northwest plans to commence construction during the summer of 2003 and complete the project in the fall of 2004.

The estimated cost of the proposed project is approximately $29.4 million.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentator will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentator will not be required to serve copies of filed documents on all other parties. However, the non-party commentator will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: January 21, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–126 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–31–000]

Paiute Pipeline Company; Notice of Application

December 30, 2002.

Take notice that on December 19, 2002, Paiute Pipeline Company (Paiute), P.O Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP03–31–000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for an order granting a certificate of public convenience and necessity and permission and approval to abandon facilities, so as to enable Paiute to replace two segments of deteriorating pipeline on its Carson Lateral mainline system and at the same time enhance the capacity on its Carson Lateral to meet the growth requirements of an existing shipper served by that portion of its transmission system, Southwest Gas Corporation-Northern Nevada (Southwest), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Paiute states that it will be replacing two deteriorated segments of the original 10-inch transmission line on its Carson Lateral. At the same time, however, as a result of a request by Southwest for additional firm transportation service on the Carson Lateral, Paiute states that it is also proposing to enhance the capacity of its Carson Lateral facilities by replacing the deteriorated segments with 20-inch diameter pipeline, rather than in kind, and by installing additional new and replacement 20-inch loop pipeline segments.

Specifically, Paiute states that it proposes to (1) Replace approximately 8.0 miles of 10-inch pipeline on the Carson Lateral between mileposts 37.34 and 45.34 with approximately 8.1 miles of 20-inch pipeline; (2) install approximately 6.4 miles of 20-inch loop

pipeline on the Carson Lateral between mileposts 9.45 and 15.85; and (3) replace and/or install pressure regulating facilities at four locations.

Paiute states that it has entered into a long-term transportation service agreement with Southwest under which Paiute will provide Southwest with additional firm transportation service of up to 5,868 Dth per day from the Wadsworth receipt point, where Paiute interconnects with Tuscarora Gas Transmission Company, to various delivery points served by the Carson Lateral. Paiute also states that the proposed facilities will add the necessary capacity to provide the increase in firm transportation service and will preserve the existing flexibility of delivery capability afforded to its shippers.

Paiute states that the estimated cost of the proposed facilities is $10,742,000. The cost to abandon in place the existing 10-inch pipeline and to remove certain pressure regulating facilities is estimated to be $18,000. Paiute requests that the Commission, in accordance with its 1999 Policy Statement for the construction of new pipeline facilities, make a determination that a portion of the costs of the proposed facilities be recovered through an incremental rate charged to Southwest, and a portion of the costs be rolled into Paiute's systemwide rates in Paiute's next general rate case under section 4 of the Natural Gas Act. Paiute states that if it were to construct new 10-inch pipeline to replace the two deteriorated 10-inch segments, it would install 6.42 miles of 10-inch replacement pipe at a cost of $3,487,000. Paiute states that it has requested that the Commission determine that $3,487,000 of the costs of the proposed facilities can be rolled into Paiute's systemwide rates in its next rate case, and that the remainder if the project cost be recovered through an incremental surcharge assessed to Southwest.

Paiute requests the issuance of a final certificate order no later than June 1, 2003 so that the proposed facilities can be constructed and placed into service by November 1, 2003.

Any questions concerning this application may be directed to Edward C. McMurtrie, Vice President, General Manager, Paiute Pipeline Company, PO Box 94197, Las Vegas, Nevada 89193–4197, at (702) 876–7178 or fax (702) 873–3820.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original an two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment date: January 21, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–125 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–25–000, et al.]

PSEG Power Connecticut LLC, et al.; Electric Rate and Corporate Filings

December 26, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PSEG Power Connecticut LLC

Docket No. EG03–25–000.

Take notice that on December 23, 2002, PSEG Power Connecticut LLC (Applicant), filed with the Federal Energy Regulatory Commission (FERC or the Commission) an amendment to its December 4, 2002 application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations. The amendment requests Commission authority to engage in certain additional activities incidental to the generation of electricity for sale at wholesale.

The Applicant is a limited liability company formed under the laws of the State of Delaware. The Applicant is engaged, directly or indirectly through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA), exclusively in owning or owning and operating eligible electric facilities and participating in certain other activities incidental to such eligible electric facilities as authorized under PUHCA. The Applicant owns and operates eligible facilities located in Connecticut.

Comment Date: January 16, 2003.

2. New York Independent System Operator, Inc.

Docket No. EL01–50–003.

Take notice that on December 20, 2002, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in accordance with the Commission's November 22, 2002 order in the above-captioned proceedings.

The NYISO has served a copy of this filing upon all parties designated on the official service lists compiled by the Secretary in these proceedings. The NYISO has also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 16, 2003.

3. Town of Norwood, Massachusetts, Complainant *v.* National Grid USA, New England Electric, System, New England Power Company, Massachusetts Electric Co., and Narragansett, Electric Company, Respondents.

[Docket No. EL03–37–000]

Take notice that on December 23, 2002, the Town of Norwood, Massachusetts (Norwood) filed with the Federal Energy Regulatory Commission (Commission) a Complaint under Section 206 of the Federal Power Act against National Grid USA, doing business as New England Electric System, New England Power Company, Massachusetts Electric Co. and Narragansett Electric Company. Norwood complains that these companies, through New England Power Company, have demanded, charged, and sought to collect from Norwood an alleged "Contract Termination Charge" that is unjust, unreasonable, unduly discriminatory, preferential and otherwise unlawful as to Norwood. A copy of this complaint was served on these companies through New England Power Company.

Comment Date: January 13, 2003.

4. Occidental Energy Marketing, Inc.

[Docket No. ER02–1947–002]

Take notice that on December 17, 2002, Occidental Energy Marketing, Inc. filed a Notice of Cancellation with regard to Occidental Energy Marketing, Inc. FERC Electric Rate Schedule No. 1 to be effective February 17, 2003.

Comment Date: January 7, 2003.

5. Sierra Pacific Power Company Nevada Power Company

[Docket No. ER02–2609–002]

Take notice that on December 23, 2002, Sierra Pacific Power Company and Nevada Power Company (collectively, Applicants) tendered for filing pursuant to Section 205 of the Federal Power Act, Section 35 of the Commission's Regulations, and the Commission's November 21, 2002 Order issued in the above-referenced proceeding, a compliance filing consisting of clean and redlined versions of the Applicants' Open Access Transmission Tariff (OATT). This compliance filing is being made to satisfy the requirement in the Commission's November 21 Order to make a compliance filing within 30 days implementing certain specified changes in the OATT.

Comment Date: January 13, 2003.

6. PJM Interconnection, L.L.C.

[Docket No. ER03–254–001]

Take notice that on December 20, 2002, PJM Interconnection, L.L.C. (PJM), amended its December 6, 2002 filing in this docket. As part of the December 6, 2002 filing, PJM added a new Schedule 12 to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. that lists all current PJM members. MG Industries, a current member of PJM, inadvertently was omitted from the new Schedule 12. Therefore, PJM hereby amends its December 6, 2002 filing to include MG Industries in Schedule 12.

PJM states that copies of this filing were served upon all parties listed on the official service list compiled by the secretary in this proceeding and MG Industries.

Comment Date: January 10, 2003.

7. New York Independent System Operator, Inc.

[Docket No. ER03–297–000]

Take notice that on December 23, 2002, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff). The proposed filing would amend the TCC credit policy. The NYISO has requested that the Commission make the filing effective on January 10, 2003.

The NYISO states it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff, the New York State Public Services Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 13, 2003.

8. Pacific Gas and Electric Company

[Docket No. ER03–299–000]

Take notice that on December 17, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing an annual update filing including revisions to its Reliability Must Run Service Agreements (RMR Agreements) with the California Independent System Operator Corporation (ISO) for Helms Power Plant, PG&E First Revised Rate Schedule FERC No. 207 and San Joaquin Power Plant, PG&E First Revised Rate Schedule FERC No. 211. This filing revises portions of the Rate Schedules to adjust the values for Contract Service Limits, Owner's Repair Cost Obligation and Prepaid Start-up information. These changes are expressly required and/or authorized under the RMR Agreements.

PG&E states that copies of this filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment Date: January 7, 2003.

9. Pacific Gas and Electric Company

[Docket No. ER03–300–000]

Take notice that on December 20, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing changes in rates included in its Transmission Owner Tariff (TO Tariff) for the Transmission Revenue Balancing Account Adjustment (TRBAA) rate, the Reliability Services (RS) rates the Transmission Access Charge Balancing Account Adjustment (TACBAA) also set forth in its TO Tariff. With the exception of the TACBAA rate, these changes in rates are proposed to become effective January 1, 2003.

Copies of this filing have been served upon the California Independent System Operator (ISO), Scheduling Coordinators registered with the ISO, Southern California Edison Company, San Diego Gas &Electric Company, the California Public Utilities Commission and other parties to the official service

lists in recent TO Tariff rate cases, FERC Docket Nos. ER00–2360–000 and ER01–66–000.

Comment Date: January 10, 2003.

10. Southern California Edison Company

[Docket No. ER03–301–000]

Take notice, that on December 20, 2002, Southern California Edison Company (Edison) tendered for filing revisions to its firm transmission service agreements (Existing Transmission Contracts) with the following entities:

Entity Rate Schedule FERC No.

1. City of Azusa 372, 373, 374, 375, 376, 377.
2. City of Banning 378, 379, 380, 381, 382, 383.
3. City of Colton 361, 362, 363, 364, 365, 366.
4. City of Riverside 390, 391, 392, 393.

The revised Existing Transmission Contracts specify, among other things, the terms, conditions and rates, for transmission service over Edison's transmission facilities. Edison requests that the revised Existing Transmission Contracts be accepted for filing effective January 1, 2003.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the Cities of Azusa, Banning, Colton and Riverside, and counsel for the Cities.

Comment Date: January 10, 2003.

11. North West Rural Electric Cooperative

[Docket No. ER03–302–000]

Take notice that on December 20, 2002, North West Rural Electric Cooperative (North West) filed three rate schedules for service by North West to the City of Westfield, Iowa pursuant to section 205 of the Federal Power Act and 35.13 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.13. These agreements are: Rate Schedule dated August 1, 1998 (Initial Rate Reduction); Agreement for Wheeling Electric Power dated January 20, 1999 (Wheeling Agreement); and Agreement for Electric Service dated January 1, 2001 (Second Rate Reduction). North West filing is available for public inspection at its offices in Orange City, Iowa.

North West submits the agreements for filing and requests that: (1) The Rate Reduction Agreement be permitted to become effective as a rate schedule as of August 1, 1998; (2) the Wheeling Agreement be permitted to become effective as of January 1, 2000; and (3) the Second Rate Reduction be permitted to become effective as of January 1, 2001. North West requests waiver of the Commission notice requirements to permit these effective dates. Additionally, North West requests that the Initial Rate Reduction and the Wheeling Agreement be deemed superseded as of January 1, 2000 and January 1, 2001, respectively. North West also requests that its Agreement for Purchase of Power Between Plymouth Electric Cooperative Association and Town of Westfield, Iowa, currently on file with the Commission, be deemed superseded as of August 1, 1998. After all approvals, the Second Rate Reduction will be the only agreement in effect for North West.

Comment Date: January 10, 2003.

12. New York Independent System Operator, Inc.

[Docket No. ER03–303–000]

Take notice that on December 20, 2002, the New York Independent System Operator, Inc. (NYISO) filed the following Market Administration and Control Area Services Tariff (Services Tariff) revisions to the NYCA demand response programs: (I) Extension of the Emergency Demand Response Program (EDRP) through October 31, 2005; (ii) establishment of EDRP Resource eligibility for participation in the NYCA Energy market Locational Based Marginal Pricing price setting mechanism; (iii) adoption of a zonal floor bid price for the Day-Ahead Demand Response Program; (iv) extension of the time period in which Demand Reduction Incentive Payments will be available for Demand Reductions through October 31, 2004; (v) de-linking of the Special Case Resource (SCR) program and EDRP so that the NYISO may activate each program separately; (vi) implementation of a Load reduction Energy payment to SCRs that verify Load reduction in response to a Forecast Reserve Shortage; and (vii) changes in the NYISO administration of the SCR program to facilitate requests for performance by SCRs.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 10, 2003.

13. Consolidated Edison Energy, Inc. and Rockland Electric Company

[Docket No. ER03–304–000]

Take notice that on December 20, 2002, Consolidated Edison Energy, Inc. (CEE) and Rockland Electric Company (RECO) tendered for filing requests to (I) permit CEE's participation in the statewide auction bidding process approved by the New Jersey Board of Public Utilities to the extent that CEE may bid to supply the electric load requirements of its affiliate, RECO, which are not served by alternative power suppliers and, if any such bid that CEE may submit is successful, entry into the requisite BPU-approved supply agreements with RECO; (ii) waive, to the extent necessary, applicable provisions in Petitioners' codes of conduct and market-base rate tariffs and the Commission's regulations; and (iii) give expedited review and approval to the foregoing requests at the earliest possible date in view of the February 3, 2003 date for submitting auction bids.

Comment Date: January 10, 2003.

14. PPL Electric Utilities Corporation

[Docket No. ER03–305–000]

Take notice that on December 20, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a revised Interconnection Agreement between PPL Electric and Allegheny Electric Cooperative, Inc. for interconnection at the Renovo/Chapman delivery point.

Comment Date: January 10, 2003.

15. North West Rural Electric Cooperative

[Docket No. ER03–306–00]

Take notice that on December 20, 2002, North West Rural Electric Cooperative (North West) filed its open access transmission tariff (OATT) and accompanying rates pursuant to the Federal Energy Regulatory Commission (Commission) Order No. 888 and section 205 of the Federal Power Act. North West is submitting the tariff because it has received a request for transmission service on its facilities. North West filing is available for public inspection at its offices in Orange City, Iowa.

Comment Date: January 10, 2003.

16. PPL Electric Utilities Corporation

[Docket No. ER03–307–000]

Take notice that on December 20, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a revised Interconnection Agreement between PPL Electric and Allegheny Electric Cooperative, Inc. for interconnection at the Fairfield delivery point.

Comment Date: January 10, 2003.

17. Southern California Edison Company

[Docket No. ER03–308–000]

Take notice, that on December 20, 2002, Southern California Edison

Company (Edison) tendered for filing a revised rate for transmission service to be provided pursuant to the terms of the Exchange Agreement (Agreement) with the Department of Water and Power of the City of Los Angeles (DWP), Rate Schedule FERC No. 219. This rate change is made in accordance with Section 8.7.6 of the Agreement and is to become effective for service rendered on and after January 1, 2003.

Copies of this filing were served upon the Public Utilities Commission of the State of California, and the DWP.

Comment Date: January 10, 2003.

18. Allegheny Power

[Docket No. ER03–309–000]

Take notice that on December 19, 2002, Allegheny Power (Allegheny) submitted for filing an unexecuted Interconnection and Operating Agreement (Agreement) with Duke Energy Fayette, LLC (Duke) and a Letter Agreement between Allegheny and Duke.

Allegheny requests an effective date of December 20, 2002 for the Agreement and Letter Agreement and accordingly seeks waiver of the Commission's prior notice requirements. Copies of the filing were served on Duke and the Maryland, Ohio, Pennsylvania, Virginia and West Virginia public utility commissions.

Comment Date: January 10, 2003.

19. California Independent System Corporation

[Docket No. ER03–310–000] Operator

Take notice that on December 20, 2002, the California Independent System Operator Corporation (ISO) submitted an informational filing as to the ISO's updated transmission Access Charge rates effective as of January 1, 2003.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO is posting the filing on the ISO Home Page.

Comment Date: January 10, 2003.

20. Southern Company Services, Inc.

[Docket No. ER03–311–000]

Take notice that on December 20, 2002, Southern Company Services, Inc., acting on behalf of Alabama Power Company (APC), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of the Interconnection Agreement between Blount County Energy, LLC and APC (Service Agreement No. 432 under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5). An effective date of November 21, 2002 has been requested.

Comment Date: January 10, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–180 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

December 30, 2002.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* P–1932–004.

c. *Date filed:* December 6, 2002.

d. *Applicant:* Southern California Edison Company (SCE).

e. *Name of Project:* Lytle Creek Project.

f. *Location:* On Lytle Creek, in the Town of Devore, San Bernardino County, California. The project occupies 29.06 acres of land within the San Bernardino National Forest.

g. Filed Pursuant to: Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Nino J. Mascolo, SCE, 2244 Walnut Grove Ave., Rosemead, California 91770 (626) 302–4459.

i. *FERC Contact:* Jon Cofrancesco, (202) 502–8951, *jon.cofrancesco@ferc.gov.*

j. Deadline for filing comments: January 14, 2003 Reply comments due January 24, 2003. This extends the 20-day comment period, provided by 18 CFR 385.602(f)(2).

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 1932–004 to all comments.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. Description of Filing: SCE filed the Offer of Settlement on behalf of itself, the U.S. Forest Service (USFS), and Fontana Union Water Company. The purpose of the Offer of Settlement is to resolve among the signatories project bypass flow and stream channel management issues associated with the USFS's Final 4(e) Conditions and the relicensing of the Lytle Creek Project. The signatories ask the Commission to accept the Offer of Settlement and incorporate the terms of Appendix A to the Settlement Agreement into any new license issued for the project.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–127 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Unlicensed Project Review and Soliciting Comments, Protests and Motions To Intervene [1]

December 30, 2002.

Take notice that the following review has been initiated by the Commission:

a. *Review Type:* Unlicensed Project.

b. *Docket No:* UL02–2–000.

c. *Owner:* Indian River Power Supply LLC.

d. *Name of Project:* Russell/Westfield Paper Company Dam Project.

e. *Location:* The project is located on the Westfield River, in the town of Russell, Hampden County, Massachusetts. This project does not occupy federal lands or tribal lands.

f. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 502–8768, or e-mail address: *henry.ecton@ferc.gov.*

g. *Deadline for filing comments, protests, and/or motions to intervene:* January 31, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov.*

Please include the docket number (UL02–2–000) on any comments, protests, or motions to intervene filed.

h. Pursuant to section 23(b)(1) of the Federal Power Act (FPA), 16 U.S.C. 817(1), a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it (1) Is located on a navigable water of the United States; (2) occupies lands of the United States; (3) utilizes surplus water or water power from a government dam; or (4) is located on a body of water over which Congress has Commerce Clause jurisdiction, project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce.

i. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

j. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

k. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Docket Number of the particular review.

l. Agency Comments—Federal, state, and local agencies are invited to file comments on the described review. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–129 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

[1] The purpose of this notice is to gather information to determine whether the existing project meets any or all of the jurisdictional criteria noted in paragraph (h).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 30, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Exempt Requester

[Docket No. Date Filed Presenter]

1. RP00–241–000 11–18–02 John F. Riordan
2. RP00–241–000 12–9–02 James H. Farrell, Jr.
3. CP02–396–000 12–20–02 Inge S. Terrill, M.En.
4. Project No. 2069–007 12–26–02 Steven L. Spangle.
5. Project No. 2086–000 12–26–02 Thomas T. Taylor

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–128 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–7435–7]

Nutrient Criteria Development; Notice of Ecoregional Nutrient Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of ecoregional nutrient criteria for lakes and reservoirs, and rivers and streams.

SUMMARY: Pursuant to section 304(a) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) announces two actions: (1) The finalization of nine section 304(a) ecoregional nutrient criteria documents for lakes and reservoirs, and rivers and streams within specific geographic regions (ecoregions) of the United States; and (2) a request for significant scientific information on three new section 304(a) ecoregional nutrient criteria documents. These documents serve as recommendations for States, Territories and authorized Tribes [1] to use as they develop nutrient criteria to protect designated uses and adopt these criteria into water quality standards.

For Which New Documents Is EPA Requesting Significant Scientific Information From the Public?

EPA invites the public to provide scientific views on three new ecoregional nutrient criteria documents: Lakes and reservoirs in ecoregions 1 and 10, and rivers and streams in ecoregion 13. EPA requests significant scientific information pertaining to the derivation of the draft criteria. EPA will accept significant scientific information submitted to the Agency within 90 days of publication of this notice in the **Federal Register**. Written significant information to: Robert Cantilli, U.S. EPA, Health and Ecological Criteria Division (4304), Office of Science and Technology, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington DC 20460. You may also send comments by e-mail to: *cantilli.robert@epa.gov.*

What Are the Criteria Recommendations for These Three Ecoregions?

AGGREGATE ECOREGIONAL (AGG. ER) CRITERIA RECOMMENDATIONS

Parameter	Agg. ER I	Agg. ER X	Agg. ER XIII
TP µg/L	55.00	60.00	15.00
TN mg/L	*0.66	0.57	1.44
Chl a µg/L	4.88	5.47	
Secchi/Turbidity**	2.55	0.77	1.49

*Calculated—a value for TN was not available, so TN was calculated based on measurements of Total Kjeldahl Nitrogen (TKN), and Nitrate + Nitrite (NO_2+NO_3).

**Secchi depth (m) is applicable to the values in Agg. ER's I and X. Turbidity (FTU) is applicable to Agg. ER XIII.

Which Documents Are Final?

The nine documents being finalized today represent nutrient criteria recommendations for lakes and reservoirs in ecoregions 3, 4, 5, and 14 and nutrient criteria recommendations for rivers and streams in ecoregions 1, 4, 5, 8, and 10. EPA announced the availability of these documents in the **Federal Register** on February 28, 2002. These documents have undergone external peer review and have been reviewed by the public.

What Are the Nutrient Criteria Recommendations for Those Ecoregions?

The following tables summarize criteria recommendations for lakes and reservoirs and rivers and streams, respectively. Table 3 of each document also provides values for each of the subecoregion (level III) within each Aggregate ecoregion.

AGGREGATE ECOREGIONAL (AGG. ER) CRITERIA RECOMMENDATIONS FOR LAKES AND RESERVOIRS

Parameter	Agg. ER III	Agg. ER IV	Agg. ER V	Agg. ER XIV
TP µg/L	17.00	20.00	33.00	8.00
TN mg/L	0.40	0.44	0.56	0.32
Chl a µg/L	3.40	2.00 (S)	2.30 (S)	2.90
Secchi (m)	2.70	2.00	1.30	4.50

Chl a—Chlorophyll a measured by Flourometric method, unless specified. S is for Spectrophotometric.

[1] Hereafter, this **Federal Register** Notice refers to these entities as "States and authorized Tribes."

Throughout this document, reference to States and authorized Tribes is intended to include Territories.

AGGREGATE ECOREGIONAL (AGG. ER) CRITERIA RECOMMENDATIONS FOR RIVERS AND STREAMS

Parameter	Agg. ER 1	Agg. ER IV	Agg. ER V	Agg. ER VIII	Agg. ER X
TP µg/L	47.00	23.00	67.00	10.00	*128
TN mg/L	0.31	0.56	0.88	0.38	0.76
Chl a µg/L	1.80	2.40	3.00	0.63	2.10(S)
Turb (FTU)	4.25	4.21	7.83	1.30	17.50

*This number appears inordinately high and may either be a statistical anomaly or reflects a unique condition. In any case, further regional investigation strongly encouraged to determine the sources, i.e., measurement error, notational error, statistical anomaly, natural enriched conditions, or cultural impacts (impacts from human activities).

Turb = Turbidity, FTU are nephelometric turbidity units, calibrated with formazin suspension.

What were the Main Submissions of Significant Scientific Information Provided by the Public?

Many of the concerns raised by the public about EPA's approach for developing nutrient criteria were raised earlier during the development of EPA's Technical Guidance Manuals. At that time, questions were raised about EPA's use of a statistical derivation of a reference condition. EPA continues to believe these approaches are reasonable for the purpose of making today's criteria recommendations. The Science Advisory Board (SAB) endorsed the reference condition approach used by EPA. The SAB stated in its review of "Biological Criteria: Technical Guidance for Streams and Small Rivers" (EPA, 1993) that "the definition of reference condition using reference sites is appropriate when used in conjunction with historical data, empirical models, and expert opinion/consensus." EPA's Nutrient Criteria Program later adopted the reference condition approach and continues to recommend it in all of its nutrient criteria guidance manuals. Additionally, the statistical derivation approach to developing nutrient criteria was favorably reviewed by peer reviewers as well. Consequently, EPA did not change its fundamental approach to nutrient criteria development or change the documents significantly beyond responding to comments of peer reviewers. Following is a summary of the most significant scientific information submitted by the public. The issues are grouped by topic, and then followed by EPA's response:

Percentile Approach

(1) The criteria are based on a statistical analysis of current nutrient levels in the Nation's waters rather than on the latest scientific knowledge and therefore are inconsistent with section 304(a) of the Clean Water Act.

(2) The use of the 25th percentile of all data or the 75th percentile of all reference data as criteria by States is undocumented, not scientifically valid, and results in meaningless numerical criteria values.

(3) Many data gaps exist in the nutrient database (for example a lake with only one reading for a parameter in a given year). Some screening techniques should have been done so that only those waterbodies were included for which there are sufficient representative data.

(4) The statistical approach used to develop the nutrient criteria is statistically flawed because it ignores the relationship between nutrient levels and in-stream/in-lake effects. As a result, there is no way of knowing the environmental benefit or the level of protection of designated uses gained by attaining the nutrient criteria levels set forth in the documents. As a result, EPA's statistical derivation of numerical nutrient criteria are meaningless to real world situations and are not helpful in making watershed management decisions, TMDL allocations, or in developing Water Quality Standards for nutrients at the State level. Therefore, they should be withdrawn.

EPA Response: The mean, median and mode are measures of central tendency commonly used in science to represent the distribution of a population of observations. The frequency distribution approach is not used to establish criteria; rather it is used to determine one of the components of a criterion, the reference condition. This reference condition is one element of a criterion which should be considered along with historical background information, possible model extrapolations of data, and consideration of possible downstream impacts on those waters by a regional panel of experts (Regional Technical Assistance Group—RTAG).

Further, the scientific community uses frequency distributions as a common basic interpreter of data with the upper and lower quartiles as an admittedly subjective, but traditional, approach to viewing the extent of a distribution about a central tendency. It is not mandatory or expected that the reference condition so derived be translated directly into a criterion. The selection of an upper quartile (or lower quartile with mixed water quality samples) is also consistent with the EPA policy to set levels protective of the majority of waters and has been peer reviewed both by EPA's SAB and external peer reviewers of our water body type technical guidance.

Finally, EPA's technical guidance manuals provide examples of alternate approaches to frequency distributions to assess reference conditions and determine relationships among causal response variables.

Model Based Approach

The percentile-based nutrient criteria proposed by EPA are acceptable only as a way to initiate a model-based, decision-theoretic approach to standard setting (as described in submission) to be undertaken by the effected States and Tribes with the assistance of EPA.

EPA Response: The presumption underlying EPA's use of a reference condition approach is that reference conditions reflect conditions conducive to the protection of most aquatic life in the given water body type and geographic region. The upper quartile of the reference data distribution is an accommodation to variability of the reference condition, and the lower quartile of a mixed sample is an effort to approach this reference condition when insufficient a priori sites exist. Therefore, the percentiles serve as recommended starting points to be further refined by in the absence of refinements that may be employed by the States, authorized Tribes and RTAGs.

Need for Site Specific Criteria

(1) Establishing a single nutrient criterion for all waters of a geographically diverse region based on inadequate data is not an appropriate approach. Numeric criteria should be developed at a site-specific level.

(2) Regarding the chlorophyll standard: annual cycle of circadian photo-periods vary significantly from southern Georgia to southern Maine. Hours of daylight affect the growth of the chlorophyll in a water body not only in photons activating chlorophyll but in

water temperature. It is difficult to understand how a single standard for chlorophyll or Secchi depth could be set over this geographic distance.

(3) The recommended criteria are lower than concentrations that may be needed to support fisheries and may result in a reduction of fish biomass.

EPA Response: EPA is using an ecoregion approach as an initial attempt to assess nutrient conditions in a broad geographic context. The Agency encourages RTAGs, including member States and authorized Tribes, to refine and further subdivide the initial ecoregions. If time and resources permit, States and authorized Tribes should also consider adopting nutrient criteria that are tailored to specific sites. EPA believes that recommending nutrient criteria on an ecoregion basis, with the use of ecoregional reference conditions, is a reasonable alternative to recommending a single nation-wide criterion that may fail to account for regional variability or to recommending criteria on an individual water body basis, which would be very resource-intensive. The EPA SAB has endorsed this region and water body-type specificity for biological criteria, and nutrient criteria share a similar ecological orientation.

One of the concerns expressed to EPA was that if the recommended nutrient criteria were met, there would not be sufficient nutrients to support fisheries. Generally, however, cultural eutrophication has been identified by States' section 303 (d) reports as one of the top national water quality problems. Where enrichment is documented as beneficial by regional specialists, EPA recommends that nutrient criteria be developed to promote the removal of that amount of ambient total nitrogen and phosphorus in excess of optimal fish production as determined by consultation of the RTAG with State and Federal fisheries biologists and water resource managers.

Total Nitrogen Criteria

Total Nitrogen criteria are not necessary and should not be required unless EPA can show site-specific reasoning for applying nitrogen criteria to all water bodies.

EPA Response: As a threshold matter, it should be noted that EPA's choice of parameters and criteria values are recommendations. The documents announced today impose no requirements. States and authorized Tribes have considerable flexibility in adopting nutrient criteria, provided that the criteria meet the requirements of the CWA and EPA's regulations (that is, they are based on sound scientific rationale and contain sufficient parameters to protect the designated uses).

With respect to EPA's recommendation that States and authorized Tribes adopt nutrient criteria for nitrogen, EPA notes that while phosphorus is often considered the limiting nutrient determining the extent of vegetative growth in fresh waters, nitrogen is often considered to be the limiting nutrient in the lower reaches of estuaries and in coastal marine waters. However, there are cases where phosphorus limits algal growth in estuaries and nitrogen performs a similar role in some freshwater systems. While nitrogen itself will not usually cause water quality impairments in the near-field in phosphorus-limited systems, if phosphorus supplies are reduced to attenuate symptoms of eutrophication within freshwater segments of a given river system, corresponding reductions in freshwater algal blooms will allow the highly soluble dissolved forms of nitrogen to be transported downstream. This downstream nitrogen transportation to estuaries or costal waters may support larger algal blooms resulting in water quality impairments. The practice of setting criteria for only nitrogen or phosphorus in a given region could displace the responsibility for nutrient abatement from the area of the source to a downstream jurisdiction. This places an undue burden on the recipient of this imported material and increases the abatement costs because source control is lost as a management option. EPA suggests, therefore, that where downstream effects take place, States and Tribes describe technologies or best management practices in their plans to begin nitrogen control.

Grouping of Reservoirs and Lakes

The final document should clarify whether Reservoir means impounded stream or river. If impoundments were sampled with natural lakes, the 75th percentile number may be too high as a standard for historic conditions in natural lakes.

EPA Response: EPA agrees that, if possible, reservoirs should not be grouped with lakes and recommends in the Technical Guidance Manual that, wherever feasible, criteria for reservoirs and lakes should be developed separately. Using the National Nutrient Database, one can separate data by lake or reservoir and determine reference conditions for each.

How Can I Get Copies of These Documents?

You can get copies of the set of three new criteria documents or any nutrient criteria document from the U.S. National Service Center for Environmental Publications (NSCEP), 11029 Kenwood Road, Cincinnati, OH 45242; (513) 489–8190 or toll free (800) 490–9198. The documents are also available electronically at *http://www.epa.gov/waterscience/standards/nutrient.html*. The waterbody-specific technical guidance manuals are also available from EPA's nutrient Web site. EPA's Office of Water, Office of Science and Technology prepared this document. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

Can the Public Continue To Provide Input After the Documents Are Finalized?

EPA encourages the public to provide additional scientific information that could help States and or authorized Tribes refine these recommended nutrient water quality criteria. EPA identified specific sections within each document where the public could greatly assist States and authorized Tribes in the task of augmenting the database for deriving ecoregional nutrient water quality criteria. For example, the public can provide information about the historical conditions and trends of the water resources within an ecoregion related to eutrophication resulting from human activities. EPA will forward all comments received on a particular ecoregional criterion or set of criteria to the appropriate State or authorized Tribe to help foster water quality criteria refinement.

SUPPLEMENTARY INFORMATION:

What Are Water Quality Criteria?

Section 304(a) of the Clean Water Act (CWA) requires the EPA to develop and publish and, from time to time, revise criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria recommendations developed under section 304(a) are based solely on data and scientific judgments. They do not consider economic impacts or the technological feasibility of meeting the criteria in ambient water.

What Is the Purpose of These Documents?

These documents give State and Tribal decision makers and others information to support the development

of numeric nutrient criteria for lakes and reservoirs and rivers and streams within several different nutrient ecoregions. An ecoregion is a geographic area with assumed relative homogeneity of ecological characteristics. EPA's section 304(a) criteria recommendations for phosphorous, total nitrogen, chlorophyll a and some form of water clarity, *i.e.* Secchi depth or turbidity represent reference conditions of surface waters that are minimally affected by human activities and provide for the protection and propagation of aquatic life and recreation.

These recommendations do not substitute for the CWA or EPA's regulations; nor are the documents themselves regulations. Thus, they cannot impose legally binding requirements on EPA, States, Indian tribes or the regulated community. Indeed, there may be other approaches that would be appropriate in particular situations or circumstances. When EPA reviews a new or revised nutrient water quality criterion submitted by a State or authorized Tribe under CWA section 303(c), EPA will decide to approve or disapprove that submission on a case-by-case basis and will be guided by the applicable requirements of the Clean Water Act and implementing regulations, taking into account comments and information presented at that time by interested persons regarding the appropriateness of applying these recommendations to the particular situation.

Why Does EPA Develop Ecoregional Nutrient Criteria?

States and authorized Tribes consistently identify excessive levels of nutrients as a major reason why as much as half of the surface waters surveyed in this country do not meet water quality objectives, such as full support of aquatic life. In 2000, EPA published nutrient criteria technical guidance manuals for lakes and reservoirs and for rivers and streams. In 2001, EPA published a draft guidance manual for estuarine and coastal marine waters. These manuals provide techniques for assessing nutrient conditions as well as methods for developing nutrient criteria for specific water body types. These and related documents are also available from EPA's nutrient Web site: *http://www.epa.gov/waterscience/standards/nutrient.html.* EPA is developing a guidance manual for wetlands.

What Is the Total Set of Ecoregional Nutrient Criteria That EPA Has Published?

On January 9, 2001, EPA announced the availability of ecoregional nutrient criteria documents for lakes and reservoirs in eight ecoregions, for rivers and streams in eight ecoregions (several of which overlap with the eight ecoregions for lakes and reservoirs), and for wetlands in one ecoregion. Those ecoregions were chosen based on the availability of nutrient data within each ecoregion. On February 28, 2002, EPA announced the availability of nine ecoregional nutrient criteria documents for lakes and reservoirs, and rivers and streams. Today, EPA announces the availability of three additional ecoregional nutrient criteria documents for lakes and reservoirs, and rivers and streams. This brings the total number of ecoregional nutrient criteria documents to 29 and results in nutrient criteria covering almost 100% of the freshwater waterbodies of the U.S. (excluding wetlands).

EPA also provided guidance on development and adoption of nutrient criteria into water quality standards. More recently, on November 14, 2001, Geoffrey H. Grubbs, Director of the Office of Science and Technology, in EPA's Office of Water provided this guidance to EPA, and State and Interstate Water Program Directors. This memorandum can be viewed electronically at: *http://www.epa.gov/waterscience/standards/nutrient.html.*

Dated: December 20, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 03–176 Filed 1–3–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–7435–8]

Nutrient Criteria Development; Notice of Nutrient Criteria Technical Guidance Manual: Estuarine and Coastal Marine Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Nutrient Criteria Technical Guidance Manual: Estuarine and Coastal Marine Waters.

SUMMARY: The Environmental Protection Agency announces the availability of a final nutrient criteria technical guidance manual for estuaries and coastal marine waters. This document gives State and Tribal water quality managers and others guidance on how to develop numeric nutrient criteria for estuaries and coastal marine waters. This document does not contain site-specific numeric nutrient criteria for any estuary or coastal marine water. This guidance was developed to help States and Tribes establish nutrient criteria. States and Tribes are in the best position to consider site-specific conditions in developing nutrient criteria. While this guidance contains EPA's scientific recommendations regarding defensible approaches for developing regional nutrient criteria, this guidance is not regulation. Thus it does not impose legally binding requirements on EPA, States, Territories, Tribes, or the public. States, Territories, and authorized Tribes retain the discretion to adopt, where appropriate, other scientifically defensible approaches to developing regional or local nutrient criteria that differ from these recommendations.

We are issuing this technical guidance in a manner similar to that used to issue new and revised criteria (see **Federal Register**, December 10, 1998, 63 FR 68354 and in the EPA document titled, National Recommended Water Quality—Correction EPA 822–Z–99–001, April 1999). EPA notified the public about the availability of the draft guidance manual and peer review on October 10, 2001 (66 FR 51665). At that time, the Agency solicited views from the public on issues of science pertaining to the information contained in the draft technical guidance manual. EPA considered the scientific views from the peer reviewers and the public and has revised the document accordingly. The completed document is now available.

ADDRESSES: You can get copies of the completed document entitled "Nutrient Criteria Technical Guidance Manual: Estuarine and Coastal Waters" from EPA's National Service Center for Environmental Publications (NSCEP) by phone at (513) 489–8190 or toll free (800) 490–9198 or by e-mail to: *ncepiwo@one.net,* or by conventional mail to NSCEP, 11029 Kenwood Road, Cincinnati, OH 45242. The document is also available electronically at *http://www.epa.gov/OST/standards/nutrient.html.*

FOR FURTHER INFORMATION CONTACT: Dr. David Flemer, USEPA, Health and Ecological Criteria Division (4304T), Office of Science and Technology, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; or call (202) 566–1101; fax (202) 566–1139; or e-mail *flemer.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

What Are Nutrient Criteria Technical Guidance Manuals?

Nutrient Criteria Technical Guidance Manuals are documents that give States and Tribes information to help develop water quality criteria and standards for nutrients, identify water quality impairments, and evaluate their success in reducing cultural eutrophication. They are intended to provide a series of steps leading to the development of nutrient criteria for a specific waterbody type.

EPA began to implement a National Strategy to Develop Regional Nutrient Criteria in 1998 to address enrichment problems. The *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs, First Edition* (EPA–822–B00–001) was the first of a series of waterbody-type specific manuals produced to help States, and Tribes establish ecoregionally appropriate nutrient criteria. EPA also developed a manual for rivers and streams (*Nutrient Criteria Technical Guidance Manual: Rivers and Streams*—EPA–822–B–00–002, and is developing a manual for wetlands. In addition to these waterbody-type specific manuals, EPA is developing nutrient criteria guidance under section 304(a) for each of the 14 ecoregions it identified in the continental United States. EPA expects States and Tribes to use the manuals, other information and local expertise to refine EPA's 304(a) nutrient criteria guidance so that their nutrient water quality criteria are tailored to local conditions. To help States and Tribes, to verify section 304(a) nutrient criteria guidance, and to provide national consistency wherever possible, EPA established Regional Technical Assistance Groups (RTAGs). RTAGs are a collection of EPA, State, Tribal representatives who work together to develop more refined ecoregional nutrient criteria, using the forthcoming section 304(a) guidance as a starting point. (EPA is also using data and expertise provided by the RTAGs to develop its section 304(a) nutrient criteria guidance for the 14 ecoregions it identified.) EPA expects the RTAGs to use the processes described in the waterbody-type specific manuals to develop recommended nutrient criteria on an ecoregional or more refined basis (such as subecoregion, coastal province, State or Tribe-level more defined class of estuary/coastal marine water). Today's manual for estuarine and coastal marine waters also explains how States or Tribes can adopt nutrient water quality standards based on the criteria values recommended by the EPA and/or RTAGs.

How Did EPA Involve the Public in Revising the Estuarine Coastal Guidance Manual?

In following the Agency's process for developing criteria and other guidance, EPA notified the public of the availability of the peer reviewed draft of the Estuarine Coastal Nutrient Criteria technical Guidance Manual on October 10, 2001 (66 FR 51665). EPA asked for views from the public on issues of science pertaining to information contained in the guidance manual. EPA considered the scientific views from the peer review and the public to revise the document.

Is the Completed Document Different Than the Draft Document?

In addressing the peer reviewers' comments and submissions of significant scientific information from the public, EPA made revisions to the draft document. Many of the submissions from the public were also presented by the peer reviewers, and these were addressed in the final document. To review the complete set of peer review comments and scientific views provided by the public, together with EPA's responses, go to *http://epa.gov/waterscience/standards/nutrient.html.*

A number of peer review comments and scientific views presented by the public questioned the use of a frequency distribution approach to develop a reference condition. The manual was rewritten to offer several methods for developing reference conditions, including several that do not use a frequency distribution. In addition, the manual is now more clear on distinguishing reference condition from criteria. Reference condition is one element of criteria derivation that RTAGs should consider with historical background information, possible model extrapolations of data, and possible downstream impacts.

Another submission questioned the utility of EPA's approach in developing estuarine/coastal criteria, since many reference conditions no longer exist. EPA added language to the guidance acknowledging that pre-Columbian, pristine conditions are rare and that the goal of the nutrient criteria setting process is to strive for a reference condition value and criteria that represent the most natural condition possible (as measured from sites having the least amount of human influence). Since extensive degradation of estuaries systems has been reported, the guidance manual describes four options for establishing reference conditions in estuaries (one option is presented for coastal waters). The manual also places greater emphasis on historical information because the reference condition of estuaries may be degraded, and estuaries, in particular, can seldom be classified by using a frequency distribution.

Several scientific views stated that the nutrient criteria that might be derived using the guidance manual do not support specific designated uses. It is true that the potential criteria derived may not be specific to a designated use. Rather, because they are reference condition-based, they should support the broad array of aquatic life uses in accordance with the Clean Water Act. As stated in the final guidance manual, the criteria derived using the manual are intended as benchmarks for comparison when a State or Tribe prepares their own criteria based on specific uses.

An additional public viewpoint indicated that nutrient criteria as developed by EPA are unnecessary because States already have criteria identifying conditions associated with eutrophication, such as dissolved oxygen, pH, and turbidity. States have used response variables such as dissolved oxygen, pH, and turbidity to reveal nutrient problems in their waters, but the root cause of eutrophication, as demonstrated by excess primary productivity, is typically nitrogen and phosphorus. For more effective prevention, it is important to measure the level and extent of the causal agents. The criteria are based directly on these primary causal elements of total nitrogen and phosphorus plus two early response variables. These are algal biomass (*e.g.*, chlorophyll-a for microalgae, dry mass for macroalgae) and water clarity, which most often indicate the early vegetative response to nutrient enrichment. Because many estuaries experience or may experience hypoxia, dissolved oxygen was added as an additional response variable.

Dated: December 20, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 03–175 Filed 1–3–03; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 7, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—December 20, 2002 (Open)

B. Reports

—Corporate Approvals
—Risk Analysis Report—Fourth Quarter Fiscal Year 2002
—Basel II and Capital Initiatives

C. New Business—Other

—**Federal Register** Notice—Draft Amended and Restated Market Access Agreement
—**Federal Register** Notice—Loan Syndications

Dated: January 2, 2003.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 03–293 Filed 1–2–03; 2:09 pm]

BILLING CODE 6705–01–P 1

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 27, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 5, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0715.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form Nos.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,832.

Estimated Time Per Response: .50–100 hours.

Frequency of Response: On occasion, annual, biennial, and one-time reporting requirements, third party disclosure requirement, recordkeeping requirement.

Total Annual Burden: 672,808 hours.

Total Annual Cost: $229,520,000.

Needs and Uses: The requirements implement the statutory obligations of section 222 of the Telecommunications Act of 1996. Among other things, carriers are permitted to use, disclose, or permit access to CPNI, without customer approval, under certain conditions. Many uses of CPNI require either opt-in or opt-out customer approval, depending upon the entity using the CPNI and the purpose for which it is used.

OMB Control No.: 3060–0835.

Title: Ship Inspections.

Form Nos.: FCC Forms 806, 824, 827, and 829.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 1,210.

Estimated Time Per Response: .084–4 hours.

Frequency of Response: On occasion, annual and every five year reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 5,245 hours.

Total Annual Cost: N/A.

Needs and Uses: The Communications Act requires the Commission to inspect the radio installations of large cargo ships and certain passenger ships at least once a year to ensure that the radio installation is in compliance with the requirements of the Act. Additionally, the Communications Act requires the inspection of small passenger ships at least once every five years. The Commission allows FCC-licensed technicians to conduct these inspections.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–161 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

December 20, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 5, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0690.

Title: Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands.

Form Nos.: FCC Forms 415 and 415–T.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5,000.

Estimated Time Per Response: .50–20 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 75,625 hours.

Total Annual Cost: $5,000,000.

Needs and Uses: The collection of information is necessary because of the Commission's Rules regarding the 37.0–38.6 GHz and 38.6–40.0 GHz bands. The rules implement the use of a channeling plan, and licensing and technical rules to fixed point-to-point microwave operation in the 37 and 39 GHz bands. This requirement will facilitate provision of communications infrastructure for commercial and private mobile radio operations and competitive wireless local telephone service. Without this information, the Commission would not be able to carry out its statutory responsibilities.

OMB Control No.: 3060–0692.

Title: Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-band, and the Allocation of Additional Spectrum for Broadcast Satellite-Service Use.

Form Nos.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5 respondents; 590 responses.

Estimated Time Per Response: 1–4 hours.

Frequency of Response: On occasion, annual and other reporting requirements, third party disclosure requirement.

Total Annual Burden: 590 hours.

Total Annual Cost: $51,000.

Needs and Uses: The Federal Communications Commission (FCC) adopted rules that redesignated portions of the 17.7–20.2 GHz band (18 GHz band) among the various currently allocated services to make more efficient use of this spectrum and to better accommodate the operational needs of licensees. On 1/31/02, the FCC adopted a Notice of Proposed Rulemaking (NPRM), in IB Docket No. 02–19, that requires licensees to amend their applications, submit milestone certifications and annual reports to the Commission to comply with new rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–162 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011835.

Title: CMA CGM/CNAN Space Charter, Pooling and Cooperative Working Agreement.

Parties: CMA CGM, Societe Nationale de Transports Maritimes ("CNAN").

Synopsis: The agreement authorizes the parties to exchange space on a first-come, first-served, space available basis for carriage of bulk cargoes on vessels they intend to time charter and operate in the trade between the U.S. East and Gulf Coasts from Eastport, Maine, to Brownsville, Texas, and countries bordering the Mediterranean and Black Seas plus Portugal and the Atlantic coast of Morocco. Initially, CMA CGM will provide one vessel, and CNAN will provide two vessels. The parties are also authorized to place containers on these vessels on a space available basis. Regarding the bulk cargoes, the parties will be pooling revenue, whereby the total freight revenues less the variable costs will be apportioned between the parties based on the number of vessels each party contributes. Finally, the parties are authorized to discuss rates and conditions in the trade and service contracts.

Agreement No.: 201075–003.

Title: Port of Oakland and Maersk Pacific, Ltd.

Parties: City of Oakland, Maersk Pacific, Ltd.

Synopsis: This amendment authorizes Maersk Pacific to operate transtainers for cargo container movement purposes within a specifically delineated area of the Premises without regard to the load limits contained in section 3.7 of the agreement.

Dated: December 30, 2002.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 03–134 Filed 1–3–03; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–32]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: The Role of Power and Control in Intimate Partner Violence—New—The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC), plans to draw a sample of individuals convicted of battering in the Dallas County Domestic Violence Court, and a sample of men living in Dallas County. The study participants, which will include two samples of men, will be asked to complete a survey that will utilize information collection instruments and methods developed and tested by experts in the fields of psychology and sociology. The study will include psychological assessments of attachment, depression, anger, and sociological assessments of peer support for violence, attitudes toward violence, and attitudes toward sex roles.

The data will be collected to further understand the psychological and sociological correlates of battering (*e.g.*, male battering of female partners), which will, in turn, assist in developing models for intervention programs.

The only cost to the respondents is the time involved to complete the survey. .

Respondents	Number of respondents	Number of responses/ respondent	Average Burden/ response (in hours)	Total burden (in hours)
Men convicted of battering in Dallas County & sampling of men in Dallas County	400	1	60/60	400
Total	400	1	60/60	400

Dated: December 30, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–143 Filed 1–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–16–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National Disease Surveillance Program—I. Case Reports (0920–0009)—Extension—National Center for Infectious Disease (NCID), Centers for Disease Control and Prevention (CDC). Formal surveillance of 20 separate reportable diseases has been ongoing to meet the public demand and scientific interest for accurate, consistent, epidemiologic data. These ongoing diseases include: bacterial meningitis and bacteremia, dengue, hantavirus, HIV/AIDS, Idiopathic CD4+T-lymphocytopenia, Kawasaki syndrome, Legionellosis, leprosy, lyme disease, malaria, Mycobacterium avium Complex Disease, plague, Q Fever, Reye Syndrome, tick-borne Rickettsial Disease, toxic shock syndrome, toxocariasis, trichinosis, typhoid fever, and viral hepatitis. Case report forms enable CDC to collect demographic, clinical, and laboratory characteristics of cases of these diseases. This information is used to direct epidemiologic investigations, to identify and monitor trends in reemerging infectious diseases or emerging modes of transmission, to search for possible causes or sources of the diseases, and to develop guidelines for the prevention of treatment. It is also used to recommend target areas in most need of vaccinations for certain diseases and to determine development of drug resistance.

Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. The total estimated annualized burden is 34,097 hours.

Respondents	Number of respondents	Number of responses/re-spondent	Average burden/ respondent (in hours)
Health Care Workers	55	111.10	5.58

Dated: December 30, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–147 Filed 1–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment: Notice of Charter Establishment

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the CDC, HRSA Advisory Committee on HIV and STD Prevention and Treatment of the Centers for Disease Control and Prevention, and the Health Resources and Services Administration of the Department of Health and Human Services, has been Chartered for a 2-year period beginning November 25, 2002, through November 25, 2004.

For further information, contact Ron Valdiserri, M.D., Executive Secretary, CDC, Advisory Committee on HIV and STD Prevention, 1600 Clifton Road, NE, m/s E–07, Atlanta, Georgia 30333. Telephone 404/639–8002, or fax 404/639–8600.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 20, 2002.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–170 Filed 1–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee conference call meeting.

Name: National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (NTFFASFAE).

Time and Date: 1 p.m.–4 p.m., January 23, 2003.

Place: The conference call will originate at the National Center on Birth Defects and Developmental Disabilities (NCBDDD), in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The Secretary is authorized by the Public Health Service Act, Section 399G, (42 U.S.C. Section 280f, as added by Pub. L. 105–392) to establish a National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect to: (1) Foster coordination among all governmental agencies, academic bodies and community groups that conduct or support Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effect (FAE) research, programs and surveillance; and (2) to otherwise meet the general needs of populations actually or potentially impacted by FAS and FAE.

Matters To Be Discussed: The Task Force will convene by conference call to: (1) Discuss and deliberate a request to endorse recommendations on FAS prevention by the Teratology Society; (2) further discuss activities proposed by the Center for Science in the Public Interest on issues regarding the labeling of alcohol beverages by the Bureau of Alcohol, Tobacco, and Firearms; and (3) discuss progress on a letter to the Surgeon General's Office requesting that he reissue the Federal Advisory against drinking during pregnancy. Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 1 p.m., Eastern Standard Time. To participate in the conference call, please dial 1–800–713–1971 and enter conference code 908417. You will then be automatically connected to the call.

Contact Person for More Information: R. Louise Floyd, DSN, RN, Designated Federal Official, National Center on Birth Defects and Developmental Disabilities, CDC, 4700 Buford Highway, NE, (F–49), Atlanta, Georgia 30333, telephone 770/488–7372, fax 770/488–7361.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: December 30, 2002.

Joseph E. Salter,

Acting Director, Management Anqlysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–142 Filed 1–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–79]

Notice of Submission of Proposed Information Collection to OMB: Request for Proposals—Contract Administrators for Project Based Section 8 Housing Assistance Payments (HAP) Contracts

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0528) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice

lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Request for Proposals—Contract Administrators for Project Based Section 8 Housing Assistance Payments (HAP) Contracts.

OMB Approval Number: 2502–0528.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The requested information is needed for HUD's selection of contract administrators to provide contract administration services for project based Section 8 Housing Assistance Payments (HAPS) contracts currently being administered directly by HUD.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	63	10		5.6		3,540

Total Estimated Burden Hours: 3,540.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 27, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–188 Filed 1–3–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–80]

Notice of Submission of Proposed Information Collection to OMB: Screening and Eviction for Drug Abuse and Other Criminal Activity

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0232) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Screening and Eviction for Drug Abuse and Other Criminal Activity Assisted Units.

OMB Approval Number: 2577–0232.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This collection of information implements statute. This collection of information implements statute giving Public Housing Agencies (PHAs) the tools for adopting and implementing fair, effective, and comprehensive policies for screening out applicants who engage in illegal drug use or other criminal activity and for evicting or terminating assistance of persons who engage in such activity. A PHA that administers a Section 8 or public housing program under an Annual Contributions Contract (ACC) with HUD may request criminal conviction records from any law enforcement agency concerning an adult member of a household applying for admission to a public housing or Section 8 program.

Respondents: State and Local Governments (Public Housing Agencies).

Frequency of Submission: On occasion of application for admission.

	Number of respondents	Annual responses	x	Hours per response	=	Burden Hours
Reporting Burden	8,600	8,600		1.3		10,850

Total Estimated Burden Hours: 41,385.

Status: Extension, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 27, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–189 Filed 1–3–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS)

Agency Information Collection Activities: Proposed Collection; Comments Requested.

ACTION: 60-day notice of information collection under review: extension of a currently approved collection department initial report.

The Department of Justice Office of Community Oriented Policing Services has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 7, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Department Initial Report (DIR).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: There is no agency form number. The U.S. Department of Justice Office of Community Oriented Policing Services (COPS) is sponsoring this information collection.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Recipients of the Funding Accelerated for Small Towns (FAST) program, the Accelerated Hiring, Education and Deployment (AHEAD) program, and/or Universal Hiring Program (UHP) grants. Other: Applicants of the current hiring grant program, UHP, or interested parties. Abstract: The DIR is a collection instrument that the COPS Office uses to establish a baseline to evaluate the progress of agencies awarded grants under the FAST, AHEAD, and UHP grant programs.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The DIR will be sent to approximately 500 grantees per year. The estimated amount of time required for the average respondent to complete and return the form is 1.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: There are 875 estimated burden hours associated with this collection.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: December 31, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–197 Filed 1–3–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF LABOR

Employment and Training Administration

[SGA/DFA 03–100]

H–1B Technical Skills Training Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of procedures for grant applications for H–1B technical skills training grants.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of approximately $200 million in grant funds for skill training programs for unemployed and employed workers. These grants are financed by a user fee paid by employers to bring foreign workers into the U.S. under a new H–1B nonimmigrant visa. As part of the H–1B nonimmigrant visa program, this technical skills training program was authorized under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), as amended. The grants are a long-term solution to domestic skill shortages in high skill and high technology occupations. H–1B technical skills grants are focused on addressing the high skill technology shortages of American businesses; they are not intended to address labor shortages due to reasons other than technical skill shortages. Grant awards will be made only to the extent that funds are available.

Eligible applicants for these grants will be local Workforce Investment Boards (Local Boards) established under section 117 of the Workforce Investment Act (WIA) and representing a local or regional public-private partnership that is comprised of at least one Local Board, one business or business-related non-profit organization such as a trade association, and one community-based organization, higher education institution or labor union that will carry out such programs or projects through One-Stop delivery systems established under section 121 of WIA, or regional consortia of Local Boards.

This notice describes the application submission requirements, the process that eligible entities must use to apply

for funds covered by this solicitation, and how grantees will be selected.

DATES: The grant policies and procedures described in these guidelines are effective immediately, and remain in effect until further notice. Funds are available for obligation by the Secretary of Labor (the Secretary) under 29 U.S.C. 2916. Applications for grant awards will be accepted immediately upon publication of this notice in the **Federal Register**. It is anticipated that review panels will begin to convene to evaluate applications 60 days after publication.

ADDRESSES: Applications must be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Ella Freeman, SGA/DFA 03–100, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: Ella Freeman, Grants Management Specialist, Division of Federal Assistance, Telephone (202) 693–3301. (This is not a toll free number.) You must specifically ask for Ella Freeman.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of grant funds for technical skills training for employed and unemployed American workers. These grants are financed by a user fee paid by employers to bring foreign workers into the U.S. on a temporary basis to work in high skill or specialty occupations. As part of the H–1B non-immigrant visa program, this technical skills training program was established under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA 1998) as amended by the American Competitiveness in the Twentieth Century Act of 2000 (ACWIA 2000) and companion legislation. The grants are a long-term solution to domestic skill shortages in high skill and high technology occupations—raising the technical skill levels of American workers so they can take advantage of the new technology-related, high skills employment opportunities. This will, in turn, help businesses reduce their dependence on skilled foreign professionals permitted to work in the U.S. on a temporary basis under the H–1B visa program. H–1B technical skills grants are focused on directly addressing the high skill technology shortages of American businesses; they are not intended to address labor shortages due to reasons other than technical skill shortages. Grant awards will be made only to the extent that funds are available.

The Act creates a two-part eligibility and funding system for the program. Seventy-five (75%) percent of the available grant funds will be awarded to Local Boards established under section 117 of the Workforce Investment Act (WIA) that will carry out such programs or projects through the One-Stop delivery systems established under section 121 of WIA, or regional consortia of Local Boards. Regional consortia of boards may be interstate. Each Local Board or consortium of boards receiving grant funds must represent a local or regional public-private partnership that is comprised of at least (i) One Local Board; (ii) one business or business-related non-profit organization such as a trade association; and (iii) one community-based organization or higher education institution or labor union. This notice governs the process for awarding the 75 percent funds.

The remaining 25 percent of the available funds will be awarded to business partnerships that consist of at least two businesses or a business-related nonprofit organization that represents more than one business. The partnership may also include any educational, labor, community organization, or Local Board. Applicants for the 25 percent funds must explain the barriers they faced in meeting the partnership eligibility criteria for the 75 percent funds—for example, the business partnerships may be on a national, multi-state, regional or rural area basis (such as rural telework programs). The Solicitation for Grant Applications (SGA) governing the competition for the first round of grants for the 25 percent funds was published in the **Federal Register** in December 2001.

Successful applicants under earlier H–1B training grant solicitations are eligible to apply for grants under this competition. Current awardees are encouraged to indicate how their new proposals can provide a different approach or scope to skills training given program improvements developed under the current award. Consideration will be given to grantees which use grant funds to significantly expand their training program or project through such means as training more workers or offering more courses, or to applicants whose training programs or projects expand as a result of increasing collaborations—especially with more than one small business or with a labor-management training program or project.

ACWIA 2000 provides resources for skill training in high skill and high technology occupations that are in demand by U.S. businesses. One key measure of this demand is determined by the number of employer H–1B applications for foreign workers. For example, the occupation with the most current H–1B demand is information technology (IT). Appendix B to this solicitation provides information on the occupations approved under H–1B petitions by the Immigration and Naturalization Service (INS) for Fiscal Year 2001. Applicants should check the INS Web site (*www.ins.gov*) or the Department of Labor's Employment and Training Administration's Web site (*www.doleta.gov/h-1b/*) for the latest INS information on occupations approved under H–1B petitions.

This announcement consists of four parts:

- Part I provides background, basic DOL policies and emphasis, principles of H–1B technical skills grants, and the legislative mandate for technical skills training grants under Section 286(s) of INA, Section 111 of ACWIA 2000, and Section 214(i) of INA.
- Part II describes specific program, administrative and reporting requirements that will apply to all grant awards.
- Part III describes the application process.
- Part IV describes the review process and rating criteria that will be used to evaluate applications for funding.

Part I—Background, DOL Policies and Emphases

A. Background

In response to demands from industries that were experiencing skill shortages in areas such as information technology, Congress enacted the Immigration Act of 1990. This act, implemented in 1992, established the H–1B visa category for non-immigrants who sought to work in high skill or specialty occupations, and set annual limits of 65,000 on the number of H–1B visas granted. In a subsequent effort to help employers access skilled foreign workers and compete internationally, Congress enacted the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA 1998) Pub. L. 105–277 in October 1998. The provisions of ACWIA 1998 created technical skills training grants under the Department of Labor's Employment and Training Administration. ACWIA 1998

was amended by the American Competitiveness in the Twenty-first Century Act of 2000 (ACWIA 2000) Pub.L. 106–313.

High skill and specialty occupations require theoretical and practical application of a body of highly specialized knowledge and sometimes may even require full state licensure to practice in the occupation. These occupations require at least a bachelor's degree or higher and/or experience in the specific specialty. They also may require recognition of expertise in the specialty through progressively responsible positions relative to the specialty occupation.

ACWIA 1998 increased the annual limit on H–1B visas temporarily to 115,000 in fiscal years 1999 and 2000, and to 107,500 in 2001. In addition, a $500 user fee was imposed on employers for H–1B applications. ACWIA 1998 authorized the use of 56.3% of the fee to finance the H–1B Technical Skills Training Grant Program. Grants funded under ACWIA 1998 had the long-term goal of raising the technical skill levels of American workers in order to fill specialty occupations presently being filled by temporary workers admitted to the United States under the provisions of the H–1B visa.

ACWIA 1998 described eligible grant applicants as local Workforce Investment Boards (local Boards) or a consortium of local Boards. Current grantees are local Boards, as established under section 117 of the Workforce Investment Act (WIA), that have been funded to carry out specifically designed high technology skill training programs or projects for employed and unemployed workers through one-stop delivery systems or a regional consortia of local boards, as established under section 121 of the WIA. Regional consortia may be interstate as well as intrastate.

ACWIA 2000, enacted on October 17, 2000, increased the temporary cap to 195,000 H–1B visas annually and extended this higher cap for two additional years, until the end of fiscal year 2003. Separate legislation raised the employer H–1B application fee from $500 to $1,000. ACWIA 2000 authorized the use of 55% of the funds generated by fees to continue the Department of Labor's H–1B Technical Skills Training Grant Program through September 30, 2003.

ACWIA 2000 created two-part eligibility and funding criteria for the new program. Local WIBs are eligible to receive 75% of total funds awarded. These grants provide funds to partnerships consisting of one or more local WIBs, at least one business or business related non-profit (such as a trade association) and one community-based organization (which may be faith-based), higher education institution or labor union. The remaining 25% of funds are made available through grants to eligible partnerships that consist of at least two businesses or a business-related nonprofit organization that represents more than one business. Partnerships may include any educational, labor, community organization, or WIB, but funds may be used only to carry out a strategy that would otherwise not be eligible for funds under the 75% clause due to barriers in meeting partnership eligibility criteria.

The 75 percent funding stream requires a 50 percent match in cash or in kind; the 25 percent portion requires a 100 percent match in cash or in kind. The matching requirement is assessed for the entire Federal grant funding level. Partners cooperating in the proposed project may divide the responsibility for the match among themselves in any way they choose to do so. ACWIA 2000 requires that consideration be given to applicants that provide a specific commitment from other public or private sources, or both, to demonstrate the long-term sustainability of the training program or project after the grant expires.

Eighty percent of the grants are to be awarded to projects that train workers in high technology, information technology, and biotechnology skills. For example, this includes skills needed for software and communications services, telecommunications, systems installation and integration, computers and communications hardware, advanced manufacturing, health care technology, biotechnology and biomedical research and manufacturing, and innovation services. No more than 20 percent may be awarded to projects that train for skills related to any single specialty occupation. A specialty occupation is one that requires at a minimum a college degree or comparable experience. In accordance with ACWIA 2000, the Secretary of Labor must make every effort to fairly distribute grant funds among urban and rural areas and across the different geographic regions of the country.

The technical skills training portion of the law (Section 111) is designed to help both employed and unemployed American workers acquire the requisite technical capabilities in high skill occupations that have shortages. Training generally is aimed at occupations at the H–1B skill levels, which are defined as a bachelor's degree or comparable experience. Under ACWIA 2000, training is not limited to skill levels commensurate with 4-year undergraduate degrees, but can include the preparation of workers for a broad range of positions along a career ladder leading to an H–1B skill level job.

To meet the legislative intent of training American workers to replace foreign workers under the H–1B visa program, technical skills training grants under this SGA must focus on a high level of training and on selected occupations. As shown on Table 1, foreign workers coming to the United States under the H–1B visa program are exceptionally well-educated, nearly 60 percent possess a Bachelor's degree, over 30 percent have a Master's degree, and 10 percent have a Doctorate or Professional degree. With respect to occupations, nearly 60 percent are computer/information technology related occupations, such as programmers, database administrators and systems analysts. The second largest occupational area is architecture, engineering and surveying related occupations. It should be noted that of the education-related area occupations, most are college and university level, not elementary or secondary level. Of the medicine and health related occupations, the largest grouping is physicians and surgeons rather than nurses or other healthcare workers.

ACWIA 2000 requires certain accountability factors. Specifically, the Secretary of Labor is to give consideration to applicants who commit to achieving certain outcome goals for individuals who complete training. These outcome goals are: (1) Hiring or causing the hiring of unemployed trainees; (2) increasing the wages or salary of incumbent workers; or (3) providing skill certifications to trainees or linking the training to industry accepted occupational skill standards, certificates, or licensing requirements. These accountability factors represent a list of possible, desired outcomes or goals rather than contractual requirements. (For example, an applicant may propose a specific goal by designing a technical skills training program that is expected to result in increased wages and the awarding of certifications that document skills acquisition). In accordance with ACWIA 2000, applicants must agree that the project will be subject to evaluation by the Department of Labor and agree to fully cooperate in evaluation studies.

ACWIA 2000 specified that consideration be given to the use of grant funds to demonstrate a significant ability to expand a training program or project through such means as training

more workers or offering more courses or projects resulting from collaborations, especially with more than one small business or with a labor management training program or project, or for a partnership that involves and directly benefits more than one small business.

TABLE 1.—KEY FACTS ABOUT H–1B VISA APPROVED PETITIONS, FISCAL YEAR 2001

	Percent of total
Country of Birth:	
India	48.9
China	8.3
Canada	3.9
Philippines	3.1
United Kingdom	2.9
All other	33.8
Age:	
Under 20	00.0
20–24	11.6
25–29	41.9
30–34	25.8
35–39	12.0
40 and over	8.70
Level of Education:	
Less than Associate's degree	1.2
Associate's degree	0.6
Bachelor's degree	56.8
Master's degree	31.1
Doctorate degree	7.4
Professional degree	3.0
Occupational Area:	
Computer/information technology	58.0
Architecture, engineering and surveying	12.2
Administrative specialties	7.2
Education	5.3
Managers and officials	3.8
Medicine and health	3.4
Life sciences	2.0
Social sciences	1.9
Mathematics/physical sciences	1.7
All other	3.2

Source: *Report on Characteristics of Specialty Occupation Workers (H–1B), Fiscal Year 2001*, U.S. Immigration and Naturalization Service, July 2002.

Forty-three H–1B Technical Skills Training Grants totaling $95.6 million were awarded under the provisions of ACWIA 1998. Under ACWIA 2000, the Department of Labor has awarded, as of October 1, 2002, a total of 45 grants totaling $116.7 million; of these, 31 grants totaling $82.3 million were under the 75 percent funding stream and 14 grants totaling $34.5 million were under the 25 percent funding stream. H–1B grants under earlier SGAs were funded for up to a 24-month period, with the possibility of an additional option year, based on performance, continued demand for training, and availability of funds.

Combining awards made under both ACWIA 1998 and ACWIA 2000, the Department of Labor has awarded a total of 88 H–1B Technical Skills Training Grants totaling $212 million. Because funds are available as they are collected from H–1B user fee revenues, the Department anticipates that additional H–1B Technical Skills Training Grant applications will be funded throughout fiscal year 2003 (October 1, 2002–September 30, 2003). Additional details on the background of the H–1B Technical Skills Training Grants demonstration project can be found at the H–1B Web site *http://www.doleta.gov/h–1b*. This Web site contains descriptions of current projects, legislative documents and research papers.

B. Principles of H–1B Technical Skills Training Grants

Development, implementation and operation of H–1B Technical Skills Training Grants as envisioned under the authorizing legislation (see Background above) is based on the following principles:

Business Involvement: Businesses are the workforce investment system's customers who generate the demand for all jobs, in particular, the demand for high skill occupations. Businesses are essential partners in formulating, developing and operating H–1B technical skills grant projects. Under WIA, business plays a critical, leadership role in planning and overseeing training and employment activities. WIA requires that the majority of the membership of state and local Workforce Investment Boards are business representatives, and that the state and local board chairs be drawn from business. For the purpose of these grants, it is desirable that businesses represented in the group applying for this grant include those with current high technology skills shortages. Some of these businesses may have in the past utilized foreign workers under the H–1B visa program. Now, they intend to hire, retain, or promote graduates of the H–1B technical skills training program.

Partnership Sustainability: The grant awards under this SGA will not exceed duration of 36 months with an option for a no cost extension of up to 12 additional months. No cost extensions extend the period during which existing grant funds may be spent. ETA intends that regional partnerships sustain themselves over the long term and well after the federal resources from this initiative have been exhausted. In addition, coordination and consultation with the applicable state workforce agency and/or the Governor's office or State Workforce Investment Board is vital to long-term sustainability and will potentially spread high skill training efforts beyond the grantee site. The statutory 50 percent non-federal matching requirement is an integral part of ensuring sustainability because the matching resources are expected to help extend the skill shortages training effort beyond the term of the grant. This partnership sustainability concept relates to two rating criteria: Links with Key Partners and Sustainability (the resources each partner offers and the role of external resources in building the foundation for a long-term partnership).

High Skill Level Focus and Innovative Service Delivery: Training selected employed and unemployed workers to fill current local or regional high skill level shortages is the immediate focus of this initiative. Training investments should be targeted in occupational areas that have been identified on the basis of H–1B occupations as high technology skill shortage areas. H–1B Technical Skills Training Grants are not intended to address lower level skill labor shortages nor are they intended to fund training programs aimed at imparting basic educational skills. In addition, H–1B grants are not intended to address occupational shortages due to reasons other than high technology skill shortages.

Innovative or proven tools and approaches, that may include on-the-job training, distance learning, or combinations of training and educational techniques, to close particular skill gaps and provide strategies for training that promote regional development are hallmarks of successful H–1B technical skills training projects. H–1B grantees should tailor training to the needs of the selected incumbent and unemployed workers, both in content and delivery.

Qualified Target Population: Technical skills training is geared towards employed and unemployed workers who can be trained and placed directly in highly skilled H–1B occupations or in the highest echelons of an H–1B career ladder. Candidates for training funded by H–1B Technical Skills Training Grants should possess (and be identified through appropriate assessment tools) a high level of general educational background and, in addition, have the prerequisites for the occupational training being proposed. Targeted individuals should also possess certain characteristics such as drive and initiative that will help guarantee successful completion of the high skill level training funded by H–1B grants.

Employees at the H–1B skill level are generally characterized as having a Bachelor's degree or comparable work experience. The H–1B technical skill training is not limited to skill levels commensurate with a four-year degree. It may be used to prepare workers for a broad range of positions along a specified career ladder. "Career ladder" may generally be defined as a system of career options which encourage opportunities for professional growth and upward mobility. Technical skills training can include a broad range of positions along a career ladder that directly leads to a high skills level job within a reasonable period of time. Thus, potential trainees are not required to enter training with a four-year degree. Additionally, trainees do not necessarily have to acquire a four-year degree to be successful, although many will have a four-year degree and many others will possess two-year degrees. Career ladders create opportunities for individuals who may vary in experience and education levels (such as specialty training and Associates' degrees) to advance along a defined career ladder and qualify through additional training and education for H–1B level related occupations.

Use of Skill Standards: Skill standards represent a benchmark by which an individual's achieved competence can be measured. Work in this area has been performed by private industry and trade associations, registered apprenticeship training systems, and public and private partnerships. Well-defined skill standards can be useful tools in matching training goals to targeted occupational areas. Applicants are encouraged to survey the progress to date in developing occupational skill standards in their community and in applicable industries.

As noted earlier (In Part IA—Background), the definition of the minimum proficiency level required to be considered an H–1B occupation, contained in section 214 (i), 8 U.S.C. 1184 (i) of the Immigration and Naturalization Act (INA), speaks to a very high skill level for these "specialty occupations." These are occupations that require "theoretical and practical application of a body of highly specialized knowledge," and full state licensure, if required for the occupation, to practice in the occupation. The standard for these occupations is either completion of at least a Bachelor's degree or experience in the specialty equivalent to the completion of such a degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty. Specialized and professionally recognized certificates may also be characteristic of a high level of technical skills.

Comprehensive Local and Regional Planning: H–1B technical skills training applicants must describe the local area or region that will be served with particular emphasis on high technology skills shortages. Applicants are encouraged to ascertain current labor force and industry data to reflect the skills shortages in their region. The proposal also must identify the political jurisdictions to be included and provide an enumeration of the specific local workforce investment areas that are served under WIA. Current data on approved H–1B visa petitions should be utilized to the extent feasible to describe skill shortages in specific occupations. Appendix B to this solicitation is a listing of occupations for which H–1B visa petitions have been recently approved. Requests for H–1B visas for the applicant's region may reflect a skills shortage for those occupations, as well. Applicants may consider surveying local and regional employers to ascertain the extent of employer use of H–1B visas to obtain foreign workers and to obtain information on the specific occupations and skills imported.

Applicants are encouraged to utilize all available state and local data, including that provided by area businesses and business associations, in making determinations of regional shortages. Applicants are encouraged to analyze data made available by their state labor market information (LMI) director, the Bureau of Labor Statistics (BLS), and through the local One-Stop delivery system.

C. DOL Policies and Emphases

Section 111(c)(4)(A) of ACWIA 2000 states that consideration will be given to applicants who, where applicable, commit to provide three target outcomes for participants who complete training. These outcomes are the hiring of unemployed trainees, increased wages or salaries of employed workers, and skill certificates documenting skills acquisition or a link to industry accepted occupational skill standards, certificates, or licensing requirements.

The Employment and Training Administration anticipates that applicants may need to make a range of supportive services available to enhance the quality and effectiveness of the skill training provided under the grant. Grant funds may not be used to provide supportive services. Appropriately focused services, as defined by section 101(46) of WIA—such as transportation or childcare—are considered as important enhancements to the technical skills training package.

Utilizing federal resources through co-enrollment in H–1B technical skills training and WIA is a strongly recommended course of action. While WIA resources cannot be counted toward the matching requirement; co-enrollment allows for much broader and comprehensive service provision. Successful applicants are encouraged to leverage such Federal resources to help make the technical skills training more effective.

In order to provide these resources, applicants should build linkages to the One-Stop Career Center network to reach out, inform, and recruit individuals to participate in H–1B technical skills training. The central role of the Local Boards in the planning and policy activity surrounding these grants is critical. WIA requires the Local Board to prepare a strategic workforce investment plan for the area that it oversees. The Local Board also designates One-Stop center operators and certifies or approves eligible training providers.

As required by ACWIA, ETA will give consideration in awarding grants to any proposal which includes and directly benefits two or more small businesses (100 employees or less).

DOL emphases for this SGA relate to level of training and occupations selected for training. In accordance with the legislative provisions to train American workers to an H–1B visa level, DOL seeks to achieve a higher level of skill training than has occurred to date in some H–1B grants—to a level that clearly prepares individuals to meet the H–1B visa definition of "theoretical and practical application of a body of specialized knowledge* * *" In addition, since a major objective of H–1B technical skills training grants is to alleviate dependency upon foreign workers in specialty occupations, DOL believes that increased priority is needed in occupations relating to the higher levels of computer science and information technology; architecture, engineering and surveying; biotechnology, biomedical research and manufacturing, and advanced manufacturing technology. Lower level healthcare and other non-H–1B occupations and preparatory or introductory level information technology areas will receive low selection priority under this SGA. DOL anticipates that the focus on a high level of training and on H–1B occupations will result in most participants being enrolled in training programs during the first year of the grant operation, with

actual training occurring during the remainder of the grant period.

Part II—Requirements

A. Eligible Participants

Training funded by a grantee may be both for persons who are currently employed and who wish to obtain and upgrade skills and for persons who are unemployed. The aim of the skills training is to place employed and unemployed workers in highly skilled H–1B related occupations. As noted above, eligible participants for H–1B Technical Skills Training Grants, prior to beginning training funded by H–1B training grants, should possess (and be identified as having through appropriate assessment tools) a high level of general educational background and, in addition, have the prerequisites for the occupational training being proposed. H–1B targeted individuals should also possess those characteristics such as drive and initiative that will help guarantee successful completion of the high skill level training funded by H–1B grants.

B. Administrative Requirements

1. General

Grantee organizations will be subject to: ACWIA 2000; these guidelines; the terms and conditions of the grant and any subsequent modifications; applicable Federal laws (including provisions in appropriations law); and any applicable requirements listed below—

a. Workforce Investment Boards—20 Code of Federal Regulations (CFR) Part 667.220, published in the **Federal Register** on Friday, August 11, 2000 (Administrative Costs).

b. Non-Profit Organizations—Office of Management and Budget (OMB) Circulars A–122 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

d. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR part 97 (Administrative Requirements).

e. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR part 31 (Cost Principles), and 29 CFR part 95 (Administrative Requirements). In addition, the audit requirements at 20 CFR 627.480 applies to commercial recipients.

f. All entities must comply with 29 CFR parts 93 and 98, and, where applicable, 29 CFR parts 96 and 99.

2. Administrative Costs

ACWIA 2000 Section 111 (c)(6) provides that an entity that receives a grant to carry out a program or project under section 414(c)(1)(A) of ACWIA may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs are defined at 20 CFR 667.220.

3. Start-up Costs

ACWIA 2000 Section 111 (c)(3) limits the amount of start-up costs of partnerships or new training projects, which may be charged to these grants. Except for partnerships of small businesses, the limit is five (5) percent of any single grant or costs not to exceed $75,000. For partnerships consisting primarily of small businesses, the limit is ten (10) percent of the cost allocable for a single grant or a maximum of $150,000.

C. Reporting Requirements

The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report (SF269) is required until such time as all funds have been expended or the period of availability has expired. Quarterly reports are due 30 days after the end of each calendar year quarter. Grantees must use ETA's On-Line Electronic Reporting System.

Progress Reports. The grantee must submit a quarterly progress report to the GOTR within 30 days following each quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter including:

1. Number completing training this quarter
2. Number completing training overall
3. Number enrolled in training
4. Number expected to complete training by end of project
5. Number new job placements as a result of training
6. Number promotions resulting from the training
7. Number wage increases resulting from training and amount of wage increases resulting from training
8. Number certifications and/or /degrees, by type, awarded as result of training

Note: DOL may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL reporting requirements.

A narrative section is also required for each quarterly report, including:

1. General overview of project progress, new developments and resolution of previous issues and problems.
2. Explanation of any problems and issues encountered and planned response.
3. Lessons learned in the areas of project administration and management, training delivery, partnership relationships and other related areas.
4. Discussion of the occupational areas for which skills training is being provided, including a listing of the occupations being trained, training delivery, number of students per occupation and other relevant information that provides a reasonable picture of the occupational training being conducted.

Final Report. A draft final report which summarizes project activities and employment outcomes and related results of the demonstration must be submitted no later than 60 days prior to the expiration date of the grant. After responding to DOL questions and comments on the draft report, three copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by DOL for preparing the final report.

D. Evaluation

As required by ACWIA 2000, applications must include an agreement that the program or project shall be subject to evaluation by the Secretary of Labor to measure its effectiveness. To measure the impact of these skill training grants, ETA will arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. Grantees must agree to make records on participants, employers and funding available and to provide access to program operating personnel and to participants, as specified by the evaluator(s) under the direction of ETA, including after the period of operation.

E. Matching Funds

Applicants must demonstrate the ability to provide resources equivalent to at least 50 percent of the grant award amount as a match. This statutory match may be provided in-cash or in-kind, and federal resources may not be counted against the matching requirement. At least one-half of the non-Federal matching funds shall be from the business or businesses or business-related nonprofit organizations involved. The amount and nature of the match must be clearly described in the application.

The 50 percent matching requirement is designed to assist grantees in initiating sustainability for the proposed project. The Department is particularly

interested that the applicants demonstrate clear evidence that matching resources will sustain training activities after the expiration of the grant. Although matches may be one-time occurrences, applicants are encouraged to seek partnerships that reflect a commitment, financially and non-financially, to the future success of the proposed program.

F. Grantee Data System

The grantee must have a system capable of collecting, storing and retrieving participant and training result information and producing reports needed for administrative, management, and analytical purposes. ETA will be routinely validating data as part of its oversight responsibilities, so grantees must ensure the accuracy and validity of information reported. The grantee must identify the data elements to be routinely collected.

G. Other

The application must include identification of a management entity, the proposed staffing pattern, the resumes of key staff members and detailed descriptions of the roles of various entities participating in the partnership. Each application MUST designate an individual who will serve as project director and who will devote a substantial portion of his/her time to the project, which may be defined as at least 60 percent. The applicant should also include a description of the organizational capacity and track record in high skill training and related activities of the primary actors in the partnership.

Part III—Application Process

A. Eligible Applicants

Section 111(c)(2)(A)(i) of ACWIA 2000 specifies that the Secretary shall, in consultation with the Secretary of Commerce, subject to the availability of funds in the H–1B Nonimmigrant Petitioner Account, award 75 percent of the grants to Local Boards established under section 116(b) or 117 of the WIA, 29 U.S.C. 2831(b) and 2832, or consortia of such Boards in a region. A consortium can cross state lines or involve more than one statewide Local Board.

Each Local Board or consortium of boards receiving grant funds must represent a local or regional public-private partnership consisting of at least one Local Board; one business or business-related non-profit organization such as a trade association and one community-based organization (which may be a faith-based organization), or higher education institution, or labor union.

The activities of the local or regional public-private partnership must be conducted in coordination with the activities of the relevant Local Board or Boards established under WIA. ACWIA 2000 requires that each partnership designate a fiscal agent responsible for being the recipient of grant funds.

Under this announcement, only Local Boards (through their designated fiscal agents) and consortia of Local Boards may apply for and receive these grant awards. This requirement does not prevent the participation of other partners or concerned entities, which are integral to the process of planning for and conducting skills training in skills shortage areas. As noted earlier under Supplementary Information, successful applicants under earlier H–1B solicitations are eligible to apply for grants under this competition. Current awardees must indicate how their new proposals can provide a different approach or scope to skills training given program improvements developed under the current award.

Applicants are encouraged to collaborate with entities that possess a sound grasp of the job market in the region and are in a position to address the issue of skill shortage occupations. These entities include organizations such as private, for-profit businesses—including small and medium-size businesses; business, trade, or industry associations such as local Chambers of Commerce and small business federations; and labor unions. These partners should include businesses and business associations, which have experienced first hand the problems of coping with skill shortages and which employ workers engaged in skill shortage occupations.

This notice will not prescriptively define the roles of individual entities within the partnership beyond requiring that the Local Boards or consortia be the applicant and designate a fiscal agent for receiving grant funds, as stated in ACWIA 2000. The applicant's proposal is expected to provide a detailed discussion of participating organizations' respective responsibilities.

Based on ETA's experience, regional partnerships that actively engage a wide range of participation from community groups—particularly with strong private employer involvement—appear to be more successful. Consortia of Local Boards representing more than one area that share common economic goals may join together as one applicant rather than applying individually.

The application must clearly identify the applicant (or the fiscal agent), the grant recipient (and/or fiscal agent), and describe its capacity to administer this project. It must also indicate that the project is consistent with and will be coordinated with the activities of the relevant Local Board or Boards and with the other partners in the workforce investment system(s) that are involved in technical skills activities in the relevant region(s).

According to Section 18 of the Lobbying Disclosure Act of 1995, an organization described in Section 501 (c) (4) of the Internal Revenue Code of 1986 that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

Note: Except as specifically provided in this Notice, DOL/ETA's acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Circulars require and an entity's procurement procedures must require that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, *i.e.*, it does not authorize the applicant to avoid competition when procuring these services.

Part IV of this announcement identifies the criteria that will be used to rate applicant submissions. These criteria and point value are:

Criterion	Points
A. Statement of Need	10
B. Level of Training and Service Delivery Strategy	25
C. Target Population	10
D. Sustainability	15
E. Linkages with Key Partners	15
F. Outcomes, Management and Cost Effectiveness	25
Total Possible Points	100

B. Submission of Proposals

Applicants must submit four (4) copies of their proposal, with original signatures. The proposal must consist of two (2) separate and distinct parts, Parts I and II.

Part I of the proposal must contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix C) and the Budget Information Form (Appendix D). Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall represent the responsible financial and administrative entity.

In preparing the Budget Information form, the applicant must provide a concise narrative explanation to support the request. The statutory language of ACWIA 2000 is specific in stating that grant resources are to be expended for programs or projects to provide technical skills training. An illustrative, but not exclusive, list of allowable and allocable types of administrative costs is provided in the WIA regulations at 20 CFR 667.200. In general, however, this grant does not contemplate or permit the purchase of capital equipment. The budget narrative should discuss precisely how the administrative costs support the project goals.

Part II must contain a technical proposal that demonstrates the applicant's capabilities in accordance with the Statement of Work. A grant application is limited to twenty-five (25) double-spaced, single-sided, 8.5 inch x 11 inch pages with one-inch margins. The applicant may provide resumes, a staffing pattern, statistical information and related material in attachments, which may not exceed fifteen (15) pages. Although not required, letters of commitment from partners or from those providing matching resources may be submitted as attachments. Such letters will not count against the allowable maximum page total. The applicant must briefly itemize those participating entities in the text of the proposal. Text type shall be 12 point or larger. Applications that do not meet these requirements will not be considered. Each application must include a Time Line outlining project activities *and* an Executive Summary that is not to exceed two pages. The Time Line and the Executive Summary do not count against the 25-page limit. No cost data or reference to prices should be included in the technical proposal.

C. Hand Delivered Proposals

Hand delivered proposals will be received at the address identified above. Telegraphed and/or faxed proposals will not be accepted. Failure to adhere to the administrative instructions pertaining to Submission of Proposals (contained in Section B) and Delivery of Proposals (contained in Section C) will be considered as non-responsive.

D. Period of Performance

The initial period of performance will be up to 36 months from the date of execution of the grant documents. It is anticipated that individual awards will not exceed $3,000,000. ETA may elect to exercise its option for a no-cost extension for these grants for an additional period not to exceed 12 months, based on the success of the program and other relevant factors.

Part IV—Review Process & Rating Criteria

A. The Review Process

Applications for the H–1B technical skills training grants will be accepted continuously after the publication of this announcement until further notice. Technical review panels will meet periodically on an as-needed basis, given the number of applications and the availability of funds.

The technical review panel will make careful evaluation of applications against the criteria below. Final funding decisions will be based on the rating of applications as a result of the review process, and other factors such as statutory requirements (urban/rural balance, geographic balance, the requirement that at least 80 percent of funds be awarded for high technology, information technology, and biotechnology occupational training and that not more than 20 percent of funds be available for training in any single specialty occupation), availability of funds, and what is most advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant(s) with or without discussions with the offeror(s). In situations without discussions, an award will be based on the offeror(s) signature on the SF 424, which constitutes a binding offer.

The rated applications will be placed in the following categories:

(1) If the application receives a rating of 80 and above, it will be placed on an eligible to be funded list. The applicant will remain on this list for 9 months before resubmittal is required. Applicants in this category may require further discussions. Inclusion on this list is not a guarantee of funding.

(2) If the application receives a rating of 79 or below, the applicant will be eligible to receive technical assistance through group workshops in areas such as:

- Grant Writing
- Partnership Building/Linkages
- Administrative Requirements
- Service Delivery Strategies

(3) Those applications receiving a rating of 70–79 will also be eligible to receive additional individualized technical assistance.

All applicants will receive written notice of their rating which will include a summary of their strengths and weaknesses in the application at the conclusion of the review process.

B. Rating Criteria

Applications will be rated on how completely they respond to the criteria set forth below, and how responsive they are to the policy goals and emphases set forth in Part II of this document.

1. Statement of Need (10 points)

ACWIA 2000 is a response to high technology skill shortages around the country in specific occupations. The most recent H–1B occupation data are provided as an attachment to this solicitation. Applicants should clearly describe the local area or region for which services are to be provided and the high technology skill shortages prevalent in the geographic area and region.

Applicants are encouraged to utilize all available data resources to ensure that their descriptions of need are relevant to local and regional labor market shortages. Information can include, but is not limited to: statistical information from Federal government sources, state labor market information, H–1B applications, newspaper want ads, expressed employer hiring demands, and information from the One-Stop system, in responding to this criterion. Descriptive items about the local area or region, such as rural or urban, should be included. (What high technology needs and opportunities exist in the region? What are the particular characteristics of the local political, economic and administrative jurisdictions—Local Boards, labor market areas, or special district authorities—that led them to associate for the purpose of this application?)

A general description of the local area or region should include socioeconomic data, with a particular focus on the general education and skill levels prevalent in the area. Applicants are encouraged to include information such as transportation patterns, and statistical and demographic information (*e.g.*, age and income data). Other germane questions that will provide greater depth of description include: What is the general business environment? What industries and occupations are growing and declining? What types of skills are being sought in the geographic area or region by the major employers in general, and the partnership member companies, in particular? Data from local and regional employers relating to the use of H–1B visas to import foreign workers to meet their high technology skill needs will be of special help in demonstrating high technology training needs.

2. Level of Training and Service Delivery Strategy (25 points)

Applicants must lay out the comprehensive strategy proposed for providing the technical skills training that is mandated as the core activity of these grant awards. Applicants shall describe a service delivery strategy that provides training at or leading to an H–1B level skill. Part 1C of this SGA spells out very clearly DOL's strong interest in achieving a higher level of training than has occurred in some H–1B grants, to a level that clearly prepares individuals to meet the H–1B visa definition of "theoretical and practical application of a body of specialized knowledge." A discussion of the impact of skills training in response to the identified skill shortages of the region should be included. Since the H–1B skill level is at the Bachelor degree level or above, training may include formal education. Specific issues that must be addressed as part of this section include:

- The range and identity of potential training providers, including identifying whether they are on the eligible training provider list as described in WIA, section 122, the types of skills training that will be offered, how the training will meet the local area or regional skills needs, and how the training will be provided.
- The targeted occupations and skill level and how the skill upgrading will be measured. If degrees and/or certificates are contemplated, the type and recognition authority should be described as well as an estimate of the number and type to be attained.
- What steps will be taken to reach out to the community(ies) to provide information about the project and planned training activities.
- How will the types of training planned for project participants be determined.

Training at a sufficiently high skill level will be an important factor in this criterion. If career ladder training is proposed, the applicant must provide adequate detail demonstrating that all rungs of the ladder lead to H–1B training at the top rung and that it is reasonably likely that the majority of individuals on the ladder will complete the highest rungs of H–1B level training under the H–1B Technical Skills Training Grant.

Innovation in the context of service delivery is also considered essential and is a basic principle of H–1B Technical Skills Training Grants and can represent a wide variety of approaches and techniques. Innovation may be implemented in the manner in which training services are provided, *e.g.*, distance learning to provide instruction, interactive video self-instructional materials, and flexible class scheduling (sections of the same class scheduled at different times of the day to accommodate workers whose schedules fluctuate). Creativity in developing the service strategy is also encouraged. The service delivery strategy must meet the needs of business partners, providing skills identified in the statement of need. Evidence should be provided that business partners have been involved in developing the training service delivery plan. The service delivery strategy should also effectively reach out to and meet needs of the target population, *i.e.*, desired candidates are recruited and training conducted in such a manner that participants can attend without undo hardship (training during workday, on weekends and/or through distance learning methods). Applicants should fully describe any innovative and creative approaches contemplated.

3. Target Population (10 points)

The eligibility criteria for skills training enumerated in ACWIA 2000 are extremely broad and include employed and unemployed workers. This section should clearly identify the targeted workers, including their characteristics and explain why they are targeted. A discussion of what assessment procedures are to be used to ensure that the targeted individuals are qualified for the training and have a high likelihood of successful completion of the training is critical. The applicant should address some specific issues relating to the target worker population such as:

- How many employed workers and unemployed workers will be targeted for services and why?
- What are the technical skills training needs of those workers to fulfill skill shortage occupations at the H–1B level? Note that employers' needs should be addressed in Statement of Need.
- It is extremely important that the selection process for workers, both employed and unemployed, be carefully described to make it clear how those individuals will be determined to possess the capacity after the completion of training to accept jobs that previously were filled via the H–1B visa process, or could be filled at the H–1B level. In the case of both incumbent workers and unemployed workers, there needs to be an extensive discussion of the criteria to be used to assess and enroll individuals. Applicants shall describe how members of the target population will be selected and the technical skills training needs of the target population in such a way as to verify that H–1B level training is actually required, especially in the case of incumbent workers. Applicants shall describe the assessment tools used to ensure that proposed trainees are able to complete H–1B level training, in terms of ability and educational preparation. Note that trainees must possess a fairly advanced skills set prior to the start of H–1B training, *i.e.*, they should be capable of pursuing training at the college level.
- What is the business partners' involvement in the selection of candidates?
- What is the targeted education and skill level of trainees as they enter the program?

4. Sustainability (15 points)

Sustainability refers to the continuation of the partnership based on the strength of that partnership and the ability of the training program to deliver value to employers. Applicants must demonstrate that they will meet the statutory requirement to provide a 50 percent match to the resources for proposed projects. Matches may either be in-cash or in-kind and federal resources cannot be counted towards the matching requirement. Applicants must describe to what extent the partners provide matching funds or services and how this contribution assists in building the foundation for a long-term partnership, *i.e.*, sustainability. Matching resources and partnerships are considered an integral element of the project, as they support and strengthen the quality of the technical skills training provided and contribute materially toward sustainability. This section MUST contain a detailed discussion of the size, nature, and quality of the non-federal match and how the match will be used to further the goals of the project. Proposals not presenting a detailed discussion of the non-federal match or not meeting the statutory 50 percent match requirement will be considered non-responsive and will not be considered.

Technical Skills Training Grant resources are limited to raising the skill levels of individuals to fill high skills H–1B occupations. Applicants will be given preference for identifying other resources both federal and non-Federal, because they can contribute materially toward quality outcomes and sustainability. (Note that although federal resources may not be counted as match, they may be counted to demonstrate the project sustainability.) Applicants are also encouraged to establish relationships with State Workforce Investment Boards and

relevant state agencies, as they may provide valuable assistance and resources that can contribute to the success of a proposed project. Applicants should enumerate these resources in this section to support their discussion of sustainability and also describe any specific existing contractual commitments. The sustainability issue can be addressed by providing concrete evidence that training activities of the partnership will be continued after the expiration date of the grant by using other public or private resources.

5. Linkages With Key Partners (15 points)

The application must show the partnership required by Section 111(c)(2)(A)(i) of ACWIA 2000 (a Local Board or consortium of Local Boards; one community-based organization, higher education institution, or labor union; and one business or business-related nonprofit organization such as a trade association). ETA encourages, and will be looking for, applications that go beyond the minimum requirements of the statute and show broader, expected long-term partnerships. The applicant should identify the partners and how they will interact together, *i.e.*, what role each will play and what resources each partner will offer. In particular, this section should identify partnerships with the private and public sectors, including ties with small- and medium-sized businesses and small business federations. In addition, the proposal should include a description of any coordination and consultation activities with the applicable state workforce agency and/or Governor's office or state Workforce Investment Board. Evidence of such coordination and/or consultation such as written documentation should be included in the application. The Service Delivery Strategy section of the Statement of Work describes the role of each of the actors in delivering the proposed services, while this section is intended to look at the linkages from a more structural perspective with particular emphasis on the employers in the consortium that are experiencing skills shortages and have hiring or upgrading needs.

ETA also is interested in the extent of the involvement of small businesses in the partnership. Consideration will be given to any partnership that involves and directly benefits more than one small business (each consisting of 100 employees or less).

6. Outcomes, Management and Cost Effectiveness (25 points)

This criterion includes three areas: (a) Program and training outcomes, (b) project and grant management, and (c) cost effectiveness. Applicants must describe the predicted outcomes resulting from this training. It is estimated that the projected results will be somewhat varied given the mix of people who will be served. Success can be determined through placements in H–1B skills shortage occupations, increased wages, or skills attainment in H–1B occupations, or in training for or placement in positions on a defined career ladder directly leading toward such skills attainment.

For unemployed workers, outcomes will be viewed in terms of gaining new employment and enhanced skills attainment in, or on the ladder to H–1B skill shortage occupations.

Outcomes for employed workers may be at a somewhat higher level than for those unemployed workers who do not possess similar skills at the outset. Because of the differing skill levels and backgrounds of participants in an H–1B training program, the outcomes section should discuss gains attained for individual participants in context of their backgrounds and skill levels when they entered. Therefore, the focus of the discussion in this section should emphasize very specifically the benefits that occur because of the training. For example, an applicant might state that a certain skill level is projected for a given group and indicate what change in skills that represents and how that might translate into an increase in earnings.

As noted in Level of Training and Service Delivery Strategy above, the application must identify what occupations will be trained for under this grant. Please identify each occupation in terms of skills in high technology, information technology and biotechnology, including skills needed for software and communication services, telecommunications, systems installation and integration, computers and communications hardware, advanced manufacturing, health care technology, bio-technology and biomedical research and manufacturing and innovation services.

Applicants should indicate how they plan to achieve one or more of the following outcome goals upon successful completion of a training program:

(1) The hiring of unemployed trainees (if applicable);

(2) Increases in the wages or salaries of already employed trainees (if applicable); and

(3) Awards of educational degrees, credit toward degrees, skill certifications to trainees or links the trainees to industry-accepted occupational skill standards, certificates or licensing requirements.

Management includes qualifications and experience of proposed staff and related areas. Applicants should include a description of the organizational structure and processes and automated system to be used for managing the project, collecting project data, monitoring and tracking progress, responding to issues and problems, and producing relevant reports for both the grantee and DOL.

Applicants will provide a detailed discussion of the expected cost effectiveness of their proposal in terms of the expected cost per participant compared to the expected benefits for these participants. Applicants should address the employment outcomes, placement, increased salary, promotion or retention and the levels of skills to be achieved (such as attaining state licensing in an occupation) relative to the amount of training that the individual needed to receive to achieve those outcomes. Benefits can be described both qualitatively in terms of skills attained, including degrees and certificates attained, and quantitatively in terms of wage gains. Costs must be justified in relation to cost per participant and, when possible, contrast with similar costs for training conducted elsewhere. Cost effectiveness may be demonstrated in part by cost per participant and cost per activity in relation to the level and duration of services provided and outcomes to be attained; the applicant's expectations regarding these measures should be included.

Signed in Washington, DC, this 31st day of December 2002.

Laura Cesario,

Grant Officer.

Appendix A: Legislative Mandate
Appendix B—H–1B Petitions Approved in Fiscal Year 2001 for Top 10 Major Occupational Groups and Top 23 Detailed Occupations, Source: INS, July 2002
Appendix C: (SF) 424—Application Form
Appendix D: Budget Information Form
Appendix E: Project Profile Information (completed by applicant)

Appendix A—Legislative Mandate

(1) ACWIA and ACWIA 2000

The relevant portions of ACWIA 2000 dealing with the establishment of a fund for implementing a program of H–1B skills training grants are as follows:

"Section 286(s)—H–1B Nonimmigrant Petitioner Account (As Amended)

(1) In General—There is established in the general fund of the Treasury a separate account, which shall be known as the 'H–1B Nonimmigrant Petitioner Account.' Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under 8 U.S.C. 1184 (c)(9)(section 214(c)(9)).

(2) Use of Fees for Job Training—55 percent of amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for demonstration programs and projects described in section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998."

"SEC. 111. Demonstration Programs and Projects To Provide Technical Skills Training for Workers.

Section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 (as contained in title IV of division C of Public Law 105–277; 112 Stat. 2681–653) is amended to read as follows:

(c) Demonstration Programs and Projects To Provide Technical Skills Training for Workers.—

(1) In General.—

(A) Funding.—The Secretary of Labor shall use funds available under section 286(s)(2) of the Immigration and Nationality Act (8 U.S.C. 1356(s)(2)) to establish demonstration programs or projects to provide technical skills training for workers, including both employed and unemployed workers.

(B) Training Provided.—Training funded by a program or project described in subparagraph (A) shall be for persons who are currently employed and who wish to obtain and upgrade skills as well as for persons who are unemployed. Such training is not limited to skills levels commensurate with a four-year undergraduate degree, but should include the preparation of workers for a broad range of positions along a career ladder. Consideration shall be given to the use of grant funds to demonstrate a significant ability to expand a training program or project through such means as training more workers or offering more courses, and training programs or projects resulting from collaborations, especially with more than one small business or with a labor-management training program or project. The need for the training shall be justified through reliable regional, state, or local data.

(2) Grants.—

(A) Eligibility.— To carry out the programs and projects described in paragraph (1)(A), the Secretary of Labor shall, in consultation with the Secretary of Commerce, subject to the availability of funds in the H–1B Nonimmigrant Petitioner Account, award—

(i) 75 percent of the grants to a local workforce investment board established under section 116(b) or section 117 of the Workforce Investment Act of 1998 (29 U.S.C. 2832) or consortia of such boards in a region. Each workforce investment board or consortia of boards receiving grant funds shall represent a local or regional public-private partnership consisting of at least—

(I) one workforce investment board;

(II) one community-based organization or higher education institution or labor union; and

(III) one business or business-related non-profit organization such as a trade association: Provided, That the activities of such local or regional public-private partnership described in this subsection shall be conducted in coordination with the activities of the relevant local workforce investment board or boards established under the Workforce Investment Act of 1998 (29 U.S.C. 2832); and

(ii) 25 percent of the grants under the Secretary of Labor's authority to award grants for demonstration projects or programs under section 171 of the Workforce Investment Act (29 U.S.C. 2916) to partnerships that shall consist of at least 2 businesses or a business-related nonprofit organization that represents more than one business, and that may include any educational, labor, community organization, or workforce investment board, except that such grant funds may be used only to carry out a strategy that would otherwise not be eligible for funds provided under clause (i), due to barriers in meeting those partnership eligibility criteria, on a national, multi state, regional, or rural area (such as rural telework programs) basis.

(B) Designation of Responsible Fiscal Agents.— Each partnership formed under subparagraph (A) shall designate a responsible fiscal agent to receive and disburse grant funds under this subsection.

(C) Partnership Considerations.— Consideration in the awarding of grants shall be given to any partnership that involves and directly benefits more than one small business (each consisting of 100 employees or less).

(D) Allocation of Grants.—In making grants under this paragraph, the Secretary shall make every effort to fairly distribute grants across rural and urban areas, and across the different geographic regions of the United States. The total amount of grants awarded to carry out programs and projects described in paragraph (1)(A) shall be allocated as follows:

(i) At least 80 percent of the grants shall be awarded to programs and projects that train employed and unemployed workers in skills in high technology, information technology, and biotechnology, including skills needed for software and communications services, telecommunications, systems installation and integration, computers and communications hardware, advanced manufacturing, health care technology, biotechnology and biomedical research and manufacturing, and innovation services.

(ii) No more than 20 percent of the grants shall be available to programs and projects that train employed and unemployed workers for skills related to any single specialty occupation, as defined in section 214(i) of the Immigration and Nationality Act.

(3) Start-Up Funds.—

(A) In General.—Except as provided in subparagraph (B), not more than 5 percent of any single grant, or not to exceed $75,000, whichever is less, may be used toward the start-up costs of partnerships or new training programs and projects.

(B) Exception.—In the case of partnerships consisting primarily of small businesses, not more than 10 percent of any single grant, or $150,000, whichever is less, may be used toward the start-up costs of partnerships or new training programs and projects.

(C) Duration of Start-Up Period.—For purposes of this subsection, a start-up period consists of a period of not more than 2 months after the grant period begins, at which time training shall immediately begin and no further Federal funds may be used for start-up purposes.

(4) Training Outcomes.—

(A) Consideration for Certain Programs and Projects.—Consideration in the awarding of grants shall be given to applicants that provide a specific, measurable commitment upon successful completion of a training course, to—

(i) hire or effectuate the hiring of unemployed trainees (where applicable);

(ii) increase the wages or salary of incumbent workers (where applicable); and

(iii) provide skill certifications to trainees or link the training to industry-accepted occupational skill standards, certificates, or licensing requirements.

(B) Requirements for Grant Applications.—Applications for grants shall—(i) articulate the level of skills that workers will be trained for and the manner by which attainment of those skills will be measured; (ii) include an agreement that the program or project shall be subject to evaluation by the Secretary of Labor to measure its effectiveness; and (iii) in the case of an application for a grant under subsection (c)(2)(A)(ii), explain what barriers prevent the strategy from being implemented through a grant made under subsection (c)(2)(A)(i).

(5) Matching Funds.—Each application for a grant to carry out a program or project described in paragraph (1)(A) shall state the manner by which the partnership will provide non-Federal matching resources (cash, or in-kind contributions, or both) equal to at least 50 percent of the total grant amount awarded under paragraph (2)(A)(i), and at least 100 percent of the total grant amount awarded under paragraph (2)(A)(ii). At least one-half of the non-Federal matching funds shall be from the business or businesses or business-related nonprofit organizations involved. Consideration in the award of grants shall be given to applicants that provide a specific commitment or commitments of resources from other public or private sources, or both, so as to demonstrate the long-term sustainability of the training program or project after the grant expires.

(6) Administrative Costs.—An entity that receives a grant to carry out a program or project described in paragraph (1)(A) may not use more than 10 percent of the amount of the grant to pay for administrative costs associated with the program or project.

(2)INA

The Immigration and Nationality Act (INA)(section 101(a)(15) (H)(i)(b))(8 U.S.C 1101 (a)(15)(H)(i)(B)) defines the H–1B alien as one "who is coming temporarily to the United States to perform services in a specialty occupation * * * or as a fashion model * * *"

The INA (Section 214(i)) sets criteria to define the term "specialty occupation:"

(1) For purposes of section 1101(a)(15)(H)(i)(b) and paragraph 2, a "specialty occupation" means an occupation that requires—(A) theoretical and practical application of a body of highly specialized knowledge and,

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(2) For purposes of section 1101(a)(15)(H)(i)(b)), the requirements of this paragraph with respect to a specialty occupation are—(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or (C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

APPENDIX B.—H–1B PETITIONS APPROVED IN FISCAL YEAR 2001 FOR TOP 10 MAJOR OCCUPATIONAL GROUPS AND TOP 23 DETAILED OCCUPATIONS, SOURCE: INS, JULY 2002

Occupations	Group rank	Detailed rank	LCA* code	Total	Percent
Computer-related	1	.....	03	191,397	58.0
Systems analysis and programming	.....	1	030	171,784	52.1
Occupations not elsewhere classified (n.e.c.)	.....	3	039	13,661	4.1
Data communications and networks	.....	17	031	2,618	0.8
Computer systems technical support	.....	18	033	2,590	0.8
Architecture, engineering and surveying	2	.....	00/01	40,388	-2.2
Electrical/Electronics engineering	2	.....	003	15,356	4.7
Occupations n.e.c.	.....	6	019	8,404	3.4
Mechanical engineering	.....	10	007	4,815	1.5
Architectural	.....	15	001	2,937	0.9
Civil engineering	.....	19	005	2,534	0.8
Industrial engineering	.....	23	012	2,184	0.7
Administrative specializations	3	.....	16	23,794	7.2
Accountants, auditors and related occupations	.....	5	160	11,076	3.4
Occupations n.e.c.	.....	13	169	3,279	1.0
Budget and management systems	.....	14	161	3,245	1.0
Sales and distribution management	.....	21	163	2,415	0.7
Education	4	.....	09	17,431	5.3
College and university education	.....	4	090	12,183	3.7
Preschool, primary school and kindergarten education	.....	20	092	2,534	0.7
Managers and officials	5	.....	18	12,423	3.8
Miscellaneous n.e.c.	.....	7	189	6,864	2.1
Medicine and health	6	.....	07	11,334	3.4
Physicians and surgeons	.....	12	070	4,541	1.4
Occupations n.e.c.	.....	16	079	2,827	0.9
Life Sciences	7	.....	04	6,492	2.0
Biological Sciences	.....	11	041	4,813	1.5
Social Sciences	8	.....	05	6,145	1.9
Economics	.....	8	050	5,733	1.7
Mathematics and physical sciences	9	.....	02	5,772	1.7
Chemistry	.....	22	022	2,360	0.7
Miscellaneous professional, technical & managerial	10	.....	19	5,662	1.7
Occupations n.e.c.	.....	9	199	5,106	1.5

*Labor Condition Application code

Appendix E—Project Profile Information

Applicant Name: _____

Project Title: _____

Occupations and Number of individuals to be Trained (list):

Level of Training:

a. Pre-career ladder_____

b. Lower career ladder_____

c. Mid-career ladder_____

d. H–1B visa level (bachelor's degree or equivalent, professionally recognized certificate training)_____

Note: Pre-Career Ladder training refers to training that is meant to prepare someone for development along a career path. This may include basic literacy classes, GED classes, basic computer skills training, ESL education, or other low level training that in and of itself will not prepare the student to hold a job on an H–1B level career ladder. Lower career ladder and mid-career level training is more advanced than pre-career ladder but still constitutes foundation preparation rather than training specifically addressing a specialty occupation at the H–1B visa level. The H–1B visa level requires "a theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specialty."

Targeted Population:

a. Incumbent workers_____

b. Unemployed workers_____

Note: incumbent workers are those currently employed by a specific company or business. Unemployed workers are those workers not currently employed, but still part of the labor force.

Geographic area served:

a. Rural_____

b. Urban_____

Note: A general delineation of urban/rural is whether the geographic area served in within a Metropolitan Statistical Area (MSA). If within a MSA, the area is considered urban, otherwise, rural.

Degrees/certificates expected [list by type. name and number]:

[FR Doc. 03–193 Filed 1–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Nos. NRTL1–88, NRTL1–89, NRTL2–90, NRTL3–90, NRTL2–92, NRTL3–92, NRTL1–93, NRTL2–93, NRTL3–93, NRTL4–93, NRTL1–97, NRTL1–98, NRTL1–99, NRTL1–2001, NRTL2–2001]

Modify Scope of Recognition of NRTLs

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice modifies the scope of recognition of certain Nationally Recognized Testing Laboratories (NRTLs).

EFFECTIVE DATE: January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Administration (OSHA) hereby gives notice of changes to the scope of recognition of the Nationally Recognized Testing Laboratories (NRTLs) listed below. Specifically, some of the test standards that OSHA currently includes in the scope of recognition of these NRTLs are no longer "appropriate test standards" primarily because they have been withdrawn or replaced. As a result, we will delete them from the scope of recognition of each affected NRTL, as listed below in this notice. This modification in scope will be noted by making appropriate changes to the listing of test standards in our informational Web page for each NRTL, which detail OSHA's official scope of recognition for the NRTL. These Web pages can be accessed at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*. In this notice, we list the test standards to be removed for each NRTL below under the heading "Withdrawn or Replaced Standards." We provide the following information for those who may be unfamiliar with OSHA requirements concerning NRTLs.

OSHA recognition of any NRTL signifies that the organization has met the legal requirements in section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

In testing and certifying (*i.e.*, approving) such products, NRTLs must demonstrate that the products conform to "appropriate test standards." This term is defined under 29 CFR 1910.7(c) and essentially means consensus-based product safety test standards developed and maintained current by U.S.-based standards developing organizations (SDOs). Such test standards are not OSHA standards, which are general requirements that employers must meet, but, individually, specify technical safety requirements that a particular type of product must meet.

OSHA recognizes each NRTL for a particular scope of recognition, which includes a list of those product safety test standards that the NRTL may use in approving products. As a normal part of its operations, an SDO occasionally withdraws existing test standards or adopts replacement test standards. In such cases, OSHA can no longer consider the withdrawn or replaced standards as "appropriate," and as a result, the Agency can no longer recognize NRTLs for the standard.

To substitute other test standards for those we are removing, under our policy, the NRTL may request or OSHA can provide recognition for comparable test standards, *i.e.*, other appropriate test standards covering comparable product testing. We list these test standards below for each NRTL under the headings "Comparable Replacement Standards." In one case (UL 1598), OSHA already includes the comparable test standard in the NRTL's scope. However, in many cases, there is no replacement standard or the NRTL did not request one prior to publication of this notice. However, if we receive such a request after publication of this notice and determine the test standard is "comparable," as described above, OSHA will add it to the NRTL's scope of recognition and therefore to OSHA's informational web page for the NRTL.

Applied Research Laboratories, Inc. (ARL)

[Docket No. NRTL1–97]

Withdrawn or Replaced Standards

UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures

Comparable Replacement Standards (If Applicable)

UL 1598 Luminaries (already included in NRTL's scope)

Canadian Standards Association (CSA)

[Docket No. NRTL2–92]

Withdrawn or Replaced Standards

ANSI C37.71 Three Phase, Manually Operated Subsurface Load Interrupting Switches for Alternating-Current Systems
ANSI Z21.10.2 Water Heaters—Sidearm Type Water Heaters
ANSI Z21.11.1 Gas-Fired Room Heaters—Vented Room Heaters
ANSI Z21.48 Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49 Gas-Type Gravity and Fan Type Vented Wall Furnaces
ANSI Z83.3 Gas Utilization Equipment in Large Boilers
ANSI Z83.17 Direct Gas Fired Door Heaters
UL 198B Class H Fuses
UL 198C High-Interrupting-Capacity Fuses, Current Limiting Type
UL 198D Class K Fuses
UL 198E Class R Fuses
UL 198F Plug Fuses
UL 198G Fuse for Supplementary Overcurrent Protection
UL 198H Class T Fuses
UL 198L D–C Fuses for Industrial Use
ANSI/NEMA 250 Enclosures for Electrical Equipment
UL 910 Test for Flame-Propagation and Smoke-Density Values for Electrical and Optical-Fiber Cables Used in Spaces Transporting Environmental Air
UL 1087 Molded-Case Switches
UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1410 Television Receivers and High-Voltage Video Products
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3101–2–20 Electrical Equipment for Laboratory Use; Part 2: Laboratory Centrifuges
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**
UL 3121–1 Process Control Equipment
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements

UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type**
UL 8730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 8730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves
UL 8730–2–9 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Temperature Sensing Controls**
UL 8730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators
UL 60730–2–10 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically-Operated Motor Starting Relays
UL 60730–2–11 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically-Operated Doors
UL 60730–2–13 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–16 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level-Operating Controls of the Float Type for Household and Similar Applications

Comparable Replacement Standards (If Applicable)

UL 1598 Luminaries (already included in NRTL's scope)
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 60730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 60730–2–10A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Motor Starting Relays
UL 60730–2–11A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Door Locks
UL 60730–2–13A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 61010A–2–020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges
UL 61010C–1 Process Control Equipment

Curtis-Straus LLC (CSL)

[Docket No. NRTL–1–99]

Withdrawn or Replaced Standards

UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements

Comparable Replacement Standards (If Applicable)

UL 61010A–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements

Entela, Inc. (ENT)

[Docket No. NRTL2–93]

Withdrawn or Replaced Standards

UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1410 Television Receivers and High-Voltage Video Products
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type**
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Comparable Replacement Standards (If Applicable)

UL 1598 Luminaries (already included in NRTL's scope)
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

FM Global Technologies LLC (FMGT) [formerly Factory Mutual Research Corporation]

[Docket No. NRTL3–93]

Withdrawn or Replaced Standards

ANSI S12.12 Nonincendive Electrical Equipment for Use in Class I and II, Division 2, and Class III, Divisions 1 and 2, Hazardous (Classified) Locations
ANSI/NEMA 250 Enclosures for Electrical Equipment

Comparable Replacement Standards (If Applicable)

ANSI 12.12.01 Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations

Intertek Testing Services NA, Inc. (ITSNA)

[Docket No. NRTL1–89]

Withdrawn or Replaced Standards

ANSI S12.12 Nonincendive Electrical Equipment for Use in Class I and II, Division 2, and Class III, Divisions 1 and 2, Hazardous (Classified) Locations
ANSI Z21.11.1 Gas-Fired Room Heaters—Vented Room Heaters
ANSI Z21.48 Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49 Gas-Type Gravity and Fan Type Vented Wall Furnaces
UL 136 Pressure Cookers (not appropriate—no NRTL approval requirement)
UL 198B Class H Fuses
UL 198D Class K Fuses
UL 198E Class R Fuses
UL 198F Plug Fuses
UL 198G Fuse for Supplementary Overcurrent Protection
UL 198H Class T Fuses
UL 198L D-C Fuses for Industrial Use
ANSI/NEMA 250 Enclosures for Electrical Equipment
UL 900 Air-Filter Units (not appropriate—no NRTL approval requirement)
UL 910 Test for Flame-Propagation and Smoke-Density Values for Electrical and Optical-Fiber Cables Used in Spaces Transporting Environmental Air
UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1410 Television Receivers and High-Voltage Video Products
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type**
UL 8730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Comparable Replacement Standards (If Applicable)

ANSI 12.12.01 Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations
UL 1598 Luminaries (already included in NRTL's scope)
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

MET Laboratories, Inc. (MET)

[Docket No. NRTL1–88]

Withdrawn or Replaced Standards

UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1410 Television Receivers and High-Voltage Video Products
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**

Comparable Replacement Standards (If Applicable)

UL 1598 Luminaries (already included in NRTL's scope)
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

National Technical Systems, Inc. (NTS)

[Docket No. NRTL1–98]

Withdrawn or Replaced Standards

UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**

Comparable Replacement Standards (If Applicable)

UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

SGS U.S. Testing Company, Inc. (SGSUS)

[Docket No. NRTL2–90]

Withdrawn or Replaced Standards

UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1571 Incandescent Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**

Comparable Replacement Standards (If Applicable)

UL 1492 Audio-Video Products and Accessories
UL 1598 Luminaries (already included in NRTL's scope)
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

Southwest Research Institute (SWRI)

[Docket No. NRTL–3–90]

Withdrawn or Replaced Standards

UL 910 Test for Flame-Propagation and Smoke-Density Values for Electrical and Optical-Fiber Cables Used in Spaces Transporting Environmental Air

Comparable Replacement Standards (If Applicable)

None

TUV America, Inc. (TUVAM)

[Docket No. NRTL–2–2001]

Withdrawn or Replaced Standards

UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**

Comparable Replacement Standards (If Applicable)

UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

TUV Product Services GmbH (TUVPSG)

[Docket No. NRTL–1–2001]

Withdrawn or Replaced Standards

UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**

Comparable Replacement Standards (If Applicable)

UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

TUV Rheinland of North America, Inc. (TUV)

[Docket No. NRTL3–92]

Withdrawn or Replaced Standards

UL 136 Pressure Cookers (not appropriate—no NRTL approval requirement)
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**
UL 3121–1 Process Control Equipment
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type**
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Comparable Replacement Standards (If Applicable)

UL 1262 Laboratory Equipment (requested by NRTL)
UL 1598 Luminaries (already included in NRTL's scope)
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements
UL 61010C–1 Process Control Equipment

Underwriters Laboratories Inc. (UL)

[Docket No. NRTL4–93]

Withdrawn or Replaced Standards

ANSI C37.71 Three Phase, Manually Operated Subsurface Load Interrupting Switches for Alternating-Current Systems
ANSI C57.12.13 Liquid-Filled Transformers Used in Unit Installations including Unit Substations-Conformance Requirements
ANSI C57.12.21 Pad Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with High Voltage Bushings; 167 kVA and Smaller
ANSI C57.12.27 Liquid Filled Distribution Transformers Used in Pad Mounted Installations, Including Unit Substations-Conformance Requirements
ANSI C62.1 Gapped Silicon-Carbide Surge Arresters for AC Power Circuits
ANSI Z21.10.2 Water Heaters-Sidearm Type Water Heaters
ANSI Z21.11.1 Gas-Fired Room Heaters-Vented Room Heaters
ANSI Z21.14 Approval Requirements for Industrial Gas Boilers
ANSI Z21.16 Gas Unit Heaters
ANSI Z21.29 Listing Requirements for Furnace Temperature Limit Controls and Fan Controls
ANSI Z21.37 Approval Requirements for Dual Oven Type Combination Gas Ranges
ANSI Z21.48 Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49 Gas-Type Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.53 Gas-Fired Heavy Duty Forced Air Heaters
ANSI Z21.55 Gas-Fired Sauna Heaters
ANSI Z21.70 Earthquake Actuated Automatic Gas Shutoff Systems
ANSI Z83.3 Gas Utilization Equipment in Large Boilers
ANSI Z83.10 Separated Combustion System Central Furnaces
ANSI Z83.17 Direct Gas Fired Door Heaters
UL 198B Class H Fuses
UL 198C High-Interrupting-Capacity Fuses, Current Limiting Type
UL 198D Class K Fuses
UL 198E Class R Fuses
UL 198F Plug Fuses
UL 198G Fuse for Supplementary Overcurrent Protection
UL 198H Class T Fuses
UL 198L D–C Fuses for Industrial Use
ANSI/NEMA 250 Enclosures for Electrical Equipment
UL 900 Air-Filter Units (not appropriate—no NRTL approval requirement)
UL 910 Test for Flame-Propagation and Smoke-Density Values for Electrical and Optical-Fiber Cables Used in Spaces Transporting Environmental Air
UL 1087 Molded-Case Switches
UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1410 Television Receivers and High-Voltage Video Products
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3101–2–20 Electrical Equipment for Laboratory Use; Part 2: Laboratory Centrifuges Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**
UL 3121–1 Process Control Equipment
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar

Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type**
UL 8730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 8730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves
UL 8730–2–9 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Temperature Sensing Controls**
UL 8730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators
UL 60730–2–10 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically-Operated Motor Starting Relays
UL 60730–2–11 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically-Operated Doors
UL 60730–2–13 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–16 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level-Operating Controls of the Float Type for Household and Similar Applications

Comparable Replacement Standards (If Applicable)

UL 1598 Luminaries (already included in NRTL's scope)
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 60730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 60730–2–10A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Motor Starting Relays
UL 60730–2–11A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Door Locks
UL 60730–2–13A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements
UL 61010A–2–020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges
UL 61010C–1 Process Control Equipment

Wyle Laboratories, Inc. (WL)

[Docket No. NRTL1–93]

Withdrawn or Replaced Standards

UL 198B Class H Fuses
UL 198C High-Interrupting-Capacity Fuses, Current Limiting Type
UL 198D Class K Fuses
UL 198E Class R Fuses
UL 198F Plug Fuses
UL 198G Fuse for Supplementary Overcurrent Protection
UL 198H Class T Fuses
UL 198L D–C Fuses for Industrial Use
UL 1087 Molded-Case Switches
UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures

Comparable Replacement Standards (If Applicable)

UL 1598 Luminaries (already included in NRTL's scope)
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements*

***Note on addition of UL 3111–1 to Wyle's scope:** This test standard is comparable to UL 1244, which is currently included in Wyle's scope of recognition. Wyle requested the addition of UL 3111–1 to its scope due to the pending withdrawal of UL 1244. However, as noted in the note below, UL 3111–1 is also due to be replaced. Therefore, the following note also applies to the addition of this standard.

****Note on test standard to be withdrawn:** This standard is due to be withdrawn by the standards development organization. However, as of the date of this notice, the OSHA NRTL Program staff has not determined whether or not there will be a replacement test standard. As a result, we will not remove this standard from the scope of the NRTL upon publication of this notice. Once we make the above determination, OSHA will replace or remove this standard, as appropriate. This note applies to the following test standards : UL 1244, UL 3111–1, UL 8730–2–4, and UL 8730–2–9.

In accordance with OSHA policy pertaining to recognition of replacement standards, the Agency only publishes one **Federal Register** notices to note the changes to the NRTL's scope of recognition. Changes to each NRTL's recognition are limited to those described in this notice. All other terms and conditions of each NRTL's recognition remain the same.

Signed at Washington, DC this 17th day of December, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–123 Filed 1–3–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–89]

Intertek Testing Services, NA, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Intertek Testing Services, NA, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

Regular mail and express delivery service: Your comments must be postmarked by January 21, 2003.

Hand delivery and messenger service: Your comments must be received in the OSHA Docket Office by January 21, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Facsimile and electronic transmission: Your comments must be sent by January 21, 2003.

ADDRESSES: Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL1–89, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket NRTL1–89, in your comments.

Internet access to comments and submissions: OSHA will place comments and submissions in response to this notice on the OSHA Webpage *http://www.osha.gov*. Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.*, social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Webpage. Please contact the OSHA Docket Office at (202)693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the address shown immediately above for the program, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Intertek Testing Services, NA, Inc. (ITSNA), has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). ITSNA's expansion request covers the use of an additional testing site and additional test standards. OSHA's current scope of recognition for ITSNA may be found in the following informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/its.html*.

OSHA recognition of any NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*.

The most recent notices published by OSHA for ITSNA's recognition covered an expansion of recognition to include an additional site, which became effective on January 28, 2002 (67 FR 3912).

The current address of the ITSNA facilities already recognized by OSHA are:

ITSNA Antioch, 2200 Wymore Way, Antioch, California 94509
ITSNA Atlanta, 1950 Evergreen Blvd., Suite 100, Duluth, Georgia 30096
ITSNA Boxborough, 70 Codman Hill Road, Boxborough, Massachusetts 01719
ITSNA Cortland, 3933 U.S. Route 11, Cortland, New York 13045
ITSNA Los Angeles, 27611 LaPaz Road, Suite C, Laguna Niguel, California 92677
ITSNA Madison, 8431 Murphy Drive, Middleton, Wisconsin 53562
ITSNA Minneapolis, 7250 Hudson Blvd., Suite 100, Oakdale, Minnesota 55128
ITSNA San Francisco, 1365 Adams Court, Menlo Park, CA 94025
ITSNA Sweden AB, Box 1103, S–164 #22, Kista, Stockholm, Sweden
ITSNA Totowa, 40 Commerce Way, Unit B, Totowa, New Jersey 07512
ITSNA Vancouver, 211 Schoolhouse Street, Coquitlam, British Columbia, V3K 4X9 Canada
ITSNA Hong Kong, 2/F., Garment Centre, 576 Castle Peak Road, Kowloon, Hong Kong
ITSNA Taiwan, 14/F., Huei Fung Building, 27, Chung Shan North Road, Sec. 3, Taipei 10451, Taiwan

The current address of the additional ITSNA testing site covered by the expansion application is:

ITSNA Lexington, 731 Enterprise Drive, Lexington, Kentucky 40510

General Background on the Applications

ITSNA has submitted an application, dated February 16, 2001 (see Exhibit 39), to expand its recognition to use 54 additional test standards and a site located in Lexington, Kentucky. The NRTL Program staff has determined that 13 of the 54 test standards cannot be included in the expansion because they either are not "appropriate test standards," within the meaning of 29 CFR 1910.7(c), or are already included in ITSNA's scope. The staff makes similar determinations in processing expansion requests from any NRTL. Therefore, OSHA would approve 41 test standards for the expansion, which are listed below (see Expansion for Standards section).

Expansion for Additional Site

The application for the additional site contains information demonstrating that

there are adequate procedures, equipment, and personnel to perform product safety testing. Those procedures are in general use throughout ITSNA's testing operations. Also, the application information shows that Lexington is wholly-owned and operated by ITSNA.

The NRTL Program staff performed an on-site review (assessment) of the facility on October 15–17, 2001. In the on-site review report, dated December 10, 2001 (see Exhibit 40), the program staff recommended a "positive finding," which means a positive recommendation on the recognition to the Assistant Secretary. However, the Agency delayed processing of the applications pending resolution of certain findings made by OSHA during its audits of other ITSNA sites already recognized. The NRTL Program staff obtained information in October 2002, which resolved these findings, and determined that OSHA may proceed with processing the application.

OSHA's recognition of the additional site would not be limited to any particular test standards. However, recognition of this site would be limited to performing product testing only to the test standards for which the site has the proper capability and programs, and for which OSHA has recognized ITSNA. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites. The Agency would not recognize the site to issue certifications under ITSNA's NRTL operations. Currently, ITSNA issues such certifications only at specific sites listed above, and OSHA must review and accept the Lexington site before ITSNA issues certifications there. In addition, OSHA would permit the site to use all eight of the "supplemental" programs. ITSNA's scope of recognition already includes these programs.

OSHA has described the "supplemental" programs referred to above in a March 9, 1995, **Federal Register** notice (60 FR 12980, 3/9/95). This notice described nine (9) programs and procedures (collectively, programs), eight of which (the "supplemental programs") any NRTL may use to control, audit, and accept the data relied upon for product certification. Such data is not normally generated at the NRTL's facility or by NRTL personnel. The notice also includes the criteria for the use by the NRTL of these eight, or supplemental, programs. Any NRTL's initial recognition will always include the first or basic program, which provides that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA does not consider these programs in determining whether any NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Expansion for Additional Standards

ITSNA also seeks recognition for testing and certification of products for demonstration of conformance to the following 41 test standards, and OSHA has determined the standards are "appropriate," within the meaning of 29 CFR 1910.7(c).

ANSI A17.5 Elevators and Escalator Electrical Equipment
ANSI C37.23* Metal Enclosed Bus and Calculating Losses in Isolated-Phase Bus
ANSI ICS 2 Industrial Control Devices, Controllers and Assemblies
ANSI S82.02.02 Electrical Equipment for Measurement, Control, and Laboratory Use
ANSI Z8.1 Commercial Laundry and Dry-cleaning Operations-Safety Requirements
ANSI Z21.1b Household Cooking Gas Appliances
ANSI Z21.19 Refrigerators Using Gas Fuel
ANSI Z21.22 Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems
ANSI Z21.41 Quick-Disconnect Devices for Use with Gas Fuel
ANSI Z21.42 Gas-Fired Illuminating Appliances
ANSI Z21.45 Flexible Connectors of Other Than All-Metal Construction for Gas Appliances
ANSI Z21.54 Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances
ANSI Z21.61 Gas-Fired Toilets
ANSI Z21.66 Automatic Vent Damper Devices for Use With Gas-Fired Appliances Electrically Operated
ANSI Z21.69 Connectors for Movable Gas Appliances
ANSI Z21.73 Portable Type Gas Camp Lights
ANSI Z21.74 Portable Refrigerators for Use With HD–5 Propane Gas
ANSI Z21.76 Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases
UL 14B Sliding Hardware for Standard, Horizontally Mounted Tin-Clad Fire Doors
UL 14C Swinging Hardware for Standard Tin-Clad Fire Doors Mounted Singly or In Pairs
UL 142 Steel Aboveground Tanks for Flammable and Combustible Liquids
UL 147 Hand-Held Torches for Fuel Gases
UL 155 Tests of Fire Resistance of Vault and File Room Doors
UL 305 Panic Hardware
UL 331 Strainers for Flammable Fluids and Anhydrous Ammonia
UL 555 Fire Dampers
UL 636 Holdup Alarm Units and Systems
UL 746A Polymeric Materials—Short Term Property Evaluations
UL 746B Polymeric Materials—Long Term Property Evaluations
UL 746E Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
UL 896 Oil-Burning Stoves
UL 1010 Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
UL 1034 Burglary Resistant Electric Locking Mechanisms
UL 1088 Temporary Lighting Strings
UL 1241 Junction Boxes for Swimming Pool Lighting Fixtures
UL 1242 Intermediate Metal Conduit
UL 1610 Central-Station Burglar-Alarm Units
UL 1637 Home Health Care Signaling Equipment
UL 2200 Stationary Engine Generator Assemblies
FMRC3260 Flame Radiation Detectors for Automatic Fire Alarm Signaling
UL 603351 Safety of Household and Similar Electrical Appliances, Part 1; General Requirements

• This standard is approved for equipment or materials intended for use in commercial and industrial power system applications. This standard is not approved for equipment or materials intended for use in installations that are excluded from the provisions of Subpart S in 29 CFR 1910 by 1910.302(a)(2).

OSHA's recognition of ITSNA, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, any NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Many of the UL test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization (*e.g.*, UL 1004) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 1004). Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version

of the test standard or the latest ANSI version of that standard. (Contact ANSI or the ANSI web site (*http://www.ansi.org*) and click "NSSN" to find out whether or not a test standard is currently ANSI-approved.)

Existing Conditions

Currently, OSHA imposes the following conditions on its recognition of ITSNA.These conditions would apply also to the recognition of the Lexington site. As mentioned in previous notices, these conditions apply solely to ITSNA's NRTL operations and are in addition to any other condition that OSHA normally imposes in its recognition of an organization as any NRTL. These conditions are listed in this notice mainly for information.

(1) ITSNA may perform safety testing for hazardous location products only at the specific ITSNA sites that OSHA has recognized, and that have been pre-qualified for such testing by the ITSNA Chief Engineer. In addition, all safety test reports for hazardous location products must undergo a documented review and approval at the Cortland testing facility by a test engineer qualified in hazardous location safety testing, prior to ITSNA's initial or continued authorization of the certifications covered by these reports.

(2) ITSNA may not test and certify any products for a client that is a manufacturer or vendor that is either owned in excess of 2% by ITSLtd or affiliated organizationally with ITSNA.

Preliminary Finding

ITSNA has submitted an acceptable request for expansion of its recognition. As previously mentioned, in connection with the request, OSHA has performed an on-site review (evaluation) of the ITSNA Lexington, Kentucky, facility (site). ITSNA has addressed the discrepancies noted by the assessors following the review, and the assessors included the resolution in the on-site review report (see Exhibit 40).

Following a review of the application file, the on-site review report, and other pertinent information, the NRTL Program staff has concluded that OSHA can grant to ITSNA the expansion of recognition to include the Lexington, Kentucky, site and the test standards listed above, subject to the conditions as noted. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendations of the staff, the Assistant Secretary has made a preliminary finding that Intertek Testing Services, NA, Inc., can meet the requirements as prescribed by 29 CFR 1910.7 for the expansion of recognition, subject to the above conditions. This preliminary finding, however, does not constitute an interim or temporary approval of the applications for ITSNA.

OSHA welcomes public comments, in sufficient detail, as to whether ITSNA has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. To consider a comment, OSHA must receive it at the address provided above (see **ADDRESSES**), no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above no later than the last date for comments. You must include your reason(s) for any request for extension. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of ITSNA's request, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL1–89 contains all materials in the record concerning ITSNA's application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant ITSNA's expansion request. The Assistant Secretary will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 4th day of December, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–122 Filed 1–3–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Nos. NRTL4–93]

Underwriters Laboratories Inc., Applications for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the applications by Underwriters Laboratories Inc. for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of these applications.

DATES: You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

Regular mail and express delivery service: Your comments must be postmarked by January 21, 2003.

Hand delivery and messenger service: Your comments must be received in the OSHA Docket Office by January 21, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Facsimile and electronic transmission: Your comments must be sent by January 21, 2003.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL4–93, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket NRTL4–93, in your comments.

Internet access to comments and submissions: OSHA will place comments and submissions in response to this notice on the OSHA Webpage *http://www.osha.gov*. Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.*, social security number, date of birth). There may be a lag time between when

comments and submissions are received and when they are placed on the Webpage. Please contact the OSHA Docket Office at (202)693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the address shown immediately above for the program, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Underwriters Laboratories Inc. (UL) has applied for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion requests cover the use of three additional sites. OSHA's current scope of recognition for UL may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

The most recent notices published by OSHA for UL's recognition covered a renewal and expansion of recognition, which became effective on May 8, 2002 (67 FR 30966).

The current address of the UL facilities (sites) already recognized by OSHA are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062

Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York 11747

Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050

Underwriters Laboratories Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709

Underwriters Laboratories Inc., 2600 N.W. Lake Road, Camas, Washington 98607

UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong

UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou District Taipei City, Taiwan

UL International Demko A/S, Lyskaer 8, P.O. Box 514, DK–2730, Herlev, Denmark

Underwriters Laboratory International (U.K.) Ltd., Wonersh House, The Guildway, Old Portsmouth RoadGuildford, Surrey GU3 1LR, United Kingdom

Underwriters Laboratory International Italia S.r.l., Via Archimede 42, 1–20041 Agrate Brianza, Milan, Italy Testing facility: Z.I. Predda Niedda st. 18, I–07100, Sassari, Italy

Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada MIR 3A9

UL Japan Co., Ltd., Shimbashi Ekimae Bldg.—1 Gohkan, 4th floor, Room 402, 2–20–15 Shimbashi Minato Ku, Tokyo 105–0004, Japan

The current addresses of the three additional UL sites covered by the expansion requests are:

UL Korea, Ltd., #805, Manhattan Building 36–2, Yeoui-dong, Yeoungdeungpo-gu, Seoul 150–010, Korea

UL International Germany GmbH, Frankfurter Strasse 229, D–63263 Neu-Isenburg, Germany

UL International (Netherlands) B.V., Landjuweel 52, NL–3905 PH Veenendaal, Netherlands

General Background on the Applications

UL has submitted an application, dated November 8, 2001 (see Exhibit 27), to expand its recognition to include a site in Seoul, Korea, and another application, dated March 15, 2002 (see Exhibit 27–1), to expand its recognition to include a site in Neu-Isenburg, Germany, and a site in Veenendaal, Netherlands. The applications contain information demonstrating that there are adequate procedures, equipment, and personnel to perform product safety testing and certification activities at the sites. Those procedures are in general use throughout UL operations. Also, the application information shows that all three sites are wholly-owned and operated by UL.

The NRTL Program staff performed an on-site review (assessment) of the Korea facility on March 11–14, 2002. In the on-site review report, dated May 23, 2002 (see Exhibit 28), the program staff recommended a "positive finding," which means a positive recommendation on the recognition to the Assistant Secretary. However, the Agency delayed consideration of the application in order to combine it for processing purposes with the application that had by then been received for the two additional sites listed above. The NRTL Program staff performed an on-site review (assessment) of the Netherlands facility on June 11–14, 2002, and an on-site review (assessment) of the Germany facility on June 18–21, 2002. In each on-site review report, dated September 27 and 30, 2002 (see Exhibits 28 and 28–1), respectively, the program staff recommended a "positive finding."

OSHA's recognition of the additional sites would not be limited to any particular test standards. However, recognition of these sites would be limited to performing product testing only to the test standards for which each site has the proper capability and programs, and for which OSHA has recognized UL. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites. In addition, OSHA would permit the sites to use all eight of the "supplemental" programs, although not all programs would necessarily be used in the near future. UL's scope of recognition already includes these programs.

OSHA has described the "supplemental" programs referred to above in a March 9, 1995, **Federal Register** notice (60 FR 12980, 3/9/95). This notice described nine (9) programs and procedures (collectively, programs), eight of which (the "supplemental programs") any NRTL may use to control, audit, and accept the data relied upon for product certification. Such data is not normally generated at the NRTL's facility or by NRTL personnel. The notice also includes the criteria for the use by the NRTL of these eight, or supplemental, programs. Any NRTL's initial recognition will always include the first or basic program, which provides that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA does not consider these programs in determining whether any NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Preliminary Finding

UL has submitted acceptable applications for expansion of its recognition as an NRTL. As noted above, in processing these requests, OSHA has performed on-site reviews of the proposed additional three UL facilities. UL has addressed any discrepancies noted by the assessor following the reviews, and the assessor has included the resolution in the on-site review reports.

Following a review of the application files, the on-site review reports, and other pertinent information, the NRTL Program staff has concluded that OSHA can grant to UL the expansion of its recognition to include the Seoul, Korea, the Neu-Isenburg, Germany, and the Veenendaal, Netherlands, sites listed above. The staff therefore recommended to the Assistant Secretary that the applications be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that Underwriters Laboratories Inc. can meet the requirements as prescribed by 29 CFR 1910.7 for expansion of its recognition. This preliminary finding does not constitute an interim or temporary approval of the applications for UL.

OSHA welcomes public comments, in sufficient detail, as to whether UL has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider a comment, OSHA must receive it at the address provided above (see **ADDRESSES**), no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above no later than the last date for comments. You must include your reason(s) for any request for extension. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of UL's requests, the on-site review reports, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL4–93 contains all materials in the record concerning UL's applications.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant UL's expansion requests. The Assistant Secretary will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 11th day of December, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–121 Filed 1–3–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–150]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that PolyuMac TechnoCore, Inc. of 1060 E. 30 Street, Hialeah, FL 33013, has applied for an exclusive license to practice the inventions described in NASA Case No. LAR–15767–1, entitled "Polyimide Precursor Solid Residuum," for which a U.S. Patent No. 6,180,746 was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; NASA Case No. LAR–15977–1, entitled "Aromatic Polyimide Foam," for which a U.S. Patent No. 6,133,330 was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; NASA Case No. LAR–15831–1, entitled "Hollow Polyimide Microspheres," for which a U.S. Patent No. 5,994,418 was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; NASA Case No. LAR–15831–2, entitled "Hollow Polyimide Microspheres," for which a U.S. Patent No. 6,235,803 was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; NASA Case No. LAR–15831–3, entitled "Hollow Polyimide Microspheres," for which a U.S. Patent No. 6,084,000 was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; and NASA Case No. LAR–15745–1, entitled "Films, Preimpregnated Tapes and Composites made from Polyimide "Salt-like" Solutions," for which a U.S. Patent No. 6,222,007 was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE(S): Responses to this notice must be received by January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199, telephone (757) 864–3230; fax (757) 864–9190.

Dated: December 30, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–194 Filed 1–3–03; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Safety Analyses of the Potential Inadvertent Disposal of Two Spent Fuel Rods at Low-Level Radioactive Waste Facilities; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Nuclear Regulatory Commission's (NRC) Office of Nuclear

Material Safety and Safeguards (NMSS) is announcing the availability for public comment of a set of draft safety analyses related to the potential inadvertent disposal of two spent fuel rods at a low-level radioactive waste facility. In November 2000, the licensee for Millstone Unit 1 (Dominion Nuclear Connecticut, Inc.) informed the NRC that the location of two spent fuel rods could not be determined and the following investigation by the licensee concluded that the two spent fuel rods may have been inadvertently sent for disposal as Class C low-level radioactive waste. One analysis was prepared for each of the two possible low-level radioactive waste facilities: the Hanford, Washington site and the Barnwell, South Carolina site. The NRC has determined, from these analyses, that the potential presence of the two fuel rods, at either site, would not constitute a present or future risk to public health and safety or the environment. The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the safety analyses is available to the NRC staff. The NRC will review public comments received on the draft documents. In response to those comments, suggested changes will be incorporated, where appropriate, and a final document will be issued.

DATES: Comments on this draft document should be submitted by March 7, 2003. Comments received after that date will be considered to the extent practicable.

ADDRESSES: The draft safety analyses, "Long-Term Hazard of Millstone Unit 1's Missing Spent Fuel Rods Potentially Disposed at the Barnwell Commercial Low-Level Radioactive Waste Disposal Facility" and "Long-Term Hazard of Millstone Unit 1's Missing Spent Fuel Rods Potentially Disposed at the Hanford Commercial Low-Level Radioactive Waste Disposal Facility," are available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. They are also available electronically from the ADAMS Electronic Reading Room on the NRC Web site at: *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Access Numbers: Barnwell's analysis—ML023610413; Hanford's analysis—ML023610424)

Members of the public are invited and encouraged to submit written comments to: Christepher McKenney, System Performance Analyst (HP), Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Mail Stop T–7J8, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments may also be sent electronically to *cam1@nrc.gov*. Copies of comments received may be examined at the ADAMS Electronic Reading Room on the NRC web site, and in the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION, CONTACT: Christepher McKenney, Mail Stop T–7J8, Environmental and Performance Assessment Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6663; Internet: *cam1@nrc.gov*.

SUPPLEMENTARY INFORMATION: In November 2000, the licensee for Millstone Unit 1 (Dominion Nuclear Connecticut, Inc.) informed the NRC that the location of two spent fuel rods could not be determined. An investigative team was formed by the licensee and completed its investigation in October, 2001. A follow-up NRC inspection reviewed the findings of the investigation and agrees with the results. The result of the investigation was that there is a chance that the rods may have been unintentionally disposed at the Hanford, Washington, or Barnwell, South Carolina commercial low-level radioactive waste disposal facilities. The most likely explanation was that the rods were inadvertently shipped to Barnwell in 1988, as part of a shipment of Class C low-level radioactive waste. These safety analyses do not address the jurisdictional issues raised by the potential disposal of spent fuel at a shallow low-level waste disposal facility.

There are both short- and long-term considerations for reviewing the health and safety impacts of the rods potentially being at a low-level radioactive waste disposal facility. These include the type and amount of radioactivity present, the current location and disposition of the suspected shipments, potential future groundwater release, and risk to potential inadvertent intruders. Dominion Nuclear Connecticut, Inc., provided an assessment of the risks from the missing fuel on October 5, 2001. A second assessment was provided by Dominion Nuclear Connecticut, Inc., on May 15, 2002, that responded to a NRC request for additional information. After investigating the short- and long-term considerations, for the reasons given in the safety analyses, NRC has determined that the presence of the two fuel rods at either low-level radioactive waste disposal facility does not constitute a present or future risk to the public health and safety or the environment.

Commentors are encouraged to submit their written comments on these two safety analyses to the addresses listed above. To ensure efficient and complete comment resolution, commentors are requested to reference the section, page, and line numbers of the document to which the comment applies, if possible.

Dated at Rockville, MD, this 24th day of December, 2002.

For the Nuclear Regulatory Commission.

Lawrence Kokajko,

Branch Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–154 Filed 1–3–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for an Expiring Information Collection: SF–15

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for the continued use of Standard Form 15 (SF–15). SF 15, Application for 10-Point Veteran Preference, is used by agencies, OPM examining offices and agency appointing officials to adjudicate individuals' claims for veterans' preference in accordance with the Veterans' Preference Act of 1944.

According to the General Services Administration, 45,000 SF–15s were completed last year. Each form requires approximately 10 minutes to complete. The annual estimated burden is 7,497 hours.

We are asking OMB to approve the continuation of the current SF–15. In the 60 day notice published July 19, 2002, we announced our proposal to revise the SF–15 and we invited

comments. We plan to submit the revision later and will address the comments at that time.

For copies of this proposal, contact Mary Beth Smith-Toomey at *mbtoomey@opm.gov* or fax to (202) 418–3251. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver written comments to:

Ellen Tunstall, Assistant Director for Employment Policy, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6500, Washington, DC 20415.

and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–110 Filed 1–3–03; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions, granting authority to make appointments under Schedule C in the excepted service as required by 5 CFR 6.1 and 213.103.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedule C between between November 1, 2002 and November 30, 2002. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

Broadcasting Board of Governors

Special Assistant to the Chairman. Effective November 21, 2002.

Special Assistant to the Chairman. Effective November 22, 2002.

Commodity Futures Trading Commission

Administrative Assistant to a Commissioner. Effective November 12, 2002.

Administrative Assistant to the Commissioner. Effective November 21, 2002.

Consumer Product Safety Commission

Executive Assistant to the Chairman. Effective November 14, 2002.

General Counsel to the Chairman. Effective November 21, 2002.

Department of Agriculture

Confidential Assistant to the Deputy Administrator, Office of Community Development. Effective November 6, 2002.

Director of Public Affairs to the Administrator. Effective November 14, 2002.

Special Assistant to the Executive Assistant for Homeland Security. Effective November 15, 2002.

Confidential Assistant to the Administrator, Risk Management Agency. Effective November 20, 2002.

Department of Commerce

Special Assistant to the Executive Assistant, International Trade Administration. Effective November 12, 2002.

Confidential Assistant to the Assistant Secretary for Economic Development. Effective November 27, 2002.

Department of Defense

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective November 1, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective November 7, 2002.

Chief of Staff to the Inspector General. Effective November 7, 2002.

Staff Assistant to the Deputy Assistant Secretary of Defense (Forces Policy). Effective November 13, 2002.

Department of Education

Confidential Assistant to the Special Assistant. Effective November 7, 2002.

Special Assistant to the Deputy Assistant Secretary for Regional Services. Effective November 19, 2002.

Special Assistant to the Director, White House Initiative on Hispanic Education. Effective November 19, 2002.

Deputy Secretary's Regional Representative to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective November 25, 2002.

Department of Energy

Special Assistant to the Deputy Assistant Secretary for National Security. Effective November 5, 2002.

Daily Scheduler to the Director, Office of Scheduling and Advance. Effective November 26, 2002.

Department of Housing and Urban Development

Advance Coordinator to the Director of Executive Scheduling. Effective November 15, 2002.

Special Assistant to the Assistant Secretary for Congressional and intergovernmental Relations. Effective November 18, 2002.

Congressional Relations Officer to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective November 18, 2002.

Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective November 18, 2002.

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective November 26, 2002.

Department of Justice

Special Assistant to the Director, Bureau of Justice Assistance, Office of Justice Programs. Effective November 7, 2002.

Public Affairs Specialist to the United States Attorney, San Antonio, TX. Effective November 20, 2002.

Department of Labor

Special Assistant to the Director of Scheduling and Advance. Effective November 21, 2002.

Attorney-Advisor to the Solicitor of Labor. Effective November 21, 2002.

Special Assistant to the Assistant Secretary for Administration and Management. Effective November 25, 2002.

Department of State

Program Support Assistant to the Foreign Affairs Officer (Visits). Effective November 15, 2002.

Staff Assistant to the Deputy Assistant Secretary for Equal Employment. Effective November 26, 2002.

Department of Veterans Affairs

Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs. Effective November 14, 2002.

Environmental Protection Agency

Deputy Associate Administrator to the Associate Administrator, Office of Congressional Affairs. Effective November 19, 2002.

General Services Administration

Special Assistant to the Deputy Associate Administrator for Government Policy. Effective November 18, 2002.

Office of Management and Budget

Senior Advisor (Assistant General Counsel) to the General Counsel. Effective November 12, 2002.

Confidential Assistant to the Controller. Effective November 19, 2002.

Small Business Administration

Special Assistant to the Associate Deputy Administrator of Entrepreneurial Development. Effective November 13, 2002.

Senior Advisor for Congressional Affairs (House) to the Assistant Administrator for Congressional and Legislative Affairs. Effective November 14, 2002.

United States Tax Court

Secretary (Confidential Assistant) to a Judge. Effective November 4, 2002.

(**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218).

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–111 Filed 1–3–03; 8:45 am]

BILLING CODE 6325–38–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings.

(2) *Form(s) submitted:* RL–231–F.

(3) *OMB Number:* 3220–0107.

(4) *Expiration date of current OMB clearance:* 04/30/2003.

(5) *Type of Request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other-for-profit.

(7) *Estimated annual number of respondents:* 300.

(8) *Total annual responses:* 150.

(9) *Total annual reporting hours:* 150.

(10) *Collection description:* Under the Railroad Retirement Act (RRA), benefits are not payable if an annuitant works for an employer covered under the RRA or last non-railroad employer. The collection obtains information regarding an annuitant's work and earnings from a non-railroad employer. The information will be used for determining whether benefits should be withheld.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312) 751–3363.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–131 Filed 1–3–03; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Pension Plan Reports.

(2) *Form(s) submitted:* G–88p, G–88r, and G–88r.1.

(3) *OMB Number:* 3220–0089.

(4) *Expiration date of current OMB clearance:* 2/28/2003.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other-for-profit.

(7) *Estimated annual number of respondents:* 500.

(8) *Total annual responses:* 1,515.

(9) *Total annual reporting hours:* 203.

(10) *Collection description:* The Railroad Retirement Act provides for payment of a supplemental annuity to a qualified railroad retirement annuitant. The collection obtains information from the annuitant's employer to determine (a) the existence of a railroad employer's pension plans and whether such plans, if they exist, require a reduction to supplemental annuities paid to the employer's former employees and (b) the amount of supplemental annuities due railroad employees.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312) 751–3363.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–132 Filed 1–3–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

[Extension: Rule 11a1–1(T); OMB Control No. 3235–0478; SEC File No. 270–428]

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collection of information discussed below.

- Rule 11a1–1(T) Transaction Yielding Priority, Parity, and Precedence.

On January 27, 1976, the Commission adopted Rule 11a1–1(T) under the Securities Exchange Act of 1934 ("Exchange Act") to exempt transactions of exchange members for their own accounts that would otherwise be prohibited under section 11(a) of the Exchange Act. The rule provides that a member's proprietary order may be executed on the exchange of which the trader is a member, if, among other things: (1) The member discloses that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated; (2) any such member through whom that bid or offer is communicated discloses to others participating in effecting the order that it is for account of a member; and (3) immediately before executing the order, a member (other than a

specialist in such security) presenting any order for the account of a member on the exchange clearly announces or otherwise indicates to the specialist and to other members then present that he is presenting an order for the account of a member.

Without these requirements, it would not be possible for the Commission to monitor its mandate under the Exchange Act to promote fair and orderly markets and ensure that exchange members have, as the principle purpose of their exchange memberships, the conduct of a public securities business.

There are approximately 1,000 respondents that require an aggregate total of 333 hours to comply with this rule. Each of these approximately 1,000 respondents makes an estimated 20 annual responses, for an aggregate of 20,000 responses per year. Each response takes approximately 1 minute to complete. Thus, the total compliance burden per year is 333 hours (20,000 minutes/60 minutes per hour = 333 hours). The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $33,333 (333 hours @ $100).

Compliance with Rule 11a–1(T) is necessary for exchange members to make transactions for their own accounts under a specific exemption from the general prohibition of such transactions under section 11(a) of the Exchange Act. Compliance with Rule 11a–1(T) does not involve the collection of confidential information. Rule 11a–1(T) does not have a record retention requirement per se. However, responses made pursuant to Rule 11a–1(T) are subject to the recordkeeping requirements of Rules 17a–3 and 17a–4. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Action Associate Executive Director for the Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 20, 2002.

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 03–138 Filed 1–3–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47105; File No. SR–Amex–2002–99]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Six-Month Extension of the Exchange's Pilot Program for Automatic Execution of Orders for Exchange Traded Funds

December 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 4, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Amex as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex seeks a six-month extension of Amex Rule 128A to continue its pilot program for the automatic execution of orders for Exchange Traded Funds ("ETFs"), with certain modifications as described below. Proposed changes to the text of Rule 128A are set forth below.[4] New text is in italics. Deleted text is in brackets.

Automatic Execution for Exchange Traded Funds

Rule 128A. The Exchange shall determine the size and other parameters of orders eligible for execution by its Automatic Execution System (Auto-Ex). An Auto-Ex eligible order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than *10* [30] seconds between entry of each such order *on the same side of the market* in a security. Members and member organizations are responsible for establishing procedures to prevent orders in a security *on the same side of the market* for any account in which the same person is directly or indirectly interested from being entered at intervals of less than *10* [30] seconds.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 19, 2001, the Commission approved the Exchange's proposal, adopted as Amex Rule 128A, to permit the automatic execution of orders for ETFs on a six-month pilot program basis.[5] Since that time, the Exchange has extended the pilot program twice, in December 2001 and June 2002, each time for six months.[6] The Exchange now seeks to extend the pilot program, with certain modifications, for an additional six months.

Since 1986, the Exchange has had an automatic order execution feature ("Auto-Ex") for eligible orders in listed options. The Chicago Board Options Exchange, Philadelphia Stock Exchange, and Pacific Exchange established similar automatic option order execution features at about the same time as the Amex, and the newest options exchange, the International Securities Exchange, also features automatic order execution. Auto-Ex,

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The Commentary to Rule 128A, providing details of the pilot program that are summarized in Section II of this notice, will remain unchanged.

[5] *See* Securities Exchange Act Release No. 44449 (June 19, 2001), 66 FR 33724 (June 25, 2001) ("June 2001 Release") (approving File No. SR–Amex–2001–29).

[6] *See* Securities Exchange Act Release Nos. 45176 (December 20, 2001), 66 FR 67582 (December 31, 2001) and 46085 (June 17, 2002) 67 FR 42836 (June 25, 2002) (notices of filing and immediate effectiveness of File Nos. SR–Amex–2001–105 and SR–Amex–2002–42, respectively).

accordingly, has been a standard feature of the options markets for a number of years.

In 1993, the Amex commenced trading Standard and Poor's Depositary Receipts® ("SPDRs®"), the first ETF to be listed and traded on the Exchange. ETFs are individual securities that represent a fractional, undivided interest in a portfolio of securities. Currently, more than 100 ETFs are listed on the Amex. Like an option, an ETF is a derivative security, and, according to the Amex, its price is a function of the value of the portfolio of securities underlying the ETF. Thus, as is the case with options, the Exchange asserts that it is not the price discovery market for ETFs, and that the price discovery market is the market or markets where the underlying securities trade.

The Exchange is now proposing to extend its current Auto-Ex technology for an additional six months to ETFs listed under Amex Rules 1002, 1002A, and 1202. The Amex represents that this will provide investors that send eligible orders to the Exchange with faster executions than they otherwise would receive. The Exchange believes that many investors desire rapid executions in trading securities that are priced derivatively since the value of the underlying instruments may fluctuate during order processing. The Amex, moreover, will continue under the pilot extension to incorporate a price improvement algorithm into Auto-Ex for ETFs, thus to provide investors with better execution prices on their orders. The price improvement algorithm works in the following manner:

When the Amex establishes the National Best Bid or Offer ("NBBO"),[7] Auto-Ex is programmed to execute eligible incoming ETF orders at the APQ plus a programmable number of trading increments with respect to the Amex bid, and less a programmable number of trading increments in the case of the Amex offer. For example, if the APQ were 90.10 to 90.20, and the APQ constituted the NBBO, incoming sell orders might be automatically executed at 90.12 (the Amex bid plus two ticks) and incoming buy orders might be executed at 90.18 (the Amex offer less two ticks). If the Amex does not establish the NBBO, Auto-Ex is programmed to execute eligible incoming ETF orders at or better than the NBBO up to a specified number of trading increments relative to the APQ.[8] Auto-Ex executes an eligible order at the improved price relative to the APQ unless such execution would result in a trade-through with respect to the price of an away market that is a participant in the Intermarket Trading System ("ITS"). If a trade through would result, the order is routed to the specialist for electronic processing through the Amex electronic order book.[9]

For example, assume that Auto-Ex is programmed to execute the order at the Amex bid plus two ticks. If the Amex bid were 90, and an away ITS market were bidding 90.01, an incoming sell order would be automatically executed on the Amex at 90.02. Continuing with this example, if the away market were bidding 90.02, an incoming sell order would be automatically executed on the Amex at 90.02 (matching the away market). If the away market were bidding 90.03, the incoming sell order would not be automatically executed. Instead, it would be routed to the specialist for electronic processing through the Amex electronic order book.

The amount of price improvement that the system provides, both when the Amex establishes the NBBO and when it does not, is determined by the Auto-Ex Enhancements Committee ("Committee") upon the request of a specialist and may differ among ETFs. The Committee consists of the Exchange's four Floor Governors and the Chairmen (or their designees) of the Specialists Association, Options Market Makers Association, and the Floor Brokers Association, respectively. The Exchange anticipates that the amount of price improvement will vary among securities based upon such factors as the width of the spread, the volatility of the basket of securities underlying the ETF, and liquidity of available hedging vehicles. The amount of price improvement may be adjusted intra-day by the Committee.

As detailed in Amex Rule 128A, Auto-Ex for ETFs with price improvement is unavailable when the spread is at a specified minimum and maximum variation, which may be adjusted security to security. The Committee will determine, upon the request of a specialist, the minimum and maximum spreads at which Auto-Ex is unavailable. As further provided in the rule, Auto-Ex is also unavailable with respect to incoming sell orders when the Amex bid is for 100 shares, and similarly unavailable with respect to incoming buy orders when the Amex offer is for 100 shares.

Orders that are otherwise Auto-Ex eligible orders are also routed to the specialist, and not automatically executed, in situations where the specialist in conjunction with a Floor Governor or two Floor Officials determine that quotes are not reliable and the Exchange is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes. Members and member organizations are notified when the Exchange has determined that quotes are not reliable prior to disengaging Auto-Ex.

Specialists and Registered Options Traders ("ROTs") that sign onto the system are automatically allocated the contra side of Auto-Ex trades for ETFs. Due to the automatic price improvement feature, the specialist and ROTs that sign onto Auto-Ex for ETFs are deemed to be on parity for purposes of allocating the contra side of ETF Auto-Ex trades. Amex Rule 128A incorporates the following methodology for the allocation of the contra side to Auto-Ex ETF trades.

Number of ROTs signed on to auto-ex in a crowd	Approximate number of trades allocated to the specialist throughout the day ("target ratio") (percent)	Approximate number of trades allocated ROTs signed on to auto-ex throughout the day ("target ratio") (percent)
1	60	40
2–4	40	60

[7] The term "establish" as used in this context of Amex Rule 128A means that the Amex Published Quote ("APQ") is currently at the NBBO, regardless of whether or not the Amex was the first exchange to be at that price. *See* June 2001 Release, *supra* note.

[8] The number of trading increments designated for price improvement when the Amex establishes the NBBO may be different than the number of increments designated for price improvement when the Amex does not establish the NBBO. *Id.*

[9] Once an order that is Auto-Ex eligible is sent to the Exchange, the person that initiated the order has no control over its execution. This is the case regardless of whether the order is executed by Auto-Ex or is executed by the specialist because Auto-Ex is unavailable. If the order is routed to the specialist for handling because Auto-Ex is unavailable, the specialist does not know if the order is for the account of a broker-dealer or for the account of a customer. This information is in the Exchange's order processing systems and is unavailable to the specialist.

Number of ROTs signed on to auto-ex in a crowd	Approximate number of trades allocated to the specialist throughout the day ("target ratio") (percent)	Approximate number of trades allocated ROTs signed on to auto-ex throughout the day ("target ratio") (percent)
5–7	30	70
8–15	25	75
16 or more	20	80

At the start of each trading day, the sequence in which trades are to be allocated to the specialist and ROTs signed onto Auto-Ex is randomly determined. Auto-Ex trades then are automatically allocated in sequence on a rotating basis to the specialist and to the ROTs that have signed onto the system so that the specialist and the crowd achieve their "target ratios" over the course of a trading session. If an Auto-Ex eligible order is greater than 100 shares, Auto-Ex divides the trade into lots of 100 shares each. Each lot is considered a separate trade for purposes of determining target ratios and allocating trades within Auto-Ex.

Round lot orders delivered to the post electronically for 2,000 shares or less are eligible for Auto-Ex for ETFs. Orders for an account in which a market maker in ETFs registered as such on another market has an interest are ineligible for Auto-Ex for ETFs. If orders for such market makers were eligible for Auto-Ex with price improvement, the Exchange represents, Amex specialists and ROTs would be unable to make markets with the proposed liquidity for other investors. (Orders for Amex Registered Traders are ineligible for Auto-Ex for ETFs pursuant to Commentaries .04 and .05 to Rule 111 and Amex Rule 950(c).)

The Exchange proposes that Amex Rule 128A now stipulate that Auto-Ex eligible orders for any account in which the same person is directly or indirectly interested may be entered only at intervals of 10 seconds or more between the entry of each such order in an ETF.[10] The Exchange states that Amex specialists and ROTs are willing to provide Auto-Ex with price improvement for orders of a certain size. If persons were allowed to enter more than one Auto-Ex eligible order for an account in which they had a direct or indirect interest at intervals of less than 10 seconds, according to the Exchange, Amex specialists and ROTs would be unable to make markets with the proposed liquidity for all investors. Under Amex Rule 128A, members and member organizations are responsible for establishing procedures to prevent orders for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 10 seconds with respect to an ETF.

The specialist may request the Exchange to increase the maximum size of Auto-Ex eligible orders. Under Amex Rule 128A, such requests are reviewed by the Committee, which approves, disapproves, or conditionally approves such requests. The rule directs the Committee to balance the interests of investors, the specialist, ROTs in the crowd, and the Exchange in determining whether to grant a request to increase the size of Auto-Ex eligible orders. The Committee also may consider requests from the specialist or ROTs to reduce the size of Auto-Ex eligible orders, balancing the same interests that it would consider in reviewing a request to increase the size of Auto-Ex eligible orders. The Committee is not permitted, however, to reduce the size of Auto-Ex eligible orders below 2,000 shares.

In addition, under Amex Rule 128A, the Committee may delegate its authority to one or more Floor Governors. The rule provides, however, that the Committee must meet promptly to review a Floor Official's decision in the event that a Floor Governor acts pursuant to delegated authority.

Amex Rule 128A further provides that in the event of system problems or unusual market conditions, a Floor Governor is permitted to reduce the size of Auto-Ex eligible orders below 2,000 shares or increase the size of Auto-Ex eligible orders up to 5,000 shares. Any such change is temporary and lasts only until the end of the unusual market condition or the correction of the system problem. Members and member organizations will be notified when the size of Auto-Ex eligible orders is adjusted due to system problems or unusual market conditions.

Amex Rule 128A also provides that the Chairman and Vice Chairman of the Exchange, acting jointly, will determine which ETFs are Auto-Ex eligible.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The proposed rule change will allow the Auto-Ex for ETFs pilot program to continue for an additional six months. The proposal also facilitates the comparison and settlement of trades since Auto-Ex transactions result in "locked-in" trades. Auto-Ex for ETFs, moreover, automatically provides investors with price improvement on their orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal, in fact, will enhance competition among markets and market makers and thereby benefit investors by allowing the Exchange to continue to provide Auto-Ex for ETFs with price improvement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

A member firm submitted a comment letter to the Commission dated September 4, 2002, on SR-Amex-2002-42 (the previous extension of the Auto-Ex for ETFs Pilot). In this correspondence, the member organization objected to the 30-second "speed bump" in Rule 128A and sought

[10] The proposed rule change reduces the interval from 30 seconds to 10 seconds, as discussed in Section II.C. below.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

clarification that the 30-second window applied only to electronic orders on the same side of the market in a security. On November 20, 2002, the Amex Board authorized revisions to Rule 128A to reduce the speed bump to 10 seconds (less than the 15 second window that is standard at options exchanges) and to clarify that the new, 10 second, window only applies to orders on the same side of the market in a security. The Exchange believes that it has addressed the concerns articulated by the member organization.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The proposed rule change has therefore become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

The Amex has requested that the Commission waive the usual five-day notice and 30-day pre-operative waiting periods. The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date and to waive the five-day notice period so that the pilot can continue without the 30-day delay. Thus, the Commission waives the five-day notice period and designates that the proposal become operative immediately.[15] The pilot extension will expire June 19, 2003.

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–99 and should be submitted by January 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–182 Filed 1–3–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 240.19b–4(f)(6).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47103; File No. SR–NASD–2002–180]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding the Prohibition Against Guarantees and Sharing in Customer Accounts

December 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 2330(e) to clarify that members and their associated persons are prohibited from guaranteeing any customer against loss in connection with any securities transaction or in any securities account of such customer. In addition, NASD is proposing that associated persons obtain written authorization from their employing member firm and the customer prior to sharing in a customer's account under Rule 2330(f). The proposed rule change to Rule 2330(f) also deletes the requirement that members and associated persons obtain the written authorization of the member carrying the account prior to sharing in a customer's account. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

A. 2330. Customers' Securities or Funds

(a) Through (d) No Change.

(e) Prohibition Against Guarantees

No member or person associated with a member shall guarantee a customer against loss in *connection with* any securities [account] *transaction or in any securities account* of such customer [carried by the member or in any securities transaction effected by the member with or for such customer].

(f) Sharing in Accounts: Extent Permissible

(1)(A) Except as provided in paragraph (f)(2) no member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member; provided, however, that a member or person associated with a member may share in the profits or losses in such an account if (i) such [member or] person associated with a member obtains prior written authorization from the member [carrying the account] *employing the associated person; (ii) such member or person associated with a member obtains prior written authorization from the customer;* and (iii) [the] *such* member or person associated with a member [shall] shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the member or person associated with a member.

(B) Exempt from the direct proportionate share limitation of

paragraph (f)(1)(A)(iii) are accounts of the immediate family of such member or person associated with a member. For purposes of this Rule, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the member or person associated with a member otherwise contributes directly or indirectly.

(2) Notwithstanding the prohibition of paragraph (f)(1), a member or person associated with a member that is acting as an investment adviser (whether or not registered as such) may receive compensation based on a share in profits or gains in an account if *(i)* [the member or] *such* person associated with a member seeking such compensation obtains prior written authorization from the member [carrying the account] *employing the associated person; (ii) such member or person associated with a member seeking such compensation obtains prior written authorization from the customer;* [,] and *(iii)* all of the conditions in Rule 205–3 of the Investment Advisers Act of 1940 (as the same may be amended from time to time) are satisfied.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends NASD rules regarding the prohibition against guarantees and requirements governing sharing in customer accounts. Earlier this year, in response to requests for interpretive guidance, NASD reviewed the application of these rules. Based on its review, NASD is proposing changes to these rules to clarify their scope and enhance their effectiveness.

Rule 2330(e)—Prohibition Against Guarantees

NASD Rule 2330(e) currently prohibits a member or its associated persons from guaranteeing a customer against loss in any customer's account that is carried by the member and in any securities transaction effected by the member with or for the customer. A strict reading of the rule would limit its application to only those guarantees made by the member (or the member's associated persons) carrying the customer's account and those guarantees made by the member (or the member's associated persons) effecting a securities transaction with or for the customer. Consequently, guarantees such as those made by an associated person to customers whose accounts are not carried by that associated person's member potentially would not be prohibited under this reading of the rule. Similarly, guarantees made by an associated person to customers whose securities transactions are not effected by that associated person's member potentially would not be prohibited under this strict reading.

NASD proposes to amend Rule 2330(e) to clarify that the rule prohibits a member and its associated persons from making guarantees to any customer because such guarantees create the expectation that the customer is insulated from market risk intrinsic in securities ownership and may induce the customer to engage in a securities transaction that is not otherwise appropriate for the customer. Even prior to the adoption of Rule 2330(e) (formerly Article III, Section 19(e) of the NASD Rules of Fair Practice), the SEC stated, with respect to guarantees, that "the observance of just and equitable principles of trade does not permit the use of statements which lead an unwary purchaser to the mistaken belief that his transactions are free of risk." [3]

The proposed rule change will clarify that members and their associated persons are prohibited from making guarantees to any customer, not just those customers whose accounts are carried by the member or those customers for whom a member is effecting a securities transaction.[4]

Rule 2330(f)—Sharing in Accounts

NASD Rule 2330(f) currently prohibits members and associated persons from sharing in the profits or losses in a customer's account except under certain limited conditions.[5] Rule 2330(f)(1)(A) permits a member or person associated with a member to share in the profits or losses in a customer's account if such member or person associated with a member obtains prior written authorization from the member that is carrying the account and the sharing is proportionate to the member's or associated person's contributions to the account. NASD Rule 2330(f)(2) permits a member or person associated with a member that acts as an investment adviser to receive compensation based on a share in the profits or gains in a customer's account if such member or person associated with a member obtains prior written authorization from the member that is carrying the account, and the conditions specified in Rule 205–3 under the Investment Advisers Act of 1940 are satisfied.

Currently, both Rule 2330(f)(1)(A) and Rule 2330(f)(2) require the member or associated person that is sharing in the profits or losses in a customer's account to obtain the prior written authorization of the member that is carrying the account. These rules do not necessarily require an associated person to obtain the prior written authorization of his or her employing member when sharing in the profits or losses in a customer's account. Employing members only would be notified if they also were the carrying member of the account or if the arrangement triggered application of another NASD rule, *e.g.*, Rules 3030 (Outside Business Activities of an Associated Person), 3040 (Private Securities Transactions of an Associated Person), or 3050 (Transactions for or by Associated Persons).[6] NASD believes

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[3] *In the Matter of Philips & Company*, 37 S.E.C. 66, 71 (1956).

[4] The proposed rule change is not, however, intended to affect the types of guarantees that currently are permitted under the rule; rather, the proposed amendment seeks to clarify the circumstances under which certain guarantees would be prohibited. For example, a "guarantee" that is extended to all holders of a particular security by an issuer as part of that security generally would not be prohibited under Rule 2330(e).

[5] For example, this provision formed the basis of an NASD enforcement action against Credit Suisse First Boston, Inc. in which NASD found that Credit Suisse First Boston's practice of sharing in the profits in customers' accounts in exchange for allocating initial public offering securities to such customers violated Rule 2330(f). In January 2002, Credit Suisse First Boston settled this matter without admitting or denying the allegations. *See* Credit Suisse First Boston Corporation, Letter of Acceptance, Waiver and Consent, No. CAF020002 (Jan. 22, 2002).

[6] Rule 3030, among other things, requires that associated persons notify their employer member of any business activity outside the scope of their relationship with the member. Rule 3040, among other things, requires that associated persons obtain written approval from their employer member before engaging in any securities transaction for which they have or may receive selling compensation outside the regular course or scope of their employment with the member. Rule 3050,

that the current requirement of receiving authorization from (and only from) the carrying member of the customer account in which a member or associated person intends to share is not the most effective regulatory approach to address the potential risks of such arrangements. NASD believes that it is important that employing members be notified and affirmatively authorize sharing in a customer's account so that they are better able to supervise their associated persons and ensure compliance with NASD rules and other applicable laws and regulations.

In addition, neither Rule 2330(f)(1)(A) nor Rule 2330(f)(2) require a member or its associated persons to obtain the prior written authorization of the customer in whose account they intend to share. NASD believes that it is important for a customer to provide his or her written approval prior to a member or its associated persons sharing in the profits or losses in that customer's account. NASD believes that it is important that customers be provided the opportunity to affirmatively authorize a member or associated person to share in their accounts.

Therefore, NASD is proposing to amend Rules 2330(f)(1)(A) and 2330(f)(2) to require that, when sharing in a customer's account, associated persons obtain the prior written authorization of their employing member and that members and their associated persons obtain the prior written authorization of the customer in whose account they will be sharing. NASD notes that, notwithstanding a member's or associated person's compliance with the requirements of Rule 2330(f), the conduct permitted under Rule 2330(f) may trigger notice and other requirements under other NASD rules, including NASD Rules 3030, 3040, and 3050. Rule 2330(f) does not affect the applicability of such other rules to these arrangements.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which require, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, the proposed rule change is intended to facilitate compliance with Rule 2330(e) by clarifying the conduct prohibited by the rule, and to strengthen the regulatory protections provided in Rule 2330(f).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–180 and should be submitted by January 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–184 Filed 1–3–03; 8:45 am]

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among other things, requires an associated person to notify his or her employer member in writing prior to opening an account or placing an initial order for the purchase or sale of securities with another member and to notify that member in writing of his or her employment relationship with the employer member.

[7] 15 U.S.C. 78o–3(b)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47104; File No. SR–NYSE–2002–39]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. ("NYSE") To Amend NYSE Rule 123D With Respect to Openings, Reopenings and Halts in Trading for Stocks Traded on the Exchange

December 30, 2002.

On August 29, 2002, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 123D: Openings and Halts in Trading. The proposed amendments would shorten the minimum time period between tape indications and reopenings in stocks that are subject to a trading halt during the trading day. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on November 26, 2002.[3] The commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission believes that the NYSE's amendments to NYSE Rule 123D to revise the procedures for re-opening after a trading halt strike a reasonable balance between preserving the price discovery process and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46852 (November 19, 2002), 67 FR 70796.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

providing timely opportunities for investors to participate in the market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[6] that the proposed rule change (SR–NYSE–2002–39), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–183 Filed 1–3–03; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 4142]

Culturally Significant Objects Imported for Exhibition Determinations: "Thomas Gainsborough, 1727–1788"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Thomas Gainsborough, 1727–1788," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about February 9, 2003 to on or about May 11, 2003; the Museum of Fine Arts, Boston, MA, from on or about June 15, 2003 to on or about September 14, 2003; and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/401–4779). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

Dated: December 20, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–198 Filed 1–3–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Boston-Maine Airways Corp., D/B/A PAN AM Clipper Connection for Issuance of Amended Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 2002–12–20) Docket OST–00–7668.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection fit, willing, and able to conduct operations using large aircraft, and (2) awarding it an amended certificate to engage in interstate scheduled air transportation of persons, property, and mail, using large aircraft.

DATES: Persons wishing to file objections should do so no later than January 13, 2003.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–00–7668 and addressed to Department of Transportation Dockets (SVC–124, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: December 27, 2002.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–185 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 201: Aeronautical Operational Control (AOC) Message Hazard Mitigation (AMHM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 201 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 201: Aeronautical Operational Control.

DATES: The meeting will be held on January 21–23, 2003 11 a.m.

ADDRESSES: The meeting will be held at Continental Airlines, Flight Training Facility, 17441 JFK Blvd., Houston, TX.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 201 meeting. The agenda will include:

- January 21–23:
  - Opening Session (Welcome, Introductory and Administrative Remarks, Review Federal Advisory Committee Act and RTCA Procedures, Review Agenda, Background)
  - Review Terms of Reference per the December 5, 2002, RTCA Program Management Committee
  - Review proposed Phase I document outline
  - Collect input from action item groups
  - Draft other sections of Phase I Document
  - Review and revise drafts, make further action item assignments
  - Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Note: This agenda will be followed as appropriate over the course of 3 days. Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement tot he committee at any time.

Issued in Washington, DC, on December 23, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–206 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM), Fifteenth Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on January 21–23, 2003, starting at 9 am.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 19(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- January 21:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda and Minutes of Previous Meeting)
  - Status of Working Group (WG)–4, Transition Document for VHF Digital Link Mode 3
  - Status of WG–5, Proposed Change 1 to the NEXCOM Safety and Performance Requirements (SPR)
  - Status of WG–6, Interoperability of NEXCOM
  - Resolve Final Review and Comment (FRAC) comments on deft WG–6 Interoperability Document for plenary approval
- January 22:
  - WG–5 meeting to review proposed final Change 1 to SPR, and recommend approval for FRAC of Change 1
- January 23:
  - WG–4 meeting to review Transition Document

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 23, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–207 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 03–10–C–00–MHT Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Manchester Airport, Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Manchester Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 5, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, ANE–600, attn: Priscilla Scott, 12 New England Executive Park, Burlington, Massachusetts, 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Kevin A. Dillon, Airport Director of the City of Manchester, Department of Aviation at the following address: One Airport Road, Suite 300, Manchester, New Hampshire, 03103–3395.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Manchester, Department of Aviation under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, PFC Program Manager, 12 New England Executive Park, Burlington, Massachusetts, 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Manchester Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 20, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Manchester, Department of Aviation was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 1, 2003.

The following is a brief overview of the application.

Proposed charge effective date: December 1, 2013.

Proposed charge expiration date: January 1, 2020.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $50,662,827.

Brief description of proposed project(s): Runway 17–35 Extension and Reconstruction. Residential and School Sound Insulation Program.

Phase II Terminal Expansion: Construction and Construction Management.

Phase II Terminal Expansion: Baggage Handling Devices, Site work, Ramp Upgrades, and Jet Bridges.

Phase II Terminal Expansion: Design Fees.

PFC Application Development.

Class or classes of air carriers that the public agency has requested not be required to collect PFCs: On demand air taxi/commercial operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 16 New England Executive Park, Burlington, Massachusetts.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Manchester, Department of Aviation.

Dated: Issued in Burlington, Massachusetts on December 20, 2002.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 03–208 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP02–009

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect recall.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency initiate an investigation of model year (MY) 1995 Dodge Dakota vehicles to address an alleged safety-related defect. The petition is identified as DP02–009.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan White, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5226.

SUPPLEMENTARY INFORMATION: Mr. Edward W. Bailey of Metairie, LA, submitted a petition to NHTSA by letter (undated), requesting that NHTSA initiate a defect investigation of model year (MY) 1995 Dodge Dakota vehicles. The petitioner alleges that the chassis on the passenger side of his vehicle cracked behind the right front wheel, through no fault of his own, which he believes constitutes a safety defect. A review of ODI's database shows that there are nine consumer complaints related to frame cracks on MY 1995–96 Dodge Dakota vehicles (hereinafter referred to as the subject vehicles), not including the petitioner's complaint. No similar complaints were found in the three model years (1992, 1993, 1994) prior to the subject vehicle model years, and no complaints were found in any model years after the subject vehicles. None of the complaints reported loss of control, crashes, injuries, or fatalities. Furthermore, a similar review of consumer complaints of frame cracks on vehicles that are peers of the subject vehicles also shows no reports of loss of control, crashes, injuries or fatalities. Most of the complainants who own or owned the subject vehicles were contacted to confirm the reported information and obtain additional information. The average mileage at failure of the frame on the subject vehicles was reported by consumers to be approximately 93,000.

After review and analysis of all the available information, it does not appear that cracking of the frame in the subject vehicles at the rate reported constitutes a defect in vehicles that average 93,000 miles. This is especially true given that there have been no reported crashes, injuries, or deaths. Therefore, we do not believe that an investigation would result in the identification of a potential safety-related defect and this petition is denied.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of an alleged safety-related defect, as defined by the petitioner, in the subject vehicles at the conclusion of an investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: December 22, 2002.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–209 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on Exemption Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on exemption applications in JULY–SEPTEMBER 2002. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on December 20, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
Modification Exemptions				
7657–M	DOT–E 7657	Welker Engineering Company, Sugar Land, TX.	49 CFR 173.201, 173.202, 173.203, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3.	To modify the exemption to authorize the transportation of additional Division 2.1, 2.2, 2.3 and Class 3 materials in a non-DOT specification stainless steel cylinder.
7657–M	DOT–E 7657	Welker Engineering Company, Sugar Land, TX.	49 CFR 173.201, 173.202, 173.203, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3.	To modify the exemption to authorize the transportation of additional Division 2.1 and 2.2 materials in a non-DOT specification stainless steel cylinders.
8232–M	DOT–E 8232	National Refrigerants, Inc., Philadelphia, PA.	49 CFR 173.123(a), 173.315.	To modify the exemption to authorize the transportation of a Division 2.2 material in non-DOT specification portable tanks.
8915–M	DOT–E 8915	E.I. DuPont de Nemours and Company, Wilmington, DE.	49 CFR 173.301(d), 173.302(a)(3), 173.302(a)(5).	To modify the exemption to authorize the transportation of an additional Division 2.1 material in a manifolded DOT Specification cylinder.

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
9419–M	DOT–E 9419	FIBA Technologies, Inc., Westboro, MA.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Subpart B, Appendix B.	To modify the exemption to authorize the elimination of the annual quantity limitation when performing the acoustic emission testing (AET) on DOT Specification cylinders for the transportation of various Division 2.1 and 2.2 gases.
9508–M	DOT–E 9508	Callery Chemical Company, Pittsburgh, PA.	49 CFR 173.202(a)(3), 173.34(e), 175.3.	To modify the exemption to authorize the transportation of an additional Division 4.3 material in DOT Specification cylinders.
10389–M	DOT–E 10389	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 174.67(i)	To modify the exemption to authorize the transportation of a Division 6.1 and additional Class 8 material in tank cars.
10789–M	DOT–E 10789	Allied Universal Corporation, Miami, FL.	49 CFR 173.304(a)(2), 173.34(d), 173.34(e).	To modify the exemption to authorize the retest period from 2 to 5 years for non-DOT specification fully open-head steel salvage cylinders and the use of a 3AA480 cylinder for the transportation of Division 2.3 materials.
10985–M	DOT–E 10985	Georgia-Pacific Corporation, Atlanta, GA.	49 CFR 174.67(i), (j)	To modify the exemption to authorize the transportation of a Division 5.1 material in DOT Specification tank cars.
11262–M	DOT–E 11262	CAIRE Inc. (Division of CHART Industries), Burnsville, MN.	49 CFR 173.316(c)(2), 175.3, 178.57–8(c).	To modify the exemption to authorize a new non-DOT specification cylinder design for the transportation of Division 2.2 materials used in a liquid oxygen supply system.
11373–M	DOT–E 11373	Chemical Resources, Inc., Louisville, KY.	49 CFR 117.848(d)	To modify the exemption to authorize for-hire contract carriers the ability to transport Division 4.2 materials on the same vehicle with Class 8 materials.
11379–M	DOT–E 11379	TRW Automotive, Occupant Safety Systems, Washington, MI.	49 CFR 173.301(h), 173.302.	To modify the exemption to authorize extension of the 10-hour lot duration for the non-DOT specification pressure vessels used as components of automobile vehicle safety systems.
11380–M	DOT–E 11380	Baker Atlas (Houston Technology Center), Houston, TX.	49 CFR 173.34(d), 178.37–13, 178.37–15, 178.37–5.	To modify the exemption to authorize a new tank assembly design for the non-DOT specification seamless cylinders transporting Division 2.1 materials.
11401–M	DOT–E 11401	Agilent Technologies, Inc., Santa Clara, CA.	49 CFR 172, 173.124, 173.125, 174, 175, 176, 177.	To modify the exemption to authorize an increase from 6 grams to a maximum of 9 grams of cesium in the inner cylinder device.
11650–M	DOT–E 11650	Autoliv ASP, Inc., Ogden, UT.	49 CFR 178.65–9	To modify the exemption to authorize an additional design qualification of the non-DOT specification pressure vessel sidewall opening for the transportation of Division 2.2 materials.
11759–M	DOT–E 11759	Honeywell International, Inc., Morristown, NJ.	49 CFR 179.15(a)	To modify the exemption to authorize the use of an additional specification tank car with increased wall thickness for the transportation of Division 6.1 materials.
11970–M	DOT–E 11970	ExxonMobil Chemical Company, Houston, TX.	49 CFR 172.101, 178.245–1(c).	To modify the exemption to authorize the use of alternative size non-DOT specification steel portable tanks for the transportation of a Division 4.2 material.
12398–M	DOT–E 12398	Praxair Inc., Danbury, CT	49 CFR 173.34(d), 178.35(e).	To modify the exemption to authorize the transportation of Division 2.3 and an additional Division 2.2 material in DOT 3A and 3AA cylinders equipped with an alternative relief device and to add cargo vessel as an additional mode of transportation.
12690–M	DOT–E 12690	Air Liquide America Corporation, Houston, TX.	49 CFR 173.304(a)(2), Note 2.	To modify the exemption to authorize cargo vessel as an additional mode for the transportation of a Division 2.3 material in DOT Specification 3AA steel cylinders.
12844–M	DOT–E 12844	Delphi Automotive Systems, Troy, MI.	49 CFR 173.301(h), 173.302(a), 175.3.	To modify the exemption to authorize relief from the requirement for each non-DOT specification pressure vessel longitudinal weld seam to be 100% radiographically inspected for the transportation of Division 2.2 materials.
12855–M	DOT–E 12855	Kraton Polymers U.S. LLC, Belpre, OH.	49 CFR 172.302(c), 173.240.	To reissue the exemption originally issued on an emergency basis for the transportation of non-DOT specification pressure vessels containing a Class 3 material.
12917–M	DOT–E 12917	Northwest Ohio Towing & Recovery, Inc., Beaverdam, OH.	49 CFR 173.242(b)	To reissue the exemption originally issued on an emergency basis for the transportation of Class 8 materials in non-DOT specification cargo tanks (aviation refuelers).

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
13002–M	DOT–E 13002	Department of Defense (MTMC), Fort Eustis, VA.	49 CFR 172.301(c), 173.203(a), 173.306(f)(1).	To modify the exemption to reissue the exemption originally issued on an emergency basis for the transportation of Division 2.2 materials in accumulators.
13015–M	DOT–E 13015	BOC Gases, Murray Hill, NJ.	49 CFR 172.203(a), 172.301(c), 173.400a(a)(1), 178.35(f).	Modification request to provide a transitional period for use of cylinder collars that obscure required markings.
13016–M	DOT–E 13016	Carrier Transicold, Syracuse, NY.	49 CFR 172.301(c), 173.24(b)(1).	To reissue the exemption originally issued on an emergency basis for the release of a Division 2.2 gas from a DOT Specification cyclinder used in refrigerating equipment.
New Exemptions				
12630–N	DOT–E 12630	Chemetall GmbH Gesellschaft, Langelsheim, DE.	49 CFR 172.102(a)(2) & (c)(7)(ii).	To authorize the transportation in commerce of lithium alkyls, Division 4.2, in non-DOT specification IM 101 portable tanks with an equivalent minimum shell thickness less than that prescribed for the material. (modes 1, 2, 3)
12753–N	DOT–E 12753	Praxair, Inc., Danbury, CT	49 CFR 173.304(a)	To authorize the transportation in commerce of certain toxic gases in 3AX and 3AAX cylinders not presently authorized for use in transporting dichlorosilane, Division 2.3. (mode 1)
12872–N	DOT–E 12872	Southern California Edison, San Clemente, CA.	49 CFR 173.403	To authorize the one-time transportation in commerce of specially designed equipment containing Class 7 radioactive material. (mode 2)
12874–N	DOT–E 12874	Zomeworks Corporation, Albuquerque, NM.	49 CFR 171 to 180	To authorize the transportation in commerce of machine components that are charged with non-flammable, non-toxic refrigerant gas without packaging or communication requirements. (modes 1, 2, 3, 4, 5)
12953–N	DOT–E 12953	Westinghouse Electric Company, Pittsburgh, PA.	49 CFR 173.453(d)	To authorize the transportation in commerce of packages of fissile material that exceed the quantities presently authorized. (modes 1, 2)
12955–N	DOT–E 12955	Air Cruisers Company, Belmar, NJ.	49 CFR 172.301(c), 173.219(b)(1).	To authorize the transportation in commerce of lifesaving appliances containing a compressed gas cylinder that is filled in excess of its marked service pressure. (modes 1, 4, 5)
12972–N	DOT–E 12972	Voltaix, Inc., North Branch, NJ.	49 CFR 173.301(j)	To authorize the transportation in commerce of non-DOT specification cylinders for export containing various compressed gases without pressure relief devices. (modes 1, 3)
12982–N	DOT–E 12982	Arthur L. Fleener, Ames, IA.	49 CFR 175.320	To authorize the transportation in commerce of Division 1.1 explosives, which are forbidden for shipment by passenger-carrying aircraft to remote areas when no other means of transportation is available. (mode 5)
12994–N	DOT–E 12994	Air Liquide American Corporation, Houston, TX.	49 CFR 173.34(d)	To authorize the transportation in commerce of certain DOT specification cylinders and cylinders manufactured to a foreign specification without pressure relief devices. (modes 1, 3)
12995–N	DOT–E 12995	The Dow Chemical Company, Midland, MI.	49 CFR 173.306(a)(3)(v)	To authorize the transportation in commerce of inner metal receptacles which have been subjected to an alternative testing procedure for use in transporting limited quantities of compressed gases. (modes 1, 2, 3, 4)
12997–N	DOT–E 12997	Albermarle Corporation, Baton Rouge, LA.	49 CFR 173.24(g)(4)	To authorize the transportation in commerce of hazardous materials in a vented bulk packaging (an intermediate bulk container) when venting is not authorized. (modes 1, 2, 3)
13020–N	DOT–E 13020	Bristol Bay Contractors, Inc., King Salmon, AL.	49 CFR 173.243, 173.315	To authorize the transportation in commerce of propane in certain non-specification portable tanks. (modes 1, 2, 3)
13023–N	DOT–E 13023	Energy Conversion Devices, Inc., Troy, MI.	49 CFR 173.187	To authorize the one-time transportation in commerce of one overpack containing a specially designed device containing a Division 4.2 material that exceeds the maximum quantity limitations. (mode 1)
13025–N	DOT–E 13025	Southern California Edison, San Clemente, CA.	49 CFR 173.403, 173.427	To authorize the one-time transportation in commerce of specially designed equipment containing Class 7 hazardous materials. (mode 1)

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
13027–N	DOT–E 13027	Hemco Fabrication & Services, Midland, TX.	49 CFR 173.241, 173.242	To authorize the manufacture, mark, sale and use of a packaging consisting of manifolded non-DOT specification tanks for use in transporting certain Class 3 and Class 8 hazardous materials. (mode 1)
13034–N	DOT–E 13034	ATK–Ammunition Accessories, Inc., Lewiston, ID.	49 CFR 173.24(c), 173.54(a), 173.62.	To authorize the transportation in commerce of explosive components, Division 1.4S in specially designed packaging. (mode 1)
13048–N	DOT–E 13048	Department of Energy/ Richland Operations Office, Richland, WA.	49 CFR 173.244	To authorize the one-time, one-way transportation in commerce of a non-DOT specification containment system for waste disposal. (mode 1)
13052–N	DOT–E 13052	Questar, Inc., North Canton, OH.	49 CFR 172.301(a), 172.301(c), 172.400(a), 173.173(b)(2), 173.242.	To authorize the manufacture, marking, sale and use of UN 11G fiberboard intermediate bulk containers for use as the outer packaging for certain waste paints and waste paint related material, Class 3 in 5 gallon pails. (mode 1)
13056–N	DOT–E 13056	American Type Culture Collection (ATCC), Manassas, VA.	49 CFR 172, Subpart C, 173.134.	To authorize the transportation in commerce of certain infectious substances in special packagings. (mode 1)
13057–N	DOT–E 13057	MINTEQ International Inc., Easton, PA.	49 CFR 172 Subparts D, E & F, 173.24(c) Subparts E & F of Part 173.	To authorize the transportation in commerce of metal tubing containing hazardous materials to be transported with minimal regulation. (modes 1, 2, 3)
13083–N	DOT–E 13083	Rockwood Pigments NA, Inc., St. Louis, MO.	49 CFR 172,101 (SP IB6 or IP2).	To authorize the transportation in commerce of self-heating, solid, organic, n.o.s. in fexible intermediate bulk containers not to exceed 2,500 lbs. (modes 1, 2, 3)
13092–N	DOT–E 13092	Aztec Peroxides, L.L.C., Elyria, OH.	49 CFR 173.225(e)	To authorize the transportation in comerce of certain organic peroxides, Division 5.2 in DOT-Specification cargo tanks. (mode 1)
EMERGENCY EXEMPTIONS				
EE 8556–M ..	DOT–E 8556	Gardner Cryogenics, Lehigh Valley, PA.	49 CFR 173.318, 176.76(g)(1), 178.338.	Modification request to add reference to an additional flow diagram. (modes 1, 2)
EE 12955–M	DOT–E 12955	Air Cruisers	49 CFR 172.301(c), 173.219(b)(1).	Modification request to provide additional time for cylinders to be re-marked. (modes 1, 4, 5)
EE 12976–M	DOT–E 12976	University of Pittsburgh, Pittsburgh, PA.	49 CFR 172.302(c), 173.196.	Modification request to provide an additional 90 days due to construction delays. (mode 1)
EE 13014–M	DOT–E 13014	Acambis Inc., Cambridge, MA.	49 CFR 173.196, 178.609	Modification request to provide additional time to transport smallpox vaccine due to technical delays. (mode 1)
EE 13032–N	DOT–E 13032	Conax Florida Corp. 2, St. Petersburg, FL.	49 CFR 178.65	To authorize the transportation in commerce of a DOT cylinder as part of a component for a vehicle that is part of the National Missile Defense Program. (mode 1)
EE 13036–N	DOT–E 13036	Datum, Beverly, MA	49 CFR 173.34(d)	To authorize the transportation in commerce of a non-DOT specification container for hydrogen. (mode 1)
EE 13042–M	DOT–E 13042	Department of State, Washington, DC.	49 CFR 172.101, Table Column 8C.	Emergency modification request to authorize Tyvek bags as inner packaging for transportation of anthrax contaminated objects. (mode 1)
EE 13065–N	DOT–E 13065	ShipMate, Inc., Torrance, CA.	49 CFR 173.166(c)	Emergency request to authorize the transportation of air bag modules and seat-belt pretensioners using an abbreviated EX number (*i.e.*, the last two digits of the year rather than using a four digit number to identify the year). (mode 1, 2, 3, 4, 5)
EE 13065–M	DOT–E 13065	Toyota Motor Sales	49 CFR 173.166(c)	Emergency request to authorize the transportation of air bag modules and seat-belt pretensioners using an abbreviated EX number (*i.e.*, the last two digits of the year rather than using a four digit number to identify the year). (mode 1, 2, 3, 4, 5)
EE 13067–N	DOT–E 13067	Kuehne Chemical Company, South Kearney, NJ.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT specification multi-unit tank car tank that has been fitted with an emergency "B" kit to prevent leakage during transportation. (mode 1)
EE 13068–N	DOT–E 13068	Brenntag Mid-South Inc., Springfield, MO.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking multi-unit tank car tank that has been fitted with an emergency "B" kit to prevent leakage during transportation. (mode 1)

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 13071–N	DOT–E 13071	JCI Jones Chemcials, Inc., Charlotte, NC.	49 CFR 173. 49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT specification multi-unit tank car tank that has been fitted with an emergency "B" kit prevent leakage (mode 1)
EE13072–N ..	DOT–E 13072	JCI Jones Chemicals, Inc., Beech Grove, IN.	49 CFR 173.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT multi-unit tank car tank that has been fitt4ed with an emergency "B" kit to prevent leakage during transportation. (mode 1)
EE13073–N ..	DOT–E 13073	Alcohol, Tobacco & Firearms, Washington, DC.	49 CFR 173,56(b), 173.62	Emergency request to transport 35 grams of unapproved explosives to an ATF laboratory. (mode 1)
EE13074–N ..	DOT–E 13074	Harcross Chemicals Inc., Kansas City, KS.	49 CFR 173.34(d)	Emergency request to transport a DOT3A480 cylinder containing chlorine that has developed a leak and has a Chlorine Institute A Kit applied. (mode 1)
EE13075–N ..	DOT–E 13075	Alexander Chemical Corp., LaPorte, IN.	49 CFR 173.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT specification multi-unit tank car tank that has been fitted with an emergency "B" kit to prevent leakage during transportation. (mode 1)
EE13079–N ..	DOT–E 13079	Atofina Chemicals, Inc., Philadelphia, PA.	49 CFR 172.400	To authorize the transportation in commerce for a one-time shipment of class 9 materials that have been mis-labeled as class 3 flammables. (mode 1)
EE13086–N ..	DOT–E 13086	Alexander Chemical Corporation, LaPorte, IN.	49 CFR 173.34(d)	Emergency request to transport a DOT3AA480 cylinder containing chlorine which has developed a leak and is fitting with a Chlorine Institute A Kit. (mode 1)
EE13089–N ..	DOT–E 13089	Harcross Chemicals, Inc., Kansas City, KS.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT 3A480 cylinder containing chlorine that has developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE13090–N ..	DOT–E 13090	JCI Jones Chemicals Inc., Caledonia, NY.	49 CFR 173.301(c), 173.34(d).	To authorize the transportation in commerce of a leaking DOT3A480 cylinder containing chlorine which has an emergency "A" kit applied to prevent leakage during transportation. (mode 1)
EE13093–N ..	DOT–E 13093	Kuehne Chemical Company, South Kearny, NJ.	49 CFR 173.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT specification multi-unit tank car tank that has been fitted with an emergency "B" kit to prevent leakage during transportation. (mode 1)
EE13094–N ..	DOT–E 13094	Airgas Nor Pac, Seattle, WA.	49 CFR 173.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT specification multi-unit tank car tank that has been fitted with an emergency "B" kit to prevent leakage during transportation. (mode 1)
EE13095–N ..	DOT–E 13095	Ocean Drilling Program, College Station, TX.	49 CFR 173.302, 175.3 ...	Emergency request to transport certain non-DOT specification hydraulic accumulators containing methane. (mode 1)
EE 13096–N	DOT–E 13096	Hacros Chemicals Inc., Kansas City, KS.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT 3A480 specification cylinder containing chlorine that has developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13097–N	DOT–E 13097	Alexander Chemical Corporation, LaPorte, IN.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT 3AA480 specification cylinder containing chlorine that has developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13098–N	DOT–E 13098	JCI Jones Chemicals, Inc., Caledonia, NY.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	Emergency request to transport a DOT 106A500 specification multi unit tank car tank containing chlorine that has developed a task and has a chlorine Institute B kit applied. (mode 1)
EE 13099–N	DOT–E 13101	The Colibri Corporation, Providence, RI.	49 CFR 172.301(a), 172.301(c), 178.3, 178.33a–9.	Emergency request to authorize the transportation in commerce of receptable containing flammable gas that are not marked with a specification, and are mis-marked with the proper shipping name and identification number. (mode 1)
EE 13102–N	DOT–E 13102	Watts Regulator Company, North Andover, MA.	49 CFR 173.150(b), 173.222(c), 173.306(a), 173.322.	Emergency request to transport non-DOT specification packagings, with limited quantities of various hazardous materials. (modes 1, 2, 4)
EE 13103–N	DOT–E 13103	JCI Jones Chemicals Inc., Milford, VA.	49 CFR 172, Subparts C&G, 172.301(c), 173.34(d).	Emergency request to transport a DOT Specification 3A480 cylinder containing chlorine that has developed a leak and is equipped with a Chlorine Institute A kit. (mode 1)
EE 13113–N	DOT–E 13113	Dow Chemicals, Inc., Kansas City, KS.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	Emergency request to transport a DOT Specification 106A500 multi unit tank car tank containing chlorine which developed a leak in the valve and has a Chlorine Institute B kit applied. (mode 1)

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 13113–N	DOT–E 13113	Dow AgroSciences L.L.C., Indianapolis, IN.	49 CFR 172.302, 173.243(b) and (c).	To authorize the transportation in commerce of a division 6.1 material in DOT specification cargo tanks that are not authorized for that material in the HMR. (mode 1)
EE 13115–N	DOT–E 13115	Airgas Northeast, Cheshire, CT.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT specification 4BW240 cylinder containing sulfur dioxide which developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13119–N	DOT–E 13119	JCI Jones Chemicals Inc., Cadedonia, NY.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT specification 3A480 cylinder containing sulfur dioxide that has developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13120–N	DOT–E 13120	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT specification multi-unit tank car tank that has been fitted with an emergency "B" kit to prevent leaking during transportation. (mode 1)
EE 13121–N	DOT–E 13121	Airgas, Corpus Christi, TX	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT specification 3A480 cylinder containing chlorine that developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13122–N	DOT–E 13122	DPC Enterprises, Houston, TX.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	Emergency request to transport a DOT specification 106A500X multi unit tank car tank containing sulfur dioxide that developed a leak and has a Chlorine Institute B kit applied. (mode 1)
EE 13123–N	DOT–E 13123	DPC Enterprises, Houston, TX.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT specification 3A480 cylinder containing chlorine that developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13125–N	DOT–E 13125	Allied Universal Corporation, Miami, FL.	49 CFR 173.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking ton cylinder that has been fitted with an emergency "B" kit to prevent leakage during transportation. (mode 1)
EE 13126–N	DOT–E 13126	Univar USA Inc., Twinsburg, OH.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT specification 3A480 cylinder containing sulfur dioxide that developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13128–N	DOT–E 13128	Alexander Chemical Co., LaPorte, IN.	49 CFR 173.34(d)	To authorize the transportation in commerce of a leaking cylinder that has been fitted with an emergency "A" kit to prevent leakage during transportation. (mode 1)
EE 13130–N	DOT–E 13130	DPC Enterprises, Houston, TX.	49 CFR 173.34(d)	To authorize the transportation in commerce of a leaking cylinder that has been fitted with an emergency "A" kit to prevent leakage during transportation. (mode 1)
EE 13131–N	DOT–E 13131	Airgas-Nor Pac, Inc., Portland, OR.	49 CFR 173.34(d)	To authorize the transportation in commerce of a leaking cylinder that has been fitted with an emergency "A" kit to prevent leakage during transportation. (mode 1)

DENIALS

10440–M	Request by MASS Systems (A Unit of Ameron Global, Inc.) Baldwin Park, CA to modify the exemption to authorize an alternative maintenance/inspection program for welded austenitic stainless steel non-DOT specification cylinders, conforming with DOT Specification 4DS, for the transportation of Division 2.2 materials denied September 27, 2002.
11759–M	Request by E.I DuPont de Nemours & Company, Inc. Wilmington, DE to modify the exemption to authorize the transportation of a Division 6.1 material in DOT Specification tank cars denied August 6, 2002.
12820–N	Request by Trinity Manufacturing Hamlet, NC to authorize the transportation in commerce of chloropicrin, 6.1, poison inhalation hazard, Hazard Zone B and chloropicrin mixtures in 1A1 drums in an alternative stacking position denied July 16, 2002.
12845–N	Request by Qantas Airways Limited Los Angeles, CA to authorize the transportation in commerce of cylinders containing medical use compressed oxygen that exceed the present quantity limitation denied September 27, 2002.
13024–N	Request by Sybron Dental Specialties Inc. Orange, CA to authorize the transportation in commerce of specially designed packagings containing metallic mercury, Class 8 in package quantities exceeding one pound with the prescribed marking and labelling denied September 25, 2002.

[FR Doc. 03–187 Filed 1–3–03; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: R. Ryan Posten, Exemptions Program Officer Hazardous Materials Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.
PM—Party to application with modification request.

Issued in Washington, DC, on December 20, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11862–N	The BOC Group, Murray Hill, NJ	4	03/31/2003
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	01/31/2003
12381–N	Ideal Chemical & Supply Co., Memphis, TN	3	05/31/2003
12412–N	Great Western Chemical Company, Portland, OR	3	05/31/2003
12440–N	Luxfer Inc., Riverside, CA	1	05/31/2003
12648–N	Stress Engineering Services, Inc., Houston, TX	4	02/28/2003
12701–N	Fuel Cell Components & Integrators, Inc., Hauppauge, NY	1	01/31/2003
12706–N	Raufoss Composites AS, Raufoss, NO	1, 3	03/31/2003
12715–N	Arkansas Eastman Division, Eastman Chemical Co., Batesville, AR	4	01/31/2003
12718–N	Weldship Corporation, Bethlehem, PA	4	01/31/2003
12751–N	Defense Technology Corporation, Casper, WY	4	01/31/2003
12859–N	Atlantic Research Corporation, Gainesville, VA	4	03/31/2003
12867–N	G.L.I. Citergaz, 964 Civray, FR	1	03/31/2003
12902–N	C&S Railroad Corp., Jim Thorpe, PA	4	01/31/2003
12941–N	The Neiman Marcus Group, Longview, TX	4	01/31/2003
12950–N	Walnut Industries, Inc., Bensalem, PA	4	01/31/2003
12960–N	International Fuel Cells, South Windsor, CT	4	03/31/2003
12973–N	Viking Packing Specialist, Tulsa, OK	4	03/31/2003
12988–N	Air Products & Chemicals, Inc., Allentown, PA	1	05/31/2003
12990–N	Technifab Products, Inc., Brazil, IN	4	01/31/2003
12991–N	General Plastics Manufacturing Company, Tacoma, WA	4	01/31/2003
12998–N	Safety-Kleen Services, Inc., Columbia, SC	4	01/31/2003
12999–N	Safety-Kleen Services, Inc., Columbia, SC	4	01/31/2003
13001–N	The J.C. Smith Co., San Saba, TX	1	03/31/2003
4453–M	Dyno Nobel, Inc., Salt Lake City, UT	4	12/31/2002
4884–M	Matheson Tri-Gas, East Rutherford, NJ	4	01/31/2003
7060–M	Federal Express, Memphis, TN	4	01/31/2003
7277–M	Structural Composites Industries, Pomona, CA	3	02/28/2003
8162–M	Structural Composites Industries, Pomona, CA	3	02/28/2003
8718–M	Structural Composites Industries, Pomona, CA	3	02/28/2003
8723–M	Dyno Nobel, Inc., Salt Lake City, UT	1	01/31/2003
10019–M	Structural Composites Industries, Pomona, CA	3,4	02/28/2003
10751–M	Dyno Nobel, Inc., Salt Lake City, UT	4	01/31/2003
10882–M	Espar Products, Inc., Mississauga, Ontario L5T 1Z8, CN	4	01/31/2003
11194–M	Carleton Technologies Inc., Pressure Technology Div., Glen Burnie, MD	4	01/31/2003
11327–M	Phoenix Services, Inc., Pasadena, MD	4	03/31/2003
11537–M	JCI Jones Chemicals, Inc., Milford, VA	3	05/31/2003
11579–M	Dyno Nobel, Inc., Salt Lake City, UT	1	01/31/2003
11769–M	Great Western Chemical Company, Portland, OR	3	03/31/2003
11769–M	Great Western Chemical Company, Portland, OR	3	03/31/2003
11769–M	Hydrite Chemical Company, Brookfield, WI	3	03/31/2003
11791–M	The Coleman Company, Inc., Wichita, KS	4	01/31/2003
11850–M	Air Transport Association, Washington, DC	4	01/31/2003
11911–M	Transfer Flow, Inc., Chico, CA	3	05/31/2003
11911–M	Transfer Flow, Inc., Chico, CA	3	05/31/2003
12065–M	Petrolab Company, Latham, NY	4	05/31/2003
12443–M	Dow Reichhold Specialty Latex, LLC, Chickamauga, GA	4	01/31/2003
12449–M	Chlorine Service Company, Inc., Kingwood, TX	4	01/31/2003

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
12599–M	Voltaix, Inc., North Branch, NJ	4	01/31/2003
12866–M	Delta Air Lines (Technical Operations Center), Atlanta, GA	4	01/31/2003

[FR Doc. 03–186 Filed 1–3–03; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Berkley Regional Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 4 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002, at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6915.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2002 Revision, on page 44301 to reflect this addition:

Company Name: Berkley Regional Insurance Company. *Business Address:* 7273 East Butherus Drive, Scottsdale, AZ 85260. *Phone:* (203) 629–3000. *Underwriting Limitation b/:* $16,283,000. *Surety Licenses c/:* AL, AK, AZ, AR, CA, CT, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. *Incorporated in:* Delaware.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: December 24, 2002.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 03–117 Filed 1–3–03; 8:45 am]
BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Ohio Indemnity Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 5 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002, at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2002 Revision, on page 44322 to reflect this addition:

Ohio Indemnity Company. *Business Address:* 250 East Broad Street, 10th Floor, Columbus, OH 43215. *Phone:* (614) 228–2000. *Underwriting Limitation b/:* $2,963,000. *Surety Licenses c/:* AL, AZ, AR, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, ME, MD, MI, MS, MO, MT, NE, NV, NH, NJ, NY, NC, ND, OH, OR, PA, RI, SC, SD, UT, VT, VA, WA, WV, WI, WY. *Incorporated in:* Ohio.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: December 24, 2002.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 03–116 Filed 1–3–03; 8:45 am]
BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8885

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8885,

Health Insurance Credit For Eligible Recipients.

DATES: Written comments should be received on or before March 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Health Insurance Credit For Eligible Recipients.

OMB Number: 1545–1807.

Form Number: 8885.

Abstract: Form 8885 is used to allow a qualifying individual to take a credit for health insurance premiums paid either by them or their behalf on their tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 300,000.

Estimated Time Per Response: 59 minutes.

Estimated Total Annual Burden Hours: 294,000.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 03–202 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8880

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8880, Credit for Qualified Retirement Savings Contributions.

DATES: Written comments should be received on or before March 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Qualified Retirement Savings Contributions.

OMB Number: 1545–1805.

Form Number: Form 8880 is used to allow qualifying taxpayers to take a nonrefundable credit for contributions made to their qualified retirement accounts. These accounts can be IRA's, Roth IRA's, or qualified employer sponsored retirement plans.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 1 hour, 19 minutes.

Estimated Total Annual Burden Hours: 1,310,000.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 03–203 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 96–53

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96–53, Section 482—Allocations Between Related Parties.

DATES: Written comments should be received on or before March 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Sec. 482—Allocations Between Related Parties.

OMB Number: 1545–1503. Revenue Procedure Number: Revenue Procedure 96–53.

Abstract: The information requested in this revenue procedure is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications, to process such applications and negotiate agreements, and to verify compliance with the agreements and whether the agreements require modification.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 160.

Estimated Time Per Respondent: 32 hours, 49 minutes.

Estimated Total Annual Burden Hours: 5,250.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 03–204 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Revenue Procedure 96–52

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96–52, Acceptance Agents (IRB 1996–48).

DATES: Written comments should be received on or before March 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or revenue procedure should be directed to Larnice Mack, (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Acceptance Agents.

OMB Number: 1545–1499.

Revenue Procedure Number: Revenue Procedures 96–52.

Abstract: Revenue Procedure 96–52 describes application procedures for becoming an acceptance agent and the requisite agreement that an agent must execute with the Internal Revenue Service.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 12,825

Estimated Time Per Respondent: 3 hrs., 12 minutes.

Estimated Total Annual Burden Hours: 41,006.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 03–205 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, February 13, 2003, from 2 p.m. central time to 3 p.m. central time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 19, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 03–199 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, February 5, 2003, from 11 a.m. central time to noon central time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 19, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 03–200 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, February 7, 2003, from 1 to 4 p.m., and Saturday, February 8, 2003, from 8 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Friday, February 7, 2003, from 1 to 4 p.m., and Saturday, February 8, 2003, from 8 a.m. to noon at the Courtyard Overland Park, Metcalf, 11301 Metcalf Avenue, Overland Park, KS 66210. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 19, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 03–201 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 3

Monday, January 6, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 2002–8]

Brokerage Loans and Lines of Credit

Correction

In rule document 02–13689 beginning on page 38353 in the issue of Tuesday, June 4, 2002 make the following correction:

§ 104.3 [Corrected]

On page 38360, in the second column, in §104.3 (a)(3)(vii)(A), in the first paragraph, in the first line, "(A)" should read, "(B)".

[FR Doc. C2–13689 Filed 1–3–03; 8:45 am]

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Federal Register

Monday,
January 6, 2003

Part II

Environmental Protection Agency

40 CFR Part 50
National Ambient Air Quality Standards for Ozone: Final Response to Remand; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL–7428–7]

RIN 2060–ZA11

National Ambient Air Quality Standards for Ozone: Final Response to Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final response to remand.

SUMMARY: On July 18, 1997, in accordance with sections 108 and 109 of the Clean Air Act (Act), EPA completed its review of the national ambient air quality standards (NAAQS) for ozone (O_3) by promulgating revised primary and secondary standards (62 FR 38856; henceforth, "1997 final rule"). On May 14, 1999, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") remanded the O_3 NAAQS to EPA to consider, among other things, any potential beneficial health effects of O_3 pollution in shielding the public from the "harmful effects of the sun's ultraviolet rays." 175 F.3d 1027 (D.C. Cir., 1999). Today's action provides EPA's final response to that aspect of the Court's remand. Based on its review of the air quality criteria and NAAQS for O_3 completed in 1997, its additional assessment of potential beneficial effects of tropospheric O_3, and taking into account public comments, EPA has determined that information linking (a) changes in patterns of ground-level O_3 concentrations likely to occur as a result of programs implemented to attain the 1997 O_3 NAAQS to (b) changes in relevant patterns of exposures to ultraviolet (UV–B) radiation of concern to public health is too uncertain at this time to warrant any relaxation in the level of public health protection previously determined to be requisite to protect against demonstrated direct adverse respiratory effects of exposure to O_3 in the ambient air. Further, it is the Agency's view that associated changes in UV–B radiation exposures of concern, using plausible but highly uncertain assumptions about likely changes in patterns of ground-level ozone concentrations, would likely be very small from a public health perspective. As a result, the revised O_3 NAAQS will remain set at a level of 0.08 parts per million (ppm), with a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations measured at each monitor within an area. No other issues related to the 1997 O_3 NAAQS remain before the Court, and other remanded issues related to implementation of the O_3 NAAQS are not addressed by today's action.

EFFECTIVE DATE: March 7, 2003.

ADDRESSES: A docket containing information relating to EPA's review of the O_3 primary and secondary standards and this response to the D.C. Circuit remand (Docket No. A–95–58) is available for public inspection at the EPA's Air Docket Center, 1301 Constitution Avenue, N.W., Room B108, Washington, DC 20460, Mail code 6102T. This docket incorporates the docket from the previous review of the O_3 standards (Docket No. A–92–17) and the docket established for the ozone air quality criteria document (Docket No. ECAO–CD–92–0786). The docket may be inspected between 8:30 a.m. and 4:30 p.m. on weekdays, excluding legal holidays. A reasonable fee may be charged for copying. The information in the docket constitutes the complete basis for the decision announced in this final response to the remand. For the availability of related information, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susan Lyon Stone, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (C539–01), Research Triangle Park, NC 27711; e-mail *stone.susan@epa.gov;* telephone (919) 541–1146.

SUPPLEMENTARY INFORMATION:

Availability of Related Information

Certain documents are available from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Available documents include:

(1) The Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information ("Staff Paper") (EPA–452/R–96–007, June 1996, NTIS # PB–96–203435; $67.00 paper copy and $21.50 microfiche). (Add a $3.00 handling charge per order).

(2) Air Quality Criteria for Ozone and Other Photochemical Oxidants ("Criteria Document") (three volumes, EPA/600/P–93–004aF through EPA/600/P–93–004cF, July 1996, NTIS # PB–96–185574; $169.50 paper copy and $58.00 microfiche).

A limited number of copies of other documents generated in connection with the review of the standard, such as documents pertaining to human exposure and health risk assessments and the relationships between ground-level O_3, UV–B radiation, and health effects, can be obtained from: U.S. Environmental Protection Agency Library (C267–01), Research Triangle Park, NC 27711; telephone (919) 541–2777. These and other related documents are also available for inspection and copying in the EPA docket.

Electronic Availability

The Staff Paper and documents pertaining to human health risk and exposure assessments are available on the Office of Air and Radiation, Policy and Guidance Web site at: *http://www.epa.gov/ttn/oarpg/t1sp.html*. The O_3 NAAQS 1996 proposal and 1997 final rule are available at the same Web site, at: *http://www.epa.gov/ttn/oarpg/t1pfpr.html*.

Children's Environmental Health

This final response to the Court's remand, reaffirming the 1997 8-hour O_3 NAAQS, specifically takes into account children as the group most at risk to the direct inhalation-related effects of O_3 exposure, and was based on studies of effects on children's health (U.S. EPA, 1996a; U.S. EPA, 1996b) and assessments of children's exposure and risk (Johnson, 1994; Johnson *et al.*, 1996 a,b; Whitfield *et al.*, 1996; Richmond, 1997). The 8-hour O_3 primary standard protects children's health with an adequate margin of safety from the direct adverse effects associated with inhalation exposures to ground-level O_3, after considering potential indirect beneficial effects of ground-level O_3 related to its attenuation of UV–B radiation and any associated adverse health effects.

Implementation Activities

When the 8-hour primary and secondary O_3 standards are implemented by the States, the power generation, automobile, petroleum, and chemical industries are likely to be affected, as well as other manufacturing concerns that emit volatile organic compounds (VOC) or nitrogen oxides (NO_X). The extent of such effects will depend on implementation policies and control strategies adopted by States to assure attainment and maintenance of the standards.

The EPA is now developing appropriate policies and control strategies to assist States in the implementation of the 8-hour primary and secondary O_3 NAAQS. The EPA now expects to propose an implementation strategy for public comment early in 2003.

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I. Background

A. 1997 Revision of the O_3 NAAQS

On July 18, 1997, in accordance with sections 108 and 109 of the Act, EPA completed its review of the NAAQS for O_3 by promulgating revised primary and secondary standards (1997 final rule). These standards were based on EPA's review of the available scientific evidence linking direct exposures to ambient O_3 to adverse health and welfare effects at levels allowed by the then current O_3 standards. The revised primary and secondary standards were each set at a level of 0.08 ppm, with an 8-hour averaging time and a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations measured at each monitor within an area.[1] The new primary standard was established to provide increased protection to the public, especially children and other at-risk populations, against a wide range of O_3-induced respiratory health effects due to inhalation exposures, including decreased lung function, primarily in children active outdoors; increased respiratory symptoms, particularly in highly sensitive individuals; hospital admissions and emergency room visits for respiratory causes, among children and adults with pre-existing respiratory disease such as asthma; inflammation of the lung; and possible long-term damage to the lungs. The new secondary standard was established to provide increased protection to the public welfare against direct O_3-induced effects on vegetation, such as agricultural crop loss, damage to forests and ecosystems, and visible foliar injury to sensitive species.

1. Legislative Requirements

Two sections of the Act govern the establishment, review, and revision of NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify certain pollutants which "may reasonably be anticipated to endanger public health or welfare" and to issue air quality criteria for them. These air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *."

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants identified under section 108. Section 109(b)(1) defines a primary standard as one "the attainment and maintenance of which, in the judgment of the Administrator, based on [the] criteria and allowing an adequate margin of safety, are requisite to protect the public health." A secondary standard, as defined in section 109(b)(2), must "specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on [the] criteria, [are] requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air." [2]

Section 109(d)(1) of the Act requires periodic review and, if appropriate, revision of existing air quality criteria and NAAQS. Section 109(d)(2) requires appointment of an independent scientific review committee to review criteria and standards and recommend new standards or revisions of existing criteria and standards, as appropriate. The committee established under section 109(d)(2) is known as the Clean Air Scientific Advisory Committee (CASAC), a standing committee of EPA's Science Advisory Board.

2. Review of Air Quality Criteria and Standards for O_3

An overview of the last review of the O_3 air quality criteria and standards is presented in section I.C of the preamble to the 1997 final rule. In summary, the 1997 review was initiated in August 1992 with the development of a revised Air Quality Criteria Document for Ozone and Other Photochemical Oxidants (henceforth, the "Criteria Document"). Multiple drafts of the Criteria Document were reviewed by CASAC and the public, resulting in a final Criteria Document (U.S. EPA, 1996a) that reflected CASAC and public comments.[3] The EPA also prepared a staff paper, Review of National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information (henceforth, the "Staff Paper").[4] Multiple drafts of the Staff Paper were also reviewed by CASAC and the public, resulting in a final Staff Paper (U.S. EPA, 1996b) that reflected CASAC and public comments.[5]

On November 27, 1996 EPA announced its proposed decision to

[1] The form of a standard refers to the air quality statistic that is used to determine whether an area attains the standard.

[2] Welfare effects as defined in section 302(h) (42 U.S.C. 7602(h)) include, but are not limited to, "effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being."

[3] In a November 28, 1995 letter from the CASAC chair to the Administrator, CASAC advised that the final draft Criteria Document "provides an adequate review of the available scientific data and relevant studies of ozone and related photochemical oxidants" (Wolff, 1995a).

[4] The Staff Paper evaluates policy implications of the key studies and scientific information in the Criteria Document, identifies critical elements that EPA staff believes should be considered, and presents staff conclusions and recommendations of suggested options for the Administrator's consideration.

[5] In separate letters from the CASAC chair to the Administrator, CASAC advised that the primary standard and secondary standard sections of the final draft Staff Paper provide "an adequate scientific basis for making regulatory decisions" concerning the O_3 standards (Wolff, 1995b, 1996).

revise the NAAQS for O_3 (61 FR 65716, December 13, 1996; henceforth, "1996 proposal"), as well as its proposed decision to revise the NAAQS for particulate matter (PM). To ensure the broadest possible public input on these proposals, EPA took extensive and unprecedented steps to facilitate the public comment process, including the establishment of a national toll-free telephone hotline and provisions for electronic submission of comments. The EPA also held several public hearings, participated in numerous meetings across the country, and held two national satellite telecasts to provide direct opportunities for public comment and to disseminate information to the public about the proposed standard revisions. As a result of this intensive effort to solicit public input, more than 50,000 comments were received on the proposed revisions to the O_3 NAAQS by the close of the public comment period on March 12, 1997.

The final rule, published on July 18, 1997, presented EPA's rationale for its final decision, and addressed the major issues raised in comments on the 1996 proposal. A comprehensive summary of all significant comments, along with EPA's response to such comments (U.S. EPA, 1997; henceforth, "Response to Comments"), can be found in the docket for the 1997 rulemaking (Docket No. A–95–58).[6] The 1997 final rule presented EPA's decision to replace the existing 1-hour primary and secondary standards[7] (each set at a level of 0.12 ppm, with a 1-expected-exceedance form, averaged over 3 years[8] with 8-hour standards, each set at a level of 0.08 ppm, with a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations measured at each monitor within an area (as determined by 40 CFR part 50, appendix I).

B. Ozone NAAQS Litigation and Remand

1. Litigation Summary

Following promulgation of the revised 8-hour O_3 NAAQS, numerous petitions for review of the standards were filed in the D.C. Circuit. *American Trucking Associations* v. *EPA*, No. 97–1441. Oral argument was held on December 17, 1998 and the Court rendered its opinion on May 14, 1999. *American Trucking Associations* v. *EPA* ("ATA I"), 175 F.3d 1027 (D.C. Cir., 1999). A divided panel found that section 109 of the Act, 42 U.S.C. § 7409, as interpreted by EPA in setting the revised O_3 (and PM) NAAQS, effected an unconstitutional delegation of legislative authority. *Id.* at 1033–1040. The Court remanded the O_3 standards with instructions that EPA should articulate an "intelligible principle" for determining the degree of residual risk to public health permissible in setting revised NAAQS. *Id.* In addition, the Court also directed that, in responding to the remand, EPA should consider the potential beneficial health effects of O_3 pollution in shielding the public from the "harmful effects of the sun's ultraviolet rays." *Id.* at 1051–1053.

In 1999, EPA petitioned the D.C. Circuit for rehearing *en banc* on several aspects of that Court's decision in *ATA I*. Although the petition for rehearing was granted in part and denied in part, the Court declined to review its ruling with regard to the potential beneficial effects of O_3 pollution. *American Trucking Associations* v. *EPA* ("*ATA II*"), 195 F.3d 4, 10 (D.C. Cir., 1999). The Court did note, however, that it "expressed[ed] no opinion, of course, upon the effect, if any, that studies showing the beneficial effects of tropospheric ozone * * * might have upon any ozone standards * * *" *Id.*

On January 27, 2000, EPA petitioned the U.S. Supreme Court for *certiorari* on the constitutional issue and two other issues, but did not request review of the D.C. Circuit ruling regarding the potential beneficial health effects of O_3. The EPA's petition for *certiorari* was granted on May 22, 2000; oral argument was subsequently held on November 7, 2000; and an opinion was issued on February 27, 2001. *Whitman* v. *American Trucking Associations* ("*Whitman*"), 531 U.S. 457 (2001). The U.S. Supreme Court reversed the judgment of the D.C. Circuit on the constitutional issue, holding that section 109 of the Act does not delegate legislative power to the EPA in contravention of the Constitution, and remanded the case to the D.C. Circuit to consider challenges to the O_3 (and PM) NAAQS that had not been addressed by that Court's earlier decisions.

Oral argument was held on December 18, 2001, and on March 26, 2002, the D.C. Circuit issued its final decision finding the 1997 O_3 (and PM) NAAQS to be "neither arbitrary nor capricious," and denied the remaining petitions for review. *American Trucking Associations* v. *EPA* ("*ATA III*"), 283 F.3d 355, (D.C. Cir. 2002). Thus, today's final response to the Court's 1999 remand regarding the potential beneficial health effects of O_3 constitutes EPA's final response to challenges to the 1997 O_3 NAAQS. Other remanded issues, relating to implementation of the O_3 NAAQS, are not addressed by today's action.

2. Remand on Health Benefits Issue

The D.C. Circuit's 1999 ruling concludes that "EPA cannot ignore the possible health benefits of ozone."[9] *ATA I*, 175 F.3d at 1033. According to the Court "[p]etitioners presented evidence that, according to them, shows the health benefits of tropospheric ozone as a shield from the harmful effects of the sun's ultraviolet rays—including cataracts and both melanoma and non-melanoma skin cancer." *Id.* at 1051. In rejecting EPA's view that Congress did not intend it to consider potential indirect beneficial effects of tropospheric O_3 in shielding the public from potentially harmful, but naturally occurring, UV–B radiation from the sun, the Court concluded that "legally * * * EPA must consider the positive identifiable effects of a pollutant's presence in the ambient air in formulating air quality criteria under section 108 and NAAQS under section 109." *Id.* at 1052. As a result, the Court directed EPA to "determine whether * * * tropospheric ozone has a beneficent effect and, if so, then to assess ozone's net adverse health effect." *Id.* at 1053. Today's action sets forth EPA's final response in that regard.

C. Atmospheric Distribution of O_3 and UV–B Radiation

The focus of the 1997 review of the air quality criteria and standards for O_3 and related photochemical oxidants was on public health and welfare effects associated with direct exposure to ambient levels of O_3 in the lower troposphere, essentially at ground level. People are directly exposed to ground-level O_3 simply by breathing ambient air; similarly, plants are directly exposed through their respiratory processes. Ground-level O_3 is not emitted directly from mobile or stationary sources but, like other photochemical oxidants, commonly exists in the ambient air as an

[6] This docket incorporates by reference the docket from the previous O_3 NAAQS review (Docket No. A–92–17) and the docket established for the Criteria Document (Docket No. ECAO–CD–92–0876).

[7] These 1-hour O_3 standards were originally set in 1979 (44 FR 8202, February 8, 1979) and reaffirmed in 1993 (58 FR 13008, March 9, 1993).

[8] The 1-hour standards are attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than one, averaged over 3 years (as determined by 40 CFR part 50, appendix H).

[9] For the reasons discussed in the Response to Comments (U.S. EPA, 1997, pp. 128–135), EPA did not consider in the 1997 review adverse health effects that might be caused by the potential increase in UV–B radiation that could result from reductions in ground-level O_3 brought about by control programs implemented to attain a revised O_3 NAAQS.

atmospheric transformation product. Ground-level O_3 formation is the result of chemical reactions of VOC, NO_X, and oxygen in the presence of sunlight and generally at elevated temperatures. As a principal ingredient in photochemical smog, elevated episodic concentrations of ground-level O_3 typically occur in the summertime. High concentrations may be found in and downwind of major urban centers as well as across broad regions of elevated precursor emissions. A detailed discussion of atmospheric formation, ambient concentrations, and health and welfare effects associated with direct exposure to O_3 can be found in the Criteria Document and Staff Paper.

Naturally occurring O_3 is found in two sections of the earth's atmosphere, the stratosphere and the troposphere. The demarcation between these two layers varies between about 8 and 18 kilometers (km) above the earth's surface. As illustrated in Figure 1, depicting the vertical profile of O_3, most naturally occurring O_3 (> 90 percent) resides in the stratosphere, with the remaining O_3 (< 10 percent) in the troposphere. The band of O_3 between about 15 and 30 km is commonly known as the "ozone layer."

Man-made air pollution has significantly perturbed the natural distribution of O_3 in both layers. It is now widely accepted that emissions of long-lived chlorofluorocarbons (CFCs) and other compounds can deplete the natural O_3 layer in the stratosphere. And, as summarized above, much shorter lived emissions of VOC and NO_X can markedly increase "smog" O_3 in the lowest portion of the troposphere, which is termed the planetary boundary layer. This fluctuating planetary boundary or "mixing" layer of the troposphere can extend as high as 1 to 3 km above the ground. Assuming a fairly high summertime O_3 pollution reservoir of 65 parts per billion (ppb) in a typical 1 km mixing layer, Cupitt (1994) estimated that pollution would add less than 1 percent to the expected total vertical profile of tropospheric and stratospheric O_3 (*i.e.*, "total column" O_3) that would occur in the natural environment.

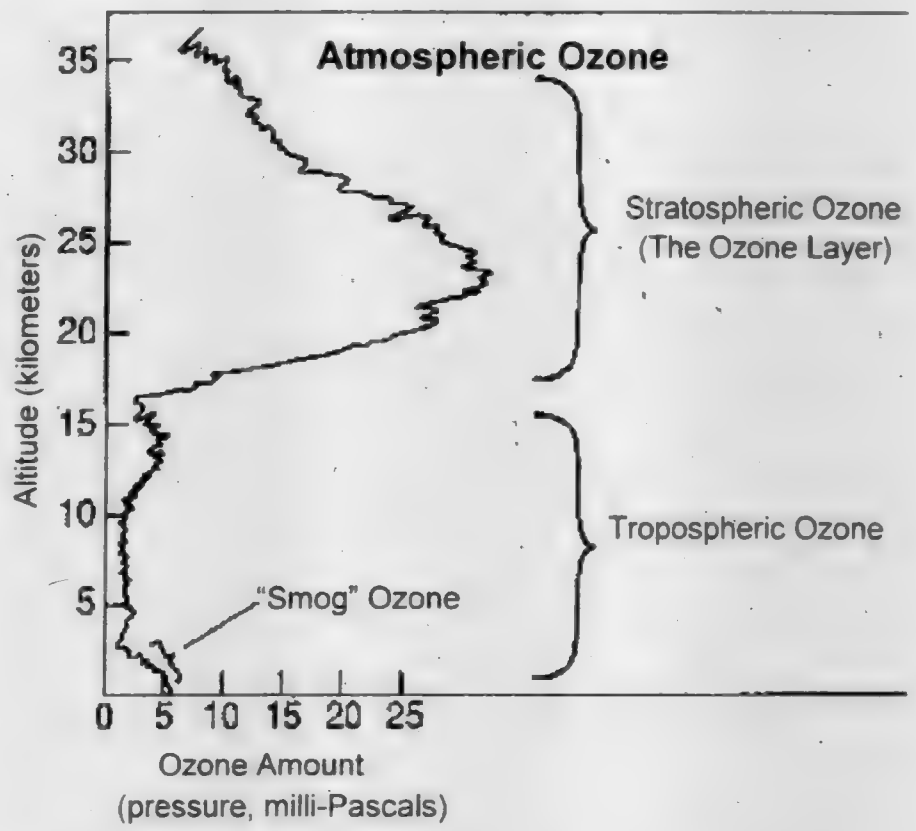

Figure 1. Distribution of Ozone in the Atmosphere (adapted from World Meteorological Organization, 1994, p. 20)

Ozone at ground level and throughout the troposphere is chemically identical to stratospheric O_3. Stratospheric O_3 occurs far too high to present any threat of direct respiratory-related adverse effects to people or plants from ambient ground-level exposures, but is known to provide a natural protective shield from excess radiation from the sun by absorbing UV–B radiation [10] before it penetrates to ground level. Recognizing that exposure to UV–B radiation has been associated with adverse health and welfare effects, EPA and international scientific, regulatory, and legislative organizations have for some time focused on understanding the effects of UV–B radiation and on controlling the man-made pollution that is causing the depletion of the O_3 layer in the stratosphere, as discussed in section I.D below.[11]

During the 1997 review, EPA recognized that tropospheric O_3 also absorbs UV–B radiation (U.S. EPA, 1996a, p. 5–79), such that ground-level O_3 formed by man-made pollution has the potential to provide some degree of additional shielding beyond the natural

[10] UV–B radiation refers to the region of the solar spectrum within the range of wavelengths generally from 280–290 nanometers (nm) at the lower end, to 315–320 nm at the upper end.

[11] For example, in 1977 and again in 1990, Congress added provisions to the Act to address stratospheric O_3 depletion and the resultant increase in exposure to UV–B radiation.

levels that would otherwise occur in the absence of man-made pollution. The relationship between ground-level O_3 and UV–B radiation, as well as the health effects associated with exposure to UV–B radiation and consideration of the UV–B radiation-related health risks associated with changes in ground-level O_3 are discussed in section II.B below. In response to the remand on the health benefits issue, EPA's assessment of the net adverse health effects of ground-level O_3 is discussed in section II.C below, as a basis for today's decision on the primary O_3 NAAQS, summarized in section II.D below.

D. Related Stratospheric O_3 Program

In the 1970s, scientists first grew concerned that certain chemicals could damage the earth's protective stratospheric O_3 layer, and these concerns were validated by the discovery of thinning of the O_3 layer over Antarctica in the southern hemisphere. Because of the risks posed by stratospheric O_3 depletion and the global nature of the problem, leaders from many countries decided to work together to craft a workable solution. Since 1987, over 175 nations have signed a landmark environmental treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer. The Protocol's chief aim is to reduce and eventually eliminate the production and use of man-made O_3 depleting substances, such as CFCs. By agreeing to the terms of the Montreal Protocol, signatory nations ratifying the Protocol—including the United States—commit to take actions to protect the stratospheric O_3 layer and to reverse the damage due to the use of O_3 depleting substances.

In 1990, Congress amended the Act by adding title VI (sections 601–618) to address the issue of stratospheric O_3 depletion.[12] Most importantly, the amended Act required the gradual end to the production of certain chemicals that deplete the O_3 layer.[13] In addition, the Act requires EPA to develop and implement regulations for the responsible management of O_3 depleting substances in the United States. The EPA has developed several regulatory programs under these authorities that include: ending the production and import of O_3 depleting substances (57 FR 33754, July 30, 1992) and identifying safe and effective alternatives (59 FR 13044, March 18, 1994), ensuring that refrigerants and halon fire extinguishing agents are recycled properly (58 FR 28660, May 14, 1993), banning the release of O_3 depleting refrigerants during the service, maintenance, and disposal of air conditioners and other refrigeration equipment (60 FR 40420, August 8, 1995), and requiring that manufacturers label products either containing or made with the most harmful O_3 depleting substances (58 FR 8136, February 11, 1993). Because of their relatively high O_3 depletion potential, several man-made compounds, including CFCs, carbon tetrachloride, methyl chloroform, and halons were targeted first for phaseout. The EPA continues to develop additional regulations for the protection of public health and the environment from effects associated with the depletion of the stratospheric O_3 layer.

Besides implementing and enforcing stratospheric O_3 protection regulations in the U.S., EPA continues to work with other U.S. government agencies and international governments to pursue ongoing changes to the Montreal Protocol and other treaties. These refinements to the Protocol and other treaties are based on ongoing scientific assessments of O_3 depletion that are coordinated by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO), with cooperation from EPA and other agencies around the globe (UNEP, 1998; and WMO, 1998).

In addition to these regulatory and scientific activities, EPA maintains several education and outreach projects to help protect the American public from the health effects of overexposure to ultraviolet (UV) radiation. Chief among these projects is the UV Index, a tool that provides a daily forecast of the next day's likely UV levels across the United States.[14] The UV Index, which EPA launched in partnership with the National Weather Service, serves as the cornerstone of EPA's SunWise School Program, the goal of which is to educate young children and their caregivers about the health effects of overexposure to the sun, as well as simple steps that people can take to avoid overexposure.[15]

E. Summary of Proposed Response to Remand

On November 14, 2001, EPA proposed a response to the D.C. Circuit remand (66 FR 52768; henceforth, "proposed response") to consider any potential beneficial effects of ground-level O_3 in shielding the public from potentially harmful, but naturally occurring, UV–B radiation from the sun. *ATA I*, 175 F.3d at 1051–53. Based on its review of the air quality criteria and NAAQS for O_3 completed in 1997, and its additional assessment of potential beneficial effects of ground-level O_3, EPA provisionally determined that the information linking (a) Changes in patterns of ground-level O_3 concentrations likely to occur as a result of programs implemented to attain the 1997 O_3 NAAQS to (b) changes in relevant patterns of exposure to UV–B radiation of concern to public health is too uncertain at this time to warrant any relaxation in the level of public health protection previously determined to be requisite to protect against the demonstrated adverse respiratory effects of direct inhalation exposure to O_3 in the ambient air.[16] Further, the proposed response presented the Agency's view that even when using plausible but highly uncertain assumptions about likely changes in patterns of ground-level O_3 concentrations, associated changes in UV–B radiation exposures of concern would likely be very small from a public health perspective. Thus, EPA proposed not to change the O_3 NAAQS set in 1997 at a level of 0.08 ppm, with a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations measured at each monitor within an area.

The proposed response solicited public comments on EPA's proposed decision not to change the 1997 O_3 NAAQS, and on various specific aspects of EPA's review and rationale. The EPA received ten comments on the proposed response from industry, public interest groups, and local and State governments. Significant comments are addressed throughout section II below and more fully in a separate Response to Comments (U.S. EPA, 2002).

II. Rationale for Final Response To Remand on the Primary O_3 Standard

Today's action presents the Administrator's final response to the remand, in which the Court directed EPA to determine ozone's net adverse effect on public health and not

[12] Title VI replaced the provisions regarding stratospheric O_3 depletion enacted in 1977. 42 U.S.C. 7671.

[13] Both the Act and the Montreal Protocol, however, provide for limited "essential use exemptions" for the continued production and import of very small quantities of CFCs and other O_3 depleting substances needed for certain essential uses, for example, for metered dose inhalers used by people with asthma and other respiratory diseases.

[14] Information about the UV Index is available from the EPA Stratospheric Ozone Hotline at (800) 296–1996 or at *http://www.epa.gov/sunwise/uvindex.html*.

[15] Information about EPA's SunWise School Program is available at *http://www.epa.gov/sunwise/*.

[16] The D.C. Circuit upheld EPA's determination that the 1997 O_3 NAAQS was requisite to protect against demonstrated adverse respiratory effects in *ATA III*.

"disregard the studies" upon which the petitioners primarily relied in their challenge. *ATA I*, 175 F.3d at 1053. Today's action reaffirms the 8-hour O_3 primary standard promulgated in 1997, based on:

(1) Information from the 1997 criteria and standards review that served as the basis for the 1997 primary O_3 standard, including the scientific information on health effects associated with direct inhalation exposures to O_3 in the ambient air, consideration of the adversity of such effects for individuals, and human exposure and risk assessments (section II.A below);

(2) A review of scientific information in the record of the 1997 review (but not considered as part of the basis for the 1997 standard) on potential health effects associated with changes in UV–B radiation, the association between changes in ground-level O_3 and potential changes in UV–B radiation, and predictions of changes in ground-level O_3 levels likely to result from attainment of alternative O_3 standards (section II.B below);

(3) Consideration of the net adverse effects of ground-level O_3, taking into account both direct adverse inhalation-related health effects and potential indirect beneficial health effects associated with the shielding of UV–B radiation by ground-level O_3 (section II.C below); and

(4) Consideration of the comments received on the proposed response.

A number of commenters focused on various aspects of EPA's decision-making process and the timing of EPA's final response. A few such commenters expressed the view that EPA's proposed response to the remand was procedurally inadequate in that in reviewing information in the record on ozone's potential beneficial effects, EPA did not supplement the air quality criteria or consult with CASAC. These commenters also asserted that EPA should reopen the record to include new studies and analyses regarding ozone's potential beneficial effects that were not available for inclusion in the 1997 rulemaking record. These commenters thus argued that EPA should supplement the air quality criteria with information on ozone's potential beneficial effects, including both new and record information, consult with CASAC, and re-propose a response to the remand.[17]

Other commenters expressed the opposite view, agreeing with EPA's reliance on the rulemaking record that was before the Court in the *ATA* litigation as the basis for EPA's proposed response, and urging EPA to conclude its response as expeditiously as possible. These commenters argued that to reopen the record would require consideration not only of new information on potential beneficial effects, but also new information on adverse respiratory effects, and that to do so would effectively erase the previous review cycle. These commenters also asserted that the analyses of ozone's potential beneficial effects that were included in the record fail to meet minimum standards of reliability and scientific adequacy, that failure by EPA to expeditiously conclude the review that began in 1992 would represent unreasonable delay, and that any associated delay in implementing the 1997 O_3 NAAQS would be at the expense of public health.

Having considered these procedural comments, EPA continues to believe it is appropriate to base its response to the remand on the large amount of relevant information in the 1997 rulemaking record that was before the Court in *ATA I*, taking into account as well the substantive comments received on the proposed response. The EPA also believes it is unnecessary to supplement the air quality criteria with the draft, preliminary analyses relied on by commenters and by some petitioners in the *ATA I* litigation, or to undertake a more formal CASAC review. As more fully discussed in the Response to Comments, EPA took note of the following in reaching these conclusions:

(1) This action responds to a remand from the D.C. Circuit and addresses the only remaining issue regarding the setting of the 1997 O_3 standard.[18] It is not a new, separate review of air quality criteria and NAAQS under sections 108 and 109. In these circumstances, it is appropriate for EPA to base its response on the record associated with the prior NAAQS review and court decisions. The EPA recognizes that new studies and related information relevant to further assessment of ozone's net adverse effects may now be available that were not part of the 1997 rulemaking record.

Such information is likely available not only on indirect potentially beneficial effects of O_3, but also on direct adverse respiratory-related effects of O_3. Taking into account the 5-year periodic review requirements of section 109 of the Act, and noting that this review already extended a decade since it was initiated (57 FR 38832; August 27, 1992), EPA believes that any such new information should be considered in the next periodic review. The EPA has already initiated the next periodic review. Preparation of a revised O_3 Criteria Document that will incorporate all such relevant information is well underway (65 FR 57810; September 26, 2000).

(2) Limiting its consideration to information that was part of the 1997 record, as well as comments on the proposed response, is consistent with EPA's prior exercise of its discretion to decide whether new studies or analyses cited during a public comment period are of such potential significance that a final decision should be postponed so they can be assessed in supplemental air quality criteria and considered before concluding a NAAQS review. *See* 58 FR 12008, 13014 n.2 (1993) (ozone NAAQS). In prior reviews, after an extended review of relevant scientific information, EPA has been aware of yet additional relevant information, but determined that the information would be more appropriately considered in its next periodic review.[19] *See, e.g.*, 62 FR 38652, 38662 (1997) (PM NAAQS).

(3) The record includes relevant information on indirect potentially beneficial effects of O_3. The public has been afforded two opportunities to submit comments and relevant information on this issue, through EPA's solicitation of public comments on both the 1996 proposal and the 2001 proposed response.

(4) The documents in the 1997 record cited by some commenters—and upon which certain petitioners primarily relied in their challenge of EPA's 1997 decision—(Cupitt, 1994; DOE, 1995; Lutter and Wolz, 1997) do not generally meet the minimum standards that EPA and CASAC have historically maintained for inclusion of health-related information in air quality criteria. The documents in question are either draft, unpublished analyses or, in the case of the one paper that was published, characterized by the authors as a "preliminary analysis," which generally relied upon the assumptions in the other unpublished analyses. Consistent with its practice in other NAAQS reviews, the EPA judges these

[17] Some commenters also expressed the view that EPA's proposed response to the remand was premature since the D.C. Circuit had not yet decided other related issues. These comments are now moot since the D.C. Circuit issued its final opinion on March 26, 2002, denying all remaining challenges to the 1997 O_3 NAAQS.

[18] As noted earlier, this action does not address implementation of the O_3 NAAQS.

[19] As in other instances where EPA has received additional studies during public comment, EPA provisionally examined a 1997 draft analysis conducted by Madronich and determined that it did not warrant supplementing the air quality criteria at this time. *See, e.g.*, 62 FR 38652, 38662 (1997) (PM NAAQS).

draft, unpublished or preliminary analyses to be inappropriate for inclusion in air quality criteria, and concludes that supplementing the 1996 O_3 criteria is not warranted.

(5) As discussed in more detail in section II.B.2, EPA also determined that it was not in a position to supplement the air quality criteria by developing its own more extensive analysis because information essential to the development of such an analysis (*e.g.*, behavioral patterns related to potential UV–B radiation exposure) is not available at this time.

(6) The EPA has appropriately consulted CASAC by providing for its review and comment the proposed response, as well as the key documents from the record upon which EPA's response is based.[20] The CASAC has expressed no concern with this procedure nor indicated that any further CASAC involvement was necessary or appropriate. Indeed, only one member of CASAC chose to comment at all, and that member likewise expressed no concern with the method by which EPA consulted with CASAC on the response to the remand. Finally, the commenters have not provided any reason to believe that additional review by CASAC would have affected the outcome of this action in any way.

In view of the above factors, in particular the quality and type of analyses relied on by commenters and the fact that CASAC had the opportunity to review those analyses as well as other information in the record, EPA believes its approach to this response represents a reasonable exercise of its discretion to decide when to supplement the review process and fulfills the Agency's responsibilities under the Act. The EPA's response fully complies with the direction of the Court that EPA determine ozone's net adverse effect on public health and not "disregard the studies" upon which the petitioners primarily relied in their challenge. *ATA I*, 175 F.3d at 1053. Nothing in the Court's remand purports to require EPA to reopen the air quality criteria, or indeed the entire review process, before concluding this aspect of the 1997 review. For the reasons discussed above, EPA also believes it would be inappropriate to do so.

Accordingly, the EPA concludes that any further extension of this review, through reopening the rulemaking record or review process, would represent an unwarranted delay in completing this review cycle, which began in 1992 and originally concluded in 1997. Any further extension of this review would also delay Agency and State actions to implement the 8-hour O_3 NAAQS, which EPA believes would be inappropriate and contrary to the purpose of the Act, in that it would impede the important public health protections afforded by the 8-hour ozone NAAQS.

A. Direct Adverse Health Effects From Breathing O_3 in the Ambient Air

This section briefly summarizes information on the direct adverse health effects from breathing O_3 in the ambient air, information as to when those effects become adverse to individuals, and insights gained from human exposure and risk assessments intended to provide a broader perspective for judgments about protecting public health from the risks associated with direct O_3 inhalation exposures.[21]

1. Health Effects Associated With O_3 Inhalation Exposures

Based on information from human clinical, epidemiological, and animal toxicological studies, an array of health effects has been attributed to short-term (1 to 3 hours), prolonged (6 to 8 hours), and long-term (months to years) exposures to O_3. Long-established acute health effects[22] induced by short-term exposures to O_3, generally while individuals were engaged in heavy exertion, include transient pulmonary function responses, transient respiratory symptoms, and effects on exercise performance.[23] The 1997 review included substantial new information on similar effects associated with prolonged exposures at concentrations as low as 0.08 ppm and at moderate levels of exertion. Other health effects associated with short-term or prolonged O_3 exposures include increased airway responsiveness, susceptibility to respiratory infection, increased hospital admissions and emergency room visits, and transient pulmonary inflammation. The 1997 review also included new information on chronic health effects[24] associated with long-term exposures. This array of effects is briefly summarized below, followed by considerations as to when these physiological effects could become medically significant such that they should be regarded as adverse to the health of individuals experiencing them.

a. Effects of Short-term and Prolonged O_3 Exposures

(i) Pulmonary function responses. Transient reductions in pulmonary function have been observed in healthy individuals and those with impaired respiratory systems (*e.g.*, asthmatic individuals) as a result of both short-term and prolonged exposures to O_3. The strongest and most quantifiable exposure-response information on such responses has come from controlled human exposure studies, which clearly show that reductions in lung function are enhanced by increased levels of activity involving exertion and by increased O_3 concentrations. Numerous such studies of exercising adults have demonstrated decrements in lung function both for exposures of 1–3 hours at $\geq$ 0.12 ppm O_3 and for exposures of 6.6 hours at $\geq$ 0.08 ppm O_3, providing conclusive evidence that O_3 levels commonly monitored in the ambient air induce lung function decrements in exercising adults. Further, numerous summer camp studies provide an extensive and reliable data base on comparable lung function responses to ambient O_3 and other pollutants in children and adolescents. The extent of pulmonary function decrements varies considerably among individuals, pulmonary function generally tends to return to baseline levels shortly after short-term exposure, and effects are typically attenuated upon repeated short-term exposures over several days.

(ii) Respiratory symptoms and effects on exercise performance. Various transient respiratory symptoms, including cough, throat irritation, chest pain on deep inspiration, and shortness of breath, have been induced by O_3 exposures of both healthy individuals and those with impaired respiratory systems. Increasing O_3 exposure durations and levels have been shown to elicit increasingly more severe symptoms that persist for longer periods

[20] The EPA's request for comments, together with copies of the proposed response and key documents, was transmitted to CASAC in a letter to Dr. Philip Hopke from Dr. Karen Martin, January 14, 2002, which is available in the docket. The EPA had previously provided an earlier draft of the proposed response, together with copies of key documents, to CASAC members in January 2001, ten months before the proposed response was published. *See* letter to Dr. Philip Hopke from Dr. Karen Martin, January 22, 2001 (available in the docket).

[21] See the 1996 proposal and 1997 final rule for more complete summaries and the Criteria Document and Staff Paper for more detailed discussion.

[22] "Acute" health effects of O_3 are defined as those effects induced by short-term and prolonged exposures to O_3. Examples of these effects are functional, symptomatic, biochemical, and physiologic changes.

[23] The 1-hour O_3 primary NAAQS set in 1979 was generally based on these acute effects associated with heavy exercise and short-term exposures.

[24] "Chronic" health effects of O_3 are defined as those effects induced by long-term exposures to O_3. Examples of these effects are structural damage to lung tissue and accelerated decline in baseline lung function.

in increasingly larger numbers of individuals. Symptomatic and pulmonary function responses follow a similar time course during an acute exposure and the subsequent recovery, as well as over the course of several days during repeated exposures. As with pulmonary function responses, the severity of symptomatic responses varies considerably among subjects. For some outdoor workers or active people who are highly responsive to ambient O_3, respiratory symptoms may cause reduced productivity, may curb the ability or desire to engage in normal activities, and may interfere with maximal exercise performance.

(iii) Increased airway responsiveness. Increased airway responsiveness is an indication that the airways are predisposed to bronchoconstriction, with a high level of bronchial responsiveness being characteristic of asthma. As a result of increased airway responsiveness induced by O_3 exposure, human airways may be more susceptible to a variety of stimuli, including antigens, chemicals, and particles. Because enhanced response to antigens in asthmatics could lead to increased morbidity (*i.e.*, medical treatment, emergency room visits, hospital admissions) or to more persistent alterations in airway responsiveness, these health endpoints raise concern for public health, particularly for individuals with impaired respiratory systems.

(iv) Increased susceptibility to respiratory infection. When functioning normally, the human respiratory tract, like that of other mammals, has numerous closely integrated defense mechanisms that provide protection from the adverse effects of a wide variety of inhaled particles and microbes. Evidence that inhalation of O_3 may break down or impair these defense mechanisms comes primarily from a very large number of laboratory animal studies with generally consistent results. One of the few studies of moderately exercising human subjects exposed to 0.08 ppm O_3 for 6.6 hours reported decrements in alveolar macrophage function, the first line of defense against inhaled microorganisms and particles in the lower airways and air sacs. While no single experimental human study or group of animal studies conclusively demonstrates that human susceptibility to respiratory infection is increased by exposure to O_3, taken as a whole, the data suggest that acute O_3 exposures can impair the host defense capability of both humans and animals, potentially resulting in a predisposition to bacterial infections in the lower respiratory tract.

(v) Hospital admissions and emergency room visits. Increased summertime hospital admissions and emergency room visits for respiratory causes have been associated with ambient exposures to O_3 and other environmental factors. Numerous studies consistently have shown such a relationship, even after controlling for modifying factors, as well as when considering only O_3 concentrations < 0.12 ppm. Individuals with preexisting respiratory disease (*e.g.*, asthma, chronic obstructive pulmonary disease) may generally be at increased risk of such effects, and some individuals with respiratory disease may have an inherently greater sensitivity to O_3. On the other hand, individuals with more severe respiratory disease are less likely to engage in the level of exertion associated with provoking responses to O_3 exposures in healthy humans. On balance, it is reasonable to conclude that evidence of O_3-induced increased airway resistance, nonspecific bronchial responsiveness, susceptibility to respiratory infection, increased airway permeability, airway inflammation, and incidence of asthma attacks suggests that ambient O_3 exposure could be a cause of increased hospital admissions, particularly for asthmatics.

(vi) Pulmonary inflammation. Respiratory inflammation can be considered to be a host response to injury and indicators of inflammation as evidence that respiratory cell damage has occurred. Inflammation induced by exposure of humans to O_3 may have several potential outcomes: (1) Inflammation induced by a single exposure (or even several exposures over the course of a season) could resolve entirely; (2) repeated acute inflammation could develop into a chronic inflammatory state; (3) continued inflammation could alter the structure and function of other pulmonary tissue, leading to disease processes such as fibrosis; (4) inflammation could interfere with the body's host defense response to particles and inhaled microorganisms, particularly in potentially vulnerable populations such as children and older individuals; and (5) inflammation could amplify the lung's response to other agents such as allergens or toxins. Exposures of laboratory animals to O_3 for periods ≤8 hours have been shown to result in cell damage, inflammation, and increased leakage of proteins from blood into the air spaces of the respiratory tract. In humans, the extent and course of inflammation and its constitutive elements have been evaluated by using bronchoalveolar lavage (BAL) to sample cells and fluid from the lung and lower airways. Several such studies have shown that exercising humans exposed (1 to 4 hours) to 0.2 to 0.6 ppm O_3 had O_3-induced markers of inflammation and cell damage, with the lowest concentration of prolonged O_3 exposure tested in humans, 0.08 ppm for 6.6 hours with moderate exercise, inducing small but statistically significant increases in these endpoints. Thus, it is reasonable to conclude that repeated acute inflammatory response and cellular damage is potentially a matter of public health concern; however, it is also recognized that most, if not all, of these effects begin to resolve in most individuals within 24 hours if the exposure to O_3 is not repeated. Of possibly greater public health concern is the potential for chronic respiratory damage that could be the result of repeated O_3 exposures occurring over a season or a lifetime.

b. Potential Effects of Long-term O_3 Exposures

Epidemiologic studies that have investigated potential associations between long-term O_3 exposures and chronic respiratory effects in humans thus far have provided only suggestive evidence of such a relationship. Most studies investigating this association have been cross-sectional in design and have been compromised by incomplete control of confounding variables and inadequate exposure information. Other studies have attempted to follow variably exposed groups prospectively. The findings from such studies conducted in southern California and Canada suggest small, but consistent, decrements in lung function among inhabitants of the more highly polluted communities; however, associations between O_3 and other copollutants and problems with study population loss have reduced the level of confidence in these conclusions. Other epidemiologic studies have attempted to find associations between daily mortality and O_3 concentrations in various cities around the United States. Although an association between ambient O_3 exposure in areas with very high O_3 levels and daily mortality has been suggested by these studies, the data are limited.

In a large number of animal toxicology studies, "lesions" [25] in the

[25] Differing views have been expressed by CASAC panel members regarding the use of the term "lesion" to describe the O_3-induced morphological (*i.e.*, structural) abnormalities observed in toxicological studies. Section V.C.8 of the Staff

Continued

centriacinar regions of the lung (*i.e.*, the portion of the lung where the region that conducts air and the region that exchanges gas are joined) are well established as one of the hallmarks of O_3 toxicity. Under certain conditions, some of the structural changes seen in these studies may become irreversible. It is unclear, however, whether ambient exposure scenarios encountered by humans result in similar "lesions" or whether there are resultant functional or impaired health outcomes in humans chronically exposed to O_3.

The epidemiologic lung function studies generally parallel those of the animal studies, but lack good information on individual O_3 exposure history and are frequently confounded by personal or copollutant variables. Thus, the Administrator recognizes that there is a lack of a clear understanding of the significance of repeated, long-term inflammatory responses, and that there is a need for continued research in this important area. In summary, the collective data on long-term exposure to O_3 garnered in studies of laboratory animals and human populations have many ambiguities. Nevertheless, the currently available information provides at least a biologically plausible basis for considering that repeated inflammation associated with exposure to O_3 over a lifetime may result in sufficient damage to respiratory tissue such that individuals later in life may experience a reduced quality of life, although such relationships remain highly uncertain.

c. Adversity of Effects for Individuals

Some population groups have been identified as being sensitive to effects associated with exposures to ambient O_3 levels, such that individuals within these groups are at increased risk of experiencing such effects. Population groups at increased risk include: (1) Active children and outdoor workers who regularly engage in outdoor activities;[26] (2) individuals with preexisting respiratory disease (*e.g.*, asthma or chronic obstructive lung disease);[27] and (3) some individuals, referred to as "hyperresponders," who are unusually responsive to O_3 relative to other individuals with similar levels of activity or with a similar health status and may experience much greater functional and symptomatic effects from exposure to O_3 than the average individual response.

In making judgments as to when the effects discussed above become significant enough that they should be regarded as adverse to the health of individuals in these sensitive populations, the Administrator has looked to guidelines published by the American Thoracic Society (ATS) and the advice of CASAC. Based on these guidelines, with CASAC concurrence, gradations of individual functional responses (*e.g.*, decrements in forced expiratory volume (FEV_1), increased airway responsiveness) and symptomatic responses (*e.g.*, cough, chest pain, wheeze) were defined, together with judgments as to the potential impact on individuals experiencing varying degrees of severity of these responses.[28]

In judging the extent to which such impacts represent effects that should be regarded as adverse to the health status of individuals, an additional factor considered is whether such effects are experienced repeatedly by an individual during the course of a year or only on a single occasion. While some experts would judge single occurrences of moderate responses to be a "nuisance," especially for healthy individuals, a more general consensus view of the adversity of such moderate responses emerges as the frequency of occurrence increases. Thus, EPA has concluded that repeated occurrences of moderate responses, even in otherwise healthy individuals, may be considered to be adverse since they could well set the stage for more serious illness.

2. Human Exposure and Risk Assessments

To put judgments about respiratory health effects that are adverse for individuals into a broader public health context, the Administrator has taken into account the results of human exposure and risk assessments.[29] This broader context includes consideration, to the extent possible, of the particular population groups at risk for various health effects, the number of people in at-risk groups likely to be exposed to O_3 concentrations shown to cause health effects, the number of people likely to experience certain adverse health effects under varying air quality scenarios, and the kind and degree of uncertainties inherent in these assessments. These quantitative assessments add to our understanding of the overall body of evidence linking O_3 inhalation exposures to adverse health effects. The models used in these assessments were appropriate and the methods used represent the state of the art.

a. Exposure Analyses

The EPA conducted exposure analyses to estimate O_3 exposures for the general population and two at-risk populations, active children who regularly engage in outdoor activity (*i.e.*, "outdoor children") and "outdoor workers," living in nine representative U.S. urban areas.[30] Exposure estimates were developed for a baseline year (*e.g.*, 1993, 1994), using monitored O_3 air quality data (*i.e.*, the "as is" scenario), as well as for simulated air quality conditions reflecting attainment of the 1-hour NAAQS and various alternative standards. The exposure analyses provide: (1) Estimates of the number of people exposed in each of these population groups to various O_3 concentrations, and the number of occurrences of such exposures, under different regulatory scenarios,[31] which are an important input to the risk assessment conducted for certain adverse health effects (summarized in the next section); and (2) estimates of the frequency of occurrences of O_3 "exposures of concern,"[32] which help

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Paper describes and discusses these degenerative changes in more detail.

[26] Exertion increases the amount of O_3 entering the airways and can cause O_3 to penetrate to peripheral regions of the lung where lung tissue is more likely to be damaged.

[27] While not necessarily more responsive than healthy individuals in terms of the magnitude of pulmonary function decrements or symptomatic responses, these individuals may be at increased risk since the impact of O_3-induced responses on already-compromised respiratory systems may more noticeably impair an individual's ability to engage in normal activity or may be more likely to result in increased self-medication or medical treatment.

[28] These gradations and impacts are summarized in the 1996 proposal and discussed in the Criteria Document (Chapter 9) and Staff Paper (section V.F, Tables V–4 and V–5).

[29] See the 1996 proposal (61 FR 65723–6) and 1997 final rule (62 FR 38860–1) for a more complete summary of these assessments. A detailed description of the exposure and risk models and their application at the time of the 1996 proposal are presented in the Staff Paper and associated technical support documents (Johnson, 1994; Johnson *et al.*, 1996 a,b; Whitfield *et al.*, 1996). Following proposal, supplemental exposure and risk analyses were done to analyze the specific standard proposed and alternative standards on which comment was solicited, as well as to refine the procedures used to simulate O_3 concentrations upon attainment of alternative standards (Richmond, 1997).

[30] The areas include a significant fraction of the U.S. urban population, 41.7 million people, the largest urban areas with major O3 nonattainment problems, and two large urban areas that are in attainment with the 1-hour NAAQS.

[31] Estimates of "people exposed" reflect the number of people who experience exposures to a given concentration of O_3, or higher, at least one time during the period of analysis, and estimates of "occurrences of exposure" reflect the number of times a given O_3 concentration is experienced by the population of interest.

[32] "Exposures of concern" refer throughout to O_3 exposures at and above 0.08 ppm, 8-hour average, at moderate exertion. Such exposures are particularly relevant to a consideration of a number of health effects, discussed in section I.A.1 above, that have been observed in controlled human studies under these exposure conditions, but for which data were too limited to allow for

to put into broader perspective other O_3-related health effects that could not be included in the risk assessment (summarized below).

The computer model used in these analyses, the probabilistic NAAQS exposure model for O_3 (pNEM/O_3), combines information on O_3 air quality with information on patterns of human activity to produce estimates of O_3 inhalation exposures. This model has been developed to take into account the most significant factors contributing to total O_3 inhalation exposure including: The temporal and spatial patterns of ground-level O_3 concentrations throughout an urban area; the variations of O_3 levels within a comprehensive set of "microenvironments;"[33] the temporal and spatial patterns of the movement of people throughout an urban area; and the effects of variable exertion levels (represented by ventilation rates), associated with a range of activities that people regularly engage in, on O_3 uptake in exposed individuals. The analysis of these key factors incorporated extensive data bases, including, for example, data from ground-level O_3 monitoring networks in these areas, data from numerous research studies that characterized the activity patterns of the general population and at-risk groups as they go about their daily activities (*e.g.*, from indoors to outdoors, moving from place to place, and engaging in activities at different exertion levels),[34] and census data on relevant factors such as age, work status, home location and type of air conditioning system present, and work place location.

The regulatory scenarios examined in the exposure analyses include both 1-hour O_3 standards, at levels of 0.12 ppm (the 1979 NAAQS) and 0.10 ppm, and 8-hour standards, at levels of 0.07, 0.08, and 0.09 ppm, with 1- and 5-expected exceedance forms, *i.e.*, the range of alternative 8-hour standards recommended in the Staff Paper and supported by CASAC as the appropriate range for consideration in this review. These estimates were also used to roughly bound exposure estimates for concentration-based forms of the standards under consideration (*e.g.*, the second- and fifth-highest daily maximum 8-hour average O_3 concentration, averaged over a 3-year period).[35] The estimated exposures are based on a single year of air quality data and reflect what would be expected in a typical or average year in an area just attaining a given standard over a 3-year compliance period; additional analyses were done to estimate exposures that would be expected in the worst year of a 3-year compliance period.

Based on the results of the exposure analyses, children who are active outdoors (representing approximately 7 percent of the population in the study areas) appear to be the at-risk population group examined with the highest percentage and number of individuals likely to experience exposures of concern. Estimated exposures of concern varied significantly across the urban areas examined in this analysis, with far greater variability associated with the 1-hour NAAQS in contrast to the more consistent results associated with alternative 8-hour standards.[36] Despite this variability across areas, general patterns can be seen in comparing alternative standards. For example, for aggregate estimates of the mean percent of outdoor children likely to experience exposures of concern within the seven nonattainment areas: The range of estimates associated with the 1-hour NAAQS is approximately 0.3–24 percent, whereas for alternative 8-hour standards (of the same 1-expected-exceedance form as the 1-hour NAAQS), the ranges are approximately 3–7 percent for a 0.09 ppm standard, 0–1 percent for a 0.08 ppm standard, and essentially zero for a 0.07 ppm standard. Within any given urban area, these differences in estimated exposures of concern between alternative standards are statistically significant.

In looking more specifically at a comparison between 8-hour standards at the 0.09 ppm and 0.08 ppm levels, aggregate estimates of the mean percentage of outdoor children likely to experience exposures of concern are estimated to be approximately 3 percent at the 0.08 ppm level (ranging from 2–10 percent in the nine areas), increasing to approximately 11 percent at the 0.09 ppm level (ranging from 7–29 percent in the nine areas).[37] Thus, based on these analyses, a standard set at 0.09 ppm would allow more than three times as many children to experience exposures of concern as would a 0.08 ppm standard, with the number of children likely to experience such exposures increasing from approximately 100,000 to more than 300,000 in these nine areas alone. These exposures of concern are judged by EPA to be an important indicator of the public health impacts of those O_3-related effects for which information is too limited to develop quantitative estimates of risk, but which have been observed in humans at a level of 0.08 ppm for 6- to 8-hour exposures. Such effects include increased nonspecific bronchial responsiveness (related, for example, to aggravation of asthma), decreased pulmonary defense mechanisms (suggestive of increased susceptibility to respiratory infection), and indicators of pulmonary inflammation (related to potential aggravation of chronic bronchitis or long-term damage to the lungs).

In taking these observations into account, the Administrator and CASAC recognized the uncertainties and limitations associated with such analyses, including the considerable, but unquantifiable, degree of uncertainty associated with a number of important inputs to the exposure model. A key uncertainty in model inputs results from limitations in the human activity data base that may not adequately account for day-to-day repetition of activities common to children, such that the number of people who experience multiple occurrences of high exposure levels may be underestimated. Small sample size also limits the extent to which ventilation rates associated with various activities may be representative of the population group to which they are applied in the model. In addition, the air quality adjustment procedure used to simulate air quality distributions associated with attaining alternative standards, while based on generalized models intended to reflect patterns of air quality changes that have historically been observed, contains significant uncertainty, especially when applied to areas requiring very large reductions in air quality to attain alternative standards

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quantitative risk assessment. Exposures at and above 0.12 ppm, 1-hour average, at heavy exertion, are also of concern; however, the focus here is on 8-hour average exposures since exposure estimates are higher for the 8-hour average effects level of 0.08 ppm at moderate exertion than for the 1-hour average effects level of 0.12 ppm at heavy exertion.

[33] The five indoor and two outdoor microenvironments included in this exposure model account for the highly localized variations in O_3 concentrations to which people are exposed that are not directly reflected in the concentrations measured at ambient ground-level O_3 monitoring sites.

[34] See, for example, Tables V–8 and V–9 in the Staff Paper, pp. 83–84.

[35] As discussed in section IV and appendix A of the Staff Paper.

[36] The observed area-to-area variability reflects differences in the shape of air quality distributions and differences in the relationships between 1-hour and 8-hour peak concentrations across urban areas, as well as differences in the percentage of homes with air conditioning (which impacts exposure estimates when individuals are indoors) and the frequency of warm versus cool days (which impacts exposure estimates because different sets of human activity patterns are used for warm versus cool days in the exposure model) across the nine urban areas (Richmond, 1997).

[37] Based on the supplemental analyses that used the third-highest concentration-based form of the standards (Richmond, 1997).

or to areas that are now in attainment with the 1-hour NAAQS.[38]

b. Risk Assessments

The EPA conducted an assessment of health risks for several categories of respiratory effects considering the same population groups, alternative air quality scenarios, and urban areas that were examined in the human exposure analyses described above. The objective of the risk assessment was to estimate to the extent possible the magnitude of risks to population groups believed to be at greatest risk either due to increased exposures (*i.e.*, outdoor children and outdoor workers) or increased susceptibility (*e.g.*, asthmatics) while characterizing, as explicitly as possible, the uncertainties inherent in the assessment. While different risk measures are provided by the assessment, EPA has focused on "headcount risk" estimates which include: (1) Estimates of the number of people likely to experience a given health effect and (2) estimates of the number of incidences of a given health effect likely to be experienced by the population group of interest (n.b., some individuals likely experience that given health effect more than once in a year). While the estimates of numbers of people and incidences of effects are subject to uncertainties and should not be viewed as demonstrated health impacts, EPA believes they do represent reasonable estimates of the likely extent of these effects on public health given the available information.

This risk assessment builds upon earlier O_3 risk assessment approaches developed during the previous O_3 NAAQS review. The risk models produce estimates of risk by taking into account: (1) Exposure-response or concentration-response relationships used to characterize various respiratory effects of O_3 exposure; (2) distributions of population exposures upon attainment of alternative standards resulting from the exposure analyses described above; and (3) distributions of 1-hour and 8-hour daily maximum O_3 concentrations upon attainment of alternative standards, developed as part of the exposure analyses. The assessment addresses a number of adverse lung function and respiratory symptom effects as well as increased hospital admissions, as discussed below.

(i) Adverse lung function and respiratory symptom effects. Risk estimates have been developed for several of the respiratory effects observed in controlled human exposure studies to be associated with O_3 exposure for which sufficient quantitative dose-response information was available. These effects include lung function decrements (measured as changes in FEV_1) and pain on deep inspiration (PDI).[39] More specifically, these effects, or health endpoints, are defined not only in terms of physiological responses, but also the amount of change in that response judged to be of medical significance (as discussed in section II.A.3 above). For decrements in FEV_1 responses, risk estimates are provided for the lower end, midpoint, and upper end of the range of response considered to be an adverse health effect (*i.e.*, ≥ 10, 15, or 20 percent FEV_1 decrements), while for PDI responses, risk estimates are provided for moderate and severe responses. Although some individuals may experience a combination of responses, risk estimates could only be provided for each individual health endpoint rather than various combinations of functional and symptomatic responses.

The exposure-response relationships used to characterize these functional and symptomatic effects were based on the controlled human exposure studies, and were applied to "outdoor children," "outdoor workers," and the general population.[40] These exposure-response relationships were combined with the results of the exposure analyses, which provided distributions of population exposures estimated to occur upon attainment of alternative standards, in terms of both the number of individuals in the general population, outdoor workers, and outdoor children exposed and the number of occurrences of exposure.

Following from the results of the exposure analyses showing outdoor children to be the population group experiencing the greatest exposures, this population group also has the highest estimated risk in terms of the percent of the population, and the numbers of children, likely to experience the health effects included in the assessment. As expected, the risk estimates exhibit the same general patterns in comparing alternative standards as was observed in the results of the exposure analyses. Estimated risk varied significantly across the urban areas examined, with greater variability associated with the 1-hour NAAQS than with alternative 8-hour standards, and, within any given urban area, the differences in risk estimated for the various 1-hour and 8-hour standards analyzed were statistically significant.

In looking more specifically at a comparison between 8-hour standards at the 0.09 ppm and 0.08 ppm levels, aggregate estimates of the number of outdoor children in the nine areas likely to experience moderate (≥ 15 percent) and large (≥ 20 percent) FEV_1 decreases and moderate or severe PDI are summarized in the 1997 final rule.[41] For example, for large FEV_1 decreases (≥ 20 percent), approximately 2 percent of outdoor children (58,000 children) would likely experience this effect one or more times per year (100,000 occurrences) at the 0.08 ppm standard level, increasing to approximately 3 percent of outdoor children (97,000 children and 220,000 occurrences) at the 0.09 ppm standard level. Based on this assessment, a standard set at 0.09 ppm would allow approximately 40–65 percent more outdoor children to experience these functional and symptomatic effects than would a 0.08 ppm standard, and approximately 70–120 percent more occurrences of such effects in outdoor children per year.

In considering these observations, the Administrator and CASAC have recognized that there are many uncertainties inherent in such assessments, not all of which can be quantified. Some of the most important caveats and limitations in this assessment include: (1) The uncertainties and limitations associated with the exposure analyses discussed above; (2) the extrapolation of exposure-response functions, consistent with CASAC's recommendation, that projects some biological responses below the lowest-observed-effects levels to an estimated background level of 0.04 ppm; and (3) the inability to account for some factors which are known to affect the exposure-response relationships (*e.g.*, assigning children the same symptomatic response rates as observed for adults and not adjusting response rates to reflect the increase and attenuation of responses that have been

[38] A more complete discussion of uncertainties and limitations is presented in the Staff Paper and technical support documents (Johnson *et al.*, 1996a,b; Richmond, 1997).

[39] Each of the effects is associated with a particular averaging time and, for most of the acute (1- to 8-hour) responses, effects also are estimated separately for specific ventilation ranges [measured as equivalent ventilation rate (EVR)] that correspond to the EVR ranges observed in the studies used to derive exposure-response relationships.

[40] While these studies only included adults aged 18–35, findings from other clinical studies and summer camp field studies in several locations across the U.S. and Canada indicate changes in lung function in healthy children similar to those observed in healthy adults exposed to O_3 under controlled laboratory conditions.

[41] Based on the supplemental analyses that used the third-highest concentration-based form of the standards (Richmond, 1997).

observed in studies of lung function and symptoms upon repeated exposures).[42]

(ii) Excess respiratory-related hospital admissions. A separate risk assessment was done for increased respiratory-related hospital admissions as reported in several epidemiologic studies.[43] The assessment looked only at one urban area, New York City, for which adequate air quality information also was available to assess population risk. Increased respiratory-related hospital admissions for individuals with asthma were modeled using a probabilistic concentration-response function based on the results of an epidemiologic study in New York City (Thurston *et al.*, 1992) and estimated distributions of daily maximum 1-hour average O_3 concentrations upon attainment of alternative standards at various monitors in New York City (developed as part of the exposure analysis discussed above).[44] The resulting risk estimates are for excess respiratory-related hospital admissions (*i.e.*, those attributable to O_3 concentrations above an estimated background O_3 level of 0.04 ppm) for asthmatic individuals over an O_3 season.

Similar to the risk assessment discussed above for lung function and respiratory symptom effects, reductions in hospital admissions for respiratory causes for asthmatic individuals and the general population are estimated to occur with each change in the level of alternative 8-hour standards from 0.09 ppm to 0.07 ppm. In looking more specifically at a comparison between 8-hour standards at 0.09 ppm and 0.08 ppm levels, a standard set at 0.09 ppm is estimated to allow approximately 40 more excess hospital admissions of asthmatics within an O_3 season in New York City for respiratory causes as compared to a 0.08 ppm standard, which represents approximately a 40 percent increase in excess O_3-related admissions, but only approximately a 0.3 percent increase in total admissions of asthmatics. The EPA believes that while these numbers of hospital admissions are relatively small from a public health perspective, they are indicative of a pyramid of much larger numbers of related O_3-induced effects, including respiratory-related hospital admissions among the general population, emergency and outpatient department visits, doctors visits, and asthma attacks and related increased use of medication that are important public health considerations.

In taking these observations into account, the Administrator recognizes the uncertainties and limitations associated with this assessment. These include: (1) The inability at this time to quantitatively extrapolate the risk estimates for New York City to other urban areas; (2) uncertainty associated with the underlying epidemiologic study from which the concentration-response relationship used in the analysis was drawn; and (3) uncertainties associated with the air quality adjustment procedure used to simulate attainment of alternative standards for the New York City area.[45]

B. Potential Indirect Beneficial Health Effects Associated with Ground-level O_3

This section is drawn from information in the record of the 1997 review with regard to the effect of ground-level O_3 on the attenuation of UV–B radiation and potential associated health benefits. All relevant record information was reviewed, including EPA documents, published articles, oral testimony at public meetings, and written comments submitted during the rulemaking and on the proposed response. This section summarizes information on the health effects associated with UV–B radiation exposure (section B.1) and the relationship between ground-level O_3 and UV–B radiation (section B.2), and evaluates estimates of UV–B radiation risks that have been attributed to reductions in ground-level O_3 projected to result from attainment of the 1997 O_3 NAAQS (section B.3). This section also responds to a number of technical comments on the proposed response relating to (i) the distinctions that EPA has drawn between assessing the public health impacts of changes in stratospheric versus ground-level O_3, (ii) the distinctions between assessing the public health impacts of changes in inhalation-related exposures to ground-level O_3 versus the impacts of changes in dermal-related exposures to UV–B radiation as mediated by changes in ground-level O_3, and (iii) the appropriate weight to give to analyses in the record that provide quantitative estimates of the public health impacts of changes in dermal-related exposures to UV–B radiation as mediated by changes in ground-level O_3.

1. Health Effects Associated with UV–B Radiation Exposure

The following short summary of information[46] on the adverse human health effects associated with exposure to UV–B radiation focuses on the three major organ systems whose tissues are commonly exposed to solar radiation: the skin, eyes, and immune system.[47] It is these three systems that are potentially subject to damage from increased UV–B radiation as a result of the absorption of solar energy by molecules present in the cells and tissues of these organs. The biologically effective dose of radiation that actually reaches target molecules generally depends on the duration of exposure at particular locations, time of day, time of year, behavior (*i.e.*, "sun avoidance" and "sun seeking" behavior[48]), and, for the skin, characteristics that include pigmentation and temporal variations (*e.g.*, changes in the pigmentation due to tanning).

a. Effects on the Skin

The most common form of solar damage to the skin is sunburn. Susceptibility to sunburn and the ability to tan are the basis for a classification system of six skin phenotypes. The most sensitive individuals (skin type I) are very light-skinned, with red or blonde hair and blue or green eyes (U.S. EPA, 1987, ES–33). The most resistant individuals (skin type VI) are darkly pigmented even without exposure to solar radiation. Susceptibility to sunburn may be a risk factor for skin cancer.

Among light-skinned populations, skin cancer is among the most common kinds of cancer. The three types of skin cancer that have been associated with exposure to solar radiation include two common types of nonmelanoma skin cancers (NMSC), squamous cell carcinoma (SCC) and basal cell carcinoma (BCC), and melanoma, a far less common form of cancer.

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[42] A more complete discussion of assumptions and uncertainties is presented in the Staff Paper and the technical support documents (Whitfield *et al.*, 1996; Richmond, 1997).

[43] Several studies, mainly conducted in the northeastern U.S. and southeastern Canada have reported excess daily respiratory-related hospital admissions associated with elevated O_3 levels within the general population and, more specifically, for individuals with asthma.

[44] The model is described in more detail in Whitfield *et al.* (1996) and results from the supplemental analysis are presented in Richmond (1997).

[45] A more complete discussion of these uncertainties and limitations is presented in the Staff Paper and technical support documents (Whitfield *et al.*, 1996; Richmond, 1997).

[46] More detailed information about the health effects associated with UV–B radiation exposure may be found in the proposed response to the remand (66 FR 57278–57280).

[47] The reference document available in the record for the information in this section is the EPA document "Assessing the Risk of Trace Gasses that Can Modify the Stratosphere" (U.S. EPA, 1987).

[48] Sun avoidance is an intentional decrease in exposure, for example, by using clothing, sunscreens, and sunglasses to shield the body from solar radiation. Sun seeking behavior is an intentional increase in exposure to solar radiation, for example, by sunbathing.

Prolonged exposure to the sun is considered to be the dominant risk factor for NMSC (U.S. EPA, 1987, ES–33). It has been observed that NMSC tends to develop on sites that are most frequently exposed to the sun (*e.g.*, head, face, and neck). Outdoor workers, who are subject to greater exposure to solar radiation, tend to have higher incidence rates of NMSC. A latitudinal gradient exists for the flux of UV–B radiation (*i.e.*, the amount of radiation transmitted through the atmosphere), with fluxes generally higher in lower latitudes. A similar latitudinal gradient is generally seen in incidence rates of NMSC. Skin pigmentation provides a protective barrier that reduces the risk of developing NMSC, such that light-skinned individuals, who are more susceptible to sunburn and have blue or green eyes, are more likely to develop NMSC.

Both types of NMSC result from the malignant transformation of keratinocytes, the major structural cells of the skin. Cumulative long-term exposure to UV radiation is the exposure of concern for both types of NMSC. More specifically, the incremental increase in cumulative lifetime exposure to UV–B radiation is the metric used to estimate the risk of increased incidence of NMSC (U.S. EPA, 1987, ES–3). Epidemiological evidence, however, also indicates that exposure to solar radiation may play different roles in the etiology of SCC and BCC. In particular, SCC is more likely to develop on sites receiving the highest cumulative UV radiation doses (*e.g.*, nose), and the development of SCC is more strongly associated with cumulative exposure to UV radiation. Relative to SCC, BCC is more likely to develop on sites that are not normally exposed to the sun, such as the trunk. For a given cumulative level of exposure to solar radiation, the risk of developing SCC may be greater than the risk of developing BCC.

Dose-response relationships for NMSC are generally estimated in terms of a biological amplification factor (BAF), which is defined as the percent change in tumor incidence that results from a 1 percent change in UV–B radiation. While there is considerable uncertainty in such estimates, results from several studies have produced an overall BAF range that is 1.8 to 2.85 for all nonmelanoma skin tumors (U.S. EPA, 1987, ES–34). The BAF estimates are generally higher for males than females and for SCC than BCC, and generally increase with decreasing latitude. Key uncertainties in these estimates include, for example, uncertainties in the actual doses of UV–B radiation received and in the underlying baseline incidence rates in populations. Additional uncertainty is introduced in estimating the change in mortality from NMSC associated with changes in UV–B radiation, reflecting in part discrepancies of reporting between death certificates and hospital diagnoses. Based on published estimates, rates of metastasis among SCCs and BCCs varied by one to two orders of magnitude, with rates estimated to be approximately 2 to 20 percent for SCC and 0.0028 to 0.55 percent for BCC. The overall fatality rate for NMSC has been estimated to be approximately 1 to 2 percent, with three-fourths to four-fifths of the deaths attributable to SCC (U.S. EPA, 1987, ES–34).[49]

Melanoma is a serious, life-threatening skin cancer that is far rarer and generally much more aggressive than NMSC. The relationship between exposure to UV–B radiation and melanoma is not as clear as the relationship between exposure to UV–B radiation and NMSC. The EPA (1987) noted limitations in the evidence linking solar radiation to melanoma. For example, no animal models were identified in which exposure to UV–B radiation experimentally induces melanoma, and no *in vitro* models for malignant transformation of melanocytes. Despite these limitations, EPA (1987) recognizes that a large array of evidence does support the conclusion that solar radiation is one of the causes of melanoma. Melanin, the principal pigment in the skin, effectively absorbs UV radiation, such that darker skin provides more protection from UV radiation. Lighter-skinned individuals, whose skin contains less protective melanin, have higher incidence and mortality rates from melanoma than do darker-skinned individuals.

Sun exposure seems to induce freckling, which is an important risk factor for melanoma, and sun exposure leading to sunburn apparently induces melanocytic moles, which are also a risk factor for melanoma. Additional evidence suggests that melanoma risk may be associated with childhood sunburn. However, other evidence suggests that childhood sunburn may be a surrogate for an individual's pigmentation characteristics or be related to mole development, rather than being a separate risk factor (U.S. EPA, 1987, ES–37).

[49] More recent estimates of mortality rates from NMSC may be found on the American Cancer Society's Web site *http://www.cancer.org*, under cancer type "Skin, Nonmelanoma," then under "Nonmelanoma Skin Cancer—Overview."

Most studies that have used latitude as a surrogate for sunlight or UV–B exposure have found an increase in melanoma incidence or mortality correlated with proximity to the equator. Other evidence, however, creates uncertainty about the relationship between solar radiation and melanoma. Some ecologic epidemiology studies, conducted primarily in Europe or in countries close to the equator, have failed to find a latitudinal gradient for melanoma. In addition, outdoor workers generally have lower incidence and mortality rates from melanoma than indoor workers, which appears to be incompatible with the hypothesis that the cumulative dose from exposure to solar radiation causes melanoma. Unlike NMSC, most melanoma occurs on sites of the body that are not habitually exposed to sunlight. This evidence suggests that exposure to solar radiation, or UV–B, is not solely responsible for variations in the incidence and mortality from melanoma (U.S. EPA 1987, ES–37).

Considering the available evidence, EPA (1987) concluded that UV–B radiation is a likely component of solar radiation that causes melanoma, either through the initiation of tumors or through suppression of the immune system. The EPA (1987) also recognized that significant uncertainties exist in characterizing associations between solar radiation and melanoma, including the appropriate action spectrum to be used in estimating doses, the best functional form for a dose-response relationship, and the best way to characterize dose (*e.g.*, peak value, cumulative summer exposure).

b. Effects on the Eyes

Evidence suggests that adverse effects on the eye are associated with exposure to UV–B radiation. Effects likely include increases in cataract incidence or severity and increased incidence of retinal disorders and retinal degeneration. Cataracts are characterized by the gradual loss of transparency of the lens due to the accumulation of oxidized lens proteins. Many possible mechanisms exist for the formation of cataracts, and UV–B radiation may play an important role in some mechanisms. Therefore, while epidemiological studies indicate that the prevalence of human cataracts varies with latitude and UV radiation in general (U.S. EPA, 1987, ES–40), significant uncertainty exists about the action spectrum to be used in any estimation of dose associated with variations in solar radiation. Epidemiological and laboratory evidence indicates that the exposure of

concern in the development of cataracts is the cumulative lifetime exposure to UV–B radiation.

c. Effects on the Immune System

Information on the effects of UV–B radiation on the immune system comes primarily from laboratory animal studies. High doses of UV radiation cause a depression in systemic hypersensitivity reactions, whereas relatively lower doses cause a depression in local contact hypersensitivity. Both of these immunosuppressive effects of UV radiation have been found to reside almost entirely in the UV–B portion of the solar spectrum (U.S. EPA, 1987, ES–39).

Information about the effects of UV radiation on the human immune system, however, is very limited. Without more complete information from laboratory or epidemiological studies, the nature of an exposure of concern cannot be estimated. Immunologic studies have not assessed the effects of long-term, low-dose UV–B irradiation, such that the magnitude of risk from this type of exposure cannot be assessed (U.S. EPA, 1987, ES–40).

2. Relationship Between Ground-level O_3 and UV–B Radiation Exposure

a. Relevant Atmospheric Factors

The relationships between ground-level O_3 and UV radiation occur in the context of a much larger dynamic of the earth's atmospheric systems. The sun is, of course, overwhelmingly the main source of a wide band of electromagnetic radiation, including the ultraviolet. The total atmosphere blocks a significant portion of the range of this incoming solar radiation before it reaches ground level, including much of the more energetic wavelengths that are shorter than visible light (400–900 nm). The UV spectrum (100–400 nm) is comprised of UV–C (100–280 nm), UV–B (280–320 nm), and UV–A (320–400 nm). Ultraviolet -B radiation is efficiently but not completely absorbed by total column O_3. Wavelengths above 350 nm, including visible light, are not absorbed by oxygen (O2) or O_3 (U.S. EPA, 1987, ES 35). Because the amount of atmospheric O_3 traversed by sunlight varies with the sun angle, atmospheric absorption is more complete in winter months and both early and late in the day, as compared to the absorption around mid-day near the summertime solar zenith. Therefore, a decrease in total column O_3 from naturally occurring conditions is of greater concern during times of higher sun angles, and for the more energetic portion of the UV–B range.

The underlying annual and diurnal patterns of UV–B penetration to the ground layer are driven primarily by three factors: (1) The change in apparent sun angle with the surface that occurs as the earth travels around the sun; (2) the diurnal change in apparent sun angle caused by the earth's rotation; and (3) the solar/meteorologically driven annual change in the amount of O_3 in the stratosphere. Stratospheric O_3 over U.S. latitudes shows a characteristic peak in the spring months, falling steadily thereafter through summer and fall (Fishman *et al.*, 1990; Frederick *et al.*, 1993). The combination of the annual sun cycle and the stratospheric O_3 cycle means that peak UV–B radiation reaching the troposphere tends to occur in late June to early July, and falls steadily thereafter (Frederick *et al.*, 1993). The annual peak in ground-level O_3 concentrations, which extends in most areas from May through September, generally overlaps the UV–B radiation peak (*e.g.*, U.S. EPA, 1996a, Figure 4–23). Diurnal patterns of ground-level O_3 vary, but in urban areas, summertime peaks tend to occur between noon and 4 pm (U.S. EPA, 1996a, section 4.4). This obviously overlaps with peak incoming UV–B radiation. The pattern of vertical mixing in the atmosphere is such that morning ground-level measurements probably do not accurately reflect "mixing-layer" concentrations (U.S. EPA, 1996a, p. 3–44).[50]

The relationship between ground-level O_3 and solar radiation, including UV–B radiation, is complex and mediated by a number of atmospheric factors. It is not limited to the simple absorption of energy. At a fundamental level, the variation in apparent solar radiation is a primary cause of meteorological fluctuations that strongly influence the build-up and transport of anthropogenic air pollution. Further, as discussed in Chapter 3 of the Criteria Document, UV–B radiation that penetrates the stratosphere to the mixing layer plays a key role in the processes leading to the formation of photochemical smog, including the formation of ground-level O_3. In fact, increased penetration of UV–B radiation to the troposphere due to stratospheric O_3 depletion would likely increase ground-level concentrations of O_3 in most urban and many rural areas of the U.S. (U.S. EPA, 1996a, p. 3–5). The chain of indirect events triggered by increased penetration of UV–B radiation can result in both increases and decreases in aerosol and acid rain formation (U.S. EPA, 1996a; pp. 3–38 to 39), with attendant further feedbacks through heterogeneous chemistry and aerosol scattering of UV–B radiation. All of these complex processes could, under varying conditions, increase or decrease the amount of UV–B radiation that actually reaches ground level relative to an unperturbed case. The reactions can further affect the concentrations of radiatively important substances such as methane, O_3, and particles, and could affect local, regional, and global climate.

Setting aside the direction and magnitude of these complex indirect effects of UV–B radiation penetration on ground-level air pollution, and assuming appropriate sun angles and cloud density, the marginal effect of ground-level O_3 on the absorption of UV–B radiation by the earth's atmosphere can be considered separately. Because of increased scattering of incident UV–B radiation by the denser layer air molecules, droplets, and particles nearer the surface, tropospheric O_3 can absorb somewhat more UV–B radiation than an equal amount of O_3 in the stratosphere (Brühl and Creutzen, 1989). The extent to which this increase in unit effect occurs depends on the relative concentrations and character of aerosols in the troposphere as compared to the stratosphere.

A further consideration is the relative effectiveness of ground-level O_3 in absorbing those spectra of UV–B radiation wavelengths most likely to cause health effects. The "effective dose" of UV–B radiation can be expressed as a function of two factors, the intensity of radiation (by wavelength) reaching the earth's surface and the action spectrum. The wavelength-dependent effect of O_3 on reducing the intensity of radiation in the UV–B range is summarized above. The action spectrum describes how effective radiation at particular wavelengths is at causing a particular biological effect or a response in an instrument. Action spectra allow the estimation of the potential effects of simultaneously changing radiation at different wavelengths by different amounts, as happens with changing O_3 levels. Laboratory and field studies have been used to estimate and adopt action spectra conventions for various biological endpoints (*e.g.*, Madronich, 1992). As noted above, uncertainty exists about the action spectra as well as how to specify appropriate dose metrics for particular health endpoints. Even estimates of the range of wavelengths

[50] The mixing layer (relevant to the vertical "thickness" of ground-level O_3) develops and grows in height through the day.

considered to be generally biologically active vary within the UV–B radiation spectrum. These different action spectra have different sensitivities to changes in total column O_3, which are formalized as numerical radiation amplification factors (RAF).[51] In general, a 1 percent change in total column O_3 will produce greater than a 1 percent change (*e.g.*, 1.1 to 1.8 percent) in effective radiation dose for particular effects.

Nevertheless, as noted above, typical summertime ground-level O_3 pollution in the eastern U.S. is less than 1 percent of total column O_3. Even considering the relative effectiveness of ground-level O_3 in reducing UV–B radiation and the amplification of effective dose, such pollution could add a few percent at most to naturally occurring biologically effective UV–B radiation shielding.[52] Viewed from one perspective and holding all other factors constant, the assumed typical O_3 pollution level is providing some "improvement" or incremental UV–B radiation shielding above the natural conditions that would otherwise exist in the mixing layer. It should also be noted that, if typical summertime O_3 levels were assumed to approximate the estimated continental background of about 40 ppb for daylight hours (U.S. EPA, 1996b, p.p. 20–21), this too would represent an "improvement" over the natural conditions that would exist in the mixing layer without the influence of international transport of O_3.[53]

The extent to which changes in ground-level O_3 concentrations would translate into changes in UV–B radiation-related health effects in various locations cannot, however, be adequately viewed by reference to uniform assumptions applicable for specific sun angle, latitude, time of day, cloud cover, and the presence of other pollutants.[54] In the real world, all of these factors vary with location, season, meteorology, and time of day. Moreover, the complex causal relationships noted above among all of these factors mean that neither static calculations holding other factors constant (*e.g.*, Cupitt, 1994) nor simple empirical associations between measured ground-level O_3 and UV–B radiation (*e.g.*, Frederick *et al.*, 1993) provide an adequate basis for assessing the "net" shielding associated with control strategy driven changes in ground-level pollution in various locations over an extended time period. Moreover, as for the direct effects of O_3, the extent of resultant UV–B radiation-related health effects is also heavily dependent on the variation of these physical changes superimposed on the activity patterns and other factors that determine population exposures and sensitivities to UV–B radiation, and on the extent to which significant biological responses can be attributed in part to episodic peak exposures as well as to long-term cumulative exposures.

Assessing the effective O_3 layer shielding is considerably more difficult for ground-level O_3 than for stratospheric O_3 because of its far greater spatial and temporal variability and the much smaller contribution to the total O_3 column made by ground-level O_3. Some insights into the relative variability of these two layers are provided in Fishman *et al.* (1990), which compares satellite measurements of stratospheric O_3 with "residual" tropospheric O_3, a measure that actually excludes the lowest portion of the ground-layer O_3 in the mixing layer. For the summer months, the long-term spatial variability in the amount of O_3 in the stratosphere across the lower 48 U.S. States is about 7 percent (Figure 8c), while the variability in the tropospheric "residual" is nearly 4 times greater, at about 25 percent (Figure 9c). By comparison, the spatial variability in ground-level O_3 measurements across regions and cities in the U.S. is far greater (U.S. EPA, 1996a, Chapter 4) reaching 200 percent and higher for comparable long-term measurements. Within an area as small as the Los Angeles basin alone, for example, the median ground-level 8-hour O_3 values in different locations varied by more than a factor of 2 (Table 28; Johnson *et al.*, 1996c). The satellite information also shows a marked contrast in the seasonal variations in O_3 for these two layers. The variation in the summer/winter stratospheric O_3 column over the U.S. is only about 2 to 4 percent, while the variation in seasonal "residual" tropospheric O_3 is about 50 to 80 percent (Figures 8a,c;9a,c; Fishman *et al.*, 1990). Again, the variability is even greater for ground-level measurements (*e.g.*, U.S. EPA, 1996a, Figure 4–23; Frederick *et al.*, 1993).

Although Fishman *et al.* (1990) do not compare daily variations in stratospheric O_3 above the U.S., it is reasonable to conclude that the spatial and annual/seasonal temporal stability evidenced by this large stratospheric reservoir would result in far more stable day-to-day and diurnal patterns as compared to ground-level O_3. The high variability of daytime O_3 concentrations for these temporal scales is amply documented in the Criteria Document (U.S. EPA, 1996a, Figure 4–23).

The spatial and temporal stability of the expansive and deep stratospheric O_3 reservoir means that assessments of the effects of long-term declines or restoration can reasonably assume that short-term and local-scale variations in important factors such as cloud cover, other pollutants, temperature, population demographics and activity patterns beneath this layer will tend to "even out" over time, permitting more confidence in the magnitude and direction of such assessments. In contrast to the stability of the stratospheric O_3 layer, the large spatial and day-to-day variability outlined above for ground-level O_3 means that geographical or temporal variations in other factors such as weather, other pollutants, sensitive population subgroups and human activity patterns may not "even out" in particular areas under assessment. Moreover, it is reasonable to assume that the variations in ground-level O_3 are not independent of the variations in many of these other factors. Such variability may have a substantial impact on the outcome of any assessment of the relative effects of a change in ground-level O_3 strategies or standards. This, combined with the many local- and regional-scale interactions among all of these factors, would complicate any such ground-level O_3 assessment.

A few commenters expressed the view that since EPA, and other agencies such as UNEP, have developed quantitative estimates of the public health impacts of relatively large increases in incident UV–B radiation associated with projected changes in the global reservoir of stratospheric O_3, it is necessarily the case that EPA can now develop credible estimates of the public health impacts associated with the relatively very small increases in incident UV–B radiation that could result from changes in ground-level O_3 likely to occur as a

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[51] The RAF is defined as the percent increase in effective dose divided by the percent decrease in total column O_3 (Madronich, 1992).

[52] For reasons discussed below, any such shielding would vary widely from day-to-day, even in the summer O_3 season.

[53] This estimated continental background is due in part to natural sources of emissions in North America and in part to the long-range transport of emissions from both anthropogenic and natural sources outside of North America.

[54] Adding to the complexity of understanding this relationship are the results of high-dose animal toxicology studies that suggest more research is needed into the direct effects of ground-level O_3 on the skin. Tests by Thiele *et al.* (1997) suggest that long-term exposure to O_3 can deplete vitamin E in the skin, and this could make the skin more susceptible to the effects of UV–B radiation (U.S. EPA, 1997). Therefore, reducing long-term ground-level O_3 exposure might serve to reduce skin problems. Even a relatively small O_3 effect here could partially or completely offset any small UV–B radiation mediated effect estimated based on O_3—UV–B interactions alone.

result of programs implemented to attain an 8-hour O_3 NAAQS. These commenters further suggest that EPA, in concluding that such estimates can not now be developed with sufficient credibility to serve as a basis for setting a less stringent 8-hour O_3 NAAQS, is treating scientific uncertainty differently than it did when regulating substances that deplete O_3 in the stratosphere. The EPA believes that these commenters are ignoring fundamental differences, discussed above, in the nature and relative magnitude of the temporal and spatial variability of O_3 levels in the stratosphere and at ground-level in the troposphere. The EPA remains convinced that it is entirely reasonable to use available information to make estimates of broad-scale public health impacts in the context of the stratospheric O_3 program, while concluding that such broad-scale analytic approaches necessarily obscure and assume away the localized and highly variable factors that are central to credibly estimating public health impacts in the context of programs designed to attain the O_3 NAAQS.

More specifically, EPA notes that quantitative estimates of public health impacts associated with projected changes in stratospheric O_3 are based primarily on epidemiological studies designed to evaluate impacts of long-term UV–B radiation exposures over broad geographic regions (defined in terms of latitude bands) within which stratospheric O_3 levels exhibit relatively little variability. These types of epidemiological studies are not designed to discern impacts associated with much smaller, and much more highly variable, localized changes in ground-level O_3 that will likely result from programs implemented to attain an 8-hour O_3 NAAQS—such local variations are simply averaged out in these studies that compare average UV–B radiation penetration over broad geographic regions with regional average incidence rates of UV–B radiation-related effects. The EPA believes that in choosing not to apply the same type of approach used to assess stratospheric O_3 impacts to its assessment of NAAQS-related changes in ground-level O_3, that it is treating scientific uncertainty in an appropriate and consistent manner. To do otherwise, as some commenters urge, would be to disregard the uncertainties associated with localized and highly variable changes in UV–B radiation exposure patterns that are central to an assessment of NAAQS-related changes, but that are not relevant to the long-term, regional assessment of stratospheric O_3 impacts. Therefore, EPA rejects the notion advanced by these commenters that the simple application of a stratospheric O_3-type assessment would produce credible quantitative estimates of NAAQS-related impacts for the purpose of weighing against the adverse respiratory-related impacts of ground-level O_3, for which EPA has applied state-of-the-art assessments that appropriately take into account the relevant, highly variable patterns of changes in exposures of concern to ground-level O_3 (as discussed more fully in the following section).

b. Factors Related to Area-Specific Assessment

An enumeration of factors that would be important in assessing the potential UV–B radiation-related consequences of a more stringent O_3 NAAQS in any geographical area serves to illustrate the complexities discussed above. Such UV–B radiation-related factors are analogous, but not equivalent to the factors that were important in the respiratory effects exposure and risk assessments discussed above in section II.A.2. These UV–B radiation-related factors include: the temporal and spatial patterns of ground-level O_3 concentrations throughout a geographic area where reductions are likely to occur, and the variations in O_3 concentrations within a comprehensive set of "microenvironments" relevant to UV–B radiation exposures (which are generally different from the microenvironments relevant to O_3 inhalation exposures); the associated temporal and spatial patterns of UV–B radiation flux in such microenvironments; the temporal and spatial patterns of movement of people throughout the UV–B radiation-related microenvironments within the geographic area; and the effects of variable behaviors (*e.g.*, the use of sunscreen, hats, sunglasses) within the range of activities that people regularly engage in, on the effective dose of UV–B radiation that reaches target organs such as the skin.

While analogous to the respiratory-related factors, there are a number of important differences between these sets of factors that arise, for example, due to: (1) The indirect nature of the relationship between changes in ground-level O_3 and UV–B radiation-related health effects (in contrast to the direct relationship between ground-level O_3 and inhalation-related health effects); (2) the long-term nature of the relevant exposures that are associated with UV–B radiation's chronic health effects (in contrast to the short-term exposures associated with acute inhalation effects); (3) the different types of parameters that are relevant to assessing dermal exposures (in contrast to those that are important in assessing inhalation exposures); and (4) the importance of skin type in characterizing the sensitive populations (in contrast to characterizing sensitive populations in terms of activity levels and respiratory health status). Further, as was done in EPA's assessment of respiratory effects, it is important to characterize the exposure-related factors specifically to address the relevant at-risk sensitive population groups. As noted in section II.B.1, the sensitivity to UV–B radiation effects varies among U.S. demographic groups, such that it would be important to incorporate census data on relevant characteristics (*e.g.*, age at time of exposure, skin pigmentation) that affect an individual's susceptibility.

Aspects of each of these factors (including areas where current information or modeling tools are insufficient to address these factors at this time), significant comments received on these factors, and EPA's general responses are discussed briefly below.

(i) Estimation of area-specific and microenvironment changes in ground-level O_3. Implementation of a more stringent O_3 standard would, over time, further reduce O_3 concentrations across many areas within the U.S., but would affect various areas in different ways. Depending on the strategies adopted, in some locations peak concentrations would be reduced significantly during the O_3 season, while the lower concentrations that occur on far more numerous days could increase. In such areas, the long-term cumulative effect could be little net change, or even a small increase in cumulative shielding. In other areas, the entire distribution of O_3 could be reduced. The assessment of the acute respiratory health effects of O_3 appropriately focused on the higher portion of this distribution, using a simple roll-back approach discussed above (section II.A.2.a) to simulate changes in air quality patterns during the O_3 season based on available air quality monitoring data. For assessment of chronic effects such as those associated with UV–B radiation, however, where long-term cumulative exposures are of central importance, the mid to lower portion of the distribution would also be important. Also the distribution across the entire year, for which O_3 monitoring data is not generally available in many parts of the country, could potentially be important. The mid to lower portion of the

distribution is much more strongly influenced by complex atmospheric chemistry and nonanthropogenic sources, such that more sophisticated, area-specific modeling may be needed to estimate changes in this part of the distribution likely to occur as a result of programs designed to attain a more stringent O_3 NAAQS.

In addition, although not relevant to assessing direct respiratory effects, the vertical distribution of O_3 concentrations up through the mixing layer becomes important in assessing the effect of O_3 in shielding UV–B radiation. The current lack of routine vertical profile measurements means that little is known about the relative effect of ground-level control strategies on O_3 in the mixing layer.

With regard to characterizing changes in O_3 concentrations within microenvironments relevant to UV–B radiation exposure, it is clear that this set of microenvironments would differ in some respects from the set of microenvironments that were relevant for respiratory effects. For example, while indoor microenvironments can reduce exposure to both ambient O_3 and UV–B radiation, outdoor microenvironments that are relevant for inhalation exposure do not reflect the characteristics that are important for UV–B radiation exposure. Further, while not relevant to inhalation exposure, microenvironments shaded by the presence of trees, buildings, and other structures in many heavily occupied areas would be important to characterize for UV–B radiation analyses because these microenvironments would tend to have greatly reduced UV–B radiation exposures even when at the same ground-level O_3 concentration as a sunny microenvironment.

A few commenters expressed the view that estimating area-specific changes and microenvironment changes in ground-level O_3 is just as important in conducting exposure and risk assessments for direct respiratory-related effects of ground-level O_3 as it would be in conducting such assessments for UV–B radiation-related effects mediated by changes in ground-level O_3. These commenters further asserted that since EPA was able to estimate area-specific changes and microenvironment changes in ground-level O_3 to conduct the respiratory-related exposure and risk assessments discussed above (section II.A.2), then EPA should also be able to estimate such changes as part of an assessment of UV–B radiation-related exposure and risk. While EPA agrees that these factors are relevant for both types of assessments, EPA does not agree that the same information on area-specific and microenvironment changes is relevant for both types of assessments. The EPA believes that these commenters are ignoring both the important differences, discussed above, in the information needed on area-specific and microenvironment factors to conduct the two types of exposure and risk assessments, and the limitations in the available information.

In particular, EPA's 9-city exposure and risk assessment of acute respiratory health effects of O_3 appropriately focused on the higher portion of the distribution of ground-level O_3 concentrations during the O_3 season, in contrast to an area-specific assessment of chronic UV–B radiation-related effects that would need to focus on the entire distribution of O_3 concentrations, not only at ground-level but extending up throughout the vertical mixing layer, across the entire year. While EPA has available air quality monitoring data sufficient for simulating changes in ground-level O_3 concentrations within the O_3 season associated with attaining a more stringent O_3 NAAQS, data are not generally available for simulating changes throughout the vertical mixing layer (necessary for calculating changes in UV–B radiation penetration to the earth's surface as a function of changes in ground-level O_3 concentration patterns) or for simulating changes beyond the O_3 season (which is only 4 to 5 months in many parts of the country). Further, while data are available on microenvironments relevant to direct inhalation-related exposures, data are not yet available on the different microenvironments relevant to dermal UV–B radiation exposures. Thus, while methodologically analogous, sufficient information is simply not yet available to address these factors as part of an area-specific assessment of UV–B radiation-related exposure and risk mediated by changes in ground-level O_3 associated with programs designed to attain a more stringent O_3 NAAQS.

(ii) Estimation of temporal and spatial patterns of UV–B radiation flux. Relative to the assessment of direct respiratory effects, the assessment of the indirect effect of O_3 shielding on UV–B radiation-related health effects requires the additional step of estimating how changes in the temporal and spatial patterns of O_3 concentrations result in changes in the patterns of UV–B radiation. Given a three-dimensional pattern of O_3 levels, a first-order approximation of UV–B penetration to the earth's surface can be readily made. The factors that influence radiation flux through the stratosphere are fairly well characterized, and most are directly related to the modest changes in stratospheric O_3 and large variations in sun angle that depend on latitude, time of year, and time of day (U.S. EPA, 1987). Nevertheless, beyond these factors, and in addition to changes in ground-level O_3, a number of other (second-order) factors in the boundary layer and the rest of the troposphere can affect the amount of UV–B radiation reaching potentially affected populations. One such factor is cloud cover, which can reduce UV–B radiation reaching the earth's surface by 50 percent or more (Cupitt, 1994). Another such factor is the presence of UV–B radiation scattering and absorbing aerosols. Depending on local circumstances and the NAAQS implementation strategy chosen, aerosol-related UV–B radiation exposure might increase or decrease as a result of ground-level O_3 reductions (U.S. EPA, 1996a, Chapter 3). Both O_3 and aerosols can affect local climate as well as UV–B radiation, and this could affect cloud cover as a further indirect consequence of a reduction strategy. While any such indirect effects might be expected to be small for modest O_3 changes, it is not currently possible to predict the magnitude or the sign of their net effect on UV–B radiation penetration.

A few commenters expressed the view that these types of uncertainties do not preclude a quantitative assessment of exposure and risk related to UV–B radiation, because assessments of environmental risks always include simplifying assumptions. While EPA agrees that simplifying assumptions could be made about these types of second order uncertainties, EPA notes that there is little information available for judging whether any such assumptions were realistic or even plausible. Thus, EPA continues to maintain that having relevant information on these factors would be important in judging the credibility of any area-specific assessment of UV–B radiation-related exposure and risk mediated by changes in ground-level O_3.

(iii) Estimation of temporal and spatial patterns of movement of people throughout microenvironments. While population densities are high in areas with the highest ground-level O_3 concentrations, people may not receive their highest exposure to UV–B radiation in such locations. Reductions in O_3 shielding would presumably be most significant in outdoor recreational areas such as the beach or rural open areas where many people likely receive a disproportionate share of their cumulative sun exposure. Local or

regional meteorological factors can, however, cause ground-level O_3 concentrations to be lower in many such areas, particularly in the western United States. For example, O_3 concentrations in the heavily populated Los Angeles area tend to be lowest at the coast and increase inland; in this case, smog-related O_3 would be providing the least shielding where the potential for exposure to UV–B radiation is the highest. The extensive data base on human activity patterns, which was used in the assessment of respiratory effects, does not generally include parameters that relate to people's movement through the types of outdoor microenvironments that are relevant to the assessment of UV–B radiation exposure.

One comment referenced specific EPA data bases that now contain activity pattern data for limited types of outdoor recreation locations, such as tennis courts and golf courses, suggesting that data are now available to better address human activity patterns in microenvironments relevant to assessing UV–B radiation-related exposures and risk. While EPA recognizes that data bases have recently expanded to include additional relevant human activity information, it also notes that the expanded data bases still fall far short of what would be needed to comprehensively project population activity patterns over time and space—in shaded, partially-shaded, and sunny environments. Additional data are still needed to conduct an exposure analysis that could account for the fraction of UV–B radiation exposure that is incurred, for example, during outdoor recreational activities in various non-shaded or partially-shaded microenvironments. The EPA continues to believe that sufficient data on relevant activity patterns are still not currently available, and that reliable estimation of the change in UV–B radiation exposure associated with reducing ground-level O_3 would be significantly hindered by not taking such factors into account.

(iv) Effects of variable behaviors on effective dose of UV–B radiation. Another important factor to be considered in assessing the potential UV–B radiation-related effects of a change in ground-level O_3 is that human behavior affects UV–B radiation exposures. When people choose to shield themselves from UV–B radiation exposure with clothing and sunscreens, and by timing their outdoor activities to avoid peak sun conditions, they are affecting a parameter that is important in assessing UV–B radiation-related effects. The generally well-known risks associated with too much sun exposure are such that many people limit their own as well as their children's exposure through such measures, regardless of the status of the protective stratospheric O_3 layer or variable amounts of ground-level O_3 pollution. While some sun exposure is generally beneficial to health, limiting excessive sun exposure would remain important for a person's health even if the stratospheric O_3 layer were fully restored to its natural state.[55]

Since sun-seeking or sun-avoidance behaviors can tend to maximize or minimize exposure to UV–B radiation, not factoring such behavioral data into an area-specific exposure assessment would hinder reliable estimation of the increased exposure associated with reducing ground-level O_3. Changes in behavior in the past, specifically increases in sun-seeking behaviors, are believed to be the primary reason for the increases in skin cancer incidence and mortality observed in the U.S. by the 1980's (U.S. EPA, 1987). Conversely, future rates of skin cancer could be reduced to the extent that people choose to change their behavior by increasing sun-avoidance behaviors.

Public awareness of the risks associated with overexposure to UV radiation seems to be having an effect on behavior. In 1987, EPA noted that behaviors causing increased UV–B radiation exposure were apparently reaching an upper limit (U.S. EPA, 1987, ES–35). The effect of increased awareness of the health consequences of UV–B radiation exposure on decreasing the number of harmful exposures is not likely to show up, in terms of reducing the incidence and mortality rates of skin cancers, for many years. Nevertheless, ignoring its effects would tend to bias exposure estimates in an area-specific assessment of the UV–B radiation-related effects of smog reduction strategies.

A few commenters noted that variable behaviors would also affect the assessments of respiratory-related exposure and risk, and that not having such information to assess exposure and risk of UV–B radiation-related effects would not introduce any additional uncertainty beyond what is incorporated in the assessments of respiratory effects. The EPA believes that these commenters are not taking into account the extent to which EPA's respiratory-related exposure and risk analyses did incorporate effects of variable respiratory-related behaviors of people as they move through space and time, and through different microenvironments, in that such behaviors are part of the human activity pattern data base used in those assessments. The human activity pattern data base incorporates respiratory-related parameters derived from human activity studies in which subjects report the types of activity they engage in as a function of location and time throughout the day, which are then linked to variable breathing rates that affect the likelihood that specific O_3 exposures are likely to result in adverse respiratory effects.[56] In contrast, the available human activity pattern data base does not include parameters related to dermal exposures to UV–B radiation, such as time spent in sunny, partially shaded, and shaded locations, nor does it include parameters related to the likelihood that people in sensitive groups exhibit sun-avoidance or sun-seeking behaviors while in such microenvironments. Thus, EPA disagrees with comments asserting either that its respiratory-related exposure and risk analyses did not take into account relevant variable behavior patterns or that there is now sufficient information available on UV–B radiation-related variable behaviors to take such factors into account in an area-specific assessment of UV–B radiation-related exposure and risk mediated by changes in ground-level O_3.

In the proposed response to the remand, EPA specifically solicited comment on the factors related to area-specific assessments of UV–B radiation-related effects that are discussed above (66 FR 57284). Beyond the specific comments on each factor noted above, commenters did not generally challenge the appropriateness of these factors in the development of such area-specific assessments, or the importance of

[55] Because of the high baseline risk of effects under natural conditions, as well as the increased risk posed by stratospheric O_3 depletion, medical authorities and governmental bodies have developed campaigns to effect such changes in behavior. The EPA and the National Weather Service (NWS) developed the UV Index. The Index provides a forecast of the expected risk of overexposure to the sun and indicates the degree of caution that should be taken when working, playing, or exercising outdoors. The EPA also developed the SunWise School Program to be used in conjunction with the UV Index. This program is designed to educate the public, especially children and their care givers, about the health risks associated with overexposure to UV radiation and encourage simple and sensible behaviors that can reduce the risk of sun-related health problems later in life (U.S. EPA, 1995a, b).

[56] The EPA recognizes that these data bases may not contain the most current information on respiratory-related avoidance behaviors that may now be occurring in response to EPA's new Air Quality Index health advisories or local community ozone action day programs. Any such updated information appropriately will be included in analyses conducted as part of the periodic review of the O_3 NAAQS that is now underway.

conducting area-specific assessments. However, as noted above, a few commenters expressed the view that since EPA conducted area-specific quantitative assessments for the inhalation exposure and respiratory effects risk assessments discussed above (section II.A.2), it necessarily has sufficient information about these same factors to conduct such exposure and risk assessments of the potential UV–B radiation-related consequences of a more stringent O_3 NAAQS. These commenters also expressed the view that to the extent that EPA has incorporated these factors in quantitative area-specific assessments of respiratory effects, it should be possible to use the same information on these factors to conduct similar assessments of UV–B radiation-related effects.

While EPA clearly recognizes that the factors that are important in the inhalation exposure and respiratory effects risk assessments are analogous to the factors that would be important to conducting similar assessments of the UV–B radiation-related effects, as discussed above, EPA believes that these commenters are ignoring the important differences between these sets of factors. Although substantial information has been gathered over time regarding factors related to respiratory effects, no such similar research has as yet been done that would provide comparable information related to dermal exposure factors. For the reasons discussed above, EPA rejects the notion advanced by these commenters that simply because there is sufficient information to conduct area-specific quantitative assessments for the inhalation exposure and respiratory effects risk assessment, that such information would be sufficient to conduct exposure and risk assessments of the UV–B radiation-related effects of a more stringent O_3 NAAQS.

Based on the discussion of factors above and consideration of the comments received, EPA continues to believe that more information is needed before credible area-specific quantitative analyses of potential UV–B radiation-related consequences of a more stringent O_3 NAAQS could be conducted.

3. Evaluation of UV–B Radiation-Related Risk Estimates for Ground-level O_3 Changes

As should be clear from the discussion above, a full risk assessment of UV–B radiation-related effects resulting from a moderate change in ground-level O_3 would be an extremely challenging enterprise that appears to be beyond current data and modeling capabilities. Nevertheless, three analyses (Cupitt, 1994; U.S. DOE, 1995; Lutter and Wolz, 1997) have developed estimates that attempt to bound the potential indirect UV–B radiation related effects associated with replacing the former 1-hour O_3 NAAQS with an 8-hour O_3 standard. All three analyses essentially reflect a static comparison of two separate O_3 concentrations on a national basis, and include, either explicitly or implicitly, numerous assumptions needed while excluding the important area-specific issues and factors outlined above.

The most thoroughly documented calculations are those provided in Cupitt (1994), an EPA white paper developed as an initial scoping analysis of the issues, in preparation for potential consideration in the Regulatory Impact Analysis (RIA) that would accompany the O_3 NAAQS regulatory package. This paper discusses many of the important factors and uncertainties outlined above, summarizes key background information to provide perspective, and includes a discussion and table summarizing the many simplifying assumptions that were needed to permit the development of quantitative estimates. Cupitt's analysis evaluates changes resulting from cumulative exposures under two scenarios, including one that compares estimates of NMSC incidence associated with an assumed reduction of daytime summer O_3 of 10 ppb that would occur uniformly throughout 30 eastern States and the District of Columbia and within an assumed atmospheric mixing layer that ranged up to 2 km in altitude. Assuming no other relevant factors changed over the several decade exposure period that would be required, the resulting increase in NMSC incidence for this extreme scenario was estimated eventually to reach "between 0.6% and 1%." While these percentages are small—indeed too small to be measurable (Cupitt, 1994)—if taken at face value, they would not necessarily be judged as trivial because of the large baseline of NMSC. For reasons outlined below, however, even these small percentage estimates appear to be substantially overstated and cannot be considered reliable.

The Cupitt paper was never formally published, but it was subjected to internal agency peer review and commentary by experts at EPA's Office of Research and Development (ORD) (Childs, 1994; Altshuller, 1994). While finding the exposition, including recognition of the difficulties in such an approach, to be "very acceptable," the reviewers noted substantial uncertainties in basic data and expressed concerns about the numerous simplifying assumptions that called the numerical results into significant question. Examples of data uncertainties noted by the reviewers include: (1) The accuracy of column O_3 (in Dobson units) and UV measurements used; (2) the fact, recognized in Cupitt (1994), that the predicted UV–B radiation flux changes are at the "noise" level and could not be reliably detected statistically or attributed to the change in ground-level O_3 concentration; (3) data on effects of aerosols are limited, yet ignoring such effects in estimating the O_3—UV–B radiation relationship was "erroneous;" and (4) data to permit dynamic assessment of the feedback between increased UV radiation and increased O_3 is limited to uncertain models, and this potential feedback mechanism was ignored in the analysis (Childs, 1994).

Reviewers also questioned a number of the simplifying assumptions that could have "substantial impact" on the resulting risk estimates. Among these were: (1) The assumed mixing height of 2 km, which reviewers considered too high on average, especially for the eastern United States—by overstating the thickness of the pollution-related layer of the atmosphere that is the focus of the control strategies designed to attain the NAAQS, this factor would bias the estimates upwards by as much as a factor of 2; (2) the assumption that the O_3 mixing ratio is the same at the earth's surface as it is at 2 km, when the vertical profile varies through the diurnal cycle—because vertical mixing increases through the day, this assumption would be most important in the earlier portion of daylight hours; (3) the assumption that neither aerosols nor O_3 production cycles themselves exert either positive or negative feedback on UV–B penetration—as noted in the previous section, a dynamic consideration of these factors could change the direction of the result in particular areas; (4) the assumption that NMSC might result from episodic exposures, when, in fact, NMSC results from cumulative doses—this assumption affects only separate and far smaller estimates Cupitt made for episodic changes, essentially invalidating those results; (5) the assumption that all people would be susceptible to NMSC based on assumed exposure factors; and (6) the assumption that behavioral patterns, demographic patterns, and meteorological factors and other factors related to actual exposures remain constant over time (Childs, 1994; Altschuller, 1994).

These reviewers capsulized their conclusions regarding the quantitative results of this analysis as follows:

In summary, (1) the numbers resulting from these calculations are quite small, and (2) the limitations of the accuracy and reliability of the input to the calculations produces numbers that cannot be defended, whether large or small. (Childs, 1994).

As noted in the discussion above, this is not simply a matter of uncertain and small risk estimates. On balance, several of the problems noted above served to inflate the overall estimates, and, depending upon local conditions and the implementation strategy assumed, could even call the direction of the results into question for some locations. Further, a significant bias, not highlighted in the cited reviews, is how well the assumed 10 ppb change in daytime O_3 levels averaged over an entire summer season (and over half the U.S.) reflects what might occur in response to the revised O_3 NAAQS.[57] In fact, this assumed change, as well as the assumptions regarding its spatial and vertical extent, are significantly larger than could reasonably be expected based on the revisions to the O_3 standard promulgated in 1997.

To provide a fair comparison, it is necessary to convert the 1-hour standard into its nearest 8-hour equivalent. As documented in the Staff Paper (U.S. EPA, 1996b), the nearest equivalent 8-hour standard would have a level of about 0.09 ppm. Superficially, this might appear to support a 10 ppb difference compared to the 0.08 ppm 8-hour standard set in 1997. The appropriateness of this comparison fades, however, when one considers that these standards are stated in reference to extreme high values in the distribution (*e.g.*, the average of the 4th-highest daily maximum concentrations). Cupitt's analysis assumed that a "mixing layer" up to 2 km deep over a very large geographical region would experience a change of 10 ppb in daylight average O_3 for an entire O_3 season. This scenario would require a challenging regional strategy that would, on average, reduce each day for the over 150 day O_3 season by 10 ppb. Yet, the 0.08 ppm 8-hour O3 standard would require that only the fourth-highest day of the O_3 season be reduced by about 10 ppb, as compared to the previous standard. Based on available O_3 trends information, strategies that reduce peak O_3 days would have far less effect on the far more numerous days toward the middle and lower-parts of the O_3 season distribution (*e.g.*, U.S. EPA, 1996a, Figures 4–2, 4–3). In fact, as reported in the Response to Comments document, based on earlier RIA projections of long-term O_3 reductions that might occur as a result of efforts to meet the 0.08 ppm 8-hour O_3 standard, the magnitude of the assumed average change appears to be overstated by more than a factor of 3 (U.S. EPA, 1997). When considered with the excessively high assumed mixing layer, the overly large geographical area requiring reductions (over 30 States), and the assumption that the entire population would be at the same risk as the more sensitive subpopulations, it is EPA's judgment, based on the record, that these readily identified biases could well be on the order of a factor of 10.

More subtle are the uncertainties and potential bias inherent in an essentially static comparison of two different O_3 values that are assumed to be uniform over a very large area. Dynamic, real-world implementation strategies would involve a number of alternative local and regional scale approaches that vary significantly in time and space, with a variety of possible outcomes with respect to the middle and lower portions of the O_3 distribution that are most relevant to estimating long-term summer averages over a period of decades into the future. An example of such local strategy-dependent outcomes would be control of NO_X emissions across a metropolitan area, which could reduce O_3 concentrations at downwind peak monitors, but also result in localized increases in lower concentrations in the center city area (National Academy of Sciences, 1991, Figure 11–2). As noted in section II.B.2 above and in Altshuller (1994), the interrelated indirect results from reduced O_3 and UV–B radiation could trigger feedbacks through increased O_3, aerosol, or cloud cover that could partially or fully offset the initial O_3 effects on UV–B radiation. Available data and assessment tools do not permit a reasonable quantitative assessment of these second- and third-order indirect effects (Altshuller, 1994; Childs, 1994).

Other potential problems associated with ignoring area-specific considerations in an O_3/UV–B risk analysis summarized in the previous section include: (1) The assessment of local physical factors (*e.g.*, buildings) that reduce UV–B radiation exposure in outdoor microenvironments, (2) meteorological conditions (*e.g.*, sea breeze) or local emissions patterns that reduce pollution in high UV–B radiation exposure microenvironments, (3) behavioral adjustments to information concerning UV–B radiation risk over time, and (4) local differences in the proportion of sensitive populations. Even Cupitt's assumption that 90 percent of exposure occurs during the summer O_3 season embeds an additional assumption about long-term personal behavior for which little empirical evidence exists.

In the proposed response, EPA solicited comment on the above discussion of the key assumptions used in the Cupitt analysis (66 FR 57285). None of the commenters disagreed with any specific aspect of EPA's evaluation of these assumptions as outlined in the proposed response, nor did any commenter disagree with EPA's judgement that the assumptions described above could introduce biases on the order of a factor of 10 to Cupitt's estimates of changes in UV–B radiation-related effects resulting from changes in ground-level O_3 projected to occur upon attainment of a more stringent O_3 NAAQS.

In summary, EPA continues to believe that the Cupitt (1994) white paper was useful for its intended purpose as a scoping analysis to identify the potential issues arising in any attempt to assess the potential shielding provided by changes in ground-level O_3. It established that any effects of even fairly large, long-term O_3 reductions in ground-level O_3 would be quite small, but as evidenced in the comments of the peer review and the discussion above, available data and modeling tools fall far short of permitting reliable quantitative risk estimates for consideration in standard setting or benefits assessments.

The analysis of this issue by U.S. Department of Energy (DOE) staff (1995) is summarized in a statement submitted as a part of public comments at a CASAC meeting. The exposition is far less complete than that of Cupitt, and it is quite difficult to reconcile the range of estimates for possible increased occurrences of NMSC, the lower bound of which are less than Cupitt, while the upper bound estimates are more than double his. The analysis apparently starts with the same assumptions regarding a constant change in summertime O_3 of 10 ppb through a 2 km mixing layer, but important information about the other assumptions is lacking. In any event, the paper does not appear to improve upon the methodology in the Cupitt analysis.[58] Given that the DOE

[57] Cupitt provides no rationale for the selection for this value where it first appears in a Table, which is characterized as addressing "questions from OMB."

[58] In addition to estimates for NMSC, the DOE statements also provided estimates for melanoma skin cancers and cataracts. As discussed above, the quantitative relationship between cumulative UV–B exposure and the latter effects are not as well established as for NMSC. Given the lack of documentation and the additional uncertainties over those for NMSC, neither the DOE estimates of

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statement must share the limitations outlined above for Cupitt and the fact that the analytical approach is neither well documented nor peer reviewed, no reliance is placed on the quantitative results presented in the DOE submission.

The work of economic analysts Lutter and Wolz (1997) provides a self-described "preliminary analysis" of UV–B radiation screening by tropospheric O_3. Here, the exposition permits a more direct comparison with that of Cupitt, and it appears that many of the same simplifying assumptions were used—either explicitly or implicitly. This paper relied upon Cupitt's assumption that the NAAQS revision might bring about a summertime average of 10 ppb reduction in O_3 in areas not attaining the standard. As discussed above, based on the record, EPA believes this substantially overstates the likely effect of the NAAQS revision. Their assumption of a constant mixing ratio for the 10 ppb change that would extend well above the planetary boundary layer, up to 10 km, also introduces upward bias into their upper-bound risk estimates. The resultant apparent dose appears to be a factor of 4 larger than the upper bound used by Cupitt and DOE staff. The other quantitative inputs to the analysis differed to a more modest degree from those used by Cupitt. In the end, the upper bound estimate of possible increased occurrences of NMSC is more than double that of Cupitt, due largely to the unwarranted assumption of a 10 km mixing height.

Again, because the quantitative assessment shares most of the limitations cited above for Cupitt, and actually adds substantial bias in a key assumption, EPA has appropriately placed no reliance on the quantitative risk estimates for NMSC from Lutter and Wolz (1997) or to the secondary estimates derived in the DOE analyses.

In the proposed response to the remand, EPA solicited comment on its evaluation of the three analyses discussed above (66 FR 57286). No commenter offered specific challenges to any technical aspect of EPA's evaluations of the quantitative analyses by Cupitt (1994), DOE (1995), and Lutter and Wolz (1997), as discussed above. Some commenters, however, expressed the general view, presumably despite the limitations of these analyses, that EPA was not justified in ignoring or discounting such evidence of positive effects, or that such analyses could serve as an upper bound on estimated UV–B radiation-related impacts. In sharp contrast, other commenters expressed the view that these analyses were of questionable reliability and did not achieve minimum standards of scientific adequacy appropriate for information to be used as a basis for NAAQS decisions.

In taking all these comments into account, EPA rejects the notion that it has ignored or completely discounted these analyses. On the contrary, EPA has thoroughly reviewed these analyses by examining the methodologies used, the nature and validity of the underlying assumptions, and the resultant uncertainties inherent in the UV–B radiation-related impacts estimated by these analyses. In so doing, EPA has concluded that (1) the methodologies used in these analyses inherently ignore area-specific factors that are important in estimating the extent to which small, variable changes in ground-level O_3 mediate long-term exposures to UV–B radiation (in contrast to the appropriate application of such methodologies that EPA and others have done in estimating the impact of relatively large changes in the stratospheric O_3 reservoir attributable to emissions of O_3-depleting substances); (2) the studies likely substantially overestimate UV–B radiation-related impacts as a result of the biases introduced by the use of specific underlying assumptions, as discussed above; and (3) as a consequence of the first two conclusions, the analyses are not scientifically adequate to be relied upon as a basis for making NAAQS decisions, and they do not provide credible quantitative estimates of UV–B radiation-related impacts that can appropriately be compared to the quantitative estimates of direct adverse respiratory-related impacts that EPA used in part as a basis for its initial NAAQS decision. The EPA believes that its examination of these analyses and their underlying assumptions, together with its examination of the basic science dealing with the atmospheric distribution of O3 and UV–B radiation (section I.C above) and information on the health effects associated with UV–B radiation and the relationship between ground-level O_3 and UV–B radiation exposure (sections II.B.1 and 2 above), does support the conclusion that UV–B radiation impacts mediated by changes in ground-level O_3 associated with attaining a more stringent O_3 NAAQS are likely very small from a public health perspective.

Beyond the comments submitted on the three analyses discussed above, a few commenters also contended that EPA's proposed response was incomplete because it did not consider another draft analysis by Madronich, referred to as a 1997 "EPA staff assessment" of UV–B radiation-related health benefits, that had been submitted by EPA to the Office of Management and Budget (OMB) in conjunction with OMB's review of the draft RIA for the O_3 NAAQS. These comments expressed the view that this draft analysis represented a substantial improvement over the earlier analyses of Cupitt (1994), DOE (1995), and Lutter and Wolz (1997) in its approach to estimating potential increases in NMSC associated with State-specific average changes in O_3 concentrations between baseline levels (*i.e.*, ground-level O_3 concentrations current at the time of the analysis) and full attainment of the 1996 proposed O_3 NAAQS. These commenters assert that EPA should now consider the results of this draft analysis, or the results of a new analysis that incorporates further refinements and extensions to the methodology and scope of the Madronich analysis, in its response.

In considering this comment, EPA first notes that the Madronich analysis submitted with the comments has not been appropriately characterized in the comments. The Madronich analysis is not an "EPA staff assessment," but rather it is a draft analysis prepared by a consultant at the request of EPA, to help inform EPA's preparation of the RIA. This draft analysis was not completed, published, or peer reviewed. Moreover, it was judged not to provide an adequate basis for quantifying potential UV–B radiation-related impacts as part of EPA's final RIA, a document that historically includes quantitative estimates of a more speculative nature than those thought to be adequate to consider as a basis for setting a NAAQS. In fact, the final RIA for the 1997 O_3 NAAQS, which was reviewed by other Federal agencies and approved for release by OMB, concluded that the available scientific and technical information, which included the Madronich draft analysis, would not permit reliable quantitative estimates of any potential impact of the more stringent O_3 NAAQS on UV–B radiation-related effects.[59] In summary, the Madronich draft analysis does not represent the type of peer-reviewed

such effects nor the uncritical reliance on them by Lutter and Wolz (1997) should be given quantitative credence.

[59] The EPA also notes that this draft analysis was appropriately not part of the rulemaking record upon which EPA is basing its response. The fact that OMB staff placed this draft analysis in OMB's docket, which includes information related to OMB's review of the RIA, in no way implies that the draft analysis was or should have been part of EPA's rulemaking record.

information that is appropriately relied upon as a basis for NAAQS rulemaking.

Although, for the reasons discussed above, EPA has not relied on the Madronich draft analysis in reaching this final response, the Agency nevertheless has conducted a provisional examination of this draft analysis to assess whether the results of the analysis call into question or are consistent with the conclusions reached in the proposed response. In this draft analysis, Madronich estimates the increases in NMSC that would result from changes in ground-level O_3 from 1997 baseline values to full attainment of the 1996 proposed O_3 NAAQS (*i.e.*, a standard set at 0.08 ppm O_3 with a form based on the 3-year average of the annual third-highest daily maximum 8-hour average concentrations). As an initial matter, and as recognized by some commenters, this draft analysis is based on an inappropriate comparison—then-current air quality versus attainment of the proposed NAAQS. The relevant comparison is between full attainment of the 1979 1-hour 0.12 ppm O_3 standard and full attainment of the 1997 final 8-hour O_3 NAAQS (with a somewhat less stringent form based on the fourth-highest daily maximum 8-hour average concentrations). Thus, the analysis by its design substantially overestimates the relevant projected decreases in O_3 levels likely to result from revising the 1979 O_3 standard (since baseline levels in some areas are substantially above levels that would attain the 1979 1-hour standard), and thus, substantially overestimates projected UV–B radiation-related impacts.

Looking beyond this initial matter, EPA notes that this analysis is based on estimated statewide average changes in O_3 concentrations. Thus, like the three other analyses discussed above, this draft analysis incorporates none of the area-specific factors, discussed in section II.B.2.b above, that EPA considers to be important in developing credible estimates of UV–B radiation-related impacts mediated by the localized and highly variable changes in ground-level O_3 likely to result from attainment of a more stringent O_3 NAAQS. The EPA does not dispute that the draft analysis uses assumptions and models that may well be appropriate for developing credible estimates of UV–B radiation-related impacts mediated by large-scale regional and relatively uniform changes in stratospheric O_3 likely to result from emissions of O_3-depleting substances.[60] But, EPA also recognizes and has fully explained (above in section II.B.2) the important differences in the factors that are central to analyses of UV–B radiation-related impacts that are mediated by changes in stratospheric O_3 versus ground-level O_3—differences that this analysis, and the commenters, simply ignore.

Apart from these area-specific methodological issues, EPA has also provisionally looked at the quantitative estimates of State-by-State annual incidences of NMSC that result from the Madronich draft analysis, yielding a nationwide aggregate estimate of an additional 696 NMSC cases annually, with over half of this estimate coming from the State of California alone.[61] Using the California estimate as an example, EPA has considered the potential impact of various assumptions used in the analysis on the estimated incidences. First, as discussed above, the use of a current baseline comparison would likely substantially overestimate incidences in California in particular, in light of the significant extent to which many areas in California continue to exceed the 1979 1-hour standard. That is, it is likely that decreases in ground-level O_3 from baseline levels to levels that would attain the 1979 1-hour standard would be greater, perhaps much greater, than the additional decreases needed to reach attainment of the 1997 8-hour standard. This bias would also likely affect estimates from other States that contribute a high proportion of the national incidence estimate and that have areas that exceed the 1-hour standard by a significant margin, including, for example, New Jersey, Georgia, and Texas, which together account for approximately 20 percent of the national estimate.

Second, as in the Cupitt analysis, the Madronich analysis assumes that the entire population would be equally susceptible to NMSC based on assumed exposure factors. This assumption would also lead to substantial overestimation of effects, however, based on demographic data from the 2001 Statistical Abstract of the United States and information on sensitive populations (discussed above in section II.B.1).[62]

Third, as noted above, the Madronich draft analysis assumes that attainment of a more stringent O_3 standard will decrease O_3 concentrations and increase UV–B radiation flux equally throughout the State, without taking into account the highly variable and localized patterns of changes in ground-level O_3 likely to result from attainment of the O_3 NAAQS, nor does it take into account the variable exposure patterns of people as they move through various microenvironments and exhibit varying degrees of sun-seeking and sun-avoidance behaviors. However, attainment of a more stringent O_3 standard will not reduce O_3 concentrations equally everywhere, and may not reduce O_3 concentrations at all in locations where people receive their highest exposure to UV–B radiation. As noted above in section II.B.2.b, in the heavily populated Los Angeles area, ground-level O_3 is at its lowest levels thus providing the least shielding along the coast, where the potential for exposure to UV–B radiation is the highest, and it is unlikely that programs designed to bring Los Angeles into attainment with a more stringent standard will result in any significant reductions in coastal O_3 levels. In this regard, some commenters also note that the analysis may also underestimate incidences since the analysis assumes that the entire population of a State will experience changes in O_3 concentrations, and presumably resultant changes in UV–B radiation-related impacts, that reflect a statewide average, thus potentially underestimating changes to the large segments of the population that live in urban areas that would likely experience larger than average changes in ground-level O_3 concentrations. However, given the variable and localized patterns of changes in ground-level O_3 that have been monitored in urban areas, including in some cases significantly lower concentrations in inner cities and higher concentrations in downwind suburban areas, it is not clear the extent to which ignoring such area-specific factors would bias resulting estimates for any given urban area either low or high. These considerations serve to demonstrate the

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[60] The EPA notes that the draft analysis estimates changes in radiation levels using a radiative transfer model that has been previously used in a number of O_3 scientific studies and WMO/UNEP international assessments of stratospheric O_3 depletion, and NMSC incidences using information from epidemiologic studies and from studies of action spectrum for induction of skin cancer in mice. The draft analysis assumes national incidence rates of 500,000 BCC cases per year and 100,000 SCC cases per year for the baseline scenario.

[61] Only point estimates are presented in the analysis; no quantitative estimates or even qualitative discussion of the uncertainties in these estimates are presented.

[62] According to the 2000 Census (U.S. Census Bureau, 2001), approximately 47 percent of the population of California is designated as "white alone." While not all "white" people are susceptible to skin cancer, this proportion is probably a better estimate of the fairer members of all races and ethnic groups in California that would be more susceptible to NMSC than the entire population.

importance of conducting area-specific assessments, as EPA did in evaluating the adverse respiratory-related impacts likely to result from attaining a more stringent O_3 standard.

Finally, one comment also notes that the Madronich draft analysis considers NMSC, but not other UV–B radiation-related effects, and that EPA should extend this quantitative analysis to estimate incidences of such other effects. The EPA believes that quantitative risk estimates to be used as a basis for NAAQS decision making should not be made based on back-of-the-envelope type approaches, as offered in the comment. Consistent with this view, EPA refrained from developing quantitative risk estimates for a range of adverse respiratory-related effects when it judged that information needed to make credible quantitative estimates was not available.[63] To do otherwise with regard to potential beneficial effects would be to apply a lower information standard than was used to assess adverse effects, which EPA declines to do, consistent with the direction from the Court in its remand to apply the "same approach," including the same (neither higher nor lower) "information threshold" to either type of information.

Although the biases and uncertainties outlined above can not be reliably quantified, EPA believes that it is reasonable to presume that any increase in nationwide annual incidences of NMSC associated with attaining a more stringent O_3 standard would likely be substantially smaller than estimated by the draft Madronich analysis. Assuming that it's even as much as one-third of that estimated by Madronich, the EPA judges that a nationwide NMSC incidence rate of this approximate magnitude would be very small from a public health perspective, representing an increase of roughly 0.03 percent in the national baseline incidence rate assumed by Madronich.[64] As to other UV–B radiation-related effects, the Madronich draft analysis provides no basis for the development of credible quantitative estimates of such effects. Having chosen not to rely upon simple ratios to develop quantitative estimates of the "pyramid of effects" related to the estimated number of hospital admissions of asthmatics that EPA did quantify in its risk assessment,[65] EPA declines to use any lower information standard, as suggested by a few commenters, in its evaluation of potential beneficial effects.

In summary, EPA has conducted a provisional examination of the Madronich draft analysis, considering the underlying assumptions and methodology as well as the quantitative results and likely uncertainties and biases in the results. Based on this provisional examination, EPA does not believe that this analysis calls into question, but rather is generally consistent with the conclusions reached in its proposed response: That information is not available at this time that will allow for credible quantitative estimates of potential UV–B radiation-related impacts of attaining a more stringent O_3 standard, and that associated changes in UV–B radiation exposures of concern, using plausible but highly uncertain assumptions would likely be very small from a public health perspective.

C. Consideration of Net Adverse Health Effects of Ground-level O_3

In considering the net adverse health effects of ground-level O_3, EPA has focused on characterizing and weighing the comparative importance of the potential indirect beneficial health effects associated with the attenuation of UV–B radiation by ground-level O_3 (section II.B above) and the direct adverse health effects associated with breathing O_3 in the ambient air (section II.A above). The same key factors considered by EPA in its 1997 review of the O_3 standard, and in the proposed response, are again considered here in characterizing the information on potential beneficial effects in the record of the 1997 review and in comments received on the proposed response, and in comparatively weighing this information relative to the direct adverse effects. Beyond quantitative assessments of exposure and risk that were central to EPA's 1997 review, these factors include the nature and severity of the effects, the types of available evidence, the size and nature of the sensitive populations at risk, and the kind and degree of uncertainties in the evidence and assessments. Because of the complexity and multidimensional nature of such a comparison, and because many of the effects, both adverse and beneficial, could not be characterized in terms of quantitative risk estimates, EPA has made no attempt to characterize all the relevant effects or associated risks to public health with a common metric.[66]

The available record information on the potential indirect beneficial health effects associated with ground-level O_3 includes information from studies of health effects caused by exposure to UV–B radiation and studies that focus on the consequences of unnaturally high exposures to UV–B radiation due to depletion of the stratospheric O_3 layer, as well as analyses that attempt to focus specifically on the consequences of assumed changes in tropospheric O_3 levels. The nature and severity of the effects of UV–B radiation exposure on the skin, eye, and immune system are discussed above (section II.B.1), as is the nature of sensitive populations at risk for these effects. These effects, especially on the skin and eye, are generally understood to be associated with long-term cumulative exposure to UV–B radiation and to have long latency periods from cumulative exposures, especially those early in life. People with light skin pigmentation make up the primary at-risk population for effects on the skin, especially for NMSC, while at-risk populations for other effects are not as well understood. For NMSC, uncertainties in the evidence generally

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[63] In the 1997 final rule (62 FR 38868), EPA specifically noted that for many O_3 inhalation-related risks to public health, information was too limited to develop quantitative estimates of risk, including: increased nonspecific bronchial responsiveness (related, for example, to aggravation of asthma), decreased pulmonary defense mechanisms (suggestive of increased susceptibility to respiratory infection), and indicators of pulmonary inflammation (related to potential aggravation of chronic bronchitis or long-term damage to the lungs).

[64] This judgment is consistent with the judgment made by EPA with regard to its estimate of the incidence rate of O_3-related hospital admissions of asthmatics in New York City, which was one of many adverse public health effects considered as part of the basis for its 1997 O_3 NAAQS decision. In its 1997 final rule, EPA judged that an annual increase of approximately 40 hospital admissions in New York City alone, representing an increase of about 0.3 percent in total hospital admissions of asthmatics, was "relatively small from a public health perspective" (62 FR 38868). An increase in NMSC incidence of roughly 0.03 percent is an order of magnitude lower than the estimated rate of O_3-related hospital admissions of asthmatics, and such hospital admissions would generally represent a more serious health effect than an incidence of NMSC, which can generally be treated in a doctor's office or outpatient facility. The EPA also notes that based on baseline incidence rates reported on the Skin Cancer Foundation Web site, *www.skincancer.org*, submitted by a commenter, this increase in NMSC incidence would be roughly only 0.02 percent.

[65] In its 1997 final rule (62 FR 38868), EPA noted that O_3-related hospital admissions of asthmatics are indicative of a pyramid of much larger numbers of related O_3-induced effects, including respiratory-related hospital admissions among the general population, emergency and outpatient department visits, doctors visits, and asthma attacks and related increased use of medication that are important public health considerations.

[66] A commenter asserted that the Court's direction to consider O_3's net adverse health effect in essence presumes the existence and use of a common metric. The EPA notes that while the Court identified the use of a common metric as one approach that EPA could use, in no way did the Court require EPA to use such an approach, nor does EPA believe that such an approach would provide a more meaningful basis on which to evaluate O_3's net effects.

relate to uncertainties in the relevant action spectra and BAFs, as well as in factors related to characterizing the severity of the different types of NMSC. Based on the record information, for the other effects, the role of UV–B radiation is less well understood (*e.g.*, as to relevant action spectra, BAFs, the nature of exposures of concern), although cumulative exposure to UV–B radiation is thought to play a causal role. These characterizations are derived from the large body of epidemiologic and toxicologic evidence that served as the basis for the reference document by EPA (1987).

The record includes a quantitative assessment conducted by EPA (1987, App. E) of the health risks associated with changes in exposure to UV–B radiation attributable to changes in the stratospheric O_3 layer. This assessment models the relationship between wide-scale changes in global/regional levels of stratospheric O_3, resulting from emissions of O_3 depleting substances with long-atmospheric lifetimes, and changes in UV–B radiation flux as a function of latitude for three broad regions across the United States.[67] As discussed above (section II.B.2), because changes in the stratospheric O_3 layer are relatively uniform across broad regions, varying across the U.S. primarily with latitude, information on localized spatial and temporal patterns of exposure-related variables (*e.g.*, changes in ground-level O_3, meteorological conditions, human activity patterns) are not relevant in producing credible estimates of risk associated with changes in stratospheric O_3. This is in sharp contrast to the nature of the information necessary to produce credible estimates of risk associated with changes in exposures to UV–B radiation projected to result from changes in ground-level O_3 that would be associated with attainment of alternative 8-hour standards for O_3.

An evaluation of the available analyses that have produced estimates of UV–B radiation-related health risks associated with changes in ground-level O_3 and the comments received on them, in section II.B.3 above, identifies major limitations in available information that resulted in the need for the analyses to incorporate broad and unsupportable assumptions. These limitations are particularly important with regard to information on spatial and temporal patterns of changes in ground-level O_3 (across the entire year and extending vertically up through the tropospheric mixing layer) likely to result from various future emission control strategies, relevant meteorological conditions and atmospheric chemistry leading to a cascade of broader indirect effects, and human demographic and activity patterns (*e.g.*, the degree of shading within outdoor microenvironments, and the prevalence of sun-seeking and sun-avoidance behaviors among sensitive groups) likely to affect UV–B radiation-related exposures of concern. For the reasons discussed above, these limitations are judged to be of central importance in any such analysis. Thus, in light of such limitations, and after careful consideration of the comments received, EPA continues to agree with internal and external reviewers, and some commenters, in concluding that the available scientific and technical information would not permit credible quantitative estimates of these potential beneficial effects.[68] Thus, EPA concludes that available analyses based on such limited information cannot serve as credible estimates of potential beneficial effects associated with the presence of ground-level O_3 due to man-made emissions of O_3-forming substances.

Beyond the specific technical comments discussed above in section II.B, several commenters expressed the general view that EPA had inappropriately applied a "double standard" in its evaluation of the scientific evidence because it failed to evaluate the protective shielding effects of ground-level O_3 using the same criteria by which it evaluated the adverse respiratory effects. This viewpoint was specifically expressed by one commenter in stating that "EPA has accepted, often without reservation, scientific evidence purporting to establish the adverse effects of ground-level ozone on respiratory effects. At the same time it has often discounted proffered scientific evidence of the potential benefits of ground-level ozone in screening harmful UV–B radiation." (Docket No. A–95–58, VI–C–8, pg. 28) As discussed below, EPA strongly rejects both aspects of this comment. Other commenters expressed the opposite view, finding EPA's approach to be evenhanded in its evaluation of the scientific evidence for potential beneficial and adverse effects, with one commenter noting that EPA "has never concluded that any allegation or "evidence" [of adverse effects], regardless of its preliminary or speculative nature or degree of uncertainty, must be factored into NAAQS decisionmaking." (Docket No. A–95–58, VI–C–6, pg. 2)

First, EPA believes that there is ample evidence in the record of the 1997 review of the O_3 NAAQS to invalidate the notion that the Agency uncritically accepts scientific evidence of adverse respiratory effects of ground-level ozone. For example, in considering evidence of adverse respiratory-related effects such as increases in bronchial responsiveness, decrements in alveolar macrophage function, and O_3-induced markers of inflammation and cell damage (as discussed in the 1996 proposed rule, 61 FR 65720–21), EPA judged that there was not sufficient information on dose-response relationships to develop quantitative risk estimates for these acute effects, even in light of the availability of peer-reviewed human exposure studies demonstrating indicators of these effects in humans at quantified exposure levels over quantified time periods (1997 final rule, 62 FR 38868). Similarly, EPA limited the scope of its quantitative risk assessment of acute respiratory-related hospital admissions of asthmatics to just one city (New York City), despite the availability of peer-reviewed studies showing increased admissions in other cities, because it judged that there was not adequate city-specific concentration-response information from epidemiological studies in other cities, that applying the New York City concentration-response information to other cities would introduce too much uncertainty into any such quantitative estimates, or that adequate ambient O_3 monitoring data were not available for other study areas to produce credible estimates of this risk for those cities (EPA, 1996b, pp. 111–112). Further, EPA did not rely on quantitative estimates of other adverse effects that have been related to hospital admissions of asthmatics in published documents submitted by commenters on the 1996 proposed rule (*e.g.*, the "pyramid of effects" including hospital admissions among the general population, visits to emergency departments and doctors'

[67] Since the EPA's 1987 risk assessment on stratospheric ozone depletion, numerous changes have been made to the model to reflect the commitments made since 1987 by the United States, under amendments to the Montreal Protocol, for reductions in production of various ozone depleting chemicals and to incorporate more accurately the latest scientific information.

[68] This conclusion was also reached by the Health and Ecological Effects Subcommittee of the Advisory Council on Clean Air Compliance Analysis, a part of EPA's Science Advisory Board, in conjunction with their review of "The Benefits and Costs of the Clean Air Act 1990 to 2010" (EPA, 1999b), noting that the relevant information "was very weak and more information is required" (EPA, 1999a). As one commenter noted, this SAB Council has more recently recommended that in EPA's next periodic prospective analysis of the Act, the Agency's analysis address this issue (Advisory Council for Clean Air Compliance Analysis, 2001).

offices, and increased asthma attacks and use of medication), due to the substantial uncertainties inherent in such ratio-of-effects-based approaches to quantifying risk. Finally, with regard to chronic effects, EPA declined to rely on available evidence, or develop quantitative estimates, of the risk of chronic O_3 respiratory-related morbidity or mortality effects in its 1997 final rule, judging that the evidence was too limited or uncertain, despite arguments by commenters on the 1996 proposed rule that such available, peer-reviewed evidence should be used as a basis for setting a lower 8-hour O_3 standard than the 0.08 ppm standard set by EPA in that rulemaking.

Second, far from discounting proffered scientific evidence of the potential ground-level ozone in screening harmful UV–B radiation, EPA has fully considered all the record evidence on the beneficial shielding effects of ground-level O_3, as well as information received in public comments, as discussed in section II.B above. Moreover, EPA has taken the additional step of provisionally considering the unpublished, Madronich draft analysis (section II.B.3), as submitted by commenters and characterized by them as an improvement over other analyses in the record. Having provisionally considered this analysis, for the reasons discussed above in section II.B, EPA has found that this analysis does not call into question the Agency's conclusions with regard to the lack of credibility of such available analyses or the likelihood that any such beneficial UV–B radiation-related effects are likely very small from a public health perspective. The fact that EPA does not agree with commenters' opinions on these issues does not in any way demonstrate that EPA has simply discounted their proffered evidence of the potential beneficial screening effects of ground-level O_3.

Therefore, EPA rejects the view of some commenters that it applied a double standard in reaching its conclusions about potential UV–B radiation-related effects that may result from a more stringent O_3 NAAQS. In fact, EPA believes that were it to rely upon the available evidence of UV–B radiation-related effects to conclude otherwise, as urged by these commenters, that it then would be applying the very type of double standard that these commenters argue against. If EPA were to have relied upon quantitative risk estimates from draft or preliminary analyses that did not utilize appropriate methods or information to take into account relevant area-specific factors, and that had not been peer-reviewed, it would then be inappropriately applying a double standard in comparing any such UV–B radiation-related risk estimates to the adverse respiratory-related risks estimated in peer-reviewed analyses that were appropriately designed and limited by the availability of credible information and assessment methods.

In setting aside the available quantitative risk analyses, EPA notes that our above evaluation of a number of critical factors in the analyses provides reasons for believing that the public health impacts of any potential beneficial effects associated with ground-level O_3 are likely very small, albeit unquantifiable at this time (sections II.B.2–3). In giving qualitative consideration to the available evidence on potential indirect beneficial effects of ground-level O_3, EPA believes it is appropriate to weigh this information in the context of the body of evidence on adverse effects caused by direct inhalation exposures to ground-level O_3 that formed the basis for the 1997 O_3 primary standard.

As an initial matter, as discussed in the 1997 final rule, the Administrator focused primarily on quantitative comparisons of risk, exposure, and air quality in selecting both the level (62 FR 38867–8) and form (62 FR 38869–72) of the 1997 O_3 primary standard. More specifically, she looked at comparisons of both those risks to public health that can be explicitly quantified in terms of estimated incidences and the size of the at-risk population (*e.g.*, children) likely to experience adverse effects, as well as those for which quantitative risk information is more limited, but for which quantitative estimates of the number of children likely to experience exposures of concern could be developed (as discussed in section II.A.2 above). In considering these comparisons, she recognized that although there were inherent uncertainties in these estimates, the underlying assessments took into account extensive data bases on the spatial and temporal patterns of air quality and directly relevant human activity patterns likely to result in inhalation exposures of concern. Further, the Administrator recognized that the assessment methods were appropriate and state-of-the-art, and that the results should play a central role in her decision.

Beyond the quantitative information on direct adverse effects, with regard to the qualitative evidence suggestive of potential serious, chronic adverse effects on public health associated with long-term inhalation exposures, EPA judged that such information was too uncertain and not well enough understood at the time to serve as the basis for establishing a more restrictive 8-hour standard in terms of either level (62 FR 38868) or form (62 FR 38871). In so doing, EPA understood that further research into potential chronic adverse effects in humans would be continued, and the results considered in the next review (62 FR 38871).

In weighing the available information on potential indirect beneficial effects of ground-level O_3, the EPA considers this information in the same light as the information on potential direct chronic adverse effects associated with long-term inhalation exposures to ground-level O_3. In both instances, the potential health effects are serious and likely to develop over many years, with important periods of exposure likely occurring in childhood. Different population groups are likely affected, however, by these potential adverse and beneficial effects. Urban populations and people with impaired respiratory systems (*e.g.*, people with asthma), who are disproportionately from certain minority groups, are most at-risk for the direct inhalation-related effects, whereas fair-skinned populations are most generally, but not exclusively, at-risk for the indirect beneficial effects related to exposure to UV–B radiation. Although different types of uncertainties are inherent in the record information on these effects, in both cases, the uncertainties related to ground-level O_3 are so great as to preclude the development of credible estimates of the size of the affected population or the probability of the occurrence of such effects.[69] In the case of indirect effects related to ground-level O_3, EPA believes that the use of plausible but unsubstantiated assumptions would likely lead to the conclusion that the potential impacts on public health are likely very small; no such conclusions have yet been drawn with regard to the public health impacts of potential direct chronic adverse effects related to inhalation exposures. After considering these factors and the public comments received, EPA now

[69] Two commenters expressed the view that EPA's analogy of UV–B radiation-related protective effects to chronic respiratory-related adverse effects is flawed because the nature of the uncertainties associated with these two types of effects are different. As discussed more fully in its response to comments (EPA, 2002), EPA explicitly recognizes here that there are different types of uncertainties inherent in the evidence of these effects, but disagrees with the commenter's characterization of these differences and with the view that any such differences in the nature of the uncertainties invalidate the weighing of these types of effects as EPA has done in reaching its conclusions.

concludes that, much like the qualitative evidence on direct adverse effects potentially associated with long-term inhalation exposures, the newly considered available evidence on potential indirect beneficial effects is not well enough understood at this time to serve as the basis for establishing a less restrictive 8-hour standard than was promulgated in 1997. Rather, EPA believes that the most recent evidence and credible analyses of potential long-term, indirect beneficial effects should be considered in the next review in conjunction with the most recent information on long-term, direct adverse effects.

D. Final Response To Remand on the Primary O_3 NAAQS

After carefully considering the scientific information available in the record on adverse effects on public health associated with direct inhalation exposures to O_3 in the ambient air and on the potential for indirect benefits to public health associated with the presence of ground-level O_3 and the resultant attenuation of naturally occurring UV–B radiation from the sun, taking into account the weight of that evidence in assessing the net adverse health effects of ground-level O_3, considering comments received on the proposed response, and for the reasons discussed above, the Administrator is now responding to the remand by reaffirming the 8-hour primary O_3 standard promulgated in 1997. In leaving unchanged the 1997 O_3 standard at this time, the Administrator has fully considered the available information in the record of the 1997 O_3 NAAQS review on potential beneficial health effects of ground-level O_3 using the same approach as for her consideration of the adverse respiratory-related effects, as directed by the Court's remand. Based on such consideration, she has determined that the information linking (a) changes in patterns of ground-level O_3 concentrations likely to occur as a result of programs implemented to attain the 1997 O_3 NAAQS to (b) changes in relevant exposures to UV–B radiation of concern to public health is too uncertain at this time to warrant any relaxation in the level of public health protection previously determined to be requisite to protect against the demonstrated direct adverse respiratory effects of exposure to O_3 in the ambient air.[70] Further, it is the Agency's view that even when using plausible but highly uncertain assumptions about likely changes in patterns of ground-level ozone concentrations, associated changes in UV–B radiation exposures of concern would likely be very small from a public health perspective.

In the past, the Administrator has been confronted with situations where there has been both quantifiable and unquantifiable evidence, and has moved forward with a NAAQS decision. The inability to quantify all related effects does not preclude the Agency from making a NAAQS decision, particularly in situations where there is strong quantifiable evidence of significant adverse health effects. Moreover, in this case, as noted above, EPA believes that while the potential beneficial effects are not quantifiable at this time, they are likely very small from a public health perspective. Accordingly, the Administrator believes it is inappropriate to wait for additional information on such effects prior to responding to this remand.

In determining now that the 0.08 ppm, 8-hour O_3 standard set in 1997 is requisite to protect public health with an adequate margin of safety, the Administrator is finding that such a standard is both necessary and sufficient. Consideration of the potential beneficial effects of ground-level O_3 did not, of course, call into question whether this standard was sufficient to protect against the adverse respiratory-related effects of O_3 addressed in EPA's 1997 final rule. However, it did raise the question as to whether this standard was still necessary to protect against O_3's net effects. Having determined that any potential UV–B radiation-related effects associated with this more stringent standard are likely very small from a public health perspective, and having judged that the evidence of any such effects should be weighed no more heavily in a determination of O_3's net effects than the record evidence on O_3's potential chronic adverse effects, the Administrator has concluded that O_3's net adverse effects necessitate a standard no less stringent than the standard set in EPA's 1997 final rule.[71]

The 0.08 ppm, 8-hour primary standard is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentration is less than or equal to 0.08 ppm. Data handling conventions are specified in a new appendix I to 40 CFR part 50, as discussed in the 1996 proposal and 1997 final rule.[72]

As discussed previously, the Administrator recognizes that relevant information on indirect potentially beneficial health effects of ground-level O_3 (as well as information on direct adverse health effects of ground-level O_3) is now available that was not part of the 1997 rulemaking record. In that regard, she notes that the next periodic review of the O_3 NAAQS is now well underway, having been formally initiated by EPA's Office of Research and Development with a call for information (65 FR 57810; September 26, 2000). To ensure that the current review of the O_3 criteria and standards now underway can be based on a comprehensive and current body of relevant scientific information, EPA continues to encourage the submission of new scientific information on the relationships between ground-level O_3, associated attenuation of UV–B radiation and other indirect effects of the presence of O_3 in the ambient air, and effects on public health such as those associated with changes in relevant exposures to UV–B radiation.

The EPA's ongoing review and revision of the O_3 Criteria Document is addressing a number of issues related to indirect potentially beneficial health effects of ground-level O_3. In particular, available information on the role of ground-level O_3 in attenuating solar UV–B radiation is being considered. Attention will be focused on the gaps in information, identified above in section II.B.2, that precluded the development of area-specific quantitative assessments of potential beneficial effects of ground-level O_3. For example, the review is considering the available information related to understanding relevant spatial and temporal patterns in changes in ground-level O_3, and associated spatial and temporal patterns in changes in solar UV–B radiation flux. The review will also consider available information on changes in human exposure to solar UV–B radiation as mediated by changes in ground-level O_3, including information related to characterizing how UV–B radiation exposures of sensitive populations may be affected by human activity patterns and variable sun-seeking and sun-avoidance behaviors. In addition, available information on the nature of health

[70] As noted above, the D.C. Circuit has already upheld EPA's determination that the 0.08 ppm 8-hour O_3 NAAQS was requisite to protect against adverse respiratory effects. *See ATA III*, 283 F.3d at 379.

[71] In so doing, EPA is applying the same decision making standard as it applied in its 1997 final rule, based on the plain meaning of the word "requisite," consistent with the U.S. Supreme Court's decision in *Whitman*, 121 S. Ct. at 911–12, 914.

[72] Subsequent to the 1997 final rule, EPA has promulgated further revisions to 40 CFR part 50 with regard to the applicability of the 1-hour O_3 standards (65 FR 45182; July 20, 2000). In addition, EPA notes that recent legislation addresses the timing of future actions on nonattainment designations with regard to the 8-hour O_3 standards (Pub. L. 106–377, 114 Stat. 1441 (2000)).

effects associated with changes in exposure to UV–B radiation mediated by changes in ground-level O_3 concentrations is being considered. As part of the O_3 Criteria Document, this information will be presented to CASAC and the public for review and comment. Based on the revised O_3 Criteria Document, and taking into account CASAC advice and public comments, EPA will consider the extent to which the available information provides an adequate basis for developing credible quantitative estimates of potential beneficial health effects of ground-level O_3. All such relevant information will be considered in EPA's review of the primary O_3 NAAQS.

III. Rationale for Final Response To Remand on the Secondary O_3 Standard

This notice also presents the Administrator's final response to the remand, reaffirming the 8-hour O_3 secondary standard promulgated in 1997, based on:

(1) Information from the 1997 criteria and standards review that served as the basis for the 1997 secondary O_3 standard, including the scientific information on welfare effects associated with direct exposures to O_3 in the ambient air, with a focus on vegetation effects, and assessments of vegetation exposure, risk, and economic values;

(2) A review of the scientific information in the record of the 1997 review (but not considered as part of the basis for the 1997 standard) on the welfare effects associated with changes in UV–B radiation, the association between changes in ground-level O_3 and changes in UV–B radiation, and predictions of changes in ground-level O_3 levels likely to result from attainment of alternative O_3 standards; and

(3) Consideration of the comments received on the proposed response.

A. Direct Adverse Welfare Effects

As discussed in the 1997 final rule, direct exposures to O_3 have been associated quantitatively and qualitatively with a wide range of vegetation effects such as visible foliar injury, growth reductions and yield loss in annual crops, growth reductions in tree seedlings and mature trees, and effects that can have impacts at the forest stand and ecosystem level. Visible foliar injury can represent a direct loss of the intended use of the plant, ranging from reduced yield and/or marketability for some agricultural species to impairment of the aesthetic value of urban ornamental species. On a larger scale, foliar injury is occurring on native vegetation in national parks, forests, and wilderness areas, and may be degrading the aesthetic quality of the natural landscape, a resource important to public welfare. Growth and yield effects of O_3 have been well documented for numerous species, including commodity crops, fruits and vegetables, and seedlings of both coniferous and deciduous tree species. Although data from tree seedling studies could not be extrapolated to quantify responses to O_3 in mature trees, long-term observational studies of mature trees have shown growth reductions in the presence of elevated O_3 concentrations. Even where these growth reductions are not attributed to O_3 alone, it has been reported that O_3 is a significant contributor that potentially exacerbates the effects of other environmental stresses (*e.g.*, pests). In addition, growth reductions can indicate that plant vigor is being compromised such that the plant can no longer compete effectively for essential nutrients, water, light, and space. When many O_3-sensitive individuals make up a population, the whole population may be affected. Changes occurring within sensitive populations, or stands, if they are severe enough, ultimately can change community and ecosystem structure. Structural changes that alter the ecosystem functions of energy flow and nutrient cycling can alter ecosystem succession.

Based on key studies and other biological effects information reported in the Criteria Document and Staff Paper, it was recognized that peak O_3 concentrations equal to or greater than 0.10 ppm can be phytotoxic to a large number of plant species, and can produce acute foliar injury and reduced crop yield and biomass production. In addition, O_3 concentrations within the range of 0.05 to 0.10 ppm have the potential over a longer duration of creating chronic stress on vegetation that can result in reduced plant growth and yield, shifts in competitive advantages in mixed populations, decreased vigor leading to diminished resistance to pest and pathogens, and injury from other environmental stresses. Some sensitive species can experience foliar injury and growth and yield effects even when O_3 concentrations never exceed 0.08 ppm. Further, the available scientific information supports the conclusion that a cumulative seasonal exposure index is more biologically relevant than a single event or mean index.

To put judgments about these vegetation effects into a broader national perspective, the Administrator has taken into account the extent of exposure of O_3-sensitive species, potential risks of adverse effects to such species, and monetized and non-monetized categories of increased vegetation protection associated with reductions in O_3 exposures. In so doing, the Administrator recognized that markedly improved air quality, and thus significant reductions in O_3 exposures would result from attainment of the 0.08 ppm, 8-hour primary standard. In looking further at the incremental protection associated with attainment of a seasonal secondary standard, she recognized that areas that would likely be of most concern for effects on vegetation, as measured by the seasonal exposure index, would also be addressed by the 0.08 ppm, 8-hour primary standard.

B. Potential Indirect Beneficial Welfare Effects

This section is drawn from the limited information in the record of the 1997 review with regard to the effect of ground-level O_3 on the attenuation of UV–B radiation and potential associated welfare benefits.[73] While this information suggests the potential for effects on plants and aquatic organisms, EPA (1987, ES–40—ES–43) recognizes that relevant studies are limited and the uncertainties are great due in part to problems in study designs, such that quantitative conclusions cannot be drawn.

With regard to effects on vegetation, while some plant cultivars tested in the laboratory were determined to be sensitive to UV–B radiation exposure, these experiments have been shown to inadequately replicate effects in the field, such that they do not reflect the complex interactions between plants and their environment. The only long-term field studies of crops involved soybeans, producing suggestive evidence of reduced yields under conditions simulating changes in total column O_3 over an order of magnitude greater than those projected to occur as a result of changes in ground-level O_3 associated with attainment of the 1997 O_3 NAAQS. Beyond the limited studies of crops, EPA (1987, ES–41) notes that little or no data exist on UV–B radiation effects on trees and other types of natural vegetation, or on possible interactions with pathogens. While it is noted that changes in UV–B radiation levels could alter the results of competition in natural ecosystems, no evidence is available to evaluate this

[73] The information in this section is drawn primarily from the EPA document "Assessing the Risk of Trace Gasses that Can Modify the Stratosphere" (U.S. EPA, 1987).

effect. Further, it is recognized that UV–B radiation may both inhibit and stimulate plant flowering, depending on the species and growth conditions. Recognizing that interactions between UV–B radiation and other environmental factors are important in determining potential UV–B radiation effects on plants, EPA (1987, ES–42) notes that extensive, long-term studies would be required to address these interactions.

With regard to effects on aquatic organisms, EPA (1987, ES–42) notes that while initial experiments show that increased UV–B radiation has the potential to harm aquatic life, difficulties in experimental designs and the limited scope of the studies prevent the quantification of potential risks. Some study results suggest that most zooplankton show no effect due to increased exposure to UV–B radiation up to some threshold exposure level, with exposures above such threshold levels eliciting notable effects. For species under UV–B stress, such effects could include reduced time spent at the surface of the water, which is critical for breeding in some species, possibly leading to changes in species diversity. It is also noted that, as do all other living organisms, aquatic biota cope with exposure to UV–B radiation by avoidance, shielding, and repair mechanisms, although uncertainty exists as to the extent to which such mitigation mechanisms would occur (U.S. EPA, 1987, ES–43). It is recognized that determination of UV–B radiation exposure in aquatic systems is complex because of the variable attenuation of UV–B radiation in the water column, and that further research is needed to improve our understanding of how UV–B radiation exposure affects marine species, particularly given their world-wide importance as a source of protein.

With regard to EPA's characterization of UV–B radiation-related effects, one commenter noted that there is now more information about the welfare effects of UV–B radiation than there was in the record of the 1997 review,[74] and asserted that this information is sufficient for the Agency to reach "rough" quantitative conclusions about some of these effects. The commenter further expressed the view that the relevant information on UV–B radiation-related effects should be evaluated as part of EPA's air quality criteria and be made subject to CASAC review. Moreover, this commenter suggested that EPA's calling the risks "potential" effects in the proposed response is inconsistent with its concluding that such effects are "real" in the context of stratospheric O_3 depletion.

The EPA agrees that there is now more information on the effects of UV–B radiation on plants, aquatic ecosystems and materials than was available in the 1997 review, and notes that there is also more information available now on the direct adverse effects of O_3 on vegetation and ecosystems. While EPA agrees that relevant information about the welfare effects of ground-level O_3, including both potential UV–B radiation-related beneficial effects and direct adverse effects, should be evaluated as part of updated air quality criteria, EPA believes that all such updated information should be evaluated during the periodic review of the O_3 criteria and standards that is now underway. A fuller discussion of EPA's procedural approach to responding to the remand, especially with regard to incorporating new information in updated air quality criteria and CASAC review, can be found in the introduction to section II above.

Further, EPA strongly disagrees with the commenter's assertion that currently available information on the effects of stratospheric O_3 depletion is sufficient for developing credible quantitative estimates of UV–B radiation-related effects associated with changes in ground-level O_3 likely to result from attainment of a more stringent O_3 NAAQS. While EPA has developed quantitative estimates of the impacts of relatively large and broadly uniform increases in incident UV–B radiation associated with projected changes in the global reservoir of stratospheric O_3, it is not necessarily the case that EPA can now develop credible estimates of impacts associated with the relatively very small and locally variable increases in incident UV–B radiation that may result from future projected changes in ground-level O_3. The EPA believes that this commenter is ignoring both the fundamental differences in the nature and relative magnitude of the temporal and spatial variability of O_3 levels in the stratosphere and ground-level troposphere, and the importance of area-specific assessments for addressing impacts related to changes in ground-level O_3 that take into account relevant factors (as discussed in section II.B above). Area-specific factors that would be important in assessing the potential for UV–B radiation-related consequences of a more stringent O_3 NAAQS on plants, aquatic ecosystems, and materials in any geographical area are the same or analogous to factors that are important in assessing the impacts on human health. Such factors include the temporal and spatial patterns of ground-level O_3 throughout a geographic area where reductions are likely to occur, the associated temporal and spatial patterns in UV–B radiation flux, and the sensitivity and spatial and temporal exposure patterns of plants, aquatic systems and materials to the relatively very small and highly variable changes in UV–B radiation associated with relevant changes in ground-level O_3.

For example, the commenter specifically noted that new information on the effects of stratospheric O_3 depletion finds that solar UV–B radiation can affect marine ecosystems by damaging the early developmental stages of some marine organisms that, in turn, can result in significant reductions in the size of the populations of larger animals that feed on these animals. Thus for marine ecosystems, increased UV–B radiation is most likely to have an effect over specific geographic areas and during specific periods of time in the life cycles of some marine organisms. This geographic and temporal specificity is not important in estimating the impacts associated with changes in stratospheric O_3, given its relative spatial and temporal stability. Such assessments of the effects of long-term declines or restoration can reasonably assume that short-term and local-scale variations in important factors, such as developmental stages of marine organisms, will tend to "even out" over time, permitting more confidence in the magnitude and direction of such assessments. In contrast, such geographic and temporal factors would have a major influence in estimating impacts associated with the localized and highly variable changes in ground-level O_3 associated with attaining a more stringent O_3 NAAQS. In particular, as discussed above in section II.B.2, coastal areas tend to have much lower ground-level O_3 levels relative to inland areas, and there is little evidence to indicate that attaining a more stringent O_3 NAAQS would appreciably change O_3 levels, and associated UV–B radiation penetration, at ground-level over marine ecosystems. Further, the seasonality of ground-level O_3 levels, and efforts to reduce ground-level O_3 to attain a more stringent O_3 NAAQS, would be important to take in account in any credible assessment of impacts of changes in ground-level O_3 levels on the seasonal developmental stages of organisms in marine

[74] The commenter specifically cited an EPA Web site pertaining to stratospheric O_3 depletion (*http://www.epa.gov/ozone/science/effects.html*), with information on the effects of UV–B radiation on plant growth, aquatic organisms and materials of commercial interest.

ecosystems. This example illustrates why broad-scale analytic approaches appropriately used to estimate stratospheric O_3 impacts are not appropriate for developing credible estimates of the impacts on public welfare of changes in tropospheric O_3 likely to result from attaining a more stringent O_3 NAAQS. Thus, EPA believes that it is not inconsistent to conclude that such quantifiable effects are "real" in relation to large, relatively uniform changes in the stratospheric O_3 reservoir, and to characterize effects that can not be credibly quantified in relation to relatively very small and highly variable changes in tropospheric O_3 associated with attaining a more stringent O_3 NAAQS as "potential" effects at this time.

C. Final Response To Remand on the Secondary O_3 NAAQS

After considering the scientific information available in the record on adverse welfare effects associated with direct exposure to O_3 in the ambient air and on the potential indirect benefits to public welfare related to attenuation of naturally occurring UV–B radiation, and the relevant comments received, the Administrator again concludes that there is insufficient information available on UV–B radiation-related effects that may result from attaining the 1997 O_3 NAAQS to warrant any relaxation in the level of public welfare protection previously determined to be requisite to protect against the demonstrated direct adverse effects of exposure to O_3 in the ambient air. Thus, the Administrator responds to the remand by reaffirming the 8-hour secondary O_3 standard promulgated in 1997, which is identical to the 8-hour primary O_3 standard.

In determining now that the 0.08 ppm, 8-hour O_3 standard set in 1997 is requisite to protect public welfare, the Administrator is finding that such a standard is both necessary and sufficient. While consideration of the potential beneficial effects of ground-level O_3 clearly did not call into question whether this standard was sufficient to protect against the direct adverse welfare effects of ground-level O_3 addressed in EPA's 1997 final rule, it did raise the question as to whether this standard was still necessary in light of potential UV–B radiation-related beneficial effects. Having determined that any potential UV–B radiation-related welfare effects associated with attaining the 1997 O_3 standard are too uncertain to be given any appreciable weight in balancing against the demonstrated direct adverse effects of ground-level O_3 on vegetation, for which information was sufficient for both quantitative and qualitative assessments that provided the basis for the 1997 secondary O_3 standard, the Administrator has concluded that the weight of evidence of O_3's adverse effects necessitates a standard no less stringent than the standard set in EPA's 1997 final rule.[75]

As recognized in section II.D with regard to consideration of health effects, the Administrator also recognizes that relevant information on indirect potentially beneficial welfare effects of ground-level O_3 is now available that was not part of this rulemaking record. As previously noted, the next periodic review of the O_3 NAAQS has already been initiated by EPA's ORD and preparation of a revised O_3 Criteria Document that will incorporate such relevant information is now underway. Thus, to ensure that the next review of the O_3 criteria and standards can be based on a comprehensive and current body of relevant scientific information, EPA continues to encourage the submission of new scientific information on the relationships between ground-level O_3, associated attenuation of UV–B radiation and other indirect effects of the presence of O_3 in the ambient air, and effects on public welfare such as those associated with changes in relevant exposures to UV–B radiation.

As noted above in section II.D, EPA's ongoing review and revision of the O_3 Criteria Document is addressing a number of issues related to indirect potentially beneficial health effects of ground-level O_3. In addition to the issues noted above, EPA's review will also consider the available information on the nature of environmental effects associated with changes in solar UV–B radiation mediated by changes in ground-level O_3 concentrations. Based on the revised O_3 Criteria Document, and taking into account CASAC and public comments, EPA also will consider the extent to which the available information provides an adequate basis for developing credible quantitative estimates of potential beneficial environmental effects of ground-level O_3. All such relevant information will be considered in EPA's review of the secondary O_3 NAAQS.

[75] In so doing, EPA is applying the same decision making standard as it applied in its 1997 final rule, as noted above in section II.D on the primary standard, based on the plain meaning of the word "requisite," consistent with the U.S. Supreme Court's decision in *Whitman*, 121 S. Ct. at 911–12, 914.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, the Agency must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this response is a "significant regulatory action" because of its important national policy implications. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record and made available for public inspection at EPA's Air Docket Center (Docket No. A–95–58).

Since today's final response to the remand is a reaffirmation of the revisions to the O_3 NAAQS previously promulgated in 1997, no new RIA has been prepared. The RIA (1997) prepared in conjunction with the 1997 revision to the O_3 NAAQS is available in the docket, from EPA at the address under "Availability of Related Information," and in electronic form as discussed above in "Electronic Availability."

As a number of judicial decisions have made clear, the economic and technological feasibility of attaining ambient standards are not to be considered in setting NAAQS, although such factors may be considered in the development of State plans to implement the standards. *E.g., Whitman*, 531 U.S. at 471 (2001); *ATA I*, 175 F.3d at 1040–1043. Accordingly, although a RIA was prepared for the 1997 decision to revise the O_3 NAAQS, neither that RIA nor the associated contractor reports have been considered in issuing this final response.

B. Paperwork Reduction Act

This action does not impose an information collection burden under provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because today's final response to the remand does not establish any new information collection requirements beyond those which are currently required under the Ambient Air Quality Surveillance Regulations in 40 CFR part 58 (OMB #2060–0084, EPA ICR No. 0940.16). Therefore, the requirements of the Paperwork Reduction Act do not apply to today's final action. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) Any small business, based on the Small Business Administration's size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. On May 14, 1999, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") remanded the O_3 NAAQS to EPA to consider, among other things, any potential beneficial health effects of O_3 pollution in shielding the public from the "harmful effects of the sun's ultraviolet rays." 175 F.3d 1027 (D.C. Cir., 1999). Today's action provides EPA's final response to that aspect of the Court's remand and reaffirms the 1997 primary O_3 NAAQS. Therefore, this rule does not establish any new regulatory requirements affecting small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, EPA cannot consider in setting a NAAQS the economic or technological feasibility of attaining ambient air quality standards, although such factors may be considered to a degree in the development of State plans to implement the standards. *See, e.g., Whitman*, 531 U.S. at 471; *ATA I*, 175 F.3d at 1040–43. Accordingly, and for the reasons discussed in the 1996 proposal and 1997 final rule, EPA has determined that the provisions of sections 202, 203, and 205 of the UMRA do not apply to this final action. The EPA acknowledges, however, that any corresponding revisions to associated State implementation plan requirements and air quality surveillance requirements, 40 CFR part 51 and 40 CFR part 58, respectively, might result in such effects. Accordingly, EPA will address unfunded mandates as appropriate when it proposes any revisions to 40 CFR parts 51 and 58.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Today's final response to the remand does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final response to the remand only reaffirms the previously promulgated ozone standard and would not alter the relationship that has existed under the Clean Air Act for 30 years, in which EPA sets NAAQS and the States implement them through submission of SIPs, in accordance with the requirements of the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final response to the remand, which leaves unchanged the 1997 final rule, does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), requires Federal agencies to ensure that their policies, programs, activities, and standards identify and assess environmental health and safety risks that may disproportionately affect children. To respond to this order, agencies must explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This final response is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. However, today's final response to the remand, reaffirming the 1997 primary O_3 NAAQS, specifically takes into account children as the group most at risk to the direct inhalation-related effects of O_3 exposure, and was based on studies of effects on children's health (U.S. EPA, 1996a; U.S. EPA, 1996b) and assessments of children's exposure and risk (Johnson *et al.*, 1994; Johnson *et al.*, 1996a, b; Whitfield *et al.*, 1996; Richmond, 1997). The 1997 revision to the primary O_3 NAAQS was promulgated to provide adequate protection to the public, especially children, against a wide range of direct O_3-induced health effects, including decreased lung function, primarily in children who are active outdoors; increased respiratory symptoms, primarily in highly sensitive individuals; hospital admissions and emergency room visits for respiratory causes, among children and adults with respiratory disease; inflammation of the lung and possible long-term damage to the lungs. This final response to the remand affirming the 1997 primary O_3 NAAQS maintains the level of protection of children's health established by the standard set in 1997. Therefore, today's final action does comply with the requirements of Executive Order 13045.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final response to the remand is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This is because this final response to the remand leaves unchanged the 1997 final rule. Thus, Executive Order 13211 does not apply to this rule.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's final response to the remand does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2) because it is a reaffirmation of the O_3 NAAQS promulgated in 1997. Nonetheless, EPA will submit a report containing this response and other information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the response in the **Federal Register**. Although this final response is not a major rule, EPA will apply the "major rule" restrictions regarding the effective date; thus, the response will be effective 60 days after publication in the **Federal Register**.

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List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: December 18, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–56 Filed 1–3–03; 8:45 am]

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Federal Register

Monday,
January 6, 2003

Part III

Department of Housing and Urban Development

24 CFR Parts 92, 570, 572, et al.
Participation in HUD Programs by Faith Based Organizations; Providing for Equal Treatment of All HUD Program Participants; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 92, 570, 572, 574, 576, 582, 583, and 585

[Doc. No. FR–4782–P–01]

RIN 2501–AC89

Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment of All HUD Program Participants

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise those HUD regulations that impose unwarranted barriers to the participation of faith-based organizations in HUD programs and implement HUD's policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing with other organizations for HUD funding. HUD supports the participation of faith-based organizations in its programs.

DATES: *Comments Due Date:* March 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for inspection and copying between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Steven Wagner, Director, Center for Faith-Based and Community Initiatives, Department of Housing and Urban Development, Room 10184, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2404 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. For program specific information, contact the following offices in HUD's Office of Community Planning and Development: For the HOME Program and the HOPE for Homeownership of Single Family Homes (HOPE 3), Virginia Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, (202) 708–2864; for the Community Development Block Grants Program, Robert Duncan, Office of Block Grant Assistance (202) 708–3587: and for the remaining programs, John Garrity, Office of Special Needs Assistance Programs, (202) 708–4300. (These numbers are not toll-free numbers.) Hearing- or speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Faith-based organizations are an important part of the social services network of the United States, offering a multitude of social services to those in need. In addition to places of worship, faith-based organizations may include small nonprofit organizations created to provide one program or multiple services, as well as neighborhood groups formed to respond to a crisis or to lead community renewal. Faith-based groups everywhere, either acting alone or as partners with other service providers and government programs, serve the poor, and help to strengthen families and rebuild communities.

All too often, however, federal policy and programs have not recognized faith-based groups as resources for providing social assistance. Federal, state, and local governments have often imposed barriers to the participation of religious organizations in social service programs, including unwarranted regulatory barriers.

President Bush has directed the federal agencies, including HUD, to take steps to ensure that federal policy and programs are fully open to faith-based community groups in a manner that is consistent with the Constitution. The Administration believes that faith-based groups possess an under-appreciated ability to meet the needs of poor Americans and revitalize distressed neighborhoods. The Administration believes that there should be an equal opportunity for *all* organizations—both faith-based and nonreligious—to participate as partners in federal programs.

As part of these efforts, President Bush issued Executive Order 13198 on January 29, 2001. The Order was published in the **Federal Register** on January 31, 2001 (66 FR 8499). Executive Order 13198 created Centers for Faith-Based and Community Initiatives in five cabinet departments—HUD, Health and Human Services, Education, Labor, and Justice. The Executive Order charged the Centers to identify and eliminate regulatory, contracting, and other programmatic obstacles to the full participation of faith-based and community organizations in the provision of social services by their Departments. This proposed rule is part of HUD's efforts to fulfill its responsibilities under the Executive Order.

II. This Proposed Rule

A. Purpose of Proposed Rule

Consistent with the President's initiative, this proposed rule would revise HUD's regulations to remove unwarranted barriers to the equal participation of faith-based organizations in HUD's programs. The objective of this proposed rule is to ensure that HUD programs are open to all qualified organizations, regardless of their religious character, and to establish clearly the proper uses to which funds may be put, and the conditions for receipt of funding.

B. HUD Program Regulations Amended by Proposed Rule

The proposed rule would amend the regulations for the following HUD programs:

1. HOME Investment Partnerships (24 CFR part 92);
2. Community Development Block Grants (CDBG) (24 CFR part 570);
3. Hope for Homeownership of Single Family Homes (HOPE 3) (24 CFR part 572);
4. Housing Opportunities for Persons with AIDS (HOPWA) (24 CFR part 574);
5. Emergency Shelter Grants (ESG) (24 CFR part 576);
6. Shelter Plus Care (24 CFR part 582);
7. Supportive Housing (24 CFR part 583); and
8. Youthbuild (24 CFR part 585).

C. Proposed Regulatory Amendments

The proposed rule would make the following specific amendments to HUD's regulations for the programs listed above.

1. Participation by Faith-Based Organizations in HUD Programs

The proposed rule would make clear that organizations are eligible to participate in HUD programs without regard to their religious character or affiliation, and organizations may not be excluded from the competition for HUD funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. The federal government, as well as state and local governments administering funds under

HUD programs, are prohibited from discriminating against organizations on the basis of religion or their religious character.

2. Faith-Based Activities

The proposed rule would describe the requirements applicable to all recipient organizations regarding the use of HUD funds for faith-based activities. Specifically, a participating organization may not use direct HUD funds to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services funded with HUD assistance, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services. This requirement ensures that HUD funds provided directly to religious organizations are not used to support inherently religious activities. Thus, HUD funds provided directly to a participating organization may not be used, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious.

This restriction does not mean that an organization that receives HUD funds cannot engage in inherently religious activities. It simply means such an organization cannot fund these activities with direct HUD funds. Thus, faith-based organizations that receive HUD funds must take steps to separate, in time or location, their inherently religious activities from the direct HUD-funded services that they offer.

These restrictions on inherently religious activities do not apply where HUD funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the secular requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, certificate, or similar funding mechanism that was provided to that individual using HUD funds under a program that is designed to give that individual a choice among providers.

3. Independence of Faith-Based Organizations

The proposed rule clarifies that a religious organization that participates in HUD programs will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use HUD funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HUD-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HUD-funded religious organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. Nondiscrimination in Providing Assistance

The proposed rule clarifies that an organization that participates in a HUD program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Accordingly, religious organizations, in providing services funded in whole or in part by HUD, may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

5. Structures Used for Religious Activities

The proposed rule would also clarify that HUD funds may not be used for the acquisition, construction or rehabilitation of structures to the extent that those structures are used for inherently religious activities, such as worship, religious instruction, or prayer. HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the specific HUD program. Where a structure is used for both eligible and inherently religious activities, HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

6. Assurance Requirements

The proposed rule would remove those provisions of HUD's regulations that require only HUD-funded religious organizations to provide assurances that they will conduct eligible program activities in a manner that is "free from religious influences." HUD imposes no comparable assurance requirements in any other context, and HUD believes it is unfair to require religious organizations alone to provide additional assurances, above and beyond those any other organization is required to provide, that they will comply with HUD requirements. All organizations that participate in HUD programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of HUD-funded activities, including those prohibiting the use of direct HUD funds to engage in inherently religious activities. In addition, to the extent that provisions of HUD's regulations disqualify religious organizations from participating in HUD's programs merely because they are motivated or influenced by religious faith to provide social services, the proposed rule removes that restriction, which is inconsistent with governing law.

7. Inapplicability of Executive Order 11246

The proposed rule would also amend the CDBG regulations to provide that Executive Order 11246, regarding equal employment opportunity, and the implementing regulations issued by the Department of Labor at 41 CFR part 60 do not apply to CDBG grantees. By its own terms, the Executive Order applies to government contractors and subcontractors, not grantees.

III. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, requires that federal agencies consult with state and local governments with state and local government officials in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from state and local government officials on this proposed rule.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would not impose any new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the proposed rule is to remove regulatory prohibitions that currently restrict the equal participation of faith-based organizations (large and small) in HUD's programs. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Numbers for the programs affected by this rule are 14.218, 14.219, 14.225, 14.227, 14.228, 14.231, 14.235, 14.237, 14.238, 14.239, 14.241, 14.243, 14.246, 14.248, 14.512, 14.514, and 14.515.

List of Subjects

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 574

AIDS/HIV, Community facilities, Disabled, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements.

CFR Part 585

Grant programs—housing and community development, Homeless, Low and very low-income families, Reporting and recordkeeping requirements, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

For the reasons stated in the preamble, HUD proposes to amend title 24 of the Code of Federal Regulations to read as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for 24 CFR part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. Revise § 92.257 to read as follows:

§ 92.257 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME program. Neither the federal government nor a state or local government receiving funds under HOME programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the HUD-funded programs or services.

(c) A religious organization that participates in the HOME program will retain its independence from federal, state, or local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOME funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOME-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that participates in the HOME program shall not, in providing housing or housing assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

3. In § 92.504, remove paragraph (c)(3)(x) and redesignate paragraph (c)(3)(xi) as paragraph (c)(3)(x).

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

4. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

5. Revise § 570.200(j) to read as follows:

§ 570.200 General policies.

* * * * *

(j) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the CDBG program. Neither the federal government nor a state or local government receiving funds under CDBG programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the CDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the CDBG program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct CDBG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide CDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a CDBG-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the CDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) CDBG funds may not be used for the acquisition, construction or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

6. Amend § 570.503 as follows:

a. Remove paragraph (b)(6);

b. Redesignate paragraphs (b)(7) and (b)(8) as paragraphs (b)(6) and (b)(7), respectively; and

c. In newly designated paragraph (b)(7)(ii), remove all references to "paragraph (b)(8)(i) of this section" and in their place add "paragraph (b)(7)(i) of this section".

7. Revise § 570.607 to read as follows:

§ 570.607 Employment and contracting opportunities.

Grantees shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

8. The authority citation for 24 CFR part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

9. Revise § 572.405(d) to read as follows:

§ 572.405 Nondiscrimination and equal opportunity requirements.

* * * * *

(d) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOPE 3 program. Neither the federal government nor a state or local government receiving funds under HOPE 3 programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the HOPE 3 program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the HOPE 3 program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOPE 3 funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HOPE 3-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOPE 3-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the HOPE 3 program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) HOPE 3 funds may not be used for the acquisition, construction or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOPE 3 funds may be used for the acquisition, construction or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOPE 3 funds may not exceed the cost of those portions of the acquisition,

construction, or rehabilitation that are attributable to eligible activities.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

10. The authority citation for 24 CFR parts 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

11. Revise § 574.300(c) to read as follows:

§ 574.300 Eligible activities.

* * * * *

(c) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOPWA program. Neither the federal government nor a state or local government receiving funds under HOPWA programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the HOPWA program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) An organization that participates in the HOPWA program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOPWA funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HOPWA-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOPWA-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the HOPWA program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) HOPWA funds may not be used for the acquisition, construction or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOPWA funds may be used for the acquisition, construction or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOPWA funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

12. The authority citation for 24 CFR part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

13. Revise § 576.23 to read as follows:

§ 576.23 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Emergency Shelter Grants program. Neither the federal government nor a state or local government receiving funds under Emergency Shelter Grants programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the Emergency Shelter Grants program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(c) A religious organization that participates in the Emergency Shelter Grants program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Emergency Shelter Grants funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Emergency Shelter Grants-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an Emergency Shelter Grants-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that participates in the Emergency Shelter Grants program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) Emergency shelter grants may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Emergency shelter grants may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, emergency shelter grants may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities.

PART 582—SHELTER PLUS CARE

14. The authority citation for 24 CFR part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11470b.

15. Revise § 582.115(c) to read as follows:

§ 582.115 Limitations on assistance.

* * * * *

(c) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the S+C program. Neither the federal government nor a state or local government receiving funds under S+C programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the S+C program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the

programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the S+C program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct S+C funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide S+C-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an S+C-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the S+C program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

* * * * *

PART 583—SUPPORTIVE HOUSING PROGRAM

16. The authority citation for 24 CFR part 583 continues to read as follows:

Authority: 42 U.S.C. 11389 and 3535(d).

17. Revise § 583.150(b) to read as follows:

§ 583.150 Limitations on use of assistance.

* * * * *

(b) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Supportive Housing Program. Neither the federal government nor a state or local government receiving funds under Supportive Housing programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the Supportive Housing Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the Supportive Housing Program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Supportive Housing Program funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Supportive Housing Program-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a Supportive Housing Program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the Supportive Housing Program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, program funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

* * * * *

PART 585—YOUTHBUILD PROGRAM

18. The authority citation for 24 CFR part 585 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

19. Revise § 585.406 to read as follows:

§ 585.406 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Youthbuild program. Neither the federal government nor a state or local government receiving funds under Youthbuild programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the Youthbuild program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(c) A religious organization that participates in the Youthbuild Program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Youthbuild Program funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Youthbuild Program-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a Youthbuild Program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that participates in the Youthbuild program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) Youthbuild funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Youthbuild funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious

activities, Youthbuild funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to secular activities.

Dated: December 11, 2002.

Mel Martinez,

Secretary.

[FR Doc. 03–133 Filed 1–3–03; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Monday,
January 6, 2003

Part IV

Department of Education

Institute of Education Sciences; Notice Inviting Applications for Grants to Support Education Research for Fiscal Year (FY) 2003; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.305G, 84.305H, 84.305J, 84.305K, 84.305L, 84.305M, and 84.305W]

Institute of Education Sciences; Notice Inviting Applications for Grants To Support Education Research for Fiscal Year (FY) 2003

SUMMARY: The Director of the Institute of Education Sciences (Institute) announces seven FY 2003 competitions for grants to support educational research. The Director takes this action under the Education Sciences Reform Act of 2002 (Act), Title I of Public Law 107–279. The intent of these grants is to provide national leadership in expanding fundamental knowledge and understanding of education from early childhood education through postsecondary study.

SUPPLEMENTARY INFORMATION *Mission of Institute:* A central purpose of the Institute is to provide parents, educators, students, researchers, policymakers, and the general public with reliable information about educational practices that support learning and improve academic achievement and access to educational opportunities for all students. In carrying out its mission, the Institute provides support for programs of research in areas of demonstrated national need.

Competitions in this notice: The following are the seven competitions in this notice for grants to support educational research in FY 2003:

- Preschool Curriculum Evaluation Research
- Interagency Education Research, in partnership with the National Science Foundation and the National Institutes of Health
- Cognition and Student Learning Research
- Reading Comprehension Research
- Teacher Quality Research
- Effective Mathematics Education Research
- Social and Character Development Research

Organization of Notice: This notice is organized in a way to be helpful to a potential applicant. The notice provides information on eligibility; application availability; data—such as key dates, length of project period, and program contacts—for each competition; indication of intent to apply; and application procedures.

Eligible Applicants: Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, non-profit and for-profit organizations and public and private agencies and institutions, such as colleges and universities.

Request for Applications and Other Information: Information regarding program and application requirements for each of the competitions is contained in the applicable Request for Applications package (RFA), which will be available at the following Web site: *http://www.ed.gov/offices/IES/funding.html.*

The RFAs will be available—

(1) On or before January 6, 2003 for Preschool Curriculum Evaluation Research, Reading Comprehension Research, Cognition and Student Learning Research, and Interagency Education Research;

(2) On or before *January 15, 2003* for Effective Mathematics Education Research, and Social and Character Development Research; and

(3) On or before *February 14, 2003* for Teacher Quality.

Interested potential applicants should check the Web site periodically.

Information regarding selection criteria and review procedures will also be posted at this Web site.

KEY DATES AND CONTACTS

CFDA number and program of research	Due date for optional letter of intent	Deadline for receipt of applications	Project period	For further information contact
84.305J Preschool Curriculum Evaluation Research.	Jan. 24, 2003	Mar. 14, 2003	Up to 48 months	Caroline Ebanks Email: *caroline.ebanks@ed.gov*
84.305W Interagency Education Research.	Jan. 24, 2003	Mar. 14, 2003	Up to 60 months	Mark Constas Email: *mark.constas@ed.gov*
84.305H Cognition and Student Learning Research.	Jan. 29, 2003	Mar. 21, 2003	Up to 36 months	Elizabeth Albro Email: *elizabeth.albro@ed.gov*
84.305G Reading Comprehension Research.	Jan. 30, 2003	Mar. 21, 2003	Up to 36 months	Elizabeth Albro Email: *elizabeth.albro@ed.gov*
84.305M Teacher Quality Research.	Mar. 26, 2003	Apr. 18, 2003	Up to 36 months	Harold Himmelfarb Email: *harold.himmelfarb@ed.gov*
84.305K Effective Mathematics Education Research.	Mar. 6, 2003	Apr. 18, 2003	Up to 48 months	Heidi Schweingruber Email: *heidi.schweingruber@ed.gov*
84.305L Social and Character Development Research.	Mar. 6, 2003	Apr. 25, 2003	Up to 48 months	Tamara Haegerich Email: *tamara.haegerich@ed.gov*

Fiscal Information: Although a final appropriation for FY 2003 has not been enacted, the Institute is inviting applications now, in accordance with the schedule in the preceding chart, so that it may be prepared to make awards following final action by Congress on the Department's appropriation bill. The President's Budget for the Institute for FY 2003 includes sufficient funding for all of the competitions included in this notice. The actual award of grants is pending the availability of funds.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 77, 80, 81, 82, 85, 86 (part 86 applies only to Institutions of Higher Education), 97, 98, and 99. In addition 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.217, 75.219 (except that the Department may select an application for funding without following the applicable procedures if the application was evaluated under the preceding competition of the program; the application rated high enough to deserve selection; and the application was not selected for funding because the application was mishandled by the Department), 75.220 and 75.230.

Letter of Intent: A letter indicating a potential applicant's intent to submit an application is optional, but encouraged, for each application. The letter of intent should be submitted by e-mail by the date listed in the chart included in this notice to the following address: *IES-LOI@asciences.com.* Receipt of the letter of intent will be acknowledged by e-mail.

The letter of intent should not exceed one page in length and should include: (1) A descriptive title and brief description of the research project; (2) the name, institutional affiliation, address, telephone number and e-mail address of the principal investigator(s); and (3) the name and institutional affiliation of any key collaborators.

The letter of intent should also: (1) Indicate the duration of the proposed project; (2) provide an estimated budget request by year and a total budget request; and (3) indicate in the e-mail subject line the RFA number and title of the relevant program of research as indicated at the following Web site: *http://www.ed.gov/offices/IES/funding.html.*

The letter of intent is optional and is not binding on applicants. Moreover, it does not enter into or affect the subsequent review of applications. The information in the optional letter of intent will help Institute staff estimate the potential workload involved in planning the review of applications.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications to the FY 2003 competitions be submitted electronically to the following Web site: *http://ies.asciences.com.* Information on the software to be used in submitting applications is available at the same Web site.

FOR FURTHER INFORMATION CONTACT: The contact person associated with a particular program of research is listed in the chart included in this notice.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in the chart included in this notice.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the program contact person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 9501 *et seq.* (the "Education Sciences Reform Act of 2002", Title 1 of Public Law 107–279, November 5, 2002).

Dated: December 30, 2002.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 03–160 Filed 1–3–03; 8:45 am]

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Federal Register

Monday,
January 6, 2003

Part V

The President

Notice of January 2, 2003—Continuation of the National Emergency With Respect to Libya

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Federal Register
Vol. 68, No. 3
Monday, January 6, 2003

Presidential Documents

Title 3—

The President

Notice of January 2, 2003

Continuation of the National Emergency With Respect to Libya

On January 7, 1986, by Executive Order 12543, President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order 12544, the President took additional measures to block Libyan assets in the United States. The President has transmitted a notice continuing this emergency to the Congress and the **Federal Register** every year since 1986.

The crisis between the United States and Libya that led to the declaration of a national emergency on January 7, 1986, has not been resolved. Despite the United Nations Security Council's suspension of U.N. sanctions against Libya upon the Libyan government's hand-over of the Pan Am 103 bombing suspects, Libya has not yet complied with its obligations under U.N. Security Council Resolutions 731 (1992), 748 (1992), and 883 (1993), which include Libya's obligation to accept respon sibility for the actions of its officials and pay compensation.

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.

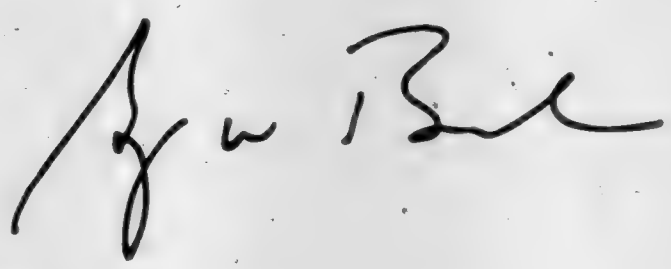

THE WHITE HOUSE,
January 2, 2003.

[FR Doc. 03–312
Filed 1–3–03; 11:03 am]
Billing code 3195–01–P

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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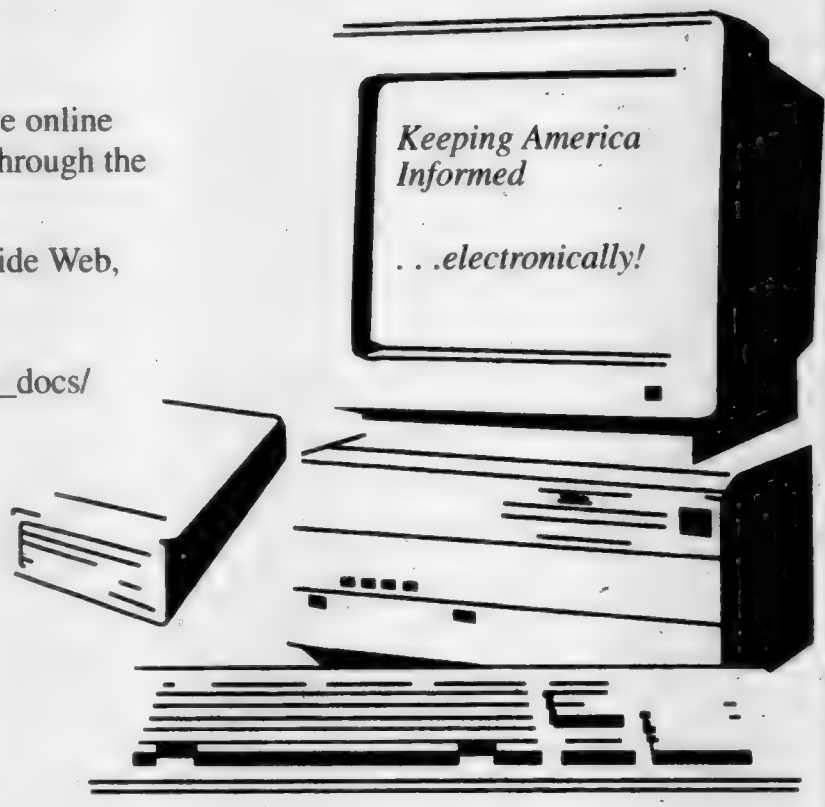

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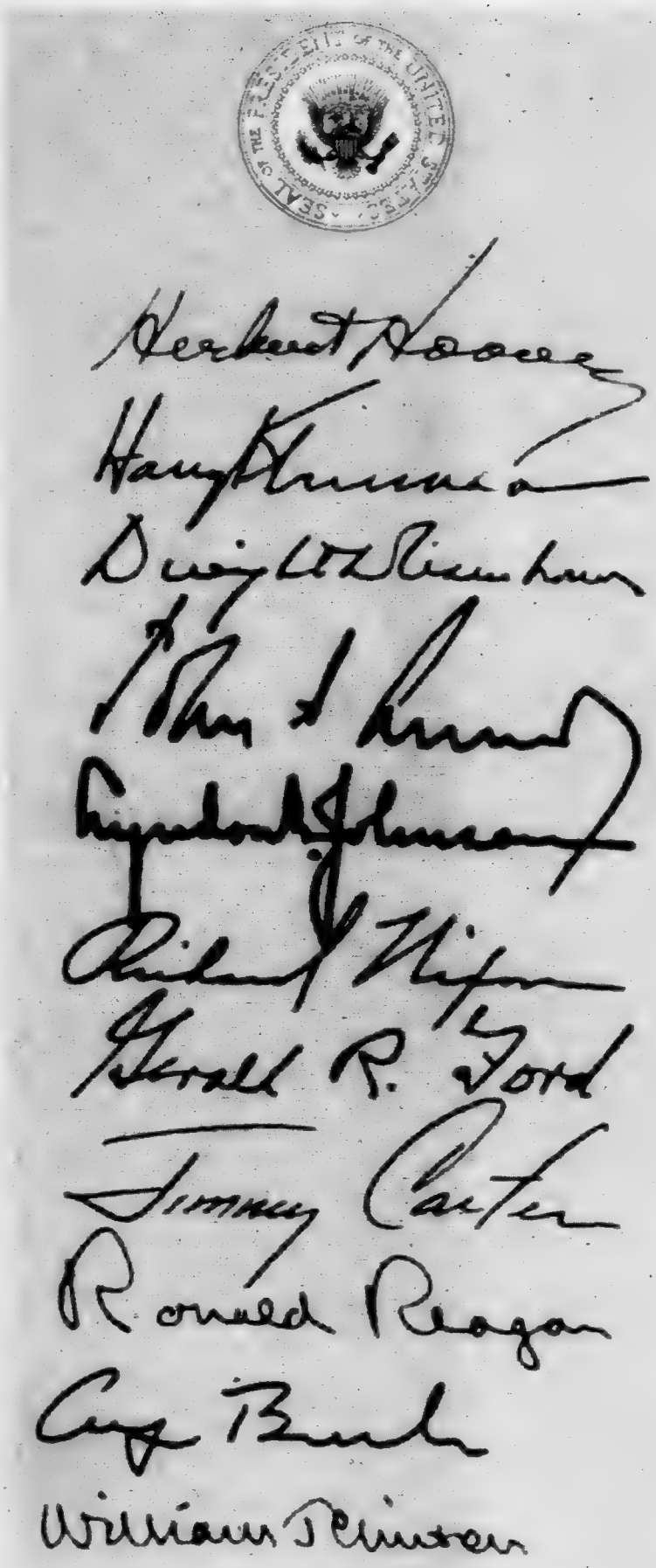

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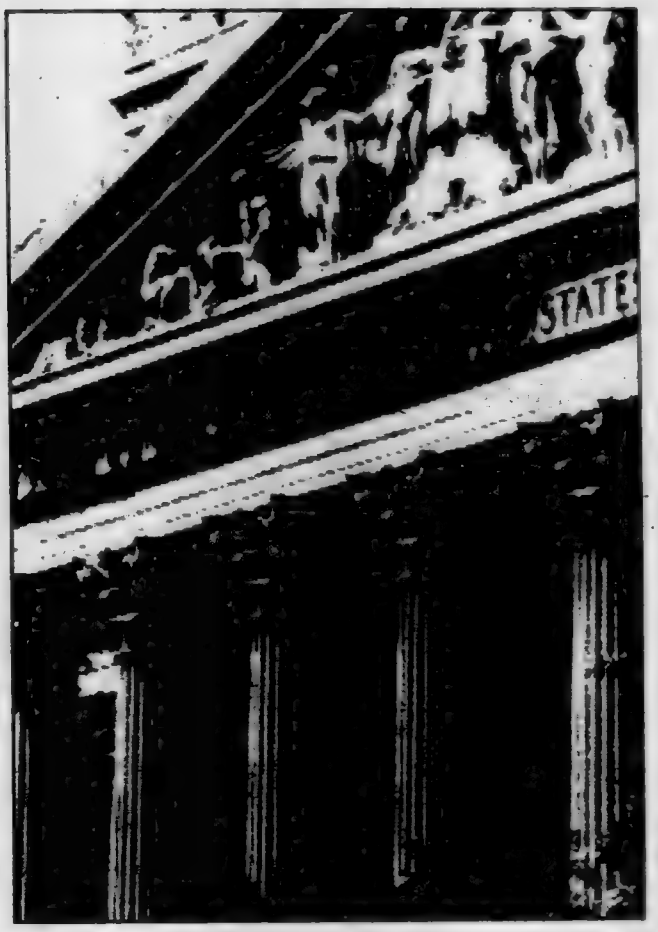

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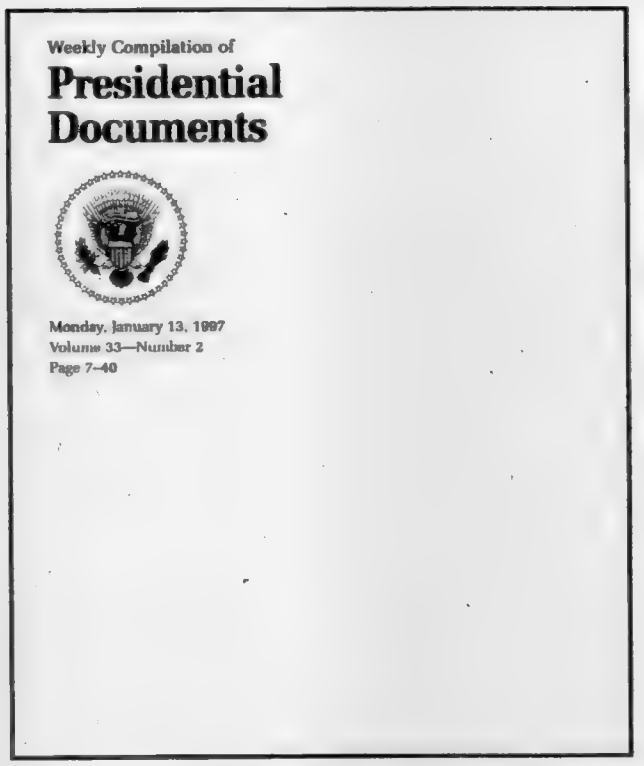

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA085/086/089/102/103—5046a; FRL–7427–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reorganization of and Revisions to Administrative and General Conformity Provisions; Documents Incorporated by Reference; Recodification of Existing SIP Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revisions consist of substantive and format changes to Virginia's general administrative provisions and definitions, reorganization and recodification of the general conformity requirements and provisions, recodification of Virginia's oxygenated gasoline regulation, and revisions to the list of technical documents which Virginia incorporates by reference into its air pollution control regulations. In this action, EPA is also correcting typographical errors and other errata currently found in the Identification of plan rule chart. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on March 10, 2003 without further notice, unless EPA receives adverse written comment by February 6, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Harold A. Frankford, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at frankford.harold@epa.gov. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Between April 30, 1997 and June 22, 1999, the Commonwealth of Virginia submitted a series of formal revisions to its SIP. These SIP revisions consist of the addition of general administrative provisions and definitions (9 VAC 5, Chapter 170) submitted by Virginia on February 18, 1998, substantive and format revisions submitted by Virginia on March 4, 1998 regarding its general administrative provisions and definitions (9 VAC 5, Chapters 10 and 20), a revision submitted by Virginia on April 20, 1998 which further reorganizes and recodifies the format of the Commonwealth's general conformity requirements (9 VAC 5, Chapter 160), a revision submitted by Virginia on April 30, 1997 which revises the format of Virginia's oxygenated gasoline regulation (2 VAC 5, Chapter 480), and a revision submitted by Virginia on June 22, 1999 which amends the list of documents which Virginia incorporates by reference (9 VAC 5, Chapter 20, Regulation 5–20–21).

II. Summary of SIP Revisions

A. Substantive Revisions to Virginia's General Administrative Provisions and Definitions

On February 18, 1998 and March 4, 1998, Virginia submitted substantial revisions, both in terms of format and substance, to its general administrative provisions and definitions. Whereas Virginia's current SIP-approved administrative provisions are located in Part II of VR–120 or 9 VAC 5 Chapter 20, the revised structure splits these general administrative provisions into two major chapters—Chapter 20 (General Provisions) and Chapter 170 (Regulations for General Administration). The individual 9 VAC 5–170 Sections are organized below:

Chapter 170 citation	Regulation for general administration	Former citation in Chapters 20 and 160
Part I	Definitions	
5–170–10	Use of Terms	5–10–10
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Chapter 170 citation	Regulation for general administration	Former citation in Chapters 20 and 160
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In the February 18, 1998 and March 4, 1998 submittals, Virginia also adds or revises the following definitions of terms:

Added: Public Hearing, Regulation of the Board, These Regulations, Virginia Register Act.

Revised: Administrative Process Act, Consent Agreement, Consent Order, Director, Emergency Special Order, Good Engineering Practice, Order, Owner, Person, Pollutant, Source, Special Order, Virginia Air Pollution Control Law, Volatile Organic Compounds.

No Wording Changes; Revised Citations Only: Virginia has recodified the following definitions from 9 VAC 5–10–20 to 9 VAC 5–170–20: Administrative Process Act, Confidential Information, Variance, and Virginia Register Act. In addition, Virginia has placed duplicate versions of the following SIP definitions found elsewhere in 9 VAC 5 into Regulation 9 VAC 5–170–20: Air Pollution, Board, Department, Director, Emergency, Federal Clean Air Act, Locality, Virginia Air Pollution Control Law, and Virginia Motor Vehicle Emissions Control Law.

In addition to the recodification, Virginia made substantive revisions to the following provisions when compared to the wording of the comparable SIP-approved provisions formerly located in 9 VAC 5, Chapter 20: 5–170–30, 5–170–60, 5–170–120, 5–170–150, 5–170–160, and 5–170–170. Virginia revised the wording of these provisions to clarify the intent of the rules, or to conform with the statutory provisions of the Virginia Air Pollution Control Law. Virginia has also revised several definitions found in Regulation 5–170–20, also to clarify the intent of the term, or in order to conform with the wording and intent of the state statute. Virginia revised the definition of the term "volatile organic compound" to add perchloroethylene as an exempt VOC solvent, and substantively revised the wording of the definition of "person" when compared to that of the SIP-approved definition.

B. Revisions to Virginia's General Conformity Provisions

On April 20, 1998, Virginia revised its SIP-approved General Conformity rules (9 VAC 5 Chapter 160) which had been incorporated into the Virginia SIP at 40 CFR Section 52.2420(c)(118). These rules are revised by:

1. Revising 9 VAC 5–160–10 (General), Section B.

2. Revising the definition of "Emergency", as defined in 9 VAC 5–160–20.

3. Removing definitions and provisions from Chapter 160 which are now duplicated in Chapter 170. The definitions are for the terms Administrative Process Act, Confidential Information, Consent Agreement, Consent Order, Emergency Special Order, Formal Hearing, Order, Party, Public Hearing, Special order, Variance, and Virginia Register Act. The provisions are: Enforcement of Regulations and Orders (9 VAC 5–160–60), and Availability of Information (9 VAC 5–160–100).

4. Removing from Chapter 160 the following additional provisions: Establishment of Regulations and Orders (9 VAC 5–160–50), Hearings and Proceedings (9 VAC 5–160–70), and Appeals (9 VAC 5–160–100).

C. Documents Being Incorporated by Reference

On June 22, 1999, Virginia submitted revisions to the list of Federal, technical, and scientific documents which Virginia incorporates by reference. Virginia lists these documents in 9 VAC 5, Chapter 20 (General Provisions), Regulation 5–20–21. In this submittal, Virginia incorporates by reference the following technical and scientific documents:

1. D323–94, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)" from Section 5, Volume 05.01 of the 1989 Annual Book of American Society for Testing Materials (ASTM) Standards. (Replacing D323–82)

2. D97–93, "Standard Test Method for Pour Point of Premium Oils" from Section 5, Volume 05.01 of the 1989 Annual Book of ASTM Standards. (Replacing D97–87)

3. National Fire Prevention Association (NFPA) 385, Standard for Tank Vehicles for Flammable and Combustible Limits, 1990 Edition. (Replacing the 1985 Edition)

4. NFPA 30, Flammable and Combustible Liquids Code. 1993 Edition (Replacing the 1987 Edition).

5. NFPA 30A, Automotive and Marine Service Station Code, 1993 Edition (Replacing the 1987 Edition).

D. Recodification of Virginia's Oxygenated Gasoline Regulations

On April 30, 1997, Virginia submitted amendments to the Commonwealth's oxygenated gasoline regulations as a revision to the SIP. In a separate action, on February 17, 2000 (65 FR 8051), EPA had approved substantive revisions to Regulation 2 VAC 5–480–20 as a revision to the SIP. By this action, EPA is approving revisions to the SIP which recodify Virginia's oxygenated gasoline regulation from VR 115–04–28 Sections 1 and 3 through 8 to 2 VAC 5 Chapter 480, Regulations 2 VAC 5–480–10, and 5–480–30 through 5–480–80, respectively. These revisions are summarized in the following chart:

2 VAC 5 CHAPTER 480—REGULATION GOVERNING THE OXYGENATION OF GASOLINE

New SIP citation	Title	Current SIP citation
5–480–10	Definitions	VR115–04–28, section 1.
5–480–30	Minimum oxygenate content	VR115–04–28, section 3.
5–480–40	Nature of oxygenates	VR115–04–28, section 4.
5–480–50	Recordkeeping transfer requirements	VR115–04–28, section 5.
5–480–60	Gasoline pump labeling	VR115–04–28, section 6.
5–480–70	Sampling, testing and oxygen content calculations	VR115–04–28, section 7.
5–480–80	Compliance and enforcement	VR115–04–28, section 8.

III. EPA's Evaluation of SIP Revisions

A. Definitions

EPA has reviewed Virginia's new and revised definitions and has determined that they are consistent with the statutory provisions of the Virginia Air Pollution Control Law and the comparable requirements of the Clean Air Act and 40 CFR part 51. Virginia revised the wording of several definitions in order to improve their clarity and intent. Virginia also has substantially revised the definition of "Person" in order to comply with revisions to "Person" found in chapter 13, section 10.1.1300 of Virginia's Air Pollution Control Law. EPA has determined that the same groups covered by the current SIP definition of "Person" are still covered under the wording of the revised definition, and therefore concludes that the revised definition of "Person" is equivalent in scope to the current SIP definition. Virginia has also revised the definition of "Volatile Organic Compound" by including perchloroethylene to the list of exempt compounds. EPA has determined that Virginia's revised definition is consistent with the definition of "volatile organic compound" found at 40 CFR 51.100(s).

B. New and Revised Administrative Provisions

EPA has reviewed the revisions to the administrative regulations of 9 VAC 5, Chapter 170, and has determined that the revised wording improves the clarity and intent of the provisions, streamlines the process of enforcing regulations, permits and orders, and defines the procedures for determining the applicability of a provision where conflicts between provisions apply. The revised regulations strengthen the public hearing process which local agencies must follow, and provide additional assurances that local ordinances will conform with the applicable state requirements.

C. Revised General Conformity Provisions

Virginia had amended its general conformity provisions so that the general and administrative provisions in 9 VAC 5 Chapter 160 would be combined with the identical provisions of 9 VAC 5, Chapter 170. Many of the definitions and administrative provisions in the SIP-approved version of 9 VAC 5, Chapter 160 make specific references to Federal agencies and their obligation to comply with state requirements. The comparative requirements of 9 VAC 5 Chapter 170 make no reference to Federal agencies. Instead, the term "Owner" is used in the place of "Federal Agencies". However, the term "Owner" refers to "Person" which by definition includes "Governmental Bodies." EPA has determined this to be an equivalent substitution for "Federal Agency." In addition, the term "Owner" also refers to "Bodies Politic," which EPA interprets to include the Federal Government and its individual agencies. The term "Department" found in the 9 VAC 5–160 provisions is not found in the consolidated 9 VAC 5–170 rules—only the term "Board." The SIP, however, has historically only conferred power to the Board. In addition, 40 CFR part 93 does not require "Department" to be included in Virginia's general conformity rules.

D. EPA's Evaluation of Revised Incorporation by Reference Provisions

In its support document accompanying the June 1999 SIP revision submittal, Virginia explained that the technical documents found in Regulation 9 VAC 5–20–21 are used to make technical evaluations related to new source review and emission standards for volatile organic compounds. Virginia revised the five documents listed above to reflect the latest available edition. EPA agrees that states should use the latest available technical documents to assist in their decisionmaking, and therefore finds these revisions to be acceptable.

E. Recodification of Virginia's Oxygenated Gasoline Regulations

The revisions to 2 VAC 5, Chapter 480, sections 2–480–10 and 2–480–30 through 2–480–80 consist only of changes to the citation format of Virginia's oxygenated gasoline rules. There are no substantive wording changes to the current SIP-approved provisions.

F. Impact of Virginia's Audit Privilege and Immunity Laws on These SIP Revisions

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information: (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . ." The opinion concludes that "[r]egarding section 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity Law, Va. Code sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity

statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Corrections to the Chart in 40 CFR 52.2020(c) Summarizing the Approved SIP Rules

On April 21, 2000 (65 FR 21513), EPA approved the revised incorporation by reference format for 40 CFR part 52, subpart VV, § 52.2420(c). This chart lists those Virginia regulations which EPA has incorporated by reference into the Virginia SIP as well as their effective dates in the Commonwealth. After review of the chart as published in the April 21, 2000 **Federal Register**, the Virginia Department of Environmental Quality informed EPA that the chart as published contained typographical errors, omissions, and inaccurate information. On July 6, 2000 (65 FR 41592) and July 14, 2000 (65 FR 43840), correction notices were published which corrected some, but not all, of the incorrect entries. This action corrects the remaining inaccurate entries to the chart in § 52.2420(c). These corrections revise information to air quality provisions which are not otherwise revised by the other SIP revisions being evaluated by EPA in this action. The information consists of corrected titles of the air quality regulations, corrected VAC citations, and corrected effective dates of some provisions, and are summarized below:

Federal Register page (65 FR)	Entry	Column title	Description of correction
21321	Chapter 20 General Provisions (Title)		Add "[Part II]" after "Chapter 20 General Provisions".
	5–20–160	State Effective Date	Remove the date "7/1/97".
	5–20–170	State Effective Date	Remove the date "7/1/97".
	5–20–180	State Effective Date	Remove the date "7/1/97".
21322	5–20–205	State Effective Date	Replace "2/1/97" with "1/1/97".
21323	5–40–50	State Effective Date	Replace "7/1/97" with "4/17/95".
	5–40–310A.–E.	Title/Subject	Replace "Dioxide" with "Oxides".
21324	4–40–450	State citation (9 VAC 5)	Replace "4–40–450" with "5–40–450".
	5–40–710	Explanation [Former SIP Citation]	Replace "120–04–614." with "120–04–0614.".
	5–40–720	Explanation [Former SIP Citation]	Replace "120–04–0613." with "120–04–0615.".
21340	5–80–10/Article 6	State citation (9 VAC 5)	Remove "Article 6".
21342	Article 9 Permits—Major Stationary Sources and Major Modifications Located in Nonattainment Areas (Title)		Add "[ ]" around "120–08–03".
	5–80–2000	Explanation [Former SIP Citation]	Replace "03A." with ".03A".
	5–80–2080	Explanation [Former SIP Citation]	Replace ".03l." with ".03l".
21343	5–9–150	State citation (9 VAC 5)	Replace "5–9–150" with "5–91–150".
21344	4–91–450	State citation (9 VAC 5)	Replace "4–91–450" with "5–91–450".
	4–91–460	State citation (9 VAC 5)	Replace "4–91–460" with "5–91–460".
21346	Chapter 160 General Conformity Rules (Title).	State Effective Date	Remove "1/24/97".

Similarly, on October 19, 2000 (65 FR 62626), EPA approved a revision to 9 VAC 5 Chapter 30 (Ambient Air Quality Standards). This revision removed section 9 VAC 5–30–20, the old ambient air quality standards for total suspended particulate matter (TSP) from the Virginia SIP. The intent of this action was to remove the entry for section 9 VAC 5–30–20 from the chart in 40 CFR 52.2420(c). This action will remove section 9 VAC 5–30–20 from the chart.

V. Final Action

EPA is approving the addition of 9 VAC 5, Chapter 170, as well as the revisions to 9 VAC 5 Chapters 10, 20, and 160 and 2 VAC 5, Chapter 480 as revisions to the Virginia SIP. EPA is also correcting the typographical errors, omissions and incorrect information found in the chart of previously-approved SIP actions found at 40 CFR 52.2420(c).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 10, 2003 without further notice unless EPA receives adverse comment by February 6, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic

impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to revise 9 VAC 5 chapters 10, 20, 30, 40, 80, 91, 160 and 170, and 2 VAC 5 chapter 480 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 17, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (c) is amended:

a. Under Chapter 10 by revising the entry for 5–10–10; adding an entry for 5–10–20 at the end of the third entry for 5–10–20; and removing entry VR120–01–02.

b. Under Chapter 20 by revising entries 5–20–160, 5–20–170, 5–20–180, and 5–20–205; and removing entries 5–20–30A.–D., 5–20–60, 5–20–100, 5–20–110, 5–20–140, 5–20–150, VR120–02–14B.

c. Under Chapter 30 by removing entry 5–30–20.

d. Under Chapter 40 by removing entry 4–4–450 and revising entries 5–40–50, 5–40–310A.–E., 5–40–710, and 5–40–720.

e. Under Chapter 80 by revising entries 5–80–10/Article 6, 5–80–2000, and 5–80–2080.

f. Under Chapter 91 by removing entries 5–9–150, 4–91–450, and 4–91–460.

g. Under Chapter 160 by revising entries for 5–160–10 and 5–160–20; and removing entries 5–160–50, 5–160–60, 5–160–70, 5–160–90, and 5–160–100.

h. By adding a new Chapter 170 including headings, with numerical entries for Part I, Part II, Part V, and Part VI.

i. Under 2 VAC 5 Chapter 480 by removing entries VR115–04–28, Sec. 1, VR115–04–28, Sec. 3, VR115–04–28, Sec. 4, VR115–04–28, Sec. 5, VR115–04–28, Sec. 6, VR115–04–28, Sec. 7 and VR115–04–28, Sec. 8; and adding entries 5–480–10, 5–480–30, 5–480–40, 5–480–50, 5–480–60, 5–480–70, and 5–480–80.

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA—Approved Regulations in the Virginia SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
Chapter 10 General Definitions [Part 1]				
5–10–10	General	1/1/98	1/7/03 [Insert Federal Register page citation].	120–02–01 Sections 5–10–10A, B and C are revised
* * *	* * *	* * *	* * *	* * *
5–10–20	Terms Defined	1/1/98	1/7/03 [Insert Federal Register page citation].	Terms Added—Public hearing: Regulations for the Control and Abatement of Air Pollution, Regulation of the Board, These regulations. Terms Revised—Good Engineering Practice, Person, Volatile organic compound. Terms Deleted (moved to 9 VAC 5–170–20)—Administrative Process Act, Air quality control region, Air quality maintenance area, Confidential information, Consent agreement, Consent order, Emergency special order, Order, Special order, Variance.
* * *	* * *	* * *	* * *	* * *
Chapter 20 General Provisions				
* * *	* * *	* * *	* * *	* * *
5–20–160	Registration	4/17/95	4/21/00 65 FR 21320.	120–02–31
5–20–170	Control Programs	4/17/95	4/21/00 65 FR 21320.	120–02–32
5–20–180	Facility and Control Equipment Maintenance or Malfunction	4/17/95	4/21/00 65 FR 21320.	120–02–34
* * *	* * *	* * *	* * *	* * *
5–20–205	Prevention of Significant Deterioration Areas.	1/1/97	3/23/98 65 FR 13795.	Former Appendix L—Effective 2/1/92.
* * *	* * *	* * *	* * *	* * *
Chapter 40 Existing Stationary Sources [Part IV]				
Part I Special Provisions				
* * *	* * *	* * *	* * *	* * *
5–40–50	Notification, Records and Reporting.	4/17/95	4/21/00 65 FR 21320.	120–04–05
* * *	* * *	* * *	* * *	* * *
Part II Emission Standards				
* * *	* * *	* * *	* * *	* * *
Article 4 General Process Operations [Rule 4–4]				
5–40–310A.–E	Standard for Nitrogen Oxides	1/1/93	4/28/99 64 FR 22792.	120–04–0408
* * *	* * *	* * *	* * *	* * *
Article 6 Rubber Tire Manufacturing Operations [Rule 4–6]				
* * *	* * *	* * *	* * *	* * *
5–40–710	Facility and Control Equipment Maintenance or Malfunction	4/17/95	4/21/00 65 FR 21320.	120–04–0614
5–40–720	Permits	4/17/95	4/21/00 65 FR 21320.	120–04–0615

EPA—APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 80 Permits for Stationary Sources [Part VIII]				
5–80–10/Article 6	New and Modified Stationary Sources.	4/17/95	4/21/00 65 FR 21320.	120–08–01
*	*	*	*	*
Article 9 Permits—Major Stationary Sources and Major Modifications Located in Nonattainment Areas. [120–08–03]				
5–80–2000	Applicability	1/1/93 ..... 4/1/99	4/21/00 65 FR 21320.	.03A (9/21/99, 64 FR 51047).
*	*	*	*	*
5–80–2080	Compliance determination and verification by performance testing	1/1/93 ..... 4/1/99	4/21/00 65 FR 21320.	.03I (9/21/99, 64 FR 51047).
*	*	*	*	*
Chapter 160 General Conformity Rules 1/24/97				
5–160–10	General.	1/1/98	1/7/03 [Insert Federal Register page citation].	Paragraph 5–160–10 is revised.
5–160–20	Terms Defined	1/1/97 ..... 1/1/98	1/7/03 [Insert Federal Register page citation].	Terms revised—Emergency. Terms deleted—Administrative Process Act, Confidential information, Consent agreement, Consent order, Emergency special order, Formal hearing, Order, Party, Public hearing, Special order, Variance, Virginia Register Act.
*	*	*	*	*
Chapter 170 Regulation for General Administration				
Part I Definitions				
5–170–10.	Use of Terms	1/1/98	1/7/03 [Insert Federal Register page citation].	Split out from 9 VAC 5–10–10
5–170–20.	Terms Defined	1/1/98	1/7/03 [Insert Federal Register page citation].	Split out from 9 VAC 5–10–20 and 5–160–20 Terms Added—Public hearing, Regulation of the Board. Terms Revised from 4/17/95 version—Consent agreement, Consent order, Emergency special order, Order, Owner, Person, Pollutant, Special Order, Source.
Part II General Provisons				
5–170–30	Applicability	1/1/98	1/7/03 [Insert Federal Register page citation].	Split out from 9 VAC 5–20–10
5–170–60.	Availability of Information	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–150 and 5–160–100.
Part V Enforcement				
5–170–120A.–C	Enforcement of Regulations, Permits and Orders	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–30A.–D. and 5–160–60.
5–170–130A	Right of Entry	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–100.

EPA—APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
		Part VI Board Actions		
5–170–150	Local Ordinances	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–60.
5–170–160	Conditions on Approvals	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–110.
5–170–170	Considerations for Approval Actions.	1/1/98	1/7/03 [Insert Federal Register page citation].	Replaces 9 VAC 5–20–140.
*	*	*	*	*
	2 VAC 5 Chapter 480	**Regulation Governing the Oxygenation of Gasoline**		
5–480–10	Definitions	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 1.
*	*	*	*	*
5–480–30	Minimum oxygenate content	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 3.
5–480–40	Nature of oxygenates	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 4.
5–480–50	Record keeping and transfer requirements.	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 5.
5–480–60	Gasoline pump labeling	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 6.
5–480–70	Sampling, testing and oxygen content calculations	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 7.
5–480–80	Compliance and enforcement	11/1/93; Recodified 4/17/95.	1/7/03 [Insert Federal Register page citation].	VR115–04–28, Sec. 8.

* * * * *

3. Section 52.2423 is revised by adding paragraph (r) to read as follows:

§ 52.2423 Approval status.

* * * * *

(r) EPA approves as part of the Virginia State Implementation Plan the revised references to the documents listed in Chapter 20, Section 9 VAC 5–20–21 (formerly Appendix M), Sections E.4.a.(1), E.4.a.(2), and E.7.a.(1) through E.7.a.(3), of the Virginia Regulations for the Control and Abatement of Air Pollution submitted by the Virginia Department of Environmental Quality on June 22, 1999.

[FR Doc. 03–93 Filed 1–6–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 98–204; FCC 02–303]

RIN 4223

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission adopts a new broadcast Equal Employment Opportunity (EEO) rule in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *MD/DC/DE Broadcasters Association* v. *FCC*. The Commission also amends and modifies their EEO rules for multichannel video programming distributors (MVPDs). The EEO rules make clear that broadcasters and MVPDs are not required to employ a staff that reflects the racial or other composition of the community or to use racial preferences in hiring. The intended effect is to adopt effective EEO rules for the broadcasting and MVPD industries.

DATES: Effective March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Lewis Pulley, Media Bureau, (202) 418–1456 or via e-mail at *lpulley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Second Report and Order* (*"2R&O"*) MM 98–204; FCC 02–303, adopted November 7, 2002 and released November 20, 2002. The complete text of this *2R&O* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street,

SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

Synopsis of Second Report and Order

I. Introduction

1. In this *2R&O*, we adopt a new broadcast equal employment opportunity ("EEO") rule in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *MD/DC/DE Broadcasters Association* v. *FCC*, 236 F.3d 13, *rehearing den.* 253 F.3d 732 (D.C. Cir. 2001), *cert. denied*, 122 S.Ct. 920 (2002) ("*Association*"). In addition, we amend our EEO rules and policies applicable to cable operators, and other multichannel video programming distributors ("MVPDs"), to conform them, as much as possible, to the broadcast EEO rule. The new broadcast EEO rule and modified EEO rules for MVPDs, adopted herein, emphasize outreach in recruitment to all qualified job candidates and ban discrimination on the basis of race, color, religion, national origin or gender. We are also issuing a *Third Notice of Proposed Rule Making* ("*3rd NPRM*") requesting comment as to the applicability of our rules with respect to part-time employees.

II. Background

2. We have administered regulations governing the EEO responsibilities of broadcast licensees since 1969, and of cable television operators since 1972. Our responsibilities in this area were codified with respect to cable television operators in 1984. They were further codified with respect to television broadcast licensees and extended to other MVPDs in 1992. In 1998, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission's EEO program requirements for broadcasters were unconstitutional in *Lutheran Church-Missouri Synod* v. *FCC*.

3. In 1998, we issued a *Notice of Proposed Rule Making* ("*NPRM*"), (63 FR 66104, December 1, 1998), for the purpose of adopting EEO rules for broadcast licensees and MVPDs consistent with the Court's decision in *Lutheran Church*. In 2000, we adopted new EEO program requirements for broadcasters, *Report and Order* ("*R&O*"), (65 FR 7448, February 15, 2000). Substantially the same program requirements were applied to MVPDs. The Commission explained that the new rules required more "than merely refraining from discrimination." They also required broadcasters and MVPDs "to reach out in recruiting new employees beyond the confines of their circle of business and social contacts to all sectors of their communities [because] * * * repeated hiring without broad outreach may unfairly exclude minority and women job candidates * * * *." The Commission concluded that nondiscrimination in hiring was not enough when not all potential applicants have had a fair opportunity to apply. "Outreach in recruitment must be coupled with a ban on discrimination to effectively deter discrimination and ensure that a homogenous workforce does not simply replicate itself through an insular recruitment and hiring process."

4. The new rule contained two primary requirements—a prohibition on discrimination based on race, color, religion, national origin or gender in hiring, and a requirement that broadcasters reach out in recruiting new employees to ensure that all qualified individuals had an opportunity to apply for and be considered as job candidates. The core of the recruitment requirement was that broadcasters widely disseminate information concerning all job vacancies. The Commission concluded that this basic requirement "is essential to meaningful outreach." The Commission left it largely to broadcasters' discretion concerning how they would fulfill this requirement, so long as their procedures were sufficient to ensure wide dissemination of information about all job openings to the entire community.

5. In addition to the basic requirement of wide dissemination of information concerning job openings, the new rule provided broadcast licensees with two recruitment options. Under "Option A," they were required to undertake two types of supplemental recruitment measures. The first measure required licensees to provide notification of job vacancies to any recruitment organization that requested such notice from the broadcaster. The second supplemental measure under Option A required broadcasters to participate in additional recruitment activities beyond the traditional recruitment that occurs with individual vacancies. These additional measures were to be selected from an open-ended menu of types of activities that included: Job fairs, job banks, scholarship programs, and community events related to employment opportunities in the industry, among others. Broadcasters were permitted to comply with the supplemental requirement by participating in activities other than the listed ones so long as they were designed to disseminate information about employment opportunities to candidates who might otherwise not learn of them. Broadcasters who selected Option A were required to maintain, but not routinely submit to the Commission, records documenting their compliance with the wide dissemination and supplemental recruitment requirements.

6. The Commission also adopted an "Option B" for recruitment that permitted licensees to forego the supplemental recruitment measures required under Option A and to design their own outreach program to suit their needs, as long as they could demonstrate that their program is inclusive, i.e., that it widely disseminated job vacancies throughout the local community. The court held, however, that Option B was unconstitutional under the equal protection component of the Due Process Clause of the Fifth Amendment. The Commission filed for hearing and rehearing *en banc*, arguing that Option B was not essential to achieving its goal of ensuring that broadcasters engage in broad outreach in recruiting new employees and that it had made plain its intent that Option B be severable. The court denied rehearing.

7. We issued the *Second Notice of Proposed Rulemaking* ("*2NPRM*"), (67 FR 1704, January 14, 2002) to request public comment on the adoption of new broadcast and MVPD EEO rules consistent with *Association*. An *En Banc* open hearing on the proposed rules was held before the full Commission on June 24, 2002. Having reviewed the suggestions contained in the comments submitted, both in writing and at the *En Banc* hearing, we are adopting new EEO rules that consist primarily of the elements of our former rules that the Court upheld as constitutional in *Association*, with modifications.

III. Summary

8. In this order, we adopt new outreach requirements applicable to broadcast and MVPDs. We are also retaining the nondiscrimination rules applicable to broadcasters and MVPDs.

9. The following is a summary of the three-pronged outreach requirement we are adopting as it relates to broadcasters:

Prong 1: Widely disseminate information concerning each full-time (30 hours or more) job vacancy, except for vacancies filled in exigent circumstances;

Prong 2: Provide notice of each full-time job vacancy to recruitment organizations that have requested such notice; and

Prong 3: Complete two (for broadcast employment units with five to ten full-

time employees or that are located in smaller markets) or four (for employment units with more than ten full-time employees located in larger markets) longer-term recruitment initiatives within a two-year period.

The following is a summary of recordkeeping and reporting requirements:

(a) Collect, but not routinely submit to the Commission: (i) Listings of all full-time job vacancies filled by the station employment unit, identified by job title; (ii) for each such vacancy, the recruitment sources used to fill the vacancy (including, if applicable, organizations entitled to notification, which should be separately identified), identified by name, address, contact person and telephone number; (iii) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies; and (iv) documentation necessary to demonstrate performance of the Prong 3 menu options, *e.g.*, job fairs, mentoring programs; (v) the total number of interviewees for each vacancy and the referral source for each interviewee; and (vi) the date each job was filled and the recruitment source that referred the hiree.

(b) Place in the station public file annually a report including the following: (i) A list of all full-time vacancies filled during the preceding year, identified by job title; (ii) recruitment source(s) used to fill those vacancies (including organizations entitled to notification of vacancies pursuant to Prong 2), including the address, contact person, and telephone number of each source; (iii) a list of the recruitment sources that referred the people hired for each full-time vacancy; (iv) data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source; and (v) a list and brief description of Prong 3 menu options implemented during the preceding year.

(c) Submit the station's EEO public file report to the Commission as part of the renewal application and midway through the license term for the Commission's mid-term review for those stations subject to mid-term review (television stations with five or more full-time employees and radio stations with more than ten full-time employees). EEO public file reports for the preceding two year period will be required because broadcasters have two years in which to complete the Prong 3 menu options. Broadcasters must also post the current EEO public file report on their web site, if they have one.

10. The same requirements will apply to MVPDs, except as necessary to comply with different statutory requirements. The Commission is also required to certify that MVPD employment units are in compliance with the EEO requirements on an annual basis. To comply with the Prong 3 requirements, MVPD employment units with six to ten full-time employees and employment units located in smaller markets will be required to undertake one recruitment initiative each year and larger employment units located in larger markets two recruitment initiatives per year. MVPD employment units are not subject to a renewal process at the Commission. Pursuant to section 634(e)(2) of the Communications Act, the Commission is required to conduct a more thorough review of each cable employment unit's EEO compliance every five years. Hence, MVPDs with six or more full-time employees will submit a copy of their most recent EEO public inspection file report to the Commission every five years.

11. The Commission has implemented the MVPD annual reporting requirement under section 634 by FCC Forms 395–A (cable operators) and 395–M (other MVPDs). We will create a new Form 396–C for all MVPDs that will encompass the same information concerning the unit's EEO outreach efforts that was formerly required in FCC Forms 395–A and 395–M. The prior forms were also used to collect data concerning the race/ethnicity and gender of the unit's workforce. The form we are adopting today will not encompass such data because, as indicated below, we will defer action on the collection of workforce data.

12. We are not acting at this time on issues raised in the *2NPRM* concerning the broadcast annual employment report (FCC Form 395–B), which has in the past been used to collect data concerning the workforces of broadcast employment units, including data concerning the race/ethnicity and gender of those workforces. We are similarly not acting on a comparable form for MVPDs. The Office of Management and Budget ("OMB") adopted new standards for classifying data on race and ethnicity in 1997 that must be incorporated in any such forms beginning in 2003. We must incorporate these new standards in our future forms. In addition, a party has raised issues concerning the collection and processing of the forms. Because the employment reports are filed on September 30 of each year, the next reports would not be due earlier than September 30, 2003.

IV. Discussion

A. Statutory Authority for EEO Program Requirements and Anti-Discrimination Rules

1. EEO Rules Applicable to Multichannel Video Programming Distributors

13. The Commission is explicitly authorized by section 634 of the Communications Act to adopt and enforce the MVPD EEO rules. Indeed, section 634 requires us to enforce EEO rules for MVPDs.

14. Although the Commission is required by section 634 to enforce EEO ruless for the MVPD industry, Congress built into section 634 flexibility by allowing the Commission to implement MVPD EEO rules by rulemaking rather than simply prescribing MVPD EEO requirements by statute; by stating in section 634(d)(2) that the "rules shall specify the terms under which" an entity shall take the actions specified in that section; and by providing in section 634(d)(4) that the Commission may amend the MVPD EEO rules "from time to time to the extent necessary to carry out the provisions of this section." Our rulemaking authority, particularly under sections 634(d)(2) and 634(d)(4), permits us to adopt new, race-neutral outreach requirements and to revise the FCC Forms filed by MVPDs to make them consistent with our modified broadcast EEO rules.

15. Section 634(d)(2) obligates the Commission to implement the listed requirements only "to the extent possible," consistent with other conflicting requirements or limitations. The court's decision in *Association* delineates constitutional limitations with which we must reconcile the MVPD EEO rules. We believe that section 634(d)(2) permits the Commission to eliminate those provisions of the MVPD EEO rules that are similar to those struck down by the court in *Association* because it is not "possible" for the Commission to enforce a provision that a court has found unconstitutional. We modify the MVPD EEO rules in this *2R&O* to remove provisions similar to those found unconstitutional in *Association*. We also revise the forms filed by MVPDs to conform them with our modified rules.

2. EEO Rules Applicable to Broadcasters

16. In 1992, Congress enacted section 334 of the Communications Act as part of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 192–385, 106 Stat. 1460 ("1992

Cable Act"). Section 334 provides that "the Commission shall not revise:"

(1) The regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 CFR 73.2080) as such regulations apply to television broadcast station licensees and permittees; or

(2) The forms used by such licensees and permittees to report pertinent employment data to the Commission, 47 U.S.C. 334(a).

The Conference Report accompanying this legislation indicates that section 334 "codifies the Commission's equal employment opportunity rules, 47 CFR 73.2080" for television licensees and permittees. Section 334 thus grants the Commission explicit authority to regulate the EEO practices of television broadcasters. Section 334 was enacted as part of section 22 of the 1992 Cable Act, which sets forth Congressional findings that, despite existing FCC EEO rules, there were few women and minorities in managerial positions in the MVPD and broadcast industries; that increased employment of women and minorities in managerial positions will advance the national policy favoring diversity of viewpoints in the electronic media; and that rigorous enforcement of EEO rules is required to effectively deter racial and gender discrimination.

a. Congressional Ratification

17. The Commission has maintained nondiscrimination and EEO program requirements for broadcasters for more than 30 years. In 1968, the Commission concluded that the national policy against discrimination and the fact that broadcasters are licensed under the Communications Act to operate in the public interest required the Commission to consider allegations of employment discrimination in licensing broadcast stations. In 1969, the Commission adopted rules prohibiting broadcast stations from discriminating against any person in employment on the basis of race, color, religion, or national origin, and requiring stations to maintain a program designed to ensure equal opportunity in every aspect of station employment. It reiterated its view that discriminatory employment practices are incompatible with a station's obligation to operate in the public interest, and relied on sections 4(i), 303, 307, 308, 309 and 310 in adopting the new rules. Relying on its authority to license and regulate broadcasters in the public interest, the Commission has revised and extended its rules on numerous occasions since 1969 to, *inter alia*, refine its EEO program requirements, require licensees to file information concerning these programs and other statistical employment information with the Commission, and prohibit discrimination against, and require outreach to, women.

18. Over the last 30 years, the Commission has vigorously enforced its EEO requirements, sanctioning broadcast licensees in numerous cases for failing to comply fully with those requirements. Commission decisions enforcing the EEO requirements have been challenged both by licensees who have been sanctioned for noncompliance and by petitioners who believed that Commission enforcement was not vigorous enough. Indeed, the Court of Appeals for the DC Circuit held more than 20 years ago that the Commission must investigate broadcasters' employment practices and, in assessing the character qualifications of broadcast licensees, consider whether they have engaged in intentional employment discrimination. And the Supreme Court observed in the seminal case addressing the scope of an agency's authority to serve the "public interest" that FCC regulation of the employment practices of its licensees "can be justified as necessary to enable the FCC to satisfy its obligation under the Communications Act of 1934 * * * to ensure that its licensees' programming fairly reflects the tastes and viewpoints of minority groups."

19. During the three decades that the Commission has administered EEO program requirements and nondiscrimination rules, Congress has repeatedly expressed awareness of the rules and has not only acquiesced in them, but has also referred to them approvingly, confirming our view that the Commission has statutory authority to promulgate these rules. Congress has ratified the Commission's authority to adopt and enforce EEO requirements against broadcasters under its statutory mandate to license and regulate broadcasters in the public interest.

20. In 1984, Congress enacted section 634 of the Communications Act as part of the Cable Communications Policy Act of 1984, Pub. L. 98–549, 98 Stat. 2779 ("1984 Cable Act"). Although the Commission at that time already had rules in place regulating the EEO practices of cable operators as well as broadcasters, section 634 was intended to "codif[y] and strengthen[] the Commission's existing equal employment opportunity regulations." Section 634 granted the Commission broad authority to adopt rules banning employment discrimination by cable operators and requiring cable operators to "establish, maintain, and execute a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of its employment policies and practices * * *."

21. The legislative history of section 634 makes it unmistakably clear that Congress believed that the Commission already possessed authority to regulate the EEO practices of mass media entities—broadcast as well as cable. The House Commerce Committee Report on the bill proposing the provisions on which section 634 was based explicitly confirmed the Commission's authority to adopt EEO rules. The House Commerce Committee stated:

> (1) *It is well established that the Commission has the authority to regulate employment practices in the communications industry.* Among the Commission's efforts in the equal employment opportunity (EEO) area over the last several years has been the enforcement of employment standards in the cable industry. Section 634 endorses and extends those standards.
>
> (2) Because of the potentially large impact cable programming and other services provided by the cable industry has on the public, the employment practices of the industry have an importance greater than that suggested by the number of its employees. The committee strongly believes that equal employment requirements are particularly important in the mass media area where employment is a critical means of assuring that program service will be responsive to a public consisting of a diverse array of population groups.

22. In addition to the explicit recognition of the Commission's broad and "well established" authority to regulate employment practices in the communications industry, the legislative history of section 634 shows that Congress viewed the legislation as codifying, strengthening and building upon the Commission's pre-existing regulatory scheme, which it viewed as well within the Commission's statutory authority.

23. Additional evidence of congressional ratification can be found in the Cable Television Consumer Protection and Competition Act of 1992, which further strengthened the cable EEO requirements, extended those requirements to all MVPDs, and codified the Commission's EEO program and nondiscrimination requirements as applied to broadcast television licensees. Congress once again explicitly acknowledged the existence of the Commission's broadcast and cable EEO requirements and proclaimed that vigorous enforcement of those rules served the public interest. Congress made the following findings in section 22(a) of the 1992 Cable Act:

> (1) Despite the existence of regulations governing equal employment opportunity,

females and minorities are not employed in significant numbers in positions of management authority in the cable and broadcast television industries;

(2) Increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media; and

(3) Rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination.

By extending the cable EEO requirements to every entity that provides multiple channels of video programming, such as MMDS operators and DBS licensees, Congress was building upon and closing the gaps in the Commission's regulatory scheme, ensuring that every electronic mass media provider would be subject to EEO regulations enforced by the Commission.

24. The 1992 Cable Act not only strengthened and extended the cable EEO requirements, it also codified the Commission's EEO requirements for broadcast television stations in section 334 of the Act. Section 334 thus explicitly recognizes the existence of the Commission's broadcast EEO rule and requires the Commission to keep its EEO requirements in effect for television broadcasters.

25. Section 22(g) of the 1992 Cable Act required the Commission to report to Congress within two years on "the effectiveness of [the Commission's] procedures, regulations, policies, standards, and guidelines in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority." The Commission was required to include in that report "such legislative recommendations to improve equal employment opportunity in the broadcasting and cable industries as it deems necessary." Congress would not have directed the Commission to review the effectiveness of its broadcast and cable EEO policies and regulations then in effect, and recommend whether further legislative action was necessary, had Congress not believed that those policies and regulations were within the Commission's lawful authority. Section 22(g) is further evidence of Congress's affirmative approval of the Commission's authority to adopt equal employment opportunity requirements for broadcasters.

26. There is another compelling reason to find in the current statutory context that Congress has ratified our authority to regulate the EEO practices of broadcasters. The Supreme Court has held on numerous occasions that courts should interpret a statute "as a symmetrical and coherent regulatory scheme" and "fit, if possible, all parts into an harmonious whole." In interpreting statutes granting administrative or judicial jurisdiction, the Supreme Court has held specifically that any interpretation of congressional intent that will result in a "bizarre jurisdictional patchwork" is to be disfavored absent legislative history or a persuasive functional argument to the contrary. In this case, Congress has explicitly granted the Commission authority to regulate the EEO practices of television broadcasters, cable operators, and all other MVPDs, including such relative newcomers as DBS and MMDS operators. Thus, rejecting the inference of congressional ratification would leave us in the anomalous situation of having jurisdiction to regulate the EEO practices of broadcast television and MVPDs, but not radio broadcasters. There is no indication in the legislative history that this was Congress's intent and none of the broadcasters commenting in this proceeding even attempts to explain why Congress would have intended such a result.

27. The Commission since 1969 has interpreted the Communications Act's grant of authority to license and regulate broadcasters as the public interest, convenience and necessity require as authorizing the Commission to regulate the equal employment practices of broadcasters. Specifically, it has interpreted the statute as granting it authority to prohibit broadcast stations from engaging in employment discrimination and to require them to maintain programs designed to ensure equal opportunity in all aspects of station employment, including recruitment. It is that interpretation of the scope of the Commission's statutory authority under the Communications Act that Congress has ratified over the course of many years.

B. Broadcast and MVPD EEO Rules, Policies, and Forms

1. Anti-Discrimination Provisions

28. In the *2NPRM* we proposed to retain the nondiscrimination provisions of our broadcast and MVPD EEO rules. We noted that the anti-discrimination provision of the broadcast EEO rule, § 73.2080(a), was not challenged in *Association*. Nonetheless, in rejecting the contention that the unlawful Option B could be severed from the EEO rule, the court stated that the "entire rule" must be vacated. In order to avoid any confusion arising from the language in the court's decision, we recodify the nondiscrimination requirement. Nondiscrimination is an essential component of every licensee's obligation as a trustee of a valuable public resource. In *Bilingual Bicultural Coalition on Mass Media, Inc.* v. *FCC*, the court stated that "[a] documented pattern of intentional discrimination would put seriously into question a licensee's character qualifications to remain a licensee: intentional discrimination almost invariably would disqualify a broadcaster from a position of public trusteeship." Finally, we are required by statute to prohibit discrimination by broadcast television licensees and MVPDs.

29. As proposed in the *2NPRM*, we will retain our policy of generally deferring action on individual complaints of employment discrimination against broadcasters and MVPDs pending final action by the Equal Employment Opportunity Commission ("EEOC") or other government agencies and/or courts established to enforce nondiscrimination laws. We will also retain the discretion to take action, notwithstanding the absence of a final decision by the EEOC or other agency/court, where the facts of a particular case so warrant. As indicated in the *R&O*, our policy generally reflects the fact that Congress intended the EEOC to be primarily responsible for the resolution of discrimination complaints and our separate adjudication of such complaints could result in duplicative or inconsistent decisions.

30. The rule adopted by the *R&O* defined a "religious broadcaster" as "a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity, 47 CFR 73.2080(a)." In the *R&O*, we clarified that, in the event of a controversy, we would determine on a case-by-case basis whether a licensee was a religious broadcaster by considering such factors as whether it operates on a non-profit basis, whether it has a distinct religious history, whether the entity's articles of incorporation set forth a religious purpose, and whether it carried religious programming.

2. Broadcast EEO Program Requirements

a. Rules and Policies

i. General Considerations

31. Several broadcast commenters have challenged the basis for our adopting any EEO rule for broadcasters. Initially, they seek to characterize our proposals in the *2NPRM* as constituting "re-regulation." In fact, we have never

"de-regulated" in this area; the court decisions that have invalidated various aspects of our EEO rules have been premised on specific legal defects found in our programs, not on a finding that nondiscrimination rules or outreach requirements are unnecessary.

32. First, our concern is not limited to intentional discrimination. It is not based on Constitutional provisions or on Title VII, but on the public interest standard in the Communications Act. In adopting the Cable TelevisionConsumer Protection and Competition Act of 1992 ("Cable Act"), Congress expressly found in pertinent part: "Rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination." Congress has made it clear that the public interest standard is sufficiently broad to cover not only intentional discrimination, but also discrimination that may arise as a result of practices and policies that are not intentionally discriminatory: Further, our policy is not limited to imposing sanctions in response to specific past discrimination; it is also intended to deter discrimination in the first instance. Our policy is designed to prevent both intentional and unintentional discriminatory practices in the broadcast and MVPD industries, and to ensure equal opportunity in employment practices, including recruitment.

33. Second, it is not necessary to find that the broadcast industry "as a whole" has engaged in discrimination in order to justify regulations to prevent discrimination. We do not suspect that the entire broadcast industry, or even most of it, engages in intentional or unintentional discrimination.

34. Third, although we commend the broadcast associations for the various activities detailed in their comments, they do not demonstrate that an EEO rule is unnecessary.

35. Some broadcasters support the adoption of an EEO rule. Our proposed EEO requirements also are generally supported by the MVPD industry.

36. Discrimination may be easy to hide and difficult to prove. Allegations of discrimination may never be fully litigated because a violator will elect to settle any litigation before it reaches the stage of a final judgment. It is thus impossible to quantify reliably the extent of actual discrimination that exists today.

37. Many of the opponents of our EEO program cite language from the *2R&O* that "[o]utreach in recruitment must be coupled with a ban on discrimination to effectively deter discrimination and ensure that a homogenous workforce does not simply replicate itself through an insular recruitment and hiring process." These parties contend that the broadcast workforce is not homogeneous and that it does not employ insular recruitment and hiring practices to replicate itself. The cited language was intended to explain why outreach in recruitment as well as a ban on discrimination is necessary to deter discrimination. We did not intend to suggest that every broadcast station has a homogeneous workforce. We recognize that in many significant respects the industry has become more diverse over the past decades. We attribute this in large measure to the fact that the industry has been subject to our various EEO requirements since 1969.

38. We accordingly conclude that adoption of new outreach rules for broadcast and MVPDs is supported by the record in this case. The evidence in this proceeding demonstrates an ongoing need to deter discrimination and ensure equal employment opportunity in the broadcasting and MVPD industries. Moreover, Congress has made clear its intention that we should enact EEO rules for the broadcast and MVPD industries.

39. Finally, as noted, our primary goal in adopting EEO program requirements is to ensure broad outreach in recruitment for broadcast and MVPD employment vacancies. We seek to do so in a manner that affords some flexibility to affected industries. The regulations we are adopting today provide sufficient flexibility. Entities will have broad discretion as to the type of recruitment sources they will use, the number of recruitment sources they will use, and the Prong 3 menu options they will implement. We are also providing that entities in smaller markets may implement fewer menu options than those in larger markets.

ii. *EEO Program and Related Provisions*

40. In the *2NPRM*, we proposed a three-prong EEO program requirement designed to ensure equal opportunity to all potential applicants, including all races and both genders, without infringing on the rights of any group. The rules were further designed to be flexible enough to avoid imposing an undue burden and to apply reasonably and effectively to broadcasters and MVPDs in differing circumstances. Based on our review of the comments, reply comments and other presentations filed in this proceeding, we adopt the proposed program, with some modifications.

41. *Outreach Prong 1—Recruitment for All Full-time Vacancies.* We will adopt the requirement that broadcasters recruit for all full-time vacancies, except in exigent circumstances. Recruitment for substantially all vacancies using sources designed to achieve broad outreach is necessary to ensure that all segments of the population have an equal opportunity to compete for broadcast (and MVPD) employment and that no segment is subjected to intentional or unintentional discrimination.

42. The effectiveness of our requirements in the past does not justify eliminating them now. Nor can we justify such a conclusion based on recent outreach efforts by the broadcast industry commendable, given that this has been an area under high scrutiny for some time. We can draw no inference from these facts; therefore, regarding the likely behavior of licensees in the absence of any current on proposed EEO program. Second, our requirements provide sufficient flexibility to design recruitment programs appropriate for different positions and circumstances.

43. In the *2NPRM*, we recognized that there might be occasional exigent circumstances in which recruitment may not be feasible. We cited as an example the need to replace immediately an employee who departs without notice and whose duties cannot be fulfilled, even briefly, by other station employees. We stated in the *R&O* that we could not anticipate every circumstance which might justify filling a position without recruitment and indicated that we would rely on the good faith discretion of broadcasters. We nonetheless cautioned that we expected nonrecruited vacancies to be rare relative to the number of vacancies for which recruitment is conducted, because our rule generally requires recruitment for every vacancy. We will incorporate this approach in our new rules.

44. The requirement that broadcasters recruit for every full-time vacancy, unless exigent circumstances exist, will become a component of our rule. Recruitment for only some openings could leave the most desirable positions open to a limited number of potential applicants, possibly excluding significant segments of the community. We will require that broadcasters develop and use for each vacancy a recruitment source or list of recruitment sources (which may be freely modified as circumstances warrant) sufficient to ensure wide dissemination of information about the opening. We will not dictate the number or type of sources that a broadcaster must use. If, however, the source or sources used cannot reasonably be expected,

collectively, to reach the entire community, the broadcaster may be found in noncompliance with our EEO rule. A broadcaster may widely disseminate job postings through any combination of methods sufficient to ensure that its recruitment efforts are inclusive. Broadcasters may contact the FCC's EEO staff with any questions on this matter. We also clarify that the same recruitment sources need not be used for every hire. We do not require licensees to use recruitment sources that, in their good faith judgment, are unlikely to elicit responses from qualified applicants in light of the demands of a particular job. We do expect them, however, to use whatever recruitment source or sources can reasonably be expected to widely disseminate notice of the vacancy to qualified applicants. Although our rule seeks to achieve broad outreach to the community, this does not preclude the use of regional or national recruitment sources. We will accordingly give consideration to a broadcaster's use of such sources in assessing its EEO record. Whatever sources a licensee uses, however, or whatever a licensee's perception is regarding whether anyone in its community is qualified for a unique job, we are requiring that sources reach qualified potential applicants in the licensee's community. Licensees are not permitted to target any group in the community for exclusion from the recruitment process.

45. With reference to the definition of community for purposes of the broad outreach requirement, we proposed in the *2NPRM* to define "community" as encompassing, at a minimum, the county in which a station is licensed or MVPD employees are primarily located, or the Metropolitan Statistical Area ("MSA") in the case of counties located in an MSA. We will instead define "community" for the purpose of the broad outreach requirement in accordance with the approach taken in the *Recon*, (Memorandum Opinion and Order, 65 FR 76948, December 8, 2000). There, we left the definition of "market" or "community" to the licensee's good faith discretion. We indicated, that in making this determination, a broadcaster should assess the technical coverage of its station(s); its marketing, promotional, and advertising practices; the pertinent market definitions adopted by public agencies or commercial services, such as Nielsen and Arbitron; and requests for notices of job vacancies from locally-based community groups. We will adopt the same policy for purposes of our new rule. (Although we are according discretion regarding the definition of "community," we expect broadcasters to be able to provide a reasonable explanation for their determinations should it become pertinent. We would be concerned if the circumstances suggested that a broadcaster is unreasonably defining its community in a manner that excludes certain areas or populations that it clearly does serve.)

46. We require only that EEO recruitment sources be reasonably calculated to reach the entire community. We do not require that broadcasters demonstrate that any particular segment of the community actually was aware of any vacancy. Nor do we require that recruitment be targeted to a specific segment or that broadcasters prove that they obtained a response from a particular segment. Prong 1 neither requires nor precludes the use of any number or type of sources a broadcaster deems appropriate to achieve broad outreach. Further, we leave the definition of "community" to the licensee's good faith discretion. We also recognize that it is difficult for licensees to recruit for vacancies in exigent circumstances. Thus, Prong 1 allows broadcasters flexibility in implementing appropriate recruitment programs for their individual circumstances.

47. Notwithstanding the greater availability of job-related Internet sites, the record does not reflect the extent to which the Internet has become well known as a principal resource for job seekers or the nature of any difficulties that Internet recruitment would create. We anticipated in the *R&O* that we would be able to assess the extent of any such difficulties based on our experience under the rules adopted therein. Because those rules were in effect for only a few months, we do not have the experience necessary to reach definitive conclusions in that respect.

48. With regard to the access of minority and rural populations to the Internet, our concerns arose from a series of reports by the National Telecommunications and Information Administration ("NTIA") in 1995, 1998 and 1999.

49. Proponents of the use of the Internet as a sole recruitment source cite the improvements reflected in NTIA's 2002 report. Although the NTIA 2002 report shows increases in Internet usage, the report also indicates continuing disparities in usage among different segments of society. Indeed, only about half of all U.S. households had Internet service as of September 2001, and only slightly more than half of individuals used the Internet from any location. We are unable to conclude that Internet usage has become sufficiently widespread to justify allowing it to be used as the sole recruitment source. As we indicated in the *R&O*, we will continue to monitor the viability of the Internet as a recruitment source and will consider petitions seeking to demonstrate in the future that circumstances have changed sufficiently to warrant a change in our policy.

50. As indicated in the *R&O*, we expect broadcasters to allow a reasonable time after recruitment is initiated for applications to be filed before the position is filled. We recognize that occasionally a shorter time might be necessary because of extraordinary circumstances. We caution that excessive instances of hires being made shortly after the initiation of recruitment could result in a finding of noncompliance if the evidence suggests that the broadcaster is not in good faith allowing adequate time for applicants to respond to its outreach efforts or is not considering their applications. Also, it is not the intention of our rule to prohibit word of mouth recruitment. Our purpose is to ensure that word-of-mouth recruitment practices are not the sole method of recruitment and that all members of the public have an opportunity to compete for available jobs. Broadcasters are free to use non-public recruitment sources and to interview and hire persons referred by such sources, so long as they also use public recruitment sources sufficient to achieve broad outreach and fairly consider the applications generated by those sources.

51. We will continue our policy stated in the *R&O* that broadcasters may engage in joint recruitment efforts. Broadcasters may also rely upon the services of outside organizations or individuals to assist it in designing or implementing their recruitment efforts. Each broadcaster (or MVPD) remains individually responsible for compliance with our rule. No broadcaster (or MVPD) is required to use the services of an outside party.

52. We will not require recruitment for internal promotions, nor will we require recruitment for temporary employees. Typically, we view temporary employees as including those hired as emergency replacements for absent regular employees or those hired to perform a particular job for a limited period of time. If a person is hired full-time to perform a regular station function for an extended period of time (*e.g.*, more than six months), such a hire will be treated as a permanent hire for which recruitment would be required. We recognize that some broadcasters may wish to hire employees initially on

a temporary basis with the possibility of retaining them on a permanent basis if their performance is satisfactory. In such circumstances, if recruitment is done at the time of the temporary hire, any later decision to convert the employee's status to full-time in the same, or essentially the same, job may be treated as a promotion. If an employee is hired as a temporary employee without recruitment, recruitment should occur if the employee is later considered for a permanent position. We caution that excessive instances of temporary hires being converted to permanent hires, without a meaningful opportunity for recruited applicants to compete, could result in a finding of noncompliance. (If an employee is hired with the expectation that successful completion of an initial probation will result in an eventual elevation to permanent status, we would not regard that as a temporary hire and would expect regular recruitment for that position.)

53. We will continue to define "full-time employee" as a permanent employee whose regular work schedule is thirty hours or more per week. In the *Recon*, we indicated that, as in the case of temporary hires, if a part-time employee is initially hired after broad outreach to all segments of the community, the decision subsequently to convert him or her to full-time in the same, or essentially the same, job may be treated as a promotion. If the broadcaster did not engage in full recruitment at the time of the initial part-time hire it would have to recruit before converting the employee to full-time. Also, as in the case of temporary hires, excessive instances of temporary hires being converted to permanent hires without a meaningful opportunity for recruited applicants to compete could result in a finding of noncompliance. We will apply the same policy under the rule being adopted today.

54. *Outreach Prong 2—Notification to Community Groups.* Under the Option A rules adopted in the *R&O*, we required that broadcasters and MVPDs provide notification of full-time job vacancies to organizations involved in assisting job seekers upon request by such organizations. We will incorporate this requirement into our new rules. This requirement provides a "safety valve" to ensure that no segment of the community is inadvertently omitted from recruitment efforts. Organizations or other entities with ties to specific segments of the labor force, such as persons with disabilities, college students, or members of different racial, ethnic, or religious groups could help broaden the reach of recruitment efforts. Organizations that come forward to request vacancy notifications may prove to be very productive referral sources. Further, this approach will enable interested groups to more closely monitor and, if necessary, seek to improve, broadcasters' recruitment efforts. We also expect broadcasters to make reasonable efforts to publicize the notification requirements so that qualifying groups are able to learn of the new procedure. Joint announcements by broadcasters or state broadcasters' associations—such as press releases, newspaper ads, and notices posted on the web site—would satisfy the requirement to publicize. Similarly, broadcasters and MVPDs could satisfy this requirement by individually issuing such announcements, or by providing on-air announcements.

55. We will provide broadcasters discretion to determine the method of providing notice to requesting parties. Such methods may include electronic mail and facsimile which may require fewer personnel and financial resources to fulfill the notification requirement than more traditional methods. For example, a broadcaster may maintain an electronic list of recruitment sources and notify all the sources simultaneously with a single e-mail when a vacancy occurs. We will also allow notifications to be made as part of joint recruitment efforts among broadcasters. However, each broadcaster participating in the joint recruitment efforts remains individually responsible for ensuring that requested notifications relating to its employment unit are made. For example, a state broadcast association may have a job bank that notifies certain sources on behalf of an employment unit when a vacancy becomes available at that employment unit. As long as the state broadcast association notifies all organizations requesting vacancy announcements from that employment unit as part of this process, the employment unit itself need not do so. Therefore, given the flexibility provided by electronic forms of notice and joint recruitment, we expect that the notification requirement will place minimal burdens on broadcasters.

56. An organization that wishes to be notified of vacancies need only notify a broadcaster once in order to be entitled to notification of all future full-time vacancies. If a broadcaster is uncertain as to the status or continuing interest of a particular group, it is free to contact the group to resolve any questions. So long as the group indicates its continued interest in receiving notifications, it is entitled to receive them.

57. The obligation to notify recruitment sources that request notice of vacancies is intended as a supplement to, not a substitute for, broadcasters' core, non-delegable obligation to widely disseminate information concerning all job vacancies. Although recruitment sources will have the right to ask broadcasters for notices of vacancies, they have no obligation to do so. And even if a broadcaster does not receive a single request for notice of vacancy information, it will nevertheless be responsible for ensuring that notice of vacancies is widely disseminated. If it fails to do so, it is not a legitimate excuse that no recruitment organizations requested notices.

58. Prong 2 of the EEO rule requires broadcasters and MVPDs to provide requested notification of full-time job vacancies to organizations involved in assisting job seekers, regardless of whether they are minority or women's organizations.

59. *Outreach Prong 3—Menu Options.* Under the rules adopted by the *R&O*, we required, under Option A, that broadcasters and MVPDs engage in a specified number of activities selected from a menu of options, such as job fairs, community events relating to broadcast employment, internship programs, scholarships, and similar activities. These activities are designed to go beyond the normal recruitment activities directed at filling particular vacancies. They are designed to encourage outreach to persons who may not be aware of the opportunities available in broadcasting or the MVPD industry or have not yet acquired the experience to compete for current vacancies. Interested members of the community will not only have access to information concerning specific job vacancies, but also will be encouraged to develop the knowledge and skills to pursue them. This approach remains justified and is not unduly burdensome. Various menu options encourage outreach to students and others who would benefit from training, mentoring and scholarships, which can work to enhance the employability of persons seeking jobs in the broadcasting or MVPD industries. These menu methods of outreach also are designed to further broaden outreach efforts to reach segments of the labor force who may be inadvertently omitted from vacancy-specific recruitment. As indicated, under this approach, broadcasters and MVPDs have great flexibility to design the types of recruitment activities best suited to their organizations and communities. In the rule we are adopting today, we will adopt this

requirement while providing additional flexibility by incorporating additional menu options that have been suggested by the parties. We are also reducing the number of menu options that employment units located in smaller markets must perform.

60. The first three specific menu options include participation in at least four job fairs by station personnel who have substantial responsibility for hiring decisions; hosting at least one job fair; or co-sponsoring at least one job fair with an organization in the business and professional community whose membership includes substantial participation of women and minorities. Job fairs are a useful method to reach a broad range of individuals who are interested in employment in the industry. The fourth option is participation in at least four activities sponsored by community groups active in broadcast employment issues, including conventions, career days, workshops and similar activities. The fifth option is the establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment. Such an endeavor would serve the goal of broad outreach by increasing the number of qualified potential employees not only for one broadcaster, but for all broadcasters in the area. The sixth option is participation in general (as opposed to vacancy-specific) outreach efforts by such means as job banks or Internet programs such as those described in the model program developed by NASBA. While such sources may be used as recruitment sources when specific vacancies occur, they can also be useful even when there is no specific vacancy to elicit interest from persons who may later be considered for a specific position. The seventh option is participation in scholarship programs directed to students desiring to pursue a career in broadcasting. The benefit of this outreach is that it attracts students of both genders and all races to careers in broadcasting, ultimately increasing the number of qualified potential employees. The eighth and ninth options are, respectively, the establishment of training and mentoring programs designed to enable station personnel to acquire skills that could qualify them for higher level positions. These options would not be satisfied by ordinary training required for employees to perform their current positions. These options are rather intended to increase employee skills so they can qualify for higher positions.

61. The tenth option is participation in at least four events or programs relating to career opportunities in broadcasting sponsored by educational institutions. Such participation again serves the purpose of increasing the universe of potential employees from which broadcasters attract job applicants. The eleventh option includes sponsorship of at least two events in the community designed to inform the public as to employment opportunities in broadcasting. Such activities can serve to increase public awareness of the opportunities available in broadcasting. The twelfth option would entail listing each upper-level opening in a job bank or newsletter of a media trade group with a broad-based membership, including participation of women and minorities.

62. The thirteenth option will consist of providing assistance to outside non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting. The fourteenth option consists of providing training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination. The fifteenth option consists of providing training to personnel of outside recruitment organizations that would enable them to better refer job candidates for broadcast positions.

63. The sixteenth option (which was the thirteenth option in our former rule) includes participation in activities other than the fifteen listed options that the licensee has designed to further the goal of disseminating information about employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities. This will provide flexibility for worthwhile initiatives that broadcasters may develop but that are not strictly within the scope of the menu options we have specified. The inclusion of this option makes it clear that the list of menu options is an open-ended list intended to guide, rather than limit, broadcasters and MVPDs.

64. In the *R&O*, we required station employment units with more than ten full-time employees to implement four of these options every two years. If that time period is less than two years, the number of menu options may be reduced proportionally to the amount of time available. If a station is required generally to perform four menu options every two years, it would be expected to perform one for each six-month period between the effective date of the rule and the next regular pertinent anniversary. Although we ordinarily do not dictate when a broadcaster must complete its menu options during the regular two-year period, when a broadcaster owns a station or stations for less than the full two-year period, it must complete the prorated number of menu options within the available time period. We will require employment units with five to ten full-time employees as well as employment units in certain smaller markets to perform two of the menu options every two years.

65. We will also permit broadcasters to perform menu options on a joint basis, either with other broadcasters, organizations such as state broadcaster associations, or with a corporate licensee's corporate headquarters. A station seeking credit for a particular menu option performed on a joint basis must have a meaningful involvement in the activity for which credit is sought. It is not sufficient for the station merely to lend its name to an activity or provide money where the activity is otherwise entirely conducted by another entity such as a trade association or the licensee's corporate headquarters. In the *Recon*, we discussed a number of circumstances where credit might be sought for activities engaged in on a joint basis. This discussion remains applicable to joint efforts engaged in pursuant to the rules we are adopting herein.

66. We note that the term "sponsor" as used in connection with several options set forth in § 73.2080(c)(2) of the old rule, which we also use in our new rule, was apparently misunderstood by some as referring only to a financial contribution. Our intent for the purpose of these options is that a "sponsor" should have a meaningful input into the planning and implementation of a specified event. Simply lending one's name or making a monetary contribution would not be sufficient. Events can be jointly sponsored, so long as each broadcaster seeking credit for sponsoring the event is actively involved in planning and implementing the event.

67. With respect to the maintenance of a scholarship program by a corporate licensee, it is reasonable for a corporate licensee to maintain a scholarship program for those employment units it owns. Any such scholarship program should incorporate involvement by the employment units for which credit will be claimed in such areas as the design of the program, the solicitation of prospective scholarship recipients, the interviewing and selection of scholarship recipients, on-air promotion of the program, and evaluation of the effectiveness of the program. While each

employment unit need not be involved in every aspect of the program, meaningful involvement in the program is essential to ensure that the employment unit is fulfilling its responsibility under our rule. In addition, the number of employment units seeking credit for a scholarship program should bear a reasonable relationship to the number or type of scholarships awarded by the corporate licensee.

68. Unrelated broadcasters may also jointly maintain a scholarship program, which could be done through a state or local broadcast association, including efforts by such associations to coordinate regional efforts. We believe that the program should incorporate meaningful involvement by each broadcaster seeking credit for the initiative in such areas as the design of the program, the solicitation of prospective scholarship recipients, the interviewing and selection of scholarship recipients, on-air promotion of the program, and evaluation of the effectiveness of the program. As in the case of corporate scholarship programs, the number or type of scholarships awarded by the joint scholarship program would have to bear a reasonable relationship to the number of employment units seeking credit for it.

69. With respect to mentoring, internships, or training programs administered by a corporate licensee, employment units of the licensee could claim credit for such a program even if not implemented in the community where the employment unit is located, but only so long as personnel from the employment units are participants in the mentoring, internships or training program. Similar questions arose under our former rule as to job fairs hosted by a corporate licensee. We would credit individual employment units with cohosting the job fair only to the extent that personnel from the unit were involved in planning and implementing the job fair. Employment units of the licensee could be credited with attendance at the job fair, but only if personnel from the employment unit with substantial responsibility in making hiring decisions at the unit in fact participated in the job fair. Although the corporate headquarters can assist in the implementation of menu options, personnel from the respective employment units must also be involved in implementation should they seek credit for participation.

70. The EEO rules adopted by the *R&O* under Option A required broadcasters and MVPDs to engage in activities selected from a broad menu of options, such as job fairs, community events relating to broadcast employment, internship programs, scholarships, and similar activities. These Prong 3 activities are designed to go beyond the normal recruitment activities directed at filling particular vacancies in order to encourage outreach to persons who may not be aware of the opportunities available in broadcasting or the MVPD industry or have not yet acquired the experience to compete for current vacancies. Interested members of the community will not only have access to information concerning specific job vacancies, but also will be encouraged to develop the knowledge and skills to pursue them. Prong 3 activities are intended as a method to reach segments of the community who might otherwise be omitted, possibly inadvertently, from vacancy-specific recruitment efforts.

71. *Outreach Requirements of Religious Broadcasters.* In the *NPRM*, we proposed to adopt a policy under which religious broadcasters that elected to apply a religious qualification to all of their employees were not required to comply with the broad outreach recruitment requirement or the menu options, but they must make reasonable, good faith efforts to recruit applicants, without regard to race, color, national origin or gender, among those who are qualified based on their religious belief or affiliation. We adopt that policy. This approach reflects our judgment that the more specific recruitment requirements described above may not be suited to recruitment that is limited to members of a certain religious faith. This requirement will also apply to religious broadcasters that elect to establish a religious qualification for some, but not all, of their positions, with respect to those positions that are subject to the religious qualification. Such religious broadcasters, with respect to other positions not subject to a religious qualification, must comply with prongs one and two. A religious broadcaster that treats five or more its full-time positions as non-religious are required to comply with the prong three menu options because, in regard to those positions, the station is in a comparable position to stations that have five or more full-time employees and none subject to a religious qualification. A religious broadcaster electing to treat none of its positions as subject to a religious qualification would be required to comply with all three prongs. Once an entity establishes its qualifications as a religious broadcaster, it has the discretion to define the religious qualification it seeks to establish. Thus, it may define the qualification generally as encompassing an entire denomination; more specifically as encompassing only persons who share a particular doctrinal belief; or even more specifically as encompassing only persons who are members of a particular church or religious organization. We do not intend to inquire into a religious broadcaster's definition of its religious qualification. All we require is that some effort be made to notify persons who meet the definition established by the religious broadcaster itself as to the availability of employment at the religious broadcaster's station.

72. *Outreach Requirements for International Stations.* In the *Recon*, we indicated that international broadcast stations licensed pursuant to section 73, Subpart F, § 73.701, *et seq.*, would be subject to our EEO requirements, except for the public file requirement, given that such stations are not required to have a public file. We are continuing this requirement in the new rules.

73. *Recordkeeping.* We will require broadcasters to retain documentation concerning their compliance with the three recruitment prongs, as proposed in the *2NPRM*. This documentation must be retained by the station, but will not be routinely submitted to the Commission. The data must be provided to the Commission upon request in the event of an investigation or audit. The documentation includes: (1) Listings of all full-time job vacancies filled by the station employment unit, identified by job title; (2) for each such vacancy, the recruitment sources used to fill the vacancy (including, if applicable, organizations entitled to notification, which should be separately identified), identified by name, address, contact person and telephone number; (3) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies; and (4) documentation necessary to demonstrate performance of the Prong 3 menu options, including sufficient information to disclose fully the nature of the initiative and the scope of the station's participation, including the station personnel involved. This documentation will allow us to verify compliance with our rules; we find no reason to believe that this minimal record retention requirement imposes an unreasonable burden on broadcasters or MVPDs.

74. We also sought comments in the *2NPRM* as to whether we should require the retention of documentation concerning the recruitment sources that referred hires and interviewees.

75. Our rule focuses on the process of recruitment, not the results thereof. It is nonetheless necessary to have some means of assessing whether the process has been conducted in good faith and whether the process is working as intended. We expect that broadcasters and MVPDs will analyze the results of their recruitment efforts to ensure that they actually achieve broad outreach. This requires knowledge of what recruitment sources have been productive in generating qualified applicants. Records of the recruitment sources of the most qualified applicants—those interviewed or hired—will be helpful in this regard. We will accordingly require that broadcasters and MVPDs maintain records reflecting the referral sources of interviewees and hires.

76. We will not require the retention of records of the recruitment sources of applicants. Data concerning the recruitment sources of interviewees and hires is sufficient for the limited purpose of determining whether the program is being conducted in good faith and working as intended. Further, although it is minimally burdensome to ascertain the recruitment sources of interviewees and hires because they are readily available to provide this information if it is not reflected in the jobseeker's application, tracking the recruitment source of all applicants may require additional efforts to collect this information. This may place an inordinate burden on broadcasters and MVPDs, particularly in light of the fact that information concerning applicants in the aggregate does not necessarily reflect sources of qualified applicants.

77. We will require that all records documenting outreach efforts be retained until the grant of the renewal application covering the license term during which the hire or activity occurs, except that, if a licensee acquired a station pursuant to an assignment or transfer that required Commission approval of FCC Form 314 or 315 during the license term, it need not retain records pertaining to the outreach efforts of a prior licensee. In order to minimize any burden associated with this requirement, records may be maintained in an electronic format, *e.g.*, by scanning pertinent documents into a computer format. Absent a showing of extraordinary circumstances, we will not credit claimed activities that cannot be supported by records.

78. In the case of religious broadcasters that apply a religious qualification to some or all of their hires, they need only retain, in the case of hires subject to the qualification, documentation as to the full-time vacancies filled, the recruitment sources used, the date each vacancy was filled, and the recruitment sources of the hires. This information is pertinent to monitoring whether the broadcaster made reasonable, good faith efforts to recruit among persons who meet the applicable religious qualification.

79. *Public File.* We will adopt the requirement that broadcasters place in their public file annually, on the anniversary of the date they are due to file their renewal applications, an EEO public file report containing the following information: (1) A list of all full-time vacancies filled by the station employment unit during the preceding year, identified by job title; (2) for each such vacancy, the recruitment source(s) used to fill the specific vacancy (including organizations entitled to notification of vacancies pursuant to Prong 2, which should be separately identified), including the address, contact person, and telephone number of each source; (3) a list of the recruitment sources that referred the people hired for each full-time vacancy; data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and, for each recruitment source used in connection with any such vacancies, the total number of interviewees referred by that source; and (4) a list and brief description of Prong 3 menu options implemented during the preceding year. Religious broadcasters with hires subject to a religious qualification need include, for full-time vacancies subject to the qualification, only the information called for in (1) and (2) above, along with information concerning the recruitment sources that referred the persons hired.

80. Some broadcasters object that documentation concerning a station's EEO efforts should not be made available to the public. To the contrary, as we indicated in the *R&O*, the public has an important role in monitoring broadcaster compliance with our EEO rule. The EEO public file report is designed to facilitate meaningful public input. We recognize broadcaster concerns that the availability of this information could trigger unwarranted, even frivolous, filings. The possibility of abuses by some does not warrant depriving the public of its right to participate in the process of monitoring and enforcing our EEO rule, which directly impacts them.

81. We will also require that broadcasters post the EEO public file report on their web site, if they have one. (Although the reports must be retained in the public file until final action has been taken on the station's next renewal application, all reports need not be maintained on the station's Web site. The requirement to post a station's EEO public file report on its Web site extends only to the current report. Also, we require only that the information contained in the EEO public file report be placed on the Web site. A scanned copy of the actual paper report contained in the public file need not be placed on the Web site; any legible format may be used.) The purpose of this requirement is to facilitate access by persons within the service area. We do not believe that our requirement to place EEO public file report information on a station's Web site is unreasonable or overly burdensome.

82. Broadcasters are free to use any format in their public file report to avoid unnecessary duplication as long as the report clearly provides the information requested. For instance, if a broadcaster used the same recruitment sources for all its vacancies, it may maintain a single list of those sources, indicating that they were used for all vacancies. If a broadcaster used different sources for different vacancies, it may maintain a master list of all its sources and use a cross-reference system to show which sources were used for which vacancies.

83. The EEO public file report need not be routinely submitted to the Commission, except in two instances. The EEO public file reports covering the two-year period preceding the filing of a renewal application must be submitted with that application as an attachment to Form 396, and will be one basis for our review of the broadcaster's compliance at renewal time. Also, for stations subject to mid-term reviews, the EEO public file reports for the two-year period preceding the mid-term review must be filed with the Commission and will be one basis for mid-term reviews. Renewal and mid-term review procedures are discussed in greater detail.

84. Because the filing dates for the EEO public file reports are tied to the date of filing of renewal applications, the due dates will apply to a given station regardless of when the licensee acquired the station. Consequently, if there is a substantial change of ownership requiring approval pursuant to FCC Form 314 or FCC Form 315 during the one-year period covered by an EEO public file report, the new licensee must place the report in the public file by the due date. The information contained in the report would encompass only EEO efforts undertaken by the new licensee.

85. The EEO public file report will be filed for station employment units, rather than only for individual stations. A "station employment unit" will be defined, as it was under our former rule, as including a station or group of commonly owned stations in the same market that shared at least one employee. We will leave the definition of the "market" to each licensee's good faith discretion. In making this determination a licensee should assess the technical coverage of its station(s); its marketing, promotional, and advertising practices; the pertinent market definitions adopted by public agencies or commercial services, such as Nielsen and Arbitron; and requests for notices of job vacancies from locally-based community groups. We expect a licensee to be able to provide a reasonable explanation for its determination should it become an issue. Finally, stations in the same market should be considered part of the same employment unit even if the licenses are held by different business entities that are commonly owned or controlled. We would view licensees as commonly owned for the purpose of the EEO rule if 50 percent or more of the voting control of the licensees is held by the same persons or entities.

86. If a station is subject to a time brokerage agreement, the licensee's EEO public file report should include data concerning only its own recruitment efforts for full-time positions and not the efforts of the broker. If a licensee is a broker of another station or stations in the same market as an employment unit including a station or stations of which it is the licensee, the licensee's EEO public file report should include data concerning its EEO efforts at both the owned and brokered stations. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include information concerning its EEO efforts at the brokered station in the EEO public file report for its own station that is geographically closest to the brokered station. The same policy will apply to EEO forms filed at mid-term (where applicable) (Form 397) and at renewal (Form 396), discussed. Non-licensee brokers are not required to file EEO public file reports because they are not licensees. If a broker is controlled directly or indirectly by a licensee or licensees, it should be considered a licensee-broker.

87. We recognize that there may be some employment units that are located in markets that include stations licensed to communities in more than one state that are in different renewal groups. As a result, the date of the last renewal application filing differs for some stations in the same employment unit, so that there could arguably be two dates governing the placing of the EEO public file report in the public file because that date is based on the anniversary of the filing of the last renewal application. The same problem arises with respect to the filing of mid-term reports (FCC Form 397), discussed. It is not our intent that employment units comply with these requirements more than once merely because they include stations in more than one renewal group. We will generally expect employment units in this situation to proceed in accordance with the schedule for only one of the renewal groups included in their unit. There may be rare instances involving television stations when it will be necessary for us to request a supplemental filing in order to comply with the statutory requirement that we conduct mid-term reviews of television licensees' EEO compliance.

88. An employment unit consisting of stations in more than one renewal group may select the renewal group that it will use for the purpose of determining the filing dates for its annual public file reports and its mid-term report, where applicable, in accordance with the following criteria. If the employment unit includes a television station, the dates for the television station should ordinarily govern, in order to accommodate the statutory requirement for mid-term review of television licensees' EEO compliance. Apart from this situation, the renewal group that will determine the employment unit's EEO filing schedule should be selected so as to minimize the time between the date for placing the EEO public file report in the public file and the date for the filing of renewal applications for stations located in renewal groups that have different renewal filing dates than the renewal group used to determine the employment unit's EEO filing schedule.

89. There may also be circumstances in which an employment unit consists of television and radio stations that are part of the same renewal group, except that the renewal schedule for radio is one year earlier than the schedule for television. In these circumstances, the filing schedule for television stations should be used for purposes of filing the mid-term report (FCC Form 397) for the employment unit, if it is subject to the requirement to file a mid-term report. This report would cover all stations in the employment unit. Thus, there would be no need to file a separate mid-term report for the radio station(s). Because the date for placing the annual public file report in the public file is the same for both radio and television, the most recent public file report should be submitted with the renewal applications for both television and radio stations in the employment unit.

90. Renewal applications must still be filed separately for each station in accordance with the regular schedule for the station's renewal group. FCC Form 396, the EEO form submitted with the renewal application, discussed below, requires that the licensee attach the EEO public file report that is ordinarily placed in the public file simultaneously with the filing of the renewal application, as well as the report for the prior year. When a station is part of an employment unit that is using the EEO filing schedule for another renewal group, the station should submit with its FCC Form 396 the most recent EEO public file report prepared for the employment unit. If the licensee feels that the most recent EEO public file report does not accurately reflect the employment unit's EEO program as of the date of the filing of the renewal application, it should disclose any pertinent facts as part of the narrative statement also required by the FCC Form 396.

91. Low power television (LPTV) stations are subject to the broadcast EEO rule by virtue of a cross-reference contained in § 74.780 of the Commission's Rules. (Licensees of low power FM (LPFM) stations are subject to the Commission's prohibition against employment discrimination. *See* 47 CFR 73.881. LPFM licensees are not required to comply with any EEO program requirements. As we stated in the LPFM *R&O*, "[b]ecause we anticipate that the vast majority of this class of licensees will employ very few (if any) full-time, paid employees, we do not intend to require LPFM licensees to comply with any EEO program requirements we adopt in our rulemaking proceeding.") LPTV stations are not required to maintain a public file. As indicated in the *Recon*, we will not expect them to prepare an EEO public file report, although LPTV stations with five or more full-time employees must comply with the recordkeeping requirements. Class A television stations are subject to the requirement to maintain a public file and are fully subject to the EEO rule, including the requirement to prepare an EEO public file report.

92. *Enforcement.* We will adopt the enforcement process proposed in the *2NPRM*, which is similar to that adopted in the *R&O*, except that we are eliminating the requirement that broadcasters certify compliance with the EEO rule in the second and sixth years of their license term. We will conduct

mid-term review of television stations with five or more full-time employees and radio stations with more than ten full-time employees, using FCC Form 397. We treat television stations differently from radio stations because of the requirements of section 334 of the Communications Act which does not permit us to exempt television stations with five to ten full-time employees from the mid-term requirement.

93. We will also monitor EEO compliance through random audits and targeted investigations resulting from information received as to possible violations. Each year we will select for audit approximately five percent of all licensees in the radio and television services, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Initially, the inquiry may request the contents of the station's public file. Further inquiry or inquiries may be conducted requesting additional documentation of recruitment efforts that is not in the public file. Based on the circumstances of the case, the inquiry could potentially include, but not be limited to, (1) A request for data covering any period of the license term; and (2) interviews of witnesses, including any complainant and present or former station employees.

94. Licensees will be subject to a variety of sanctions and remedies for EEO rule violations or deficiencies. Some examples of violations or deficiencies might include: engaging in employment discrimination in hiring or promotions; failure to file a mid-term review when due; failure to file an EEO public file report when due; failure to file Form 396 when due; misrepresentation of outreach efforts or other information; non-responsiveness or evasion in responding to a written Commission inquiry; failure to recruit for all vacancies absent exigent circumstances; failure to widely disseminate information concerning vacancies for full-time positions; failure to analyze routinely the adequacy of the various program elements in achieving broad outreach to all segments of the community; failure to undertake the required Prong 3 menu options; and failure to notify organizations that request vacancy notices. Also, it may constitute a violation of the EEO rule if, based on all of the evidence, we determine that a licensee has attempted to evade our requirements through token or sham efforts.

95. We take the EEO rules and obligations we establish here very seriously, and fully expect broadcasters and MVPDs to do the same. We remind licensees that it is as true today as it was 20 years ago that a "documented pattern of intentional discrimination would put seriously into question a licensee's character qualification to remain a licensee." We intend to carefully monitor compliance with our EEO rules. Sanctions and remedies that may be issued by the Commission for deficiencies in licensees' EEO compliance include admonishments, reporting conditions, forfeitures, short term renewal of license, or designation for hearing for possible revocation of license or denial of renewal. The appropriate sanction or remedy will be determined on a case-by-case basis. Sanctions will be greater in cases involving recidivism, continuous EEO non-compliance, or intentional discrimination. In particular, if sufficiently egregious violations are found, we will not hesitate to designate for hearing.

96. We will also be taking steps to ensure that broadcasters, MVPDs, and the public are aware of and able to comply with the EEO rules and policies. First, we will continue to maintain an EEO page on the Commission's Web site. In addition, our Consumer & Governmental Affairs Bureau (CGB) will provide information to the public on the new rules adopted by the Commission. CGB will make a factsheet on the rules available to the public through our consumer centers and our Web site. Commission staff will continue to participate in conferences held throughout the country that deal with broadcast and MVPD EEO issues. Finally, as always, our EEO staff is available to answer more specific questions and provide informal guidance regarding the rules. We encourage the industry and the public to take advantage of these resources.

97. *Forms Relating to EEO Compliance.* We readopt the forms adopted in the *R&O*, incorporating the changes discussed above. Primarily, we eliminate the portion of the forms that provided for an election between Option A and Option B because our present rule does not provide for an election. We also will not reissue the Initial Election Statement, which required a licensee to choose between Option A and Option B. We are addressing here only forms relating to our EEO outreach requirements. As indicated, FCC Form 395–B, the Annual Employment Report, which is being deferred, is unrelated to the implementation and enforcement of our EEO program.

98. We readopt, with modifications, FCC Form 396, which is filed by broadcasters as part of their renewal applications. We will delete the Option A/Option B-election. The form as adopted by the *R&O* also required the broadcaster to certify that it complied with the EEO rule during the two-year period preceding the filing of the report; to attach a copy of its EEO public file for the preceding year; and to provide a narrative statement demonstrating how the station achieved broad outreach during the preceding two years. The licensee must still certify to the accuracy of the forms it submits to the Commission; it just need not draw a legal conclusion as to whether the facts it submits demonstrate compliance with our rules. We will modify the form to eliminate the certification requirement. We will require the submission of the EEO public file report due at the time of the filing of the Form 396 along with the form filed one year before that. This is because we allow two years for the performance of the Prong 3 menu options. We recognize that in some instances a station may have been sold during the prior two years. In that case, the licensee at the time of renewal need only submit EEO public file reports relating to its own operation of the station.

99. The version of Form 396 adopted by the *R&O* included the following question: "Have any complaints been filed before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station(s)?" In the *2NPRM*, we stated that the form required the reporting of "pending" discrimination complaints. We did not clarify the period of time to which the word "pending" referred, *e.g.*, pending at any time during the most recent license term or pending at the time a renewal application is filed. We will require the reporting of all complaints filed during the most recent license term, consistent with our past practice. This will avoid unnecessary litigation and involves little additional burden. Form 396 requests information concerning the disposition or current status of the complaint, and the Commission will consider complaints only to the extent they are deemed relevant.

100. FCC Form 396–A is to be used for applications for the construction of a new broadcast station or for the sale of an existing broadcast station. We will readopt this form but delete references to the Option A/Option B election.

101. We adopted in the *R&O* FCC Form 397, "Broadcast Statement of Compliance," which was to be submitted in the second, fourth, and sixth years of the license term for the

purpose of certifying whether the licensee's station employment unit complied with the EEO rule during the preceding two years. In the *2NPRM*, we proposed to use the Form 397 only for the purpose of filing mid-term reviews, renaming it the "Broadcast Mid-term Report." We will adopt this proposal. Form 397 will be filed by licensees subject to mid-term review. We will modify Form 397 to eliminate the reference to an election. In addition, consistent with our discussion concerning Form 396, we will eliminate the compliance certification requirement and instead require submission of EEO public file reports for the two years preceding the filing (unless the earlier report does not pertain to the current licensee because of a sale). Two groups of television stations would be required by our new rules to file mid-term reports in 2003: New Jersey and New York filings would be due by February 1, 2003, and Delaware and Pennsylvania filings would be due by April 1, 2003. Because of the extremely short time between the anticipated effective date of the rules and the filing dates, we will not require stations in these groups to file mid-term reports in 2003.

102. *Provisions for Small Stations and Small Markets.* The rule adopted by the *R&O* exempted from the outreach provisions (but not the nondiscrimination provisions) station employment units that had fewer than five full-time (30 hours per week or more) employees. As noted, a "station employment unit" referred to a station or group of commonly owned stations in the same market that shared at least one employee. We will include this exemption in our new rule. We also provided in the *R&O* that station employment units with five to ten full-time employees would be required to perform only two, rather than four, Prong 3 menu options every two years. We will incorporate this requirement in our new rule. In addition, we will extend it to certain small market stations. We further provided in the *R&O* that radio station employment units with five to ten full-time employees would be exempt from the mid-term review requirement. We did not extend this relief to television stations because of the requirements of section 334 of the Communications Act. We will include this exemption for radio in our new rule.

103. In the *2NPRM*, we asked whether we should expand the exemption for small stations to include employment units with ten or fewer employees. We also asked whether we should modify the requirement that stations with more than 10 full-time employees complete four menu options every two years. Smaller stations with five to 10 or fewer full-time employees are required to complete two menu options every two years. We further asked whether we should treat all stations with five or more full-time employees that are located in smaller markets like smaller stations. Having reviewed the record, we find no basis for increasing the pertinent exemptions, except that we find some modification warranted with respect to the menu option requirements applicable to stations in smaller markets.

104. With one exception, we find no basis in the record to provide additional exemptions from our rule beyond those referenced. First, we reject as unsupported in the record any suggestion that the rule we adopt today imposes unreasonable burdens on small broadcasters. As a general matter, the rule imposes minimal burdens. In addition, small broadcasters are permitted to perform fewer menu options, and most likely will have fewer hires, resulting in fewer records to keep and fewer job vacancies requiring recruitment under the rule. Further, as we found in the *R&O*, small stations provide entry-level opportunities in the broadcast industries and make up approximately ⅓ of the broadcast industry. If we were to exempt such a large number of stations from the EEO rule—stations that may provide entry level opportunities for people new to broadcasting—we would undermine the central purpose of our EEO rule. We decline to do so.

105. We find that it would be appropriate, to modify our Prong 3 menu option requirement for stations in smaller markets. We recognize that smaller markets may not have the resources in the community to support some of the activities contemplated in Prong 3. We did not address this problem in the *R&O* because small market stations that found the menu option requirement burdensome could elect to proceed under Option B. That alternative will not be available under our new rule. We will accordingly provide that small market stations will be required to perform only two, rather than four, menu options during a two year period.

106. We will define the scope of this exemption as extending to any station employment unit consisting solely of a station or stations licensed to a community that is located in a county that is outside of all metropolitan areas, as defined by OMB, or is located in a metropolitan area that has a population of fewer than 250,000 persons. This will operate to reduce requirements for stations in most markets below the 100 largest markets using definitional criteria that are readily ascertainable from government sources. (The most recent OMB definition of metropolitan areas is contained in OMB Bulletin No. 99–04 (June 30, 1999). *See http://www.whitehouse.gov/omb/inforeg/msa-bull99-04.html*. Metropolitan areas with a population of fewer than 250,000 are defined as Level C and D MSAs or primary MSAs (PMSAs). OMB Bulletin No. 99–04 may be used initially to define areas subject to this provision. OMB has adopted new metropolitan area standards and will announce definitions of areas based on the new standards and Census 2000 data in 2003. *Standards for Defining Metropolitan and Micropolitan Statistical Areas*, (65 FR 82228, December 27, 2000).)

107. In the *Recon*, we adopted a policy pursuant to which an owner who has a controlling interest (50 percent or greater voting control) in a licensee would not be considered a station employee for purposes of the EEO rule, even if he or she worked at the station. We concluded that such an owner's employment at the station would be more an incident of ownership rather than a normal employment relationship because the owner could not be in any normal sense hired or fired. We declined to extend this policy to lesser ownership interests because the circumstances pertaining to their employment might vary widely and we could not assume that the employment was primarily an incident of ownership. Fletcher, Heald & Hildreth, P.L.C. ("FHH"), on behalf of its clients, filed a petition for reconsideration, urging that owners with 20 percent or greater interests should not be treated as "employees" for purposes of the EEO rule. We will not consider owners holding a 20 percent or greater voting interest in a licensee as station "employees" for EEO purposes. This will be subject to the proviso, however, that no single owner has positive control (greater than 50 percent voting control) of the licensee. In that circumstance, the principal enjoying positive control would be in a position to determine whether other stockholders could be employed at the station, and only he or she could properly claim employment as an incident of ownership. Absent that circumstance, it is reasonable to believe that a 20 percent or greater owner's employment position is an incident of ownership. Someone who owns a 20 percent interest in a licensee company is not truly an

employee of the licensee, holding a position that would be subject to recruitment, and thus should be permitted to work at the station without first requiring outside recruitment. FHH suggests that we should, as a safeguard, require that the owners have made a capital contribution. We do not find this necessary. Legitimate ownership interests may exist that do not involve a capital contribution. In the event of alleged abuse of this exception, we will consider all relevant factors, including the extent of an asserted owner's capital contribution to determine the legitimacy of a claimed ownership interest.

3. MVPD EEO Program Requirements

a. Rules and Policies

108. We will adopt substantially the same outreach program, recordkeeping and reporting requirements for MVPDs, as we have for broadcasters. The only distinctions will arise in light of the specific requirements imposed by section 634 of the Communications Act. We monitor the EEO programs pursuant to annual reports which have contained employment and program data, as required by statute. We will be creating a new form that will contain only program data. As mentioned, we are deferring consideration of a new form for MVPDs that requires employment data. Because our review of MVPD EEO compliance is an annual review pursuant to section 634, we define the Prong 3 menu options requirement for MVPDs in terms of performing two initiatives annually for those with more than ten full-time employees or one initiative annually for those with six to ten full-time employees. With respect to the definition of "community" for the purpose of determining broad outreach, we are leaving the definition of "community" for this purpose to the reasonable good faith discretion of the entity concerned. We will apply the same policy to MVPDs. MVPDs should use pertinent criteria, including the location of the system, pertinent market definitions adopted by public agencies or commercial services, and requests for notices of job vacancies from locally-based community groups. They should also consider what areas actually produce job applicants. MVPDs should engage in broad outreach throughout the entire local community from which they can reasonably expect to elicit applicants, whether or not that community is defined by its franchise area.

109. MVPD compliance with the EEO requirements is monitored pursuant to annual reports filed by MVPDs: FCC Form 395–A (for cable operators) and FCC Form 395–M (for other MVPDs). The only substantive modification required by the new rules adopted today is the elimination of the Option A/Option B election. In addition, we will combine these forms. The two forms are virtually identical except for a section in the Form 395–A requiring cable operators to list the communities in which they operate. In view of the similarity of the two forms, we do not find any necessity for having separate forms for cable operators and other MVPDs. Both forms request information concerning the entity's EEO outreach program. In addition, both forms request information as to the gender and racial/ethnic composition of the entity's workforce, analogous to the broadcast Form 395–B. As in the broadcast context, the data concerning the entity's workforce is no longer pertinent to the administration of our EEO outreach requirements. We will adopt at this time a single form, FCC Form 396–C, which will include the portions of Forms 395–A and 395–M relating to EEO outreach, but not the portion eliciting data concerning the entity's workforce, for use by all MVPDs. We will consider the adoption of a new form for eliciting workforce data from MVPDs as part of the future *R&O* in which we will also address the broadcast Form 395–B.

C. Constitutional Issues

110. The court in *Association* upheld Option A of the EEO rule as constitutional because it found that broadcasters were not pressured to recruit minorities and women under Option A. The recruitment outreach provisions we are adopting in this *2R&O and 3rd NPRM* are the same in all material respects as the basic requirements of Option A. In enforcing the EEO rule, the Commission will not pressure employers to favor anyone on the basis of race, ethnicity, or gender. As a race and gender neutral regulation, the EEO rule we are adopting today raises no equal protection concerns.

V. Conclusion

111. In this *2R&O*, we adopt a new broadcast EEO rule and set of policies, and we amend our MVPD EEO rules and policies. We remain committed both to prohibiting discrimination in employment and requiring broad and inclusive outreach in recruitment by broadcasters and cable entities.

VI. Procedural Matters

112. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *2NPRM*. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the *NPRM*, including comments on the IRFA. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604, a Final Regulatory Flexibility Analysis ("FRFA") is contained in Appendix B.

113. *Paperwork Reduction Act of 1995 Analysis.* The actions herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to, and become effective upon, approval by the Office of Management and Budget as prescribed by the Act.

VII. Final Regulatory Flexibility Analysis

114. As required by the RFA, an IRFA was incorporated into the *2NPRM* in this proceeding. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the *2NPRM*, including comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Proposed Rule Changes

115. This *2R&O* adopts new equal employment opportunity (EEO) rules and policies for broadcasters and multi-channel video program distributors (MVPDs) consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *MD/DC/DE Broadcasters Association* v. *FCC*, 236 F.3d 13, *rehearing den.* 253 F.3d 732 (D.C. Cir. 2001), *cert. denied*, 122 S.Ct. 920 (2002) (*Association*). The Court therein found unconstitutional one of two options for achieving broad outreach provided by the broadcast EEO outreach requirements adopted in the *R&O*, and codified as § 73.2080 of the Commission's rules, 47 CFR 73.2080. The Court found the option invalid because it found that nonminority job applicants were less likely to receive notification of job openings under that recruitment option. The Court further found that the other option provided by the rule, although not invalid, could not be severed from the one unconstitutional option and therefore it vacated the entire rule.

B. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

116. One comment was filed specifically in response to the IRFA. The American Cable Association (ACA) proposes the following relief for smaller MVPDs serving fewer than 15,000 subscribers or, in the alternative, employing ten or fewer employees: an exemption from the EEO outreach requirements, streamlined recordkeeping and reporting requirements, and a streamlined FCC Form 395–A (Cable Television Annual Employment Report). ACA states that for many smaller companies, compliance with EEO outreach, recordkeeping, and reporting requirements imposes substantial administrative burdens and costs. ACA also filed these same comments regarding small MVPDs in response to the *2NPRM*. We note that the *2R&O* considers ACA's concerns and provides relief to small MVPD employment units.

C. Recording, Recordkeeping, and Other Compliance Requirements

117. The purpose of this rulemaking is to replace our prior EEO rule that was found in part to be unconstitutional. Hence, the recording, recordkeeping, and compliance requirements of the new rule will not exceed those under the former rule. We note that the Small Business Administration (SBA) approved our approach for small broadcast stations and small MVPDs under our former rule. Generally, no special skills will be necessary to comply with the requirements.

118. The *2R&O* requires that broadcasters and MVPDs recruit for all full-time job vacancies except in exigent circumstances, that some EEO materials be kept in the public inspection file, and that all broadcasters and MVPDs adhere to the EEO rules' general anti-discrimination provisions.

119. In addition, broadcasters and MVPDs must undertake two additional recruitment measures. The first recruitment measure requires broadcasters and MVPDs to provide notification of full-time job vacancies to any requesting organization if the organization is involved in assisting job seekers. Depending on the size or location of a station's staff, the second recruitment measure requires broadcasters to engage in at least four (for station employment units with more than ten full-time employees in larger markets) or two (for station employment units with five to ten full-time employees or if they are located in a small market) of the following menu options every two years: participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions; hosting of at least one job fair; co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities; participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues (including conventions, career days, workshops, and similar activities); establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment; participation in job banks, Internet programs, and other programs designed to promote outreach generally; participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting; establishment of training and mentoring programs designed to enable station personnel to acquire skills that could qualify them for higher level positions; participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting; sponsorship of at least two events in the community designed to inform members of the public as to employment opportunities in broadcasting; listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities; providing assistance to outside non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting; providing training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination; providing training to personnel of outside organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions; and participation in other activities designed by the station employment unit to further the goal of disseminating information about employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities. MVPD units in larger markets with more than ten full-time employees engage in at least two options from the recruitment measures menu every year and MVPD units with six to ten full-time employees or those located in small markets engage in at least one option every year.

120. Also, broadcasters and MVPDs must retain records to demonstrate that they have recruited for all full-time permanent positions. Such recordkeeping includes: listings of all full-time vacancies filled, listings of recruitment sources, the address/contact person/telephone number of each recruitment source, dated copies of advertisements and other documentation announcing vacancies, listings of those organizations which requested notification of vacancies, the total number of interviewees for each vacancy, the date and recruitment source of each hire, the number of interviewees referred by each recruitment source, and documentation showing proof of participation in menu options. Broadcasters' records must be maintained until grant of the renewal application for the term during which the hiring activity occurred. MVPDs would retain their records for a minimum of seven years. In order to lessen any burdens, records may be maintained in an electronic format, *e.g.*, by scanning pertinent documents into a computer format.

121. Stations and MVPDs must place annually the following EEO records in their local public inspection file: listings of full-time vacancies filled during the preceding year, recruitment sources used for each vacancy, the address/contact person/telephone number of each recruitment source, an indication of the organizations requesting notification, the total number of persons interviewed for full-time vacancies during the preceding year, the total number of interviewees referred by each recruitment source, a list of the recruitment source that referred each full-time hiree, and a brief description of the menu option items undertaken during the preceding year. Station units retain the materials in their file until final action has been taken on the station's next license renewal application, and cable entities retain their materials for a period of five years.

122. Most broadcasters must submit the contents of their station's EEO public inspection file to the FCC as part of their renewal application and midway through the license term for the Commission's mid-term review (for those subject to mid-term review), and MVPDs with six or more full-time employees submit copies of their EEO public inspection file to the Commission every five years. Broadcasters' submissions cover only the last two years of EEO activity. MVPDs' submissions cover only the last

year of EEO activity. Broadcasters must post their current EEO public file report on their web site, if they have one.

123. Also, broadcasters subject to mid-term review must file Form 397 (Broadcast Mid-Term Report) and place a copy of the Report in the public inspection file. Broadcasters must also place a copy of Form 396 (Broadcast EEO Program Report) and Form 396-A (Broadcast Model EEO Program Report for the construction or sale of a station) in the public inspection file.

124. We also note that we have provided relief to broadcast and MVPD entities located in small markets. While this is not specifically a small entity relief, this action also lessens compliance burdens.

D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

1. Definition of a "Small Business"

125. The new rules would apply to broadcast stations and MVPDs. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the [SBA] and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

126. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. Finally, "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The United States Bureau of the Census (Census Bureau) estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

2. Issues in Applying the Definition of a "Small Business"

127. We could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

128. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

129. With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

130. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

3. Estimates Based on Census Data

131. The rules to be adopted pursuant to this *2R&O* will apply to broadcast television and radio stations. The SBA defines a television broadcasting station that has no more than $12.0 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under other North American Industry Classification (NAICS) numbers.

132. There were 1,695 full-service television stations operating as of December 2001. According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total, that operated for the entire year. Of this total, 734 firms had annual receipts of $9,999,999.00 or less and an additional 71 had receipts of $10 million to $24,999,999.00. Thus, under this standard, the majority of firms can be considered small.

133. The SBA defines a radio broadcasting station that has no more than $6 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. Radio stations which are

separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Census Bureau data for 1997, there were 4,476 Radio Stations (firms), total, that operated for the entire year. Of this total 4,265 had annual receipts of $4,999,999.00 or less, and an additional 103 firms had receipts of $5 million to $9,999,999.00. Under this standard, the great majority of firms can be considered small.

134. The *2R&O* also amends EEO rules applicable to MVPDs. SBA has developed a definition of a small entity for cable and other program distribution, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes direct broadcast satellite services (DBS), multipoint distribution systems (MDS), and local multipoint distribution service (LMDS). According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year. Of this total, 1,180 firms had annual receipts of $9,999,999.00 or less, and an additional 52 firms had receipts of $10 million to $24,999,999.00. Under this standard, the majority of firms can be considered small.

135. *Cable Systems:* The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

136. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. We found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. Since we do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

137. *MDS:* MDS involves a variety of transmitters, which are used to relay programming to the home or office. The Commission has defined "small entity" for purposes of the 1996 auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business.

138. *LMDS:* The auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission reauctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the reauction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

139. *DBS:* Because DBS provides subscription services, it falls within the SBA-recognized definition of "Cable and Other Program Distribution." This definition provides that a small entity is one with $12.5 million or less in annual receipts. Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We neither request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would be considered a small business under the SBA definition.

140. An alternative way to classify small entities is by the number of employees. Based on available data, we estimate that in 1997 the total number of full-service broadcast stations with four or fewer employees was 5186, of which 340 were television stations. Similarly, we estimate that in 1997, 1900 cable employment units employed fewer than six full-time employees. Also, in 1997, 296 "MVPD" employment units employed fewer than six full-time employees. We also estimate that in 1997, the total number of full-service broadcast stations with five to ten employees was 2145, of which 200 were television stations. Similarly, we estimate that in 1997, 322 cable employment units employed six to ten full-time employees. Also, in 1997, approximately 65 MVPD employment units employed six to ten full-time employees.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

141. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

142. This *2R&O* sets forth the Commission's new EEO rules and procedures, and considers the significant alternatives presented in the comments. We have determined that our finalized rules fulfill our public interest goals while maintaining minimal

regulatory burdens and ease and clarity of administration.

143. The *2NPRM* proposed to exempt small staff stations from specific EEO recordkeeping and reporting requirements as had been the case under our previous EEO rule. Under our former EEO rule, station employment units with fewer than five full-time employees were exempt from the rule's outreach provisions; station employment units with five to ten full-time employees performed only two, rather than four, menu options every two years; and radio station employment units with five to ten full-time employees were exempt from the mid-term review requirement. In addition, MVPD employment units employing six to ten full-time employees performed only one menu option each year as opposed to the two options required otherwise. MVPDs with fewer than six full-time employees were not required to demonstrate compliance with the EEO program requirements. The *2R&O* adopts this same relief. Thus, the EEO rule does not impose unreasonable burdens on small broadcasters or MVPDs.

144. We provide this relief because entities with small staffs have limited personnel and financial resources to carry out EEO requirements. The exception for small businesses provides them with some relief of any recordkeeping and reporting costs. We believe that the relief to small broadcasters and MVPDs balances the importance of deterring discrimination and achieving broad outreach in broadcast and MVPD employment practices against the need to maintain minimal regulatory burdens.

145. The *2NPRM* asked whether the Commission should increase the number of employees below which broadcasters would be exempt from the EEO outreach requirements to include employment units with ten or fewer employees. We also asked whether to increase the threshold for the lesser number of menu options, or permit the lesser number for stations in smaller markets. As noted, we received one comment directly in response to the IRFA. In addition, we received a few general comments that are pertinent. As discussed in the *2R&O*, the National Association of Broadcasters (NAB) supports exempting stations with fewer than ten full-time employees. NAB explains that such stations face unique obstacles in complying with our rule because of a lack of personnel and resources, difficulties in competing with larger stations, and a lack of access to resources necessary to implement menu options. NAB also contends that stations in smaller markets face difficulties similar to those facing stations with fewer that ten full-time employees. The Association of Public Television Stations supports an exemption from the EEO rule for stations with ten or fewer employees because of the funding problems of small public television stations, especially those outside of top 100 markets, and difficulties experienced in attracting and retaining minority employees. The Local Television Group (LTVG) asks the Commission to exempt stations with fewer than 100 employees, in order to parallel Equal Employment Opportunity Commission rules. Minority Media and Telecommunications Council (MMTC), the National Organization for Women (NOW), American Women in Radio and Television (AWRT), the National Association for the Advancement of Colored People (NAACP), and the Lawyers' Committee for Civil Rights Under Law oppose an increase in the exemptions, citing primarily the opportunity for entry into the industry provided by small stations.

146. The ACA asks for an exemption from the EEO outreach requirements, streamlined recordkeeping and reporting requirements, and a streamlined FCC Form 395–A (Cable Television Annual Employment Report) for cable systems with fewer than 15,000 subscribers or, in the alternative, employing ten or fewer employees. ACA explains that the Commission previously provided relief to systems with fewer than 15,000 subscribers in the context of rate regulation, and that compliance with EEO outreach and recordkeeping imposes substantial administrative burdens for smaller cable companies.

147. Fletcher Heald & Hildreth, P.L.C. (FH&H) requests that the Commission adopt a policy that when an owner has a controlling interest (20% or greater voting control) in a licensee, he or she would not be considered a station employee for purposes of the EEO rule, even if he or she in fact worked at the station.

148. We recognize that smaller markets may not have the resources in the community to support many of the required menu options. Accordingly, the EEO rule adopted in the *2R&O* provides that small market systems will be permitted to perform only two, rather than four, menu options during a two-year period.

149. The EEO rule also will not consider owners holding a 20% or greater voting interest in a licensee as station employees for EEO purposes. This policy could assist small operators by reducing the number of full-time employees an entity would have when assessing its eligibility for a small entity exemption or other small business relief.

150. We find no basis in the record to provide any additional exemptions from our rule. Generalized claims as to the alleged burdens by commenters are unsupported by evidence. The rule we are adopting today does not impose unreasonable burdens on small entities. Nor does the rule impose hardships comparable to those involved in rate regulation. Further, as we found in the *R&O*, small entities provide much needed entry-level employment opportunities in the industry.

151. With respect to streamlining reporting/recordkeeping requirements, we will replace Form 395–A with a new form, the FCC Form 396–C. MVPD compliance with the EEO rule's requirements is monitored pursuant to annual reports filed by MVPDs which must be placed in an entity's public file. The Form 396–C requires information concerning the entity's EEO outreach program and not its workforce. We will consider the adoption of a new form eliciting workforce data in a future *R&O*.

152. In order to lessen any burdens, the *2R&O* does not require the retention of records of the recruitment sources of applicants as this may require additional efforts to contact applicants who did not provide the information in the application. Also, records may be conveniently maintained in an electronic format, *e.g.*, by scanning pertinent documents into a computer format.

Report to Congress

153. The Commission will send a copy of the *2R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *2R&O*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *2R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clause

154. Pursuant to the authority contained in sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554, *2R&O* is adopted, and part 73 and part 76 of the Commission's rules are amended. It is our intention in adopting these rule

changes that, if any provision of the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of the rules not deemed unlawful and the application of such rules to other persons or circumstances shall remain in effect to the fullest extent permitted by law.

155. The late-filed comments and reply comments in this proceeding are considered as part of the record in this proceeding.

156. Pursuant to the Congressional Review Act, the new rules and amendments will become effective either March 10, 2003, or upon receipt by Congress of a report in compliance with the Congressional Review Act, 5 U.S.C. 801, whichever is later, and the information collection contained in these rules will become effective March 10, 2003, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise. We will not require television broadcast licensees to file EEO mid-term reports in 2003.

157. FCC Forms 395A, 395B and 395M, and §§ 73.3612 of the Commission's rules, 47 CFR 73.3612 (Annual Employment Report) and § 76.1802 of the Commission's rules, 47 CFR 76.1802 (Equal Employment Opportunity) will remain suspended pending further action on workforce data collection issues.

158. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *2R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

159. MM Docket No. 98–204 will remain open for the limited purpose of considering the issues raised in the *3rd NPRM*, and to facilitate any additional proceedings upon further order of the Commission.

List of Subjects in 47 CFR Parts 73 and 76

Cable television, Equal employment opportunity.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.2080 is revised to read as follows:

§ 73.2080 Equal employment opportunities (EEO).

(a) *General EEO policy.* Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, Class A TV or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex. Religious radio broadcasters may establish religious belief or affiliation as a job qualification for all station employees. However, they cannot discriminate on the basis of race, color, national origin or gender from among those who share their religious affiliation or belief. For purposes of this rule, a religious broadcaster is a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity.

(b) *General EEO program requirements.* Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and nondiscrimination in every aspect of station employment policy and practice. Under the terms of its program, a station shall:

(1) Define the responsibility of each level of management to ensure vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

(c) *Specific EEO program requirements.* Under the terms of its program, a station employment unit must:

(1) Recruit for every full-time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Religious radio broadcasters who establish religious affiliation as a qualification for a job position are not required to comply with these recruitment requirements with respect to that job position or positions, but will be expected to make reasonable, good faith efforts to recruit applicants who are qualified based on their religious affiliation. Nothing in this section shall be interpreted to require a broadcaster to grant preferential treatment to any individual or group based on race, color, national origin, religion, or gender.

(i) A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to such recruitment sources, a station employment unit shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the station employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least four (if the station employment unit has more than ten full-time employees and is not located in a smaller market) or two (if it has five to ten full-time employees and/or is located entirely in a smaller market) of the following initiatives during each two-year period beginning with the date stations in the station employment unit are required to file renewal applications, or the second, fourth or sixth anniversaries of that date.

(i) Participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment;

(vi) Participation in job banks, Internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;

(viii) Establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for station personnel;

(x) Participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;

(xi) Sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;

(xiv) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) Provision of training to personnel of unaffiliated non-profit organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;

(xvi) Participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

(3) Analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.

(4) Periodically analyze measures taken to:

(i) Disseminate the station's equal employment opportunity program to job applicants and employees;

(ii) Review seniority practices to ensure that such practices are nondiscriminatory;

(iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;

(iv) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;

(v) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;

(vi) Where union agreements exist, cooperate with the union or unions in the development of programs to ensure all persons of equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and

(vii) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.

(5) Retain records to document that it has satisfied the requirements of paragraphs (c)(1) and (2) of this section. Such records, which may be maintained in an electronic format, shall be retained until after grant of the renewal application for the term during which the vacancy was filled or the initiative occurred. Such records need not be submitted to the FCC unless specifically requested. The following records shall be maintained:

(i) Listings of all full-time job vacancies filled by the station employment unit, identified by job title;

(ii) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies;

(iv) Documentation necessary to demonstrate performance of the initiatives required by paragraph (c)(2) of this section, including sufficient information to fully disclose the nature of the initiative and the scope of the station's participation, including the station personnel involved;

(v) The total number of interviewees for each vacancy and the referral source for each interviewee; and

(vi) The date each vacancy was filled and the recruitment source that referred the hiree.

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its web site, if it has one, an EEO public file report containing the following information (although if any broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station):

(i) A list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title;

(ii) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(iv) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(v) A list and brief description of initiatives undertaken pursuant to paragraph (c)(2) of this section during the preceding year.

(d) *Small Station Exemption.* The provisions of paragraphs (b) and (c) of this section shall not apply to station employment units that have fewer than five full-time employees.

(e) *Definitions.* For the purposes of this rule:

(1) A full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more.

(2) A station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

(3) A smaller market includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

(f) *Enforcement.* The following provisions apply to employment activity concerning full-time positions at each broadcast station employment unit (defined in this part) employing five or more persons in full-time positions, except where noted.

(1) All broadcast stations, including those that are part of an employment unit with fewer than five full-time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 396) with their renewal application. Form 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 396, information provided on its Form 396 should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a copy of their Form 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.

(2) The Commission will conduct a mid-term review of the employment practices of each broadcast television station and each radio station that is part of an employment unit of more than ten full-time employees four years following the station's most recent license expiration date as specified in § 73.1020. Each such licensee is required to file with the Commission the Broadcast Mid-Term Report (FCC Form 397) four months prior to that date. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 397, its Report should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station.

(3) If a station is subject to a time brokerage agreement, the licensee shall file Forms 396, Forms 397, and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered station(s) in determining the bases of Forms 396, Forms 397 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Forms 396, Forms 397, and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Forms 396, Forms 397, and EEO public file reports filed for its own station that is geographically closest to the brokered station.

(4) Broadcast stations subject to this section shall maintain records of their recruitment activity necessary to demonstrate that they are in compliance with the EEO rule. Stations shall ensure that they maintain records sufficient to verify the accuracy of information provided in Forms 396, Forms 397, and EEO public file reports. To determine compliance with the EEO rule, the Commission may conduct inquiries of licensees at random or if it has evidence of a possible violation of the EEO rule. In addition, the Commission will conduct random audits. Specifically, each year approximately five percent of all licensees in the television and radio services will be randomly selected for audit, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Upon request, stations shall make records available to the Commission for its review.

(5) The public may file complaints throughout the license term based on a station's Form 397 or the contents of a station's public file. Provisions concerning filing, withdrawing, or non-filing of informal objections or petitions to deny license renewal, assignment, or transfer applications are delineated in §§ 73.3584 and 73.3587–3589 of the Commission's rules.

(g) *Sanctions and Remedies.* The Commission may issue appropriate sanctions and remedies for any violation of this rule.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

3. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 560, 561, 571, 572, 573.

4. Section 76.75 is amending by revising the section heading and paragraphs (b), (f), (g), (h), (i), and (j); and removing paragraph (k), to read as follows:

§ 76.75 Specific EEO program requirements.

* * * * *

(b) Establish, maintain and carry out a positive continuing program of outreach activities designed to ensure equal opportunity and nondiscrimination in employment. The following activities shall be undertaken by each employment unit:

(1) Recruit for every full-time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Nothing in this section shall be interpreted to require a multichannel video programming distributor to grant preferential treatment to any individual or group based on race, national origin, color, religion, age, or gender.

(i) An employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to using such recruitment sources, a multichannel video programming distributor employment unit shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the multichannel video programming distributor employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least two (if the unit has more than ten full-time employees and is not located in a smaller market) or one (if the unit has six to ten full-time employees and/or is located, in whole or in part, in a smaller market) of the following initiatives during each twelve-month period preceding the filing of an EEO program annual report:

(i) Participation in at least two job fairs by unit personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least two events sponsored by organizations representing groups present in the community interested in multichannel video programming distributor employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community in acquiring skills needed for multichannel video programming distributor employment;

(vi) Participation in job banks, Internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in a scholarship program designed to assist students interested in pursuing a career in multichannel video programming communications;

(viii) Establishment of training programs designed to enable unit personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for unit personnel;

(x) Participation in at least two events or programs sponsored by educational institutions relating to career opportunities in multichannel video programming communications;

(xi) Sponsorship of at least one event in the community designed to inform and educate members of the public as to employment opportunities in multichannel video programming communications;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for multichannel video programming employment and/or other career development assistance pertinent to multichannel video programming communications;

(xiv) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) Provision of training to personnel of unaffiliated non-profit organizations interested in multichannel video programming employment opportunities that would enable them to better refer job candidates for multichannel video programming positions;

(xvi) Participation in other activities reasonably calculated by the unit to further the goal of disseminating information as to employment opportunities in multichannel video programming to job candidates who might otherwise be unaware of such opportunities.

* * * * *

(f) A multichannel video programming distributor shall analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis.

(g) Analyze on an ongoing basis its efforts to recruit, hire, promote and use services without discrimination on the basis of race, national origin, color, religion, age, or sex and explain any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(1) Where union agreements exist, cooperating with the union or unions in the development of programs to ensure all persons equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(2) Reviewing seniority practices to ensure that such practices are nondiscriminatory;

(3) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race, national origin, color, religion, age, or sex discrimination;

(4) Evaluating the recruitment program to ensure that it is effective in achieving a broad outreach to potential applicants.

(5) Utilizing media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion, age, or sex over another; and

(6) Avoiding the use of selection techniques or tests that have the effect of discriminating against qualified minority groups or women.

(h) A full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more.

(i) The provisions of paragraphs (b)(1)(ii), (b)(2), (c), and (f) of this section shall not apply to multichannel video programming distributor employment units that have fewer than six full-time employees.

(j) For the purposes of this rule, a smaller market includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

5. Section 76.77 is revised to read as follows:

§ 76.77 Reporting requirements and enforcement.

(a) *EEO program annual reports.* Information concerning a unit's compliance with the EEO recruitment requirements shall be filed by each employment unit with six or more full-time employees on FCC Form 396–C on or before September 30 of each year. If a multichannel video programming distributor acquires a unit during the twelve months covered by the EEO program annual report, the recruitment activity in the report shall cover the period starting with the date the entity acquired the unit.

(b) *Certification of Compliance.* The Commission will use the recruitment information submitted on a unit's EEO program annual report to determine whether the unit is in compliance with the provisions of this subpart. Units found to be in compliance with these rules will receive a Certificate of Compliance. Units found not to be in compliance will receive notice that they are not certified for a given year.

(c) *Investigations.* The Commission will investigate each unit at least once every five years. Employment units are required to submit supplemental investigation information with their regular EEO program annual reports in the years they are investigated. If an entity acquires a unit during the period covered by the supplemental investigation, the information submitted by the unit as part of the investigation shall cover the period starting with the date the operator acquired the unit. The supplemental investigation information shall include a copy of the unit's EEO public file report for the preceding year.

(d) *Records and inquiries.* Employment units subject to this subpart shall maintain records of their recruitment activity in accordance with § 76.75 to demonstrate whether they are in compliance with the EEO rules. Units shall ensure that they maintain records sufficient to verify the accuracy of information provided in their EEO program annual reports and the supplemental investigation responses required by § 76.1702 to be kept in a unit's public file. To determine compliance with the EEO rules, the Commission may conduct inquiries of

employment units at random or if the Commission has evidence of a possible violation of the EEO rules. Upon request, employment units shall make records available to the Commission for its review.

(e) *Public complaints.* The public may file complaints based on EEO program annual reports, supplemental investigation information, or the contents of a unit's public file.

(f) *Sanctions and remedies.* The Commission may issue appropriate sanctions and remedies for any violation of the EEO rules.

6. Section 76.1702 is revised to read as follows:

§ 76.1702 Equal employment opportunity.

(a) Every employment unit with six or more full-time employees shall maintain for public inspection a file containing copies of all EEO program annual reports filed with the Commission pursuant to § 76.77 and the equal employment opportunity program information described in paragraph (b) of this section. These materials shall be placed in the unit's public inspection file annually by the date that the unit's EEO program annual report is due to be filed and shall be retained for a period of five years. The file shall be maintained at the central office and at every location with six or more full-time employees. A headquarters employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multichannel video programming distributor that operates multiple units shall be maintained at the central office of the headquarters employment unit. The multichannel video programming distributor shall provide reasonable accommodation at these locations for undisturbed inspection of its equal employment opportunity records by members of the public during regular business hours.

(b) The following equal employment opportunity program information shall be included annually in the unit's public file, and on the unit's web site, if it has one, at the time of the filing of its FCC Form 396–C:

(1) A list of all full-time vacancies filled by the multichannel video programming distributor employment unit during the preceding year, identified by job title;

(2) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to § 76.75(b)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(3) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(4) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(5) A list and brief description of the initiatives undertaken pursuant to § 76.75(b)(2) during the preceding year, if applicable.

BILLING CODE 6712–01–P

Appendix—Forms

Note: The following appendix will not appear in the Code of Federal Regulations.

Federal Communications Commission
Washington, D. C. 20554

NOT Approved by OMB
3060-0120

BROADCAST EQUAL EMPLOYMENT OPPORTUNITY
MODEL PROGRAM REPORT

Legal Name of the Applicant		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
[redacted]	Facility ID Number	Call Sign

☐ Application for Construction Permit for New Station ☐ Application for Assignment of License

☐ Application for Transfer of Control

a. Service Type: ☐ AM ☐ FM ☐ TV ☐ Other (specify)

b. Community of License: City | State

INSTRUCTIONS

Applicants seeking authority to construct a new commercial, noncommercial or international broadcast station, applicants seeking authority to obtain assignment of the construction permit or license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discrimination in employment and related benefits on the basis of race, color, religion, national origin or sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, an applicant who proposes to employ five or more full-time employees must establish a program designed to ensure equal employment opportunity. This is submitted to the Commission as the Model EEO Program. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Guidelines for a Model EEO Program and a Model EEO Program are attached.

NOTE: Check appropriate box, sign the certification below and return to FCC:

☐ Station employment unit will employ fewer than 5 full-time employees; therefore no written program is being submitted.

☐ Station employment unit will employ 5 or more full-time employees. Our Model EEO Program is attached. (You must complete all sections of this form.)

I certify that the statements made herein are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed	Name of Respondent
Title	Date

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

FCC 396-A
October 2002

GUIDELINES TO THE MODEL EEO PROGRAM

The model EEO program adopted by the Commission for construction permit applicants, assignees, and transferees contains five sections designed to assist the applicant in establishing an effective EEO program for its station. The specific elements which should be addressed are as follows:

I. GENERAL POLICY

The first section of the program should contain a statement by the applicant that it will afford equal employment opportunity in all personnel actions without regard to race, color, religion, national origin or sex, and that it has adopted an EEO program which is designed to fully utilize the skills of qualified persons.

II. RESPONSIBILITY FOR IMPLEMENTATION

This section calls for the name (if known) and title of the official who will be designated by the applicant to have responsibility for implementing the station's program.

III. POLICY DISSEMINATION

The purpose of this section is to disclose the manner in which the station's EEO policy will be communicated to employees and prospective employees. The applicant's program should indicate whether it: (a) intends to utilize an employment application form which contains a notice informing job applicants that discrimination is prohibited and that persons who believe that they have been discriminated against may notify appropriate governmental agencies; (b) will post a notice which informs job applicants and employees that the applicant is an equal opportunity employer and that they may notify appropriate governmental authorities if they believe that they have been discriminated against; and (c) will seek the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and in the inclusion of nondiscrimination provisions in union contracts. The applicant should also set forth any other methods it proposes to utilize in conveying its EEO policy (e.g., orientation materials, on-air announcements, station newsletter) to employees and prospective employees.

V. RECRUITMENT

The applicant should specify the recruitment sources and other techniques it proposes to use to attract qualified job applicants. The purpose of the listing is to assist the applicant in developing specialized referral sources to ensure wide dissemination of vacancy information as job opportunities occur. Sources which subsequently prove to be nonproductive should not be relied on and new sources should be sought.

MODEL EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

I. GENERAL POLICY

It will be our policy to provide equal employment opportunity to all qualified individuals without regard to race, color, religion, national origin or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

It will also be our policy to promote the realization of equal employment opportunity through a positive, continuing program of specific practices designed to ensure the full realization of equal employment opportunity without regard to race, color, religion, national origin or sex.

To make this policy effective, and to ensure conformance with the Rules and Regulations of the Federal Communications Commission, we have adopted an Equal Employment Opportunity Program which includes the following elements:

II. RESPONSIBILITY FOR IMPLEMENTATION

Name/Title

will be responsible for the administration and implementation of our Equal Employment Opportunity Program. It will also be the responsibility of all persons making employment decisions with respect to the recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that our policy and program is adhered to and that no person is discriminated against in employment because of race, color, religion, national origin or sex.

III. POLICY DISSEMINATION

To ensure that all members of the staff are cognizant of our equal employment opportunity policy and their individual responsibilities in carrying out this policy, the following communication efforts will be made:

☐ The station's employment application forms will contain a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State or Federal agency if they believe they have been the victims of discrimination.

☐ Appropriate notices will be posted informing applicants and employees that the station is an Equal Opportunity Employer and of their right to notify an appropriate local, State or Federal agency if they believe they have been the victims of discrimination.

☐ We will seek the cooperation of unions, if represented at the station, to help implement our EEO program and all union contracts will contain a nondiscrimination clause.

☐ Other (specify)

IV. RECRUITMENT

To ensure that information concerning each full-time vacancy is widely disseminated, we propose to use the following list of recruitment sources consistent with the requirements of 47 C.F.R. Section 73.2080:

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 1 hour. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0120), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0120.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-0113

BROADCAST EQUAL EMPLOYMENT OPPORTUNITY PROGRAM REPORT

(To be filed with broadcast license renewal application)

(For FCC Use Only)
Code No.

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

TYPE OF BROADCAST STATION :

Commercial Broadcast Station

☐ Radio ☐ TV

Low Power TV

International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

List call sign and location of all stations included on this report. List commonly owned stations that share one or more employees. Also list stations operated by the licensee pursuant to a time brokerage agreement. Indicate on the table below which stations are operated pursuant to a time brokerage agreement. To the extent that licensees include stations operated pursuant to a time brokerage agreement on this report, responses or information provided in Sections I through IV should take into consideration the licensee's EEO compliance efforts at brokered stations, as well as any other stations, included on this form. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Call Sign	Facility ID Number	Type (check applicable box)	Location (city, state)	Time Brokerage Agreement (check applicable box)
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No

CONTACT PERSON IF OTHER THAN LICENSEE

Name			Street Address
City	State	Zip Code	Telephone No. ( )

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, a license renewal applicant whose station employment unit employs five or more full-time station employees must file a report of its activities to ensure equal employment opportunity. If a station employment unit employs fewer than five full-time employees, no equal employment opportunity program information need be filed. If a station employment unit is filing a combined report, a copy of the report must be filed with each station's renewal application.

A copy of this report must be kept in the station's public file. These actions are required to obtain license renewal. Failure to meet these requirements may result in sanctions or license renewal being delayed or denied. These requirements are contained in 47 C.F.R. Section 73.2080 and are authorized by the Communications Act of 1934, as amended.

DISCRIMINATION COMPLAINTS. Have any pending or resolved complaints been filed during this license term before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station(s)? ☐ Yes ☐ No

If so, provide a brief description of the complaint(s), including the persons involved, the date of the filing, the court or agency, the file number (if any), and the disposition or current status of the matter.

Does your station employment unit employ fewer than five full-time employees? ☐ Yes ☐ No
Consider as "full-time" employees all those permanently working 30 or more hours a week.

If your station employment unit employs fewer than five full-time employees, complete the certification below, return the form to the FCC, and place a copy in your station(s) public file. You do not have to complete the rest of this form. If your station employment unit employs five or more full-time employees, you must complete all of this form and follow all instructions.

CERTIFICATION

This report must be certified, as follows:
A. By licensee, if an individual;
B. By a partner, if a partnership (general partner, if a limited partnership);
C. By an officer, if a corporation or an association; or
D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	Name of Respondent
Title	Telephone No. (include area code)
Date	

The purpose of this document is to provide broadcast licensees, the FCC, and the public with information about whether the station is meeting equal employment opportunity requirements.

GENERAL POLICY

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, national origin, religion or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

RESPONSIBILITY FOR IMPLEMENTATION

A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME	TITLE

It is also the responsibility of all persons at a broadcast station making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that no person is discriminated against in employment because of race, color, religion, national origin or sex.

I. EEO PUBLIC FILE REPORT

Attach as an exhibit one copy of each of the EEO public file reports from the previous two years. Stations are required to place annually such information as is required by 47 C.F.R. Section 73.2080 in their public files.

Exhibit No.

II. NARRATIVE STATEMENT

Provide a statement in an exhibit which demonstrates how the station achieved broad and inclusive outreach during the two-year period prior to filing this application. Stations that have experienced difficulties in their outreach efforts should explain.

Exhibit No.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 1 hour, 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0113), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0113.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

NOTICE

SHOULD YOU NO LONGER OPERATE THIS EMPLOYMENT UNIT, PLEASE FURNISH THE CURRENT OPERATOR'S NAME, ADDRESS, DATE OF TRANSFER AND RETURN THE FORM 396-C IMMEDIATELY. CALL (202) 418-1450 TO OBTAIN FORMS FOR NEWLY ACQUIRED UNITS OR IF YOU HAVE ANY EEO QUESTIONS

RETURN THE COMPLETED FORM IN DUPLICATE INCLUDING ANSWERS TO THE SUPPLEMENTAL INVESTIGATION SHEET (SIS) IF APPLICABLE AS SOON AS POSSIBLE. FOR YOUR INFORMATION, THE UPPER RIGHT HAND CORNER OF THE FORM 396-C WILL BE MARKED WITH AN "X" FOR THOSE UNITS THAT MUST FILL OUT AN SIS. PURSUANT TO SECTION 76.1802 OF THE COMMISSION'S RULES, THE DUE DATE FOR FILING FORM 396-C IS SEPTEMBER 30TH OF EACH YEAR.

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
3060-0095/0574

INSTRUCTIONS FOR COMPLETING
FCC FORM 396-C

YOU ARE STRONGLY URGED TO CONSULT THE COMMISSION'S CABLE EEO RULES BEFORE COMPLETING THIS FORM
47 C.F.R. Section 76.71 et seq.

General Instructions

Supply the requested information for the unit. If the unit is to submit a Supplemental Investigation Sheet (SIS), one will be attached to the form and an "x" will appear in the brackets before "Supplemental Investigation Sheet Attached" located in the box "For FCC Use Only" on page 1 of the form. If the unit no longer exists due to consolidation with another unit, or is no longer under your control, attach as Exhibit A an explanation and proceed to Section V.

Section I

A. In addition to the unit operator's legal name, supply, if applicable, the name of the MSO owning or controlling the operator.

B. Supply the address to which you want the correspondence sent.

C. Supply the county and state of the unit's principal employment office.

D. A full-time employee is one who permanently works 30 or more hours per week.

E. Insert the payroll period in July, August or September used for this year's report.

F. Place an X in the appropriate brackets for each possible exhibit.

Section II

Submit as Exhibit A, a list of communities added or deleted from the unit using the format provided. To obtain this information, review the prior year's form for the unit, noting the communities then comprising the unit, and comparing that list with the names of the communities now comprising the unit.
(NOT APPLICABLE TO MVPD UNITS)

Section III

Carefully answer each of the nine (9) questions by checking either Yes or No. If the answer is No, attach as Exhibit B an explanation. The focus of question three is on whether cable units have engaged in broad and inclusive outreach. The Commission does not require the targeting of certain kinds of sources or organizations. With regard to question five, we clarify that efforts to seek out entrepreneurs should be broad enough to cover all segments of the community, and that no entity should be excluded on the basis of race, color, religion, national origin, age or gender. See 47 C.F.R. Section 76.75.

Section IV

You may attach as Exhibit C any additional information you believe useful in the FCC's evaluation of your EEO efforts. There is no requirement to provide such information.

Section V

Sign and date the form in the spaces provided. Also, print the name of the official signing as well as the title of that person. Return the original and one copy to the Commission by September 30th. Retain a copy for your files.

Supplemental Investigation Sheet (SIS)

If required, attach as Exhibits D, E, and F the job descriptions requested in Part I, the responses to the questions checked in Part II, and the EEO public file report requested in Part III.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPER REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested in this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will vary from 10 minutes to 1 hour, 15 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0095/0574), Washington D.C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember – you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0095/0574.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 95-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

FCC FORM 396-C

Approved by OMB
3060-0095

Submit the original and one copy by September 30:

Federal Communications Commission
Policy Division, Media Bureau
Washington, D. C. 20554

For FCC Use Only

Emp. Unit ID # _____

( ) Supplemental Investigation Sheet (SIS) Attached

SECTION I IDENTIFYING INFORMATION

A. Name of Operator:		
MSO Name:		
B. Employment Unit's Mailing Address		
City	State	Zip Code
C. County and State in which unit's employment office is located		

E. Pay Period Covered by this Report (inclusive dates)

D. Category of Respondent (check applicable box)

( ) Fewer than six (6) full-time employees during the selected payroll period: Complete Sections I, II and VIII

( ) Six (6) or more full-time employees during the selected payroll period: Complete ALL sections of the Form 395-A and the Supplemental Investigation Sheet, if attached

F. Attachments: (Check applicable boxes)

Not Applicable	Attached	Exhibit - For:
( )	( )	A-Section II
	( )	B-Section III
( )	( )	C-Section IV
( )	( )	D-SIS-Job Descriptions
( )	( )	E-SIS Narrative Responses
	( )	F-SIS EEO Public File Report

SECTION II COMMUNITY INFORMATION

System Communities Comprising Local Employment Unit			
Ident No.	Name of Community	Location (State)	Type

Review the list of communities served on the previous year's submission and attach as Exhibit A any additions or deletions using the format noted above. NOTE: APPLICABLE ONLY TO CABLE OPERATORS AND NOT TO OTHER MVPD UNITS.

Exhibit No. A

SECTION III EEO POLICY AND PROGRAM REQUIREMENTS

Check YES or NO to each of the following questions. If answer to any question below is NO, attach as EXHIBIT B an explanation.

Exhibit No. B

YES	NO		
( )	( )	1.	Have you complied with the outreach provisions of the FCC's Cable Equal Employment Opportunity Rule, 47 C.F.R. Section 76.75(b) during the twelve month period prior to filing this form?
( )	( )	2.	Do you disseminate widely your EEO Program to job applicants, employees, and those with whom you regularly do business?
( )	( )	3.	Do you contact organizations, media, educational institutions, and other potential sources of applicants for referrals whenever job vacancies are available in your organization?
( )	( )	4.	Do you undertake to offer promotions to positions of greater responsibility in a nondiscriminatory manner?
( )	( )	5.	To the extent possible, do you seek out entrepreneurs in a nondiscriminatory manner and encourage them to conduct business with all parts of your organization?
( )	( )	6.	Do you analyze the results of your efforts to recruit, hire, promote, and use services in a nondiscriminatory manner and use these results to evaluate and improve your EEO program?
( )	( )	7.	Do you define the responsibility of each level of management to ensure a positive application and vigorous enforcement of your policy of equal employment opportunity and maintain a procedure to review and control managerial and supervisory performance?
( )	( )	8.	Do you conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, age, or sex from your personnel policies and practices and working conditions?
( )	( )	9.	Do you conduct a continuing review of job structure and employment practices and maintain positive recruitment training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility?

SECTION IV ADDITIONAL INFORMATION

You may provide as Exhibit C any additional information that you believe might be useful in evaluating your efforts to comply with the Commission's EEO provisions. There is no requirement to provide additional data or information.

Exhibit No. C

This report must be certified as follows:

A By the individual owning the reporting system if individually owned;

B By a partner, if a partnership; or

C. By an officer, if a corporation or association.

I certify that to the best of my knowledge, information and belief, all statements contained in this report are true and correct

Signed	Title
Date	Name of Respondent
Telephone No. (include area code)	

9.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE (U.S. CODE, TITLE 47, SECTION 312(a)(1), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Give brief job descriptions for employees in the job categories specified below. The number specified in the box indicates the number of different job descriptions that are to be submitted for each category. Job descriptions should include the position title and a brief description of the major duties and responsibilities of the individual(s) in the position.

1. ☐	Officials and Managers	4. ☐	Sales Workers	7. ☐	Operatives (semi-skilled)
2. ☐	Professionals	5. ☐	Office and Clerical	8. ☐	Laborers (unskilled)
3. ☐	Technicians	6. ☐	Craft Workers (skilled)	9. ☐	Service Workers

Part II Inquiries Concerning EEO Program and Practices

Submit responses to the inquiries indicated by an "X." Responses should be brief, but must provide sufficient information to describe the employment unit's activity and efforts in the area of inquiry.

1. ☐ Describe the employment unit's efforts to comply with the outreach provisions of 47 C.F.R. Section 76.75(b) or (f).

2. ☐ Describe the employment unit's efforts to disseminate widely its equal employment opportunity program to job applicants, employees, and those with whom it regularly does business.

3. ☐ Name the organizations, media, educational institutions, and other recruitment sources used to attract applicants whenever job vacancies become available.

4. ☐ Explain the employment unit's efforts to promote in a nondiscriminatory manner to positions of greater responsibility.

5. ☐ Describe the employment unit's efforts to encourage entrepreneurs to conduct business in a nondiscriminatory manner with all parts of its operation and provide an analysis of the results of those efforts.

6. ☐ Report the findings of the employment unit's analysis of its efforts to recruit, hire and promote in a nondiscriminatory manner and explain any difficulties encountered in implementing its EEO program.

7. ☐ Describe the responsibility of each level of the employment unit's management with respect to application and enforcement of its EEO policy and explain the procedure for review and control of managerial and supervisory performance.

8. ☐ Describe the manner in which the employment unit conducts its continuing review of job structure and employment practices.

9. ☐ Other Inquiries:

Part III EEO Public File Report

Attach a copy of the EEO public file report from the previous year. Cable entities are required to place annually such information as is required by 47 C.F.R. Section 76.1702 in their public files.

EMP UNIT ID:

MSO NAME:
OPR NAME:

Federal Communications Commission
Washington, D.C. 20554

DRAFT
NOT Approved by OMB
3060-0922

BROADCAST MID-TERM REPORT

(For FCC Use Only)
Code No.

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
[redacted]	Facility ID Number	Call Sign

TYPE OF BROADCAST STATION :

Commercial Broadcast Station

☐ Radio ☐ TV

Low Power TV

International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

List call sign and location of all stations included on this statement. List commonly owned stations that share one or more employees. Also list stations operated by the licensee pursuant to a time brokerage agreement. Indicate on the table below which stations are operated pursuant to a time brokerage agreement. To the extent that licensees include stations operated pursuant to a time brokerage agreement on this report, responses or information provided in Sections I through III should take into consideration the licensee's EEO compliance efforts at brokered stations, as well as any other stations, included on this form. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Call Sign	Facility ID Number	Type (check applicable box)	Location (city, state)	Time Brokerage Agreement (check applicable box)
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No

FCC 397
September 2002

SEND NOTICES AND COMMUNICATIONS TO THE FOLLOWING NAMED PERSON AT THE ADDRESS INDICATED BELOW:

Name			Street Address
City	State	Zip Code	Telephone No. ( )

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, a televsion station employment unit that employs five or more full-time station employees must file a full and complete Broadcast Mid-Term Report. If a televsoin station employment unit employs fewer than five full-time employees, only the first two pages of this report need be filed.

A copy of this Mid-Term Report must be kept in the station's public file. Failure to meet these requirements may result in sanctions or remedies. These requirements are contained in 47 C.F.R. Section 73.2080 and are authorized by the Communications Act of 1934, as amended.

Does your station employment unit employ fewer than ten full-time employees if television or fewer than eleven full-time employees if radio? ☐ Yes ☐ No

If yes, you do not have to file this form with the FCC. However, you have the option to complete the certification below, return the form to the FCC, and place a copy in your station(s) public file. You do not have to complete the rest of this form. If your station employment unit employs five or more full -time employees,if television, or eleven or more full-time employees if radio, you must complete all of this form and follow all instructions.

CERTIFICATION

This report must be certified, as follows:

A. By licensee, if an individual;
B. By a partner, if a partnership (general partner, if a limited partnership);
C. By an officer, if a corporation or an association; or
D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	Name of Respondent
Title	Telephone No. (include area code)
Date	

GENERAL POLICY

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, national origin, religion or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

RESPONSIBILITY FOR IMPLEMENTATION

A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME	TITLE

It is also the responsibility of all persons at a broadcast station making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that no person is discriminated against in employment because of race, color, religion, national origin or sex.

MID-TERM REPORT

Television station employment units with five or more full-time employees and radio station employment units with more than ten full-time employees filing in the middle of the license term must attach a copy ofeach of the EEO public file reports from the previous two years. Stations are required to place annually such information as is required by 47 C.F.R. Section 73.2080 in their public files.

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FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0922), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0922.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

[FR Doc. 03–171 Filed 1–2–03; 11:55 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000629197–2192–03; I.D. 032900A]

RIN 0648–AN06

Atlantic Highly Migratory Species; Monitoring of Recreational Landings; Retention Limit for Recreationally Landed North Atlantic Swordfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend regulations governing Atlantic billfish and North Atlantic swordfish recreational fisheries to implement recommendations adopted at the 2000 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and enhance management programs for these species. This rule implements a mandatory recreational landings self-reporting system for Atlantic blue marlin, Atlantic white marlin, west Atlantic sailfish, and North Atlantic swordfish; establishes a recreational retention limit for North Atlantic swordfish; adds handlines as an authorized gear for North Atlantic swordfish; clarifies language concerning applicability of recreational retention limits for sharks, yellowfin tuna, and North Atlantic swordfish; clarifies language regarding the Billfish Certificate of Eligibility (COE); and makes the criterion for determining the size and/or size class the same for both vessels commercially permitted for swordfish and recreational vessels. In addition, NMFS will promote voluntary use of circle hooks within the recreational swordfish fishery via an outreach program. The intent of these actions is to improve monitoring and conservation of overfished Atlantic billfish and North Atlantic swordfish stocks.

DATES: Effective March 2, 2003.

ADDRESSES: Copies of the supporting documents including the Environmental Assessment/Regulatory Impact Review (EA/RIR) may be obtained from the Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. The EA/RIR may also be viewed on the Highly Migratory Species (HMS) Management Division website at *www.nmfs.noaa.gov/sfa/hmspg.html*. Send comments on any ambiguity or unnecessary complexity arising from the language in this final rule to the same address. Comments regarding the collection of information requirements contained in the final rule should be sent to: the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer.)

FOR FURTHER INFORMATION CONTACT: Russell Dunn or Rick Pearson, 727–570–5447.

SUPPLEMENTARY INFORMATION: The background and rationale for this final rule were contained in the preamble to the proposed rule published in the **Federal Register** on December 26, 2001 (66 FR 66386), and are not repeated here. Additional background is contained in the EA/RIR for this action (see **ADDRESSES**).

This final rule revises 50 CFR 635.5 to establish an enhanced monitoring program for non-tournament recreational landings of Atlantic sailfish, blue and white marlin, and swordfish through a self-reporting method based on a toll-free telephone call-in system. North Carolina and Maryland are exempted from reporting non-tournament billfish/swordfish landings since these states have modified their large pelagic/bluefin tuna catch card reporting programs to include these species. To avoid duplication, landings reported through a registered HMS tournament are exempt from the telephone call-in requirement.

This final rule also revises regulations at 50 CFR 635.22 to implement a recreational retention limit for swordfish of one swordfish per person, up to three swordfish per vessel, per trip; revises 50 CFR 635.21(d)(4) to include handlines as authorized gear in the recreational swordfish fishery to clarify the consolidated regulatory text; revises 50 CFR 635.22 to apply the daily recreational retention limits for all HMS species to vessels that are HMS Charter/Headboat (CHB) permit holders; revises 50 CFR 635.31 to clarify the consolidated regulatory text in the Billfish COE regulations; and revises 50 CFR 635.20(a) to apply the same standard of measurement to both recreational vessels and commercial vessels that have been issued a limited access swordfish permit.

Comments and Responses

NMFS held three public hearings and received written comments during the comment period on the proposed rule. Public hearings were held in Mobile, AL, on January 14, 2002; in Manteo, NC, on January 22, 2002; and in Ft. Lauderdale, FL, on January 23, 2002. Comments were submitted by recreational and commercial organizations, state agencies, conservation groups, and the general public. All comments were considered and responded to as follows:

Mandatory Self-reporting Call-in system

Comment 1: Several commenters supported the call-in system, but some raised concerns about verifying the validity of reports and enforcement of reporting.

Response: NMFS is implementing the call-in system because it provides a system to collect non-tournament billfish/swordfish landings reports (patterned after the bluefin tuna call-in reporting system) and it closes a gap in data collection when applied in concert with other programs. Also see response to comment 3.

Comment 2: One fishing group representative supported use of a call-in system for private recreational fishermen only, and using logbooks for CHB vessels.

Response: Owners of HMS Angling permitted vessels and CHB operators are responsible for reporting all non-tournament billfish/swordfish landings because not all CHB are selected to submit logbooks as specified under 50 CFR 635.5(a). Those CHB operators that are selected to submit logbooks will also have to report non-tournament billfish/swordfish landings through the call-in system. NMFS will examine response rates and work with vessel operators to reduce the reporting burden and avoid duplication.

Comment 3: Several commenters did not support the call-in system and expressed concern that there was no way to verify false reports or ensure that all non-tournament catches were reported.

Response: In the initial call-in, the caller will be asked by the automated system for the caller's phone number. NMFS personnel will then call back every angler as part of the overall system to identify the catch by boat or documentation number and avoid duplicate reporting. During the call back, the angler will be given a confirmation number. To ensure that catches are reported, NMFS will inform the public of the reporting requirement. For example, NMFS will advertise the call-in number in angler publications and distribute fliers to ports where billfish and swordfish have historically been landed, and will publicize that failure to report is unlawful.

Comment 4: Several comments, including one from a representative from a fishing club and another from a

representative of a conservation group, expressed concern that the call-in system would adversely affect goodwill existing between fishermen and scientists by imposing additional governmental paperwork. The conservation group representative suggested that NMFS duplicate the Gulf of Mexico RBS system throughout the Atlantic and implement a landing tag system to better meet international requirements.

Response: The RBS collects tournament data in the Gulf of Mexico, Atlantic, and Caribbean. The RBS at one time (before 1994) systematically sampled non-tournament sites; however, currently RBS only collects tournament data. Non-tournament data is voluntarily phoned into the RBS and these callers will be referred to the non-tournament call-in system. With this action, NMFS is attempting to get a census of non-tournament billfish/swordfish landings.

Comment 5: Several commenters stated that the call-in system was too expensive to operate, too time consuming for NMFS to manage, has no practical utility, and is not enforceable.

Response: NMFS considers this the least expensive of all the measures considered. The toll-free line already exists and the estimated number of calls are expected to be within the capacity of the system. The program is patterned after the bluefin tuna call-in reporting system. The call-in will be enforced as all fisheries management rules are enforced. In lieu of the call-in system, anglers landing billfish or swordfish in states that have elected and been approved by NMFS to conduct their own alternative recreational catch reporting program, which is allowed under 50 CFR 635.5(c)(3), will follow their states procedures for reporting. North Carolina and Maryland have chosen, with NMFS approval, to modify their large pelagic/bluefin tuna catch card reporting programs to include billfish and swordfish for reporting purposes.

Recreational Retention Measures of North Atlantic Swordfish

Comment 1: Several commenters, which included a representative from a fishing club and two national conservation groups, supported the swordfish retention limit but expressed concern about lack of law enforcement for the sale of recreationally caught swordfish.

Response: NMFS implements this provision because it is easier to enforce a retention limit than a sale restriction. In addition, NMFS believes a retention limit will reduce the number of recreationally landed swordfish that are available for sale. Through the outreach program, NMFS will remind the public that sale of recreationally landed swordfish is prohibited.

Comment 2: Several commenters, which included a representative for a sport fishermen association, noted that one swordfish per vessel per trip would have negative impacts on the CHB industry and suggested that the vessel limit be increased to accommodate more than one angler on a single vessel.

Response: NMFS has modified the final action to minimize the potential impacts on CHB operations which deal with multiple clients. The final action of one swordfish per person, up to three swordfish per vessel, per trip will accommodate multiple persons aboard a single vessel and should more closely reflect current catch patterns in this re-emerging fishery. Anecdotal information indicates that recreational catches of swordfish tend to be clustered in that several trips may not catch any swordfish while a few trips may catch several swordfish. Since not all trips are likely to be successful, NMFS expects that, on average, the three fish per vessel maximum limit will not be reached. The most recent stock assessment of North Atlantic swordfish indicates that the stock is rebuilding quickly and that current catch rates are not impeding stock recovery. As the final action should more closely reflect current catch patterns, increasing the swordfish retention limit should not impact the swordfish stock recovery. Additionally, the incidental swordfish catch quota has not been filled to date so the United States has quota available to accommodate increased landings in the recreational fishery. Therefore, NMFS has modified this portion of the rule to allow the landing of one swordfish per person, up to three swordfish per vessel, per trip.

Comment 3: Several commenters stated that this was an allocation matter, not a conservation measure.

Response: The retention limit is intended to prevent uncontrolled expansion of a re-emerging fishery and discourage the illegal sales of recreationally landed swordfish. Uncontrolled expansion of the swordfish recreational fishery could result in excess mortality, particularly on juvenile fish, that could impede stock recovery. NMFS remains concerned that the continued recovery of swordfish is sensitive to overharvests and excessive mortality of juvenile fish and the re-emerging recreational swordfish fishery off Florida occurs in a swordfish nursery area. Also see response to comment 1 above under this section.

Comment 4: A mass mailing from an organized recreational anglers group objected to the retention limit, stating that the fishery was wrongly characterized as a recent fishery but indeed that it is an historic (not a recent) incidental fishery and there was no scientific basis for the one swordfish limit.

Response: NMFS did not intend to imply in the Environmental Assessment (EA) that the fishery was new but that catching juvenile swordfish by recreational fishermen is likely increasing. In the Purpose for Action, the EA states: "With the implementation of the ICCAT North Atlantic swordfish rebuilding program and the recent closure of nursery waters off the east coast of Florida to pelagic longline fishing activities (August 1, 2000, 65 FR 47214; February 5, 2001, 66 FR 8903), further increases in recreational landings of North Atlantic swordfish, particularly juveniles, is likely to occur along the U.S. Atlantic coast." Based on the large size of recreationally landed swordfish (50–200+ pounds), which cannot be sold commercially, NMFS considered a one fish per vessel limit to be reasonable for swordfish for personal consumption. However, based on comments that the proposed retention limit may impact CHB operations and to better reflect current catch patterns in this fishery, NMFS has modified the swordfish retention limit in the final action.

Comment 5: Several commenters wanted recreational vessels to have the same option as the commercial vessels to dress the swordfish at sea.

Response: NMFS has made the requested change to afford recreational fishermen the same latitude for at-sea processing as commercially permitted vessels. NMFS proposed to make the lower jaw fork length (LJFL) measurement the sole criterion for recreationally landed swordfish because recreational fishermen typically do not process fish at sea as well as the ability to measure the LJFL on a fish while it's still alive to determine if it meets the minimum size. However, due to public comment that recreational fishermen would like the latitude to process swordfish at sea in order to ice the carcass more thoroughly, NMFS modified the final action so that the LJFL measurement will apply when the lower jaw and tail are intact. If either the tail or lower jaw is missing, the cleithrum to keel (CK) measurement or weight standard will apply in all cases.

Changes from the Proposed Rule

In response to comments received during the comment period and to clarify regulatory language, the following changes were made to the proposed rule (December 26, 2001, 66 FR 66386):

In § 635.5 (c), a lead-in paragraph was added to explain angler reporting responsibility and the wording was changed in 635.5 (c)(3) to make the intent of alternative reporting more easily understood.

In § 635.20(a), the proposed regulatory text has been amended to apply the same standard of measurement and/or size class to both recreational and commercial North Atlantic swordfish landings.

In § 635.22 (f), one North Atlantic swordfish per vessel per trip was changed to one North Atlantic swordfish per person, up to three North Atlantic swordfish per vessel, per trip.

In § 635.30(d), the proposed regulatory text has been withdrawn so that recreational vessels are not required to maintain North Atlantic swordfish with its head, fins, and bill intact through offloading.

In § 635.71, paragraph (b)(6) was revised to show that BFT reporting is now under § 635.5(c)(1) or (3) instead of § 635.5(c), paragraph (c)(6) was added to reflect changes in § 635.5 that mandated recreational self-reporting, paragraph (e)(14) was added to reflect changes in § 635.22(f) implementing a retention limit for recreationally landed North Atlantic swordfish, and paragraph (e)(15) was added to reflect changes in § 635.5(c)(2) and (3) on North Atlantic swordfish reporting. Some of these changes were necessary because the prohibitions section was omitted in the proposed rule. These changes do not alter the intent of the proposed rule.

Finally, several changes were made to conform with regulatory changes made in another final rule that published on December 18, 2002 (67 FR 77434).

Classification

This rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. The Assistant Administrator for Fisheries, NOAA (AA), has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries, and are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel of Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. NMFS received no comments during the comment period on the proposed rule that would change that conclusion. However, some CHB operators raised a concern during the public comment period with regard to the one swordfish per vessel retention limit. To respond to this concern and better reflect current catch patterns, NMFS modified the final rule to provide a one swordfish per person, up to three swordfish per vessel, per trip limit. This modification does not alter the agency's prior conclusion of no significant economic impact on a substantial number of small entities.

This final rule will apply to all participants in the recreational Atlantic marlin and North Atlantic swordfish fisheries, all of which are considered small entities. The Billfish Fishery Management Plan estimated that there were 7,915 U.S. tournament billfish anglers in the western Atlantic in 1989. A 1992 inventory of 359 billfish tournaments indicated an average expenditure of $2,147 per angler per trip (including tournament fees), or $4,242 for each fish caught, corresponding to $32,382 for each billfish landed. Swordfish are not generally included in billfish tournament prize categories and non-tournament recreational catch data are not currently systematically collected but may be frequent.

Because of the large size of most recreationally landed swordfish, the retention limit in this final action should be sufficient for swordfish intended for personal consumption, even on vessels carrying multiple anglers. Recreationally landed swordfish cannot be sold commercially, therefore no significant economic impacts are anticipated for individual anglers. The modified retention limit should also minimize any potential impacts on CHB operators. An increase in the vessel trip limit will more accurately reflect recent catch patterns in the fishery and, since many trips are unsuccessful, on average, the three swordfish per vessel limit is not expected to be reached. The swordfish fishery is a rare event fishery characterized by clustered catch rates in which several trips may result in no swordfish catches and a few trips may catch several swordfish. The call-in system takes less than 3 to 5 minutes for each no-cost report and an additional 3 to 5 minutes for a confirmation call-back, thus no significant economic impacts are anticipated.

NMFS prepared an Environmental Assessment for this rule that describes impacts on the human environment and determined that no significant impacts would result.

This final rule is consistent with the Endangered Species Act. On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the ESA. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. NMFS issued a final rule on July 9, 2002 (67 FR 45393), to implement the reasonable and prudent alternative required by the BiOp. The fishing activities conducted pursuant to this rule will not affect listed species in any manner not already considered in the BiOp because these actions primarily address reporting requirements and are not expected to alter fishing practices or fishing effort in any way not previously considered.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0446. Public reporting burden for this collection of information is estimated to average 5 minutes per initial reporting call and 5 minutes per confirmation callback, and 5 minutes to fill out a catch reporting card (for those pilot programs conducted under state reporting systems). This action also repeats collection-of-information requirements that have been approved by OMB under control number 0648–0216. Public reporting burden for this collection of information is 20 minutes to prepare a billfish COE and 2 minutes for recordkeeping by subsequent purchasers of the billfish. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for the reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be

subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: December 23, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.5, paragraph (c) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(c) *Anglers.* All bluefin tuna, billfish, and North Atlantic swordfish non-tournament landings must be reported as specified under paragraphs (c)(1) or (c)(2) of this section, unless an alternative recreational catch reporting system has been established as specified under paragraph (c)(3) of this section. Tournament landings must be reported as specified under paragraph 635.5(c) of this section.

(1) *Bluefin tuna.* The owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all BFT landings under the Angling category quota designated at § 635.27(a) through the NMFS automated catch reporting system within 24 hours of the landing. Such reports may be made by calling 1–888–872–8862 or by submitting the required information over the Internet at: *www.nmfspermits.com.*

(2) *Billfish and North Atlantic Swordfish.* Anglers must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, Atlantic sailfish and North Atlantic swordfish, including those landed on a charter/headboat, to NMFS by calling 1–800–894–5528 within 24 hours of the landing. For telephone reports, a contact phone number must be provided so that NMFS can call the angler back for follow up questions and to provide a confirmation of the reported landing. The landing telephone report has not been completed unless the angler has received a confirmation number from a NMFS' designee.

(3) *Alternative recreational catch reporting.* Alternative recreational catch reporting procedures may be established by NMFS with cooperation from states which may include such methodologies as telephone, dockside or mail surveys, mail in or phone-in reports, tagging programs, catch cards, or mandatory check-in stations. A census or a statistical sample of persons fishing under the recreational fishing regulations of this part may be used for these alternative reporting programs (after the programs have received Paperwork Reduction Act approval from OMB). Persons or vessel owners selected for reporting will be notified by NMFS or by the cooperating state agency of the requirements and procedures for reporting recreational catch. Each person so notified must comply with those requirements and procedures. Additionally, NMFS may determine that recreational landing reporting systems implemented by the states, if mandatory, at least as restrictive, and effectively enforced, are sufficient for recreational landing monitoring as required under this part. In such case, NMFS will file with the Office of the **Federal Register** for publication notification indicating that compliance with the state system satisfies the reporting requirements of paragraph (c) of this section.

* * * * *

3. In § 635.20, paragraph (a) is revised to read as follows:

§ 635.20 Size limits.

(a) *General.* The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas for a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4. The LJFL will be the sole criterion for determining the size of whole (head on) North Atlantic swordfish for a vessel that has not been issued a limited access North Atlantic swordfish permit under § 635.4. If the head or tail of an North Atlantic swordfish has been removed prior to or at the time of landing, the CK or minimum weight standard shall be applied in all cases.

* * * * *

4. In § 635.21, paragraph (d)(4)(iv) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(d) * * *

(4) * * *

(iv) Except for persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

5. In § 635.22, paragraphs (a), (c), and (d) are revised, and paragraphs (e) and (f) are added to read as follows:

§ 635.22 Recreational retention limits.

(a) *General.* Atlantic HMS caught, possessed, retained, or landed under these recreational limits may not be sold or transferred to any person for a commercial purpose. Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic EEZ, to a North Atlantic swordfish taken from or possessed in the Atlantic Ocean, and to bluefin and yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and for the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

* * * * *

(c) *Sharks.* One shark from either the large coastal, small coastal, or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(e), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark per person may be possessed on board a vessel. No prohibited sharks listed in table 1(d) of appendix A to this part may be retained. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued a limited access vessel permit under § 635.4 for Atlantic sharks. If an Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks may be applied to persons aboard a vessel issued an Atlantic shark LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire trip.

(d) *Yellowfin tuna.* Three yellowfin tunas per person per day may be

retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel issued an Atlantic Tunas vessel permit under § 635.4. The recreational retention limit for yellowfin tuna applies to persons, including captain and crew, aboard a vessel that has been issued an Atlantic HMS Charter/Headboat permit only when the vessel is engaged in a for-hire trip.

(e) *Bluefin tuna.* Refer to § 635.23 for Atlantic bluefin tuna recreational retention limits.

(f) *North Atlantic swordfish.* One North Atlantic swordfish per person up to three per vessel per day may be retained. Regardless of the length of a trip, no more than the daily limit of North Atlantic swordfish may be possessed on board a vessel. The recreational retention limit for North Atlantic swordfish applies to a person who fishes in any manner, except to a person aboard a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4.

6. In § 635.31, paragraph (b)(2)(ii) is revised and paragraph (b)(3) is added to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(b) * * *

(2) * * *

(ii) It is accompanied by a Billfish Certificate of Eligibility (COE) form, obtained from NMFS, or its equivalent that documents that the fish was harvested from other than the Atlantic Ocean management unit.

(A) The Billfish COE required under this section must indicate, in English, the name and homeport of the harvesting vessel, and the date and port of offloading. Only the purchaser of the billfish from the harvesting vessel must complete this information.

(B) The Billfish COE must be signed and dated by each dealer in possession of the product throughout the chain of custody up to but not including the consumer. This signature indicates a declaration that the billfish were not harvested from the management unit.

(C) A Billfish COE may refer to billfish taken from only one harvesting vessel. If a shipment contains billfish taken from more than one vessel, a separate billfish COE must accompany the shipment for each harvesting vessel.

(D) A model Billfish COE can be obtained by contacting the Division Chief. An equivalent form may be used provided it contains all of the information required under this section.

(3) For the purposes of this paragraph, a dealer or seafood processor means any individual, other than a consumer, who engages in any activity, other than fishing, of industry, trade, or commerce, including but not limited to the buying or selling of a regulated species or parts thereof and activities conducted for the purpose of facilitating such buying and selling.

* * * * *

7. In § 635.71, paragraph (b)(6) is revised and paragraphs (c)(6), (e)(14), and (e)(15) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(b) * * *

(6) As an angler, fail to report a BFT, as specified in

§ 635.5(c)(1) or (3).

* * * * *

(c) * * *

(6) As an angler, fail to report a billfish, as specified in § 635.5(c)(2) or (3).

* * * * *

(e) * * *

(14) Exceed the recreational catch limit for North Atlantic swordfish, as specified in § 635.22(f).

(15) As an angler, fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (3).

[FR Doc. 03–275 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011219306–2283–02; I.D. 110501A]

RIN 0648–AM44

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Observer Coverage Requirements for Vessels and Shoreside Processors in the North Pacific Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend regulations governing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to refine observer coverage requirements and improve support for observers. This action is intended to ensure continued collection of high quality observer data to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs) and to promote the goals and objectives contained in those FMPs.

DATES: Effective on February 5, 2003.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this regulatory action and the 1996 Environmental Assessment (EA) RIR/FRFA prepared for the Interim North Pacific Groundfish Observer Program and the RIR/FRFAs for the subsequent extensions of the Interim North Pacific Groundfish Observer Program may also be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Management Area (BSAI) in the Exclusive Economic Zone under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council adopted and NMFS implemented the Interim Groundfish Observer Program (Interim Program) in 1996, which superseded the North Pacific Fisheries Research Plan (Research Plan). The requirements of the 1996 Interim Program were extended through 1997 (61 FR 56425, November 1, 1996), again through 1998 (62 FR 67755, December 30, 1997), again through 2000 (63 FR 69024, December 15, 1998), and extended through 2002 under a final rule published December 21, 2000 (65 FR 80381). The program was extended again through 2007 by way of a final rule published on December 6, 2002 (67 FR 72595). The Interim Program provides the framework for the collection of data by observers to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Further, it authorizes mandatory observer coverage requirements for vessels and shoreside processors and establishes vessel,

processor, and contractor responsibilities relating to the Observer Program. NMFS intends the Interim Program to be effective until a long-term program is developed and implemented that addresses several current concerns. These concerns include data integrity, observer compensation, working conditions for observers, and equitable distribution of observer costs.

NMFS is working with the Council and the Council's Observer Advisory Committee (OAC) to address the above concerns and others through development of new options for an alternative infrastructure for the Observer Program.

A description of the regulatory provisions of the Interim Groundfish Observer Program was provided in the proposed and final rules implementing this program (61 FR 40380, August 2, 1996; 61 FR 56425, November 1, 1996, respectively) as well as the proposed and final rules extending this program through 1998 and again through 2000 (62 FR 49198, September 19, 1997; 62 FR 67755, December 30, 1997; 63 FR 47462, September 8, 1998; and 63 FR 69024, December 15, 1998, respectively).

A proposed rule to amend regulations governing observer coverage requirements for vessels and shoreside processors in the North Pacific Groundfish Fisheries was published in the **Federal Register** on April 2, 2002 (67 FR 15517), for a 30–day public review and comment period that ended on May 1, 2002. NMFS received 2 letters of comment on the proposed rule which are summarized and responded to in Response to Comments, below.

This final rule addresses concerns about (1) shoreside and stationary floating processor observer coverage; (2) shoreside processor observer logistics; (3) observer coverage requirements for vessels fishing for groundfish with pot gear; and (4) confidentiality of observer personal information.

Shoreside or stationary floating processor observer coverage. New regulations will maintain the current monthly observer coverage periods at shoreside or stationary floating processors based on monthly landings projections. However, during a month when a directed fishery for pollock or Pacific cod closes, a shoreside or stationary floating processor with 100–percent coverage requirements that received pollock or Pacific cod from the fishery that closed in that given month would have the option to reduce observer coverage to 30–percent coverage requirements for the remainder of that month under certain conditions. These conditions are: (1) the shoreside or stationary floating processor must maintain observer coverage for 30 percent of all days that groundfish are received or processed for the remainder of that month; and (2) groundfish landings received by the shoreside or stationary floating processor may not exceed 250 mt/calendar week for the remainder of that month. If a shoreside or stationary floating processor is expected to receive greater than 250 mt/wk during any calendar week of that month, the shoreside or stationary floating processor would be required to return to 100–percent observer coverage for the days fish are received or processed during that week until all groundfish received during that week is processed.

The reduced observer coverage period for a given shoreside or stationary floating processor would be authorized beginning on the fourth calendar day following the day that a pollock or cod fishery closes, allowing for observation of the delivery and processing of fish received prior to the closure, and would end on the last day of that month. Observer coverage for the month following would be based on monthly landings projections and thresholds as specified under current regulations at § 679.50, but also may be reduced for that month under the conditions of this action.

The Community Development Quota (CDQ) and American Fisheries Act (AFA) programs' observer coverage requirements found at § 679.50(d)(4) and (5), respectively, currently supersede general observer coverage requirements for shoreside or stationary floating processors, and will continue to take precedence over this allowance for reduced coverage.

Shoreside or stationary floating processor observer logistics. This final rule amends the observer regulations to require the observer provider company to provide the following logistical support to observers deployed at shoreside or stationary floating processors: Adequate housing meeting certain standards; reliable communication equipment such as an individually assigned phone or pager for notification of upcoming deliveries or other necessary communication; and, if the observer's accommodations are greater than 1 mile away from the processing facility, reliable motorized transportation to the shoreside processor that ensures timely arrival to allow the observer to complete assigned duties.

Groundfish pot fishery observer coverage requirements. This final rule also amends regulations governing coverage requirements for the groundfish pot gear fishery to require a vessel equal to or longer than 60 ft (18.3 m) length overall (LOA), fishing with pot gear that participates more than 3 days in a directed fishery for groundfish in a calendar quarter, to carry an observer during at least 30 percent of the total number of pot retrievals for that calendar quarter. Such vessels would also need to continue to carry an observer for at least one entire fishing trip using pot gear in a calendar quarter, for each of the groundfish fishery categories in which the vessel participates during that calendar quarter. Groundfish will still be required to be retained each day the observer is on board and gear is retrieved, in order for the gear retrieved on that day to count toward observer coverage requirements.

Confidentiality of observer personal information. Observer providers are required to ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

Response to Comments

Two letters on the April 2, 2002, proposed rule (67 FR 15517) were received that contained a total of 15 unique comments. Comments are summarized and responded to here.

Comment 1: Observer coverage should be flexible before a fishery opens as well as when it closes. Many of the directed fisheries in the Gulf of Alaska start mid-month. The way the regulations are written, a shoreside processor is required to have an observer 100 percent of the time during that month even though the fishery which will trigger the coverage will not occur until many days into the month. The regulation change regarding the step down in coverage needs to be a two-way door, prior to a fishery season opening date and after a fishery closure date.

Response: NMFS considered both options in the analysis prepared for the proposed rule and continues to support the revised coverage regulations as proposed. The analysis showed that if shoreside processors were given the leeway to reduce coverage based on some landings criteria both before and after fishery closures, observer coverage for shoreside plants would essentially shift to a system of weekly observer coverage based on weekly landings projections. The analysis concluded that such a change would result in an observer coverage system for shoreside

processors that would be extremely burdensome, both financially and logistically, to shoreside processors, observer providers, and observers. The primary causes of this burden would be the logistical complexities and costs involved in deploying observers to and from shoreside processors on a weekly basis. NMFS would be supportive of a reexamination of these issues in the future, if the Council develops an alternative observer delivery model that would provide for weekly coverage standards in a cost effective and practical manner.

Comment 2: Virtually all IFQ sablefish received by Kodiak shoreside processors are eastern headed and gutted fish. The present shorebased observer regulations require 100 percent observer coverage for sablefish landings for some months. Why do observers need to observe these landings if there are no biological data to collect from headed/gutted fish? IFQ sablefish should be exempted from shorebased coverage requirements.

Response: Observer data are used in preparing annual stock assessments for sablefish. In particular, both catch rate and length data are used. Not all IFQ sablefish are delivered headed and gutted, some are delivered whole in refrigerated seawater. Observers obtain length data and otoliths from those fish. Observers also collect information from other groundfish that are delivered with IFQ sablefish.

Comment 3: According to the analysis prepared for this proposed rule, a shoreside processor that has chosen to reduce observer coverage to 30 percent does not have the ability to increase coverage back to the 100–percent level for the pollock and Pacific cod reopener. This provision needs to be highlighted in the regulations. NMFS also needs to make a concerted effort to communicate with industry regarding any reopening before the 4 day window expires after a fishery closes, when a plant is allowed to reduce coverage from 100 percent to 30 percent for the remainder of the month.

Response: The proposed rule correctly stated that a shoreside processor that has reduced observer coverage from 100 percent to 30 percent in a given month under the terms of this rule, and subsequently expects to receive or process greater than 250 mt per week upon the reopening of a Pacific cod or pollock fishery in that same month, must return to 100–percent coverage for each subsequent week of that month in which 250 mt or greater is expected to be received or processed. The commentor is correct in asserting that the analysis prepared for this rule did not include the provision for returning to 100–percent coverage upon the reopening of a Pacific cod or pollock fishery. The analysis has since been revised to reflect this provision in the rule, and no change from the proposed rule is made to the final rule.

NMFS strives for timely communication with industry regarding the reopening of a closed fishery. Once harvest amounts relative to available total allowable catch are determined, NMFS provides the public notice of any fishery reopening in a manner that is intended to minimize operational costs to industry. In 2002, the reopenings of the GOA pollock fishery occurred only in the Central Regulatory Area (statistical area 630) and were announced within a 3–4 day time period after the fishery closed. NMFS intends to continue to provide this level of effective response to the extent practicable.

Comment 4: According to the analysis prepared for the proposed rule, the ability to reduce observer coverage to 30 percent (from 100 percent during a given month) related to fisheries closures other than for Pacific cod or pollock was not considered because of concerns regarding loss of data for a variety of species that are landed in small quantities. However, the Kodiak shoreside processors are the only shorebased processors in Alaska that currently offer markets for the directed rockfish and flatfish harvests. Therefore, this exclusion directly impacts this subset of processors. The idea that more observer data will be collected if the plant maintains 100–percent observer coverage beyond the end of the season is flawed. Once a fishery closes, no more catch will be delivered for those species and, therefore, there is no additional opportunity to collect data. Also, for both flatfish and rockfish, allocations are split between the catcher/processor and the shorebased processor sector, so additional data are available from the catcher/processors. Allowing the regulations to extend to the other directed fisheries besides pollock and Pacific cod would help reduce shorebased observer cost without impacting observer data.

Response: NMFS analyzed the impacts of the reduction of shoreside processor observer coverage requirements on observer data and associated costs based on requests from industry and the resulting Council motion. The industry request and Council motion were limited to reducing shoreside observer coverage from 100 percent to 30 percent based on pollock and Pacific cod directed fishery closures. Therefore, consideration of observer coverage reduction at shoreside processors relative to closures for other directed fisheries is beyond the scope of the analysis prepared for this action. While there may be some advantage in extending this type of coverage reduction mechanism to other directed fishery closures, NMFS intends to implement this change as described in the proposed rule. NMFS, in consultation with the Council, may consider extending this provision to other fisheries after review of the implementation of this provision in the pollock and Pacific cod fisheries.

Comment 5: NMFS has indicated that in some circumstances it is acceptable for an observer to lodge on a vessel after the observer has been released from duty on a vessel, but not prior to the requested date of deployment of the observer to a vessel. However, no guidelines exist as to what those acceptable circumstances might be. NMFS has provided verbal guidance that it would be acceptable for an observer to lodge on a vessel if the observer was released from duty at 3 a.m.; but apparently it would not be acceptable to lodge on the vessel if the vessel wants to depart at 3 a.m. Not allowing contractors to have the flexibility to lodge observers on vessels that they are or will be assigned to, and not allowing vessels to have the option to minimize lodging costs will significantly increase costs to vessels who frequently volunteer to lodge their observers earlier or later than needed for their coverage.

Response: The final rule has been clarified to provide clearer guidance on when observers may be housed on vessels they will be, or currently are, assigned to. The intent of this regulation is to avoid the lodging of an observer aboard a vessel on which he or she is not working or currently assigned. An observer released from duty aboard a vessel could lodge aboard the vessel for no more than 24 hours provided the skipper or at least one crew member is aboard while the observer is lodged there, and provided this lodging is logistically practical for the observer and the vessel personnel. If the observer wants to get off the vessel as soon as it docks or if the vessel skipper requests the observer leave upon docking, arrangements must be made by the observer provider for the observer to move to land-based accommodations. Likewise, an observer assigned to a vessel would be allowed to lodge on that vessel up to 24 hours prior to departure, provided the skipper or at least one crew member is aboard, and as long as this is logistically practical for the observer and the vessel personnel.

Comment 6: Can shoreside processors provide their own internal pager system as a means for communication with the observer assigned to that processor?

Response: The observer provider company is ultimately responsible for ensuring that observers are issued individual communications devices and maintaining them in working order as specified in the rule. If it is logistically more convenient to meet these requirements through an arrangement with the shoreside processor, the observer provider company may do so.

Comment 7: If the present communication system between shoreside processors and their observers is working, is a pager or cell phone necessary?

Response: Yes. While the present communications systems between processors and observers may be successful for some processors, the current approach is not working for others. In light of these failures, NMFS believes that regulation on how these important communications must occur is necessary to some degree. Communications are largely reliant on the dependability of the individuals involved, as well as the communications equipment available. In cases where individuals involved are highly dependable, any system has a better chance of working. NMFS cannot control the level of human dependability in all cases, but the agency can require a certain standard for communications equipment that must be available to individual observers. In promulgating such regulations, NMFS must apply these requirements to all shoreside processors without bias.

Comment 8: What accommodations will be made for those shoreside processors where cell and or pager services are not available?

Response: Where cell phone or pager service is not available at the location of the shoreside processor, walkie-talkies may be an acceptable substitute. However, due to inherent range restrictions and unreliability of these devices, they would be approved only on a case by case basis. Where cell phone or pager service is not available and walkie talkies are not approved, another method of communication between the processor and the observer would need to be proposed by the observer provider company to the Observer Program for approval.

Comment 9: Who is responsible for lack of compliance when an observer drops his or her cell/pager in the harbor while going out to a vessel and it takes a lot of money and a week to get a new one to the observer? What obligation does the plant have to notify the observer during that down time?

Response: The observer provider company is responsible for ensuring observers have individual communications devices in working order. If a device ceases to be in working order, the provider must provide a back up device in a timely manner such that the observer is able to communicate with the processor regarding the next delivery following the loss or failure of the communications device. In light of that, having one or two working back-up devices on site at all times to avoid "down time" makes logistical sense. The regulations do not include an exception for "down time".

Comment 10: Who is liable if the observer takes the pager out of cell/pager range?

Response: The observer provider company is responsible for providing the equipment in working order. As is currently the case, the observer is expected to remain in reasonable communication with the processor. That includes remaining in range of such communication devices as the individual circumstances of the shoreside processor operations and location dictate.

Comment 11: It is unclear whether the criteria for lodging an observer assigned to a shoreside plant "within a mile of a shoreside processor" is determined by road distance or "as the crow flies".

Response: This requirement relies on the distance along the road or path traveled by the observer between his or her lodging and the shoreside processor to which he or she is assigned.

Comment 12: In some ports where observers lodge away from the plant premises, taxi service is not available 24 hours/day. Under these conditions, what will happen when a taxi is not available and the observer has to rely on transportation from the plant given that NMFS has implied in the analysis that plant transportation is unreliable? Plants which have to lodge their observers more than a mile away will see a significant increase in transportation costs for their observers. Is there any time a taxi would not be considered acceptable motorized transportation?

Response: Reliable, alternate arrangements that meet the requirements of the rule must be made when a taxi is not available. A taxi would not be considered acceptable transportation if it cannot transport an observer to the shoreside processor in a timely manner to allow the observer to perform his or her official duties. These duties include being present at the processor at appropriate times during the delivery and/or processing of the fish from delivery that requires sampling. Once in a while, a taxi may not be able to deliver an observer to the assigned shoreside processor in a timely manner to perform assigned duties due to unexpected mechanical break down of a taxi or other unforeseen circumstances. However, if such events become chronic and transportation by taxi becomes unreliable and untimely, alternate transportation arrangements that conform to the regulatory requirements must be made.

Comment 13: Do observers still have the option of walking or taking a bike to their assigned plant if they prefer to do so?

Response: Yes. Observers may choose to walk or ride a bicycle between their shoreside lodging and the shoreside processor to which they are assigned, as long as transportation, as described in regulations, is always available.

Comment 14: If this new regulation goes into effect, vessels using pot gear would be forced to wait until near the end of the season or quarter to obtain their 30–percent coverage for the number of pot lifts they performed. Consequently, the demand for observer coverage may exceed the availability of observers. Vessels may not be able to comply with required coverage as contractors would be less likely to be able to cover all of the pot boats during the end of the season crunch. Additionally, under those circumstances, vessels will see cost increases because they won't be able to share observer airfare, transportation and subsistence costs with other vessels.

Response: NMFS believes that proper planning by pot gear vessels and observer providers can ensure observer availability in most cases. However, NMFS does acknowledge that last minute changes in management decisions related to fishery openings and closures can present challenges for compliance with observer coverage requirements. NMFS strives to take coverage needs into consideration when determining midseason fishery openings.

This regulation, which bases observer coverage levels on the actual amount of gear fished, rather than days fished, is intended to ensure observer data that are more representative of actual fishing effort. The majority of vessels, for which days fished does reflect average fishing effort over the course of a quarter or season, should see no substantive change in the way they estimate observer coverage needs. Likewise, no more problem should exist with observer availability at the end of the quarter or season than what is currently

experienced. Additionally, observer coverage needs should be somewhat predictable over time, allowing vessels to meet coverage needs prior to the end of the season or quarter.

Comment 15: We believe that this proposed regulation would not solve the identified issue of pot gear vessels going out just beyond the harbor and pulling one pot to obtain observer coverage for that day. Vessels would now be able to set just a few pots and pull them as many times as possible in one day to obtain a large portion of their coverage.

Response: NMFS does not anticipate this type of behavior, particularly because it would not be cost effective. If and when this behavior occurs, NMFS will respond accordingly.

Changes From the Proposed Rule

To provide clarity in the application of certain provisions of this action, regulatory text in § 679.50(d)(3) and (i)(2) is changed from the proposed rule. Nearly all Observer Program regulations that apply to shoreside processors also apply to stationary floating processors. The proposed rule identified only shoreside processors in the revised language for these paragraphs. Thus, the final rule is changed from the proposed rule to apply to both shoreside processors and stationary floating processors.

The final rule also is changed to reflect revised regulatory text that became effective January 1, 2003, under a separate final rule that extended the Observer Program through December 31, 2007 (67 FR 72595, December 6, 2002). These changes include redesignating proposed changes to paragraphs (i)(2)(v) and (i)(2)(xiii) as final changes to paragraphs (i)(2)(vi) and (i)(2)(xii), respectively. The portion of redesignated paragraph (i)(2)(xii) that addressed an expectation of observer providers to monitor observer performance is deleted because this provision was superceded in the December 6, 2002, final rule. Last, redesignated paragraph (i)(2)(vi) is revised to incorporate the regulatory guidance referenced to in the response to comment 5.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The amendment of the existing regulations implementing the Interim Observer Program is consistent with the intent and purpose of the Interim Observer Program. These actions follow previous actions to refine observer coverage requirements and improve support for observers. Previous actions addressing these matters were analyzed in the EA/RIR/FRFA for the Interim Observer Program dated August 27, 1996, the RIR/FRFA for the extension of the Interim Observer Program through 1998 dated October 28, 1997, and the RIR/FRFA for the extension of the Interim Observer Program through 2000, dated June 4, 1998. Copies of these analyses are available from NMFS (see **ADDRESSES**).

NMFS prepared a FRFA which describes the impact this final rule would have on small entities. A copy of the FRFA is available from the Regional Administrator (see **ADDRESSES**). In addition to the discussion below, the FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and its findings, and the finding from the EA/RIR/FRFA for the Observer Program and its extension. No comments on the IRFA were received during the public comment period on the proposed rule. Thus, no new data were incorporated into the analysis during the comment period that would result in findings that differ from those previously described. A description of the impacts of this action on small entities was summarized in the proposed rule (67 FR 15520, April 2, 2002) and is not repeated here.

This action includes measures that will minimize the significant economic impacts of observer coverage requirements on at least some small entities. Vessels less than 60 ft (18.3 m) LOA are not required to carry an observer while fishing for groundfish. Vessels 60 ft (18.3 m) and greater, but less than 125 ft (38.1 m) LOA, have lower levels of observer coverage than those 125 ft (38.1 m) and above. Since the inception of the North Pacific Groundfish Observer Program in 1989, NMFS has strived to mitigate the economic impacts of the observer program on small entities. In doing so, NMFS has not significantly adversely affected the implementation of the conservation and management responsibilities imposed by the FMPs and the Magnuson-Stevens Fishery Conservation and Management Act.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 30, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.50, paragraphs (d)(3) through (6) are redesignated as (d)(4) through (7); paragraph (c)(1)(vii), newly redesignated paragraph (d)(4) and paragraphs (i)(2)(vi) and (i)(2)(xii) are revised; and new paragraph (d)(3) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(c) * * *

(1) * * *

(vii) Vessels using pot gear. (A) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA fishing with pot gear that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer:

(*1*) For at least 30 percent of the total number of pot retrievals for that calendar quarter, and

(*2*) For at least one entire fishing trip using pot gear in a calendar quarter, for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(B) Groundfish are required to be retained each day that pot gear is retrieved in order for gear retrieved that day to count toward observer coverage requirements for all catcher vessels and catcher/processors using pot gear and required to carry observers.

* * * * *

(d) * * *

(3) Is subject to observer requirements specified in paragraph (d)(1) of this section that receives pollock or Pacific cod, may reduce observer coverage in the event that a directed fishery for such species closes, subject to the following conditions:

(i) The shoreside or stationary floating processor must maintain observer coverage for 30 percent of all days that groundfish are received or processed, beginning on the fourth calendar day following the day that the directed fishery for pollock or Pacific cod was closed and ending on the last day of the month, except as allowed in this paragraph (d)(3)(iv) of this section.

(ii) Observer coverage for the month following the month with reduced observer coverage will be based on monthly landings projections and thresholds as specified in paragraphs (d)(1) and (2) of this section, but may also be reduced for that subsequent

month as specified in this paragraph (d)(3) of this section.

(iii) Total groundfish landings received by a shoreside or stationary floating processor under reduced observer coverage as authorized under this paragraph (d)(3) may not exceed 250 mt per calendar week.

(iv) If greater than 250 mt in round weight equivalent of groundfish are projected to be received in a given calender week by a shoreside or stationary floating processor during a month with reduced observer coverage, as authorized under this paragraph (d)(3), the shoreside or stationary floating processor must return to observer coverage requirements as specified in paragraph (d)(1) of this section until all fish received during that week is processed. The shoreside or stationary floating processor may then return to reduced observer coverage as authorized under this paragraph (d)(3) for the remainder of the calendar month.

(4) Offloads pollock at more than one location on the same dock and has distinct and separate equipment at each location to process those pollock and that receives pollock harvested by catcher vessels in the catcher vessel operational area.

* * * * *

(i) * * *

(2) * * *

(vi) Observer deployment logistics. (A) An observer provider must provide to each of its observers under contract:

(*1*) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel and shoreside or stationary floating processor assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(*2*)Lodging, per diem, and any other necessary services to observers aboard fishing vessels or at the site of shoreside or stationary floating processing facilities.

(B) Except as provided in paragraphs (i)(2)(vi)(C) and (i)(2)(vi)(D) of this section, each observer deployed to a shoreside processing facility, and each observer between vessel or shoreside assignments while still under contract with a certified observer provider company, shall be provided with accommodations at a licensed hotel, motel, bed and breakfast, or with private land-based accommodations for the duration of each shoreside assignment or period between vessel or shoreside assignments. Such accommodations must include an individually assigned bed for each observer for the duration of that observer's shoreside assignment or period between vessel or shoreside assignments, such that no other person is assigned to that bed during the same period of the observer's shoreside assignment or period between vessel or shoreside assignments. Additionally, no more than four beds may be in any individual room housing observers at accommodations meeting the requirements of this section.

(C) Observers may be housed on vessels they will be, or currently are, assigned to for a period not to exceed 24 hours:

(*1*)Prior to their vessel's initial departure from port;

(*2*)Following the completion of an offload where the observer has duties and is scheduled to disembark; or

(*3*)Following the completion of an offload where the observer has duties and is scheduled to disembark.

(D) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel skipper or at least one crew member is aboard and that such housing is logistically practical for the observer and the vessel personal. Alternative housing accommodations must be arranged if the conditions in this paragraph (D) are not met or if the observer wants to get off the vessel as soon as it docks or if the vessel operator requests the observer to leave upon docking.

(E) Each observer deployed to shoreside processing facilities shall be provided with individually assigned communication equipment in working order, such as a cell phone or pager for notification of upcoming deliveries or other necessary communication. Each observer assigned to a shoreside processing facility located more than 1 mile from the observer's local accommodations shall be provided with motorized transportation that will ensure the observer's arrival at the processing facility in a timely manner such that the observer can complete his or her assigned duties. Unless alternative arrangements are approved by the Observer Program Office:

* * * * *

(xii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

* * * * *

[FR Doc. 03–177 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 4
Tuesday, January 7, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–139–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing the proposed removal of a required amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). OSM is proposing to remove the required amendment because the Federal regulation upon which the required amendment is based no longer exists. This document gives the times and locations that the Pennsylvania program is available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. on February 6, 2003. If requested, we will hold a public hearing on the amendment on February 3, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on January 22, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger at the address listed below.

You may review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Harrisburg Field Office.

Mr. George Rieger, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, PA 17101, (717) 782–4036, *grieger@osmre.gov*.

J. Scott Roberts, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, PO Box 8461, Harrisburg, PA 17105–8461, (717) 787–5103.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036 Internet: *grieger@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15, and 938.16.

II. Description of the Proposed Amendment

The regulations at 30 CFR 938.16(ss) require Pennsylvania to submit a change to its regulations under the ownership and control provisions concerning an applicant's eligibility for receiving a provisionally issued permit when outstanding violations are present. Specifically, it mandates that Pennsylvania amend 25 Pa. Code 86.37(a)(8) and (11) to require a permit applicant to submit proof that a violation has been corrected or is in the process of being satisfactorily corrected within 30 days of the initial judicial review affirming the violation.

The Federal provision corresponding to the required amendment at 938.16(ss) was formerly located at 30 CFR 773.15(b)(1)(ii). However, on December 19, 2000, we made changes to the Federal rules regarding ownership and control that eliminated this provision (65 FR 79582). In discussing the rule change at 30 CFR 773.15(b)(1)(ii) we noted:

> Under the previous rule at § 773.15(b)(1)(ii), the permittee had 30 days from the date that the initial judicial review decision affirmed the validity of the violation to submit proof that the violation was being corrected to the satisfaction of the agency with jurisdiction over the violation. In contrast, final § 773.14(c) requires that the regulatory authority initiate action to suspend or revoke the permit as improvidently issued if the disposition of challenges or administrative or judicial appeals affirms the violation or ownership or control listing or finding. We made this change to ensure prompt implementation of the section 510(c) permit block sanction once the validity of a violation or ownership or control listing or finding is affirmed on appeal. (The previous rule did not specify what action the regulatory authority must take if the permittee did not submit the required proof within 30 days.) 65 FR at 79623.

Rather than requiring the permittee to submit proof that an affirmed violation is being corrected, as required in 30 CFR 938.16(ss), the new rule requires the regulatory authority to initiate action to suspend or revoke the permit if a violation is affirmed. Because the Federal rule change renders the required amendment at 30 CFR 938.16(ss) unnecessary, we are proposing to remove the required amendment. However, at a later date, we will be informing Pennsylvania and other States by letter of any changes required in their

programs as a result of the above-referenced change to the Federal ownership and control regulations, as well as a result of other changes we made to those regulations on December 19, 2000.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the removal of the required amendment satisfies the applicable program criteria of 30 CFR 732.15.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. PA–139" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782–4036.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on January 22, 2003 If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. In 65 FR 79582, we made several changes to the Federal regulations, including the elimination of the counterpart Federal regulation. Taking all of the changes made into consideration, we noted in that **Federal Register** notice that "in accordance with Executive Order 12630, the rule does not have significant takings implications. This determination is based on the fact that the rule will not have an impact on the use or value of private property and so, does not result in significant costs to the government." Since the elimination of the counterpart Federal regulation had no takings implications, the removal of the amendment requiring the corresponding State provision will have no takings implications.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse

effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In the December 19, 2000 **Federal Register** notice eliminating the counterpart Federal regulation, we estimated that there would be no change to industry costs resulting from the changes made to 30 CFR part 773, which, before the changes, had contained the counterpart Federal regulation (65 FR 79582, 79659). Similarly, the removal of the amendment requiring the corresponding State provision will not have a significant economic impact.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons stated above, this rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that, by removing the required amendment, we are not mandating any State action.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 15, 2002.

Vann Weaver,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–157 Filed 1–6–03; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA085/086/089/102/103–5046b; FRL–7428–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reorganization of and Revisions to Administrative and General Conformity Provisions; Documents Incorporated by Reference; Recodification of Existing SIP Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. EPA is proposing approval of substantive and format changes to Virginia's general administrative provisions and definitions, reorganization and recodification of the general conformity requirements and provisions, recodification of Virginia's oxygenated gasoline regulation, and revisions to the list of technical documents which Virginia incorporates by reference into its air pollution control regulations.

In the Final Rules section of this **Federal Register**, EPA is approving Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 6, 2003.

ADDRESSES: Written comments should be addressed to Harold A. Frankford, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 17, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–94 Filed 1–6–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[WT Docket No. 02–381; FCC 02–325]

Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: This document seeks comment on the effectiveness of the Commission's current regulatory tools in facilitating the delivery of spectrum-based services to rural areas. Specifically, we ask whether and how the Commission could modify its policies to promote the further development and deployment of such services to rural areas. In addition, we request comment on the extent to which rural telephone companies ("rural telcos") and other entities seeking to serve rural areas have opportunities to acquire spectrum and provide spectrum-based services. This document fulfills a Commission commitment to develop a record on these matters to determine the extent to which the Commission has achieved these statutory goals.

DATES: Comments are due on or before February 3, 2003 and reply comments are due on or before February 18, 2003.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Robert Krinsky, Federal Communications Commission, Room 4–B551, 445 12th Street, SW., Washington, DC 20554. See "Supplementary Information" for comment and reply comment filing instructions.

FOR FURTHER INFORMATION CONTACT: Robert Krinsky at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Notice of Inquiry* released on December 20, 2002. The complete text of the *Notice of Inquiry* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Notice of Inquiry* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

I. Introduction

1. The *Notice of Inquiry* seeks comment on the effectiveness of our current regulatory tools in facilitating the delivery of spectrum-based services to rural areas. Specifically, we ask whether and how the Commission could modify its policies to promote the further development and deployment of such services to rural areas, pursuant to section 309(j) of the Communications Act of 1934, as amended ("Communications Act"). In addition, we request comment on the extent to which rural telephone companies ("rural telcos") and other entities seeking to serve rural areas have opportunities to acquire spectrum and provide spectrum-based services, pursuant to sections 309(j)(3) and 309(j)(4) of the Communications Act. The *Notice of Inquiry* fulfills a Commission commitment to develop a record on these matters to determine the extent to which the Commission has achieved these statutory goals. Based on the record developed in this proceeding, we will determine whether it would be appropriate to revise existing policies or adopt new policies to promote more extensive provision of spectrum-based services to rural areas and the acquisition of spectrum by rural telcos. While satellite services may, in the future, play a critical role in bringing telecommunications services to rural America, the *Notice of Inquiry* addresses issues related only to the provision of terrestrial wireless service to rural areas, not the provision of general telecommunications services to rural areas.

II. Background

2. The Omnibus Budget Reconciliation Act of 1993 added section 309(j) to the Communications Act, authorizing, but not requiring, the Commission to award licenses for use of the electromagnetic spectrum through competitive bidding where mutually exclusive applications are accepted for filing. In 1997, Congress expanded the Commission's auction authority by requiring it to award mutually exclusive license applications for initial applications or construction permits by competitive bidding unless certain specific exemptions apply. Section 309(j) requires the Commission to promote various objectives in designing a system of competitive bidding. A number of those objectives focus on the provision of spectrum-based services to rural areas, and three provisions mention providing the opportunity to rural telcos to acquire spectrum and provide spectrum-based services. For example, section 309(j)(3)(A) requires the Commission to encourage the development and rapid deployment of new technologies, products, and services for the benefit of the public, "including those residing in rural areas." Section 309(j)(3)(B) directs the Commission to disseminate spectrum licenses among a wide variety of applicants, including "rural telephone companies." Section 309(j)(4)(D) requires the Commission to ensure that rural telcos are given the opportunity to acquire spectrum and provide spectrum-based services. In addition to the rural service objectives mandated by section 309(j), Congress directed the Commission to pursue other broader public interest goals in designing a system of competitive bidding. Specifically, section 309(j)(3) requires the Commission to promote efficient and intensive use of the spectrum, encourage economic opportunity and competition, and recover for the public a portion of the value of the public spectrum.

3. In an effort to fulfill the rural service objectives set forth in section 309(j), the Commission has adopted a number of policies intended, among other things, to encourage the provision of spectrum-based services to rural areas and the participation of rural telcos in the competitive bidding for spectrum licenses. Specifically, these policies include: (i) The availability of small business bidding credits; (ii) the designation of various sizes of geographic service areas for spectrum licenses; (iii) the opportunity to obtain licenses through service area partitioning and spectrum disaggregation arrangements with existing licensees; and (iv) the adoption of construction benchmark performance requirements. In addition, apart from its obligation under section 309(j), the Commission has expressed support for the provision of telecommunications services to tribal lands. The Commission also established the Rural Radiotelephone Service, which may operate in the paired 152/158 and 454/459 MHz bands, and Basic Exchange Telephone Radio Systems ("BETRS"), which may operate in those same bands as well as on 10 channel blocks in the 816–820/861–865 MHz bands, primarily to facilitate the provision of basic telephone service to remote and sparsely populated areas where wireline service is not feasible.

4. In 1994, the Commission adopted small business bidding credits to encourage broad participation in spectrum auctions. A bidding credit is a payment discount on a winning bid determined at the conclusion of the bidding process. Small business bidding credits are available to businesses — including rural telcos — whose gross revenues do not exceed a specified threshold. These bidding credits are intended to encourage participation in the competitive bidding process by entities that otherwise might have difficulty gaining access to capital. Through the use of small business bidding credits, the Commission has sought to promote the participation of small businesses, rural telcos, and women- and minority-owned firms

(collectively referred to as "designated entities"), thereby addressing Congress's mandate to ensure diversity in the ownership of spectrum licenses. The Commission determines on a service-specific basis whether bidding credits will be offered, the eligibility criteria for receiving a bidding credit, and the amount of the bidding credit.

5. However, in the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), the Commission declined to adopt a bidding credit specifically for rural telcos. Rather, the Commission determined to continue to make small business bidding credits available to entities, including rural telcos that meet the requisite revenue criteria. In 2000, the Commission also began offering a tribal land bidding credit, the size of which is determined by the amount of tribal land area reached by the service provider. All telcos, including rural operators that fulfill the requisite criteria may obtain a tribal land bidding credit.

6. Recent statistics indicate that rural telcos have actively participated in spectrum auctions and have had some success in winning licenses. A significant portion of rural telcos that have participated in spectrum auctions have received small business bidding credits. For instance, an examination of the 29 auctions completed by the Commission as of September 18, 2002, that offered small business bidding credits, reveals that 84 percent of the qualified bidders that identified themselves as rural telcos and 79 percent of all qualified bidders were eligible to receive a small business bidding credit. In the Commission's most recent auction for licenses in the lower 700 MHz Band, 89 percent of qualified bidders that identified themselves as rural telcos won licenses. In addition, 77 percent of all winning rural telco bidders in that auction received a bidding credit.

7. In addition to bidding credits, another way in which the Commission has sought to enhance rural telco participation in spectrum auctions is by adopting service areas of varying sizes. Although in many services we offer licenses that cover geographic areas of only one size, in a number of services, we license areas of varying sizes, ranging from small to large, in order to attract a diverse group of prospective bidders. Larger entities, for instance, may seek to acquire licenses that cover whole regions of the country, while other entities, such as rural telcos, may be interested in obtaining licenses to serve only particular rural areas. After seeking comment, the Commission has varied the size of the geographic service area depending upon the nature of the service provided and the likely users. In services for which we have adopted one size of license area, such areas are usually larger than Rural Service Areas ("RSAs"). In determining the appropriate size of a license area, we seek to balance two competing concerns. On one hand, we seek to adopt service areas of a size that results in efficient and intensive use of spectrum resources. On the other hand, we seek to adopt licensing areas that will permit the dissemination of licenses among a wide variety of applicants. The smallest of these geographic service areas are RSAs and Metropolitan Statistical Areas ("MSAs"), of which there are 734 licenses comprising the United States and its territories. Adopting service rules that provide for licenses with small geographic areas allows bidders to target the precise areas they are interested in serving, rather than having to compete for expansive geographic areas that encompass smaller, sought-after areas. The Commission has also licensed spectrum according to Economic Area Groupings ("EAGs"), which make up six licensing areas for the entire country. Some terrestrial wireless services, such as narrowband Personal Communications Services ("PCS") and 1670–1675 MHz, have geographic service areas that have nationwide coverage. Other geographic service areas fall along a range of intermediate sizes between RSAs and nationwide service areas, *e.g.*, BTAs, Economic Areas ("EAs"), and Major Economic Areas ("MEAs").

8. The Commission has also adopted partitioning and disaggregation policies to enable service providers, including rural telcos, to acquire spectrum without bidding on licenses that may not be suited to their particular needs. "Partitioning" is the assignment by a licensee of geographic portions of the license. "Disaggregation" is the assignment by a licensee of discrete portions or "blocks" of spectrum of the license. Where permitted by our rules, licensees may partition or disaggregate any of their licensed spectrum to other entities. Obtaining spectrum through partitioning or disaggregation, rather than competitive bidding, is often appealing to service providers with limited financial resources, specific service area needs, or small bandwidth requirements because licenses offered at auction may be more costly, cover larger geographic areas, and have greater bandwidth than desired. For instance, the geographic service area of a license made available at auction may include both urban and rural areas. A rural telco interested in serving only a rural area may seek to obtain spectrum post-auction through partitioning or disagregation, rather than bid for a license covering an area that it does not intend to serve. In this manner, our partitioning and disaggregation policies may help service providers, such as rural telcos, to obtain spectrum tailored to their specialized service area and financial needs. The Commission's analysis of applications for geographic partition and spectrum disaggregation reveals that 13.5 percent of all assignees have voluntarily identified themselves as rural telcos. Our analysis also demonstrates that 13.8 percent of all assignees (including rural and non-rural telcos) claim they are, or will be, serving rural areas.

9. The Commission has sought to enhance service to rural areas by requiring winning bidders of spectrum licensees to meet certain performance requirements. Section 309(j)(4)(B) of the Act specifically directs the Commission to prescribe such "performance requirements" to ensure prompt delivery of service to rural areas, to prevent stockpiling of spectrum, and to promote investment in and rapid deployment of new technologies and services. Performance requirements include construction benchmarks. Construction benchmarks typically require licensees to serve either a specific portion of the geographic service area or a specific percentage of the population in the geographic service area by a certain period of time. In some instances, the Commission has adopted a "substantial service" requirement as its construction requirement. Under this approach, licensees are required to provide "substantial service" to either a geographic service area or to the population within the geographic service area within a specific period of time. The Commission has defined "substantial service" as "service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal." The "substantial service" requirement was established to assess meaningful service through a measure not based on population or geographic metrics. Substantial service was established for circumstances where the Commission has determined that more flexible construction requirements rather than fixed benchmarks would more likely result in the efficient use of spectrum and the provision of service to rural, remote, and insular areas. The Commission may consider such factors as whether a licensee's operations serve

niche markets or focus on serving populations outside of areas served by other licensees. The Commission has indicated that a "substantial service" construction requirement may help foster service to less densely populated areas. Because this requirement can be met in a variety of ways, the Commission has stated that it will review substantial service showings on a case-by-case basis. The Commission has rarely found that a commercial mobile radio service ("CMRS") carrier has failed to meet its performance requirements.

10. Another step the Commission has taken to encourage the provision of wireless services to rural areas is the retention, in RSAs, of the cellular cross-interest rule, which is designed to protect against the cellular incumbents developing cross interests that may create the incentive and ability to restrict the availability of services in those areas. The cellular cross-interest rule limits the ability of parties to have attributable interests in cellular carriers on different channel blocks in a single geographic area. In its recent reevaluation of this rule, the Commission determined that the cross-interest rule was no longer necessary in MSAs because the cellular duopoly conditions that prompted the rule's adoption no longer existed. However, the Commission found that in RSAs competition to the incumbent cellular licensees was not as developed as in MSAs. Accordingly, the Commission concluded that a combination of interests in cellular licensees serving RSAs would more likely result in a significant reduction in competition in these areas. The Commission therefore decided to retain the cellular cross-interest rule in RSAs, subject to waiver of the rule based on certain conditions. The Commission noted that retention of the cross-interest rule in RSAs does not preclude cellular carriers from obtaining PCS licenses in order to expand capacity or offer advanced services.

III. Request for Comment

11. Under section 309(j), the Commission has a statutory mandate to promote the development and deployment of wireless technologies to rural areas and economic opportunities for rural telcos and other entities seeking to serve rural areas. Indeed, as discussed, the Commission has implemented a number of initiatives toward achieving those goals. We seek to better understand the nature of spectrum supply and demand and the services currently provided and planned to be offered in rural areas. We are also interested in developing a record on whether there are any discrepancies between rural and urban America in the availability, use and cost of wireless services. Approximately 80 percent of the U.S. population lives in metropolitan areas. However, our society is increasingly mobile and, therefore, ubiquitous wireless service is essential, not only for those living in rural areas, but also for individuals whose business and leisure activities take them to all parts of the nation. Thus, it is in the larger public interest to promote seamless wireless service throughout the country. By the *Notice of Inquiry*, we seek to broaden our understanding of the effect our current policies have had on the availability of spectrum-based services in rural America and on access to spectrum licenses by rural telcos and other entities seeking to serve rural areas. Further, we are interested in exploring whether it is appropriate to adopt new approaches in these areas. We therefore seek comment on the effectiveness of our current regulatory tools in facilitating the delivery of spectrum-based services to areas that traditionally may have been underserved by telecommunications providers and on our efforts to provide rural telcos with the opportunity to participate in spectrum auctions. We also invite comment on ways in which the Commission could modify its policies to best fulfill these statutory goals.

12. At the outset, we request comment on the types of wireless services that are currently provided, and that are planned to be offered, in rural areas. We seek information on the availability of wireless services in rural areas and the providers of such services. We ask commenters to identify which service providers, in addition to rural telcos, are providing wireless services to rural populations. To the extent possible, we request that commenters provide particularized data on wireless coverage and provision of services to rural areas. The more specific data we receive, the better able we will be to tailor our regulations to meet our rural service goals. We particularly seek comment from consumer groups, community groups, State Commissions, local governments and others about any geographic areas that lack adequate wireless coverage, have inadequate quality of service, or inequitable pricing. We also ask commenters to identify the obstacles to providing wireless service in rural areas. In particular, we ask commenters to address the economic viability of building out in rural areas. In what ways, if any, can the Commission modify its rules to promote build-out to rural regions? We also seek comment on whether we should maintain a Web site that would include information that would be helpful to entities seeking to provide wireless services to rural areas. Such a Web site, for instance, could have links to other sites that contain information about programs and financial incentives that are available to those seeking to serve rural populations. Should we maintain a database that would provide information to prospective service providers, including rural carriers, on the availability of spectrum for initial licensing or leasing? In addition to the specific issues identified in the *Notice of Inquiry*, we also invite comment on any other issues within the Commission's jurisdiction that may directly relate to the provision of wireless service in rural areas.

13. Apart from the rural service mandate set forth in section 309(j), Congress also directed the Commission to pursue other public interest objectives in designing a system of competitive bidding, including the efficient and intensive use of the spectrum, the development and rapid deployment of new technologies and services, the promotion of competition, and the recovery for the public of a portion of the value of the spectrum. In providing comment on how the Commission may best fulfill the rural objectives, we ask that commenters also address how any proposed suggestions would further, or impede, the Commission's achievement of the other public interest goals set forth in section 309(j)(3).

14. Finally, we recognize that issues involving spectrum leasing opportunities are of significant interest to rural telcos. They have expressed interest in gaining access to spectrum usage rights through secondary markets. We plan to address these matters in our proceeding on secondary markets.

15. In addition, we note that rural interests have raised issues related to the controlling interest standard that the Commission adopted in the *Part 1 Fifth Report and Order*. In essence, they argue that application of this rule will inappropriately disqualify rural telco cooperative applicants from attaining small business bidding status and will frustrate the objectives of the Commission's small business bidding preference program and the mandates of section 309(j). Because we will respond to petitions for reconsideration of the *Part 1 Fifth Report and Order* in a subsequent order, as part of the Part 1 rulemaking proceeding, we do not seek comment on, and will not address these matters in the *Notice of Inquiry*.

A. Definition of "Rural Areas"

16. As discussed, sections 309(j)(3) and 309(j)(4) direct the Commission to promote the development and deployment of spectrum-based services to "rural areas." The statute, however, does not provide a definition of what constitutes a "rural area." The federal government has multiple ways of defining "rural," reflecting the multiple purposes for which the definitions are used. The Commission has used RSAs to define "rural" in certain instances. In the *Seventh Report*, 17 FCC Rcd 12985 (2002), the Commission used three different proxy definitions of "rural" for purposes of analyzing the average number of competitors in rural versus non-rural counties. We compared the number of competitors in (i) RSA counties versus MSA counties, (ii) non-nodal EA counties versus nodal EA counties, and (iii) counties with population densities below 100 persons per square mile versus those with population densities above 100 persons per square mile. We request comment on whether and how the Commission should define "rural area" for purposes of determining the extent to which the Commission has met its mandate under section 309(j). In addition, we seek comment on whether we should adopt different definitions of what constitutes a "rural area" depending upon the regulatory initiative for which the definition is used. Commenters should identify the factors that the Commission should consider when defining "rural area." In addition, we are interested in compiling a comprehensive list of the number of telephone companies that meet the definition of "rural telephone company" as defined in 47 U.S.C. 153(37). The identical definition is also included in 47 CFR 1.2110(c)(4) and 51.5. We ask that commenters provide data to assist us in this effort.

B. Bidding Credits

17. As explained, bidding credits are intended to foster broad participation in the competitive bidding process for licenses. A bidding credit reduces the amount of the winning bid paid for a license by a qualifying entity. The Commission requests comment on whether, and the extent to which, small business bidding credits have facilitated the participation of rural telcos in competitive bidding and the delivery of spectrum-based services to rural areas. Our research demonstrates that rural telcos often qualify as small businesses and are therefore eligible to receive small business bidding credits. Is the availability of small business bidding credits effective in assisting rural telcos to gain access to spectrum? Is the availability of such credits helpful in promoting the provision of spectrum-based services to rural areas? Commenters should support their responses to these questions with data or other empirical information. For instance, if commenters contend that small business bidding credits are not helpful in promoting rural telco participation in Commission auctions, commenters should provide data or statistics supporting that assertion. If empirical evidence demonstrates that small business bidding credits are not effective in facilitating the provision of wireless services to rural areas or the participation of rural telcos in competitive bidding, should the Commission adopt a bidding credit specifically for rural telcos or based on the provision of service to rural areas? For instance, should the Commission adopt a rural service bidding credit modeled after the tribal lands bidding credit? In responding to these questions, commenters should discuss why the use of small business bidding credits is or is not effective in creating opportunities for rural telcos or in spurring the provision of services to rural areas.

18. If the Commission were to adopt a bidding credit specifically for rural telcos, what criteria should it use to determine eligibility for the credit (if it is not based on financial size) and what should be the size of the credit? Is it appropriate, for instance, to adopt a bidding credit for all rural telcos irrespective of how large or well-financed these entities may be? When initially considering the adoption of a rural telco bidding credit in 1994, the Commission found that rural telcos do not *per se* have the same difficulty accessing capital as other groups, such as small businesses. The Commission stated that the parties advocating the adoption of a rural telco credit had "failed to demonstrate a historical lack of access to capital that was the basis for according bidding credits to small businesses, minorities and women." In subsequent decisions, the Commission has reiterated that large rural telcos do not appear to have barriers to capital formation similar to those faced by other designated entities. In commenting on this issue, parties that advocate the adoption of a bidding credit specifically for rural telcos should address whether we should consider access to capital as a factor in determining whether to adopt such a bidding credit. We note that rural telcos may seek below-market rate lending through the Department of Agriculture's Rural Utilities Service ("RUS"). In addition, section 6103 of the recently-enacted Farm Security and Rural Investment Act of 2002 provides loans and loan guarantees to construct, improve, and acquire facilities and equipment to provide broadband service to rural communities with 20,000 or fewer residents. These financing options suggest that rural telcos may have greater ability than other designated entities to attract capital. We seek comment on what role these programs should play, if any, in our consideration of adopting an independent rural telco bidding credit.

C. Geographic Service Areas

19. The sizes of geographic service areas vary on a service-by-service basis depending upon such factors as the nature of the service and the likely users. We seek comment on the extent to which the size of the geographic service area affects the ability of rural telcos to acquire spectrum licenses through competitive bidding. In addition, commenters should discuss whether, and in what ways, the size of the geographic service area affects the provision of wireless services to rural areas. Commenters should provide data to support their positions.

20. Does the size of the geographic service area affect the provision of wireless services to rural areas by entities other than rural telcos? Large license areas, for instance, may enable nationwide carriers to compete with local or regional carriers in providing service to rural areas. Such large areas may also provide opportunities for new entrants to compete on a wide-area basis in an existing service. With regard to commercial mobile telephony specifically, there is considerable industry support for the notion that relatively large licenses are most efficient. The original geographic scope of cellular, broadband PCS, and certain SMR licenses was small and, as a result, the licenses were assigned to a large number of entities. The predominant trend since then, however, has been for operators progressively to aggregate licenses and build large geographic footprints. The Commission has found that these footprint-expanding transfers and assignments result in important public benefits. Today, six providers approach nationwide status. However, less than 50 percent of the geographic area of the country is served by three or more carriers. Given this evidence, are small license areas inefficient for licenses of spectrum suitable for provision of mobile voice and data service? And for such licenses, do the interests of consumers of rural service diverge from the interests of rural telcos that wish to supply such service?

Alternatively, does the use of small geographic licensing areas stimulate competition in the provision of wireless services to rural populations? Does the adoption of smaller service areas enable rural telcos to compete more effectively in spectrum auctions? If rural telcos win licenses covering small geographic service areas, are they more likely to provide services to those areas than are other service providers? Is there evidence that smaller geographic areas will result in more rapid deployment of services? Are rural carriers better positioned to serve the needs of rural America than nationwide carriers? Reliance on nationwide licenses assumes that nationwide carriers and local carriers are equally well positioned to serve rural consumer needs. Is this correct? On the other hand, are rural populations better served by carriers that operate on a nationwide basis as opposed to local carriers? For example, are nationwide carriers better able to offer lower prices, better roaming capability, or more services due to economies of scale? If the adoption of smaller service areas for licenses does enhance the participation and success of rural telcos in competitive bidding and/or the provision of services to rural areas, should the Commission adopt varied-sized or small-sized geographic service areas for all auctionable services? Are there particular services that are more appropriate for licensing by smaller geographic areas? If smaller geographic service areas promote competition, service, and access to spectrum by rural telcos, what size service areas would be most effective to achieve these benefits? In addition, we seek comment on whether certain auction designs, such as combinatorial or "package" bidding, facilitate license configurations that are efficient and likely to foster the provision of wireless services to rural areas.

D. Partitioning and Disaggregation

21. Partitioning and disaggregation policies and regulations are designed to facilitate more efficient and intensive use of the spectrum, including use by rural telcos to serve rural areas. In paragraph eight, we provide statistics regarding partition and disaggregation assignees that have identified themselves as rural telcos, and assignees that claim that they are or will be serving rural areas. However, because we do not require applicants to identify themselves as rural telcos when applying for licenses, we cannot with certainty determine the extent of transactions involving rural telcos based solely on our licensing records. Therefore, we seek comment on the extent to which rural telcos have received licenses through geographic partitioning and spectrum disaggregation. We are interested in learning whether, and in what ways, partitioning and disaggregation policies have been helpful in providing rural telcos with access to spectrum. We also ask for comment on whether, and to what extent, partitioning and disaggregation rules have enhanced the provision of services to rural areas. In responding to these questions, commenters should provide data or other empirical information to support their positions. We also solicit comment on whether partitioning and disaggregation policies enhance competition in the provision of wireless services to rural areas. If partitioning and disaggregation facilitate the provision of services to rural areas, do sufficient incentives exist for both winning bidders and prospective licensees to participate in the spectrum partitioning and disaggregation process? For instance, to what extent do the potential transaction costs involved in partitioning and disaggregation discourage licensees from pursuing such options? We note that some rural interests maintain that such transaction costs and other factors lead licensees to avoid pursuing partitioning and disaggregation agreements. If sufficient incentives do not exist to encourage partitioning of service areas and disaggregation of spectrum, should the Commission adopt additional incentives to motivate parties to pursue these options? For example, should the Commission require that licensees disaggregate or partition under certain circumstances, such as when there is unused spectrum or unserved portions of geographic service areas?

E. Performance Requirements

22. Performance requirements, such as construction benchmarks, are intended to help ensure that licensees promptly provide service to potential subscribers. The type of construction benchmark the Commission adopts for a license may determine whether services are deployed expeditiously to rural areas. For instance, depending on the level at which it is set, a population-based requirement may be achievable by a licensee providing service only to the urban areas covered by its license. In contrast, a geography-based benchmark targets the delivery of services to a percentage of a geographic area, rather than to a percentage of the population in an area. Because population is only rarely distributed uniformly across a geographic area, the same percentage requirement under a geography-based standard may result in greater geographic area and population coverage than that percentage under a population-based requirement.

23. We seek comment on whether and how construction benchmarks may be utilized to encourage licensees to deliver wireless services to rural populations. To what extent are our current construction benchmarks effective in ensuring that spectrum-based services are provided to rural areas? In what instances, and under what circumstances, should the Commission adopt a population-based, geography-based, or substantial service construction benchmark? For example, in licensing service areas that are predominantly rural, should the Commission adopt geography-based construction benchmarks? Are there other types of construction benchmarks that would better promote service to rural regions? For instance, should we adopt a separate construction benchmark applicable only to service areas that constitute rural areas? Alternatively, should we revise our current construction benchmarks to permit service providers to serve either smaller portions of the population or service area if they meet a second construction benchmark applicable to the rural portions of a licensee's market? If so, commenters should explain what construction benchmarks we should adopt for the rural portions of the service area? If, as suggested, we were to require licensees to disaggregate or partition unused spectrum or unserved portions of geographic service areas, should the Commission adopt additional construction benchmarks to implement this requirement? If so, what penalties should the Commission impose on licensees for failure to timely meet such additional construction benchmarks? As noted, the Commission has generally accepted certifications of CMRS carriers that they have met their construction benchmarks. To what extent are our self-certification procedures an adequate means of ensuring compliance with our construction benchmark requirements?

24. In addition to employing varying types of construction benchmarks for auctioned licenses, the Commission has also utilized different models with respect to enforcing construction requirements. In the Cellular Radiotelephone Service, initial licensees are given five years to construct facilities and begin providing service to their market. At the end of the initial five-year period the licensee is allowed to "keep what it builds" and the remaining portions of the market

become available for licensing to other parties via the cellular "unserved area" licensing process. In contrast, auctioned services such as broadband PCS provide for an "all or nothing" penalty for failing to meet the construction benchmarks, *i.e.*, if a licensee does not meet the five- or ten-year benchmark or make a showing of substantial service (where applicable) it forfeits the entire license and does not get to "keep what it builds." With this past experience in mind, we seek comment on whether these models, a hybrid model, or some combination of targeted models, may be utilized to facilitate service in rural areas. We also seek comment on whether the Commission should adopt performance requirements other than construction benchmarks to encourage the provision of wireless services to rural areas.

25. For unserved areas in the Cellular Radiotelephone Service, should the Commission adopt a different approach to assigning spectrum usage rights? Specifically, should the Commission adopt a "commons" model, which allows unlimited numbers of unlicensed users to share frequencies, with usage rights that are governed by technical standards but with no right to protection from interference? In addition, should the Commission amend the application filing process for cellular unserved areas to further encourage service providers to operate in rural areas? Furthermore, should the Commission apply the policy it has adopted with respect to unserved areas in the Cellular Radiotelephone Service to other services to promote wireless service in rural areas, *i.e.*, allow licensees to continue to serve the areas they have built-out, but make available for licensing to other parties those portions of a market that are not being served by current licensees? With respect to our ownership rules for the Cellular Radiotelephone Service, we seek comment on whether and to what extent our retention of the cellular cross-interest rule for RSAs advances spectrum-based services to rural areas. Should the Commission amend this rule to further the provision of wireless services to rural areas?

26. Finally, it may be economically inefficient, and thus harmful to customers, to require for each wireless service the same number of competitors in urban and rural areas. This appears to be true, for example, with regard to mobile telephony. How should a performance requirement policy for rural areas address this issue? Economic theory predicts that where licensees are in competitive markets, and no market failures exist and transactions costs are sufficiently low, market forces will drive optimal decisions on what is built, where, and when. In that setting, build-out rules arguably would distort resource allocation, or at best be irrelevant. We ask parties to comment on the application of this economic theory to construction benchmarks that cover rural areas. In particular, for those services and rural markets where there is competition, how should we balance the putative efficiency harm of build-out rules against the potential equity benefit? Moreover, for those services and rural markets where there is a lack of competition, *e.g.*, as a result of small market size not being able to support multiple operators, is it possible that build-out rules would impose efficiency costs in the form of spending on excess capacity?

F. Band Manager Licensing

27. A band manager is a licensee that is specifically authorized to lease its licensed spectrum usage rights for use by third parties through private contractual agreements without having to seek prior Commission approval. Band managers may make their licensed spectrum available to facilitate all types of spectrum use that are consistent with the technical restrictions adopted for the particular band and in accordance with certain requirements imposed on the leasing relationship. The Commission has adopted band manager licensing for several bands. The band manager may subdivide its spectrum in any manner it chooses and make it available to any third party, consistent with the frequency coordination and interference rules specified for the particular band. Band managers are permitted to apportion spectrum based on both geographic area and frequency. Such spectrum apportionment differs from traditional geographic partitioning and spectrum disaggregation because it does not involve the transfer or assignment of the band manager's licenses to other parties. Band manager licensing is an innovative spectrum management approach that can enable parties to acquire spectrum more readily for varied uses. The band manager option will also enable small businesses to acquire spectrum in amounts to serve particular geographic areas, and for periods of time, that better suit their unique characteristics and specialized communications needs. We seek comment on whether rural telcos would be able to obtain more affordable access to spectrum through a band manager than by acquiring licenses directly at auction or through partitioning and disaggregation. We also seek comment on whether rural telcos would be more likely to obtain access to spectrum that is tailored to their particular needs from a band manager than by acquiring licenses in an auction or through partitioning and disaggregation. Comments should also discuss whether band manager licensing would promote service or enhance the quality of service to rural areas.

G. Technical and Operational Rules

28. The Commission has developed technical and operational rules throughout its spectrum-based services in order to facilitate efficient use of the radio spectrum while minimizing the potential for harmful interference among licensees. We seek comment on the degree of flexibility that these regulations afford to providers of spectrum-based services in rural areas. Are there aspects of these rules that could be modified or made more flexible to encourage expanded service to rural areas while ensuring that services remain free of harmful interference? For example, would increasing permissible power levels be beneficial for particular types of services in areas where there is less spectrum congestion? Commenters should explain how their proposed changes would satisfy the goal of expanded rural service while not increasing the likelihood of harmful interference to existing licensees.

29. With respect to the Rural Radiotelephone Service, which includes BETRS, we note that as of November 2002, there were 67 active BETRS licenses with facilities in 17 states and 580 active Rural Radiotelephone licenses with facilities relatively uniformly spread throughout the continental United States. Of these, only one BETRS and two Rural Radiotelephone licenses were issued within the last two years. We seek comment on how we might revise the rules for these services to further facilitate the provision of wireless service to rural areas.

H. Unlicensed Spectrum

30. We also seek comment on the extent to which unlicensed spectrum is being used to provide wireless services to rural communities. We ask commenters to identify the service providers that are utilizing unlicensed spectrum and the types of services they are offering. Further, we seek comment regarding actions the Commission could take to encourage or facilitate the use of unlicensed spectrum. For example, unlicensed operation is generally limited to very low power levels in order to help ensure that the operation does not interfere with licensed services. However, the interference

potential of unlicensed devices may be low or negligible in rural communities. Should unlicensed devices be permitted to use higher output power levels in such environments? If so, what criteria would have to be met in order to qualify to use the higher power levels?

I. Eligible Telecommunications Carriers

31. The Commission's rules concerning universal service support for eligible telecommunications carriers ("ETCs") may impact deployment of wireless services to rural areas. Under the Communications Act, only carriers designated as ETCs under section 214(e) may receive federal universal service support. Under the Commission's rules, wireless carriers may be designated as ETCs and may receive universal service support for providing service to consumers that use wireless service as their only phone service as well as to consumers that also maintain wireline service. The Commission recently asked the Federal-State Joint Board on Universal Service (Joint Board) to review the ETC rules and provide recommendations regarding if and how these rules should be modified. We anticipate that the Joint Board will develop information on the impact of the Commission's ETC rules on deployment of wireless services to rural areas. In this docket, we seek comment generally on whether the Commission's ETC rules have promoted deployment of wireless service to rural areas and greater subscribership in these areas. We also seek to gather factual information. Specifically, we direct the Universal Service Administrative Corporation to provide us with information on the number of wireless carriers currently designated as ETCs, the amount of federal universal service support they have received, and the number of lines they serve. We ask that commenters provide any information available on how many of the customers served by wireless carrier ETCs also maintain wireline phones. How many customers had no phone service whatsoever until they purchased wireless service?

IV. Procedural Issues

A. Ex Parte Presentations

32. This is an exempt proceeding in which *ex parte* presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.

B. Filing of Comments and Reply Comments

33. We invite comment on the issues and questions set forth. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before February 3, 2003, and reply comments on or before February 18, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). Commenters that wish confidential treatment of their submissions should request that their submission, or specific part thereof, be withheld from public inspection.

34. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an email to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Robert Krinsky, Federal Communications Commission, Room 4–B551, 445 12th Street, SW., Washington, DC 20554.

V. Ordering Clauses

35. Accordingly, it is ordered that, pursuant to the authority contained in 47 U.S.C. 151, 4(i), and 303(r) the *Notice of Inquiry* is adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–219 Filed 1–6–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[WT Docket No. 02–379; FCC 02–327]

Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: This document solicits data and information on the status of competition in the CMRS industry for our Eighth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services ("Eighth Report"). The Eighth Report will provide an assessment of the current state of competition and changes in the CMRS competitive environment.

DATES: Comments are due on or before January 27, 2003 and reply comments are due on or before February 11, 2003.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Chelsea Fallon, Federal Communications Commission, Room 4–A335, 445 12th Street, SW., Washington, DC 20554. See "Supplementary Information" for comment and reply comment filing instructions.

FOR FURTHER INFORMATION CONTACT: Chelsea Fallon at (202) 418–7991.

SUPPLEMENTARY INFORMATION: This is a summary of the *Notice of Inquiry* released on December 13, 2002. The complete text of the *Notice of Inquiry* is

available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Notice of Inquiry* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Introduction

1. In 1993, Congress created the statutory classification of Commercial Mobile Services to promote the consistent regulation of similar mobile radio services. At the same time, Congress established the promotion of competition as a fundamental goal for CMRS policy formation and regulation. To measure progress toward this goal, Congress required the Federal Communications Commission ("Commission" or "FCC") to submit annual reports that analyze competitive conditions in the industry. The *Notice of Inquiry* solicits data and information on the status of competition in the CMRS industry for our Eighth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services ("Eighth Report"). The Eighth Report will provide an assessment of the current state of competition and changes in the competitive environment since the release of the *Seventh Report*, 17 FCC Rcd 12985 (2002).

2. The *Notice of Inquiry* is part of the Commission's ongoing effort to improve its *CMRS Reports*. In February 2002, the Commission held a Public Forum to examine ways in which to better gather and analyze data for the *Seventh Report*, in particular data regarding the development of CMRS services in rural and underserved areas. As a result of the forum, the Commission was able to integrate new data into the *Seventh Report* and adopted a number of suggestions made by forum participants on how to obtain and analyze data more effectively.

3. Commercial mobile telephone and mobile data services are provided by a large number of terrestrial CMRS operators as well as mobile satellite operators. In an effort to provide the most complete picture of competition to Congress, the *CMRS Reports* analyze CMRS services from a consumer point of view. Therefore, some portions of our analysis include offerings outside the umbrella of "services" specifically designated as CMRS by the Commission. Because providers of these services may, on some level, compete with CMRS providers, the Commission believes it is important to consider them in its analysis and collects information on specific product categories regardless of their regulatory classification.

4. In the *Notice of Inquiry*, we seek information that can be used to examine the status of competition in the CMRS industry. We note in our ongoing process of improving our data gathering process that we have taken the step of issuing the *Notice of Inquiry* in an effort to gather more detailed, comprehensive, and independent data for this year's report. We request data that will allow us to evaluate the extent to which consumers can choose among CMRS operators, services, and technologies. In particular, we seek the following data and ask commenters to address the following general questions:

- What is the current structure of the CMRS industry?
- Which entities compete to provide CMRS services?
- What have been the most significant changes or developments in the industry over the past year?
- What is the extent of deployment of CMRS services?
- What is the state of competition in the provision of CMRS services?
- How does competition in the CMRS marketplace vary across the United States, in particular between rural and urban areas?
- What metrics are available that will give us insight into the level of competition in the provision of CMRS services? We are interested in, but not limiting commenters to, information on service availability, the number of subscribers, penetration rates, usage, average revenue per subscriber, churn, quality of service, pricing data and trends, and profits.
- To what extent do key metrics, such subscribership and usage levels, vary among different demographic groups?
- How does CMRS providers' cost of capital affect service availability, including entry into new geographic markets, the quality of service, and the introduction of new services? How is the cost of capital related to the level of competition in the provision of CMRS services? Is it possible to track the cost of capital that different CMRS providers have faced and will continue to face over time?
- How does competition in the CMRS industry in the United States compare to that in other countries? How do key CMRS industry performance metrics, such as subscribership, usage, pricing, quality of service, and service availability, vary between the United States and other countries?

5. Industry members, interested parties, and members of the public should submit information, comments, and analyses regarding competition in the provision of CMRS services. Commenters that wish confidential treatment of their submissions should request that their submission, or a specific part thereof, be withheld from public inspection. In order to facilitate our analysis of competitive trends over time, we request that parties submit current data as well as data that are comparable over time. In addition to the comments submitted in this proceeding, the Eighth Report will also include information from publicly-available and FCC sources.

II. Matters on Which Comment Is Requested

A. Competition in the Mobile Telephone Sector

i. Introduction

6. For purposes of the *CMRS Reports*, the mobile telephone sector is defined to include all operators that offer commercially available, interconnected mobile voice services. These operators provide access to the public switched telephone network ("PSTN") via mobile communication devices employing radiowave technology to transmit calls. The mobile telephone sector is dominated by providers using cellular radiotelephone, broadband Personal Communications Service ("broadband PCS"), and Specialized Mobile Radio ("SMR") licenses. Because these licensees offer mobile telephone services that are essentially interchangeable from the perspective of most consumers, they have been discussed in the *CMRS Reports* and are discussed in the *Notice of Inquiry* as a cohesive industry sector.

7. For purposes of the Eighth Report, we seek information on significant trends and developments that have occurred in the mobile telephone sector since the publication of the *Seventh Report*. Historically, the *CMRS Reports* have looked at the extent of service availability as well as the number of consumers using mobile telephone services. In addition, the *CMRS Reports* have looked at minutes of use, average revenue per unit, churn levels, and pricing trends as indicators of competition.

ii. Service Availability

8. The *CMRS Reports* include an analysis of the availability of commercial mobile telephone service that the Commission uses to evaluate competition in the U.S. mobile telephone industry. This analysis has

heretofore been based on publicly available information released by operators, such as news releases, Securities and Exchange Commission ("SEC") filings, coverage maps available on operators' web sites, and network buildout notifications filed with the Commission. The statistics presented in the *CMRS Reports* based on this information include the number of providers operating in a given geographic area, the percent of the population living in areas with a certain number of competitors, and the extent of coverage of the various network technologies (*e.g.*, analog, CDMA, TDMA, GSM, and iDEN). In the *Third and Fourth Reports*, the geographic area used as the basis for these analyses was Basic Trading Areas ("BTAs"); however, the subsequent *CMRS Reports* have been improved and present this information on a more disaggregated, county-by-county basis.

9. Previous *CMRS Reports* have included several notable caveats about our analysis of the service availability. First, to be considered as "covering" a county, an operator need only be offering any service in a portion of that county. Second, multiple operators shown as covering the same county are not necessarily providing service to the same portion of that county. Consequently, some of the counties included in this analysis may have limited coverage from a particular provider. Third, the figures for POPs and land area in this analysis include all of the POPs and every square mile in a county considered to have coverage. Therefore, this analysis overstates to some degree both the level of competition and total coverage in terms of both geographic area and population covered. On the other hand, while newer broadband PCS and SMR licensees have less complete networks that may be overstated in our analysis, the original cellular licensees have extensive networks that provide almost complete coverage of the entire land mass of their license areas, and hence the entire land area of the continental United States.

10. We ask for comment on how to improve the methodology we use to determine service availability and evaluate competition. As described, the methodology inherently includes some undetermined degree of overcounting. Do commenters believe that this degree of overcounting is significant and materially affects the determination of mobile telephone service availability and competition? Is there an alternate methodology that could be used to determine service availability and competition?

11. In order to improve the accuracy of our analysis and to reduce overcounting in the Eighth Report, we ask service providers to submit as part of their comments to the Commission, in electronic format, the coverage maps that they already make available to the public. Specifically, we request carriers submit as part of their comments the maps they employ to advertise their coverage areas in brochures and on their web sites in a geo-referenced, mapable format, such as MapInfo table (.tab) or Tagged Image Format (.TIF) files, on a CD sent to the Commission. The Commission has used the contours filed by 800 MHz cellular licensees to determine the availability of analog mobile telephone service, and therefore does not require additional maps showing analog coverage from cellular licensees. However, the Commission requests that cellular licensees submit as part of their comments their publicly-available maps in the aforementioned format showing where they offer reliable digital service. In addition to the coverage maps that carriers make available to the public, do carriers have maps with more detailed coverage information that are not available to the public? In the alternative, we ask carriers to please indicate in their comments if they do not have such maps. Would carriers or other parties be willing to submit such maps as part of their comments?

12. Moreover, carrier provision of their publicly-available coverage maps in electronic, geo-referenced format with clearly-defined boundary lines, would enable the Commission to examine more precisely the smaller geographic areas underlying the coverage boundaries, such as zip code areas or census block groups. These small geographic areas could therefore allow the Commission to make more accurate estimates of the population and land area covered by a certain number of carriers or served by a digital network.

13. In conducting our analysis of service availability and competition, we seek information about the extent to which consumers are able to, and do, purchase service plans from carriers whose networks do not cover their residential location or billing address. Carriers frequently query potential subscribers about the zip code of their billing address. Should this be taken as an indication that carriers do not provide service to consumers whose billing address zip codes are outside the range of the carriers' network coverage areas, even if such consumers wish to purchase service plans in order use their phones inside the coverage areas? To what extent are mobile telephone subscribers' residential locations or billing addresses located outside of their carrier's network coverage area? To what degree would an analysis of the population of smaller geographic areas that underlie carriers' network coverage boundaries undercount those subscribers? Furthermore, would the use of other, smaller geographic areas in addition to or in place of counties be appropriate in analyzing service availability? If so, which areas would be appropriate? Do data currently exist on this basis?

14. In order to continue to improve the accuracy of our analysis, we seek information on whether carriers market service to new customers in all of the geographic areas in which they have coverage. Do carriers provide coverage in certain areas, such as near major roads, where they do not also market service to residents? If the latter is true, our analysis could be further improved if carriers indicated the parts of their coverage areas in which they compete to offer new service and the parts that are used only to provide coverage to traveling subscribers based in other locations. In addition to employing more accurate coverage maps, in what other ways could our analysis of service availability be improved?

15. We also seek data on the relationship between competition and the availability of roaming for wireless customers. To what extent do carriers have agreements that enable their customers to use automatic roaming throughout the United States? Are there geographic areas in which some carriers do not have automatic roaming agreements? If so, where are those areas and is there any correlation to the number of wireless providers operating in those areas? Are rural customers more affected than non-rural customers? How many customers use manual roaming? Where are those customers located when they use manual roaming, and how frequent is their usage?

16. Finally, we seek comment on the fact that our service availability analysis relies on information reported by service providers, including their news releases, filings with the SEC, Web site coverage maps, and network buildout notifications filed with the Commission. In addition, there are independent web sites and public reports that include some information about service coverage and dead zones. There are risks to relying exclusively on data supplied by parties with a financial stake in the use of such data as part of Commission decisions. Since we, in some cases, report on information supplied only by one or two sources, we

also seek comment on ways of obtaining independent verification of competition information provided for the report. Which independent sources can be reliably used to verify carrier-supplied coverage information? Do commenters believe such verification is necessary in analyzing service availability and competition?

17. In addition to analyzing service availability by all facilities-based mobile telephone carriers, previous *CMRS Reports* have discussed "nationwide" mobile telephone operators. Companies that analysts typically describe as being nationwide offer service in at least some part of the western, midwestern, and eastern United States. This label does not necessarily mean that the operator's license areas, service areas, or pricing plans cover the entire land area of the United States. The *Seventh Report* listed six carriers that analysts typically describe as nationwide mobile telephone operators, all of which, with their affiliates and partnerships, have licenses covering between 230 and 285 million people. We seek comment on whether it is appropriate to call these similarly situated operators "nationwide" mobile telephone operators. Is there other terminology that would better describe the carriers that have a relatively large number of licensed POPs and provide coverage in multiple large regions of the United States?

iii. Market Performance and Key Metrics

18. The *CMRS Reports* have looked at a series of key metrics as indicators of the demand for and reliance on mobile telephone service. Examples of key metrics employed in the past include the number of subscribers and penetration rates, average minutes of use per subscriber per month ("MOUs"), average revenue per unit, and churn. In addition, the *CMRS Reports* look at the prices for mobile telephone services, including new developments in pricing plans; the extent of digital service; and wireless-wireline competition. The sources of data and analysis of these metrics are discussed. Are there other metrics or techniques that should be used to analyze competition in the mobile telephone sector? Are metrics available on a national and/or sub-national level? What types of conclusions can and cannot be drawn from the current and recommended metrics? For example, is service quality related to competition? How would the Commission measure service quality?

(a) Subscribership

19. One of the key metrics that provides an indication of the demand for mobile telephone service is the total number of subscribers. Prior to the *Seventh Report*, the Commission relied on estimated national subscribership data from a semi-annual survey, started in 1985, conducted by the Cellular Telecommunications and Internet Association ("CTIA"). Beginning with the *Seventh Report*, however, the Commission was able to estimate the number of U.S. subscribers using information filed directly with the FCC. This information, the Numbering Report Utilization / Forecast ("NRUF") data, tracks phone number usage in the United States. All mobile telephone carriers must report to the FCC which of their phone numbers they have assigned to end users, thereby permitting the Commission to make an accurate estimate of the total number of mobile telephone subscribers. As stated in the *Seventh Report*, the Commission used NRUF data to estimate that there were 128.5 million subscribers in the United States as of December 31, 2001. The CTIA estimate for the same time was 128.4 million subscribers.

20. We seek comment on the use of NRUF data to estimate the total number of U.S. mobile telephone subscribers. We also seek comment on the continued use of CTIA's estimate from its semi-annual survey. Furthermore, we request information from commenters on other data sources that are available to determine the number of U.S. mobile telephone subscribers and whether parties are willing to provide the data. In addition, we request subscribership data that would assist in a greater understanding of the competitive landscape, such as penetration rates by age cohorts or household penetration rates.

21. The Commission also collects subscribership data as part of the local competition and broadband data gathering program. Mobile telephone carriers with more than 10,000 facility-based subscribers in a state are required to report their number of subscribers in those states twice a year to the Commission. Using this data, the Commission reported that mobile telephone carriers had 122.4 million U.S. subscribers as of December 31, 2001. For purposes of the Eighth Report, we seek comment on whether this data should be used to draw any conclusions about the mobile telephone sector, or whether it undercounts subscribership to such a degree that it should not be employed for such purposes.

22. NRUF data is submitted to the Commission on a rate center basis. Rate center boundaries have in large part been determined by incumbent local exchange carriers for their own network management purposes. Because rate center boundaries are relatively small, the NRUF data allows the Commission to make sub-national or regional estimates of mobile telephone subscribership and penetration. However, there are a number of disadvantages associated with using NRUF data for this purpose. First, because CMRS carriers have wide latitude in choosing to which rate center to assign a phone number across a large geographic area, rate center boundaries are not necessarily indicative of where a phone number assignee, and hence a mobile telephone subscriber, lives, works, or uses her phone. In addition, rate center boundaries are not coterminous with other boundaries frequently used in mobile telephone analyses, such as counties, Cellular Market Areas ("CMAs"), or BTAs. Furthermore, in order to protect the confidentiality of the companies submitting NRUF data, the Commission does not report the number of subscribers for geographic areas in which there are three or fewer carriers.

23. For purposes of the *Seventh Report*, the Commission chose to use Economic Areas ("EAs") as the geographic unit for its sub-national subscribership analysis using NRUF data, in part because it minimized many of NRUF's drawbacks, discussed. EAs, which are defined by the Department of Commerce, consist of one or more economic nodes and the surrounding areas that are economically related to the node. One of the main factors in determining the economic relationship between the economic node(s) and the surrounding areas is commuting patterns, so that each EA includes, as far as possible, the place of work and the place of residence of its labor force. Because EAs are large enough to include many rate centers and because they attempt to capture both the rate centers in which subscribers have their numbers assigned and the larger area in which they use their phones, an EA-based analysis minimizes the pitfalls of the NRUF data while still providing useful sub-national penetration information.

24. We ask for comment on how to determine which geographic area or areas should be used, for purposes of the Eighth Report, to calculate mobile telephone subscribership and penetration rates. We request opinions on the appropriateness of using EAs for such calculations. Would other geographic areas be appropriate to use in place of or in addition to EAs, such as states, Major Trading Areas ("MTAs"), BTAs, CMAs, or counties, noting the caveats of the NRUF data

discussed? In addition, are there other ways to interpret existing national and sub-national subscribership data for purposes of the Eighth Report?

(b) Minutes of Use

25. To analyze mobile telephone usage, the Commission has used MOUs as a key metric in the previous *CMRS Reports*. The *Seventh Report* includes MOU estimates from CTIA, Paul Kagan and Associates, and J.D. Power & Associates. All of these sources showed MOUs increasing substantially during 2001. We seek comment on the use of MOUs as an indicator of the demand for mobile telephone services as well as of the level of competition in the mobile telephone sector. For purposes of the Eighth Report, we ask for comment on the sources of the MOU data presented in the *Seventh Report* and request additional MOU data. In addition, should the Commission perform other analyses or draw additional conclusions from new or existing data?

26. All of the MOU sources presented in the *Seventh Report* estimate MOUs on a national basis. In order to increase the granularity of our analysis for the Eighth Report, we request data on MOUs on a sub-national basis and/or broken down by various demographic groups.

(c) Average Revenue Per Unit

27. Average monthly revenue per subscriber, often referred to as average revenue per unit or "ARPU", is another key metric presented in the *CMRS Reports*. One source of this metric is the industry-wide ARPU figure reported by CTIA in its semi-annual mobile telephone survey. In addition, many carriers report their individual ARPU figures periodically in their SEC filings. We seek comment on the use of ARPU as a metric in our analysis of the mobile telephone industry. Is ARPU a useful metric when analyzing competition? Is there a link between changes in ARPU and changes in competition? Is additional ARPU data available that should be considered, in particular data depicting whether and how ARPU varies by region and/or demographic group? Are there additional analyses that can be performed or conclusions that can be drawn in the Eighth Report from new or existing data?

28. CTIA reported that ARPU declined almost continuously from 1987 to 1999, going from a peak of $98.02 in December 1988 to a low of $39.43 in December 1998. However, since 1999, ARPU has been increasing, rising to $47.37 in December 2001. The *Seventh Report* concluded that the growth in ARPU might be the result of a variety of factors, including increased usage offsetting per-minute price declines, as well as the adoption of higher-priced monthly calling plans by consumers. We request from commenters additional input on the possible causes for the recent rise in ARPU, as well as additional data that may support various hypotheses. What role, if any, do changes in ARPU have on competition?

(d) Churn

29. Churn, a fourth key metric used in the *CMRS Reports*, refers to the number of customers an operator loses over a given period of time. The *Seventh Report* discussed churn estimates from Merrill Lynch, Salomon Smith Barney, and Telephia. Some of data included in these sources is reported by carriers, many of whom reveal their churn rates periodically in their SEC filings. Are there other sources of churn data available that should be included in the Eighth Report?

30. We seek comment on the use of churn rates as a tool in our analysis of the mobile telephone industry, including to what extent churn rates are a reflection of competition in this industry. We ask if there are additional analyses that can be performed or conclusions that can be drawn from churn data in the Eighth Report. Do commenters believe the churn data we have included in previous reports is reliable?

31. The Telephia data presented in the *Seventh Report* included estimates of churn for selected metropolitan areas including Chicago, Los Angeles, New York, San Francisco, and Washington D.C. To improve our analysis of the mobile telephone industry in the Eighth Report, we request additional sub-national or regional churn data, as well as churn data by demographic groups.

iv. Pricing Data and Trends

32. The *Seventh Report* contained pricing data from a series of sources, all of which indicated that the average price of mobile telephone service has been decreasing over time. The *Seventh Report* cited information from the U.S. Department of Labor's Bureau of Labor Statistics ("BLS"), Econ One, and trends based on CTIA data. Using CTIA data, we calculated a national average of revenue per minute ("RPM") by dividing ARPU by MOUs. We used this RPM figure as an estimate of the average price per minute of mobile telephone service. RPM has been declining every year since 1995. BLS began reporting a cellular telephone component of the Consumer Price Index ("CPI") in December 1997 ("cellular CPI"). The cellular CPI decreased 5.5 percent during 2001, and 32.8 percent between 1997 and 2001. The CPI, which includes the cellular CPI, represents approximately 87 percent of the U.S. population, and includes expenditure patterns of some of the rural populations. Do commenters believe the cellular CPI should be considered representative of national pricing trends? In contrast to our estimate of RPM and BLS's cellular CPI, which attempt to capture national pricing trends, Econ One analyzes pricing plans for the top 25 U.S. cities. The firm also calculates the average price of service across four different monthly usage levels and derives, from that data, an average for all users. Econ One found that the average price of service (across all usage levels and 25 cities) declined 7.3 percent during 2001, following a 6.9 percent decline in 2000.

33. We seek comment on the use of these various pricing estimates as a tool in our analysis of the mobile telephone industry, including to what extent price decreases are evidence of competition in the mobile telephone sector. We ask for feedback on the sources of the pricing data used in the *Seventh Report* and request additional national and sub-national pricing data for the Eighth Report. Are there additional analyses that can be performed or conclusions that can be drawn from new or existing pricing data?

34. The *CMRS Reports* have also examined new types of pricing plans introduced during the past year in order to report on major developments in the industry and to assess the new plans' impact on competition. To what extent do new types of pricing plans both reflect a competitive industry and stimulate competition among providers? What are the major innovations that have occurred with pricing plans since the *Seventh Report?*

35. We seek information on which carriers offer nationwide pricing plans, particularly those that are not typically described as being nationwide operators, and request descriptions of the terms of such plans. We ask carriers that offer nationwide pricing plans whether they offer the same rates and terms to consumers throughout all parts of the country where they offer such plans, including Alaska, Hawaii, and Puerto Rico. Furthermore, do carriers charge different prices—both monthly and per minute—or offer different terms for their local and regional plans across the various areas that they serve? If so, are these geographic variations substantial, and what are the major reasons for such variations?

36. Is pricing data available on whether certain types of pricing plans are associated with specific demographic cohorts or types of users? For example, do subscribers with lower personal or household incomes tend to purchase pricing plans with lower monthly fees? Are particular plans associated with teenagers or college students? Are prepaid services used by a group of consumers with similar characteristics? Have the introduction of new types of pricing plans increased mobile telephone penetration among specific demographic groups or in certain geographic areas?

v. Geographic Comparisons: Urban versus Rural

37. Since the release of the *Sixth Report*, the Commission has attempted to obtain a better understanding of the state of competition below the national level, in particular in rural areas. To begin with, we ask commenters to address whether an urban/rural distinction is meaningful in the context of mobile telephone service, given the varying types of geographic areas in which consumers use their mobile phones and carriers offer plans.

38. To the extent that it is meaningful to analyze mobile telephone service availability in rural areas, we seek comment on how best to determine whether competition has developed successfully in rural areas. We invite parties to comment on what data is available to address this issue and whether they believe there is meaningful competition among mobile telephone providers in rural areas.

39. The primary difficulty for the Commission in examining the state of competition in rural areas has been the lack of sub-national data. Prior to the release of the *Seventh Report*, the Commission held a Public Forum to gather more insights into and data about CMRS service availability in rural areas. Much of the information gathered was anecdotal. Therefore, additional data is needed, and we seek comment and information on three topics related to mobile telephone service availability in rural areas: (i) the definition of rural, (ii) service availability and network deployment, and (iii) market performance and key metrics.

40. Do services, pricing plans, and technologies differ between rural areas and urban areas? Do the providers who serve both areas offer the same products and prices in each type of area?

(a) Definition of Rural

41. In order to analyze mobile telephone service availability and competition in rural areas, it is necessary to first define what geographic area(s) constitutes "rural." The federal government has multiple ways of defining rural, reflecting the multiple purposes for which the definitions are used. The Commission has used Rural Service Areas ("RSAs") to define "rural" in certain instances. In the CMRS spectrum cap proceeding, the Commission designated RSAs as rural areas and stated, "Other market designations used by the Commission for CMRS, such as [EAs], combine urbanized and rural areas, while MSAs and RSAs are defined expressly to distinguish between rural and urban areas." Since passage of the Telecommunications Act of 1996, the Commission generally has used the statutory definition to determine which local exchange carriers can be classified as rural telephone companies. That definition uses a range of standards including the population of a jurisdiction and the number of access lines serving communities of various sizes.

42. In the *Seventh Report*, we used three different proxy definitions of rural for purposes of analyzing the average number of competitors in rural versus non-rural counties. We compared the number competitors in (i) RSA counties versus MSA counties, (ii) non-nodal EA counties versus nodal EA counties, and (iii) counties with population densities below 100 persons per square mile versus those with population densities above 100 persons per square mile.

43. We request comment on whether and how the Commission should define rural for purposes of the Eighth Report. What elements should the Commission consider when defining "rural"? Should there be a single delineation between rural and non-rural areas, or should rural be defined on a continuum? For example, should the Eighth Report define different degrees of "ruralness" based on population density?

(b) Rural Service Availability

44. As mentioned, the Commission analyzed service availability in rural areas in the *Seventh Report* using three different proxy definitions for rural. The analysis resulted in similar results for each definition. Non-rural counties had an average of 5.5 to 5.7 service providers, while rural counties had an average of 3.1 to 3.3 competitors. We ask whether the existence of fewer facilities-based providers in rural areas necessarily indicates the existence of less meaningful competition in these areas.

45. When examining service availability in rural areas, should the Commission continue to use multiple definitions of rural for purposes of the Eighth Report? Were the three definitions employed in the *Seventh Report* appropriate proxies to use in assessing competition in rural areas? Are there other geographic definitions that should be employed in the Eighth Report? Is data available that would allow an analysis using other definitions?

46. In addition to addressing rural issues generally, we also take this opportunity to focus on access to telecommunications services by individuals living on tribal lands. In our *Report and Order* implementing auction bidding credits for those who commit to serving federally-recognized tribal lands, we noted that communities on tribal lands have had less access to telecommunications services than any other segment of the U.S. population. According to the 1990 Census, only 53 percent of those living on tribal lands had basic telephone service, as opposed to 94 percent for the United States as a whole. Further, a 1999 study commissioned by the U.S. Department of Commerce's Economic Development Administration found that the average penetration rate for basic telephone service on reservation and trust lands in rural areas was just 39 percent. Therefore, it may be appropriate to examine closely the state of telecommunications access not only in rural areas, but more specifically on tribal lands.

47. We seek comment on whether the Eighth Report should specifically address the state of mobile telephone competition on tribal lands. If so, what issues are present on tribal lands that warrant separate consideration from other rural areas with similar population levels? In examining services available on tribal lands, should we limit our consideration to services available to individuals who live within federally-recognized tribal lands, or should we also include other nearby areas where Native Americans may live? If so, we ask that commenters provide details regarding which areas should be included in our discussion, and provide information or information sources for obtaining sufficiently granular data about services in such areas.

(c) Rural Metrics

48. As discussed, the *CMRS Reports* have looked at key metrics as indicators of the demand for mobile telephone service and competition among mobile telephone providers. These metrics include the number of subscribers, MOUs, ARPU, churn, and pricing data. Historically, all of these metrics have

been presented on a national basis, although sub-national subscribership and pricing data were included in the *Seventh Report*. Furthermore, we have requested sub-national or regional data for all of these metrics in sections II.A.iii. and II.A.iv., *supra*.

49. At this point, we request data for all of these metrics on a sub-national level and ask what the data show about differences between urban and rural areas in terms of demand and competition. Does information currently exist demonstrating differences in subscribership, MOUs, ARPU, churn, and prices in urban versus rural areas? If so, would commenters be willing to provide such information?

50. Beginning with the *Seventh Report*, we presented subscribership figures on an EA basis using NRUF data. Should the Commission use NRUF data to determine subscribership and penetration rates in rural areas, however they may be defined? Would the NRUF data be able to provide accurate and meaningful statistics on rural subscribership given the limitations of the data discussed? Are there other sources of information that could be used to determine the number of subscribers and penetration rates in rural areas?

51. The Commission knows of few studies that have been done comparing mobile telephone pricing in urban versus rural areas. However, Econ One has completed one study, which it presented at the Public Forum and which we included in the *Seventh Report*, that compared pricing in the 25 largest U.S. cities (with an average population of 4.4 million) with 25 randomly-selected towns or cities (with an average population of 95,611) located in RSAs. For purposes of its analysis, Econ One considered the towns or cities located in an RSA to be rural areas. The company reported very similar pricing in these two groups of cities. However, while the mean prices for monthly service in urban and rural areas were similar, there was a wider range of prices in rural areas than in urban areas. We ask for additional information on whether there are meaningful pricing differences between urban and rural areas. To the extent that such differences exist, what are the reasons for such differences? Should additional analyses on the differences between urban and rural mobile telephone pricing be performed? What additional conclusions can be drawn, and what are the limitations of those conclusions?

52. Finally, to what extent do nationwide carriers affect prices and competition in rural areas, even if such carriers do not offer service in those areas? Do these carriers create the same competitive pressures in rural areas that they do in urban areas?

vi. Wireless-Wireline Competition

53. Mobile telephone service has been considered both a complement to and a substitute for wireline services. Historically, most consumers used their mobile phones as a mobile complement to their wireline phones by using their mobile handsets only when away from their homes or places of work. However, as noted in the *Seventh Report*, an estimated 3 to 5 percent of consumers have "cut the cord," meaning they do not subscribe to wireline phone service. The *Seventh Report* included information about consumers who consider their mobile phones their primary phone but may still continue to have a wireline phone. Moreover, the *Seventh Report* noted that, due to the fact that several mobile telephone packages have extensive local service areas and/or include free long distance, many consumers now use their mobile phones instead of their wireline phones to make "long distance" calls.

54. In order to track and analyze competition between mobile telephone and wireline services more effectively, we request data on (i) The number of mobile telephone subscribers who do not subscribe to residential wireline service, (ii) the percentage of consumers' total monthly voice communication minutes that are made from mobile phones, (iii) the percentage of consumers' total monthly long distance minutes that are made from mobile phones, (iv) the percentage of mobile telephone subscribers' calls and minutes that occur in their homes using their mobile phones, (v) the percentage of both mobile telephone and wireline calls and minutes that terminate on mobile phones, and (vi) demographic data on which groups of consumers have allocated a substantial portion of their voice communications to mobile telephone service. Should the Commission gather additional data, perform additional analyses, or draw new conclusions on wireless-wireline competition?

55. The *CMRS Reports* have also discussed the effects of mobile telephone service on the operational and financial results of companies that offer wireline services. Such effects include a decrease in the number of residential access lines, a drop in long distance revenues, and a decline in payphone profits. To what extent is the increase in mobile telephone usage a major cause of these developments, and why? Given these developments, we ask for comment on the extent to which mobile telephone service competes with wireline service. What other effects has mobile telephone service had on the provision of other telecommunications services by other service providers? What new developments in wireless-wireline competition have occurred since the *Seventh Report*? What are the major reasons for these developments?

vii. Satellite Operators

56. Satellite operators offer mobile telephone services which, from a consumer's point of view, have many of the same characteristics as terrestrial-based mobile telephone services. At least four carriers currently provide mobile satellite services ("MSS") in the United States: Globalstar Telecommunications LTD, Iridium Satellite LLC, Inmarsat Limited, and Mobile Satellite Ventures. We request that these carriers submit as part of their comments information detailing the geographic areas of the United States in which they provide coverage as well as those areas in which they offer service to new customers. Taking into account such information on MSS service availability, we seek comment on the extent of competition among MSS providers. To what extent do MSS providers compete with terrestrial-based mobile telephone providers? Are MSS services substitutes for terrestrial-based mobile telephone and data services? Should MSS providers be considered an additional service provider in the analysis of service availability in the Eighth Report, or do they offer services that generally are not substitutes for services provided by terrestrial CMRS carriers, even though they fall under the legal umbrella of CMRS?

viii. Resellers

57. Resellers offer service to consumers by purchasing airtime at wholesale rates from facilities-based providers and reselling it at retail prices. According to information provided to the Commission in its ongoing local competition and broadband data gathering program, the resale sector accounted for approximately 5 percent of all mobile telephone subscribers as of December 2001. To what extent are resellers creating competitive pressures in the mobile telephone sector? In 2002, WorldCom, which claimed to be the largest reseller of post-paid wireless service the United States, announced that was abandoning the resale business. Who are the remaining major resellers? How many subscribers do they have? From a consumer perspective, what are the benefits of buying from a reseller versus a facilities-based provider? Are resellers selling to specific demographic

segments? The *Seventh Report* discusses "mobile virtual network operators" ("MVNOs") that are a type of reseller that focuses on brand development, with the intent to offer a niche product and to have better customer retention. An example of an MVNO is Virgin Group LLC ("Virgin"). Virgin has an arrangement with Sprint PCS whereby Virgin markets prepaid mobile telephone service using Sprint PCS's network. We ask for comment on how this resale model has affected the provision of resale services. We also ask for information about companies that have employed the MVNO resale model since the *Seventh Report*.

ix. International Developments

58. The *Seventh Report* compared the mobile telephone sectors in the United States, Western Europe, and parts of the Asia-Pacific by examining a number of performance measures, including penetration levels, subscriber growth, MOUs, and pricing. The scope of international comparisons in the *Seventh Report* and previous *CMRS Reports* has been constrained by the availability of comparable international data. For the purposes of the Eighth Report, we seek data to update and possibly expand upon these international comparisons.

59. The international comparisons in the *Seventh Report* were based on various sources of data that were generally current as of the second half of 2001. We request suggestions on sources of data for updating international comparisons of penetration levels, subscriber growth, and usage for the year 2002.

60. The *Seventh Report* used Organization for Economic Co-Operation and Development ("OECD")/ Teligen mobile service baskets and revenue per minute ("RPM") estimates to compare mobile telephone pricing in the United States, Canada, and parts of Western Europe and the Asia-Pacific. We request recommendations on alternative methods of comparing mobile telephone pricing in different countries and associated sources of data. We also seek suggestions on sources of data for updating the international comparison of RPM.

61. We also invite suggestions on additional performance measures and associated data sources for comparing the U.S. mobile telephone sector with those in other countries.

B. Competition in the Mobile Data Sector

i. Introduction

62. For purposes of its *CMRS Reports*, the Commission considers mobile data to be the delivery of non-voice information to a mobile device. Two-way mobile data services include not only the ability to receive non-voice information on an end-user device but the ability to send it from an end-user device to another mobile or landline device using wireless technology. The *Seventh Report* concluded that competition within the mobile data sector is developing successfully, as evidenced by the multitude of dynamic services, service packages, and pricing plans available to consumers from a variety of providers.

63. For purposes of the Eighth Report, we seek information on the significant changes and developments that have occurred in the mobile data industry since the publication of the *Seventh Report*. Do commenters believe that competition is continuing to develop successfully within the mobile data sector?

64. In analyzing competition within the mobile data industry, it is necessary to consider the relationship between mobile data and mobile telephone service. Both services are offered by many of the same providers using the same networks and end user devices, yet differences in the nature of the two services exist. Hence, to what extent are the mobile data and mobile telephone sectors separate, and to what extent are they converging?

65. Related to this issue of convergence, the *Seventh Report* discussed the emergence of smartphone devices during 2001 and 2002 that combine the organization and data-centric features of personal digital assistants ("PDAs") with the voice capabilities of mobile telephones. We seek comment on the extent to which the emergence of smartphones has signified a convergence between mobile data and mobile telephone service, and we seek data on the growth in the number of users of these devices. How many smartphones have been sold in the United States? What types of consumers purchase smartphones? What are the features and capabilities of the various devices? Finally, have there been any new developments related to smartphones since the *Seventh Report*?

ii. Services & Content

66. The *Seventh Report* described three general categories of mobile data providers and their corresponding devices: (i) mobile telephone operators offering services primarily on mobile telephone handsets, (ii) providers of mobile data access to handheld PDA devices and laptop computers, and (iii) paging carriers offering services on pagers and two-way messaging devices. However, in analyzing subsectors within the mobile data industry, for several reasons we have found it most effective to segregate the industry not along the lines of devices, spectrum bands, or network technologies, but instead along the lines of the types of services available to consumers. First, the types of mobile data services available to consumers have become increasingly similar across devices. Many of the same mobile data services are available on mobile telephone handsets, PDAs, smartphones, and laptop computers. With the exception of traditional one-way pagers, most mobile data devices have the ability to offer some form of text messaging, web browsing, and e-mail access. Second, carriers use a variety of different spectrum bands—including broadband PCS, cellular, and SMR—and a variety of different network technologies—including CDMA, GSM, cdma2000 1xRTT ("1xRTT"), and General Packet Radio Service ("GPRS")—to provide many of the same mobile data services.

67. The types of services discussed in the *Seventh Report* include: Paging, Short Messaging Service ("SMS") and instant messaging ("IM"), web browsing, e-mail and corporate server access, location-based services, and short range data transmissions. Are there additional categories that should be analyzed in the Eighth Report? What new and innovative services are mobile data providers offering? In addition, we seek comment on the extent to which mobile data services are substitutes for or complements of one another? For example, do messaging services compete with e-mail services? Are web browsing services a complement to e-mail access? Which services are most often bundled together, and why?

68. In addition to seeking data on the level of competition among different mobile data services, we request information on the extent to which mobile data services compete with data services offered through wireline devices. For example, have mobile e-mail services been a substitute for e-mail access on a personal computer offered through a dial-up, Digital Subscriber Line ("DSL"), or cable modem connection?

69. Furthermore, we request data on the growth and success of the various mobile data services. Which services are most popular with consumers and have the highest adoption rates? In what

ways do services offered over 1xRTT and GPRS networks differ from those offered over 2G networks?

70. In addition to requesting comment on mobile data services generally and the economic relationship between these services, we also seek information related to specific mobile data services.

(a) Paging

71. Traditional paging service consists of a one-way data communication sent to a mobile device that alerts the user when it arrives. The communication usually consists of a phone number for the user to call, but could also contain a short text message or information update. As discussed in the various *CMRS Reports*, the number of subscribers to traditional one-way paging services has been declining over the past few years. In addition, all of the major paging carriers have filed for bankruptcy reorganization over the past two years. Do commenters foresee continued demand for one-way paging services? If so, who are the major purchasers of one-way paging services? What specific advantages do one-way paging services offer for these consumers versus other services? How many paging subscribers also own a mobile telephone?

(b) Web Content

72. As explained in the *Sixth and Seventh Reports*, mobile web browsing services allow users to access content from the World Wide Web on a mobile device. The web browsing services offered can vary by provider and by device in both the type and amount of content that users can receive. For example, mobile web subscribers using laptops may be able to connect to any web page and view graphical content, while users accessing the web from a mobile telephone handset may be able to view only a limited number of text-based web pages that have been redesigned for mobile devices. Furthermore, some carriers limit the web sites that users can access to those with which they have a content agreement.

73. We invite commenters to address the extent to which users have a choice of which content they receive. Can users of mobile web services access any web site, only those have been re-designed for access on mobile device, or only those with whom the carrier has a content agreement? Approximately how many web sites have been specially designed for use on a mobile device?

74. Have there been any notable technological developments in the past year that have facilitated a greater availability of mobile web browsing services?

(c) Text Messaging

75. As mentioned in the *Seventh Report*, SMS provides the ability for users to send and receive text messages to and from mobile devices with maximum message length ranging from 120 to 500 characters. We seek data on the growth rate of SMS in the United States over the past several months. How many SMS messages have been sent in the United States over time?

76. Furthermore, as of mid-2002, most of the major mobile telephone carriers had introduced the ability to exchange text messages with subscribers on other carriers' networks. We seek information on how this intercarrier interoperability has affected SMS adoption rates and the volume of SMS traffic.

77. In addition to offering SMS, some carriers offer IM services. Instant messaging services, such as AOL Instant Messenger ("AIM") and MSN Messenger, enable users to send and receive messages within a community of users, creating a chat-style atmosphere, whereas SMS is a communication between two individuals. From their mobile devices, AIM users are able to tell whether or not someone from their "buddy list"—a list of other AIM users with whom the initial user communicates—is online. In addition, AIM users can communicate with their buddies regardless of whether they are on a desktop computer or a mobile telephone. AT&T Wireless, Sprint PCS, T-Mobile, and Palm have offered AIM to their users, while Verizon Wireless and Cingular Wireless have offered MSN Messenger. Unlike with SMS, open access or interprovider interoperability is not available with IM services; AIM users cannot exchange messages with users of MSN Messenger. To what extent have these access and interoperability issues affected demand for instant messaging services in the mobile data sector?

78. As mentioned, the Commission invites comment of the extent to which the various mobile data services compete with each other. In particular, we ask to what extent text messaging and e-mail are substitutes for each other. In what ways do the features and capabilities of the two services vary?

(d) E-mail and Corporate Server Access

79. As discussed in the *Seventh Report*, a variety of services are available to consumers that allow them to receive e-mail messages while mobile from an existing home- or work-based e-mail account. We seek information from commenters on the specific capabilities of these various mobile e-mail services. To what extent are features such as forwarding and deleting integrated with consumers' other e-mail accounts? Are users able to view attachments? In addition, we seek information on the specific capabilities of services that allow users to access corporate intranets or files stored on corporate servers from a mobile device.

80. With regard to both types of services, we seek information on how much data or content a user can download, and how quickly and reliably. Furthermore, are these services secure? What level of security and/or encryption is offered by these various services?

iii. Devices

81. Mobile data services, and in particular mobile Internet services, are offered on a variety of end-user devices. Which devices are used most for mobile Internet access? Furthermore, do any of the features of mobile data devices—such as battery life, data storage capacity, and screen size—constrain the ability of users to access mobile Internet services, and therefore limit the demand for such services? Which features on which devices might limit mobile Internet access the most?

iv. Subscribership

82. In addition to seeking information on the capabilities of the various mobile data services discussed, we also request data on the number of subscribers to and users of mobile Internet services. How many people in the United States subscribe to or use any type mobile Internet service? Do most mobile Internet users also subscribe to mobile telephone service? How many people use the different types of mobile data services, including paging, SMS, IM, web browsing, e-mail, and corporate server access? In the *Seventh Report*, we used NRUF data to estimate the number of paging subscribers at the end of 2001. Do commenters agree that this is a reliable method for calculating the number of subscribers to that particular service?

83. How many people subscribe to or use higher-speed mobile Internet services provided over 1xRTT and GPRS networks? How does subscribership to the various mobile data services vary by geographic region and among various demographic groups?

v. Service Availability

84. In preparation for the Eighth Report, we request information on the availability of mobile data services offered over 2G mobile networks, as well as higher-speed mobile data

services offered over 1xRTT and GPRS networks.

85. Do carriers offer any type of mobile Internet service in any portion of their service areas? In what percentage of their license and network footprints do carriers offer mobile Internet services? Are the same types of services available in all areas? What percent of carriers' licensed and network POPs are located in the areas where mobile Internet services are available? Does mobile data service availability vary between urban and rural areas?

86. The *Seventh Report* summarized the deployment of next-generation network technologies 1xRTT and GPRS on a county-by-county basis as of March 2002. For purposes of the Eighth Report, we seek information on the extent to which carriers have continued to upgrade their networks with these next-generation technologies since March 2002. In what portion of their license and network footprints have carriers deployed 1xRTT or GPRS, and in what portion do they offer advanced wireless services using these technologies? Are the same types of advanced wireless services available in all areas? Does the availability of advanced wireless services vary between urban and rural areas? What percent of carriers' licensed and network POPs are located in the areas where 1xRTT or GPRS-based mobile data services are available? Furthermore, what percent of the U.S. population has access to advanced wireless services provided by 1xRTT and/or GPRS?

87. Furthermore, we request comment on the actual data transfer speeds that most users experience with GPRS and with 1xRTT. Do the two technologies differ in this respect? To what degree are individual users' data transfer speeds depleted as more users log on to the network in a given area?

88. Finally, we request information on the extent to which mobile data providers are upgrading or plan to upgrade their networks with additional next generation technologies beyond GPRS and 1xRTT, such as EDGE, WCDMA, and 1X–EV.

vi. Pricing

89. In analyzing competition in the mobile data industry and the general evolution of this sector, we have examined the prices charged by providers for various mobile data services. While the analysis of pricing in the mobile telephone sector includes an estimate of per-minute pricing, such an estimate is not feasible in the mobile data sector given the variety of services and the variety of pricing techniques used by carriers. Therefore, the previous *CMRS Reports* have summarized and compared, in some cases over time, the different prices carriers charge as well as various pricing methods they use.

90. For the Eighth Report, we request data from providers on the prices they charge for the various mobile data services they offer. How have these prices changed over time?

91. In addition to asking for actual pricing data, we also seek comment on the general trends related to mobile data pricing. To what extent do providers bundle mobile data services with each other and with voice service? Do providers offer mobile data services as add-ons service to voice service or as standalone services? Are mobile data services offered on a per-use basis or on a monthly subscription basis? Finally, do providers charge for mobile data services by the megabyte of data, by the minutes of usage, by the incremental service, and/or do they offer a flat rate for unlimited usage?

92. In addition, we seek information on the degree to which mobile data providers, in their pricing plans and marketing efforts, distinguish between mobile Internet services offered over 2G networks and those offered over next-generation 1xRTT and GPRS networks.

93. Are the prices of mobile data services generally the same across all the geographic areas in which carriers offer them? Do the prices vary by region, in particular between urban and rural areas? To the extent that they do vary by region, what are the reasons for this?

vii. WiFi

94. Over the past year, the WLAN technology, Wireless Fidelity or WiFi, has begun to play an increasingly important role in the mobile data industry. WiFi operates in the unlicensed spectrum bands using primarily the 802.11 wireless technology standards and allows data transfer speeds of up to 11 Mbps. While WiFi is not a CMRS service per se, we included a discussion of it in previous *CMRS Reports* because of its potential to affect the provision of CMRS services.

95. Users of mobile devices with WiFi capabilities or attachments can establish a high-speed, wireless connection to the Internet within a variety of settings, including restaurants, coffee shops, hotels, airports, convention centers, office buildings, and college campuses. These buildings or campuses generally connect to the Internet via a high-speed wireline technology such as a T–1 line, and WiFi users lose their high-speed wireless connections once they exit these settings. Given both the advantages and limitations of WiFi, do commenters believe that it competes with commercial, interconnected mobile data services? Does WiFi have the potential to compete with these services to a greater extent in the future?

96. For purposes of the Eighth Report, we request data on the current extent of WiFi deployment and usage. How many people or what percent of the U.S. population subscribes to or uses WiFi services? In how many locations is WiFi currently available, and in which types of locations do most users establish WiFi connections? What data transfer speeds do most users experience with the various WiFi technology standards, including 802.11a, 802.11b, and 802.11g? In addition, what are the major drawbacks of WiFi access? To what degree are WiFi connections secure for end users? What, if any, interference problems are associated with WiFi access? Are voice services possible and available using WiFi connections?

97. Finally, we seek information on the other uses of unlicensed spectrum besides WiFi. Are both voice and data services available through these other types of connections? What is the extent of deployment of these other services?

III. Fixed Voice and Data Services

98. In addition to providing an analysis of competition in the commercial mobile services industry, the *CMRS Reports* have also included an appendix providing an overview of the current state of the fixed wireless industry. Some licensees of spectrum bands traditionally used for CMRS are using that spectrum to provide fixed wireless services. Furthermore, because most fixed wireless carriers have typically offered two-way, high-speed data services, the fixed wireless sector is discussed in greater detail in the Commission's annual report on the deployment of broadband services, pursuant to section 706 of the Telecommunications Act of 1996.

99. With the *Notice of Inquiry*, the Commission seeks the data from commenters on the state of the fixed wireless industry to incorporate into the Fixed Wireless Appendix of the Eighth Report. Who are the major providers of fixed wireless services? Have the carriers that experienced financial difficulties over the past two years made progress towards recovery and formed new business strategies? Which spectrum bands are currently being used by operators to deploy fixed services, including the unlicensed spectrum bands? In what portion of the United States, measured by both population and land area, are fixed wireless services available? To what extent have fixed wireless networks been deployed in rural areas? How many fixed wireless

systems employ unlicensed spectrum? How many businesses and households currently subscribe to fixed wireless services? What are the typical data transfer rates offered by the various fixed wireless systems? Have there been in any major technological innovations that have affected the fixed wireless industry over the past year?

IV. Procedural Matters

A. Ex Parte Presentations

100. This is an exempt proceeding in which ex parte presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.

B. Filing of Comments and Reply Comments

101. We invite comment on the issues and questions set forth. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 27, 2003, and reply comments on or before February 11, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

102. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an email to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four (4) copies of each filing. Parties choosing to submit, as part of their comments, map files in response to requests in paragraphs 11 through 14, paragraph 56, or paragraph 86, *supra*, should submit a CD (compact disc) containing one copy of the maps of their service areas, with the various distinctions described, in a format, either MapInfo table (.tab) or Tagged Image Format (.TIF), that will allow Commission staff to open and use these files in MapInfo Professional software, version 6.0. If you have questions about submitting map files, please contact Chelsea Fallon at (202) 418–7991. Paper filings and CDs containing map files can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Chelsea Fallon, Federal Communications Commission, Room 4–A335, 445 12th Street, SW., Washington, DC 20554.

V. Ordering Clauses

103 Accordingly, it is ordered that, pursuant to the authority contained in sections 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, the *Notice of Inquiry* is adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–218 Filed 1–6–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 68, No. 4
Tuesday, January 7, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Idaho Panhandle National Forest's Idaho Panhandle Resource Advisory Committee will meet Friday, January 17, 2003 at 9:30 a.m. in Coeur d' Alene, Idaho for a business meeting. The business meeting is open to the public.

DATES: January 17, 2003.

ADDRESSES: The meeting location is the Idaho Panhandle National Forest's Supervisor's Office, located at 3815 Schreiber Way, Coeur d; Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Official, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: The meeting agenda will focus on reviewing project proposals for fiscal year 2003 and recommending funding for projects during the business meeting. The public forum begins at 1 p.m.

Dated: January 31, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 03–225 Filed 1–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-469–807]

Stainless Steel Wire Rod From Spain: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: January 7, 2003.

FOR FURTHER INFORMATION CONTACT: Kevin Williams or Timothy Finn at (202) 482–2371 or (202) 482–0065, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR Part 351 (2002).

Background

On September 3, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from Spain (67 FR 56267).

Pursuant to a request made by Carpenter Technology Corp. (the petitioner), the Department initiated an administrative review of the antidumping duty order on SSWR from Spain for the period September 1, 2001, through August 31, 2002 on October 18, 2002 (67 FR 65336)(October 24, 2002)). On December 6, 2002, the petitioner withdrew its request for the administrative review of SSWR from Spain.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department is rescinding the administrative review of the order on SSWR from Spain for the period September 1, 2001 through August 31, 2002 because the requesting party has withdrawn its request for this administrative review within the 90-day time limit and no other interested parties have requested a review of SSWR from Spain for this time period.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 31, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–290 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–050. *Applicant:* The University of Texas at Austin, Fusion Research Center, 1 University Station, C1510, Austin, TX 78712. *Instrument:* "Helimak" Custom

Magnetized Plasma Turbulence Apparatus. *Manufacturer:* Academia Sinica Institute of Plasma Physics, Peoples Republic of China. *Intended Use:* The instrument is intended to be used to study turbulence and transport in plasmas, principally hydrogen and argon plasmas. The basic properties of the plasma—density, temperature, and velocity—will be measured as well as the behavior of the fluctuations (turbulence) in those quantities. Experimental objectives include validating the nonlinear mechanisms occurring in plasma turbulence and the effect of shear in the flow velocity in stabilizing the turbulence. *Application accepted by Commissioner of Customs:* December 12, 2002.

Docket Number: 02–051. *Applicant:* National Renewable Energy Lab (NREL), 1617 Cole Boulevard, Golden, CO 80401. *Instrument:* Ignition Quality Tester. *Manufacturer:* Advanced Engine Technology Ltd., United Kingdom. *Intended Use:* The instrument is intended to be used to measure the ignition delay, maximum chamber temperature, rate of heat rise, and autoignition temperature of various diesel fuels, surrogate molecules, additives, and alternative fuel compounds to better understand how the molecular structure of fuel compounds relates to the ignition quality (and potentially to the exhaust emissions). The instrument will also be used to characterize new fuels (such as biodiesel) prior to testing them in engines. *Application accepted by Commissioner of Customs:* December 20, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–291 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 991215340–2318–02]

Collaborative Science, Technology, and Applied Research (CSTAR) Program

AGENCY: National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for proposals.

SUMMARY: The CSTAR Program represents an NOAA/NWS effort to create a cost-effective continuum of basic and applied research to operations through collaborative research between operational forecasters and academic institutions which have expertise in the environmental sciences. These activities will engage researchers and students in applied research of interest to the operational meteorological community and improve the accuracy of forecasts and warnings of environmental hazards by applying scientific knowledge and information to NWS products and services. The NOAA CSTAR Program is a contributing element of the U.S. Weather Research Program. NOAA's program is designed to complement other agency contributions to that national effort.

DATES: Proposals must be received by the NWS no later than close of business February 21, 2003. We anticipate review of full proposals will occur during March 2003, and funding should begin during early summer 2003 for most approved projects. June 1, 2003, should be used as the proposed start date on proposals, unless otherwise directed by the Program Officer. Applicants should be notified of their status within 3 months of the closing date. All proposals must be submitted in accordance with the guidelines below. Failure to follow these guidelines will result in proposals being returned to the submitter.

ADDRESSES: Proposals must be submitted to NOAA/NWS; 1325 East-West Highway, Room 15330; Silver Spring, Maryland 20910–3283.

FOR FURTHER INFORMATION CONTACT: Sam Contorno (see **ADDRESSES**), or by phone at 301–713–3557 ext. 150, or fax to 301–713–1253, or via internet at samuel.contorno@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 313; 49 U.S.C. 44720 (b); 33 U.S.C. 883d; 15 U.S.C. 2904; 15 U.S.C. 2934.

Catalog for Federal Domestic Assistance

This program is designated under Catalog for Federal Assistance number 11.468, Applied Meteorological Research.

Funding Availability

NOAA/NWS believes its warning and forecast mission will benefit significantly from a strong partnership with outside investigators. Current program plans assume the total resources provided through this announcement will support extramural efforts through the broad academic community. Because of Federal budget uncertainties, it has not been determined how much money will be available through this announcement. Proposals should be prepared assuming an annual budget of no more than $125,000. It is expected that approximately four awards will be made, depending on availability of funds. This program announcement is for projects to be conducted by university investigators for a 1-year, 2-year, or 3-year period. When a proposal for a multi-year award is approved, funding will initially be provided for only the first year of the program. If an application is selected for initial funding, the NWS has no obligation to provide additional funding in connection with that award in subsequent years. Funding for each subsequent year of a multi-year proposal is at the discretion of the NWS. It will be contingent upon satisfactory progress in relation to the stated goals of the proposal to address specific science needs and priorities of the NWS and the availability of funds. Applications must include a scope of work and a budget for the entire award period. Each funding period must be discrete and clearly distinguished from any other funding period.

The funding instrument for extramural awards will be a cooperative agreement since one or more NOAA/NWS components—forecast offices, National Centers for Environmental Prediction (NCEP) service centers, or regional headquarters—will be substantially involved in implementation of the project. Examples of substantial involvement may include, but are not limited to, proposals for collaboration between NOAA scientists and a recipient scientist and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement. A matching share is not required by this program.

Program Objectives

The long term objective of the CSTAR Program is to improve the overall forecast and warning capabilities of the operational hydrometeorological community by addressing the following national science priorities through collaborative efforts between the NWS and academic institutions: Quantitative precipitation estimation (QPE) and forecasting (QPF), including precipitation type and probabilistic QPF; Flash flood and probabilistic river prediction; Prediction of seasonal-to-interannual and decadal climate variability, and the impacts of these

variabilities on extreme weather events; Prediction of tropical cyclones near landfall, including track, intensity, and associated precipitation, and hazardous weather; Prediction of marine conditions, including fog, winds, coastal ocean, and open-ocean waves; The effect of topography and other surface forcing on local weather regimes; Locally hazardous weather, especially severe convection, winter weather, and phenomena that affect aviation; and Conditions conducive for the rapid development of wildfires and the dispersion of smoke and other air-quality hazards.

Individual NWS Regions and NCEP service centers have a subset of these science priorities due to differences in factors such as topography, weather regimes, and mission.

Program Priorities

NOAA will give sole attention to individual proposals addressing the identified science priorities from NWS Regions and NCEP service centers as listed below. Proposals must clearly specify which primary science priorities are being addressed.

Since a goal of this call for proposals is to foster long-term collaborative interactions between a university and NWS operational offices/NCEP service centers, a proposal must be submitted by at least two principal investigators (PIs) from the same college or university. Proposals submitted jointly by two or more separate colleges or universities are not allowed. At least two of the PIs within this program must be full, assistant, or associate college or university professors with substantial documented involvement in the proposal. Proposals should clearly state the role of each PI in the project.

Except for researchers who are associate, assistant, or full professors at the Naval Postgraduate School or other federally funded educational institutions, Federal Government employees are not allowed to be listed as PIs, although collaboration between the academic community and NOAA within the project is strongly encouraged.

A proposal must contain at least two distinct subtasks addressing one or more of the science priorities listed by a NWS Region or NCEP service center. PIs must clearly address the science and technology transfer process contained within the proposal. This includes their interactions with operational NWS units, including weather offices, River Forecast Centers, NCEP service centers, and regional offices, with the specific goal of improving operational services.

The names, affiliations, and phone numbers of relevant NWS regional/NCEP focal points are provided. Prospective applicants should communicate with these focal points for information on priorities within regional science priorities. Focal points cannot assist in the conceptual design and specific elements to be included in a proposal. Applicants should send completed proposals to the NOAA/NWS program office identified earlier rather than to individual focal points.

NWS Eastern Region Science Priorities

NWS Eastern Region has identified the following science priorities to be addressed by proposals:

The roles of unique geomorphic influences on weather problems such as the type, amount, and intensity of precipitation associated with the complex terrain of the Appalachian Mountains, Atlantic Seaboard, and the Great Lakes. The interaction of these terrain features with large scale weather systems such as winter storms, hurricanes, and closed lows.

The development of more accurate, region-specific conceptual models for tornado, hail, high wind (both convective and synoptic), flash flood, and localized heavy snow events. Detailed investigation of the roles of mesoscale phenomenon such as gravity waves, thermal and moisture boundaries, and localized instabilities during these events. Improved understanding of low-topped severe convection and associated tornado development.

Cloud physics and associated microphysical processes and their role in determining precipitation type and snowfall efficiency.

The relationship of land-falling tropical storms and hurricanes to severe weather and heavy precipitation resulting in flooding and flash flooding.

The processes of snow melt and river ice formation and break-up and their roles in widespread river flooding. The development of high resolution surface analysis systems and the application of these analyses to verification of gridded hydrometeorological forecasts.

The development of improved methodologies for forecasting the onset and dissipation of fog and low ceilings for different geographical locations across the eastern United States.

The processes that lead to high winds, waves, and flooding near the Atlantic Coast, Chesapeake Bay, and Great Lakes. Innovative approaches to formulate, produce, display and deliver high-resolution forecasts and products, an evolving priority of the user community throughout the heavily populated eastern United States. Develop innovative methodologies to communicate forecast uncertainties to a wide variety of users.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, NOAA/NWS/Eastern Region Scientific Services Division, 631–244–0136, or on the Internet at *Kenneth.Johnson@noaa.gov*.

NWS Southern Region Science Priorities

The NWS Southern Region science priorities to be addressed by proposals are as follows:

Development of improved techniques for the prediction of freezing and frozen precipitation events in the NWS Southern Region, including timing, areal extent, intensity and amount.

Development of diurnal lightning and cloud climatologies stratified by weather regime to better predict the onset, spatial coverage, and duration of precipitation, especially under weak synoptic forcing.

Development of improved techniques to forecast and monitor heavy-rain events.

Development of relationships between land falling tropical cyclones and associated severe weather, including heavy precipitation, flooding and flash flooding, throughout the southern United States.

Development of improved techniques to observe and forecast winds and waves in the coastal environment. Improved understanding of the influences of the complex terrain of the southern Appalachians, the Texas Hill Country, the Mexican Plateau, and the Gulf Coast on weather problems such as type, amount, duration and intensity of precipitation and resultant flash flooding.

Development of optimal strategies for using mesoscale models to accurately predict the effects of topography and other surface forcing on local weather. Improved methodologies to better predict the development and duration of stratus, fog and other conditions which result in instrument flight rule (IFR) flying conditions in the NWS Southern Region.

Development of methodologies for use of Doppler weather radar (WSR–88D) and multi-sensor technology to detect/identify storm features leading to, and/or associated with, the development of weak (F0 and F1) tornadoes and waterspouts which are characteristic of tropical and semi-tropical environments.

Development of methodologies for the use of Doppler weather radar and other multi-sensor technology to detect precursor conditions and enhance forecast capabilities for improved

warnings associated with microburst producing thunderstorms.

Development of optimal WSR–88D scan strategies and adaptable parameter settings for accurately estimating heavy precipitation amounts.

Development of techniques to improve hydrologic modeling and prediction for Southern U.S. rivers and streams, including calibration of models, improved distributive modeling techniques, and improved soil moisture accounting. Development of methodologies to better predict the type, duration, and severity of arctic outbreaks that result in damaging freezes affecting the NWS Southern Region.

Development of improved methods for utilizing data analysis, manipulation and communication technology (Internet, Web sites, Geographic Information Systems, etc.) for preparing and disseminating high resolution hydrological and meteorological forecasts and products which best serve the changing needs of varied users.

FOR FURTHER INFORMATION CONTACT: Dan Smith, NOAA/NWS/Southern Region Scientific Services Division, 817–978–2671, or on the Internet at dan.smith@noaa.gov.

NWS Central Region Science Priorities

The NWS Central Region science priorities to be addressed by proposals are as follows:

Improve hazardous weather warnings for different geographical locations in Central Region, including the Central Plains, Northern Plains, Ozark Plateau, mid and upper Mississippi Valley, lower Ohio Valley and Great Lakes regions by:

Developing more accurate, region-specific conceptual models for tornado, hail, high wind, heavy precipitation, and elevated nocturnal convection events.

Developing more accurate, region-specific diagnostic strategies/methodologies to interrogate remotely sensed data (radar, satellite, etc.) and numerical weather guidance with emphasis on weaker and shorter lived severe thunderstorm and tornado events.

Improve Central Region winter weather precipitation forecasts by:

Developing a climatology of winter precipitation events including, but not limited to, heavy snow, sleet or freezing rain stratified by Central Region County Warning Forecast Areas and relating it to public products and services. Linking cloud physics and associated micro-physical processes, precipitation efficiency, water vapor distribution, and transport of winter stratiform and/or convective clouds to improved methodologies for estimating or forecasting winter precipitation amounts.

Improve the accuracy (probability of detection) and average forecast lead time for winter storm warnings by better understanding the development, intensification, and sudden acceleration northeastward of strong mid-west storm systems following Rocky Mountain lee-side cyclogenesis.

Improve aviation forecast products and services by:

Developing a climatology of ceiling, visibility, and low-level wind shear for Central Region county warning forecast areas.

Developing better methodologies to forecast the onset and dissipation of fog and low ceilings for different geographical locations in the Central Region.

Improve the utility and utilization of numerical guidance in the forecast process by developing more efficient and effective methodologies to display, review, and interrogate numerical model output in an operational environment.

Improve the quality of weather services to the public through the development of new and innovative forecast methodologies and products.

FOR FURTHER INFORMATION CONTACT: Peter Browning, NOAA/NWS/Central Region Scientific Services Division, 816–891–7734 ext. 300, or on the Internet at *Peter.Browning@noaa.gov.*

NWS Western Region Science Priorities

The NWS Western Region science needs to be addressed by proposals are as follows:

Improve operational precipitation and hydrological forecasts in complex terrain across a wide range of western U.S. meteorological regimes. In the West, water is a critical and closely managed resource.

Improve wintertime forecasts of snow in complex terrain.

Improve acquisition and use of non-NWS observational networks, such as mesonets.

Improve analysis through better assimilation systems that produce more realistic analysis in complex terrain.

Improve numerical model performance in western complex terrain.

Research, develop and help implement statistical methods to objectively produce bias-corrected model grids (e.g. from grids, not just points) to improve gridded forecasts.

Research, develop and help implement methods to objectively downscale forecast and ensemble grids to the resolution necessary (2–5km) to help improve IFPS forecasts and forecast methodology.

Improve hydrological modeling, through use of emerging techniques, such as distributed hydrologic modeling, of rain/snow melt processes in complex terrain.

Develop conceptual models that better describe the effect of complex terrain on weather forecasts.

Improve precipitation and flash flooding forecasts produced from high based convection with a deep dry sub cloud layer in the arid inter-mountain region.

Improve forecast of significant precipitation events that produce flooding and affect marine forecasts along the west coast.

Improve forecast of the onset of the monsoon season and flash flooding in the desert Southwest.

Improve snow and wind forecast associated with arctic front intrusion into complex terrain in the northern plains.

Improve fire-weather forecasts and smoke dispersion in the western United States.

Improve forecasters ability to produce forecasts of temperature, humidity, and winds in complex terrain.

Improve forecast and warnings of severe weather unique to the western United States through the better use of observational systems and conceptual models.

Improve the performance of coastal and mountain-top WSR–88D radars on a variety of NWS Western Region weather regimes, such as high based inter-mountain convection and low topped storms along the west coast.

FOR FURTHER INFORMATION CONTACT: Andy Edman, NOAA/NWS/Western Region Scientific Services Division, 801–524–5131, or on the Internet at *andy.edman@noaa.gov.*

NWS Alaska Region Science Priorities

The science priorities of the NWS Alaska Region to be addressed by proposals are as follows (in order of importance):

Determine the geomorphic influences on type, amount, duration, and intensity of snow associated with complex terrain to improve forecasts for the Anchorage, Alaska, area, where over 50 percent of the state population resides.

Develop better methodologies to forecast winds over the marine inland waters of southeast Alaska. Methodologies can include numerical forecasts from mesoscale models.

Improve methodologies to forecast fog in the Alaska coastal communities

located along the coast of the Gulf of Alaska.

Improve the winter season WSR–88D-based rain and snow QPEs. All six sites are influenced by complex topography.

Improve the accuracy (probability of detection) and lead time for airborne volcanic ash detection and tracking by better understanding source conditions and early developments of the ash cloud. Improvements must include remote sensing techniques.

Innovative approaches to remote sensing that result in the formulation and production of high resolution hydrometeorological forecasts of river and localized flash flooding produced by synoptic and mesoscale weather systems interacting with complex terrain in south-central Alaska. Emphasis should be placed on the Kenai River watershed.

FOR FURTHER INFORMATION CONTACT: Gary Hufford, NOAA/NWS/Alaska Region Environmental and Scientific Services Division, 907–271–3886, or on the Internet at *gary.hufford@noaa.gov*.

NWS Pacific Region Science Priorities

The science priorities of the NWS Pacific Region to be addressed in proposals are as follows:

Optimize the utility of new and existing observing systems, with emphasis on satellites and their use in providing precipitation estimations.

Develop, optimize, and utilize local high-resolution modeling capabilities aimed at providing operational real-time guidance as well as a tool for locally conducted research.

Conduct Pacific Basin synoptic climatological studies, with emphasis on flash-flood and high-wind events.

FOR FURTHER INFORMATION CONTACT: Ken Waters, NOAA/NWS/Pacific Region Regional Scientist, 808–532–6413, or on the Internet at *Ken.Waters@noaa.gov*.

NWS National Centers for Environmental Prediction Science Priorities

NCEP service centers have established the following science priorities which may be addressed in proposals:

Aviation Weather Center

Develop numerical and subjective techniques to improve the accuracy of convective forecasts in the 2–6 hour time scale.

Improve the treatment of drizzle-size droplets in clouds that lead to aircraft icing through improved parameterization and/or explicit micro physics techniques that are both economical and support cloud initialization using existing observational data sets, including the Automated Surface Observing System, radar, and satellite data.

Enhance understanding of the triggering mechanisms associated with different families of clear-air turbulence events, including gravity waves emanating from convective systems, gravity waves induced by jet streaks, cross-mountain flow, critical boundary-layer flow regimes, etc.

Improve the observations, data assimilation, and modeling of the moisture profile in the boundary layer to better forecast the occurrence of fog and low cloud ceilings.

Climate Prediction Center

Develop dynamically and ensemble-based techniques to improve the prediction of weekly, monthly, and seasonal precipitation skill, including regional climate prediction systems.

Improve global and domestic forecasts of seasonal climate variability through better understanding and modeling of the coupled atmosphere/ocean system and the effect of variations on that coupling to ensemble prediction.

Hydrometeorological Prediction Center (HPC)

Conduct research addressing the broad geographical and seasonal ranges of problems associated with QPF, from initiation, duration, movement, to precipitation type. This includes the spectrum from drizzle to heavy rain and from lake-effect snow to synoptic-scale snowfall.

Develop new model verification techniques to enhance current methods of objectively assessing which models will perform best. The techniques should apply for all time ranges used by HPC, from less than 6 hours to 7 days.

Develop techniques for using output from model ensembles in forecast operations to improve the accuracy of both deterministic and probabilistic forecasts and to add information concerning uncertainty.

Develop techniques to modify gridded numerical guidance to produce gridded forecast products, which are made horizontally, vertically, and temporally consistent using sound meteorological theory.

Marine Prediction Center (MPC)

Develop a robust marine verification system that utilizes the various observations from both in-situ and remote sources. Parameters to be verified include; but are not limited to: Wind speed and direction; sea-state (height, period, direction); visibility; weather; and icing conditions.

Improve forecasting techniques for warnings and forecasts of hazardous marine conditions through the use of additional data sources (especially in-situ), as well as improved use of all marine data sources in numerical weather prediction and model data assimilation techniques.

Storm Prediction Center

Develop mesoscale or storm-scale numerical prediction models, ensemble approaches, and verification techniques to improve forecasts of the location, timing, intensity, and mode of deep moist convection.

Develop three-dimensional mesoscale analysis techniques, observing systems, expert systems or statistical guidance, robust conceptual models, and scientific understanding to improve forecasts of the location, timing, intensity, and mode of deep moist convection.

Tropical Prediction Center (TPC)

Improve hurricane intensity forecasting using either empirical or dynamical forecasting techniques, especially those that combine atmospheric/oceanic interactions and which can be incorporated with existing TPC intensity guidance.

Improve forecasts for the size of tropical cyclones. A goal of this effort will be the generation of probabilistic guidance by MPC and TPC on 34, 50 kt, and 64 kt forecast wind radii for marine and emergency management interests.

Develop an "all-platform" surface wind display and analysis over marine areas for use by TPC and MPC that would cover the larger scale tropical storm environment and that would combine QuikScat, SSM/I, ERS, low-level cloud-drift winds, and conventional observations, including buoys and ships, etc.

Note: In all instances, projects are encouraged which not only address the priorities of individual NCEP service centers but also address aspects of the NCEP/Environmental Modeling Center's goals for improving data assimilation and numerical modeling of the atmosphere, oceans, and Earth's surface.

FOR FURTHER INFORMATION CONTACT: Ralph Petersen, NOAA/NWS/National Centers for Environmental Prediction, 301–763–8000 ext. 7200, or on the Internet at *ralph.petersen@noaa.gov*.

Eligibility

All accredited U.S. colleges and universities, including federally funded educational institutions such as the Naval Postgraduate School, are eligible for funding under this announcement. The restriction is needed because the results of the collaboration are to be incorporated in academic processes which ensure academic

multidisciplinary peer review as well as Federal review of scientific validity for use in operations. Funding for non-U.S. institutions is not available under this announcement.

Evaluation Criteria

The evaluation criteria and weighting of the criteria are as follows:

(1) *Operational Applicability (30 percent):* What is the likelihood of the proposed science activities to improve operational hydrometeorological services? Are proposed research activities transferrable to forecast operations in a reasonable time frame?

(2) *Scientific Merit (25 percent):* What is the intrinsic scientific value and maturity of the subject and the study proposed as they relate to the specific science priorities?

(3) *Technology Transfer and Methodology (25 percent):* What is the degree of collaboration with multiple operational units throughout the project? What is the level of planning by researchers to integrate results into operations successfully and efficiently? Were focused scientific objectives and strategies, including data management considerations, project milestones, and timeliness, used?

(4) *Capability of researchers (10 percent):* Do PIs clearly document past scientific collaborations with operational meteorologists? Have past interactions been successful? Are researchers likely to maintain effective and consistent interactions with operational forecasts throughout the course of the proposed research program? Have researchers demonstrated the ability to conduct successful research?

(5) *Cost Effectiveness (10 percent):* Do researchers demonstrate the ability to leverage other resources? Is there a high ratio of operationally useful results versus proposed costs?

Selection Procedures

All proposals will be evaluated and individually ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer panel review. Three to seven NWS experts representing NWS Regions and Centers may be used in this process. Their recommendations and evaluations will be considered, along with the program policy factors discussed below, by the selecting official who will select the proposals to be funded and determine the amount of funds available for each proposal. Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding. Because the selecting official will take into account program policy factors, awards may not necessarily be made to the highest scored proposals.

Program Policy Factors

The selecting official may take into account the need to spread awards geographically and among priorities and universities. While a university may submit more than one application, the selecting official may limit the awards to only one per university. Finally, the amount of funds available and whether an application substantially duplicates other projects currently approved for funding or funded by NOAA or other Federal agencies may be considered by the selecting official.

Proposal Submission

Proposals must adhere to the five provisions under "Proposals" and the seven requirements under "Required Elements" by the deadline of February 21, 2003. Failure to follow these restrictions will result in proposals being returned to the submitter without review. In addition, applicants should note those provisions under "Other Requirements/Information" that must be complied with before an award can be made.

Proposals

(1) Proposals submitted to the NOAA NWS CSTAR Program must include the original and two unbound copies of the proposal.

(2) Investigators are not required to submit more than three copies of the proposal. Investigators are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5 x 11), or otherwise unusual materials submitted as part of the proposal. Only an original version of the federally required forms and two copies are needed.

(3) Proposals should be no more than 30 pages (numbered) in length, including budget, investigators vitae, and all appendices and should be limited to funding requests for 1- to 3-year duration. Appended information should be counted within the 30-page total. Federally mandated forms are not included within the page count.

(4) Proposals should be sent to the NWS (see **ADDRESSES**).

(5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

All proposals should include the following elements:

(1) *Signed title page.* The title page should be signed by the PIs and the institutional representative and should clearly indicate which project area is being addressed. The PIs and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) *Abstract:* An abstract must be included and should contain an introduction of the problem, rationale, and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution's investigators, total proposed cost, and budget period.

(3) *Results from prior research.* The results of related projects supported by NOAA and other agencies should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency, award number, PIs, period of award, and total award. The section should be a brief summary and should not exceed two pages total.

(4) *Project description.* The proposed project must be completely described, including identification of the problem; scientific objectives; proposed methodology; relevance to the priorities of the NWS Region or NCEP service center; operational applicability; scientific merit; proposed technology transfer; past collaborations with operational hydrometeorologists; cost effectiveness of research; and the program priorities listed above. Benefits of the proposed project to the general public and the scientific community should be discussed. A year-by-year summary of proposed work must be included. The project description, including references but excluding figures and other visual materials, must not exceed 15 pages of text. In general, proposals from three or more investigators may include a project description containing up to 15 pages of overall project description plus up to 5 additional pages for individual project descriptions.

(5) *Budget.* Applicants must submit a Standard Form 424 "Application for Federal Assistance," including a detailed budget using the Standard Form 424a, "Budget Information—Non-Construction Programs." The form is included in the standard NOAA application kit. The proposal must include total and annual budgets corresponding with the descriptions provided in the project description. Additional text to justify expenses should be included as necessary.

(6) *Vitae.* Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all

publications in the last 3 years with up to five other relevant papers.

(7) *Current and pending support.* For each investigator, submit a list which includes project title, supporting agency with grant number, investigator months, dollar value, and duration. Requested values should be listed for pending support.

Other Requirements/Information

(1) Applicants may obtain a standard NOAA application kit from the NOAA Office of Grants Management. Primary applicant Certification: All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

(2) Federal Policies and Procedures Applicable to this announcement:

A. *Environmental Impact.* Applicants whose proposed projects may have an environmental impact should furnish sufficient information to assist proposal reviewers in assessing the potential environmental consequences of supporting the project.

B. The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published October 30, 2002 (67 FR 66109), is applicable to this solicitation.

(3) There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and the NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If one incurs costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award.

(4) *Disposition of Unsuccessful Applications.* Those proposals that are not ultimately selected for funding will be destroyed.

(5) If an application is selected for funding, the DOC has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the DOC.

In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied benefits of, or subjected to discrimination under any program or activity receiving financial assistance from the NOAA/NWS. The NOAA/NWS does not have a direct telephonic device for the deaf (TDD capabilities can be reached through the State of Maryland-supplied TDD contact number, 800–735–2258, between the hours of 8 a.m.–4:30 p.m.

Paperwork Reduction Act

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424 and 424A has been approved by OMB under the respective control numbers 0348–0043 and 0348–0044. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget control number.

Executive Orders 12866 and 12372

This notice has been determined to be not significant for purposes of E.O. 12866. Applications under this program are not subject to E.O. 12372, "Intergovernmental Review of Federal Programs."

Administrative Procedure Act/ Regulatory Flexibility Act

Notice and comment are not required under 5 U.S.C. 553(a)(2), or any other law, for rules relating to public property, loans, grants, benefits or contracts. Because notice and comment are not required, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

Dated: December 31, 2002.

John E. Jones, Jr.,

Deputy Assistant Administrator for Weather Services.

[FR Doc. 03–224 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010203B]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Ecosystems Committee, Squid, Mackerel and Butterfish Committee, Law Enforcement Committee, Highly Migratory Species Ad-Hoc Committee, and Executive Committee will hold a public meeting.

DATES: Tuesday, January 21, 2003, through Thursday, January 23, 2003. On Tuesday, January 21, 2003, the Ecosystems Committee will meet from noon until 2 p.m. The Squid, Mackerel and Butterfish Committee will meet from 2–5 p.m. On Wednesday, January 22, 2003, the Law Enforcement Committee will meet from 8:30–9:30 a.m. Council will meet from 9:30 a.m. until 4:00 p.m. On Thursday, January 23, 2003, the Highly Migratory Species Ad-Hoc Committee will meet from 8–9 a.m. The Executive Committee will meet from 9–10 a.m. Council convenes from 10 a.m. until 4 p.m.

ADDRESSES: This meeting will be held at the Trump Plaza Hotel, Mississippi Avenue and the Boardwalk, Atlantic City, NJ, telephone 609–441–2708.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: Agenda items for the Council's committees and the Council itself are: the Ecosystems Committee will discuss Council's role in identifying and addressing NMFS habitat/bycatch requirements; the Squid, Mackerel and Butterfish Committee will discuss and finalize measures to be included in Amendment 9 (gear impacts on EFH, Illex fishery moratorium, multiple year specification process, bycatch/discard reduction in Loligo fishery, and "other"); the Law Enforcement Committee will review the Fisheries Achievement Award Program and discuss background investigation needs/limitations regarding Council members and advisors; Council will conduct a scoping meeting for Amendment 1 to the Dogfish Fishery Management Plan (consider, among other management measures, the following items for inclusion in Amendment 1: define a rebuilding biomass target for Bmsy, establish rebuilding timeframe consistent with Section 304(e) of the Magnuson-Stevens Act, address bycatch/discard issues, address different allocation processes,

"other"); approve Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan for Secretarial submission; the Highly Migratory Species Ad-Hoc Committee will discuss establishment of a permanent sub-quota allocation of bluefin tuna for North Carolina during December 1 through January 31 time period; Council will receive and discuss organizational and committee reports including the New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting; and, act on any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting date.

Dated: January 2, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–276 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[030102001–3001–01]

United States Climate Change Science Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice of availability and request for public comment.

SUMMARY: The United States Climate Change Science Program (CCSP) is announcing the availability of a draft document "Strategic Plan for the Climate Change Science Program." The complete draft strategic plan was posted on the CCSP web site at *http://www.climatescience.gov* for public comment on November 11, 2002. The CCSP is seeking public comment in order to receive feedback from the widest range of interested parties. This draft document is being issued for comment only and is not intended for interim use. The CCSP will review public comments received on the draft document. In response to those comments, suggested changes will be incorporated, where appropriate, and a final document will be issued for use.

In your review, we ask you to provide a perspective on the content, implications, and challenges outlined in the plan as well as suggestions for any alternate approach you wish to have considered, and the types of climate and global change information required by policy makers and resource managers. We also ask that you comment on any inconsistencies within or across chapters, and omissions of important topics. For any shortcomings that you note in the draft, please propose specific remedies.

In your comments, please consider the following issues: (1) Overview on the content, implications, and challenges outlined in the plan; (2) areas of agreement and disagreement, as appropriate; (3) suggestions for alternative approaches, if appropriate; (4) inconsistencies within or across chapters; (5) omissions of important topics; (6) specific remedies for identified shortcomings of the draft plan; (7) type of climate and global change information required by representative groups; (8) other comments not covered above. Please do not comment on grammar, spelling, or punctuation. Professional copy editing will correct deficiencies in these areas for the final draft.

Please follow these instructions for preparing and submitting your review. Using the format guidance described below will facilitate our processing of reviewer comments and assure that your comments are appropriately considered. Please provide background information about yourself on the first page of your comments: your name(s), organization(s), area(s) of expertise, mailing address(es), telephone and fax numbers, and email address(es). Overview comments on the chapter should follow your background information and should be numbered. Comments that are specific to particular pages, paragraphs or lines of the chapter should follow your overview comments and should identify the page and line numbers to which they apply. Comments that refer to a table or figure should identify the table or figure number. In the case of tables, please also identify the row and column to which the comment refers. Order your comments sequentially by page and line number. At the end of each comment, please insert your name and affiliation. An example of the format is provided on the CCSP web site at: *http://www.climatescience.gov/Library/stratplan2003/comments.htm.*

DATES: Comments on this draft document should be submitted by January 18, 2003. Comments received after that date will be considered to the extent practicable. All comments submitted will be posted on the CCSP web site for public review.

ADDRESSES: The Strategic Plan for the Climate Change Science Program is available on the CCSP web site at: *http://www.climatescience.gov/Library/stratplan2003/.* A free single copy of the Plan will be available to interested parties until the supply is exhausted. Such copies may be requested by writing to the U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave., NW., Washington, DC 20006 or submitting e-mail to *information@climatescience.gov.*

All comments should be sent electronically to *comments@climatescience.gov* or to Ms. Sandy MacCracken, U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave., NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Ms. Sandy MacCracken, U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave., NW., Washington, DC 20006. (Phone: 202–223–6262, Fax: 202–223–3065, e-mail: *smaccrac@usgcrp.gov);* or visit the CCSP Web site at *http://www.climatescience.gov.*

SUPPLEMENTARY INFORMATION: Scientists recognized the existence of a natural "greenhouse effect" and the possibility of human-induced changes in the Earth's climate and environment as early as the 19th century and, over time, this possibility has become widely accepted. In the last decades of the 20th century, public debate about the contribution of human activities to observed climate change and potential future changes in climate, and about courses of action to manage risks to humans and the environment, has been active and frequently contentious. These debates cover a range of both science and policy issues, including the extent to which global temperatures have in fact changes; whether most of the observed overall change in temperature of the last 50 years is attributable to human activities (principally the burning of biomass and fossil fuels and changes in land cover); how much climate might change in the future; and

whether proposed response strategies, such as reductions in emissions or efforts to enhance natural carbon sequestration processes, would produce economic or other effects more detrimental than the effects of climate change itself.

Science-based information is required to inform public debate on the wide range of climate and global change issues necessary for effective public policy and stewardship of natural resources. Developing the needed information will require addressing a wide-ranging set of fundamental science questions, significantly improving observations and data management, and implementing highly credible and transparent mechanism for conveying research results in ways that are useful for decisionmakers and the public.

1. The Issues for Science and Society

Environmental systems on Earth are changing constantly. The climate system is highly variable, with conditions varying significantly over the span of seasons, years, decades, and longer timescales. Fluctuations in the amount of energy emitted by the Sun, slight deviations in the Earth's orbit, volcanic injections of gases and particles into the atmosphere, and natural variations in ocean temperatures and currents, all cause variability and changes in climate conditions.

Against the backdrop of these natural forces, humans have become agents of environmental change, at least on timescales of decades to centuries, even as living standards for billions of people have improved tremendously. Emission of greenhouse gases and pollutants and extensive changes in the land surface (both tied to widespread development of modern living standards) have potential consequences for global and regional climate. They also influence air quality, the Earth's protective shield of stratospheric ozone, the distribution and abundance of water resources and many plant and animal species, and the ability of ecosystems to provide life-supporting goods and services.

The challenge is that discerning whether human activities are causing observed climatic changes and impacts requires detecting a small, decade-by-decade trend against the backdrop of wide temperature changes that occur on shorter timescales (seasons to years). A sound base of observations, as well as a solid understanding of how the Earth's environmental systems respond to different natural and human forces, is essential to detecting and attributing climate change to any specific cause. Currently, measurements taken at the Earth's surface, in various layers of the atmosphere, in boreholes, in the oceans, and in other environmental systems such as the cryosphere (frozen regions) indicate that the climate is warming. Further, in Climate Change Science: An Analysis of Some Key Questions (NRC, 2001a), the National Research Council (NRC), the operational arm of the National Academy of Sciences (NAS), concluded that "the changes observed over the last several decades are likely mostly due to human activities, but we cannot rule out that some significant part of these changes is also a reflection of natural variability." The NRC report elaborates on this point:

Because of the large and still uncertain level of natural variability inherent in the climate record and the uncertainties in the time histories of the various forcing agents (and particularly aerosols), a causal linkage between the buildup of greenhouse gases in the atmosphere and the observed climate changes during the 20th century cannot be unequivocally established. The fact that the magnitude of the observed warming is large in comparison to natural variability as simulated in climate models is suggestive of such a linkage, but it does not constitute proof of one because the model simulations could be deficient in natural variability on the decadal to century time scale. The warming that has been estimated to have occurred in response to the buildup of greenhouse gases in the atmosphere is somewhat greater than the observed warming. At least some of this excess warming has been offset by the cooling effect of sulfate aerosols, and in any case one should not necessarily expect an exact correspondence because of the presence of natural variability.

Apparently contradicting the evidence of warming are inconsistencies in the observational record, particularly related to the differences between temperature trends measured at the surface and measurements taken from satellite observations of the lower- to mid-troposphere, which show no significant warming trends in the last two decades of the 20th century. Reconciling these differences and improving observational capabilities remains an important challenge with significant potential implications for decisionmaking.

But the issues extend beyond those of "detection and attribution" to projecting how climate and other related environmental conditions could change in the future. Confidence in such projections is tied to knowledge of basic climate processes and natural variability, the ability of climate models to represent accurately these processes, and the ability of models to represent interactions of natural processes and any human-induced changes in the climate system.

Improving the capability to project future climate conditions would be of significant economic and social value. Consider, for example, the benefits of improved forecasts of the onset of the El Niño-Southern Oscillation (ENSO). ENSO is a large-scale climate oscillation in the equatorial Pacific Ocean that changes phase every few years. Its effects reverberate through the global climate system to affect precipitation and temperature in many regions of the world. Armed with a basic understanding of the processes involved, scientists intensified systematic observations and improved their models, and by the late 1990s could successfully forecast some conditions months in advance. While much additional work is required to improve ENSO forecasts, some climatic features can now be accurately predicted, with significant societal benefits. In the United States, decisionmakers are able to better estimate energy requirements, prepare for storms, manage water resources, anticipate where damage recovery efforts will be required, and foresee other potential impacts. In countries in South America, Africa, and other regions of the world, resource planners and managers are applying model results to develop agricultural plans, anticipate potential food surpluses and shortages, and prepare for other impacts. Such as planning has already reduced suffering and saved crops that would have otherwise been lost to drought and other ENSO effects.

Improving the ability to project long-term trends in climate and related conditions is important to understanding the effects of different types and amounts of natural and human forcing, such as that due to different levels of greenhouse gas and aerosol emissions. Therefore, anticipating how possible future forcing could affect the climate requires development of complex computer models that incorporate the many features of the climate system and their interactions. Such models have been under construction for decades, and require ongoing observations and research into basic processes to fuel their continued improvement. Already, large-scale features of climate can be simulated, but many significant uncertainties remain to be addressed. Current models project significantly different increases in the global average surface temperature, from approximately 1 °C during the 21st century to more than 5 °C during the

same period. This range of uncertainty incorporates both different estimates of climate sensitivity (the increase in temperature that results from a doubling of atmospheric concentrations of carbon dioxide (CO_2)) and a wide range in projections of future greenhouse gas emissions. Reducing uncertainty in climate models will involve improving understanding of the role of clouds in different parts of the atmosphere; improving characterization of the circulation and interaction of energy in the atmosphere and oceans; improving understanding of the Earth's natural carbon cycle; developing more detailed representations of features of the feedbacks from the land surface; incorporating additional types of forcing agents (e.g., "black carbon"); and making progress on other fundamental challenges. Improved projections of climate changes on decadal or longer timescales are also important for many areas of planning and resource management where decisions made today have implications for decades to come. However, at this point, modeled projections of the future regional impacts of global climate change are often contradictory and are not sufficiently reliable tools for planning.

Even if the scientific community were to develop a "perfect" model of the global climate, it would not be possible to predict the level and rate of future changes in climate resulting from human activities. This is because these activities are not predetermined, but rather depend on human choices, which will, in turn, affect future climate conditions. The activities in question-energy-related emissions of greenhouse gases; changing the surface of the land through clearing, conversion, and growth of different land covers; and the release of chemicals (both natural and human-made) that alter the productivity of the land and the oceans—all depend on a more basic set of human driving forces. These include population growth, living standards, characteristics of technology, and institutions (*e.g.*, market conditions). While we cannot predict these conditions, we can use a different set of models to project the climatic and environmental consequences of different combinations of basic human driving forces. These models are useful for performing "If * * *, then * * *" scenario experiments that make it possible to begin to explore the potential implications of different technological and institutional conditions for future emissions, climate, and living standards.

Improving our ability to project potential future variations and changes in climate and environmental conditions, subject to assumptions about natural and human forcing, could enable governments, businesses, and communities to reduce damages and seize opportunities to benefit from changing conditions by adapting infrastructure, activities, and plans. But realizing this potential will require sustained research and improved understanding of the interactions among climate, natural and managed environmental systems, and human activities. Scientific research needs to address a range of issues.

The complexity of the Earth's environmental systems, the unique conditions that they provide for life, and the state of these systems, including potential impacts on society, make climate and global change among the most important issues for our generation, and perhaps for generations to come. Given what is at stake, the Nation and the international community need the best possible science to inform public debate and decisionmaking in government and the private sector.

2. The Research Program

In February 2002, President George W. Bush announced the formation of a new management structure, the Climate Change Science Program (CCSP), to coordinate and provide direction to US research efforts in the areas of climate and global change. These efforts include the US Global Change Research Program (USGCRP), which began as a Presidential initiative in 1989 and was codified by Congress in the Global Change Research Act of 1990 (Pub. L. 101–606), and the Climate Change Research Initiative (CCRI), which was announced by the President in June 2001 to reduce significant uncertainties in climate science, improve global climate observing systems, and develop resources to support policy- and decisionmaking. Departments and agencies of the US Government that participate in the CCSP include the Departments of Agriculture, Commerce (the National Oceanic and Atmospheric Administration and the National Institute of Science and Technology), Defense, Energy, Health and Human Services, Interior (US Geological Survey), State, and Transportation; the Agency for International Development, the Environmental Protection Agency; the National Aeronautics and Space Administration; the National Science Foundation; and the Smithsonian Institution. The Office of Science and Technology Policy, the Council on Environmental Quality, and the Office of Management and Budget provide oversight on behalf of the Executive Office of the President.

The CCRI provides a distinct focus to the overall research program. The focus is defined by a set of uncertainties about the global climate system that have been identified by policymakers and analyzed by the NRC (NRC, 2001a). Areas addressed in the NRC report include climate observations, aerosols, North American carbon sources and sinks, climate feedbacks and modeling, scenarios of human-induced forcing, and development of methodologies for risk management. The CCRI is described more completely in Part I of this draft strategic plan.

The CCRI accelerates key areas of research that have been under development over the past thirteen years in the USGCRP. Over this period, the United States has made a large scientific investment—totaling more than $20 billion in the areas of climate change and global change research. With these resources, research programs supported by the agencies that participate in the USGCRP, in collaboration with several other national and international science programs, have mounted extensive space-based, surface, and in situ (at fixed sites) systems for global observations and monitoring of climate and ecosystems variables; have documented and characterized several important aspects of the sources, sinks, abundances, and lifetimes of greenhouse gases; have begun to address the complex issues surrounding various aerosol species that may significantly influence climate; have advanced our understanding of global water and carbon cycles (but with major remaining uncertainties); and have developed several approaches to computer modeling of global climate. The program has been a comprehensive, interagency collaboration that has facilitated scientific discovery. Program results have revealed and addressed many of the complex interactions of climate and other environmental systems, and have started to lay the foundation for understanding the relationships between natural variability and human activities that may contribute to change. US researchers have developed fundamental insights into how the climate and Earth system functions: Insights that are incorporated into advanced models throughout the world. The USGCRP is described more completely in Part II of this draft strategic plan.

CCSP's management will balance the CCRI's near-term focus on climate change with the USGCRP's breadth, creating a program that both accelerates development of answers to scientific

aspects of key climate policy issues and support advances in knowledge of the physical, biological, and chemical processes that influence the Earth system. This breadth is required to continue improving our understanding of the complex interrelationships among a broad set of systems that regulate climate and the global environment, as described in NRC's seminal report, Global Environmental Change: Research Pathways for the Next Decade (NRC, 1999a). The Pathways report lays out a framework of research questions that has significantly influenced the development of this strategic plan. Other reports issued by several boards, committees, and panels of the NRC have advised the USGCRP on specific aspects of climate and global change research and have influenced specific components of its research strategy. Indeed, the program has benefited from extensive interaction with the NRC, which is responsible for evaluating the USCGRP periodically for scientific merit.

By investigating a targeted yet comprehensive set of questions, the CCSP seeks to focus attention on key climate changes issues that are important for public debate and decisionmaking, while maintaining sufficient breadth to facilitate the discovery of the unexpected. Establishing a careful balance between focus and breadth is essential if scientists are to develop knowledge of the interactions between natural variability and potential human impacts on the Earth system. This is an important management issue for the program and is a prerequisite for making as effective and productive use as possible of the significant resources allocated to this purpose. Establishing this balance, and a rational sequencing of research priorities and potentials, will require input from both decisionmaking and the science community.

3. Guiding Principles for CCSP

To fulfill its mission as the publicly sponsored research program addressing climate change issues for the United States, the CCSP must continuously adhere to three guiding principles that underpin the objectivity, integrity, and usefulness of its research and reporting:

(i) The scientific analyses conducted by the CCSP are policy relevant but not policy driven. CCSP scientific analyses (including measurements, models, projections, and interpretations) are directed toward continually improving our understanding of climate, ecosystems, land use, technological changes, and their interactions. In developing projections of possible future conditions, the CCSP addresses questions in the form of "If * * *, then * * *" analyses. Policy and resource management decisions are the responsibility of government officials who must integrate many other considerations with available scientific information.

(ii) CCSP analyses should specifically evaluate and report uncertainty. All of science, and all decisionmaking, involves uncertainty. Uncertainty need not be a basis for inaction; however, scientific uncertainty should be carefully described in CCSP reports as an aid to the public and decisionmakers.

(iii) CCSP analyses, measurements, projections and interpretations should meet two goals: Scientific credibility and lucid public communication. Scientific communications by the CCSP must maintain a high standard of methods, reporting, uncertainty analysis, and peer review. CCSP public reports must be carefully developed to provide objective and useful summaries of findings.

4. The Research Strategy

This draft strategic plan for the CCSP, incorporating both the USGCRP and the CCRI, is built around a carefully constructed set of questions and objectives for each of the major areas of the program. Primary research questions that focus on broad science issues are supported by more detailed questions and objectives that can be addressed in specific research initiatives and projects. For each major question addressed, the strategy includes a very brief description of the state of knowledge, subsidiary questions, descriptions of products and deliverables, information of activities and infrastructure needed to make progress, and the benefits or "payoffs" from research. For each major program area, linkages to important national and international research activities are also described.

This plan should be considered a draft subject to substantial revision through public comment and independent review by the NAS.

Part I of the plan describes the components of the CCRI as discussed above. These are organized into three broad programmatic areas: (1) Research focused on key climate change uncertainties; (2) Climate quality observations, monitoring, and data management; and (3) Resources for decision support.

Part II of the plan describes major research questions about how the components of Earth's environmental system function, how the system may change in response to human and natural forcing, and what the implications of these changes may be for a variety of human activities and natural environments and resources. For each major research question, a state of knowledge, illustrative research questions, research needs, and a list of products and payoffs are described. The specific topics addressed and their corresponding major research questions are:

(1) Atmospheric Composition

Question 1: What are the climate-relevant chemical and radiative properties, and spatial and temporal distributions, of human-caused and naturally occurring aerosols?

Question 2: What is the current quantitative skill for simulating the atmospheric budgets of the growing suite of chemically active greenhouse gases and their implications for the Earth's energy balance?

Question 3: What are the effects of regional pollution on the global atmosphere and the effects of global climate and chemical change on regional air quality and atmospheric chemical inputs to ecosystems?

Question 4: What are the time scale and other characteristics of the recovery of the stratospheric ozone layer in response to declining abundances of ozone-depleting gases and increasing abundances of greenhouse gases?

Question 5: What ate the couplings among climate change, air pollution, and ozone layer depletion, which were once considered as separate issues?

(2) Climate Variability and Change

Question 1: What is the sensitivity of climate change projections to feedbacks in the climate system?

Question 2: To what extent can predictions of near-term climate fluctuations and projections of long-term climate change be improved, and what can be done to extend knowledge of the limits of predictability?

Question 3: What is the likelihood of climate-induced changes that are significantly more abrupt than expected, such as the collapse of the thermohaline circulation or rapid melting of the major ice sheets?

Question 4: Whether and how are the frequencies, intensities, and locations of extreme events, such as major droughts, floods, wildfires, heat waves, and hurricanes, altered by natural climate variations and human-induced climate changes?

Question 5: How can interactions between producers and users of climate variability and change information be optimally structured to ensure essential

information needed for formulating adaptive management strategies is identified and provided to decisionmakers and policymakers?

(3) The Global Water Cycle

Question 1: To what extent does the water cycle vary and change with time, and what are the internal mechanisms and external forcing factors, including human activities, responsible for variability and change?

Question 2: How do feedback processes control the interactions between the global water cycle and other parts of the climate system (*e.g.*, carbon cycle, energy), and how are these feedbacks changing over time?

Question 3: What are the key uncertainties in seasonal to interannual predictions and long-term projections of water cycle variables, and what improvements are needed in global and regional models to reduce these uncertainties?

Question 4: How do the water cycle and its variability affect the availability and quality of water supplied for human consumption, economic activity, agriculture, and natural ecosystems; and how do its interactions and variability affect sediment and nutrient transports, and the movement of toxic chemicals and other biogeochemical substances?

Question 5: What are the consequences of global water cycle variability and change, at a range of temporal and spatial scales, for human societies and ecosystems? How can the results of global water cycle research be used to inform policy and water resource management decision processes?

(4) Land Use and Land Cover Change

Question 1: What are the primary drivers of land use and land cover change?

Question 2: What tools or methods are needed to allow for better characterization of historic and current land use and land cover characteristics and dynamics?

Question 3: What advances are required to allow for the projection of land use and land cover patterns and characteristics 10–50 years into the future?

Question 4: How can projections be made of potential land cover and land use change over the next 10–50 years for use in models of impacts on the environment, social and economic systems, and human health?

Question 5: What are the combined effects of climate and land use and land cover change and what are the potential feedbacks?

(5) The Global Carbon Cycle

Question 1: What are the magnitudes and distributions of North American carbon sources and sinks and what are the processes controlling their dynamics?

Question 2: What are the magnitudes and distributions of ocean carbon sources and sinks on seasonal to centennial time scales, and which processes control their dynamics?

Question 3: What are the magnitudes and distributions of global terrestrial, oceanic and atmospheric carbon sources and sinks and are they changing over time?

Question 4: What are the effects of past, present, and future land use change and resource management practices on carbon sources and sinks?

Question 5: What will be the future atmospheric carbon dioxide and methane concentrations, and how will terrestrial and marine carbon sources and sinks change in the future?

Question 6: How will the Earth system, and its different components, respond to various options being considered by society for managing carbon in the environment, and what scientific information is needed for evaluating these options?

(6) Ecosystems

Question 1: What are the most important linkages and feedbacks between ecosystems and global change (especially climate), and what are their quantitative relationships?

Question 2: What are the potential consequences of global change for ecosystems and the delivery of their goods and services?

Question 3: What are the options for sustaining and improving ecosystem goods and services valued by societies, given projected global changes?

(7) Human Contributions and Responses to Environmental Change

Question 1: What are the magnitudes, interrelationships, and significance of the primary human drivers of change in atmospheric composition and the climate system, changes in land use and land cover, and other changes in the global environment?

Question 2: What are the current and potential future impacts of global environmental variability and change on human welfare, what factors influence the capacity of human societies to respond to change, and how can resilience be increased and vulnerability reduced?

Question 3: How can the methods and capabilities for societal decisionmaking under conditions of complexity and uncertainty about global environmental variability and change be enhanced?

Question 4: What are the potential human health effects of global environmental change, and what tools and climate and environmental information are needed to assess and address the cumulative risk to health from these effects?

In addition, the final chapter in Part II is devoted to Grand challenges in modeling, observations, and information systems. Modeling, observations, and data and information dissemination are crosscutting, "enabling" activities and are tightly coupled to the seven research elements. These are needs that are particular to a given research area and must be planned and implemented in close association with the research that they support or draw on. However, they also need to be managed in a focused manner because they provide essential infrastructure that must serve multiple purposes within the CCSP-enabling fundamental research, as well as supporting assessment and decisionmaking—and because they depend on the distributed assets of CCSP agencies, some of which were originally developed to serve other needs.

Part III of the plan describes communication, cooperation, and management issues that cut across all areas of the program. The specific topics addressed are:

(1) Reporting and Outreach

Inventory of Existing Agency Activities
Reporting and Outreach for Decisionmakers
Reporting and Outreach for the Public
Outreach for K–12 Education

(2) International Research and Cooperation

Goals of International Cooperation in Climate Science
The International Framework
Bilateral Cooperation in Climate Change Research and Technology
Multilateral International Cooperation in Research and Observational Programs
Regional Cooperation In Global Change Research
U.S. Plans And Objectives For Future International Cooperation

(3) Program Management and Review

Scientific Guidance
Interagency Planning and Implementation
Program Integration

References

NRC, 1999a. Committee on Global Change Research, National Research Council, Global

Environmental Change: Research Pathways for the Next Decade (Washington, DC: National Academy Press).

NRC, 2001a. National Research Council, Committee on the Science of Climate Change, Climate Change Science: An Analysis of Some Key Questions (Washington, DC: National Academy Press).

James R. Mahoney,

Assistant Secretary for Oceans and Atmosphere and Director, U.S. Climate Change Science Program.

[FR Doc. 03–292 Filed 1–6–03; 8:45 am]

BILLING CODE 3510–KB–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Defense Security Service.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 20, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Security Service.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Defense Security Service at (703) 325–6182.

Title, Associated Forms, and OMB Number: Defense Security Service FL 14–a, November 1991, OMB No. 0704–0206.

Needs and Uses: The specific objective of a personnel security investigation is to elicit information concerning the loyalty, character, reliability of the individual being investigated to ascertain his or her suitability for a position of trust so that the DoD adjudicator may determine if it is clearly consistent with the interests of national security to grant the individual access to classified information. Adjudicative determinations are made in accordance with DoD 5200.2–R, "DoD Personnel Security Program." This regulation specifies medical information is to be obtained from records and physicians when there is an indication of a history of mental or nervous disorder, use or abuse of prescribed or illegal drugs, such as marijuana, narcotics or barbiturates; or abuse or excessive use of alcohol. Obtaining such medical information provides the adjudicator with a complex picture of the individual without it, the adjudicator may not be able to make a determination as to where or not the individual should be granted access to classified information.

Affected Public: Individuals, business, or households.

Annual Burden Respondents: 11,700.

Number of Burden Hours: 7,020.

Number of Respondents: 11,700.

Responses per Respondent: 1.

Average Burden Per Response: 0.6 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

See "Needs and Uses".

Dated: December 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–252 Filed 1–6–03; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Defense Security Service.

ACTION: Notice.

In compliance with Section 350(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (C3I) announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof, Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 20, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Security Service.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Defense Security Service at (703) 325–6182.

Title, Associated Forms, and OMB Number: Department of Defense request for Personnel Security Investigation; DD Form 1879; OMB Number 0704–0384. Needs and Uses: The information collection requirement is necessary to solicit minimal information and investigative information, which will become part of the security clearance investigations for access to classified information or employment in sensitive positions.

Affected Public: Individuals, Business, or other for profit.

Annual Burden Respondents: 32,164.

Number of Burden Hours: 8.041.

Number of Respondents: 32,164.

Responses per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The DD Form 1879, "Department of Defense Request for Personnel Security Investigation," is used to request Single Scope Background Investigations (SSBIs), National Agency Checks with Local Agency Checks and Credit Checks (NACLCs), National Agency Checks (NACs), SSBI Periodic Reinvestigations (PRs), or Special Investigative Inquiries (SIIs). It will accompany the Standard Form 85–P, "Questionnaire for Public Trust Position," or Standard Form 86, "Questionnaire for National security Position," which will be used by the Defense Security Service for the purpose of conducting SSBIs, NACLCs, NACs, PRs, and SIIs. These provide the basis for determination of a person's eligibility for access to classified information, appointment to a sensitive position, assignment to duties that require a automated collection of techniques or personnel security or trustworthiness determination continuing eligibility for retention of a security clearance, or assignment to other sensitive duties.

Dated: December 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–253 Filed 1–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 6, 2003.

Title, Form Number, and OMB Number: DoD Active Duty/Reserve Forces Dental Examination; DD Form 2813; OMB Number 0720–0022.

Type of Request: Revision.

Number of Respondents: 885,000.

Responses Per Respondent: 1.

Annual Responses: 885,000.

Average Burden Per Response: 3 minutes.

Annual Burden Hours: 44,250.

Needs and Uses: The information collection requirement is necessary to obtain and record the dental health status of members of the Armed Forces. This form enables civilian dentists to record the results of their examination findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental health status of their members.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Cristal Thomas.

Written comments and recommendations on the proposed information collection should be sent to Ms. Thomas at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 30, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–254 Filed 1–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 6, 2003.

Title, Form Number, and OMB Number: U.S. Army ROTC 4-Year College Scholarship Application (For High School Students); CC Form 114–R; OMB Number 0702–0073.

Type of Request: Reinstatement.

Number of Respondents: 11,000.

Responses Per Respondent: 1.

Annual Responses: 11,000.

Average Burden Per Response: 45 minutes.

Annual Burden Hours: 8,250.

Needs and Uses: The applications are available to high school students. After the applications for U.S. Army ROTC College Scholarship Program are completed, they are submitted to Headquarters, Cadet Command for review, screening and selection of scholarship recipients. The application and information provide the basis for the scholarship award.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies for the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 30, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–255 Filed 1–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 6, 2003.

Title, Form Number, and OMB Number: Pre-Candidate Procedures; USMA Forms 375, 723, 450, 21–12, 21–27, and 381; OMB Number 0702–0060.

Type of Request: Reinstatement.

Number of Respondents: 66,200.

Responses Per Respondent: 1.

Annual Responses: 66,200.

Average Burden per Response: 8 minutes (average).

Annual Burden Hours: 8,350.

Needs and Uses: Candidates to the United States Military Academy (USMA) provide personal background information, which allows the USMA Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by the Office of Institutional Research for correlation with success in graduation and military careers. The purpose of this activity is to obtain a group of applicants who eventually may be evaluated for admission to the USMA.

Affected Public: Individuals or households.

Frequency: On Ocassion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Officer Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR,

1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 30, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–256 Filed 1–06–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 6, 2003.

Title, Form Number, and OMB Number: Appointment of Chaplains for the Military Services; DD Forms 2741 and 2088; OMB Number 0704–0190.

Type of Request: Extension.

Number of Respondents: 797.

Responses Per Respondent: 1.

Annual Responses: 797.

Average Burden Per Response: 46 minutes (average).

Annual Burden Hours: 614.

Needs and Uses: Per 32 CFR part 65, in conjunction with 10 U.S.C. 532 and 591, professionally qualified clergy persons shall be appointed as chaplains to provide for the free exercise of religion for all members of the Military Services, their dependents, and other authorized persons. Since World War I, the professional qualifications of clergy have been certified by the faith group of which these clergy are members. Religious organizations register with the Department of Defense for the purpose of endorsing clergy as fully qualified to serve as chaplains in the Armed Forces. No clergy person may become a chaplain without this endorsement, and the loss of this endorsement constitutes a loss of professional status. It also certifies the number of years of professional experience for each candidate.

Affected Public: Not-for-profit institutions.

Frequency: On occasion; annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 30, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–257 Filed 1–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Submission for Office of Management and Budget Review; Comment Requested

AGENCY: Department of Energy.

ACTION: Agency Information Collection Extension.

SUMMARY: The Department of Energy (Department or DOE) has submitted an information collection package to the Office of Management and Budget (OMB) for extension under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The package covers the collection of information from state and alternative fuel provider fleets that are subject to the DOE's Alternative Fuel Transportation Program (10 CFR Part 490). The regulations contained in DOE's Alternative Fuel Transportation Program have been promulgated in accordance with sections 501 and 507(o) of the Energy Policy Act of 1992, Pubic Law 102–486, 106 STAT. 2776; 42 U.S.C. 13251, 13257(o). This information is used by the Department to determine the compliance statuses of covered fleets regulated under the Alternative Fuel Transportation Program. The information is critical to ensure the Government has sufficient information to ensure compliance of fleets with reporting and alternative fuel vehicle acquisition requirements.

DATES: Comments must be filed on or before February 6, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. (Also, please notify the DOE contact listed in this notice.)

ADDRESSES: Address comments to DOE Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), Room 10102, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503. (Comments should also be addressed to the Records Management Division, Office of the Chief Information Officer, at the address listed below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Susan L. Frey, Director, Records Management Division, Office of Records and Business Management, IM–11/GTN Bldg. , U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585–1290.

SUPPLEMENTARY INFORMATION: The package contains the following information:

(1) *Current OMB control number:* 1910–5101.

(2) *Package Title:* Annual Alternative Fuel Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets. (Formerly entitled, "Recordkeeping and Reporting Requirements of the Alternative Fuel Transportation Program DOE/OTT/101.)

(3) *Summary:* A three-year extension is requested because the information is critical to ensure that the Government has sufficient information to ensure that covered fleets are complying with annual reporting and acquisition requirements under the Alternative Fuel Transportation Program.

(4) *Purpose:* To collect fleet compliance reports to determine compliance status under the Program.

(5) *Type of Respondents:* Covered state government and alternative fuel provider fleets as defined in 10 CFR part 490.

(6) *Estimated number of responses:* 310 annually.

(7) Estimated total burden hours, including recordkeeping hours, required to provide the information is 5 hours.

Statutory Authority: 42 U.S.C. 13251, 13257(o).

Dated: Issued in Washington, DC on December 30, 2002.

Susan L. Frey,

Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer.

[FR Doc. 03–260 Filed 1–6–03; 8:45 am]

BILLING CODE 6450–01–Pu

DEPARTMENT OF ENERGY

Submission for OMB Review, Comment Request

AGENCY: Department of Energy.

ACTION: Agency information collection extensions.

SUMMARY: The Department of Energy (DOE) is submitting an information collection package to the Office of Management and Budget (OMB) for renewal under the Paperwork Reduction Act of 1995. The package requests a 3-year extension of its Security information collection (formerly known as Safeguards and Security), OMB Control Number 1910–1800. The package covers collections of information concerning the management and administration of DOE's Government-owned/contractor-operated facilities (GOCO's), offsite contractors, businesses and citizens. The information is used by Departmental management to exercise management oversight as to the implementation of applicable statutory and contractual requirements and obligations. The collection of this information is critical to ensure that the Government has sufficient information to judge the degree to which contractors meet contractual requirements; that public funds are being spent in the manner intended; and that fraud, waste, and abuse are immediately detected and eliminated. These collections provide information concerning the Department's security program. Typical information collected in this package pertains to material control and accountability, security incident investigations, and protection of unclassified and classified documents.

DATES: Comments regarding this information collection package should be submitted to the OMB Desk no later than February 6, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. (Also, please notify the DOE contact listed in this notice.)

ADDRESSES: Submit comments to DOE Desk Officer, Office Information and Regulatory Affairs (OIRA), Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Susan L. Frey, Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer, IM–11/GTN Bldg, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290, (301) 903–3666, or E-mail *susan.frey@hq.doe.gov.* (Also notify Brenda Scheel, Office of Security, SO–1.12/GTN Bldg, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290 (301) 903–4098.

SUPPLEMENTARY INFORMATION: The package contains: (1) *Title:* Security; (2) *Current OMB control Number:* 1910–1800; (3) *Type of Respondents:* DOE management and operating contractors, offsite contractors, businesses, and citizens; (4) *Estimated number of Responses:* 5,886; (5) *Estimated Total Burden Hours:* 179,452; (6) *Purpose:* This information is required by the Department to ensure that programmatic and administrative management requirements and resources concerning security are managed efficiently and effectively and to exercise management oversight of DOE contractors; (7) *Number of Collections:* This package contains 12 information and/or record-keeping requirements.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91, of August 4, 1977.

Issued in Washington, DC, on December 30, 2002.

Susan L. Frey,

Director, Records Management Division, Office of Records and Business Management, Officer of the Chief Information Officer.

[FR Doc. 03–261 Filed 1–6–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Submission for OMB Review; Comment Request

AGENCY: Department of Energy.

ACTION: Agency information collection extension.

SUMMARY: The Department of Energy (DOE) has submitted renewals for an additional three years for the information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under sections 3507(h)(1) and 3506(c) of the paperwork Reduction Act of 1995 (Pub. L. 104–13).

Each entry contains the following information: (1) The collection number and title; (2) A summary of the collection of information, type of request (new, revision, extension, or reinstatement), response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information, (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

DATES: Comments must be filed on or before February 6, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The OMB Desk Officer may be telephoned at (202) 395–7318. (Also, please notify the DOE contact listed below.)

ADDRESSES: Address comments to the DOE Desk Officer, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, Room 10102 725 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to the Records Management Division, Office of the Chief Information Officer, at the addressee below.)

SUPPLEMENTARY INFORMATION; The information collections submitted to OMB for review were:

(1) *Title:* Personal Property; (2) *Current OMB control Number:* 1910–1000. (3) *Type of Respondents:* DOE management and operating contractors and offsite contractors. (4) *Estimated Number of Responses:* 111; (5) *Estimated Total Burden Hours:* 1,880. (6) *Purpose:* This provides the Department with the information necessary for the management, control, reutilization, and disposal of government personal property. (7) *Number of Collections:* The package contains 3 information and/or recordkeeping requirements.

Statutory Authority: Sections 3507(h) (1) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, on December 30, 2002.

Susan L. Frey,

Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer.

[FR Doc. 03–262 Filed 1–6–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Policy Statement; Policy for Statistical Tables Based on Historical Electric Power Survey Information Collected Under a Pledge of Confidentiality

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Policy statement.

SUMMARY: The EIA has established a policy regarding the use of disclosure limitation methods for statistical tables derived from historical electric power survey information collected under a pledge of confidentiality. Disclosure limitation methods are used to ensure that sensitive table cell values are suppressed; *i.e.*, withheld from public release. A sensitive data cell value is one that, if publicly disseminated, may be used to closely estimate confidential information that an individual survey respondent reported to EIA.

Under this policy, EIA will use disclosure limitation methods on statistical tables based on aggregated historical electric power survey information collected under a pledge of confidentiality only if the information is currently collected under a pledge of confidentiality. (As of December 2002, electric power information collected under a pledge of confidentiality includes costs of fuels for unregulated plants, tested heat rates, fuel inventories, plant costs and expenses for unregulated plants, monthly electricity sales information reported for energy-only service, and latitude/longitude for electric power facilities.) For information not currently collected under a pledge of confidentiality, EIA will not use disclosure limitation methods for statistical tables derived from the historical electric power survey information previously collected under a pledge of confidentiality.

This policy applies to any information collected in an EIA electric power survey under a pledge of confidentiality during a survey period at least three years prior to the date of its proposed release in a statistical table. The three-year period includes the reporting year (the year for which information is currently being collected) and two prior years where information has been finalized. In accordance with applicable laws and regulations, EIA will continue to not publicly release survey forms collected under a pledge of confidentiality.

This policy is based on the need to provide additional statistical tabulations that will improve and broaden the understanding of the United States electric power industry by releasing additional statistical tabulations. These tables may present information at the national, State, and/or regional levels in various EIA information products. (EIA's electric power information is available on the web at *http://www.eia.doe.gov/*.)

DATES: This policy becomes effective on January 7, 2003.

ADDRESSES: Requests for additional information or questions about this policy should be directed to Dean Fennell. He may be contacted by FAX (202–287–1934), e-mail *(Dean.Fennell@eia.doe.gov)*, or telephone (202–287–1744). These contact methods are recommended to expedite contact. His mailing address is Energy Information Administration, EI–53, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0650.

FOR FURTHER INFORMATION CONTACT: Requests should be directed to Mr. Fennell at the address listed above. EIA's electric power information is available on the web at *http://www.eia.doe.gov/*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments
III. Current Actions

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA conducts surveys to collect information about the electric power industry from companies and organizations involved in the generation, transmission, distribution, and sales of electric power. This survey information is disseminated in a variety of information products and electronic data files used by government and private sector policymakers and analysts.

On October 24, 2002, EIA issued a **Federal Register** notice (67 FR 65345) requesting public comments on a proposed policy regarding the use of disclosure limitation methods for statistical tables derived from historical electric power survey information collected under a pledge of confidentiality. A second notice was issued on November 4, 2002 (67 FR 67253) to correct a publication mistake in the date for submission of comments. In the October 24 notice, EIA discussed the reasons for the proposed policy as well as reasons for proposing it. In addition to publishing the notice, EIA sent a copy of the notice to each of its over 6,000 electric power survey respondents.

The proposed policy was based on the need to provide additional statistical tabulations that will improve and broaden the understanding of the electric power industry. These statistical tables will provide electric power information at national, State, and/or regional levels. (An example of this is publishing national level fuel consumption information in EIA's Annual Energy Review, or publishing State or regional level information for fuel consumption, useful thermal output, or generation in reports such as EIA's Electric Power Monthly or Natural Gas Annual.)

II. Discussion of Comments

In response to the **Federal Register** notice and EIA's mailing of the notice to its survey respondents, EIA received 19 sets of comments. Most of the comments were from electric power companies and trade groups.

Of the comments received, nine were in favor of a policy of not using disclosure limitation methods on statistical tables based on historical electric power survey information, nine objected to the proposal, and one commenter did not take a position. After analyzing the comments, EIA decided to propose using disclosure limitation methods on statistical tables based on historical electric power survey information collected under a pledge of confidentiality only if the survey information is currently collected under a pledge of confidentiality. If the historical survey information was collected under a pledge of confidentiality but is not currently collected under such a pledge, EIA will not use disclosure limitation methods on statistical tables based on the aggregated historical information.

The decision is based on the fact that for information not currently collected under a pledge of confidentiality, the public has access to the most recent information in individually-identifiable form. Therefore, the release of statistical tables not subjected to disclosure limitation methods for historical survey information previously collected under a pledge of confidentiality should not cause substantial competitive harm to the position of any survey respondent. Examples of information meeting this criteria include generation and fuel consumption information collected under a pledge of confidentiality prior to 1999 on the Form EIA–867, but the generation and fuel consumption information are currently collected with no pledge of confidentiality.

Following is a summary of the major supporting and opposing arguments received in response to EIA's proposed policy.

General Concerns—Arguments for Release of Aggregated Information Collected Under a Pledge of Confidentiality

Nine responders to the October 24, 2002, **Federal Register** notice generally supported EIA's approach to not using disclosure limitation methods before disseminating information collected under a pledge of confidentiality at an aggregate level in statistical tables after a three-year period. They stated that the release of such information at least three years after collection and aggregated at the State, regional, or national level will adequately safeguard the competitive position of any survey respondent. If an affected survey respondent disagrees, the respondent has the option to request confidential treatment through the DOE's Office of Hearings and Appeals or in court. Further, some stated that disseminating historically confidential information at the State level is especially important as States move into an era characterized by the need for portfolio management of power supply, demand, and related factors. Others believe that the release of aggregated information after a three-year period expands the historical information available and has the potential to benefit information users, researchers, and policymakers.

Other persons argued that the industry has failed to document any specific harm that will arise from the release of EIA aggregated survey information despite the fact that competition has existed in the industry for several years. They also stated that much of the information is already available, that the statistical tables will not have any competitive impact by the time they are released by EIA, and that public policy goals depend on this information.

Some supporters of the release of aggregated information after three years believe that both EIA's enabling statute and the Freedom of Information Act (FOIA) mandate that EIA disseminates its information. They state that the FOIA contains nine exemptions from public disclosure, and only Exemption 4 (which protects against release of confidential commercial or financial information), potentially relates to the type of information collected on EIA's electric power surveys. In fact, one commenter stated that the purpose of FOIA is to promote disclosure, not to justify secrecy.

Another commenter in favor of the release of historical information stated that with the movement toward a more competitive market, it should be clear to all that energy markets can function best in the presence of wide access to information.

Also in support of the proposed policy, many commenters to previous EIA **Federal Register** notices published March 13, 2001 (Vol. 66, No. 49) who opposed the release of individually-reported information believed that EIA could fulfill its statutory duties without disclosure of individual plant level information by disseminating the information in an aggregated form. In addition, several supported a delay in the disclosure of sensitive information to protect against competitive harm.

General Concerns—Arguments Against Release of Aggregated Information Collected Under A Pledge of Confidentiality

Nine responders to the October 24, 2002, **Federal Register** notice opposed EIA's proposal to release information collected under a pledge of confidentiality at an aggregate level after a three-year period. They believe that disclosure even at an aggregate level of competitively sensitive information will harm respondents, the electricity market, and the consumer. In particular, some believe their entities hold market share in certain States and regions. If the number of entities included in the aggregate is small, they believe that their information could be easily discerned. Others understood that the confidential information would remain proprietary even when disseminated at aggregate levels. They stated that EIA is changing its policy on confidentiality.

Some had an issue with the three-year time period. Their concern is that much of the information provided in the responses to the EIA surveys would potentially change little over time. Thus, if the number of entities included in a particular aggregate is small, individually reported information could be discerned. If the information changes little over time, competitive harm could occur with respect to fuel purchase prices and plant operating costs.

One commenter opposed the proposal to release aggregate information collected under a pledge of confidentiality after three years stating that the proposal is too broad and unfounded. The person also stated that the new proposal violates the expectations of companies that have submitted the information in reliance on confidentiality assurances. The person went on to say that the mere passage of time does not ensure that information treated as confidential because of commercial and security concerns no longer need to be treated as confidential. The commenter believes that the proposal is a generalization, which can not be made for all categories of information or for all facilities and companies. Also, companies have provided the information in reliance on EIA assurances, which should not now be withdrawn after the information has been submitted.

EIA's Response to Comments

EIA finds that the comments on the issue are thoughtful and reflect the nature of the tradeoff in ensuring information is available for monitoring and analyzing the electric power industry and markets while at the same time ensuring that information collected under a pledge of confidentiality in EIA's electric power surveys is not released in statistical tables in such a way as to cause potential substantial competitive harm to the survey respondents.

EIA's final policy is to discontinue the use of disclosure limitation methods such as suppression and complimentary suppression for statistical tables derived from historical electric power survey information collected under a pledge of confidentiality only if the information is not currently collected under a pledge of confidentiality. This decision is based on the need to provide additional tabulations that will improve and broaden the understanding of the electric power industry by releasing more aggregated information (State, regional, or national level) while using disclosure limitation methods to ensure the confidentiality of information currently collected under a pledge of confidentiality. The potential disclosure of data that were confidential and older than three years will not have a major impact on the competitiveness of the respondents, as their current data are no longer confidential.

III. Current Actions

The EIA is establishing a policy regarding the use of disclosure limitation methods for information in statistical tables derived from historical electric power survey information collected under a pledge of confidentiality. (Disclosure limitation methods are used to ensure that sensitive table cell values are suppressed; *i.e.*, withheld from public release.) Under this policy, disclosure limitation methods will be used on statistical tables based on aggregated historical electric power survey information collected under a pledge of confidentiality only if the information is

currently collected under a pledge of confidentiality. (As of December 2002, electric power survey information collected under a pledge of confidentiality includes costs of fuels for unregulated plants, tested heat rates, fuel inventories, plant costs and expenses for unregulated plants, monthly electricity sales information reported for energy-only service, and latitude/longitude for electric power facilities.) If the survey information is not currently collected under a pledge of confidentiality, EIA will not use disclosure limitation methods for statistical tables derived from the historical electric power survey information.

This policy would apply to any information collected in an EIA electric power survey under a pledge of confidentiality during a survey period at least three years prior to the date of its proposed release in a statistical table. The three-year period includes the reporting year (the year for which information is currently being collected) and two prior years where information have been finalized. In accordance with applicable laws and regulations, EIA will not publicly release survey forms collected under a pledge of confidentiality.

Statutory Authority: Section 52 of the Federal Energy Administration Act (Pub. L. No. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, December 31, 2002.

Guy F. Caruso,

Administrator, Energy Information Administration.

[FR Doc. 03–259 Filed 1–6–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–340–003]

ANR Pipeline Company; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 24, 2002, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of December 24, 2002:

First Revised Sheet No. 192
First Revised Sheet No. 192 A
First Revised Sheet No. 192B
First Revised Sheet No. 192C

ANR states that the revised tariff sheets are being filed in compliance with the Commission's November 26, 2002 Order in the above-referenced docket in regards to MDQ reductions. ANR Pipeline Company, 101 FERC 61,246 (2002).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–239 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–065]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 31, 2002.

Take notice that on December 23, 2002, ANR Pipeline Company (ANR) tendered for filing and approval Amendments to two Service Agreements between ANR and Wisconsin Public Service Corporation, which revise the MDQ under such Agreements. ANR requests that the Commission accept and approve the agreements to be effective January 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–251 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–091]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

December 31, 2002.

Take notice that on December 27, 2002, CenterPoint Energy Gas Transmission Company (CEGT, formerly Reliant Energy Gas Transmission Company) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 651, to be effective January 1, 2003.

CEGT states that the purpose of this filing is to describe the provisions of a revised negotiated rate transaction between CEGT and TPS Dell, L.L.C. Tariff sheets describing the original negotiated rate transaction (i.e., the transaction being amended by CEGT's filing) were accepted by the Commission in a letter order dated September 27, 2002, in Docket No. RP96–200–085.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention Date: January 8, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–250 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–346–000]

Citizens Communications Company; Notice of Filing

December 31, 2002.

Take notice that on December 27, 2002, Citizens Communications Company (Citizens) filed an Agreement with Vermont Electric Cooperative, Inc. (VEC) for Firm Sales Service, designated as Citizens' Rate Schedule FERC No. 44. Citizens requests waiver of the Commission's prior notice requirements, and an effective date of January 1, 2003 for the service agreement.

Citizens states that copies of this filing were served on VEC and the Vermont Public Service Board. In addition, a copy of the rate schedule is available for inspection at the offices of Citizens' Vermont Electric Division during regular business hours.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: January 17, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–230 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–010]

Colorado Interstate Gas Company; Notice of Refund Report

December 31, 2002.

Take notice that on December 23, 2002, Colorado Interstate Gas Company (CIG) tendered for filing its refund report in Docket No. RP01–350–000.

CIG states that the filing and refunds were made to comply with the Commission's order issued on August 5, 2002. CIG states that the refunds were made on November 25, 2002.

CIG states that the refund report summarizes jurisdictional transportation and gathering refund amounts for the period October 1, 2001 through September 30, 2002 pursuant to Article 2.2 of CIG's Stipulation and Agreement as approved in the Commission's August 5, 2002 order.

CIC states that copies of CIG's filing are being mailed to all parties of record in this proceeding and interested states regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 7, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–238 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–218–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 31, 2002.

Take notice that on December 23, 2002, Colorado Interstate Gas Company (CIG) tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 271, to become effective February 1, 2003.

CIG states that the tariff sheet is being filed to remove the five-year term matching cap from the right-of-first-

refusal provisions of CIG's Tariff consistent with the Commission's Order on Remand.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–247 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–022]

Colorado Interstate Gas Company; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 27, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of December 1, 2002:

Substitute Original Sheet No. 11O
Substitute Original Sheet No. 11P
Substitute Original Sheet No. 11R
Substitute Original Sheet No. 11S

CIG states that these tariff sheets are being filed to comply with the Commission's order issued November 27, 2002 in this proceeding and to remove the Maximum Daily Quantity reduction provision applicable to these negotiated rate transactions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 8, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–249 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–219–000]

Discovery Gas Transmission LLC; Notice of Tariff Filing

December 31, 2002.

Take notice that on December 26, 2002, Discovery Gas Transmission LLC (Discovery) tendered for filing tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective February 1, 2003:

Fourth Revised Sheet No. 20
Second Revised Sheet No. 114
Fourth Revised Sheet No. 151
Third Revised Sheet No. 152
First Revised Sheet No. 152A
Fourth Revised Sheet No. 154
Fourth Revised Sheet No. 155
Third Revised Sheet No. 169
First Revised Sheet No. 169A
First Revised Sheet No. 186

Discovery states that this filing is made in part for administrative purposes and in part as a housekeeping matter to clarify, update and clean up several items in Discovery's tariff.

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention Date: January 7, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–248 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065]

El Dorado Irrigation District California; Notice of Public Meetings

December 31, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador counties, California. The project occupies lands of the El Dorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies are working collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process. Meetings will be held as follows:

January 13 Recreation Workgroup—9 am—4 pm; January 14 Geomorphology sub-workgroup—9 am—4 pm; January 15 Plenary Meeting—9 am—4 pm; and January 16 Plenary Meeting—9 am—4 pm.

We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in these meetings.

All meetings will be held in the El Dorado Board of Directors Meeting Room, located at EID Headquarters, 2890 Mosquito Road, Placerville, California.

For further information, please contact Elizabeth Molloy at (202) 502–8771 or John Mudre at (202) 502–8902.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–232 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–214–000]

Kinder Morgan Interstate Gas Transmission LLC Docket No. RP03–214–000; Notice of Tariff Filing

December 31, 2002.

Take notice that on December 23, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, Third Revised Sheet No. 37, to be effective January 23, 2003.

KMIGT states that the purpose of this filing is to revise Section 18.5 of KMIGT's General Terms and Conditions (GT&C) in order to eliminate the five-year term matching cap concerning the exercise of the right of first refusal in compliance with the Commission Order on Remand issued October 31, 2002.

KMIGT states that a copy of this filing has been served upon all of its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–244 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–404–007]

Northern Natural Gas Company; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 23, 2002, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets in compliance with the Commission's order issued on November 21, 2002, in Docket No. RP00–404, *et al.* (Order):

Seventh Revised Sheet No. 1
Ninth Revised Sheet No. 2
61 Revised Sheet No. 53
Fourth Revised Sheet No. 55
Third Revised Sheet No. 111
Fifth Revised Sheet No. 115
Third Revised Sheet No. 125
Third Revised Sheet No. 133
Fifth Revised Sheet No. 142
Original Sheet No. 142A
Original Sheet No. 142B
Original Sheet No. 142C
Original Sheet No. 142D
Original Sheet No. 142E
Fifth Revised Sheet No. 146
Fourth Revised Sheet No. 154
Tenth Revised Sheet No. 201
Eighth Revised Sheet No. 220
Sixth Revised Sheet No. 226
Sixth Revised Sheet No. 252
Third Revised Sheet No. 256
Seventh Revised Sheet No. 258
Seventh Revised Sheet No. 259
Second Revised Sheet No. 260A
Fourth Revised Sheet No. 263C
Fourth Revised Sheet No. 263D
Fourth Revised Sheet No. 266
Fourth Revised Sheet No. 269
Second Revised Sheet No. 270
Second Revised Sheet No. 292A
Third Revised Sheet No. 304
Second Revised Sheet No. 305
Original Sheet No. 305A
Original Sheet No. 305B
Original Sheet No. 306
Sheet No. 307
Second Revised Sheet No. 432
Sheet No. 433
Second Revised Sheet No. 443
First Revised Sheet No. 444
Sheet No. 445

Northern states that this filing is Northern's compliance filing under Order No. 637.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–235 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–451–002]

Northern Natural Gas Company; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 23, 2002, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet in compliance with the Commission's order issued on November 21, 2002 in Docket No. RP00–404–000, *et al.* (637 Order):

Substitute First Revised Sheet No. 269B

In accordance with the Commission's 637 Order, Northern states that it is filing the above-referenced tariff sheet to revise Section 32 (L) (Imbalance Trading) of the General Terms and Conditions of Northern's FERC Gas Tariff.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–240 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77–110]

Pacific Gas and Electric Company; Notice of Filing and Requesting Comments

December 31, 2002.

On November 29, 2002, the National Marine Fisheries Service (NMFS) filed with the Commission its final biological opinion for a proposed license amendment for the Potter Valley Project (PVP; FERC No. 77–110). The proposed amendment involves changes in the minimum flow release requirements at the project, consisting of increased releases to the Eel River, which would result in overall decreased diversions to the Russian River. The PVP is licensed to Pacific Gas and Electric Company (PG&E) and is located in Lake and Mendocino counties, California.

The NMFS biological opinion finds that the proposed increase in minimum flow releases to the Eel River is likely to jeopardize the continued existence of southern Oregon/northern California coho salmon, California coastal chinook salmon, and California steelhead and likely to adversely modify designated critical habitat in the Eel River Basin. With respect to salmonids in the Russian River, it is the NMFS' biological opinion that the proposed action is not likely to jeopardize listed species or adversely modify designated critical habitat. The biological opinion includes a "Reasonable and Prudent Alternative," which the NMFS believes should avoid jeopardy to listed species.

The purpose of this notice is to request comments on the NMFS biological opinion, including its "Reasonable and Prudent Alternative." Copies of the biological opinion are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Comments on the biological opinion should be filed with the Commission within 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

For additional information concerning the foregoing, please contact John Mudre at (202) 502–8902.

Comments due: January 30, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–233 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–14–001]

Pine Needle LNG Company, LLC; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 27, 2002, Pine Needle LNG Company, LLC (Pine Needle), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 80 and Second Revised Sheet No. 81. The proposed effective date of the tariff sheets is February 1, 2003.

Pine Needle states that the purpose of this filing is to comply with the Commission's "Order Accepting Tariff Filing and Requiring Compliance Filing" issued on November 27, 2002, in the referenced docket, in which the Commission directed Pine Needle to refile, within 30 days, revised tariff sheets to modify its right of first refusal provisions.

Pine Needle states that it will serve copies of the instant filing on its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–242 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2355–008, et al.]

Southern California Edison Company, et al.; Electric Rate and Corporate Filings

December 27, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Southern California Edison Company

[Docket Nos. ER97–2355–008, ER98–2322–003 and ER97–2355–006]

Take notice that on December 23, 2002, Southern California Edison Company (SCE) tendered for filing its Wholesale Distribution Access Tariff (WDAT) in compliance with Opinion Nos. 458 and 458-A rendered in the aforementioned dockets.

SCE states that copies of this filing were served upon those persons whose names appear on the official Service List for these dockets.

Comment Date: January 13, 2003.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–108–008]

Take notice that on December 23, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing revisions to Attachments S (Independent Market Monitoring Plan) and S–1 (Independent Market Monitor Retention Agreement) of the Midwest ISO Open Access Transmission Tariff. The Midwest ISO states that the revisions enhance the independent status of the Independent Market Monitor, and believe they are in compliance with the Commission's November 22, 2002 Order in the same proceeding.

The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all parties on the official service list in this proceeding. The Midwest ISO states that they have served a copy of this filing electronically, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been posted electronically on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: January 13, 2003.

3. Consolidated Edison Company of New York, Inc.

[Docket Nos. ER02–2126–005]

Take notice that on December 20, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a revised unexecuted Interconnection Agreement (Agreement) between Con Edison and PSEG Power In-City I, LLC (PSEG Power). Con Edison stated that the filing was made in compliance with the Order Accepting for Filing, with Modifications, Proposed Interconnection Agreement, issued on November 20, 2002 in this proceeding. The revised Agreement has a designated effective date of September 1, 2002.

Con Edison stated that copies of the filing were served upon all parties to this proceeding.

Comment Date: January 13, 2003.

4. ISO New England, Inc.

[Docket No. ER02–2330–004]

Take notice that on December 20, 2002, ISO New England Inc. submitted a compliance filing providing a status report on the implementation of Standard Market Design in New England.

Comment Date: January 10, 2003.

5. New York Independent System Operator, Inc.

[Docket No. ER03–13–001]

Take notice that on December 23, 2002, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in accordance with the Commission's November 22, 2002 order in the above-captioned proceeding.

The NYISO states that it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 13, 2003.

6. Pacific Gas and Electric Company

[Docket No. ER03–312–000]

Take notice that on December 23, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing unexecuted copies of: (i) A Wholesale Distribution Tariff (WDT) Service Agreement (Service Agreement) between PG&E and Hercules Municipal Utility (HMU); and (ii) an Interconnection Agreement (IA) between PG&E and HMU.

The Service Agreement is submitted pursuant to the PG&E wholesale distribution tariff and permits PG&E to recover the ongoing costs for service required over PG&E's distribution facilities. The IA provides the terms and conditions for the continued interconnection of the Electric Systems of HMU and PG&E.

PG&E has requested certain waivers for a proposed effective date of January 1, 2003. Copies of this filing have been served upon HMU, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: January 13, 2003.

7. New York State Electric & Gas Corporation

[Docket No. ER03–313–000]

Take notice that on December 23, 2002 New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a supplement to Rate Schedule 117 filed with FERC corresponding to an Agreement with the Delaware County Electric Cooperative (the Cooperative).

This rate filing is made pursuant to Section 1 (c) and Section 3(a) through (c) of Article IV of the June 1, 1977 Facilities Agreement between NYSEG and the Cooperative, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period ending December 31, 2001. The revised facilities charge is levied on the cost of the 34.5 kV tie line from Taylor Road to the Jefferson Substation, constructed by NYSEG for the sole use of the Cooperative.

NYSEG requests an effective date of January 1, 2003. NYSEG also states that copies of the filing were served upon the Delaware County Electric Cooperative, Inc. and the Public Service Commission of the State of New York.

Comment Date: January 13, 2003.

8. New York State Electric & Gas Corporation

[Docket No. ER03–316–000]

Take notice that on December 23, 2002 New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a supplement to Rate Schedule 194 filed with FERC corresponding to an Agreement with the Steuben Rural Electric Cooperative, Inc. (the Cooperative).

This rate filing is made pursuant to Section 2 (a) through (c) of Article IV of the December 1, 1977 Facilities Agreement between NYSEG and the Cooperative, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period ending December 31, 2001. The revised facilities charge is levied on the cost of the tap of NYSEG's South Addison to Presho 34.5 transmission line. Such tap of NYSEG's transmission line connects to the Cooperative's Sullivan Road Substation and is for the sole use of the Cooperative.

NYSEG requests an effective date of January 1, 2003. NYSEG states that copies of the filing were served upon the Steuben Rural Electric Cooperative, Inc. and the Public Service Commission of the State of New York.

Comment Date: January 13, 2003.

9. PacifiCorp

[Docket No.ER03–317–000]

Take notice that on December 23, 2002, PacifiCorp, tendered for filing in accordance with 18 CFR 35 *et seq.*of the Commission's Rules and Regulations, a revised Attachment J to its Open Access Transmission Tariff calculating load ratio shares applicable to PacifiCorp's Network Integration Transmission Service Customers.

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and PacifiCorp's Network Customers.

Comment Date: January 13, 2003.

10. PacifiCorp

[Docket No. ER03–318–000]

Take notice that on December 23, 2002, PacifiCorp tendered for filing in accordance with 18 CFR 35 *et seq.* of the Commission's Rules and Regulations, a Notice of Cancellation of Supplement No. 20 to Service Agreement No. 65 under PacifiCorp's 1st Revised Electric Tariff Vol. No. 11 for service between PacifiCorp and Hinson Power Company.

PacificCorp states that copies of this filing were supplied to Hinson Power Company, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment Date: January 13, 2003.

11. International Falls Power Company

[Docket No. ER03–319–000]

Take notice that on December 23, 2003, International Falls Power Company (IFPC) tendered for: (1)Filing a petition for acceptance of an initial rate schedule authorizing IFPC to make wholesale sales of power at market-based rates; (2) requests for waivers and blanket authority; and (3) a request for an effective date for its market-based rate authorization as of January 1, 2003.

Comment Date: January 13, 2003.

12. NM Colton Genco LLC, NM Mid-Valley Genco LLC, NM Milliken Genco LLC

[Docket Nos. ER03–320–000, ER03–321–000, and ER03–322–000]

Take notice that on December 23, 2002, NM Colton Genco LLC (NM Colton), NM Mid-Valley Genco LLC (NM Mid-Valley) and NM Milliken Genco LLC (NM Milliken) (together, Applicants), requested the Commission to: (1) Accept for filing Applicants' proposed FERC Electric Tariffs, and grant their requests for blanket authority to make market-based sales of energy, capacity, and certain ancillary services; and (2) grant Applicants such waivers and authorizations necessary to transact at market-based rates.

Comment Date: January 13, 2003.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–323–000]

Take notice that on December 23, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing the Midwest ISO Market Mitigation Measures as Attachment S–2 to the Midwest ISO Open Access Transmission Tariff.

The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all parties on the official service list in this proceeding. The Midwest ISO states it has served a copy of this filing electronically, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been posted electronically on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other

interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: January 13, 2003.

14. PJM Interconnection, L.L.C.

[Docket No. ER03–324–000]

Take notice that on December 20, 2002, PJM Interconnection, L.L.C. (PJM) submitted for filing: (1) An unexecuted network integration transmission service agreement for the Borough of Mont Alto (Mont Alto); and (2) revisions to Attachment H–11 of the PJM open access transmission tariff (PJM Tariff) to reflect the settlement credit and resulting rate for network integration transmission service for Mont Alto in the Allegheny Power (Allegheny) zone. The network service agreement reflects an "Other Supporting Facilities" charge for Mont Alto calculated by Allegheny and based upon direct assignment of the distribution facilities used to provide service to Mont Alto.

PJM requests waiver of the Commission's notice requirement to allow an effective date of December 1, 2002 for the filing, to reflect the date upon which Mont Alto began taking network integration transmission service under the PJM Tariff.

PJM states that it served a copy of its filing on Mont Alto and the Pennsylvania Public Utilities Commission.

Comment Date: January 10, 2003.

15. Ameren Services Company

[Docket No. ER03–326–000]

Take notice that on December 24, 2002, Ameren Services Company (ASC) tendered for filing an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and Ameren Energy Marketing. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy Marketing pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: January 14, 2003.

16. Wisvest Corporation, Wisvest-Connecticut, LLC, PSEG Fossil LLC

[Docket No. ER03–327–000]

Take notice that on December 23, 2002, PSEG Power Connecticut LLC and its parent PSEG Fossil LLC, tendered for filing with the Federal Energy Regulatory Commission (Commission) Original Rate Schedule FERC No. 1 in compliance with Wisvest Corporation, *et al.*, 101 FERC § 61,166, effective as of December 6, 2002.

Comment Date: January 13, 2003.

17. New York Independent System Operator, Inc.

[Docket No. ER03–328–000]

Take notice that on December 23, 2002, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Market Administration and Control Area Services Tariff (Services Tariff) and Open Access Transmission Tariff (OATT). The proposed filing would revise provisions regarding customer challenges to settlements and the NYISO's reconciliation of final settlement corrections.

The NYISO has requested that the Commission make the filing effective on January 10, 2003. NYISO also states that a copy of this filing was served upon all signatories of the NYISO's OATT and Services Tariff.

Comment Date: January 13, 2003.

18. NorthWestern Energy, a division of NorthWestern Corporation

[Docket No. ER03–329–000]

Take notice that on December 23, 2002, NorthWestern Energy, a division of NorthWestern Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Succession adopting all applicable rate schedules, service agreement, tariffs and supplements thereto previously filed with the Commission by NorthWestern Energy, L.L.C. (formerly known as The Montana Power Company).

Comment Date: January 13, 2003.

19. Sunflower Electric Power Corporation

[Docket No. NJ03–1–000]

Take notice that on December 23, 2002, Sunflower Electric Power Corporation (Sunflower) submitted a petition for declaratory order granting reciprocity approval of its amended Open Access Transmission Tariff and a request for waiver of the filing fee associated with such petitions.

Comment Date: January 21, 2003.

20. Entergy Services, Inc.

[Docket Nos. OA96–158–006 and OA97–657–003]

Take notice that on December 23, 2002, Entergy Services, Inc. (Entergy) on behalf of the Entergy Operating Companies, tendered for filing an amendment to its December 2, 2002 compliance filing submitted in the above-referenced dockets pursuant to the Federal Energy Regulatory Commission's (Commission) order in Entergy Services, Inc., 101 FERC § 61,141. Entergy filed Substitute First Revised Sheet No. 118 to replace First Revised Sheet No. 118 to detail Entergy's stated rate for Schedule No. 1 charges provided under Entergy's Open Access Transmission Tariff. The accompanying blackline to Substitute First Revised Sheet No. 118 also corrects a typographical error contained in the blackline accompanying First Revised Sheet No. 118.

Comment Date: January 21, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–231 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–015]

Texas Gas Transmission Corporation; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 23, 2002, Texas Gas Transmission

Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Seventh Revised Sheet No. 40, to become effective November 7, 2002.

Texas Gas states that the purpose of this filing is to comply with conditions set forth in the Commission's delegated order dated December 6, 2002.

Texas Gas states that copies of the revised tariff sheet are being mailed to all parties on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–236 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–245–014, RP01–253–007, CP01–34–004, CP01–103–003, CP01–368–003, and RP02–171–005]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report Filing

December 31, 2002.

Take notice that on December 20, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered the refund report filing in Docket Nos. RP01–245–000, *et al.*

Transco states that on November 27, 2002, Transco submitted refunds (or surcharges) to all affected customers in the referenced proceedings.

Transco states that it has served copies of Attachment 1 to the filing and certain summary schedule (Appendix A to the filing) on the recipients of the refund (or surcharge) and their respective State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 9, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–237 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–13–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

December 31, 2002.

Take notice that on December 27, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Fourth Revised Sheet No. 374O and First Revised Sheet No. 374O.00. The proposed effective date of the tariff sheets is February 1, 2003.

Transco states that the purpose of this filing is to comply with the Commission's "Order Accepting Tariff Filing and Requiring Compliance Filing" issued on November 27, 2002, in the referenced docket, in which the Commission directed Transco to refile, within 30 days, revised tariff sheets to modify its right of first refusal provisions.

Transco states that it will serve copies of the instant filing on its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–241 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–216–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

December 31, 2002.

Take notice that on December 23, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventh Revised Twenty-First Revised Sheet No. 28, to be effective December 1, 2002.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased

from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. Transco states that this filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Third revised Volume No. 1 Tariff.

Transco further states that included in Appendix A attached to the filing is the explanation of the rate changes and details regarding the computation of the revised S–2 rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 7, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–245 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–2–001]

Transwestern Pipeline Company; Notice of Tariff Filing

December 31, 2002.

Take notice that on December 27, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Eleventh Revised Sheet No. 5B.03, to become effective November 1, 2002.

Pursuant to Section 25 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Transwestern states that it is filing a corrected tariff sheet, which sets forth the corrected TCR II Reservation Surcharges that Transwestern proposes to put into effect on November 1, 2002. Transwestern states that the tariff sheet Eleventh Revised Sheet No. 5B.03, previously submitted in its October 1 filing in Docket No. RP03–2–000 reflected incorrect rates for three Current Firm Shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings.. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 8, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–243 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–05–000]

Washington Gas Light Company; Notice of Petition for Rate Approval

December 31, 2002.

Take notice that on December 9, 2002, Washington Gas Light Company (WGLC) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for transportation and storage services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

WGLC proposes to establish a demand charge of $2.1841 per Dekatherm for the maximum daily quantity pursuant to its last approved rate in PR99–14–000.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before January 15, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–234 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–33–000]

Wellco Services, Inc.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

December 31, 2002.

Take notice that on December 26, 2002, Wellco Services, Inc., a California corporation (Applicant), with its principal executive office at 650 Bercut Drive, Suite C, Sacramento, California 95814, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant states it will be engaged directly and exclusively in the business of operating several eligible facilities and will satisfy the obligation of selling electric energy at wholesale through its contractual relationship with the owners of such eligible facilities which sell electric energy exclusively at wholesale.

Applicant states that copies of the application have been served upon the California Public Utility Commission and the Securities and Exchange Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: January 21, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–229 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–33–000, CP03–34–000 and CP03–35–000]

Wyckoff Gas Storage Company, LLC; Notice of Application

January 2, 2003.

On December 23, 2002, Wyckoff Gas Storage Company, LLC, (Wyckoff), located at 1776 Yorktown, Houston, Texas, 77056, filed an application in the above referenced dockets, pursuant to Section 7(c) of the Natural Gas Act (NGA), and Parts 157 and 284 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations for: (1) A certificate of public convenience and necessity authorizing Wyckoff to develop, construct, own, operate, maintain, and abandon a natural gas storage facility and other associated and appurtenant facilities capable of storing 6 BCF of working gas; (2) a blanket certificate pursuant to part 284, Subpart G, authorizing Wyckoff to provide storage services on behalf of others; (3) a blanket certificate pursuant to part 157, Subpart F, authorizing Wyckoff to develop, construct, acquire, own, operate, maintain, and abandon additional facilities following construction of the facilities for which authorization is being sought under part 157, Subpart A; and (4) authorization to provide storage services at market-based rates. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Wyckoff states that it does not have market power in any relevant product or geographic market for storage services, and has submitted a market power study with its application, in support of its position that it lacks market power. Pursuant to its request for market-based rates, Wyckoff requests that the Commission waive (1) the requirement of 18 CFR 157.14 with respect to Exhibits K, L, N, and O of the application; (2) the accounting and reporting requirements of 18 CFR part 201 and 18 CFR 260.2; and the requirement to file the rate information required by 18 CFR 157.6(b)(8).

The storage facilities which Wyckoff seeks to construct and operate will be located in Steuben County, New York. The storage facilities will consist of two depleted natural gas reservoirs and two pipelines, totaling 11.5 miles, to interconnect the facilities with the existing pipeline systems of Tennessee Gas Pipeline, Dominion Transmission, Inc., and Columbia Gas Transmission Company. The proposed storage facility has a maximum gas volume of 10 BCF, of which 6 BCF is working gas, a maximum deliverability of 400 MMCF/d, and maximum injection capability of 250 MMCf/d. The facility requires the construction of 6 new injection/withdrawal wells, the re-completion of 3 existing wells, 9,470 horsepower compression. Wyckoff will offer firm and interruptible storage services on an open access and non-discriminatory basis.

Any questions regarding this application should be directed to Edmund A. Knolle, Executive Vice President, Wyckoff Gas Storage Company, LLC, 1776 Yorktown, Houston, Texas, 77056, (713) 961–3204.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: January 23, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–295 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–217–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

December 31, 2002.

Take notice that on December 23, 2002, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Fourth Revised Sheet No. 62, to become effective February 1, 2003.

WIC states that the tariff sheet is being filed to remove the five-year term matching cap from the right-of-first-refusal provisions of WIC's Tariff consistent with the Commission's Order on Remand.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. *Intervention Date:* January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–246 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–182–001, et al.]

Phoenix Energy Associates, L.L.C., et al.; Electric Rate and Corporate Filings

December 30, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Phoenix Energy Associates, L.L.C.

[Docket No. ER03–182–001]

Take notice that on December 23, 2002, Phoenix Energy Associates, L.L.C. tendered for filing with the Federal Energy Regulatory Commission (Commission) in response to a deficiency letter from the Commission, an amendment to its Rate Schedule, a contact number for the corporation and a waiver of the effective date for the Rate Schedule.

Comment Date: January 13, 2003.

2. XL Weather & Energy Inc.

[Docket No. ER03–330–000]

Take notice that on December 23, 2002, XL Weather & Energy Inc. (XL Weather) submitted for filing a revised market-based rate schedule (Rate Schedule) reflecting its name change from Element Re Capital Products Inc. XL Weather requests a waiver of the 60-day prior notice requirement to allow its revised Rate Schedule to become effective as of December 11, 2002

Comment Date: January 13, 2003.

3. PJM Interconnection, L.L.C.

[Docket No. ER03–331–000]

Take notice that on December 24, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the Appendix of Attachment K of the PJM Open Access Transmission Tariff and

Schedule 1 of the Amended and Restated Operating Agreement to modify the provisions relating to the determination of eligibility to receive Operating Reserves credits during Maximum Generation Emergency conditions.

PJM states that copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: January 14, 2003.

4. PJM Interconnection, L.L.C.

[Docket No. ER03–332–000]

Take notice that on December 24, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the governance provisions of the PJM Operating Agreement to: (1) Add two new members to the PJM Board of Managers (Board); (2) establish a Nominating Committee to choose candidates for Board vacancies; and (3) permit election of Board members and the Chair and Vice Chair of the Members Committee by a simple majority of voting sectors.

PJM requests an effective date of December 25 for the amendments. PJM also states that copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: January 14, 2003.

5. Southern California Edison Company

[Docket No. ER03–333–000]

Take notice that on December 24, 2002, Southern California Edison Company (SCE) tendered for filing the Amended and Restated Service Agreement For Wholesale Distribution Service (Agreement) between SCE and SCE QF Resources. SCE respectfully requests an effective date of December 25, 2002 for the revisions.

The Agreement serves to provide the terms and conditions under which SCE provides Distribution Service under SCE's FERC Electric Tariff, Original Volume No. 5.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and SCE QF Resources.

Comment Date: January 14, 2003.

6. American Transmission Company LLC

[Docket No. ER03–334–000]

Take notice that on December 24, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Madison Gas and Electric Company.

ATCLLC requests an effective date of November 24, 2002.

Comment Date: January 14, 2003.

7. Ameren Services Company

[Docket No. ER03–335–000]

Take notice that on December 24, 2002, Ameren Services Company (ASC) tendered for filing an executed Service Agreement for Firm Point-to-Point Services between ASC and Duke Energy Trading and Marketing, L.L.C. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Duke Energy Trading and Marketing, L.L.C. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: January 14, 2003.

8. Ameren Services Company

[Docket No. ER03–336–000]

Take notice that on December 24, 2002, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Services between ASC and Ameren Energy. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: January 14, 2003.

9. Bangor Hydro-Electric Company

[Docket No. ER03–337–000]

Take notice that on December 23, 2002 Bangor Hydro-Electric Company (Bangor Hydro) submitted for filing, pursuant to section 205 of the Federal Power Act, an executed Entitlement and Firm Energy Agreement between Bangor Hydro and Constellation Power Source, Inc. (CPS).

Bangor Hydro states that copies of this filing were served upon CPS, Constellation Power Source Maine, LLC, the Maine Public Utilities Commission, and the Maine Public Advocate.

Comment Date: January 13, 2003.

10. Southern California Edison Company

[Docket No. ER03–338–000]

Take notice that on December 23, 2002, Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission) revisions to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Substitute First Revised Original Volume No. 6, to reflect (1) the annual update of the Transmission Revenue Balancing Account Adjustment and the Transmission Access Charge Balancing Account Adjustment; (2) the inclusion in the TO Tariff of rates for transmission service applicable to certain specified existing transmission contracts; (3) the Commission's Opinion No. 458-A in Docket No. ER97–2355–002; and (4) SCE's revised interconnection procedures which were accepted by the Commission's June 4, 2002 order in SCE's Docket Nos. EL00–95–025 and EL00–98–024.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, the service list in Docket No. ER97–2355–002, the Cities of Azusa, Banning, Colton, Riverside, California, the Department of Water and Power of the City of Los Angeles, California, and all Scheduling Coordinators certified by the California Independent System Operator.

Comment Date: January 13, 2003.

11. San Diego Gas & Electric Company

[Docket No. ER03–339–000]

Take notice that on December 23, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) Original Volume No. 7 to its Transmission Owner Tariff, superseding Volume No. 6 in its entirety. Volume No. 7 incorporates changes resulting from prior Commission orders that accepted for filing SDG&E's revised generator interconnection procedures, revised Reliability Must Run rates, and Supplemental Transmission Surcharge Rates for upgrades to its Imperial Valley-La Rosita transmission line and the costs of increased security for its transmission system. Along with these approved changes, SDG&E has eliminated certain rate schedules and added a new schedule with the approval of the California Public Utilities. Commission, eliminated references to the California Power Exchange, eliminated Ancillary Services it no longer offers since divestiture of its generation assets, and updated the contact information for regulatory filings.

SDG&E requests that the Commission waive the sixty-day notice requirement and establish an effective date of December 31, 2002 for Volume No. 7.

SDG&E states that copies of the filing have been served on the California Public Utilities Commission and the California Independent System Operator Corporation.

Comment Date: January 13, 2003.

12. Calpine PowerAmerica—OR, LLC, Calpine Power America—CA, LLC

[Docket Nos. ER03–341–000 and ER03–342–000]

Take notice that on December 26, 2002, Calpine PowerAmerica—CA, LLC tendered for filing, under section'205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: January 16, 2003.

13. Aquila, Inc.

[Docket No. ER03–344–000]

Take notice that on December 27, 2002, Aquila, Inc. (Aquila), filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d, and part 35 of the Commission Regulations, 18 CFR part 35, an Interconnection Agreement between Aquila, Inc. d/b/a WestPlains Energy-Kansas and Russell Municipal Power and Light dated as of December 9, 2002. The Interconnection Agreement is filed as Service Agreement No. 104 to Aquila FERC Electric Tariff, Third Revised Volume No. 26.

Comment Date: January 17, 2003.

14. New England Power Pool

[Docket No. ER03–345–000] Take notice that on December 27, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted changes to Appendix E to Market Rule 1 (Appendix E), entitled "Load Response Program." Appendix E has been revised to change the basis for allocating to Participants the costs of the NEPOOL Load Response Program from Load Obligation to Network Load. NEPOOL has requested that the proposed changes become effective February 25, 2003 for transactions on and after the applicable effective dates set forth in Market Rule 1 and Appendix E (the SMD Effective Date and the effective date for the Day-Ahead Demand Response Program).

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: January 17, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–296 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7435–9]

Availability of FY 01 Grant Performance Reports for State of North Carolina and Memphis-Shelby County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of the state air pollution control program at North Carolina Department of Environment and Natural Resources, and the local program at Memphis-Shelby County Health Department, Tennessee. These evaluations were conducted to assess the agencies' performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection. Evaluations for the other seven states and 15 local governments which have air pollution control programs were published November 18, 2002.

ADDRESSES: The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW, Atlanta, Georgia 30303, in the Air, Pesticides, and Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Rayna Brown (404) 562–9093. She may be contacted at the above Region 4 address.

Dated: December 23, 2002.

Russell L. Wright, Jr.,

Assistant Regional Administrator, Office of Policy and Management, Region 4.

[FR Doc. 03–284 Filed 1–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7436–4]

Preliminary Findings of Informal Review of State of Michigan's Approved Clean Water Act Section 404 Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: This document announces EPA's preliminary finding that, at this time, formal program withdrawal proceedings should not be initiated for Michigan's approved Clean Water Act section 404 permit program.

DATES: Comments on this document must be received in writing by March 10, 2003.

ADDRESSES: Written comments on today's notice may be submitted to Jo Lynn Traub, Director, Water Division, Attn: Michigan Section 404 Program Review, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. As an alternative, EPA will accept comments electronically. Comments should be sent to the following Internet Email Address: *elston.sue@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Sue Elston, Watersheds and Wetlands Branch, at the EPA address noted above or by telephone at (312) 886–6115. The Report containing EPA's preliminary findings is available via the Internet at the following location: *http://www.epa.gov/region5/water/wshednps/pdf/mi_404_program_review.pdf.* In addition, a hard copy of the information supporting today's notice is available for review at EPA Region 5, 77 West

Jackson Boulevard, 16th Floor, Chicago, Illinois; Library of Michigan, 702 Kalamazoo Street, Lansing, Michigan; Olson Library, Northern Michigan University, 1401 Presque Isle Avenue, Marquette, Michigan; Otsego County Library, 700 S. Otsego Avenue, Gaylord, Michigan; and at Brandner Library, Schoolcraft College, 18600 Haggerty Road, Livonia, Michigan. To arrange for access to the docket materials in Chicago, call (312) 886–6115, in Lansing call (517) 373–9489, in Marquette call (906) 227–2117, in Gaylord call (989) 732–5841, and in Livonia call (734) 462–4440.

SUPPLEMENTARY INFORMATION: On October 16, 1984, EPA approved the regulatory permitting program that the State of Michigan had submitted pursuant to the requirements and guidelines contained in subsections 404(g) and 404(h) of the Clean Water Act. 33 U.S.C. 1344(g) and (h). (See 49 FR 38947, October 2, 1984.) In that notice of approval, EPA noted that the Administrator was required to approve a program submitted by a state pursuant to subsection 404(g) of the CWA unless that program does not meet the requirements of subsection 404(h) of the CWA, and EPA then stated that it had determined that the program submitted by the State of Michigan met those statutory requirements. The components of the approved program are stated at 40 CFR 233.70 . When EPA initially approved the program, Michigan did not have authority to carry out the program in Indian lands. EPA now concludes, as set forth more fully in the Report, that Michigan remains without authorization to carry out the program in Indian lands, which EPA defines to be the same as Indian Country as defined by statute (18 U.S.C. 1151).

The Michigan state agency authorized in 1984 to administer the approved section 404 program was the Department of Natural Resources. Later, the State of Michigan reorganized its agencies and transferred authority to administer the approved section 404 program to the Department of Environmental Quality (MDEQ). EPA approved this transfer on November 14, 1997 (62 FR 61173, November 14, 1997). The State of Michigan was the first state in the nation, and currently is one of only two states, to be authorized to administer a CWA section 404 permit program within its borders.

Recently EPA decided to perform an informal review of Michigan's approved section 404 program and the program's administration by MDEQ. EPA so decided, among other reasons, because since 1984 there have been a number of changes to the relevant federal and state statutes and regulations, and because a body of State of Michigan judicial and administrative opinions relevant to permitting under the section 404 program had developed. In addition, in recent years EPA has received a number of comments and complaints about Michigan's administration of the approved section 404 program. Among these was the February 1997 submission by the Michigan Environmental Council and the Lone Tree Council which requested that EPA either ensure reform of Michigan's section 404 program or withdraw approval of the section 404 program. EPA responded that it was treating the February 1997 request as a petition to withdraw, and committed to performing an informal review of that petition's allegations, as provided for by 40 CFR 233.53(c)(1). See documents published at 62 FR 14846, March 28, 1997, and 62 FR 61173, 61174, November 14, 1997. The federal regulations allow EPA to conduct an informal review of allegations made in a petition to withdraw a section 404 program approval, 40 CFR 233.53(c).

In deciding to informally review Michigan's section 404 program, however, EPA decided to comprehensively review all aspects of Michigan's administration of the section 404 program—both with respect to permit processing and permit decision making and with respect to enforcement of the provisions of CWA section 404 and section 404 permits issued by MDEQ—and to comprehensively review the adequacy of Michigan's current legal authorities which establish and embody Michigan's section 404 program. Thus, EPA did not limit itself to reviewing the few matters of concern mentioned in the petition submitted by the Michigan Environmental Council and the Lone Tree Council.

The Regional Administrator of Region 5, EPA, informed the Director of MDEQ of the commencement of the section 404 program review in a letter of January 22, 1998.

To perform its program review, EPA requested that the State of Michigan provide an updated program description (40 CFR 233.11); a new Attorney General's Statement confirming that state laws and regulations provide adequate authority to administer the section 404 program and addressing the other subjects mentioned at 40 CFR 233.12; and a compilation of all current, relevant Michigan laws and regulations. The State of Michigan submitted these materials to EPA in June 1999, and submitted new and updated information to EPA between June 1999 and the date of this Notice.

As well as reviewing and analyzing the documents submitted by the State of Michigan, during its program review EPA reviewed hundreds of permitting files, enforcement files, and citizen complaint files that MDEQ generated between 1995 and 1999, visiting all thirteen MDEQ district offices and the central MDEQ office in Lansing, Michigan. EPA also conducted numerous interviews of MDEQ personnel in the field and central offices. Additionally, EPA reviewed most of MDEQ's written decisions issued in contested permitting cases between January 1994 and early 1999. The contested case decisions represent final agency action by MDEQ in matters involving individual permits processed under the approved state program. Also as part of its program review, EPA consulted with offices of the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers which interact with MDEQ during its administration of the program. Finally, during January and May of 1999 EPA held four availability sessions to receive comments from interested persons.

EPA now has completed its review and analysis of all materials. EPA has preliminarily concluded that the review findings do not warrant a recommendation to the Administrator to initiate formal program withdrawal proceedings, but do warrant corrective action on the State's part. In arriving at this conclusion, EPA analyzed whether the circumstances for program withdrawal which are set forth at 40 CFR 233.53(b) exist and, with respect to those areas of concern to EPA, whether the State of Michigan has indicated its willingness to take timely corrective actions to address EPA's concerns. In performing the program review, EPA also reviewed the criteria for initial section 404 program approval which are set forth in subsection 404(h) of the CWA.

EPA has found both deficiencies and strengths in Michigan's legal authorities establishing the approved section 404 program and in the program's administration by MDEQ. These strengths, deficiencies, and proposed corrective actions are identified in the document titled *Results of the U.S. Environmental Protection Agency Region 5 Review of Michigan Department of Environmental Quality's Section 404 Program*, and other documents that are contained in the public docket that supports this Notice. To address the deficiencies, EPA will be requesting that the State of Michigan perform certain corrective actions; EPA already has consulted with the State of Michigan about the nature of those

corrective actions. The corrective actions that EPA has identified to date are described in general terms elsewhere in this Notice and supporting documents, although those corrective actions may be modified based on future experience and the specifics of the corrective actions must still be defined and finalized. EPA expects that certain corrective actions may be implemented through regulatory action by MDEQ, but that other corrective actions will require action by the Michigan legislature. EPA and the State of Michigan also have agreed on a tentative schedule for implementing the identified corrective actions, although we expect that modifications to this schedule likely will occur in the future. If adequate corrective actions are not taken by the State of Michigan in a timely manner, EPA will reconsider whether formal withdrawal proceedings, as outlined in subsection 404(i) of the CWA and 40 CFR 233.53(c), should be commenced. A summary of the most significant findings of the program review follows.

Through its review of the State of Michigan's legal authorities, EPA has determined that the State's laws and regulations are, for the most part, consistent with section 404 of the Clean Water Act, but has identified deficiencies in a few specific areas, resulting in a preliminary conclusion by EPA that the State does not have legal authority fully consistent with section 404 of the Clean Water Act and the State's implementation of the section 404 program is not entirely consistent with the requirements of 40 CFR part 233.

The scope of regulatory jurisdiction granted to MDEQ by Michigan law is one area of concern for EPA. In many Michigan counties MDEQ has no jurisdiction over a non-contiguous wetland even if that wetland is ecologically significant or large (unless MDEQ has individually determined that the wetland has essential natural resource value). EPA acknowledges that the extent of federal CWA jurisdiction over isolated wetlands recently was limited by the United States Supreme Court decision in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 121 S.Ct. 675 (2001) *(SWANCC),* but the precise CWA jurisdictional limitation resulting from SWANCC remains unclear. For that reason EPA remains concerned that Michigan's jurisdiction over non-contiguous wetlands is narrower than is federal CWA jurisdiction over isolated wetlands, even post-*SWANCC.* The State is proposing completion of a statewide wetland inventory, which upon completion in each county, will authorize MDEQ to assert jurisdiction over all non-contiguous wetlands in that county which are larger than five acres.

Another area of concern is that Michigan law appears to exempt a wider range of activities than does the CWA under subsection 404(f) of the CWA, including exemptions for discharges occurring as part of certain agricultural activities, discharges related to drain creation and improvement, and discharges associated with iron and copper mining tailings basins. The State has agreed to seek statutory amendments and the promulgation of administrative rules to address these issues.

EPA's examination of Michigan law included review of MDEQ's authorities and procedures for issuing permits. MDEQ issues section 404 and State permits for activities in waters of the United States under two different state statutes: Part 301 and Part 303 of the Natural Resources and Environmental Protection Act. EPA has several concerns with regard to MDEQ's permitting authority. The first concern is that MDEQ may not have clear authority to require all permit conditions required under federal law, and may not have clear authority to revoke and modify issued permits in all situations provided for by federal law. The State has agreed to promulgation of administrative rules to resolve these concerns. EPA also considered the Michigan statutory provision which directs that a permit under Part 303 shall issue within 90 days of a triggering event, and found this provision does not pose an impediment to MDEQ's proper implementation of the section 404 program.

Michigan law also fails to require that MDEQ incorporate the section 404(b)(1) guidelines (or state environmental criteria which are equivalent to the section 404(b)(1) guidelines) into its permit decision making processes. The criteria in the section 404(b)(1) guidelines as to which MDEQ-issued permits are not explicitly required to meet include application of a proper feasible and prudent alternatives analysis, application of the correct water dependency test, a bar on issuing permits which will jeopardize federally threatened or endangered species or their critical habitats, and a bar on issuing permits which will result in significant degradation of waters of the United States. The State has already promulgated administrative rules that address many of these concerns, and has agreed to promulgate rules to address the remaining issues.

EPA's review of contested case decisions issued over the years by MDEQ's Office of Administrative Hearings found that final agency decisions frequently have failed to interpret and apply Michigan law in a manner that is consistent with the federal requirements for administering a section 404 program; the result has been the issuance of permits—which constitute section 404 permits—for activities which have not been subjected to proper analyses for water dependency, satisfaction of the section 404(b)(1) guidelines, and other federal criteria, thereby undermining the State's ability to administer a program which meets the terms of section 404(h) of the CWA. For these reasons, EPA has found that certain changes must be made to some Michigan statutory provisions and administrative rules in order to make them more clearly consistent with federal law. MDEQ has acknowledged EPA's concerns and has proposed what appear to be effective corrective actions to resolve these concerns. Some of these corrective actions already have been taken by MDEQ, while others are proposed for the future.

With regard to MDEQ's administration of the section 404 program, the program review found that, in general, MDEQ is doing a good job. MDEQ is operating its regulatory program in a manner consistent with the State Program Regulations found at 40 CFR part 233. The majority of permit files which EPA reviewed were found to contain the necessary documentation supporting the permit decision. The State's general permit program was found to be consistent with the federal requirements for general permits. MDEQ's permit application process was found to be consistent with the requirements in the federal regulations. MDEQ is including appropriate conditions in its permits to ensure compliance with the section 404(b)(1) guidelines and applicable water quality standards, and the duration of permits issued is consistent with federal requirements.

This program review did, however, identify several problems with MDEQ's administration of its section 404 permit program. The program review identified a need for MDEQ, USFWS and EPA to develop a procedure regarding how the agencies will coordinate when a potential project may have some effect on a federally threatened or endangered species or critical habitat.

The EPA has identified the need for MDEQ to modify its public notice procedures to make them consistent with 40 CFR 233.32. EPA found that MDEQ public notice procedures do not ensure that interested members of the public always have sufficient

opportunity to submit comments in response to public notices nor do the state's public notice procedures include providing public notices by mail to all interested parties, as required by the regulations. In order to partially address this concern, the state has implemented an internet based public notice system that makes all public notices available on the MDEQ website. EPA and MDEQ will be discussing additional corrective actions that need to be taken to ensure that all interested persons receive timely public notices of projects requiring CWA section 404 permits.

As part of our review of MDEQ's enforcement efforts, citizen complaint files were reviewed in all of the MDEQ district offices. Based on the annual reports prepared by MDEQ, an average of 800 citizen complaints are investigated each year. The program review found that district offices make a concerted effort to address complaints. Generally, the review found complaints were routinely followed with site inspections, which usually were made within two weeks of receipt of the complaint.

An opportunity for public participation in the State's enforcement process is required by federal law, and MDEQ has agreed to implement procedures to comply with the requirements of 40 CFR 233.41(e)(2).

This review concludes that MDEQ has maintained a satisfactory enforcement program. MDEQ has designed the enforcement program to identify un-permitted activities and initiates enforcement responses in a timely manner. Overall, Michigan's enforcement program achieves appropriate injunctive relief through wetlands restoration and wetland mitigation and obtains adequate penalties. The review of MDEQ's use of administrative consent agreements found that the agreements effectively resolved the violations at issue and resulted in additional environmental restoration and conservation of wetland.

Although there is no legal requirement that EPA receive public comment regarding the preliminary determinations of its informal review of Michigan's section 404 program, EPA has decided to accept such public comments for a period of sixty (60) days from the publication date of this notice. EPA seeks public comment on its preliminary determination that formal withdrawal proceedings not be commenced, as well as EPA's detailed findings regarding MDEQ's administration of the permitting and enforcement program and the adequacy of Michigan's legal authorities. If public comments received by EPA indicate significant public interest in the holding of a public hearing, EPA may decide to hold such a hearing.

Dated: December 18, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–285 Filed 1–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7436–5]

Issuance of a General Permit to the National Science Foundation for the Ocean Disposal of Man-Made Ice Piers From its Base at McMurdo Sound on Antarctica

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed permit.

SUMMARY: EPA is today proposing to issue a general permit under sections 102(a) and 104(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) to the National Science Foundation (NSF) for the disposal at sea of man-made ice piers from its base at McMurdo Sound on Antarctica. The NSF is the agency of the United States Government responsible for oversight of the United States Antarctic Program. The NSF currently operates three major bases in Antarctica: McMurdo Station on Ross Island, adjacent to McMurdo Sound; Palmer Station, near the western terminus of the Antarctic Peninsula; and Amundsen-Scott South Pole Station, at the geographic South Pole. McMurdo Station is the largest of the three stations, and serves as the primary logistics base for Antarctica. In order to unload supplies at McMurdo Station, ships dock at an ice pier at McMurdo Station; this man-made pier has a normal life span of three to five years. At the end of its useful life, all transportable equipment, materials, and debris are removed, the pier is cast loose from its moorings at the base and towed out to McMurdo Sound for disposal, where it melts naturally. Issuance of this general permit is necessary because the pier must be towed out to sea for disposal at the end of its useful life. This proposed general permit is intended to protect the marine environment by setting forth specific permit terms and conditions, including operating conditions during use of the pier and clean-up, with which the NSF must comply before the disposal of such ice piers would take place.

DATES: Written comments on this proposed general permit will be accepted until February 6, 2003. All comments must be received or postmarked by midnight of February 6, 2003, or must be delivered by hand by the close of business of that date to the address specified below.

ADDRESSES: This proposed permit is identified as Docket No. OW–2002–0048. Please send an original and three copies of your comments and enclosures (including references) to the "OW–2002–0048, Comment Clerk", Water Docket (MC 4101T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries should be delivered to: EPA Water Docket, 1301 Constitution Avenue, NW., Room B–135, Washington, DC 20004. Electronic mail comments will be accepted at the e-mail address, *ow-docket@epamail.epa.gov*, and must be received by close of business of the date specified above. Electronic comments must be submitted as an ASCII, WP 5.1, WP 6.1, or WP 8 file, avoiding the use of special characters and any form of encryption. Electronic comments must be identified by Docket Number OW–2002–0048. Comments and data will also be accepted on discs in ASCII, WP 5.1, WP 6.1, or WP 8 file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. To ensure that the Agency can read, understand, and therefore properly respond to comments, commenters should cite the paragraph(s) or sections in the proposed permit to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Commenters should submit any references cited in their comments. Commenters who want the Agency to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No comments submitted by facsimile transmission (fax) will be accepted. The record for this proposed permit has been established, as noted above, as Docket No. OW–2002–0048, and includes printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, 1301 Constitution Avenue, NW., Room B–135, Washington, DC 20004. For access to docket materials, call (202) 566–2426, to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: David Redford, Chief, Marine Pollution Control Branch, Oceans and Coastal Protection Division (4504T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W.,

Washington, DC, 20460; telephone (202) 566–1288.

SUPPLEMENTARY INFORMATION:

A. Background on McMurdo Station Ice Pier

The NSF was established as an independent agency of the Executive Branch of the government in 1950. Following the International Geophysical Year in 1957–1958, President Eisenhower decided that the NSF should have full responsibility for the formulation, coordination, and management of the United States Antarctic Program (USAP). The NSF currently operates three major bases in Antarctica: McMurdo Station on Ross Island, adjacent to McMurdo Sound; Palmer Station, near the western terminus of the Antarctic Peninsula; and Amundsen-Scott South Pole Station, at the geographic South Pole.

McMurdo Station, which is located on the southern tip of Hut Point Peninsula on Ross Island, is the largest of the three stations. This station is the logistics hub of the USAP, with a harbor, landing strips on both sea ice and shelf ice, and a helicopter pad. The majority of personnel and supplies destined for bases and field camps on Antarctica pass through McMurdo Station.

The approximately 85 buildings at the Station range in size from a small radio shack to large three-story structures. This year-round facility has a peak summer population of approximately 1150 persons, and a winter population of 150 to 200. McMurdo Station is the most southerly port in the world that is accessible by ship.

For most of the year, McMurdo Station is closed in by sea ice. However, in early January, a U.S. Coast Guard icebreaker opens a channel to the harbor at McMurdo Station, allowing a fuel tanker and a supply vessel to replenish the station. The tanker normally arrives in mid-January to unload AN–8 fuel (JP–8 fuel with an icing inhibitor added), and unleaded gasoline. The AN–8 fuel is the primary fuel for power generation, heating sources, and aircraft; the gasoline is used for small portable equipment. In early February, the resupply vessel arrives and off-loads the annual provision of supplies for McMurdo Station and other U.S. Antarctic bases. After unloading its cargo, the supply vessel is backloaded with the previous year's accumulation of wastes, which are returned to the United States for disposal and recycling.

To permit the various vessels to dock and unload at McMurdo Station, construction of an ice pier is necessary. This ice pier, which is approximately 800 feet long, 300 feet wide, and 22 feet thick, is constructed during the winter season in the following manner.

Construction begins when the frozen ice pack in McMurdo Sound reaches approximately 0.6 m (2 ft) in thickness. Snow is bermed to a depth of about 0.6 m (2 ft) on the ice pack, at the perimeter of what will be the ice pier. Heavy-duty pumps are then used to flood the ice pack inside the bermed snow with about 10 cm (4 in) of seawater. This water freezes solid in about 24 hours, when the process is repeated with another 10 cm of seawater. This process is repeated until the ice thickness of the pier reaches approximately 1.5 m (5 ft). When that thickness of the pier is achieved, several holes are drilled in the ice near the periphery of the ice pier, and lengths of 2″ steel pipe are inserted vertically into the holes. The space surrounding the pipe-ice interface is flooded with water and allowed to freeze, fixing the pipes in the ice pier. Approximately 2,100 m (6,900 ft) of 1″ steel cable is then woven around the steel pipes frozen in the ice, providing a horizontal reinforcement mat for the first layer of the ice pier.

The entire process is repeated three more times, until the ice pier is approximately 6.7 m (22 ft) thick. However, the horizontal mat of steel cables is not employed in the last repetition of the process; thus, there are three layers of cable reinforcement in the completed ice pier. When the final layer is created and the pier is approximately 6.7 m (22 ft) thick, three or four wooden utility poles are vertically embedded approximately four feet deep in the ice pier to provide support for electrical cables for lighting, power for equipment, and telephone service to structures on the pier. These poles consist of natural, chemically-untreated wood. In addition, just before the pier is completed, several shorter utility poles are frozen into the proximal edge of the pier, to serve as bollards, to attach the pier to the mainland at McMurdo. When the construction of the ice portion of the pier is completed, a 15–20 cm (6–8 in) thick layer of 2 cm (¾ in) or smaller gravel is applied to cover the surface of the pier, to provide a non-slip working surface.

In summary, the following types and approximate quantities of materials would normally be used in the construction of an ice pier at McMurdo Sound Station:

—1″ steel cable: 6,300 m (21,000 ft).
—2″ steel pipe: 200 m (650 ft).
—Wooden utility poles: 3 or 4, plus several bollards.
—2 cm or smaller gravel: 4,200 m^3 (5,000 yd^3).

At the end of each austral summer season, the pier is inspected, and as much of the gravel non-slip surface as possible is removed and stored for use the following season. If the pier is to be reused the next year, it is flooded with seawater during the winter to create a new surface for the following summer season. The pier has a normal viable life of three to five years; after that period, factors such as stress cracking and erosion no longer allow the pier to be used. The erosion of the seaward face of the ice pier is caused by such factors as wave action, contact of vessels with the pier face, and the discharge of coolant water from ships docked at the pier.

When the pier has deteriorated to the point that it is not capable of being used the following season, the wooden poles are cut off just above the surface of the ice, the gravel is scraped off for use in the following season, all transportable equipment, materials, and debris are removed, and the pier is physically separated from its attachment to McMurdo Base at the end of the austral summer. It is then towed by a U.S. Coast Guard cutter into McMurdo Sound past the distal end of the open channel in the ice, as near to the Ross Sea currents as possible. The pier is set free in a direction that will allow it to flow with the Ross Sea currents, away from the open channel in the ice. The pier then floats free amidst the ice pack, where it mixes with the annual sea ice, and eventually disintegrates.

Complete information is not available on the time required for melting and disintegration of an ice pier, or on the path an ice pier takes after its release. NSF scientists have estimated, however, that melting and disintegration will take place over several years, and that ice piers will drift from their release point in McMurdo Sound, into the Antarctic Sea, and eventually into the Southern Ocean, where they will presumably float with the currents of the Southern Ocean. These estimates are supported by tracking data collected on an ice pier disposed by NSF in February 1999 under an emergency permit. One condition of that permit was that the pier be tracked by the use of emplaced pingers for a period of one year. Tracking records indicated that the pier traveled approximately 600 miles in a generally northerly direction into the Southern Ocean during the first six months, when it then became locked in ice. No further movement of the ice pier was detected in the second six months of the year-long tracking period. These tracking results confirm what NSF staff believed would happen to any released ice piers.

B. Statutory and Regulatory Background

1. Marine Protection, Research, and Sanctuaries Act (MPRSA)

Section 102(a) of the MPRSA, 33 U.S.C. 1412(a), requires that agencies or instrumentalities of the United States obtain a permit to transport any material from any location for the purpose of dumping into ocean waters. Section 104(c) of the MPRSA, 33 U.S.C. 1414(c), and EPA regulations at 40 CFR 220.3(a) authorize the issuance of a general permit under the MPRSA for the dumping of materials which have a minimal adverse environmental impact, and are generally disposed of in small quantities. General permits currently exist for burial at sea for both cremated and non-cremated human remains, for vessels used by the United States Navy for the purposes of target practice and testing ordnance, and for vessels transported for the purpose of disposal.

The proposed towing of ice piers by the NSF from McMurdo Station for disposal at sea constitutes transportation of material for the purpose of dumping in ocean waters, so it is subject to the MPRSA. The NSF has requested the issuance of a general ocean dumping permit for its ice piers.

2. Obligations Under International Law

On October 2, 1996, President Clinton signed into law the Antarctic Science, Tourism, and Conservation Act of 1996, amending the Antarctic Conservation Act of 1978. This law is designed to implement the provisions of the Protocol on Environmental Protection to the Antarctic Treaty ("the Protocol"). The Protocol was signed by the U.S. on October 4, 1991, ratified on April 17, 1997, and entered into force on January 18, 1998. The Protocol builds on the Antarctic Treaty to extend its effectiveness as a mechanism for ensuring protection of the Antarctic environment. It designates Antarctica as a natural reserve, devoted to peace and science, and sets forth basic principles and detailed, mandatory rules applicable to human activities in Antarctica. It prohibits all activities relating to mineral resources in Antarctica, except for scientific research. It commits signatories to the Protocol (known as Parties) to environmental impact assessment procedures for proposed activities, both governmental and private. Among other things, it also requires Parties to protect Antarctic flora and fauna, and imposes strict limitations on disposal of wastes in Antarctica, and discharges of pollutants into Antarctic waters.

Several sets of regulations exist that will assist in implementation of the Protocol. These include NSF regulations regarding environmental impact assessment of proposed Foundation actions in Antarctica (45 CFR part 641), NSF waste regulations for Antarctica (45 CFR part 671), and EPA regulations regarding environmental impact assessment of non-governmental activities in Antarctica (40 CFR part 8).

EPA wishes to clarify that its proposal to issue a general permit under the MPRSA does not indicate whether the proposed activity is in compliance with other relevant obligations under the Protocol and implementing legislation. Accordingly, the responsible United States authority must make separate determinations with respect to other relevant obligations, and the Agency will coordinate with the responsible authority, as appropriate, in the Agency's consideration of the issuance of a general permit under the MPRSA.

In this regard, the Agency notes that the NSF has completed a USAP Final Environmental Impact Statement (June 1980), a USAP Final Supplemental Environmental Impact Statement (October 1991), and an Initial Environmental Evaluation (May 1992), all of which address in some aspects the construction, operation, and disposal of ice piers at McMurdo Station in Antarctica. All of these documents are available for review at the Office of Polar Programs of the NSF, 4201 Wilson Boulevard, Arlington, VA 22230 (Contact: Joyce Jatko, telephone: (703) 292–8030). The documents did not identify any potential environmental impacts from the disposal of ice piers, other than the minor navigational hazard that would be equivalent to that posed by an ice floe or a small iceberg. The Agency considered the analyses contained in the three documents cited above in developing this proposed general permit.

C. Potential Effects of Ice Pier Disposal

Because the natural creation and disintegration of icebergs occurs constantly in the Antarctic environment, the primary ice component of the NSF piers is not of environmental concern. However, the ice piers also contain approximately 21,000 feet of 1″ steel cable and 650 feet of 2″ steel pipe between the ice layers, that eventually will fall, as the pier disintegrates, to the bottom of McMurdo Sound, the Antarctic Sea, or the Southern Ocean. The steel cable and pipe will sink permanently to the bottom, and over considerable time, will dissolve through oxidative processes, unless they fall into very deep anaerobic waters, where they would not dissolve.

Because there are approximately 2,100 m (6,900 ft) of cable frozen in each of the three layers of the ice pier, it is possible that during the melting process there may be loops of cable suspended from the bottom of the ice pier. These loops will remain for brief periods of time before the cable in each layer is released from the bottom of the pier due to melting. The entire length of 2,100 m (6,900 ft) of cable would then descend rapidly to the ocean floor.

The Agency has considered the possibility of these loops of cable entangling organisms in the marine environment. The only animals that could potentially become entangled in the suspended loops of cable are large whales of the Antarctic Sea or the Southern Ocean. However, these animals are known to have sophisticated natural sonar (sound navigation and ranging) systems, are able to detect and precisely identify objects at considerable distances with those systems, and normally will avoid large objects such as icebergs. In addition, because in excess of 80 percent of icebergs (and the ice pier) is submerged beneath the surface, there is no reason to believe any cetaceans will approach an ice pier, by either coming near it on the surface to breathe, or by swimming beneath it. Thus, the possibility of entanglement of large animals by suspended loops of cable from the ice pier is regarded as very minimal.

Additionally, the Agency and the NSF have discussed the possibility of seals becoming ensnared in any loops of cable hanging from the ice pier. Although seals are known to routinely haul out on ice floes to rest and to breed, EPA does not believe there is any danger from any cables embedded in the edges of the ice pier to Antarctic seal populations in their passage from the ocean to the ice surface, because any loops of cable will be visible and easily avoided.

There is no danger to any marine avian species from the release of the ice piers. Penguins, if they are in the area, can easily hop onto, and off, the edge of the ice pier, if necessary. Further, there is no permanent penguin population in the area of McMurdo Station on a year-round basis. Any penguins in the area arrive at their usual breeding rookeries in late October of each year. Their eggs are hatched in November, the chicks are fledged no later than late December of each year, and all penguins, except for a very few stragglers, are gone from the McMurdo Station area by late January every year. On those years when the ice pier must be cut loose, the detachment

from McMurdo Station occurs in late February. Thus, there are no penguins in the area at that time, since the birds will have already gone out to sea again.

Further, both the National Marine Fisheries Service and the Fish and Wildlife Service have agreed that the disposal of ice piers from McMurdo Station will not have any effect on endangered or threatened species, nor is the action likely to adversely affect any critical habitats.

In addition, the time that the loops of cable are suspended from the bottom of the ice pier would be expected to be relatively brief. Once a substantial portion of the cable in each layer is released from the ice by melting processes, the weight of the suspended cable will act to detach the remainder of the layer of cable from the pier. As discussed above, the entire length of cable would then fall rapidly to the ocean bottom.

Although the wooden utility poles and the bollards are cut off at the level of the ice surface before the pier is towed for dumping, the six or seven stump ends of the poles, approximately four feet long, remain frozen in the pier. (The NSF requires that the longer, exposed lengths of the utility poles be returned for recycling back to the United States; they are never disposed of in the ocean). When eventually released from the pier during the disintegration process, the stump ends of the poles could float for several years, providing substrate for attachment of sessile organisms. Eventually, however, the poles will be destroyed by biological processes. Navigational hazards from the poles are unlikely, because of their small size and limited number.

Of potentially greater environmental concern are any operational discharges, leaks, or spills that may have contaminated the surface of the pier over the period of its existence. Examples of such possible releases include AN–8 (jet fuel formulated for cold environment use by heavy diesel engines and aircraft) or gasoline during the annual unloading process from the resupply oil tanker; spills of material due to leaks or cracks in containers or drums during the annual offloading from the supply vessel; leaks of AN–8, gasoline, engine lubricating oil, hydraulic fluid, or ethylene glycol (antifreeze) from equipment working on the pier; or spills of liquids or chemicals being stored on, or moved across, the pier. These discharges, leaks, and spills could result in contamination of parts of the pier with chemical compounds of concern to the marine environment.

To assess this potential further, in February 1993 the NSF analyzed eleven ice samples taken from the ice pier at McMurdo Station. The samples were collected in the following manner. The central portion of the pier was first divided into 21 equal area quadrats, each approximately 100′ × 100′. The center of each plot was then identified, and four additional sample locations were identified in an equidistant "X" pattern from the center sample point. One sample was collected from each of the five points in each plot, and the five sub-samples were then composited into a single sample for each plot. Composited samples were analyzed for alternating plots throughout the grid pattern, *i.e.*, the composited sample for every other plot was analyzed, for a total of eleven analyses. The samples were analyzed for two compounds: ethylene glycol (antifreeze) and total extractable hydrocarbons (TEH). Ethylene glycol was selected because of the possibility of leaks from engine blocks; TEH was selected because of the need for a broad spectrum analytical procedure, and because the presence of TEH would represent any possible extractable petroleum discharges onto the surface of the ice pier. Ethylene glycol was not detected in any of the eleven samples, at a detection limit of 16 mg/kg; TEH was not detected in ten of the eleven samples, at a detection limit of 3 mg/kg. Only one sample, collected beneath two 55-gallon fuel drums used to provide heat for a warming hut on the ice pier, showed a concentration of 70 mg/kg. This sample was collected directly underneath fuel drums where dripping had occurred during drum exchange operations.

Subsequently, the NSF issued a directive that at all locations where fuel drums for building heating systems, or fuel transfer stations are found, such locations shall be underlain with secondary containment methods, to facilitate capture of leaks or spills. Secondary containment methods include large metal pans or impermeable liners placed beneath the potential contaminant source. Drip pans were installed under the fuel drums at the warming hut on the ice pier.

In February 1994, the approximately 800′ by 300′ surface of the ice pier was again divided into 21 quadrats for further examination of locations of contamination. NSF personnel examined the entire surface of the pier, after the non-slip gravel surface had been removed, and any points on the pier showing signs of contamination from leaks or spills were marked and noted. Five samples were taken from each of the 21 quadrats; the samples were composited and analyzed for total petroleum hydrocarbons (TPH). TPH analysis, which identifies a narrower range of analytes than the broader TEH analytical procedure, was used because previous analyses demonstrated that only analytes from the narrower range are present. TPH has a detection limit of 10 mg/kg; for all samples except one, TPH was undetected. That single sample had a TPH concentration of 50 mg/kg. Analysis of that single sample was unable to specifically determine the chemical composition of the contaminants; vehicle engine fuel or hydraulic fluids were identified as the most likely possibilities.

The NSF has a spill prevention, control, and countermeasures (SPCC) plan for all of the stations and bases under NSF jurisdiction in Antarctica. The plan, revised in September 1994, and currently being updated, includes a section addressing fuel storage and transfer systems for the ice pier at McMurdo Station. The SPCC plan identifies the annual unloading of petroleum products from the supply tanker as having the greatest potential for accidental discharge of contaminants. Previously, four-inch diameter hoses made up in 50-foot lengths were used to unload fuel from the tanker to the tank farms on the mainland at McMurdo Station. However, to reduce the risk of a potential fuel spill during the tanker unloading operation, new six-inch diameter hoses made up in 660-foot lengths replaced the older hoses in 1993. The new hoses significantly reduced the number of hose connections (and potential leaks) on the ice pier. For further protection, the connecting point from the tanker to the transfer hose was underlain by large drip pans.

In addition, the SPCC plan identifies the annual unloading of drummed lubricants, solvents, and hazardous materials from the cargo freighter, and the subsequent loading of the freighter with materials destined to be returned to New Zealand or the United States, as potential sources of accidental discharge or spills. As a result, to reduce the potential for discharges, the plan requires all materials received from, or loaded onto, the cargo vessel to be containerized in double-walled military vans.

D. Discussion

Today EPA is proposing to issue a new general permit to NSF and its agents for the ocean dumping of man-made ice piers from the NSF research station at McMurdo Sound, Antarctica, subject to specific conditions. Agents of the NSF are included in the permit because transportation for the purpose of dumping the pier may be by vessels

which are not under the direct ownership or operational control of the NSF, *e.g.*, the U.S. Military Sealift Command, the U.S. Navy, or U.S. Coast Guard vessels. Further, the proposed general permit applies only to the ocean dumping of man-made ice piers from the NSF station at McMurdo Sound, Antarctica. The 1992 amendments to the MPRSA (Pub. L. 102–580) provide that permits under the MPRSA shall be issued for a period not to exceed seven years (section 104(a), 33 U.S.C. 1414(a)); consequently, the term of this proposed permit is limited to a maximum of seven years.

The proposed general permit establishes several specific conditions that must be met during the life of, and prior to the ocean dumping of, the ice pier. In addition, it requires the NSF to report by June 30 of every year to the Director of the Oceans and Coastal Protection Division, in EPA's Office of Water, on any spills, discharges, or clean-up procedures on the ice pier, and on any ocean dumping of ice piers from McMurdo Station conducted under this general permit.

With the institution of new protective measures, such as longer length hoses for unloading petroleum products from the annual supply tanker, and new precautions taken in the handling and return to bases outside Antarctica of used or contaminated chemicals, solvents, and hazardous materials, the chance of a spill or a discharge of these materials is low. There is considerable vehicular traffic on the ice pier during the austral summer season, and the possibility of engine block leaks or discharges from these vehicles cannot be totally avoided. However, the NSF has informed the Agency that vehicles are parked on the pier for only brief periods of time, ranging from minutes to less than an hour, and that no vehicles are ever parked on the pier overnight.

The proposed general permit requires that the NSF have an SPCC plan in place, consistent with the requirements of 40 CFR 112.3, for the ice pier that addresses:

(1) The unloading of petroleum products from supply tankers to the storage tanks at McMurdo Station;

(2) The unloading of drummed chemicals, petroleum products, and material (cargo) from cargo freighters to supply depots at McMurdo Station; and

(3) The loading of materials to freighters destined to be returned to bases outside Antarctica.

The proposed permit requires that the SPCC plan include methods to minimize the accidental release or discharge of any products to the ice pier. In addition, the proposed general permit requires that the following clean-up and reporting procedures must be followed by NSF in the event of a spill or discharge on the pier:

(1) All spills or discharges must be cleaned up within two hours of the spill or discharge, or as soon as possible thereafter.

(2) If a spill or discharge occurs, clean-up procedures must be completed to a level below any visible evidence of the spill or discharge.

(3) As part of normal permit monitoring requirements, an official record of the following information shall be kept by NSF:

(a) The date and time of all spills or discharges, the location of the spill or discharge, the approximate volume of the spill or discharge, clean-up procedures employed, and the results;

(b) The number of wooden poles remaining in the pier at the time of release from McMurdo Station, and their approximate length;

(c) The approximate length of the steel cables remaining in the pier at the time of its release;

(d) Any other substances remaining on the pier at the time of its release; and

(e) The date of detachment of the pier from McMurdo Station, and the geographic coordinates (latitude and longitude) of the point of final release of the pier in McMurdo Sound.

(4) A copy of this record shall be submitted to the Director of the Oceans and Coastal Protection Division, in the EPA's Office of Water, by June 30 of every year as part of the annual reporting requirements.

The conditions specified in the proposed permit are intended to protect the Antarctic environment against release of contaminants from the McMurdo Station ice pier following its ocean dumping and subsequent melting. As noted above, section 104(c) of the MPRSA, 33 U.S.C. 1414(c), and EPA regulations at 40 CFR 220.3(a) authorize the issuance of general permits for the dumping of materials which have minimal adverse environmental impacts.

In light of the testing and analyses described above, and the conditions which are stipulated in the proposed permit for the disposal of ice piers, it is the determination of the Agency that only minimal adverse environmental impacts would result from the dumping of ice piers from the NSF base at McMurdo Station in Antarctica.

Furthermore, the NSF is directed, as a condition of this permit, to utilize a methodology to track any ice piers released from McMurdo Station for a period of one year from the date of release of the pier. Such methodologies may include the use of satellite-tracked pingers placed on the ice pier, or any other methodology that will allow data to be collected on the course, speed, and location of the ice pier. The results of these tracking efforts are to be included in the reports that the NSF is required to submit to the Agency. The period of one year was chosen by the Agency for several reasons: first, batteries for pinger tracking operations beyond a period of one year become considerably heavier and bulkier (and a greater source of pollution to the marine environment when the ice piers eventually melt); and further, one year's measurements should provide substantial evidence concerning the track of ice piers in the dissolution process.

The NSF shall submit tracking reports to the Agency for all releases of ice piers from McMurdo Station under this permit. If tracking results demonstrate that all such ice piers released have generally followed the same path and time duration for the one year following release, the Agency will consider whether further tracking efforts and tracking reports shall be required from the NSF under any future versions of this permit.

Considering that any contaminants remaining on the surface of the piers are expected to be extremely minimal, and further, that the area over which the melting and disintegration of the piers occurs is immense, the potential for damage to the environment from ocean dumping of any McMurdo Station ice piers is minimal. In addition, the possibility of entanglement of large organisms in suspended loops of cable from the melting ice piers has been determined by the Agency to be very minimal; further discussion of this issue can be found in "C. Potential Effects of Ice Pier Disposal," above.

Further, it should be noted that the issuance of an ocean dumping permit to the NSF does not in any way relieve the NSF of meeting any of its obligations under the Antarctic Protocol, the Antarctic Conservation Act, or the implementing regulations.

Statutory and Executive Order Reviews

A. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management

and Budget. Since this proposed general permit affects only a single Federal agency's record-keeping and reporting requirements, it is not subject to the requirements of the Paperwork Reduction Act.

B. Endangered Species Act

The Endangered Species Act (ESA) imposes duties on Federal agencies regarding endangered species of fish, wildlife, or plants and habitat of such species that have been designated as critical. Section 7(a)(2) of the ESA and its implementing regulations (50 CFR part 402) require EPA to ensure, in consultation with the Secretary of Interior or Commerce, that any action authorized, funded, or carried out by EPA in the United States or upon the high seas, is not likely to jeopardize the continued existence of any endangered or threatened species, or adversely affect their critical habitat.

In compliance with section 7 of the ESA, an endangered species list for the affected area of ocean dumping of ice piers from the NSF facility at McMurdo Station was requested by EPA and received from both the Fish and Wildlife Service (F&WS) of the Department of the Interior and the National Marine Fisheries Service (NMFS) of the Department of Commerce. No endangered, threatened, or candidate species are reported to potentially occur in the affected area.

EPA has discussed this matter with both the F&WS and the NMFS pursuant to section 7 of the ESA, and the agencies have agreed that the ocean dumping of ice piers by the NSF or its agents from McMurdo Station in Antarctica will have no effect on endangered or threatened species. EPA will consider any comments offered by either the F&WS or the NMFS on this issue before promulgating a final general permit on the ocean dumping of ice piers.

Dated: January 2, 2003.

Suzanne E. Schwartz,

Director, Oceans and Coastal Protection Division.

The proposed permit is as follows:

Disposal of Ice Piers From McMurdo Station, Antarctica

The United States National Science Foundation and its agents are hereby granted a general permit under sections 102(a) and 104(c) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1412(a) and 1414(c), to transport ice piers from the McMurdo Sound, Antarctica, research station for the purpose of ocean dumping, subject to the following conditions:

(a) The NSF shall have a spill prevention, control, and countermeasures (SPCC) plan in place, consistent with the requirements of 40 CFR 112.3, for the McMurdo Station ice pier. The SPCC plan shall address procedures for loading and unloading the following materials, and shall include methods to minimize the accidental release or discharge of any of the following materials to the ice pier:

(1) Petroleum products unloaded from supply tankers to the storage tanks at McMurdo Station;

(2) Drummed chemicals, petroleum products, and materiel unloaded from cargo freighters to supply depots at McMurdo Station; and

(3) Materials loaded to freighters destined to be returned to bases outside Antarctica.

(b) If a spill or discharge occurs on an ice pier, clean-up procedures must be completed by NSF or its contractors to a level below any visible evidence of the spill or discharge. All spills or discharges on an ice pier must be cleaned up within two hours of the spill or discharge, or as soon as possible thereafter.

(c) As part of normal monitoring requirements, a record of the following information shall be kept by NSF:

(1) The date and time of all spills or discharges, the location of the spill or discharge, a description of the material that was spilled or discharged, the approximate volume of the spill or discharge, clean-up procedures employed, and the results;

(2) The number of wooden poles remaining in the pier at the time of its release from McMurdo Station, and their approximate length;

(3) The approximate length of the steel cables remaining in the pier at the time of its release from McMurdo Station;

(4) Any other substances remaining on the pier at the time of its release from McMurdo Station; and

(5) The date of detachment of the pier from McMurdo Station, and the geographic coordinates (latitude and longitude) of the point of final release of the pier in McMurdo Sound or the Antarctic Sea.

(d) The non-embedded ends of all wooden utility poles and bollards will be cut off from the ice pier prior to disposal, and shall not be disposed of in the ocean.

(e) Prior to the ocean dumping of any ice piers, the following actions shall be taken by NSF:

(1) Other than the matter physically embedded in the ice pier (*i.e.*, the ends of light poles or bollards frozen in the pier, and the strengthening cables), all other objects (including the non-embedded portions of bollards used for maintaining a connection between the pier and the mainland, the non-embedded portions of poles used for lighting, power, or telephone connections, and any removable equipment, debris, or objects of anthropogenic origin), shall be removed from the pier prior to dumping.

(2) The gravel non-slip surface of the pier shall be removed to the maximum extent possible, and stored on the mainland for subsequent use.

(3) A methodology to track any ice piers released from McMurdo Station shall be established and utilized for a period of one year from the date of release of the ice pier. The results of these tracking efforts are to be included in the annual reports that the NSF is required to submit to EPA.

(f) The NSF shall submit a report by June 30 of every year to the Director of the Oceans and Coastal Protection Division, in EPA's Office of Water, on (1) Any spills, discharges, or clean-up procedures on the ice pier at McMurdo Station, (2) any ocean dumping of ice piers from McMurdo Station, and (3) any tracking efforts of ice piers released from McMurdo Station under this general permit for the year preceding the date of the annual report.

(g) For the purpose of this permit, the term "ice pier(s)" means those man-made ice structures containing embedded steel cable, and any remaining gravel frozen into the surface of the pier, that are constructed at McMurdo Station, Antarctica, for the purpose of off-loading the annual provision of materiel and supplies for the base at McMurdo Station and other U.S. Antarctic bases, and for loading the previous year's accumulation of wastes, which are returned to the United States.

(h) This permit shall be valid until [add date—seven years from the date of issuance].

[FR Doc. 03–335 Filed 1–6–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–15]

Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions, and Notice of Annual Adjustment of the Limits on Annual Compensation for Federal Home Loan Bank Directors, and Notice of Annual Adjustment of the Maximum Dollar Limits on Certain Allocations by a Bank of its Annual Required Affordable Housing Program Contributions

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Housing Finance Board (Finance Board) has adjusted the cap on average total assets that defines a "Community Financial Institution" (CFI) based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U), as published by the Department of Labor (DOL), pursuant to the requirements of section 2(13)(B) of the Federal Home Loan Bank Act (Bank Act) requirements of the Finance Board's regulations. Notice is hereby given that the Finance Board has made similar adjustments to the limits on annual compensation for the Federal Home Loan Bank (Bank) directors, based on the CPI–U, as published by the DOL, pursuant to the requirements of section 7(i)(2)(B) of the Bank Act and requirements of the Finance Board's regulations. In addition, notice is hereby given that the Finance Board has made similar adjustments to the maximum dollar limits on certain allocations by a Bank of its annual required Affordable Housing Program (AHP) contributions, pursuant to the requirements of the Finance Board's regulations.

FOR FURTHER INFORMATION CONTACT: Scott L. Smith, Associate Director, Economic and Financial Analysis, Office of Supervision, (202) 408–2991, or Kirsten L. Landeryou, Economic and Financial Analysis, Office of Supervision, (202) 408–2552. Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 2(13)(B) of the Bank Act (12 U.S.C. 1422(13)(B)), and § 900.1 of the Finance Board's regulations (12 CFR 900.1) require the Finance Board, beginning in 2001, to adjust annually the cap on average total assets (CFI Asset Cap) set forth in section 2(13)(A)(ii) of the Bank Act (12 U.S.C. 1422(13)(A)(ii)) and § 900.1 of the Finance Board's regulations that defines a CFI, based on the annual percentage increase, if any, in the CP–U, as published by the DOL.

Section 7(i)(2)(B) of the Bank Act (12 U.S.C. 1427(i)(2)(B)) and § 918.3(a)(1) of the Finance Board's regulations (12 CFR 918.3(a)(1)), require the Finance Board, beginning January 1, 2001, to make similar annual adjustments to the annual compensation limits set forth in section 7(i)(2)(A) of the Bank Act (12 U.S.C. 1427(i)(2)(A)) and § 918.3(a)(1), for members of the boards of directors of the Banks. Section 951.3(a)(1)(iii) of the Finance Board's regulations (12 CFR 951.3(a)(1)(iii)) requires the Finance Board, beginning in 2003, to make similar annual adjustments to the maximum dollar limits set forth in § 951.3(a)(1)(i), on the amounts that a Bank may set aside annually from its annual required AHP contributions for the current year and the subsequent year, towards homeownership set-aside programs. In addition, § 951.3(a)(1)(iii) of the Finance Board's regulations (12 CFR 951.3(a)(1)(iii)) requires the Finance Board, beginning in 2003, to make similar annual adjustments to the maximum dollar limits set forth in § 951.3(a)(1)(ii), on the amounts that a Bank may set aside annually from its annual required AHP contributions for the current year and the subsequent year, towards an additional first-time homebuyer set-aside program. Section 951.3(a)(2) of the Finance Board's regulations (12 CFR 951.3(a)(2)), requires the Finance Board, beginning in 2002, to make a similar annual adjustment to the maximum dollar limit set forth in § 951.3(a)(2), on the amount that a Bank may allocate from its annual required AHP contribution for the subsequent year to the current year's competitive application program.

For purposes of the CFI Asset Cap, the Finance Board is required to publish notice by **Federal Register** of the CP–U-adjusted Cap. *See* 12 CFR 900.1. For purposes of the Banks' board of directors annual compensation limits, the Finance Board is required to publish notice, by **Federal Register**, distribution of a memorandum or otherwise, of the CP–U-adjusted limits on such compensation. *See* 12 CFR 918.3(a)(1). For purposes of the maximum dollar limits on Banks' allocations from annual required AHP contributions, the Finance Board is required to publish notice, by **Federal Register**, distribution of a memorandum or otherwise, of the CP–U-adjusted maximum dollar limits.

The annual adjustments of the existing CFI Asset Cap, annual Bank director compensation limits and maximum dollar limits on Bank allocations from annual required AHP contributions, effective January 1 of a particular calendar year, reflect the percentage by which the CP–U published for November of the preceding calendar year exceeds the CP–U published for November of the year before the preceding calendar year (if at all). For example, the adjustments of the limits effective January 1, 2003 are based on the percentage increase in the CP–U from November 2001 to November 2002. The CFI Asset Cap is rounded to the nearest million dollars, the annual compensation limits are rounded to the nearest dollar and the limits on allocations from AHP contributions are rounded to the nearest $100,000.[1]

The Finance Board has determined that it is appropriate to use data from November rather than waiting for the December data to become available so that the Banks can be notified of the adjusted CFI Asset Cap, annual Bank director compensation limits and AHP maximum dollar allocation limits as close to the January 1 effective date as possible. Other Federal agencies do not rely on December data, which is published in mid-January, when calculating annual inflation adjustments and, as a result, are able to announce their adjustments prior to the effective date of January 1.

The DOL encourages the use of CPI–U data that has not been seasonally adjusted in "escalation agreements" because seasonal factors are updated annually and seasonally adjusted data are subject to revision for up to five years following the original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered. Accordingly, the Finance Board is using data that has not been seasonally adjusted to calculate the new CFI Asset Cap, annual Bank director compensation limits and AHP maximum dollar allocation limits.

The unadjusted CPI–U increased 2.2 percent between November of 2001 and November of 2002. Based on this data, pursuant to the requirements of § 900.1, the Finance Board has adjusted the CFI Asset Cap from the 2002 limit of $527 million to $538 million, effective January 1, 2003. The Finance Board arrived at the adjusted limit of $538 million by rounding to the nearest million.

Pursuant to § 918.3(a)(1), based on the 2.2 percent increase in the unadjusted CPI–U, the Finance Board has adjusted the annual compensation limits for the members of the boards of directors of the Banks as follows, effective January 1, 2003: for a Chairperson—$26,921; for a Vice-Chairperson—$21,537; for any other member of a Bank's board of directors—$16,152. The Finance Board arrived at the adjusted annual compensation limits by rounding to the nearest dollar.

Pursuant to § 951.3(a)(1)(iii), based on the 2.2 percent increase in the unadjusted CPI–U, the Finance Board has adjusted the maximum dollar limits

[1] All adjusted limits referred to in this notice have been rounded to some dollar level. However, the calculations of new limits are based on cumulative CP–U changes applied to the limits as they first appeared in Finance Board regulations, and hence are not distorted over time by rounding.

on the amounts that a Bank may set aside from its annual required AHP contributions for the current year and the subsequent year, toward homeownership set-aside programs, from the 2002 limit of $3.0 million to $3.1 million, effective January 1, 2003. The Finance Board arrived at the adjusted limit of $3.1 million by rounding to the nearest $100,000.

Pursuant to § 951.3(a)(1)(iii), the Finance Board also applied the 2.2 percent increase in the unadjusted CPI–U to the 2002 maximum dollar limit on the amount that a Bank may set aside from its annual required AHP contributions, for the current year and the subsequent year, towards an additional first-time homebuyer set-aside program. Rounding the resulting number to the nearest $100,000, the maximum dollar limit remains at the 2002 level of $1.5 million, effective January 1, 2003. In addition, pursuant to § 951.3(a)(2), based on the 2.2 percent increase in the unadjusted CPI–U, the Finance Board has adjusted the maximum dollar limit on the amount that a Bank may allocate from its annual required AHP contribution for the subsequent year to the current year's competitive application program, from the 2002 limit of $3.0 million to $3.1 million, effective January 1, 2003. The Finance Board arrived at the adjusted limit of $3.1 million by rounding to the nearest $100,000.

Dated: December 31, 2002.

Federal Housing Finance Board.

John T. Korsmo,

Chairman.

[FR Doc. 03–196 Filed 1–6–03; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, January 13, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; (202) 452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–354 Filed 1–3–03; 2:17pm]

BILLING CODE 6210–01–P

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request for Unmodified SF 278 Executive Branch Personnel Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: After this first round notice and public comment period, OGE plans to submit the Standard Form (SF) 278 for extension of approval (up to three years) by Office of Management and Budget

(OMB) under the Paperwork Reduction Act. The SF 278 is henceforth to be accompanied by agency notification to filers of the adjustment of the gifts/travel reimbursements reporting thresholds and, when final, the revisions to the Privacy Act Statement. Both revisions will not be incorporated into the form itself at this time, since OGE plans a more thorough revision of the form in the next year or two.

DATES: Comments on this proposed extension should be received by March 24, 2003.

ADDRESSES: Comments should be sent to Mary T. Donovan, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's Internet E-mail address at *usoge@oge.gov*. For E-mail messages, the subject line should include the following reference—"Paperwork comment on the SF 278."

FOR FURTHER INFORMATION CONTACT: Ms. Donovan at the Office of Government Ethics; telephone: 202–208–8000, ext. 1185; FAX: 202–208–8038. A copy of a blank SF 278 may be obtained, without charge, by contacting Ms. Donovan. Also, a copy of a blank SF 278 is available through the Forms, Publications & Other Ethics Documents section of OGE's Web site at *http://www.usoge.gov*.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this notice and comment period, the unmodified Standard Form 278 Executive Branch Personnel Public Financial Disclosure Report (OMB control number 3209–0001) for extension of approval for (up to) three years by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The current paperwork approval for the SF 278 is scheduled to expire at the end of March 2003. Since, for now, no modification to this standard form is being proposed, OGE will not seek any General Services Administration (GSA) standard forms clearance for this extension.

The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act (the Ethics Act), is the sponsoring agency for the Standard Form 278. In accordance with section 102 of the Ethics Act, 5 U.S.C. app. section 102, and OGE's implementing financial disclosure regulations at 5 CFR part 2634, the SF 278 collects pertinent financial information from certain officers and high-level employees in the executive branch for conflicts of interest review and public disclosure. The financial information collected under the statute and regulations relate to: assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over $5,000 paid by a source—all subject to various reporting thresholds and exclusions.

The Office of Government Ethics notes two changes (discussed below) affecting the content of SF 278s. The first change concerns the recent adjustments in the gifts/reimbursements reporting thresholds. The second change involves the routine use language contained in the Privacy Act Statement of the form that will be revised in 2003. For now, OGE is proposing no revisions to the SF 278, but rather asks that executive branch departments and agencies inform SF 278 filers, through cover memorandum or otherwise, of these two changes when the existing

March 2000 edition of SF 278 report forms are provided for completion. In addition, information regarding these changes is being posted on OGE's Web site.

Effective January 1, 2002, GSA raised "minimal value" under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, to $285 or less for the three-year period 2002–2004. See 67 FR 56495–56496 (September 4, 2002). As a result, OGE has advised agencies and revised its financial disclosure regulations to reflect the increase in the thresholds for SF 278 reporting of gifts and travel reimbursements received from any one source to "more than $285" for the aggregation level for reporting and to "$114 or less" for the de minimis aggregation exception threshold. These Ethics Act reporting thresholds are tied to any adjustment in foreign gifts minimal value over $250 (see 5 U.S.C. app. section 102(a)(2)(A) & (B)). See OGE's September 27, 2002 memorandum to designated agency ethics officials (DO–02–021) and 67 FR 61761–61762 (October 2, 2002). Both the GSA and OGE rulemakings and OGE's memorandum are posted on the OGE Web site.

In addition, OGE is in the process of updating the OGE/GOVT–1 system of records notice (covering SF 278 Public Financial Disclosure Reports and other name-retrieved ethics program records). As a result, the Privacy Act Statement, which includes paraphrases of the routine uses on page 11 of the instructions on the SF 278, will be affected. A summary of the anticipated changes relevant to that SF 278 statement has been prepared for inclusion with the paperwork clearance submission to OMB. Once the new language in OGE's forthcoming Privacy Act notice is finalized (anticipated completion date is spring 2003), OGE will advise departments and agencies of the Privacy Act Statement changes (with notice to OMB at that time) without further paperwork clearance.

During the last session of Congress, a bill (S. 1811) was introduced to amend the Ethics in Government Act of 1978 (5 U.S.C. app.) to streamline the financial disclosure process for executive branch employees. The bill was not enacted, but may be introduced again in the current session of Congress. If the bill is enacted, the public financial disclosure requirements will change, and the SF 278 will have to be revised accordingly. At that time, OGE would seek paperwork renewal from OMB and standard form clearance from GSA for the revised SF 278.

For now, OGE will continue to make the unmodified SF 278 available to departments and agencies and their reporting employees through the Forms, Publications & Other Ethics Documents section of OGE's Web site. This allows employees two different fillable options for preparing their report on a computer (in addition to a downloadable blank form), although a printout and manual signature of the form are still required unless specifically approved otherwise by OGE.

The SF 278 is completed by candidates, nominees, new entrants, incumbents and terminees of certain high-level positions in the executive branch of the Federal Government. The Office of Government Ethics, along with the agencies concerned, conducts the review of the SF 278 reports of Presidential nominees subject to Senate confirmation. This group of nominee reports forms, together with those of terminees from such positions who may file after leaving the Government, forms the basis for OGE's paperwork estimates in this notice.

In light of OGE's experience over the past three years (1999–2001), the estimate of the total number, on average, of such nominees' SF 278 forms expected to be filed annually at OGE by members of the public (as opposed to current Federal employees) is 449. (The 2002 figures are not yet available.) This estimated number is based primarily on the forms processed at OGE by private citizen Presidential nominees to positions subject to Senate confirmation (and their private representatives—lawyers, accountants, brokers and bankers) and those who file termination reports from such positions after their Government service ends, as well as Presidential and Vice Presidential candidates who are private citizens. The OGE estimate covers the next three years, 2003–2005 including a significant increase in reports anticipated with the fall 2004 Presidential election and following transition. The prior paperwork burden estimate was 260 forms per year. The estimated average amount of time to complete the report form, including review of the instructions and gathering of needed information, remains the same at three hours. Thus, the overall estimated annual public burden for the SF 278 for the private citizen/representative nominee and terminee report forms processed at the Office of Government Ethics is being adjusted to 1,347 (from 780) hours.

Moreover, OGE estimates, based on the agency ethics program questionnaire responses for 1999–2001 (the 2002 figures are not available), that some 21,200 SF 278 report forms are filed annually at departments and agencies throughout the executive branch. Most of those executive branch filers are current Federal employees at the time they file, but certain candidates for President and Vice President, nominees, new entrants and terminees complete the form either before or after their Government service. The percentage of private citizen filers branchwide is estimated at no more than 5% to 10%, or some 1,060 to 2,120 per year at most.

Public comment is invited on each aspect of the SF 278 Public Financial Disclosure Report as set forth in this notice, including specifically views on the need for and practical utility of this collection of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Any comments received in response to this notice will be summarized for, and may be included with, OGE's request for extension of OMB paperwork approval for this information collection. Comments will also become a matter of public record.

Approved: December 30, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 03–287 Filed 1–6–03; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: "Needs Assessment of Primary Care Practice-Based Research Networks (PBRNs)". In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by March 10, 2003.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 2101

East Jefferson Street, Suite 500, Rockville, MD 20852–4908. Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Needs Assessment of Primary Care Practice-Based Research Networks (PBRNs)"

The project is being conducted in response to an AHRQ RFP entitled "Resource Center for Primary Care Practice-Based Research Networks (PBRNs)" (issued under Contract 290–02–0008). The Healthcare Research and Quality Act of 1999, amending section 911(b) of Title IX of the Public Health Service Act (42 U.S.C. 299 *et seq.*), states that AHRQ will "employ research strategies and mechanisms that will link research directly with clinical practice in geographically diverse locations * * * including provider-based research network".

In order to assist AHRQ in meeting this goal, AHRQ created an RFP that specifically requires a resource center to "access the specific needs, if any, of each PBRN awarded (by AHRQ)" by determining "the stage of development of networks funded under the PBRN initiatives [AHRQ RFA–HS–02–003] and the specific resource needs of each network."

The PBRNs are groups of primary care practices working together with academic researchers to address community-based health care research questions and to translate research findings into practice to improve health care. AHRQ funded 36 PBRNs in September, 2002, as well as a Resource Center intended to provide technical assistance and support to the PMRNs in their efforts to design and implement research projects. It is expected that an additional 24 PBRNs will be funded in 2003. In the proposed activities, the PBRN Resource Center will collect data directly from each PBRN and their affiliated practices. The collection is a needs assessment of each of the AHRQ funded PBRNs. The collection will identify how the Resource Center can best support these networks through the development and use of information technology, and by linking the PBRNs with appropriate technical experts.

The in-depth needs assessment of each PBRN will use written and web surveys and telephone interviews. Each needs assessment will ascertain the current capabilities of an individual PBRN in several respects, including:

- The ability to design and implement appropriately rigorous and complex research plans, including their access to key resources such as validated instruments and competence conducting advanced data analysis;
- The technical capacity for conducting data management tasks such as aggregating research data across networks, developing data files, and warehousing data;
- The ability to use information technology to foster effective communication with affiliated practices and with other research networks;
- The ability to address HHS priorities such as research involving populations of diverse race or ethnicity, socioeconomic status, age, gender and geography as well as preparedness for bioterrorism and other emerging public health threats;
- The ability to engage the network's practicing clinicians and community represenatives in the design, conduct and dissemination of research studies;
- The ability to design and implement data collection instruments in clinical settings;
- The mechanisms for supporting AHRQ's central goal of assuring new research findings are translated into everyday practice; and
- Their capacity for long-term sustainability.

To obtain the necessary information, surveys and interviews will be conducted with PBRN staff and staff members in each network's participating practices.

Method of Collection

Due to the relatively small number of organizations in the respondent universe of AHRQ funded PBRNs, and the expected diversity of needs, we will survey all of the AHRQ funded PBRNs (including those to be funded in 2003).

The method of data collection for the needs assessments consists of web-based and paper-based surveys and telephone interviews. We expect to involve multiple individuals from each PBRN in the data collection, including the PBRN administrator, information technology personnel, and the PBRN's lead clinician as well as individuals with similar roles at the affiliated practice level.

All individuals or networks unable to complete the survey via the Web will be sent a paper-based survey to complete and return by mail. The Resource Center will data enter any surveys completed by hand so that these responses can be included in the analyses. Non-respondents will receive a telephone reminder and, if necessary, will be sent an additional survey.

ESTIMATED ANNUAL RESPONDENT BURDEN

Data collection effort	Number of respondents	Estimated time per respondent in hours	Estimated total burden hours	Average hourly wage rate	Estimated annual cost to the Government
Needs assessment	180 (maximum of three individuals from each of 60 PBRNs).	1	180	*40.26	$7,246.80
Needs assessment	720 (maximum of two individuals at member practices PBRNs)***.	0.5	360	**45.77	16,477.20
Total	900	0.6	540		

Footnotes:

*Based on the mean of the average wages for manager in medicine and health, physicians, and computer systems analyst/scientist, National Compensation Survey: Occupational Wages in the United States, 2000, "U.S. Department of Labor, Bureau of Labor Statistics, September 2001".

**Based on the mean of the average wages for manager in medicine and health and physicians, "National Compensation Survey: Occupational Wages in the United States, 2000", "U.S. Department of Labor, Bureau of Labor Statistics, September 2001".

***This estimate assumes that variation exists in the number of member practices that comprise each PBRN. Consequently, we will survey two individuals (the lead clinician and the administrator) at each of three member practices in 20 PBRNs; in 20 PBRNs we will survey two individuals at each of six member practices; and in 20 PBRNs we will survey two individuals at each of nine member practices.

Estimated Annual Costs to the Federal Government

The total cost to the government for activities directly related to this data collection is $432,451.00.

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 30, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 03–289 Filed 1–6–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: January 23–24, 2003 (Open from 8 a.m. to 8:15 a.m. on January 23 and closed for remainder of the meeting).

Place: AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

2. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: February 6–7, 2003 (Open from 8 a.m. to 8:15 a.m. on February 6 and closed for remainder of the meeting).

Place: AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

3. *Name of Subcommittee:* Health Research Dissemination and Implementation.

Date: February 10–11, 2003 (Open from 8 a.m. to 8:15 a.m. on February 10 and closed for remainder of the meeting).

Place: AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

4. *Name of Subcommittee:* Health Systems Research.

Date: February 24–25, 2003 (Open for 6 p.m. to 6:15 p.m. on February 24 and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852 (For February 24 Meeting). AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852 (For February 25 Meeting).

5. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Place: February 26–27, 2003 (Open from 7 p.m. to 7:15 p.m. on February 26 and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852 (For February 26 Meeting). AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852 (For February 27 Meeting).

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: December 27, 2002.

Carolyn M. Clancey,

Acting Director.

[FR Doc. 03–288 Filed 1–6–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–17–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: The National Birth Defects Prevention Study (OMB 0920–0010)—Extension—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC) has been monitoring the occurrence of serious birth defects and genetic diseases in Atlanta since 1967 through the Metropolitan Atlanta Congenital Defects Program (MACDP). The MACDP is a population-based surveillance system for birth defects in the five counties of Metropolitan Atlanta. Its primary purpose is to describe the spatial and temporal patterns of birth defects occurrence and serve as an early warning system for new teratogens. From 1993 to 1996, NCBDDD conducted the Birth Defects Risk Factor Surveillance (BDRFS) study, a case-control study of risk factors for selected birth defects. Infants with birth defects were identified through MACDP and maternal interviews, and clinical/laboratory tests were conducted on approximately 300 cases and 100 controls per year. Controls were selected from among normal births in the same population. In 1997 the BDRFS became the National Birth Defects Prevention Study (NBDPS). The major components of the study did not change.

The NBDPS is a case-control study of major birth defects that includes cases identified from existing birth defect surveillance registries in ten states (including metropolitan Atlanta). Control infants are randomly selected from birth certificates or birth hospital records. Mothers of case and control infants are interviewed using a computer-assisted telephone interview. Parents are asked to collect cheek cells

from themselves and their infants for DNA testing. Information gathered from both the interviews and the DNA specimens will be used to study independent genetic and environmental factors as well as gene-environment interactions for a broad range of carefully classified birth defects.

This request is submitted to obtain approval for current NBDPS activities for three more years with one change indicated below:

The CDC NBDPS currently remunerates participants for the biologic sample collection portion of the study. The cheek cell kits include $20.00 as an incentive to complete them and send them back. Overall, only 50% of participants completing the interview send in a completed cheek cell kit. While some subjects have stated that they do not wish to provide buccal samples due to their concerns about genetic testing, many subjects state that it is time consuming and difficult to remember to complete the kit and mail it back. An additional $20.00 incentive will be added that is linked to the return of the cheek cell kits. It is appropriate to have a higher level of compensation for those who spend the additional time to complete the cheek cell collection and return the kit than for those who only receive the kit and invest no time in further participation. This would make a total of $60.00 compensation ($20.00 for the completing of the interview, $20.00 for receiving the cheek cell kit and $20.00 for returning the kit) for subjects who choose to complete the entire study including the return of the cheek cell samples for herself and the baby or for just herself if the baby is deceased. While samples are requested from the father, the third incentive would not be dependent on the cooperation of the father since this may pose a hardship to those mothers who are not in regular contact with the father. Given the time and inconvenience required for the entire study (interview and cheek cell), a total of $60.00 is an appropriate level of compensation. The additional $20.00 money order is expected to increase the number of kits that are completed and returned and will be included in the thank you letter that each participant receives upon completion of the study. The estimated annualized burden is 1600 hours.

Survey	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)
NBDPS Case/Control Interview	400	1	1
Cheek Cell Collection (mother/father/infant)	1,200	2	20/60
Completion of Entire Study	400	1	1

Dated: December 31, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–227 Filed 1–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–14–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Cholera and Other Vibrio Illness Surveillance Report (OMB 0920–0322)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). Vibrio species are naturally occurring marine bacteria and an important cause of seafoodborne and wound associated illnesses. Certain Vibrio species (*e.g.*, V. cholera, V. parahemolyticus) cause dehydrating diarrheal illnesses. In addition to endemic cholera in the United States, illnesses caused by epidemic strains of cholera are reported among travelers returning from southern Asia and Latin America.

The data collected in this surveillance provides important information on the public health impact of vibriosis in the Gulf Coast States. FDA, which has regulatory responsibility for the safety of seafood, has requested these data to identify interventions that may reduce the burden of seafoodborne vibriosis. The data are also of interest to public and industry groups such as the Interstate Shellfish Sanitation Conference and the National Fisheries Institute.

The annual burden hours are estimated to be 50.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hours)
Local Health Dept Staff	90	1	20/60
Health Care Facility Staff	45	1	20/60
Physicians	15	1	20/60

Dated: December 31, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–228 Filed 1–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (HRSA) (60 FR 56605 as amended November 6, 1995; as last amended at 67 FR 46519, July 15, 2002).

This notice establishes a centralized Division of Grants Management Operations (DGMO) within the Office of Management and Program Support (OMPS), removes the grants management functions in the Bureau of Primary Health Care, the Bureau of Health Professions, the Maternal Child Health Bureau and the HIV/AIDS Bureaus and moves them to a newly established Division of Grants Management Operations within the OMPS; establishes a centralized Division of Independent Review within the OMPS; abolishes the Office of Peer Review in the Bureau of Health Professions; abolishes the Division of Grants and Procurement Management within the OMPS; establishes a Division of Procurement Management within OMPS; moves the HRSA Small and Disadvantaged Business function from the Office of Equal Opportunity and Civil Rights to the newly established Division of Procurement Management within OMPS; moves the Office of International Health Affairs to the Office of the Administrator; establishes a Division of Border Health within the Office of International Health Affairs; establishes the Office of Financial Policy and Oversight (OFPO); changes the name of and revises the functional statement of the Office of Field Operations which becomes the Office of Performance Review; revises the functional statement for the Office of Planning and Evaluation; and revises the functional statements for the Bureau of Primary Health Care, the Bureau of Health Professions, the Maternal Child Health Bureau, the HIV/AIDS Bureau, and the Office of Special Programs to reflect the above changes.

Section RA–00, Mission

The Health Resources and Services Administration (HRSA) directs national health programs which improve the health of the Nation by assuring quality health care to underserved, vulnerable and special-need populations and by promoting appropriate health professions workforce capacity and practice, particularly in primary care and public health.

Section RA–10, Organization

The Office of the Administrator is headed by the Administrator, Health Resources and Services Administration (OA) who reports directly to the Secretary. The OA includes the following components:

(1) Immediate Office of the Administrator (RA);
(2) Office of Equal Opportunity and Civil Rights (RA2);
(3) Office of Planning and Evaluation (RA5);
(4) Office of Communications (RA6);
(5) Office of Minority Health (RA9);
(6) Office of Legislation (RAE);
(7) Office of Financial Policy and Oversight (RAJ) and;
(8) Office of International Health Affairs (RAH)

1. In the Office of the Administrator establish the Office of Financial Policy and Oversight as follows:

Office of Financial Policy and Oversight (RAJ)

Provides national leadership in the administration and assurance of the financial integrity of HRSA's programs. Provides oversight over all HRSA activities to ensure that HRSA's resources are being properly used and protected. Specifically, OFPO: (1) Serves as the Administrator's principal source for grants policy and financial integrity of HRSA programs; (2) exercises oversight over the Agency's business processes related to assistance programs; and (3) facilitates plans, directs and coordinates the administration of HRSA grant policies.

2. Establish the Division of Financial Integrity in the Office of Financial Policy and Oversight as follows:

Division of Financial Integrity (RAJ1)

(1) Serves as the Agency's focal point for coordinating financial audits of grantees; (2) coordinates the external financial assessment of HRSA grantees and the resolution of any audit findings; (3) conducts the pre- and post-award review of grant applicants' and grantees' accounting systems; (4) conducts ad hoc studies and reviews related to the financial integrity of the HRSA business processes related to assistance programs; (5) serves as the agency's liaison with the Office of Inspector General for issues related to grants; (6) manages and maintains the Agency's hot line for reporting fraudulent fiscal activities; and (7) establishes an assessment model for grantee oversight.

3. Establish the Division of Grants Policy in the Office of Financial Policy and Oversight as follows:

Division of Grants Policy (RAJ2)

(1) Advises on grants policy issues and assists in the identification and resolution of grants policy issues and problems; (2) analyzes, develops and implements the Agency's grants policy; (3) coordinates the review of Departmental grants policies and ensures that Agency policies and procedures are revised to reflect appropriate changes; (4) conducts review of the limited competition process; (5) monitors and reviews the Agency's program application guidance; (6) serves as the grants liaison for the Agency's electronic systems and processes; (7) coordinates the development of standardized documents and processes for the Agency related to grants; (8) reviews Agency programs for proper interpretation and timely implementation and application of grants management policies; and (9) serves as the coordinator for General Accounting Office and OIG studies on HRSA Programs.

4. Delete the functional statement for the Office of Planning and Evaluation (RA5) in its entirety and replace as follows:

Office of Planning and Evaluation (RA5)

The OPE (1) Serves as the Administrator's primary staff unit for coordinating the agency's strategic, evaluation and research planning processes; (2) oversees communication and maintains liaison between the Administrator, other OPDIVs, higher levels of the Department and other Departments on all matters involving analysis of program policy undertaken in the Agency; (3) prepares policy analysis papers and other planning documents as required in the Administration's strategic planning process; (4) analyzes budgetary data with regard to planning guidelines; (5) collaborates in the development of budgets, performance plans, and performance reports required under the Government Performance and Results Act (GPRA); (6) coordinates activity related to the prevention agenda and

Healthy People activities; (7) analyzes and coordinates the information needs of the Agency; and (8) serves as the focal point for the advancement of managed care systems for safety net providers serving at-risk populations.

5. Delete in its entirety the functional statement for the Office of International Health Affairs in the OMPS and establish the Office of International Health Affairs (RAH) in the Office of the Administrator as follows:

Office of International Health Affairs (RAH)

The Office of International Health Affairs serves as a focal point within the Health Resources and Services Administration (HRSA) for leadership, coordination, and advancement of international health activities relating to health care services for vulnerable and at-risk populations and for training programs for health professionals. The Office carries out the following functions in coordination with the Department and State Department to the extent authorized by laws within the authority of HRSA. Specifically, the OIHA: (1) Provides leadership within HRSA for the support for international health in coordinating policy development with other Departmental agencies; (2) provides technical and other support to HRSA components as they interface with Departmental international health activities; (3) develops working relationships with private sector providers and HRSA grantees to assure mutual areas of cooperation, maximization of expertise and coordination as it relates to international health; (4) advises the HRSA Administrator on strategies to maximize the participation of the Agency and its components in international health programs and activities; (5) works with foundations, private agencies and other Federal, State, and local agencies for the effective development of policies and resources relating to health care for vulnerable populations world-wide; and (6) coordinates international travel and visitor programs within the jurisdiction of HRSA.

6. Establish the Division of Border Health within the Office of International Health Affairs as follows:

Division of Border Health (RAH1)

Provides leadership and direction to coordinate the Agency's assets in border regions. Specifically, DBH: (1) Assures that the Agency's engagement with regions of the border is strategic, performance based, builds partnerships and alliances, and maximizes utilization of Agency assets; (2) assures agency-wide coordination by establishing border health program policies and procedures including tracking mechanisms; (3) conducts management and evaluation studies to improve the health delivery system on the border; (4) serves as the secretariat and chair for the Agency's Border Health Workgroup; (5) plans, directs, and coordinates the Agency's border health activities; and (6) plans, coordinates and facilitates the agency agreements activities with border health issues.

7. Delete the functional statement for the Office of Equal Opportunity and Civil Rights (RA2) in its entirety and replace as follows:

Office of Equal Opportunity and Civil Rights (RA2)

Directs, coordinates, develops, and administers HRSA's equal opportunity and civil rights activities. Specifically: (1) Provides advice, counsel, and recommendations to HRSA personnel, including regional divisions, on equal opportunity and civil rights and represents HRSA in all equal employment opportunity (EEO) areas; (2) administers affirmative action programs designed to ensure equality of opportunity in employment; (3) manages the Civil Service complaints system and prepares final HRSA decisions; (4) manages the complaints system for Public Health Service (PHS) Commissioned Corps personnel under the provisions of PHS Personnel Instruction 6 and issues proposed dispositions; (5) develops and directs implementation of the requirements of Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and the Americans With Disabilities Act, as they apply to recipients of HRSA funds; (6) provides technical assistance and guidance to HRSA on developing education and training programs regarding equal opportunity and civil rights; (7) approves settlement agreements and attorney fees; and (8) applies all applicable laws, guidelines, rules and regulations in accordance with those of the DHHS Office of Equal Employment Opportunity and Civil Rights.

8. Revise the functional statement of the Office of Management and Program Support as follows:

Office of Management and Program Support (RS)

Provides agency-wide leadership, program direction, and coordination to all phases of management. Specifically, OMPS: (1) Provides management expertise and staff advice and support to the Administrator in program and policy formulation and execution; (2) plans, directs, and coordinates the Agency's activities in the areas of administrative management, financial management, human resources management, including labor relations, debt management, procurement management, real and personal property accountability and management, alternative dispute resolution and administrative services; (3) directs and coordinates the development of policy and regulations; (4) oversees the development of annual operating objectives and coordinates HRSA work planning and appraisals; (5) plans, directs and carries out the independent review of grant applications for all of HRSA's programs; (6) plans, directs and carries out the grants officer functions for all of HRSA's programs; (7) directs and coordinates the Agency's organization, functions and delegations of authority programs; and (8) administers the Agency's Executive Secretariat and committee management functions.

9. In the Office of Management and Program Support delete the functional statement for the Division Grants and Procurement Management and establish the Division of Grants Management Operations as follows:

Division of Grants Management Operations (RSA)

(1) Exercises the sole responsibility within HRSA for all aspects of Grant and Cooperative Agreement receipt and award processes; (2) participates in the planning, development, and implementation of policies and procedures for grants and other federal financial assistance mechanisms; (3) provides assistance and technical consultation to program offices in the development and interpretation of laws, regulations, policies, and guidelines relative to the Agency's grant and cooperative agreement programs; (4) develops standard operating procedures, methods and materials for the administration of the Agency's grants programs; (5) establishes standards and guides for grants management operations; (6) reviews grantee financial status reports and prepares reports and analyses on the grantee's use of funds; (7) provides technical assistance to applicants and grantees on financial and administrative aspects of grant projects; (8) provides data and analyses as necessary for budget planning, hearings, operational planning and management decisions; and (9) participates in the development of program guidance and instructions for grant competitions.

10. Establish the Division of Procurement Management in the Office

of Management and Program Support as follows:

Division of Procurement Management (RS4)

Provides leadership in the planning, development, and implementation of policies and procedures for contracts. Specifically, DPM: (1) Exercises the sole responsibility within HRSA for the award and management of contracts; (2) provides advice and consultation of interpretation and application of the Department of Health and Human Services policies and procedures governing contracts management; (3) develops operating procedures and policies for the Agency's contracts programs; (4) establishes standards and guides for and evaluates contracts operations throughout the Agency; (5) coordinates the Agency's positions and actions with respect to the audit of contracts; (6) maintains liaison directly with or through Agency Bureaus or Offices with contractors, other organizations, and various components of the Department; and (7) provides leadership, guidance, and advice on the promotion of the activities in HRSA relating to procurement and material management governed by the Small Business Act of 1958, Executive Order 11625, and other statutes and national policy directives for augmenting the role of private industry, and small and minority businesses as sources of supply to the Government and Government contractors.

11. Establish the Division of Independent Review within the Office of Management and Program Support as follows:

Division of Independent Review (RS9)

(1) Plans, directs and carries out HRSA's independent review of applications for grants and cooperative agreement funding, and assures that the process is fair, open, and competitive; (2) develops, implements and maintains policies and procedures necessary to carry out the Agency's independent review/peer review processes; (3) provides technical assistance to Independent Reviewers ensuring that reviewers are aware of and comply with the appropriate administrative policies and regulations; (4) provides technical advice and guidance to the Agency regarding the independent review processes; (5) coordinates and assures the development of program policies and rules relating to the HRSA's extramural grant activities; and (6) provides HRSA Offices and Bureaus with the final disposition of all reviewed applications.

12. Change the name of the Office of Field Operations and the names of its Field Offices and revise its functions as follows:

Office of Performance Review (RE)

Section RF–00, Mission

The Mission of the Office of Performance Review (OPR) is to improve access to quality health care and reduce health disparities by effectively reviewing and enhancing the performance of HRSA-supported programs within communities and States.

Section RF–10, Organization

The OPR is comprised of a Headquarters unit and ten regional operating divisions. The Associate Administrator, who reports directly to the HRSA Administrator, heads the OPR. A Division Director, who reports directly to the Associate Administrator, heads each of the ten OPR regional operating divisions. The OPR is organized as follows:

1. Headquarters (RE)
2. Regional Divisions (RF)
   a. Boston Regional Division (RF12) serves Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.
   b. New York Regional Division (RF13) serves New Jersey, New York, Puerto Rico and the United States Virgin Islands.
   c. Philadelphia Regional Division (RF11) serves Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia.
   d. Atlanta Regional Division (RF21) serves Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.
   e. Chicago Regional Division (RF 31) serves Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.
   f. Dallas Regional Division (RF 41) serves Arkansas, Louisiana, New Mexico, Oklahoma and Texas.
   g. Kansas City Regional Division (RF32) serves Iowa, Kansas, Missouri and Nebraska.
   h. Denver Regional Division (RF42) serves Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.
   i. San Francisco Regional Division (RF51) serves Arizona, California, Hawaii, Nevada, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Republic of the Marshall Islands and the Republic of Palau.
   j. Seattle Regional Division (RF52) serves Alaska, Idaho, Oregon and Washington.

Section RF–20, Function

Serves as the Agency's focal point for reviewing and enhancing the performance of HRSA-supported programs within communities and States. Specifically, OPR: (1) Tracks regional and State trends in public health, health care and health policy, analyzing the impact on HRSA-supported programs; (2) conducts grantee performance reviews, providing programmatic and business management assessments, recommendations, on-site technical assistance and best practice identification; (3) performs State and community strategic partnership reviews, examining the collective effectiveness of HRSA-supported programs and facilitating collaboration in addressing priority health needs; (4) provides recommendations and input on HRSA and selected Departmental program designs, policies and initiatives; and (5) exercises line management authority related to the general administrative and management functions of OPR.

13. Revise the functional statement for the Maternal and Child Health Bureau (RM) as follows:

Maternal and Child Health Bureau (RM)

Provides national leadership and policy direction for the Maternal and Child Health Bureau programs. These programs are designed to improve the health of women of childbearing age, infants, children, adolescents, and their families, of children with special health needs, and of persons with hemophilia. Specifically, MCHB: (1) Coordinates the planning, development, implementation and evaluation of the programs and activities of the Bureau; (2) facilitates effective, collaborative relationships with other health and related programs; (3) establishes a program mission, goals, objectives and policy with broad Administration guidelines; (4) serves as the focal point for managing the Bureau-wide strategic planning operation as it relates to long and short range programmatic goals and objectives for the Bureau; (5) arranges and provides technical assistance to assure that the grantees meet program expectations; (6) serves as principal contact to the Agency, the Department, Office of Management and Budget (OMB), and the White House on matters concerning the health status of America's mothers and children; and (7) provides information and reports on the Bureau's programs to public, health, education

and related professional associations, the Congress, other Federal agencies, OMB, and the White House.

14. In the Maternal and Child Health Bureau Office of Operations and Management delete the grants function and revise the Office of Operations and Management (RM1) as follows:

Office of Operations and Management (RM1)

Plans, directs, coordinates, and evaluates Bureau-wide administrative and management activities; coordinates and monitors program and administrative policy implementation and maintains close liaison with officials of the Agency, and the Office of the Secretary on matters relating to these activities. Specifically, OOM: (1) Serves as the Associate Administrator's and Bureau's principal source for management and administrative advice and assistance; (2) provides or serves as liaison for program support services and; (3) provides leadership on intergovernmental activities of the Bureau which requires central administrative direction or intergovernmental activities of the Bureau, which require central direction of cross-cutting administrative issues affecting program activities; (4) participates in the development of strategic plans, regulatory activities, policy papers, and legislative proposals relating to MCH programs; (5) plans, coordinates and facilitates the Bureau's agency agreements activities; (6) coordinates human resource activities for the Bureau; (7) provides guidance to the Bureau on financial management activities; (8) determines State allocations of MCH Block Grant funds based on formula and current census data; (9) provides organization and management analysis, develops policies and procedures for internal operation, and interprets and implements the Administration's management policies, procedures and systems; (10) coordinates the Bureau's program and administrative delegations of authority activities; (11) provides staff services in the operational planning and program analysis; (12) is responsible for paperwork management functions, including the development and maintenance of bureau manual issuances; (13) provides direction regarding new developments in office management activities; and (14) coordinates Bureau funds and resources for grants, contracts and cooperative agreements.

15. In the Maternal and Child Health Bureau revise the functions of the Division of State and Community Health (RM6) as follows:

Division of State and Community Health (RM6)

In collaboration with MCHB Divisions and Offices, serves as the organizational focus for the administration of responsibilities related to the MCH Block Grant to States Program. Specifically, DSCH: (1) Provides national leadership, direction, coordination, and administrative oversight related to the development and management of the State MCH Block Grant annual reports; (2) based on reviews of State Block grant applications and annual reports submitted by States, develops, plans, manages and monitors a Bureau-wide program of technical assistance and consultation in collaboration with other Bureau Divisions and related health programs; (3) develops and manages a program for the collection, analysis and dissemination of National and State Information and data to various constituencies including the public, States, and Congress about the Block Grant to States Program; (4) coordinates within this Agency and with other Federal programs (particularly Title XIX of the Social Security Act) to extend and improve comprehensive, coordinated services in the Block Grant to States Program; (5) develops, plans, manages and monitors the abstinence only education grant program to the States; (6) develops, plans, manages and monitors the State Systems Development Initiative (SSDI) grant to the States program; (7) participates in activities related to the Special projects of Regional and National Significance (SPRANS) program to facilitate the dissemination of effective knowledge related to State MCH functions; (8) monitors interagency agreements of Federal assignees to State MCH programs; (9) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals and budget submissions relating to health services for women of childbearing age, infants, children, adolescents, children with special health care needs and their families; (10) responsible for the administration of funds and other resources for grants, contracts, and cooperative agreements; and (11) develops Program Application and Guidance documents.

16. Delete the functional statement for the HIV/AIDS Bureau (RV) in its entirety and replace as follows:

HIV/AIDS Bureau (RV)

Provides leadership and direction for the HIV/AIDS programs and activities of the Bureau and oversees its relationship with other national health programs. Specifically: (1) Coordinates the formulation of an overall strategy and policy for HRSA AIDS programs; (2) coordinates the internal functions of the Bureau and its relationships with other national health programs; (3) establishes AIDS program objectives, alternatives, and policy positions consistent with broad Administration guidelines; (4) provides direction and leadership for the Agency's AIDS grants and contracts programs; (5) reviews AIDS related program activities to determine their consistency with established policies; (6) represents the Agency and the Department at AIDS related meetings, conferences and task forces; (7) serves as principal contact and advisor to the Department and other parties concerned with matters relating to planning and development of health delivery systems related to HIV/AIDS; (8) develops and administers operating policies and procedures for the Bureau; (9) directs and coordinates Bureau Executive Secretariat activities; (10) directs the Center for Quality; (11) serves in developing and coordinating Telehealth programs and in facilitating electronic dissemination of best practices in health care to health care professionals; (12) provides grantees/States with accurate and timely interpretations of the Bureau's program expectations, requirements, guidances, and Federal legislation; and (13) arranges and provides technical assistance to assure that the grantees meet program expectations.

17. In the HIV/AIDS Bureau delete the functional statement for the Office of Program Support (RV2) in its entirety and replace as follows:

Office of Program Support (RV2)

Plans, directs, coordinates and evaluates Bureau-wide administrative and management support activities. Specifically, OPS: (1) Serves as the Bureau's principal source for management and administrative advices and assistance; (2) assists in the development and administration of policies and procedures which govern the review and final recommendation for funding to the Associate Administrator; (3) provides guidance to the Bureau on financial management activities; (4) coordinates personnel activities for the Bureau and advises on the allocation of the Bureau's personnel resources; (5) provides organization and management analysis for the Bureau, develops policies and procedures for internal Bureau requirements, and interprets and implements, the Administration's management policies and procedures; (6) coordinates the

Bureau's delegations of authority activities; (7) manages the Bureau's performance management systems; (8) provides or arranges for the provision of support services such as supply management, space management, manual issuances, forms, records, reports, and supports civil rights compliance activities; (9) provides direction regarding technological developments in office management activities; and (10) manages the Bureau's executive secretariat functions.

18. In the HIV/AIDS Bureau delete the functional statement for the Office of Science and Epidemiology (RV4) in its entirety and replace as follows:

Office of Science and Epidemiology (RV4)

Serves as the Bureau's principal source on HIV epidemiologic surveillance, program data collection and evaluation, medical and biometric research, and the development of new models of HIV care. The Office coordinates with all HRSA HIV/AIDS programs on the development and implementation of science and epidemiology activities. Specifically: (1) Develops and directs long and short range scientific activities; (2) plans, directs, coordinates and administers the Bureau's annual program evaluation strategy; (3) designs and implements special scientific studies of the impact and outcomes of Bureau health care programs; (4) carries out data collection and analysis activities that document the clients and services of Bureau programs; (5) collects and maintains information on the costs and quality associated with the Bureau's health care programs; (6) directs and manages the implementation and evaluation of priority models of care through the Special Programs of National Significance (Title XXVI, Part F of the PHS Act), including developing Program Application and Guidance documents; (7) formulates and interprets program-related policies; (8) coordinates the documentation of all science, evaluation, and new models of care products with HRSA HIV/AIDS programs; (9) coordinates technical assistance plans and activities with the Division of Training and Technical Assistance and manages program specific technical assistance; (10) plans and develops collaborative efforts in the scientific aspects of Bureau programs with other HHS components, Federal departments, universities, and other scientific organizations; (11) organizes, guides and coordinates the Bureau's scientific planning and development activities in epidemiology, research, and demonstrations; (12) plans and coordinates Bureau participation in scientific organizations, including scientific clearance of presentations and articles for publications; (13) studies and analyzes trends in health care, including availability, access distribution, organization, and financing to determine if the Bureau activities address HIV/AIDS issues in an effective, efficient manner; and (14) coordinates and consults with State and local health departments, other components of the Department, other Federal agencies and/or outside groups on the implementation of Office programs.

19. In the HIV/AIDS Bureau delete the functional statement for the Division of Service Systems (RV5) in its entirety and replace as follows:

Division of Service Systems (RV5)

Administers Bureau programs and activities and manages funds and other resources related to the provision of coordinated comprehensive HIV health care and support services, including reimbursement for treatment with life-prolonging drugs, for persons with HIV/AIDS. Specifically: (1) Directs and manages the implementation of Parts A and B of Title XXVI of the PHS Act including Emergency Relief Grants (Title I), HIV CARE Grants (Title II), and State AIDS Drug Assistance programs; (2) provides program implementation proposals and plans, and the interpretation of legislation and regulations; (3) monitors HIV services planning and delivery program in States and Cities and provides administrative, strategic, and programmatic direction to grantees to encourage efficient, coordinated treatment of persons with HIV infection; (4) develops Program Application and Guidance documents; (5) develops requirements, guidance and monitors State and territorial programs for medical therapies established to ensure that these treatments are integrated into the system of health care services; (6) promotes the development of State treatment program formularies that include classes of drugs necessary for the proper treatment of people with HIV infection; (7) formulates and interprets program related policies; (8) coordinates technical assistance plans and activities with the Division of Training and Technical Assistance; and (9) coordinates and consults with State and local health departments, other components of the Department, other Federal agencies and/or outside groups on the implementation of Division programs.

20. In the HIV/AIDS Bureau delete the functional statement for the Division of Training and Technical Assistance (RV7) in its entirety and replace as follows:

Division of Training and Technical Assistance (RV7)

Coordinates, designs, directs and administers HIV/AIDS-related planning, training, technical assistance and extramural authorities and activities within the Agency. Advises on training and education activities pertaining to the administration of the Bureau's programs. Specifically: (1) Directs and manages the implementation of the AIDS Education and Training Centers (AETC) program of the CARE Act, Title XXVI, Part F of the PHS Act; (2) identifies technical assistance needs and develops technical assistance packages, conducts programs, meetings, and activities to meet such needs; (3) convenes consultation meetings with grantees, providers, representatives of professional and political organizations, and advocacy groups; (4) develops Program Application and Guidance documents for the AETC program; (5) develops and manages mechanisms and resources to address technical assistance needs and support Division/Bureau technical assistance plans and programs; (6) formulates and interprets program-related policies; (7) coordinates and manages the Bureau's HIV-related managed care activities; (8) serves as the Bureau's focal points for advising and coordinating with advisory committees and other external organizations on policies regarding health care delivery and HIV/AIDS prevention, treatment, education and technical assistance; (9) develops outreach activities to assure that target populations are aware of the benefits and availability of HRSA HIV/AIDS programs; (10) provides program implementation proposals and plans, and the interpretation of legislation and regulations; and (11) coordinates and consults with State and local health departments, other components of the Department, other Federal agencies and/or outside groups on the implementation of Division programs.

21. Revise the functional statement for the Bureau of Health Professions (RP) as follows:

Bureau of Health Professions (RP)

Provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health personnel. Specifically: (1) Assesses the Nation's health personnel supply and requirements and forecasts supply and requirements for future time periods under a variety of health resources utilization assumptions; (2) collects and analyzes data and disseminates

information on the characteristics and capacities of the Nation's health personnel production systems; (3) proposes new or modifications to existing Departmental policies and programs related to health personnel development and utilization; (4) develops, tests and demonstrates new and improved approaches to the development and utilization of health personnel within various patterns of health care delivery and financing systems; (5) provides financial support to institutions and individuals for health professions education programs; (6) administers Federal programs for targeted health personnel development and utilization; (7) provides leadership for promoting equity and diversity in access to health services and health careers for under-represented minority groups; (8) provides technical assistance, consultation and special financial assistance to national, State, and local agencies, organizations, and institutions for the development, production, utilization, and evaluation of health personnel; (9) provides grantees/States with accurate and timely interpretations of the Bureau's program expectations, requirements, guidances, and Federal legislation; (10) coordinates with the programs of other agencies within the Department, and in other Federal Departments and agencies concerned with health personnel development and health care services; (11) provides liaison and coordinates with non-Federal organizations and agencies concerned with health personnel development and utilization; (12) serves as a focus for technical assistance activities in the internal aspects of health personnel development; (13) administers the National Practitioner Data Bank Program; (14) administers the Healthcare Integrity and Protection Data Bank Program; (15) administers the Ricky Ray Hemophilia Relief Fund Program; (16) provides direction and leadership to the Children's Hospitals Graduate Medical Education (CHGME) Payment Program; (17) administers the National Health Service Corps Program which assures accessibility of health care in underserved areas; (18) plans the activities of the National Health Services Corps Advisory Council; (19) administers the Public Health Service Scholarship Training Program and the National Health Service Corps Scholarship Loan Repayment Program; (20) administers the designation of health professional shortage areas and medically-underserved populations; (21) administers the Community Scholarship Program; (22) administers the State Loan Repayment Program; (23) administers the Nursing Education Loan Repayment program; and (24) provides direction and leadership for the Federal Credentialing Program.

22. In the Bureau of Health Professions abolish the Office of Peer Review (RPG).

23. In the Bureau of Health Professions revise the functions of the Office of Program Support (RP1) as follows:

Office of Program Support (RP1)

Plans, directs, coordinates and evaluates Bureau-wide administrative management activities. Maintains close liaison with officials of the Bureau, Agency, the Office of Public Health and Science, and the Office of the Secretary on management and support activities. Specifically: (1) Serves as the Bureau's principal source for management and administrative advice and assistance; (2) provides advice, guidance and coordinates personnel activities for the Bureau; (3) directs and coordinates the allocation of personnel resources; (4) provides organization and management analysis, develops policies and procedures for internal operation and interprets and implements the Bureau's management policies, procedures and systems; (5) develops and coordinates Bureau program and administrative delegations of authority activities; (6) provides guidance to the Bureau on financial management activities; (7) provides Bureau-wide support services such as supply management, equipment utilization, printing, property management, space management, records management and management reports; (8) manages the Bureau's performance management systems; and (9) develops general guidance and criteria related to the Bureau's grant programs.

24. In the Bureau of Health Professions revise the functions of the Division of National Health Service Corps (RPH) as follows:

Division of National Health Service Corps (RPH)

Provides (1) strategic planning and overall program policy guidance and oversight to the National Health Service Corps (NHSC); (2) initiates national program and policy changes, including regulatory and statutory amendments to ensure NHSC consistency with evolving national health care policy; (3) supports the NHSC National Advisory Council (NAC); (4) provides national NHSC leadership, integration and coordination with HRSA and other Departmental programs serving or impacting the Nation's underserved communities and populations; (5) coordinates NHSC policy on primary and other health care manpower issues, and works with a wide variety of national, regional, State and local constituencies in ensuring their effective implementation; (6) directs and administers the Public Health Service Scholarship Training Program, the NHSC Loan Repayment Program and the NHSC Scholarship Program; (7) develops and implements program plans and policies and operating and evaluation plans and procedures; (8) monitors obligatory service requirements and conditions of deferment for compliance; (9) provides guidance and technical assistance for educational institutions on the NHSC scholarship program; (10) maintains liaison with, and provides assistance to, program-related public and private professional organizations and institutions; (11) coordinates financial aspects of programs with educational institutions; (12) develops program data needs, formats and reporting requirements including collection, collation, analysis and dissemination of data; (13) participates in the development of forward plans, and budgets including recruitment, deferment and service monitoring systems; and (14) develops Program Application and Guidance documents.

25. Revise the functional statement for the Bureau of Primary Health Care (RC) as follows:

Bureau of Primary Health Care (RC)

Provides national leadership in developing, coordinating, evaluating, and assuring access to comprehensive preventive and primary health care services and improving the health status of the Nations' underserved and vulnerable populations. Specifically, the Bureau: (1) Assesses the Nation's health care needs of underserved populations; (2) assists communities in providing quality health care services, demonstrating new and improved approaches for providing access to healthcare; (3) administers the Consolidated Health Center Program; (4) develops comprehensive integrated systems of care for underserved communities and populations; (5) decreases health disparities through the targeting of resources to those populations at increased risk of negative health outcomes; (6) promotes the integration of primary care services with mental health and dental health services; (7) develops innovative strategies for serving special populations and difficult to serve sub-populations; (8) provides leadership for promoting equity, diversity, and cultural competency in access to health

care services for underserved populations; (9) coordinates with various other organizations involved in health care access and utilization, integrated systems of care, and improvement of health status for underserved populations; (10) supports the efforts of other organizations in their efforts to meet the needs of vulnerable, under-served, and special populations; (11) provides policy leadership, programmatic direction and consultation on activities related to community-based primary health care; (12) administers the Black Lung Clinics Program and the Native Hawaiian Health Systems Program; (13) provides leadership and direction for the National Hansen's Disease Program; (14) administers a national health-care program in support of the Immigration and Naturalization Service; and (15) administers the Section 340B Drug Pricing Program.

26. In the Office of Special Programs (RR), delete the functional statement in its entirety and replace as follows:

Office of Special Programs (RR)

Provides the overall leadership and direction for the procurement allocation, and transplantation of human organs and bone marrow; programmatic, financial and architectural/engineering support for construction/renovation programs; operation of the Vaccine Injury Compensation Program and the State Planning Grants Program. Specifically: (1) Administers the Organ Procurement and Transplantation Network and the Scientific Registry of Transplant Recipients to assure compliance with Federal regulations and policies; (2) administers the National Marrow Donor Program in matching volunteer unrelated marrow donors for transplants and studying the effectiveness of unrelated marrow donors for transplants and related treatment; (3) develops and maintains a national program of grants and contracts to organ procurement organizations and other entities to increase the availability of various organs to transplant candidates; (4) manages national programs for compliance with uncompensated care and other assurances; (5) directs and administers Section 242 hospital mortgage insurance program (via inter-agency agreement with HUD) and HHS direct and guaranteed construction loan repayment; (6) directs and administers the construction/renovation/equipping of health care and other facilities; (7) directs and administers the National Vaccine Injury Compensation Program; and (8) directs and administers the State Planning Grants Program.

Delegation of Authority

All delegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation. I hereby ratify and affirm all actions taken by any DHHS official which involved the exercise of these authorities prior to the effective date of this delegation.

This reorganization is effective December 23, 2002.

Dated: December 23, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–294 Filed 1–6–03; 8:45 am]

BILLING CODE 4165–15–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: January 25–26, 2003.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: The Hermosa Inn, 5532 North Palo Cristi Road, Scottsdale, Arizona.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 30, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–265 Filed 1–6–03; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 22, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Unemployment Insurance Trust Fund Activity.

OMB Number: 1205–0154.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Form	Number of respondents	Frequency	Annual responses	Total annual responses	Average response time (hours)	Burden hours
ETA–2112	53	Monthly	12	636	0.5	318
ETA–8401	53	Monthly	12	636	0.5	318
ETA–8403	53	On occasion	6	318	0.5	159
ETA–8405	53	Monthly	12	636	0.5	318
ETA–8413	53	Monthly	12	636	0.5	318
ETA–8414	53	Monthly	12	636	0.5	318
Totals				3,498		1,749

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 303(a)(4) of the Social Security Act (SSA) and section 3304(a)(3) of the Federal Unemployment Tax Act (FUTA) require that all money received in the unemployment fund of a state be paid immediately to the Secretary of Treasury to the credit of the Unemployment Trust Fund (UTF).

Section 303(a)(5) of the SSA and section 3304(a)(4) of the FUTA require that all money withdrawn from the UTF be used solely for the payment of unemployment compensation, exclusive of the expenses of administration.

Section 303(a)(6) of the SSA gives the Secretary of Labor the authority to require the reporting of information deemed necessary to assure state compliance with the provisions of the SSA. Accordingly, the Secretary of Labor requires the following reports:

- ETA 2112: UI Financial Transactions Summary, Unemployment Fund.
- ETA 8401: Monthly Analysis of Benefit Payment Account.
- ETA 8405: Monthly Analysis of Clearing Account.
- ETA 8413: Income—Expense Analysis UC Fund, Benefit Payment Account.
- ETA 8414: Income—Expense Analysis UC Fund, Clearing Account.
- ETA 8403: Summary of Financial Transactions—Title IX Fund.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–278 Filed 1–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 30, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Marlene Howze on 202–693–4158 or E-Mail: *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration (ESA).

Type of Review: Extension of a currently approved collection.

Title: Payment of Compensation Without Award.

OMB Number: 1215–0022.

Affected Public: Business or other for-profit.

Type of Response: Reporting.

Frequency: On Occasion.

Number Of Respondents: 900.

Number of Annual Responses: 26,100.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 6,525.

Total Annualized Capital/Startup Cost: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $10,440.00.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act. This Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. The OWCP district offices use the information provided on Form LS–206 to determine the payment status of a given case. If the information were not collected, the OWCP would have no way of determining whether compensation payments had been made by liable insurance carriers and self-insured employers.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–279 Filed 1–6–03; 8:45 am]

BILLING CODE 4510–CF–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Ergonomics

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Establishment of the National Advisory Committee on Ergonomics (NACE); notice of meeting.

SUMMARY: The National Advisory Committee on Ergonomics is being established and chartered for a two year term. This committee is part of the Secretary's comprehensive approach for reducing ergonomics-related injuries and illnesses in the workplace. The

Secretary may ask NACE to advise her on such matters as ergonomic guidelines, research, and outreach and assistance. This notice announces the selection of 15 persons to serve as members of NACE and schedules the first NACE meeting. The public is encouraged to attend.

DATES: The Committee will meet in Washington, DC on Wednesday, January 22, 2003 from 9 a.m. until approximately 5 p.m.

ADDRESSES: The Committee will meet at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001; Telephone (202) 628–2100.

Mail comments, views, or statements in response to this notice to MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, OSHA, U.S. Department of Labor, Room N–3655, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 693–2144; Fax: (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, OSHA, Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION:

I. Background

On April 4, 2002, the Secretary of Labor announced her intention to establish a National Advisory Committee on Ergonomics to advise her in the following areas: (1) Various industry or task-specific guidelines; (2) identification of gaps in research applying ergonomic principles to the workplace; (3) current and projected research needs; (4) methods of providing outreach and assistance that will communicate the value of ergonomics to employers and employees; and (5) ways to increase communication among stakeholders on the issue of ergonomics. On May 2, 2002, OSHA published a notice in the **Federal Register** requesting nominations for membership on NACE (67 FR 22121).

II. Establishment

In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2) and after consultation with the General Services Administration (GSA), the Secretary of Labor has determined that the establishment of the National Advisory Committee on Ergonomics (NACE) is in the public interest, to advise the Secretary as to the performance of Departmental duties under the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 651 *et seq.* Notice is hereby given that NACE is established for a period of two years and that the charter has been filed in accordance with 41 CFR 102–3.70.

III. Appointment of Committee Members

Over two hundred nominations of highly qualified individuals were received in response to the Agency's request for nominations. Ergonomics involves a wide range of complex issues.

For that reason, the Secretary has selected the following individuals who have a wide range of experience concerning the issues to be examined by the Committee. The NACE members are:

Edward Bernacki, M.D., M.P.H., Associate Professor and Director, Johns Hopkins Univ. School of Medicine, Baltimore, Maryland.

Lisa M Brooks, C.I.E., Health and Safety Program Manager for International Paper, Memphis, Tennessee.

Paul A. Fontana, President/CEO for Work Rehabilitation, Inc., Lafayette, Louisiana.

Willis J. Goldsmith,. Esq., Jones, Day, Reavis & Pogue, Washington, DC.

Morton L Kasdan,. M.D., Clinical Professor of Surgery, University of Louisville, Louisville, Kentucky.

Carter J. Kerk, Ph.D., Associate Professor in Industrial Engineering, South Dakota School of Mines & Technology, Rapid City, South Dakota.

James L. Koskan, MS, CSP, Corporate Director of Risk Control, SUPERVALU INC., Minneapolis, Minnesota.

George P. LaPorte, Ergonomics Manager, NATLSCO Loss Control Services, Division of Kemper Insurance Companies, Lake Zurich, Illinois.

Barbara McCabe, Program Manager, Operating Engineers National Hazmat Program, Operating Engineers, Beaver, West Virginia.

J. Dan McCausland, Consultant and Director, Worker Safety and Human Resources, American Meat Institute, Madison, Wisconsin.

Audrey Nelson, Ph.D., RN, Center Director for VHA Patient Safety Center of Inquiry, Suncoast Development Research Evaluation Research Center on Safe Patient Transitions, Tampa, Florida.

Lida Orta-Anes, Ph.D., Associate Professor, Graduate School of Public Health, University of Puerto Rico, San Juan, Puerto Rico.

Roxanne Rivera, President and CEO, PMR Construction Services, Inc., Albuquerque, New Mexico.

W. Corey Thompson, National Safety and Health Specialist, American Postal Workers Union, Washington, DC.

Richard Wyatt, Ph.D., Associate Director, Aon Ergonomic Services, Huntsville, Alabama.

These individuals represent a broad range of interests, knowledge, and experience in the field of ergonomics, and the breadth of membership will assure that the Committee will be fairly balanced in terms of the points of view represented and the functions to be performed.

III. Meeting Agenda

The first meeting of NACE on January 22, 2003, will include an introduction of the Committee members and an overview and brief history of OSHA's activities related to ergonomics. The meeting will also include a discussion of OSHA's efforts to develop ergonomic guidelines, and presentations on enforcement, outreach, and research issues.

IV. Public Participation

Written data, views, or comments for consideration by NACE on the various agenda items listed above may be submitted, preferably with copies, to MaryAnn Garrahan at the address listed above. Submissions received by January 14, 2003 will be provided to the committee members for consideration. Requests to make oral presentations to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee should notify MaryAnn Garrahan at the address noted above. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Persons with disabilities requiring special accommodations should contact Veneta Chatman (telephone: (202) 693–1912; FAX (202) 693–1635) by January 14, 2003.

A transcript of the meeting will be available for inspection and copying in the OSHA Technical Data Center, Room N–2625 (see address section above) telephone: (202) 693–2350.

Authority: This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), GSA's FACA Regulations (41 CFR part 102–3), and DLMS 3 Chapter 1600.

Signed at Washington, DC, this 30th day of December 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–277 Filed 1–6–03; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Nuclear Fuel Services, Inc. Notice of Receipt of Amendment Request and Opportunity To Request a Hearing

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 11, 2002, a request from Nuclear Fuel Services, Inc., to amend its NRC Special Nuclear Materials License SNM–124, to authorize (1) processing operations in the Blended Low-Enriched Uranium Preparation Facility (BPF) and (2) minor administrative changes. The staff hereby provides notice of the request and issues a notice of opportunity to request a hearing on the amendment application.

The request is the second of three license amendment requests planned to support operations associated with downblending and conversion of high-enriched uranium materials to low-enriched uranium oxides. NFS is currently manufacturing high-enriched nuclear reactor fuel at its facility in Erwin, Tennessee. NFS is constructing a new complex at the Erwin site to manufacture low-enriched nuclear reactor fuel. NFS is requesting this amendment to authorize operations at the BPF that will prepare low-enriched uranium solutions for use in the new complex. The BPF operations will be conducted within the existing facility because that facility is already authorized to handle high-enriched material. After the high-enriched material is downblended and converted to a low-enriched uranium solution, it will be transferred from the BPF to the new complex.

The October 11, 2002, amendment application contains an Integrated Safety Analysis (ISA) Summary for two of the eleven BPF operations. By letter dated October 14, 2002, NFS provided an ISA Summary addressing the remaining nine operations in the BPF. NFS excluded nine operations from the amendment request because NRC Special Nuclear Materials License SNM–124 already authorizes these operations in another building and NFS is relocating them to the BPF. By letter dated October 10, 2002, NFS provided revisions to their Emergency Plan to incorporate BPF operations. These three submittals comprise the content of the license amendment application. NFS also submitted revisions to their Fundamental Nuclear Material Control (FNMC) Plan by letter dated May 24, 2002, and revisions to their Physical Safeguards Plan by letter dated October 10, 2002. The FNMC Plan and Physical Safeguards Plan are being reviewed independently.

This application will be reviewed by the staff for conformance with 10 CFR parts 20, 70, 73, and 74, using NUREG–1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility" and other applicable agency regulations and guidance. If NRC approves the request, the approval will be documented in an amendment to NRC Special Nuclear Materials License SNM–124. However, before approving the request, NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC regulations. These findings will be documented in a Safety Evaluation Report and either an Environmental Assessment (EA) or an Environmental Impact Statement.

An EA, dated June 28, 2002, was issued to support the first amendment request for this project and may be looked to for additional information.

II. Notice of Availability of Amendment Request

The following documents are available for public inspection and copying at the NRC Public Document Room, U.S. Nuclear Regulatory Commission Headquarters, Room O–1–F–21, 11555 Rockville Pike, Rockville, MD 20852, or through the ADAMS computer system at *http://www.nrc.gov/reading-rm/adams.html* using the accession numbers listed below:

A. NFS License Amendment Request Dated October 11, 2002

1. Cover Letter and Attachment 1, Proposed Changes to License SNM–124 (ADAMS accession number ML022960038).

2. Attachment III, Non-Proprietary Version of ISA Summary, Part 1 of 2 (ADAMS accession number ML022960069).

3. Attachment III, Non-Proprietary Version of ISA Summary, Part 2 of 2 (ADAMS accession number ML023400228).

B. ISA Summary for BPF Processes Dated October 14, 2002

1. Cover Letter (ADAMS accession number ML023080301).

2. Attachment II, Non-Proprietary Version of ISA Summary, Part 1 of 2 (ADAMS accession number ML023090025).

4. Attachment II, Non-Proprietary Version of ISA Summary, Part 2 of 2 (ADAMS accession number ML023090170).

C. Environmental Assessment for First License Amendment Dated June 28, 2002 (ADAMS Accession Number ML021790068).

Attachments II and IV of the NFS license amendment request dated October 11, 2002, contain proprietary information and are being withheld from the public pursuant to 10 CFR 2.790. Attachment I of the ISA Summary for BPF Processes dated October 14, 2002, contains proprietary information and is being withheld from the public pursuant to 10 CFR 2.790. The Physical Safeguards Plan and the Fundamental Nuclear Material Control Plan are confidential restricted data, as defined in 10 CFR 25.5, and are not publicly available. In addition, the Emergency Plan Revisions are sensitive, homeland security information, and are not publicly available.

III. Notice of Opportunity To Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

A. By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

B. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

A. The applicant, Nuclear Fuel Services, 1205 Banner Hill Road, Erwin, Tennessee 37650–9718. A copy of the request for hearing should also be sent

to the attorney for the licensee, Daryl Shapiro, c/o Shaw Pittman, L.L.P., 2300 N Street, NW., Washington, DC 20037; and

B. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

A. The interest of the requestor in the proceeding;

1. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

2. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

3. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Technical Contact

For further information, contact Mary T. Adams, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8–A–33, Washington, DC 20555. Telephone (301) 415–7249.

Dated at Rockville, Maryland, this 31st day of December, 2002.

For the U.S. Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–264 Filed 1–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027–MLA–5 ASLBP No. 03–807–01–MLA]

Sequoyah Fuels Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission, see 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, see 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding:

Sequoyah Fuels Corporation, Gore, Oklahoma (Materials License Amendment).

The hearing will be conducted pursuant to 10 CFR part 2, Subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns requests for hearing submitted (1) on December 14, 2002, by Citizens Action for Safe Energy, Inc.; (2) on December 16, 2002, by the State of Oklahoma; (3) on December 16 by the Cherokee Nation; and (4) by fifteen other Oklahoma residents during December 2002. The requests were filed in response to a notice of consideration of an amendment request from Sequoyah Fuels Corporation to possess byproduct material, as defined in Atomic Energy Act section 11e.(2), at its Gore, Oklahoma facility site. The notice and opportunity for a hearing were published in the **Federal Register** on November 14, 2002 (67 FR 69,048).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR. 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Rosenthal and Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Alan S. Rosenthal, Administrative Judge, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Thomas D. Murphy, Administrative Judge, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 31st day of December 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–263 Filed 1–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of January 6, 13, 20, 27, February 3, 10, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters To Be Considered:

Week of January 6, 2003

There are no meetings scheduled for the Week of January 6, 2003.

Week of January 13, 2003—Tentative

Tuesday, January 14, 2003

10 a.m. Discussion of security Issues (Closed-Ex. 1).

2 p.m. Briefing on NRC Lessons Learned: Davis-Besse Reactor Vessel Head (RVH) Degradation (Public Meeting) (Contact: Stacey Rosenberg, 301–415–1733).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of January 20, 2003—Tentative

Thursday, January 23, 2003

2 p.m. Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs, Performance, and Plans—Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of January 27, 2003—Tentative

There are no meetings scheduled for the Week of January 27, 2003.

Week of February 3, 2003—Tentative

Tuesday, February 4, 2003

10 a.m. Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of February 10, 2003—Tentative

Monday, February 10, 2003

10 a.m. Briefing on Status of Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting) (Contact: Michael Case, 301–415–1275)

This meeting will be webcast live at the web address—*http://www.nrc.gov*

Tuesday, February 11, 2003

10 a.m. Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: January 2, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–320 Filed 1–3–03; 12:17 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice: Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, December 13, through December 26, 2002. The last biweekly notice was published on December 24, 2002 (67 FR 78515).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 6, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 13, 2002, as supplemented November 20, 2002

Description of amendment request: The proposed amendments delete requirements from the technical specifications (TS) and other elements of the licensing bases to maintain a Post-Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, "Elimination of Requirements for a Post-Accident Sampling System (PASS)." The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments

concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated November 13, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen G. Howe.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Located in Mecklenburg County, North Carolina

Date of amendment request: December 2, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for Administrative Controls in Section 5.0 concerning Responsibility, Unit Staff, Unit Staff Qualifications, and Controls of the High Radiation Area.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

As required by 10 CFR 50.91(a)(1), this analysis is provided to demonstrate that the proposed license amendment does not involve a significant hazard.

Conformance of the proposed amendment to the standards for a determination of no significant hazards, as defined in 10 CFR 50.92, is shown in the following:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Approval of this amendment will have no effect on accident probabilities or consequences since the changes are purely administrative in nature.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Implementation of this amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No physical changes are being made to the plant. Therefore, the introduction of any new accident scenarios does not exist. The amendment does not impact any plant systems that are accident initiators nor does it adversely impact any accident mitigating system. This amendment is purely administrative in nature.

(3) Does the proposed change involve a significant reduction in margin of safety?

No. Implementation of this amendment will not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this amendment. System[s] and components are not affected and therefore are capable of performing as designed. This amendment is purely administrative nature, it will have no effect on any safety margins.

Conclusion.

Based on the preceding analysis, it is concluded that the proposed license amendment does not involve a Significant

Hazards Consideration Finding as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Located in Mecklenburg County, North Carolina

Date of amendment request: December 12, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for TS Table 3.3.2–1 Footnote (c) to correct an editorial error, TS 3.4.3 is revised to update the Reactor Coolant System Pressure-Temperature limits for use up to 34 Effective Full Power Years (EFPY) and TS 3.4.12 is revised to update the Low Temperature Over-Pressure limits for use up to 34 EFPY. Associated changes are also proposed for the TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke has evaluated whether or not a significant hazards consideration is involved with the proposed amendments by focusing on the three standards set forth in 10 CFR 50.92, "issuance of amendment," as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the reactor coolant system (RCS) pressure and temperature (P–T) limits and low temperature overpressure protection (LTOP) limits are developed utilizing the methodology of American Society of Mechanical Engineers (ASME) Section XI, Appendix G, in conjunction with the methodology of ASME Code Case N–641. Usage of these methodologies provides compliance with the underlying intent of 10 CFR [Part] 50 Appendix G and provides operational limits established to prevent non-ductile failure of the reactor vessel. The Loss of Coolant Accident analysis and other accident analyses in the Updated Final Safety Analysis Report (UFSAR) do not assume failure of the reactor vessel. The P–T and LTOP limits are not initiators or contributors to accident analyses addressed in the UFSAR. The proposed changes do not alter any assumption previously made in the radiological consequence evaluations nor affect the mitigation of the radiological consequences of an accident previously evaluated. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes to RCS P–T limits and LTOP limits are proposed to prevent non-ductile failure of the reactor vessel. The proposed changes do not modify the RCS pressure boundary, nor make any physical changes to the facility. The proposed changes do not introduce any new mode of system operation or failure mechanism. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are developed utilizing the methodology of ASME Section XI, Appendix G, in conjunction with the methodology of ASME Code Case N–461. Usage of these methodologies provides compliance with the underlying intent of 10 CFR [Part] 50 Appendix G and provides operational limits established to prevent non-ductile failure of the reactor vessel. This Code case constitutes relaxation from the current requirements of 10 CFR [Part] 50 Appendix G. The alternate methodology allowed by the Code case is based on industry experience gained since the inception of the 10 CFR [Part] 50 Appendix G requirements and replaces some requirements that have now been determined to be excessively conservative. The more appropriate assumptions and provisions allowed by the Code case maintain a margin of safety that is consistent with the intent of 10 CFR [Part] 50 Appendix G. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above, Duke concludes that the proposed amendments present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: December 12, 2002.

Description of amendment request: The proposed amendment would revise the Facility Operating License and Technical Specifications (TSs) to increase the licensed core thermal power level to 3114.4 megawatts (MWt), which is a 1.4% increase above the currently authorized power level of 3071.4 MWt. The proposed power uprate involves the improvement in the core power uncertainty allowance originally required for the emergency core cooling system (ECCS) evaluations performed in accordance with Appendix K, "ECCS Evaluation Models," to Part 50 of Title 10 of the Code of Federal Regulations. In addition, changes would be made in TS Sections 1.1, 2.1, 2.3, 3.1, 3.4, 6.9, and the applicable TS Bases would be revised to account for the change in power level.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed 1.4% increase in maximum core thermal power is based on the use of instrumentation that supports a reduction in the measurement uncertainty value assumed in certain safety analyses. The affected analyses now use an uncertainty value of 2% which was required by 10 CFR [Part] 50 Appendix K at the time that the plant was originally licensed. At that time, measurement of feedwater flowrate in the plant secondary side used differential pressure-type flow venturis. The plant secondary side thermal calorimetric is used to determine reactor thermal power. A June 2000 revision to 10 CFR [Part] 50 Appendix K permitted the use of lower uncertainty values in the affected analyses, if the reduced value can be justified. Entergy Nuclear Operations (ENO) has implemented the use of Caldon, Inc. Leading Edge Flowmeter (LEFM) technology to measure feedwater flowrate. The LEFM measures fluid velocity by measuring the transit time of ultrasonic pulses introduced into the fluid stream. The LEFM Check System implemented at Indian Point 2 has a demonstrated measurement accuracy of 0.6%. Based on this measurement accuracy, the licensed thermal power can be increased 1.4% by reducing the assumed uncertainty used in safety analyses

with respect to core thermal power from 2.0% to 0.6%. This results in a net increase in licensed reactor core thermal power; from 3071.4 MWt to 3114.4 MWt. The LEFM and the flow venturi instrumentation are used to collect data and there is no automatic initiation function performed by this instrumentation. Use of the LEFM instrumentation is therefore not an accident initiator and does not increase the probability of occurrence of an existing analyzed accident. Also, the LEFM instrumentation and the venturi instrumentation do not mitigate accidents so that the consequences of previously analyzed accidents are not increased.

Analyses and evaluations associated with the proposed change to core thermal power have demonstrated that applicable acceptance criteria for plant systems, components, and analyses (including the Final Safety Analysis Report [FSAR] Chapter 14 safety analyses) will continue to be met for the proposed 1.4% increase in licensed core thermal power for Indian Point 2. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or the operational performance of any potentially affected system, component or analysis. Therefore, the probability of an accident previously evaluated is not affected by this change. The subject increase in core thermal power will not adversely affect the ability of any safety-related system to meet its intended safety function. Further, the radiological dose evaluations in support of this power uprate effort show that the current FSAR Chapter 14 radiological analyses are unaffected, and that the current dose analyses of record bound plant operation with the subject increase in licensed core thermal power level.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license amendment increases the maximum allowed core thermal power through the use of feedwater flow instrumentation that supports a reduction in the measurement uncertainty assumed in certain safety analyses. The LEFM Check System instrumentation has greater measurement accuracy than the differential pressure-type flow venturi instrumentation that was originally used so that the measurement uncertainty assumed in certain analyses can be correspondingly reduced. Both the venturi and LEFM flow instrumentation provide data that is used by plant operators to monitor the thermal output of the plant. The instrumentation does not perform an automatic actuation function and there are no output signals to plant safety systems or control systems. Therefore, instrumentation malfunction or failure does not introduce new accident scenarios or equipment failure mechanisms. Operation, maintenance, or failure of either instrumentation system does not have an adverse effect on safety-related systems or any structures, systems, and components required for transient or accident mitigation.

Operating the plant at a new maximum core thermal power of 3114.4 MWt, which is 1.4% greater than the current maximum of 3071.4 MWt, is bounded by existing or updated analyses which demonstrate that established limits and acceptance criteria continue to be met. Operating at the new power level does not create new or different accident initiators and existing credible malfunctions are bounded by existing or updated analyses or evaluations.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The evaluations and analyses associated with the proposed increase in maximum core thermal power demonstrate that applicable acceptance criteria will continue to be met. The existing licensed maximum core thermal power level incorporates a 2% measurement uncertainty for the analysis of loss-of-coolant-accidents as originally required by Appendix K of 10 CFR [Part] 50. The regulations have subsequently been revised to allow the option of justifying smaller measurement uncertainties by using more accurate instrumentation to calculate reactor thermal power. Certain analyses that already assume a bounding core power level because of the 2% measurement uncertainty are not changed as a result of the proposed increase in core thermal power. Use of the LEFM instrumentation with improved measurement accuracy supports the use of a smaller measurement uncertainty assumption in the safety analyses. Other analyses were updated or evaluations were performed to demonstrate that nuclear steam supply and balance-of-plant systems and components will continue to perform, under normal and credible transient conditions, within established limits.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Exelon Generation Company, LLC, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: November 21, 2002.

Description of amendment request: Exelon Generation Company, LLC, the licensee, is proposing a change to the Limerick Generating Station (LGS), Unit 2, Technical Specifications (TSs) contained in Appendix A to the Operating License. This proposed change will revise the TS section on safety limits to incorporate revised safety limit minimum critical power ratios (SLMCPRs) due to the cycle-specific analysis performed by Global Nuclear Fuel for LGS, Unit 2, Cycle 8.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the cycle specific Safety Limit Minimum Critical Power Ratios (SLMCPRs) for incorporation into the Technical Specifications (TS), and their use to determine cycle specific thermal limits, has been performed using the methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which incorporates Amendment 25. Amendment 25 was approved by the NRC [Nuclear Regulatory Commission] in a March 11, 1999 safety evaluation report.

The basis of the SLMCPR calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling. The GE–14 fuel is in compliance with Amendment 22 to "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which provides the fuel licensing acceptance criteria. The probability of fuel damage will not be increased as a result of this change. Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR is a TS numerical value, calculated to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core if the limit is not violated. The new SLMCPRs are calculated using NRC approved methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which incorporates Amendment 25. Additionally, the GE–14 fuel is in compliance with Amendment 22 to "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000, which provides the fuel licensing acceptance criteria. The SLMCPR is

not an accident initiator, and its revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

There is no significant reduction in the margin of safety previously approved by the NRC as a result of the proposed change to the SLMCPRs, which includes the use of GE–14 fuel. The new SLMCPRs are calculated using methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which incorporates Amendment 25. The SLMCPRs ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated when all uncertainties are considered, thereby preserving the fuel cladding integrity. Therefore, the proposed TS change will not involve a significant reduction in the margin of safety previously approved by the NRC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Andersen.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: November 26, 2002.

Description of amendment request: The proposed amendments revise Technical Specification (TS) 3.1.3.1, Control Rod Operability," by adding required actions for scram discharge volume (SDV) vent and drain valves to align with those in NUREG–1433, "Standard Technical Specification, General Electric Plants, BWR/4," Revision 2. Additionally, modifications are proposed to change TS 3.6.3, "Primary Containment Isolation Valves," to clarify the relationship between TS 3.1.3.1 and TS 3.6.3 regarding SDV vent and drain valve.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The scram discharge volume (SDV) and control rod drive (CRD) system, including the associated SDV vent and drain isolation valves, are not initiators to any accident sequence analyzed in the Updated Final Safety Analysis Report (UFSAR). Operation in accordance with the proposed Technical Specification (TS) ensures that the SDV and control rods are capable of performing their function as described in the UFSAR; therefore, the mitigative functions supported by the SDV and control rods will continue to provide the protection assumed by the analysis. The addition of specific TS actions to be taken for inoperable SDV vent or drain isolation valves will not challenge the ability of the SDV and control rods to perform their design function. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed. In addition, the CRD system including the SDV isolation valves is within the scope of 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," which will ensure the control of maintenance activities associated with the CRD system and SDV isolation valves.

Under the proposed TS changes, the SDV vent and drain lines may be unisolated under administrative control. This allows any accumulated water in the line to be drained, to preclude a reactor scram on SDV high level. This is acceptable since the administrative controls ensure the valve can be closed quickly, by a dedicated operator, if a scram occurs with the valve open. The 8-hour allowable outage time to isolate the line is based on the low probability of a scram occurring while the line is not isolated and unlikelihood of significant CRD seal leakage.

The proposed changes do not involve any physical change to structures, systems, or components (SSCs) and do not alter the method of operation or control of SSCs. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by these proposed changes. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged.

The integrity of fission product barriers, plant configuration, and operating procedures as described in the UFSAR will not be affected by these proposed changes. Therefore, the consequences of previously analyzed accidents will not increase because of these proposed changes.

Based on the above discussion, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by these proposed changes. These proposed changes will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. Any alteration in procedures will continue to ensure that the plant remains within analyzed limits, and no change is required to the procedures relied upon to respond to an off-normal event as described in the UFSAR. As such, no new failure modes are being introduced. The changes do not alter assumptions made in the safety analysis and licensing basis.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes are acceptable because the operability of the SDV and SDV isolation valves is unaffected, there is no detrimental impact on any equipment design parameter, and the plant will still be required to operate within assumed conditions. Operation in accordance with the proposed TS ensures that the SDV and control rods are capable of performing their functions as described in the UFSAR. Therefore, the support of the SDV and control rods in the plant response to analyzed events will continue to provide the margins of safety assumed by the analysis. The additions to TS for inoperable SDV vent and drain isolation valves will not challenge the ability of the SDV or control rods to perform their design function. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed. In addition, CRD system, including the SDV vent and drain isolation valves, are within the scope of 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," which will ensure the control of maintenance activities associated with the CRD system. This provides sufficient management control of the requirements that assure the control rods and CRD system are maintained in a highly reliable condition. Although there is an increase in allowable outage time, this increase was evaluated and determined not to be a significant reduction in a margin of safety.

The proposed TS Actions for inoperable SDV vent and drain isolation valves are reasonable and consistent with approved standards, guidance and regulations.

Based on the above discussion, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Andersen.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: June 4, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from "* * * up to 24 hours to permit completion of the surveillance when the allowable (equipment inoperability) outage time limits of the ACTION requirements are less than 24 hours" to "* * * up to 24 hours or up to the limit of the specified frequency, whichever is greater." In addition, the following requirement would be added to SR 4.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours, and the risk impact shall be managed." The proposed amendment is consistent with TS Task Force traveler TSTF–358, which has been approved by the Nuclear Regulatory Commission (NRC). The TS Bases will be revised under the licensee's existing TS Bases control program to be consistent with the bases for TSTF–358.

Basis for proposed no significant hazards consideration determination: The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee reviewed the model NSHC presented in the **Federal Register** and concluded that it is applicable to Davis-Besse. The model NSHC determination was incorporated by reference into its application dated June 4, 2002, to satisfy the requirements of 10 CFR 50.91(a), and is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: December 9, 2002.

Description of amendment request: The proposed amendment utilizes the Alternate Source Term radiological calculations to update the design basis analysis in the Updated Safety Analysis Report for the Fuel Handling Accident. Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," was utilized in the development of the proposed amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment involves implementation of the Alternative Source Term for the Fuel Handling Accident at the Perry Nuclear Power Plant (PNPP). There are no physical design modifications to the plant associated with the proposed amendment. The revised calculations do not impact the initiators of a Fuel Handling Accident in any way. They also do not impact the initiators for any other design basis events. Therefore, because design basis accident initiators are not being altered by adoption of the Alternative Source Term analyses, the

probability of an accident previously evaluated is not affected.

With respect to consequences, the only previously evaluated accident that could be affected is the Fuel Handling Accident. The Alternative Source Term is an input to calculations used to evaluate the consequences of an accident, and does not by itself affect the plant response, or the actual pathway of the radiation released from the fuel. It does however, better represent the physical characteristics of the release, so that appropriate mitigation techniques may be applied. For the Fuel Handling Accident, the AST analyses demonstrate acceptable doses, within regulatory limits, after 24 hours of radiological decay, without credit for Containment/Fuel Handling Building integrity, filtration system operability, or Control Room automatic isolation. Therefore, the consequences of an accident previously evaluated are not significantly increased.

Based on the above conclusions, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve a physical alteration of the plant (no new or different type of equipment will be installed and there are no physical modifications to existing equipment associated with the proposed changes). Also, no changes are proposed to the methods governing plant/system operation during handling of recently irradiated fuel, so no new initiators or precursors of a new or different kind of accident are created. New equipment or personnel failure modes that might initiate a new type of accident are not created as a result of the proposed amendment.

Thus, this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment is associated with the implementation of a new licensing basis for PNPP Fuel Handling Accidents. Approval of the change from the original source term to a new source term taken from Regulatory Guide 1.183 is being requested. The results of the accident analyses, revised in support of the proposed license amendment, are subject to revised acceptance criteria. The analyses have been performed using conservative methodologies, as specified in Regulatory Guide 1.183. Safety margins have been evaluated and analytical conservatism has been utilized to ensure that the analyses adequately bound the postulated limiting event scenario. The dose consequences of the limiting Fuel Handling Accident remains within the acceptance criteria presented in 10 CFR 50.67, "Accident Source Term," and Regulatory Guide 1.183.

The proposed changes continue to ensure that the doses at the exclusion area and low population zone boundaries, as well as the Control Room, are within corresponding regulatory limits. For the Fuel Handling Accident, Regulatory Guide 1.183 conservatively sets the Exclusion Area Boundary (EAB) and Low Population Zone (LPZ) limits below the 10 CFR 50.67 limit, and sets the Control Room limit consistent with 10 CFR 50.67.

Since the proposed amendment continues to ensure the doses at the EAB, LPZ and Control Room are within corresponding regulatory limits, the proposed license amendment does not involve a significant reduction in a margin of safety.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: October 23, 2002.

Description of amendment request: **The proposed amendment would revise Crystal River Unit 3 Improved Technical Specifications (ITS) 4.2.1, "Fuel Assemblies," and ITS 4.2.2, "Control Rods," to permit the use of Framatome ANP M5 advanced alloy for fuel rod cladding and fuel assembly structural components.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

Florida Power Corporation (FPC) has evaluated the proposed License Amendment Request (LAR), which consists of the identified Technical Specification changes and exemption requests, against the criteria of 10 CFR 50.92(c). The Technical Specification changes are categorized as follows:

1. Modification of Section 4.2.1, DESIGN FEATURES, Fuel Assemblies, and to include the M5 advanced alloy for fuel rod cladding and fuel assembly structural material[.]

2. Removal of design information such as maximum fuel enrichment, nominal active fuel length, maximum individual rod weight, and details of Control Rod content. Adopting the wording from the Standard ITS.

3. Addition to ITS 4.2.1 of the following sentence: "A limited number of lead test assemblies that have not completed representative testing may be placed in nonlimiting core regions." Crystal River Unit 3 does not intend to load lead test assemblies in the upcoming fuel cycle (Cycle 14). This sentence is being added for consistency with NUREG 1430, Revision 2.

FPC has concluded that this proposed LAR does not involve a significant hazards consideration. The following is a discussion of how each of the criteria is satisfied.

(1) [Does not] [i]nvolve a significant increase in the probability or consequences of an accident previously evaluated.

M5 advanced alloy: Topical reports BAW–10227P–A, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR [Pressurized Water Reactor] Reactor Fuel," February 2000 and BAW–10179P–A, Revision 4, "Safety Criteria and Methodology for Acceptable Cycle Reload Analyses," March 2001 provide the licensing basis for the Framatome ANP (FRA–ANP) advanced cladding and structural material, designated M5. The M5 material can be used for fuel rod cladding, as well as for fuel assembly spacer grids, fuel rod end plugs, and fuel assembly guide and instrument tubes. By letter dated August 2, 2001 (Reference 4), the NRC approved BAW–10179P–A, Revision 4, for referencing in license applications. BAW–10179P–A, Revision 4 incorporates BAW–10227P–A. The M5 material was shown in these documents to have equivalent or superior properties to the current Zircaloy-4 material. The cladding itself is not an accident initiator and does not affect accident probability. The M5 cladding has been shown to meet all 10 CFR 50.46 design criteria and, therefore, will not increase the consequences of an accident.

Removal of design parameters of maximum fuel enrichment, active fuel length, rod weight and Control Rod content: This change moves design features from Improved Technical Specifications (ITS) to the Final Safety Analysis Report (FSAR) and other design documents and analyses. The Framatome ANP enhanced fuel design will involve increased rod weight and active fuel length. The approved Framatome ANP topical report, BAW–10179P–A, "Safety Criteria and Methodology for Acceptable Cycle Reload Analyses," will continue to be used to ensure that the required safety limits for the fuel are satisfied. Therefore, the relocation of design information does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Addition of a limited number of lead test assemblies: This change is administrative in nature and is proposed for consistency with the ITS standard. Crystal River Unit 3 does not intend to load lead test assemblies in the upcoming fuel cycle. When lead test assemblies are to be loaded, the approved Framatome ANP topical report BAW–10179P–A will be used to ensure that all applicable limits of the safety analysis are met and that the lead test assemblies are placed in nonlimiting core locations. Applicable mixed core penalties and core operating limits will be developed and applied. Therefore, use of lead test assemblies will not involve a significant

increase in the probability or consequences of an accident previously evaluated.

(2) [Does not] [c]reate the possibility of a new or different kind of accident from any accident previously evaluated.

M5 advanced alloy: Topical report BAW–10227P–A demonstrated that the material properties of the M5 alloy are not significantly different from those of Zircaloy-4. Therefore, M5 fuel rod cladding and fuel assembly structural components will perform similarly to those fabricated from Zircaloy-4, thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different type of accident.

Removal of design parameters of maximum fuel enrichment, active fuel length, rod weight and Control Rod content: This change moves design features from ITS to the FSAR and other design documents and analyses or adds consistency with the standard ITS. The location of this information does not create the possibility of a new or different kind of accident from any accident previously evaluated. The approved FRA–ANP topical report, BAW–10179P–A will continue to be used to ensure that the required safety limits are satisfied. Therefore, these changes do not involve the possibility of a new or different kind of accident from any accident previously evaluated.

Addition of a limited number of lead test assemblies: This change is administrative in nature and it is proposed for consistency with the ITS standard. Crystal River Unit 3 does not intend to load lead test assemblies in the upcoming fuel cycle. When lead test assemblies are to be loaded, they will be designed and manufactured to ensure compatibility with the co-resident fuel assemblies, core internal structures, and fuel handling and storage equipment. The approved Framatome ANP topical report BAW–10179P–A will be used to ensure that the lead test assemblies meet all applicable limits of the safety analysis and that the lead test assemblies are placed in non-limiting core locations. Applicable mixed core penalties and core operating limits will be developed and applied. Therefore, use of lead test assemblies will not involve the possibility of a new or different kind of accident from any previously evaluated.

(3) [Does not] [i]nvolve a significant reduction in a margin of safety.

M5 advanced alloy: The proposed changes will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the M5 alloy are not significantly different from those of Zircaloy-4. The M5 alloy is expected to perform similarly or better [than] Zircaloy-4 for all normal operating and accident scenarios, including both non-LOCA [loss-of-coolant accident] and LOCA scenarios. For LOCA scenarios, where the slight differences in M5 material properties relative to Zircaloy-4 could have some impact on the overall accident scenario, plant-specific LOCA analyses will be performed prior to the use of fuel assemblies with fuel rods or fuel assembly components containing M5. These LOCA analyses, required by ITS 5.6.2.18, "Core Operating Limits Report (COLR)," will demonstrate that all applicable margins of safety will be maintained by the use of the M5 alloy.

Removal of design parameters of maximum fuel enrichment, active fuel length, rod weight and Control Rod content: Approved methodologies will be used in the cycle-specific safety analysis to evaluate the use of the M5 advanced alloy, and account for various assembly differences (various rod weights and active fuel lengths). The location of the design information does not affect the margin of safety.

Addition of a limited number of lead test assemblies: This change is administrative in nature and is proposed for consistency with the ITS standard. Crystal River Unit 3 does not intend to load lead test assemblies in the upcoming fuel cycle. When lead test assemblies are to be loaded, the approved Framatome ANP topical report BAW–10179P–A will be used to ensure that all applicable limits of the safety analysis are met and that the lead test assemblies are placed in nonlimiting core locations. Applicable mixed core penalties and core operating limits will be developed and applied. There will be no significant reduction in the margin of safety when a limited number of lead test assemblies are utilized.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, Associate General Counsel (MAC–BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Allen G. Howe.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: November 25, 2002.

Description of amendment request: The proposed license amendment would modify plant Technical Specifications (TSs) and the associated spent fuel pool (SFP) criticality analyses to eliminate credit for the Boraflex™ neutron absorber in SFP fuel storage racks and credit specific rules to control fuel assembly positioning in the SFP racks. TS 3.9.11 is revised to add a Limiting Condition for Operation for the SFP soluble boron concentration and require periodic surveillance of this parameter. This submittal provides justification for removing the description of the poison material in the spent fuel racks from Section 5 of the Unit 1 TSs, that was requested to be added by the licensee's cask pit spent fuel storage rack submittal dated October 23, 2002. In addition, a new SFP dilution analysis was performed that supports the criticality analysis requirement for a minimum soluble boron concentration.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

(1) Would operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment to eliminate reliance on Boraflex™ and to credit SFP soluble boron for reactivity control in the spent fuel pool storage racks was evaluated for impact on the following previously evaluated events:

- A fuel handling accident (FHA)
- A fuel mispositioning event
- A cask drop accident
- A loss of spent fuel pool cooling

The proposed amendment does not modify the facility. A new criticality analysis credits existing soluble boron in the SFP water and specific fuel positioning rules for reactivity control, without requiring any physical changes to the fuel storage racks. The amendment does not change any rack module location or any module's designation as Region 1 or Region 2 storage. There is no significant increase in the probability of a fuel handling accident in the SFP that is caused by crediting soluble boron and new fuel positioning rules, rather than Boraflex™, for reactivity control. The probability of a fuel handling accident is a function of the equipment design and procedures used when handling irradiated fuel. Neither of these features is affected when soluble boron, instead of Boraflex™, is credited for reactivity control in the SFP.

There is no increase in the probability of an accidental fuel assembly mispositioning when crediting the presence of soluble boron in fuel pool water for reactivity control. Fuel assembly selection and manipulation will continue to be controlled by approved fuel handling procedures; these procedures require the identification of a verified target location prior to grappling the assembly. Fuel placement will be in accordance with the revised TS.

There is no increase in the consequences of either an FHA or an accidental mispositioning of a fuel assembly into the SFP racks. Consequences of a FHA are not increased because the proposed amendment does not change the fuel fission product inventory, local meteorological conditions, or the fission product partition factor provided by fuel pool water. The consequences of an accidental misload are not increased because the criticality analysis demonstrates that the fuel array will remain sub-critical, even if the pool contains a boron concentration below the minimum level required by Technical Specifications. The TS will ensure that an adequate SFP soluble boron concentration is maintained for all conditions.

The proposed fuel positioning rules do not cause the total radionuclide inventory present in the spent fuel pool to increase, or

alter the type or mass of casks that may be placed in the fuel pool, or alter any facet of operation of the spent fuel cask crane. No characteristics of the existing spent fuel cask drop analysis for Unit 1 are affected by the proposed fuel positioning rules or by credit for soluble boron. Therefore, there is no increase in either the probability or the consequences of a cask drop accident caused by this change.

The proposed change does not increase either the probability or the consequences of a loss of normal SFP cooling. The proposed fuel positioning rules do not require any interaction with the fuel pool cooling system. Credit for a portion of the existing soluble boron concentration does not change its interaction with the fuel pool cooling system. The ability to detect and mitigate a loss of SFP cooling event is unchanged, and the revised criticality analysis considered the effects of boiling in the SFP and found them acceptable.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Would operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not modify the physical plant, nuclear fuel, or the design function and operation of the spent fuel pool storage racks at St. Lucie Unit 1. A TS controlled minimum concentration of soluble boron has always been required in the St. Lucie Unit 1 spent fuel pool; as such, the possibility of an inadvertent fuel pool dilution event has always existed. However, the spent fuel pool dilution analysis that accompanies this submittal demonstrates that no credible dilution event could increase fuel pool reactivity such that the effective neutron multiplication factor (k_{eff}) exceeds 0.95. Therefore, implementation of credit for soluble boron to control reactivity in the SFP will not create the possibility of a new or different type of criticality accident.

The limiting fuel assembly mispositioning event does not represent a new or different type of accident. The mispositioning of a fuel assembly within the fuel storage racks has always been possible. The locations of SFP rack modules and the specific modules assigned to each storage region remain unchanged; analysis results show that the storage racks remain subcritical, with substantial margin, following a worst case fuel misloading event. Therefore, a fuel assembly misload event that involves new fuel storage arrangements required by the criticality analysis does not result in a new or different type of criticality accident.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

(3) Would operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

No. The revised fuel positioning requirements proposed by this license amendment provide sufficient safety margin to ensure that the spent fuel pool storage racks will always remain subcritical. To comply with the requirements of 10 CFR 50.68 when crediting soluble boron, the current TS reactivity limit for the fuel storage racks (*i.e.*, k_{eff} less than or equal to 0.95 when flooded with unborated water) will be replaced with two separate limits (k_{eff} less than 1.0 when flooded with unborated water, and k_{eff} less than or equal to 0.95 when flooded with water containing 500 ppm boron).

The proposed amendment maintains the 0.95 reactivity limit by a combination of restrictions on fuel characteristics and fuel positioning, storage cell geometry and by crediting a portion of the soluble boron in the SFP, rather than by crediting Boraflex.

The proposed license amendment does not reduce the margin of safety provided by the soluble boron normally present in fuel pool water; the TS minimum permissible boron concentration is not decreased. The TS minimum required value of 1720 ppm is substantially greater than the 500 ppm value required by the updated criticality analysis to assure k_{eff} remains = 0.95 for non-accident conditions; it is also substantially greater than the soluble boron concentration necessary to compensate at a 95% probability, with a 95 percent confidence for the limiting postulated reactivity anomaly in the fuel pool storage racks.

No credible dilution of the fuel pool can result in an SFP soluble boron concentration less than the minimum value required by the criticality analysis. Therefore, an inadvertent dilution event can not challenge safety margins.

Based on these evaluations and the supporting analyses, operating the facility with the proposed amendment does not involve in a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

GPU Nuclear Corporation and Saxton Nuclear Experimental Corporation (SNEC), Docket No. 50–146, Saxton Nuclear Experimental Facility (SNEF), Bedford County, Pennsylvania

Date of amendment request: April 22, 2002, as supplemented on December 5, 2002.

Description of amendment request: The proposed amendment would allow removal of the upper half of the SNEF containment vessel and make a change to the organization to add the position of Vice-President GPU Nuclear Oversight to reflect the merger of GPU Inc. and FirstEnergy Corp.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has determined that Technical Specification Change Request No. 62 involves no significant hazard consideration as defined in 10 CFR 50.92.

1. The proposed changes to the SNEC Technical Specifications do not involve a significant increase in the probability of occurrence or consequences of an accident or malfunction of equipment important to safety previously analyzed in the safety analysis report.

As described in the change to delete Technical Specification 1.1.2, radiation levels inside the Containment Vessel will be below that necessary to maintain the Containment Vessel as an Exclusion Area. Further as required by modified Technical Specification 2.1.1 ventilation controls will be established to monitor and control any potential releases of airborne radioactivity during activities involving removal of the upper dome. Finally an analysis has been performed to determine the dose to a maximally exposed individual due to an accidental release while cutting the Containment Vessel. In developing a source term for the event it was assumed that following the concrete removal process the interior surfaces of the upper Containment Vessel dome was homogeneously coated with concrete dust. NUREG 1507 "Minimum Detectable Concentrations with Typical Radiation Survey Instruments for Various Contaminants and Field Conditions" describes an experiment to determine the attenuation effects due to dusty conditions. The maximum dust loading presented was 9.99 mg/cm^2 for soil. This value was converted to concrete dust by comparing the relative densities of the material (1.5 g/cm^3 for soil and 2.3 g/cm^3 for concrete) or 15.3 mg/cm^2. This amount of dust coating the internal surfaces of the Containment Vessel dome (9.05E6 cm^2) results in 299 pounds of dust being left in the Containment Vessel.

Table 1 provides the mix of isotopes remaining at the SNEC Facility based on the most recent survey results and isotope decay. During the removal operation a resuspension factor of 1.9E–2/m (as described in NUREG/CR 0130 "Technology, Safety and Costs of Decommissioning a Reference Pressurized Water Reactor Power Station", Volume 2, page J–27) was selected to represent the amount of concrete dust going airborne. This parameter is about one order of magnitude larger than that used in any other accident analyses described in the NUREG. This entire volume of dust was assumed to be released, unfiltered, directly to the environment.

An accident dispersion factor (c/Q) of 3.41E–3 sec/m^3, was also selected as it is the highest, thus most conservative, value used in the SNEC Facility Offsite Dose Calculation Manual (ODCM). Additionally composite dose conversion factors were selected from

Table 5–1 of EPA 400–R–92–001 "Manual of Protective Action Guides and Protective Guides for Nuclear Incidents" (US EPA, May 1992).

Based on the above a calculated dose of 3.23E–4 mrem to the maximally exposed individual represents a conservative estimate for an accidental release. For comparison Section 3.1 of the SNEC Facility USAR estimated the dose from an unfiltered release due to a material handling event of 1.5 mrem to the maximally exposed individual.

Thus this proposed change does not involve a significant increase in the probability of occurrence or consequences of an accident or malfunction of equipment important to safety previously analyzed in the SNEC Facility USAR.

For the portions of the amendment that would make a change to the organization to add the position of Vice-President GPU Nuclear Oversight to reflect the merger of GPU Inc. and FirstEnergy Corp, these changes are administrative in nature. As such they have no effect on the probability of occurrence or consequences of an accident or malfunction of equipment important to safety.

2. The proposed changes to the SNEC Technical Specifications will not create the possibility for an accident or malfunction of a different type than any previously evaluated in the safety analysis report.

As described in the response to item 1 above, the limiting accidental release during segmentation of the Containment Vessel dome involves the direct release of radioactive material to the environment. This event is similar to both a material handling event as described in Section 3.1 of the SNEC Facility USAR, and loss of engineering controls during segmentation as described in Section 3.4 of the SNEC Facility USAR. Thus the possibility of a new accident is not created.

For the portions of the amendment that would make a change to the organization to add the position of Vice-President GPU Nuclear Oversight to reflect the merger of GPU Inc. and FirstEnergy Corp, these changes are administrative in nature. As such they have no effect on the possibility of an accident or malfunction of a different type.

3. The changes will not involve a significant reduction in the margin of safety as defined in the basis for any technical specification for SNEC. The SNEC Facility Technical Specifications do not contain a defined margin of safety. However the implied margin of safety is to protect members of the public from exposure to radioactive material.

At the point in time that these Technical Specifications would take affect general radiation levels in the SNEC Facility Containment Vessel would be such that the Containment Vessel could be opened for unrestricted use as defined in 10 CFR 20.1301. Additionally the dose to a maximally exposed individual from an accidental release during removal of the Containment Vessel dome is several orders of magnitude below that from the limiting accidents defined in the SNEC Facility USAR. Thus the margin of safety is not reduced.

For the portions of the amendment that would make a change to the organization to add the position of Vice-President GPU Nuclear Oversight to reflect the merger of GPU Inc. and FirstEnergy Corp, these changes are administrative in nature. As such they have no effect on the margin of safety as defined in the basis for any technical specification for SNEC.

The NRC staff has reviewed the analysis of the licensees and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for the Licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Program Director: William D. Beckner.

TABLE 1.—MAXIMUM EXPOSED INDIVIDUAL DOSE FROM CUTTING THE CV

Isotope	CV concrete activity (Ci) per table 4.13 SNEC char. report	Fraction remaining as dust (uCi)	CV wall area concetration (uCi/m)[2]	CV air concetration (uCi/m)[3]	Instantaneous release rate (uCi/sec)[4]	Concentration (uCi/cm)[3]	DCF[7]	Offsite dose (mrem)
Am – 241	8.24e – 05	4.68e – 03	5.17e – 06 ..	9.83e – 08 ..	2.93e – 04	9.99e – 13	1.47e+05 ..	1.47e – 04
Co – 60	4.60e – 02	2.61e+00 ..	2.89e – 03 ..	5.49e – 05 ..	1.63e – 01	5.57e – 10	7.50e+01 ..	4.18e – 05
Cs – 137	2.38e – 01	1.35e+01 ..	1.49e – 02 ..	2.84e – 04 ..	8.46e – 01	2.88e – 09	1.14e+01 ..	3.28e – 05
C – 14	5.74e – 03	3.26e – 01	3.60e – 04 ..	6.84e – 06 ..	2.04e – 02	6.96e – 11	6.94e – 01	4.83e – 08
Eu – 152	1.42e – 03	8.07e – 02	8.91e – 05 ..	1.69e – 06 ..	5.05e – 03	1.72e – 11	7.50e+01 ..	1.29e – 06
H – 3	1.29e – 01	7.33e+00 ..	8.10e – 03 ..	1.54e – 04 ..	4.58e – 01	1.56e – 09	2.14e – 02	3.34e – 08
Ni – 63	3.93e – 02	2.23e+00 ..	2.47e – 03 ..	4.69e – 05 ..	1.40e – 01	4.76e – 10	2.11e+00 ..	1.01e – 06
Pu – 239	5.24e – 05	2.98e – 03	3.29e – 06 ..	6.25e – 08 ..	1.86e – 04	6.35e – 13	1.44e+05 ..	9.17e – 05
Pu – 241	1.84e – 04	1.05e – 02	1.15e – 05 ..	2.19e – 07 ..	6.54e – 04	2.23e – 12	2.75e+03 ..	6.13e – 06
Sr – 90	1.59e – 04	9.03e – 03	9.98e – 06 ..	1.90e – 07 ..	5.65e – 04	1.93e – 12	4.44e+02 ..	8.56e – 07
Total	4.60e – 01	2.61e+01 ..			1.63e+00 ..			2.70e+05

[1] Fraction remaining determined by: (299 lbs dust/5.26E6 lbs total concrete in CV) × 1E6 uCi/Ci × CV concrete activity.
[2] Area concentration determined by dividing dust fraction remaining by 9.05E2 m^2 (surface of CV shell being removed).
[3] Air concentration determined by multiplying CV wall area activity by 1.9E – 2/m (NUREG 0130 resuspension factor for dust sweeping).
[4] Calculated by multiplying CV air specific activity by CV volume (2.98E3 m^3) instantaneously released in one second.
[5] Maximum atmospheric dispersion factor (X/Q) is 3.41E–3 sec/m^3 at the site boundary (200 meters) and in Sector N per SNEC ODCM Revision 5.
[6] Calculated by multiplying X/Q × activity released in uCi/sec × 1e – 6 m^3/cm^3.
[7] Per EPA 400–R–92–001, Table 5–1.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 10, 2002.

Description of amendment request: This proposed amendment would replace the fire protection (FP) requirements contained in Facility Operating License (FOL) Section 2.C.(4) with the standard fire protection FOL condition recommended by Generic Letter 86–10, Section F, adapted to Cooper Nuclear Station (CNS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change would revise the CNS Operating License condition concerning

the FP program and its change process. It does not alter the FP requirements in the FHA [fire hazard analysis] or in the USAR [updated safety analysis report] including the assumptions underlying them. Neither does it alter SSCs [structures, systems or components] relied on by analyses to mitigate accidents or special events. Since it does not change any of the FP requirements or analyses, this proposed amendment does not introduce a new initiator for any of the accidents analyzed in the CNS USAR or considered therein. Because it does not specifically change any FP requirements or mitigating SSCs, this proposed amendment does not introduce a new mechanism for degrading the mitigating features considered for the accidents analyzed. By introducing no new accident initiators and no new mechanisms for degradation of mitigating features, no significant increase in the probability or consequences of an accident previously evaluated is involved in the proposed change. Therefore, the proposed change does not result in a significant increase in radiological doses for any Design Basis Accident and does not result in a significant increase in the types or amounts of any effluents that may be released off-site.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment does not physically change the fit, form, or function of any SSC credited in the accident analyses or in the FHA, Technical Requirements Manual (TRM), or the USAR. The proposed change does not alter assumptions or requirements used in the FHA, TRM, or USAR, nor does it affect the CNS Fire Protection program. It does not, therefore, alter the FP program or affect the plant's ability to achieve and maintain safe shutdown in the event of a fire, and it does not result in a reduction in the level of fire protection of the facility. Because it does not change FP requirements, the FP program or fire-mitigating SSCs, this proposed change does not create the possibility of a new or different kind of accident from those previously evaluated for CNS.

3. Do the proposed changes involve a significant reduction in the margin of safety?

The proposed amendment does not alter the design features of the approved FP plan. The proposed amendment does not alter administrative controls in the CNS Fire Protection program necessary to ensure required performance of physical barriers during anticipated operational occurrences and postulated accidents. The proposed change does not alter the NRC approved Fire Protection program as described in FP SER [safety evaluation report] dated May 23, 1979, SER Supplement 1 dated November 21, 1980, SER dated September 21, 1983, SER dated April 16, 1984, SER dated August 21, 1985, SER dated April 10, 1986, SER dated November 7, 1988, SER dated August 15, 1995. It does not affect the USAR, the TRM, the FHA or the commitments contained therein. It does not physically change the fit, form, or function of any SSC credited in the accident analyses or in these documents. Because it does not change the requirements, plan or mitigating SSCs, this proposed change does not involve a significant reduction in a margin of safety.

In summary, the proposed amendment does not involve a significant increase in the probability or consequences of an accident or creates the possibility of a new or different kind of accident or involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: November 22, 2002.

Description of amendment request: **The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS), Section 4.6, "Periodic Testing of Emergency Power System." This proposed amendment would allow KNPP to inspect the diesel generators (DGs) at least once per refueling frequency either while the plant is operating or during a refueling outage. Current TS requires an inspection during the refueling outage without exception. In addition, the proposed amendment would allow KNPP to make administrative changes to TS Section 4.6. The proposed change provides operational flexiblity in the schedule of maintenance activities.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The DGs are accident mitigating equipment, not accident initiating equipment. Consequently, there will be no impact on any accident probabilities by the approval of the requested amendment.

The proposed change does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. Consequently, no analysis assumptions are violated and there are no adverse effects on the factors that contribute to off-site or on-site dose as the result of an accident.

The format, typographical, grammatical, and standardized naming convention changes in addition to the WORD conversion are administrative in nature and therefore have no impact on accident initiators or plant equipment.

Based on the above, the proposed administrative changes and permitting DG inspections to be performed during plant operation does not involve a significant increase in the probabilities or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident mechanisms would be created as a result of NRC approval of this amendment request since no changes are being made to the plant that would introduce any new accident mechanisms. Equipment would be operated in the same configurations with the exception of the mode in which the inspection is credited. The inspection will be performed within the current approved Technical Specification limiting condition for operation (LCO). This amendment request does not impact any plant systems that are accident initiators or adversely impact any accident mitigating systems.

The proposed administrative changes do not involve any modifications to the physical plant or operations. Administrative changes do not contribute to accident initiators nor do they produce a new accident scenario. Based on the above, implementation of the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include fuel cladding, the reactor coolant system, and the containment system. The proposed change to the inspection timing for the DGs do not affect the operability requirements for the DGs, as verification of such operability will continue to be performed as required. Continued verification of operability supports the capability of the DGs to perform their required function of providing emergency power to plant equipment that supports the fission product barriers. Consequently, the performance of these fission product barriers will not be impacted by implementation of this license amendment request and therefore does not involve a significant reduction in the margin of safety.

The administrative changes do not affect plant equipment or operation. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Esq., Shaw Pittman, Potts & Trowbridge, 2300 N. Street, NW., Washington, DC 20037–1128.

NRC Section Chief: L. Raghavan.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: August 27, 2002.

Description of amendment requests: The proposed license amendments would revise the term "minimum measured flow per loop" to "measured loop flow" in the allowable value and nominal trip setpoint for the Reactor Coolant Flow-Low reactor trip function contained in Table 3.3.1–1, "Reactor Trip System Instrumentation," of Technical Specification (TS) 3.3.1. In addition, the proposed amendments would allow for an alternate method for the measurement of reactor coolant system (RCS) total volumetric flow rate through measurement of the elbow tap differential pressures on the RCS primary cold legs. The use of elbow tap differential pressures normalized to Diablo Canyon Power Plant Cycle 1 and 2 precision flow calorimetrics would improve the accuracy of the RCS flow measurement through reduction of the effect of hot leg temperature streaming that is present in the current flow calorimetric method.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the Technical Specification (TS) 3.3.1 Table 3.3.1–1 term "minimum measured flow per loop" to "measured loop flow" in the allowable value and nominal trip setpoint for the Reactor Coolant Flow-Low reactor trip function and allows an alternate method for the measurement of reactor coolant system (RCS) total flow to meet TS surveillance requirement (SR) SR 3.4.1.4 through measurement of the elbow tap differential pressures on the RCS primary cold legs.

The change will not increase the probability of an accident previously evaluated because adequate RCS flow will still be assured. The Reactor Coolant Flow-Low reactor trip function allowable value and nominal trip setpoint are accident mitigation functions and are not an accident initiator. The elbow tap method to measure RCS flow and the change to the flow definition associated with the Reactor Coolant Flow-Low reactor trip function do not involve a plant modification.

For the elbow tap method to measure RCS flow, sufficient margin exists to account for all reasonable instrument uncertainties and therefore the RCS flow will continue to be maintained at a value which is bounded by the design basis accident initial conditions. The change to the flow definition associated with the Reactor Coolant Flow-Low reactor trip function allowable value and nominal trip setpoint does not change a design basis accident initial condition or the conditions at the time of reactor trip during a design basis accident and therefore has no adverse effect on the design basis accidents which credit the Reactor Coolant Flow-Low reactor trip setpoint.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the flow definition associated with the Reactor Coolant Flow-Low reactor trip function allowable value and nominal trip setpoint and the proposed elbow tap method to measure RCS flow will not create the possibility of a new or different type of accident from any previously evaluated. There are no physical changes being made to the plant and there are no changes in operation of the plant that could introduce a new failure mode, creating an accident which has not been evaluated.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to the flow definition associated with the Reactor Coolant Flow-Low reactor trip function allowable value and nominal trip setpoint and the proposed elbow tap method to measure RCS flow will not reduce the margin of safety. For the proposed elbow tap flow method, sufficient margin exists to account for all reasonable instrument uncertainties and thus the RCS flow will continue to be maintained at a value which is bounded by the design basis accident initial conditions, and no adverse effect on the plant response to design basis accidents is created. The change in the flow definition associated with the Reactor Coolant Flow-Low reactor trip function allowable value and nominal trip setpoint does not change a design basis accident initial condition or the conditions at the time of reactor trip during a design basis accident, and therefore has no effect on the plant response to design basis accidents which credit the Reactor Coolant Flow-Low reactor trip setpoint. Since the change does not affect the response to design basis accidents, it does not result in a decrease in departure from nucleate boiling margin or reactor coolant system peak pressure margin for the design basis accidents.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: November 1, 2002.

Description of amendment requests: The proposed license amendments would revise Technical Specification (TS) 3.3.1, "Reactor Trip System (RTS) Instrumentation," and TS 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation" as follows: (1) Revise both the RTS and ESFAS instrumentation TS and TS Bases to change or clarify the allowances for bypassing and tripping tested channels with other channels inoperable; (2) remove Surveillance Requirement 3.3.1.10 from Function 16.b, "Turbine Stop Valve Closure;" (3) correct the nominal trip setpoint value for Function 16.b, "Turbine Stop Valve Closure;" (4) correct the allowable value for the Function 18.f, "Turbine Impulse Chamber Pressure, P–13;" and (5) remove and relocate the nonsafety-related turbine trip function from Function 5 of Table 3.3.2–1, "Turbine Trip and Feedwater Isolation." This function will be relocated to other owner-controlled documents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes in the required action statements in the Limiting Conditions for Operation (LCOs) for the allowable surveillance testing configurations for both the reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instruments will not change the probability or consequences of an accident previously evaluated.

The proposed surveillance testing configuration changes only clarify available surveillance testing configurations and

limitations on those configurations. The changes do not modify how the RTS and ESFAS functions respond to any accident condition. These surveillance testing configurations provide greater flexibility to prevent inadvertent actuation of these functions that could be a precursor for an accident.

Previous Diablo Canyon Power Plant (DCPP) submittals have been approved providing for the capability of surveillance testing in trip and/or in bypass. Surveillance testing in bypass is considered the preferred method for most Eagle 21 instruments. However, where testing by tripping a single channel without causing a function actuation is acceptable, that capability was also maintained.

Although some of the changes may appear to add new allowable surveillance testing configurations, all of the proposed configurations are based on the application of the intent behind the existing Technical Specification (TS) wording. The limitations on surveillance testing configurations provided by the proposed changes are to ensure that there are no spurious actuations and that during testing a valid signal will cause the associated functions to actuate as designed. None of these configurations place the associated function in a logic that has not been previously evaluated and approved.

The proposed elimination of the channel calibration for the turbine stop valve position switches will not change the probability or consequences of an accident previously evaluated since these switches are not subject to drift. These limit switches are installed with fixed limit setpoints that actuate based on valve position and they are not calibrated in the field. As a result, a channel calibration being performed on these switches provides no useful purpose other than to verify function similar to the remaining trip actuation device operational test (TADOT). As a result, performing only the TADOT provides all necessary assurances of operability.

The correction of the turbine stop valve closure nominal trip setpoint is administrative in nature and will not change the probability or consequences of an accident previously evaluated. This was an oversight in the Improved Technical Specification (ITS) review and conversion process. The proposed change only returns the setpoint to the previously evaluated value.

The proposed change to the allowable value for Function 18.f, "Turbine Impulse Chamber Pressure, P–13," is administrative in nature and will not change the probability or consequences of an accident previously evaluated. The P–13 intended trip setpoint has always been maintained at 10 percent and remains unchanged. This modification is performed to provide consistency with current methodology and NUREG–1431, and does not affect the operation of the protective function.

The proposed removal and relocation of the turbine trip function from ESFAS Function 5 will not change the probability or consequences of an accident previously evaluated. The turbine trip function is nonsafety-related and is not credited in any design bases accident scenario. The proposed change only clarifies importance of the two trip functions. The proposed changes in this LAR [License Amendment Request] do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes in the required action statements in the LCOs for the allowable surveillance testing configurations for both the RTS and ESFAS instruments will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes only clarify previously available surveillance testing configurations and limitations on those configurations. These clarifications ensure maximum surveillance testing flexibility to prevent inadvertent actuation of these functions that could be a precursor for an accident. The changes do not modify any equipment, hardware or how the RTS and ESFAS functions respond to any accident condition.

The proposed elimination of the channel calibration for the turbine stop valve position switches will not create the possibility of a new or different kind of accident from any accident previously evaluated. This change does not modify any equipment, hardware or functions. The switches are installed with fixed limit setpoints that actuate based on valve position. The switches are not subject to drift and are not calibrated in the field. As a result, a channel calibration being performed on these switches provides no useful purpose other than to verify function similar to the required TADOT. As a result, performing only the TADOT provides equivalent assurances of operability.

The correction of the turbine stop valve closure nominal trip setpoint in Function 16.b, "Turbine Stop Valve Closure," is administrative in nature and will not create the possibility of a new or different kind of accident from any accident previously evaluated. This was an oversight in the ITS review and conversion process. The proposed change does not modify any hardware or equipment, and only returns the setpoint to the previously evaluated value.

The proposed change to the allowable value for Function 18.f, "Turbine Impulse Chamber Pressure, P–13," is administrative in nature and will not create the possibility of a new or different kind of accident from any accident previously evaluated. The P–13 intended (nominal) trip setpoint has always been maintained at 10 percent and remains unchanged. This change does not modify any equipment or hardware. This modification is performed to provide consistency with current methodology and NUREG–1431, and does not affect the operation of the protective function.

The proposed removal and relocation of the turbine trip function from ESFAS Function 5 will not create the possibility of a new or different kind of accident from any accident previously evaluated. The turbine trip function is nonsafety-related and is not credited in any design bases accident scenario. The proposed change only clarifies importance of the two trip functions.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes in the required action statements in the LCOs for the allowable surveillance testing configurations for both the RTS and ESFAS instruments will not involve a significant reduction in a margin of safety. The proposed changes only clarify previously available surveillance testing configurations and limitations on those configurations. These clarifications ensure maximum surveillance testing flexibility to prevent inadvertent actuation of these functions that could be a precursor for an accident. The changes do not modify any equipment, hardware or how the RTS and ESFAS functions respond to any accident condition.

The proposed elimination of the channel calibration for the turbine stop valve position switches will not involve a significant reduction in a margin of safety. This change does not modify any equipment, hardware or functions. The switches are installed with fixed limit setpoints that actuate based on valve position. The switches are not subject to drift and are not calibrated in the field. As a result, a channel calibration being performed on these switches provides no useful purpose other than to verify function similar to the required TADOT. As a result, performing only the TADOT provides equivalent assurances of operability.

The correction of the turbine stop valve closure nominal trip setpoint in Function 16.b, is administrative in nature and will not involve a significant reduction in a margin of safety. This was an oversight in the ITS review and conversion process. The proposed change does not modify any hardware or equipment, and only returns the setpoint to the previously evaluated value.

The proposed change to the allowable value for Function 18.f, "Turbine Impulse Chamber Pressure, P–13," is administrative in nature and will not involve a significant reduction in a margin of safety. The P–13 intended (nominal) trip setpoint has always been maintained at 10 percent and remains unchallenged. This change does not modify any equipment or hardware. This modification is performed to provide consistency with current methodology and NUREG–1431, and does not affect the operation of the protective function.

The proposed removal and relocation of the turbine trip function from ESFAS Function 5 does not involve a significant reduction in a margin of safety. The turbine trip function is nonsafety-related and is not credited in any design bases accident scenario. The proposed change only clarifies importance of the two trip functions.

None of the proposed changes affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendments request: December 9, 2002.

Description of amendments request: The proposed amendments would revise Technical Specification 3.7.5, "Auxiliary Feedwater System," Surveillance Requirement (SR) 3.7.5.2 for San Onofre Nuclear Generating Station, Units 2 and 3. Specifically, the proposed change would change wording of the Frequency of SR 3.7.5.2 from "31 days on a Staggered Test Basis" to "In accordance with the Inservice Testing Program." Such inservice tests confirm component operability, trend performance, and detect incipient failures by indicating abnormal performance. This change is requested to implement recommendations from the Standard Technical Specifications for Combustion Engineering Plants, NUREG–1432, Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

In June 2001, the Nuclear Regulatory Commission (NRC) issued NUREG 1432, Revision 2, "Standard Technical Specifications Combustion Engineering Plants." For Technical Specification 3.7.5, "Auxiliary Feedwater (AFW) System," Surveillance Requirement (SR) 3.7.5.2 requires verification that each AFW pump's developed head at the flow test point is greater than or equal to the required developed head which ensures that AFW pump performance has not degraded during the cycle. This test confirms one point on the pump design curve and is indicative of overall performance. This proposed change will revise San Onofre Nuclear Generating Station (SONGS) Surveillance Frequency to be consistent with NUREG 1432, Revision 2. This change in and of itself will have no effect on the probability or consequences of an accident previously evaluated.

Once this change to the Technical Specification is approved, changes to the Surveillance Frequency of the AFW pumps would be controlled in accordance with the Risk-Informed Inservice Testing Program.

Therefore, the proposed change does not involve a significant increase in the probability of consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment will not change the design, configuration or method of operation of the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment will change the SR 3.7.5.2 Frequency from "31 days on a Staggered Test Basis" to "In accordance with the Inservice Testing Program." The proposed change does not change the operation or surveillance requirements. It does not change the design function of any of AFW system components. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Based on the above, Southern California Edison concludes that the proposed amendment present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: December 2, 2002.

Description of amendment request: The proposed amendments change Technical Specification Surveillance Requirement 3.6.4.1.2 to require that only one access door in each access opening of the secondary containment be verified closed every 31 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [Does] the proposed change [* * *] involve a significant increase in the probability or consequences of an accident previously evaluated[?]

The proposed change to Surveillance Requirement SR 3.6.4.1.2 would require that only one of the two secondary containment access doors be verified closed; presently, both doors are required to be verified closed. This change is administrative in nature in that it does not involve, require, or result from any physical change to me secondary containment boundary or access door configuration. The change to Surveillance Requirement SR 3.6.4.1.2 is consistent with TSTF Standard Technical Specification Change Traveler TSTF–18, Revision 1, and Surveillance Requirement SR 3.6.4.1.3 of Revision 2 of Volume 1 of NUREG–1433. As indicated in the "Justification" portion of Standard Technical Specification Change Traveler TSTF–18, Revision 1, verifying one of the two access doors is closed is sufficient to ensure that the infiltration of outside air does not prevent the establishment and preservation of the required negative pressure within the secondary containment. Indeed, neither the requirements regarding minimum negative pressure and maximum infiltration and drawdown time nor the actions required to be taken should these requirements not be met will be altered by me proposed Licensing amendment.

Because the physical characteristics and performance requirements of the secondary containment will not be altered and the change to Surveillance Requirement SR 3.6.4.1.2 is consistent with the current revision of NUREG–1433, the proposed Licensing amendment can not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. [Does] the proposed change [* * *] create the possibility of a new or different kind of accident from any previously evaluated[?]

For the reasons previously discussed, neither the secondary containment boundary nor the access door configuration will be altered by or because of the proposed change to the surveillance requirement. Likewise, the requirements defining and governing secondary containment operability and functionality, that is, Standby Gas Treatment system flow rate and secondary containment negative pressure and drawdown limits, will not be changed. The secondary containment, including its access openings, will remain physically unaltered; will function as presently described in the Updated Final Safety Analysis Report [(UFSAR)]; and will be subject to the same structural and functional requirements. Under these circumstances, this change can not, and does not, create the possibility of a new or different kind of accident from any previously evaluated.

3. [Does] the proposed change [* * *] involve a significant decrease in the margin of safety[?]

The requirements defining and governing secondary containment operability and functionality, that is, Standby Gas Treatment system flow rate and secondary containment negative pressure and drawdown limits, will not be changed. The secondary containment, including its access openings will function as presently described in the [* * *] UFSAR and will be subject to the same structural and functional requirements. Therefore, this change can not, and does not, reduce any margin of safety associated with the secondary containment function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: John A. Nakoski.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 4, 2002.

Brief description of amendments: The proposed amendments revise several of the Required Actions in the Technical Specifications (TS) that require suspension of operations involving positive reactivity additions or suspension of operations involving reactor coolant system (RCS) boron concentration reductions. In addition, the proposed amendments revise several Limiting Conditions for Operation (LCO) Notes that preclude reductions in RCS boron concentration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The RTS [Reactor Trip System] instrumentation and reactivity control systems will be unaffected. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the FSAR [Final Safety Analysis Report] are not adversely affected because the changes to the Required Actions and LCO Notes assure the limits on SDM [Shutdown Margin] and refueling boron concentration continue to be met, consistent with the analysis assumptions and initial conditions included within the safety analysis and licensing basis. The activities covered by this amendment application are routine operating evolutions. The proposed changes do not reduce the capability of reborating the RCS.

The proposed changes will not involve a significant increase in the probability of any event initiators. The initiating event for an inadvertent boron dilution event, as discussed in FSAR Section 15.4.6, is a failure in the reactor makeup control system (RMCS) or operator error such that inventory makeup with the incorrect boron concentration enters the RCS by way of the CVCS [Chemical and Volume Control System]. Since the RMCS design is unchanged, there will be no initiating event frequency increase associated with equipment failures. However, there could be an increased exposure time per operating cycle to potential operator errors during TS Conditions that, heretofore, prohibited positive reactivity additions. As such, the RTS Instrumentation and RCS Loops TS Bases changes from TSTF [Technical Specification Task Force]-286, Revision 2, have been augmented to preclude the introduction of reactor makeup water into the RCS via the CVCS when one source range neutron flux channel is inoperable or when no RCS loop is in operation. The equipment and processes used to implement RCS boration or dilution evolutions are unchanged and the equipment and processes are commonly used throughout the applicable MODES under consideration. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating limits. The proposed changes merely permit the conduct of normal operating evolutions when additional controls over core reactivity are imposed by the Technical Specifications. The proposed changes do not introduce any new equipment into the plant or alter the manner in which existing equipment will be operated. The changes to operating procedures are minor, with clarifications provided that required limits must continue to be met. No performance requirements or response time limits will be affected. These changes are consistent with assumptions made in the safety analysis and licensing basis regarding limits on SDM and refueling boron concentration.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the limits on SDM or refueling boron concentration. The nominal trip setpoints specified in the Technical Specifications Bases and the safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis is changed. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor (FDH), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and

requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, Docket No. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: September 16, 2002.

Brief description of amendment: The amendment revises a license condition by deleting the requirement to include check valve MVD–V5008 in the facility check valve program.

Date of issuance: December 13, 2002.

Effective date: December 13, 2002.

Amendment No.: 251.

Facility Operating License No. DPR–62: Amendment revises Appendix B, "Additional Conditions."

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68731).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: January 31, 2002, as supplemented on September 18, 2002.

Brief description of amendments: The amendments change the method of verifying boron concentration of each safety injection tank. Rather than taking a sample of each tank every 31 days, the revised technical specification surveillance requirement requires leakage into the tanks to be monitored every 12 hours and a sample to be taken every 6 months.

Date of issuance: December 19, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 255 and 232.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 16, 2002. The September 18, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated December 19, 2002.

No significant hazards consideration comments received: No.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: September 10, 2001, as supplemented by letters dated June 19 and November 8, 2002. The supplemental information provided clarification that did not change the scope or the initial no significant hazards consideration determination.

Brief description of amendment: The amendment revises TS 3/4.9.7 and the corresponding Bases to address the use of a single-failure-proof-handling system for the Spent Fuel Building and to remove the restriction on travel of crane loads in excess of 1800 pounds.

Date of issuance: December 17, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 198.

Facility Operating License No. DPR–61: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10009).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 29, 2002.

Brief description of amendments: The amendments revised the Technical Specifications 3.8.4.7, to modify the note to eliminate the "once per 60 months" restriction on replacing the battery service test by the battery modified performance discharge test. Associated changes to the TS Bases are also included.

Date of issuance: December 17, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 209 & 190.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68733).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: May 30, 2002, as supplemented on October 31, 2002.

Brief description of amendment: The amendment revised the requirements in several administrative programs in Technical Specification Section 6.0, "Administrative Controls." Specifically, the amendment: (1) Replaced the specific management titles for several organizational positions with generic titles, (2) replaced the title of the Quality Assurance Program Description

with a reference to the quality assurance program described or referenced in the Updated Final Safety Analysis Report, and (3) deleted the functions of the Station Nuclear Safety and the Nuclear Facilities Safety Committees and the Vice President-Nuclear Power since their duties and responsibilities are described in the Quality Assurance Program Description.

Date of issuance: December 17, 2002.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 235.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42824).

The October 31 supplemental letter provided clarifying information that did not expand the scope of the amendment or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of application for amendment: June 28, 2002, as supplemented on October 15 (two separate letters), October 17, November 15, and December 6, 2002.

Brief description of amendment: The amendment increases the licensed reactor core power level by 1.66 percent from 3250 megawatts thermal (MWt) to 3304 MWt. The power level increase is considered a measurement uncertainty recapture power uprate.

Date of issuance: December 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 273.

Facility Operating License No. DPR–58: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 23, 2002 (67 FR 48219).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 2002.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Brief description of amendment: The amendment revised Technical Specification 2.7, "Electrical Systems," to increase the amount of diesel fuel oil required for seven days of emergency diesel generator operation.

Date of issuance: December 16, 2002.

Effective date: December 16, 2002, and to be implemented within 30 days of issuance.

Amendment No.: 213.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68741).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: June 24, 2002, as supplemented by letter dated September 24, 2002.

Brief description of amendments: The amendments delete Technical Specification 5.5.3, "Post Accident Sampling System (PASS)," and thereby eliminate the requirements to have and maintain the PASS at Plant Hatch.

Date of issuance: December 18, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 235 & 177.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50958).

The supplement dated September 24, 2002, provided clarifying information that did not change the scope of the June 24, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 18, 2002.

No significant hazards consideration comments received: No

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendments request: October 24, 2001, as supplemented by correspondent e-mails dated August 27, 2002, and September 24, 2002.

Brief description of amendments: The amendments consist of relocating various Technical Specifications (TSs) to the Technical Specification Requirements Manual (TRM). The amendments will relocate TSs 3/4.1.3.3, 3/4.3.3.2, 3/4.3.3.11, 3/4.4.7, 3/4.4.9.2, 3/4.3.4.11, 3/4.7.2, 3/4.7.10, 3/4.9.3, 3/4.9.5, 3/4.9.7, 3/4.10.5, and 3/4.11.2.5 to the TRM. Their associated bases will also be relocated to the TRM to be consistent with relocation of the various TSs. In addition, the proposed amendment corrects various typographical and page numbering errors, deletes an outdated one-time exception, and makes minor formal changes to improve consistency.

Date of issuance: The license amendment is effective as of its date of issuance and shall be implemented within 6 months from the date of issuance.

Effective date: December 17, 2002.

Amendment Nos.: Unit 1—145; Unit 2—33.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 5, 2002 (67 FR 5334).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: September 3, 2002.

Description of amendment request: The proposed amendment revised Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for

any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: December 23, 2002.

Effective date: Date of issuance, to be implemented within 45 days.

Amendment Nos.: 243, 278, 237.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63698).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 2002.

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant , Unit 1, Rhea County, Tennessee

Date of application for amendments: September 3, 2002.

Description of amendment request: The proposed amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: December 11, 2002.

Effective date: Date of issuance, to be implemented within 45 days.

Amendment No.: 42.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63699).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 2002.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket No. 50–280, Surry Power Station, Unit 1, Surry County, Virginia

Date of application for amendment: October 15, 2001, as supplemented November 8, 2001, June 28, 2002, and July 25, 2002 .

Brief Description of amendment: This amendment revises the Technical Specifications to allow a one-time change in the Appendix J Type A containment integrated leakage rate test interval from the required 10 years to a test interval of 15 years at Surry Power Station, Unit 1.

Date of issuance: December 16, 2002.

Effective date: December 16, 2002.

Amendment No.: 233.

Facility Operating License No. DPR–32: Amendment changes the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64309). The November 8, 2001, June 28, 2002, and July 25, 2002, supplements contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 30th day of December 2002.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–156 Filed 1–6–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

January 23, 2003 Public Hearing

Time and Date: 1 p.m., Thursday, January 23, 2003.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Hearing open to the public at 1 p.m.

Purpose: Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Tuesday, January 21, 2003. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Tuesday, January 21, 2003. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Contact Person for Information: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov*.

Dated: January 3, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–313 Filed 1–3–03; 11:17 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

[Extension: Rule 17a–7; SEC File No. 270–238; OMB Control No. 3235–0214.]

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information described below.

Rule 17a–7 [17 CFR 270.17a–7] under the Investment Company Act of 1940 (the "Act") is entitled "Exemption of

certain purchase or sale transactions between an investment company and certain affiliated persons thereof." It provides an exemption from section 17(a) of the Act for purchases and sales of securities between registered investment companies, which are affiliated persons or affiliated persons of affiliated persons of each other, or between a registered investment company and an affiliated person or an affiliated person of an affiliated person, when the affiliation arises solely because of a common adviser, director, or officer. Rule 17a–7 requires investment companies to keep various records in connection with purchase or sale transactions affected by the rule. The rule requires the board of directors of an investment company to establish procedures reasonably designed to ensure that all conditions of the rule have been satisfied. If an investment company enters into a purchase or sale transaction with an affiliated person, the rule requires the investment company to compile and maintain written records of the transaction.[1] In addition, under the rule, the board is required to determine, at least on a quarterly basis, that all affiliated transactions made during the preceding quarter were made in compliance with these established procedures. The Commission's examination staff uses these records to evaluate transactions between affiliated investment companies for compliance with the rule.

The Commission estimates that approximately 1,000 investment companies enter into transactions affected by rule 17a–7 each year and, therefore, are subject to the rule's information collection requirements.[2] The average annual burden for rule 17a–7 is estimated to be approximately two burden hours per respondent, for an annual total of 2,000 burden hours for all respondents.[3] The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Rule 17a–7 requires investment companies to maintain and preserve permanently a written copy of the procedures governing rule 17a–7 transactions. In addition, investment companies are required to maintain written records of each rule 17a–7 transaction for a period of not less than six years from the end of the fiscal year in which the transaction occurred. The collection of information required by rule 17a–7 is necessary to obtain the benefits of the rule. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 27, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–271 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–P

[1] The written records are required to set forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, and the information or materials upon which the board of directors' determination that the transaction was in compliance with the procedures was made.

[2] These estimates are based on conversations with the examination and inspections staff of the Commission and fund representatives. Based on these conversations, the Commission staff estimates that most investment companies (4,000 of the estimated 4,500 registered investment companies) have adopted procedures for compliance with rule 17a–7. Of these 4,000 investment companies, the Commission staff estimates that each year approximately 25% (1,000) enter into transactions affected by rule 17a–7.

[3] This estimate is based in turn on the staff's estimate that the approximately 1,000 funds that rely on rule 17a–7 annually engage in an average of 8 rule 17a–7 transactions and spend approximately 15 minutes per transaction on recordkeeping required by the rule.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (HSBC Bank plc, To Withdraw From Listing and Registration its $500m 7.625% Subordinated Notes (due June 15, 2006) and $300m 6.95% Subordinated Notes (due March 15, 2011) From the New York Stock Exchange, Inc. File No. 1–87110

December 31, 2002.

HSBC Bank plc, a public limited company incorporated under the laws of England and Wales ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its $500m 7.625% Subordinated Notes (due June 15, 2006) and $300m 6.95% Subordinated Notes (due March 15, 2011) ("Securities"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

The Board of Directors ("Board") of the Issuer approved a resolution on November 27, 2002 to withdraw the Issuer's Securities from listing on the NYSE. In making the decision to withdraw its Securities from the NYSE, the Issuer states the Securities are not widely held in the United States and the ongoing burdens associated with maintaining the listing are considered onerous and of little benefit to investors. The Issuer states that it intends to consolidate, as far as possible, the listings of all its Securities on a single stock exchange and be subject to the ongoing reporting requirements of that exchange. In addition, the Issuer states that all the terms and conditions of the Securities will remain unchanged. The Issuer states that its Securities began trading on the London Stock Exchange on December 20, 2002.

Any interested person may, on or before January 21, 2003 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–221 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47113; File No. SR-Amex-2002-89]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by American Stock Exchange LLC Relating to Crossing Procedures for Clean Agency Crosses

December 31, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 5, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 23, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 126(g), Commentary .02 to provide that orders of 5,000 shares or more for the account of a non-member organization may be crossed at a price at or within the bid or offer without being broken up by a specialist or Registered Trader at the cross price. The text of the proposed rule is below. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

Rule 126(g)

Commentary

.02 When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are of 5,000 shares or more and are for the accounts of persons who are not members or member organizations, the member may "cross" those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 151, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction. No member may break up the proposed cross transaction, in whole or in part, at the cross price. *No specialist or Registered Trader may effect a proprietary transaction to provide price improvement to one side or the other of a cross transaction effected pursuant to this Commentary .02.* A transaction effected at the cross price in reliance on this Commentary .02 shall be printed as "stopped stock".

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 126 (Precedence of Bids and Offers) sets out rules governing priority and precedence of bids and offers on the Exchange Floor, and generally provides that bids and offers are entitled to precedence based on time, with a member bidding at the highest price (offering at the lowest price) entitled to priority, and members simultaneously bidding at the highest price (offering at the lowest price) entitled to be on parity and divide executions at their price after a previous sale removes all bids and offers from the Floor. Commentary .02 to Amex Rule 126(g) applies only to agency (that is, both orders for accounts of non-members) crosses (referred to herein as "clean crosses") to buy and sell orders of 5,000 shares or more. This commentary provides that a member may cross those orders at a price at or within the prevailing quotation, with such orders entitled to priority at the cross price over previously entered bids and offers. When crossing these orders, the member must follow the crossing procedures of Amex Rule 151 and another member may trade with either the bid or offer side of the cross, but only to provide price improvement to all or part of the bid or offer. In addition, the member must trade with all other market interest having time priority at that price before trading with any part of the cross transaction.

The Exchange implemented Commentary .02 to facilitate execution of block size crosses on the Amex. In implementing this exception to the Exchange's rules of precedence, and, in reducing minimum share size required to permit a clean cross from 25,000 to 5,000 shares, the Exchange was responding competitively to regional exchanges that were attracting Amex orders because orders to cross are not readily broken up by other trading interest in those markets, which may lack a trading crowd or limit orders on specialists' books.[4]

A member currently is not permitted to break up a proposed clean agency cross at the cross price, but may trade with the bid or offer side to provide price improvement to all or part of the bid or offer. The Exchange proposes to amend Amex Rule 126(g), Commentary .02 to provide that orders of 5,000 shares or more for the account of a non-member or member organization may be crossed at a price at or within the bid or offer without being broken up by a specialist or Registered Trader acting as principal. The proposed rule would still enable members representing agency orders to break up the cross to provide price improvement to all or part of the bid or offer. The purpose of the rule is to continue to reduce the amount of crossing activity lost to regional exchanges or the third market. Because clean crosses are required under Amex Rule 151 to be effected at the minimum price variation, since the advent of decimal pricing, it is possible for the

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[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated December 20, 2002, and enclosures ("Amendment No. 1"). Amendment No. 1 corrected a typographical error in the text of the proposed amendment.

[4] See File No. SR–Amex–92–41, approved in Release No. 34–34089, May 26, 1994 and File No. SR–Amex–01–02, approved in Release No. 34–44123, March 28, 2001.

specialist or other members to interfere with a cross while providing price improvement of only $.01 to a portion of the cross. This may result in a perception that specialists or Registered Traders will break up a proposed clean cross transaction by trading for their own accounts at a minimally improved price ahead of a public customer on the other side of the cross. This perception could encourage a loss of crossing activity to other markets.

Amex clean cross procedures will continue to preserve auction market principles by providing the possibility of price improvement (because members must follow Amex Rule 151 crossing procedures), and by requiring that members trade with other market interest having time priority at that price before trading with any part of the cross transaction. In addition, the Exchange believes the proposal will enhance competition among markets in the execution of agency crosses.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Act in general and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–89 and should be submitted by January 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–269 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78(f)(b).

[6] 15 U.S.C. 78(f)(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47106; File No. SR–NASD–2002–99]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc., and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to Gross Income Assessments and Personnel Assessments

December 30, 2002.

I. Introduction

On July 24, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its Member Regulation (including Enforcement) pricing structures to: (1) Implement a three-tiered flat rate for the Gross Income Assessment ("GIA") that would be applied to gross FOCUS revenue and would eliminate existing deductions and exclusions; (2) use the Personnel Assessment as a more prominent assessable base to fund Member Regulation activities. On August 21, 2002, the NASD amended the proposal.[3] The proposed rule change, as modified by Amendment No. 1, was published for notice and comment in the **Federal Register** on August 30, 2002.[4]

The Commission received 13 comment letters on the proposed rule change.[5] On November 29, 2002, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 21, 2002 letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division") Commission, and attachments ("Amendment No. 1"). In Amendment No. 1, the NASD provided new proposed rule language that completely replaces and supersedes the original proposed rule language, and made minor technical amendments to the rest of the filing.

[4] *See* Securities Exchange Act Release No. 46417 (August 23, 2002), 67 FR 55893.

[5] August 19, 2002 letter from Mary Yeager, Assistant Secretary, New York Stock Exchange, Inc. ("NYSE") to Jonathan G. Katz, Secretary, Commission ("NYSE Letter"); September 17, 2002 letter from Lanny A. Schwartz, Philadelphia Stock Exchange, Inc. ("Phlx") to Jonathan G. Katz, Secretary, Commission ("Phlx Letter"); September 18, 2002 letter from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange ("CBOE") to Jonathan G. Katz, Secretary, Commission ("CBOE Letter"); September 19, 2002 letter from Thomas W. Sexton, Vice President and General Counsel, National Futures Association

Continued

NASD filed a response to the comment letters and simultaneously amended the proposed rule change.[6] This order approves the proposed rule change as modified as Amendment No. 1. Simultaneously, the Commission provides notice of filing of Amendment No. 2 and grants accelerated approval of Amendment No. 2.

II. Summary of Comments

The Commission received 13 comment letters on the proposed rule change, all in opposition to the proposal.[7]

Many commenters objected to the proposal because they believe the proposed fees are not limited to recovery of costs for services performed by the NASD.[8] For example, commenters expressed disapproval of the NASD's proposed changes to the manner in which it calculates the GIA, stating the new method of calculating the GIA would include revenue from transactions for which there is no regulatory nexus between the transactions and the NASD, including transactions that do not involve securities.[9] Some commenters disapprove of the proposal because they believe the amount of the GIA will have an inverse relationship to the resources that the NASD must expend on firms. In other words, the new method of calculating the GIA allegedly would result in a greater financial impact on firms for which the NASD plays a smaller regulatory role.[10]

Commenters objected to the proposal because they believe the NASD will be charging its members who have dual memberships for regulatory services in relation to transactions in covered securities (as defined in the proposals) that are effected on other markets.[11] Additionally, the commenters expressed concern about the precedent the proposal will set. For example, if the NASD is allowed to assess a fee based on its member's futures business, the NFA may determine that it is acceptable to assess fees based on its members' securities business.[12]

In its response to the commenters, the NASD focused only on comments made in connection with the instant proposed rule change.[13] The NASD expressed its belief that the proposed changes to the GIA are fair and equitable, because they will "ensure that all NASD members use the same simplified fee structure and will be assessed on the same uniform basis."[14]

With regard to the commenters' concerns that there is no clear nexus between the NASD's proposed fees and the NASD's regulatory services provided, the NASD explained that most of the commenters objected to including commodities in the GIA.[15] By reinstating the exclusion for commodities income, the NASD believes it has addressed the commenters' concerns in this regard. The NASD stated that it believes that the requirement that fees be reasonable and equitably allocated does not require a fee structure "so specific and complex as to tie specific self-regulatory programs and related expenses to specific business lines within a firm[.]" The NASD reiterated the position outlined in the proposal—that total revenues of a broker-dealer member, combined with trading activity of those members and the number of registered persons, serves as an effective measure of what drives the NASD's regulatory costs.[16] Regarding the concern that other markets may institute fees similar to the

("NFA") to Jonathan G. Katz, Secretary, Commission ("NFA Letter"); September 19, 2002 letter from Patrice Blanc, Chairman and Chief Executive Officer, Fimat USA, Inc. ("Fimat") to Jonathan G. Katz, Secretary, Commission ("Fimat Letter"); September 20, 2002 letter from Catherine D. Dixon, Assistant Secretary of the Commission, U.S. Commodity Futures Trading Commission ("CFTC") to Jonathan G. Katz, Secretary, Commission ("CFTC Letter"); September 26, 2002 letter from Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association ("SIA") to Jonathan G. Katz, Secretary, Commission ("SIA Letter"); September 20, 2002 letter from David J. Vitale, President and Chief Executive Officer, Board of Trade of the City of Chicago, Inc., James J. McNulty, President and Chief Executive Officer, Chicago Mercantile Exchange, Inc., and J. Robert Collins, President and Chief Executive Officer, New York Mercantile Exchange, Inc. to Jonathan G. Katz, Secretary, Commission ("Mercantile Letter"); September 23, 2002 letter from Christopher K. Hehmeyer, Co-Chairman, and Carl W. Gilmore, General Counsel, both of Goldenberg, Hehmeyer and Co. ("Goldenberg") to Jonathan G. Katz, Secretary, Commission ("Goldenberg Letter") September 20, 2002 letter from John M. Damgard, President, Futures Industry Association, Inc. ("FIA") to Jonathan G. Katz, Secretary, Commission ("FIA Letter"); September 23, 2002 letter from Brad W. Corey, Chief Financial Officer, Man Financial Inc. ("Man") to Jonathan G. Katz, Secretary, Commission ("Man Letter"); September 26, 2002 letter from Ronald H. Filler, Senior Vice President, Lehman Brothers, Inc. ("Lehman") to Jonathan G. Katz, Secretary, Commission ("Lehman Letter"); September 20, 2002 letter from Thomas O'Brien, Chief Financial Officer, TransMarket Group, L.L.C. ("TransMarket") to Jonathan G. Katz, Secretary, Commission ("TransMarket Letter").

[2] November 27, 2002 letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, Commission ("NASD Response Letter") and attachments (collectively, "Amendment No. 2"). In Amendment No. 2, the NASD excluded commodities income from Gross Revenue for purposes of the GIA.

[7] *See* footnote 5, *supa*. The Commission notes that, in proposing to modify its regulatory pricing structure, the NASD filed the instant proposed rule change in tandem with SR–NASD–2002–98. *See* Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002). SR–NASD–2002–98 was effective upon filing with the Commission. 15 U.S.C. 78s(b)(3)(A)(ii), 17 CFR 240.19b-4(f)(2). Because the NASD's proposed changes to its regulatory pricing structure were split between two separate yet related rule filings, some of the commenters expressed opposition to the restructuring, generally, without raising specific concerns about SR–NASD–2002–99. *See* NYSE Letter; Phlx Letter; and SIA Letter at 1–2 (absence of the effective rate of the NASD's proposed trading activity fee makes it impossible for SIA member firms to determine the impact of all elements of the NASD's proposed pricing structure). No commenters objected to the Personnel Assessment specifically. Some commenters questioned whether the NASD's proposed restructuring as a whole would be revenue neutral. *See e.g.*, NFA Letter at 1 ("NASD claims that its entire proposal would be revenue neutral, but it does not provide any figures to support that claim.").

[8] *See e.g.*, NYSE Letter; CBOE Letter at 3; NFA Letter at 3–4; Fimat Letter at 1–2; Mercantile Letter at 1; Lehman Letter at 2; Man Letter at 2; TransMarket Letter; FIA Letter at 1 (the proposal " * * * unfairly penalizes member firms that derive a significant portion of their revenue from activities unrelated to their securities business, which are not subject to the oversight of the NASD and with respect to which the NASD provides no regulatory services.") and at 4–5.

[9] *See e.g.*, CFTC Letter at 1; NFA Letter at 1–2 (GIA will collect income via FOCUS reports that is unrelated to securities, such as over-the-counter derivatives, cash commodities, futures, and foreign exchange); Fimat Letter (GIA will have adverse and disproportionate impact on combined broker-dealers/futures commission merchants by allowing the NASD to collect fees on revenue that does not come from securities-related business); Mercantile Letter at 1, 3 ("* * * there is no nexus between the NASD fee and its regulatory responsibilities in the commodity industry."); Goldenberg Letter at 1 (Goldenberg will experience significant increase in its GIA, though "not a single customer * * * would be entitled to utilize any of the regulatory services of the NASD.".

[10] *See* NFA Letter at 4–5; FIA Letter at 2–3; Man Letter at 3.

[11] *See* Phlx Letter at 1; Mercantile Letter at 1.

[12] Mercantile Letter at 4 ("NFA could also decide to impose fees on dually registered members with respect to their securities-related transactions * * * duplicative fees would be imposed at the expense of members' profit margin, or, alternatively, such fees would merely be passed on by the members to the ultimate customers."). *See also* Fimat Letter at 2.

[13] NASD Response Letter at 2–3. The Commission notes that the NASD Response Letter speaks of 15 comment letters, because the NASD listed comment letters received on the instant filing and on SR–NASD–2002–98. There are only 13 letters specific to the instant filing, however, and the NASD will address comments relating to SR–NASD–2002–98 at a later time.

[14] *Id.* at 5. The NASD also noted that it removed deductions and exclusions that were used inconsistently by member firms from the GIA equation. *Id.* However, the NASD reinstated the exclusion for commodities income. Noting that some of its member firms conduct securities and commodities business in a single, jointly registered entity, while other members conduct a substantially similar business in separate entities with separate registrations, the NASD determined that "to subject those conducting securities and commodities business in a single jointly registered entity to the increased expense burden (when the commodities income is already assessed under a comparable regulatory scheme) would result in similar entities receiving different treatment." *Id.*

[15] NASD Response Letter at 7.

[16] *Id.* at 8.

NASD's fees, the NASD restates its position that the fees it is proposing "are directly related to the regulatory responsibilities of NASD, are member regulatory fees not market regulatory fees, and are revenue neutral to NASD." [17]

Finally, with regard to the concern that commenters are unable to comment meaningfully on the proposal because of the lack of specifics on the trading activity fee in SR–NASD–2002–98, the NASD states that it has since established and published the trading activity fee rates. Furthermore, the trading activity fee portion of the NASD's proposed fee restructuring proposal is now subject to full notice and comment.[18]

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letters, and the NASD's response to the comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association [19] and, in particular, the requirements of section 15A(b)(5) of the Act.[20] Section 15A(b)(5) requires, among other things, that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission finds that the three-tiered flat rate for the GIA that the NASD proposes to apply to gross FOCUS revenue and the use of the Personnel Assessment, as described in the instant proposed rule change, is consistent with section 15A(b)(5) of the Act, in that the proposal is reasonably designed to simplify the NASD's fee structure, and to fairly and equitably assess higher fees to those member firms that require a greater portion of NASD regulatory services.

The Commission recognizes the difficulties inherent in restructuring the NASD's regulatory fees, and believes that the NASD has made a good faith effort to do so in a manner that is fair and reasonable. The Commission also notes that the NASD has indicated it will examine the fees periodically, and will adjust the fees accordingly in an effort to keep the fees at a level that is revenue neutral to the NASD.

While some commenters believe there is no clear nexus between the NASD's proposed fees and the regulatory services the NASD provides, the Commission believes that the NASD had adequately addressed this concern. The Commission believes that both the overall business activity of a firm and the level of transactions a firm handles are reflected in the cost of the NASD's regulatory services. If the fee were based on either measure alone firms whose business is predominantly reflected in one or the other measure would subsidize the operations of other firms. Furthermore, the NASD, as a registered national securities association, has a wide-ranging responsibility for overseeing the just and equitable conduct of its members, as well as its members' financial condition, no matter what activities its members choose to conduct through the broker-dealer. The Commission is satisfied that the NASD's proposed GIA is reasonably tailored to apportion fees based on the regulatory services the NASD provides. Additionally, the Commission agrees that the NASD's decision to reinstate the exclusion for commodities income in the GIA should substantially satisfy the commenters who expressed dissatisfaction with this aspect of the proposal.

With regard to the commenters' concern that approval of the NASD's proposed fee restructuring may set a precedent whereby other markets may institute fees similar to the NASD's fees, the Commission notes that any fee proposal filed with the Commission must meet the statutory standard established in section 15A(b))5) of the Act.[21] In particular, the Commission will, as it has done in the instant proposed rule change, assess any such proposal to determine whether or not the proposed fees have a sufficient nexus to the regulatory responsibilities of the proposing entity, and are fees based on the regulation of members as opposed to the regulation of markets.

The Commission believes that the NASD has been responsive to the commenters' concerns that more time and information is necessary to evaluate the NASD's tandem proposed rule changes to restructure its regulatory fees. With the filing of SR–NASD–2002–147 and SR–NASD–2002–148, the NASD has provided the public with further opportunity to evaluate its proposed regulatory fee restructuring.

With regard to all other issues raised by the commenters, the Commission is satisfied that the NASD has adequately and accurately addressed the commenters' concerns.

The Commission finds good cause for approving proposed Amendment No. 2 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The NASD filed Amendment No. 2 in response to comments it received after the publication of the notice of filing of the proposed rule change, to address certain commenters' concerns.[22] Because Amendment No. 2 is responsive to these commenters' concerns, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–99 and should be submitted by January 28, 2003.

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[17] *Id.*

[18] *See* Securities Exchange Act Release No. 46817 (November 12, 2002), 67 FR 69785 (November 19, 2002) (SR–NASD–2002–148).

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78o–3(b)(5).

[21] Exchange rules must comply with section 6(b)(4) of the Act. 15 U.S.C. 78f(b)(4).

[22] Certain commenters objected to the NASD's method of calculating the GIA because it would include revenue from transactions for which there is no regulatory nexus between the transactions and the NASD. See footnote 9, *supra*. Although the NASD believes that the GIA structure as proposed constitutes "a reasonable fee that is equitably allocated, and consistent with the Act," the NASD reinstated the exclusion for commodities. NASD Response Letter at 5. According to the NASD, some of its member firms conduct securities and commodities business in a single jointly registered entity, and other members conduct a substantially similar business as separate entities with separate registrations. Reinstating the exclusion for commodities income allows similarly situated entities to receive the same treatment. While the NASD believes that commodities income drives some of the NASD's regulatory costs for jointly registered firms, it reinstated the exclusion for commodities income. *Id.*

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NASD–2002–99), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–220 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47111; File No. SR–NASD–2002–183]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Amending Nasdaq's Rules Pertaining to Certain Issuer Entry Fees

December 31, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On December 30, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On December 31, 2002 Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend its rules regarding non-refundable application fees, listing fees for rights, and SmallCap entry and annual listing fees. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

4510. The Nasdaq National Market

(a) Entry Fee

(1) [When a] *A* domestic issuer, or foreign issuer raising capital in conjunction with its Nasdaq listing, *that* submits an application for inclusion of any class of its securities (*not otherwise identified in this Rule 4500 series*) in The Nasdaq National Market, [it] shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, [which includes a one-time company listing fee of $5,000 ($1,000 of which is a non-refundable processing fee),] according to the following schedule[:]. *This fee will be assessed on the date of entry in The Nasdaq National Market, except for $5,000 which represents a non-refundable, application fee, and which must be submitted with the issuer's application.*

Up to 30 million shares—$100,000.

30+ to 50 million shares—$125,000.

Over 50 million shares—$150,000.

(2) [When a] *A* foreign issuer not raising capital in conjunction with its Nasdaq listing, including American Depositary Receipts (ADRs), *that* submits an application for inclusion of any class of its securities (*not otherwise identified in this Rule 4500 series*) in The Nasdaq National Market, [it] shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, [which includes a one-time company listing fee of $5,000 ($1,000 of which is a non-refundable processing fee),] according to the following schedule[:]. *This fee will be assessed on the date of entry in The Nasdaq National Market, except for $5,000, which represents a non-refundable, application fee, and which must be submitted with the issuer's application.*

Up to 3 million shares—$50,000.

3+ to 5 million shares—$75,000.

5+ to 30 million shares—$100,000.

30+ to 50 million shares—$125,000.

Over 50 million shares—$150,000.

(3) No change

(4) *An issuer that submits an application for inclusion of any class of rights in The Nasdaq National Market, shall pay, at the time of its application, a non-refundable application fee of $1,000 to The Nasdaq Stock Market, Inc.*

([4]*5*) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

([5]*6*) If the application is withdrawn or is not approved, the entry fee (less the non-refundable *application* [processing] fee) shall be refunded.

(b)–(d) No change

4520. The Nasdaq SmallCap Market

(a) Entry Fee

(1) [When a]*An* issuer *that* submits an application for inclusion of any class of its securities (*not otherwise identified in this Rule 4500 series)* [, other than convertible debentures,] in The Nasdaq SmallCap Market, [it] shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, [which includes a one-time company listing fee of $5,000 ($1,000 of which is a non-refundable processing fee),] according to the following schedule[:]. *This fee will be assessed on the date of entry in The Nasdaq SmallCap Market, except for a non-refundable, application fee of $5,000, which must be submitted with the issuer's application.*

Up to [1 million shares—$9,500.

1+ to] 5 million shares—$[19,000] *25,000.*

5+ to 10 million shares—$[30,875] *35,000.*

10+ to 15 million shares—$[40,375] *45,000.*

Over 15 million shares—$[47,500] *50,000.*

(2) [When a]*An* issuer *that* submits an application for inclusion of any class of convertible debentures in The Nasdaq SmallCap Market, [it] shall pay to The Nasdaq Stock Market, Inc. a [one-time, company] *non-refundable application* [listing] fee of $5,000 [(which shall include a $1,000 non-refundable processing fee)] and a fee of $1,000 or $50 per million dollars face amount of debentures outstanding, whichever is higher.

(3) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

(4) Total shares outstanding means the aggregate of all classes of equity securities to be included in The Nasdaq SmallCap Market as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be

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[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq requests that the Commission finds good cause to approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

[4] See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated December 30, 2002 ("Amendment No. 2"). Amendment No. 2 makes technical changes to the proposed rule text.

filed with the issuer's appropriate regulatory authority.

(5) A*n issuer that submits an application for inclusion of any class of rights in The Nasdaq SmallCap Market, shall pay, at the time of its application, a non-refundable application fee to The Nasdaq Stock Market of $1,000.* [If the application is withdrawn or is not approved, the entry fee (less the non-refundable *application* [processing] fee) shall be refunded.]

(b) No change

(c) Annual Fee

(1) The issuer of a class of securities that is a domestic or foreign issue, including American Depositary Receipts (ADRs), listed in The Nasdaq SmallCap Market shall pay to The Nasdaq Stock Market, Inc. an annual fee to be computed as follows:

(A) $[8,000] *15,000 for the first issue if it has total shares outstanding of up to 10 million shares; or*

(B) *$16,000 for the first issue if it has total shares outstanding of 10 million or more shares;* plus

(C) $2,000 for each additional issue.

(D) *For companies with more than one issue, the first issue is the company's common stock or common stock equivalent with the highest total shares outstanding. For companies with no common stock or common stock equivalent, the first issue is the issue with the highest total shares outstanding.*

(2)–(4) No change

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Nasdaq rules regarding non-refundable application fees, listing fees for rights, and SmallCap entry and annual listing fees. Nasdaq proposes that these changes be effective as of January 1, 2003. Nasdaq also proposes that the proposed fees be applied to all issuers listed as of that date, and all new listings entering Nasdaq on or after that date. Pursuant to NASD Rule 4520 ("The Nasdaq SmallCap Market"), SmallCap entry fees would increase from a range of $9,500 to $47,000, to a range of $25,000 to $50,000, depending on the total shares outstanding in the issue. Nasdaq SmallCap annual fees would increase from $8,000 for the first issue, to a range from $15,000 to $16,000, depending on the total shares outstanding in the issue. Nasdaq is undertaking this increase to cover costs associated with the operation of the SmallCap market. In particular, Nasdaq has continued to invest in market services and initiatives such as the launch of SuperMontage℠, the NASDAQ Market Intelligence Desk℠, and enhancements to NASDAQ.com. At the same time, Nasdaq's costs to provide regulatory oversight, client coverage and other professional services have continued to increase.

Nasdaq also proposes to: (1) Provide transparency to the entry fee for rights; (2) change the date of the assessment of entry fees from the date of application to the date of listing; and (3) increase the non-refundable portion of the listing fee from $1,000 to $5,000 for both the Nasdaq National Market and the Nasdaq SmallCap Market.[5]

With respect to the entry fee for rights, Nasdaq rules do not currently distinguish between rights and regular equities. As such, applications for the inclusion of any class of rights are subject to the same entry fees as those for regular equities. Nasdaq has traditionally waived all but $1,000 of the entry fees for rights because Nasdaq believes that it would be inequitable to charge the same entry fees for rights and regular equities, as rights are short-term in nature and usually expire in 30 to 60 days. Therefore, Nasdaq is proposing to codify a separate non-refundable entry fee of $1,000 for the inclusion of any class of rights to provide transparency to this policy.

Nasdaq is also proposing to revise the assessment date for entry fees from the date that an issuer submits a listing application to the date that an issuer is listed. Currently, Nasdaq currently assesses entry fees based on the date that an issuer submits its application. Because an issuer is billed for entry fees at the time that it is listed, however, Nasdaq staff must review the fee schedule that was in effect at the time that the issuer submitted its listing application in order to determine the appropriate entry fees that are due. Nasdaq believes that revising the assessment date for entry fees to the date that an issuer is listed will make it much easier for Nasdaq staff, as well as issuers, to determine the proper fees for the listing of a class of securities; as the fees will be determined by the fee schedule in effect at the time of billing.

Lastly, Nasdaq proposes to increase the non-refundable portion of the listing fee from $1,000 to $5,000. Currently, when an issuer submits an application for inclusion on Nasdaq, it must pay a one-time fee of $5,000, which includes a $1,000 non-refundable processing fee. Nasdaq is proposing to increase the non-refundable processing fee from $1,000 to $5,000 in order to cover the costs associated with processing an application. Because the cost of processing a listing application is approximately $5,000, Nasdaq is unable to cover its costs in those situations where an issuer withdraws its application or is denied listing. In conjunction with this change, Nasdaq also proposes to change the term "listing fee" to "application fee."

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act[6] in general, and with sections 15A(b)(5)[7] and 15A(b)(6)[8] of the Act in particular. Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among issuers using the Nasdaq system. Nasdaq believes that the proposed rule change is consistent with section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices as well as to protect investors and the public interest by providing greater transparency to Nasdaq's rules for issuers, their counsel, and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[5] *See* NASD Rules 4510 and 4520, respectively.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

[8] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–183 and should be submitted by January 28, 2003.

IV. Commission's Finding and Order Granting Accelerated Approval of a Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 15A of the Act [9] and the rules and regulations thereunder applicable to a national securities association. Specifically, the Commission finds that the proposed rule change, as amended, is consistent with section 15A(b)(5) of the Act,[10] in that the proposal provides for an equitable allocation of reasonable dues, fees, and other charges among issuers using Nasdaq's facility and/or systems. As represented by Nasdaq, the Commission notes that the proposed fee increase in Nasdaq SmallCap entry and annual fees reflect the additional costs associated with operating Nasdaq SmallCap market, including various regulatory and client services provided to issuers. Namely, Nasdaq represented that it has continued to invest in market services and market quality improvements such as SuperMontage, the Nasdaq Market Intelligence Desk, and enhancements to NASDAQ.com. Furthermore, as represented by Nasdaq, the increase of a non-refundable application fee from $1,000 to $5,000 covers the processing of an issuer application for entry, especially in those instances where an issuer has withdrawn its application or has been denied listing.

The Commission also finds that the proposed rule change consistent with section 15A(b)(6) of the Act [11] because the proposed rules promote just and equitable principles of trade, and protect investors and the public interest. In particular, the Commission notes that Nasdaq should provide greater transparency to issuers by codifying its regular practice of charging a $1,000 fee for the inclusion of any class of rights. Finally, Nasdaq has represented that it would assess appropriate entry fees based on the fee schedule in effect at the time of listing, rather than the application date.

Nasdaq seeks to implement that proposed fees on January 1, 2003. In order to facilitate the implementation of the new fee schedule and ease administration of the fees, Nasdaq has requested that the Commission find good cause to approve the proposed rule change, as amended, before the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission finds good cause to approve the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that granting accelerated approval to the amended proposal will allow Nasdaq to implement the new fees by January 1, 2003 and will provide issuers with notice and an opportunity to budget for additional costs.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the propsed rule change (SR–NASD–2002–183) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–222 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47112; File No. SR–NASD–2002–182]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Extending Existing Pilot Program for the Regulatory Fee and Trading Activity Fee

December 31, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Association filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to extend the pilot program for the Trading Activity Fee ("TAF") through March 1, 2003. The TAF structure as originally proposed in SR–NASD–2002–98 [5] (and modified in SR–NASD–2002–147 [6]) is set to expire on December 31, 2002. Upon expiration of SR–NASD–2002–98, the member regulatory pricing structure was to revert to Section 8 of Schedule A of the By-Laws as amended. However, the NASD has determined not to revert to the previous pricing structure, but rather to extend the TAF pilot program, to maintain the status quo and to allow the Commission more time to review issues presented by the TAF proposed rule change.[7] The NASD proposes no substantive changes to the existing pilot

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002).

[6] Securities Exchange Act Release No. 46818 (November 12, 2002), 67 FR 69782 (November 19, 2002).

[7] In addition, many NASD member firms have already made programming changes to pay in conformity with the TAF structure that was effective on October 1, 2002.

program, other than to extend its operation through March 1, 2003.

The text of the proposed rule change is available at the NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2002, the NASD filed SR–NASD–2002–98, which proposed a new member regulatory pricing structure.[8] The proposed rule change was filed for immediate effectiveness pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder. SR–NASD–2002–98 is currently in effect. Assessments under the new TAF were effective as of October 1, 2002.[11] On October 18, 2002, the NASD established a sunset provision whereby the TAF would cease to exist after December 31, 2002.[12] Upon expiration of SR–NASD–2002–98, the member regulatory pricing was to revert to Section 8 of Schedule A of the By-Laws as amended.

The NASD has determined not to revert to the previous pricing structure established in Section 8 of Schedule A of the NASD By-Laws, but rather to extend the TAF pilot program in order to maintain the status quo and to allow the Commission more time to review issues presented by the TAF proposed rule change. Accordingly, the NASD filed the instant proposed rule change to extend the TAF structure pilot program through March 1, 2003. The NASD proposes no other changes to the pilot, other than to extend its operation through March 1, 2003.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[13] which requires, among other things, that the NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on this proposed rule change were neither solicited nor received. Written comments have been solicited on SR–NASD–2002–98, SR–NASD–2002–147 and SR–NASD–2002–148. These comments are not addressed herein, but are, as appropriate, discussed in connection with the respective rule filings.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The NASD has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, acceleration of the operative date will allow the pilot to operate without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–182 and should be submitted by January 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–268 Filed 1–6–03; 8:45 am]

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[8] Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002)(SR–NASD–2002–98). *See also* Securities Exchange Act Release No. 46417 (August 23, 2002), 67 FR 55893 (August 30, 2002)(SR–NASD–2002–99). The NASD also published two *Notices to Members* describing the proposed changes and addressing interpretive questions posed by NASD members. *See Notice to Members 02–41* (July 2002), and *Notice to Members 02–63* (September 2002).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] Member firms must pay the TAF (for the first quarter starting October 1, 2002) by no later than January 15, 2003.

[12] At the same time, the NASD filed a new proposed rule change (SR–NASD–2002–148), substantially similar to SR–NASD–2002–98 but filed under Section 19(b)(1) of the Act, to allow for additional notice and comment. The NASD sought Commission approval of SR–NASD–2002–148 with an implementation date of December 31, 2002. To date, this proposed rule filing is pending with the Commission.

[13] 15 U.S.C. 78o–3(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47110; File No. SR–NYSE–2002–49; SR–NASD–2002–154]

Self-Regulatory Organizations: Notice of Filing of Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to Exchange Rules 344 ("Supervisory Analysts"), 345A ("Continuing Education for Registered Persons"), 351 ("Reporting Requirements") and 472 ("Communications With the Public") and by the National Association of Securities Dealers, Inc. Relating to Research Analyst Conflicts of Interest

December 31, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 2002, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange"), and on October 25, 2002, National Association of Securities Dealers ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations ("SROs"). On December 4, 2002, NYSE submitted Amendment No. 1 to its proposed rule change.[3] On December 18, 2002, NASD submitted Amendment No. 1 to its proposed rule change.[4]

The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The SROs propose to amend their rules to address research analyst conflicts of interest. NYSE filed with the Commission proposed amendments to Rule 472 ("Communications with the Public"). The proposed amendments expand upon recently approved amendments to Rule 472[5] and will place further restrictions on associated persons' (hereinafter referred to as research analysts) preparing research reports, compensation and trading activities, as well as additional disclosure requirements on research reports issued by members and member organizations.

Proposed amendments to Rule 351 ("Reporting Requirements"), will require members and member organizations to document the basis and approval of a research analyst's compensation as required by Rule 472(h)(2) and include it in the annual written attestation that they are required to submit to the Exchange.

Proposed amendments to Rule 344 ("Supervisory Analysts"), will require a new registration category and qualification examination for research analysts. Proposed amendments to Rule 345A ("Continuing Education for Registered Persons"), will include research analysts and supervisory analysts as covered persons subject to the Firm Element of the Continuing Education Program to address applicable rules, regulations, ethics and professional responsibility.

NASD filed with the Commission proposed amendments to NASD Rules 1120 and 2711, and a proposed rule change to create a new NASD Rule 1050, to expand upon recently approved rules that govern research analyst conflicts of interest.

Below is the text of the proposed rule changes. Proposed new language is in *italics*; proposed deletions are in [brackets].

A. NYSE's Proposed Rule Text

Rule 472 Communications With the Public

Approval of Communications and Research Reports

(a)(1) Each advertisement, market letter, sales literature or other similar type of communication which is generally distributed or made available by a member or member organization to customers or the public must be approved in advance by a member, allied member, supervisory analyst, or qualified person designated under the provisions of Rule 342(b)(1).

(2) Research reports must be [prepared or] approved, in advance, by a supervisory analyst acceptable to the Exchange under the provisions of Rule 344. Where a supervisory analyst does not have technical expertise in a particular product area, the basic analysis contained in such report may be co-approved by a product specialist designated by the organization. In the event that the member organization has no principal or employee qualified with the Exchange to approve such material, it must be approved by a qualified supervisory analyst in another member organization by arrangement between the two member organizations.

Investment Banking, Research Department and Subject Company Relationships and Communications

(b)(1) Research Department personnel or any associated person(s) engaged in the preparation of research reports may not be subject to the supervision or control of the Investment Banking Department of the member or member organization. Research reports may not be subject to review or approval prior to distribution by the Investment Banking Department.

(2) Investment Banking personnel may check research reports prior to distribution only to verify the accuracy of information and to identify or to review for any potential conflicts of interest that may exist, provided that:

(i) Any such written communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be made either through the Legal or Compliance Department or in a transmission copied to Legal or Compliance; and

(ii) Any such oral communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be documented and made either with Legal or Compliance personnel acting as intermediary or in a conversation conducted in the presence of Legal or Compliance personnel.

(3) A member or member organization may not submit a research report to the subject company prior to distribution, except for the review of sections of a draft of the research report solely to verify facts. Members and member organizations may not, under any circumstances, provide the subject company sections of research reports

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Darla Stuckey, Corporate Secretary, New York Stock Exchange, Inc., to James A. Brigagliano, Assistant Director, Division of Market Regulation ("Division"), Commission (December 4, 2002) ("NYSE Amendment No. 1"). NYSE Amendment No. 1 conformed aspects of the proposed NYSE rules to those of NASD (*See* SR–NASD–2002–154), and proposed effective dates for the various rule provisions.

[4] *See* Letter from Philip Shaikun, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (December 18, 2002) ("NASD Amendment No. 1"). NASD Amendment No. 1 inserted language in proposed Rule 1050 to clarify that only research analysts who are directly responsible for the preparation of research reports (as opposed to indirect supervisors or others who are not directly responsible) would be required to register with NASD and pass a qualification examination. NASD Amendment No. 1 also conformed NASD's proposed research analyst compensation provisions to comparable provisions in the NYSE's research analyst rule amendments. NASD Amendment No. 1 also amended the definition of "research report" to conform it to the requirements of the Sarbanes-Oxley Act of 2002. NASD Amendment No. 1 also revised certain language that was contained in the discussion of the proposed amendment concerning print media interviews and articles.

[5] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).

that include the research summary, the research rating or the price target.

(i) Prior to submitting any sections of the research report to the subject company, the Research Department must provide a complete draft of the research report to the Legal or Compliance Department.

(ii) If after submission to the subject company, the Research Department intends to change the proposed rating or price target, the Research Department must provide written justification to, and receive prior written authorization from, the Legal or Compliance Department for any change. The Legal or Compliance Department must retain copies of any drafts and changes thereto of the research reports provided to the subject company.

(iii) The member or member organization may not notify a subject company that a rating will be changed until after the close of trading in the principal market of the subject company one business day prior to the announcement of the change.

(4) No associated person may issue a research report or make a public appearance concerning a subject company if the associated person engaged in any communication with the subject company in furtherance of obtaining investment banking business prior to the time the subject company entered into a letter of intent or other written agreement with the member or member organization designating the member or member organization as an underwriter of an initial public offering by the subject company. This provision shall not apply to any due diligence communication between the associated person and the subject company, the sole purpose of which was to analyze the financial condition and business operations of the subject company.

Written Procedures

(c) Each member and member organization must establish written procedures reasonably designed to ensure that members, member organizations and their associated persons are in compliance with this Rule (see Rule 351(f) *and Rule 472(h)(2)* for attestations to the Exchange regarding compliance).

Retention of Communications

(d) Communications with the public prepared or issued by a member or member organization must be retained in accordance with Rule 440 ("Books and Records"). The names of the persons who prepared and who reviewed and approved the material must be ascertainable from the retained records and the records retained must be readily available to the Exchange, upon request.

Restrictions on Trading Securities by Associated Persons

(e)(1) No associated person or member of the associated person's household may purchase or receive an issuer's securities prior to its initial public offering (*e.g.*, so-called pre-IPO shares), if the issuer is principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports.

(2) No associated person or member of the associated person's household may trade in any recommended subject company's securities or derivatives of such securities for a period of thirty (30) calendar days prior to and five (5) calendar days after the member's or member organization's issuance of research reports concerning such security or a change in rating or price target of a subject company's securities.

(3) No associated person or member of the associated person's household may effect trades contrary to the member's or member organization's most current recommendations (*i.e.*, sell securities while maintaining a "buy" or "hold" recommendation, buy securities while maintaining a "sell" recommendation, or effecting a "short sale" in a security while maintaining a "buy" or "hold" recommendation on such security).

(4) The following are exceptions to the prohibitions contained in paragraphs (1), (2), and (3):

(i) Transactions by associated persons and household members that have been pre-approved in writing by the Legal or Compliance Department that are made due to an unanticipated significant change in their personal financial circumstances;

(ii) A member or member organization may permit the issuance of research reports or permit a change to the rating or price target on a subject company, regardless of whether an associated person and/or household members traded the subject company's securities or derivatives of such securities, within the thirty (30) calendar day period described in paragraph (e)(2), when the issuance of such research reports, or change in such rating or price target is attributable to some significant news or events regarding the subject company, provided that the issuance of such research reports, or change in rating or price target on such subject company has been pre-approved in writing by the Legal or Compliance Department;

(iii) Sale transactions by an associated person and/or household member who is new to the member or member organization within thirty (30) calendar days of such associated person's employment with the member or member organization when such associated person and/or household member had previously purchased such security or derivatives of such security prior to the associated person's employment with the member or member organization;

(iv) Sale transactions by an associated person and/or household member within thirty (30) calendar days from the date of the member's or member organization's issuance of research reports or changes to the rating or price target on a subject company when such associated person and/or household member had previously purchased the subject company's securities or derivatives of such securities prior to initiation of coverage of the subject company by the associated person;

(v) Transactions in accounts not controlled by the associated person and for investment funds in which an associated person or household member participates as a passive investor, provided the interest of the associated person or household member in the assets of the fund does not exceed 1% of the fund's assets, and the fund does not invest more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports. If an investment fund distributes securities in kind to an associated person before the issuer's initial public offering, the associated person must either divest those securities immediately or refrain from participating in the preparation of research reports concerning that issuer;

(vi) Transactions in a registered diversified investment company as defined under Section 5(b)(1) of the Investment Company Act of 1940.

Restrictions on Member's or Member Organization's Issuance of Research Reports *and Participation in Public Appearances*

(f)(1) A member or member organization may not issue research reports regarding an issuer *or recommend an issuer's securities in a public appearance*, for which the member or member organization acted as manager or co-manager of an initial public offering within forty (40) calendar days following the effective date of the offering.

(2) A member or member organization may not issue research reports regarding an issuer *or recommend an issuer's securities in a public appearance*, for

which the member or member organization acted as manager or co-manager of a secondary offering within ten (10) calendar days following the effective date of the offering. This prohibition shall not apply to research reports issued under Securities Act Rule 139 regarding issuers whose securities are actively traded, as defined in Securities Exchange Act Rule 101(c)(1) of Regulation M.

(3) A member or member organization may permit exceptions to the prohibitions in paragraphs (f)(1) and (2) (consistent with other securities laws and rules) for research reports that are issued due to significant news or events, provided that such research reports are pre-approved in writing by the *member's or member's organization's* Legal or Compliance Department.

(4) No member or member organization which has acted as a manager or co-manager of a securities offering may issue a research report or make a public appearance within fifteen (15) days prior to or after the expiration, waiver or termination of a lock-up agreement or any other agreement that the member or member organization has entered into with a subject company and its shareholders that restricts or prohibits the sale of the subject company's or its shareholder's securities after the completion of a securities offering. A member or member organization may permit exceptions to the prohibitions in paragraph (f)(4) (consistent with other securities laws and rules) for research reports that are issued as a result of the development of significant news or events, provided that such research reports are pre-approved in writing by the member's or member organization's Legal or Compliance Department.

(5) If a member or member organization withdraws its research coverage of a subject company, notice of this withdrawal must be made. Such notice must be made in the same manner as when research coverage was first initiated by the member or member organization and must include the member's or member organization's final recommendation or rating.

Prohibition of Offering Favorable Research for Business

(g) No member or member organization may directly or indirectly offer a favorable research rating or specific price target, or offer to change a rating or price target, to a subject company as consideration or inducement for the receipt of business or for compensation.

Restrictions on Compensation to Associated Persons

(h)(*1*) No member or member organization may compensate an associated person(s) for specific investment banking services transactions. An associated person may not receive an incentive or bonus that is based on a specific investment banking services transaction. However, a member or member organization is not prohibited from compensating an associated person based upon such *member's or member organization's* [person's] overall performance, including [services provided to] the *performance of the* Investment Banking Department (see Rule 472(k)(2) for disclosure of such compensation).

(2) *An associated person's compensation must be reviewed and approved at least annually by a committee which reports to the Board of Directors or where the member or member organization has no Board of Directors to a senior executive officer of the member or member organization. Such committee may not include representatives from the member's or member organization's Investment Banking Department. The committee must, among other things, consider the following factors, if applicable, when reviewing an associated person's compensation:*

i. *The associated person's individual performance,* (e.g., *productivity, and quality of research product);*

ii. *The correlation between the associated person's recommendations and stock price performance;*

iii. *The overall ratings received from clients, sales force, and peers independent of the Investment Banking Department, and other independent rating services.*

The committee may not consider as a factor in determining the associated person's compensation, his or her contributions to the member's or member organization's investment banking business.

The committee must document the basis upon which each associated person's compensation was established. The annual attestation required by Rule 351(f) must certify that the committee reviewed and approved each associated person's compensation and has documented the basis upon which such compensation was established.

General Standards for All Communications

(Formerly positioned at Supplementary Material .30)

(i) No change

Specific Standards for Communications

(Formerly positioned at Supplementary Material .40)

(j) No change (except for deletion of .40(2)).

Disclosure

(k)(1)Disclosures Required in Research Reports and Public Appearances

Disclosure of Member's, Member Organization's and Associated Person's Ownership of Securities

(i) A member or member organization must disclose in research reports and an associated person must disclose in public appearances:

a. If, as of the last day of the month before the publication or appearance (or the end of the second most recent month if the publication or appearance is less than ten (10) calendar days after the end of the most recent month), the member or member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The member or member organization must make the required beneficial ownership computation no later than ten (10) calendar days after the end of the prior month. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934,

b. If the associated person or a household member has a financial interest in the securities of the subject company, *and the nature of the financial interest, including, without limitation, whether it consists of any option, right, warrant, futures contract, long or short position,* or

c. Any other actual, material conflict of interest of the member or member organization, which the associated person knows, or has reason to know, at the time the research report is issued or at the time the public appearance is made.

Member, Member Organization and Affiliate Compensation

(ii) A member or member organization must disclose in research reports if the member or member organization or its affiliates: a) Has managed or co-managed a public offering of equity securities for the subject company in the past twelve (12) months; b) has received compensation for investment banking services from the subject company in the past twelve (12) months; or c) expects to receive or intends to seek compensation for investment banking

services from the subject company in the next three (3) months.

When an associated person recommends securities in a public appearance, the associated person must disclose if the subject company is an investment banking services client of the member, member organization, or one of its affiliates; when the associated person knows or has reason to know of this relationship.

Disclosure of Associated Person's Affiliations With Subject Company

(iii) A member or member organization must disclose in research reports, and an associated person must disclose in public appearances, whether the associated person or member of the associated person's household is an officer, director or advisory board member of the recommended issuer.

(k)(2) Disclosures Specific to Research Reports

The front page of a research report either must include the disclosures required under this Rule or must refer the reader to the page(s) on which each such disclosure is found. Disclosures, and references to disclosures, must be clear, comprehensive and prominent.

A member or member organization must disclose in research reports if the associated person preparing such reports received compensation that is based upon (among other factors) the member's or member organization's overall investment banking revenues.

A member or member organization must disclose in research reports that recommend securities:

(i) If it is making a market in the subject company's securities at the time the research report is issued.

(i) The valuation methods used, and any price objectives must have a reasonable basis and include a discussion of risks.

(iii) The meanings of all ratings used by the member or member organization in its ratings system. (For example, a member or member organization might disclose that a "strong buy" rating means that the rated security's price is expected to appreciate at least 10% faster than other securities in its sector over the next 12-month period). Definitions of ratings terms also must be consistent with their plain meaning. Therefore, for example, a "hold" rating should not mean or imply that an investor should sell a security.

(iv) The percentage of all securities that the member or member organization recommends an investor "buy," "hold," or "sell." Within each of the three categories, a member or member organization must also disclose the percentage of subject companies that are investment banking services clients of the member or member organization within the previous twelve (12) months. (See Rule 472.70 for further information.).

(v) A chart that depicts the price of the subject company's stock over time and indicates points at which a member or member organization assigned or changed a rating or price target. This provision would apply only to securities that have been assigned a rating for at least one year, and need not extend more than three years prior to the date of the research report. The information in the price chart must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter).

When a member or member organization distributes a research report covering six (6) or more subject companies for purposes of the disclosures required in paragraph (k) of this Rule, such research report may direct the reader in a clear and prominent manner as to where they may obtain applicable current disclosures in written or electronic format.

Other Communications Activities

(l) Other communications activities are deemed to include, but are not limited to, conducting interviews with the media, writing books, conducting seminars or lecture courses, writing newspaper or magazine articles or making radio/TV appearances.

Members and member organizations must establish specific written supervisory procedures applicable to members, allied members and employees who engage in these types of communications activities. These procedures must include provisions that require prior approval of such activity by a person designated under the provisions of Rule 342(b)(1). These types of activities are subject to the general standards set forth in paragraph (i). In addition, any activity which includes discussion of specific securities and/or industries is subject to the specific standards in paragraph (j).and the disclosure requirements of paragraphs (k)(1) and (k)(2)(i).

.10 Definitions

(1) Communication—The term "Communication" is deemed to include, but is not limited to, advertisements, market letters, research reports, sales literature, electronic communications, communications in and with the press and wires and memoranda to branch offices or correspondent firms which are shown or distributed to customers or the public.

(2) Research Report—"Research report" is generally defined as a written or electronic communication which includes an analysis of equity securities of individual companies or industries, and provides information reasonably sufficient upon which to base an investment decision. [and includes a recommendation].

For purposes of approval by a supervisory analyst pursuant to Rule 472(a)(2), research report includes, but is not limited to, reports which recommend equity securities, derivatives of such securities, including options, debt and other types of fixed income securities, single stock futures products, and other investment vehicles subject to market risk.

(3) Advertisement—"Advertisement" is defined to include, but is not limited to, any sales communications that is published, or designed for use in any print, electronic or other public media such as newspapers, periodicals, magazines, radio, television, telephone recording, web sites, motion pictures, audio or video device, telecommunications device, billboards or signs.

(4) Market letters—"Market letters" are defined as, but are not limited to, any written comments on market conditions, individual securities, or other investment vehicles *that are not defined as research reports.* They also *may* include "follow-ups" to research reports and articles prepared by members or member organizations which appear in newspapers and periodicals.

(5) Sales literature—"Sales literature" is defined as, but is not limited to, written or electronic communications including, but not limited to, telemarketing scripts, performance reports or summaries, form letters, seminar texts, and press releases discussing or promoting the products, services and facilities offered by a member or member organization, the role of investment in an individual's overall financial plan, or other material calling attention to any other communication.

.20 For purposes of this Rule, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transaction), or similar investments; or serving as placement agent for the issuer.

.30 For purposes of this Rule, the term "Investment Banking Department" means any department or division of the member or member organization, whether or not identified as such, that performs any investment banking services on behalf of the member or member organization.

.40 For purposes of this Rule, the term "associated person" includes a member, allied member, or employee of a member or member organization responsible for, and any person who reports directly or indirectly to such associated person in connection with, the *preparation* of [making of the recommendation to purchase, sell or hold an equity security in] research reports, or *making recommendations or offering opinions* in public appearances or establish*ing a* rating or price target of a subject company's equity securities. For purposes of this Rule, the term "household member" means any individual whose principal residence is the same as the associated person's principal residence. Paragraphs (e)(1), (2), (3); (4)(i), (ii), (iii), (iv) and (v); (k)(1)(i)b., (k)(1)(iii) apply to any account in which an associated person has a financial interest, or over which the associated person exercises discretion or control, other than an investment company registered under the Investment Company Act of 1940.

This term "associated person" also includes such "other persons," e.g., Director of Research, Supervisory Analyst, or member of a committee, who have direct influence and/or control with respect to (1) preparing research reports, or (2) establishing or changing a rating or price target of a subject company's equity securities. Such other persons are subject to the provisions of paragraph (e)(1)—(4) of this Rule.

.50 For purposes of this Rule, the term "public appearance" includes, without limitation, participation in a seminar, forum (including an interactive electronic forum), radio, [or] television *or print media* interview, or other public appearance or public speaking activity, *or the writing of a newspaper article or other type of public written medium* in which an associated person makes a recommendation or offers an opinion concerning any equity securities *and/or industries.*

.60 For purposes of this Rule, "subject company" is the company whose equity securities are the subject of research reports.

.70 For purposes of Rule 472(k)(2)(iv), a member or member organization must determine, based on its own ratings system, into which of the three categories each of their securities ratings utilized falls. This information must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter). For example, a research report might disclose that the member or member organization has assigned a "buy" rating to 58% of the securities that it follows, a "hold" rating to 15%, and a "sell" rating to 27%.

Rule 472(k)(2)(iv) requires members or member organizations to disclose the percentage of companies that are investment banking services clients for each of the three ratings categories within the previous twelve (12) months. For example, if 20 of the 25 companies to which a member or member organization has assigned a "buy" rating are investment banking clients of the member or member organization, the member or member organization would have to disclose that 80% of the companies that received a "buy" rating are its investment banking clients. Such disclosure must be made for the "buy," "hold" and "sell" ratings categories as appropriate.

.80 For purposes of this Rule, the term "Legal or Compliance Department" also includes, but is not limited to, any department of the member or member organization which performs a similar function.

.90 For purposes of Rule 472(a), a qualified person is one who has passed an examination acceptable to the Exchange.

.100 For purposes of this Rule, the term "initial public offering" refers to the initial registered equity security offering by an issuer, regardless of whether such issuer is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, prior to the time of the filing of such issuer's registration statement.

.110 For purposes of this Rule, a secondary offering shall include a registered follow-on offering by an issuer or a registered offering by persons other than the issuer involving the distribution of securities subject to Regulation M of the Securities Exchange Act of 1934.

Reporting Requirements

Rule 351

(a)–(e) No change.

(f) Each member and member organization that prepares, issues or distributes [communications to the public, (including but not limited to,] research reports *and whose associated persons make public appearances* [, media presentations and interviews]), is required to submit to the Exchange annually, a letter of attestation signed by a senior officer or partner that the member or member organization has established and implemented procedures reasonably designed to comply with the provisions of Rule 472. *The attestation must also specifically certify that each associated person's compensation was reviewed and approved in accordance with the requirements of Rule 472(h)(2) and that the basis for such approval has been documented.*

* * * * *

.11 For purposes of Rule 351(f), the attestation must be submitted by April 1 of each year.

.12 The term "research report" is defined in Rule 472.10 *and the term "public appearance" is defined in Rule 472.50.*

Securities Analysts and Supervisory Analysts

Rule 344. *Securities analysts and supervisory analysts must be registered with, qualified by, and approved by the Exchange.*

[Supervisory analysts required under Rule 472 shall be acceptable to, and approved by, the Exchange.]

.10 For purposes of this Rule, the term "securities analyst" includes a member, allied member or employee who is directly responsible for the preparation of research reports. Securities analyst candidates must pass a qualification examination acceptable to the Exchange.

.11 [.10] *For purposes of this rule, the term "supervisory analyst" includes a member, allied member or employee who is responsible for approving research reports under Rule 472(a)(2).* In order to show evidence of acceptability to the Exchange as a supervisory analyst, a member, allied member or employee may do one of the following:

(1) Present evidence of appropriate experience and pass an Exchange Supervisory Analysts Examination.

(2) Present evidence of appropriate experience and successful completion of a specified level of the Chartered Financial Analysts Examination prescribed by the Exchange and pass only that portion of the Exchange Supervisory Analysts Examination dealing with Exchange rules on research standards and related matters.

[In addition, if not a member, allied member or registered representative, the candidate is subject to Exchange investigation of character and conduct and should submit personal information on Form U–4 for this purpose.]

The Exchange publishes a Study Outline for the *Securities Analyst Examination and the Supervisory*

Analysts Examination. [Examinations are requested and given under the procedures described in Para. of 2345.15 for registered representative examinations.]

Continuing Education for Registered Persons

Rule 345A.(a) Regulatory Element—No change.

(b) Firm Element

(1) Persons Subject to the Firm Element—The requirements of Section (b) of this Rule shall apply to any registered person who has direct contact with customers in the conduct of the member's or member organization's securities sales, trading or investment banking activities, and to the immediate supervisors of such persons, *and to registered persons who function as supervisory analysts, and securities analysts as defined in Rule 344* (collectively, "covered registered persons").

(2) Standards—No Change.

(3) Participation in the Firm Element—No Change.

(4) Specific Training Requirements—The Exchange may require a member or member organization, either individually or as part of a larger group, to provide specific training to its covered registered persons in such areas the Exchange deems appropriate. Such a requirement may stipulate the class of covered registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

.10 For purposes of this Rule, the term "registered person" means any member, allied member, registered representative or other person registered or required to be registered under Exchange rules, but does not include any such person whose activities are limited solely to the transaction of business on the Floor with members or registered broker-dealers. *For purposes of the Regulatory Element required under Rule 345A(a), the term does not include persons registered as securities analysts or supervisory analysts pursuant to Rule 344.*

.20–.40 No Change.

.50 Pursuant to Rule 345A(b)(1), all persons registered as securities analysts and supervisory analysts pursuant to Rule 344 must participate in a Firm Element Continuing Education program that includes training in applicable rules and regulations, ethics and professional responsibility.

* * * * *

The Exchange is requesting the following implementation schedule for the proposed amendments (all time periods are from the date that the Commission approves the filing) in order to provide reasonable time periods for members and member organizations to develop and implement policies, procedures and systems to comply with the new requirements:

- NYSE Rule 345A(b) and .50—Implementation of a Firm Element Continuing Education Program for Research Analysts—90 calendar days.
- All other provisions—60 calendar days.

In addition, the Exchange is proposing an effective date of 180 days after approval of the amendments to NYSE Rule 344.10 to provide sufficient time for the Exchange to develop and implement a qualification examination for research analysts.

B. *NASD's Proposed Rule Text*

Rule 1050. Registration of Research Analysts

All persons associated with a member who are to function as research analysts shall be registered with NASD. Before their registrations can become effective, they shall pass a Qualification Examination for Research Analysts as specified by the Board of Governors. For the purposes of this Rule 1050, "research analyst" shall mean an associated person who is directly responsible for the preparation of research reports.

* * * * *

Rule 1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with the Association. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(a) Regulatory Element

(1)–(4) (No change.)

(5) Definition of Registered Person

For purposes of this Rule, the term "registered person" means any person registered with [the Association] *NASD* as a representative, principal, [or] assistant representative *or research analyst* pursuant to Rule 1020, 1030, 1040, *1050* and 1110 Series.

(6) (No change.)

(b) Firm Element

(1) Persons Subject to the Firm Element

The requirements of this subparagraph shall apply to any person registered with the member who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons, *and to any person registered as a research analyst pursuant to Rule 1050* (collectively, "covered registered persons"). "Customer" shall mean any natural person and any organization, other than another broker or dealer, executing securities transactions with or through or receiving investment banking services from a member.

(2) Standards for the Firm Element

(A) (No change.)

(B) Minimum Standards for Training Programs—Programs used to implement a member's training plan must be appropriate for the business of the member and, at a minimum must cover the following matters concerning securities products, services, and strategies offered by the member:

(i) General investment features and associated risk factors;

(ii) Suitability and sales practice considerations; [and]

(iii) Applicable regulatory requirements[.]; *and*

(iv) With respect to registered research analysts, training in ethics, professional responsibility and the requirements of Rule 2711.

(3)–(4) (No change.)

* * * * *

Rule 2711. Research Analysts and Research Reports

(a) Definitions

For purposes of this rule, the following terms shall be defined as provided.

(1)–(3) (No change.)

(4) "Public appearance" means any participation in a seminar, forum (including an interactive electronic forum), radio, [or] television *or print media* interview, or other public speaking activity, *or the writing of a print media article*, in which a research analyst makes a recommendation or offers an opinion concerning an equity security.

(5) "Research analyst" means the associated person who is principally responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with, preparation of the substance of a research report, whether or not any such person has the job title of "research analyst." *Solely for purposes of paragraph (g), the term "research analyst" also includes such other persons as the director of research, supervisory analyst, or*

member of a committee who have direct influence or control with respect to (A) the preparation of research reports, or (B) establishing or changing a rating or price target of a subject company's equity securities.

(6)–(7) (No change.)

(8) "Research report" means a written or electronic communication which includes an analysis of equity securities or individual companies or industries, and which provides information reasonably sufficient upon which to base an investment decision [and includes a recommendation].

(9) (No change.)

(b) (No change.)

(c) Restrictions on Review of a Research Report by the Subject Company

(1)–(3) (No change.)

(4) No research analyst may issue a research report or make a public appearance concerning a subject company if the research analyst engaged in any communication with the subject company in furtherance of obtaining investment banking business prior to the time the subject company entered into a letter of intent or other written agreement with the member designating the member as an underwriter of an initial public offering by the subject company. This provision shall not apply to any due diligence communication between the research analyst and the subject company, the sole purpose of which was to analyze the financial condition and business operations of the subject company.

(d) [Prohibition of Certain Forms of] *Restrictions on* Research Analyst Compensation

(1) No member may pay any bonus, salary or other form of compensation to a research analyst that is based upon a specific investment banking services transaction.

(2) A research analyst's compensation must be reviewed and approved at least annually by a committee that reports to the member's board of directors, or when the member has no board of directors, to a senior executive officer of the member. This committee may not have representation from the member's investment banking department. The committee must consider the following factors when reviewing a research analyst's compensation, if applicable:

(A) *the research analyst's individual performance, including the analyst's productivity and the quality of the analyst's research;*

(B) *the correlation between the research analyst's recommendations and the stock price performance; and*

(C) *the overall ratings received from clients, sales force, and peers independent of the member's investment banking department, and other independent ratings services.*

The committee may not consider as a factor in determining the research analyst's compensation his or her contributions to the member's investment banking business. The committee must document the basis upon which each research analyst's compensation was established. The annual attestation required by Rule 2711(i) must certify that the committee reviewed and approved each research analyst's compensation and documented the basis upon which this compensation was established.

(e) (No change.)

(f) [Imposition of Quiet Periods] *Restrictions on Publishing Research Reports and Public Appearances; Termination of Coverage*

(1) No member may publish a research report regarding a subject company *or recommend a subject company's securities in a public appearance* for which the member acted as manager or co-manager of:

[(1)]*(A)* an initial public offering, for 40 calendar days following the date of the offering; or

[(2)]*(B)* a secondary offering, for 10 calendar days following the date of the offering; provided that:

[(A)]*(i)* paragraphs (f)(1)*(A)* and (f)[(2)]*(1)(B)* will not prevent a member from publishing a research report concerning the effects of significant news or a significant event on the subject company within such 40- and 10-day periods, and provided further that the legal and compliance department authorizes publication of that research report before it is issued; and

[(B)]*(ii)* paragraph (f)[(2)]*(1)(B)* will not prevent a member from publishing a research report pursuant to SEC Rule 139 regarding a subject company with "actively-traded securities," as defined in Regulation M, 17 CFR 242.101(c)(1).

(3) No member that has acted as a manager or co-manager of a securities offering may publish a research report or make a public appearance concerning a subject company 15 days prior to and after the expiration, waiver or termination of a lock-up agreement or any other agreement that the member has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of a securities offering. This paragraph will not prevent a member from publishing a research report concerning the effects of significant news or a significant event on the subject company within such period, provided that the legal and compliance department authorized publication of that research report before it is issued.

(4) If a member intends to discontinue its research coverage of a subject company, notice of this withdrawal must be made in the same manner as when research coverage was first initiated by the member and must include the member's final recommendation or rating.

(g)–(i) (No change.)

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the NYSE and NASD included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The NYSE and NASD have prepared summaries, set forth in Sections A, B, and C below.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. NYSE's Purpose

Background

NYSE believes that allegations regarding improprieties in solicitation of investment banking business impugn the objectivity and integrity of research analysts and the reports they prepare and have continued to undermine investor confidence in the equity markets. According to the NYSE, in discharging their duties as SROs, the NYSE and NASD have been proactive in this regard and have passed sweeping changes, described below, to their rules governing research analysts, their member organizations and their communications with the public. The proposed amendments described below are a continuation of this process to restore integrity to the public equity markets.

Prior Amendments

On May 10, 2002, the SEC approved amendments to Exchange Rules 472 and 351 which significantly changed the manner in which members and member organizations, their investment-banking departments and their research analysts manage and disclose conflicts of interest between their investment banking and research activities. The SEC also

simultaneously approved comparable changes to NASD rules (new NASD Rule 2711—"Research Analysts and Research Reports"). NYSE believes that these rule amendments are the result of the SROs working to develop uniform industry rules.

The rule amendments generally restrict the relationship between research and investment banking departments and the companies that are the subject of research reports; require disclosure of a financial interest in a subject company by an analyst or a member or member organization; require disclosure of existing and potential investment banking relationships with a subject company; impose quiet periods for the issuance of research reports following the completion of a company's securities offering; restrict personal trading by research analysts in the stock of the companies covered by such analysts; and generally require extensive disclosure in research reports of certain important information to help customers monitor the correlation between an analyst's rating and the stock's price movements.

The rule amendments have been phased-in incrementally to provide members and member organizations time to develop and implement policies, procedures and systems and hire additional personnel to comply with the new requirements. The staggered implementation of the Rules began July 9, 2002, with September 9, 2002 and November 6, 2002 as the effective dates for certain specified provisions. Implementation dates for certain of the SRO rules have also been delayed for small firms. As a result of numerous interpretive requests, on June 26, 2002, the Exchange and the NASD issued a Joint Memo providing interpretive guidance to certain rule provisions.[6]

According to NYSE, the Exchange, together with other regulatory organizations and SROs, is currently examining members' and member organizations' research practices to determine compliance with the new SRO Rules.

According to the NYSE, some of the interpretive issues raised by the industry and the preliminary findings from the recent examinations have highlighted the need for certain additional changes to the existing SRO Rules. NYSE believes that further amendments to the SRO rules will also be required to comply with the mandate of the Sarbanes-Oxley Act of 2002 ("SOA"), which requires the SEC, either directly or indirectly through SROs, to adopt not later than one year after the date of enactment of the Act (July 24, 2002), "rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information."

According to the NYSE, certain of the disclosure requirements and prohibitions that the SOA mandates have already been adopted in the new NYSE Rules. In some cases, the SOA appears to impose more stringent requirements. The NYSE is currently analyzing the differences between the SOA and NYSE Rules, to determine the extent of additional amendments to be made.

Proposed Amendments Regarding Research Analysts

The following proposed amendments to Exchange rules governing communications with the public expand upon the recently approved rule changes. The amendments generally provide for further restrictions on research analysts' compensation and trading activities, and impose additional disclosure requirements for research reports and associated persons.

Proposed amendments to Rule 472 would further separate an analyst's compensation from investment banking influence by requiring procedures for review and approval of research analysts' compensation by a Committee that reports to the Board of Directors or a senior executive. Recently approved amendments prohibit an associated person from being compensated for specific investment services transactions.

Such a Committee, at a minimum, would consider the following factors: the associated person's individual performance (*e.g.*, quality of research product), correlation between a research analyst's recommendations and stock prices, and overall ratings from various internal or external parties exclusive of member or member organization investment banking personnel.

Further, in determining an individual research analyst's compensation, the Committee may not consider his or her contribution to the firm's overall investment banking business. The basis for a research analyst's compensation would have to be documented and an annual attestation to the Exchange would certify that the Committee reviewed and approved each associated person's compensation and documented the basis for such approval (Rule 472(h)(1) and (2)).

Proposed Rule 472(b)(4) will prohibit a research analyst from issuing a research report or making a public appearance concerning a subject company if the research analyst engaged in any communication with the subject company in furtherance of obtaining investment banking business prior to the time the subject company entered into a letter of intent or other written agreement with the member or member organization designating the member or member rganization as an underwriter of an initial public offering by the subject company.[7] Prohibiting research analysts from issuing research reports or making public appearances after participating in "pitch" meetings is intended to prevent the use or promise of research as an influence or a sales and marketing tool with prospective investment banking clients of the member or member organization, and would cause subject companies to choose a prospective investment banking firm based on the merits of its underwriting capabilities, rather than its research coverage.[8]

Due diligence communications between the research analyst and the subject company, the sole purpose of which is to analyze the financial condition and business operations of the subject company, is not subject to the prohibition. Recognizing the need for critical financial analysis of a subject company during the period an issuer is preparing to engage in a securities offering with the public, the rule allows research analysts to participate in due diligence communications. In doing so, the rule is intended to segregate legitimate research analyst duties/functions, traditionally associated with their profession, from the sales/marketing duties that they may have been called upon recently to do by their firms.

Proposed amendments to Rule 472 would prohibit the issuance of research reports by the manager or co-manager of a securities offering for fifteen (15) days prior to and after the expiration time of any "lock-up agreement" (Rule 472(f)(4)). This provision is intended to address situations where research analysts may issue positive research reports or reiterated "buy" recommendations shortly before or just after the expiration of a lock-up agreement. Through issuance or reiteration of "buy" recommendations,

[6] NYSE Information Memo No. 02–26 (June 26, 2002), and NASD Notice to Members 02–39 (July 2002).

[7] Telephone conversation between NYSE and Division Staff on December 30, 2002.

[8] Telephone conversation between NYSE and Division Staff on December 30, 2002.

shareholders of the subject company which were precluded from selling shares in the immediate aftermarket for specified periods of time, may be able to sell their shares at higher prices. Imposition of this fifteen (15) day blackout period around the expirations of lockups is intended to mitigate and/or eliminate the incentive for a research analyst to issue positive research reports, and should permit real market forces to determine the price at which such securities can be sold after the expiration of such agreements.

Proposed amendments to Rule 472 would require notification to customers when a member or member organization terminates research coverage of a subject company and require that the final report include a final recommendation or rating [9] (assuming the member or member organization had issued a prior rating or recommendation) [10] (Rule 472(f)(5)). This provision is intended to address situations where research analysts have discontinued following subject companies without changing their ratings of such companies, even though ratings changes, may have in many instances, been warranted. Thus, investors held the securities of such companies, often while these companies were deteriorating financially, without the benefit of guidance from the firms from which they had purchased them. The recently approved amendments to Rule 472 also address this issue, in part, by requiring the disclosure of a price chart versus changes in ratings in order to help investors track the correlation between a research analyst's rating/recommendation and the stock's price performance. NYSE believes that the proposed amendments would enhance this required disclosure by providing investors with notice of termination of coverage as well as any final rating the member or member organization has issued on the subject company.

As proposed, the definition of research analyst (associated person) would be amended to include research directors, supervisory analysts and others *e.g.*, committee members, who have direct influence, or control the preparation of research reports and establishment or change in ratings or price targets and thereby subject them to the trading and ownership prohibitions of the Rule (Rule 472.40) as research analysts.

As proposed, the current ten (10) and forty (40) day quiet periods for research analysts' issuance of research reports by managers and co-managers of initial and secondary offerings would be extended to include public appearances (Rule 472(f)(1) and (2)). Extending the quiet periods to public appearances would preclude members and member organizations from engaging in communications through public appearances that they are otherwise prohibited from making in written communications to the same standards. NYSE believes that subjecting all types of appearances and written communications should further remove any incentives for biased research recommendations in any potential type of medium.

The definition of "public appearance" would be amended to include research analysts" making a recommendation in a newspaper article or similar public medium (Rule 472.50). Extending the definition of public appearance to recommendations in a newspaper article would require research analysts to make the same disclosures that they are required to make in other public appearances.[11]

Proposed amendments to Rule 344 ("Supervisory Analysts") would establish a new registration category and require a qualification examination for research analysts (Rule 344). In addition, Rule 345A ("Continuing Education for Registered Persons") would be amended to include research analysts and supervisory analysts as covered persons subject to the Firm Element of the Continuing Education Program to address applicable rules and regulations, ethics, and professional responsibility (Rule 345A(b) and .50).

NYSE believes that research analysts as securities professionals perform vital functions for their members or member organizations in the public equity markets. As such, they should be subject to the highest ethical and professional competency standards. Accordingly, NYSE believes that establishing a new registration category with a corresponding qualifying examination will raise such standards. Further, including research and supervisory analysts as covered persons in the Firm Element component of Continuing Education Programs would place an obligation on members and member organizations to ensure that they are receiving the requisite ethics and professional responsibility training that NYSE believes they will require to properly conduct their duties as research analysts.

The Exchange is making certain clarifying amendments to Rule 472 that would make it more uniform with the NASD rule and would bring it into conformity with certain of the new requirements of the Act.

Rule 472 is being amended to require that the nature of a research analyst's financial interest in a subject company's securities be disclosed in research reports and public appearances, including whether the interest consists of any option, right, warrant, futures contract, or long or short position, etc. This would make NASD and NYSE rule texts consistent with each other (Rule 472(k)(1)(i)(b).

Proposed amendments to Rule 472(l) with respect to specified communications activities, including, interviews with the media, writing books and newspaper/periodical articles etc., engaged in by members, allied members or employees, would clarify the approval and supervisory requirements for such activities.

As proposed, the term "research report" as it is currently defined in the Rule 472 is being amended to conform to the Act's definition by deleting the criterion of providing a recommendation from the criteria that determines what constitutes a research report (Rule 472.10(2)). NYSE believes conforming the definition to the one required by the SOA would help facilitate members' and member organizations' future compliance with the SOA in the least disruptive manner.

2. NYSE's Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act [12] which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interests.

3. NASD's Purpose

Background

In May 2002, the SEC approved new NASD Rule 2711 and similar amendments to existing New York Stock Exchange ("NYSE") rules that increased the regulation of research analysts and research reports.[13] The new rules are intended to improve the objectivity of

[9] The Exchange requested that Commission Staff delete the reference to a final recommendation or rating "if any" in order to conform to changes made by NYSE Amendment No. 1.

[10] Telephone conversation between NYSE and Division Staff on December 30, 2002.

[11] The Exchange requested that Commission Staff delete the reference to "research reports." Telephone conversation between NYSE and Division Staff on December 30, 2002.

[12] 15 U.S.C. 78f(b)(5).

[13] *Supra* note 5,m *See also* Securities Exchange Act Release No. 46402 (June 6, 2002), 67 FR 40361 (June 12, 2002)(correcting language contained in rule 2711(h)).

research and provide investors with more useful and reliable information when making investment decisions. Most of the new rules' provisions became effective on July 9, 2002, although some provisions took effect on September 9, 2002, and one provision took effect on November 6, 2002. Additionally, in July 2002, the SEC approved an NASD rule proposal to delay until November 6, 2002 the effectiveness of certain provisions for certain members with foreign affiliates, certain research analysts that are divesting the securities of all subject companies that they cover, and certain defined small firms.[14]

In June 2002, NASD and the NYSE issued a joint memorandum that provided members with the new rule language, as well as interpretive guidance on a number of Rule 2711's provisions.[15] NASD and the NYSE also have been examining members' research practices to determine compliance with the new research analyst rules.

According to NASD, as a result of the examinations and further discussions with the SEC staff, NASD and NYSE agreed that additional rules governing members' research activities are necessary to protect investors. This rule change proposal would effectuate those additional safeguards. Generally, the proposed amendments would further separate analyst compensation from investment banking influence, prohibit analysts from issuing "booster shot" research reports, prohibit analysts from participating in "bake-off" meetings with prospective investment banking clients, require members to publish a final research report when they terminate coverage of a subject company, impose registration, qualification and continuing education requirements on research analysts, and make certain other changes.

NASD believes that these amendments do not implement all of the changes that may be required pursuant to the research analyst provisions of the SOA. NASD anticipates filing additional proposed amendments to Rule 2711 in the future to meet the requirements of SOA after further discussions with NYSE and SEC staff.

A more detailed discussion of the proposed rule change follows.

1. Analyst Compensation

The proposed amendments would require members to further separate analyst compensation from investment banking influence by imposing new restrictions on the manner in which research analysts may be compensated. The rule proposal would require members to employ a compensation committee that reports to the member's board of directors (or if the member does not have a board of directors, a senior executive officer of the member) responsible for reviewing and approving analyst compensation at least annually. The committee could not have representation from the member's investment banking department. In determining an analyst's compensation, the committee would have to consider, if applicable, the research analyst's individual performance, including the analyst's productivity and research quality, the correlation between the analyst's recommendations and stock price performance, and overall ratings of clients, sales force, and peers independent of the member's investment banking department. The committee could not consider the analyst's contributions to the member's investment banking business.

The committee would be required to document the basis for establishing the analyst's compensation. The member also would have to attest annually to NASD that the committee reviewed and approved each analyst's compensation and documented the basis upon which the compensation was established.

2. Restrictions on Publishing Research Reports and Public Appearances

The proposed amendments would make several changes to current Rule 2711(f), which imposes "quiet periods" on members during which members may not publish research reports following an initial or secondary public offering of securities. First, the proposed amendments would extend the quiet period prohibitions to public appearances by research analysts as well as to the issuance of research reports.

Second, the proposed amendments would prohibit "booster shot" research reports or public appearances around the time of the expiration, waiver or termination of a "lock-up" agreement. Members often enter into lock-up agreements with subject companies or their shareholders that restrict or prohibit the sale of a subject company's or its shareholder's securities for a defined period after the completion of a securities offering. This provision would prohibit members from publishing a research report or making a public appearance concerning a subject company for 15 days prior to or after the expiration, waiver or termination of a lock-up agreement, thus helping prevent members from publishing favorable research that is intended to benefit the shareholders whose lock-up agreement is no longer in effect by driving up the price of the issuer's shares. However, the rule proposal includes an exception that would allow members to publish research reports during this quiet period to comment on the effect of significant news or a significant event on the subject company, provided that the legal and compliance department authorizes the publication of the report before it is issued. A similar exception exists with respect to quiet periods in the current rule.

Third, the proposed amendments would require a member that decides to terminate coverage of a subject company to publish a notice of this termination, and to publish its final rating or recommendation of the subject company's securities (assuming the member had issued a prior rating or recommendation). This provision is intended to eliminate the practice of dropping coverage of a subject company rather than lowering a rating or recommendation.

3. Bake-Offs

The proposed amendments would prohibit a research analyst from issuing a research report or making a public appearance concerning a subject company if the research analyst communicated with the subject company in furtherance of obtaining investment banking business before the subject company had entered into a letter of intent or other written agreement designating the member as an underwriter of an initial public offering of the subject company. This provision would not apply to due diligence communications between an analyst and a subject company where the sole purpose is to analyze the financial condition and business operations of the subject company. The purpose of this provision is to prevent research analysts from attending "bake-off" meetings or otherwise communicating with a subject company where the intention is to pitch the member's investment banking services.

4. Registration, Qualification and Continuing Education of Research Analysts

The proposed amendments would create new NASD Rule 1050, which would require all persons associated with a member that function as research analysts to register with NASD. For purposes of Rule 1050, "research analyst" would be defined as any associated person who is directly responsible for the preparation of

[14] *See* Securities Exchange Act Release No. 46165 (July 3, 2002), 67 FR 46555 (July 15, 2002).

[15] *See* Notice to Members 02–39 (July 2002).

research reports. Before these persons' registrations could become effective, they would be required to pass a qualification examination for research analysts specified by NASD. The proposed amendments also would amend Rule 1120 to require research analysts to participate in the regulatory element and firm element of a member's continuing education program. The firm element program would have to include research analysts' training and education in ethics, professional responsibility and the requirements of Rule 2711.

5. Definitions

The proposed amendments would revise the definition of "research analyst" to include supervisors of research analysts, including directors of research and members of supervisory committees. The proposed expanded definition would apply only with respect to the personal trading restrictions of Rule 2711(g). NASD believes the amendment is necessary because these supervisory personnel review and often greatly influence the content of and recommendation contained in research reports and therefore should be subject to the same trading restrictions, such as the prohibition on trading against the member's recommendation. The other provisions of Rule 2711 that govern research analyst conduct and disclosures would not apply to supervisors of research analysts.

Additionally, the definition of "public appearance" would be revised to include interviews with print media and the writing of a print media article by a research analyst. In NASD's experience, the opinions and recommendations by research analysts made in the print media, specifically in opinion pieces, have created some of the same concerns as those made in radio and television appearances, which are covered by the current definition. NASD is modifying the guidance discussed in NASD's Notice to Members 02–39 concerning the making of the required disclosures in public appearances with media outlets. An analyst would not violate the rule if the analyst makes the required disclosures to the print, radio or television media in good faith, even if the media outlet does not print or broadcast the information. NASD thus recognizes the independent editorial discretion of the print, radio and television media.

6. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[16] of the Act, which require, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that this proposed rule change would eliminate or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts. The NASD further believes that the proposed rule change will provide investors with better and more reliable information with which to make investment decisions.

B. Self-Regulatory Organizations' Statements on Burden on Competition

NYSE and NASD do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NYSE and NASD has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the SROs consent, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

The Commission notes that the NYSE and NASD have worked together to develop these proposals. The Commission specifically requests comment on the substance of the proposals, and whether there are any differences between the NYSE and NASD proposals that present compliance or interpretive issues. The Commission also specifically seeks comment on the practicalities of making the required disclosures in print media and other public appearances. The Commission requests comment on whether the SROs should consider whether there are other effective means (including abbreviated disclosures) to alert investors of conflicts in the context of public media appearances that would take into account possible space or time limitations.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposals, as amended, are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Electronically submitted comments will be posted on the Commission's Web site (*http://www.sec.gov*). All submissions should refer to File Nos. SR–NASD–2002–154 and SR–NYSE–2002–49 and should be submitted by March 10, 2003.

Copies of the rule filings, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the rule filings and amendments will also be available for inspection and copying at the principal offices of the SROs and on the SROs' respective Web sites (*http://www.nyse.com* and *http://www.nasd.com*).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–223 Filed 1–6–03; 8:45 am]

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[16] 15 U.S.C. 78o–3(b)(6).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47114; File No. SR–OC–2002–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Listing Standards for Security Futures Products

December 31, 2002.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on November 7, 2002, OneChicago, LLC ("OneChicago") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I and II below, which Items have been prepared by OneChicago. On December 11, 2002, OneChicago filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. OneChicago also filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with written certifications under Section 5c(c) of the Commodity Exchange Act ("CEA")[3] on November 6 and 7, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rules

OneChicago is proposing to adopt rules on listing standards for security futures contracts ("Eligibility and Maintenance Criteria for Security Futures Products") to comply with the requirements under Section 6(h)(3) of the Act[4] and the criteria under Section 2(a)(1)(D)(i) of the CEA.[5] The OneChicago Listing Standards are, for the most part, substantially identical to the sample listing standards (the "Sample Listing Standards") included in Staff Legal Bulletin No. 15 ("SLB 15"),[6] except that the OneChicago Listing Standards:

- Reflect the modifications to the statutory listing standards requirements adopted by the Commission and the CFTC with respect to shares of exchange-traded funds, trust-issued receipts, shares of registered closed-end management investment companies, and American Depositary Receipts ("ADRs")[7] and
- Establish an approximately equal dollar-weighting methodology for physically settled futures based on narrow-based security indices (such indices are referred to hereafter as "NBIs"), which (i) Requires the number of each component security to be rounded up or down to the nearest multiple of 100 shares or receipts in the course of the initial index composition and any subsequent rebalancing, (ii) contemplates mandatory annual rebalancing of such indices under specified circumstances, complemented by OneChicago's ability to rebalance indices on an interim basis if it so elects, and (iii) ensures that outstanding contracts will not be affected by any rebalancing.

In connection with the adoption of the OneChicago Listing Standards, OneChicago is proposing the following rule changes, which are referenced in Item II.A.1.b below, from the version of the OneChicago Rulebook filed as part of OneChicago's notice registration with the Commission on Form 1–N:[8]

- An amendment to its Rule 213 (the "Information Sharing Rule"), to add the following text after the first sentence: "The Chief Executive Officer, or his or her delegate, is authorized to provide information to any such organization, association, board of trade or regulator that is a party to an information sharing agreement with the Exchange, in accordance with the terms and subject to the conditions set forth in such agreement.";
- An amendment to its Rule 603 (the "Market Manipulation Rule"), to (i) remove the reference to market demoralization from the heading and (ii) replace the reference to "upsetting the equilibrium of the market in any Contract" with the words "generating unnecessary volatility";
- An amendment to its Rule 605 (the "Sales Practice Rule"), to provide that each Clearing Member, Exchange Member (including its Related Parties) and Access Person shall comply with any and all sales practice rules from time to time promulgated by the National Futures Association ("NFA") (in the case of any Clearing Member, Exchange Member or Access Person that is registered with the NFA) or the National Association of Securities Dealers, Inc. ("NASD") (in the case of any other Clearing Member, Exchange Member or Access Person) with respect to security futures.
- An amendment to its Rule 610 (the "Trading Ahead Rule") to remove the requirement that a customer's consent under such rule be in writing and indicated on each relevant order; and
- An amendment to its Rule 611 (the "Trading Against Rule"), to remove the requirement that a customer's consent under such rule be in writing and given or renewed within 12 months of the transaction at issue.

OneChicago is also filing herewith proposed Rules 403, 415, 419, 501, 601, 602, 604, 612 and 613, which remain unchanged from the Rulebook filed with the Commission as part of OneChicago's notice registration on Form 1–N.[9] OneChicago Rule 515, while also referenced in Item II.A.1.b below, is not filed in this proposed rule change because it was the subject of a separate filing by OneChicago on Form 19b–4, and was approved by the Commission on November 7, 2002.[10]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and statutory basis for, the proposed rules, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 6(h)(3) of the Act[11] sets forth a number of requirements for listing standards applicable to security futures products. Among other things, that Section provides that such listing standards must (i) be no less restrictive than comparable listing standards for options traded on a national securities

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[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

[4] 15 U.S.C. 78f(h)(3).

[5] 7 U.S.C. 2(a)(1)(D)(i).

[6] SEC, Division of Market Regulation, Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001) (available at *http://.sec.gov*).

[7] *See* Joint Order Granting the Modification of Listing Standards Requirements (Exchange-Traded Funds, Trust-Issued Receipts and shares of Closed-End Funds), Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002) *and* Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001), 67 FR 42760 (June 25, 2002).

[8] *See* Securities Exchange Act Release No. 46669 (October 16, 2002); 67 FR 65156 (October 23, 2002) (File No. 10–133).

[9] *See* Securities Exchange Act Release No. 46669 (October 16, 2002); 67 FR 65156 (October 23, 2002) (File No. 10–133).

[10] *See* Securities Exchange Act Release No. 46787 (November 7, 2002); 67 FR 69059 (November 14, 2002) (SR–OC–2002–01).

[11] 15 U.S.C 78f(h)(3).

exchange [12] and (ii) require that trading in security futures products not be readily susceptible to manipulation of the price of such products or of the underlying securities or options on such securities.[13]

a. OneChicago Listing Standards

According to OneChicago, Commission staff published SLB 15, including the Sample Listing Standards (which were derived from typical listing standards used by exchanges trading options based on securities or security indices), to provide guidance as to how an exchange can comply with the foregoing requirements, but noted that different listing standards could also be consistent with the Act.

OneChicago believes that the Sample Listing Standards, as modified by the order relating to shares of exchange-traded funds, trust-issued receipts and shares of registered closed-end management investment companies,[14] constitute a useful and appropriate model to be used in developing initial listing and maintenance standards for security futures products. The OneChicago Listing Standards therefore generally follow the Sample Listing Standards (as so modified), subject to the additional modifications relating to physically settled futures based on NBIs described under Item I. above. The additional modifications are (i) a function of OneChicago's providing for physical settlement of futures contracts based on NBIs, and accordingly, are limited in application to such physically settled contracts, and (ii) designed to enhance the usefulness and effectiveness of futures on NBIs in connection with hedging, arbitrage and other investment strategies.

Unlike options on security indices currently listed on national securities exchanges, all NBI futures to be listed on OneChicago are expected to be physically settled. OneChicago believes that physical settlement will effectively reduce the basis risk related to trading in these products and lead to tighter bid-ask spreads, thereby limiting the potential for market manipulation. OneChicago believes that its decision in favor of physical settlement therefore furthers the statutory objective of avoiding price manipulation of security futures products and their underlying securities.[15] Physical settlement, however, makes it impracticable to have NBIs consisting of component securities in increments that are smaller than 100 shares or receipts, which corresponds to customary increments for transactions in the markets for those securities. For this reason, rounding is a necessary step in the initial index composition and any subsequent rebalancing.

If the composition of NBIs were subject to frequent or retroactive changes as a result of index rebalancings, OneChicago believes that NBI futures would lose their potential as particularly useful and effective tools in the implementation of hedging, arbitrage and other investment strategies.

The Sample Listing Standards contemplate at least quarterly rebalancings of equal dollar-weighted indices. The OneChicago Listing Standards modify this requirement by providing that an approximately equal dollar-weighted NBI underlying a physically settled security futures product is to be rebalanced annually, but only if the aggregate value of the security position with the highest value is two or more times greater than the aggregate value of the security position with the lowest value in the index for a specified time period. OneChicago believes that this test adequately balances the potential adverse consequences of too frequent changes in the composition of any NBI with the objective that an NBI should be, and remain, representative of the industry segment to which it relates. OneChicago will have the ability to rebalance any NBI on an interim basis should this become necessary as a result of exceptional changes in the relative values of the component securities. As OneChicago plans to list only contracts expiring on the next two quarterly expiration dates (based on the quarterly cycle of March, June, September and December) and the nearest two serial monthly expiration dates that are not quarterly expiration dates, OneChicago will be able to phase in contracts based on a rebalanced NBI, and thereby replace contracts with open interest based on the previous NBI composition, within a short period of time.

OneChicago believes it is critical, however, that investors with open positions in contracts based on a particular NBI be able to rely on the number of shares or receipts evidencing each component security remaining unchanged for purposes of those contracts. Accordingly, the OneChicago Listing Standards clarify that outstanding contracts will not be affected by any rebalancing.

Unlike the Sample Listing Standards (and the listing standards for options on which they are based), exchange rules and other requirements applicable to a variety of financial instruments based on "narrowly-based" security indices or baskets contemplate modifications to a pure equal dollar-weighted composition methodology and/or do not require automatic periodic rebalancings. For example, OneChicago believes that the rules of the American Stock Exchange ("Amex") for portfolio depositary receipts [16] and index fund shares [17] expressly permit a "modified equal-dollar weighting methodology" and do not appear to provide for rebalancing. Similarly, no rebalancing is required for the component securities represented by any series of trust-issued receipts traded on Amex.[18] Further, OneChicago notes that the offering documents for the "Holding Company Depositary Receipts (HOLDRS)" developed by Merrill Lynch & Co., Inc., another exchange-listed instrument designed to enable investors to indirectly gain exposure to equity securities of multiple issuers through a single investment, specify that the underlying trust assets will not change during the (indefinite) term of the trust unless one of several narrowly defined "reconstitution events" occurs. In this connection, OneChicago notes that single-security futures based on at least some of the aforementioned instruments are permissible under the relief granted by the Commission and the CFTC [19] with respect to shares of exchange-traded funds, trust-issued receipts and shares of registered closed-end management investment companies.

The contents of the OneChicago Listing Standards, including the approximately equal dollar-weighting methodology described above, will be publicly available and fully disclosed. Finally, OneChicago believes that it is also worth noting that, despite the differences between the OneChicago Listing Standards and the Sample Listing Standards, hypothetical indices following one or the other methodology have been shown to be highly correlated.

b. Section 6(h)(3) Requirements

Section 6(h)(3) of the Act [20] contains detailed requirements for listing standards and conditions for trading applicable to security futures products. Set forth below is a summary of each such requirement or condition, followed by a brief explanation of how OneChicago will comply with it,

[12] 15 U.S.C. 78f(h)(3)(C).

[13] 15 U.S.C. 78f(h)(3)(H).

[14] *See supra* note 7.

[15] *See* 15 U.S.C. 78f(h)(3)(H).

[16] *See* Amex Rule 1000, in particular Commentary .03 thereto.

[17] *See* Amex Rule 1000A, in particular Commentary .02 thereto.

[18] *See* Amex Rule 1202, in particular Commentary .01 thereto.

[19] *See supra* note 7.

[20] 15 U.S.C. 78f(h)(3).

whether by particular provisions in the OneChicago Listing Standards or otherwise.

Clause (A) of Section 6(h)(3) of the Act [21] requires that any security underlying a security future be registered pursuant to Section 12 of the Act.[22] This requirement is addressed by sections I.A.(ii), II.A.(i), III.A.(ii)(b) and IV.A.(ii)(a) of the OneChicago Listing Standards.

Clause (B) of Section 6(h)(3) of the Act [23] requires that a market on which a physically settled security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product. All security futures products initially proposed to be traded on OneChicago will be physically settled. OneChicago has entered into arrangements with both The Options Clearing Corporation ("OCC") and the clearinghouse of the Chicago Mercantile Exchange Inc. ("CME"), both of which are registered clearing agencies, relating to the clearing of security futures products. By virtue of the CME clearinghouse being an associated clearinghouse of OCC, and OCC having in place arrangements with the National Securities Clearing Corporation for the delivery of securities underlying physically settled security futures products, OneChicago believes that the payment and delivery of the securities underlying OneChicago's security futures products in accordance with the statutory requirements should be ensured.

Clause (C) of Section 6(h)(3) of the Act [24] provides that listing standards for security futures products must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.[25] For the reasons discussed under Item II.A.1. above, notwithstanding specified differences between the Sample Listing Standards and the OneChicago Listing Standards, OneChicago believes that the latter are no less restrictive than comparable listing standards for exchange-traded options.

Clause (D) of Section 6(h)(3) of the Act [26] requires that each security future be based on common stock or such other equity securities as the Commission and the CFTC jointly determine appropriate. This requirement is addressed by sections I.A(i), III.A(ii)(c) and IV.A(ii)(b) of the OneChicago Listing Standards.

Clause (E) of Section 6(h)(3) of the Act [27] requires that each security futures product be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product. OneChicago notes that pursuant to Section 6(h)(7) of the Act,[28] the foregoing requirement is deferred until the "compliance date" (as defined therein). OneChicago expects that both OCC and the CME clearinghouse will have in place procedures complying with the requirements of clause (E) after such "compliance date."

Clause (F) of Section 6(h)(3) of the Act [29] requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act [30] effect transactions in a security futures product. This requirement is addressed by the Sales Practice Rule. As amended, the Sales Practice Rule requires all security futures intermediaries entering into transactions on OneChicago to comply with the applicable sales practice rules from time to time promulgated by the NFA (in the case of any Clearing Member, Exchange Member or Access Person that is registered with the NFA) or the NASD (in the case of any other Clearing Member, Exchange Member or Access Person), both of which are national securities associations.

Clause (G) of Section 6(h)(3) of the Act [31] requires that each security futures product be subject to the prohibition against dual trading in Section 4j of the CEA [32] and the rules and regulations thereunder or the provisions of Section 11(a) of the Act [33] and the rules and regulations thereunder. Security futures intermediaries trading on OneChicago will be subject to the aforementioned statutory and regulatory prohibitions against dual trading by virtue of OneChicago Rule 604 previously included in Exhibit A–5 to OneChicago's Form 1–N, filed with the Commission on August 20, 2002,[34] which requires such intermediaries to comply with all applicable law. OneChicago Rules 610 through 613 contain customary provisions relating to the priority of customers' orders, trading against customers' orders, withholding orders and disclosing orders, consistent with Regulations §§ 155.2 through 155.4 under the CEA.[35] The amendments reflected in Rules 610 and 611 as filed herewith reflect the fact that the customer consents referred to therein are not generally required to be in writing or renewed. OneChicago notes, however, that the prohibition of dual trading in security futures products as set forth in Regulation § 41.27[36] adopted pursuant to Section 4j(a) of the CEA [37] by its terms only applies to a contract market operating an electronic trading system if such market provides participants with a time or place advantage or the ability to override a predetermined algorithm. Since those conditions do not exist on OneChicago, OneChicago has no specific rule prohibiting dual trading.

Clause (H) of Section 6(h)(3) of the Act [38] provides that trading in a security futures product must not be readily susceptible to manipulation of the price of such security futures product; nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities. As discussed in Item II.A.1. above, the eligibility and maintenance criteria for security futures products contained in the OneChicago Listing Standards have been designed to ensure that the products that will be listed on OneChicago and the underlying securities will not be readily susceptible to price manipulation. In addition, Rule 603 in the OneChicago Rulebook, as amended by this filing, prohibits market manipulation (including generating unnecessary volatility or creating a condition where prices do not or will not reflect fair market values). The amendments reflected in Rule 603 as filed herewith were designed to avoid the use of terms or concepts that are not germane to futures markets. OneChicago Rules 415(b) and 419 implement the requirements contained in Rule 6h-1, under the Act [39] relating to settlement and regulatory halts with respect to security futures products.

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[21] 15 U.S.C. 78f(h)(3)(A).
[22] 15 U.S.C. 78l.
[23] 15 U.S.C. 78f(h)(3)(B).
[24] 15 U.S.C. 78f(h)(3)(C).
[25] 15 U.S.C. 78o–3(a).
[26] 15 U.S.C. 78f(h)(3)(D).
[27] 15 U.S.C. 78f(h)(3)(E).
[28] 15 U.S.C. 78f(h)(7).
[29] 15 U.S.C. 78f(h)(3)(F).
[30] 15 U.S.C. 78o–3(a).
[31] 15 U.S.C. 78f(h)(3)(G).
[32] 7 U.S.C. 4j.
[33] 15 U.S.C. 78k(a).
[34] *See supra* note 8.
[35] 17 CFR 155.2–155.4.
[36] 17 CFR 41.27.
[37] 7 U.S.C. 4j(a).
[38] 15 U.S.C. 78f(h)(3)(H).
[39] 17 CFR 240.6h–1.

Clause (I) of Section 6(h)(3) of the Act[40] requires that procedures be in place for coordinated surveillance among the market on which a security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading. The relevant provisions are OneChicago Rules 601, 602 and 603, which prohibit fraudulent acts, fictitious transactions and market manipulation, respectively. OneChicago notes that it is an affiliate member of the Intermarket Surveillance Group ("ISG") and has executed an affiliate agreement, an agreement to share market surveillance and regulatory information and an addendum to the foregoing agreements with the other ISG members. The Information Sharing Rule permits OneChicago to enter into agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade and their respective regulators. To the extent permitted by any such agreement, OneChicago's Chief Executive Officer, or his or her designee, will be authorized to provide information to any such organization, association, board of trade or regulator that is a party to an information sharing agreement. Additional provisions related to coordinated surveillance are contained in sections I.A.(ix)(a), III.A(ii)(g) and IV.A(ii)(b) of the OneChicago Listing Standards.

Clause (J) of Section 6(h)(3) of the Act[41] requires that a market on which a security futures product is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph. The audit trail capability provided by CBOE*direct*, the trade matching engine utilized by OneChicago, will create and maintain an electronic transaction history database that contains information with respect to all orders, whether executed or not, and resulting transactions on OneChicago. This applies to orders entered through CBOE*direct* terminals as well as to orders routed to CBOE*direct* through CME's Globex® system. The information recorded with respect to each order includes: time received (by CBOE*direct* or Globex®), terms of the order, order type, instrument and contract month, price, quantity, account type, account designation, user code and clearing firm.

OneChicago's electronic audit trail will consist of data recorded by CBOE*direct* and Globex®, and OneChicago will have full access to all such data. Information logged by CBOE*direct*, including in respect of orders received through CBOE*direct* terminals, will be archived and provided to OneChicago each day. Orders received through Globex® will be archived and maintained at CME. Together these data sets will enable OneChicago to trace each order back to the clearing firm by or through which it was submitted. If any question or issue arises as to the source of an order prior to submission by or through a clearing firm, OneChicago will request that the clearing firm provide an electronic or other record of the order.

For orders that cannot be immediately entered into either Chicago Board Options Exchange, Inc ("CBOE") or CME systems, and therefore will not be recorded electronically by CBOE*direct* and Globex® at the time they are placed, OneChicago Rule 403(b) requires that the Clearing Member or, if applicable, the Exchange Member or the Access Person receiving such order must prepare an order form in a non-alterable written medium, which must be time-stamped and include the account designation, date and other required information (*i.e.*, order terms, order type, instrument and contract month, price and quantity). Each such form must be retained for at least five years from the time it is prepared. In addition, OneChicago Rule 501 establishes a general recordkeeping requirement pursuant to which each Clearing Member, Exchange Member and Access Person must keep all books and records as required to be kept by it pursuant to the CEA, CFTC regulations, the Act, regulations under the Act and the Rules of OneChicago. OneChicago Rule 501 also requires that such books and records be made available to OneChicago upon request. Current CFTC regulations require books and records to be maintained for a period of five years.

Block trades will be entered in CBOE*direct* by OneChicago's operations management after they are verbally reported by designated individuals at the Clearing Member for the selling party. At the time of each such verbal report, a trade identification number will be assigned and provided to the caller. Both the buyer and the seller in each trade will then follow up the verbal report by submitting a block trade reporting form via facsimile or email to OneChicago. Generally, the same procedures apply to exchange of future for physical ("EFP") transactions, except that no verbal report is required for such transactions. Since block trades and EFP transactions involve orders that cannot be immediately entered into either CBOE's or CME's systems, the Clearing Members or, if applicable, Exchange Members or Access Persons involved must comply with the procedures specified in the preceding paragraph.

Clause (K) of Section 6(h)(3) of the Act[42] requires that a market on which a security futures product is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded. OneChicago Rule 419 provides for trading in a security future to be halted at all times that a regulatory halt has been instituted for the relevant underlying security or securities.

Clause (L) of Section 6(h)(3) of the Act[43] requires that the margin requirements for a security futures product comply with the regulations prescribed pursuant to Section 7(c)(2)(B) of the Act.[44] OneChicago believes that its proposed Rule 515 regarding customer margin is consistent with the requirements of the Act.[45]

For the reasons described above, OneChicago submits that the OneChicago Listing Standards and the proposed changes to the Information Sharing Rule, the Market Manipulation Rule, the Sales Practice Rule, the Trading Ahead Rule, the Trading Against Rule and the other proposed OneChicago rules filed herewith, satisfy the requirements set forth in Section 6(h)(3) of the Act.[46]

2. Statutory Basis

One Chicago has filed these proposed rules pursuant to Section 19(b)(7) of the Act.[47] OneChicago believes that the OneChicago Listing Standards are authorized by, and consistent with, Section 6(b)(5)[48] of the Act because they are designed to prevent fraudulent and manipulative acts and practices and to

[40] 15 U.S.C. 78f(h)(3)(I).
[41] 15 U.S.C. 78f(h)(3)(J).
[42] 15 U.S.C. 78f(h)(3)(K).
[43] 15 U.S.C. 78f(h)(3)(L).
[44] 15 U.S.C. 78g(c)(2)(B).
[45] The Commission notes that OneChicago's Rule 515 regarding customer margin was approved on November 7, 2002. Securities Exchange Act Release No. 46787 (November 7, 2002); 67 FR 69059 (November 14, 2002) (SR–OC–2002–01). *See supra* note 9.
[46] 15 U.S.C. 78f(h)(3).
[47] 15 U.S.C. 78s(b)(7).
[48] 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the OneChicago Listing Standards will have an impact on competition because (i) It can be expected that other self-regulatory organizations that will list security futures products will adopt substantially similar listing standards and (ii) any concerns about possible anti-competitive effects should be evaluated in light of the standards applicable to other financial instruments based on "narrowly based" security indices or baskets, which are consistent with the OneChicago Listing Standards. In addition, OneChicago does not believe that the proposed amendment to the Information Sharing Rule will have an impact on competition because such amendment deals with procedural aspects of sharing information and is not substantive. Similarly, OneChicago does not believe that the proposed amendment to the Sales Practice Rule will have an impact on competition because it is designed to reflect the fact that members of OneChicago that are registered with the NFA will be subject to the sales practice rules of such organization rather than the sales practice rules of the NASD. Finally, OneChicago does not believe that the proposed amendments to the Market Manipulation Rule, the Trading Ahead Rule or the Trading Against Rule or the other proposed rules will have an impact on competition because such amendments constitute non-substantive changes to reflect market practice in the areas to which they relate.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rules Received From Members, Participants, or Others

Comments on the OneChicago Listing Standards have not been solicited.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Pursuant to Section 19(b)(7)(B) of the Act,[49] the proposed rule change, as filed with the Commission on November 7, 2002, became effective on November 8, 2002. Amendment No. 1 to the proposed rule change became effective on December 11, 2002. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[50]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules conflict with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings will also be available for inspection and copying at the principal office of OneChicago. Electronically submitted comments will be posted on the Commission's internet Web site (*http://www.sec.gov*).

All submissions should refer to File No. SR–OC–2002–04 and should be submitted by January 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[51]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–272 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–P

[49] 15 U.S.C. 78s(b)(7)(B).

[50] 15 U.S.C. 78s(b)(1).

[51] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47109; File No. SR–Phlx–2002–78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Increase the Transaction Charge for Off-Floor Broker-Dealer Orders Delivered via AUTOM and Executed via AUTO–X

December 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 16, 2002, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to increase the off-floor broker-dealer equity option transaction charge from $.35 per contract to $.45 per contract for orders delivered through the Phlx Automated Options Market ("AUTOM") System, and automatically executed by the Exchange's Automatic Execution System ("AUTO–X").[3] The $.45 per contract transaction charge applicable to off-floor broker-dealer orders entered via AUTOM and executed via AUTO-X will apply to transactions in equity options only.[4] The option transaction charge applicable to off-floor broker-dealer orders not executed by AUTO–X remains at $.35 per contract. The Exchange intends to implement this fee on transactions settling on or after January 2, 2003.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[4] This fee will be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to raise revenue for the Exchange by charging a $.45 transaction charge for off-floor broker-dealer orders that are delivered via AUTOM and executed automatically via AUTO–X.

Currently, the Exchange charges a fee of $.35 per contract for all off-floor broker-dealer transactions, regardless of how such an order is executed. The $.35 charge will continue to apply to off-floor broker-dealer orders not executed by AUTO–X.

The $.35 charge for non-AUTO–X transactions and the $.45 charge for AUTO–X transactions apply to members for orders, received from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. Accordingly, an order for the account of an ROT entered from off-floor would be subject to one of the two charges.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members relating to the automatic execution of off-floor broker-dealer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

[5] 15 U.S.C. 78f(b).
[6] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File No. SR–Phlx–2002–78 and should be submitted by January 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–270 Filed 1–6–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78(s)(b)(3)(A)(ii).
[8] 17 CFR 240.19b–4(f)(2).
[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 24, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 6, 2003 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1681.
Form Number: IRS Form A.
Type of Review: Extension.
Title: Qualifications & Availability Form.
Description: Form A is used by external applicants applying for clerical and technical positions with the Internal Revenue Service. Applicants will complete information relating to their address, job preference, veteran's preference and a series of occupational questions, knowledge and skills along with background information.
Respondents: Individuals or households.
Estimated Number of Respondents: 90,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 45,000 hours.
OMB Number: 1545–1685.
Regulation Project Number: REG–103735–00 NPRM and Temporary.
Type of Review: Extension.
Title: Tax Shelter Disclosure Statements.
Description: The regulations provide guidance on the filing requirement under section 6011 for certain corporate taxpayers engaged in transactions producing tax savings in excess of certain dollar thresholds.
Respondents: Business or other for-profit, individuals or households.
Estimated Number of Respondents/Recordkeepers: 1.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.
Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1 hour.

OMB Number: 1545–1686.

Regulation Project Number: REG–103736–00 NPRM and Temporary.

Type of Review: Extension.

Title: Requirement to Maintain List of Investors in Potentially Abusive Tax Shelters.

Description: The regulations provide guidance on the requirement under section 6112 to maintain a list of investors in potentially abusive tax shelters.

Respondents: Business or other for-profit, individual or household.

Estimated Number of Recordkeepers: 150.

Estimated Burden Hours Per Recordkeeper: 100 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 15,000 hours.

OMB Number: 1545–1687.

Regulation Project Number: REG–110311–98 NPRM and Temporary.

Type of Review: Extension.

Title: Corporate Tax Shelter Registration.

Description: The regulations provide the guidance required to activate the registration requirements of Internal Revenue Code (IRC) section 6111 and penalty provisions of IRC section 6707 for confidential corporate tax shelters described in IRC section 6111(d).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 4.

Estimated Burden Hours Per Respondent: 15 minutes.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–267 Filed 1–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet January 21–23, 2003, from 8:30 a.m. to 5 p.m. each day. The meeting will be held at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 230, Washington, DC. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to healthcare, rehabilitation, compensation, outreach, and other programs and activities administered by the VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On January 21, the agenda topics for this meeting will include briefings and updates on the Women Veterans Health Program, the National Survey of Veterans, Board of Veterans Appeals issues, legislative issues affecting women veterans, community-based outpatients clinics, and the National Women Veterans Study. On January 22, the Committee will be briefed on Committee requirements, compensation and pension benefits, VA-funded research on women veterans, the status of the VA Homeless Program and related issues that the Committee members may choose to introduce. On January 23, discussions will include briefings regarding the VA Domiciliary Programs and the 8 Comprehensive Women Veterans Health Centers. The Committee is tentatively scheduled for a briefing on Capitol Hill and from the Department of Labor, Veterans Employment and Training Service.

Any member of the public wishing to attend should contact Ms. Maryanne Carson, at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Carson may be contacted either by phone at (202) 273–6193, fax at (202) 273–7093 or e-mail at *00W@mail.va.gov*. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before the meeting, or within 10 days after the meeting.

Dated: December 23, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 03–258 Filed 1–6–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allowed the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 1.629), the allowance is equal to the average cost of Government-furnished graveliners minus any administrative costs to VA. The law continues to provide a veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing a claim, and the amount of the allowance payable for qualifying interments that occur during calendar year 2003.

FOR FURTHER INFORMATION CONTACT: Karen Barber, Program Analyst, Legislation and Regulatory Division (402B3), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–273–5183 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 501(a) and Pub. L. 104–275, Section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments that occur during calendar year 2003 is the average cost of Government-furnished graveliners in fiscal year 2002, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners that were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development

projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $162.90 for fiscal year 2002.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $9.75 for calendar year 2003.

The net allowance payable for qualifying interments occurring during calendar year 2003, therefore, is $153.15.

Approved: December 26, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–217 Filed 1–6–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 4

Tuesday, January 7, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Adminstration

[A–201–827]

Notice of Final Rescission of Antidumping Duty Administrative Review: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico

Correction

In notice document 02–33134 beginning on page 81 in the issue of Thursday, January 2, 2003, make the following correction:

On page 81, in the third column, in the **EFFECTIVE DATE** section, in the first and second lines, "(Insert date of publication in the **Federal Register**)." should read, "January 2, 2003".

[FR Doc. C2–33134 Filed 1–6–03; 8:45 am]

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Federal Register

Tuesday,
January 7, 2003

Part II

Environmental Protection Agency

40 CFR Parts 9, 710, and 723
TSCA Inventory Update Rule Amendments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 710, and 723

[OPPT–2002–0054; FRL–6767–4]

RIN 2070–AC61

TSCA Inventory Update Rule Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating amendments to the Toxic Substances Control Act (TSCA) section 8(a) Inventory Update Rule (IUR). The IUR currently requires manufacturers (including importers) of certain chemical substances on the TSCA Chemical Substances Inventory to report data on each chemical's current production volume, site–limited status, and plant site information every 4 years. Through these IUR amendments (IURA), EPA is requiring the reporting of additional data for certain chemicals to assist EPA and others in screening potential exposures and risks resulting from industrial chemical operations and commercial and consumer uses of TSCA chemical substances. EPA is also modifying the IUR reporting and recordkeeping requirements, removing one reporting exemption and creating others, and modifying its procedures for making Confidential Business Information claims. EPA is also making certain non–substantive technical corrections.

DATES: This final rule is effective February 6, 2003. For purposes of judicial review, this rule shall be promulgated at 1 p.m. eastern daylight/standard time on January 21, 2003.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8170; e–mail address: TSCA–Hotline@epa.gov.

For technical information contact: Susan Sharkey, Project Manager, Economics, Exposure and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8789; e–mail address: sharkey.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute to include import) chemical substances currently subject to reporting under the Inventory Update Rule (IUR) at 40 CFR part 710 or if you manufacture inorganic chemical substances. Any use of the term "manufacture" in this document will encompass "import," unless otherwise stated. In the past, persons that only are processors of chemical substances have not been required to comply with the requirements of 40 CFR part 710. These amendments do not change the status of processors under the regulations at 40 CFR part 710. Potentially affected categories and entities may include, but are not limited to:

Chemical manufacturers and importers currently subject to IUR reporting, and chemical manufacturers and importers of inorganic chemical substances (NAICS codes 325, 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in § 710.48 in the regulatory text. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document or Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPPT–2002–0054. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

II. Background

A. What Action is the Agency Taking?

1. *Substantive changes to the CFR*. EPA is promulgating amendments to the IUR (IURA) which were proposed on August 26, 1999 (64 FR 46772) (FRL–6097–4), taking into consideration comments received on the proposal. The amendments to the IUR that are contained in this final rule, as well as the inventory update provisions of 40 CFR part 710 that are unchanged by these amendments, appear in a new subpart C to 40 CFR part 710. The inventory update provisions that apply to the 2002 update remain unchanged although the Agency has added subpart headings in order to distinguish the provisions that apply to the 2002 update (i.e., the existing IUR) and the new and revised provisions promulgated in this rule. The following is a brief listing of the primary changes to the IUR, which do not affect the regulations in place for IUR reporting in 2002. These changes are described in more detail in this document, along with a summary of the comments received and the Agency's summary response to those comments.

First, EPA is amending the existing IUR regulations, 40 CFR 710.28 and 710.32, which appear in the new subpart C as §§ 710.48 and 710.52, to raise the production volume basic

reporting threshold from the current 10,000 pounds (lbs.) per year to 25,000 lbs. per year, and to add a new larger-volume reporting threshold of 300,000 lbs. per year for the reporting of processing and use information.

Second, EPA is amending 40 CFR 710.32, which appears in the new subpart C as § 710.52, to add exposure–related information to the existing reporting requirements for chemical substances covered by the IUR. Specifically, the Agency is requiring that manufacturers subject to the amended rule ("submitters") report, in ranges: (1) The number of workers reasonably likely to be exposed to the chemical substance at the site of manufacture; (2) the physical form(s) in which the chemical substance is sent off–site; (3) the percentage of total reported production volume associated with each physical form; and (4) the maximum concentration of the chemical substance at the time it leaves the submitter's manufacturing site or, if the chemical substance is site–limited, the maximum concentration at the time it is reacted on–site to produce a different chemical substance.

Third, EPA is amending 40 CFR 710.32, which appears in the new subpart C as § 710.52, to require chemical manufacturers of chemical substances with production volumes of 300,000 lbs. or greater to report certain exposure–related information concerning the processing and use of each reportable chemical substance that is conducted at sites that receive the reportable chemical substance from the submitter site directly or indirectly (whether the recipient site(s) are controlled by the submitter site or not) (including through a broker/distributor, from a customer of the submitter, etc.). Specifically, manufacturers of these larger–production volume chemical substances will be required to report, to the extent the information is readily obtainable:

- The type of industrial processing or use operation(s) at each site, including downstream sites.
- The five–digit NAICS codes that best describe the industrial activities during the processing or use operation.
- The industrial function of each chemical substance during the processing or use operation, for each NAICS code reported.
- The percentages of the submitter's production volume used in each industrial function category.
- The number of sites where the various processing or use operations occur.
- The number of workers reasonably likely to be exposed to the chemical substance in each processing or use operation.
- The categories of commercial and consumer uses of the reportable chemical substance.
- An indication of the presence of the reportable chemical substance in or on consumer products intended for use by children.
- The percentages of the submitter's production volume associated with each commercial and consumer product category.
- The maximum concentration of the reportable chemical substance in each commercial and consumer product category.

Fourth, EPA is revoking the current full exemption from IUR reporting at 40 CFR 710.26(a) for inorganic chemical substances, and is phasing in reporting for these substances, which appears in the new subpart C as § 710.46(b)(3). For the first submission period following promulgation of IURA (i.e., the 2006 submission period), EPA is requiring partial reporting for these substances (i.e., inorganic chemical substances will not be subject to the reporting of processing and use information). In subsequent submission periods, manufacturers of an inorganic substance will be subject to full reporting (i.e., including the processing and use information reporting requirements), to the extent that they manufacture at least 300,000 lbs. of the substance at a site during a given reporting year.

Fifth, EPA is amending 40 CFR 710.26, which appears in the new subpart C as § 710.46(b)(1), to create a partial reporting exemption for certain chemical substances termed "petroleum process streams" for purposes of reporting under the IURA (i.e., these chemical substances are not subject to the reporting of processing and use information).

Sixth, EPA is providing, in 40 CFR 710.46(b)(2), a partial exemption for specific chemical substances (i.e., these chemical substances are not subject to the reporting of processing and use information) where EPA has identified that there is a low current interest in the IURA processing and use information related to the chemical. EPA has identified a list of chemicals that are covered by this partial exemption, and provides a process for revising this list over time because interest in the IURA processing and use information for a particular chemical can change.

Seventh, EPA is amending 40 CFR 710.26, which appears in the new subpart C as § 710.46(a)(4), to provide a full exemption from IUR reporting for certain forms of natural gas.

Eighth, EPA is amending 40 CFR 710.32, which appears in the new subpart C as § 710.52, to require the reporting of more specific information to assist in the accurate identification of plant sites reporting under IUR.

Ninth, EPA is amending 40 CFR 710.28, 710.32, and 710.33, which appear in the new subpart C as §§ 710.48, 710.52, and 710.53, to change the period for which reporting is required from a corporate fiscal year to a calendar year basis.

Tenth, EPA is amending 40 CFR 710.32, which appears in the new subpart C as § 710.52, to allow submitters to claim their production volume range as CBI, in addition to the existing requirement that submitters report a specific production volume number and the CBI status of that specific number. Under the IURA, some submitters may choose to assert a confidentiality claim for specific production volume information while releasing the more general production volume range as public information.

Eleventh, EPA is amending 40 CFR 710.38, which appears in the new subpart C as § 710.58, to require substantiation of plant site confidentiality claims at the time such claims are made in IUR submissions to EPA (i.e., "upfront substantiation"), in a manner similar to the upfront substantiation of chemical identity, which will continue to be required under 40 CFR 710.38, which appears in the new subpart C as § 710.58.

Finally, EPA is amending 40 CFR 710.37, which appears in the new subpart C as § 710.57, to extend the records retention period from 4 years to 5 years.

2. *Technical changes to the CFR.* The amendments that are contained in this final rule, as well as the parts of 40 CFR part 710 that are unchanged by these amendments, are codified in a new subpart C in 40 CFR part 710. Because promulgation of IURA will overlap a current IUR reporting cycle, EPA must maintain the existing IUR provisions in 40 CFR part 710 in effect throughout the 2002 submission period for the existing IUR. Submitters filing IUR reports in 2002 must follow the regulations currently contained in 40 CFR part 710, which will now appear under the new heading as subpart B. On January 1, 2003, the regulations in this final rule that are promulgated in subpart C of 40 CFR part 710 will become effective for use by submitters filing IURA reports in 2006 and beyond. (See § 710.1(b) of the regulatory text) Since the Agency has duplicated in subpart C those provisions from subpart B (i.e., the existing part 710) that are unchanged by these

amendments, once the current reporting cycle is complete, subpart B will no longer be applicable and the Agency will issue a technical amendment to remove it from the CFR. The creation of subparts in 40 CFR part 710 does not make any substantive changes other than those that have been presented in this final rule.

Although there are no substantive changes to the provisions from existing 40 CFR part 710 that have been incorporated into the new subpart C, the Agency has made minor technical corrections to those provisions, as well as technical changes to the existing provisions that now appear in subpart A. Specifically, the Agency is correcting several typographical errors that appear in the existing 40 CFR part 710, and is making other minor non–substantive edits to that text. These technical corrections include the following. (Note wherever a change is being made to a new regulatory text provision, a regulatory text citation to the corresponding existing 40 CFR part 710 provision is provided in parentheses, e.g., § 710.59 (§ 710.39). This parenthesized citation is provided in order to identify where the new regulatory text originated.)

In accordance with plain language principles, EPA has substituted "will" or "must" for "shall." These three terms are considered to be equivalent, and delineate requirements to be followed or met. Corrections were made in the following sections: § 710.1(d) (§ 710.1(c)); § 710.3(a) (§ 710.2(a)); § 710.3(b) (§ 710.2(b)); § 710.3(c) (§ 710.2(c)); § 710.3(d) in the definition for "Administrator" (§ 710.2(e)); § 710.3(d) in the definition for "site" (§ 710.2(w)); § 710.3(d) in the note following the definition for "small quantities for research and development" (§ 710.2(y)); and § 710.4(b)(2) (§ 710.4(b)(2)).

EPA has corrected some punctuation and spelling errors: commas were added in § 710.1(a) (§ 710.1(a)), in § 710.3(d) in the definition for "distribute in commerce" (§ 710.2(j)) and in the definition for "small quantities for research and development" and in the note following the same definition (§ 710.2(y)); commas were removed in the definition for "distribute in commerce" (§ 710.2(j)) and in the note following the definition for "distribute in commerce" (§ 710.2(y)); in § 710.3(d) "Process 'for commercial purposes'" was substituted for "Process for 'commercial purposes'" in the definition for "Process 'for commercial purposes'" (§ 710.2(u)); in § 710.3(d) "juridical" was substituted for "juridicial" in the definition for "person" (§ 710.2(s)) and "appropriate" was substituted for "appropriated" in the definition for "technically qualified person" (§ 710.2(aa)(2)); in § 710.4(d)(2) "premanufacture" was substituted for "premanufacturing" (§ 710.4(d)(2)); and in § 710.4(d)(5) "photographic films" was substituted for "photographic, films" (§ 710.4(d)(5)).

EPA has made certain additional non–substantive changes. In § 710.3(d), EPA substituted "1,000 lbs. (454 kg)" for "1,000 pounds" in the note following the definition for "small quantities for research and development" (§ 710.2(y)). EPA has substituted "his/her" for "his" in sections where the word "his" was used: in two instances in § 710.3(d) in the definition for "Administrator" (§ 710.2(e)); in § 710.3(d) in the definition for importer (§ 710.2(l)(2)); and in § 710.3(d) in the definition for "technically qualified person" (§ 710.2(aa)).

EPA has made certain additional non-substantive changes and updated information submission information in § 710.59 by substituting "Availability of reporting form and instructions" for "How do I submit the required information for the 1998 reporting cycle?" (§ 710.39); in § 710.59(a) by substituting "http://www.epa.gov/oppt/iur" for "http://www.epa.gov/opptintr/iur98" and by removing "or Fax-on-Demand by using a faxphone to call (202) 401–0527 and selecting item 5119" as Fax-on-Demand is no longer available (§ 710.39(a)); in § 710.59(b) by substituting "Guidance for completing the reporting form and preparing an electronic (magnetic media) report will be made available prior to each submission period." for the existing paragraph after the heading (§ 710.39(b)); in § 710.59(c) by substituting "will send" for "is mailing" and "reporting package (consisting of a copy of Form U and a copy of the reporting instructions) to those submitters that reported in the IUR submission period that occurred immediately prior to the current submission period." for "reporting package to those companies that reported in 1994. " (§ 710.39(c)); in § 710.59(c)(1), EPA substituted "By telephone" for "By phone" and removed "or TDD 202–554–0551" as the TDD number is no longer available (§ 710.39(c)(1)); in § 710.59(c)(2), EPA substituted "TSCA-Hotline@epa.gov" for "TSCA-Hotline@epamail.epa.gov" (§ 710.39(c)(2)); and in § 710.59(c) and (d) EPA substituted "7408M" for "7408," "OPPT Document Control Officer (DCO)" for "Document Control Officer," and "Environmental Protection Agency" for "U.S. Environmental Protection Agency" (§ 710.39(c)(3)); and by adding § 710.59(c)(4) to state that the reporting form and instructions will additionally be available via the Internet.

EPA has also made minor technical corrections to the existing provisions in § 710.39 that now appear in subpart B. EPA removed "for the 1998 reporting cycle" from the section heading to clarify that the section applies to the current reporting cycle. In § 710.39(a), EPA replaced the website address with the current address, www.epa.gov/oppt/iur/iur02/index.htm, and removed the Fax-on-Demand information, which is no longer available. In § 710.39(c)(1), EPA removed the TDD number, which is no longer available. The Agency corrected dates and addresses in § 710.39(c), (c)(3), and (d) by replacing "1994" with "1998," "Mail Code 7408" with "Mail Code 7408M," and inserting "OPPT" before "Document Control Officer."

EPA made minor revisions to clarify the meaning of certain provisions. In § 710.1(a) "and recordkeeping" was inserted after "governing reporting," "(TSCA)" was inserted after "(15 U.S.C. 2607(a))," and "and keeping current" was inserted after "purpose of compiling" (§ 710.1(a)); in § 710.1(d), the note following the paragraph was added to the end of the paragraph and "Note: As a matter of traditional Agency policy," was removed (§ 710.1(b)); in § 710.52(c)(1) "submitter" was substituted for "respondent" and "as described in § 710.59" for "from EPA at the address set forth in § 710.39" (§ 710.32(c)(1)); in § 710.52(c)3(ii) "indicating, for each reportable chemical substance at each site," was substituted for "for each substance for which information is being submitted indicating" and added ", or both manufactured in the United States and imported in the United States" (§ 710.32(c)(5)); in § 710.52(c)(3)(iii) "designation indicating, for each reportable chemical substance at each site," was substituted for "statement for each substance for which information is being submitted indicating" (§ 710.32(c)(6)); in §§ 710.45 and 710.55(a) "submission period" was substituted for "reporting period" (§§ 710.25 and 710.35(a)); in § 710.48 "section" was substituted for "§ 710.28" (§ 710.28); in § 710.48(b) "paragraphs (a) and (b)" were deleted (§ 710.28(c)); in § 710.52(c)(3)(iv) "reportable" was substituted for "subject" (§ 710.32(c)(7)); in § 710.58(b) "Chemical identity." was added as a section header to more clearly identify the topic of the section, and "The following steps must be taken to assert" was substituted for "To

assert," and "reportable" was substituted for "specific" (§ 710.38(c)(b) and (c)); in § 710.58(b)(1) "submitter" was substituted for "person" (§ 710.38(c)(1)); in § 710.58(b)(1)(i) "subpart" was substituted for "part" (§ 710.58(c)(1)(i)); in § 710.58(b)(1)(vi) substituted "have been taken" for "have you taken" and "the" for "this" (§ 710.38(c)(1)(vi)); in § 710.58(c)(2) "listed in paragraph (c)(1) of this section" was added for clarification purposes, "submitter" was substituted for "person" and "clearly identify the information that is claimed confidential by marking the specific information on each page with a label such as 'confidential business information,' 'proprietary,' or 'trade secret.'" was substituted for "mark that information as 'trade secret,' 'confidential,' or other appropriate designation." (§ 710.38(c)(2)); and in § 710.58(d) "is indicated on the reporting form" was substituted for "accompanies information at the time it is" and "confidentiality claim substantiation" was substituted for "substantiation" (§ 710.38(d)).

EPA replaced "manufactured or imported" with "manufactured (including imported)" to provide consistency and clarification. EPA made this change in: § 710.52(c)(3)(iv) (§ 710.32(c)(7)); § 710.58(c)(1)(v) (§ 710.38(c)(1)(v)); § 710.58(c)(1)(vi) (§ 710.38(c)(1)(vi)); § 710.58(c)(1)(vii) (§ 710.38(c)(1)(vii)); § 710.58(c)(1)(viii) (§ 710.38(c)(1)(viii)); § 710.58(c)(1)(x) (§ 710.38(c)(1)(x)); and § 710.48 (§ 710.28).

EPA moved three definitions that currently appear in § 710.2 to § 710.23, to clarify that they apply to the existing IUR. In § 710.3(d), three changes were made in recognition that the definitions are no longer separated into sections, but are contained within paragraph (d): in the § 710.3(d) definition for "Commerce," "paragraph (1) of this definition" was substituted for "paragraph (1) of this section" (§ 710.2(i)), and in the § 710.3(d) definition for "Technically qualified individual," "this paragraph" was substituted for "paragraph (aa)(3) of this section" and "paragraph (1) of this definition" was substituted for "paragraph (aa)(1) of this section" (§ 710.2(aa)(3)).

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may promulgate a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making these minor regulatory changes in this final rule without prior notice and opportunity for comment because these minor corrections are non–substantive and do not affect the meaning or legal effect of the provisions affected, which remains the same as it was when the provision appeared in 40 CFR part 710. Thus, notice and public procedure are unnecessary for these minor changes to the existing or new provisions in 40 CFR part 710. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

B. What is the Agency's Authority for Taking this Action?

EPA is required under TSCA section 8(b), 15 U.S.C. 2607(b), to compile and keep current an inventory of chemical substances in commerce. This inventory is known as the TSCA Chemical Substances Inventory (the TSCA Inventory). In 1977, EPA promulgated a rule (42 FR 64572, December 23, 1977) under TSCA section 8(a), 15 U.S.C. 2607(a), to compile an inventory of chemical substances in commerce at that time. In 1986, EPA promulgated the initial IUR at 40 CFR part 710 (51 FR 21447, June 12, 1986), also under TSCA section 8(a), to facilitate the periodic updating of the TSCA Inventory and to support activities associated with the implementation of TSCA.

TSCA section 8(a)(1) authorizes the EPA Administrator to promulgate rules under which manufacturers and processors of chemical substances and mixtures (referred to hereinafter as "chemical substances") must maintain such records and submit such information as the Administrator may reasonably require. Under TSCA section 8(a), the Agency may collect information associated with chemical substances to the extent that it is known to or reasonably ascertainable by the submitter. TSCA section 8(a) gives EPA broad discretion in determining the information for which reporting can be required. Some of the types of information which can be required under TSCA section 8(a)(2) include: Categories of use for each chemical substance; estimates of the amount manufactured or processed for each category of use; a description of the byproducts resulting from the manufacture, processing, use, or disposal of each chemical substance; an estimate of the number of individuals exposed in their places of employment; and the duration of such exposure.

TSCA section 8(a) generally excludes small manufacturers and processors of chemical substances from the reporting requirements established in TSCA section 8(a). However, EPA is authorized by TSCA section 8(a)(3) to require TSCA section 8(a) reporting from small manufacturers and processors with respect to any chemical substance that is the subject of a rule proposed or promulgated under TSCA section 4, 5(b)(4), or 6, or that is the subject of an order under TSCA section 5(e), or that is the subject of relief that has been granted pursuant to a civil action under TSCA section 5 or 7. The standard for determining whether an entity qualifies as a "small manufacturer" for purposes of 40 CFR 710.29, and for 40 CFR part 710 generally, is defined in 40 CFR 704.3. Processors are not currently subject to the regulations at 40 CFR part 710.

This document promulgates the IURA as subpart C in 40 CFR part 710, which includes provisions copied from the existing IUR regulations in 40 CFR part 710 that are not substantively changed as a part of this rulemaking, and the new IURA provisions in this final rule. Failure to comply fully with any provision of this final rule will be a violation of TSCA section 15 and will subject the violator to the penalties of TSCA sections 16 and 17.

C. What is the Inventory Update Rule (IUR)?

The IUR requires U.S. manufacturers of organic chemicals to report to EPA every 4 years the identity of chemical substances manufactured annually during the reporting year in quantities of 10,000 lbs. or more at each plant site they own or control. The current IUR generally excludes several categories of substances from its reporting requirements, i.e., polymers, inorganic substances, microorganisms, and naturally occurring chemical substances. Plant sites subject to the rule are currently required to report information such as company name, plant site location, plant site Dun and Bradstreet number(s), identity of the reportable chemical substance, and production volume of each reportable chemical substance. Data were reported to EPA under the IUR in 1986, 1990, 1994, and 1998, and a collection is occurring in 2002.

The data reported under IUR are used to update the information maintained on the TSCA Inventory, which is a listing of chemical substances in commerce. EPA uses the TSCA Inventory and data reported under the IUR to support many TSCA-related activities and to provide overall support for a number of EPA and other Federal health, safety, and environmental protection activities (See Unit II.E. for

further explanation of some of these activities).

D. Why is EPA amending the IUR?

EPA is amending the IUR for three primary reasons: (1) To tailor the chemical substance reporting requirements to more closely match the Agency's information needs; (2) to obtain new and updated information relating to potential exposures to a subset of chemical substances listed on the TSCA Inventory; and (3) to improve the utility of the information reported. These amendments will enhance the information collected through the IUR, improve the scope of chemicals covered by the rule, and improve CBI claims, thereby accomplishing these three goals.

These goals are supported by the policy in section 2(b)(1) of TSCA, that "adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures." The data currently available to EPA are generally inadequate for risk screening purposes. TSCA section 8(a)(2) authorizes EPA to require manufacturers and processors of chemical substances to report a wide variety of data, including exposure–related information which will be reported for certain chemical substances under IURA. These amendments remove certain reporting requirements and add others to focus reporting under the IUR on that information which is most needed by EPA and other Federal agencies for screening, assessing, and managing risk. Additionally, the availability of these data will enhance public awareness of basic information about chemical substances.

Any evaluation of potential "risk" is generally based on a combination of hazard information and exposure information. EPA relies on risk screening to indicate which chemical substances pose a potential risk to human health or the environment, and thus warrant a more detailed, resource intensive analysis. The EPA Science Advisory Board's report "Reducing Risk: Setting Priorities and Strategies for Environmental Protection" (Ref. 1) and the National Academy of Public Administration's report "Setting Priorities, Getting Results, A New Direction for EPA" (Ref. 2) recognize that EPA's ability to use risk screening to set priorities and allocate its limited resources has been significantly impeded by a lack of exposure data. The manufacturing, processing, and use of chemicals on the TSCA Inventory result in a wide array of exposure scenarios. The exposure-related data included in IURA will greatly improve EPA's ability to conduct risk screening to identify chemical substances that could pose an unreasonable risk to human health or to the environment, or that otherwise warrant further investigation.

E. What are EPA's TSCA-Related Chemical Screening and Assessment Activities?

TSCA authorizes EPA to gather chemical hazard and exposure data, as well as related information such as production volume, to determine whether a chemical may pose an unreasonable risk of injury to human health or the environment. The Agency is able to institute risk management actions when necessary to mitigate or avoid unreasonable risk. Important elements in a successful chemical risk management program include identifying the chemical substances, manufacturing sites, and exposure scenarios of greatest potential concern, and using that information to set priorities for more detailed risk assessment, further research, advisory notices, or other appropriate actions. To help fulfill its TSCA responsibilities, EPA has established the IUR and other regulations to collect information on commercial chemicals.

The TSCA Inventory currently includes more than 76,000 chemical substances. Approximately 8,900 of these chemical substances are non-polymer, organic chemical substances manufactured at at least one site in quantities of 10,000 lbs. or more per year, as reported under the 1998 IUR data collection. EPA estimates that IURA will continue to collect information on approximately 8,900 chemical substances. However, the set of substances that will be reported under IURA will be somewhat different than the set of substances that was reported under the previous IUR collections primarily because of two changes: Raising the basic reporting threshold (see Unit II.F.2.) and adding reporting on the manufacture of inorganic chemical substances (see Unit II.F.1.a.). Data collected under IURA will enable EPA to more effectively conduct initial risk screening on a subset of the chemical substances within its purview, as described in the remaining part of this section and in Unit III.A.1.

EPA conducted tiered risk evaluations of chemical substances even prior to the enactment of TSCA in 1976. A tiered approach allows EPA to sort through many chemicals, focus on those chemical substances of greatest concern, and take appropriate actions. The Agency is thus able to optimize resources while limiting overall regulatory burdens. The essential steps of the tiered risk evaluation generally include: An initial evaluation (sometimes preceded by a prescreen of candidate chemicals); basic risk management decisions resulting from the initial screening; more detailed risk assessment when appropriate; and resulting risk management actions, such as regulatory or voluntary efforts to reduce risk. Each of these steps is only as effective as the available data inputs--if little data exist to inform the process, each step suffers as a result.

Exposure-related information collected through the IURA will inform the initial risk screening step. Initial risk screening is conducted using readily accessible information from the scientific literature, as well as other data readily available to the Agency, such as those provided by manufacturers and processors. This information set often is incomplete or of insufficient quality to allow the Agency to reach definitive conclusions about the set of chemicals under review, but may be sufficient to decide which chemicals appear to warrant further evaluation, or conversely, appear to be low priority and therefore do not currently warrant further review. These initial reviews are often more qualitative than quantitative. Also, continual updates to these data, such as the recurring reporting of exposure-related data under IURA, will ensure that the most serious concerns will be addressed even as chemical quantities and exposure potentials change between submission periods.

The effectiveness of risk screening, risk assessment, and risk management is dependent upon the quality as well as the availability of both hazard and exposure information. While past approaches to priority setting have emphasized relative chemical hazards and used production volume as a simple surrogate for exposure, EPA must increase its emphasis on the exposure component of risk screening and assessment. EPA no longer believes that reporting under the current IUR is adequate for these purposes. The IURA will provide EPA with data that will more accurately and realistically gauge potential exposures. The exposure-related information reported under IURA will be used in combination with hazard information developed under TSCA section 4 test rules and enforceable consent agreements/orders, through voluntary efforts such as the High Production Volume (HPV) Challenge Program (see www.epa.gov/opptintr/chemrtk/volchall.htm), and

other sources. These more current and complete data from the IURA will allow the Agency and others to screen and prioritize chemicals based on potential risk more effectively than it is currently able to do.

Although the inherent hazard associated with a chemical substance will generally remain the same over time, exposure of workers and affected populations can change significantly. If the amount of a chemical substance produced increases significantly, releases to the environment and human exposures would also be expected to increase. Conversely, if the amount produced remains constant, environmental releases and human exposures may decline as engineering controls are added and pollution prevention practices are implemented. Although the hazard associated with a chemical generally remains constant, the risk associated with the manufacturing, processing, and use of a chemical substance will change as exposure increases or changes. The Agency needs to be able to identify changes in exposures as well as specific exposure scenarios, making it important to collect exposure data on a regular basis. Chemicals that present low hazard may still pose a risk if they are produced in large amounts and have high exposure potential, are released into the environment at high volumes and/or concentrations, or involve exposures to particularly sensitive subpopulations.

A voluntary effort called the Use and Exposure Information Project (UEIP) demonstrated that useful screening level exposure information is available to and can be reported by industry. The UEIP was a cooperative effort begun in the fall of 1992 between government and industry in recognition of the difficulties encountered in obtaining accurate and up-to-date exposure information on HPV TSCA chemicals. Participants included EPA, the Chemical Manufacturers Association (CMA) (now the American Chemistry Council, or ACC), the Chemical Specialty Manufacturers Association (CSMA), the Synthetic Organic Chemical Manufacturers Association (SOCMA), and the American Petroleum Institute (API) (Ref. 3). Data collected by EPA under the UEIP were similar to those now being required under IURA, and included the following: Production volume, site location, percentage of production volume for a given use, environmental releases, number of workers, worker activities, monitoring data, and industrial and consumer uses. EPA's experience with UEIP has shown that the types of data requested by the UEIP are available from industry and can be used to prepare screening level exposure assessments.

The UEIP, however, provided one-time reporting of information by a subset of the manufacturers of a small number of selected HPV chemicals. Given these efforts, the limitations of the data available from past and current information collections that are described in detail in the proposal for these amendments (64 FR 46772, August 26, 1999), and the amount of time it would otherwise take to acquire screening level exposure data for the chemical substances on the TSCA Inventory, it is appropriate to develop a more systematic and broadly applied approach to the prioritization process. The Agency is doing this by requiring that certain basic exposure-related information be reported under this amended rule instead of collecting the information through a one-time voluntary program.

F. What Are the Requirements of IURA?

The regulatory text of this document describes the specific IURA reporting requirements. EPA is also developing a guidance document with specific reporting instructions, and intends to conduct workshops to help potential IURA submitters become familiar with the revised reporting form (Form U) and amended reporting requirements. A draft version of the revised Form U is available in the docket, and EPA intends to develop an electronic version of the revised Form U. EPA will seek additional feedback on the revised form's structure, format, and layout before finalizing it for use in 2006. Submitters should note that the information in § 710.52(c)(1) and (c)(2) of the regulatory text (Part I of the revised Form U) need only be reported once per reporting cycle for each submitter site manufacturing 25,000 lbs. or more of a reportable chemical, while the information in § 710.52(c)(3) and (c)(4) of the regulatory text (Parts II and III of the revised Form U, respectively) will be reported for each reportable chemical at a reporting site, depending upon the chemical's production volume.

1. *What are the changes to the chemical substances covered by IUR?*—a. *Inorganic chemical substances.* EPA is requiring partial reporting for inorganic chemical substances for reporting year 2005 information submitted to EPA during the 2006 submission period, and full reporting for inorganic chemical substances in subsequent submission periods (see § 710.46(b)(3) of the regulatory text). Partial reporting means that the submitter must report the information described in § 710.52(c)(1), (c)(2), and (c)(3), as well as §710.58 of the regulatory text, as applicable (i.e., Parts I and II of revised Form U.). Full reporting means that the submitter must additionally report the processing and use information as described in § 710.52(c)(4) of the regulatory text (i.e., all parts of revised Form U).

EPA intends to screen potential risks associated with inorganic chemical substances to set priorities for testing, more detailed risk assessment and potential risk management. The phasing-in of inorganic chemical reporting provides manufacturers of these chemicals with the opportunity to familiarize themselves with IUR reporting while providing EPA and others with needed basic manufacturing information on inorganic chemicals. Future full reporting of exposure-related information will provide EPA and others with needed additional information for those inorganic chemicals with production volumes of 300,000 lbs. or more at a site. See Unit III.A.1. for a discussion of the importance of this exposure-related information to EPA and others for both organic and inorganic chemicals. Unit III.C.1.a. contains a discussion specific to inorganic chemicals. The basic impetus for collecting information on organic chemicals also holds for inorganic chemicals.

b. *Petroleum process streams.* EPA is exempting certain chemical substances, termed "petroleum process streams" for purposes of IURA, from reporting the processing and use data contained in the regulatory text at § 710.52(c)(4). For purposes of this rule, the petroleum process streams included in the exemption are the multi-component complex chemical substances listed by Chemical Abstracts Service (CAS) Registry Number in the regulatory text at § 710.46(b)(1). This list of chemical substances was derived from the 1983 publication of the API entitled "Petroleum Process Stream Terms Included in the Chemical Substances Inventory Under the Toxic Substances Control Act (TSCA)" (Ref. 4). Chemical substances listed in the API document consisting of a single component chemical, except for water, will not be considered petroleum process streams for IURA reporting purposes. Water (CAS number 7732–18–5) is partially exempt from IURA reporting under the petroleum process stream exemption.

The basis for this exemption is not because these streams are of known low toxicity. EPA believes that the chemicals termed "petroleum process streams" for purposes of IURA are often toxicologically active. However, these

chemicals are frequently processed at the site where they are produced in vessels which are designed to minimize losses and, coincidentally, the potential for releases and exposure. In many cases, the flammable nature of these products requires that they also be transported, processed, and stored in well controlled vessels. For these reasons, EPA believes worker exposure to the chemicals termed "petroleum process streams" for purposes of IURA is diminished and thus full IURA exposure-related reporting is not warranted at this time. Partial IURA reporting includes site location and production volume information which have important uses by EPA and others apart from gauging exposures and risk screening. EPA may take action to revoke this exemption if circumstances warrant.

In the final rule, EPA is making selected changes to the partial exemption list of petroleum process stream chemicals published in the proposed rule. Certain chemicals are being added to the list because they were inadvertently left off the proposed list covered by the exemption. These multi–component chemicals, all of which are listed in the 1983 API publication (Ref. 4), include the following chemical substances (CAS numbers): 8052–41–3, 64742–21–8, 64742–26–3, 64742–94–5, 68476–32–4, 68515–29–7, 68783–12–0, 68918–98–9, 68919– 15–3, 68953–80–0, and 70693–06–0.

In the final rule, EPA is also removing a number of chemicals from the petroleum process stream partial exemption list published in the proposed rule. These chemicals fall into three groups:

(1) Certain chemicals that are already part of the broader natural gas or polymer exemptions. Those already exempted under the natural gas exemption are: 8006–14–2, 8006–61–9, 64741–48–6, 68410–63–9, 68425–31–0, and 68919–39–1. Additionally, an incorrect CAS number 68425–31–1 was corrected to read 68425–31–0, which, again, has been removed from the partial exemption because it is already fully exempt from IUR reporting under the natural gas exemption. Chemicals removed because they are already fully exempt under the polymer exemption are: 64741–71–5, 64741–72–6, 67891–77–4, 67891–78–5, 68131–77–1, 68131–79–3, 68131–80–6, 68131–81–7, 68131–83–9, 68131–99–7, 68132–00–3, 68410–01–5, 68410–10–6, 68410–13–9, 68410–14–0, 68410–16–2, 68410–59–3, 68425–27–4, 68425–28–5, 68476–87–9, 68477–37–2, 68477–43–0, 68477–45–2, 68477–46–3, 68477–50–9, 68477–51–0, 68477–52–1, 68478–07–9, 68478–09–1, 68527–24–2, 68527–25–3, 68783–10–8, 68783–11–9, and 68955–30–6.

(2) Single component chemicals, except for water, should not have been included in the petroleum process streams partial exemption. As stated in the proposed rule, the exemption was intended to include only certain multi–component chemicals derived from the 1983 API publication (Ref. 4). As a result, the following single–component chemicals have been removed from the petroleum process streams partial exemption list as proposed: 8007–45–2 and 10024–97–2.

(3) Certain chemicals that are not included on the TSCA Inventory and therefore are not currently reportable under IUR have also been removed from the exemption list: 64741–93–1, 64741–94–2, 64742–00– 3, 64742–02–5, 64742–17–2, 64742–66–1, 64742–74–1, 64742–84–3, and 64754–96–7.

In this final rule, EPA is also making some additional corrections to the petroleum process streams partial exemption list published in the proposed rule.

(1) Incorrect CAS numbers for certain chemicals were provided in the proposed rule. These CAS numbers were incorrect because of typographical errors in the proposed rule. The correct CAS numbers (incorrect CAS numbers are in parentheses) are as follows: 8006–20–0 (8006–20–2), 64742–18–3 (64742–18–2), 64742–20–7 (64742–20–3), 68187–60–0 (68187–60–9), 68459–78–9 (68459–79–8), 68513–14–4 (68514–14–4), 68513–19–9 (68512–19–9), and 68514–38–5 (68514–38–4). Two additional incorrect CAS numbers were provided in the proposed rule, i.e., 64742–36–2 and 68741–41–9. The corrected CAS numbers for these chemicals, i.e., 64742–36–5 and 64741–41–9 respectively, were also provided in the proposed rule.

(2) Several duplicate CAS numbers that were included in the proposed rule have been removed.

(3) CAS numbers for certain chemicals have been superceded by new CAS numbers. The new CAS numbers are as follows (superceded CAS numbers are in parenthesis): 68187–58–6 (68334–31–6), 68410–13–9 (68477–56–5), 68308–08–7 (68478–21–7), 68334–30–5 (68512–90–3), 68918–99–0 (68513–26–8), 64742–83–2 (6851–30–7), 68988–79–4 (68515–31–1), 64742–93–4 (68516–21–2), 68606–10–0 (68606–35–9), and 64742–93–4 (68650–78–2).

c. *Natural gas.* EPA is exempting certain forms of natural gas from IUR reporting. These substances are listed in the regulatory text at § 710.46(a)(4). EPA believes that, to date, adequate IUR information has been collected on these chemical substances to fulfill EPA's and other IUR information users' current needs. EPA will take action to revoke this exemption if circumstances warrant in the future.

d. *Specific chemical substances.* EPA is exempting certain specific chemical substances for which EPA has determined that there is a low current interest in the IURA processing and use information from reporting the processing and use information contained in the regulatory text at § 710.52(c)(4). These chemicals are still subject to the other requirements of IURA. The chemical substances included in this partial exemption are listed by CAS Number in the regulatory text at § 710.46(b)(2)(iv). EPA is also establishing a process for revising the list of exempted chemical substances over time.

EPA is establishing this partial exemption in an effort to improve IURA's efficiency and effectiveness. This partial exemption also provides additional benefits in reducing the potential reporting burden of IURA for certain manufacturers of these chemicals, and provides an efficient process for amending the partial exemption list as the need for processing and use information under IURA changes over time. The inclusion of a chemical substance under this partial exemption is not based on the potential risks of a chemical. This partial exemption is solely intended to provide a tool to assist the Agency in better managing the collection of processing and use information under IURA.

In the proposed rule, EPA specifically sought comment on a partial reporting exemption for "low priority" chemicals, and requested comment on the criteria the Agency might use to establish such an exemption, as well as the specific chemicals that might qualify for such an exemption. (See Unit IX.3. of the preamble to the proposal, at 64 FR 46794). EPA also offered several approaches for identifying the chemicals that could be considered for such an exemption. A number of commenters supported the creation of a partial exemption, and several provided suggestions for additional chemical substances or classes of substances that they wanted EPA to consider including in this or an expanded partial exemption.

In response to the comments received, EPA has established a partial exemption that applies when EPA has determined that there is a low current interest in the chemical's IURA processing and use information. Because IURA reporting is

chemical-specific, this exemption applies to the specific chemical substances that are listed within the exemption, which are discussed in more detail below. The need for EPA's collection of IURA processing and use information related to a particular chemical substance can change over time; therefore, EPA has also established a process that will allow EPA to revise the list by adding or removing a chemical to reflect the change in interest. The process allows anyone to submit a written request for EPA to consider revising the list of chemical substances covered under this partial exemption. EPA may also revise the list on its own initiative. When a list revision is necessary, EPA's preferred approach will be to issue a direct final rule, which affords an opportunity for public comment, while providing an efficient mechanism for revising the list.

In determining whether there is low current interest in IURA processing and use information related to a specific chemical substance, EPA will look to the specific circumstances surrounding the chemical in question, and may use one or more of the considerations identified below, and/or considerations not identified below, to make an informed decision. EPA will consider the totality of information available for the chemical substance, including but not limited to the following:

(A) Whether the chemical qualifies or has qualified in past IUR collections for the reporting of the information described in § 710.52(c)(4) (i.e., at least one site manufactures 300,000 pounds or more of the chemical).

(B) The chemical substance's chemical and physical properties or potential for persistence, bioaccumulation, health effects, or environmental effects (considered independently or together).

(C) The information needs of EPA, other federal agencies, tribes, states, and local governments, as well as members of the public.

(D) The availability of other complementary risk screening information.

(E) The availability of comparable processing and use information.

(F) Whether the potential risks of the chemical substance are adequately managed by EPA or another agency or authority.

It is important to note that the inclusion of these chemical substances under this partial exemption is not based on the potential risks of the chemicals, but is based on the Agency's current assessment of the need for collecting IURA processing and use information. Additionally, some of these chemicals have issues that may renew interest in them in the future, at which time EPA will reconsider the applicability of this partial exemption for those chemicals.

To create an initial list of specific chemical substances covered by this partial exemption, EPA started with:

(1) The list of chemical substances identified as part of the HPV Challenge Program for which, based upon a preliminary review of known hazard information, it was determined that the SIDS data set would not further our understanding of the chemical's properties.

(2) The list of the chemical substances that the European Union (EU) exempted from its reporting requirements for existing chemical substances.

(3) Certain other chemicals identified during the Executive Order 12866 interagency review, for which EPA was able to quickly determine, based on a review of their chemical structures, properties, existing hazard information, and available exposure information, that IURA processing and use information is of low current interest.

This list was then adjusted based upon the totality of information available to EPA during the Executive Order 12866 interagency review period to ensure that the chemicals included in this partial exemption were those for which EPA determined that IURA processing and use information is of low current interest. EPA chose these chemicals because almost all previously underwent a review to have gotten on these lists and, considering the time available during the Executive Order 12866 interagency review, the Agency was able to utilize these lists, along with the Agency's current knowledge and understanding of the individual chemical's structure, properties, indications of hazards and potential exposures, to inform its determination that there is a low current interest in IURA processing and use information for these specific chemicals (Ref. 5). As indicated previously, EPA has established a process for revising the list of chemicals covered by this partial exemption, and intends to reconsider the chemicals identified in comments for applicability under this partial exemption.

The list currently consists of the following chemicals:

(1) Chemicals for which it had been determined that the SIDS data set would not further our understanding of the chemical's properties, and not otherwise sponsored under the HPV Challenge Program: 50–70–4, 50–99–7, 56–87–1, 57–50–1, 59–02–9, 69–65–8, 124–38–9, 142–47–2, 1592–23–0, 7440–44–0, 8001–21–6, 8001–22–7, 8001–26–1, 8001–29–4, 8001–30–7, 8001–31–8, 8001–78–3, 8001–79–4, 8002–03–7, 8002–75–3, 8006–54–0, 8016–28–2, 8016–70–4, 8021–99–6, 8029–43–4, 9050–36–6, 16291–96–6, 61789–97–7, 61789–99–9, 64147–40–6, 64755–01–7, 65996–63–6, 65996–64–7, 68188–81–8, 68334–00–9, 68334–28–1, 68409–76–7, 68425–17–2, 68439–86–1, 68476–78–8, 68514–27–2, 68514–74–9, 68525–87–1, 68918–42–3, 68952–94–3, 68989–98–0, and 73138–67–7.

(2) Chemicals from the EU Existing Chemicals Program exempted list that are not currently otherwise a part of another Agency program such as the HPV Challenge Program: 50–81–7, 58–95–7, 59–51–8, 87–79–6, 123–94–4, 137–08–6, 150–30–1, 1317–65–3, 7440–37–1, 7727–37–9, 7782–42–5, 8001–23–8, 8002–13–9, 8002–43–5, 9004–53–9, 9005–25–8, 11103–57–4, 26836–47–5; 61789–44–4, 67701–01–3, 68002–85–7, 68131–37–3, 68308–54–3, 68424–45–3, and 68424–61–3.

(3) Chemicals otherwise identified by EPA based on consideration of the chemical's structure, properties, existing hazard information, and available information concerning the extent of exposure, and which are not currently a part of another Agency program such as the HPV Challenge Program: 1333–74–0, 7782–44–7, 68442–69–3, 68648–86–2, 68648–87–3, 129813–58–7, 129813–59–8 and 129813–60–1.

You may use the process established in § 710.46(b)(2) to submit a request for the Agency to consider other chemical substances for inclusion under this partial exemption. Please ensure that you provide sufficient information in your requests to enable EPA to make the necessary determination after considering the totality of available information. If you have any questions about this process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT** for additional assistance.

Under the list revision process, EPA will provide a written response to requests within 120 days of receipt, and will maintain copies of these responses in a public docket that will be established for each reporting cycle. In order to assist the Agency in completing any necessary revision to the list before the reporting period, any request for revising the list of chemicals under this partial exemption must be received by the Agency no later than January 1 of the year before the reporting period in question (i.e.,12 months prior to the reporting period). For example, any request for inclusion under this partial exemption must be submitted to EPA no later than January 1, 2004, i.e., 12 months prior to the next reporting

period, which begins on January 1, 2005, for the 2006 submission period. If the request is submitted after this date, during an actual reporting period, or during the submission period, EPA is less likely to have sufficient time to complete its evaluation and make a determination, or issue the necessary rulemaking such that the decision can be effective for that submission period. Submitters should check the **Federal Register** for list revisions or may check the electronic CFR to identify what chemicals are on the partial exemption list prior to each reporting period.

EPA intends to develop a standard operating procedure (SOP) for this specific chemical partial exemption process, which will outline the process steps, as well as provide guidance to EPA personnel on making such determinations. EPA would like to seek your input during the development of this SOP, as well as feedback on the implementation of this process, as part of IURA implementation workshops that are planned.

One of the purposes of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, can be achieved through federal agencies working together with the affected industries to design surveys that will achieve multiple purposes with a single survey instrument. EPA plans to identify and initiate dialogue that has the potential for generating additional paperwork burden reductions for the IURA. For example, the current USGS annual survey covers approximately 80 minerals, and accounts for at least 75% of the industrial production and 75% of the facilities included in the USGS survey. If you have identified other federal agency information collections that could satisfy the IURA purposes, or for which IURA information might serve as a viable substitute and have the potential to generate federal paperwork burden reductions, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless the agency has obtained approval for the activity from the Office of Management and Budget (OMB), an approval which must be renewed every 3 years. As part of the PRA approval renewal process, which includes an opportunity for public review and comment prior to OMB review, EPA intends to continue to evaluate this exemption process and will provide information about the chemicals evaluated, requests received, decisions made and related process elements and experiences as part of the information collection request (ICR) submitted to OMB. The Agency will also analyze the information collected from one reporting year to the next, in order to ensure that IURA information collection activities continue to meet the requirements of the PRA, including the demonstration of practical utility.

e. *Polymers.* As a result of recent inquiries regarding the exemption of polymers from IUR reporting, EPA is clarifying this existing exemption. The exemption does not apply to a polymeric substance that has been hydrolyzed, depolymerized, or otherwise chemically modified, except in cases where the intended product of this reaction is totally polymeric in structure. The Agency's intent under the exemption at 40 CFR 710.26(b) has always been (and continues to be under 40 CFR 710.46(a)(1)) that the products of such reactions carried out on polymeric materials are excluded from IUR reporting only if they are intended to have a totally polymeric composition. There is no change in the IUR status of polymeric materials that have not undergone such reactions and are flagged in the TSCA Inventory.

f. *Microorganisms.* EPA is clarifying this existing definition to ensure that the definition used for IURA purposes is consistent with the microorganisms rule at 40 CFR part 725 and to clarify the status of chemicals produced from living microorganisms.

2. *How have the reporting thresholds changed?* EPA is raising the basic IUR reporting threshold from a production volume of 10,000 lbs. per year per site to 25,000 lbs. per year per site. Every person manufacturing a non–excluded chemical substance at or above the threshold will be required to report the information in Parts I and II of the revised Form U (see the regulatory text at §§ 710.52(c)(1), (c)(2), and (c)(3) and 710.58). The increased IUR reporting threshold makes the IUR and Toxics Release Inventory (TRI) reporting thresholds equivalent for manufacturers. These thresholds also approximate the current TSCA section 5 premanufacture notification (PMN) low volume exemption threshold of 10,000 kg (approximately 22,000 lbs.). EPA is raising the basic IUR reporting threshold in order to reduce the number of reports filed, thus reducing the overall industry burden associated with this regulation. The new reporting threshold does not represent a finding of low exposure or low risk.

EPA is also instituting a second, higher production volume threshold of 300,000 lbs. per year per site. Persons who manufacture a reportable chemical substance at or above this level will be required to report the information in Part III of the revised Form U (see § 710.52(c)(4) of the regulatory text) in addition to the information in Parts I and II of the revised Form U. The information reported on Part III of the form relates to the processing and use of chemical substances. EPA is instituting this separate threshold to limit processing and use data reporting to a subset of a few thousand IUR reportable chemicals out of the approximately 76,000 chemicals listed on the TSCA Inventory.

Information concerning lower production volume chemical substances is valuable, especially for identifying trends and additional substitute chemicals. However, wherever possible, the Agency has attempted to limit the reporting burden. In the future, EPA may find it necessary to collect information on chemicals at reporting thresholds below the thresholds introduced in this action. Although both the 25,000 lbs. and 300,000 lbs. thresholds are significantly higher than the current IUR 10,000 lbs. threshold, the enhanced information that will be gathered under the amended rule will enable the Agency and others to more efficiently identify those chemical substances warranting further, more in–depth review, as well as chemicals of lesser concern (see Ref. 6).

3. *Have the reporting year, the submission period, or the reporting frequency changed?* In order to provide clarification, two new definitions are being added at 40 CFR 710.43: "reporting year" means the calendar year in which information to be reported to EPA during a submission period is generated and "submission period" means the period in which the information generated during the reporting year is submitted to EPA. "Submission period" replaces the term "reporting period," as used under the current IUR regulations at 40 CFR part 710.

As proposed, EPA is changing the IUR reporting year to a calendar year basis from a corporate fiscal year basis. This change standardizes reporting time frames across IUR submitters and across various other reporting programs, such as the TRI program.

Under the current IUR regulations at 40 CFR 710.33(b), submitters are required to report on a recurring basis during a 120–day period from August to December (the "submission period" under IURA) every 4 years. In a separate action following this final rule, EPA intends to change the submission period to occur earlier in the year, for example from January 1 through May 1. This potential change is related in part to the

reporting year change in this final rule from fiscal year to calendar year. The August to December submission period was originally used because many companies' fiscal years end in July, and starting the IUR submission period in late August allowed these companies to report their most current information. Companies will now report on a calendar year basis, making an earlier submission period more appropriate. Changing the submission period to occur earlier in the year would allow sites to submit their information closer to the period during which it was generated, as well as allow the Agency to obtain the information early in the year, thereby increasing the timeliness of the availability of the data.

In this final rule, EPA has not changed the reporting frequency (every 4 years), although EPA did consider alternative reporting frequencies (see the "Revised Economic Analysis for the Amended Inventory Update Rule," Ref. 7). This means that the first reporting year for IURA information will be 4 years after the reporting year under the existing IUR, i.e., existing IUR reporting year is 2001, so the first reporting year under IURA will be 2005. The submission period will continue to occur in the year following the reporting year, i.e., existing IUR submission period is in 2002, so the first submission period for IURA will be in 2006.

The final rule indicates that subsequent reporting years and submission periods will occur every 4 years. In a separate action following this final rule, however, EPA intends to change the reporting frequency after the first reporting year under IURA (i.e., 2005, with submission to EPA in 2006) from every 4 years to every 5 years. This would mean that, instead of occurring in 2009, the second reporting year under IURA would be 2010 (i.e., 5 years after 2005), and would then occur every 5 years thereafter. The submission period would continue to occur in the year following the reporting year, so it too would occur every 5 years (i.e., 2011, 2016, etc.). In making this change, EPA also intends to change the recordkeeping period from 5 years to 6 years. EPA agreed to make these changes within the next 12 months as part of the interagency review under Executive Order 12866 in an effort to further reduce the potential reporting burden related to IURA. EPA estimates that a 5–year frequency would save regulated entities about $50 million over 20 years at a 3% discount rate (about a 16% reduction), and $37 million over 20 years at a 7% discount rate, and would still meet EPA's most critical data needs (Ref. 8).

For the first reporting year under IURA, EPA intends to issue guidance and conduct workshops to help the regulated community become familiarized with the revised regulations. A draft copy of the guidance for the 2006 submission period can be found in the docket for this rulemaking (Ref. 9).

4. *How have the recordkeeping requirements changed*? EPA is requiring that persons subject to reporting under IURA retain records that document any information reported to EPA under IURA for a period of 5 years beginning with the effective date of that submission period (see § 710.57 of the regulatory text). The effective date of the submission period is the last day of the submission period (currently December 23, although EPA intends to change this date, see Unit II.F.3.) in a year in which data must be submitted to EPA under IURA. Previously, submitters were required to retain records for 4 years (see 40 CFR 710.37). Under IURA, if a person submits a report in the year 2006, that person will retain the records on which the report is based until December 23, 2011. This change ensures that the submitter will have the previous submission available when determining future reporting. The change will also aid in EPA's enforcement of IUR by requiring that submitters maintain records that span successive submission periods. As described in Unit II.F.3., in a separate action EPA intends to change the reporting frequency from every 4 years to every 5 years. In that action, EPA also intends to change the recordkeeping period from 5 years to 6 years in order to continue to span successive submission periods. A 6–year recordkeeping period would require, under IURA, that if a person submits a report in the year 2006, that person will retain the records on which the report is based until December 23, 2012.

Persons who are not required to report under the existing IUR because they manufacture less than the 10,000 lb. reporting threshold have been required to retain volume records as evidence to support decisions not to submit a report. In this rulemaking, EPA is eliminating this provision because EPA believes that this type of information is routinely retained by companies in the normal course of business.

5. *How have the data elements reported by all submitters changed*? The new and revised data elements to be reported under the amended rule are discussed in this section. Data elements that are currently reported under IUR but that are not revised by these amendments are not generally discussed in this document.

a. *Technical contact identification (§ 710.52(c)(2)(i) of the regulatory text).* In addition to the name of a person who will serve as technical contact for the submitter company, the parent company name, the contact person's full mailing address, and the contact person's telephone number, submitters must report the contact person's e–mail address and the parent company Dun and Bradstreet Number. The technical contact person must be able to answer questions about the information on the revised Form U that is submitted by the company to EPA.

b. *Plant site identification (§ 710.52(c)(2)(ii) of the regulatory text).* Submitters must report the plant site county or parish in addition to the information currently required for each plant site that is subject to reporting.

EPA had additionally proposed to require submitters to report a plant site identification number in order to clearly identify the reporting site in a way that would allow the cross–linking of IUR information with information reported about the same plant site contained in other data bases. EPA specifically proposed requiring the reporting of a newly assigned Facility Registration Identifier (FRI), or, if the Facility Registry System were not yet in place in time for the publication of this final rule, the submitter would report the site's RCRA number, if one has been assigned to the site. In this final rule, EPA has decided not to require the submission of a site identification number in addition to the Dun and Bradstreet number that submitters must continue to report. The Agency may instead make number assignments either directly on the reporting form after it is submitted to EPA, or prior to mailing out the form at the beginning of a submission period. Submitters will not be responsible for obtaining or reporting this number.

c. *Chemical identification (§ 710.52(c)(3)(i) of the regulatory text).* Submitters must indicate which type of chemical identifying number they are reporting, in addition to the number itself. EPA no longer allows the use of certain of the previously used substitute identifying numbers (such as EPA–assigned numbers for Test Market Exemption Applications, original TSCA Inventory form numbers, and numbers associated with Notices of *Bona Fide* Intent to Manufacture) because they are difficult to cross–reference to CAS Registry numbers. Submitters must report a CAS Registry number, or, if a CAS Registry Number is not known to the submitter, the submitter must report

either an EPA–designated accession number for confidential substances or a PMN case number.

d. *Confidentiality of production volume range (§ 710.52(c)(3)(v) of the regulatory text).* Submitters must continue to report the specific production volume of the reportable chemical and may claim CBI protection for that production volume. Additionally, submitters may claim as CBI a pre–determined production volume range corresponding to the reported production volume number. This claim, if needed, would be separate from a CBI claim for the specific production volume.

Submitters of specific CBI production volume data may allow the release of more general range information. EPA expects that roughly 50% of submitters of specific CBI production volume data will allow the public release of volume ranges. This expectation of reduced CBI claims is based on the CBI claim statistics associated with the development of the original TSCA Inventory (See "Inventory Update Rule (IUR) Technical Support Document: Evaluation of Likelihood of Confidential Business Information Claims for Production Volume Information" (Ref. 10)) as well as comments received from industry concerning potential TSCA CBI reforms (Ref. 11). The range option will allow the public greater access to data on chemical production volumes, and the Agency will be better equipped to publicly release more aggregate production volume data relevant to its risk screening and other decisions.

The production volume ranges in the final rule are 25,000 to 300,000 lbs.; 300,000 to 1,000,000 lbs.; 1,000,000 to 10,000,000 lbs.; 10,000,000 to 50,000,000 lbs.; 50,000,000 to 100,000,000 lbs.; 100,000,000 to 500,000,000 lbs.; 500,000,000 to 1,000,000,000 lbs.; and greater than 1,000,000,000 lbs. per year. These ranges are similar to those first used in the development of the original TSCA Inventory, except for one change, i.e., the lowest range starts at the IURA reporting threshold of 25,000 lbs. rather than the 10,000 lb. threshold that was used in the current IUR. EPA additionally made one change to the ranges included in the proposed rule, i.e, the upper end of the first range and the lower end of the second range were raised to 300,000 lbs. from the 100,000 lbs. range limit included in the proposal, resulting in ranges of 25,000 – 300,000 lbs. and 300,000 – 1,000,000 lbs. This change makes the ranges consistent with the second reporting threshold of 300,000 lbs. or more (see § 710.52(c)(4) of the regulatory text), and provides additional protection for submitters' production volume range CBI claims.

Under the proposed rule's 100,000 lbs. range limit for the lowest production volume range, submitters who did not claim the production volume range as CBI might have inadvertently provided the public with more information than they intended. For instance, for a submitter whose production volume was in the 100,000 to 1,000,000 lbs. range, who did not claim their production volume range CBI, and who did not report any information in Part III of reporting Form U (the industrial processing and use and the commercial and consumer use information), public users of the data would be able to infer that the submitter's production was somewhere between 100,000 to 300,000 lbs. per year – information which the submitter might have considered CBI. To protect against such inadvertent disclosures of CBI, EPA changed the production volume ranges to reflect the second reporting threshold of 300,000 lbs. EPA does not believe that the change significantly affects the utility of the data to the public.

e. *Number of potentially exposed workers (§ 710.52(c)(3)(vi) of the regulatory text).* Submitters must report the range code that corresponds to their estimate of the total number of workers reasonably likely to be exposed to each reportable chemical substance at each plant site. EPA defines "reasonably likely to be exposed" as an exposure to a chemical substance which, under foreseeable conditions of manufacture, processing, distribution in commerce, or use of the chemical substance, is more likely to occur than to not occur. Such exposures would normally include, but not be limited to, exposure during activities such as charging reactor vessels; drumming; bulk loading; cleaning equipment; maintenance operations; materials handling and transfers; and analytical operations. Covered exposures include exposures through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), but exclude accidental or theoretical exposures.

Workers involved in chemical manufacturing, processing, and use are a subpopulation of concern to EPA, the Occupational Safety and Health Administration (OSHA) (Ref. 12), the National Institute of Occupational Safety and Health (NIOSH) (Ref. 13), and other organizations (e.g., labor unions). Workers may often be exposed to chemical substances in higher doses and with greater frequency than the general population, and may therefore be at potentially greater risk of adverse health effects. The number of workers reasonably likely to be exposed to specific chemical substances is important to EPA and other organizations in developing screening level exposure scenarios. These scenarios are then used to develop priorities for testing, more detailed risk assessment, and risk management.

Under IURA, submitters are required to use ranges rather than specific values for reporting certain data, including the number of workers reasonably likely to be exposed and the number of processing or use sites. The ranges for reporting the estimated number of potentially exposed workers are found in § 710.52(c)(3)(vi) of the regulatory text. In general, reporting these ranges reduces the potential burden to submitters of developing a precise point estimate for the data element. The use of ranges should additionally result in fewer CBI claims than if precise point estimates were provided because ranges tend to reveal less sensitive information than specific estimates while still conveying sufficient information useful to effectively screen chemical risks. Submitters are permitted to claim the reported ranges as confidential if revealing even this general information would disclose information of a sensitive nature.

f. *Maximum concentration (§ 710.52(c)(3)(vii) of the regulatory text).* Submitters must report the maximum concentration, measured by weight, of the reportable chemical substance at the time it leaves the submitter's manufacturing site or, if it is a site-limited chemical, at the time it is reacted on-site to produce a different chemical substance. This information is to be reported regardless of the various physical forms in which the chemical may be sent off-site or reacted on–site. Concentration ranges for use in reporting are found in § 710.52(c)(3)(vii) of the regulatory text.

Concentration is an important variable to consider when estimating the magnitude of potential exposures. Information about the maximum concentration of a chemical substance present at processing and use sites is frequently used in chemical risk screening in the review of PMNs for new chemical substances required by section 5 of TSCA and is used to the extent it is available in screening chemicals on the TSCA Inventory. For example, EPA has developed standard methods to estimate dermal exposures that workers may experience while performing common industrial operations such as sampling and loading chemicals into drums. These

standard methods use maximum concentration information to estimate upper limits to exposure estimates. If EPA is aware that a chemical substance is processed or used only as a fraction of a mixture with other chemical substances, exposure estimates may be adjusted downward accordingly. For example, a chemical substance which is a component of a liquid mixture exerts a lower vapor pressure than it would as a pure chemical substance. Because higher vapor pressure is associated with increasing inhalation exposure to a chemical substance, the concentration of a chemical substance in a liquid mixture impacts the exposure assessment.

A chemical may be produced in multiple physical forms and in multiple formulations and products. As described in Unit II.F.5.g., EPA is requiring reporting of each of the physical forms in which a chemical is sent off–site. For the purpose of exposure screening, EPA is requiring only the reporting of the maximum concentration, regardless of the various physical forms in which a chemical may be sent off-site.

EPA had proposed that submitters also report the average concentration of the chemical when leaving the manufacturing site (at 64 FR 46788). EPA is not promulgating this requirement because of the potential difficulty of determining the average concentration. For example, a submitter could produce many formulations containing a particular chemical substance, making a determination of average concentration difficult.

g. *Physical form (§ 710.52(c)(3)(viii) of the regulatory text).* Submitters must report the physical form(s) of the chemical at the time it leaves the site of manufacture or, if the chemical is site-limited, at the time it is reacted on site to produce a different chemical substance. The list of physical forms from which submitters must select is found in § 710.52(c)(3)(viii) of the regulatory text. Further discussion on physical form reporting is found in Unit III.B.1.a.

The physical form of a chemical is an important factor to consider when estimating magnitudes and concentrations of potential exposures. EPA's analyses of TRI and PMN data demonstrated that the physical state of a chemical is a determining factor in predicting the potential for industrial releases of chemicals, and hence, exposures to humans and the environment. The results of the analyses are provided in a technical support document that was developed by EPA in support of this rule ("Inventory Update Rule (IUR) Amendments Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening," Ref. 14). The physical state, which provides information on volatility and how the chemical is likely to be handled during manufacturing, processing, and use, is an important data element for the purpose of exposure and risk screening.

h. *Percent production volume (§ 710.52(c)(3)(ix) of the regulatory text).* Submitters are required to report the percentage of total production volume (as reported under regulatory text § 710.52(c)(3)(iv)) of the reportable chemical substance that is associated with each physical form reported. Percent production volume estimates will allow the Agency to aggregate, on a case-by-case basis, the production volume of a particular physical form for a given chemical across multiple sites. These determinations will allow EPA to better characterize the risk associated with chemicals that are manufactured in physical forms that typically result in higher exposures, such as volatile liquids or powders, but that are produced in small quantities. These percent production volume estimates will help put the physical form information into context. Estimates must be rounded off to the nearest 10% of production volume.

6. *What new definitions have been added to explain or reworded to clarify the reporting requirements*? EPA has reorganized the definition section of the regulatory text associated with the original Inventory and IUR. There are now three definition sections. The existing § 710.2 contains definitions relevant primarily to the compilation of the original Inventory, although a few of these definitions are also relevant to both IUR and IURA. EPA has recodified these general definitions in § 710.3. Definitions relevant only to IUR, which were originally in § 710.2, are now in § 710.23. Section 710.43 contains definitions relevant only to IURA. This reorganization clarifies the relationships between the definitions and the various rules, and has no substantive effect.

Two existing definitions are being clarified (§ 710.3 of the regulatory text). EPA defines "manufacture" to mean to manufacture, produce, or import for commercial purposes and "manufacture or import 'for commercial purposes'" to mean to manufacture, produce, or import with the purpose of obtaining an immediate or eventual commercial advantage, and includes, for example, the manufacture or import of any amount of a chemical substance or mixture: (1) For commercial distribution, including for test marketing, or (2) for use by the manufacturer, including use for product research and development, or as an intermediate.

Certain new definitions are being added to § 710.43 as a result of this final rule.

a. *Known to or reasonably ascertainable by.* TSCA section 8(a)(2) authorizes EPA to require persons to report information that is known to or reasonably ascertainable by the submitter. For the purposes of reporting under IURA, a submitter will report information described in the regulatory text at § 710.52(c)(1), (c)(2), and (c)(3) that is known to or reasonably ascertainable by the submitter. This means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.

b. *Readily obtainable information.* TSCA section 8(a)(2) authorizes EPA to require persons to report information that is known to or reasonably ascertainable by the submitter. Under IURA, a submitter will report processing and use information (i.e., the information reported for sites at which the 300,000 lbs. threshold has been met or exceeded) only to the extent that such information is "readily obtainable" by the submitter's management and supervisory employees responsible for manufacturing, processing, distributing, technical services, and marketing of the reportable chemical substance (see regulatory text § 710.43). Extensive file searches are not required. The "readily obtainable" standard for processing and use information requires less effort on the part of the submitter than the "known to or reasonably ascertainable by" standard that applies to all other IUR reporting (see regulatory text § 710.43), while providing sufficiently precise processing and use information for screening level reviews. In addition, the "readily obtainable" standard limits the reporting burden associated with processing and use reporting and is identical to the standard currently in effect under EPA's TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR) (See 40 CFR 712.7). The "readily obtainable" definition is further discussed in Unit III.D.2.

c. *Reasonably likely to be exposed.* For the purposes of reporting under IURA, reasonably likely to be exposed means an exposure to a chemical substance which, under foreseeable conditions of manufacture (including import), processing, distribution in commerce, or use of the chemical substance, is more likely to occur than not to occur. Such exposures would

normally include, but would not be limited to, activities such as charging reactor vessels, drumming, bulk loading, cleaning equipment, maintenance operations, materials handling and transfers, and analytical operations. Covered exposures include exposures through any route of entry (inhalation, ingestion, skin contact, etc.), but excludes accidental or theoretical exposures.

d. *Use.* For the purpose of reporting under IURA, EPA is defining "use" as any utilization of a chemical substance or mixture that is not otherwise covered by the terms "manufacture" or "process" (see regulatory text § 710.43). For example, the activity of processing a solvent into a paint formulation is considered "processing" rather than "use" because the activity incorporates the chemical substance (the solvent) into a formulation. If the paint formulation containing the solvent is then applied to a metal or wood surface (e.g., cars), this application would be considered a use activity. Relabeling or redistributing a container holding a chemical substance or mixture where no repackaging occurs does not constitute use or processing of the chemical substance or mixture.

e. *Repackaging.* For the purpose of reporting under IURA, "repackaging" is defined as the physical transfer of a chemical substance or mixture (as is) from one container to another container or containers in preparation for distributing the chemical substance or mixture in commerce. This definition does not apply to sites that only relabel or redistribute the reportable chemical substance without removing the chemical substance from the container in which it is received or purchased.

f. *Industrial use.* EPA defines "industrial use" for purposes of reporting under IURA as use at a site at which one or more chemical substances or mixtures are manufactured or processed (see § 710.43 of the regulatory text).

g. *Commercial and consumer use.* For purposes of reporting under IURA, EPA defines "commercial use" as the use of a chemical substance or mixture in a commercial enterprise providing saleable goods or a service, such as painting contractors using paint products. A "consumer use," on the other hand, means the use of a chemical substance that is directly, or as part of a mixture, sold to or made available to consumers for their use in or around a permanent or temporary household or residence, a school, or recreational areas (see § 710.43 of the regulatory text). Exposures to commercial and consumer products are similar for risk screening purposes because existing screening level assessment methods are not sophisticated enough to distinguish between these exposures.

h. *Intended for use by children.* For purposes of reporting under IURA, EPA defines "intended for use by children" as the use of a chemical substance or mixture in or on a product that is specifically intended for use by children age 14 or younger. A chemical substance or mixture is intended for use by children when the submitter answers "yes" to at least one of the following questions for the product into which the submitter's chemical substance or mixture is incorporated: (1) Is the product commonly recognized (i.e., by a reasonable person) as being intended for children age 14 or younger; (2) Does the manufacturer of the product state through product labeling or other written materials that the product is intended for or will be used by children age 14 or younger; or (3) Is the advertising, promotion, or marketing of the product aimed at children age 14 or younger?

i. *Reportable chemical substance.* For the purposes of reporting under IURA, a reportable chemical substance is a chemical substance described in § 710.45 of the regulatory text.

j. *Reporting year.* For the purposes of reporting under IURA, the reporting year is the calendar year in which information to be reported to EPA during a submission period is generated, i.e., calendar year 2005 and the calendar year at 4–year intervals thereafter. For instance, for information submitted in 2006, the information will be generated during the period from January 1 to December 31, 2005.

k. *Submission period.* For the purposes of reporting under IURA, the submission period is the period in which the information generated during the reporting year is submitted to EPA. For instance information generated during the period from January 1 to December 31, 2005 (i.e., when the chemical substance is manufactured) will be submitted during the 2006 submission period.

l. Site-limited. For purposes of reporting under IURA, EPA defines "site-limited" to mean that a chemical substance is manufactured and processed only within a site and is not distributed for commercial purposes as a substance or as part of a mixture or article outside the site. Imported substances are never site-limited. Although a site-limited chemical substance is not distributed for commercial purposes outside the site at which it is manufactured and processed, the substance is considered to have been manufactured and processed for commercial purposes.

7. *What new data elements are reportable by only larger production volume manufacturers?* As described in Unit II.F.2., EPA is replacing the current IUR reporting threshold of 10,000 lbs. per year per site with two new production volume reporting thresholds of 25,000 lbs. and 300,000 lbs. per year per site. Each person manufacturing a reportable substance at or above the 25,000 lbs. per year per site threshold is required to complete at least a partial report containing the information in Parts I and II of the revised Form U. Persons who manufacture a reportable substance at or above the 300,000 lbs. per year per site threshold are required to complete a full report, providing the information in Part III of the revised Form U in addition to the information in Parts I and II. Part III concerns the processing and use of chemical substances.

a. *Processing and use information (§ 710.52(c)(4) of the regulatory text).* Submitters with plant sites at which a reportable chemical substance is manufactured in annual quantities of 300,000 lbs. or more must report processing and use information under IURA. EPA requires submitters to report the information described in § 710.52(c)(4) of the regulatory text concerning the processing and use of each reportable chemical substance at sites that receive a reportable chemical substance from the submitter site either directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.), whether the recipient site(s) are controlled by the submitter site or not. Processing and use information must be reported only to the extent that the data, or an estimate, is "readily obtainable" by the submitter (see Unit II.F.6.b.).

i. *Industrial processing or use operations (§ 710.52(c)(4)(i)(A) of the regulatory text).* Submitters must report the industrial processing or use operation(s) at each site that receives the reportable substance from the submitter site (whether the recipient site(s) are controlled by the submitter site or not). The categories for reporting are listed in § 710.52(c)(4)(i)(A) of the regulatory text.

ii. *North American Industrial Classification System (NAICS) Code (§ 710.52(c)(4)(i)(B) of the regulatory text).* Submitters must report the five–digit NAICS code(s) that best describe(s) the industrial processing or use activities at the sites that receive a reportable chemical substance from the submitter either directly or indirectly (including through a broker/distributor,

from a customer of the submitter, etc.), whether the recipient site(s) are controlled by the submitter site or not. The NAICS codes, published by the Office of Management and Budget (OMB), have superseded the prior system of Standard Industrial Classification (SIC) codes (Ref. 15). Submitters must report these codes to the extent the information is readily obtainable for processing or use activities at sites that process or use a reportable chemical substance received from the submitter. EPA does not intend for manufacturers to survey their customers or distributors to precisely identify the appropriate NAICS codes at their downstream sites.

The NAICS classification system is being used in IURA to describe the industrial setting in which chemical exposures associated with the industrial processing or use of a chemical substance may occur. Exposure to a chemical substance typically varies among industries. The NAICS code in conjunction with the Industrial Function Category (IFC) code and the processing or use operation will define the industrial, commercial, or consumer setting so that the appropriate scenarios can be applied to estimate worker, community, and environmental exposures to the chemical substance.

The NAICS codes which best describe the industrial activities associated with each reported industrial processing or use operation must be provided. If more than 10 NAICS codes apply to a reportable chemical substance, submitters need only report the 10 NAICS code, IFC and processing or use operation combinations that cumulatively represent the largest percentage of the substance's production volume, measured by weight. Submitters may also report the same NAICS code multiple times if the chemical being reported has several industrial functions or multiple processing or use operations. This limitation on reporting is intended to minimize submitters' reporting burden.

iii. *Industrial function category (IFC) (§ 710.52(c)(4)(i)(C) of the regulatory text).* Submitters must report the IFCs that best represent the specific manner in which a chemical substance is used within each NAICS code reported. Submitters may report the same function category under different NAICS codes. The IFCs to be used are listed in the regulatory text at § 710.52(c)(4)(i)(C).

A NAICS code and IFC combination sufficiently defines a potential exposure scenario for risk screening and priority–setting purposes. EPA conducted studies to determine whether information regarding the industrial sectors in which a chemical substance is processed and used, and information regarding the function a chemical substance performs within industrial processes, are useful for the purpose of screening level exposure assessments. These studies demonstrated that this type of information provides indications of the route, magnitude, and concentration of potential chemical exposures to humans and to the environment. The results of the studies are provided in two of the technical support documents that EPA developed in support of this rule (Refs. 14 and 16).

IFCs are also useful in estimating the frequency and duration of chemical substance exposures by indicating the type of application in which a chemical will be used (e.g., solvents (for cleaning and degreasing) or intermediate). The relationship between industrial function categories and the frequency and duration of exposure to chemical substances is particularly useful in developing exposure assessments in EPA's New Chemicals Program. These data elements are important elements in developing useful exposure scenarios. In the absence of these data, EPA often uses conservative estimates that may indicate a greater risk than is actually the case. Data that will be obtained under IURA will enable EPA to make more realistic characterizations of exposure, instead of "worst case" assumptions.

iv. *Percentage of production volume attributable to each combination of NAICS code and industrial function category in each processing or use operation (§ 710.52(c)(4)(i)(D) of the regulatory text).* Submitters must estimate the percentage of total production volume attributable to each reported combination of NAICS code and IFC in each processing or use operation, to the extent that such information is readily obtainable. Estimates must be rounded off to the nearest 10% of production volume. Submitters are not permitted to round off to zero percent if the production volume attributable to a NAICS code/IFC/processing or use operation combination is 300,000 lbs. or more and accounts for 5% or less of the total production volume of a reportable chemical substance. In such cases, submitters must report the percentage of production volume attributable to that combination to the nearest 1% of production volume. This exception to the general rounding rule will ensure that adequate use information is reported for the larger production volume chemical substances.

The total percent production volumes associated with the NAICS code/IFC combinations may add up to more than 100%, given that the submitter is reporting on distribution of a chemical to sites in its control as well as downstream sites, some of which are not immediate purchasers from the original manufacturing site. Additionally, the total percent production volume may add up to less than 100% if the submitter cannot readily obtain information about how all of its production volume is processed or used by industry.

v. *Number of processing or use sites (§ 710.52(c)(4)(i)(E) of the regulatory text).* Submitters must report estimates of the total number of industrial sites, including those beyond the submitter's control, that process or use each reportable chemical substance manufactured by the submitter, with respect to each combination of NAICS code and IFC in each processing or use operation. The ranges that will be used for reporting the number of sites can be found at § 710.52(c)(4)(i)(E) of the regulatory text. For risk screening purposes, the number of sites at which chemical substances are manufactured, processed, or used is a useful indicator of the number of ecosystems and the size of the general population potentially exposed to the chemical substances.

vi. *Number of workers (§ 710.52(c)(4)(i)(F) of the regulatory text).* Submitters must report estimates of the total number of workers, including those at sites not under the submitter's control, that are reasonably likely to be exposed while processing or using the reportable chemical substance, with respect to each combination of NAICS code and IFC in each processing or use operation. The approximate number of workers will be reported using the same definitions and ranges described under Unit II.F.5.e. The difference in reporting worker exposure information under this section is that such information need be reported only to the extent that it is readily obtainable.

b. *Commercial and consumer use information (§ 710.52(c)(4)(ii) of the regulatory text).* Submitters must report information concerning the commercial and consumer uses of each reportable chemical substance, whether the site(s) at which the chemical substance is used are controlled by the submitter site or not. As for the industrial processing and use information described in Unit II.F.7.a., commercial and consumer use information must be reported only by sites at which a chemical substance is manufactured in annual quantities of 300,000 lbs. or more, and submitters are only required to report the information to the extent that it is readily obtainable.

Consumers comprise a subpopulation of particular concern to EPA, the Consumer Products Safety Commission (CPSC), and other governmental and non–governmental organizations. Information from submitters about whether the chemical substances they manufacture are used in consumer products is useful in estimating the potential risks to consumers that result from chemical exposures. In the absence of more specific data, EPA often assumes for risk screening purposes that large, unprotected populations may potentially be exposed to the chemical substances in consumer products. EPA is also working with industry and other stakeholders to develop hazard, exposure, and risk assessments regarding chemicals to which children are exposed. The commercial and consumer product information that will be reported under IURA will be used by EPA in the identification of chemicals that might be included in these programs, and may contribute to exposure assessments for these chemicals.

i. *Commercial and consumer product categories (§ 710.52(c)(4)(ii)(A) of the regulatory text).* Submitters must report up to 10 categories that best describe the commercial and consumer products in which the reportable chemical substance is used (whether the recipient site(s) are controlled by the submitter site or not). If more than 10 categories apply, submitters need only report the 10 categories for the chemical substance that cumulatively represent the largest percentage of the submitter's production volume, measured by weight. The commercial and consumer product (CCP) categories are listed at § 710.52(c)(4)(ii)(A) of the regulatory text. Information on the use of chemicals in CCPs is useful in estimating the frequency and duration of chemical substance exposures. In the absence of other information, consumers are often assumed to experience less controlled, but less frequent exposures than workers. The data that will be obtained under IURA will enable EPA to make more realistic characterizations of exposure, instead of "worst case," overly conservative assumptions.

ii. *Products intended for use by children (§ 710.52(c)(4)(ii)(B) of the regulatory text).* Submitters must indicate, within each reported CCP category, whether, based on readily obtainable information, any amount of each reportable chemical substance manufactured by the submitter is or is not present in (for example, a plasticizer chemical used to make pacifiers) or on (for example, as a component in the paint on a toy) any products intended for use by children, regardless of the concentration of the substance, or indicate that such information is not readily obtainable.

EPA defines "intended for use by children" in § 710.43 of the regulatory text and in Unit II.F.6.h. Using this definition, if a submitter determines, based on readily obtainable information, that its chemical substance or mixture is used in or on a product that is intended to be used by children age 14 or younger, the submitter would indicate this on Form U. For example, EPA believes that certain products, like crayons, coloring books, diapers, and toy cars – to name a few – are typically intended to be used by children age 14 or younger. As such, if a submitter determines, based on readily obtainable information, that its chemical substance or mixture is used in crayons and toy cars, that submitter would report a "Y" in the Children's Use column on Form U for categories C01 and C10.

On the other hand, EPA believes that certain products, like household cleaning products, automotive products, and lubricants--to name a few--are typically not intended to be used by children age 14 or younger. As such, if a submitter determines, based on readily obtainable information, that its chemical substance or mixture is used in automotive care products and lubricants, that submitter could report a "N" in the Children's Use column on Form U for categories C03 and C09.

For further illustration, some examples of products that are typically intended for use by children 14 or younger are provided for each commercial and consumer use category (this listing is not intended to be exhaustive and should therefore not be considered limiting):

Code	Category	Examples of Children's Products
C01	Artists' supplies	Crayons, children's markers
C02	Adhesives and sealants	Craft glue, model glue
C03	Automotive care products	Typically products in this category are not likely to be intended for use by children 14 or younger
C04	Electrical and electronic products	Electronic games, remote control cars, toys
C05	Glass and ceramic products	Porcelain dolls
C06	Fabrics, textiles and apparel	Pajamas
C07	Lawn and garden products (non-pesticidal)	Lawn and gardening tools designed specifically for children, e.g., children's rake
C08	Leather products	Shoes, jackets, baseball gloves
C09	Lubricants, greases and fuel additives	Typically products in this category are not likely to be intended for use by children 14 or younger
C10	Metal products	Toy trucks, toy cars, wagon
C11	Paper products	Diapers, baby wipes, coloring books
C12	Paints and coatings	Finger paints, water color kits intended for children's use

Code	Category	Examples of Children's Products
C13	Photographic chemicals	Typically products in this category are not likely to be intended for use by children 14 or younger
C14	Polishes and sanitation goods	Typically products in this category are not likely to be intended for use by children 14 or younger
C15	Rubber and plastic products	Pacifiers, action figures, balls
C16	Soaps and detergents	Baby shampoo, children's bubble bath
C17	Transportation products	Child's car seat
C18	Wood and wood furniture	Baby cribs, changing tables, wooden toys
C19	Other	Other items specifically intended for use by children age 14 or younger

EPA chose the phrase "intended for use by children" because it appears in the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) and has been applied by the Consumer Product Safety Commission (CPSC) for over 20 years. While not specifically defined in FHSA or its implementing regulations, the CPSC regulations list several factors that CPSC considers in determining whether a product is a "children's product" intended for use by children (16 CFR 1501.2(b)). After consultation with CPSC, EPA adapted these factors for the purpose of defining "intended for use by children" for IURA purposes.

EPA based the ages for the definition, i.e., 14 or younger, on the Standard Consumer Safety Specification on Toy Safety issued by the American Society for Testing and Materials (ASTM), Standard: ASTM F963–96a. This standard covers age groups through 14 years and defines "toy" as: "any object designed, manufactured, or marketed as a plaything for children through the age of 14 years" (Ref. 17, section 3.1.33).

Obtaining information indicating that a chemical substance or mixture is used in a product that is intended for use by children will enable the Agency and others to identify chemicals affecting this particularly sensitive population. EPA has long had an interest in protecting children from unreasonable adverse affects associated with exposure to chemicals. In 1995, EPA established a policy to ensure that environmental health risks of children are explicitly and consistently evaluated in our risk assessments, risk characterizations, and environmental and public health standards (see http://yosemite.epa.gov/ochp/ochpweb.nsf/homepage). Environmental health threats to children are often difficult to recognize and assess because of limited information to identify where children's exposures occur and limited understanding of when and why children's exposures and responses are different from those of adults.

In 1997, Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), specifically directed each Federal agency to make it a high priority to identify, assess, and address children's environmental health and safety risks. It also created a Task Force on Environmental Health Risks and Safety Risks to Children. On October 9, 2001, President Bush signed Executive Order 13229, entitled *Amendment to Executive Order 13045, Extending the Task Force on Environmental Health Risks and Safety Risks to Children* (66 FR 52013, October 11, 2001), extending the work of the Task Force by another 18 months. These Executive Orders illustrate the interest in and the importance placed on addressing children's environmental health and safety risks.

The inclusion of the children's use category in IURA will provide the Agency and others with valuable information about the relationship between the IUR chemicals and products intended for use by children 14 or younger. This information will allow the Agency to respond to concerns about chemicals used in the manufacture of products intended for use by children, enabling the Agency to identify those chemicals that are reported as not being used in children's products, those chemicals that are used in children's products, and those chemicals where it is not known if they are used in children's products. This initial screen will then allow EPA and others to identify those chemicals used in children's products that might warrant further investigation or assessment, and thereby allow EPA, as well as other interested parties and affected entities, to better prioritize such assessments and maximize available resources.

iii. *Percentage of production volume attributable to each commercial and consumer product category (§ 710.52(c)(4)(ii)(C) of the regulatory text).* Submitters must estimate the percentage of their site production volume for each reportable chemical substance that is attributable to each specific commercial and consumer end–use. This information must be submitted to the extent that it is readily obtainable. Estimates must be rounded off to the nearest 10% of production volume. However, a CCP category which accounts for 5% or less of the total production volume of a reportable chemical substance cannot be rounded off to zero percent if the production volume attributable to that CCP category is greater than or equal to 300,000 lbs. In such cases, submitters must report the percentage of production volume attributable to that CCP category to the nearest 1% of production volume. This exception to the general rounding rule will ensure that adequate use information is reported for the larger production volume chemical substances.

The total percent production volumes reported may add up to more than 100%, given that the submitter is reporting on distribution of a chemical to sites in its control as well as downstream sites, some of which are not immediate purchasers from the original manufacturing site. Additionally, the total percent production volume may add up to less than 100% if the submitter cannot readily obtain information about how all of its production volume is used in commercial and consumer products.

iv. *Maximum concentration in commercial and consumer products (§ 710.52(c)(4)(ii)(D) of the regulatory text).* Submitters must report the maximum concentration (measured by weight) of each reportable chemical substance in each commercial and consumer product category. In complying with this requirement, submitters will select from the list of concentration ranges provided in § 710.52(c)(3)(vii) in the regulatory text. Concentration is further discussed in Unit III.B.1.b. As with the other processing and use information that submitters must report, such information will be reported only to the extent that it is readily obtainable by the submitter.

8. *What changes have been made to requirements for making CBI claims?* Submitters are able to claim information submitted to EPA under this amended rule as confidential if they have reason to believe that release of the information would reveal trade secrets or confidential commercial or financial information, as provided by section 14 of TSCA and 40 CFR part 2. Claims of confidentiality must be asserted at the time information is submitted to EPA. EPA's procedures for processing and reviewing confidentiality claims are set forth at 40 CFR part 2, subpart B. EPA strongly encourages submitters to review confidentiality claims carefully to ensure that the information in question falls within the protection of TSCA section 14, and to limit invalid confidentiality claims as much as possible.

Submitters will have an opportunity to make CBI claims for most of the information reported under IURA. To claim information as confidential, a submitter must check the appropriate box and sign the certification statement on the reporting form. If a submitter fails to do so, EPA could release the information to the public without further notice to the submitter. As in the past TSCA Inventory Update collections and the initial TSCA Inventory collection, by signing the certification statement the submitter certifies that its claims of confidentiality are true and correct. Procedures for claiming information submitted electronically (such as a submission on diskette) as CBI will be specified in the instruction manual that will be available each submission period as described in § 710.59 of the regulatory text. CBI should not be submitted by e–mail. A discussion about CBI claims under IURA is provided in this unit.

a. *Upfront substantiation for plant site identity.* Submitters are required to provide upfront substantiation for CBI claims for plant site identity, in a manner similar to the upfront substantiation of chemical identity under the existing IUR (see 40 CFR 710.38). Under IURA (see § 710.58(d) of the regulatory text), a submitter may assert a claim of confidentiality for a plant site identity if the submitter believes that releasing that identity would reveal trade secrets or confidential commercial or financial information, as provided by TSCA section 14. Submitters in past IUR information collections have claimed in excess of 15% of plant site identities as CBI. While the Agency does not question the occasional need for this claim, it believes that these claims should be limited to only those circumstances in which it is necessary. Further discussion on upfront substantiation is found in Unit III.E.2.

In order to assert a claim of confidentiality for a plant site identity under this amended rule, the submitter must check the appropriate box on the reporting form indicating a confidentiality claim for plant site identity and substantiate the claim in writing by answering certain questions provided in § 710.58(d) of the regulatory text. If a submitter fails to substantiate the plant site CBI claim, EPA could make the information available to the public without further notice to the submitter.

b. *CBI claims for chemical production volume information.* EPA did not change the ability of the submitter to assert a claim of confidentiality for production volume information if the release of that information would reveal trade secrets or confidential commercial or financial information as provided by section 14 of TSCA. However, submitters may now make separate CBI claims for both actual plant site production volume information and a corresponding production volume range. Production volume ranges are similar to those used in the implementation of the original TSCA Inventory collection and can be found at § 710.52(c)(3)(v) of the regulatory text.

In the last four IUR submission periods when EPA sought actual production volume information, approximately 65% of the information was claimed as confidential. In contrast, only 35% of production volume data collected in ranges in the original TSCA inventory collection were claimed as confidential. This difference indicates that submitters may be significantly less likely to make CBI claims for production volume information reported in ranges than for discrete production volume figures. The high proportion of CBI claims in IUR reports has severely limited EPA's ability to convey production volume information to the public, even in the form of a national aggregate production volume for the chemical. EPA needs to be able to convey production volume information to the public to explain its chemical risk assessment and risk management decisions. Effective communication of this information is vital to EPA's overall mission. EPA has added the ability to claim production volume range information CBI in an effort to address this problem. In some cases, submitters may choose to claim their actual production volume as CBI, while allowing the more general production volume range to be made public.

III. Public Comments

EPA carefully considered the comments it received on the proposed IURA. Major comments are discussed below. Additional comment summaries and more detailed responses are contained in the "Summary of EPA's Responses to Public Comments Submitted in Response to Proposed TSCA Inventory Update Rule Amendments" (Ref. 18).

A. General Comments

1. *How will EPA and others use the new exposure-related data collected under these amendments?* Several commenters expressed the view that EPA has not provided adequate justification supporting the Agency's need for the new IUR data, nor enough specific examples showing how EPA would use the data for its intended purpose.

EPA has an obligation under TSCA to protect human health and the environment from unreasonable risks associated with chemicals under its jurisdiction. In order to evaluate potential chemical risks, EPA has determined that a portion of the chemicals (both inorganic and organic) on the TSCA Inventory currently warrant the collection of manufacturing information, and that a subset of those chemicals (i.e., those produced in annual quantities of 300,000 lbs. or more at a site) currently warrant the collection of supplementary processing and use information. EPA is amending the IUR to provide an accurate and readily available source of basic exposure-related information for approximately 4,000 of the 76,000 substances listed on the TSCA Inventory. The amendments significantly limit industry's reporting burden while providing EPA with information needed to screen for risks to human health and the environment.

EPA's primary use of these data will be to identify priority TSCA chemicals for more detailed information gathering, risk assessment, and risk management in order to develop targeted programs, allowing the Agency to be proactive in protecting human health and the environment. Screening chemical risks generally requires a combination of both hazard and exposure information. The lack of exposure-related data beyond production volume data in the current IUR has severely limited the usefulness of the current IUR data for risk screening. Moreover, the exposure-related data that will be collected under IURA are not otherwise readily available from publicly available data sources (see Unit III.A.3.). This lack of exposure-related data has made it difficult for EPA and others to identify chemicals with potential exposures of concern, and has resulted in the generation of overly conservative screening level exposure assessments.

The addition of manufacturing, processing and use exposure-related data to IURA, especially when compiled by EPA into a searchable data base format, will enable EPA and others to more readily screen chemicals for exposure and risk. These reviews will allow for better prioritization of chemicals to identify those warranting more detailed assessments and to eliminate chemicals of lesser concern from further review.

Data generated by IURA will be used in a wide variety of programs fundamental to fulfilling the Agency's TSCA statutory mandate. These programs range from the more traditional existing chemicals risk screening efforts, to voluntary programs such as EPA's Design for the Environment program (see http://www.epa.gov/opptintr/dfe), to individual requests for analysis of chemicals not associated with a particular program. The IURA data base will be searched to identify chemicals or use scenarios meeting specific criteria. For instance, the data base could be searched to identify chemicals that, based upon these data, have the greatest potential for consumer exposure, creating a list of chemicals arranged according to the production volumes associated with different consumer uses. Additional examples of uses for IURA data are provided in this section and in EPA's "IURA Data Use Plan" (Ref. 19). The Agency anticipates that, as was true even for the basic production data reported under the existing IUR, new uses of IURA data by EPA and by others will continually emerge and cannot be predicted at this time.

Results from EPA tools such as the Use Cluster Scoring System (UCSS) will be greatly improved by IURA data. The UCSS is a computerized tool that combines hazard and exposure information from a variety of data sources, analyzes the data in relation to groupings by commercial use, or "clusters," and identifies clusters of potential concern to EPA. EPA's Science Advisory Board (SAB) commented in its evaluation of the UCSS that the lack of exposure information in the system has impaired its usefulness (Ref. 20). The IURA data base will provide exposure information that the UCSS will be able to download directly and use. (For a description of UCSS, see V.B.6. of the proposed rule at 64 FR 46780 or www.epa.gov/oppt/cahp/actlocal/use.html)

EPA will also use IURA data to perform preliminary exposure and risk screening across a portion of the TSCA Inventory chemicals. Some of the same types of data that will be collected under IURA have been collected under the Agency's TSCA Existing and New Chemicals Programs and have aided EPA in performing exposure and risk screening. These exposure-related data were submitted as part of programs such as: The voluntary UEIP (see http://www.epa.gov/opptintr/exposure/docs/ueip.htm for a description of this project) and the PMN program under TSCA section 5. Although the UEIP and PMN programs involve the submission of certain data that are the same as or similar to data being submitted under IURA, these programs cannot sufficiently serve the needs that IURA will serve (see Units V.A.1. and V.B.5. of the proposed rule at 64 FR 46775 and 46780). However, these programs are examples of the usefulness of certain IURA data elements.

For example, several IURA data elements were used in an Existing Chemicals Program initial review of the chemical methyl ethyl ketoxime (MEKO). This review relied in part upon data submitted by industry under the UEIP. Some of the data are similar to those that will be reported under IURA and include the following: Production volume, manufacturing process, industry sector, industrial processing/use activity, functional use, number of sites, number of workers, physical/chemical properties, and consumer product information. Other UEIP information submitted by industry on MEKO are not of the sort that will be collected under IURA, such as environmental releases (releases to air, water, etc.), worker exposure activities, and monitoring data. The IURA is designed to obtain information that is the most critical for generating screening level exposure profiles.

The UEIP submissions for MEKO indicated that there were one manufacturer and two importers of MEKO in 1993 and five primary end uses (submissions provided percentages of MEKO production and import volumes devoted to each use). The submissions also reported the number of workers at the manufacturing site, the physical forms of products containing MEKO, and the MEKO weight fraction in each use.

The MEKO use information was combined with information from available workplace monitoring studies and modeling approaches to compile a screening level workplace exposure assessment. The UEIP information on use provided crucial information to allow EPA to postulate process operations, worker activities, and possible exposures. For example, MEKO's primary use (92% of production and import volume) is as a paint additive. This fact allows EPA to refer to information on paint manufacturing and use to estimate exposures to workers who either formulate paints or apply the paints using spray guns or other techniques. MEKO use in paint indicates a potential for exposure to several large populations (workers and consumers) because exposure to even small amounts of paint can result in significant exposure levels to chemicals in paints. Such use information can also be used by EPA to generate estimated numbers of workers in very small businesses (< 10 workers) that may be poorly represented by existing National Occupation Exposure Survey (NOES) data. In the MEKO case, such a population would be commercial painters. Without the information about MEKO use in paints and the large percentage of MEKO volume devoted to this use, exposed populations and exposure level estimates may have been severely underestimated or left as a data gap (not estimated). Such underestimations and data gaps can artificially lower the appropriate level of concern for potential risk(s) from a chemical.

The usefulness of IURA data elements is also demonstrated by EPA's use of similar data in its New Chemicals Program. PMNs for new chemical substances submitted to EPA under TSCA section 5 require many of the same exposure-related data elements that will be reported under IURA. Exposure-related data in PMNs include estimates of production volume, categories of use, percent production volume in the categories of use, maximum number of workers exposed,

and concentrations and physical forms of the chemical. EPA uses these exposure-related data to generate screening level risk assessments for regulatory decision-making under TSCA section 5.

The manufacturer of a new chemical provided the following information in a recent PMN submission: An estimated import volume; chemical uses and the percentages of the import volume devoted to each use (non-cosmetic applications as a component of a fragrance formulation used in household products such as detergents, cleaners, soaps, room fresheners, etc.); number of sites and workers; and consumer product information (weight percent in products). EPA used this information in combination with technical references and other data to estimate the number of manufacturers of household products who may use the new substance. Releases of the new substance as a result of the fragrance formulation process and from manufacturers of the household products were estimated, resulting in estimated environmental concentrations of the new substance due to its release and estimated general population exposures to the new substance. EPA also used the information on processing and use in combination with modeling techniques to estimate the number of workers and consumers who may be exposed to the new substance and their estimated exposures to the new substance. These exposure-related estimates, when combined with information on the estimated hazards of the new substance, indicated that the estimated risks to potentially-exposed workers, the general population, consumers, and aquatic species were all below levels of concern. Therefore, the Agency could determine that no further regulation under TSCA section 5 was needed for this new substance. In contrast, without this information, EPA would have had to rely on generic assumptions for approximating potential exposures. These types of assumptions are intended to be conservative in nature and therefore often result in higher than likely exposure estimates.

Information from the IURA may also be used in efforts to identify single chemicals to support potential exposure prevention activities. For example, EPA recently learned that certain imports of zinc sulfate were contaminated with cadmium. Using the IURA processing and use data on inorganic substances, EPA could have quickly identified importers of zinc sulfate and segments of industry or the general population that might use the chemical. EPA then could have targeted warnings of the potential for exposure to cadmium more effectively, thereby preventing exposures to the groups likely to be the most highly exposed.

Other Federal agencies have also long recognized the need for and importance of exposure data. OSHA, NIOSH, and CPSC have written letters supporting EPA's and their own need for exposure data (Refs. 12, 13, 21, 22, and 23). In May 2000, the Government Accounting Office (GAO) stated that "Various federal agencies have collected such human exposure data for a number of purposes; historically, these collection efforts have been limited to selected chemicals, subpopulations, and time periods" (Ref. 24).

Other government agencies, industry, public interest groups, and the public in general will be able to access and use the non-CBI portion of IURA information. The IURA exposure-related data will be important to users beyond those who accessed the existing IUR in the past solely for production volume information. The Natural Resources Defense Council (NRDC), for example, has expressed interest in using IURA information (Ref. 25). In another case, persons interested in reviewing the HPV Challenge Program screening level hazard data (see http://www.epa.gov/opptintr/chemrtk/volchall.htm) will be able to use the non-CBI exposure-related IURA data to put the hazard data into context. Risks identified via evaluation of these screening level hazard and exposure data then can be addressed.

Although EPA can envision a wide variety of uses for the new IURA exposure-related information as described in this section, the Agency anticipates that even more opportunities exist for use of this information, as is true for the basic production data reported under the current IUR.

2. *What is the practical utility of the new exposure-related data*? Commenters have questioned whether the data collected as a part of this rulemaking will have "practical utility." Practical utility is defined in the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3502(11)) to mean "the ability of an Agency to use information, particularly the capability to process such information in a timely and useful fashion." The OMB regulatory definition of "practical utility" at 5 CFR part 1320.3(l) addresses not only the theoretical or potential usefulness of information to an Agency, but also its actual usefulness, taking into account its accuracy, validity, adequacy, and reliability, the Agency's ability to process the information in a useful and timely fashion, and whether the Agency demonstrates actual timely use of the data by the Agency's own functions. The following discussion addresses commenters' concerns in two parts: First, the accuracy, validity, adequacy, and reliability of the data; and second, the timely use of the data by EPA.

a. *How has the Agency ensured that the data will be accurate, valid, adequate, and reliable*? Commenters asserted that the data EPA proposed to collect through IURA would not be adequate for the purposes stated by EPA, and would not be accurate, valid, or reliable. Commenters stated that the information collected through IURA would be of limited accuracy and would be inferior to data the Agency has collected in other programs. Commenters also stated that the information would be so uncertain that it would not be useful to predict chemical risk, and that there are so many other factors that affect exposure, such as engineering controls, that the data would provide a limited and potentially inaccurate view of potential exposure. Additionally, commenters asserted that they do not know how their chemicals are used downstream of the manufacturing site, therefore if they were required to report such information, the resulting data would be unreliable.

EPA considered the types of information needed for screening level exposure and risk assessments and believes the information that will be collected through IURA will have the necessary level of accuracy, validity, adequacy, and reliability for such assessments. EPA agrees that there are many ways to increase the accuracy, validity, and reliability of the data. However, in developing IURA and considering various alternatives, EPA relied on experience from programs such as TSCA's PMN program and the UEIP data collection, and maintained a balance between data needs for exposure screening and priority setting and the burden associated with providing the information. If the Agency had required very precise, specific reporting, submitter burden would have increased beyond that which is appropriate for a screening level data collection. EPA also agrees that there are many factors that can affect exposure potential; however, the data provided by the submitters will provide baseline information sufficient for an initial screen of exposure potential.

i. *Adequacy of the data*. Before proposing the IURA, EPA analyzed various exposure data collections and assessments to determine the data elements needed for a screening level exposure assessment. This discussion

and analysis are in the document "Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening" (Ref. 14). Commenters' suggestions on the proposed rule implied that more extensive information about exposures than was included in the proposed rule would be necessary for even a screening level analysis of potential exposure. One commenter stated that there are many other factors that can significantly affect the potential for exposure. These factors include engineering controls and personal protective equipment practices, the nature of the activities in which workers are engaged, and the physicochemical characteristics of the chemical substances. This commenter also stated that the data collected under IURA will provide a limited and potentially inaccurate view of potential exposure. However, as summarized in Unit III.A.1., risk analyses performed by the Agency in general and OPPT in particular are graduated and data-driven. As the initial levels of concern and the quantity and quality of data increase, the need for methodologies used in risk review become more detailed and exacting, and the reviews become more accurate and reliable. Based on its experience screening chemical risks through such programs as the TSCA New Chemicals Program, the Agency believes IURA data will provide information adequate to perform initial screens of chemicals. The Agency also will be better able to prioritize and make basic risk management decisions about those chemicals of greatest concern as indicated by the available data. These better informed decisions will enhance confidence that the most appropriate chemicals are selected for more detailed assessments.

ii. *Accuracy and reliability of the data.* The Agency considered the data accuracy and reliability needed for screening level exposure analyses, and took several steps to ensure IURA data meet those needs. Screening level data need not be absolutely precise, but should be accurate and reliable enough to make usable and defensible technical assessments. The IURA will supply exposure-related information the Agency currently does not have, recognizing that industry has a greater knowledge than EPA about its own operations and the uses of chemicals it manufactures and sells. Without this information, EPA either would not screen these chemicals, would screen them using outdated or anecdotal exposure information, or would rely on exposure estimates (typically conservative) using modeling data.

Commenters stated that the accuracy and reliability of much of the information reported in Part III of the proposed revised Form U (§ 710.32(c)(4) of the proposed regulatory text, now § 710.52(c)(4)) would be highly questionable because it relates to sites, activities, and products that are not under the direct or indirect control of the reporting company. Industry programs such as the ACC's Responsible Care Program (see http://www.americanchemistry.com for more information) require that, as part of the program, member companies work with customers, carriers, suppliers, distributors, and contractors to foster the safe use, transport and disposal of chemicals. The Responsible Care Program, coupled with basic marketing and sales force activities, suggests that many companies are well informed about downstream uses of their chemicals. EPA recognizes that submitters may not always have detailed information about how the chemical(s) they make are used. As a result, submitters will only be required to report this information to the extent it is "readily obtainable" (see Unit II.F.6.b.). In addition, the Agency believes, based on its experience with the New Chemicals Program, the UEIP, stakeholder meetings, discussions with industry about voluntary risk management programs, and industry's various self-regulation initiatives, that most submitters have at least some basic information about downstream uses, such as the information that will be reported under the IURA. These data are believed to be of sufficient reliability for use by the Agency and others for purposes such as screening level risk assessments and prioritization.

EPA also requires much of the IURA information to be submitted in EPA specified ranges. This requirement benefits both the Agency and submitters. First, range reporting is less burdensome for the submitter than calculating specific numeric estimates. Demanding greater data accuracy increases the burdens associated with data collection. Second, information reported in discrete numeric values can indicate a level of accuracy that is not necessarily present. EPA believes that a higher level of confidence in data accuracy can be achieved by specifying ranges.

Commenters suggested that EPA use other methods to obtain processing and use information, such as voluntary data collection programs. However, voluntary industry efforts are not uniformly reliable for collecting data, and the Agency generally cannot ensure that data submitted under voluntary efforts will be complete and accurate. For example, the UEIP was undertaken by EPA in partnership with industry to collect relatively detailed information on 60 high production volume chemicals. EPA received data for 48 of the 60 UEIP chemicals. Many of the forms received for those 48 chemicals were not completely filled out, and only a subset of manufacturers submitted data. Thus, while the information that EPA received was quite useful, it was insufficiently complete for the purposes to which IURA information will be put. EPA's experience with UEIP is an indicator that exposure data collected under a voluntary effort are likely to be uneven and fall short of meeting EPA's needs.

iii. *Validity of the data.* Another commenter had specific concerns about the validity of the worker exposure data and felt that an auditing program would be necessary to generally ensure an acceptable level of quality for data collected under IURA.

EPA agrees that validated exposure data are the most useful for the full range of Agency risk assessment activities. However, EPA's experience with similar data collection efforts such as TSCA's New Chemicals Program demonstrates that the type of data EPA is collecting under IURA are sufficient for the purpose of screening to prioritize follow-on efforts for risk assessment and management. A rigorous validation process for all IURA exposure-related information would impose significant additional burdens on industry and the Agency that would likely outweigh the benefits accruing to the screening process. As discussed in Unit III.A.1., EPA exposure and risk evaluations are often iterative, with screening level assessments succeeded by more intensive and data rich assessments, as indicated by the screening level assessments and as data become available. The IURA data will be useful to the Agency in evaluating potential exposures and risks, serving as indicators as to what levels and types of exposures from which chemicals need further review.

b. *Will the Agency use the data in a timely manner?* Many commenters questioned whether EPA would be able to make effective and timely use of IURA processing and use information, stating that the large amount of data submitted would overwhelm the Agency. EPA acknowledges that IURA will generate a significant quantity of new data that EPA has not handled under past IUR data collections. However, EPA has carefully designed

the data collection to facilitate efficient data management and use. Data collected through IURA will be put into a relational data base format, which can be easily searched, compared, and used. The collection of data organized by codes, rather than narrative information presented in an unstructured manner, lends itself to such a data base format. In addition, providing for electronic IURA submissions allows data to be entered into the data base more accurately and expeditiously, resulting in a quick turnaround between the submission of the data to the Agency and the availability of the data for use. The Agency anticipates that approximately 95% of all reports will be submitted electronically or on disks, as opposed to hard copies. This compares with 70% that were submitted on disks in 1998. The IURA will facilitate EPA's information management and the data will be available quickly for the Agency's and others' use.

3. *Why doesn't EPA use other available sources of data or mechanisms to collect the data sought under IURA*? EPA requested comments on specific mechanisms or data sources it could use to obtain needed exposure-related information with greater ease and less burden to industry. Commenters responded with a variety of sources, ranging from current data collection mechanisms within EPA (such as TSCA 8(a) PAIR, UEIP, and cooperative approaches) to public data sources such as the Hazardous Substances Data Bank (HSDB) (HSDB is a toxicology data file on the National Library of Medicine's (NLM) Toxicology Data Network (TOXNET)). In addition, many commenters stated that EPA has not made effective use of the exposure-related data it has collected already under current or prior programs. For example, they stated that data collected under two other TSCA rules - the PAIR and the Comprehensive Assessment Information Rule (CAIR) rules - have not been used effectively to support Agency risk assessment or risk management decisions. Commenters went on further to say that under the voluntary UEIP, EPA was furnished exposure-related data on 60 HPV chemicals (actually only 48), but only two reached the initial risk assessment stage.

The alternate data sources commenters described were generally sources that EPA had already evaluated in its analysis for the proposed rule or with which EPA was otherwise familiar. EPA explored a wide variety of public data sources, as demonstrated in the following: "Inventory Update Rule (IUR) Amendments Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening" (Ref. 14), "Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule" (Ref. 26), and "A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response to CMA" (Ref. 27) (see also Unit V.B.5. of the proposed rule at 64 FR 46780)). For the most part, commenters did not identify new sources or provide additional information to support the assertion that these alternate data sources provide the information that EPA proposed to collect under IURA. After considering the information provided, EPA believes the decision not to use an alternate data source as a replacement for IURA is still sound. The Agency may, however, evaluate an alternate source for individual chemicals as part of its consideration of a particular chemical under the new exemption process established in the final rule.

EPA has spent considerable effort and resources evaluating other data sources that could potentially provide the accurate and up-to-date information that the Agency needs. A primary consideration, as mandated by TSCA, was not to subject industry to unnecessary or duplicative reporting. The exposure information sought under IURA is not currently accessible to EPA. Although some useful exposure-related data exist in some sources, the data are insufficient for the purposes to which IURA data will be put, typically because they are neither timely or detailed enough. Without IURA, EPA has difficulty efficiently screening potential risks posed by approximately 4,000 higher production chemicals on the TSCA Inventory.

Commenters stated that, if EPA were to have specific concerns about information collection for substances or categories of substances, the selective use of TSCA section 8(a) PAIR (40 CFR part 712) reporting would be more cost effective than requiring all manufacturers exceeding a production trigger to report manufacturing, processing, and use information. EPA disagrees with the suggestion that PAIR rules would be an efficient or cost effective way to compile a data base to allow the relatively large-scale risk screening of chemicals on the TSCA Inventory. PAIR is a very useful data collection tool when one or a small group of chemicals is targeted for risk assessment; however, PAIR is limited when collecting information on a large number of chemicals. Additionally, the PAIR rule has fewer, less definitive data elements than IURA, is a one-time collection versus the recurring collection of IURA, and will not provide data sufficient to meet the goals of IURA. Use of PAIR rather than IURA would force EPA to set risk screening priorities based on hazard and production volume alone, or in response to requests from others. As discussed in the document entitled "A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response To CMA" (Ref. 27), this approach greatly hinders EPA's ability to make effective and efficient risk management decisions.

EPA plans to continue using existing data sources and information sets. For example, EPA has used data previously collected under PAIR, CAIR, and the UEIP in a variety of ways, such as to support TSCA section 4 test rule analyses, to provide analyses for the Agency's efforts under the OECD SIDS program, and in support of international efforts (Refs. 18 and 27). However, the existing sources are generally best used when conducting a more detailed risk assessment of a specific chemical of concern, rather than preliminary risk screening of a relatively large set of chemicals. The IURA submissions will provide a consistent set of screening level exposure data that will allow EPA to better identify on a relative basis the chemicals of highest priority for further risk evaluation. EPA will use IURA data to identify those specific chemicals which are of potential concern and need follow up assessment. For instance, IURA exposure data integrated with HPV Challenge Program hazard data will provide the input needed to effectively develop risk-based priorities for more detailed assessment of chemicals. Once EPA has determined that a specific chemical (or group of chemicals) has sufficient potential for exposure or risk to warrant further assessment, the Agency will use the other information sources and data gathering tools as appropriate.

4. *Can TSCA information be used for right-to-know purposes*? Some of the commenters stated that TSCA does not authorize EPA to promulgate IURA based in part on EPA's goal of providing "right-to-know" information to the public, non-governmental entities and private organizations. In addition, some commenters noted that OSHA and other agencies have their own authorities to collect information on chemicals.

TSCA contains many of the principles embodied in the right-to-know concept. For instance, TSCA section 14(b) specifically authorizes EPA to disclose health and safety data collected under the statute. TSCA section 14 reflects the legislative determination that certain TSCA data should be available to the

public and interested parties. In addition, sections 4, 5, 6, as well as section 21, for example, provide opportunities for public participation in chemical management decisions. Participation must be meaningful, and to be meaningful the public must have access to TSCA non-confidential information.

TSCA was designed in part to address the lack of health, safety, and exposure information government agencies and the public faced in dealing with chemicals. See, H.R. Rep. 94-1341 at 6 (1976), reprinted in Legislative History of the Toxic Substances Control Act, at 414 (1976) ("Present authorities for protecting against and regulating hazardous chemicals are fragmented and inadequate . . . Most significant among the deficiencies are . . . (3) No authority exists for collection of data to determine the totality of human and environmental exposure to chemicals."). TSCA was seen as a way of providing federal agencies and the public with access to health, safety, and exposure data so that the risks of chemical substances could be more fully evaluated and understood. See, Statement of Sen. Hartke, Cong. Rec., March 26, 1976 [S4397- 4432], reprinted in Legislative History of the Toxic Substances Control Act, at 218 (1976) ("[T]he essential element of this legislation is that it has attempted to provide for the individual- not only who works, but for the rest of American society- the right to know what is in store as far as the toxicity of the chemicals is concerned."). Congress envisioned TSCA as a tool for providing the public and others with health, safety, and exposure information about chemical substances.

Finally, TSCA does not limit the use or disclosure of data (except if data are considered confidential) collected under the statute. Congress drafted TSCA in part to provide basic health, safety, and exposure information to other federal agencies, as well as state, local and international governments. TSCA provides several mechanisms--TSCA sections 9, 10, and 12 for example--for sharing health and safety data among various levels of government. These sections again demonstrate TSCA's role as a tool for gathering and disseminating information about chemicals.

B. Comments on Specific Data Elements

1. *Manufacturing information*—a. *Physical form.* EPA requested comment on its proposed requirement that submitters report the physical form of a chemical as it leaves the site of manufacture. Several commenters suggested variations on the specifics of physical form reporting, but generally agreed with reporting the physical form as the chemical leaves the site of manufacture. For instance, one commenter suggested expanding the types of physical forms that can be reported. EPA has determined that the six categories as proposed (see § 710.52(c)(3)(viii) of the regulatory text) will be adequate for risk screening purposes, and is not adding additional physical form categories at this time. Experience with the same six physical form categories as part of EPA's exposure screening assessment of over 20,000 chemicals in its New Chemicals Program indicates that the categories of physical forms that EPA is using under IURA will be adequate.

Other commenters recommended that EPA allow submitters to report more than one physical form for each reportable substance, because a substance may leave a site in more than one physical form. EPA agrees with this comment and is requiring in this final rule that submitters report all physical forms of a substance when the substance is sent off-site. Reporting on all physical forms in IURA will lead to a better assessment of exposure to a chemical substance. For example, processing a fine, nonagglomerating powder could result in occupational exposure by inhalation of chemical dust. Processing the same chemical as a liquid solution would eliminate, or at least reduce, the inhalation risk (the liquid could become an aerosol and be inhaled, depending on the processing activity). By combining data elements on the physical form of a chemical substance, its production volume, and the fraction directed to each industrial processing or use activity, a screening estimate of the potential exposure associated with manufacturing or processing of a chemical substance can be derived. The resulting exposure assessment will be more representative and less conservative than if the physical form(s) were unknown. For these reasons, EPA is requiring the reporting of all physical forms in which a chemical substance leaves the manufacturing site.

b. *Concentration.* EPA originally proposed to require the reporting of both maximum and average concentrations of each reportable chemical substance at the time the substance is sent off-site. A number of commenters felt that this information would be difficult to report for the following reasons: Chemicals may be used in many product formulations at a given plant site and there may often be no consistent average or maximum concentration of an individual chemical across these formulations; such information does not reside in any currently available data bases and would need to be generated for IURA reporting (which would be particularly difficult with respect to average concentration information); and average and maximum concentrations may vary in product formulations during different IURA reporting cycles. Commenters suggested that maximum concentration information will be misleading if only a small amount of the reportable chemical substance is made available commercially at that concentration, while the bulk of the total quantity leaving the site has a lower concentration. They also indicated that determining average concentration requires a complicated calculation which falls outside the scope of "reasonably ascertainable" information. Commenters suggested that average concentration can be calculated by product or by the weighted average of each product, and each of the calculations can result in tremendously different answers.

The Agency has determined that average concentration information is not critical for purposes of screening level exposure assessment and has not included this element in this final rule. Screening level review is typically meant, in part, to serve as a method of identifying chemicals that even at their maximum concentration are less likely to present a risk to human health or the environment. Average concentration information cannot be used to make such a determination.

EPA recognizes that the concentration of an IUR reportable chemical may vary from shipment to shipment leaving a submitter's site, or when reacted on-site to produce a different chemical substance. However, maximum concentration is to be reported in wide ranges and not specific numbers, thereby alleviating the need to determine specific concentrations. Additionally, EPA does not intend for submitters to go to great lengths to determine what maximum concentration ranges to select for IUR reporting. Instead, EPA is simply requiring that submitters select a range of concentrations from a list of given ranges. The ranges from which submitters must select are: Less than 1% by weight; 1–30% by weight; 31–60% by weight; 61–90% by weight, and greater than 90% by weight.

One commenter was concerned that EPA did not specify whether it would require submitters to conduct specific chemical testing or statistical analysis in order to report concentration data, or whether submitters should merely estimate concentrations. In addition, the

commenter was unsure whether a submitter should report the maximum concentration level for each product it manufactures/imports, or simply estimate the overall maximum concentration of the chemical substance. EPA recognizes that concentration data may vary from product to product and from shipment to shipment, and may be difficult to report in some instances, particularly in product formulations. EPA is not requiring the reporting of concentrations in all products and formulations but rather only one maximum concentration, regardless of the chemical substance's physical form(s) or product formulation(s). Because concentration information will be reported in ranges and not as individual values, this information or at least an estimate should be known to or reasonably ascertainable by most submitters. Submitters are not expected to conduct chemical testing or statistical analysis beyond any testing or analyses already done by the submitter as part of normal operations in order to report maximum concentration information. EPA anticipates that chemical importers will frequently receive maximum concentration information from their suppliers, and manufacturers will obtain this information from samples analyzed for quality control. This information is often found in the physical property or hazardous constituents sections of the MSDS.

2. *Industrial processing and use.* The Agency received three comments regarding the IFCs to be reported by submitters that have plant sites at which 300,000 lbs. or more of a reportable chemical substance are manufactured. The first comment questioned how the IFCs would apply to chemicals with multiple industrial uses. The second comment suggested that the Agency provide submitters with a "free response" option if their industrial function is not represented among the IFCs. The third comment stated that the IFCs proposed by EPA were adequate.

Submitters are required to report up to 10 unique combinations of processing or use categories, IFCs, and NAICS codes (see § 710.52(c)(4)(i)(A), (c)(4)(i)(B), and (c)(4)(i)(C) of the regulatory text). In making their selection from among the IFC codes, submitters must determine which IFC best represents the specific industrial use of the reportable chemical within a given NAICS code/processing and use category. The Agency will provide examples of how to select which code "best represents" an industrial use in the instruction manual that will be available to all submitters (see § 710.59 of the regulatory text). Submitters may report multiple IFCs for the same NAICS code, and multiple NAICS codes may be paired with the same IFC. Unit II.F.7. provides further information on reporting industrial processing and use information.

The set of IFCs adopted by EPA at § 710.52(c)(4)(i)(C) encompasses the vast majority of uses for chemicals subject to IUR reporting. Rather than include all possible industrial functions, EPA selected categories based upon information developed due to other Agency programs such as the TSCA New Chemicals Program and believes that the categories included in this final rule are sufficient for initial risk screening purposes. One commenter suggested that the submitter be allowed to supply a "free response" for an industrial function that is not on the EPA list. However, a "free response option" could result in a wide array of answers, which EPA would then have to group. The Agency believes the chemical manufacturer is best equipped to determine with which industrial function scenario the industrial processing and use data should be matched. If none of the categories fit, however, the submitter could report the "other" category. By aggregating similar uses under a single NAICS and a single IFC code, EPA will be able to more effectively characterize the risk associated with the totality of the production of each chemical substance. By requiring the submitter to identify the appropriate IFC code(s) from the provided list, EPA seeks to minimize the errors that could occur if the Agency, rather than the submitter, attempted to aggregate uses other than those identified in the prescribed list of IFCs.

3. *Commercial and consumer use*—a. *Commercial and consumer product categories.* In the proposed rule, the Agency requested comment on the appropriateness of the commercial and consumer product categories. Commenters had a range of opinions about the proposed categories. One commenter felt that EPA should adopt the use categories used by the European Commission (EC) (Ref. 28). Another commenter stated that the categories appeared to be adequate. A third commenter suggested that the "C-19 Other" category be deleted and that the Agency consider requiring the submitter to identify the specific use.

EPA is not changing the commercial and consumer product categories at this time, although the Agency may revisit these categories in the future should a need arise for more specific commercial and consumer use information. EPA has evaluated the EC's set of use categories and has determined that these categories blend functional use information with end use information. They therefore constitute a more complex identification system than the one that will be used under IURA. For the screening level purposes of IURA data, EPA currently believes that focusing on end use information alone for commercial and consumer uses provides the necessary level of detail for its screening level reviews. EPA is concerned that the use of EC's scheme for the commercial and consumer reporting would be overly burdensome for the current needs identified by EPA, due to the greater number of categories (55 EC categories versus 19 IURA categories). Further guidance on the relationship between EC and IURA categories can be found in the instruction manual for IURA (see § 710.59 of the regulatory text) (Ref. 9).

In addition, the EC system does not appear to describe the commercial or consumer end uses in a way that meets the needs identified by EPA and targeted by IURA. For example, a chemical that is used as a propellant would be listed under the category "aerosol propellants" using the EC system. Such a listing would not provide the Agency with the information it needs about the type of commercial/consumer product in which the submitter uses the propellant (e.g., paint, a lubricant). For more information on EPA's commercial and consumer category analysis, see the document "Inventory Update Rule (IUR) Technical Support Document Selection of Consumer and Commercial End-Use Categories" (Ref. 29). EPA will provide examples of the types of products that fit into its commercial and consumer product categories in the instruction manual that will be made available to all submitters (see § 710.59 of the regulatory text).

EPA considered requiring submitters to identify the specific use of the product, rather than the use a miscellaneous "Other" category. However, the Agency prefers to require submitters to choose from among the commercial and consumer product categories provided at § 710.52(c)(4)(ii)(A) of the regulatory text in order to encourage manufacturers to more carefully consider the listed categories, as opposed to being allowed to provide their own specific description. In this manner, EPA can more effectively assign chemicals to the correct categories, and avoid guessing the appropriate categories because the Agency believes the chemical manufacturer is best equipped to determine with which commercial or

consumer category their product use best fits. By aggregating similar product categories, EPA will more effectively characterize the risk associated with the totality of the use of each chemical substance. Requiring the submitter to identify the appropriate product categories from the provided list will minimize the errors that could occur if the Agency, rather than the submitter, attempted to aggregate uses other than those identified in the prescribed list of product categories.

b. *Non-TSCA end uses.* Three commenters requested that EPA not only continue to exempt chemicals that are manufactured only for non-TSCA purposes (such as pesticides, drugs, cosmetics, etc.) from all IURA reporting, but also exempt manufacturers of IURA-reportable TSCA chemicals from the requirement that non-TSCA downstream uses be reported (such as use of a TSCA chemical by a downstream processor in making a pesticide, etc.). These commenters assert that EPA does not have authority under TSCA to implement requirements of this sort.

EPA agrees that substances that are manufactured only for non-TSCA purposes, as described in TSCA section 3(2)(B), are exempt from all TSCA requirements and are not subject to reporting under IURA. Therefore, substances that are intended at the time of manufacture to be used for non-TSCA purposes (e.g., as a pesticide, as a drug) do not have to be reported.

The Agency also agrees that submitters under IURA will not be required to report on the non-TSCA downstream uses of the TSCA chemicals that they manufacture. It is important to note that EPA was able to reach this conclusion without reaching the issue of whether it has the authority to require such reporting. Descriptions of IFCs (see § 710.52(c)(4)(i)(C) of the regulatory text) have been clarified to reflect the fact that they only include TSCA uses. For example, one of the IFCs is called "Agricultural chemicals (non-pesticidal)." The consumer and commercial product categories (see § 710.52(c)(4)(ii)(A) of the regulatory text) are also restricted to TSCA uses. An example of one of these categories is "Lawn and garden products (non-pesticidal)." This category includes chemicals such as compressed gasses in delivery systems for many pesticides used indoors and outdoors, and other intermediates, but does not include pesticides. Additionally, many lawn amendments such as fertilizers contain chemicals that may be regulated under TSCA, (e.g., surfactants).

c. *Exempt reporting of use information for chemicals in articles.* Two commenters believed that to the extent a submitter's reportable chemical is used in an article, the submitter should be exempt from the reporting of consumer and commercial end-use information (i.e., § 710.32(c)(5) of the proposed regulatory text). The commenters stated that there is no reason to believe that consumer exposure will result from chemicals in articles.

EPA does not agree that manufacturers of chemicals that are later incorporated into articles should be exempt from the reporting of consumer and commercial end-use information. Certain exposures do result from chemicals incorporated in articles. For example, potential dermal and inhalation exposures occur from chemicals incorporated into products in the category "fabrics, textiles and apparel." Specific cases, such as formaldehyde from pressed wood products used in mobile homes or chlorinated flame retardants used on children's sleep wear, also demonstrate that potentially harmful exposures can occur from chemicals incorporated into articles.

d. *Usefulness of percent production data and maximum concentration data.* A commenter felt that in the case of consumer products in particular, it is unclear whether the percent production data and maximum concentration data required under § 710.32(c)(5)(i)(B) and (c)(5)(i)(C) of the proposed regulatory text would add any material information to the production volume information already required under the existing IUR. The commenter stated that the volumes of chemicals they will report as having been manufactured, and for which they will report maximum concentration information, are in the products the commenter sells. Therefore, the Agency will already have the needed production volume and concentration information and does not need to collect these particular data elements for consumer products.

Production volume and concentration information reported at the manufacturing site is typically different information than percent production volume and concentration in consumer and commercial categories. Often manufacturers will sell a chemical for multiple uses, in a variety of products, or the chemical will be used multiple times before reaching the consumer/commercial product. For instance, a manufacturer may report that a chemical is used in three different commercial and consumer product categories—20% of the manufactured production volume is used in category A, 35% in category B, and 45% in category C. Additionally, while the manufacturer sells the product at a certain concentration (say 90%), a final product may have a different concentration. For instance, the final product may contain only 5% of the chemical. The resulting potential exposure scenario associated with such a product would be very different from a scenario where the concentration in the final product is 90%. The Agency, therefore, is retaining the commercial and consumer percent production volume and maximum concentration data elements.

4. *General data elements comments—*

a. *Workers who are "reasonably likely to be exposed" to a reportable chemical.* EPA requested comment on alternative definitions of "potentially exposed worker" and "reasonably likely to be exposed." Specifically, EPA requested comment on whether OSHA definition of "employee" in its hazard communication standard (29 CFR 1910.1200(c)) is more appropriate for use in IURA. The hazard communication standard defines "employee" as a worker who may be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies. Workers such as office workers or bank tellers who encounter hazardous chemicals only in non-routine, isolated instances are not covered. OSHA's hazard communication standard also defines "exposure" or "exposed" as the exposure of an employee to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes potential (e.g., accidental or possible) exposure.

One commenter stated that OSHA's definition of an employee is appropriate to identify persons reasonably likely to be exposed to chemical substances. This commenter stated that the Agency should broaden the definition of exposure in IURA to include potential (accidental or possible) exposures to chemical substances which workers may experience in the course of their employment. This commenter also stated that this is what worker exposure entails in the real world and to exclude some portion of those worker exposures, as EPA proposed, is inappropriate. A second commenter felt that persons who could be exposed to a chemical substance in foreseeable emergencies should be included in EPA's new definition for persons who are reasonably likely to be exposed to a reportable substance.

EPA has determined that the OSHA definition of "employee" does not provide a more appropriate standard than the one proposed and finalized in IURA. Whereas OSHA wanted to provide all persons who could foreseeably be exposed to a chemical substance with knowiedge of the potential hazards of that chemical, EPA is seeking to specifically identify those persons routinely exposed to chemical substances and for whom engineering controls and personal protective equipment are likely to provide the greatest benefit. The definition adopted by EPA for a person "reasonably likely to be exposed" in this rule will target those individuals who routinely have the potential to be exposed to chemical substances, and for whom chronic risks are greatest. This definition provides more useful and realistic information for the risk screening purposes for which EPA envisions IURA data will be used.

b. *Personal protective equipment.* EPA requested comment on whether the Agency should collect information on the use of PPE during the manufacture of chemicals reported under IURA. Several commenters stated that EPA should not collect PPE information for the purposes of risk screening. After reviewing these comments, EPA agrees that collecting information on the availability of PPE would not enhance the initial risk screening process, and has determined that this data element should not be added to the IUR as part of this rulemaking. Because EPA cannot ensure that protective equipment will be available to all employees and, if available, will be used properly in a well managed hygiene program, the potential risk encountered in the manufacture, processing, or use of a chemical substance is initially assessed by EPA in the absence of PPE information. The IURA is designed primarily to collect only screening level information. Inclusion of PPE in risk assessment would require collection and integration of location-specific information on physical conditions and the PPE used, and would greatly complicate the risk assessment. This type of information is more likely to be included in assessments more detailed than the initial risk screening assessment for which IURA information will be used.

A commenter suggested that EPA use PPE information as a way to submit lower estimates for various IUR data elements, such as the number of workers. For the reasons provided in the previous paragraph, EPA will not use PPE information to lower the estimates of workers reasonably likely to be exposed. Because the reporting of PPE information would not contribute to the initial risk screening process and would impose an additional burden on persons reporting under IUR, EPA is not including information on PPE in the reporting requirements for this rule.

c. *Metric system reporting.* Under IUR, data are currently reported using the U.S. customary system of measurement units (e.g., pounds and yards). EPA requested comment on changing reporting requirements to require metric system reporting instead (e.g., kilograms and meters). Two commenters suggested that EPA convert to metric system units or at least give submitters the option of using either metric or U.S. customary units. One commenter requested that EPA continue to require the use of U.S. customary units or give submitters the option of reporting in either metric or U.S. customary units. EPA has decided to continue to require the use of the U.S. customary system because at least in the short term, this allows the IUR data base to remain compatible with other Agency data bases, especially TRI, which also typically use the U.S. customary system. EPA believes allowing for reporting using either the U.S. customary or metric systems of units would create confusion and increase reporting and administrative error. EPA may revisit this issue in future IUR amendments.

C. Reporting Universe Comments

EPA received a variety of comments concerning which chemicals and sites should be subject to reporting and recordkeeping requirements.

1. *Chemical categories undergoing changes in reporting status.* In the IURA proposal, EPA created exemptions from reporting for several groups of chemicals that would otherwise be IUR-reportable. The IUR currently contains full reporting exemptions for inorganic chemicals, polymers, microorganisms, and naturally occurring chemicals. EPA proposed to modify these exemptions by: (1) Requiring partial reporting for inorganic chemicals in lieu of the existing full exemption; (2) creating a partial reporting exemption for chemical substances termed "petroleum process streams" for purposes of reporting under IURA; and, (3) creating a full exemption for certain forms of natural gas. EPA also requested comment on the creation of additional exemptions, but asked that commenters provide a clear supporting rationale for creating such exemptions.

a. *Inorganic chemicals* - Many commenters submitted comments about the removal of the full exemption for inorganic chemicals.

EPA originally created the inorganic chemical exemption because it believed that the hazard potential of many inorganics was "relatively well-established" (50 FR 9944, 9947, March 12, 1985) and that hazard information alone was sufficient for prioritization within inorganic chemical substance risk assessments. EPA now intends to increase the consideration given to exposure, another component of risk, in screening chemicals and in setting priorities for risk assessment and risk management activities. The Agency no longer believes that chemical hazard information alone provides a sufficient basis for prioritization for these purposes. As a result, the former basis for this exemption is no longer applicable.

i. *Why does the Agency need basic IUR information on inorganic chemical substances?* During interagency review prior to proposal it was suggested that EPA first collect the IUR information in §§ 710.52(c)(1), (c)(2), (c)(3), and 710.58 of the regulatory text (Parts I and II of the revised Form U) on inorganic substances before collecting the processing and use information in § 710.52(c)(4) of the regulatory text (Part III of the revised Form U). It was thought that partial reporting would allow EPA to become generally familiar with the production volumes of inorganic chemicals, and would permit manufacturers of these substances to familiarize themselves with the most basic IUR requirements before being required to comply with the processing and use data requirements. Many commenters stated that EPA had not demonstrated the practical utility of collecting basic information on inorganic substances. Other commenters felt the Agency should collect these data and that inorganic chemicals should not have had an exemption under IUR.

EPA uses basic IUR information in a wide variety of ways (as described in Units II.C. and E.) and expects the basic IUR information on inorganic chemicals to be used in similar ways. For example, EPA used IUR information in the HPV Challenge Program (see http://www.epa.gov/opptintr/chemrtk/volchall.htm) to identify chemicals produced in aggregate national volumes of one million pounds or more. The HPV Challenge Program has not been able to include inorganic chemicals as EPA did not have the necessary production volume information on the inorganic chemicals produced in or imported into this country. Additionally, the TSCA Interagency Testing Committee (ITC) has encountered difficulties in its attempts to identify inorganic chemicals for recommendations to EPA for testing or other further evaluations due to the lack

of even the most basic IUR data for these chemicals (Ref. 30).

ii. *Why is EPA phasing in reporting for inorganic chemical substances?* EPA requested comment on completely removing the inorganic chemicals exemption, requiring reporting of all of IURA information, including the information described in § 710.52(c)(4) of the regulatory text on inorganic chemicals manufactured in volumes of 300,000 lbs. or more at a site. Some commenters supported phased-in reporting of this information, where EPA would maintain a partial exemption (i.e., requiring the reporting of all of IURA information except the information in § 710.52(c)(4)) for the first submission period only and would require full reporting in subsequent submission periods. EPA agrees with this approach because it provides new submitters with an opportunity to become familiar with basic IUR reporting, allows EPA to become familiar with the current inorganic chemical industry, and provides basic production information in the first submission period. Requiring full reporting for inorganic chemicals in subsequent submission periods provides EPA with the processing and use exposure-related information needed to continue efforts begun with the first reporting year information.

EPA's primary use of both the basic data collected during the first submission period and the additional exposure-related data collected during subsequent submission periods will be to identify priority TSCA chemicals for more detailed information gathering, risk assessment, and risk management in order to develop targeted programs to protect human health and the environment. Screening chemical risks generally requires a combination of both hazard and exposure information. The absence of exposure-related data for inorganic chemicals, beyond even the basic production data collected during the first submission period under IURA, would severely limit the usefulness of IURA data for risk screening. See Unit III.A.1. for further discussion of additional uses of IURA exposure-related data.

While some commenters supported the phasing-in approach, other commenters suggested that EPA review the information collected on inorganic chemicals under the partial exemption and collect additional information on these chemicals through a future rulemaking. Commenters suggested a variety of ways to collect this additional information, including specifically listing chemicals that would be subject to future IUR collections or using PAIR. However, EPA's experience with using information from other sources or collecting information using PAIR has demonstrated that this approach is insufficient, as discussed in Unit III.A.3.

iii. *Why doesn't EPA use already available information on inorganic chemical substances?* Commenters stated that the inorganic chemicals data that EPA needs to conduct screening level risk assessments are already available from a variety of sources, including the USGS's annual reports on mineral production, health assessment documents prepared by the Agency for Toxic Substances and Disease Registry, studies by OSHA, the TRI compiled by EPA, and literature published by trade associations. EPA closely examined these data sources, and concluded that, while useful, these sources are inadequate to meet the Agency's data needs for inorganic chemicals.

Some of the suggested data sources pertain to naturally occurring substances which are exempted from reporting by a provision in IUR that EPA has not proposed to change, i.e., 40 CFR 710.26(a)(3), which is codified as § 710.46(a)(3) for IURA. Many of the remaining data sources identified by commenters pertain to metallic alloys or studies of a single metal species and do not include information on the multiplicity of pigments, flocculating agents, oxidants, photochromic salts, flame retardants, catalysts, and other inorganic compounds for which data are sought through IURA. In some cases, the data sources are one-time collections of information and therefore would not provide current information on the inorganic chemical industries. Others, although revised from time to time, do not identify the chemicals with sufficient specificity, do not identify the manufacturing site or a technical contact, and/or do not provide information on the use of the inorganic chemical. In sum, the data sources identified by commenters and by EPA are not sufficient to provide the information sought through IURA. EPA has consulted with USGS to investigate whether the USGS annual survey of approximately 80 minerals could be amended to better serve as a source for use and exposure data that could be used in place of IURA for those minerals (Ref. 31). EPA plans to identify and initiate dialogues with other federal agencies about collection activities that have the potential for generating additional federal paperwork burden reductions, particularly related to the IURA. The new exemption process established in the final rule provides an opportunity for EPA to consider alternate sources of information for individual chemicals. EPA is extremely sensitive to the PRA's directive for federal agencies to reduce unnecessary burden, and will continue to consistently strive to find areas in which burden can be decreased to the maximum extent practical, as well as carefully evaluate new or revised information collections to ensure that the Agency's informational needs are met with the minimal burden possible. Although none of the identified alternate sources appear to be sufficient to replace IURA, EPA believes that an alternate information source could provide sufficient information for a particular chemical. EPA is also willing to work with other agencies to perhaps resolve differences in the various information collection activities in an effort to reduce overall reporting burden on industry.

Additional discussion of the applicability of available data sources is found in "Summary of EPA's Responses to Public Comments Submitted in Response to Proposed TSCA Inventory Update Rule Amendments" (64 FR 46772) (Ref. 18) and in "Inorganic Chemicals: Sources of Information Suggested by Commenters to the Proposed Inventory Update Rule Amendments" (Ref. 32).

b. *Partial exemption for petroleum process streams.* EPA proposed a partial exemption from IURA reporting for certain chemical substances that the Agency is calling "petroleum process streams" for purposes of IURA and requested comment on duplication of reporting under the information collections conducted by DOE's Energy Information Administration (EIA) through EIA forms EIA 810, EIA 816, and EIA 64A. Operators of all operating and idle petroleum refineries, blending plants, or blending terminals must complete form EIA 810 to provide a monthly refinery report on their operations to DOE. Operators that extract liquid hydrocarbons from a natural gas stream and/or separate a liquid hydrocarbon stream into its component products must complete form EIA 816 to provide a monthly natural gas liquids report to DOE. Operators of domestic natural gas processing plants must complete form EIA 64A to provide an annual report of the geographical location and geological formation of natural gas liquids production to DOE. In the IURA proposal, EPA stated its intention to work with DOE to identify potential duplication and to further investigate the potential usefulness of DOE's information collections in fulfilling EPA's statutory obligations under TSCA.

One commenter stated that EPA could use the DOE data along with other supplemental information sources to generate the type of petroleum process stream information that IURA proposed to collect. Several commenters also stated that the proposed IURA reporting would be duplicative of DOE reporting for certain chemicals, particularly fuel oil #2 and kerosene, and that EPA should therefore fully exempt those chemicals from reporting under IURA.

EPA has investigated the information collection conducted by DOE through EIA forms EIA 64A, EIA 810, and EIA 816, and has determined that chemical substances are not sufficiently identified for EPA's purposes in the DOE reports. For example, many of the chemical substances in the DOE reports are identified by nomenclature other than the CAS nomenclature used by EPA for TSCA purposes, are identified in broad categories, or are not identified by CAS number. Many of the chemical names used by DOE are either generic or represent groups of chemicals. For example, distillate fuel oil, reported on EIA Form 810, may refer to several chemicals on the TSCA Inventory, such as fuel oil #2, fuel oil #4, or fuel oil #6. This lack of specific identifier information means that EPA and others cannot distinguish which information collected by DOE is attributable to which chemical. More specific identification is needed to attribute the appropriate hazard and physical and chemical properties to the petroleum stream.

The DOE information also lacks important exposure components and identifiers that are necessary for exposure and risk screening activities. For example, the DOE information does not contain the number of workers reasonably likely to be exposed to a chemical or the maximum concentration of the chemical. In addition, it may be difficult to discern from the DOE data if a petroleum process stream is used as a solvent in a consumer product or as a combustible fuel. This is an important distinction because the likelihood of exposure to a petroleum process stream depends on its use. These data are needed elements that will fill a vital data gap in chemical risk screening.

Several persons commented that there is no need to collect exposure-related data for petroleum process stream manufacturing operations because physical hazards existing at many sites currently necessitate extensive safety precautions that limit worker exposure. Discussed in more detail in Unit II.F.1.b.

c. *Exemption for certain forms of natural gas.* EPA proposed that six natural gas substances be fully exempt from reporting under IURA. In addition, EPA requested comment on whether reporting for the six substances should be required in upcoming submission periods and whether they were the appropriate natural gas substances for inclusion in the proposed exemption.

Commenters expressed support for the full exemption of the six natural gas streams listed in the proposed IURA. These commenters also recommended adding fuel oil #2, kerosene, methane, ethane, propane, butane, pentane, and hexane, and liquefied natural gas to the full exemption list. The commenters stated that an exemption is warranted for these chemicals because: (1) DOE already requires annual and monthly reports for the chemicals which contain the same information requested by EPA; (2) the chemicals are similar in chemical composition to the six chemicals EPA proposed to exempt; (3) their chemical structure and identity remain the same throughout processing; (4) a similar amount of data is available for these chemicals as for the six chemicals EPA proposed to exempt; and, (5) a similar number of TSCA reports are filed for these chemicals as for the six chemicals EPA proposed to exempt.

EPA has retained the exemption for certain forms of natural gas as proposed. Adequate IUR information has been collected on the six chemical substances to fulfill EPA's and other IUR information users' current needs. EPA will take action to revoke this exemption if circumstances warrant in the future.

Liquefied natural gas, which is a form of natural gas (CAS No. 8006–61–9), is covered under the natural gas exemption. EPA did not include ethane, methane, propane, butane, other paraffinic hydrocarbons, fuel oil #2, or kerosene in the list of substances included in the natural gas exemption because they are not just isolated components of natural gas but are also chemical substances which can be produced from other source materials, chemical process streams, feedstocks, or reactants. These alkanes have significant uses in chemical manufacturing, including the production of ammonia and methanol from synthesis gas derived from methane, thermal cracking of ethane/propane mixtures to produce ethylene, and vapor-phase oxidation of n-butane to produce maleic anhydride. At present, there is not a sufficient basis to conclude that data on all significant uses of these alkanes are adequate.

EPA did not rely on the data contained in the DOE reports discussed in Unit III.C.1.b. in its creation of the new exemption for certain forms of natural gas. While some useful information for these chemicals is included in the DOE reports, it is insufficient for exposure or risk screening (see Unit III.C.1.b.). Downstream processing and use exposure information collected through IURA for these chemicals will not duplicate information collected by DOE.

2. *Exemption of additional groups of chemicals from IURA reporting or from the reporting of specific data elements.* EPA requested comment in the proposed rule on the selection of chemicals that might be exempted from reporting under IURA and on specific criteria to distinguish these chemicals from those that remain subject to reporting. EPA received many industry comments in favor of creating a new exemption for chemicals that may be considered to be "low priority," but commenters did not indicate standard criteria for establishing such exemptions. However, in response to these comments and comments received during interagency review, EPA created a partial exemption (i.e., an exemption from the reporting of information required under regulatory text § 710.52(c)(4)) for certain chemicals for which the collection of processing and use information is currently of "low interest." This new partial exemption is intended to improve IURA's efficiency and effectiveness. EPA has established a process by which future changes to the chemicals included in the partial exemption can be made after careful examination of the totality of information available for the chemical substance, including but not limited to the considerations provided in § 710.46(b)(2) and discussed in Unit II.F.1.d. This partial exemption also provides additional benefits in reducing the potential reporting burden of IURA for certain manufacturers of these chemicals. The inclusion of a chemical substance under this partial exemption does not address the potential risks of a chemical. This partial exemption is solely intended to provide a tool to assist the Agency in better managing the collection of processing and use information under IURA. See Unit II.F.1.d for a discussion of the exemption and the process to add or remove chemical substances from the exemption.

In addition, commenters suggested classes of chemicals for exemption. EPA has determined that none of these suggested exemptions can be implemented at this time, as described in the remainder of this section.

a. *HPV chemicals.* A number of commenters stated that industry is already providing EPA with sufficient hazard data via the HPV Challenge

Program (see http://www.epa.gov/opptintr/chemrtk/volchall.htm), as well as exposure data through other voluntary programs (e.g., International Council of Chemical Associations (ICCA) data collections and UEIP). Therefore, providing exposure-related information on HPV chemicals via IURA would be duplicative and unnecessary.

The Agency recognizes that a variety of voluntary and regulatory efforts to collect hazard data are underway, such as the voluntary HPV Challenge Program. However, the scope and expected output from the HPV Challenge Program differ markedly from those anticipated under IURA. The HPV Challenge Program centers on providing basic hazard data for HPV chemicals, most of which will also be IURA-reportable chemicals. The IURA focus is on gathering exposure-related information for moderate and high volume chemicals in a wide range of industrial operations, involving multiple sites and covering manufacturing, processing, and use of the chemical substances.

The Agency is unable to limit its IURA information collection efforts to HPV chemicals alone, for several reasons. The Agency could not know definitively which chemicals are HPV substances in any particular IURA reporting cycle as of that reporting year. A chemical substance meets the criteria for an HPV chemical by meeting a one million pound national production volume threshold, based upon the aggregate production volume in the nation (as reported to IUR). Production volumes can vary significantly over a 4–year reporting cycle, and it is not uncommon for chemicals to rise above or fall below the HPV threshold each reporting cycle. For instance, EPA used 1990 IUR reporting to identify approximately 2,800 HPV substances. An additional 500 substances which were not HPV chemicals in 1990 were identified as being HPV via the 1994 IUR production volume data. The IURA collection could be limited to the HPV Challenge Program chemicals (i.e., the baseline set of chemicals for the program, consisting of chemicals that were HPV according to 1990 IUR information). However, that restricts IURA's ability to supply screening level exposure information to only those HPV chemicals. This would severely limit the usefulness of IURA over time, as the universe of chemicals that were HPV in 1990 will not be the same universe of chemicals that are HPV in future years, and would compromise the Agency's broader responsibility for risk screening.

b. *Existing Chemicals Program "low concern" chemicals.* Commenters recommended that the chemicals previously determined by EPA to be of low concern via the Existing Chemicals Program be exempt from reporting under IURA. However, commenters did not provide sufficient criteria that would clearly distinguish exempted chemicals from others subject to IUR reporting. EPA cannot create exemptions without a clear basis or justification. During the development of these amendments, EPA considered exempting chemicals previously reviewed by the Existing Chemicals Program, but was unable to develop standard criteria for such an exemption (See Ref. 33 and Unit IX.3. of the proposal preamble, at 64 FR 46794). Under the Existing Chemicals Program, no standard criteria were used for determining which chemicals were lower priority, because in the course of the program many different chemicals involve unique risk assessment or risk management issues. For example, many chemicals were analyzed within a specific use, and other uses were not examined. As an alternative to this approach, EPA developed a partial exemption for chemicals which are determined to be of low current interest for purposes of IURA processing and use information reporting, based on considerations described in Unit II.F.1.d., and identified an initial list of chemicals currently covered by the partial exemption (Ref. 5).

c. *Organization for Economic Cooperation and Development (OECD) chemicals.* Commenters recommended that the chemicals for which EPA has a minimum set of hazard and exposure data, such as OECD's SIDS chemicals that have completed the SIDS process, be exempt from reporting under IURA. Commenters also suggested that chemicals in the International Council of Chemical Association (ICCA) screening level data collection programs be included in this exemption.

EPA disagrees that data collection efforts through the OECD and ICCA programs provide sufficient exposure information to replace IURA information. Data collection efforts under the auspices of OECD and ICCA concentrate on the development of hazard assessments and generally provide only a small fraction of the exposure-related data called for under IURA. A goal of the ICCA Program is to process chemical cases through OECD's HPV SIDS Program, which develops hazard information for the program chemicals. As hazard data do not change from year to year, the data collection supports a one-time report. The IURA will provide current exposure-related information for risk screenings and preliminary assessments. Exposure information, as collected under IURA, will vary from reporting year to reporting year and therefore needs to be collected on a continuing basis. While the OECD HPV SIDS Program does not specifically disallow the collection of exposure information, the program does leave such collection to the discretion of the sponsor country (Ref. 34). Exposure information available via SIDS is therefore generally not specific to U.S. uses and concerns.

d. *Metals.* Various commenters stated that either metals as a group, or specific metals such as zinc and copper, should be granted special consideration for IURA reporting. Several commenters asserted that providing information on maximum concentrations is unnecessary for the metals, because they will generally have close to 100% concentrations when they leave the manufacturing site or whenever they are present in consumer or commercial products. Further, commenters indicate that the only exposure potential for these substances in commercial or consumer products will be dermal (not via other routes such as inhalation or ingestion). Additionally, a commenter stated that workers "in proximity" to or handling solid metal articles should not be considered to be exposed for reporting purposes, because the metal is in a form in which neither inhalation nor dermal exposure will occur. Other commenters believed that any IUR reporting on metals is unnecessary because ample information on metals production and exposure potentials is already available from other sources, such as the USGS, or because specific metals, such as copper and zinc, are beneficial to human health and therefore should be of no exposure concern.

Metals present some unique issues regarding exposure potential, and the information that will be collected under IURA on metals will do much to improve EPA's and others' knowledge about the uses and exposures associated with these chemicals. Not all metal-containing products are pure metal. For example, metal powders used in fine arts, metal pastes used in repairs, and commercial metallic paints contain varying percentages of metals. In addition, although some metals in trace quantities, such as chromium, are essential nutrients to plants and/or animals, in greater exposure concentrations these same metals can be harmful.

Because metals are ubiquitous and can be present in a variety of physical forms, different routes of exposure are possible. Chronic exposure to solutions

containing metals such as nickel may result in contact dermatitis. Milling metal parts containing antimony and beryllium creates dusts which, if inhaled, can result in acute chemical pneumonitis. Inhalation of fumes containing chromium resulted in an elevated incidence of bronchial carcinoma among workers in the U.S. chromate industry before the source of the exposure was recognized and corrected. Exposure by ingestion is of concern for metals that may enter water sources following improper disposal of used materials, for example. The use of cadmium in batteries for portable electronic devices, including computers, is increasing; long-term exposure to cadmium has a potential to cause kidney, liver, bone, and blood damage.

EPA has exempted submitters that would otherwise be subject to IUR reporting from reporting with respect to chemicals that are imported in the form of an article (see 40 CFR 710.30(b) and § 710.50(b) of the regulatory text). However, submitters that manufacture a reportable chemical and incorporate it into an article will continue to be subject to reporting under the IURA.

The Agency reviewed a number of sources that provide information about metals production and characteristics, including USGS data specifically noted by commenters (Ref. 32). The information, although useful for depicting global mining and production of the major commercial metals, is not comparable to the national scale and domestic exposures data that will be provided under IURA. Further, because metals are subject chemicals in many EPA programs, including the Great Lakes Binational Toxics Strategy; the revised drinking water standards; the revised emission standards for secondary metal refinishers; and the Waste Minimization National Plan, current information about domestic metals production and use will benefit many EPA offices and programs.

As indicated previously, EPA will be reconsidering individual chemicals for applicability under the new partial exemption, and plans to identify and initiate dialogues with other federal agencies about collection activities that have the potential for generating additional federal paperwork burden reductions, particularly related to the IURA.

e. *Other chemical groups.* Commenters suggested EPA exempt a variety of additional groups of chemicals from either full or partial IURA reporting. These groups included fossil fuel combustion byproducts such as coal combustion products; fertilizers; substances encapsulated in a polymer matrix; pesticides; and certain chemicals outside the scope of TSCA jurisdiction (such as drugs). Commenters stated that exposures associated with fossil fuel combustion byproducts are already well known, and, with information currently being submitted to EPA and other federal organizations such as DOE, well beyond the amount needed for "basic screening." Commenters argued that reporting on these byproducts under IURA would be duplicative (therefore unnecessary) and overly burdensome, especially because these chemicals are considered "beneficially used in an environmentally sound manner" by EPA's Office of Solid Waste (OSW). A parallel argument was made for fertilizers, in that certain commenters consider them to be well-characterized and generally "safe." Similarly, a commenter believed encapsulated substances are of little concern, due to low exposure potentials for the encapsulated chemicals, as implied by the Agency's treatment of such substances under Significant New Use Rules (SNURs); the commenter believed that, when chemicals are secured within a polymer matrix, the SNUR requirements no longer apply. Commenters also stated that pesticides and other chemicals not subject to TSCA should be fully exempt from reporting.

Comments specific to these different groups of chemicals are addressed below.

i. *Fossil fuel combustion byproducts.* Commenters stated that fossil fuel combustion byproducts have been sufficiently studied for beneficial reuse to justify their full exemption from IURA reporting. They asserted that EPA's OSW had adequately reviewed data on these substances to allow their use as solid waste in situations where exposures were possible, such as in the case of soil amendments. The commenters believe that EPA offices such as OPPT and OSW must coordinate their efforts related to fossil fuel combustion byproducts prior to undertaking any actions under TSCA, and suggested that continued reporting on these chemicals would be particularly burdensome.

EPA disagrees with these comments. Review of the recent OSW Report to Congress on the subject of fossil fuel combustion byproducts (Ref. 35) indicates that these products can be hazardous to human health and the environment when mismanaged. These products not only typically contain heavy metals such as cadmium, chromium, lead, and mercury, but leachates from fuel combustion byproducts can contain significant concentrations of arsenic. Despite these concerns, OSW has decided to exempt these substances from regulation as hazardous waste when they are beneficially reused. While OSW was not able to identify damage cases or significant risks to human health or the environment associated with these types of beneficial uses based on available data, OSW plans to assess new information on risks as that information becomes available. The IURA will be instrumental in providing manufacturing, processing, and use data for fossil fuel combustion byproducts to enable OSW to monitor the potential risk associated with these chemical substances. Additionally, as with any chemical byproduct with a use, EPA in general needs information to be able to screen these chemicals for potential concerns outside of the OSW purview. Review of such contemporary data, as shared between OPPT and OSW, will allow EPA to make well-informed risk management decisions by constructing realistic screening level exposure profiles for these substances. These profiles could be adjusted as the production dynamics change between IURA reporting cycles. EPA believes the importance of accurate exposure-related data in formulating sound risk management decisions for fossil fuel combustion byproducts justifies the associated reporting burden.

ii. *Fertilizers.* Fertilizers that qualify for the inorganic exemption have not been subject to IUR reporting in the past. A number of commenters emphasized that, in general, fertilizers are chemicals whose risks have already have been well-characterized. According to the commenters, ample recent hazard and exposure data from studies conducted by EPA's OSW indicate that fertilizers generally are of low toxicity, and some constituents of major fertilizer types are "safe" because the exposure potentials are low. Further, as the commenter pointed out, recent SIDS program studies on urea, a common fertilizer, described the chemical to be "of low priority" for further investigation, thereby implying that the chemical poses little hazard to human health and the environment, and that adequate risk information is available. Commenters stated that because they believe the constituents are not harmful to human health or the environment, fertilizers should be exempt from downstream use and exposure reporting under IURA (i.e., a partial exemption from IURA reporting). Other commenters stated that fertilizers should be granted a full exemption from

IURA reporting, or that EPA should exempt certain fertilizers by CAS number. One commenter suggested that 20 substances be included in the fertilizer list (see list provided in Comment C4b-6 of the comment summary document, Ref. 18).

EPA does not believe the suggested IURA exemptions for fertilizers and fertilizer constituents are warranted at this time. The Agency does not agree with industry comments citing a 1999 EPA OSW risk evaluation on "non-nutritive" components in fertilizers as adequate justification for classifying fertilizers as "safe," and therefore eligible for exemption. The OSW report addresses trace quantities of metal contaminants in those fertilizers (i.e., the non-nutritive elements), not the fertilizers themselves. A review of basic hazard identification guides, such as the Merck Index, the Condensed Chemical Dictionary, and Dangerous Properties of Industrial Materials, shows that exposure to many fertilizers and fertilizer materials, including those cited in industry comments such as anhydrous ammonia, potassium sulfate, and urea, can cause both reversible and irreversible adverse health effects ranging from acute to chronic. The availability of IURA exposure-related data will allow for the risk screening of chemicals used as fertilizers and fertilizer constituents to extend beyond environmental effects and aid the screening of risks to workers, consumers, and the general population. The Agency therefore believes it is appropriate to require reporting for fertilizers under IURA.

iii. *Encapsulated substances.* A commenter stated that the import volumes of IUR reportable components contained within compounded imported polymers should be exempt from IURA reporting. The commenter indicated that volumes of these encapsulated components are difficult to determine. Such components include antioxidants, colorants, lubricants, and stabilizers that are commonly used additives in polymer products. The polymers are sometimes manufactured by a foreign company and imported into the United States. The commenter stated that these additives, which are encapsulated in a polymer matrix, are typically present in the matrix at a few weight percent. The commenter's understanding was that when chemicals are secured within a polymer matrix, the SNUR requirements no longer apply, thus their suggestion was for EPA to treat such substances similarly under IURA.

The SNUR requirements in 40 CFR part 721 do not exempt substances encapsulated in a polymer matrix. Although chemicals incorporated into a polymer matrix are not subject to SNURs in certain limited circumstances, for example, when an individual SNUR specifically states that the SNUR requirements do not apply to such substances (see, e.g., 40 CFR 721.8160(a)), such chemicals are not otherwise generally exempt from SNUR requirements.

Although EPA appreciates the difficulty in ascertaining quantitative production information from manufacturers outside direct U.S. jurisdiction, exempting IUR reportable components encapsulated in a polymer matrix from IURA is not warranted. Not all polymers are inviolable. Additives such as colorants and lubricants, which can be hazardous to human health or the environment, can leach from the polymer matrix, resulting in subsequent exposures. Also, additives which are inherently insoluble in the polymer may migrate to the surface of the polymeric material and be released over time from the polymer. Under IURA, each non-exempted mixture component is reportable if imported above the stated thresholds. Reasonably ascertainable information can be used to estimate these import quantities.

iv. *Pesticides.* Some commenters stated that the Agency should exempt pesticide chemicals from reporting under the IURA, and also should exempt those substances outside the scope of TSCA, including drugs and cosmetics.

The original IUR did not require reporting for chemicals manufactured for non-TSCA purposes. Similarly, in IURA, amounts of an otherwise IUR-reportable substance that are intended at the time of manufacture to be used for non-TSCA purposes (e.g., as a pesticide, as a drug) do not have to be reported. For example, if a company were to manufacture 300,000 lbs. of an IUR-reportable substance, 170,000 lbs. of which were intended at the time of manufacture to be sold as a drug precursor, and 130,000 lbs. of which were intended at the time of manufacture to be used for a TSCA purpose, only 130,000 lbs. of the substance would have to be reported under IUR. The company would not have to report the processing and use information described in § 710.52(c)(4) of the regulatory text for that chemical at that plant site, since the company did not manufacture a total of at least 300,000 lbs. of the chemical at the site for TSCA purposes. Many substances, such as the pesticide active ingredient pentachlorophenol, are also used in industrial and commercial applications regulated under TSCA. In those cases, the chemicals will continue to be reportable under IURA.

v. *Food additives.* Commenters stated that low hazard chemicals, such as food additives, should be categorically excluded from the new reporting requirements. The commenter stated that food use substances, for example, are regulated by the Food and Drug Administration (FDA) and must either be generally recognized as safe (GRAS), the subject of a prior sanction, or the subject of a food additive regulation promulgated by FDA.

According to FDA's Office of Premarket Approval (OPA), food use substances for FDA's purposes are those that are added directly to food, and could inadvertently contact and be incorporated into food because of use in packaging material or in food processing. FDA does not evaluate chemicals for environmental effects--only for human health effects. The chemicals subject to FDA rules are not inherently low hazard in many cases. For example, substances such as plasticizers, lubricants, release agents, acids (e.g., hydrochloric acid), boiler water additives, and solvents (e.g., acetone and hexane) are included as food use substances. Furthermore, even direct (i.e., listed) GRAS chemicals can be of concern when used at industrial concentrations, such as sulfuric acid. Thus, as is true with other chemical substances, food additives can present a risk to human health or the environment depending on use and the resulting exposure pathways. EPA does not believe a categorical exemption for chemicals that may be used as food additives is warranted at this time. Again, such chemicals are only reportable under IURA to the extent that they are intended at the time of manufacture to be used for TSCA purposes.

3. *Thresholds.* EPA requested comment on the 300,000 lbs. threshold for reporting industrial processing and use, and consumer and commercial use information (required under § 710.52(c)(4) of the regulatory text). Commenters generally were supportive of having a second, higher reporting threshold for this exposure-related information. However, one commenter stated that the 300,000 lbs. threshold is too low, and that it should be set at one million pounds to coincide with the HPV Challenge Program threshold.

EPA considered chemicals with aggregate, nationwide U.S. production and importation volumes of one million pounds or more (based on 1990 IUR data) for the HPV Challenge Program. That is, if one million pounds of a

certain chemical were reported for the 1990 IUR as being produced or imported collectively, by manufacturers throughout the United States, then that chemical was identified as an HPV chemical for purposes of the HPV Challenge Program. The 300,000 lbs. IURA threshold captures at least one report for more than 95% of the HPV chemicals reported to the 1990 IUR.

The production volume that defines chemicals as HPV should not be confused with the 300,000 lbs. per year reporting threshold for processing and use data reporting in IURA. The 300,000 lbs. threshold applies to the amount manufactured at a single site and is not an aggregate, industry-wide production number. EPA is implementing the 300,000 lbs. per year reporting threshold for individual IUR submitters because it limits the increase in burden associated with the new IURA processing and use reporting requirements and it limits the number of chemicals for which exposure-related data will be reported to approximately 4,000. This number is consistent with the "several thousand chemicals" suggested by GAO in its 1995 report "EPA Should Focus Its Chemical Use Inventory on Suspected Harmful Substances" (Ref. 36), and ensures that exposure-related data will be reported for almost all HPV chemicals (defined by national aggregate production). Increasing the 300,000 lbs. threshold to one million lbs. would drastically undermine the Agency's collection of processing and use exposure-related data. The higher threshold would reduce the number of chemicals for which this information is submitted and eliminate processing and use data reporting on many of the HPV chemicals. The Agency would be left with very little information with which to conduct the needed screening- level assessments and the resulting prioritization would be less meaningful.

In the proposed IURA, EPA also solicited comments on the possibility of replacing the chemicals identified using the 300,000 lbs. annual production volume threshold (by site) with any of five other groups of chemicals. Those groups include: (1) A set of HPV chemicals that submitters identify as being produced nationwide in amounts of one million lbs. or more; (2) chemicals that are currently subject to testing under TSCA section 4 (i.e., test rules and enforceable consent agreements (ECAs)); (3) chemicals identified for voluntary testing; (4) chemicals designated for testing by the ITC; and (5) chemicals listed in the Agency's Master Testing List (the current edition is available at http://www.epa.gov/opptintr/chemtest/mtl.htm).

With respect to the possibility of limiting the collection of processing and use information to HPV chemicals identified by submitters, the Agency asked for comment on: (1) Whether submitters would be able to determine which chemicals have exceeded the nationally aggregated HPV threshold in a given submission period, especially given how frequently chemical production rises above and falls below this threshold from IUR submission period to submission period; (2) what additional burdens such a determination would place on submitters; and (3) whether IURA data would be less useful if processing and use data reporting were limited to HPV chemicals.

Many commenters favored use of the set of HPV chemicals in lieu of the proposed IURA reporting with the 300,000 lbs. threshold, yet none directly responded to the specific Agency questions. Commenters failed to take into account the added burden of aggregating chemical production to determine which substances are HPV chemicals. They also offered no justification for substituting the 300,000 lbs. plant site-specific threshold with a one million lbs. national aggregate threshold, beyond stating that relevant information is being provided already through other programs. Nor did they offer possible solutions to the problem of reliably aggregating production volumes.

EPA does not believe that submitters will be able to effectively aggregate nationwide production volumes. Aggregation is especially difficult in light of continual, market-driven changes in production and many submitters' interest in protecting individual plant site production volume information as CBI. Additionally, for a nationally aggregated one million lbs. threshold to be effective, it must be able to accommodate the frequency with which individual chemicals may rise above or fall below the HPV threshold criteria of a U.S. aggregate production volume of one million lbs. or more per year. For example, 17% of the chemicals which were HPVs according to data submitted under the 1990 IUR were not HPVs according to data submitted under the 1994 IUR.

D. Definitions and Clarification Requests

1. *Is mining considered manufacturing?* Commenters asked whether mining is considered "manufacturing" under TSCA. Under TSCA, the term "manufacture" includes production or importation of a chemical substance as well as its manufacture (TSCA section 3(7)). Mining, which includes extracting metal ores or minerals from their natural deposits by any means, including secondary recovery of metal ore from reuse or other storage piles, wastes, or rock dumps, or from mill tailings derived from the mining, cleaning, or concentration of metal ores, is production and is considered to be a manufacturing activity under TSCA.

However, chemical substances which are naturally occurring and which, among other things, are unprocessed or processed only by manual, mechanical, or gravitational means (see 40 CFR 710.4(b)(1)) are currently excluded from IUR reporting and will continue to be excluded under IURA (see 40 CFR 710.46(a)(3)). For example, rocks, ores, and minerals are not IURA-reportable to the extent they are manufactured only via the means described in 40 CFR 710.4(b). The § 710.46(a)(3) exclusion is a process-specific exclusion rather than a chemical- or industry-specific one. Therefore, persons who manufacture a substance in a manner other than as specified in § 710.4(b) are required to report under IURA unless they or the substance they manufacture are otherwise excluded. As a result, many mined materials are listed on the TSCA Inventory because at least some of the time they are produced by other than manual, mechanical, or gravitational means.

Section 710.46(a)(3) intentionally exempts from IURA reporting any chemical substance which is isolated or removed from nature, for a commercial purpose, by any means listed in § 710.4(b). It also exempts any other chemical substance derived or separated from the substance originally removed from nature, provided such derivation involved only the means specified in § 710.4(b). For example, when using manual, mechanical, or gravitational processes to separate one or more substances from a naturally-occurring mixture, these isolated component substances are also considered naturally-occurring and excluded from reporting. However, any substance manufactured from a naturally occurring precursor substance via a chemical reaction is not considered naturally occurring and, therefore, not excluded from reporting under § 710.46(a)(3).

2. *What is the difference between "reasonably ascertainable" information and "readily obtainable" information?* A number of commenters raised concerns about the meaning of "readily obtainable" and "reasonably

ascertainable," what level of effort is required for each, and the difference in the level of effort required. Commenters also stated that the expectation that submitters will provide data on users outside their control seems to be an unworkable and unrealistic mandate. The reporting standard of TSCA section 8(a)(2) is "reasonably ascertainable," and commenters stated that this should not be construed to include data that are not in the possession of the person reporting.

"Known to or reasonably ascertainable by" is the current standard for data collection under which IUR operates and is the standard authorized by TSCA section 8(a). "Known to or reasonably ascertainable by" means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know. The "known to or reasonably ascertainable by" standard is applicable to the information required under § 710.52(c)(1), (c)(2), and (c)(3) of the regulatory text.

"Readily obtainable" is a lesser standard EPA is applying to the reporting of information concerning the processing and use of chemicals subject to IURA (§ 710.52(c)(4) of the regulatory text). The readily obtainable standard is limited to information known by management and supervisory employees of the submitter, and does not require additional effort to collect information on processing or use of chemicals by others not under the control of the submitter. Although the Agency is requiring submitters to provide only information that it knows, EPA believes that in many cases submitters will possess some knowledge concerning use of chemicals sold by the submitter to their customers, even though the submitter does not control its customers' sites. For example, when a company markets the substances for certain end uses. EPA's experience with over 30,000 TSCA section 5 PMNs demonstrates that companies generally do know the intended ultimate use, as well as intervening processing steps, of their products. In choosing the readily obtainable standard, the Agency is lessening the burden on submitters compared to the "known to or reasonably ascertainable by" standard, while recognizing that the submitter is supplying data on uses of chemicals that are beyond his or her control. The standard for reporting information on processing and use of chemical substances under IURA is the same as the standard adopted in the PAIR, which was also promulgated under the authority of TSCA section 8(a). (See 40 CFR 712.7)

E. Confidential Business Information

The Agency's intent under these regulations is to achieve balance and ensure that the submitter only claims as confidential that information which is legally entitled to confidential treatment. EPA believes that these amendments will discourage the assertion of invalid CBI claims by focusing submitter's attention more closely on their decision to make certain claims.

1. *General CBI.*—a. *Reducing the amount of CBI claims.* EPA solicited suggestions from commenters on what could be done to the IUR reporting process and data elements to reduce CBI claims, thereby allowing better public access to the data. Some commenters suggested that EPA is trying to discourage legitimate CBI claims by making assertion of such claims overly burdensome. Some commenters stated that the new data elements that are being added by these amendments raise significant CBI concerns and that IURA can be expected to result in a significant increase in the number of legitimate CBI claims.

EPA agrees that submitters will make CBI claims for the new data elements that are being added by these amendments, most likely resulting in a greater number of CBI claims overall. However, EPA is requiring reporting for most of the new data elements in ranges, a reporting method EPA believes will result in fewer CBI claims compared to reporting discrete numbers. Additionally, EPA is amending the IUR to encourage the assertion of only legally valid CBI claims, and to ensure that CBI claims are well thought out by the submitter. The IURA includes a new requirement to provide upfront substantiation of CBI claims for site identity. This requirement will minimize claims by prompting submitters to perform an initial evaluation of the need for and validity of a CBI claim for plant site identity, an essential data element. These efforts will greatly assist in limiting CBI claims to those that are legitimate.

EPA wishes to clarify that it is not attempting to discourage legitimate confidentiality claims; rather, the Agency intends only to discourage inappropriate claims. This allows the Agency to protect legitimate CBI while also increasing the amount of information available for public use.

EPA has information indicating the existence of inappropriate or no longer valid CBI claims. For instance, when EPA has selectively challenged CBI claims in the past, many of these claims have been amended by the companies to make the information available to the public. Additionally, OPPT's administrative record 00125, which contains state CBI data reviews, published articles, industry letters, and other papers discussing CBI issues, provides further indication that inappropriate or no longer valid CBI claims exist. For instance, the Georgia Department of Natural Resources reported in a 1996 CBI Data Review that IUR data identified as confidential was available in other non-confidential data bases (Ref. 37). The administrative record is in the same location as the Docket and is available by following the procedures identified in Unit I.B.1.

Some commenters suggested reducing the number of data elements that will be collected under IURA, perhaps using instead a format such as the one used by OECD for SIDS chemicals, which aggregates information for all manufacturers and thus protects company-specific information. EPA considered alternate reporting formats with different data elements, and has determined that the reporting of site-specific information by the individual sites is the best way to collect the information needed. EPA will continue to perform the aggregating function when providing the public with information that is subject to a site-specific CBI claim. Collecting only national aggregate values would drastically reduce the usefulness of the information to the Agency, even though it may reduce the number of CBI claims. The IUR is used to address both national needs and local issues. For example, IUR production volume information was used to identify the national list of High Production Volume (HPV) chemicals for the Agency's HPV Challenge Program (see http://www.epa.gov/opptintr/chemrtk/volchall.htm). Moreover, site-specific IUR information is used to secure a better overall understanding of activities at individual sites. This information is used for site-specific risk assessments for the use of federal, state and local entities.

b. *Protection of CBI.* Some commenters expressed concern about the Agency's ability to protect against the inappropriate release of CBI and stated that, under section 14 of TSCA, EPA has a statutory obligation to protect information properly claimed as CBI. These commenters are concerned about past releases of information claimed as confidential, and would like to see the Agency take steps to guarantee greater protection of CBI data.

EPA agrees that it has a statutory obligation to protect information

properly claimed CBI and is continually involved in exploring ways to better protect such information. In this light, these amendments reflect the Agency's efforts to assure that information it protects qualifies for that protection under the established legal standards. The new IURA requirements will help assure that EPA's system of information protection is limited to valid claims.

c. *Production volume ranges.* EPA requested comment on the use of production volume ranges as a mechanism to reduce the number of confidentiality claims by allowing characterizations of site-specific chemical and specific production volume information without releasing CBI. In general, commenters felt that the use of the ranges would not necessarily result in reduced CBI claims. Commenters cited a few examples where production volume would still be claimed CBI, including information reported in ranges. Other commenters suggested using broader ranges.

Despite these comments, the Agency has determined that it is worthwhile to require submitters to consider whether their production volumes, within ranges similar to those used for the original TSCA Inventory, warrant protection as CBI (EPA made adjustments to the original TSCA Inventory ranges by making the ranges consistent with the second reporting threshold of 300,000 lbs., as described in Unit II.F.5.d.). EPA recognizes that some submitters will make CBI claims for both the specific and the ranged production volume information. However, EPA believes that in many cases submitters will allow the release of ranged production volume information. This belief is supported by some industry organizations. For example, in a 1993 letter, a company suggested the use of the original Inventory production volume ranges for non-confidential reporting. While the company did state that "conceivably, a submitter could be able to justify a CBI claim for a range," the conclusion was that many companies would be satisfied with non-confidential reporting (Ref. 11). These conclusions are further supported by EPA's experience with the original TSCA Inventory, where only 35% of production volume values reported were claimed CBI, compared to the typical claim level of 65% for production volumes under IUR.

d. *Disclosing customer confidential information.* A commenter expressed concern that, as a producer of chemical feedstocks, they might inadvertently report customer data and not claim the data as CBI, while their customer reports the same data and does claim the data as CBI.

EPA does not believe that this will be a significant issue. The downstream processing and use information that some submitters will be required to provide under IURA is not tied to customer identities. Submitters will not report where or who their customers are or how much their individual customers produce. In addition, CBI claims can be made as necessary for any information provided on Form U.

2. *Upfront substantiation.*—a. *Authority for substantiation.* A commenter stated that the plant site identity substantiation requirement is not authorized under TSCA. Another commenter felt that requiring upfront substantiation is overly burdensome and an arbitrary exercise of authority. The commenter stated that substantiation should only be required if and when a request for public disclosure is made, and substantial and reasonable need are demonstrated.

Under TSCA section 14(c), "a [confidential] designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe." EPA is continuing to require that those reporting under IURA substantiate their chemical identity CBI claims, and is requiring under these amendments that submitters also substantiate any plant site identity CBI claims. Section 710.58 of the regulatory text requires submitters to substantiate these claims submitted under IUR by providing answers to specified questions. EPA has long required upfront substantiation for specified CBI claims under the authority specified in TSCA (see, e.g., 40 CFR 710.38(c) of the current regulatory text) and will continue to require upfront substantiation where appropriate.

The Agency is adding upfront substantiation requirements for plant site identity information because EPA has observed that, on occasion, plant site information has been claimed as confidential even though, for example, it was revealed in filings required under sections 311, 312, and 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. sections 11021 to 11023. EPA believes that many of these CBI claims are inappropriate and that the new substantiation requirement will reduce the occurrence of inappropriate claims. A decrease in the number of CBI claims under the new substantiation requirement would facilitate EPA's ability to make current plant site information available to other Federal agencies and the public because more information submitted under IUR could be released publicly.

Upfront substantiation of CBI claims imposes some additional burden, although this burden is not substantial. EPA's economic analysis for this rule estimates 0.2 to 0.3 hour per plant site reporting under IURA for the incremental costs of reporting all elements of plant site identity information. The burden of upfront substantiation for plant site identity CBI claims is included in this estimate.

b. *Alternate substantiation questions.* One commenter suggested a simplified set of substantiation questions, consisting of two questions: (1) Are the specified data confidential? and, (2) In as much detail as possible, explain why this information should be given CBI protection.

EPA believes that requiring responses to the list of substantiation questions in § 710.58 of the regulatory text is necessary to ensure that information submitted for confidential protection qualifies for that protection. The commenter's proposed questions, while providing the opportunity for a submitter to express its business reasons and preferences regarding the information, do not provide all of the necessary information to definitively evaluate the eligibility of the information for confidential treatment.

3. *Reassertion.* EPA received a number of comments regarding the proposed new CBI reassertion provisions. All of these comments were opposed to the proposed new requirement. Some comments expressed the position that reassertion is overly burdensome and even punitive, requiring submitters to retrace old steps by answering all the original substantiation questions anew. Commenters were concerned that reassertion could possibly require the retention of voluminous old records. Others felt the proposed standards would violate the Agency's obligation under TSCA to protect confidential information and that EPA would exceed its authority if it required the reassertion of CBI claims.

EPA has considered these industry comments, and weighed the concerns expressed against the public's need for access to information on chemicals in commerce in the United States. While the Agency believes the requirement to reassert old claims of CBI is justified as a practical measure to ensure that information withheld meets the legal criteria and that the expressions of concern relating to burden associated with reassertion, appear to be the result of a misunderstanding of the practical aspects of the proposed reassertion requirement, the Agency is not finalizing the proposed reassertion

requirement. EPA has made this decision in an effort to reduce the overall burden of these amendments.

F. Administrative Comments

1. *Frequency of reporting.* Several commenters stated that one-time reporting of IURA information would be more appropriate in most cases for the intended purposes expressed by EPA. In general, commenters stated that EPA could use tools such as PAIR to identify changes in a particular chemical's exposure or use profile at the time the Agency decides to do a risk analysis for that chemical (see Unit III.A.3.). A few commenters stated that there is insufficient change in the chemical industry to warrant recurring reporting of IURA information, especially for higher volume chemicals.

EPA's experience with past IUR reporting demonstrates that the chemical industry is dynamic, with a 30% change in the number of chemicals reported from one submission period to the next. The specific chemicals that are reported or not reported in any single submission period change at a variety of production volumes; this change is by no means limited to lower production volume chemicals.

Although a chemical's hazards may be fully characterized, EPA needs up-to-date exposure information to stay current with developments and adequately screen chemicals for possible risks to human health and the environment. While the toxicity of a chemical does not change (although new information can modify the assessment or identify new concerns), a chemical's exposure profile can vary greatly over time. Human and/or environmental exposures to the substance can at one time be minor, but as uses change from industrial applications to consumer uses, or as production volumes increase, exposures also tend to increase. Because exposures and uses can and do change over time as technologies develop or innovations arise, updated exposure information is needed to maintain an adequate understanding of current exposures. EPA did consider one-time reporting for IURA processing and use data, but the information would quickly become out of date.

A primary goal of IURA is to provide a data base of exposure-related information which can be used for screening level purposes to identify chemicals for further assessment, as well as chemicals of lesser concern (see Unit III.A.1.). EPA intends to use other data sources and collection tools, as appropriate, once a chemical has been identified as a candidate for further assessment.

2. *Calendar year reporting.* One commenter stated that the requirement to report data on a calendar year basis instead of a company fiscal year basis would increase systems development needs for companies who report their manufacturing volume on a fiscal year versus a calendar year (by creating the need for a second tracking system), while adding no additional value or accuracy in the reporting of manufacturing data. This commenter pointed out that because the most that companies' fiscal years can differ from a calendar year is 6 months and IUR reporting occurs every 4 years (instead of every year), there can be little difference in the data with a maximum 6–month time frame shift. Other commenters supported the change to a calendar year basis, supporting the idea of having a consistent time frame to better enable linkages with other data bases.

EPA has retained the calendar year reporting cycle as proposed. By moving the collection to a calendar year basis, the IURA data collection becomes more compatible with other data bases such as the TRI. This compatibility increases the usefulness of the IURA collection by allowing IURA data to be combined with data from other collections. Generally, companies should be sufficiently familiar with their production that this provision should not present special challenges that are unaccounted for in the burden estimates provided by survey respondents, as described in the economic analysis.

G. Economic Impact Estimates

Commenters raised a number of concerns about the economic analysis. In response, EPA has made a number of changes to make the analysis a more readable document and to incorporate changes made to the final IURA requirements.

1. *General burden comments.* Commenters raised a variety of concerns about the size of the burden associated with the amendments, and EPA's estimates of that burden. In general, commenters felt that the Agency's burden estimates were too low. However, few commenters provided evidence as to why they felt EPA underestimated the burden, and none provided any specific analytical basis for amending the estimates. Some commenters claimed that the revised form represents a 5-, 10-, or 30–fold increase in burden, at least partly based upon the fact that the original Form U was only 1 page and the sample revised Form U provided in the proposed rule was 3 pages.

In response to these comments, EPA reviewed the burden analysis and, although the estimated burden was adjusted, determined that the comments do not warrant modifications to the Agency's general approach to the analysis. EPA based much of the burden analysis on a survey of 78 industry respondents (Ref. 7). In addition, EPA considered the burden associated with such programs as the UEIP (described in Unit III.A.1.), a voluntary project in which EPA collected information similar in some ways to IURA information. UEIP respondents provided estimates of the amount of time they used to complete the survey forms (Ref. 7). However, EPA did reassess the results of the burden survey and did make some changes to the analysis. The burden from the analysis associated with the proposed rule was $36 to $51 million in the first year, and $27 million to $41 million in future reporting years. Changes in the rule and methodology raised estimated costs of the final rule to between $72 and $87 million in the first reporting cycle, and $64 to $77 million in future reporting cycles. These changes are primarily due to revising the analysis from the survey data, revising the analysis to remove the reassertion burden, updating costs to year 2000 dollars, and updating the number of report submissions to incorporate the 1998 IUR data collection. These changes are discussed further in "Revised Economic Analysis for the Amended Inventory Update Rule" (Ref. 7).

a. *Burden over time.* Commenters raised concerns about specific burden issues. Several commenters felt that burden associated with IURA will not decrease over time because of the 4–year time lapse between submission periods. Those commenters believe that the 4–year period between submission periods will result in changes to product lines and personnel such that a complete reintroduction to IUR reporting will be necessary in each reporting cycle. EPA disagrees, and expects rule familiarization to require the most effort in the first year of reporting. EPA believes that there will be some similarity in the information reported from one submission period to the next, especially for Parts I and II of the revised Form U. Subsequent reporting will be facilitated by the site's maintenance of its previous submission period's records.

b. *Characterization of burden reduction.* Commenters asserted that the economic analysis for the proposed rule was misleading in its characterization of

the actions that constitute burden reduction and cost savings. Specifically, commenters referred to EPA's claim of a burden reduction and cost savings associated with the 300,000 lbs. threshold for reporting of Form U, Part III information on industrial processing and use, and consumer and commercial use. EPA simply meant that providing a partial exemption for chemicals below the 300,000 lbs. threshold is a concession to the burden that the rule imposes on reporting sites, and that the Agency has no other basis for this exemption other than to mitigate the increase in burden. EPA presented a similar discussion comparing options considered under the rule for other partial reporting exemptions such as the petroleum streams exemption. These discussions are put into the appropriate context in the economic analysis. A commenter also took issue with the fact that EPA asserts that reporting processing and use information on the top 10 NAICS codes will reduce costs (versus reporting on an unlimited number of NAICS codes), given that identifying these top 10 could take considerable effort. EPA continues to believe that reporting only the top 10 NAICS codes will be less burdensome than reporting all NAICS codes associated with industrial processing or use operations.

2. *Cost comments.* Two commenters asserted that compliance costs for chemicals manufactured in amounts below the 25,000 lbs. threshold are not zero and that, as production volume for a chemical approaches the threshold, tracking costs will accrue to determine if production will cross the threshold.

Compliance determination (the act of determining the need to comply with a regulation) occurs on a per-site basis. This means that all sites that report under IURA are assumed to incur the same average cost for determining compliance, regardless of the number of chemicals reported. Some small number of firms that are not required to report may incur some negligible costs in this regard, but EPA believes the costs to be relatively small given that it is standard business practice for a company to be aware of the volumes it produces. The existence of voluntary submitters does not imply that below-threshold compliance costs are non-zero; it simply indicates that some firms choose to respond to IUR when reporting is not required.

Another commenter determined that member companies in its organization would experience no savings from raising the threshold from 10,000 lbs. to 25,000 lbs. as no reports are eliminated. In 1994, EPA received approximately 3,800 reports for chemicals produced in quantities between 10,000 and 25,000 lbs. As a result, the Agency anticipates that a significant number of reports will be eliminated by raising the reporting threshold.

3. *Benefits comments.* Commenters stated that EPA has overestimated the benefits of this rule and should quantify the benefits. However, given that IURA is an information rule and its benefits are therefore indirect, it is currently not possible to quantify the benefits of the rule. Only by collecting the information required under the IURA can EPA begin to assess thoroughly the risks from a portion of the more than 76,000 chemicals in commerce. The actions that result from EPA review of the IURA data will have direct health and environmental benefits, benefits that typically can be quantified. Commenters offered no alternate assessment, quantitative or otherwise, of the benefits from IURA. In the absence of quantified benefit figures, it is impossible to make simple comparisons to estimates of reporting costs. Thus, EPA must balance the needs of the Agency for data with which to address important environmental and health risks, with the burdens of obtaining such data. In doing so, the uses of and need for the data are carefully addressed both within the Agency, and during interagency review. EPA has made every attempt to collect only the information necessary to meet Agency goals for obtaining screening level exposure-related information.

4. *Small business impact comments.* Several commenters argued that EPA's analysis of the impacts of IURA on small businesses is insufficient to meet the requirements of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996. EPA's analysis of small business impacts fully complies with the RFA, as amended. For rules subject to the RFA, the Agency is required to undertake specific actions (such as preparing an initial regulatory flexibility analysis and convening a small business advocacy review panel) unless it certifies that the rule will not have a significant impact on a substantial number of small entities. EPA prepared a thorough small entity analysis that meets the requirements of the RFA. The analysis for the final rule can be found in the "Revised Economic Analysis for the Amended Inventory Update Rule" (Ref. 7). For both the proposed and final rules, EPA certified that there will not be a significant impact on a substantial number of small entities. A summary of the analysis and the certification can be found in Unit V.B.

5. *Non-regulatory alternatives.* Commenters also stated that EPA did not identify any non-regulatory alternatives and failed to assess the relative costs and benefits of an alternative approach. In the economic analysis for the proposed rule, the Agency did not specifically identify non-regulatory alternatives to the reporting requirements. However, the Agency did consider non-regulatory alternatives and has added a discussion to the economic analysis.

The Agency primarily considered two non-regulatory alternatives. First, the Agency considered using publicly available information, as discussed in Unit III.A.3. The Agency found that the information to be collected through IURA was not publicly available and therefore this was not a viable option. Second, the Agency considered a voluntary approach to collecting this information, similar to the UEIP collection discussed in Unit III.A.1. However, information collected through a voluntary program may lack consistency, may not be sufficiently comprehensive, or may not occur on a recurring basis, and therefore would not fully serve the purposes of IURA information. Therefore, a voluntary approach was not a viable option.

IV. Materials in the Rulemaking Record

The public version of the official record for this rulemaking has been established as described in Unit I.B.1. under docket ID number OPPT–2002–0054. This record includes the documents located in the docket as well as the documents that are referenced in those documents. The following is a listing of the documents that are specifically referenced in this final rule. These documents, and the documents referenced therein, are also included in the public version of the official record. Please note that some referenced documents are already publicly available and this list includes the relevant location information.

1. U.S. EPA, "Reducing Risk: Setting Priorities and Strategies for Environmental Protection," Science Advisory Board, (SAB-EC-90-021), 1990.

2. National Academy of Public Administration, "Setting Priorities, Getting Results - A New Direction for EPA," 1995.

3. Chemical Manufacturers Association, Synthetic Organic Chemical Manufacturers Association, U.S. EPA, Chemical Specialties Manufacturing Association, American Petroleum Institute, "Round 3 of the

UEIP (Use and Exposure Information Project)," June 3, 1996.

4. American Petroleum Institute, "Petroleum Process Stream Terms Included in the Chemical Substances Inventory Under the Toxic Substances Control Act (TSCA)," Health and Safety Regulation Committee Task Force on Toxic Substances Control, February 1985.

5. USEPA, "Methodology Used for the Initial Selection of Chemicals for the Inventory Update Rule Amendments (IURA) 'Low Current Interest' Partial Reporting Exemption," OPPT, July 24, 2002.

6. USEPA, "EPA Needs Exposure-Related Data: A Discussion of the Justification for Collecting Exposure-Related Data Through the IUR Amendments," OPPT/EETD/EPAB, 1998.

7. USEPA, "Economic Analysis for the Amended Inventory Update Final Rule," OPPT, August 2002.

8. USEPA, "Incremental Cost Estimates for IURA: Interagency Review Comparison and Five Year Reporting Cycle," OPPT/EETD/EPAB, July 17, 2002.

9. USEPA, "Draft Instructions Manual for the 2006 Inventory Update Rule Reporting," OPPT, August 2002.

10. USEPA, "Inventory Update Rule (IUR) Technical Support Document: Evaluation of Likelihood of Confidential Business Information Claims for Production Volume Information," OPPT, August 26, 1996.

11. Letter from Mark N. Duvall, Union Carbide, to EPA, "Additional Comments of Union Carbide Corporation on EPA's Preliminary Actions to Reform TSCA Confidential Business Information, Docket No. OPPTS–00125," August 31, 1993.

12. Letter from Stephen A. Newell, Occupational Safety and Health Administration, to Wardner G. Penberthy, EPA, October 15, 1996.

13. Letter from Paul A. Schulte, Ph.D., National Institute for Occupational Safety and Health, to Wardner G. Penberthy, EPA, October 8, 1996.

14. USEPA, "Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening," Volumes 1 and 2, OPPT, July 19, 1996.

15. U.S. Census Bureau, North American Industrial Classification System (NAICS), http://www.census.gov/epcd/www/naics.html, 1999.

16. USEPA, "Preliminary Assessment Information Rule (PAIR) Database, Manufacturing Process Type/Release Analysis and Number of Workers/Production Quantity Analysis," OPPT, September 26, 1996.

17. Standard Consumer Safety Inspection ASTM F963-96A (sec. 3.1–3.3).

18. USEPA, "Summary of EPA's Responses to Public Comments Submitted in Response to Proposed TSCA Inventory Update Rule Amendments (64 FR 46772)," OPPT/EETD, September 6, 2002.

19. USEPA, "IURA Data Use Plan," OPPT/EETD, August 23, 2002.

20. USEPA, "A SAB Report: Improving the Use Cluster Scoring System, Recommendations for the Use Cluster Scoring System Prepared by the Environmental Engineering Committee," Science Advisory Board, SAB-EEC-95-017, September 1995. Also available at www.epa.gov/sab/pdf/eec95017.pdf.

21. Letter from Michael A. Babich, U.S. Consumer Product Safety Commission, to Wardner G. Penberthy, EPA, June 24, 1996.

22. Letter from Robert Franklin, U.S. Consumer Product Safety Commission, to EPA, December 23, 1999.

23. Letter from Paul A. Schulte, Ph.D., National Institute for Occupational Safety & Health, to EPA, December 21, 1999.

24. General Accounting Office, "Toxic Chemicals: Long-Term Coordinated Strategy Needed to Measure Exposures in Humans," GAO/HEHS-00-80, May 2, 2000.

25. Letter from Linda Greer, Ph.D., Natural Resources Defense Council, to Carol Browner, EPA, February 12, 1999.

26. USEPA, "Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule," OPPT/EETD/EPAB, March 1, 1999.

27. USEPA, "A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response to CMA," OPPT, March 1999.

28. European Commission, "Technical Guidance Document in Support of Commission Directive 93/67/EEC on Risk Assessment for New Notified Substances and Commission Regulation (EC) No 1488/94 on Risk Assessment for Existing Substances; Part III."

29. USEPA, "'Inventory Update Rule (IUR) Technical Support Document: Selection of Consumer and Commercial End-Use Categories," OPPT, 1996.

30. Letter from the TSCA Interagency Testing Committee providing a response to an Interagency proposed rule review question, undated.

31. Letter from John DeYoung, Chief Scientist, U.S. Geological Survey, to Mary Ellen Weber, EPA, July 25, 2002.

32. USEPA, "Inorganic Chemicals: Sources of Information Suggested by Commenters to the Proposed Inventory Update Rule Amendments," OPPT, June 2000.

33. Memorandum from Sandy Zavolta, U.S. EPA, to Heidi King, Office of Management and Budget, May 21, 1999.

34. OECD, "Guidance for Collection and Transmission of Exposure Information for SIDS Initial Assessment," OECD SIDS Manual (Third Revision), Section 2.5, July 1997, available at http://www.epa.gov/opptintr/sids/sidsman.htm.

35. USEPA, "Report to Congress: Wastes from the Combustion of Fossil Fuels (EPA Docket #F–2000–FF2F–FFFFF) Public Comment Summary and Response Document," OSW, April 25, 2000, available at http://www.epa.gov/epaoswer/other/fossil/ffc-resp.pdf.

36. General Accounting Office, "EPA Should Focus Its Chemical Use Inventory on Suspected Harmful Substances," GAO/RCED-95-165, July 7, 1995.

37. Confidential Business Information Data Review, Georgia Department of Natural Resources, Docket entry 00125 B2a-010 filed June 19, 1996, page 4.

V. Statute and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this is a "significant regulatory action" under section 3(f) of the Executive Order, because it raises "novel legal or policy issues arising out of legal mandates" relating to information collection. This action was therefore submitted to OMB for review under this Executive Order, and any comments or changes made during that review have been documented in the public record.

In addition, EPA has prepared an economic analysis of the potential impacts of this action, which is contained in a document entitled *Economic Analysis for the Amended Inventory Update Rule* (Ref. 7). The Agency, in promulgating this rule, is required under TSCA to consider the potential costs and benefits associated with IURA. The analysis was therefore used by the decision-makers to help in the selection of the final rule requirements presented in this document. This document is available as a part of the public version of the official record for this action and is briefly summarized here.

EPA estimates that these amendments will cost between $72 and $87 million in the first reporting cycle, and $64 to

$77 million in future reporting cycles, resulting in an annualized cost of $17 to $21 million over the next 20 years at a 3% discount rate, and $19 to $22 million at a 7% discount rate.

Under these amendments, approximately 8,900 chemicals will be subject to reporting, and the Agency expects that it will receive approximately 26,800 submissions during the first submission period. In the first submission period, approximately 9,800 of those submissions (providing information on about 4,000 chemicals) will be full reports which include information found in Part III of revised reporting Form U. The remainder will report only company, site and chemical identification and manufacturing information (Parts I and II of revised Form U). In future submission periods with the addition of full reporting for inorganic chemicals, EPA expects to receive over 12,300 full forms, covering 4,600 chemicals. In order to keep the reporting burden as low as possible, EPA is requiring that certain information be reported in ranges, that only the top 10 NAICS codes be accounted for when reporting industrial processing and use information, and that only readily obtainable information in Part III of revised Form U be reported.

EPA analyzed the effects of a number of different alternatives for the rule, including variations in exemptions, different thresholds for both partial- (i.e., Parts I and II of revised Form U) and full-form (i.e., all parts of revised Form U) reporting, and various frequencies of collection. These options are explored further in the Economic Analysis (Ref. 6).

EPA considered continuing the existing full exemption from IUR reporting for inorganic chemicals and adding a full exemption for site-limited petroleum streams. EPA examined the effects of keeping the partial-form threshold at 10,000 lbs. and considered full-form thresholds of 100,000, 300,000, 500,000, and one million lbs., as well as a phased-in 100,000/500,000 full-form threshold. EPA also considered changes in the reporting cycle, such as a one-time collection, and a 2–year cycle.

EPA believes that this final rule represents an appropriate balance between the burden placed on industry to provide information and the Agency's need for that information to fill its statutory obligations and fulfill its mission under TSCA and, as part of that mission, to provide information needed by other agencies (OSHA, NIOSH, CPSC, etc.).

The costs of these amendments will be borne by two groups: the chemical industry and EPA. Industry costs are associated with complying with the regulation, while EPA costs are associated with administering the regulation and maintaining the collected data. In this rulemaking effort, EPA has made every attempt to balance data needs with collection costs and burden. Wherever possible, EPA has used exemptions or partial exemptions to reduce the number of reports that would potentially be filed by industry. EPA has provided a second threshold for reporting use information required in Part III of revised Form U, reducing the per report burden for submitters. Recognizing that this information will be used for screening level purposes, EPA has reduced the specificity of the information that will be required in three ways: (1) By requiring the reporting of only readily obtainable information for the processing and use exposure-related data; (2) by requiring that submitters report much of the information in ranges, reducing the need to generate specific estimates; and, (3) by requiring processing and use exposure-related information on only the top 10 uses/NAICS codes/IFCs, as determined by percent of the chemical's volume. These steps limit the amount of information required, reducing the time and effort spent by the chemical industry in complying with the amendments.

EPA assumes that the burden associated with reporting under IURA will decrease over time as industry's familiarity with the reporting rule increases and to the extent that the information being reported remains somewhat constant from one submission period to the next. Projected costs to EPA are relatively small and are estimated to be $576,000 in the first reporting year, and $270,000 in subsequent reporting years.

Substantial changes in the economic analysis have occurred since the economic analysis produced for the proposed rule, which is summarized in Unit XI. of the proposed rule (at 64 FR 46799). The economic analysis was revised primarily due to changes in the final rule and changes to the cost methodology that more fully reflect potential industry burden. The revised economic analysis in support of this final rule can be found in the public version of the official record for this rulemaking (Ref. 6).

Changes made since the proposal due to public comments or interagency review include deleting the average concentration data element, phasing-in full reporting for inorganic chemicals, adding a partial exemption for specific chemical substances for which the Agency has determined that the IURA processing and use information is of low current interest, and deleting the proposed CBI reassertion requirement. Changes made to the cost methodology include increasing burden estimates for reporting processing and use data. The increase in burden estimate was initiated in response to industry comment, and stemmed from differences in the survey instrument used to estimate costs of IURA in 1996, and the sample Form U in 1999.

Estimates for reporting processing and use data were revised upward after reviewing public comments and the survey data. Differences between the survey instrument and the proposed Form U required EPA to aggregate certain responses. After reading the comments, EPA is using more conservative assumptions in this process. Therefore, it is more likely that EPA cost estimates overestimate, rather than underestimate, actual costs.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0162. In accordance with the procedures at 5 CFR 1320.11, EPA submitted an Information Collection Request (ICR) document to OMB in 1999 (identified as EPA ICR No. 1884.02), which is also included in the public docket that is described in Unit I.B.1.

The information that will be reported under IURA will better enable EPA to screen thousands of chemical substances for potential risk. Risk screening is necessary in order to conserve limited Agency and industry resources by focusing risk assessment work on chemical substances for which some level of potential risk has been indicated. The new information that will be reported under this rule is critical to the risk screening process and is unavailable through other sources. Responses to this collection of information will be mandatory, pursuant to TSCA section 8(a), 15 U.S.C. 2607(a). The regulations codifying the reporting requirements appear at 40 CFR part 710. CBI claims may be made for all or part of the information that will be reported under IURA. This action includes new substantiation procedures for CBI claims regarding plant site identity (See § 710.58(d) in the regulatory text).

As a result of IURA, reporting sites will submit either a full report for a

chemical (which includes site identification, manufacturing information and processing and use data) or a partial report (which does not include processing and use data). For the first reporting cycle, inorganic chemical manufacturers will only submit partial reports while organic chemical manufacturers will submit a mix of partial and full reports. The IURA increases the average reporting burden for both partial and full reports compared to previous IUR reporting.

Companies will continue to report under IURA once every 4 years, so the average annual IURA reporting burden and cost is calculated in the ICR as one quarter of the burden and cost in a reporting cycle. Thus, the results in the ICR differ slightly from those in the economic analysis prepared under Executive Order 12866, which calculates the annualized cost of multiple reporting cycles over a 20–year period. In addition, the economic analysis calculates the incremental increase in burden due to IURA, while the ICR calculates the total reporting and recordkeeping burden for IURA (i.e., the sum of the incremental IURA burden and the baseline IUR burden). Companies may continue to report for multiple chemicals on a single Form U (as revised). Companies generally submit one Form U per site, so the burden per Form U is approximately equivalent to the burden per site.

For the first reporting cycle, the annual average burden for organic chemical manufacturers is estimated to be 121.5 to 152.4 hours per site at a cost of $8,313 to $10,448 (reflecting an average of 5.1 partial reports and 3.8 full reports per site). For inorganic chemical manufacturers, the annual average burden is estimated at 43.3 to 66.1 hours per site at a cost of $2,936 to $4,547 (reflecting an average of 8.3 reports per site). These estimates include the time needed to review instructions; search data sources; gather and maintain the data needed; complete and review the collection of information; and transmit or otherwise disclose the information. The actual burden on any specific site may be different from this estimate depending on the complexity of the site, the number of IURA reportable chemicals at the site, and the profile of the site's operations. There will be approximately 2,500 submitters for organic chemicals (including petroleum process streams), and 500 submitters for inorganic chemicals. For the first reporting cycle, the total annual burden is estimated to be approximately 325,000 to 414,000 hours at a total estimated industry cost of $22.2 to $28.4 million per year.

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

As part of the PRA approval renewal process, which occurs every 3 years and includes an opportunity for public review and comment prior to OMB review, EPA intends to evaluate this collection activity, particularly the new exemption process, in order to demonstrate the practical utility of IURA information collection activities. The Agency will provide information in the ICR renewal document that details the chemicals evaluated under the exemption process, the exemption requests received, and the Agency's decisions made, as well as provide information about the process elements and experiences.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The currently approved ICR control numbers issued by OMB for various EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this final rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of the PRA and OMB's implementing regulations at 5 CFR part 1320. This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without further notice and comment.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analysis for this rule (Ref. 6), and is briefly summarized here.

Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions (5 U.S.C. 601(6)). Because not-for-profit organizations and governmental jurisdictions will not be affected by this rule, "small entity" for purposes of this final rule is synonymous with "small business." Section 601(3) of the RFA establishes as the default definition of small business the definition used in section 3 of the Small Business Act (15 U.S.C. 632) under which the Small Business Administration (SBA) establishes small business size standards (13 CFR 121.201). The RFA recognizes, however, that it may be appropriate at times for Federal agencies to use an alternate definition of small business. As a result, RFA section 601(3) provides that an Agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. EPA established a different definition of small business, found in the existing IUR at 40 CFR 704.3, in accordance with these requirements. Manufacturers who meet the 40 CFR 704.3 definition of small business are generally exempted from IUR reporting in 40 CFR 710.29. This exemption is retained under these amendments in § 710.49 and was not reopened for comment. In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and the Agency.

Despite the fact that small manufacturers that fully meet the 40 CFR 704.3 definition are generally exempt from reporting under IUR, and thus are not significantly impacted by IURA, EPA conducted an analysis of the potential impact for submitters that meet only part of the 40 CFR 704.3 definition. Specifically, an analysis of the potential impact was conducted only for those submitters that meet the first criterion in the 40 CFR 704.3 definition of "small manufacturer or importer," i.e., total annual sales of less than $40 million, but that do not meet the second criterion, i.e., production or import volume of less than 100,000 pounds at all sites.

For small manufacturers of organic chemicals subject to reporting, the Agency estimates the impact to be 0.15% to 0.18% of sales. For small manufacturers of inorganic chemicals subject to reporting, the Agency estimates the impact to be 0.07% to 0.20% of sales.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), EPA has determined that this regulatory action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any 1 year. The analysis of the costs associated with this action are described in Unit V.A. In addition, EPA has determined that this rule does not significantly or uniquely affect small governments. Accordingly, this rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 13132

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications, because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Orders 13084 and 13175

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on such communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

On November 6, 2000, the President issued Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249). Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 as of that date. EPA developed this rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084.

G. Executive Order 13211

This rule is not a "significant energy action" as defined in Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This final rule modifies the existing IUR reporting and recordkeeping requirements that apply to chemical manufacturers and importers. As such, we have concluded that this rule is not likely to have adverse energy effects.

H. Executive Order 13045

This rulemaking does not require special consideration pursuant to the terms of Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it is not likely to have an annual effect on the economy of $100 million or more and it does not have a potential effect or impact on children. As discussed in this preamble, this rule will provide the Agency with information needed to screen and prioritize chemical substances, including information on potential exposures to children. This information will allow the Agency and others to determine which chemical substances have potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

I. National Technology Transfer and Amendment Act

This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

J. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in minority and low-income populations. The Agency believes that the information collected under this rule will assist EPA and others in determining the risks and exposures associated with the chemicals covered by the rule. Although not directly impacting environmental justice-related concerns, this information will enable the Agency to protect human health and the environment by being better able to prioritize chemical substances of concern.

K. Executive Order 12630

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with*

Constitutionally Protected Property Rights (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

L. Executive Order 12988

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, titled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 723

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

Dated: December 18, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I is amended as follows:

1. Part 9 is amended as follows:

PART 9—[AMENDED]

a. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671, 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

b. In § 9.1, the table is amended by revising the heading "Inventory Reporting Regulations" to read "TSCA Chemical Inventory Regulations"; removing the existing entry under the heading; and adding the following entries to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* *	* * *
TSCA Chemical Inventory Regulations	
Part 710, Subpart B.	2070–0070
Part 710, Subpart C.	2070–0162
* *	* * *

* * * * *

2. Part 710 is amended as follows:

PART 710—[AMENDED]

a. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Revise the part heading and table of contents for part 710 to read as follows:

PART 710—TSCA CHEMICAL INVENTORY REGULATIONS

Subpart A—General Provisions

Sec.
710.1 Scope and compliance.
710.3 Definitions.
710.4 Scope of the inventory.

Subpart B—2002 Inventory Update Reporting

710.23 Definitions.
710.25 Chemical substances for which information must be reported.
710.26 Chemical substances for which information is not required.
710.28 Persons who must report.
710.29 Persons not subject to this subpart.
710.30 Activities for which reporting is not required.
710.32 Reporting information to EPA.
710.33 When to report.
710.35 Duplicative reporting.
710.37 Recordkeeping requirements.
710.38 Confidentiality.
710.39 How do I submit the required information?

Subpart C—Inventory Update Reporting for 2006 and Beyond

710.43 Definitions.
710.45 Chemical substances for which information must be reported.
710.46 Chemical substances for which information is not required.
710.48 Persons who must report.
710.49 Persons not subject to this subpart.
710.50 Activities for which reporting is not required.
710.52 Reporting information to EPA.
710.53 When to report.
710.55 Duplicative reporting.
710.57 Recordkeeping requirements.
710.58 Confidentiality.
710.59 Availability of reporting form and instructions.

c. Sections 710.1 through 710.4 are designated as subpart A and the subpart heading is added to read as follows:

Subpart A—General Provisions

d. Revise § 710.1 to read as follows:

§ 710.1 Scope and compliance.

(a) This part establishes regulations governing reporting and recordkeeping by certain persons who manufacture, import, or process chemical substances for commercial purposes under section 8(a) of the Toxic Substances Control Act (15 U.S.C. 2607(a)) (TSCA). Section 8(a) authorizes the Administrator to require reporting of information necessary for administration of the Act and requires EPA to issue regulations for the purpose of compiling and keeping current an inventory of chemical substances manufactured or processed for a commercial purpose, as required by section 8(b) of the Act. Following an initial reporting period, EPA published an initial inventory of chemical substances manufactured, processed, or imported for commercial purposes. In accordance with section 8(b), EPA periodically amends the inventory to include new chemical substances which are manufactured or imported for a commercial purpose and reported under section 5(a)(1) of the Act. EPA also revises the categories of chemical substances and makes other amendments as appropriate.

(b) The regulations in this part apply to the activities associated with the compilation of the TSCA Chemical Inventory and the update of information on a subset of the chemical substances included on the Inventory. The Inventory Update regulations were

amended in 2002; however, these amendments apply to updates after 2002, not to the 2002 update. In order to prevent confusion as to which regulations apply to which update, EPA has preserved the provisions that apply to the 2002 update in subpart B. The new and revised requirements that apply to updates after 2002 appear in subpart C. Prior to January 1, 2003, the regulations in subpart B of this part are effective for purposes of Inventory update activities. As of January 1, 2003, subpart C is effective for purposes of Inventory update activities. The Agency intends to remove subpart B from the CFR once the 2002 update is complete.

(c) Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under these reporting regulations. In addition, section 15(3) makes it unlawful for any person to fail to keep, and permit access to, records required by these regulations. Section 16 provides that any person who violates a provision of section 15 is liable to the United States for a civil penalty and may be criminally prosecuted. Pursuant to section 17, the Government may seek judicial relief to compel submission of section 8(a) information and to otherwise restrain any violation of section 15. (EPA does not intend to concentrate its enforcement efforts on insignificant clerical errors in reporting.)

(d) Each person who reports under these regulations must maintain records that document information reported under these regulations and, in accordance with the Act, permit access to, and the copying of, such records by EPA officials.

§ 710.2 [Removed]

e. Remove § 710.2.

f. Add § 710.3 to subpart A to read as follows:

§ 710.3 Definitions.

In addition to the definitions in § 704.3 of this chapter, the following definitions apply to this part:

(a) The following terms will have the meaning contained in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 *et seq.*, and the regulations issued under such Act: *Cosmetic*, *device*, *drug*, *food*, and *food additive*. In addition, the term *food* includes poultry and poultry products, as defined in the Poultry Products Inspection Act, 21 U.S.C. 453 *et seq.*; meats and meat food products, as defined in the Federal Meat Inspection Act, 21 U.S.C. 60 *et seq.*; and eggs and egg products, as defined in the Egg Products Inspection Act, 21 U.S.C. 1033 *et seq.*

(b) The term *pesticide* will have the meaning contained in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, and the regulations issued thereunder.

(c) The following terms will have the meaning contained in the Atomic Energy Act of 1954, 42 U.S.C. 2014 *et seq.*, and the regulations issued thereunder: *Byproduct material*, *source material*, and *special nuclear material*.

(d) The following definitions also apply to this part:

Act means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

Administrator means the Administrator of the U.S. Environmental Protection Agency, any employee or authorized representative of the Agency to whom the Administrator may either herein or by order delegate his/her authority to carry out his/her functions, or any other person who will by operation of law be authorized to carry out such functions.

An *article* is a manufactured item:

(1) Which is formed to a specific shape or design during manufacture,

(2) Which has end use function(s) dependent in whole or in part upon its shape or design during end use, and

(3) Which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 710.4(d)(5); except that fluids and particles are not considered articles regardless of shape or design.

Byproduct means a chemical substance produced without separate commercial intent during the manufacture or processing of another chemical substance(s) or mixture(s).

Chemical substance means any organic or inorganic substance of a particular molecular identity, including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and any chemical element or uncombined radical; except that "chemical substance" does *not* include:

(1) Any mixture,

(2) Any pesticide when manufactured, processed, or distributed in commerce for use as a pesticide,

(3) Tobacco or any tobacco product, but not including any derivative products,

(4) Any source material, special nuclear material, or byproduct material,

(5) Any pistol, firearm, revolver, shells, and cartridges, and

(6) Any food, food additive, drug, cosmetic, or device, when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

Commerce means trade, traffic, transportation, or other commerce:

(1) Between a place in a State and any place outside of such State, or

(2) Which affects trade, traffic, transportation, or commerce described in paragraph (1) of this definition.

Distribute in commerce and *distribution in commerce*, when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture, mean to sell or the sale of the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of the substance, mixture, or article; or to hold or the holding of the substance, mixture, or article after its introduction into commerce.

EPA means the U.S. Environmental Protection Agency.

Importer means any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the U.S. and includes:

(1) The person primarily liable for the payment of any duties on the merchandise, or

(2) An authorized agent acting on his/her behalf (as defined in 19 CFR 1.11).

Impurity means a chemical substance which is unintentionally present with another chemical substance.

Intermediate means any chemical substance:

(1) Which is intentionally removed from the equipment in which it is manufactured, and

(2) Which either is consumed in whole or in part in chemical reaction(s) used for the intentional manufacture of other chemical substance(s) or mixture(s), or is intentionally present for the purpose of altering the rate of such chemical reaction(s).

Note: The *equipment in which it was manufactured* includes the reaction vessel in which the chemical substance was manufactured and other equipment which is strictly ancillary to the reaction vessel, and any other equipment through which the chemical substance may flow during a continuous flow process, but does not include tanks or other vessels in which the chemical substance is stored after its manufacture.

Manufacture means to manufacture, produce, or import for commercial purposes.

Manufacture or import "for commercial purposes" means to manufacture, produce, or import with the purpose of obtaining an immediate or eventual commercial advantage, and includes, for example, the manufacture

or import of any amount of a chemical substance or mixture:

(1) For commercial distribution, including for test marketing, or

(2) For use by the manufacturer, including use for product research and development, or as an intermediate.

Mixture means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that "mixture" does include:

(1) Any combination which occurs, in whole or in part, as a result of a chemical reaction if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined and if, after the effective date or premanufacture notification requirements, none of the chemical substances comprising the combination is a new chemical substance, and

(2) Hydrates of a chemical substance or hydrated ions formed by association of a chemical substance with water.

New chemical substance means any chemical substance which is not included in the inventory compiled and published under section 8(b) of the Act.

Person means any natural or juridical person including any individual, corporation, partnership, or association, any State or political subdivision thereof, or any municipality, any interstate body and any department, agency, or instrumentality of the Federal Government.

Process means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce:

(1) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(2) As part of a mixture or article containing the chemical substance or mixture.

Process "for commercial purposes" means to process:

(1) For distribution in commerce, including for test marketing purposes, or

(2) For use as an intermediate.

Processor means any person who processes a chemical substance or mixture.

Site means a contiguous property unit. Property divided only by a public right-of-way will be considered one site. There may be more than one manufacturing plant on a single site. For the purposes of imported chemical substances, the site will be the business address of the importer.

Small quantities for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product (hereinafter sometimes shortened to *small quantities for research and development*) means quantities of a chemical substance manufactured, imported, or processed or proposed to be manufactured, imported, or processed that:

(1) Are no greater than reasonably necessary for such purposes, and

(2) After the publication of the revised inventory, are used by, or directly under the supervision of, a technically qualified individual(s).

Note: Any chemical substances manufactured, imported, or processed in quantities less than 1,000 lbs. (454 kg) annually will be presumed to be manufactured, imported, or processed for research and development purposes. No person may report for the inventory any chemical substance in such quantities unless that person can certify that the substance was not manufactured, imported, or processed solely in small quantities for research and development, as defined in this section.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

Technically qualified individual means a person:

(1) Who because of his/her education, training, or experience, or a combination of these factors, is capable of appreciating the health and environmental risks associated with the chemical substance which is used under his/her supervision,

(2) Who is responsible for enforcing appropriate methods of conducting scientific experimentation, analysis, or chemical research in order to minimize such risks, and

(3) Who is responsible for the safety assessments and clearances related to the procurement, storage, use, and disposal of the chemical substance as may be appropriate or required within the scope of conducting the research and development activity. The responsibilities in this paragraph may be delegated to another individual, or other individuals, as long as each meets the criteria in paragraph (1) of this definition.

Test marketing means the distribution in commerce of no more than a predetermined amount of a chemical substance, mixture, or article containing that chemical substance or mixture, by a manufacturer or processor to no more than a defined number of potential customers to explore market capability in a competitive situation during a predetermined testing period prior to the broader distribution of that chemical substance, mixture, or article in commerce.

United States, when used in the geographic sense, means all of the States, territories, and possessions of the United States.

§ 710.4 [Amended]

g. Section 710.4 is amended as follows:

i. In paragraphs (a), (c)(1), (c)(2), (c)(3), and the Note at the end of paragraph (d)(8), change the references to "§ 710.2", "§ 710.2(h)", "§ 710.2(q)", "§ 710.2(y)", and "§ 710.2(n)", respectively to "§ 710.3(d)".

ii. In paragraph (b)(2), change "shall" to "will".

iii. In the Note to paragraph (d)(2), change "premanufacturing" to "premanufacture".

iv. In paragraph (d)(5), change "photographic, films" to "photographic films".

h. Sections 710.25 through 710.39 are designated as subpart B and the subpart heading is added to read as follows:

Subpart B—2002 Inventory Update Reporting

i. Add § 710.23 to subpart B to read as follows:

§ 710.23 Definitions.

In addition to the definitions in § 704.3 of this chapter and § 710.3, the following definitions also apply to subpart B of this part.

Master Inventory File means EPA's comprehensive list of chemical substances which constitute the Chemical Substances Inventory compiled under section 8(b) of the Act. It includes substances reported under subpart A of this part and substances reported under part 720 of this chapter for which a Notice of Commencement of Manufacture or Import has been received under § 720.120 of this chapter.

Non-isolated intermediate means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture.

Site-limited means a chemical substance is manufactured and processed only within a site and is not distributed for commercial purposes as a substance or as part of a mixture or article outside the site. Imported substances are never site-limited.

§ 710.39 [Amended]

j. Section 710.39 is amended as follows:

i. Revise the section heading to read "How do I submit the required information?"

ii. In paragraph (a), the second sentence is revised to read: "Copies of the Form U are available from EPA at the address set forth in paragraph (c) of this section and from the EPA Internet Home Page at http://www.epa.gov/oppt/iur/iur02/index.htm."

iii. In the introductory text of paragraph (c), change "1994" to "1998".

iv. In paragraph (c)(1), insert a period after "554–1404" and remove the remainder of the sentence.

v. In paragraph (c)(3), change "7408," to "7408M,".

vi. In paragraph (d), change "Document Control Officer" to "OPPT Document Control Officer" and change "7407," to "7407M,".

k. Add a new subpart C to read as follows:

Subpart C—Inventory Update Reporting for 2006 and Beyond

§ 710.43 Definitions.

In addition to the definitions in § 704.3 of this chapter and § 710.3, the following definitions also apply to subpart C of this part:

Commercial use means the use of a chemical substance or mixture in a commercial enterprise providing saleable goods or services (e.g., dry cleaning establishment, painting contractor).

Consumer use means the use of a chemical substance that is directly, or as part of a mixture, sold to or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in or around recreational areas.

Industrial use means use at a site at which one or more chemical substances or mixtures are manufactured (including imported) or processed.

Intended for use by children means the chemical substance or mixture is used in or on a product that is specifically intended for use by children age 14 or younger. A chemical substance or mixture is intended for use by children when the submitter answers "yes" to at least one of the following questions for the product into which the submitter's chemical substance or mixture is incorporated:

(1) Is the product commonly recognized (i.e., by a reasonable person) as being intended for children age 14 or younger?

(2) Does the manufacturer of the product state through product labeling or other written materials that the product is intended for or will be used by children age 14 or younger?

(3) Is the advertising, promotion, or marketing of the product aimed at children age 14 or younger?

Known to or reasonably ascertainable by means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.

Master Inventory File means EPA's comprehensive list of chemical substances which constitute the Chemical Substances Inventory compiled under section 8(b) of the Act. It includes substances reported under subpart A of this part and substances reported under part 720 of this chapter for which a Notice of Commencement of Manufacture or Import has been received under § 720.120 of this chapter.

Non-isolated intermediate means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture.

Readily obtainable information means information which is known by management and supervisory employees of the submitter company who are responsible for manufacturing, processing, distributing, technical services, and marketing of the reportable chemical substance. Extensive file searches are not required.

Reasonably likely to be exposed means an exposure to a chemical substance which, under foreseeable conditions of manufacture (including import), processing, distribution in commerce, or use of the chemical substance, is more likely to occur than not to occur. Such exposures would normally include, but would not be limited to, activities such as charging reactor vessels, drumming, bulk loading, cleaning equipment, maintenance operations, materials handling and transfers, and analytical operations. Covered exposures include exposures through any route of entry (inhalation, ingestion, skin contact, absorption, etc.), but excludes accidental or theoretical exposures.

Repackaging means the physical transfer of a chemical substance or mixture, as is, from one container to another container or containers in preparation for distribution of the chemical substance or mixture in commerce.

Reportable chemical substance means a chemical substance described in § 710.45.

Reporting year means the calendar year in which information to be reported to EPA during an IUR submission period is generated, i.e., calendar year 2005 and the calendar year at 4–year intervals thereafter.

Site-limited means a chemical substance is manufactured and processed only within a site and is not distributed for commercial purposes as a substance or as part of a mixture or article outside the site. Imported substances are never site-limited. Although a site-limited chemical substance is not distributed for commercial purposes outside the site at which it is manufactured and processed, the substance is considered to have been manufactured and processed for commercial purposes.

Submission period means the period in which the information generated during the reporting year is submitted to EPA.

Use means any utilization of a chemical substance or mixture that is not otherwise covered by the terms *manufacture* or *process*. Relabeling or redistributing a container holding a chemical substance or mixture where no repackaging of the chemical substance or mixture occurs does not constitute use or processing of the chemical substance or mixture.

§ 710.45 Chemical substances for which information must be reported.

Any chemical substance which is in the Master Inventory File at the beginning of a submission period described in § 710.53, unless the chemical substance is specifically excluded by § 710.46.

§ 710.46 Chemical substances for which information is not required.

The following groups or categories of chemical substances are exempted from some or all of the reporting requirements of this subpart, with the following exception: A chemical substance described in paragraph (a)(1), (a)(2), or (a)(4), or (b) of this section is not exempted from any of the reporting requirements of this subpart if that substance is the subject of a rule

proposed or promulgated under section 4, 5(a)(2), 5(b)(4), or 6 of the Act, or is the subject of an order issued under section 5(e) or 5(f) of the Act, or is the subject of relief that has been granted under a civil action under section 5 or 7 of the Act.

(a) *Full exemptions.* The following categories of chemical substances are exempted from the reporting requirements of this subpart.

(1) *Polymers.* (i) Any chemical substance described with the word fragments "*polym*", "*alkyd", or "*oxylated" in the Chemical Abstracts Service Index or Preferred Nomenclature in the Chemical Substance Identities section of the 1985 edition of the Inventory or in the Master Inventory File, where the asterisk (*) indicates that any sets of characters may precede, or follow, the character string defined.

(ii) Any chemical substance which is identified in the 1985 edition of the Inventory or the Master Inventory File as siloxane and silicone, silsesquioxane, a protein (albumin, casein, gelatin, gluten, hemoglobin), an enzyme, a polysaccharide (starch, cellulose, gum), rubber, or lignin.

(iii) This exclusion does not apply to a polymeric substance that has been hydrolyzed, depolymerized, or otherwise chemically modified, except in cases where the intended product of this reaction is totally polymeric in structure.

(2) *Microorganisms.* Any combination of chemical substances that is a living organism, and that meets the definition of "microorganism" at § 725.3 of this chapter. Any chemical substance produced from a living microorganism is reportable under this subpart unless otherwise excluded.

(3) *Naturally occurring chemical substances.* Any naturally occurring chemical substance, as described in § 710.4(b). The applicability of this exclusion is determined in each case by the specific activities of the person who manufactures the substance in question. Some chemical substances can be manufactured both as described in § 710.4(b) and by means other than those described in § 710.4(b). If a person described in § 710.48 manufactures a chemical substance by means other than those described in § 710.4(b), the person must report regardless of whether the substance also could have been produced as described in § 710.4(b). Any chemical substance that is produced from such a naturally occurring chemical substance described in § 710.4(b) is reportable unless otherwise excluded.

(4) *Certain forms of natural gas.* Chemical substances with the following Chemical Abstract Service (CAS) Registry Numbers: CAS No. 64741–48–6, Natural gas (petroleum), raw liquid mix; CAS No. 68919–39–1, Natural gas condensates; CAS No. 8006–61–9, Gasoline natural; CAS No. 68425–31–0, Gasoline (natural gas), natural; CAS No. 8006–14–2, Natural gas; and CAS No. 68410–63–9, Natural gas, dried.

(b) *Partial exemptions.* The following groups of chemical substances are partially exempted from the reporting requirements of this subpart (i.e., the information described in § 710.52(c)(4) need not be reported for these substances). Such chemical substances are not excluded from the other reporting requirements under this subpart. A chemical substance described in paragraph (b)(3) of this section qualifies for a partial reporting exemption during the 2006 submission period; in subsequent submission periods, the chemical substances described in paragraph (b)(3) of this section will be subject to full reporting under this subpart (i.e., all of the information described in this subpart must be reported), unless otherwise exempted.

(1) *Petroleum process streams.* EPA has designated the following chemical substances, listed by CAS Number, as partially exempt from reporting under the IUR.

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING

CAS No.	Product
7732–18–5	Water
8002–05–9	Petroleum
8002–74–2	Paraffin waxes and hydrocarbon waxes
8006–20–0	Fuel gases, low and medium B.T.U.
8008–20–6	Kerosine (petroleum)
8009–03–8	Petrolatum
8012–95–1	Paraffin oils
8030–30–6	Naphtha
8032–32–4	Ligroine
8042–47–5	White mineral oil (petroleum)
8052–41–3	Stoddard solvent
8052–42–4	Asphalt
63231–60–7	Paraffin waxes and hydrocarbon waxes, microcryst.
64741–41–9	Naphtha (petroleum), heavy straight-run
64741–42–0	Naphtha (petroleum), full-range straight-run
64741–43–1	Gas oils (petroleum), straight-run
64741–44–2	Distillates (petroleum), straight-run middle
64741–45–3	Residues (petroleum), atm. tower
64741–46–4	Naphtha (petroleum), light straight-run
64741–47–5	Natural gas condensates (petroleum)
64741–49–7	Condensates (petroleum), vacuum tower
64741–50–0	Distillates (petroleum), light paraffinic
64741–51–1	Distillates (petroleum), heavy paraffinic
64741–52–2	Distillates (petroleum), light naphthenic
64741–53–3	Distillates (petroleum), heavy naphthenic
64741–54–4	Naphtha (petroleum), heavy catalytic cracked
64741–55–5	Naphtha (petroleum), light catalytic cracked
64741–56–6	Residues (petroleum), vacuum
64741–57–7	Gas oils (petroleum), heavy vacuum
64741–58–8	Gas oils (petroleum), light vacuum
64741–59–9	Distillates (petroleum), light catalytic cracked

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
64741–60–2	Distillates (petroleum), intermediate catalytic cracked
64741–61–3	Distillates (petroleum), heavy catalytic cracked
64741–62–4	Clarified oils (petroleum), catalytic cracked
64741–63–5	Naphtha (petroleum), light catalytic reformed
64741–64–6	Naphtha (petroleum), full-range alkylate
64741–65–7	Naphtha (petroleum), heavy alkylate
64741–66–8	Naphtha (petroleum), light alkylate
64741–67–9	Residues (petroleum), catalytic reformer fractionator
64741–68–0	Naphtha (petroleum), heavy catalytic reformed
64741–69–1	Naphtha (petroleum), light hydrocracked
64741–70–4	Naphtha (petroleum), isomerization
64741–73–7	Distillates (petroleum), alkylate
64741–74–8	Naphtha (petroleum), light thermal cracked
64741–75–9	Residues (petroleum), hydrocracked
64741–76–0	Distillates (petroleum), heavy hydrocracked
64741–77–1	Distillates (petroleum), light hydrocracked
64741–78–2	Naphtha (petroleum), heavy hydrocracked
64741–79–3	Coke (petroleum)
64741–80–6	Residues (petroleum), thermal cracked
64741–81–7	Distillates (petroleum), heavy thermal cracked
64741–82–8	Distillates (petroleum), light thermal cracked
64741–83–9	Naphtha (petroleum), heavy thermal cracked
64741–84–0	Naphtha (petroleum), solvent-refined light
64741–85–1	Raffinates (petroleum), sorption process
64741–86–2	Distillates (petroleum), sweetened middle
64741–87–3	Naphtha (petroleum), sweetened
64741–88–4	Distillates (petroleum), solvent-refined heavy paraffinic
64741–89–5	Distillates (petroleum), solvent-refined light paraffinic
64741–90–8	Gas oils (petroleum), solvent-refined
64741–91–9	Distillates (petroleum), solvent-refined middle
64741–92–0	Naphtha (petroleum), solvent-refined heavy
64741–95–3	Residual oils (petroleum), solvent deasphalted
64741–96–4	Distillates (petroleum), solvent-refined heavy naphthenic
64741–97–5	Distillates (petroleum), solvent-refined light naphthenic
64741–98–6	Extracts (petroleum), heavy naphtha solvent
64741–99–7	Extracts (petroleum), light naphtha solvent
64742–01–4	Residual oils (petroleum), solvent-refined
64742–03–6	Extracts (petroleum), light naphthenic distillate solvent
64742–04–7	Extracts (petroleum), heavy paraffinic distillate solvent
64742–05–8	Extracts (petroleum), light paraffinic distillate solvent
64742–06–9	Extracts (petroleum), middle distillate solvent
64742–07–0	Raffinates (petroleum), residual oil decarbonization
64742–08–1	Raffinates (petroleum), heavy naphthenic distillate decarbonization
64742–09–2	Raffinates (petroleum), heavy paraffinic distillate decarbonization
64742–10–5	Extracts (petroleum), residual oil solvent
64742–11–6	Extracts (petroleum), heavy naphthenic distillate solvent
64742–12–7	Gas oils (petroleum), acid-treated
64742–13–8	Distillates (petroleum), acid-treated middle
64742–14–9	Distillates (petroleum), acid-treated light
64742–15–0	Naphtha (petroleum), acid-treated
64742–16–1	Petroleum resins
64742–18–3	Distillates (petroleum), acid-treated heavy naphthenic
64742–19–4	Distillates (petroleum), acid-treated light naphthenic
64742–20–7	Distillates (petroleum), acid-treated heavy paraffinic
64742–21–8	Distillates (petroleum), acid-treated light paraffinic
64742–22–9	Naphtha (petroleum), chemically neutralized heavy
64742–23–0	Naphtha (petroleum), chemically neutralized light
64742–24–1	Sludges (petroleum), acid
64742–25–2	Lubricating oils (petroleum), acid-treated spent
64742–26–3	Hydrocarbon waxes (petroleum), acid-treated
64742–27–4	Distillates (petroleum), chemically neutralized heavy paraffinic
64742–28–5	Distillates (petroleum), chemically neutralized light paraffinic
64742–29–6	Gas oils (petroleum), chemically neutralized
64742–30–9	Distillates (petroleum), chemically neutralized middle
64742–31–0	Distillates (petroleum), chemically neutralized light
64742–32–1	Lubricating oils (petroleum), chemically neutralized spent
64742–33–2	Hydrocarbon waxes (petroleum), chemically neutralized
64742–34–3	Distillates (petroleum), chemically neutralized heavy naphthenic
64742–35–4	Distillates (petroleum), chemically neutralized light naphthenic
64742–36–5	Distillates (petroleum), clay-treated heavy paraffinic
64742–37–6	Distillates (petroleum), clay-treated light paraffinic

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
64742–38–7	Distillates (petroleum), clay-treated middle
64742–39–8	Neutralizing agents (petroleum), spent sodium carbonate
64742–40–1	Neutralizing agents (petroleum), spent sodium hydroxide
64742–41–2	Residual oils (petroleum), clay-treated
64742–42–3	Hydrocarbon waxes (petroleum), clay-treated microcryst.
64742–43–4	Paraffin waxes (petroleum), clay-treated
64742–44–5	Distillates (petroleum), clay-treated heavy naphthenic
64742–45–6	Distillates (petroleum), clay-treated light naphthenic
64742–46–7	Distillates (petroleum), hydrotreated middle
64742–47–8	Distillates (petroleum), hydrotreated light
64742–48–9	Naphtha (petroleum), hydrotreated heavy
64742–49–0	Naphtha (petroleum), hydrotreated light
64742–50–3	Lubricating oils (petroleum), clay-treated spent
64742–51–4	Paraffin waxes (petroleum), hydrotreated
64742–52–5	Distillates (petroleum), hydrotreated heavy naphthenic
64742–53–6	Distillates (petroleum), hydrotreated light naphthenic
64742–54–7	Distillates (petroleum), hydrotreated heavy paraffinic
64742–55–8	Distillates (petroleum), hydrotreated light paraffinic
64742–56–9	Distillates (petroleum), solvent-dewaxed light paraffinic
64742–57–0	Residual oils (petroleum), hydrotreated
64742–58–1	Lubricating oils (petroleum), hydrotreated spent
64742–59–2	Gas oils (petroleum), hydrotreated vacuum
64742–60–5	Hydrocarbon waxes (petroleum), hydrotreated microcryst.
64742–61–6	Slack wax (petroleum)
64742–62–7	Residual oils (petroleum), solvent-dewaxed
64742–63–8	Distillates (petroleum), solvent-dewaxed heavy naphthenic
64742–64–9	Distillates (petroleum), solvent-dewaxed light naphthenic
64742–65–0	Distillates (petroleum), solvent-dewaxed heavy paraffinic
64742–67–2	Foots oil (petroleum)
64742–68–3	Naphthenic oils (petroleum), catalytic dewaxed heavy
64742–69–4	Naphthenic oils (petroleum), catalytic dewaxed light
64742–70–7	Paraffin oils (petroleum), catalytic dewaxed heavy
64742–71–8	Paraffin oils (petroleum), catalytic dewaxed light
64742–72–9	Distillates (petroleum), catalytic dewaxed middle
64742–73–0	Naphtha (petroleum), hydrodesulfurized light
64742–75–2	Naphthenic oils (petroleum), complex dewaxed heavy
64742–76–3	Naphthenic oils (petroleum), complex dewaxed light
64742–78–5	Residues (petroleum), hydrodesulfurized atmospheric tower
64742–79–6	Gas oils (petroleum), hydrodesulfurized
64742–80–9	Distillates (petroleum), hydrodesulfurized middle
64742–81–0	Kerosine (petroleum), hydrodesulfurized
64742–82–1	Naphtha (petroleum), hydrodesulfurized heavy
64742–83–2	Naphtha (petroleum), light steam-cracked
64742–85–4	Residues (petroleum), hydrodesulfurized vacuum
64742–86–5	Gas oils (petroleum), hydrodesulfurized heavy vacuum
64742–87–6	Gas oils (petroleum), hydrodesulfurized light vacuum
64742–88–7	Solvent naphtha (petroleum), medium aliph.
64742–89–8	Solvent naphtha (petroleum), light aliph.
64742–90–1	Residues (petroleum), steam-cracked
64742–91–2	Distillates (petroleum), steam-cracked
64742–92–3	Petroleum resins, oxidized
64742–93–4	Asphalt, oxidized
64742–94–5	Solvent naphtha (petroleum), heavy arom.
64742–95–6	Solvent naphtha (petroleum), light arom.
64742–96–7	Solvent naphtha (petroleum), heavy aliph.
64742–97–8	Distillates (petroleum), oxidized heavy
64742–98–9	Distillates (petroleum), oxidized light
64742–99–0	Residual oils (petroleum), oxidized
64743–00–6	Hydrocarbon waxes (petroleum), oxidized
64743–01–7	Petrolatum (petroleum), oxidized
64743–02–8	Alkenes, C>10 .alpha.-
64743–03–9	Phenols (petroleum)
64743–04–0	Coke (petroleum), recovery
64743–05–1	Coke (petroleum), calcined
64743–06–2	Extracts (petroleum), gas oil solvent
64743–07–3	Sludges (petroleum), chemically neutralized
64754–89–8	Naphthenic acids (petroleum), crude
64771–71–7	Paraffins (petroleum), normal C>10
64771–72–8	Paraffins (petroleum), normal C5-20
67674–12–8	Residual oils (petroleum), oxidized, compounds with triethanolamine
67674–13–9	Petrolatum (petroleum), oxidized, partially deacidified

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
67674–15–1	Petrolatum (petroleum), oxidized, Me ester
67674–16–2	Hydrocarbon waxes (petroleum), oxidized, partially deacidified
67674–17–3	Distillates (petroleum), oxidized light, compounds with triethanolamine
67674–18–4	Distillates (petroleum), oxidized light, Bu esters
67891–79–6	Distillates (petroleum), heavy arom.
67891–80–9	Distillates (petroleum), light arom.
67891–82–1	Hydrocarbon waxes (petroleum), oxidized, compounds with ethanolamine
67891–83–2	Hydrocarbon waxes (petroleum), oxidized, compounds with isopropanolamine
67891–85–4	Hydrocarbon waxes (petroleum), oxidized, compounds with triisopropanolamine
68131–05–5	Hydrocarbon oils, process blends
68131–49–7	Aromatic hydrocarbons, C6-10, acid-treated, neutralized
68131–75–9	Gases (petroleum), C3-4
68153–22–0	Paraffin waxes and Hydrocarbon waxes, oxidized
68187–57–5	Pitch, coal tar-petroleum
68187–58–6	Pitch, petroleum, arom.
68187–60–0	Hydrocarbons, C4, ethane-propane-cracked
68307–98–2	Tail gas (petroleum), catalytic cracked distillate and catalytic cracked naphtha fractionation absorber
68307–99–3	Tail gas (petroleum), catalytic polymn. naphtha fractionation stabilizer
68308–00–9	Tail gas (petroleum), catalytic reformed naphtha fractionation stabilizer, hydrogen sulfide-free
68308–01–0	Tail gas (petroleum), cracked distillate hydrotreater stripper
68308–02–1	Tail gas (petroleum), distn., hydrogen sulfide-free
68308–03–2	Tail gas (petroleum), gas oil catalytic cracking absorber
68308–04–3	Tail gas (petroleum), gas recovery plant
68308–05–4	Tail gas (petroleum), gas recovery plant deethanizer
68308–06–5	Tail gas (petroleum), hydrodesulfurized distillate and hydrodesulfurized naphtha fractionator, acid-free
68308–07–6	Tail gas (petroleum), hydrodesulfurized vacuum gas oil stripper, hydrogen sulfide-free
68308–08–7	Tail gas (petroleum), isomerized naphtha fractionation stabilizer
68308–09–8	Tail gas (petroleum), light straight-run naphtha stabilizer, hydrogen sulfide-free
68308–10–1	Tail gas (petroleum), straight-run distillate hydrodesulfurizer, hydrogen sulfide-free
68308–11–2	Tail gas (petroleum), propane-propylene alkylation feed prep deethanizer
68308–12–3	Tail gas (petroleum), vacuum gas oil hydrodesulfurizer, hydrogen sulfide-free
68308–27–0	Fuel gases, refinery
68333–22–2	Residues (petroleum), atmospheric
68333–23–3	Naphtha (petroleum), heavy coker
68333–24–4	Hydrocarbon waxes (petroleum), oxidized, compds. with triethanolamine
68333–25–5	Distillates (petroleum), hydrodesulfurized light catalytic cracked
68333–26–6	Clarified oils (petroleum), hydrodesulfurized catalytic cracked
68333–27–7	Distillates (petroleum), hydrodesulfurized intermediate catalytic cracked
68333–28–8	Distillates (petroleum), hydrodesulfurized heavy catalytic cracked
68333–29–9	Residues (petroleum), light naphtha solvent extracts
68333–30–2	Distillates (petroleum), oxidized heavy thermal cracked
68333–81–3	Alkanes, C4-12
68333–88–0	Aromatic hydrocarbons, C9-17
68334–30–5	Fuels, diesel
68409–99–4	Gases (petroleum), catalytic cracked overheads
68410–00–4	Distillates (petroleum), crude oil
68410–05–9	Distillates (petroleum), straight-run light
68410–12–8	Distillates (petroleum), steam-cracked, C5-10 fraction, high-temp. stripping products with light steam-cracked petroleum naphtha C5 fraction polymers
68410–71–9	Raffinates (petroleum), catalytic reformer ethylene glycol-water countercurrent exts.
68410–96–8	Distillates (petroleum), hydrotreated middle, intermediate boiling
68410–97–9	Distillates (petroleum), light distillate hydrotreating process, low-boiling
68410–98–0	Distillates (petroleum), hydrotreated heavy naphtha, deisohexanizer overheads
68411–00–7	Alkenes, C>8
68425–29–6	Distillates (petroleum), naphtha-raffinate pyrolyzate-derived, gasoline-blending
68425–33–2	Petrolatum (petroleum), oxidized, barium salt
68425–34–3	Petrolatum (petroleum), oxidized, calcium salt
68425–35–4	Raffinates (petroleum), reformer, Lurgi unit-sepd.
68425–39–8	Alkenes, C>10 .alpha.-, oxidized
68441–09–8	Hydrocarbon waxes (petroleum), clay-treated microcryst., contg. polyethylene, oxidized
68459–78–9	Alkenes, C18-24 .alpha.-, dimers
68475–57–0	Alkanes, C1-2
68475–58–1	Alkanes, C2-3
68475–59–2	Alkanes, C3-4
68475–60–5	Alkanes, C4-5
68475–61–6	Alkenes, C5, naphtha-raffinate pyrolyzate-derived
68475–70–7	Aromatic hydrocarbons, C6-8, naphtha-raffinate pyrolyzate-derived
68475–79–6	Distillates (petroleum), catalytic reformed depentanizer
68475–80–9	Distillates (petroleum), light steam-cracked naphtha
68476–26–6	Fuel gases
68476–28–8	Fuel gases, C6-8 catalytic reformer

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
68476–29–9	Fuel gases, crude oil distillates
68476–30–2	Fuel oil, no. 2
68476–31–3	Fuel oil, no. 4
68476–32–4	Fuel oil, residues-straight-run gas oils, high-sulfur
68476–33–5	Fuel oil, residual
68476–34–6	Fuels, diesel, no. 2
68476–39–1	Hydrocarbons, aliph.-arom.-C4-5-olefinic
68476–40–4	Hydrocarbons, C3-4
68476–42–6	Hydrocarbons, C4-5
68476–43–7	Hydrocarbons, C4-6, C5-rich
68476–44–8	Hydrocarbons, C>3
68476–45–9	Hydrocarbons, C5-10 arom. conc., ethylene-manuf.-by-product
68476–46–0	Hydrocarbons, C3-11, catalytic cracker distillates
68476–47–1	Hydrocarbons, C2-6, C6-8 catalytic reformer
68476–49–3	Hydrocarbons, C2-4, C3-rich
68476–50–6	Hydrocarbons, C≥5, C5-6-rich
68476–52–8	Hydrocarbons, C4, ethylene-manuf.-by-product
68476–53–9	Hydrocarbons, C≥20, petroleum wastes
68476–54–0	Hydrocarbons, C3-5, polymn. unit feed
68476–55–1	Hydrocarbons, C5-rich
68476–56–2	Hydrocarbons, cyclic C5 and C6
68476–77–7	Lubricating oils, refined used
68476–81–3	Paraffin waxes and Hydrocarbon waxes, oxidized, calcium salts
68476–84–6	Petroleum products, gases, inorg.
68476–85–7	Petroleum gases, liquefied
68476–86–8	Petroleum gases, liquefied, sweetened
68477–25–8	Waste gases, vent gas, C1-6
68477–26–9	Wastes, petroleum
68477–29–2	Distillates (petroleum), catalytic reformer fractionator residue, high-boiling
68477–30–5	Distillates (petroleum), catalytic reformer fractionator residue, intermediate-boiling
68477–31–6	Distillates (petroleum), catalytic reformer fractionator residue, low-boiling
68477–33–8	Gases (petroleum), C3-4, isobutane-rich
68477–34–9	Distillates (petroleum), C3-5, 2-methyl-2-butene-rich
68477–35–0	Distillates (petroleum), C3-6, piperylene-rich
68477–36–1	Distillates (petroleum), cracked steam-cracked, C5-18 fraction
68477–38–3	Distillates (petroleum), cracked steam-cracked petroleum distillates
68477–39–4	Distillates (petroleum), cracked stripped steam-cracked petroleum distillates, C8-10 fraction
68477–40–7	Distillates (petroleum), cracked stripped steam-cracked petroleum distillates, C10-12 fraction
68477–41–8	Gases (petroleum), extractive, C3-5, butadiene-butene-rich
68477–42–9	Gases (petroleum), extractive, C3-5, butene-isobutylene-rich
68477–44–1	Distillates (petroleum), heavy naphthenic, mixed with steam-cracked petroleum distillates C5-12 fraction
68477–47–4	Distillates (petroleum), mixed heavy olefin vacuum, heart-cut
68477–48–5	Distillates (petroleum), mixed heavy olefin vacuum, low-boiling
68477–53–2	Distillates (petroleum), steam-cracked, C5-12 fraction
68477–54–3	Distillates (petroleum), steam-cracked, C8-12 fraction
68477–55–4	Distillates (petroleum), steam-cracked, C5-10 fraction, mixed with light steam-cracked petroleum naphtha C5 fraction
68477–58–7	Distillates (petroleum), steam-cracked petroleum distillates, C5-18 fraction
68477–59–8	Distillates (petroleum), steam-cracked petroleum distillates cyclopentadiene conc.
68477–60–1	Extracts (petroleum), cold-acid
68477–61–2	Extracts (petroleum), cold-acid, C4-6
68477–62–3	Extracts (petroleum), cold-acid, C3-5, butene-rich
68477–63–4	Extracts (petroleum), reformer recycle
68477–64–5	Gases (petroleum), acetylene manuf. off
68477–65–6	Gases (petroleum), amine system feed
68477–66–7	Gases (petroleum), benzene unit hydrodesulfurizer off
68477–67–8	Gases (petroleum), benzene unit recycle, hydrogen-rich
68477–68–9	Gases (petroleum), blend oil, hydrogen-nitrogen-rich
68477–69–0	Gases (petroleum), butane splitter overheads
68477–70–3	Gases (petroleum), C2-3
68477–71–4	Gases (petroleum), catalytic-cracked gas oil depropanizer bottoms, C4-rich acid-free
68477–72–5	Gases (petroleum), catalytic-cracked naphtha debutanizer bottoms, C3-5-rich
68477–73–6	Gases (petroleum), catalytic cracked naphtha depropanizer overhead, C3-rich acid-free
68477–74–7	Gases (petroleum), catalytic cracker
68477–75–8	Gases (petroleum), catalytic cracker, C1-5-rich
68477–76–9	Gases (petroleum), catalytic polymd. naphtha stabilizer overhead, C2-4-rich
68477–77–0	Gases (petroleum), catalytic reformed naphtha stripper overheads
68477–79–2	Gases (petroleum), catalytic reformer, C1-4-rich
68477–80–5	Gases (petroleum), C6-8 catalytic reformer recycle
68477–81–6	Gases (petroleum), C6-8 catalytic reformer
68477–82–7	Gases (petroleum), C6-8 catalytic reformer recycle, hydrogen-rich

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
68477–83–8	Gases (petroleum), C3-5 olefinic-paraffinic alkylation feed
68477–84–9	Gases (petroleum), C2-return stream
68477–85–0	Gases (petroleum), C4-rich
68477–86–1	Gases (petroleum), deethanizer overheads
68477–87–2	Gases (petroleum), deisobutanizer tower overheads
68477–88–3	Gases (petroleum), deethanizer overheads, C3-rich
68477–89–4	Distillates (petroleum), depentanizer overheads
68477–90–7	Gases (petroleum), depropanizer dry, propene-rich
68477–91–8	Gases (petroleum), depropanizer overheads
68477–92–9	Gases (petroleum), dry sour, gas-concn.-unit-off
68477–93–0	Gases (petroleum), gas concn. reabsorber distn.
68477–94–1	Gases (petroleum), gas recovery plant depropanizer overheads
68477–95–2	Gases (petroleum), Girbatol unit feed
68477–96–3	Gases (petroleum), hydrogen absorber off
68477–97–4	Gases (petroleum), hydrogen-rich
68478–00–2	Gases (petroleum), recycle, hydrogen-rich
68478–01–3	Gases (petroleum), reformer make-up, hydrogen-rich
68478–02–4	Gases (petroleum), reforming hydrotreater
68478–03–5	Gases (petroleum), reforming hydrotreater, hydrogen-methane-rich
68478–04–6	Gases (petroleum), reforming hydrotreater make-up, hydrogen-rich
68478–05–7	Gases (petroleum), thermal cracking distn.
68478–08–0	Naphtha (petroleum), light steam-cracked, C5-fraction, oligomer conc.
68478–10–4	Naphtha (petroleum), light steam-cracked, debenzenized, C8-16-cycloalkadiene conc.
68478–12–6	Residues (petroleum), butane splitter bottoms
68478–13–7	Residues (petroleum), catalytic reformer fractionator residue distn.
68478–15–9	Residues (petroleum), C6-8 catalytic reformer
68478–16–0	Residual oils (petroleum), deisobutanizer tower
68478–17–1	Residues (petroleum), heavy coker gas oil and vacuum gas oil
68478–18–2	Residues (petroleum), heavy olefin vacuum
68478–19–3	Residual oils (petroleum), propene purifn. splitter
68478–20–6	Residues (petroleum), steam-cracked petroleum distillates cyclopentadiene conc., C4-cyclopentadiene-free
68478–22–8	Tail gas (petroleum), catalytic cracked naphtha stabilization absorber
68478–24–0	Tail gas (petroleum), catalytic cracker, catalytic reformer and hydrodesulfurizer combined fractionater
68478–25–1	Tail gas (petroleum), catalytic cracker refractionation absorber
68478–26–2	Tail gas (petroleum), catalytic reformed naphtha fractionation stabilizer
68478–27–3	Tail gas (petroleum), catalytic reformed naphtha separator
68478–28–4	Tail gas (petroleum), catalytic reformed naphtha stabilizer
68478–29–5	Tail gas (petroleum), cracked distillate hydrotreater separator
68478–30–8	Tail gas (petroleum), hydrodesulfurized straight-run naphtha separator
68478–32–0	Tail gas (petroleum), saturate gas plant mixed stream, C4-rich
68478–33–1	Tail gas (petroleum), saturate gas recovery plant, C1-2-rich
68478–34–2	Tail gas (petroleum), vacuum residues thermal cracker
68512–61–8	Residues (petroleum), heavy coker and light vacuum
68512–62–9	Residues (petroleum), light vacuum
68512–78–7	Solvent naphtha (petroleum), light arom., hydrotreated
68512–91–4	Hydrocarbons, C3-4-rich, petroleum distillates
68513–02–0	Naphtha (petroleum), full-range coker
68513–11–1	Fuel gases, hydrotreater fractionation, scrubbed
68513–12–2	Fuel gases, saturate gas unit fractionater-absorber overheads
68513–13–3	Fuel gases, thermal cracked catalytic cracking residue
68513–14–4	Gases (petroleum), catalytic reformed straight-run naphtha stabilizer overheads
68513–15–5	Gases (petroleum), full-range straight-run naphtha dehexanizer off
68513–16–6	Gases (petroleum), hydrocracking depropanizer off, hydrocarbon-rich
68513–17–7	Gases (petroleum), light straight-run naphtha stabilizer off
68513–18–8	Gases (petroleum), reformer effluent high-pressure flash drum off
68513–19–9	Gases (petroleum), reformer effluent low-pressure flash drum off
68513–62–2	Disulfides, C5-12-alkyl
68513–63–3	Distillates (petroleum), catalytic reformed straight-run naphtha overheads
68513–65–5	Butane, branched and linear
68513–66–6	Residues (petroleum), alkylation splitter, C4-rich
68513–67–7	Residues (petroleum), cyclooctadiene bottoms
68513–68–8	Residues (petroleum), deethanizer tower
68513–69–9	Residues (petroleum), steam-cracked light
68513–74–6	Waste gases, ethylene oxide absorber-reactor
68514–15–8	Gasoline, vapor-recovery
68514–29–4	Hydrocarbons, amylene feed debutanizer overheads nonextractable raffinates
68514–31–8	Hydrocarbons, C1-4
68514–32–9	Hydrocarbons, C10 and C12, olefin-rich
68514–33–0	Hydrocarbons, C12 and C14, olefin-rich
68514–34–1	Hydrocarbons, C9-14, ethylene-manuf.-by-product

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
68514–35–2	Hydrocarbons, C14-30, olefin-rich
68514–38–5	Hydrocarbons, C4-10-unsatd.
68514–36–3	Hydrocarbons, C1-4, sweetened
68514–37–4	Hydrocarbons, C4-5-unsatd.
68514–79–4	Petroleum products, hydrofiner-powerformer reformates
68515–25–3	Benzene, C1-9-alkyl derivs.
68515–26–4	Benzene, di-C12-14-alkyl derivs.
68515–27–5	Benzene, di-C10-14-alkyl derivs., fractionation overheads, heavy ends
68515–28–6	Benzene, di-C10-14-alkyl derivs., fractionation overheads, light ends
68515–29–7	Benzene, di-C10-14-alkyl derivs., fractionation overheads, middle cut
68515–30–0	Benzene, mono-C20-48-alkyl derivs.
68515–32–2	Benzene, mono-C12-14-alkyl derivs., fractionation bottoms
68515–33–3	Benzene, mono-C10-12-alkyl derivs., fractionation bottoms, heavy ends
68515–34–4	Benzene, mono-C12-14-alkyl derivs., fractionation bottoms, heavy ends
68515–35–5	Benzene, mono-C10-12-alkyl derivs., fractionation bottoms, light ends
68515–36–6	Benzene, mono-C12-14-alkyl derivs., fractionation bottoms, light ends
68516–20–1	Naphtha (petroleum), steam-cracked middle arom.
68526–52–3	Alkenes, C6
68526–53–4	Alkenes, C6-8, C7-rich
68526–54–5	Alkenes, C7-9, C8-rich
68526–55–6	Alkenes, C8-10, C9-rich
68526–56–7	Alkenes, C9-11, C10-rich
68526–57–8	Alkenes, C10-12, C11-rich
68526–58–9	Alkenes, C11-13, C12-rich
68526–77–2	Aromatic hydrocarbons, ethane cracking scrubber effluent and flare drum
68526–99–8	Alkenes, C6-9 .alpha.-
68527–00–4	Alkenes, C8-9 .alpha.-
68527–11–7	Alkenes, C5
68527–13–9	Gases (petroleum), acid, ethanolamine scrubber
68527–14–0	Gases (petroleum), methane-rich off
68527–15–1	Gases (petroleum), oil refinery gas distn. off
68527–16–2	Hydrocarbons, C1-3
68527–18–4	Gas oils (petroleum), steam-cracked
68527–19–5	Hydrocarbons, C1-4, debutanizer fraction
68527–21–9	Naphtha (petroleum), clay-treated full-range straight-run
68527–22–0	Naphtha (petroleum), clay-treated light straight-run
68527–23–1	Naphtha (petroleum), light steam-cracked arom.
68527–26–4	Naphtha (petroleum), light steam-cracked, debenzenized
68527–27–5	Naphtha (petroleum), full-range alkylate, butane-contg.
68553–00–4	Fuel oil, no. 6
68553–14–0	Hydrocarbons, C8-11
68602–79–9	Distillates (petroleum), benzene unit hydrotreater dipentanizer overheads
68602–81–3	Distillates, hydrocarbon resin prodn. higher boiling
68602–82–4	Gases (petroleum), benzene unit hydrotreater depentenizer overheads
68602–83–5	Gases (petroleum), C1-5, wet
68602–84–6	Gases (petroleum), secondary absorber off, fluidized catalytic cracker overheads fractionater
68602–96–0	Distillates (petroleum), oxidized light, strong acid components, compds. with diethanolamine
68602–97–1	Distillates (petroleum), oxidized light, strong acid components, sodium salts
68602–98–2	Distillates (petroleum), oxidized light, strong acid components
68602–99–3	Distillates (petroleum), oxidized light, strong acid-free
68603–00–9	Distillates (petroleum), thermal cracked naphtha and gas oil
68603–01–0	Distillates (petroleum), thermal cracked naphtha and gas oil, C5-dimer-contg.
68603–02–1	Distillates (petroleum), thermal cracked naphtha and gas oil, dimerized
68603–03–2	Distillates (petroleum), thermal cracked naphtha and gas oil, extractive
68603–08–7	Naphtha (petroleum), arom.-contg.
68603–09–8	Hydrocarbon waxes (petroleum), oxidized, calcium salts
68603–10–1	Hydrocarbon waxes (petroleum), oxidized, Me esters, barium salts
68603–11–2	Hydrocarbon waxes (petroleum), oxidized, Me esters, calcium salts
68603–12–3	Hydrocarbon waxes (petroleum), oxidized, Me esters, sodium salts
68603–13–4	Petrolatum (petroleum), oxidized, ester with sorbitol
68603–14–5	Residual oils (petroleum), oxidized, calcium salts
68603–31–6	Alkenes, C10, tert-amylene concentrator by-product
68603–32–7	Alkenes, C15-20 .alpha.-, isomerized
68606–09–7	Fuel gases, expander off
68606–10–0	Gasoline, pyrolysis, debutanizer bottoms
68606–11–1	Gasoline, straight–run, topping-plant
68606–24–6	Hydrocarbons, C4, butene concentrator by-product
68606–25–7	Hydrocarbons, C2-4
68606–26–8	Hydrocarbons, C3
68606–27–9	Gases (petroleum), alkylation feed
68606–28–0	Hydrocarbons, C5 and C10-aliph. and C6-8-arom.

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES TERMED "PETROLEUM PROCESS STREAMS" FOR PURPOSES OF INVENTORY UPDATE REPORTING—Continued

CAS No.	Product
68606–31–5	Hydrocarbons, C3-5, butadiene purifn. by-product
68606–34–8	Gases (petroleum), depropanizer bottoms fractionation off
68606–36–0	Hydrocarbons, C5-unsatd. rich, isoprene purifn. by-product
68607–11–4	Petroleum products, refinery gases
68607–30–7	Residues (petroleum), topping plant, low-sulfur
68608–56–0	Waste gases, from carbon black manuf.
68647–60–9	Hydrocarbons, C>4
68647–61–0	Hydrocarbons, C4-5, tert-amylene concentrator by-product
68647–62–1	Hydrocarbons, C4-5, butene concentrator by-product, sour
68650–36–2	Aromatic hydrocarbons, C8, *o*-xylene-lean
68650–37–3	Paraffin waxes (petroleum), oxidized, sodium salts
68782–97–8	Distillates (petroleum), hydrofined lubricating-oil
68782–98–9	Extracts (petroleum), clarified oil solvent, condensed-ring-arom.-contg.
68782–99–0	Extracts (petroleum), heavy clarified oil solvent, condensed-ring-arom.-contg.
68783–00–6	Extracts (petroleum), heavy naphthenic distillate solvent, arom. conc.
68783–01–7	Extracts (petroleum), heavy naphthenic distillate solvent, paraffinic conc.
68783–02–8	Extracts (petroleum), intermediate clarified oil solvent, condensed-ring-arom.-contg.
68783–04–0	Extracts (petroleum), solvent-refined heavy paraffinic distillate solvent
68783–05–1	Gases (petroleum), ammonia-hydrogen sulfide, water-satd.
68783–06–2	Gases (petroleum), hydrocracking low-pressure separator
68783–07–3	Gases (petroleum), refinery blend
68783–08–4	Gas oils (petroleum), heavy atmospheric
68783–09–5	Naphtha (petroleum), catalytic cracked light distd.
68783–12–0	Naphtha (petroleum), unsweetened
68783–13–1	Residues (petroleum), coker scrubber, condensed-ring-arom.-contg.
68783–15–3	Alkenes, C6-7 .alpha.-
68783–61–9	Fuel gases, refinery, sweetened
68783–62–0	Fuel gases, refinery, unsweetened
68783–64–2	Gases (petroleum), catalytic cracking
68783–65–3	Gases (petroleum), C2-4, sweetened
68783–66–4	Naphtha (petroleum), light, sweetened
68814–47–1	Waste gases, refinery vent
68814–67–5	Gases (petroleum), refinery
68814–89–1	Extracts (petroleum), heavy paraffinic distillates, solvent-deasphalted
68814–87–9	Distillates (petroleum), full-range straight-run middle
68814–90–4	Gases (petroleum), platformer products separator off
68814–91–5	Alkenes, C5-9 .alpha.-
68855–57–2	Alkenes, C6-12 .alpha.-
68855–58–3	Alkenes, C10-16 .alpha.-
68855–59–4	Alkenes, C14-18 .alpha.-
68855–60–7	Alkenes, C14-20 .alpha.-
68911–58–0	Gases (petroleum), hydrotreated sour kerosine depentanizer stabilizer off
68911–59–1	Gases (petroleum), hydrotreated sour kerosine flash drum
68915–96–8	Distillates (petroleum), heavy straight-run
68915–97–9	Gas oils (petroleum), straight-run, high-boiling
68918–69–4	Petrolatum (petroleum), oxidized, zinc salt
68918–73–0	Residues (petroleum), clay-treating filter wash
68918–93–4	Paraffin waxes and Hydrocarbon waxes, oxidized, alkali metal salts
68918–98–9	Fuel gases, refinery, hydrogen sulfide-free
68918–99–0	Gases (petroleum), crude oil fractionation off
68919–00–6	Gases (petroleum), dehexanizer off
68919–01–7	Gases (petroleum), distillate unifiner desulfurization stripper off
68919–02–8	Gases (petroleum), fluidized catalytic cracker fractionation off
68919–03–9	Gases (petroleum), fluidized catalytic cracker scrubbing secondary absorber off
68919–04–0	Gases (petroleum), heavy distillate hydrotreater desulfurization stripper off
68919–05–1	Gases (petroleum), light straight run gasoline fractionation stabilizer off
68919–06–2	Gases (petroleum), naphtha unifiner desulfurization stripper off
68919–07–3	Gases (petroleum), platformer stabilizer off, light ends fractionation
68919–08–4	Gases (petroleum), preflash tower off, crude distn.
68919–09–5	Gases (petroleum), straight-run naphtha catalytic reforming off
68919–10–8	Gases (petroleum), straight-run stabilizer off
68919–11–9	Gases (petroleum), tar stripper off
68919–12–0	Gases (petroleum), unifiner stripper off
68919–15–3	Hydrocarbons, C6-12, benzene-recovery
68919–17–5	Hydrocarbons, C12-20, catalytic alkylation by-products
68919–19–7	Gases (petroleum), fluidized catalytic cracker splitter residues
68919–20–0	Gases (petroleum), fluidized catalytic cracker splitter overheads
68919–37–9	Naphtha (petroleum), full-range reformed
68920–06–9	Hydrocarbons, C7-9
68920–07–0	Hydrocarbons, C<10-linear
68920–64–9	Disulfides, di-C1-2-alkyl

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CAS No.	Product
68921–07–3	Distillates (petroleum), hydrotreated light catalytic cracked
68921–09–5	Distillates (petroleum), naphtha unifiner stripper
68921–08–4	Distillates (petroleum), light straight-run gasoline fractionation stabilizer overheads
68921–67–5	Hydrocarbons, ethylene-manuf.-by-product distn. residues
68952–76–1	Gases (petroleum), catalytic cracked naphtha debutanizer
68952–77–2	Tail gas (petroleum), catalytic cracked distillate and naphtha stabilizer
68952–78–3	Tail gas (petroleum), catalytic hydrodesulfurized distillate fractionation stabilizer, hydrogen sulfide-free
68952–79–4	Tail gas (petroleum), catalytic hydrodesulfurized naphtha separator
68952–80–7	Tail gas (petroleum), straight-run naphtha hydrodesulfurizer
68952–81–8	Tail gas (petroleum), thermal-cracked distillate, gas oil and naphtha absorber
68952–82–9	Tail gas (petroleum), thermal cracked hydrocarbon fractionation stabilizer, petroleum coking
68953–80–0	Benzene, mixed with toluene, dealkylation product
68955–27–1	Distillates (petroleum), petroleum residues vacuum
68955–28–2	Gases (petroleum), light steam-cracked, butadiene conc.
68955–31–7	Gases (petroleum), butadiene process, inorg.
68955–32–8	Natural gas, substitute, steam-reformed desulfurized naphtha
68955–33–9	Gases (petroleum), sponge absorber off, fluidized catalytic cracker and gas oil desulfurizer overhead fractionation
68955–34–0	Gases (petroleum), straight-run naphtha catalytic reformer stabilizer overhead
68955–35–1	Naphtha (petroleum), catalytic reformed
68955–36–2	Residues (petroleum), steam-cracked, resinous
68955–76–0	Aromatic hydrocarbons, C9-16, biphenyl deriv.-rich
68955–96–4	Disulfides, dialkyl and di-Ph, naphtha sweetening
68956–47–8	Fuel oil, isoprene reject absorption
68956–48–9	Fuel oil, residual, wastewater skimmings
68956–52–5	Hydrocarbons, C4-8
68956–54–7	Hydrocarbons, C4-unsatd.
68956–55–8	Hydrocarbons, C5-unsatd.
68956–70–7	Petroleum products, C5-12, reclaimed, wastewater treatment
68988–79–4	Benzene, C10-12-alkyl derivs., distn. residues
68988–99–8	Phenols, sodium salts, mixed with sulfur compounds, gasoline alk. scrubber residues
68989–88–8	Gases (petroleum), crude distn. and catalytic cracking
68990–35–2	Distillates (petroleum), arom., hydrotreated, dicyclopentadiene-rich
68991–49–1	Alkanes, C10-13, arom.-free desulfurized
68991–50–4	Alkanes, C14-17, arom.-free desulfurized
68991–51–5	Alkanes, C10-13, desulfurized
68991–52–6	Alkenes, C10-16
69013–21–4	Fuel oil, pyrolysis
69029–75–0	Oils, reclaimed
69430–33–7	Hydrocarbons, C6-30
70024–88–3	Ethene, thermal cracking products
70528–71–1	Distillates (petroleum), heavy distillate solvent ext. heart-cut
70528–72–2	Distillates (petroleum), heavy distillate solvent ext. vacuum overheads
70528–73–3	Residues (petroleum), heavy distillate solvent ext. vacuum
70592–76–6	Distillates (petroleum), intermediate vacuum
70592–77–7	Distillates (petroleum), light vacuum
70592–78–8	Distillates (petroleum), vacuum
70592–79–9	Residues (petroleum), atm. tower, light
70693–00–4	Hydrocarbon waxes (petroleum), oxidized, sodium salts
70693–06–0	Aromatic hydrocarbons, C9-11
70913–85–8	Residues (petroleum), solvent-extd. vacuum distilled atm. residuum
70913–86–9	Alkanes, C18-70
70955–08–7	Alkanes, C4-6
70955–09–8	Alkenes, C13-14 .alpha.-
70955–10–1	Alkenes, C15-18 .alpha.-
70955–17–8	Aromatic hydrocarbons, C12-20
71243–66–8	Hydrocarbon waxes (petroleum), clay-treated, microcryst., oxidized, potassium salts
71302–82–4	Hydrocarbons, C5-8, Houdry butadiene manuf. by-product
71329–37–8	Residues (petroleum), catalytic cracking depropanizer, C4-rich
71808–30–5	Tail gas (petroleum), thermal cracking absorber
72230–71–8	Distillates (petroleum), cracked steam-cracked, C5-17 fraction
72623–83–7	Lubricating oils (petroleum), C>25, hydrotreated bright stock-based
72623–84–8	Lubricating oils (petroleum), C15-30, hydrotreated neutral oil-based, contg. solvent deasphalted residual oil
72623–85–9	Lubricating oils (petroleum), C20-50, hydrotreated neutral oil-based, high-viscosity
72623–86–0	Lubricating oils (petroleum), C15-30, hydrotreated neutral oil-based
72623–87–1	Lubricating oils (petroleum), C20-50, hydrotreated neutral oil-based
93762–80–2	Alkenes, C15-18

(2) *Specific exempted chemical substances*—(i) *Exemption.* EPA has determined that, at this time, the information in § 710.52(c)(4) associated with the chemicals listed in paragraph (b)(2)(iv) of this section is of low current interest.

(ii) *Considerations.* In making its determination of whether this partial exemption should apply to a particular chemical substance, EPA will consider the totality of information available for the chemical substance in question, including but not limited to, one or more of the following considerations:

(A) Whether the chemical qualifies or has qualified in past IUR collections for the reporting of the information described in § 710.52(c)(4) (i.e., at least one site manufactures 300,000 pounds or more of the chemical).

(B) The chemical substance's chemical and physical properties or potential for persistence, bioaccumulation, health effects, or environmental effects (considered independently or together).

(C) The information needs of EPA, other federal agencies, tribes, states, and local governments, as well as members of the public.

(D) The availability of other complementary risk screening information.

(E) The availability of comparable processing and use information.

(F) Whether the potential risks of the chemical substance are adequately managed by EPA or another agency or authority.

(iii) *Amendments.* EPA may amend the chemical list in paragraph (b)(2)(iv) of this section on its own initiative or in response to a request from the public based on EPA's determination of whether the information in § 710.52(c)(4) is of low interest.

(A) Any person may request that EPA amend the chemical list in paragraph (b)(2)(iv) of this section. Your request must be in writing and must be submitted to the address provided in § 710.59(d). Requests must identify the chemical in question, as well as its CAS Number or other chemical identification number as identified in § 710.52(c)(3)(i). Your request should provide sufficient information for EPA to determine whether collection of the information in § 710.52(c)(4) for the chemical in question is of low interest. In preparing your request, please refer to the considerations outlined in paragraph (b)(2)(ii) of this section. If a request related to a particular chemical is resubmitted, any subsequent request must clearly identify new information contained in the request. EPA may request other information that it believes necessary to evaluate the request. EPA will issue a written response to each request within 120 days of receipt of the request, and will maintain copies of these responses in a public docket that will be established for each reporting cycle.

(B) As needed, the Agency will initiate rulemaking to make revisions to the list in paragraph (b)(2)(iv) of this section.

(C) To assist EPA in reaching a decision regarding a particular request prior to a given reporting year, requests must be submitted to EPA no later than 12 months prior to the start of the reporting year, i.e., by January 1, 2004, or by each January 1 at 4–year intervals thereafter.

(iv) *List of chemical substances.* EPA has designated the following chemical substances, listed by CAS Number, as partially exempt from reporting under the IUR.

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES UNDER § 710.46(B)(2)

CAS No.	Chemical
50–70–4	D-Glucitol
50–81–7	L-Ascorbic acid
50–99–7	D-Glucose
56–87–1	L-Lysine
57–50–1	.alpha.-D-Glucopyranoside, .beta.-D-fructofuranosyl
58–95–7	2H-1-Benzopyran-6-ol, 3,4-dihydro-2,5,7,8-tetramethyl-2-[(4R,8R)-4,8,12- trimethyltridecyl]-, acetate, (2R)-
59–02–9	2H-1-Benzopyran-6-ol, 3,4-dihydro-2,5,7,8-tetramethyl-2-[(4R,8R)-4,8,12- trimethyltridecyl]-, (2R)-
59–51–8	Methionine
69–65–8	D-Mannitol
87–79–6	L-Sorbose
123–94–4	Octadecanoic acid, 2,3-dihydroxypropyl ester
124–38–9	Carbon dioxide
137–08–6	.beta.-Alanine, N-[(2R)-2,4-dihydroxy-3,3-dimethyl-1-oxobutyl]-, calcium alt (2:1)
142–47–2	L-Glutamic acid, monosodium salt
150–30–1	Phenylalanine
1317–65–3	Limestone
1333–74–0	Hydrogen
1592–23–0	Octadecanoic acid, calcium salt
7440–37–1	Argon
7440–44–0	Carbon
7727–37–9	Nitrogen
7782–42–5	Graphite
7782–44–7	Oxygen
8001–21–6	Sunflower oil
8001–22–7	Soybean oil
8001–23–8	Safflower oil
8001–26–1	Linseed oil
8001–29–4	Cottonseed oil
8001–30–7	Corn oil
8001–31–8	Coconut oil
8001–78–3	Castor oil, hydrogenated
8001–79–4	Castor oil
8002–03–7	Peanut oil
8002–13–9	Rape oil
8002–43–5	Lecithins
8002–75–3	Palm oil

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES UNDER § 710.46(B)(2)—Continued

CAS No.	Chemical
8006–54–0	Lanolin
8016–28–2	Lard, oil
8016–70–4	Soybean oil, hydrogenated
8021–99–6	Charcoal, bone
8029–43–4	Syrups, hydrolyzed starch
9004–53–9	Dextrin
9005–25–8	Starch
9050–36–6	Maltodextrin
11103–57–4	Vitamin A
16291–96–6	Charcoal
26836–47–5	D-Glucitol, monooctadecanoate
61789–44–4	Fatty acids, castor-oil
61789–97–7	Tallow
61789–99–9	Lard
64147–40–6	Castor oil, dehydrated
64755–01–7	Fatty acids, tallow, calcium salts
65996–63–6	Starch, acid-hydrolyzed
65996–64–7	Starch, enzyme-hydrolyzed
67701–01–3	Fatty acids, C12-18
68002–85–7	Fatty acids, C14-22 and C16-22-unsatd.
68131–37–3	Syrups, hydrolyzed starch, dehydrated
68188–81–8	Grease, poultry
68308–54–3	Glycerides, tallow mono-, di- and tri-, hydrogenated
68334–00–9	Cottonseed oil, hydrogenated
68334–28–1	Fats and glyceridic oils, vegetable, hydrogenated
68409–76–7	Bone meal, steamed
68424–45–3	Fatty acids, linseed-oil
68424–61–3	Glycerides, C16-18 and C18-unsatd. mono- and di-
68425–17–2	Syrups, hydrolyzed starch, hydrogenated
68439–86–1	Bone, ash
68442–69–3	Benzene, mono-C10-14-alkyl derivs.
68476–78–8	Molasses
68514–27–2	Grease, catch basin
68514–74–9	Palm oil, hydrogenated
68525–87–1	Corn oil, hydrogenated
68648–86–2	Benzene, C14-16-alkyl derivs.
68648–87–3	Benzene, C10-16-alkyl derivs.
68918–42–3	Soaps, stocks, soya
68952–94–3	Soaps, stocks, vegetable-oil
68989–98–0	Fats and glyceridic oils, vegetable, residues
73138–67–7	Lard, hydrogenated
129813–58–7	Benzene, mono-C10-13-alkyl derivs.
129813–59–8	Benzene, mono-C12-14-alkyl derivs.
129813–60–1	Benzene, mono-C14-16-alkyl derivs.

(3) *Inorganic chemical substances.* For purposes of this subpart, an inorganic chemical substance is any chemical substance which does not contain carbon or contains carbon only in the form of carbonato [=CO3], cyano [--CN], cyanato [--OCN], isocyano [--NC], or isocyanato [--NCO] groups or the chalcogen analogues of such groups. During the 2006 submission period, manufacturers are excluded only from the reporting requirements under § 710.52(c)(4) for inorganic chemical substances. During the 2006 submission period, manufacturers of inorganic chemical substances are not excluded from the other reporting requirements under this part. During submission periods following the 2006 submission period, manufacturers of inorganic chemical substances are subject to all of the reporting requirements in this subpart.

§ 710.48 Persons who must report.

Except as provided in § § 710.49 and 710.50, the following persons are subject to the requirements of this subpart. Persons must determine whether they must report under this section for each chemical substance that they manufacture (including import) at an individual site.

(a) *Persons subject to recurring reporting.* Any person who manufactured (including imported) for commercial purposes 25,000 lbs. (11,340 kg) or more of a chemical substance described in § 710.45 at any single site owned or controlled by that person at any time during calendar year 2005 or during the calendar year at 4–year intervals thereafter is subject to reporting.

(b) *Special provisions for importers.* For purposes of this section, the site for a person who imports a chemical substance described in § 710.45 is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction. The import site may in some cases be the organization's headquarters in the United States (see also § 710.55(b)).

§ 710.49 Persons not subject to this subpart.

A person described in § 710.48 is not subject to the requirements of this subpart if that person qualifies as a small manufacturer as that term is defined in § 704.3 of this chapter. Notwithstanding this exclusion, a

person who qualifies as a small manufacturer is subject to this subpart with respect to any chemical substance that is the subject of a rule proposed or promulgated under section 4, 5(b)(4), or 6 of the Act, or is the subject of an order in effect under section 5(e) of the Act, or is the subject of relief that has been granted under a civil action under section 5 or 7 of the Act.

§ 710.50 Activities for which reporting is not required.

A person described in § 710.48 is not subject to the requirements of this subpart with respect to any chemical substance described in § 710.45 that the person solely manufactured or imported under the following circumstances:

(a) The person manufactured or imported the chemical substance described in § 710.45 solely in small quantities for research and development.

(b) The person imported the chemical substance described in § 710.45 as part of an article.

(c) The person manufactured the chemical substance described in § 710.45 in a manner described in § 720.30(g) or (h) of this chapter.

§ 710.52 Reporting information to EPA.

Any person who must report under this subpart, as described in § 710.48, must submit the information described in this section for each chemical substance described in § 710.45 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lbs. (11,340 kg) or more at any one site during calendar year 2005 or during the calendar year at 4–year intervals thereafter. (See § 710.48(b) for the "site" for importers). A separate form must be submitted for each chemical substance at each site for which the submitter is required to report. A submitter of information under this subpart must report information as described in paragraphs (c)(1), (c)(2), and (c)(3) of this section to the extent that such information is *known to or reasonably ascertainable by* that person whereas a submitter must report information as described in paragraph (c)(4) of this section only to the extent that such information is *readily obtainable* by that person. A submitter under this subpart must report information that applies to the calendar year for which the person is required to report (i.e., calendar year 2005 and the calendar year at 4–year intervals thereafter).

(a) *Reporting in writing.* Any person who chooses to report information to EPA in writing must do so by completing the reporting form available from EPA at the address set forth in § 710.59. The form must include all information described in paragraph (c) of this section. Persons reporting in writing must submit a separate form for each site for which the person is required to report.

(b) *Reporting by magnetic media.* Any person who chooses to report information to EPA by means of magnetic media must submit the information described in paragraph (c) of this section. Magnetic media submitted in response to this subpart must meet EPA specifications, as described in the instruction booklet available from EPA at the address set forth in § 710.59.

(c) *Information to be reported.* Manufacturers (including importers) of a reportable chemical substance in an amount of 25,000 lbs. (11,340 kg) or more at a site during a reporting year must report the information described in paragraphs (c)(1), (c)(2), and (c)(3) of this section. Manufacturers (including importers) of a reportable chemical substance in an amount of 300,000 lbs. (136,077 kg) or more at a site during a reporting year must report the information described in paragraph (c)(4) of this section in addition to the information described in paragraphs (c)(1), (c)(2), and (c)(3) of this section. As described in § 710.46(b)(3), manufacturers of certain inorganic chemical substances are not required to report the information described in paragraph (c)(4) of this section during the 2006 submission period, but are required to report this information during subsequent submission periods. As described in § 710.46(b)(1) and (b)(2), manufacturers of certain chemicals are not required to report the information described in paragraph (c)(4) of this section.

(1) *A certification statement signed and dated by an authorized official of the submitter company.* Persons reporting by means of magnetic media must submit this information on the reporting form available as described in § 710.59.

(2) *Company and plant site information.* The following company and plant site information must be reported for each site at which at least 25,000 lbs. (11,340 kg) of a reportable chemical substance is manufactured (including imported) during calendar year 2005 or during the calendar year at 4–year intervals thereafter (see § 710.48(b) for the "site" for importers):

(i) The name of a person who will serve as technical contact for the submitter company, and who will be able to answer questions about the information submitted by the company to EPA, the parent company name and Dun and Bradstreet Number, the contact person's full mailing address, the contact person's telephone number and the contact person's e-mail address.

(ii) The name and full street address of each site. A submitter under this subpart must include the appropriate Dun and Bradstreet Number for each plant site reported, and the county or parish (or other jurisdictional indicator) in which the plant site is located.

(3) *Specific information for chemicals manufactured in amounts of 25,000 lbs. or more.* The following chemical-specific information must be reported for each reportable chemical substance manufactured at (including imported into) each site in amounts of 25,000 lbs. (11,340 kg) or more during calendar year 2005 or during the calendar year at 4–year intervals thereafter:

(i) The specific chemical name and CAS Number of each reportable chemical substance at each site. A submitter under this subpart may use an EPA-designated Accession Number for confidential substances, or a premanufacture notice (PMN) case number (see § 720.65 of this chapter) in lieu of a CAS Number when a CAS Number is not known to or reasonably ascertainable by the submitter. In addition to reporting the number itself, submitters must specify the type of number they are reporting by selecting from among the following codes:

CODES TO SPECIFY TYPE OF CHEMICAL IDENTIFYING NUMBER

Codes	Number Type
A	Accession Number
C	CAS Registry Number
P	PMN Number

(ii) A statement indicating, for each reportable chemical substance at each site, whether the substance is manufactured in the United States, imported into the United States, or both manufactured in the United States and imported into the United States.

(iii) A designation indicating, for each reportable chemical substance at each site, whether the substance is site-limited.

(iv) The total volume (in pounds) of each reportable chemical substance manufactured (including imported) at each site. This amount must be reported to two significant figures of accuracy provided that the reported figures are within plus or minus 10% of the actual volume.

(v) Any person claiming that the volume reported under paragraph (c)(3)(iv) of this section is confidential

business information under § 710.58 must indicate, for each reportable chemical substance at each site, whether the total volume range (in pounds) which corresponds with the specific volume figure reported in response to paragraph (c)(3)(iv) of this section is also confidential. Volume ranges are listed in the following table:

VOLUME RANGES

From	To
25,000 lbs.	300,000 lbs.
300,000 lbs.	1,000,000 lbs.
1,000,000 lbs.	10,000,000 lbs.
10,000,000 lbs.	50,000,000 lbs.
50,000,000 lbs.	100,000,000 lbs.
100,000,000 lbs.	500,000,000 lbs.
500,000,000 lbs.	1,000,000,000 lbs.
Greater than 1,000,000,000 lbs..	

(vi) The total number of workers reasonably likely to be exposed to each reportable chemical substance at each site. For each reportable substance at each site, the submitter must select from among the ranges of workers listed in the following table and report the corresponding code (i.e., W1 through W8):

CODES FOR REPORTING NUMBER OF WORKERS REASONABLY LIKELY TO BE EXPOSED

Codes	Range
W1	Less than 10 workers
W2	At least 10 but less than 25 workers
W3	At least 25 but less than 50 workers
W4	At least 50 but less than 100 workers
W5	At least 100 but less than 500 workers
W6	At least 500 but less than 1,000 workers
W7	At least 1,000 but less than 10,000 workers
W8	At least 10,000 workers

(vii) The maximum concentration, measured by percentage of weight, of each reportable chemical substance at the time it is sent off-site from each site. If the chemical is site-limited, you must report the maximum concentration, measured by percentage of weight, of the reportable chemical substance at the time it is reacted on-site to produce a different chemical substance. This information must be reported regardless of the physical form(s) in which the substance is sent off-site/reacted on-site. For each substance at each site, select the maximum concentration of the substance from among the ranges listed in the following table and report the corresponding code (i.e., M1 through M5):

CODES FOR REPORTING MAXIMUM CONCENTRATION OF CHEMICAL SUBSTANCE

Codes	Concentration Range (% weight)
M1	Less than 1% by weight
M2	From 1 to 30% by weight
M3	From 31 to 60% by weight
M4	From 61 to 90% by weight
M5	Greater than 90% by weight

(viii) The physical form(s) of the reportable chemical substance as it is sent off-site from each site. If the chemical is site-limited, you must report the physical form(s) of the reportable chemical substance at the time it is reacted on-site to produce a different chemical substance. For each substance at each site, the submitter must report as many physical forms as apply from among the physical forms listed below:

(A) Dry powder.
(B) Pellets or large crystals.
(C) Water- or solvent-wet solid.
(D) Other solid.
(E) Gas or vapor.
(F) Liquid.

(ix) Submitters must report the percentage, rounded off to the closest 10%, of total production volume of the reportable chemical substance, reported in response to paragraph (c)(3)(iv) of this section, that is associated with each physical form reported under paragraph (c)(3)(viii) of this section. The sum of the percentages reported must not add up to more than 100%.

(4) Specific information for chemical substances manufactured in amounts of 300,000 lbs. or more. In addition to the information required under paragraphs (c)(1), (c)(2), and (c)(3) of this section, the following information must be reported for each reportable chemical substance manufactured (including imported) in an amount of 300,000 lbs. (136,077 kg) or more at any one site during calendar year 2005 or during the calendar year at 4–year intervals thereafter. Persons subject to paragraph (c)(4) of this section must report the information described in paragraphs (c)(4)(i) and (c)(4)(ii) of this section for each reportable chemical substance at sites under their control and at sites that receive a reportable chemical substance from the submitter directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.). Information reported in response to this paragraph must be reported only to the extent that it is readily obtainable by the submitter. If information responsive to a given data requirement under this paragraph, including information in the form of an estimate, is not readily obtainable, the submitter is not required to respond to the requirement.

(i) Industrial processing and use information.

(A) A designation indicating the type of industrial processing or use operation(s) at each site that receives a reportable substance from the submitter site directly or indirectly (whether the recipient site(s) are controlled by the submitter site or not). For each chemical substance, report the letters which correspond to the appropriate processing or use operation(s). A particular designation may need to be reported more than once, to the extent that a submitter reports more than one NAICS code (under paragraph (c)(4)(i)(B) of this section) that applies to a given designation under this paragraph.

Designation	Operation
PC	Processing as a reactant
PF	Processing - incorporation into formulation, mixture or reaction product
PA	Processing - incorporation into article
PK	Processing - repackaging
U	Use - non-incorporative activities

(B) The five-digit North American Industrial Classification System (NAICS) codes which best describe the industrial activities associated with each industrial processing or use operation reported under paragraph (c)(4)(i)(A) of this section. Information about how to find these codes is provided in the instruction booklet available from EPA at the address set forth in § 710.59. A particular NAICS code may need to be reported more than once, to the extent that a submitter reports more than one industrial function code (under paragraph (c)(4)(i)(C) of this section) that applies to a given NAICS code under this paragraph.

(C) For each NAICS code reported under paragraph (c)(4)(i)(B) of this section, code(s) from the following list must be selected to designate the industrial function category(ies) that best represents the specific manner in which the chemical substance is used. A particular industrial function category may need to be reported more than once, to the extent that a submitter reports more than one industrial processing or use operation/NAICS code

combination (under paragraphs (c)(4)(i)(A) and (c)(4)(i)(B) of this section) that applies to a given industrial function category under this paragraph. If more than 10 unique combinations of industrial processing or use operations/NAICS codes/industrial function categories apply to a chemical substance, submitters need only report the 10 unique combinations for the chemical substance that cumulatively represent the largest percentage of the submitter's production volume for that chemical, measured by weight.

CODES FOR REPORTING INDUSTRIAL FUNCTION CATEGORIES

Codes	Category
U01	Adsorbents and absorbents
U02	Adhesives and binding agents
U03	Aerosol propellants
U04	Agricultural chemicals (non-pesticidal)
U05	Anti-adhesive agents
U06	Bleaching agents
U07	Coloring agents, dyes
U08	Coloring agents, pigments
U09	Corrosion inhibitors and anti-scaling agents
U10	Fillers
U11	Fixing agents
U12	Flame retardants
U13	Flotation agents
U14	Fuels
U15	Functional fluids
U16	Intermediates
U17	Lubricants
U18	Odor agents
U19	Oxidizing agents
U20	pH-regulating agents
U21	Photosensitive chemicals
U22	Plating agents and metal surface treating agents
U23	Processing aid, not otherwise listed
U24	Process regulators, used in vulcanization or polymerization processes
U25	Process regulators, other than polymerization or vulcanization processes
U26	Reducing agents
U27	Solvents (for cleaning or degreasing)
U28	Solvents (which become part of product formulation or mixture)
U29	Solvents (for chemical manufacture and processing and are not part of product at greater than one percent by weight)
U30	Stabilizers
U31	Surface active agents
U32	Viscosity adjustors
U33	Other

(D) The estimated percentage, rounded off to the closest 10%, of total production volume of the reportable chemical substance associated with each combination of industrial processing or use operation, NAICS code and industrial function category. Where a particular combination of industrial processing or use operation, NAICS code and industrial function category accounts for 5% or less of the submitter's site's total production volume of a reportable chemical substance, the percentage must not be rounded off to zero % if the production volume attributable to that industrial processing or use operation, NAICS code and industrial function category combination is 300,000 lbs. (136,077 kg) or more during the reporting year. Instead, in such a case, submitters must report the percentage, rounded off to the closest 1%, of the submitter's site's total production volume of the reportable chemical substance associated with the particular combination of industrial processing or use operation, NAICS code and industrial function category.

(E) For each combination of industrial processing or use operation, NAICS code and industrial function category, the submitter must estimate the number of sites at which each reportable chemical substance is processed or used. For each combination associated with each substance, the submitter must select from among the ranges of sites listed in the following table and report the corresponding code (i.e., S1 through S7):

CODES FOR REPORTING NUMBERS OF SITES

Codes	Range
S1	Less than 10 sites
S2	From 10 to 25 sites
S3	From 25 to 100 sites
S4	From 100 to 250 sites
S5	From 250 to 1,000 sites
S6	From 1,000 to 10,000 sites
S7	More than 10,000 sites

(F) For each combination of industrial processing or use operation, NAICS code and industrial function category, the submitter must estimate the number of workers reasonably likely to be exposed to each reportable chemical substance. For each combination associated with each substance, the submitter must select from among the worker ranges listed in paragraph (c)(3)(vi) of this section and report the corresponding code (i.e., W1 though W8).

(ii) *Commercial and consumer use information.*

(A) Using the codes listed in this paragraph, submitters must designate the commercial and consumer product category or categories that best describe the commercial and consumer products in which each reportable chemical substance is used (whether the recipient site(s) are controlled by the submitter site or not). If more than 10 codes apply to a chemical substance, submitters need only report the 10 codes for the chemical substance that cumulatively represent the largest percentage of the submitter's production volume for that chemical, measured by weight:

CODES FOR REPORTING COMMERCIAL AND CONSUMER PRODUCT CATEGORIES

Codes	Category
C01	Artists' supplies
C02	Adhesives and sealants
C03	Automotive care products
C04	Electrical and electronic products
C05	Glass and ceramic products
C06	Fabrics, textiles and apparel
C07	Lawn and garden products (non-pesticidal)
C08	Leather products
C09	Lubricants, greases and fuel additives
C10	Metal products
C11	Paper products
C12	Paints and coatings
C13	Photographic chemicals
C14	Polishes and sanitation goods
C15	Rubber and plastic products
C16	Soaps and detergents
C17	Transportation products
C18	Wood and wood furniture
C19	Other

(B) Submitters must determine, within each commercial and consumer product category reported under paragraph (c)(4)(ii)(A) of this section, whether any amount of each reportable chemical substance manufactured (including imported) by the submitter is present in (for example, a plasticizer chemical used to make pacifiers) or on (for example, as a component in the paint on a toy) any consumer products intended for use by children up to the age of 14, regardless of the concentration of the substance remaining in or on the product. Submitters must select from the following options: the chemical substance is used in or on any consumer products intended for use by children, the chemical substance is not used in or on any consumer products intended for use by children, or information as to whether the chemical substance is used in or on any consumer products intended for use by children is not readily obtainable.

(C) The estimated percentage, rounded off to the closest 10%, of the submitter's site's total production volume of the reportable chemical substance associated with each commercial and consumer product

category. Where a particular commercial and consumer product category accounts for 5% or less of the total production volume of a reportable chemical substance, the percentage must not be rounded off to zero % if the production volume attributable to that commercial and consumer product category is 300,000 lbs. (136,077 kg) or more during the reporting year. Instead, in such a case, submitters must report the percentage, rounded off to the closest 1%, of the submitter's site's total production volume of the reportable chemical substance associated with the particular commercial and consumer product category.

(D) Where the reportable chemical substance is used in commercial or consumer products, the estimated typical maximum concentration, measured by weight, of the chemical substance in each commercial and consumer product category reported under paragraph (c)(4)(ii)(A) of this section. For each substance in each commercial and consumer product category reported under paragraph (c)(4)(ii)(A) of this section, submitters must select from among the ranges of concentrations listed in the table in paragraph (c)(3)(vii) of this section and report the corresponding code (i.e., M1 through M5).

§ 710.53 When to report.

All information reported to EPA in response to the requirements of this subpart must be submitted during an applicable submission period. The first submission period is from August 25, 2006, to December 23, 2006. Subsequent recurring submission periods are from August 25 to December 23 at 4–year intervals after the first submission period. Any person described in § 710.48(a) must report during each submission period for each chemical substance described in § 710.45 that the person manufactured (including imported) during the preceding calendar year (i.e., the "reporting year").

§ 710.55 Duplicative reporting.

(a) *With regard to section 8(a) rules.* Any person subject to the requirements of this part who previously has complied with reporting requirements of a rule under section 8(a) of the Act by submitting the information described in § 710.52 for a chemical substance described in § 710.45 to EPA, and has done so within 1 year of the start of a submission period described in § 710.53, is not required to report again on the manufacture of that substance at that site during that submission period.

(b) *With regard to importers.* This part requires that only one report be submitted on each import transaction involving a chemical substance described in § 710.45. When two or more persons are involved in a particular import transaction and each person meets the Agency's definition of "importer" as set forth in § § 710.3 and 704.3 of this chapter, they may determine among themselves who should submit the required report; if no report is submitted as required under this part, EPA will hold each such person liable for failure to report.

§ 710.57 Recordkeeping requirements.

Each person who is subject to the reporting requirements of this subpart must maintain records that document any information reported to EPA. Records relevant to reporting during a submission period must be retained for a period of 5 years beginning with the effective date of that submission period.

§ 710.58 Confidentiality.

(a) Any person submitting information under this subpart may assert a business confidentiality claim for the information at the time it is submitted. These claims will apply only to the information submitted with the claim. New confidentiality claims, if necessary, must be asserted with regard to information submitted during the next submission period. Guidance for asserting confidentiality claims is provided in the instruction booklet identified in § 710.59. Information claimed as confidential in accordance with this section will be treated and disclosed in accordance with the procedures in part 2 of this chapter.

(b) Chemical identity. A person may assert a claim of confidentiality for the chemical identity of a specific chemical substance only if the identity of that substance is treated as confidential in the Master Inventory File as of the time the report is submitted for that substance under this subpart. The following steps must be taken to assert a claim of confidentiality for the identity of a reportable chemical substance:

(1) The submitter must submit with the report detailed written answers to the following questions signed and dated by an authorized official.

(i) What harmful effects to your competitive position, if any, do you think would result from the identity of the chemical substance being disclosed in connection with reporting under this subpart? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(ii) How long should confidential treatment be given? Until a specific date, the occurrence of a specific event, or permanently? Why?

(iii) Has the chemical substance been patented? If so, have you granted licenses to others with respect to the patent as it applies to the chemical substance? If the chemical substance has been patented and therefore disclosed through the patent, why should it be treated as confidential?

(iv) Has the identity of the chemical substance been kept confidential to the extent that your competitors do not know it is being manufactured or imported for a commercial purpose by anyone?

(v) Is the fact that the chemical substance is being manufactured (including imported) for a commercial purpose available to the public, for example in technical journals, libraries, or State, local, or Federal agency public files?

(vi) What measures have been taken to prevent undesired disclosure of the fact that the chemical substance is being manufactured (including imported) for a commercial purpose?

(vii) To what extent has the fact that this chemical substance is manufactured (including imported) for commercial purposes been revealed to others? What precautions have been taken regarding these disclosures? Have there been public disclosures or disclosures to competitors?

(viii) Does this particular chemical substance leave the site of manufacture (including import) in any form, e.g., as product, effluent, emission? If so, what measures have been taken to guard against the discovery of its identity?

(ix) If the chemical substance leaves the site in a product that is available to the public or your competitors, can the substance be identified by analysis of the product?

(x) For what purpose do you manufacture (including import) the substance?

(xi) Has EPA, another Federal agency, or any Federal court made any pertinent confidentiality determinations regarding this chemical substance? If so, please attach copies of such determinations.

(2) If any of the information contained in the answers to the questions listed in paragraph (b)(1) of this section is asserted to contain confidential business information, the submitter must clearly identify the information that is claimed confidential by marking the specific information on each page with a label such as "confidential business information," "proprietary," or "trade secret."

(c) Site identity. A submitter may assert a claim of confidentiality for a site only if the linkage of the site with a reportable chemical is confidential and not publicly available. The following steps must be taken to assert a claim of confidentiality for a site identity:

(1) The submitter must submit with the report detailed written answers to the following questions signed and dated by an authorized official:

(i) Has site information been linked with a chemical identity in any other Federal, state or local reporting scheme? For example, is the chemical identity linked to a facility in a filing under the Emergency Planning and Community Right-to-Know Act (EPCRA) section 311, namely through a Material Safety Data Sheet (MSDS)? If so, identify all such schemes. Was the linkage claimed as confidential in any of these instances?

(ii) What harmful effect, if any, to your competitive position do you think would result from the identity of the site and the chemical substance being disclosed in connection with reporting under this subpart? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(2) If any of the information contained in the answers to the questions listed in paragraph (c)(1) of this section is asserted to contain confidential business information, the submitter must clearly identify the information that is claimed confidential by marking the specific information on each page with a label such as "confidential business information," "proprietary," or "trade secret."

(d) If no claim of confidentiality is indicated on the reporting form submitted to EPA under this subpart, or if confidentiality claim substantiation required under paragraphs (c) and (d) of this section is not submitted with the reporting form, EPA may make the information available to the public without further notice to the submitter.

§ 710.59 Availability of reporting form and instructions.

(a) *Use the proper EPA form.* You must use the EPA form identified as "Form U" to submit written information in response to the requirements of this subpart. Copies of Form U are available from EPA at the address set forth in paragraph (c) of this section and from the EPA Internet Home Page at http://www.epa.gov/oppt/iur.

(b) *Follow the reporting instructions.* Guidance for completing the reporting form and preparing an electronic (magnetic media) report will be made available prior to each submission period.

(c) *Obtain the reporting package and copies of the form.* EPA will send a reporting package (consisting of a copy of Form U and a copy of the reporting instructions) to those submitters that reported in the IUR submission period that occurred immediately prior to the current submission period. Failure to receive a reporting package does not obviate or otherwise affect the requirement to submit a timely report. If you did not receive a reporting package, but are required to report, you may obtain a copy of the reporting package from EPA by submitting a request for this information as follows:

(1) *By telephone.* Call the EPA TSCA Hotline at 202–554–1404.

(2) *By e-mail.* Send an e-mail request for this information to the EPA TSCA Hotline at TSCA-Hotline@epa.gov.

(3) *By mail.* Send a written request for this information to the following address: TSCA Hotline, Mailcode 7408M, ATTN: Inventory Update Rule, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(4) *By Internet.* To download a copy of the form and/or instructions go to: http://www.epa.gov/oppt/iur.

(d) *Submit the completed reports.* You must submit your completed reporting form(s) and/or magnetic media to EPA at the following address: OPPT Document Control Officer (DCO), Mailcode 7407M, ATTN: Inventory Update Rule, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. Part 723 is amended as follows:

PART 723—[AMENDED]

a. The authority citation for part 723 continues to read as follows:

Authority: 15 U.S.C. 2604.

b. In § 723.175, revise paragraph (b)(3) to read as follows:

§ 723.175 Premanufacture Notification Exemptions

* * * * *

(b) Definitions. * * *

(3) The terms *byproduct*, *EPA*, *impurities*, *person*, and *site* have the same meanings as in § 710.3 of this chapter.

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[FR Doc. 02–32909 Filed 12–31–02; 9:56 am]

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Federal Register

Tuesday,
January 7, 2003

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Final Rule and Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021209299–2299–01; I.D. 112502B]

RIN 0648–AQ19

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule; groundfish fishery management measures for January through February 2003; request for comments.

SUMMARY: NMFS announces the January through February 2003 management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California. Management measures for January through February 2003 are intended to prevent overfishing; rebuild overfished species; minimize incidental catch and discard of overfished and depleted stocks; provide equitable harvest opportunity for both recreational and commercial sectors; and, within the commercial fisheries, allow achievement of harvest guidelines and limited entry and open access allocations to the extent practicable.

DATES: Effective January 1, 2003, through February 28, 2003. Comments must be received no later than 5 p.m, local time (l.t.) on February 6, 2003.

ADDRESSES: Send comments to D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070, or fax to 206–526–6736; or Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or fax to 562–980–4047. Comments will not be accepted if submitted via e-mail or Internet. Information relevant to this rule, which includes environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR), is available for public review during business hours at the office the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Additional reports referred to in this document may also be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov*, *becky.renko@noaa.gov* or Svein Fougner (Southwest Region, NMFS) phone: 562–980–4000; fax: 562–980–4047 and; e-mail: *svein.fougner@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This emergency rule also is accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region website at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Council's website at *http://www.pcouncil.org*.

Background

The Pacific Coast groundfish fishery management plan (FMP) requires that fishery specifications for groundfish be annually evaluated, and revised as necessary, that optimum yields (OYs) be specified for species or species groups in need of particular protection, and that management measures designed to achieve the OYs be published in the **Federal Register** and made effective by January 1, the beginning of the fishing year. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks.

Throughout 2002, the Council has been developing revisions to its specifications and management measures process, through proposed Amendment 17 to the FMP. Among other procedural changes, Amendment 17 would revise the NMFS publication process for the specifications and management measures. Historically, the Council has developed annual specifications and management measures in a public two-meeting process (formerly at its September and November meetings) followed by a NMFS final action published in the **Federal Register** and made available for public comment and correction after the effective date of the action. Each year, specifications and management measures were effective until the specifications and management measures for the following year are published and effective. In 2001, the agency was challenged on this process in *Natural Resources Defense Council, Inc.* v.*Evans*, 168 F.Supp. 2d 1149 (N.D.Cal., 2001) and the Court ordered NMFS to provide prior public notice and allow public comment on the annual specifications.

Amendment 17 was recently adopted by the Council, but has not yet been submitted for NMFS for approval. NMFS must still comply with the Court's Order for a public notice and comment period on the 2003 specifications and management measures. The Council had its initial meeting regarding these measures in June, and finalized its 2003 specifications and management measures recommendations at its September 9–13, 2002, meeting in Portland, OR. The Council could not act earlier in the year because the new science upon which the specifications and management measures were based was not ready until June. For 2003, the Council has recommended implementing depth-based management measures, with large closed areas intended to prevent vessels from operating in waters where overfished species are commonly found. NMFS and the Council felt that these management changes were significant enough to warrant analysis via an environmental impact statement (EIS). An EIS is a National Environmental Policy Act (NEPA) analysis document that requires a series of public review and comment periods at different document drafting stages. Given the complexity of the annual specifications and management measures package and the need for EIS-related public review periods, NMFS did not have enough time to publish a proposed rule on the Council's recommendations, receive public comments, and implement a final rule by January 1, 2003. Thus, NMFS is publishing this emergency rule under the Magnuson-Stevens Act emergency authority at section 305(c), which finalizes and makes effective the groundfish management measures for January 1 through February 28, 2003.

Absent a final rule by January 1, 2003, management measures for January and February 2003 would revert to those that were in place for January-February 2002. There are several species for which reverting to a management regime without depth-based closures at the beginning of the year could result in either exceeding the annual commercial OYs or very early attainment of OYs during the year. While these circumstances could jeopardize manager's ability to keep landings within rebuilding targets for some species, they could also lead to significant foregone revenue from other

target species whose fisheries might also have to be closed prematurely.

NMFS implemented an emergency rule on September 10, 2002 (67 FR 57973, September 13, 2002), that opened trawling north of 40°10′ N. lat. inshore of 100 fm (183 m) and offshore of 250 fm (457 m), while leaving a large area closed to protect overfished species. Without these depth-based management measures, the northern trawl fishery would have closed entirely for September-December 2002 in order to protect darkblotched rockfish, an overfished species. NMFS expects that failing to implement depth-based management measures for January-February 2003 could similarly jeopardize fisheries participation later in the fishing year.

Specifications and management measures proposed for March-December 2003 in the Proposed Rules section of this issue of the **Federal Register** combined with this emergency rule are intended to protect overfished groundfish species while allowing harvesters some access to healthy groundfish stocks. Specifications and management measures proposed for 2003 in the Proposed Rule section of this issue of the **Federal Register** are designed to rebuild overfished stocks through constraining direct and incidental mortality and areas of fishing operation to prevent overfishing, and to achieve as much of the OYs as practicable for healthier groundfish stocks managed under the FMP. That proposed rule describes the rationale for the 2003 groundfish management measures, which include trip, bag and size limits, time/area closures, and gear- and area-specific regulations, including the management measures implemented in this emergency rule.

The Council adopted Amendment 17 during its October 28 - November 1, 2002, meeting in Foster City, CA. With that schedule, NMFS expects to review Amendment 17 for final implementation in early 2003, which will formalize a rulemaking process that will allow adequate time for both the Council's recommendations development and NEPA process and NMFS notice and comment process on specifications and management measure packages. These anticipated process changes should reduce the need for future management measure implementation via emergency rule.

IV. NMFS Actions

For the reasons stated above, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator or AA), concurs with the Council's recommendations and announces the following management actions for January 1 through February 28, 2003.

A. General Definitions and Provisions

The following definitions and provisions apply to the 2003 management measures, unless otherwise specified in a subsequent **Federal Register** document:

(1) *Trip limits.* Trip limits are used in the commercial fishery to specify the amount of fish that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as follows:

(a) A per-trip limit is the total allowable amount of a groundfish species or species group, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(b) A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours l.t. Only one landing of groundfish may be made in that 24–hour period. Daily trip limits may not be accumulated during multiple day trips.

(c) A weekly trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 7 consecutive days, starting at 0001 hours l.t. on Sunday and ending at 2400 hours l.t. on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week includes days within two different months, a vessel is not entitled to two separate weekly limits during that week.

(d) A cumulative trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time without a limit on the number of landings or trips, unless otherwise specified. The cumulative trip limit periods for limited entry and open access fisheries, which start at 0001 hours l.t. and end at 2400 hours l.t., are as follows, unless otherwise specified:

(i) The 2–month periods are: January 1–February 28, March 1–April 30, May 1–June 30, July 1–August 31, September 1–October 31, and, November 1–December 31.

(ii) One month means the first day through the last day of the calendar month.

(iii) One week means 7 consecutive days, Sunday through Saturday.

(2) *Fishing ahead.* Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. As stated at 50 CFR 660.302 (in the definition of "Landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing. Fishing ahead is not allowed during or before a closed period (see paragraph A.(7)). See paragraph A.(9) for information on inseason changes to limits.

(3) *Weights.* All weights are round weights or round-weight equivalents unless otherwise specified.

(4) *Percentages.* Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) *Legal fish.* "Legal fish" means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660, the Magnuson-Stevens Act, any document issued under part 660, and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

(6) *Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the "total length," which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the state where the fish will be landed.

(a) *Whole fish.* For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(b) *"Headed" fish.* For a fish with the head removed ("headed"), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(c) *Filets.* A filet is the flesh from one side of a fish extending from the head to the tail, which has been removed from the body (head, tail, and backbone) in a single continuous piece. Filet lengths may be subject to size limits for some groundfish taken in the recreational fishery off California (see paragraph D.(1)). A filet is measured along the length of the longest part of the filet in a relaxed position; stretching or otherwise manipulating the filet to increase its length is not permitted.

(d) *Sablefish weight limit conversions.* The following conversions apply to both

the limited entry and open access fisheries when trip limits are effective for those fisheries. For headed and gutted (eviscerated) sablefish:

(i) The minimum size for headed sablefish, which corresponds to 20 inches (51 cm) tl for whole fish, is 14 inches (36 cm).

(ii) The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the state conversion factors may differ; fishers should contact fishery enforcement officials in the State where the fish will be landed to determine that State's official conversion factor.)

(e) *Lingcod size and weight conversions.* The following conversions apply in both limited entry and open access fisheries.

(i) *Size conversion.* For lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(ii) *Weight conversion.* The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The states' conversion factors may differ, and fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.) If a state does not have a conversion factor for headed and gutted lingcod, or lingcod that is only gutted; the following conversion factors will be used. To determine the round weight, multiply the processed weight times the conversion factor.

(A) *Headed and gutted.* The conversion factor for headed and gutted lingcod is 1.5.

(B) *Gutted, with the head on.* The conversion factor for lingcod that has only been gutted is 1.1.

(7) *Closure.* "Closure," when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See 50 CFR 660.302.) Unless otherwise announced in the **Federal Register**, offloading must begin before the time the fishery closes. The provisions at paragraph A.(2) for fishing ahead do not apply during a closed period. It is unlawful to transit through a closed area with the prohibited species on board, no matter where that species was caught, except as provided for in the CCA at A.(19).

(8) *Fishery management area.* The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed between 0–200 nm offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

(9) *Routine management measures.* Most trip, bag, and size limits, and area closures in the groundfish fishery have been designated "routine," which means they may be changed rapidly after a single Council meeting. (See 50 CFR 660.323(b)). Council meetings in 2002 will be held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register**. Information concerning changes to routine management measures is available from the NMFS Northwest and Southwest Regional Offices (see **ADDRESSES**). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect.

(10) *Limited entry limits.* It is unlawful for any person to take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish (50 CFR 660.306(p)).

(11) *Operating in both limited entry and open access fisheries.* The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit cannot be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(12) *Operating in areas with different trip limits.* Trip limits for a species or a species group may differ in different geographic areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (see 50 CFR 660.323(a)(1)). In 2003, the cumulative trip limit periods for the limited entry and open access fisheries are specified in paragraph A(1)(d), but may be changed during the year if announced in the **Federal Register**.

(a) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(b) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(c) *Operating in two different areas where a species or species group is managed with different types of trip limits.* During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(d) *Minor rockfish.* Several rockfish species are designated with species-specific limits on one side of the 40°10′ N. lat. management line, and are

included as part of a minor rockfish complex on the other side of the line.

(i) If a vessel takes and retains minor slope rockfish north of 38° N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 38° N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 38° N. lat. [Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative-limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.]

(ii) If a vessel takes and retains minor slope rockfish south of 38° N. lat., that vessel is also permitted to take and retain, possess or land Pacific ocean perch (POP) up to its cumulative limit north of 38° N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 38° N. lat. [Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.]

(iii) If a vessel takes and retains minor shelf rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess, or land yellowtail rockfish up to its cumulative limits north of 40°10′ N. lat., even if yellowtail rockfish is part of the landings from minor shelf rockfish taken and retained south of 40°10′ N. lat. Widow rockfish is included in overall shelf rockfish limits for all gear groups. [Note: A vessel that takes and retains minor shelf rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor shelf rockfish during that period.]

(e) *"DTS complex."* For 2003, there are differential trip limits for the "DTS complex" (Dover sole, shortspine thornyhead, longspine thornyhead, sablefish) north and south of the management line at 40°10′ N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph A.(12) when making landings that include any one of the four species in the "DTS complex."

(f) *Flatfish complex.* For 2003, there are differential trip limits for the flatfish complex (butter, curlfin, English, flathead, petrale, rex, rock, and sand soles, Pacific sanddab, and starry flounder) north and south of the management line at 40°10′ N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph A.(12) when making landings that include any one of the species in the flatfish complex.

(13) *Sorting.* It is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or commercial OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, commercial optimum yield, or quota applied." This provision applies to both the limited entry and open access fisheries (see 50 CFR 660.306(h).) The following species must be sorted in 2003:

(a) For vessels with a limited entry permit:

(i) Coastwide widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, rex sole, petrale sole, arrowtooth flounder, other flatfish, lingcod, sablefish, and Pacific whiting [Note: Although both yelloweye and darkblotched rockfish are considered minor rockfish managed under the minor shelf and minor slope rockfish complexes, respectively, they have separate OYs and therefore must be sorted by species.]

(ii) North of 40°10′ N. lat.- POP, yellowtail rockfish, and, for fixed gear, black rockfish and blue rockfish;

(iii) South of 40°10′ N. lat.- minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, and Pacific sanddabs.

(b) For open access vessels (vessels without a limited entry permit):

(i) Coastwide-widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, Dover sole, arrowtooth flounder, petrale sole, rex sole, other flatfish, lingcod, sablefish, Pacific whiting, and Pacific sanddabs;

(ii) North of 40°10′ N. lat.- black rockfish, blue rockfish, POP, yellowtail rockfish;

(iii) South of 40°10′ N. lat.- minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish;

(iv) South of Point Conception--thornyheads.

(14) *Limited Entry Trawl Gear Restrictions.* Limited entry trip limits may vary depending on the type of trawl gear that is on board a vessel during a fishing trip: large footrope, small footrope, or midwater trawl gear. No more than one type of trawl gear may be on board during any single fishing trip.

(a) *Types of trawl gear*—Large footrope, small footrope, and midwater or pelagic trawl gears are defined at 50 CFR 660.302 and 660.322(b).

(b) *Cumulative trip limits and prohibitions by trawl gear type*—(i) *Large footrope trawl.* If Table 3 does not provide a large footrope trawl cumulative or trip limit for a particular species or species group, it is unlawful to take and retain, possess or land that species or species group if large footrope gear is on board. It is unlawful for any vessel using large footrope gear to exceed large footrope gear limits for any species or to use large footrope gear to exceed small footrope gear or midwater trawl gear limits for any species. It is unlawful for any vessel using large footrope gear or that has large footrope trawl gear on board to fish for groundfish shoreward of the Rockfish Conservation Areas (RCAs) defined at paragraph (19) of this section. The presence of rollers or bobbins larger than 8 inches (20 cm) in diameter on board the vessel, even if not attached to a trawl, will be considered to mean a large footrope trawl is on board.

(ii) *Small footrope or midwater trawl gear.* Cumulative trip limits for canary rockfish, chilipepper rockfish, widow rockfish, yellowtail rockfish, bocaccio, minor shelf rockfish, minor nearshore rockfish, and lingcod, as indicated in Table 3 under NMFS Actions, are allowed only if small footrope gear or midwater trawl gear is used, and if that gear meets the specifications in paragraphs A.(14).

(iii) *Midwater trawl gear.* Higher yellowtail and widow rockfish cumulative trip limits are available for limited entry vessels using midwater trawl gear. Each landing that contains yellowtail or widow rockfish is attributed to the gear on board with the most restrictive trip limit for those species. Landings attributed to small footrope trawl must not exceed the small footrope limit, and landings attributed to midwater trawl must not exceed the midwater trawl limit. If a vessel has landings attributed to both types of trawls during a cumulative trip limit period, all landings are counted toward the most restrictive gear-specific cumulative limit.

(iv) *More than one type of trawl gear on board; trawl gear and non-trawl gear on board.* The cumulative trip limits in Table 3 of Section IV must not be exceeded. For the first time in 2003, it is prohibited to have more than one type

of trawl gear on board. It is prohibited to have more than one type of limited entry trawl gear on board and it is prohibited to have both limited entry trawl gear and exempted trawl gear on board. It is also prohibited to have both trawl gear and non-trawl (limited entry or open access) gear on board at the same time.

(c) *State landing receipts.* Washington, Oregon, and California will require the type of trawl gear on board to be recorded on the State landing receipt(s) for each trip or on an attachment to the State landing receipt.

(d) *Gear inspection.* All trawl gear and trawl gear components, including unattached rollers or bobbins, must be readily accessible and made available for inspection at the request of an authorized officer. No trawl gear may be removed from the vessel prior to offloading. All footropes shall be uncovered and clearly visible except when in use for fishing.

(15) *Platooning—limited entry trawl vessels.* Limited entry trawl vessels are automatically in the "A" platoon, unless the "B" platoon is indicated on the limited entry permit. If a vessel is in the "A" platoon, its cumulative trip limit periods begin and end on the beginning and end of a calendar month as in the past. No more than one trawl permit may be registered to a vessel unless a permit is endorsed for both trawl and either longline or pot gear and is being stacked under § 660.335(c) for use in the limited entry fixed gear primary sablefish fishery. If a vessel is registered for use with more than one permit with a trawl endorsement through the fixed gear permit stacking program, then the vessel owner must designate one trawl-endorsed permit as his base trawl permit and may only fish in the platoon associated with that base trawl permit. If a limited entry trawl permit is authorized for the "B" platoon, then cumulative trip limit periods will begin on the 16th of the month (generally 2 weeks later than for the "A" platoon), unless otherwise specified.

(a) For a vessel in the "B" platoon, cumulative trip limit periods begin on the 16th of the month at 0001 hours, l.t., and end at 2400 hours, l.t., on the 15th of the month. Therefore, the management measures announced herein that are effective on January 1, 2003, for the "A" platoon will be effective on January 16, 2003, for the "B" platoon. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the "B" platoon, unless otherwise specified.

(b) A vessel authorized to operate in the "B" platoon may take and retain, but may not land, groundfish from January 1, 2003, through January 15, 2003.

(c) A vessel authorized to operate in the "B" platoon will have the same cumulative trip limits for the November 16, 2003, through December 31, 2003, period as a vessel operating in the "A" platoon has for the November 1, 2002, through December 31, 2002 period.

(16) *Permit transfers.* Limited entry permit transfers are to take effect no earlier than the first day of a major cumulative limit period following the day NMFS receives the transfer form and original permit (50 CFR 660.335(e)(3)). Those days in 2003 are January 1, March 1, May 1, July 1, September 1, and November 1, and are delayed by 15 days (starting on the 16th of a month) for the "B" platoon.

(17) *Exempted fisheries.* U.S. vessels operating under an exempted fishing permit (EFP) issued under 50 CFR part 600 are also subject to these restrictions, unless otherwise provided in the permit. EFPs may include the collecting of scientific samples of groundfish species that would otherwise be prohibited for retention.

(18) *Application of requirements.* Paragraphs B. and C. pertain to the commercial groundfish fishery, but not to Washington coastal tribal fisheries, which are described in Section V. The provisions in paragraphs B. and C. that are not covered under the headings "limited entry" or "open access" apply to all vessels in the commercial fishery that take and retain groundfish, unless otherwise stated. Paragraph D. pertains to the recreational fishery.

(19) *Rockfish Conservation Areas.* For 2003, the Council has introduced several RCAs and a Yelloweye Rockfish Conservation Area (YRCA) and has retained the Cowcod Conservation Area (CCAs) used in 2001 and 2002. Collectively, any geographically defined area where specific fishing activities are prohibited (closed) or otherwise restricted intended to protect a particular groundfish species or species group or intended to protect a complex of species is referred to as a Groundfish Conservation Area. The YRCA, the CCAs, and the larger depth-based RCAs are Groundfish Conservation Areas. Larger RCAs intended to protect a complex of species, such as overfished shelf rockfish species, have boundaries defined by a series of coordinates intended to approximate particular depth contours, such as 100 fm (183 m), 150 fm (274 m), 250 fm (457,) etc. Different gear types or fishing sectors may have RCAs with differing boundaries.

(a) *Yelloweye Rockfish Conservation Area.* Recreational fishing for groundfish is prohibited within the YRCA. It is unlawful for recreational fishing vessels to take, retain, possess, or land groundfish inside the YRCA. The YRCA is a C-shaped area off the northern Washington coast that is bound by straight lines connecting all of the following points in the order listed:

48°00′ N. lat.; 124°59′ W. long.;
48°00′ N. lat.; 125°18′ W. long.;
48°04′ N. lat.; 124°59′ W. long.;
48°04′ N. lat.; 125°18′ W. long.;
48°04′ N. lat.; 125°11′ W. long.;
48°04′ N. lat.; 125°18′ W. long.;
48°18′ N. lat.; 125°11′ W. long.;
48°18′ N. lat.; 125°18′ W. long.;
and connecting back to 48°00′ N. lat.; 124°59′ W. long.

(b) *Cowcod Conservation Areas.* The coordinates of the Cowcod Conservation Areas (CCAs) are defined at § 660.304(c). Recreational and commercial fishing for groundfish is prohibited within the CCAs, except that recreational and commercial fishing for rockfish and lingcod is permitted in waters inside 20 fathoms (36.9 m). It is unlawful to take and retain, possess, or land groundfish inside the CCAs, except for rockfish and lingcod taken in waters inside the 20–fathom (36.9 m) depth contour, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00′30" N. lat., and bounded on the south by the latitude line at 32°59′30" N. lat.

(c) *Limited entry trawl groundfish coastwide and open access exempted trawl south of 40°10′ N. lat. Conservation Area.*

(i) The trawl RCA is closed to limited entry groundfish trawl fishing coastwide and to open access exempted trawl fishing (except for pink shrimp trawling) south of 40°10′ N. lat. Fishing with limited entry groundfish trawl gear is prohibited within the trawl RCA north of 40°10′ N. lat, and fishing with any trawl gear is prohibited within the trawl RCA south of 40°10′ N. lat., unless that vessel is trawling for pink shrimp. Coastwide, it is unlawful to take and retain, possess, or land groundfish taken with limited entry groundfish trawl gear in the trawl RCA. South of 40°10′ N. lat., it is unlawful to take and retain, possess, or land any species of fish taken with any type of trawl gear in the trawl RCA. Trawl vessels may transit through the trawl RCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: (1) below deck; or (2) if the gear cannot readily be moved, in a secured and covered manner, detached from all

towing lines, so that it is rendered unusable for fishing; or (3) remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels fishing with midwater trawl gear for Pacific whiting during the primary whiting season or taking and retaining yellowtail rockfish or widow rockfish in association with Pacific whiting during the primary whiting season caught with midwater trawl gear or to taking and retaining yellowtail or widow rockfish with midwater trawl gear when midwater gear trip limits are authorized for those species (November-December 2003.) If a vessel fishes in an RCA, it may not participate in any fishing on that trip that is inconsistent with the restrictions that apply within the RCA. For example, if a vessel participates in the pink shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery outside of the RCA. Nothing in these Federal regulations supercede any State regulations that may prohibit trawling shoreward of the 3 nm State waters boundary line.

(ii) Between the U.S. border with Canada and 40°10′ N. lat., the trawl RCA is defined along an eastern, inshore boundary approximating 100 fm (183 m) in January through June and October through December, and approximating 75 fm (137 m) in July and August. Between 40°10′ N. lat. and 34°27′ N. lat., the trawl RCA is defined along an eastern, inshore boundary approximating 50 fm (91 m) in January and February and 60 fm (110 m) in March through December. Between 34°27′ N. lat. and the U.S. border with Mexico, along the mainland coast of California, the trawl RCA is defined along an eastern, inshore boundary approximating 100 fm (183 m) throughout the year. Between 34°27′ N. lat. and the U.S. border with Mexico, adjacent to the islands offshore of California, the trawl RCA is defined along an inshore boundary approximating 20 fm (37 m) throughout the year. Boundary coordinates are provided below at paragraph (e) of this section.

(iii) Between the U.S. border with Canada and 38° N. lat., the trawl RCA is defined along a western, offshore boundary approximating 250 fm (457 m) in March through October, and approximating 250 fm (457 m) with some modifications to provide open areas to allow winter petrale sole fishing in January, February, November, and December. Between 38° N. lat. and the U.S. border with Mexico, the trawl RCA is defined along a western, offshore boundary approximating 150 fm (274 m) throughout the year. Boundary coordinates are provided below at paragraph (e) of this section.

(d) *Non-trawl (limited entry fixed gear and open access nontrawl gears) Groundfish Conservation Area.*

(i) The non-trawl RCA is closed to non-trawl gear (limited entry or open access longline and pot or trap, open access hook-and-line, pot or trap, gillnet, set net, trammel net and spear) fishing for groundfish. Fishing with non-trawl gear is prohibited within the non-trawl gear RCA. It is unlawful to take and retain, possess, or land groundfish taken with non-trawl gear in the non-trawl gear RCA. Limited entry fixed gear and open access non-trawl gear vessels may transit through the non-trawl gear RCA, with or without groundfish on board. These restrictions do not apply to vessels fishing for species other than groundfish with non-trawl gear. If a vessel fishes in an RCA, it may not participate in any fishing on that trip that is inconsistent with the restrictions that apply within the RCA. For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA.

(ii) Between the U.S. border with Canada and 46°16′ N. lat., the non-trawl gear RCA extends to the shoreline. Between 46°16′ N. lat. and 40°10′ N. lat., the non-trawl gear RCA is defined along an eastern, inshore boundary approximating 27 fm (49 m) throughout the year. Between 40°10′ N. lat. and the U.S. border with Mexico, the non-trawl gear RCA is defined along an eastern, inshore boundary approximating 20 fm (37 m) throughout the year, except as provided for between Point Fermin (33°41′ N. lat.; 118°18′ W. long.) and the Newport South Jetty (33°36′ N .lat.; 117° 51′ W. long.) Between a line drawn due south from Point Fermin, CA (33°41′ N. lat.; 118°18′ W. long.) and a line drawn due west from the Newport South Jetty (33°36′ N .lat.; 117° 51′ W. long.,) vessels fishing with hook-and-line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m) in the months of July and August. Boundary coordinates are provided below at paragraph (e) of this section.

(iii) Between the U.S. border with Canada and 40°10′ N. lat., the non-trawl gear RCA is defined along a western, offshore boundary approximating 100 fm (183 m) throughout the year. Between 40°10′ N. lat. and the U.S. border with Mexico, the trawl RCA is defined along a western, offshore boundary approximating 150 fm (274 m) throughout the year. Boundary coordinates are provided below at paragraph (e) of this section.

(e) *RCA Boundary Coordinates.* Coordinates for the specific boundaries that approximate the depth contours selected for both trawl and non-trawl gear RCAs are provided here.

(i) The 27–fm (49–m) depth contour used between 46°16′ N. lat. and 40°10′ N. lat. as an eastern boundary for the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 46°16.00′ N. lat., 124°12.39′ W. long.;
(2) 46°14.85′ N. lat., 124°12.39′ W. long.;
(3) 46°3.95′ N. lat., 124°3.64′ W. long.;
(4) 45°43.14′ N. lat., 124°0.17′ W. long.;
(5) 45°23.33′ N. lat., 124°1.99′ W. long.;
(6) 45°9.54′ N. lat., 124°1.65′ W. long.;
(7) 44°39.99′ N. lat., 124°8.67′ W. long.;
(8) 44°20.86′ N. lat., 124°10.31′ W. long.;
(9) 43°37.11′ N. lat., 124°14.91′ W. long.;
(10) 43°27.54′ N. lat., 124°18.98′ W, long.;
(11) 43°20.68′ N. lat., 124°25.53′ W. long.;
(12) 43°15.08′ N. lat., 124°27.17′ W. long.;
(13) 43°6.89′ N. lat., 124°29.65′ W. long.;
(14) 43°1.02′ N. lat., 124°29.70′ W. long.;
(15) 42°52.67′ N. lat., 124°36.10′ W. long.;
(16) 42°45.96′ N. lat., 124°37.95′ W. long.;
(17) 42°45.80′ N. lat., 124°35.41′ W. long.;
(18) 42°38.46′ N. lat., 124°27.49′ W. long.;
(19) 42°35.29′ N. lat., 124°26.85′ W. long.;
(20) 42°31.49′ N. lat., 124°31.40′ W. long.;
(21) 42°29.06′ N. lat., 124°32.24′ W. long.;
(22) 42°14.26′ N. lat., 124°26.27′ W. long.;
(23) 42°4.86′ N. lat., 124°21.94′ W. long.;
(24) 42°0.10′ N. lat., 124°20.99′ W. long.;
(25) 42°0.00′ N. lat., 124°21.03′ W. long.;
(26) 41°56.33′ N. lat., 124°20.34′ W. long.;
(27) 41°50.93′ N. lat., 124°23.74′ W. long.;
(28) 41°41.83′ N. lat., 124°16.99′ W. long.;
(29) 41°35.48′ N. lat., 124°16.35′ W. long.;

(30) 41°23.51′ N. lat., 124°10.48′ W. long.;
(31) 41°4.62′ N. lat., 124°14.44′ W. long.;
(32) 40°54.28′ N. lat., 124°13.90′ W. long.;
(33) 40°40.37′ N. lat., 124°26.21′ W. long.;
(34) 40°34.03′ N. lat., 124°27.36′ W. long.;
(35) 40°28.88′ N. lat., 124°32.41′ W. long.;
(36) 40°24.82′ N. lat., 124°29.56′ W. long.;
(37) 40°22.64′ N. lat., 124°24.05′ W. long.;
(38) 40°18.67′ N. lat., 124°21.90′ W. long.;
(39) 40°14.23′ N. lat., 124°23.72′ W. long.; and
(40) 40°10.00′ N. lat., 124°17.22′ W. long.;

(ii) The 75–fm (137–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA in the months of July and August is defined by straight lines connecting all of the following points in the order stated:
(1) 48°14.58′ N. lat., 125°42.47′ W. long.;
(2) 48°20.26′ N. lat., 125°23.03′ W. long.;
(3) 48°23.00′ N. lat., 124°50.00′ W. long.;
(4) 48°17.10′ N. lat., 124°54.82′ W. long.;
(5) 48°05.10′ N. lat., 124°59.40′ W. long.;
(6) 48°04.98′ N. lat., 125°10.02′ W. long.;
(7) 47°54.00′ N. lat., 125°04.98′ W. long.;
(8) 47°44.52′ N. lat., 125°00.00′ W. long.;
(9) 47°42.00′ N. lat., 124°58.98′ W. long.;
(10) 47°35.52′ N. lat., 124°55.50′ W. long.;
(11) 47°22.02′ N. lat., 124°44.40′ W. long.;
(12) 47°16.98′ N. lat., 124°45.48′ W. long.;
(13) 47°10.98′ N. lat., 124°48.48′ W. long.;
(14) 47°04.98′ N. lat., 124°49.02′ W. long.;
(15) 46°57.98′ N. lat., 124°46.50′ W. long.;
(16) 46°54.00′ N. lat., 124°45.00′ W. long.;
(17) 46°48.48′ N. lat., 124°44.52′ W. long.;
(18) 46°40.02′ N. lat., 124°36.00′ W. long.;
(19) 46°34.09′ N. lat., 124°27.03′ W. long.;
(20) 46°24.64′ N. lat., 124°30.33′ W. long.;
(21) 46°19.98′ N. lat., 124°36.00′ W. long.;
(22) 46°18.14′ N. lat., 124°34.26′ W. long.;
(23) 46°18.72′ N. lat., 124°22.68′ W. long.;
(24) 46°14.64′ N. lat., 124°22.54′ W. long.;
(25) 46°11.08′ N. lat., 124°30.74′ W. long.;
(26) 46°4.28′ N. lat., 124°31.49′ W. long.;
(27) 45°55.97′ N. lat., 124°19.95′ W. long.;
(28) 45°44.97′ N. lat., 124°15.96′ W. long.;
(29) 45°43.14′ N. lat., 124°21.86′ W. long.;
(30) 45°34.44′ N. lat., 124°14.44′ W. long.;
(31) 45°15.49′ N. lat., 124°11.49′ W. long.;
(32) 44°57.31′ N. lat., 124°15.03′ W. long.;
(33) 44°43.90′ N. lat., 124°28.88′ W. long.;
(34) 44°28.64′ N. lat., 124°35.67′ W. long.;
(35) 44°25.31′ N. lat., 124°43.08′ W. long.;
(36) 44°17.15′ N. lat., 124°47.98′ W. long.;
(37) 44°13.67′ N. lat., 124°54.41′ W. long.;
(38) 43°56.85′ N. lat., 124°55.32′ W. long.;
(39) 43°57.50′ N. lat., 124°41.23′ W. long.;
(40) 44°1.79′ N. lat., 124°38.00′ W. long.;
(41) 44°2.16′ N. lat., 124°32.62′ W. long.;
(42) 43°58.15′ N. lat., 124°30.39′ W. long.;
(43) 43°53.25′ N. lat., 124°31.39′ W. long.;
(44) 43°35.56′ N. lat., 124°28.17′ W. long.;
(45) 43°21.84′ N. lat., 124°36.07′ W. long.;
(46) 43°19.73′ N. lat., 124°34.86′ W. long.;
(47) 43°9.38′ N. lat., 124°39.30′ W. long.;
(48) 43°7.11′ N. lat., 124°37.66′ W. long.;
(49) 42°56.27′ N. lat., 124°43.29′ W. long.;
(50) 42°45.00′ N. lat., 124°41.50′ W. long.;
(51) 42°39.72′ N. lat., 124°39.11′ W. long.;
(52) 42°32.88′ N. lat., 124°40.13′ W. long.;
(53) 42°32.30′ N. lat., 124°39.04′ W. long.;
(54) 42°26.96′ N. lat., 124°44.31′ W. long.;
(55) 42°24.11′ N. lat., 124°42.16′ W. long.;
(56) 42°21.10′ N. lat., 124°35.46′ W. long.;
(57) 42°14.72′ N. lat., 124°32.30′ W. long.;
(58) 42°9.24′ N. lat., 124°32.04′ W. long.;
(59) 42°1.89′ N. lat., 124°32.70′ W. long.;
(60) 42°0.03′ N. lat., 124°32.02′ W. long.;
(61) 42°0.00′ N. lat., 124°32.02′ W. long.;
(62) 41°46.18′ N. lat., 124°26.60′ W. long.;
(63) 41°29.22′ N. lat., 124°28.04′ W. long.;
(64) 41°9.62′ N. lat., 124°19.75′ W. long.;
(65) 40°50.71′ N. lat., 124°23.80′ W. long.;
(66) 40°43.35′ N. lat., 124°29.30′ W. long.;
(67) 40°40.24′ N. lat., 124°29.86′ W. long.;
(68) 40°37.50′ N. lat., 124°28.68′ W. long.;
(69) 40°34.42′ N. lat., 124°29.65′ W. long.;
(70) 40°34.74′ N. lat., 124°34.61′ W. long.;
(71) 40°31.70′ N. lat., 124°37.13′ W. long.;
(72) 40°25.03′ N. lat., 124°34.77′ W. long.;
(73) 40°23.58′ N. lat., 124°31.49′ W. long.;
(74) 40°23.64′ N. lat., 124°28.35′ W. long.;
(75) 40°22.53′ N. lat., 124°24.76′ W. long.;
(76) 40°21.46′ N. lat., 124°24.86′ W. long.;
(77) 40°21.74′ N. lat., 124°27.63′ W. long.;
(78) 40°19.76′ N. lat., 124°28.15′ W. long.;
(79) 40°18.00′ N. lat., 124°25.38′ W. long.;
(80) 40°18.54′ N. lat., 124°22.94′ W. long.;
(81) 40°15.55′ N. lat., 124°25.75′ W. long.;
(82) 40°16.06′ N. lat., 124°30.48′ W. long.;
(83) 40°15.75′ N. lat., 124°31.69′ W. long.; and
(84) 40°10.00′ N. lat., 124°21.28′ W. long.

(iii) The 100–fm (183–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA and as a western boundary for the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:
(1) 48°15.00′ N. lat., 125°41.00′ W. long.;
(2) 48°14.00′ N. lat., 125°36.00′ W. long.;
(3) 48°09.50′ N. lat., 125°40.50′ W. long.;

(4) 48°08.00′ N. lat., 125°38.00′ W. long.;
(5) 48°05.00′ N. lat., 125°37.25′ W. long.;
(6) 48°02.60′ N. lat., 125°34.70′ W. long.;
(7) 47°59.00′ N. lat., 125°34.00′ W. long.;
(8) 47°57.26′ N. lat., 125°29.82′ W. long.;
(9) 47°59.87′ N. lat., 125°25.81′ W. long.;
(10) 48°01.08′ N. lat., 125°24.53′ W. long.;
(11) 48°02.08′ N. lat., 125°22.98′ W. long.;
(12) 48°02.97′ N. lat., 125°22.89′ W. long.;
(13) 48°04.47′ N. lat., 125°21.75′ W. long.;
(14) 48°06.11′ N. lat., 125°19.33′ W. long.;
(15) 48°07.95′ N. lat., 125°18.55′ W. long.;
(16) 48°09.00′ N. lat., 125°18.00′ W. long.;
(17) 48°11.31′ N. lat., 125°17.55′ W. long.;
(18) 48°14.60′ N. lat., 125°13.46′ W. long.;
(19) 48°16.67′ N. lat., 125°14.34′ W. long.;
(20) 48°18.73′ N. lat., 125°14.41′ W. long.;
(21) 48°19.98′ N. lat., 125°13.24′ W. long.;
(22) 48°22.95′ N. lat., 125°10.79′ W. long.;
(23) 48°21.61′ N. lat., 125°02.54′ W. long.;
(24) 48°23.00′ N. lat., 124°49.34′ W. long.;
(25) 48°17.00′ N. lat., 124°56.50′ W. long.;
(26) 48°06.00′ N. lat., 125°00.00′ W. long.;
(27) 48°04.62′ N. lat., 125°01.73′ W. long.;
(28) 48°04.84′ N. lat., 125°04.03′ W. long.;
(29) 48°06.41′ N. lat., 125°06.51′ W. long.;
(30) 48°06.00′ N. lat., 125°08.00′ W. long.;
(31) 48°07.28′ N. lat., 125°11.14′ W. long.;
(32) 48°03.45′ N. lat., 125°16.66′ W. long.;
(33) 47°59.50′ N. lat., 125°18.88′ W. long.;
(34) 47°58.68′ N. lat., 125°16.19′ W. long.;
(35) 47°56.62′ N. lat., 125°13.50′ W. long.;
(36) 47°53.71′ N. lat., 125°11.96′ W. long.;
(37) 47°51.70′ N. lat., 125°09.38′ W. long.;
(38) 47°49.95′ N. lat., 125°06.07′ W. long.;
(39) 47°49.00′ N. lat., 125°03.00′ W. long.;
(40) 47°46.95′ N. lat., 125°04.00′ W. long.;
(41) 47°46.58′ N. lat., 125°03.15′ W. long.;
(42) 47°44.07′ N. lat., 125°04.28′ W. long.;
(43) 47°43.32′ N. lat., 125°04.41′ W. long.;
(44) 47°40.95′ N. lat., 125°04.14′ W. long.;
(45) 47°39.58′ N. lat., 125°04.97′ W. long.;
(46) 47°36.23′ N. lat., 125°02.77′ W. long.;
(47) 47°34.28′ N. lat., 124°58.66′ W. long.;
(48) 47°32.17′ N. lat., 124°57.77′ W. long.;
(49) 47°30.27′ N. lat., 124°56.16′ W. long.;
(50) 47°30.60′ N. lat., 124°54.80′ W. long.;
(51) 47°29.26′ N. lat., 124°52.21′ W. long.;
(52) 47°28.21′ N. lat., 124°50.65′ W. long.;
(53) 47°27.38′ N. lat., 124°49.34′ W. long.;
(54) 47°25.61′ N. lat., 124°48.26′ W. long.;
(55) 47°23.54′ N. lat., 124°46.42′ W. long.;
(56) 47°20.64′ N. lat., 124°45.91′ W. long.;
(57) 47°17.99′ N. lat., 124°45.59′ W. long.;
(58) 47°18.20′ N. lat., 124°49.12′ W. long.;
(59) 47°15.01′ N. lat., 124°51.09′ W. long.;
(60) 47°12.61′ N. lat., 124°54.89′ W. long.;
(61) 47°08.22′ N. lat., 124°56.53′ W. long.;
(62) 47°08.50′ N. lat., 124°54.95′ W. long.;
(63) 47°01.92′ N. lat., 124°57.74′ W. long.;
(64) 47°01.14′ N. lat., 124°59.35′ W. long.;
(65) 46°58.48′ N. lat., 124°57.81′ W. long.;
(66) 46°56.79′ N. lat., 124°56.03′ W. long.;
(67) 46°58.01′ N. lat., 124°55.09′ W. long.;
(68) 46°55.07′ N. lat., 124°54.14′ W. long.;
(69) 46°59.60′ N. lat., 124°49.79′ W. long.;
(70) 46°58.72′ N. lat., 124°48.78′ W. long.;
(71) 46°54.45′ N. lat., 124°48.36′ W. long.;
(72) 46°53.99′ N. lat., 124°49.95′ W. long.;
(73) 46°54.38′ N. lat., 124°52.73′ W. long.;
(74) 46°52.38′ N. lat., 124°52.02′ W. long.;
(75) 46°48.93′ N. lat., 124°49.17′ W. long.;
(76) 46°41.50′ N. lat., 124°43.00′ W. long.;
(77) 46°34.50′ N. lat., 124°28.50′ W. long.;
(78) 46°29.00′ N. lat., 124°30.00′ W. long.;
(79) 46°20.00′ N. lat., 124°36.50′ W. long.;
(80) 46°18.00′ N. lat., 124°38.00′ W. long.;
(81) 46°17.00′ N. lat., 124°35.50′ W. long.;
(82) 46°17.00′ N. lat., 124°22.50′ W. long.;
(83) 46°15.02′ N. lat., 124°23.77′ W. long.;
(84) 46°12.00′ N. lat., 124°35.00′ W. long.;
(85) 46°10.50′ N. lat., 124°39.00′ W. long.;
(86) 46°8.90′ N. lat., 124°39.11′ W. long.;
(87) 46°0.97′ N. lat., 124°38.56′ W. long.;
(88) 45°57.04′ N. lat., 124°36.42′ W. long.;
(89) 45°54.29′ N. lat., 124°40.02′ W. long.;
(90) 45°47.19′ N. lat., 124°35.58′ W. long.;
(91) 45°41.75′ N. lat., 124°28.32′ W. long.;
(92) 45°34.16′ N. lat., 124°24.23′ W. long.;
(93) 45°27.10′ N. lat., 124°21.74′ W. long.;
(94) 45°17.14′ N. lat., 124°17.85′ W. long.;
(95) 44°59.51′ N. lat., 124°19.34′ W. long.;
(96) 44°49.30′ N. lat., 124°29.97′ W. long.;
(97) 44°45.64′ N. lat., 124°33.89′ W. long.;
(98) 44°33.00′ N. lat., 124°36.88′ W. long.;
(99) 44°28.20′ N. lat., 124°44.72′ W. long.;
(100) 44°13.16′ N. lat., 124°56.36′ W. long.;
(101) 43°56.34′ N. lat., 124°55.74′ W. long.;
(102) 43°56.47′ N. lat., 124°34.61′ W. long.;
(103) 43°42.73′ N. lat., 124°32.41′ W. long.;
(104) 43°30.92′ N. lat., 124°34.43′ W. long.;
(105) 43°17.44′ N. lat., 124°41.16′ W. long.;
(106) 43°7.04′ N. lat., 124°41.25′ W long.;
(107) 43°3.45′ N. lat., 124°44.36′ W. long.;
(108) 43°3.90′ N. lat., 124°50.81′ W. long.;

(109) 42°55.70′ N. lat., 124°52.79′ W. long.;
(110) 42°54.12′ N. lat., 124°47.36′ W. long.;
(111) 42°43.99′ N. lat., 124°42.38′ W. long.;
(112) 42°38.23′ N. lat., 124°41.25′ W. long.;
(113) 42°33.02′ N. lat., 124°42.38′ W. long.;
(114) 42°31.89′ N. lat., 124°42.04′ W. long.;
(115) 42°30.08′ N. lat., 124°42.67′ W. long.;
(116) 42°28.27′ N. lat., 124°47.08′ W. long.;
(117) 42°25.22′ N. lat., 124°43.51′ W. long.;
(118) 42°19.22′ N. lat., 124°37.92′ W. long.;
(119) 42°16.28′ N. lat., 124°36.11′ W. long.;
(120) 42°5.65′ N. lat., 124°34.92′ W. long.;
(121) 42°0.00′ N. lat., 124°35.27′ W. long.;
(122) 42°00.00′ N. lat., 124°35.26′ W. long.;
(123) 41°47.04′ N. lat., 124°27.64′ W. long.;
(124) 41°32.92′ N. lat., 124°28.79′ W. long.;
(125) 41°24.17′ N. lat., 124°28.46′ W. long.;
(126) 41°10.12′ N. lat., 124°20.50′ W. long.;
(127) 40°51.41′ N. lat., 124°24.38′ W. long.;
(128) 40°43.71′ N. lat., 124°29.89′ W. long.;
(129) 40°40.14′ N. lat., 124°30.90′ W. long.;
(130) 40°37.35′ N. lat., 124°29.05′ W. long.;
(131) 40°34.76′ N. lat., 124°29.82′ W. long.;
(132) 40°36.78′ N. lat., 124°37.06′ W. long.;
(133) 40°32.44′ N. lat., 124°39.58′ W. long.;
(134) 40°24.82′ N. lat., 124°35.12′ W. long.;
(135) 40°23.30′ N. lat., 124°31.60′ W. long.;
(136) 40°23.52′ N. lat., 124°28.78′ W. long.;
(137) 40°22.43′ N. lat., 124°25.00′ W. long.;
(138) 40°21.72′ N. lat., 124°24.94′ W. long.;
(139) 40°21.87′ N. lat., 124°27.96′ W. long.;
(140) 40°21.40′ N. lat., 124°28.74′ W. long.;
(141) 40°19.68′ N. lat., 124°28.49′ W. long.;
(142) 40°17.73′ N. lat., 124°25.43′ W. long.;
(143) 40°18.37′ N. lat., 124°23.35′ W. long.;
(144) 40°15.75′ N. lat., 124°26.05′ W. long.;
(145) 40°16.75′ N. lat., 124°33.71′ W. long.;
(146) 40°16.29′ N. lat., 124°34.36′ W. long.; and
(147) 40°10.00′ N. lat., 124°21.12′ W. long.

(iv) The 250–fm (457–m) depth contour used north of 38° N. lat. for March through October as a western boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:
(1) 48°14.68′ N. lat., 125°42.10′ W. long.;
(2) 48°12.83′ N. lat., 125°39.71′ W. long.;
(3) 48°13.00′ N. lat., 125°39.00′ W. long.;
(4) 48°12.73′ N. lat., 125°38.87′ W. long.;
(5) 48°12.43′ N. lat., 125°39.12′ W. long.;
(6) 48°11.83′ N. lat., 125°40.01′ W. long.;
(7) 48°11.78′ N. lat., 125°41.70′ W. long.;
(8) 48°10.62′ N. lat., 125°43.41′ W. long.;
(9) 48°09.23′ N. lat., 125°42.80′ W. long.;
(10) 48°08.79′ N. lat., 125°43.79′ W. long.;
(11) 48°08.50′ N. lat., 125°45.00′ W. long.;
(12) 48°07.43′ N. lat., 125°46.36′ W. long.;
(13) 48°06.00′ N. lat., 125°46.50′ W. long.;
(14) 48°05.38′ N. lat., 125°42.82′ W. long.;
(15) 48°04.19′ N. lat., 125°40.40′ W. long.;
(16) 48°03.50′ N. lat., 125°37.00′ W. long.;
(17) 48°01.50′ N. lat., 125°40.00′ W. long.;
(18) 47°57.00′ N. lat., 125°37.00′ W. long.;
(19) 47°55.21′ N. lat., 125°37.22′ W. long.;
(20) 47°54.02′ N. lat., 125°36.57′ W. long.;
(21) 47°53.67′ N. lat., 125°35.06′ W. long.;
(22) 47°54.14′ N. lat., 125°32.35′ W. long.;
(23) 47°55.50′ N. lat., 125°28.56′ W. long.;
(24) 47°57.03′ N. lat., 125°26.52′ W. long.;
(25) 47°57.98′ N. lat., 125°25.08′ W. long.;
(26) 48°00.54′ N. lat., 125°24.38′ W. long.;
(27) 48°01.45′ N. lat., 125°23.70′ W. long.;
(28) 48°01.97′ N. lat., 125°22.34′ W. long.;
(29) 48°03.68′ N. lat., 125°21.20′ W. long.;
(30) 48°01.96′ N. lat., 125°19.56′ W. long.;
(31) 48°00.98′ N. lat., 125°20.43′ W. long.;
(32) 48°00.00′ N. lat., 125°20.68′ W. long.;
(33) 47°58.00′ N. lat., 125°20.00′ W. long.;
(34) 47°57.65′ N. lat., 125°19.18′ W. long.;
(35) 47°58.00′ N. lat., 125°18.00′ W. long.;
(36) 47°56.59′ N. lat., 125°18.15′ W. long.;
(37) 47°51.30′ N. lat., 125°18.32′ W. long.;
(38) 47°49.88′ N. lat., 125°14.49′ W. long.;
(39) 47°49.00′ N. lat., 125°11.00′ W. long.;
(40) 47°47.99′ N. lat., 125°07.31′ W. long.;
(41) 47°46.47′ N. lat., 125°08.63′ W. long.;
(42) 47°46.00′ N. lat., 125°06.00′ W. long.;
(43) 47°44.50′ N. lat., 125°07.50′ W. long.;
(44) 47°43.39′ N. lat., 125°06.57′ W. long.;
(45) 47°42.37′ N. lat., 125°05.74′ W. long.;
(46) 47°40.61′ N. lat., 125°06.48′ W. long.;
(47) 47°37.43′ N. lat., 125°07.33′ W. long.;
(48) 47°33.68′ N. lat., 125°04.80′ W. long.;
(49) 47°30.00′ N. lat., 125°00.00′ W. long.;
(50) 47°28.00′ N. lat., 124°58.50′ W. long.;
(51) 47°28.88′ N. lat., 124°54.71′ W. long.;
(52) 47°27.70′ N. lat., 124°51.87′ W. long.;
(53) 47°24.84′ N. lat., 124°48.45′ W. long.;
(54) 47°21.76′ N. lat., 124°47.42′ W. long.;
(55) 47°18.84′ N. lat., 124°46.75′ W. long.;
(56) 47°19.82′ N. lat., 124°51.43′ W. long.;
(57) 47°18.13′ N. lat., 124°54.25′ W. long.;
(58) 47°13.50′ N. lat., 124°54.69′ W. long.;
(59) 47°15.00′ N. lat., 125°00.00′ W. long.;
(60) 47°08.00′ N. lat., 124°59.83′ W. long.;
(61) 47°05.79′ N. lat., 125°01.00′ W. long.;
(62) 47°03.34′ N. lat., 124°57.49′ W. long.;
(63) 47°01.00′ N. lat., 125°00.00′ W. long.;

(64) 46°55.00′ N. lat., 125°02.00′ W. long.;
(65) 46°51.00′ N. lat., 124°57.00′ W. long.;
(66) 46°47.00′ N. lat., 124°55.00′ W. long.;
(67) 46°34.00′ N. lat., 124°38.00′ W. long.;
(68) 46°30.50′ N. lat., 124°41.00′ W. long.;
(69) 46°33.00′ N. lat., 124°32.00′ W. long.;
(70) 46°29.00′ N. lat., 124°32.00′ W. long.;
(71) 46°20.00′ N. lat., 124°39.00′ W. long.;
(72) 46°18.16′ N. lat., 124°40.00′ W. long.;
(73) 46°15.83′ N. lat., 124°27.01′ W. long.;
(74) 46°15.00′ N. lat., 124°30.96′ W. long.;
(75) 46°13.17′ N. lat., 124°37.87′ W. long.;
(76) 46°13.17′ N. lat., 124°38.75′ W. long.;
(77) 46°10.50′ N. lat., 124°42.00′ W. long.;
(78) 46°6.21′ N. lat., 124°41.85′ W. long.;
(79) 46°3.02′ N. lat., 124°50.27′ W. long.;
(80) 45°57.00′ N. lat., 124°45.52′ W. long.;
(81) 45°46.85′ N. lat., 124°45.91′ W. long.;
(82) 45°45.81′ N. lat., 124°47.05′ W. long.;
(83) 45°44.87′ N. lat., 124°45.98′ W. long.;
(84) 45°43.44′ N. lat., 124°46.03′ W. long.;
(85) 45°35.82′ N. lat., 124°45.72′ W. long.;
(86) 45°35.70′ N. lat., 124°42.89′ W. long.;
(87) 45°24.45′ N. lat., 124°38.21′ W. long.;
(88) 45°11.68′ N. lat., 124°39.38′ W. long.;
(89) 44°57.94′ N. lat., 124°37.02′ W. long.;
(90) 44°44.28′ N. lat., 124°50.79′ W. long.;
(91) 44°32.63′ N. lat., 124°54.21′ W. long.;
(92) 44°23.20′ N. lat., 124°49.87′ W. long.;
(93) 44°13.17′ N. lat., 124°58.81′ W. long.;
(94) 43°57.92′ N. lat., 124°58.29′ W. long.;
(95) 43°50.12′ N. lat., 124°53.36′ W. long.;
(96) 43°49.53′ N. lat., 124°43.96′ W. long.;
(97) 43°42.76′ N. lat., 124°41.40′ W. long.;
(98) 43°24.00′ N. lat., 124°42.61′ W. long.;
(99) 43°19.74′ N. lat., 124°45.12′ W. long.;
(100) 43°19.62′ N. lat., 124°52.95′ W. long.;
(101) 43°17.41′ N. lat., 124°53.02′ W. long.;
(102) 42°49.15′ N. lat., 124°54.93′ W. long.;
(103) 42°46.74′ N. lat., 124°53.39′ W. long.;
(104) 42°43.76′ N. lat., 124°51.64′ W. long.;
(105) 42°45.41′ N. lat., 124°49.35′ W. long.;
(106) 42°43.92′ N. lat., 124°45.92′ W. long.;
(107) 42°38.87′ N. lat., 124°43.38′ W. long.;
(108) 42°34.78′ N. lat., 124°46.56′ W. long.;
(109) 42°31.47′ N. lat., 124°46.89′ W. long.;
(110) 42°31.00′ N. lat., 124°44.28′ W. long.;
(111) 42°29.22′ N. lat., 124°46.93′ W. long.;
(112) 42°28.39′ N. lat., 124°49.94′ W. long.;
(113) 42°26.28′ N. lat., 124°47.60′ W. long.;
(114) 42°19.58′ N. lat., 124°43.21′ W. long.;
(115) 42°13.75′ N. lat., 124°40.06′ W. long.;
(116) 42°5.12′ N. lat., 124°39.06′ W. long.;
(117) 41°59.99′ N. lat., 124°37.72′ W. long.;
(118) 42°0.00′ N. lat., 124°37.76′ W. long.;
(119) 41°47.93′ N. lat., 124°31.79′ W. long.;
(120) 41°21.35′ N. lat., 124°30.35′ W. long.;
(121) 41°7.11′ N. lat., 124°25.25′ W. long.;
(122) 40°57.37′ N. lat., 124°30.25′ W. long.;
(123) 40°41.03′ N. lat., 124°33.21′ W. long.;
(124) 40°37.40′ N. lat., 124°38.96′ W. long.;
(125) 40°33.70′ N. lat., 124°42.50′ W. long.;
(126) 40°31.31′ N. lat., 124°41.59′ W. long.;
(127) 40°25.00′ N. lat., 124°36.65′ W. long.;
(128) 40°22.42′ N. lat., 124°32.19′ W. long.;
(129) 40°17.17′ N. lat., 124°32.21′ W. long.;
(130) 40°18.68′ N. lat., 124°50.44′ W. long.;
(131) 40°10.11′ N. lat., 124°28.25′ W. long.;
(132) 40°1.63′ N. lat., 124°17.25′ W. long.;
(133) 39°51.85′ N. lat., 124°10.33′ W. long.;
(134) 39°32.41′ N. lat., 124°0.01′ W. long.;
(135) 38°57.16′ N. lat., 124°1.89′ W. long.;
(136) 38°11.66′ N. lat., 123°30.87′ W. long.;
(137) 38°3.18′ N. lat., 123°33.45′ W. long.; and
(138) 38°00.00′ N. lat., 123°28.84′ W. long.

(v) The 250–fm (457–m) depth contour modified to allow fishing for petrale in winter months of January, February, November, and December and used north of 38° N. lat. as a western boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.71′ N. lat., 125°41.95′ W. long.;
(2) 48°13.00′ N. lat., 125°39.00′ W. long.;
(3) 48°08.50′ N. lat., 125°45.00′ W. long.;
(4) 48°06.00′ N. lat., 125°46.50′ W. long.;
(5) 48°03.50′ N. lat., 125°37.00′ W. long.;
(6) 48°01.50′ N. lat., 125°40.00′ W. long.;
(7) 47°57.00′ N. lat., 125°37.00′ W. long.;
(8) 47°55.50′ N. lat., 125°28.50′ W. long.;
(9) 47°58.00′ N. lat., 125°25.00′ W. long.;
(10) 48°00.50′ N. lat., 125°24.50′ W. long.;
(11) 48°03.50′ N. lat., 125°21.00′ W. long.;
(12) 48°02.00′ N. lat., 125°19.50′ W. long.;
(13) 48°00.00′ N. lat., 125°21.00′ W. long.;
(14) 47°58.00′ N. lat., 125°20.00′ W. long.;
(15) 47°58.00′ N. lat., 125°18.00′ W. long.;
(16) 47°52.00′ N. lat., 125°16.50′ W. long.;
(17) 47°49.00′ N. lat., 125°11.00′ W. long.;
(18) 47°46.00′ N. lat., 125°06.00′ W. long.;
(19) 47°44.50′ N. lat., 125°07.50′ W. long.;
(20) 47°42.00′ N. lat., 125°06.00′ W. long.;
(21) 47°38.00′ N. lat., 125°07.00′ W. long.;
(22) 47°30.00′ N. lat., 125°00.00′ W. long.;
(23) 47°28.00′ N. lat., 124°58.50′ W. long.;
(24) 47°28.88′ N. lat., 124°54.71′ W. long.;
(25) 47°27.70′ N. lat., 124°51.87′ W. long.;
(26) 47°24.84′ N. lat., 124°48.45′ W. long.;

(27) 47°21.76′ N. lat., 124°47.42′ W. long.;
(28) 47°18.84′ N. lat., 124°46.75′ W. long.;
(29) 47°19.82′ N. lat., 124°51.43′ W. long.;
(30) 47°18.13′ N. lat., 124°54.25′ W. long.;
(31) 47°13.50′ N. lat., 124°54.69′ W. long.;
(32) 47°15.00′ N. lat., 125°00.00′ W. long.;
(33) 47°08.00′ N. lat., 124°59.82′ W. long.;
(34) 47°05.79′ N. lat., 125°01.00′ W. long.;
(35) 47°03.34′ N. lat., 124°57.49′ W. long.;
(36) 47°01.00′ N. lat., 125°00.00′ W. long.;
(37) 46°55.00′ N. lat., 125°02.00′ W. long.;
(38) 46°51.00′ N. lat., 124°57.00′ W. long.;
(39) 46°47.00′ N. lat., 124°55.00′ W. long.;
(40) 46°34.00′ N. lat., 124°38.00′ W. long.;
(41) 46°30.50′ N. lat., 124°41.00′ W. long.;
(42) 46°33.00′ N. lat., 124°32.00′ W. long.;
(43) 46°29.00′ N. lat., 124°32.00′ W. long.;
(44) 46°20.00′ N. lat., 124°39.00′ W. long.;
(45) 46°18.16′ N. lat., 124°40.00′ W. long.;
(46) 46°15.83′ N. lat., 124°27.01′ W. long.;
(47) 46°15.00′ N. lat., 124°30.96′ W. long.;
(48) 46°13.17′ N. lat., 124°38.76′ W. long.;
(49) 46°10.51′ N. lat., 124°41.99′ W. long.;
(50) 46°6.24′ N. lat., 124°41.81′ W. long.;
(51) 46°3.04′ N. lat., 124°50.26′ W. long.;
(52) 45°56.99′ N. lat., 124°45.45′ W. long.;
(53) 45°49.94′ N. lat., 124°45.75′ W. long.;
(54) 45°49.94′ N. lat., 124°42.33′ W. long.;
(55) 45°45.73′ N. lat., 124°42.18′ W. long.;
(56) 45°45.73′ N. lat., 124°43.82′ W. long.;
(57) 45°41.94′ N. lat., 124°43.61′ W. long.;
(58) 45°41.58′ N. lat., 124°39.86′ W. long.;
(59) 45°38.45′ N. lat., 124°39.94′ W. long.;
(60) 45°35.75′ N. lat., 124°42.91′ W. long.;
(61) 45°24.49′ N. lat., 124°38.20′ W. long.;
(62) 45°14.43′ N. lat., 124°39.05′ W. long.;
(63) 45°14.30′ N. lat., 124°34.19′ W. long.;
(64) 45°8.98′ N. lat., 124°34.26′ W. long.;
(65) 45°9.02′ N. lat., 124°38.81′ W. long.;
(66) 44°57.98′ N. lat., 124°36.98′ W. long.;
(67) 44°56.62′ N. lat., 124°38.32′ W. long.;
(68) 44°50.82′ N. lat., 124°35.52′ W. long.;
(69) 44°46.89′ N. lat., 124°38.32′ W. long.;
(70) 44°50.78′ N. lat., 124°44.24′ W. long.;
(71) 44°44.27′ N. lat., 124°50.78′ W. long.;
(72) 44°32.63′ N. lat., 124°54.24′ W. long.;
(73) 44°23.25′ N. lat., 124°49.78′ W. long.;
(74) 44°13.16′ N. lat., 124°58.81′ W. long.;
(75) 43°57.88′ N. lat., 124°58.25′ W. long.;
(76) 43°56.89′ N. lat., 124°57.33′ W. long.;
(77) 43°53.41′ N. lat., 124°51.95′ W. long.;
(78) 43°51.56′ N. lat., 124°47.38′ W. long.;
(79) 43°51.49′ N. lat., 124°37.77′ W. long.;
(80) 43°48.02′ N. lat., 124°43.31′ W. long.;
(81) 43°42.77′ N. lat., 124°41.39′ W. long.;
(82) 43°24.09′ N. lat., 124°42.57′ W. long.;
(83) 43°19.73′ N. lat., 124°45.09′ W. long.;
(84) 43°15.98′ N. lat., 124°47.76′ W. long.;
(85) 43°4.14′ N. lat., 124°52.55′ W. long.;
(86) 43°4.00′ N. lat., 124°53.88′ W. long.;
(87) 42°54.69′ N. lat., 124°54.54′ W. long.;
(88) 42°45.46′ N. lat., 124°49.37′ W. long.;
(89) 42°43.91′ N. lat., 124°45.90′ W. long.;
(90) 42°38.84′ N. lat., 124°43.36′ W. long.;
(91) 42°34.82′ N. lat., 124°46.56′ W. long.;
(92) 42°31.57′ N. lat., 124°46.86′ W. long.;
(93) 42°30.98′ N. lat., 124°44.27′ W. long.;
(94) 42°29.21′ N. lat., 124°46.93′ W. long.;
(95) 42°28.52′ N. lat., 124°49.40′ W. long.;
(96) 42°26.06′ N. lat., 124°46.61′ W. long.;
(97) 42°21.82′ N. lat., 124°43.76′ W. long.;
(98) 42°17.47′ N. lat., 124°38.89′ W. long.;
(99) 42°13.67′ N. lat., 124°37.51′ W. long.;
(100) 42°13.76′ N. lat., 124°40.03′ W. long.;
(101) 42°5.12′ N. lat., 124°39.06′ W. long.;
(102) 42°2.67′ N. lat., 124°38.41′ W. long.;
(103) 42°2.67′ N. lat., 124°35.95′ W. long.;
(104) 42°0.00′ N. lat., 124°35.88′ W. long.;
(105) 41°59.99′ N. lat., 124°35.92′ W. long.;
(106) 41°56.38′ N. lat., 124°34.96′ W. long.;
(107) 41°53.98′ N. lat., 124°32.50′ W. long.;
(108) 41°50.69′ N. lat., 124°30.46′ W. long.;
(109) 41°48.30′ N. lat., 124°29.91′ W. long.;
(110) 41°47.93′ N. lat., 124°31.79′ W. long.;
(111) 41°21.35′ N. lat., 124°30.35′ W. long.;
(112) 41°7.11′ N. lat., 124°25.25′ W. long.;
(113) 40°57.37′ N. lat., 124°30.25′ W. long.;
(114) 40°41.03′ N. lat., 124°33.21′ W. long.;
(115) 40°37.40′ N. lat., 124°38.96′ W. long.;
(116) 40°33.70′ N. lat., 124°42.50′ W. long.;
(117) 40°31.31′ N. lat., 124°41.59′ W. long.;
(118) 40°25.00′ N. lat., 124°36.65′ W. long.;
(119) 40°22.42′ N. lat., 124°32.19′ W. long.;
(120) 40°17.17′ N. lat., 124°32.21′ W. long.;
(121) 40°18.68′ N. lat., 124°50.44′ W. long.;
(122) 40°10.11′ N. lat., 124°28.25′ W. long.;
(123) 40°1.63′ N. lat., 124°17.25′ W. long.;
(124) 39°51.85′ N. lat., 124°10.33′ W. long.;
(125) 39°32.41′ N. lat., 124°0.01′ W. long.;
(126) 38°57.16′ N. lat., 124°1.89′ W. long.;
(127) 38°11.66′ N. lat., 123°30.87′ W. long.;
(128) 38°3.18′ N. lat., 123°33.45′ W. long.; and
(129) 38°00.00′ N. lat., 123°28.84′ W. long.

(vi) The 50–fm (91–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the

trawl RCA in the months of January and February is defined by straight lines connecting all of the following points in the order stated:
(1) 40°10.01′ N. lat., 124°19.97′ W. long.;
(2) 40°9.20′ N. lat., 124°15.81′ W. long.;
(3) 40°7.51′ N. lat., 124°15.29′ W. long.;
(4) 40°5.22′ N. lat., 124°10.06′ W. long.;
(5) 40°6.51′ N. lat., 124°8.01′ W. long.;
(6) 40°0.72′ N. lat., 124°8.45′ W. long.;
(7) 39°56.60′ N. lat., 124°7.12′ W. long.;
(8) 39°52.58′ N. lat., 124°3.57′ W. long.;
(9) 39°50.65′ N. lat., 123°57.98′ W. long.;
(10) 39°40.16′ N. lat., 123°52.41′ W. long.;
(11) 39°30.12′ N. lat., 123°52.92′ W. long.;
(12) 39°24.53′ N. lat., 123°55.16′ W. long.;
(13) 39°11.58′ N. lat., 123°50.93′ W. long.;
(14) 38°55.13′ N. lat., 123°51.14′ W. long.;
(15) 38°28.58′ N. lat., 123°22.84′ W. long.;
(16) 38°14.58′ N. lat., 123°9.93′ W. long.;
(17) 38°1.86′ N. lat., 123°9.76′ W. long.;
(18) 37°53.66′ N. lat., 123°12.06′ W. long.;
(19) 37°48.01′ N. lat., 123°15.84′ W. long.;
(20) 37°36.77′ N. lat., 122°58.48′ W. long.;
(21) 37°1.02′ N. lat., 122°33.71′ W. long.;
(22) 37°2.28′ N. lat., 122°25.06′ W. long.;
(23) 36°48.20′ N. lat., 122°3.28′ W. long.;
(24) 36°51.46′ N. lat., 121°57.54′ W. long.;
(25) 36°44.14′ N. lat., 121°58.10′ W. long.;
(26) 36°36.76′ N. lat., 122°1.16′ W. long.;
(27) 36°15.62′ N. lat., 121°57.13′ W. long.;
(28) 36°10.60′ N. lat., 121°43.65′ W. long.;
(29) 35°40.38′ N. lat., 121°22.59′ W. long.;
(30) 35°24.35′ N. lat., 121°2.53′ W. long.;
(31) 35°2.66′ N. lat., 120°51.63′ W. long.;
(32) 34°39.52′ N. lat., 120°48.72′ W. long.;
(33) 34°31.26′ N. lat., 120°44.12′ W. long.; and
(34) 34°27.00′ N. lat., 120°31.25′ W. long.

(vii) The 60–fm (110–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the trawl RCA in March through October is defined by straight lines connecting all of the following points in the order stated:
(1) 40°10.01′ N. lat., 124°19.97′ W. long.;
(2) 40°9.20′ N. lat., 124°15.81′ W. long.;
(3) 40°7.51′ N. lat., 124°15.29′ W. long.;
(4) 40°5.22′ N. lat., 124°10.06′ W. long.;
(5) 40°6.51′ N. lat., 124°8.01′ W. long.;
(6) 40°0.72′ N. lat., 124°8.45′ W. long.;
(7) 39°56.60′ N. lat., 124°7.12′ W. long.;
(8) 39°52.58′ N. lat., 124°3.57′ W. long.;
(9) 39°50.65′ N. lat., 123°57.98′ W. long.;
(10) 39°40.16′ N. lat., 123°52.41′ W. long.;
(11) 39°30.12′ N. lat., 123°52.92′ W. long.;
(12) 39°24.53′ N. lat., 123°55.16′ W. long.;
(13) 39°11.58′ N. lat., 123°50.93′ W. long.;
(14) 38°55.13′ N. lat., 123°51.14′ W. long.;
(15) 38°28.58′ N. lat., 123°22.84′ W. long.;
(16) 38°8.32′ N. lat., 123°14.60′ W. long.;
(17) 38°0.27′ N. lat., 123°15.29′ W. long.;
(18) 37°56.93′ N. lat., 123°21.61′ W. long.;
(19) 37°48.01′ N. lat., 123°15.84′ W. long.;
(20) 37°36.77′ N. lat., 122°58.48′ W. long.;
(21) 37°1.02′ N. lat., 122°33.71′ W. long.;
(22) 37°2.28′ N. lat., 122°25.06′ W. long.;
(23) 36°48.20′ N. lat., 122°3.28′ W. long.;
(24) 36°51.46′ N. lat., 121°57.54′ W. long.;
(25) 36°44.14′ N. lat., 121°58.10′ W. long.;
(26) 36°36.76′ N. lat., 122°1.16′ W. long.;
(27) 36°15.62′ N. lat., 121°57.13′ W. long.;
(28) 36°10.60′ N. lat., 121°43.65′ W. long.;
(29) 35°40.38′ N. lat., 121°22.59′ W. long.;
(30) 35°24.35′ N. lat., 121°2.53′ W. long.;
(31) 35°2.66′ N. lat., 120°51.63′ W. long.;
(32) 34°39.52′ N. lat., 120°48.72′ W. long.;
(33) 34°31.26′ N. lat., 120°44.12′ W. long.; and
(34) 34°27.00′ N. lat., 120°31.25′ W. long.

(viii) The 100–fm (183–m) depth contour used between 34°27′ N. lat. and the U.S. border with Mexico as an eastern boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:
(1) 34°27.00′ N. lat., 120°31.74′ W. long.;
(2) 34°21.90′ N. lat., 120°25.25′ W. long.;
(3) 34°24.86′ N. lat., 120°16.81′ W. long.;
(4) 34°22.80′ N. lat., 119°57.06′ W. long.;
(5) 34°18.59′ N. lat., 119°44.84′ W. long.;
(6) 34°15.04′ N. lat., 119°40.34′ W. long.;
(7) 34°14.40′ N. lat., 119°45.39′ W. long.;
(8) 34°12.32′ N. lat., 119°42.41′ W. long.;
(9) 34°9.71′ N. lat., 119°28.85′ W. long.;
(10) 34°4.70′ N. lat., 119°15.38′ W. long.;
(11) 34°3.33′ N. lat., 119°12.93′ W. long.;
(12) 34°2.72′ N. lat., 119°7.01′ W. long.;
(13) 34°3.90′ N. lat., 119°4.64′ W. long.;
(14) 34°1.80′ N. lat., 119°3.23′ W. long.;
(15) 33°59.32′ N. lat., 119°3.50′ W. long.;
(16) 33°59.00′ N. lat., 118°59.55′ W. long.;
(17) 33°59.51′ N. lat., 118°57.25′ W. long.;
(18) 33°58.82′ N. lat., 118°52.47′ W. long.;
(19) 33°58.54′ N. lat., 118°41.86′ W. long.;
(20) 33°55.07′ N. lat., 118°34.25′ W. long.;
(21) 33°54.28′ N. lat., 118°38.68′ W. long.;
(22) 33°51.00′ N. lat., 118°36.66′ W. long.;
(23) 33°39.77′ N. lat., 118°18.41′ W. long.;
(24) 33°35.50′ N. lat., 118°16.85′ W. long.;
(25) 33°32.68′ N. lat., 118°9.82′ W. long.;
(26) 33°34.09′ N. lat., 117°54.06′ W. long.;
(27) 33°31.60′ N. lat., 117°49.28′ W. long.;
(28) 33°16.07′ N. lat., 117°34.74′ W. long.;
(29) 33°7.06′ N. lat., 117°22.71′ W. long.;

(30) 32°53.34′ N. lat., 117°19.13′ W. long.;
(31) 32°46.39′ N. lat., 117°23.45′ W. long.;
(32) 32°42.79′ N. lat., 117°21.16′ W. long.; and
(33) 32°34.22′ N. lat., 117°21.20′ W. long.

(ix) The 150–fm (274–m) depth contour used between 38° N. lat. and the U.S. border with Mexico as a western boundary for both the trawl RCA and the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:
(1) 37°59.73′ N. lat., 123°29.85′ W. long.;
(2) 37°51.46′ N. lat., 123°25.16′ W. long.;
(3) 37°44.06′ N. lat., 123°11.44′ W. long.;
(4) 37°35.26′ N. lat., 123°2.29′ W. long.;
(5) 37°14.00′ N. lat., 122°50.00′ W. long.;
(6) 37°1.00′ N. lat., 122°36.00′ W. long.;
(7) 36°58.07′ N. lat., 122°28.35′ W. long.;
(8) 37°0.71′ N. lat., 122°24.53′ W. long.;
(9) 36°57.50′ N. lat., 122°24.98′ W. long.;
(10) 36°58.38′ N. lat., 122°21.85′ W. long.;
(11) 36°55.85′ N. lat., 122°21.95′ W. long.;
(12) 36°52.86′ N. lat., 122°12.89′ W. long.;
(13) 36°48.71′ N. lat., 122°9.28′ W. long.;
(14) 36°46.65′ N. lat., 122°4.10′ W. long.;
(15) 36°51.00′ N. lat., 121°58.00′ W. long.;
(16) 36°44.00′ N. lat., 121°59.00′ W. long.;
(17) 36°38.00′ N. lat., 122°2.00′ W. long.;
(18) 36°26.00′ N. lat., 121°59.05′ W. long.;
(19) 36°22.00′ N. lat., 122°1.00′ W. long.;
(20) 36°19.00′ N. lat., 122°5.00′ W. long.;
(21) 36°14.00′ N. lat., 121°58.00′ W. long.;
(22) 36°10.61′ N. lat., 121°44.51′ W. long.;
(23) 35°50.53′ N. lat., 121°29.93′ W. long.;
(24) 35°46.00′ N. lat., 121°28.00′ W. long.;
(25) 35°38.94′ N. lat., 121°23.16′ W. long.;
(26) 35°26.00′ N. lat., 121°8.00′ W. long.;
(27) 35°7.42′ N. lat., 120°57.08′ W. long.;
(28) 34°42.00′ N. lat., 120°54.00′ W. long.;
(29) 34°29.00′ N. lat., 120°44.00′ W. long.;
(30) 34°22.00′ N. lat., 120°32.00′ W. long.;
(31) 34°21.00′ N. lat., 120°21.00′ W. long.;
(32) 34°24.00′ N. lat., 120°15.00′ W. long.;
(33) 34°22.11′ N. lat., 119°56.63′ W. long.;
(34) 34°19.00′ N. lat., 119°48.00′ W. long.;
(35) 34°15.00′ N. lat., 119°48.00′ W. long.;
(36) 34°8.00′ N. lat., 119°37.00′ W. long.;
(37) 34°7.00′ N. lat., 120°11.00′ W. long.;
(38) 34°13.00′ N. lat., 120°30.00′ W. long.;
(39) 34°9.00′ N. lat., 120°38.00′ W. long.;
(40) 33°58.00′ N. lat., 120°29.00′ W. long.;
(41) 33°51.00′ N. lat., 120°9.00′ W. long.;
(42) 33°38.00′ N. lat., 119°58.00′ W. long.;
(43) 33°38.00′ N. lat., 119°50.00′ W. long.;
(44) 33°46.25′ N. lat., 119°49.32′ W. long.;
(45) 33°53.82′ N. lat., 119°53.42′ W. long.;
(46) 33°59.00′ N. lat., 119°21.00′ W. long.;
(47) 34°2.00′ N. lat., 119°13.00′ W. long.;
(48) 34°1.52′ N. lat., 119°4.50′ W. long.;
(49) 33°58.83′ N. lat., 119°3.76′ W. long.;
(50) 33°56.55′ N. lat., 118°40.50′ W. long.;
(51) 33°51.00′ N. lat., 118°38.00′ W. long.;
(52) 33°39.63′ N. lat., 118°18.75′ W. long.;
(53) 33°35.44′ N. lat., 118°17.57′ W. long.;
(54) 33°31.98′ N. lat., 118°12.59′ W. long.;
(55) 33°33.25′ N. lat., 117°54.15′ W. long.;
(56) 33°31.43′ N. lat., 117°49.84′ W. long.;
(57) 33°16.53′ N. lat., 117°36.13′ W. long.;
(58) 33°6.51′ N. lat., 117°24.11′ W. long.;
(59) 32°54.11′ N. lat., 117°21.45′ W. long.;
(60) 32°46.15′ N. lat., 117°24.26′ W. long.;
(61) 32°41.97′ N. lat., 117°22.10′ W. long.;
(62) 32°39.00′ N. lat., 117°28.13′ W. long.; and
(63) 32°34.84′ N. lat., 117°24.62′ W. long.

(x) The 150–fm (274–m) depth contour used around islands/seamounts off the state of California is defined by straight lines around each island/seamount connecting all of the following points in the order stated:
(A) San Nicholas Island
(1) 33°32.73′ N. lat., 119°47.00′ W. long.;
(2) 33°14.00′ N. lat., 119°15.00′ W. long.;
(3) 33°12.00′ N. lat., 119°18.00′ W. long.;
(4) 33°11.00′ N. lat., 119°26.00′ W. long.;
(5) 33°13.13′ N. lat., 119°43.19′ W. long.;
(6) 33°13.11′ N. lat., 119°53.05′ W. long.;
(7) 33°30.00′ N. lat., 119°52.00′ W. long.; and
(8) 33°32.73′ N. lat., 119°47.00′ W. long.

(B) Santa Catalina Island
(1) 33°19.00′ N. lat., 118°15.00′ W. long.;
(2) 33°26.00′ N. lat., 118°22.00′ W. long.;
(3) 33°28.00′ N. lat., 118°28.00′ W. long.;
(4) 33°30.00′ N. lat., 118°31.00′ W. long.;
(5) 33°31.00′ N. lat., 118°37.00′ W. long.;
(6) 33°29.00′ N. lat., 118°41.00′ W. long.;
(7) 33°23.00′ N. lat., 118°31.00′ W. long.;
(8) 33°21.00′ N. lat., 118°33.00′ W. long.;
(9) 33°18.00′ N. lat., 118°28.00′ W. long.;
(10) 33°16.00′ N. lat., 118°13.00′ W. long.; and
(11) 33°19.00′ N. lat., 118°15.00′ W. long.

(C) San Clemente Island
(1) 32°48.50′ N. lat., 118°18.34′ W. long.;
(2) 32°56.00′ N. lat., 118°29.00′ W. long.;
(3) 33°3.00′ N. lat., 118°34.00′ W. long.;
(4) 33°5.00′ N. lat., 118°38.00′ W. long.;
(5) 33°3.00′ N. lat., 118°40.00′ W. long.;
(6) 32°48.00′ N. lat., 118°31.00′ W. long.;
(7) 32°43.00′ N. lat., 118°24.00′ W. long.; and
(8) 32°48.50′ N. lat., 118°18.34′ W. long.

(D) Santa Barbara Island
(1) 33°36.06′ N. lat., 118°57.15′ W. long.;
(2) 33°20.64′ N. lat., 118°59.39′ W. long.;

(3) 33°23.00′ N. lat., 119°7.00′ W. long.;
(4) 33°43.00′ N. lat., 119°14.00′ W. long.;
(5) 33°46.00′ N. lat., 119°12.00′ W. long.; and
(6) 33°36.06′ N. lat., 118°57.15′ W. long.
(E) Orange County Seamount
(1) 33°25.00′ N. lat., 118°1.00′ W. long.;
(2) 33°25.00′ N. lat., 117°58.00′ W. long.;
(3) 33°23.00′ N. lat., 117°58.00′ W. long.;
(4) 33°23.00′ N. lat., 118°1.00′ W. long.; and
(5) 33°25.00′ N. lat., 118°1.00′ W. long.

(20) *Rockfish categories.* Rockfish (except thornyheads) are divided into categories north and south of 40°10′ N. lat., depending on the depth where they most often are caught: nearshore, shelf, or slope (scientific names appear in Table 2). Nearshore rockfish are further divided into shallow nearshore and deeper nearshore categories south of 40°10′ N. lat. Trip limits are established for "minor rockfish" species according to these categories (see Tables 2–5).

(a) Nearshore rockfish consists entirely of the minor nearshore rockfish species listed in Table 2, which includes California scorpionfish.

(i) Shallow nearshore rockfish consists of black-and-yellow rockfish, China rockfish, gopher rockfish, grass rockfish, and kelp rockfish.

(ii) Deeper nearshore rockfish consists of black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, olive rockfish, quillback rockfish, and treefish.

(iii) California scorpionfish.

(b) Shelf rockfish consists of canary rockfish, shortbelly rockfish, widow rockfish, yelloweye rockfish, yellowtail rockfish, bocaccio, chilipepper, cowcod, and the minor shelf rockfish species listed in Table 2.

(c) Slope rockfish consists of POP, splitnose rockfish, darkblotched rockfish, and the minor slope rockfish species listed in Table 2.

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Table 2 – Minor Rockfish Species (excludes thornyheads)

North of 40°10' N. lat.	South of 40°10' N. lat.
NEARSHORE	
black, Sebastes melanops	black, Sebastes melanops
black and yellow, S. chrysolmelas	black and yellow, S. chrysolmelas
blue, S. mystinus	blue, S. mystinus
brown, S. auriculatus	brown, S. auriculatus
calico, S. dalli	calico, S. dalli
China, S. nebulosus	California scorpionfish, Scorpaena guttata
copper, S. caurinus	China, Sebastes nebulosus
gopher, S. carnatus	copper, S. caurinus
grass, S. rastrelliger	gopher, S. carnatus
kelp, S. atrovirens	grass, S. rastrelliger
olive, S. serranoides	kelp, S. atrovirens
quillback, S. maliger	olive, S. serranoides
treefish, S. serriceps	quillback, S. maliger
	treefish, S. serriceps
SHELF	
bronzespotted, S. gilli	bronzespotted, S. gilli
bocaccio, S. paucispinis	chameleon, S. phillipsi
chameleon, S. phillipsi	dwarf-red, S. rufianus
chilipepper, S. goodei	flag, S. rubrivinctus
cowcod, S. levis	freckled, S. lentiginosus
dwarf-red, S. rufianus	greenblotched, S. rosenblatti
flag, S. rubrivinctus	greenspotted, S. chlorostictus
freckled, S. lentiginosus	greenstriped, S. elongatus
greenblotched, S. rosenblatti	halfbanded, S. semicinctus
greenspotted, S. chlorostictus	honeycomb, S. umbrosus
greenstriped, S. elongatus	Mexican, S. macdonaldi
halfbanded, S. semicinctus	pink, S. eos
honeycomb, S. umbrosus	pinkrose, S. simulator
Mexican, S. macdonaldi	pygmy, S. wilsoni
pink, S. eos	redstriped, S. proriger
pinkrose, S. simulator	rosethorn, S. helvomaculatus
pygmy, S. wilsoni	rosy, S. rosaceus
redstriped, S. proriger	silvergrey, S. brevispinus
rosethorn, S. helvomaculatus	speckled, S. ovalis
rosy, S. rosaceus	squarespot, S. hopkinsi
silvergrey, S. brevispinis	starry, S. constellatus
speckled, S. ovalis	stripetail, S. saxicola
squarespot, S. hopkinsi	swordspine, S. ensifer
starry, S. constellatus	tiger, S. nigorcinctus
stripetail, S. saxicola	vermilion, S. miniatus
swordspine, S. ensifer	yelloweye, S. ruberrimus
tiger, S. nigorcinctus	yellowtail, S. flavidus
vermilion, S. miniatus	
yelloweye, S. ruberrimus	
SLOPE	
aurora, S. aurora	aurora, S. aurora
bank, S. rufus	bank, S. rufus
blackgill, S. melanostomus	blackgill, S. melanostomus
darkblotched, S. crameri	darkblotched, S. crameri
redbanded, S. babcocki	Pacific ocean perch (POP), S. alutus
rougheye, S. aleutianus	redbanded, S. babcocki
sharpchin, S. zacentrus	rougheye, S. aleutianus
shortraker, S. borealis	sharpchin, S. zacentrus
splitnose, S. diploproa	shortraker, S. borealis
yellowmouth, S. reedi	yellowmouth, S. reedi

B. Limited Entry Fishery

(1) *General.* Most species taken in limited entry fisheries will be managed with cumulative trip limits (see paragraph A.(1)(d),) size limits (see paragraph A.(6)), seasons (see paragraph A.(7)), and areas that are closed to specific gear types. The trawl fishery has gear requirements and trip limits that differ by the type of trawl gear on board (see paragraph A.(14)). Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph A.(20)). Yelloweye rockfish retention is prohibited in the limited entry fixed gear fisheries. Most of the management measures for the limited entry fishery are listed above and in the following tables: Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South). A header in Table 3 (North), Table 3 (South), Table 4 (North), and Table 5 (South) approximates the Rockfish Conservation Area (i.e., closed area) for vessels participating in the limited entry fishery. [Note: Between a line drawn due south from Point Fermin (33° 42′ 30″ N. lat.; 118° 17′ 30″ W. long.) and a line drawn due west from the Newport, South Jetty (33° 35′ 37″ N. lat.; 117° 52′ 50″ W. long.,) vessels fishing with hook-and-line- and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m).]

Management measures may be changed during the year by announcement in the **Federal Register**. However, the management regimes for several fisheries (nontrawl sablefish, Pacific whiting, and black rockfish) do not neatly fit into these tables and are addressed immediately following Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South).

Table 3 (North). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear North of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply – Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[10/] (RCA):	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)	100 fm - 250 fm		75 fm - 250 fm	100 fm - 250 fm	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)
	Small footrope is required shoreward of the RCA, both large and small footropes are permitted seaward of the RCA. Only one type of trawl gear is allowed on board a vessel at any one time.						
1	**Minor slope rockfish[3/]**	1,800 lb/ 2 months					
2	**Pacific ocean perch**	3,000 lb/ 2 months					
3	**DTS complex**						
4	Sablefish	6,000 lb/ 2 months		7,000 lb/ 2 months			6,000 lb/ 2 months
5	Longspine thornyhead	8,000 lb/ 2 months	9,000 lb/ 2 months				7,000 lb/ 2 months
6	Shortspine thornyhead	2,300 lb/ 2 months	2,400 lb/ 2 months				2,200 lb/ 2 months
7	Dover sole	26,000 lb/ 2 months		25,000 lb/ 2 months			26,000 lb/ 2 months
8	**Flatfish**						
9	All other flatfish[4/]	100,000 lb/ 2 months	100,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole				100,000 lb/ 2 months
10	Petrale sole	Not limited					Not limited
11	Rex sole	Included in all other flatfish					
12	Arrowtooth flounder	30,000 lb/ trip	60,000 lb/ 2 months; 7,500 lb/ trip				30,000 lb/ trip
13	**Whiting[5/]**						
14	mid-water trawl - permitted within the RCA	20,000 lb/ trip		Primary Season		10,000 lb/ trip	
15	**Other Fish[9/]**	Not limited					
16	**Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**						
17	**Minor shelf rockfish and widow rockfish[3/]**	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
18	**Widow rockfish - mid-water trawl**						
19	mid-water trawl - permitted within the RCA	CLOSED[6/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month		CLOSED[6/]	12,000 lb/ 2 months
20	**Canary rockfish**	100 lb/ month		300 lb/ month		100 lb/ month	
21	**Yellowtail**						
22	mid-water trawl - permitted within the RCA	CLOSED[6/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month			18,000 lb/ 2 months
23	small footrope trawl[7/]	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Combined with and without flatfish, not to exceed 3,000 lb/ month					
24	**Minor nearshore rockfish**	300 lb/ month					
25	**Lingcod[8/]**	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See A.(14).

2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at A.(19)(e), that may vary seasonally

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear South of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[10/] (RCA):						
	40°10' - 38° N. lat.	50 fm - 250 fm	60 fm - 250 fm				
	38° - 34°27' N. lat.	50 fm - 150 fm	60 fm - 150 fm				
	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
	Small footrope is required shoreward of the RCA; both large and small footropes are permitted seaward of the RCA Only one type of trawl gear is allowed on board a vessel at any one time.						
1	**Minor slope rockfish[3/]**						
2	40°10' - 38° N. lat.	1,800 lb/ 2 months					
3	South of 38° N. lat.	30,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	1,800 lb/ 2 months					
6	South of 38° N. lat.	30,000 lb/ 2 months					
7	**DTS complex**						
8	Sablefish	6,000 lb/ 2 months		7,000 lb/ 2 months			6000 lb/ 2 months
9	Longspine thornyhead	8,000 lb /2 months	9,000 lb/ 2 months				7000 lb/ 2 months
10	Shortspine thornyhead	2,300 lb/ 2 months	2,400 lb/ 2 months				2,200 lb/ 2 months
11	Dover sole	26,000 lb/ 2 months		25,000 lb/ 2 months			26,000 lb/ 2 months
12	**Flatfish**						
13	All other flatfish[4/]	70,000 lb/ 2 months	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole				70,000 lb/ 2 months
14	Petrale sole	No limit					No limit
15	Rex sole	Included in all other flatfish					
16	Arrowtooth flounder	No limit	1,000 lb/ 2 months				No limit
17	**Whiting[5/]**						
18	mid water trawl - permitted within the RCA	20,000 lb/ trip		Primary Season		10,000 lb/ trip	
19	**Other Fish[9/]**	Not limited					
20	**Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**						
21	**Minor shelf rockfish, widow, and chilipepper rockfish[3/]**	300 lb/ month					
22	**Widow rockfish**						
23	mid water trawl - permitted within the RCA	CLOSED[6/]					12, 000 lb/ 2 months
24	**Canary rockfish**	100 lb/ month		300 lb/ month		100 lb/ month	
25	**Bocaccio**	CLOSED[6/]					
26	**Cowcod**	CLOSED[6/]					
27	**Minor nearshore rockfish**	300 lb/ month					
28	**Lingcod[8/]**	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See A.(14).

2/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies See B.(3)

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North). Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[8/] (RCA):						
	North of 46°16' N. lat.	shoreline - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm					
	South of 40°10' N. lat.	20 fm - 150 fm					
1	**Minor slope rockfish**	1,800 lb/ 2 months	No more than 25% of the weight of sablefish landed/ trip				1,800 lb/ 2 months
2	**Splitnose**	1,800 lb/ 2 months					
3	**Pacific ocean perch**	1,800 lb/ 2 months					
4	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
5	**Longspine thornyhead**	9,000 lb/ 2 months					
6	**Shortspine thornyhead**	2,000 lb/ 2 months					
7	**Dover sole**	5,000 lb/ month					
8	**Arrowtooth flounder**						
9	**Petrale sole**						
10	**Rex sole**						
11	**All other flatfish[2/]**						
12	**Whiting[3/]**	10,000 lb/ trip					
13	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	200 lb/ month					
14	**Canary rockfish**	CLOSED[5/]					
15	**Yelloweye rockfish**	CLOSED[5/]					
16	**Cowcod**	CLOSED[5/]					
17	**Minor nearshore rockfish**	3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish[6/]					
18	**Lingcod[7/]**	CLOSED[5/]		400 lb/ month			CLOSED[5/]

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ TThe whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

4/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South). Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply – Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):	20 fm - 150 fm			20 fm - 150 fm – Between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 36' 37" N lat.; 117° 52' 50" W. long..) vessels fishing with hook&line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm	20 fm - 150 fm	
1	**Minor slope rockfish[4/]**						
2	40°10' - 38° N. lat.	1,800 lb/ 2 months	No more than 25% of weight of sablefish landed/ trip				1,800 lb/ 2 months
3	South of 38° N. lat.	30,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	1,800 lb/ 2 months					
6	South of 38° N. lat.	20,000 lb/ 2 months					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
9	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
10	**Longspine thornyhead**	9,000 lb/ 2 months					
11	**Shortspine thornyhead**	2,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 5 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 5 lb (2.27 kg) of weight per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**Rex sole**						
16	**All other flatfish[2/]**						
17	**Whiting[3/]**	10,000 lb/ trip					
18	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	100 lb/ 2 month	CLOSED[5/]	200 lb/ 2 months	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
19	**Canary rockfish**	CLOSED[5/]					
20	**Yelloweye rockfish**	CLOSED[5/]					
21	**Cowcod**	CLOSED[5/]					
22	**Bocaccio**	CLOSED[5/]					
23	**Minor nearshore rockfish**						
24	Shallow nearshore	200 lb/ 2 months	CLOSED[5/]	400 lb/ 2 months	500 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months
25	Deep nearshore	200 lb/ 2 months		200 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months	200 lb/ 2 months
26	California scorpionfish	CLOSED[5/]		800 lb/ 2 months		CLOSED[5/]	
27	**Lingcod[6/]**	CLOSED[5/]		400 lb/ month, when nearshore open			CLOSED[5/]

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

4/ Chilipepper rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at A.(19)(e) that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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(2) *Sablefish.* The limited entry sablefish allocation is further allocated 58 percent to trawl gear and 42 percent to nontrawl gear.

(a) *Trawl trip and size limits.* Management measures for the limited entry trawl fishery for sablefish are listed in Table 3 (North) and Table 3 (South).

(b) *Nontrawl (fixed gear) trip and size limits.* To take, retain, possess, or land sablefish during the primary season for the limited entry fixed gear sablefish fishery, the owner of a vessel must hold a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement. (See 50 CFR 663.323(a)(2)(i).) A sablefish endorsement is not required to participate in the limited entry daily trip limit fishery.

(i) *Primary season.* The primary season begins at 12 noon l.t. on April 1, 2003, and ends at 12 noon l.t. on October 31, 2003. There are no pre-season or post-season closures. During the primary season, each vessel with at least one limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for each of the sablefish-endorsed limited entry permits registered for use with that vessel, for the tier(s) to which the permit(s) are assigned. For 2003, the following limits would be in effect: Tier 1, 53,000 lb (24,040 kg); Tier 2, 24,000 lb (10,886 kg); Tier 3, 14,000 lb (6,350 kg). All limits are in round weight. If a vessel is registered for use with a sablefish-endorsed limited entry permit, all sablefish taken after April 1, 2003, count against the cumulative limits associated with the permit(s) registered for use with that vessel.

(ii) *Daily trip limit.* Daily and/or weekly sablefish trip limits listed in Table 4 (North) and Table 4 (South) apply to any limited entry fixed gear vessels not participating in the primary sablefish season described in paragraph (i) of this section. North of 36° N. lat., the daily and/or weekly trip limits apply to fixed gear vessels that are not registered for use with a sablefish-endorsed limited entry permit, and to fixed gear vessels that are registered for use with a sablefish-endorsed limited entry permit when those vessels are not fishing against their primary sablefish season cumulative limits. South of 36° N. lat., the daily and/or weekly trip limits for taking and retaining sablefish that are listed in Table 4 (South) apply throughout the year to all vessels registered for use with a limited entry fixed gear permit.

(iii) *Participating in both the primary and daily trip limit fisheries.* A vessel that is eligible to participate in the primary sablefish season may participate in the daily trip limit fishery for sablefish once that vessel's primary season sablefish limit(s) have been taken or after October 31, 2003, whichever occurs first. No vessel may land sablefish against both its primary season cumulative sablefish limits and against the daily trip limit fishery limits within the same 24 hour period of 0001 hour l.t. to 2400 hours l.t. If a vessel has taken all of its tier limit except for an amount that is smaller than the daily trip limit amount, that vessel's subsequent sablefish landings are automatically subject to daily and/or weekly trip limits.

(3) *Whiting.* Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 and at 50 CFR 660.323(a)(3) and (a)(4).

(a) Allocations. The non-tribal allocations, based on percentages that are applied to the commercial OY of 121,200 mt in 2003 (see 50 CFR 660.323 (a)(4)), are as follows:

(i) *Catcher/processor sector*—41,288 mt (34 percent);

(ii) *Mothership sector*—29,080 mt (24 percent);

(iii) *Shore-based sector*—50,904 mt (42 percent). No more than 5 percent (2,545 mt) of the shore-based whiting allocation may be taken before the shore-based fishery begins north of 42° N. lat. on June 15, 2003.

(iv) *Tribal allocation*—See paragraph V.

(b) *Seasons.* The 2003 primary seasons for the whiting fishery start on the same dates as in 2002, as follows (see 50 CFR 660.323(a)(3)):

(i) *Catcher/processor sector*—May 15;

(ii) *Mothership sector*—May 15;

(iii) *Shore-based sector*—June 15 north of 42° N. lat.; April 1 between 42°-40°30′ N. lat.; April 15 south of 40°30′ N. lat.

(c) *Trip limits.* (i) *Before and after the regular season.* The "per trip" limit for whiting before and after the regular season for the shore-based sector is announced in Table 3 (North) and Table 3 (South), as authorized at 50 CFR 660.323(a)(3) and (a)(4). This trip limit includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka area.

(ii) *Inside the Eureka 100 fm (183 m) contour.* No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during ax fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area.

(4) *Black rockfish.* The regulations at 50 CFR 660.323(a)(1) state: "The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lb (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip." These "per trip" limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures listed in Tables 4 (North) and Table 5 (North) of NMFS Actions. The crossover provisions at paragraphs A.(12) do not apply to the black rockfish per-trip limits.

C. Trip Limits in the Open Access Fishery

(1) *General.* Open access gear is gear used to take and retain groundfish from a vessel that does not have a valid permit for the Pacific Coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), setnet and trammel net (south of 38° N. lat. only), and exempted trawl gear (trawls used to target non-groundfish species: pink shrimp or prawns, and, south of Pt. Arena, CA (38°57′30″ N. lat.), California halibut or sea cucumbers). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see paragraph A.(1)(d)), size limits (see paragraph A.(6)), seasons (see paragraph A.(7)), and closed areas. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph A.(19)). Retention of yelloweye rockfish and canary rockfish and, south of 40°10′ N. lat., bocaccio is prohibited in all open access fisheries. The trip limits, size limits, seasons, and other management measures for open access groundfish gear, including exempted trawl gear, are listed in Table 5 (North) and Table 5 (South). A header in Table 5 (North) and Table 5 (South) approximates the Rockfish Conservation Area (i.e., closed area) for vessels participating in the open access fishery. [Note: Between a line drawn due south from Point Fermin (33°42′30″ N. lat.; 118°17′30″ W. long.)

and a line drawn due west from the Newport South Jetty (33°35′37″ N. lat.; 117°52′50″ W. long.,) vessels fishing with hook-and-line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m) in the months of July and August.] For vessels participating in exempted trawl fisheries, the RCAs are the same as those for limited entry trawl gear. Exempted trawl gear RCAs are detailed in the exempted trawl gear sections at the bottom of Table 5 (North) and Table 5 (South). Retention of groundfish caught by exempted trawl gear is prohibited in the designated RCAs. The trip limit at 50 CFR 660.323(a)(i) for black rockfish caught with hook-and-line gear also applies. (The black rockfish limit is repeated at paragraph B.(4).)

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Table 5 (North). 2003 Trip Limits for Open Access Gears North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply – Read Sections A. and C. NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[8/] (RCA):							
	North of 46°16' N. lat.	0 fm - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm					
1	**Minor slope rockfish[2/]**	Per trip, no more than 25% of weight of the sablefish landed					
2	**Pacific ocean perch**	100 lb/ month					
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
4	**Thornyheads**	CLOSED[5/]					
5	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs.					
6	**Arrowtooth flounder**						
7	**Petrale sole**						
8	**Rex sole**						
9	**All other flatfish[3/]**						
10	**Whiting**	300 lb/ month					
11	**Minor shelf rockfish, widow and yellowtail rockfish[2/]**	200 lb/ month					
12	**Canary rockfish**	CLOSED[5/]					
13	**Yelloweye rockfish**	CLOSED[5/]					
14	**Cowcod**	CLOSED[5/]					
15	**Minor nearshore rockfish**	3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish[4/]					
16	**Lingcod[6/]**	CLOSED[5/]		300 lb/ month		CLOSED[5/]	
17	**Other Fish[7/]**	Not limited					
18	**PINK SHRIMP EXEMPTED TRAWL** *(not subject to RCAs)*						
19	North	**Effective April 1 - October 31, 2003:** groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
20	**PRAWN EXEMPTED TRAWL** *(not subject to RCAs)*						
21	North	Groundfish 300 lb/trip. Limits and closures in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip.					

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Bocaccio and chilipepper rockfishes are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40' N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South). 2003 Trip Limits for Open Access Gears South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections A. and C. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):						
	South of 40°10' N. lat.	20 fm - 150 fm			20 fm - 150 fm	20 fm - 150 fm	
		Between a line drawn due south from Point Fermin, CA (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.) vessels fishing with hook & line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm					
1	**Minor slope rockfish[2/]**						
2	40°10' - 36° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 36° N. lat.	10,000 lb/ 2 months					
4	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	**Thornyheads**						
9	40°10' - 34°27' N. lat.	CLOSED[5/]					
10	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
11	**Dover sole**						
12	**Arrowtooth flounder**						
13	**Petrale sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 5 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 5 lb (2.27 kg) of weight per line are not subject to the RCAs.					
14	**Rex sole**						
15	**All other flatfish[3/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish, widow and chilipepper rockfish[2/]**	100 lb/ 2 month	CLOSED[5/]	200 lb/ 2 months	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
18	**Canary rockfish**	CLOSED[5/]					
19	**Yelloweye rockfish**	CLOSED[5/]					
20	**Cowcod**	CLOSED[5/]					
21	**Bocaccio**	CLOSED[5/]					
22	**Minor nearshore rockfish**						
23	Shallow nearshore	200 lb/ 2 months	CLOSED[5/]	400 lb/ 2 months	500 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months
24	Deep nearshore	200 lb/ 2 months		200 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months	200 lb/ 2 months
25	California scorpionfish	CLOSED[5/]		800 lb/ 2 months		CLOSED[5/]	
26	**Lingcod[4/]**	CLOSED[5/]		300 lb/ month, when nearshore open			CLOSED[5/]
27	**Other Fish[6/]**	Not limited					
28	**PINK SHRIMP EXEMPTED TRAWL GEAR** *(not subject to RCAs)*						
29	South	**Effective April 1 - October 31, 2003:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
30	**PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL**						
31	**EXEMPTED TRAWL Rockfish Conservation Area[7/] (RCA):**						
32	40°10' - 38° N. lat.	50 fm - 250 fm	60 fm - 250 fm				
33	38° - 34°27' N. lat.	50 fm - 150 fm	60 fm - 150 fm				
34	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
35		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip.					

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ The size limit for lingcod is 24 inches (61 cm) total length.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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(2) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers.* [Note: The States of California and Washington will likely prohibit trawling for spot prawn beginning in 2003, while the State of Oregon will likely begin phasing out trawling for spot prawn in 2003.] Trip limits and RCAs for groundfish retained in the spot and ridgeback prawn, California halibut, or sea cucumber fisheries are in Table 5 (North) and Table 5 (South).

(a) *State law.* The trip limits in Table 5(North) and Table 5(South) are not intended to supersede any more restrictive state law relating to the retention of groundfish taken in shrimp or prawn pots or traps.

(b) *Participation in the California halibut fishery.* A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA, and;

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392(a), which states: "No California halibut may be taken, possessed or sold which measures less than 22 in (56 cm) in total length, unless it weighs 4 lbs (1.8144 kg) or more in the round, 3 and one-half lbs (1.587 kg) or more dressed with the head on, or 3 lbs (1.3608 kg) or more dressed with the head off. Total length means "the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail."

(c) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the sea cucumber fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA, and;

(iii) The landing includes sea cucumbers taken in accordance with California Fish and Game Code, section 8405, which requires a permit issued by the State of California.

(3) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp.* Trip limits for groundfish retained in the pink shrimp fishery are in Table 5 (North) and Table 5 (South). Notwithstanding section A.(11), a vessel that takes and retains pink shrimp and also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery.

D. Recreational Fishery

Federal recreational groundfish regulations are not intended to supersede any more restrictive state recreational groundfish regulations relating to federally managed groundfish.

(1) *Washington.* For each person engaged in recreational fishing seaward of Washington, the groundfish bag limit is 15 groundfish, including rockfish and lingcod, and is open year-round (except for lingcod). The following sublimits and closed areas apply:

(a) *Yelloweye Rockfish Conservation Area.* The YRCA is a "C-shaped" area which is closed to recreational groundfish and halibut fishing. The coordinates for the YRCA are defined at A.(19).

(b) *Rockfish.* In areas seaward of Washington that are open to recreational groundfish fishing, there is a 10–rockfish per day bag limit, of which no more than 1 may be canary rockfish. Taking and retaining yelloweye rockfish is prohibited.

(c) *Lingcod.* Recreational fishing for lingcod is closed between January 1 and March 15, and between October 16 and December 31. In areas seaward of Washington that are open to recreational groundfish fishing and when the recreational season for lingcod is open (i.e., between March 16–October 15), there is a bag limit of 2 lingcod per day, which may be no smaller than 24 in (61 cm) total length.

(2) *Oregon.* The bag limits for each person engaged in recreational fishing seaward of Oregon are 2 lingcod per day, which may be no smaller than 24 in (61 cm) total length; and 10 marine fish per day, which excludes salmon, tuna, surfperch, sanddab, lingcod, and baitfish, but which includes rockfish and other groundfish. The minimum size limit for cabezon retained in the recreational fishery is 15 in (38 cm). Within the 10 marine fish bag limit, no more than 1 may be canary rockfish, no more than 1 may be yelloweye rockfish and when the all-depth recreational fisheries for Pacific halibut (*Hippoglossus stenolopis*) are open, the first Pacific halibut taken of 32 in (81 cm) or greater in length may be retained. During the all-depth recreational fisheries for Pacific halibut, vessels with halibut on board may not take, retain, possess or land yelloweye rockfish or canary rockfish.

(3) *California.* Seaward of California (north and south of 40°10′ N. lat.), California law provides that, in times and areas when the recreational fishery is open, there is a 20–fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. Retention of cowcod is prohibited in California's recreational fishery all year in all areas.

(a) *North of 40°10′ N. lat.* North of 40°10′ N. lat. to the California/Oregon border, California's recreational groundfish fishery will generally conform with Oregon's recreational regulations (see D.(2)). For each person engaged in recreational fishing seaward of California north of 40°10′ N. lat., the following seasons, bag limits, and size limits apply:

(i) *RCG Complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in state regulation (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as "sculpin."

(A) *Seasons.* North of 40°10′ N. lat., recreational fishing for the RCG Complex is open from January 1 through December 31.

(B) *Bag limits, boat limits, hook limits.* North of 40°10′ N. lat., the bag limit is 10 rockfish per day, of which no more than 2 may be bocaccio, 1 may be canary rockfish, and no more than 1 per day up to a maximum of two per boat may be yelloweye rockfish. The following daily bag limits also apply: no more than 10 cabezon per day and no more than 10 greenlings (kelp and/or rock greenlings) per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* The following size limits apply: cabezon may be no smaller than 15 in (38 cm) total length and kelp and rock greenling may be no smaller than 12 in (30 cm) total length.

(D) *Dressing/filleting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. Brown-skinned

rockfish fillets may be no smaller than 6.5 in (16.6 cm). "Brown-skinned" rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(ii) *Lingcod.*

(A) *Seasons.* North of 40°10′ N. lat., recreational fishing for lingcod is open from January 1 through December 31.

(B) *Bag limits, boat limits, hook limits.* North of 40°10′ N. lat., the bag limit is 2 lingcod per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/fileting.* Lingcod filets may be no smaller than 16 in. (41 cm) in length .

(b) *South of 40°10′ N. lat.* For each person engaged in recreational fishing seaward of California south of 40°10′ N. lat., the following seasons, bag limits, size limits and closed areas apply:

(i) *Closed Areas.*

(A) *Cowcod Conservation Areas.* Recreational fishing for groundfish is prohibited within the CCAs, for coordinates described in Federal regulations at 50 CFR 660.304(c), except that fishing for sanddabs is permitted subject to the provisions in paragraph D.(3)(iv) and that fishing for species managed under this section (not including cowcod, bocaccio, canary, and yelloweye rockfishes) is permitted in waters shoreward of the 20- fm (37–m) depth contour within the CCAs from July 1 through December 31, 2003, subject to the bag limits in this section.

(B) South of 40°10′ N. lat., recreational fishing for all groundfish, including lingcod, is prohibited seaward of the 20–fm (37–m) depth contour, except that recreational fishing for sanddabs is permitted seaward of the 20–fm (37–m) depth contour subject to the provisions in paragraph D.(3)(iv).

(ii) *RCG Complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in state regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as "sculpin."

(A) *Seasons.* South of 40°10′ N. lat., recreational fishing for the RCG Complex is open from July 1 through December 31 (i.e., it's closed from January 1 through June 30). When recreational fishing for the RCG Complex is open, it is permitted only inside the 20–fm (37–m) depth contour, subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits.* South of 40°10′ N. lat., in times and areas when the recreational season for the RCG Complex is open, there is a limit of 2–hooks and one line when fishing for rockfish, and the bag limit is 10 RCG Complex fish per day, of which up to 10 may be rockfish, no more than 2 of which may be shallow nearshore rockfish. [Note: The shallow nearshore rockfish group off California are composed of kelp, grass, black-and-yellow, China, and gopher rockfishes.] Also within the 10 RCG Complex fish per day limit, no more than 2 groundfish per day may be greenlings (kelp and/or rock greenlings) and no more than 3 groundfish per day may be cabezon. Lingcod, California scorpionfish, and sanddabs taken in recreational fisheries off California do not count toward the 10 RCG Complex fish per day bag limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* The following size limits apply: cabezon may be no smaller than 15 in (38 cm) and kelp and rock greenling may be no smaller than 12 in (30 cm).

(D) *Dressing/filleting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. Brown-skinned rockfish filets may be no smaller than 6.5 in (16.6 cm). "Brown-skinned" rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(iii) *California scorpionfish.* California scorpionfish only occur south of 40°10′ N. lat. (A) Seasons. South of 40°10′ N. lat., recreational fishing for California scorpionfish is closed from March 1 through June 30 (i.e., the California scorpionfish season is open during January-February and during July-December). When recreational fishing for California scorpionfish is open, it is permitted only inside the 20–fm (37–m) depth contour (except at Huntington Flats between a line drawn due south from Point Fermin (33 42′30" N. lat.; 118 17′30" W. long.) and a line drawn due west from the Newport South Jetty (33 35′37" N. lat.; 117 52′50" W. long.,) recreational fishing for California scorpionfish may occur from shore to a boundary line approximating 50–fm (91–m) during July-August), subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits.* South of 40°10′ N. lat., in times and areas where the recreational season for California scorpionfish is open, and the bag limit is 5 California scorpionfish per day. California scorpionfish do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* California scorpionfish may be no smaller than 10 in (25 cm) total length.

(D) *Dressing/filleting.* California scorpionfish fillets may be no smaller than 5 in (12.8 cm).

(iv) *Lingcod.* (A) *Seasons.* South of 40°10′ N. lat., recreational fishing for lingcod is open July 1 through December 31. When recreational fishing for lingcod is open in the south, it is permitted only inside the 20 fm (37 m) depth contour, subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits.* South of 40°10′ N. lat., in times and areas when the recreational season for lingcod is open, there is a limit of 2–hooks and one line when fishing for lingcod, and the bag limit is 2 lingcod per day. Lingcod do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/filleting.* Lingcod fillets may be no smaller than 16 in. (41 cm) in length.

(iv) *Sanddabs.* South of 40°10′ N. lat., recreational fishing for sanddabs is permitted both shoreward and seaward of the 20–fm (37–m) depth contour (i.e., recreational fishing for sanddabs is permitted in all areas south of 40°10′ N. lat.). Recreational fishing for sanddabs is permitted seaward of the 20- fm (37–m) depth contour subject to a limit of up to 5–hooks "Number 2" or smaller, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (45 kg) of weight per line. There is no bag limit, season, or size limit for sanddabs, however, it is prohibited to fillet sanddabs at sea.

V. Washington Coastal Tribal Fisheries

The legal basis for and background information on groundfish allocations harvest by the four Washington Coastal Tribes (Makah, Quileute, Hoh, and Quinault) with treaty rights to groundfish is described in the proposed

rule to implement the 2003 groundfish specifications and management measures in the Proposed Rules section of the January 7, 2003 issue of the **Federal Register**.

The Assistant Administrator (AA) announces the following tribal allocations for 2003, including those that are the same as in 2002. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations.

A. Sablefish

The tribal allocation is 631 mt, 10 percent of the total catch OY, less 3 percent estimated discard mortality.

B. Rockfish

(1) For the commercial harvest of black rockfish off Washington State, a harvest guideline of: 20,000 lb (9,072 kg) north of Cape Alava (48°09′30″ N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.).

(2) Thornyheads are subject to a 300–lb (136–kg) trip limit.

(3) Canary rockfish are subject to a 300–lb (136–kg) trip limit.

(4) Yelloweye rockfish are subject to a 100–lb (45–kg) trip limit.

(5) Yellowtail rockfish taken in the tribal mid-water trawl fisheries are subject to a cumulative limit of 30,000 lb (13,608 kg) per two-month period. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed in any two-month period. These limits may be adjusted by an individual tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish.

(6) Other rockfish, including minor nearshore, minor shelf, and minor slope rockfish groups are subject to a 300–lb (136–kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300–lb (136–kg) per trip.

(7) Rockfish taken during open competition tribal commercial fisheries for Pacific halibut will not be subject to trip limits.

C. Lingcod

Lingcod are subject to a 300–lb (136–kg) daily trip limit and a 900–lb (408–kg) weekly limit.

D. Pacific whiting

The tribal allocation is 25,000 mt.

Classification

These final management measures for January 1 through February 28, 2003 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act and 50 CFR parts 600 and 660 subpart G (the regulations implementing the FMP).

The AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and comment would be impracticable and contrary to the public interest.

The January-February management measures are intended to protect overfished and other depressed stocks while also allowing as much harvest of healthy stocks as possible. As explained above, delay in implementation of these regulatory measures could cause harm to some stocks and would require unnecessarily restrictive measures later in the year to make up for the late implementation. Because the 2002 measures are not strict enough, leaving these measures in place could cause harm to some stocks. Much of the data necessary for these specifications and management measures came from the 2002 fishing year and new stock assessments were not available until June. Because of the timing of the receipt, development, review, and analysis of the fishery information necessary for setting the initial specifications and management measures, it is impracticable and contrary to the public interest to publish these measures in the **Federal Register** and to take public comment on the measures prior to January 1, 2002. It would be impracticable because, as explained above, providing prior notice would delay the effective date of these measures and the January-February 2002 measures would remain in place. Because the 2002 measures are not conservative enough, they do not meet the Council's rebuilding goals for 2003. Leaving the 2002 measures in place for 2003 could cause harm to some stocks.

For the reasons above, the AA also finds good cause under 5 U.S.C. 553(d) to waive the requirement to delay for 30 days the effective date of the rule.

Because there is no requirement to provide for prior notice and opportunity for public comment on this rule the analytical requirements of the Regulatory Flexibility Act do not apply. However, as described above, the January-February 2003 management measures are based on the overall analysis underlying the 2003 specifications and March-December 2003 management measures which are proposed in the Proposed Rules section of this issue of the **Federal Register**. The Council's Initial Regulatory Flexibility analysis prepared for the 2003 specifications and management measures considers the effects of the January and February management measures on the fisheries.

This action has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to Executive Order 13175, this emergency rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the FMP request new allocation or regulations specific to the tribes, in writing, before the first of the two autumn groundfish meetings of the Council. The regulation at 50 CFR 660.324(d) further states "the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus." The tribal management measures in this final rule have been developed following these procedures. The tribal representative on the Council made a motion to adopt the tribal management measures, which was passed by the Council, and those management measures, which were developed and proposed by the tribes, are included in this emergency rule.

NMFS issued Biological Opinions (BOs) under the Endangered Species Act on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California).

During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the Pacific whiting fishery's

Biological Opinion's (whiting BO) (December 19, 1999) incidental catch statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental catch statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002, that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action is within the scope of these consultations.

Because prior notice and opportunity for public comment are not required for this emergency rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. However, as described above, the January-February 2003 management measures are based on the overall analysis underlying the 2003 specifications and March-December 2003 management measures which are proposed in the Proposed Rules section of this issue of the **Federal Register**. The Council's Initial Regulatory Flexibility analysis prepared for the 2003 specifications and management measures considers the effects of the January and February management measures on the fisheries.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 20, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.302, the definition for "Open access fishery" is suspended and a definition for "Open access fishery (for the period January 1, 2003 to February 28, 2003)" is temporarily added to read as follows:

§ 660.302 Definitions.

* * * * *

Open access fishery (for the period January 1, 2003 to February 28, 2003) means the fishery composed of vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery. Any commercial fishing vessels that does not have a limited entry permit and which lands groundfish in any commercial fishery is a participant in the open access fishery.

* * * * *

3. In § 660.304, paragraphs (a) through (f) are suspended and paragraphs (g) through (j) are temparily added to read as follows:

§ 660.304 Management areas.

* * * * *

(g) *Management areas*—(1) *Vancouver.* (i) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48 deg.35′75″ N. lat., 124 deg.43′00″ W. long.) south of the International Boundary between the U.S. and Canada (at 48 deg.29′37.19″ N. lat., 124 deg.43′33.19″ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. lat.	W. long.
1	48 deg.29′37.19″	124 deg.43′33.19″
2	48 deg.30′11″	124 deg.47′13″
3	48 deg.30′22″	124 deg.50′21″
4	48 deg.30′14″	124 deg.54′52″
5	48 deg.29′57″	124 deg.59′14″
6	48 deg.29′44″	125 deg.00′06″
7	48 deg.28′09″	125 deg.05′47″
8	48 deg.27′10″	125 deg.08′25″
9	48 deg.26′47″	125 deg.09′12″
10	48 deg.20′16″	125 deg.22′48″
11	48 deg.18′22″	125 deg.29′58″
12	48 deg.11′05″	125 deg.53′48″
13	47 deg.49′15″	126 deg.40′57″
14	47 deg.36′47″	127 deg.41′23″
15	47 deg.22′00″	127 deg.41′23″
16	46 deg.42′05″	128 deg.51′56″
17	46 deg.31′47″	129 deg.07′39″

(iii) The southern limit is 47 deg.30′ N. lat.

(2) *Columbia.* (i) The northern limit is 47 deg.30′ N. lat.

(ii) The southern limit is 43 deg.00′ N. lat.

(3) *Eureka.* (i) The northern limit is 43 deg.00′ N. lat.

(ii) The southern limit is 40 deg.30′ N. lat.

(4) *Monterey.* (i) The northern limit is 40 deg.30′ N. lat.

(ii) The southern limit is 36 deg.00′ N. lat.

(5) *Conception.* (i) The northern limit is 36 deg.00′ N. lat.

(ii) The southern limit is the U.S.–Mexico International Boundary, which

is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32 deg.35′22″	117 deg.27′49″
2	32 deg.37′37″	117 deg.49′31″
3	31 deg.07′58″	118 deg.36′18″
4	30 deg.32′31″	121 deg.51′58″

(h) Commonly used geographic coordinates—

(1) Cape Falcon, OR--45°46′ N. lat.

(2) Cape Lookout, OR--45°20′15″ N. lat.

(3) Cape Blanco, OR--42°50′ N. lat.

(4) Cape Mendocino, CA--40°30′ N. lat.

(5) North/South management line--40°10′ N. lat.

(6) Point Arena, CA--38°57′30″ N. lat.

(7) Point Conception, CA--34°27′ N. lat.

(i) *Cowcod Conservation Areas (CCAs).* (1) The Western CCA is an area south of Point Conception that is bound by straight lines connecting all of the following points in the order listed:

33°50′ N. lat., 119°30′ W. long.;
33°50′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°30′ W. long.;
and connecting back to 33°50′ N. lat., 119°30′ W. long.

(2) The Eastern CCA is a smaller area west of San Diego that is bound by straight lines connecting all of the following points in the order listed:

32°42′ N. lat., 118°02′ W. long.;
32°42′ N. lat., 117°50′ W. long.;
32°36′42″ N. lat., 117°50′ W. long.;
32°30′ N. lat., 117°53′30″ W. long.;
32°30′ N. lat., 118°02′ W. long.;
and connecting back to 32°42′ N. lat., 118°02′ W. long.

(j) *International boundaries.* (1) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(2) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit").

(3) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

* * * * *

4. In § 660.322, paragraph (b)(5) is suspended and paragraphs (b)(6) and (b)(7) are temporarily added to read as follows:

§ 660.322 Gear restrictions.

* * * * *

(b) * * *

(6) *Large and small footrope trawl gear.* Large footrope trawl gear is bottom trawl gear, as specified at § 660.302, with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope). Small footrope trawl gear is bottom trawl gear, as specified at § 660.302 and 660.322(b), with a footrope diameter 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Chafing gear may be used only on the last 50 meshes of a small footrope trawl, measured from the terminal (closed) end of the codend. Other lines or ropes that run parallel to the footrope may not be augmented or modified to violate footrope size restrictions. For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(7) *Pelagic or "midwater" trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. The footrope of pelagic gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of pelagic trawl gear must be bare and may not be suspended with chains or any other materials. Sweeplines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16–inch (40.6–cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: Over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

* * * * *

[FR Doc. 02–32755 Filed 12–31–02; 1:23 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021209300–2300–01; I.D. 112502C]

RIN 0648–AQ18

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule to implement the 2003 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) and State waters off the coasts of Washington, Oregon, and California. The proposed rule includes the levels of the acceptable biological catch (ABC) and optimum yields (OYs). The commercial OYs (the total catch OYs reduced by tribal allocations and by amounts expected to be taken in recreational and compensation fisheries, which is when a portion of the OY for a groundfish species is used as whole or partial compensation for resource surveys that were conducted using private vessels) proposed in this rule would be allocated between the limited entry and open access fisheries and between different sectors of the limited entry fleet. Proposed management measures for 2003 are intended to prevent overfishing; rebuild overfished species; reduce and minimize the bycatch and discard of overfished and depleted stocks; provide equitable harvest opportunity for both recreational and commercial sectors; and, within the commercial fisheries, achieve harvest guidelines and limited entry and open access allocations to the extent practicable.

DATES: Comments must be received no later than 5 p.m., local time (l.t.,) on February 6, 2003.

ADDRESSES: Send comments to D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070, or fax to 206–526–6736; or Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or fax to 562–980–4047. Comments will not be accepted if submitted via e-mail or the internet. Information relevant to this proposed rule, which includes a draft environmental impact statement, is available for public review during business hours at the office of the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Copies of additional reports referred to in this document may also be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov*, *becky.renko@noaa.gov* or Svein Fougner (Southwest Region, NMFS) phone: 562–980–4000; fax: 562–980–4047 and; e-mail: *svein.fougner@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

The proposed rule also is accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region website at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Council's website at *http://www.pcouncil.org*.

Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) requires that fishery specifications for groundfish be annually evaluated, and revised as necessary, that OYs be specified for species or species groups in need of particular protection, and that management measures designed to achieve the OYs be published in the **Federal Register** and made effective by January 1, the beginning of the fishing year. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks.

Throughout 2002, the Council has been developing revisions to its specifications and management measures process, through proposed Amendment 17 to the FMP. Among other procedural changes, Amendment 17 would revise the NMFS publication process for the specifications and management measures. Historically, the Council has developed annual specifications and management measures in a public two-meeting process (formerly at its September and November meetings) followed by a NMFS final action published in the **Federal Register** and made available for public comment and correction after the effective date of the action. Each year, specifications and management measures were effective until the specifications and management measures for the following year were published and effective. In 2001, the agency was challenged on this process in *Natural Resources Defense Council, Inc.* v. *Evans*, 168 F.Supp. 2d 1149 (N.D.Cal., 2001) and the Court ordered NMFS to provide prior public notice and allow public comment on the annual specifications through publication of proposed and final rules.

Amendment 17 was recently adopted by the Council, but has not yet been submitted for NMFS for approval. NMFS must still comply with the Court's Order for a public notice and comment period on the 2003 specifications and management measures. The Council had its initial meeting regarding these measures in June, and finalized its 2003 specifications and management measures recommendations at its September 9–13, 2002, meeting in Portland, OR. The Council could not act earlier in the year because the new science upon which the specifications and management measures were based was not ready until June.

For 2003, the Council has recommended implementing depth-based management measures, with large closed areas intended to prevent vessels from operating in waters where overfished species are commonly found. NMFS and the Council felt that these management changes were significant enough to warrant analysis via an environmental impact statement (EIS). An EIS is a National Environmental Policy Act analysis document that requires a series of public review and comment periods at different document drafting stages. Given the complexity of the annual specifications and management measures and the need for EIS-related public review periods, NMFS did not have enough time to publish a proposed rule, receive public comments, and implement a final rule by January 1, 2003. NMFS is publishing this proposed rule for the entire 2003 specifications and management measures package to comply with the Court's Order to make such regulatory packages available for public comment prior to implementation. To ensure that adequately conservative management measures are in place by January 1, 2003, NMFS has also published an emergency rule in the Final Rules

section of this January 7, 2003 edition that implements groundfish management measures for January 1 through February 28, 2003.

Specifications and management measures proposed for 2003 are designed to rebuild overfished stocks through constraining direct and incidental mortality, and to achieve as much of the OYs as practicable for healthier groundfish stocks managed under the FMP.

I. Proposed Specifications

Proposed fishery specifications include ABCs, the designation of OYs (which may be represented by harvest guidelines (HGs) or quotas for species that need individual management), and the allocation of commercial OYs between the open access and limited entry segments of the fishery. These specifications include fish caught in State ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore).

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Table 1a. 2003 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (Oys), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) Areas (weights in metric tons).

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total Catch)	Allocations total catch			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROUNDFISH												
Lingcod b/	841					841	651	284	230	81.0	54	19.0
Pacific Cod	3,200		c/			3,200	3,200	3,200	--	--	--	--
Pacific Whiting d/	188,000					188,000	148,200	121,200	--	--	--	--
Sablefish e/ (north of 36°)	8,209				--	8,209	6,500	5,767	5,225	90.6	542	9.4
Sablefish f/ (south of 36°)	--				441	441	294	294	--	--	--	--
FLATFISH												
Dover sole g/	8,510					8,510	7,440	7,318	--	--	--	--
English sole	2,000		1,100			3,100	na	-	-	-	-	-
Petrale sole h/	1,262		500	800	200	2,762	na	-	-	-	-	-
Arrowtooth flounder	5,800					5,800	na	-	-	-	-	-
Other flatfish i/	700	3,000	1,700	1,800	500	7,700	na	-	-	-	-	-

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total Catch	Allocations total catch			
	Vancouver	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROCKFISH:												
Pacific Ocean Perch j/	689			--		689	377	374	--	--	--	--
Shortbelly k/	13,900					13,900	13,900	13,900	--	--	--	--
Widow l/	3,871					3,871	832	781	757	97.0	23	3.0
Canary m/	272					272	44	23	20	87.7	2.8	12.3
Chilipepper n/	c/			2,700		2,700	2,000	1,985	1,106	55.7	879	44.3
Bocaccio o/	c/			198		198	≤20	14	8	52.7	6	44.3
Splitnose p/	c/			615		615	461	461	--	--	--	--
Yellowtail q/	3,146			c/		3,146	3,146	2,717	2,492	91.7	226	8.3
Shortspine thornyhead r/ north of 34°27'	1,004					1,004	955	941	939	99.7	3	0.27
Longspine thornyhead s/ north of 36°	2,461				--	2,461	2,461	2,434	--	--	--	--
south of 36° t/	--				390	390	195	195	--	--	--	--
Cowcod u/	c/		19		--	19	2.4	0	--	--	--	--
	c/		--		5	5	2.4	0	--	--	--	--
Darkblotched v/	205					205	172	170		--	170	-
Yelloweye w/	52					52	22	9.5	--	--	--	-

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commer-cial OY (Total Catch	Allocations total catch			
	Vancou-ver	Colum-bia	Eureka	Mont-erey	Concep-tion	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
Minor Rockfish North x/	4,795			--		4,795	3,056	2,292	2,102	91.7	190	8.3
Minor Rockfish South y/	--			3,506		3,506	1,894	1,401	780	55.7	621	44.3
Remaining Rockfish	2,727			854		--	--	--	--	-	-	--
bank z/	c/			350		350	--	--	--	--	--	--
black aa/	615		500			1,115	--	--	--	--	--	--
blackgill bb/	c/			75	268	343	--	--	--	--	--	--
bocaccio - north	8					318	--	--	--	--	--	--
chilipepper-north	32					32	--	--	--	--	--	--
redstripe	576			c/		576	--	--	--	--	--	--
sharpchin	307			45		352	--	--	--	--	--	--
silvergrey	38			c/		38	--	--	--	--	--	--
splitnose	242			c/		242	--	--	--	--	--	--
yellowmouth	99			c/		99	--	--	--	--	--	--
yellowtail-south				116		116	--	--	--	--	--	--
Other rockfish cc/	2,068			2,652		--	--	--	--	--	--	--
OTHER FISH dd/	2,500	7,000	1,200	2,000	2,000	14,700	na	-	--	--	--	-

Table 1b. 2003 OYs for minor rockfish by depth sub-groups (weights in metric tons).

Species	Total Catch ABC	OY (Total Catch)			Harvest Guidelines (total catch)			
					Limited Entry		Open Access	
		Total Catch OY	Recreational Estimate	Commercial OY for minor rockfish and HG for depth sub-groups	Mt	%	Mt	%
Minor Rockfish North x/	4,794	3,056	750	2,292	2,102	91.7	190	8.3
Nearshore		928	740	188				
Shelf		968	10	954				
Slope		1,160	0	1,156				
Minor Rockfish South y/	3,506	1,894	493	1,401	780	55.7	621	44.3
Nearshore		541	433	108				
Shelf		714	60	654				
Slope		639	0	639				

a/ ABC applies to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was declared overfished on March 3, 1999. A stock assessment that included parts of Canadian waters was done in 2000 and updated for 2001. Following the assessment, lingcod was believed to be at 15 percent of its unfished biomass coastwide. The U.S. portion of the ABC for the Vancouver area was set at 44 percent of the total biomass for that area. The ABC of 841 mt was calculated using an Fmsy proxy of F45%. The total catch OY of 651 mt is based on a rebuilding plan with a 60 percent probability of rebuilding the stock to Bmsy by the year 2009 (Tmax). The total catch OY is reduced by 355 mt for the amount that is estimated to be taken by the recreational fishery, 3 mt for the amount estimated to be taken during research fishing, 4.3 mt for the amount estimated to be taken in non-groundfish fisheries, and by 5.2 mt for the amount estimated to be taken in the tribal fishery, resulting in a commercial OY of 284 mt. The open access total catch allocation is 54 mt (19 percent of the commercial OY) and the open access landed catch value is 43 mt. The limited entry total catch allocation is 230 mt and the landed catch value is 184 mt. The landed catch value is based on a discard mortality rate of 20 percent. Tribal vessels are estimated to land about 5.2 mt of lingcod in 2003, but do not have a specific allocation at this time.

c/ "Other species", these are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, Pacific cod is included in the non-commercial OY of "other fish" and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted.

d/ Pacific whiting - The most recent stock assessment was prepared in 2002, at which time the whiting stock was believed to be below 25 percent of its unfished biomass. Whiting was declared overfished on April 15, 2002 (67 FR 18117). The U.S.-Canada ABC of 235,000 mt is based on the 2002 assessment results with the application of an Fmsy

proxy harvest rate of 45%. In estimating the current biomass, NMFS used a medium level recruitment assumption of a recent (1999) large year class. The U.S. ABC of 188,000 mt is 80 percent of the coastwide ABC. The U.S. whiting OY is 148,200 mt which is 80 percent of the coastwide OY (185,325 mt) and is based on the application of the 40-10 harvest rate policy. The total catch OY is further reduced by 25,000 mt for the tribal allocation, 200 mt for the amount estimated to be taken during research fishing, and 1,800 mt for the estimated catch in non-groundfish fisheries, resulting in a commercial OY of 121,200 mt. The commercial OY is allocated between the sectors with 42 percent (50,904 mt) going to the shore-based sector, 34 percent (41,288 mt) going to the catcher/processor sector, and 24 percent (29,080 mt) going to the mothership sector. Discards of whiting are estimated from the observer data and counted towards the OY inseason.

e/ Sablefish north of 36° N. lat. - NMFS did a new sablefish assessment in 2001 for the area north of Point Conception (34°27'N lat.) and updated it for 2002. Following the assessment update, sablefish north of 34° 27'N lat. was believed to be between 31 percent and 38 percent of its unfished biomass. The ABC for the surveyed area (8,459 mt) is based on environmentally driven projections with the Fmsy proxy of F45%. The ABC for the management area north of 36° N. lat. is 8,209 mt (97.04 percent of the ABC from the surveyed area). The total catch OY for the area north of 36° N. lat.is 6,500 mt and is 97.04 percent of the OY from the surveyed area with a risk averse precautionary adjustment. The total catch OY is reduced by 10 percent (650 mt) for the tribal set aside, by 11.1 mt for compensation to vessels that conducted resource surveys, 53.0 mt for the amount estimated to be taken as research catch, and 18.5 mt for the amount estimated to be taken in non-groundfish fisheries. The remainder (5,767 mt) is the commercial total catch OY. The open access allocation is 9.4 percent of the commercial OY, resulting in an open access total catch OY of 542 mt. The limited entry total catch OY is 5,225 mt. The limited entry total catch OY is further divided with 58 percent (3,031 mt) allocated to the trawl fishery and 42 percent (2,194 mt) allocated to the non-trawl fishery. To provide for bycatch in the at-sea whiting fishery 15 mt of the limited entry trawl allocation will be set aside. Discard rates will be applied as follows: 21 percent for limited entry trawl, 8 percent for limited entry fixed gear and open access, and 3 percent for the tribal fisheries. Landed catch OYs are 2,364 mt for limited entry trawl, excluding the at-sea whiting fishery, 2,019 mt for limited entry fixed gear, 499 mt for open access, and 631 mt for the tribal fisheries.

f/ Sablefish south of 36° N. lat. - The ABC of 441 mt is the sum of 250 mt (2.96 percent of the ABC from the 2002 survey based assessment update) and 191 mt (based on historical landings). The total catch OY (294 mt) is the sum of 198 mt (2.96 percent of the OY from the 2002 update of the survey based assessment with a risk averse precautionary adjustment) and 96 mt (that portion of the ABC based on historical landings which was reduced by 50 percent to address uncertainty, due to limited information). There are no limited entry or open access allocations in the Conception area at this time. The assumed discard value is 8 percent, resulting in a landed catch value of 271 mt.

g/ Dover sole north of 34° 27'N lat. was assessed in 2001 and was believed to be at 29 percent of its unfished biomass. The ABC (8,510 mt) is based on an Fmsy proxy of F40%. Because the biomass is estimated to be in the precautionary zone, the total catch OY of 7,440 mt is based on the application of the 40-10 harvest rate policy. The OY is reduced by 62.4 mt for compensation to vessels that conducted resource surveys, 58 mt for the amount estimated to be taken as research catch, and 2 mt for estimated catch in non-groundfish fisheries resulting in commercial OY of 7,318 mt. Discards are assumed to be 5 percent, resulting in a landed catch OY of 7,006 mt.

h/ Petrale Sole was believed to be at 42 percent of its unfished biomass following a 1999 assessment. For 2002, the ABC for the Vancouver-Columbia area (1,262 mt) is based on a F40% Fmsy proxy. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) continue at the same level as 2001.

i/ Other flatfish are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels.

j/ Pacfic ocean perch (POP) was declared overfished on March 3, 1999. The ABC (689 mt) was projected from the 2000 assessment which was updated for 2001 and is based on an Fmsy proxy of F50%. The OY (377 mt) is based on a 70 percent probability of

rebuilding the stock to Bmsy by the year 2041 (Tmax). The OY is reduced by 3 mt for the amount estimated to be taken during research fishing, resulting in a commercial OY of 374 mt. The landed catch value is 314 mt, and is based on a discard rate of 16 percent.

k/ Shortbelly rockfish remains as an unexploited stock and is difficult to assess quantitatively. The 1989 assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the assessment.

l/ Widow rockfish was assessed in 2000 and was believed to be at 24 percent of its unfished biomass. Widow rockfish was declared overfished on January 11, 2001 (66 FR 2338). The ABC (3,871 mt) is based on a F50% Fmsy proxy. The OY (832 mt) is based on a 60 percent probability of rebuilding the stock to Bmsy by the year 2039 (Tmax). The OY is reduced by 5 mt for the amount estimated to be taken as recreational catch, 1.5 mt for the amount estimated to be taken during research fishing, 0.4 mt for the amount estimated to be taken in non-groundfish fisheries, and 45 mt for the amount estimated to be taken in the tribal fisheries, resulting in a commercial OY of 781 mt. The commercial OY is divided with open access receiving 3 percent (23 mt) and limited entry receiving 97 percent (757 mt). The limited entry landed catch equivalent for the open access fishery is 20 mt. The limited entry allocation is reduced by 182 mt for anticipated bycatch in the at-sea whiting fishery and an additional 30 mt for anticipated bycatch in the shore-based sector of the whiting fishery. The remainder of the limited entry allocation is reduced by 16 percent to account for discards in the trip limit fisheries. The landed catch equivalent, excluding the at-sea whiting fishery, is 488 mt. Tribal vessels are estimated to land about 45 mt of widow rockfish in 2003, but do not have a specific allocation at this time.

m/ Canary rockfish was declared overfished on January 4, 2000 (65 FR 221). A new assessment was completed in 2002 for canary rockfish and the stock is believed to be at 8 percent of its unfished biomass coastwide. The coastwide ABC of 272 mt is based on a Fmsy proxy of F50%. The coastwide OY of 44 mt is based on the rebuilding plan, which has a 60 percent probability of rebuilding the stock to Bmsy by the year 2076 (Tmax). The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 1 mt for the amount estimated to be taken during research fishing, 2.3 mt for the amount estimated to be taken during the tribal fisheries, and 2.5 for the amount estimated to be taken in non-groundfish fisheries, resulting in a commercial OY of 23 mt. For 2003, the total catch OY has been divided with 61 percent going to the commercial fisheries and 39 percent going to the recreational fisheries. The commercial OY is divided with open access receiving 12.3 percent (2.8 mt) and limited entry receiving 87.7 percent (20 mt). The landed catch value for the open access fishery is 2.3 mt. The limited entry allocation is further reduced by 3 mt for anticipated bycatch in the offshore whiting fishery. The limited entry landed catch value is 14 mt, which is based on a discard rate of 16 percent. Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 2.3 mt of canary rockfish in 2003, but do not have a specific allocation at this time.

n/ Chilipepper rockfish - the ABC (2,700 mt) for the Monterey-Conception area is based on the 1998 stock assessment with the application of F50% Fmsy proxy. Because the unfished biomass is believed to be above 40 percent, the default OY could be set equal the ABC. However, the OY is set at 2,000 mt to discourage effort on chilipepper, which co-occur with bocaccio rockfish. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,985 mt. Open access is allocated 44.3 percent (879 mt) of the commercial OY and limited entry is allocated 55.7 percent (1,106 mt) of the commercial OY. The assumed discard is 16 percent, resulting in a open access landed catch value of 739 mt and a limited entry landed catch value of 929 mt.

o/ Bocaccio rockfish was assessed in 2002 and is believed to be at 3.6 percent of its unfished biomass. Bocaccio rockfish was declared overfished on March 3, 1999. The ABC of 198 mt is based on a F50% Fmsy proxy. The OY of ≤20 mt is based on a sustainabitiy analysis with >80 percent probability of no further decline in spawning biomass. The OY is reduced by 0.2 mt for the amount estimated to be taken during research fishing, and 5 mt for the amount estimated to be taken in the recreational

fishery, resulting in a 14 mt commercial OY. Open access is allocated 44.3 percent (6 mt) of the commercial OY and limited entry is allocated 55.7 percent (8 mt) of the commercial OY. Boccacio retention will not be permitted in 2003. The OY will be used to accommodate discards of bocaccio rockfish resulting from incidental take in fisheries for co-occurring species.

p/ Splitnose rockfish - The 2001 ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. The assumed discard is 16 percent for a landed catch value of 387 mt.

q/ Yellowtail rockfish - Following the 2000 stock assessment, yellowtail rockfish was believed to be at 63 percent of its unfished biomass. The ABC of 3,146 mt is based on a 2000 stock assessment for the Vancouver-Columbia-Eureka areas with the Fmsy Proxy of F50%. The OY (3,146 mt) was set equal to the ABC. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 8 mt for the amount estimated to be taken during research fishing, 5.8 mt for the amount taken in non-groundfish
fisheries, and 400 mt for the amount estimated to be taken in the tribal fisheries, resulting in a commercial OY of 2,717 mt. The open access allocation (226 mt) is 8.3 percent of the commercial OY. The limited entry allocation (2,492 mt) is 91.7 percent the commercial OY. For anticipated bycatch in the at-sea whiting fishery, 300 mt is subtracted from the limited entry landed catch allocation. An additional 100 mt is deducted for the shore-based whiting fishery. The remainder (2,092 mt) is further reduced by 16 percent for assumed discard. The limited entry landed catch equivalent, excluding the at-sea whiting fishery, is 1,773 mt. The open access landed catch equivalent is 189 mt. Tribal vessels are estimated to land about 400 mt of yellowtail rockfish in 2003, but do not have a specific allocation at this time.

r/ Shortspine thornyhead was last assessed in 2001 and the stock was believed to be between 25 and 50 percent of its unfished biomass. The ABC (1,004 mt) for the area north of Pt. Conception (34° 27'N lat.) is based on a F50% Fmsy proxy. The OY of 955 mt is based on the new survey with the application of the 40-10 harvest policy. The OY is reduced by 9 mt for the amount estimated to be taken during research fishing, by 1.6 mt for compensation to vessels that conducted resource surveys, and 3.0 mt for the amount estimated to be taken in the tribal fisheries, resulting in commercial OY of 941 mt. Open access is allocated 0.27 percent (3 mt) of the commercial OY and limited entry is allocated 99.73 percent (939 mt) of the commercial OY. A 20 percent rate of discard is applied to obtain a limited entry landed catch value (751 mt). There is no ABC or OY for the southern Conception area. Tribal vessels are estimated to land about 3 mt of shortspine thornyhead in 2003, but do not have a specific allocation at this time.

s/ Longspine thornyhead is believed to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on the average of the 3-year individual ABCs at a F50%. The total catch OY (2,461 mt) is set equal to the ABC. The OY is further reduced by 8.9 mt for compensation to vessels that conducted resource surveys, by 18 mt for the amount estimated to be taken during research fishing, resulting in a commercial OY of 2,434 mt. To derive the landed catch equivalent of 2,020 mt, the limited entry allocation is reduced by 17 percent for estimated discards.

t/ Longspine thornyhead - A separate ABC (390 mt) is established for the Conception area and is based on historical catch for the portion of the Conception area north of 34° 27' N. lat. (Point Conception). To address uncertainty in the stock assessment due to limited information, the ABC was reduced by 50 percent to obtain the OY, (195 mt). There is no ABC or OY for the southern Conception Area.

u/ Cowcod in the Conception area was assessed in 1999 and was believed to be less than 10 percent of its unfished biomass. Cowcod was declared overfished on January 4, 2000 (65 FR 221). The ABC in the Conception area (5 mt) is based on the 1999 assessment, while the ABC for the Monterey (19 mt) is based on average landings from 1993-1997. An OY of 4.8 mt (2.4 mt in each area) is based on the rebuilding plan which has a 55 percent probability of rebuilding the stock to Bmsy by the year 2099 (Tmax). Cowcod retention will not be permitted in 2003. The OY will be used to accommodate discards of cowcod rockfish resulting from incidental take.

v/ Darkblotched rockfish was assessed in 2000 and was believed to be at 22 percent of its unfished biomass. The darkblotched rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). The ABC is projected to be 205 mt and is based on an Fmsy proxy of F50%. The OY of 172 mt is based on the rebuilding plan, which has a 80 percent probability of rebuilding the stock to Bmsy by the year 2047 (Tmax). For anticipated bycatch in the at-sea whiting fishery, 5 mt is subtracted from the limited entry landed catch OY. The landed catch value for the remaining limited entry fisheries is 132 mt. The landed catch values are based on a discard rate of 20 percent.

w/ Yelloweye rockfish was assessed in 2001 and updated for 2002. On January 11, 2002 yelloweye rockfish was declared overfished (67 FR 1555). In 2002 following the assessment update, yelloweye rockfish was believed to be at 24.1 percent of its unfished biomass coastwide. The 52 mt coastwide ABC is based on an Fmsy proxy of F50%. The OY of 22 mt is based on a revised rebuilding analysis (August 2002) with a 50 percent probability of rebuilding to Bmsy by the year 2050 (Tmid). The OY is reduced by 7.7 mt for the amount estimated to be taken in the recreational fishery, 0.6 mt for the amount estimated to be taken during research fishing, 0.8 mt for the amount taken in non-groundfish fisheries, and 3 mt for the amount estimated to be taken in the tribal fisheries, resulting in a commercial OY of 9.5 mt. Tribal vessels are estimated to land about 3 mt of yelloweye rockfish in 2003, but do not have a specific allocation at this time.

x/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable assessments. The ABC is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain the total catch OY (3,056 mt) the remaining rockfish ABCs are further reduced by 25 percent with the exception of black rockfish; other rockfish ABCs were reduced by 50 percent. These deductions were a precautionary measures due to limited stock assessment information. The OY is reduced by 750 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 2,292 mt. Open access is allocated 8.3 percent (190 mt) of the commercial OY and limited entry is allocated 91.7 percent (2,102 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish. Tribal vessels are estimated to land about 14 mt of minor rockfish (10 mt of shelf rockfish, and 4 mt of slope rockfish) in 2003, but do not have a specific allocation at this time.

y/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish", which includes species that do not have quantifiable assessments. The ABC (3,556 mt) is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain total catch OY (2,015 mt), the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish, and the other rockfish ABCs were reduced by 50 percent. These deductions were a precautionary measures due to limited stock assessment information. The OY is reduced by 493 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,401 mt. Open access is allocated 44.3 percent (621 mt) of the commercial OY and limited entry is allocated 55.7 percent (780 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish.

z/ Bank rockfish -- The ABC is 350 mt which is based on a 2000 assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

aa/ Black rockfish -- the ABC (1,115 mt) is based on a 2000 assessment, and is the sum of the assessment area (615 mt) plus the average catch in the unassessed area (500 mt). To obtain the OY for the southern portion of this area, the ABC has been reduced by 50 percent as a precautionary measures due to limited information. For the assessed area the OY was set equal to the ABC. This stock contributes 865 mt towards

the minor rockfish OY in the north.

bb/ Blackgill rockfish is believed to be at 51 percent of its unfished biomass. The ABC of 343 mt is the sum of the Conception area ABC of 268 mt, based on the 1998 assessment with an Fmsy proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent for precautionary measures because of lack of information.

cc/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been assessed quantitatively.

dd/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

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ABC Policy and Overfishing

Each fishing year, the Council evaluates the biological condition of the Pacific Coast groundfish fishery, develops estimates of the ABC for major groundfish stocks and identifies the harvest levels or OYs for the species or species groups that it proposes to manage.

The Magnuson-Stevens Act requires that the FMP prevent overfishing. Overfishing is defined in the National Standards Guidelines (50 CFR part 600, subpart D) as exceeding the fishing mortality rate (F) needed to produce maximum sustainable yield (MSY) on a continuing basis. When setting the 2003 ABCs, the Council maintained a policy of using a default harvest rate as a proxy for the fishing mortality rate that is expected to achieve the maximum sustainable yield (Fmsy). The OYs were then set at levels expected to prevent overfishing, equal to or less than the ABCs.

The ABC for a species or species group is generally derived by multiplying the harvest rate proxy by the biomass forecast to be available to the fishery. In 2003, the following default harvest rates proxies, based on the Council's Scientific and Statistical Committee (SSC) recommendations, were used: F40% for flatfish and F50% for rockfish (including thornyheads), and F45% for other groundfish such as sablefish, and lingcod. For whiting the Council chose a harvest rate proxy of F45% which was more conservative than the SSC's F40% recommendation. The FMP allows default harvest rate proxies to be modified as scientific data improves for a particular species.

A harvest or fishing mortality rate can mean very different things for different stocks, because the rate is dependent on the productivity of a particular species. For more resilient stocks, those with less of a decline in recruitment (a measure of the young fish that mature and enter the fishery) as the spawning stock declines, a higher fishing mortality rate may be used, such as F40%. A rate of F40% can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under natural conditions (if there were no mortality due to fishing), and is therefore a more aggressive harvest rate than F45% or F50%. Harvest rate policies must account for several complicating factors, including the relative fecundity of mature individuals over time and the optimal stock size for the highest level of productivity within that stock.

For some groundfish species, there may be little or no detailed biological data available on which to base ABCs, with only rudimentary assessments being prepared. For other species, ABC levels may be established only on the basis of historical landings. Precautionary measures continue to be taken when setting ABCs and OYs for species with no or only rudimentary assessments.

In 2000, the Council adopted a more precautionary ABC policy for stocks with less rigorous or rudimentary stock assessments. The policy had been to assume that fishing mortality was equal to natural mortality (F=M); the current policy is that fishing mortality is 75 percent of natural mortality (F=0.75M). Based on SSC recommendations, the Council reaffirmed this policy, but added another precautionary adjustment, requiring that OYs for these stocks be set at 75 percent of ABCs. For further information on this policy, see the preamble to the annual specifications and management measures published on January 11, 2001 (66 FR 2338).

The 2003 ABCs are based on the best scientific information available to the Council at its September 2002 meeting. The ABCs in Table 1 represent total fishing mortality (landed catch plus discards). Where the assessments included Canadian waters, the ABCs apply only to U.S. waters. Stock assessment information considered in determining the ABCs is Stock Assessment and Fishery Evaluation documents and reports and is available from the Council. These documents were made available to the public before the Council's September 2002 meeting. Additional information may be found in the EIS prepared by the Council for this action and in documents available at the June and September 2002 Council meetings. (see **ADDRESSES**)

OY Policy

In 1999, the Council adopted a "40–10 precautionary policy" for setting OYs. The 40–10 policy is intended to reduce the chance that species will become overfished. According to the Council's OY policy, if the stock biomass is larger than the biomass needed to produce MSY (Bmsy), the OY may be set equal to or less than the ABC. The Council uses 40 percent as a default proxy for Bmsy, also referred to as B40%. The Council's default OY harvest policy reduces the fishing mortality rate when a stock is at or below Bmsy. A stock with a current biomass between 25 percent of the unfished level and Bmsy is said to be in the "precautionary zone." The further the stock is below the precautionary threshold (usually B40%), the greater the reduction in OY relative to the ABC, until at B10%, the OY would be set at zero. This is, in effect, a default rebuilding policy that will foster quicker return to the Bmsy level than would fishing at the ABC level. For further information on this policy, see the preamble to the annual specification and management measures published on January 8, 1999 (64 FR 1316).

The Council may recommend setting the OY higher than what the default OY harvest policy specifies, provided that the OY does not exceed the ABC (Fmsy)

harvest rate, complies with the requirements of the Magnuson-Stevens Act, and is consistent with the National Standard Guidelines and FMP requirements. On a case-by-case basis, additional precaution may be added as may be warranted by uncertainty in the data or by a stock's higher risk of being overfished. A stock that falls below 25 percent of its unfished biomass (B25%) is considered overfished under the FMP. Once a stock is declared overfished, the Magnuson-Stevens Act requires the Council to develop a rebuilding plan within 1 year from the public announcement in the **Federal Register** that the stock has been declared overfished. Rebuilding plans for overfished species generally have stock-specific allowable harvest rates based on a rebuilding analysis and rebuilding strategy, although those rates may still be consistent with this 40–10 default OY policy and may not exceed Fmsy.

2003 ABCs and OYs

The species that had ABCs and OYs in 2002 continue to have ABCs and OYs in 2003. Changes that have been made since 2002 that affect the ABCs and OYs for 2003 include: (1) the completion of new assessments for canary, bocaccio, and yelloweye rockfish; (2) the preparation of an assessment update for sablefish; (3) the preparation of a yelloweye rockfish rebuilding analysis; (4) revision of the widow rockfish rebuilding analysis; (5) changes in the catch distribution of canary rockfish between commercial and recreational fisheries; (6) the preparation of a sustainability analysis for bocaccio rockfish; (7) the projection of the 2002 Pacific whiting model forward one year; and (8) the subdivision of the minor nearshore rockfish south OY into shallow nearshore rockfish, California scorpion fish, and deeper nearshore rockfish. Discussions of the development of ABCs and OYs for species with changed specifications from 2002 are contained in this section. Summaries of draft rebuilding plans for overfished species are provided in the next section, "Determination of Overfished Stocks and Rebuilding Plans."

Canary rockfish

NMFS prepared an assessment update for canary rockfish, based on an age-structure stock synthesis model. Unlike the previous assessment in 2000, the 2002 assessment model included the entire coast and blended the alternative mortality/selectivity scenarios into one scenario that linked increasing female natural mortality to maturity while allowing selectivity (the ability of the gear to catch certain sizes or types of fish) of females to be domed shaped. In this context, "domed shaped" means that the model places greater emphasis on female mortality at intermediate ages, rather than equally across all possible ages of mortality. This was done to address uncertainty regarding the reasons for the lower occurrence of old females versus old males. Although the model provides a more complete evaluation, the availability and mortality of older females in the survey and fishery data continues to be a source of uncertainty with the assessment. The 2002 assessment extends back to 1940 to provide a better evaluation of the unfished biomass level, and estimates the degree of compensation in the spawner-recruitment relationship to provide an improved basis for forecasting future recruitments during rebuilding.

The new assessment estimates that the canary rockfish biomass was at 8 percent of its unfished biomass coastwide at the beginning of 2002. As with the 2000 assessment, canary rockfish shows a decline throughout the assessment time period with most of the decline occurring from 1975 to 1995.

The Council considered four OYs based on different rebuilding parameters—constant fishing mortality rates that would have 80–percent, 60–percent and 50–percent probabilities of rebuilding the canary rockfish to Bmsy by the year 2076 (T_{max} is the maximum allowable time to rebuild as defined in the National Standard Guidelines, 50 CFR subpart D). The fourth option had a 50–percent probability of rebuilding the canary rockfish to B40% by the year 2067 (T_{mid}). (T_{mid} is halfway between T_{max} and T_{min}–the minimum time to rebuild in the absence of fishing as defined in the National Standard Guidelines, 50 CFR Subpart D). In addition, four different arrangements for dividing catch between the commercial and recreational fisheries were considered. The OY levels ranged from 20 mt to 57 mt. In general, the recreational fisheries take smaller canary rockfish than the commercial fisheries, resulting in a greater per ton impact on the canary stock over the rebuilding period. The catch sharing arrangements considered by the Council included: 20 percent recreational/80 percent commercial, 39 percent recreational/61 percent commercial, 50 percent recreational/50 percent commercial, and 80–percent recreation/20 percent commercial. The Council recommended adopting an ABC of 272 mt and an OY of 44 mt based on a 60–percent probability of rebuilding the canary rockfish to Bmsy by the year 2076 (T_{max}) with a 39–percent recreation/61–percent commercial catch sharing arrangement. Canary rockfish is taken in a wide variety of fisheries coastwide, co-occurring with many different groundfish stocks. The catch sharing arrangement for canary rockfish was needed to ensure that canary rockfish taken in the different fisheries would be appropriately accounted for.

Bocaccio Rockfish

A new stock assessment was prepared for bocaccio rockfish in the Conception and Monterey areas, the statistical areas where the bocaccio rockfish stock is overfished. This new assessment uses a length-based stock synthesis model similar to that used for the 1999 assessment, but differs from the previous assessment in that it (1) includes new information from a larger area of southern California; (2) moves the beginning of the assessment time period back 18 years; (3) updates estimates of commercial and recreational landings data; (4) uses a "jacknife" statistical method to estimate precision of abundance indexes rather than using assumed values of precision, which is a useful procedure when the data dispersion or distribution are wide or extreme; (5) omits triennial survey data from hauls where the trawl gear did not actually fish on the ocean floor (so-called "water hauls"); (6) adds an index of larval abundance reflecting spawning biomass; (7) adds a recreational "catch per unit effort"(CPUE)index for 1980–2001; and (8) includes a new recruitment index based on the impingement rate of juvenile bocaccio rockfish in saltwater intakes at southern California electric power plants between 1972–2000.

The new bocaccio rockfish assessment is consistent with the finding in previous assessments that there has been a declining biomass trend since 1969. The new assessment estimates that the bocaccio rockfish spawning stock biomass in the Monterey and Conception areas is at about 3.6 percent of its unfished biomass. The estimated biomass for 2002 (age 2+ fish) is 2,914 mt. The ABC for bocaccio rockfish, which is based on the new assessment with an Fmsy proxy of F50%, is 198 mt.

Bocaccio was declared overfished in 1999. Since 2000, the bocaccio OY has been set to be a constant harvest level of 100 mt. This level was based on the 1999 rebuilding analysis and was estimated to have a 67 percent probability of rebuilding the stock to Bmsy by 2033. The new assessment in 2002 found that the rate of rebuilding would probably be lower than projected from the 1999 assessment and that the

harvest level would need to be lowered. Based on the new stock assessment and a new rebuilding analysis, the Council, at its June 2002 meeting, recommended for further analysis a bocaccio rockfish OY for 2003 of 5.8 mt. This new OY was associated with a constant mortality rate and a 50 percent probability of rebuilding to Bmsy by the year 2109 (T_{max}). At this same meeting, the Council requested that the rebuilding analysis be updated using procedures recommended by the SSC. Following the June 2002 Council meeting and prior to revision of the bocaccio rebuilding analysis, the rebuilding model for all overfished species was refined to more accurately account for actual catch occurring during and after the initial year of rebuilding.

In the revised bocaccio rebuilding analysis prepared following the June Council meeting, the stock failed to have a 50- percent probability of rebuilding by T_{max}, even in the absence of fishing. T_{max} is the maximum time for rebuilding established by the National Standard Guidelines (50 CFR 600, subpart D). This failure is due to lower estimated recruitment of the 1999 year class and recent landings that exceeded the rebuilding OYs. Bocaccio landings in 2000 and 2001 were respectively 69 and 47 mt over the OY levels set in 2000. In addition, hindsight shows, based on the new rebuilding analysis' calculation of the actual strength of the 1999 year class, that the OYs for 2000 and 2001 had been set too high in view of the actual strength of the 1999 year class. The OYs set for 2000 and 2001 created a "rebuilding deficit" that will take more than T_{max} to recover from. NMFS subsequently prepared a sustainability analysis for bocaccio rockfish. A rebuilding analysis addresses the fishing rates associated with rebuilding an overfished stock to a target abundance within a specified time frame, whereas a sustainability analysis addresses the fishing rates that would lead to no further decline in abundance over a specified time frame. In both types of analysis, the uncertainty of future reproductive successes requires that the results be described in terms of probabilities rather than certainties. The sustainability analysis shows that a harvest level of ≤20 mt would provide a 50- percent probability for the stock to rebuild in 170 years, with a high probability (>80 percent) of no further decline in the spawning biomass over the next 100 years. The Council's SSC concluded that the sustainability analysis represented the best available science and endorsed its use in setting 2003 harvest levels. The Council agreed with the SSC recommendation. The National Standard Guidelines do not address the situation where NMFS concludes, based on an updated rebuilding analysis, that a stock cannot be rebuilt within T_{max}, even with zero fishing mortality. Therefore, NMFS has determined that the National Standard Guidelines do not provide sufficient guidance for the bocaccio rockfish situation and instead has looked directly to the Magnuson-Stevens Act for guidance. Section 304(e)(4)(A)(i) states that a rebuilding period shall "be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem."

NMFS believes that the Magnuson-Stevens Act requires that the Council and NMFS meet the conservation needs of the stock (National Standard 1), and also consider the needs of fishing communities (National Standard 8). Balancing these considerations, zero fishing mortality is not required for this situation. Zero fishing mortality would seriously adversely affect fishers and communities in California south of Cape Mendocino, CA. In this area, commercial fisheries (including fisheries for non-groundfish species) and recreational fisheries that incidentally catch bocaccio would be severely curtailed or closed for many years into the future. Bocaccio is taken incidentally in a wide variety of fisheries, ranging from recreational fisheries that operate off piers and jetties taking juvenile bocaccio in nearshore waters, to commercial purse seine fisheries for squid and other coastal pelagic species.The OY recommended by the Council, which is based on the sustainability analysis, the needs of fishing communities, and the biology of the stock, has a low probability of driving the stock into further decline and will not materially jeopardize future rebuilding. The large historical biomass of bocaccio occurred through accumulation over time of biomass from several intermittent, large recruitments. These large recruitment events are thought to be connected to currently unknown and unpredictable ocean conditions. Bocaccio rebuilding depends on the future occurrence of similarly large recruitment successes. Although the 1999 year class was in fact smaller than had been projected in 1999, it is still the largest year class since 1991. The recruitment success observed in 1999 indicates that the current spawning biomass is capable of initiating the rebuilding, but substantial rebuilding awaits the future occurrence of several such successes. Based on the current information, NMFS concludes that at the proposed OY level bocaccio will be able to rebuild. The analysis shows an 80 percent probability of no further decline after 100 years, a 50 percent probability (the standard reference probability level) of rebuilding within 170 years, and a 33 percent probability of rebuilding by the year 2109. Therefore, NMFS believes the recommended OY is consistent with the Magnuson-Stevens Act.

Yelloweye Rockfish

Yelloweye rockfish were first assessed in 1996 as part of the "remaining rockfish" group. In 2001, a yelloweye rockfish assessment was conducted for northern California and Oregon. The 2001 assessment estimated that yelloweye rockfish was at about 7 percent of its unfished biomass in waters off northern California and at 13 percent of its unfished biomass in waters off Oregon; this resulted in NMFS declaring yelloweye rockfish to be overfished. An initial yelloweye rockfish rebuilding analysis, based on the 2001 assessment, was prepared and presented at the Council's June 2002 meeting. Because this assessment did not cover Washington, the development of rebuilding measures was hampered.

In August 2002, an updated assessment was completed in order to incorporate data from Washington, an important area of yelloweye rockfish abundance, and to incorporate newly available age data. Other changes from the 2001 assessment included: the use of a combined area model; revised selectivity curves for all sectors of the fishery; the inclusion of Washington catch data; re-evaluation of California logbook data and the influence of port group and depth effects; extension of the modeled time period; revision of the treatment of natural mortality rates; and inclusion of a spawner-recruitment relationship to provide an overall measure of stock productivity.

Like the 2001 assessment, the updated assessment indicated that there has been a declining abundance trend for more than 30 years, with the last above average recruitment occurring in the late 1980s. The assessment update concluded that the coastwide yelloweye rockfish spawning female biomass (934 mt) was at 24.1 percent of its unfished biomass at the beginning of 2002. The SSC supported the new assessment model and indicated that it represented the best available science. The 2003

yelloweye ABC of 52 mt is based on the new assessment, with an Fmsy proxy of F50%.

A revised rebuilding analysis was prepared following completion of the 2002 assessment. Due to the less depleted stock status and higher productivity estimated by the updated assessment, the rebuilding period is shorter than had been estimated following the initial rebuilding analysis. The SSC indicated that the revised rebuilding analysis represented the best available science and advised using it to set 2003 harvest levels.

At the Council's September meeting, four OY options were considered for yelloweye rockfish: 2.1 mt — the low range from the June 2002 draft rebuilding analysis; 13.5 mt - the 2002 OY; 22 mt - based on a 50–percent probability of rebuilding the yelloweye rockfish to Bmsy by the year 2050 (T_{mid}) from the revised rebuilding analysis; and 27 mt, the value corresponding to a 50–percent probability of rebuilding the yelloweye rockfish to Bmsy by the year 2069 (T_{max}) from the revised rebuilding analysis. The SSC advised that the OY not exceed 22 mts, the OY recommended by the Council's ad hoc allocation committee. The Council followed the SSC's advice and recommended adopting an OY of 22 mt.

Sablefish

In 2001, sablefish were assessed in the region between Point Conception (34° 27′ N. lat.) and the U.S.-Canada border. The assessment indicated a decline in biomass since the late 1970s and a decline in recruitment during the early 1990s. This result was supported by a parallel assessment conducted by an industry-supported research team. For 2002, newly available fishery and survey data were used to update the assessment. No changes were made to the model structure or assumptions. However, the update produced a larger than expected increase in the perceived stock abundance throughout the time series. Such a change is an indication of the overall uncertainty in the stock assessment due to the relatively short time series of survey data. The relative 2001 spawning stock biomass had been estimated to be between 27 and 38 percent of the unfished biomass following the 2001 assessment, and the estimate increased to between 31 and 39 percent of the unfished biomass in the 2002 update. There was a notable increase in the estimated abundance of young fish born in 1999 and 2000 and evidence that these young fish have begun to recruit to the fishery.

As in 2001, two alternative states of nature, environmentally driven and density-dependent, were considered in calculation of target abundance levels and current productivity. The declines in recruitment during the early 1990s may have resulted from changes in environmental conditions or the low recruitment may have been caused by low spawning biomass. It is not possible to determine with high confidence the primary cause of the low recruitments during the 1990s, but the higher recruitment in 1999 and 2000 lends support for the environmental scenario.

The ABC estimate for the assessment area north of Point Conception (34° 27′ N. lat) is 8,459 mt. The ABC for the management area north of 36° N lat. is 8,209 mt (97.04 percent of the ABC from the surveyed area). The ABC estimate was based on the environmental scenario for trends in recruitment and on application of an Fmsy proxy of F45%. Although there is evidence that juvenile sablefish have begun to recruit to the fishery, the growth of the sablefish biomass will be slow and will depend on future average recruitment being larger than observed during most of the 1990s.

Four OY options were presented to the Council for the area North of 36° N. lat.: 8,187 mt based on the ABC from the environmentally driven projection with an Fmsy proxy of F45% and a 40/10 adjustment; 7,455 mt based on the ABC from the density-dependent projection with an Fmsy proxy of F45% and a 40/10 adjustment; 4,477 mt based on the ABC from the density-dependent projection with an Fmsy proxy of F60% and a 40/10 adjustment; and 5,000 mt, an intermediate point between 4,477 mt and 7,455 mt. The SSC indicated that the medium and high OYs were relatively risk-prone and advised the Council that caution should be used when setting the 2003 harvest levels. The SSC noted that an OY of 5,000 mt, as recommended by the Council's ad hoc Allocation Committee, was consistent with the SSC recommendation and addresses uncertainty in assessment relating to the different states of nature.

Following discussions and public comment, the Council recommended adopting an ABC of 8,459 mt for the surveyed area, resulting in an ABC of 8,209 mt with an OY of 6,500 mt for the area north of 36° N′ lat. The Council recommended OY of 6,500 mt is the 7,455 mt OY, based on a 40/10 adjustment to the ABC, with an additional 1,000 mt precautionary reduction. The Council based its recommendation on the SSC's advice to be precautionary because of assessment uncertainties, and because the sablefish biomass is within the precautionary range. The Council indicated that it was prudent to adopt an OY that was risk averse rather than risk neutral.

Pacific Whiting

Pacific whiting was declared overfished on April 15, 2002 (67 FR 18117). The Pacific whiting stock is estimated to be just below the FMP's overfished species rebuilding threshhold of B25%. In June, a draft rebuilding analysis for whiting that followed the analysis guidelines established by the SSC was presented to the Council. Because of the high variability in recruitment patterns and short life span of whiting, the rebuilding analysis estimated a short rebuilding period even with high harvest levels. However, given the recruitment variability, there is also a high probability that the whiting biomass would drop below the overfishing threshold again following recovery. The rebuilding analysis examined alternative Fmsy proxies in terms of whether the population would become overfished following recovery. The SSC was unable to investigate the merits of moving from the current F40% Fmsy proxy to another; however, the SSC did advise continuing the use of the 40–10 harvest policy for whiting and noted that the 40–10 harvest policy appeared adequate to achieve rebuilding.

Three OY options, all of which are based on a medium level of recruitment for the 1999 year class, were considered by the Council: 129,600 mt based on the 2002 biomass estimate with an F40% Fmsy proxy and the application of the 40–10 harvest policy; 148,200 mt based on the 2003 projected biomass with an F45% Fmsy proxy and the application of the 40–10 harvest policy; and 173,600 mt based on the 2003 projected biomass with an F40% Fmsy proxy and the application of the 40–10 harvest policy. The SSC advised the Council to be precautionary and not increase the whiting OY over the 2002 harvest level until a new assessment was conducted. However, the Council indicated that the medium harvest level, 148,200 mt, based on the 2003 projected biomass with an F45% Fmsy, was sufficiently precautionary. Although it allows a short-term increase in the OY based on expected population growth, it moves to a more precautionary harvest rate that is expected to increase the rebuilding rate and reduce the risk of declining back into an overfished state (below B25%) given the high productivity of whiting.

Minor Nearshore Rockfish

To protect depleted stocks and minimize the chance of overfishing, changes were made in 2000 that

eliminated the "Sebastes complex" and created the "minor rockfish" categories (January 4, 2000, 65 FR 221). Minor rockfish species that have had rudimentary or no assessments are divided into nearshore, shelf, and slope categories that represent where they are predominantly caught.

Given the expected increase in fishing pressure in nearshore areas, the States of Oregon and California indicated that the commercial and recreational minor nearshore rockfish fisheries could be better managed if the minor nearshore rockfish species group were subdivided. For 2003, the States of Oregon and California will manage minor nearshore rockfish north as two groups: black and blue rockfish and all other nearshore rockfish. Due to the expected effort shift to the nearshore area resulting from depth based closures in deeper waters, the Council further recommended capping the 2003 OY at the 2000 OY level. This was done as a precautionary measure until quantitative assessment can be prepared for the southern portion (south of Cape Falcon, OR) of the area north of Cape Mendocino, CA. Because there are no commercial nearshore fisheries in the State of Washington, minor nearshore rockfish will continue to be managed as a single group. The total catch OY for black and blue rockfish in the area between 40°10′ N. lat. and 46°16′ N. lat. is 585 mt and the total catch OY for all other nearshore rockfish in this same area is 53 mt. For the area north of 46°16′ N. lat. (the Washington/Oregon border), the total catch OY for all nearshore rockfish is 290 mt, most of which is estimated to be taken in the recreational fisheries although a small amount is expected to be taken in the tribal fisheries.

For 2003, the minor nearshore rockfish south OY will be managed as the following three groups with separate OYs: Shallow nearshore rockfish (black and yellow, China, grass, gopher and kelp rockfish), California scorpionfish, and deeper nearshore rockfish (black, blue, brown, calico, copper, olive, treefish, and quillback rockfish). Given the projected increase in both recreational and commercial fishing pressure in nearshore areas, the State of California indicated that the fisheries could be better managed and overfishing prevented if the minor nearshore rockfish species were subdivided. The shallow nearshore rockfish total catch OY will be 104.9 mt; the deeper nearshore rockfish total catch OY will be 351 mt; and the California scorpionfish total catch OY will be 84.8 mt. Alternative catch sharing arrangements between the commercial and recreational sectors were considered by the Council. The catch sharing arrangement proposal in this rule was developed through a public hearing process conducted by the California Department of Fish and Game.

Overfished Species

Nine groundfish stocks have been designated as "overfished," POP, bocaccio, lingcod, canary rockfish, cowcod, darkblotched rockfish, widow rockfish, yelloweye rockfish and Pacific whiting. Management measures designed to rebuild overfished species, or to prevent species from becoming overfished, may restrict the harvest of relatively healthy stocks that are harvested with overfished species. As a result of the constraining management measures imposed to protect and rebuild overfished species, a number of the OYs for healthy stocks may not be achieved in 2003.

Pacific Ocean Perch (POP)

The recommended ABC for POP in 2003 is 689 mt, is based on an F50% Fmsy proxy and is a 2003 projection based on the Council's interim rebuilding strategy. Three OYs based on the most recent rebuilding analysis and corresponding to different probabilities of rebuilding the stock were presented to the Council. These OYs were: 496 mt based on a 50 percent probability of rebuilding POP rockfish to Bmsy by the year 2041 (T_{max}); 377 mt the value corresponding to a 70 percent probability of rebuilding POP to Bmsy by the year 2041; and 311 mt the value corresponding to an 80–percent probability of rebuilding POP to Bmsy by the year 2041. The Council recommended OY of 377 mt is consistent with the interim rebuilding strategy adopted by the Council in prior years.

Lingcod

The recommended ABC for lingcod in 2003 is 841 mt and is based on an F45% Fmsy proxy. Three OYs, based on the rebuilding analysis prepared in 2001 and corresponding to different probabilities of rebuilding the stock to Bmsy by T_{max}, were presented to the Council. These OYs were: 555 mt based on a 80- percent probability of rebuilding lingcod to Bmsy by the year 2009 (T_{max}); 651 mt the value corresponding to a 60–percent probability of rebuilding lingcod to Bmsy by the year 2009; and 725 mt the value corresponding to a 50–percent probability of rebuilding lingcod to Bmsy by the year 2009. The Council recommended adopting an OY for 2003 of 651 mt. This harvest level is consistent with the interim rebuilding strategy adopted by the Council in prior years and is expected to maintain the Council's goal of rebuilding lingcod by the year 2009.

Darkblotched Rockfish

The recommended ABC for darkblotched rockfish in 2003 is 205 mt and is based on an F50% Fmsy proxy. Five OYs, based on the 2001 rebuilding analysis and corresponding to different probabilities of rebuilding the stock to Bmsy, were presented to the Council. These OYs were: 100 mt, 130 mt based on the 2001 harvest level that was in place before the final rebuilding analysis was completed, 172 mt the value corresponding to a 80- percent probability of rebuilding darkblotched rockfish to Bmsy by the year 2047 (T_{max}); 184 mt the value corresponding to a 60- percent probability of rebuilding darkblotched rockfish to Bmsy by the year 2047; and 205 mt the value corresponding to a 50- percent probability of rebuilding darkblotched rockfish to Bmsy by the year 2047. The 172 mt OY is also comparable to a 50-percent probability of rebuilding darkblotched rockfish to Bmsy by the year 2030 (T_{mid}).

Because darkblotched rockfish are primarily harvested with trawl gear, managing to a lower OY would most constrain the trawl fishery and likely require most fishing to occur seaward of the 250 fm (457 m) depth contour, where darkblotched rockfish is primarily caught (for further information see the Emergency rule to establish depth-based management measures; September 13, 2002, 67 FR 57973). Measures to further restrict flatfish trawl fisheries shoreward of 100 fm (183 m) would also protect juvenile darkblotched rockfish. Small vessels would be most affected by a lower OY. The Council recommended an OY of 172 mt, which provides a reasonable balance between the length of time for rebuilding the stock and the adverse economic impacts to the limited entry trawl sector. This OY is associated with an 80- percent probability of rebuilding within T_{max} as compared to the 70 percent probability that was applied in 2002.

Widow Rockfish

The recommended ABC for widow rockfish in 2003 is 3,871 mt and is based on an F50% Fmsy proxy. At the Council's June 2002 meeting, a revised widow rockfish rebuilding analysis was reviewed. Three OYs based on the revised analysis and corresponding to different probabilities of rebuilding the stock by T_{max} were presented to the

Council. These OYs were: 656 mt based on a 50 percent probability of rebuilding widow rockfish to Bmsy by the year 2030 (T_{mid}); 832 mt the value corresponding to a 60 percent probability of rebuilding widow rockfish to Bmsy by the year 2039 (T_{max}); and 916 mt the value corresponding to a 50- percent probability of rebuilding widow rockfish to Bmsy by the year 2039. The low OY alternative would not provide for a mid-water trawl target fishery for yellowtail rockfish and would not provide an adequate buffer against unanticipated mortalities and increased effort. The higher harvest levels could be expected to provide for a limited mid-water trawl fishery for yellowtail rockfish. The Council recommended adopting an OY for 2003 of 832 mt. This harvest level is consistent with the interim rebuilding strategy adopted by the Council, and a 60–percent probability of rebuilding widow rockfish to Bmsy by the year 2039, which is the same as a 50 percent probability of rebuilding by 2037 ($T_{Target.}$)Derivations of the ABC and OYs for the individual groundfish species are explained in detail in Council documents from their June and September 2002 meetings and in the most recent stock assessments and are summarized in this document in Table 1a. Derivations of commercial harvest guidelines, limited entry and open access allocations, and landed catch equivalents appear in the footnotes to Table 1a, listed at the end of Table 1b.

Determinations of Overfished Stocks and Rebuilding Plans

The status of the groundfish stocks is evaluated against the requirements of the Magnuson-Stevens Act, the National Standard Guidelines, and the FMP. A species is considered to be overfished if its current biomass is less than 25 percent of the unfished biomass. The Magnuson-Stevens Act requires that a rebuilding plan be prepared within 1 year after the Council is notified by NMFS that a particular species is overfished.

In the fall of 2000, NMFS had approved the first three rebuilding plans for lingcod, boccacio, and POP (65 FR 53646, September 5, 2000). Subsequently, requirements for developing overfished species rebuilding plans were addressed in Amendment 12 to the FMP, which were submitted for public review (65 FR 54475, September 8, 2000) and approved by NMFS on December 7, 2000. During NMFS's review of Amendment 12, the agency considered whether the three recently approved rebuilding plans met the requirements of Amendment 12 and concluded that the plans did not. The final rule to implement Amendment 12 describes NMFS's revocation of the lingcod, boccacio, and POP rebuilding plans (65 FR 82947, December 29, 2000). NMFS instructed the Council to re-submit rebuilding plans. The groundfish fishery has continued to operate under interim rebuilding measures for these species.

While NMFS and the Council were developing rebuilding plans that were consistent with the requirements of Amendment 12, NMFS notified the Council that canary rockfish and cowcod were overfished and that the Council must submit rebuilding plans for these species to NMFS by January 4, 2001 (65 FR 221, January 4, 2000). On January 11, 2001 (66 FR 2338), NMFS notified the Council that darkblotched and widow rockfish were overfished and that Council must submit rebuilding plans for these species to NMFS by January 11, 2002. Subsequently, on August 20, 2001, the Federal magistrate ruled in *National Resources Defense Council, Inc* v. *Evans* 168 F. Supp. 2d 1149 (N.D. Cal., 2001) that rebuilding plans under the FMP must be in the form of a plan amendment or proposed regulations as specified by the Magnuson-Stevens Act, 16 U.S.C. 1854 (e)(3). In accordance with the Court ruling, the magistrate issued an order setting aside those portions of Amendment 12 to the FMP dealing with rebuilding plans (Amendment 12 provided a framework for rebuilding plans that were not themselves plan amendments or proposed regulations). As a result of the magistrate's decision, the Council must now revise Amendment 12 and rebuilding plans to be consistent with the Magnuson-Stevens Act. On January 11, 2002 (67 FR 1555), NMFS notified the Council that yelloweye rockfish was overfished and that the Council must submit a rebuilding plan to NMFS by January 11, 2003. On April 15, 2002 (67 FR 18117), NMFS notified the Council that Pacific whiting was overfished and that the Council must submit a rebuilding plan to NMFS by April 15, 2003. At its October 29 - November 1, 2002, meeting in Foster City, CA, the Council addressed Amendment 16 to the FMP, which is scheduled for adoption in April 2003. Amendment 16 is intended to bring the FMP into compliance with the Court order to make rebuilding measures consistent with the Magnuson-Steven's Act, and allow for public review.

The draft rebuilding plans initially endorsed by the Council are summarized as follows:

POP

Areas: Vancouver and Columbia

Status of stock: 13 percent of its unfished biomass (1998)

T_{max}: 2041

Ttarget with a 50 percent probability of rebuilding: 2027

Probability of rebuilding to Bmsy by T_{max}: 70 percent

Fmsy proxy: F50%

ABC in 2003: 689 mt

OY in 2003: 377 mt

Management measures for 2003: POP primarily inhabit waters of the upper continental slope and are found along the edge of the shelf. POP are primarily taken in trawl gear. Therefore, new depth based management measures that prohibit bottom trawling in depths where darkblotched rockfish, a slope species, are commonly found will also benefit POP. Relatively small cumulative trip limits are intended to accommodate incidental bycatch without encouraging targeting. POP is not an important species for the recreational or nontrawl commercial fisheries.

Bocaccio

Areas: Monterey and Conception

Status of stock: 3.6 percent of its unfished biomass in 2002

T_{max}: 2109 see discussion in previous section regarding the sustainability analysis

T_{target} with a 50 percent probability of rebuilding: see discussion in previous section regarding the sustainability analysis

Probability of rebuilding to Bmsy by T_{max}: see discussion in previous section regarding the sustainability analysis

Fmsy proxy: F50%

ABC in 2003: 198 mt

OY in 2003: ≤20 mt

Management measures for 2003: All directed bocaccio rockfish fishing opportunities will be eliminated for 2003. Boccacio rockfish retention will not be permitted in the commercial fisheries. The OY will be used to accommodate discards of bocaccio rockfish resulting from incidental catch taken in fisheries for co-occurring species (see bycatch rate discussion). Bocaccio rockfish are a shelf species commonly found in depths between 45–160 fm (82–293 m). New depth based management measures will prohibit groundfish-directed bottom trawl, limited entry fixed gear, and open access fishing opportunities in the depths where bocaccio are most commonly found. Closed areas will differ by gear type to tailor closures so that they best reflect where a particular gear type takes bocaccio. Chilipepper rockfish will be included in the minor

shelf species group, which eliminates opportunities to directly target a species that commonly co-occurs with bocaccio. The California recreational fisheries south of 40° 10′ N. lat. will be closed entirely from January through June, 2003 and open only shoreward of 20 fm (37 m) for July through December. The retention of bocaccio rockfish will be prohibited for all gears.

Lingcod

Areas: Coastwide

Status of stock: 15 percent of its unfished biomass in 2001

T_{max}: 2009

T_{mid} with a 50–percent probability of rebuilding: NA

Probability of rebuilding to Bmsy by T_{max}: 60 percent

Fmsy proxy: F45%

ABC in 2003: 841 mt

OY in 2003: 651 mt

Management measures for 2003: In general, commercial non-trawl landings are prohibited during winter months to protect lingcod during their spawning and nesting seasons. Trip limits during the open season remain low. Because lingcod are predominately found on the shelf, gear and depth based management restrictions imposed to protect overfished shelf rockfish species will benefit lingcod. The recreational fisheries in each State maintained a 2 lingcod bag limit, however Washington State will close lingcod fishing for five months, from fall to early spring. California recreational fisheries will be closed from January to June. Commercial hook and line fisheries are similarly closed during the winter months to eliminate targeting during the winter spawning and nesting season.

Canary Rockfish

Areas: Coastwide

Status of stock: 8 percent of its unfished biomass in 2002

T_{max}: 2076

T_{target} with a 50 percent probability of rebuilding: 2074

Probability of rebuilding to Bmsy by T_{max}: 60 percent

Fmsy proxy: F50%

ABC in 2003: 272 mt

OY in 2003: 44 mt

Management measures for 2003: The new depth based management measures that prohibit bottom trawling on much of the continental shelf and slope will limit opportunity to catch canary rockfish. In addition, small footrope trawl gear restrictions in waters shoreward of the closed areas are expected to keep the incidental catch of canary rockfish low. May to October restrictions for arrowtooth flounder are also expected to minimize incidental catch of canary rockfish. Retention of canary rockfish will be prohibited in the limited entry and open access fixed gear fisheries. The States will require the exempted pink shrimp trawl vessels to use finfish excluders to participate in the state-managed fisheries. The States of Washington and California will ban spot prawn trawls beginning in 2003, and instead require pot gear to be used for spot prawns. In the recreational fisheries canary rockfish retention will be limited to 1 fish in Washington and Oregon, and prohibited in California. In addition, the California recreational fisheries south of 40° 10′ N. lat. will be closed entirely from January through June and open only shoreward of 20 fm (37 m) for July through December.

Cowcod

Areas: Point Conception to the U.S.-Mexico boundary.

Status of stock: 4–11 percent of unfished biomass in 1999

T_{max}: 2099

T_{target} with a 50–percent probability of rebuilding: 2095

Probability of rebuilding to Bmsy by T_{max}: 55 percent

Fmsy proxy: F50%

ABC in 2003: 24 mt

OY in 2003: 4.8 mt

Management measures for 2003: All directed cowcod fishing opportunities were eliminated beginning in 2001. Retention of cowcod is prohibited for all commercial and recreational fisheries. To protect cowcod from incidental harvest, the Council has recommended continuing to use two Cowcod Conservation Areas (CCAs) (the Eastern CCA and the Western CCA) in the Southern California Bight, delineated to encompass key cowcod habitat areas and known areas of high catches. Fishing for groundfish is prohibited within the CCAs, except that minor nearshore rockfish, cabezon, lingcod, scorpionfish, and greenling may be taken from waters where the bottom depth is less than 20 fathoms (37 m) when the season for those species is open. A transportation corridor is provided through the Western CCA to allow commercial vessels fishing for slope rockfish and other groundfish west of the Western CCA to transport that groundfish through the Western CCA.

Darkblotched rockfish

Areas: Coastwide

Status of stock: 22 percent of unfished biomass in 2000

T_{max}: 2047

T_{target} with a 50 percent-probability of rebuilding: 2030

Probability of rebuilding to Bmsy by T_{max}: 80%

Fmsy proxy: F50%

ABC in 2003: 205 mt

OY in 2003: 172 mt

Management measures for 2003: Adult darkblotched rockfish primarily inhabit waters of the upper continental slope and are primarily found along the edge of the shelf north of 38° N.′ lat. Darkblotched rockfish are primarily taken with trawl gear. The new depth based management measures that prohibit bottom trawling on much of the continental shelf and slope will limit opportunity to catch darkblotched rockfish. Measures to restrict flatfish trawl fisheries shoreward of 100 fm (183 m) will also protect juvenile darkblotched rockfish. May to October restrictions for arrowtooth flounder are also expected to minimize incidental catch of darkblotched rockfish.

Widow Rockfish

Areas: Coastwide

Status of stock: 24 percent of unfished biomass in 2000

T_{max}: 2039

T_{target} with a 50–percent probability of rebuilding: 2037

Probability of rebuilding to Bmsy by T_{max}: 60 percent

Fmsy proxy: F50 percent

ABC in 2003: 3,871 mt

OY in 2003: 832 mt

Management measures in 2003: Commercial limits for widow rockfish are intended to accommodate incidental catch and remove incentives for direct fishing. In addition, the midwater trawl fisheries for yellowtail rockfish have been constrained with an incidental catch allowance during the primary season for Pacific whiting to reduce interception of widow rockfish. Bottom trawl opportunities for shelf rockfish continue to be extremely limited, which is expected to benefit widow rockfish.

Yelloweye Rockfish

Areas: coastwide

Status of stock: 24 percent of unfished biomass in 2002

T_{max}: 2071

T_{target} with a 50–percent probability of rebuilding: 2052

Probability of rebuilding to Bmsy by T_{max}: 92 percent

Fmsy proxy: F50%

ABC in 2003: 52 mt

OY in 2003: 22 mt

Management measures in 2003: Yelloweye rockfish are more available to the fixed gear and recreational fisheries than to trawl gear. The retention of yelloweye rockfish in the commercial fixed gear fisheries will be prohibited. In addition, depth based closures on the continental shelf will prevent commercial interception of yelloweye rockfish. Off Washington State retention of yelloweye rockfish in recreational fisheries will be prohibited. A Yelloweye Rockfish Conservation Area

(YRCA) has been identified off the north Washington coast, and recreational fishing will be prohibited within that conservation area. In Oregon, the retention of yelloweye rockfish during the all-depth halibut fisheries will be prohibited, otherwise there is a one yelloweye rockfish sub-limit in the ten marine fish bag limit. The California recreational fisheries south of 40° 10′ N lat will be closed entirely from January through June and open shoreward of 20 fm (37 m) for July through December. However, the retention of yelloweye rockfish in the California recreational fisheries will be prohibited.

Overfishing

None of the 2003 ABCs are knowingly set higher than Fmsy or its proxy, none of the OYs are set higher than the corresponding ABCs, and the management measures in this proposed rule are designed to keep harvest levels within specified OYs. Overfishing is difficult to detect inseason for many groundfish, particularly for minor rockfish species, because most are not individually identified on landing. Species compositions, based on proportions encountered in samples of landings, are applied during the year. However, final results are not available until after the end of the year. Thus, this **Federal Register** document discusses overfishing for 2001, not 2002. If overfishing occurred on any groundfish species in 2002, it will be discussed in the 2004 **Federal Register** publication of the specifications for that year. After the 2001 fishing season, NMFS determined that overfishing had not occurred on any of the groundfish species. However, a new stock assessment on Pacific whiting incorporating 2001 hydroacoustic survey data was completed in early 2002. The new stock assessment revised the spawning stock biomass to be lower than previously estimated over the past several years. Therefore, in retrospect, revised biomass estimates based on the results of the new assessment indicate that the exploitation rates on Pacific whiting in 1999, 2000, and 2001 were above the overfishing level.

In the past, several changes to groundfish management, and rockfish management in particular, were intended to ensure that groundfish species were not subject to overfishing harvest rates. These changes included separating the rockfish complex into species and assemblages (nearshore, shelf, and slope), closing fisheries inseason once the OY has been reached, structuring the season to reduce bycatch of overfished species, imposing gear restrictions, requiring sorting of rockfish to improve landings data, and restructuring the season and trip limits inseason. As information on the stocks improves, management measures continue to evolve. For 2003, management measures are more restrictive in order to protect overfished species, including reduced harvest levels, depth based management, closed areas and seasons. Area closures north of Cape Mendocino, CA, were primarily designed to protect canary rockfish, but are also expected to provide protection for other northern overfished species such as darkblotched rockfish, lingcod, POP, yelloweye rockfish, and widow rockfish. Area closures south of Cape Mendocino, CA were primarily designed to protect bocaccio rockfish, but are also expected to provide protection for other southern overfished species such as cowcod, lingcod, and darkblotched rockfish in its southern range.

Bycatch and Discard Accounting

The Magnuson-Stevens Act defines bycatch as "fish which are harvested in a fishery, which are not sold or kept for personal use, and include economic discards and regulatory discards." By contrast, Pacific Coast groundfish fishery management and many other fishery management regimes commonly use the term bycatch to describe non-targeted species that are caught in common with (co-occur with) target species, some of which are landed and sold or otherwise used and some of which are discarded. The term "discard" is used to describe those fish harvested that are neither landed nor used. For the purposes of this proposed rule, the term "bycatch" is used to describe a species' co-occurrence with a target species, regardless of that first species' disposition.

West Coast groundfish species are rarely found in isolation. They normally form associations with other groundfish species that vary by geographic location, position in the water column, and season. Fisheries management recognizes this mix by setting management measures that discourage targeting of more abundant stocks in times when and areas where depleted stocks may co-occur with those healthy stocks. Fisheries management also recognizes this mix by structuring retention allowances for the harvestable amounts of depleted stocks so that fisheries have some limited opportunity to access more abundant fish stocks.

With the exception of the mid-water trawl fishery for Pacific whiting, most groundfish vessels sort their catch at sea and discard species that are either in excess of cumulative trip limits, unmarketable, in excess of annual allocations, or incidentally caught non-groundfish species. Landed or retained catch has been monitored by the three state-run fish ticket programs in Washington, Oregon, and California. Since August 2001, total catch (landed catch + discards) has been monitored through a Federal observer program. (For more information on the NMFS observer program and the observer coverage plan, see *http://wwwnwfsc.noaa.gov/fram/Observer.*) Widow, yellowtail, canary and darkblotched rockfish discard in the at-sea whiting fisheries is monitored inseason and actual discard numbers are deducted from the OY.

Groundfish management measures include provisions to reduce trip limit-induced discards and to account for those discards when monitoring harvest levels OYs. Historically, NMFS and the Council have accounted for dead discards by estimating the amounts of certain species OYs that would be discarded dead, and then subtracting those amounts from the total catch OYs to get landed catch levels for those species. These discard rates have been expressed as a percent of total catch OY, so that a 16- percent discard rate for a species meant that 16 percent of that species' total catch OY would be deducted to derive that species' landed catch OY. Then, management measures were set to achieve the landed catch OY for that species. Using discard rates was intended to account for dead fish either as dead discard or in landed catch. For all species except lingcod, sablefish, and nearshore rockfish species, it is assumed that discarded fish are generally dead upon discard or die soon after being discarded. Rockfish, particularly deepwater species, are severely stressed by decompression and temperature shock; however, lingcod discard mortality studies show about a 50–percent discard survival rate. There is no exact measure of discard amounts in most fisheries. Assumed amounts are taken into account to determine the fishing mortality level and to prevent overall harvest from exceeding the OYs.

NMFS approach to bycatch management in the 2002 specifications and management measures was a radical departure from historic bycatch management practices. The primary emphasis of the bycatch modeling that NMFS used in the development of the 2002 management measures was the estimation of the total amounts of bycatch species that would be caught coincidentally with available target species. The new management approach structured the amount and timing of cumulative landings limits for target species so that the expected total catch of both target and bycatch species not

exceed their allowable annual harvests. This new approach better accounted for the total mortality of the overfished stocks taken as bycatch than the previous method of applying estimated discard rates to the annual OY to calculate landed catch harvest guidelines. NMFS believes that setting cumulative landing limits for both target and bycatch species based on their co-occurrence in the catch will help ensure that annual OYs for bycatch species are not exceeded. Additional information on the bycatch analysis used in setting the 2002 specifications and management measures is available in the preambles to the proposed and final rules implementing that regulatory package, at 67 FR 1555 (January 11, 2002) and 67 FR 10490 (March 7, 2002,) respectively.

Discard rates for individual groundfish species or species groups are provided in the species-specific footnotes to Table 1 of this document. Although no longer the first line of defense, calculating landed catch OYs based on estimated discard rates is still a strong second line of defense. NMFS new modeling approach for 2002 provided insight into the expected level of discards that are associated with total amounts of catch. Results from the modeling were drawn upon to estimate landed catch OYs for overfished species taken incidentally in the commercial fishery. Landings were monitored so that inseason action could be taken to reduce fishing effort for one or more of the target species. During 2002, notable closures and restrictive regulations were implemented to prevent overharvest of overfished species.

The third line of defense is the revision of the procedures used for evaluating inseason progress of the fishery and for making management adjustments for the target species, and will also help ensure that annual OYs for overfished species are not exceeded. In previous years, when inseason monitoring had revealed that landings of a target species or complex were progressing at a rate that was too fast or too slow, adjustments were made to the cumulative landings limits based primarily on achieving the annual OY for the target species with little consideration of the bycatch implications of changing those limits. For 2002 inseason actions, the bycatch model was used to evaluate the bycatch consequences of any deviations from the projected target fishery landings, and of any changes in target species limits during the remainder of the year. Target species landings limits were not adjusted upwards when an adjustment meant that an associated bycatch species total catch OY would be exceeded, even if the annual OY for the target species would not be achieved.

For setting its 2003 specifications and management measures, the Council again relied on the 2002 bycatch analysis described earlier in this document, adjusted as described below. However, NMFS anticipates revising the co-occurrence rates in the bycatch analysis in early 2003, based on the agency's evaluation of how those rates compare with rates recorded in the first year of the Federal at-sea observer program (August 2001 through August 2002). These revised co-occurrence rates will be used to guide decisions on inseason actions in 2003, just as the original bycatch analysis guided those decisions in 2002.

As discussed in more detail following this section, the Council has introduced new closed areas for 2003, intended to prevent vessels from fishing in waters where overfished species commonly occur. The Council and its advisory bodies expected that introducing new depth based management measures would require adjusting the bycatch analysis to better recognize fishing patterns in the areas remaining open to fishing. Additionally, 2003 depth-related revisions to the bycatch analysis would have to account for expected effort shift by vessels that had historically operated in the formerly open areas.

To account for varying fishing patterns by depth, the Groundfish Management Team (GMT) estimated the percentage of effort shift from closed areas to the remaining open fishing areas, then estimated the percentage of target species OYs that would be taken in the nearshore and offshore open areas. Some deepwater species, such as sablefish, will likely only be taken offshore of the closed areas; similarly, vessels will be targeting nearshore species shoreward of the closed areas. Other species, such as Dover sole, are distributed more broadly and will likely be taken in both the nearshore and offshore open areas. Once the GMT had set formulas to account for effort shift and target species availability in open fishing areas, the GMT addressed expected bycatch rates within those open areas.

Using the bycatch rates approved by the Council for the 2002 groundfish fisheries, the GMT analyzed bycatch rates for the same combinations of targeted and overfished stocks by depth and by two-month fishing period in trawl logbooks. Because the bycatch rates from trawl logbooks for the total fishing area were lower than those chosen by the Council for 2002 management, the GMT assumed that depth-specific bycatch rates shown in the trawl logbooks were not adequately conservative. Thus, the GMT adjusted depth-specific trawl logbook bycatch rates by the ratio between the Council's 2001/2002 selected rates for all areas and the logbook rates for all areas. From these adjustments, the GMT set new depth- and fishing period-specific bycatch rates that were compatible with the more conservative all areas bycatch rates the Council set in 2002. The SSC evaluated the GMT's methodology for setting depth based bycatch rates for 2003 and noted that the methods chosen were reasonable, yet would benefit from the expected 2003 analysis of the bycatch model against data gathered in the at-sea observer program.

In designing trip limits, season closures, and other management measures, the GMT crafted trip limit scenarios for targeted and bycatch species taken in the open areas that were calculated to keep the total catch (landed + discard) of targeted species and overfished species below their respective OYs. The Council's ultimate trip limit, season, and area closure recommendations were shaped largely by the depth-adapted 2001/2002 bycatch and discard analysis and are proposed in section IV of this proposed rule.

Depth-based Management

Since 1998, groundfish management measures have been shaped by the need to rebuild overfished groundfish stocks. The over 80 species in the West Coast groundfish complex mix with each other to varying degrees throughout the year and in different portions of the water column. Some species, like Pacific whiting, are strongly aggregated, making them easier to target with relatively little bycatch of other species. Conversely, other species like canary rockfish may occur in species specific clusters, but are also found co-occurring with a wide variety of other groundfish species. Over the past several years, groundfish management measures have been more carefully crafted to recognize the tendencies of overfished species to co-occur with healthy stocks in certain times and areas.

With the 2002 specifications and management measures, the Council introduced a new bycatch analysis model, discussed earlier, that allowed managers to set trip limits so that more abundant stocks were more strongly targeted in times when they were less likely to co-occur with overfished stocks. The 2002 management measures primarily varied by time (two-month period) and by north-south management area (north of Cape Mendocino, between Cape Mendocino and Point Conception,

south of Point Conception, etc.) For 2003, the Council has recommended using a new management tool: depth-based closures intended to prevent vessels from fishing in depths where overfished species commonly occur while still allowing some fishing for more abundant stocks in the open areas.

Depth-based management closures for the continental shelf were first introduced on September 13, 2002 (67 FR 57973), with an emergency rule that closed trawling in the months of September-December 2002 in waters north of 40°10′ N. lat. (approximately at Cape Mendocino) at depths where darkblotched rockfish commonly occurs. At its June 2002 meeting, the Council had found that the darkblotched rockfish estimated total catch was expected to exceed the OY before the end of 2002. In order to protect darkblotched rockfish from overharvest while still allowing fisheries access to underharvested healthy stocks, the Council asked NMFS to implement an emergency rule that would allow trawl gear only shoreward of 100 fm (184 m) and offshore of 250 fm (461 m). NMFS reviewed and implemented the Council's request, revising the restrictions to allow fishing shoreward of 100 fm (184 m) only in October-December and offshore of 250 fm (461 mt) in September-December, to prevent overharvest of canary rockfish and darkblotched rockfish in September.

The September-December 2002 closure was intended to specifically protect darkblotched rockfish, which are commonly caught by trawl gear in waters of 70–250 fm (128–457 m) depth. In designing 2003 management measures, the Council considered depth closures that would provide protection for several overfished species. Different closed areas are provided for different gear types, as not all gear types encounter each overfished species at the same rate or in similar areas. POP, for example, is almost exclusively caught in trawl fisheries, whereas yelloweye rockfish tends to be caught by hook-and-line gear.

For the limited entry bottom trawl fisheries north of 40°10′ N. lat., canary rockfish tends to be available in 20–200 fm (37–366 m) depths, with higher catches in more shallow areas during the summer. As mentioned earlier, darkblotched rockfish tends to be found in 70–250 fm (128–457 m). To provide protection for all of these stocks in 2003, the Council recommended a closed area for bottom trawl fisheries north of 40°10′ N. lat. of 100–250 fm (184–461 m) depths, with the inshore closed area boundary line moving to 75 fm (137 m) for the months of July-August. This closure is expected to protect canary and darkblotched rockfish in areas where they have historically been taken by trawl fisheries. In the months of January-February and November-December, the offshore closed area boundary would be revised to allow some bottom trawling in areas where petrale sole tends to aggregate. (See paragraph IV A. (19) for exact coordinates.) This closed area is also expected to protect other northern continental shelf and slope overfished species, such as lingcod, widow rockfish, POP, and yelloweye rockfish. Large footrope bottom trawling would be prohibited shoreward of the closed areas. Midwater trawling, as defined at 50 CFR 660.322(b)(6) would be permitted within the closed area for Pacific whiting, yellowtail and widow rockfish because these fishing strategies have historically encountered only small amounts of overfished species as bycatch. Trawling with open access exempted gear for species other than groundfish (spot prawn off Oregon and pink shrimp north of 40°10′ N. lat) would be permitted within the closed area. However, the States require groundfish excluder devices to be used in the pink shrimp fishery.

In the limited entry bottom trawl and open access exempted trawl fisheries south of 40°10′ N. lat., bocaccio tend to be found in 45–160 fm (82–293 m) depths and the greatest number of bocaccio tend to be taken between 40°10′ N. lat. and 34°27′ N. lat. (Point Conception.) Although darkblotched rockfish are considered a northern species, they are also found between 40°10′ N. lat. and 38° N. lat. To protect these overfished species, the Council recommended closing bottom trawling between 40°10′ N. lat. and 38° N. lat. in 60–250 fm (110–457 m) depths, except that the inshore closed area boundary would be at 50 fm (91 m) in January-February. Between 38° N. lat. and 34°27′ N. lat., bottom trawling would be closed in 60–150 fm (110–274 m) depths, except that the inshore closed area boundary would be at 50 fm (91 m) in January-February. South of 34°27′ N. lat., bottom trawling would be permitted along the mainland coast (not off California islands) inside of 100 fm (183 m). Around the California islands, bottom trawling would be prohibited shoreward of 150 fm (274 m). Midwater trawling, as defined at 50 CFR 660.322(b)(6), would be permitted within the closed areas only for widow rockfish and whiting. For all areas, large footrope bottom trawling would be prohibited shoreward of the closed areas. Small footrope trawls are less able to fish in the rocky habitat preferred by many of the overfished rockfish species. In addition to these depth closures, the CCAs will remain closed to fishing offshore of 20 fm (37 m).

North of Cape Mendocino, CA, limited entry fixed gear and open access hook-and-line fisheries have a greater effect on yelloweye rockfish and a lesser effect on darkblotched rockfish than trawl gear fisheries. Thus, depth restrictions for these fisheries were designed to prevent hook-and-line gear from operating in depths where yelloweye rockfish are commonly found, 100 fm (183 m) and shallower. The Council has recommended closing limited entry and open access hook-and-line fishing shoreward of the 100 fm (183 m) contour off the Washington coast, and between 27 fm (49 m) and 100 fm (183 m) off the Oregon coast and off California north of 40°10′ N. lat. The 27–fm (49–m) contour occurs entirely in State waters off the State of Washington and commercial fishing for groundfish is prohibited in State waters off Washington, making an inshore closed area boundary moot for that State. Fishing is permitted shoreward of the 27 fm (49 m) boundary off Oregon and northern California because this area tends to be inshore of the areas where overfished species occur.

South of 40°10′ N. lat., limited entry fixed gear and open access fisheries will be primarily constrained by management measures to protect bocaccio. Fishing will be prohibited between the 20–fm (37–m) and 150–fm (274–m) depth contours throughout the year. The Council recommended an exception to this prohibition for commercial vessels using hook-and-line gear with no more than 12 hooks per line and up to 1 lb (.45 kg) weight per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank. This type of gear is used by vessels fishing for Pacific sanddabs, an abundant species that does not usually co-occur with overfished species. Hook-and-line vessels will also be permitted to fish in waters of 20–60 fm (37–110 m) depths during July and August. In addition to these depth closures, the CCAs will remain closed to fishing offshore of 20 fm (37 m).

Anticipating inseason adjustments to depth-based management measures, designed to protect overfished species while allowing the harvest of healthy groundfish stocks, the states of Oregon and California supplied coordinates for two additional depth contours. A 50–fm (91–m) depth contour off the state of Oregon and/or a 150–fm (270–m) depth

contour between 46°16′ N. lat. and 38°N. lat. may be implemented at any time during 2003 through an inseason action.

Recreational fisheries off Washington, Oregon, and California north of 40°10′ N. lat. will be subject to fewer depth restrictions than the commercial fisheries, primarily because most recreational vessels tend to operate in the nearshore area inside State waters. Off Washington, recreational fishing for groundfish and halibut will be prohibited inside the YRCA, a C-shaped closed area off the northern Washington coast. Coordinates for the YRCA will be defined at 50 CFR 660.304(d). Off Oregon and California north of 40°10′ N. lat., recreational fishing for groundfish will be closed outside of 27 fm (49 m) if either the yelloweye or canary rockfish recreational fisheries set asides are projected to be achieved.

As in past years, recreational fisheries off California south of 40°10′ N. lat., will be constrained by depth in order to reduce catch of bocaccio and other overfished rockfish species. Recreational fishing for groundfish will be prohibited entirely in waters offshore of the 20 fm (37 m) depth contour. The CCAs will also remain closed to fishing offshore of 20 fm (37 m). Coordinates defining the CCAs have changed modestly to ensure that the CCAs comply with depth-based closures for waters off southern California. CCA coordinates will be defined at 50 CFR 660.304(c).

Many of the closed areas and boundary lines are generally described using a fathom contour line. All of these lines, except the 20 fm (37 m) contour off California south of 40°10′ N. lat. and the 3–nautical mile State management line off California, are specifically defined in the regulations at IV.A. (19), using latitude/longitude waypoints. These waypoint coordinates provide straight-line boundaries that approximate the depth-contours to provide clarity to the closed area boundaries for enforcement purposes. To ensure that consistent nomenclature is used coastwide, an area closed to fishing for groundfish will be referred to as a "Groundfish Conservation Area" in general, regardless of whether the boundaries of that area change during the year. The YRCA and the CCA are defined by coordinates that are fixed throughout the year. The larger, gear or sector-specific closed areas described by depth contour boundaries for the 2003 fishing year will be referred to as "Rockfish Conservation Areas," or RCAs. For example, there will be both a trawl RCA and a non-trawl RCA north of 40°10′ N. lat. Boundaries for the RCAs will be referred to as either the "inshore boundary," meaning the RCA boundary or borderline that is closest to shore, or the "offshore boundary," meaning the RCA boundary or borderline that is farthest offshore.

At its September meeting, the Council adopted the State of California's recommendation to create a California Rockfish Conservation Area (CRCA) in waters south of 40°10′ N. lat. To ensure consistent coastwide nomenclature, this area will be referred to as an RCA in Federal regulations. NMFS anticipates that the Council and the State of California may continue to refer to the CRCA in management discussions. This RCA south of 40°10′ N. lat. will be an area of restricted or no fishing intended to protect overfished rockfish species. This restricted area is proposed as ocean waters of 20–250 fm (37–457 m) depth between 40°10′ N. lat. and 38° N. lat and waters of 20–150 fm (37–274 m) depth between 38° N. lat. and the U.S. border with Mexico. The restrictions for that area that apply to the groundfish fisheries and the exceptions to those restrictions are described earlier in the section on depth based management. Any vessel allowed to fish within the CRCA based on an exception to a fishing restriction would be required to accommodate a State or Federal observer, if requested. In creating this RCA, the Council and the State of California wished to ensure that they had accounted for all fisheries that operate in waters where overfished rockfish species occur, whether State or federally managed. Several of the restrictions within the RCA affect only State-managed species and will be implemented through State regulations. Other restrictions affect federally-managed species other than groundfish, such as salmon, and will be implemented through Federal salmon regulations.

Vessel Monitoring System (VMS)

Routine monitoring of the fishing fleet is used to ensure that vessel operators comply with fisheries regulations. Traditional monitoring techniques include the monitoring of fisheries from air and surface craft, observer programs and analysis of catch records and vessel logbooks. The efficiency of these surveillance techniques can be dramatically enhanced by the addition of a VMS. VMS is a tool that is commonly used to monitor vessel activity in relationship to geographically defined management areas where fishing activity is restricted. VMS transmitters installed aboard each vessel automatically determine the vessel's location and transmit that position to a satellite where the information is validated and analyzed before being disseminated for fisheries management, surveillance and enforcement purposes. Transmitters are designed to be tamper resistant and automatic.

Time area closures have long been used to restrict fishing activity in the Pacific Coast groundfish fishery in order to keep harvests within sector allocations and at sustainable levels or to prohibit the catch of certain species. Until September 2002, geographically defined areas tended to be in the nearshore area or defined by simple latitude lines. On September 13, 2002, NMFS published an emergency rule that established a Darkblotched Rockfish Conservation Area for the Pacific Coast groundfish fishery (67 FR 57973), a large irregularly shaped geographical area defined by a series of latitudinal and longitudinal coordinates that extends far offshore with much activity being beyond the range of State enforcement capabilities. Coastwide, depth-based areas defined for 2003 are similarly defined. Traditional enforcement of time areas closures is most effective when the geographical areas are nearshore, small, and defined by simple line. Therefore, management and enforcement of the large irregularly shaped areas proposed for the Pacific Coast groundfish fishery would be greatly enhanced if a VMS program were established. The Council recommended that NMFS move forward in developing a VMS program with the intention of having a system in place by mid-year 2003.

For October-December 2002, Washington and Oregon were able to monitor mid-water fisheries for yellowtail and widow rockfish in the DBCA through a vessel declaration process. The declaration process required vessels intending to fish within the closed area with mid-water gear to declare their intentions to the States. The States were able to fund this process because each vessel was limited to two trips per 2–month period, which also limited the number of declarations the States would have to track. In 2003, the States will not be able to monitor fisheries occurring within the closed areas with a declaration process because they are unable to fund such a process. Federal regulations proposing implementation of a VMS system will address the possible need for a Federal declaration system in conjunction with VMS coverage.

II. Commercial and Recreational Fisheries

Since 1994, the non-tribal commercial groundfish fishery has been divided into

limited entry and open access sectors, each with its own set of allocations and management measures. Species or species group allocations between the two sectors are based on the relative amounts of a species or species group taken by each component of the fishery during the 1984–1988 limited entry permit qualification period (50 CFR 660.332). The FMP allows suspension of this allocation formula for overfished species when changes to the traditional allocation formula are needed to better protect overfished species (FMP, section 5.3.2).

Historically, groundfish species and/or species groups have not been allocated between the commercial and recreational fisheries. Fishery managers instead estimated the amount that would be taken in the recreational fisheries and set that amount aside before determining the allowable harvest for the non-tribal commercial sectors. For 2003, the Council has recommended adopting nearshore groundfish allocations between the recreational and commercial fisheries. These allocations were proposed by the States of Oregon and California for waters off their coasts north and south of 40°10′ N. lat. and are intended to maintain the ratio between recreational and commercial landings 2000. Most of the fish subject to the allocation will be taken in State waters, but State-Federal management of these nearshore species is coordinated through the Council. Commercial groundfish fishing is prohibited in Washington State waters.

Groundfish species or species group allocations and set asides for the tribal and non-tribal sectors, and between the different non-tribal commercial and recreational sectors, are detailed in Tables 1a and 1b. All OYs, allocations, and set asides are expressed in terms of total catch. The limited entry/open access allocations for bocaccio, canary, darkblotched, yelloweye rockfish, and the nearshore rockfish species group would be suspended to allow the Council to better develop management measures that provide harvest opportunity for more abundant stocks while protecting overfished stocks. Estimates of trip-limit induced discards are taken "off the top" and in accordance with the bycatch and discard analysis described earlier in this notice before setting the non-tribal sector allocations, except for estimates of sablefish discards as explained in the footnotes to Table 1a. Landed catch equivalents are the harvest goals used when adjusting trip limits and other management measures during the season. Estimated bycatch of yellowtail, widow, canary, and darkblotched rockfish in the offshore whiting fishery is also deducted from the limited entry allocations before determining the landed catch equivalents for the target fisheries for widow and yellowtail rockfish.

Open Access Allocations

The open access fishery is composed of vessels that operate under the OYs, quotas, and other management measures governing the open access fishery, using (1) exempt gear or (2) longline or pot (trap) gear fished from vessels that do not have limited entry permits endorsed for that gear. Exempt gear includes all types of legal groundfish fishing gear except groundfish trawl, longline, and pots. (Exempt gear includes trawls used to harvest pink shrimp, spot or ridgeback prawns (shrimp trawls) and halibut or sea cucumbers south of Pt. Arena, CA (38°57′30″ N. lat.)

Open access allocations are derived by applying the open access allocation percentages to the commercial OY. The commercial OY is the total catch OY after subtracting any tribal allocations and set-asides for recreational fisheries or compensation fishing for conducting resource surveys. For those species in which the open access share would have been less than 1 percent, no open access allocation is specified unless significant open access effort is expected.

Limited Entry Allocations

The limited entry fishery is the fishery composed of vessels using limited entry gear fished pursuant to the OYs, quotas, and other management measures governing the limited entry fishery. Limited entry gear includes longline, pot, or groundfish trawl gear used under the authority of a valid limited entry permit issued under the FMP, affixed with an endorsement for that gear. Groundfish trawl gear excludes shrimp trawls used to harvest pink shrimp, spot or ridgeback prawns, and other trawls used to fish for California halibut or sea cucumbers south of Pt. Arena, CA. A sablefish endorsement is also required for a vessel to operate in the limited entry primary fixed gear season for sablefish.

The limited entry allocation (in total catch) is the OY reduced by (1) set-asides, if any, for treaty tribal fisheries, recreational fisheries, or compensation fishing for participation in resource surveys (which results in the commercial OY or quota); and (2) the open access allocation. (Allocations for Washington coastal tribal fisheries are discussed in Section V. and, for Pacific whiting, at paragraph IV.B.(3).)

Following these procedures, the Regional Administrator calculated the amounts of allocations that are presented in Table 1a of this document. Unless otherwise specified, the limited entry and open access allocations would be treated as OYs or harvest guidelines in 2003. There may be slight discrepancies from the Council's recommendations due to rounding.

III. 2003 Management Measures

Before 2000, the major goals of groundfish management were to prevent overfishing while achieving the OYs and to provide year-round fisheries for the major species or species groups. Over time, however, it became apparent that a number of species could not continue to be harvested year-round at a constant harvest rate. New legislative mandates under the Magnuson-Stevens Act (as amended by the Sustainable Fisheries Act in 1996) gave highest priority to preventing overfishing and rebuilding overfished stocks to their MSY levels. The National Standard Guidelines at 50 CFR 600.310 interpreted this as "weak stock management," which means that harvest of more abundant stocks may need to be curtailed to prevent overfishing or to rebuild overfished stocks.

Nine FMP species were declared overfished as of March 2002 (lingcod, bocaccio, POP, canary rockfish, cowcod, widow rockfish, darkblotched rockfish, yelloweye rockfish and Pacific whiting). Of the management measures intended to protect these species, measures for canary and darkblotched rockfish protection in the north and bocaccio protection in the south are the most constraining, because both species are broadly distributed on the continental shelf. Canary rockfish management is constraining because canary rockfish are caught directly or incidentally in most West Coast fisheries (groundfish and non-groundfish.) In order to rebuild these overfished species while allowing harvest of more abundant stocks, the Council chose management measures that prohibit bottom trawling over large portions of the continental shelf, where lingcod, bocaccio, canary rockfish, cowcod, widow rockfish, yelloweye rockfish, and, to a lesser extent, POP and darkblotched rockfish occur. As discussed earlier in this notice, the depth based management measures introduced for 2003 are gear-specific and have been crafted to maximize fishing opportunity for more abundant stocks in times when and areas where bycatch and discard of overfished and depleted stocks is estimated to be lowest.

Management measures for the limited entry fishery are found in section IV. Most cumulative trip limits, size limits, and seasons for the limited entry fishery are set out in Tables 3 and 4 of section IV. However, the limited entry nontrawl sablefish fishery, the midwater trawl fishery for Pacific whiting, and the hook-and-line fishery for black rockfish off Washington are managed separately from the majority of the groundfish species and are not fully addressed in the tables. The management structure for these fisheries has not changed since 2002, except for the level of trip limits for sablefish and Pacific whiting, and is described in paragraphs IV.B.(2)-(4) of section IV. Other provisions for the 2002 fisheries not explicitly addressed above would remain in effect for 2003 and are repeated in section V. of this document.

After hearing proposals and advice from its advisory entities and public testimony at its September 2002 meeting, the Council recommended the following actions for management in 2003.

Limited Entry Trawl

For the limited entry trawl fishery, the Council recommended a suite of gear restrictions, area closures and cumulative trip limits designed to allow fishing with gear in times and areas where incidental catch of overfished or depleted species will be minimized. In 2002, limits for some species groups were more varied than those proposed for 2003 because the 2002 limits were set to encourage (higher limits) or discourage (lower limits) fishing in different depths. Because the Council has recommended depth based closures for 2003, trip limits for those species taken in areas that remain open vary less than in 2002. Many of the more abundant groundfish stocks, such as the suite of flatfish species, are harvested almost exclusively with trawl gear, rather than with hook-and-line gear. Similarly to closed areas designed to protect overfished species taken with trawl gear, the limited entry trawl trip limit regime for more abundant stocks is gear-specific.

Flatfish fisheries are managed with more restrictive trip limits and an expanded closed area during the summer months, when participation is greater and trawl tows for flatfish are more likely to encounter overfished species. Dover sole, sablefish, thornyhead (DTS) complex limits vary only slightly throughout the year because fishing for these species is expected to largely take place on the continental slope, beyond the offshore boundary of the trawl RCAs. North of 40°10′ N. lat., the trawl RCA is primarily intended to protect canary and darkblotched rockfish; south of 40°10′ N. lat., the trawl RCA is primarily intended to protect bocaccio.

As in 2002, trawl-caught lingcod retention would be permitted throughout the year, with higher limits in the summer months. Lingcod caught incidentally during winter trawl fisheries would otherwise be discarded and thereby increase the overall lingcod discard level in the trawl fisheries. The lingcod landings limits of 800 lb (363 kg) per 2–month period in the winter months and 1,000 lb (454 kg) per 2–month period in the summer months are not high enough to give trawlers an incentive to target lingcod. Total lingcod catch is expected to be well under the lingcod OY due to fishery restrictions intended to protect other overfished species.

For 2003, the Council recommended continuing the use of differential trip limits for limited entry trawlers operating with different trawl gear configurations: bottom trawl with footropes greater than 8 inches (20.5 cm) in diameter (large footrope); bottom trawl with footropes smaller than 8 inches (20.5 cm) in diameter (small footrope); and midwater or pelagic trawl. Trawling with footropes that have roller gear or other large gear designed to bounce over tough rock piles tends to allow those vessels greater access to rocky areas where several of the overfished species congregate. Therefore, landings of shelf rockfish are prohibited if large footrope trawls (such as roller gear) are used (or are on board the vessel); small amounts of shelf rockfish bycatch may be landed if small footrope trawls are used; and, targeting more abundant shelf rockfish stocks is encouraged only if midwater trawls are used. Midwater trawl gear generally has very low bycatch of overfished species because most of those species aggregate on or near the ocean bottom, where midwater trawl gear does not operate. To further ensure that large footrope trawl gear is not used in nearshore and continental shelf areas, bottom trawling with large footrope gear is prohibited shoreward of the RCAs. Within the RCAs, bottom trawling will be prohibited for all groundfish and midwater trawling will be permitted only for Pacific whiting, widow rockfish and yellowtail rockfish north of 40°10′ N. lat. and only for whiting and widow rockfish south of 40°10′ N. lat. If a vessel fishes in an RCA, it may not participate in any fishing on that same trip that is inconsistent with the restrictions that apply within the RCA. For example, if a vessel participates in the shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery outside the RCA. Additionally, only one trawl gear type will be permitted on board per fishing trip. Cowcod prohibitions and CCAs apply to limited entry trawl vessels, although there are few limited entry trawl vessels operating south of Point Conception in CCA waters.

Large footrope trawls may still be used for deepwater fisheries where fewer overfished species are encountered. These fisheries primarily take Dover and rex soles, thornyheads, sablefish, and deepwater rockfish. Higher limits of yellowtail and widow rockfish are available when those species are taken with midwater trawl gear during the primary whiting season. Yellowtail rockfish taken with small footrope gear is restricted to 1,000 lb (454 kg) per month unless it is taken with flatfish, or taken during November-December. These combined yellowtail rockfish management measures are intended to allow yellowtail rockfish retention in fisheries, times and areas where incidental harvest of overfished species is lower.

Limited Entry Fixed Gear

Similar to the limited entry trawl fisheries, trip limit opportunities and area closures in the limited entry fixed gear fisheries are arranged to minimize opportunities for intercepting overfished species. As discussed earlier, limited entry fixed gear fisheries will be closed in times when and areas where they are expected to intercept overfished species.

North of 40°10′ N. lat., management measures to protect yelloweye rockfish constrain the limited entry fixed gear fishery by prohibiting those vessels from operating in an RCA of 27–100 fm (49–183 m) depths. Washington State waters (shore to 3 nm) are closed to commercial groundfish fishing and the 27 fm (49 m) contour is entirely within State waters, which means that limited entry fixed gear vessels operating off Washington will not have nearshore fishing opportunities. South of the Washington/Oregon border at 46°16′ N. lat. and north of 40°10′ N. lat., the primary limited entry fixed gear fishing opportunity shoreward of the RCA will be for nearshore rockfish. Similar to 2002, fisheries for minor nearshore rockfish north of 40°10′ N. lat. are managed with sublimits for species other than black and blue rockfish, to encourage targeting on these more abundant nearshore rockfish species.

South of 40°10′ N. lat., the limited entry fixed gear RCA is in 20–150 fm (37–274 m) depths to protect bocaccio and other overfished rockfish. In 2001

and 2002, this fishery and the open access hook-and-line fishery had season structures tied to that of the recreational fishery south of 40°10′ N. lat. This season structure link was intended to facilitate enforcement, so that similar gear types would be either on or off the water at the same time. For 2003, the recreational and commercial fisheries will be separated because the recreational season has been shifted to a six month July-December block. If commercial hook-and-line fisheries were restricted to July-December, key fishing and marketing months in spring and early summer would be closed. Trip limits for species available in the open inshore area tend to be higher in the summer months. For the first time in 2003, species in the minor nearshore rockfish complex in the south will be managed with different trip limits for a shallow nearshore group, a deeper nearshore group, and California scorpionfish (shallow and deeper nearshore groups defined at IV.A.(20) and in Table 2.) These groups will be managed separately because the Council expects an increase in nearshore fishing effort due to fishing being prohibited in the RCA and wishes to spread that effort through the different minor nearshore species that will be available shoreward of the RCA. Cowcod prohibitions and closures continue to apply to limited entry, fixed gear vessels.

Limited entry fixed gear fisheries for sablefish will likely be concentrated offshore of the RCAs north and south of 40°10′ N. lat. Larger sablefish, which sell for a higher price per pound than small sablefish, tend to be found farther offshore. The primary sablefish fishery will again be held from April 1 through October 31 north of 36° N. lat. Minor slope rockfish are often caught in association with sablefish, therefore vessels will be permitted minor slope rockfish landings of up to 25 percent of the weight of sablefish landed during the months of March through October. Minor slope rockfish may not be landed unless taken with sablefish so as to discourage directed targeting on that complex. The northern overfished slope rockfish species, darkblotched rockfish and POP, are not commonly caught with fixed gear. Historically, yelloweye rockfish have been caught incidentally in hook-and-line sablefish fisheries. In 2003, however, hook-and-line sablefish fisheries will be moved offshore of yelloweye rockfish habitat through implementation of the RCAs. Yelloweye rockfish retention will again be prohibited in the 2003 limited entry fixed gear fisheries.

As in 2001–2002, limited entry fixed gear fishing for lingcod will be prohibited during January through April and during November through December. These closures are intended to protect nest-guarding lingcod during the spawning and nesting season. Nest-guarding lingcod are more available to fixed gear than to trawl gear, because lingcod nest in rocky habitat that tears trawl gear while line gear may be used successfully in rocky areas. Winter closures for fixed gear are intended to eliminate fixed gear lingcod targeting.

Open Access Nontrawl Gear (Hook-and-line, Troll, Pot, Setnet, Trammel Net)

The open access nontrawl fishery is managed separately from the limited entry fixed-gear fishery, but overfished species protection measures are similar for both sectors. As in the past, open access cumulative trip limits continue to be applied mostly to 2–month periods, and thornyheads may not be taken and retained north of 34°27′ N. lat. Season structuring and RCAs are similar to those for the limited entry fixed gear fisheries, and implemented to protect the same overfished species. The lingcod fishery for all open access nontrawl gears is also subject to the same closures and size limits as the limited entry fixed gear fisheries. Similar to 2002, fisheries for minor nearshore rockfish north of 40°10′ N. lat. are managed with sublimits for species other than black and blue rockfish, to encourage targeting on these more abundant nearshore rockfish species. Cowcod prohibitions and closures apply to all open access vessels.

Open access cumulative limits may exceed those for limited entry. If a vessel with a limited entry permit uses open access gear (including exempted trawl gear) and the open access cumulative limit is larger, the vessel will be constrained by the smaller, limited entry cumulative limit for the entire cumulative period.

Open Access Exempted Trawl Gear

Open access exempted trawl gear (used to harvest ridgeback prawns, California halibut, sea cucumbers, pink shrimp, or spot prawns in Oregon) is managed with both "per trip" limits, cumulative trip limits, and area closures. These trip limits are similar to those in 2002, and the species-specific open access limits apply but may not exceed the overall groundfish limits. The groundfish limits in the pink shrimp fishery are 500 lb (227 kg) of groundfish per day, not to exceed 1,500 lb (680 kg) per trip in the pink shrimp fishery. For other exempted trawl gears, there is a 300 lb (136 kg) per trip limit of groundfish. The pink shrimp fishery is subject to species-specific limits that are different from other open access limits for lingcod, canary rockfish, and sablefish. As with open access nontrawl gears, thornyheads may not be taken and retained north of 34°27′ N. lat. RCAs for the limited entry trawl fishery also apply to open access exempted trawl fisheries south of 40°10′ N. lat. Cowcod prohibitions and closures apply to all open access vessels.

South of 40°10′ N. lat., the RCAs for exempted trawl gear are similar to those for limited entry trawl gear. Between 40°10′ N. lat. and 38° N. lat., trawling is prohibited in 60–250 fm (110–457 m) depths (50–250 fm (91–457 m) in January-February) and large footrope trawling is prohibited shoreward of the RCA. Between 38° N. lat. and 34°27′ N. lat., trawling is prohibited in 60–150 (110–457 m) depths (50–250 fm (91–457 m) in January-February) and large footrope trawling is prohibited shoreward of the RCA. From 34°27′ N. lat. to the U.S. border with Mexico, trawling is prohibited in 100–150 fm (183–274 m) depths and large footrope trawling is prohibited shoreward of the RCA.

In addition to the trip limit restrictions and area closures south of 40°10′ N. lat., all three States are requiring that vessels operating in their pink shrimp trawl fisheries use finfish excluders. The States of Washington and California have banned trawling for spot prawns, requiring that spot prawn fishery participants use low bycatch pot gear. Oregon is in the process of considering whether to similarly ban trawling for spot prawns. The State of California is also requiring that ridgeback shrimp trawlers use finfish excluder devices, similar to requirements in the more northern pink shrimp trawl fishery.

Recreational Fishery

Recreational fisheries effort has also been constrained to protect overfished species, particularly for lingcod, canary rockfish, bocaccio, and yelloweye rockfish, which have significant recreational catches. Washington, Oregon, and California each proposed, and the Council recommended, different combinations of seasons, bag limits, and size limits to best fit the needs of their recreational fisheries, while also meeting conservation goals.

For lingcod, Washington proposed closing their recreational fishery for 5 months (January 1 - March 15, October 15 - December 31) and maintained its 2 fish bag limit and its 24 inch (61 cm) minimum size limit. For Oregon and California north of 40°10′ N. lat., the States proposed increasing the lingcod bag limit to 2 fish, and continuing the

year-round fishery and 24 inch (61 cm) minimum size limit. For California, south of 40°10′ N. lat., California proposed maintaining its 2–lingcod bag limit and 24- inch (61–cm) size limit, but restricting its fishery to a 6- month season of July-December.

Recreational fisheries management off Washington and Oregon will again be shaped this year by a need to maintain low yelloweye rockfish catch. Measures taken to protect yelloweye rockfish in 2002 will be maintained and expanded upon. Washington also proposed maintaining its 10 rockfish bag limit, but reducing its canary rockfish sublimit to 1 fish and prohibiting yelloweye rockfish retention. In the past, Oregon has had an overall rockfish bag limit of 10 fish. For 2003, Oregon proposed including rockfish within an overall 10 marine fish bag limit, a category that includes all marine fish except salmon, tuna, surfperch, sanddab, lingcod and baitfish (herring, anchovy, smelt, and sardine.) For Oregon anglers who take marine fish other than rockfish, this marine fish bag limit will reduce the amount of available rockfish. Within the 10 marine fish bag limit, Oregon has proposed a sublimit of no more than one canary rockfish and no more than one yelloweye rockfish. In reviewing the take of yelloweye rockfish in their recreational fisheries, the States of Washington and Oregon found that yelloweye rockfish is most frequently taken by vessels that travel offshore to target Pacific halibut. However, yelloweye rockfish are not taken while the vessel is fishing for halibut, but rather after the vessel has completed its halibut fishing and is headed for port. Therefore, prohibiting the retention of yelloweye rockfish when halibut are on the vessel should eliminate the directed harvest of yelloweye rockfish during halibut fishing trips, without causing discard of incidentally-caught yelloweye rockfish. Oregon has proposed prohibiting the retention of yelloweye rockfish during its all-depth halibut fisheries. Washington has proposed prohibiting all yelloweye rockfish retention off its shore, and will also prohibit recreational fishing for groundfish and halibut within the YRCA.

Recreational fishing restrictions proposed by California are intended to ensure that fishing mortality does not exceed limits associated with rebuilding plans for bocaccio, canary rockfish, cowcod, and lingcod. In 2001 and 2002, California's recreational fisheries management measures were not sufficiently conservative to prevent their fisheries from exceeding their set asides for overfished rockfish species. Therefore, California has proposed notably more restrictive measures for 2003. North of 40°10′ N. lat., California recreational management measures will continue to be similar to those for waters off Oregon. South of 40°10′ N. lat., where the significant majority of California recreational fisheries occur, recreational fishing will be closed entirely January through June and open only shoreward of 20 fm (37 m) July through December. The season was restructured to maximize recreational harvest opportunity while ensuring that nearshore groundfish, California scorpionfish, and lingcod shoreward of 20 fm (37 m) are not overharvested. California proposed to maintain its 10 rockfish bag limit, but set that within a 10 fish nearshore groundfish bag limit, similar to Oregon's marine fish bag limit. Within the nearshore groundfish limit, no more than 2 fish may be rock or kelp greenling and no more than three fish may be cabezon. Within the 10–rockfish bag limit, no more than two may be shallow nearshore rockfish. Unlike in previous years, bocaccio, canary rockfish and yelloweye rockfish retention will be prohibited. As with the commercial fisheries, cowcod retention will continue to be prohibited and recreational fishing within the CCAs offshore of 20 fm (37 m) will be prohibited.

Council Revisions to Its Management Measures Recommendations

At its October 28 through November 1, 2002 meeting in Foster City, CA, the Council made recommendations to modestly alter some of the management measures recommendations it had made at its September 2002 meeting. These recommendations were made at the November meeting, when the public had not expected to have opportunity to comment on 2003 management measures. In addition, these are minor changes that need not be in place on January 1. 2003. Thus, NMFS is proposing the Council's November recommendations as part of this proposed rule, but will not implement them for January-February 2003 via the emergency rule implementing management measures for those two months. The Council made the following recommended revisions to its September 2002 management measures recommendations, all of which are minor and are not expected to alter the overall effect of this management package on the environment:

1. For vessels participating in the open access exempted trawl fishery for California halibut south of 38°57′30″ N. lat., continue overall groundfish 300 lb (136 kg) per trip limit, provided that weight of groundfish landed does not exceed weight of non-groundfish species landed. However, allow up to 100 lb (45 kg) of groundfish to be landed without the vessel having to meet that ratio requirement, provided that at least one California halibut is landed.

2. For vessels participating in the open access exempted trawl fishery for California halibut south of 38°57′30″ N. lat. the monthly flatfish cumulative limit of 3,000 lb (1,361 kg), no more than 300 lb (136 kg) of which may be species other than Pacific sanddabs, is proposed to be revised so that the overall monthly cumulative limit is retained, but no more than 300 lb (136 kg) of that cumulative amount may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish. Vessels fishing for sea cucumber with open access exempted trawl gear that also take California halibut would still have access to the 300 lb (136 kg) per trip limit, but only if their landings of groundfish species did not exceed their landings of non-groundfish species.

3. Continue to allow hook-and-line fishing for Pacific sanddabs within the RCAs south of 40°10′ N. lat. However, instead of allowing this fishing with up to 5 hooks per fishing line and no more than 5 lb (2.27 kg) line weight, allow this fishing with up to 12 hooks per fishing line and no more than 1 lb (.45 kg) line weight for commercial fisheries and no more than 2 lb (.91 kg) line weight for recreational fisheries.

4. Revise the coordinates of the YRCA so that they define a "C-shaped" area off the north Washington coast instead of an "L-shaped" area to better protect areas where yelloweye rockfish are found, and to be consistent with the measures proposed for the recreational fisheries for halibut.

Fishing Communities and Impacts

The Magnuson-Stevens Act requires that actions taken to implement FMPs be consistent with the 10 National Standards, one of which requires that conservation and management measures shall, consistent with the conservation requirements of the Act, "take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities and (B), to the extent practicable, minimize adverse economic impacts on such communities." Commercial and recreational fisheries for Pacific coast groundfish contribute to the economies and shape the cultures of numerous fishing communities in Washington, Oregon, and California. Meeting the needs of fishing communities has

become increasingly difficult because the Council manages an overcapitalized fleet that harvests a multi-species complex with several overfished species. In recommending this year's specifications and management measures, the Council accommodated some of the needs of those communities within the constraints of Magnuson-Stevens Act requirements to rebuild overfished stocks, prevent overfishing, and minimize bycatch. In general, the Council allows the largest harvest possible, consistent with conservation needs of the fish stocks.

West Coast groundfish intermix by species, which means that interception and incidental mortality of overfished species is inevitable even if retention of a particular species is prohibited. As discussed earlier, the Council's primary goal for 2003 was to minimize opportunities for incidental take of overfished species while allowing as much fishing opportunity of more abundant stocks as possible. To achieve this, the fishing seasons and area closures are structured both to maximize target species catch while minimizing overfished species incidental take and to allow minimal retention of overfished species where incidental take will inevitably occur. Larger area closures are intended to ensure that few vessels have opportunities to fish in waters where overfished species commonly occur.

For 2003, the Council continued the year-round fishery opportunity that is important to the fishing and processing sectors for maintaining continuous employment opportunities and maintaining consistent groundfish marketing opportunities. Depth closures and gear restrictions would modify the cumulative trip limit system to allow fishing for at least some groundfish species at all times during the year. Gear restrictions prohibit bottom trawling with roller gear in the nearshore area and on the continental shelf and allow only the use of midwater trawl on the continental shelf where most overfished species occur. Small footrope bottom trawling is permitted in the nearshore area. The concepts behind these trawl gear restrictions were first developed for the 2000 fishery by a group of industry participants who met with the GMT to develop measures that would achieve conservation goals while minimizing effects of the restrictions on the industry and coastal communities.

Allowable commercial catches of many groundfish remain low in 2003, but the Council has tried to structure the area closures to provide commercial fisheries with greater flexibility in their fishing patterns while not increasing the overall catches. For example, the offshore boundary of the trawl RCA is modified in January-February and in November-December to allow directed fishing for petrale sole in areas where and times when petrale sole are known to aggregate and to co-occur with fewer overfished stocks. New depth based closures are intended to allow fisheries access to more abundant stocks in the offshore and inshore open areas, thereby limiting the extent to which fishers and related firms would be driven out of business. Many commercial groundfish fishers have other fishing opportunities during the year, and these opportunities were taken into account. For example, the small-scale commercial fishers (and recreational fishers) in southern California would (under State regulations) still be able to fish for certain species in nearshore waters while the continental shelf is closed to protect overfished species.

Nonetheless, the effects of these 2003 management measures on some fishers and communities will be severe, particularly for those without other opportunities. For the 2003 fishery, the Council proposed stringent harvest levels intended to protect and rebuild overfished and depleted stocks. In addition to constraining OYs for overfished stocks, the Council also severely restricted harvest on more abundant stocks associated with overfished stocks. These measures were needed to ensure that rebuilding of overfished and depleted stocks could occur. However, they will cause serious socio-economic repercussions as a result of these lower harvest levels and the consequent lower landings limits.

Distribution of the economic effect of the 2003 management measures will depend on how well fishers can adapt to the restrictions. Some user groups, particularly those able to use midwater trawl gear, will have a greater opportunity to harvest than they would have had without gear restrictions, because proposed restrictions allow fishers to use gear with lower incidental catch of the depleted rockfish. Other fishers will not be able to maintain a viable operation at the reduced harvest levels. The Council prepared an EIS for this action, which includes a discussion of the economic and social effects of these management measures on coastal communities (see **ADDRESSES**).

Trip Limit Tables and Management Measures

Cumulative trip limits are set into tables, with explanations in section IV. For 2003, NMFS has separated tables for each fishing sector into northern and southern area tables. The industry is cautioned not to rely on the tables alone. The text in Section IV. provides cumulative trip limit definitions and periods, size limit definitions and conversions, and other information that cannot be readily included in a table but must be understood in order to correctly use the tables. For the first time in 2003, gear regulations and reference coordinates are being proposed as a regulatory amendment to the regulations at 50 CFR part 660. Historically, NMFS has published these regulatory measures as annual specifications. The sablefish allocations and nontrawl sablefish management, Pacific whiting allocations and seasons, and "per trip" limits for black rockfish off Washington State are still presented in text in paragraphs IV.B. Trip limits for exempted trawl gear in the open access fishery (Table 5 and paragraph IV.C.), recreational management measures (paragraph IV.D.), and tribal allocations and management measures (paragraph V.) still remain in the text.

Cumulative trip limits are applied during the time periods and in the areas indicated in Tables 3–5 of Section IV. The cumulative trip limit may be taken at any time within the applicable cumulative trip limit period. All cumulative trip limit periods start at 0001 hours, local time, on the specified beginning date.

IV. NMFS Actions

For the reasons stated above, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concurs with the Council's recommendations and announces the following management actions for 2003, including measures that are unchanged from 2002 and new measures.

A. General Definitions and Provisions

The following definitions and provisions apply to the 2002 management measures, unless otherwise specified in a subsequent **Federal Register** document:

(1) *Trip limits.* Trip limits are used in the commercial fishery to specify the amount of fish that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as follows:

(a) A per trip limit is the total allowable amount of a groundfish species or species group, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(b) A daily trip limit is the maximum amount that may be taken and retained,

possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours l.t. Only one landing of groundfish may be made in that 24–hour period. Daily trip limits may not be accumulated during multiple day trips.

(c) A weekly trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 7 consecutive days, starting at 0001 hours l.t. on Sunday and ending at 2400 hours l.t. on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week includes days within two different months, a vessel is not entitled to two separate weekly limits during that week.

(d) A cumulative trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time without a limit on the number of landings or trips, unless otherwise specified. The cumulative trip limit periods for limited entry and open access fisheries, which start at 0001 hours l.t. and end at 2400 hours l.t., are as follows, unless otherwise specified:

(i) The 2–month periods are: January 1–February 28, March 1–April 30, May 1–June 30, July 1–August 31, September 1–October 31, and, November 1–December 31.

(ii) One month means the first day through the last day of the calendar month.

(iii) One week means 7 consecutive days, Sunday through Saturday.

(2) *Fishing ahead.* Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. As stated at 50 CFR 660.302 (in the definition of "landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing. Fishing ahead is not allowed during or before a closed period (see paragraph IV.A.(7)). See paragraph IV.A.(9) for information on inseason changes to limits.

(3) *Weights.* All weights are round weights or round-weight equivalents unless otherwise specified.

(4) *Percentages.* Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) *Legal fish.* "Legal fish" means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660, the Magnuson-Stevens Act, any document issued under part 660, and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

(6) *Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the "total length," which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the State where the fish will be landed.

(a) *Whole fish.* For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(b) *"Headed" fish.* For a fish with the head removed ("headed"), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(c) *Filets.* A filet is the flesh from one side of a fish extending from the head to the tail, which has been removed from the body (head, tail, and backbone) in a single continuous piece. Filet lengths may be subject to size limits for some groundfish taken in the recreational fishery off California (see paragraph IV. D.(1)). A filet is measured along the length of the longest part of the filet in a relaxed position; stretching or otherwise manipulating the filet to increase its length is not permitted.

(d) *Sablefish weight limit conversions.* The following conversions apply to both the limited entry and open access fisheries when trip limits are effective for those fisheries. For headed and gutted (eviscerated) sablefish:

(i) The minimum size for headed sablefish, which corresponds to 20 inches (51 cm) total length for whole fish, is 14 inches (36 cm).

(ii) The conversion factor established by the State where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the State conversion factors may differ; fishers should contact fishery enforcement officials in the State where the fish will be landed to determine that State's official conversion factor.)

(e) *Lingcod size and weight conversions.* The following conversions apply in both limited entry and open access fisheries.

(i) *Size conversion.* For lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(ii) *Weight conversion.* The conversion factor established by the State where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The States' conversion factors may differ, and fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that State's official conversion factor.) If a state does not have a conversion factor for headed and gutted lingcod, or lingcod that is only gutted; the following conversion factors will be used. To determine the round weight, multiply the processed weight times the conversion factor.

(A) *Headed and gutted.* The conversion factor for headed and gutted lingcod is 1.5.

(B) *Gutted, with the head on.* The conversion factor for lingcod that has only been gutted is 1.1.

(7) *Closure.* "Closure," when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See 50 CFR 660.302.) Unless otherwise announced in the **Federal Register**, offloading must begin before the time the fishery closes. The provisions at paragraph IV.A.(2) for fishing ahead do not apply during a closed period. It is unlawful to transit through a closed area with the prohibited species on board, no matter where that species was caught, except as provided for in the CCA at IV. A.(19).

(8) *Fishery management area.* The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed between 0–200 nm offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

(9) *Routine management measures.* Most trip, bag, and size limits, and area closures in the groundfish fishery have been designated "routine," which means they may be changed rapidly after a single Council meeting see 50 CFR 660.323(b). Council meetings in 2002 will be held in the months of

March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register**. Information concerning changes to routine management measures is available from the NMFS Northwest and Southwest Regional Offices (see **ADDRESSES**). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect.

(10) *Limited entry limits.* It is unlawful for any person to take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish (50 CFR 660.306(p)).

(11) *Operating in both limited entry and open access fisheries.* The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit cannot be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(12) *Operating in areas with different trip limits.* Trip limits for a species or a species group may differ in different geographic areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (see 50 CFR 660.323(a)(1)). In 2002, the cumulative trip limit periods for the limited entry and open access fisheries are specified in paragraph IV.A(1)(d), but may be changed during the year if announced in the **Federal Register**.

(a) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(b) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(c) *Operating in two different areas where a species or species group is managed with different types of trip limits.* During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(d) *Minor rockfish.* Several rockfish species are designated with species-specific limits on one side of the 40°10 N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line.

(i) If a vessel takes and retains minor slope rockfish north of 38° N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 38° N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 38° N. lat. [Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.]

(ii) If a vessel takes and retains minor slope rockfish south of 38° N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 38° N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 38° N. lat. [Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.]

(iii) If a vessel takes and retains minor shelf rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess, or land yellowtail rockfish up to its cumulative limits north of 40°10′ N. lat., even if yellowtail rockfish is part of the landings from minor shelf rockfish taken and retained south of 40°10′ N. lat. Widow rockfish is included in overall shelf rockfish limits for all gear groups. [Note: A vessel that takes and retains minor shelf rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor shelf rockfish during that period.]

(e) "DTS complex." For 2003, there are differential trip limits for the "DTS complex" (Dover sole, shortspine thornyhead, longspine thornyhead, sablefish) north and south of the management line at 40°10′ N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph IV.A.(12) when making landings that include any one of the four species in the "DTS complex."

(f) *Flatfish complex.* For 2003, there are differential trip limits for the flatfish complex (butter, curlfin, English, flathead, petrale, rex, rock, and sand soles, Pacific sanddab, and starry flounder) north and south of the management line at 40°10′ N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph IV.A.(12) when making landings that include any one of the species in the flatfish complex.

(13) *Sorting.* It is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or commercial OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, commercial optimum yield, or quota applied." This provision applies to both the limited entry and open access fisheries. (See 50 CFR 660.306(h).) The following species must be sorted in 2003:

(a) For vessels with a limited entry permit:

(i) Coastwide - widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish,

shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, rex sole, petrale sole, arrowtooth flounder, other flatfish, lingcod, sablefish, and Pacific whiting [Note: Although both yelloweye and darkblotched rockfish are considered minor rockfish managed under the minor shelf and minor slope rockfish complexes, respectively, they have separate OYs and therefore must be sorted by species.]

(ii) North of 40°10′ N. lat. - POP, yellowtail rockfish, and, for fixed gear, black rockfish and blue rockfish;

(iii) South of 40°10′ N. lat.- minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, and Pacific sanddabs.

(b) For open access vessels (vessels without a limited entry permit):

(i) Coastwide - widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, Dover sole, arrowtooth flounder, petrale sole, rex sole, other flatfish, lingcod, sablefish, Pacific whiting, and Pacific sanddabs;

(ii) North of 40°10′ N. lat. - black rockfish, blue rockfish, Pacific ocean perch, yellowtail rockfish;

(iii) South of 40°10′ N. lat.- minor shall nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish;

(iv) South of Point Conception—thornyheads.

(14) *Limited Entry Trawl Gear Restrictions.* Limited entry trip limits may vary depending on the type of trawl gear that is on board a vessel during a fishing trip: large footrope, small footrope, or midwater trawl gear. No more than one type of trawl gear may be on board during any single fishing trip.

(a) *Types of trawl gear*—Large footrope, small footrope, and midwater or pelagic trawl gears are defined at 50 CFR 660.302 and 660.322(b).

(b) *Cumulative trip limits and prohibitions by trawl gear type*—(i) *Large footrope trawl.* If Table 3 does not provide a large footrope trawl cumulative or trip limit for a particular species or species group, it is unlawful to take and retain, possess or land that species or species group if large footrope gear is on board. It is unlawful for any vessel using large footrope gear to exceed large footrope gear limits for any species or to use large footrope gear to exceed small footrope gear or midwater trawl gear limits for any species. It is unlawful for any vessel using large footrope gear or that has large footrope trawl gear on board to fish for groundfish shoreward of the RCAs defined at paragraph (19) of this section. The presence of rollers or bobbins larger than 8 inches (20 cm) in diameter on board the vessel, even if not attached to a trawl, will be considered to mean a large footrope trawl is on board.

(ii) *Small footrope or midwater trawl gear.* Cumulative trip limits for canary rockfish, chilipepper rockfish, widow rockfish, yellowtail rockfish, bocaccio, minor shelf rockfish, minor nearshore rockfish, and lingcod, as indicated in Table 3 to section IV, are allowed only if small footrope gear or midwater trawl gear is used, and if that gear meets the specifications in paragraphs IV.A.(14).

(iii) *Midwater trawl gear.* Higher yellowtail and widow rockfish cumulative trip limits are available for limited entry vessels using midwater trawl gear. Each landing that contains yellowtail or widow rockfish is attributed to the gear on board with the most restrictive trip limit for those species. Landings attributed to small footrope trawl must not exceed the small footrope limit, and landings attributed to midwater trawl must not exceed the midwater trawl limit. If a vessel has landings attributed to both types of trawls during a cumulative trip limit period, all landings are counted toward the most restrictive gear-specific cumulative limit.

(iv) *More than one type of trawl gear on board; trawl gear and non-trawl gear on board.* The cumulative trip limits in Table 3 of Section IV must not be exceeded. For the first time in 2003, it is prohibited to have more than one type of trawl gear on board. It is prohibited to have more than one type of limited entry trawl gear on board and it is prohibited to have both limited entry trawl gear and exempted trawl gear on board. It is also prohibited to have both trawl gear and non-trawl (limited entry or open access) gear on board at the same time.

(c) *State landing receipts.* Washington, Oregon, and California will require the type of trawl gear on board to be recorded on the State landing receipt(s) for each trip or on an attachment to the State landing receipt.

(d) *Gear inspection.* All trawl gear and trawl gear components, including unattached rollers or bobbins, must be readily accessible and made available for inspection at the request of an authorized officer. No trawl gear may be removed from the vessel prior to offloading. All footropes shall be uncovered and clearly visible except when in use for fishing.

(15) *Platooning—limited entry trawl vessels.* Limited entry trawl vessels are automatically in the "A" platoon, unless the "B" platoon is indicated on the limited entry permit. If a vessel is in the "A" platoon, its cumulative trip limit periods begin and end on the beginning and end of a calendar month as in the past. No more than one trawl permit may be registered to a vessel unless a permit is endorsed for both trawl and either longline or pot gear and is being stacked under § 660.335(c) for use in the limited entry fixed gear primary sablefish fishery. If a vessel is registered for use with more than one permit with a trawl endorsement through the fixed gear permit stacking program, then the vessel owner must designate one trawl-endorsed permit as his base trawl permit and may only fish in the platoon associated with that base trawl permit. If a limited entry trawl permit is authorized for the "B" platoon, then cumulative trip limit periods will begin on the 16th of the month (generally 2 weeks later than for the "A" platoon), unless otherwise specified.

(a) For a vessel in the "B" platoon, cumulative trip limit periods begin on the 16th of the month at 0001 hours, l.t., and end at 2400 hours, l.t., on the 15th of the month. Therefore, the management measures announced herein that are effective on January 1, 2003, for the "A" platoon will be effective on January 16, 2003, for the "B" platoon. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the "B" platoon, unless otherwise specified.

(b) A vessel authorized to operate in the "B" platoon may take and retain, but may not land, groundfish from January 1, 2003, through January 15, 2003.

(c) A vessel authorized to operate in the "B" platoon will have the same cumulative trip limits for the November 16, 2003, through December 31, 2003, period as a vessel operating in the "A" platoon has for the November 1, 2002, through December 31, 2002 period.

(16) *Permit transfers.* Limited entry permit transfers are to take effect no earlier than the first day of a major cumulative limit period following the day NMFS receives the transfer form and original permit (50 CFR 660.335(e)(3)). Those days in 2003 are January 1, March 1, May 1, July 1, September 1, and November 1, and are delayed by 15 days (starting on the 16th of a month) for the "B" platoon.

(17) *Exempted fisheries.* U.S. vessels operating under an exempted fishing permit (EFP) issued under 50 CFR part 600 are also subject to these restrictions, unless otherwise provided in the permit. EFPs may include the collecting of scientific samples of groundfish species that would otherwise be prohibited for retention.

(18) *Application of requirements.* Paragraphs IV.B. and IV.C. pertain to the commercial groundfish fishery, but not to Washington coastal tribal fisheries, which are described in Section V. The provisions in paragraphs IV.B. and IV.C. that are not covered under the headings "limited entry" or "open access" apply to all vessels in the commercial fishery that take and retain groundfish, unless otherwise stated. Paragraph IV.D. pertains to the recreational fishery.

(19) *Rockfish Conservation Areas.* For 2003, the Council has introduced several RCAs and a YRCA and has retained the CCAs used in 2001 and 2002. Collectively, any geographically defined area where specific fishing activities are prohibited (closed) or otherwise restricted intended to protect a particular groundfish species or species group or intended to protect a complex of species is referred to as a Groundfish Conservation Area. The YRCA, the CCAs, and the larger depth-based RCAs are Groundfish Conservation Areas. Larger RCAs intended to protect a complex of species, such as overfished shelf rockfish species, have boundaries defined by a series of coordinates intended to approximate particular depth contours, such as 100 fm (183 m), 150 fm (274 m), 250 fm (457,) etc. Different gear types or fishing sectors may have RCAs with differing boundaries.

(a) *Yelloweye Rockfish Conservation Area.* The coordinates of the YRCA are defined at § 660.304(d). Recreational fishing for groundfish is prohibited within the YRCA. It is unlawful for recreational fishing vessels to take, retain, possess, or land groundfish inside the YRCA.

(b) *Cowcod Conservation Areas.* The coordinates of the Cowcod Conservation Areas (CCAs) are defined at § 660.304(c). Recreational and commercial fishing for groundfish is prohibited within the CCAs, except that recreational and commercial fishing for rockfish and lingcod is permitted in waters inside 20–fathoms (36.9–m). It is unlawful to take and retain, possess, or land groundfish inside the CCAs, except for rockfish and lingcod taken in waters inside the 20–fathom (36.9–m) depth contour, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00′30″ N. lat., and bounded on the south by the latitude line at 32°59′30″ N. lat.

(c) *Limited entry trawl groundfish coastwide and open access exempted trawl south of 40°10′ N. lat. Conservation Area.*

(i) The trawl RCA is closed to limited entry groundfish trawl fishing coastwide and to open access exempted trawl fishing (except for pink shrimp trawling) south of 40°10′ N. lat. Fishing with limited entry groundfish trawl gear is prohibited within the trawl RCA north of 40°10′ N. lat. and fishing with any trawl gear is prohibited within the trawl RCA south of 40°10′ N. lat., unless that vessel is trawling for pink shrimp. Coastwide, it is unlawful to take and retain, possess, or land groundfish taken with limited entry groundfish trawl gear in the trawl RCA. South of 40°10′ N. lat., it is unlawful to take and retain, possess, or land any species of fish taken with any type of trawl gear in the trawl RCA. Trawl vessels may transit through the trawl RCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: (1) below deck; or (2) if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or (3) remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels fishing with midwater trawl gear for Pacific whiting or taking and retaining yellowtail rockfish or widow rockfish in association with Pacific whiting caught with midwater trawl gear or to taking and retaining yellowtail or widow rockfish with midwater trawl gear when trip limits are authorized for those species (November-December 2003.) If a vessel fishes in an RCA, it may not participate in any fishing on that trip that is inconsistent with the restrictions that apply within the RCA. For example, if a vessel participates in the pink shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery outside of the RCA. Nothing in these Federal regulations supercede any State regulations that may prohibit trawling shoreward of the 3 nm State waters boundary line.

(ii) Between the U.S. border with Canada and 40°10′ N. lat., the trawl RCA is defined along an eastern, inshore boundary approximating 100 fm (183 m) in January through June and October through December, and approximating 75 fm (137 m) in July and August. Between 40°10′ N. lat. and 34°27′ N. lat., the trawl RCA is defined along an eastern, inshore boundary approximating 50 fm (91 m) in January and February and 60 fm (110 m) in March through December. Between 34°27′ N. lat. and the U.S. border with Mexico, along the mainland coast of California, the trawl RCA is defined along an eastern, inshore boundary approximating 100 fm (183 m) throughout the year. Between 34°27′ N. lat. and the U.S. border with Mexico, adjacent to the islands offshore of California, the trawl RCA is defined along an inshore boundary approximating 20 fm (37 m) throughout the year. Boundary coordinates are provided below at paragraph (e) of this section.

(iii) Between the U.S. border with Canada and 38° N. lat., the trawl RCA is defined along a western, offshore boundary approximating 250 fm (457 m) in March through October, and approximating 250 fm (457 m) with some modifications to provide open areas to allow winter petrale sole fishing in January, February, November, and December. Between 38° N. lat. and the U.S. border with Mexico, the trawl RCA is defined along a western, offshore boundary approximating 150 fm (274 m) throughout the year. Boundary coordinates are provided below at paragraph (e) of this section.

(d) Non-Trawl (Limited Entry Fixed Gear and Open Access Nontrawl Gears) Groundfish Conservation Area.

(i) The non-trawl RCA is closed to non-trawl gear (limited entry or open access longline and pot or trap, open access hook-and-line, pot or trap, gillnet, set net, trammel net and spear) fishing for groundfish. Fishing with non-trawl gear is prohibited within the non-trawl gear RCA. It is unlawful to take and retain, possess, or land groundfish taken with non-trawl gear in the non-trawl gear RCA. Limited entry fixed gear and open access non-trawl gear vessels may transit through the non-trawl gear RCA, with or without groundfish on board. These restrictions do not apply to vessels fishing for species other than groundfish with non-trawl gear. If a vessel fishes in an RCA, it may not participate in any fishing on that trip that is inconsistent with the restrictions that apply within the RCA. For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA.

(ii) Between the U.S. border with Canada and 46°16′ N. lat., the non-trawl gear RCA extends to the shoreline. Between 46°16′ N. lat. and 40°10′ N. lat., the non-trawl gear RCA is defined along an eastern, inshore boundary approximating 27 fm (49 m) throughout the year. Between 40°10′ N. lat. and the U.S. border with Mexico, the non-trawl gear RCA is defined along an eastern, inshore boundary approximating 20 fm

(37 m) throughout the year, except as provided for between Point Fermin (33°41′ N. lat.; 118°18′ W. long.) and the Newport South Jetty (33°36′ N .lat.; 117° 51′ W. long.) Between a line drawn due south from Point Fermin (33°41′ N. lat.; 118°18′ W. long.) and a line drawn due west from the Newport South Jetty (33°36′ N .lat.; 117° 51′ W. long.,) vessels fishing with hook-and-line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m) in the months of July and August. Boundary coordinates are provided below at paragraph (e) of this section.

(iii) Between the U.S. border with Canada and 40°10′ N. lat., the non-trawl gear RCA is defined along a western, offshore boundary approximating 100 fm (183 m) throughout the year. Between 40°10′ N. lat. and the U.S. border with Mexico, the trawl RCA is defined along a western, offshore boundary approximating 150 fm (274 m) throughout the year. Boundary coordinates are provided below at paragraph (e) of this section.

(e) *RCA Boundary Coordinates.* Coordinates for the specific boundaries that approximate the depth contours selected for both trawl and non-trawl gear RCAs are provided here.

(i) The 27–fm (49–m) depth contour used between 46°16′ N. lat. and 40°10′ N. lat. as an eastern boundary for the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 46°16.00′ N. lat., 124°12.39′ W. long.;
(2) 46°14.85′ N. lat., 124°12.39′ W. long.;
(3) 46°3.95′ N. lat., 124°3.64′ W. long.;
(4) 45°43.14′ N. lat., 124°0.17′ W. long.;
(5) 45°23.33′ N. lat., 124°1.99′ W. long.;
(6) 45°9.54′ N. lat., 124°1.65′ W. long.;
(7) 44°39.99′ N. lat., 124°8.67′ W. long.;
(8) 44°20.86′ N. lat., 124°10.31′ W. long.;
(9) 43°37.11′ N. lat., 124°14.91′ W. long.;
(10) 43°27.54′ N. lat., 124°18.98′ W. long.;
(11) 43°20.68′ N. lat., 124°25.53′ W. long.;
(12) 43°15.08′ N. lat., 124°27.17′ W. long.;
(13) 43°6.89′ N. lat., 124°29.65′ W. long.;
(14) 43°1.02′ N. lat., 124°29.70′ W. long.;
(15) 42°52.67′ N. lat., 124°36.10′ W. long.;
(16) 42°45.96′ N. lat., 124°37.95′ W. long.;
(17) 42°45.80′ N. lat., 124°35.41′ W. long.;
(18) 42°38.46′ N. lat., 124°27.49′ W. long.;
(19) 42°35.29′ N. lat., 124°26.85′ W. long.;
(20) 42°31.49′ N. lat., 124°31.40′ W. long.;
(21) 42°29.06′ N. lat., 124°32.24′ W. long.;
(22) 42°14.26′ N. lat., 124°26.27′ W. long.;
(23) 42°4.86′ N. lat., 124°21.94′ W. long.;
(24) 42°0.10′ N. lat., 124°20.99′ W. long.;
(25) 42°0.00′ N. lat., 124°21.03′ W. long.;
(26) 41°56.33′ N. lat., 124°20.34′ W. long.;
(27) 41°50.93′ N. lat., 124°23.74′ W. long.;
(28) 41°41.83′ N. lat., 124°16.99′ W. long.;
(29) 41°35.48′ N. lat., 124°16.35′ W. long.;
(30) 41°23.51′ N. lat., 124°10.48′ W. long.;
(31) 41°4.62′ N. lat., 124°14.44′ W. long.;
(32) 40°54.28′ N. lat., 124°13.90′ W. long.;
(33) 40°40.37′ N. lat., 124°26.21′ W. long.;
(34) 40°34.03′ N. lat., 124°27.36′ W. long.;
(35) 40°28.88′ N. lat., 124°32.41′ W. long.;
(36) 40°24.82′ N. lat., 124°29.56′ W. long.;
(37) 40°22.64′ N. lat., 124°24.05′ W. long.;
(38) 40°18.67′ N. lat., 124°21.90′ W. long.;
(39) 40°14.23′ N. lat., 124°23.72′ W. long.; and
(40) 40°10.00′ N. lat., 124°17.22′ W. long.;

(ii) The 75–fm (137–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA in the months of July and August is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.58′ N. lat., 125°42.47′ W. long.;
(2) 48°20.26′ N. lat., 125°23.03′ W. long.;
(3) 48°23.00′ N. lat., 124°50.00′ W. long.;
(4) 48°17.10′ N. lat., 124°54.82′ W. long.;
(5) 48°05.10′ N. lat., 124°59.40′ W. long.;
(6) 48°04.98′ N. lat., 125°10.02′ W. long.;
(7) 47°54.00′ N. lat., 125°04.98′ W. long.;
(8) 47°44.52′ N. lat., 125°00.00′ W. long.;
(9) 47°42.00′ N. lat., 124°58.98′ W. long.;
(10) 47°35.52′ N. lat., 124°55.50′ W. long.;
(11) 47°22.02′ N. lat., 124°44.40′ W. long.;
(12) 47°16.98′ N. lat., 124°45.48′ W. long.;
(13) 47°10.98′ N. lat., 124°48.48′ W. long.;
(14) 47°04.98′ N. lat., 124°49.02′ W. long.;
(15) 46°57.98′ N. lat., 124°46.50′ W. long.;
(16) 46°54.00′ N. lat., 124°45.00′ W. long.;
(17) 46°48.48′ N. lat., 124°44.52′ W. long.;
(18) 46°40.02′ N. lat., 124°36.00′ W. long.;
(19) 46°34.09′ N. lat., 124°27.03′ W. long.;
(20) 46°24.64′ N. lat., 124°30.33′ W. long.;
(21) 46°19.98′ N. lat., 124°36.00′ W. long.;
(22) 46°18.14′ N. lat., 124°34.26′ W. long.;
(23) 46°18.72′ N. lat., 124°22.68′ W. long.;
(24) 46°14.64′ N. lat., 124°22.54′ W. long.;
(25) 46°11.08′ N. lat., 124°30.74′ W. long.;
(26) 46°4.28′ N. lat., 124°31.49′ W. long.;
(27) 45°55.97′ N. lat., 124°19.95′ W. long.;
(28) 45°44.97′ N. lat., 124°15.96′ W. long.;
(29) 45°43.14′ N. lat., 124°21.86′ W. long.;
(30) 45°34.44′ N. lat., 124°14.44′ W. long.;
(31) 45°15.49′ N. lat., 124°11.49′ W. long.;
(32) 44°57.31′ N. lat., 124°15.03′ W. long.;
(33) 44°43.90′ N. lat., 124°28.88′ W. long.;
(34) 44°28.64′ N. lat., 124°35.67′ W. long.;
(35) 44°25.31′ N. lat., 124°43.08′ W. long.;
(36) 44°17.15′ N. lat., 124°47.98′ W. long.;
(37) 44°13.67′ N. lat., 124°54.41′ W. long.;
(38) 43°56.85′ N. lat., 124°55.32′ W. long.;
(39) 43°57.50′ N. lat., 124°41.23′ W. long.;
(40) 44°1.79′ N. lat., 124°38.00′ W. long.;
(41) 44°2.16′ N. lat., 124°32.62′ W. long.;
(42) 43°58.15′ N. lat., 124°30.39′ W. long.;
(43) 43°53.25′ N. lat., 124°31.39′ W. long.;

(44) 43°35.56′ N. lat., 124°28.17′ W. long.;
(45) 43°21.84′ N. lat., 124°36.07′ W. long.;
(46) 43°19.73′ N. lat., 124°34.86′ W. long.;
(47) 43°9.38′ N. lat., 124°39.30′ W. long.;
(48) 43°7.11′ N. lat., 124°37.66′ W. long.;
(49) 42°56.27′ N. lat., 124°43.29′ W. long.;
(50) 42°45.00′ N. lat., 124°41.50′ W. long.;
(51) 42°39.72′ N. lat., 124°39.11′ W. long.;
(52) 42°32.88′ N. lat., 124°40.13′ W. long.;
(53) 42°32.30′ N. lat., 124°39.04′ W. long.;
(54) 42°26.96′ N. lat., 124°44.31′ W. long.;
(55) 42°24.11′ N. lat., 124°42.16′ W. long.;
(56) 42°21.10′ N. lat., 124°35.46′ W. long.;
(57) 42°14.72′ N. lat., 124°32.30′ W. long.;
(58) 42°9.24′ N. lat., 124°32.04′ W. long.;
(59) 42°1.89′ N. lat., 124°32.70′ W. long.;
(60) 42°0.03′ N. lat., 124°32.02′ W. long.;
(61) 42°0.00′ N. lat., 124°32.02′ W. long.;
(62) 41°46.18′ N. lat., 124°26.60′ W. long.;
(63) 41°29.22′ N. lat., 124°28.04′ W. long.;
(64) 41°9.62′ N. lat., 124°19.75′ W. long.;
(65) 40°50.71′ N. lat., 124°23.80′ W. long.;
(66) 40°43.35′ N. lat., 124°29.30′ W. long.;
(67) 40°40.24′ N. lat., 124°29.86′ W. long.;
(68) 40°37.50′ N. lat., 124°28.68′ W. long.;
(69) 40°34.42′ N. lat., 124°29.65′ W. long.;
(70) 40°34.74′ N. lat., 124°34.61′ W. long.;
(71) 40°31.70′ N. lat., 124°37.13′ W. long.;
(72) 40°25.03′ N. lat., 124°34.77′ W. long.;
(73) 40°23.58′ N. lat., 124°31.49′ W. long.;
(74) 40°23.64′ N. lat., 124°28.35′ W. long.;
(75) 40°22.53′ N. lat., 124°24.76′ W. long.;
(76) 40°21.46′ N. lat., 124°24.86′ W. long.;
(77) 40°21.74′ N. lat., 124°27.63′ W. long.;
(78) 40°19.76′ N. lat., 124°28.15′ W. long.;
(79) 40°18.00′ N. lat., 124°25.38′ W. long.;
(80) 40°18.54′ N. lat., 124°22.94′ W. long.;
(81) 40°15.55′ N. lat., 124°25.75′ W. long.;
(82) 40°16.06′ N. lat., 124°30.48′ W. long.;
(83) 40°15.75′ N. lat., 124°31.69′ W. long.; and
(84) 40°10.00′ N. lat., 124°21.28′ W. long.

(iii) The 100–fm (183–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA and as a western boundary for the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°15.00′ N. lat., 125°41.00′ W. long.;
(2) 48°14.00′ N. lat., 125°36.00′ W. long.;
(3) 48°09.50′ N. lat., 125°40.50′ W. long.;
(4) 48°08.00′ N. lat., 125°38.00′ W. long.;
(5) 48°05.00′ N. lat., 125°37.25′ W. long.;
(6) 48°02.60′ N. lat., 125°34.70′ W. long.;
(7) 47°59.00′ N. lat., 125°34.00′ W. long.;
(8) 47°57.26′ N. lat., 125°29.82′ W. long.;
(9) 47°59.87′ N. lat., 125°25.81′ W. long.;
(10) 48°01.08′ N. lat., 125°24.53′ W. long.;
(11) 48°02.08′ N. lat., 125°22.98′ W. long.;
(12) 48°02.97′ N. lat., 125°22.89′ W. long.;
(13) 48°04.47′ N. lat., 125°21.75′ W. long.;
(14) 48°06.11′ N. lat., 125°19.33′ W. long.;
(15) 48°07.95′ N. lat., 125°18.55′ W. long.;
(16) 48°09.00′ N. lat., 125°18.00′ W. long.;
(17) 48°11.31′ N. lat., 125°17.55′ W. long.;
(18) 48°14.60′ N. lat., 125°13.46′ W. long.;
(19) 48°16.67′ N. lat., 125°14.34′ W. long.;
(20) 48°18.73′ N. lat., 125°14.41′ W. long.;
(21) 48°19.98′ N. lat., 125°13.24′ W. long.;
(22) 48°22.95′ N. lat., 125°10.79′ W. long.;
(23) 48°21.61′ N. lat., 125°02.54′ W. long.;
(24) 48°23.00′ N. lat., 124°49.34′ W. long.;
(25) 48°17.00′ N. lat., 124°56.50′ W. long.;
(26) 48°06.00′ N. lat., 125°00.00′ W. long.;
(27) 48°04.62′ N. lat., 125°01.73′ W. long.;
(28) 48°04.84′ N. lat., 125°04.03′ W. long.;
(29) 48°06.41′ N. lat., 125°06.51′ W. long.;
(30) 48°06.00′ N. lat., 125°08.00′ W. long.;
(31) 48°07.28′ N. lat., 125°11.14′ W. long.;
(32) 48°03.45′ N. lat., 125°16.66′ W. long.;
(33) 47°59.50′ N. lat., 125°18.88′ W. long.;
(34) 47°58.68′ N. lat., 125°16.19′ W. long.;
(35) 47°56.62′ N. lat., 125°13.50′ W. long.;
(36) 47°53.71′ N. lat., 125°11.96′ W. long.;
(37) 47°51.70′ N. lat., 125°09.38′ W. long.;
(38) 47°49.95′ N. lat., 125°06.07′ W. long.;
(39) 47°49.00′ N. lat., 125°03.00′ W. long.;
(40) 47°46.95′ N. lat., 125°04.00′ W. long.;
(41) 47°46.58′ N. lat., 125°03.15′ W. long.;
(42) 47°44.07′ N. lat., 125°04.28′ W. long.;
(43) 47°43.32′ N. lat., 125°04.41′ W. long.;
(44) 47°40.95′ N. lat., 125°04.14′ W. long.;
(45) 47°39.58′ N. lat., 125°04.97′ W. long.;
(46) 47°36.23′ N. lat., 125°02.77′ W. long.;
(47) 47°34.28′ N. lat., 124°58.66′ W. long.;
(48) 47°32.17′ N. lat., 124°57.77′ W. long.;
(49) 47°30.27′ N. lat., 124°56.16′ W. long.;
(50) 47°30.60′ N. lat., 124°54.80′ W. long.;
(51) 47°29.26′ N. lat., 124°52.21′ W. long.;
(52) 47°28.21′ N. lat., 124°50.65′ W. long.;
(53) 47°27.38′ N. lat., 124°49.34′ W. long.;
(54) 47°25.61′ N. lat., 124°48.26′ W. long.;
(55) 47°23.54′ N. lat., 124°46.42′ W. long.;
(56) 47°20.64′ N. lat., 124°45.91′ W. long.;
(57) 47°17.99′ N. lat., 124°45.59′ W. long.;
(58) 47°18.20′ N. lat., 124°49.12′ W. long.;
(59) 47°15.01′ N. lat., 124°51.09′ W. long.;
(60) 47°12.61′ N. lat., 124°54.89′ W. long.;

(61) 47°08.22′ N. lat., 124°56.53′ W. long.;
(62) 47°08.50′ N. lat., 124°54.95′ W. long.;
(63) 47°01.92′ N. lat., 124°57.74′ W. long.;
(64) 47°01.14′ N. lat., 124°59.35′ W. long.;
(65) 46°58.48′ N. lat., 124°57.81′ W. long.;
(66) 46°56.79′ N. lat., 124°56.03′ W. long.;
(67) 46°58.01′ N. lat., 124°55.09′ W. long.;
(68) 46°55.07′ N. lat., 124°54.14′ W. long.;
(69) 46°59.60′ N. lat., 124°49.79′ W. long.;
(70) 46°58.72′ N. lat., 124°48.78′ W. long.;
(71) 46°54.45′ N. lat., 124°48.36′ W. long.;
(72) 46°53.99′ N. lat., 124°49.95′ W. long.;
(73) 46°54.38′ N. lat., 124°52.73′ W. long.;
(74) 46°52.38′ N. lat., 124°52.02′ W. long.;
(75) 46°48.93′ N. lat., 124°49.17′ W. long.;
(76) 46°41.50′ N. lat., 124°43.00′ W. long.;
(77) 46°34.50′ N. lat., 124°28.50′ W. long.;
(78) 46°29.00′ N. lat., 124°30.00′ W. long.;
(79) 46°20.00′ N. lat., 124°36.50′ W. long.;
(80) 46°18.00′ N. lat., 124°38.00′ W. long.;
(81) 46°17.00′ N. lat., 124°35.50′ W. long.;
(82) 46°17.00′ N. lat., 124°22.50′ W. long.;
(83) 46°15.02′ N. lat., 124°23.77′ W. long.;
(84) 46°12.00′ N. lat., 124°35.00′ W. long.;
(85) 46°10.50′ N. lat., 124°39.00′ W. long.;
(86) 46°8.90′ N. lat., 124°39.11′ W. long.;
(87) 46°0.97′ N. lat., 124°38.56′ W. long.;
(88) 45°57.04′ N. lat., 124°36.42′ W. long.;
(89) 45°54.29′ N. lat., 124°40.02′ W. long.;
(90) 45°47.19′ N. lat., 124°35.58′ W. long.;
(91) 45°41.75′ N. lat., 124°28.32′ W. long.;
(92) 45°34.16′ N. lat., 124°24.23′ W. long.;
(93) 45°27.10′ N. lat., 124°21.74′ W. long.;
(94) 45°17.14′ N. lat., 124°17.85′ W. long.;
(95) 44°59.51′ N. lat., 124°19.34′ W. long.;
(96) 44°49.30′ N. lat., 124°29.97′ W. long.;
(97) 44°45.64′ N. lat., 124°33.89′ W. long.;
(98) 44°33.00′ N. lat., 124°36.88′ W. long.;
(99) 44°28.20′ N. lat., 124°44.72′ W. long.;
(100) 44°13.16′ N. lat., 124°56.36′ W. long.;
(101) 43°56.34′ N. lat., 124°55.74′ W. long.;
(102) 43°56.47′ N. lat., 124°34.61′ W. long.;
(103) 43°42.73′ N. lat., 124°32.41′ W. long.;
(104) 43°30.92′ N. lat., 124°34.43′ W. long.;
(105) 43°17.44′ N. lat., 124°41.16′ W. long.;
(106) 43°7.04′ N. lat., 124°41.25′ W. long.;
(107) 43°3.45′ N. lat., 124°44.36′ W. long.;
(108) 43°3.90′ N. lat., 124°50.81′ W. long.;
(109) 42°55.70′ N. lat., 124°52.79′ W. long.;
(110) 42°54.12′ N. lat., 124°47.36′ W. long.;
(111) 42°43.99′ N. lat., 124°42.38′ W. long.;
(112) 42°38.23′ N. lat., 124°41.25′ W. long.;
(113) 42°33.02′ N. lat., 124°42.38′ W. long.;
(114) 42°31.89′ N. lat., 124°42.04′ W. long.;
(115) 42°30.08′ N. lat., 124°42.67′ W. long.;
(116) 42°28.27′ N. lat., 124°47.08′ W. long.;
(117) 42°25.22′ N. lat., 124°43.51′ W. long.;
(118) 42°19.22′ N. lat., 124°37.92′ W. long.;
(119) 42°16.28′ N. lat., 124°36.11′ W. long.;
(120) 42°5.65′ N. lat., 124°34.92′ W. long.;
(121) 42°0.00′ N. lat., 124°35.27′ W. long.;
(122) 42°00.00′ N. lat., 124°35.26′ W. long.;
(123) 41°47.04′ N. lat., 124°27.64′ W. long.;
(124) 41°32.92′ N. lat., 124°28.79′ W. long.;
(125) 41°24.17′ N. lat., 124°28.46′ W. long.;
(126) 41°10.12′ N. lat., 124°20.50′ W. long.;
(127) 40°51.41′ N. lat., 124°24.38′ W. long.;
(128) 40°43.71′ N. lat., 124°29.89′ W. long.;
(129) 40°40.14′ N. lat., 124°30.90′ W. long.;
(130) 40°37.35′ N. lat., 124°29.05′ W. long.;
(131) 40°34.76′ N. lat., 124°29.82′ W. long.;
(132) 40°36.78′ N. lat., 124°37.06′ W. long.;
(133) 40°32.44′ N. lat., 124°39.58′ W. long.;
(134) 40°24.82′ N. lat., 124°35.12′ W. long.;
(135) 40°23.30′ N. lat., 124°31.60′ W. long.;
(136) 40°23.52′ N. lat., 124°28.78′ W. long.;
(137) 40°22.43′ N. lat., 124°25.00′ W. long.;
(138) 40°21.72′ N. lat., 124°24.94′ W. long.;
(139) 40°21.87′ N. lat., 124°27.96′ W. long.;
(140) 40°21.40′ N. lat., 124°28.74′ W. long.;
(141) 40°19.68′ N. lat., 124°28.49′ W. long.;
(142) 40°17.73′ N. lat., 124°25.43′ W. long.;
(143) 40°18.37′ N. lat., 124°23.35′ W. long.;
(144) 40°15.75′ N. lat., 124°26.05′ W. long.;
(145) 40°16.75′ N. lat., 124°33.71′ W. long.;
(146) 40°16.29′ N. lat., 124°34.36′ W. long.; and
(147) 40°10.00′ N. lat., 124°21.12′ W. long.

(iv) The 250–fm (457–m) depth contour used north of 38° N. lat. for March through October as a western boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:
(1) 48°14.68′ N. lat., 125°42.10′ W. long.;
(2) 48°12.83′ N. lat., 125°39.71′ W. long.;
(3) 48°13.00′ N. lat., 125°39.00′ W. long.;
(4) 48°12.73′ N. lat., 125°38.87′ W. long.;
(5) 48°12.43′ N. lat., 125°39.12′ W. long.;
(6) 48°11.83′ N. lat., 125°40.01′ W. long.;
(7) 48°11.78′ N. lat., 125°41.70′ W. long.;
(8) 48°10.62′ N. lat., 125°43.41′ W. long.;
(9) 48°09.23′ N. lat., 125°42.80′ W. long.;
(10) 48°08.79′ N. lat., 125°43.79′ W. long.;
(11) 48°08.50′ N. lat., 125°45.00′ W. long.;
(12) 48°07.43′ N. lat., 125°46.36′ W. long.;
(13) 48°06.00′ N. lat., 125°46.50′ W. long.;
(14) 48°05.38′ N. lat., 125°42.82′ W. long.;
(15) 48°04.19′ N. lat., 125°40.40′ W. long.;

(16) 48°03.50′ N. lat., 125°37.00′ W. long.;
(17) 48°01.50′ N. lat., 125°40.00′ W. long.;
(18) 47°57.00′ N. lat., 125°37.00′ W. long.;
(19) 47°55.21′ N. lat., 125°37.22′ W. long.;
(20) 47°54.02′ N. lat., 125°36.57′ W. long.;
(21) 47°53.67′ N. lat., 125°35.06′ W. long.;
(22) 47°54.14′ N. lat., 125°32.35′ W. long.;
(23) 47°55.50′ N. lat., 125°28.56′ W. long.;
(24) 47°57.03′ N. lat., 125°26.52′ W. long.;
(25) 47°57.98′ N. lat., 125°25.08′ W. long.;
(26) 48°00.54′ N. lat., 125°24.38′ W. long.;
(27) 48°01.45′ N. lat., 125°23.70′ W. long.;
(28) 48°01.97′ N. lat., 125°22.34′ W. long.;
(29) 48°03.68′ N. lat., 125°21.20′ W. long.;
(30) 48°01.96′ N. lat., 125°19.56′ W. long.;
(31) 48°00.98′ N. lat., 125°20.43′ W. long.;
(32) 48°00.00′ N. lat., 125°20.68′ W. long.;
(33) 47°58.00′ N. lat., 125°20.00′ W. long.;
(34) 47°57.65′ N. lat., 125°19.18′ W. long.;
(35) 47°58.00′ N. lat., 125°18.00′ W. long.;
(36) 47°56.59′ N. lat., 125°18.15′ W. long.;
(37) 47°51.30′ N. lat., 125°18.32′ W. long.;
(38) 47°49.88′ N. lat., 125°14.49′ W. long.;
(39) 47°49.00′ N. lat., 125°11.00′ W. long.;
(40) 47°47.99′ N. lat., 125°07.31′ W. long.;
(41) 47°46.47′ N. lat., 125°08.63′ W. long.;
(42) 47°46.00′ N. lat., 125°06.00′ W. long.;
(43) 47°44.50′ N. lat., 125°07.50′ W. long.;
(44) 47°43.39′ N. lat., 125°06.57′ W. long.;
(45) 47°42.37′ N. lat., 125°05.74′ W. long.;
(46) 47°40.61′ N. lat., 125°06.48′ W. long.;
(47) 47°37.43′ N. lat., 125°07.33′ W. long.;
(48) 47°33.68′ N. lat., 125°04.80′ W. long.;
(49) 47°30.00′ N. lat., 125°00.00′ W. long.;
(50) 47°28.00′ N. lat., 124°58.50′ W. long.;
(51) 47°28.88′ N. lat., 124°54.71′ W. long.;
(52) 47°27.70′ N. lat., 124°51.87′ W. long.;
(53) 47°24.84′ N. lat., 124°48.45′ W. long.;
(54) 47°21.76′ N. lat., 124°47.42′ W. long.;
(55) 47°18.84′ N. lat., 124°46.75′ W. long.;
(56) 47°19.82′ N. lat., 124°51.43′ W. long.;
(57) 47°18.13′ N. lat., 124°54.25′ W. long.;
(58) 47°13.50′ N. lat., 124°54.69′ W. long.;
(59) 47°15.00′ N. lat., 125°00.00′ W. long.;
(60) 47°08.00′ N. lat., 124°59.83′ W. long.;
(61) 47°05.79′ N. lat., 125°01.00′ W. long.;
(62) 47°03.34′ N. lat., 124°57.49′ W. long.;
(63) 47°01.00′ N. lat., 125°00.00′ W. long.;
(64) 46°55.00′ N. lat., 125°02.00′ W. long.;
(65) 46°51.00′ N. lat., 124°57.00′ W. long.;
(66) 46°47.00′ N. lat., 124°55.00′ W. long.;
(67) 46°34.00′ N. lat., 124°38.00′ W. long.;
(68) 46°30.50′ N. lat., 124°41.00′ W. long.;
(69) 46°33.00′ N. lat., 124°32.00′ W. long.;
(70) 46°29.00′ N. lat., 124°32.00′ W. long.;
(71) 46°20.00′ N. lat., 124°39.00′ W. long.;
(72) 46°18.16′ N. lat., 124°40.00′ W. long.;
(73) 46°15.83′ N. lat., 124°27.01′ W. long.;
(74) 46°15.00′ N. lat., 124°30.96′ W. long.;
(75) 46°13.17′ N. lat., 124°37.87′ W. long.;
(76) 46°13.17′ N. lat., 124°38.75′ W. long.;
(77) 46°10.50′ N. lat., 124°42.00′ W. long.;
(78) 46°6.21′ N. lat., 124°41.85′ W. long.;
(79) 46°3.02′ N. lat., 124°50.27′ W. long.;
(80) 45°57.00′ N. lat., 124°45.52′ W. long.;
(81) 45°46.85′ N. lat., 124°45.91′ W. long.;
(82) 45°45.81′ N. lat., 124°47.05′ W. long.;
(83) 45°44.87′ N. lat., 124°45.98′ W. long.;
(84) 45°43.44′ N. lat., 124°46.03′ W. long.;
(85) 45°35.82′ N. lat., 124°45.72′ W. long.;
(86) 45°35.70′ N. lat., 124°42.89′ W. long.;
(87) 45°24.45′ N. lat., 124°38.21′ W. long.;
(88) 45°11.68′ N. lat., 124°39.38′ W. long.;
(89) 44°57.94′ N. lat., 124°37.02′ W. long.;
(90) 44°44.28′ N. lat., 124°50.79′ W. long.;
(91) 44°32.63′ N. lat., 124°54.21′ W. long.;
(92) 44°23.20′ N. lat., 124°49.87′ W. long.;
(93) 44°13.17′ N. lat., 124°58.81′ W. long.;
(94) 43°57.92′ N. lat., 124°58.29′ W. long.;
(95) 43°50.12′ N. lat., 124°53.36′ W. long.;
(96) 43°49.53′ N. lat., 124°43.96′ W. long.;
(97) 43°42.76′ N. lat., 124°41.40′ W. long.;
(98) 43°24.00′ N. lat., 124°42.61′ W. long.;
(99) 43°19.74′ N. lat., 124°45.12′ W. long.;
(100) 43°19.62′ N. lat., 124°52.95′ W. long.;
(101) 43°17.41′ N. lat., 124°53.02′ W. long.;
(102) 42°49.15′ N. lat., 124°54.93′ W. long.;
(103) 42°46.74′ N. lat., 124°53.39′ W. long.;
(104) 42°43.76′ N. lat., 124°51.64′ W. long.;
(105) 42°45.41′ N. lat., 124°49.35′ W. long.;
(106) 42°43.92′ N. lat., 124°45.92′ W. long.;
(107) 42°38.87′ N. lat., 124°43.38′ W. long.;
(108) 42°34.78′ N. lat., 124°46.56′ W. long.;
(109) 42°31.47′ N. lat., 124°46.89′ W. long.;
(110) 42°31.00′ N. lat., 124°44.28′ W. long.;
(111) 42°29.22′ N. lat., 124°46.93′ W. long.;
(112) 42°28.39′ N. lat., 124°49.94′ W. long.;
(113) 42°26.28′ N. lat., 124°47.60′ W. long.;
(114) 42°19.58′ N. lat., 124°43.21′ W. long.;
(115) 42°13.75′ N. lat., 124°40.06′ W. long.;
(116) 42°5.12′ N. lat., 124°39.06′ W. long.;
(117) 41°59.99′ N. lat., 124°37.72′ W. long.;
(118) 42°0.00′ N. lat., 124°37.76′ W. long.;
(119) 41°47.93′ N. lat., 124°31.79′ W. long.;
(120) 41°21.35′ N. lat., 124°30.35′ W. long.;

(121) 41°7.11′ N. lat., 124°25.25′ W. long.;
(122) 40°57.37′ N. lat., 124°30.25′ W. long.;
(123) 40°41.03′ N. lat., 124°33.21′ W. long.;
(124) 40°37.40′ N. lat., 124°38.96′ W. long.;
(125) 40°33.70′ N. lat., 124°42.50′ W. long.;
(126) 40°31.31′ N. lat., 124°41.59′ W. long.;
(127) 40°25.00′ N. lat., 124°36.65′ W. long.;
(128) 40°22.42′ N. lat., 124°32.19′ W. long.;
(129) 40°17.17′ N. lat., 124°32.21′ W. long.;
(130) 40°18.68′ N. lat., 124°50.44′ W. long.;
(131) 40°10.11′ N. lat., 124°28.25′ W. long.;
(132) 40°1.63′ N. lat., 124°17.25′ W. long.;
(133) 39°51.85′ N. lat., 124°10.33′ W. long.;
(134) 39°32.41′ N. lat., 124°0.01′ W. long.;
(135) 38°57.16′ N. lat., 124°1.89′ W. long.;
(136) 38°11.66′ N. lat., 123°30.87′ W. long.;
(137) 38°3.18′ N. lat., 123°33.45′ W. long.; and
(138) 38°00.00′ N. lat., 123°28.84′ W. long.

(v) The 250–fm (457–m) depth contour modified to allow fishing for petrale in winter months of January, February, November, and December and used north of 38° N. lat. as a western boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:
(1) 48°14.71′ N. lat., 125°41.95′ W. long.;
(2) 48°13.00′ N. lat., 125°39.00′ W. long.;
(3) 48°08.50′ N. lat., 125°45.00′ W. long.;
(4) 48°06.00′ N. lat., 125°46.50′ W. long.;
(5) 48°03.50′ N. lat., 125°37.00′ W. long.;
(6) 48°01.50′ N. lat., 125°40.00′ W. long.;
(7) 47°57.00′ N. lat., 125°37.00′ W. long.;
(8) 47°55.50′ N. lat., 125°28.50′ W. long.;
(9) 47°58.00′ N. lat., 125°25.00′ W. long.;
(10) 48°00.50′ N. lat., 125°24.50′ W. long.;
(11) 48°03.50′ N. lat., 125°21.00′ W. long.;
(12) 48°02.00′ N. lat., 125°19.50′ W. long.;
(13) 48°00.00′ N. lat., 125°21.00′ W. long.;
(14) 47°58.00′ N. lat., 125°20.00′ W. long.;
(15) 47°58.00′ N. lat., 125°18.00′ W. long.;
(16) 47°52.00′ N. lat., 125°16.50′ W. long.;
(17) 47°49.00′ N. lat., 125°11.00′ W. long.;
(18) 47°46.00′ N. lat., 125°06.00′ W. long.;
(19) 47°44.50′ N. lat., 125°07.50′ W. long.;
(20) 47°42.00′ N. lat., 125°06.00′ W. long.;
(21) 47°38.00′ N. lat., 125°07.00′ W. long.;
(22) 47°30.00′ N. lat., 125°00.00′ W. long.;
(23) 47°28.00′ N. lat., 124°58.50′ W. long.;
(24) 47°28.88′ N. lat., 124°54.71′ W. long.;
(25) 47°27.70′ N. lat., 124°51.87′ W. long.;
(26) 47°24.84′ N. lat., 124°48.45′ W. long.;
(27) 47°21.76′ N. lat., 124°47.42′ W. long.;
(28) 47°18.84′ N. lat., 124°46.75′ W. long.;
(29) 47°19.82′ N. lat., 124°51.43′ W. long.;
(30) 47°18.13′ N. lat., 124°54.25′ W. long.;
(31) 47°13.50′ N. lat., 124°54.69′ W. long.;
(32) 47°15.00′ N. lat., 125°00.00′ W. long.;
(33) 47°08.00′ N. lat., 124°59.82′ W. long.;
(34) 47°05.79′ N. lat., 125°01.00′ W. long.;
(35) 47°03.34′ N. lat., 124°57.49′ W. long.;
(36) 47°01.00′ N. lat., 125°00.00′ W. long.;
(37) 46°55.00′ N. lat., 125°02.00′ W. long.;
(38) 46°51.00′ N. lat., 124°57.00′ W. long.;
(39) 46°47.00′ N. lat., 124°55.00′ W. long.;
(40) 46°34.00′ N. lat., 124°38.00′ W. long.;
(41) 46°30.50′ N. lat., 124°41.00′ W. long.;
(42) 46°33.00′ N. lat., 124°32.00′ W. long.;
(43) 46°29.00′ N. lat., 124°32.00′ W. long.;
(44) 46°20.00′ N. lat., 124°39.00′ W. long.;
(45) 46°18.16′ N. lat., 124°40.00′ W. long.;
(46) 46°15.83′ N. lat., 124°27.01′ W. long.;
(47) 46°15.00′ N. lat., 124°30.96′ W. long.;
(48) 46°13.17′ N. lat., 124°38.76′ W. long.;
(49) 46°10.51′ N. lat., 124°41.99′ W. long.;
(50) 46°6.24′ N. lat., 124°41.81′ W. long.;
(51) 46°3.04′ N. lat., 124°50.26′ W. long.;
(52) 45°56.99′ N. lat., 124°45.45′ W. long.;
(53) 45°49.94′ N. lat., 124°45.75′ W. long.;
(54) 45°49.94′ N. lat., 124°42.33′ W. long.;
(55) 45°45.73′ N. lat., 124°42.18′ W. long.;
(56) 45°45.73′ N. lat., 124°43.82′ W. long.;
(57) 45°41.94′ N. lat., 124°43.61′ W. long.;
(58) 45°41.58′ N. lat., 124°39.86′ W. long.;
(59) 45°38.45′ N. lat., 124°39.94′ W. long.;
(60) 45°35.75′ N. lat., 124°42.91′ W. long.;
(61) 45°24.49′ N. lat., 124°38.20′ W. long.;
(62) 45°14.43′ N. lat., 124°39.05′ W. long.;
(63) 45°14.30′ N. lat., 124°34.19′ W. long.;
(64) 45°8.98′ N. lat., 124°34.26′ W. long.;
(65) 45°9.02′ N. lat., 124°38.81′ W. long.;
(66) 44°57.98′ N. lat., 124°36.98′ W. long.;
(67) 44°56.62′ N. lat., 124°38.32′ W. long.;
(68) 44°50.82′ N. lat., 124°35.52′ W. long.;
(69) 44°46.89′ N. lat., 124°38.32′ W. long.;
(70) 44°50.78′ N. lat., 124°44.24′ W. long.;
(71) 44°44.27′ N. lat., 124°50.78′ W. long.;
(72) 44°32.63′ N. lat., 124°54.24′ W. long.;
(73) 44°23.25′ N. lat., 124°49.78′ W. long.;
(74) 44°13.16′ N. lat., 124°58.81′ W. long.;
(75) 43°57.88′ N. lat., 124°58.25′ W. long.;
(76) 43°56.89′ N. lat., 124°57.33′ W. long.;
(77) 43°53.41′ N. lat., 124°51.95′ W. long.;
(78) 43°51.56′ N. lat., 124°47.38′ W. long.;
(79) 43°51.49′ N. lat., 124°37.77′ W. long.;
(80) 43°48.02′ N. lat., 124°43.31′ W. long.;
(81) 43°42.77′ N. lat., 124°41.39′ W. long.;
(82) 43°24.09′ N. lat., 124°42.57′ W. long.;
(83) 43°19.73′ N. lat., 124°45.09′ W. long.;

(84) 43°15.98′ N. lat., 124°47.76′ W. long.;
(85) 43°4.14′ N. lat., 124°52.55′ W. long.;
(86) 43°4.00′ N. lat., 124°53.88′ W. long.;
(87) 42°54.69′ N. lat., 124°54.54′ W. long.;
(88) 42°45.46′ N. lat., 124°49.37′ W. long.;
(89) 42°43.91′ N. lat., 124°45.90′ W. long.;
(90) 42°38.84′ N. lat., 124°43.36′ W. long.;
(91) 42°34.82′ N. lat., 124°46.56′ W. long.;
(92) 42°31.57′ N. lat., 124°46.86′ W. long.;
(93) 42°30.98′ N. lat., 124°44.27′ W. long.;
(94) 42°29.21′ N. lat., 124°46.93′ W. long.;
(95) 42°28.52′ N. lat., 124°49.40′ W. long.;
(96) 42°26.06′ N. lat., 124°46.61′ W. long.;
(97) 42°21.82′ N. lat., 124°43.76′ W. long.;
(98) 42°17.47′ N. lat., 124°38.89′ W. long.;
(99) 42°13.67′ N. lat., 124°37.51′ W. long.;
(100) 42°13.76′ N. lat., 124°40.03′ W. long.;
(101) 42°5.12′ N. lat., 124°39.06′ W. long.;
(102) 42°2.67′ N. lat., 124°38.41′ W. long.;
(103) 42°2.67′ N. lat., 124°35.95′ W. long.;
(104) 42°0.00′ N. lat., 124°35.88′ W. long.;
(105) 41°59.99′ N. lat., 124°35.92′ W. long.;
(106) 41°56.38′ N. lat., 124°34.96′ W. long.;
(107) 41°53.98′ N. lat., 124°32.50′ W. long.;
(108) 41°50.69′ N. lat., 124°30.46′ W. long.;
(109) 41°48.30′ N. lat., 124°29.91′ W. long.;
(110) 41°47.93′ N. lat., 124°31.79′ W. long.;
(111) 41°21.35′ N. lat., 124°30.35′ W. long.;
(112) 41°7.11′ N. lat., 124°25.25′ W. long.;
(113) 40°57.37′ N. lat., 124°30.25′ W. long.;
(114) 40°41.03′ N. lat., 124°33.21′ W. long.;
(115) 40°37.40′ N. lat., 124°38.96′ W. long.;
(116) 40°33.70′ N. lat., 124°42.50′ W. long.;
(117) 40°31.31′ N. lat., 124°41.59′ W. long.;
(118) 40°25.00′ N. lat., 124°36.65′ W. long.;
(119) 40°22.42′ N. lat., 124°32.19′ W. long.;
(120) 40°17.17′ N. lat., 124°32.21′ W. long.;
(121) 40°18.68′ N. lat., 124°50.44′ W. long.;
(122) 40°10.11′ N. lat., 124°28.25′ W. long.;
(123) 40°1.63′ N. lat., 124°17.25′ W. long.;
(124) 39°51.85′ N. lat., 124°10.33′ W. long.;
(125) 39°32.41′ N. lat., 124°0.01′ W. long.;
(126) 38°57.16′ N. lat., 124°1.89′ W. long.;
(127) 38°11.66′ N. lat., 123°30.87′ W. long.;
(128) 38°3.18′ N. lat., 123°33.45′ W. long.; and
(129) 38°00.00′ N. lat., 123°28.84′ W. long.

(vi) The 50–fm (91–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the trawl RCA in the months of January and February is defined by straight lines connecting all of the following points in the order stated:

(1) 40°10.01′ N. lat., 124°19.97′ W. long.;
(2) 40°9.20′ N. lat., 124°15.81′ W. long.;
(3) 40°7.51′ N. lat., 124°15.29′ W. long.;
(4) 40°5.22′ N. lat., 124°10.06′ W. long.;
(5) 40°6.51′ N. lat., 124°8.01′ W. long.;
(6) 40°0.72′ N. lat., 124°8.45′ W. long.;
(7) 39°56.60′ N. lat., 124°7.12′ W. long.;
(8) 39°52.58′ N. lat., 124°3.57′ W. long.;
(9) 39°50.65′ N. lat., 123°57.98′ W. long.;
(10) 39°40.16′ N. lat., 123°52.41′ W. long.;
(11) 39°30.12′ N. lat., 123°52.92′ W. long.;
(12) 39°24.53′ N. lat., 123°55.16′ W. long.;
(13) 39°11.58′ N. lat., 123°50.93′ W. long.;
(14) 38°55.13′ N. lat., 123°51.14′ W. long.;
(15) 38°28.58′ N. lat., 123°22.84′ W. long.;
(16) 38°14.58′ N. lat., 123°9.93′ W. long.;
(17) 38°1.86′ N. lat., 123°9.76′ W. long.;
(18) 37°53.66′ N. lat., 123°12.06′ W. long.;
(19) 37°48.01′ N. lat., 123°15.84′ W. long.;
(20) 37°36.77′ N. lat., 122°58.48′ W. long.;
(21) 37°1.02′ N. lat., 122°33.71′ W. long.;
(22) 37°2.28′ N. lat., 122°25.06′ W. long.;
(23) 36°48.20′ N. lat., 122°3.28′ W. long.;
(24) 36°51.46′ N. lat., 121°57.54′ W. long.;
(25) 36°44.14′ N. lat., 121°58.10′ W. long.;
(26) 36°36.76′ N. lat., 122°1.16′ W. long.;
(27) 36°15.62′ N. lat., 121°57.13′ W. long.;
(28) 36°10.60′ N. lat., 121°43.65′ W. long.;
(29) 35°40.38′ N. lat., 121°22.59′ W. long.;
(30) 35°24.35′ N. lat., 121°2.53′ W. long.;
(31) 35°2.66′ N. lat., 120°51.63′ W. long.;
(32) 34°39.52′ N. lat., 120°48.72′ W. long.;
(33) 34°31.26′ N. lat., 120°44.12′ W. long.; and
(34) 34°27.00′ N. lat., 120°31.25′ W. long.

(vii) The 60–fm (110–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the trawl RCA in March through October is defined by straight lines connecting all of the following points in the order stated:

(1) 40°10.01′ N. lat., 124°19.97′ W. long.;
(2) 40°9.20′ N. lat., 124°15.81′ W. long.;
(3) 40°7.51′ N. lat., 124°15.29′ W. long.;
(4) 40°5.22′ N. lat., 124°10.06′ W. long.;
(5) 40°6.51′ N. lat., 124°8.01′ W. long.;
(6) 40°0.72′ N. lat., 124°8.45′ W. long.;
(7) 39°56.60′ N. lat., 124°7.12′ W. long.;
(8) 39°52.58′ N. lat., 124°3.57′ W. long.;
(9) 39°50.65′ N. lat., 123°57.98′ W. long.;
(10) 39°40.16′ N. lat., 123°52.41′ W. long.;
(11) 39°30.12′ N. lat., 123°52.92′ W. long.;
(12) 39°24.53′ N. lat., 123°55.16′ W. long.;
(13) 39°11.58′ N. lat., 123°50.93′ W. long.;
(14) 38°55.13′ N. lat., 123°51.14′ W. long.;
(15) 38°28.58′ N. lat., 123°22.84′ W. long.;
(16) 38°8.32′ N. lat., 123°14.60′ W. long.;
(17) 38°0.27′ N. lat., 123°15.29′ W. long.;
(18) 37°56.93′ N. lat., 123°21.61′ W. long.;
(19) 37°48.01′ N. lat., 123°15.84′ W. long.;

(20) 37°36.77′ N. lat., 122°58.48′ W. long.;
(21) 37°1.02′ N. lat., 122°33.71′ W. long.;
(22) 37°2.28′ N. lat., 122°25.06′ W. long.;
(23) 36°48.20′ N. lat., 122°3.28′ W. long.;
(24) 36°51.46′ N. lat., 121°57.54′ W. long.;
(25) 36°44.14′ N. lat., 121°58.10′ W. long.;
(26) 36°36.76′ N. lat., 122°1.16′ W. long.;
(27) 36°15.62′ N. lat., 121°57.13′ W. long.;
(28) 36°10.60′ N. lat., 121°43.65′ W. long.;
(29) 35°40.38′ N. lat., 121°22.59′ W. long.;
(30) 35°24.35′ N. lat., 121°2.53′ W. long.;
(31) 35°2.66′ N. lat., 120°51.63′ W. long.;
(32) 34°39.52′ N. lat., 120°48.72′ W. long.;
(33) 34°31.26′ N. lat., 120°44.12′ W. long.; and
(34) 34°27.00′ N. lat., 120°31.25′ W. long.

(viii) The 100–fm (183–m) depth contour used between 34°27′ N. lat. and the U.S. border with Mexico as an eastern boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:
(1) 34°27.00′ N. lat., 120°31.74′ W. long.;
(2) 34°21.90′ N. lat., 120°25.25′ W. long.;
(3) 34°24.86′ N. lat., 120°16.81′ W. long.;
(4) 34°22.80′ N. lat., 119°57.06′ W. long.;
(5) 34°18.59′ N. lat., 119°44.84′ W. long.;
(6) 34°15.04′ N. lat., 119°40.34′ W. long.;
(7) 34°14.40′ N. lat., 119°45.39′ W. long.;
(8) 34°12.32′ N. lat., 119°42.41′ W. long.;
(9) 34°9.71′ N. lat., 119°28.85′ W. long.;
(10) 34°4.70′ N. lat., 119°15.38′ W. long.;
(11) 34°3.33′ N. lat., 119°12.93′ W. long.;
(12) 34°2.72′ N. lat., 119°7.01′ W. long.;
(13) 34°3.90′ N. lat., 119°4.64′ W. long.;
(14) 34°1.80′ N. lat., 119°3.23′ W. long.;
(15) 33°59.32′ N. lat., 119°3.50′ W. long.;
(16) 33°59.00′ N. lat., 118°59.55′ W. long.;
(17) 33°59.51′ N. lat., 118°57.25′ W. long.;
(18) 33°58.82′ N. lat., 118°52.47′ W. long.;
(19) 33°58.54′ N. lat., 118°41.86′ W. long.;
(20) 33°55.07′ N. lat., 118°34.25′ W. long.;
(21) 33°54.28′ N. lat., 118°38.68′ W. long.;
(22) 33°51.00′ N. lat., 118°36.66′ W. long.;
(23) 33°39.77′ N. lat., 118°18.41′ W. long.;
(24) 33°35.50′ N. lat., 118°16.85′ W. long.;
(25) 33°32.68′ N. lat., 118°9.82′ W. long.;
(26) 33°34.09′ N. lat., 117°54.06′ W. long.;
(27) 33°31.60′ N. lat., 117°49.28′ W. long.;
(28) 33°16.07′ N. lat., 117°34.74′ W. long.;
(29) 33°7.06′ N. lat., 117°22.71′ W. long.;
(30) 32°53.34′ N. lat., 117°19.13′ W. long.;
(31) 32°46.39′ N. lat., 117°23.45′ W. long.;
(32) 32°42.79′ N. lat., 117°21.16′ W. long.; and
(33) 32°34.22′ N. lat., 117°21.20′ W. long.

(ix) The 150–fm (274–m) depth contour used between 38° N. lat. and the U.S. border with Mexico as a western boundary for both the trawl RCA and the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:
(1) 37°59.73′ N. lat., 123°29.85′ W. long.;
(2) 37°51.46′ N. lat., 123°25.16′ W. long.;
(3) 37°44.06′ N. lat., 123°11.44′ W. long.;
(4) 37°35.26′ N. lat., 123°2.29′ W. long.;
(5) 37°14.00′ N. lat., 122°50.00′ W. long.;
(6) 37°1.00′ N. lat., 122°36.00′ W. long.;
(7) 36°58.07′ N. lat., 122°28.35′ W. long.;
(8) 37°0.71′ N. lat., 122°24.53′ W. long.;
(9) 36°57.50′ N. lat., 122°24.98′ W. long.;
(10) 36°58.38′ N. lat., 122°21.85′ W. long.;
(11) 36°55.85′ N. lat., 122°21.95′ W. long.;
(12) 36°52.86′ N. lat., 122°12.89′ W. long.;
(13) 36°48.71′ N. lat., 122°9.28′ W. long.;
(14) 36°46.65′ N. lat., 122°4.10′ W. long.;
(15) 36°51.00′ N. lat., 121°58.00′ W. long.;
(16) 36°44.00′ N. lat., 121°59.00′ W. long.;
(17) 36°38.00′ N. lat., 122°2.00′ W. long.;
(18) 36°26.00′ N. lat., 121°59.05′ W. long.;
(19) 36°22.00′ N. lat., 122°1.00′ W. long.;
(20) 36°19.00′ N. lat., 122°5.00′ W. long.;
(21) 36°14.00′ N. lat., 121°58.00′ W. long.;
(22) 36°10.61′ N. lat., 121°44.51′ W. long.;
(23) 35°50.53′ N. lat., 121°29.93′ W. long.;
(24) 35°46.00′ N. lat., 121°28.00′ W. long.;
(25) 35°38.94′ N. lat., 121°23.16′ W. long.;
(26) 35°26.00′ N. lat., 121°8.00′ W. long.;
(27) 35°7.42′ N. lat., 120°57.08′ W. long.;
(28) 34°42.00′ N. lat., 120°54.00′ W. long.;
(29) 34°29.00′ N. lat., 120°44.00′ W. long.;
(30) 34°22.00′ N. lat., 120°32.00′ W. long.;
(31) 34°21.00′ N. lat., 120°21.00′ W. long.;
(32) 34°24.00′ N. lat., 120°15.00′ W. long.;
(33) 34°22.11′ N. lat., 119°56.63′ W. long.;
(34) 34°19.00′ N. lat., 119°48.00′ W. long.;
(35) 34°15.00′ N. lat., 119°48.00′ W. long.;
(36) 34°8.00′ N. lat., 119°37.00′ W. long.;
(37) 34°7.00′ N. lat., 120°11.00′ W. long.;
(38) 34°13.00′ N. lat., 120°30.00′ W. long.;
(39) 34°9.00′ N. lat., 120°38.00′ W. long.;
(40) 33°58.00′ N. lat., 120°29.00′ W. long.;
(41) 33°51.00′ N. lat., 120°9.00′ W. long.;
(42) 33°38.00′ N. lat., 119°58.00′ W. long.;
(43) 33°38.00′ N. lat., 119°50.00′ W. long.;
(44) 33°46.25′ N. lat., 119°49.32′ W. long.;
(45) 33°53.82′ N. lat., 119°53.42′ W. long.;
(46) 33°59.00′ N. lat., 119°21.00′ W. long.;
(47) 34°2.00′ N. lat., 119°13.00′ W. long.;
(48) 34°1.52′ N. lat., 119°4.50′ W. long.;
(49) 33°58.83′ N. lat., 119°3.76′ W. long.;

(50) 33°56.55′ N. lat., 118°40.50′ W. long.;
(51) 33°51.00′ N. lat., 118°38.00′ W. long.;
(52) 33°39.63′ N. lat., 118°18.75′ W. long.;
(53) 33°35.44′ N. lat., 118°17.57′ W. long.;
(54) 33°31.98′ N. lat., 118°12.59′ W. long.;
(55) 33°33.25′ N. lat., 117°54.15′ W. long.;
(56) 33°31.43′ N. lat., 117°49.84′ W. long.;
(57) 33°16.53′ N. lat., 117°36.13′ W. long.;
(58) 33°6.51′ N. lat., 117°24.11′ W. long.;
(59) 32°54.11′ N. lat., 117°21.45′ W. long.;
(60) 32°46.15′ N. lat., 117°24.26′ W. long.;
(61) 32°41.97′ N. lat., 117°22.10′ W. long.;
(62) 32°39.00′ N. lat., 117°28.13′ W. long.; and
(63) 32°34.84′ N. lat., 117°24.62′ W. long.

(x) The 150–fm (274–m) depth contour used around islands/seamounts off the state of California is defined by straight lines around each island/seamount connecting all of the following points in the order stated:

(A) San Nicholas Island
(1) 33°32.73′ N. lat., 119°47.00′ W. long.;
(2) 33°14.00′ N. lat., 119°15.00′ W. long.;
(3) 33°12.00′ N. lat., 119°18.00′ W. long.;
(4) 33°11.00′ N. lat., 119°26.00′ W. long.;
(5) 33°13.13′ N. lat., 119°43.19′ W. long.;
(6) 33°13.11′ N. lat., 119°53.05′ W. long.;
(7) 33°30.00′ N. lat., 119°52.00′ W. long.; and
(8) 33°32.73′ N. lat., 119°47.00′ W. long.

(B) Santa Catalina Island
(1) 33°19.00′ N. lat., 118°15.00′ W. long.;
(2) 33°26.00′ N. lat., 118°22.00′ W. long.;
(3) 33°28.00′ N. lat., 118°28.00′ W. long.;
(4) 33°30.00′ N. lat., 118°31.00′ W. long.;
(5) 33°31.00′ N. lat., 118°37.00′ W. long.;
(6) 33°29.00′ N. lat., 118°41.00′ W. long.;
(7) 33°23.00′ N. lat., 118°31.00′ W. long.;
(8) 33°21.00′ N. lat., 118°33.00′ W. long.;
(9) 33°18.00′ N. lat., 118°28.00′ W. long.;
(10) 33°16.00′ N. lat., 118°13.00′ W. long.; and
(11) 33°19.00′ N. lat., 118°15.00′ W. long.

(C) San Clemente Island
(1) 32°48.50′ N. lat., 118°18.34′ W. long.;
(2) 32°56.00′ N. lat., 118°29.00′ W. long.;
(3) 33°3.00′ N. lat., 118°34.00′ W. long.;
(4) 33°5.00′ N. lat., 118°38.00′ W. long.;
(5) 33°3.00′ N. lat., 118°40.00′ W. long.;
(6) 32°48.00′ N. lat., 118°31.00′ W. long.;
(7) 32°43.00′ N. lat., 118°24.00′ W. long.; and
(8) 32°48.50′ N. lat., 118°18.34′ W. long.

(D) Santa Barbara Island
(1) 33°36.06′ N. lat., 118°57.15′ W. long.;
(2) 33°20.64′ N. lat., 118°59.39′ W. long.;
(3) 33°23.00′ N. lat., 119°7.00′ W. long.;
(4) 33°43.00′ N. lat., 119°14.00′ W. long.;
(5) 33°46.00′ N. lat., 119°12.00′ W. long.; and
(6) 33°36.06′ N. lat., 118°57.15′ W. long.

(E) Orange County Seamount
(1) 33°25.00′ N. lat., 118°1.00′ W. long.;
(2) 33°25.00′ N. lat., 117°58.00′ W. long.;
(3) 33°23.00′ N. lat., 117°58.00′ W. long.;
(4) 33°23.00′ N. lat., 118°1.00′ W. long.; and
(5) 33°25.00′ N. lat., 118°1.00′ W. long.

(xi) The 50–fm (91–m) depth contour off Oregon state, which may be used for inseason management in 2003 is defined by straight lines connecting all of the following points in the order stated:
(1) 46°16.00′ N. lat., 124°17.33′ W. long.;
(2) 45°50.88′ N. lat., 124°9.68′ W. long.;
(3) 45°12.99′ N. lat., 124°6.71′ W. long.;
(4) 44°52.48′ N. lat., 124°11.22′ W. long.;
(5) 44°42.41′ N. lat., 124°19.70′ W. long.;
(6) 44°38.80′ N. lat., 124°26.58′ W. long.;
(7) 44°24.99′ N. lat., 124°31.22′ W. long.;
(8) 44°18.11′ N. lat., 124°43.74′ W. long.;
(9) 44°15.23′ N. lat., 124°40.47′ W. long.;
(10) 44°18.80′ N. lat., 124°35.48′ W. long.;
(11) 44°19.62′ N. lat., 124°27.18′ W. long.;
(12) 43°56.65′ N. lat., 124°16.86′ W. long.;
(13) 43°34.95′ N. lat., 124°17.47′ W. long.;
(14) 43°12.60′ N. lat., 124°35.80′ W. long.;
(15) 43°8.96′ N. lat., 124°33.77′ W. long.;
(16) 42°59.66′ N. lat., 124°34.79′ W. long.;
(17) 42°54.29′ N. lat., 124°39.46′ W. long.;
(18) 42°46.50′ N. lat., 124°39.99′ W. long.;
(19) 42°41.00′ N. lat., 124°34.92′ W. long.;
(20) 42°36.29′ N. lat., 124°34.70′ W. long.;
(21) 42°28.36′ N. lat., 124°37.90′ W. long.;
(22) 42°25.53′ N. lat., 124°37.68′ W. long.;
(23) 42°18.64′ N. lat., 124°29.47′ W. long.;
(24) 42°12.95′ N. lat., 124°27.34′ W. long.;
(25) 42°3.04′ N. lat., 124°25.81′ W. long.; and
(26) 42°0.00′ N. lat., 124°26.21′ W. long.

(xii) The 150–fm (274–m) depth contour between 46°16′ N. lat. and 38° N. lat., which may be used for inseason management in 2003 is defined by straight lines connecting all of the following points in the order stated:
(1) 46°16.00′ N. lat., 124°26.15′ W. long.;
(2) 46°13.38′ N. lat., 124°31.36′ W. long.;
(3) 46°12.09′ N. lat., 124°38.39′ W. long.;
(4) 46°9.46′ N. lat., 124°40.64′ W. long.;
(5) 46°7.30′ N. lat., 124°40.68′ W. long.;
(6) 46°2.76′ N. lat., 124°44.01′ W. long.;
(7) 46°2.64′ N. lat., 124°47.96′ W. long.;
(8) 46°1.22′ N. lat., 124°43.47′ W. long.;
(9) 45°51.81′ N. lat., 124°42.89′ W. long.;
(10) 45°45.95′ N. lat., 124°40.72′ W. long.;
(11) 45°44.11′ N. lat., 124°43.09′ W. long.;
(12) 45°34.50′ N. lat., 124°30.27′ W. long.;
(13) 45°21.10′ N. lat., 124°23.11′ W. long.;
(14) 45°9.69′ N. lat., 124°20.45′ W. long.;
(15) 44°56.25′ N. lat., 124°27.03′ W. long.;
(16) 44°44.47′ N. lat., 124°37.85′ W. long.;

(17) 44°31.81′ N. lat., 124°39.60′ W. long.;
(18) 44°31.48′ N. lat., 124°43.30′ W. long.;
(19) 44°19.70′ N. lat., 124°50.88′ W. long.;
(20) 44°12.04′ N. lat., 124°58.16′ W. long.;
(21) 44°7.38′ N. lat., 124°57.87′ W. long.;
(22) 43°57.06′ N. lat., 124°57.20′ W. long.;
(23) 43°52.52′ N. lat., 124°49.00′ W. long.;
(24) 43°51.56′ N. lat., 124°37.49′ W. long.;
(25) 43°47.83′ N. lat., 124°36.43′ W. long.;
(26) 43°31.79′ N. lat., 124°36.80′ W. long.;
(27) 43°30.78′ N. lat., 124°38.19′ W. long.;
(28) 43°29.34′ N. lat., 124°36.77′ W. long.;
(29) 43°26.46′ N. lat., 124°40.02′ W. long.;
(30) 43°16.15′ N. lat., 124°44.37′ W. long.;
(31) 43°9.33′ N. lat., 124°45.35′ W. long.;
(32) 43°8.85′ N. lat., 124°48.92′ W. long.;
(33) 43°3.23′ N. lat., 124°52.41′ W. long.;
(34) 43°0.25′ N. lat., 124°51.93′ W. long.;
(35) 42°56.62′ N. lat., 124°53.93′ W. long.;
(36) 42°54.84′ N. lat., 124°54.01′ W. long.;
(37) 42°52.31′ N. lat., 124°50.76′ W. long.;
(38) 42°47.78′ N. lat., 124°47.27′ W. long.;
(39) 42°46.32′ N. lat., 124°43.59′ W. long.;
(40) 42°41.63′ N. lat., 124°44.07′ W. long.;
(41) 42°38.83′ N. lat., 124°42.77′ W. long.;
(42) 42°35.37′ N. lat., 124°43.22′ W. long.;
(43) 42°32.78′ N. lat., 124°44.68′ W. long.;
(44) 42°32.19′ N. lat., 124°42.40′ W. long.;
(45) 42°30.28′ N. lat., 124°44.30′ W. long.;
(46) 42°28.16′ N. lat., 124°48.38′ W. long.;
(47) 42°18.34′ N. lat., 124°38.77′ W. long.;
(48) 42°13.65′ N. lat., 124°36.82′ W. long.;
(49) 42°0.15′ N. lat., 124°35.81′ W. long.;
(50) 41°47.79′ N. lat., 124°29.52′ W. long.;
(51) 41°21.00′ N. lat., 124°29.00′ W. long.;
(52) 41°11.00′ N. lat., 124°23.00′ W. long.;
(53) 41°5.00′ N. lat., 124°23.00′ W. long.;
(54) 40°54.00′ N. lat., 124°26.00′ W. long.;
(55) 40°50.00′ N. lat., 124°26.00′ W. long.;
(56) 40°44.51′ N. lat., 124°30.83′ W. long.;
(57) 40°40.61′ N. lat., 124°32.06′ W. long.;
(58) 40°37.36′ N. lat., 124°29.41′ W. long.;
(59) 40°35.64′ N. lat., 124°30.47′ W. long.;
(60) 40°37.43′ N. lat., 124°37.10′ W. long.;
(61) 40°36.00′ N. lat., 124°40.00′ W. long.;
(62) 40°31.59′ N. lat., 124°40.72′ W. long.;
(63) 40°24.64′ N. lat., 124°35.62′ W. long.;
(64) 40°23.00′ N. lat., 124°32.00′ W. long.;
(65) 40°23.39′ N. lat., 124°28.70′ W. long.;
(66) 40°22.28′ N. lat., 124°25.25′ W. long.;
(67) 40°21.90′ N. lat., 124°25.17′ W. long.;
(68) 40°22.00′ N. lat., 124°28.00′ W. long.;
(69) 40°21.35′ N. lat., 124°29.53′ W. long.;
(70) 40°19.75′ N. lat., 124°28.98′ W. long.;
(71) 40°18.15′ N. lat., 124°27.01′ W. long.;
(72) 40°17.45′ N. lat., 124°25.49′ W. long.;
(73) 40°18.00′ N. lat., 124°24.00′ W. long.;
(74) 40°16.00′ N. lat., 124°26.00′ W. long.;
(75) 40°17.00′ N. lat., 124°35.00′ W. long.;
(76) 40°16.00′ N. lat., 124°36.00′ W. long.;
(77) 40°10.07′ N. lat., 124°22.90′ W. long.;
(78) 40°7.00′ N. lat., 124°19.00′ W. long.;
(79) 40°8.10′ N. lat., 124°16.70′ W. long.;
(80) 40°5.90′ N. lat., 124°17.77′ W. long.;
(81) 40°1.46′ N. lat., 124°12.85′ W. long.;
(82) 40°4.32′ N. lat., 124°10.33′ W. long.;
(83) 40°3.21′ N. lat., 124°8.83′ W. long.;
(84) 40°1.33′ N. lat., 124°8.70′ W. long.;
(85) 39°58.51′ N. lat., 124°12.44′ W. long.; and
(86) 38°00.00′ N. lat., 124°7.49′ W. long.

(20) Rockfish categories. Rockfish (except thornyheads) are divided into categories north and south of 40°10′ N. lat., depending on the depth where they most often are caught: nearshore, shelf, or slope (scientific names appear in Table 2). Nearshore rockfish are further divided into shallow nearshore and deeper nearshore categories south of 40°10′ N. lat. Trip limits are established for "minor rockfish" species according to these categories (see Tables 2–5).

(a) Nearshore rockfish consists entirely of the minor nearshore rockfish species listed in Table 2, which includes California scorpionfish.

(i) Shallow nearshore rockfish consists of black-and-yellow rockfish, China rockfish, gopher rockfish, grass rockfish, and kelp rockfish.

(ii) Deeper nearshore rockfish consists of black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, olive rockfish, quillback rockfish, and treefish.

(iii) California scorpionfish.

(b) Shelf rockfish consists of canary rockfish, shortbelly rockfish, widow rockfish, yelloweye rockfish, yellowtail rockfish, bocaccio, chilipepper, cowcod, and the minor shelf rockfish species listed in Table 2.

(c) Slope rockfish consists of Pacific ocean perch, splitnose rockfish, darkblotched rockfish, and the minor slope rockfish species listed in Table 2.

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Table 2 – Minor Rockfish Species (excludes thornyheads)

North of 40°10' N. lat.	South of 40°10' N. lat.
NEARSHORE	
black, Sebastes melanops	black, Sebastes melanops
black and yellow, S. chrysolmelas	black and yellow, S. chrysolmelas
blue, S. mystinus	blue, S. mystinus
brown, S. auriculatus	brown, S. auriculatus
calico, S. dalli	calico, S. dalli
China, S. nebulosus	California scorpionfish, Scorpaena guttata
copper, S. caurinus	China, Sebastes nebulosus
gopher, S. carnatus	copper, S. caurinus
grass, S. rastrelliger	gopher, S. carnatus
kelp, S. atrovirens	grass, S. rastrelliger
olive, S. serranoides	kelp, S. atrovirens
quillback, S. maliger	olive, S. serranoides
treefish, S. serriceps	quillback, S. maliger
	treefish, S. serriceps
SHELF	
bronzespotted, S. gilli	bronzespotted, S. gilli
bocaccio, S. paucispinis	chameleon, S. phillipsi
chameleon, S. phillipsi	dwarf-red, S. rufianus
chilipepper, S. goodei	flag, S. rubrivinctus
cowcod, S. levis	freckled, S. lentiginosus
dwarf-red, S. rufianus	greenblotched, S. rosenblatti
flag, S. rubrivinctus	greenspotted, S. chlorostictus
freckled, S. lentiginosus	greenstriped, S. elongatus
greenblotched, S. rosenblatti	halfbanded, S. semicinctus
greenspotted, S. chlorostictus	honeycomb, S. umbrosus
greenstriped, S. elongatus	Mexican, S. macdonaldi
halfbanded, S. semicinctus.	pink, S. eos
honeycomb, S. umbrosus	pinkrose, S. simulator
Mexican, S. macdonaldi	pygmy, S. wilsoni
pink, S. eos	redstriped, S. proriger
pinkrose, S. simulator	rosethorn, S. helvomaculatus
pygmy, S. wilsoni	rosy, S. rosaceus
redstriped, S. proriger	silvergrey, S. brevispinus
rosethorn, S. helvomaculatus	speckled, S. ovalis
rosy, S. rosaceus	squarespot, S. hopkinsi
silvergrey, S. brevispinis	starry, S. constellatus
speckled, S. ovalis	stripetail, S. saxicola
squarespot, S. hopkinsi	swordspine, S. ensifer
starry, S. constellatus	tiger, S. nigorcinctus
stripetail, S. saxicola	vermilion, S. miniatus
swordspine, S. ensifer	yelloweye, S. ruberrimus
tiger, S. nigorcinctus	yellowtail, S. flavidus
vermilion, S. miniatus	
yelloweye, S. ruberrimus	
SLOPE	
aurora, S. aurora	aurora, S. aurora
bank, S. rufus	bank, S. rufus
blackgill, S. melanostomus	blackgill, S. melanostomus
darkblotched, S. crameri	darkblotched, S. crameri
redbanded, S. babcocki	Pacific ocean perch (POP), S. alutus
rougheye, S. aleutianus	redbanded, S. babcocki
sharpchin, S. zacentrus	rougheye, S. aleutianus
shortraker, S. borealis	sharpchin, S. zacentrus
splitnose, S. diploproa	shortraker, S. borealis
yellowmouth, S. reedi	yellowmouth, S. reedi

B. Limited Entry Fishery

(1) *General.* Most species taken in limited entry fisheries will be managed with cumulative trip limits (see paragraph IV.A.(1)(d),) size limits (see paragraph IV.A.(6)), seasons (see paragraph IV.A. (7)), and areas that are closed to specific gear types. The trawl fishery has gear requirements and trip limits that differ by the type of trawl gear on board (see paragraph IV.A.(14)). Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception

must adhere to CCA restrictions (see paragraph IV.A.(20)). Yelloweye rockfish retention is prohibited in the limited entry fixed gear fisheries. Most of the management measures for the limited entry fishery are listed above and in the following tables: Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South).

A header in Table 3 (North), Table 3 (South), Table 4 (North), and Table 5 (South) approximates the Rockfish Conservation Area (i.e., closed area) for vessels participating in the limited entry fishery. [Note: Between a line drawn due south from

Point Fermin (33° 42′ 30″ N. lat.; 118° 17′ 30″ W. long.) and a line drawn due west from the Newport South Jetty (33° 35′ 37″ N. lat.; 117° 52′ 50″ W. long.,) vessels fishing with hook-and-line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m).]

Management measures may be changed during the year by announcement in the **Federal Register**. However, the management regimes for several fisheries (nontrawl sablefish, Pacific whiting, and black rockfish) do not neatly fit into these tables and are addressed immediately following Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South).

Table 3 (North). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear North of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[10/] (RCA):	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)	100 fm - 250 fm		75 fm - 250 fm	100 fm - 250 fm	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)
	Small footrope is required shoreward of the RCA; both large and small footropes are permitted seaward of the RCA. Only one type of trawl gear is allowed on board a vessel at any one time.						
1	**Minor slope rockfish[3/]**	1,800 lb/ 2 months					
2	**Pacific ocean perch**	3,000 lb/ 2 months					
3	**DTS complex**						
4	Sablefish	6,000 lb/ 2 months		7,000 lb/ 2 months			6,000 lb/ 2 months
5	Longspine thornyhead	8,000 lb/ 2 months	9,000 lb/ 2 months				7,000 lb/ 2 months
6	Shortspine thornyhead	2,300 lb/ 2 months	2,400 lb/ 2 months				2,200 lb/ 2 months
7	Dover sole	26,000 lb/ 2 months		25,000 lb/ 2 months			26,000 lb/ 2 months
8	**Flatfish**						
9	All other flatfish[4/]	100,000 lb/ 2 months	100,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole				100,000 lb/ 2 months
10	Petrale sole	Not limited					Not limited
11	Rex sole	Included in all other flatfish					
12	Arrowtooth flounder	30,000 lb/ trip	60,000 lb/ 2 months; 7,500 lb/ trip				30,000 lb/ trip
13	**Whiting[5/]**						
14	mid-water trawl - permitted within the RCA	20,000 lb/ trip		Primary Season		10,000 lb/ trip	
15	**Other Fish[9/]**	Not limited					
16	**Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**						
17	**Minor shelf rockfish and widow rockfish[3/]**	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
18	**Widow rockfish - mid-water trawl**						
19	mid-water trawl - permitted within the RCA	CLOSED[6/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month		CLOSED[6/]	12,000 lb/ 2 months
20	**Canary rockfish**	100 lb/ month		300 lb/ month		100 lb/ month	
21	**Yellowtail**						
22	mid-water trawl - permitted within the RCA	CLOSED[6/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month			18,000 lb/ 2 months
23	small footrope trawl[7/]	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Combined with and without flatfish, not to exceed 3,000 lb/ month					
24	**Minor nearshore rockfish**	300 lb/ month					
25	**Lingcod[8/]**	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See A.(14).

2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear South of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply – Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[10/] (RCA):						
	40°10' - 38° N. lat.	50 fm - 250 fm	60 fm - 250 fm				
	38° - 34°27' N. lat.	50 fm - 150 fm	60 fm - 150 fm				
	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
	Small footrope is required shoreward of the RCA; both large and small footropes are permitted seaward of the RCA. Only one type of trawl gear is allowed on board a vessel at any one time.						
1	**Minor slope rockfish[3/]**						
2	40°10' - 38° N. lat.	1,800 lb/ 2 months					
3	South of 38° N. lat.	30,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	1,800 lb/ 2 months					
6	South of 38° N. lat.	30,000 lb/ 2 months					
7	**DTS complex**						
8	Sablefish	6,000 lb/ 2 months		7,000 lb/ 2 months			6000 lb/ 2 months
9	Longspine thornyhead	8,000 lb /2 months		9,000 lb/ 2 months			7000 lb/ 2 months
10	Shortspine thornyhead	2,300 lb/ 2 months		2,400 lb/ 2 months			2,200 lb/ 2 months
11	Dover sole	26,000 lb/ 2 months		25,000 lb/ 2 months			26,000 lb/ 2 months
12	**Flatfish**						
13	All other flatfish[4/]	70,000 lb/ 2 months	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole				70,000 lb/ 2 months
14	Petrale sole	No limit					No limit
15	Rex sole	Included in all other flatfish					
16	Arrowtooth flounder	No limit	1,000 lb/ 2 months				No limit
17	**Whiting[5/]**						
18	mid water trawl - permitted within the RCA	20,000 lb/ trip		Primary Season		10,000 lb/ trip	
19	**Other Fish[9/]**	Not limited					
20	**Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**						
21	**Minor shelf rockfish, widow, and chilipepper rockfish[3/]**	300 lb/ month					
22	**Widow rockfish**						
23	mid water trawl - permitted within the RCA	CLOSED[6/]					12, 000 lb/ 2 months
24	**Canary rockfish**	100 lb/ month		300 lb/ month		100 lb/ month	
25	**Bocaccio**	CLOSED[6/]					
26	**Cowcod**	CLOSED[6/]					
27	**Minor nearshore rockfish**	300 lb/ month					
28	**Lingcod[8/]**	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See A.(14).

2/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North). Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply – Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[8/] (RCA):						
	North of 46°16' N. lat.	shoreline - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm					
	South of 40°10' N. lat.	20 fm - 150 fm					
1	**Minor slope rockfish**	1,800 lb/ 2 months	No more than 25% of the weight of sablefish landed/ trip				1,800 lb/ 2 months
2	**Splitnose**	1,800 lb/ 2 months					
3	**Pacific ocean perch**	1,800 lb/ 2 months					
4	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
5	**Longspine thornyhead**	9,000 lb/ 2 months					
6	**Shortspine thornyhead**	2,000 lb/ 2 months					
7	**Dover sole**	5,000 lb/ month					
8	**Arrowtooth flounder**						
9	**Petrale sole**						
10	**Rex sole**						
11	**All other flatfish[3/]**						
12	**Whiting[3/]**	10,000 lb/ trip					
13	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	200 lb/ month					
14	**Canary rockfish**	CLOSED[5/]					
15	**Yelloweye rockfish**	CLOSED[5/]					
16	**Cowcod**	CLOSED[5/]					
17	**Minor nearshore rockfish**	3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish[6/]					
18	**Lingcod[7/]**	CLOSED[5/]		400 lb/ month			CLOSED[5/]

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ TThe whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

4/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South). Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):	20 fm - 150 fm			20 fm - 150 fm -- Between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N. lat.; 117° 52' 50" W. long..) vessels fishing with hook&line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm	20 fm - 150 fm	
1	**Minor slope rockfish[4/]**						
2	40°10' - 38° N. lat.	1,800 lb/ 2 months	No more than 25% of weight of sablefish landed/ trip				1,800 lb/ 2 months
3	South of 38° N. lat.	30,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	1,800 lb/ 2 months					
6	South of 38° N. lat.	20,000 lb/ 2 months					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
9	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
10	**Longspine thornyhead**	9,000 lb/ 2 months					
11	**Shortspine thornyhead**	2,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**Rex sole**						
16	**All other flatfish[2/]**						
17	**Whiting[3/]**	10,000 lb/ trip					
18	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	100 lb/ 2 month	CLOSED[5/]	200 lb/ 2 months	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
19	**Canary rockfish**	CLOSED[5/]					
20	**Yelloweye rockfish**	CLOSED[5/]					
21	**Cowcod**	CLOSED[5/]					
22	**Bocaccio**	CLOSED[5/]					
23	**Minor nearshore rockfish**						
24	Shallow nearshore	200 lb/ 2 months	CLOSED[5/]	400 lb/ 2 months	500 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months
25	Deep nearshore	200 lb/ 2 months		200 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months	200 lb/ 2 months
26	California scorpionfish	CLOSED[5/]		800 lb/ 2 months		CLOSED[5/]	
27	**Lingcod[6/]**	CLOSED[5/]		400 lb/ month, when nearshore open			CLOSED[5/]

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

4/ Chilipepper rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at A.(19)(e) that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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(2) *Sablefish.* The limited entry sablefish allocation is further allocated 58 percent to trawl gear and 42 percent to nontrawl gear. See footnote e/ of Table 1a.

(a) *Trawl trip and size limits.* Management measures for the limited entry trawl fishery for sablefish are listed in Table 3 (North) and Table 3 (South).

(b) *Nontrawl (fixed gear) trip and size limits.* To take, retain, possess, or land sablefish during the primary season for the limited entry fixed gear sablefish fishery, the owner of a vessel must hold a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement. (See 50 CFR 660.323(a)(2)(i).) A sablefish endorsement is not required to participate in the limited entry daily trip limit fishery.

(i) *Primary season.* The primary season begins at 12 noon l.t. on April 1, 2003, and ends at 12 noon l.t. on

October 31, 2003. There are no pre-season or post-season closures. During the primary season, each vessel with at least one limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for each of the sablefish-endorsed limited entry permits registered for use with that vessel, for the tier(s) to which the permit(s) are assigned. For 2003, the following limits would be in effect: Tier 1, 53,000 lb (24,040 kg); Tier 2, 24,000 lb (10,886 kg); Tier 3, 14,000 lb (6,350 kg). All limits are in round weight. If a vessel is registered for use with a sablefish-endorsed limited entry permit, all sablefish taken after April 1, 2003 count against the cumulative limits associated with the permit(s) registered for use with that vessel.

(ii) *Daily trip limit.* Daily and/or weekly sablefish trip limits listed in Table 4 (North) and Table 4 (South) apply to any limited entry fixed gear vessels not participating in the primary sablefish season described in paragraph (i) of this section. North of 36° N. lat., the daily and/or weekly trip limits apply to fixed gear vessels that are not registered for use with a sablefish-endorsed limited entry permit, and to fixed gear vessels that are registered for use with a sablefish-endorsed limited entry permit when those vessels are not fishing against their primary sablefish season cumulative limits. South of 36° N. lat., the daily and/or weekly trip limits for taking and retaining sablefish that are listed in Table 4 (South) apply throughout the year to all vessels registered for use with a limited entry fixed gear permit.

(iii) *Participating in both the primary and daily trip limit fisheries.* A vessel that is eligible to participate in the primary sablefish season may participate in the daily trip limit fishery for sablefish once that vessel's primary season sablefish limit(s) have been taken or after October 31, 2003, whichever occurs first. No vessel may land sablefish against both its primary season cumulative sablefish limits and against the daily trip limit fishery limits within the same 24 hour period of 0001 hour l.t. to 2400 hours l.t. If a vessel has taken all of its tier limit except for an amount that is smaller than the daily trip limit amount, that vessel's subsequent sablefish landings are automatically subject to daily and/or weekly trip limits.

(3) *Whiting.* Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 and at 50 CFR 660.323(a)(3) and (a)(4).

(a) *Allocations.* The non-tribal allocations, based on percentages that are applied to the commercial OY of 121,200 mt in 2003 (see 50 CFR 660.323 (a)(4)), are as follows:

(i) Catcher/processor sector—41,288 mt (34 percent);

(ii) Mothership sector—29,080 mt (24 percent);

(iii) Shore-based sector—50,904 mt (42 percent). No more than 5 percent (2,545 mt) of the shore-based whiting allocation may be taken before the shore-based fishery begins north of 42° N. lat. on June 15, 2003.

(iv) Tribal allocation—See paragraph V.

(b) *Seasons.* The 2003 primary seasons for the whiting fishery start on the same dates as in 2002, as follows (see 50 CFR 660.323(a)(3)):

(i) Catcher/processor sector—May 15;

(ii) Mothership sector—May 15;

(iii) Shore-based sector—June 15 north of 42° N. lat.; April 1 between 42°-40°30′ N. lat.; April 15 south of 40°30′ N. lat.

(c) *Trip limits.* (i) Before and after the regular season. The "per trip" limit for whiting before and after the regular season for the shore-based sector is announced in Table 3 (North) and Table 3 (South), as authorized at 50 CFR 660.323(a)(3) and (a)(4). This trip limit includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka area.

(ii) Inside the Eureka 100 fm (183 m) contour. No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area.

(4) *Black rockfish.* The regulations at 50 CFR 660.323(a)(1) state: "The trip limit for black rockfish (Sebastes melanops) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lb (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip." These "per trip" limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures listed in Tables 4 (North) and Table 5 (North) of section IV. The crossover provisions at paragraphs IV.A. (12) do not apply to the black rockfish per-trip limits.

C. Trip Limits in the Open Access Fishery

(1) *General.* Open access gear is gear used to take and retain groundfish from a vessel that does not have a valid permit for the Pacific Coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), setnet and trammel net (south of 38° N. lat. only), and exempted trawl gear (trawls used to target non-groundfish species: pink shrimp or prawns, and, south of Pt. Arena, CA (38°57′30″ N. lat.), CA halibut or sea cucumbers). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see paragraph IV.A.(1)(d)), size limits (see paragraph IV.A.(6)), seasons (see paragraph IV.A.(7)), and closed areas. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph IV.A.(19)). Retention of yelloweye rockfish and canary rockfish and, south of 40°10′ N. lat., bocaccio is prohibited in all open access fisheries. The trip limits, size limits, seasons, and other management measures for open access groundfish gear, including exempted trawl gear, are listed in Table 5 (North) and Table 5 (South). A header in Table 5 (North) and Table 5 (South) approximates the RCA (i.e., closed area) for vessels participating in the open access fishery. [Note: Between a line drawn due south from Point Fermin (33 42′30″ N. lat.; 118 17′30″ W. long.) and a line drawn due west from the Newport South Jetty (33 35′37″ N. lat.; 117 52′50″ W. long.,) vessels fishing with hook-and-line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m) in the months of July and August.] For vessels participating in exempted trawl fisheries, the RCAs are the same as those for limited entry trawl gear. Exempted trawl gear RCAs are detailed in the exempted trawl gear sections at the bottom of Table 5 (North) and Table 5 (South). Retention of groundfish caught by exempted trawl gear is prohibited in the designated RCAs. The trip limit at 50 CFR 660.323(a)(1) for black rockfish caught with hook-and-line gear also applies. (The black rockfish limit is repeated at paragraph IV.B.(4).)

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Table 5 (North). 2003 Trip Limits for Open Access Gears North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply – Read Sections A. and C. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[8/] (RCA):							
	North of 46°16' N. lat.	0 fm - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm					
1	**Minor slope rockfish[2/]**	Per trip, no more than 25% of weight of the sablefish landed					
2	**Pacific ocean perch**	100 lb/ month					
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
4	**Thornyheads**	CLOSED[5/]					
5	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs.					
6	**Arrowtooth flounder**						
7	**Petrale sole**						
8	**Rex sole**						
9	**All other flatfish[3/]**						
10	**Whiting**	300 lb/ month					
11	**Minor shelf rockfish, widow and yellowtail rockfish[2/]**	200 lb/ month					
12	**Canary rockfish**	CLOSED[5/]					
13	**Yelloweye rockfish**	CLOSED[5/]					
14	**Cowcod**	CLOSED[5/]					
15	**Minor nearshore rockfish**	3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish[4/]					
16	**Lingcod[6/]**	CLOSED[5/]		300 lb/ month			CLOSED[5/]
17	**Other Fish[7/]**	Not limited					
18	**PINK SHRIMP EXEMPTED TRAWL** *(not subject to RCAs)*						
19	North	**Effective April 1 - October 31, 2003:** groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
20	**PRAWN EXEMPTED TRAWL** *(not subject to RCAs)*						
21	North	Groundfish 300 lb/trip. Limits and closures in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip.					

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Bocaccio and chilipepper rockfishes are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40' N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South). 2003 Trip Limits for Open Access Gears South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections A. and C. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):						
	South of 40°10' N. lat.	20 fm - 150 fm			20 fm - 150 fm	20 fm - 150 fm	
		Between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N. lat.; 117° 52' 50" W. long.,) vessels fishing with hook&line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm					
1	**Minor slope rockfish[2/]**						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	**Thornyheads**						
9	40°10' - 34°27' N. lat.	CLOSED[5/]					
10	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
11	**Dover sole**						
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**Rex sole**						
15	**All other flatfish[3/]**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.					
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish, widow and chilipepper rockfish[2/]**	100 lb/ 2 month	CLOSED[5/]	200 lb/ 2 months	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
18	**Canary rockfish**	CLOSED[5/]					
19	**Yelloweye rockfish**	CLOSED[5/]					
20	**Cowcod**	CLOSED[5/]					
21	**Bocaccio**	CLOSED[5/]					
22	**Minor nearshore rockfish**						
23	Shallow nearshore	200 lb/ 2 months	CLOSED[5/]	400 lb/ 2 months	500 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months
24	Deep nearshore	200 lb/ 2 months		200 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months	200 lb/ 2 months
25	California scorpionfish	CLOSED[5/]		800 lb/ 2 months		CLOSED[5/]	
26	**Lingcod[4/]**	CLOSED[5/]		300 lb/ month, when nearshore open			CLOSED[5/]
27	**Other Fish[6/]**	Not limited					
28	**PINK SHRIMP EXEMPTED TRAWL GEAR** *(not subject to RCAs)*						
29	South	**Effective April 1 - October 31, 2003:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
30	**PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL**						
31	**EXEMPTED TRAWL Rockfish Conservation Area[7/] (RCA):**						
32	40°10' - 38° N. lat.	50 fm - 250 fm	60 fm - 250 fm				
33	38° - 34°27' N. lat.	50 fm - 150 fm	60 fm - 150 fm				
34	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
35		Groundfish 300 lb/trip. Trip-limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 25).					

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 680.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ The size limit for lingcod is 24 inches (61 cm) total length.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

6/ Other fish are defined at 50 CFR 680.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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(2) Groundfish taken with exempted trawl gear by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers. [Note: The States of California and Washington will likely prohibit trawling for spot prawn beginning in 2003, while the State of Oregon will likely begin phasing out trawling for spot prawn in 2003.] Trip limits and RCAs for groundfish retained in the spot and ridgeback prawn, California halibut, or sea cucumber fisheries are in Table 5 (North) and Table 5 (South). (a) State law. The trip limits in Table 5(North) and Table 5(South) are not intended to supersede any more restrictive State law relating to the retention of groundfish taken in shrimp or prawn pots or traps.

(b) *Participation in the California halibut fishery.* A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA; and

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392(a), which states: "No California halibut may be taken, possessed or sold which measures less than 22 in (56 cm) in total length, unless it weighs 4 lbs (1.8144 kg) or more in the round, 3 and one-half lbs (1.587 kg) or more dressed with the head on, or 3 lbs (1.3608 kg) or more dressed with the head off. Total length means "the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail."

(c) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the sea cucumber fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA; and

(iii) The landing includes sea cucumbers taken in accordance with California Fish and Game Code, section 8405, which requires a permit issued by the State of California.

(3) Groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp. Trip limits for groundfish retained in the pink shrimp fishery are in Table 5 (North) and Table 5 (South). Notwithstanding section IV.A.(11), a vessel that takes and retains pink shrimp and also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery.

D. Recreational Fishery

Federal recreational groundfish regulations are not intended to supersede any more restrictive State recreational groundfish regulations relating to federally-managed groundfish.

(1) *Washington.* For each person engaged in recreational fishing seaward of Washington, the groundfish bag limit is 15 groundfish, including rockfish and lingcod, and is open year-round (except for lingcod). The following sublimits and closed areas apply:

(a) *Yelloweye Rockfish Conservation Area.* The Yelloweye Rockfish Conservation Area, or YRCA, is an "C-shaped" area which is closed to recreational groundfish and halibut fishing. The coordinates for the YRCA are defined at 50 CFR 660.304(d).

(b) *Rockfish.* In areas seaward of Washington that are open to recreational groundfish fishing, there is a 10 rockfish per day bag limit, of which no more than 1 may be canary rockfish. Taking and retaining yelloweye rockfish is prohibited.

(c) *Lingcod.* Recreational fishing for lingcod is closed between January 1 and March 15, and between October 16 and December 31. In areas seaward of Washington that are open to recreational groundfish fishing and when the recreational season for lingcod is open (i.e., between March 16–October 15), there is a bag limit of 2 lingcod per day, which may be no smaller than 24 in (61 cm) total length.

(2) *Oregon.* The bag limits for each person engaged in recreational fishing seaward of Oregon are 2 lingcod per day, which may be no smaller than 24 in (61 cm) total length; and 10 marine fish per day, which excludes salmon, tuna, surfperch, sanddab, lingcod, and baitfish, but which includes rockfish and other groundfish. The minimum size limit for cabezon retained in the recreational fishery is 15 in (38 cm). Within the 10 marine fish bag limit, no more than 1 may be canary rockfish, no more than 1 may be yelloweye rockfish and when the all-depth recreational fisheries for Pacific halibut (Hippoglossus stenolopis) are open, the first Pacific halibut taken of 32 in (81 cm) (or greater in length may be retained. During the all-depth recreational fisheries for Pacific halibut, vessels with halibut on board may not take, retain, possess or land yelloweye rockfish or canary rockfish.

(3) *California.* Seaward of California (north and south of 40°10′ N. lat.), California law provides that, in times and areas when the recreational fishery is open, there is a 20–fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. Retention of cowcod is prohibited in California's recreational fishery all year in all areas.

(a) North of 40°10′ N. lat. North of 40°10′ N. lat. to the California/Oregon border, California's recreational groundfish fishery will generally conform with Oregon's recreational regulations (see IV.D.(2)). For each person engaged in recreational fishing seaward of California north of 40°10′ N. lat., the following seasons, bag limits, and size limits apply:

(i) *RCG Complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in State regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as "sculpin."

(A) *Seasons.* North of 40°10′ N. lat., recreational fishing for the RCG Complex is open from January 1 through December 31.

(B) *Bag limits, boat limits, hook limits.* North of 40°10′ N. lat., the bag limit is 10 rockfish per day, of which no more than 2 may be bocaccio, 1 may be canary rockfish, and no more than 1 per day up to a maximum of two per boat may be yelloweye rockfish. The following daily bag limits also apply: no more than 10 cabezon per day and no more than 10 greenlings (kelp and/or rock greenlings) per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* The following size limits apply: cabezon may be no smaller than 15 in (38 cm) total length and kelp and rock greenling may be no smaller than 12 in (30 cm) total length.

(D) *Dressing/Filleting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. Brown-skinned

rockfish fillets may be no smaller than 6.5 in (16.6 cm). "Brown-skinned" rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(ii) *Lingcod.*

(A) *Seasons.* North of 40°10′ N. lat., recreational fishing for lingcod is open from January 1 through December 31.

(B) *Bag limits, boat limits, hook limits.* North of 40°10′ N. lat., the bag limit is 2 lingcod per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/Fileting.* Lingcod filets may be no smaller than 16 in. (41 cm) in length .

(b) South of 40°10′ N. lat. For each person engaged in recreational fishing seaward of California south of 40°10′ N. lat., the following seasons, bag limits, size limits and closed areas apply:

(i) *Closed Areas.*

(A) *Cowcod Conservation Areas.* Recreational fishing for all groundfish is prohibited within the CCAs, for coordinates described in Federal regulations at 50 CFR 660.304(c), except that fishing for sanddabs is permitted subject to the provisions in paragraph IV.D.(3)(iv) and that fishing for species managed under this section (not including cowcod, bocaccio, canary, and yelloweye rockfishes) are permitted in waters shoreward of the 20–fm (37–m) depth contour within the CCAs from July 1 through December 31, 2003, subject to the bag limits in this section.

(B) South of 40°10′ N. lat., recreational fishing for all groundfish, including lingcod, is prohibited seaward of the 20–fm (37–m) depth contour, except that recreational fishing for sanddabs is permitted seaward of the 20–fm (37–m) depth contour subject to the provisions in paragraph IV.D.(3)(iv).

(ii) *RCG Complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in State regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as "sculpin."

(A) *Seasons.* South of 40°10′ N. lat., recreational fishing for the RCG Complex is open from July 1 through December 31 (i.e., it's closed from January 1 through June 30). When recreational fishing for the RCG Complex is open, it is permitted only inside the 20–fm (37–m) depth contour, subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits.* South of 40°10′ N. lat., in times and areas when the recreational season for the RCG Complex is open, there is a limit of 2–hooks and one line when fishing for rockfish, and the bag limit is 10 RCG Complex fish per day, of which up to 10 may be rockfish, no more than 2 of which may be shallow nearshore rockfish. [Note: The shallow nearshore rockfish group off California are composed of kelp, grass, black-and-yellow, China, and gopher rockfishes.] Also within the 10 RCG Complex fish per day limit, no more than 2 fish per day may be greenlings (kelp and/or rock greenlings) and no more than 3 fish per day may be cabezon. Lingcod, California scorpionfish and sanddabs taken in recreational fisheries off California do not count toward the 10 RCG Complex fish per day bag limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* The following size limits apply: cabezon may be no smaller than 15 in (38 cm) and kelp and rock greenling may be no smaller than 12 in (30 cm).

(B) *Dressing/Filleting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. Brown-skinned rockfish filets may be no smaller than 6.5 in (16.6 cm). "Brown-skinned" rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(iii) *California scorpionfish.* California scorpionfish only occur south of 40°10′ N. lat.

(A) *Seasons.* South of 40°10′ N. lat., recreational fishing for California scorpionfish is closed from March 1 through June 30 (i.e., the California scorpionfish season is open during January-February and during July-December). When recreational fishing for California scorpionfish is open, it is permitted only inside the 20–fm (37–m) depth contour (except at Huntington Flats between a line drawn due south from Point Fermin (33 42′30″ N. lat.; 118 17′30" W. long.) and a line drawn due west from the Newport South Jetty (33 35′37″ N. lat.; 117 52′50″ W. long.,) recreational fishing for California scorpionfish may occur from shore to a boundary line approximating 50 fm (91 m) during July-August), subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits.* South of 40°10′ N. lat., in times and areas where the recreational season for California scorpionfish is open, and the bag limit is 5 California scorpionfish per day. California scorpionfish do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* California scorpionfish may be no smaller than 10 in (25 cm) total length.

(D) *Dressing/Filleting.* California scorpionfish fillets may be no smaller than 5 in (12.8 cm).

(iv) *Lingcod.* (A) *Seasons.* South of 40°10′ N. lat., recreational fishing for lingcod is open July 1 through December 31. When recreational fishing for lingcod is open in the south, it is permitted only inside the 20–fm (37–m) depth contour, subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits.* South of 40°10′ N. lat., in times and areas when the recreational season for lingcod is open, there is a limit of 2–hooks and one line when fishing for lingcod, and the bag limit is 2 lingcod per day. Lingcod do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/Filleting.* Lingcod fillets may be no smaller than 16 in. (41 cm) in length.

(iv) *Sanddabs.* South of 40°10′ N. lat., recreational fishing for sanddabs is permitted both shoreward and seaward of the 20 fm (37 m) depth contour (i.e., recreational fishing for sanddabs is permitted in all areas south of 40°10′ N. lat.). Recreational fishing for sanddabs is permitted seaward of the 20- fm (37–m) depth contour subject to a limit of up to 12–hooks "Number 2" or smaller, which measure 11 mm (0.44 inches) point to shank, and up to 2 lb of weight per line. There is no bag limit, season, or size limit for sanddabs, however, it is prohibited to fillet sanddabs at sea.

V. Washington Coastal Tribal Fisheries

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean, and concluded that, in

general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes' usual and accustomed ocean fishing areas (described at 60 CFR 660.324).

A tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived. The tribal fisheries for sablefish, black rockfish, and whiting are separate fisheries, and are not governed by the limited entry or open access regulations or allocations. The tribes regulate these fisheries so as not to exceed their allocations.

The tribal allocation for black rockfish is the same in 2003 as in 2002. Also similar to 2002, the tribal sablefish allocation is 10 percent of the total catch OY (650 mt), less 3 percent for estimated discard mortality, or 631 mt.

In 1999 through 2002, the tribal whiting allocation has been based on a methodology originally proposed by the Makah Tribe in 1998. The methodology is an abundance-based sliding scale that determines the tribal allocation based on the level of the overall U.S. OY, up to a maximum 17.5 percent tribal harvest ceiling at OY levels below 145,000 mt. The tribes have proposed using the same methodology in 2003. In 2003, applying the sliding scale methodology to a 148,200–mt overall OY results in a 25,000–mt tribal whiting allocation, which will be taken by the Makah Tribe. No other tribes have proposed to harvest whiting in 2003.

The sliding scale methodology used to determine the treaty Indian share of Pacific whiting is the subject of ongoing litigation. In United States v. Washington, Subproceeding 96–2, the Court held that the methodology is consistent with the Magnuson-Stevens Act, and is the best available scientific method to determine the appropriate allocation of whiting to the tribes. United States v. Washington, 143 F.Supp.2d 1218 (W.D. Wash. 2001). This ruling was reaffirmed in July 2002. Midwater Trawlers Cooperative v. Daley, C96–1808R (W.D. Wash.) (Order Granting Defendants' Motion to Supplement Record, July 17, 2002). Additional briefing will occur in this case. However, at this time NMFS remains under a Court Order in Subproceeding 96–2 to continue use of the methodology unless the Secretary finds just cause for its alteration or abandonment, the parties agree to a permissible alternative, or further order issues from the Court. Therefore NMFS is obliged to continue to use the methodology unless one of the events identified by the Court occurs. Since NMFS finds no reason to change the methodology, it has been used to determine the 2003 tribal allocation.

For some species on which the tribes have a modest harvest, no specific allocation has been determined. Rather than try to reserve specific allocations for the tribes, NMFS is establishing trip limits recommended by the tribes and the Council to accommodate modest tribal fisheries. For lingcod, all tribal fisheries are restricted to 300 lb (136 kg) per day and 900 lb (408 kg) per week cumulative limits. Tribal fisheries are expected to take about 5.2 mt of lingcod in 2003. For rockfish species, the 2003 tribal longline and trawl fisheries will operate under trip and cumulative limits. Tribal fisheries will operate under a 300–lb (136–kg) per trip limit each for canary rockfish, thornyheads, and the minor rockfish species groups (nearshore, shelf, and slope), and under a 100–lb (45–kg) trip limit for yelloweye rockfish. A 300–lb (136 kg) canary rockfish trip limit is expected to result in landings of 2.3 mt in 2003. A 300–lb (136–kg) thornyheads trip limit is expected to result in landings of 2.7 mt in 2003. Other rockfish limits are expected to result in the following landings levels: widow rockfish, 45 mt; yelloweye rockfish, 3.1 mt; yellowtail rockfish, 400 mt; minor nearshore rockfish, 2 mt; minor shelf rockfish excluding yelloweye, 4.5 mt; minor slope rockfish, 4 mt. Trace amounts (1 mt) of POP and darkblotched rockfish may also be landed in tribal commercial fisheries.

The Assistant Administrator (AA) announces the following tribal allocations for 2003, including those that are the same as in 2002. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations.

A. Sablefish

The tribal allocation is 631 mt, 10 percent of the total catch OY, less 3 percent estimated discard mortality.

B. Rockfish

(1) For the commercial harvest of black rockfish off Washington State, a harvest guideline of: 20,000 lb (9,072 kg) north of Cape Alava, WA (48°09′30″ N. lat.) and 10,000 lb (4,536 kg) between Destruction Island, WA (47°40′00″ N. lat.) and Leadbetter Point, WA (46°38′10″ N. lat.).

(2) Thornyheads are subject to a 300–lb (136–kg) trip limit.

(3) Canary rockfish are subject to a 300–lb (136–kg) trip limit.

(4) Yelloweye rockfish are subject to a 100–lb (45–kg) trip limit.

(5) Yellowtail rockfish taken in the tribal mid-water trawl fisheries are subject to a cumulative limit of 30,000 lb (13,608 kg) per 2–month period. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed in any two-month period. These limits may be adjusted by an individual tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish.

(6) Other rockfish, including minor nearshore, minor shelf, and minor slope rockfish groups are subject to a 300–lb (136–kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300 lb (136 kg) per trip.

(7) Rockfish taken during open competition tribal commercial fisheries for Pacific halibut will not be subject to trip limits.

C. Lingcod

Lingcod are subject to a 300–lb (136–kg) daily trip limit and a 900–lb (408–kg) weekly limit.

D. Pacific whiting

The tribal allocation is 25,000 mt.

Classification

These proposed specifications and management measures for 2003 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act, the FMP, and 50 CFR parts 600 and 660 subpart G (the regulations implementing the FMP).

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

Pursuant to Executive Order 13175, this rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the FMP request new allocations or regulations specific to the tribes, in writing, before the first of the two fall groundfish meetings of the Council. The regulation at 50 CFR 660.324(d) further states "the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus." The tribal management measures in this proposed rule have been developed following these procedures. The tribal representative on

the Council made a motion to adopt the tribal management measures, which was passed by the Council, and those management measures, which were developed and proposed by the tribes, are included in this proposed rule.

The Council prepared an initial regulatory flexibility analysis that describes the impact this proposed rule, if adopted, would have on small entities.

NMFS is proposing the 2003 annual specifications and management measures to allow West Coast commercial and recreational fisheries participants to fish the harvestable surplus of more abundant groundfish stocks, while also ensuring that those fisheries do not exceed the allowable catch levels intended to protect overfished and depleted stocks. The form of the specifications, in ABCs and OYS, follows the guidance of the Magnuson-Stevens Act, the National Standard Guidelines, and the FMP for protecting and conserving fish stocks. Annual management measures include trip and bag limits, size limits, time/area closures, gear restrictions, and other measures intended to allow year-round West Coast groundfish landings without compromising overfished species rebuilding measures.

Approximately 2,000 vessels participate in the West Coast groundfish fisheries. Of those, about 500 vessels are registered to limited entry permits issued for either trawl, longline, or pot gear. About 1,500 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at non-groundfish species. All but 10–20 of those vessels are considered small businesses by the Small Business Administration. There are also about 450 groundfish buyers on the West Coast, approximately 5 percent of which are responsible for about 80 percent of West Coast groundfish purchases. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast and 415 charter vessels active on the California coast.

The Council considered five alternative specifications and management measures regimes for 2003: the no action alternative, which would have implemented the 2002 regime for 2003; the low OY alternative, which set harvest levels so that overfished stocks would have an 80 percent probability of rebuilding within T_{max}; the high OY alternative, which set harvest levels so that overfished stocks would have a 50 percent probability of rebuilding within T_{max}; the Allocation Committee alternative, which set harvest levels intermediate to those of the low and high alternatives, but includes management through depth-based closures, and; the Council OY alternatives (preferred alternative) which was the same as the Allocation Committee alternative, except that it included a higher sablefish harvest north of Point Conception, CA and more restrictive recreational fishery management measures south of Cape Mendocino, CA. Each of these alternatives included both harvest levels (specifications) and management measures needed to achieve those harvest levels, with the most restrictive management measures corresponding to the lowest OYs.

Each of the alternatives analyzed by the Council was expected to have different overall effects on the economy. Among other factors, the draft EIS for this action reviewed alternatives other than the no action alternative for expected declines in revenue and income from 2001 levels. Declines were not measured from 2002 levels because complete data from 2002 is not yet available. The low OY alternative was expected to reduce commercial exvessel revenue by $60 million in 2003, reduce overall commercial harvest income by $274 million, and reduce recreational fishery income (mainly charter businesses) by $150 million. The high OY alternative was expected to reduce commercial exvessel revenue by $6 million in 2003, reduce overall commercial harvest income by $16 million, and reduce recreational fishery income by $1.3 million. The economic effects of the Allocation Committee alternative were analyzed both for management with depth-based regulatory measures and without those measures. The Allocation Committee alternative without depth-based regulatory measures was expected to reduce commercial exvessel revenue by $21 million in 2003, reduce overall commercial harvest income by $53 million, and reduce recreational fishery income by $1.3 million. The Allocation Committee alternative with depth-based regulatory measures was expected to reduce commercial exvessel revenue by $15 million in 2003, reduce overall commercial harvest income by $40 million, and reduce recreational fishery income by $1.3 million. The Council's preferred alternative, which includes depth-based regulatory measures and a recreational fishery management regime designed to more strictly constrain harvest of overfished species, was expected to reduce commercial exvessel revenue by $13 million in 2003, reduce overall commercial harvest income by $35 million, and reduce recreational fishery income by $26 million. The Council's preferred alternative meets the conservation requirements of the Magnuson-Stevens Act, while reducing to the extent possible the adverse economic impacts of these conservation measures on the fishing industries and associated communities.

Depth based management is particularly expected to both protect overfished species from harvest in areas where they commonly occur and allow fisheries greater access to more abundant stocks outside of the closed areas. Without depth-based management, harvest of abundant stocks would have been more severely restricted because there would have been no measures to prevent vessels from operating in areas where abundant and overfished stocks cooccur.

Recreational fisheries management measures in 2001 and 2002 were not adequately conservative and those fisheries exceeded their overfished species retention levels in both years. Thus, the recreational fisheries are more severely restricted under the preferred alternative than under the high OY alternative or under either of the Allocation Committee alternatives. While the preferred alternative is expected to result in greater income declines for businesses associated with recreational fishing, those declines reflect conservation measures expected to better protect overfished species. Estimates of declines in revenues and income in this section are from the draft EIS for this action and may change with the completion of the final EIS.

Revenues for many groundfish fishery participants under the preferred alternative are expected to decline in 2003. These declines are mainly attributable to more restrictive management measures intended to protect overfished species. It is difficult to estimate exactly how this overall decline in landings and revenue will affect individual members of the groundfish fleet. However, the overall decline is significant enough to suggest that small businesses with a substantial portion of their incomes dependent on groundfish will be negatively affected by implementation of the 2003 proposed harvest levels. Overall, commercial vessels that target groundfish are expected to have a 21 percent decline in groundfish-related ex-vessel revenue and a 5 percent decline in total ex-vessel fishing revenue. The cumulative effect of 2003 management on the personal incomes of fishery participants is expected to be a $35 million decline.

Vessels and groundfish buyers that rely heavily on groundfish for their annual income, as opposed to other West Coast fish species, will be more affected by the 2003 management regime than those with more diversified catch and harvest assemblages.

Most of the significant catch and effort reductions in the recreational fleet would occur off California south of 40°10′ N. lat. Little change in overall recreational effort is expected in Washington or Oregon. For the West Coast recreational fleet, personal income is expected to decline by 10 percent overall, with a cumulative effect of a $26 million decline. These personal income values are a measure of the contribution of recreational fishing to businesses and local communities. Reduction in effort in California is expected to result in a reduction in revenue for businesses that cater to recreational fishers. Gross receipts for recreational groundfish activities will likely decline in proportion with the decline in number of angler trips, however, net profits may decline more given that certain costs will be fixed on an annual and per trip basis. Revenue declines from groundfish may be offset to the degree that charter vessels operate in other fisheries.

This rule does not propose any new reporting and recordkeeping requirements. Other regulations affecting the West Coast groundfish fisheries are primarily found at 50 CFR 660.301–360. A copy of this analysis is available from the Council (see **ADDRESSES**).

NMFS issued Biological Opinions (BOs) under the Endangered Species Act on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California). During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the Pacific whiting fishery's Biological Opinion'e;s (whiting BO) (December 19, 1999) incidental catch statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental catch statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002, that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action is within the scope of these consultations.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 20, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.302, the definition for "Open access fishery" is revised to read as follows:

§ 660.302 Definitions.

* * * * *

Open access fishery means the fishery composed of vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery. Any commercial fishing vessels that does not have a limited entry permit and which lands groundfish in any commercial fishery is a participant in the open access fishery.

* * * * *

3. In § 660.304, the section heading and entire section are revised to read as follows:

§ 660.304 Management areas, including conservation areas, and commonly used geographic coordinates.

(a) *Management areas*—(1) *Vancouver.* (i) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48 deg.35′75″ N. lat., 124 deg.43′00″ W. long.) south of the International Boundary between the U.S. and Canada (at 48 deg.29′37.19″ N. lat., 124 deg.43′33.19″ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. lat.	W. long.
1	48 deg.29′37.19″	124 deg.43′33.19″
2	48 deg.30′11″	124 deg.47′13″
3	48 deg.30′22″	124 deg.50′21″
4	48 deg.30′14″	124 deg.54′52″
5	48 deg.29′57″	124 deg.59′14″
6	48 deg.29′44″	125 deg.00′06″
7	48 deg.28′09″	125 deg.05′47″
8	48 deg.27′10″	125 deg.08′25″
9	48 deg.26′47″	125 deg.09′12″
10	48 deg.20′16″	125 deg.22′48″

Point	N. lat.	W. long.
11	48 deg.18′22″	125 deg.29′58″
12	48 deg.11′05″	125 deg.53′48″
13	47 deg.49′15″	126 deg.40′57″
14	47 deg.36′47″	127 deg.41′23″
15	47 deg.22′00″	127 deg.41′23″
16	46 deg.42′05″	128 deg.51′56″
17	46 deg.31′47″	129 deg.07′39″

(iii) The southern limit is 47 deg.30′ N. lat.

(2) *Columbia.* (i) The northern limit is 47 deg.30′ N. lat.

(ii) The southern limit is 43 deg.00′ N. lat.

(3) *Eureka.* (i) The northern limit is 43 deg.00′ N. lat.

(ii) The southern limit is 40 deg.30′ N. lat.

(4) *Monterey.* (i) The northern limit is 40 deg.30′ N. lat.

(ii) The southern limit is 36 deg.00′ N. lat.

(5) *Conception.* (i) The northern limit is 36 deg.00′ N. lat.

(ii) The southern limit is the U.S.–Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32 deg.35′22″	117 deg.27′49″
2	32 deg.37′37″	117 deg.49′31″
3	31 deg.07′58″	118 deg.36′18″
4	30 deg.32′31″	121 deg.51′58″

(b) Commonly used geographic coordinates—

(1) Cape Falcon, OR--45°46′ N. lat.

(2) Cape Lookout, OR--45°20′15″ N. lat.

(3) Cape Blanco, OR--42°50′ N. lat.

(4) Cape Mendocino, CA--40°30′ N. lat.

(5) North/South management line--40°10′ N. lat.

(6) Point Arena, CA--38°57′30″ N. lat.

(7) Point Conception, CA--34°27′ N. lat.

(c) *Cowcod Conservation Areas (CCAs).* (1) The Western CCA is an area south of Point Conception that is bound by straight lines connecting all of the following points in the order listed:

33°50′ N. lat., 119°30′ W. long.;
33°50′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°30′ W. long.;

and connecting back to 33°50′ N. lat., 119°30′ W. long.

(2) The Eastern CCA is a smaller area west of San Diego that is bound by straight lines connecting all of the following points in the order listed:

32°42′ N. lat., 118°02′ W. long.;
32°42′ N. lat., 117°50′ W. long.;
32°36′42″ N. lat., 117°50′ W. long.;
32°30′ N. lat., 117°53′30″ W. long.;
32°30′ N. lat., 118°02′ W. long.;

and connecting back to 32°42′ N. lat., 118°02′ W. long.

(d) *Yelloweye Rockfish Conservation Area (YRCA).* The YRCA is an C-shaped area off the northern Washington coast that is bound by straight lines connecting all of the following points in the order listed:

48°18′ N. lat.; 125°18′ W. long.;
48°18′ N. lat.; 124°59′ W. long.;
48°11′ N. lat.; 125°11′ W. long.;
48°11′ N. lat.; 124°59′ W. long.;
48°04′ N. lat.; 125°11′ W. long.;
48°04′ N. lat.; 124°59′ W. long.;
48°00′ N. lat.; 125°18′ W. long.;
48°00′ N. lat.; 124°59′ W. long.;

and connecting back to 48°18′ N. lat.; 125°18′ W. long.

(e) *International boundaries.* (1) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(2) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit").

(3) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

4. In § 660.322, paragraphs (b)(5) and (b)(6) are revised to read as follows:

§ 660.322 Gear restrictions.

* * * * *

(b) *Trawl gear.* * * *

(5) *Large and small footrope trawl gear.* Large footrope trawl gear is bottom trawl gear, as specified at § 660.302, with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope). Small footrope trawl gear is bottom trawl gear, as specified at § 660.302 and 660.322(b), with a footrope diameter 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Chafing gear may be used only on the last 50 meshes of a small footrope trawl, measured from the terminal (closed) end of the codend. Other lines or ropes that run parallel to the footrope may not be augmented or modified to violate footrope size restrictions. For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(6) *Pelagic or "midwater" trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. The footrope of pelagic gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of pelagic trawl gear must be bare and may not be suspended with chains or any other materials. Sweeplines, including the bottom leg of the bridle, must be

bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16–inch (40.6–cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: Over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

* * * * *

5. In § 660.323, paragraph (b) is revised to read as follows:

§ 660.323 Catch restrictions.

* * * * *

(b) *Routine management measures.* In addition to the catch restrictions in this section, other catch restrictions that are likely to be adjusted on an annual or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if they have been designated as routine through the two-meeting process described in PCGFMP. The following catch restrictions have been designated as routine:

(1) *Commercial limited entry and open access fisheries* —(i) *Trip landing and frequency limits, size limits, all gear.* Trip landing and frequency limits have been designated as routine for the following species or species groups: widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, splitnose rockfish, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; Dover sole, sablefish, shortspine thornyheads, longspine thornyheads, and the "DTS complex," which is composed of those species; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.302; Pacific whiting; lingcod; and "other fish" as a complex consisting of all groundfish species listed at § 660.302 and not otherwise listed as a distinct species or species group. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on an annual or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraph (b)(1)(i)(A) and (B) of this section.

(A) *Trip landing and frequency limits.* To extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to protect overfished species; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) *Size limits.* To protect juvenile fish; to extend the fishing season.

(ii) *Differential trip landing and frequency limits based on gear type, closed seasons.* Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on an annual or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks.

(2) *Recreational fisheries all gear types.* Routine management measures for all groundfish species, separately or in any combination, include bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements. All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS, to rebuild and protect overfished or depleted species, and to maintain consistency with State regulations, and for the other purposes set forth in this section.

(i) *Bag limits.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste.

(ii) *Size limits.* To protect juvenile fish; to protect and rebuild overfished species; to enhance the quality of the recreational fishing experience.

(iii) *Season duration restrictions.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste; to enhance the quality of the recreational fishing experience.

(3) *All fisheries, all gear types depth-based management measures.* Depth-based management measures, particularly the setting of closed areas known as Groundfish Conservation Areas may be imposed on any sector of the groundfish fleet using specific boundary lines that approximate depth contours with latitude/longitude waypoints. Depth-based management measures and the setting of closed areas may be used to protect and rebuild overfished stocks.

* * * * *

[FR Doc. 02–32756 Filed 12–31–02; 1:23 pm]

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Federal Register

Tuesday,
January 7, 2003

Part IV

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2550

Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974; Automatic Rollovers; Proposed Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

RIN 1210–AA92

Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974; Automatic Rollovers

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Request for information.

SUMMARY: Section 657(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001 directs the Department of Labor (Department) to develop, through regulations, safe harbors relating to the automatic rollovers of certain mandatory tax-qualified plan distributions to individual retirement plans. Under these safe harbors, the designation of an institution and the investment of funds by a plan administrator to receive automatic rollovers in accordance with section 401(a)(31)(B) of the Internal Revenue Code (Code) would be deemed to satisfy the fiduciary requirements of section 404(a) of the Employee Retirement Income Security Act (ERISA). The purpose of this document is to request information from the public on issues relating to the development of these safe harbors and to assist in drafting regulations. The Department also seeks information on low-cost individual retirement plans for purposes of transfers under section 401(a)(31)(B) of the Code and for other uses that promote the preservation of assets for retirement income.

DATES: Written or electronic responses should be submitted to the Department of Labor on or before March 10, 2003.

RESPONSES: Written responses (preferably, at least three copies) should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, Washington, DC 20210, Attention: Automatic Rollovers RFI. All responses will be available for public inspection at the Public Disclosure Room, Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, Washington, DC 20210. Electronic responses should contain "Automatic Rollovers RFI" in the subject line and be addressed to *e-ORI@pwba.dol.gov*.

FOR FURTHER INFORMATION CONTACT: Stacey A. Gillis or Katherine D. Lewis, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, Washington, DC 20210, telephone (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Tax-qualified retirement plans are permitted to make an immediate distribution to a separating participant without the participant's consent if the present value of the participant's vested accrued benefit does not exceed $5,000.[1] Recipients may choose to roll the plan distribution (cash-out) into an IRA [2] or another qualified plan, or they may retain the cash-out as a taxable distribution. Prior to making a distribution, plan administrators are required to provide the participant with a written explanation of the Code provisions under which the participant may elect to have the distribution transferred directly to an IRA or another qualified plan, the provision requiring tax withholding if the distribution is not directly transferred and the provisions under which the distribution will not be taxed if the participant transfers the distribution to an IRA or another qualified plan within 60 days of receipt.[3] In recent years, both plan sponsors and participants have indicated an interest in establishing rollover accounts as the default form of distribution option to encourage preservation of the amount distributed for retirement purposes and to mitigate the tax consequences to the participant with respect to the amount distributed.

In July 2000, the Internal Revenue Service (Service) issued Revenue Ruling 2000–36 [4] approving a plan amendment which permitted a direct rollover to an IRA as the default distribution option for an involuntary cash-out of a qualified plan distribution of an amount greater than $1,000 but less than or equal to $5,000, whenever a separating employee failed to make an affirmative election to either choose a direct rollover or take a taxable cash payment. The Service held that the plan amendment requiring the direct rollover to an IRA in these circumstances did not cause the plan to fail to satisfy the requirements of sections 401(a)(31) and 411(d)(6) of the Code. The plan amendment also provided that in the case of a default direct rollover, the plan administrator would select an IRA trustee, custodian, or issuer that is unrelated to the employer, establish the IRA with that trustee, custodian, or issuer on behalf of any separating employee, and make the initial investment choices for the account.

In this ruling, the Department advised the Treasury and the Service that, under Title I of the ERISA, in the context of a default direct rollover described in the ruling, the participant will cease to be a participant covered under the plan within the meaning of 29 CFR 2510.3–3(d)(2)(ii)(B), where the distribution constitutes the entire benefit rights of a participant, and the distributed assets will cease to be plan assets within the meaning of 29 CFR 2510.3–101. However, the Department also noted that the selection of an IRA trustee, custodian or issuer and IRA investment for purposes of a default direct rollover would constitute a fiduciary act subject to the general fiduciary standards and prohibited transaction provisions of ERISA.[5] In addition, the Department stated that plan provisions governing the default direct rollover of distributions, including the participant's ability to affirmatively opt out of the arrangement, must be described in the plan's summary plan description furnished to participants and beneficiaries.

Subsequent to the issuance of Revenue Ruling 2000–36, section 657 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107–16, amended section 401(a)(31) of the Code to require that, absent an affirmative election by the participant, certain mandatory distributions from a qualified retirement plan must be directly transferred to an individual retirement plan [6] of a designated trustee or issuer. Specifically, section 657(a) of EGTRRA added a new section 401(a)(31)(B)(i) to the Code to provide that, in the case of a trust that is part of an eligible plan, the trust will not constitute a qualified trust unless the plan of which the trust is a

[1] Code sections 411(a)(11) and 417(e).

[2] "IRA" means an individual retirement account under section 408(a) of the Code and an individual retirement annuity under section 408(b) of the Code.

[3] Code section 402(f).

[4] Rev. Rul. 2000–36, 2000–2 C.B. 140.

[5] See the Department's information letter to Diana Orantes Ceresi (Feb. 19, 1998) regarding the factors a plan fiduciary should consider in selecting a service provider. Among other things, a responsible plan fiduciary must engage in an objective process designed to elicit information necessary to assess the qualifications of the service provider, the quality of the services offered and the reasonableness of the fees charged in light of the services provided. Such process should also be designed to avoid self-dealing, conflicts of interest or other improper influence.

[6] Section 401(a)(31)(B)(i) of the Code requires the transfer to be made to an "individual retirement plan," which section 7701(a)(37) of the Code defines to mean an individual retirement account described in section 408(a) and an individual retirement annuity described in section 408(b), *i.e.* "IRA'.

part provides that if a mandatory distribution of more than $1,000 is made and the distributee (generally the participant) does not elect to have such distribution paid directly to an eligible retirement plan or receive the distribution directly, the plan administrator must transfer such distribution to an IRA of a designated trustee or issuer. Section 657(a)(1)(B)(ii) of EGTRRA defines an "eligible plan" as a plan which provides for an immediate distribution to a participant of any "nonforfeitable accrued benefit for which the present value (as determined under section 411(a)(11) of the Code) does not exceed $5,000".

Additionally, section 657(a) of EGTRRA added a notice requirement in section 401(a)(31)(B)(i) of the Code requiring the plan administrator to notify the distributee in writing, either separately or as part of the notice required under section 402(f) of the Code, that the participant may transfer the distribution to another IRA.[7]

As part of these new EGTRRA provisions, section 657(c)(2)(A) directs the Department to issue final regulations providing safe harbors under which the plan administrator's designation of an institution to receive the automatic rollover and the initial investment choice for the rolled-over funds would be deemed to satisfy the fiduciary requirements of section 404(a) of ERISA. Moreover, the provisions requiring all tax-qualified retirement plans to make automatic rollovers to IRAs the default option for involuntary distributions of certain defined amounts will not become effective until the Department issues the safe harbor regulations.

Section 657(c)(2)(B) of EGTRRA also states that the Secretaries of Labor and Treasury may provide, and shall give consideration to providing, special relief with respect to the use of low-cost individual retirement plans for purposes of Code section 401(a)(31)(B) transfers and for other uses that promote the preservation of assets for retirement income.

B. Issues Under Consideration

Automatic Rollover Safe Harbors

The Department is interested in comments regarding appropriate standards for the development of safe harbors under which the designation of an institution providing an IRA to receive the automatic rollover of funds and the initial investment choice for the rolled-over funds would be deemed to satisfy the fiduciary requirements of section 404(a) of ERISA. A list of some of the issues with respect to which comments are requested is included below. Responses on other issues pertinent to the Department's consideration are also invited.

As a framework for these comments, the Department notes that existing Treasury regulations describe fundamental requirements that must be satisfied in order for IRAs to maintain their tax classification under the Code.[8] Any standards made part of a safe harbor would supplement such requirements.

Request for Information

1. *Standards for Safe Harbor Entity:* What criteria should apply to the Department's determination that an IRA custodian, trustee or issuer (IRA provider) qualifies as a safe harbor entity? Should the standards differ depending on whether the IRA is an account or an annuity? Should IRA providers who are existing plan service providers receive any special consideration if plan investments can be rolled directly in-kind without transaction fees for liquidating plan investments and purchasing IRA investments?

2. *Standards for Safe Harbor Initial Investment:* What criteria should apply to the Department's determination that an initial investment qualifies as a safe harbor investment? Should consideration be given to including or excluding specific investment vehicles in the safe harbor? If mutual funds are included, should they be limited to passively invested mutual funds such as index funds or include all publicly traded mutual funds? Should the criteria include specific asset allocation standards?

3. *Establishment Costs:* What is the range of establishment costs that IRA providers charge for the establishment or set-up of IRAs of the typical size of an automatic rollover and how do they vary? What factors should be considered in determining the reasonableness of these costs imposed by an IRA provider under the safe harbor? Should regulations clarify that establishment costs are either an expense of the distributing plan or a charge to the IRA funds of the account-holder?

4. *Termination Costs:* What is the range of termination costs that IRA providers charge for the termination or closure of IRAs of the typical size of an automatic rollover and how do they vary? What factors should be considered in determining the reasonableness of these costs imposed by an IRA provider under the safe harbor?

5. *Maintenance Fees:* What is the range of maintenance and administrative fees that IRA providers charge for maintaining and administering IRAs of the typical size of an automatic rollover and how do they vary? What factors should be considered in determining the reasonableness of these fees imposed by an IRA provider under the safe harbor?

6. *Investment Fees:* What types of fees would be associated with the initial investment of the IRA? What types of fees would be associated with the ongoing investment vehicle of the IRA? What factors should be considered in determining the reasonableness of these fees imposed by an IRA provider under the safe harbor? Should the IRA principal be guaranteed with all investment fees, maintenance fees and establishment costs being charged to investment earnings?

7. *Surrender Charges:* What is the range of surrender charges that investment vehicles for IRAs of the typical size of an automatic rollover are subject to upon surrender or redemption, how do they vary and what circumstances trigger their imposition? What factors should be considered in determining the reasonableness of these charges imposed by an IRA provider under the safe harbor?

8. *Transfers within One Year:* Do IRA providers refund or waive in whole or part establishment costs, termination costs, maintenance fees or surrender charges for IRAs that are withdrawn or directly rolled over within one year of establishment by the account-holder? Should the Department consider refund or waiver features in determining whether an IRA provider or initial investment qualifies for safe harbor treatment?

9. *Prohibited Transaction Relief:* Is there a need for prohibited transaction relief that would enable a plan sponsor, as the plan administrator, to select itself or an affiliate as the IRA provider, or to choose an initial investment in which it may have an interest? If relief is needed, what safeguards should be imposed with respect to such relief?

10. *Legal Impediments:* What legal impediments are plan administrators

[7] Conforming amendments to Code sections 401(a)(31) and 402(f)(1) were also made by section 657 of EGTRRA.

[8] For example, with respect to individual retirement accounts, 26 CFR 1.408–2(b)(2)(i) states that the trustee of an individual retirement account must be a bank (as defined in § 408(n) of the Code and regulations thereunder) or another person who demonstrates, in the manner described in paragraph (e) of the regulation, to the satisfaction of the Service, that the manner in which the trust will be administered will be consistent with § 408(e) of the Code and with the regulation. With respect to individual retirement annuities, 29 CFR § 1.408–3 describes, among other things, requirements that must be met in order to maintain the tax-qualified status of such annuity arrangements.

likely to encounter in establishing IRAs for automatic rollovers on behalf of separating employees? What legal impediments are financial institutions likely to encounter in designing and marketing IRAs for automatic rollovers?

11. *Disclosure:* Should the regulation impose any additional disclosure requirements on safe harbor IRA providers?

12. *Low-Cost IRAs:* Is there a need for special consideration of IRA providers who provide low-cost IRAs for automatic rollovers? What criteria should be used to demonstrate low-cost or the promotion of the preservation of assets for retirement income by IRA providers? What kinds of low-cost IRA products are available?

13. *Current Practices:* How many qualified retirement plans currently have mandatory distribution provisions? Typically, what are those provisions? How many mandatory distributions occur annually and what is the form of distribution? What are the associated costs?

14. *EGTRRA Provisions:* What additional administrative costs will compliance with the EGTRRA automatic rollover requirements impose on qualified retirement plans and the assets of plan participants?

Impact on Small Entities

In responding to the questions above, please address the anticipated annual impact of any proposals on small business and small plans (plans with fewer than 100 participants).

All submitted responses will be made a part of the record of the proceeding referred to herein and will be available for public disclosure.

Signed at Washington, DC, this 2nd day of January 2003.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 03–281 Filed 1–6–03; 8:45 am]

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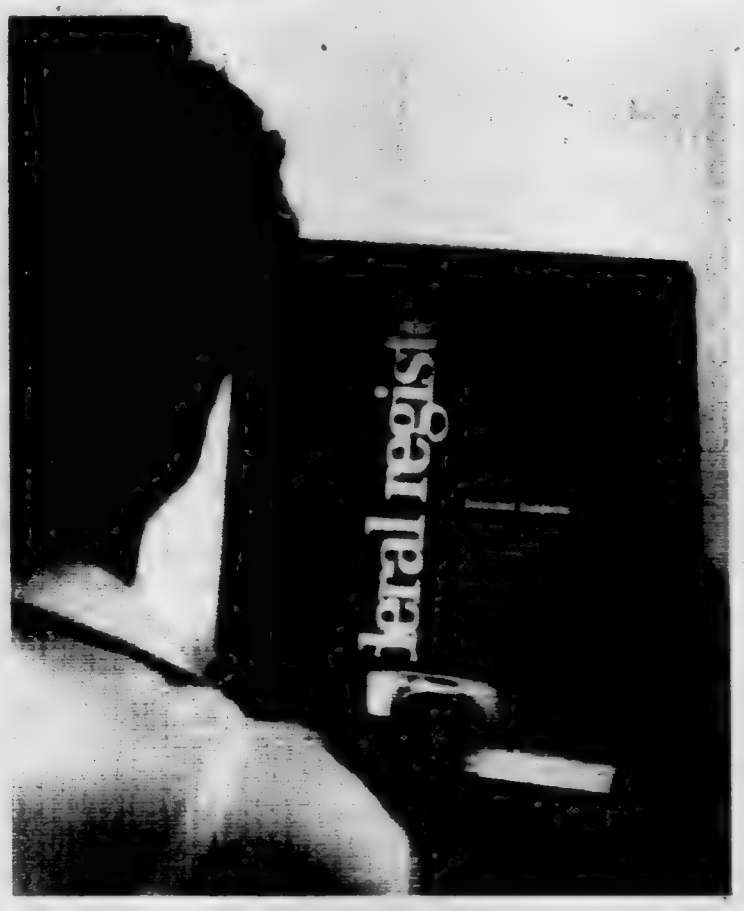

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Federal Register
Vol. 68, No. 5
Wednesday, January 8, 2003

Presidential Documents

Title 3—

The President

Proclamation 7636 of January 2, 2003

National Mentoring Month, 2003

By the President of the United States of America

A Proclamation

Across our great Nation, many Americans are responding to the call to service by mentoring a child in need. By offering love, guidance, and encouragement, mentors put hope in children's hearts, and help ensure that young people realize their full potential. During National Mentoring Month, we recognize the vital contributions of dedicated mentors, and we encourage more Americans to make a difference in the hearts and souls of our communities by volunteering their time to meet the needs of America's youth.

Volunteers provide friendship and support to young people who are facing challenging situations, serve as positive role models, and help to instill important values, goals, and skills. Mentors help young Americans build confidence, gain knowledge, and develop the character necessary to make the right choices and achieve their dreams. Statistics show that at-risk children with mentors demonstrate improved academic performance and are less likely to be involved in destructive activities such as drugs, alcohol, and violence.

During these extraordinary times, we are experiencing a growing culture of service, citizenship, and compassion in our country, with millions of Americans sacrificing for causes greater than self. Dedicated individuals are getting involved in mentoring through faith-based and community organizations, corporate initiatives, school-based programs, and many other outlets for kindness. By dedicating their time and their talents to offer a child a quality relationship with a caring adult, mentors strengthen our families and our communities and reflect the true spirit of America.

Many Americans can point to individuals who influenced their lives and helped to shape them into who they are today. Whether they were teachers, coaches, relatives, clergy, or other community leaders, these positive role models have been critical to our healthy development and helped to instill purpose in our lives. As we honor these everyday heroes, we also recognize that there is a great need for more mentors in America. Too many children in our Nation are growing up without enough support and guidance in their lives, and we must work to ensure that no child is left behind.

This month, I encourage all Americans to become a mentor and change the life of a child in need. In July, the National Mentoring Partnership helped establish the USA Freedom Corps Volunteer Network—the largest system in the Nation for matching individuals with volunteer opportunities. I am proud of this partnership and ask individuals to go online at www.usafreedomcorps.gov or call 1–877–USACORPS to find millions of ways to help children in their neighborhoods. Together, we can reaffirm the promise of America and point the way to a brighter future for all of our children.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 2003 as National Mentoring Month. I call upon the people of the United States to recognize

the importance of being role models for our youth, to look for mentoring opportunities in their communities, and to celebrate this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.

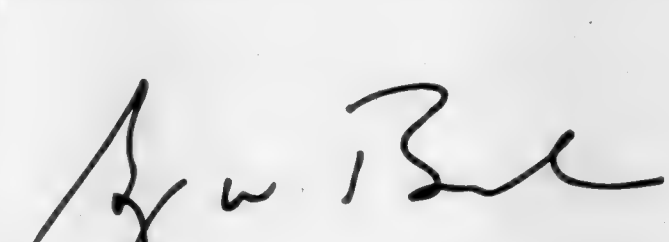

[FR Doc. 03–438
Filed 1–7–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 68, No. 5
Wednesday, January 8, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–07–AD; Amendment 39–13012; AD 2003–01–01]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 36, A36, A36TC, B36TC, 58, and 58A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 2000–26–16, which applies to certain Raytheon Aircraft Company (Raytheon) Beech Models A36, B36TC, and 58 airplanes. AD 2000–26–16 requires you to inspect for missing rivets on the right hand side of the fuselage and, if necessary, install rivets. AD 2000–26–16 resulted from Raytheon identifying several instances of missing rivets on these airplanes. AD 2000–26–16 incorporated an incorrect listing of serial numbers for the affected model airplanes and omitted certain airplane models from the applicability section of AD 2000–26–16. This AD retains the actions required in AD 2000–26–16 and corrects the applicability section. The actions specified by this AD are intended to detect and correct missing rivets in the right hand fuselage panel assembly in the area above the right wing and below the cabin door threshold. These rivets must be present for the fuselage to carry the ultimate load and prevent critical structural failure with loss of airplane control.

DATES: This AD becomes effective on February 27, 2003.

The Director of the Federal Register previously approved the incorporation by reference of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised May, 2000, as of February 16, 2001 (66 FR 1253, January 8, 2001).

The Director of the Federal Register approved the incorporation by reference of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 2, Revised October, 2002, as of February 27, 2003.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–07–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

Raytheon production and inspection personnel identified several instances of missing rivets on Models A36, B36TC, and 58 airplanes. The missing rivets are the result of a quality control problem. This condition caused us to issue AD 2000–26–16, Amendment 39–12066 (66 FR 1253, January 8, 2001). AD 2000–26–16 requires you to inspect for missing rivets on the right hand fuselage and if necessary, install rivets.

What Has Happened Since AD 2000–26–16 To Initiate This Action?

Raytheon notified FAA that the airplane models and serial numbers listed in Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised: May, 2000, and the applicability section of AD 2000–26–16 are incorrect. The serial number designations did not correctly refer to the applicable airplane models. We are adding Beech Models 36, A36TC, and 58A airplanes to the applicability section of this AD to correct this in this document.

What Is the Potential Impact If FAA Took No Action?

This condition, if not corrected, could result in the airplane being unable to carry the ultimate load which could cause structural failure and loss of airplane control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models 36, A36, A36TC, B36TC, 58, and 58A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 14, 2002 (67 FR 52894). The NPRM proposed to supersede AD 2000–26–16, Amendment 39–12066, with a new AD that would retain the actions required in AD 2000–26–16 and add certain airplane models to the applicability section of this AD.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

The manufacturer has issued Revision 2 to Raytheon Mandatory Service Bulletin SB 53–3341. This service information contains a corrected list of affected airplane models and serial numbers. We will incorporate this service bulletin into the procedures section of this AD.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 3,632 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	No parts required for the inspection	$60 per airplane	$60 × 3632 = $217,920

We estimate the following costs to accomplish the modification if necessary:

Labor cost	Parts cost	Total cost per airplane
4 workhours × $60 per hour = $240	$100 per airplane	$340 per airplane

What Is the Difference Between the Cost Impact of This AD and the Cost Impact of AD 2000–26–16?

The only difference between this AD and AD 2000–26–16 is the correction to the applicability. No additional actions are being added. The FAA has determined that this AD action does not increase the cost impact over that already required by AD 2000–26–16.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–01–01 Raytheon Aircraft Company: Amendment 39–13012; Docket No. 2002–CE–07–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) Group 1:	
A36	E–185 through E–3231 and E–3233.
B36TC	EA–242 and EA–273 through EA–635.
58	TH–1 through TH–1811 and TH–1813 through TH–1897.
(2) Group 2:	
36	E–1 through E–184.
A36TC	EA–1 through EA–241 and EA–243 through EA–272.
58A	TH–1 through TH–1811 and TH–1813 through TH–1897.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct missing rivets in the right hand fuselage panel assembly in the area above the right wing and below the cabin door threshold. These rivets must be present for the fuselage to carry the ultimate load and prevent critical structural failure with loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For Group 1 airplanes: inspect for up to 9 missing rivets between fuselage station (F.S.) 83.00 and F.S. 91.00 at water line (W.L.) 90.3.	Within the next 100 hours time-in-service (TIS) after February 16, 2001 (the effective date of AD 2000–26–16), unless already accomplished.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised: May 2000; or Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 2, Revised: October, 2002; and the Bonanza Series Maintenance Manual or Baron Model 58 Series Maintenance Manual.
(2) For Group 2 airplanes: inspect for up to 9 missing rivets between fuselage station (F.S.) 83.00 and F.S. 91.00 at water line (W.L.) 90.3.	Within the next 100 hours time-in-service after February 27, 2003 (the effective date of this AD), unless already accomplished.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised: May 2000; or Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 2, Revised: October, 2002; and the Bonanza Series Maintenance Manual.
(3) For all affected airplanes: if you find rivets are missing, install these rivets.	Before further flight after the inspection, unless already accomplished.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised: May 2000; or Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 2, Revised: October, 2002; and the Bonanza Series Maintenance Manual or Baron Model 58 Series Maintenance Manual.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 2000–26–16, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?*

(1) Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised: May 2000, or Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 2, Revised: October, 2002.

(i) The Director of the Federal Register approved the incorporation by reference of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 2, Revised: October, 2002, under 5 U.S.C. 552(a) and 1 CFR part 51.

(ii) The Director of the Federal Register previously approved the incorporation by reference of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised May, 2000, as of February 16, 2001 (66 FR 1253, January 8, 2001).

(2) You may get copies from Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2000–26–16, Amendment 39–12066.

(j) *When does this amendment become effective?* This amendment becomes effective on February 27, 2003.

Issued in Kansas City, Missouri, on December 30, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–148 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–77–AD; Amendment 39–13010; AD 2002–26–21]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 and –300 series airplanes, that requires inspecting the electrical wire harness next to the fuel line at the left electric fuel pump for signs of chafing; securing the electrical wire harness to the fuel line using ty-rap; and taking corrective actions, if necessary. This action is necessary to prevent damage to the electrical wire harness, which could

result in electrical arcing and an increased potential for fire or explosion. This action is intended to address the identified unsafe condition.

DATES: Effective February 12, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and –300 series airplanes was published in the **Federal Register** on September 13, 2002 (67 FR 57984). That action proposed to require inspecting the electrical wire harness next to the fuel line at the left electric fuel pump for signs of chafing; securing the electrical wire harness to the fuel line using ty-rap; and taking corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 100 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection and securing of the electrical wire harness, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–21 Dornier Luftfahrt GMBH: Amendment 39–13010. Docket 2002–NM–77–AD.

Applicability: Model 328–100 series airplanes, as listed in Dornier Service Bulletin SB–328–24–391, dated September 11, 2001; and Model 328–300 series airplanes, as listed in Dornier Service Bulletin SB–328J–24–120, dated September 12, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the electrical wire harness, made up of wiring and a protective sleeve, which could result in electrical arcing and an increased potential for fire or explosion, accomplish the following:

Inspection

(a) Within 400 flight hours after the effective date of this AD, do a one-time general visual inspection to detect chafing damage to the electrical wire harness, made up of wiring and a protective sleeve, next to the fuel line at the left electric fuel pump; per Dornier Service Bulletin SB–328–24–391, dated September 11, 2001 (for Model 328–100 series airplanes); or Dornier Service Bulletin SB–328J–24–120, dated September 12, 2001 (for Model 328–300 series airplanes); as applicable.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

No Chafing: Secure the Electrical Wire Harness

(b) If no chafing damage to the electrical wire harness, made up of wiring and a protective sleeve, is detected during the

inspection required by paragraph (a) of this AD, before further flight, secure the electrical wire harness to the fuel line using ty-rap, per Dornier Service Bulletin SB–328–24–391, dated September 11, 2001 (for Model 328–100 series airplanes); or Dornier Service Bulletin SB–328J–24–120, dated September 12, 2001 (for Model 328–300 series airplanes); as applicable.

Chafing: Corrective Action(s) and Secure the Electrical Wire Harness

(c) If any chafing damage to the electrical wire harness, made up of wiring and a protective sleeve, is detected during the inspection required byparagraph (a) of this AD, before further flight, do the action(s) specified in paragraphs (c)(1) and (c)(2) of this AD, as applicable, and paragraph (c)(3) of this AD, per Dornier Service Bulletin SB–328–24–391, dated September 11, 2001 (for Model 328–100 series airplanes); or Dornier Service Bulletin SB–328J–24–120, dated September 12, 2001 (for Model 328–300 series airplanes); as applicable.

(1) For any damaged protective sleeve: Repair or replace the protective sleeve, per the applicable service bulletin.

(2) For any damaged wiring: Replace the electrical wire harness, made up of wiring and a protective sleeve, with a new electrical wire harness, per the applicable service bulletin.

(3) Secure the electrical wire harness, made up of wiring and a protective sleeve, to the fuel line using ty-rap, per the applicable service bulletin.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Dornier Service Bulletin SB–328–24–391, dated September 11, 2001; or Dornier Service Bulletin SB–328J–24–120, dated September 12, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directives 2002–049 and 2002–050, both dated March 7, 2002.

Effective Date

(g) This amendment becomes effective on February 12, 2003.

Issued in Renton, Washington, on December 30, 2002.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–151 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–25–AD; Amendment 39–13014; AD 2003–01–03]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Model ( )HC–( )2Y( )–( ) propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hartzell Propeller Inc. model ( )HC–( )2Y( )–( ) propellers, with certain serial numbers (SN's) of two-bladed aluminum propeller hubs part numbers (P/N's) D–6522–1, D–6522–2, D–6529–1, and D–6559–3 installed. This action requires removal from service of those certain SN's of two-bladed aluminum propeller hubs and replacement with serviceable hubs. This amendment is prompted by a two-bladed aluminum propeller hub manufacturing quality control problem. The actions specified in this AD are intended to prevent in-flight propeller blade separation resulting in airframe and engine damage, and possible loss of the airplane.

DATES: Effective January 23, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 23, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–25–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7031; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: On August 19, 2002, the FAA was notified by Hartzell Propeller Inc. that certain two-bladed aluminum propeller hub SN's installed in 2-bladed propellers were found to have subsurface discontinuities in the aluminum. Some of these hubs have been installed in propellers and some have been shipped as spares. The discontinuities were not removed during the propeller hub forging process, and could initiate fatigue cracking in the propeller hub arms. This final rule; request for comments, replaces affected hubs determined to be under higher stresses based on specific airplane installation, within 50 hours time-since-new (TSN) or 12 months from the effective date of the AD, whichever occurs first, and affected hubs determined to be under lower stresses based on specific airplane installation, within 100 hours TSN or 12 months from the effective date of this AD, whichever occurs first. This condition, if not corrected, could result in in-flight propeller blade separation, airframe and engine damage, and possible loss of the airplane.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Alert Service Bulletin

(ASB) HC–ASB–61–259, dated September 4, 2002, that provides a SN list of 123 affected propeller hubs and describes procedures for hub replacement. This AD action has denoted the remaining 52 serial numbered propeller hubs that need to be replaced.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other propeller hubs of the same type design, this AD is being issued to prevent in-flight propeller blade separation resulting in airframe and engine damage, and possible loss of airplane control. This AD requires removal from service of certain two-bladed aluminum propeller hubs identified by SN and replacement with serviceable two-bladed aluminum propeller hubs. This action lists the remaining 52 serial numbered propeller hubs that need to be replaced. The actions are required to be done in accordance with the alert service bulletin described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–25–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–01–03 Hartzell Propeller Inc.: Amendment 39–13014. Docket No. 2002–NE–25–AD.

Applicability

This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model ( )HC–( )2Y( )–( ) propellers, with propeller hub part numbers (P/N's) D–6522–1, D–6522–2, D–6529–1, and D–6559–3, with the serial numbers (SN's) listed in the following Table 1:

TABLE 1.—APPLICABLE PROPELLERS AND HUBS

Propeller SN	Hub SN	Hub P/N
AU11115B	A61365B	D–6522–1
AU11116B	A61366B	D–6522–1
AU11117B	A61367B	D–6522–1
AU11119B	A61369B	D–6522–1
AU11125B	A61375B	D–6522–1
AU11131B	A61381B	D–6522–1
AU11134B	A61384B	D–6522–1
AU11135B	A61385B	D–6522–1
AY515B	A61397B	D–6522–2
AY516B	A61398B	D–6522–2
CH36140B	A61409B	D–6529–1
CH36141B	A61410B	D–6529–1
CH36151B	A61420B	D–6529–1
CH36152B	A61421B	D–6529–1
CH36153B	A61422B	D–6529–1
CH36157B	A61427B	D–6529–1
EU376B	A61443B	D–6559–3
CH36172B	A61547B	D–6529–1
CH36159B	A61553B	D–6529–1
CH36160B	A61554B	D–6529–1
CH36162B	A61556B	D–6529–1
CH36163B	A61557B	D–6529–1
CH36165B	A61560B	D–6529–1
CH36188B	A61563B	D–6529–1
CH36193B	A61568B	D–6529–1
CH36194B	A61569B	D–6529–1

TABLE 1.—APPLICABLE PROPELLERS AND HUBS—Continued

Propeller SN	Hub SN	Hub P/N
CH36195B	A61570B	D–6529–1
CH36196B	A61571B	D–6529–1
CH36178B	A61573B	D–6529–1
CH36179B	A61574B	D–6529–1
CH36181B	A61576B	D–6529–1
CH36182B	A61577B	D–6529–1
CH36183B	A61578B	D–6529–1
CH36198B	A61583B	D–6529–1
CH36199B	A61584B	D–6529–1
CH36200B	A61585B	D–6529–1
CH36201B	A61586B	D–6529–1
CH36202B	A61587B	D–6529–1
CH36203B	A61588B	D–6529–1
CH36204B	A61589B	D–6529–1
CH36205B	A61590B	D–6529–1
CH36209B	A61594B	D–6529–1
CH36211B	A61596B	D–6529–1
CH36212B	A61597B	D–6529–1
CH36213B	A61598B	D–6529–1
CH36215B	A61601B	D–6529–1
CH36216B	A61602B	D–6529–1
AU11145B	A61603B	D–6522–1
AU11147B	A61605B	D–6522–1
AU11155B	A61613B	D–6522–1
AY520B	A61743B	D–6522–2
AU11175B	A61893B	D–6522–1

These propellers are installed on, but not limited to the following:

AMERICAN CHAMPION 8GCBC, 8KCAB
AERMACCHI S.p.A. S.208, S.208A
BEECH 95 series
BELLANCA 14–19–3, 14–19–3A
CESSNA 170 series, 172 series, 175 series, 177, A188A, A188B, T188C, 310 series
DIAMOND AIRCRAFT DA–40
LAKE (REVO) LA–4, LA–4–200
MAULE Aerospace Technology, Inc. M(T)–7–235( ), M–5–235C, M–6–235, M(X)–7–235
MOONEY M20 series
Pilatus BRITTEN–NORMAN LTD BN–2 series, MK III, MK III–2, MK III–3
PIPER PA–23, PA–23–160, PA–24, PA–24–260, PA–25–260,
PA–28–140, PA–32–300, PA–32S–300, PA–34–200, PA–44–180T
SOCATA—Groupe AEROSPATIALE MS–200, MS 894A, MS 894E, TB–20, TB–21
Sky International Inc (Husky) A–1, S–1T, S–2A, S–2S (previous owners were Christian Industries; Aviat, Inc.; White International, LTD.)
Univair Aircraft Corporation 108 series (previous owner was Stinson)
Vulcanair S.p.A. P68 series (previous owner was Partenavia Construzioni Aeronautiche S.p.A)

Note 1: The parentheses that appear in the propeller models indicate the presence or absence of additional letter(s) which vary the basic propeller hub model designation. This airworthiness directive is applicable regardless of whether these letters are present or absent on the propeller hub model designation.

Note 2: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent in-flight propeller blade separation resulting in airframe and engine damage, and possible loss of the airplane, do the following:

(a) For Piper PA–32( ) series airplanes with Lycoming 540 series engines rated at 300 horse power or higher, Britten Norman BN–2 series airplanes with Lycoming 540 series engines, acrobatic airplanes including certificated acrobatic airplanes, military trainers, any airplanes routinely exposed to acrobatics usage, and airplanes used for agricultural purposes, remove affected hubs listed by SN in Table 1 of this AD within 50 hours time-since-new (TSN) or 12 months from the effective date of this AD, whichever occurs first, and replace with serviceable hubs, in accordance with paragraphs 3.A. through 3.B.(3) of ASB HC–ASB–61–259, dated September 4, 2002.

(b) For airplanes other than those listed in paragraph (a) of this AD, remove affected hubs listed by SN in Table 1 of this AD within 100 hours TSN or 12 months from the effective date of this AD, whichever occurs first, and replace with serviceable hubs, in accordance with paragraphs 3.A. through 3.B.(3) of ASB HC–ASB–61–259, dated September 4, 2002.

(c) After the effective date of this AD, do not install any propeller assembly that has a hub with a P/N D–6522–1, D–6522–2, D–6529–1, or D–6559–3, with a SN listed in Table 1 of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(f) The propeller hub replacements must be done in accordance with Alert Service Bulletin Hartzell Propeller Inc. HC-ASB–61–259, dated September 4, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on January 23, 2003.

Issued in Burlington, Massachusetts, on December 31, 2002.

Robert J. Ganley,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–226 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

RIN 1076–AE34

Partial Distribution of Fiscal Year 2003 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: We are issuing a rule requiring that we distribute $25 million of fiscal year 2003 Indian Reservation

Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. This partial distribution reflects the funds the Federal Highway Administration has allocated to the Department of the Interior and is based on funding appropriated by a continuing resolution for Department of the Interior funding in effect until September 20, 2003. We are using the Federal Highway Administration (FHWA) Price Trends report for the relative need formula distribution process, with appropriate modifications to address non-reporting States.

EFFECTIVE DATE: January 13, 2003 through September 30, 2003.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at (202) 208–4359 (phone) or (202) 208–4696 (fax).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads (IRR) Program, the Relative Need Formula, the Federal Highway Administration (FHWA) Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?

The background information on the IRR Program, the relative need formula, the FHWA Price Trends Report, and the TEA–21 Negotiated Rulemaking process is detailed in the **Federal Register** notice dated February 15, 2000 (65 FR 7431).

Why Are You Publishing This Rule?

We are publishing this rule for the distribution of $25 million of fiscal year 2003 IRR funds. This rule sets not precedent for the final rule to be published as required by section 1115 of TEA–21.

Where Can I Find Information on the Distribution of Fiscal Year 2002 IRR Funds?

You can find this information in the **Federal Register** notice dated January 10, 2002 (67 FR 1290).

How Will the Secretary Distribute $25 Million of Fiscal Year 2003 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute $25 million of fiscal year 2003 IRR Program funds based on the current relative need formula used in fiscal years 2000, 2001 and in the first distribution in fiscal year 2003. We are using the latest indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process.

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this rule is not a significant regulatory action because it will not have an annual effect of more than $100 million on the economy. The total amount available for distribution of fiscal year 2003 IRR Program funds is approximately $200 million and we are distributing approximately $25 million under this rule. Congress has authorized these funds and FHA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2003 IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR Program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR Program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the partial distributions for fiscal years 2000, 2001 and 2002 IRR Program funds.

Approximately 350 road and bridge construction projects are at various phases that depend on this fiscal year's IRR Program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this rule because it applies only to tribal governments, not state and local governments.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it does not have an annual effect on the economy of $100 million or more. We are distributing approximately $25 million under this rule. Congress has authorized these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to Indian tribal governments and tribal organizations for transportation planning, road and bridge construction, and road improvements. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of $100 million or greater in any year. The effect of this rule is to immediately provide $25

million of fiscal year 2003 IRR Program funds to tribal governments for ongoing IRR activities and construction projects.

Takings Implications (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This rule does not affect the relationship between state governments and the Federal Government because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 1988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. Under the Transportation Equity Act for the 21st Century negotiated rulemaking, we have published a proposed rule and funding formula (67 FR 51328, August 7, 2002). A final funding formula for fiscal year 2004 will be published in 2003. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to $25 million of fiscal year 2003 IRR Program funding.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

National Environmental Policy Act

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to the President's Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," we have consulted with tribal representatives throughout the negotiated rulemaking process and in developing this rule. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993 to distribute IRR Program funds. We are making a change from previous years (which we also made for fiscal years 2000, 2001, and 2002 IRR Program funds (*see* **Federal Register** notices at 65 FR 37697, 66 FR 17073, and 67 FR 44355) to modify the FHWA Price Trends Report indices for non-reporting states which do not have current price trends data reports. The yearly FHWA Report is used as part of the process to determine the cost-to-improve portion of the relative need formula. Consultation with tribal governments and tribal organizations is ongoing as part of the TEA–21 negotiated rulemaking process

List of Subjects in 25 CFR Part 170

Highways and Roads, Indians-lands.

For the reasons set out in the preamble, we are amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

1. The authority citation for part 170 continues to read as follows:

Authority: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

2. Add § 170.4b to read as follows:

§ 170.4B What formula will BIA use to distribute $25 million of fiscal year 2003 Indian Reservation Roads Program funds?

On January 13, 2003 we will distribute $25 million of fiscal year 2003 IRR Program funds authorized under Section 1115 of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 154. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. The formula has been modified to account for non-reporting States by inserting the latest data reported for those states for use in the relative need formula process.

Dated: December 16, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–343 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–LY–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–026]

RIN 2115–AA97

Security Zones; Port of San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones around and under all cruise ships that are located in and near the Port of San Diego. These security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into these zones will be prohibited, unless specifically authorized by the Captain of the Port of San Diego.

DATES: This rule is effective on December 21, 2002 at 11:59 p.m. (PST).

ADDRESSES: Comments and material received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 02–026], and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, CA, 92101, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell,

Chief of Port Operations, U.S. Coast Guard Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 1, 2002, we published a notice of proposed rulemaking (NPRM) entitled Security Zones, Port of San Diego, CA in the **Federal Register** (67 FR 212). We received 1 letter commenting on the proposed rule. No public hearing was requested, and none was held.

On November 5, 2001, we issued a temporary rule under docket COTP San Diego 01–020 which was published in the **Federal Register** (67 FR 6648, Feb. 13, 2002) under temporary section 165.T11–030 of Title 33 of the Code of Federal Regulations (CFR). In that rulemaking, the Coast Guard established a rule creating 100-yard security zones around cruise ships that enter, are moored in, or depart from the Port of San Diego.

On June 21, 2002, a change in effective period for the temporary rule was issued, under docket COTP SD 02–013, and was published in the **Federal Register** (67 FR 41845, June 20, 2002) under the same previous temporary section 165.T11–030, which is set to expire at 11:59 p.m. on December 21, 2002. The Captain of the Port has determined the need for continued security regulations exists. This final rule differs slightly from temporary section 165.T11–030 in one way. Although, while implicit in the temporary rule, the security zones proposed here will be described as extending from the water's surface to the sea floor. This more specific description is intended to discourage unidentified scuba divers and swimmers from coming within close proximity of a cruise ship.

Accordingly, this rulemaking makes permanent the temporary security zones established on November 5, 2001, under docket COTP San Diego 01–020, 33 CFR 165.T11–030 published in the **Federal Register** at 67 FR 6648 (February 13, 2002). That temporary rule's effective period was extended until December 21, 2002 by a notice in the **Federal Register** dated June 20, 2002 (67 FR 41845).

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the threat of maritime attacks is real as evidenced by the attack of a tanker vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215) that the security of the U.S. is endangered by the 9/11/01 attacks and that such disturbances continue to endanger the international relations of the U.S.

See also *Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, 67 Fed. Reg. 58317 (September 13, 2002); *Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism*, 67 Fed. Reg. 59447 (September 20, 2002). Additionally a Maritime Advisory was issued to: *Operators of U.S. Flag and Effective U.S. Controlled Vessels and other Maritime Interests*, detailing the current threat of attack, MARAD 02–07 (October 10, 2002). The current temporary rule is set to expire December 21, 2002, and any delay in the effective date of this final rule is impractical and contrary to the public interest.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 and section 104 of the Maritime Transportation Security Act of November 25, 2002 (50 U.S.C. 191 *et seq*) (Magnuson Act) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship would have on the public interest, the Coast Guard is establishing security zones around and under cruise ships entering, departing, or moored within the port of San Diego. These security zones will help the Coast Guard prevent vessels or persons from engaging in terrorist actions against cruise ships. The Coast Guard believes the establishment of security zones is prudent for cruise ships because they carry multiple passengers.

Discussion of Comments and Changes

We received one letter from the local port authority commenting on the definition of a cruise ship used in the notice of proposed rulemaking. The definition in the notice of proposed rulemaking defined "cruise ship" as a "passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; capable of making international voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked, disembarked, or at a port of call in the San Diego port".

The local port authority noted that this definition of "cruise ship" would include various commercial sport fishing vessels that homeport in San Diego. After consideration of the comment, the Coast Guard has changed the definition of a "cruise ship" from "over 100 feet in length" to "100 gross tons or more". This change will eliminate commercial sport fishing vessels from the definition of "cruise ship".

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area. Also, the zones will encompass only a small portion of the waterway. The Port of San Diego can accommodate only a few cruise ships moored at the same time. Most cruise ship calls at

each location occur on only one day each week, and are generally less than 18 hours in duration. Furthermore, vessels will be able to pass safely around the zones, and vessels and people may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port.

The sizes of the zones are the minimum necessary to provide adequate protection for the cruise ships, their crews and passengers, other vessels operating in the vicinity of the cruise ships and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the Port of San Diego and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking a cruise ship in the main ship channels, effectively limiting the use of the channel. However, the moving security zones will only be effective during cruise ship transits, which will last for approximately 60 minutes. In addition, vessels are able to safely transit around the zones while a vessel is moored or at anchor in the Port of San Diego.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We expect this proposed rule may affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in these small portions near the cruise ships covered by these security zones, of the port of San Diego. The impact to these entities would not be significant since these zones are proposed to encompass only small portions of the waterway for limited period of times (while the cruise ships are transiting, moored). Delays, if any, are expected to be less than sixty minutes in duration. Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. When a cruise ship is at anchor, vessel traffic will have ample room to maneuver around the security zone. The outbound or inbound transit of a cruise ship will last about 60 minutes. Although this regulation prohibits simultaneous use of portions of the channel, this prohibition is of short duration. While a cruise ship is moored, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the security zone with the patrol commander.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Joseph Brown, Marine Safety Office San Diego, (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish a security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.1108 to read as follows:

§ 165.1108 Security Zones; Cruise Ships, Port of San Diego, California.

(a) *Definition.* "Cruise ship" as used in this section means a passenger vessel, except for a ferry, 100 gross tons or more, authorized to carry more than 12 passengers for hire; capable of making international voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked, disembarked or at a port of call in the San Diego port.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is anchored at a designated anchorage within the San Diego port area inside the sea buoys bounding the port of San Diego.

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is moored at any berth within the San Diego port area inside the sea buoys bounding the Port of San Diego; and

(3) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is underway on the waters inside the sea buoys bounding the Port of San Diego.

(c) *Regulations.* (1) In accordance with the general regulation in § 165.33 of the part, entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, San Diego or his designated representative.

(2) Persons desiring to transit the area of the security zones may contact the Captain of the Port at telephone number (619) 683–6495 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zones by the San Diego Harbor Police.

Dated: December 13, 2002.

S. P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 03–315 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA91

Title I—Improving the Academic Achievement of the Disadvantaged; Correction

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations; correction.

SUMMARY: The Department of Education published in the **Federal Register** of December 2, 2002, regulations governing the programs administered under Title I, parts A, C, and D of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (hereinafter referred to as the Title I programs). The December 2, 2002, document contained minor errors. Additionally, some material was inadvertently left out of the Analysis of Comments and Changes appendix to the document. This document corrects the errors and adds the omitted material to the appendix.

DATES: These regulations are effective January 2, 2003.

FOR FURTHER INFORMATION CONTACT: For subparts A, D, and E of part 200, Jacquelyn C. Jackson, Ed. D. Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

For subparts B and C of part 200, Francisco Garcia, Director, Migrant Education Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E217, FB–6, Washington, DC 20202–6135. Telephone: (202) 260–0089.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: In the final regulations published on December 2, 2002 (67 FR 71710) make the following corrections:

1. On page 71716, in the second column, the introductory text of § 200.13(b) is corrected by adding the acronym "AYP" following the word "define".

2. On page 71720, in the first column § 200.29(a) is correctly designated as paragraph (a)(1).

3. On page 71741, in the appendix, in the second column, after the fourth line, add the following text to read:

* * * * *

Comment: Several commenters noted a "catch-22" in the requirement to demonstrate increasing proficiency by limited English proficient students, since lack of English proficiency is the defining characteristic of this group and successful students "graduate" from, and thus are no longer counted in, the subgroup. Two commenters recommended that the final regulations

permit the inclusion of "formerly" limited English proficient students in the limited English proficient (LEP) subgroup for the purpose of determining adequate yearly progress. The commenters feared that counting only "current" limited English proficient students would result in permanent identification for improvement of any school serving sufficient numbers of such students.

Discussion: The Secretary recognizes the concern raised by the commenter not to penalize schools and LEAs that succeed in developing the English proficiency of limited English proficient students. However, these provisions are statutory and may not be changed by the Secretary. Also, the definition of "limited English proficient" in section 9101 (25) of the ESEA includes three alternative definitions and may give States some flexibility to address this concern. The Secretary may further address this issue in Title I guidance.

Changes: None.

* * * * *

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Dated: January 3, 2003.

Susan B. Neuman,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 03–351 Filed 1–7–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK88

Health Care for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the regulations regarding health care for Vietnam veterans' children suffering from spina bifida to also encompass health care for women Vietnam veterans' children with certain other birth defects. This is necessary to provide health care for such children in accordance with recently enacted legislation. The amendments also reduce the requirements for preauthorization, reflect changes in organizational and personnel titles, revise contact information for the VHA Health Administration Center, and make nonsubstantive changes for purposes of clarity.

DATES: *Effective Date:* January 8, 2003.

Applicability Dates: This rule is applicable retroactively to December 1, 2001, for benefits added by Public Law 106–419. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Susan Schmetzer, Chief, Policy & Compliance Division, Health Administration Center, Department of Veterans Affairs, PO Box 65020, Denver, CO 80206, telephone (303) 331–7552.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on January 2, 2002 (67 FR 209), we proposed to amend VA health care regulations to provide benefits for women Vietnam veterans' children with covered birth defects, reduce the requirements for preauthorization, reflect changes in organizational and personnel titles, revise contact information for the VHA Health Administration Center, and make nonsubstantive changes for purposes of clarity. Prior to the enactment of Public Law 106–419 on November 1, 2000, the provisions of 38 U.S.C. chapter 18 only concerned benefits for children with spina bifida who were born to Vietnam veterans. Effective December 1, 2001, section 401 of Public Law 106–419 amended 38 U.S.C. chapter 18 to add benefits for women Vietnam veterans' children with certain birth defects (referred to as "covered birth defects").

Two companion proposed rule documents concerning the provision of benefits under that legislation were also set forth in the January 2, 2002, issue of the **Federal Register**. One concerned monetary allowances and the identification of covered birth defects (RIN: 2900–AK67) (67 FR 200). The other concerned the provision of vocational training benefits (RIN: 2900–AK90) (67 FR 215). With respect to the first document, we published a final rule entitled "Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects" in the July 31, 2002, issue of the **Federal Register** (67 FR 49585).

For the proposed rule on health care, we provided, except for the information collection provisions, a thirty-day period for public comments, which ended on February 1, 2002. Pursuant to the Paperwork Reduction Act, we provided for the information collections in the document a 60-day comment period, which ended on March 4, 2002. We received comments from one organization and two individuals. None of the comments concerned the information collections.

One commenter, an individual, felt that the U.S. government is displaying a bias in favor of women veterans in this regulation and that the hidden effect of Agent Orange may also have remained dormant in men's systems and produced chromosomal disorders in their children. No changes are made based on this comment. Public Law 106–419, which was based on a comprehensive health study conducted by VA of 8,280 women Vietnam-era veterans, provides benefits specifically for women Vietnam veterans' children with certain birth defects. We have no legal authority to award the new health care benefits to children of male Vietnam veterans.

Another individual commented about payment of transportation expenses for medical care and treatment, and suggested two changes to the regulations. First, he suggested a change that he said would clarify § 17.902(a), which in the first sentence requires preauthorization for certain travel and other benefits. In our view, his suggested change would not be merely a clarification but rather would be a substantive change to the benefits paid for travel of beneficiaries and any necessary attendants. The proposed rule contained the same language concerning travel as in the current regulations in 38 CFR part 17 for health care for Vietnam veterans' children with spina bifida. We believe that a substantive change to travel benefits is beyond the scope of this rulemaking.

Second, this commenter suggested that § 17.903, concerning payment, be amended to contain specific provisions about travel benefits. The commenter's suggested language would, in part, unnecessarily restate statutory provisions that are already reflected in the language in proposed § 17.900, which defines "health care" as including "direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants)." Also, his suggested language would add substantive

provisions on travel. As discussed above, a substantive change to travel benefits is beyond the scope of this rulemaking.

A comment was received from the Spina Bifida Association of America requesting that the regulations be changed to reflect VA as a primary payer rather than the exclusive payer for covered services. The commenter asserted that as an unintended consequence of the "exclusive payer" language (in the current 38 CFR 17.900 and in the proposed rule in § 17.901), health care providers are sometimes unwilling to provide care covered by the regulations because coordination of benefits with other health insurers (and resulting additional payments to the providers for their services) is not allowed. Because the requested change is significant and substantive in nature, it is beyond the scope of this rulemaking. However, the Department is considering the need for such a change.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change except that we are making nonsubstantive changes for purposes of clarity and we are adding a statement following each of the sections in the rule with information collection requirements to reflect the approval by the Office of Management and Budget (OMB) of the information collection requirements contained in those sections.

Administrative Procedure Act

This rule provides for new benefits and otherwise merely removes restrictions on benefits and makes nonsubstantive changes. To avoid delay in furnishing the new benefits, we find that there is good cause to make this final rule effective without a 30-day delay of its effective date. Accordingly, under 5 U.S.C. 553, there is no need for delay in this rule's effective date.

Applicability Dates

This rule is applicable retroactively to the statutory effective date of December 1, 2001, for benefits added by section 401 of Public Law 106–419. This rule is otherwise applicable on the rule's effective date, January 8, 2003, for the already existing program of health care furnished for Vietnam veterans' children determined under 38 CFR 3.814 to suffer from spina bifida.

Paperwork Reduction Act

Information collection requirements associated with this final rule (in 38 CFR 17.902 through 17.904) have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521) and have been assigned OMB control number 2900–0578. The information collection requirements of § 17.902 concern requests for preauthorization for certain health care services or benefits. The information collection requirements of § 17.903 concern the submission of claims from approved health care providers for health care provided under §§ 17.900 through 17.905. The information collection requirements of § 17.904 concern the review and appeal process regarding provision of health care, or payment relating to provision of health care, under §§ 17.900 through 17.905.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the rule will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only a total of 1200 Vietnam veterans' children who suffer from spina bifida and women Vietnam veterans' children who suffer from covered birth defects. They are widely geographically diverse and the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this document is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance program numbers for the programs affected by this document.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 17 is amended as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, the undesignated center heading immediately preceding § 17.900 and §§ 17.900 through 17.905 are revised to read as follows:

Health Care Benefits for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

§ 17.900 Definitions.

For purposes of §§ 17.900 through 17.905—

Approved health care provider means a health care provider currently approved by the Center for Medicare and Medicaid Services (CMS), Department of Defense TRICARE Program, Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health Care Organizations (JCAHO), or currently approved for providing health care under a license or certificate issued by a governmental entity with jurisdiction. An entity or individual will be deemed to be an approved health care provider only when acting within the scope of the approval, license, or certificate.

Child for purposes of spina bifida means the same as *individual* as defined at § 3.814(c)(2) or § 3.815(c)(2) of this title and for purposes of covered birth defects means the same as *individual* as defined at § 3.815(c)(2) of this title.

Covered birth defect means the same as defined at § 3.815(c)(3) of this title and also includes complications or

medical conditions that are associated with the covered birth defect(s) according to the scientific literature.

Habilitative and rehabilitative care means such professional, counseling, and guidance services and such treatment programs (other than vocational training under 38 U.S.C. 1804 or 1814) as are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of a disabled person.

Health care means home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care; and includes the training of appropriate members of a child's family or household in the care of the child; and the provision of such pharmaceuticals, supplies (including continence-related supplies such as catheters, pads, and diapers), equipment (including durable medical equipment), devices, appliances, assistive technology, direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants), and other materials as the Secretary determines necessary.

Health care provider means any entity or individual that furnishes health care, including specialized clinics, health care plans, insurers, organizations, and institutions.

Home care means medical care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to a child in the child's home or other place of residence.

Hospital care means care and treatment furnished to a child who has been admitted to a hospital as a patient.

Nursing home care means care and treatment furnished to a child who has been admitted to a nursing home as a resident.

Outpatient care means care and treatment, including preventive health services, furnished to a child other than hospital care or nursing home care.

Preventive care means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines necessary to provide effective and economical preventive health care.

Respite care means care furnished by an approved health care provider on an intermittent basis for a limited period to an individual who resides primarily in a private residence when such care will help the individual continue residing in such private residence.

Spina bifida means all forms and manifestations of spina bifida except spina bifida occulta (this includes complications or medical conditions that are associated with spina bifida according to the scientific literature).

Vietnam veteran for purposes of spina bifida means the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and for purposes of covered birth defects means the same as defined at § 3.815(c)(1) of this title.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.901 Provision of health care.

(a) *Spina bifida.* VA will provide a Vietnam veteran's child who has been determined under § 3.814 or § 3.815 of this title to suffer from spina bifida with such health care as the Secretary determines is needed by the child for spina bifida. VA may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities.

(b) *Covered birth defects.* VA will provide a woman Vietnam veteran's child who has been determined under § 3.815 of this title to suffer from spina bifida or other covered birth defects with such health care as the Secretary determines is needed by the child for the covered birth defects. However, if VA has determined for a particular covered birth defect that § 3.815(a)(2) of this title applies (concerning affirmative evidence of cause other than the mother's service during the Vietnam era), no benefits or assistance will be provided under this section with respect to that particular birth defect.

(c) *Providers of care.* Health care provided under this section will be provided directly by VA, by contract with an approved health care provider, or by other arrangement with an approved health care provider.

(d) *Submission of information.* For purposes of §§ 17.900 through 17.905:

(1) The telephone number of the Health Administration Center is (888) 820–1756;

(2) The facsimile number of the Health Administration Center is (303) 331–7807;

(3) The hand-delivery address of the Health Administration Center is 300 S. Jackson Street, Denver, CO 80209; and

(4) The mailing address of the Health Administration Center—

(i) For spina bifida is P.O. Box 65025, Denver, CO 80206–9025; and

(ii) For covered birth defects is P.O. Box 469027, Denver, CO 80246–0027.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

Note to § 17.901: This is not intended to be a comprehensive insurance plan and does not cover health care unrelated to spina bifida or unrelated to covered birth defects. VA is the exclusive payer for services paid under §§ 17.900 through 17.905 regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. Any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida or covered birth defects.

§ 17.902 Preauthorization.

(a) Preauthorization from a benefits advisor of the Health Administration Center is required for the following services or benefits under §§ 17.900 through 17.905: rental or purchase of durable medical equipment with a total rental or purchase price in excess of $300, respectively; transplantation services; mental health services; training; substance abuse treatment; dental services; and travel (other than mileage at the General Services Administration rate for privately owned automobiles). Authorization will only be given in those cases where there is a demonstrated medical need related to the spina bifida or covered birth defects. Requests for provision of health care requiring preauthorization shall be made to the Health Administration Center and may be made by telephone, facsimile, mail, or hand delivery. The application must contain the following:

(1) Name of child,

(2) Child's Social Security number,

(3) Name of veteran,

(4) Veteran's Social Security number,

(5) Type of service requested,

(6) Medical justification,

(7) Estimated cost, and

(8) Name, address, and telephone number of provider.

(b) Notwithstanding the provisions of paragraph (a) of this section, preauthorization is not required for a condition for which failure to receive immediate treatment poses a serious threat to life or health. Such emergency care should be reported by telephone to the Health Administration Center within 72 hours of the emergency.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0578.)

§ 17.903 Payment.

(a)(1) Payment for services or benefits under §§ 17.900 through 17.905 will be determined utilizing the same payment methodologies as provided for under the

Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see § 17.270).

(2) As a condition of payment, the services must have occurred:

(i) For spina bifida, on or after October 1, 1997, and must have occurred on or after the date the child was determined eligible for benefits under § 3.814 of this title.

(ii) For covered birth defects, on or after December 1, 2001, and must have occurred on or after the date the child was determined eligible for benefits under § 3.815 of this title.

(3) Claims from approved health care providers must be filed with the Health Administration Center in writing (facsimile, mail, hand delivery, or electronically) no later than:

(i) One year after the date of service; or

(ii) In the case of inpatient care, one year after the date of discharge; or

(iii) In the case of retroactive approval for health care, 180 days following beneficiary notification of eligibility.

(4) Claims for health care provided under the provisions of §§ 17.900 through 17.905 must contain, as appropriate, the information set forth in paragraphs (a)(4)(i) through (a)(4)(v) of this section.

(i) Patient identification information:

(A) Full name,

(B) Address,

(C) Date of birth, and

(D) Social Security number.

(ii) Provider identification information (inpatient and outpatient services):

(A) Full name and address (such as hospital or physician),

(B) Remittance address,

(C) Address where services were rendered,

(D) Individual provider's professional status (M.D., Ph.D., R.N., etc.), and

(E) Provider tax identification number (TIN) or Social Security number.

(iii) Patient treatment information (long-term care or institutional services):

(A) Dates of service (specific and inclusive),

(B) Summary level itemization (by revenue code),

(C) Dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed,

(D) Principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization,

(E) All secondary diagnoses,

(F) All procedures performed,

(G) Discharge status of the patient, and

(H) Institution's Medicare provider number.

(iv) Patient treatment information for all other health care providers and ancillary outpatient services such as durable medical equipment, medical requisites, and independent laboratories:

(A) Diagnosis,

(B) Procedure code for each procedure, service, or supply for each date of service, and

(C) Individual billed charge for each procedure, service, or supply for each date of service.

(v) Prescription drugs and medicines and pharmacy supplies:

(A) Name and address of pharmacy where drug was dispensed,

(B) Name of drug,

(C) National Drug Code (NDC) for drug provided,

(D) Strength,

(E) Quantity,

(F) Date dispensed,

(G) Pharmacy receipt for each drug dispensed (including billed charge), and

(H) Diagnosis for which each drug is prescribed.

(b) Health care payment will be provided in accordance with the provisions of §§ 17.900 through 17.905. However, the following are specifically excluded from payment:

(1) Care as part of a grant study or research program,

(2) Care considered experimental or investigational,

(3) Drugs not approved by the U.S. Food and Drug Administration for commercial marketing,

(4) Services, procedures, or supplies for which the beneficiary has no legal obligation to pay, such as services obtained at a health fair,

(5) Services provided outside the scope of the provider's license or certification, and

(6) Services rendered by providers suspended or sanctioned by a Federal agency.

(c) Payments made in accordance with the provisions of §§ 17.900 through 17.905 shall constitute payment in full. Accordingly, the health care provider or agent for the health care provider may not impose any additional charge for any services for which payment is made by VA.

(d) *Explanation of benefits (EOB).*—(1) When a claim under the provisions of §§ 17.900 through 17.905 is adjudicated, an EOB will be sent to the beneficiary or guardian and the provider. The EOB provides, at a minimum, the following information:

(i) Name and address of recipient,

(ii) Description of services and/or supplies provided,

(iii) Dates of services or supplies provided,

(iv) Amount billed,

(v) Determined allowable amount,

(vi) To whom payment, if any, was made, and

(vii) Reasons for denial (if applicable).

(2) [Reserved]

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0578.)

§ 17.904 Review and appeal process.

For purposes of §§ 17.900 through 17.905, if a health care provider, child, or representative disagrees with a determination concerning provision of health care or with a determination concerning payment, the person or entity may request reconsideration. Such request must be submitted in writing (by facsimile, mail, or hand delivery) within one year of the date of the initial determination to the Health Administration Center (Attention: Chief, Benefit and Provider Services). The request must state why it is believed that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the sender without further consideration. After reviewing the matter, including any relevant supporting documentation, a benefits advisor will issue a written determination (with a statement of findings and reasons) to the person or entity seeking reconsideration that affirms, reverses, or modifies the previous decision. If the person or entity seeking reconsideration is still dissatisfied, within 90 days of the date of the decision he or she may submit in writing (by facsimile, mail, or hand delivery) to the Health Administration Center (Attention: Director) a request for review by the Director, Health Administration Center. The Director will review the claim and any relevant supporting documentation and issue a decision in writing (with a statement of findings and reasons) that affirms, reverses, or modifies the previous decision. An appeal under this section would be considered as filed at the time it was delivered to the VA or at the time it was released for submission to the VA (for example, this could be evidenced by the postmark, if mailed).

Note to § 17.904: The final decision of the Director will inform the claimant of further appellate rights for an appeal to the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0578.)

§ 17.905 Medical records.

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment or that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905 must be provided to VA at no cost.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

[FR Doc. 03–101 Filed 1–7–03; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[RSPA Docket No. 02–13658 (HM–215E)]

RIN 2137–AD41

Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Incorporation by Reference

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) by updating incorporation by reference materials to include the most recent amendments to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). This action is necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft and vessel after these international standards become effective. The other changes proposed in the notice of proposed rulemaking (NPRM) under this docket will be addressed in a separate rule.

DATES: *Effective date:* The effective date of these amendments is January 8, 2003.

Voluntary compliance date: Compliance with the regulations, as amended herein, is authorized as of January 1, 2003.

Incorporation by reference. The incorporation by reference of certain publications listed in these amendments has been approved by the Director of the Federal Register as of January 8, 2003.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366–8553, or Shane Kelley, International Standards, telephone (202) 366–0656, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2002, RSPA published a notice of proposed rulemaking (NPRM) under Docket Number RSPA–2002–13658 (HM–215E), 67 FR 72034, that proposed changes to more fully align the HMR with international standards. Proposed changes were to update the incorporations by reference of three international standards and to solicit comments by January 2, 2003. The standards are Amendment 31 to the IMDG Code, the 2003–2004 edition of the ICAO Technical Instructions, and the twelfth revised edition of the UN Recommendations. We received no comments opposing the incorporation of these updated standards. We are issuing this final rule adopting only the incorporation by reference materials to allow their use beginning January 1, 2003, the effective date of the international standards. Our intent is to prevent disruption for persons transporting hazardous materials in international commerce.

Discussion of Standards and Amendments

Amendment 31 to the IMDG Code, which was recently published by the International Maritime Organization (IMO), contains miscellaneous changes to the IMDG Code concerning classification, labeling, packaging, and documentation. The IMO has established January 1, 2003, as the implementation date for these amendments and is authorizing a one-year transition period, until January 1, 2004, for compliance with the new requirement. Amendments 30 and 31 are authorized for use until January 1, 2004, at which time all shipments must conform to Amendment 31. With certain exceptions, we authorize in § 171.12 of the HMR, shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel. At least 150 countries, with combined merchant fleets accounting for more than 98% of the world's gross tonnage, use the IMDG Code as a basis for regulating vessel transport of hazardous materials.

The 2003–2004 edition of the ICAO Technical Instructions is effective January 1, 2003. The revised edition incorporates numerous miscellaneous changes concerning classification, labeling, packaging and documentation. In § 171.11 of the HMR, we authorize the offering, accepting and transporting of hazardous materials by air when prepared in conformance with the ICAO Technical Instructions and by motor vehicle both before and after air transportation, with certain exceptions. Virtually all shipments of hazardous materials transported internationally by aircraft are transported in accordance with the ICAO Technical Instructions, as well as the majority of the domestic shipments. The ICAO Technical Instructions are updated every two years.

The twelfth revised edition of the UN Recommendations is also effective January 1, 2003. The UN Recommendations are not regulations but are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially by the UN Committee of Experts. They serve as the basis for the IMDG Code and the ICAO Technical Instructions.

Uniform national and international hazardous materials transportation regulations enhance transportation safety and facilitate trade of hazardous materials. International carriers engaged in the transportation of hazardous materials by air generally elect to comply with the ICAO Technical Instructions, while vessel operators generally elect to comply with the IMDG Code. In so doing, these carriers are able to train their hazmat employees in a single set of hazardous materials transportation requirements, thereby minimizing the possibility of improperly transporting a shipment of hazardous materials because of differences in domestic regulations. Authorizing the use of the updated editions of international standards will facilitate the international transportation of hazardous materials by aircraft and vessel by ensuring a basic consistency between the HMR and the international regulations.

Based on the above discussion, we are revising § 171.7, to incorporate by reference Amendment 31 to the IMDG Code, the 2003–2004 edition of the ICAO Technical Instructions, and the twelfth revised edition of the UN Recommendations.

Sequence of Optional Shipping Paper Description in the NPRM

The December 3, 2002 NPRM contains an error in § 172.203(b), pertaining to the proposed optional sequence of information for the basic description on shipping papers. We intended that the proposed description be identical to that specified in the UN Recommendations, *ie.*, identification (ID) number, proper shipping name, hazard class, subsidiary hazard, and packing group. A correct example would be "UN2744, Cyclobutyl chloroformate, 6.1, (8.3), PG II." The proposed rule incorrectly specified the order of sequence as ID number, hazard class, subsidiary hazard, proper shipping name, and packing group.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. Benefits resulting from the adoption of the amendments in this final rule include enhanced transportation safety resulting from the consistency of domestic and international hazard communications and continued access to foreign markets by domestic shippers of hazardous materials. This final rule applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors and training companies.

Adoption of the amendments in this final rule should result in minimal cost savings by easing the regulatory compliance burden for shippers engaged in domestic and international commerce by aircraft and vessel. Although preparation of a regulatory impact analysis or regulatory evaluation is not warranted because these amendments do not impose mandatory additional requirements, a preliminary regulatory evaluation addressing the December 3, 2002 NPRM is available for review in Docket Number RSPA–2002–13658.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), (3), and (5), above, and would preempt State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to incorporate changes adopted in international standards, effective January 1, 2003. Without adoption of the amendments in this final rule, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage. These companies would be forced to comply with a dual system of regulations. The changes in this rulemaking are intended to avoid this result.

Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption will be April 8, 2003.

C. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This rule will facilitate the transportation of hazardous materials in international commerce by providing consistency with, and authorizing the use of, international standards contained in the 2003–2004 ICAO Technical Instructions and Amendment 31 to the IMDG Code. This final rule applies to offerors and carriers of hazardous materials, some of whom are small entities such as chemical users and suppliers. The total net increase in costs to small businesses in implementing this rulemaking is minimal. We believe that any costs associated with adoption of these amendments will be outweighed by the benefits. This final rule will facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. By adopting the amendments in this final rule, U.S. companies, including numerous small entities competing in foreign markets, will have continued access to foreign markets and will not be at an economic disadvantage by being forced to comply with a dual system of regulations. Consistency with international requirements also will result in enhanced safety. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

There are no information collection requirements in this final rule.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We analyzed the effects of these amendments, as well as other proposals, on the environment and whether a more comprehensive environmental impact statement may be required. Our findings conclude that there are no significant environmental impacts associated with the amendments being adopted in this final rule. For interested parties, an environmental assessment is available in the public docket.

I. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in the paragraph (a)(3) table, the following changes are made:

a. Under the entry "International Civil Aviation Organization (ICAO)", the existing entry is revised;

b. Under the entry "International Maritime Organization (IMO)", the entry "International Maritime Dangerous Goods (IMDG) Code, 1994 Consolidated Edition, as amended by Amendment 29 (1998) (English edition)" is removed and one entry is added in its place; and

c. Under the entry "United Nations", the entry "UN Recommendations on the Transport of Dangerous Goods, Eleventh Revised Edition (1999)" is revised.

The revisions and addition read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
International Civil Aviation Organization (ICAO):	
* * * * * * *	
Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), DOC 9284–AN/905, 2003–2004 Edition, including Erratum.	171.11; 172.202; 172.401; 172.512; 172.602
* * * * * * *	
International Maritime Organization (IMO):	
* * * * * * *	
International Maritime Dangerous Goods (IMDG Code), 2002 Edition, including Amendment 31–02 (English Edition).	171.12; 172.202; 172.401; 172.502; 172.602; 173.21; 176.2; 176.5; 176.11; 176.27; 176.30
* * * * * * *	
United Nations:	
* * * * * * *	
UN Recommendations on the Transport of Dangerous Goods, Twelfth Revised Edition (2001).	172.202; 172.401; 172.502; 173.24
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Issued in Washington, DC on January 3, 2003 under authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator, Research and Special Programs Administration.

[FR Doc. 03–325 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 68, No. 5
Wednesday, January 8, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–24–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to General Electric (GE) CF6–6 series turbofan engines. This proposal would require a reduction of the cyclic life limit for certain high pressure turbine rotor (HPTR) rear shafts, and would require removing certain HPTR rear shafts from service before exceeding the new, lower cyclic life limit. In addition, the proposal would require removing from service certain HPTR rear shafts that currently exceed, or will exceed, the new, lower cyclic life limit according to the compliance schedule described in this proposal. The actions specified by the proposed AD are intended to prevent cracks in HPTR rear shafts that could result in uncontained engine failure and damage to the airplane.

DATES: Comments must be received by March 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–24–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*", Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: 781–238–7192, fax: 781–238–7199, e-mail: *karen.curtis@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–24–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–24–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

An updated low-cycle fatigue (LCF) analysis of certain HPTR rear shaft part numbers installed in CF6–6 engines, including an improved 3D finite element analysis of certain features, was performed by the manufacturer. That analysis indicated the need to lower the cyclic life limit for these part numbers. The updated analysis was prompted by a recently completed analysis on the same rotor assembly, but with different blades.

This proposal will require a new life limit for these HPTR rear shaft P/N's of 8,950 cycles-since-new. On August 8, 2002, the manufacturer issued Temporary Revision TR 05–0022, revising the life limits section of the engine manual to reflect the new life limit for these shafts. Because the fleet contains rear shafts that exceed this new lower limit, a draw down plan is required. This condition, if not corrected could result in LCF cracking and failure of the shafts, which could result in uncontained engine failure and damage to the airplane.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF6–6 series turbofan engines of the same type design, the proposed AD would establish a new, lower cyclic life limit of 8,950 CSN for HPTR rear shafts P/N's 9137M13G01/G02/G03, 9138M22G01/G02/G09/G10, 9138M25G02, and 9687M22G04/G07/G10 and would require removing certain HPTR rear shafts from service before exceeding the new, lower cyclic life limit. In addition, the proposal would require removing from service certain HPTR rear shafts that currently exceed, or will exceed, the new, lower cycle life limit according to a compliance schedule based on accumulated cycles on the rear shaft on the effective date of this AD.

Economic Analysis

There are approximately 55 GE CF6–6 series turbofan engines of the affected design in the domestic fleet that would be affected by this proposed AD. There are no foreign registered engines. There are no labor or parts costs associated with the implementation of this proposed action. The total cost of the proposed AD to U.S. operators is

estimated to be $41,690 per engine, which is the cost of new rear shafts.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 2002–NE–24–AD.

Applicability

This airworthiness directive (AD) is applicable to General Electric Company CF6–6 series turbofan engines. These engines are installed on, but not limited to McDonnell Douglas DC–10 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent cracks in high pressure turbine rotor (HPTR) rear shafts, which could result in uncontained engine failure and damage to the airplane, do the following:

(a) Remove from service HPTR rear shafts, part numbers (P/N's) 9137M13G01/G02/G03, 9138M22G01/G02/G09/G10, 9138M25G02, and 9687M22G04/G07/G10 in accordance with Table 1 as follows:

TABLE 1.—HPTR REAR SHAFT REMOVAL SCHEDULE

If the rear shaft cycles-since-new (CSN) on the effective date of this AD are:	Then remove the rear shaft
(1) Fewer than 5,000 CSN	Before exceeding 8,950 CSN
(2) 5,000 CSN or more, but fewer than 8,950 CSN	Within 3,950 additional cycles-in-service (CIS) from the effective date of this AD or before 11,550 CSN, whichever occurs earlier.
(3) 8,950 CSN or more	At next HPTR rear shaft piece part exposure, or within 2,600 additional cycles-in-service (CIS), whichever occurs earlier.

(b) After the effective date of this AD, do not install any HPTR rear shaft, P/N 9137M13G01/G02/G03, 9138M22G01/G02/G09/G10, 9138M25G02, or 9687M22G04/G07/G10, that has 8,950 or more CSN into an engine.

(c) Except as provided in paragraph (a) of this AD, this action establishes a new, cyclic life limit of 8,950 CSN for HPTR rear shaft P/N's 9137M13G01/G02/G03, 9138M22G01/G02/G09/G10, 9138M25G02, and 9687M22G04/G07/G10 which is published in Chapter 05–11–03 of CF6–6 Engine Shop Manual, GEK 9266.

Definition

(d) For the purpose of this AD, HPTR rear shaft piece-part exposure is defined as complete disassembly of the rear shaft from the HPTR structure in accordance with the manufacturer's engine manual.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(f) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on January 3, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–330 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–231–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 and –400F series airplanes. This proposal would require initial and, for certain airplanes, repetitive inspections of the

rivets in the forward, top, and side panels of the nose wheel well (NWW) for discrepancies; and follow-on inspections and corrective action, if necessary. This proposal also provides eventual terminating action for the repetitive inspections. This action is necessary to find and fix discrepancies of the rivets in the NWW panels, which could result in failure of the rivets and consequent reduced structural integrity of the panels and rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 24, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–231–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–231–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that missing rivet heads were found in the side panels of the nose wheel well (NWW) between body stations 260 and 340 of the canted pressure bulkhead on certain Boeing Model 747–400 and –400F series airplanes. Investigation revealed that the rivets were incorrectly heat-treated and were made of 7050 aluminum, which is susceptible to stress corrosion cracking. Rivets in the subject area should be made of 2017 aluminum, which is a more durable material. One airplane had 44 discrepant rivets (missing heads, incorrectly heat-treated) at random locations on both side panels, 28 of the rivets were found using a detailed inspection, and 16 were found using an indirect conductivity eddy current inspection method. Such discrepancies, if not found and fixed, could result in failure of the rivets and consequent reduced structural integrity of the NWW panels and rapid depressurization of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 747–53A2472, including Appendix A, dated June 7, 2001, which describes procedures for initial and repetitive detailed inspections and a follow-on indirect conductivity eddy current inspection for discrepancies (missing rivet heads or incorrectly heat-treated rivets) in the forward, top, and side panels of the NWW between fuselage stations 260 and 340 of the canted pressure bulkhead; and corrective action, if necessary. The corrective action includes the following:

- If up to three adjacent rivets with missing heads are found, remove the discrepant rivets and install permanent or time limited repair fasteners.
- If four or more adjacent rivets with missing heads are found, remove discrepant rivets and do a high frequency eddy current inspection of the web for cracking around the intact fasteners at each end of the line of missing rivets.
- If web cracking is found, the service bulletin specifies contacting the manufacturer for repair instructions.
- If no web cracking is found, install permanent or time limited repair fasteners.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Service Information and Proposed Rule

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be done per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 43 airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to do the proposed detailed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the detailed inspection proposed by this AD on U.S. operators is estimated to be $1,440, or $240 per airplane, per inspection cycle.

It would take approximately 10 work hours per airplane to do the proposed indirect conductivity eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the indirect conductivity eddy current inspection proposed by this AD on U.S. operators is estimated to be $3,600, or $600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet done any of the proposed requirements of this AD action, and that no operator would do those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–231–AD.

Applicability: Model 747–400 and –400F series airplanes, line numbers 1141 through 1183 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepancies of the rivets in the nose wheel well (NWW) panels, which could result in failure of the rivets and consequent reduced structural integrity of the panels and rapid depressurization of the airplane, do the following:

Repetitive/Follow-on Inspections/Corrective Action

(a) Within 6 months after the effective date of this AD: Do a detailed inspection of the forward, top, and side panels of the NWW for missing rivet heads, between fuselage stations 260 and 340 of the canted pressure bulkhead, per Figure 2 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2472, including Appendix A, dated June 7, 2001.

(1) If any missing rivet head is found, before further flight, replace with a permanent or time limited repair fastener and do the actions specified in paragraph (b) of this AD.

(2) If no missing rivet head is found, before further flight, do the actions required by paragraph (c) of this AD, or repeat the detailed inspection at least every 6 months until paragraph (c) of this AD is done.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) If any missing rivet head is found during any inspection required by paragraph (a) of this AD: Within 30 days after doing the detailed inspection, do an indirect conductivity eddy current inspection for discrepant rivets (incorrectly heat-treated) per Figure 2 of the Work Instructions of the service bulletin. If any discrepant rivet is found, before further flight, replace with a permanent or time limited repair fastener as required by paragraph (b)(1) or (b)(2) of this AD, as applicable. If no discrepant rivet is found, no further action is required by this AD. Replace any time limited repair fasteners with permanent fasteners within 24 months after installation.

(1) If up to three adjacent discrepant rivets are found: Before further flight, remove the affected rivets and replace with permanent or time limited repair fasteners per the Work Instructions of the service bulletin.

(2) If four or more adjacent discrepant rivets are found: Before further flight, remove the affected rivets and do a high frequency eddy current inspection of the web for cracking around the intact fasteners at each end of the line of missing rivets per the Work Instructions of the service bulletin.

(i) If no web cracking is found, before further flight, install permanent or time limited repair fasteners per the Work Instructions of the service bulletin.

(ii) If any web cracking is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Terminating Action

(c) For airplanes on which no missing rivet head is found during the inspection required by paragraph (a) of this AD: Within 2 years after the effective date of this AD, do an indirect conductivity eddy current inspection

for discrepant rivets (incorrectly heat-treated) of the NWW panels between fuselage stations 260 and 340 of the canted pressure bulkhead per the Work Instructions of Boeing Alert Service Bulletin 747–53A2472, including Appendix A, dated June 7, 2001.

(1) If any discrepant rivet is found, before further flight, replace with a permanent or time limited repair fastener. Replace any time limited repair fasteners with permanent fasteners within 24 months after installation.

(2) If no discrepant rivet is found, no further action is required by this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Renton, Washington, on December 31, 2002.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–333 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131478–02]

RIN 1545–BB25

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section 1502 of the Internal Revenue Code regarding proposed regulations that redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain dispositions and deconsolidations of such stock.

DATES: The public hearing originally scheduled for January 15, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, October 23, 2002 (67 FR 65060), announced that a public hearing was scheduled for January 15, 2003, at 10 a.m., in room 6718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code. The public comment period for these regulations expires on January 21, 2003. Outlines of oral testimony were due on December 27, 2002. The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit outlines of topics to be addressed. As of Friday, January 3, 2003, no one has requested to speak. Therefore, the public hearing scheduled for January 15, 2003, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 03–353 Filed 1–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124667–02]

RIN 1545–BA78

Disclosure of Relative Values of Optional Forms of Benefit; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations relating to the disclosure of relative values of optional forms of benefit under section 417 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for Tuesday, January 14, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor in the Regulations Unit, Associate Chief Counsel (Income Tax & Accounting), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, October 7, 2002 (67 FR 62417), announced that a public hearing was scheduled for January 14, 2003, at 10 a.m., in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20044. The subject of the public hearing is proposed regulations under section 417 of the Internal Revenue Code. The deadline for submitting outlines and requests to speak at the hearing for these proposed regulations expired on January 2, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of January 3, 2003, no one has requested to speak. Therefore, the public hearing scheduled for January 14, 2003, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting).

[FR Doc. 03–352 Filed 1–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 965; 2002R–421P]

RIN 1512–AD05

Proposed Expansion of the Russian River Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: ATF has received a petition proposing the expansion of the Russian River Valley viticultural area in Sonoma County, California. The petitioned 767-acre expansion lies on the eastern boundary of the Russian River Valley viticultural area, which is entirely within the Sonoma Coast and North Coast viticultural areas of northern California. We propose this action under the authority of the Federal Alcohol Administration Act. We invite comments on this proposal.

DATES: We must receive written comments by March 10, 2003.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 965);
- 202–927–8525 (Facsimile);
- *nprm@atfhq.atf.treas.gov* (E-mail);
- *http://www.atf.treas.gov* (An online comment form is available with this notice).

See the "Public Participation" section of this notice for specific requirements, as well as for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Specialist, Regulations Division (San Francisco, CA), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA 94105–1906; telephone (415) 271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

Authority

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes ATF to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR part 9, American Viticultural Areas, contains the list of approved viticultural areas.

Definition

Title 27 CFR 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9.

Requirements

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence of local and/or national name recognition of the proposed viticultural area as the area specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence of geographical characteristics, such as climate, soil, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features found on maps of the largest applicable scale that are approved by the United States Geological Survey (USGS); and
- A copy or copies of the appropriate USGS-approved map(s) with the boundaries prominently marked.

Additionally, for a wine to use the name of a viticultural area as an appellation of origin, 85 percent of the grapes in the wine must be grown within the viticultural area.

Expansion Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition from Donald L. Carano of the Ferrari-Carano Vineyards and Winery in Healdsburg, California, proposing a 767-acre expansion of the established 96,000-acre Russian River Valley viticultural area (*See* 27 CFR 9.66). This proposed expansion would result in less than a one percent increase in the established area's size. The petitioner states that approximately 365 of the proposed expansion's 767 acres are currently planted to grapes.

Located approximately 55 miles north of San Francisco, the proposed expansion fits into a 90° angle in the current Russian River Valley viticultural area's eastern boundary at the village of Fulton, which is just northwest of the city of Santa Rosa in Sonoma County, California. The proposed expansion is bordered by Fulton Road on the west, River Road on the north, U.S. Highway 101 on the east, and two locally known streets, Dennis Lane and Francisco Avenue, to the south.

The petitioner states that the proposed expansion has the same climate and other characteristics of the current Russian River Valley viticultural area, and, therefore, the proposed expansion meets the criteria for inclusion in the established viticultural area. The petitioner also notes that, in the past, some winegrape growers in the proposed expansion area have erroneously believed their vineyards to be within the boundaries of the Russian River Valley viticultural area.

Name Evidence

The petitioner provided evidence that the proposed expansion area, adjacent to the established area's boundaries, is also referred to as the Russian River Valley viticultural area. A Wine Country Living magazine map of viticultural areas, dated July 2002, shows the proposed expansion area as being within the established Russian River Valley viticultural area's borders. A June 2002 Wine Spectator Online article states that the Vintners Inn hotel is in the Russian River Valley viticultural area, although it is actually in the proposed expansion. The Russian River Wine Road web site (1998–2002) also locates the Vintners Inn, as well as Siduri Wines, inside the Russian River viticultural area, even though both are within the proposed expansion area. In August 2002, the Russian River Valley Winegrape Growers Association website listed several members who are in the proposed expansion area. Road signs in the proposed expansion area also indicate that the area is associated locally with the Russian River.

Evidence of Boundaries

Historically, the proposed expansion area was used for prune orchards and vineyards, according to Mr. John Marcucci, whose family has owned thirty acres in the proposed area for four generations. He recalls that, prior to 1918, the acreage was planted to Petite Syrah, Zinfandel, and Pinot Noir wine grapes. Mr. Marcucci and Mr. Henry Bisordi, both life long residents of the area, also recollect that years ago prune orchards were more profitable than vineyards, but when the market turned, some orchards were replaced with vineyards. The previous owner of the Vintners Inn acreage claims that approximately 50 acres of this land was devoted to French Colombard wine grapes and orchards until about 25 years ago when the orchards were removed for Chardonnay, Pinot Blanc, and Sauvignon Blanc wine grape plantings. Currently, 48 percent, or almost half of the 767 acre proposed expansion area, is used for viticulture.

Growing Conditions

Treasury Decision ATF–159 of October 21, 1983, 48 FR 48813, established the Russian River Valley as a viticultural area. This Treasury Decision stated:

> The Russian River viticultural area includes those areas through which flow the Russian River or some of its tributaries and where there is a significant climate effect from coastal fogs. The specific growing climate is the principal distinctive characteristic of the Russian River Valley viticultural area. The area designated is a cool growing coastal area because of fog intruding up the Russian River and its tributaries during the early morning hours.

Climate

The petitioner states that the term "Russian River," as it applies to viticulture, refers to that portion of the Russian River valley influenced by cool temperatures and coastal fog. The proposed expansion area has heavy fog, according to an undated map included in the petition and titled "Lines of Heaviest and Average Maximum Fog Intrusion for Sonoma County."

The current petitioner and Treasury Decision ATF–159, which established the Russian River Valley viticultural area, both refer to the Winkler degree-day (accumulated heat units) system, which is used to classify grape-growing climatic regions (*See* "General Viticulture," Albert J. Winkler, University of California Press, 1975). As noted in Treasury Decision ATF–159, "The Russian River Valley viticultural area is termed 'coastal cool' with a range of 2000 to 2800 accumulated heat units."

The petitioner conducted a degree-day study of three vineyards from April 2001 through October 2001, which coincides with Winkler's growing season. Two of these vineyards are within the established Russian River Valley viticultural area, while the other is in the proposed expansion area. This study measured air temperature, wind speed, precipitation, and humidity at the three area vineyards. The petitioner provided the degree-day (accumulated heat units) results shown in the following table:

Vineyard	Degree-days (accumulated heat units)
In the *established* viticultural area:	
Vino Farms Vineyard	2,477
Storey Creek Vineyard	2,736
In the *proposed expansion* area:	
LeCarrefour Vineyards	2,636

The results from the three vineyards studied show that all three are within the 2,000 to 2,800 accumulated heat units range found in the Russian River Valley viticultural area, as stated in Treasury Decision ATF–159. ATF independently confirmed that LeCarrefour Vineyards, at 4350 Barnes Road, Santa Rosa, California, is within the petitioned expansion area.

Elevation

Elevations within the proposed expansion area range from 130 feet to 160 feet, with a gentle rise from southwest to northeast, according to the two USGS topographic maps covering the expansion area. These elevations are similar to those found in the portion of the established Russian River Valley viticultural area immediately adjacent to the proposed expansion.

Soil

The predominant soils of the proposed expansion of the Russian River Valley viticultural area are Huichica Loam, Yolo Clay Loam, and Yolo Silt Loam, as depicted on the Sonoma County Soil Survey map (USDA, 1972), sheet 74. These soils are also found within the established Russian River Valley viticultural area in vineyards to the north of the proposed area, as depicted on pages 57 and 66 of the maps developed by the USDA's Forest Service and Soil Conservation Service in May 1972. Treasury Decision ATF–159, which established the Russian River Valley viticultural area, does not identify the predominant soils of the area or indicate any uniqueness in the soils of the viticultural area.

Watershed

The established Russian River Valley viticultural area and the proposed expansion area are in the large Russian River Valley watershed, as noted on the (California) Department of Fish and Game Inland Fisheries Division's "Russian River Watershed" map of April 1, 1997. This watershed includes the Russian River and the tributaries noted in Treasury Decision ATF–159.

Boundary Description

The proposed expansion area is along the current eastern boundary line of the Russian River Valley viticultural area in a 90° angle at the village of Fulton, just northwest of the city of Santa Rosa, California. The proposed expansion area boundary has four irregular sides and is wider along its southern side than at its northern side. Its overall size is 767 acres, or about 1.2 square miles. The general road boundaries are Fulton Road to the west, River Road to the north, U.S. Highway 101 to the east, and Dennis Lane and Francisco Avenue to the south. Fulton Road on the west and River Road on the north form a portion of the current Russian River Valley viticultural area's eastern boundary.

Maps

The proposed expansion of the Russian River Valley viticultural area is shown on two USGS maps: the Santa Rosa Quadrangle, California—Sonoma Co., 7.5 Minute Series, edition of 1994; and the Sebastopol Quadrangle, California, 7.5 Minute Series, edition of 1954, photorevised 1980.

Public Participation

We request comments from anyone interested. Please support your comments with historical data or data concerning the growing conditions or boundaries of the area. We will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We will not acknowledge receipt of any comments. All comments received will be considered as originals.

You may submit comments in any of five ways:

- *By Mail:* You may send written comments to ATF at the address listed in the **ADDRESSES** section.
- *By Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Comments transmitted as facsimiles must—
  (1) Be legible;
  (2) Reference this notice number;
  (3) Be on 8½ x 11-inch paper,
  (4) Contain a legible, written signature; and
  (5) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- By E-mail: You may e-mail comments to *nprm@atfhq.atf.treas.gov*. Comments transmitted as electronic-mail must—
  (1) Contain your name, mailing address, and e-mail address;
  (2) Reference this notice number on the subject line; and
  (3) Be legible when printed on 8½ x 11-inch paper.
- *Online:* We provide a comment form with the online copy of this proposed rule. See the "Regulations" section of the ATF Internet Web site at *http://www.atf.treas.gov*.
- *In Person:* You may write to the Director to ask for a public hearing. The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Disclosure

You may inspect copies of the petition, the proposed regulations, the appropriate maps, and any written comments received by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also obtain copies of documents and comments related to this notice at 20 cents per page. If you want to view or request copies of comments, call the ATF librarian at 202–927–7890.

For your convenience, we will post comments received in response to this notice on the ATF Web site. All

comments posted on our Web site will show the names of commenters, but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the ATF Reference Library. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/* and select "Regulations," then "Notices of proposed rulemaking (Alcohol)." Next, select "View Comments" under this notice number.

We will not recognize any comments or submitted materials as confidential. We will disclose all information in comments and the names of commenters. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

Regulatory Analyses and Notices

Paperwork Reduction Act

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small businesses. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, no regulatory assessment is required.

Drafting Information

The principal author of this document is N. A. Sutton (San Francisco), Regulations Division, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

ATF proposes to amend Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Amend §9.66, Russian River Valley viticultural area by removing "Road" and adding in its place "Avenue" at the end of paragraph (c)(9), by redesignating paragraphs (c)(12) through (c)(24) as (c)(14) through (c)(26), by revising paragraphs (c)(10) and (c)(11), and by adding new paragraphs (c)(12) and (c)(13) to read as follows:

Subpart C—Approved American Viticultural Areas

§9.66 Russian River Valley.

* * * * *

(c) Boundaries. * * *

(10) Proceed north on Wright Avenue, which becomes Fulton Road, for approximately 3.8 miles to an unnamed unimproved road running to the east in Section 5 of T7W, R8W, which becomes a light duty road locally known as Francisco Avenue, and continue east on Francisco Avenue for about 0.6 mile to its intersection with the eastern boundary line of Section 5 in T7W, R8W, at a point where Francisco Avenue makes a 90° turn to the south.

(11) Proceed north along that section line for about 500 feet to a point due west of the intersection of Barnes Road and an unnamed light duty road locally known as Dennis Lane.

(12) From that point, proceed east in a straight line to Dennis Lane, continue east on Dennis Lane to its end, and continue due east in a straight line to U.S. Highway 101, passing onto the Santa Rosa map in the process.

(13) Proceed northwest along U.S. Highway 101, passing onto the Sebastopol map, to its intersection with an unnamed medium duty road locally known as River Road west of U.S. Highway 101 and as Mark West Springs Road east of U.S. Highway 101.

* * * * *

Signed: December 20, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 03–286 Filed 1–7–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. S–778–A]

RIN 1218–AB 81

Standards Improvement Project—Phase II

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of comment period.

SUMMARY: On October 31, 2002, OSHA published a proposed rule entitled "Standards Improvement Project—Phase II". The proposal provided for a period to receive public comment to end on December 30, 2002. OSHA is extending the deadline for receipt of public comment until January 30, 2003. This action is in response to interested parties who have requested additional time to submit their comments to the record.

DATES: Comments and data must be submitted by January 30, 2003.

ADDRESSES: Submit three copies of written comments to the Docket Office, Docket No. S–778–A, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–2350). Commenters may transmit written comments of 10 pages or less by fax to the Docket Office at (202) 693–1648.

You may submit comments electronically to *http://ecomments.osha.gov*. Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach the materials to your electronic comments.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Ms. Bonnie Friedman, Director, OSHA Office of Information and Consumer Affairs, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–1999). For technical inquiries, contact Mr. Robert Manware, Office of Physical Hazards, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210

(telephone (202) 693–2299; fax: (202) 693–1678). For additional copies of this **Federal Register** notice, contact the Office of Publications, Room N–3101, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–1888). Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's website on the Internet at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION: In 1995, the Agency identified a number of provisions in its regulations and standards that were inconsistent, duplicative, outdated, or in need of being rewritten in plain language. In 1998, as part of the process of correcting such provisions, OSHA made several substantive revisions to its health and safety standards that reduced the regulatory obligations of employers while maintaining the safety and health protection afforded to employees (63 FR 33450, June 18, 1998). During and after this rulemaking, the Agency identified several other regulatory provisions in its safety and health standards involving notification of use, frequency of exposure monitoring and medical surveillance, and similar provisions that it believes are unnecessary or ineffective in protecting employee safety and health. OSHA proposed to make substantive revisions to a number of the health standard provisions identified in this process on October 31, 2002 (67 FR 66494). The period for filing public comment on the proposal was to end on December 30, 2002. Interested parties, including the AFL–CIO, have requested an extension of the deadline for submitting comments based on the need for additional time to provide a thorough review and response to the substantive provisions proposed for revision in the notice. OSHA, therefore, is extending the deadline for submitting comments from December 30, 2002, until January 30, 2003.

Authority

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this document. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 29 CFR part 1911.

Signed in Washington, DC on January 2, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–316 Filed 1–7–03; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 010203A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna; Commercial Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: NMFS will conduct four public hearings to receive comments from fishery participants and other members of the public regarding proposed regulations to reduce dead discards of Atlantic bluefin tuna (BFT) in the Atlantic pelagic longline fishery and emergency regulations in the Atlantic shark fisheries that implemented commercial quotas for 2003 and suspended the commercial minimum size limit. NMFS previously published the proposed rule regarding incidental catch requirements of BFT on December 24, 2002. NMFS previously published the emergency rule regarding Atlantic sharks on December 27, 2002.

DATES: Written comments on the proposed rule regarding BFT must be received by 5 p.m. on February 7, 2003. Written comments on the emergency rule regarding Atlantic sharks must be received by 5 p.m. on February 14, 2003. The public hearings will be held from January 22 to January 30, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Barnegat Light, NJ; Manteo, NC; Treasure Island, FL; and Fairhaven, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Dianne Stephan at 978–281–9260 regarding the proposed rule on BFT and Karyl Brewster-Geisz at 301–713–2347 regarding the emergency rule on commercial shark management measures.

SUPPLEMENTARY INFORMATION: NMFS proposes to amend regulations governing the BFT fishery to reduce discards of BFT in the Atlantic pelagic longline fishery. The intent of these actions is to minimize dead discards of BFT and improve management of the Atlantic pelagic longline fishery, while complying with the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and allowing harvest of BFT consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas. The December 24, 2002, proposed rule (67 FR 78404) contains the background information for this measure and that information is not repeated here.

NMFS issued an emergency rule, effective December 31, 2002, that set the 2003 commercial quotas for large and small coastal sharks, suspended the commercial minimum size limit, and allowed regulations on season-specific quota adjustments and counting dead discards and state landings after a Federal closure against the commercial quotas to go into effect. These regulations are necessary to ensure that the regulations in force are based on the best available science. The December 27, 2002, emergency rule (67 FR 78990) contains the background information for these measures and that information is not repeated here.

Hearing and Meeting Dates, Times, and Locations

The hearings for the proposed and emergency rules will be conducted jointly at the identified locations. NMFS intends to dedicate half of the hearing time to each rule. The public hearing schedule is as follows:

Wednesday, January 22, 2003 - Barnegat Light, NJ, 7 - 9 p.m.

Barnegat Light Fire House
10th Boulevard Street
Long Island Beach
Barnegat Light, NJ 08006

Monday, January 27, 2003 - Manteo, NC, 7 - 9 p.m.

North Carolina Aquarium
Airport Road
Manteo, NC 27954

Tuesday, January 28, 2003 - Treasure Island, FL, 7 - 9 p.m.

Garden Room
City of Treasure Island Community Center
1 Park Place at 106th Avenue
Treasure Island, FL 33706

Thursday, January 30, 2003 - Fairhaven, MA, 7 - 9 p.m.

Holiday Inn Express
110 Middle Street
Fairhaven, MA 02719

Special Accommodations

These public hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed Brad McHale (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

Dated: January 2, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–323 Filed 1–7–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 5
Wednesday, January 8, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, January 9, 2003, Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting January 9, 2003 begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Review previous meeting minutes and approve, RAC member/subcommittee reports, Proxy votes and absent voting members/Quorum, Overhead Discussion and Decision, Review Sierra RAC Rating Method, and Funding Multiple Year Projects. Time will also be set aside for public comments at the end of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Heidi L. Perry,

Acting Forest Supervisor.

[FR Doc. 03–329 Filed 1–7–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB88

National Environmental Policy Act Documentation Needed for Limited Timber Harvest

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed interim directive; request for comment.

SUMMARY: The Forest Service gives notice of and requests comment on proposed revisions to its directives for implementing the National Environmental Policy Act and Council on Environmental Quality regulations contained in Forest Service Handbook 1909.15, Chapter 30, which addresses categorical exclusions from requirements to prepare environmental disclosure documents. The proposal would add three categorical exclusions to Section 31.2 that are applicable to small timber harvesting projects. These categorical exclusions will not apply where there are extraordinary circumstances, such as adverse effects on threatened and endangered species or their designated critical habitat, wilderness areas, inventoried roadless areas, wetlands, and archeological or historic sites. The intended effect is to facilitate the implementation of limited timber harvest projects that do not have significant effects on the human environment. Public comment is invited and will be considered in development of the final directive.

DATES: Comments must be received in writing by March 10, 2003.

ADDRESSES: Send written comments via the U.S Postal Service to: Limited Timber Harvest, Forest Service—CAT, USDA, P.O. Box 221090, Salt Lake City, Utah 84122.

Comments also may be submitted via facsimile to (801) 517–1014 or by e-mail to *limitedtimber@fs.fed.us*. If comments are sent via facsimile or e-mail, the public is requested not to send duplicate written comments via regular mail.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Dave Sire, Ecosystem Management Coordination Staff, (202) 205–0895, or Darci Birmingham, Forest and Rangeland Management Staff, (202) 205–1759. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 4 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Need for the Proposed Direction

The Council on Environmental Quality (CEQ) regulations at 40 CFR 1507.3 provide that agencies may, after notice and comment, adopt categories of actions that do not have significant impacts on the human environment and, consequently, do not require preparation of an environmental assessment or an environmental impact statement. The agency's first timber harvest related categorical exclusion, published in 1981, broadly identified actions of limited size or magnitude. Since 1981, the agency's categorical exclusion concerning small timber harvest activities has been revised several times to better define the category and to add size or volume limits. The agency's most recent revision to the timber harvest-related category occurred in 1992, when the category's limits of 100,000 board feet or 10 acres, were expanded to allow harvest of green timber up to 250,000 board feet and salvage harvest of up to 1 million board feet (57 FR 43180; September 18, 1992). This 1992 revision also allowed up to one mile of low-standard road construction.

Current Forest Service procedures for complying with and implementing the National Environmental Policy Act (NEPA) are set out in Forest Service Handbook (FSH) 1909.15. Chapter 30 of FSH 1909.15 establishes two types of categorical exclusions. The first, set out at section 31.1, consists of categories of actions that are so routine and limited that a record is not required. The second type, set out at section 31.2, consists of categories of routine actions that require documentation in a Decision Memo of the rationale for not preparing an environmental assessment or an environmental impact statement. The agency is proposing three new categorical exclusions that would fall within this second type of categorical exclusion that requires a Decision Memo.

On September 18, 1998, a lawsuit was filed against the Forest Service arguing that the 1992 categorical exclusions were improperly promulgated. On September 28, 1999, the United States District Court for the Southern District of Illinois found that the categorical exclusions were properly promulgated. However, the court found insufficient evidence in the record to support the agency's decision to set the volume limits in Categorical Exclusion 4 at 250,000 board feet of merchantable wood products for timber harvest and 1 million board feet of merchantable wood products for salvage. Accordingly, the court declared Categorical Exclusion 4 in section 31.2 of Chapter 30 FSH 1909.15 null and void and enjoined the agency from its further use.

In an October 1, 1999, letter, the Associate Chief for Natural Resources notified the Regional Foresters of the court's injunction and instructed them to refrain from further use of Categorical Exclusion 4. The agency has recently issued Interim Directive No. 1909.15–2002–1 to formally notify employees to discontinue use of Categorical Exclusion 4 in Forest Service Handbook 1909.15, Environmental Policy and Procedures.

Most timber harvest projects that were originally excluded under Categorical Exclusion 4 were subsequently reconsidered, analyzed, and documented in environmental assessments. However, field offices reported that the level of documentation and analysis required for these environmental assessments forced agency personnel to extend timeframes and expend undue energy and funding in order to complete minor harvesting projects.

In response to field concerns during the fall of 2001, the Associate Deputy Chief for the National Forest System requested field units to monitor selected timber harvests that would have qualified under former Categorical Exclusion 4. In response, field units collected data on 154 randomly selected timber harvests. The review's objective was to determine if these harvests did or did not have significant effects on the human environment. The review concluded that none of the 154 projects had a significant effect on the human environment.

Based on this review and the agency's extensive experience with small timber harvest projects, the Forest Service proposes to add three new categorical exclusions to its Environmental Policy and Procedures Handbook (FSH 1909.15). These categories would appear in section 31.2, Categories of Actions for Which a Project or Case File and Decision Memo Are Required, and would provide specific, narrow categorical exclusions for limited timber harvest. For each of the proposed categories, examples of potential actions that fit the category are provided. These examples are intended to be illustrative only and are not intended to be either constraining or all-inclusive.

It is important to note that the proposed categorical exclusions are not intended to replace the former Categorical Exclusion 4. They are limited by size and are more specific about the types of harvest methods, when compared to the agency's former Categorical Exclusion 4. The proposed categorical exclusions are, therefore, much more limited in scope than the former Categorical Exclusion 4.

Description of Proposed New Categorical Exclusions

The first new proposed categorical exclusion (Categorical Exclusion 10) would allow harvest of live trees not to exceed 50 acres with no more than ½ mile of temporary road construction. This category could not be used for even-aged regeneration harvest or vegetation type conversion. Even-aged regeneration harvests generally remove most of an existing stand of trees. An example would be the seed tree method of cutting where all trees in a stand are removed except for a few dominant seed-producing trees. Vegetation type conversion is designed to change existing vegetative cover to another, such as converting a timber stand to an open field. Proposed Categorical Exclusion 10 would not include these types of treatments. This category would allow incidental removal of trees for temporary roads, landings, and skid trails. It would allow low-impact silvicultural treatments by timber purchasers.

Examples of projects that could be implemented under proposed Categorical Exclusion 10 are removal of individual trees to reduce fuels adjacent to a residential area and removal of scattered trees to improve the health and vigor of a remaining stand.

The next category that the agency proposes (Categorical Exclusion 11) would allow salvage of dead and/or dying trees not to exceed 250 acres with no more than ½ mile of temporary road construction. This categorical exclusion would permit salvage harvest in areas where trees have been severly damaged by forces such as fire, wind, ice, insects, or disease and still have some economic value as a forest product.

Categorical Exclusion 11 would be limited to salvage of dead and dying trees by timber purchasers and may also allow incidental removal of green trees for temporary roads, landings, and skid trails.

The final new category (Categorical Exclusion 12) proposed by the Forest Service would allow removal of any trees necessary to control the spread of insects and disease on no more than 250 acres with no more than ½ mile of temporary road construction. This category allows the agency to apply harvest methods to control insects and disease before they spread to adjacent healthy trees. This category may allow incidental removal of green trees for temporary roads, landings, and skid trails.

In all three proposed categories, trees could be sold as sawlogs, fuelwood, or specialty products.

Rationale for the Proposal

The scope of the proposed new categories is consistent with the scope of the 154 projects examined in the 2001 review, each of which had no significant environmental effects. Consequently, the level of effects associated with these proposed new categories would also be below the level of significant environmental effects. Green tree harvests monitored in the 2001 review averaged 70 acres in size while sanitation and salvage harvests averaged 253 acres in size. Having reconsidered the basis for establishing categorical exclusions for small timber harvests, the Forest Service now believes that acreage is a more useful measure of project magnitude than timber volume. Acreage is easily delineated and quantified when developing a proposal, while estimating timber volume within a given acreage may vary considerably based on statistical samples, merchantability standards, and condition of the timber.

With regard to road construction that would fall within these new categorical exclusions, it is important to note that only temporary road construction would be permitted. As defined in Forest Service Manual 7705, temporary roads are not intended to be a part of the forest transportation system and are not necessary for long-term resource management. The Forest Service anticipates that only a small percentage of projects would require any temporary road construction. The 2001 review data indicates that for each project that would have qualified under Categorical Exclusion 4 an average of ½ mile of temporary road was built. Therefore, the agency has selected ½ mile as the upper limit of temporary road construction.

These categorical exclusions will not apply where there are extraordinary circumstances, such as adverse effects on threatened and endangered species or their designated critical habitat,

wilderness areas, inventoried roadless areas, wetlands, and archeological or historic sites.

It is important to note that categorical exclusions do not absolve Responsible Officials from scoping. The CEQ regulations at 40 CFR 1501.7 define scoping as a process for determining the scope of issues to be addressed and for identifying significant issues to be documented in an environmental impact statement. The Forest Service conducts scoping on all proposed actions, including those covered by categorical exclusions. Guidance to Forest Service employees on scoping is set out in Chapter 10 of FSH 1909.15. As provided in Chapter 10, part of scoping may involve inviting participation from interested and affected agencies and citizens. Furthermore, FSH 1909.15, section 11 states that in determining whether a proposed action can be categorically excluded, the Responsible Official must consider the following: (1) The nature of the proposal; (2) preliminary issues; (3) interested and affected agencies, organizations, and individuals, and; (4) the extent of existing documentation.

Categorical exclusions also do not absolve the Responsible Official from conducting appropriate consultations with Federal and State regulatory agencies such as those required by the Endangered Species Act and the National Historic Preservation Act.

One important consideration in the development of any category for limited timber harvest is cumulative effects. The CEQ regulations state that categorically excluded actions must not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). The agency's 2001 review of 154 small timber harvests did not show any instance where projects similar in scope and limits to the three categories proposed in this notice resulted in significant cumulative effects on the human environment.

The quantity and geographic extent of actions that might be implemented under these three proposed categorical exclusions are not anticipated to change much from historic levels. Slightly over 300 projects were implemented using Categorical Exclusion 4 in 1998, the last year it was in effect. These projects involved approximately 8,200 acres of green tree harvest and approximately 41,100 acres of salvage, representing less than .03% of the 192 million acres of National Forest System lands on the continental United States and Alaska.

It is also important to note that any timber harvest performed using the proposed categorical exclusions must meet all applicable Federal, State, and local laws, as well as land and resource management plan standards and guidelines. It is the combination of these standards and guidelines, the limited scope of the proposed categorical exclusions, the results of the 2001 review, and the agency's long experience dealing with low-impact silvicultural treatments that leads the agency to conclude that implementation of the proposed categories would not result in cumulatively significant effects on the human environment.

While some small fuel reduction projects may fit the proposed categorical exclusions, most fuel reduction projects applying the principles of the National Fire Plan will be larger in scope, both in size and types of activities than would be allowed under the proposed categories. Similarly, most projects implementing the National Fire Plan involve a combination of activities such as thinning, pruning, and prescribed burning, which would take them beyond the scope of these proposed categorical exclusions.

The agency's categorical exclusions for small timber harvest projects have evolved since 1981 when the Forest Service NEPA procedures in FSH 1909.15, chapter 30, first provided for categorical exclusion of actions of limited size or magnitude, which included some timber sales. A categorical exclusion was added to chapter 30 in the 1985 review of NEPA procedures to provide for "[l]ow-impact silvicultural activities that are limited in size and duration and that primarily use existing roads and facilities, such as firewood sales, salvage, thinning, and small harvest cuts * * * " From 1987 through 1992, the agency conducted small timber harvest projects through a categorical exclusion which allowed salvage, thinning, and harvest cuts to less than 100,000 board feet or less than 10 acres. As previously noted, in 1992, a revised category (Categorical Exclusion 4) was established, allowing up to 1 million board feet of salvage and 250,000 board feet of merchantable wood products.

In 1993, the Forest Service issued regulations at 36 CFR part 215 (58 FR 58910) which stated that, with the exception of Categorical Exclusion 4, all other categorically excluded actions are not subject to notice, comment, and administrative appeal. The agency believed that public interest in timber harvest activities of the magnitude allowed under Categorical Exclusion 4 warranted providing opportunities for administrative appeal. Because of their limited scope, activities subject to the remaining categorical exclusions were not made appealable under 36 CFR part 215.

The categorical exclusions being proposed in this notice are limited by size and the type of activity allowed. Additionally, a review of timber harvests categorically excluded in 1998 shows that 15% of these projects were appealed. Six percent of the projects that were appealed (one percent of the total number of projects) were sent back to the Responsible Official for additional analysis and documentation. Consequently, the agency concludes that timber sales within the limits of Categorical Exclusion 4 are not as controversial as originally contemplated during promulgation of the agency's appeal regulations at 36 CFR part 215. Therefore, the proposed new categorical exclusions would fall under 36 CFR 215.8, Decisions Not Subject to Appeal, paragraph (a)(4).

Conclusion

Based upon an analysis of field data, the agency proposes three new categorical exclusions for limited timber harvest. Actions identified in the proposed categories are limited in scope, would not have significant impacts on the human environment, and would not require preparation of an environmental assessment or an environmental impact statement.

These categorical exclusions would permit timely response to small timber harvest requests and to forest health problems involving small areas of National Forest System land. Additionally, they would conserve limited agency funds.

These proposed categorical exclusions would be implemented through the issuance of an interim directive to FSH 1909.15, Environmental Policy and Procedures Handbook, Chapter 30. Although an interim directive (ID) expires in 18 months from its issue date, the establishment of these three new categorical exclusions is intended to be a permanent revision. The agency is issuing an interim directive solely for administrative efficiency. The text of the final interim directive along with other interim directives will be incorporated into a revision of the entire Chapter 30 sometime in the next year or so.

Public comment is invited on this proposal and will be considered in adopting a final policy.

The text of the proposed categorical exclusions is set out at the end of this notice.

Environmental Impact

These proposed revisions to Forest Service Handbook 1909.15 would add direction to field employees regarding

requirements for NEPA documentation. FSH 1909.15, section 31.1b (57 FR 43180) excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary assessment is that this proposed interim directive falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental impact statement or environmental assessment. A final determination will be made upon adoption of the final interim directive. In addition, pursuant to 40 CFR 1505.1 and 1507.3, the agency is consulting with the Council on Environmental Quality to ensure full compliance with the purposes and provisions of NEPA and the CEQ implementing regulations.

Regulatory Impact

This proposed interim directive has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action as defined by Executive Order 12866. Accordingly, OMB has reviewed this proposed interim directive.

The primary economic effects of the proposed categorical exclusions for limited timber harvest are changes in costs of conducting environmental analysis and preparing NEPA documents. The proposed categorical exclusions would reduce agency administrative costs by reducing the analysis and documentation requirements for small timber harvest projects. An analysis of costs and benefits compared the cost of documenting categorical exclusions to that of preparing environmental assessments. Using the number of small timber harvest activities categorically excluded in 1998, the last year such actions could be categorically excluded, savings were averaged over a ten-year period. Based on this approach, the average annual cost savings of the proposed categorical exclusions are estimated to be $6 million compared with continued use of environmental assessments for small timber harvest projects. The application of these Categorical Exclusions would have no quantifiable effect on the government's timber sale receipts.

The analysis of costs and benefits was performed in accordance with the direction in OMB Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements (Office of Management and Budget Memorandum 00–08).

This proposed interim directive has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that it would not have a significant economic impact on a substantial number of small entities as defined by the act because it would not impose recordkeeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market.

The agency believes small businesses in general may benefit from a potential increase in small timber sale opportunities as a result of the proposed interim directive. Although the Forest Service finds this increase difficult to quantify, it believes that more small sales may be prepared when using a categorical exclusion rather than an environmental assessment, resulting in an increase in the number of sales available for small businesses and local mills. The Forest Service assumes that all qualified potential purchasers would, consistent with the rules at 36 CFR part 223 for advertising, awarding, and administering sales, have equal opportunity to accrue benefits from any increase in sale opportunities. Additionally, some of these sales are likely to be set aside for small businesses under the agency's small business timber sale set-aside program.

A civil rights impact analysis was prepared for the proposed interim directive. No adverse effects are identified for groups of people who fall within the scope of Civil Rights legislation or the Executive Order on Environmental Justice (E.O. 12898), although some potential beneficial impacts have been noted.

Federalism

The agency has considered this proposed interim directive under the requirements of Executive Order 13132 on Federalism and has made an assessment that the proposed interim directive conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

Consultation and Coordination With Indian Tribal Governments

This proposed interim directive does not have tribal implications as defined by Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments and, therefore, advance consultation with tribes is not required.

No Takings Implications

This proposed interim directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 on Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed interim directive does not pose the risk of a taking of Constitutionally protected private property.

Energy Effects

This proposed interim directive has been reviewed under Executive Order 13211 on Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed interim directive does not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

This proposed interim directive does not contain any additional recordkeeping or reporting requirements associated with the timber harvest program or other information collection requirements as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: December 30, 2002.

Dale N. Bosworth,

Chief.

Text of Proposed Interim Directive

Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook, affected by this policy are included in this notice. The intended audience for this direction is Forest Service employees charged with planning and administering small timber harvest projects. Selected headings and existing text are included to assist the reader in placing the proposed interim directive in context. Reviewers who wish to view the entire chapter 30 of FSH 1909.15 may obtain a copy from the address shown earlier in this notice and from the Forest Service home page on

the Internet at *http://www.fs.fed.us/im/directives/fsh/1909.15/1909.15,30.txt.*

FSH 1909.15—Environmental Policy and Procedures Handbook Chapter 30—Categorical Exclusion From Documentation

(To provide context for understanding the proposed new categorical exclusions that would be established as paragraphs 10, 11, and 12 in section 31.2, the introductory text of section 31.2 (identified by italics) follows:

31.2—Categories of Action for Which a Project or Case File and Decision Memo Are Required.

Routine, proposed actions within any of the following categories may be excluded from documentation in an EIS or an EA; however, a project or case file is required and the decision to proceed must be documented in a decision memo (sec. 32). As a minimum, the project or case file should include any records prepared, such as (1) the names of interested and affected people, groups, and agencies contacted; (2) the determination that no extraordinary circumstances exist; (3) a copy of the decision memo (sec 30.5 (2); (4) a list of the people notified of the decision; (5) a copy of the notice required by 36 CFR Part 217, or any other notice used to inform interested and affected persons of the decision to proceed with or to implement an action that has been categorically excluded. Maintain a project or case file and prepare a decision memo for routine, proposed actions within any of the following categories.

* * * * *

10. *Harvest of live trees not to exceed 50 acres, requiring no more than ½ mile of temporary road construction.* Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include but are not limited to:

a. Removal of individual trees for sawlogs, specialty products, or fuelwood.

b. Harvest of trees to reduce the fuel loading in an overstocked stand adjacent to a residential area and construction of a short temporary road to access the stand.

c. Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

11. *Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction.* The proposed action may include incidental removal of green trees for landings, skid trails, and road clearing. Examples include but are not limited to:

a. Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees.

b. Harvest of fire damaged trees.

12. *Sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporary road construction, including removal of infested/infected trees and adjacent green trees up to two tree lengths away if determined necessary to control the spread of insects or disease.* The proposed action may include incidental removal of green trees for landings, skid trails, and road clearing. Examples include but are not limited to:

a. Felling and harvest of trees infested with southern pine beetles and immediately adjacent green trees to control expanding infestations.

b. Harvest of green trees infested with mountain pine beetle and trees already killed by beetles.

[FR Doc. 03–311 Filed 1–7–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838, C–122–839]

Certain Softwood Lumber From Canada: Notice of Initiation of Antidumping Duty New Shipper Review for the Period May 22, 2002, Through October 31, 2002; Notice of Initiation of Countervailing Duty New Shipper Review for the Period January 1, 2002, Through December 31, 2002; and Rescission of Countervailing Duty Expedited Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty new shipper reviews and rescission of countervailing duty expedited review in certain softwood lumber from Canada.

EFFECTIVE DATE: January 8, 2003.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct new shipper reviews of the antidumping (AD) and countervailing duty (CVD) orders on certain softwood lumber from Canada. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d) (2002), we are initiating AD and CVD new shipper reviews for Scierie La Pointe & Roy Ltée.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Keith Nickerson (AD review) at (202) 482–1756 and (202) 482–3813, respectively; Gayle Longest or Eric B. Greynolds (CVD review) at (202) 482–3338 and (202) 482–0671, respectively; Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On November 26, 2002, the Department received timely requests from Scierie La Pointe & Roy Ltée (La Pointe & Roy), in accordance with 19 CFR 351.214(c) (2002), for new shipper reviews of the AD and CVD orders on certain softwood lumber from Canada, which have a May anniversary month.[1]

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), La Pointe & Roy certified that it did not export certain softwood lumber to the United States during the period of investigation (POI), and that it has never been affiliated with any exporter or producer which exported certain softwood lumber during the POI.[2] Pursuant to 19 CFR 351.214(b)(2)(iv), the company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that and subsequent shipments, the date of the first sale to an unaffiliated customer in the United States, and that it has informed the Governments of Canada and Quebec, through counsel, that they will be required to provide a full response to the Department's questionnaire.[3]

In accordance with section 751(a)(2)(B) of the Act, and 19 CFR 351.214(b), and based on information on the record, we are initiating AD and CVD new shipper reviews for La Pointe & Roy.

Initiation of Reviews

On December 12, 2002, the Coalition for Fair Lumber Imports Executive Committee (the petitioners) submitted comments regarding the new shipper review requests of La Pointe & Roy. The petitioners allege that La Pointe & Roy should not be considered a new shipper because it was allocated quota under the 1996 U.S./Canada Softwood Lumber Agreement. According to the petitioners, as a holder of quota, La Pointe & Roy had a strong incentive to sell subject merchandise to the United States either directly or indirectly.[4]

Furthermore, the petitioners assert that even if La Pointe & Roy did not export subject merchandise during the POI, there is no valid reason to initiate a CVD new shipper review, since the company has requested an expedited review. According to the petitioners, La Pointe & Roy is withdrawing its request for expedited review because the company did not export subject merchandise to the United States during the POI. The petitioners argue that a company does not have to export the

[1] (*See Certain Softwood Lumber Products from Canada*, 67 FR 36068, 36070 (May 22, 2002).

[2] *See* submission from Alston & Bird LLP to the Department, dated November 26, 2002, at Exhibits 1 and 2.

[3] *See Id.*, at Exhibits 3, 4, and 5.

[4] *See* submission from Dewey Ballantine LLP to the Department, dated December 12, 2002, at 5.

subject merchandise during the POI to be a part of the expedited review process and that a CVD new shipper review would have the same focus as a CVD expedited review—whether and to what extent a particular product benefitted from subsidies. Therefore, the petitioners assert that there is no reason for the Department to initiate a CVD new shipper review as the same result can be obtained through the expedited review process.

On December 19, 2002, La Pointe & Roy submitted rebuttal comments to the issues raised by the petitioners; the petitioners responded on December 24, 2002. Although on December 19, 2002, La Pointe & Roy stated that transfer of its allocated quota during the POI was done without the specific knowledge of what the ultimate use of the quota would be by the customer, on December 27, 2002, it corrected its statement to indicate that, in fact, it "was not allocated any quota by the Canadian government between April 1, 2000 and March 31, 2001," [5] the POI.

In addition, on December 31, 2002, La Pointe and Roy clarified that the quota it received in 1998 and 1999 was transferred to other companies in 1998 and 1999 and was not carried over into the POI. Furthermore, the company stated that the transfers of quota described as occurring during the POI in its December 19, 2002, submission occurred prior to, not during, the POI.

After reviewing the submissions of all parties, we have determined that La Pointe & Roy's certifications that during the POI (1) it did not export to the United States and (2) it did not receive any quota which would have allowed it to export to the United States, are sufficient, for purposes of initiation. Moreover, there is no conflict with any expedited review because La Pointe & Roy is withdrawing its request for expedited review on the grounds that it did not export during the POR, as stated in their November 26, 2002, submission. In sum, we have considered La Pointe & Roy's requests and find that they meet the requirements set forth in the Department's regulations. Therefore, in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews of the AD and CVD orders on certain softwood lumber from Canada. We intend to issue the preliminary results of these new shipper reviews not later than 180 days after initiation of these reviews. In addition, we are granting La Pointe & Roy's request to rescind the ongoing expedited review.

New shipper review proceeding	Period to be reviewed
Scierie La Pointe & Roy Ltée.	05/22/02—10/31/02 (AD) 01/01/02—12/31/02 (CVD)

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the reviews, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed company in accordance with 19 CFR 351.214(e). Because La Pointe & Roy certified that it both produces and exports the subject merchandise, the sale of which was the basis for these new shipper review requests, we will apply the bonding privilege only to subject merchandise for which La Pointe & Roy is both the producer and exporter. Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: December 31, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 03–348 Filed 1–7–03; 8:45 am]

BILLING CODE 3510–DS–P

[5] See submission from Alston & Bird LLP to the Department on behalf of La Pointe & Roy, dated December 27, 2002.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–846]

Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and preliminary partial rescission of the fifth antidumping duty administrative review and preliminary results of the seventh new shipper review.

SUMMARY: The Department of Commerce is currently conducting the fifth administrative review and the seventh new shipper review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC") covering the period April 1, 2001, through March 31, 2002. The administrative review examines 16 exporters, five of which are exporters included in three exporter/producer combinations. The new shipper review covers two exporters.

We have preliminarily determined that no sales have been made below normal value with respect to the exporters subject to these reviews, with the exception of one exporter determined to be part of the PRC non-market economy ("NME") entity. If these preliminary results are adopted in our final results of these reviews, we will instruct the U.S. Customs Service to assess antidumping duties on entries of subject merchandise during the period of review, for which the importer-specific assessment rates are above *de minimis*. We are also preliminarily rescinding the administrative review with respect to five exporters included in the three exporter/producer combinations because none of those respondents made shipments of the subject merchandise during the period of review.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: January 8, 2003.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–1280, and (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2002, the petitioner [1] requested an administrative review pursuant to 19 CFR 351.213(b) for 15 exporters, [2] five of which are included in

[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

[2] The names of these exporters are as follows: (1) China National Industrial Machinery Import & Export Corporation ("CNIM"); (2) Laizhou Automobile Brake Equipment Company, Ltd. ("LABEC"); (3) Longkou Haimeng Machinery Co., Ltd. ("Haimeng"); (4) Laizhou Hongda Auto Replacement Parts Co., Ltd. ("Hongda"); (5) Hongfa Machinery (Dalian) Co., Ltd. ("Hongfa"); (6) Qingdao Gren (Group) Co. ("GREN"); (7) Qingdao Meita Automotive Industry Company, Ltd. ("Meita"); (8) Shandong Huanri (Group) General Company ("Huanri General"); (9) Yantai Winhere Auto-Part Manufacturing Co., Ltd. ("Winhere"); and

Continued

three exporter/producer combinations[3] that received zero rates in the less-than-fair-value ("LTFV") investigation and thus were excluded from the antidumping duty order only with respect to brake rotors sold through the specified exporter/producer combinations.

On April 30, 2002, the Department received timely requests from Shanxi Fengkun Metallurgical Ltd. Co. ("Shanxi Fengkun") and Zibo Golden Harvest Machinery Limited Company ("Golden Harvest") for a new shipper review of this antidumping duty order in accordance with 19 CFR 351.214(c). On this same date, Beijing Concord Auto Technology Inc. ("Beijing Concord") requested that the Department conduct an administrative review of its exports of subject merchandise for the period April 1, 2001, through March 31, 2002.

On May 7, 2002, both Shanxi Fengkun and Golden Harvest agreed to waive the time limits applicable to the new shipper review and to permit the Department to conduct the new shipper review concurrently with the administrative review.

On May 23, 2002, the Department initiated an administrative review covering the companies listed in the petitioner's April 26, 2002, request, as well as Beijing Concord (*see Initiation or Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 67 FR 36148).

On May 24, 2002, the Department initiated a new shipper review of Shanxi Fengkun and Golden Harvest (*see Brake Rotors from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 67 FR 38642 (June, 5, 2002)).

On June 3, 2002, we issued a questionnaire to each company listed in the above-referenced initiation notices. Also on June 3, 2002, the Department provided the parties an opportunity to submit publicly available information for consideration in these preliminary results.

On June 19, 2002, each of the exporters that received a zero rate in the LTFV investigation stated that during the period of review ("POR") it did not make U.S. sales of brake rotors produced by companies other than those included in its respective excluded exporter/producer combination.

We received responses to the Department's questionnaire in July and August 2002. We issued supplemental questionnaires in August 2002, and received responses in September, October, and November 2002.

Beijing Concord did not respond to the Department's June 3, 2002, antidumping questionnaire. Consequently, on October 16, 2002, we informed Beijing Concord that since the Department had not received a questionnaire response from it by the deadline granted to it, we would have to resort to facts available in accordance with section 776(b) of the Act (*see* "Facts Available" section of this notice below for further discussion).

On October 2, 2002, the Department conducted a data query on brake rotor entries made during the POR from all exporters named in the excluded exporter/producer combinations in order to substantiate their claims that they made no shipments of subject merchandise during the POR. As a result of the data query, the Department requested that the Customs Service confirm the actual manufacturer for 25 specific entries associated with the excluded exporter/producer combinations. On December 31, 2002, the Department issued a memorandum stating that it preliminarily found no evidence that shipments of merchandise subject to the order were made by the five exporters included in the three exporter/producer combinations during the POR. For further discussion, *see* the section of this notice entitled "Preliminary Partial Rescission of Administrative Review."

Also in October 2002, we issued verification outlines to Golden Harvest, GREN, and Shanxi Fengkun. We conducted verification of the responses submitted by Golden Harvest, GREN and its U.S. subsidiary, and Shanxi Fengkun during October and November 2002. We issued verification reports in December 2002. (*See* December 13, 2002, verification reports for Golden Harvest and Shanxi Fengkun in the Seventh Antidumping Duty New Shipper Review and December 20, 2002, verification report for GREN in the Fifth Antidumping Duty Administrative Review.)

On December 23, 2002, GREN submitted revised U.S. sales and factors of production listings, pursuant to the Department's instructions, reflecting data corrections based on verification findings.

Scope of the Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in the order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Period of Review

The POR covers the period April 1, 2001, through March 31, 2002.

Verification

As provided in section 782(i)(2) of the Act, we verified information provided by GREN, Golden Harvest, and Shanxi Fengkun. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification

(10) Zibo Luzhou Automobile Parts Co., Ltd. ("ZLAP"); (11) China National Machinery and Equipment Import & Export (Xianjiang) Corporation ("Xianjiang"); (12) China National Automotive Industry Import & Export Corporation ("CAIEC"); (13) Laizhou CAPCO Machinery Co., Ltd. ("Laizhou CAPCO"); (14) Laizhou Luyuan Automobile Fittings Co. ("Laizhou Luyuan"); and (15) Shenyang Honbase Machinery Co., Ltd. ("Shenyang").

[3] The excluded exporter/producer combinations are: (1) Xianjiang/Zibo Botai; (2) CAIEC or Laizhou CAPCO/Laizhou CAPCO; and (3) Laizhou Luyuan or Shenyang/Laizhou Luyuan or Shenyang.

results are outlined in the verification report for each of these companies (*see* December 2002 verification reports for Golden Harvest, Shanxi Fengkun and GREN for further discussion).

Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that the exporters which are part of the three exporter/producer combinations which received zero rates in the LTFV investigation did not make shipments of subject merchandise to the United States during the POR. Specifically, (1) neither Laizhou CAPCO nor CAIEC exported brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO; ((2) Xinjiang did not export brake rotors to the United States that were manufactured by producers other than Zibo Botai, (3) Shenyang did not export brake rotors to the United Stated that were manufactured by producers other than Shenyang or Laizhou Luyuan, and (4) Laizhou Luyuan did not export brake rotors to the United States that were manufactured by producers other than Laizhou Luyuan or Shenyang.

In order to make this determination, we first examined PRC brake rotor shipment data maintained by the Customs Service. We then selected entries associated with each exporter and requested the Customs Service to provide documentation which would enable the Department to determine who manufactured the brake rotors included in those entries. On December 31, 2002, we placed on the record of this review a memorandum which summarized the data provided by the Customs Service in response to our query. Based on the results of our query, in accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding the administrative review because we found no evidence that the exporters in question made U.S. shipments of the subject merchandise during the POR. Although we still have not received manufacturer confirmation on some of the entries we selected in our sample, we will continue to pursue this matter with the Customs Service and seek to obtain the necessary data for consideration in our final results.

Facts Available

We issued Beijing Concord the Department's antidumping duty questionnaire on June 3, 2002. Although we provided Beijing Concord with three extensions of time for submitting its questionnaire response, it failed to provide its response by the final extended deadline date of August 9, 2002. As a result of not receiving a questionnaire response from it and in light of its counsel withdrawing its appearance on its behalf (*see* letter from counsel dated August 9, 2002), we issued Beijing Concord a letter on August 22, 2002, which informed the company that we assumed that it did not intend to participate in this review. On September 3, and 16, 2002, Beijing Concord stated that it would not be able to participate in this review based on its decision to no longer retain counsel, particularly given its alleged lack of experience with our administrative process. However, in those same letters, Beijing Concord stated that it was willing to respond to the questionnaire if the Department wanted it to do so. In response to the September 3, and 16, 2002, letters submitted by Beijing Concord, we informed the company on October 16, 2002, that the deadline (which had been extended three times pursuant to its request) for submitting a response to the Department's June 3, 2002, antidumping questionnaire had long passed and that we would not be able to provide it with another opportunity to respond to the questionnaire in this review. In addition, we informed Beijing Concord that we would have to apply facts available to it in accordance with section 776(b) of the Act.

Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." Beijing Concord's September 3, and 16, 2002, letters documented for the record the company's decision not to provide this information in a timely manner and it has otherwise failed to respond to our requests for information, thereby failing to comply with this provision of the statute. Therefore, we determine that Beijing Concord failed to cooperate to the best of its ability, making the use of an adverse inference appropriate. Consequently, Beijing Concord is not eligible to receive a separate rate and continues to be part of the PRC NME entity, subject to the PRC-wide rate.

In this segment of the proceeding, in accordance with Department practice (*see, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review of Brake Rotors from the People's Republic of China*, 64 FR 61581, 61584 (November 12, 1999)), as adverse facts available, we have assigned to exports of the subject merchandise by Beijing Concord the PRC-wide rate of 43.32 percent, a rate that was calculated based on information contained in the petition. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce a respondent to provide the Department with complete and accurate information in a timely manner." *See Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932, February 23, 1998.

Section 776 of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "[i]nformation derived from the petition that gave rise to the investigation or review under section 751 concerning the subject merchandise."

With respect to the relevance aspect of corroboration, the Department stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) ("TRBs"), that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." *See* also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin).

We corroborated the petition information in subsequent reviews to the extent that we noted the history of corroboration and found that we had not received any information that warranted revisiting the issue. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review*, 65 FR 48464 (August 8, 2000). Similarly, no information has been presented in

the current review that calls into question the reliability or the relevance of the information contained in the petition. We thus find that the information is reliable; therefore, we have applied, as adverse facts available, the PRC-wide rate from prior administrative reviews of this order and have satisfied the corroboration requirements under section 776(c) of the Act. See *Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as the adverse facts available in the current review). We have determined that this rate has probative value and, therefore, is an appropriate rate to be applied in this review to exports of subject merchandise by Beijing Concord as facts otherwise available.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate).

Of the 12 respondents that submitted questionnaire responses, three of the PRC companies (*i.e.*, Hongfa, Meita, and Winhere) are wholly foreign-owned. Thus, for these three companies, because we have no evidence indicating that they are under the control of the PRC government, a separate rates analysis is not necessary to determine whether they are independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999); *Preliminary Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 66703, 66705 (November 7, 2000); and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China ("Bicycles")* 61 FR 19026 (April 30, 1996)).

The remaining nine respondents (*i.e.*, Golden Harvest, Haimeng, Hongda, ZLAP, CNIM, GREN, Huanri General, LABEC and Shanxi Fengkun) are either joint ventures between PRC and foreign companies, collectively-owned enterprises and/or limited liability companies in the PRC. Thus, for these nine respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control (see Bicycles at 61 FR 56570). To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. *De Jure* Control

CNIM, Golden Harvest, GREN, Haimeng, Hongda, Huanri General, LABEC, Shanxi Fengkun, and ZLAP have each placed on the administrative record documents to demonstrate absence of *de jure* control, including the "The Enterprise Legal Person Registration Administrative Regulations," promulgated on June 3, 1988; the 1990 "Regulation Governing Rural Collectively-Owned Enterprises of PRC;" and the 1994 "Foreign Trade Law of the People's Republic of China."

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of collectively-owned enterprises, joint ventures between PRC and foreign companies, and/or limited liability companies. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* ("*Furfuryl Alcohol*") 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to CNIM, Golden Harvest, GREN, Haimeng, Huanri General, Hongda, LABEC, Shanxi Fengkun, and ZLAP.

2. *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses (*see Silicon Carbide and Furfuryl Alcohol*).

CNIM, Golden Harvest, GREN, Haimeng, Hongda, Huanri General, LABEC, Shanxi Fengkun, and ZLAP have each asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each of these companies' questionnaire responses indicates that its pricing during the POR does not suggest coordination among exporters.

In this segment of the proceeding, the Department selected three of the 12 respondents for verification, namely Golden Harvest, GREN, and Shanxi Fengkun. The Department did not select the other nine respondents (*i.e.*, CNIM, Haimeng, Hongda, Hongfa, Huanri General, LABEC, Meita, Winhere, and ZLAP) for verification.

For Golden Harvest, GREN, and Shanxi Fengkun, the Department found no evidence at verification of government involvement in any of these companies' business operations. Specifically, Department officials examined sales documents that showed that each of these three respondents negotiated its contracts and set its own sales prices with its customers. In addition, the Department reviewed sales payments, bank statements and accounting documentation that demonstrated that each of these three respondents received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention. Finally, the Department

examined internal company memoranda, such as appointment notices and election results, which demonstrated that each of these three companies selected its own management. *See* pages five through seven of the Department's verification report for Golden Harvest; pages 10 through 12 of the Department's verification report for GREN; and pages six and seven of the Department's verification report for Shanxi Fengkun. This information, taken in its entirety, supports a finding that there is a *de facto* absence of governmental control of each of these companies' export functions.

With regard to CNIM, Haimeng, Hongda, Huanri General, LABEC, and ZLAP (*i.e.*, the other six respondents subject to the separate rates test in this review), the Department elected not to verify these companies' responses in accordance with section 351.307(b)(3). Based on documentation contained in each company's response, the Department also finds that each of these six respondents (1) negotiated its contracts and set its own sales prices with its customers; (2) received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention; (3) retained its profits and, where applicable, arranged its own financing; and (4) selected its own management (see each respondent's questionnaire responses).

Consequently, we have determined that CNIM, Golden Harvest, GREN, Haimeng, Hongda, Huanri General, LABEC, Shanxi Fengkun and ZLAP have each met the criteria for the application of separate rates either through documentation submitted on the record subject to verification or through actual verification. *See Notice of Final Determination at Less Than Fair Value: Persulfates from the People's Republic of China*, 62 FR 27222 (May 19, 1997).

Normal Value Comparisons

To determine whether sales of the subject merchandise by CNIM, Golden Harvest, GREN, Haimeng, Huanri General, Hongda, Hongfa, LABEC, Meita, Shanxi Fengkun, Winhere, and ZLAP to the United States were made at prices below normal value ("NV"), we compared each company's export prices to NV, as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice, below.

Export Price

For 11 of the 12 respondents (*i.e.*, CNIM, Golden Harvest, Haimeng, Huanri General, Hongda, Hongfa, LABEC, Meita, Shanxi Fengkun, Winhere, and ZLAP), we used export price methodology in accordance with section 772(a) of the Act because the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States, and constructed export price was not otherwise indicated.

1. CNIM, Golden Harvest, Hongfa, Meita, Shanxi Fengkun, Winhere, and ZLAP

We calculated EP based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC, in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in an NME currency, we based those charges on surrogate rates from India (*see* "Surrogate Country" section below). To value foreign inland trucking charges, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies. Based on our verification findings, we revised the reported distance from Golden Harvest to the port of exportation (*see* page 13 of the Golden Harvest verification report). To value foreign brokerage and handling expenses, we relied on public information reported in the 1997–1998 new shipper review of the antidumping duty order on stainless steel wire rod from India.

2. Haimeng, Hongda, Huanri General, and LABEC

We calculated EP based on packed, CIF, CFR or FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC, marine insurance and international freight, in accordance with section 772(c) of the Act. As all foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in an NME currency, we valued these services using the Indian surrogate values discussed above. For marine insurance, we used public information that was used in the 2000–2001 administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. For international freight (*i.e.*, ocean freight and U.S. inland freight expenses from the U.S. port to the warehouse (where applicable)), we used the reported expense because each of these four respondents used market-economy freight carriers and paid for those expenses in a market-economy currency (*see, e.g., Brake Rotors from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 64 FR 9972, 9974 (March 1, 1999)).

Constructed Export Price

For GREN, we calculated constructed export price ("CEP") in accordance with section 772(b) of the Act. We found that GREN made CEP sales during the POR because the sales were made for the account of GREN by the respondent's subsidiary in the United States to unaffiliated purchasers. We based CEP on packed, delivered or ex-warehouse prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight and foreign brokerage and handling charges in the PRC, international freight (*i.e.*, ocean freight and U.S. inland freight from the U.S. port to the warehouse), marine insurance, U.S. customs duties and fees (including harbor maintenance fees, merchandise processing fees, and brokerage and handling), and U.S. inland freight expenses (*i.e.*, freight from the plant to the customer). As all foreign inland freight, foreign brokerage and handling, and marine insurance expenses were provided by NME service providers or paid for in an NME currency, we valued these services using the Indian surrogate values discussed above. For international freight (*i.e.*, ocean freight and U.S. inland freight expenses from the U.S. port to the warehouse (where applicable)), we used the reported expense because the respondent used a market-economy freight carrier and paid for those expenses in a market-economy currency.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (commissions and credit expenses), and indirect selling expenses (including inventory carrying costs) incurred in the United States. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority (*see Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat From the People's Republic of China*, 66 FR 52100, 52103 (October 12, 2001)). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India and Indonesia are among the countries comparable to the PRC in terms of overall economic development (*see* Memorandum from the Office of Policy to Irene Darzenta Tzafolias, dated May 29, 2002). In addition, based on publicly available information placed on the record, India is a significant producer of the subject merchandise. Accordingly, we considered India the primary surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate country selection. Where we could not find surrogate values from India, we used values from Indonesia.

3. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors reported by each of the 12 respondents which produced the brake rotors it exported to the United States during the POR. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian or Indonesian values.

Based on our verification findings at Golden Harvest, we revised the following data in its response: (1) the reported per-unit weight for tin clamps and steel strap for all models; (2) the reported per-unit weight for corrugated paper cartons reported for two models; (3) the per-unit factor amounts for direct labor for all models; and (4) the distances from Golden Harvest to three of its suppliers (*see* pages 17, 19, and 20 of the Golden Harvest verification report). Based on our verification findings at Shanxi Fengkun, we revised the reported per-unit weight for five of its packing materials (*i.e.*, corrugated paper cartons, nails, plastic bags, tape, and steel strap) (*see* page 18 of the Shanxi Fengkun verification report). Based on our verification findings at GREN, we revised the distances reported from GREN to four of its suppliers (*see* page 7 of the GREN verification report).

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency or in U.S. dollars, we made adjustments for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*.

To value pig iron, steel scrap, ferrosilicon, ferromanganese, limestone, lubrication oil, ball bearing cups, coking coal and firewood, we used April 2001-December 2001 average import values from *Monthly Statistics of the Foreign Trade of India* ("*Monthly Statistics*"). We relied on the factor specification data submitted by the respondents for the above-mentioned inputs in their questionnaire and supplemental questionnaire responses for purposes of selecting surrogate values from *Monthly Statistics*. Because we could not obtain a product-specific price from India to value lug bolts, we used a January-November 1999 product-specific import value from the Indonesian government publication *Indonesian Foreign Trade Statistical Bulletin* (*see Bicycles*, 61 FR at 19040 (Comment 17)). Certain respondents (*i.e.*, Golden Harvest, Haimeng, Huanri General, LABEC, and ZLAP) stated in their responses they did not incur an expense for bearing cups and lug bolts because their U.S. customer provided these items to them free of charge. In support of their claim that they incurred no expense for these items, the respondents provided either the sales agreement or purchase order from their U.S. customers. Therefore, for the preliminary results, we have not valued these items for those respondents.

We also added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*.

We based our surrogate value for electricity on data obtained from *Energy Data Directory & Yearbook (1999–2000)*.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value selling, general, and administrative ("SG&A") expenses, factory overhead and profit, we used the 2000–2001 financial data of Kalyani Brakes Limited ("Kalyani") and Rico Auto Industries Limited ("Rico").

Where appropriate, we removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports. We made certain adjustments to the ratios calculated as a result of reclassifying certain expenses contained in the financial reports. For further discussion of the adjustments made, *see* the Preliminary Results Valuation Memorandum, dated December 31, 2002.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401 (1997), we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based on CIF import values in the surrogate country. We have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the factory, or from the domestic supplier to the factory on an input-specific basis.

To value corrugated paper cartons, nails, plastic bags and sheets/covers, steel strip, tape, clamps, and labels, we used April 2001-December 2001 average import values from *Monthly Statistics*. All respondents included the weight of the clamp in their reported steel strip weights. With the exception of one respondent (*i.e.*, Golden Harvest), because the material of the clamp and steel strip was the same for both inputs, we valued these factors using the combined weight reported by those respondents. For Golden Harvest, we separately valued the two packing

material inputs since the clamps were made out of tin.

To value pallet wood, we used a January 1999-November 1999 pallet wood value from the Indonesian publication *Indonesian Foreign Trade Statistical Bulletin* because we consider the value for this input from Monthly Statistics to be unreliable (*see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 1953, 1955 (January 10, 2001) and accompanying decision memorandum at Comment 10, and *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review*, 65 FR 46691 (July 31, 2000)).

Preliminary Results of the Review

We preliminarily determine that the following margins exist during the period April 1, 2001, through March 31, 2002:

Manufacturer/producer/exporter	Margin Percent
PRC NME entity (which includes Beijing Concord)	43.32
China National Industrial Machinery Import & Export Corporation	0.43 (*de minimis*)
Hongfa Machinery (Dalian) Co., Ltd.	0.00
Laizhou Automobile Brake Equipment Company, Ltd.	0.18 (*de minimis*)
Longkou Haimeng Machinery Co., Ltd.	0.07 (*de minimis*)
Laizhou Hongda Auto Replacement Parts Co., Ltd.	0.00
Qingdao Gren (Group) Co.	0.09 (*de minimis*)
Qingdao Meita Automotive Industry Company, Ltd.	0.12 (*de minimis*)
Shanxi Fengkun Metallurgical Ltd. Co.	0.00
Shandong Huanri (Group) General Company	0.03 (*de minimis*)
Yantai Winhere Auto-Part Manufacturing Co., Ltd.	0.00
Zibo Golden Harvest Machinery Limited Company	0.00
Zibo Luzhou Automobile Parts Co., Ltd.	0.16 (*de minimis*)

We will disclose the calculations used in our analysis to the parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held on March 31, 2003.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than February 21, 2003. Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than February 28, 2003. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value for those sales where this information was unavailable, we will subtract applicable movement expenses from the gross sales value. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appropriate appraisement instructions for the companies subject to this review directly to the Customs Service upon completion of this review. For entries of the subject merchandise during the POR from companies not subject to this review, we will instruct the Customs Service to liquidate them at the cash deposit rate in effect at the time of entry.

Cash Deposit Requirements

Upon completion of these reviews, for entries from CNIM, Golden Harvest, GREN, Haimeng, Hongda, Hongfa, Huanri General, LABEC, Meita, Shanxi Fengkun, Winhere, and ZLAP, we will require cash deposits at the rate established in the final results as further described below.

The following deposit requirements will be effective upon publication of the final results of these administrative and new shipper reviews for all shipments of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for CNIM, Golden Harvest, GREN, Haimeng, Hongda, Hongfa, Huanri General, LABEC, Meita, Shanxi Fengkun, Winhere, and ZLAP will be the rate determined in the final results of review (except that if the rate is *de minimis*, *i.e.*, less than 0.50 percent within the meaning of 19 CFR 351.106(c)(1), a cash deposit rate of zero will be required); (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity (*e.g.*, which includes Beijing Concord) will continue to be 43.32 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate

regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1) and (2)(B) of the Act.

Dated: December 31, 2002.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–346 Filed 1–7–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849; A–821–808; A–791–804]

Cut-to-Length Carbon Steel Plate From the People's Republic of China, the Russian Federation, and South Africa; Final Results of Expedited Sunset Review of Suspended Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: cut-to-length carbon steel plate from the People's Republic of China, the Russian Federation, and South Africa.

SUMMARY: On September 3, 2002, the Department of Commerce ("the Department") published the notice of initiation of sunset reviews of the suspended antidumping duty investigations on cut-to-length carbon steel plate from the People's Republic of China (the "PRC"), the Russian Federation ("Russia"), and South Africa ("Africa"). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in these cases, no response) from respondent interested parties, we determined to conduct expedited (120-day) reviews. As a result of these reviews, we find that termination of the suspended antidumping duty investigations would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Reviews."

EFFECTIVE DATE: January 8, 2003.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2002, the Department published the notice of initiation of the sunset reviews of the suspended antidumping duty investigations on cut-to-length carbon steel plate ("CTL Steel Plate") from the PRC, Russia, and South Africa (67 FR 56268). The Department received Notices of Intent to Participate on behalf of Bethlehem Steel Corporation, United States Steel Corporation, IPSCO Steel Inc., and Nucor Corporation (collectively "domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. The domestic interested parties claimed interested party status under Section 771(9)(C) of the Tariff Act of 1930 (the "Act"), as U.S. manufacturers and producers of a domestic like product. We received complete substantive responses, in the Chinese, Russian, and South African reviews, from the domestic interested parties, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). Bethlehem Steel Corporation and the United States Steel Corporation have been active participants in the Russian and South African proceedings since the petition was filed. IPSO participated in the original investigation through questionnaire responses to the International Trade Commission. Nucor did not participate in the initial investigation. The domestic interested parties are committed to full participation in this five-year review.

We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to Section 751(c)(3)(B) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department conducted expedited, 120-day, reviews of these suspended investigations.

Scope of Reviews

The products covered under the suspension agreements are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject merchandise within the scope of the petition is grade X–70 plate. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

These reviews cover all imports from all manufacturers, producers, and exporters of CTL Steel Plate from the PRC, Russia, and South Africa.

Analysis of Comments Received

All issues raised in these cases by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 2, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the suspended investigation be terminated. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in

room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading "January 2003." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that termination of the antidumping duty suspension agreement on CTL Steel Plate from the PRC, Russia, and South Africa would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

	Margin (percent)
Chinese Manufacturers/Producers/Exporters	
Anshan (AISCO/Anshan International/Sincerely Asia Ltd.)	30.68
Baoshan (Bao/Baoshan International Trade Corp./Bao Steel Metals Trading Corp.)	30.51
Liaoning	17.33
Shanghai Pudong	38.16
WISCO (Wuhan/International Economic and Trading Corp./Cheerwu Trader Ltd.)	128.59
China-Wide	128.59
Russian Manufacturers/Producers/Exporters	
Severstal	53.81
Russia-Wide	185.00
South African Manufacturers/Producers/Exporters	
Highveld	26.01
Iscor	50.87
All Others	38.36

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 2, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–350 Filed 1–7–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In accordance with 19 CFR 351.213(b)(1), the Department of Commerce (the Department) received a timely request from petitioners, Bethlehem Steel Corporation and United States Steel Corporation, to conduct an administrative review of the sales of subject merchandise made by producers Sumitomo Metal Industries, Ltd. (Sumitomo), and Kawasaki Steel Corporation (Kawasaki). On July 24, 2002, the Department initiated an administrative review of the antidumping duty order on certain hot-rolled flat-rolled carbon-quality steel products from Japan for the period of review (POR) from June 1, 2001 to May 31, 2002. Because petitioners have withdrawn their request for review within 90 days of the notice of initiation's publication date, and because no other parties requested a review, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: January 8, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 1999, the Department published in the **Federal Register** the antidumping duty order on certain hot-rolled flat-rolled carbon-quality steel flat products from Japan. *See Antidumping Duty Order; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 34778. In response to a timely request from petitioners, Bethlehem Steel Corporation and United States Steel Corporation, filed in accordance with 19 CFR 351.213(b), the Department initiated an administrative review of this antidumping duty order, covering the period of June 1, 2001 through May 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 48435 (July 24, 2002). The request covered two manufacturers/exporters of the subject merchandise, Kawasaki and Sumitomo. Kawasaki submitted a letter to the Department on September 10, 2002 stating that it did not have any reviewable or reportable U.S. sales, entries, or shipments of subject merchandise during the POR. On October 22, 2002, petitioners withdrew their request for an administrative review with respect to both Kawasaki and Sumitomo.

Rescission of Review

Pursuant to our regulations, the Department will rescind an administrative review, "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). This section further

provides that the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. *See* CFR 351.213(d)(1). In this case, petitioners' withdrawal of their request for review was within the 90-day time limit, and there were no other requests for review. Therefore, the Department is rescinding this administrative review for the period June 1, 2001 through May 31, 2002. The Department will issue appropriate assessment instructions to the U.S. Customs Service. This notice is published in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: December 24, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–349 Filed 1–7–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rods from India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on stainless steel wire rods ("SSWR") from India in response to a request by the Viraj Group, Limited ("Viraj Group"), and by petitioners, who requested a review of the following companies: Panchmahal Steel Limited ("Panchmahal"), Mukand Limited ("Mukand") and Isibars Steel ("Isibars"). The period of review ("POR") is December 1, 2000, through November 30, 2001.

We have preliminarily determined that Mukand and the Viraj Group have sold subject merchandise at less than normal value ("NV") during the POR. In addition, we have determined to rescind the review with respect to Isibars based on the withdrawal of the only request for review of the company. Lastly, we have preliminarily determined to apply an adverse facts available ("AFA") rate to all sales and entries of Panchmahal's subject merchandise during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above de minimis.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: January 8, 2003

FOR FURTHER INFORMATION CONTACT: For the Viraj Group contact Stephen Bailey at (202) 482–1102, for Panchmahal contact Marlene Hewitt at (202) 482–1385, for Mukand contact Jonathen Herzog at (202) 482–4271, and for Isibars contact Lilit Astvatsatrian at (202) 482–6412, or Robert Bolling at (202) 482–3434. AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the provisions codified at 19 C.F.R. Part 351 (2001).

Background

On October 20, 1993, the Department published the final determination in the **Federal Register** that resulted in the antidumping duty order on certain stainless steel wire rod from India. *See Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From India*, 58 FR 54110 (October 20, 1993) ("*Antidumping Duty Order*"). On December 3, 2001, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 66 FR 60183, (December 3, 2001) ("*Opportunity to Request Administrative Review*").

On December 27, 2001, the Viraj Group requested an administrative review of the antidumping duty order on certain stainless steel wire rods from India. *See* the Viraj Group's December 27, 2001 submission. On December 28, 2001, petitioners requested an administrative review of the antidumping duty order on certain stainless steel wire rods from India for Isibars, Mukand, and Panchmahal. *See* petitioner's December 28, 2001 submission. In accordance with 19 C.F.R. 351.221(b), we published a notice of initiation of the review of Isibars, Mukand, Panchmahal and the Viraj Group on January 29, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 4236, (January 29, 2002).

On January 29, 2002, the Department issued a questionnaire to the Viraj Group, Panchmahal, Mukand, and Isibars. The Department initiated a cost of production inquiry and requested that Isibars and the Viraj Group respond to section D of the questionnaire in addition to sections A, B, and C.[1]

Isibars, Mukand, and the Viraj Group submitted their Section A questionnaire responses on February 26, 2002. On March 15, and 20, 2002, Panchmahal submitted its Section A questionnaire response in two submissions.

On March 26, 2002, petitioners submitted comments regarding Isibars' Section A questionnaire response. On April 5, 2002, Isibars and Mukand submitted their Sections B and C questionnaire responses. On April 8 and 9, 2002, the Viraj Group submitted its Sections B, C, and D questionnaire responses, respectively. On April 9, 2002, Panchmahal submitted its Sections B and C questionnaire responses. On May 9, 2002, petitioners withdrew their request for an administrative review for Isibars.

On April 23 and 25, 2002, petitioners submitted allegations that Panchmahal and Mukand were selling subject merchandise below their costs of production, respectively. *See petitioners April 23, 2002 submission at 2 and April 25, 2002 at 2.* On May 30, 2002, the Department initiated a cost of production inquiry with respect to Mukand, and issued its Section D questionnaire to Mukand. On June 11, 2002, the Department initiated a cost of production inquiry with respect to Panchmahal, and issued its Section D questionnaire to Panchmahal. On June 27, 2002, Mukand submitted its Section

[1] Because the Department disregarded certain Viraj Group sales made in the home market at prices below the cost of producing the subject merchandise in the most recently completed segment of this proceeding and excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that the Viraj Group made sales in the home market at prices below the cost of producing the merchandise in this review. *See Final Results*; and section 773(b)(2)(A)(ii) of the Act.

D questionnaire response. On August 1, 2002, Panchmahal submitted its Section D questionnaire response.

The Department issued its first Sections A, B, and C supplemental questionnaire to Mukand on July 3, 2002. The Department received a response to this questionnaire on July 17, 2002. The Department issued a second Sections A, B, C and a first Section D supplemental questionnaire to Mukand on August 7, 2002, and received a response to this questionnaire on August 23, 2002, with accompanying exhibits submitted on August 26, 2002. The Department issued its third supplemental questionnaire for Sections A, B, C and D to Mukand on September 9, 2002, and received a response on September 26, 2002. On October 4, 2002, the Department issued its fourth Sections A, B, C and D supplemental questionnaire to Mukand and received a response on October 11, 2002. On October 17, 2002, the Department issued a fifth supplemental questionnaire concerning Sections A and C to Mukand. The Department received a response to this questionnaire on October 21, 2002. The Department issued a sixth supplemental questionnaire concerning Sections B, C, and D on November 26, 2002, to Mukand and received a response to this questionnaire on December 4, 2002. The Department issued a seventh supplemental questionnaire to Mukand concerning Section C on November 26, 2002, and received a response to this questionnaire on December 13, 2002.

The Department issued a Section A supplemental questionnaire to Panchmahal on May 7, 2002. The Department received a response to this questionnaire on May 29 and 30, 2002. The Department issued to Panchmahal a Sections B and C supplemental questionnaire on July 16, 2002, and received a response to this questionnaire on July 29, 2002. The Department issued to Panchmahal a Sections A, B, C, and D supplemental questionnaire on August 27, 2002, and received a response on September 19, 2002, with additional material and exhibits on September 23, 2002. The Department issued to Panchmahal a Section D supplemental questionnaire on September 12, 2002, and received a response on September 23, 2002. The Department issued to Panchmahal a Sections B, C, and D supplemental questionnaire on October 1, 2002, and received a response to this questionnaire on October 18, 2002. The Department issued to Panchmahal a Section D supplemental questionnaire on October 23, 2002, and received a response to this questionnaire on October 25, 2002. The Department issued to Panchmahal a Sections B, C, and D supplemental questionnaire on October 28, 2002, and received a response to this questionnaire on November 5, 2002. The Department issued to Panchmahal a Section D supplemental questionnaire on November 7, 2002, and received a response to this questionnaire on November 12, 2002.

The Department issued its first Sections A, B, C, and D supplemental questionnaire to the Viraj Group on June 12, 2002. The Department received a response to this questionnaire on July 23, 2002. The Department issued a second Sections A, B, C, and D supplemental questionnaire to the Viraj Group on September 13, 2002, and received a response to this questionnaire from the Viraj Group on October 4, 2002, with the accompanying exhibits submitted on October 7, 2002. The Department issued a third supplemental questionnaire to Viraj for Sections B and C on September 20, 2002, in which we asked for a revised database for the home and U.S. markets. The Department received a response to this supplemental questionnaire on October 7, 2002. The Department issued a fourth supplemental questionnaire for Sections A, B, C, and D to the Viraj Group on November 18, 2002. The Department received a response to this questionnaire on December 2, 2002.

On July 9, 2002, due to the reasons set forth in the *Extension of Time Limit for the Preliminary Results of Antidumping Administrative Review: Certain Stainless Steel Wire Rod from India*, 67 FR 45481, the Department extended the due date for the preliminary results. In accordance with section 751(a)(3)(A) of the Act, the Department extended the due date for the notice of preliminary results 60 days, from the original due date of September 2, 2002, to November 1, 2002. *See Extension of Time Limit for the Preliminary Results of Antidumping Administrative Review: Certain Stainless Steel Wire Rod from India*, 67 FR 45481 (July 9, 2002).

Additionally, on September 17, 2002, in accordance with section 751(a)(3)(A) of the Act, the Department again extended the due date for the notice of preliminary results an additional 30 days, from the revised due date of November 1, 2002 to December 1, 2002. *See Extension of Time Limit for the Preliminary Results of Antidumping Administrative Review: Certain Stainless Steel Wire Rod from India*, 67 FR 58585 (September 17, 2002).

Further, on November 13, 2002, in accordance with section 751(a)(3)(A) of the Act, the Department again extended the due date for the notice of preliminary results an additional 30 days, from the revised due date of December 1, 2002 to December 31, 2002. *See Stainless Steel Wire Rod from India: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 68834 (November 13, 2002).

Period of Review

The period of review ("POR") is December 1, 2000, through November 30, 2001.

Scope of the Review

The merchandise under review is certain SSWR, which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Verification

As provided in section 782(i) of the Act, we verified sales and cost information provided by Mukand from October 21 through October 31, 2002, using standard verification procedures, including an examination of relevant sales, cost, financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report and are on file in the Department's Central Records Unit located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Partial Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party which requests an administrative

review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department may extend this deadline if it is reasonable to do so. On May 9, 2002, petitioners withdrew their request for an administrative review of Isibars. Although petitioners withdrew their request for the review after the 90–day period had expired, the Department is rescinding the administrative review of Isibars for the order on SSWR from India for the period December 1, 2000 through November 30, 2001, because the review for this company had not yet progressed beyond a point where it would have been unreasonable to allow the petitioners to withdraw their request for review, no other party requested a review of Isibars, and no party objected; it is therefore reasonable for the Department to rescind the review with respect to Isibars. This action is consistent with the Department's practice. *See Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 40913 (June 14, 2002) and *Antifriction Bearings and Parts Thereof From France, Germany, Japan, and the United Kingdom: Partial and Full Rescissions of Antidumping Duty Administrative Reviews*, 67 FR 65089 (October 23, 2002) where, pursuant to a request filed after the 90 day deadline, the Department rescinded the review with respect to one respondent because the review of that respondent had not progressed beyond a point where it would have been unreasonable to grant the request for rescission. Therefore, in accordance with 19 C.F.R. 351.213(d)(1) and consistent with the Department's practice, the Department is rescinding the review with respect to Isibars.

Facts Available

In the instant review, despite numerous requests and clarifications from the Department, Panchmahal failed to provide or withheld the information the Department requested. As explained in detail below, because the Department received inadequate responses to the questionnaire and multiple supplemental questionnaires from Panchmahal, the Department could not verify the incomplete information that Panchmahal did provide, which is necessary for the margin analysis.

Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782 (c) and (e); (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to Section 782(d), use the facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner, and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Section 782(c)(2) of the Act similarly provides that the Department shall consider the ability of the party submitting the information and shall provide such interested party assistance that is practicable.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If the person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is "deficient" under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this investigation, Panchmahal failed to provide or withheld the information necessary to properly calculate a dumping margin, in the form and manner requested by the Department, which prevented the Department from conducting verification. Despite numerous requests and extra assistance from the Department, Panchmahal failed to provide cost reconciliations, that is, an explanation as to how it compiled its POR per-unit costs as derived from its cost accounting system/financial statements. Furthermore, Panchmahal is aware of the Department's requirements given that it has participated in other reviews in other proceedings in which the Department verified Panchmahal's cost and sales information. *See Stainless Steel Bar From India; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review* 66 FR 8939, (February 5, 2001).

The Department specifically requested the cost reconciliations in the original questionnaire sent to Panchmahal on January 29, 2002. The Department offered Panchmahal the opportunity to supplement its questionnaire response pursuant to section 782(d) of the Act to address the deficiencies and omissions of data which rendered its previous response inadequate for use in the preliminary determination. In particular, the Department issued six supplemental questionnaires for section D (*i.e.*, August 27, 2002; September 12, 2002; October 1, 2002; October 23, 2002; October 28, 2002; and November 7, 2002). Five of these supplemental questionnaires requested that Panchmahal reconcile its reported POR per-unit costs to its financial statements. In the supplemental questionnaires, the Department also requested Panchmahal to calculate its cost of production figures based on actual costs incurred by Panchmahal during the POR. Moreover, in accordance with section 782(c) the Department also considered Panchmahal's difficulties in submitting the requested information and provided additional telephone and electronic-mail clarifications.

Although Panchmahal eventually provided what it alleged were its reported cost data on a POR basis in the fifth supplemental questionnaire response, Panchmahal still failed to explain the methodology it used to derive its POR per-unit costs from its cost accounting system. *See* fifth Supplemental Questionnaire Response, received November 4, 2002. Panchmahal's failure to reconcile its financial statements to its POR per-unit costs as requested by the Department in its original and six supplemental questionnaires constitutes a failure because Panchmahal did not provide the required information without

explanation and because Panchmahal also withheld the information although it knew the requirements of the Department for cost verification based on its own previous experience and declined to comply to the best of its ability under sections 776(a)(2)(A) and (B). Most importantly, this failure to provide or withholding of the requested information by Panchmahal has resulted in an inadequate response that prevented the Department from conducting verification and using its data in the preliminary results. *See* Cancellation of Verification Memorandum to the File from Stephen Bailey to Edward Yang, dated November 18, 2002. Thus, pursuant to sections 776(a)(2)(A) and (B) of the Act, and having satisfied sections 782(c)(2), (d), and (e) of the Act, the Department must apply facts otherwise available in this case.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Doc. No. 103–316, Citation No. (1994), at 870. Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See* also *Antidumping Duties, Countervailing Duties; Final Rule*, 62 FR 27340 (May 17, 1997).

In this case, Panchmahal has failed to cooperate by not acting to the best of its ability to comply with the request for information. As discussed above, despite the numerous requests by the Department, Panchmahal failed to provide or withheld requested information from the Department. In response to Panchmahal's request for assistance via a telephone call from Mr. Pratik of Panchmahal, the Department clarified to Panchmahal the Department's cost reconciliation requests both in the telephone conversation and in a follow-up e-mail. See Memorandum to the File dated November 1, 2002. Panchmahal was provided numerous opportunities and supplemental questionnaires to fully respond to the Department's request for a cost reconciliation and to correct response deficiencies, in accordance with section 782(d) of the Act. *See* Cancellation of Verification Memorandum to the File from Stephen Bailey to Ed Yang, dated November 18, 2002. However, despite the assistance offered and provided by the Department's staff, Panchmahal failed to submit a questionnaire response that addressed the most important deficiency identified by the Department in each of the six supplemental questionnaires, the cost reconciliation.

Due to Panchmahal's failure to provide the necessary requested information that the Department had identified as necessary for the verification, the Department was precluded from conducting verification by the inadequacy of information on the record. Moreover, Panchmahal failed to provide a reasonable explanation for its failure to comply with these standard requests for information. Accordingly, the Department finds that Panchmahal did not act to the best of its ability to provide the information requested, despite the extensive assistance provided by the Department. As facts available, we have preliminarily assigned Panchmahal the all others rate of 48.80 percent.

Collapsing

In the previous administrative review, the Department decided to collapse Viraj Forgings Limited ("VFL"), Viraj Alloys Limited ("VAL") and Viraj Impoexpo Limited ("VIL") because the companies were found capable, through their sales and production operations, of manipulating prices or affecting production decisions (of each other). *See Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review*, 67 FR 37391 (May 29, 2002). In this case, the Viraj Group reported that there were no operational or legal changes to the Viraj Group during this POR. *See* the Viraj Group's July 23, 2002 submission at page 1. Based on the decision in the previous administrative review and because no information on the record deviates from the facts of the previous administrative review with respect to the factors which are used to determine collapsing, the Department will continue to treat VFL, VAL, and VIL as one entity for purposes of this administrative review, called "Viraj Group."

Normal Value Comparisons

To determine whether Mukand's and the Viraj Group's sales of subject merchandise from India to the United States were made at less than normal value, we compared the export price ("EP") and constructed export price ("CEP"), as appropriate, to the normal value ("NV"), as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the *Scope of the Review* section above, which were produced and sold by Mukand and the Viraj Group in the home market during the POR, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Mukand

Mukand submitted information on the record which claimed that all of its grades should be treated as distinct grades for calculation purposes. *See Mukand's July 17, 2002 submission* at 2. To verify this claim, the Department requested that Mukand provide a chemical breakdown of each of its grades. After analyzing the data presented by Mukand, the Department has determined that there is insufficient record evidence to support Mukand's position that grade 304M is a distinct grade from 304, that grade 304LN is a distinct grade from 304L and that grade 420 is a distinct grade from grade 410. Therefore, the Department has preliminarily determined to combine the above grades; specifically, the Department has determined that grade 304M should be treated as grade 304, grade 304LN should be treated as grade 304L, and grade 420 should be treated as grade 410.

The grade chemistries provided on the record by Mukand indicate that grade 304M is a subset of grade 304, because they have similar chemistries and compositions; thus, Mukand's grades 304 and 304M have been treated by the Department as one grade for purposes of the model match program. Further, when the Department compared the chemistries of Mukand's grades 410 and 420 only slight differences existed, but when compared to the grade standards set out by the American Iron and Steel Institute ("AISI"), the reported chemistry for Mukand's grade 420 is more similar to the grade chemistry of AISI grade 410

than the grade chemistry for AISI grade 420; thus, Mukand's grades 420 and 410 have been treated by the Department as one grade for purposes of the model match program. Finally, the chemistry ranges reported by Mukand for graded 304L and 304LN indicate that grade 304LN has a similar chemistry and composition to grade 304L; thus, Mukand's grades 304LN and 304L have been treated by the Department as one grade for purposes of the model match program.

It is the Department's practice not to create additional categories unless the physical characteristics are significantly different from an existing known category. *See Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review*, 63 FR 781 (January 7, 1998). Therefore, for the purposes of these preliminary results, the Department has combined the grades as follows in its model match program: grade 304M should be treated as grade 304, grade 304LN should be treated as grade 304L, and grade 420 should be treated as grade 410.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, export price ("EP") is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, constructed export price ("CEP") is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

For purposes of this review, Mukand has classified certain sales as EP sales and certain sales as CEP sales. Based on the information on the record, we are using both export price and constructed export price as defined in section 772(a) and (b) of the Act.

For purposes of this review, the Viraj Group has classified all sales as CEP sales. Based on the information on the record, we are using constructed export price as defined in section 772(b) of the Act.

Mukand

Mukand reported both EP and CEP sales during the POR in the United States. Mukand originally reported all of its U.S. sales as EP sales. Mukand explained that it had reported its sales as EP sales because in the ordinary course of trade, Mukand International Limited ("MIL"), Mukand's wholly-owned subsidiary, which was based in the United Kingdom during the POR, sells to one unaffiliated U.S. customer ("U.S. customer"), a trading company, prior to importation, thus meeting the definition of an EP transaction.

At verification, the Department found that in an ordinary sale, the unaffiliated U.S. customer initiates a sale by sending a purchase order to MIL. *See Sales and Cost Verification of Mukand Limited in the Antidumping Administrative Review of Stainless Steel Wire Rod from India* ("*Mukand Verification Report*") at page 32. MIL acknowledges the customer's order and then sends the order information on to Mukand. *See Mukand Verification Report* at 32. Mukand produces the subject merchandise and upon completion of the order, invoices MIL and MIL invoices the unaffiliated U.S. customer in a back-to-back transaction. *See Mukand Verification Report* at 32. Mukand then ships the subject merchandise to the unaffiliated U.S. customer. *See Mukand Verification Report* at 32. Mukand arranges for shipping from its production facilities in Mumbai, India, and MIL becomes the importer of record in the U.S. *See Mukand Verification Report* at 32. MIL plays no further role with regard to sales between the unaffiliated U.S. customer and its customers once the subject merchandise is entered into the U.S. *See Mukand Verification Report* at page 32.

During the POR, however, the U.S. customer rejected several shipments, in full or in part, made pursuant to several purchase orders, because the merchandise was shipped late and therefore did not meet the terms of sale. Until this rejection, these sales had occurred in the manner described above. Upon further discussion between MIL and the U.S. customer, MIL cancelled the sales in its books and issued credit notes for the amount of merchandise rejected. *See Mukand Verification Report* at page 31. In addition, MIL and the U.S. customer reached an agreement with unique terms whereby the U.S. customer would hold the rejected subject merchandise at its U.S. warehouse at no expense to MIL until the U.S. customer needed to purchase the merchandise from MIL. *See Mukand Verification Report* at page 30. *See also Mukand's October 21, 2002 supplemental response* at annexure 1.

In accordance with this agreement, MIL's U.S. customer purchased a certain portion from the subject merchandise stored at the U.S. customer's U.S. warehouse during the POR. *See Mukand Verification Report* at page 30. The purchase was made in accordance with the agreement between MIL and the U.S. customer. *See Mukand Verification Report* at page 30. In its original response, Mukand reported these sales as EP sales, however, the Department sought clarification of whether Mukand was claiming that these sales were either EP or CEP sales. In response to the Department's questioning, Mukand reclassified the subject merchandise involved in these sales as CEP sales. Mukand reclassified these sales as CEP sales, because the sale of the subject material was made after its importation to the United States.

The Department has determined that Mukand's EP sales are properly reported sales, because those sales were made in accordance with the definition of an EP sale. In addition, the Department has determined that Mukand properly reported the reclassified EP sales as CEP sales, because those sales were made after the importation of the subject merchandise into the United States to the unaffiliated U.S. customer.

Based on the evidence on the record, the Department has preliminarily determined that those sales classified by Mukand as CEP sales should also be treated as consignment sales (with MIL's U.S. customer as the consignment agent) given the unique terms and circumstances of these sales; in particular, the existence of "consignment stock." Due to the proprietary nature of the information on the record please see the Department's memorandum, *Antidumping Duty Investigation of Stainless Steel Wire Rod from India: Consignment Sales Analysis Memorandum* dated December 3, 2002 ("*Mukand Consignment Memorandum*"), for a detailed explanation of our decision.

On December 5, 2002, the Department formally informed Mukand of its decision to treat the CEP sales as consignment sales and requested Mukand to respond to the Department's November 26, 2002 supplemental questionnaire. *See* Department's Letter of December 5, 2002. Mukand provided its response to the Department's supplemental questionnaire on December 13, 2002, but failed to provide the requested information concerning costs incurred by its unaffiliated U.S. customer related to the downstream consignment sales that are necessary to

calculate a margin. *See Mukand supplemental response dated December 13, 2002* at 1 and 2. Although Mukand provided some pricing information (a few invoices) on these consignment sales, it failed to provide the relevant expense information related to these invoices and it failed to provide the requested and required database the Department needs to calculate a margin. Nevertheless, the Department issued a second supplemental questionnaire on December 17, 2002, requesting the prices and expenses incurred by MIL's unaffiliated U.S. customers relating to these consignment sales. *See Supplemental Questionnaire* dated December 17, 2002.

The Department has preliminarily determined that the use of facts available, in accordance with section 776(a)(2) of the Act, is warranted for the prices and expenses incurred for the unreported consignment sales in the U.S. market. Consistent with section 776(a)(2)(A) and (B) of the Act, Mukand withheld information that had been requested by the Department and failed to provide such information in a timely manner, justifying the use of facts otherwise available in reaching the applicable determination.

In this case, Mukand failed to provide price and expense information for its consignment sales through MIL's unaffiliated U.S. customer (the consignment agent). By not providing the consignment sales information requested by the Department in a database format that provides specific prices and expenses of these consignment sales, Mukand has prevented the Department from calculating an accurate antidumping duty margin, inclusive of the consignment sales.

Given that Mukand provided the Department with some pricing information, but not the requested expense information and the requested database, the Department finds it appropriate to apply facts available to those sales the Department has determined to be consignment sales. As facts available, the Department has used the weighted-average U.S. price and the weighted-average expenses submitted by Mukand in lieu of the prices and expenses of the consignment sales through MIL's unaffiliated U.S. customer. *Nippon Steel Corp. v. United States*, 2001 CIT 136, Slip-Op at 6 (Oct. 12, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: IQE Red Raspberries from Chile*; 67 FR 35790 (May 21, 2002); *Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*; 67 FR 51210, (August 7, 2002). The Department has determined that the weighted-average of prices and expenses of all U.S. sales by MIL to its unaffiliated U.S. customer during the POR is proper because the Department only recently formally requested that Mukand provide its consignment sales information and Mukand provided some invoices. *See Department's Letter* of December 5, 2002. Additionally, the Department recently issued a supplemental questionnaire on these consignment sales. See Supplemental Questionnaire dated December 17, 2002. Further, the Department finds that the weighted-average is proper because the consignment sales are reflective of a variety of prices, quantities, and expenses. *See Analysis for Mukand Steel Limited for the Preliminary Results of the Administrative Review on Stainless Steel Wire Rod from India for the period December 1, 2000 through November 30, 2001*, December 31, 2002 ("*Mukand Analysis Memorandum*").

The Department calculated CEP, in accordance with section 772(b) of the Act, based on the packed CIF prices to the first unaffiliated customer in the United States. The Department made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, brokerage and handling, inland freight, international freight, U.S. customs duties, and marine insurance. In accordance with section 772(d)(1) of the Act, we deducted those selling expense associated with economic activities occurring in the United States, including direct selling expenses (bank charges and credit expenses) and indirect selling expenses.

We recalculated Mukand's inventory carrying cost factor to the total cost of manufacturing rather than the variable cost of manufacturing as reported in the questionnaire response. Finally, we recalculated Mukand's calculation of credit insurance to account for a decimal error found in Mukand's reported credit insurance. *See Mukand Verification Report* and *Mukand Analysis Memorandum*.

We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

For purposes of this administrative review, Mukand classified the remainder of its sales as EP sales, stating that it sold subject merchandise directly to an unaffiliated importer in the United States during the POR. Therefore, the Department is using EP as defined in section 772(a) of the Act because the merchandise was first sold, prior to importation, by Mukand's affiliate MIL, which was based in London during the POR, to an unaffiliated purchaser in the United States. The Department based EP on packed prices to unaffiliated purchasers in the United States. The Department made deductions for inland freight, marine insurance, and brokerage and handling in accordance with section 772(c) of the Act. Finally, the Department recalculated Mukand's calculation of credit insurance to account for a decimal error found in Mukand's reported credit insurance. *See Mukand Verification Report* and *Mukand Analysis Memorandum*.

As explained in the "Duty Drawback" section below, the Department is not making any adjustments for duty drawback for EP or CEP sales.

The Viraj Group

For purposes of this review, the Viraj Group has classified all of its sales as CEP sales. Based on the information on the record, we are using constructed export price as defined in section 772(b) of the Act.

The Viraj Group has classified those sales made by VIL and VFL through Viraj USA Inc. ("Viraj USA"), an affiliated reseller that is 100% owned by VFL, as CEP sales. VIL and VFL make the shipment from India on a Cost Insurance Freight ("CIF") and Ex-Dock Duty Paid ("EDDP") basis to Viraj USA. Viraj USA clears the goods through customs and oversees customer delivery. Then Viraj USA sells the goods to the unaffiliated U.S. customer who makes payment to Viraj USA.

Based on the evidence on the record, the Department preliminarily determines that VIL's and VFL's U.S. sales through Viraj USA were made "in the United States" within the meaning of secton 772(b) of the Act, and thus have been appropriately classified by the Viraj Group as CEP transactions.

The Department calculated CEP, in accordance with section 772(b) of the Act, based on the packed CIF or EDDP prices to the first unaffiliated customer in the United States. The Department made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, brokerage and handling, inland freight, international freight, U.S. customs duties, marine

insurance, customs clearance and delivery arrangements. In accordance with section 772(d)(1) of the Act, we deducted those selling expense associated with economic activities occurring in the United States, including direct selling expenses (bank charges and credit expenses) and indirect selling expenses. As explained in the "Duty Drawback" section below, we are not making any adjustment for duty drawback.

We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Duty Drawback

The Viraj Group

In the previous administrative review, the Department denied the Viraj Group's request for an upward adjustment to the U.S. starting price based on duty drawback pursuant to section 772(c)(1)(B) of the Act. *See Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative Review*, 67 FR 37391 (May 29, 2002) ("*Final Results*"). The Department denied the duty drawback adjustment because the reported duty drawback was not directly linked to the amount of duty paid on imports used in the production of merchandise for export as required by the Department's two-part test, which states there must be: (1) a sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product. *See Rajinder Pipes Ltd. v. U.S.* ("*Rajinder Pipes*"), 70 F. Supp. 2d 1350, 1358. The Court of International Trade upheld the Department's decision to deny respondent an adjustment for duty drawback because there was not substantial evidence on the record to establish that part one of the Department's test had been met. *See Viraj Group, Ltd. v. United States of America and Carpenter Technology, Corp., et al.*, Slip Op. 01–104 (CIT August 15, 2001).

Similarly, in the current review, the Department finds that the Viraj Group has not provided substantial evidence on the record to establish the necessary link between the import duty and the reported rebate for duty drawback. The Viraj Group has reported that it received duty drawback in the form of duty entitlement certificates which are issued by the Government of India to neutralize the incidence of basic custom duty on the import of raw materials used in the production of subject merchandise, but has failed to establish the necessary link between the import duty paid and the rebate given by the Government of India. As in the previous review, the Viraj Group was not able to demonstrate that the import duty paid and the duty drawback rebate were directly linked. Therefore, the Department is denying a duty drawback credit for the preliminary results of this review.

Mukand

The Department also finds that Mukand has not provided substantial evidence on the record to establish the necessary link between the import duty and reported rebate for duty drawback. Mukand has reported that it received duty drawback in the form of duty entitlement certificates which are issued by the Government of India to neutralize the incidence of basic custom duty on the import of raw materials used in the production of subject merchandise, but has failed to establish the necessary link between the import duty paid and the rebate given by the Government of India. In this review, Mukand was not able to demonstrate that the import duty paid and the duty drawback rebate were directly linked. *See Mukand Verification Report* at page 21. Therefore, the Department is denying a duty drawback credit for the preliminary results of this review.

Normal Value

After testing home market viability, we calculated NV as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value ("NV") (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Mukand and the Viraj Group's volume of home market sales of the foreign like product to the volume of each of their U.S. sales of subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because both Mukand and the Viraj Group's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that sales in the home market provide a viable basis for calculating NV. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and in the ordinary course of trade.

For NV, we used the prices at which the foreign like product was first sold for consumption in India, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade ("LOT") as the EP or CEP as appropriate. After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-Constructed Value ("CV") Price Comparisons" sections of this notice.

Additionally, the Viraj Group reported the home market sales of VAL. Since we have preliminarily determined to collapse the companies of the Viraj Group, we included the home market sales of VAL as the basis of NV.

2. Cost of Production Analysis

Mukand

Based on the information contained in a timely filed cost allegation by the petitioners on April 25, 2002, the Department found reasonable grounds to believe or suspect that Mukand's sales of the foreign like product in their respective comparison market were made at prices below the cost of production, pursuant to section 773(b)(1) of the Act based on allegations made by petitioners in this case. *See petitioners' Allegation of Sales Below Cost of April 25, 2002*. As a result, the Department initiated a sales below-cost investigation. *See Letter of Initiation of Sales Below Cost Investigation* dated May 30, 2002.

The Viraj Group

Because the Department disregarded certain Viraj Group sales made in the home market at prices below the cost of producing the subject merchandise in the most recently completed segment of this proceeding and excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that the Viraj Group made sales in the home market at prices below the cost of producing the merchandise in this review. *See Final Results*; and section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry in this case on

January 29, 2002, to determine whether the Viraj Group made home market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act.

3. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Mukand's and the Viraj Group's respective costs of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses ("SG&A"), including interest expenses, and packing costs. The Department relied on the COP data submitted by Mukand and the Viraj Group in their original and supplemental cost questionnaire responses.

For the purpose of these preliminary results, we revised the COP information submitted by Mukand as follows: 1) we recalculated Mukand's interest expense ratio to adjust the amount of interest expenses attributed to construction in progress and to eliminate SG&A and interest from the denominator used to determine the interest expense factor; and 2) we recalculated Mukand's general and administrative expenses ("G&A") to account for errors in the allocation of expenses between indirect selling expenses and G&A. *See Mukand Analysis Memorandum.*

For the purpose of these preliminary results, we revised the COP information submitted by the Viraj Group as follows: 1) we adjusted the Viraj Group's financial expenses to include all of the interest expenses reported in the audited financial statements of all of the Viraj Group companies; 2) we recalculated the Viraj Group's reported G&A to include all depreciation reported on its financial statements; and 3) we re-valued the Viraj Group's direct materials for CV based on the COP of control numbers ("CONNUM") with identical grades rather then use the transfer price from collapsed entities in the calculation of CV. *See Analysis for the Preliminary Results of Review for Stainless Steel Wire Rod from India for 2000–2001: The Viraj Group, Limited,*dated December 31, 2002 ("*Viraj Analysis Memorandum*").

4. Test of Home Market Prices

We compared the weighted-average COP for Mukand and the Viraj Group's home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all cost with all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and indirect selling expenses.

5. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Mukand's or the Viraj Group's sales of a given product were, within an extended period of time, at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Mukand's or the Viraj Group's sales of a given product were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time, in accordance with sections 773(b)(2)(B) of the Act and 19 C.F.R. 351.406(b). In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the cost of production, we disregarded all sales of that product.

Price-to-Price Comparisons

Mukand

For those products comparisons for which there were sales at prices above the COP, we based NV on the home market prices to the home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A) and (b), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing ("COM") of the U.S. product, we based NV on CV. We calculated NV based on prices to unaffiliated home market customers. We applied Mukand's inventory carrying cost factor to the total cost of manufacturing instead of the variable cost of manufacturing as reported by Mukand in its questionnaire response. Finally, we revised Mukand's calculation of credit insurance to account for a decimal error found in Mukand's reported credit insurance calculation at verification. See Mukand Verification Report at 2 and Mukand Analysis Memorandum.

The Viraj Group

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to the home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in differences-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing ("COM") of the U.S. product, we based NV on CV. We calculated NV based on prices to unaffiliated home market customers. We made circumstances of sale adjustments for credit expenses, as appropriate.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the sum of Mukand's and the Viraj Group's cost of materials, fabrication employed in producing the subject merchandise, and SG&A, including interest expenses and profit. We calculated the COPs included in the calculation of CV as noted above in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in India. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. For CV, we made the same adjustments described in the COP section above.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. *See also* 19 C.F.R. 351.412. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. *See* 19 C.F.R. 351.412(2)(iii). For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. *See* 19 C.F.R. 351.412(2)(i). For CEP, it is the level of the constructed sale from the exporter to the affiliated importer. *See* 19 C.F.R. 351.412(c)(ii).

To determine the LOT of a sale, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Substantial differences in selling activities are a necessary, but not sufficient condition for determining that there is a difference in the stage of marketing. *See* 19 C.F.R. 351.412(C)(2). If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from Mukand and the Viraj Group about the marketing stages involved in their respective U.S. and home market sales, including a description of the selling activities performed by Mukand and the Viraj Group for each channel of distribution. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different categories of sales, the functions and activities should be dissimilar.

In the present review, while Mukand requested an LOT adjustment, the Viraj Group did not. To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

Mukand

In the home market ("HM"), Mukand reported three levels of trade. *See April 5, 2002 Questionnaire Response from Mukand*, at 18. Mukand sold through four channels of distribution in the HM. The Department has preliminarily determined that in each of these four channels of distribution, only minor differences in selling functions existed. *See Antidumping Duty Review of Stainless Steel Wire Rod from India: Level of Trade Analysis*("*LOT Memo*"). Because the Department has preliminarily determined that only minor differences exist between selling functions in each of the four HM channels of distribution, we preliminarily determine that there is one LOT in the HM. *See LOT Memo.*

For the U.S. market, Mukand reported one level of trade. *See April 5, 2002 Questionnaire Response from Mukand* at 50. For its U.S. sales, Mukand reported two channels of distribution: EP sales made to order to an unaffiliated customer before importation; and CEP sales sold on consignment by an unaffiliated customer after importation. For details of this situation, *See Mukand Consignment Memorandum*. For its EP sales, MIL sold directly to an unaffiliated U.S. customer, and for its CEP sales, MIL sold through a U.S. customer, after importation, which sold the merchandise, or a consignment basis, to other unaffiliated customers in the United States. *See Mukand Consignment Memorandum*. All of Mukand's U.S. sales were made by its wholly-owned subsidiary MIL, which was based in London during the POR. We examined the claimed selling functions performed by MIL for all U.S. sales and have determined that MIL provided the same level of services for both its EP and CEP sales to the United States. *See LOT Memo.*

For EP sales in the U.S. market, Mukand provided the same level of services for both EP and NV sales with only minor differences. *See LOT Memo.* Based on our analysis of the selling functions performed for sales in the HM and EP sales in the U.S. market, we preliminarily determine that there is not a significant difference in the selling functions performed in the home market and U.S. market, and that these sales are made at the same LOT. *See LOT Memo.*

In order to determine whether NV was established at a different LOT than CEP, we examined stages in the marketing process and selling functions along the LOT between Mukand and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transactions, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade then the CEP level of trade. Mukand did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and the Indian markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See LOT Memo.* Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is no significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. *See LOT Memo.* Thus, we find that Mukand's NV and CEP sales were made at the same LOT, and no LOT adjustment or CEP offset need be granted.

The Viraj Group

In accordance with the principles discussed above, we examined information regarding the Viraj Group's distribution systems in both the United States and Indian markets, including selling functions, classes of customers, and selling expenses for the Viraj group.

The Viraj Group claimed only one level of trade in the home market. *See* the Viraj Group's April 8, 2002 submission at B–6 and October 7, 2002 submission at 1. Additionally, the Viraj Group reported that it sold through one channel of distribution in the home market: directly to unaffiliated customers (trading companies and end-users). *See* Viraj Group's April 8, 2002

submission at B–6. For sales in the home market, the Viraj Group reported that all of its sales are sold ex-works. *See* the Viraj Group's April 8, 2002 submission at B–4. The Viraj Group reported that it performs the following selling functions in the home market: price negotiations, order processing, and customer communication. *See* the Viraj Group's October 7, 2002 submission at 1. Because there is only one channel of distribution in the home market and identical selling functions are performed for all home market sales, we preliminarily determine that there is one LOT in the home market.

The Viraj Group claimed one level of trade in the U.S. market. *See* the Viraj Group's April 8, 2002 submission at C–4. The Viraj Group reported that it sold through one channel of distribution in the U.S. market, directly from its mill to its U.S. affiliate (*i.e.*, Viraj USA). *Id.* We determined the LOT of the Viraj Group's CEP sales based on the CEP starting price, and adjusted for selling expenses identified in section 772(d) of the Act. We found that the selling functions (*i.e.*, price negotiations, order processing, and customer communication) the Viraj Group performs after the section 772(d) adjustments are the same for all of its U.S. sales. See The Viraj Group's February 26, 2002 submission at A–10. Therefore, we preliminarily determine that the Viraj Group has one LOT in the U.S. market based on its selling functions to the United States.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between (1) the Viraj Group and its home market customers and (2) the Viraj Group and its affiliated U.S. reseller, Viraj USA, after deductions for expenses and profits. Specifically, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade than the CEP level of trade. The Viraj Group did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Indian markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. For CEP sales, we found that the Viraj Group provided many of the same selling functions and expenses for its sale to its affiliated U.S. reseller Viraj USA as it provided for its home market sales, including price negotiation, order processing, and customer communication. Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is not a significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. Thus, we find that the Viraj's NV and CEP sales were made at the some LOT, and no LOT adjustment or CEP offset need be granted.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for Panchmahal, Mukand, and the Viraj Group for the period December 1, 2000 through November 30, 2001:

Producer/Manufacturer/Exporter	Weighted-Average Margin
The Viraj Group, Limited	0.82%
Panchmahal	48.80%
Mukand, Limited	32.87%

The Department will disclose calculations performed for these preliminary results within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 C.F.R. 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 C.F.R. 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. *See* 19 C.F.R. 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See*19 C.F.R. 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 C.F.R. 351.309(d). Further, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 C.F.R. 251.212(b), the Department has calculated an assessment rate applicable to all appropriate entries. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value, or entered quantity, as appropriate, of the examined sales for that importer. Upon completion of this review, where the assessment rate is above de minimis, we will instruct the U.S. Customs Service to assess duties on all entries of subject merchandise by that importer.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular product is de minimis, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 48.80 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of the proprietary information disclosed under APO in accordance with 19 C.F.R. 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: December 31, 2002.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–347 Filed 1–7–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010303A]

North Pacific Fishery Management Council; Notice of Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Committee Meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Essential Fish Habitat Committee will meet in Seattle, WA.

DATES: The meeting will be held on January 26, 2003.

ADDRESSES: Renaissance Madison Hotel, 515 Madison Street, Seattle, WA 98104, in the South Room on the 3rd floor.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Cathy Coon, NPFMC, 907–271–2809.

SUPPLEMENTARY INFORMATION: The meeting will begin at 9a.m. on Sunday, January 26, 2003. The Committee's agenda includes the following issues:

(1) Comments on the geographic boundaries of Alternative 6.

(2) Comments on Alternative 5 suboption for the Aleutian Islands.

(3) Update on the geographic boundaries of the Gulf of Alaska Alternatives in accordance with Coast Guard and NMFS regulatory specifications.

(4) Discussion of the concept of a baseline for the analysis.

Although non-emergency issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), these issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 3, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–322 Filed 1–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010203D]

North Pacific Fishery Management Council; Notice of Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Committee Meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Observer Committee will meet in Seattle, WA.

DATES: The meeting will be held on January 23 and 24, 2003.

ADDRESSES: Alaska Fisheries Science Center (Center), 7600 Sand Point Way NE, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Nicole Kimball, NPFMC, 907–271–2809.

SUPPLEMENTARY INFORMATION: The meeting will begin at 9 a.m. on Thursday, January 23, 2003, and continue through Friday, January 24, 2003. The Committee's agenda includes the following issues:

(1) Review a discussion paper which outlines a proposed problem statement and general alternatives and issues for long-term, significant revisions to the Observer Program.

(2) Review a NMFS proposal for a short-term pilot project to test deployment of observer resources to determine catch composition and bycatch rates in a specific fishery.

Although non-emergency issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), these issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305)c) of the Magnuson-Stevens Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 02, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–324 Filed 1–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; ADA Technologies, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to ADA Technologies, Inc., a revocable, nonassignable, exclusive, license to practice worldwide the Government-Owned inventions described in U.S. Patent No. 5,885,076 entitled "Method and System for Removing Mercury From Dental Waste Water," issued 23 March 1999, in the field of removal of mercury from dental waste water.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 03–299 Filed 1–7–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Secretary of Education's Commission on Opportunity in Athletics; Meeting

AGENCY: Secretary of Education's Commission on Opportunity in Athletics; Department of Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public meeting of the Secretary of Education's Commission on Opportunity in Athletics (the Commission). The meeting will take place in Washington, DC.

Individuals who will need accommodations for a disability in order to attend the meetings should notify the Commission office no later than January 22, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: January 29–30, 2003.

Location: Hilton Washington and Towers Hotel, 1919 Connecticut Avenue, NW., Washington, DC 20009.

Times: January 29: 9 a.m.–12:30 p.m., 2 p.m.–5 p.m. January 30: 9 a.m.–1 p.m.

Meeting Format: This meeting will be held according to the following schedule:

1. Date: January 29, 2003, Time: 9 a.m.–12:30 p.m., 2 p.m.–5 p.m. January 30, 2003, Time: 9 a.m.–1 p.m.

Attendees: If you would like to attend any or all of the above listed meetings; we ask that you register with the Commission office by email or fax to the address listed under **ADDRESSES**. Please provide us with your name contact information.

Participants: The meeting scheduled for January 29–30, 2003 will consist of review and discussion by the Commissioners of the information from the previous public meetings in preparation for the Commission's forthcoming report to the Secretary of Education. The public is invited to observe this meeting; however there will not be opportunity for public comment.

In addition to making reservations, individuals attending the public meetings, for security purposes, must be prepared to show photo identification in order to enter the meeting location.

FOR FURTHER INFORMATION CONTACT

1. *Internet.* We encourage you to send your questions through the Internet to the following address: *OpportunityinAthletics@ed.gov*

2. *Mail.* You may submit your comments to The Secretary of Education's Commission on Opportunity in Athletics, 400 Maryland Avenue, SW., ROB–3 Room 3060, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

3. *Facsimile.* You may submit comments by facsimile at (202) 260–4560.

View the Commission's Web site at: *http://www.ed.gov/inits/commissionsboards/athletics.* The Commission office number is 202–708–7417.

SUPPLEMENTARY INFORMATION: The nation is commemorating the 30th anniversary of the passage of Title IX, the landmark legislation prohibiting recipients of Federal funds from discriminating on the basis of sex. Since this legislation was enacted, there has been a dramatic increase in the number of women participating in athletics at the high school and college level. The Secretary of Education has determined that this anniversary provides an appropriate time to review the application of Title IX to educational institutions; efforts to provide equal opportunity in athletics to women and men. In order to do so, the Secretary established the Commission on Opportunity in Athletics. The Commission will produce a report no later than February 28, 2003, outlining its findings relative to the opportunities for men and women in athletics in order to improve the effectiveness of Title IX.

The Commission will discuss the following priority areas:

1. Are Title IX standards for assessing equal opportunity in athletics working to promote opportunities for male and female athletes?

2. Is there adequate Title IX guidance that enables colleges and school districts to know what is expected of them and to plan for an athletic program that effectively meets the needs and interests of their students?

3. Is further guidance or are other steps needed at the junior and senior high school levels where the availability or absence of opportunities will critically affect the prospective interests and abilities of student athletes when they reach college age?

4. How should activities such as cheerleading or bowling factor into the analysis of equitable opportunities?

5. How do revenue producing and large-roster teams affect the provision of equal athletic opportunities? The Department has heard from some parties that whereas some men athletes will "walk-on" to intercollegiate teams—without athletic financial aid and without having been recruited—women rarely do this. Is this accurate and, if so, what are its implications for Title IX analysis?

6. In what ways do opportunities in other sports venues, such as the Olympics, professional leagues, and community recreation programs, interact with the obligations of colleges and school districts to provide equal athletic opportunity? What are the implications for Title IX?

7. Apart from Title IX enforcement, are there other efforts to promote athletic opportunities for male and female students that the Department might support, such as public-private partnerships to support the efforts of schools and colleges in this area?

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: January 6, 2003.

Rod Paige,

Secretary of Education.

[FR Doc. 03–386 Filed 1–7–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for Retrieval, Treatment, and Disposal of Tank Waste and Closure of Single-Shell Tanks at the Hanford Site, Richland, WA

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) intends to prepare an environmental impact statement (EIS) on the proposed retrieval, treatment, and disposal of the waste being managed in the high-level waste (HLW) tank farms at the Hanford Site near Richland, Washington, and closure of the 149 single-shell tanks (SSTs) and associated facilities in the HLW tank farms. The HLW tanks contain both hazardous and radioactive waste (mixed waste).

This EIS will be prepared in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations (40 CFR parts 1500–1508 and 10 CFR part 1021). DOE's proposed action is to remove waste from the tanks to the extent that retrieval is technically and economically feasible, treat the waste through vitrification in the planned Waste Treatment Plant (WTP) and/or one of several other treatment processes such as bulk vitrification, grout, steam reforming and sulfate removal, depending on waste type and waste characteristics. DOE proposes to package the waste for offsite shipment and disposal or onsite disposal. The tanks would be filled with materials to immobilize the residual waste and prevent long-term degradation of the tanks and discourage intruder access.

The 149 underground SSTs and 28 underground double-shell tanks (DSTs) are grouped in 18 tank farms that are regulated under the Resource Conservation and Recovery Act of 1976 (RCRA) as treatment, storage, and disposal units that, for closure purposes, include tanks, associated ancillary equipment, and contaminated soils. DOE proposes to close the tanks in accordance with the Hanford Federal Facility Agreement and Consent Order (also known as the Tri-Party Agreement or TPA). DOE invites public comments on the proposed scope of this EIS.

DATES: The public scoping period begins with the publication of this Notice and concludes March 10, 2003. DOE invites Federal agencies, Native American tribes, State and local governments, and members of the public to comment on the scope of this EIS. DOE will consider fully all comments received by the close of the scoping period and will consider comments received after that date to the extent practicable.

Public meetings will be held during the scoping period. Meetings will be held in Seattle and Richland, Washington and in Portland and Hood River, Oregon on the following dates.

Richland: February 5, 2003.

Hood River: February 18, 2003.

Portland: February 19, 2003.

Seattle: February 20, 2003.

At least 15 days prior to the meetings, DOE will notify the public of the meeting locations and times and will provide additional information about each meeting through press releases, advertisements, mailings and other methods of encouraging public participation in the NEPA process. At these scoping meetings, DOE will provide information about the tank waste program and alternatives for retrieving, treating, and disposing of the waste, along with alternatives for closing the SSTs. The meetings will provide opportunities to comment orally or in writing on the EIS scope, including the alternatives and issues that DOE should consider in the EIS.

ADDRESSES: DOE invites public comment on the proposed scope of this EIS. Comments may be submitted by mail, electronic mail, fax, or voice mail and addressed as follows: Mary Beth Burandt, Document Manager, DOE Office of River Protection, U.S. Department of Energy, Post Office Box 450, Mail Stop H6–60, Richland, Washington, 99352, Attention: Tank Retrieval and Closure EIS, Electronic mail: *Mary_E_Burandt@rl.gov,* Fax: (509) 376–2002, Telephone and voice mail: (509) 373–9160.

FOR FURTHER INFORMATION CONTACT: To request information about this EIS and the public scoping workshops or to be placed on the EIS distribution list, use any of the methods identified in **ADDRESSES** above. For general information about the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585–0119, Fax: (202) 586–7031, Telephone: (202) 586–4600, Voice mail: (800) 472–2756.

SUPPLEMENTARY INFORMATION

Background

The Hanford Site defense activities related to nuclear weapons production created a wide variety of waste. Over 50 million gallons of waste are presently stored in the HLW tank farms, which are located in the 200 Area of the Site. The waste is stored in 149 underground SSTs (ranging in capacity from approximately 55,000 to 1 million gallons) and 28 underground DSTs (ranging in capacity from approximately one to 1.16 million gallons) grouped in 18 tank farms, and approximately 60 smaller miscellaneous underground storage tanks. This waste has been processed and transferred between tanks, and as a result, the chemical, physical (*i.e.*, liquid, solid and sludge) and radiological characteristics of the waste vary greatly among and within individual tanks. In addition, the tank waste contains chemicals or has characteristics classified as hazardous waste under RCRA regulations (40 CFR Parts 260–268 and Parts 270–272) and as dangerous waste under the Washington Administrative Code "Dangerous Waste Regulations" (WAC 173–303).

In 1996, DOE issued the Tank Waste Remediation System (TWRS) EIS (DOE/EIS–0189), which included analyses of alternatives for retrieving and treating (*e.g.*, immobilizing) the waste stored in the tank farms. Because sufficient data were not available to evaluate a range of closure actions, tank system closure alternatives were not evaluated in the TWRS EIS. Among the uncertainties were data regarding past leak losses from the SSTs and how retrieval technology would perform to meet retrieval objectives.

In 1997, DOE issued its Record of Decision (ROD, 62 FR 8693, February

26) in which DOE decided that it would proceed with tank waste retrieval and treatment. In the ROD and subsequent supplemental analyses, DOE acknowledged that there were substantial technical uncertainties that required resolution. Nevertheless, to make progress while resolving the technical uncertainties, DOE decided to implement waste treatment using a phased approach as identified in the TWRS ROD. During the initial phase (Phase I), DOE planned to design, construct and operate demonstration-scale waste treatment facilities. Following the demonstration phase, DOE would construct full-scale facilities to treat the remaining tank waste (Phase II).

DOE's decision in the TWRS ROD was consistent with modifications to the Tri-Party Agreement contained in the M–62, "Complete Pretreatment, Processing and Vitrification of Hanford High-level (HLW) and Low-activity (LAW) Tank Wastes" series of milestones. Accordingly, DOE proceeded with plans to design, construct, and operate facilities that would separate waste into high-level and low-activity waste streams, vitrify the high-level waste stream and vitrify or similarly immobilize the LAW stream. These facilities are now under construction and are collectively referred to as the "Waste Treatment Plant" or WTP.

DOE's strategy for retrieving, treating and disposing of the tank waste and closing the tank farms has continued to evolve, based on information becoming available since the TWRS ROD was issued. New information and proposed changes to DOE's strategy include the following:

- Design of and preliminary performance projections for the WTP support DOE's proposal to extend operations beyond the original plan to operate the WTP for a ten-year period and to enhance throughput compared to facilities planned for in the 1997 ROD.
- New information indicates that deployment of large-scale treatment facilities in approximately 2012 to immobilize waste not processed by the WTP currently under construction, as identified in the TWRS ROD, may be prohibitively expensive (DOE/EIS–0189–SA–3).
- Under DOE Order 435.1 (Radioactive Waste Management), as applicable, DOE may determine that some tank wastes should be managed as low-level waste (LLW) and transuranic (TRU) waste, which may result in changes in how DOE may treat and dispose of portions of the SST and DST wastes from the HLW tank farms.
- DOE wants to consider non-vitrification treatment technologies for LAW and LLW, if these wastes could be immobilized and disposed of onsite or offsite, while providing protection to the human environment comparable to LAW and LLW immobilized by vitrification.

In developing its Performance Management Plan for the Accelerated Cleanup of the Hanford Site (PMP, DOE/RL–2000–47, August 2002), DOE stated its intent to meet its commitments under the Tri-Party Agreement, and identified its plan to complete tank waste retrieval, treatment and disposal by 2028, and to close all of the tanks and associated facilities, including the WTP, by 2033. DOE's current plans call for closing all of the SSTs by 2028.

DOE stated in the PMP that to achieve these objectives, increased capacity will be needed for the WTP, along with additional treatment capacity provided by other waste immobilization technologies, referred to herein as "supplemental" technologies (bulk vitrification, containerized grout, steam reforming, or sulfate removal are examples). Also in the PMP and in the Supplement Analysis for the Tank Waste Remediation System (DOE/EIS–0189–SA3, 2001), DOE concluded that its evolving strategy for treating and disposing of the tank wastes by 2028 and closing the SSTs by 2028 requires NEPA analysis of proposed tank waste retrieval, treatment and disposal, and proposed tank closure actions.

Further, under the TPA Milestone M–45, "Complete Closure of All Single-Shell Tank (SST) Farms," DOE and the Washington State Department of Ecology (Ecology) have identified a process to start discussing how SST closure would occur. An important part of the process DOE and Ecology have defined for closing tank systems is compliance with Washington State Dangerous Waste regulations that require approval of a closure plan and modification of the Hanford Site Dangerous Waste Permit. Before Ecology can approve either a closure plan or modification of DOE's permit, the State of Washington must fulfill its State Environmental Policy Act (SEPA) requirements. As SEPA is very similar to NEPA, Ecology can adopt a NEPA document if it determines that the document is sufficient to meet SEPA requirements. Ecology has agreed to be a cooperating agency in preparing this EIS.

Need for Action

To meet its commitments under the Tri-Party Agreement and implement its plans to close the tank systems and associated facilities in a timely manner to reduce existing and potential future risk to the public, site workers, and the environment, DOE needs to complete waste retrieval, treatment and disposal of the waste from the SST and DST systems by 2028 and close all SST systems by 2028.

Although DOE is addressing safety and environmental issues posed by tank wastes to minimize current potential risks to human health and the environment, DOE must also implement long-term actions to safely manage and dispose of waste from the tank waste systems, including waste associated with inactive miscellaneous underground storage tanks, and close the SST systems to reduce permanently the potential risk to human health and the environment. These long-term actions also are needed to ensure compliance with applicable Federal requirements regulating the management and disposal of radioactive waste, as well as Federal and Washington State requirements regulating hazardous and mixed waste.

Proposed Action

DOE proposes to retrieve waste from the 149 SST and 28 DST systems and close the SST tank farms in a manner that complies with Federal and Washington State requirements and protects the human environment. (Closure of the DSTs and closure of the WTP are not part of the proposed action because they are active facilities needed to complete waste treatment. Closure of the DSTs and WTP would be addressed at a later date, after appropriate NEPA analysis.) DOE proposes to immobilize the retrieved waste in the WTP and through supplemental treatment technologies such as bulk vitrification, grout, steam reforming and sulfate removal, and to package the immobilized waste for offsite shipment and disposal in licensed and/or permitted facilities or disposal onsite. DOE proposes to close the SST farms (including tanks, ancillary equipment and soils) within the tank farm area by 2028. The tanks would be filled with materials to immobilize the residual waste and prevent long-term degradation of the tanks and discourage intruder access. Associated support buildings, structures, laboratories, and the treatment facilities would be decontaminated and decommissioned in a cost-effective, legally compliant, and environmentally sound manner. Under the proposed action, DOE would use existing, modified, or, if required, new systems to assure capability to store and manage waste during retrieval and treatment.

Background on Development of Alternatives

The proposed action could result in changes to DOE's tank waste management program with respect to waste storage, waste retrieval, waste treatment, waste disposal, and tank farm closure at the Hanford Site. These key variables were evaluated to develop the range of reasonable alternatives identified below. In terms of waste storage, the EIS would analyze the use of the existing waste storage systems and evaluate the need for new storage systems. With regard to waste retrieval, DOE would evaluate a range of timing of retrieval and the technologies used, from past-practice sluicing as analyzed in the TWRS EIS to dry retrieval. Treatment and disposal alternatives for portions of the SST and DST waste would be evaluated based on some volume of the waste being classified as LLW or TRU waste pursuant to DOE Order 435.1. The waste identified as LLW could be treated and packaged for onsite or offsite disposal. The waste identified as TRU waste could be treated and packaged for transport and disposal at the Waste Isolation Pilot Plant (WIPP) near Carlsbad, New Mexico.

Unless a specific alternative identifies a waste type as LLW and/or TRU waste, the waste would be analyzed as HLW or LAW for the purposes of treatment and disposal. The alternatives for waste treatment include: 1) Treating all wastes via an enhanced WTP as vitrified waste; 2) treating HLW via the WTP and LAW via WTP or supplemental treatments; or 3) treating the waste as stated in #2 and/or supplemental treatment for LLW and TRU waste in the tank farms, in which case some waste would not be processed through the WTP. The options for waste disposal include disposing of the waste onsite using existing or new facilities, disposing of the waste at offsite government facilities (*e.g.*, a geological repository, WIPP, DOE's Nevada Test Site) or using onsite and offsite commercial facilities (such as Envirocare in Utah) for disposal of Hanford waste. Alternatives for tank closure would be evaluated based on broad closure strategies including clean closure (removal of the tanks, ancillary facilities, and contaminated soils) and landfill closure (residual waste left in place and post closure care).

Proposed Alternatives

Each of the six alternatives contains a waste storage, retrieval, treatment and disposal component. Alternatives 3 through 6 also include a tank closure component. The main differences among the alternatives include the extent of waste retrieval, the waste treatment and disposal approach, the tank closure approach, and timing to complete the necessary activities.

1. No Action

The Council on Environmental Quality NEPA Regulations (40 CFR parts 1500–1508), and the DOE NEPA Regulations (10 CFR part 1021) require analysis of a No Action alternative.

Storage: DOE would continue current waste management operations using existing storage facilities. Immobilized (*i.e.*, vitrified) High-level Waste (IHLW) would be stored onsite pending disposal at a geologic repository. Once WTP operations are completed, all tank waste system storage (SSTs and DSTs), treatment, and disposal facilities at the Hanford Site would be placed in a stand-by operational condition.

Retrieval: Waste would be retrieved to the extent required to provide waste feed to the WTP using currently available liquid-based retrieval and leak detection technologies (approximately 25–50% of the total waste volume would be retrieved).

Treatment: No new vitrification or treatment capacity beyond that anticipated in the WTP would be deployed. However, the WTP would be modified within parameters provided for in the TWRS ROD to increase throughput. The WTP would continue to operate until its design life ends in 2046.

Disposal: The residual waste in tanks and the waste remaining in tanks that had not been retrieved (approximately 50 to 75% of the total waste volume) would remain in the tank farm indefinitely. Immobilized Low Activity Waste (ILAW) (by vitrification) would be disposed of onsite. IHLW would be stored onsite pending disposal at a geological repository. For purposes of analysis, administrative control of the tank farms would end following a 100-year period.

Closure: Tank closure would not be addressed; under this alternative, some waste would be left in the tanks indefinitely.

2. Implement the 1997 Record of Decision (With Modifications)

This alternative would continue implementation of decisions made in the TWRS ROD and as considered in three supplement analyses completed through 2001. (*See* "RELATED NEPA DECISIONS AND DOCUMENTS" below for references.) Under these supplement analyses, DOE concluded that changes in the design and operation of the WTP, as defined in its contracts and program plans, were within the bounds of analysis of environmental impacts in the TWRS EIS. Among the key modifications that would occur under this alternative are: (1) Implementing the initial phase of waste treatment with one ILAW facility rather than two, (2) expanding the design capacity of the ILAW facility from 20 metric tons of glass per day to 30 metric tons of glass per day, and (3) extending the design life of the Phase I facilities from 10 years to 40 years. Under this alternative, no new actions would be taken beyond those previously described in the TWRS ROD and supplement analyses regarding the tank waste.

Storage: DOE would continue current waste management operations using existing storage facilities as described under No Action.

Retrieval: Waste would be retrieved to the Tri-Party Agreement goal (*i.e.*, residual waste would not exceed 360 cubic feet for 100 series tanks or 36 cubic feet for 200 series tanks, which would correspond to 99% retrieval) using currently available liquid-based retrieval and leak detection systems.

Treatment: The existing WTP would be modified to enhance throughput and supplemented with additional vitrification capacity, as needed, to complete waste treatment by 2028. Under this alternative, all waste retrieved from tanks (approximately 99%) would be vitrified.

Disposal: Retrieved and treated waste would be disposed of onsite (ILAW) or stored onsite pending disposal at a geologic repository (IHLW). Once operations are completed, all tank waste system waste storage, treatment, and disposal facilities at the Hanford Site would be placed in a stand-by operational condition. The residual waste would remain in the tank farm indefinitely. For purposes of analysis, DOE assumes under this alternative that it would cease to maintain administrative control after a 100-year period.

Closure: Tank closure would not be addressed under this alternative. Some waste would be left in the tanks indefinitely.

3.0 Landfill Closure of Tank Farms/ Onsite and Offsite Waste Disposal

Storage: DOE would continue current waste management operations using existing storage facilities.

Retrieval: Waste would be retrieved to the Tri-Party Agreement goal (*i.e.*, residual waste would not exceed 360 cubic feet for 100 series tanks or 36 cubic feet for 200 series tanks, which would correspond to 99% retrieval) using currently available liquid-based retrieval and leak detection systems.

Treatment: Retrieved waste would be treated with the WTP capacity based on enhanced and/or modified performance of operating systems (*e.g.*, modifications to melters to increase throughput). WTP capacity would be supplemented with additional waste treatment capacity to immobilize LAW using a non-vitrification technology. New non-vitrification supplemental treatment capacity would be developed external to the WTP to immobilize a portion of the tank waste that would be designated as LLW pursuant to DOE Order 435.1 and/or prepare a portion of the tank waste that would be designated as TRU waste for disposal. Waste treatment under this alternative would be completed in 2028 and all SST tank systems would be closed by 2028.

Disposal: ILAW immobilized via the WTP would be disposed of onsite or at offsite commercial (*e.g.*, U.S. Ecology of Washington or Envirocare of Utah) or DOE facilities (Nevada Test Site). IHLW would be stored onsite pending disposal at a national geologic repository. LLW immobilized external to the WTP would be disposed of onsite or at offsite commercial or DOE facilities. TRU waste would be packaged and stored onsite in an existing or new facility pending disposal at the Waste Isolation Pilot Plant (WIPP).

Closure: As operations are completed, SST waste system, waste storage, treatment and disposal facilities at the Hanford Site would be closed as a RCRA landfill unit under Dangerous Waste Regulations under WAC 173–303 and DOE Order 435.1, as applicable, or decommissioned (waste treatment facilities under DOE Order 430.1A). The tanks would be filled with materials to immobilize the residual waste and prevent long-term degradation of the tanks and discourage intruder access. Tanks, ancillary equipment, and contaminated soils would be remediated and remain in place and the closed tank systems would be covered with an engineered barrier that exceeds RCRA landfill requirements and is the more protective of the landfill options being evaluated (*i.e.*, Hanford barrier).

The main differences between this alternative and other alternatives involve: 1) Using a more robust barrier for closure of tank systems that would provide longer term protection from contaminant releases from closed tank systems and limit intrusion into the closed system compared to the barrier evaluated under Alternatives 5 and 6 (tanks would not be closed under Alternatives 1 and 2, thus no barriers would be used); and 2) Treatment and disposal of treated waste would be the same for Alternatives 3 through 5 allowing for a comparison of the impacts associated with deployment of systems to treat and dispose of transuranic waste (Alternatives 3 through 5) to treatment of waste via the WTP and subsequent management as ILAW and IHLW (Alternatives 2 and 6).

4.0 Clean Closure of Tank Farms/Onsite and Offsite Waste Disposal

Storage: DOE would continue current waste management operations using existing storage facilities that would be modified, as needed, to support minimizing liquid losses from SSTs and accelerating SST waste retrieval into safer storage pending retrieval for treatment.

Retrieval: Waste would be retrieved using multiple waste retrieval campaigns using various retrieval technologies (*e.g.*, confined sluicing, crawlers), to the extent needed to support clean closure requirements (*i.e.*, 0.1% residual in the tanks or 99.9% waste retrieved from tanks) using liquid and non-liquid retrieval and enhanced in-tank and/or ex-tank leak detection systems.

Treatment: Retrieved waste would be treated with the WTP capacity based on enhanced and/or modified performance of operating systems (see Alternative 3). New alternative treatment capacity to immobilize LLW (*e.g.*, bulk vitrification, containerized grout, steam reforming, sulfate removal) and/or prepare TRU waste for disposition would be developed external to the WTP. Waste treatment under this alternative would be completed in 2028 and all SST tank systems would be closed by 2028.

Disposal: LAW immobilized via the WTP would be disposed of onsite or at offsite commercial or DOE facilities (see Alternative 3). IHLW would be stored onsite pending disposal at a national geologic repository. LLW immobilized external to the WTP would be disposed of onsite or at offsite commercial or DOE facilities (See Alternative 3). TRU waste would be retrieved from tanks, packaged in a new facility, and stored onsite in existing or new storage facilities pending shipment to and disposal at the WIPP.

Closure: Clean closure reflects minimal residual waste in tanks and ancillary equipment, and contaminated soils remediated in place and/or removed from the tank system to be treated and disposed of in accordance with RCRA requirements. As operations are completed, all SST system storage, treatment, and disposal facilities at the Hanford Site would be closed. Waste storage and disposal facilities would be closed in a manner that supported future use on an unrestricted basis and that did not require post-closure care.

The main differences between this alternative and the other alternatives are: 1) The greatest amount of waste is retrieved from tanks based on multiple technology deployments; and 2) tank systems would be closed to meet clean closure standards. Treatment and disposal of treated waste would be the same for Alternatives 3 through 5, allowing a comparison of the impacts associated with deployment of systems to treat and dispose of TRU waste (Alternatives 3 through 5) to treatment of TRU waste via the waste treatment plant (Alternatives 2 and 6).

5.0 Accelerated Landfill Closure/Onsite and Offsite Waste Disposal

Storage: DOE would continue current waste management operations using existing storage facilities that would be modified or supplemented with new waste storage facilities, to support actions regarding near-term acceleration of tank waste retrieval and treatment. Under this alternative, some SSTs would be retrieved and closed by 2006, exceeding the existing TPA M–45 commitments.

Retrieval: Waste would be retrieved to the Tri-Party Agreement goal to the extent feasible using currently available liquid-based retrieval and leak detection systems (residual waste would correspond to 90–99% retrieval).

Treatment: Waste treatment would be completed no later than 2024 and SST systems would be closed by 2028. Retrieved waste would be treated with the WTP capacity based on enhanced and/or modified performance of operating systems, as described under Alternative 2. WTP capacity would be supplemented with new treatment capacity to immobilize LLW. New treatment capacity to immobilize LLW and/or prepare TRU waste for disposition would be developed external to the WTP.

Disposal: LAW immobilized via the WTP would be disposed of onsite or at offsite commercial or DOE facilities. IHLW would be stored onsite pending disposal at the proposed national geologic repository. LLW immobilized external to the WTP would be disposed of onsite or at offsite commercial or DOE facilities. Transuranic waste would be packaged and stored onsite pending disposal at the WIPP.

Closure: As operations are completed, SST tank waste system waste storage, treatment, and disposal facilities would be closed as a RCRA landfill unit under Dangerous Waste Regulations under WAC 173–303 and DOE Order 435.1, or decommissioned (waste treatment

facilities under DOE Order 430.1A). Waste storage and disposal facilities would be closed as RCRA landfill units under applicable state Dangerous Waste Regulations (WAC 173–303). The tanks would be filled with materials to immobilize the residual waste and prevent long-term degradation of the tanks and discourage intruder access. Tank systems (tanks, ancillary equipment, and soils) would be closed in place and would be covered with a modified RCRA barrier (*i.e.*, a barrier with performance characteristics that exceed RCRA requirements for disposal of hazardous waste).

The main difference between this alternative and the other alternatives are (1) completion of some SST closure actions by 2006, completion of all waste treatment by 2024, and closure of all SST systems by 2028 in contrast to Alternatives 2, 3 and 6, which would complete waste treatment in 2028 and SST tank systems closure in 2028 and; (2) no remediation of ancillary equipment and contaminated soil, allowing a comparison with the more extensive remediation analyzed under Alternative 3. Another main difference between this alternative and Alternative 3 is the use of a modified RCRA barrier. Treatment and disposal of treated waste would be the same for Alternatives 3 through 5, allowing for a comparison of the impacts associated with deployment of systems to treat and dispose of transuranic waste (Alternatives 3 through 5) to treatment of transuranic waste via the WTP (Alternatives 2 and 6).

6.0 Landfill Closure/Onsite and Offsite Waste Disposal

Storage: DOE would continue current waste management operations using existing storage facilities that would be modified, as needed, to support SST waste retrieval and treatment.

Retrieval: Waste would be retrieved to the Tri-Party Agreement goal (*i.e.*, residual waste would not exceed 360 cubic feet for 100 series tanks or 36 cubic feet for 200 series tanks, which corresponds to retrieval of 99%) using liquid and non-liquid based retrieval and enhanced leak detection systems.

Treatment: Retrieved waste would be treated with the WTP capacity based on enhanced and/or modified performance of operating systems. Supplemental treatment technologies would be used to immobilize LLW. New non-vitrification treatment capacity to immobilize LLW for disposition would be developed external to the WTP. Waste treatment under this alternative would be completed in 2028, and all SST systems would be closed by 2028.

Disposal: ILAW immobilized via the WTP would be disposed of onsite or at offsite commercial or DOE facilities. IHLW would be stored onsite pending disposal at a national geologic repository. LLW immobilized external to the WTP would be disposed of onsite or at offsite commercial or DOE facilities.

Closure: As operations are completed, all tank waste system waste storage, treatment, and disposal facilities at the Hanford Site would be closed (tank farm systems) or decommissioned (waste treatment facilities). The tanks would be filled with materials to immobilize the residual waste and prevent long-term degradation of the tanks and discourage intruder access. Waste storage and disposal facilities would be closed as RCRA landfill units under applicable state Dangerous Waste Regulations (WAC 173–303). Residual waste in tanks, ancillary equipment, and contaminated soils would be remediated in place as needed in accordance with RCRA requirements, and the closed tank systems would be covered with a modified RCRA barrier.

The main difference between this alternative and the other alternatives is that under this alternative there would not be a separate TRU waste stream (Alternatives 3 through 5). As with Alternative 2, waste would be treated in the WTP and subsequently managed as either ILAW or IHLW.

Preliminary Identification of EIS Issues: The following issues have been tentatively identified for analysis in the EIS. The list is presented to facilitate comment on the scope of the EIS; it is not intended to be all-inclusive or to predetermine the potential impacts of any of the alternatives.

- Effects on the public and onsite workers from releases of radiological and nonradiological materials during normal operations and reasonably foreseeable accidents.
- Long-term risks to human populations resulting from waste disposal and residual tank system wastes.
- Effects on air and water quality from normal operations and reasonably foreseeable accidents, including long-term impacts on groundwater.
- Cumulative effects, including impacts from other past, present, and reasonably foreseeable actions at the Hanford Site.
- Effects on endangered species, archaeological/cultural/historical sites, floodplains and wetlands, and priority habitat.
- Effects from onsite and offsite transportation and from reasonably foreseeable transportation accidents.
- Socioeconomic impacts on surrounding communities.
- Disproportionately high and adverse effects on low-income and minority populations (Environmental Justice).
- Unavoidable adverse environmental effects.
- Short-term uses of the environment versus long-term productivity.
- Potential irretrievable and irreversible commitment of resources.
- The consumption of natural resources and energy, including water, natural gas, and electricity.
- Pollution prevention, waste minimization, and potential mitigative measures.

Related NEPA Decisions and Documents: The following lists DOE other NEPA documents that are related to this proposed Hanford Site Tank Retrieval and Closure EIS.

45 FR 46155, 1980, "Double-Shell Tanks for Defense High-Level Radioactive Waste Storage, Hanford Site, Richland, Washington; Record of Decision," **Federal Register**.

53 FR 12449, 1988, "Disposal of Hanford Defense High-Level Transuranic, and Tank Wastes, Hanford Site, Richland, Washington; Record of Decision," **Federal Register**.

60 FR 28680, 1995, "Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Program, Part III; Record of Decision," **Federal Register**.

60 FR 54221, 1995, "Final Environmental Impact Statement for the Safe Interim Storage of Hanford Tank Wastes at the Hanford Site, Richland, WA; Record of Decision," **Federal Register**.

60 FR 61687, 1995, "Record of Decision Safe Interim Storage of Hanford Tank Wastes, Hanford Site, Richland, Washington," **Federal Register**.

61 FR 3922, 1996, "Availability of the Final Environmental Impact Statement for Management of Spent Nuclear Fuel from the K Basins at the Hanford Site, Richland, WA; Notice of Availability of Final Environmental Impact Statement," **Federal Register**.

61 FR 10736, 1996, "Management of Spent Nuclear Fuel from the K Basins at the Hanford Site, Richland, WA. ACTION: Notice of Record of Decision," **Federal Register**.

62 FR 8693, 1997, "Record of Decision for the Tank Waste Remediation System, Hanford Site, Richland, Washington," **Federal Register**.

DOE/EA–0479, 1990, Collecting Crust Samples from Level Detectors in Tank

SY–101 at the Hanford Site, U.S. Department of Energy, Richland, Washington.
DOE/EA–0495, 1991, Preparation of Crust Sampling of Tank 241–SY–101, U.S. Department of Energy, Richland, Washington.
DOE/EA–0511, 1991, Characterization of Tank 241–SY–101, U.S. Department of Energy, Richland, Washington.
DOE/EA–0581, 1991, Upgrading of the Ventilation System at the 241–SY Tank Farm, U.S. Department of Energy, Richland, Washington.
DOE/EA–0802, 1992, Tank 241–SY–101 Equipment Installation and Operation to Enhance Tank Safety, U.S. Department of Energy, Richland, Washington.
DOE/EA–0803, 1992, Proposed Pump Mixing Operations to Mitigate Episodic Gas Releases in Tank 241–SY–101, U.S. Department of Energy, Richland, Washington.
DOE/EA–0881, 1993, Tank 241–C–103 Organic Vapor and Liquid Characterization and Supporting Activities, U.S. Department of Energy, Richland, Washington.
DOE/EA–0933, 1995, Tank 241–C–106 Past Practice Sluicing Waste Retrieval, U.S. Department of Energy, Richland, Washington.
DOE/EA–0981, 1995, Solid Waste Retrieval Complex, Enhanced Radioactive and Mixed Waste Storage Facility, U.S. Department of Energy, Richland, Washington.
DOE/EA–1203, 1997, Trench 33 Widening in 218–W–5 Low-Level Burial Ground, U.S. Department of Energy, Richland, Washington.
DOE/EA–1276, 1999, Widening Trench 36 of the 218–E–12B Low-Level Burial Ground, U.S. Department of Energy, Richland, Washington.
DOE/EA–1405, 2002, Transuranic Waste Retrieval from the 218–W–4B and 218–W–4C Low-Level Burial Grounds, Finding of No Significant Impact, U.S. Department of Energy, Richland, Washington.
DOE/EIS–0113, 1987, Final Environmental Impact Statement. Disposal of Hanford Defense High-Level, Transuranic and Tank Wastes Hanford Site Richland, Washington, U.S. Department of Energy, Washington, DC.
DOE/EIS–0189, 1996, Tank Waste Remediation System, Hanford Site, Richland, Washington, Final Environmental Impact Statement, U.S. Department of Energy and Washington State Department of Ecology, Washington, DC.
DOE/EIS–0189–SA1, 1997, Supplement Analysis for the Proposed Upgrades to the Tank Farm Ventilation, Instrumentation, and Electrical Systems under Project W–314 in Support of Tank Farm Restoration and Safe Operations, U.S. Department of Energy, Richland Operations Office, Richland, Washington.
DOE/EIS–0189–SA2, 1998, Supplement Analysis for the Tank Waste Remediation System, U.S. Department of Energy, Washington, DC.
DOE/EIS–0189–SA3, 2001, Supplement Analysis for the Tank Waste Remediation System, U.S. Department of Energy, Washington, DC.
DOE/EIS–0200, 1997, Final Waste Management Programmatic Environmental Impact Statement, U.S. Department of Energy, Washington, DC.
DOE/EIS–0212, 1995, Safe Interim Storage of Hanford's Tank Waste Final Environmental Impact Statement, U.S. Department of Energy, Richland Operations Office, Richland, Washington.
DOE/EIS–0222, 1999, Final Hanford Remedial Action Environmental Impact Statement and Comprehensive Land Use Plan, U.S. Department of Energy, Richland Operations Office, Richland, Washington.
DOE/EIS–0250, 2002, Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, U.S. Department of Energy Office of Civilian Radioactive Waste Management, Washington, DC.
DOE/EIS–0286D, 2000, Draft Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, U.S. Department of Energy, Richland, Washington.
DOE/EIS–0287, 2002, Idaho High-Level Waste and Facilities Disposition Environmental Impact Statement, U.S. Department of Energy, Washington, DC.
Ecology, 2000, Draft Environmental Impact Statement for Commercial Low-Level Radioactive Waste Disposal Site, Richland, Washington, Washington State Department of Ecology, Olympia, Washington.
Ecology, EPA, and DOE, 1989, Hanford Federal Facility Agreement and Consent Order, as amended, Washington State Department of Ecology, U.S. Environmental Protection Agency, and U.S. Department of Energy, Olympia, Washington.

Issued in Washington, DC on this 3rd day of January, 2003.

Beverly A. Cook,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 03–318 Filed 1–7–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–37–000, et al.]

Exelon Generation Company, LLC, et al. Electric Rate and Corporate Filings

January 2, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Exelon Generation Company, LLC

[Docket No. EC03–37–000]

Take notice that on December 23, 2002, Exelon Corporation, Exelon Ventures Company, LLC, and Exelon Generation Company, LLC, filed an application with the Federal Energy Regulatory Commission (Commission) requesting authorization from the Commission to implement a plan of corporate reorganization.

Comment Date: January 13, 2003.

2. Idaho Power Company andIDACORP Energy, L.P.,

[Docket No. EC03–38–000]

Take notice that on December 23, 2002, Idaho Power Company (Idaho Power) and IDACORP Energy, L.P. (IELP, collectively, Applicants) filed an Application for Commission Approval of Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act. The jurisdictional facilities that are the subject of the Application are a wholesale power sales agreement and transactions (Truckee Agreement and Transactions) between Idaho Power and Truckee-Donner Public Utility District. By their Application, Applicants seek Commission approval for the assignment of the Truckee Agreement and Transactions from Idaho Power to IELP.

Comment Date: January 13, 2003.

3. Calpine Energy Services, L.P. Calpine Northbrook Energy Marketing, LLC

[Docket No. EC03–39–000]

Take notice that on December 24, 2002, Calpine Energy Services, L.P. (CES) and Calpine Northbrook Energy Marketing, LLC (CNEM) tendered for filing an application under section 203 of the Federal Power Act for approval of

the assignment by CES to CNEM of a wholesale power sales agreement for power purchase and sale transactions between Morgan Stanley Capital Group Inc., and CES.

Comment Date: January 14, 2003.

4. ITC Holdings Corp., et al.

[Docket Nos. EC03–40–000 and ER03–343–000]

Take notice that on December 24, 2002, ITC Holdings Corp. (ITC Holdings), ITC Holdings Limited Partnership, International Transmission Company (International Transmission), DTE Energy, Inc. (DTE Energy), and The Detroit Edison Company (Detroit Edison) submitted a joint application pursuant to Section 203 of the Federal Power Act (FPA) seeking all authorizations and approvals necessary for the disposition of jurisdictional facilities in order for DTE Energy to sell, and ITC Holdings to purchase, all of the outstanding capital stock of International Transmission. In addition, pursuant to FPA Section 205 and part 35 of the Commission's regulations, the joint application tenders for filing proposed rates for International Transmission as an independent transmission company, and certain operating and interconnection agreements between International Transmission and Detroit Edison.

Comment Date: January 14, 2003.

5. New England Power Pool

[Docket No. ER03–291–000]

Take notice that on December 18 , 2002, the New England Power Pool (NEPOOL) Participants Committee submitted the Eighty-Eighth Agreement Amending New England Power Pool Agreement, which changes the formula in Scheduling 16 of the NEPOOL Open Access Transmission Tariff (the NEPOOL Tariff) for determining the compensation owners of eligible generators will receive for providing black-start related system restoration and planning services to NEPOOL pursuant to Schedule 16. A January 1, 2003 effective date was requested for each of these Agreements.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England State governors and regulatory commissions.

Comment Date: January 10, 2003.

6. Nevada Power Company

[Docket No. ER03–340–000]

Take notice that on December 26, 2002, Nevada Power Company (Nevada Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) three services agreements:

1. Service Agreement No. 100 to the Sierra Pacific Resources Operating Companies' FERC Electric Tariff, First Revised Volume No. 1. This Service Agreement is an executed Transmission Service Agreement between Nevada Power and Reliant Energy Services, Inc. (Reliant).

2. Service Agreement No. 101A to the Sierra Pacific Resources Operating Companies' FERC Electric Tariff, First Revised Volume No. 1. This Service Agreement is an executed Transmission Service Agreement between Nevada Power and Pinnacle West Energy Company (Pinnacle West).

3. Service Agreement No. 101B to the Sierra Pacific Resources Operating Companies' FERC Electric Tariff, First Revised Volume No. 1. This Service Agreement is an executed Transmission Service Agreement between Nevada Power and Southern Nevada Water Authority (SNWA).

Comment Date: January 16, 2003.

7. Arizona Public Service Company

[Docket No. ER03–347–000]

Take notice that on December 30, 2002, Arizona Public Service Company (APS) tendered for filing a revised Agreement with the City of Williams (Williams) which terminates Service Schedule A effective December 31, 2002 at midnight of APS–FERC Rate Schedule No. 192.

APS states that copies of this filing have been served on Williams and the Arizona Corporation Commission.

Comment Date: January 21, 2003.

8. Arizona Public Service Company

[Docket No. ER03–348–000]

Take notice that on December 30, 2002, Arizona Public Service Company (APS) tendered for filing a request for regulatory approval to change rates to its Long-Term Power Transactions Agreement with PacifiCorp (PAC) applicable under the APS–FERC Rate Schedule No. 182.

APS states that copies of this filing have been served on PAC, the California Public Utilities Commission, the Public Utility Commission of Oregon, the Utah Public Service Commission, the Washington Utilities and Transportation Commission, the Montana Public Service Commission, the Public Service Commission of Wyoming, the Idaho Public Utilities Commission, and the Arizona Corporation Commission.

Comment Date: January 21, 2003.

9. Central Maine Power Company

[Docket No. ER03–349–000]

Take notice that on December 30, 2002, Central Maine Power Company (CMP) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, an executed S.D. Warren Somerset Entitlement Agreement, effective as of March 1, 2003, and designated as Original FERC Rate Schedule No. 201. In addition, CMP requested confidential treatment for certain competitively sensitive material contained in the Agreement and in Exhibit B to CMP's filing.

Comment Date: January 21, 2003.

10. Wisconsin River Power Company

[Docket No. ER03–350–000]

Take notice that on December 30, 2002, Wisconsin River Power Company (WRPCo or the Company) tendered for filing Second Revised Rate Schedule FERC No. 2 (Second Revised Rate Schedule) by and among WRPCo and Consolidated Water Power Company (CWPCo) and Wisconsin Public Service Corporation (WPS) and Wisconsin Power and Light Company (WP&L). The Second Revised Rate Schedule facilitates the sale of power by WRPCo to CWPCo, WPS and WP&L.

The Company requests that the Commission waive its notice of filing requirements to allow the Second Revised Rate Schedule to become effective as of December 31, 2002.

WRPCo states that copies of the filing were served upon CWPCo, WPS, WP&L, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: January 21, 2003.

11. Wisconsin River Power Company

[Docket No. ER03–351–000]

Take notice that on December 30, 2002, Wisconsin River Power Company (WRPCo or the Company) tendered for filing an Original Rate Schedule FERC No. 3 (Rate Schedule) by and among WRPCo and Wisconsin Public Service Corporation (WPS) and Wisconsin Power and Light Company (WP&L) (collectively, the Purchasers). The Rate Schedule sets forth the rates, terms and conditions under which the Purchasers will obtain electric capacity and energy from WRPCo's generating unit.

The Company requests that the Commission waive its notice of filing requirements to allow the Rate Schedule to become effective as of December 31, 2002.

WRPCo states that copies of the filing were served upon WPS, WP&L, the Public Service Commission of

Wisconsin and the Michigan Public Service Commission.

Comment Date: January 21, 2003.

12. Calpine California Equipment Finance Company, LLC

[Docket No. ES03–17–000]

Take notice that on December 18, 2002, Calpine California Equipment Finance Company, LLC (Calpine Finance) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term debt in an amount not to exceed $250 million.

Calpine Finance also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: January 14, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–376 Filed 1–7–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0080; FRL–7282–8]

Lead-Based Paint Activities; State of North Dakota Lead-Based Paint Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; requests for comments and opportunity for public hearing.

SUMMARY: On October 4, 2002, EPA received an application from the State of North Dakota requesting authorization to administer a Program in accordance with section 402 of the Toxic Substances Control Act (TSCA). Included in the application was a letter signed September 26, 2002, by the Governor of North Dakota. stating that the State's Lead-Based Paint Abatement Program is at least as protective of human health and the environment as the Federal program under TSCA section 402. Also, included was a letter from the Attorney General of North Dakota, certifying that the laws and regulations of the State provided adequate legal authority to administer and enforce TSCA section 402. North Dakota certifies that its program meets the requirements for approval of a State program under section 404 of TSCA and that North Dakota has the legal authority and ability to implement the appropriate elements necessary to enforce the program. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will be established. Today's notice announces the receipt of North Dakota's application, provides a 45–day public comment period, and an opportunity to request a public hearing on the application.

DATES: Comments on the application must be received on or before February 24, 2003.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket ID number 2002–0080 (in duplicate) to: Amanda Hasty, Environmental Protection Agency, Region VIII, 8P–P3T, 999 18th St., Suite 300, Denver, CO 80202–2466.

Comments, data, and requests for a public hearing may also be submitted electronically to: hasty.amanda@epa.gov. Follow the instructions under Unit V. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Dave Combs, Regional Toxics Team Leader, 999 18th St., Suite 300, 8P–P3T, Denver, CO 80202–2466; telephone (303) 312–6021; e-mail address: combs.dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General

A. Does this Notice Apply to Me?

This notice is directed to the public in general. This notice may, however, be of interest to firms and individuals engaged in lead-based paint activities in North Dakota. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by the notice. If you have any questions regarding the applicability of this notice to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. The Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–92), titled "Lead Exposure Reduction."

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). These regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 (15 U.S.C. 2684), a State or Indian Tribe may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. EPA will review those applications within 180 days of receipt of the complete application. To receive

EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684 (b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA authorization.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA authorization, by submitting a letter signed by the Governor or the Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdrawals the application.

Section 404(b) of TSCA provides that EPA may approve a program application only after providing notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether North Dakota's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If EPA finds that the program does not meet the requirements for authorization of a state program, EPA will disapprove the program application, at which time a notice will be issued in the **Federal Register** and the Federal program will be established in North Dakota.

II. State Program Description Summary

This summary is provided in accordance with 40 CFR 745.324(a)(4). The applicant has provided the following summary of their lead program. The 2001 North Dakota Legislative session adopted changes to North Dakota's Century Code (NDCC) 23-25, "Air Pollution Control Law." These changes authorized North Dakota's Department of Health (NDDH) to adopt and enforce certain requirements of 40 CFR part 745, subpart L, into the North Dakota Administrative Code (NDAC). The NDDH began amending the NDAC in January 2002. The amendments to the NDAC were adopted in accordance with the administrative rule practices requirements contained in NDCC 28-32 titled "Administrative Agencies Practice Act."

On April 19, 2002, a public hearing was held to consider comments on the proposed administrative rule amendments. Comments were accepted for 30 days before and 30 days after the public hearing. A regulatory analysis including the classes of people probably affected, probable impact including economic impact, probable impact to the Department and alternative methods considered were prepared and made available prior to the start of the public comment period. In addition, the Department prepared a takings assessment (economic analysis) and a stringency determination in conjunction with the regulatory analysis.

On June 18, 2002, the State Health Council adopted the final rule. On August 1, 2002, the North Dakota Legislative Council published the North Dakota Administrative Code (NDAC) 33-15-24 titled "Standards for Lead-Based Paint Activities," to adopt certain provisions of 40 CFR part 745, subpart L, into the North Dakota Administrative Code. The rule became effective September 1, 2002.

On August 15, 2002, a public hearing was held regarding North Dakota's intent to seek EPA authorization of its lead-based paint program. Comments were accepted for 30 days before and 30 days after the public hearing. No comments were received concerning North Dakota's intent to seek EPA authorization of its program. NDAC 33-15-24 references with minor changes the requirements contained in 40 CFR 745.220, "Scope and Applicability," § 745.223, "Definitions," § 745.225, "Accreditation of Training Programs: Target Housing and Child-Occupied Facilities," § 745.226, "Certification of Individuals and Firms Engaged in Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities," § 745.227, "Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities," and § 745.233, "Lead-Based Paint Activities Requirements." Minor changes were made to these sections. The term "certification of companies" was replaced with "licensing of companies." The term "certification" was reserved for individuals. The terminology change was made for clarification and ease of implementation when discussing requirements with the regulated community. All references to EPA grandfather clauses, which preceded the rulemaking, were deleted. Definitions including chewable surface, dripline, lead-based paint hazard, wipe sample, dust lead hazard, paint lead hazard, soil lead hazard, work practice requirement and renovation were adopted from 40 CFR 745.63, 745.65, and 745.83. Elevated blood lead level concentration was changed from 20 micrograms per deciliter to 10 micrograms per deciliter to follow the U.S. Center for Disease Control (CDC) guidelines. Notification requirements were added to NDAC 33–15–24–03. The notification requirements contain provisions for notification to the State prior to beginning lead-based paint abatement activities and prior to conducting lead-based paint abatement courses. Also, fees for certification of individuals, licensing of companies and accreditation of lead-based paint courses were established in NDAC 33–15–24–04.

Several other minor changes were made. These changes are discussed in more detail in a document titled, "Summary of Proposed North Dakota's Lead-Based Paint Rules, January 2002." The North Dakota Lead Activities program will be administered by the North Dakota Department of Health, Division of Air Quality. The North Dakota Department of Health began implementing its program on the day the rule became effective, September 1, 2002. Additional information, copies of the documents referenced above and application forms for licensing and certification may be obtained by contacting the North Dakota Department of Health at (701) 328–5188.

In accordance with 40 CFR 745.324(d), "Program Certification," the Governor of North Dakota submitted a self-certification letter to the EPA Administrator on September 26, 2002, certifying that the State program meets the requirements contained in 40 CFR part 745.324(e)(2)(i) and (e)(2)(ii). Included in the application was a letter from the Attorney General of North Dakota, certifying that the laws and regulations of the State provided adequate legal authority to administer and enforce TSCA section 402. Therefore, as of September 26, 2002, the State of North Dakota is authorized to administer and enforce the lead-based paint program under TSCA section 402, until such time as the Administrator disapproves the application or withdraws the State's Program authorization.

III. Federal Overfiling

TSCA section 404(b) (15 U.S.C. 2684(b)) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket ID number 2002–0080. Copies of this notice, the State of North Dakota's authorization application, and all comments received on the application are available for inspection in the Region VIII office, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located at EPA, Region VIII, and 8P–P3T, 999 18th St., Suite 300, Denver CO 80202.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked "confidential," "CBI," or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed, as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at: hasty.amanda@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket ID number. Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: December 12, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–337 Filed 1–7–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Jetstream Freight Forwarding, Inc. dba Jetstream, 21804 Marine View Drive South, Suite C, Des Moines, WA 98198, Officers: Sara Barnes, Director of Operations (Qualifying Individual), Bryan Jennings, President.

JJB Trucking Service Inc., 333 N. Broad Street, Elizabeth, NJ 07201, Officer: Bertha Trimmio, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Full Service Logistics, Inc., 2100 Huntington Drive, Suite 7, San Marino, CA 91108, Officer: Mei Tung Tsang, C.E.O. (Qualifying Individual).

Q Follow Shipping, Inc., 815 Fairview Avenue, Bldg. #1, Fairview, NJ 07022, Officers: Timothy Cheng Liang, President (Qualifying Individual).

Northtrans Shipping Inc., 17246 S. Main Street, Gardena, CA 90248, Officers: Herbert Lo, President (Qualifying Individual), Matthew Leung, Exec. Vice President.

ECAC Incorporated, 1146 Atlantic Avenue, Brooklyn, NY 11216, Officer: Emeka J. Ukasoanya, President (Qualifying Individual).

Consolidation Shipping & Logistic, (USA) Inc., 219 Stuyvesant Avenue, Lyndhurst, NJ 07071, Officers: Edwin E. Romero, President (Qualifying Individual), Tario Mahmood, Chairman.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Kraus International Shipping Co., 1400 E. Clement Street, Suite 100, Baltimore, MD 21230, Officers: Brenda A. Lang, Secretary (Qualifying Individual), Diane Kraus, President.

Dated: January 3, 2003.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 03–317 Filed 1–7–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications, must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than February 3, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. CBS Banc Corp, Russellville, Alabama; to merge with Community Financial Services, Inc., Bolivar, Tennessee, and thereby indirectly acquire The Bank of Bolivar, Bolivar, Tennessee.

2. Coast Financial Holdings, Inc., Bradenton, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Coast Bank of Florida, Bradenton, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Frontenac Bancshares, Inc., Earth City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Frontenac Bank, Earth City, Missouri.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Utah Community Bancorp, Sandy, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Utah Community Bank, Sandy, Utah.

Board of Governors of the Federal Reserve System, January 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–302 Filed 1–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Bancshares of Florida, Inc. (formerly Citizens Bancshares of Southwest Florida), Naples, Florida; to acquire Florida Trust Company, Inc., Ft. Lauderdale, Florida, and thereby engage in trust company activites, pursuant to section 225.28(b)((15) of Regulation Y. These activities will be conducted in Florida.

Board of Governors of the Federal Reserve System, January 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–301 Filed 1–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 021 0171]

Baxter International, Inc., and Wyeth Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 18, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Joanne Lewers, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2667.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following analysis to aid public comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for December 20, 2002), on the World Wide Web, at "*http://www.ftc.gov/os/2002/12/index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing consent orders ("Consent Agreement") from Baxter International Inc. and Wyeth. The Consent Agreement contains an order to maintain assets to preserve, among other things, the viability, marketability, and

competitiveness of the assets to be divested pending their divestiture. The Consent Agreement also contains a decision and order that is designed to remedy the anticompetitive effects of Baxter's proposed acquisition of the generic injectable pharmaceutical business of Wyeth. Under the terms of the Consent Agreement, the companies will be required to: (1) Divest all of Wyeth's assets relating to propofol to a Commission-approved acquirer; (2) terminate all of Baxter's rights and interests in GensiaSicor's pancuronium, vecuronium, and metoclopramide products, and divest all of its pancuronium, vecuronium, and metoclopramide assets to GensiaSicor; and (3) terminate Baxter's co-marketing agreement with Watson Pharmaceuticals, Inc. by March 14, 2004.

The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

Pursuant to an asset purchase agreement dated June 8, 2002, between Baxter and Wyeth, Baxter proposes to acquire from Wyeth substantially all of the assets related to Wyeth's generic injectable pharmaceutical business operated by Wyeth's ESI Lederle division for a total of $316 million in cash and assumed liabilities. The Commission's complaint alleges that the proposed acquisition, if consummated, would constitute a violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the markets for the manufacture and sale of: (1) Propofol; (2) pancuronium; (3) vecuronium; (4) metoclopramide; and (5) new injectable iron replacement therapies ("NIIRTs"). The proposed Consent Agreement would remedy the alleged violations by replacing in each of these markets the lost competition that would result from the merger.

Propofol

Propofol is a general anesthetic commonly used for the induction and maintenance of anesthesia during surgical procedures and as a sedative for patients who are mechanically ventilated. Although there are other anesthetic agents, there are many benefits associated with propofol including the ability to quickly adjust the amount of sedation and its superior safety profile. Because propofol has a short duration profile, it is the preferred anesthetic agent for out-patient surgery. Annual U.S. sales of propofol total between $375 and $400 million.

The market for propofol is highly concentrated. AstraZeneca sells Diprivan®, the branded propofol product. Baxter markets the only generic propofol product, which is manufactured by GensiaSicor. Wyeth is seeking approval from the Food and Drug Administration ("FDA") for its own propofol product, and it is one of the two best-positioned firms to enter the market.

Entry into the propofol market requires lengthy development efforts because of the product's unique characteristics. Propofol is considered to be one of the most difficult injectable products to develop. Indeed, only one company has been able to introduce a generic propofol product. Propofol is manufactured using a complex process, and it requires the use of a preservative. The preserved formulation used for Diprivan® and the preserved formulation used for the generic propofol marketed by Baxter are both protected by patents. For this reason, any new entrant would have to develop a propofol product using a different preservative that does not infringe existing patents. Once a company has developed a viable product, it is also required to conduct studies and obtain approval from the FDA to market propofol. Clinical development and FDA approval for this particular generic drug takes several years.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for the manufacture and sale of propofol by eliminating potential competition between Baxter and Wyeth. With only two firms currently supplying propofol to customers in this market (Baxter and AstraZeneca), entry by Wyeth and the one other firm well-positioned to enter would likely increase competition and reduce propofol prices. Accordingly, allowing Baxter to acquire Wyeth's generic injectable business likely would reduce the number of rivals in the future from four to three and force customers to pay higher prices for propofol.

The proposed Consent Agreement preserves future competition in the market for propofol by requiring the parties to divest Wyeth's propofol assets to Faulding Pharmaceutical Company no later than 10 business days after the acquisition. Faulding is well-positioned to continue Wyeth's development efforts and poses no separate competitive concerns as the acquirer of the propofol assets. If the Commission determines that Faulding is not an acceptable purchaser, or that the manner of divestiture is not acceptable, Baxter and Wyeth must divest the propofol assets to a Commission-approved buyer no later than 90 business days from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the propofol assets. The Consent Agreement also requires the parties to license certain additional know-how that relates, but does not exclusively relate, to propofol to the propofol acquirer.

The Consent Agreement contains several provisions designed to ensure that the divestiture is successful. Baxter and Wyeth are required to provide transitional services to the propofol acquirer relating to regulatory approvals and manufacturing, and in responding to, and defending against, any lawsuit, investigation or proceeding relating to propofol. The Consent Agreement also requires Baxter and Wyeth to provide incentives to certain employees to continue in their positions until the divestiture is accomplished. For a period of six months from the date the assets are divested, Baxter and Wyeth will provide the propofol acquirer an opportunity to enter into employment contracts with individuals who have experience relating to Wyeth's propofol product. Baxter and Wyeth are also required to provide incentives to these individuals to accept employment with the propofol acquirer. For a period of one year following the divestiture date, Baxter and Wyeth are prohibited from hiring any employees of the acquirer of the propofol assets who have responsibility related to propofol. Finally, Baxter and Wyeth must take steps to maintain the confidentiality of confidential information related to propofol.

Pancuronium

Pancuronium is a rapid-onset, long-acting neuromuscular blocking agent used to temporarily freeze muscles during surgery or mechanical ventilation and to assist in the intubation process. Although pancuronium is an older drug, doctors continue to use it because it is an effective and inexpensive product with a known side-effect profile. The market for pancuronium in the United States is approximately $2 million.

Pancuronium is a small and highly concentrated market. Baxter, Wyeth and Abbott are the only suppliers of generic injectable pancuronium in the United States. Currently, Baxter, which markets pancuronium pursuant to an exclusive

agreement with GensiaSicor, accounts for almost half of U.S. sales of the drug. Post-acquisition, Baxter would account for 74% of the sales of pancuronium in the United States, and the post-acquisition Herfindahl-Hirschman Index ("HHI") would be 6,152 points, representing a 2,496 point increase in the HHI. Post-acquisition, Abbott would be the only other supplier of pancuronium in the United States.

The market for the manufacture and sale of pancuronium is unlikely to attract new entrants because pancuronium is an older drug whose usage and price have declined over time. Although pancuronium is still an important drug, companies are unlikely to devote resources to developing an older drug with limited sales. Even if a supplier of other injectable drugs decided to develop pancuronium, it would be costly and time consuming to complete the necessary research and development, and to obtain the requisite approval from the FDA. Consequently, entry into the pancuronium market is not likely to occur in a timely manner, if at all.

The proposed acquisition would create a duopoly in the market for the manufacture and sale of pancuronium in the United States. Post-acquisition, Baxter and Abbott would be the only remaining suppliers of pancuronium. This is likely to lead to higher prices of pancuronium.

The proposed Consent Agreement preserves competition in the pancuronium market by requiring Baxter to terminate all of its rights and interests in GensiaSicor's pancuronium product and divest all of its pancuronium assets to GensiaSicor no later than five days after the acquisition. GensiaSicor is capable of marketing and selling its own pancuronium. It is a well recognized and respected company in the injectable pharmaceutical industry, and will be an able competitor in the market for the manufacture and sale of pancuronium.

Vecuronium

Vecuronium is an intermediate-acting neuromuscular blocking agent that temporarily freezes muscles during surgery, mechanical ventilation, or intubation. Vecuronium is a popular neuromuscular blocking agent with a superior side effect profile. The market for the manufacture and sale of vecuronium in the United States is approximately $21 million.

The market for the manufacture and sale of vecuronium is highly concentrated. Baxter markets vecuronium under an exclusive supply agreement with GensiaSicor. Baxter and Wyeth were the two leading suppliers of vecuronium in the United States, with a combined market share of 53%, until Wyeth temporarily suspended its vecuronium production in 2001. Prior to the announcement of the acquisition, Wyeth planned to re-enter the vecuronium market in the near future. Post-acquisition, the HHI would be 3,598 points, representing a 1,364 point increase in the HHI. There are only three other suppliers of vecuronium in the United States. Organon continues to market its branded vecuronium, and Abbott and Bedford supply generic vecuronium products.

Entry into the market for the manufacture and sale of vecuronium is unlikely because it is an older drug with established suppliers, and it is a difficult drug to manufacture. Although vecuronium continues to be an important drug, companies are unlikely to devote resources to entering this market because existing suppliers have become entrenched, making it difficult for new entrants to capture meaningful market share. In addition, vecuronium is a complicated drug to manufacture. Because of the unique manufacturing process involved in making vecuronium, entry would take longer than two years and cost hundreds of thousands of dollars.

The proposed acquisition is likely to result in anticompetitive harm in the U.S. market for the manufacture and sale of vecuronium. Absent the proposed acquisition, Wyeth would have re-entered this market. By acquiring Wyeth's vecuronium, Baxter would likely delay or forego the re-launch of Wyeth's vecuronium and eliminate any associated price competition.

The proposed Consent Agreement preserves future competition in the market for vecuronium by requiring Baxter to terminate all of its rights and interests in GensiaSicor's vecuronium product and divest all of its vecuronium assets to GensiaSicor no later than five days after the acquisition.

Metoclopramide

Metoclopramide is an antiemetic used for the prevention and treatment of nausea and vomiting for patients undergoing certain types of chemotherapy and for post-operative treatment. Metoclopramide is an older antiemetic that continues to be used because it is effective, has a known safety profile, and is considerably cheaper than newer antiemetics. Annual U.S. sales of metoclopramide total approximately $13 million.

The market for metoclopramide is highly concentrated. Wyeth developed the branded metoclopramide product, Reglan®. Baxter is the exclusive supplier of GensiaSicor's metoclopramide product. Wyeth and Baxter together represent over half of the sales of metoclopramide in the United States. Post-acquisition, the HHI would be 3,852 points, an increase of 936 points above the pre-Acquisition HHI. Only two other companies supply metoclopramide in the United States: Abbott and Faulding.

New entry into the market for the manufacture and sale of metoclopramide is difficult, expensive and unlikely to occur. Metoclopramide is an older drug with small sales relative to newer injectable anti-emetics. Therefore, firms do not consider the market for the manufacture and sale of metoclopramide to be an attractive entry opportunity. Several manufacturers have already exited the market and none are interested in re-entering. Even if firms that have exited were interested in re-launching their drugs, re-entry would likely take such firms an estimated two years or more.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for the manufacture and sale of metoclopramide by reducing the number of suppliers from four to three. The combined entity would account for over half of all sales of metoclopramide in the United States. The proposed acquisition is likely to lead to higher prices.

The proposed Consent Agreement preserves competition in the metoclopramide market by requiring Baxter to terminate all of its interests in GensiaSicor's metoclopramide and divest all of its metoclopramide assets to GensiaSicor no later than five days after the acquisition.

New Injectable Iron Replacement Therapies

NIIRTs are used to treat iron deficiency in patients undergoing hemodialysis. NIIRTs include both injectable iron gluconate and iron sucrose. Annual U.S. sales of NIIRTs total approximately $225 million.

The market for the manufacture and sale of NIIRTs is highly concentrated. Watson markets Ferrlecit®, the only injectable iron gluconate product available in the United States. American Regent markets Venofer®, the only injectable iron sucrose product in the United States. Watson recently entered into a co-promotional agreement with Baxter, pursuant to which Baxter promotes Ferrlecit®.

Entry into the market for the manufacture and sale of NIIRTs is very difficult and time consuming. Because

of FDA-imposed New Chemical Entity exclusivity periods, the earliest that any company could file for regulatory approval of a generic iron gluconate product is February 2004. Similar provisions protect iron sucrose, though its exclusivity period expires in November 2003. Entry into the market for the manufacture and sale of NIIRTs is further complicated by a lack of raw material suppliers. Even if a new entrant were to locate a raw material supplier, both iron gluconate and iron sucrose are difficult products that would take more than two years to develop. Wyeth is the best-positioned firm to successfully develop a NIIRT product.

The proposed acquisition is likely to have anticompetitive effects in the market for the manufacture and sale of NIIRTs in the United States because it would eliminate potential competition between Baxter and Wyeth. The proposed acquisition would remove Wyeth as the best-positioned independent entrant into this market and prevent all associated price competition.

The proposed Consent Agreement preserves future competition in the market for the manufacture and sale of NIIRTs by requiring Baxter to terminate its co-marketing agreement with Watson within weeks of the expiration of Ferrlicit®'s New Chemical Entity exclusivity. This termination provides an incentive for Baxter to continue developing and ultimately launch the iron gluconate product that it will acquire from Wyeth.

Pursuant to the terms of the Order, the Commission has appointed William E. Hall as a Monitor Trustee to ensure Baxter's and Wyeth's compliance with all of the requirements of the Order. Mr. Hall has over 30 years of experience in the pharmaceutical industry and is well-respected in the industry. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the Consent Agreement requires Baxter and Wyeth to file reports with the Commission periodically until the divestitures are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 03–309 Filed 1–7–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–33]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: The Second Injury Control and Risk Survey (ICARIS 2) Phase 2—New—The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC)—This project will use data from a telephone survey to measure injury-related risk factors and guide injury prevention and control priorities including those identified as priorities in Healthy People 2010 objectives for the nation. Injuries are a major cause of premature death and disability with associated economic costs of over $150 billion dollars in lifetime costs for persons injured each year. Healthy People 2010 objectives and the recent report from the Institute of Medicine, Reducing the Burden of Injury, call for reducing this toll. In addition to national efforts, NCIPC funds injury control prevention programs at the state and local levels. These programs need data both to establish their prevention priorities and monitor their performance. The use of outcome data (*e.g.*, fatal injuries) for measuring program effectiveness is problematic because cause-specific events are relatively rare and because data on critical risk factors (*e.g.*, was a helmet worn in a bike crash?; was a smoke detector present at a fatal fire?) are often missing. Because these risk factors are early in the causal chain of injury, they are what injury control programs target to prevent injuries. Accordingly, monitoring the level of injury risk factors in a population can help programs set priorities and evaluate interventions.

The first Injury Control and Risk Factor Survey (ICARIS), conducted in 1994, was a random digit dial telephone survey that collected injury risk factor and demographic data on 5,238 English- and Spanish-speaking adults (greater than or equal to 18 years old) in the United States. Proxy data were collected on 3,541 children <15 years old. More than a dozen peer-reviewed scientific reports have been published from the ICARIS data on subjects including dog bites, bicycle helmet use, residential smoke detector usage and fire escape practices, attitudes toward violence, suicidal ideation and behavior, and compliance with pediatric injury prevention counseling.

ICARIS–2, a national telephone survey about injury, which began in the summer of 2000, has collected data on more than 8,700 of the targeted 10,200 respondents to date. The first phase of the survey was initiated as a means for monitoring the injury risk factor status of the nation at the start of the millennium. The second phase of the survey is needed to expand knowledge in areas investigators could not fully explore, previously. By using data collected in ICARIS as a baseline, data collected in ICARIS–2 Phase-2 will be used along with data currently being collected (ICARIS–2 Phase-1) to measure changes and gauge the impact of injury prevention policies. The ICARIS–2 surveys may also serve as the only readily available source of data to measure several of the Healthy People 2010 injury prevention objectives. In order to more fully monitor injury risk factors and selected year Healthy People 2010 injury objectives, as well as evaluate the effectiveness of injury prevention programs, the second phase (ICARIS–2 Phase-2) of the current national telephone survey on injury risk is being implemented. The only cost to the respondents is the time involved to complete the survey.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Adult male and female (age +18 years)	3,000	1	17/60	850
Total	3,000	1	17/60	850

Dated: January 2, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–326 Filed 1–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2004 or Calendar Year 2004

AGENCY: Office of Self-Governance, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 3, 2003, deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2004 or calendar year 2004.

DATES: Completed application packages must be received by the Director, Office of Self-Governance by March 3, 2003.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to the Director, Office of Self-Governance, U.S. Department of the Interior, Mail Stop 2548, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, U.S. Department of the Interior, Office of Self-Governance, Mail Stop 2548, 1849 C Street NW., Washington, DC 20240; Telephone 202–208–5734.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208) the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into a written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations, will take approximately two months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

Purpose of Notice

25 CFR parts 1000.10 to 1000.31 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2004 and calendar year 2004. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2004 or calendar year 2004 must respond to this notice, except for those which are (1) currently involved in negotiations with the Department; (2) one of the 81 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

Dated: December 19, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–342 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Assessment of the Addition of Blue-Fronted Amazon Parrots (*Amazona aestiva*) From a Sustainable Use Management Plan in Argentina to the Approved List of Non-Captive-Bred Birds Under the Wild Bird Conservation Act of 1992

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a draft Environmental Assessment.

SUMMARY: The public is invited to comment on the draft Environmental Assessment of the addition of blue-fronted amazon parrots (*Amazona aestiva*) from a sustainable use management plan in Argentina to the approved list of non-captive-bred birds under the Wild Bird Conservation Act of 1992 (WBCA). We have prepared a draft Environmental Assessment under regulations implementing the National Environmental Policy Act of 1969 (NEPA). Council on Environmental Quality regulations in 40 CFR 1501.3(b) state that an agency "may prepare an environmental assessment on any action at any time in order to assist agency planning and decision making." Future regulations implementing the WBCA may be subject to NEPA documentation requirements on a case-by-case basis.

DATES: Written data, comments, or requests for a copy of this draft Environmental Assessment must be received by February 7, 2003.

ADDRESSES: Written data, comments, or requests for a copy of this draft Environmental Assessment should be sent to the Chief, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Andrea Gaski, Chief, Branch of Operations, Division of Management Authority, at 703–358–2095.

SUPPLEMENTARY INFORMATION:

Background

The WBCA, which was signed into law on October 23, 1992, limits or prohibits imports of exotic bird species

to ensure that their wild populations are not harmed by trade. It also encourages wild bird conservation programs in countries of origin by ensuring that all imports of such species into the United States are biologically sustainable and not detrimental to the survival of the species. A final rule published in the **Federal Register** on November 16, 1993 (58 FR 60524), implemented the prohibitions stipulated in the WBCA and provided permit requirements and procedures for some allowed exemptions.

Since the publication of the final rule of November 16, 1993, imports of all birds listed in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as defined in the final rule are prohibited, except for (a) species included in an approved list; (b) specimens for which an import permit has been issued; (c) species from countries that have approved sustainable use management plans for those species; or (d) specimens from approved foreign captive-breeding facilities. We published a proposed rule in the **Federal Register** on March 17, 1994 (59 FR 12784), that would implement procedures for the establishment of an approved list of captive-bred species listed in the CITES Appendices that can be imported without a WBCA permit; criteria for including non-captive-bred (wild-caught) species in the approved list, and approval of foreign captive-breeding facilities.

A final rule published on January 24, 1996 (61 FR 2084), implemented procedures for the establishment of an approved list of non-captive-bred (wild-caught) species listed in the CITES Appendices that could be imported. The list of approved non-captive-bred species is contained in 50 CFR 15.33(b). For wild-caught CITES-listed birds to be on the approved list, we must determine that CITES is being effectively implemented for the species for each country of origin from which imports will be allowed, CITES-recommended measures are implemented, and there is a scientifically based management plan for the species that is adequately implemented and enforced. The scientifically based management plan must: (a) Provide for the conservation of the species and its habitat; (b) include incentives for conservation; (c) ensure that the use of the species is biologically sustainable and is well above the level at which the species might become threatened; (d) ensure that the species is maintained throughout its range at a level consistent with its role in the ecosystem; (e) address factors that include illegal trade, domestic trade, subsistence use, disease, and habitat loss; and (f) ensure that the methods of capture, transport, and maintenance of the species minimize the risk of injury or damage to health. For a species with a multinational distribution, we must also consider (a) whether populations of the species in other countries will be detrimentally affected by exports from the country requesting approval; (b) whether factors affecting conservation of the species are regulated throughout its range so that recruitment and/or breeding stocks will not be detrimentally affected by the proposed export; (c) whether the projected take and export will detrimentally affect breeding populations; and (d) whether the projected take and export will detrimentally affect existing enhancement activities, conservation programs, or enforcement efforts throughout the species' range. A species and country of export listed in 50 CFR 15.33(b) may be approved for three years, after which time the Service will have an opportunity to consider renewal of the approval.

On August 10, 2000, we published in the **Federal Register** (65 FR 49007) a notice of receipt of application for approval of a petition from the Management Authority of Argentina, Direccion de Fauna and Flora Silvestre, requesting that blue-fronted amazon parrots (*Amazona aestiva*) from an Argentine sustainable use management plan be added to the list of approved non-captive-bred species under the WBCA. We accepted comments on that petition until October 11, 2000.

Approval of Argentina's petition would result in the need to amend 50 CFR 15.33(b) by adding blue-fronted amazon parrots from Argentina to the list of approved non-captive-bred species. The amendment would allow the import into the United States of blue-fronted amazon parrots removed from the wild in Argentina under an approved sustainable use management plan, without a WBCA import permit. Along with this notice of availability, we will publish a proposed rule to allow the import into the United States of blue-fronted amazon parrots (*Amazona aestiva*) removed from the wild in Argentina under their approved sustainable use management plan.

Comments on the draft Environmental Assessment will be considered in our decision regarding whether to amend 50 CFR 15.33(b) by adding blue-fronted amazon parrots from Argentina to the list of approved non-captive-bred species. Written comments we have already received in response to the August 10, 2000, notice of receipt of application, have been retained and will be considered during this open comment period. Although we have used information already received in formulating the draft Environmental Assessment, we will address that information as well as any new comments received in our final Environmental Assessment, if necessary.

Dated: January 3, 2003.

Peter O. Thomas,

Chief, Division of Management Authority.

[FR Doc. 03–345 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Klamath Fishery Management Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of this meeting are to hear technical reports, to discuss and develop Klamath fall Chinook salmon harvest management options for the 2003 season, and to make recommendations to the Pacific Fishery Management Council and other agencies. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 3 p.m. to 8 p.m. on Sunday, April 6, 2003.

ADDRESSES: The meeting will be held at the Red Lion Hotel at the Quay, 100 Columbia Street, Vancouver, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Detrich, Project Leader, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: At the April 6, 2003, meeting, the Klamath Fishery Management Council may schedule short follow-up meetings to be held between April 7, 2003, and April 11, 2003, at the Red Lion Hotel at the Quay, 100 Columbia Street, Vancouver,

Washington, where the Pacific Fishery Management Council will be meeting.

For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: January 2, 2003.

John Engbring,

Acting Manager, California/Nevada Operations Office, Sacramento, CA, Notice of Meeting of the Klamath Fishery Management Council.

[FR Doc. 03–321 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register** notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Class III gaming between the Confederated Tribes of the Colville Reservation and the State of Washington.

EFFECTIVE DATE: January 8, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 18, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–339 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved addendum to a tribal-State compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Addendum to the Class III gaming compact between the Coeur d'Alene Tribe and the State of Idaho.

EFFECTIVE DATE: January 8, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 19, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–338 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved tribal-State Compact.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment to the Class III gaming compact between the Kootenai Tribe of Idaho and the State of Idaho.

EFFECTIVE DATE: January 8, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 19, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–340 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved addendum to a tribal-State compact.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Addendum to the Class III gaming compact between the Nez Perce Tribe and the State of Idaho.

DATES: January 8, 2003

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 19, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–341 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–4N–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1023 (Preliminary)]

Certain Ceramic Station Post Insulators from Japan

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The United States International Trade Commission (Commission) hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1023 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of certain station

post insulators of ceramics, provided for in subheading 8546.20.00 of the Harmonized Tariff Schedule of the United States (currently reported under statistical reporting number 8546.20.0060), that are alleged to be sold in the United States at less than fair value. Unless the United States Department of Commerce (Commerce) extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by February 14, 2003. The Commission's views are due at Commerce within five business days thereafter, or by February 24, 2003.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179 or *ffischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on December 31, 2002, by Lapp Insulator Company LLC, Le Roy, NY; Newell Porcelain Co., Inc., Newell, WV; Victor Insulators, Inc., Victor, NY; and the IUE Industrial Division of the Communications Workers of America, AFL–CIO, Washington, DC.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on January 21, 2002, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179 or *ffischer@usitc.gov*) not later than January 14, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 24, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means except to the extent provided by 201.8 of the Commission's rules, as amended by 67 FR 68063 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: January 2, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–303 Filed 1–7–03; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, 50–373, 50–374, 50–254, and 50–265]

Exelon Generation Company, LLC; Byron Station, Units 1 and 2, LaSalle County Station, Units 1 and 2, Quad Cities Nuclear Power Station, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66, issued to Exelon Generation Company, LLC (the licensee), for operation of the Byron Station, Units 1 and 2, located in Ogle County, Illinois; for Facility Operating License Nos. NPF–11 and NPF–18, issued to the licensee, for operation of LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois; and for Facility Operating License Nos. DPR–29 and DPR–30, issued to the licensee, for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois. Therefore, as required by 10 CFR 51.21, the NRC has prepared this environmental assessment. For the reasons set forth in this environmental assessment, the NRC is making a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Appendix B, "Environmental Protection Plan (Non-Radiological)," of the licenses to remove a parenthetical reference to a superseded section of 10 CFR Part 51.

The proposed action is in accordance with the licensee's application dated September 27, 2002.

The Need for the Proposed Action

The proposed change is editorial in nature. An amendment is required because the current parenthetical reference to 10 CFR 51.5(b)(2) in Appendix B is no longer applicable, since this CFR reference was superseded in 1984 by a complete revision of 10 CFR Part 51 (49 FR 9381). The subject matter of the original referenced portion of the regulations was not carried over into the reformatted version during the revision.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant adverse environmental impacts associated with the proposed action. The proposed change is editorial in nature.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any resource different from those previously considered in the Final Environmental Statements for the Byron Station, Units 1 and 2, dated April 1982; for the LaSalle County Station, Units 1 and 2, dated November 1978; and for the Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972.

Agencies and Persons Consulted

On November 13, 2002, the staff consulted with the Illinois State official, Mr. F. Niziolek of the Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 27, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of January 2003.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–319 Filed 1–7–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, January 23, 2003
Thursday, February 6, 2003
Thursday, February 20, 2003
Thursday, March 6, 2003
Thursday, March 20, 2003

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to

be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW, Washington, DC 20415 (202) 606–1500.

Dated: December 30, 2002.

Mary M. Rose,

Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 03–298 Filed 1–7–03; 8:45 am]

BILLING CODE 6325–49–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25880; 812–12676]

Neuberger Berman Equity Funds, et al.; Notice of Application

January 2, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

Summary of Application: Applicants request an order to permit (a) Certain registered investment companies to pay an affiliated lending agent a fee based on a share of the revenue derived from securities lending activities; and (b) the registered investment companies to lend portfolio securities to affiliated broker-dealers. The requested order would supersede certain prior orders. [1]

Applicants: Neuberger Berman Equity Funds, Neuberger Berman Income Funds, Neuberger Berman Advisers Management Trust, Neuberger Berman Intermediate Municipal Fund Inc., Neuberger Berman California Intermediate Municipal Fund Inc., Neuberger Berman New York Intermediate Municipal Fund Inc., Neuberger Berman Real Estate Income Fund Inc. (the "Funds"), Neuberger Berman, LLC ("Neuberger Berman"), and Neuberger Berman Management Inc. ("NBMI").

Filing Dates: The application was filed on October 26, 2001 and amended on December 23, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 27, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicants: c/o Ellen Metzger, Esq., Neuberger Berman, LLC, 605 3rd Avenue, 21st Floor, New York, NY 10158–3698.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each of the Funds is either an open-end or closed-end management investment company registered under the Act. Several of the Funds are comprised of multiple series (the Funds and any existing or future series thereof, collectively, the "Lending Funds"). NBMI is the investment manager and administrator to the Funds and their series and the principal underwriter of those Funds that are open-end management investment companies. Neuberger Berman serves as the sub-adviser to the Funds. Pursuant to the sub-advisory agreement with NBMI, Neuberger Berman is compensated for providing investment research; however, all investment decisions for the Funds are made by NBMI. Both NBMI and Neuberger Berman are registered as investment advisers under the Investment Advisers Act of 1940 and broker-dealers under the Securities Exchange Act of 1934. NBMI and Neuberger Berman are wholly owned subsidiaries of Neuberger Berman Inc., a publicly owned holding company.

2. Applicants request that any relief granted pursuant to the application also apply to any other registered investment company or series thereof for which NBMI or any entity controlling, controlled by or under common control with NBMI serves as investment adviser. All existing entities that currently intend to rely on the order have been named as applicants. Any other existing or future entity that wishes to rely on the order will do so only in accordance with the terms and conditions of the application.

3. The Lending Funds propose to enter into an agency securities lending program (the "Securities Lending Program"). The agent for the Securities Lending Program will be an operating unit of Neuberger Berman (the "NB Securities Lending Group"). [2] The NB Securities Lending Group's activities as lending agent for the Lending Funds will be conducted under the supervision of investment management personnel of NBMI. Subject to the parameters set forth in procedures approved by the board of trustees or directors ("Board") of each Lending Fund, NBMI will pre-approve eligible borrowers. In addition, NBMI will be responsible for determining what portion, if any, of assets of the Lending Funds will be allocated to securities lending activities, subject to each Lending Fund's fundamental or operating policies. NBMI will be responsible for investing all cash collateral received in respect of the securities loans.

4. As securities lending agent for the Lending Funds, the NB Securities Lending Group will be responsible for, among other things, selecting borrowers from the pre-approved list, entering into loans of pre-approved securities with pre-approved borrowers on pre-approved terms, and performing administrative or ministerial functions in connection with each Lending Fund's securities lending program. The NB Securities Lending Group will deliver loaned securities received from the Lending Funds to borrowers; arrange for the return of loaned securities to the Lending Funds at the termination of the loans; monitor daily the value of the loaned securities and collateral; request that borrowers add to the collateral when required by the loan agreement; and provide recordkeeping and accounting services necessary for the

[1] Energy Fund Incorporated, Investment Company Act Release Nos. 11175 (May 19, 1980) (notice) and 11249 (July 3, 1980) (order); Energy Fund Inc., Investment Company Act Release Nos. 14452 (April 4, 1985) (notice) and 14498 (May 2, 1985) (order).

[2] In addition, the applicants may utilize the employees of entities controlling, controlled by or under common control with Neuberger Berman in performing the securities lending activities to be performed by NB Securities Lending Group.

operation of the Securities Lending Program.[3]

5. Securities loans generally are collateralized by U.S. Government securities, cash or letters of credit. When the collateral is cash, the lender invests the cash collateral during the loan period and, after paying the borrower an agreed upon interest rate, retains the remainder thereof, which is usually shared with the securities lending agent. If the collateral is a U.S. Government security or letter of credit, the borrower pays a lending fee, which is usually shared between the lender and the securities lending agent.

6. The applicants request relief to permit: (a) The Lending Funds to pay Neuberger Berman, or an entity controlling, controlled by, or under common control with Neuberger Berman, a fee based on a share of the revenue derived from securities lending activities; and (b) the Lending Funds to lend portfolio securities to Neuberger Berman and any broker-dealer, other than NBMI, that controls, is controlled by, or is under common control with, Neuberger Berman (collectively, the "Affiliated Broker-Dealers").

Applicants' Legal Analysis

A. Payment of Lending Agent Fees

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan, in which the investment company participates unless the Commission has approved the transaction. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include the investment company's adviser. As the Lending Funds' sub-adviser, Neuberger Berman may be deemed to be an affiliated person of the Lending Funds. Because a fee arrangement between a lending agent and a Lending Fund, under which compensation is based on a percentage of the revenue generated by securities lending transactions, may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d–1, applicants request an order to permit each Lending Fund to pay, and Neuberger Berman to accept, such fees in connection with services provided by Neuberger Berman to a Lending Fund.

2. Applicants propose that each Lending Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with the NB Securities Lending Group will meet the standards of rule 17d–1:

a. In connection with the approval of the NB Securities Lending Group as lending agent for the Lending Funds, and implementation of the proposed fee arrangement, a majority of the Board of each Lending Fund (including a majority of the trustees or directors of each Lending Fund who are not "interested persons" as defined in section 2(a)(19) of the Act (the "Independent Trustees/Directors")) will determine that (i) The contract with the NB Securities Lending Group is in the best interests of the Lending Fund and its shareholders; (ii) the services to be performed by the NB Securities Lending Group are appropriate for the Lending Fund; (iii) the nature and quality of the services to be provided by the NB Securities Lending Group are at least equal to those provided by others offering the same or similar services; and (iv) the fees for the NB Securities Lending Group's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

b. In connection with the approval of the NB Securities Lending Group as lending agent for the Lending Funds and the initial implementation of the proposed fee arrangement, the Board of each Lending Fund will review, competing quotes with respect to lending agency fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

c. Each Lending Fund's contract with the NB Securities Lending Group for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board, including a majority of the Independent Trustees/Directors, makes the findings referred to in paragraph (a) above.

d. The Board, including a majority of the Independent Trustees/Directors, will (i) determine at each regular quarterly meeting on the basis of reports submitted by the NB Securities Lending Group that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review not less frequently than annually the conditions and procedures for continuing appropriateness.

e. Each Lending Fund will (i) Maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions described in the application and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Securities Lending Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

B. Lending to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company, or an affiliated person of such a person ("second-tier affiliate"), acting as principal, to borrow money or other property from the registered investment company. Applicants state that because Neuberger Berman is sub-adviser to the Lending Funds, and the other Affiliated Broker-Dealers are under common control with Neuberger Berman and NBMI, an Affiliated Broker-Dealer may be considered an affiliated person, or a second-tier affiliate, of a Lending Fund. Accordingly, section 17(a)(3) would prohibit the Affiliated Broker-Dealers from borrowing securities from the Lending Funds.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3), and under section 17(d) and rule 17d–1 to permit the Lending Funds to lend portfolio securities to Affiliated Broker-Dealers.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Lending Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated broker-dealers.[4] In this regard, applicants state

[3] The personnel of the NB Securities Lending Group who will provide day-to-day lending agency services to the Lending Funds do not and will not provide investment advisory services to the Lending Funds, or participate in any way in the selection of portfolio securities or other aspects of the management of the Lending Funds.

[4] A "spread" is the compensation earned by a Lending Fund from a securities loan, which compensation is in the form either of a lending fee payable by the borrower to the Lending Fund (when non-cash collateral is posted) or of the excess retained by the Lending Fund over a rebate rate

that at least 50% of the loans made by the Lending Funds, on an aggregate basis, will be made to unaffiliated borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board, including a majority of the Independent Trustees/Directors, or by a committee of the Board made up of Independent Trustees/Directors (the "Lending Committee"), and all transactions with Affiliated Broker-Dealers will be reviewed periodically by an officer of the Lending Fund. The Board, including a majority of the Independent Trustees/Directors, also will review quarterly reports on all lending activity.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Securities Lending Program will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

2. Approval of the Board, including a majority of the Independent Trustees/Directors, shall be required for the initial and subsequent approvals of the NB Securities Lending Group as lending agent for a Lending Fund, for the institution of all procedures relating to the Securities Lending Program, and for any periodic review of loan transactions for which the NB Securities Lending Group acted as lending agent.

3. Each Lending Fund will (i) Maintain and preserve permanently in an easily accessible place a written copy of the procedures (with any modifications) that are followed in connection with lending securities and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth the number of shares loaned, the face amount of the securities loaned, the fee received (or rebate remitted), the identity of the borrower, the terms of the loan, and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable, and that the procedures followed in making such loan were in accordance with the other undertakings set forth in the application.

payable by the Lending Fund to the borrower (when cash collateral is posted and then invested by the Lending Fund).

4. The Lending Funds, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated borrowers.

5. a. All loans will be made with spreads no lower than those provided for in a schedule of spreads, which will be established and may be modified from time to time by the Board and by a majority of the Independent Trustees/Directors or by the Lending Committee ("Schedule of Spreads"). The Schedule of Spreads and any modifications thereto will be ratified by the full Board of each Lending Fund and by a majority of the Independent Trustees/Directors.

b. The Schedule of Spreads will provide for rates of compensation to the Lending Funds that are reasonable and fair, and that are determined in light of those considerations set forth in the application.

c. The Schedule of Spreads will be uniformly applied to all borrowers of the Lending Funds' portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any borrower.

d. If a security is loaned to an unaffiliated borrower with a spread higher than the minimum provided for in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

e. Each Lending Fund's Securities Lending Program will be monitored on a daily basis by an officer of the Lending Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Lending Fund's Board, including a majority of the Independent Trustees/Directors, or the Lending Committee.

6. A Lending Fund will not make any loan to an Affiliated Broker-Dealer unless the income to the Lending Fund attributable to such loan fully covers the transaction costs, if any, incurred in making the loan.

7. The Boards of the Lending Funds, including a majority of the Independent Trustees/Directors, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of any order that may be granted and that such transactions were conducted on terms that were reasonable and fair, and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

8. The total value of securities loaned to any one borrower on the approved list will be in accordance with a schedule to be approved by the Board of each Lending Fund, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Lending Fund, computed at market value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–300 Filed 1–7–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3474]

State of Florida

Sarasota County and the contiguous counties of Charlotte, DeSoto, and Manatee in the State of Florida constitutes a disaster area as a result of a fire that occurred on October 16, 2002, at the Public Storage Inc. storage facility. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 19, 2003, and for economic injury may be filed until the close of business on September 22, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 347405 and for economic injury is 9T6800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 20, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 03–307 Filed 1–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3478]

State of Mississippi

Newton County and the contiguous counties of Clarke, Jasper, Kemper, Lauderdale, Leake, Neshoba, Scott, and Smith in the State of Mississippi constitute a disaster area due to damages caused by severe thunderstorms and tornadoes that occurred on December 19, 2002. Applications for loans for physical damage may be filed until the close of business on February 24, 2003 and for economic injury until the close of business on September 24, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.87
Homeowners Without Credit Available Elsewhere	2.937
Businesses With Credit Available Elsewhere	6.648
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.324
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury: Businesses and a Small Agricultural Cooperatives Without Credit Available Elsewhere	3.324

The number assigned to this disaster for physical damage is 347812 and for economic injury, the number is 9T7200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 24, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 03–305 Filed 1–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3479]

Commonwealth of the Northern Mariana Islands

As a result of the President's major disaster declaration for Public Assistance on December 11, 2002, and Amendment 1 adding Individual Assistance on December 24, 2002, I find that the Island of Rota within the Commonwealth of the Northern Mariana Islands constitutes a disaster area due to damages caused by Super Typhoon Pongsona occurring on December 8, 2002, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 24, 2003 and for economic injury until the close of business on September 24, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, PO Box 13795, Sacramento, CA 95853–4795.

The Interest Rates are:

For Physical Damage:	*Percent*
Homeowners With Credit Available Elsewhere	5.875
Homeowners Without Credit Available Elsewhere	2.937
Businesses With Credit Available Elsewhere	6.648
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.324
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.324

The number assigned to this disaster for physical damage is 347908 and for economic injury the number is 9T7300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 26, 2002.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–304 Filed 1–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3476]

State of Texas

Jefferson County and the contiguous counties of Chambers, Hardin, Liberty, and Orange in the State of Texas, and Cameron Parish in the State of Louisiana constitute a disaster area due to damages caused by flooding that occurred on December 3, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 24, 2003, and for economic injury until the close of business on September 24, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, Suite 102, Forth Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.648
Businesses and non-profit organizations without credit available elsewhere	3.324
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.324

The numbers assigned to this disaster for physical damage are 347606 for Texas and 347706 for Louisiana. For economic injury, the numbers are 9T7000 for Texas and 9T7100 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 24, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 03–306 Filed 1–7–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–14069]

Maritime Security

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings; request for comments—correction.

SUMMARY: On December 30, 2002, the Coast Guard published a notice of meetings and request for comments in the **Federal Register** concerning requirements for security assessments, plans, and specific security measures for ports, vessels, and facilities. This document contains corrections to that notice.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice or

the public meetings, write or call Mr. Martin Jackson of the Office of Standards Evaluation and Development (G–MSR), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, *mjackson@comdt.uscg.mil*, or call at 202–267–1140.

Need for Correction

As published, the Coast Guard's December 30, 2002 Maritime Security notice of meetings and request for comments (67 FR 79741–79806) contains typographical errors and omissions that may prove to be misleading and therefore need to be corrected.

Correction

In notice FR Doc. 02–32845, published December 30, 2002 (67 FR 79741), make the following corrections:

1. On page 79743, in the third column, starting on line 57, immediately after the words "Navigation and Vessel Inspection Circular (NVIC) 3–96," correct "Change 2" to read "Change 1."

2. On page 79744, in the first column, on line 5, correct "NVIC 3–96" to read "NVIC 3–96, Change 1".

3. On page 79745, in the third column, starting on line 7, correct "$1.4 billion" to read "$1.3 billion".

4. On page 79782, in the second column, in line 17, correct "$1.4 billion" to read "$1.3 billion".

5. On page 79782, in the second column, in line 32, correct "141,000 hours" to read "140,000 hours".

6. On page 79782, in the second column, in line 45, correct "464,000 hours" to read "465,000 hours".

7. On page 79790, in the heading for table 24, correct ">500" to read "≤500".

Dated: January 3, 2003.

L.L. Hereth,

RADM U.S. Coast Guard, Director, Port Security.

[FR Doc. 03–344 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13986]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: These decisions are effective as of the date of their publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marilynne Jacobs, Office of Vehicle Safety Compliance, NHTSA (202–366–2832).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 2, 2003.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex A

Nonconforming Motor Vehicles Decided to Be Eligible for Importation

1. Docket No. NHTSA–2002–13384

Nonconforming Vehicle: 2001 and 2002 Ducati 996R motorcycles.

Substantially similar U.S.-certified vehicle: 2001 and 2002 Ducati 996R motorcycles.

Notice of Petition Published at: 67 FR 62520 (October 7, 2002).

Vehicle Eligibility Number: VSP–398.

2. Docket No. NHTSA–2002–12730

Nonconforming Vehicles: 2002 Mercedes Benz Gelaendewagen 5-Door Long Wheel Base multipurpose passenger vehicles.

Substantially similar U.S.-certified vehicles: 2002 Mercedes Benz Gelaendewagen 5-Door Long Wheel Base multipurpose passenger vehicles.

Notice of Petition Published at: 67 FR 55307 (August 28, 2002).

Vehicle Eligibility Number: VSP–392.

3. Docket No. NHTSA–2002–12731

Nonconforming Vehicle: Left-Hand Drive Japanese Market 1997 Jeep Grand Cherokee multipurpose passenger vehicles.

Substantially similar U.S.-certified vehicle: 1997 Jeep Grand Cherokee multipurpose passenger vehicles.

Notice of Petition Published at: 67 FR 48701 (July 25, 2002).
Vehicle Eligibility Number: VSP–389.

4. Docket No. NHTSA–2002–12732

Nonconforming Vehicles: 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002.
Substantially similar U.S.-certified vehicles: 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002.
Notice of Petition Published at: 67 FR 48700 (July 25, 2002).
Vehicle Eligibility Number: VSP–390.

5. Docket No. NHTSA–2002–13333

Nonconforming Vehicle: 1997 BMW 850 Series passenger cars.
Substantially similar U.S.-certified vehicle: 1997 BMW 850 Series passenger cars.
Notice of Petition Published at: 67 FR 59593 (September 23, 2002).
Vehicle Eligibility Number: VSP–396.

6. Docket No. NHTSA–2002–13382

Nonconforming Vehicles: 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles.
Substantially similar U.S.-certified vehicles: 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles.
Notice of Petition Published at: 67 FR 62521 (October 7, 2002).
Vehicle Eligibility Number: VSP–397.

[FR Doc. 03–297 Filed 1–7–03; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 03–14196]

Grant of Application of Suzuki Motor Corp. for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

This notice grants the application by Suzuki Motor Corporation of Japan (submitted by American Suzuki Motor Corporation) for a temporary exemption of two years for its AN 400 scooter, from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The applicant asserts that Acompliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. Sec. 30113(b)(3)(iv).

The safety issues raised by this petition are identical to those raised in previous petitions by Suzuki and other manufacturers. Further, given the opportunity for public comment on these issues in the years 1998–2001 (which resulted only in comments in support of the petitions), we have concluded that a further opportunity to comment on the same issues is not likely to result in any substantive submissions, and that we may proceed to a decision on this petition. See, e.g., Aprilia and Honda (66 FR 59519) and Aprilia (65 FR 1225).

The Reason Why the Applicant Needs a Temporary Exemption

The problem is one that is common to the motorcycles covered by the applications. If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (Item 11, Table 1). Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less. Suzuki petitioned to use the left handlebar as the control for the rear brakes of certain of their motorcycles whose engines produce more than 5 brake horsepower. The frame of each of these motorcycles has not been designed to mount a right foot operated brake pedal (i.e, these scooter-type vehicles which provide a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the frame could cause failure due to fatigue unless proper design and testing procedures are performed.

Absent an exemption, the manufacturer will be unable to sell the AN 400 because the vehicle would not fully comply with Standard No. 123.

Arguments Why the Overall Level of Safety of the Vehicle to be Exempted Equals or Exceeds That of Non-Exempted Vehicles

As required by statute, the petitioner has argued that the overall level of safety of the AN 400 equals or exceeds that of a non-exempted motor vehicle, for the following reasons. The vehicle is equipped with an automatic transmission. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicle can be operated without requiring special training or practice.

Suzuki informed us that its AN 400 "can easily meet the braking performance requirements in FMVSS 122," and enclosed a test report dated August 26 and 27, 2002, in support.

Arguments Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Suzuki argued that the level of safety of the AN 400 is at least equal to that of vehicles certified to meet Standard No. 123. In its opinion, scooters like the AN 400 "are of interest to the public [as] evidenced by . . . the favorable public comment on [similar] exemption requests and the number of scooters sold under the granted exemptions."

NHTSA's Decision on the Application

It is evident that, unless Standard No. 123 is amended to permit or require the left handlebar brake control on motorscooters with more than 5 hp, the petitioner will be unable to sell its AN 400 if it does not receive a temporary exemption from the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions by Suzuki, Aprilia, Honda, and others, that we have repeatedly found that the motorcycles exempted from the brake control location requirement of Standard No. 123 have an overall level of safety that equals or exceeds that of nonexempted motorcycles.

Suzuki's argument that an exemption would be in the public interest because of the comments in support of previous exemption requests for similar scooter-type vehicles is a valid one, absent any data indicating that the overall level of safety is not at least equal to that of complying vehicles.

In consideration of the foregoing, we hereby find that the petitioner has met their burden of persuasion that to require compliance with Standard No. 123 would prevent it from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Therefore, Suzuki Motor Corporation is hereby granted NHTSA Temporary Exemption No. EX02–3 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear brakes be operable through the right foot control. This exemption applies only to the Suzuki AN 400, and will expire on December 1, 2004.
(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on January 2, 2003.

Jeffrey W. Runge,
Administrator.

[FR Doc. 03–356 Filed 1–7–03; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 168X)]

Union Pacific Railroad Company—Abandonment Exemption—in Hardin County, IA (Eldora Junction Line in Eldora, IA)

On December 19, 2002, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 to abandon and discontinue service over a segment of line, known as the Eldora Junction Line, extending from milepost 5.10 to milepost 6.22, a distance of 1.12 miles, in Hardin County, IA. The line traverses U.S. Postal Service Zip Code 50627 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 8, 2003.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 28, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 168X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the UP petition are due on or before January 28, 2003.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *"http://www.stb.dot.gov."*

Decided: December 31, 2002.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–334 Filed 1–7–03; 8:45 am]

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Federal Register

Wednesday,
January 8, 2003

Part II

Department of Transportation

Federal Highway Administration

23 CFR Parts 970, 971, 972, and 973
Federal Lands Highway Program; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 970

[FHWA Docket No. FHWA–99–4967]

RIN 2125–AE52

Federal Lands Highway Program; Management Systems Pertaining to the National Park Service and the Park Roads and Parkways Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21), requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the Federal Lands Highway program (FLHP). The Secretary of Transportation has delegated the authority to the FHWA to serve as the lead agency within the U.S. DOT to implement the FLHP. The roads funded under the FLHP include Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. This rulemaking proposes to provide for the development and implementation of safety, bridge, pavement, and congestion management systems for transportation facilities under National Park Service (NPS) jurisdiction and funded under the FLHP.

DATES: Comments must be received on or before March 10, 2003.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Bini, Federal Lands Highway, HFPD–2, (202) 366–6799, FHWA, 400 Seventh Street, SW., Washington, DC 20590; office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For legal questions, Ms. Vivian Philbin, HFL–16, (303) 716–2122, FHWA, 555 Zang Street, Lakewood, CO 80228. Office hours are from 7:45 a.m. to 4:15 p.m., m.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS): *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Background

Section 1115(d) of the TEA–21 (Public Law 105–178, 112 Stat 107, 156 (1998)) amended 23 U.S.C. 204 to require the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. A management system is a process for collecting, organizing, and analyzing data to provide a strategic approach to transportation planning, program development, and project selection. Its purposes are to improve transportation system performance and safety, and to develop alternative strategies for enhancing mobility of people and goods.

The roads funded under the FLHP include, but are not limited to, Park Roads and Parkways (PRP), Forest Highways, Refuge Roads, and Indian Reservation Roads. The Secretary of Transportation delegated to the FHWA the authority to serve as the lead agency within the U.S. Department of Transportation to administer the FLHP (see 49 CFR 1.48(b)(29)). This rulemaking action addresses the management systems for the NPS and the Park Roads and Parkways program.

The requirements in the TEA–21 are not intended in any way to interfere with any portion of the NPS Organic Act, 16 U.S.C. 1 *et seq.*, which established the NPS. The four management systems serve to guide the NPS in making resource allocation decisions for the PRP transportation improvement programs (PRPTIPs) and help the NPS implement the purpose of the Organic Act, which is to promote and regulate the use of the lands managed by the NPS.

On September 1, 1999, the FHWA issued an advance notice of proposed rulemaking (ANPRM) to solicit public comments concerning development of this proposed rule pertaining to the NPS and the Park Roads and Parkways program (64 FR 47749). The ANPRM requested comments on the feasibility of developing a rule to meet both the transportation planning and management systems requirements of the TEA–21. Therefore, comments made to the docket addressed both transportation planning and management systems issues. However, the FHWA has decided to separate the NPRM's for transportation planning and management systems. For this reason, this NPRM concerns only the development of the management systems. This NPRM includes responses to the comments submitted to the docket on the ANPRM that addressed the proposed development of the four management systems. Those comments on the ANPRM that addressed transportation planning will be addressed at a later date. The FHWA received comments addressing the management systems from various State Transportation Departments. These comments are summarized below. Specific comments may be obtained by reviewing the materials in the docket.

Based on the comments on the ANPRM, the FHWA has developed this NPRM to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for roads under the NPS jurisdiction and funded under the FLHP. Separate NPRM's on management systems have also been developed for the Fish and Wildlife Service (FWS) and the Refuge Roads program, the Forest Service (FS) and the Forest Highway program, and the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads program. The other three related NPRM's are published elsewhere in today's **Federal Register**.

On April 21, 2000, then President Clinton issued Executive Order (EO) 13148, Greening the Government Through Leadership in Environmental Management. This EO requires all Federal agencies to implement an environmental management system (EMS) to ensure that agencies develop strategies to support environmental leadership in programs, policies, and procedures and that senior level managers explicitly and actively endorse these strategies. The EO requires that agencies implement an EMS no later than December 31, 2005. Furthermore, in an April 1, 2002, letter, the Bush Administration encouraged all agencies to promote the use of EMS in Federal, State, local, and private facilities and directed the Environmental Protection Agency (EPA) to report annually on how well each agency has done in promoting EMS.

The FHWA has already begun working toward establishing an EMS. Additionally, the FWHA is working with the American Association of State Highway and Transportation Officials' (AASHTO) Center for Environmental Excellence to include EMS as part of an environmental stewardship demonstration project. The FHWA is currently providing technical and financial assistance to the Center, which in turn supports States that have initiated EMSs.[1] Furthermore, the FHWA continues to demonstrate environmental stewardship by encouraging the use of EMS in the construction, operation, and maintenance of transportation facilities.

Although an EMS may have some overlap with the four management systems that are the subject of this proposed rulemaking, the FHWA has decided not to incorporate the EMS in this rulemaking. The FHWA believes that great progress has been made on the EMS and promoting the use of EMS by the States. In addition, the FHWA has a long-standing working relationship with the Federal Land Management Agencies (FLMAs) through the Federal Lands Highway Program. The natural resource conservation and preservation missions of these agencies have led to the development of a jointly held environmental ethic that pervades transportation project decision-making through the use of context sensitive design, best management practices, and a heightened sensitivity to environmental impacts. This relationship provides a strong foundation for the FHWA to encourage the use of environmental management systems by the FLMAs. For example, the National Park Service currently has an initiative underway to implement a service-wide EMS approach. The FHWA and the NPS can evaluate ways to coordinate the use and development of the EMS with the transportation management systems through the joint development of the management system implementation plan called for in this rulemaking. A similar approach can be used with all of the FLMAs.

Any EMS developed by the FHWA, or by a FLMA, will not have an adverse effect on any of the management systems in this proposed rulemaking. Instead, such an EMS may help foster a movement toward the use of a comprehensive asset management system that incorporates EMS, along with the transportation management systems proposed in this rulemaking, and others not covered in this proposed action, such as a maintenance management system. The role of the EMS in a more comprehensive approach would demonstrate a commitment to environmental stewardship that goes beyond the individual project level or the development of a multi-project transportation program. The EMS should be a fundamentally important business tool that pervades all aspects of FLMA transportation decision-making. The FHWA will continue to advance its EMS and promote the EMS initiatives of the FLMAs through implementation planning for the transportation management systems. In addition, the FHWA will continue to promote the use of EMSs in the construction, operation, and maintenance of transportation facilities.

In developing the management system implementation plans, the need for data elements that address the environmental performance measures can be evaluated in relationship to individual agency plans to implement an EMS. This could provide an opportunity for the ongoing collection of environmental information, if appropriate and necessary. At a minimum, this would provide an opportunity to link existing environmental data to the transportation management systems using a geographic information system common to both systems.

From the FHWA's stewardship perspective regarding the Federal Lands Highway Program, EMS is most appropriately pursued as part of sound FLMA business management planning. Thus, the FHWA has decided not to address the EMS requirement in this proposed rulemaking action.

[1] More information on how EMS applies to transportation organizations can be found on the AASHTO's Center for Environmental Excellence website at the following URL: *http//itre.ncsu.edu/AASHTO/stewardship.*

Summary of Comments Received on the ANPRM Pertaining to the NPS and the Park Roads and Parkways Program

The following discussion summarizes the comments received on the ANPRM and the FHWA's responses to these comments. The discussion provides the public a general sense of the issues addressed in the comments. As previously stated, this NPRM is intended for the development of management systems. Therefore, this summary contains only comments and responses related to the management systems. There are instances where reference is made to transportation planning issues because the management systems serve as a guide to planning activities.

Rule Development

Comments: The majority of comments supported the FHWA's proposal to develop "separate rules" pertaining to the NPS and the Park Roads and Parkways program, the FWS and the Refuge Roads program, the BIA and the Indian Reservations Roads program, and the FS and the Forest Highway program. The commenters in favor of this proposal point out the fact that transportation planning functions for the different Federal lands highways are performed by various Federal, State, and local entities, depending on ownership of the roadways and responsibilities for constructing and maintaining the facilities.

The Wisconsin DOT and the Kentucky Transportation Cabinet offered an opposite view. These two State DOTs requested that we develop only one general rule applicable to all four agencies. The Wisconsin DOT suggested that this rule be flexible so that it recognizes the different approaches used by the States. The Kentucky Transportation Cabinet recommended that the rule should require the Federal land management agencies (FLMAs) to develop Memoranda of Understanding or Agreements that would address the consistency between the Federal land transportation planning procedures and those required under 23 U.S.C. 134 and 135. The Kentucky Transportation Cabinet was concerned that the additional rules might jeopardize existing procedures already in effect.

Response: Following the recommendations from the majority of commenters, the FHWA, in consultation with each appropriate Federal land management agency, developed a separate rule pertaining to each agency: the NPS, the FWS, the FS, and the BIA. The variance among the rules allows for

the significant differences in the ownership, jurisdiction, and maintenance responsibilities that the FLMAs exercise over the subject roadways addressed in the rule. To ensure uniformity, the FHWA coordinated the development of each NPRM, so that similar text and format are contained in each of the rules.

Addressing the Management Systems Requirements

Comments: Many States believe that the management systems should only be developed as needed and should relate to systems that are already implemented by States and local agencies. It was recommended that the FHWA encourage the Federal agencies to explore and use the States' existing systems. The States also recommended the systems be tailored to fit local conditions, and be applicable solely to the portion of the Federal lands highways owned and maintained by Federal agencies. Many of the States are concerned that the implementation of the management systems may affect the current working relationships among State, local, and Federal agencies. The Wisconsin DOT encouraged the FHWA to work with the FLMA's and State Transportation Departments to clarify ownership discrepancies between Federal and State data. They suggested that the FLMA's have accurate data reflecting the amount of mileage the agencies own by location. Further, these data have to agree with data reported by States in the Highway Performance Monitoring System (HPMS) database.[2]

Response: The stakeholders' concerns presented above were considered in the development of this NPRM. Each of the proposed management system rules calls for the FHWA, in cooperation with the FLMA, to develop an implementation plan or implementation procedures for each of the management systems. In addition, flexibility is provided to determine criteria for the need and applicability of each of the FLMA's management systems. These implementation plans will provide the opportunity to relate the FLMA management systems to systems already implemented by States and local agencies. It will also allow the management systems to be tailored to fit a broad range of local conditions, and to avoid inefficient duplication of management systems already in use by the States. Development of the implementation plans will provide an opportunity to strengthen the working relationships among Federal, State, Tribal and local agencies, as well as define responsibility for and ownership of data.

Comments: The Wisconsin DOT also stated that the FHWA should clarify that this rule and the National Highway System (NHS) Designation Act of 1995, Public Law 104–59, 109 Stat. 568, do not make the implementation of management systems mandatory.

Response: While it is correct that the Public Law 104–59 made the management systems optional for States and Metropolitan Planning Organizations (MPO's), except for the congestion management systems in MPOs with a population of greater than 200,000, section 1115(d) applies to the Federal land management agencies, not to the States; however, the States may be requested to provide information. The TEA–21, enacted on June 9, 1998, amended 23 U.S.C. 204 to specify "The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program." Therefore, the development and implementation of the management systems, where appropriate, is mandated by law for the Federal land management agencies.

Approach to Structure of Proposed Regulation

In the development of this proposed rule, the FHWA attempted to minimize the level of data collection and analyses required. The FHWA now solicits comments on the extent to which this strategy has been achieved. Any comments suggesting that the strategy has not been successful should identify the specific reasons why requirements and/or provisions are burdensome. Suggestions to lessen burdens are welcome.

Section-by-Section Analysis

Subpart A

Section 970.100 Purpose

This section states that subpart A provides definitions for terms used in this rule.

Section 970.102 Applicability

This section states that the definitions in subpart A are applicable to this rule.

Section 970.104 Definitions

This section incorporates the terms defined in 23 U.S.C. 101(a), 49 U.S.C. 5302, and 23 CFR part 450. It also includes additional definitions for terms used in this part.

The phrase "Federal lands" or "Indian lands," as applicable, would be added to the definitions of "bridge management system (BMS)," "congestion management system (CMS)," "pavement management system (PMS)," and "safety management system (SMS)" to indicate the distinction between the Federal or Indian lands and Federal-aid management systems (refer to 23 CFR part 500 for definitions of the Federal-aid management systems). The management system definitions also specify their applicability to the BIA, FS, FWS and NPS, as appropriate.

Subpart B

Section 970.200 Purpose

This section states the purpose of this proposed rule, which is to fulfill the requirements set forth by the TEA–21. The section further emphasizes that the management systems would serve as a guide for the development of the NPS transportation plan and the PRPTIP, which are the products of the NPS transportation planning process.

Section 970.202 Applicability

This section defines the applicability of the management systems.

Section 970.204 Management Systems Requirements

This section sets forth general requirements for all four management systems. Additional requirements applicable to specific systems are in §§ 970.208 through 970.214.

Paragraph (a) states that the NPS shall develop, establish, and implement the management systems. This paragraph also requires the NPS to develop the management systems in a way that assists in meeting the goals and measures established through the Government Performance and Results Act (Public Law 103–62, 107 Stat.285 (1993)). Paragraphs (a) and (e) provide flexibility in the development of the management systems. Paragraph (b) requires the FHWA and the NPS to develop implementation plans for the management systems.

To ensure the management systems are developed, implemented, and operated systematically, paragraph (c) requires the development of procedures that will include the following: Consideration of management system results in the planning process; system

[2] The HPMS was developed in 1978 as a national highway transportation system database. It includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional system, and certain summary information for urbanized, small urban and rural areas. Additional information about this database is available online at the URL: *http://www.fhwa.dot.gov/ohim.*

analysis; a description of each management system; operation and maintenance of management systems and databases; and data collection, processing, analysis, and updating. Paragraph (d) ensures that the database has a geographical reference system so that information can be geolocated. Paragraph (f) requires a periodic evaluation of the effectiveness of the management systems, preferably as part of the transportation planning process. Paragraph (g) ensures that transportation investment decisions based on management system results would be used at different levels of the NPS.

Section 970.206 Funds for Establishment, Development, and Implementation of the Systems

This section provides that the funds available for the Park Roads and Parkways program can be used for development, establishment, and implementation of the management systems in accordance with legislative provisions for the funds.

Section 970.208 Federal Lands Pavement Management System (PMS)

Paragraph (a) defines the applicability of the PMS. Paragraph (b) provides flexibility for the development of the PMS.

This section further sets forth components that must be included in a PMS. They include requirements for a basic framework composed of data collection and maintenance, network level analysis, and reporting requirements.

Section 970.210 Federal Lands Bridge Management System (BMS)

Paragraph (a) defines the applicability of the BMS. The section sets forth the components that must be included in a BMS. They consist of data collection and maintenance, network level analysis, investment analysis, and reporting requirements.

Section 970.212 Federal Lands Safety Management System (SMS)

Paragraph (a) defines the applicability of the SMS. Because of the strong emphasis the TEA–21 has on safety, paragraph (b) requires the SMS to be used to ensure that safety is considered and implemented as appropriate in all phases of transportation planning, programming and project implementation.

Section (c) sets forth the components that must be included in a SMS. They include data collection, maintenance and reporting; identification and correction of potential safety problems; and communications.

To provide flexibility, paragraph (d) states that the extent of SMS requirements set forth in this proposed rule for low volume roads may be tailored to be consistent with the functional classification of the roads, and the number and types of transit and other vehicles operated by the NPS. However, each functional classification should include adequate requirements to ensure effective safety decisionmaking.

Section 970.214 Federal Lands Congestion Management System (CMS)

This section defines congestion and requires the NPS to develop criteria for determining when a CMS is to be implemented for a specific transportation system, and have coverage for all systems meeting the criteria. In addition, it requires the NPS to consider the results of the CMS in selecting strategies to address congestion and, further, that strategies be considered that reduce private automobile travel and improve existing transportation system efficiency. Paragraphs (c)(1), (2), and (3) address CMS coverage for portions of the NPS transportation systems inside and outside the boundaries of transportation management areas (TMAs).

Paragraph (c)(4) further sets forth components to be included in a CMS. They include the following: identification and documentation of measures for congestion; identification of the causes of congestion; development of evaluation processes; identification of benefits; determination of methods to monitor and evaluate performance of the overall transportation system after strategies are implemented; and consideration of example strategies provided in the proposed rule.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after the close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the proposed rule would be a significant regulatory action within the meaning of Executive Order 12866, and under the regulatory policies and procedures of the U.S. Department of Transportation, because of the substantial public interest anticipated in the transportation facilities of the National Parks. The FHWA anticipates that the economic impact of any action taken in this rulemaking process will be minimal. The FHWA anticipates that the proposed rule will not adversely affect any sector of the economy in a material way. Though the proposed action here will impact the NPS, it will not likely interfere with any action taken or planned by the NPS or another agency, or materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this proposed action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the proposal described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. Commenters are encouraged to evaluate any options addressed here with regard to the potential for impact.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a mandate that requires further analysis under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995; 109 Stat. 48). This proposed rule will not result in the expenditure by State, local and Tribal Governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for roads under the NPS jurisdiction. These roads are funded under the FLHP; therefore the proposed rule is not considered an unfunded mandate. Further, in compliance with the Unfunded

Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal Governments and the private sector.

Executive Order 13132 (Federalism)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FHWA has determined that this proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that the proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. However, commenters are encouraged to consider these issues, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed rule contains a requirement for data and information to be collected and maintained in the four management systems that are to be developed. In order to streamline the process, the FHWA intends to request that OMB approve a single information collection clearance for all of the data in the four management systems at the time that the requirements in this proposal are made final. The FHWA is sponsoring this proposed clearance on behalf of the National Park Service.

The FHWA estimates that a total of 4,100 burden hours per year would be imposed on non-Federal entities to provide the required information for the NPS management systems. Respondents to this information collection include State Transportation Departments, Metropolitan Planning Organizations, Tribal governments, regional transportation planning agencies, and county and local governments. The National Park Service would bear the burden of developing the management systems in a manner that would incorporate any existing data in the most efficient way and without additional burdens to the public. The estimates here only include burdens on the respondents to provide information that is not usually and customarily collected.

Where a substantial level of effort may be required of non-Federal entities to provide NPS management system information, the effort has been benchmarked to the number of miles of NPS owned roads or the number of NPS owned bridges within the agency's jurisdiction. This approach has been applied to the PMS, BMS and SMS. For NPS implementation of the PMS, BMS, and SMS, the annual burden estimate is 1,700 hours. Implementation of the BMS will result in 500 annual hours of burden, with the PMS and the SMS each requiring 600 hours per year. The level of burden on non-Federal entities is modest since the NPS will incorporate existing data into the management systems, where feasible.

For the CMS, the non-Federal burden, if applicable, would likely fall to the MPOs, and represents the need for the NPS to coordinate its management system with the MPO's, for that portion of its transportation system that is within an MPO area. For estimating purposes, approximately 60 MPOs nationwide may be burdened by the proposed regulation. Forty hours of burden were assigned to each of the 60 MPOs, resulting in a total burden of 2,400 hours per year attributable to the CMS.

The FHWA is required to submit this proposed collection of information to OMB for review and approval, and accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The FHWA analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this proposed action would not have any effect on the quality of the environment. An environmental impact statement is, therefore, not required.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that the proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government, and will not preempt tribal law. The requirements set forth in the proposed rule do not directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not involve an environmental risk to health and safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

This proposed rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because, although it is a significant regulatory action under Executive Order 12866, the proposed rule is not likely to have a significant adverse effect on the supply, distribution or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 970

Bridges, Grant programs—transportation, Highway safety, Highways and roads, National parks, Public lands, Transportation.

For reasons set forth in the preamble, the Federal Highway Administration proposes to amend chapter I of Title 23, Code of Federal Regulations, as set forth below.

Issued on: December 20, 2002.

Mary E. Peters,

Federal Highway Administrator.

1. Add a new subchapter L, consisting of part 970 to read as follows:

SUBCHAPTER L—FEDERAL LANDS HIGHWAYS

PART 970—NATIONAL PARK SERVICE MANAGEMENT SYSTEMS

Subpart A—Definitions

Sec.

970.100 Purpose.
970.102 Applicability.
970.104 Definitions.

Subpart B—National Park Service Management Systems

970.200 Purpose.
970.202 Applicability.
970.204 Management systems requirements.
970.206 Funds for establishment, development and implementation of the systems.
970.208 Federal lands Pavement Management System (PMS).
970.210 Federal lands Bridge Management System (BMS).
970.212 Federal lands Safety Management System (SMS).
970.214 Federal lands Congestion Management System (CMS).

Authority: 23 U.S.C. 204 and 315; 42 U.S.C. 7410 *et seq.*; 49 CFR 1.48.

Subpart A—Definitions

§ 970.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

§ 970.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

§ 970.104 Definitions.

Alternative transportation systems means modes of transportation other than private vehicles, including methods to improve system performance such as transportation demand management, congestion management, and intelligent transportation systems. These mechanisms help reduce the use of private vehicles and thus improve overall efficiency of transportation systems and facilities.

Elements means the components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

Federal lands bridge management system (BMS) means a systematic process used by the Forest Service (FS), the Fish and Wildlife Service (FWS) and the National Park Service (NPS) for collecting and analyzing bridge data to make forecasts and recommendations, and provides the means by which bridge maintenance, rehabilitation, and replacement programs and policies may be efficiently and effectively considered.

Federal lands congestion management system (CMS) means a systematic process used by the NPS, the FWS and the FS for managing congestion that provides information on transportation system performance, and alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet Federal, State and local needs.

Federal Lands Highway program (FLHP) means a federally funded program established in 23 U.S.C. 204 to address transportation needs of Federal and Indian lands.

Federal lands pavement management system (PMS) means a systematic process used by the NPS, the FWS and the FS that provides information for use in implementing cost-effective pavement reconstruction, rehabilitation, and preventive maintenance programs and policies, and that results in pavement designed to accommodate current and forecasted traffic in a safe, durable, and cost-effective manner.

Federal lands safety management system (SMS) means a systematic process used by the NPS, the FWS and the FS with the goal of reducing the number and severity of traffic accidents by ensuring that all opportunities to improve roadway safety are identified, considered, implemented, and evaluated, as appropriate, during all phases of highway planning, design, construction, operation and maintenance, by providing information for selecting and implementing effective highway safety strategies and projects.

Highway safety means the reduction of traffic accidents on public roads, including reductions in deaths, injuries, and property damage.

Intelligent transportation system (ITS) means electronics, communications, or information processing used singly or in combination to improve the efficiency and safety of a surface transportation system.

Life-cycle cost analysis means an evaluation of costs incurred over the life of a project allowing a comparative analysis between or among various alternatives. Life-cycle cost analysis promotes consideration of total cost, including maintenance and operation expenditures. Comprehensive life-cycle cost analysis includes all economic variables essential to the evaluation, including user costs such as delay, safety costs associated with maintenance and rehabilitation projects, agency capital costs, and life-cycle maintenance costs.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5306 must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for the metropolitan planning area pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303.

National Park Service transportation plan means an official NPS multimodal transportation plan that is developed through the NPS transportation planning process pursuant to 23 U.S.C. 204.

Operations means those activities associated with managing, controlling, and regulating highway and pedestrian traffic.

Park road means a public road, including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles, that is located within, or provides access to, an area in the National Park System with title and maintenance responsibilities vested in the United States.

Park Road Program transportation improvement program (PRPTIP) means a staged, multi-year, multimodal program of NPS transportation projects in a State area. The PRPTIP is consistent with the NPS transportation plan and developed through the NPS planning processes pursuant to 23 U.S.C. 204.

Park Roads and Parkways program means a program that is authorized in 23 U.S.C. 204 with funds allocated to the NPS by the FHWA for each fiscal year as provided in 23 U.S.C. 202(c).

Parkway means a parkway authorized by Act of Congress on lands to which title is vested in the United States.

Secretary means the Secretary of Transportation.

Serviceability means the degree to which a bridge provides satisfactory service from the point of view of its users.

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

Transportation facilities means roads, streets, bridges, parking areas, transit vehicles, and other related transportation infrastructure.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the Federal Transit Administration (FTA). The TMA designation applies to the entire metropolitan planning area(s).

Subpart B—National Park Service Management Systems

§ 970.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 204, which requires the Secretary and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. These management systems serve to guide the National Park Service (NPS) in developing transportation plans and making resource allocation decisions for the PRPTIP.

§ 970.202 Applicability.

The provisions in this subpart are applicable to the NPS, which is responsible for satisfying these requirements for management systems pursuant to 23 U.S.C. 204.

§ 970.204 Management systems requirements.

(a) The NPS shall develop, establish and implement the management systems as described in this subpart. The NPS may tailor all management systems to meet the NPS goals, policies, and needs. The management systems also shall be developed so they assist in meeting the goals and measures that were jointly developed by the FHWA and the NPS in response to the Government Performance and Results Act of 1993 (Public Law 103–62, 107 Stat. 285).

(b) The NPS and the FHWA shall develop an implementation plan for each of the management systems. These plans will include, but are not limited to, the following: Overall goals and policies concerning the management systems, each agency's responsibilities for developing and implementing the management systems, implementation schedule, data sources, and cost estimate. The FHWA will provide the NPS ongoing technical engineering support for the development, implementation, and maintenance of the management systems.

(c) The NPS shall develop and implement procedures for the development, establishment, implementation and operation of management systems. The procedures shall include:

(1) A process for ensuring the outputs of the management systems are considered in the development of NPS transportation plans and PRPTIPs and in making project selection decisions under 23 U.S.C. 204;

(2) A process for the analysis and coordination of all management system outputs to systematically operate, maintain, and upgrade existing transportation assets cost-effectively;

(3) A description of each management system;

(4) A process to operate and maintain the management systems and their associated databases; and

(5) A process for data collection, processing, analysis and updating for each management system.

(d) All management systems will use databases with a geographical reference system that can be used to geolocate all database information.

(e) Existing data sources may be used by the NPS to the maximum extent possible to meet the management system requirements.

(f) The NPS shall develop an appropriate means to evaluate the effectiveness of the management systems in enhancing transportation investment decisionmaking and improving the overall efficiency of the affected transportation systems and facilities. This evaluation is to be conducted periodically, preferably as part of the NPS planning process.

(g) The management systems shall be operated so investment decisions based on management system outputs can be considered at the national, regional, and park levels.

§ 970.206 Funds for establishment, development, and implementation of the systems.

The FLHP Park Roads and Parkways program funds may be used for development, establishment, and implementation of the management systems. These funds are to be administered in accordance with the procedures and requirements applicable to the funds.

§ 970.208 Federal lands Pavement Management System (PMS).

In addition to the requirements provided in § 970.204, the PMS must meet the following requirements:

(a) The NPS shall have PMS coverage of all paved park roads, parkways, parking areas and other associated facilities, as appropriate, that are funded under the FLHP.

(b) The PMS may be utilized at various levels of technical complexity depending on the nature of the transportation network. These different levels may depend on mileage, functional classes, volumes, loading, usage, surface type, or other criteria the NPS deems appropriate.

(c) The PMS shall be designed to fit the NPS goals, policies, criteria, and needs using the following components, at a minimum, as a basic framework for a PMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the PMS. The minimum PMS database shall include:

(i) An inventory of the physical pavement features including the number of lanes, length, width, surface type, functional classification, and shoulder information;

(ii) A history of project dates and types of construction, reconstruction, rehabilitation, and preventive maintenance. If some of the inventory or historic data is difficult to establish, it may be collected when preservation or reconstruction work is performed;

(iii) Condition data that includes roughness, distress, rutting, and surface friction (as appropriate);

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) Data for estimating the costs of actions.

(2) A system for applying network level analytical procedures that are capable of analyzing data for all park roads, parkways and other appropriate associated facilities in the inventory or any subset. The minimum analyses shall include:

(i) A pavement condition analysis that includes roughness, distress, rutting, and surface friction (as appropriate);

(ii) A pavement performance analysis that includes present and predicted performance and an estimate of the

remaining service life (performance and remaining service life to be developed with time); and

(iii) An investment analysis that:

(A) Identifies alternative strategies to improve pavement conditions;

(B) Estimates costs of any pavement improvement strategy;

(C) Determines maintenance, repair, and rehabilitation strategies for pavements using life-cycle cost analysis or a comparable procedure;

(D) Provides for short and long term budget forecasting; and

(E) Recommends optimal allocation of limited funds by developing a prioritized list of candidate projects over a predefined planning horizon (both short and long term).

(d) For any park roads, parkways and other appropriate associated facilities in the inventory or subset thereof, PMS reporting requirements shall include, but are not limited to, percentage of roads in good, fair, and poor condition.

§ 970.210 Federal lands Bridge Management System (BMS).

In addition to the requirements provided in § 970.204, the BMS must meet the following requirements:

(a) The NPS shall have a BMS for the bridges which are under the NPS jurisdiction, funded under the FLHP, and required to be inventoried and inspected as prescribed by 23 U.S.C. 144.

(b) The BMS shall be designed to fit the NPS goals, policies, criteria, and needs using, as a minimum, the following components:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS. The minimum BMS database shall include:

(i) Data described by the inventory section of the National Bridge Inspection Standards (23 CFR 650.311);

(ii) Data characterizing the severity and extent of deterioration of bridge elements;

(iii) Data for estimating the cost of improvement actions;

(iv) Traffic information including volumes and other pertinent information; and

(v) A history of conditions and actions taken on each bridge, excluding minor or incidental maintenance.

(2) A system for applying network level analytical procedures that are capable of analyzing data for all bridges in the inventory or any subset. The minimum analyses shall include:

(i) A prediction of performance and estimate of the remaining service life of structural and other key elements of each bridge, both with and without intervening actions; and

(ii) A recommendation for optimal allocation of limited funds through development of a prioritized list of candidate projects over predefined short and long term planning horizons.

(c) The BMS may include the capability to perform an investment analysis as appropriate, considering size of structure, traffic volume, and structural condition. The investment analysis may:

(1) Identify alternative strategies to improve bridge condition, safety and serviceability;

(2) Estimate the costs of any strategies ranging from maintenance of individual elements to full bridge replacement;

(3) Determine maintenance, repair, and rehabilitation strategies for bridge elements using life cycle cost analysis or a comparable procedure;

(4) Provide short and long term budget forecasting; and

(5) Evaluate the cultural and historical values of the structure.

(d) For any bridge in the inventory or subset thereof, BMS reporting requirements shall include, but are not limited to, percentage of non-deficient bridges.

§ 970.212 Federal Lands Safety Management System (SMS).

In addition to the requirements provided in § 970.204, the SMS must meet the following requirements:

(a) The NPS shall have an SMS for all transportation systems serving NPS facilities, as appropriate, funded under the FLHP.

(b) The NPS shall use the SMS to ensure that safety is considered and implemented, as appropriate, in all phases of transportation system planning, design, construction, maintenance, and operations.

(c) The SMS shall be designed to fit the NPS goals, policies, criteria, and needs and shall contain the following components:

(1) An ongoing program for the collection, maintenance and reporting of a data base that includes:

(i) Accident records with details for analysis such as accident type, using standard reporting descriptions (*e.g.*, right-angle, rear-end, head-on, pedestrian-related), location, description of event, severity, weather and cause;

(ii) An inventory of safety appurtenances such as signs, delineators, and guardrails (including terminals);

(iii) Traffic information including volume, speed, and vehicle classification, as appropriate.

(iv) Accident rates by customary criteria such as location, roadway classification, and vehicle miles of travel.

(2) Development, establishment, and implementation of procedures for:

(i) Routinely maintaining and upgrading safety appurtenances including highway-rail crossing warning devices, signs, highway elements, and operational features, where appropriate;

(ii) Identifying and investigating hazardous or potentially hazardous transportation elements and systems, transit vehicles and facilities, roadway locations and features;

(iii) Establishing countermeasures and setting priorities to address identified needs.

(3) A process for communication, coordination, and cooperation among the organizations responsible for the roadway, human, and vehicle safety elements;

(d) While the SMS applies to appropriate transportation systems serving NPS facilities funded under the FLHP, the extent of system requirements (*e.g.*, data collection, analyses, and standards) for low volume roads may be tailored to be consistent with the functional classification of the road and number and types of transit and other vehicles operated by the NPS.

§ 970.214 Federal Lands Congestion Management System (CMS).

(a) For purposes of this section, congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. For portions of the NPS transportation system outside the boundaries of TMAs, the NPS shall:

(1) Develop criteria to determine when a CMS is to be implemented for a specific transportation system; and

(2) Have CMS coverage for all transportation systems serving NPS facilities that meet minimum CMS needs criteria, as appropriate, funded through the FLHP.

(b) The NPS shall consider the results of the CMS when selecting congestion mitigation strategies that are the most time efficient and cost effective and that add value (protection/rejuvenation of resources, improved visitor experience) to the park and adjacent communities.

(c) In addition to the requirements provided in § 970.204, the CMS must meet the following requirements:

(1) For those NPS transportation systems that require a CMS, in both metropolitan and non-metropolitan areas, consideration shall be given to strategies that promote alternative transportation systems, reduce private automobile travel, and best integrate

private automobile travel with other transportation modes.

(2) For portions of the NPS transportation system within transportation management areas (TMAs), the NPS transportation planning process shall include a CMS that meets the requirements of this section. By agreement between the TMA and the NPS, the TMA's CMS coverage may include the transportation systems serving NPS facilities, as appropriate. Through this agreement(s), the NPS may meet the requirements of this section.

(3) If a TMA's CMS does not provide coverage of the portions of the NPS transportation facilities within the boundaries of the TMA, the NPS shall develop a separate CMS to cover those facilities within the boundaries of the TMA. Approaches may include the use of alternate mode studies and implementation plans as components of the CMS.

(4) A CMS will:

(i) Identify and document measures for congestion (*e.g.*, level of service);

(ii) Identify the causes of congestion;

(iii) Include processes for evaluating the cost and effectiveness of alternative strategies;

(iv) Identify the anticipated benefits of appropriate alternative traditional and nontraditional congestion management strategies;

(v) Determine methods to monitor and evaluate the performance of the multi-modal transportation system; and

(vi) Appropriately consider strategies, or combinations of strategies for each area, such as:

(A) Transportation demand management measures;

(B) Traffic operational improvements;

(C) Public transportation improvements;

(D) ITS technologies; and

(E) Additional system capacity.

[FR Doc. 03–102 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 971

[FHWA Docket No. FHWA–99–4969]

RIN 2125–AE55

Federal Lands Highway Program; Management Systems Pertaining to the Forest Service and the Forest Highway Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21), requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the Federal Lands Highway program (FLHP). The Secretary of Transportation has delegated the authority to the FHWA to serve as the lead agency within the U.S. DOT to implement the FLHP. The roads funded under the FLHP include Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. This rulemaking proposes to provide for the development and implementation of safety, bridge, pavement, and congestion management systems for transportation facilities providing access to and within the National Forests and funded under the FLHP.

DATES: Comments must be received on or before March 10, 2003.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Bini, Federal Lands Highway, HFPD–2, (202) 366–6799, FHWA, 400 Seventh Street, SW., Washington, DC 20590; office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For legal questions, Ms. Vivian Philbin, HFL–16, (303) 716–2122, FHWA, 555 Zang Street, Lakewood, CO 80228. Office hours are from 7:45 a.m. to 4:15 p.m., m.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS): *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Background

Section 1115(d) of the TEA–21 (Public Law 105–178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204 to require the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. A management system is a process for collecting, organizing and analyzing data to provide a strategic approach to transportation planning, program development, and project selection. Its purposes are to improve transportation system performance and safety, and to develop alternative strategies for enhancing mobility of people and goods.

The roads funded under the FLHP include, but are not limited to, Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. The Secretary of Transportation delegated to the FHWA the authority to serve as the lead agency within the U.S. Department of Transportation to administer the FLHP (see 49 CFR 1.48 (b)(29)). This rulemaking action addresses the management systems for the Forest Service (FS) and the Forest Highway (FH) program.

On September 1, 1999, the FHWA issued an advance notice of proposed rulemaking (ANPRM) to solicit public comments concerning development of this proposed regulation pertaining to the FS and the FH program (64 FR 47744). The ANPRM requested comments on the feasibility of developing a rule to meet both the transportation planning and management systems requirements of

the TEA–21. Therefore, comments made to the docket addressed both transportation planning and management systems issues. However, the FHWA has decided to separate the NPRM's for transportation planning and management systems. For this reason, this NPRM concerns only the development of the management systems. This NPRM includes responses to the comments submitted to the docket on the ANPRM that addressed the proposed development of the four management systems. Those comments on the ANPRM that addressed transportation planning will be addressed at a later date. The FHWA received comments addressing the management systems from various State Transportation Departments and the Oregon Association of County Engineers and Surveyors. These comments are summarized below. Specific comments may be obtained by reviewing the materials in the docket.

Based on the comments on the ANPRM, the FHWA has developed this NPRM to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation systems providing access to and within the National Forests and Grasslands, and funded under the FLHP. Separate NPRMs on management systems have also been developed for the Fish and Wildlife Service (FWS) and the Refuge Roads program, the National Park Service (NPS) and the Park Roads and Parkways program, and the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads program. The other three related NPRMs are published elsewhere in today's **Federal Register**.

On April 21, 2000, then President Clinton issued Executive Order (EO) 13148, Greening the Government Through Leadership in Environmental Management. This EO requires all Federal agencies to implement an environmental management system (EMS) to ensure that agencies develop strategies to support environmental leadership in programs, policies, and procedures and that senior level managers explicitly and actively endorse these strategies. The EO requires that agencies implement an EMS no later than December 31, 2005. Furthermore, in an April 1, 2002, letter, the Bush Administration encouraged all agencies to promote the use of EMS in Federal, State, local, and private facilities and directed the Environmental Protection Agency (EPA) to report annually on how well each agency has done in promoting EMS.

The FHWA has already begun working toward establishing an EMS. Additionally, the FWHA is working with the American Association of State Highway and Transportation Officials' (AASHTO) Center for Environmental Excellence to include EMS as part of an environmental stewardship demonstration project. The FHWA is currently providing technical and financial assistance to the Center, which in turn supports States that have initiated EMSs.[1] Furthermore, the FHWA continues to demonstrate environmental stewardship by encouraging the use of EMS in the construction, operation, and maintenance of transportation facilities.

Although an EMS may have some overlap with the four management systems that are the subject of this proposed rulemaking, the FHWA has decided not to incorporate the EMS in this rulemaking. The FHWA believes that great progress has been made on the EMS and promoting the use of EMS by the States. In addition, the FHWA has a long-standing working relationship with the Federal Land Management Agencies (FLMAs) through the Federal Lands Highway Program. The natural resource conservation and preservation missions of these agencies have led to the development of a jointly held environmental ethic that pervades transportation project decision-making through the use of context sensitive design, best management practices, and a heightened sensitivity to environmental impacts. This relationship provides a strong foundation for the FHWA to encourage the use of environmental management systems by the FLMAs. For example, the National Park Service currently has an initiative underway to implement a service-wide EMS approach. The FHWA and the NPS can evaluate ways to coordinate the use and development of the EMS with the transportation management systems through the joint development of the management system implementation plan called for in this rulemaking. A similar approach can be used with all of the FLMAs.

Any EMS developed by the FHWA, or by a FLMA, will not have an adverse effect on any of the management systems in this proposed rulemaking. Instead, such an EMS may help foster a movement toward the use of a comprehensive asset management system that incorporates EMS, along with the transportation management systems proposed in this rulemaking, and others not covered in this proposed action, such as a maintenance management system. The role of the EMS in a more comprehensive approach would demonstrate a commitment to environmental stewardship that goes beyond the individual project level or the development of a multi-project transportation program. The EMS should be a fundamentally important business tool that pervades all aspects of FLMA transportation decision-making. The FHWA will continue to advance its EMS and promote the EMS initiatives of the FLMAs through implementation planning for the transportation management systems. In addition, the FHWA will continue to promote the use of EMSs in the construction, operation, and maintenance of transportation facilities.

In developing the management system implementation plans, the need for data elements that address the environmental performance measures can be evaluated in relationship to individual agency plans to implement an EMS. This could provide an opportunity for the ongoing collection of environmental information, if appropriate and necessary. At a minimum, this would provide an opportunity to link existing environmental data to the transportation management systems using a geographic information system common to both systems.

From the FHWA's stewardship perspective regarding the Federal Lands Highway Program, EMS is most appropriately pursued as part of sound FLMA business management planning. Thus, the FHWA has decided not to address the EMS requirement in this proposed rulemaking action.

[1] More information on how EMS applies to transportation organizations can be found on the AASHTO's Center for Environmental Excellence website at the following URL: *http://itre.ncsu.edu/AASHTO/stewardship*.

Summary of Comments Received on the ANPRM Pertaining to the FS and the Forest Highway Programs

The following discussion summarizes the comments received on the ANPRM and the FHWA's response to these comments. This discussion provides the public a general sense of the issues addressed in the comments. As previously stated, this NPRM is intended for the development of management systems. Therefore, this summary contains only comments and responses related to the management systems. There are instances where reference is made to transportation planning issues because the management systems serve as a guide to planning activities.

Rule Development

Comments: The majority of comments supported the FHWA's proposal to develop "separate rules" pertaining to the FS and the FH programs, the NPS

and the Park Roads and Parkways program, the FWS and the Refuge Roads program, and the BIA and the Indian Reservations Roads program. The commenters in favor of this proposal point out the fact that transportation planning functions for the different Federal lands highways are performed by various Federal, State, Tribal and local entities, depending on ownership of the roadways and responsibilities for constructing and maintaining the facilities.

The Wisconsin DOT and the Kentucky Transportation Cabinet offered an opposite view. These two State DOTs requested that we develop only one general rule applicable to all four agencies. The Wisconsin DOT suggested that this rule be flexible so that it recognizes the different approaches used by the States. The Kentucky Transportation Cabinet recommended that the rule should require the Federal land management agencies (FLMAs) to develop Memoranda of Understanding or Agreements that would address the consistency between Federal land transportation planning procedures and those required under 23 U.S.C. 134 and 135. The Kentucky Transportation Cabinet was concerned that the additional rules might jeopardize existing procedures already in effect.

Response: Following the recommendations from the majority of commenters, the FHWA, in consultation with each appropriate Federal land management agency, developed a separate rule pertaining to each agency: the FS, the NPS, the FWS, and the BIA. The variance among the rules allows for the significant differences in the ownership, jurisdiction, and maintenance responsibilities that the FLMAs exercise over the subject roadways addressed in the rule. To ensure uniformity, the FHWA coordinated the development of each NPRM, so that similar text and format are contained in each of the rules.

Addressing the Management Systems Requirements

Comments: Many States believe that the management systems should only be developed as needed and should relate to systems that are already implemented by States and local agencies. It was recommended that the FHWA encourage the Federal agencies to explore and use the States' existing systems. The States also recommended the systems be tailored to fit local conditions, and be applicable solely to the portion of the Federal lands highways owned and maintained by Federal agencies. Many of the States are concerned that the implementation of the management systems may affect the current working relationships among State, Tribal, local, and Federal agencies. The Wisconsin DOT encouraged the FHWA to work with the FLMAs and State Transportation Departments to clarify ownership discrepancies between Federal and State data. They suggested that the FLMAs have accurate data reflecting the amount of mileage the agencies own by location. Further, these data have to agree with data reported by States in the Highway Performance Monitoring System (HPMS) database.[2]

Response: The stakeholders' concerns presented above were considered in the development of this NPRM. Each of the proposed management system rules calls for the FHWA, in cooperation with the FLMA, to develop an implementation plan or implementation procedures for each of the management systems. In addition, flexibility is provided to determine criteria for the need and applicability of each of the FLMA's management systems. These implementation plans will provide the opportunity to relate the FLMA management systems to systems already implemented by States and local agencies. It will also allow the management systems to be tailored to fit a broad range of local conditions, and to avoid inefficient duplication of management systems already in use by the States. Development of the implementation plans will provide an opportunity to strengthen the working relationships among Federal, State, Tribal and local agencies, as well as define responsibility for and ownership of data. In fact, throughout the proposed regulation, we use the term "tri-party partnership" to refer to the joint, cooperative, shared partnership among the Federal Lands Highway Division, the State Department of Transportation and the Forest Service that carry out the FH program.

Comments: The Wisconsin DOT also stated that the FHWA should clarify that this rule and the National Highway System (NHS) Designation Act of 1995, Public Law 104–59, 109 Stat. 568, do not make the implementation of management systems mandatory.

Response: While it is correct that the Public Law 104–59 made the management systems optional for States and Metropolitan Planning Organizations (MPOs), except for the congestion management systems in MPOs with a population greater than 200,000, section 1115(d) of TEA–21 applies to the Federal land management agencies, not directly to the States; however, the States may be requested to provide information. The TEA–21, enacted on June 9, 1998, amended 23 U.S.C. 204 to specify, "The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program." Therefore, the development and implementation of the management systems, where appropriate, is mandated by law for the Federal land management agencies.

[2] The HPMS was developed in 1978 as a national highway transportation system database. It includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional system, and certain summary information for urbanized, small urban and rural areas. Additional information about this database is available online at the URL: *http://www.fhwa.dot.gov/ohim.*

Approach to Structure of Proposed Regulation

In the development of this proposed rule, the FHWA has attempted to minimize the level of data collection and analyses required. The FHWA now solicits comments on the extent to which this strategy has been achieved. Any comments suggesting that the strategy has not been successful should identify the specific reasons why requirements and/or provisions are burdensome. Suggestions to lessen burdens are welcome.

Section-by-Section Analysis

Subpart A

Section 971.100 Purpose

This section states that subpart A provides definitions for terms used in this rule.

Section 971.102 Applicability

This section states that the definitions in subpart A are applicable to this rule.

Section 971.104 Definitions.

This section incorporates the terms defined in 23 U.S.C. 101(a), 49 U.S.C. 5302, and 23 CFR part 450. It also includes additional definitions for terms used in this part.

The phrase "Federal lands" or "Indian lands," as applicable, would be added to the definitions of "bridge management system (BMS)," "congestion management system (CMS)," "pavement management system (PMS)," and "safety management system (SMS)" to indicate the distinction between the Federal or Indian lands, and Federal-aid management systems (refer to 23 CFR part 500 for definitions of the Federal-aid management systems). The

management system definitions also specify their applicability to the BIA, FS, FWS and NPS, as appropriate.

Subpart B

Section 971.200 Purpose

This section states the purpose of this proposed regulation, which is to fulfill the requirements set forth by the TEA–21.

Section 971.202 Applicability

This section defines the applicability of the management systems.

Section 971.204 Management Systems Requirements

This section sets forth general requirements for all four management systems. Additional requirements applicable to specific systems are in §§ 971.208 through 971.214.

Paragraph (a) states that the tri-party partnership shall develop, establish, and implement the management systems as described in this subpart. In addition, paragraph (a), along with paragraph (d), provides flexibility in the development of the management systems. To ensure the management systems are developed, implemented, and operated systematically, paragraph (b) requires the development of procedures that will include the following: Consideration of management system results in the planning process; system analysis; a description of each management system; operation and maintenance of management systems and databases; and data collection, processing, analysis, and updating. Paragraph (c) ensures that the database has a geographical reference system so that information can be geolocated. Paragraph (e) requires a periodic evaluation of the effectiveness of the management systems, preferably as part of the transportation planning process. Paragraph (f) ensures that transportation investment decisions based on management system results would be used at the State area level.

Section 971.206 Funds for Establishment, Development, and Implementation of the Systems

This section provides that the funds available for the FH program can be used for development, establishment, and implementation of the management systems in accordance with legislative provisions for the funds.

Section 971.208 Federal Lands Pavement Management System (PMS)

Paragraph (a) defines the applicability of the PMS. Paragraph (b) permits the use of the American Association of State Highway and Transportation Officials' (AASHTO) "Pavement Management Guide" [3] as a guide for the development of the PMS. Paragraph (c) provides flexibility for the development of the PMS.

This section further sets forth components that must be included in a PMS. They include requirements for a basic framework composed of data collection and maintenance, network level analysis, and reporting requirements.

Section 971.210 Federal Lands Bridge Management System (BMS)

Paragraph (a) defines the applicability of the BMS. Paragraph (b) permits the use of the AASHTO's "Guidelines for Bridge Management Systems" [4] as a guide for the development of the BMS.

The section sets forth components that must be included in a BMS. They consist of data collection and maintenance, network level analysis, investment analysis, and reporting requirements.

Section 971.212 Federal Lands Safety Management System (SMS)

Paragraph (a) defines the applicability of the SMS. Paragraph (b) permits the use of the FHWA publication entitled "Safety Management Systems: Good Practices for Development and Implementation." [5]

Because of the strong emphasis the TEA–21 has on safety, paragraph (c) requires the SMS to be used to ensure that safety is considered and implemented as appropriate in all phases of transportation planning, programming and project implementation. Paragraph (d) states that the level of complexity of a SMS depends on the nature of the facilities involved.

Paragraphs (e) and (g) set forth components that must be included in a SMS. They include data collection and maintenance, identification and correction of potential safety problems, coordination, and reporting.

To provide flexibility, paragraph (f) states that the extent of SMS requirements set forth in this proposed rule for low volume roads may be tailored to be consistent with the functional classification of the roads. However, each functional classification should include adequate requirements to ensure effective safety decisionmaking.

Section 971.214 Federal Lands Congestion Management System (CMS)

This section defines congestion and addresses the criteria and the need for CMS coverage for portions of the FH network outside the boundaries of transportation management areas (TMAs). In addition, it specifies that the tri-party partnership shall consider CMS results in selecting implementation strategies to address congestion. Paragraph (c)(1) requires consideration of strategies that reduce automobile travel and improve the efficiency of the existing transportation system.

Paragraph (c)(2) further sets forth components to be included in a CMS. They include the following: identification and documentation of measures for congestion; identification of the causes of congestion; development of evaluation processes; identification of benefits of congestion management; determination of methods to monitor and evaluate performance of the overall transportation system after strategies are implemented; and consideration of example strategies provided in the proposed rule.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

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[3] "Pavement Management Guide," AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased on line at *http://www.transportation.org.publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[4] "Guidelines for Bridge Management Systems," AASHTO, 1993, is available for inspection as prescribed at 49 CFR part 7. It may be purchased on line at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[5] "Safety Management Systems: Good Practices for Development and Implementation," FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at *http://safety.thwa.dot.gov/media/documents.htm*. It is available for inspection and copying as prescribed at 49 CFR part 7.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the proposed rule would be a significant regulatory action within the meaning of Executive Order 12866, and under the regulatory policies and procedures of the U.S. Department of Transportation, because of the substantial public interest anticipated in the transportation facilities of the National Forests and Grasslands. The FHWA anticipates that the economic impact of any action taken in this rulemaking process will be minimal. Any changes proposed here are not anticipated to adversely affect any sector of the economy in a material way. Though the proposed action here will impact the FS, it will not likely interfere with any action taken or planned by the FS or another agency, or materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this proposed action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the proposal described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. Commenters are encouraged to evaluate any options addressed here with regard to the potential for impact.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a mandate that requires further analysis under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local and Tribal Governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation systems providing access to and within the National Forests and Grasslands. These roads are funded under the FLHP; therefore the proposed rule is not considered an unfunded mandate. Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal Governments and the private sector.

Executive Order 13132 (Federalism)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FHWA has determined that this proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that the proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. However, commenters are encouraged to consider these issues, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed rule contains a requirement for data and information to be collected and maintained in the four management systems that are to be developed. In order to streamline the process, the FHWA intends to request that the OMB approve a single information collection clearance for all of the data in the four management systems at the time that the requirements in this proposal are made final. The FHWA is sponsoring this proposed clearance on behalf of the U.S. Forest Service.

The FHWA estimates that a total of 8,900 burden hours would be imposed on non-Federal entities to provide the required information for the FS management systems. Respondents to this information collection include State Transportation Departments, Metropolitan Planning Organizations (MPOs), Tribal governments, regional transportation planning agencies, and county and local governments. The Forest Service would bear the burden of developing the management systems in a manner that would incorporate any existing data in the most efficient way and without additional burdens to the public. The estimates here only include burdens on the respondents to provide information that is not usually and customarily collected.

Where a substantial level of effort may be required of non-Federal entities to provide management system information, the effort has been benchmarked to the number of miles of State or locally owned roads or the number of State or locally owned bridges within the jurisdiction of the FS. This approach has been applied to the PMS, BMS and SMS. Since a substantial portion of the FS system is State or locally owned roads, considerable effort may be required of States, and county and local governments in providing pavement, bridge and safety information. The total annual burden estimate for these three systems is 6,100 hours. Burden estimates are 2,200 hours per year for the PMS; 1,700 hours per year for the BMS; and 2,200 hours per year for the SMS.

For implementation of the CMS, the non-Federal burden, if applicable, would likely fall to the MPOs, and represents the need for the FS to coordinate its management systems with the MPOs for that portion of its transportation system that is within an MPO area. For estimating purposes, approximately 70 MPOs nationwide may be burdened by the proposed regulation. Forty hours of burden were assigned to each of the 70 MPOs, resulting in a total annual burden estimate of 2,800 hours attributable to the FS CMS.

The FHWA is required to submit this proposed collection of information to the OMB for review and approval and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this proposed action would not have any effect on the quality of the environment. An environmental impact statement is, therefore, not required.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that the proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government, and will not preempt tribal law. The requirements set forth in the proposed rule do not directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not involve an environmental risk to health and safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

This proposed rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Effect Energy Supply, Distribution or Use. The FHWA has determined that it is not a significant energy action under that order because, although this proposed action is considered a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 971

Bridges, Grant programs—transportation, Highway safety, Highways and roads, National forests, Public lands, Transportation.

For reasons set forth in the preamble, the Federal Highway Administration proposes to amend chapter I of Title 23, Code of Federal Regulations, as set forth below.

Issued on: December 20, 2002.

Mary E. Peters,

Federal Highway Administrator.

1. Add part 971 to subpart L to read as follows:

PART 971—FOREST SERVICE MANAGEMENT SYSTEMS

Subpart A—Definitions

Sec.

971.100 Purpose.
971.102 Applicability.
971.104 Definitions.

Subpart B—Forest Highway Program Management Systems

971.200 Purpose.
971.202 Applicability.
971.204 Management systems requirements.
971.206 Funds for establishment, development and implementation of the systems.
971.208 Federal lands Pavement Management System (PMS).
971.210 Federal lands Bridge Management System (BMS).
971.212 Federal lands Safety Management System (SMS).
971.214 Federal lands Congestion Management System (CMS).

Authority: 23 U.S.C. 204, 315; 42 U.S.C. 7410 *et seq.*; 49 CFR 1.48.

Subpart A—Definitions

§ 971.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

§ 971.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

§ 971.104 Definitions.

Alternative transportation systems means modes of transportation other than private vehicles, including methods to improve system performance such as transportation demand management, congestion management, and intelligent transportation systems. These mechanisms help reduce the use of private vehicles and thus improve overall efficiency of transportation systems and facilities.

Elements means the components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

Federal lands bridge management system (BMS) means a systematic process used by the Forest Service (FS), the Fish and Wildlife Service (FWS) and the National Park Service (NPS) for collecting and analyzing bridge data to make forecasts and recommendations, and that provides the means by which bridge maintenance, rehabilitation, and replacement programs and policies may be efficiently and effectively considered.

Federal lands congestion management system (CMS) means a systematic process used by the FS, FWS and NPS for managing congestion that provides information on transportation system performance, and alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet Federal, State and local needs.

Federal Lands Highway program (FLHP) means a federally funded program established in 23 U.S.C. 204 to address transportation needs of Federal and Indian lands.

Federal lands pavement management system (PMS) means a systematic process used by the FS, FWS and NPS that provides information for use in implementing cost-effective pavement reconstruction, rehabilitation, and preventive maintenance programs and policies and that results in pavement designed to accommodate current and forecasted traffic in a safe, durable, and cost-effective manner.

Federal lands safety management system (SMS) means a systematic process used by the FS, FWS and NPS with the goal of reducing the number and severity of traffic accidents by ensuring that all opportunities to improve roadway safety are identified, considered, implemented and evaluated as appropriate, during all phases of highway planning, design, construction, operation and maintenance, by providing information for selecting and implementing effective highway safety strategies and projects.

Forest highway (FH) means a State-designated road under the jurisdiction of, and maintained by, a public authority and open to public travel, that provides access to or within a National Forest or Grassland.

Forest Highway program means the public lands highway funds allocated each fiscal year as is provided in 23 U.S.C. 202 for projects that provide access to and within the National Forest system as described in 23 U.S.C. 202(b).

Forest Highway program transportation improvement program (FHPTIP) means a staged, multiyear, multimodal program of transportation projects in a State area consistent with the Forest Highway transportation plan and developed through the tri-party Forest Highway planning processes pursuant to 23 U.S.C. 204.

Forest Service transportation plan means the official Forest Highway multimodal, transportation plan that is developed through the tri-party Forest Highway transportation planning process pursuant to 23 U.S.C. 204.

Highway safety means the reduction of traffic accidents on public roads, including reductions in deaths, injuries, and property damage.

Intelligent transportation system (ITS) means electronics, communications, or information processing used singly or in combination to improve the efficiency and safety of a surface transportation system.

Life-cycle cost analysis means an evaluation of costs incurred over the life of a project allowing a comparative analysis between or among various alternatives. Life-cycle cost analysis promotes consideration of total cost, including maintenance and operation expenditures. Comprehensive life-cycle cost analysis includes all economic variables essential to the evaluation including user costs such as delay, safety costs associated with maintenance and rehabilitation projects, agency capital costs, and life-cycle maintenance costs.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5306 must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for the metropolitan planning area pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303.

National Forest System means all the lands and waters reported by the Forest Service as being part of the National Forest System, including those generally known as National Forests and National Grasslands.

Operations means those activities associated with managing, controlling, and regulating highway traffic.

Secretary means the Secretary of Transportation.

Serviceability means the degree to which a bridge provides satisfactory service from the point of view of its users.

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

Transportation facilities means roads, streets, bridges, parking areas, transit vehicles, and other related transportation infrastructure.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the Federal Transit Administration (FTA). The TMA designation applies to the entire metropolitan planning area(s).

Tri-party means the joint, cooperative, shared partnership among the Federal Lands Highway Division (FLHD), State Department of Transportation (State DOT), and the Forest Service (FS) to carry out the FH program.

Subpart B—Forest Highway Program Management Systems

§ 971.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 204 which requires the Secretary and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP.

§ 971.202 Applicability.

The provisions in this subpart are applicable to the FHWA, the Forest Service and the State DOTs that are responsible for satisfying these requirements for management systems pursuant to 23 U.S.C. 204.

§ 971.204 Management systems requirements.

(a) The tri-party partnership shall develop, establish and implement the management systems as described in this subpart. The management systems may be tailored to meet the FH program goals, policies, and needs.

(b) The tri-party partnership shall develop and implement procedures for the acceptance of the existing, or the development, establishment, implementation and operation of new management systems. The procedures shall include:

(1) A process for ensuring the output of the management systems are considered in the development of the FH program transportation plans and transportation improvement programs, and in making project selection decisions under 23 U.S.C. 204;

(2) A process for the analyses and coordination of all management systems outputs to systematically operate, maintain, and upgrade existing transportation assets cost-effectively;

(3) A description of each management system;

(4) A process to operate and maintain the management systems and their associated databases; and

(5) A process for data collection, processing, analysis, and updating for each management system.

(c) All management systems will use databases with a common or coordinated reference system, that can be used to geolocate all database information, to ensure that data across management systems are comparable.

(d) Existing data sources may be used by the tri-party partnership to meet the management system requirements.

(e) The tri-party partnership shall develop an appropriate means to evaluate the effectiveness of the management systems in enhancing transportation investment decisionmaking and improving the overall efficiency of the affected transportation systems and facilities. This evaluation is to be conducted periodically, preferably as part of the FS planning process.

(f) The management systems shall be operated so investment decisions based on management system outputs can be accomplished at the State area level.

§ 971.206 Funds for establishment, development, and implementation of the systems.

The FLHP FH program funds may be used for development, establishment, and implementation of the management systems. These funds are to be administered in accordance with the procedures and requirements applicable to the funds.

§ 971.208 Federal lands Pavement Management System (PMS).

In addition to the requirements provided in § 971.204, the PMS must meet the following requirements:

(a) The tri-party partnership shall have PMS coverage of all FHs and other associated facilities, as appropriate, funded under the FLHP.

(b) The PMS may be based on the concepts described in the AASHTO's "Pavement Management Guide." [1]

(c) The PMS may be utilized at various levels of technical complexity depending on the nature of the transportation network. These different levels may depend on mileage, functional classes, volumes, loading, usage, surface type, or other criteria the tri-party partnership deems appropriate.

(d) The PMS shall be designed to fit the FH program goals, policies, criteria, and needs using the following components, at a minimum, as a basic framework for a PMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the PMS. The minimum PMS database shall include:

(i) An inventory of the physical pavement features including the number of lanes, length, width, surface type, functional classification, and shoulder information;

(ii) A history of project dates and types of construction, reconstruction, rehabilitation, and preventive maintenance. If some of the inventory or historic data is difficult to establish, it may be collected when preservation or reconstruction work is performed;

(iii) A condition survey that includes ride, distress, rutting, and surface friction (as appropriate);

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) Data for estimating the costs of actions.

(2) A system for applying network level analytical procedures that are capable of analyzing data for all FHs and other appropriate associated facilities in the inventory or any subset. The minimum analyses shall include:

(i) A pavement condition analysis that includes ride, distress, rutting, and surface friction (as appropriate);

(ii) A pavement performance analysis that includes present and predicted performance and an estimate of the remaining service life (performance and remaining service life to be developed with time); and

(iii) An investment analysis that:

(A) Identifies alternative strategies to improve pavement conditions;

(B) Estimates costs of any pavement improvement strategy;

(C) Determines maintenance, repair, and rehabilitation strategies for pavements using life-cycle cost analysis or a comparable procedure;

(D) Provides for short and long term budget forecasting; and

(E) Recommends optimal allocation of limited funds by developing a prioritized list of candidate projects over a predefined planning horizon (both short and long term).

(e) For any FHs and other appropriate associated facilities in the inventory or subset thereof, PMS reporting requirements shall include, but are not limited to, percentage of roads in good, fair, and poor condition.

§ 971.210 Federal Lands Bridge Management System (BMS).

In addition to the requirements provided in § 971.204, the BMS must meet the following requirements:

(a) The tri-party partnership shall have a BMS for the FH bridges funded under the FLHP and required to be inventoried and inspected under 23 CFR part 650, subpart C, National Bridge Inspection Standards (NBIS).

(b) The BMS may be based on the concepts described in the AASHTO's "Guidelines for Bridge Management Systems." [2]

(c) The BMS shall be designed to fit the FH program goals, policies, criteria, and needs using the following components, as a minimum, as a basic framework for a BMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS. The minimum BMS database shall include:

(i) The inventory data required by the NBIS (23 CFR 650.311);

(ii) Data characterizing the severity and extent of deterioration of bridge elements;

(iii) Data for estimating the cost of improvement actions;

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) A history of conditions and actions taken on each bridge, excluding minor or incidental maintenance.

(2) A system for applying network level analytical procedures at the State or local area level, as appropriate, and capable of analyzing data for all bridges in the inventory or any subset. The minimum analyses shall include:

(i) A prediction of performance and estimate of the remaining service life of structural and other key elements of each bridge, both with and without intervening actions; and

(ii) A recommendation for optimal allocation of limited funds through development of a prioritized list of candidate projects over predefined short and long term planning horizons.

(d) The BMS may include the capability to perform an investment analysis as appropriate, considering size of structure, traffic volume, and structural condition. The investment analysis may:

(1) Identify alternative strategies to improve bridge condition, safety and serviceability;

(2) Estimate the costs of any strategies ranging from maintenance of individual elements to full bridge replacement;

(3) Determine maintenance, repair, and rehabilitation strategies for bridge elements using life cycle cost analysis or a comparable procedure; and

(4) Provide short and long term budget forecasting.

(e) For any bridge in the inventory or subset thereof, BMS reporting requirements shall include, but are not limited to, percentage of non-deficient bridges.

§ 971.212 Federal Lands Safety Management System (SMS).

In addition to the requirements provided in § 971.204, the SMS must meet the following requirements:

(a) The tri-party partnership shall have an SMS for transportation systems providing access to and within National Forests and Grasslands, and funded under the FLHP.

(b) The SMS may be based on the guidance in "Safety Management Systems: Good Practices for Development and Implementation." [3]

(c) The tri-party partnership shall utilize SMS to ensure that safety is considered and implemented, as appropriate, in all phases of transportation system planning, design, construction, maintenance, and operations.

(d) The SMS may be utilized at various levels of complexity depending on the nature of the facility and/or network involved.

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[1] "Pavement Management Guide," AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[2] "Guidelines for Bridge Management Systems," AASHTO, 1993, is available for inspection as prescribed at 49 CFR part 7. It may be purchased on line at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[3] "Safety Management Systems: Good Practices for Development and Implementation," FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at *http://safety.fhwa.dot.gov/media/documents.htm*. It is available for inspection and copying as prescribed at 49 CFR part 7.

(e) The SMS shall be designed to fit the FH program goals, policies, criteria, and needs and shall contain the following components:

(1) An ongoing program for the collection, maintenance and reporting of a database that includes:

(i) Accident records with detail for analysis such as accident type using standard reporting descriptions (*e.g.*, right-angle, rear-end, head-on, pedestrian-related, *etc.*), location, description of event, severity, weather and cause;

(ii) An inventory of safety appurtenances such as signs, delineators, and guardrails (including terminals);

(iii) Traffic information including volume and vehicle classification (as appropriate); and

(iv) Accident rates by customary criteria such as location, roadway classification, and vehicle miles of travel.

(2) Development, establishment, and implementation of procedures for:

(i) Routine maintenance and upgrading of safety appurtenances including highway rail crossing safety devices, signs, highway elements, and operational features, where appropriate;

(ii) Identifying, investigating, and analyzing hazardous or potentially hazardous transportation system safety problems, roadway locations and features;

(iii) Establishing countermeasures and setting priorities to correct the identified hazards and potential hazards.

(3) Identification of focal points for all contacts at State, regional, Tribal and local levels to coordinate, develop, establish, and implement the SMS among the agencies.

(f) While the SMS applies to appropriate transportation systems providing access to and within National Forests and Grasslands funded under the FLHP, the extent of system requirements (*e.g.*, data collection, analyses, and standards) for low volume roads may be tailored to be consistent with the functional classification of the roads. However, adequate requirements should be included for each roadway to provide for effective inclusion of safety decisions in the administration of the FH program.

§ 971.214 Federal Lands Congestion Management System (CMS).

(a) For purposes of this section, congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. For portions of the FH network outside the boundaries of TMA's, the tri-party partnership shall:

(1) Develop criteria to determine when a CMS is to be implemented for a specific FH; and

(2) Have CMS coverage for the transportation systems providing access to and within National Forests, as appropriate, that meets minimum CMS criteria.

(b) The tri-party partnership shall consider the results of the CMS when selecting the implementation of strategies that provide the most efficient and effective use of existing and future transportation facilities.

(c) In addition to the requirements provided in § 971.204, the CMS must meet the following requirements:

(1) For those FH transportation systems that require a CMS, in both metropolitan and non-metropolitan areas, consideration shall be given to strategies that reduce private automobile travel and improve existing transportation efficiency. Approaches may include the use of alternative mode studies and implementation plans as components of the CMS.

(2) A CMS will:

(i) Identify and document measures for congestion (*e.g.*, level of service);

(ii) Identify the causes of congestion;

(iii) Include processes for evaluating the cost and effectiveness of alternative strategies to manage congestion;

(iv) Identify the anticipated benefits of appropriate alternative traditional and nontraditional congestion management strategies;

(v) Determine methods to monitor and evaluate the performance of the multi-modal transportation system; and

(vi) Appropriately consider the following example categories of strategies, or combinations of strategies for each area:

(A) Transportation demand management measures;

(B) Traffic operational improvements;

(C) Public transportation improvements;

(D) ITS technologies; and

(E) Additional system capacity.

[FR Doc. 03–103 Filed 1–7–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 972

[FHWA Docket No. FHWA–99–4970]

RIN 2125–AE54

Federal Lands Highway Program; Management Systems Pertaining to the Fish and Wildlife Service and the Refuge Roads Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21) requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the Federal Lands Highway program (FLHP). The Secretary of Transportation has delegated the authority to the FHWA to serve as the lead agency within the U.S. DOT to implement the FLHP. The roads funded under the FLHP include Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. This rulemaking proposes to provide for the development and implementation of safety, bridge, pavement, and congestion management systems for transportation facilities serving the National Wildlife Refuge System (Refuge System) funded under the FLHP.

DATES: Comments must be received on or before March 10, 2003.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Bini, Federal Lands Highway, HFPD–2, (202) 366–6799, FHWA, 400 Seventh Street, SW., Washington, DC

20590; office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For legal questions, Ms. Vivian Philbin, HFL–16, (303) 716–2122, FHWA, 555 Zang Street, Lakewood, CO 80228. Office hours are from 7:45 a.m. to 4:15 p.m., m.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS): *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Background

Section 1115(d) of the TEA–21 (Public Law 105–178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204 to require the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. A management system is a process for collecting, organizing and analyzing data to provide a strategic approach to transportation planning, program development, and project selection. Its purposes are to improve transportation system performance and safety, and to develop alternative strategies for enhancing mobility of people and goods.

The roads funded under the FLHP include, but are not limited to, Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. The Secretary of Transportation delegated to the FHWA the authority to serve as the lead agency within the U.S. Department of Transportation to administer the FLHP (see 49 CFR 1.48(b)(29)). This rulemaking action addresses the management systems for the Fish and Wildlife Service (FWS) and the Refuge Roads program.

On September 1, 1999, the FHWA issued an advance notice of proposed rulemaking (ANPRM) to solicit public comments concerning development of this proposed rule pertaining to the FWS and the Refuge Roads program (64 FR 47741). The ANPRM requested comments on the feasibility of developing a rule to meet both the transportation planning and management systems requirements of the TEA–21. Therefore, comments made to the docket addressed both transportation planning and management systems issues. However, the FHWA has decided to publish separate NPRMs for transportation planning and management systems. For this reason, this NPRM concerns only the development of the management systems. This NPRM includes responses to the comments submitted to the docket on the ANPRM that addressed the proposed development of the four management systems. Those comments on the ANPRM that addressed transportation planning will be addressed at a later date. The FHWA received comments addressing the management systems from various State Departments of Transportation. These comments are summarized below. Specific comments may be obtained by reviewing the materials in the docket.

Based on the comments on the ANPRM, the FHWA has developed this NPRM to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation facilities serving the Refuge System funded under the FLHP. Separate NPRMs on management systems have also been developed for the National Park Service (NPS) and the Park Roads and Parkways program, the Forest Service (FS) and the Forest Highway program, and the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads program. The other three related NPRMs are published elsewhere in today's **Federal Register**.

On April 21, 2000, then President Clinton issued Executive Order (EO) 13148, Greening the Government Through Leadership in Environmental Management. This EO requires all Federal agencies to implement an environmental management system (EMS) to ensure that agencies develop strategies to support environmental leadership in programs, policies, and procedures and that senior level managers explicitly and actively endorse these strategies. The EO requires that agencies implement an EMS no later than December 31, 2005. Furthermore, in an April 1, 2002, letter, the Bush Administration encouraged all agencies to promote the use of EMS in Federal, State, local, and private facilities and directed the Environmental Protection Agency (EPA) to report annually on how well each agency has done in promoting EMS.

The FHWA has already begun working toward establishing an EMS. Additionally, the FWHA is working with the American Association of State Highway and Transportation Officials' (AASHTO) Center for Environmental Excellence to include EMS as part of an environmental stewardship demonstration project. The FHWA is currently providing technical and financial assistance to the Center, which in turn supports States that have initiated EMSs.[1] Furthermore, the FHWA continues to demonstrate environmental stewardship by encouraging the use of EMS in the construction, operation, and maintenance of transportation facilities.

Although an EMS may have some overlap with the four management systems that are the subject of this proposed rulemaking, the FHWA has decided not to incorporate the EMS in this rulemaking. The FHWA believes that great progress has been made on the EMS and promoting the use of EMS by the States. In addition, the FHWA has a long-standing working relationship with the Federal Land Management Agencies (FLMAs) through the Federal Lands Highway Program. The natural resource conservation and preservation missions of these agencies have led to the development of a jointly held environmental ethic that pervades transportation project decision-making through the use of context sensitive design, best management practices, and a heightened sensitivity to environmental impacts. This relationship provides a strong foundation for the FHWA to encourage the use of environmental management systems by the FLMAs. For example, the National Park Service currently has an initiative underway to implement a service-wide EMS approach. The FHWA and the NPS can evaluate ways to coordinate the use and development of the EMS with the transportation management systems through the joint development of the management system implementation plan called for in this

[1] More information on how EMS applies to transportation organizations can be found on the AASHTO's Center for Environmental Excellence Web site at the following URL: *http//itre.ncsu.edu/AASHTO/stewardship*.

rulemaking. A similar approach can be used with all of the FLMAs.

Any EMS developed by the FHWA, or by a FLMA, will not have an adverse effect on any of the management systems in this proposed rulemaking. Instead, such an EMS may help foster a movement toward the use of a comprehensive asset management system that incorporates EMS, along with the transportation management systems proposed in this rulemaking, and others not covered in this proposed action, such as a maintenance management system. The role of the EMS in a more comprehensive approach would demonstrate a commitment to environmental stewardship that goes beyond the individual project level or the development of a multi-project transportation program. The EMS should be a fundamentally important business tool that pervades all aspects of FLMA transportation decision-making. The FHWA will continue to advance its EMS and promote the EMS initiatives of the FLMAs through implementation planning for the transportation management systems. In addition, the FHWA will continue to promote the use of EMSs in the construction, operation, and maintenance of transportation facilities.

In developing the management system implementation plans, the need for data elements that address the environmental performance measures can be evaluated in relationship to individual agency plans to implement an EMS. This could provide an opportunity for the ongoing collection of environmental information, if appropriate and necessary. At a minimum, this would provide an opportunity to link existing environmental data to the transportation management systems using a geographic information system common to both systems.

From the FHWA's stewardship perspective regarding the Federal Lands Highway Program, EMS is most appropriately pursued as part of sound FLMA business management planning. Thus, the FHWA has decided not to address the EMS requirement in this proposed rulemaking action.

Summary of Comments Received on the ANPRM Pertaining to the FWS and the Refuge Roads Program

The following discussion summarizes the comments received on the ANPRM and the FHWA's response to these comments. This discussion provides the public a general sense of the issues addressed in the comments. As previously stated, this NPRM is intended for the development of management systems. Therefore, this summary contains only comments and responses related to the management systems. There are instances where reference is made to transportation planning issues because the management systems serve as a guide to planning activities.

Rule Development

Comments: The majority of comments supported the FHWA's proposal to develop "separate rules" pertaining to the FWS and the Refuge Roads program, the NPS and the Park Roads and Parkways program, the BIA and the Indian Reservations Roads program, and the FS and the Forest Highway program. The commenters in favor of this proposal pointed out the fact that transportation planning functions for the different Federal lands highways are performed by various Federal, State, and local entities, depending on ownership of the roadways and responsibilities for constructing and maintaining the facilities.

The Wisconsin DOT and the Kentucky Transportation Cabinet offered an opposite view. These two State Transportation Departments requested that we develop only one general rule applicable to all four agencies. The Wisconsin DOT suggested that this rule be flexible so that it recognizes the different approaches used by the States. The Kentucky Transportation Cabinet recommended that the rule should require the Federal land management agencies (FLMAs) to develop Memoranda of Understanding or Agreements that would address the consistency between the Federal land transportation planning procedures and those required under 23 U.S.C. 134 and 135. The Kentucky Transportation Cabinet was concerned that the additional rules might jeopardize existing procedures already in effect.

Response: Following the recommendations from the majority of commenters, the FHWA, in consultation with each appropriate Federal land management agency, developed a separate rule pertaining to each agency: The FWS, the NPS, the FS, and the BIA. The variance among the rules allows for the significant differences in the ownership, jurisdiction, and maintenance responsibilities that the FLMAs exercise over the subject roadways addressed in the rule. To ensure uniformity, the FHWA coordinated the development of each NPRM, so that similar text and format are contained in each of the rules.

Addressing the Management Systems Requirements

Comments: Many States believe that the management systems should only be developed as needed and should relate to systems that are already implemented by States and local agencies. It was recommended that the FHWA encourage the Federal agencies to explore and use the States' existing systems. The States also recommended the systems be tailored to fit local conditions, and be applicable solely to the portion of the Federal lands highways owned and maintained by Federal agencies. Many of the States are concerned that the implementation of the management systems may affect the current working relationships among State, Tribal, local, and Federal agencies. The Wisconsin DOT encouraged the FHWA to work with the FLMA's and State Transportation Departments to clarify ownership discrepancies between Federal and State data. They suggested that the FLMA's have accurate data reflecting the amount of mileage the agencies own by location. Further, these data have to agree with data reported by States in the Highway Performance Monitoring System (HPMS) database.[2]

Response: The stakeholders' concerns presented above were considered in the development of this NPRM. Each of the proposed management system rules calls for the FHWA, in cooperation with the FLMA, to develop an implementation plan or implementation procedures for each of the management systems. In addition, flexibility is provided to determine criteria for the need and applicability of each of the FLMAs management systems. These implementation plans will provide the opportunity to relate the FLMA management systems to systems already implemented by States and local agencies. It will also allow the management systems to be tailored to fit a broad range of local conditions, and to avoid inefficient duplication of management systems already in use by the States. Development of the implementation plans will provide an opportunity to strengthen the working relationships among Federal, State, Tribal and local agencies, as well as define responsibility for and ownership of data.

[2] The HPMS was developed in 1978 as a national highway transportation system database. It includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional system, and certain summary information for urbanized, small urban and rural areas. Additional information about this database is available online at the URL: *http://www.fhwa.dot.gov/ohim.*

Comments: The Wisconsin DOT also stated that the FHWA should clarify that this rule and the National Highway System (NHS) Designation Act of 1995, Public Law 104–59, 109 Stat. 568, do not make the implementation of management systems mandatory.

Responses: While it is correct that the Public Law 104–59 made the management systems optional for States and Metropolitan Planning Organizations (MPOs), except for the congestion management systems in MPOs with a population of greater than 200,000, section 1115(d) of TEA–21 applies to the Federal land management agencies, not directly to the States; however, States may be requested to provide information. The TEA–21, enacted on June 9, 1998, amended 23 U.S.C. 204 to specify "The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program." Therefore, the development and implementation of the management systems, where appropriate, is mandated by law for the Federal land management agencies.

Approach to Structure of Proposed Regulation

In the development of this proposed rule, the FHWA has attempted to minimize the level of data collection and analyses required. The FHWA now solicits comments on the extent to which this strategy has been achieved. Any comments suggesting that the strategy has not been successful should identify the specific reasons why requirements and/or provisions are burdensome. Suggestions to lessen burdens are welcome.

Section-by-Section Analysis

Subpart A

Section 972.100 Purpose

This section states that subpart A provides definitions for terms used in this rule.

Section 972.102 Applicability

This section states that the definitions in subpart A are applicable to this rule.

Section 972.104 Definitions

This section incorporates the terms defined in 23 U.S.C. 101(a), 49 U.S.C. 5302, and 23 CFR part 450. It also includes additional definitions for terms used in this part.

The phrase "Federal lands" or "Indian lands," as applicable, would be added to the definitions of "bridge management system (BMS)," "congestion management system (CMS)," "pavement management system (PMS)," and "safety management system (SMS)" to indicate the distinction between the Federal or Indian lands, and Federal-aid management systems (refer to 23 CFR part 500 for definitions of the Federal-aid management systems). The management system definitions also specify their applicability to the BIA, FS, FWS and NPS, as appropriate.

Subpart B

Section 972.200 Purpose

This section states the purpose of this proposed rule, which is to fulfill the requirements set forth by the TEA–21.

Section 972.202 Applicability

This section defines the applicability of the management systems.

Section 972.204 Management Systems Requirements

This section sets forth general requirements for all four management systems. Additional requirements applicable to specific systems are in §§ 972.208 through 972.214.

Paragraph (a) states that the FWS shall develop, establish, and implement the management systems. Paragraphs (a) and (e) provide flexibility in the development of the management systems. Paragraph (b) requires the FHWA and the FWS to develop implementation plans for the management systems. To ensure the management systems are developed, implemented, and operated systematically, paragraph (c) requires the development of procedures that will include the following: Consideration of management system results in the planning process; system analysis; a description of each management system; operation and maintenance of management systems and databases; and data collection, processing, analysis, and updating. Paragraph (d) ensures that the database has a geographical reference system so that information can be geolocated. Paragraph (f) requires a periodical evaluation process of the effectiveness of the management systems, preferably as part of the transportation planning process. Paragraph (g) ensures that transportation investment decisions based on management system results would be used at the regional level.

Section 972.206 Funds for Establishment, Development, and Implementation of the Systems

This section provides that the funds available for the Refuge Roads program can be used for development, establishment, and implementation of the management systems in accordance with legislative provisions for the funds.

Section 972.208 Federal Lands Pavement Management System (PMS)

Paragraph (a) defines the applicability of the PMS. Paragraph (b) permits the use of the American Association of State Highway and Transportation Officials' (AASHTO) "Pavement Management Guide "[3] as a guide for the development of the PMS. Paragraph (c) provides flexibility for the development of the PMS.

This section further sets forth processes and procedures that must be included in a PMS. They include requirements for a basic framework composed of data collection and maintenance, network level analysis, and reporting procedures.

Section 972.210 Federal Lands Bridge Management System (BMS)

Paragraph (a) defines the applicability of the BMS. The section sets forth processes and procedures that must be included in a BMS. They consist of data collection and maintenance, analytical procedures, and reporting procedures.

Section 972.212 Federal Lands Safety Management System (SMS)

Paragraph (a) defines the applicability of the SMS. Paragraph (b) permits the use of the FHWA publication entitled "Safety Management Systems: Good Practices for Development and Implementation."[4]

Because of the strong emphasis the TEA–21 has on safety, paragraph (c) requires the SMS to be used to ensure that safety is considered and implemented as appropriate in all phases of transportation planning, programming and project implementation. Paragraph (d) states that the level of complexity of a SMS depends on the nature of the facilities involved.

Paragraph (e) section sets forth components that must be included in a SMS. They include data collection and

[3] "Pavement Management Guide," AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[4] "Safety Management Systems: Good Practices for Development and Implementation," FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at *http://safety.fhwa.dot.gov/media/documents.htm*. It is available for inspection and copying as prescribed at 49 CFR part 7.

maintenance, identification and correction of potential safety problems, communications, public education, and reporting.

To provide flexibility, paragraph (f) states that the extent of SMS requirements set forth in this proposed rule for low volume roads may be tailored to be consistent with the functional classification of the roads. However, each functional classification should include adequate requirements to ensure effective safety decision-making.

Section 972.214 Federal Lands Congestion Management System (CMS)

This section defines congestion and specifies that the FWS shall consider the results of the CMS in selecting strategies to address congestion. In addition, it requires the FWS to consider strategies that reduce private automobile travel and improve existing transportation system efficiency. Paragraphs (b)(1), (2), and (3) address CMS coverage for portions of the FWS transportation systems inside and outside the boundaries of transportation management areas (TMAs).

Paragraph (b)(4) further sets forth components to be included in a CMS. They include the following: Identification and documentation of measures for congestion; identification of the causes of congestion; development of evaluation processes; identification of benefits; determination of methods to monitor and evaluate performance of the overall transportation system after strategies are implemented; consideration of example strategies provided in the proposed rule; and provision of information supporting the implementation of actions.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the proposed rule would be a significant regulatory action within the meaning of Executive Order 12866, and under the regulatory policies and procedures of the U.S. Department of Transportation, because of the substantial public interest anticipated in the transportation facilities of the Refuges. The FHWA anticipates that the economic impact of any action taken in this rulemaking process will be minimal. The FHWA anticipates that the proposed changes will not adversely affect any sector of the economy in a material way. Though the proposed action here will impact the FWS, it will not likely interfere with any action taken or planned by the FWS or another agency, or materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this proposed action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the proposal described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. Commenters are encouraged to evaluate any options addressed here with regard to the potential for impact.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a mandate that requires further analysis under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local and Tribal Governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation facilities serving the Refuge System. These roads are funded under the FLHP; therefore the proposed rule is not considered an unfunded mandate. Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal Governments and the private sector.

Executive Order 13132 (Federalism)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FHWA has determined that this proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that the proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. However, commenters are encouraged to consider these issues, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed rule contains a requirement for data and information to be collected and maintained in the four management systems that are to be developed. In order to streamline the process, the FHWA intends to request that the OMB approve a single information collection clearance for all of the data in the four management systems at the time that the requirements in this proposal are made final. The FHWA is sponsoring this proposed clearance on behalf of the Fish and Wildlife Service.

The FHWA estimates that a total of 3,700 burden hours would be imposed on non-Federal entities to provide the required information. Respondents to this information collection include State Transportation Departments, Metropolitan Planning Organizations

(MPOs), Tribal governments, regional transportation planning agencies, and county and local governments. The Fish and Wildlife Service would bear the burden of developing the management systems in a manner that would incorporate any existing data in the most efficient way and without additional burdens to the public. The estimates here only include burdens on the respondents to provide information that is not usually and customarily collected.

Where a substantial level of effort may be required of non-Federal entities to provide management system information, the effort has been benchmarked to the number of miles of State or locally owned roads or the number of State or locally owned bridges within the agency's jurisdiction. This approach has been applied to the PMS, BMS and SMS. Since a substantial portion of the FWS system is State and locally owned roads, the burden on States, and county and local governments will be measurable at a level commensurate with the relatively modest extent of the public FWS system. The total annual burden estimate for these three systems is 1,300 hours. Burden estimates are 500 hours per year for the PMS, 300 hours per year for the BMS, and 500 hours per year for the SMS.

For implementation of the CMS, the non-Federal burden, if applicable, would likely fall to the MPOs, and represents the need for the FLMA's to coordinate their management systems with the MPOs for that portion of their transportation system that is within the MPO area. For estimating purposes, approximately 60 MPOs nationwide, may be burdened by the proposed regulation. Forty hours of burden were assigned to each of the 60 MPO's, resulting in a total annual burden estimate of 2,400 hours attributable to the FWS CMS.

The FHWA is required to submit this proposed collection of information to the OMB for review and approval and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this proposed action would not have any effect on the quality of the environment. An environmental impact statement is, therefore, not required.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that the proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government, and will not preempt tribal law. The requirements set forth in the proposed rule do not directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not involve an environmental risk to health and safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

This proposed rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distributions, or Use. The FHWA has determined that it is not a significant energy action under that order because, although the proposed action is considered to be a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 972

Bridges, Grant programs—transportation, Highway safety, Highways and roads, Public lands, Transportation, Wildlife refuges.

For reasons set forth in the preamble, the Federal Highway Administration proposes to amend chapter I of Title 23, Code of Federal Regulations, as set forth below.

Issued on: December 20, 2002.

Mary E. Peters,

Federal Highway Administrator.

1. Add a new part 972 to subchapter L to read as follows:

PART 972—FISH AND WILDLIFE SERVICE MANAGEMENT SYSTEMS

Subpart A—Definitions

Sec.
972.100 Purpose.
972.102 Applicability.
972.104 Definitions.

Subpart B—Fish and Wildlife Service Management Systems

Sec.
972.200 Purpose.
972.202 Applicability.
972.204 Management systems requirements.
972.206 Funds for establishment, development and implementation of the systems.
972.208 Federal lands Pavement Management System (PMS).
972.210 Federal lands Bridge Management System (BMS).
972.212 Federal lands Safety Management System (SMS).
972.214 Federal lands Congestion Management System (CMS).

Authority: 23 U.S.C. 204, 315; 42 U.S.C. 7410 *et seq.*; 49 CFR 1.48.

Subpart A—Definitions

§ 972.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

§ 972.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

§ 972.104 Definitions.

Alternative transportation systems means modes of transportation other than private vehicles, including methods to improve system performance such as transportation demand management, congestion management, and intelligent transportation systems. These mechanisms help reduce the use of private vehicles and thus improve overall efficiency of transportation systems and facilities.

Elements means the components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

Federal lands bridge management system (BMS) means a systematic process used by the Forest Service (FS), the Fish and Wildlife Service (FWS) and the National Park Service (NPS) for analyzing bridge data to make forecasts and recommendations, and provides the means by which bridge maintenance, rehabilitation, and replacement programs and policies may be effectively considered.

Federal lands congestion management system (CMS) means a systematic process used by the FS, FWS and NPS for managing congestion that provides information on transportation system performance and alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet Federal, State and local needs.

Federal Lands Highway program (FLHP) means a federally funded program established in 23 U.S.C. 204 to address transportation needs of Federal and Indian lands.

Federal lands pavement management system (PMS) means a systematic process used by the FS, FWS and NPS that provides information for use in implementing cost-effective pavement reconstruction, rehabilitation, and preventive maintenance programs and policies and that results in pavement designed to accommodate current and forecasted traffic in a safe, durable, and cost-effective manner.

Federal lands safety management system (SMS) means a systematic process used by the FS, FWS and NPS with the goal of reducing the number and severity of traffic accidents by ensuring that all opportunities to improve roadway safety are identified, considered, implemented and evaluated as appropriate, during all phases of highway planning, design, construction, operation and maintenance, by providing information for selecting and implementing effective highway safety strategies and projects.

Fish and Wildlife Service transportation plan means the official Fish and Wildlife Service-wide multimodal transportation plan that is developed through the Fish and Wildlife Service transportation planning process pursuant to 23 U.S.C. 204.

Highway safety means the reduction of traffic accidents, and deaths, injuries, and property damage resulting therefrom, on public roads.

Intelligent transportation system (ITS) means electronics, communications, or information processing used singly or in combination to improve the efficiency and safety of a surface transportation system.

Life-cycle cost analysis means an evaluation of costs incurred over the life of a project allowing a comparative analysis between or among various alternatives. Life-cycle cost analysis promotes consideration of total cost, to include maintenance and operation expenditures. Comprehensive life-cycle costs analysis includes all economic variables essential to the evaluation: User costs such as delay and safety costs associated with maintenance and rehabilitation projects, agency capital cost, and life-cycle maintenance costs.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5306 must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for the metropolitan planning area pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303.

National Wildlife Refuge System (Refuge System) means all the lands and waters reported by the FWS as being part of the National Wildlife Refuge System in the annual "Report of Lands Under Control of the U.S. FWS."[1] Included in the Refuge System are those lands that are generally known as refuges, waterfowl production areas, wetland management districts, and coordination areas.

Operations means those activities associated with managing, controlling, and regulating highway traffic.

Refuge road means a public road that provides access to or within a unit of the National Wildlife Refuge System and for which title and maintenance responsibilities is vested in the United States Government.

[1] "Report of Lands under Control of the U.S. FWS," U.S. FWS, (published annually on September 30). A free copy is available from the U.S. FWS, Division of Realty, 4401 North Fairfax Drive, Suite 622, Arlington, VA 22203; telephone: (703) 358–1713.

Refuge Road transportation improvement program (RRTIP) means a staged, multiyear, multimodal program of transportation projects for the Refuge Road Program consistent with the Fish and Wildlife Service transportation plan and planning processes pursuant to 23 U.S.C. 204.

Refuge Roads program means the funds allocated each fiscal year, as described in 23 U.S.C. 202(e).

Secretary means the Secretary of Transportation.

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

Transportation facilities means roads, streets, bridges, parking areas, transit vehicles, and other related transportation infrastructure.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the Federal Transit Administration (FTA). The TMA designation applies to the entire metropolitan planning area(s).

Subpart B—Fish and Wildlife Service Management Systems

§ 972.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 204 which requires the Secretary and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP.

§ 972.202 Applicability.

The provisions in this subpart are applicable to the Fish and Wildlife Service (FWS) which is responsible for satisfying these requirements for management systems pursuant to 23 U.S.C. 204.

§ 972.204 Management systems requirements.

(a) The FWS shall develop, establish and implement the management systems as described in this subpart. The FWS may tailor the management systems to meet the FWS goals, policies, and needs.

(b) The FWS and the FHWA shall develop an implementation plan for each of the management systems. These plans will include, but are not limited to, the following: Overall goals and policies concerning the management systems, each agency's responsibilities for developing and implementing the

management systems, implementation schedule, data sources, and cost estimate. The FHWA will provide the FWS ongoing technical engineering support for the development, implementation, and maintenance of the management systems.

(c) The FWS shall develop and implement procedures for the development, establishment, implementation and operation of management systems. The procedures shall include:

(1) A process for ensuring the results of any of the management systems are considered in the development of FWS transportation plans and transportation improvement programs and in making project selection decisions under 23 U.S.C. 204;

(2) A process for the analyses and coordination of all management system outputs to systematically operate, maintain, and upgrade existing transportation assets cost-effectively;

(3) A description of each management system;

(4) A process to operate and maintain the management systems and their associated databases; and

(5) A process for data collection, processing, analysis and updating for each management system.

(d) All management systems will use databases with a geographical reference system that can be used to geolocate all database information.

(e) Existing data sources may be used by the FWS to the maximum extent possible to meet the management system requirements.

(f) The FWS shall develop an appropriate means to evaluate the effectiveness of the management systems in enhancing transportation decision-making and improving the overall efficiency of the affected federally owned transportation systems and facilities. This evaluation is to be conducted periodically, preferably as part of the comprehensive conservation planning process.

(g) The management systems shall be operated so investment decisions based on management system outputs can be accomplished at the regional level.

§ 972.206 Funds for establishment, development, and implementation of the systems.

The FLHP Refuge Roads program funds may be used for development, establishment, and implementation of the management systems. These funds are to be administered in accordance with the procedures and requirements applicable to the funds.

§ 972.208 Federal lands Pavement Management System (PMS).

In addition to the requirements provided in § 972.204, the PMS must meet the following requirements:

(a) The FWS shall, at a minimum, have PMS coverage of all paved refuge roads and other associated facilities, as appropriate, funded under the FLHP.

(b) The PMS may be based on the concepts described in the AASHTO's "Pavement Management Guide." [2]

(c) The PMS may be utilized at various levels of technical complexity depending on the nature of the pavement network. These different levels may depend on mileages, functional classes, volumes, loadings, usage, surface type, or other criteria the FWS deems appropriate.

(d) The PMS shall be designed to fit the FWS goals, policies, criteria, and needs using the following components, at a minimum, as a basic framework for a PMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the PMS. The minimum PMS database shall include:

(i) An inventory of the physical pavement features including the number of lanes, length, width, surface type, functional classification, and shoulder information;

(ii) A history of project dates and types of construction, reconstruction, rehabilitation, and preventive maintenance. If some of the inventory or historic data are difficult to establish, it may be collected when preservation or reconstruction work is performed;

(iii) A condition survey that includes ride, distress, rutting, and surface friction (as appropriate);

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) Data for estimating the costs of actions.

(2) A system for applying network level analytical procedures that are capable of analyzing data for all FWS managed transportation facilities in the inventory or any subset. The minimum analyses shall include:

(i) A pavement condition analysis that includes ride, distress, rutting, and surface friction (as appropriate);

(ii) A pavement performance analysis that includes present and predicted performance and an estimate of the remaining service life (performance and remaining service life to be developed with time); and

(iii) An investment analysis that:

(A) Identifies alternative strategies to improve pavement conditions;

(B) Estimates costs of any pavement improvement strategy;

(C) Determines maintenance, repair, and rehabilitation strategies for pavements using life-cycle cost analysis or a comparable procedure;

(D) Provides short and long term budget forecasting; and

(E) Recommends optimal allocation of limited funds by developing a prioritized list of candidate projects over a predefined planning horizon (both short and long term).

(e) For any FWS managed transportation facilities in the inventory or subset thereof, PMS reporting requirements shall include, but are not limited to, percentage of roads in good, fair, and poor condition.

§ 972.210 Federal Lands Bridge Management System (BMS).

In addition to the requirements provided in § 972.204, the BMS must meet the following requirements:

(a) The FWS shall have a BMS for bridges which are under the FWS jurisdiction, funded under the FLHP, and required to be inventoried and inspected under 23 CFR part 650, subpart C, National Bridge Inspection Standards (NBIS).

(b) The BMS shall be designed to fit the FWS goals, policies, criteria, and needs using the following components, as a minimum, as a basic framework for a BMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS. The minimum BMS database shall include:

(i) The inventory data required by the NBIS (23 CFR 650.311(a));

(ii) Data characterizing the severity and extent of deterioration of bridge elements;

(iii) Data for estimating the cost of improvement actions;

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) A history of conditions and actions taken on each bridge, excluding minor or incidental maintenance.

(2) Analytical procedures that are capable of analyzing data for all bridges in the inventory or any subset. These procedures include, as appropriate, such factors as bridge condition, recommended repairs/replacement and

[2] "Pavement Management Guide," AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

estimated costs, prediction of the estimated remaining life of the bridge, development of a prioritized list of candidate projects over a specified planning horizon, and budget forecasting.

(c) For any bridge in the inventory or subset thereof, BMS reporting requirements shall include, but are not limited to, percentage of non-deficient bridges.

§ 972.212 Federal lands Safety Management System (SMS).

In addition to the requirements provided in § 972.204, the SMS must meet the following requirements:

(a) The FWS shall have an SMS for all transportation facilities serving the Refuge System, as appropriate, funded under the FLHP.

(b) The FWS SMS may be based on the guidance in "Safety Management Systems: Good Practices for Development and Implementation," [3]

(c) The FWS shall utilize the SMS to ensure that safety is considered and implemented as appropriate in all phases of transportation system planning, design, construction, maintenance, and operations.

(d) The SMS may be utilized at various levels of complexity depending on the nature of the facility involved.

(e) The SMS shall be designed to fit the FWS goals, policies, criteria, and needs using, as a minimum, the following components as a basic framework for a SMS:

(1) An ongoing program for the collection, maintenance and reporting of a database that includes:

(i) Accident records with sufficient detail for analysis such as accident type using standard reporting descriptions (*e.g.* right-angle, rear-end, head-on, pedestrian-related, etc.), location, description of event, severity, weather and cause;

(ii) An inventory of safety appurtenances such as signs, delineators, and guardrails (including terminals);

(iii) Traffic information including volumes and vehicle classification (as appropriate); and

(iv) Accident rates by customary criteria such as location, roadway classification, and vehicle miles of travel.

(2) Development, establishment and implementation of procedures for:

(i) Routinely maintaining and upgrading safety appurtenances including highway-rail crossing warning devices, signs, highway elements, and operational features where appropriate; and

(ii) Identifying and investigating hazardous or potentially hazardous transportation system safety problems, roadway locations and features, then establishing countermeasures and setting priorities to correct the identified hazards and potential hazards;

(3) A process for communication, coordination, and cooperation among the organizations responsible for the roadway, human, and vehicle safety elements; and

(4) Development and implementation of public information and education activities on safety needs, programs, and countermeasures which affect safety on the FWS transportation systems.

(f) While the SMS applies to appropriate transportation facilities serving the Refuge System funded under the FLHP, the extent of system requirements (*e.g.*, data collection, analyses, and standards) for low volume roads may be tailored to be consistent with the functional classification of the roads. However, adequate detail should be included for each functional classification to provide for effective inclusion of safety decisions in the administration of transportation by the FWS.

§ 972.214 Federal lands Congestion Management System (CMS).

(a) For purposes of this section, congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. For those FWS transportation systems that require a CMS, in both metropolitan and non-metropolitan areas, consideration shall be given to strategies that reduce private automobile travel and improve existing transportation system efficiency. Approaches may include the use of alternate mode studies and implementation plans as components of the CMS. The FWS shall consider the results of the CMS when selecting the implementation of strategies that provide the most efficient and effective use of existing and future transportation facilities, and alleviate congestion.

(b) In addition to the requirements provided in § 972.204, the CMS must meet the following requirements:

(1) For portions of the FWS transportation system within TMAs, the FWS transportation planning process shall include a CMS that meets the requirements of this section. By agreement between the TMA and the FWS, the TMA's CMS coverage may include the transportation facilities serving the Refuge System, as appropriate. Through this agreement(s), the FWS may meet the requirements of this section.

(2) If a TMA's CMS does not provide coverage of the portions of the FWS transportation facilities within the boundaries of the TMA, the FWS shall develop a separate CMS to cover those facilities within the boundaries of the TMA.

(3) For portions of the FWS transportation system outside the boundaries of TMA's, the FWS shall:

(i) Develop criteria to determine when a CMS is to be implemented for a specific transportation system; and

(ii) Have CMS coverage for all transportation facilities serving the Refuge System, as appropriate, funded through the FLHP that meet minimum CMS needs criteria.

(4) A CMS will:

(i) Identify and document measures for congestion (*e.g.*, level of service);

(ii) Identify the causes of congestion;

(iii) Include processes for evaluating the cost and effectiveness of alternative strategies to manage congestion;

(iv) Identify the anticipated benefits of appropriate alternative traditional and nontraditional congestion management strategies;

(v) Determine methods to monitor and evaluate the performance of the multi-modal transportation system;

(vi) Appropriately consider the following example categories of strategies; or combinations of strategies for each area:

(A) Transportation demand management measures;

(B) Traffic operational improvements;

(C) Public transportation improvements;

(D) ITS technologies;

(E) Additional system capacity; and

(vii) Provide information supporting the implementation of actions.

[FR Doc. 03–104 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–22–P

[3] "Safety Management Systems: Good Practices for Development and Implementation," FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at *http://safety.thwa.dot.gov/media/documents.htm*. It is available for inspection and copying as prescribed as 49 CFR part 7.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 973

[FHWA Docket No. FHWA–99–4968]

RIN 2125–AE53

Federal Lands Highway Program; Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21), requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the Federal Lands Highway program (FLHP). The Secretary of Transportation has delegated the authority to the FHWA to serve as the lead agency within the U.S. DOT to implement the FLHP. The roads funded under the FLHP include Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation facilities providing access to Indian lands and funded under the FLHP.

DATES: Comments must be received on or before March 10, 2003.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Bini, Federal Lands Highway, HFPD–2, (202) 366–6799, FHWA, 400 Seventh Street, SW., Washington, DC 20590; office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For legal questions, Ms. Vivian Philbin, HFL–16, (303) 716–2122, FHWA, 555 Zang Street, Lakewood, CO 80228. Office hours are from 7:45 a.m. to 4:15 p.m., m.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS): *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web Page at: *http://www.access.gpo.gov/nara*.

Background

Section 1115(d) of the TEA–21 (Pub. L. 105–178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204 to require the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. A management system is a process for collecting, organizing, and analyzing data to provide a strategic approach to transportation planning, program development, and project selection. Its purposes are to improve transportation system performance and safety, and to develop alternative strategies for enhancing mobility of people and goods.

The roads funded under the FLHP include, but are not limited to, Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. The Secretary of Transportation delegated to the FHWA the authority to serve as the lead agency within the U.S. Department of Transportation to administer the FLHP (*see* 49 CFR 1.48 (b)(29)). This rulemaking action addresses the management systems for the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads (IRR) program.

On September 1, 1999, the FHWA issued an advance notice of proposed rulemaking (ANPRM) to solicit public comments concerning development of this proposed rule pertaining to the BIA and the IRR program (64 FR 47746). The ANPRM requested comments on the feasibility of developing a rule to meet both the transportation planning and management systems requirements of the TEA–21. Therefore, comments made to the docket addressed both transportation planning and management systems issues. However, the FHWA has decided to publish separate NPRMs for transportation planning and management systems. For this reason, this NPRM concerns only the development of the management systems. This NPRM includes responses to the comments submitted to the docket on the ANPRM that addressed the proposed development of the four management systems. Those comments on the ANPRM that addressed transportation planning will be addressed at a later date. The FHWA received comments addressing the management systems from various State DOT's, Tribal representatives from the Indian Reservation Roads Program Negotiated Rulemaking Committee (Committee), the United South and Eastern Tribes, Inc. (USET), and an intertribal council of twenty-three federally recognized Tribes (Council). These comments are summarized in the following section. Specific comments may be obtained by reviewing the materials in the docket.

Pursuant to Executive Order 13175 (Tribal Consultation), the FHWA has participated in a number of consultation sessions on this rulemaking with numerous Tribal government representatives. The purpose of these sessions was to explain the FHWA's intent in developing the NPRM, as well as to seek input and feedback. To the extent feasible, the FHWA will continue to use the Committee and other key Tribal transportation meetings to consult and coordinate with the (Indian Tribal Governments) ITGs on this rulemaking throughout the remainder of the process. In addition, the FHWA will hold seven informational meetings during the comment period in the following locations at a date and time to be announced in the **Federal Register**: Albuquerque, NM; Anchorage, AK; Minneapolis, MN; Nashville, TN; Portland, OR; Las Vegas, NV; and Tulsa, OK. These meetings will be used to provide an overview of the rulemaking

process and describe FHWA's purpose and intent in developing the rules. Tribal representatives are encouraged to attend these meetings and to provide suggestions and comments.

Based on the comments we received on the ANPRM and during Tribal consultations, the FHWA has developed this NPRM to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation facilities providing access to Indian lands and funded under the FLHP. Separate NPRM's on management systems have also been developed for the National Park Service (NPS) and the Park Roads and Parkways program, the Fish and Wildlife Service (FWS) and the Refuge Roads program, and the Forest Service (FS) and the Forest Highway program. The other three related NPRM's are published elsewhere in today's **Federal Register**.

On April 21, 2000, then President Clinton issued Executive Order (EO) 13148, Greening the Government Through Leadership in Environmental Management. This EO requires all Federal agencies to implement an environmental management system (EMS) to ensure that agencies develop strategies to support environmental leadership in programs, policies, and procedures and that senior level managers explicitly and actively endorse these strategies. The EO requires that agencies implement an EMS no later than December 31, 2005. Furthermore, in an April 1, 2002, letter, the Bush Administration encouraged all agencies to promote the use of EMS in Federal, State, local, and private facilities and directed the Environmental Protection Agency (EPA) to report annually on how well each agency has done in promoting EMS.

The FHWA has already begun working toward establishing an EMS. Additionally, the FWHA is working with the American Association of State Highway and Transportation Officials' (AASHTO) Center for Environmental Excellence to include EMS as part of an environmental stewardship demonstration project. The FHWA is currently providing technical and financial assistance to the Center, which in turn supports States that have initiated EMSs.[1] Furthermore, the FHWA continues to demonstrate environmental stewardship by encouraging the use of EMS in the construction, operation, and maintenance of transportation facilities.

Although an EMS may have some overlap with the four management systems that are the subject of this proposed rulemaking, the FHWA has decided not to incorporate the EMS in this rulemaking. The FHWA believes that great progress has been made on the EMS and promoting the use of EMS by the States. In addition, the FHWA has a long-standing working relationship with the Federal Land Management Agencies (FLMAs) through the Federal Lands Highway Program. The natural resource conservation and preservation missions of these agencies have led to the development of a jointly held environmental ethic that pervades transportation project decision-making through the use of context sensitive design, best management practices, and a heightened sensitivity to environmental impacts. This relationship provides a strong foundation for the FHWA to encourage the use of environmental management systems by the FLMAs. For example, the National Park Service currently has an initiative underway to implement a service-wide EMS approach. The FHWA and the NPS can evaluate ways to coordinate the use and development of the EMS with the transportation management systems through the joint development of the management system implementation plan called for in this rulemaking. A similar approach can be used with all of the FLMAs.

Any EMS developed by the FHWA, or by a FLMA, will not have an adverse effect on any of the management systems in this proposed rulemaking. Instead, such an EMS may help foster a movement toward the use of a comprehensive asset management system that incorporates EMS, along with the transportation management systems proposed in this rulemaking, and others not covered in this proposed action, such as a maintenance management system. The role of the EMS in a more comprehensive approach would demonstrate a commitment to environmental stewardship that goes beyond the individual project level or the development of a multi-project transportation program. The EMS should be a fundamentally important business tool that pervades all aspects of FLMA transportation decision-making. The FHWA will continue to advance its EMS and promote the EMS initiatives of the FLMAs through implementation planning for the transportation management systems. In addition, the FHWA will continue to promote the use of EMSs in the construction, operation, and maintenance of transportation facilities.

In developing the management system implementation plans, the need for data elements that address the environmental performance measures can be evaluated in relationship to individual agency plans to implement an EMS. This could provide an opportunity for the ongoing collection of environmental information, if appropriate and necessary. At a minimum, this would provide an opportunity to link existing environmental data to the transportation management systems using a geographic information system common to both systems.

From the FHWA's stewardship perspective regarding the Federal Lands Highway Program, EMS is most appropriately pursued as part of sound FLMA business management planning. Thus, the FHWA has decided not to address the EMS requirement in this proposed rulemaking action.

Summary of Comments Received on the ANPRM Pertaining to the BIA and the Indian Reservation Roads Program

The following discussion summarizes the comments received on the ANPRM and the FHWA's response to these comments. This discussion provides the public a general sense of the issues addressed in the comments. As previously stated, this NPRM is intended for the development of management systems. Therefore, this summary contains only comments and responses related to the management systems. There are instances where reference is made to transportation planning issues because the management systems serve as a guide to planning activities.

Rule Development

Comments: The majority of comments supported the FHWA's proposal to develop "separate rules" pertaining to the BIA and the Indian Reservations Roads program, the FWS and the Refuge Roads program, the NPS and the Park Roads and Parkways program, and the FS and the Forest Highway program. The commenters in favor of this proposal pointed out the fact that transportation planning functions for the different Federal lands highways are performed by various Federal, State, and local entities, depending on ownership of the roadways and responsibilities for constructing and maintaining the facilities.

The Wisconsin DOT and the Kentucky Transportation Cabinet offered an opposite view. These two State Transportation Departments requested that we develop only one

[1] More information on how EMS applies to transportation organizations can be found on the AASHTO's Center for Environmental Excellence Web site at the following URL: *http//itre.ncsu.edu/AASHTO/stewardship*.

general rule applicable to all four agencies. The Wisconsin DOT suggested that this rule be flexible so that it recognizes the different approaches used by the States. The Kentucky Transportation Cabinet recommended that the rule should require the Federal land management agencies (FLMAs) to develop Memoranda of Understanding or Agreements that would address the consistency between the Federal land transportation planning procedures and those required under 23 U.S.C. 134 and 135. The Kentucky Transportation Cabinet was concerned that the additional rules might jeopardize existing procedures already in effect.

Response: Following the recommendations from the majority of commenters, the FHWA, in consultation with each appropriate Federal land management agency, developed a separate rule pertaining to each agency: the BIA, the FWS, the NPS, and the FS. The variance among the rules allows for the significant differences in the ownership, jurisdiction, and maintenance responsibilities that the FLMAs exercise over the subject roadways addressed in the rule. To ensure uniformity, the FHWA coordinated the development of each NPRM, so that similar text and format are contained in each of the rules.

Comments: Tribal representatives from the Committee, the USET, and the Council recommended against the proposed development of a rule relating to transportation planning and management systems for the IRR program in a process separate from the one presently underway through the Committee. In addition, they stated that the Committee would utilize the Indian Reservation Roads Program Transportation Planning Procedures and Guidelines (Guidelines),[2] that had been developed with Tribal consultation and implemented by the DOT in October 1999, to develop regulations that address transportation planning and management issues. These commenters believed that the proposed rule and the rule derived from the Guidelines would be inconsistent with each other.

Response: This proposed rule was developed to fulfill the requirement set forth by the TEA–21. This requirement was separate and apart from the negotiated rulemaking requirement for the IRR program. The language set forth in this NPRM is, with the exception of proposed funding sources, consistent with the draft language on management systems set forth in the IRR negotiated rulemaking. While the Guidelines help the Indian Tribal Governments (ITGs) address transportation planning and management system requirements, the Guidelines do not meet the requirements for rulemaking set forth in the TEA–21.

Addressing the Management Systems Requirements

Comments: Many States believe that the management systems should only be developed as needed and should relate to systems that are already implemented by States and local agencies. It was recommended that the FHWA encourage the Federal agencies to explore and use the States' existing systems. The States also recommended the systems be tailored to fit local conditions, and be applicable solely to the portion of the Federal lands highways owned and maintained by Federal agencies. Many of the States are concerned that the implementation of the management systems may affect the current working relationships among State, local, and Federal agencies. The Wisconsin DOT encouraged the FHWA to work with the FLMAs and State Transportation Departments to clarify ownership discrepancies between Federal and State data. They suggested that the FLMAs have accurate data reflecting the amount of mileage the agencies own by location. Further, these data have to agree with data reported by States in the Highway Performance Monitoring System (HPMS) database.[3]

Response: The stakeholders' concerns presented above were considered in the development of this NPRM. Each of the proposed management system rules calls for the FHWA, in cooperation with the FLMA, to develop an implementation plan or implementation procedures for each of the management systems. In addition, flexibility is provided to determine criteria for the need and applicability of each of the FLMA's management systems. These implementation plans will provide the opportunity to relate the FLMA management systems to systems already implemented by States and local agencies. It will also allow the management systems to be tailored to fit a broad range of local conditions, and to avoid inefficient duplication of management systems already in use by the States. Development of the implementation plans will provide an opportunity to strengthen the working relationships among Federal, State, Tribal and local agencies, as well as define responsibility for and ownership of data.

Comments: The Wisconsin DOT also stated that the FHWA should clarify that this rule and the National Highway System (NHS) Designation Act of 1995, Public Law 104–59, 109 Stat. 568, do not make the implementation of management systems mandatory.

Response: While it is correct that the Public Law 104–59 made the management systems optional for States and Metropolitan Planning Organizations (MPOs), except for the congestion management systems in MPOs with a population of greater than 200,000, section 1115(d) of TEA–21 applies to the Federal land management agencies, not directly to the States; however, the States may be requested to provide information. The TEA–21, enacted on June 9, 1998, amended 23 U.S.C. 204 to specify that "The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program." Therefore, the development and implementation of the management systems, where appropriate, is mandated by law for the Federal land management agencies.

Approach to Structure of Proposed Regulation

In the development of this proposed rule, the FHWA has attempted to minimize the level of data collection and analyses required. The FHWA now solicits comments on the extent to which this strategy has been achieved. Any comments suggesting that the strategy has not been successful should identify specific reasons why the requirements and/or provisions are burdensome. Suggestions to lessen burdens are welcome.

Section-by-Section Analysis

Subpart A

Section 973.100 Purpose

This section states that subpart A provides definitions for terms used in this rule.

Section 973.102 Applicability

This section states that the definitions in subpart A are applicable to this rule.

[2] "Indian Reservation Roads Program Transportation Planning Procedures and Guidelines," October 1999, is available at the URL: *http://www.fhwa.dot.gov/flh/reports/indian/intro.htm.*

[3] "The HPMS was developed in 1978 as a national highway transportation system datanbase. It includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional system, and certain summary information for urbanized, small urban and rural areas. Additional information about this database is available online at the URL: *http://www.fhwa.dot.gov/ohim.*

Section 973.104 Definitions

This section incorporates the terms defined in 23 U.S.C. 101(a), 49 U.S.C. 5302, and 23 CFR part 450; and also includes additional definitions for terms used in this part.

The phrase "Indian lands" would be added to the definitions of "bridge management system (BMS)," "congestion management system (CMS)," "pavement management system (PMS)," and "safety management system (SMS)" to indicate the distinction between the Indian lands, Federal lands and Federal-aid management systems (refer to 23 CFR part 500 for definitions of the Federal-aid management systems). The NPRMs for the FS, FWS and NPS would use the phrase "Federal lands" to indicate the distinction between the Federal lands, Indian lands and Federal-aid management systems. The management system definitions also specify their applicability to the BIA, FS, FWS and NPS, as appropriate.

Subpart B

Section 973.200 Purpose

This section states the purpose of this proposed rule, which is to fulfill the requirements set forth by the TEA–21.

Section 973.202 Applicability

This section defines the applicability of the management systems.

Section 973.204 Management Systems Requirements

This section sets forth general requirements for all four management systems. Additional requirements applicable to specific systems are in §§ 973.208 through 973.214.

Paragraph (a) states that the BIA shall develop, establish, and implement the nationwide management systems. Paragraphs (a) and (h) provide flexibility in the development of the nationwide management systems. Paragraph (b) requires the FHWA and the BIA to develop implementation plans for the nationwide management systems.

Paragraph (c) states that a Tribe may develop, establish, and implement Tribal management systems.

Paragraph (d) directs the BIA, in consultation with the Tribes, to develop criteria for cases in which Tribal management systems are not appropriate.

Paragraph (e) directs the BIA or Tribes, as appropriate, to incorporate data provided by States and local governments in the nationwide or Tribal management systems for State and locally owned IRRs.

To ensure the management systems are developed, implemented, and operated systematically, paragraph (f) requires the development of procedures that will include the following: Consideration of management system results in the planning process; system analysis; a description of each management system; operation and maintenance of management systems and databases; and data collection, processing, analysis, and updating. Paragraph (g) ensures that the database has a geographical reference system so that information can be geolocated. Paragraph (h) encourages the use of existing data sources to the maximum extent possible.

Paragraph (i) states that a nationwide congestion management system is not required. The BIA and the FHWA, in consultation with the Tribes, will develop criteria to determine when congestion management systems are required for specific BIA transportation facilities. The BIA or the Tribe may develop, establish and implement the congestion management systems when they are required.

Paragraph (j) requires a periodical evaluation process of the effectiveness of the management systems, preferably as part of the transportation planning process. Paragraph (k) ensures that transportation investment decisions based on management system results would be used at the BIA region or Tribal level and can be used throughout the transportation planning process.

Section 973.206 Funds for Establishment, Development, and Implementation of the Systems

This section provides that the funds available for the IRR program can be used for development, establishment, and implementation of the nationwide and required congestion management systems in accordance with legislative provisions for the funds.

Section 973.208 Indian Lands Pavement Management System (PMS)

Paragraph (a) defines the applicability of the PMS. Paragraph (b) requires Tribes that collect data for a PMS to provide the data to the BIA to be used in the nationwide PMS. Paragraph (c) recommends the use of the American Association of State Highway and Transportation Officials' (AASHTO) "Pavement Management Guide" [4] as a guide for the development of the PMS.

Paragraph (d) provides flexibility for the development of the PMS.

This section further sets forth processes and procedures that must be included in a PMS. They include requirements for a basic framework composed of data collection and maintenance, network level analysis, and reporting procedures.

Section 973.210 Indian Lands Bridge Management System (BMS)

Paragraph (a) defines the applicability of the BMS. Paragraph (b) requires Tribes that collect data for a BMS to provide the data to the BIA to be used in the nationwide BMS. Paragraph (c) recommends the use of the AASHTO's "Guidelines for Bridge Management Systems" [5] as a guide for the development of BMS.

The section sets forth components that must be included in a BMS. They consist of data collection and maintenance, analysis procedures, and reporting procedures.

Section 973.212 Indian Lands Safety Management System (SMS)

Paragraph (a) defines the applicability of the SMS. Paragraph (b) requires Tribes that collect data for a SMS to provide the data to the BIA to be used in the nationwide SMS. Paragraph (c) encourages the use of the FHWA publication entitled "Safety Management Systems: Good Practices for Development and Implementation." [6]

Because of the strong emphasis the TEA–21 has on safety, paragraph (d) requires the SMS to be used to ensure that safety is considered and implemented as appropriate in all phases of transportation planning, programming and project implementation. Paragraph (e) states that the level of complexity of the nationwide and Tribal SMS's depends on the nature of the facilities involved.

The section sets forth the components that must be included in a SMS. They include data collection and maintenance, identification and

[4] "Pavement Management Guide," AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[5] "Guidelines for Bridge Management Systems," AASHTO, 1993, is available for inspection as prescribed at 49 CFR part 7. It may be purchased on line at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[6] "Safety Management Systems: Good Practices for Development and Implementation," FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at *http://safety.fhwa.dot.gov/media/documents.htm*. It is available for inspection and copying as prescribed at 49 CFR part 7.

correction of potential safety problems, communications, public education, training needs, and reporting.

To provide flexibility, paragraph (g) states that the extent of SMS requirements set forth in this proposed rule for low volume roads may be tailored to be consistent with the functional classification of the roads. However, each functional classification should include adequate requirements to ensure effective safety decisionmaking.

Section 973.214 Indian Lands Congestion Management System (CMS)

Paragraph (b)(1) requires the BIA and the FHWA, in consultation with the Tribes, to develop criteria for determining when a CMS will be required for a specific transportation system.

Paragraph (b)(2) further sets forth the components to be included in a CMS. They include the following: Identification and documentation of measures for congestion; identification of the causes of congestion; development of evaluation processes; identification of benefits; determination of methods to monitor and evaluate performance of the overall transportation system after strategies are implemented; and consideration of example strategies provided in the proposed rule.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the proposed rule would be a significant regulatory action within the meaning of Executive Order 12866, and under the regulatory policies and procedures of the U.S. Department of Transportation, because of the substantial public interest anticipated in the transportation facilities of the Indian lands. The FHWA anticipates that the economic impact of any action taken in this rulemaking process will be minimal. The FHWA anticipates that the proposed changes will not adversely affect any sector of the economy in a material way. Though the proposed action will impact the BIA, it will not likely interfere with any action taken or planned by the BIA or another agency, or materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this proposed action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the proposal described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. Commenters are encouraged to evaluate any options addressed here with regard to the potential for impact.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a mandate that requires further analysis under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local and Tribal Governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation systems providing access to and within Indian lands. These roads are funded under the FLHP; therefore, the proposed rule is not considered an unfunded mandate. Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal Governments and the private sector.

Executive Order 13132 (Federalism)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FHWA has determined that this proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that the proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. However, commenters are encouraged to consider these issues, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed rule contains a requirement for data and information to be collected and maintained in the four management systems that are to be developed. In order to streamline the process, the FHWA intends to request that the OMB approve a single information collection clearance for all of the data in the four management systems at the time that the requirements in this proposal are made final. The FHWA is sponsoring this proposed clearance on behalf of the Bureau of Indian Affairs.

The FHWA estimates that a total of 5,600 burden hours per year would be imposed on non-Federal entities to provide the required information for the BIA management systems. Respondents to this information collection include State Transportation Departments, Metropolitan Planning Organizations, Tribal governments, regional transportation planning agencies, and county and local governments. The BIA would bear the burden of developing the management systems in a manner that would incorporate any existing data in the most efficient way and without additional burdens to the public. The estimates here only include burdens on the respondents to provide information

that is not usually and customarily collected.

Where a substantial level of effort may be required of non-Federal entities to provide BIA management system information, the effort has been benchmarked to the number of miles of State, local or Tribally owned roads or the number of State, local or Tribally owned bridges within the BIA's jurisdiction. This approach has been applied to the PMS, BMS and SMS. For BIA implementation of the PMS, BMS, and SMS, the total annual burden estimate is 3,600 of the 5,600 hours per year. The level of burden on non-Federal entities for these management systems is modest since the agency will incorporate existing data into the system. Of these three systems, the most substantial burden is associated with the collection of data to implement the BMS. The BMS burden is estimated at 1,400 hours per year. The PMS and SMS burdens are estimated at 1,100 hours per year for each of these management systems.

For the CMS, the non-Federal burden, if applicable, would likely fall to the MPOs, and represents the need for the BIA to coordinate its management system with the MPOs, for those limited instances when a portion of its transportation system is within an MPO area. For estimating purposes, approximately 50 MPOs nationwide may be burdened by the proposed regulation. Forty hours of burden were assigned to each of the 50 MPOs, resulting in a total burden of 2000 hours attributable to the CMS.

The FHWA is required to submit this proposed collection of information to OMB for review and approval, and accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this proposed action would not have any effect on the quality of the environment. An environmental impact statement is, therefore, not required.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000, and believes that the proposal will have substantial direct effects on one or more Indian Tribes.

Section 5 (b) of Executive Order 13175 states:

> To the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless:
>
> (1) Funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government; or
>
> (2) The agency, prior to formal promulgation of the regulation,
>
> (A) Consulted with Tribal officials early in the process of developing the proposed regulation.

The Executive Order states similar requirements for any regulation that has Tribal implications and preempts Tribal law.

As stated previously, this rulemaking is statutorily required under section 1115(d) of the TEA–21. While there are no specific additional dedicated funds for implementing this regulation, funds already available under the IRR program can be used for the development, establishment, and implementation of the management systems. The FHWA has utilized key Tribal transportation meetings to consult and coordinate with Indian Tribal Governments on this rulemaking since its inception. At these meetings, the FHWA advised the Tribes of the ANPRM and encouraged them to submit comments and suggestions to the docket. In addition, after the docket was closed, the FHWA shared with them all comments submitted to the docket, including those from State Transportation Departments questioning provisions of the IRR statute.

Tribal Summary Impact Statement

As stated earlier, the FHWA published an ANPRM on September 1, 1999, to solicit public comments concerning development of this proposed rule pertaining to the BIA and the IRR program (64 FR 47746). Among the comments the FHWA received are the comments from the Tribal representatives to the Indian Reservation Roads Program Negotiated Rulemaking Committee, the United South and Eastern Tribes, Inc., and an intertribal council of twenty-three federally recognized Tribes. These comments are summarized in the section entitled "Summary of Comments Received on the ANPRM Pertaining to the BIA and the Indian Reservation Roads Program." Specific comments may be obtained by reviewing the materials in the docket.

Pursuant to Executive Order 13175, during the development process of this NPRM, the FHWA participated in a number of consultation sessions on this rulemaking with numerous Tribal government representatives. The purpose of these sessions was to explain the FHWA's intent in developing the NPRM, as well as to seek input and feedback. These discussions were scheduled agenda items with time provided for questions and answers and took place at the following events: The "Transportation Improvements: Experiences Among Tribal, Local, State, and Federal Governments Conference," Albuquerque, NM, October 2000; the "Annual Providers Conference," Anchorage, AK, November 2000; the "Intertribal Transportation Association Annual Meeting," Las Vegas, NV, December 2000; and the "Northern Plains Transportation Exposition," Aberdeen, SD, March 2001.

During these discussions, the Tribes addressed two major concerns. The first concern dealt with the funding for the establishment, development, and implementation of the management systems. As a response, § 973.206 of this proposed action states that the IRR program management funds may be used to conduct nationwide management systems activities. Additionally, the IRR two-percent Tribal transportation planning or construction funds may be used for Tribal management systems activities.

The second concern surrounded the Tribes' desire to utilize the IRR Negotiated Rulemaking in lieu of this proposed rule. This comment also was addressed to the ANPRM published on September 1, 1999. The FHWA responds to this comment in this NPRM in the "Summary of Comments Received on the ANPRM Pertaining to the BIA and the Indian Reservation Roads Program" section. As the response indicates, the requirements for the management systems and the requirements for the IRR program are separate. However with the exception of funding, the language set forth in this NPRM is consistent with the draft language on management systems set forth in the IRR Negotiated Rulemaking Notice.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not concern an environmental risk to health and safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because, although this proposed action is considered to be a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 973

Bridges, Grant programs—transportation, Highway safety, Highways and roads, Indians—Lands, Public lands. Transportation.

For reasons set forth in the preamble, the Federal Highway Administration proposes to amend chapter I of title 23, Code of Federal Regulations, as set forth below.

Issued on: December 20, 2002.

Mary E. Peters,

Federal Highway Administrator.

1. Add part 973 to read as follows:

PART 973—BUREAU OF INDIAN AFFAIRS MANAGEMENT SYSTEMS

Subpart A—Definitions

Sec.
973.100 Purpose.
973.102 Applicability.
973.104 Definitions.

Subpart B—Bureau of Indian Affairs Management Systems

973.200 Purpose.
973.202 Applicability.
973.204 Management systems requirements.
973.206 Funds for establishment, development and implementation of the systems.
973.208 Indian lands Pavement Management System (PMS).
973.210 Indian lands Bridge Management System (BMS).
973.212 Indian lands Safety Management System (SMS).
973.214 Indian lands Congestion Management System (CMS).

Authority: 23 U.S.C. 204, 315, 42 U.S.C. 7410 *et seq.*; 49 CFR 1.48.

Subpart A—Definitions

§ 973.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

§ 973.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

§ 973.104 Definitions.

Alternative transportation systems means modes of transportation other than private vehicles, including methods to improve system performance such as transportation demand management, congestion management, and intelligent transportation systems. These mechanisms help reduce the use of private vehicles and thus improve overall efficiency of transportation systems and facilities.

Elements means the components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

Federal Lands Highway program (FLHP) means a federally funded program established in 23 U.S.C. 204 to address transportation needs of Federal and Indian lands.

Indian lands bridge management system (BMS) means a systematic process used by the Bureau of Indian Affairs (BIA) or Tribal governments for analyzing bridge data to make forecasts and recommendations, and provides the means by which bridge maintenance, rehabilitation, and replacement programs and policies may be efficiently considered.

Indian lands congestion management system (CMS) means a systematic process used by the BIA or Tribal governments for managing congestion that provides information on transportation system performance and alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet Federal, State and local needs.

Indian lands pavement management system (PMS) means a systematic process used by the BIA or Tribal governments that provides information for use in implementing cost-effective pavement reconstruction, rehabilitation, and preventive maintenance programs and policies, and that results in pavement designed to accommodate current and forecasted traffic in a safe, durable, and cost-effective manner.

Indian lands safety management system (SMS) means a systematic process used by the BIA or Tribal governments with the goal of reducing the number and severity of traffic accidents by ensuring that all opportunities to improve roadway safety are identified, considered, implemented and evaluated, as appropriate, during all phases of highway planning, design, construction, operation and maintenance by providing information for selecting and implementing effective highway safety strategies and projects.

Indian reservation road means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

Indian Reservation Roads (IRR) program means a part of the FLHP established in 23 U.S.C. 204 to address the transportation needs of federally recognized Indian Tribal Governments (ITG).

Indian Reservation Roads transportation improvement program (IRRTIP) means a multi-year, financially constrained list by year, State, and Tribe of IRR-funded projects selected by ITGs from Tribal TIP's, or other Tribal

actions, that are programmed for construction in the next 3 to 5 years.

Indian Reservation Roads transportation plan means a document setting out a Tribe's long-range transportation priorities and needs. The IRR transportation plan, which can be developed by either the Tribe or the BIA on behalf of that Tribe, is developed through the IRR transportation planning process pursuant to 23 U.S.C. 204.

Indian Tribal Government (ITG) means a duly formed governing body of an Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village, or Community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Life-cycle cost analysis means an evaluation of costs incurred over the life of a project allowing a comparative analysis between or among various alternatives. Life-cycle cost analysis promotes consideration of total cost, to include maintenance and operation expenditures. Comprehensive life-cycle costs analysis includes all economic variables essential to the evaluation: Safety costs associated with maintenance and rehabilitation projects, agency capital cost, and life-cycle maintenance costs.

Operations means those activities associated with managing, controlling, and regulating highway traffic.

Secretary means the Secretary of Transportation.

Serviceability means the degree to which a bridge provides satisfactory service from the point of view of its users.

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

Transportation facilities means roads, streets, bridges, parking areas, transit vehicles, and other related transportation infrastructure.

Subpart B—Bureau of Indian Affairs Management Systems

§ 973.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 204 which requires the Secretary and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP.

§ 973.202 Applicability.

The provisions in this subpart are applicable to the Bureau of Indian Affairs (BIA) and the Indian Tribal Governments (ITGs) that are responsible for satisfying these requirements for management systems pursuant to 23 U.S.C. 204.

§ 973.204 Management systems requirements.

(a) The BIA, in consultation with the Tribes, shall develop, establish and implement nationwide pavement, bridge, and safety management systems for Federally and Tribally owned IRR. The BIA may tailor the nationwide management systems to meet the agency's goals, policies, and needs.

(b) The BIA and the FHWA, in consultation with the Tribes, shall develop an implementation plan for each of the nationwide management systems. These plans will include, but are not limited to, the following: Overall goals and policies concerning the nationwide management systems, each agency's responsibilities for developing and implementing the nationwide management systems, implementation schedule, data sources, and cost estimate.

(c) Tribes may develop, establish, and implement Tribal management systems under a self-determination contract or self-governance annual funding agreement. The Tribe may tailor the management systems to meet its goals, policies, and needs.

(d) The BIA, in consultation with Tribes, shall develop criteria for cases in which Tribal management systems are not appropriate.

(e) The BIA, in consultation with Tribes, or the Tribes under a self-determination contract, shall incorporate data provided by States and local governments into the nationwide or Tribal management systems, as appropriate, for State and locally owned IRRs.

(f) The BIA, in consultation with the Tribes, shall develop and implement procedures for the development, establishment, implementation and operation of nationwide management systems. If a Tribe develops Tribal management systems, the Tribe shall develop and implement procedures for the development, establishment, implementation and operation of Tribal management systems. The procedures shall include:

(1) A description of each management system;

(2) A process to operate and maintain the management systems and their associated databases;

(3) A process for data collection, processing, analysis and updating for each management system;

(4) A process for ensuring the results of the management systems are considered in the development of IRR transportation plans and transportation improvement programs and in making project selection decisions under 23 U.S.C. 204; and

(5) A process for the analysis and coordination of all management systems outputs to systematically operate, maintain, and upgrade existing transportation assets cost-effectively;

(g) All management systems shall use databases with a common or coordinated reference system that can be used to geolocate all database information.

(h) Existing data sources may be used by the BIA and Tribes to the maximum extent possible to meet the management system requirements.

(i) A nationwide congestion management system is not required. The BIA and the FHWA shall develop criteria for determining when congestion management systems are required for BIA or Tribal transportation facilities providing access to and within the Indian reservations. Either the Tribes or the BIA, in consultation with the Tribes, shall develop, establish and implement congestion management systems for the transportation facilities that meet the criteria.

(j) The BIA shall develop an appropriate means to evaluate the effectiveness of the management systems in enhancing transportation investment decisions and improving the overall efficiency of the affected transportation systems and facilities. This evaluation is to be conducted periodically, preferably as part of the BIA planning process.

(k) The management systems shall be operated so investment decisions based on management system outputs can be accomplished at the BIA region and Tribal level and can be utilized throughout the transportation planning process.

§ 973.206 Funds for establishment, development, and implementation of the systems.

The IRR program management funds may be used to accomplish nationwide management system activities. For Tribal management system activities, the IRR two percent Tribal transportation planning or construction funds may be used. (Refer to 23 U.S.C. 204(b) and 204(j)). These funds are to be administered in accordance with the procedures and requirements applicable to the funds.

§ 973.208 Indian lands Pavement Management System (PMS).

In addition to the requirements provided in § 973.204, the PMS must meet the following requirements:

(a) The BIA shall have a PMS for all federally and Tribally owned IRRs included in the IRR inventory.

(b) Where a Tribe collects data for the Tribe's PMS, the Tribe shall provide the data to the BIA to be used in the nationwide PMS.

(c) The nationwide and Tribal PMSs may be based on the concepts described in the AASHTO's "Pavement Management Guide." [1]

(d) The nationwide and Tribal PMSs may be utilized at various levels of technical complexity depending on the nature of the pavement network. These different levels may depend on mileage, functional classes, volumes, loading, usage, surface type, or other criteria the BIA and ITGs deem appropriate.

(e) A PMS shall be designed to fit the BIA's or Tribes' goals, policies, criteria, and needs using the following components, at a minimum, as a basic framework for a PMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the PMS. The minimum PMS database shall include:

(i) An inventory of the physical pavement features including the number of lanes, length, width, surface type, functional classification, and shoulder information;

(ii) A history of project dates and types of construction, reconstruction, rehabilitation, and preventive maintenance. If some of the inventory or historic data is difficult to establish, it may be collected when preservation or reconstruction work is performed;

(iii) A condition survey that includes ride, distress, rutting, and surface friction (as appropriate);

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) Data for estimating the costs of actions.

(2) A system for applying network level analytical procedures that are capable of analyzing data for all federally and Tribally owned IRR in the inventory or any subset. The minimum analyses shall include:

(i) A pavement condition analysis that includes ride, distress, rutting, and surface friction (as appropriate);

(ii) A pavement performance analysis that includes present and predicted performance and an estimate of the remaining service life (performance and remaining service life to be developed with time); and

(iii) An investment analysis that:

(A) Identifies alternative strategies to improve pavement conditions;

(B) Estimates costs of any pavement improvement strategy;

(C) Determines maintenance, repair, and rehabilitation strategies for pavements using life-cycle cost analysis or a comparable procedure;

(D) Performs short and long term budget forecasting; and

(E) Recommends optimal allocation of limited funds by developing a prioritized list of candidate projects over a predefined planning horizon (both short and long term).

(f) For any roads in the inventory or subset thereof, PMS reporting requirements shall include, but are not limited to, percentage of roads in good, fair, and poor condition.

§ 973.210 Indian lands Bridge Management System (BMS).

In addition to the requirements provided in § 973.204, the BMS must meet the following requirements:

(a) The BIA shall have a nationwide BMS for the federally and Tribally owned IRR bridges that are funded under the FLHP and required to be inventoried and inspected under 23 CFR part 650, subpart C, National Bridge Inspection Standards (NBIS).

(b) Where a Tribe collects data for the Tribe's BMS, the Tribe shall provide the data to the BIA to be used in the nationwide BMS.

(c) The nationwide and Tribal BMSs may be based on the concepts described in the AASHTO's "Guidelines for Bridge Management Systems." [2]

(d) A BMS shall be designed to fit the BIA or Tribe's goals, policies, criteria, and needs using the following components, as a minimum, as a basic framework for a BMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS. The minimum BMS database shall include:

(i) The inventory data described by the NBIS (23 CFR 650.311);

(ii) Data characterizing the severity and extent of deterioration of bridge components;

(iii) Data for estimating the cost of improvement actions;

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) A history of conditions and actions taken on each bridge, excluding minor or incidental maintenance.

(2) A systematic procedure for applying network level analytical procedures that are capable of analyzing data for all bridges in the inventory or any subset. The minimum analyses shall include:

(i) A prediction of performance and estimate of the remaining service life of structural and other key elements of each bridge, both with and without intervening actions; and

(ii) A recommendation for optimal allocation of limited funds by developing a prioritized list of candidate projects over a predefined planning horizon (both short and long term).

(e) The BMS may include the capability to perform an investment analysis (as appropriate, considering size of structure, traffic volume, and structural condition). The investment analysis may include the ability to:

(1) Identify alternative strategies to improve bridge condition, safety and serviceability;

(2) Estimate the costs of any strategies ranging from maintenance of individual elements to full bridge replacement;

(3) Determine maintenance, repair, and rehabilitation strategies for bridge elements using life cycle cost analysis or a comparable procedure; and

(4) Perform short and long term budget forecasting.

(f) For any bridge in the inventory or subset thereof, BMS reporting requirements shall include, but are not limited to, percentage of non-deficient bridges.

§ 973.212 Indian lands Safety Management System (SMS).

In addition to the requirements provided in § 973.204, the SMS must meet the following requirements:

(a) The BIA shall have a nationwide SMS for all federally and Tribally owned IRR and public transit facilities included in the IRR inventory.

(b) Where a Tribe collects data for the Tribe's SMS, the Tribe shall provide the data to the BIA to be used in the nationwide SMS.

(c) The nationwide and Tribal SMS may be based on the guidance in "Safety Management Systems: Good Practices,

[1] "Pavement Management Guide," AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[2] "Guidelines for Bridge Management Systems," AASHTO, 1993, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

for Development and Implementation." [3]

(d) The BIA and ITGs shall utilize the SMSs to ensure that safety is considered and implemented as appropriate in all phases of transportation system planning, design, construction, maintenance, and operations.

(e) The nationwide and Tribal SMSs may be utilized at various levels of complexities depending on the nature of the IRR facility involved.

(f) A SMS shall be designed to fit the BIA or ITG's goals, policies, criteria, and needs using, as a minimum, the following components as a basic framework for a SMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the SMS. The minimum SMS database shall include:

(i) Accident records;

(ii) An inventory of safety hardware including signs, guardrails, and lighting appurtenances (including terminals); and

(iii) Traffic information including volume and vehicle classification (as appropriate).

(2) Development, establishment and implementation of procedures for:

(i) Routinely maintaining and upgrading safety appurtenances including highway-rail crossing warning devices, signs, highway elements, and operational features where appropriate;

(ii) Routinely maintaining and upgrading safety features of transit facilities;

(iii) Identifying and investigating hazardous or potentially hazardous transportation system safety problems, roadway locations and features; and

(iv) Establishing countermeasures and setting priorities to correct the identified hazards and potential hazards.

(3) A process for communication, coordination, and cooperation among the organizations responsible for the roadway, human, and vehicle safety elements;

(4) Development and implementation of public information and education activities on safety needs, programs, and countermeasures which affect safety on the BIA's and ITG's transportation systems; and

(5) Identification of skills, resources and training needs to implement safety programs for highway and transit facilities and the development of a program to carry out necessary training.

(g) While the SMS applies to all IRRs in the IRR inventory, the extent of system requirements (*e.g.*, data collection, analyses, and standards) for low volume roads may be tailored to be consistent with the functional classification of the roads. However, adequate requirements should be included for each BIA functional classification to provide for effective inclusion of safety decisions in the administration of transportation by the BIA and ITGs.

(h) For any transportation facilities in the IRR inventory or subset thereof, SMS reporting requirements shall include, but are not limited to, the following:

(1) Accident types such as right-angle, rear-end, left turn, head-on, sideswipe, pedestrian-related, run-off-road, fixed object, and parked vehicle;

(2) Accident severity per year measured as number of accidents with fatalities, injuries, and property damage only; and

(3) Accident rates measured as number of accidents (fatalities, injuries, and property damage only) per 100 million vehicle miles of travel, number of accidents (fatalities, injuries, and property damage only) per 1000 vehicles, or number of accidents (fatalities, injuries, and property damage only) per mile.

§ 973.214 Indian lands Congestion Management System (CMS).

(a) For purposes of this section, congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. The BIA and the FHWA, in consultation with the Tribes, shall develop criteria to determine when a CMS is to be implemented for a specific Federally or Tribally owned IRR transportation system that is experiencing congestion. Either the Tribe or the BIA, in consultation with the Tribe, shall consider the results of the CMS in the development of the IRR transportation plan and the IRRTIP, when selecting strategies for implementation that provide the most efficient and effective use of existing and future transportation facilities to alleviate congestion and enhance mobility.

(b) In addition to the requirements provided in § 973.204, the CMS must meet the following requirements:

(1) For those BIA or Tribal transportation systems that require a CMS, consideration shall be given to strategies that reduce private automobile travel and improve existing transportation system efficiency. Approaches may include the use of alternate mode studies and implementation plans as components of the CMS.

(2) A CMS will:

(i) Identify and document measures for congestion (*e.g.*, level of service);

(ii) Identify the causes of congestion;

(iii) Include processes for evaluating the cost and effectiveness of alternative strategies;

(iv) Identify the anticipated benefits of appropriate alternative traditional and nontraditional congestion management strategies;

(v) Determine methods to monitor and evaluate the performance of the multi-modal transportation system; and

(vi) Appropriately consider the following example categories of strategies, or combinations of strategies for each area:

(A) Transportation demand management measures;

(B) Traffic operational improvements;

(C) Public transportation improvements;

(D) ITS technologies; and

(E) Additional system capacity.

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BILLING CODE 4910–22–P

[3] "Safety Management Systems: Good Practices for Development and Implementation," FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at *http://safety.fhwa.dot.gov/media/documents.htm*. It is available for inspection and copying as prescribed at 49 CFR part 7.

Federal Register

Wednesday,
January 8, 2003

Part III

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 19

Board of Governors of the Federal Reserve System
12 CFR Part 263

Federal Deposit Insurance Corporation
12 CFR Part 308

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 513

Removal, Suspension, and Debarment of Accountants From Performing Audit Services; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 02–15]

RIN 1557–AB43

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R–1139]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AC57

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 513

[No. 2002–58]

RIN 1550–AB53

Removal, Suspension, and Debarment of Accountants From Performing Audit Services

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, and OTS (each an Agency, and collectively, the Agencies) propose to revise their respective rules of practice pursuant to section 36 of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831m). Section 36, as implemented by 12 CFR part 363, requires that each insured depository institution with total assets of $500 million or more produce an annual report containing the institution's financial statements and certain management assessments. The depository institution must provide the report to the FDIC, the appropriate Federal banking agency, and any appropriate state bank supervisor. Section 36 also requires that the depository institution obtain an audit of its financial statements and an attestation on management's assertions concerning internal controls over financial reporting by an independent public accountant (accountant) and include the accountant's audit and attestation reports in its annual report.

Congress gave the Agencies authority to remove, suspend, or debar accountants from performing the audit services required by section 36 if there is good cause to do so. This proposal would amend the Agencies' rules to establish rules of practice and procedure for the removal, suspension, and debarment of accountants and their firms from performing section 36 audit services for insured depository institutions. The proposal reflects the Agencies' increasing concern with the quality of audits and internal controls for financial reporting at insured depository institutions. Although there have been few bank and thrift failures in recent years, the circumstances of the failures that have occurred illustrate the importance of maintaining high quality in the audits of the financial position and attestations of management assessments of insured depository institutions. The proposed regulations enhance the Agencies' ability to address misconduct by accountants who perform annual audit and attestation services.

DATES: Comments must be received by March 10, 2003.

ADDRESSES:

OCC: Please direct comments to: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW, Mailstop 1–5, Washington, DC 20219, Attention Docket No. 02–15. Comments are available for inspection and photocopying at that address. You can make an appointment to inspect the comments by calling (202) 874–5043. In addition, comments may be sent by facsimile transmission to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to use fax or e-mail delivery, if possible.

Board: Comments should refer to Docket No. R–1139 and may be mailed to Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551; sent by FAX to (202) 452–3819 or (202) 452–3102; or sent by e-mail to *regs.comments@federalreserve.gov*. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12 (except as provided in section 261.14) of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Commenters are encouraged to submit comments by facsimile transmission to FAX number (202) 898–3838 or by electronic mail to *Comments@FDIC.gov*. Comments also may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 8:30 am and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 am and 4:30 p.m. on business days.

OTS: Mail: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention No. 2002–58.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, N.W. from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention No. 2002–58.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention Docket No. 2002–58.

E-mail: Send e-mails to <*regs.comments@ots.treas.gov*>, Attention Docket No. 2002–58 and include your name and telephone number. Due to temporary disruptions in mail service in the Washington, D.C. area, commenters are encouraged to send comments by fax or e-mail if possible.

Public Inspection: Interested persons may inspect comments at the Public Reading Room, 1700 G St. NW., from 10 a.m. until 4 p.m. on business days by appointment or obtain comments and/or an index of comments by facsimile by telephoning the Public Reading Room at (202) 906–5922 from 9 a.m. until 5 p.m. on business days. Comments and the related index will also be posted on the OTS Internet site at <*http://www.ots.treas.gov*>.

FOR FURTHER INFORMATION CONTACT:

OCC: Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Richard Shack, Senior Accountant, Office of the Chief Accountant, (202) 874–4911; and Karen Besser, National Bank Examiner, Special Supervision/Fraud, (202) 874–4464.

Board: Richard Ashton, Associate General Counsel, (202) 452–3750; Nina Nichols, Counsel, (202) 452–2961; Arthur Lindo, Project Manager, (202)

452–2695; and Salome Tinker, Senior Financial Analyst, (202) 452–3034, Division of Banking Supervision and Regulation; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Richard Bogue, Counsel, Enforcement Unit, (202) 898–3726; Robert F. Storch, Chief, Accounting and Securities Disclosure Section, (202) 898–8906.

OTS: Christine A. Smith, Project Manager, (202) 906–5740, Supervision Policy; Teresa A. Scott, Counsel (Banking & Finance), (202) 906–6478, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 36 of the FDIA, as implemented by FDIC regulations, requires every large insured depository institution to submit an annual report containing its financial statements and certain management assessments to the FDIC, the appropriate Federal banking agency, and any appropriate state bank supervisor.[1] Section 36 of the FDIA also requires that an independent public accountant audit such insured depository institution's annual financial statements to determine whether those statements are presented fairly in accordance with generally accepted accounting principles (GAAP) and with the accounting objectives, standards, and requirements described in section 37 of the FDIA.

Under section 37, the accounting principles applicable to financial statements required to be filed with the Agencies must be uniform and consistent with GAAP.[2] In addition, the accountant must attest to and report on management's assertions concerning internal controls over financial reporting.[3] The institution's annual report also must contain the accountant's audit and attestation reports.[4] Section 36 of the FDIA gives the Agencies the authority to remove, suspend, or bar an accountant from performing the audit services required under section 36 for good cause.[5] This authority is in addition to the enforcement tools the Agencies have under section 8 of the FDIA, which enable the Agencies to remove or prohibit an institution-affiliated party (IAP), including an accountant, from further participation in the affairs of an insured depository institution for certain types of misconduct.[6] Section 36 authority is also distinct from the Agency's capability to remove, suspend, or debar from practice before the Agency parties, such as accountants, who represent others.[7]

Section 36 does not define good cause, but authorizes the Agencies to implement section 36 through the joint issuance of rules of practice.[8] A removal, suspension, or debarment under section 36 would limit an accountant's or accounting firm's eligibility to provide audit services to insured depository institutions with total assets of $500 million or more. A section 36 action would not restrict the ability of accountants and firms to provide audit services to financial institutions with less than $500 million in total assets, however, or to provide other types of services to all financial institutions.

The Agencies have jointly prepared proposed rules of practice to implement the provisions of section 36. The texts of the Agencies' proposed regulations are substantively identical and differ with respect to conforming changes each Agency is making to its existing rules. These proposed rules do not create independent professional standards or obligations for accountants or firms. Rather, they are consistent with an accountant's existing responsibility to adhere to applicable professional standards such as generally accepted auditing standards and generally accepted standards for attestation engagements. The proposed rules are also consistent with the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act),[9] which, among other things, provides for significant reforms in the oversight of the accounting industry. The discussion that follows refers more specifically to the provisions of the Sarbanes-Oxley Act that are relevant to this proposal.

II. Discussion of the Proposal and Request for Comment

The proposal would amend the Agencies' rules of practice by adding provisions for removal, suspension, or debarment of accountants or accounting firms from performing the audit services required by section 36 of the FDIA. The proposed rules would define "good cause" to remove, suspend, or debar an accountant or firm from performing audit services and establish procedures for removal, suspension, or debarment of accountants or firms if the "good cause" standards are satisfied.

The first part of the discussion that follows describes the common elements of the proposed rules. The second part explains proposed technical and conforming changes to the existing rules of the OCC, Board, and FDIC. The Agencies invite comment on all aspects of the proposed rules.

A. Proposed Additions to the Rules of All the Agencies

1. Audit Services

The proposed rules define "audit services" as any service required to be performed under section 36 of the FDIA (12 U.S.C. 1831m) and 12 CFR part 363, including attestation services.[10]

2. Good Cause for Agency Action

The proposed rules define good cause for removal, suspension, or debarment of accountants from providing audit services required by section 36. Under the proposal, the Agencies would have "good cause" if the accountant does not possess the requisite qualifications to perform audit services; engages in knowing or reckless conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to accountants through the Sarbanes-Oxley Act and developed by the Public Company Accounting Oversight Board (Accounting Oversight Board) and the Securities and Exchange Commission (SEC), as such standards and provisions become effective;[11]

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[1] 12 U.S.C. 1831m, 1831m(j)(2); *see also* 12 CFR part 363 (describing the requirements for independent audits and reporting for all insured depository institutions). The statute gives the FDIC Board of Directors the discretion to establish the threshold asset size at which a section 36 annual report is required. That amount is currently set at $500 million. *See* 12 CFR 363.1(a). While a section 36 audit is not required of financial institutions with less than $500 million in total assets, the Agencies encourage every insured depository institution, regardless of its size or character, to have an annual audit of its financial statements performed by an independent public accountant. *See* 12 CFR part 363 App. A (Introduction).

[2] 12 U.S.C. 1831m(d), 1831n.

[3] *Id.* 1831m(c); *see also* 12 CFR part 363 (independent audit and reporting requirements).

[4] 12 U.S.C. 1831m(a)(1) and (2).

[5] *Id.* 1831m(g)(4)(A).

[6] *Id.* 1813(u)(4), 1818(e)(1).

[7] *See* 12 CFR part 19, subpart K; 12 CFR part 263, subpart F; and 12 CFR part 513.

[8] 12 U.S.C. 1831m(g)(4)(B).

[9] The Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat 745 (2002).

[10] For the Board and OTS, "audit services" also includes services provided to a bank holding company or thrift holding company that satisfy the audit requirements under section 36 of a subsidiary bank or thrift of that holding company.

[11] The FDIC's Guidelines and Interpretations concerning annual independent audits and reporting requirements, *see* 12 CFR part 363 app. A, at para. 14, call for accountants who perform audit and attestation services to comply with the American Institute of Certified Public Accountants' *Code of Professional Conduct* and meet the independence requirements and interpretations of the SEC and its staff. Title II of the Sarbanes-Oxley Act amended the Securities and Exchange Act of 1934 by adding new auditor indepdence provisions.

Continued

in a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or engages in repeated instances of unreasonable conduct, each resulting in a violation of applicable standards, that indicate a lack of competence to perform annual audit services.

Good cause also includes knowingly or recklessly giving false or misleading information to the Agencies with respect to any matter before the Agency; knowingly or recklessly materially violating any provision of the Federal banking or securities laws or regulations, or any other law, including the Sarbanes-Oxley Act; and removal, suspension, or debarment from practice before any Federal or state agency regulating the banking, insurance, or securities industries on grounds relevant to the provision of audit services, other than those actions that result in automatic removal, suspension, and debarment under the proposed rules.

Conduct giving rise to good cause under the proposed rules does not have to occur in connection with the provision of audit services or in connection with services provided to depository institutions. Any actions or failures to act by an independent public accountant or accounting firm that meet the criteria for good cause set forth in the regulation, whether or not related to the banking industry, could constitute good cause for Agency action. The standards in the proposed rules for removal, suspension, and debarment are drawn principally from the Agencies' existing practice rules and from the practice rules of the SEC.[12] The proposal thus promotes consistency with respect to professional standards for accountants.

3. Removal, Suspension, or Debarment of Accounting Firms or Offices of Firms

The proposed rules provide for the removal, suspension, or debarment of accounting firms as a whole and identify factors the Agencies may consider in determining the appropriate remedy. Under current regulations governing practice before the Agencies, the Agencies generally can remove, suspend, or debar a firm by naming each member of the firm or office in the order of suspension or debarment. The proposal retains this flexibility and provides guidance on conduct that may result in a firm-wide sanction.

The proposed rules provide that, in considering whether to take action against a firm and the severity of the sanction against a firm, the Agencies may assess the gravity, scope, or repetition of the act or failure to act; the adequacy of and adherence to applicable policies, practices, or procedures for the firm's conduct of its business and the performance of audit services; the selection, training, supervision, and conduct of members or employees of the firm involved in the performance of audit services; the extent to which managing partners or senior officers of the firm participated, directly or indirectly through oversight or review, in the act or failure to act; and the extent to which the firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence. This is not an exclusive list of factors the Agencies may consider, and circumstances may present other facts that the Agencies will take into account in determining whether to take an action against a firm.

The Agencies anticipate that there may be circumstances in which it will not be appropriate to remove, suspend, or debar an entire firm, but that action should be taken against a particular office or offices of a firm. The proposed rules permit that more limited action.

4. Removal, Suspension, and Debarment Procedures

Under the proposed rules, the Agencies would hold hearings on removals, suspensions, and debarments under rules that are consistent with the Agencies' Uniform Rules of Practice and Procedure (Uniform Rules).[13] The Uniform Rules provide, among other things, for written notice to the respondent of the intended Agency action and the opportunity for a public hearing before an administrative law judge. The administrative law judge would refer a recommended decision to the Agency, which would issue a final decision and order. Each Agency would have the discretion to limit an order of removal, suspension, or debarment from providing audit services to a limited number of insured depository institutions, rather than to all insured depository institutions supervised by the issuing Agency. This is referred to in the proposed regulations as a "limited scope order."[14]

The Agencies do not intend the proposed rules to create any new or different procedural mechanisms for Agency removal, suspension, or debarment of accountants. Rather, the Agencies generally intend to apply to these proceedings established rules and practices.

5. Immediate Suspensions

Section 36 of the FDIA provides that the appropriate Federal banking agency may "remove, suspend, or bar" an independent public accountant from performing audit services.[15] The proposed rules would implement the authority to suspend by providing that an Agency may issue a notice of immediate suspension when an Agency has a reasonable basis to believe that an accountant or accounting firm is engaged in conduct that would constitute grounds for an order of removal, suspension, or debarment and if immediate suspension is necessary for the protection of an insured depository institution, its depositors, or the depository system as a whole. The discretion to impose immediate suspensions can be critical to the safety and soundness of one or more insured depository institutions. For example, once misconduct is identified, immediate suspensions would prevent additional or escalating instances of misconduct.

Under the proposed rules, a notice of immediate suspension would remain in effect until the Agency dismisses the charges in the notice or issues a final order of removal, suspension, or debarment. The proposals establish a system for expedited review of a notice of immediate suspension. The accountant or accounting firm has the right to petition for a stay of a notice of immediate suspension within 10 calendar days after receiving service of

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Title II also requires that the SEC promulgate regulations, within 180 days after enactment of the Act, or by January 23, 2003, to implement these provisions. *See* Sarbanes-Oxley Act, section 208. Most of the provisions, however, are not effective until after an accountant is required to register with the Accounting Oversight Board created by this legislation. This requirement will not be effective until later in 2003. Therefore, accountants who perform section 36 annual audits and attestation services for insured depository institutions, regardless of whether the institution or its holding company is an issuer directly subject to the Sarbanes-Oxley Act, must comply with the SEC's upcoming regulations on auditor independence, once those regulations become effective for registered public accounts under the Sarbanes-Oxley Act.

[12] *See* 17 CFR 201.102(e) (SEC's rules on suspension and debarment of those who practice before the Commission, including accountants). Congress recently codified the SEC's suspension and debarment rules in section 602 of the Sarbanes-Oxley Act.

[13] *See* 12 CFR part 19, subpart A (OCC); 12 CFR part 263, subpart A (Board); 12 CFR part 308, subpart A (FDIC); 12 CFR 509, supart A (OTS).

[14] The Agencies will also have the discretion to issue suspension orders where the duration of the suspension would be dependent on the satisfactory completion of remedial action.

[15] 12 U.S.C. 1831m(g)(4)(A).

the notice. A presiding officer appointed by the Agency would hold a hearing on the stay petition not more than 30 days after receipt of the petition. The presiding officer would be required to issue a decision within 30 days of the hearing. The presiding officer could grant a stay of an immediate suspension upon a demonstration that a substantial likelihood exists of the accountant's or firm's success on the issues raised by the notice and that, absent such relief, the accountant or firm would suffer immediate and irreparable injury, loss, or damage. Any party may appeal the presiding officer's decision to the Agency.

The Agencies modeled the procedures set out in the proposed rules for imposing an immediate suspension of an accountant or accounting firm pending completion of a formal removal, suspension, or debarment administrative hearing after the procedures that apply to other types of temporary suspensions by regulatory agencies. In particular, the proposed immediate suspension procedures are substantially the same as those in section 8(g) of the FDIA governing the suspension by a Federal banking agency of an institution-affiliated party who has been charged with a felony.[16] The courts have upheld the procedures established in section 8(g) as meeting constitutional due process requirements.[17] Nevertheless, the Agencies invite comment on whether additional procedures should be provided to ensure that parties have adequate due process protections when they are suspended prior to a hearing on the charges made by an Agency.

6. Automatic Removal, Suspension, and Debarment

Under the proposed rules, an accountant or accounting firm that is subject to a final order of removal, suspension, or debarment issued by one Agency would be automatically precluded from performing audit services for insured depository institutions regulated by the other Agencies. In addition, automatic removal, suspension, or debarment would result from a final order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission, a currently effective disciplinary sanction by the Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act,[18] or a suspension or debarment from practice for cause by a state, possession, commonwealth, or District of Columbia licensing authority.

Each Agency would have the discretion to waive the automatic suspension on a case-by-case basis with respect to an institution it supervises by issuing written permission to the accountant or accounting firm. The Agencies intend that neither a limited scope order nor a notice of immediate suspension would bar an accountant or accounting firm from performing audit services for insured depository institutions outside the scope of that order or notice.

7. Notice

The proposed rules would require the Agencies to make public any final order of removal, suspension, or debarment against an accountant or accounting firm and notify the other Agencies of such orders. This is consistent with the presumption in favor of public notice for enforcement actions in the FDIA.[19]

The rules also contain notification provisions for accountants and firms. The proposal would require that an accountant or accounting firm that performs section 36 audit services for any insured depository institution provide the Agencies with written notice of any currently effective disciplinary sanction against the accountant or firm issued by the Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act, relating to revocation of registration and association with a public accounting firm or issuer; any current suspension or denial of the privilege of appearing or practicing before the SEC; or any suspensions or debarments for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia. Written notice is also required respecting any removal, suspension, or debarment from practice before any Federal or state agency regulating the banking, insurance, or securities industries on grounds relevant to the provision of audit services; and any action by the Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act, relating to limitations on the activities of accountants and accounting firms and any other appropriate sanction provided in the rules of the Accounting Oversight Board. Written notice must be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier.

8. Reinstatement

The Agencies would have the discretion to grant an accountant's or accounting firm's request for reinstatement. Under the proposals, a removed, suspended, or debarred individual or firm would be able to request reinstatement by the Agency that issued the order. The individual or firm would be able to request reinstatement at any time more than one year after the effective date of the order and, thereafter, at any time more than one year after the most recent request for reinstatement.

B. Conforming and Technical Changes to the Rules of the Agencies

1. OCC

The OCC proposes to add "recklessness" to its description of "disreputable conduct" that may lead to removal, suspension, or debarment of parties or their representatives who practice or appear before the OCC.[20] This change would conform the OCC's general rules of practice with the standards in the proposal for removal, suspension, or debarment of accountants from performance of section 36-required audit services, which in turn reflects the addition of the recklessness standard to the SEC's rules of practice by the Sarbanes-Oxley Act. The purpose of adding the recklessness standard is to clarify that conduct more culpable than incompetence, but less culpable than willful or knowing action, may form the basis for a suspension or debarment.

The OCC also proposes to broaden the scope of "disreputable conduct" to allow the OCC to consider suspensions or debarments of accountants—for any reason—by the other Agencies, the SEC, the Commodity Futures Trading Commission, or any other Federal agency. This change would remove the requirement in the current section 19.196(g) that suspensions by other agencies concern "matters relating to the supervisory responsibilities of the OCC." This change takes into account the possibility that a suspension of an accountant by another agency, relating to the professional conduct of an accountant, could be grounds for

[16] *Id.* 1818(g).

[17] *See FDIC* v. *Mallen*, 486 U.S. 230 (1988).

[18] Section 105(c)(4)(A) of the Sarbanes-Oxley Act allows the Accounting Oversight Board to revoke the registration of an accounting firm for violation of the Act or other laws or regulations cited. Section 105(c)(4)(B) gives the Accounting Oversight Board authority to suspend or bar a person from further association with any registered public accounting firm.

[19] 12 U.S.C. 1818(u)(1).

[20] *See* 12 CFR 19.196 (describing disreputable conduct).

removal, suspension, or debarment by the OCC, even if the suspension by the other agency did not relate to a banking matter.

Unlike the other amendments in the proposal, which would address an accountant's or firm's ability to perform section 36-required audits, this part of the proposal concerns who may practice before the OCC in other capacities, such as in adjudications, or through preparation of documents for submission to the OCC.

The OCC would also revise a number of sections within part 19 to make conforming and technical changes to implement section 36 of the FDIA and bring procedural aspects of part 19 up to date.

2. Board

The Board proposes to amend its Rules of Practice Before the Board (12 CFR part 263, subpart F) to expand the type of conduct for which an individual may be censured, debarred, or suspended from practice before the Agency. In particular, the Board proposes to revise the description of the conduct that would warrant sanctions to include reckless violations, or reckless aiding and abetting violations, of specified laws and the reckless provision of false or misleading information, or reckless participation in the provision of false or misleading information, to the Board. The regulation currently provides for sanctions only for willful misconduct. The purpose of this proposed amendment is to clarify that conduct more culpable than incompetence, but less culpable than willful or knowing action, may form the basis for a suspension or debarment from practice before the Agency. This change also reflects the modification made to the SEC's rules of practice by the Sarbanes-Oxley Act.

3. FDIC

The FDIC proposes to make a clarifying and conforming amendment to 12 CFR 308.109, which deals with the suspension and disbarment of the right of any counsel to appear or practice before the FDIC, to specify that an application for reinstatement must comply with the general filing procedures established by part 303. The amendment would add a new sentence before the current last sentence of section 308.109(b)(3) to read as follows: "The application shall comply with the requirements of 12 CFR 303.3."

C. Comment Solicitation

The Agencies ask for comment on all aspects of the proposed rules. Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12. 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

D. Community Bank Comment Request

The Agencies invite comment on the impact of this proposal on community banks. The Agencies recognize that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, we specifically request comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

E. Regulatory Flexibility Act

OCC: Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), the appropriate Federal banking agencies must either provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule or certify that the rule would not have a significant economic impact on a substantial number of small entities. For purposes of this Regulatory Flexibility Analysis and proposed regulation, the OCC defines "small entities" to be those national banks with less than $150 million in total assets. For other entities that could be affected by this rule, such as accountants and accounting firms, a small entity is defined as an accounting office with $7 million or less in annual receipts.

We have reviewed the impact this proposed rule will have on small banks. Based on that review, we certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The basis for the certification is that the requirement for audits does not apply to national banks with less than $500 million in total assets. In addition, only a limited number of small accounting firms provide section 36 audit services to national banks. For these reasons, the OCC does not anticipate that the proposal will affect a substantial number of small entities.

Board: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the suspension and debarment amendments proposed in this rulemaking will not have a significant adverse economic impact on a substantial number of small entities. For purposes of this Regulatory Flexibility Analysis, the Board defines "small entity" as (1) any insured state member bank with less than $150 million in total assets, or (2) any bank holding company with a subsidiary insured state member bank with less than $150 million in total assets. For other entities that could be affected by this rule, such as accountants and accounting firms, a small entity is defined as an accounting office with $7 million or less in annual receipts. The basis for the Board's certification is that the rule will not apply to state member banks that have less than $500 million in total assets. In addition, only a limited number of small accounting firms provide section 36 audit services to institutions that are regulated by the Federal Reserve.

FDIC: The rule proposes and requests comment on amendments to the FDIC's rules of practice (12 CFR part 308). These amendments would add rules of practice and standards of conduct with regard to accountants and accounting firms engaged by State nonmember banks. The FDIC hereby certifies, pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), that the proposed suspension and debarment amendments will not, if promulgated through a final rule, have a significant economic impact on a substantial number of small entities. The basis for the certification is that the rule will not apply to insured depository institutions that have less than $150 million in total assets. Furthermore, only a limited number of small accounting firms provide section 36 audit services to insured depository institutions for which the FDIC is the appropriate Federal banking agency.

OTS: Under the RFA, OTS must either provide an IRFA with this proposed rule, or certify that the rule would not have a significant economic impact on a substantial number of small entities. For purposes of this RFA analysis and

proposed regulation, the OTS defines "small banks" to be those savings associations with less than $150 million in total assets.

Pursuant to section 605(b) of the RFA, OTS certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that this rule does not apply to savings associations with less than $500 million in assets.

F. Executive Order 12866

The OCC and OTS have determined that this proposal is not a significant regulatory action under Executive Order 12866.

G. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking requires no further analysis under the Unfunded Mandates Act.

H. Paperwork Reduction Act

The Agencies have determined that this proposed rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

List of Subjects

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Federal Reserve System, Lawyers, Penalties.

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, investigations, Lawyers, Penalties, State nonmember banks.

12 CFR Part 513

Accountants, Administrative practice and procedure, Lawyers.

Deparment of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For reasons set out in the joint preamble, the OCC proposes to amend part 19 of chapter I of title 12 of the Code of Federal Regulations to read as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is amended to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909 and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; and 42 U.S.C. 4012a.

2. Section 19.100 of subpart B is revised to read as follows:

§ 19.100 Filing documents.

All materials required to be filed with or referred to the Comptroller or the administrative law judge in any proceeding under this part must be filed with the Hearing Clerk, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Filings to be made with the Hearing Clerk include the notice and answer; motions and responses to motions; briefs; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition (except that in removal and prohibition cases instituted pursuant to 12 U.S.C. 1818, the administrative law judge will file the record and the recommended decision with the Board of Governors of the Federal Reserve System); referrals by the administrative law judge of motions for interlocutory review; exceptions and requests for oral argument; and any other papers required to be filed with the Comptroller or the administrative law judge under this part.

3. In § 19.111 of subpart C, the section heading and the fourth and fifth sentences are revised to read as follows:

§ 19.111 Suspension, removal, or prohibition.

* * * The written request must be sent by certified mail to, or served personally with a signed receipt on, the District Deputy Comptroller in the OCC district in which the bank, accountant, or accounting firm in question is located, or, if the bank is supervised by the Large Bank Supervision Department, to the appropriate Deputy Comptroller for Large Bank Supervision for the Office of the Comptroller of the Currency, or if the bank is supervised by the Mid-Size/Community Banks Department, to the Deputy Comptroller for Mid-Size/Community Banks for Office of the Comptroller of the Currency, Washington, DC 20219. The request must state specifically the relief desired and the grounds on which that relief is based.

4. In § 19.196 of subpart K, the introductory text and paragraphs (a), (b), and (g) are revised to read as follows:

§ 19.196 Disreputable conduct.

Disreputable conduct for which an individual may be censured, debarred, or suspended from practice before the OCC includes:

(a) Willfully or recklessly violating or willfully or recklessly aiding and abetting the violation of any provision of the Federal banking or applicable securities laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust;

(b) Knowingly or recklessly giving false or misleading information, or participating in any way in the giving of false information to the OCC or any officer or employee thereof, or to any tribunal authorized to pass upon matters administered by the OCC in connection with any matter pending or likely to be pending before it. The term "information" includes facts or other statements contained in testimony, financial statements, applications for enrollment, affidavits, declarations, or any other document or written or oral statement;

* * * * *

(g) Suspension, debarment or removal from practice before the Board of Governors, the FDIC, the OTS, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal or state agency; and

* * * * *

5. A new subpart P is added to read as follows:

Subpart P—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

Sec.
19.241 Scope.
19.242 Definitions.
19.243 Removal, suspension, or debarment.
19.244 Automatic removal, suspension, or debarment.
19.245 Notice of removal, suspension, or debarment.
19.246 Petition for reinstatement.

Subpart P—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

§ 19.241 Scope.

This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured national banks, District of Columbia banks, and Federal branches and agencies of foreign banks.

§ 19.242 Definitions.

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services.

(c) *Independent public accountant (accountant)* means any individual who performs or participates in providing audit services.

§ 19.243 Removal, suspension, or debarment.

(a) *Good cause for removal, suspension, or debarment—(1) Individuals.* The Comptroller may remove, suspend, or debar an independent public accountant from performing audit services for insured national banks that are subject to section 36 of the FDIA if, after service of a notice of intention and opportunity for hearing in the matter, the Comptroller finds that the accountant:

(i) Lacks the requisite qualifications to perform audit services;

(ii) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to accountants through the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002) (Sarbanes-Oxley Act), and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(iii) Has engaged in negligent conduct in the form of:

(A) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or

(B) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(iv) Has knowingly or recklessly given false or misleading information, or knowingly or recklessly participated in any way in the giving of false or misleading information, to the OCC or any officer or employee of the OCC;

(v) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law;

(vi) Has been removed, suspended, or debarred from practice before any Federal or state agency regulating the banking, insurance, or securities industries, other than by an action listed in § 19.244, on grounds relevant to the provision of audit services.

(2) *Accounting firms.* If the Comptroller determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (a)(1) of this section, the Comptroller also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar a firm or an office thereof, and the term of any sanction against a firm under this section, the Comptroller may consider, for example:

(i) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for the removal, suspension, or debarment;

(ii) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(iii) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(iv) The extent to which managing partners or senior officers of the accounting firm have participated, directly, or indirectly through oversight or review, in the act or failure to act; and

(v) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(3) *Limited scope orders.* An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Comptroller, be made applicable to a particular national bank or class of national banks.

(4) *Remedies not exclusive.* The remedies provided in this subpart are in addition to any other remedies the OCC may have under any other applicable provisions of law, rule, or regulation.

(b) *Proceedings to remove, suspend, or debar—(1) Initiation of formal removal, suspension, or debarment proceedings.* The Comptroller may initiate a proceeding to remove, suspend, or debar an accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) *Hearings under paragraph (b) of this section.* An accountant or firm named as a respondent in the notice issued under paragraph (b)(1) of this section may request a hearing on the allegations in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 19, subpart A.)

(c) *Immediate suspension from performing audit services—(1) In general.* If the Comptroller serves a written notice of intention to remove, suspend, or debar an accountant or accounting firm from performing audit services, the Comptroller may, with due regard for the public interest and without a preliminary hearing, immediately suspend such accountant or firm from performing audit services for insured national banks, if the Comptroller:

(i) Has a reasonable basis to believe that the accountant or firm has engaged in conduct (specified in the notice served on the accountant or firm under paragraph (b) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (a) of this section;

(ii) Determines that immediate suspension is necessary for the protection of an insured depository

institution or its depositors or for the protection of the depository system as a whole; and

(iii) Serves such respondent with written notice of the immediate suspension.

(2) *Procedures.* An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Comptroller dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the Comptroller to the respondent.

(3) *Petition for stay.* Any accountant or firm immediately suspended from performing audit services in accordance with paragraph (c)(1) of this section may, within 10 calendar days after service of the notice of immediate suspension, file with the Office of the Comptroller of the Currency, Washington, DC 20219 for a stay of such immediate suspension. If no petition is filed within 10 calendar days, the immediate suspension shall remain in effect.

(4) *Hearing on petition.* Upon receipt of a stay petition, the Comptroller will designate a presiding officer who shall fix a place and time (not more than 30 calendar days after receipt of the petition, unless extended at the request of petitioner) at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses may also be presented. In hearings held pursuant to this paragraph there shall be no discovery and the provisions of §§ 19.6 through 19.12, 19.16, and 19.21 of this part shall apply.

(5) *Decision on petition.* Within 30 calendar days after the hearing, the presiding officer shall issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice.

(6) *Review of presiding officer's decision.* The parties may seek review of the presiding officer's decision by filing a petition for review with the presiding officer within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the presiding officer shall promptly certify the entire record to the Comptroller. Within 60 calendar days of the presiding officer's certification, the Comptroller shall issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order shall state the basis of the Comptroller's decision.

§ 19.244 Automatic removal, suspension, and debarment.

(a) An independent public accountant or accounting firm may not perform audit services for insured national banks if the accountant or firm:

(1) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision under section 36 of the FDIA.

(2) Is subject to a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(A) or (B));

(3) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission; or

(4) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(b) Upon written request, the Comptroller, for good cause shown, may grant written permission to such accountant or firm to perform audit services for national banks. The request shall contain a concise statement of the action requested. The Comptroller may require the applicant to submit additional information.

§ 19.245 Notice of removal, suspension or debarment.

(a) *Notice to the public.* Upon the issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the Comptroller shall make the order publicly available and provide notice of the order to the other Federal banking agencies.

(b) *Notice to the Comptroller by accountants and firms.* An accountant or accounting firm that provides audit services to a national bank must provide the Comptroller with written notice of:

(1) Any currently effective order or other action described in § 19.243(a)(1)(vi) or §§ 19.244(a)(2) through (a)(4); or

(2) Any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act) (15 U.S.C. 7215(c)(4)(C) or (G)).

(c) *Timing of notice.* Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or firm accepts an engagement to provide audit services, whichever date is earlier.

§ 19.246 Petition for reinstatement.

(a) *Form of petition.* Unless otherwise ordered by the Comptroller, a petition for reinstatement by an independent public accountant or accounting firm removed, suspended, or debarred under § 19.243 may be made in writing at any time one year after the effective date of the order of removal, suspension, or debarment and, thereafter, at any time more than one year after the accountant's or firm's most recent petition for reinstatement. The request shall contain a concise statement of the action requested. The Comptroller may require the applicant to submit additional information.

(b) *Procedure.* A petitioner for reinstatement under this section may, in the sole discretion of the Comptroller, be afforded a hearing. The accountant or firm shall bear the burden of going forward with a petition and proving the grounds asserted in support of the petition. In reinstatement proceedings, the person seeking reinstatement shall bear the burden of going forward with an application and proving the grounds asserted in support of the application. The Comptroller may, in his sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Comptroller, for good cause shown, has reinstated the petitioner or until the suspension period has expired. The filing of a petition for reinstatement shall not stay the effectiveness of the removal, suspension, or debarment of an accountant or firm.

Dated: November 27, 2002.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the joint preamble, the Board proposes to amend part 263, chapter II, title 12 of the Code of Federal Regulations as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 is revised to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 506, 1817(j), 1818, 1828(c), 1831m, 1831o, 1831p–1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o–4, 78o–5, 78u–2, 6801, 6805; and 28 U.S.C. 2461 note.

2. In § 263.94, paragraphs (a) and (b) are revised to read as follows:

§ 263.94 Conduct warranting sanctions.

* * * * *

(a) Willfully or recklessly violating or willfully or recklessly aiding and abetting the violation of any provision of the Federal banking or applicable securities laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust;

(b) Knowingly or recklessly giving false or misleading information, or participating in any way in the giving of false information to the Board or to any Board officer or employee, or to any tribunal authorized to pass upon matters administered by the Board in connection with any matter pending or likely to be pending before it. The term "information" includes facts or other statements contained in testimony, financial statements, applications, affidavits, declarations, or any other document or written or oral statement;

* * * * *

3. A new subpart J is added as follows:

Subpart J—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

Sec.

263.400 Scope.
263.401 Definitions.
263.402 Removal, suspension, or debarment.
263.403 Automatic removal, suspension, and debarment
263.404 Notice of removal, suspension, or debarment.
263.405 Petition for reinstatement.

Subpart J—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

§ 263.400 Scope.

This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services for insured state member banks and for bank holding companies required by section 36 of the FDIA (12 U.S.C. 1831m).

§ 263.401 Definitions.

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services. Audit services include any service performed with respect to the holding company of an insured bank that is used to satisfy requirements imposed by section 36 or part 363 on that bank.

(c) *Banking organization* means an insured state member bank or a bank holding company that obtains audit services that are used to satisfy requirements imposed by section 36 or part 363 on an insured subsidiary bank of that holding company.

(d) *Independent public accountant* (accountant) means any individual who performs or participates in providing audit services.

§ 263.402 Removal, suspension, or debarment.

(a) *Good cause for removal, suspension, or debarment*—

(1) *Individuals.* The Board may remove, suspend, or debar an independent public accountant from performing audit services for banking organizations that are subject to section 36 of the FDIA, if, after notice of and opportunity for hearing in the matter, the Board finds that the accountant:

(i) Lacks the requisite qualifications to perform audit services;

(ii) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflict of interest provisions applicable to accountants through the Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745 (2002) (Sarbanes-Oxley Act), and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(iii) Has engaged in negligent conduct in the form of:

(A) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or

(B) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(iv) Has knowingly or recklessly given false or misleading information, or knowingly or recklessly participated in any way in the giving of false or misleading information, to the Board or any officer or employee of the Board;

(v) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law; or

(vi) Has been removed, suspended, or debarred from practice before any Federal or state agency regulating the banking, insurance, or securities industries, other than by an action listed in § 263.403, on grounds relevant to the provision of audit services.

(2) *Accounting firms.* If the Board determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (a)(1) of this section, the Board also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend or debar a firm or an office thereof, and the term of any sanction against a firm under this section, the Board may consider, for example:

(i) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for removal, suspension, or debarment;

(ii) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(iii) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(iv) The extent to which managing partners or senior officers of the accounting firm have participated, directly, or indirectly through oversight

or review, in the act or failure to act; and

(v) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(3) *Limited scope orders.* An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Board, be made applicable to a particular banking organization or class of banking organizations.

(4) *Remedies not exclusive.* The remedies provided in this subpart are in addition to any other remedies the Board may have under any other applicable provisions of law, rule, or regulation.

(b) *Proceedings to remove, suspend, or debar—*(1) *Initiation of formal removal, suspension, or debarment proceedings.* The Board may initiate a proceeding to remove, suspend, or debar an accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) *Hearing under paragraph (b) of this section.* An accountant or firm named as a respondent in the notice issued under paragraph (b)(2) of this section may request a hearing on the allegations in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 263, subpart A).

(c) *Immediate suspension from performing audit services—*(1) *In general.* If the Board serves a written notice of intention to remove, suspend, or debar an accountant or accounting firm from performing audit services, the Board may, with due regard for the public interest and without a preliminary hearing, immediately suspend such accountant or firm from performing audit services for banking organizations, if the Board:

(i) Has a reasonable basis to believe that the accountant or firm has engaged in conduct (specified in the notice served on the accountant or firm under paragraph (b) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (a) of this section;

(ii) Determines that immediate suspension is necessary for the protection of an insured depository institution or its depositors or for the protection of the depository system as a whole; and

(iii) Serves such respondent with written notice of the immediate suspension.

(2) *Procedures.* An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Board dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the Board to the respondent.

(3) *Petition to stay.* Any accountant or firm immediately suspended from performing audit services in accordance with paragraph (c)(1) of this section may, within 10 calendar days after service of the notice of immediate suspension, file with the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551 for a stay of such immediate suspension. If no petition is filed within 10 calendar days, the immediate suspension shall remain in effect.

(4) *Hearing on petition.* Upon receipt of a stay petition, the Secretary will designate a presiding officer who shall fix a place and time (not more than 30 calendar days after receipt of the petition, unless extended at the request of petitioner) at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses may also be presented. In hearings held pursuant to this paragraph there shall be no discovery and the provisions of §§ 263.6 through 263.12, 263.16, and 263.21 of this part shall apply.

(5) *Decision on petition.* Within 30 calendar days after the hearing, the presiding officer shall issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice.

(6) *Review of presiding officer's decision.* The parties may seek review of the presiding officer's decision by filing a petition for review with the presiding officer within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the presiding officer shall promptly certify the entire record to the Board. Within 60 calendar days of the presiding officer's certification, the Board shall issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order shall state the basis of the Board's decision.

§ 263.403 Automatic removal, suspension, and debarment.

(a) An independent public accountant or accounting firm may not perform audit services for banking organizations if the accountant or firm:

(1) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision under section 36 of the FDIA;

(2) Is subject to a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(4)(A) or (B));

(3) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission; or

(4) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(b) Upon written request, the Board, for good cause shown, may grant written permission to such accountant or firm to perform audit services for banking organizations. The request shall contain a concise statement of the action requested. The Board may require the applicant to submit additional information.

§ 263.404. Notice of removal, suspension, or debarment.

(a) *Notice to the public.* Upon the issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the Board shall make the order publicly available and provide notice of the order to the other Federal banking agencies.

(b) *Notice to the Board by accountants and firms.* An accountant or accounting firm that provides audit services to a banking organization must provide the Board with written notice of:

(1) Any currently effective order or other action described in § 263.402(a)(1)(vi) or §§ 263.403(a)(2) through (a)(4); or

(2) Any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(4)(C) or (G)).

(c) *Timing of notice.* Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or firm accepts an engagement to provide audit services, whichever date is earlier.

§ 263.405 Petition for reinstatement.

(a) *Form of petition.* Unless otherwise ordered by the Board, a petition for reinstatement by an independent public accountant or accounting firm removed, suspended, or debarred under § 263.402 may be made in writing at any time one year after the effective date of the order of removal, suspension, or debarment and, thereafter, at any time more than one year after the accountant's or firm's most recent petition for reinstatement. The request shall contain a concise statement of the action requested. The Board may require the petitioner to submit additional information.

(b) *Procedure.* A petitioner for reinstatement under this section may, in the sole discretion of the Board, be afforded a hearing. The accountant or firm shall bear the burden of going forward with a petition and proving the grounds asserted in support of the petition. The Board may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Board, for good cause shown, has reinstated the petitioner or until the suspension period has expired. The filing of a petition for reinstatement shall not stay the effectiveness of the removal, suspension, or debarment of an accountant or firm.

By order of the Board of Governors of the Federal Reserve System, December 17, 2002.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3 and 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358.

2. Section 308.109(b)(3) is amended to add a new sentence before the last sentence to read as follows:

§ 308.109 Suspension and disbarment

* * * * *

(b) * * *

(3) * * * The application must comply with the requirements of § 303.3 of this chapter. * * *

* * * * * *

3. A new Subpart U is added to read as follows:

Subpart U—Removal, Suspension, and Debarment of Accountants From Performing Audit Service

Sec.

308.600 Scope.
308.601 Definitions.
308.602 Removal, suspension, or debarment.
308.603 Automatic removal, suspension, and debarment.
308.604 Notice of removal, suspension, or debarment.
308.605 Application for reinstatement.

Subpart U—Removal, Suspension, and Debarment of Accountants From Performing Audit Service

§ 308.600 Scope.

This subpart, which implements section 36(g)(4) of the FDIA (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured depository institutions for which the FDIC is the appropriate Federal banking agency.

§ 308.601 Definitions.

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services.

(c) *Independent public accountant (accountant)* means any individual who performs or participates in providing audit services.

§ 308.602 Removal, suspension, or debarment.

(a) *Good cause for removal, suspension, or debarment—(1) Individuals.* The Board of Directors may remove, suspend, or debar an independent public accountant from performing audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency under section 36 of the FDIA if, after service of a notice of intention and opportunity for hearing in the matter, the Board of Directors finds that the accountant:

(i) Lacks the requisite qualifications to perform audit services;

(ii) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to accountants through the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745 (2002)) (Sarbanes-Oxley Act) and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(iii) Has engaged in negligent conduct in the form of:

(A) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or

(B) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(iv) Has knowingly or recklessly given false or misleading information, or knowingly or recklessly participated in any way in the giving of false or misleading information, to the FDIC or any officer or employee of the FDIC;

(v) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law; or

(vi) Has been removed, suspended, or debarred from practice before any Federal or state agency regulating the banking, insurance, or securities industries, other than by an action listed in § 308.603, on grounds relevant to the provision of audit services.

(2) *Accounting firms.* If the Board of Directors determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph

(a)(1) of this section, the Board of Directors also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar an accounting firm or an office thereof, and the term of any sanction against an accounting firm under this section, the Board of Directors may consider, for example:

(i) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for the removal, suspension, or debarment;

(ii) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(iii) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(iv) The extent to which managing partners or senior officers of the accounting firm have participated, directly, or indirectly through oversight or review, in the act or failure to act; and

(v) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(3) *Limited scope orders.* An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Board of Directors, be made applicable to a limited number of insured depository institutions for which the FDIC is the appropriate Federal banking agency.

(4) *Remedies not exclusive.* The remedies provided in this subpart are in addition to any other remedies the FDIC may have under any other applicable provision of law, rule, or regulation.

(b) *Proceedings to remove, suspend or debar*— (1) *Initiation of formal removal, suspension, or debarment proceedings.* The Board of Directors may initiate a proceeding to remove, suspend, or debar an accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) *Hearings under paragraph (b) of this section.* An accountant or firm named as a respondent in the notice issued under paragraph (b)(1) of this section may request a hearing on the allegations contained in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 308, subpart A) (Uniform Rules).

(c) *Immediate suspension from performing audit service*— (1) *In general.* If the Board of Directors serves a written notice of intention to remove, suspend, or debar an accountant or accounting firm from performing audit services, the Board of Directors may, with due regard for the public interest and without a preliminary hearing, immediately suspend such accountant or firm from performing audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency if the Board of Directors:

(i) Has a reasonable basis to believe that the accountant or accounting firm has engaged in conduct (specified in the notice served upon the accountant or accounting firm under paragraph (b)(1) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (a) of this section;

(ii) Determines that immediate suspension is necessary for the protection of an insured depository institution or its depositors or for the protection of the depository system as a whole; and

(iii) Serves such respondent with written notice of the immediate suspension.

(2) *Procedures.* An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Board of Directors dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the Board of Directors to the respondent.

(3) *Petition to stay.* Any accountant or accounting firm immediately suspended from performing audit services in accordance with paragraph (c)(1) of this section may, within 10 calendar days after service of the notice of immediate suspension, file a petition with the Executive Secretary for a stay of such immediate suspension. If no petition is filed within 10 calendar days, the immediate suspension will remain in effect.

(4) *Hearing on petition.* Upon receipt of a stay petition, the Executive Secretary will designate a presiding officer who will fix a place and time (not more than 30 calendar days after receipt of the petition, unless extended at the request of petitioner) at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses also may be presented. Enforcement counsel may represent the agency at the hearing. In hearings held pursuant to this paragraph there shall be no discovery, and the provisions of §§ 308.6 through 308.12, § 308.16, and § 308.21 of the Uniform Rules will apply.

(5) *Decision on petition.* Within 30 calendar days after the hearing, the presiding officer will issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice of intention. The presiding officer will serve a copy of the decision on, and simultaneously certify the record to, the Executive Secretary.

(6) *Review of presiding officer's decision.* The parties may seek review of the presiding officer's decision by filing a petition for review with the Executive Secretary within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the Executive Secretary will promptly certify the entire record to the Board of Directors. Within 60 calendar days of the Executive Secretary's certification, the Board of Directors will issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order will state the basis of the Board's decision.

§ 308.603 Automatic removal, suspension, and debarment.

(a) An independent public accountant or accounting firm may not perform audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency if the accountant or firm:

(1) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision under section 36 of the FDIA;

(2) Is subject to a temporary suspension or permanent revocation of

registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(A) or (B));

(3) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission; or

(4) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(b) Upon written request, the FDIC, for good cause shown, may grant written permission to such accountant or firm to perform audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency. The written request must comply with the requirements of § 303.3 of this chapter.

§ 308.604 Notice of removal, suspension, or debarment.

(a) *Notice to the public.* Upon the issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the FDIC will make the order publicly available and provide notice of the order to the other Federal banking agencies.

(b) *Notice to the FDIC by accountants and firms.* An accountant or accounting firm that provides audit services to any insured depository institution for which the FDIC is the appropriate Federal banking agency must provide the FDIC with written notice of:

(1) any currently effective order or other action described in § 308.602(a)(1)(vi) or §§ 308.603(b) through (d); or

(2) any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(C) or (G)).

(c) *Timing of Notice.* Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier.

§ 308.605 Application for reinstatement.

(a) *Form of petition.* Unless otherwise ordered by the Board of Directors, an application for reinstatement by an independent public accountant or accounting firm removed, suspended, or debarred under § 308.602 may be made in writing at any time more than one year after the effective date of the removal, suspension, or debarment and, thereafter, at any time more than one year after the accountant's or accounting firm's most recent application for reinstatement. The application must comply with the requirements of § 303.3 of this chapter.

(b) *Procedure.* An applicant for reinstatement under this section may, in the sole discretion of the Board of Directors, be afforded a hearing. In reinstatement proceedings, the person seeking reinstatement shall bear the burden of going forward with an application and proving the grounds asserted in support of the application, and the Board of Directors may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Board of Directors, for good cause shown, has reinstated the applicant or until the suspension period has expired. The filing of an application for reinstatement will not stay the effectiveness of the removal, suspension, or debarment of an accountant or firm.

Dated: December 17, 2002.

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Robert Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the preamble, the Office of Thrift Supervision proposes to amend part 513 of chapter V of title 12 of the Code of Federal Regulations as follows:

1. The authority citation for part 513 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1813, 1831m, and 15 U.S.C. 78.

2. Add § 513.8 to read as follows:

§ 513.8 Removal, suspension, or debarment of independent public accountants and accounting firms performing audit services.

(a) *Scope.* This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured savings associations and savings and loan holding.

(b) *Definitions.* As used in this section, the following terms have the meaning given below unless the context requires otherwise:

(1) *Accounting firm.* The term *accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(2) *Audit services.* The term *audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA Act and 12 CFR part 363, including attestation services. Audit services include any service performed with respect to a savings and loan holding company of a savings association that is used to satisfy requirements imposed by section 36 or part 363 on that savings association.

(3) *Independent public accountant.* The term *independent public accountant* means any individual who performs or participates in providing audit services.

(c) *Removal, suspension, or debarment of independent public accountants.* The Office may remove, suspend, or debar an independent public accountant from performing audit services for savings associations that are subject to section 36 of the FDIA if, after service of a notice of intention and opportunity for hearing in the matter, the Office finds that the independent public accountant:

(1) Lacks the requisite qualifications to perform audit services;

(2) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to independent public accountants through the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002) (Sarbanes-Oxley Act), and developed by the Public Company Oversight Board and the Securities and Exchange Commission;

(3) Has engaged in negligent conduct in the form of:

(i) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an independent public accountant knows, or should know, that heightened scrutiny is warranted; or

(ii) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(4) Has knowingly or recklessly given false or misleading information or knowingly or recklessly participated in

any way in the giving of false or misleading information to the Office or any officer or employee of the Office;

(5) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law; or

(6) Has been removed, suspended, or debarred from practice before any federal or state agency regulating the banking, insurance, or securities industries, other than by action listed in paragraph (j) of this section, on grounds relevant to the provision of audit services.

(d) *Removal, suspension or debarment of an accounting firm.* If the Office determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (c) of this section, the Office also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar an accounting firm or office thereof, and the term of any sanction against an accounting firm under this section, the Office may consider, for example:

(1) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for the removal, suspension, or debarment;

(2) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(3) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(4) The extent to which managing partners or senior officers of the accounting firm have participated, directly or indirectly through oversight or review, in the act or failure to act; and

(5) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(e) *Remedies.* The remedies provided in this section are in addition to any other remedies the Office may have under any other applicable provisions of law, rule, or regulation.

(f) *Proceedings to remove, suspend, or debar.* (1) The Office may initiate a proceeding to remove, suspend, or debar an independent public accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) An independent public accountant or accounting firm named as a respondent in the notice issued under paragraph (f)(1) of this section may request a hearing on the allegations in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 509).

(g) *Immediate suspension from performing audit services.* (1) If the Office serves written notice of intention to remove, suspend, or debar an independent public accountant or accounting firm from performing audit services, the Office may, with due regard for the public interest and without preliminary hearing, immediately suspend an independent public accountant or accounting firm from performing audit services for savings associations, if the Office:

(i) Has a reasonable basis to believe that the independent public accountant or accounting firm engaged in conduct (specified in the notice served upon the independent public accountant or accounting firm under paragraph (f) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (c) or (d) of this section;

(ii) Determines that immediate suspension is necessary for the protection of an insured depository institution or its depositors or for the protection of the depository system as a whole; and

(iii) Serves such independent public accountant or accounting firm with written notice of the immediate suspension.

(2) An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Office dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the Office to the independent public accountant or accounting firm.

(h) *Petition to stay.* (1) Any independent public accountant or accounting firm immediately suspended from performing audit services in accordance with paragraph (g) of this section may, within 10 calendar days after service of the notice of immediate suspension, file a petition with the Office for a stay of such suspension. If no petition is filed within 10 calendar days, the immediate suspension will remain in effect.

(2) Upon receipt of a stay petition, the Office will designate a presiding officer who shall fix a place and time (not more than 30 calendar days after receipt of such petition, unless extended at the request of the petitioner), at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses may also be presented. In hearings held pursuant to this paragraph, there will be no discovery and the provisions of §§ 509.6 through 509.12, 509.16, and 509.21 of the Uniform Rules will apply.

(3) Within 30 calendar days after the hearing, the presiding officer shall issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice.

(4) The parties may seek review of the presiding officer's decision by filing a petition for review with the presiding officer within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the presiding officer must promptly certify the entire record to the Director. Within 60 calendar days of the presiding officer's certification, the Director shall issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order shall state the basis of the Director's decision.

(i) *Scope of any order of removal, suspension, or debarment.* (1) Except as provided in paragraph (i)(2), any independent public accountant or accounting firm that has been removed, suspended (including an immediate suspension), or debarred from performing audit services by the Office may not, while such order is in effect, perform audit services for any savings association.

(2) An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Office, be made applicable to a limited number of savings associations or savings and loan holding companies (limited scope order).

(j) Automatic removal, suspension, and debarment. (1) An independent public accountant or accounting firm may not perform audit services for a savings association if the independent public accountant or accounting firm:

(i) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of the Comptroller of the Currency under section 36 of the FDIA;

(ii) Is subject to a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(A) or (B));

(iii) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission; and

(iv) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(2) Upon written request, the Office, for good cause shown, may grant written permission to an independent public accountant or accounting firm to perform audit services for savings associations. The request must contain a concise statement of action requested. The Office may require the applicant to submit additional information.

(k) *Notice of removal, suspension, or debarment.* (1) Upon issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the Office shall make the order publicly available and provide notice of the order to the other Federal banking agencies.

(2) An independent public accountant or accounting firm that provides audit services to a savings association must provide the Office with written notice of:

(i) Any currently effective order or other action described in paragraph (c)(6) or paragraphs (j)(1)(ii) through (j)(1)(iv) of this section; or

(ii) Any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(C) or (G)).

(3) Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action or 15 calendar days before an independent public accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier.

(l) *Application for reinstatement.* (1) Unless otherwise ordered by the Office, an independent public accountant or accounting firm removed, suspended or debarred under this section may apply for reinstatement in writing at any time one year after the effective date of the order of removal, suspension, or debarment and, thereafter, at any time more than one year after the independent public accountant's or accounting firm's most recent application for reinstatement. The request shall contain a concise statement of action requested. The Office may require the applicant to submit additional information.

(2) An applicant for reinstatement under paragraph (l)(1) of this section may, in the Office's sole discretion, be afforded a hearing. The independent public accountant or accounting firm shall bear the burden of going forward with an application and the burden of proving the grounds supporting the application. The Office may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Office, for good cause shown, has reinstated the applicant or until, in the case of a suspension, the suspension period has expired. The filing of a petition for reinstatement shall not stay the effectiveness of the removal, suspension, or debarment of an independent public accountant or accounting firm.

Dated: December 2, 2002.

By the Office of Thrift Supervision.

James Gilleran,

Director.

[FR Doc. 03–98 Filed 1–7–03; 8:45 am]

BILLING CODE 4810-33-P, 6210-01-P, 6714-01-P, 6720-01-P

Federal Register

Wednesday,
January 8, 2003

Part IV

The President

Executive Order 13282—Adjustments of Certain Rates of Pay

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Federal Register
Vol. 68, No. 5
Wednesday, January 8, 2003

Presidential Documents

Title 3—

The President

Executive Order 13282 of December 31, 2002

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(a), are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The rates of basic pay for senior executives in the Senior Executive Service, as adjusted under 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5311–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a), and section 140 of Public Law 97–92) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to section 601(a)-(b) of Public Law 107–314, the rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.*

(a) Pursuant to sections 5304 and 5304a of title 5, United States Code, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register**.

Sec. 6. *Administrative Law Judges.* The rates of basic pay for administrative law judges, as adjusted under 5 U.S.C. 5372(b)(4), are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective on January 1, 2003. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2003.

Sec. 8. *Prior Order Superseded.* Executive Order 13249 of December 28, 2001, is superseded.

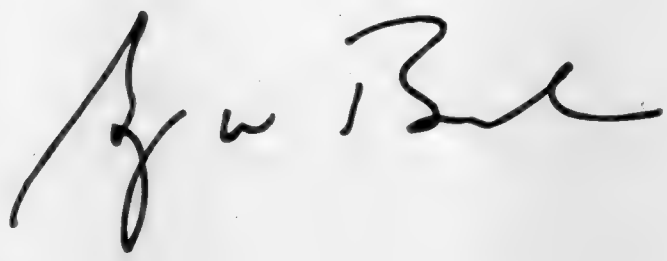

THE WHITE HOUSE,
December 31, 2002.

Billing code 3195–01–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

	1	2	3	4	5	6	7	8	9	10
GS-1	$15,214	$15,722	$16,228	$16,731	$17,238	$17,536	$18,034	$18,538	$18,559	$19,031
GS-2	17,106	17,512	18,079	18,559	18,767	19,319	19,871	20,423	20,975	21,527
GS-3	18,664	19,286	19,908	20,530	21,152	21,774	22,396	23,018	23,640	24,262
GS-4	20,952	21,650	22,348	23,046	23,744	24,442	25,140	25,838	26,536	27,234
GS-5	23,442	24,223	25,004	25,785	26,566	27,347	28,128	28,909	29,690	30,471
GS-6	26,130	27,001	27,872	28,743	29,614	30,485	31,356	32,227	33,098	33,969
GS-7	29,037	30,005	30,973	31,941	32,909	33,877	34,845	35,813	36,781	37,749
GS-8	32,158	33,230	34,302	35,374	36,446	37,518	38,590	39,662	40,734	41,806
GS-9	35,519	36,703	37,887	39,071	40,255	41,439	42,623	43,807	44,991	46,175
GS-10	39,115	40,419	41,723	43,027	44,331	45,635	46,939	48,243	49,547	50,851
GS-11	42,976	44,409	45,842	47,275	48,708	50,141	51,574	53,007	54,440	55,873
GS-12	51,508	53,225	54,942	56,659	58,376	60,093	61,810	63,527	65,244	66,961
GS-13	61,251	63,293	65,335	67,377	69,419	71,461	73,503	75,545	77,587	79,629
GS-14	72,381	74,794	77,207	79,620	82,033	84,446	86,859	89,272	91,685	94,098
GS-15	85,140	87,978	90,816	93,654	96,492	99,330	102,168	105,006	107,844	110,682

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$85,140	$68,988	$55,901	$45,296	$36,703	$32,811	$29,332	$26,222	$23,442
2	87,694	71,058	57,578	46,655	37,804	33,795	30,212	27,009	24,145
3	90,325	73,189	59,305	48,055	38,938	34,809	31,118	27,819	24,870
4	93,035	75,385	61,085	49,496	40,106	35,853	32,052	28,653	25,616
5	95,826	77,647	62,917	50,981	41,310	36,929	33,013	29,513	26,384
6	98,701	79,976	64,805	52,510	42,549	38,037	34,004	30,398	27,176
7	101,662	82,375	66,749	54,086	43,825	39,178	35,024	31,310	27,991
8	104,711	84,847	68,751	55,708	45,140	40,353	36,075	32,250	28,831
9	107,853	87,392	70,814	57,380	46,494	41,564	37,157	33,217	29,696
10	110,682	90,014	72,938	59,101	47,889	42,811	38,272	34,214	30,586
11	110,682	92,714	75,126	60,874	49,326	44,095	39,420	35,240	31,504
12	110,682	95,496	77,380	62,700	50,806	45,418	40,602	36,297	32,449
13	110,682	98,360	79,701	64,581	52,330	46,781	41,820	37,386	33,423
14	110,682	101,311	82,093	66,519	53,900	48,184	43,075	38,508	34,425

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Deputy Under Secretary for Health	$144,591 **
Associate Deputy Under Secretary for Health	138,491 ***
Assistant Under Secretaries for Health	134,408 ***

	Minimum	Maximum	
Medical Directors	$114,678	$129,972	***
Service Directors	99,853	124,011	
Director, National Center for Preventive Health	85,140	124,011	

Physician and Dentist Schedule

Director Grade	$99,853	$124,011
Executive Grade	92,204	117,511
Chief Grade	85,140	110,682
Senior Grade	72,381	94,098
Intermediate Grade	61,251	79,629
Full Grade	51,508	66,961
Associate Grade	42,976	55,873

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$85,140	$110,682
Senior Grade	72,381	94,098
Intermediate Grade	61,251	79,629
Full Grade	51,508	66,961
Associate Grade	42,976	55,873

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$85,140	$110,682
Assistant Director Grade	72,381	94,098
Chief Grade	61,251	79,629
Senior Grade	51,508	66,961
Intermediate Grade	42,976	55,873
Full Grade	35,519	46,175
Associate Grade	30,565	39,736
Junior Grade	26,130	33,969

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* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $134,000.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $125,400.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

ES-1	$116,500
ES-2	122,000
ES-3	127,500
ES-4	133,800
ES-5	134,000
ES-6	134,000

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

level I	$171,900
level II	154,700
level III	142,500
level IV	134,000
level V	125,400

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

Vice President	$198,600
Senators	154,700
Members of the House of Representatives	154,700
Delegates to the House of Representatives	154,700
Resident Commissioner from Puerto Rico	154,700
President pro tempore of the Senate	171,900
Majority leader and minority leader of the Senate	171,900
Majority leader and minority leader of the House of Representatives	171,900
Speaker of the House of Representatives	198,600

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

Chief Justice of the United States	$192,600
Associate Justices of the Supreme Court	184,400
Circuit Judges	159,100
District Judges	150,000
Judges of the Court of International Trade	150,000

SCHEDULE 8—PAY OF THE UNIFORMED SERVICES
(Effective on January 1, 2003)

Part I—MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
COMMISSIONED OFFICERS															
O-10 **	-	-	-	-	-	-	-	-	-	-	-	$12,077.70*	$12,137.10*	$12,389.40*	$12,829.20*
O-9	-	-	-	-	-	-	-	-	-	-	-	10,563.60	10,715.70	10,935.60	11,319.60
O-8	$7,474.50	$7,719.30	$7,881.60	$7,927.20	$8,129.40	$8,468.70	$8,547.30	$8,868.90	$8,961.30	$9,238.20	$9,639.00	10,008.90	10,255.80	10,255.80	10,255.80
O-7	6,210.90	6,499.20	6,633.00	6,739.20	6,930.90	7,120.80	7,340.40	7,559.40	7,779.00	8,468.70	9,051.30	9,051.30	9,051.30	9,051.30	9,096.90
O-6	4,603.20	5,057.10	5,388.90	5,388.90	5,409.60	5,641.20	5,672.10	5,672.10	5,994.60	6,564.30	6,898.80	7,233.30	7,423.50	7,616.10	7,989.90
O-5	3,837.60	4,323.00	4,622.40	4,678.50	4,864.80	4,977.00	5,222.70	5,403.00	5,635.50	5,991.90	6,161.70	6,329.10	6,519.60	6,519.60	6,519.60
O-4	3,311.10	3,832.80	4,088.70	4,145.70	4,383.00	4,637.70	4,954.50	5,201.40	5,372.70	5,471.10	5,528.40	5,528.40	5,528.40	5,528.40	5,528.40
O-3 ***	2,911.20	3,300.30	3,562.20	3,883.50	4,069.50	4,273.50	4,405.80	4,623.30	4,736.10	4,736.10	4,736.10	4,736.10	4,736.10	4,736.10	4,736.10
O-2 ***	2,515.20	2,864.70	3,299.40	3,410.70	3,481.20	3,481.20	3,481.20	3,481.20	3,481.20	3,481.20	3,481.20	3,481.20	3,481.20	3,481.20	3,481.20
O-1 ***	2,183.70	2,272.50	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80	2,746.80
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-3E	-	-	-	$3,883.50	$4,069.50	$4,273.50	$4,405.80	$4,623.30	$4,806.30	$4,911.00	$5,054.40	$5,054.40	$5,054.40	$5,054.40	$5,054.40
O-2E	-	-	-	3,410.70	3,481.20	3,591.90	3,778.80	3,923.40	4,031.10	4,031.10	4,031.10	4,031.10	4,031.10	4,031.10	4,031.10
O-1E	-	-	-	2,746.80	2,933.70	3,042.00	3,152.70	3,261.60	3,410.70	3,410.70	3,410.70	3,410.70	3,410.70	3,410.70	3,410.70

* Basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $11,874.90 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $14,155.50 per month, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $11,874.90 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
WARRANT OFFICERS															
W-5	-	-	-	-	-	-	-	-	-	-	-	$5,169.30	$5,346.60	$5,524.50	$5,703.30
W-4	$3,008.10	$3,236.10	$3,329.10	$3,420.60	$3,578.10	$3,733.50	$3,891.00	$4,044.60	$4,203.60	$4,356.00	$4,512.00	4,664.40	4,822.50	4,978.20	5,137.50
W-3	2,747.10	2,862.00	2,979.30	3,017.70	3,141.00	3,281.70	3,467.40	3,580.50	3,771.90	3,915.60	4,058.40	4,201.50	4,266.30	4,407.00	4,548.00
W-2	2,416.50	2,554.50	2,675.10	2,763.00	2,838.30	2,993.10	3,148.50	3,264.00	3,376.50	3,453.90	3,579.90	3,705.90	3,831.00	3,957.30	3,957.30
W-1	2,133.90	2,308.50	2,425.50	2,501.10	2,662.50	2,782.20	2,888.40	3,006.90	3,085.20	3,203.40	3,320.70	3,409.50	3,409.50	3,409.50	3,409.50
ENLISTED MEMBERS															
E-9 *	-	-	-	-	-	-	$3,564.30	$3,645.00	$3,747.00	$3,867.00	$3,987.30	$4,180.80	$4,344.30	$4,506.30	$4,757.40
E-8	-	-	-	-	-	$2,975.40	3,061.20	3,141.30	3,237.60	3,342.00	3,530.10	3,625.50	3,787.50	3,877.50	4,099.20
E-7	$2,068.50	$2,257.80	$2,343.90	$2,428.20	$2,516.40	2,667.90	2,753.40	2,838.30	2,990.40	3,066.30	3,138.60	3,182.70	3,331.50	3,427.80	3,671.40
E-6	1,770.60	1,947.60	2,033.70	2,117.10	2,204.10	2,400.90	2,477.40	2,562.30	2,636.70	2,663.10	2,709.60	2,709.60	2,709.60	2,709.60	2,709.60
E-5	1,625.40	1,733.70	1,817.40	1,903.50	2,037.00	2,151.90	2,236.80	2,283.30	2,283.30	2,283.30	2,283.30	2,283.30	2,283.30	2,283.30	2,283.30
E-4	1,502.70	1,579.80	1,665.30	1,749.30	1,824.00	1,824.00	1,824.00	1,824.00	1,824.00	1,824.00	1,824.00	1,824.00	1,824.00	1,824.00	1,824.00
E-3	1,356.90	1,442.10	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80	1,528.80
E-2	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00	1,290.00
E-1 **	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80	1,150.80
E-1 ***	1,064.70	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $5,732.70 per month, regardless of cumulative years of service under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 3)

Part II-RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $764.40.

Note: As a result of the enactment of sections 602-694 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY P

(Effective on the first day of the first a able pay period beginning on or after Janua , 2003)

Locality Pay Area[1]	Rate
Atlanta, GA	9.74%
Boston-Worcester-Lawrence, MA-NH-ME-CT-RI	13.57%
Chicago-Gary-Kenosha, IL-IN-WI	14.58%
Cincinnati-Hamilton, OH-KY-IN	12.09%
Cleveland-Akron, OH	10.33%
Columbus, OH	10.70%
Dallas-Fort Worth, TX	10.90%
Dayton-Springfield, OH	9.62%
Denver-Boulder-Greeley, CO	13.34%
Detroit-Ann Arbor-Flint, MI	14.71%
Hartford, CT	14.11%
Houston-Galveston-Brazoria, TX	18.61%
Huntsville, AL	9.08%
Indianapolis, IN	8.85%
Kansas City, MO-KS	9.28%
Los Angeles-Riverside-Orange County, CA	16.05%
Miami-Fort Lauderdale, FL	12.45%
Milwaukee-Racine, WI	10.05%
Minneapolis-St. Paul, MN-WI	11.56%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	15.23%
Orlando, FL	8.67%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	12.11%
Pittsburgh, PA	9.52%
Portland-Salem, OR-WA	11.64%
Richmond-Petersburg, VA	9.67%
Sacramento-Yolo, CA	11.99%
St. Louis, MO-IL	8.98%
San Diego, CA	12.70%
San Francisco-Oakland-San Jose, CA	19.04%
Seattle-Tacoma-Bremerton, WA	11.77%
Washington-Baltimore, DC-MD-VA-WV	11.48%
Rest of U.S.	8.64%

SCHEDULE 10-ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

AL-3/A	$ 89,200
AL-3/B	96,000
AL-3/C	102,900
AL-3/D	109,800
AL-3/E	116,600
AL-3/F	123,400
AL-2	130,400
AL-1	134,000

[1]Locality Pay Areas are defined in 5 CFR 531.603.

[FR Doc. 03–464
Filed 1–7–03; 8:45 am]
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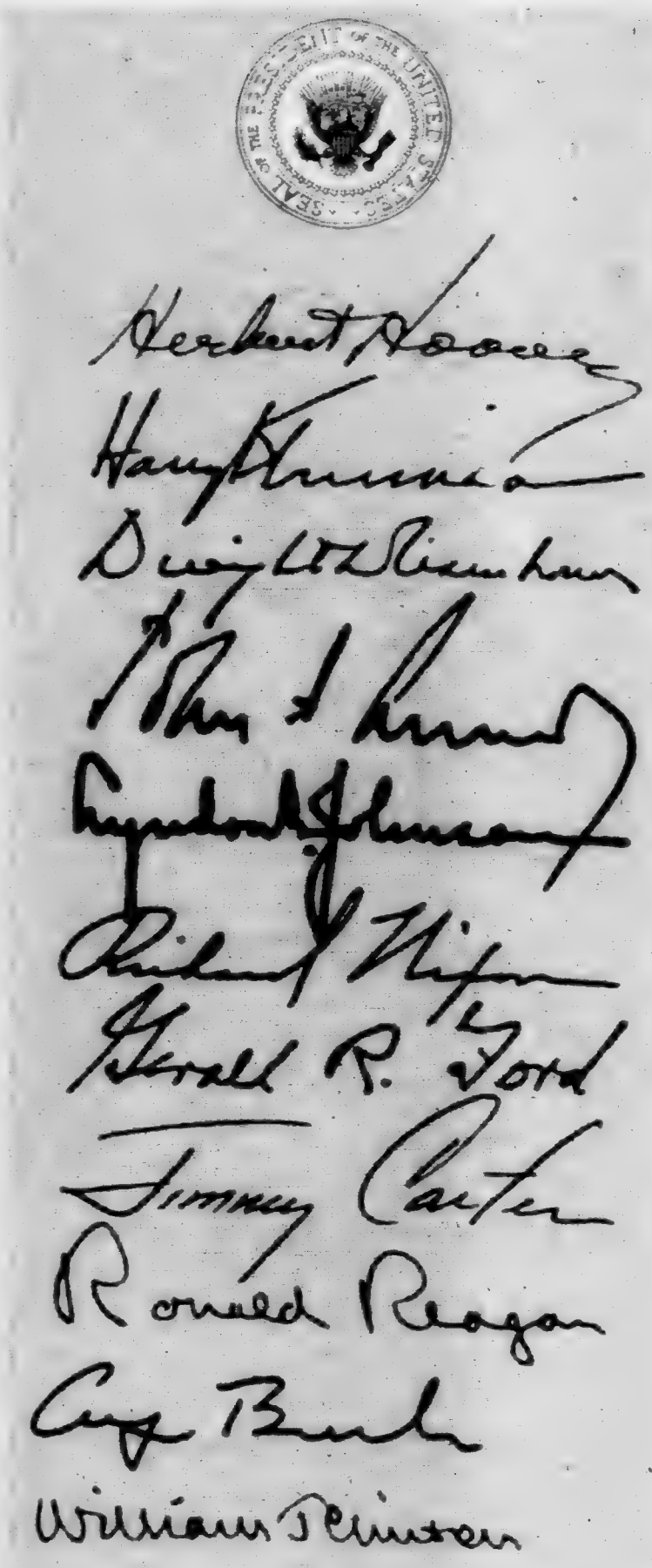

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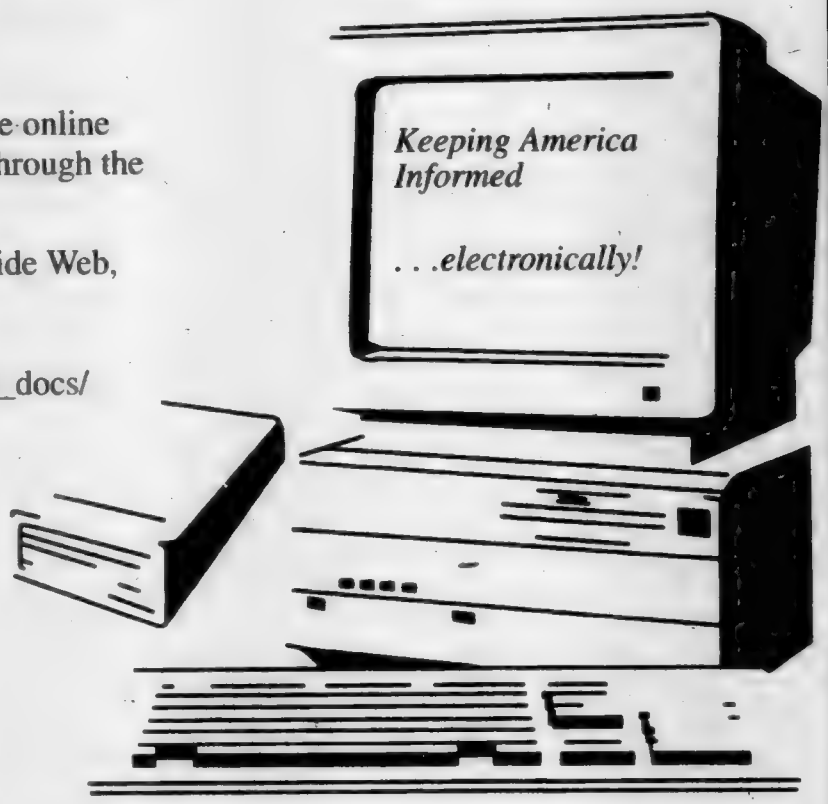

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–7 FR]

Raisins Produced From Grapes Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Raisin Administrative Committee (Committee) for the 2002–03 and subsequent crop years from $6.50 to $8.00 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The Committee locally administers the Federal marketing order which regulates the handling of raisins produced from grapes grown in California (order). Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California raisin handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002–03 and subsequent crop years from $6.50 to $8.00 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The order authorizes volume control provisions that establish free and reserve percentages for raisins acquired by handlers. Free tonnage raisins may be sold by handlers to any outlet, and reserve tonnage raisins are held by handlers for the account of the Committee or released or sold to handlers for sale to free tonnage outlets. Reserve raisins held for the account of the Committee are not assessable. With projected assessable tonnage about 81,000 tons less than last year's assessable tonnage, sufficient income should be generated at the higher assessment rate for the Committee to meet its anticipated expenses. This action was recommended by the Committee at a meeting on July 24, 2002.

Sections 989.79 and 989.80, respectively, of the order provide authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

A continuous assessment rate of $6.50 per ton has been in effect since the 2000–01 crop year. For the 2002–03 crop year, the Committee recommended increasing the assessment rate to $8.00 per ton of assessable raisins to cover recommended administrative expenditures of $1,912,000. This compares to budgeted expenses of $2,080,000 for the 2001–02 crop year. Major expenditures include $663,000 for export program administration and related activities, $500,000 for salaries, $164,800 for contingencies, and

$160,000 for compliance activities. Budgeted expenses for these items in 2001–02 were $662,500, $500,000, $303,500, and $220,000, respectively.

The recommended $8.00 per ton assessment rate was derived by dividing the $1,912,000 in anticipated expenses by an estimated 239,000 tons of assessable raisins. The Committee recommended increasing its assessment rate because the projected 2002–03 assessable tonnage of 239,000 tons is 81,000 tons lower than last year's assessable tonnage. Sufficient income should be generated at the higher assessment rate for the Committee to meet its anticipated expenses. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining seven handlers have sales less than $5,000,000. No more than seven handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent crop years from $6.50 to $8.00 per ton of assessable raisins acquired by handlers. The Committee recommended 2002–03 expenditures of $1,912,000. Major expenditures include $663,000 for export program administration and related activities, $500,000 for salaries, $164,800 for contingencies, and $160,000 for compliance activities. Budgeted expenses for these items in 2001–02 were $662,500, $500,000, $303,500, and $220,000, respectively. With anticipated assessable tonnage at 239,000 tons, about 81,000 tons lower than last year's assessable tonnage, sufficient income should be generated at the $8.00 per ton assessment rate to meet expenses. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

The industry considered various alternative assessment rates prior to arriving at the $8.00 per ton recommendation. The Committee's Audit Subcommittee met on July 24, 2002, to review preliminary budget information. The subcommittee was aware that the full Committee would be meeting later that day to consider actions that would impact the 2002 free tonnage percentage and, thus, the quantity of 2002 assessable tonnage. The Audit Subcommittee considered assessment rates of $7.50 and $8.00 per ton based on varying levels of assessable tonnage. Ultimately, the full Committee adopted the subcommittee's recommendation of $8.00 per ton based on 239,000 tons of assessable tonnage.

A review of statistical data on the California raisin industry indicates that assessment revenue has consistently been less than one percent of grower revenue in recent years. Although no official estimates or data are available for the upcoming season, it is anticipated that assessment revenue will likely continue to be less than one percent of grower revenue in the 2002–03 crop year, even with the increased assessment rate.

Regarding the impact of this action on affected entities, this action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order.

Additionally, the Audit Subcommittee and full Committee meetings held on July 24, 2002, where this action was deliberated were public meetings widely publicized throughout the California raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on November 21, 2002 (67 FR 70182). Copies of the proposed rule were mailed by the Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition the rule was made available through the Internet by the Office of the Federal Register and USDA. A 10-day comment period ending December 2, 2002, was provided for interested persons to respond to the proposal.

One comment was received opposing the proposed increase in the assessment rate. The commenter stated that the estimate of assessable tonnage used by the Committee was artificially low, improperly justifying a higher assessment rate. The commenter argued that issuance of the proposed assessment rate at this time would be arbitrary, capricious, and not in

accordance with law because there is no field price for raisins and USDA has not approved the Raisin Administrative Committee's recommendation for free and reserve tonnage. The commenter also suggests that last year's assessment rate could be retained by simply increasing the amount of assessable tonnage by 81,000 tons.

We disagree with the commenter. The issuance of this rule is consistent with the order provisions that authorize assessments. The Committee derived the $8.00 per ton assessment rate only after determining the level of necessary and appropriate administrative expenses, and dividing total administrative expenses by assessable tonnage. If later estimates indicate that the actual assessable tonnage is sufficiently greater than that projected by the Committee on July 24, 2002, the Committee could recommend that the assessment rate be reduced. Upon approval by the Secretary, this lower rate would be applied to all assessable 2002–03 crop year raisins. In either case, the assessment revenue collected from handlers would be used to fund the Committee's approved administrative expenses in accordance with §§ 989.79 and 989.80.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee, the comment received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving 2002–03 raisin crop from growers; (2) the crop year began on August 1, 2002, and the assessment rate applies to all raisins received during the 2002–03 and subsequent seasons; (3) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 10-day comment period was provided for in the proposed rule and the comment received was considered by USDA in reaching a decision on this matter.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.347 is revised to read as follows:

§ 989.347 Assessment rate.

On and after August 1, 2002, an assessment rate of $8.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: January 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–455 Filed 1–6–03; 4:34 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 996, 997, 998, and 999

[Docket No. FV02–996–1 FIR]

Establishment of Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States and Termination of the Peanut Marketing Agreement and Associated Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with changes, an interim final rule establishing a new part 996 which requires all domestic and imported peanuts marketed in the United States to be officially inspected. This action is mandated by the Farm Security and Rural Investment Act of 2002, enacted May 13, 2002. This rule continues handling standards that handlers and importers must follow and edible quality standards that all such peanuts intended for edible use must meet prior to entering human consumption channels. Safeguards to protect against peanut quality concerns are also specified. This rule also finalizes the termination of the Peanut Marketing Agreement No. 146 (Agreement) and the rules and regulations issued under the Agreement, and the termination of companion regulations that applied to imported peanuts and peanuts handled by persons not subject to the Agreement.

DATES: The changes to the interim rule of September 9, 2002 (67 FR 57129), are effective January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Wendland or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, suite 2A38, Unit 155, Riverdale, Maryland 20737; telephone (301) 734–5243, Fax: (301) 734–5275 or Ronald L. Cioffi, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938; or E-mail: *james.wendland@usda.gov*, *kenneth.johnson@usda.gov* or *ronald.cioffi@usda.gov*.

Small businesses may request information on complying with this rule by contacting Jay Guerber, at the same DC address as above, or E-mail: jay.guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under section 1308 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), 7 U.S.C. 7958, hereinafter referred to as the "Act."

This final rule has been determined to be non-significant for the purposes of Executive Order 12866 by the Office of Management and Budget (OMB) and therefore has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Prior documents in this proceeding are: an interim final rule published in the **Federal Register**, (67 FR 57129, September 9, 2002) and a correction (67 FR 63503, October 11, 2002).

Termination of the Peanut Marketing Agreement and the Peanut Non-signer and Import Regulations

This rule finalizes termination of Peanut Marketing Agreement No. 146 (7

CFR part 998.1–998.61) and the rules and regulations (7 CFR part 998.100–998.409) in effect under the Agreement on December 31, 2002, so that indemnification payments can be made on 2001 crop peanuts. This rule also finalizes termination of the companion regulations that apply to peanuts handled by persons not subject to the Agreement (7 CFR part 997) and to imported peanuts (7 CFR part 999.600) effective January 13, 2003.

The Peanut Marketing Agreement No. 146 (7 CFR part 998) has been in effect since 1965 under the authority of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (AMAA). The Agreement was administered by the Peanut Administrative Committee (PAC), which was comprised of peanut handlers and producers appointed by USDA. Minimum quality regulations were applied to handlers who signed the Agreement. The Agreement covered peanuts produced in the three regional production areas in the United States. The Agreement also included authority for indemnification payments to signatory handlers on peanuts involved in product and appeals claims due to aflatoxin content. Reporting and recordkeeping requirements also were prescribed. Handlers paid assessments to the PAC to cover program administrative and indemnification costs.

Consistent with the requirements of the AMAA, comparable quality requirements had been in effect for peanuts handled by persons not signatory to the Agreement ("non-signers"). The non-signer program (7 CFR part 997) was mandated in 1989 by Pub. L. 101–220, which amended the AMAA. The peanut import regulation had been authorized by section 108B(f)(2) of the Agricultural Act of 1949 (7 U.S.C. 1445c3), as amended in 1990 and 1993.

The non-signer regulations covered peanuts handled by persons not subject to the Agreement. The inspection and quality requirements were the same as those under the Agreement. Non-signer handlers had to pay the same administrative assessment rate as applied to signatory handlers under the Agreement.

The peanut import regulation required imported peanuts to meet the same quality and handling requirements as required under the Agreement. Imported peanuts were maintained under lot identification procedures and kept separate and apart from domestic peanuts until certified for human consumption use.

Under all three programs, failing peanuts could be reconditioned to meet edible requirements or disposed of in non-edible outlets. Safeguard provisions were included in the three programs to ensure that the Federal or Federal-State Inspection Service (Inspection Service) sampled, inspected, and certified the quality of all peanut lots intended for edible consumption, and that chemical analyses were performed by USDA laboratories or laboratories approved by USDA.

The Farm Security and Rural Investment Act of 2002 terminated the PAC effective July 1, 2002. That action, in turn, required termination of the Agreement and its implementing regulations. The Agreement and its implementing regulations are terminated effective January 1, 2003, by the interim final rule and indemnification payments for 2001 peanuts can be made through December 31, 2002. The companion regulations covering peanuts handled by persons not signatory to the Agreement and imported peanuts were terminated effective September 10, 2002. Assessments collected by the PAC under the Agreement and by USDA under the non-signer regulations ceased with 2001 crop peanuts.

New Peanut Program Authority

Section 1308 of the Act requires that USDA take several actions with regard to peanuts marketed in the United States, effective with 2002 crop peanuts.

Mandatory Inspection: Paragraph (a) requires that all peanuts marketed in the United States (including imported peanuts) be officially inspected and graded by Federal or Federal-State inspectors.

Termination of the Peanut Administrative Committee: Paragraph (b) terminated the PAC effective July 1, 2002. As noted above, because the PAC was charged with daily oversight of the Agreement's regulatory program, termination of the PAC necessitated termination of the Agreement and its implementing regulations. That termination is effective January 1, 2003, and indemnification payments on 2001 crop peanuts can be made through December 31, 2002. The companion non-signer and peanut import regulations were based on regulations under the Agreement. Those regulations were terminated effective September 10, 2002.

Establishment of a Peanut Standards Board: Paragraph (c) provides for the establishment of a Peanut Standards Board (Board), and requires USDA to consult with the Board prior to establishing or changing quality and handling standards for domestically produced and imported peanuts. The Board is not subject to the Federal Advisory Committee Act. A transition period is designated to allow time for USDA to implement nomination procedures and select a Board, as prescribed under the Act.

USDA received nominations and applications from interested persons to serve on the Board. A notice was published in the **Federal Register** on August 2, 2002 (67 FR 50409), and an application form was posted on the AMS website at: *http://www.ams.usda.gov/fv/peanut-farmbill.htlm*. Written nominations were received through September 3, 2002.

The Act also provides, in paragraph (g)(1) of section 1308, that during the transition period from the Agreement to the new program, USDA may designate persons serving as members of the PAC to serve as members of the Board, on an interim basis, for the purpose of carrying out the duties of the Board. USDA established the interim Board and consulted with it on three occasions to establish the quality and handling standards specified in this program.

Maintaining wholesome quality peanuts: Paragraph (d) directs USDA to make identifying and combating the presence of all quality concerns related to peanuts a priority in the development of quality and handling standards for peanuts and in the inspection of domestically produced and imported peanuts. The Act directs USDA to consult with appropriate Federal and State agencies to provide adequate safeguards against all quality concerns related to peanuts. USDA notified State government Inspection Service supervisors of the proposed text on the internet and met with supervisors on July 29 and August 15, 2002. USDA also has contacted officials in the United States Customs Service (Customs Service) and the Food and Drug Administration (FDA) with regard to this new program.

Imported peanuts: Paragraph (e) provides that imported peanuts shall be subject to the same quality and handling standards as apply to domestically produced peanuts.

Program Continuity

To maintain program continuity until the new peanut program could take effect, USDA continued the implementing regulations of the Agreement and the non-signer and import regulations as provided above. Assessments are not being collected and indemnification payments are not being made on 2002 crop peanuts.

The provisions of the new program apply to 2002 and subsequent crop year peanuts, to 2001 crop year peanuts not yet inspected, and to 2001 crop year failing peanuts that have not met disposition standards. This program continues in force and effect until modified, suspended, or terminated.

Pursuant to the Act, USDA consulted with interim Board members in the development of the quality and handling standards established in this rulemaking. USDA coordinated a conference call with interim Board members on July 2, 2002. An initial draft text with reduced USDA oversight was prepared by USDA and distributed to the interim Board members prior to the conference call. The draft was reviewed and initial changes and comments were proposed. At the interim Board's direction, four interim Board officers met with USDA on July 17, 2002. Three of the four officers proposed several additional changes, including a proposal to change the minimum kernel size that could be used in human consumption outlets. A second draft text was prepared reflecting those proposed changes. That draft was again distributed to interim Board members and State supervisors of the Inspection Service and was discussed at a meeting in Atlanta, Georgia, on July 30, 2002. In addition to the 18-member interim Board, approximately 50 industry members and Inspection Service State supervisors attended the meeting. The revised draft text was thoroughly reviewed and several modifications were recommended. Quality standards which would allow purchase of Segregation 2 and 3 quality peanuts for processing for human consumption use and the proposed change in the minimum kernel size were discussed by the interim Board. An implementation schedule also was discussed.

USDA revised the draft text after the Atlanta meeting and posted it on the AMS website. Written comments were received from interim Board members after the meeting and a few comments were received in response to the posting of the draft standards text on the internet. Comments to the draft were accepted through August 12, 2002.

Comments From Interim Board Members and Others to the Draft Rule

Most interim Board members indicated that they did not seek radical or wholesale changes to the Agreement regulations. This was apparent from comments offered during the initial conference call and at the July 30, 2002, interim Board meeting.

Grower member representatives raised three general objections to establishment of new standards for the 2002 peanut crop. They believed that the new program should not have been implemented if the 2002 crop harvest had begun. Because of geographical location, peanuts in south Texas and north Florida, representing a small portion of the total crop, were harvested before USDA could complete this rulemaking process. Because the new quality standards offer potential benefits to growers and handlers, some grower members contended that implementation after the 2002 crop harvest had begun would be unfair to producers and handlers in those early-harvest areas.

Some interim Board members suggested that the greatest benefit from the program—purchase of Segregation 2 and 3 peanuts for possible edible use—would affect only a very small percentage of the early harvest peanuts, and that it may be possible to warehouse some of the early season farmers stock peanuts until the new standards become effective. Other interim Board members did not contest this assessment.

Section 1308 of the Act provides that its provisions take effect with the 2002 peanut crop. An alternative considered was to continue the more restrictive 2001 regulations for the entire 2002 crop and implement the new program for the 2003 crop. However, USDA believed that implementation of the program as soon as possible after harvest begins was better than that alternative. The benefits of the new program to the entire industry are compelling. Most interim Board members believe that there should not be further delay in implementing this action. Only a small number of early harvest producers were affected by the implementation date of this action. Further, storage accommodations can help alleviate any timing concerns. Finally, the Act mandates that the new program be in effect for 2002 crop peanuts.

The same interim Board members concerned about producer fairness also cautioned about making significant changes to incoming quality provisions without knowledge of changes being considered to the Marketing Assistance Program by USDA's Farm Service Agency. Pursuant to the Act, the FSA loan program also was being restructured, and the extent and nature of the loan provisions were not known until after the quality and handling standards in this program became effective.

These members stated that the provision to allow purchase of Segregation 2 and 3 quality peanuts for edible consumption could affect the FSA loan program. They questioned details relating to the loan payments, inspection costs and storage of farmers stock peanuts placed under FSA's loan program.

None of the definitions and other provisions addressed in the interim final rule are applicable to other peanut programs operated by USDA, such as the loan and direct payment, counter-cyclical payments, and quota buyout payment programs provided for in the 2002 Act. Thus, for example, the definitions of "handle" and "handler" set out in the interim final rule have no application to those other programs and do not govern eligibility for payments, or the kinds of payments that can be made, under those other programs. Rather, the definitions and other provisions implemented in the interim final rule were strictly developed for the limited purposes reflected in the rule and no other. The policy choices and any statutory interpretations involved reflect that limited purpose. FSA was consulted in that respect and assured that the understanding and intent was clearly that these rules would not in any way restrict policy determination made with respect to other programs. Rules for other peanut programs will be issued in due course. Further, references in this preamble to previous peanut programs is meant to refer to those peanut operations which were under the control of the Agricultural Marketing Service (AMS) and not those under the control of FSA or FSA's predecessor agency.

Written comments concerning provisions of the draft rule were received from a few independent handlers stating that not all handlers are able to remove all defective kernels, particularly in lots with concealed freeze damage or kernels with yellow pitting. Also, some alleged that not all peanut shelling operations have the latest technologies or their own dedicated blanching facilities to remove all kernels which contain aflatoxin.

Handlers must make decisions regarding the reconditioning of each failing lot. Those decisions are made on a lot-by-lot basis, based upon the grade factors identified in the lot's latest grade inspection or aflatoxin certificate. Handlers with the latest milling technologies or their own blanching operations may be better able to recondition failing lots than handlers without such equipment. Handlers are not prevented from remilling lots more than one time to remove defective or contaminated kernels. Custom blanching operations with current

technologies are available to all handlers. If reconditioning operations are not successful, other handlers with such equipment could acquire the failing lots or recondition them on a contract basis. Because handlers are not prevented from reconditioning other handlers' failing lots, high quality standards can be established and maintained.

In the 1980's, Agreement regulations prohibited small kernels from use in edible consumption lots because research showed a higher incidence of aflatoxin in small peanuts. Research conducted at that time indicated that aflatoxin occurs more frequently in peanuts which are under stress during the growing season and that many peanut kernels are small because the plants were under such stress.

Some large handlers contended in the interim Board meeting that modern sorting technologies are able to remove the smaller, contaminated kernels and that end-product manufacturers now have markets for smaller whole kernels in snack foods and other edible products. The handlers recommended that the change would allow more domestically produced peanuts to be used in human consumption outlets and, thus, result in a more efficient use of total domestic peanut production. They also claimed that foreign manufacturers of peanut products, such as peanut paste and peanut butter, are not under such minimum size restrictions for the manufactured product they export to the United States. The handlers contended that relaxation in the size and shape of the holes in the screens used to sort out small kernels would allow domestic handlers and manufacturers to better compete with foreign product.

However, interim Board members representing regional grower associations opposed smaller kernel sizes for food quality and wholesomeness reasons. They contended that the risk of increased aflatoxin contamination in the smaller kernels outweighs the benefit of any incremental increase in the use of small peanut kernels, or cost savings accrued. Those opposed to the use of small kernels contended that, in addition to having a higher incidence of aflatoxin, smaller kernels also have a bitter taste.

At the interim Board meeting, a representative from a peanut manufacturers' association said that manufacturers oppose use of smaller size kernels.

The draft text which USDA posted on the internet included a table displaying amended screen sizes that would allow smaller kernels in edible lots. Written comments were received, most from interim Board members, opposing the use of round hole screens and the smaller kernel size. Those comments cited concerns for wholesomeness and a loss of quality if smaller kernels were allowed in edible lots. Some suggested that the screen sizes should not be changed without further research on the increased risk of aflatoxin in small peanut kernels.

After review of the positions presented at the interim Board meeting and the written comments received, USDA determined that the kernel sizes specified under the previous peanut programs should be established in the interim final rule and continue in effect for the 2002 crop year. Therefore, the recommendation to change the minimum size standard was not accepted for 2002 crop peanuts.

An oilmill operator (crusher) commenting on the draft text stated that the mission of the new standards should be to ensure food safety and not to establish restrictions that increase costs and hinder trade between willing sellers and buyers. Therefore, it was the commenter's view that peanuts to be used for non-edible purposes such as crushing should not be subject to the same incoming identification and inspection requirements as edible peanuts. USDA discussed and explained in the Interim Final Rule why incoming inspection is necessary.

Several additional minor changes were made to the draft text, reviewed by the interim Board, and posted on the internet. Those changes were based on further USDA review of the draft text and discussions with Inspection Service supervisors. The changes included re-instituting Agreement requirements in the new program that help USDA monitor the disposition of sheller oilstock residuals, the movement of failing lots through the reconditioning processes, adjustments to positive lot identification procedures, and compliance oversight. A more thorough recordkeeping paragraph also was added to reflect current industry practice and the requirements of this program.

USDA published the interim final rule (67 FR 57129) establishing the new peanut minimum quality and handling standards on September 9, 2002. The rule became effective September 10, 2002. Comments were accepted through October 9, 2002. Twenty five comments were received and are addressed below.

Comments Concerning the Interim Final Rule

The major issue discussed in the comments was the large handlers' recommendation to change screen sizes to reduce the minimum kernel size for peanuts intended for human consumption. Twenty one comments were received on that topic. Five handlers, 10 growers, and 2 other persons supported the recommendation to change the minimum kernel size. Their position was not changed from that outlined in the interim final rule discussion: (1) Domestic and international markets exist for small peanut kernels; (2) allowing the use of smaller kernels in edible lots will enable domestic handlers to compete with foreign peanut butter produced without regard to kernel size; and (3) wholesomeness is ensured because the outgoing standards are not changed in the new Peanut Standards rule.

Two growers and two handlers commented that the screens should not be changed. They claimed that an Agricultural Research Service (ARS) study conducted in the late 1980s shows a higher incidence of aflatoxin contamination in small peanut kernels. They commented that allowing the use of smaller kernels is not worth the increased risk of aflatoxin contamination in those small kernels. They also cited the pungent taste of small kernels as a quality factor which should weigh against use of smaller peanut kernels.

Proponents of smaller kernel use also contend that wholesomeness is not a concern because the electronic sorting equipment identifies and removes all damaged and contaminated kernels, even small, contaminated kernels. Based upon compliance staff information, approximately 31 of 71 handlers have electronic equipment capable of efficiently sorting out contaminated small kernels. One commenter pointed out that a reduction in kernel size for domestic peanuts would be applied to imported peanuts, but that it is not known how many foreign peanut shelling operations utilize electronic equipment.

Manufacturer associations opposed changing screen sizes when the interim final rule was being prepared. A handler commented that brand-name manufacturers are the ones best prepared, but least likely (due to quality concerns) to use the small kernels, while smaller, low-end buyers are most likely to buy the low-priced small kernels but are least likely to have the equipment or expend extra funds for testing to assure the small kernels are free of aflatoxin contamination.

After consideration of comments received on minimum kernel size, USDA has determined the regulations should continue, for the 2002 peanut

crop, the same screen sizes established in the interim rule and used since the late 1980s. This decision is based on USDA's determination that further research on aflatoxin contamination in small kernels should be conducted. Such research has been started by ARS with the cooperation of the Federal-State Inspection Service and Agricultural Marketing Service aflatoxin laboratories in Georgia. Furthermore, this year's marketing season, using the present screen sizes, is well under way and any change in screen sizes at this stage would not cover the majority of the 2002 crop. If, based on USDA's research and studies, it is determined that a change in screen size is warranted, such change will be considered and discussed with the Board.

Four other issues were covered in comments on the interim final rule. A few handlers requested that a sampling and inspection fee of $.0027 per pound, formerly charged to buyers under the Peanut Marketing Agreement, be retained in the new peanut standard program. The interim final rule terminated the Agreement. As discussed in the interim final rule, USDA did not include the fee in that rule because the fee is considered a contractual matter between sellers and buyers. This rule does not reinstate such fee.

Several handlers pointed out that a separate moisture content requirement for Virginia-type seed peanuts was omitted in the interim final rule. This was corrected by memorandum from USDA to the Inspection Service dated October 4, 2002. The separate moisture requirement for Virginia-type seed peanuts is added to the final rule as a proviso to the incoming quality standards in paragraph (b) of § 996.30.

Three commenters in Oklahoma requested an increase in the incoming grade tolerance for foreign material content because their buying point does not have facilities to clean freshly pulled farmers stock peanuts to meet the required foreign material content tolerance. However, the tolerance is the same as required under USDA's previous peanut programs for many years. Moreover, alternative courses of action provided under the previous programs are continued in this program to help growers and buying point operators to meet the foreign material content tolerance. Paragraph (c) of § 996.30 provides that farmers stock peanuts with a foreign material content exceeding 10.49 percent may held separately until milled, moved over a sand-screen before storage, or shipped directly to a handler for prompt shelling.

Finally, one interim Board grower member opposed the relaxation to allow purchase of Segregation 3 peanuts for processing into edible peanuts. The commenter stated that this would increase the chances of kernels with aflatoxin ending up in edible peanut lots. The majority of other commenters supported the relaxation in comments to the draft provisions and interim final rule on the premise that contaminated kernels would be sorted out in the handling process. USDA will continue to allow the purchase of Segregation 3 peanuts for processing for human consumption use because this will enable a more efficient use of peanut production.

Clarification of Interim Final Rule

Clarification to certain provisions of the interim rule were suggested by the Inspection and the Customs Service. These are as follows:

The Inspection Service suggested that paragraph (b)(4) of § 996.40, regarding the sampling and testing of peanuts for outgoing requirements, should read that number 3 check samples may be ground by the Inspection Service or a USDA or USDA-approved laboratory. The interim final rule provided only that the Inspection Service would grind number 3 samples. The phrase "USDA or USDA-approved laboratory" is added to § 996.40(b)(4) to allow those entities to grind number 3 check samples if it is more convenient to the efficient testing of the number 3 samples.

Paragraph (g) of § 996.50 provides for the positive lot identification (PLI) of residual peanuts by red tags or other PLI means acceptable to the Inspection Service. The Inspection Service also suggested that it is not the responsibility of Inspection Service personnel to determine the appropriate use of other PLI methods in addition to the use of red tags. However, Inspection Service personnel are able to utilize lot identification methods, other than red tags, if other methods are determined suitable and appropriate to a particular situation or lot of peanuts and are documented on the inspection certificate. The paragraph will continue to read as provided in the interim final rule.

Paragraph (c) of § 996.60, regarding the early arrival and storage of foreign peanuts in the U.S. prior to the opening of an import quota, incorrectly specifies that the Inspection Service may require re-inspection. However, the Inspection Service does not have authority to demand re-inspection. USDA may require such re-inspection. Paragraph (c) of § 996.60 is revised accordingly.

The Customs Service clarified titles and citations of Customs Service regulations specified in the preamble on page 57135 of the interim final rule. The correct citations are specified in the preamble discussion under Import Entry Procedures.

Customs also suggested changes in the preamble discussion and text definition of "conditionally released" to clarify that merchandise is not conditionally released for storage or warehousing. Under Customs Service procedures, warehoused merchandise is not conditionally released. Appropriate changes in the preamble discussion under the stamp-and-fax procedure and in the definition of "conditionally released" under § 996.2 have been made in this final rule.

The Customs Service requested that the preamble discussion regarding limiting lot size to 200,000 pounds clarify that Customs has no requirement on the amount of merchandise that can be covered under a single entry. The 200,000 pound limit is required by USDA and the inspection service to assure an accurate sampling protocol. The preamble language has been clarified accordingly.

Customs also suggested clarifications in the use of some terms in the preamble to be consistent with Customs Service terminologies. The preamble has been edited to use "Customs broker" rather than "import broker," "port of arrival" rather than "port of entry," and "warehousing" rather than "storage." In the discussion, the process involved in the conditional release of peanuts also has been clarified to conform with Customs Service procedures. The suggested clarifications are made in the preamble discussion in this final rule.

Finally, Customs Service suggested that the definition of importer under § 966.7 should include importers who enter peanuts intended for non-edible use. Importation of non-edible peanuts may not be economically feasible at this time, given the low value of oilstock and feed-quality peanuts. Further, it is not USDA's intention to restrict importation for such purposes. However, importers of all peanuts, regardless of intended use, must comply with the inspection and disposition requirements of this program. The definition of Importer under § 966.7 has been clarified accordingly.

After review of all comments received to the interim final rule, USDA finalizes, and continues in effect with changes, the interim final rule in 7 CFR part 996 as follows.

Peanut Quality and Handling Standards

This rulemaking action finalizes the interim final rule and continues in effect, with changes, part 996, peanut quality and handling standards. These standards are similar to the quality and handling requirements that were in effect under USDA's three previous peanut programs. The changes, described in the following discussion, are based on interim Board recommendations in developing the draft rule and on industry comments to the interim final rule.

No restrictions on use of farmers stock peanuts: Prior to issuance of the interim final rule, only farmers stock peanuts determined to be Segregation 1 quality peanuts could be acquired by handlers for preparation and disposition to human consumption outlets. Segregation 2 and 3 farmers stock peanuts were restricted to non-human consumption use such as seed, oilstock, animal feed, and birdseed.

This peanut standards program differs from the previous peanut programs in that handlers may purchase any segregation quality peanuts for shelling and eventual disposition to human consumption outlets, provided that such peanuts, after handling, meet the outgoing standards of this program. This change was recommended by several of the large peanut handling operations.

Some handlers on the interim Board stated that the prohibition on Segregation 2 and 3 peanuts for edible use is more than 35 years old and that modern technologies enable handlers to shell and mill failing quality peanuts of any segregation category. They stated that this will increase use of domestic peanut production for edible consumption without a loss in edible peanut quality. They also stated that raw, farmers stock peanuts produced in other countries are not subject to incoming quality requirements or restricted as to segregation levels in those countries. Thus, they believe, this change in the peanut program would place domestic handlers on an even playing field with shellers in other countries who might export to the United States peanuts shelled and handled from any quality raw peanuts.

At the interim Board meeting, at least one grower spoke in favor of removal of the restriction on the use of Segregation 2 and 3 farmers stock only in non-edible outlets. Many growers have long contended that a single moldy peanut in a wagonload of farmers stock greatly reduces the value of the entire wagon and, thus, significantly reduces the grower's income. These growers see this as unfair and believe that they should be able to market their peanuts without a restriction on segregation use.

Under this program, Segregation 3 peanuts with visible aflatoxin mold may be purchased by handlers and imported by importers. Safeguard procedures remain in place to assure peanut quality and wholesomeness. The requirement that any farmers stock peanuts shelled and milled for human consumption use must be inspected and certified as meeting outgoing quality standards for grade and aflatoxin content prior to disposition for human consumption use is continued in this final rule.

Storage of Segregation 2 and 3 farmers stock peanuts purchased by the handler is at the handler's discretion. Separate storage and shelling of Segregation 2 and 3 peanuts under the handler's ownership are no longer necessary because any peanuts intended for human consumption use must meet outgoing quality requirements before such use. Shelling of a handler's farmers stock peanuts and use of the handler's shelled peanuts also are at the handler's discretion, provided that any shelled peanuts which the handler disposes of for human consumption use are inspected and certified for outgoing grade quality, as indicated in the table in § 996.31(a), and certified negative as to aflatoxin pursuant to a chemical analysis carried out by a USDA or USDA-approved laboratory. Positive lot identification (PLI) practices covered under § 996.40(a) must also be followed. A handler may dispose of the handler's non-edible quality peanuts (sheller oilstock residuals) to such non-edible peanut uses as crushing into oil, or animal feed, or seed, pursuant to § 996.50. Disposition is at the handler's discretion, provided that non-edible peanuts are moved under positive lot identification procedures and records documenting all such dispositions are maintained by the handler pursuant to § 996.71(b).

To the extent that farmers stock peanuts are imported, the importer has the same discretionary control over the storage, handling, and disposition of such peanuts.

Any storage or subsequent inspection that a handler may carry out for farmers stock peanuts held under USDA's Farm Service Agency's (FSA) loan program are subject to the provisions of the loan program.

Likewise, a handler may receive or acquire farmers stock peanuts or shelled peanuts from another handler and proceed to mill and prepare those peanuts for edible or non-edible use. Any contractual arrangements covering storage, shelling, milling, or disposition of such peanut lots are up to the two handlers. However, any peanuts intended for human consumption must be certified for such use pursuant to § 996.31(a).

This final rule continues the same outgoing quality standards for damage, defects, foreign material and moisture, and maximum allowable aflatoxin content as required under the previous peanut programs. The 15 parts-per-billion (ppb) maximum aflatoxin content is specified in the definition of the term "negative aflatoxin content" in § 996.11.

Direct blanching without prior inspection: Under the previous programs, all peanuts were required to be sampled and inspected for grade quality and aflatoxin content as the peanuts completed the shelling operation. The peanuts also were positive lot identified at that time and kept separate and apart from other milled lots. After the peanuts were moved to a blanching operation and blanched, a second sampling and grade inspection was conducted.

Under this program, handlers intending to blanch peanuts pursuant to a buyer's demand, may move peanuts from the handler's shelling facility to the handler's dedicated blanching facility without obtaining outgoing inspection and PLI prior to movement. Under this provision, the handler's blanching operation may not blanch peanuts belonging to other handlers. Movement of such peanuts under these conditions may be without grade inspection and PLI.

This change from the previous peanut programs was recommended by interim Board handler members, who have their own blanching facilities, as a method of reducing handling and inspection costs and improving the efficiency of handling operations for peanuts that the handler intends to blanch. This provision does not apply to peanuts sent to a custom blancher for blanching because those peanuts may be commingled with peanuts from another handler. To help safeguard against inadvertent commingling with another handler's peanuts, peanut lots sent to a custom blancher must be maintained under positive lot identity and be accompanied by a valid grade inspection certificate.

Because the peanuts are sampled and inspected for grade and aflatoxin content after completion of the blanching operation, and PLI is applied at that time, the outgoing quality and identity of the peanuts is not jeopardized.

Reporting farmers stock acquisitions: Because handlers and importers may

shell and mill Segregation 2 and 3 peanuts into edible quality peanuts, it is necessary that USDA account for all farmers stock peanuts acquired by handlers and importers. This final rule continues to require that all farmers stock acquisitions, regardless of segregation category, must be reported by the handler and importer to USDA. Form FV–305, Handlers/Importers Monthly Report is similar to the form previously used under the non-signer peanut program and to the PAC–1 filed by signatory handlers under the Agreement.

Reporting failing lots: Under the previous programs, non-signer handlers and importers were required to file with USDA copies of the outgoing grade and aflatoxin certificates on every peanut lot failing quality or aflatoxin standards. USDA used these certificates to monitor reconditioning and proper disposition of the failing lots. Under the Agreement, the Inspection Service and the aflatoxin laboratories filed with PAC, all grade and aflatoxin certificates on behalf of the signatory handlers.

Reporting procedures similar to those used under the Agreement are used for all handlers and importers in this program. Thus, handlers and importers are not required to file failing grade quality and aflatoxin certificates with USDA. These certificates are filed by the Inspection Service and USDA and USDA-approved aflatoxin laboratories.

The incoming quality, outgoing quality, and handling standards established under the interim final rule and finalized in this rule are the same as, or similar to, the requirements under the previous peanut programs and are intended to maintain the peanut industry's high standards for peanut quality and wholesomeness.

Quality Standards

The following categories of peanuts are subject to inspection requirements and quality and handling standards established under part 996.

Incoming quality—farmers stock peanuts: Under this program, all farmers stock peanuts received by handlers or importers must be sampled and inspected by the Federal or Federal-State Inspection Service (Inspection Service) inspectors to determine the moisture content of the peanuts, the amount of foreign material in the peanuts, and the amount of damage and concealed damage in the peanuts. Moisture and foreign material content not exceeding 10.49 percent meet incoming quality standards—the same as under the previous peanut programs. The peanuts also are inspected for visible *Aspergillis flavus* mold. Seed peanuts produced in the Virginia-Carolina area may be received or acquired containing up to 11.49 percent moisture.

Domestically produced farmers stock peanuts are required to undergo incoming inspection at a buying point prior to shelling or storage. Incoming quality standards are found in paragraph (a) of § 966.30. Incoming inspection is conducted by the Inspection Service to determine the general grade level of raw, farmers stock peanuts presented by the producer at buying points in the various domestic production areas. Peanuts are graded for foreign material, loose-shelled kernels, and moisture content. Segregation 1 farmers stock peanuts may contain 2 percent or less damaged kernels and 1 percent or less concealed damage caused by rancidity, mold, or decay. Segregation 2 peanuts are lesser quality peanuts containing more than 2 percent damaged kernels, or more than 1 percent concealed damage. Segregation 3 peanuts are those which contain visible *Aspergillus flavus*. Segregation 2 and 3 peanuts may be shelled and entered into human consumption outlets provided the peanuts meet outgoing quality and wholesomeness requirements. Imported farmers stock peanuts must be transported directly to a buying point and subjected to incoming inspection to determine Segregation quality.

It is the handler's option to keep farmers stock peanuts segregated by category or to commingle Segregation 1, 2, and 3 peanuts in the handler's warehouse. Domestically produced and imported farmers stock peanuts, however, must be kept separate and apart because imported peanuts are subject to Customs Service redelivery demands until the imported peanuts are certified as meeting outgoing quality requirements specified in § 996.31.

Incoming inspection determines the quality of the farmers stock peanuts based on moisture content, foreign material, damage, loose-shelled kernels, and visible *Aspergillus flavus* mold. Handlers and importers must report to USDA acquisitions of all Segregation 1, 2, and 3 farmers stock peanuts. The Inspection Service issues USDA form FV–95, "Federal-State Inspection Service Notesheet" designating the lot as either Segregation 1, 2, or 3 quality. Reporting requirements are discussed in more detail below.

Because USDA cannot determine whether peanuts produced and milled in a foreign country originated from Segregation 1 quality peanuts, importers do not have to provide evidence of Segregation 1 quality for foreign peanuts imported in shelled or cleaned-inshell condition.

Outgoing quality—shelled peanuts: Both domestic and imported shelled peanuts must be sampled, inspected, and certified as meeting the outgoing grade standards specified in the table in § 996.31(a) entitled "Minimum Quality Standards—Peanuts for Human Consumption." The table lists, for different peanut varieties, maximum percentage tolerances for damaged kernels; unshelled kernels and kernels with minor defects; split and broken kernels and sound whole kernels (size factors); foreign material, and moisture content. All categories and tolerances in the table are the same as those in effect under the Agreement at the time the PAC was terminated.

Each shelled peanut lot also must undergo chemical testing by a USDA laboratory or a private laboratory approved by USDA. AMS' Science and Technology Programs assures that all of the laboratories conducting chemical analyses follow the same testing procedures. The maximum allowable presence of aflatoxin is 15 parts per billion (ppb)—the same standard as required under the three previous peanut programs. This tolerance has been in effect for more than 15 years and was in effect at the time the PAC was terminated.

Once certified as meeting outgoing quality standards under § 996.31(a) for shelled peanuts, a lot may not be commingled with any lot that has failed outgoing quality standards or any residual peanuts from reconditioning operations.

Outgoing quality—Cleaned-inshell peanuts: Based on the changes in the edible use of Segregation 2 and 3 peanuts, cleaned-inshell peanuts are no longer restricted to Segregation 1 peanuts. Cleaned-inshell peanuts are farmers stock peanuts that are cleaned, sorted, and prepared for human consumption markets in the U.S. and must be inspected against minimum quality standards not exceeding 2 percent damage, 10 percent moisture, and 0.5 percent foreign material. Cleaned-inshell peanuts also may not exceed more than 1 percent mold unless the lot is also chemically tested and found "negative" as to aflatoxin. These standards are found in paragraph (b) of § 996.31.

Handling Standards

Positive lot identification procedures are continued in effect under § 966.40. These procedures are necessary to maintain identification of peanut lots and ensure that lots certified for edible consumption are not commingled with

peanuts of lower quality. This section also establishes consistent procedures for collecting samples from peanut lots that are being inspected. Lot identification and sampling procedures must be applied consistently on all peanut lots undergoing inspection to ensure that all peanut lots are handled uniformly and lots once certified as meeting outgoing standards are maintained and shipped without loss of quality. PLI standards under this final rule are the same as the positive lot identification requirements previously used by the Inspection Service under the Agreement, non-signer, and import peanut programs.

The Inspection Service works with domestic peanut handlers, importers, and storage warehouses to determine the most appropriate PLI or lot identity method to be used on individual peanut lots. Several factors dictate which PLI method should be used: (1) Size of the lot; (2) storage space on the dock or in the warehouse; (3) whether any further movement of the lot is required prior to certification; and (4) other needs of the handler, importer, dock or warehouse operators, or the Customs Service.

For domestic lots and repackaged import lots, PLI includes PLI stickers, tags or seals applied to each individual package or container in such a manner that is acceptable to the Inspection Service and maintains the identity of the lot. For imported lots, PLI tape may be used to wrap bags or boxes on pallets, PLI stickers may be used to cover the shrink-wrap overlap, doors may be sealed to isolate the lot, bags or boxes may be stenciled with a lot number, or any other means that is acceptable to the Inspection Service. The crop year or quota year shown on the positive lot identification tags shall be the year in which the peanuts in the lot were produced domestically or imported into the United States, as appropriate.

PLI practices for both domestic and imported peanuts also include affixing a PLI seal to the door of a shipping container so that it cannot be opened without breaking the seal, and affixing a red tag on sewn bags of failing quality peanuts. Other methods acceptable to the Inspection Service that clearly identify the lot and prevent peanuts from being removed or added to the lot may be used. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and, if in other containers, by other means acceptable to the Inspection Service. All lots of shelled or cleaned-inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

The standard peanut lot size is 40,000 pounds, but may vary at the handler or buyer's preference. Lot size is limited to 200,000 pounds, which is the largest amount of peanuts that can be adequately sampled by the Inspection Service. The limitation was used under the agreement, non-signer, and import peanut programs.

Sampling procedures: This rule continues in effect uniform sampling procedures and sample sizes that the Inspection Service follows when conducting grade inspections, and in collecting peanuts for chemical analysis. The portion of the peanuts collected for chemical analysis are sent to a USDA or USDA-approved laboratory. A portion of the peanuts sampled are held by the Inspection Service as check samples if the lot is determined to fail either grade or aflatoxin analysis. These procedures and sample sizes are the same as those previously used under the Agreement, non-signer, and import peanut programs.

All required sampling and positive lot identification procedures are performed by inspectors of the Federal or Federal-State Inspection Service. Imported peanuts are subject to Customs Service redelivery demands if determined in violation of these quality or handling standards or Customs Service entry requirements referenced below. Handlers and importers must reimburse the Inspection Service and chemical laboratories for sampling and grade inspection and chemical analyses for aflatoxin. Incoming inspections range from $4.00 to $6.25 per ton of farmers stock peanuts. Sampling and outgoing grade inspections vary with each Federal-State Inspection Service and range from $1.50 to $3.00 a ton. Chemical analysis for aflatoxin averages $40.00 per analysis. The fee schedule for USDA laboratories appears at 7 CFR part 91.37.

Import Entry Procedures

The import entry and safeguard procedures established under the interim final rule and finalized in this rule are similar to the procedures applied under the previous peanut import program (7 CFR part 999.600).

U.S. Customs Service requirements: Importers of foreign produced peanuts must follow established Customs Service entry procedures and AMS stamp-and-fax notification and inspection procedures specified below. Customs Service importation procedures and requirements are set out in title 19 of the Code of Federal Regulations. The Customs Service regulations applicable to peanut handling and processing include, but are not be limited to: Bond requirements (19 CFR part 113); transfer of merchandise from port of arrival to another Customs Service office location (19 CFR parts 18 and 112); entry of merchandise for consumption (19 CFR parts 141 and 142; warehouse entry and withdrawal from warehouse for consumption (19 CFR part 144); establishment of bonded warehouses (19 CFR part 19); and within these parts, manipulation in bonded warehouses (19 CFR part 19.11); substitution of actual owner as importer of record (19 CFR part 141.20); failure to recondition merchandise (19 CFR part 113.62(e); and redelivery of merchandise to Customs custody (19 CFR part 113.62(d)) and 19 CFR 141.113). For Customs Service purposes, the term "consumption" means "use in the United States." Customs Service entry procedures are not superseded by the import procedures in this program.

It is the importer's responsibility to file import entry documentation and notify the Inspection Service with documentation sufficient to insure inspection of all imported peanut lots. It also is the importer's responsibility to account for disposition of all failing quality peanut lots imported by the importer. A bond secured by surety or U.S. Treasury obligations must be posted by the importer with the Customs Service to guarantee the importer's performance. For more information on these procedures, importers should contact their customs broker, the Customs Service office at the port where peanuts are expected to be entered, or *www.ustreas.gov/education/duties/bureaus/uscustoms.html*.

Safeguard procedures: The safeguard procedures in this part are similar to safeguard procedures already in place for peanuts and other imported fresh agricultural commodities and are consistent with the inspection, identification, and certification requirements applied to domestically produced peanuts.

To obtain information on importing peanuts or making arrangements for necessary inspection and certification, importers may contact the Fresh Products Branch headquarters office in Washington, DC, which will direct them to the closest regional inspection office. The telephone number of headquarters office is (202) 720–5870, and the fax number is (202) 720–0393.

Stamp-and-fax procedure: Under USDA safeguard procedures established in this program, the importer must provide advance notice of inspection needs to the Inspection Service office that will collect samples of the peanuts for inspection. The importer must file

completed entry documentation (usually Customs Service forms CS 3461 and CF 7501, or other equivalent forms) with the Inspection Service office by mail or facsimile transmission. To expedite entry procedures, the filing should occur prior to, or upon arrival of the shipment at the port of entry. The Inspection Service office stamps, signs, and dates the entry document and returns it to the importer or Customs broker by fax or mail. The importer/broker then submits the stamped copy to the Customs Service. This "stamp-and-fax" procedure is unchanged from the procedure used under the previous peanut import program and is similar to procedures in place for other imported agricultural commodities under USDA jurisdiction. Failure to file the entry documentation stamped by the Inspection Service may result in a delay in entry of the product.

The importer must file a copy of each stamp-and-fax entry document with USDA and forward a copy, with any lot that is transported in-bond to an inland destination for inspection or warehousing. The importer must provide sufficient information to identify the peanut lot being entered and to ensure that arrangements are made for sampling and inspection. This information must include the Customs Service entry number, container identification, weight of the peanut lot, the city, street address, and building number (if known) receiving the peanut lot, the requested date and time of inspection, and a contact name and telephone number at the destination. If the destination is changed from that listed on the stamp-and-fax document, the importer must immediately advise Inspection Service offices at both the original destination and the new destination of such change. Shipments that are not made available pursuant to entry documentation, or are not properly displayed for sampling purposes, will be reported to the Customs Service as failing to follow required entry procedures.

Boatload shipments exceeding 200,000 pounds must be entered as two or more items on Customs Service entry documents. This limit on lot size is required by USDA and the Inspection Service for sampling purposes and is the same as the limit on lot sizes of domestically produced peanuts. Lot size and identification arrangements must be made cooperatively between the importer and the Inspection Service. This facilitates subsequent lot identification, inspection, and reporting of large imported shipments.

Release for importation: Depending on condition (shelled or inshell) and containerization, foreign-produced peanuts may be either: (1) Held at the port-of-entry until certified by the Inspection Service as meeting the edible quality requirements of this rule; or, (2) conditionally released under Customs Service entry procedures and transported inland for inspection and certification.

Under option (1), foreign-produced shelled or cleaned-inshell peanuts which are held at the port-of-arrival must be presented in containers or bags that allow appropriate sampling of the lot pursuant to Inspection Service requirements. After sampling, such lots are held at the port-of-arrival under Customs Service custody, under positive lot identification requirements of the Inspection Service, pending results of the inspection and chemical analysis. If determined to meet the applicable edible quality requirements of this part, the shelled or cleaned-inshell peanuts may be entered for consumption without further inspection. Reports of such entries do not have to be filed with USDA.

If a lot is held at the port-of-arrival under Customs Service custody and subsequently determined to fail edible quality standards, the lot, at the importer's discretion, may be: Exported; moved inland under bond for reconditioning and, if satisfactorily remilled or blanched, used for edible consumption; or entered for non-edible consumption. Such failing peanuts that remain under Customs Service custody until exported do not have to be reported to USDA because the peanuts were not officially entered into the U.S. Failing lots that are moved in-bond for reconditioning at a remilling or blanching facility inland must be reported to USDA, pursuant to option 2, below. The importer is responsible for ensuring that such lots remain under PLI until reconditioned and determined to meet edible quality requirements. Records of disposition of residual peanuts to non-edible outlets also must be maintained. Such records must be maintained for the time frames discussed under Reporting and Recordkeeping Requirements, below.

Under option (2), foreign produced peanuts moved inland from the port-of-arrival for sampling, inspection, and certification. All imported farmers stock peanuts must be shipped inland for sampling and inspection because specialized sampling facilities at buying points are not available at ports of entry. All in-bond entries must be maintained under PLI. Shelled and cleaned-inshell lots which are subsequently sampled and determined to meet both grade and aflatoxin quality standards may be entered directly into human consumption channels of commerce and not reported to USDA. For monitoring and compliance-assurance purposes, in-bond entries which fail to meet outgoing quality standards are reported to USDA by the Inspection Service and/or the aflatoxin laboratory.

Peanuts transported from the port-of-arrival to another location must be transported by a carrier designated by the Customs Service under 19 U.S.C. 1551. Peanuts entered for warehousing must be stored in a Customs Service bonded warehouse. Such peanuts must remain in Customs Service custody until they are determined to meet the quality and handling standards of this program, at which point they may be withdrawn from warehouse and entered for consumption.

Imported shipments of farmers stock peanuts must be transported inland to a buying point where sampling equipment is available to conduct the incoming sampling operation. Importers are required to maintain all records showing compliance with these standards and all Customs Service requirements.

Importers must not release failing lots for edible consumption until reconditioned and certified as meeting the standards of this program.

Reporting and Recordkeeping

This rule finalizes reporting and recordkeeping standards under § 996.71 that are necessary for USDA to monitor compliance with program quality and handling standards.

Farmers stock acquisitions: Handlers and importers are required to report to USDA the volume of Segregation 1, 2, and 3 farmers stock peanuts acquired from growers or others, or imported. Under previous peanut programs, the information was used, in part, to determine the assessment owed by signatory handlers to the PAC and non-signatory handlers to USDA.

Because all farmers stock peanuts can now be shelled for human consumption use, all three categories of farmers stock must be reported. This information is used for compliance purposes and in the compilation of reports by USDA. The monthly report must include the volume, by variety, of Segregation 1, 2, and 3 farmers stock peanuts acquired in the preceding month. Form FV–305, Handlers/Importers Monthly Report is used by handlers and importers to report their monthly farmers stock acquisitions.

To collect farmers stock information, the interim Board recommended that USDA use the assessment form used under the national Peanut Promotion,

Research, and Information Order (7 CFR part 1216). However, that form has been discontinued and the new "First Handler's Report" form used under that research and promotion program does not require disclosure of volume handled, peanut variety, or Segregation of the peanuts acquired. Thus, the form cannot be used for the purposes needed under this program.

The new form, Handlers/Importers Monthly Report, must be sent to USDA. Facsimile or express mail deliveries may be used to ensure timely receipt of certificates and other required documentation. Mail deliveries must be addressed to the DC Marketing Field Office, MOAB, FVP, AMS, USDA, 4700 River Road, Unit 155, Riverdale, MD 20737, Attn: Report of Peanuts. The Fax number is (301) 734–5275.

Falsification of any report submitted to USDA is a violation of Federal law and is punishable by fine or imprisonment, or both.

Documentation of edible and non-edible peanuts: This program continues the procedures previously used under the Agreement to monitor disposition of edible and failing quality peanuts. The Inspection Service sends copies of all grade inspections and the chemical laboratories send copies of all aflatoxin assays to USDA. USDA uses this information to monitor proper disposition of all lots failing either grade or aflatoxin certification.

This represents a relaxation of reporting requirements for importers. Under the previous peanut import program, non-signatory handlers and importers were required to file copies of all failing grade and aflatoxin certificates with AMS. Importers are no longer required to do so, unless specifically requested by USDA or unless the Customs Service demands such documentation of importers. These certificates will be provided by the Inspection Service, USDA laboratories, or USDA-approved laboratories, as the case may be.

Recordkeeping: Handlers and importers are required to maintain all relevant documentation on the disposition of inedible peanuts. If a lot is remilled, blanched, or roasted, the handler or importer must maintain grade certificate(s) and/or aflatoxin certificate(s) showing that the lot has been reconditioned and subsequently meets outgoing, edible quality standards. Grade and aflatoxin inspections conducted on reconditioned lots reference the applicable lot number and previous grade and aflatoxin certificate numbers so that a record of the lot's reconditioning is maintained. Documents showing the disposition of non-edible residuals (pick-outs, etc.) must be maintained by each handler and importer. For example, if the lot is crushed for oil, the oil mill's report of crushing must be maintained. That crushing report must tie the crushed residual peanuts to their original failing lots. If the failing lot is sold for seed or for animal feed, the sales receipt of the transaction must tie the purchased lot to the failing lot through the inspection certificate number. If the failing lot is exported, an export certificate must be filed showing the inspection certificate number of the failing peanut lot. Failing peanut lots sent to a landfill or buried also must be reported with proof of such disposition through the inspection certificate number.

In total, the documentation maintained and distributed to USDA must be sufficient to document and substantiate the proper disposition of all peanut lots failing grade or aflatoxin quality standards, as well as the residuals resulting from those failing lots.

Documentation on lot dispositions must be maintained for at least two years after the crop year of applicability.

Confidentiality

This rule includes a confidentiality provision in § 996.72 to protect handler and importer reports and records required to be submitted to USDA under this program. Confidential information includes data or information constituting a trade secret or disclosing a trade position, financial condition, or business operations of handlers or their customers. Confidentiality provisions do not extend to disclosure of peanut lots determined to be within the provisions in § 996.74(b).

Verification of Reports

Provisions are included in § 996.73 of this part that allows USDA access to any premises where peanuts may be held or processed, and access to any business files containing information regarding the handling, importing, and disposition of peanuts. USDA, at any time during regular business hours, is permitted to inspect any peanuts held and any and all records with respect to the acquisition, holding, or disposition of any peanuts which may be held or which may have been disposed of by that handler or importer.

Compliance Oversight

USDA will take action against any handler or importer in violation of the Act or this part. Such action includes instances when a handler or importer: (1) Acquires farmers stock peanuts without official incoming inspection; (2) fails to obtain outgoing inspection on shelled or cleaned-inshell peanuts and ships such peanuts for human consumption use; (3) ships failing quality peanuts for human consumption use; (4) commingles failing quality peanuts with certified edible quality peanuts and ships the commingled lot for human consumption use; (5) fails to maintain PLI on peanut lots certified for human consumption use; (6) fails to maintain and provide access to records on the reconditioning or disposition of failing quality peanuts; or (7) otherwise violates any provisions of the Act or this program.

USDA will use injunctions to restrain violations and withdraw inspection services from alleged violators.

AMS will notify the FDA of the names of any handlers or importers known to have shipped un-inspected or failing peanuts into human consumption channels and the lot numbers of such peanuts. AMS also will publish on the AMS Web site the names of any handler and importer and the failing lots not reported as reconditioned or disposed to non-edible outlets.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS had prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There were approximately 45 peanut handlers and 38 importers that were subject to regulation under the Agreement and non-signer program, and the peanut import regulation. An estimated two-thirds of the handlers and nearly all of the importers may be classified as small entities, based on the documents and reports received by USDA. Small agricultural service firms, which include handlers and importers, are defined by the Small Business Administration (SBA) (13 CFR 121.201), as those having annual receipts of less than $5,000,000.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition (less than $750,000 in annual receipts from agricultural sales) can be obtained from the 1997 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 10,505 peanut farms with sales valued at less than $500,000 in 1997,

representing 86 percent of the total number of peanut farms in the U.S (12,221). Since the Agricultural Census does not use $750,000 in sales as a category, $500,000 in sales is the closest approximation. Assuming that most of the sales from those farms are attributable to peanuts, the percentage of small peanut farms in 1997 (less than $750,000 in sales) was likely a few percentage points higher than 86 percent, and may have shifted a few percentage points since then. Thus, the proportion of small peanut farms is likely to be between 80 and 90 percent.

Two-year average peanut production for the 2000 and 2001 crop years was 3.711 billion pounds, harvested from 1.363 million acres, yielding 2,723 pounds per acre. The average value of production for the two-year period was $948.777 million, as reported on the National Agricultural Statistics Service (NASS) Web site as of August 2002 (*http://www.nass.usda.gov:81/idepd/report.htm*). The average grower price over the two-year period was $0.26 per pound, and the average value per harvested acre was $707. Dividing the two-year average value of production ($948.177 million) by the estimated 12,221 farms yields an estimated revenue per farm of approximately $77,600.

The Agricultural Census presents farm sizes in ranges of acres, and median farm size in 1997 was between 50 and 99 acres. The median is the midpoint ranging from the largest to the smallest. Median farm size in terms of annual sales revenue was between $100,000 and $250,000. Several producers may own a single farm jointly, or, conversely, a producer may own several farms. In the peanut industry, there is, on average, more than one producer per farm. Dividing the two-year average value of production of $948.777 million by an estimated 23,000 commercial producers (2002 Agricultural Statistics, USDA, Table 11–10) results in an estimate of average revenue per producer of approximately $41,251.

Oilmill operators, blanchers, and private chemical laboratories are subject to this rule to the extent that they must comply with reconditioning provisions under § 996.50 and reporting and recordkeeping requirements under § 996.71. There are several such entities in the peanut industry and these requirements are applied uniformly to these entities, whether large or small. In addition, there are currently 10 State inspection programs (FSIS) that will perform inspection under this new program.

Importers of peanuts cover a broad range of business entities, including fresh and processed food handlers and commodity brokers who buy agricultural products on behalf of others. Under the 2001 import quota, approximately 38 business entities imported approximately 126 million pounds of low duty peanuts (sometimes called "duty free" quota peanuts). That import quota period ended December 31, 2001, for Mexico, and March 31, 2002, for Argentina, Israel, and other countries. Some large, corporate handlers are also importers of peanuts. AMS is not aware of any peanut producers who imported peanuts during any of the recent quota years. The majority of peanut importers have annual receipts under $5,000,000. Customs brokers may provide import services to importers who are regulated under, and accountable, to this rule. They must assure that entry requirements under § 996.60 and reporting and recordkeeping requirements under § 996.71 are met. These requirements are not applied disproportionately to small Customs brokers.

In view of the foregoing, it can be concluded that the majority of peanut producers, handlers, and importers may be classified as small entities. In addition, it may be assumed that many oilmill operators and blanchers also are small entities.

The quality and handling requirements of the prior peanut quality programs have been in effect for more than 36 years and for imported peanuts for more than six years. Handlers and importers have been the segment of the industry directly regulated under the three peanut programs, and they are in general agreement that the industry has changed greatly since the establishment of the Agreement in 1965.

With only a few exceptions, the quality and handling standards in this peanut program are the same as, or similar to, the requirements previously in effect for domestically produced and imported peanuts. The few exceptions are relaxations in requirements that will benefit handlers and importers. These requirements were subject to regulatory flexibility analysis and were found to not disproportionately affect small entities.

The Act requires that all peanuts marketed in the United States be officially inspected and graded by Federal or Federal-State inspectors. The Act further requires that USDA make identifying and combating the presence of all quality concerns a priority in the development of quality and handling standards and in the inspection of all peanuts in the domestic market. Finally, USDA is to "* * * provide adequate safeguards against all quality concerns related to peanuts." The new peanut program is to be established in consultation with the Board.

This program establishes under part 996 the minimum quality and handling standards that were in effect on May 13, 2002, the date the Act became effective, with relaxations recommended by interim Board members and peanut growers and handlers. Peanuts may not be entered into human consumption channels unless the peanuts are inspected and meet minimum quality standards for size, damage, defects, foreign material and moisture, and not exceed maximum aflatoxin content specified in this rule. Handling standards include the same positive lot identification, sampling and inspection procedures, and prohibitions on commingling certified and non-edible peanuts as were in effect under the three previous programs. Peanuts failing to meet the quality standards of this part, or which are not handled consistent with the handling standards of this part, may not be used for human consumption in the United States.

All USDA required sampling, quality certification, and lot identification is conducted by the Inspection Service. Chemical analysis is conducted by USDA or USDA-approved laboratories. Private laboratories must, among other things, agree to send copies of all aflatoxin analyses conducted by the laboratory to USDA. Foreign produced peanuts stored in bonded warehouses are subject to Customs Service audits. Handlers and importers must reimburse the Inspection Service and USDA laboratories and approved private laboratories, for services provided and costs incurred in the sampling, grade inspection and chemical analysis of peanuts. Incoming inspections range from $4.00 to $6.25 per ton of farmers stock peanuts. Sampling and outgoing grade inspections vary with the Federal and each Federal-State Inspection Service and range from $1.50 to $3.00 a ton. Chemical analysis for aflatoxin averages $40.00 per analysis. These costs to handlers and importers also were incurred under the previous three programs. Thus, there is no net increase in financial burden attributable to these aspects of the new program.

This action imposes on handlers and importers a minor reporting requirement in addition to that imposed under the previous peanut programs (reporting acquisitions of Segregation 2 and 3 farmers stock peanuts). However, importers and non-signatory handlers under the previous programs have a

minor decrease in reporting requirements, because they are no longer required to submit evidence of proper disposition of failing lots. That task is completed by the USDA. Recordkeeping requirements remain the same as required under the three previous peanut programs. The information collection burden under the previous programs totaled 411 reporting hours and 269 recordkeeping hours. These were approved under OMB Nos. 0581–0067 (Agreement), 0581–0163 (non-signers), and 0581–0176 (imports).

Changes affecting regulated entities: Under this program, handlers are no longer subject to any payment of assessments on farmers stock peanuts acquired. Under the Agreement and non-signer program, handlers were assessed $.33 per net farmers stock ton of peanuts acquired. This totaled over $515,000 for the 2000 crop. Assessments collected from signatory handlers provided for the administration of the PAC. Assessments collected from non-signatory handlers helped reimburse USDA for administration of the non-signer program. There are no such assessments under this peanut program.

The previous peanut programs prohibited the use of Segregation 2 and 3 farmers stock peanuts in human consumption channels. This program removes that prohibition and allows such peanuts to be handled and marketed in higher return outlets. Handlers sought this change. As noted above, handlers believe that modern milling technologies enable handlers to remove poor quality and contaminated peanut kernels in the shelling and milling operation. This change from the previous programs' requirements enables more peanuts to be marketed at higher market values for human consumption. Segregation 2 and 3 peanuts, in a normal crop year, average around 1 percent of total production. Thus, for the 2000 and 2001 crop years, an estimated 37 million pounds of additional farmers stock peanuts would have been available for human consumption channels.

Handlers stated that peanuts used in the manufacturing of imported peanut butter and peanut paste are not restricted to Segregation 1 quality peanuts produced in those exporting countries. They contended that use of Segregation 2 and 3 quality peanuts for human consumption, after careful and efficient sorting and milling processes, would level the playing field for the U.S. peanut industry. Outgoing inspection will ensure that poor quality peanuts do not enter domestic edible consumption market channels.

Grower and handler revenues are likely to increase slightly due to the ability to sell Segregation 2 and 3 quality peanuts for human consumption use. This change is not expected to affect small and large entities differently.

If Segregation 2 and 3 peanuts are handled for human consumption, it is reasonable to assume that fewer poor quality peanuts will be available for crushing into oil and other non-edible use such as animal feed. Thus, if normal supply and demand factors take affect, the price of oilstock quality peanuts could rise. A higher percentage of sheller oilstock residuals are likely to be sorted out of Segregation 2 and 3 peanuts during the initial shelling process. Therefore, not all of the peanuts in Segregation 2 and 3 lots will be edible, and the supply of oilstock peanuts will not be cut off completely. The market value of peanuts used for crushing into oil and added to animal feed could increase.

Further, blanching operations could realize an increase in business because blanching, as a last resort in reconditioning a failing lot, will likely be used in the final preparation of shelled peanuts originating from Segregation 2 and 3 peanuts for human consumption.

Finally, handlers with blanching facilities dedicated exclusively to the handler's own peanuts may move a lot of shelled peanuts directly from the shelling operation to their dedicated blanching operations without first obtaining grade inspection and PLI on the lot. Handlers recommended removing the required inspection and PLI prior to blanching at their own, dedicated facilities because the nature of the peanuts change in the blanching process and the peanuts must be inspected immediately after blanching, rendering the first inspection redundant. This would apply only to lots blanched in the handler's own blanching facility that does not blanch peanuts belonging to others, thus eliminating the need to establish PLI prior to blanching. This streamlined handling process will increase efficiency of the handling of peanuts that the handler intends to blanch. Handler costs for such lots are reduced by inspecting the lot once, rather than twice. While this change may tend to be most beneficial to those handlers who are mostly larger operations with their own, dedicated, blanching facilities, it should not have an adverse impact on small handlers.

Reporting and recordkeeping requirements under this peanut program are not expected to adversely impact small businesses, and there is no indication that large and small businesses would be impacted differently. Under this program, handlers and importers must report monthly acquisitions of Segregation 2 and 3 peanuts—a minor increase from the previous programs when only Segregation 1 peanuts were reported. However, the benefits of being able to handle those peanuts for possible edible consumption outweigh the increased reporting requirement. Further, this minor increase in reporting is offset by a decrease in reporting disposition of failing peanut lots for non-signatory handlers and importers. In the case of imports, few, if any, peanuts are imported in farmers stock form because of the extra weight and bulk of the peanut shell.

The other provisions in this peanut program are the same as, or similar to, the requirements in effect for domestically produced and imported peanuts for the last several years. Those requirements were subject to prior regulatory flexibility analysis.

USDA has considered alternatives to this program. The Act provides that a new program be established for the 2002 peanut crop. An alternative would have been to continue the 2001 regulations for the entire 2002 crop. However, based on industry comment, implementation of a new program as soon as possible after harvest began was preferable to continuing the previous programs. USDA has met with the interim Board which is representative of the industry and has included nearly all of its recommendations in this rule. The initial draft prepared by USDA proposed a streamlined program with less USDA oversight of handling standards. However, the interim Board suggested that oversight provisions in the previous programs be included in this program to assure the continued high quality and wholesomeness of peanuts entered into human consumption channels in the U.S. Draft provisions were posted on the USDA website and comments were received. Most comments confirmed the Board's consensus that significant changes in the previous programs were not necessary. One proposal included changing screen sizes to allow smaller kernels to be included in lots intended for human consumption use. Comments advised against such a relaxation in the interim final rule. The majority of comments to the interim final rule on this topic favored the relaxation. However, USDA has decided to review this proposal further and not to make such a change at this time. Thus, this program is substantially the same as

USDA's three previous peanut programs.

Except as previously discussed, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. A small business guide on complying with AMS' fresh fruit, vegetable, and specialty crop programs similar to this peanut program may be viewed at the following web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide or compliance with this program should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Information Collection

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements under the Agreement, non-signers and import programs were approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0067, 0581–0163 and 0581–0176, respectively. However, with the termination of those peanut programs, reporting and recordkeeping burdens on peanut handlers and importers have been terminated. OMB burden hours under the previous programs were 540 hours. The burden under the new program is estimated to be 463 hours. An estimated 367 hours (nearly 80 percent) of the new program burden is for recordkeeping, which handlers and importers would normally do under good business practices.

The Act specifies in § 1604(c)(2)(A) that any new quality and handling standards, established pursuant to the Act, may be implemented without regard to the Paperwork Reduction Act. Nonetheless, USDA has considered the reporting and recordkeeping burden on handlers and importers under the new program.

Handlers and importers are required to complete and submit only one report to USDA—a monthly acquisition of farmers stock peanuts. Acquisitions of Segregation 2 and 3 peanuts must now be reported because those peanuts can be prepared for edible markets. Because Segregation 2 and 3 peanuts normally account for around 1 percent of each peanut crop, this change is expected to represent only a minor increase in the reporting burden under the new program. Non-signatory handlers and importers are no longer required to submit evidence of disposition of failing lots, which reduces their reporting burden. Recordkeeping requirements remain the same as required under the three previous peanut programs.

USDA held several meetings with the interim Board, Inspection Service supervisors, posted a draft rule on the internet for comments, and considered all comments, prior to publishing the interim final rule. Twenty-five comments were received to the interim final rule and all were carefully considered in developing this finalization action. As earlier discussed, changes have been made to the interim final rule. Any additional changes will be considered in consultation with the Peanut Standards Board, as provided for in the Act. USDA also has reviewed this rule with FSA and incorporated the suggested clarifications suggested by the Customs Service. The program established in the interim final rule and finalized in this rulemaking action is substantially the same as the three previous peanut programs. The 2002 crop harvest is now complete.

Section 1601 of the Act also specifies that promulgation of the standards and administration of the new peanut quality program shall be made without regard to: (A) The Paperwork Reduction Act; (B) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and (C) the notice and comment provisions of section 553 of title 5, United States Code.

Section 553 of title 5 provides that, upon good cause, the rule may be made effective less than 30 days after publication in the **Federal Register**. The Farm Bill required that the rule be effective for the 2002 crop year and the interim final rule became effective at the beginning of the 2002 harvest season. A 30 day comment period was provided in the interim final rule and all comments received were considered. This rule finalizes the interim final rule and implements five minor revisions which improve the overall effectiveness of the interim final rule. Based on the above, USDA finds that good cause exists for making this rule effective one day after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 996

Food grades and standards, Imports, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601–674 and Public Law 107–171, 7 CFR chapter IX is amended as set forth below.

Accordingly, the interim final rule amending 7 CFR part 996 which was published at 67 FR 57129 on September 9, 2002, is adopted as a final rule with the following changes:

PART 996—MINIMUM QUALITY AND HANDLING STANDARDS FOR DOMESTIC AND IMPORTED PEANUTS MARKETED IN THE UNITED STATES

Authority: Secs. 1308, Pub. L. 107–171, 116 Stat. 178 (U.S.C. 7958).

Definitions

1. Section 996.2 is revised to read as follows:

§ 996.2 Conditional release.

Conditional release means release from U.S. Customs Service custody to the importer for purposes of handling and USDA required sampling, inspection and chemical analysis.

2. Section 996.7 is revised to read as follows:

§ 996.7 Importer.

Importer means a person who engages in the importation of foreign produced peanuts into the United States.

3. Section 996.30 is amended by revising paragraph (b) to read as follows:

§ 996.30 Incoming quality standards.

* * * * *

(b) *Moisture.* No handler or importer shall receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing more than 10.49 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling; and *Provided further,* That Virginia-type peanuts used for seed may be received or acquired containing up to 11.49 percent moisture.

* * * * *

4. Section 996.40 is amended by revising paragraph (b)(4) to read as follows:

§ 996.40 Handling standards.

* * * * *

(b) * * *

(4) Upon call from the laboratory, the handler or importer shall cause Sample 2 to be ground by the Inspection Service, USDA or USDA-approved laboratory in a "subsampling mill." The resultant ground subsample from Sample 2 shall be of a size specified by the Inspection Service and it shall be designated as "Subsample 2–AB." Upon call from the laboratory, the handler shall cause Sample 3 to be ground by the Inspection Service, USDA or USDA-approved laboratory in a "subsampling mill." The resultant ground subsample from Sample 3 shall be of a size

specified by Inspection Service and shall be designated as "Subsample 3–AB." "Subsamples 2–AB and 3–AB" shall be analyzed only in a USDA laboratory or a USDA-approved laboratory and each shall be accompanied by a notice of sampling. The results of each assay shall be reported by the laboratory to the handler and to USDA.

* * * * *

5. Section 996.60 is amended by revising paragraph (c) to read as follows:

§ 996.60 Safeguard procedures for imported peanuts.

* * * * *

(c) *Early arrival and storage.* Peanut lots sampled and inspected upon arrival in the United States, but placed in storage for more than one month prior to beginning of the quota year for which the peanuts will be entered, must be reported to USDA at the time of inspection. The importer shall file copies of the Customs Service documentation showing the volume of peanuts placed in storage and location, including any identifying number of the storage warehouse. Such peanuts should be stored in clean, dry warehouses and under cold storage conditions consistent with industry standards. USDA may require re-inspection of the lot at the time the lot is declared for entry with the Customs Service.

* * * * *

Dated: January 3, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–367 Filed 1–8–03; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 211

Regulation K; Docket No. R–1114

International Banking Operations; International Lending Supervision

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its regulations relating to international lending by simplifying the discussion concerning the accounting for fees on international loans to make the regulation consistent with generally accepted accounting principles (GAAP).

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Michael G. Martinson, Associate Director (202/452–3640), Division of Banking Supervision and Regulation; or Ann Misback, Assistant General Counsel (202/452–3788), or Melinda Milenkovich, Counsel (202/452–3274), Legal Division, Board of Governors of the Federal Reserve System, 20th & Street, NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf ("TDD") only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The International Lending Supervision Act of 1983 (ILSA), 12 U.S.C. 3901, *et seq.*, requires each federal banking agency to evaluate the foreign country exposure and transfer risk of banking institutions within its jurisdiction for use in examination and supervision of such institutions. To implement ILSA, the federal banking agencies, through the Interagency Country Exposure Review Committee (ICERC), assess and categorize countries on the basis of conditions that may lead to increased transfer risk. Transfer risk may arise due to the possibility that an asset of a banking institution cannot be serviced in the currency of payment because of a lack of, or restraints on, the availability of foreign exchange in the country of the obligor. Section 905(a) of ILSA directs each federal banking agency to require banking institutions within its jurisdiction to establish and maintain a special reserve whenever the agency determines that the quality of an institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness, or no definite prospects exist for the orderly restoration of debt service. 12 U.S.C. 3904(a). In keeping with the requirements of ILSA, on February 13, 1984, the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (collectively, the federal banking agencies) issued a joint notice of final rulemaking requiring banking institutions to establish special reserves, the allocated transfer risk reserve (ATRR), against the risks presented in certain international assets. (49 FR 5594).

ILSA also requires the federal banking agencies to promulgate regulations for accounting for fees charged by banking institutions in connection with international loans. Section 906(a) of ILSA (12 U.S.C. 3905(a)) deals specifically with the restructuring of international loans to avoid excessive debt service burden on debtor countries. This section requires banking institutions, in connection with the restructuring of an international loan, to amortize any fee exceeding the administrative cost of the restructuring over the effective life of the loan. Section 906(b) of ILSA (12 U.S.C. 3905(b)) deals with all international loans and requires the federal banking agencies to promulgate regulations for accounting for agency, commitment, management and other fees in connection with such loans to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

When ILSA was enacted in 1983 and the regulation on accounting for international loan fees was promulgated on March 29, 1984, Congress and the federal banking agencies considered that the application of the broad fee accounting principles for banks contained in GAAP were insufficient to accomplish adequate uniformity in accounting principles in this area. Accordingly, the Board's regulation provided a separate accounting treatment for each type of fee charged by banking institutions in connection with their international lending. Since that time, the Financial Accounting Standards Board (FASB) has revised the GAAP rules for fee accounting for international loans in a manner that accommodates the specific requirements of section 906 of ILSA. In order to reduce the regulatory burden on banking institutions, and simplify its regulations, the Board proposed to eliminate from Subpart D the requirements as to the particular accounting method to be followed in accounting for fees on international loans and require instead that institutions follow GAAP in accounting for such fees.

No public comments were received concerning the Board's proposal and it is being adopted as proposed. In the event that the FASB changes the GAAP rules on fee accounting for international loans, the Board will reexamine its regulation in light of ILSA to assess the need for a revision to the regulation.

Regulatory Flexibility Act

The Board has reviewed the final rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule revises accounting mechanisms for fees associated with international loans and harmonizes their treatment with accounting principles set forth in other regulations. Both the underlying regulation and the final rule primarily affect financial institutions engaged in significant international loan transactions, and the overall impact of the final rule will be to reduce regulatory burden. Accordingly, pursuant to 5 U.S.C.

605(b), the Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget.

The collections of information associated with this rulemaking are found in 12 CFR 211.43 and 211.44. This information is required to evidence compliance with the requirements of Regulation K and the International Lending Supervision Act. The respondents/recordkeepers are for–profit financial institutions, including small businesses.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The information on the allocated transfer risk reserve requested in section 211.43 is collected in the Consolidated Reports of Condition and Income (FFIEC 031 and 041; OMB No. 7100–0036), the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128), and the Report of Condition for Edge and Agreement Corporations (FR 2886B; OMB No. 7100–0086). The final rule would not change the burden associated with these reports. The information requested in section 211.44 on international assets is collected in the Country Exposure Reports (FFIEC 009/009a; OMB No. 7100–0035) and the burden for this report also remains unchanged.

No comments specifically addressing the collections of information were received.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding any aspect of this collection of information, including suggestions for reducing the burden may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0036, 7100–0128, 7100–0086 or 7100–0035), Washington, DC 20503.

Plain Language

Section 722 of the Gramm–Leach–Bliley Act requires each federal banking agency to use plain language in all proposed and final rules published after January 1, 2000. Toward this end, the Board used a variety of plain language techniques in drafting this amendment. The Board invited comments on how to make the changes proposed by this rulemaking easier to understand. No commenters addressed this issue. Accordingly, no changes were made to the proposed style or format.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Board is amending 12 CFR part 211 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, 3109 *et seq*

2. Sections 211.41 through 211.45 are revised to read as follows:

§ 211.41 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX, 97 Stat. 1153) (International Lending Supervision Act); the Federal Reserve Act (12 U.S.C. 221 *et seq.*) (FRA), and the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) (BHC Act).

(b) *Purpose and scope.* This subpart is issued in furtherance of the purposes of the International Lending Supervision Act. It applies to State banks that are members of the Federal Reserve System (State member banks); corporations organized under section 25A of the FRA (12 U.S.C. 611 through 631) (Edge Corporations); corporations operating subject to an agreement with the Board under section 25 of the FRA (12 U.S.C. 601 through 604a) (Agreement Corporations); and bank holding companies (as defined in section 2 of the BHC Act (12 U.S.C. 1841(a)) but not including a bank holding company that is a foreign banking organization as defined in § 211.21(o).

§ 211.42 Definitions.

For the purposes of this subpart:

(a) *Administrative cost* means those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(b) *Banking institution* means a State member bank; bank holding company; Edge Corporation and Agreement Corporation engaged in banking. Banking institution does not include a foreign banking organization as defined in § 211.21(o).

(c) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(d) *International assets* means those assets required to be included in banking institutions' *Country Exposure Report* forms (FFIEC No. 009).

(e) *International loan* means a loan as defined in the instructions to the *Report of Condition and Income* for the respective banking institution (FFIEC Nos. 031 and 041) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(f) *Restructured international loan* means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) A new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(g) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

§ 211.43 Allocated transfer risk reserve.

(a) *Establishment of Allocated Transfer Risk Reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the Board in accordance with this section.

(b) *Procedures and standards*–(1) *Joint agency determination.* At least annually, the Federal banking agencies

shall determine jointly, based on the standards set forth in paragraph (b)(2) of this section, the following:

(i) Which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) The amount of the ATRR for the specified assets; and

(iii) Whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR*–(i) *Evaluation of assets.* The Federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(1) Such obligors have failed to make full interest payments on external indebtedness; or

(2) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(3) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) Whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR.* (A) In determining the amount of the ATRR, the Federal banking agencies shall consider:

(1) The length of time the quality of the asset has been impaired;

(2) Recent actions taken to restore debt service capability;

(3) Prospects for restored asset quality; and

(4) Such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be ten percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be fifteen percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies.

(3) *Board notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the Board shall notify each banking institution holding assets subject to an ATRR:

(i) Of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) That an ATRR established for specified assets may be reduced.

(c) *Accounting treatment of ATRR*–(1) *Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Loan and Lease Losses, and shall deduct the ATRR from "gross loans and leases" to arrive at "net loans and leases." The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. For banks, consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of *Consolidated Reports of Condition and Income* (FFIEC 031 and 041). For bank holding companies, the consolidation shall be in accordance with the principles set forth in the "Instructions to Consolidated Financial Statements for Bank Holding Companies" (Form F.R. Y–9C). Edge and Agreement corporations engaged in banking shall report in accordance with instructions for preparation of the Report of Condition for Edge and Agreement Corporations (Form F.R. 2886b).

(4) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Loan and Lease Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset; provided, that only those international assets that may be charged to the Allowance for Loan and Lease Losses pursuant to generally accepted accounting principles may be written down by a charge to the Allowance for Loan and Lease Losses. However, the Allowance for Loan and Lease Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the Board or, at any time, by writing down such amount of the international asset for which the ATRR was established.

§ 211.44 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98–181, 97 Stat. 1153) (ILSA), a banking institution shall submit to the Board, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA, a banking institution shall submit to the Board information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the Board on request.

(b) *Procedures.* The format, content and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the Federal banking agencies. The requirements to be prescribed by the Federal banking agencies may include changes to existing reporting forms (such as the Country Exposure Report, form FFIEC No. 009) or such other requirements as the Federal banking agencies deem appropriate. The Federal banking agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the Federal banking agencies' judgment, have *de minimis* holdings of international assets.

(c) *Reservation of authority.* Nothing contained in this rule shall preclude the Board from requiring from a banking institution such additional or more frequent information on the institution's holding of international assets as the Board may consider necessary.

§ 211.45 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes the amount of the fee exceeding the administrative cost over the effective life of the loan.

(b) *Accounting treatment.* Subject to paragraph (a) of this section, banking institutions shall account for fees on international loans in accordance with generally accepted accounting principles.

By order of the Board of Governors of the Federal Reserve System, January 6, 2003.

Jennifer J. Johnson

Secretary of the Board

[FR Doc. 03–385 Filed 1–8–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Micro Chemical, Inc., to Micro Beef Technologies LTD and to correct the sponsor's mailing address.

DATES: This rule is effective January 9, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *dnewkirk@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Micro Chemical, Inc., Amarillo, TX 79105, has informed FDA of a change of name and mailing address to Micro Beef Technologies LTD, P.O. Box 9262, Amarillo, TX 79105. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect these changes.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "Micro Chemical, Inc." and in the table in paragraph (c)(2) by revising the entry for "047126" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Micro Beef Technologies LTD, P.O. Box 9262, Amarillo, TX 79105.	047126
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
047126	Micro Beef Technologies LTD, P.O. Box 9262, Amarillo, TX 79105
* * * * *	

Dated: December 31, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–359 Filed 1–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of address for Pennfield Oil Co.

DATES: This rule is effective January 9, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967; e-mail: dnewkirk@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68137, has informed FDA of a change of address to 14040 Industrial Rd., Omaha, NE 68144. Accordingly, the agency is amending the regulations in 21 CFR 510.600 to reflect the change of sponsor's address.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A), because it is a rule of "particular applicability." Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "Pennfield Oil Co." and in the table in paragraph (c)(2) by revising the entry for "053389" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144.	053389
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
053389	Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144
* * * * *	

Dated: December 31, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–373 Filed 1–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–131]

RIN 2115–AA97

Safety and Security Zones: Drilling and Blasting Operations, HubLine Project, Captain of the Port, Boston, MA

AGENCY: Coast Guard, (DOT).

ACTION: Temporary final rule; request for comments; correction.

SUMMARY: This document corrects the temporary final rule; request for comments published in the **Federal Register** on December 9, 2002, creating temporary safety and security zones around the Drillboat No. 8 and Lablift IV to protect the public from hazards associated with drilling and blasting operations and to protect the vessels and the public from possible acts of terrorism. Due to heavy weather conditions and better information as to the makeup of the ocean floor in the area, contractors with the Hubline Gas Pipeline Project decided to replace the vessels Drillboat No. 8 and Lablift IV with one vessel, the lift barge Kaitlyn Eymard. This correction amends the temporary final rule to reflect the change of vessels that the security and safety zones are established to protect.

DATES: The temporary final rule published in the **Federal Register** is effective from November 18, 2002 through February 28, 2003. These corrections to that rule are effective December 24, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule; request for comments; correction, contact Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard published a temporary final rule; request for comments in the **Federal Register** on December 9, 2002 (67 FR 72840). This rule added temporary section 165.T01–131 to part 165 of Title 33 Code of Federal Regulations creating temporary safety and security zones around the Drillboat No. 8 and the Lablift IV from November 18, 2002 through February 28, 2003.

Need for Correction

As published, the vessels named in the temporary final rule have been changed. Due to heavy weather conditions and better information as to the makeup of the ocean floor in the area, contractors with the Hubline Gas Pipeline Project determined that use of a single vessel, the lift barge Kaitlyn Eymard, would be safer and more effective than using two vessels, Drillboat No. 8 and Lablift IV, as currently identified in the temporary final rule. This rule removes the Drillboat No. 8 and the Lablift IV and replaces it with the lift barge Kaitlyn Eymard.

Correction of Publication

In temporary final rule, FR Doc. 02–30928, published on December 9, 2002 (67 FR 72840), make the following corrections:

1. On page 72840, in the first column, on lines 25, 38, and 41, in the second column, line 60, and in the third column, lines 18 and 29, on page 72841 first column, line 24, third column, line 57, and on page 72842, first column, lines 2, 5, and 14, replace the words "Drillboat No. 8 and Lablift IV" with "Kaitlyn Eymard".

2. On page 72840, first column, lines 24, 31, and 37, second column, lines 59 and 67, and third column, lines 23, 31, and 43, on page 72841, in the third column, line 62, replace the word "vessels" with "vessel".

3. On page 72840, first column, lines 24, 28, and 35, second column, line 64, third column, lines 23, 28, 30, 40, 41, 53, and 54, on page 72841, first column, lines 23, 37, and 40, second column, line 2, third column, lines 50 and 55, and on page 72842, first column, line 12, replace the word "zones" with "zone".

4. On page 72840, first column, line 33, and third column, line 8 replace, "800–PSI" with "high pressure".

5. On page 72840, in the first column, on lines 30 and 35, and in third column, line 41, replace the word "these" with "this".

6. On page 72840, in the first column, on lines 35 and 42, in the second column, lines 65 and 67, in the third column, lines 2 and 40, and on page 72841, in the first column, on line 25, replace the word "are" with "is".

7. On page 72840, in the first column, on line 42 and in the third column, on line 2, replace the words "they" with "it".

8. On page 72840, in the third column, on line 24, replace the word "them" with "it".

9. On page 72840, in the second column, on line 65, replace the words "drill barges" with "vessel".

10. On page 72840, in the third column, on line 19, replace the words "drill vessels themselves" with "vessel itself".

11. On page 72840, in the third column, on line 44, replace the word "each" with "the".

12. On page 72840, in the third column, on line 50, replace the word "in" with "is".

13. On page 72840, in the second column, on line 64, replace the word "affect" with "affects".

14. On page 72840, third column, line 45, replace the word "each" with the word "the".

Dated: December 24, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 03–314 Filed 1–8–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[GU02–01; FRL–7433–5]

Clean Air Act Interim Approval of the Alternate Permit Program; Territory of Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to grant interim approval of the alternate permit program submitted by the Territory of Guam (Guam). In EPA's November 13, 1996 direct final rule, EPA granted Guam, as well as owners and operators of certain sources within Guam, an exemption from Title V requirements on the condition that Guam promulgate and administer an approved alternative permit program. EPA granted these conditional exemptions under the authority of section 325 of the Clean Air Act (Act). Interim approval of Guam's alternate permit program will allow sources to be permitted under an approved alternate permit program while also requiring Guam to make additional submissions to fulfill all of the requirements of the conditional exemption.

DATES: The direct final rule for Guam is effective on April 9, 2003 unless adverse

or critical comments are received by March 10, 2003. If EPA receives such comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Mail comments to Gerardo Rios, Chief of the Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted program and other supporting information used in evaluating the alternate permit program are available for inspection during normal business hours at the following location: Pacific Insular Area Program, U.S. EPA-Region IX (CMD–5), U.S. EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Ben Machol, EPA Region IX, at (415) 972–3770, (*Machol.Ben@epa.gov*), Pacific Insular Area Program, or Robert Baker, at (415) 972–3979, Permits Office, Air Division, at the EPA-Region IX address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Action and Implications
A. Interim Approval of Guam's Exemption Request
B. Expiration and Revocation of the Exemption in 40 CFR 69.13(a)
C. Other Terms of Conditional Exemption Continue Unchanged
D. Interaction of Part 71 and Part 69
III. Administrative Requirements

I. Background

Section 325(a) of the Act authorizes the Administrator of EPA, upon petition by the Governor, to exempt any person or source or class of persons in Guam, from any requirement of the Act except for requirements of section 110 and Part D of subchapter I of the Act (where necessary to attain and maintain the National Ambient Air Quality Standards), and section 112. An exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.

The Governor of Guam submitted a petition pursuant to section 325(a) of the Act for an exemption from Title V of the Act. Title V requires states, including Guam, to adopt and submit to EPA a Title V operating permit program for major sources and certain other stationary sources. If any state does not adopt an operating permit program, Title V requires EPA to apply certain sanctions within that area and to promulgate, administer, and enforce a federal operating permit program for such area. EPA proposed regulations to implement a federal operating permit program on April 27, 1995 (60 FR 20804) and promulgated the final rule on July 1, 1996, at 40 CFR part 71 (61 FR 34202) (part 71). Title V requires that sources located in states that do not adopt a Title V permitting program obtain a federal operating permit from the EPA. Guam requested an exemption from the Title V program, but committed to achieving several of the goals of Title V by developing an alternate operating permit program.

On November 13, 1996, EPA issued a direct final rule (61 FR 58289), codified at 40 CFR 69.13 (the conditional exemption) in which EPA granted the government of Guam an exemption from the requirement to adopt a Title V program on the condition that Guam adopt and implement a local alternate operating permit program. EPA also granted owners or operators of certain sources on Guam a conditional exemption from the requirement to apply for a federal Title V operating permit under part 71. These certain owners and operators of sources are exempted from Title V requirements so long as they obtain, by January 13, 2003, an operating permit under an alternate operating program approved by EPA. That rulemaking did not waive part 71 permitting requirements for owners or operators of solid waste incinerators required to obtain a Title V operating permit under section 129(e) of the Act or of major sources under section 112 of the Act required to obtain Title V permits. That rulemaking also does not waive or exempt the government of Guam, or owners or operators of sources located in Guam, from complying with all other applicable Clean Air Act provisions.

On January 13, 1999, Guam submitted an alternate permit program, consisting of Guam's Air Pollution Control Standards and Regulations (Guam's Regulations), along with supporting documents and authorizing legislation. Guam's Regulations set forth (1) the requirements for Guam's proposed alternate permit program, which applies to sources that would be subject to Title V without the exception provided in the conditional exemption; and (2) the requirements for Guam's purely local air permit program, which applies to sources that are not subject to requirements of Title V of the Act. The entire alternate permit program was also submitted as a SIP revision, including matters not required to be submitted as a SIP.

On July 12, 1999, Guam sent a clarifying letter, withdrawing the SIP submission and setting forth which parts of Guam's Air Pollution Control Standards and Regulations are to be considered part of the alternate permit program, and further stating that the SIP revision would be submitted to EPA after all comments were received from EPA.

II. Final Action and Implications

A. Interim Approval of Guam's Alternate Permit Program

EPA is granting interim approval of the alternate permit program submitted by Guam. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to grant interim approval to Guam's part 69 program if adverse comments are filed. This rule will be effective on April 9, 2003 without further notice unless we receive adverse comment by March 10, 2003. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

1. Alternate Permit Program Meets Most, But Not All, of the Conditional Exemption Requirements

The alternate permit program submitted by Guam meets most of the requirements of the conditional exemption. The technical support document contains a more detailed discussion of the criteria and EPA's evaluation.

(a). Fees

40 CFR 69.13(b)(2) requires that the program shall provide for the collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of the program, and that it ensure that funds are used solely to support the program. Guam's alternate permit program provides for the collection of fees from permitted sources, in an amount that will pay for the cost of operation of the program, and it ensures that the funds will be used solely to support the program activities authorized under Guam's Air Pollution Control Act. But Guam's alternate

permit program treats fees in a manner which EPA would not allow under a Title V program, because a unified fund is established for fees which are collected under the alternate permit program submitted to EPA (approved program fees) and fees which are collected under the completely local air permit program (local air program fees), and money from this unified fund will be commingled for use on both the approved program and the local program.

A Title V operating permit program is not allowed to commingle fees between the Title V program and the non-federal local program because non-federal local program fees are often used as part of the state matching grant required to receive federal funds. See the July 21, 1994 Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, "Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants," which can be found at *http://www.epa.gov/ttn/oarpg/t5/memoranda/grantmem.pdf*.

The Administrator has exercised her authority under Section 325 of the Act and granted Guam a conditional exemption from the Title V requirements. In addition, the Administrator has the authority to waive the Title V requirement concerning commingled fees because Congress made different rules for grants and matching fees in "Insular Areas" such as Guam, American Samoa, and CNMI. Congress authorized grants to be consolidated, and for agencies to waive any requirements for matching funds otherwise required by law to be provided by the Insular Area involved. See 48 U.S.C. 1469a (2002). More specifically, Congress authorized the Administrator of EPA to modify the maintenance or level of effort requirements for assistance grants. See Act August 27, 1986, Public Law 99–396, section 12(a), 100 Stat. 841.

EPA believes that it is appropriate to allow Guam's consolidated treatment of funds for the following reasons. The unique situation of the territories has prompted Congress to allow consolidation of grants and waiver of matching fund requirements in Insular Territories such as Guam, in recognition of factors which are relevant here. One purpose of granting a section 325 conditional exemption was to allow for the development of a streamlined part 69 program which would be protective of air quality and designed in a manner appropriate to the unique conditions of Guam. Guam EPA (GEPA) shall be implementing the 40 CFR part 69 alternate permit program and the purely local program as a combined program. Maintaining the federal program separate from the local activities authorized under Guam's Air Pollution Control Act would require burdensome recordkeeping and reporting procedures, and the increased burden would be an unnecessary drain on the resources of GEPA which would not contribute to better air quality. Most critical, Guam's law and regulations require that fees collected under the combined program can only be used to support the program activities authorized under Guam's Air Pollution Control Act. Taking all of these factors into consideration, EPA finds that Guam's program, meets the requirements of 40 CFR 69.13(b)(2).

(b). Scope

EPA notes that Guam's Regulations Section 1102.11 (Variances) is not part of the approved alternate permit program. Variances are not available for the part 69 program. We also note that section 1102.11 by its very terms would not apply to the alternate permit program because section 1102.11(b) states "Under no circumstances shall a variance from any federal regulations or federally enforceable air pollution control permit terms or conditions be granted." All owners or operators of a source wishing to qualify for the exemption from the permitting requirements of 40 CFR part 71 must obtain an operating permit under Guam's approved alternate permit program.

(c). Regular Inspections

40 CFR 69.13(b)(8) requires a system of regular inspections of permitted sources. Section 1104.13 of Guam's Regulations provides that sources required to obtain a permit are subject to regular inspections for compliance. 40 CFR 69.13(b)(8) also requires a system to identify unpermitted major sources, and guidelines for appropriate responses to violations. The submission packet by Guam included a program description discussing inspection, compliance, enforcement and penalties.

A system of regular inspections requires that Guam provide adequate inspector staff and training and develop appropriate internal procedures to inspect all permitted sources. EPA also expects that Guam will develop appropriate guidelines for responding to violations that are discovered. EPA will continue to assist Guam by providing guidance and manuals for inspecting permitted sources. EPA reserves the right to revoke the exemption in its entirety through rulemaking if Guam does not provide adequate inspector staff and training and develop appropriate internal procedures to inspect permitted sources so that it is adequately administering and enforcing the alternate operating permit program.

2. Alternate Permit Program Does Not Meet All Requirements

Two key requirements of the conditional exemption were not met by Guam's submission.

(a). EPA Ability To Reopen for Cause

40 CFR 69.13(b)(10) requires that the program allow EPA to reopen a permit for cause. If EPA provides Guam with written notice that a permit must be reopened for cause, Guam must issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. If Guam fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and reissue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment. The language in Guam's submission does not match this requirement that Guam must issue a permit that resolves EPA's concerns within 180 days, or EPA will terminate, modify or revoke and reissue the permit under part 71.

Section 1104.16 of Guam's Regulations states that EPA has authority to act under 40 CFR part 71 if EPA lodges an objection concerning GEPA issuing a permit, permit renewal or permit amendment and that objection is not resolved within 180 days, but section 1104.16 does not clearly cover the situation where a permit is reopened and the action is to terminate or suspend the permit.

Under sections 1104.18(f) and 1104.18(g) of Guam's Regulations, it can take up to 360 days to terminate, suspend, reopen or amend the permit in accordance with EPA's objection. Under section 1104.18(f), GEPA has up to 180 days to submit a proposed determination. Under section 1104.18(g), if EPA then objects, GEPA has up to 180 additional days to terminate, suspend, reopen or amend the permit in accordance with EPA's objection. Further, in the case of termination or suspension of a permit, sections 1104.18 does not clearly specify that EPA shall itself have authority to act under part 71. For final approval of the alternate permit program, section 1104.18 must be amended to conform with the requirements of 40 CFR 69.13(b)(10).

(b). SIP Revision

Forty CFR 69.13(c) states that Guam shall no later than March 15, 1999 submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant the exemption authorized in 40 CFR 69.13.

Guam submitted a revision to its SIP by the applicable deadline but, at EPA's request, GEPA issued a clarification letter on July 12, 1999 in which it withdrew the SIP submission. EPA agreed at that time to defer action on the required SIP language until GEPA received comments from EPA on the revision. EPA has now provided comments on the alternate permit program, and Guam can thus proceed in properly adopting and submitting a SIP revision which meets the requirements of 40 CFR 69.13(c).

(c). Other Changes

Major deficiencies are discussed above. In addition, EPA has recommended that GEPA take certain steps to clarify the regulatory language and strengthen the program. The technical support document contains a more detailed discussion of these recommended changes.

3. Reason for Interim Approval of Program

The alternate operating permit program submitted by Guam meets most of the requirements of the conditional exemption from Title V requirements, but the deficiencies discussed above must be corrected before EPA can grant full approval of the alternate permit program. EPA is confident that these deficiencies can be corrected by Guam, but there remains a question of timing. If the owner or operator of any source has not obtained an operating permit under an alternate operating permit program approved by EPA for Guam by January 13, 2003, the exemption for such source shall expire and the source shall become subject to the permitting requirements of 40 CFR part 71 on that date.

To ensure that there is adequate time to review and issue permit applications under an EPA-approved program before the January 13, 2003 deadline, EPA has decided to grant interim approval of the program. This interim approval will allow Guam to simultaneously move forward with permitting sources while correcting the deficiencies identified above. If Guam has not corrected the deficiencies in the alternate permit program within two years, then the interim approval of the alternate program shall expire and the owner or operators of such sources shall become subject to the permitting requirements of 40 CFR part 71 on that date.

B. Expiration and Revocation of the Conditional Exemption in 40 CFR 69.13(a)

The conditional exemption set forth circumstances under which the exemption shall expire or may be revoked. Those circumstances set forth in the conditional exemption continue unchanged. Guam's alternate program, which is receiving interim approval pursuant to today's rule, will be implemented within the framework of the conditional exemption as follows:

(1) If Guam does not submit a revised alternate operating permit program within 18 months of the effective date of this interim approval, then interim approval of the alternate permit program shall expire with no further rulemaking and 40 CFR Part 71 shall become effective for all subject sources in Guam.

(2) If Guam submits revisions within 18 months of the effective date of this interim approval, the interim approval will continue for an additional 6 months while EPA reviews the amended program to determine if it qualifies for full approval. Unless EPA approves the amended program, the interim approval will expire with no further rulemaking two years after the effective date of this interim approval. EPA will approve the amended program and provide notice of the approval in the **Federal Register** if the amended program meets all the conditions of the exemption. In the event that EPA disapproves the program because the program does not meet the requirements, EPA will revoke the exemption at 40 CFR 69.13(a)(1) by rulemaking.

C. Other Terms of Conditional Exemption Continue Unchanged

EPA is granting interim approval only to those portions of Guam's Regulations that are necessary to implement Guam's alternate permit program, required by the conditional exemption as part of the exemptions from the Title V program. This approval does not constitute approval under any other provisions of the Act. Except as provided herein, all other terms and conditions of the conditional exemption continue unchanged. The scope of the exemptions set forth in the conditional exemption continues unchanged. EPA continues to reserve its authority to revoke or modify the exemptions in whole or in part.

D. Interaction of Part 71 and Part 69

Approval of Guam's program is occurring close to the January 13, 2003 deadline set forth in part 69. As a result, most sources will be unable to obtain a permit under an EPA approved program by the January 13, 2003 deadline, as required by § 69.13(d)(3). Because the failure to meet the January 13, 2003 deadline is not, in these cases, caused by the failure of the applicant to timely submit information required or requested to process the application, GEPA has asked EPA to clarify how the provisions of part 71 will be applied to sources which submit a timely and complete permit application to GEPA but which have not obtained a permit by January 13, 2003.

(1) Requirements of Guam's program: Guam's program requires that major sources must submit permit applications within 6 months of the effective date of Guam's alternate program, PSD sources and NSPS sources must submit permit applications within 10 months, and NESHAP and all other sources must submit permit applications within 12 months of the effective date of Guam's alternate program. See Guam's Regulations at section 1104.10, and appendix A to section 1104.10. These deadlines match or exceed the requirements of parts 70 and 71. See 40 CFR 70.4(b)(11)(i) and 71.5(a)(1)(i). Guam shall approve or deny the application within twelve months after receipt of a complete application, although shorter actions times apply in some instances. See Guam's Regulations at section 1104.6(j). Guam's program requires action from the regulatory agency that matches or exceeds the requirements of parts 70 and 71. See 40 CFR 70.4(b)(11)(ii), 71.7(a)(2) and 71.4(i).

(2) Sources become subject to part 71 on January 13, 2003: Sources without permits become subject to part 71 on January 13, 2003. Pursuant to 40 CFR 69.13(d)(3), part 71 requirements will apply to all sources which do not have permits under an EPA approved program on January 13, 2003. If the owners or operators of a source which was eligible for the conditional exemption do not have a permit under Guam's approved part 69 program on January 13, 2003, and do not have a part 71 permit, then they must submit a timely and complete part 71 application to EPA, and "timely" means submitted to EPA within 12 months. See 40 CFR 71.5(a)(1).

(3) Approval of part 70 programs results in EPA suspension of part 71 permit issuance: Interim approval of Guam's program should affect the need

for sources to obtain part 71 permits. Sources in areas with approved part 70 programs are not permanently required to submit part 71 applications to EPA. Forty CFR 71.4(l) states that the Administrator will suspend the issuance of part 71 permits promptly upon publication of notice of approval of a State or Tribal operating permits program that meets the requirements of part 70. Forty CFR 71.4(l)(1) states that the Administrator will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program. EPA thus suspends issuance of part 71 permits once a part 70 program is authorized. A program that meets the requirements of part 70 can be a program with full approval, or a program with interim approval. Section 71.4(l) states that the Administrator may retain jurisdiction over the part 71 permits for which the administrative or judicial review process is not complete and will address this issue in the notice of state program approval. If the program being granted interim approval in this action were a part 70 program, then EPA would suspend the issuance of part 71 permits, and address in the notice of program approval the issue of part 71 permits for which the administrative process is not complete.

(4) Interpretation of part 71 regulations in light of the conditional exemption: EPA believes that the part 71 regulations should be interpreted in a manner which is consistent with the conditional exemption granted to Guam under section 325 of the Act. Guam requested and received a conditional exemption from the need to implement a program which meets all of the requirements of part 70. Although Guam is not required to implement a part 70 program, it must have a program which meets the requirements set forth at 40 CFR 69.13. Furthermore, while Guam's alternate permit program reflects Guam's unique conditions and circumstances, it is the functional equivalent of a part 70 permit program. It is consistent with the regulatory framework therefore, to consider that Guam's alternate permit program approved in today's rule "meets the requirements of part 70" for the purposes of 40 CFR 71.4(l). Accordingly, EPA will suspend the issuance of part 71 permits for sources which are eligible for the conditional exemption upon Guam's program being granted interim approval, provided that the owners and operators of such sources apply for and obtain permits under Guam's approved operating permit program, in the manner specified below.

(5) Timing and source requirements upon approval of Guam's program. Owners and operators of sources eligible for the conditional exemption that become, pursuant to 40 CFR 69.13(d)(3), automatically subject to part 71 on January 13, 2003 because such source does not have a permit issued under Guam's EPA-approved permit shall be subject to the following: (1) Owners/operators of such sources must submit a timely and complete application to Guam EPA by the applicable deadline specified in Guam's approved program. (2) Owners/operators of such sources must obtain a federally enforceable operating permit issued pursuant to Guam's alternative operating permit program within the time periods specified by that program.

Owners and operators of sources which under 40 CFR 69.13(d)(3) are automatically subject to part 71 on January 13, 2003 do not need to submit a part 71 permit application to EPA so long as they meet all of the above criteria. Owners and operators of sources which under 40 CFR 69.13(d)(3) are automatically subject to part 71 on January 13, 2003 and which do not meet all of the above criteria remain subject to the requirement to apply for and obtain a part 71 permit. Owners or operators of sources excluded from the conditional exemption (see 40 CFR 69.13(a)(4)) remain subject to the requirement to apply for and obtain a part 71 permit.

III. Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this final approval is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law.

This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law.

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000).

This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Act.

This final approval also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR parts 69 and 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Act, EPA will approve State programs provided that they meet the requirements of the Act and EPA's regulations codified at 40 CFR part 70 or, in this case, 40 CFR part 69. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 69

Environmental protection, Air pollution control, Guam.

Dated: December 17, 2002.

Alexis Strauss,

Acting Regional Administrator, Region 9.

40 CFR part 69 is amended as follows:

PART 69—[AMENDED]

1. The authority citation for part 69 continues to read as follows:

Authority : Sec. 325, Clean Air Act, as amended (42 U.S.C. 7625–1).

Subpart A—Guam

2. Subpart A is amended by adding § 69.13(f) to read as follows:

§ 69.13 Title V conditional exemption.

* * * * *

(f) Interim approval of alternate permit program.

(1) The following sections of Guam's Air Pollution Control Standards and Regulations are granted interim approval as Guam's alternate permit program:

1101.1(a) Administrator
1101.1(d) Air pollutant
1101.1(e) Air pollution
1101.1(i) Air pollution emission source
1101.1(r) CFR
1101.1(s) Clean Air Act
1101.1(t) Commenced
1101.1(v) Compliance Plan
1101.1(aa) Emission
1101.1(cc) Emissions unit
1101.1(ii) Fugitive Emissions
1101.1(jj) GEPA
1101.1(kk) Hazardous air pollutant
1101.1(xx) Owner or operator
1101.1(zz) Permit
1101.1(bbb) Person
1101.1(eee) Potential to emit
1101.1(iii) Regulated air pollutant
1101.1(jjj) Responsible official
1101.1(ooo) Source
1101.1(uuu) USEPA
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(a) Administrative Permit Amendment
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1104.23 Application Fees for Air Pollution Emission Sources
1104.24 Annual Fees for Air Pollution Emission Sources
1104.25 Penalties and Remedies
1106 Standards of Performance for Air Pollution Emission Sources

(2)(i) If Guam does not submit a revised alternate operating permit program within 18 months of April 9, 2003, then interim approval of the alternate permit program shall expire with no further rulemaking and 40 CFR part 71 shall become effective for all subject sources in Guam.

(ii) If Guam submits revisions within 18 months of April 9, 2003, the interim approval will continue for an additional 6 months while EPA reviews the amended program to determine if it qualifies for full approval. Unless EPA approves the amended program, the interim approval will expire with no further rulemaking two years after April 9, 2003. EPA will approve the amended program and provide notice of the approval in the **Federal Register** if the amended program meets all the conditions of the exemption.

(3) SIP Revision. Guam shall adopt, pursuant to required procedures, and submit to EPA a revision to Guam's SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant the exemption authorized in this § 69.13.

[FR Doc. 03–119 Filed 1–8–03; 8:45 am]

BILLING CODE 6560–50–U

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–75

[FMR Amendment C–1 Corrections]

RIN 3090–AH45

Federal Management Regulation; Real Property Policies Update; Corrections

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Correcting amendments.

SUMMARY: The General Services Administration is issuing amendments to FMR Amendment C–1, Real Property Policies Update, published in the **Federal Register** at 67 FR 76820, December 13, 2002, to correct the dollar thresholds associated with negotiated sales and explanatory statements to be consistent with existing statutes.

DATES: Effective Date: January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, Office of Governmentwide Policy, General Services Administration, by phone at (202) 501–1737 or by e-mail at *stanley.langfeld@gsa.gov*.

Corrections

In the final rule document appearing in the issue of December 13, 2002, make the following corrections:

§ 102–75.880 [Corrected]

1. On page 76864, third column, under § 102–75.880, correct paragraph (a) by removing "$50,000" and adding "$15,000" in its place.

§ 102–75.885 [Corrected]

2. On page 76864, third column, under § 102–75.885, correct paragraph (b) by removing "$700,000" and adding "$100,000" in its place.

§ 102–75.905 [Corrected]

3. On page 76865, second column, under § 102–75.905, correct paragraphs (a) and (c) by removing "$700,000" and adding "$100,000" in its place.

Dated: January 2, 2003.

Stanley C. Langfeld,

Director, Real Property Policy Division, Office of Governmentwide Policy.

[FR Doc. 03–377 Filed 1–8–03; 8:45 am]

BILLING CODE 6820–23–P

Proposed Rules

Federal Register
Vol. 68, No. 6
Thursday, January 9, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–02–007]

RIN 0581–AC24

Requirements for the USDA "Produced From" Grademark for Shell Eggs

AGENCY: Agricultural Marketing Service, (USDA).

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the regulations governing the voluntary shell egg grading program by clarifying the requirements for using the "Produced From" grademark for shell eggs. Use of this grademark began in April 1998. Since then, questions have arisen regarding the regulatory language. This proposal would clarify the language of the "Produced From" grademark requirements in the regulations by removing the reference to continuous supervision.

DATES: Comments must be received on or before March 10, 2003.

ADDRESSES: Send written comments to David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, Room 3944-South, 1400 Independence Avenue, SW., Washington, DC 20250–0259. Comments may be faxed to (202) 690–0941.

State that your comments refer to Docket No. PY–02–007 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, (202) 720–3271.

SUPPLEMENTARY INFORMATION:

Background

AMS administers a voluntary grading program for shell eggs under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). Any interested person, commercial firm, or government agency that applies for service must comply with the terms and conditions of the regulations and must pay for the services rendered. AMS graders monitor processing operations and verify the grade and size of eggs packed into packages bearing the USDA grademark.

Current regulations allow for the use of several different grademarks to identify consumer-pack USDA graded shell eggs or products prepared from them. The regulations also include the eligibility requirements for eggs to be identified with an official grademark.

Proposed Changes

A "Produced From" grademark was added to the regulations, effective April 20, 1998 (63 FR 13329, March 19, 1998). As currently written, the regulations state that the "Produced From" grademark may be used to identify products for which there are no official U.S. grade standards (*e.g.*, pasteurized shell eggs), provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade AA or A shell eggs under the continuous supervision of a grader."

The intent of the regulations was to ensure that the eggs used to produce the products were U.S. Consumer Grade AA or A. One of the requirements for eggs to be identified with an official grademark is that the eggs be graded under the supervision of a grader.

The regulations could be interpreted to mean that the products that are produced from the U.S. Consumer Grade AA or A shell eggs must also be produced under continuous supervision. However, this was not the Department's intent.

The Agency has determined that in order to clarify the regulatory language, the reference to continuous supervision regarding the "Produced From" grademark should be removed.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this proposed rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000 (13 CFR 121.201). Approximately 625,000 egg laying hens are needed to produce enough eggs to gross $9,000,000.

Currently, the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) authorizes a voluntary grading program for shell eggs. Shell egg processors that apply for service must pay for the services rendered. These user fees are proportional to the volume of shell eggs graded, so that costs are shared by all users. Plants in which these grading services are performed are called official plants. Shell egg processors who do not use USDA's grading service may not use the USDA grade shield. There are about 625 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 175 are official plants that use USDA's grading service and would be subject to this proposed rule. Of these 175 official plants, 57 meet the small business definition.

This proposed amendment would benefit the processors in the industry, both large and small. It is intended to clarify a regulatory provision which has caused some confusion and involves no additional costs.

Executive Orders 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with

this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection and recordkeeping requirements included in this rule, and there are no new requirements. The assigned OMB control number is 0581–0128.

List of Subjects in 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 56 be amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 56.36 [Amended]

2. In § 56.36, paragraph (a)(3) is amended by adding a period after the word "eggs" the second time it appears in the paragraph and by removing the words "under the continuous supervision of a grader."

Dated: December 26, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–369 Filed 1–8–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

7 CFR Parts 1951, 1962, and 1965

RIN 0560–AG50

Farm Loan Programs Account Servicing Policies—Elimination of 30-Day Past-Due Period

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to amend its regulations to eliminate the 30-day past-due period prior to a determination that the borrower is delinquent and clarify the use of the terms "delinquent" and "past due" with regard to direct loan servicing and offset. Because the regulation only allows debt writedown after a borrower becomes delinquent, this proposed change would allow Farm Loan Program (FLP) borrowers to receive debt writedown on the day after a missed payment, assuming all other primary loan servicing criteria are met, instead of waiting 31 days.

DATE: Comments on this rule must be submitted by March 10, 2003, to be assured consideration.

ADDRESSES: Submit written comments to Director, Farm Loan Programs, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, SW., Washington, DC 20250–0523. Comments will be available for public inspection weekdays from 8 a.m. to 4:15 p.m., eastern standard time, at the above address.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, telephone (202) 690–4014; electronic mail: *mike_cumpton@wdc.fsa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. This rule will allow borrowers in financial difficulty to work with the Agency to cure the delinquency at an earlier time. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Evaluation

It is the determination of FSA that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) except as specifically stated in this rule, no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before seeking judicial review.

Executive Order 12372

For reasons contained in the notice related to 7 CFR part 3015, subpart V (48 FR 29115 June 24, 1983) the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost and benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Paperwork Reduction Act

The amendments to 7 CFR part 1951 contained in this rule require no revisions to the information collection requirements that were previously approved by OMB under control numbers 0575–0119 and 0560–0161 according to the provisions of 44 U.S.C. chapter 35. The information collections currently approved by OMB under control number 0560–0171 include the amendment to 7 CFR part 1962 contained in this rule. The amendment to 7 CFR part 1965 contained in this rule requires no revision to the information collection requirements that were previously approved by OMB and assigned control number 0560–0158.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans

10.406—Farm Operating Loans

10.407—Farm Ownership Loans

Discussion of the Proposed Rule

Currently, borrowers are considered "past-due" for 30 days after a scheduled FLP payment is not made, after which they are considered "delinquent". This is not consistent with the terminology used by FSA Farm Programs (FP) where no "past-due" period exists prior to delinquency. For consistency, FSA proposes to amend 7 CFR part 1951, subparts C and S, 7 CFR part 1962, subpart A, and 7 CFR part 1965, subpart A to eliminate the 30-day "past-due" period prior to a borrower becoming delinquent. Because 7 CFR part 1951, subpart S only allows debt writedown after a borrower becomes delinquent, this change would allow FLP borrowers to receive debt writedown on the day after a missed payment, assuming all other primary loan servicing criteria are met, instead of waiting 31 days. This will allow servicing to be completed earlier with no additional loss to the government, as the additional accrued interest during the 30 day period is often simply added to the writedown which would have been calculated on the first day the account was "past-due". This proposal also will change the definition of the word "delinquent" with regard to all servicing and offsets. The rule will not affect the "90 days past due" criteria that is currently used to determine initial notice of primary loan servicing under 7 CFR part 1951 subpart S, as this requirement is statutory (7 U.S.C. 1981d).

List of Subjects

7 CFR Part 1951

Account servicing, Credit, Debt restructuring, Loan programs—agriculture, Loan programs-housing and community development.

7 CFR Part 1962

Agriculture, Bankruptcy, Loan programs-agriculture, Loan programs-housing and community development.

7 CFR Part 1965

Loan programs-agriculture, Loan programs-housing and community development, Low and moderate income housing.

Accordingly, 7 CFR chapter XVIII is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

2. Amend § 1951.102 to:

a. Revise paragraph (b)(6)

b. Revise the third sentence of paragraph (b)(13), to read as follows:

§ 1951.102 Administrative Offset.

* * * * *

(b) * * *

(6) *Delinquent or past-due* means a payment that was not made by the due date.

* * * * *

(13) * * * To be feasible the debt must exist and be 90 days past due or the borrower must be in default of other obligations to the Agency, which can be cured by the payment.

* * * * *

Subpart S—Farm Loan Programs Account Servicing Policies

3. Amend § 1951.906 by removing the definition of "Delinquent borrower" and adding in its place the definition of "Delinquent or past-due borrower".

§ 1951.906 Definitions.

* * * * *

Delinquent or past-due borrower: A borrower who has failed to make all or part of a payment by the due date.

* * * * *

4. Amend the second sentence of § 1951.907 paragraph (c) to read as follows:

§ 1951.907 Notice of loan service programs.

* * * * *

(c) * * * FLP borrowers who are at least 90 days past due will be sent exhibit A of this subpart with Attachments 1 and 2 by certified mail, return receipt requested.* * *

* * * * *

PART 1962—PERSONAL PROPERTY

5. The authority citation for part 1962 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing and Liquidation of Chattel Security

6. Amend § 1962.40 to revise the first sentence of paragraph (b)(2) to read as follows:

§ 1962.40 Liquidation.

* * * * *

(b) * * *

(2) In Farm Loan Programs loan cases, borrowers who are 90 days past due on their payments must receive exhibit A with attachments 1 and 2 or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default.

* * * * *

PART 1965—REAL PROPERTY

7. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

8. Amend § 1965.26 to revise the first sentence of paragraph (b)(2) to read as follows:

§ 1965.26 Liquidation action.

* * * * *

(b) * * *

(2) In Farm Loan Programs loan cases, borrowers who are 90 days past due on their payments, must receive Exhibit A with attachments 1 and 2, or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default.

* * * * *

Dated: December 31, 2002.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

Dated: January 3, 2003.

Thomas C. Dorr,

Under Secretary for Rural Development.

[FR Doc. 03–394 Filed 1–8–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 255 and 399

[Docket Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations; Statements of General Policy

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Proposed rule; notice of petition response date.

SUMMARY: The Department has issued a notice of proposed rulemaking that proposes to readopt and amend its existing rules governing airline computer reservations systems (CRSs) and to clarify the requirements of its Statements of General Policy on travel agency disclosure of any agency service fees. Sabre, one of the CRSs, has filed a petition asking for a fact hearing. The Department is now establishing January 13, 2003, as the due date for responses to Sabre's petition.

DATES: Responses to Sabre's petition are due January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION:

The Department has begun a rulemaking to reexamine whether it should maintain its existing rules governing CRS operations. We issued a notice of proposed rulemaking that set forth our tentative proposals regarding the existing rules and our tentative belief that we should not extend the rules to cover the sale of airline tickets through the Internet. 67 FR 69366 (November 15, 2002). We stated our intent to follow the notice-and-comment procedures established by the Administrative Procedure Act for informal rulemakings. 67 FR 69369. Comments and reply comments on our notice of proposed rulemaking are now due March 16 and May 15, 2003. 67 FR 72869 (December 9, 2002).

On December 23 Sabre filed a petition asking us to hold a "Fact Hearing." Sabre asserts that our notice did not provide an adequate factual basis for our tentative decision that we should maintain the existing rules with some changes. The hearing sought by Sabre would include, among other things, testimony from a Department official on the factual basis underlying these decisions.

Delta Airlines, assuming that answers to Sabre's petition would normally be due January 3, has filed a motion asking that answers be due January 13. Sabre filed its 33-page petition on December 23. Delta contends that it did not receive a copy of the petition until December 30, since Sabre had served it by mail, that Delta would have only two business days to prepare its response if it were required to respond by January 3, and that a 10-day extension would be reasonable. Delta notes that the petition seeks extraordinary relief and raises a number of controversial legal issues.

We believe that Delta's request is reasonable and that responses by other parties would assist our consideration of Sabre's petition. Given the holidays and the unusual nature of Sabre's petition, establishing January 13 as the due date for answers would give the parties an adequate time to respond without delaying the rulemaking. We therefore invite interested persons to file answers by January 13.

Issued in Washington, DC on January 2, 2003.

Kirk K. Van Tine,

General Counsel.

[FR Doc. 03–355 Filed 1–8–03; 8:45 am]

BILLING CODE 4910–63–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Expansion of the Port Limits of Portland, MA

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs regulations pertaining to the field organization of Customs by extending the geographical limits of the port of entry of Portland, Maine, to include the City of Auburn, Maine. This proposed change is being made to provide better service to carriers, importers, and the general public.

DATE: Comments must be received on or before March 10, 2003.

ADDRESSES: Written comments must be submitted to the U. S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at the U.S. Customs Service, 799 9th Street, NW., Washington, DC, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202–572–8768.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Fleming, Office of Field Operations, at 202–927–1049.

SUPPLEMENTARY INFORMATION:

Background

To provide better service to carriers, importers, and the general public, Customs proposes to amend § 101.3(b)(1), Customs regulations (19 CFR 101.3(b)(1)), by extending the geographical limits of the port of entry of Portland, Maine.

Current Port Limits of Portland, Maine

The current port limits of Portland, Maine, as extended by Executive Order (E. O.) 9297 of February 1, 1943 (8 FR 1479), include Portland, Maine, and the territory embracing the municipalities of South Portland, Falmouth, and Cape Elizabeth, in the State of Maine, and Peak, Long, Cliff, Cushing, and Diamond Islands, in the State of Maine.

Proposed Expansion of Port

It is proposed to expand the port limits of the port of entry of Portland, Maine, to include the City of Auburn, Maine.

Customs proposes to include the City of Auburn within the port limits to facilitate the clearance of international cargo at the Auburn Intermodal Facility ("AIF"). AIF is a rail/truck intermodal facility with a high cube, doublestack intermodal terminal worldwide.

If the proposed extension of the Portland, Maine, port of entry limits to include the City of Auburn, Maine, is adopted, the limits of port column adjacent to the listing of Portland, Maine, in the list of Customs ports of entry in § 101.3(b)(1) will be amended accordingly.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Comments

Before adopting this proposal, consideration will be given to any

written comments that are timely submitted to Customs. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5, Treasury Department Regulations (31 CFR 1.5), and § 103.11(b), Customs regulations (19 CFR 102.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

Customs establishes, expands and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

Robert C. Bonner,

Commissioner of Customs.

Approved: January 6, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–432 Filed 1–8–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 103

RIN 1515–AD18

Confidentiality Protection for Vessel Cargo Manifest Information

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to provide that, in addition to the importer or consignee, parties that electronically transmit vessel cargo manifest information directly to Customs 24 or more hours before cargo is laden aboard the vessel at the foreign port may request confidentiality with respect to the name and address of the importer or consignee, related marks and identification numbers that reveal their names and addresses, and the names and addresses of their shippers. These parties must submit to Customs a letter of authorization signed by the importer or consignee with the request for confidentiality. Current regulations allow only the importer or consignee, or an authorized employee, attorney, or official of the importer or consignee, to make such requests.

DATES: Comments must be received on or before February 10, 2003.

ADDRESSES: Written comments (preferably in triplicate), regarding both the substantive aspects of the proposed rule and how it may be made easier to understand, may be submitted to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at the U.S. Customs Service, 799 9th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Burton, Chief, Entry and Carriers Branch, Office of Regulations and Rulings, at (202) 572–8724.

SUPPLEMENTARY INFORMATION:

Background

Under 19 U.S.C. 1431, Customs must make available for public disclosure certain information contained in vessel manifests except when the importer or consignee has requested confidential treatment.

On October 31, 2002, Customs published a final rule document in the **Federal Register** (67 FR 66318) that amended the Customs Regulations pertaining to the inward foreign manifest to provide that Customs must receive from the carrier the vessel's Cargo Declaration (Customs Form (CF) 1302), one document among a few that comprise the manifest, or a Customs-approved electronic equivalent of the cargo declaration, at least 24 hours before the cargo is laden aboard the vessel at the foreign port, and to require that Vessel Automated Manifest System (AMS) participants provide the cargo declaration electronically (see 19 CFR 4.7(b)(2)). The amended regulation also provides that a properly licensed or registered non-vessel operating common carrier (NVOCC) that is in possession of an International Carrier Bond containing the provisions of § 113.64 of the regulations (19 CFR 113.64) may electronically transmit required manifest information directly to Customs through the AMS 24 or more hours before cargo it delivers to the vessel carrier is laden aboard the vessel at the foreign port. If the NVOCC chooses not to transmit the required manifest information to Customs, as described above, the amended regulation provides that the NVOCC must instead fully disclose and present the required information to the vessel carrier to allow the vessel carrier to present the information to Customs via the AMS system. (See 19 CFR 4.7(b)(3).)

The final rule amended other sections within Part 4 of the regulations and made amendments to § 113.64 having to do with bond obligations of NVOCCs that elect to transmit manifest information in accordance with § 4.7(b). Discussion of these particular amendments is not necessary in this document. (See the final rule, cited previously, for a more complete presentation of these amendments.)

In response to the notice of proposed rulemaking (NPRM) that preceded publication of the final rule discussed above, published in the **Federal Register** (67 FR 51519) on August 8, 2002, the NVOCC community submitted several comments expressing concern that certain information and data that a NVOCC would supply under the new procedures of § 4.7(b) would be subject to release for publication. Under § 103.31 of the regulations (19 CFR 103.31), vessel manifest information is made available to newspapers, commercial magazines, trade journals, and similar publications. The NVOCC group contended that such release would reveal confidential business information that could result in harm to the NVOCC community, and recommended that Customs amend the regulations to permit NVOCCs to request confidentiality on behalf of importers and consignees under § 103.31. Because the NVOCC comments concerned an issue that was not the focus of the prior rulemaking, Customs responded to these comments in the final rule document by indicating that it would soon publish another NPRM proposing to amend the regulations to address the issue within the limitations of existing law. The purpose of this NPRM is to seek further input from the trade community on the specific question whether the Customs regulations should be amended.

Under 19 U.S.C. 1431(c), only importers and consignees are authorized to make such confidentiality requests to

protect their name and address from disclosure as well as the name and address of their shippers. The regulations implementing this Section provide that authorized employees, attorneys, or officials of importers or consignees may make such requests (19 CFR 103.31(d)). Consistent with the view that authorized representatives of the importers or consignees may file confidential requests, this document proposes to amend § 103.31(d) of the Customs Regulations to allow parties that transmit directly to Customs manifest information in accordance with §§ 4.7(b) and 4.7a to file a biennial certification requesting confidentiality on behalf of an importer or consignee when authorized to do so by the importer or consignee. This amendment allowing such parties, including NVOCCs and vessel carriers, to make confidentiality requests will enhance the new procedures set forth in the final rule, as these parties will be relieved from any disadvantage that might result from publication of certain manifest information.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC. To make arrangements to inspect submitted comments, call Mr. Joseph Clark at (202) 572–8768.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Inasmuch as adoption of the proposed amendment would expand the parties who may request confidentiality of business sensitive information for the purpose of protecting their competitive standing or advantage, and thus would benefit this segment of the importing community, it is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the proposed amendments to the Customs Regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in § 103.31 has previously been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0124 (Disclosure by Customs of information on cargo declarations of inward vessel manifests). This notice of proposed rulemaking (NPRM) contains an additional collection of information that has been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The additional collection of information in this proposed rule document is contained in § 103.31(d)(i). This information is required to allow a party transmitting vessel cargo manifest information directly to Customs in accordance with the procedures of § 4.7(b) of this chapter to submit a confidentiality certification on behalf of an importer or consignee. The likely respondents are businesses such as non-vessel operating common carriers and vessel carriers that must submit to Customs the information required under the regulation when choosing to obtain confidentiality for importers and consignees.

The estimated burden to the public resulting from the additional collection is as follows:

Estimated total annual reporting and/or recordkeeping burden: 250 hours.

Estimated average annual burden per respondent/recordkeeper: 30 minutes.

Estimated number of respondents and/or recordkeepers: 500.

Estimated annual frequency of responses: 1.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to Customs at the address set forth in the **ADDRESSES** section of this document.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

List of Subjects in 19 CFR Part 103

Administrative practice and procedure; Confidential business information, Electronic filing, Freedom of Information, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons stated in the preamble, Part 103 of the Customs Regulations (19 CFR Part 103) is proposed to be amended as follows:

PART 103—AVAILABILITY OF INFORMATION

1. The general authority citation for part 103 and the specific authority citation for § 103.31 continue to read as follows:

Authority: 5 U.S.C. 301; 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431;

* * * * *

2. Section 103.31 is proposed to be amended by revising paragraph (d)(1)(i) to read as follows:

§ 103.31 Information on vessel manifests and summary statistical reports.

* * * * *

(d) *Confidential treatment*—(1) *Inward manifest.* * * *

(i) An importer or consignee, or authorized employee, attorney or official of the importer or consignee, must submit a certification (as described in paragraph (d)(1)(ii) of this section) to claim confidential treatment of the data set forth in paragraph (d)(1) of this section. In addition, a party that either electronically directly transmits, or uses a service provider to transmit, the Customs Form 1302 Cargo Declaration to Customs in accordance with the procedures of § 4.7(b) of this chapter may submit a certification to claim confidential treatment of the data set forth in paragraph (d)(1) of this section on behalf of an importer or consignee if the importer or consignee designates such party as its attorney-in-fact authorized to submit a certification on the importer's or consignee's behalf. The party so designated/authorized must provide Customs with a letter of authorization signed by the importer or consignee, or its authorized employee, attorney or official, to support any

submission of a certification under this paragraph.

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: January 3, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–363 Filed 1–8–03; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[GU02–02; FRL–7433–4]

Clean Air Act Interim Approval of the Alternate Permit Program; Territory of Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant interim approval of the alternate permit program submitted by the Territory of Guam (Guam). In EPA's November 13, 1996 direct final rule, EPA granted Guam, as well as owners and operators of certain sources within Guam, an exemption from title V requirements on the condition that Guam promulgate and administer an approved alternative permit program. EPA granted these conditional exemptions under the authority of section 325 of the Clean Air Act (Act). Interim approval of Guam's alternate permit program will allow sources to be permitted under an approved alternate permit program while also requiring Guam to make additional submissions to fulfill all of the requirements of the conditional exemption.

In the rules and regulations section of this **Federal Register**, we are granting interim approval of these local rules as Guam's alternate permit program in a direct final action without prior proposal because we believe this action is not controversial and do not anticipate adverse comment. A detailed rationale for this approval is set forth in the direct final rule. If we do not receive adverse comments, no further activity is planned. If EPA receives adverse comments, however, we will publish a timely withdrawal of the direct final action and address the comments in a subsequent final action based on this proposed rule. We will not open a second comment period, so anyone interested in commenting should do so at this time.

DATES: Any comments on this proposal must arrive by March 10, 2003.

ADDRESSES: Mail comments to Gerardo Rios, Chief of the Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Copies of the submitted program and other supporting information used in evaluating the alternate permit program are available for inspection during normal business hours at the following location: Pacific Insular Area Program, U.S. EPA-Region IX (CMD–5), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Ben Machol, EPA Region IX, at (415) 972–3770, (*Machol.Ben@epa.gov*), Pacific Insular Area Program, or Robert Baker, at (415) 972–3979, (*Baker.Robert@epa.gov*) Permits Office, Air Division, at the EPA-Region IX address listed above.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located under the rules and regulations section of this **Federal Register**.

Dated: December 17, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–120 Filed 1–8–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AH86

Florida Manatees; Incidental Take During Specified Activities; Extension of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, provide notice that the public comment period for the proposed regulations that would authorize for the next five years the incidental, unintentional take of a small number of Florida manatees (*Trichechus manatus latirostris*) resulting from government activities related to watercraft and watercraft access facilities is extended to allow all interested parties to submit written comments on the proposal and the draft environmental impact statement. Comments previously submitted during the comment period need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on the proposal.

DATES: The original comment period is scheduled to close on January 13, 2003. The comment period is hereby extended until January 27, 2003. Comments from all interested parties must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: If you wish to comment, you may submit your comments by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216.

2. You may hand-deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to 904/232–2404.

3. You may send comments by electronic mail (e-mail) to *manatee@fws.gov*. For directions on how to submit electronic comment files, *see* the "Public Comments Solicited" section.

We request that you identify whether you are commenting on the proposed rule or draft environmental impact statement. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m. Monday through Friday, at the above address. You may obtain copies of the draft environmental impact statement from the above address or by calling 904/232–2580, or from our Web site at *http://northflorida.fws.gov*. Information regarding this proposal is available in alternative formats upon request.

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, Assistant Field Supervisor (*see* **ADDRESSES** section), telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361–1407) sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product

unless authorized. "Take" as defined by the MMPA and its implementing regulations (50 CFR part 18) means "to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following—the collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal."

"Harassment" is defined under the MMPA as, "any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

The prohibitions on take apply to all persons, including Federal, State, and local government agencies, with the exception of humane taking (including euthanasia) by government officials while engaged in their official duties (16 U.S.C. 1379(h)).

Section 101(a)(5)(A) of the MMPA allows the Secretary of the Department of the Interior, through the Director of the Fish and Wildlife Service (Service), upon request, to authorize by specific regulation the incidental unintentional take of a small number of marine mammals by U.S. citizens engaged in specific identified activities (other than commercial fishing) within specific geographic areas. On November 14, 2002, the Service published a proposed rule and notice of availability of a draft Environmental Impact Statement regarding regulations that would authorize for the next five years the incidental unintentional take of a small number of Florida manatees (*Trichechus manatus latirostris*) resulting from government activities related to watercraft and watercraft access facilities within three regions of Florida (67 FR 69078).

Public Comments Solicited

Any final action resulting from this proposal will be based on the best available information. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

We welcome any and all suggestions, materials, and recommendations to assist and guide us in this endeavor. Specifically, we are seeking:

1. Information regarding manatee population studies/data, particularly for the Southwest Florida Stock;
2. Information regarding measures, including technological measures, that would result in the least practicable impact on manatees and their habitat;
3. Information regarding the effectiveness of mitigating measures currently in place;
4. Information regarding the potential social and economic effects of the proposed regulations;
5. Information regarding means of minimizing potential social and economic effects of the negative finding for the Southwest Stock;
6. Suggested means and measures to report and monitor the effects of incidental take on manatees;
7. Suggested additional research efforts related to the findings of this rule; and
8. Nominations for participants to serve on the Working Group on Watercraft-related Incidental Take.

Additionally, we are requesting specific public comment on the following issues pertaining to the economic analysis, which is printed in its entirety in the EIS for this action:

1. Information to better model the change in boater behavior and/or the economic surplus impacts of changes in marine access;
2. Additional estimates of the difference in residential property values with and without the potential to construct private boat docks;
3. Information to estimate the number and regional distribution of out-of-state boaters who use their boats in Florida waters; and
4. Alternative regional impact models (*i.e.*, alternatives to IMPLAN) that would more accurately capture changes in sector outputs and employment resulting from the rule.

Please submit comments as a DOS text file format and avoid the use of special characters and encryption. Please also include "Attn—RIN 1018–AH86" and your name and return address in your email message. If you do not receive a confirmation from the system that we have received your email message, contact us directly by calling the Jacksonville Field Office (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their name and home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Our final determination on the proposed regulations will take into consideration comments and any additional information received by the date specified above. Previous comments and information submitted during the comment period need not be resubmitted. The comment period is extended to January 27, 2003.

Author

The primary author of this notice is Stefanie Barrett, U.S. Fish and Wildlife Service (*see* **ADDRESSES**).

Authority

The authority to establish regulations that would authorize for the next five years the incidental, unintentional take of small numbers of Florida manatees is provided by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

Dated: December 27, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–357 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 68, No. 6
Thursday, January 9, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber From Korea: Notice of Extension of Time Limit for 2001–2002 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the current review of the antidumping duty order on certain polyester staple fiber from Korea. The period of review is May 1, 2001 through April 30, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Jarrod Goldfeder, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1174 or (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On June 25, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on certain polyester staple fiber ("PSF") from Korea, covering the period May 1, 2001, through April 30, 2002 (67 FR 42753). The preliminary results for the antidumping duty administrative review of certain PSF from Korea are currently due no later than January 31, 2003.

Extension of Time Limits for Preliminary Results

The respondents in this proceeding have outstanding original and supplemental questionnaire responses. Because the Department requires time to review and analyze these responses once they are received, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, January 31, 2003). Therefore, the Department of Commerce is extending the time limit for completion of the preliminary results to not later than June 2, 2003, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 31, 2002.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 03–430 Filed 1–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms from Indonesia: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Sophie Castro or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0588 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2002, the Department published in the **Federal Register** (67 FR 4945) a notice of "Opportunity To Request Administrative Review" of the antidumping duty order on certain preserved mushrooms from Indonesia for the period February 1, 2001, through January 31, 2002 (third review period). On February 28, 2002, the respondents, PT Dieng Djaya ("Dieng") and PT Surya Jaya Abadi Perkasa ("Surya")[1], PT Indo Evergreen Agro Business Corporation ("Evergreen"), and PT Zeta Agro Corporation ("Zeta") requested an administrative review of their sales for the above-mentioned period. The petitioner, the Coalition for Fair Preserved Mushroom Trade,[2] did not comment. On March 27, 2002, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 14696.

Partial Recission of Review

On May 20, 2002, Dieng/Surya withdrew its request for an administrative review of its sales for the third review period. Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request within 90 days of the date of publication of

[1] In accordance with 19 CFR 351.401(f), PT Dieng Djaya and PT Surya Jaya Abadi Perkasa were determined to be affiliated companies in the original less-than-fair-value investigation and are henceforth referred to as Dieng/Surya.

[2] The Coalition for Fair Preserved Mushroom Trade includes the American Mushroom Institute; L.K. Bowman, Inc.; Modern Mushrooms Farms, Inc.; Monterey Mushrooms, Inc.; Mount Laurel Canning Corp.; Mushroom Canning Company; Southwood Farms; Sunny Dell Foods, Inc.; and United Canning Corp.

notice of initiation of the requested review. In this case, Dieng/Surya has withdrawn its request for review within the 90-day period. We have received no other submissions regarding Dieng/Surya's withdrawal of its request for review. Therefore, we are rescinding, in part, this administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia as to Dieng/Surya. This review will continue with respect to Evergreen and Zeta.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: January 3, 2003.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–431 Filed 1–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Transformed Bacteria Producing CS6 Antigens as Vaccines

AGENCY: Department of the Army, (DoD).

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/479,877 entitled "Transformed Bacteria Producing CS6 Antigens as Vaccines," file January 10, 2000. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention is related to a CS6 antigen for use in vaccines to protect from pathological effects of enterotoxigenic E. coli.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–435 Filed 1–8–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army (DoD).

ACTION: Notice.

SUMMARY: This notice amends Performance Review Boards Membership, published November 25, 2002 (67 FR 70584), for the Department of the Army. The following name is added to the Performance Review Board for the U.S. Army Corps of Engineers (USACE): Mr. Joseph Tyler, Chief, Programs Management Division, Directorate of Military Programs, Headquarters, USACE.

EFFECTIVE DATE: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–433 Filed 1–8–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, (DoD).

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting

Name of Committee: Inland Waterways Users Board (Board).

Date: February 13, 2003.

Location: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue NW., Washington, DC (1–202–628–2100).

Time: Registration will begin at 8:30 a.m. and the meeting is scheduled to adjourn at 11 a.m.

Agenda: The Board will hear briefings on the status of both the funding for inland navigation projects and studies, and the Inland Waterways Trust Fund. The Board will also consider its priorities for the next fiscal year.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, 441 G Street, NW., Washington, DC 20314–1000; Ph: (202) 761–4559.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Luz D. Ortiz,

Army Federal Registration Liaison Officer.

[FR Doc. 03–434 Filed 1–8–03; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Cancellation of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of cancellation of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the cancellation of Financial Assistance Solicitation No. DE–PS26-03NT41716 entitled "Gasification Technologies Fundamental Research" which was published in the **Federal Register** on December 02, 2002 (67 FR 71544).

FOR FURTHER INFORMATION CONTACT: Keith L. Carrington, MS l07, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880, E-mail Address: *keith.carrington@netl.doe.gov,* Telephone Number: (304) 285–4456.

Issued in Pittsburgh, Pennsylvania, on December 19, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–383 Filed 1–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41463 entitled "2003 Climate Change Fuel Cell Buy-Down Program. The objective of the cost-shared program is to simultaneously stimulate commercialization of stationary fuel cell power plants and reduce greenhouse gas emissions through the efficient use of fossil fuels.

DATES: The solicitation will be available on the "Industry Interactive Procurement System" (IIPS) webpage located at *http://e-center.doe.gov* on or about December 30, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Michael Nolan, Contract Specialist, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507–0880, E-mail Address: *michael.nolan@netl.doe.gov*, Telephone Number: (304) 285–4149.

SUPPLEMENTARY INFORMATION: With support from the Department of Defense (DoD), DOE, through the National Energy Technology Laboratory, will issue a financial assistance solicitation for grant applications from qualifying applicants proposing demonstrations of stationary fuel-cell powered plants. The Federal support will not exceed the lower of $1,000/kW or one-third of the total project costs which includes unit cost, installation, and one year of operation. The solicitation will be issued on or about December 30, 2002, and applications will be due on or about June 1, 2003. Awards are projected for September 2003 with all project work (including one calendar year of operation and a final report) to be completed by September 30, 2006. Once released, the solicitation will be available for downloading from the IIPS Internet page at *http://e-center.doe.gov*. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Morgantown, WV, on December 6, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–384 Filed 1–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 6, 2003, 9 a.m.–5 p.m.

Friday, February 7, 2003, 8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hotel Hanford House, 802 George Washington Way, Richland, WA, Phone: (509) 946–7611, Fax: (509) 943–8564.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA, 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Thursday, February 6, 2003

- Introduction and discussion of Draft Advice on the Notice of Intent to Prepare an Environmental Impact Statement for Accelerated Retrieval, Treatment and Disposal of Tank Waste and Closure of Tanks at the Hanford site.
- Strategic Initiative #4, Accelerated Waste Disposal, Performance Management Plan for Accelerated Cleanup of the Hanford Site and emerging issues on off-site waste shipments.
- 116N Trench Determination of Significance.
- Introduction and discussion of Draft Advice on Transuranic Waste from EM SSAB Transuranic Waste Management Workshop

Friday, February 7, 2003.

- Adoption of Draft Advice.
- Hanford Exposure Scenarios Task Force Final Report.
- Hanford Advisory Board Annual Report for 2002.
- Hanford Advisory Board Self Evaluation.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC, on December 31, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–379 Filed 1–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, January 23, 2003; 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport, Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Review and finalize recommendation on proposed modifications to Rocky Flats Cleanup Agreement.

2. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on January 6, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–380 Filed 1–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Tuesday, January 21, 2003, 8 a.m.–6 p.m.

Wednesday, January 22, 2003, 8 a.m.–5 p.m.

Public participation sessions will be held on:

Tuesday, January 21, 2003, 12:15–12:30 p.m, 5:45–6 p.m.

Wednesday, January 22, 2003, 11:45–12 noon, 4 p.m.–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: West Coast Hotel in the Teton/Bonneville Rooms, 475 River Parkway, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 545 Shoup Avenue, Suite 335B, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet Home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda Topics: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *http://www.ida.net/users/cab/.*)

- Potential new missions under the Idaho National Engineering and Environmental Laboratory (INEEL)'s new Nuclear Energy mission.
- The status of cleanup at Waste Area Group 7, including the Revised Work Plan and the major findings of the Remedial Investigation and the Baseline Risk Assessment.
- The status of the INEEL Environmental Management Program and implementation of the Performance Management Plan for Accelerating Cleanup at the INEEL.
- The waste acceptance criteria for the Waste Isolation Pilot Plant, (including criteria for remote-handled transuranic waste) that need to be changed to receive INEEL waste.
- The Record of Decision for the High-Level Waste and Facilities Disposition Environmental Impact Statement.
- The Public Involvement Plan to support the phased Record of Decision for the High-Level Waste and Facilities Disposition Environmental Impact Statement.
- DOE's efforts to address "problematic wastes" for which there is no clear treatment and disposal path.
- Board member reactions and concerns related to the V-Tank contents treatment and disposal options.
- Lessons learned from the 3,100 cubic meter project.
- Transuranic Waste Performance Management Plan.

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or tele-phone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate

the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Penny Pink, INEEL CAB Administrator, North Wind Environmental, Inc., PO Box 51174, Idaho Falls, ID 83405 or by calling (208) 528–8718.

Issued at Washington, DC, on December 31, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–381 Filed 1–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, January 22, 2003, 6 p.m.–9 p.m.

ADDRESSES: Crosby Senior Center, 8910 Willey Road, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6 p.m. Call to Order

6–6:15 p.m. Chair's Remarks and Ex Officio Announcements

6:15–6:30 p.m. Final Closure CAB Mission Statement

6:30–6:45 p.m. Prepare for SSAB Workshop

6:45–7:30 p.m. Silos Update and Feedback from Roundtable

7:30–7:45 p.m. Discussion of DOE Risk-based End State Policy

7:45–8 p.m. Comments on Fernald Stewardship Plan

8–8:45 p.m. Planning for Stewardship and Future Sites

8:45–9 p.m. Public Comment

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on December 31, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–382 Filed 1–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–246–000]

Order Establishing Procedures Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell

Issued December 30, 2002.

1. On December 6, 2002, the United States Department of Energy (DOE) referred to the Commission (Referral) the matter of compensation for costs incurred pursuant to an emergency order issued under section 202(c) of the Federal Power Act (FPA). DOE requests that the Commission "conduct such proceedings as it determines to be appropriate and issue a final order resolving these matters." In this order the Commission initiates procedures as requested. This order establishes procedures which will enable the Commission to resolve the issues in a timely manner.

2. In order to provide notice to interested parties, this order will be published in the **Federal Register**. Motions to intervene are due on or before 10 days after the date of publication.

3. On August 26, 2002, pursuant to section 202(c) of the FPA [1] and section 301 of the DOE Organization Act,[2] the Secretary of Energy issued Order No. 202–02–1 (Emergency Order). In the Emergency Order, the Secretary determined that an emergency existed on Long Island "due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, a shortage of facilities for the transmission of electric energy and other causes." Further, the Secretary determined that the issuance of the Emergency Order would alleviate the emergency and serve the public interest. Therefore, the Secretary directed Cross-Sound Cable Company, LLC (CSC) "to operate the Cross-Sound Cable and related facilities in order to transmit and deliver electric capacity and/or energy when, as and in such amounts as may be scheduled and purchased by the Long Island Power Authority (LIPA)." The Emergency Order further directed CSC "to take such actions as are necessary in order to energize the [CSC] facilities."

4. As noted in the Referral, CSC and LIPA have not been able to reach agreement on appropriate compensation relating to the Emergency Order. Therefore, pursuant to 10 CFR 205.376 (2002), DOE requests that the Commission apply such standards and procedures as it considers appropriate to resolve this matter.

5. In order to ascertain the positions of CSC, LIPA and any other interested party regarding the appropriate compensation for the emergency period, the Commission orders the filing of Initial Briefs on or before January 31, 2003 explaining the party's position and providing evidentiary support for that position. Parties may rebut each other's positions in Reply Briefs, which are due on or before February 28, 2003. Parties

[1] 16 U.S.C. 824a(c) (2000).

[2] 42 U.S.C. 7151(b) (2001).

do not need to file Initial Briefs in order to file Reply Briefs.

6. In authorizing the emergency transmission and delivery of electric capacity and energy, the Emergency Order limited the service provided by CSC for LIPA as follows:

> [T]his order * * * shall be limited to requiring the transmission and delivery of such electric capacity and/or energy as is necessary in the judgment of the New York Independent System Operator to meet the supply and essential reserve margin needs of LIPA * * * and * * * prior to exercising its judgment as required by this order, the New York Independent System Operator must consult with ISO–New England, Inc. to ensure that the *scheduling* of such electric capacity and/or energy will not violate system *operating criteria* * * * (Emphasis added.)

7. The documents in the Referral indicate that "the day that DOE issued the [Emergency] Order, LIPA contacted the NYISO and remained in almost daily telephone and e-mail communication with NYISO to determine what those emergency operating and scheduling protocols would be." The documents further indicate that the "Implementation Protocol for Emergency Operation of the Cross Sound Cable" (Protocol for Emergency CSC Operation) was not made available to LIPA until NYISO sent a facsimile transmission to LIPA on September 23, 2002, one week before the Emergency Order expired.

8. To help the Commission understand the reasons for the delay in establishing the Protocol for Emergency CSC Operation as ordered by the Secretary, and to help the Commission ensure that such a delay does not occur again, NYISO and ISO–New England are hereby directed to answer the following questions on or before January 31, 2003:

A. Explain in detail why NYISO and ISO-New England did not establish the Protocol for Emergency CSC Operation within a week or less of the issuance of the Secretary's Emergency Order.

B. Explain in detail the processes followed and the reasons why it took 38 days to issue the Protocol for Emergency CSC Operation.

C. Explain whether the same processes would be used if the Secretary issued another emergency order. If not, what changes would be made?

D. The fourth paragraph of the Protocol for Emergency CSC Operation states:

> All costs associated with energy provided pursuant to the [Emergency] Order and this Protocol shall be governed by the Emergency Transactions Agreement entered into between the NYISO and the New England Power Pool on August 14, 2000.

(1) Identify and support all costs associated with providing energy under the Emergency Order including expenses associated with establishing the Protocol for Emergency CSC Operation.

(2) Provide a copy of the August 14 Emergency Transactions Agreement and the protocols used to support such agreement.

E. Is there a scheduling and operating protocol which will be used if another emergency order is issued or when the CSC is fully operational?

9. Any comments parties have with respect to the answers provided by the ISOs may be included in separate sections of the Initial or Reply Briefs.

The Commission Orders

(A) Procedures for Commission action on the Referral are hereby established as discussed in the body of this order.

(B) The NYISO and ISO–NE are hereby directed to submit responses, as discussed in the body of this order.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–365 Filed 1–8–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7437–2]

EPA Public Meeting—Closing the Gap: Innovative Responses for Sustainable Water Infrastructure; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is hosting a one-day public forum to discuss water and wastewater infrastructure in the United States. EPA's goal is to bring together stakeholders, including those from business, government, and academia, to exchange information and views on management and sustainable financing of the nation's water and wastewater infrastructure. The meeting will be in Washington, DC, on January 31, 2003, starting at 9 a.m. This meeting is open to the public.

The forum will be composed primarily of two moderated expert panels who will offer their insights. At the forum, the audience will have an opportunity to provide questions to be discussed by the experts.

DATES: The meeting will begin at 9 a.m. on January 31, 2003.

ADDRESSES: The meeting will be held in the ballroom at the Marriott at Metro Center at 775 12th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: For more information on the location and agenda of this meeting, and general background information including related documents and reports on water and wastewater infrastructure needs, please see the Office of Water Web Page at *http://www.epa.gov/ow/* or contact the Safe Drinking Water Hotline, phone: (800) 426–4791 or (703) 285–1093. To assist in making arrangements for the number of attendees, please send an e-mail to *closingthegap@cadmusgroup.com* with the name, title, and organization of each person attending. Seating is limited to 300 people. If you need special accommodations at this meeting, including signing, you should contact Shawna Bergman at (202) 564–3641 by January 24, 2003, so that we can make appropriate arrangements.

Dated: January 3, 2003.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 03–392 Filed 1–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0340; FRL–7287–7]

Folpet; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0340, must be received on or before February 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection

Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7740; e-mail address: *giles-parker.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0340. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0340. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or

other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0340. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0340.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0340. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:January 2, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Makhteshim-Agan of North America Inc.

2E6512

EPA has received a pesticide petition (2E6512) from Makhteshim-Agan of North America Inc. (MANA), 551 Fifth Ave., Suite 1100 New York, NY 10176 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of folpet *N*-[(trichloromethyl)]thiophthalimide in or on the raw agricultural commodity hop at 120 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residue of folpet in plants is adequately understood based on acceptable avocado, grape and wheat metabolism studies. The metabolism of folpet in livestock is adequately understood. Based on the results observed in the metabolism studies, secondary residues such as phthalimide and phthalic acid are not expected to be of toxicological concern. The residue of concern is folpet per se.

2. *Analytical method.* An adequate gas chromatography/electron capture detector (GC/ECD) analytical method is available for enforcing tolerances of folpet in or on plant commodities. The method of detection had a limit of detection (LOD) of 0.01 mg/kg (ppm) and a limit of quantitation (LOQ) of 0.02 milligrams/kilogram (mg/kg) (ppm) in dried hops.

3. *Magnitude of residues.* Five residue trials have been conducted in Bavaria, Germany during 1996 and 1997. The hops were treated up to 8 times per season at a rate of up to 4.3 kg active ingredients/hectare (a.i./ha) (up to 23 kg a.i./ha per season), considering a 14 day PHI. After kiln drying, the measured residues in hops ranged from 25 to 65 ppm. Folpet was not detectable in any of the processed hop commodities (LOD for spent hops = 0.01 ppm; beer = 0.003 ppm). The generated data support the requested tolerance.

B. Toxicological Profile

1. *Acute toxicity.* In studies using laboratory animals, in general folpet has been shown to be of low acute toxicity: The acute oral LD_{50} and the acute dermal LD_{50} in rats were greater than 5,000 mg/kg. The acute rat inhalation LC_{50} (4-hour) was 0.48 mg/l. Folpet was irritating to the eyes of rabbits. It was not irritating to rabbit skin in a standard dermal irritation study but was a dermal sensitizer in a guinea pig maximization study. Based on these results, folpet is expected to be classified as TOXICITY CATEGORY IV for acute oral and dermal toxicity, and skin irritation, and as TOXICITY CATEGORY II for acute inhalation toxicity, and eye irritation.

2. *Genotoxicty.* Folpet was tested for genotoxic effects in several standard tests. Folpet is neither mutagenic nor genotoxic in mammals. In some of the *in vitro* studies mutagenic events were observed, such as gene mutations/DNA damage in bacteria and mammalian cells, chromosomal aberrations in mammalian cells and mitotic recombination in yeast. However, folpet does not present a genotoxic risk based on the fact that folpet degrades with a half-life of 0.97 seconds *in vivo.* This fast detoxification effectively eliminates systemic exposure to folpet or thiophosgene.

3. *Reproductive and developmental toxicity.* In an oral developmental study with New Zealand rabbits, the maternal and developmental no observed adverse effect level (NOAEL) was 10 mg/kg/day based on decreased food consumption, increased number of fetuses and litters with hydrocephalus and associated skull malformations at the lowest observed adverse effect level (LOAEL) of 20 mg/kg/day. In the rat developmental study the developmental no observed effect level (NOEL) was 60 mg/kg and the lowest observed effect level (LOEL) was 360 mg/kg.

A two-generation reproductive study in rats produced a parental NOEL of 34.5 mg/kg/day. There was a marginal decrease in the body weight of the F_1 offspring at birth and during lactation but no other changes in physical, functional, or behavioral endpoints were observed. The NOEL in the F_2 of 40 mg/kg/day was based on decreased body weight gain and decreased fertility of the males. The LOEL in this study was 180 mg/kg.

For both developmental and reproductive bioassays, the effects elicited by folpet are considered secondary to its primary effect: irritancy of the gastrointestinal tract. Folpet is absent in the systemic circulation and its initial ring degradate, phthalimide, has been shown not to be a developmental toxin.

4. *Subchronic toxicity.* In a 90-day feeding study in rats, the NOEL was established at 3,000 ppm and the LOEL was 10,000 ppm. Noted effects were decreased brain weight and decreased total blood protein including albumin.

In a subchronic dermal toxicity study, folpet was applied to rats at dose levels of 0, 1, 10, and 30 mg/kg body weight for 6 hours per day, 5 days a week, for a total of 21 days over a period of 30 days. All folpet treated rats developed pronounced dermal irritation in a dose-related manner. Systemic toxicity based on decreased body weight gain was observed at 10 and 30 mg/kg dose levels, but without clearly separating this effect to the severe skin damage.

5. *Chronic toxicity.* A 2-year feeding chronic toxicity/carcinogenicity study in rats was conducted with folpet at dietary concentrations of 0, 200, 800, or 3,200 ppm. For chronic toxicity, the NOAEL was 200 ppm (9 mg/kg/day) and the LOAEL was 800 ppm (35 mg/kg) based on hyperkeratosis/acanthosis and ulceration/erosion of the non-glandular stomach in males and females. No evidence of carcinogenicity was observed in this study.

A 2-year feeding chronic toxicity/carcinogenicity study in CD-1 mice showed a statistically significant, dose-related increase in the incidence of duodenal adenocarcinomas with an increase of about 50% at the highest dose tested (1,429 mg/kg/day). A similar response was seen in a chronic feeding study with B6C3F1 mice at the highest dose tested (HDT) of 1,000 mg/kg.

In previous assessments, the Agency has concluded that folpet is a Group B2 carcinogen, based on the increased incidences of duodenal adenomas and carcinomas in males and females of two strains of mice.

6. *Animal metabolism.* Results from the livestock and rat metabolism studies showed that orally administered folpet was rapidly absorbed, hydrolized and metabolized, followed by rapid elimination, predominantly via the urine. The major fecal degradate was phthalamic acid, while phthalic acid was a minor degradate. Most of the applied dose was excreted within 24 hours.

7. *Metabolite toxicology.* There are no folpet metabolites identified in plant or animal commodities, which require regulation.

8. *Endocrine disruption.* The standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. There is no evidence which suggests that folpet is an endocrine disrupter. The existing studies are generally considered to be sufficient to detect any endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure.* Potential dietary exposures from food under the existing tolerances for domestic uses (avocados) and imported commodities (apples, cranberries, cucumbers, grapes, lettuce, melons, onions, strawberries, and tomatoes), were estimated using the Dietary Exposure Evaluation Model (DEEM) for acute and chronic exposure based on the U.S. Department of Agriculture's (USDA) 1989–1992 individual consumption data. Residue data were based on field trials and percent crop information along with processing factors from submitted studies. No data from USDA's Pesticide Data Program (PDP) were available for folpet.

i. *Food.* Acute dietary exposure was compared to the acute population adjusted dose (aPAD), which utilizes 25.3% for females (15–50 years) at the 99th percentile, the only population group of concern for the acute Reference Dose (aRfD = 0.03 mg/kg/day, using the NOAEL of 10 mg/kg from the rabbit study, and the FQPA safety factor of 3X).

The results of the chronic (non-cancer) dietary analysis indicate that the chronic Population Adjusted Dose (cPAD) was below 1% for the U.S. population and its most sensitive subgroups based on a cRfD of 0.09 mg/kg/day.

Concerning the dietary cancer risk, the Agency's calculated upper bound risk was 9.8×10^{-8}, based on a Q^* of 0.00186 $mg/kg/day^{-1}$, using field trial data, processing factors and percent crop treated information. This risk level is far less than EPA's level of concern of 1×10^{-6}.

Based on USDA's consumption data not more than 0.0022% of the U.S. population diet is constituted of hops

(**Federal Register** of June 1, 2000, Vol.65, No 106, p. 35069–35090, Table 10; Guidance on Pesticide Import Tolerances and Residue Data for Imported Food). Furthermore, USDA's import statistics show that not more than 38% of beer consumed in the USA is imported and/or contains imported hops, which translates into a diet contribution from imported hops of not more than 0.0007%. For the purposes of this risk assessment, it was also demonstrated in brewing studies using hops treated with folpet at maximum label rates (range of residues: 25 to 65 ppm) and exaggerated hopping rates (0.002% or up to 2 g per liter wort) that no folpet residues could be measured in the finished beer (LOD = 0.003 ppm). Hopping rates in beer production are usually less than 0.001% in brew water (wort). Even considering that trace amounts of folpet would enter the brewing process, it will be rapidly hydrolyzed and completely degraded by the end of the beer brewing.

In view of this information and assumptions, the resulting dietary risk contribution via imported hops is negligible, even if 100% of the imported hops would be treated with folpet at maximum label rates.

ii: *Drinking water.* The potential for folpet to leach into groundwater or contaminate surface water is very limited considering that folpet is currently only registered for the use on avocados in two counties in Florida. Based on the available information, the predicted residues in drinking water do not indicate an unacceptable contribution to acute or chronic dietary exposure at this time. Since the proposed petition does not add any new uses or exposures to it, contribution of any folpet residues in drinking water to the total dietary intake is negligible.

2. *Non-dietary exposure.* Not applicable.

D. Cumulative Effects

There is a common mechanism of toxicity that folpet shares with captan with regard to its carcinogenicity in the mouse. Folpet and captan share the common metabolite, thiophosgene, which contributes to the irritancy of the duodenum in mice along with the parent compounds, leading (at dose levels above the established threshold and for administration with sufficient time) to adenomas. Thiophosgene reacts not only with thiol groups, as does folpet and captan, but also with a variety of other functional groups. This instability results in its rapid loss. The cumulative effect of captan and folpet oral exposure is of theoretical interest only, as the threshold for irritancy in the mouse duodenum is above 60 mg/kg/day (captan) or 50 mg/kg/day (folpet). If the mouse test system reflected human susceptibility, a 70 kg individual would need to consume more than 3.5 grams folpet plus captan in order to approach the NOEL of 50 mg/kg/day. Given the expected residue levels of folpet and those of captan, this is not possible.

E. Safety Determination

1. *U.S. population.* Using the exposure assumptions described above, MANA concludes that the total dietary exposure to folpet is acceptable. According to import information statistics from the USDA and under the conservative (worst-case) dietary exposure assumption described above, not more than 0.0022% of the U.S. population diet is constituted of hops, which means not more than 0.0007% can potentially be contributed to imported hops. Based on these insignificant dietary contributions, MANA considers the potential folpet residue contribution negligible, concluding that the most sensitive population group of concern are still females (15–50 years) with an aPAD of 25% and a cPAD of <1%. There is generally no concern for exposures below 100% of the PAD since it represents the level at or below which no appreciable risks to human health is posed. The upper bound calculated dietary cancer risk was 9.8×10^{-8}, based on a Q* of 0.00186 $mg/kg/day^{-1}$, which is far less than EPA's level of concern of 1×10^{-6}.

Thus, there is reasonable certainty that no harm will result to the U.S. population in general or to any of its subgroups of concern from aggregate exposure to folpet residues in or on imported hops.

2. *Infants and children.* Data from rat and rabbit development toxicity studies and rat multigeneration reproduction studies are generally used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposure to the pesticide.

FFDCA Section 408 provides that the Agency may apply an additional safety factor for infants and children to account for pre- and post-natal toxicity or incompleteness of the database. However, the toxicology database for folpet regarding potential pre- and post-natal effects in offspring is complete according to existing Agency data requirements and does not indicate any particular developmental or reproductive concerns.

EPA assigned an FQPA safety factor of 3x in the 1999 Reregistration Eligibility Decision (RED). This was based on the apparent hydrocephaly seen in New Zealand rabbits. Subsequently, additional data were provided to the Agency that showed folpet does not induce hydrocephaly. The Agency agreed with the assessment contained in the submitted document and rescinded its request for a new rabbit study. The Agency has not, as of yet, removed the FQPA 3x safety factor. A FQPA safety factor of 1x would be also consistent with that of captan. The appropriate acute Reference Dose (aRfD) for folpet, calculated with a FQPA safety factor of 1x, would be 0.01 mg/kg/day. This aRfD should be used in future assessments concerning the potential risks to infants and children. However, for the purpose of this assessment, MANA used the existing aRfD of 0.03 mg/kg/day, as it was done in the 1999 RED.

MANA concludes that there is a reasonable certainty that no harm will result to infants and children from the anticipated dietary exposure to residues of folpet and considering that the proposed import tolerance does not affect foods and beverages legally consumed by children and infants.

F. International Tolerances

Germany has established an MRL (maximum residue limit) of 120 ppm for residues of folpet in dried hops. No CODEX MRL for hops exists.

[FR Doc. 03–389 Filed 1–8–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7437–1]

Proposed CERCLA Section 122(h)(1) Administrative Agreement for Recovery of Response Costs for the City Chemical Corporation Site, Hudson County, Jersey City, NJ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a

proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of response costs concerning the City Chemical Corporation site ("Site") located in Hudson County, Jersey City, New Jersey. The settlement requires the settling parties, City Chemical Corporation and Peter Wolpert, the former Site-operators, and City Chemical, LLC, City Chemical Corporation's corporate successor, to pay $300,000 in reimbursement of EPA's response costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), in exchange for their payment of monies. For 30 days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before February 10, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866.

Comments should reference the City Chemical Corporation Site located in Hudson County, Jersey City, New Jersey, Index No. CERCLA–02–2002–2032.

To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Frances M. Zizila, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3135.

Dated: December 23, 2002.

George Pavlou, Director,

Emergency & Remedial Response Division.

[FR Doc. 03–393 Filed 1–8–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 9, 2003, Meeting open to the public. This meeting was cancelled.

* * * * *

DATE AND TIME: Tuesday, January 14, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, January 16, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2002–14: Libertarian National Committee, Inc. by Counsel, William W. Hall.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–558 Filed 1–7–03; 3:53 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0405]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by February 10, 2003.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting (OMB Control Number 0910–0437)—Extension

Section 519(a), (b), and (c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i (a), (b), and (c)) requires user facilities, manufacturers, and importers of medical devices to report adverse events involving medical devices to FDA. On December 11, 1995 (60 FR 63578 at 63597), FDA issued part 803 (21 CFR part 803) that implemented section 519 of the act. The regulation was amended to conform with the changes reflected in the 1997 FDA Modernization Act.

Information from these reports will be used to evaluate risks associated with medical devices and to enable FDA to take appropriate regulatory measures to protect the public health.

Respondents to this collection of information are businesses or other for profit and non-profit organizations, including user facilities, manufacturers, and importers of medical devices.

In the **Federal Register** of Tuesday, October 1, 2002 (67 FR 61638), FDA requested public comment on the proposed collection of information. FDA received one comment, but it was not directly related to the information collection.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
803.19	25	1	25	1	75
803.30	1,000	3	3,000	1	3,000
803.33 FDA Form 3419	1,000	1	1,000	1	1,000
803.40	50	10	500	1	500
803.50	1,500	34	51,000	1	51,000
803.55 FDA Form 3417	700	5	3,500	1	3,500
Total					59,075

[1] There are no capitol costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
803.17	3,200	1	3,200	3.3	10,560
803.18[2]	39,000	1	39,000	1.5	58,500
Total					69,060

[1] There are no capitol costs or operating and maintenance costs associated with this collection of information.
[2] Include an estimated 35,000 medical device distributors. Although they do not submit medical device reports, they must maintain records of complaints.

The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information to meet the medical device report (MDR) requirements as part of their internal quality control system.

Part 803 requires user facilities to report incidents where a medical device caused or contributed to a death or serious injury to the device manufacturer and to FDA (in case of death). Manufacturers of medical devices are required to report to FDA when they become aware of information indicating that one of their devices may have caused or contributed to death or serious injury or has malfunctioned in such a way that should the malfunction recur, it would be likely to cause or contribute to death or serious injury. Device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers, unless they are unknown. If the manufacturer is unknown, the importer sends the reports to FDA.

The agency has estimated that on average, 1,800 entities annually would be required to establish new procedures or revise existing procedures in order to comply with MDR provisions. For those entities, a one-time burden of 10 hours is estimated for establishing written MDR procedures. The remaining manufacturers, user facilities, and importers which are not required to revise their written procedures to comply with this provision are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered "usual and customary" under 5 CFR 1320.3(b)(2).

Dated: January 2, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–361 Filed 1–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0509]

International Conference on Harmonisation; Draft Guidance on the M4 Common Technical Document—Quality: Questions and Answers/ Location Issues; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of December 30, 2002 (67 FR 79639). The document announced the availability of a draft guidance entitled "Common Technical Document—Quality: Questions and Answers/Location Issues." The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–32852, appearing on page 79639 in the **Federal Register** of Monday, December 30, 2002, the following correction is made:

1. On page 79639, in the first column, in the heading of the document, "[Docket No. 02N–0509]" is corrected to read "[Docket No. 02D–0509]".

Dated: January 3, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–360 Filed 1–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of Availability of the Draft Cactus Ferruginous Pygmy-Owl Recovery Plan for Review and Public Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: We the U.S. Fish and Wildlife Service (Service) announce the availability for public review of a Draft Recovery Plan for the Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*) (Draft Plan). The species is currently known to occur on Federal, state, tribal, and private lands in Pima and Pinal Counties in southern Arizona. We solicit review and comment from the public on this Draft Plan.

DATES: Comments on the Draft Plan must be received on or before April 9, 2003 to ensure our consideration.

ADDRESSES: Persons wishing to review the Draft Recovery Plan may obtain a copy by accessing the Service's Arizona Ecological Service Field Office internet web page at *Arizonaes.fws.gov* or by contacting the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951 (602/242–0210) to obtain a copy via the mail or in person at the address above. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the address above, faxed to 602/242–2513, or emailed to *cfpo_recovery@fws.gov*. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Richardson, Arizona Ecological Services Tucson Suboffice, U.S. Fish and Wildlife Service, 110 South Church Avenue, Suite 3450, Tucson, Arizona, 85701 (520/670–4643).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant species to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. We, along with other Federal agencies, will take these comments into account in the course of implementing approved recovery plans.

The Draft Plan describes the status, current management, recovery objectives and criteria, and actions needed to reclassify the pygmy-owl from endangered to threatened. The Draft Plan was developed in coordination with the Service and by an appointed Recovery Team which includes a group of scientists with expertise in the ecology of the pygmy-owl and other raptors (Technical Group) together with a team of stakeholders (the Implementation Group), which includes members of affected parties (*i.e.*, tribes, state agencies, counties, towns, developers, environmental groups, ranchers, mining, and private property rights groups). The Draft Plan has undergone peer review by scientists, conservation biologists, range experts, and others experienced in reviewing recovery plans. This Draft Plan incorporates their comments where applicable. Additional peer review will be conducted during the current public comment period.

The pygmy-owl occurs in a variety of scrub and woodland communities, including riverbottom woodlands, woody thickets, Sonoran desertscrub, and semidesert grasslands. The pygmy-owl occurs in areas with fairly dense woody thickets or woodlands with trees and/or cacti large enough to support nesting cavities. They are found below 1,200 meters (4,000 feet). We determined in 1997 that the distinct population segment in Arizona of the pygmy-owl was endangered (62 FR 10730) primarily because of habitat destruction. Factors identified included (1) present or threatened destruction of their habitat and range, (2) inadequate existing regulatory mechanisms, and (3) other natural or manmade factors affecting their continued existence. The Draft Plan contains actions to address these factors.

Public Comments Solicited

We solicit written comments on the Draft Plan. In particular, we are soliciting specific comments on:

1. Any information on the numbers and distribution of the pygmy-owl not considered in the Draft Plan and their relation to proposed recovery actions;
2. Whether we have looked at the right biological factors and other relevant data related to the quantity and quality of available pygmy-owl habitat and what habitat is necessary to the recovery of the species;
3. Land use practices and current or planned activities within Recovery Areas and their possible impacts on proposed recovery actions.

All comments received by us on or before the date specified in the **DATES** section above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 15, 2002.

Geoffrey L. Haskett,

Acting Regional Director.

[FR Doc. 03–46 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Programmatic Environmental Impact Statement for the Proposed Navajo Ten-Year Forest Management Plan, Navajo Nation, Arizona/New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of cancellation.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs is canceling the notice of intent to file a final programmatic Environmental Impact Statement for the proposed Navajo Nation Ten-Year Forest Management Plan that we published in the **Federal Register** on November 20, 2002 (67 FR 70090). We are withdrawing the document because it duplicates a previously issued Environmental Impact Statement for the same proposed action.

EFFECTIVE DATE: January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Donald Sutherland, Bureau of Indian

Affairs, Office of Trust Responsibilities, Environmental and Cultural Resources Management, 1849 C Street, NW., Washington, DC 20240; (202) 208–4791.

Dated: December 18, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–429 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Integrated Resource Management Plan for the Spokane Indian Reservation, Stevens County, WA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) and the Spokane Tribe of Indians, as co-lead agencies, intend to prepare an Environmental Impact Statement (EIS) on a proposed update to the Integrated Resource Management Plan (IRMP) for the Spokane Indian Reservation. The purpose of updating the IRMP is to develop long-term resource management policies that will ensure direction and stability for needed sustained growth of reservation economics, compatible with traditional values and needs for a quality human environment. Details on the project area and the proposed action are provided in the **SUPPLEMENTARY INFORMATION** section. This notice also announces a public scoping meeting for the content of the EIS.

DATES: Comments on the scope and content of the EIS must arrive by February 7, 2003. The public scoping meeting will be held on Thursday, January 23, 2003, at 6 p.m.

ADDRESSES: You may mail or hand carry written comments to Rudy Peone, Spokane Tribe Department of Natural Resources, P.O. Box 480, Wellpinit, Washington 99040; or to Ted Hensold, Bureau of Indian Affairs, Spokane Agency, P.O. Box 389, Wellpinit, Washington 99040. You may also telefax comments to Rudy Peone at (509) 258–9600. Please include your name and mailing address with your comments so documents pertaining to this project may be sent to you.

The public meeting will be held at the Fire Management Conference Room, 6290 Ford-Wells Road, Wellpinit, Washington.

FOR FURTHER INFORMATION CONTACT: Rudy Peone, 509–258–9042, extension 14.

SUPPLEMENTARY INFORMATION: The boundaries of the Spokane Indian Reservation encompass approximately 157,000 acres, located in southern Stevens County, Washington. These include 110,500 acres of tribal trust lands, 1,400 acres of tribal fee lands, 24,800 acres of individually owned trust (allotment) lands, 14,400 acres of private fee lands, 1,100 acres of Bureau of Reclamation (BOR) lands above the Lake Roosevelt high pool line, and about 4,800 acres covered by Lake Roosevelt, under BOR administration. The lands range from dry, ponderosa pine steppe on the southern boundary of the Spokane River at 1,300 foot elevation to moist, inland coniferous forest on the northern portion of the reservation where elevation reaches about 4,000 feet.

Major land uses include timber management, livestock grazing, agriculture, hunting and fishing, recreation, and cultural practices. Timber harvesting occurs on about 108,000 acres of commercial forest lands.

The Spokane Tribe first enacted an IRMP in 1994. Its purpose was to provide a holistic framework to guide all land management of the reservation. It is now approaching its useful end. While the IRMP served an important role in managing resources during the formative stages of the Tribe's natural resource programs, human population growth and various economic activities have placed new and competing demands on reservation resources. These changes include encroachment of housing into formerly unpopulated areas; local shortages of drinking water during dry periods; increased demand for employment related to natural resource extraction and use; larger areas impacted by economic development; increased visitor and tourist traffic; increasing threats to surface and ground water resources by solid waste, sewage discharge, timber harvesting and other economic activities; and aesthetic degradation.

The proposed update of the IRMP will integrate more specific policies for land uses, natural resources, economic development and cultural resources and values on all lands within the boundaries and/or under the jurisdiction of the reservation. Services that affect natural resources and are affected by land use designations (such as housing, utilities, and roads) are also included. The proposed action includes specifically and accurately identifying the current needs that affect the natural resources on the reservation, projecting needs over the next 10 years, and developing the range of feasible alternatives to address those needs.

In addition to no action (continued management under the current IRMP), the alternatives will include a mix of possibilities for change which relate to each specific resource. Timber harvest options may range from a diminished harvest level to allow maximum protection of soil, water, cultural and aesthetic resources to an increased harvest level to meet economic demands of the Tribe. Housing options may range from unrestricted locating of housing through various forms of restrictions to protect natural areas. Recreation options may range from commercial development of recreation opportunities to attract vacationers from around the region to creating opportunities for tribal members alone. Range management options may include terminating the open range policies versus restricting open range to limited areas or pasture leases. Water resources options may include a more flexible approach to the current fixed riparian buffers or increasing those buffers. Cultural resource management options may range from protecting only those resources which are defined in the National Historic Preservation Act to defining standards for protection of cultural properties and cultural landscapes which are uniquely important to the Spokane Tribe.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 5 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the

Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: December 18, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–427 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent to Prepare an Environmental Impact Statement for a Proposed Tribal Light Industrial Park, Umatilla Indian Reservation, Umatilla County, OR

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA), with the cooperation of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), intends to gather the information necessary for preparing an Environmental Impact Statement (EIS) for the proposed lease of up to 100 acres of land held in trust by the United States for the benefit of the CTUIR in Umatilla County, Oregon, for the construction and operation of a 400,000 square foot warehouse distribution center or similar sized light manufacturing facility. The purpose of the proposed action is to help meet the economic development needs of the CTUIR. Details on the project location and proposed action are provided in the **SUPPLEMENTARY INFORMATION** section. This notice also announces a public scoping meeting to identify potential issues to include in the EIS, identify which issues to analyze in depth, and eliminate issues that are not significant.

DATES: Comments on the scope and content of the EIS must arrive by February 7, 2003. The public scoping meeting will be held on Thursday, January 23, 2003, at 6 p.m.

ADDRESSES: You may mail or hand carry written comments to Philip Sanchez, Superintendent, Bureau of Indian Affairs, Umatilla Agency, P.O. Box 520, Pendleton, Oregon 97801.

You may obtain a map displaying the proposed project location from Jerry L. Lauer, Natural Resource Officer, Bureau of Indian Affairs, Umatilla Agency, P.O. Box 520, Pendleton, Oregon 97801, telephone (541) 278–3790.

FOR FURTHER INFORMATION CONTACT: Jerry L. Lauer, (541) 278–3790.

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of BIA approval of a lease between the developer of a 400,000 square foot warehouse and distribution center or light manufacturing facility (lessee) and the CTUIR (lessor), of parts of the South Half of the North Half and the North Half of the South Half, Section 21, Township 2 North, Range 33 East, Willamette Meridian, Umatilla County, Oregon. The property encompasses approximately 100 acres on the Umatilla Indian Reservation, adjacent to and south of Exit 216 on Interstate 84.

The proposed project has several components. These include construction of below-ground water, sewer, storm water drainage, and electric power service on the site; construction of a 40-foot-wide industrial access road; extension of utilities from current access points north of Interstate 84, including below grade crossing of Interstate 84; construction of a 400,000-square-foot warehouse or light manufacturing facility; and operation of the warehouse or light manufacturing facility with approximately 150 employees. In the case of the warehouse and distribution center, there will be approximately 100 outgoing and 100 inbound semi-trailers each day.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 5 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: December 16, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–428 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rate adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns, or has an interest in, irrigation facilities located on various Indian reservations throughout the United States where rates are established to recover its costs to administer, operate, maintain, and rehabilitate those facilities. We request your comments on the proposed rate adjustments.

DATES: Interested parties may submit comments on the proposed rate adjustments on or before March 10, 2003.

ADDRESSES: All comments on the proposed rate adjustments must be in writing and addressed to: Larry Scrivner, Acting Director, Office of Trust Responsibilities, Attn.: Irrigation and Power, MS–3061–MIB, Code 210, 1849 C Street, NW., Washington, DC 20240, Telephone (202) 208–5480.

FOR FURTHER INFORMATION CONTACT: For details about a particular irrigation project, please use the tables in **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project is located.

SUPPLEMENTARY INFORMATION: The tables in this notice list the irrigation project contacts where the BIA recovers its costs for local administration, operation, maintenance, and rehabilitation, the current irrigation assessment rates, and the proposed rates for the 2003 irrigation season and subsequent years where applicable.

What Are Some of the Terms I Should Know for This Notice?

The following are terms we use that may help you understand how we are applying this notice.

Administrative costs means all costs we incur to administer our irrigation projects at the local project level. Local project level does not normally include the Agency, Region, or Central Office costs unless we state otherwise in writing.

Assessable acres means lands designated by us to be served by one of our irrigation projects and to which we provide irrigation service and recover our costs. (See *Total assessable acres*)

BIA means the Bureau of Indian Affairs.

Bill means our statement to you of the assessment charges and/or fees you owe the United States for administration, operation, maintenance, and/or rehabilitation. The date we mail or hand deliver your bill will be stated on it.

Costs means the costs we incur for administration, operation, maintenance, and rehabilitation to provide direct support or benefit to an irrigation facility.

Customer means any person or entity that we provide irrigation service to.

Due date is the date on which your bill is due and payable. This date will be stated on your bill.

I, me, my, you, and your means all interested parties, especially persons or entities that we provide irrigation service to and receive beneficial use of our irrigation projects affected by this notice and our supporting policies, manuals, and handbooks.

Irrigation project means, for the purposes of this notice, the facility or portions thereof, that we own, or have an interest in, including all appurtenant works, for the delivery, diversion, and storage of irrigation water to provide irrigation service to customers for which we assess periodic charges to recover our costs to administer, operate, maintain, and rehabilitate. These projects may be referred to as facilities, systems, or irrigation areas.

Irrigation service means the full range of services we provide customers of our irrigation projects, including, but not limited to, water delivery. This includes our activities to administer, operate, maintain, and rehabilitate our projects.

Maintenance costs means all costs we incur to maintain and repair our irrigation projects and equipment of our irrigation projects and is a cost factor included in calculating your operation and maintenance (O&M) assessment.

Must means an imperative or mandatory act or requirement.

Operation and maintenance (O&M) assessment means the periodic charge you must pay us to reimburse our costs.

Operation or operating costs means costs we incur to operate our irrigation projects and equipment and is a cost factor included in calculating your O&M assessment.

Past due bill means a bill that has not been paid by the close of business on the 30th day after the due date, as stated on the bill. Beginning on the 31st day after the due date we begin assessing additional charges accruing from the due date.

Rehabilitation costs means costs we incur to restore our irrigation projects or features to original operating condition or to the nearest state which can be achieved using current technology and is a cost factor included in calculating your O&M assessment.

Total assessable acres means the total acres served by one of our irrigation projects.

Total O&M cost means the total of all the allowable and allocatable costs we incur for administering, operating, maintaining, and rehabilitating our irrigation projects serving your farm unit.

Water means water we deliver at our projects for the general purpose of irrigation and other purposes we agree to in writing.

Water delivery is an activity that is part of the irrigation service we provide our customers when water is available.

We, us, and our means the United States Government, the Secretary of the Interior, the BIA, and all who are authorized to represent us in matters covered under this notice.

Does This Notice Affect Me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects, or you have a carriage agreement with one of our irrigation projects.

Where Can I Get Information on the Regulatory and Legal Citations in This Notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov*.

Why Are You Publishing This Notice?

We are publishing this notice to notify you that we propose to adjust one or more of our irrigation assessment rates. This notice is published in accordance with the BIA's regulations governing its operation and maintenance of irrigation projects, specifically, 25 CFR 171.1. These sections provide for the fixing and announcing of the rates for annual assessments and related information for our irrigation projects.

What Authorizes You To Issue This Notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual and by memorandum dated January 25, 1994, from the Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

When Will You Put the Rate Adjustments Into Effect?

We will put the rate adjustments into effect for the 2003 irrigation season and subsequent years where applicable.

How Do You Calculate Irrigation Rates?

We calculate irrigation assessment rates in accordance with 25 CFR 171.1(f) by estimating the cost of normal operation and maintenance at each of our irrigation projects. The cost of normal operation and maintenance means the expenses we incur to provide direct support or benefit for an irrigation project's activities for administration, operation, maintenance, and rehabilitation. These costs are then applied as stated in the rate table in this notice.

What Kinds of Expenses Do You Include in Determining the Estimated Cost of Normal Operation and Maintenance?

We include the following expenses:

(a) Personnel salary and benefits for the project engineer/manager and project employees under their management control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(e) Capitalization expenses;

(f) Acquisition expenses;

(g) Maintenance of a reserve fund available for contingencies or emergency expenses for, and insuring, reliable operation of the irrigation project; and

(h) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

When Should I Pay My Irrigation Assessment?

We will mail or hand deliver your bill notifying you of the amount you owe to the United States and when such amount is due. If we mail your bill, we will consider it as being delivered no later than 5 business days after the day we mail it. You should pay your bill no later than the close of business on the 13th day after the due date stated on the bill.

What Information Must I Provide for Billing Purposes?

We must obtain certain information from you to ensure we can properly process, bill for, and collect money owed to the United States. We are required to collect the taxpayer identification number or social security number to properly bill the responsible party and service the account under the authority of, and as prescribed in, Public Law 104–143, the Debt Collection Improvement Act of 1996.

(a) At a minimum, this information is:

(1) full legal name of person or entity responsible for paying the bill;

(2) adequate and correct address for mailing or hand delivering our bill; and

(3) the taxpayer identification number or social security number of the person or entity responsible for paying the bill;

(b) It is your responsibility to ensure we have correct and accurate information for (a) above.

(c) If you are late paying your bill due to your failure to furnish such information or comply with (b), you cannot appeal your bill on this basis.

What Can Happen if I Do Not Provide the Information Required for Billing Purposes?

We can refuse to provide you irrigation service.

If I Allow My Bill To Become Past Due, Could This Affect My Water Delivery?

If we do not receive your payment before the close of business on the 13th day after the due date stated on your bill, we will send you a past due notice. Your bill will have additional information concerning your rights. We will consider your past due notice as delivered no later than 5 business days after the day we mail it. We have the right to refuse water delivery to any of your irrigated land on which the bill is past due. We can continue to refuse water delivery until you pay your bill or make payment arrangements that we agree to. Our authority to demand payment of your past due bill is 31 CFR 901.2, "Demand for Payment."

Are There Any Additional Charges if I Am Late Paying My Bill?

Yes. We will assess you interest on the amount owed and use the rate of interest established annually by the Secretary of the United States Treasury (Treasury) to calculate what you will be assessed (31 CFR 901.9(b)). You will not be assessed this charge until your bill is past due. However, if you allow your bill to become past due, interest will accrue from the due date, not the past due date. Also, you will be charged an administrative fee of $12.50 for each time we try to collect your past due bill. If your bill becomes more than 90 days past due, you will be assessed a penalty charge of 6 percent per year and it will accrue from the date your bill initially became past due. Our authority to assess interest, penalties, and administration fees on past due bills is prescribed in 31 CFR 901.9, "Interest, penalties, and costs."

What Else Can Happen to My Past Due Bill?

If you do not pay your bill or make payment arrangements that we agree to, we are required to send your past due bill to the Treasury for further action. We must send your bill to Treasury no later than 180 days after the original due date of your irrigation assessment bill. The requirement for us to send your unpaid bill to Treasury is prescribed in 31 CFR 901.1, "Aggressive agency collection activity."

Who Can I Contact for Further Information?

The following tables are the regional and project/agency contacts for our irrigation facilities.

Project name	Project agency contacts
Northwest Region Contacts	
Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, Telephone (503) 231–6702.	
Flathead Irrigation Project	Ernest T. Moran, Superintendent, Flathead Agency Irrigation Division, P.O. Box 40, Pablo, Montana 59855–5555, Telephone: (406) 675–2700.
Fort Hall Irrigation Project	Eric J. LaPointe, Superintendent, Fort Hall Agency, P.O. Box 220, Fort Hall, Idaho 83203–0220, Telephone: (208) 238–2301.
Wapato Irrigation Project	Pierce Harrison, Project Administrator, Wapato Irrigation Project, P.O. Box 220, Wapato, WA 98951–0220, Telephone: (509) 877–3155.
Rocky Mountain Region Contacts	
Keith Beartusk, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Ross Denny, Superintendent, Cliff Hall, Irrigation Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent, (406) 338–7519, Irrigation.
Crow Irrigation Project	Gordon Jackson, Superintendent, Dan Lowe, Irrigation Manager, P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672 Superintendent, (406) 638–2863 Irrigation.
Fort Belknap Irrigation Project	Cleo Hamilton, Superintendent, Dan Spencer, Irrigation Manager, R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901 Superintendent, (406) 353–2905 Irrigation.
Fort Peck Irrigation Project	Ed Lone Fight, Acting Superintendent, P.O. Box 637, Poplar, MT 59255, Marvin Azure, Irrigation Manager (acting), 602 6th Avenue North, Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent, (406) 653–1752, Irrigation.

Project name	Project agency contacts
Wind River Irrigation Project	Clark Madison, Acting Superintendent, Sheridan Nicholas, Irrigation Manager, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810 Superintendent, (307) 332–2596 Irrigation.
Southwest Region Contacts	
Rob Baracker, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 615 First Street, NW, Albuquerque, New Mexico 87102, Telephone (505) 346–7590/91.	
Pine River Irrigation Project	Michael Stancampiano, Superintendent, John Formea, Irrigation Engineer, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511 Superintendent, (970) 563–1017 Irrigation.
Western Region Contacts	
Wayne Nordwall, Regional Director, Bureau of Indian Affairs, Western Regional Office, P.O. Box 10, Phoenix, Arizona 85001, Telephone (602) 379–6600.	
Colorado River Irrigation Project	Allen Anspach, Superintendent, R.R. 1 Box 9–C, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Paul Young, Superintendent, 1555 Shoshone Circle, Elko, Nevada 89801, Telephone: (775) 738–0569, Superintendent.
Fort Yuma Irrigation Project	William Pyott, Land Operations Officer, P.O. Box 11000, Yuma, Arizona, Telephone: (520) 782–1202.
San Carlos Irrigation Project Joint Works	Randy Shaw, Supervisory General Engineer, 13805 N. Arizona Boulevard, Coolidge, AZ 85228, Telephone: (520) 723–6216.
San Carlos Irrigation Project Indian Works	Joe Revak, Supervisory General Engineer, Pima Agency, Land Operations, Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3372.
Uintah Irrigation Project	Lynn Hansen, Irrigation Manager, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4341.
Walker River Irrigation Project	Robert Hunter, Superintendent, 1677 Hot Springs Road, Carson City, Nevada 89706, Telephone: (775) 887–3500.

What Irrigation Assessments or Charges Are Proposed for Adjustment by This Notice?

The rate table below contains the current rates for all of our irrigation projects where we recover our costs for operation and maintenance. The table also contains the proposed rates for the 2003 season and subsequent years where applicable. The irrigation projects where rates are proposed for adjustment are noted by an asterisk immediately following the name of the project.

NORTHWEST REGION RATE TABLE

Project name	Rate category	Current 2002 rate	Proposed 2003 rate	Proposed 2004 rate
Flathead Irrigation Project*	Basic per acre	$19.95	$19.95	$21.45
Fort Hall Irrigation Project*	Basic per acre	20.00	22.00	To be Determined.
Fort Hall Irrigation Project Minor Units	Basic per acre	14.00	14.00	Do.
Fort Hall Irrigation Project* Michaud	Basic per acre	28.00	30.00	Do.
	Pressure per acre	41.00	43.50	Do.
Wapato Irrigation Project* Simcoe Units	Billing Charge Per Tract	5.00	5.00	Do.
	Farm unit/land tracts up to one acre (minimum charge).	10.40	13.00	Do.
	Farm unit/land tracts over one acre—per acre	10.40	13.00	Do.
Wapato Irrigation Project* Ahtanum Units	Billing Charge Per Tract	5.00	5.00	Do.
	Farm unit/land tracts up to one acre (minimum charge).	10.35	13.00	Do.
	Farm unit/land tracts over one acre—per acre	10.35	13.00	Do.
Wapato Irrigation Project* Satus Unit	Billing Charge Per Tract	5.00	5.00	Do.
	Farm unit/land tracts up to one acre (minimum charge).	41.40	51.00	Do.
	"A" farm unit/land tracts over one acre—per acre.	41.40	51.00	Do.
	Additional Works farm unit/land tracts over one acre—per acre.	45.76	56.00	Do.
	"B" farm unit/land tracts over one acre— per acre.	49.68	61.00	Do.
	Water Rental Agreement Lands—per acre	50.96	62.00	Do.

ROCKY MOUNTAIN REGION RATE TABLE

Project name	Rate category	Current 2002 rate	Proposed 2003 rate
Blackfeet Irrigation Project	Basic-per acre	$13.00	$13.00
Crow Irrigation Project (See note below)	Basic-per acre	16.00	16.00
Fort Belknap Irrigation Project*	Indian per acre	6.25	7.00
	Non-Indian per acre	12.50	14.00
Fort Peck Irrigation Project	Basic-per acre	14.00	14.00
Wind River Irrigation Project*	Basic-per acre	12.00	13.00

SOUTHWEST REGION RATE TABLE

Project name	Rate category	Current 2002 rate	Proposed 2003 rate
Pine River Irrigation Project	Minimum Charge per tract	$25.00	$25.00
	Basic-per acre	8.50	8.50

WESTERN REGION RATE TABLE

Project name	Rate category	Current 2002 rate	Proposed 2003 rate	Proposed 2004 rate
Colorado River Irrigation Project* (See note #1 below).	Basic per acre up to 5.0 acre-feet	$37.00	.....	To be Determined.
	Excess Water per acre foot 5.0–5.5 acre-feet	7.40	.....	Do.
	Excess Water per acre-foot over 5.5 acre-feet	17.00	.....	Do.
	Basic per acre up to 5.75 acre-feet	.....	$47.00	Do.
	Excess Water per acre-foot over 5.75 acre-feet.	.....	17.00	Do.
Duck Valley Irrigation Project	Basic-per acre	5.30	5.30	Do.
Fort Yuma Irrigation Project (See note #2 below).	Basic-per acre up to 5.0 acre-feet	60.00	60.00	Do.
	Excess Water per acre-foot over 5.0 acre-feet	10.50	10.50	Do.
San Carlos Irrigation Project (Joint Works)	Basic-per acre	20.00	20.00	20.00
San Carlos Irrigation Project (Indian Works)	Basic-per acre	56.00	56.00	To be Determined
Uintah Irrigation Project* (See note #2 below)	Basic-per acre	8.50	11.00	Do.
Walker River Irrigation Project	Indian per acre	7.32	7.32	Do.
	Non-Indian per acre	15.29	15.29	Do.

Note #1—For the Colorado River Irrigation Project, pursuant to a reconciliation of the operation and maintenance financial records as of December 31, 2002, funds in excess of the 700,000 reserve fund will be refunded to the excess water users in proportion to the amount of excess water purchased by each water user. The refund will be a credit against the 2003 irrigation season assessment for eligible excess water users.

Note #2—The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation (Reclamation). The irrigation rates assessed for operation and maintenance are established by Reclamation and are provided for informational purposes only. The BIA only collects the irrigation assessments on behalf of Reclamation.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The BIA irrigation projects are vital components of the local agriculture economy of the reservations on which they are located. To fulfill its responsibilities to the tribes, tribal organizations, water user organizations, and the individual water users, the BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, costs of administration, operation, maintenance, and rehabilitation. This is accomplished at the individual irrigation projects by Project, Agency, and Regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of the BIA's overall coordination and consultation process to provide notice and request comments from these entities on adjusting our irrigation rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA owned and operated irrigation projects, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is "a rule of particular applicability relating to rates." 5 U.S.C. 601(2).

Unfunded Mandates Act of 1995

These rate adjustments impose no unfunded mandates on any governmental or private entity and are

in compliance with the provisions of the Unfunded Mandates Act of 1995.

Takings (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant "takings" implications. The rate adjustments do not deprive the public, state, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant Federalism effects because they pertain solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires February 28, 2003.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Dated: November 20, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–437 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–DES–02–51]

Banks Lake Drawdown, Columbia Basin Project, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings for the Banks Lake Drawdown, Washington, draft Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a draft Environmental Impact Statement (Draft EIS) to examine the impacts of alternatives to lower the minimum surface elevation for Banks Lake in August from 1,565 feet to 1,560 feet.

The action alternative describes the resource conditions that would occur between Banks Lake surface elevations of 1,570 feet and 1,560 feet, while the no action alternative describes the conditions that would occur without the proposed action, between surface elevation 1,570 feet and 1,565 feet. Both the no action and action alternatives include four potential operational scenarios that could occur within their respective ranges.

The action alternative includes a refill of the reservoir to elevation 1,565 feet, beginning September 1 and ending no later than September 10.

DATES: Written comments on the draft EIS must be received no later than March 10, 2003, at the address listed under the **ADDRESSES** section below.

Public hearings will be held to accept oral comments on the draft EIS at:

- Coulee City, Washington, on February 11, 2003, from 7 to 9 p.m. and,
- Moses Lake, Washington, on February 12, 2003, from 1:30 to 3:30 p.m.

The public hearing facilities are physically accessible. Please contact Mr. Blanchard at the telephone, fax or TTY relay numbers listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice for accessibility accommodations, including sign language interpreters or other auxiliary aids. Requests should be made by January 31, 2003, to allow sufficient time to arrange for accommodation.

ADDRESSES: The public hearings will be held at:

- Coulee City Elementary School, 410 W. Locust, Coulee City, Washington, and,
- District 5 Fire Station Training Facility, 12801 Nelson Road, Moses Lake, Washington.

Written comments on the draft EIS should be submitted to Mr. Jim Blanchard, Special Projects Officer, Bureau of Reclamation, 32 C Street, P.O. Box 815, Ephrata, WA 98823–0815; or by fax 509–754–0239, or by e-mail at: *jblanchard@pn.usbr.gov*.

See the **SUPPLEMENTARY INFORMATION** section below for locations where copies of the DEIS are available for public review and inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Blanchard, Special Projects Officer, at 509–754–0226 (relay users may dial 711). Those wishing to obtain a copy of the draft EIS in the form of a printed document or on compact disk (CD–ROM with reader included) or a summary of the draft EIS may contact Mr. Blanchard.

SUPPLEMENTARY INFORMATION:

Public Disclosure

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Hearing Process Information

Requests to make oral comments at the public hearings may be made at each hearing. Comments will be recorded by a court reporter. Speakers will be called in the order of their requests. In the interest of available time, each speaker will be asked to limit oral comments to five minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the public hearing or identified as hearing comments and mailed to be received by Mr. Blanchard no later than March 10, 2003.

Background

Since its creation in the early 1950s, Banks Lake has been operated and maintained for the storage and delivery of irrigation water drawn from the Columbia River to Columbia Basin Project (CBP) lands. At Dry Falls Dam, the Main Canal flows south from the Banks Lake outlet works to the northern portion of the CBP's irrigable area. Reclamation operates the reservoir within established constraints on water surface elevation to met contractual obligations, ensure public safety, and protect property. Reclamation considers other resource needs as feasible within existing operational constraints.

In December of 2000, the National Marine Fisheries Service issued a Biological Opinion (BIOP) to the Bureau

of Reclamation, the U.S. Army Corps of Engineers, and Bonneville Power Administration for the operation of the Federal Columbia River Power System. The BIOP included a Reasonable and Prudent Alternative (RPA), of which action 31 advised Reclamation to "assess the likely environmental effects of operation of Banks Lake up to 10 feet down from full pool during August."

Reclamation proposes to complete RPA action 31 by preparing the Banks Lake Drawdown draft Environmental Impact Statement to describe and analyze the environmental effects of lowering the August surface elevation of Banks Lake to elevation 1560 feet, which is 10 feet below full pool.

Review and Inspection of the DEIS

Copies of the DEIS are available for public review and inspection at the following locations:

- Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 18th and C Streets, NW., Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, Colorado 80225.
- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234.
- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington 98901.
- Bureau of Reclamation, Ephrata Field Office, 32 C Street, Ephrata, Washington 98823.

Libraries

- Bridgeport Community Library, Douglas County, 1206 Columbia St., Bridgeport, WA 509–686–7281.
- Coulee City Community Library, 405 W. Main St., Coulee City, WA 509–674–2313.
- Des Moines Library, 21620 11th Ave S, Des Moines, WA 206–824–6066.
- East Wenatchee Community Library, Douglas County, 271 9th St NE, East Wenatchee, WA 509–886–7404.
- Ephrata Public Library, 45 Alder NW, Ephrata, WA 509–754–3971.
- Grand Coulee Community Library, 225 Federal, Grand Coulee, WA 509–633–0972.
- Moses Lake Public Library, 418 E. 5th Ave, Moses Lake, WA 509–765–3489.
- Quincy Community Library, 108 B St SW., Quincy, WA 509–787–2359.
- Royal City Community Library, 356 Camelia, Royal City, WA 509–346–9281.
- Seattle Public Library, 800 Pike St, Seattle, WA 206–386–4636.
- Soap Lake Community Library, 32 E. Main, Soap Lake, WA 509–246–1313.
- Warden Community Library, 305 S. Main, Warden, WA 509–349–2226.
- Wenatchee Public Library, Chelan County, 310 Douglas St, Wenatchee, WA 509–662–5021.

Internet

The DEIS is also available on the Internet at *http://www.pn.usbr.gov*.

Dated: December 20, 2002.

J. William McDonald,

Regional Director, Pacific Northwest Region, Bureau of Reclamation.

[FR Doc. 03–387 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (the AMWG), a technical work group (the TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

Date and Location: The Glen Canyon Dam Adaptive Management Work Group will conduct the following public meeting:

Phoenix, Arizona—January 28–29, 2003. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss experimental flows, non-native fish control, status of the temperature control device risk assessment, 2000 Low Steady Summer Flow (LSSF) reports, FY 2004 Annual Work Plan and Budget, basin hydrology and 602a storage, information needs associated with the Strategic Plan, public outreach, environmental compliance, and other administrative and resource issues pertaining to the AMP.

Date and Location: The Glen Canyon Dam Technical Work Group will conduct the following public meeting:

Phoenix, Arizona—February 26–27, 2003. The meeting will begin 9:30 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at 2 p.m. on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the experimental flow status, non-native fish control, FY 2004 budget changes, the target development process, environmental compliance, address assignments from the AMWG meeting held in January 2003, and other administrative and resource issues pertaining to the AMP.

Agenda items may be revised prior to any of the meetings. Final agendas will be posted 15 days in advance of each meeting and can be found on the Bureau of Reclamation Web site under Environmental Programs at *http://www.uc.usbr.gov/amp*. Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings.

To allow full consideration of information by the AMWG or TWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3758; faxogram (801) 524–3858; e-mail at *rpeterson@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members at their respective meetings.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; or via e-mail at *rpeterson@uc.usbr.gov*.

Date: December 18, 2002.

Randall V. Peterson,

Manager, Adaptive Management and Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 03–371 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–MN–O

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 20, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158, or e-mail *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Request to be Selected as Payee.

OMB Number: 1215–0166.

Affected Public: Business or other-for-profit; individuals or households; and not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 2,000.

Number of Annual Responses: 2,000.

Estimated Time Per Response: 20 minutes.

Total Burden Hours: 667.

Total Annualzied Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $800.00.

Description: Benefits are payable by the Department of Labor to miners who are totally disabled due to pneumoconiosis and to certain survivors of a miner under the Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 901). If a beneficiary is incapable of handling his affairs, the person or institution responsible for his care is required to apply to receive the benefits payment on the beneficiary's behalf. The CM–910 is used to obtain information about prospective representative payees to determine whether they are qualified to handle monetary benefits on behalf of the beneficiary. If this information were not collected, the Department would be unable to evaluate the applicant's ability to be a representative payee.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–424 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 20, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158) or E-mail *Howze-Marlene@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Requirements of *Bona Fide* Thrift or Savings Plan (29 CFR part 547) and Requirements of a Bona Fide Profit-Sharing Plan or Trust (29 CFR part 549).

OMB Number: 1215–0119.

Affected Public: Business or other for-profit; individuals or households; not-for-profit institutions; and State, local or tribal government.

Frequency: On occasion.

Number of Respondents: 462,000.

Number of Annual Responses: 462,000.

Total Burden Hours (Recordkeeping): 2.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 7(e)(3)(b) of the Fair Labor Standards Act permits the exclusion from an employee's regular rate of pay, payments on behalf of an employee to a "*bona fide*" thrift or savings plan, profit-sharing plan or trust. Regulations, 29 CFR part 547 and 549, set forth the requirements for a "*bona fide*" thrift or savings plan, profit-sharing plan or trust. The maintenance of the records required by the regulations enables the Department of Labor (DOL) investigators to determine whether a given thrift or savings plan, profit-sharing plan or trust, is in compliance with section 7(e)(3)(b) of the FLSA. Without these records, such a determination could not be made.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–425 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 26, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158), or e-mail *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those whoa re to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Notice of Controversion of Right to Compensation.

OMB Number: 1215–0023.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 900.

Number of Annual Responses: 18,900.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 4,725.

Total Annualzied Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $7,985.25.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act. This Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. Pursuant to section 14(d) of the Act, and 20 CFR 702.251, if an employer controverts the right to compensation, he shall file with the district director in the affected compensation district on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the Secretary, stating that the right to compensation is controverted.

Form LS–207 is used by insurance carriers and self-insured employers to controvert claims under the act. OWCP district offices use this information to determine the basis for not paying benefits in a case. It also informs the injured claimant of the reason(s) for not paying compensation benefits. If the information were not collected, our district offices and claimants would have no way of knowing the reason(s) for controverting the right to compensation.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–426 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,357; Consol Energy, Reno Lake Mine, Sesser, IL.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,154; Dana Corp., Traction Technologies Group, Jonesboro, AR.

The investigation revealed that criterion (a)(2)(A) (1.B) (Sales or production, or both did not decline) and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,008; Storage Technology Corp., Minneapolis Research and Development Center, Brooklyn Park, MN.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.A and B) (No employment declines; No shift in production to a foreign country) have not been met.

TA–W–50,056; Ehlert Tool Company, New Berlin, WI.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–50,276; SuperValu, Belle Vernon, PA.

TA–W–50,184; Corning Cable Systems, LLC, Business Operation.

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not a supplier or downstream producer for trade-affected companies.

TA–W–50,255 & A,B; Aurora Systems, Inc., Erie, PA, Rochester, NY and Buffalo, NY.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,345; General Electric Industrial Systems Components Plant, Plainville, CT: October 7, 001.

TA–W–42,341; Pomona Paper Co., a Subsidiary of APC Paper Co., Inc., Pomona, CA: October 24, 2001.

TA–W–42,318; Eagle Clothing Co., Los Angeles, CA: October 15, 2001.

TA–W–42,282; Ohmite Manufacturing Co., C.T. Gamble Acquisition Corp., d/b/a C.T. Gamble Industries, Delanco, NJ: October 4, 2001.

TA–W–42,176; Georgia-Pacific Lumber Corp., Western Lumber Operations, Fort Bragg, CA: August 23, 2001.

TA–W–42,077; Bijur Lubricating Corp., Bennington, VT: August 20, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–50,305; Burgess Norton Manufacturing Co., Div. of Amsted Industries, DeKalb, IL: December 11, 2001.

TA–W–50,284; Newell Rubbermaid Corp., Levelor Hardware Group, Amerock Hardware Div., Bulldog Hardware Div., Ogdenburg, NY: November 27, 2001.

TA–W–50,216; Carney Products Co., LTD, a Subsidiary of Flannery-Comerford, Inc., St. Maries, ID: November 13, 2001.

TA–W–50,175 and A; T.L. Diamond and Company, Inc., New York and Eagle Zinc Co., a Subsidiary of T.L. Diamond and Co., Inc., Hillsboro, IL: November 22, 2001.

TA–W–50,171; J K. Tool and Die, Inc., Apollo, PA: November 22, 2001.

TA–W–50,094; Chiquola Industrial Products Group LLC, Honea Path, SC: November 5, 2001.

TA–W–50,012; PD Wire and Cable, a Subsidiary of Phelps Dodge Industries, a Subsidiary of Phelps Dodge Corp., Laurinburg, NC: November 5, 2001.

TA–W–50,009 and A; Dodger Industries, Inc., Eagle Grove, IA and Eldora, IA: November 4, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–50,226; Technicolor Virginia, Ruckersville, VA and Charlottesville, VA: November 21, 2001.

TA–W–50,202; General Electric Co., Glass Plant, Bridgeville, PA: November 19, 2001.

TA–W–50,155; PCC Airfoils, LLC, Douglas, GA: November 18, 2001.

TA–W–50,110; Emerson Motor Co., Sturgeon Bay, WI: November 12, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–07558; Dana Corp., Traction Technologies Group, Jonesboro, AR.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–07653; Genesis Communications, Inc., San Diego, CA.

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

NAFTA–TAA–06912; State of Alaska Commercial Fisheries Entry Commission Permit #57954M, New Stuyahok, AK.

NAFTA–TAA–07451; Permit #58117F, South Naknek, AK.

NAFTA–TAA–06884; Permit #64750, Naknek, AK.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–07661; Hawker Power Systems, Inc., a Subsidiary of Enersys, Inc., Springfield, MO: September 18, 2001.

NAFTA–TAA–07629; Shipping Systems, Inc., a Subsidiary of Bancroft Bag, Crossett, AR: October 21, 2001.

NAFTA–TAA–07589; Georgia-Pacific Lumber Corp., Western Lumber Operations, Fort Bragg, CA: September 27, 2001.

NAFTA–TAA–06209; Schlumberger Oilfield Services, Webster, TX: May 16, 2001.

I hereby certify that the aforementioned determinations were issued during the months of December, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 2, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–415 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,311; New England Iron, LLC, Springfield, MA.

TA–W–42,159; Landis Gardner, Div. of Unova Industrial Automation Systems, Inc., Waynesboro, PA.

TA–W–42,162; Forney, Inc., Hermitage, PA.

TA–W–42,328; Stratex Newtworks, Inc., San Jose, CA.

TA–W–42,288; Warp Knit Mills, Inc., Lincolnton, NC.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,229 & A; Dana Corp., Traction Technologies Group, Department 606, Syracuse, IN and Department 782, Syracuse, IN.

TA–W–42,106; Pyramid Industries, Inc., a Wholly Owned Subsidiary of Lamson and Sessions, Inc., Erie, PA.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–50,240 & A; Erie Industrial Maintenance, Berea, OH and Erie Industrial Insulation, Berea, OH.

TA–W–50,232; Roxio, Inc., Maple Grove, MN.

TA–W–50,229; Electronic Data Systems Corp., Rochester, NY.

TA–W–52,236; Consolidated Freightways, York, PA.

TA–W–42,283; Facility Pro, Columbus, OH.

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–42,208; Englehard Corp., a Div. of The Process Technologies Group, Erie, PA.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,351; Johnstown Corp., Johnstown, PA: August 16, 2002.

TA–W–42,343; Wolverine World Wide, Inc., Formerly Frolic Footwear, a Div. of Wolverine Manufacturing Group, Arkansas Operations, Monette, AR: October 23, 2001.

TA–W–41,596; Carton Craft Corp., Buffalo, NY: May 8, 2001.

TA–W–42,212; Deluxe Craft Photo Albums, Inc., Chicago, IL: September 17, 2001.

TA–W–42,196; Hy-Tec Manufacturing, Stator Reclaim Line, Ada, OK: September 13, 2001.

TA–W–42,266; Presto Manufacturing Co., Jackson, MS: October 3, 2001.

TA–W–41,741; Weyerhaeuser Co., Woodburn Engineered Wood Products Div., Woodburn, OR: June 17, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–50,078 & a; Auburn Hosiery Mills, Inc., a Subsidiary of Kellwood Co., Auburn, KY and Adairville, KY: November 5, 2001.

TA–W–50,203 & A; SMS Eumuco, Inc., a Subsidiary of SMS Eumuco, GMBH, a Subisidiary of SM–AG, Pittsburgh, PA and Bellefonte, PA: November 21, 2001.

TA–W–50,153; Triangle Apparel, Inc., Parson, TN: November 20, 2001.

TA–W–50,033; CMAC of America, d/b/a Carolina Circuits, Greenville, SC: November 6, 2001.

TA–W–50,039; Vista Wood Products, Lafayette, TN: November 7, 2001.

TA–W–50,054; Universal Automotive, Inc., Cuba, MO: November 8, 2001.

TA–W–50,259; Alfred Angelo, Inc., Delray Beach, FL: November 20, 2001.

TA–W–50,238; Island Manufacturing Co., Inc., North Bergen, NJ: November 27, 2001.

TA–W–50,162; Magnivision, Inc., Miramar, FL: November 14, 2001.

TA–W–50,160; Edward Vogt Valve Co., A Branch of Flowserve, Jeffersonville, IN: November 18, 2001.

TA–W–50,157; Durango-Georgia Paper Co., St. Mary's, GA: November 14, 2001.

TA–W–50,149; New Roan Corp., Hialeah, FL: November 5, 2001.

TA–W–50,130; Lakeview Forge Co., Erie, PA: November 18, 2001.

TA–W–50,102; MMG North America, a Subsidiary of TT Electronics, Paterson, NY: November 7, 2001.

TA–W–50,099; Sweater Project, Inc., Bergen, NJ: November 7, 2001.

TA–W–50,098; Interstate Foam Processors, Inc., Passaic, NJ: November 4, 2001.

TA–W–50,088; Charles and Sons Apparel, Inc., West New York, NJ: November 7, 2001.

TA–W–50,083; Rayonier, Southeast Wood Productions Div., Lumber City, GA: November 8, 2001.

TA–W–50,067; Advanced Glassfiber Yarns, Aiken, SC: November 8, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–50,022; Andrew Corp., Richardson, TX: November 4, 2001.

TA–W–50,137; SL Outer Banks, LLC, Lumberton, NC: November 18, 2001.

TA–W–50,085; Pass and Seymour, a Subsidiary of Legrand, Concord, NC: November 12, 2001.

TA–W–50,168; Square D Company, Raleigh Plant Knightdale, NC: November 20, 2001.

TA–W–50,186; Don Shapiro Industries, Inc., d/b/a Action West, El Paso, TX: December 27, 2002.

TA–W–50,119; U.S. Repeating Arms Co., Inc., New Haven, CT: November 8, 2001.
TA–W–50,023; Andrew Corp., Burlington, IA: November 4, 2001.
TA–W–50,357; Dixon Ticonderoga Co., Inc., Sandusky Div., Sandusky, OH: December 9, 2001.
TA–W–50,269; Pass and Seymour/ Legrand, Greensboro Manufacturing Plant, Whitsett, NC: December 2, 2001.
TA–W–50,267; Concise Fabricators, Inc., Tucson, AZ: October 29, 2001.
TA–W–50,236; Stryker Howmedica Osteonics Corp., a Subsidiary of Stryker Corp., Rutherford, NJ: December 4, 2001.
TA–W–50,136; Bissell Homecare, Inc., Walker, MI: November 2, 2001.
TA–W–50,096; Burlington Industries, Inc., Reidsville Weaving Plant, Reidsville, NC: November 8, 2001.
TA–W–50,068; Velvet Drive Transmission, New Bedford, MA: November 7, 2001.
TA–W–50,065; Rawlings Sporting Goods Co., Inc., Licking, MO: November 11, 2001.
TA–W–50,026; Andrew Corp., Addison, IL: November 4, 2001.
TA–W–50,047; Andrew Corp., Denton, TX: November 4, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06126; Furnimex Products USA, Inc., Charm House Manufacturing, Sumter, SC.
NAFTA–TAA–07654; Stratex Networks, Inc., San Jose, CA.
NAFTA–TAA–07597; Dana Corp., Traction Technologies Group, Department 606, Syracuse, IN.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–07645; Findlay Industries, Inc., Eagle Pass Warehouse, Eagle Pass, TX.

The investigation revealed that criteria (2) has not been met. Sales or production, or both, did not decline during the relevant period as required for certification.

NAFTA–TAA–07660; Engelhard Corp., a Div. of The Process Technologies Group, Erie, PA.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–07593; Deluxe Craft Photo Albums, Inc., Chicago, IL: September 17, 2001.
NAFTA–TAA–06292; Weyerhaeuser Co., Woodburn Engineered Wood Products Div., Woodburn, OR: June 19, 2001.
NAFTA–TAA–07372; Permit #64414M, Naknek, AK: September 5, 2001.
NAFTA–TAA–07597A; Dana Corp., Traction Technologies Group, Department 782, Syracuse, IN: September 30, 2001.

I hereby certify that the aforementioned determinations were issued during the months of December, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 23, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–414 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Workers Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 21, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 21, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 13th day of December, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 12/02/2002 and 12/06/2002]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,223	Alcoa Fujikura, LTD (Wkrs)	Allentown, PA	12/02/2002	12/02/2002
50,224	Upstate Printed Circuits (Wkrs)	Syracuse, NY	12/02/2002	11/30/2002
50,225	Unitek Electronics, Inc. (Comp)	Tigard, OR	12/02/2002	11/29/2002
50,226	Technicolor Virginia (Comp)	Ruckersville, VA	12/02/2002	11/21/2002
50,226A	Technicolor Virginia (CAO)	Charlottesville, VA	12/02/2002	11/21/2002
50,227	Fabricating source, Inc. (The) (Comp)	Youngstown, OH	12/02/2002	11/19/2002
50,228	Lau Industries, Inc. (USWA)	Indianapolis, IN	12/03/2002	12/02/2002
50,229	Electronic Data Systems (Wkrs)	Rochester, NY	12/03/2002	11/21/2002
50,230	Mount Vernon Mills, Inc. (Comp)	Johnston, SC	12/03/2002	12/02/2002
50,231	Snorkel/Omni Equipment Textron (Wkrs)	Elwood, KS	12/03/2002	12/02/2002
50,232	Roxio, Inc. (Wkrs)	Maple Grove, MN	12/03/2002	12/02/2002
50,233	Bombardier Mass Transit Corp. (Wkrs)	Barre, VT	12/03/2002	12/03/2002
50,234	BiPhase Technologies (Wkrs)	Lake Lillian, MN	12/03/2002	11/25/2002
50,235	Baker Enterprises, Inc. (Wkrs)	Alpena, MI	12/03/2002	11/08/2002
50,236	Stryker Howmedica Osteonics Corp. (Comp)	Rutherford, NJ	12/04/2002	12/03/2002
50,237	Pass and Seymour/Legrand (Comp)	Dallas, NC	12/04/2002	11/25/2002
50,238	Island Manufacturing Company (NJ)	North Bergen, NJ	12/04/2002	11/27/2002
50,239	Nestle Purina (RWDSU)	St. Joseph, MO	12/04/2002	11/26/2002
50,240	Erie Industrial Maintenance (Comp)	Berea, OH	12/04/2002	11/24/2002
50,240A	Erie Industrial Insulation (Co.)	Berea, OH	12/04/2002	11/24/2002
50,241	National Spinning Company, Inc. (Comp)	Washington, NC	12/04/2002	11/25/2002
50,242	Beres Industrial, Inc. (Comp)	Lakewood, NJ	12/04/2002	11/20/2002
50,243	Worthington Steel (IBT)	Jackson, MI	12/04/2002	11/26/2002
50,244	Medtronic Corporation (FL)	Sunrise, FL	12/04/2002	11/27/2002
50,245	Wolverine World Wide (Comp)	Kirksville, MO	12/04/2002	12/03/2002
50,246	Orcom (OR)	Bend, OR	12/04/2002	12/03/2002
50,247	Holland USA (Comp)	Denmark, SC	12/04/2002	11/26/2002
50,248	Howmet Casting (NJ)	Dover, NJ	12/04/2002	11/21/2002
50,249	Alpha Mills Corporation (Comp)	Annville, PA	12/04/2002	12/02/2002
50,250	Polyone Corporation (NJ)	Farmingdale, NJ	12/04/2002	11/19/2002
50,251	Voith Fabrics, Inc. (Compt)	Frankfort, KY	12/04/2002	12/03/2002
50,252	General Mills (Comp)	Hillsdale, MI	11/26	12/04/2002
50,253	Johns Manville (Wkrs)	Natchez, MS	12/04/2002	12/03/2002
50,254	Precision Tool and Design (Wkrs)	Erie, PA	12/06/2002	11/27/2002
50,255	Aurora Systems, Inc. (Comp)	Erie, PA	12/06/2002	11/28/2002
50,255A	Aurora Systems, Inc. (Co.)	Rochester, NY	12/06/2002	11/28/2002
50,255B	Aurora Systems, Inc. (Co.)	Buffalo, NY	12/06/2002	11/28/2002
50,256	E.J. Snyder and Company, Inc. (Comp)	Albemarle, NC	12/06/2002	12/05/2002
50,257	Electric Steel Castings (USWA)	Speedway, IN	12/06/2002	12/05/2002
50,258	Weyerhaeuser Cascade Operations (Comp)	Enumclaw, WA	12/06/2002	12/02/2002
50,259	Alfred Angelo (Wkrs)	Delray Beach, FL	12/06/2002	11/20/2002
50,260	Motorola (Wkrs)	Mesa, AZ	12/06/2002	12/05/2002
50,261	Advanced Power Technology, Inc. (Orr)	Bend, OR	12/06/2002	12/05/2002
50,262	Engineered Polymers Corporation (MN)	Mora, MN	12/06/2002	12/03/2002
50,263	OMG Fidelity (NJ)	Newark, NJ	12/06/2002	12/04/2002
50,264	Atlantic Metal Products (NJ)	Springfield, NJ	12/06/2002	12/04/2002
50,265	HBK Industries (UNITE)	Blackwood, NJ	12/06/2002	12/03/2002
50,266	Parker Hannifin (Wkrs)	Minneapolis, MN	12/06/2002	12/04/2002
50,267	Concise Fabricators, Inc. (Comp)	Tucson, AZ	12/06/2002	10/29/2002
50,268	American Tool Companies (Comp)	Lexa, AR	12/06/2002	12/04/2002
50,269	Pass and Seymour / Legrand (Comp)	Whitsett, NC	12/06/2002	12/02/2002
50,270	Kreuter Manufacturing Company (Wkrs)	New Paris, IN	12/06/2002	11/22/2002

[FR Doc. 03–421 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,312]

Analog Devices, Inc., Norwood, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 28, 2002 in response to petition filed on behalf of workers at Analog Devices, Inc., Norwood, Massachusetts.

The three workers filing the petition worked in different divisions of the firm: Corporate Marketing, ASC, Analog Semiconductor, and Corporate Sales. The petition regarding the investigation has been deemed invalid because the three petitioners are not within the same appropriate subdivision of the firm. Consequently, the investigation has been terminated.

Signed in Washington, DC this 13th day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–406 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,263]

Arkansas Metal Castings, Inc., Ft. Smith, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 9, 2002 in response to a worker petition which was filed on behalf of workers at Arkansas Metal Castings, Inc., Ft. Smith, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, DC this 20th day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–402 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,321]

Baxter Healthcare Corporation, Mountain Home, AR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 12, 2002 in response to a worker petition filed by the State of Arkansas Employment Security Department on behalf of workers at Baxter Healthcare Corporation, Mountain Home, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 31st day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–419 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,299]

CSI Employment Services, Mt. Pleasant, IA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 12, 2002, in response to a worker petition filed by a company official on behalf of workers at CSI Employment Services, Mt. Pleasant, Iowa.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of December, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–405 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,181]

Eagle Zinc Company, Hillsboro, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 25, 2002, in response to a worker petition filed by the company on behalf of workers at Eagle Zinc Company, Hillsboro, Illinois.

The petitioning group of workers is covered by an earlier petition (TA–W–50,175) filed on November 25, 2002 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case (TA–W–50,181), would duplicate efforts and serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 9th day of December, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–408 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,344]

Hitachi High Technologies America, Inc., San Jose, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 1, 2002, in response to a worker petition filed by the company on behalf of workers at Hitachi High Technologies America, Inc., San Jose, California.

The subject firm requested that the existing petition be terminated. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 20th day of December, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–403 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,067]

Huntsman Polymers Corporation Utilities Division, Odessa, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application of October 16, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on October 7, 2002 and published in the **Federal Register** on November 5, 2002 (67 FR 67418).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on the finding that the subject firm workers did not produce an article within the meaning of section 222(3) of the Trade Act of 1974. The affected workers managed water and raw materials utilized in the various manufacturing processes performed at the subject firm.

The petitioner alleges that the Utility Division was in direct support of a Trade Adjustment Assistance (TAA) certified facility (Huntsman Polymer Corporation, Odessa, Texas (TA–W–39,780) and thus believes the worker group should be certified eligible to receive TAA.

Upon examination of the initial investigation and further contact with the company, it has been determined that only a small portion of the work performed by the subject workers was directed towards that certified TAA facility. The overwhelming majority of the support activities were directed towards other plant product lines, which are not under existing TAA certifications.

The investigation further revealed that the Utilities Division required the same number of workers whether it was at full operating capacity or at a reduced operating level.

The dominant factor leading to the declines in employment at Huntsman Polymers Corporation, Utilities Division, Odessa, Texas was related to a "Feasibility Study" in which it was determined that in order to reduce company costs, the Utilities Division would be merged with another facility at the Odessa site.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 23rd day of December, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–413 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,111]

Osram Sylvania Products, Inc., Bangor, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 18, 2002 in response to a worker petition filed by a company official on behalf of workers at OSRAM SYLVANIA Products, Inc., Bangor, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 16th day of December, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–404 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 21, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 21, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 20th day of December, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 12/09/2002 and 12/13/2002]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,271	Partminer, Inc. (Wkrs)	Englewood, CO	12/09/2002	12/04/2002
50,272	Hitachi Magnetics Corp. (UAW)	Edmore, MI	12/09/2002	12/03/2002
50,273	Harvard Industries, Inc. (NJ)	Lebanon, NJ	12/09/2002	11/06/2002
50,274	Neenah Foundry (GMP)	Neenah, WI	12/09/2002	12/06/2002
50,275	Chinook Sailing Products (Comp)	Casscade Locks, OR	12/09/2002	12/25/2002
50,276	SuperValu, Inc. (Wkrs)	Belle Vernon, OA	12/09/2002	11/18/2002
50,277	Heico-Ohmite, LLC (Comp)	Skokie, IL	12/09/2002	12/03/2002
50,278	Dennis Windings (Wkrs)	Wilkes-Barre, PA	12/09/2002	12/03/2002
50,279	Pfaltzgraff Co. (The) (Comp)	Thomasville, PA	12/09/2002	11/06/2002
50,280	Holmes Group (The) (Wkrs)	Clinton, MO	12/09/2002	12/09/2002
50,281	U.S. Manufacturing (Wkrs)	Bad Axe, MI	12/09/2002	12/03/2002
50,282	Cusolar Industries, Inc. (MI)	Chesterfield, MI	12/09/2002	12/09/2002
50,283	Advanced Micro Devices (Wkrs)	Austin, TX	12/10/2002	11/23/2002
50,284	Newell Rubbermaid (USWA)	Ogdensburg, NY	12/10/2002	11/27/2002
50,285	Fiber-Line, Inc. (Comp)	Hickory, NC	12/10/2002	11/22/2002
50,286	Indiana Glass Company (Comp)	Dunkirk, IN	12/10/2002	12/06/2002
50,287	Corning Cables Systems (Wkrs)	Hickory, NC	12/10/2002	11/05/2002
50,288	Lancaster Malleable Castings Company (Comp).	Lancaster, PA	12/10/2002	12/02/2002
50,289	Metolius Mountain Products, Inc. (Comp)	Bend, OR	12/10/2002	11/22/2002
50,290	Sipex Corporation (Wkrs)	Billerica, MA	12/10/2002	11/06/2002
50,291	Intelicoat (Comp)	Spartanburg, SC	12/10/2002	12/04/2002
50,292	Gorham/Lenox (Comp)	Smithfield, RI	12/10/2002	12/09/2002
50,293	Mitsubishi Electric Automation (Comp)	Vernon Hills, IL	12/10/2002	12/09/2002
50,294	Gates Rubber Company (Comp)	Denver, CO	12/10/2002	12/04/2002
50,295	Vaughan Furniture Company (Comp)	Galax, VA	12/10/2002	12/06/2002
50,296	TRW Valve Division (SVAA)	Danville, PA	12/10/2002	12/09/2002
50,297	Progressive Die and Automation (Wkrs)	Grand Rapids, MI	12/12/2002	11/14/2002
50,298	SPX Valves/Controls (Comp)	Sartell, MN	12/12/2002	11/15/2002
50,299	CSI Employment Services (IA)	Mt. Pleasant, IA	12/12/2002	12/10/2002
50,300	Nexfor Fraser Levesque Operations (Comp)	Ashland, ME	12/12/2002	12/10/2002
50,301	DeLong Sportswear, Inc. (Comp)	Quanah, TX	12/12/2002	12/11/2002
50,302	Union Tank Car (IBB)	E. Chicago, IN	12/12/2002	12/01/2002
50,303	Profuse Services, Inc. (Comp)	Merkel, TX	12/12/2002	12/05/2002
50,304	Defiance Metal Products of PA (Comp)	Bedford, PA	12/12/2002	11/27/2002
50,305	Burgess Norton Manufacturing Company (Comp).	DeKalb, IL	12/12/2002	12/11/2002
50,306	Nevamar Company (Wkrs)	Stuart, VA	12/12/2002	12/04/2002
50,307	Xerox Corporation (Wkrs)	Yukon, OK	12/12/2002	12/03/2002
50,308	Helicopter Aviation Services Corporation (Wkrs).	Mt. Pleasant, PA	12/12/2002	11/05/2002
50,309	Parkdale Mills, Inc. (Comp)	Belmont, NC	12/12/2002	12/10/2002
50,310	Mossberg Reel, LLC (Comp)	Cumberland, RI	12/12/2002	12/06/2002
50,311	Relizon (Comp)	Newark, OH	12/12/2002	12/02/2002
50,312	Intertape Polymer Group (Comp)	Menasha, WI	12/12/2002	12/09/2002
50,313	Mike Dent Enterprises (Comp)	Burns, OR	12/12/2002	11/13/2002
50,314	Electroglas, Inc. (Wkrs)	San Jose, CA	12/12/2002	12/09/2002
50,315	Capital City Press (GCIU)	Berlin, VT	12/12/2002	12/10/2002
50,316	Gem Case, LLC (Comp)	Cranston, RI	12/12/2002	11/22/2002
50,317	FMC (USWA)	S. Charleston, WV	12/12/2002	12/05/2002
50,318	Fairfield Manufacturing Co., Inc. (UAW)	Lafayette, IN	12/12/2002	12/11/2002
50,319	ACS (Wkrs)	Liberty, KY	12/12/2002	12/10/2002
50,320	American Bag Corp. (Comp)	Stearns, KY	12/12/2002	11/25/2002
50,321	Baxter Health Care Corp. (AR)	Mountain Home, AR	12/12/2002	12/12/2002
50,322	Temp Associates (IA)	Mount Pleasant, IA	12/12/2002	12/10/2002
50,323	Potlatch Corporation (ID)	Lewiston, ID	12/12/2002	12/10/2002
50,324	Smiths Aerospace (Wkrs)	Malvern, PA	12/12/2002	12/09/2002
50,325	Successful Futures (IA)	Mt. Pleasant, IA	12/12/2002	12/10/2002
50,326	Jordan Fashions Corp. (UNITE)	New York, NY	12/12/2002	12/12/2002
50,327	Jo La Foundation (UNITE)	Brooklyn, NY	12/12/2002	12/09/2002
50,328	Crane Manufacturing and Service Corp. (Comp).	Cudahy, WI	12/12/2002	12/05/2002
50,329	U.S. Forgecraft Corp. (AR)	Fort Smith, AR	12/12/2002	12/12/2002
50,330	Bardon Rubber Company (UAW)	Union Grove, WI	12/12/2002	12/11/2002
50,331	Suntec Industries (UAW)	Rockford, IL	12/12/2002	12/11/2002
50,332	Tetley USA, Inc. (Comp)	Williamsport, PA	12/12/2002	12/10/2002
50,333	Rockford Company (The) (Comp)	Rockford, IL	12/13/2002	11/04/2002
50,334	Sumco Phoenix Corporation (Comp)	Fremont, CA	12/13/2002	11/26/2002
50,335	Windless, Inc. (Wkrs)	Altoona, PA	12/13/2002	12/02/2002
50,336	Rhodes Collections, Inc. (Comp)	Garland, TX	12/13/2002	12/06/2002

APPENDIX—Continued

[Petitions instituted between 12/09/2002 and 12/13/2002]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,337	MacLean ESNA (AR)	Pocahontas, AR	12/13/2002	12/12/2002
50,338	Dana Corporation/Long Manufacturing (Comp).	Sheffield, PA	12/13/2002	12/10/2002
50,339	Tower Automotive, Inc. (DALU)	Milwaukee, WI	12/13/2002	12/09/2002
50,340	Lear (PACE)	Peru, IN	12/13/2002	12/09/2002
50,341	Cooper Standard (AR)	El Dorado, AR	12/13/2002	12/12/2002
50,342	Pechiney Plastic Packaging (Wkrs)	Neenah, WI	12/13/2002	12/12/2002
50,343	Fashion Technologies, Inc. (Comp)	Gaffney, SC	12/13/2002	12/10/2002
50,344	Rough and Ready Lumber Co. (Comp)	Cave Junction, OR	12/13/2002	12/12/2002
50,345	Gateway Forest Products (AK)	Ward Cove, AK	12/13/2002	12/12/2002
50,346	Square D Company (Wkrs)	Columbia, MO	12/13/2002	12/10/2002
50,347	Rayovac Corporation (Comp)	Madison, WI	12/13/2002	12/09/2002
50,348	Egger Steel Company (Wkrs)	Sioux Falls, SD	12/13/2002	12/05/2002

[FR Doc. 03–423 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,279]

Pfaltzgraff Company, Thomasville, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 9, 2002 in response to a worker petition which was filed on behalf of workers at Pfaltzgraff Company, Thomasville, Pennsylvania.

An active certification covering the petitioning group of workers is already in effect (TA–W–41,917, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of December 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–418 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,855, TA–W–40,855A]

Quebcor World Kingsport, Inc., Kingsport, Tennessee, Quebcor World Hawkins, Kinsport Press Road, Church Hill, Tennessee; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 5, 2002, the United Steelworkers of America, Local 299 requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Quebecor World Kingsport, Inc., Kingsport, Tennesse (TA–W–40,855) and Quebcor World Hawkins, Kingsport Press Road, Church Hill, Tennessee (TA–W–40,855A) was issued on May 2, 2002, and was published in the **Federal Register** on May 17, 2002 (67 FR 35143).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The investigation findings revealed that criterion (3) of the group eligibility requirements of section 222 of the Trade Act of 1974 was not met. Increased imports did not contribute importantly to worker separations at the subject firm. The preponderance in the declines in employment at Quebcor World Hawkins, Kingsport Press Road, Church Hill, Tennessee is the direct result of plant production being shifted to other domestic locations and related bumping into the Quebecor World Kingsport, Incorporated facility. The workers were engaged in activities related to the production of books and also provided warehouse and distribution functions.

The request for reconsideration alleges that the subject plant workers were impacted by company work being exported to foreign countries and then shipped back to the United States. The petitioner attached a copy of work orders in an attempt to depict this.

The Department of Labor requested that the company verify the work orders lost to foreign sources and the amount of business lost to foreign sources. The company summarized the information and indicated that the amount of the work exported and imported back to the United States was negligible.

The petitioner further states that during February 2002, the company shifted binding equipment (Koibus casing-in line and one Horauf casemaker) from Quebecor World Hawkings to Bogata, Columbia.

Based on information supplied by the company, all plant production was shifted to domestic sources. A shift in plant machinery to a foreign source does not meet the eligibility requirements of section 223 of the Trade Act of 1974. As already indicated, company imports of products like or directly competitive with what the subject plant produced were negligible and thus any shifts in plant machinery to a foreign source is irrelevant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 20th day of December, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–412 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,196]

The Rockford Company, Rockford Illinois; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 26, 2002, in response to a worker petition filed by a company official on behalf of workers at The Rockford Company, Rockford, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 13th day of December, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–407 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix of this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations begin or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 21, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 21, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 3rd day of January 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 12/16/2002 and 12/23/2002]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,349	Simmons Foods (AR)	Siloam Springs, AR	12/16/2002	12/01/2002
50,350	Leviton Manufacturing Co., Inc. (Comp)	Warwick, RI	12/16/2002	12/13/2002
50,351	Top Gun Tool, Inc. (Wkrs)	Erie, PA	12/16/2002	12/16/2002
50,352	Spherion Atlanta Enterprises, LLC (NC)	Wilmington, NC	12/16/2002	12/13/2002
50,353	Edinboro Molding, Inc. (Comp)	Edinboro, PA	12/16/2002	11/04/2002
50,354	Red-Wing Shoe Company (Wkrs)	Potosi, MO	12/16/2002	11/22/2002
50,355	Southwest Silica Flux (Wkrs)	Hanover, NM	12/16/2002	12/01/2002
50,356	Key Plastics, LLC (Wkrs)	Port Huron, MI	12/16/2002	12/01/2002
50,357	Dixon Toconderoga Co. (Comp)	Sandusky, OH	12/16/2002	12/09/2002
50,358	Jore Corp (Comp)	Edgerton, WI	12/16/2002	12/16/2002
50,359	General Chemical Group (Comp)	Manistee, MI	12/16/2002	12/13/2002
50,360	Ocean State Finishing Co. (Wkrs)	Woonsocket, RI	12/17/2002	12/02/2002
50,361	OEM Shades, Inc. (Comp)	Ford City, PA	12/17/2002	12/13/2002
50,362	Rosal Sportswear (UNITE)	Lehighton, PA	12/17/2002	12/10/2002
50,363	Miorasami Corporation (Comp)	Scottsdale, AZ	12/17/2002	12/12/2002
50,364	Reactive Metals and Alloys Corp. (Comp)	W. Pittsburg, PA	12/17/2002	12/12/2002
50,365	Amital Spinning Corporation (Wkrs)	Wallace, NC	12/18/2002	12/12/2002
50,366	Agere Systems, Inc. (IBEW)	Breinigsville, PA	12/18/2002	12/09/2002
50,367	Autoliv ASP (UNITE)	Indianapolis, IN	12/18/2002	12/12/2002
50,368	Flexaust (Wkrs)	El Paso, TX	12/18/2002	12/07/2002
50,369	Akzo Nobel Polymer Chemicals, LLC (Comp)	Burt, NY	12/18/2002	12/10/2002
50,370	Ultimate Tool, Inc. (Comp)	Erie, PA	12/18/2002	12/12/2002
50,371	Nestle Confections and Snacks (RWDSU)	Fulton, NY	12/18/2002	12/09/2002
50,372	Oneida Limited (Comp)	Oneida, NY	12/18/2002	12/10/2002
50,373	Chautauqua Hardware Corporation (Wkrs)	Jamestown, NY	12/18/2002	12/12/2002
50,374	SPX Valves and Controls (Comp)	Lake City, PA	12/18/2002	12/11/2002
50,375	Carlisle Food Service Products (Comp)	Erie, PA	12/18/2002	12/03/2002
50,376	Medtronic Perfusion Systems (Comp)	Anaheim Hills, CA	12/18/2002	12/15/2002
50,377	Trans World Connections, Ltd. (Wkrs)	Lynchburg, VA	12/18/2002	12/12/2002
50,378	NACCO Materials Handling Group, Inc. (Comp).	Lenoir, NC	12/18/2002	12/12/2002
50,379	B and D Resources (Wkrs)	Robinson, IL	12/18/2002	12/13/2002
50,380	Tri Star Refractions, Inc. (USWA)	Cincinnati, OH	12/18/2002	12/12/2002
50,381	Vishay Micro-Measurements (Comp)	Wendell, NC	12/18/2002	12/17/2002
50,382	Reddog Industries (Wkrs)	Erie, PA	12/18/2002	12/17/2002
50,383	Employment Control, Inc. (USWIB)	Easton, MD	12/18/2002	11/19/2002

APPENDIX—Continued

[Petitions instituted between 12/16/2002 and 12/23/2002]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,384	National Forge Company (IUNFE)	Irvine, PA	12/18/2002	12/14/2002
50,385	Santini Corporation (Comp)	Leoma, TN	12/18/2002	12/17/2002
50,386	Burelbach Industries (OR)	Rickreal, OR	12/18/2002	12/10/2002
50,387	Pittsburg Cut Flower (Comp)	Pittsburg, PA	12/18/2002	12/12/2002
50,388	Pasminco (USWA)	Gordonsville, TN	12/19/2002	12/18/2002
50,389	F/V Three Wind (Comp)	Dillingham, AK	12/19/2002	12/17/2002
50,390	Goodyear Tire and Rubber Company (USWA).	Lincoln, NE	12/19/2002	12/18/2002
50,391	Motorola, Inc. (Wkrs)	Deer Park, IL	12/19/2002	12/10/2002
50,392	Heckett Multi-Serv (Wkrs)	Koppel, PA	12/19/2002	12/02/2002
50,393	Tredegar Film Products (Wkrs)	Carbondale, PA	12/19/2002	11/07/2002
50,394	Micro Component Tech. (Wkrs)	Roseville, MN	12/19/2002	12/18/2002
50,395	Delafoil Ohio, Inc. (Comp)	Perrysburg, OH	12/19/2002	12/18/2002
50,396	Sherwood Tool, Inc. (Comp)	Kensington, CT	12/19/2002	12/11/2002
50,397	Clorox Products Manufacturing (ME)	Londonderry, NH	12/19/2002	12/17/2002
50,398	West Coast Automation, Corp. (Comp)	Goldendale, WA	12/19/2002	12/18/2002
50,399	Computer Horizons Corporation (Comp)	Irving, TX	12/19/2002	12/15/2002
50,400	Staktek Group L.P. (Comp)	Austin, TX	12/19/2002	12/13/2002
50,401	FPL Energy (IBEW)	Yarmouth, ME	12/19/2002	12/13/2002
50,402	Tillotson Healthcare Corp. (Wkrs)	Colebrook, NH	12/23/2002	11/21/2002
50,403	Badger Pattern Works, Inc. (Comp)	New Berlin, WI	12/23/2002	12/20/2002

[FR Doc. 03–422 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,322]

Temp Associates, Mount Pleasant, Iowa; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 19, 2002 in response to a worker petition filed by a state agency representative on behalf of workers at Temp Associates, Mount Pleasant, Iowa.

The petitioner has requested that this petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 19th day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–420 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,061, TA–W–50,061A]

VF Jeanswear, Limited Partnership, a Susidiary of VF Corporation, Woodstock, Virginia, VF Jeanswear, Limited Partnership, a Subsidiary of VF Corporation, Lebanon, Missouri; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 2, 2002, applicable to workers of VF Jeanswear, Limited Partnership, located in Woodstock, Virginia. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The Department found that the decision inadvertently omitted the workers of VF Jeanswear, Limited Partnership, located in Lebanon, Missouri, producing jeans and casual pants.

It is the Department's intent to provide coverage to all workers of VF Jeanswear, Limited Partnership, adversely affected by the shift in production to Mexico. Accordingly, the Department is amending the certification to expand coverage to the workers at VF Jeanswear, Limited Partnership, Lebanon, Missouri.

The amended notice applicable to TA–W–50,061 is hereby issued as follows:

All workers of VF Jeanswear, Limited Partnership, Woodstock, Virginia (TA–W–50,061), and Lebanon, Missouri (TA–W–50,061A), who became totally or partially separated from employment on or after November 6, 2001 through December 2, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of December 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–416 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,251]

Voith Fabrics, Inc., Frankfort, Kentucky; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 4, 2002 in response to a worker petition which was filed by the company on behalf of workers at Voith Fabrics, Inc., Frankfort, Kentucky.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 31st day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–417 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7608]

Arkansas Metal Castings, Inc., Ft. Smith, Arkansas; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on October 8, 2002, in response to a petition which was filed by a company official on behalf of workers at Arkansas Metal Castings, Inc., Ft. Smith, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 20th day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–410 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7657]

Hitachi High Technologies America, Inc., San Jose, California; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 27, 2002 in response to a petition filed by a company official on behalf of Hitachi High Technologies America, Inc., San Jose, California.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 20th day of December, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–409 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—05245]

Eagle Picher Industries, Construction Equipment Division, Now Known as Noble Construction Equipment, Inc., Lubbock, Texas; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on January 23, 2002, applicable to workers of Eagle Picher Industries, Construction Equipment Division, Lubbock, Texas. The notice was published in the **Federal Register** on February 5, 2002 (67 FR 5294).

At the request of the State agency, the Department reviewed the revised determination for workers of the subject firm.

Information provided by the State and the company shows that Noble International purchased Eagle Picher Industries, Construction Equipment Division in December 2001 and is now known as Noble Construction Equipment, Inc.

Information also shows that workers separated from employment at the subject firm, had their wages reported under a separate unemployment insurance (UI) tax account for Noble Construction Equipment, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Eagle Picher Industries, Construction Equipment Division, now known as Noble Construction Equipment, Inc. who were adversely affected by the shift in the production of construction equipment to Mexico.

The amended notice applicable to NAFTA–05245 is hereby issued as follows:

All workers of Eagle Picher Industries, Construction Equipment Division, now known as Noble Construction Equipment, Inc., Lubbock, Texas, who became totally or partially separated from employment on or after August 22, 2000, through January 23, 2004, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of December 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–411 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

LEGAL SERVICES CORPORATION

Limited English Proficiency Guidance—Request for Comments

AGENCY: Legal Services Corporation.

ACTION: Limited English Proficiency Guidance—request for comments.

SUMMARY: As part of their obligation to refrain from national origin discrimination, LSC grantees must ensure they are providing proper service to persons with limited English proficiency (LEP). LSC is considering whether guidance (formal or informal) from LSC on LEP compliance would assist grantees, or, alternately whether there is some other form of information sharing that LSC can facilitate among grantees to help ensure all grantees are in compliance with LEP related requirements. According, LSC is requesting public comment on this matter.

DATES: Written comments must be received on or before March 10, 2003.

ADDRESSES: Written comments may be submitted by mail, fax or email to Mattie C. Condray at the addresses listed below.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002–4250; 202–336–8817 (phone); 202–336–8952 (fax); *mcondray@lsc.gov*.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) is a private, non-profit corporation created by Congress and funded through annual appropriations from Congress. LSC's mission is to promote equal access to the system of justice and improve opportunities for low-income people

throughout the United States by making grants for the provision of high-quality civil legal assistance to those who would be otherwise unable to afford legal counsel.

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, prohibits the recipients of Federal assistance from, inter alia, discriminating on the basis of national origin. As part of a government-wide effort, the Justice Department has recently issued guidance regarding national origin discrimination affecting persons of limited English proficiency (LEP). The DOJ guidance notes that "[i]n certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI * * * against national origin discrimination." 67 FR 41455, at 41457. The DOJ guidance is intended to provide assistance to DOJ grant recipients and to serve as a model to other Federal agencies, which are required by Executive Order 13166 to issue their own guidance on LEP.[1] LSC is not subject to the executive order (because LSC is not a department, agency or instrumentality of the Federal Government) and is not, therefore, required to issue guidance on this subject. However, to the extent that the Federal effort is intended to improve access to Federally funded services for LEP persons and help ensure compliance with Title VI, it is appropriate to consider whether our grantees could benefit from similar guidance from LSC.

At the outset, a question has been raised with LSC regarding whether our grantees are, in fact, even subject to the requirements of Title VI of the Civil Rights Act. The argument in this case is that LSC grantees should not be considered recipients of Federal financial assistance, and, therefore, not subject to Title VI. There is no single answer to the question of the "Federal" nature of LSC funds; LSC funds are considered "Federal" funds for some purposes and "non-Federal" for others.[2] This has been the case for the entire history of the Corporation and the differing answers are justified by reference to the laws governing the particular use of the funds in question.

In this instance, the most closely analogous law is Section 504 of the Rehabilitation Act of 1973, which prohibits against discrimination on the basis of handicap by recipients of Federal financial assistance. In adopting its regulations at 45 CFR Part 1624 implementing Section 504, the Corporation stated that its decision to adopt the regulations was based, in part, on the fact that Section 504 applied directly to LSC recipients as recipients of "Federal financial assistance." 44 FR 55175 (Sept. 25, 1979). Unfortunately, the preamble to the regulation does not provide an analysis of how that conclusion was reached. Based on the discussion in the preamble, however, it does not appear that the conclusion that LSC grantees are recipients of Federal financial assistance for the purpose of Section 504 was challenged by any of the commenters and in the 23 years since the Part 1624 regulations were adopted no one has raised that issue with LSC.

LSC does not discern a meaningful difference between Section 504 and Title VI in this instance. Both are anti-discrimination laws applicable to recipients of Federal financial assistance. To the extent that LSC and its grantees have understood LSC funds to be Federal funds for the purpose of Section 504, LSC believes that LSC funds must also be considered Federal funds for the purpose of Title VI. However, the Corporation specifically invites comment on this issue.

Even if it were to be determined that Title VI is not directly applicable to LSC's grantees, it would remain appropriate at this time to consider LEP guidance. Each LSC grantee signs a grant assurance under which it promises not to discriminate on the basis of, among other things, national origin. Although the text of the grant assurance does not mention Title VI specifically, it is clear that the language of the grant assurance is based on the non-discrimination provisions of Federal civil rights laws, such as the Civil Rights Act, the Rehabilitation Act and the Americans with Disabilities Act. Thus, there is a contractual obligation on the part of each grantee to ensure it is not engaging in national origin discrimination, requiring it to properly serve LEP persons.

Moreover, LSC believes there are sound programmatic reasons to consider this issue at this time. A considerable portion of the LSC grantee client base has always been comprised of LEP persons; many of our grantees have extensive experience in providing services to LEP persons simply out of necessity. Due to changing demographics, and state planning efforts resulting in reconfigured service areas, however, many grantees are grappling with issues relating to serving LEP persons for the first time. It is, therefore, meant to consider whether guidance from LSC would assist these grantees, or, alternately whether there is some other form of information sharing that LSC can facilitate among grantees to help ensure that the knowledge and best practices of the grantees who have been leaders on this issue is available to all grantees and that all grantees are meeting their obligations in this regard.

LSC has identified several possible approaches it could take to this issue: LSC could issue regulations, as it did with Section 504; LSC could issue its own guidance (based on the DOJ guidance or otherwise); LSC could choose to refrain from issuing guidance, but could endorse the DOJ guidance; LSC could, either instead of or in conjunction with issuing guidance and/or endorsing the DOJ guidance, choose to engage in other activities to collect and distribute information of a best practices nature, illustrating what grantees with experience in dealing with LEP persons have been doing as an aid to other grantees needing assistance in this area; or LSC could choose to do nothing at all. Each of these approaches has advantages and disadvantages. Before determining a course of action, LSC, with this notice, is looking to the field for information on which option (or another course of action not identified above) would be most appropriate and helpful for grantees. LSC invites comment on the issues discussed below and on any other relevant consideration regarding service to LEP persons.

Issuing Regulations

LSC could issue its own regulations on the matter. Doing so would be analogous to LSC's action in issuing its Part 1624 regulations. LSC was not

[1] Under the DOJ Guidance, recipients are encouraged to undertake an individualized assessment that balances the following four factors: (1) The number of proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee/recipient; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. The guidance recommends that recipients consider adopting LEP plans or policies based on the results of their assessment. The guidance identifies the following elements which may be helpful in designing an LEP policy or plan: (1) identifying LEP persons who need language assistance; (2) identifying ways in which language assistance will be provided; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating LEP policy. The guidance also identifies a variety of language assistance services which recipients may consider using, including oral interpretation services, bilingual staff, telephone interpreter lines, written language services and community volunteers.

[2] For example, LEP funds are considered non-Federal funds for the purpose of matching Title III funds under the Older Americans Act, but they are considered Federal funds for the purpose of a federal prosecution for theft or embezzlement under Title 18 of the U.S. Code.

obligated to issue regulations implementing Section 504, but chose to do so because of the importance of the subject matter. Justifying the decision to issue 504 implementing regulations, the Corporation said (in the preamble to the rule) that "discriminatory practices by legal services programs interfere directly with the ability of those programs to provide high quality legal assistance in an efficient and effective manner." 44 FR 55175. The same rationale could be said to be applicable in this situation as well.

The disadvantage of taking such an approach is that it would impose an additional regulatory burden on grantees and, given that LSC is not receiving significant complaints of discrimination by grantees related to service to LEP persons, it is does not appear to LSC that such an additional regulatory burden is warranted. Moreover, by issuing regulations, LSC would become obligated to monitor compliance with and enforce any such regulations adopted. Notwithstanding some expansion of its Office and Compliance and Enforcement staff, the Corporation nonetheless has limited resources and the OCE staff does not have the expertise in these matters as do EEOC and DOJ staff. In addition, as with claims of violation of Part 1624, LSC would be without statutory authority to direct a recipient to take any specific action to come into compliance, nor could LSC make any award to an aggrieved complainant; LSC would be limited to attempting to resolve problems informally and to punishing violations by considering suspension or termination of the grant. As such, LSC is not well suited to resolving such claims in the manner that most complainants would find helpful to them.

Issuing Non-Regulatory Guidance

The recent guidance issued by DOJ is not in the form of regulations, and LSC could follow suit with issuing its own non-regulatory guidance. Issuing non-binding guidance would avoid some of the disadvantages of issuing regulations, yet would still allow LSC provide assistance to its grantees as to what grantees can, at a minimum, be doing to ensure that they are in compliance with their obligations to refrain from national origin discrimination.

However, if LSC chooses to issue guidance, even taking care to make it clear that such guidance was in the nature of "best practices" and not mandatory standards, LSC could find itself obligated to investigate a claim that a grantee had discriminated against an LEP person (or persons). As noted above, the Corporation has long taken the position that it is not suited to undertaking such investigations. On the other hand, LSC is obligated by Part 1618 of its regulations to investigate claims of violations of grant assurances. Thus, to the extent the grant assurances prohibit discrimination LSC already has a duty to investigate claims of national origin discrimination. In such a case, issuing guidance on LEP would not impose any additional risks or obligations on LSC or its grantees.

In addition, to the extent that many of LSC grantees receive grants from Federal agencies, such as DOJ, the Department of Housing and Urban Development and the Internal Revenue Service, these grantees will already be subject to the Federal guidance issuing from those agencies. Additional guidance from LSC would, at best, be duplicative and, therefore, unnecessary, and, at worst, be inconsistent, putting grantees in a difficult spot in complying with both sets of standards. LSC is specifically interested in learning how many grantees will already be subject to the DOJ (or other Federal agency) guidance as a result of receipt of DOJ (or other Federal) grants.

Refraining from Issuing Guidance

LSC could decline to issue its own guidance, but could commend the DOJ guidance to grantees. Such a message would make clear that the DOJ guidance is not directly applicable to them (unless they also receive grants from DOJ), but might be helpful to them in ensuring that they are complying with their obligations to LEP persons. This approach would remind our recipients of their contractual obligations under the grant assurances as well as any applicable Title VI obligations and provide them with some potentially useful guidance, without injecting LSC directly into the issue. Moreover, as noted above, to the extent that grantees receive grants from Federal agencies, they will already be subject to the Federal guidance issuing from those agencies. Additional guidance from LSC would, at best, be duplicative and, therefore, unnecessary, and, at worst, be inconsistent, putting grantees in a difficult spot in complying with both sets of standards.

The disadvantage of this approach is that, as the DOJ guidance is aimed at a somewhat different grantee population, the guidance might not be as helpful as it would be if LSC developed its own policy guidance document tailored to the legal services community. Further, there is the possibility that if LSC recommended the DOJ guidance to grantees that such an action would be the functional equivalent to issuing its own guidance, with the attendant advantages and disadvantages outlines above.

Refraining from Taking Any Action

LSC could decline to take any action. As noted above, the Executive Order does not apply to LSC and LSC does not have direct responsibility for enforcing Title VI.[3] This approach is legally defensible and would avoid the potential disadvantages which might be generated by either developing LSC's own guidance or endorsing the DOJ guidance. On the other hand, although LSC is not bound to follow Federal initiatives such as this one, LSC often takes cues from them. As noted above, the rationale that led LSC to issue its regulations at Part 1624, would appear to be applicable also in this situation. Moreover, to the extent that LEP persons comprise a significant proportion of the legal services client community, it would appear that guidance in this area would be warranted and helpful to our grantees. LSC specifically invites comments on this issue.

Other Actions

Either in addition to, or in lieu of, any of the options above, LSC could collect and disseminate information on ideas and best practices from grantees who are already serving LEP persons. This would allow grantees to reap the benefits of others' experience to lead to an improvement of services throughout the country.

There are any number of ways this could be accomplished. LSC could gather and post information on its Legal Resource Initiative Web site, *http://www.lri.lsc.gov* and success stories could be published in Equal Justice Magazine. There are also resources external to LSC, such as the National LEP Advocacy Task Force, with which LSC could work to the benefit of grantees. LSC requests suggestions and ideas about the best ways for LSC to provide assistance in this area.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 03–364 Filed 1–8–03; 8:45 am]

BILLING CODE 7050–01–P

[3] Leaving aside the LSC's responsibility to enforce its grant assurances which prohibit national origin discrimination.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

PSEG Nuclear, LLC, Salem Nuclear Generating Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 55, Section 55.59(c) for Facility Operating License Nos. DPR–70 and DPR–75, issued to PSEG Nuclear LLC (PSEG or the licensee), for operation of the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), located in Salem County, New Jersey. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the facility licensee on a one-time basis from the 24 month schedule requirement of 10 CFR 55.59(c) for completing the licensed operator requalification training program at Salem.

The proposed action is in accordance with the facility licensee's application for exemption docketed October 28, 2002.

The Need for the Proposed Action

The proposed action would extend the date for the facility licensee to complete the licensed operator requalification training program at Salem. The proposed action would extend the date for completing the training program from October 3, 2002, to January 9, 2003, therefore extending the training program by approximately 3 months over the schedule required by 10 CFR 55.59(c). This proposed action is needed to allow Salem to align their requalification training program with the training program at the Hope Creek Nuclear Generating station.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the extension of the licensed operator requalification program at Salem from October 3, 2002, to January 9, 2003.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for Salem.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the New Jersey State official, Mr. D. Zannoni, on November 14, 2002, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of this environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see PSEG's letter dated October 28, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 3rd day of January 2003.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–374 Filed 1–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nickel-Base Alloy, Vessel Head Penetration Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of conference.

SUMMARY: NRC Research will sponsor a three-day conference addressing issues of flaw detection and crack growth rate modeling and applications for nickel-base alloys used as vessel head penetrations (VHP) and other pressure boundary attachments. Participants will include a domestic and an international audience consisting of reactor operators, regulatory personnel, and researchers involved in the solution of the structural integrity issues arising from crack growth and leakage through Alloy 600 components, cladding and associated attachment welds. The conference will be structured to include presentations by industry, regulatory and laboratory representatives, as well as open discussion of the critical issues. There are no restrictions on attendance at this conference.

DATES: March 24–26, 2003.

ADDRESSES: Marriot Gaithersburg/Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Ken Natesan, Argonne National Laboratory, Telephone: (630) 252–5103, e-mail: *natesan@anl.gov*, or Bill Cullen, Mail Stop T–10 E10, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 415–6754, e-mail: *whc@nrc.gov*. Conference information will be posted on the NRC Web site: *http://www.nrc.gov*, under the public meetings section of both the

Alloy 600 and Vessel Head Degradation subheadings.

SUPPLEMENTARY INFORMATION: The proceedings will be published as Conference Proceedings of the Nuclear Regulatory Commission (NUREG/CP-series). Additional details, including lists of session chairpersons, and the contributed papers will be published on the NRC Web site: *http://www.nrc.gov* under the public meetings section of both the Alloy 600 and Vessel Head Degradation subheadings. Presentations at the conference will encompass vessel penetration cracking issues for all primary boundary locations, including upper head, lower head and pressurizer penetrations, and nickel-base alloy, or mixed metal welds used to join pressure boundary components.

The conference will consist of six sessions, chaired by domestic and international representatives of regulatory agencies, industry, and research organizations. Each session scheduled below includes invited and contributed papers on the following specific topics:

Monday, March 24, 2003—8:30 a.m.–12 Noon

Topics to be presented include flaw inspection procedures, descriptions of NDE results, and user experience with component mock-ups or other NDE training and certification procedures; visual inspection tools, programs underway to improve performance.

Monday, March 24, 2003—1:30–5 p.m.

Topics to be presented include descriptions of crack growth rate (CGR) experiments, interpretation and analysis of CGR data for Alloys 600, 690, 182/82 and 152/52.

Tuesday, March 25, 2003—8:30 a.m.–12 Noon

Topics to be presented include probabilistic fracture mechanics analysis of pressure boundary structural elements, including experimental or analytical stress analyses for axial and circumferential cracking of VHPs.

Tuesday, March 25, 2003—1:30–5 p.m.

Topics to be presented include programs that address the mitigation of the cracking or other corrective actions, especially repair procedures; future materials and fabrication techniques.

Wednesday, March 26, 2003—8:30 a.m.–12 Noon

Topics to be presented include application of these results in operating plants, including follow-on inspections of repaired components, and evaluations of success or failure of these methods.

Wednesday, March 26, 2003—1:30–5 p.m.

Wrap up and summaries by session chairs

The conference is open to the public, and there is no registration fee. Those who wish to attend are encouraged to contact Ken Natesan (*natesan@anl.gov*) or Bill Cullen (*whc@nrc.gov*). Further information, including forms for conference registration, and a final list of presentations, will be posted on the NRC website. Those attendees needing special services, such as for the hearing impaired, are requested to notify the conference organizers as far in advance as reasonably possible.

Dated at Rockville, Maryland, this 3rd day of January, 2003.

For the Nuclear Regulatory Commission.

Nilesh C. Chokshi,

Acting Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 03–375 Filed 1–8–03; 8:45 am]

BILLING CODE 7590–01–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The Commission on Ocean Policy will hold a meeting to discuss the development of recommendations for a coordinated national ocean policy. This will be the fourteenth public Commission meeting.

DATES: The public meeting will be held Friday, January 24, 2003 from 8:30 a.m. to 3:45 p.m.

ADDRESSES: The meeting location is the Amphitheater, Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Ave., NW., Washington DC 20004.

FOR FURTHER INFORMATION CONTACT: Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC 20036, 202–418–3442, *schaff@oceancommission.gov*.

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Pub. L. 106–256, Section 3(e)(1)(E)). The agenda will include discussions of policy options, a public comment session, and any required administrative discussions and executive sessions. Members of the public are requested to submit their statements for the record electronically by Tuesday, January 14, 2003 to the meeting Point of Contact. The meeting agenda, including the specific time for the public comment period, and guidelines for making public comments will be posted on the Commission's Web site at *http://www.oceancommission.gov* prior to the meeting.

Dated: January 3, 2003.

James D. Watkins, USN (ret.),

Chairman, Commission on Ocean Policy.

[FR Doc. 03–370 Filed 1–8–03; 8:45 am]

BILLING CODE 6820–WM–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34304]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—The Portland & Western Railroad, Inc.

On December 20, 2002, The Burlington Northern and Santa Fe Railway Company (BNSF) filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for overhead trackage rights between milepost 68.6 at Bush, OR, and milepost 96.5 at Albany, OR, a distance of 27.9 miles. The trackage rights operations would be conducted over part of a line owned by BNSF, which was leased to The Portland & Western Railroad, Inc. (P&WR), pursuant to a transaction exempted in *Portland & Western Railroad, Inc.—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34255 (STB served Jan. 3, 2003).

The transaction was scheduled to be consummated on or after December 27, 2002, the effective date of the exemption. The purpose of the trackage rights is to allow BNSF to operate over the leased line: (1) Moving trains containing loaded or empty cars interchanged with P&WR and other carriers having interchanges at Albany; or (2) for pre-positioning or storage of cars as agreed to between BNSF and P&WR.[1]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and*

[1] On December 23, 2002, BNSF filed a motion to dismiss this notice on the ground that separate Board approval of its trackage rights is unnecessary. John D. Fitzgerald, on behalf of the United Transportation Union—General Committee of Adjustment, replied on December 30, 2002. The motion to dismiss will be addressed in a separate decision.

Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

The notice is filed under 49 CFR 1180.2(d). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34304, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sarah W. Bailiff, The Burlington Northern and Santa Fe Railway Company, PO Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*"

Decided: January 3, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–396 Filed 1–8–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 215X)]

Norfolk Southern Railway Company—Abandonment Exemption—Between Williamson and Cinderella, in Mingo County, WV

The Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 2.5-mile line of railroad between milepost FG–0.0 at Williamson and milepost FG–2.5 at Cinderella, in Mingo County, WV. The line traverses United States Postal Service Zip Code 25661.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government agency acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 8, 2003,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 17, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 29, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 14, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by January 9, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 2, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–395 Filed 1–8–03; 8:45 am]

BILLING CODE 4915–00–P

[1] NSR initially proposed a consummation date of February 6, 2003. NSR's representative has subsequently acknowledged that consummation cannot occur before February 8, 2003, based on the December 20, 2002 filing date of the notice of exemption. *See* 49 CFR 1152.50(d)(2).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Aviation Security Advisory Committee Meeting

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a closed meeting of the Aviation Security Advisory Committee (ASAC).

DATES: The meeting will take place on January 22, 2003, from 10 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dan Mullarkey, Office of Security Regulation and Policy, 400 7th St., SW., Washington, DC 20590, Room 3034, telephone 202–385–1236.

SUPPLEMENTARY INFORMATION: This meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Act) (Pub. L. 92–463; 5 U.S.C. App. 11). In accordance with section 10(d) of the Act, TSA has determined that this meeting will be closed in its entirety to the public in accordance with 5 U.S.C. 552b(c)(3).

The matters under discussion constitute sensitive transportation security information that is exempt from disclosure by 49 U.S.C. 40119(b), and include such items as a security briefing, a security technology briefing, and a discussion regarding possible tasks for ASAC. ASAC members will be required to sign a Sensitive Security Information non-disclosure form before attending the meeting.

Members of the public who wish to file a written statement with the ASAC may do so by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington DC, on January 3, 2003.

Thomas R. Blank,

Associate Under Secretary for Security Regulation and Policy.

[FR Doc. 03–388 Filed 1–8–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 2, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 10, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0913.
Regulation Project Number: FI–165–84 NPRM.
Type of Review: Extension.
Title: Below-Market Loans.
Description: Section 7872 recharacterizes a below-market loan as a market rate loan and an additional transfer by the lender to the borrower equal to the amount of imputed interest. The regulation requires both the lender and the borrower to attach a statement to their respective income tax returns for years in which they have either imputed income or claim imputed deductions under section 7872.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 1,631,202.
Estimated Burden Hours Per Respondent: 18 minutes.
Frequency of Response: On occasion, Annually.
Estimated Total Reporting Burden: 481,722 hours.
OMB Number: 1545–0916.
Regulation Project Number: EE–96–85 NPRM and EE–63–84 Temporary.
Type of Review: Extension.
Title: Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984.
Description: These temporary regulations provide rules relating to effective dates and other issues arising under section 91, 223 and 511–561 of the Tax Reform Act of 1984.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 12,800.
Estimated Burden Hours Per Respondent: 31 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 6,500 hours.
OMB Number: 1545–1018.
Regulation Project Number: FI–27–89 Temporary and Final and FI–61–91 Final.
Type of Review: Extension.
Title: Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters (FI–27–89); Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements (FI–61–91).
Description: The regulations prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirements for REMICs and certain brokers.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 655.
Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 978 hours.
OMB Number: 1545–1041.
Regulation Project Number: PS–102–86 Final.
Type of Review: Extension.
Title: Cooperative Housing Corporations.
Description: This regulation provides an elective alternative to the proportionate share rule for allocating interest and taxes to the tenant-stockholders of cooperative housing corporations.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 2,500.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Other (one-time election).
Estimated Total Reporting Burden: 625 hours.
OMB Number: 1545–1356.
Regulation Project Number: REG–248770–96 Final.
Type of Review: Extension.
Title: Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.
Description: The regulations provide guidance with respect to the recovery of administrative costs incurred in connection with an administrative proceeding before the Internal Revenue Service. Procedures that must be followed to recover such costs are set forth.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government.
Estimated Number of Respondents: 38.
Estimated Burden Hours Per Respondent: 2 hours, 16 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 86 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–366 Filed 1–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974; System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS), gives notice of a proposed alteration to the system of records entitled "Claims and Inquiry

Records on Treasury Checks, and International Claimants," which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The system was last published in its entirety in the **Federal Register** on August 22, 2001, at 66 FR 44206.

DATES: Comments must be received no later than February 10, 2003. The proposed routine use will be effective February 18, 2003, unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments must be submitted to the Financial Management Service, Financial Accounting and Services Division, 3700 East West Highway, Room 630F, Hyattsville, Maryland 20782. Comments may be submitted via e-mail to: *judgment.fund@fms.treas.gov*. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rose Brewer, Financial Management Service, Financial Accounting and Services Division, (202) 874–9186.

SUPPLEMENTARY INFORMATION: FMS makes payment on awards certified by the Foreign Claims Settlement Commission. The purpose of this new routine use is to enable FMS to more efficiently publicize information about unpaid claimants under the War Claims Act and the International Claims Settlement Act. Upon receiving a certified claim from the Foreign Claims Settlement Commission, FMS sends notice to the claimant to arrange for payment. FMS makes several attempts to contact claimants, but some of these claimants do not respond. Many claimants continue to go unpaid indefinitely. Publicizing these unpaid claims by means such as a public database maintained on the Internet with (1) claimant name, (2) city and state of last known address, and (3) amount outstanding should result in payment of numerous claims. Claimants can pursue these claims directly without the assistance of an intermediary. This routine use is consistent with the purpose for which the information was collected, that is, making payment to award holders.

The report required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated November 30, 2000.

For the reasons set forth in the preamble, FMS proposes to alter system of records Treasury/FMS .003—Claims and Inquiry Records on Treasury Checks, and International Claimants, as follows:

Treasury/FMS .003

System Name: Claims and Inquiry Records on Treasury Checks, and International Claimants—Treasury/Financial Management Service.

* * * * *

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

* * * * *

Description of changes: The first word "To" and the last word "and" are removed in routine use (7). Replace the lowercase "p" in the word "provide" in routine use (7) with an uppercase "P". The comma "," at the end of routine use (7) is replaced with a semicolon ";". The period "." at the end of routine use (8) is replaced with a semicolon ";" followed by the word "and", and the following routine use is added at the end thereof:

"(9) Disclose information to the public when attempts by FMS to locate the claimant have been unsuccessful. This information is limited to the claimant's name and city and state of last known address, and the amount owed to the claimant. (This routine use does *not* apply to the Iran Claims Program or the Holocaust Survivors Claims Program or other claims programs that statutorily prohibit disclosure of claimant information.)"

* * * * *

Dated: December 31, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 03–266 Filed 1–8–03; 8:45 am]

BILLING CODE 4810–35–P

Corrections

Federal Register

Vol. 68, No. 6

Thursday, January 9, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34255]

Portland & Western Railroad, Inc.—Lease and Operations Exemption—The Burlington Northern and Santa Fe Railway Company

Correction

In notice document 03–9 beginning on page 396 in the issue of Friday, January 3, 2003 make the following correction:

On page 396, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C3–9 Filed 1–8–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 2002–64]

RIN 1550–AB55

Savings Associations—Transactions with Affiliates

Correction

In rule document 02–31782 beginning on page 77909 in the issue of Friday, December 20, 2002 make the following correction:

§ 563.41 [Corrected]

On page 77917, in the second column, in §563.41, in paragraph (a)(2), in the second line, "defined " should read, "is defined ".

[FR Doc. C2–31782 Filed 1–8–03; 8:45 am]

BILLING CODE 6720–01–D

Federal Register

Thursday,
January 9, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Three Plant Species From the Island of Lanai, Hawaii; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH10

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Three Plant Species From the Island of Lanai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for three of the 37 species known historically from the Hawaiian island of Lanai. The three species are *Bidens micrantha* ssp. *kalealaha*, *Portulaca sclerocarpa*, and *Tetramolopium remyi*. A total of approximately 320 hectares (789 acres) of land on Lanai fall within the boundaries of the six critical habitat units designated for the three species. This critical habitat designation provides additional protection under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on February 10, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation, used in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are 37 plant species that, at the time of listing, were reported from the island of Lanai (Table 1). Seven of these species are endemic to the island of Lanai, while 30 species are reported from one or more other islands, as well as Lanai. Each of the 37 species is described in more detail below in the section, "Discussion of Plant Taxa." Although we considered designating critical habitat on Lanai for each of the 37 plant species, for the reasons described below, the final designation includes critical habitat for only 3 of 37 plant species. Species that also occur on other islands may have critical habitat designated on other islands in subsequent rulemakings.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 37 SPECIES FROM LANAI

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe, Niihau
Abutilon eremitopetalum (NCN)				C			
Adenophorus periens (pendant kihi fern).	C	H	C	R	R	C	
Bidens micrantha ssp. *kalealaha* (kookoolau).				C	C		
Bonamia menziesii (NCN)	C	C	H	C	C	C	
Brighamia rockii (pua ala)			C	H	H		
Cenchrus agrimonioides (kamanomano, sandbur, agrimony).		C		H	C	R	NW Isles (H)
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Clermontia oblongifolia ssp. *mauiensis* (oha wai).				C	C		
Ctenitis squamigera (pauoa)	H	C	C	C	C	H	
Cyanea grimesiana ssp. *grimesiana* (haha).		C	C	C	C		
Cyanea lobata (haha)				H	C		
Cyanea macrostegia ssp. *gibsonii* (NCN).				C			
Cyperus trachysanthos (puukaa) ..	C	C	H	H			Ni (C)
Cyrtandra munroi (haiwale)				C	C		
Diellia erecta (NCN)	C	C	C	H	C	C	
Diplazium molokaiense (NCN)	H	H	H	H	C		
Gahnia lanaiensis (NCN)				C			
Hedyotis mannii (pilo)			C	C	C		
Hedyotis schlechtendahliana var. *remyi* (kopa).				C			
Hesperomannia arborescens (NCN).		C	C	H	C		
Hibiscus brackenridgei (mao hau hele).	H	C	H	C	C	C	Ka (R)
Isodendrion pyrifolium (wahine noho kula).		H	H	H	H	C	Ni (H)
Labordia tinifolia var. *lanaiensis* (kamakahala).				C			
Mariscus fauriei (NCN)			C	H		C	
Melicope munroi (alani)			H	C			

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 37 SPECIES FROM LANAI—Continued

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe, Niihau
Neraudia sericea (NCN)			C	H	C		Ka (H)
Phyllostegia glabra var. *lanaiensis* (NCN).				H			
Portulaca sclerocarpa (poe)				C		C	
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Ni (H), Ka (C), NW Isles (C)
Silene lanceolata (NCN)	H	C	C	H		C	
Solanum incompletum (popolo ku mai).	H		H	H	H	C	
Spermolepis hawaiiensis (NCN)	C	C	C	C	C	C	
Tetramolopium lepidotum ssp. *lepidotum* (NCN).		C		H			
Tetramolopium remyi (NCN)				C	H		
Vigna o-wahuensis (NCN)		H	C	C	C	C	Ni (H), Ka (C)
Viola lanaiensis (NCN)				C			
Zanthoxylum hawaiiense (ae)	C		C	H	C	C	

Key
C (Current)—occurrence last observed within the past 30 years.
H (Historical)—occurrence not seen for more than 30 years.
R (Reported)—reported from undocumented observations.
*NCN—No Common Name.

The Island of Lanai

Lanai is a small island totaling about 360 square kilometers (sq km) (139 sq miles (mi) in area. Hidden from the trade winds in the lee or rain shadow of the more massive West Maui Mountains, Lanai was formed from a single shield volcano built by eruptions at its summit and along three rift zones. The principal rift zone runs in a northwesterly direction and forms a broad ridge whose highest point, Lanaihale, has an elevation of 1,027 meters (m) (3,370 feet (ft)). The entire ridge is commonly called Lanaihale, after its highest point. Annual rainfall on the summit of Lanaihale is 760 to 1,015 millimeters (mm) (30 to 40 inches (in)), but is considerably less, 250 to 500 mm (10 to 20 in), over much of the rest of the island (Department of Geography 1998).

Geologically, Lanai is part of the four-island complex comprising Maui, Molokai, Lanai, and Kahoolawe, known collectively as Maui Nui (Greater Maui). During the last Ice Age about 12,000 years ago, when sea levels were about 160 m (525 ft) below their present level, these four islands were connected by a broad lowland plain. This land bridge allowed the movement and interaction of each island's flora and fauna and contributed to the present close relationships of their biota (Department of Geography 1998).

Changes in Lanai's ecosystem began with the arrival of the first Polynesians about 1,500 years ago. In the 1800s, goats (*Capra hircus*), pigs (*Sus scrofa*), and sheep (*Ovis aries*) were first introduced to the island. Native vegetation was soon decimated by these nonnative ungulates, and erosion from wind and rain caused further damage to the native forests. Formal ranching was begun in 1902, and by 1910, the Territorial forester helped to revegetate the island. By 1911, a ranch manager from New Zealand, George Munro, instituted forest management practices to recover the native forests and bird species which included fencing and eradication of sheep and goats from the mountains. Mouflon sheep (*Ovis musimon*) and axis deer (*Axis axis*) were introduced to Lanai in 1954 and 1920 respectively, leading to renewed impacts on the native vegetation. By the 1920s, Castle and Cooke had acquired more than 98 percent of the island and established a 6,500 ha (16,000 ac) pineapple plantation surrounding its company town, Lanai City. In the early 1990s, the pineapple plantation closed, and two luxury hotels were developed by the private landowner, sustaining the island's economy today (Hobdy 1993).

There are no military installations on the island of Lanai.

Discussion of Plant Taxa

Species Endemic to Lanai

Abutilon eremitopetalum (NCN)

Abutilon eremitopetalum is a long-lived shrub in the mallow family (Malvaceae) with grayish-green, densely hairy, and heart-shaped leaves. It is the only *Abutilon* species on Lanai whose flowers have green petals hidden within the calyx (the outside leaf-like part of the flower) (Bates 1999).

Abutilon eremitopetalum is known to flower during February. Little else is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Abutilon eremitopetalum* was found in small, widely scattered colonies in the ahupuaa (geographical areas) of Kalulu, Mahana, Maunalei, Mamaki, and Paawili on the northern, northeastern, and eastern parts of Lanai. Currently, about seven individuals are known from a single occurrence on privately owned land in Kahea Gulch on the northeastern part of the island (Caum 1933; Geographic Decision Systems International (GDSI) 2000; Hawaii Natural Heritage Program (HINHP) Database 2000; Service 1995).

Abutilon eremitopetalum is found in lowland dry forest at elevations between 108 and 660 m (354 and 2,165 ft), on a moderately steep north-facing slope on red sandy soil and rock, usually near gulch bottoms. *Erythrina sandwicensis* (wiliwili) and *Diospyros sandwicensis* (lama) are the dominant trees in open forest of the area. Other associated native species include *Dodonaea viscosa* (aalii), Nesoluma polynesicum (keahi), *Psydrax odorata* (alahee), *Rauvolfia sandwicensis* (hao), *Sida fallax* (ilima), or *Wikstroemia* sp. (akia) (HINHP Database 2000; Service 1995).

The threats to *Abutilon eremitopetalum* are habitat degradation

and competition by encroaching nonnative plant species such as *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), and *Pluchea carolinensis* (sourbush); browsing by axis deer; soil erosion caused by feral ungulate grazing on grasses and forbs; and the small number of extant individuals, as the limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could destroy the only known existing occurrence. Fire is another potential threat because the area is dry much of the year (HINHP Database 2000; Service 1995; 56 FR 47686).

Cyanea macrostegia ssp. *gibsonii* (NCN)

Cyanea macrostegia ssp. *gibsonii*, a long-lived perennial and a member of the bellflower family (Campanulaceae), is a palm-like tree 1 to 7 m (3 to 23 ft) tall with elliptic or oblong leaves that have fine hairs covering the lower surface. The following combination of characters separates this species from the other members of the genus on Lanai: calyx lobes are oblong, narrowly oblong, or ovate in shape, and the calyx and corolla (petals of a flower) are both more than 5 mm (0.2 in) wide (Lammers 1999; 56 FR 47686).

Limited observations suggest *Cyanea macrostegia* ssp. *gibsonii* flowers during the month of July. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1995).

Cyanea macrostegia ssp. *gibsonii* has been documented from the summit of Lanaihale and the upper parts of Mahana, Kaiholena, and Maunalei Valleys of Lanai. There are currently only two occurrences containing 74 individuals. One occurrence is located north of Lanaihale and the second occurrence is north of Puu Aalii (puu = summit or hill) on privately owned land (GDSI 2000; HINHP Database 2000; Lammers 1999; 56 FR 47686).

The habitat of *Cyanea macrostegia* ssp. *gibsonii* is lowland wet *Metrosideros polymorpha* (ohia) forest or *Diplopterygium pinnatum* (uluhe lau nui)-*M. polymorpha* shrubland between elevations of 738 and 1,032 m (2,421 and 3,385 ft). It has been observed to grow on flat to moderate or steep slopes, usually on lower gulch slopes or gulch bottoms, often at edges of streambanks, probably due to vulnerability to ungulate damage at more accessible locations. Associated vegetation includes *Antidesma platyphyllum* (hame), *Broussaisia arguta* (kanawao), *Cheirodendron trigynum* (olapa), *Clermontia* sp. (oha wai), *Cyrtandra* sp. (haiwale), *Dicranopteris linearis* (uluhe), *Dubautia* sp. (naenae), *Freycinetia arborea* (ieie), *Hedyotis* sp. (NCN), *Ilex anomala* (kawau), *Labordia* sp. (kamakahala), *Melicope* sp. (alani), *Perrottetia sandwicensis* (olomea), *Pipturus albidus* (mamaki), *Pneumatopteris sandwicensis* (NCN), *Psychotria* sp. (kopiko), *Sadleria* sp. (amau), or *Scaevola chamissoniana* (naupaka kuahiwi) (HINHP Database 2000; Service 1995; Joel Lau, HINHP, pers. comm., 2001).

The threats to *Cyanea macrostegia* ssp. *gibsonii* are browsing by axis deer; competition with the nonnative plant *Hedychium gardnerianum* (kahili ginger); and the small number of extant individuals, as the limited gene pool may depress reproductive vigor, or any natural or man-caused environmental disturbance could destroy the existing occurrences (HINHP Database 2000; Service 1995; 56 FR 47686).

Gahnia lanaiensis (NCN)

Gahnia lanaiensis, a short-lived perennial and a member of the sedge family (Cyperaceae), is a tall (1.5 to 3 m (5 to 10 ft)), tufted, grass-like plant. This sedge may be distinguished from grasses and other genera of sedges on Lanai by its spirally arranged flowers, its solid stems, and its numerous, three-ranked leaves. *Gahnia lanaiensis* differs from the other members of the genus on the island by its achenes (seed-like fruits), which are 3.6 to 4.6 mm (0.14 to 0.18 in) long and purplish-black when mature (Koyama 1999).

July has been described as the "end of the flowering season" for *Gahnia lanaiensis*. Plants of this species have been observed with fruit in October. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Degener *et al.*, 1964; 56 FR 47686).

Gahnia lanaiensis is known from one occurrence containing 47 individuals on privately owned land along the summit of Lanaihale in the Haalelepaakai area and on the eastern edge of Hauola Gulch. The occurrence is found between 915 and 1,030 m (3,000 and 3,380 ft) in elevation. This distribution encompasses the entire known historic range of the species (GDSI 2000; HINHP Database 2000).

The habitat of *Gahnia lanaiensis* is lowland wet forest (shrubby rainforest to open scrubby fog belt or degraded lowland mesic forest), wet *Diplopterygium pinnatum-Dicranopteris linearis-Metrosideros polymorpha* shrubland, or wet *M. polymorpha-Dicranopteris linearis* shrubland at elevations between 737 and 1,032 m (2,417 and 3,385 ft). It occurs on flat to gentle ridgecrest topography in moist to wet clay or other soil substrate in open areas or in moderate shade. Associated species include native mat ferns, *Coprosma* sp. (pilo), *Doodia* sp. (okupukupu laulii), *Hedyotis terminalis* (manono), *Ilex anomala*, *Leptecophylla tameiameiae* (pukiawe), *Lycopodium* sp. (wawaeiole), *Sadleria* spp. (amau), *Scaevola* sp. (naupaka), or *Sphenomeris chinensis* (palaa) (Service 1995).

The primary threats to this species are the small number of plants and their restricted distribution, which increase the potential for extinction from naturally occurring events. In addition, *Gahnia lanaiensis* is threatened by habitat destruction resulting from the planned development of the island, and competition with *Leptospermum scoparium* (manuka), a weedy tree introduced from New Zealand, which is spreading along Lanaihale, but has not yet reached the area where *Gahnia* is found (HINHP Database 2000; Service 1995).

Hedyotis schlechtendahliana var. *remyi* (kopa)

Hedyotis schlechtendahliana var. *remyi*, a short-lived perennial and a member of the coffee family (Rubiaceae), is a few-branched subshrub from 0.6 to 6 m (2 to 10 ft) long, with weakly erect or climbing stems that may be somewhat square, smooth, and glaucous (with a fine waxy coating that imparts a whitish or bluish hue to the stem). The species is distinguished from others in the genus by the distance between leaves and the length of the sprawling or climbing stems, and the variety *remyi* is distinguished from *H. schlechtendahliana* var. *schlechtendahliana* by the leaf shape, presence of narrow flowering stalks, and flower color (Wagner *et al.*, 1999).

Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown for *Hedyotis schlechtendahliana* var. *remyi* (Service 2001).

Historically, *Hedyotis schlechtendahliana* var. *remyi* was known from five locations on the northwestern portion of Lanaihale. Currently, this species is known from eight individuals in two occurrences on privately owned land on Kaiholeha-Hulupoe Ridge, Kapohaku drainage, and Waiapaa drainage on Lanaihale (GDSI 2000; HINHP Database 2000; 64 FR 48307).

Hedyotis schlechtendahliana var. *remyi* typically grows on or near ridge crests in mesic windswept shrubland

with a mixture of dominant plant species that may include *Metrosideros polymorpha, Dicranopteris linearis,* or *Leptecophylla tameiameiae* at elevations between 558 and 1,032 m (1,830 and 3,385 ft). Associated plant species include *Dodonaea viscosa, Dubautia* spp., *Myrsine* sp. (kolea), *Sadleria* spp., or *Sphenomeris chinensis* (HINHP Database 2000; 64 FR 48307).

The primary threats to *Hedyotis schlechtendahliana* var. *remyi* are habitat degradation and destruction by axis deer; competition with nonnative plant species, such as *Leptospermum scoparium, Myrica faya* (firetree), *Psidium cattleianum* (strawberry guava), or *Schinus terebinthifolius* (Christmasberry); and random environmental events or reduced reproductive vigor due to the small number of remaining individuals and occurrences (HINHP Database 2000; 64 FR 48307).

Labordia tinifolia var. *lanaiensis* (kamakahala)

Labordia tinifolia var. *lanaiensis,* a short-lived perennial in the logan family (Loganiaceae), is an erect shrub or small tree 1.2 to 15 m (4 to 49 ft) tall. The stems branch regularly into two forks of nearly equal size. This subspecies differs from the other species in this endemic Hawaiian genus by having larger capsules (a dry, generally many seeded fruit) and smaller corollas (petals, whorl of flower parts) (Wagner *et al.*, 1999).

Little is known about the life history of *Labordia tinifolia* var. *lanaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001).

Labordia tinifolia var. *lanaiensis* was historically known from the entire length of the summit ridge of Lanaihale. Currently, *L. tinifolia* var. *lanaiensis* is known from only one occurrence on privately owned land at the southeastern end of the summit ridge of Lanaihale. This occurrence totals 3 to 8 scattered individuals (GDSI 2000; HINHP Database 2000; Service 2001).

The typical habitat of *Labordia tinifolia* var. *lanaiensis* is gulch slopes in lowland mesic forest. Associated native species include *Alyxia oliviformis* (maile), *Bobea elatior* (ahakea launui), *Clermontia* spp., *Coprosma* spp., *Cyrtandra grayana* (haiwale), *Dicranopteris linearis, Diospyros sandwicensis, Diplopterygium pinnatum, Freycinetia arborea, Hedyotis acuminata* (au), *Melicope* spp., *Myrsine lessertiana* (kolea), *Perrottetia sandwicensis, Pipturus albidus, Pittosporum confertiflorum* (hoawa), *Pleomele fernaldii* (hala pepe), *Pouteria sandwicensis* (alaa), *Psychotria* spp., *Sadleria cyatheoides* (amau), *Scaevola chamissoniana,* or *Xylosma hawaiiense* (maua) at elevations between 550 and 1,013 m (1,804 and 3,323 ft) (HINHP Database 2000; Service 2001; 64 FR 48307).

Labordia tinifolia var. *lanaiensis* is threatened by axis deer and several nonnative plant species. The species is also threatened by random environmental factors or reduced reproductive vigor because of the small population (Service 2001; 64 FR 48307).

Phyllostegia glabra var. *lanaiensis* (NCN)

Phyllostegia glabra var. *lanaiensis* is a robust, erect to decumbent (reclining, with the end ascending), glabrous, short-lived perennial herb in the mint family (Lamiaceae). Its leaves are thin and narrow, often red-tinged or with red veins, and toothed at the edges. The flowers are white, occasionally tinged with purple, and are variable in size, about 1 to 2.5 centimeters (cm) (0.4 to 1.0 in) long. This variety is very similar to *Phyllostegia glabra* var. *glabra;* it may be difficult to differentiate between the two species without flowers (Wagner *et al.*, 1999).

Little is known about the life history of *Phyllostegia glabra* var. *lanaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Phyllostegia glabra var. *lanaiensis* is known from only two collections from Lanai (one near Kaiholena) and was last collected in 1914 (two fertile specimens). A report of this plant from the early 1980s probably was erroneous and should be referred to as *Phyllostegia glabra* var. *glabra* (Robert Hobdy, Hawaii Division of Forestry and Wildlife (DOFAW), pers. comm., 1992; Service 1995).

Nothing is known of the preferred habitat of or native plant species associated with *Phyllostegia glabra* var. *lanaiensis* on the island of Lanai (Service 1995).

Nothing is known of the threats to *Phyllostegia glabra* var. *lanaiensis* on the island of Lanai (Service 1995).

Viola lanaiensis (NCN)

Viola lanaiensis, a short-lived perennial of the violet family (Violaceae), is a small, erect, unbranched or little-branched subshrub. The leaves, which are clustered toward the upper part of the stem, are lance-shaped with a pair of narrow, membranous stipules (leaf-like appendages arising from the base of a leaf) below each leaf axis. The flowers are small and white with purple-tinged or purple veins, and occur singly or up to four per upper leaf axil. The fruit is a capsule, about 1.0 to 1.3 cm (0.4 to 0.5 in) long. It is the only member of the genus on Lanai (Wagner *et al.*, 1999).

Little is known about the life history of *Viola lanaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Viola lanaiensis was known historically from scattered sites on the summit, ridges, and upper slopes of Lanaihale (from near the head of Kaiolena and Hookio Gulches to the vicinity of Haalelepaakai, a distance of about 4 km (2.5 mi)), at elevations of approximately 850 to 975 m (2,790 to 3,200 ft). An occurrence of *V. lanaiensis* was known in the late 1970s along the summit road near the head of Waialala Gulch where an occurrence of approximately 20 individuals flourished. That occurrence has since disappeared due to habitat disturbance. Two occurrences are currently known from privately owned land on southern Lanai: In Kunoa Gulch, between Kunoa and Waialala Gulches; and in the upper end of the northernmost drainage of Awehi Gulch, in Hauola Gulch and along Hauola Trail. It is estimated that the occurrences total less than 80 plants (GDSI 2000; HINHP Database 2000).

The habitat of *Viola lanaiensis* is *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or lowland mesic shrubland. The species has been observed on moderate to steep slopes from lower gulches to ridgetops, at elevations between 639 and 1,032 m (2,096 and 3,385 ft), with a soil and decomposed rock substrate in open to shaded areas. It was once observed growing from crevices in drier soil on a mostly open rock area near a recent landslide. Associated vegetation includes ferns and short windswept shrubs or other diverse mesic community members, such as *Antidesma* spp. (hame), *Carex* sp. (NCN), *Coprosma* spp., *Freycinetia arborea, Hedyotis centranthoides* (NCN), *Hedyotis terminalis, Ilex anomala, Leptecophylla tameiameiae, Myrsine* spp., *Nestegis sandwicensis* (olopua), *Psychotria* spp., *Scaevola chamissoniana,* or *Xylosma* sp. (Service 1995; 56 FR 47686).

The main threats to *Viola lanaiensis* include browsing and habitat disturbance by axis deer; encroaching

nonnative plant species, such as *Leptospermum* sp. (NCN); depressed reproductive vigor due to a limited local gene pool; the probable loss of appropriate pollinators; and predation by slugs (*Midax gigetes*) (Service 1995; 56 FR 47686).

Multi-Island Species

Adenophorus periens (pendent kihi fern)

Adenophorus periens, a member of the grammitis family (Grammitidaceae), is a small, pendant, epiphytic (not rooted on the ground), and short-lived perennial fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna (leaflet) margins, pinnae at right angles to the midrib axis, placement of the sori on the pinnae, and by the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens*, which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores (minute, reproductive dispersal unit of ferns and fern allies) may be dispersed by wind, water, or perhaps on the feet of birds or insects. *Adenophorus periens* spores lack a thick resistant coat, which may indicate their longevity is brief, probably measured in days at most. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not known (Linney 1989; Service 1999).

Historically, *Adenophorus periens* was known from Kauai, Oahu, and the island of Hawaii, with undocumented reports from Lanai and Maui. Currently, it is known from several locations on Kauai, Molokai, and Hawaii. On Lanai, it was last seen in the 1860s (GDSI 2000; HINHP Database 2000; Service 1999; 59 FR 56333).

This epiphytic species, usually growing on *Metrosideros polymorpha* trunks, is found in riparian banks of stream systems in well-developed, closed canopy that provides deep shade or high humidity in *M. polymorpha-Dicranopteris linearis-Diplopterygium pinnatum* wet forests, open *M. polymorpha* montane wet forest, or *M. polymorpha-D. linearis* lowland wet forest at elevations between 763 and 1,032 m (2,503 and 3,385 ft). Associated native plant species include *Broussaisia arguta, Cheirodendron trigynum, Clermontia* spp., *Freycinetia arborea, Hedyotis terminalis, Machaerina angustifolia* (uki), *Melicope* spp., *Psychotria* spp., *Sadleria* spp., or *Syzygium sandwicensis* (ohia ha) (Linney 1989; Service 1999; 59 FR 56333; Kenneth Wood, National Tropical Botanical Garden, pers. comm., 2001).

Nothing is known of the threats to *Adenophorus periens* on the island of Lanai because the species was last seen there in the 1860s.

Bidens micrantha ssp. *kalealaha* (kookoolau)

Bidens micrantha ssp. *kalealaha*, a short-lived member of the aster family (Asteraceae), is an erect perennial herb. This subspecies can be distinguished from other subspecies by the shape of the seeds, the density of the flower clusters, the numbers of ray and disk florets per head, differences in leaf surfaces, and other characteristics (Ganders and Nagata 1999; 57 FR 20772).

Bidens micrantha is known to hybridize with other native *Bidens*, such as *B. mauiensis* and *B. menziesii*, and possibly *B. conjuncta*. Little else is known about the life history of *B. micrantha* ssp. *kalealaha*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Ganders and Nagata 1999; Service 1997; 57 FR 20772).

Historically, *Bidens micrantha* ssp. *kalealaha* was known from Lanai and Maui. Currently, this species remains on East Maui and there is one Lanai occurrence in the Waiapaa Gulch area on privately owned land (Ganders and Nagata 1999; GDSI 2000; HINHP Database 2000; Service 1997; 57 FR 20772; HINHP Database 2000; R. Hobdy, pers. comm., 2002).

The habitat of *Bidens micrantha* ssp. *kalealaha* is gulch slopes in dry *Dodonaea viscosa* shrubland at elevations between 409 and 771 m (1,342 and 2,529 ft) (J. Lau, pers. comm., 2001).

The threats to this species on Lanai include habitat destruction by axis deer and mouflon sheep; competition from a variety of nonnative plant species; depressed reproductive vigor due to a limited local gene pool; and fire (Service 1997; 57 FR 20772).

Bonamia menziesii (NCN)

Bonamia menziesii, a short-lived perennial and a member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles (narrowed top of ovary), longer stems and petioles (a stalk that supports a leaf), and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Bonamia menziesii* was known from Kauai, Oahu, Molokai, West Maui, and Hawaii. Currently, this species is known from Kauai, Oahu, Maui, Hawaii, and Lanai. On Lanai, the three occurrences, containing a total of 14 individual plants, are found on privately owned land in the Ahakea and Kanepuu Units of Kanepuu Preserve, and on Puhielelu Ridge (GDSI 2000; HINHP Database 2000).

Bonamia menziesii is found in dry *Nestegis sandwicensis-Diospyros sandwicensis* forest and dry *Dodonaea viscosa* shrubland at elevations between 315 and 885 m (1,033 and 2,903 ft). Associated species include *Bobea* sp. (ahakea), *Dianella sandwicensis* (uki uki), *Diospyros sandwicensis, Erythrina sandwicensis, Hedyotis terminalis, Melicope* sp., *Metrosideros polymorpha, Myoporum sandwicense* (naio), *Nesoluma polynesicum, Nestegis sandwicensis* (olopua), *Pisonia* sp. (papala kepau), *Pittosporum* sp. (hoawa), *Pouteria sandwicensis, Psydrax odorata*, or *Rauvolfia sandwicensis* (HINHP Database 2000; 59 FR 56333).

The primary threats to this species on Lanai are habitat degradation and possible predation by mouflon sheep and axis deer; depressed reproductive vigor due to a limited local gene pool; competition with a variety of nonnative plant species, such as *Lantana camara, Leucaena leucocephala* or *Schinus terebinthifolius*; and a nonnative beetle (*Physomerus grossipes*) (Service 1999; 59 FR 56333).

Brighamia rockii (pua ala)

Brighamia rockii, a long-lived perennial member of the bellflower family (Campanulaceae), grows as an unbranched stem-succulent with a thickened stem that tapers from the base. This species is a member of a unique endemic Hawaiian genus with only one other species, found on Kauai, from which it differs by the color of its petals, its longer calyx (fused sepals) lobes, and its shorter flower stalks (Lammers 1999).

Observations of *Brighamia rockii* have provided the following information: The reproductive system is protandrous, meaning male flower parts are produced before female parts, in this case, separated by several days; only five

percent of the flowers produce pollen; very few fruits are produced per inflorescence; there are 20 to 60 seeds per capsule; and plants in cultivation have been known to flower at nine months of age. This species was observed in flower during August. Little else is known about the life history of *Brighamia rockii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2000; Service 1996b; 57 FR 46325).

Historically, *Brighamia rockii* ranged along the northern coast of East Molokai from Kalaupapa to Halawa, may possibly have grown on Maui, and was last seen on Lanai in 1911. Currently, it is extant only on Molokai (HINHP Database 2000; Lammers 1999; Service 1996b; 57 FR 46325; K. Wood, *in litt.* 2000).

On Lanai, *Brighamia rockii* occurred on sparsely vegetated ledges of steep, rocky, dry cliffs, at elevations between 119 and 756 m (390 and 2,480 ft) with native grasses, sedges, herbs and shrubs (Service 1996b; 57 FR 46325; J. Lau, pers. comm., 2001).

Threats to *Brighamia rockii* on the island of Lanai included habitat destruction from axis deer and mouflon sheep, competition with nonnative plants, and depressed reproductive vigor due to a limited local gene pool (Service 1996b).

Cenchrus agrimonioides (kamanomano (= sandbur, agrimony))

Cenchrus agrimonioides is a short-lived perennial member of the grass family (Poaceae) with leaf blades that are flat or folded and have a prominent midrib. There are two varieties, *Cenchrus agrimonioides* var. *laysanensis* and *Cenchrus agrimonioides* var. *agrimonioides*. They differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of *Cenchrus agrimonioides*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. This species has been observed to produce fruit year-round (Service 1999; 61 FR 53108).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from Oahu, Lanai, Maui, and an undocumented report from the Island of Hawaii. Historically, *C. agrimonioides* var. *laysanensis* was known from Laysan, Kure, and Midway, all within what is now the Northwestern Hawaiian Islands National Wildlife Refuge. This variety was never known from the island of Lanai. Currently, *Cenchrus agrimonioides* var. *agrimonioides* is known from Oahu and Maui. On Lanai it was last seen in 1915 (HINHP Database 2000; Service 1999; 61 FR 53108).

Cenchrus agrimonioides var. *agrimonioides* was found on slopes in mesic *Metrosideros polymorpha* forest or shrubland at elevations between 583 and 878 m (1,912 and 2,880 ft) (HINHP Database 2000; Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001).

The major threats to *Cenchrus agrimonioides* var. *agrimonioides* on Lanai included competition with nonnative plant species; browsing and habitat degradation by axis deer, mouflon sheep, and cattle (*Bos taurus*); and depressed reproductive vigor due to a limited local gene pool (Service 1999; 61 FR 53108).

Centaurium sebaeoides (awiwi)

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *Centaurium erythraea*, which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.*, 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Occurrences are found in dry areas, and plants are more likely to be found following heavy rains. Little else is known about the life history of *Centaurium sebaeoides*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Centaurium sebaeoides was historically and is currently known from Kauai, Oahu, Molokai, Lanai, and Maui. On Lanai, there is one occurrence containing between 20 and 30 individual plants in Maunalei Valley on privately owned land (HINHP Database 2000).

This species is found on dry ledges at elevations between 39 and 331 m (128 and 1,086 ft). Associated species include *Hibiscus brackenridgei* (HINHP Database 2000).

The major threats to this species on Lanai are competition from nonnative plant species, grazing and habitat destruction caused by axis deer and mouflon sheep, depressed reproductive vigor, and natural or human-caused environmental disturbance that could easily be catastrophic to the only known population due to the small number of remaining individuals and the limited and scattered distribution of the species (HINHP Database 2000; Service 1999; R. Hobdy in *litt.* 2002).

Clermontia oblongifolia ssp. *mauiensis* (oha wai)

Clermontia oblongifolia ssp. *mauiensis*, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a shrub or tree with oblong to lance-shaped leaves with petioles. *Clermontia oblongifolia* is distinguished from other members of the genus by its calyx and corolla, which are similar in color and are each fused into a curved tube that falls off as the flower ages. *Clermontia oblongifolia* ssp. *mauiensis* is reported from Maui and Lanai, while the other two subspecies of this species are only known from Oahu and Molokai (Lammers 1988, 1999; 57 FR 20772).

Clermontia oblongifolia ssp. *mauiensis* is known to flower from November to July. Little else is known about the life history of *C. oblongifolia* ssp. *mauiensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Rock 1919; Service 1997).

Clermontia oblongifolia ssp. *mauiensis* was historically and is currently known from Lanai and Maui. On Lanai, an unknown number of individuals has been reported from Kaiholena Gulch on privately owned land (HINHP Database 2000; Lammers 1999; 57 FR 20772).

This plant typically grows in gulch bottoms in mesic forests at elevations between 700 and 1,032 m (2,296 and 3,385 ft) (HINHP Database 2000).

The threats to this species on Lanai are its vulnerability to extinction from a single natural or human-caused environmental disturbance; depressed reproductive vigor; and habitat degradation by axis deer and mouflon sheep (Service 1997; 57 FR 20772).

Ctenitis squamigera (pauoa)

Ctenitis squamigera is a short-lived perennial fern and a member of the spleenwort family (Aspleniaceae). It has a rhizome (horizontal stem), creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. It can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering

of tan-colored scales on its frond (Wagner and Wagner 1992).

Little is known about the life history of *Ctenitis squamigera*. Its reproduction cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Ctenitis squamigera* was recorded from Kauai, Oahu, Molokai, Maui, Lanai, and the island of Hawaii. Currently, it is found on Oahu, Molokai, Maui, and Lanai. On Lanai, there are two occurrences totaling 42 individual plants on privately owned land in the Waiapaa-Kapohaku area on the leeward (southwestern) side of the island, and in the Lopa and Waiopa Gulches on the windward (northeastern) side (GDSI 2000; HINHP Database 2000; 59 FR 49025).

This species is found in the forest understory at elevations between 640 and 944 m (2,099 and 3,096 ft) in diverse mesic forest and scrubby mixed mesic forest. Associated native plant species include *Alyxia oliviformis, Antidesma* spp., *Blechnum occidentale* (NCN), *Boehmeria grandis* (akolea), *Carex meyenii* (NCN), *Coprosma* spp., *Cyrtandra* spp., *Doodia* spp., *Freycinetia arborea, Melicope* spp., *Metrosideros polymorpha, Microlepia* sp. (NCN), *Myrsine* spp., *Nephrolepis* sp. (kupukupu), *Nestegis sandwicensis, Peperomia* sp. (ala ala wai nui), *Perrottetia sandwicensis, Pipturus albidus, Pittosporum* spp., *Pneumatopteris sandwicensis, Psychotria* spp., *Sadleria* spp., *Selaginella* sp. (lepelepe a moa), *Syzygium sandwicensis, Wikstroemia* spp., or *Xylosma* sp. (HINHP Database 2000; 59 FR 49025).

The primary threats to this species on Lanai are habitat degradation by axis deer and mouflon sheep; competition with nonnative plant species, especially *Psidium cattleianum* and *Schinus terebinthifolius;* fire; decreased reproductive vigor; and extinction from naturally occurring events due to the small number of existing populations and individuals (Culliney 1988; HINHP Database 2000; Service 1998a; 59 FR 49025).

Cyanea grimesiana ssp. *grimesiana* (haha)

Cyanea grimesiana ssp. *grimesiana*, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1999).

On Molokai, flowering plants have been reported in July and August. Little else is known about the life history of *Cyanea grimesiana* ssp. *grimesiana*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Cyanea grimesiana ssp. *grimesiana* was historically and is currently known from Oahu, Molokai, Lanai, and Maui. Currently on Lanai there are two occurrences with at least three individuals on privately owned land in Kaiholena Gulch and Waiakeakua Gulch (HINHP Database 2000; Service 1999; 61 FR 53108;).

This species is typically found in mesic forest, often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa* (koa), or on rocky or steep slopes of streambanks, at elevations between 667 and 1,032 m (2,188 and 3,385 ft). Associated native species include *Antidesma* spp., *Bobea* spp., *Myrsine* spp., *Nestegis sandwicensis, Psychotria* spp., or *Xylosma* sp. (Service 1999; 61 FR 53108).

The threats to this species on Lanai are habitat degradation and/or destruction caused by axis deer and mouflon sheep; competition with various nonnative plants; random naturally occurring events causing extinction due to the small number of existing individuals; fire; landslides; and predation by rats (*Rattus rattus*) and various species of slugs (Service 1999; 59 FR 53108).

Cyanea lobata (haha)

Cyanea lobata, a short-lived member of the bellflower family (Campanulaceae), is a sparingly branched perennial shrub with smooth to somewhat rough stems and oblong, irregularly lobed leaves. This species is distinguished from other species of *Cyanea* by the size of the flower and the irregularly lobed leaves with petioles (Lammers 1990).

Cyanea lobata is known to flower from August to February, even in individuals as small as 50 cm (20 in) in height. Little else is known about the life history of *Cyanea lobata*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Degener 1936; Rock 1919; Service 1997; 57 FR 20772).

Historically, *Cyanea lobata* was known from Lanai and West Maui. It was last seen on Lanai in 1934 (GDSI 2000; HINHP Database 2000; Service 1997; 57 FR 20772).

This species occurs in gulches in mesic to wet forest and shrubland at elevations between 664 and 1,032 m (2,178 and 3,385 ft) and containing one or more of the following associated native plant species: *Antidesma* spp., *Athyrium* spp. (akolea); *Cyrtandra* spp., *Freycinetia arborea, Metrosideros polymorpha, Morinda trimera* (noni kuahiwi), *Peperomia* spp., *Pipturus albidus, Pleomele fernaldii* (halapepe), *Psychotria* spp., *Touchardia latifolia* (olona), or *Xylosma* spp. (HINHP Database 2000; Service 1997; 57 FR 20772; J. Lau, pers. comm., 2001; and R. Hobdy, pers. comm., 2001).

The threats to this species on Lanai included habitat degradation by axis deer and mouflon sheep (Service 1997; 57 FR 20772).

Cyperus trachysanthos (puukaa)

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a short-lived perennial grass-like plant with a short rhizome. The stems are densely tufted, obtusely triangular in cross-section, tall, sticky, and leafy at the base. This species is distinguished from others in the genus by the short rhizome, the leaf sheath with partitions at the nodes, the shape of the glumes (floral bracts), and the length of the stems (Koyama 1999).

Little is known about the life history of *Cyperus trachysanthos*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Cyperus trachysanthos* was known on Niihau and Kauai, and from scattered locations on Oahu, Molokai, and Lanai. Currently it is found on Kauai, Niihau and Oahu. It was last observed on Lanai in 1919 (GDSI 2000; HINHP Database 2000).

Cyperus trachysanthos is usually found in seasonally wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes in *Heteropogon contortus* (pili) grassland at elevations between 0 and 46 m (0 and 151 ft). *Hibiscus tiliaceus* (hau) is often found in association with this species (Koyama 1999; 61 FR 53108; J. Lau and K. Wood, pers. comms., 2001).

On Lanai, the threats to this species included the loss of wetlands and habitat degradation by axis deer and mouflon sheep (Service 1999; 61 FR 53108; R. Hobdy in litt. 2002).

Cyrtandra munroi (haiwale)

Cyrtandra munroi is a short-lived perennial and a member of the African

violet family (Gesneriaceae). It is a shrub with opposite, elliptic to almost circular leaves that are sparsely to moderately hairy on the upper surface and covered with velvety, rust-colored hairs underneath. This species is distinguished from other species of the genus by the broad opposite leaves, the length of the flower cluster stalks, the size of the flowers, and the amount of hair on various parts of the plant (Wagner *et al.*, 1999).

The reproductive biology of some species of *Cyrtandra* has been studied, but not *C. munroi* specifically. The studies of other members of the genus suggest that a specific pollinator may be necessary for successful pollination. Seed dispersal may be via birds, which eat the fruits. Flowering time, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1995).

Cyrtandra munroi was historically and is currently known from Lanai and Maui. Currently on Lanai there are a total of two occurrences containing 17 individuals on privately owned land in the Kapohaku-Waiapaa area, and in the gulch between Kunoa and Waialala gulches (GDSI 2000; HINHP Database 2000).

The habitat of this species is diverse mesic forest, wet *Metrosideros polymorpha* forest, and mixed mesic *M. polymorpha* forest, typically on rich, moderately steep gulch slopes at elevations between 667 and 1,032 m (2,188 and 3,385 ft). It occurs on soil and rock substrates on slopes from watercourses in gulch bottoms and up the sides of gulch slopes to near ridgetops. Associated native species include *Alyxia oliviformis, Bobea elatior, Clermontia* spp., *Coprosma* spp., *Cyrtandra grayana, Dicranopteris linearis, Diospyros sandwicensis, Diplopterygium pinnatum, Freycinetia arborea, Hedyotis acuminata* (au), *Melicope spp., Myrsine lessertiana, Perrottetia sandwicensis, Pipturus albidus, Pittosporum confertiflorum, Pleomele fernaldii, Pouteria sandwicensis, Psychotria* spp., *Sadleria cyatheoides, Scaevola chamissoniana,* or *Xylosma hawaiiense* (HINHP Database 2000; Service 1995).

The threats to this species on Lanai are browsing and habitat disturbance by axis deer; competition with the nonnative plant species *Leptospermum scoparium, Melinis minutiflora* (molasses grass), *Myrica faya, Paspalum conjugatum* (Hilo grass), *Pluchea carolinensis, Psidium cattleianum,* or *Rubus rosifolius* (thimbleberry); depressed reproductive vigor; and loss of appropriate pollinators (Service 1995; 57 FR 20772).

Diellia erecta (NCN)

Diellia erecta, a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of three to nine lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having large brown or dark gray scales, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of *Diellia erecta.* Its reproduction cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. Currently, it is known from Oahu, Molokai, Maui, and the island of Hawaii and was recently rediscovered on Kauai. On Lanai it was last seen in 1929 (HINHP Database 2000; Service 1999).

This species is found in brown granular soil with leaf litter and occasional terrestrial moss on north-facing slopes in deep shade and on steep slopes or gulch bottoms in *Pisonia* spp. forest at elevations between 651 and 955 m (2,135 and 3,132 ft). Associated native plant species include native grasses or ferns (HINHP Database 2000; Service 1999; J. Lau and K. Wood, pers. comms., 2001).

The major threats to *Diellia erecta* on Lanai included habitat degradation by axis deer and mouflon sheep, and competition with nonnative plant species (Service 1999; 59 FR 56333).

Diplazium molokaiense (NCN)

Diplazium molokaiense, a short-lived perennial fern and a member of the spleenwort family (Aspleniaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Little is known about the life history of *Diplazium molokaiense.* Its reproduction cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Maui. Currently, this species is known only from Maui. It was last seen on Lanai in 1914 (HINHP Database 2000).

This species occurs in shady, damp places in wet forests at elevations between 737 and 1,032 m (2,417 and 3,385 ft) (HINHP Database 2000; Service 1998a; J. Lau, pers. comm., 2001).

The primary threats to *Diplazium molokaiense* on Lanai included habitat degradation by axis deer and mouflon sheep, and competition with nonnative plant species (HINHP Database 2000; Service 1998a; 59 FR 49025).

Hedyotis mannii (pilo)

Hedyotis mannii is a short-lived perennial and a member of the coffee family (Rubiaceae). It has smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long, which are woody at the base and four-angled or -winged. It is distinguished from other species by its growth habit, its quadrangular or winged stems, the shape, size, and texture of its leaves, and its dry capsule, which opens when mature (Wagner *et al.*, 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b).

Hedyotis mannii was once widely scattered on Lanai, West Maui, and Molokai. After a hiatus of 50 years, this species was rediscovered in 1987 by Steve Perlman on Molokai. In addition, an occurrence was discovered on Maui and two occurrences, now numbering between 35 and 40 individual plants, were discovered on Lanai in 1991 on privately owned land in Maunalei and Hauola gulches (GDSI 2000; HINHP Database 2000; Service 1996b).

Hedyotis mannii typically grows on dark, narrow, rocky gulch walls and on steep streambanks in wet forests between 711 and 1,032 m (2,332 and 3,385 ft) in elevation. Associated plant species include *Carex meyenii, Dryopteris sandwicensis, Freycinetia arborea, Sadleria* spp., or *Scaevola chamissoniana* (HINHP Database 2000; Service 1996b; J. Lau, pers. comm., 2001).

The primary threats to *Hedyotis mannii* are the limited number of individuals which makes it extremely vulnerable to extinction from random environmental events; habitat degradation caused by axis deer and mouflon sheep; and nonnative plants, such as *Melinis minutiflora, Psidium cattleianum,* and *Rubus rosifolius* (57 FR 46325).

Hesperomannia arborescens (NCN)

Hesperomannia arborescens, a long-lived perennial of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomannia* species in having the following combination of characteristics: Erect to ascending flower heads, thick flower head stalks, and usually hairless and relatively narrow leaves (Wagner *et al.*, 1999).

This species has been observed in flower from April through June and in fruit during March and June. Little else is known about the life history of *Hesperomannia arborescens*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 59 FR 14482).

Hesperomannia arborescens was formerly known from Oahu, Molokai, and Lanai. This species is now known from Oahu, Molokai, and Maui. It was last seen on Lanai in 1940 (GDSI 2000; HINHP Database 2000; Service 1998b; 59 FR 14482).

Hesperomannia arborescens is found on slopes or ridges in lowland mesic or wet forest at elevations between 737 and 1,032 m (2,417 and 3,385 ft) and containing one or more of the following associated native plant species: *Antidesma* spp., *Bobea* spp., *Cheirodendron* spp. (olapa), *Cibotium* spp. (hapuu), *Clermontia* spp., *Coprosma* spp., *Dicranopteris linearis, Freycinetia arborea, Isachne distichophylla* (ohe), *Machaerina* spp. (uki), *Melicope* spp., *Metrosideros polymorpha, Myrsine sandwicensis* (kolea), *Pipturus albidus, Psychotria* spp., *Sadleria* spp. (HINHP Database 2000; Service 1998b; 59 FR 14482; R. Hobdy, pers. comm., 2001).

The major threats to *Hesperomannia arborescens* on Lanai included habitat degradation by axis deer and mouflon sheep, and competition with nonnative plant species (HINHP Database 2000; Service 1998b; 59 FR 14482).

Hibiscus brackenridgei (mao hau hele)

Hibiscus brackenridgei, a short-lived perennial and a member of the mallow family (Malvaceae), is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: Yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules (leaf bracts) that fall off, leaving an elliptical scar.

Two subspecies are currently recognized, *Hibiscus brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1999).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be related to day length. Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, and the island of Hawaii. *Hibiscus brackenridgei* was collected from an undocumented site on Kahoolawe, though the subspecies has never been determined. Currently, *H. brackenridgei* ssp. *mokuleianus* is only known from Oahu. *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and the island of Hawaii. On Lanai, there are two occurrences containing an unknown number of individuals on privately owned land; one occurrence is known from Keamuku Road, one from a fenced area on the dry plains of Kaena Point. Outplanted individuals that were initially planted in Kanepuu Preserve now appear to be reproducing naturally (GDSI 2000; HINHP Database 2000; Service 1999; Wesley Wong, Jr., *in litt.* 1998).

Hibiscus brackenridgei ssp. *brackenridgei* occurs in lowland dry to mesic forest and shrubland between 0 and 645 m (0 and 2,116 ft) in elevation. Associated plant species include *Dodonaea viscosa, Isachne distichophylla, Psydrax odorata*, or *Sida fallax* (HINHP Database 2000; Service 1999).

The primary threats to *Hibiscus brackenridgei* ssp. *brackenridgei* on Lanai are habitat degradation; possible predation by axis deer, mouflon sheep, and rats; competition with nonnative plant species; fire; and susceptibility to extinction caused by naturally occurring events or reduced reproductive vigor (Service 1999; 59 FR 56333; R. Hobdy *in litt.* 2002).

Isodendrion pyrifolium (wahine noho kula)

Isodendrion pyrifolium, a short-lived perennial of the violet family (Violaceae), is a small, branched shrub with elliptic to lance-shaped leaf blades. The papery-textured blade has moderately hairy veins. Below the petiole are oval, hairy stipules. The fruit is a three-lobed, oval capsule. *Isodendrion pyrifolium* is distinguished from other species in the genus by its smaller, green-yellow flowers, and hairy stipules and leaf veins (Wagner *et al.*, 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening one to two months later. Little else is known about the life history of *Isodendrion pyrifolium*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Isodendrion pyrifolium was historically found on six of the Hawaiian Islands: Niihau, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. Currently it is found only on the island of Hawaii. It was last seen on Lanai in 1870 (GDSI 2000; HINHP Database 2000; Service 1996a; 59 FR 10305).

On Lanai, *Isodendrion pyrifolium* occurred in dry shrubland at elevations between 132 and 574 m (433 and 1,883 ft) with one or more of the following associated native plant species: *Dodonaea viscosa, Heteropogon contortus, Lipochaeta* or *Melanthera* spp. (nehe), or *Wikstroemia oahuensis* (akia) (Service 1996a; 59 FR 10305; J. Lau and R. Hobdy, pers. comms., 2001).

Nothing is known of the threats to *Isodendrion pyrifolium* on the island of Lanai because the species was last seen there in 1870.

Mariscus fauriei (NCN)

Mariscus fauriei, a member of the sedge family (Cyperaceae), is a short-lived perennial plant with somewhat enlarged underground stems and three-angled, single or grouped aerial stems 10 to 50 cm (4 to 20 in) tall. This species differs from others in the genus in Hawaii by its smaller size and its more narrow, flattened, and more spreading spikelets (flower clusters) (Koyama 1990; 59 FR 10305).

Little is known about the life history of *Mariscus fauriei*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1996a).

Historically, *Mariscus fauriei* was found on Molokai, Lanai, and the island of Hawaii. It currently occurs on Molokai and the island of Hawaii. It was last seen on Lanai in 1929 (GDSI 2000; HINHP Database 2000; Service 1996a; 59 FR 10305).

Nothing is known of the preferred habitat of or native plant species

associated with *Mariscus fauriei* on the island of Lanai (Service 1996a).

Nothing is known of the threats to *Mariscus fauriei* on the island of Lanai (Service 1996a).

Melicope munroi (alani)

Melicope munroi, a long-lived perennial of the rue (citrus) family (Rutaceae), is a sprawling shrub up to 3 m (10 ft) tall. The new growth of this species has minute hairs. This species differs from other Hawaiian members of the genus in the shape of the leaf and the length of the inflorescence (flower cluster) stalk (Stone *et al.*, 1999).

Little is known about the life history of *Melicope munroi*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001).

Historically, this species was known from the Lanaihale summit ridge of Lanai and above Kamalo on Molokai. Currently, *Melicope munroi* is known only from the Lanaihale summit ridge on Lanai. There are two occurrences totaling an estimated 35 individual plants on privately owned land on the Lanaihale summit, head of Hauola gulch, Waialala gulch, and the ridge of Waialala gulch (GDSI 2000; HINHP Database 2000; Service 2001; 64 FR 48307).

Melicope munroi is typically found on slopes in lowland wet shrublands, at elevations of 701 and 1,032 m (2,299 and 3,385 ft). Associated native plant species include *Broussaisia arguta, Cheirodendron trigynum, Coprosma* spp., *Dicranopteris linearis, Diplopterygium pinnatum, Machaerina angustifolia*, other *Melicope* spp., or *Metrosideros polymorpha* (HINHP Database 2000; Service 2001).

The major threats to *Melicope munroi* on Lanai are trampling, browsing, and habitat degradation by axis deer and competition with the nonnative plant species *Leptospermum scoparium* and *Psidium cattleianum*. In addition, the limited number of individuals in the two remaining occurrences makes it extremely vulnerable to extinction from random environmental events (HINHP Database 2000; Service 2001; 64 FR 48307).

Neraudia sericea (NCN)

Neraudia sericea, a short-lived perennial member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. *Neraudia sericea* differs from the other four species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.*, 1999).

Little is known about the life history of *Neraudia sericea*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Neraudia sericea was historically found on Molokai, Lanai, Maui, and Kahoolawe. Currently, this species is extant on Molokai and Maui. It was last seen on Lanai in 1913 (GDSI 2000; HINHP Database 2000; Service 1999; 59 FR 56333).

Neraudia sericea generally occurs in gulch slopes or gulch bottoms in dry-mesic or mesic forest at elevations between 693 and 869 m (2,273 and 2,850 ft). Associated native species include *Diospyros sandwicensis, Dodonaea viscosa, Metrosideros polymorpha*, or *Nestegis sandwicensis* (HINHP Database 2000; 59 FR 56333; J. Lau, pers. comm., 2001).

The primary threats to *Neraudia sericea* on Lanai included habitat degradation by pigs (*Sus scrofa*), and goats (currently axis deer and mouflon sheep), and competition with nonnative plant species (Service 1999; 59 FR 56333).

Portulaca sclerocarpa (poe)

Portulaca sclerocarpa of the purslane family (Portulacaceae) is a short-lived perennial herb with a tuberous taproot and has stems up to about 20 cm (8 in) long. The succulent, grayish-green leaves are almost circular in cross-section. The petals are white, pink, or pink with a white base. The hardened capsules open very late or not at all, and contain dark reddish-brown seeds. This species differs from other native and naturalized species of the genus in Hawaii by its woody taproot, its narrow leaves, and the colors of its petals and seeds. Its closest relative, *P. villosa*, differs mainly in its thinner-walled, opening capsule (Wagner *et al.*, 1999).

This species has been observed in flower during March, June, and December. The presence of juveniles indicated that pollination and germination were occurring. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1996a).

Portulaca sclerocarpa was historically and is currently found on the island of Hawaii, and on an islet (Poopoo Islet) off the south coast of the island of Lanai. The Lanai occurrence on privately owned land contains about 10 plants. Poopoo Islet is a small rocky outcrop, 1 ha (2.4 ac) in area and approximately 200 m (600 ft) from the south shoreline, and is considered part of the island of Lanai (GDSI 2000; HINHP Database 2000; Service 1996a).

This species grows on exposed ledges in thin soil in coastal communities at elevations between 0 and 82 m (0 and 269 ft) (HINHP Database 2000; Wagner *et al.*, 1999).

The major threats to *Portulaca sclerocarpa* on Lanai are herbivory by the larvae of a nonnative sphinx moth (*Hyles lineata*); competition from nonnative plants; and fire (Service 1996a; 59 FR 10305; Frank Howarth, Bishop Museum, *in litt.* 2000).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a member of the pea family (Fabaceae), is typically a sprawling short-lived perennial shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets, which are usually sparsely to densely covered with silky hairs. The flowers are a salmon color tinged with yellow, orange-red, scarlet or, rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.*, 1999).

The pollination biology of *Sesbania tomentosa* has been studied by David Hopper, University of Hawaii. His findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus*, and that occurrences at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown (Service 1999).

Currently, *Sesbania tomentosa* occurs on six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and on two islands in the Northwestern Hawaiian Islands (Nihoa and Necker). Although once found on Niihau and Lanai, it is no longer extant on those islands. It was last seen on Lanai in 1957 (GDSI 2000; HINHP Database 2000; 59 FR 56333).

Sesbania tomentosa is found on sandy beaches, dunes, or pond margins at elevations between 44 and 221 m (144 and 725 ft). It commonly occurs in coastal dry shrublands or mixed coastal

dry cliffs with the associated native plant species *Chamaesyce celastroides* (akoko), *Cuscuta sandwichiana* (kaunaoa), *Dodonaea viscosa*, *Heteropogon contortus*, *Myoporum sandwicense*, *Nama sandwicensis* (hinahina kahakai), *Scaevola sericea* (naupaka kahakai), *Sida fallax*, *Sporobolus virginicus* (akiaki), *Vitex rotundifolia* (kolokolo kahakai), or *Waltheria indica* (uhaloa) (HINHP Database 2000; Service 1999; K. Wood, pers. comm., 2001).

The primary threats to *Sesbania tomentosa* on Lanai included habitat degradation caused by competition with various nonnative plant species; lack of adequate pollination; seed predation by rats, mice (*Mus musculus*) and, potentially, nonnative insects; and fire (Service 1999; 59 FR 56333).

Silene lanceolata (NCN)

Silene lanceolata, a member of the pink family (Caryophyllaceae), is an upright, short-lived perennial plant with stems 15 to 51 cm (6 to 20 in) long, which are woody at the base. The flowers are white with deeply lobed, clawed petals. This species is distinguished from *S. alexandri* by its smaller flowers and capsules and its stamens, which are shorter than the sepals (Wagner *et al.*, 1999).

Little is known about the life history of *Silene lanceolata*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b; 57 FR 46325).

The historical range of *Silene lanceolata* includes five Hawaiian Islands: Kauai, Oahu, Molokai, Lanai, and Hawaii. *Silene lanceolata* is presently extant on the islands of Molokai, Oahu, and Hawaii. It was last observed on Lanai in 1930 (GDSI 2000; Service 1996b; 57 FR 46325).

Nothing is known of the preferred habitat of or native plant species associated with *Silene lanceolata* on the island of Lanai (Service 1996b).

Nothing is known of the threats to *Silene lanceolata* on the island of Lanai (Service 1996b).

Solanum incompletum (popolo ku mai)

Solanum incompletum, a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in) long, and berries 1 to 2 cm (0.4 to 0.8 in) in diameter (Symon 1999).

Little is known about the life history of *Solanum incompletum*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Solanum incompletum* was known on Lanai, Maui, and the island of Hawaii. According to David Symon (1999), the known distribution of *Solanum incompletum* also extended to the islands of Kauai and Molokai. Currently, *Solanum incompletum* is only known from the island of Hawaii. It was last seen on Lanai in 1925 (HINHP Database 2000; Service 1999).

On Lanai, *Solanum incompletum* occurred on broad, gently sloping ridges in dry, *Dodonaea viscosa* shrubland, at elevations between 151 and 372 m (495 and 1,220 ft) with one or more of the following associated native plant species: *Heteropogon contortus*, *Lipochaeta* or *Melanthera* spp., or *Wikstroemia oahuensis* (Service 1999; J. Lau, pers comm., 2001).

On Lanai, the threats to *Solanum incompletum* included habitat destruction by goats and pigs (more recently axis deer) and competition with various nonnative plants (Service 1999).

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves are dissected into narrow, lance-shaped divisions. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Spermolepis hawaiiensis* was known from Kauai, Oahu, Lanai, and the island of Hawaii. Based on recent collections, it is now known to be extant on those four islands, Molokai, and Maui. On Lanai, this species is known from three occurrences of 570 to 620 individuals on privately owned land in the southern edge of Kapoho Gulch, Kamiki Ridge, and approximately 274 m (900 ft) downslope of Puu Manu (HINHP Database 2000; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2000).

Spermolepis hawaiiensis is known from gulch slopes and ridge tops in dry forests dominated by *Diospyros sandwicensis* or shrublands dominated by *Dodonaea viscosa* at elevations between 402 and 711 m (1,319 and 2,332 ft). Associated native plant species include *Nesoluma polynesicum*, *Nestegis sandwicensis*, *Psydrax odorata*, or *Rauvolfia sandwicensis* (HINHP Database 2000; Service 1999; R. Hobdy, pers. comm., 2000; J. Lau, pers. comm., 2001).

The primary threats to *Spermolepis hawaiiensis* on Lanai are habitat degradation by axis deer, competition with various nonnative plants, such as *Lantana camara;* and erosion, landslides, and rockslides due to natural weathering, which result in the death of individual plants as well as habitat destruction (Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2000).

Tetramolopium lepidotum ssp. *lepidotum* (NCN)

Tetramolopium lepidotum ssp. *lepidotum*, a member of the aster family (Asteraceae), is an erect shrub 12 to 36 cm (4.7 to 14 in) tall, branching near the ends of the stems. The leaves are lance-shaped and wider at the leaf tip. This species can be distinguished from the other extant species on Oahu by its hermaphroditic disk flowers and its inflorescence of six to 12 heads (Lowrey 1999).

Tetramolopium lepidotum ssp. *lepidotum* is a short-lived perennial that has been observed producing flowers and fruit from April through July. No further information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b; 56 FR 55770).

Historically, *Tetramolopium lepidotum* ssp. *lepidotum* was known from Oahu and Lanai. It currently occurs only on Oahu. It was last seen on Lanai in 1928 (Environmental Division of the Army Database 2001; GDSI 2000; HINHP Database 2000; Service 1998b; 56 FR 55770).

Nothing is known of the preferred habitat of or native plant species associated with *Tetramolopium lepidotum* ssp. *lepidotum* on the island of Lanai (Service 1998b).

Nothing is known of the threats to *Tetramolopium lepidotum* ssp. *lepidotum* on the island of Lanai (Service 1998b).

Tetramolopium remyi (NCN)

Tetramolopium remyi, a short-lived perennial member of the sunflower family (Asteraceae), is a many branched, decumbent or occasionally erect shrub up to about 38 cm (15 in) tall. The

stems, leaves, flower bracts, and fruit are covered with sticky hairs. *Tetramolopium remyi* has the largest flower heads in the genus. Two other species of the genus are known historically from Lanai, but both have purplish rather than yellow disk florets and from four to 60 rather than one flower head per branch (Lowrey 1999).

Tetramolopium remyi flowers between April and January. Field observations suggest that the population size of the species can be profoundly affected by variability in annual precipitation. The adult plants may succumb to prolonged drought, but apparently there is a seedbank in the soil that can replenish the population during favorable conditions. Such seed banks are of great importance for arid-dwelling plants to allow populations to persist through adverse conditions. Success in greenhouse cultivation of these plants with much higher water availability implies that, although these plants are drought-tolerant, perhaps the dry conditions in which they currently exist are not optimum. Individual plants are probably not long-lived. Pollination is hypothesized to be by butterflies, bees, or flies. Seed dispersal agents, environmental requirements, and other limiting factors are unknown (Lowrey 1986; Service 1995).

Historically, the species was known from Maui and Lanai. Currently, *Tetramolopium remyi* is known only from one occurrence on Lanai on privately owned land near Awehi Road, with a total of approximately 150 plants (GDSI 2000; HINHP Database 2000).

Tetramolopium remyi is found in red, sandy, loam soil in dry *Dodonaea viscosa-Heteropogon contortus* communities at elevations between 65 and 485 m (213 and 1,591 ft). Commonly associated native species include *Bidens mauiensis* (kookoolau), *Melanthera lavarum* (nehe), *Waltheria indica*, or *Wikstroemia oahuensis* (HINHP Database 2000).

Browsing by axis deer and mouflon sheep and competition from nonnative species, primarily *Andropogon virginicus* (broomsedge) and *Panicum maximum* (guinea grass), are the main threats to the species on Lanai. Fire is also a potential threat (Service 1995; 56 FR 47686).

Vigna o-wahuensis (NCN)

Vigna o-wahuensis, a member of the legume family (Fabaceae), is a slender, twining, short-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets, which vary in shape from round to linear. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods, which may or may not be slightly inflated (Geesink *et al.*, 1999).

Little is known about the life history of *Vigna o-wahuensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, and Maui. Based on recent collections, *Vigna o-wahuensis* is now known to be extant on the islands of Molokai, Maui, Lanai, Kahoolawe, and Hawaii. On Lanai, one occurrence with at least one individual is known from Kanepuu on privately owned land (GDSI 2000; HINHP Database 2000; Service 1999; J. Lau, *in litt.* 2000).

On Lanai, *Vigna o-wahuensis* is found in *Nestegis sandwicensis* or *Diospyros sandwicensis* dry forest at elevations between 98 and 622 m (321 and 2,040 ft) (HINHP Database 2000; 59 FR 56333; J. Lau, pers. comm., 2001).

Threats to *Vigna o-wahuensis* on Lanai include habitat degradation by mouflon sheep and axis deer; competition with various nonnative plant species; fire; and random naturally occurring events causing extinction and or reduced reproductive vigor of the only remaining individual on Lanai (Service 1999).

Zanthoxylum hawaiiense (ae)

Zanthoxylum hawaiiense is a medium-sized tree in the rue (citrus) family (Rutaceae) with pale to dark gray bark, and lemon-scented leaves, composed of three small leaflets. A long-lived perennial tree, *Z. hawaiiense* is distinguished from other Hawaiian members of the genus by several characteristics: Three leaflets all of similar size, one joint on the lateral leaf stalk, and sickle-shaped fruits with a rounded tip (Stone *et al.*, 1999).

Little is known about the life history of *Zanthoxylum hawaiiense*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Historically, *Zanthoxylum hawaiiense* was known from five islands: Kauai, Molokai, Lanai, Maui, and the island of Hawaii. Currently, *Zanthoxylum hawaiiense* is found on Kauai, Molokai, Maui, and the island of Hawaii. It was last seen on Lanai in 1947 (GDSI 2000; HINHP Database 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Zanthoxylum hawaiiense* on the island of Lanai (Service 1996a).

Nothing is known of the threats to *Zanthoxylum hawaiiense* on the island of Lanai (Service 1996a).

A summary of occurrences and landownership for the 37 plant species reported from the island of Lanai is given in Table 2.

TABLE 2.—SUMMARY OF EXISTING OCCURRENCES ON LANAI, AND LANDOWNERSHIP FOR 37 SPECIES REPORTED FROM LANAI

Species	Number of current occurrences	Landownership		
		Federal	State	Private
Abutilon eremitopetalum	1			X
Adenophorus periens	0			
Bidens micrantha	1			X
Bonamia menziesii	3			X
Brighamia rockii	0			
Cenchrus agrimonioides	0			
Centaurium sebaeoides	1			X
Clermontia oblongifolia ssp. *mauiensis*	1			X
Ctenitis squamigera	2			X
Cyanea grimesiana ssp. *grimesiana*	2			X
Cyanea lobata	0			
Cyanea macrostegia ssp. *gibsonii*	2			X
Cyperus trachysanthos	0			
Cyrtandra munroi	2			X

TABLE 2.—SUMMARY OF EXISTING OCCURRENCES ON LANAI, AND LANDOWNERSHIP FOR 37 SPECIES REPORTED FROM LANAI—Continued

Species	Number of current occurrences	Landownership		
		Federal	State	Private
Diellia erecta	0			
Diplazium molokaiense	0			
Gahnia lanaiensis	1			X
Hedyotis mannii	2			X
Hedyotis schlechtendahliana var. *remyi*	2			X
Hesperomannia arborescens	0			
Hibiscus brackenridgei	3			X
Isodendrion pyrifolium	0			
Labordia tinifolia var. *lanaiensis*	1			X
Mariscus fauriei	0			
Melicope munroi	2			X
Neraudia sericea	0			
Phyllostegia glabra var. *lanaiensis*	0			
Portulaca sclerocarpa	1			X
Sesbania tomentosa	0			
Silene lanceolata	0			
Solanum incompletum	0			
Spermolepis hawaiiensis	3			X
Tetramolopium lepidotum ssp. *lepidotum*	0			
Tetramolopium remyi	1			X
Vigna o-wahuensis	1			X
Viola lanaiensis	2			X
Zanthoxylum hawaiiense	0			

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Bonamia menziesii, Brighamia rockii, Cyanea lobata* (as *C. baldwinii*), *Gahnia lanaiensis, Hedyotis mannii* (as *H. thyrsoidea* var. *thyrsoidea*), *Hesperomannia arborescens* (as *H. arborescens* var. *bushiana* and var. *swezeyi*), *Hibiscus brackenridgei* (as *H. brackenridgei* var. *brackenridgei*, var. *mokuleianus*, and var. "from Hawaii"), *Neraudia sericea* (as *N. kahoolawensis*), *Portulaca sclerocarpa, Sesbania tomentosa* (as *S. hobdyi* and *S. tomentosa* var. *tomentosa*), *Silene lanceolata, Solanum incompletum* (as *S. haleakalense* and *S. incompletum* var. *glabratum*, var. *incompletum*, and var. *mauiensis*), *Tetramolopium lepidotum* ssp. *lepidotum, Vigna o-wahuensis* (as *V. sandwicensis* var. *heterophylla* and var. *sandwicensis*), *Viola lanaiensis*, and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *citiodora*) were considered endangered; *Cyrtandra munroi, Diellia erecta, Labordia tinifolia* var. *lanaiensis*, and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered threatened; and *Abutilon eremitopetalum, Bidens micrantha* ssp. *kalealaha* (as *B. distans* and *B. micrantha* ssp. *kalealaha*), *Ctenitis squamigera, Cyanea macrostegia* ssp. *gibsonii, Diplazium molokaiense, Isodendrion pyrifolium, Melicope munroi* (as *Pelea munroi*), *Phyllostegia glabra* var. *lanaiensis*, and *Tetramolopium remyi* were considered to be extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except *Cyrtandra munroi, Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication (40 FR 27823).

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated Notices of Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). We listed the 37 species as endangered between 1991 and 1999. A summary of the listing actions can be found in Table 3(a).

TABLE 3(a).—SUMMARY OF LISTING ACTIONS FOR 37 PLANT SPECIES FROM LANAI

Species	Federal status	Proposed rule		Final rule		Proposed designation or non-designation of critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
Abutilon eremitopetalum.	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Adenophorus periens	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/29/00	65 FR 66808, 65 FR 83158
Bidens micrantha ssp. *kalealaha.*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Bonamia menziesii	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/7/00, 12/18/00, 12/27/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 82086, 67 FR 3940
Brighamia rockii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158
Cenchrus agrimonioides.	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00	65 FR 79192
Centaurium sebaeoides.	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	11/07/00, 12/18/00, 12/27/00, 12/29/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940
Clermontia oblongifolia ssp. *mauiensis.*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00, 12/27/00	65 FR 79192, 65 FR 82086
Ctenitis squamigera	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00, 12/27/00, 12/29/00.	65 FR 79192, 65 FR 82086, 65 FR 83158
Cyanea grimesiana ssp. *grimesiana.*	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00, 12/27/00, 12/29/00.	65 FR 79192, 65 FR 82086, 65 FR 83158
Cyanea lobata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Cyanea macrostegia ssp. *gibsonii.*	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Cyperus trachysanthos.	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00, 01/28/02	65 FR 66808, 67 FR 3940
Cyrtandra munroi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00, 12/27/00	65 FR 79192, 65 FR 82086
Diellia erecta	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/29/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940
Diplazium molokaiense.	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00	65 FR 79192
Gahnia lanaiensis	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Hedyotis mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/18/00, 12/27/00, 12/29/00.	65 FR 79192, 65 FR 82086, 65 FR 83158
Hedyotis schlechtendahliana var. *remyi.*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086
Hesperomannia arborescens.	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482	12/18/00, 12/29/00	65 FR 79192, 65 FR 83158
Hibiscus brackenridgei.	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192
Isodendrion pyrifolium	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	01/28/02	67 FR 3940
Labordia tinifolia var. *lanaiensis.*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086
Mariscus fauriei	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/29/00	65 FR 83158
Melicope munroi	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086
Neraudia sericea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00, 12/29/00	65 FR 79192, 65 FR 83158
Phyllostegia glabra var. *lanaiensis.*	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/29/00	65 FR 83158
Portulaca sclerocarpa	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/27/00	65 FR 82086
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/29/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940
Silene lanceolata	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158
Solanum incompletum.	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	01/28/02	67 FR 3940

TABLE 3(a).—SUMMARY OF LISTING ACTIONS FOR 37 PLANT SPECIES FROM LANAI—Continued

Species	Federal status	Proposed rule		Final rule		Proposed designation or non-designation of critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
Spermolepis hawaiiensis.	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/27/00, 12/29/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940
Tetramolopium lepidotum ssp. *lepidotum.*	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
Tetramolopium remyi	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Vigna o-wahuensis ...	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00, 12/29/00 ..	65 FR 79192, 65 FR 83158
Viola lanaiensis	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Zanthoxylum hawaiiense.	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	11/07/00, 12/18/00, 12/29/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940

Key: E= Endangered.

At the time each plant was listed, we found that designation of critical habitat was prudent for three of these plants (*Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi*) and not prudent for the other 34 plants because it would not benefit the plant or would increase the degree of threat to the species. The not prudent findings for these species, along with others, were challenged in *Conservation Council for Hawaii* v. *Babbitt,* 2F. Supp, 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency findings for 245 listed plant species in Hawaii, including 34 of the 37 species reported from Lanai. Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a "uniform protection plan" prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public, State, and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public, State, and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (*Conservation Council for Hawaii* v. *Babbitt,* 24 F. Supp. 2d 1074 (D. Haw. 1998)).

At the time we listed *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi* (64 FR 48307), we found that designation of critical habitat was prudent and stated that we would develop critical habitat designations for these three taxa, along with seven others, by the time we completed designations for the other 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt,* Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed, however, that it was reasonable for us to integrate these ten Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, and ordered us to publish proposed critical habitat designations for the ten Maui Nui species with the first 100 plants from the group of 245 by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the State Division of Forestry and Wildlife (DOFAW), county governments, and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it would cause economic hardship, discourage cooperative projects, polarize

relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands, promote funding for management of these plants, educate the public and State government, and protect partnerships with landowners and build trust.

In early February 2000, we hand-delivered a letter to representatives of the private landowner on Lanai requesting any information considered germane to the management of any of the 37 plants on the island, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the plants on Lanai, and a handout containing general information on critical habitat. On April 4, 2000, we met with representatives of the landowner to discuss their current land management activities. In addition, we met with Maui County DOFAW staff and discussed their management activities on Lanai.

On December 27, 2000, we published the third of the court-ordered proposed critical habitat designations or non-designations for 18 Lanai plants (65 FR 82086). The prudency determinations and proposed critical habitat designations for Kauai and Niihau plants were published on November 7, 2000 (65 FR 66808), for Maui and Kahoolawe plants on December 18, 2000 (65 FR 79192), and for Molokai plants on December 29, 2000 (65 FR 83158). All of these proposed rules were sent to the **Federal Register** by or on November 30, 2000, as required by the court orders.

In those proposals, we proposed that critical habitat was prudent for 33 species (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Mariscus fauriei, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis,* and *Zanthoxylum hawaiiense*) that are reported from Lanai as well as on Kauai, Niihau, Maui, Kahoolawe, and Molokai. We proposed that critical habitat was not prudent for one species, *Phyllostegia glabra* var. *lanaiensis,* because it had not been seen recently in the wild, and no genetic material of this species is known to exist.

On December 27, 2000, we proposed designation of critical habitat on approximately 1,953 ha (4,826 ac) of land on the island of Lanai. The publication of the proposed rule opened a 60-day public comment period, which closed on February 26, 2001. On February 22, 2001, we published a notice (66 FR 11133) announcing the reopening of the comment period until April 2, 2001, on the proposal to designate critical habitat for plants from Lanai and a notice of a public hearing. On March 22, 2001, we held a public hearing at the Lanai Public Library Meeting Room, Lanai. On April 6, 2001, we published a notice (66 FR 18223) announcing corrections to the proposed rule. These corrections included changes to the map of general locations of units and new Universal Tranverse Mercator (UTM) coordinates and increased the total proposed critical habitat to 2,034 ha (5,027 ac).

On October 3, 2001, we submitted a joint stipulation with Earthjustice (representing the plaintiffs in *Hawaii Conservation Council* v. *Babbitt*) requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. On January 28, 2002, in the Kauai revised proposal, we proposed that designation of critical habitat was prudent for *Isodendrion pyrifolium* and *Solanum incompletum,* two species reported from Lanai as well as Kauai, Maui, and Molokai.

On March 4, 2002, we published a revised proposed rule for the 37 plant species from Lanai (67 FR 9806). Critical habitat for 32 (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Mariscus fauriei, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis*) of the 37 plant species from the island of Lanai was proposed on approximately 7,853 ha (19,504 ac) of land (67 FR 9806). Critical habitat was not proposed for *Mariscus fauriei, Phyllostegia glabra* var. *lanaiensis, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum,* and *Zanthoxylum hawaiiense* on the island of Lanai because these plants no longer occur on Lanai and we were unable to determine habitat which is essential to their conservation on this island.

The publication of the revised proposed rule opened a 60-day public comment period, which closed on May 3, 2002. On July 15, 2002, we published a notice (67 FR 46450) announcing the reopening of the comment period until August 30, 2002, and a notice of a public hearing. On July 16, 2002, we published a notice announcing the availability of the draft economic analysis on the proposed critical habitat (67 FR 46626). On July 22, 2002, we held a public information meeting at the Lanai Senior Center, Lanai. On August 1, 2002, we held a public hearing at the Lanai Public Library Meeting Room, Lanai. On July 11, 2002, we submitted joint stipulations with Earthjustice requesting extension of the court orders for the final rules to designate critical habitat for plants from Lanai (December 30, 2002), Kauai and Niihau (January 31, 2003), Molokai (February 28, 2003), Maui and Kahoolawe (April 18, 2003), Oahu (April 30, 2003), the Northwestern Hawaiian Islands (April 30, 2003), and the island of Hawaii (May 30, 2003), citing the need to conduct additional review of the proposals, address comments received during the public comment periods, and to conduct a series of public workshops on the proposals. The joint stipulations were approved and ordered by the court on July 12, 2002. On November 15, 2002, we published in the **Federal Register** (67 FR 69176) a notice reopening the public comment period for the proposed rule.

Summary of Comments and Recommendations

In the proposed rule published on March 4, 2002 (67 FR 9806), we requested that all interested parties submit written comments on the proposal. We also contacted all appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. We received one request for a public hearing. We announced the date and time of the public hearing in letters to all interested parties, appropriate State and Federal agencies, county governments, and elected officials, and in notices published in the *Honolulu Advertiser* and the *Maui News* on March 19, 2002. A transcript of the hearing held in Lanai City, Lanai on August 1, 2002, is available for inspection (see **ADDRESSES** section).

We received individually written letters from 19 parties, including three designated peer reviewers, four State agencies, and 12 individuals, and testimony from three individuals at the August 1, 2002, public hearing. Approximately 275 additional letters were submitted as part of a mailing campaign. Of the 22 parties who did not respond as part of the mailing campaign, five supported the proposed designation, eight were opposed, and nine expressed neither support nor opposition. The eight commenters who opposed the proposal specifically opposed designation of critical habitat on lands they own or manage, and requested that these areas be excluded from critical habitat designation.

We reviewed all comments received for substantive issues and new information regarding critical habitat for *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Mariscus fauriei, Melicope munroi, Neraudia sericea, Phyllostegia glabra* var. *lanaiensis, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepidotum, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis,* and *Zanthoxylum hawaiiense.* Similar comments were grouped into general issues and are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment:* One reviewer questioned whether loss of wetlands is a threat to *Cyperus trachysanthos* because wetlands are not known to exist on Lanai.

Our Response: Because *Cyperus trachysanthos* requires seasonally wet soils, we feel that the lack of such soils on Lanai does constitute a threat to the species. However, based on information received during the public comment period, we have revised the proposed critical habitat for *C. trachysanthos.* We are no longer proposing critical habitat for this species on Lanai because of the absence of wetland habitat. Furthermore, we were able to locate sites on other islands that: (1) Contain the primary constituent elements that are essential to the conservation of the species, (2) are within historical range, and (3) accommodate our recovery goals of 8–10 populations.

(2) *Comment:* One reviewer stated that deer and mouflon sheep are threats to *Centaurium sebaeoides, Cyperus trachysanthos,* and *Sesbania tomentosa,* and that mouflon sheep, not goats and pigs, are a threat to *Hibiscus brackenridgei.*

Our Response: Goats and pigs were replaced with mouflon sheep and axis deer as current threats throughout the "Discussion of plant taxa" section. Goats and pigs are no longer present on Lanai and were mistakenly included as current threats.

(3) *Comment:* One peer reviewer suggested that high nutrient runoff from a nearby golf course be included as a threat to Unit G.

Our Response: Unit G has been modified to exclude inland areas that do not contain the primary constituent elements for *Portulaca sclerocarpa.* Critical habitat is now proposed only for the cliff faces along the shore. These areas are not at risk of nutrient runoff from the nearby golf course.

(4) *Comment:* Several commenters expressed concern that *Phyllostegia glabra* var. *lanaiensis* be assumed extinct, as it is common for Hawaiian plant species that have not been seen for decades to be rediscovered. The recent rediscoveries of *Asplenium fragile* var. *insulare* on Maui and of *Phyllostegia waimeae* on Kauai are cases in point. Critical habitat should be designated for this species.

Our Response: We continue to believe that it would not be prudent to designate critical habitat for *Phyllostegia glabra* var. *lanaiensis,* a species known only from Kaiholena on Lanai. The species has not been seen on Lanai for over 80 years. This species was last observed on Lanai at Kaiholena in 1914. A report of this plant from the early 1980s was probably erroneous and should be referred to as *P. glabra* var. *glabra* (R. Hobdy, pers. comm., 1992). In addition, this species is not known to be in storage or under propagation. Given these circumstances, we have determined that designation of critical habitat for *P. glabra* var. *lanaiensis* is not prudent because such designation would not be beneficial to the species. If this species is rediscovered, we may reconsider designating critical habitat for this species as new information becomes available (see 16 U.S.C. 1532(5)(B); 50 CFR 424.13(f)).

(5) *Comment:* The Service should not designate critical habitat for *Adenophorus periens,* which was last seen on Lanai in the 1860s, because nothing is known about its threats. The Service must prove that the designated areas for critical habitat are essential to the conservation of *A. periens* before designating critical habitat.

Our Response: The Service believes that designation of critical habitat for *Adenophorus periens* is prudent because information about the habitat requirements of *A. periens* exists in the historical literature and, unlike the case of *Phyllostegia glabra,* individuals of this species are currently in cultivation, allowing populations to be restored. According to recovery goals, reestablishment of wild populations within historical range is essential to the recovery of this species (USFWS 1999). However, the Service excluded proposed unit Lanai D, proposed in part as critical habitat for *A. periens* because we believe the benefits of exclusion outweigh the benefits of inclusion. The landowner has entered into a voluntary memorandum of agreement with the Service to manage the lands in proposed Unit D, as well as adjacent lands, for the conservation benefit of the 28 listed species for which it was proposed as critical habitat. We believe the benefits of these management actions would not occur if critical habitat is designated, are greater than the benefits of including the area as critical habitat. See *Exclusions Under Section 4(b)(2)* for a more detailed discussion of the exclusions. Critical habitat for *A. periens* has been proposed within historical range on Kauai, Molokai, Hawaii, and Oahu.

(6) *Comment:* One peer reviewer suggested that a recommendation to

discontinue federally supported hunting programs and remove nonnative animals, particularly axis deer, be incorporated into the proposal.

Our Response: The Service recognizes that populations of many game mammal species affect the distribution and abundance of many listed endangered plant and animal species to varying degrees, either directly or indirectly. We also recognize that game mammal hunting is a highly valued activity to a portion of the present-day Hawaiian culture. We recognize hunting as an important tool to manage wild populations of game and support hunting as a recreational activity and the maintenance of game mammal hunting programs within the state of Hawaii. However, Federal and state law dictate that hunting programs must be designed and executed in a way that is compatible with endangered species conservation. Game mammal hunting programs must not only prevent extinction, but allow for the recovery of federally listed endangered and threatened species.

Under the Endangered Species Act, a critical habitat designation establishes a geographic area that is important for the conservation of a threatened or endangered species and may require special management considerations. However, a designation does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other special conservation area. It does not allow government or public access to private lands and will not result in closure of the area to all access or use. A critical habitat designation does not constitute a land management plan. Rather, it triggers the requirement that Federal agencies must consult with the Service on activities they take or fund that might affect critical habitat.

(7) *Comment:* Critical habitat designation should consider the following: (1) The importance of designating the best remaining elements of ecosystems for multi-species recovery, (2) the practicality of managing and protecting scattered units without apparent physical boundaries, and (3) the importance of public/private partnerships for species recovery.

Our Response: We agree that all these factors are important for the conservation of listed species. We have sought to designate only areas that are essential for the conservation of the species, and which contain primary constituent elements within the best remaining habitats. We also agree that public/private partnerships are often essential for species recovery. As an example, the Service is excluding proposed unit Lanai D, an area proposed as critical habitat for 28 species, because the landowner has entered into a voluntary memorandum of agreement with the Service to manage the lands for the conservation benefit of 28 listed species. We believe there is a higher likelihood of beneficial conservation activities occurring on Lanai without designated critical habitat than there would be with designated critical habitat in this location. See *Exclusions Under Section 4(b)(2)* for a more detailed discussion of the excluded areas.

(8) *Comment:* One peer reviewer commented that the requirement that 1,000 m separate populations is adequate for small-scale disturbance events, but is inadequate for large-scale disturbances. However, the use of multiple populations with a 1,000-m separation is a good balance between protecting against catastrophes and avoiding isolation of populations. Another peer reviewer commented that although a 1,000-m separation seems a bit arbitrary, it is workable. A third peer reviewer disagreed with the identification of populations as discrete units due to the lack of barriers to breeding on Lanai.

Our Response: We acknowledge the difficulty in identifying a discrete, quantitative distance between populations, but in the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we believe that a distance of 1,000 m (3,281 ft) is scientifically reasonable based on our review of current literature (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; Schierup and Christiansen 1996).

(9a) *Comment:* Two peer reviewers commented that the multi-population approach is essential to the successful recovery of Hawaiian species, but that 8 to10 populations may be too low a goal in some cases. Eight to 10 populations should be considered the low end of what is needed for recovery; species that characteristically have numerous populations containing small numbers of individuals require special consideration. (9b) *Comment:* Another peer reviewer suggested that 8 to 10 populations *on each island* would be most appropriate for multi-island species.

Our Response: The Service acknowledges that, in general, identification of more than 8 to 10 areas for recovery would improve the likelihood of recovery. However, absent any quantitative scientific modeling for the species, the service concludes that 8 to 10 populations is a goal that has a reasonable likelihood of meeting recovery goals.

(10) *Comment:* It is difficult to comment in an informed manner on critical habitat for species occurring on more than one island because the proposed rule did not provide information on critical habitat proposed on other islands for multi-island species.

Our Response: For this reason, the Service gave notice on August 20, 2002, reopening simultaneous comment periods for the proposed designations and non-designations of critical habitat for plant species on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, and the northwestern Hawaiian Islands until September 30, 2002, and for plant species on the islands of Hawaii, and Oahu until November 30, 2002. The new comment periods allowed all the interested parties to review all the proposals together and submit written comments. The comment period for the proposed designations and non-designations of critical habitat for plant species on Lanai opened on August 15, 2002, and closed on August 30, 2002, overlapping with the reopened comment periods for Kauai, Niihau, Molokai, Maui, Kahoolawe, the northwestern Hawaiian Islands, Hawaii and Oahu.

(11a) *Comment:* Two peer reviewers stated that degraded habitat should only be excluded from critical habitat if it lacks the potential to become appropriate habitat in the future or if enough less degraded areas exist to make retention of degraded areas unnecessary. (11b) *Comment:* A third peer reviewer feels that degraded sites should still be included as critical habitat, at the very least as buffer zones and ideally as areas for expansion. (11c) *Comment:* Two peer reviewers commented that excluding degraded areas from critical habitat tends to encourage landowners to let areas decline to the point where they will not be selected as critical habitat.

Our Response: The Service agrees that "degraded" areas may be necessary for recovery of the species. We have included areas that are "degraded" only if such areas contain the primary constituent elements for the species; we considered if they are able to eventually regain those missing primary constituent elements if properly managed for restoration and no other suitable habitat for the species is available. We revised proposed critical habitat for many species in the proposed rule because we were able to reach our recovery goal of 8 to 10 populations for a species in intact areas within its

historical range that contain the primary constituent elements.

(12) *Comment:* One commenter was concerned about the designation of units containing "a badly degraded habitat." The reviewer criticizes designation of such areas because it is not economically efficient to control threats such as feral ungulates, weeds, and fire. Such designation will create a regulatory burden and restrict future management options for landowners and the State. Another suggested that some species may be endangered because they exist in marginal habitat and that designating more marginal habitat will not improve a species' chance of survival.

Our Response: We agree that it is in a species' best interest to designate critical habitat in the least degraded areas containing primary constituent elements within historical range. However, in order to reach our recovery goal of 8 to 10 populations for a species within historical range it was sometimes necessary to include "degraded" areas when other less degraded areas were not available for the species.

(13a) *Comment:* One peer reviewer stated that it is unlikely that enough land has been identified for the long-term conservation of multiple populations; however, given the need to compromise, the proposed units are reasonable. Peer reviewers stated that the areas seem suitable in size and are ecologically appropriate, provided: (1) They are protected from their primary threats, (2) excluded lands are properly managed and of large enough size to be ecologically sustainable, (3) proposed units E1–3 are consolidated into a single unit and proposed unit D is retained as an entire unit, or the Service can explain why fragmentation and edge-effects are not threats to the species and why there is adequate mid-elevation habitat available in other areas for target species. (13b) *Comment:* Critical habitat for *Hibiscus brackenridgei, Tetramolopium remyi,* and *Sesbania tomentosa* should be larger due to their formerly extensive range. (13c) *Comment:* One peer reviewer stated that removal of significant portions of any of the critical habitat units in the proposed rule is likely to prevent the recovery of, or lead to the extinction of, listed species.

Our Response: We did not include additional lands in proposed critical habitat because, at the time of the proposal and revised proposal, we concluded that those lands were not essential for the conservation of the 37 Lanai plant species, based on available information concerning status of the species in specific areas and level of habitat degradation. In this final rule, several units and parts of units proposed as critical habitat have been excluded because they are not essential for the conservation of the species or because there are alternatives to a critical habitat designation. We determined them to be non-essential due to their lacking primary constituent elements, or having primary constituent elements but there are other places for these species that have more primary constituent elements, are less degraded, are already undergoing restoration, or are within a partnership, Natural Area Reserve, TNCH preserve, or on a refuge. A sufficient number (as defined in our recovery plans) of other, more appropriate areas are being designated or proposed as critical habitat within historical range on other islands. In other cases, the Service decided that the benefits of excluding critical habitat outweighed the benefits of including critical habitat. See the descriptions of exclusion of critical habitat under Exclusions Under Section 4(b)(2), below.

(14) *Comment:* One peer reviewer noted that one of the keys to a plant's survival is having the appropriate microclimate, which is created by other plant species in a large enough aggregation to alter the environment. Because of the strong, harsh winds on Lanai, it is essential that critical habitat units, such as proposed units A, B, and C, are large enough to provide habitat for a complete plant community that can provide shelter from the winds.

Our Response: We agree and have sought to designate critical habitat units that are large enough to accommodate the needs of the species within those units. However, based on information received during the public comment period, we have revised the proposed critical habitat units and have excluded proposed units A, B, and C because they are not essential for the conservation of *Hibiscus brackenridgei, Cyperus trachysanthos, Tetramolopium remyi,* and *Sesbania tomentosa*. Although they possess some of the primary constituent elements for these species, their habitat is largely degraded. We were able to identify an adequate number of sites within the historical range containing more appropriate and less degraded habitat, and/or that are already slated for conservation management and restoration.

(15a) *Comment:* Several commenters, including one peer reviewer, felt that the proposed rule was improved by incorporating clear methodology to designate appropriate unoccupied habitat for plant recovery. (15b) *Comment:* The Service should not designate unoccupied habitat. One commenter stated that the Service is acting outside its authority in designating unoccupied habitat because almost any area in Hawaii is capable of supporting one or more protected species, and the entire State would have to be designated if unoccupied habitat is included. (15c) *Comment:* Unoccupied habitat outside of the Conservation District should not be designated because it is degraded.

Our Response: Our recovery plans for these species identify the need to expand existing populations and reestablish wild populations within the historical range. Because of the very limited current range of these species, designating only occupied areas would not meet the conservation requirements of the species. Occupied areas, as well as the similar habitat around them within the designated units of critical habitat that may be occupied in the future, provide the essential life-cycle needs of the species and provide some or all of the habitat components essential for the conservation (primary constituent elements) of these species. We have revised the December 27, 2000, proposal to designate critical habitat for 18 species from Lanai to incorporate new information and/or address comments and new information received during the comment periods, including information on areas of potentially suitable unoccupied habitat for some of these species. Expansion of some of these species to areas that were likely to have been historically occupied is essential to the conservation of the species.

When designating unoccupied habitat for these species, we first evaluated lands that are suitable for each species. Of this suitable habitat, we determined what areas are essential for the conservation of each species using the guidelines outlined in the recovery plans (*i.e.*, areas that contain one or more of the primary constituent elements, are either in good condition for recovery efforts or could be made good through appropriate management actions), and would provide space needed by the species to reach our recovery goals of 8 to 10 populations with a minimum of 100 mature reproducing individuals per population for long-lived perennials, 300 mature reproducing individuals per populations for short-lived perennials, and 500 mature reproducing individuals per population for annuals.

We disagree that all areas outside the Conservation District are degraded and inappropriate for these species. Areas that contain one or more of the primary constituent elements, are either in good

condition for recovery efforts or could be made good through appropriate management actions, and would provide space needed by the species to reach our recovery goals of 8 to 10 populations with a minimum number of mature reproducing individuals as specified above, were determined to be essential for the conservation of each species, regardless of land-use zoning.

(16a) *Comment:* One peer reviewer praised the Service for its logical and reasonable methodology and for using the best available science, including information such as elevation range, vegetation type, associated species, physical location and community type for determining critical habitat on Lanai. Another reviewer expressed appreciation for the extensive work and review of Lanai data by the Service.

(16b) *Comment:* Other reviewers felt that the Service did not adequately consider recovery science and management in its proposed critical habitat designations and did not have adequate information relating to each species' primary constituent elements.

Our Response: When developing the proposed rule to designate critical habitat for 32 plants from Lanai, we used the best scientific and commercial data available at the time, including but not limited to, information from the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database; the final listing rules for these species; information received during the public comment periods and the informational meetings and public hearings held on Lanai on July 22, 2002, and August 1, 2002; recent biological surveys and reports; our recovery plans for these species; GIS information (*e.g.*, vegetation, soils, annual rainfall, elevation contours, landownership); information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the island of Lanai; discussions with botanical experts; and recommendations from the Hawaii Pacific Plant Recovery Coordinating Committee (CPC, *in litt.* 1999, HINHP database 2000; HPPRCC 1998; Service 1994, 1995, 1996, 1997, 1998a, 1998c, 1999).

In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of appropriate and independent specialists regarding the proposed rule. The purpose of this peer review was to ensure that our designation methodology of critical habitat of Lanai plants was based on scientifically sound data, assumptions, and analysis. The comments of all of the peer reviewers were taken into consideration in the development of this final designation. We are required under a court-approved settlement agreement to finalize this designation by December 30, 2002. If provided with new information, we may revise the critical habitat designation in the future.

(17) *Comment:* One commenter asked why other federally listed plants on Lanai and historically listed plants were not included in the critical habitat proposal. A peer reviewer asked why critical habitat was not proposed for *Gardenia mannii* when it appears that the proposed critical habitat may provide adequate habitat for the recovery of that species.

Our Response: The proposed rule to designate critical habitat for 32 species found on Lanai was prepared in response to a lawsuit (see "Previous Federal Action" section above). Species listed prior to 1991, such as *Gardenia mannii,* were not covered by this lawsuit and thus not addressed in the proposed rule. Additionally, certain species were not included in the proposed rule because historical records were incomplete and biological experts were unable to provide information about their habitat requirements. These species are: *Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum,* and *Zanthoxylum hawaiiense.*

(18) *Comment:* One commenter stated that critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* should be included in the final rule, if such habitat is present on Lanai.

Our Response: Historical records are incomplete and biological experts were unable to provide information about the habitat requirements of *Tetramolopium lepidotum* ssp. *lepidotum* on Lanai. *Tetramolopium lepidotum* ssp. *lepidotum* is currently found on Oahu and we have proposed critical habitat for this species on that island.

Issue 2: Effects of Designation

(19) *Comment:* One landowner commented that critical habitat should be consistent with current and ongoing conservation efforts in priority areas so that resources are not directed elsewhere in an uncoordinated manner. This reviewer stated that the Service and landowner should work together to develop an approach that is more likely to lead to species recovery, rather than a passive designation lacking management.

Our Response: We agree and recognize that the ultimate purpose of critical habitat is to contribute to the conservation of listed species, a purpose that can be best reached by cooperation between the Service and the community. As an example, the Service excluded proposed unit D, proposed for 28 species, from critical habitat designation because we believe the benefits of exclusion outweigh the benefits of inclusion. The landowner entered into a voluntary memorandum of agreement with the Service to manage the lands in proposed unit Lanai D, as well as adjacent lands, for the conservation benefit of the 28 listed species for which it was proposed as critical habitat. We believe the benefits of these management actions, which would not occur if critical habitat is designated, are greater than the benefits of including the area as critical habitat. *See Exclusions Under Section 4(b)(2)* for a more detailed discussion of the exclusions.

(20) *Comment:* One reviewer commented that the designation of critical habitat alone will not prevent the loss of remaining natural habitats and that funds would be better spent on natural resource management activities. Another reviewer stated that if management is not realistic, it makes little sense to designate critical habitat.

Our Response: Critical habitat designation is one of a number of conservation tools established in the Act that can play an important role in the recovery of a species. For a Federal action to adversely modify critical habitat, the action would have to adversely affect the critical habitat's constituent elements or their management in a manner likely to appreciably diminish or preclude the conservation of the species. Designation of critical habitat is a way to guide Federal agencies in evaluating their actions, in consultation with the Service, such that their actions do not hamper conservation of listed species. There also are educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowners, land managers, and the general public about the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

(21) *Comment:* One peer reviewer noted that it appears that there is an assumption that "natural" areas in the recent past were not impacted by humans. It is unlikely that there was any place in the major Hawaiian Islands that was not at least nominally altered by Hawaiians. There should therefore be a slated role for the Hawaiian

community in the proposed conservation zones.

Our Response: We agree that Hawaiians may have impacted natural areas prior to European settlement. Further, we believe that native Hawaiians can play an important role in species recovery. We do not anticipate that the critical habitat designation will affect their role in species recovery efforts, and we believe it is likely to be compatible with many of the land management goals of native Hawaiians.

(22) *Comment:* Critical habitat must accommodate the traditional cultural gathering rights of native Hawaiians as reflected in Article XII of the State constitution and upheld by the Hawaii Supreme Court in the Public Access Shoreline Hawaii and Ka Paakai o Ka Aina decisions.

Our Response: Critical habitat designation does not affect activities, including human access, on State or private lands unless some kind of Federal permit, license, or funding is involved and the activities may affect the species. It imposes no regulatory prohibitions on state or other non-Federal lands, nor does it impose any restrictions on State or non-Federal activities that are not funded or authorized by any Federal agencies. Access to Federal lands that are designated as critical habitat is not restricted unless access is determined to result in the destruction or adverse modification of the critical habitat. If we determine that access will result in adverse modification of the critical habitat, we will suggest reasonable or prudent alternatives that allow the proposed activities to proceed. Activities of the State or private landowner or individual, such as farming, grazing, logging, and gathering generally are not affected by a critical habitat designation, even if the property is within the geographical boundaries of the critical habitat, unless there is Federal nexus to the activity. A critical habitat designation has no regulatory effect on access to State or private lands. Recreational, commercial, and subsistence activities, including hunting, on non-Federal lands are not regulated by this critical habitat designation, and may be impacted only where there is Federal involvement in the action and the action is likely to destroy or adversely modify critical habitat.

(23) *Comment:* One native Hawaiian commenter stated that the critical habitat proposal is crucial in guardianship and preservation of not only native plants, but the native species that thrive in such protected habitat.

Our Response: We agree that conservation of native plants is consistent with the land management goals of many native Hawaiians. Though not intended to replace on the ground management, we agree that critical habitat designation plays a role in the protection of native species. Designation of critical habitat is a way to guide Federal agencies in evaluating their actions, in consultation with the Service, such that their actions do not hamper conservation of listed species. There also are educational or informational benefits to the designation of critical habitat. Education benefits include the notification of landowners, land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

Issue 3: Site-Specific Biological Comments

(24) *Comment:* The exclusion of Kanepuu Preserve needs to be reassessed because the string of small preserves may not be adequate to provide for the long-term maintenance of habitat. Critical habitat may need to be established around these preserves in order to sustain native plant communities. One peer reviewer was concerned that, given the exclusion of Kanepuu Preserve, *Bonamia menziesii* may not have enough suitable lowland dry forest designated as critical habitat.

Our Response: We reassessed the exclusion of Kanepuu Preserve and determined that it should be excluded because, in addition to having ongoing management, it is not essential for the conservation of *Bonamia menziesii* or *Hibiscus brackenridgei*. We were able to locate sites on other islands for those two species that: (1) Contain at least one of the primary constituent elements that are essential to the conservation of the species, (2) are within historical range, and (3) accommodate our recovery goals of 8–10 populations.

(25a) *Comment:* One peer reviewer noted that as long as the units are protected from major threats, adequate, although not ideal, habitat is designated within proposed unit A for species recovery. (25b) *Comment:* Other commenters recommended removing unit A from the proposed designation, citing the following reasons: (1) *Hibiscus brackenridgei* is represented by only one individual in the unit, the unit has a small amount of suitable soil, it has habitat proposed in unit D, habitats exist on other islands, and the species has been extensively cultivated *ex situ;* (2) the physical attributes of Kaena Iki have changed substantially over time, the ground water spring dried up and seasonally wet soil habitat is no longer present, making it unsuitable habitat for *Cyperus trachysanthos;* (3) the historical location for *C. trachysanthos* is somewhat ambiguous because "Kaena" is also the name of a locality 2.5 miles to the east-northeast outside proposed unit A; and (4) the former population of *C. trachysanthos* within proposed unit A was likely very small and may be considered an unusual occurrence. (25c) *Comment:* Another reviewer suggested reducing the size of proposed unit A to less than 275 acres in the upper portion of the site near the existing populations of *H. brackenridgei*. The unit should be designed to accommodate just one of the 8 to 10 populations needed statewide.

Our Response: Unit A was proposed as critical habitat for two species, *Cyperus trachysanthos* and *Hibiscus brackenridgei*. We excluded the proposed critical habitat for *C. trachysanthos* from the final rule because this area no longer contains the suitable habitat of seasonally wet soils. The water source has permanently dried up due to alterations in the watershed properties of the island. Also, this area is not essential for the conservation of *C. trachysanthos*, a multi-island species, because were able to locate sites on other islands that: (1) Contain at least one of the primary constituent elements that are essential to the conservation of the species, (2) are within historical range, and (3) accommodate our recovery goals of 8 to 10 populations.

Based on information received during the public comment period, we have also excluded unit A as critical habitat for *H. brackenridgei*, a multi-island species. We determined that this area is not essential for the conservation of the species because there are at least eight other places for this species that have more primary constituent elements, are less degraded, are already undergoing restoration, or are within a partnership, Natural Area Reserve, TNCH preserves, or on a refuge. More appropriate areas on other islands, within historical range, and that provide habitat for 10 populations, are proposed as critical habitat for *H. brackenridgei*.

(26a) *Comment:* One peer reviewer noted that, as long as the units are protected from major threats, adequate, though not ideal, habitat is designated within proposed unit B for species recovery. (26b) *Comment:* Proposed unit B should not be removed from critical habitat designation because recent surveys found no individuals of *Tetramolopium remyi* present in fenced areas, despite favorable environmental conditions. (26c) *Comment:* Proposed unit B should be reduced to less than

235 acres in the upper portion of the site near the existing population. Proposed unit D provides better habitat for many populations of *T. remyi* and recovery is much more likely in this unit.

Our Response: Unit B was proposed as critical habitat for *Tetramolopium remyi*. Modifications were made to this unit to exclude areas not essential to the conservation of this species. The area is highly degraded and is in a game management area where one of the threats (axis deer) is being managed for hunting purposes by the State. The remaining area designated as critical habitat for the multi-island species *T. remyi* provides habitat within its historical range for one population of the 8 to 10 outlined in the recovery plan for this species. The designated area is situated around the recently extirpated known individuals, contains at least one of the primary constituent elements, and most likely contains a viable seed bank due to the recent existence of mature, seed-bearing individuals of this species in the area. This unit was renamed Lanai 1—*Tetramolopium remyi*.

(27) *Comment:* Two commenters suggested that proposed unit C be removed from critical habitat designation for *Sesbania tomentosa*, citing the following reasons: (1) The species does not currently occur on Lanai; (2) natural recruitment from inter-island dispersal is unlikely; (3) it is not economically efficient to manage the threats in these areas; (4) the historical Lanai population may have been genetically distinct and propagules are not available from the historical population; and (5) suitable unoccupied habitat exists in proposed unit D.

Our Response: Unit C was proposed as critical habitat for the multi-island species *Sesbania tomentosa*. We have excluded this unit from critical habitat because it is not essential for the conservation of the species because there are at least eight other places for this species that have more primary constituent elements or are less degraded, are already undergoing restoration, or are within a partnership, Natural Area Reserve, TNCH preserve, or on a refuge. More appropriate areas on other islands, within the historical range, and that provide habitat for 10 populations, are proposed as critical habitat for *S. tomentosa*.

(28a) *Comment:* Commenters, including peer reviewers, supported the designation of critical habitat in proposed unit D because: (1) This area contains the best remaining habitat on Lanai, (2) supports high rare species diversity, and (3) has existing programs for native species management at Lanaihale. (28b) *Comment:* One reviewer commented that the extension of critical habitat for *Centaurium sebaeoides* into the Lanai Cooperative Game Management Area is reasonable because the habitat in this area is similar to the species' current habitat on Lanai. (28c) *Comment:* Two peer reviewers questioned the removal of the middle portion of proposed unit D, especially when edge effects should be minimized. (28d) *Comment:* Proposed unit D should be divided into three subunits (D–1, D–2, and D–3) in order to make the unit manageable in a practical sense. (27e) *Comment:* D–1 (Lanaihale area) should be removed from critical habitat designation because it is already being managed in a cooperative agreement between the Service and Castle and Cooke Resorts, LLC.

Our Response: Lanai D was proposed as critical habitat for 28 species: *Abutilon eremitopetalum, Adenophorus periens, Bonamia menziesii, Brighamia rockii, Centaurium sebaeoides, Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Diellia erecta, Diplazium molokaiensis, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Solanum incompletum, Spermolepis hawaiiense, Tetramolopium remyi, Vigna o-wahuensis* and *Viola lanaiensis*.

Based on additional information and discussions with the landowner, the Service has decided not to designate critical habitat for these species on Lanai. The unit was excluded from critical habitat under section 4(b)(2) of the Act because the landowner entered into a voluntary memorandum of agreement with the Service to manage the lands in proposed unit Lanai D, as well as adjacent lands, for the conservation benefit of the 28 listed species for which it was proposed as critical habitat. We believe the benefits of these management actions, which would not occur if critical habitat is designated, are greater than the benefits of including the area as critical habitat. See *Exclusions Under Section 4(b)(2)* for a more detailed discussion of the exclusions.

(29a) *Comment:* All commenters agreed that at least portions of proposed units E1–3 are appropriate for critical habitat designation due to the likely presence of many species within the unit. (29b) *Comment:* One peer reviewer argued for consolidation of proposed units E1–E3 in order to reduce edge effect and fragmentation, and remove barriers to gene flow. (29c) *Comment:* Only the upper portions of proposed units E should be included as critical habitat for *Bidens micrantha* because the remainder of proposed unit E is not essential to the conservation of the species.

Our Response: We acknowledge the potential negative impacts of edge effects on the habitat for *Bidens micrantha*. However, this species' primary constituent elements are found only within ridge habitat and the three proposed E units are actually three ridges. Consolidating the units would add the gulch areas between the ridges that lack the primary constituent elements for *B. micrantha*.

No changes were made to these proposed units and they are designated as critical habitat for *Bidens micrantha* ssp. *kalealaha*. They have been renamed units Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North, Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle, and Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South.

(30) *Comment:* Two reviewers suggested removing proposed unit F as critical habitat for *Hibiscus brackenridgei* due to its degraded habitat, marginal soil and rainfall, and physical characteristics that are different from those at currently extant populations. One reviewer believed that designation of such sites is not economically efficient and would create a regulatory burden and restrict future management options for landowners and the State.

Our Response: This unit was proposed as critical habitat for the multi-island species *Hibiscus brackenridgei*. Based on information received during the public comment period, we have revised the proposed critical habitat for this species. We have excluded proposed unit F because it does not contain the primary constituent elements essential for the conservation of this species. An adequate amount of critical habitat for *Hibiscus brackenridgei* is proposed within historical range on other islands.

(31) *Comment:* One peer reviewer expressed concern that proposed unit G is downslope from a golf course and the high nutrient runoff from the golf course may encourage nonnative plants and threaten the survival of native species within the proposed unit. Three commenters suggested removing proposed unit G as critical habitat for *Portulaca sclerocarpa* because: (1) The species does not occur at this site currently, (2) historical records of its

occurrence at this site are lacking, (3) since the species is confined to vertical cliffs, habitat above the cliff is inappropriate, (4) few available niches exist for this species along the cliffs, (5) the species was likely always rare in this area, and (6) the cliffs are already protected under applicable shoreline setback laws.

Our Response: Lanai G was proposed as critical habitat for the multi-island species *Portulaca sclerocarpa*. Modifications were made to this unit to exclude inland areas that do not contain the primary constituent elements. Although there are no historical records for this species on the main island of Lanai, we believe the species did historically occur there as plants continue to survive just off shore on Poopoo Islet. Poopoo Islet is a small rocky outcrop approximately 200 m (600 ft) from the south shoreline. It is likely that the species disappeared from the main island Lanai as a result of the threats there prior to adequate surveys being conducted. Further, the areas designated as critical habitat on Lanai proper contain one or more of the primary constituent elements and provide additional area for one of the 8 to 10 populations needed for the recovery of this species as outlined in the recovery plan. Critical habitat designated for *P. sclerocarpa* includes only cliff faces along the shore. While it is true the cliffs are already protected under applicable State shoreline setback laws, the specific habitat features for this species are not directly protected by those laws. Actions taken adjacent to the cliffs, which may not be affected by State laws, could appreciable alter the ability of the habitat to support a population of this species. This unit was renamed Lanai 5—*Portulaca sclerocarpa*—Coast.

(32) *Comment:* Commenters supported the designation of critical habitat for *Portulaca sclerocarpa* at proposed unit H. One commenter noted that although surveys found no evidence of the species in proposed unit H, the islets' cliff faces remain appropriate for a species that was likely naturally rare due to the area's few suitable niches.

Our Response: We agree this species is rare, but this unit continues to support the one extant colony of this species on Lanai. No changes were made to this unit and it is designated as critical habitat for *Portulaca sclerocarpa*. It has been renamed Lanai 6—*Portulaca sclerocarpa*—Isle.

Issue 4: Mapping

(33) *Comment:* The Service should define affected property lines in a manner that allows for the descriptions to be used in real property conveyance documents in the State of Hawaii.

Our Response: The maps in the **Federal Register** are meant to provide the general location and shape of critical habitat. The legal descriptions are readily plotted and transferable to a variety of mapping formats and were made available electronically upon request for use with GIS programs. At the public hearing, the maps were expanded to wall-size to assist the public in better understanding the proposal. These larger scale maps were also provided to individuals upon request. Furthermore, we provided direct assistance in response to written or telephone questions with regard to mapping and landownership within the proposed designation.

(34) *Comment:* The final proposal should map or identify how many populations are being accommodated in each unit and the acreage allotted for each population.

Our Response: The final rule identifies the number of populations accommodated in each unit. We do not have the scientific information to precisely identify how many acres each population requires. We did, however, ensure that each population is separated by 1,000 meters or by some distinct geologic feature.

Issue 5: Economic Issues

(35) *Comment:* The Draft Economic Analysis (DEA) fails to consider economic impacts of listing and critical habitat that result through interaction with State law, specifically Hawaii's Endangered Species Act. The commenter suggested that *New Mexico Cattlegrowers Association* v. *U.S. Fish and Wildlife Service* requires consideration of the impact of listing as well as the impact of designating an area as critical habitat. Instead, the analysis is expressly limited to the impact of Federal agency consultation under the jeopardy standard. However, since Federal listing triggers listing under State law, the Service must consider the impact of take prohibitions under State law (and consequently Federal law, which prohibits destruction of plants in knowing violation of State law).

Our Response: Possible costs resulting from interplay of the Federal Endangered Species Act and Hawaii State law are discussed in the economic analysis under indirect costs (*e.g.*, possible conservation management mandate for the private landowner and reduction in game mammal populations). The economic analysis considers the economic impacts of section 7 consultations related to critical habitat even if they are attributable co-extensively to the listed status of the species. In addition, the economic analysis examines any indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. However, where it is the listing of a species that prompts action at the State or local level (*e.g.*, further regulating the take of federally listed species), the impacts are not attributable to critical habitat designation and are not appropriately considered in the economic analysis of critical habitat designation. Take prohibitions under Hawaii law are tied to the Federal listing of the species and do not co-extensively occur because of critical habitat designations. However, our analysis did consider the other ways in which the Federal Endangered Species Act and Hawaii State law may interplay.

(36) *Comment:* Two commenters stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with Hawaii's Land Use Law. Critical habitat could result in changes to zoning under State law. HRS § 205–2(e) states that Conservation Districts shall include areas necessary for conserving endangered species. HRS 195D–5.1 states that DLNR shall initiate amendments in order to include the habitat of rare species. Even if DLNR does not act, the Land Use Commission may initiate such changes, or they may be forced by citizen lawsuits. Areas for endangered species are placed in the protected subzone with the most severe restrictions. While existing uses can be grandfathered in, downzoning will prevent landowners from being able to shift uses in the future, will reduce market value, and make the land unmortgageable.

Our Response: As indicated in the final addendum to the DEA (Addendum), about 362.4 ac of agricultural lands and 8 ac of rural lands are included in the final designation. No agricultural or ranching activities take place on these agricultural lands. Assuming a worst-case scenario, one which is not envisioned, reduction in land values due to redistricting land from the Agricultural or Rural District to Conservation District could range from $50,736 to $163,080 ($140 to $450 per acre) for agricultural lands and $1.3 million to $2.7 million ($160,000 to $334,000 per acre) for rural lands. Under this scenario, even if a landowner has no plans to sell the land, the loss in land value could reduce potential mortgage financing. However, the likelihood of redistricting is not certain and could be small. The State's history

supports the unlikelihood of rezoning or redistricting land based on evaluations of biological value.

(37) *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Environmental Impact Statement Law. HRS 343–5 applies to any use of conservation land, and a full Environmental Impact Statement is required if any of the significance criteria listed in HAR 11–200–12 apply. One of these criteria is that an action is significant if it "substantially affects a rare, threatened or endangered species or its habitat." This will result in costly procedural requirements and delays. However, the DEA does not acknowledge that any impact on endangered species habitat will be deemed to be "significant." Multiple commenters stated that the DEA fails to evaluate the practical effect critical habitat designation will have on development. Special Management Area permits administered by Maui County as required by Hawaii's Coastal Zone Management Act, will be harder to get, will result in delays, will cause a decline in property values and may make land impossible to develop.

Our Response: Adverse impacts on development, including delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, and increased risk of litigation over approvals, are not expected since no known development plans exist for the areas proposed for designation, as modified. Furthermore, the following factors make future development projects within critical habitat highly unlikely: (1) As modified, approximately 53 percent of the critical habitat is in the Conservation District where development is severely limited; (2) approximately 46 percent of the critical habitat is in the Agricultural District, but because the land includes gulches, it does not host any ranching or agricultural activities; (3) less than one percent of the proposed designation encompasses land in the Rural District with no known development plans; and (4) as modified, the cliffs along the southern shore are the only critical habitat area that is in the Special Management Area. (The percentages given here are different from those in the addendum because of the Service's decision to exclude Lanai Unit D (see *Exclusions Under Section 4(b)(2)*)

(38) *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically the State Water Code. HRS 174C–2 states that "adequate provision shall be made for protection of fish and wildlife". HRS 174C–71 instructs the Commission of Water Resource Management to establish an instream use protection program to protect fish and wildlife. Since landowners may depend on water pumped from other watersheds, these effects can be far-reaching. It is impossible to tell from the descriptions in the proposal whether any water diversions will have to be reduced as a result of listing and critical habitat designation. The Service has an obligation to thoroughly investigate this issue and refrain from designating critical habitat until it has determined whether its actions will affect water use and balance this against any benefit to the species.

Our Response: No costs are expected to occur from such impacts, because none of the listed plants are stream-dependent for their survival and therefore critical habitat designation would not cause a reduction in existing water diversions.

(39) *Comment:* One commenter stated that the cost of potential citizen lawsuits preventing certain activities or requiring some sort of management in critical habitat was not discussed in the DEA. Another commenter stated that critical habitat designation will bring unnecessary and costly litigation. One commenter stated that proposed critical habitat could entail considerable cost to both the State and private landowners. One commenter stated that critical habitat designation could indirectly result in limitations or special management requirements (such as fencing or control of invasive species) being established on private lands. The DEA estimates that the Palila court decision may be interpreted to mandate private conservation and could cost Lanai landowners up to $800,000 per year, or $8 million over ten years. However, Table VI–3 of the Addendum dismisses these costs as minor and does not add them to the total cost estimate. These costs should be considered.

Our Response: The Act does not obligate landowners to manage their land to protect critical habitat, nor would landowners and managers be obligated under the Act to participate in projects to recover a species for which critical habitat has been designated. However, the DEA does discuss the potential mandate for conservation management pursuant to litigation and the resulting costs for the proposed designation on Lanai. Specifically, adverse impacts on development, including delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, and increased risk of litigation over approvals, are not expected since there are no known development plans within the areas proposed for designation, as modified. Furthermore, the following factors make future development projects within critical habitat highly unlikely: (1) As modified, approximately 53 percent of the proposed critical habitat is in the Conservation District where development is already limited; (2) approximately 46 percent of the critical habitat is in the Agricultural District, but because the land includes gulches, it does not host any ranching or agricultural activities; (3) less than one percent of the designation encompasses land in the Rural District with no known development plans; and (4) as modified, the cliffs along the southern shore are the only critical habitat area that is in the Special Management Area.

Thus, while it is conceivable that there may initially be an increase in subsequent lawsuits related to the critical habitat designation, it is not possible to predict their number, degree of complexity, or any other associated effect on project delays due to scant historical evidence regarding the Lanai plants.

(40) *Comment:* One commenter stated that the DEA lacks a thorough benefits analysis. It does not include the benefits of watershed protection and improvement, protection of other stream and riparian biota, and the value of the plants as an indicator of ecological health. Other commenters stated that the DEA ignored the benefit of keeping other native species off the endangered species list, of maintaining water quality and quantity, of promoting ground water recharge, and of preventing siltation of the marine environment, thus protecting coral reefs. Another commenter noted that additional benefits of critical habitat include combating global warming, providing recreational opportunities, attracting ecotourism, and preserving Hawaii's natural heritage. The Service must use the tools available, such as a study by the University of Hawaii (UH) Secretariat for Conservation Biology that estimated the value of ecosystem service, to determine the benefits of critical habitat. Another commenter stated that the DEA overestimates economic benefits and many of the alleged benefits are entirely speculative, unquantifiable or lack any commercial value.

Our Response: The DEA discussed these potential benefits. However, the DEA also indicated that these benefits

are not quantified due to lack of information available on: (1) Quantified data on the value of the Lanai species; and (2) quantified data on the change in the quality of the ecosystem and the species as a result of the designation. Although the UH study does value ecosystem services, it has limited applicability for valuing the benefits of the critical habitat designation for the plants for a number of reasons. First, the UH study had a different purpose, which was to estimate the total value of environmental benefits provided by the entire Koolau Mountains on the island of Oahu. Consistent with its purpose, the UH study provides no estimates of the changes in environmental conditions resulting from changes in land and stream management due to critical habitat designation. Furthermore, many of the assumptions and much of the analysis in the UH study are not transferable to the economic analysis for the critical habitat of the Lanai plants. For example, the value of water recharge in the UH study reflects projected water supply and demand conditions on Oahu, an island three times the size of Lanai, but with a population of more than 360 times that of Lanai. Also, the UH benefit analysis of reducing soil runoff is unique to three valleys that drain through partially channelized streams in urban areas into the manmade Ala Wai Canal. Since this canal was designed with inadequate flushing from stream or ocean currents, it functions as an unintended settling basin, so must be dredged periodically. In addition, the recreational and ecotourism values provided in the UH study apply to areas that are accessible to most hikers, which is not the case with most of the Lanai critical habitat. Most of the critical habitat units designated on Lanai are either in mountainous areas with steep slopes and difficult access or on coastal cliffs.

(41) *Comment:* Existence values should be quantified. Studies referenced in the DEA analysis contain information about how much people would be willing to pay to save various species. Even assuming plants are noncharismatic and therefore would justify lower values, there would still be a value of $6 per household per year. If the study is able to take values for a day of hunting from the State of Idaho and apply them to Hawaii, it should be equally able to take values from studies which have looked at other species to get some sense of what people would pay to make sure these species recover and do not go extinct.

Our Response: As discussed in the Addendum, when primary research is not feasible, economists frequently rely on the method of benefits transfer. Benefits transfer involves the application of results of existing valuation studies to a new policy question. Two core principals of defensible benefits transfer are: (1) The use of studies that apply acceptable techniques to generate welfare values, and (2) similarity between the good being valued in the literature and the good being valued in the policy context to which the transfer is being made (*i.e.*, the protection afforded the Lanai plants by critical habitat). As noted above, no known studies exist with quantified data on the value of plants or the change in the quality of the ecosystem and the species as a result of the designation. Therefore, applying results of existing valuation studies on non-plants to Lanai plant critical habitat is not feasible.

(42) *Comment:* The conclusion under E.O. 12866 that the rule will not have an annual economic effect of $100 million or more, or adversely affect in a material way any sector of the economy or State or local governments or communities, is flawed because it does not consider the major adverse impacts from secondary effects.

Our Response: For the reasons explained in the DEA, this rule is not expected to have an annual economic effect of $100 million or more. Both the DEA and the Addendum provide analysis of the indirect costs associated with designation of critical habitat for the Lanai plants in terms of land management, loss in property values and investigative costs. These indirect costs are considered and those costs that can be quantitatively estimated are addressed in the DEA and Addendum. Some potential costs are not estimated because the likelihood of actually incurring the cost is considered to be extremely remote.

(43) *Comment:* The designation of critical habitat will have direct and substantial impacts on private property because large areas will be unavailable for productive use and land values will be substantially diminished. The Service must take these into account and weigh them against the speculative protections that would accrue from designation. The DEA correctly recognizes that perceptions and uncertainty of the economic impact of critical habitat designation can cause temporary reductions in land value as long as those perceptions persist and until information is distributed. These impacts, however, need to be analyzed. The DEA should examine true appraised values, rather than relying on "GIS analysis of land value," which is not explained, with and without critical habitat designation and as it may be perceived by buyers and lenders. In addition to the reduction in land value itself, the DEA should investigate whether these losses in property value may be long-term, because the consequences of critical habitat are yet to be determined and will likely be the subject of extensive and costly litigation that will take years to resolve. The DEA should also recognize that land use values may be used as collateral for loans supporting commercial operations and assess the potential impact critical habitat designations may have on these transactions.

Our Response: The DEA did indeed estimate land values associated with the different land use districts using GIS analysis. This technique assesses large parcels as a group, rather than as specific parcels, due to lack of obtaining information on land values for specific locations. However, during the comment period, Castle and Cooke Resorts, LLC, provided location-specific land value information for the areas in the proposed units. Therefore, the Addendum relied on those figures to recalculate the decrease in property value in the worst-case scenario. According to Castle and Cooke Resorts, LLC, the agricultural lands included in the designation should be valued at $390 to over $1,000 per acre; rural lands at $160,000 to over $335,000 per acre; and conservation lands at $250 to over $550 per acre (based on an appraisal of similar lands). Based on these figures, the decrease in property value of agricultural lands could range from $50,811 to $163,323 million [(($390 − $250)×362.94), (($1,000 − $550)×362.94)]. The decrease in value for rural lands may range from $1.2 million to $2.7 million [(($160,000 − 250)×8), (($335,000 − 550)×8)]. As noted above, this scenario is not expected to occur, and ensuring that clear and correct information is available to all potential buyers will further reduce the potential for such a scenario.

(44) *Comment:* It is not adequate to state, without any analysis, that any reduction in property value to agricultural lands proposed in units E and F is expected to be small because many of the lands are categorized as open space by the county to limit development. Agricultural lands such as those on Lanai have been appraised from $390 to $1,000 an acre. The DEA should examine the effects by using appraised values before and after critical habitat designation. The DEA also states that rural land on Lanai is valued at approximately $44,000 per acre, even though nearby house lots in the Manele

Project district range up to $15 million. If the entire Manele Project district is not excluded in the final rule, the DEA will have failed to analyze one of the most substantial impacts of critical habitat on Lanai. Even if excluded, proposed unit G includes approximately 110 ac of rural lands, and the DEA has undervalued these lands greatly. The undeveloped rural land in proposed unit G is adjacent to already developed infrastructure in the Manele Project district.

Our Response: The Service has removed proposed unit F and modified proposed unit G to exclude all but the cliffs in this final designation. As modified, about 8 ac of rural lands remain in the designation. However, no known plans exist for development on this rural land and the cliff areas are likely unable to be developed. As noted above, using figures provided by Castle and Cooke Resorts, LLC, the Addendum estimated that the decrease in value for those rural lands may range from $1.2 million to $2.7 million.

(45) *Comment:* The DEA underestimates the economic costs because they are limited to what is likely to occur within ten years even though critical habitat designation is permanent and not automatically revised if there is new evidence of the benefits of non-designation, or if the species is delisted.

Our Response: As indicated by the DEA, the landowner does not have specific development plans for the proposed designated areas for the next ten years. As such, no maps, permit applications, or other documents are available to serve as the basis for an estimate of possible impact of the designation.

A listed species is delisted when it is recovered or has gone extinct. Recovery is defined as no longer needing the protections provided by the Act, including critical habitat. Thus, when a species is delisted, critical habitat for that species would no longer be in effect.

(46) *Comment:* The DEA grossly generalizes that all land in the Conservation District is "not suitable for development due to poor access and terrain." This statement is not true for all or even most of such lands. The DEA should have a unit-by unit review of the actual lands designated to determine whether this is the case.

Our Response: In the final designation, only about 373 ac of proposed unit B (now Lanai 1—*Tetramolopium remyi*) and the cliffs of proposed unit G (now Lanai 5—*Portulaca sclerocarpa*-Coast) are lands in the Conservation District. Lanai 1—*Tetramolopium remyi* is in the State hunting unit on the mountain flanks. Lanai 5—*Portulaca sclerocarpa*-Coast is limited to the steep cliffs of southern coast, only accessible by a guided tour on a rocky trail. Therefore, we believe the lands in the Conservation District that are included in this final designation are in fact unsuitable for development. Other lands in the Conservation District that were included in the proposed designation have not been included in this final critical habitat designation.

(47) *Comment:* The economic analysis is wrong in identifying the impacts on State and county development approvals as major. The analysis completely fails to take into account the benefits of having this information and enabling State and county agencies to make better land use decisions. This benefit should be quantified and discussed in the analysis.

Our Response: The DEA concluded that the possible quarry site for proposed unit F may undergo more stringent State and county development approval because of the designation and, therefore, may result in major impacts. However, such impacts are no longer expected since we have removed proposed unit F from this final designation for scientific reasons. In addition, State and county agencies may gain better knowledge of land resources because of the critical habitat designation. However, the extent to which this may help their land-use decisions is unknown. For example, State and county agencies may need to spend less time surveying lands for natural resources, but it is not feasible to estimate to what extent the designation would reduce the number of hours or the amount of effort involved in determining the sensitivity of an area. Furthermore, it is also impossible to determine how much of the benefit is attributable to the designation alone.

(48) *Comment:* Proposed critical habitat units A, B, C, F and a small portion of D are in the Lanai Cooperative Game Management Area lease. One commenter stated that critical habitat management and game management activities are not compatible. As a result, the commenter indicated that the worst-case scenario would be for the public hunting program to be eliminated entirely, which would have an economic impact on Lanai, and that this was not reflected in the DEA. Alternatively, another commenter stated that the Service should not base its economic analysis on unlikely worst-case scenarios, but, rather, on likely scenarios. For example, this commenter indicated that the requirement to fence all of the critical habitat areas within hunting management areas is the worst case. Further it was noted, that the more likely situation would be that the State would forego Federal funding for game mammal programs on Lanai and use State funds, in which case fencing would not be required. Therefore, the commenter indicated that at most, the cost would be those portions of the program that the State would not receive because of critical habitat. The commenter further questioned how much of this to attribute to critical habitat, because history shows us that the State has already foregone some funds due to listing, not critical habitat. Lastly, the commenter noted that there also may be some ecosystem benefits to the State from fencing that are not reflected in the analysis.

Our Response: Although DLNR does discuss the possibility of shutting down the State hunting program on Lanai in its comment to the proposed rule, the agency also states that avoiding a Federal nexus is the likely alternative. The DEA recognizes that DLNR is likely to avoid a Federal nexus by finding alternative non-Federal funds to manage State hunting units on Lanai. Therefore, in a conservative estimate of possible impacts to game management activities on Lanai, the DEA considered the worst-case scenario to be the building an exclosure fence around the proposed critical habitat that overlaps with State hunting units. It is important to note, however, that the Service has removed and modified some of these units in this final rule. As such, the Addendum has revisited the impacts on game management discussed in the DEA and revised the estimated costs according to the modification.

(49) *Comment:* Given the size of the designated areas, the vagueness of the regulatory exclusion, and the real costs of obtaining development approvals, the estimate of 15 to 24 hours is too low.

Our Response: To address these concerns, the Addendum revisited the hours estimates presented in the DEA. The DEA indicated that the landowner may want to learn how the designation may affect: (1) The use of his land (either through restrictions or new obligations) and (2) the value of his land. Since commenters did not provide an estimate of time or cost incurred in order to investigate the implications of critical habitat, the Addendum conservatively doubled the hours spent by the landowner and/or his attorneys or professional staff on investigating the issues. As described in the Addendum, using these new assumptions, the analysis estimated that total section 7

costs range from $4,900 to $11,500, all of which are attributable to critical habitat.

(50) *Comment:* Designation will have a huge impact on a new quarry site, the probable source for rock for improvements to the breakwater at Kaumalapau Harbor by the Corps, which will in turn have a material adverse impact on planned development of essential improvements to the harbor. The Service cannot assume that the section 7 costs would be minor because stone could be obtained from another location within the quarry. Private actions in critical habitat within the Conservation District, such as construction of a new quarry in proposed unit F, could require a full EIS at an additional cost.

Our Response: Such impacts are not expected since the Service has removed proposed unit F completely from this final rule.

(51) *Comment:* Designation will create uncertainties which will deter investment and potential agricultural and irrigation water resource development.

Our Response: As noted above, no agricultural or ranching activities take place within the designated critical habitat. Furthermore, potential agricultural or ranching activities on these agricultural lands in the future are also unlikely due to their remote location (mostly on gulch lands) and rugged terrain. Therefore, such impacts are not expected to occur as a result of the designation.

(52) *Comment:* The DEA must take into account the unique local circumstances of land ownership and limited economic base of Lanai, which are especially susceptible to detrimental impacts of regulations.

Our Response: The DEA examined potential impacts on small entities (small businesses, small organizations, and small governmental jurisdictions) under the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996. The DEA concluded that a significant economic impact on a substantial number of small entities would not result from the proposed critical habitat designation. However, the DEA also concluded that small businesses on Lanai that cater to hunters could be indirectly affected by the designation in the unlikely event that DLNR builds exclosure fences around the designated critical habitat. As stated above, this final rule designates fewer areas within State hunting areas than did the proposed rule.

Issue 6: Policy and Regulations

(53) *Comment:* One commentor stated the proposal fails to properly consider the importance of cooperation and goodwill between the Service and private landowners, and the impact critical habitat designations will have in discouraging voluntary partnerships on private lands.

Our Response: The Service recognizes the importance of landowner cooperation for recovery of listed species. This is especially true for the island of Lanai which is under private ownership. We also recognize that critical habitat designations may have a negative impact on voluntary partnerships with private landowners. Conservation of the Lanai plant species requires control of threats from alien species and fire, and translocation of species that have been extirpated from the wild. Castle and Cooke Resorts, LLC, owner of the lands proposed as critical habitat, has cooperated with the Service, the State of Hawaii, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits to the species. In addition, Castle and Cooke Resorts, LLC has agreed to expand the existing conservation measures to address the threats to all of the species in proposed unit Lanai D. They also indicated that including the area in a critical habitat designation would have a negative impact on their existing and future voluntary conservation efforts on Lanai. After weighing the benefits of including unit Lanai D as critical habitat with the benefits of excluding it, we concluded that the designation of critical habitat would have a net negative conservation effect on the recovery and conservation of the species included in the unit, and thus excluded unit Lanai D from the final designation of critical habitat.

(54) *Comment:* The Service did not adequately address the takings of private property as a result of designating critical habitat for endangered plants on Lanai. If the critical habitat proposal would require reducing water diversions from any stream, the Service should investigate whether that would take anyone's vested water rights. In addition, if the proposed designation of critical habitat precipitates conversion of agricultural lands to conservation land that has no economically beneficial use, then the Federal and State governments will have taken private property.

Our Response: We have assessed the takings implications of this rule in accordance with Executive Order 12630 and have concluded that this rule does not pose significant takings implications. Because no critical habitat unit boundaries are located in existing diversions, no requirements to reduce out-of-stream water use will arise as a result of this rule. Furthermore, none of the plants are stream-dependent for their survival and therefore would not cause a reduction in water diversion. According to the State, land classification would not be changed based on the designation of critical habitat alone, and private lands are rarely changed to conservation. In addition, although the 366 acres within unit Lanai E is zoned for agriculture, the land within this unit is on and/or near mountain flanks lined with gulches, and neither farming nor ranching takes place in the unit.

(55) *Comment:* Prudency cannot be determined without an analysis of the economic impacts of critical habitat. The prudency of critical habitat designation is a final conclusion based on weighing all relevant factors, including economic factors. While the Service promised to complete its economic impact analysis before it promulgates its final determination of critical habitat, it risks putting the decision before the analysis. The prior determination that critical habitat is prudent and is therefore required, is treated as a given, even though it ignored economic factors.

Our Response: First, the Service did not make a final conclusion regarding prudency in the proposed rule; in fact, the proposed rule specifically requested public comment on the reasons why habitat is prudent or not prudent. Second, the commenter is conflating the two steps of the process. As defined by regulation, prudency looks at whether critical habitat would harm or benefit the species. *See* 50 CFR 424.12(a)(1). If critical habitat is prudent, we look at all of the impacts of designating specific areas as critical habitat to see if the benefits of designation outweigh the benefits of excluding an area from critical habitat. Third, this does not mean we ignored the requirement to consider economic and other impacts of critical habitat designation. To the contrary, a draft economic analysis was prepared, comments were solicited, and an addendum was completed. Furthermore, we have excluded a significant portion of the proposed designation based on negative impacts to important private conservation efforts.

(56) *Comment:* While the Service has stated that critical habitat affects only activities that require Federal permits or funding, and does not require landowners to carry out special

management or restrict use of their land, this fails to address the breadth of federal activities that affect private property in Hawaii and the extent to which private landowners are required to obtain Federal approval before they can use their property. These requirements extend to all State agencies using Federal funds in connection with a proposed action and community actions for which Federal approval or review is necessary. The requirements also extend to loan and grant programs such as National Resources Conservation Service loans and grants. In addition, the Service has taken the position in other States that it has a right to intervene in local land use proceedings if they affect endangered species on private property, as evidenced by the Service petition to the local zoning board in Arizona to postpone approval of a rezoning petition pending a survey to determine the extent to which an endangered plant was present on the property even though no Federal approval was being sought.

Our Response: Private landowners are not required to obtain Federal approval before using their property. When State or private landowners seek a Federal permit or Federal funding, the Federal agency must consult with the Service on actions that may affect listed species or designated critical habitat. The draft Economic Analysis identifies the potential Federal actions that may result in consultations on listed plants and critical habitat on Lanai over the next ten years. Finally, the Service has never intervened in local land use proceedings in the State of Hawaii and does not anticipate doing so in the future.

(57) *Comment:* One commenter said that the Service failed to give the public adequate opportunity to comment on the memorandum of agreement (MOA) draft being used to possibly form the basis of a decision to exclude proposed unit Lanai D from the final critical habitat.

Our Response: The Service posted a notice of availability of the draft MOA in the **Federal Register** on November 15, 2002. Letters were sent to interested parties that same day, notifying the recipients of the availability of the draft MOA at the Honolulu office of the Service. Electronic versions of the draft agreement were also available upon request. The comment period was opened for 10 days to allow the public to make comments.

(58) *Comment:* One commenter said that the draft MOA made available for comment is non-binding and only in draft form with vague terms. He said the draft does not make clear what the species in question would receive *in lieu* of critical habitat protection. He also said that the draft MOA does not require any real financial commitments on the part of Castle and Cooke Resorts, LLC, relying, instead on in-kind contributions, nor would any new funds be committed to conservation efforts during the first nine years of the agreement.

Our Response: Much planning is necessary to execute successful plant restoration efforts of the type and scale covered by the draft MOA. The area covered by the draft MOA is a large, rugged terrain covering thousands of acres where no one has worked before. The development of precise propagation and planting plans will require site-specific and species-specific evaluations and require consultation and additional input of expert biologists. Some efforts will also likely involve experimentation, for example investigating plant survival in certain areas, the feasibility of providing water to a particular site, or a test of deer hunting methods in different terrains. It is difficult to set specific numeric targets of plants propagated and reintroduced without first conducting the necessary evaluation of specific landscape conditions and logistical constraints and opportunities. More precise goal-setting is appropriate after these more basic planning activities are completed. The draft MOA references the Service's recovery plans and the actions called for therein; these plans will provide the basic guidance for these draft MOA future actions, with adaptive management. The draft MOA makes it clear that the company will be implementing conservation actions that benefit all these listed species, *e.g.* putting up exclosure fences around more than just the proposed plant critical habitat area, they will be removing ungulates, and they will be planting native plants (including listed species). It is impossible to provide precise figures on these actions at this point. But given the past positive record of action by the company in fulfilling voluntary agreements, we believe it is reasonable to expect these overall commitments will be met.

In reference to the funding portion of the draft MOA, it is a longstanding policy of the Service to accept and encourage in-kind contributions for our cost-share partnership programs. These type of contributions provide local, on-the-ground expertise; they encourage greater local "ownership" in a successful outcome; and many partners often provide greater in-kind services than for which they receive credit. The commenter is correct that there are no explicit guarantees regarding exactly how much the company would spend over the life of this agreement, but this is a voluntary agreement based on good faith, past performance, and a reasonable expectation of future performance.

Preserving Castle and Cooke Resorts, LLC's current commitment to voluntary conservation is one of our fundamental goals in the critical habitat exclusion. Regardless of any additional commitments from the company, this accomplishment alone establishes an important benefit of approval of the draft MOA and excluding proposed Lanai Unit D, when compared with a critical habitat designation. In our opinion, loss of these existing voluntary commitments, which is made more likely by a critical habitat designation, would have a much greater negative impact on these plants than would the proposed critical habitat exclusion. These plants are benefitting more from these ongoing, interventionist actions than they would from the critical habitat designation. We have outlined our reasoning for excluding land from critical habitat below (see *Exclusions Under Section 4(b)(2)).*

(59) *Comment:* One commenter stated that the draft MOA stipulation that Castle and Cooke Resorts, LLC would not seek Federal assistance and/or authorization from any Federal agency for activities that may adversely affect habitat found in some areas of proposed unit Lanai D falls short of protection that critical habitat provides. He also stated that even if Castle and Cooke Resorts, LLC does not apply for Federal assistance and/or authorization, that does not mean that the Federal government would not initiate any projects on Lanai that may affect the proposed critical habitat that may be excluded from final designation and designation would provide more protection under the Act.

Our Response: To improve the current condition of the endangered and threatened species on Lanai, it is insufficient simply to prohibit harmful activities. Rather, it is necessary to carry out active management measures to confer a positive benefit on the species of concern, such as habitat manipulation, exotic species control, or simply allowing access for the purposes of reintroduction (Bean 2002). We feel the likelihood of federally-initiated projects on Lanai that may affect listed species is very low, and therefore critical habitat would have little regulatory benefit to the species other than those listed below in section *Exclusions Under Section 4(b)(2).*

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from 12 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region that the species occurs in, and familiarity with the principles of conservation biology. We received comments from three. All three generally supported our methodology and conclusion, but none supported or opposed the proposed critical habitat designations. Comments received from the peer reviewers were summarized in the previous section and considered in developing the final rule.

Summary of Changes From the Revised Proposed Rule

Based on a review of public comments received on the proposed determinations of critical habitat, we have reevaluated our proposed designations and included several changes to the final designations of critical habitat. These changes include the following:

(1) The scientific names were changed for the following associated species found in the *"Supplementary Information: Discussion of the Plant Taxa"* section: *Styphelia tameiameiae* changed to *Leptecophylla tameiameiae* in the discussion of *Gahnia lanaiensis, Hedyotis schlechtendahliana* var. *remyi,* and *Viola lanaiensis; Odontosoria chinensis* changed to *Sphenomeris chinensis* in the discussion of *G. lanaiensis* and *H. schlechtendahliana* var. *remyi; Diospyros ferrea* changed to *D. sandwicensis* in the discussion of *Abutilon eremitopetalum.*

(2) We removed *Sapindus oahuensis* from the list of associated species in the *"Supplementary Information: Discussion of the Plant Taxa"* section for *Bonamia menziesii;* added gulch bottoms to habitat in the species description section for *Abutilon eremitopetalum;* and throughout the species description section removed goats and pigs and replaced them with mouflon sheep and axis deer as current threats. Goats and pigs are no longer present on Lanai and were mistakenly included as current threats.

(3) We received new information on the presence of *Bidens micrantha* ssp. *kalealaha* in Waiapaa Gulch. For *Tetramolopium remyi,* we updated the two occurrences to one occurrence, updated the number of plants to 150 and updated "Table 2.—Summary of existing occurrences on Lanai, and landownership for 37 species reported from Lanai." This new information did not affect our decisions in designating critical habitat for these species. Waipaa Gulch was proposed as critical habitat for *B. micrantha* ssp. *kalealaha* and the loss of a population of *T. remyi* is a recent extirpation and the habitat once occupied is still considered essential to the recovery of that species. We believe that its recent presence indicates a high likelihood of a seed bank in the area.

(4) We changed "flowering cycles, pollination vectors, seed dispersal agents" to "reproduction cycles, dispersal agents" in the life history portion of the *"Supplementary Information: Discussion of the Plant Taxa"* section for the fern species *Ctenitis squamigera, Diellia erecta,* and *Diplazium molokaiense.*

(5) We revised the list of manmade features that are excluded from the designation in order to exclude additional features based on information received during the public comment periods. The revised list is described in the *"Criteria Used to Identify Critical Habitat"* and in regulatory language for section 17.96 *"Critical habitat—plants"* described at the end of this document.

(6) We revised our decision on the essentiality of Kanepuu Preserve for the conservation of *Bonamia menziesii* (see *"Managed Lands"*).

(7) We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, that indicated that the primary constituent elements were not present in certain portions of the proposed unit, that certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements, or that the areas were not essential to the conservation of the species in question. In addition, an area was excluded based on weighing the benefits of inclusion versus exclusion pursuant to section 4(b)(2) of the Act (see "*Economic Analysis*").

A brief summary of the modifications made to each unit is given below (see also Figure 1).

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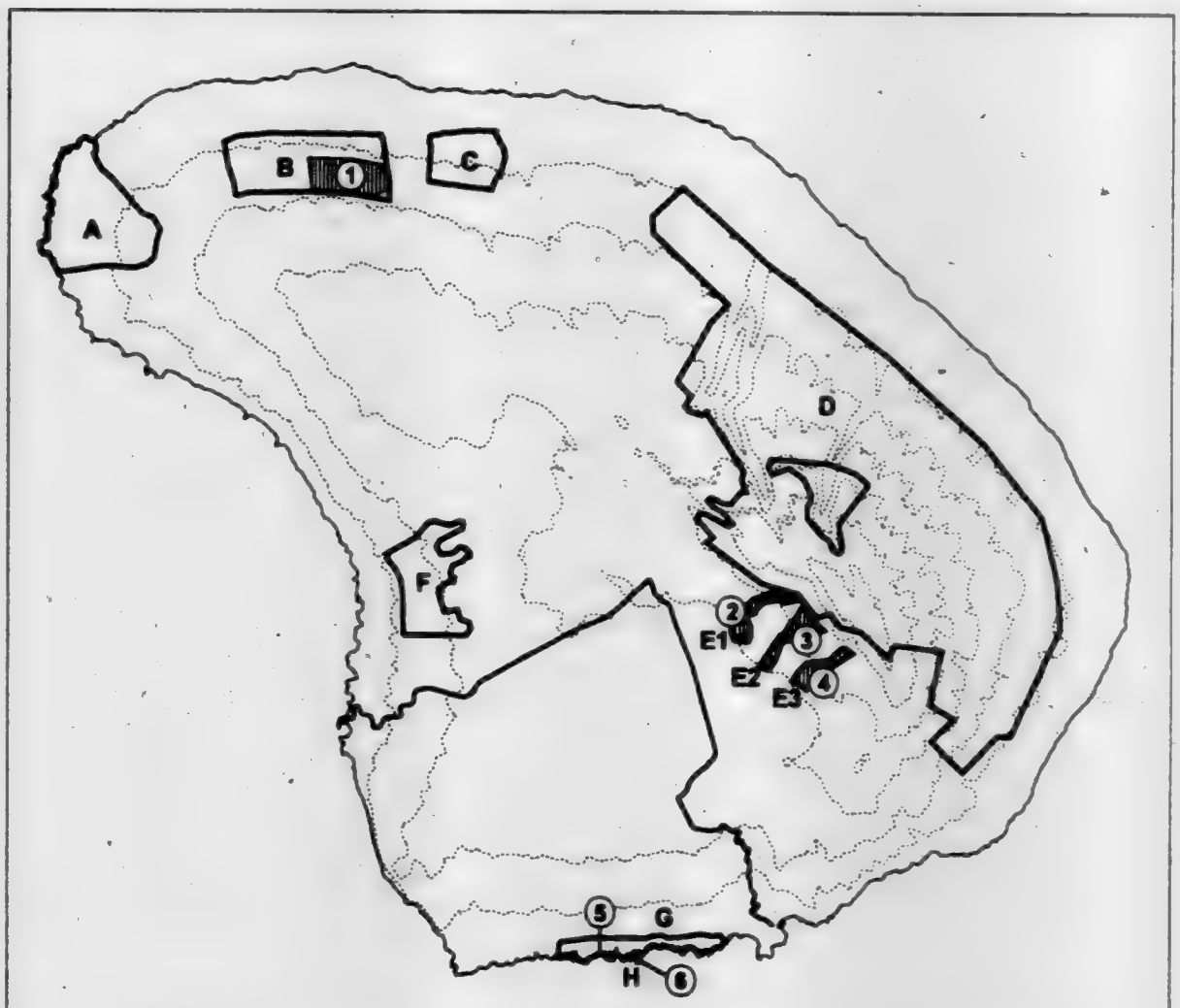

Figure 1
Summary of Changes from Proposed Rule to Final Rule

Final Lanai Critical Habitat Unit
Proposed Lanai Critical Habitat Unit
Major Roads
Coastline
Elevation (500-ft. contours)

BILLING CODE 4310–55–C

(8) In accordance with the revisions described in (7) above, we revised section 17.12 *"Endangered and threatened plants"* to include only *Bidens micrantha* ssp. *kalealaha*, *Portulaca sclerocarpa*, and *Tetramolopium remyi* (see *"Economic Analysis"*).

(9) In accordance with the revisions described in (7) above, we revised section 17.96 "*Critical Habitat—plants*" to include only *Bidens micrantha* ssp. *kalealaha*, *Portulaca sclerocarpa*, and *Tetramolopium remyi* and updated their elevation ranges, based on information received during the public comment periods.

Lanai A

This unit was proposed as critical habitat for two species, *Cyperus trachysanthos* and *Hibiscus brackenridgei*. We excluded the proposed critical habitat for *C. trachysanthos* from the final rule because this area no longer contains the suitable habitat of seasonally wet soils. The water source has permanently dried up due to alterations in the watershed properties of the island. Also, this area is not essential for the conservation of *C. trachysanthos*, a multi-island species, because we have proposed adequate habitat on other islands within its historical range.

We excluded the proposed critical habitat for *Hibiscus brackenridgei*, a multi-island species. This area is not essential for the conservation of the species because the area lacks sufficient suitable soil and there are at least eight other places for this species that have the primary constituent elements, are less degraded, are already undergoing restoration, or are within a partnership, TNCH preserve or other reserve. Other areas on other islands within its historical range are proposed as critical habitat that provide habitat for 10 populations.

Exclusion of this unit from critical habitat for *Cyperus trachysanthos* and *Hibiscus brackenridgei* resulted in the overall reduction of 574 ha (1,418 ac) of critical habitat on the island of Lanai.

Lanai B

This unit was proposed as critical habitat for *Tetramolopium remyi*, a multi-island species. Modifications were made to this unit to exclude areas not essential to the conservation of this species (*i.e.* areas that are highly degraded). The area designated as critical habitat for *T. remyi* provides habitat within its historical range for one population. The designated area is situated around the recently extirpated known individuals and contains the primary constituent elements. In addition, this area most likely contains a viable seed bank because of the recent existence of mature, seed-bearing individuals in this area and because plants from drought-prone sites tend to survive through the existence of seed banks. This modification resulted in the reduction from 551 ha (1,363 ac) to 151 ha (373 ac). This unit was renamed Lanai 1—*Tetramolopium remyi*.

Lanai C

This unit was proposed as critical habitat for the multi-island species *Sesbania tomentosa*. This unit was excluded from critical habitat because it is not essential for the conservation of the species and there are at least eight other places for this species that have more primary constituent elements, are less degraded, are already undergoing restoration, or are within a partnership, TNCH preserve, or other reserve. Other areas on other islands within the historical range of *S. tomentosa* are being designated or proposed as critical habitat and provide habitat for 10 populations.

Exclusion of this unit from critical habitat for *Sesbania tomentosa* resulted in the overall reduction of 222 ha (549 ac) of critical habitat on the island of Lanai.

Lanai D

Lanai D was proposed as critical habitat for 28 species: *Abutilon eremitopetalum*, *Adenophorus periens*, *Bonamia menziesii*, *Brighamia rockii*, *Centaurium sebaeoides*, *Cenchrus agrimonioides*, *Clermontia oblongifolia* ssp. *mauiensis*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea lobata*, *Cyanea macrostegia* ssp. *gibsonii*, *Cyrtandra munroi*, *Diellia erecta*, *Diplazium molokaiensis*, *Gahnia lanaiensis*, *Hedyotis mannii*, *Hedyotis schlechtendahliana* var. *remyi*, *Hesperomannia arborescens*, *Hibiscus brackenridgei*, *Isodendrion pyrifolium*, *Labordia tinifolia* var. *lanaiensis*, *Melicope munroi*, *Neraudia sericea*, *Solanum incompletum*, *Spermolepis hawaiiense*, *Tetramolopium remyi*, *Vigna o-wahuensis* and *Viola lanaiensis*.

This unit was excluded from critical habitat under section 4(b)(2) of the Act for the reasons described in the "*Economic Analysis*" section below. Exclusion of this unit from critical habitat for the 28 species listed above resulted in the overall reduction of 5,861 ha (14,482 ac) of critical habitat on the island of Lanai.

Lanai E1, E2 and E3

No changes were made to these units and they are designated as critical habitat for *Bidens micrantha* ssp. *kalealaha*. They have been renamed units Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North (53 ha (132 ac)), Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle (60 ha (148 ac)), and Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South (49 ha (120 ac)).

Lanai F

This unit was proposed as critical habitat for the multi-island species *Hibiscus brackenridgei*. This unit was excluded from critical habitat because it is not essential for the conservation of the species because it is highly degraded. Other areas on other islands, within the species' historical range, are being proposed as critical habitat that provide habitat for 10 populations.

Exclusion of this unit from critical habitat for *Hibiscus brackenridgei* resulted in the overall reduction of 331 ha (818 ac) of critical habitat on the island of Lanai.

Lanai G

Lanai G was proposed as critical habitat for the multi-island species *Portulaca sclerocarpa*. Modifications were made to this unit to exclude inland areas that do not contain the primary constituent elements. Critical habitat for *P. sclerocarpa* includes only cliff faces along the shore. This modification resulted in the reduction from 151 ha (373 ac) to 7 ha (17 ac). This unit was renamed Lanai 5—*Portulaca sclerocarpa*—Coast.

Lanai H

No changes were made to this unit and it is designated as critical habitat for *Portulaca sclerocarpa*. It has been renamed Lanai 6—*Portulaca sclerocarpa*—Isle, consists of Poopoo Islet, and contains 1 ha (2 ac).

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation," as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." The relationship between a species survival and its recovery has been a source of confusion to some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when its recovery can be achieved; thus, the concepts of long-term survival and recovery are intricately linked. However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434) regarding a not prudent finding, the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known, using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species or alternatively, we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic areas occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have some of the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation.

Our regulations state that "The Secretary shall designate critical habitat outside the geographic areas presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species.

A. Prudency

We originally proposed that designation of critical habitat was prudent for six plants (*Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Gahnia lanaiensis, Portulaca sclerocarpa, Tetramolopium remyi,* and *Viola lanaiensis*) from the island of Lanai on December 27, 2000 (65 FR 82086). In that same proposal, we incorporated by reference the proposed prudency analysis for 13 other plants (*Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Spermolepis hawaiiensis,* and *Vigna o-wahuensis*) that are reported from Lanai as well as from Kauai, Niihau, Maui, or Kahoolawe (64 FR 48307, 65 FR 66808, 65 FR 79192, and 65 FR 82086). No change was made to the proposed prudency findings for the 19 plants in the revised proposal published on March 4, 2002, and they were incorporated by reference (67 FR 9806). In addition, in the December 27, 2000, proposal, we proposed that designation of critical habitat was not prudent for *Phyllostegia glabra* var. *lanaiensis,* and no change was made to this proposed prudency finding in the March 4, 2002, revised proposal (65 FR 82086 and 67 FR 9806). In the March 4, 2002, revised proposal no change was made to the proposed prudency analysis published in other proposed rules for 16 plants (*Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense,*

Hesperomannia arborescens, Isodendrion pyrifolium, Mariscus fauriei, Neraudia sericea, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, and Zanthoxylum hawaiiense) that no longer occur on Lanai but are reported from one or more other islands, and they were incorporated by reference (65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940, and 67 FR 9806). In the March 4, 2002, revised proposal, we proposed that designation of critical habitat was prudent for *Tetramolopium lepidotum* ssp. *lepidotum*, a species for which a prudency finding had not been made previously, and that no longer occurs on Lanai but is reported only from Oahu (67 FR 9806).

We believe that designation of critical habitat is prudent for 36 species (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Mariscus fauriei, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepidotum, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis, and Zanthoxylum hawaiiense*) from the island of Lanai.

We analyzed the potential threats and benefits for each species in accordance with the court's order and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of these species or of similarly situated species. Consequently, while we remain concerned that these activities could potentially threaten these 36 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which threats would be exacerbated by the designation of critical habitat. The potential benefits to designation of critical habitat for these 36 species include: (1) Triggering section 7 consultation in new areas it would not otherwise occur; (2) focusing conservation activities on the most essential area; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore we believe that the designation of critical habitat for these 36 species is prudent because the potential benefits of critical habitat designation outweigh the potential threats.

Designation of critical habitat is not prudent for *Phyllostegia glabra* var. *lanaiensis* because such designation would be of no benefit to this species. *Phyllostegia glabra* var. *lanaiensis* has not been seen on Lanai since 1914. In addition, this plant is not known to be in storage or under propagation. If this species is relocated, we may revise this final rule to incorporate or address new information becomes available (see 16 U.S.C. 1532(5)(B); 50 CFR 424.13(f)).

B. Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Mariscus fauriei, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepidotum, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis, and Zanthoxylum hawaiiense*. This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC's) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, landownership); the final listing rules for these 36 species; the December 27, 2000, proposal; the March 4, 2002, revised proposal; information received during the public comment periods and public hearings; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information that we sent to all landowners, land managers, and interested parties on the island of Lanai; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (CPC *in litt.* 1999; GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; 65 FR 82086).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data have been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed to some degree. New location data for many species have been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the specific listed species at issue. As a result, the critical habitat designations in this rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana ssp. grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis* is described above in the "*Background*" section of this final rule. We are unable to identify these features for *Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum* and *Zanthoxylum hawaiiense,* which no longer occur on the island of Lanai, because information on the physical and biological features (*i.e.*, the primary constituent elements) that are considered essential to the conservation of these four species on Lanai is not known (see 67 FR 9806).

All areas designated as critical habitat are within the historical range of the three species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of the species.

As described in the discussions for each of the three species for which we are designating critical habitat, we are defining the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community (*e.g.*, mesic *Metrosideros polymorpha* forest), associated native plant species, locale information (*e.g.*, steep rocky cliffs, talus slopes, gulches, streambanks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicate specific microclimate (localized climatic) conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the **SUPPLEMENTARY INFORMATION:** *Discussion of the Plant Taxa* section above, constitute the primary constituent elements for these species on the island of Lanai.

D. Criteria Used To Identify Critical Habitat

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.*, population viability analysis (National Research Council 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). At this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, we used available information, including expert scientific opinion, to identify potentially suitable habitat within the known historic range of each species.

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these three species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes: (1) Stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species biology and ecology (Service 1995, 1996a, 1997). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within their historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennials; 300 mature, reproducing individuals per population for short-lived perennials; and 500 mature, reproducing individuals per population for annuals. There are some specific exceptions to this general recovery goal of 8 to 10 populations for species that are believed to be very narrowly distributed on a single island, but that does not apply to the three species. To be considered recovered, the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1995, 1996a, 1997). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated and influenced by the same small-scale events (such as landslides), and which contains a minimum of 100, 300, or 500 mature, reproducing individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual.

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes or tsunamis, that could destroy a large percentage of a species at any one time, may be reduced (Menges 1990; Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology

literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Menges 1990; Murphy *et al.* 1990; Podolsky 2001; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life-history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

The long-term objectives, as reviewed by Pavlik (1996), require from 50 to 2,500 individuals per population, based largely on research and theoretical modeling on endangered animals, since much less research has been done on endangered plants. Many aspects of species life history are typically considered to determine guidelines for species' interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed longevity, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of these characteristics that can be uniformly applied to all Hawaiian plant species is longevity (*i.e.*, long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature, reproducing individuals per population for long-lived perennial species, 300 mature, reproducing individuals per population for short-lived perennial species, and 500 mature, reproducing individuals per population for annual species.

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. Although absent the detailed information inherent to the types of Population Viability Analysis models described above (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species: (1) Creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2001; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Meffe and Carroll 1996; Raup 1991). This basic conservation principle of redundancy applies to Hawaiian plant species. By maintaining 8 to 10 viable populations in several critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and recovery. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of non-native plants and animals. Establishing and conserving 8 to 10 viable populations on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as the hurricanes which occurred in 1982 and 1992 on Kauai, fires, and nonnative plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential to give the species a reasonable likelihood of long-term survival and recovery, based on currently available information.

In summary, the long-term survival and recovery of Hawaiian plant species requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species. Some of this habitat is currently not known to be occupied by these species. To recover the species, it is essential to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.*, hurricanes, fire, and non-native species introductions) (Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992).

In this rule, we have defined the primary constituent elements based on the general habitat features of the areas from which the plants are reported, such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes, streambanks), and elevation. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of the three plant species.

Our approach to delineating critical habitat units was applied in the following manner:

1. We focused on designating units representative of the known current and historical geographic and elevational range of each species; and

2. Critical habitat units were designed to allow for expansion of existing wild populations and reestablishment of wild populations within the historic range, as recommended by the recovery plans for each species.

The proposed critical habitat units were delineated by creating rough units for each species by screen digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program. The polygons were created by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

The resulting shape files (delineating historic elevational range and potential, suitable habitat) were then evaluated. Elevation ranges were further refined and land areas identified as not suitable

for a particular species (*i.e.*, not containing the primary constituent elements) were avoided. The resulting shape files for each species were then considered to define all suitable habitat on the island, including occupied and unoccupied habitat.

These shape files of suitable habitat were further evaluated. Several factors were used to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for conservation would be available within the suitable habitat units identified as containing the appropriate primary constituent elements for each species. If more than the area needed for the number of recovery populations was identified as potentially suitable, only those areas within the least disturbed suitable habitat were designated as proposed critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,280 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; Schierup and Christiansen 1996). The resulting critical habitat units were further refined by using satellite imagery and parcel data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of one or more of the 32 plant species for which critical habitat was proposed on March 4, 2002. Geographic features (*e.g.*, ridge lines, valleys, streams, coastlines, *etc.*) or manmade features (*e.g.*, roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries.

Following publication of the proposed critical habitat rules for 255 Hawaiian plants (67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 34522, 67 FR 36968, 67 FR 37108), we reevaluated proposed critical habitat, State-wide, for each of the multi-island species using the recovery guidelines (8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennial species; 300 mature, reproducing individuals per population for short-lived perennial species; and 500 mature, reproducing individuals per population for annual species) to determine if we had inadvertently proposed for designation too much or not enough habitat to meet the essential recovery goals of 8 to 10 populations per species distributed among the islands of the species' known historic range (HINHP Database 2000, 2001; Wagner *et al.* 1990, 1999). For each multi-island species, we then further evaluated areas of the proposed critical habitat for the existing quality of the primary constituent elements (*i.e.*, intact native plant communities, predominance of associated native plants versus nonnative plants) and potential as a recovery area. We selected adequate area for our recovery goals of 8 to 10 populations distributed among the islands of each species' historical range. Of the proposed critical habitat for a species, areas that did not meet these criteria and that may provide habitat for populations above the recovery goal of 8 to 10, were determined not essential for the conservation of the species and were excluded from the final designation.

For the species endemic to Lanai, we modified the boundaries of proposed critical habitat using additional information from botanical experts and comments on the proposed rule. We excluded areas that do not contain one or more of the primary constituent elements or were not essential for the conservation of the species because: (1) The area is highly degraded and may not be restorable; (2) the area has some of the primary constituent elements but there are at least eight other places for the species that have more primary constituent elements or are less degraded or are already undergoing restoration or are within a partnership, Natural Area Reserve, TNCH preserve, or refuge; or (3) the threats to the species are uncontrollable in this area. In addition, some areas were excluded under section 4(b)(2) of the Act for economic or other reasons (See "Exclusions Under Section 4(b)(2)"). The specific modifications are described above in the "Summary of Changes from the Revised Proposed Rule." The boundaries of the final critical habitat units are described by their UTMs.

Within the critical habitat boundaries, section 7 consultation is generally necessary and adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In selecting areas of designated critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of the three species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas from the maps. In addition, existing manmade features and structures within the boundaries of the mapped unit, such as buildings; roads; aqueducts and other water system features—including, but not limited to, pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, and wells; telecommunications towers and associated structures and equipment; electrical power transmission lines and associated rights-of-way; radars; telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines); airports; other paved areas; and other rural residential landscaped areas do not contain one or more of the primary constituent elements and are therefore excluded under the terms of this regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

In summary, for these species we utilized the approved recovery plan guidance to identify appropriately sized land units containing essential occupied and unoccupied habitat. Based on the best available information, we believe these areas constitute the habitat necessary on Lanai to provide for the recovery of *Bidens micrantha* ssp. *kalealaha*, *Portulaca sclerocarpa*, and *Tetramolopium remyi*.

Managed Lands

Currently occupied and historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 32 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and

section 7 consultations. Additionally, we contacted the major private landowner on Lanai by mail and we met with the landowner's representatives in April 2000 and August 2002 to discuss their current management for the plants on their lands. We also met with Maui County DOFAW office staff to discuss management activities they are conducting on Lanai. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearings.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require "special management considerations or protections." Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and have adequate funding for the management plan); and, (3) provides assurances that the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

In determining whether a management plan or agreement provides a conservation benefit to the species, we considered the following:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive non-native plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Cuddihy and Stone 1990; Howarth 1985; Loope 1998; Scott *et al.* 1986; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Smith 1985; Stone 1985; Vitousek 1992; Wagner *et al.* 1985).

Current threats to these species include non-native grass- and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including axis deer and mouflon sheep); direct and indirect effects of non-native plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and non-native insect pollinators for food, and predation of native insect pollinators by non-native hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be negatively affected by fruit- and flower-eating pests such as non-native arthropods, mollusks, and rats, and photosynthesis and water transport are affected by non-native insects, pathogens, and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include non-native plant invasions altering wildfire regimes, feral ungulates carrying weeds and disturbing vegetation and soils, thereby facilitating dispersal and establishment of non-native plants, and numerous non-native insect species feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Bruegmann *et al.* 2001; Cuddihy and Stone 1990; D'Antonio and Vitousek 1992; Howarth 1985; Mack 1992; Scott *et al.* 1986; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Smith 1985; Tunison *et al.* 1992);

(2) The recommendations from the HPPRCC in their 1998 report to us ("Habitat Essential to the Recovery of Hawaiian Plants"). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of non-native species threats, wildfire, and land use changes; and

(3) The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in our recovery plans for these 32 species (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001), in the 1998 HPPRCC report to us, and in various other documents and publications relating to plant conservation in Hawaii (Cuddihy and Stone 1990; Mueller-Dombois 1985; Smith 1985; Stone 1985; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) nonnative plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plant species; (7) propagation, reintroduction, and augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance: Feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). On a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants.

As shown in Table 2, the 32 species of plants are found on private lands on the island of Lanai. Information received in response to our public notices; meetings with representatives of the landowner and Maui County DOFAW staff; the December 27, 2000, and March 4, 2002, proposals; public comment periods; and the March 22, 2001, and August 1, 2002, public hearings, as well as information in our files, indicated that there is limited on-going conservation management action for these plants, except as noted below. Without management plans and assurances that the plans will be implemented, we are unable to find that the land in question does not require special management or protection.

Private Lands

Two species (*Bonamia menziesii* and *Hibiscus brackenridgei*) are reported from The Nature Conservancy of

Hawaii's (TNCH) Kanepuu Preserve, which is located in the northeast-central portion of Lanai (GDSI 2000; HINHP Database 2000; TNCH 1997). This preserve was established by a grant of a perpetual conservation easement from the private landowner to TNCH and is included in the State's Natural Area Partnership (NAP) program, which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 1997).

Under the NAP program, the State of Hawaii provides matching funds on a two-to-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the six-year partnership agreement between the State and the managing entity is automatically renewed each year so that there are always six years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every six years. By April 1 of any year, the managing partner may notify the State that it does not intend to renew the agreement; however, in such case, the partnership agreement remains in effect for the balance of the existing six-year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if State funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the State Department of Land and Natural Resources (DLNR), and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat. Secs. 195–1–195–11, and Hawaii Administrative Rules Sec. 13–210.

The management program within Kanepuu Preserve is documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plant and its habitat within the preserve (TNCH 1997, 1998, 1999). These management measures address the factors which led to the listing of *Bonamia menzeisii* and *Hibiscus brackenridgei* including control of non-native species of ungulates, rodents, weeds, and fire control. In addition, habitat restoration and monitoring are also included in these plans.

The primary goals within Kanepuu Preserve are to: (1) Control non-native species; (2) suppress wildfires; and (3) restore the integrity of the dryland forest ecosystem through monitoring and research. Specific management actions to address feral ungulates include the replacement of fences around some of the management units with Benzinal-coated wire fences as well as staff hunting and implementation of a volunteer hunting program with the DLNR. Additionally, a small mammal control program has been established to prevent small nonnative mammals (*e.g.*, rats) from damaging rare native species and limit their impact on the preserve's overall native biota.

To prevent further displacement of native vegetation by non-native plants, a non-native plant control plan has been developed, which includes monitoring of previously treated areas, and the control of non-native plants in management units with restoration projects.

The fire control program focuses on suppression and pre-suppression. Suppression activities consist of coordination with State and county fire-fighting agencies to develop a Wildfire Management Plan for the preserve (TNCH 1998). Pre-suppression activities include mowing inside and outside of the fence line to minimize fuels for fires.

A restoration, research, and monitoring program has been developed at Kanepuu Preserve to create a naturally regenerating *Nestegis sandwicensis-Diospyros sandwicensis* dryland forest, and expand the current range of native-dominated vegetation. Several years of casual observation indicate that natural regeneration is occurring within native forest patches in the deer-free units (TNCH 1999). A draft of the Kanepuu Restoration Plan was completed in June 1999. This plan identifies sites for rare plant outplanting and other restoration activities. Monitoring is an important component to measure the success or failure rate of the animal and weed control programs. Management of these non-native species control programs is regularly amended to preserve the ecological integrity of the preserve.

Comments received on the proposed rule and a site visit by Service staff revealed that Kanepuu Preserve does not contain as many of the primary constituent elements for *Bonamia menzeisii* and *Hibiscus brackenridgei* as previously thought or that exist in other areas of the State of Hawaii proposed as critical habitat for these species. The other areas proposed for these species are occupied, contain intact native habitat, are being managed for these species, and provide adequate area for the 8 to 10 populations needed to reach our recovery goals for these species. It is our belief that this area is not essential for the conservation of these species for the above stated reasons. We were able to find enough better quality habitat for 8 to 10 populations needed to reach our recovery goals on this and other Hawaiian islands. Though it is occupied by *Bonamia menziesii* and *Hibiscus brackenridgei* and should continue to be managed for these and other species, this area was not considered essential to the conservation of any of the 37 species covered by this rule.

The critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of *Bidens micrantha* ssp. *kalealaha*, *Portulaca sclerocarpa*, and *Tetramolopium remyi*, and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We publish this final rule acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may consider reevaluating the boundaries of areas that warrant critical habitat designation.

The approximate areas of the designated critical habitat by landownership or jurisdiction are shown in Table 4.

Critical habitat includes habitat for these three species in the northwestern, central, and southern portions of Lanai. Lands designated as critical habitat have been divided into six units. A brief description of each unit is presented below.

TABLE 4.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII

Unit name	State/local	Private	Federal	Total
Lanai 1—*Tetramolopium remyi*		151 ha (373 ac)		151 ha (373 ac)
Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North.		53 ha (131 ac)		53 ha (131 ac)
Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle.		60 ha (148 ac)		60 ha (148 ac)
Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South.		48 ha (118 ac)		48 ha (118 ac)
Lanai 5—*Portulaca sclerocarpa*—Coast		7 ha (17 ac)		7 ha (17 ac)
Lanai 6—*Portulaca sclerocarpa*—Isle		1 ha (2 ac)		1 ha (2 ac)
Grand Total		320 ha (789 ac)		320 ha (789 ac)

Descriptions of Critical Habitat Units

Lanai 1—*Tetramolopium remyi*

This unit is critical habitat for *Tetramolopium remyi* and is 151 ha (373 ac) on privately owned land. It lies approximately between 182 m (600 ft) and 274 m (900 ft) elevation, is slightly east of Puumaiekahi Gulch, contains a portion of Lapaiki Gulch and is completely in a conservation district (limited use). Awalua Road runs through the western portion of this unit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial and is currently unoccupied. The habitat features contained in this unit that are important for this species include, but are not limited to, predominantly red sandy loam in a *Dodonaea viscosa-Heteropogon contortus* community. In addition, this area is the most likely to contain a viable seed bank on the north side of the island because of the existence within the past year of mature, seed-bearing individuals in this area and because plants from drought-prone sites tend to survive through the existence of seed banks. The State of Hawaii is managing a small portion of this unit by fencing the area to control feral ungulates around the recently extirpated known individuals. This unit provides for one population within this multi-island species' historical range on Lanai.

Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North

This unit is critical habitat for *Bidens micrantha* ssp. *kalealaha* and is 53 ha (131 ac) on privately owned land. This unit lies west of Lanai 3 and includes most of Kapohaku Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of this short-lived perennial and is currently unoccupied. The habitat features contained in this unit that are important for this species include, but are not limited to, gulch slopes in dry *Dodonaea viscosa* shrubland. This critical habitat unit provides area for one population within the historical range of this multi-island species and is in the gulch adjacent to the occupied unit Lanai 3—*Bidens micrantha* ssp *kalealaha*—Middle. It is geographically separated (by a ridge) from other designated critical habitat units on this and other islands in order to avoid all populations from being destroyed by one naturally occurring catastrophic event.

Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle

This unit is critical habitat for *Bidens micrantha* ssp. *kalealaha* and is 60 ha (148 ac) on privately owned land. This unit lies between Lanai 2 and Lanai 4 and includes most of Waiapaa Gulch and Waiakaiole Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of this short-lived perennial and is currently occupied by less than 20 individuals. This unit is important to the conservation of the species because it supports the one extant colony of this species on Lanai. This unit also includes habitat that is important for the expansion of the present population. The habitat features contained in this unit that are important for this species include, but are not limited to, gulch slopes in dry *Dodonaea viscosa* shrubland. This critical habitat unit provides area for one population within the historical range of this multi-island species. It is geographically separated by a ridge from other designated critical habitat units on this and other islands in order to avoid all populations from being destroyed by one naturally occurring catastrophic event.

Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South

This unit is critical habitat for *Bidens micrantha* ssp. *kalealaha* and is 48 ha (118 ac) on privately owned land. This unit lies east of Lanai 3 and includes most of Paliakoae Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of this short-lived perennial and is currently unoccupied. The habitat features contained in this unit that are important for this species include, but are not limited to, gulch slopes in dry *Dodonaea viscosa* shrubland. This critical habitat unit provides area for one recovery population within the historical range of this multi-island species and is in a gulch adjacent to the occupied unit Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle. It is geographically separated by a ridge from other designated critical habitat units on this and other islands in order to avoid all populations from being destroyed by one naturally occurring catastrophic event.

Lanai 5—*Portulaca sclerocarpa*—Coast

This unit is critical habitat for *Portulaca sclerocarpa* and is 7 ha (17 ac) on privately owned land. This unit lies along the shore between Anapuka in the west and Huawai Bay in the east. This unit provides habitat for one population (combined with Lanai 6—*Portulaca sclerocarpa*—Isle) of 300 mature, reproducing individuals of this short-lived perennial and is currently unoccupied. The habitat features contained in this unit that are important for this species include, but are not limited to, exposed ledges in thin soil in coastal communities. This coastal habitat is unique to Lanai for this species; on the island of Hawaii, this species grows on weathered soils, cinder cones, or geologically young lava; in montane dry shrubland; often on bare cinder; near steam vents; or in open *Metrosideros polymorpha*-dominated woodlands, away from coastal areas. This critical habitat unit provides area for one recovery population within the historical range of this multi-island

species and is adjacent to the currently occupied habitat in Unit 6—Portulaca sclerocarpa—Isle. It is geographically separated from other designated critical habitat on the island of Hawaii in order to avoid all populations from being destroyed by one naturally occurring catastrophic event.

Lanai 6—*Portulaca sclerocarpa*—Isle

This unit is critical habitat for *Portulaca sclerocarpa* and is 1 ha (2 ac) on privately owned land. This unit comprises all of Poopoo Islet. This unit provides habitat for one population (combined with Lanai 5—*Portulaca sclerocarpa*—Coast) of 300 mature, reproducing individuals of this short-lived perennial and is currently occupied by about 10 plants. This unit is important to the conservation of the species because it supports the one extant colony of this species on Lanai. This unit also includes habitat that is important for the expansion (combined with Lanai 5—*Portulaca sclerocarpa*—Coast) of the present population. The habitat features contained in this unit that are important for this species include, but are not limited to, exposed ledges in thin soil in coastal communities. This coastal habitat is unique to Lanai for this species; on the island of Hawaii, this species grows on weathered soils, cinder cones, or geologically young lava; in montane dry shrubland; often on bare cinder; near steam vents; or in open *Metrosideros polymorpha*-dominated woodlands, away from coastal areas. This critical habitat unit provides area for one population within the historical range of this multi-island species. It is geographically separated from other designated critical habitat units on the island of Hawaii to prevent all populations from being destroyed by one naturally occurring catastrophic event.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat when their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(1) of the Act requires Federal agencies, including the Service, to use their authorities to carry out programs for the conservation of any species that is proposed or listed as endangered or threatened. Section 7(a)(4) of the Act requires Federal agencies (action agency) to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal action agency must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Activities on Federal lands that may affect critical habitat of *Bidens micrantha* ssp. *kalealaha*, *Portulaca sclerocarpa*, or *Tetramolopium remyi* will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), the Department of Housing and Urban Development, or an incidental take permit under section 10(a)(1)(B) of the Act from us; or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), or Department of Energy); regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communications Commission will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities (whether public or private) that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: Overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock that degrades watershed values;

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems in wetlands where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;

(6) Introducing or encouraging the spread of non-native plant species into critical habitat units; and

(7) Importation of non-native species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the listed species and the primary constituent elements of their habitats.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species concerned.

Economic Impacts

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic impact of the designation, in accordance with the recent decision in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001). The draft analysis was made available for review on August 16, 2002 (67 FR 46626). We accepted comments on the draft analysis until the comment period closed on August 30, 2002, and again from November 15, 2002 to November 25, 2002 (67 FR 69176).

We have not excluded or modified critical habitat units from the proposed rule based on economic impacts. Our draft economic analysis evaluated the potential future section 7 effects, including indirect effects, associated with designating critical habitat for 32 species (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis*) on Lanai. However, given the difficulty of determining precisely what section 7 impacts should be attributed alone to critical habitat, we have analyzed the total section 7 impacts as well.

The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) potential delays associated with reinitiating completed consultations after critical habitat is finalized; (4) uncertainty and public perceptions resulting in loss of land value from the designation of critical habitat; (5) potential effects on property values including potential indirect costs resulting from the loss of hunting opportunities and increased regulation related costs due to the interaction of State and local laws; and (6) potential offsetting benefits associated with critical habitat, including educational benefits. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency.

Following the close of the comment period on the draft economic analysis, a final addendum was completed that incorporated public comments on the draft analysis and made other changes in the draft, for example, to account for changes in unit boundaries due to the receipt of information during the comment period indicating that certain areas do not contain the necessary primary constituent elements or were not essential to the conservation of the species. Together, the draft analysis as modified by the addendum constitute our final economic analysis. The final economic analysis estimates that, over the next 10 years, the designation may result in potential economic effects ranging from approximately $450,000 to $530,000 in quantifiable costs, and concludes that economic impacts from the designation of critical habitat would not be significant. This is a reduction of approximately $1.7 million from the costs estimated in the draft economic analysis, and is due to the exclusion of proposed units Lanai A, Lanai C, and Lanai F from final designation and the significant reduction in size to proposed units Lanai B and Lanai G (designation of 6,181 ha (15,271 ac) versus the 7,853 ha (19,405 ac) proposed as critical habitat, a reduction of approximately 1,672 ha (4,134 ac)). As described in the analysis, direct costs result from conservation projects and secondary costs result from investigations of the implications of critical habitat designation. Indirect costs attributed to critical habitat that were considered major in the draft economic analysis are avoided by the modifications made to units based on new biological information (*i.e.*, excluding unit F and removing much of the land zoned as rural). The Addendum to the economic analysis states that the indirect cost of reduction in property values is not expected to occur, and ensuring that clear and correct information on the effects of a critical habitat designation is available to all potential buyers will further reduce the potential for such a scenario. A more detailed discussion of our economic analysis is contained in the draft economic analysis and the addendum. Both documents are included in our administrative record and are available for inspection at the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Other Impacts

As described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating

critical habitat. A proposed critical habitat unit, Lanai D, located on the central-eastern side of the island, was excluded from designation because we believed that doing so would further the goal of encouraging private landowners to undertake voluntary conservation activities, which will be necessary to achieve species recovery. The proposed 5,861 ha (14,482 ac) unit is on private lands owned by Castle and Cooke Resorts, LLC. Castle and Cooke Resorts, LLC—which owns 99 percent of the island—is currently undertaking voluntary conservation activities within and adjacent to this unit, and has recently entered into an agreement with the Service for future activities (MOA, 2002), as well.

The proposed unit Lanai D is occupied habitat for 17 species: *Abutilon eremitopetalum, Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyaneq grimesiana* ssp. *grimesiana, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Spermolepis hawaiiense, Tetramolopium remyi,* and *Viola lanaiensis.* It is unoccupied habitat for 11 species: *Adenophorus periens, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Diellia erecta, Diplazium molokaiensis, Hesperomannia arborescens, Isodendrion pyrifolium, Neraudia sericea, Solanum incompletum,* and *Vigna o-wahuensis.*

According to our published recovery plans, recovery of these species will require reproducing, self-sustaining populations located in a geographic array across the landscape, with population numbers and population locations of sufficient robustness to withstand periodic threats due to natural disaster or biological threats (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). The highest priority recovery tasks include active management such as plant propagation and reintroduction, fire control, alien species removal, and ungulate fencing. Failure to implement these active management measures, all of which require voluntary landowner support and participation, virtually assures the extinction of these species. Many of these types of conservation actions in this area of Lanai are carried out as part of the Lanai Forest and Watershed Partnership and by actions taken on the landowner's initiative in areas outside the watershed partnership area. These activities, which are described in more detail below, require substantial voluntary cooperation by Castle and Cooke Resorts, LLC.

The following analysis describes the likely conservation benefits of a critical habitat designation compared to the negative impacts of a critical habitat designation. The Service paid particular attention to the following issues: Whether critical habitat designation would confer regulatory conservation benefits on these species; whether the designation would educate members of the public such that conservation efforts would be enhanced; and whether a critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on this privately-owned island.

If excluding an area from a critical habitat designation will provide substantial conservation benefits, and at the same time including the area fails to confer a counter-balancing positive regulatory or educational benefit to the species, then the benefits of excluding the area from critical habitat outweigh the benefits of including it. The results of this type of evaluation will vary significantly depending on the landowners, geographic areas, and species involved.

(1) Benefits of Inclusion

Critical habitat in Lanai D was proposed for the following species: *Abutilon eremitopetalum, Adenophorus periens, Bonamia menziesii, Brighamia rockii, Centaurium sebàeoides, Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Diellia erecta, Diplazium molokaiensis, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Solanum incompletum, Spermolepis hawaiiense, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis.* The primary direct benefit of inclusion of the proposed unit Lanai D as final critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat.

Historically, we have conducted only seven informal consultations under section 7 on Lanai, and only one consultation involved any of the 28 species associated with proposed unit D. We do not expect further consultations in unit Lanai D for several reasons. Unit Lanai D is privately owned and does not contain any wetlands (the major reason for Federal permits). The landowner does not plan on applying for Federal funds (other than for habitat restoration) and does not foresee any reason to obtain federal permits that may create a federal nexus. Any funds received by the landowner for habitat restoration will require internal consultations, but will not likely adversely affect listed plant species or involve other Federal agencies. The majority of the land in proppsed unit Lanai D is zoned as Conservation [1] (71 percent). Any lands zoned as Agriculture [2] (27 percent) in this area are not currently used for agricultural purposes and are currently fallow. Likely future use by the landowner of this area is as watershed protection (MOA, 2002). As stated in the economic analysis, future development in this area is not expected over the long term. Past uses of this area include marginal agriculture (primarily grazing). For these specific reasons, we do not expect future consultations in proposed unit Lanai D.

Although we believe the likelihood of a consultation is small, in the unlikely event that the landowner began using Federal funds or permits for projects, consultation requirements under section 7 of the Act would be triggered as a result of the funding or permitting processes administered by the Federal agency involved. The benefit of critical habitat designation would ensure that any actions funded by or permits given by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where species are not currently present; in contrast, Federal project areas with listed species present would still be covered under section 7. Given the overall low likelihood of Federal

[1] Conservation-zoned land is designated to conserve, protect and preserve the State's important natural resources through appropriate management in order to promote the long-term sustainability of these natural resources, and to promote public health, safety and welfare. Only limited development and commercial activity are allowed in the Conservation District.

[2] Agricultural-zoned land is a catch-all category that includes all lands not otherwise categorized, regardless of the agricultural quality of the land. Crops, livestock, and grazing are permitted in the zone, as are accessory structures and farmhouses. Although land in this zoning is not meant to be urbanized, it is, in practice, sometimes used for large-lot subdivisions. Listed species are found in some parts of this zoning, particularly in gulches, on hillsides, and on some of the land that is used for low-intensity grazing. In many cases, the fact that the land is Agricultural District indirectly protects listed species by limiting urban sprawl.

projects being proposed in the area of proposed unit D, the Service believes there is low potential for negative impacts to unoccupied habitat as a consequence of Federal activities, and thus a low regulatory benefit of a critical habitat designation in this area. We believe there is a low likelihood of negative impacts because of reasons stated above (*i.e.*, land use and zoning, land use history).

Another reason that the benefits of including Lanai D in the critical habitat designation is small is that, even if the area is not included in the designation, the conservation agreement (MOA, 2002) will provide conservation benefits to the target species. The management actions as outlined will remove threats (*e.g.* axis deer, mouflon sheep, rats, invasive nonnative plants) from the Lanaihale and East Lanai Regions, engage in fire control measures, engage in nursery propagation of native flora (including the target species) and planting of such flora. These actions will significantly improve the habitat for all currently occurring species (*Abutilon eremitopetalum, Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Spermolepis hawaiiense, Tetramolopium remyi*, and *Viola lanaiensis*) and will provide suitable habitat for reintroduction of extirpated species (*Adenophorus periens, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Diellia erecta, Diplazium molokaiensis, Hesperomannia arborescens, Isodendrion pyrifolium, Neraudia sericea, Solanum incompletum*, and *Vigna o-wahuensis*).

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. This outcome would be important for these 28 species. Any information about the species and their habitats that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable. However, only one landowner would be affected directly by including Lanai D in the designation, and that landowner is already working with the Service to address the habitat needs of the species. Further, this area was included in the proposed designation, which itself has reached a wide audience, and has thus provided information to the broader public about the conservation value of the area. For these reasons, we would expect that including Lanai D in the designation would provide at most moderate educational benefits to the species.

To be inclusive, we have considered some of these unlikely assumptions in this benefits of inclusion section. The economic analysis also identifies indirect impacts to landowners and other affected parties, and some of these impacts could result in benefits to the species. For example, the critical habitat designation could encourage the State to take measures to manage the populations of feral ungulates by fencing off portions of the State hunting areas (Economic Analysis section 4.b.). Such measures could result in preserving significant populations of the plants within the enclosed areas, and further the recovery of the species. The economic analysis concluded, however, that this result would be unlikely, because closing off portions of the State hunting areas would be vigorously protested by hunters. The economic analysis also stated that there is a possibility, of undetermined likelihood, that private landowners could be required by courts to take specific management actions if failing to take the action is a "taking" of the species (Economic Analysis section 4.c.). Management actions could include such activities as control of feral ungulates, non-native plants, rodents, and invertebrate pests; fire management; maintenance of plant genetic material; propagation; or management of the habitat or the plant populations. Each of these actions would provide commensurate benefits to the species, and designation of a particular area as critical habitat could further define and expand the scope of the management actions and resulting benefits. Many of these actions will be species-specific and benefit species as well as the island's watershed. Also, these types of management actions would ensure these areas continue to provide habitat for the seven island endemics as well as for reintroduction of several species including *Solanum incompletum* and *Isodendrion pyrifolium* which are no longer found on the island. We believe, however, that many of these same benefits would result from the agreement the Service has recently entered into with the landowner (MOA, 2002). Finally, the Economic Analysis discusses the possibility that designation could make development more difficult and/or costly (Economic Analysis sections 4.d. and 4.f.). The State or Counties could require developers to prepare a State EIS instead of a less burdensome EA in order to obtain development approvals, and may ultimately require additional project modifications; in addition, landowners could perceive that development in rural and agricultural areas is limited. Preparation of an EIS would presumably result in decisionmaking that is more informed and that is better able to provide for the protection of the species. Similarly, to the extent that designation of critical habitat would result in additional or more finely tuned project modifications, it would further the conservation of the species. The final designation together with the excluded Unit D contain less than 6 ha (15 ac) of land designated as Rural lands. Of these, over half 3.4 ha (8.3 ac) are mountainous and the rest are coastal 2.4 ha (6 ac). In the unlikely event that land values are decreased or economic activities are slowed, these plant species would benefit from the resulting decreased level of invasive activities. For example, the Rural lands in Unit D provide habitat for two multi-island species, *Centaurium sebaeoides* and *Brighamia rockii*. For both species, the Lanai populations are the only non-coastal populations of the species that are known to exist. This makes protecting the Lanai populations and their habitat from harmful activities particularly important. The only anticipated development project identified in the Economic Analysis is the planned construction of a new quarry, and this does not fall within Unit D and has been dropped from the analysis.

In sum, the Service believes that a critical habitat designation for listed plants on Lanai would provide a relatively low level of additional regulatory conservation benefits to each of the plant species. Any regulatory conservation benefits would accrue through the benefit associated with section 7 consultation. Based on a review of past consultations and consideration of the likely future activities in the area, there is little Federal activity expected to occur on this privately-owned island that would trigger section 7 consultation. The Service believes that critical habitat proposal and final designation provides some conservation benefits by educating the public on the site-specific areas on Lanai essential to the recovery of the extant and extirpated species.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of these species on Lanai and other Hawaiian islands (Shogren *et al.* 1999, Wilcove and Chen 1998, Wilcove *et al.* 1998). Consideration of this concern is especially important in areas where species have been extirpated and their recovery requires access and permission for reintroduction efforts. For example, eleven of the 28 species associated with proposed unit D are extirpated from Lanai, and natural repopulation is likely not possible without human assistance and landowner cooperation.

Castle and Cooke Resorts, LLC, is involved in several important voluntary conservation agreements and is currently carrying out some of these activities for conservation and watershed protection purposes. For example, the Partners for Fish and Wildlife Awehi Gulch agreement was entered into in fiscal year 1998 with the stated purpose of restoring and protecting a mesic to dry forest community including a population of the endangered *Gardenia brighamii*. The strategy to be employed for this project was to construct a three-acre deer-proof fenced exclosure, ensure that all deer were removed from the fenced area, plant and water *G. brighamii* within the fenced area, and control invasive alien plants in areas around the out-planted individuals. The agreement is between Castle and Cooke Resorts, LLC, the State Division of Forestry and Wildlife (DOFAW), and the USFWS. The USFWS provided funding for fence materials ($24,000), DOFAW provided the labor to construct the fence, and Castle and Cooke provided the labor and materials needed to plant, water, and weed the area. The fence was completed and no deer were left within the exclosure. Shortly thereafter, Castle and Cooke planted 150 *G. brighamii*, planted other native species (50 individuals) appropriate to the area within the Awehi exclosure, conduced alien plant removal above the level agreed upon, and set up a watering system (tank and delivery lines) that will be used for establishing more that just the original gardenia plants in the exclosure.

Another important voluntary project undertaken in partnership with the landowner is the Lanaihale Summit Forest Restoration Project. This is a very large and ambitious project (approximately 5,800 acres) within the area of proposed unit D, for which the USFWS has obligated a total of $177,500 to date. The landowner is matching that amount with at least $143,266 of in-kind cost-share in the form of fence-line clearing and native-plant restoration (growing, planting, and weed control). It is understood that these amounts will not be sufficient to complete the summit fence but will allow the project to get started with the assumption that the partnership will be able to secure additional funding from various sources to help complete the project. Castle and Cooke has entered into other agreements with agencies besides the Service, such as the Hawaii Division of Forestry and Wildlife and Hawaii Department of Health for additional funds to assist with completion of this project. The agreement documenting this project lists 10 of the proposed critical habitat plant species (among others) that will benefit from its completion. The project is currently ongoing. Castle and Cooke's Conservation Department has almost completed clearing the fence line for the first (Unit 1) of three exclosure units that will make up the summit fence project. They have also obtained bids from private contractors for construction of this first phase of fencing.

A third voluntary partnership project undertaken in cooperation with this landowner is the Lanai Cloud Forest Exclosure project. For this much smaller exclosure project, the Service provided $27,500 to be matched by in-kind services valued at $9,213 to be provided by the company. The purpose of this project is to provide an area protected by a fence that excluded not only deer and sheep, but predators (rats and feral cats) as well. The exact size and location for this project have not yet been finalized, but will be selected to provide the greatest protection and restoration potential for listed plants and two species of imperilled tree snails. This project is yet to get underway due to the higher priority of the summit fence. The Service and the landowner are planning to complete this project by the end of fiscal year 2003.

Another noteworthy voluntary agreement is the Lanai Forest and Watershed Partnership. While this multi-party agreement does not commit the company (or any party) to complete any conservation actions, it does demonstrate the willingness of the company to work cooperatively with all involved parties toward landscape-scale conservation efforts.

In addition to the projects described above, to address the conservation needs of all of the listed species associated with proposed unit D and to cover a larger landscape area, Castle and Cooke Resorts, LLC, has recently entered into an agreement with the Service to voluntarily manage proposed unit D and some adjacent lands for the conservation benefit of all of the listed species from Lanai. This agreement includes the following important voluntary commitments by Castle and Cooke Resorts, LLC:

1. Construction of exclosure fencing around large portions of Lanaihale and East Lanai (proposed unit D and adjacent lands); this fencing would expand upon the Lanaihale summit fence described above and protect a much larger area.
2. Active management of feral ungulates that are negatively affecting listed plants within the fenced areas; through a combination of public hunting and staff hunting, feral ungulates will be eliminated or controlled to allow for the restoration of listed plant species within fenced areas.
3. Active management of nonnative grasses and other fire hazards, and development of fire control measures;
4. Nursery propagation and planting of native flora, including these listed species, within the fenced areas;
5. In the unlikely event that future Federal projects occur on Lanai in the most important portions of proposed unit D (*e.g.*, Lanaihale and some adjacent areas), the landowner has agreed to have these projects reviewed by the Service to a standard similar to that required by section 7 consultation for designated critical habitat. These areas were identified by the company's contract botanist as having the highest conservation value for these listed species. They include the Lanaihale area (2,339 ha (5,781 ac)), an adjacent area to the north (702 ha (1,734 ac)), and an area east of the Lanaihale area (1,082 ha (2,674 ac)).

The Service believes that each of the listed species originally included within proposed unit D will benefit substantially from this agreement due to a reduction in ungulate browsing and habitat conversion, a reduction in competition with nonnative weeds, a reduction in risk of fire, and the reintroduction of species currently extirpated from various areas and for which the technical ability to propagate these species currently exists or will be developed in the near future.

On Lanai, simply preventing "harmful activities" will not slow the extinction of listed plant species. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. While the impact of providing these incentives may be modest in economic terms, they can be significant in terms

of conservation benefits that can stem from the cooperation of the landowner. The continued participation of Castle and Cooke Resorts, LLC, in the existing Lanai Forest and Watershed Partnership and other voluntary conservation agreements will greatly enhance the Service's ability to further the recovery of these endangered plants. Approximately 27 percent of the proposed critical habitat on Lanai, including portions of proposed unit D, are zoned Agriculture. Although the Service's economic analysis did not find it likely, the landowner and other commenters nevertheless believe that there is a risk that the critical habitat designation will result in the rezoning of lands, that State and county permits will contain additional requirements and expense for protection of lands designated as critical habitat, and that there is an increased risk of third-party litigation. We believe that the landowner's concerns over these potential negative impacts would affect its voluntary conservation efforts, which we believe are necessary to conserve these species.

As described earlier, Castle and Cooke Resorts, LLC, has a history of entering into conservation agreements with various Federal and State agencies and nongovernmental organizations on important portions of their lands. These arrangements have taken a variety of forms. They include partnership commitments such as the Awehi Gulch Partners for Fish and Wildlife project, Puhielelu Exclosure (funded through section 6 of the Act), Lanai Summit Fence project in concert with NRCS and the Service, Lanai Snail Fence, Lanai Forest Stewardship Project, Lanai Forest and Watershed Partnership, and the Kanepuu Preserve (perpetual easement to TNCH).

Thus, we believe it is essential for the recovery of these 28 species to build on the previous voluntary conservation efforts. Because the Federal government owns no land on Lanai, and because large tracts of land suitable for conservation of threatened and endangered species are owned by one private landowner, successful recovery of listed species on Lanai is especially dependent upon working partnerships and the voluntary cooperation of this landowner. Without additional voluntary conservation efforts for these 28 species, recovery will not occur.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding proposed unit Lanai D as critical habitat outweigh the benefits of including it as critical habitat for *Abutilon eremitopetalum, Adenophorus periens, Bonamia menziesii, Brighamia rockii, Centaurium sebaeoides, Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Diellia erecta, Diplazium molokaiensis, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Solanum incompletum, Spermolepis hawaiiense, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis.*

This conclusion is based on the following factors:

1. Large portions of proposed unit D (Lanaihale area) are currently being managed under the Lanai Forest and Watershed Partnership by the landowner on a voluntary basis in cooperation with us and the State of Hawaii to achieve important conservation goals. Building on this partnership approach, Castle and Cooke Resorts, LLC, has entered into a long-term agreement with the Service to manage the area within proposed unit D and adjacent areas for conservation. In the past, Castle and Cooke Resorts, LLC, has cooperated with us, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

2. Simple regulation of "harmful activities" is not sufficient to conserve these species. Landowner cooperation and support will be required to prevent the extinction and promote the recovery of all of the listed species on this island due to the need to implement proactive conservation actions such as ungulate management, weed control, fire suppression, and plant propagation. This need for landowner cooperation is especially acute because the proposed unit Lanai D is unoccupied by eleven of the 28 species. Future conservation efforts, such as translocation of these eleven plant species back into unoccupied habitat on the island, will require the cooperation of Castle and Cooke Resorts, LLC.

3. Excluding proposed unit Lanai D will foster participation in ongoing and future voluntary conservation efforts on the island. We believe the memorandum of agreement with Castle and Cooke Resorts, LLC, documents this commitment to voluntary conservation efforts on their lands on Lanai. This cooperation is essential to the conservation of the species.

4. Given the current watershed partnership and recent conservation agreements between the Service and the landowner, the Service believes the overall regulatory and educational benefits of including this unit as critical habitat are relatively small in comparison. The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal will be effectively accomplished through the identification of this area in the management agreements described above. Likewise, there will be little Federal regulatory benefit to the species because, as described in the economic analysis and in this rule, there is a low likelihood that this proposed critical habitat unit will be negatively affected to any significant degree by Federal activities requiring section 7 consultation. The Service is unable to identify any other potential benefits associated with critical habitat for this proposed unit.

In conclusion, we find that the net benefits of excluding proposed unit Lanai D from critical habitat for these species outweigh the benefits of including it. As described above, the overall benefits to these species of a critical habitat designation for this unit are relatively small. We conclude there is a higher likelihood of beneficial conservation activities occurring on this portion of Lanai without designated critical habitat than there would be with designated critical habitat in this location. We reached this conclusion because active management is integral to the recovery of these species, which are found almost entirely on private land. The landowner is more likely to continue and increase their ongoing voluntary conservation efforts on the island if this area is not designated as critical habitat.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

In considering whether or not exclusion of proposed unit D might result in the extinction of any of these 28 species, the Service first considered the impacts to the seven species endemic to Lanai (Abutilon eremitopetalum, Cyanea macrostegia ssp. gibsonii, Gahnia lanaiensis, Hedyotis schlechtendahliana var. remyi, Labordia tinifolia var. lanaiensis, Phyllostegia glabra var. lanaiensis, and Viola lanaiensis), and second to the 21

species known from Lanai and one or more other Hawaiian islands.

For both the seven endemic and the 21 "multi-island" species, it is the Service's conclusion that the conservation agreement developed by Castle and Cooke Resorts, LLC, and agreed to by the Service will provide more net conservation benefits than would be provided by designating proposed unit D as critical habitat. This agreement, which is described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for all Lanai's listed plants and increase their likelihood of recovery. We believe that extinction of any these species as a consequence of this exclusion is unlikely because there are no known threats in proposed unit D due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Implementation of the conservation agreement between the landowner and the Service, and the exclusion of proposed unit D, has the highest likelihood of preventing extinction of these species, especially the species endemic to the island of Lanai.

In addition, critical habitat is being designated on another area of Lanai for one species (Unit 1—*Tetramolopium remyi*), and critical habitat has been proposed and is likely to be designated on other islands for the remaining 20 multi-island species consistent with the guidance in recovery plans. These other designations identify conservation areas for the maintenance and expansion of the existing populations.

In sum, the above analysis indicates there is a much greater likelihood of the landowner undertaking conservation actions on Lanai to prevent extinction without the proposed unit Lanai D being designated as critical habitat. Therefore, the exclusion of the proposed unit Lanai D will not cause extinction and should in fact improve the chances of recovery for *Abutilon eremitopetalum, Adenophorus periens, Bonamia menziesii, Brighamia rockii, Centaurium sebaeoides, Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Diellia erecta, Diplazium molokaiensis, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Solanum incompletum, Spermolepis hawaiiense, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis.*

Taxonomic Changes

At the time we listed *Cyanea grimesiana* ssp. *grimesiana* and *Cyanea lobata,* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii.* Subsequent to the final listing, we became aware of new taxonomic treatments of these species. Also, the soon-to-be-published book *Hawaii's Ferns and Fern Allies* (Palmer, in press) has changed the family name for *Ctenitis squamigera* from Aspleniaceae to Dryopteridaceae. Due to the court-ordered deadlines, we are required to publish this final rule to designate critical habitat on Lanai before we can prepare and publish a notice of taxonomic changes for these three species. We plan to publish a taxonomic change notice for these three species after we have published the final critical habitat designations on Lanai.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this is a significant regulatory action because it may raise novel legal or policy issues. As required by the executive order, we have provided a copy of the rule, which describes the need, for this action and how designation meets that need and the economic analysis, which assesses the costs and benefits of this critical habitat designation, to OMB for review. OMB did not recommend or make any changes in this regulatory action.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the RFA to require Federal agencies to provide a certification statement with the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities.

As discussed in our Draft Economic Analysis, we are certifying that the critical habitat designation for the three Lanai species will not have a significant effect on a substantial number of small entities because the lands designated as critical habitat are owned solely by one landowner, Castle and Cooke Resorts, LCC, which is not a small entity as defined by RFA, as amended by the SBREFA. The following discussion explains our rationale.

The regulatory flexibility analysis determines whether this critical habitat designation potentially affects a "substantial number" of small entities in counties supporting critical habitat areas. It also quantifies the probable number of small businesses likely to experience a "significant effect." While SBREFA does not explicitly define either "substantial number" or "significant effect," the Environmental Protection Agency and other Federal agencies have interpreted these terms to represent an impact on 20 percent or more of the small entities in any industry and an effect equal or greater than three percent or more of a business' annual revenues. In both tests, this analysis conservatively examines the total estimated section 7 costs calculated in the Draft Economic Analysis, including those impacts that may be "attributable co-extensively" with the listing of the species.

The RFA/SBREFA defines "small governmental jurisdiction" as the government of a city, county, town, school district, or special district with a population of less than 50,000. By this definition, Maui County is not a small governmental jurisdiction because its population was 128,100 in 2000. Although certain State agencies, such as DLNR, may be affected by the proposed critical habitat designation, State governments are considered independent sovereigns, not small governments, for the purposes of the RFA.

No primary projects or activities that might be affected by the proposed critical habitat are expected to affect small businesses. Castle and Cooke Resorts, LLC, the sole owner of the lands on which critical habitat is designated, may be adversely affected by a decrease in property values. However, this is a company that received over $13.5 million in net income in 1999 (Lynch. February 7, 2000). It is therefore not considered to be a small business. Thus, the proposed critical habitat designation is not likely to affect small businesses on Lanai.

Our Draft Economic Analysis does mention that some small businesses may be adversely affected if, in the unlikely event that the Department of Land and Natural Resources builds fences around the critical habitat, some businesses that cater to the hunting community may be adversely affected. However, courts have indicated that an RFA/SBREFA analysis is properly limited to the impacts on entities directly regulated by the regulation. *American Trucking Ass'ns* v. *U.S. Envtl. Protection Agency*, 178 F.3d 1027, 1045 (D.C. Cir. 1999); *Mid-Tex Elec. Corp.* v. *Federal Energy Regulatory Comm'n*, 88 F.3d 1105,1170 (D.C. Cir. 1996). In this instance, that would mean that the RFA/SBREFA analysis should consider impacts on entities subject to section 7 consultation requirements, not entities regulated indirectly because of affiliation or relationship to a directly regulated entity. Thus entities that are not directly regulated by the critical habitat designation, such as businesses that supply hunters on Lanai, are not considered in this analysis.

Since these three plant species were listed (between 1991 and 1994), there have been no formal section 7 consultations and only seven informal section 7 consultations on Lanai, in addition to consultations on Federal grants to State wildlife programs. None of these consultations affected small entities. Two informal consultations were conducted on behalf of a private consulting firm, representing Maui Electric Company, who requested species lists for a proposed generating station at Miki Basin. None of the three species were reported from this area. Two informal consultations were conducted on behalf of the FAA for airport navigational or improvement projects. None of the three species were reported from the project areas. One informal consultation was conducted on behalf of the U.S. Department of the Navy regarding nighttime, low-altitude terrain flights and confined area landings over and on limited areas of northwestern Lanai by the Marine Corps. None of the three species were reported from the project area. One informal consultation was conducted on behalf of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) for the construction of a wildlife exclusion fence and removal of nonnative ungulates from the enclosure, control of invasive nonnative plants within the enclosure, and outplanting of native plants in the Lanaihale watershed area. Two species, *Bidens micrantha* ssp. *kalealaha* and *Tetramolopium remyi*, were reported from the project area. Funding for the project will be provided by NRCS, through their Wildlife Habitat Incentive Program, to Castle and Cooke Resorts, LLC. One informal consultation was conducted on behalf of the Service, for the effects of fencing and replanting of listed and endangered species within Awehi Gulch. None of the three species were reported from the Awehi Gulch project area. In addition, we are in the process of determining a project area in the Lanaihale watershed for fencing and restoration of native vegetation. Funding for the project will be provided by the Service to Castle and Cooke Resorts, LLC, in partnership with the State DLNR. Only one of the three species (*Tetramolopium remyi*) is reported from the project area.

We have determined that Maui Electric Company is not a small entity because it is not an independent non-profit organization, small governmental jurisdiction, or a small business. The FAA, U.S. Department of the Navy, and NRCS are not small entities. The informal consultations on the Lanaihale watershed area project and the Awehi Gulch project indirectly affected or concerned the major landowner on Lanai, Castle and Cooke Resorts, LLC. As stated above, we have determined that Castle and Cooke Resorts, LLC, is not a small entity because it is not a small retail and service business with less than $5 million in annual sales nor is it a small agricultural business with annual sales less than $750,000. We concurred with the NRCS's determination that the Lanaihale watershed area project, as proposed, was not likely to adversely affect listed species. At this time, the Lanaihale watershed area projects are ongoing. Therefore, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Lanai.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7, that would otherwise not be required. However, there will be little additional impact on State and local governments and their activities because two of the proposed critical habitat areas are occupied by at least one species. Other than the federally funded habitat restoration projects in the Lanaihale watershed area, we are aware of relatively few activities in the designated critical habitat areas for these three plants that have Federal involvement and thus would require consultation for ongoing projects. As mentioned above, we have conducted only seven informal consultations under section 7 on Lanai to date, and only one consultation involved any of the three species. As a result, we cannot easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

On Lanai, all of the designations are on private land under one landowner. Nearly all of the land within the critical habitat units is unsuitable for development, land uses, and activities. This is due to the units remote locations, lack of access, and rugged terrain. The majority of this land is within the State Conservation District, where State land-use controls severely limit development and most activities. Approximately 46 percent of this land is within the State Agricultural District, and less than one percent is within the State Rural District. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. However, activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these designations consist of improvements in communications and tracking facilities; ranching; road improvements; recreational use, such as hiking, camping, picnicking, game hunting, and fishing; botanical gardens; and crop farming. With the exception of communications and tracking facilities improvements by the FAA or the Federal Communications Commission, these activities are unlikely to have Federal involvement. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps and watershed management and restoration projects sponsored by NRCS. However the NRCS restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are rare, and would likely affect only the major landowner on the island (who is not a small entity), within these critical habitat designations.

Lands that are within the State Rural District are primarily located within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations

from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, small farms that may receive funding or require authorizations from the Department of Agriculture, watershed management and restoration projects sponsored by NRCS, and activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would require Federal funds, permits, or authorizations in these coastal areas.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for these three species from Lanai, we can describe only the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of these species and the threats they face, especially as described in the final listing rules and in this critical habitat designation, as well as our experience with similar listed plants in Hawaii. In addition, all of these species are protected under the State of Hawaii's Endangered Species Act (Hawaii Revised Statutes, Chap. 195D–4). Therefore, we have also considered the kinds of actions required under the State licensing process for these species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides; management of competing non-native species; restoration of degraded habitat; propagation; outplanting and augmentation of existing populations; construction of protective fencing; and periodic monitoring. These measures are not likely to result in a significant economic impact to a substantial number of small entities because any measure included as a reasonable and prudent alternative would have to be economically feasible to the individual landowner and because, as discussed above, we do not believe there will be a substantial number of small entities affected by the Act's consultation requirements.

In summary, we have determined that, because all of the critical habitat designations are on lands under one landownership and because that landowner is not a small entity, this rule would not affect a substantial number of small entities and would not result in a significant economic effect on a substantial number of small entities. Most of this private land within the areas being designated as critical habitat is currently being used for recreational or conservation purposes, and therefore is not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area being designated. The most likely future section 7 consultations resulting from this rule would be for informal consultations on federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by NRCS and the Service. These consultations would likely occur on only a subset of the total number of parcels, all under one ownership, and, therefore, would not affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect the single landowner. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the designation of critical habitat for *Bidens micrantha* ssp. *kalealaha, Portulaca sclerocarpa,* and *Tetramolopium remyi* will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined whether designation of critical habitat would cause: (a) Any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final addendum to the economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy production supply and distribution facilities. No energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe the designation of critical habitat for *Bidens micrantha* ssp. *kalealaha, Portulaca sclerocarpa,* and *Tetramolopium remyi* on Lanai will affect future energy production. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the three species from Lanai in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in the two areas currently occupied by one or more of the three plant species imposes no additional restrictions beyond those currently in place; and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in the remaining four unoccupied areas may require section 7 consultation on non-Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. In these cases, the most likely scenario would be section 7 consultation on Federal funding for State game management programs. However, of the four unoccupied areas, only the Lanai 1—*Tetramolopium remyi* unit falls within a State Game Management Area (GMA), and the area in which the recently extirpated *Tetramolopium remyi* population occurred within the unit has already been fenced by the State for protection against damage by ungulates. Therefore, there will be little additional impact on State and local governments and their activities as a result of the designation of critical habitat in currently unoccupied areas on Lanai.

The designations may have some benefit to these governments, in that the areas essential to the conservation of these species are more clearly defined and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the three plant species from Lanai.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these three plant species. Therefore, designation of critical habitat for these three species does not involve any Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this final rule are the staff of the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by revising the entries for *Bidens micrantha* ssp. *kalealaha, Portulaca sclerocarpa*; and *Tetramolopium remyi* under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Bidens micrantha ssp. *kalealaha.*	Kookoolau	U.S.A. (HI)	Asteraceae	E	467	17.96(b)	NA
*	*	*	*	*	*	*	
Portulaca sclerocarpa.	Poe	U.S.A. (HI)	Portulacaceae	E	532	17.96(b)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	*
Tetramolopium remyi	None	U.S.A. (HI)	Asteraceae	E	435	17.96(b)	NA
*	*	*	*	*	*	*	*

3. Amend § 17.96 by adding a new paragraph (b) to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(b) Critical habitat; plants on the island of Lanai, Hawaii.

(1) *Maps and critical habitat unit descriptions.* The following paragraphs contain the legal descriptions of the critical habitat units designated for the island of Lanai, Hawaii. Existing manmade features and structures within proposed areas, such as buildings, roads, aqueducts, reservoirs, diversions, flumes, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, lawns, other rural residential landscaped areas, electrical transmission and distribution, and communication facilities and regularly maintained associated rights-of way and access ways do not contain one or more of the primary constituent elements described for each species in paragraph (b)(2) of this section and therefore, are not included in the critical habitat designations. Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the six critical habitat units designated on the island of Lanai.

(i) **Note:** Map 1—Index map follows:

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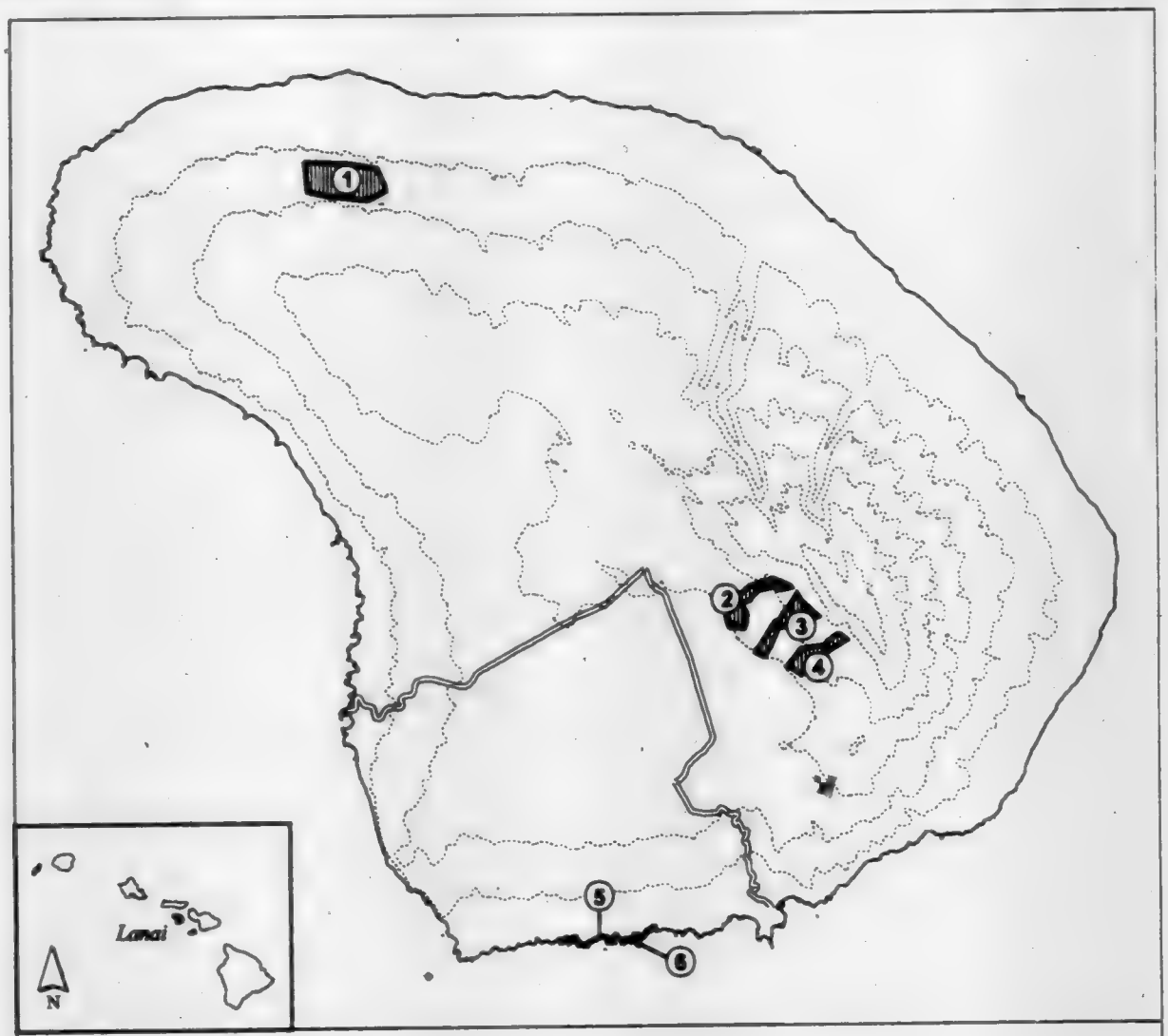

Map 1
Lanai Final Critical Habitat - Island Index Map

Final Lanai Critical Habitat Unit

Major Roads
Coastline
Elevation (500-ft. contours)

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(ii) Lanai 1—*Tetramolopium remyi* (151 ha; 373 ac).

(A) Unit consists of the following nine boundary points: 708156, 2313405; 709229, 2313365; 709970, 2313244; 710178, 2312821; 710182, 2312686; 709754, 2312448; 708741, 2312566; 708241, 2312691; 708156, 2313405.

(B) **Note:** Map 2 follows:

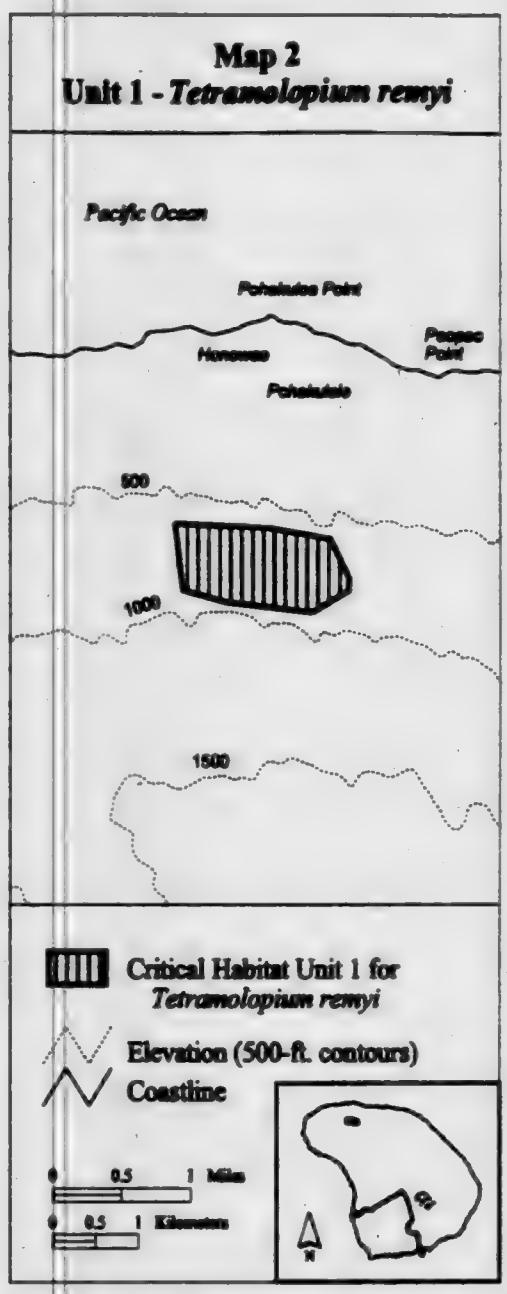

(iii) Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North (53 ha; 131 ac)

(A) Unit consists of the following 20 boundary points: 718727, 2301883; 718642, 2302092; 718720, 2302377; 718928, 2302637; 719228, 2302896; 719550, 2302974; 719799, 2303078; 720193, 2302917; 720260, 2302858; 719948, 2302788; 719846, 2302865; 719474, 2302802; 719277, 2302635; 719253, 2302561; 719078, 2302494; 719042, 2302419; 719144, 2302231; 719136, 2302009; 719078, 2301859; 718727, 2301883.

(B) **Note:** Map 3 follows:

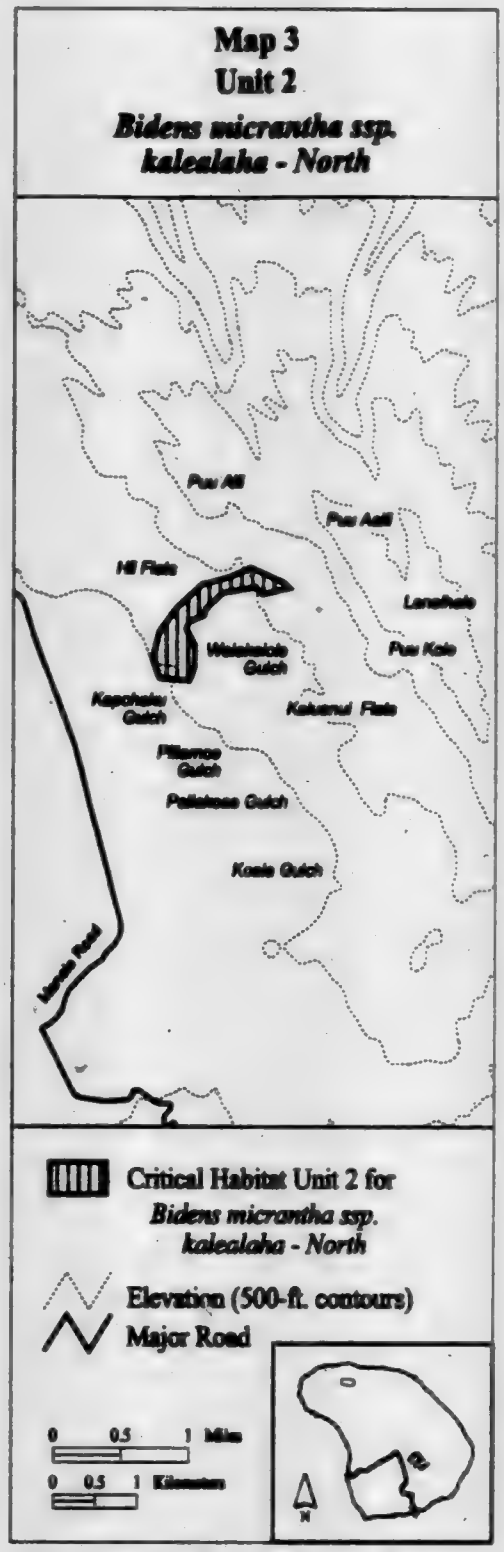

(iv) Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle (60 ha; 148 ac)

(A) Unit consists of the following 19 boundary points: 719582, 2301162; 719361, 2301274; 719868, 2302031; 719968, 2302070; 720134, 2302344; 720198, 2302369; 720411, 2302710; 720524, 2302530; 720931, 2302147; 720741, 2302073; 720699, 2302012; 720600, 2302026; 720464, 2301954; 720259, 2301901; 720187, 2301857; 720106, 2301890; 719937, 2301876; 719749, 2301413; 719582, 2301162.

(B) **Note:** Map 4 follows:

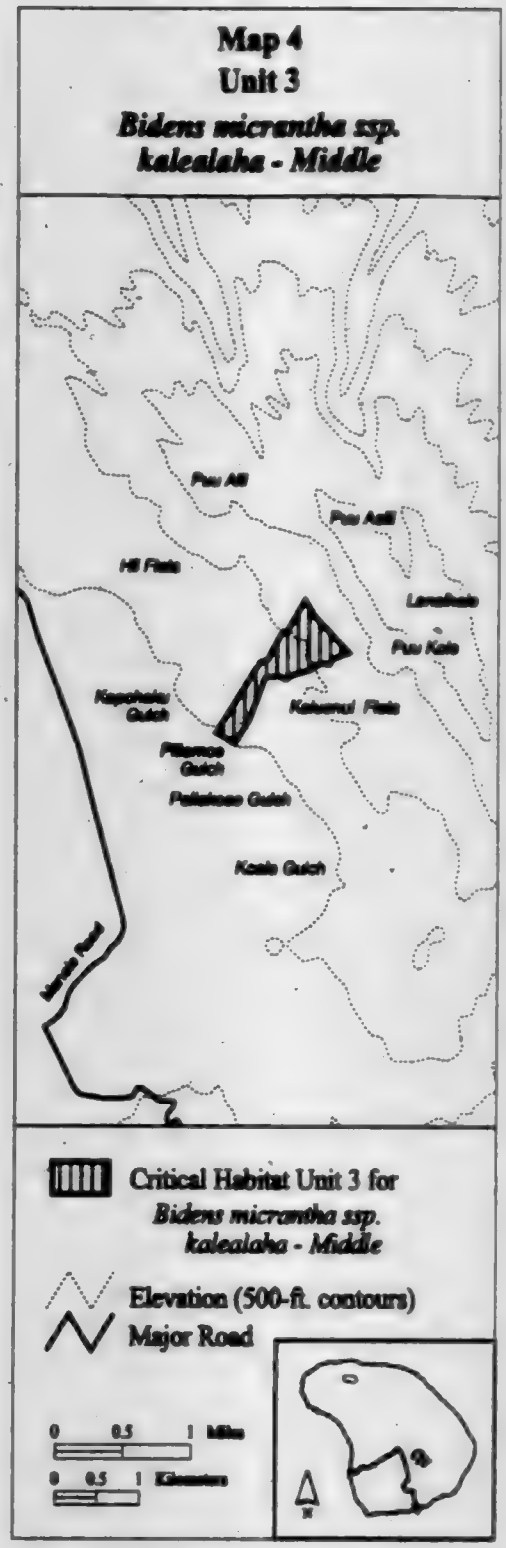

(v) Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South (48 ha; 118 ac)

(A) Unit consists of the following 11 boundary points: 721438, 2301740; 721647, 2301574; 720952, 2301142; 720824, 2300969; 720507, 2300707; 720411, 2300796; 720164, 2300917; 720513, 2301353; 721094, 2301439; 721161, 2301532; 721438, 2301740.

(B) **Note:** Map 5 follows:

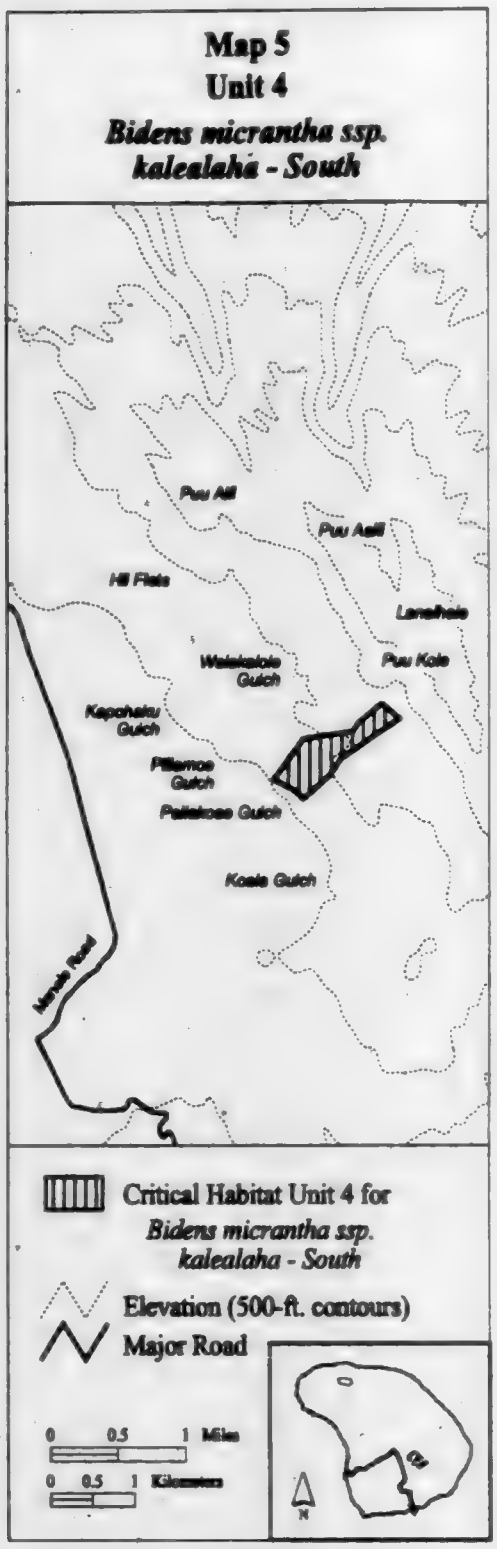

(vi) Lanai 5—*Portulaca sclerocarpa*—Coast (7 ha; 17 ac).

(A) Area consists of the following 109 boundary points and the intermediate coastline: 716811, 2294534; 714416, 2294262; 714411, 2294277; 714422, 2294291; 714456, 2294290; 714473, 2294280; 714478, 2294247; 714484, 2294226; 714558, 2294267; 714568, 2294317; 714590, 2294331; 714662, 2294292; 714689, 2294248; 714719, 2294280; 714735, 2294279; 714745, 2294295; 714745, 2294323; 714766, 2294357; 714795, 2294361; 714829, 2294349; 714833, 2294329; 714834, 2294305; 714838, 2294281; 714832, 2294257; 714855, 2294254; 714880, 2294241; 714901, 2294221; 714907, 2294204; 714937, 2294195; 714949, 2294166; 714960, 2294158; 714995, 2294154; 715038, 2294145; 715070, 2294126; 715089, 2294125; 715107, 2294172; 715130, 2294182; 715151, 2294225; 715167, 2294229; 715188, 2294229; 715221, 2294240; 715245, 2294248; 715267, 2294269; 715290, 2294289; 715314, 2294291; 715335, 2294295; 715357, 2294305; 715377, 2294327; 715415, 2294331; 715439, 2294357; 715477, 2294353; 715496, 2294344; 715533, 2294357; 715564, 2294356; 715580, 2294347; 715605, 2294340; 715615, 2294316; 715619, 2294292; 715644, 2294298; 715659, 2294286; 715669, 2294259; 715670, 2294239; 715660, 2294219; 715671, 2294213; 715692, 2294216; 715715, 2294212; 715735, 2294242; 715758, 2294268; 715763, 2294284; 715770, 2294312; 715799, 2294336; 715787, 2294371; 715800, 2294392; 715821, 2294402; 715849, 2294396; 715860, 2294364; 715893, 2294324; 715983, 2294259; 716003, 2294252; 716014, 2294216; 716064, 2294227; 716070, 2294286; 716106, 2294307; 716142, 2294307; 716174, 2294283; 716210, 2294248; 716239, 2294258; 716264, 2294284; 716262, 2294373; 716275, 2294406; 716412, 2294390; 716458, 2294326; 716484, 2294363; 716529, 2294395; 716585, 2294452; 716619, 2294499; 716658, 2294508; 716683, 2294499; 716719, 2294550; 716756, 2294581; 716802, 2294587; 716811, 2294534.

(B) **Note:** Map 6 follows:

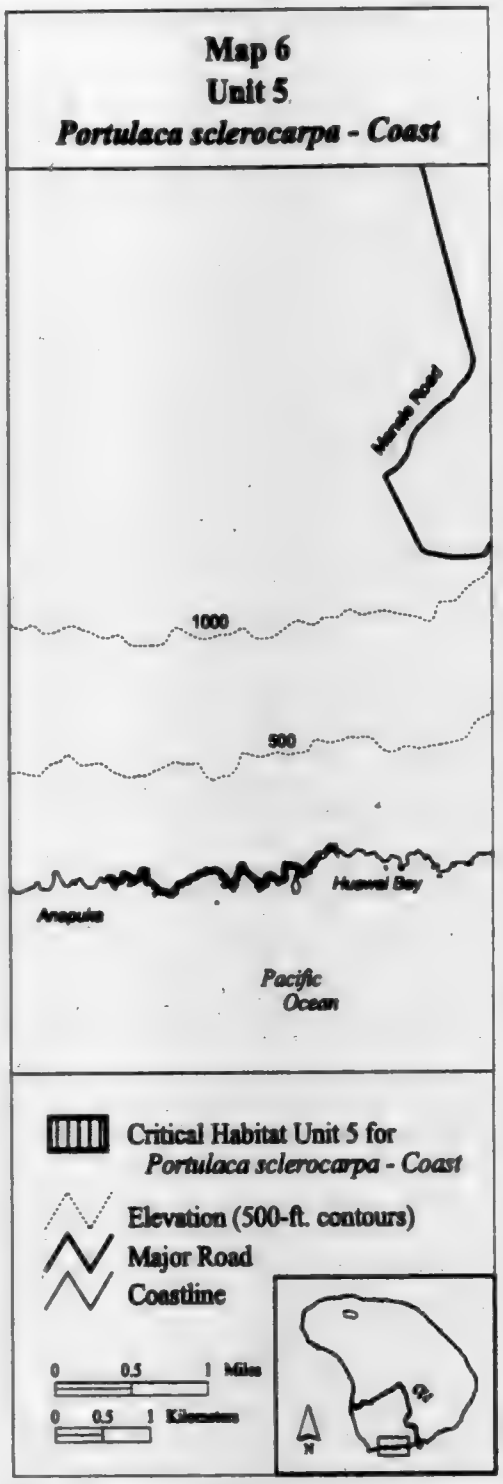

(vii) Lanai 6—*Portulaca sclerocarpa*—Isle (1 ha; 2 ac)

(A) Area consists of the entire offshore island located at approximately: 716391, 2294222.

(B) **Note:** Map 7 follows:

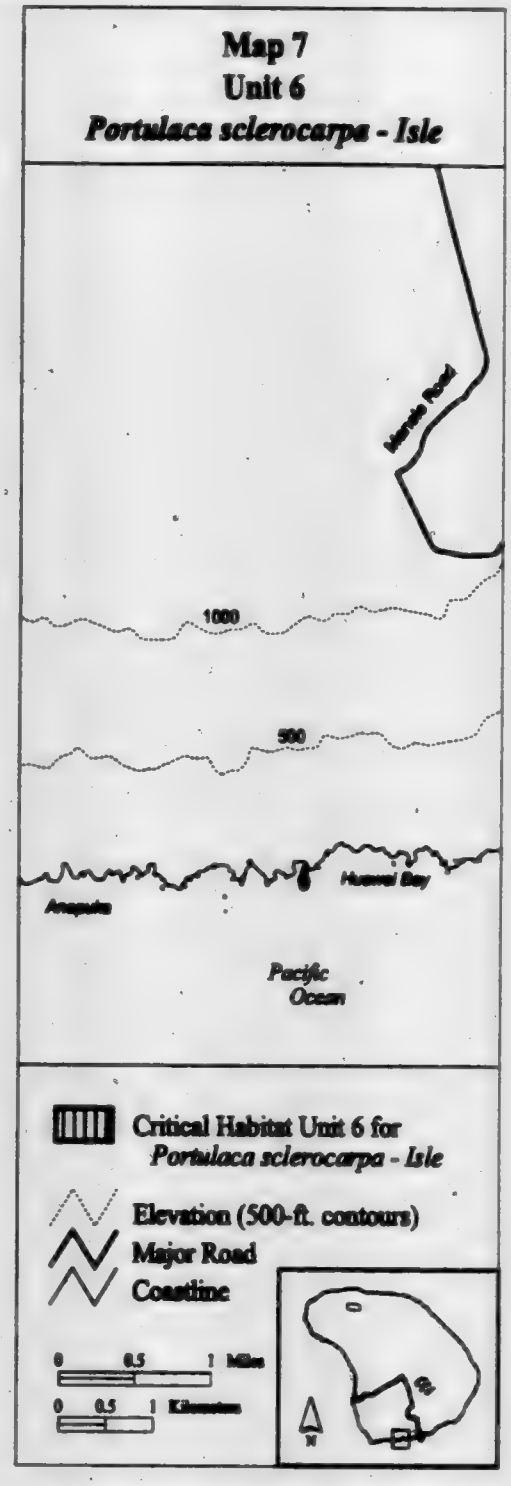

(VIII) PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR LANAI

Unit name	Species occupied	Species unoccupied
Lanai 1—*Tetramolopium remyi*		*Tetramolopium remyi.*
Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North		*Bidens micrantha* ssp. *kalealaha.*
Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle	*Bidens micrantha* ssp. *kalealaha.*	
Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South		*Bidens micrantha* ssp. *kalealaha.*
Lanai 5—*Portulaca sclerocarpa*—Coast		*Portulaca sclerocarpa.*
Lanai 6—*Portulaca sclerocarpa*—Isle	*Portulaca sclerocarpa.*	

(2) *Hawaiian plants—Constituent elements; Flowering plants.*

Family Asteraceae: *Bidens micrantha* ssp. *kalealaha* (kookoolau)

Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North, Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle, and Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South, identified in the legal descriptions in (b)(1)(iii), (b)(1)(iv), and (b)(1)(v) of this section, constitute critical habitat for *Bidens micrantha* ssp. *kalealaha* on Lanai. Within these units, the currently known primary

constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulch slopes in dry *Dodonaea viscosa* shrubland; and

(ii) Elevations between 409 and 691 m (1,342 and 2,267 ft).

Family Asteraceae: *Tetramolopium remyi* (NCN)

Lanai 1—*Tetramolopium remyi*, identified in the legal descriptions in (b)(1)(ii) of this section, constitutes critical habitat for *Tetramolopium remyi* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Red, sandy, loam soil in dry *Dodonaea viscosa-Heteropogon contortus* communities with one or more of the following associated native species: *Bidens mauiensis, Waltheria indica, Wikstroemia oahuensis,* or *Melanthera lavarum;* and

(ii) Elevations between 90 and 481 m (295 and 1,578 ft).

Family Portulacaceae: *Portulaca sclerocarpa* (poe)

Lanai 5—*Portulaca sclerocarpa*—Coast and Lanai 6—*Portulaca sclerocarpa*—Isle, identified in the legal descriptions in (b)(1)(vi) and (b)(1)(vii) of this section, constitute critical habitat for *Portulaca sclerocarpa* on Lanai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Exposed ledges in thin soil in coastal communities; and

(ii) Elevations between 0 and 30 m (0 and 98 ft).

Dated: December 27, 2002.

David P. Smith,

Acting Assistant Secretary of Fish and Wildlife and Parks.

[FR Doc. 03–130 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
January 9, 2003

Part III

Environmental Protection Agency

40 CFR 63

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7419–3]

RIN 2060–AG52

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for the plywood and composite wood products (PCWP) source category. The EPA has determined that the PCWP source category contains major sources of hazardous air pollutants (HAP), including acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. These HAP are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, damage to nasal membranes, reproductive disorders, and problems with pregnancies) and acute health disorders (*e.g.*, irritation of eyes, throat, and mucous membranes, dizziness, headache, and nausea). Three of the HAP have been classified as probable or possible human carcinogens. These proposed standards would implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources subject to the rule to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). Implementation of the proposed standards would reduce HAP emissions from the PCWP source category by approximately 9,700 megagrams per year (Mg/yr) (11,000 tons per year (tons/yr)). In addition, the proposed standards would reduce emissions of volatile organic compounds (VOC) by 25,000 Mg/yr (27,000 tons/yr). This action also proposes to add a method to the relevant General Provisions to measure methanol, formaldehyde, and phenol and a method to measure total HAP at PCWP facilities.

DATES: *Comments.* Submit comments on or before March 10, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by January 29, 2003, a public hearing will be held on February 10, 2003.

ADDRESSES: *Comments.* Written comments sent by U.S. mail should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket Number A–98–44, Room B108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. Written comments delivered in person or by courier (*e.g.*, FedEx, Airborne, and UPS) should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket Number A–98–44, Room B102, U.S. EPA, 1301 Consitution Avenue, NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina.

Docket. Docket No. A–98–44 contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460 in room B108, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

General and technical information. Mary Tom Kissell, Waste and Chemical Processes Group, Emissions Standards Division (C439–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–4516, electronic mail (e-mail) address *kissell.mary@epa.gov.*

Methods, sampling, and monitoring information. Gary McAlister, Source Measurement Analysis Group, Emission Monitoring and Analysis Division (D243–02), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1062, e-mail address *mcalister.gary@epa.gov.*

Economic impacts and benefit analysis. Larry Sorrels, Innovative Strategies and Economics Group, Air Quality Strategies and Standards Division (C339–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5041, e-mail address *sorrels.larry@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–98–44. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mary Tom Kissell, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park NC 27711. The EPA will disclose information identified as CBI only the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact JoLynn Collins, Waste and Chemical Processes Group, Emissions Standards Division (C439–03), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–5671 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call JoLynn Collins to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, with certain exceptions, will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 566–1742. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of regulated entities
Industry	2421	321999	Sawmills with lumber kilns.
	2435	321211	Hardwood plywood and veneer plants.
	2436	321212	Softwood plywood and veneer plants.
	2493	321219	Reconstituted wood products (Particleboard, medium density fiberboard, hardboard, fiberboard, and oriented strandboard plants).
	2439	321213	Structural Wood Members, Not Elsewhere Classified (Engineered wood products plants).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2231 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

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- A. What Is the Purpose of This Proposed Rule?
- B. What Is the Source of Authority for Development of NESHAP?
- C. What Criteria Are Used in the Development of NESHAP?
- D. How Was This Proposed Rule Developed?
- E. What are the Health effects of the Pollutants Emitted From the PCWP Industry?
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VI. Administrative Requirements
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- C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
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- F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 601 *et seq.*
- G. Paperwork Reduction Act
- H. National Technology Transfer and Advancement Act of 1995
- I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Introduction

A. What Is the Purpose of This Proposed Rule?

The purpose of the proposed rule is to protect the public health by reducing emissions of HAP from PCWP facilities.

B. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The PCWP source category was originally listed as the plywood and particleboard source category on July 16, 1992 (57 FR 31576). The name of the source category was changed to plywood and composite wood products on November 18, 1999 (64 FR 63025) to more accurately reflect the types of manufacturing facilities covered by the source category. Major sources of HAP are those that have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons per year of any combination of HAP.

Section 112(d) of the CAA directs us to adopt emission standards for categories and subcategories of HAP sources. In cases where emission standards are not feasible, section 112(h) of the CAA allows us to develop design, equipment, work practice and/or operational standards. The collection of compliance options, operating requirements, and work practice requirements in today's proposed rule make up the emission standards and

work practice standards for the PCWP NESHAP.

C. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we must also consider any control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

D. How Was This Proposed Rule Developed?

We used several resources to develop this proposed rule, including questionnaire responses from industry, emissions test data, site visits to PCWP facilities, telephone contacts, and operating permits. We consulted representatives of the PCWP industry, State and Federal representatives, and emission control device vendors in developing this proposed rule. Industry representatives provided emissions test data, arranged site visits, reviewed draft questionnaires, and identified issues and provided information to help resolve issues in the rulemaking process. State representatives provided emissions test data and copies of permits.

We identified the MACT floor level of control with information obtained from the questionnaire responses, emission test reports, site visits, telephone contacts, and operating permits.

E. What Are the Health Effects of the Pollutants Emitted From the PCWP Industry?

This proposed rule protects air quality and promotes the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. The HAP emitted by PCWP facilities include, but are not limited to, acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. Exposure to these compounds has been demonstrated to cause adverse health effects when present in concentrations higher than those typically found in ambient air.

We do not have the necessary data on each PCWP facility and the people living around each facility to determine the actual population exposures to the HAP emitted from these facilities and the potential health effects. Therefore, we do not know the extent to which the adverse health effects described in the following subsections occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, today's proposed rule would reduce emissions and subsequent exposures.

1. Acetaldehyde

Acetaldehyde is ubiquitous in the environment and may be formed in the body from the breakdown of ethanol (ethyl alcohol). Acute (short-term) exposure to acetaldehyde results in effects including irritation of the eyes, skin, and respiratory tract. In humans, symptoms of chronic (long-term) exposure to acetaldehyde resemble those of alcoholism. Long-term inhalation exposure studies in animals reported damage to the nasal epithelium and mucous membranes, growth retardation, and increased kidney weight. We have classified acetaldehyde as a probable human carcinogen (Group B2) based on animal studies that have shown nasal tumors in rats and laryngeal tumors in hamsters.

2. Acrolein

Acute (short-term) inhalation exposure to acrolein may result in upper respiratory tract irritation and congestion. The major effects from chronic (long-term) inhalation exposure to acrolein in humans consist of general respiratory congestion and eye, nose, and throat irritation. Acrolein is a strong dermal irritant, causing skin burns in humans. We consider acrolein a possible human carcinogen (Group C) based on limited animal cancer data suggesting an increased incidence of tumors in rats exposed to acrolein in the drinking water.

3. Formaldehyde

Both acute (short-term) and chronic (long-term) exposure to formaldehyde irritates the eyes, nose, and throat, and may cause coughing, chest pains, and bronchitis. Reproductive effects, such as menstrual disorders and pregnancy problems, have been reported in female workers exposed to formaldehyde. Limited human studies have reported an association between formaldehyde exposure and lung and nasopharyngeal cancer. Animal inhalation studies have reported an increased incidence of nasal squamous cell cancer. We consider formaldehyde a probable human carcinogen (Group B2).

4. Methanol

Acute (short-term) or chronic (long-term) exposure of humans to methanol by inhalation or ingestion may result in blurred vision, headache, dizziness, and nausea. No information is available on the reproductive, developmental, or carcinogenic effects of methanol in humans. Birth defects have been observed in the offspring of rats and mice exposed to methanol by inhalation. A methanol inhalation study using rhesus monkeys reported a decrease in the length of pregnancy and limited evidence of impaired learning ability in offspring. We have not classified methanol with respect to carcinogenicity.

5. Phenol

Acute (short-term) inhalation and dermal exposure to phenol is highly irritating to the skin, eyes, and mucous membranes in humans. Oral exposure to small amounts of phenol may cause irregular breathing, muscular weakness and tremors, coma, and respiratory arrest at lethal concentrations. Anorexia, progressive weight loss, diarrhea, vertigo, salivation, and a dark coloration of the urine have been reported in chronically (long-term) exposed humans. Gastrointestinal irritation and blood and liver effects have also been reported. No studies of developmental or reproductive effects of phenol in humans are available, but animal studies have reported reduced fetal body weights, growth retardation, and abnormal development in the offspring of animals exposed to phenol by the oral route. We have classified phenol in Group D, not classifiable as to human carcinogenicity.

6. Propionaldehyde

No information is available on the acute (short-term) effects of propionaldehyde in humans. Animal studies have reported that inhalation exposure to high levels of propionaldehyde results in anesthesia and liver damage. No information is available on the chronic (long-term), reproductive, developmental or carcinogenic effects of propionaldehyde in animals or humans. We have not classified propionaldehyde for carcinogenicity.

F. Incorporation by Reference of NCASI Test Methods

With today's action, we are proposing to amend 40 CFR 63.14 by revising paragraph (f) to incorporate by reference two test methods developed by the National Council of the Paper Industry for Air and Stream Improvement (NCASI): (1) Method CI/WP–98.01, Chilled Impinger Method for Use at Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol; and (2) pending review by EPA, Method IM/CAN/WP–99.01, Impinger/Canister Source Sampling Method for Selected HAPs at Wood Products Facilities. These methods are available from the NCASI, Methods Manual, P.O. Box 133318, Research Triangle Park, NC 27709–3318 or at *http://www.ncasi.org*. They are also available from the docket for this proposed rule (Docket Number A–98–44).

In today's proposed rule, NCASI Method CI/WP–98.01 would be allowed as an alternative to:

- EPA Method 320, Measurement of Vapor Phase Organic and Inorganic Emission by Extractive FTIR, for measuring methanol or formaldehyde;
- EPA Method 0011, Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources, for measuring formaldehyde;
- EPA Method 316, Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries, for measuring formaldehyde;
- EPA Method 308, Procedure for Determination of Methanol Emission from Stationary Sources, for measuring methanol; and
- NCASI Method IM/CAN/WP–99.01 for measuring formaldehyde or methanol.

The NCASI Method CI/WP–98.01 has been validated using EPA Method 301, Field Validation of Pollutant Measurement Methods from Various Waste Media, for measuring methanol, formaldehyde, and phenol emissions from PCWP facilities. (EPA Method 0011 is available in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846. EPA Methods 301, 308, 316, and 320 are in 40 CFR part 63, appendix A.)

In today's proposed rule, NCASI Method IM/CAN/WP–99.01, which is a self-validating method, would be allowed, pending our review, as an alternative to:

- EPA Method 320, for measuring methanol, formaldehyde, or total HAP;
- EPA Methods 0011 and 316, for measuring formaldehyde;
- EPA Method 308, for measuring methanol; and
- NCASI Method CI/WP–98.01, for measuring formaldehyde or methanol.

G. Alternative Procedure for Determining Press Enclosure Capture Efficiency

We are working with industry representatives to develop a procedure that uses measurement of tracer gas to determine capture efficiency. We are proposing this "tracer gas procedure" today in appendix A to the proposed subpart DDDD.

H. Changes to the Scope of a Source Category

Today's action serves to broaden the PCWP source category to include lumber kilns located at stand-alone kiln-dried lumber manufacturing facilities or at any other type of facility. Wood products industry representatives requested that all lumber kilns (regardless of location) be considered in today's proposed rule so there would be one MACT determination for all lumber kilns nationwide. If lumber kilns at stand-alone kiln-dried lumber manufacturing facilities and other types of facilities are not included in the PCWP NESHAP, kiln-dried lumber manufacturing could be listed as a major source category under section 112(c) of the CAA in the future, requiring a separate section 112(d) rulemaking, and may become separately subject to the provisions of section 112(g) of the CAA as well. Because the design and operation of lumber kilns are essentially the same regardless of whether the kilns are located at a sawmill or are co-located with PCWP or other types of manufacturing operations, we have included lumber kilns in the PCWP source category. Broadening the scope of the PCWP source category to include lumber kilns located at any type of facility is reasonable because based on our information, there are no currently applicable controls at any lumber kilns and it is both more efficient and expeditious to include them in the MACT process now than to separately address them in a rulemaking that would not likely result in meaningful emissions reductions from lumber kilns. Moreover, including all lumber kilns in the PCWP MACT results in placing them on a faster schedule for purposes of future residual risk analysis under CAA section 112(f).

II. Summary of Proposed Rule

A. What Process Units Are Subject to This Proposed Rule?

The proposed rule would regulate HAP emissions from PCWP facilities that are major sources. Plywood and composite wood products are manufactured by bonding wood material (fibers, particles, strands, *etc.*) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. Plywood and composite wood products manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any facility. Plywood and composite wood products include (but are not limited to) plywood, veneer, particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams. Table 1 of this preamble lists the process units at PCWP facilities and indicates which process units are subject to the control requirements in today's proposed rule. "Process unit" means equipment classified according to its function such as a blender, dryer, press, former, or board cooler.

TABLE 1.—PROCESS UNITS THAT ARE SUBJECT TO THE PROPOSED CONTROL REQUIREMENTS

For the following process units . . .	Does today's proposed rule include control requirements for . . .	
	Existing affected sources?	New affected sources?
Softwood veneer dryers; tube dryers; strand dryers; green rotary dryers; hardboard ovens; reconstituted wood product presses; and pressurized refiners.	Yes	Yes.
Press predryers; fiberboard mat dryers; and board coolers	No	Yes.
Dry rotary dryers; veneer redryers; plywood presses; engineered wood products presses; hardwood veneer dryers; humidifiers; atmospheric refiners; formers; blenders; rotary agricultural fiber dryers; agricultural fiber board presses; sanders; saws; fiber washers; chippers; log vats; lumber kilns; storage tanks; wastewater operations; miscellaneous coating operations; and stand-alone digesters.	No	No.

The affected source for this proposed rule is the combination of all PCWP manufacturing operations, including PCWP process units, onsite storage of raw materials, onsite wastewater treatment operations associated with PCWP manufacturing, and miscellaneous coating operations located in a single facility covering a contiguous area under common control that is also a major source. One of the implications of the proposed definition of affected source is that the control requirements or "floor," as defined in section 112(d)(3), are determined for the entire PCWP facility. Therefore, except for lumber kilns not otherwise located at PCWP facilities, this proposed rule contains the control requirements that represent the MACT level of control for the entire facility. For lumber kilns not otherwise located at PCWP facilities, this proposed rule contains the control requirements that represent the MACT level of control only for lumber kilns.

B. What Pollutants Are Regulated by This Proposed Rule?

The proposed rule would regulate HAP emissions from PCWP facilities. For the purpose of compliance with 40 CFR part 63, subpart DDDD, we defined "total HAP" to be the sum of the emissions of six primary HAP emitted from PCWP manufacturing. For the purpose of determining whether your facility is a major source, you would have to include all HAP as prescribed by rules and guidance pertaining to determination of major source.

The six HAP that define "total HAP" are: Acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. Other HAP are sometimes emitted and controlled along with these six HAP, but in low quantities that may be difficult to measure. Depending upon which of the compliance alternatives you choose, you could be required to measure emissions of total hydrocarbon (THC), methanol, or formaldehyde as surrogates for measuring total HAP.

C. What Are the Compliance Options?

Today's proposed rule includes a range of compliance options which are summarized in the following subsections. You would have to use one of the compliance options to show compliance with the proposed rule. In most cases, the proposed compliance options would be the same for new and existing sources. Dilution to achieve compliance is prohibited as specified in 40 CFR 63.4.

1. Production-Based Compliance Options

Today's proposed rule includes production-based compliance options which are based on total HAP and vary according to type of process unit. Total HAP emissions are defined in today's proposed rule as the total mass emissions of the following six HAP: Acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. The production-based compliance options are in units of mass of pollutant per unit of production. Add-on control systems may not be used to meet the production-based compliance options. For pressurized refiners and most dryers, the production-based compliance options are expressed as pounds per oven-dried-ton of wood (lb/ODT). For presses, hardboard ovens, and some dryers, the production-based compliance options are expressed as pounds per thousand square feet of board (lb/MSF), with a reference board thickness.

2. Add-On Control System Compliance Options

If you operate a process unit equipped with an add-on control system, you may use any one of the following six compliance options. "Add-on control system" or "control system" means the combination of capture and control devices used to reduce HAP emissions to the atmosphere.

a. Reduce THC emissions (as carbon, and minus methane if you wish to subtract methane) by 90 percent.

b. Reduce methanol emissions by 90 percent.

c. Reduce formaldehyde emissions by 90 percent.

d. Limit the concentration of THC (as carbon, and minus methane if you wish to subtract methane) in the outlet of the add-on control system to 20 parts per million by volume, dry basis (ppmvd).

e. Limit the concentration of methanol in the exhaust from the add-on control system to 1 ppmvd (can be used only if the concentration of methanol entering the control device is greater than or equal to 10 ppmvd).

f. Limit the concentration of formaldehyde in the exhaust from the add-on control system to 1 ppmvd (can be used only if the concentration of formaldehyde entering the control device is greater than or equal to 10 ppmvd).

In the first three options (a through c), the 90 percent control efficiency represents a total control efficiency. Total control efficiency is defined as the product of the capture efficiency and the control device efficiency. For process units such as rotary strand dryers, capture efficiency is not an issue because the rotary strand dryer has a single exhaust point which is easily captured by the control device. However, for presses and board coolers, the HAP emissions cannot be completely captured without installing an enclosure. If the enclosure meets the criteria for a permanent total enclosure (PTE) as described in EPA Test Method 204 (40 CFR part 51, appendix M), then you could assign the enclosure a capture efficiency of 100 percent. You would have to test other enclosures to determine capture efficiency using EPA Test Methods 204 and 204A through 204F (as appropriate) or the alternative

tracer gas procedure in today's proposed rule. For the three concentration options (d through f), you would need to have an enclosure that either meets the criteria for a PTE or achieves a capture efficiency greater than or equal to 95 percent.

The six compliance options are equivalent ways to express the HAP control levels that represent the MACT floor. Because the compliance options are equivalent for controlling HAP emissions, you would be required to meet only one compliance option for add-on control systems. For example, if you elect to test your control system for THC and formaldehyde and the test results demonstrate compliance with only the THC or only the formaldehyde compliance option, you would still be in compliance with today's proposed rule.

3. Emissions Averaging Compliance Option

The CAA does not limit how we set control requirements beyond requiring that they be applicable to all sources in a category and be at least as stringent as the MACT floor. Therefore, the relevant statutory language does not prohibit us from allowing a source to meet MACT through use of emissions averaging as long as averaging does not cross source category boundaries, and the standard is set at a level at least as stringent as the MACT floor. As explained in this preamble, we believe we have met these criteria. In addition, it should be noted that Congress explicitly provided that cost should be considered in setting the standards. Emissions averaging is a means of achieving the required emissions reductions in a cost effective way. Therefore, if you operate an existing affected source, you could choose to comply with the emissions averaging provisions instead of the production-based compliance options or add-on control system compliance options.

Emissions averaging is a system of debits and credits in which the credits must equal or exceed the debits. "Debit-generating process units" are the PCWP process units required to meet the proposed control requirements that you choose to either not control or under-control. "Credit-generating process units" are the PCWP process units that you choose to control. You may take credit for emissions from debit-generating process units that are under-controlled. Control devices used for credit-generating process units may not be assigned more than 90 percent control efficiency.

Under the emissions averaging provisions, you would determine the required mass removal (RMR) of total HAP from debit-generating process units for a 6-month compliance period. Total HAP is defined in today's proposed rule to include acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. The RMR would be based on initial total HAP measurements for each debit-generating process unit, your process unit operating hours for a 6-month period, and the required 90 percent control system efficiency. One hundred percent of the RMR for debit-generating process units would have to be achieved or exceeded by the actual mass removal (AMR) of total HAP achieved by credit-generating process units. The AMR is determined based on initial performance tests, the total HAP removal efficiency of the control systems used to control the credit-generating process units, and your process unit operating hours over the 6-month period.

There are some restrictions on use of the emissions averaging provisions in today's proposed rule. You would have to limit emissions averaging to the process units located within your affected source. Emissions averaging could not be used at new affected sources. You could not include in an emissions average those process units that are not operating or that are shut down. You could not include in your emissions average those process units controlled to comply with a State or Federal rule other than today's proposed rule (unless the process unit was included in an emissions average and the control system was installed before the process unit was subject to the other State or Federal rule). Only PCWP process units using add-on control systems may be used to generate credits.

D. What Operating Requirements Are in the Proposed Rule?

The operating requirements in today's proposed rule would apply to add-on control systems used to comply with the proposed rule and to process units that can meet the proposed production-based compliance options. For incineration-based control devices and biofilters, the proposed rule specifies that you would either monitor operating parameters or use a THC continuous emission monitoring system (CEMS) to demonstrate continuous compliance. The proposed operating requirements are summarized below:

- If you operate a thermal oxidizer, such as a regenerative thermal oxidizer (RTO) or a combustion unit that accepts process exhaust into the flame zone, you would be required to maintain the firebox temperature at a level that is greater than or equal to the minimum temperature established during the performance test. You would also be required to maintain the average static pressure at the inlet of the thermal oxidizer within the operating range established during the performance test. You may choose to monitor gas flow rate at the thermal oxidizer stack as an alternative to monitoring static pressure. If you monitor gas flow, you must maintain the gas flow rate below the maximum flow rate established during the performance test. If you operate a combustion unit that accepts process exhaust into the flame zone and that combustion unit has a heat input capacity of greater than or equal to 44 megawatts (MW), you would be exempt from the testing and monitoring requirements described above for thermal oxidizers.
- If you operate a catalytic oxidizer, such as a regenerative catalytic oxidizer (RCO) or thermal catalytic oxidizer (TCO), you would be required to maintain the temperature upstream of the catalyst bed at or above the minimum temperature established during the performance test. You would also be required to maintain the average static pressure at the inlet of the catalytic oxidizer within the operating range established during the performance test. You may choose to monitor gas flow rate at the catalytic oxidizer stack as an alternative to monitoring static pressure. If you monitor gas flow, you must maintain the gas flow rate below the maximum flow rate established during the performance test.
- If you operate a biofilter, you would be required to maintain the temperature of the air stream entering the biofilter, pH of the biofilter effluent, and pressure drop across the biofilter bed within the ranges you specify during the initial performance test or during qualifying previous performance tests using the required test methods. If you use values from previous performance tests to establish the operating parameter ranges, you would have to certify that the biofilter and associated process unit(s) have not been modified subsequent to the date the previous data were collected.
- If you operate an add-on control system not listed in today's proposed rule, you would establish operating parameters to be monitored and parameter values that represent your operating requirements during the performance test, subject to prior written approval by the Administrator.
- If you operate a process unit that can meet the production-based compliance options without an add-on

control device, you would be required to maintain the average process unit inlet or operating temperature (depending on the specific process unit) below the maximum temperature established during the performance test.

- As an alternative to monitoring the operating parameters specified above for thermal oxidizers, catalytic oxidizers, biofilters, other control devices, and process units that meet the compliance options for process units without add-on control systems, you would be allowed to monitor THC concentration in the outlet stack with a THC CEMS. You would be required to maintain the outlet THC concentration below the maximum concentration established during the performance test. You may choose to subtract methane from the THC concentration measured by the CEMS if you wish to do so.

E. What Are the Work Practice Requirements?

The work practice requirements in today's proposed rule apply to veneer dryers, dry rotary dryers, veneer redryers, and hardwood veneer dryers. For veneer dryers, the proposed work practice requirements require you to minimize fugitive emissions from the veneer dryer doors (by applying appropriate operation and maintenance procedures) and from the green end of the dryers (through proper balancing of hot zone exhausts). The proposed work practice requirements also specify parameters that you would monitor to demonstrate that each dry rotary dryer, redryer, and hardwood veneer dryer continuously operates in a manner consistent with the definitions of these process units provided in today's proposed rule, as follows:

- If you operate a dry rotary dryer, you would be required to maintain the inlet dryer temperature at or below 600 °F and maintain the moisture content of the wood particles entering the dryer at or below 30 weight percent, on a dry basis.
- If you operate a veneer redryer, you would be required to maintain the moisture content of the wood veneer entering the dryer at or below 25 percent, by weight.
- If you operate a hardwood veneer dryer, you would be required to process less than 30 percent, by volume, softwood species each year.

F. When Must I Comply With This Proposed Rule?

Existing PCWP facilities must comply within 3 years of the date the promulgated rule is published in the **Federal Register**. New sources that commence construction after today's date must comply immediately upon initial startup or on the effective date of the rule, whichever is later.

G. How Do I Demonstrate Initial Compliance With This Proposed Rule?

The initial compliance requirements in today's proposed rule vary with the different compliance options.

1. Production-Based Compliance Options

If you are complying with the production-based compliance options in today's proposed rule, you would be required to conduct an initial performance test using specified test methods to demonstrate initial compliance. You would be required to test the efficiency of your emissions capture device during the initial compliance test if the process unit is a press or board cooler. The actual emission rate of the press or board cooler would be equivalent to the measured emissions divided by the capture efficiency. You would be required to install process (temperature) monitoring equipment to be used to demonstrate compliance with the operating requirements for process units without add-on control systems or install a THC CEMS and monitor the outlet THC concentration. During the initial compliance test, you would use the process monitoring equipment to establish the parameter value that represents your operating requirement for the process unit.

2. Add-On Control System Compliance Options

If you use the compliance options for add-on control systems, you would be required to conduct an initial performance test using specified test methods to demonstrate initial compliance. With the exception of the 20 ppmvd THC concentration option, you would be required to test at both the inlet and the outlet of the control device. If you use any of the six compliance options for add-on control systems, and the process unit is a press or a board cooler without a PTE, you would also be required to test the capture efficiency of your partial enclosure. Prior to the initial performance test, you would be required to install control device parameter monitoring equipment or THC CEMS to be used to demonstrate compliance with the operating requirements for add-on control systems in today's proposed rule. During the initial compliance test, you would use the control device parameter monitoring equipment or THC CEMS to establish the parameter values that represent your operating requirements for the control systems. If your add-on control system is preceded by a particulate control device, you would only be required to establish operating parameter values for the HAP control system and not for the particulate control device. If your control device is a biofilter, then you may use historical operating records for the biofilter to establish your operating requirements as long as you were in compliance with the emission limits in today's proposed rule when the data were collected, the test data were obtained using the test methods in today's proposed rule, and no modifications were made to the process unit or biofilter subsequent to the date the historical data were collected.

3. Emissions Averaging Compliance Option

If you elect to comply with the emissions averaging compliance option in today's proposed rule, you would be required to submit an Emissions Averaging Plan (EAP) to the Administrator for approval. The EAP would describe the process units you are including in the emissions average. The plan also would specify which process units will be credit-generating units and which process units will be debit-generating units. The EAP would also have to include descriptions of the control systems used to generate emission credits, documentation of the total HAP measurements made to determine the RMR, calculations and supporting documentation to demonstrate that the AMR will be greater than or equal to the RMR, and a summary of the operating parameters that will be monitored for the credit-generating units.

Following approval of your EAP, you would be required to conduct performance tests to determine the total HAP emissions from all process units included in the EAP. The credit-generating process units would be equipped with add-on control systems; therefore, for those process units, you would follow the procedures for demonstrating initial compliance as outlined above for add-on control systems. The emissions averaging provisions would require you to conduct all total HAP measurements and performance test(s) when the process units are operating under representative operating conditions. Today's proposed rule defines "representative operating conditions" as those conditions under which the process unit will be typically operating following the compliance date. Representative conditions would include such things as using a

representative range of materials (*e.g.*, wood material of a typical species mix and moisture content, typical resin formulations) and operating the process unit at typical operating temperature ranges.

4. Work Practice Requirements

The work practice requirements in today's proposed rule do not require you to conduct any initial performance tests. To demonstrate initial compliance with the work practice requirements for dry rotary dryers, you would have to install parameter monitoring devices to continuously monitor the dryer inlet operating temperature and the moisture content (dry basis) of the wood furnish (*i.e.*, wood fibers, particles, or strands used for making board) entering the dryer. You would then use the parameter monitoring devices to continuously monitor and record the dryer temperature and wood furnish moisture content for a minimum of 30 days. If the monitoring data indicate that during the minimum 30-day demonstration period, your dry rotary dryer continuously processed wood furnish with an inlet moisture content less than or equal to 30 percent, and the dryer was continuously operated at an inlet dryer temperature less than or equal to 600 °F, then your dryer would meet the definition of a dry rotary dryer in today's proposed rule. You would submit the monitoring data as part of your notification of compliance status report.

To demonstrate initial compliance with the work practice requirements for hardwood veneer dryers, you would have to calculate the annualized percentage of softwood veneer processed in the dryer by volume, using veneer dryer production records for the 12-month period prior to the compliance date. If the total annual percentage by volume of softwood veneer is less than 30 percent, your veneer dryer would meet the definition of hardwood veneer dryer. You would then submit a summary of the production data for the 12-month period and a statement verifying that the veneer dryer will continue to process less than 30 percent softwoods as part of your notification of compliance status report.

To demonstrate initial compliance with the work practice requirements for softwood veneer dryers, you would have to develop a plan for minimizing fugitive emissions from the veneer dryer green end and heated zones. You would submit the plan with your notification of compliance status report.

To demonstrate initial compliance with the work practice requirements for veneer redryers, you would have to install a device that can be used to continuously monitor the moisture content (dry basis) of veneer entering the dryer. You would then use the moisture monitoring device to continuously monitor and record the inlet moisture content of the veneer for a minimum of 30 days. If the monitoring data indicate that your veneer dryer continuously processed veneer with a moisture content less than or equal to 25 percent during the minimum 30-day demonstration period, then your veneer dryer would meet the definition of a veneer redryer in today's proposed rule. You would submit the monitoring data as part of your notification of compliance status report.

H. How Do I Demonstrate Continuous Compliance With This Proposed Rule?

The continuous compliance requirements in today's proposed rule vary with the different types of compliance options.

1. Production-Based Compliance Options

If you comply with the production-based compliance options, then you would have to install a continuous parameter monitoring system (CPMS) to monitor the process operating parameter(s) used to demonstrate compliance with the operating requirements in today's proposed rule. Your CPMS would have to collect data at least every 15 minutes, and you would need to have at least three data points per hour to have a valid hour of data. You would have to operate the CPMS at all times the process unit is operating. You also would have to conduct proper maintenance of the CPMS and maintain an inventory of necessary parts for routine repairs of the CPMS. Using the data collected with the CPMS, you would calculate and record the 3-hour block average values of each process operating parameter.

The process operating parameter you would monitor for green rotary dryers, tube dryers, and strand dryers is dryer inlet temperature. The process operating parameter you would monitor for hardboard ovens, press predryers, reconstituted wood product presses, fiberboard mat dryer hot zones, and softwood veneer dryer hot zones is operating temperature. You would not be required to monitor process parameters for reconstituted wood product board coolers or pressurized refiners. For each temperature parameter, you would have to continuously maintain the 3-hour block average temperature below the maximum temperature established during the performance test.

Instead of operating a CPMS, you could choose to operate a CEMS for monitoring THC concentration to demonstrate compliance with the operating requirements in today's proposed rule. If you choose to operate a THC CEMS in lieu of a CPMS, you would have to demonstrate continuous compliance as described in the following subsection.

2. Add-On Control System Compliance Options

For add-on control systems, you would have to install a CPMS to monitor the specified control device operating parameter(s) or install a CEMS to monitor THC concentration to demonstrate compliance with the operating requirements in today's proposed rule. If you operate a CPMS, it would have to collect data at least every 15 minutes, and you would need to have at least three data points per hour to have a valid hour of data. You would have to operate the CPMS at all times the process unit is operating. You also would have to conduct proper maintenance of the CPMS and maintain an inventory of necessary parts for routine repairs of the CPMS. Using the data collected with the CPMS, you would calculate and record the average values of each operating parameter according to the specified averaging times.

For thermal oxidizers, you would have to continuously maintain the 3-hour block average firebox temperature at or above the minimum temperature established during the performance test. For catalytic oxidizers, you would have to continuously maintain the 3-hour block average temperature upstream of the catalyst bed at or above the minimum value established during the performance test. For both thermal and catalytic oxidizers, you would also have to continuously maintain the 3-hour block average static pressure at the inlet of the thermal oxidizer within the operating range established during the performance test. As an alternative to monitoring static pressure, you may monitor gas flow rate at the oxidizer stack. If you monitor gas flow, you must maintain the 3-hour block average gas flow rate below the maximum flow rate established during the performance test.

For biofilters, you would have to maintain the gas temperature entering the biofilter, effluent pH, and pressure drop across the biofilter bed within the operating ranges you establish. You would establish your biofilter operating parameter limits, their monitoring frequencies, and their averaging times

based on data collected during the initial performance test or during qualifying previous performance tests using the required test methods. If you use values from previous performance tests to establish the operating parameter ranges, you would have to certify that the biofilter and associated process unit(s) have not been modified subsequent to the date the previous data were collected. If previous performance test data are not available (as would be the case for a new biofilter installation) you would be allowed up to 180 days after the compliance date to gather the necessary information and establish your biofilter operating parameter ranges.

If you choose to operate a CEMS for monitoring THC concentration instead of operating a CPMS, you must install, operate, and maintain the CEMS according to Performance Specification 8 in 40 CFR part 60, appendix B. You would also be required to comply with the CEMS data quality assurance requirements in Procedure 1 of appendix F of 40 CFR part 60. You would be required to conduct a performance evaluation of the CEMS according to 40 CFR 63.8 and Performance Specification 8. The CEMS would have to complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Using the data collected with the CEMS, you would calculate and record the 3-hour block average THC concentration. You would have to continuously monitor and maintain the 3-hour block average THC concentration at or below the maximum established during the performance test. You may use a CEMS capable of subtracting methane from the measured THC concentration if you wish to do so.

If you comply with today's proposed rule using an add-on control system, you could request a routine control device maintenance exemption from the Administrator. Your request for a routine control device maintenance exemption would have to document the need for routine maintenance on the control device and the time required to accomplish the maintenance, describe the maintenance activities and the frequency of these activities, explain why the maintenance could not be accomplished during process shutdowns, describe how you plan to minimize emissions to the greatest extent possible during these maintenance activities, and provide any other documentation required by the Administrator. If your request for the routine control device maintenance exemption is approved by the Administrator, it would have to be incorporated into your title V permit. The compliance options and operating requirements would not apply during times when control device maintenance covered under your approved routine control device maintenance exemption is performed. The routine control device maintenance exemption may not exceed 3 percent of annual operating uptime for each green rotary dryer, tube dryer, strand dryer, or pressurized refiner controlled. The routine control device maintenance exemption is limited to 0.5 percent of the annual operating uptime for each softwood veneer dryer, reconstituted wood product press, reconstituted wood product board cooler, hardboard oven, press predryer, or fiberboard mat dryer controlled. If your control device is used to control a combination of equipment with different downtime allowances (*e.g.*, a tube dryer and a press), then the highest (*i.e.*, 3 percent) downtime allowance applies.

3. Emissions Averaging Compliance Option

To demonstrate continuous compliance with the emissions averaging provisions, you would have to continuously comply with the applicable operating requirements for add-on control systems (described in the previous subsection). You also would have to maintain records of your operating hours for each process unit included in the EAP. For each semiannual compliance period, you would have to demonstrate that the AMR equals or exceeds the RMR using your initial (or most recent) total HAP measurements for debit-generating units, initial (or most recent) performance test results for credit-generating units, and the operating hours recorded for the semiannual compliance period.

4. Work Practice Requirements

To demonstrate continuous compliance with the work practice requirements for dry rotary dryers and veneer redryers, you would be required to operate all dry rotary dryers and veneer redryers so that they continuously meet the definitions of these process units in today's proposed rule. For dry rotary dryers, you would have to continuously monitor and maintain the inlet furnish moisture content at or below 30 percent and the inlet dryer operating temperature at or below 600 °F. You would also have to manually measure the moisture content of a representative sample of the inlet wood furnish once per day to verify the readings from the moisture meter. For veneer redryers, you would have to continuously monitor and maintain the inlet veneer moisture content at or below 25 percent.

To demonstrate continuous compliance with the work practice requirements for softwood veneer dryers, you would have to follow the procedures in your operating plan for minimizing fugitive emissions from the green end and heated zones of the veneer dryer and maintain records documenting that you have followed your plan. For hardwood veneer dryers, you would have to continue to process less than 30 percent softwood veneer by volume and maintain records on veneer dryer production.

III. Rationale for Proposed Rule

A. How Did We Select the Source Category and Any Subcategories?

The PCWP source category includes the manufacture of many types of wood products, including (but not limited to) plywood, veneer, particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams. During our review of the available information on this source category, we found that the processes used to produce the different types of wood products were more similar than dissimilar with respect to the types of equipment used and the HAP emitted. Published definitions of the various wood products often group several types of products together or overlap with definitions developed for other similar wood products. As the wood products industry continues its relatively high rate of growth, new and different wood products are coming into the marketplace, some of which are hybrids of existing wood products or modified versions of existing wood products. Because the differences between many of the product lines are already somewhat blurred and the equipment that is used to manufacture wood products cuts across industry sectors, we determined that establishing subcategories based on product type was unwarranted and could seriously hamper applicability determinations. Therefore, today's proposed rule does not establish any subcategories under the PCWP source category.

B. How Did We Define the Affected Source?

In today's proposed rule, the affected source is the collection of process units associated with the manufacturing of PCWP at a plant site. The affected

source includes, but is not limited to, those process units found in green end operations, drying operations, blending and forming operations, pressing and board cooling operations, and miscellaneous finishing operations (such as sanding, sawing, patching, edge sealing, and other finishing operations not subject to other NESHAP). The affected source also includes onsite storage of raw materials used in the manufacture of PCWP, such as resins, onsite wastewater treatment operations specifically associated with PCWP manufacturing, and miscellaneous coating operations. The affected source includes lumber kilns at PCWP manufacturing facilities and at any other facility.

Miscellaneous coating operations are activities such as edge coating of PCWP, labeling and printing on PCWP, application of anti-skid coatings, putty/patching operations at plywood facilities, etc. Only those onsite miscellaneous coating operations at PCWP manufacturing facilities that are listed in § 63.2292 of today's proposed rule are covered by these proposed NESHAP. We specifically excluded these miscellaneous coatings operations from the proposed Wood Building Products Surface Coating NESHAP (40 CFR part 63, subpart QQQQ). We included these sources in the definition of affected source for PCWP because these miscellaneous coating operations are part of the PCWP manufacturing process and are performed at the same location.

To provide compliance flexibility, we defined the affected source as the combination of all of the process units at a PCWP manufacturing facility. Many of the PCWP facilities that already control HAP emissions to the levels that would be required in today's proposed rule do so by first combining emissions from different process units and then controlling the combined emissions in one or more emission control devices. Much of the control device efficiency data used to set the proposed compliance options for add-on control systems was based on control equipment that was used to control emissions from multiple types of process units. As a result, the required level of control would be the same for most types of process units. For example, the control level for new and existing reconstituted wood products presses would be the same as the control level for new and existing tube dryers. We believe that the proposed broad definition of affected source is consistent with the way the industry applies add-on control devices, and that it creates more meaningful opportunities for emissions averaging. The affected source definition we selected is the same for both new and existing sources.

The affected source includes lumber kilns co-located at PCWP manufacturing facilities and lumber kilns at other facilities that do not manufacture PCWP (*i.e.*, stand-alone kiln-dried lumber manufacturing facilities such as sawmills). Wood products industry representatives requested that all lumber kilns (regardless of location) be considered in today's proposed rule so there would be one MACT determination for all lumber kilns nationwide.

If lumber kilns at stand-alone kiln-dried lumber manufacturing facilities are not included in the PCWP NESHAP, those stand-alone facilities could be listed as a major source category under section 112(c) of the CAA in the future and may be subject to the provisions of section 112(g) of the CAA as well. We believe no additional emissions reductions would be accomplished by listing lumber kilns as a separate source category or by having them regulated by case-by-case MACT. We believe this because: (1) The design and operation of lumber kilns are essentially the same regardless of whether the kilns are located at a sawmill or co-located with PCWP manufacturing operations, (2) we know of no lumber kilns that are controlled for HAP, and (3) we know of no cost effective HAP controls for lumber kilns. In addition, we know of no additional recordkeeping or reporting that stand-alone facilities would incur by being part of the PCWP source category since the PCWP source category includes only major sources. Including stand-alone kilns in the PCWP source category will save resources for regulatory agencies and industry and does not forego HAP reductions; therefore, we are proposing stand-alone kilns as part of the PCWP source category.

C. How Did We Determine the MACT Floor for Existing Sources?

Section 112(l)(3) of the CAA specifies that each MACT standard be at least as stringent as the floor for the sources in the relevant source category or subcategory. Today's proposed PCWP rule does not have subcategories; therefore, the average emission limitation achieved by the best-performing 12 percent of all major PCWP facilities represents the MACT floor for the source category. In order to rank the PCWP facilities based on performance, we would need facilitywide uncontrolled emissions data and facilitywide controlled emissions data for each facility to determine the percent reduction in HAP emissions achieved by each facility. We do not have actual facilitywide emissions data; however, we have accurate and complete information on the type and number of individual process units at PCWP facilities. In addition, emissions data are based on process unit data. Therefore, we decided to apply the MACT floor methodology at the process-unit level. Our information is especially accurate and complete for dryers and presses, which are generally the highest-emitting process units and the ones most likely to have add-on control systems that reduce HAP emissions from PCWP facilities. With this approach, the sourcewide MACT floor is represented by the MACT floor level of control established for each process unit group. We believe that applying the MACT floor methodology to process unit groups results in the closest possible approximation of the true sourcewide MACT floor, since it better enables us to take into account process unit-specific emissions data. We do not believe the results from this approach are significantly different from what they would be if facilitywide source-specific data had been available.

We determined the MACT floor control level for existing sources using the following procedure:

- We reviewed available data on pollution prevention techniques and the performance of add-on control devices and identified those add-on control systems that were best at reducing HAP emissions;
- For each process unit group identified in Table 1 of this preamble, we ranked the process units in that group from the best performing to the worst performing based on the type of add-on control system applied to each process unit;
- For each process unit group, we then identified the add-on control system that represented the MACT floor technology; and
- Using available information on the performance of the add-on control systems, we determined the performance level of the add-on control systems.

This procedure is explained in more detail in the following paragraphs. Additional information on how we determined the proposed MACT floor for the PCWP industry is available in the docket for this rule (Docket Number A–98–44).

1. Identifying the Best-Performing Add-On Control Systems

Although we believe that the potential for pollution prevention exists for some

facilities in the PCWP industry, we are not aware of any demonstrated pollution prevention techniques that can be universally applied across the industry. Furthermore, we have no information on the degree of emissions reduction that can be achieved through pollution prevention measures. The PCWP facilities use add-on control devices because there currently are no feasible pollution prevention measures. Therefore, we focused our analysis on the performance of add-on control devices. We reviewed the available data on control device performance to determine which add-on control systems are best at reducing HAP emissions. We focused our analysis on THC, formaldehyde, and methanol because these three pollutants are the most prevalent pollutants emitted from the PCWP industry and represent the majority of the available data on control device performance. The design and operating factors that affect a control system's ability to reduce emissions of formaldehyde, methanol, or THC are generally the same. For example, an RTO designed to reduce THC emissions will also reduce formaldehyde or methanol emissions.

Based on a review of the available control device performance data for the PCWP industry, we concluded that only two types of add-on air pollution control devices (APCD) consistently and continuously reduced HAP emissions: incineration-based controls (including RTOs, RCOs, and incineration of pollutants in onsite process combustion equipment used to control emissions from various PCWP process units) and biofilters (used to control PCWP press emissions). The control device efficiency data showed that APCD installed for particulate matter (PM) abatement had no effect on gaseous HAP or THC emissions. These APCD include cyclones, multiclones (or multicyclones), baghouses (or fabric filters), and electrified filter beds (EFB). The performance data for wet electrostatic precipitators (WESP) and wet scrubbers installed for PM control also showed no effect on HAP and THC emissions. These wet systems may achieve short-term reductions in THC or gaseous HAP emissions, however, the HAP and THC control efficiency data, which range from slightly positive to negative values, indicate that the ability of these wet systems to absorb water-soluble compounds (such as formaldehyde) diminishes as the recirculating scrubbing liquid becomes saturated with these compounds.

The performance data for the incineration-based controls and biofilters showed methanol and formaldehyde emissions reductions equal to or greater than 90 percent, except in those cases where the pollutant loadings of the emission stream entering the control systems were very low. The performance data for THC showed that incineration-based control systems could achieve THC emissions reductions equal to or greater than 90 percent. The THC emissions reductions achieved with biofilters varied somewhat, with an average THC reduction of about 80 percent. Although biofilters are less effective in reducing some of the less water-soluble VOC compounds, such as pinenes, that make up a portion of the THC measurements, they can achieve HAP emissions reductions equal to or greater than 90 percent. These emissions reductions are reported only for biofilters treating emissions from presses at PCWP facilities. No PCWP process units other than presses are currently using biofilters to reduce air pollution. Both incineration-based controls and biofilters can achieve identical formaldehyde and methanol emissions reductions.

2. Ranking of Process Units

We ranked the process units within each process unit group according to the HAP control devices that were applied. Information on the number of process units nationwide and the types of add-on control devices applied to process units was based primarily on responses to a survey of the industry.

When we ranked the process units, we treated process units equipped with any type of incineration-based control system or biofilters as being equivalent with respect to their potential to reduce HAP emissions. We ranked the process units by control device rather than actual unit-specific emissions reductions because we have limited inlet/outlet data on which to calculate control efficiency. Based on available information (*e.g.*, RTO operating temperatures), we are not aware of any significant design or operational differences among each type of control system evaluated that would affect the ranking of process units. Furthermore, we are not aware of factors other than the type of control system used that would significantly affect the ranking of process units.

3. Identifying Control Technologies To Establish the MACT Floor

We established MACT floor control levels by applying the floor procedures to similar process units. We believe that this approach results in the closest approximation of the true sourcewide MACT floor.

With a few exceptions, there were at least 30 process units in each process unit group. As discussed in section I.C, when there are at least 30 sources in the source category, the MACT floor for existing sources is equivalent to the average emission limitation achieved by the best-performing 12 percent of existing sources in that group. Our interpretation of the "average emission limitation" is that it is a measure of central tendency, such as the median. If the median is used when there are at least 30 process units in a process unit group, then the emission level achievable by the process unit and its control system that is at the bottom of the top 6 percent of the best-performing process units (*i.e.*, the 94th percentile) represents the MACT floor control level for that component of the sourcewide floor. For example, there are approximately 303 softwood veneer dryers nationwide, and HAP emissions from approximately 64 of these dryers (21 percent nationwide) are controlled using incineration-based control systems. The HAP emissions from the remainder of the softwood veneer dryers are uncontrolled. In this example, the 94th percentile is represented by the control system applied to the softwood plywood dryer ranked at number 18 (18/303 = 6 percent). However, incineration-based controls are also used by softwood veneer dryers ranked below the 94th percentile. Assuming that there are no significant design or operational differences between the different types of incineration-based control systems that would affect their performance, we would consider the incineration-based control technologies as being equivalent for control of HAP emissions. Thus, all of the softwood veneer dryers equipped with incineration-based control systems would be representative of the MACT floor level of control for softwood veneer dryers.

For those process unit groups where there were fewer than 30 but at least five process units, such as hardboard ovens, the emission level achievable by the process unit and its control system that is the median of the best-performing five sources represents the MACT floor level of control. For example, the MACT floor level of control for fiberboard mat dryers is no emissions reductions because there are ten fiberboard mat dryers nationwide, and emissions from only two of the ten fiberboard mat dryers are controlled (both via incineration). Therefore, the top five fiberboard mat dryers include the two that are controlled, plus three that are uncontrolled. In this example, the

median source (the fiberboard mat dryer ranked "number 3") is uncontrolled.

When a process unit group had fewer than five process units, we determined the appropriate control technology based on the control technology used by the majority of the process units in the process unit group.

For those process units not required to meet the control requirements in today's proposed rule, we determined that: (1) The MACT floor level of control is no emissions reductions, and beyond the floor control options are too costly to be feasible; or (2) insufficient information is available to conclude that the MACT floor level of control is represented by any emissions reductions (miscellaneous coating operations and wastewater operations). We are requesting comment on whether no emissions reductions for miscellaneous coating operations and for wastewater operations is appropriate. Commenters should submit any information they have on HAP or VOC emissions from miscellaneous coatings and wastewater operations.

4. Determining the Performance Level of MACT Floor Technologies

Using the procedures described above, we determined that the proposed MACT floor level of control for process units was either no emissions reductions or equivalent to the emissions reductions achieved by incineration-based control systems or biofilters. Although some process units are equipped with add-on controls that perform at a level somewhere between zero emissions reductions and the performance level achievable with incineration-based controls and biofilters, none of these control systems were identified as MACT floor control technologies because they either do not reduce organic HAP emissions (bag houses) or do so on an inconsistent and unreliable basis (wet electrostatic precipitators). Therefore, we focused our analysis on incineration-based controls and biofilters.

For the purpose of establishing the performance level of the MACT floor control systems, we decided to group all of the available data on incineration-based controls and biofilters together. We grouped all the data together because the available data for incineration-based controls is incomplete. Without complete data, we could not identify which were the best performing incinerators; therefore, we could not identify the top performing 12 percent. By considering all of the performance data together, we maximized the amount of available data on which we could base the MACT floor level of performance.

The reasons the available data are incomplete are: Multiple emission points are treated, inlet/outlet data are limited, data among pollutants vary, and pollutant loadings are variable. These are discussed below.

Multiple emission points treated. Some of the control systems treat HAP emissions from multiple types of process units, such as tube dryers, reconstituted panel presses, and board coolers. In those cases, separate determinations of the performance of the control system on emissions from each type of process unit were not possible.

Limited inlet/outlet data. Limited or no inlet/outlet data were available for the control systems applied to the process units in each group.

Variability in data among pollutants. In some cases, it was not possible to directly compare the performance of different control systems because data were not available for the same pollutant. For example, for one RTO, we might only have THC emissions data, and for another RTO, we might only have formaldehyde data.

Variability in pollutant loadings. Our ability to compare the performance of the different types of incineration-based control systems with each other and with biofilters was also hampered by the fact that the uncontrolled emissions being treated by the different control systems varied with respect to pollutant loading (inlet concentration) and pollutant type. For example, the available THC concentration data for the inlet of the control systems ranged from as low as 45 ppmvd to as high as 5,100 ppmvd. With the exception of some control systems with lower pollutant inlet concentrations, the available data for incineration-based controls and biofilters show that these control systems can achieve THC, methanol or formaldehyde emissions reductions greater than or equal to 90 percent.

We considered basing the control system performance level on just one pollutant, such as THC as a surrogate for HAP. Many of the existing PCWP facilities with MACT control systems are already required to meet a specified VOC control efficiency, and these facilities generally measure THC emissions as a surrogate for VOC emissions. Source VOC mass emissions (as required in new source review or prevention of significant deterioration reviews and emission limits for VOC by definition) must be expressed on a mass basis. This requires an adjustment for other compounds, such as formaldehyde, to the measured THC emissions. However, THC emissions data sometimes include methane which is neither a HAP nor a VOC. The THC emissions data also frequently include other non-HAP compounds, such as terpenes, which are associated with processing of softwoods. We also considered basing the control system performance level on HAP, measured as total HAP, or methanol as a surrogate for HAP, or formaldehyde as a surrogate for HAP. Methanol and formaldehyde are the predominant HAP emitted from PCWP process units, and they can be measured directly. However, not all process units emit formaldehyde at detectable levels, and not all process units emit methanol at detectable levels, so basing the performance level only on methanol or only on formaldehyde was not possible. For process units where both the methanol and formaldehyde emissions are low, THC emissions may be the only viable option for defining the control system performance. We rejected basing the control system performance level on total HAP emissions because it seemed overly burdensome to require testing of multiple pollutants at the outlet of a control device when testing of one dominant pollutant would be sufficient for determining control device performance. Furthermore, the total HAP control efficiency could be negatively affected by those measurements for HAP not detected at either the inlet or outlet of the control device (*e.g.*, the method detection limit used in the calculation of total HAP control efficiency may be slightly higher at the inlet than the outlet resulting in decreased total HAP control efficiency).

Another consideration in determining the performance level that represents the MACT floor level of control is the format of this performance level (*e.g.*, percent reduction, outlet concentration level). In general, applying an incineration-based MACT control system to a process unit that emits high concentrations of HAP and THC will result in a greater percentage of emissions reductions than if that same incineration-based MACT control system was applied to a process unit that emits lower concentrations of HAP and THC. Therefore, a performance level solely in the form of a percent reduction in emissions could not adequately characterize the performance level of the MACT floor control technology. In similar MACT rulemakings where incineration-based control technologies represent the MACT floor, we have defined the performance level of the incineration-based control technologies as either a

percent reduction or an outlet concentration, whichever is less stringent, with both forms being considered equivalent to the other. We have recognized in these previous MACT rulemakings that there are practical limits to the ability of incineration-based control systems to treat more dilute emission streams. We consider the practical limit of control of THC via incineration to be approximately 20 ppmvd in the outlet of the control device.

To account for the variability in the type and amount of HAP in the uncontrolled emissions from the various process units and the effect of this variability on control system performance, we decided to base the MACT floor performance level on all three of the pollutants we analyzed and include maximum concentration levels in the outlet of the control systems as an alternative to emissions reductions. The MACT floor performance level is a 90 percent reduction in THC or methanol or formaldehyde emissions. The maximum concentration level in the outlet of the MACT floor control system is 20 ppmvd for THC, or 1 ppmvd for methanol, or 1 ppmvd for formaldehyde. We chose 20 ppmvd as the alternative maximum concentration for THC because 20 ppmvd represents the practical limit of control for THC. We chose 1 ppmvd as the maximum outlet concentration for both methanol and formaldehyde because this concentration is achievable by MACT control systems and the method detection limits for these compounds using the NCASI impinger/canister method (NCASI Method IM/CAN/WP–99.01, proposed to be incorporated by reference in today's proposed rule) are less than 1 ppmvd. Based on the available data for MACT control systems, these six emission levels for add-on control systems are considered equivalent options for defining the performance level of a MACT control system.

D. How Did We Determine the MACT Floor for New Sources?

For new sources, the CAA requires the MACT floor to be based on the degree of emissions reductions achieved in practice by the best-controlled similar source. We believe for most process unit groups that the existing source MACT floor control level also represents the level of control appropriate for new sources because the same types of emission control systems, such as thermal oxidizers and biofilters, are used. In these cases, the existing source MACT floor technology represents the greatest degree of emissions reductions that is achievable under all circumstances within each particular operation regulated by the proposed rule. For a few process units, the MACT floor level of control for new units is more stringent than for existing units. In those cases, we determined the MACT floor control level for existing process units was no emissions reductions, and that the MACT control level for new sources was represented by incineration-based controls or biofilters.

E. What Control Options Beyond the MACT Floor Did We Consider?

The control devices that represent the MACT floor control level achieve the greatest HAP emissions reductions of any available control technologies. There are no controls that achieve greater emissions reductions than the MACT floor control level for process unit groups with MACT floor control levels represented by incineration-based controls or biofilters; therefore, we only looked at beyond the floor options for process unit groups at existing sources where the MACT floor level of control was no emissions reductions. Process units that were inherently lower-emitting, such as sanding and sawing operations, were excluded from the beyond-the-floor analyses because emissions from these process units would not be cost effective to control. Based on a review of the HAP emissions data for process units where the MACT floor level of control was determined to be no emissions reductions, we selected blenders and stand-alone digesters for a beyond-the-floor analysis because these process units emit higher levels of HAP emissions relative to other process units. We also conducted beyond-the-floor analyses for three process unit groups with no emissions reductions at the MACT floor control level for existing sources but requiring control for new sources. These process units included fiberboard mat dryers, press predryers, and board coolers. We determined that the environmental benefits of requiring controls for these process units did not justify the cost. Moreover, many of the existing control devices at well-controlled facilities would not have the additional capacity to treat the emissions from these process units, and thus, these facilities would have to install new controls. Therefore, we decided that the control level for blenders, stand-alone digesters, fiberboard mat dryers, press predryers, and board coolers should be no emissions reductions at existing sources.

F. How Did We Select the Format of the Proposed Rule?

We decided to offer several formats for complying with today's proposed rule. The purpose of multiple formats is to provide you the flexibility to comply in the most cost-effective and efficient manner. We considered the following factors in selecting the format of the proposed rule:

- The format should allow for multiple compliance techniques for the various types of facilities in the industry.
- The format should simplify compliance and ensure that the cost of compliance is not excessive.
- The format must be enforceable.

The format of this proposed rule is based on a combination of production-based compliance options, percent emissions reduction compliance options, pollutant concentration compliance options, and work practice requirements. We are also including emissions averaging as an option for complying with the proposed rule. The following subsections describe the selection of the formats for each compliance option and work practice requirement included in the proposed rule.

1. Production-Based Compliance Options

The production-based total HAP compliance options apply to process unit emissions prior to entering an add-on control system. This option allows for future pollution prevention techniques and cost-effective control of inherently lower-emitting process units. The production-based compliance options were determined by applying a 90 percent reduction to the highest total HAP test for each type of process unit with a controlled MACT floor. A 90 percent reduction was selected because it is equivalent to the emissions reductions achievable through the use of MACT. The 90 percent reduction was applied to the highest tests rather than the average emission factors because the production-based options calculated using the highest tests more closely correlate with actual emissions from process units with MACT control systems. If the average emission factors were used in the calculation of the production-based compliance options, some of the process units with MACT control systems would not be capable of meeting those options. Use of statistical methods for predicting the highest test value likely to be observed for each process unit was also considered. However, the available total HAP test data sets are too small to justify use of

such statistical methods, and the resulting compliance options, in many cases, seemed unreasonably high compared to the actual emissions from process units with MACT control systems. Therefore, statistical methods were not used. We based the production-based compliance options on total HAP emissions, as defined in today's proposed rule, because of the variability in uncontrolled HAP emissions within and among the different types of process units. Total HAP emissions varied less than the emissions of individual HAP and the emissions of THC.

2. Add-On Control System Compliance Options

The six compliance options for add-on control systems in today's proposed rule are based on the performance of incineration-based control systems and biofilters. We included two formats in these compliance options: Emissions reductions (percent) and maximum outlet pollutant concentrations. Many of the well-controlled facilities are already subject to permit limits that are in the form of a percent reduction in emissions. Therefore, we expect that some of those facilities may choose to comply with an emissions reduction option. We are also including outlet concentration options so that sources that have lower inlet pollutant concentrations (and thus, have lesser ability to achieve higher emissions reductions) can demonstrate compliance. We consider the emissions reduction options and the outlet concentration options to be equivalent limits. We are not requiring an oxygen correction to the outlet concentration options because most of our outlet concentration data were measured at ambient oxygen levels due to the relatively dilute emission streams being treated. Dilution to achieve compliance with the proposed PCWP rule is prohibited by 40 CFR 63.4.

We are restricting the use of the formaldehyde and methanol concentration-based options to only those sources with formaldehyde or methanol emissions entering the control device that are greater than 10 ppmvd. We have included this restriction to prevent circumvention of the proposed standards. For example, if a process unit emits primarily formaldehyde and only a very small amount of methanol (slightly less than 1 ppmvd), without the 10 ppmvd restriction, you could demonstrate compliance with the 1 ppmvd methanol concentration option without using a control system or using a control system that does not reduce HAP, such as a baghouse. The 10 ppmvd restriction does not apply to the percent reduction compliance options.

3. Emissions Averaging Compliance Option

Today's proposed rule includes an emissions averaging compliance option because we believe that emissions averaging represents an equivalent, more flexible, and less costly alternative to controlling certain emission points to MACT floor levels. Prior to an industry-sponsored emissions test program carried out by NCASI, the majority of the available emissions test data for the PCWP industry was limited to THC and formaldehyde emissions data for dryers and presses. The industry-sponsored test program provided speciated HAP emissions data for a variety of process units at 29 different PCWP plants. For some of these previously untested process units, the NCASI data represent the only available HAP emissions data for those sources. A few of these process units, such as blenders, may emit quantities of HAP equal to or greater than the quantities emitted from some types of dryers and presses. In addition to emitting more HAP, these other types of process units often have a lower volume of exhaust gas to be treated compared to dryers and presses. The combination of higher pollutant concentrations and lower exhaust gas flow rates may make these other process units more cost effective to control. However, very few PCWP facilities have installed emission control devices on process units other than dryers and presses. Therefore, when determining the MACT floors for existing process units, the process units most likely to have controlled MACT floors have been dryers and presses, with some exceptions. Most other types of process units are largely uncontrolled throughout the industry and based on our MACT analysis, we did not include existing source control requirements for these process units in today's proposed rule. Therefore, emissions from these other types of process units at existing sources would not be controlled under the point-by-point compliance options in today's proposed rule. By allowing emissions averaging across the affected source, which is broadly defined in today's proposed rule, sources can achieve the same environmental gains as point-by-point compliance, but at reduced cost.

The emissions averaging provisions in today's proposed rule are based in part on the emissions averaging provisions in the Hazardous Organic NESHAP (HON). The legal basis and rationale for the HON emissions averaging provisions were provided in the preamble to the final HON (59 FR 19425, April 22, 1994). The rationale for including certain limitations and requirements as part of today's emissions averaging provisions follows the HON and is summarized below.

Emission points allowed in emissions averaging. Only those emission points (process units) that are part of the affected source (PCWP manufacturing facility), as defined in today's proposed rule, can be included in an emissions average. Therefore, a PCWP facility collocated with a pulp and paper mill, for example, cannot include emission points in the pulp and paper mill as part of the emissions average.

Today's proposed rule also excludes new affected sources from the proposed emissions averaging provisions. Today's proposed rule defines affected sources broadly, such that a new source is essentially a whole new "green field" mill. Therefore, not allowing emissions averaging at new sources does not affect existing sources' ability to use emissions averaging. New sources have historically been held to a stricter standard than existing sources because it is most cost effective to integrate state-of-the-art controls into equipment design and to install the technology during construction of new sources. One reason we allow emissions averaging is to give existing sources flexibility to achieve compliance at diverse points with varying degrees of control already in place in the most cost-effective and technically reasonable fashion. This concern does not apply to new sources which can be designed and constructed with compliance in mind.

Today's proposed rule also excludes from emissions averaging any process units equipped with emission control systems that were installed to comply with a State or Federal rule or statute (other than today's proposed rule). We are including this restriction because credits for controls applied to comply with another rule increase your ability to generate credits, but do not generate any new emissions reductions, thus creating more emissions. However, if a process unit in your approved EAP used to generate emission credits later becomes subject to a State or Federal rule other than the proposed PCWP rule, the process unit can continue to generate credits in the approved plan. Work practice requirements are excluded from emissions averaging because, by definition, the level of emissions reduction achieved by compliance with those requirements is not sufficiently quantifiable.

Limits on credit for control efficiencies. The proposed emissions averaging provisions limit the value of

the control system efficiency (CD_i) to 90 percent in the equation for calculating the AMR of total HAP from all process units generating credits. No credit above 90 percent is allowed.

Differences from the HON emissions averaging approach. Some aspects of the HON emissions averaging approach have not been included in the proposed PCWP rule. Specifically, today's proposed rule does not limit the number of emission points allowed in an emissions average, does not require a hazard or risk analysis, and does not include a discount factor. The HON limited the number of emission points that could be used in an emissions average because of significant enforcement concerns. The HON sources have many emission points, are complex and diverse, and as a result are subject to a more complex set of emissions averaging provisions. The PCWP facilities have fewer emission points within each facility. Therefore, the enforcement concerns arising due to the large number of emission points in each HON facility are minimized for PCWP facilities. As a result, we believe a simpler set of emissions averaging provisions is appropriate for PCWP facilities, and the limitation on the number of points available for averaging was not included in the proposed rule.

The HON requires a hazard and risk study for emission points included in an emissions average largely because of the many pollutants and many emission points at the source. The PCWP facilities have fewer pollutants of concern and are likely to have similar HAP emissions from the emission points that would be used to generate debits and credits. Thus, we believe that averages will achieve a comparable hazard/risk benefit as point-by-point compliance. Although States would still have the discretion to require a PCWP facility that requested approval of an emissions average to conduct a hazard and risk study (or preclude the facility from using emissions averaging altogether), the proposed rule does not require a hazard or risk study.

The HON requires a discount factor of 10 percent in credit calculations to share with the environment some portion of the cost savings due to emissions averaging and to account for uncertainty in emissions estimation. Due to differences between PCWP and HON sources (discussed below), we do not believe it is necessary for the proposed PCWP rule to include a discount factor.

The HON proposal preamble (57 FR 62652, December 31, 1992) and the HON final preamble discuss how cost savings due to emissions averaging should be shared between industry and the environment. For the HON, we decided that it was appropriate that industry share any cost savings realized from emissions averaging and included a discount factor because the costs of controlling different emission points could vary significantly. The HON proposal preamble also discussed the level of uncertainty in estimating emissions reductions that may result from facilities using emissions averaging. For the HON, the uncertainty arose from differing accuracies available for estimating emissions from the number of emission points at a HON facility, the number of HAP emitted from HON facilities, and the different types of emission points.

The PCWP industry differs in almost every relevant factor from the HON. First, HON facilities can cover several square miles and some emission points, such as storage vessels, could be some distance from other emission points making them relatively costly to control. Second, as discussed previously, the number of points that might be included in an emissions average at a PWCP facility is fewer than could be included in a HON average and, therefore, less of a concern. Third, the magnitude of emissions from HON emission points is typically much greater than the emissions from PCWP emission points. Fourth, there are six HAP of primary concern emitted from PCWP facilities compared to over 140 HAP emitted from HON facilities. Fifth, the kinds of emission points found at PCWP facilities are much more similar than those regulated by the HON and, therefore, unlikely to introduce additional uncertainty.

We believe the inclusion of emissions averaging into rules and the decision on how to design an emission averaging approach for a particular source category must be evaluated for each source category. Although the HON and the proposed PCWP rule share the same legal basis for including emission averaging as a compliance option and the same basic system of credits and debits, some of the restrictions reasonable for the HON emissions averaging provisions are unnecessary for the proposed PCWP rule.

4. Work Practice Requirements

Section 112(h) of the CAA states that "* * * if it is not feasible in the judgement of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof * * *" Section 112(h)(2) further defines the phrase "not feasible to prescribe or enforce an emission standard" as any situation in which "* * * a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, * * * or the application of measurement methodology to a particular class of sources is not practicable * * *"

Today's proposed rule includes work practice requirements for softwood veneer dryers, dry rotary dryers, hardwood veneer dryers, and veneer redryers. The proposed work practice requirements for softwood veneer dryers include a requirement to minimize fugitive emissions from the veneer dryer doors and the green end of the dryer. It is not practical for sources to measure the fugitive emissions from the softwood veneer dryers; therefore, in lieu of establishing an emission limit for fugitive emissions, we are proposing that sources develop a plan for minimizing these emissions and keep records to document they are following their plan.

For dry rotary dryers, hardwood veneer dryers, and veneer redryers, the proposed work practice requirements would establish limits on how these process units are operated and the types of materials processed in these units. The MACT floors for dry rotary dryers, hardwood veneer dryers and veneer redryers are all equivalent to no emissions reductions because none of these process units have add-on control devices. The emissions from these three types of process units are relatively low compared to the emissions from other PCWP process units subject to today's proposed rule. However, if these three types of process units were operated in a manner that was inconsistent with how they are defined in today's proposed rule, the emissions from these process units could increase.

For example, a green rotary dryer, which has proposed compliance options in today's proposed rule, is essentially the same in terms of equipment as a dry rotary dryer. However, a dry rotary dryer emits much less HAP than a green rotary dryer because it dries wood particles that have been previously dried to some extent; thus, much of the HAP present in the wood has already been released. The dry rotary dryers also operate at lower temperatures, which further reduces the amount of HAP emitted. Therefore, the operation of the rotary dryer, and not the equipment design, determines whether it is classified as a green or dry rotary dryer. Because the dry rotary dryers, veneer redryers and hardwood veneer dryers

are defined and classified based on how they are operated, and we made MACT floor determinations based on those classifications, we believe that proposing work practice requirements (such as continuously monitoring dryer temperature and wood moisture content) that ensure that these process units continuously operate as defined in today's proposed rule is more appropriate than proposing compliance options for these process units.

G. How Did We Select the Test Methods for Determining Compliance With the Proposed Rule?

Today's proposed rule would require you to conduct performance tests to demonstrate compliance with the production-based compliance options, compliance options for add-on control devices, and the emissions averaging alternative. Depending upon which compliance option you use, you would be required to measure emissions of methanol, formaldehyde, THC, or total HAP. When determining compliance with compliance options for presses and board coolers, you also would be required to determine the capture efficiency of the enclosures for those presses and board coolers that have enclosures that do not qualify as PTE. For presses and board coolers that have partial enclosures or no enclosures, you must determine the capture efficiency of the emissions capture device by installing a TTE as described in EPA Method 204 or using the tracer gas method as described in Appendix A to today's proposed rule. The test methods you would have to use to measure these pollutants and capture efficiency are discussed below.

We are proposing the use of EPA Method 25A (Determination of Total Gaseous Organic Matter Concentration Using a Flame Ionization Analyzer) for measuring THC emissions because most of the PCWP facilities that are already required to measure THC emissions use this method. Also, most of the available emissions data that we used to establish THC control efficiencies for the various control systems were measured using Method 25A and reported on an "as carbon" basis. Method 25A is better suited than EPA Method 25 (Measurement of Total Gaseous Nonmethane Organic Emissions as Carbon (TGNMO)) for measuring emission streams from PCWP process units which typically have lower THC concentrations (*e.g.*, less than 50 ppm) and relatively high moisture contents. However, unlike Method 25, Method 25A does measure methane as a THC. Because many of the well-controlled PCWP facilities are required by permit to reduce VOC emissions, these facilities generally are allowed to subtract methane emissions from the THC measurement when reporting VOC emissions because methane is not a VOC, according to EPA's definition of VOC. Therefore, we also would allow you to subtract methane emissions from measured THC values using EPA Method 18 (Measurement of Gaseous Organic Compound Emissions by Gas Chromotography). Method 18 is a self-validating method.

We are proposing the use of the NCASI Method (NCASI Method CI/WP–98.01, Chilled Impinger Method for Use at Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol, 1998) for measuring methanol or formaldehyde. We are also proposing the NCASI Chilled Impinger Canister Method (NCASI Method IM/CAN/WP–99.01) for measuring total HAP emissions. Total HAP emissions are defined, for purposes of today's proposed rule, as the sum of the emissions of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. The NCASI Chilled Impinger Method (NCASI Method CI/WP–98.01), which we are proposing to incorporate by reference, has been validated (using EPA Method 301 criteria) for measuring formaldehyde, methanol, and phenol from dryers and press vents at PCWP facilities. The NCASI Method IM/CAN/WP–99.01, which we are proposing to incorporate by reference (pending EPA review of the method), is a self-validating method that can be used to measure numerous HAP compounds.

As an alternative to the NCASI methods, we are proposing use of other applicable EPA test methods in order to increase the flexibility of the proposed rule. You could use EPA Method 320 (Measurement of Vapor Phase Organic and Inorganic Emission by Extractive FTIR) to measure emissions of methanol, formaldehyde and total HAP. Method 320 is a self-validating method that uses Fourier transform infrared (FTIR) spectroscopy. You could also use EPA Method 308 (Procedure for Determination of Methanol Emission from Stationary Sources) for measuring emissions of methanol. Method 308 predates the NCASI Chilled Impinger Method and the NCASI Impinger Canister Method and has been used to test PCWP emission sources in the past. You could use EPA Method 0011 (Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources) or EPA Method 316 (Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries) to measure formaldehyde emissions. Although EPA Method 0011 has not been validated for use in the PCWP industry, it predates the NCASI methods and EPA Method 320 and is frequently used to measure formaldehyde emissions from PCWP process units. A comparison of formaldehyde measurements made using the NCASI methods and EPA Method 0011 showed no significant differences (see Docket number A–98–44); therefore, we would allow you to use EPA Method 0011 as an alternative to the NCASI Methods for measuring formaldehyde. Although EPA Method 316 has not been validated for testing of PCWP process units, it is a relatively new method for measuring formaldehyde concentrations as low as 11 parts per billion. Therefore, it is included as an alternative to the other test methods for formaldehyde in today's proposed rule.

We are proposing the use of EPA Method 204 (Criteria for and Verification of Permanent or Temporary Total Enclosure) and Methods 204A through 204F for determining the capture efficiency of enclosures. Methods 204A through 204F include the following: Method 204A—Volatile Organic Compounds Content In Liquids Input Stream; Method 204B—Volatile Organic Compounds Emissions In Captured Stream; Method 204C—Volatile Organic Compounds Emissions In Captured Stream (Dilution Technique); Method 204D—Volatile Organic Compounds Emissions In Uncaptured Stream From Temporary Total Enclosure; Method 204E—Volatile Organic Compounds Emissions In Uncaptured Stream From Building Enclosure; and Method 204F—Volatile Organic Compounds Content In Liquid Input Stream (Distillation Approach). If the enclosure meets the definition and criteria in EPA Method 204 for a PTE, then you may assume that its capture efficiency is 100 percent. If the enclosure is not a PTE, then you would have to build a total temporary enclosure (TTE) around the process unit that meets the definition of a TTE in EPA Method 204, and you would be required to determine the capture efficiency of the TTE using Methods 204A through 204F (as appropriate). You would then have to measure emissions from both the control device (if applicable) and the TTE and use the combined emissions to determine compliance. If the process unit is uncontrolled, you would have to use the capture efficiency of the TTE in determining the uncontrolled emissions from the process unit.

Industry representatives have expressed concern with using EPA Methods 204 and 204A through F for determining capture efficiency of press enclosures. The industry representatives have indicated that some facilities may have difficulty retrofitting a PTE or TTE that meets the EPA Method 204 criteria. Partial enclosures may be able to achieve high capture. We recognize the need for flexibility in determining capture efficiency for PCWP press enclosures and, therefore, as an alternative to Methods 204 and 204A through F, we are working with PCWP industry representatives to develop and propose a tracer gas procedure that may be used to determine the capture efficiency of PCWP press partial enclosures. This alternative tracer gas procedure is provided as Appendix A to today's proposed rule. This procedure would be applicable for determination of capture efficiency for press enclosures that are not considered to be PTE as defined in EPA Method 204, and the procedure is proposed as an alternative to the construction of TTE. Sulfur hexafluoride (SF6) is used as a tracer gas. This gas is not indigenous to the ambient atmosphere and is nonreactive. The alternative tracer gas procedure provided as Appendix A to today's proposed rule is a "work in progress." Industry representatives are testing the tracer gas procedure and are expected to provide data and feedback that may be used in revising the procedure if necessary. Discussions with industry representatives regarding development of the proposed alternative tracer gas procedure are documented in Docket A–98–44. We welcome your comments on the proposed alternative tracer gas procedure. We also welcome your comments on additional approaches for determining capture efficiency, such as the use of computational fluid dynamics (CFD) models or other methods that would meet the data quality objective (DQO) or lower confidence limit (LCL) statistical criteria outlined in Appendix A to subpart KK of 40 CFR part 63 (National Emission Standards for the Printing and Publishing Industry). Today's proposed rule would allow facilities to petition the Administrator for use of alternative test methods.

H. How Did We Select the Monitoring and Recordkeeping Requirements?

We are proposing monitoring and recordkeeping requirements based on a combination of general monitoring and recordkeeping requirements in the NESHAP General Provisions (40 CFR part 63, subpart A) and specific monitoring methods already in use at PCWP plants. The proposed monitoring requirements we selected pertain to the operating requirements for control devices and the work practice requirements for various dryers.

The proposed recordkeeping requirements include submitting a copy of each notification and report, as well as documentation supporting any Initial Notification or Notification of Compliance Status, according to the requirements in § 63.10(b)(2)(xiv). You would also have to keep the records specified in § 63.6(e)(3) related to startup, shutdown, and malfunction (SSM), records of performance tests, as required in § 63.7(g)(1), and records for each continuous monitoring system (CMS), including CPMS or CEMS. The records for the CMS would include records of the applicable operating requirements and monitoring data required in today's proposed rule. You also would have to keep records to demonstrate compliance with any work practice requirements that apply to you.

How we selected the specific proposed monitoring and recordkeeping requirements is discussed in the following subsections.

1. Control Device Parameter Monitoring and Recordkeeping Requirements

According to today's proposed rule, you would have the option of either monitoring control device operating parameters or operating a THC CEMS at the control device outlet to demonstrate continuous compliance with the operating requirements. The operating parameters for thermal oxidizers, catalytic oxidizers, and biofilters were selected based on information from the questionnaire responses and information from other source categories regarding the parameters that are currently used as reliable indicators of control device performance.

For thermal oxidizers, we would require monitoring for the temperature in the firebox or in the ductwork immediately downstream of the firebox. A sufficiently high temperature in the firebox helps to ensure complete combustion of pollutants. We also would require you to monitor the static pressure at the inlet of the thermal oxidizer as an indicator of capture efficiency and the process unit exhaust flow rate entering the thermal oxidizer. You may monitor gas flow rate at the thermal oxidizer stack as an alternative to monitoring static pressure. Monitoring of gas flow or static pressure can alert the operator to problems such as plugging of the thermal oxidizer. Parameter monitoring would not be required for combustion units with greater than or equal to 44 MW heat input capacity that accept process exhausts into the flame zone.

For catalytic oxidizers, we would require monitoring of the temperature at the inlet of the catalyst bed. The rate at which pollutants in the exhaust stream are oxidized on the catalyst is greatly affected by temperature, as well as other parameters (such as residence time and turbulence) that are fixed by the design of the catalytic oxidizer. Monitoring of the inlet temperature to the catalytic oxidizer helps to ensure that the system is operating as designed with a temperature high enough to oxidize the pollutants. As for thermal oxidizers, we also would require you to monitor the static pressure at the inlet of the catalytic oxidizer or stack gas flow rate.

If you operate a thermal oxidizer or catalytic oxidizer, you would be required to calculate and record 3-hour block averages of the operating parameter values. We selected the 3-hour averaging time because the initial performance test provisions in today's proposed rule require you to perform a minimum of three 1-hour test runs, and the control device operating requirements would be based on the average values obtained using all test data obtained during the performance test. Each 3-hour average parameter value must remain within the level established during the performance test in order for you to demonstrate continuous compliance with the operating requirement.

The proposed operating parameters for biofilters are based on information about parameters currently monitored for biofilters operated in the PCWP industry and on information supplied by a biofilter vendor. For biofilters, you would be required to monitor the following parameters to demonstrate continuous compliance: (1) Temperature of the air stream entering the biofilter, (2) pressure drop across the media bed, and (3) pH of the effluent. Monitoring temperature and pH help determine the health of the microorganism population. Extremes in either temperature or pH can slow or halt microbial activity. Monitoring the pressure drop across the biofilter can alert the operator to problems such as plugging or drying of the bed media. Because factors that affect the performance of biofilters and biofilter monitoring methods can be site specific, you would be allowed to establish your biofilter operating parameter requirements and their corresponding monitoring methods, monitoring frequencies, and averaging times based on historical biofilter operating records. We allow the use of historical records in setting the biofilter parameter limits

because establishing limits during a 3-hour performance test may not adequately identify acceptable operating ranges for biofilter parameters. Some facilities in the PCWP industry have been operating biofilters for years, and these facilities have learned through experience the most appropriate monitoring methods, monitoring frequencies, and optimal operating ranges for their biofilters. Because historical biofilter operating records may not be available for some biofilters (such as new biofilter installations), today's proposed rule would allow up to 180 days following the compliance date for the necessary operating data to be gathered for use in setting parameter requirements. To ensure compliance, all historical operating data used to establish the operating parameter limits must be accompanied by performance test data for the same time period that show that the biofilter was meeting the emission limits in today's proposed rule, and that the data were collected using the test methods in today's proposed rule. In addition, you would have to certify that no modifications have been made to the biofilter or associated process unit(s) subsequent to the date the historical data were collected. Because there are only a few biofilters operating in the PCWP industry and we have limited information on how changes in biofilter operating parameters affect biofilter performance, we welcome your comments on these proposed monitoring requirements for biofilters.

If you operate a control device other than a thermal oxidizer, catalytic oxidizer, or biofilter, you would be required to petition the Administrator for site-specific operating parameters to indicate proper operation and continued performance of the control device. You would establish the operating parameter values during the performance test and maintain the parameters within the range established during the performance test. The Administrator would determine whether maximum value, minimum value, or a range of operating parameters is appropriate. The Administrator would also determine the appropriate averaging time for each monitoring parameter for the control device.

If you comply with the production-based compliance options, then you would be required to continuously monitor a process operating parameter (temperature). You would monitor dryer inlet temperature for green rotary dryers, tube dryers, or strand dryers. You would monitor operating temperature for hardboard ovens, press predryers, reconstituted wood product presses, fiberboard mat dryer hot zones, and softwood veneer dryer hot zones. You would not be required to monitor process parameters for reconstituted wood product board coolers or pressurized refiners. We request comment on whether the temperature parameters are appropriate for monitoring to show compliance with the production-based compliance options. The production-based compliance options were developed for inherently low-emitting process units or process units using pollution prevention. We believe that process unit HAP emissions are somewhat dependent on dryer or press temperature; however, other factors such as resin HAP content and percent of furnish that enters the plant already dried may also affect HAP emissions. It is not clear what pollution prevention techniques will be used to comply with the production-based compliance options (partly because pollution prevention measures are expected to evolve in the future), therefore, we request your feedback on how facilities that will use pollution prevention could show continuous compliance with the production-based compliance options.

Instead of monitoring process or control system operating parameters for thermal oxidizers, catalytic oxidizers, biofilters, or other control systems, you could choose to monitor THC concentration with a CEMS at the control device outlet to show compliance with the operating requirements. If you use a THC CEMS, you would be required to maintain the average THC concentration at the control device outlet below the maximum THC concentration established during the performance test. The purpose of monitoring THC concentration is to show compliance with the operating requirements (as opposed to the compliance options); thus, you could use the THC CEMS instead of CPMS regardless of whether you demonstrate compliance with the THC, formaldehyde, methanol, or total HAP compliance options. For example, you could conduct a performance test to show that you reduce formaldehyde by 90 percent while simultaneously operating the THC CEMS to determine the maximum 3-hour block outlet THC concentration that would become your parameter value representing your operating requirement. Generally, the same parameters that affect control device formaldehyde, methanol, or total HAP reduction efficiency also impact the THC reduction efficiency; thus, we believe that allowing use of a THC CEMS instead of a operating CPMS to demonstrate continuous compliance with the operating requirements is appropriate. If you choose to do so, you may subtract methane from the THC concentration measured with your THC CEMS (*e.g.*, by using a CEMS that measures TGNMO).

Control device maintenance requirements vary significantly from facility to facility. Although we believe that most of the maintenance activities can be accomplished during scheduled facilitywide or partial shutdowns, we recognize that some facilities may need to perform more maintenance on their control systems than other facilities due to site-specific factors, such as the nature and quantity of particulate entering an RTO or the ability of an RTO to perform online bakeouts (a feature often incorporated into newer RTO designs).

The most widely used add-on control systems at PCWP facilities are RTO, RCO, and biofilters. As with any control device in any industry, these control devices require routine maintenance. Routine maintenance includes activities such as cleaning or replacement of corroded parts, media replacement, bakeouts (RTO and RCO), washouts (RTO and RCO), and cleaning of ducts. Some PCWP drying processes release particulates and salts that can plug and weaken RTO and RCO media beds. Frequent bakeouts and washouts are necessary to combat the particulate and salt buildup. Partial or total media replacement is done when bakeouts and washouts are no longer effective.

Plywood and composite wood products industry representatives have requested that today's proposed rule include a downtime allowance that would allow process units to operate while the control device is offline for routine maintenance. After considering the available data, we included in today's proposed rule a routine control device maintenance exemption. To obtain the exemption, you must explain to the Administrator why you cannot perform routine control device maintenance during process shutdowns and describe how you plan to minimize emissions to the greatest extent possible during the maintenance. The routine control device maintenance exemption may not exceed 3 percent of annual operating uptime for each green rotary dryer, tube dryer, strand dryer, or pressurized refiner controlled. The routine control device maintenance exemption is limited to 0.5 percent of annual operating uptime for each softwood veneer dryer, reconstituted wood product press, reconstituted wood product board cooler, hardboard oven, press predryer, or fiberboard mat dryer

controlled. If your control device is used to control a combination of equipment with different downtime allowances (*e.g.*, a tube dryer and a press), then the highest (*i.e.*, 3 percent) downtime allowance applies. The maximum percentages of operating time allowed for the routine control device maintenance exemption are based on our independent analysis of data from an extensive control device downtime survey conducted by the PCWP industry.

We are requesting comment on the appropriateness of including a routine control device maintenance exemption in today's proposed rule and whether or not the downtime allowance allotted is appropriate as the maximum amount of time per year for such an exemption. Commenters should submit information and data that support their comments such as detailed maintenance records and descriptions of the add-on control systems, sources controlled by the control system, and any particulate removal devices that precede the control system.

2. Monitoring and Recordkeeping Requirements for Process Units Without Add-On Control Devices

If you comply with the production-based compliance options in today's proposed rule without using an add-on control system, then you would be required to monitor and record process unit operating parameters. For most process units, temperature would be the required process monitoring parameter. Although HAP emissions vary within and among process units and no one process parameter is responsible for these variations, we selected temperature as the proposed required process monitoring parameter for most process units. We chose operating temperature because it affects HAP emissions and can be controlled and monitored relatively easily.

As for the control device operating requirements, you could choose to monitor THC concentration using a CEMS at the process unit outlet instead of monitoring process unit temperature. If you use a THC CEMS, you would be required to maintain the average THC concentration at the process unit outlet below the maximum THC concentration established during the performance test.

If you elect to use emissions averaging, you would not be required to monitor process parameters for those uncontrolled process units that are used to generate debits. However, when you determine the total HAP emissions from these uncontrolled process units, you would have to perform the emissions measurements under representative operating conditions, and you would be required to keep records of the hours of operation for these uncontrolled process units.

3. Monitoring and Recordkeeping Requirements for Dry Rotary Dryer Work Practice Requirements

Rotary dryers that meet the definition of "dry rotary dryers" in today's proposed rule would not be subject to the proposed control requirements. Green rotary dryers and dry rotary dryers are essentially the same in terms of equipment design. The differences between the two types of dryers are operational. Green rotary dryers are used to dry green furnish, and dry rotary dryers are used to dry furnish that has been previously dried. Green rotary dryers are defined as dryers that dry wood particles that have a moisture content greater than 30 percent on a dry basis or operate at an inlet dryer temperature greater than 600° F. Conversely, dry rotary dryers dry wood particles that have a moisture content less than or equal to 30 percent on a dry basis and operate at an inlet dryer temperature less than or equal to 600° F. The 30 percent moisture and 600° F values were selected for the definitions of dry and green rotary dryers based on values reported in literature, in the questionnaire responses, and in the emissions test reports.

Because the differences in dry rotary dryers and green rotary dryers are operational, we are including monitoring requirements for dry rotary dryers in today's proposed rule that would ensure that these dryers operate as dry rotary dryers on a continuous basis. If you own or operate a dry rotary dryer, you would be required to continuously monitor, calculate, and record the 24-hour average dryer inlet temperature and the 24-hour average moisture content of the incoming wood particles. In addition to monitoring dryer inlet temperature and furnish moisture, you would be required to take representative grab samples of wood particles at the dryer inlet once each day of dryer operation and manually determine the moisture content of the sample on a dry basis. We have included the grab sampling requirement as a means of checking the accuracy of the correlation between the moisture content measured by the continuous moisture sensor and the dry basis moisture content manually determined using a grab sample. The continuous moisture sensors measure moisture level as the ratio of the weight of water to the volume of wood (in the sensing zone). Today's proposed rule defines moisture content, on a dry basis, as the ratio of the weight of water to the weight of dry wood, multiplied by 100.

The requirements for the continuous moisture sensor and the grab sample requirement are specified in § 63.2268(f). We plan to add performance specifications for the continuous moisture sensor to include such parameters as the amount of drift allowed. We request comment on drift and any other performance specifications that should be added to ensure moisture content is being measured accurately, to ensure flexibility in the type of continuous moisture sensor that can be used by a facility, and to ensure compliance and enforceability. We also plan to add specifications to the grab sample requirements, such as including the period of time a sample must maintain a constant weight. We request comment on what this period of time should be and any other specifications that should be added to ensure accurate and precise results.

However, if you choose or are required by some other regulatory action to install a control device designed to reduce VOC or HAP emissions from a dry rotary dryer, you would be exempted from the process monitoring requirements for dry rotary dryers in today's proposed rule.

4. Monitoring and Recordkeeping Requirements for Veneer Redryer Work Practice Requirements

Veneer dryers that meet the definition of "veneer redryers" in today's proposed rule would not be subject to the proposed control requirements. Like the differences between green and dry rotary particle dryers, the differences between veneer dryers and veneer redryers are operational. Veneer dryers are used to dry green veneer, and veneer redryers are used to redry veneer that has been previously dried but requires some additional moisture reduction. Thus, in today's proposed rule, veneer redryers are defined as veneer dryers with an inlet veneer moisture content of less than 25 percent (by weight, dry basis). The 25 percent value was selected as the criterion for distinguishing between veneer dryers and veneer redryers because 25 percent was the highest reported veneer dryer outlet moisture content in responses to a survey. If you own or operate a veneer redryer, you would be required to continuously monitor, calculate, and record the 24-hour average inlet veneer moisture content to show that you continuously meet the definition of a veneer redryer.

For purposes of today's proposed rule, process units heated by microwaves or

radio frequency that are used to remove moisture from veneer are not considered to be veneer dryers or veneer redryers, although these process units are typically used to redry veneer. Emissions test data from the NCASI sampling program indicate that emissions from radio frequency veneer redryers are minimal compared to the emissions from veneer dryers heated by conventional means (such as direct firing or steam heating). Thus, the monitoring requirements for veneer redryers described above would not apply to process units that dry or redry veneer using microwaves or radio frequency.

5. Monitoring and Recordkeeping Requirements for Hardwood Veneer Dryer Work Practice Requirements

Veneer dryers that meet the definition of "hardwood veneer dryer" in today's proposed rule would not be subject to the proposed control requirements. Hardwood veneer dryers are defined in the proposed rule as veneer dryers that process less than 30 percent softwood species on an annual volume basis. If you own or operate a hardwood veneer dryer, you would be required to keep a record (such as a purchase or production record) of the annual volume percentage of softwood species processed in the dryer to show that your dryer continuously meets the definition of a hardwood veneer dryer.

6. Monitoring and Recordkeeping Requirements for Softwood Veneer Dryer Work Practice Requirements

The proposed work practice requirement for softwood veneer dryers is to minimize fugitive emissions from the dryer doors and green end. If you own or operate a softwood veneer dryer, you would be required to develop a plan for minimizing fugitive emissions from the dryer, and you would have to keep records to document that you are following your plan to show continuous compliance with the work practice requirement.

7. Additional Recordkeeping Requirements for Sources Complying With Emissions Averaging Alternative

If you comply with the emissions averaging provisions, you would be required to keep records of all information necessary to calculate debits and credits, including records of your process unit operating hours, records of total HAP measurements for debit-generating process units, and records of performance tests for credit-generating process units. You would also have to keep monitoring records for add-on control systems used to control credit-generating process units.

I. How Did We Select the Notification and Reporting Requirements?

We selected the proposed notification and reporting requirements based on requirements in the NESHAP General Provisions (40 CFR part 63, subpart A) and specific requirements for the PCWP source category.

The notification requirements that we are proposing include Initial Notifications, notification of performance test, Notification of Compliance Status, and notification dates. These notification requirements are based on requirements in §§ 63.7(b) and (c), 63.8(e) and (f), 63.9(b) through (h), and 63.10(d)(2).

In addition, we selected notification requirements for the emissions averaging provisions. If you comply with the emissions averaging provisions, you would have to submit an EAP to the Administrator for approval at least 1 year prior to the compliance date, or 1 year prior to the date you would begin using an emissions average to comply with the proposed rule, whichever is later. The EAP would have to be submitted prior to the date you would begin using an emissions average so that the Administrator would have time to review and approve or disapprove the plan, and so that you would have time to ensure that the emissions credits would equal or exceed the emissions debits.

The proposed reporting requirements that we selected include semiannual compliance reports, required in § 63.10(e)(3), and immediate SSM reports, required in § 63.10(d)(5)(ii). If there are no deviations from the compliance options, operating requirements, or work practice requirements during the reporting period, then you would only be required to include a statement that there were no deviations in your semiannual compliance report. If there are deviations from the compliance options, operating requirements, or work practice requirements during a reporting period, then you would be required to submit the information required in today's proposed rule in your semiannual compliance report. If you have a startup, shutdown or malfunction during the reporting period, and you take actions consistent with your SSM plan (SSMP), then your compliance report would have to include the information in § 63.10(d)(5)(i). The submittal date for the compliance report is based on information in § 63.10(e)(3)(v).

If there is a startup, shutdown, or malfunction during the reporting period, and you take actions inconsistent with the SSMP, then you would be required to submit an immediate SSM report. The report would have to include the actions taken for the event and the information provided in § 63.10(d)(5)(ii). The submittal date for the immediate SSM report is based on § 63.10(d)(5)(ii). For facilities complying with the emissions averaging provisions, the semiannual compliance report would have to contain calculations showing that the AMR equals or exceeds the RMR in addition to the requirements outlined above for semiannual compliance reports.

We have included a routine control device maintenance exemption in today's proposed rule to provide an allowance for control device downtime associated with routine maintenance such as bakeouts, washouts, and media replacement. We would like to clarify that there will also be instances when a control device is offline for correction of malfunctions such as electrical problems, mechanical problems, utility supply problems, pre-filer upsets, production malfunctions (*e.g.*, dryer fires), and weather-related problems. Because these malfunctions are sudden, infrequent, and not reasonably preventable, they would be covered under the SSM provisions of today's proposed rule. In addition, control device downtime due to process upsets that require shutdown and restarting of equipment would be covered under the SSM provisions.

IV. Summary of Environmental, Energy and Economic Impacts

A. How Many Facilities Are Impacted by This Proposed Rule?

This proposed rule is expected to affect an estimated 223 existing major source facilities that manufacture PCWP. The impacted facilities generally manufacture one or more of the following products: softwood plywood, softwood veneer, medium density fiberboard (MDF), oriented strandboard (OSB), particleboard, hardboard, laminated strand lumber, and laminated veneer lumber. The number of impacted facilities was determined based on the estimated potential to emit (*i.e.*, uncontrolled HAP emissions) from each facility and whether or not the facility already operates control systems necessary to meet the proposed standards. Facilities with estimated potential to emit 25 tons or more of total HAP or 10 or more tons of an individual HAP are major sources of HAP and are

subject to today's proposed rule. Of the estimated 223 facilities affected by this proposed rule, an estimated 166 are expected to install add-on control systems to reduce emissions. The remaining facilities already have installed add-on controls, do not have any process units subject to the compliance options, or are expected to comply with work practice requirements only.

The environmental and cost impacts presented in this preamble represent the estimated impacts for the 223 facilities. The impact estimates were based on the use of RTOs (or in some cases a combination WESP and RTO) because RTOs are the most prevalent HAP emissions control technology used in the PCWP industry. However, technologies other than RTOs could be used to comply with today's proposed standards. For a facility that we believe already achieves the emissions reductions required by today's proposed rule, only recordkeeping cost impacts were estimated.

The number of affected facilities presented above (223) does not include major source facilities with lumber kilns that are not otherwise PCWP facilities. Some of these facilities may be major sources of HAP emissions due to lumber drying operations. Because today's proposed rule contains no control requirements for lumber kilns, we expect there to be no cost, environmental, or energy impacts associated with today's proposed rule for these facilities.

B. What Are the Air Quality Impacts?

We estimate nationwide baseline HAP emissions from the PCWP source category to be 17,000 Mg/yr (19,000 tons/yr) at the current level of control. We estimate that the proposed standards would reduce total HAP emissions from the PCWP source category by about 9,700 Mg/yr (11,000 tons/yr). In addition, we estimate that the proposed standards would reduce VOC emissions (approximated as THC) by about 25,000 Mg/yr (27,000 tons/yr) from a baseline level of 45,000 Mg/yr (50,000 tons/yr).

In addition to reducing emissions of HAP and VOC, the proposed standards would also reduce emissions of criteria pollutants, such as carbon monoxide (CO) from direct-fired emission sources and particulate matter less than 10 microns in diameter (PM_{10}). We estimate that the proposed standards would reduce CO emissions by about 10,000 Mg/yr (11,000 tons/yr). We estimate that the proposed standards would reduce PM_{10} emissions by about 11,000 Mg/yr (13,000 tons/yr).

Combustion of exhaust gases in an RTO generates some emissions of nitrogen oxides (NO_X). We estimate that the nationwide increase in NO_X emissions due to the use of RTOs would be about 4,300 Mg/yr (4,800 tons/yr). This estimated increase in NO_X emissions may be an overestimate because some plants may select control technologies other than RTOs to comply with the proposed standards.

Indirect air impacts of today's proposed rule would result from increased electricity usage associated with operation of control devices. Assuming that plants will purchase electricity from a power plant, we estimate that the proposed standards may increase secondary emissions of criteria pollutants such as PM_{10}, sulfur dioxide (SO_2), NO_X, and CO from power plants by about 6,200 Mg/yr (6,900 tons/yr).

C. What Are the Water Quality Impacts?

Wastewater is produced from WESP blowdown, washing out of RTOs, and biofilters. We based all of our impact estimates on the use of RTOs (with or without a WESP upstream depending on the process unit). We estimate that the wastewater generated from WESP blowdown and RTO washouts would increase by about 43 thousand cubic meters per year (m^3/yr)(11 million gal/yr) as a result of today's proposed rule. Facilities would likely dispose of this wastewater by sending it to a municipal treatment facility, evaporating it onsite, incinerating it in an onsite boiler, reusing it onsite (*e.g.*, in log vats or resin mix), or hauling it offsite for spray irrigation.

D. What Are the Solid Waste Impacts?

Solid waste is produced in the form of solids from WESPs and by RTO or RCO media replacement. We estimate that 4,500 Mg/yr (5,000 tons/yr) of solid waste would be generated as a result of today's proposed rule. This solid material may be disposed of in a landfill or used for other purposes. Some PCWP facilities have been able to use RTO or RCO media as aggregate in onsite roadbeds. Some facilities have also been able to identify a beneficial reuse for wet control device solids (such as giving them away to local farmers for soil amendment).

E. What Are the Energy Impacts?

The overall energy demand (*i.e.*, electricity and natural gas) is expected to increase by about 4.3 million gigajoules per year (GJ/yr) (4.1 trillion British thermal units per year (Btu/yr)) nationwide under the proposed standards. The estimated increase in the energy demand is based on the electricity requirements associated with RTOs and WESPs and the fuel requirements associated with RTOs. Electricity requirements are expected to increase by about 718 gigawatt hours per year (Gwh/yr) under the proposed standards. Natural gas requirements are expected to increase by about 45 million m^3/yr (1.6 billion cubic feet per year (ft^3/yr)) under the proposed standards.

F. What Are the Cost Impacts?

The cost impacts estimated for today's proposed rule represent a high-end estimate of costs. Although the use of RTO technology to reduce HAP emissions represents the most expensive compliance option, we based our nationwide cost estimates on the use of RTO technology at all of the impacted facilities because: (1) RTO technology can be used to reduce emissions from all types of PCWP process units; and (2) we could not accurately predict which facilities would use emissions averaging or production-based emissions limits or install less expensive add-on control devices, such as RCO and biofilters. Therefore, our cost estimates are likely to be overstated, as we anticipate that owners and operators of impacted sources will take advantage of available cost saving opportunities,

The high-end estimated total capital costs of today's proposed rule are $479 million. These capital costs apply to existing sources and include the costs to purchase and install both the RTO equipment (and in some cases, a WESP upstream of the RTO) and the monitoring equipment, and the costs of performance tests. Permanent total enclosure costs are also included for reconstituted wood products presses.

The high-end estimated annualized costs of the proposed standards are $142 million. The annualized costs account for the annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, and recordkeeping and reporting costs. Potential control device cost savings and increased recordkeeping and reporting costs associated with today's proposed emissions averaging alternative standard are not accounted for in either the capital or annualized cost estimates.

G. Can We Achieve the Goals of the Proposed Rule in a Less Costly Manner?

We have made every effort in developing this proposal to minimize the cost to the regulated community and allow maximum flexibility in compliance options consistent with our statutory obligations. We recognize, however, that the proposal may still

require some facilities to take costly steps to further control emissions even though those emissions may not result in exposures which could pose an excess individual lifetime cancer risk greater than one in one million, or which exceed thresholds determined to provide an ample margin of safety for protecting public health and the environment from the effects of hazardous air pollutants. We are, therefore, specifically soliciting comment on whether there are further ways to structure the proposed rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment.

Representatives of the plywood and composite wood products industry provided EPA with descriptions of three mechanisms that they believed could be used to implement more cost-effective reductions in risk. The docket for today's proposed rule contains "white papers" prepared by industry that outline their proposed approaches (see docket number A–98–44, Item # II–D–525). These approaches could be effective in focusing regulatory controls on facilities that pose significant risks and avoiding the imposition of high costs on facilities that pose little risk to public health or the environment, and we are seeking public comment on the utility of each of these approaches with respect to this proposed rule.

One of the approaches, an applicability cutoff for threshold pollutants, would be implemented under the authority of CAA section 112(d)(4); the second approach, subcategorization and delisting, would be implemented under the authority of CAA section 112(c)(1) and (c)(9); and, the third approach, would involve the use of a concentration-based applicability threshold. We are seeking comment on whether these approaches are legally justified and, if so, we ask for information that could be used to support such approaches.

The maximum achievable control technology, or MACT, program outlined in CAA section 112(d) is intended to reduce emissions of HAP through the application of MACT to major sources of toxic air pollutants. Section 112(c)(9) is intended to allow EPA to avoid setting MACT standards for categories or subcategories of sources that pose less than a specified level of risk to public health and the environment. The EPA requests comment on whether the approaches described here appropriately rely on the provisions of CAA section 112. While the approaches focus on assessing the inhalation exposures of HAP emitted by a source, EPA specifically requests comment on the appropriateness and necessity of extending these approaches to account for non-inhalation exposures or to account for adverse environmental impacts. In addition to the specific requests for comment noted in this section, we are also interested in any information or comment concerning technical limitations, environmental and cost impacts, compliance assurance, legal rationale, and implementation relevant to the identified approaches. We also request comment on appropriate practicable and verifiable methods to ensure that sources' emissions remain below levels that protect public health and the environment. We will evaluate all comments before determining whether either of the three approaches will be included in the final rule.

1. Industry Emissions and Potential Health Effects

For the PCWP source category, six HAP make up about 96 percent of the total organic HAP (*i.e.*, does not include metals that are HAP). Those six HAP are methanol, formaldehyde, acetaldehyde, phenol, acrolein, and propionaldehyde. All HAP are not emitted by all sources. However, all of the 223 major sources emit all six of the predominant HAP, with a few exceptions. Some engineered wood plants do not emit phenol; these plants are major sources but would not be affected by the proposed rule because they have no equipment subject to the proposed rule. Also, several particleboard plants do not emit propionaldehyde; these particleboard plants have dry rotary particle dryers (as opposed to green particle dryers), which are not subject to control requirements. (For more information, see section III.C.3).

In accordance with section 112(k), EPA developed a list of 33 HAP which present the greatest threat to public health in the largest number of urban areas. Some of the PCWP HAP are included on this list for the EPA's Urban Air Toxics Program. These HAP include three of the six most predominant PCWP HAP (acetaldehyde, acrolein, and formaldehyde). Additional urban HAP that may be emitted by PCWP facilities include benzene, carbon tetrachloride, chloroform, and methylene chloride.

In November 1998, EPA published "A Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants." The organic HAP emitted by PCWP facilities do not appear on the published list of PBT compounds referenced in the EPA strategy.

To estimate the potential baseline risks posed by the PCWP source category and the potential impact of applicability cutoffs, EPA performed a "rough" risk assessment for 185 of the 223 facilities in the PCWP source category. The HAP included in the assessment were acetaldehyde, acrolein, benzene, formaldehyde, manganese, methanol, methylene chloride, and phenol. Of these HAP, four are presently not considered to have thresholds for cancer effects: acetaldehyde, benzene, formaldehyde, and methylene chloride.

Of the 185 facilities assessed, 148 facilities were found to pose cancer risks equal to or greater than one in one million to their surrounding population. Forty-six facilities were predicted to pose cancer risks of one in 100,000 or greater, and two PCWP facilities were found to pose cancer risks equal to or greater than one in 10,000.

2. Applicability Cutoffs for Threshold Pollutants Under Section 112(d)(4) of the CAA

The first approach is an "applicability cutoff" for threshold pollutants that is based on EPA's authority under CAA section 112(d)(4) to establish standards for HAP which are "threshold pollutants." A "threshold pollutant" is one for which there is a concentration or dose below which adverse effects are not expected to occur over a lifetime of exposure. For such pollutants, section 112(d)(4) allows EPA to consider the threshold level, with an ample margin of safety, when establishing emission standards. Specifically, section 112(d)(4) allows EPA to establish emission standards that are not based upon the MACT specified under section 112(d)(2) for pollutants for which a health threshold has been established. Such standards may be less stringent than MACT. Historically, EPA has interpreted section 112(d)(4) to allow categories of sources that emit only threshold pollutants to avoid further regulation if those emissions result in ambient levels that do not exceed the threshold, with an ample margin of safety.[1]

A different interpretation would allow us to exempt individual facilities within a source category that meet the section 112(d)(4) requirements. There are three potential scenarios under this interpretation of the section 112(d)(4) provision. One scenario would allow an exemption for individual facilities that emit only threshold pollutants and can demonstrate that their emissions of

[1] *See* 63 FR 18754, 18765–66 (April 15, 1998) (Pulp and Paper Combustion Sources Proposed NESHAP)

threshold pollutants would not result in air concentrations above the threshold levels, with an ample margin of safety, even if the category is otherwise subject to MACT. A second scenario would allow the section 112(d)(4) provision to be applied to both threshold and non-threshold pollutants, using the one in a million cancer risk level for decisionmaking for non-threshold pollutants. A third scenario would allow a section 112(d)(4) exemption at a facility that emits both threshold and non-threshold pollutants. For those emission points where only threshold pollutants are emitted and where emissions of the threshold pollutants would not result in air concentrations above the threshold levels, with an ample margin of safety, those emission points could be exempt from the MACT standard. The MACT standard would still apply to non-threshold emissions from other emission points at the source. For this third scenario, emission points that emit a combination of threshold and non-threshold pollutants that are co-controlled by MACT would still be subject to the MACT level of control. However, any threshold HAP eligible for exemption under section 112(d)(4) that are controlled by control devices different from those controlling non-threshold HAP would be able to use the exemption, and the facility would still be subject to the provisions of the standard that control non-threshold pollutants or that control both threshold and non-threshold pollutants.

Estimation of hazard quotients and hazard indices. Under the section 112(d)(4) approach, EPA would have to determine that emissions of each of the threshold pollutants emitted by PCWP sources at the facility do not result in exposures which exceed the threshold levels, with an ample margin of safety. The common approach for evaluating the potential hazard of a threshold air pollutant is to calculate a "hazard quotient" by dividing the pollutant's inhalation exposure concentration (often assumed to be equivalent to its estimated concentration in air at a location where people could be exposed) by the pollutant's inhalation Reference Concentration (RfC). An RfC is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure that, over a lifetime, likely would not result in the occurrence of adverse health effects in humans, including sensitive individuals. The EPA typically establishes an RfC by applying uncertainty factors to the critical toxic effect derived from the lowest- or no-observed-adverse-effect level of a pollutant.[2] A hazard quotient less than one means that the exposure concentration of the pollutant is less than the RfC and, therefore, presumed to be without appreciable risk of adverse health effects. A hazard quotient greater than one means that the exposure concentration of the pollutant is greater than the RfC. Further, EPA guidance for assessing exposures to mixtures of threshold pollutants recommends calculating a "hazard index" by summing the individual hazard quotients for those pollutants in the mixture that affect the same target organ or system by the same mechanism.[3] Hazard index (HI) values would be interpreted similarly to hazard quotients; values below one would generally be considered to be without appreciable risk of adverse health effects, and values above one would generally be cause for concern.

For the determinations discussed herein, EPA would generally plan to use RfC values contained in EPA's toxicology database, the Integrated Risk Information System (IRIS). When a pollutant does not have an approved RfC in IRIS, or when a pollutant is a carcinogen, EPA would have to determine whether a threshold exists based upon the availability of specific data on the pollutant's mode or mechanism of action, potentially using a health threshold value from an alternative source, such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the California Environmental Protection Agency (CalEPA). Table 2 of this preamble provides RfC's, as well as unit risk estimates, for the HAP emitted by facilities in the PCWP source category. A unit risk estimate is defined as the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 $\mu g/m^3$ in air.

TABLE 2.—DOSE-RESPONSE ASSESSMENT VALUES FOR SOME HAP REPORTED EMITTED BY THE PLYWOOD AND COMPOSITE WOOD PRODUCTS SOURCE CATEGORY [a, b]

Chemical name	CAS No.	Reference concentration [c] (mg/m^3)	Unit risk estimate [d] ($1/(ug/m^3)$)
Acetaldehyde	75–07–0	9.0E–03 (IRIS)	2.2E–06 (IRIS)
Acrolein	107–02–8	2.0E–05 (IRIS)	
Benzene	71–43–2	6.0E–02 (CAL)	7.8E–06 (IRIS)
Carbon tetrachloride [e]	56–23–5	4.0E–02 (CAL)	1.5E–05 (IRIS)
Chloroform [e]	67–66–3	9.8E–02 (ATSDR)	
Formaldehyde	50–00–0	9.8E–03 (ATSDR)	1.3E–05 (IRIS)
Manganese compounds	7439–96–5	5.0E–05 (IRIS)	
Methanol	67–56–1	4.0E+00 (CAL)	
Methyl ethyl ketone	78–93–3	1.0E+00 (IRIS)	
Methylene chloride	75–09–2	1.0E+00 (ATSDR)	4.7E–07 (IRIS)

[2] "Methods for Derivation of Inhalation Reference Concentrations and Applications of Inhalation Dosimetry," EPA–600/8–90–066F, Office of Research and Development, USEPA, October 1994.

[3] "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum Technical Panel," EPA/630/R–00/002. USEPA, August 2000. *http://www.epa.gov/nceawww1/pdfs/chem mix/chem mix 08 2001.pdf.*

TABLE 2.—DOSE-RESPONSE ASSESSMENT VALUES FOR SOME HAP REPORTED EMITTED BY THE PLYWOOD AND COMPOSITE WOOD PRODUCTS SOURCE CATEGORY [a, b]—Continued

Chemical name	CAS No.	Reference concentration [c] (mg/m^3)	Unit risk estimate [d] (1/(ug/m^3))
Phenol	108–95–2	2.0E–01 (CAL)	

[a] Propionaldehyde, a HAP emitted by the PCWP source category, is not included in Table 2 because there are no dose-response values for it.

[b] The table includes many, but not all, of the HAP emitted by the PCWP source category. The following additional HAP have been detected at more than one PCWP facility: cumene, methyl isobutyl ketone (MIBK), styrene, toluene, m,p-xylene, o-xylene, methylene diphenyl diisocyanate (MDI), chloromethane, and ethyl benzene. In addition, the following HAP have been detected at only one PCWP facility: acetophenone, biphenyl, bis-(2-ethylhexyl phthalate), bromomethane, carbon disulfide, di-n-butyl phthalate, ethyl benzene, hydroquinone, n-hexane, 1,1,1-trichloroethane, 4-methyl-2-pentanone, chloroethane, m,p-cresol, and o-cresol. Other HAP, including metal compounds (in addition to manganese compounds) may be emitted by facilities in the PCWP source category.

[c] *Reference Concentration:* An estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups which include children, asthmatics and the elderly) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from various types of human or animal data, with uncertainty factors generally applied to reflect limitations of the data used.

[d] Unit Risk Estimate: The upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 μg/m^3 in air. The interpretation of the Unit Risk Estimate would be as follows: if the Unit Risk Estimate = 1.5 × 10–6 per μg/m^3, 1.5 excess tumors are expected to develop per 1,000,000 people if exposed daily for a lifetime to 1 μg of the chemical in 1 cubic meter of air. Unit Risk Estimates are considered upper bound estimates, meaning they represent a plausible upper limit to the true value. (Note that this is usually not a true statistical confidence limit.) The true risk is likely to be less, but could be greater.

[e] This HAP was detected at only one PCWP facility.

Sources:
IRIS = EPA Integrated Risk Information System (*http://www.epa.gov/iris/subst/index.html*).
ATSDR = U.S. Agency for Toxic Substances and Disease Registry (*http://www.atsdr.cdc.gov/mrls.html*).
CAL = California Office of Environmental Health Hazard Assessment (*http://www.oehha.ca.gov/air/hot_spots/index.html*).
HEAST = EPA Health Effects Assessment Summary Tables (#PB(=97–921199, July 1997).

To establish an applicability cutoff under section 112(d)(4), EPA would need to define ambient air exposure concentration limits for any threshold pollutants involved. There are several factors to consider when establishing such concentrations. First, we would need to ensure that the concentrations that would be established would protect public health with an ample margin of safety. As discussed above, the approach EPA commonly uses when evaluating the potential hazard of a threshold air pollutant is to calculate the pollutant's hazard quotient, which is the exposure concentration divided by the RfC.

The EPA's "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures" suggests that the noncancer health effects associated with a mixture of pollutants ideally are assessed by considering the pollutants' common mechanisms of toxicity.[4] The guidance also suggests, however, that when exposures to mixtures of pollutants are being evaluated, the risk assessor may calculate an HI. The recommended method is to calculate multiple hazard indices for each exposure route of interest and for a single specific toxic effect or toxicity to a single target organ. The default approach recommended by the guidance is to sum the hazard quotients for those pollutants that induce the same toxic effect or affect the same target organ. A mixture is then assessed by several HI, each representing one toxic effect or target organ. The guidance notes that the pollutants included in the HI calculation are any pollutants that show the effect being assessed, regardless of the critical effect upon which the RfC is based. The guidance cautions that if the target organ or toxic effect for which the HI is calculated is different from the RfC's critical effect, then the RfC for that chemical can be an overestimate, that is, the resultant HI potentially may be overprotective. Conversely, since the calculation of an HI does not account for the fact that the potency of a mixture of HAP can be more potent than the sum of the individual HAP potencies, an HI may potentially be underprotective in some situations.

Options for establishing a hazard index limit. One consideration in establishing a hazard index limit is whether the analysis considers the total ambient air concentrations of all the emitted HAP to which the public is exposed.[5] There are at least several options for establishing a hazard index limit for the section 112(d)(4) analysis that reflect, to varying degrees, public exposure.

One option is to allow the hazard index posed by all threshold HAP emitted from PCWP sources at the facility to be no greater than one. This approach is protective if no additional threshold HAP exposures would be anticipated from other sources in the vicinity of the facility or through other routes of exposure (*e.g.*, through ingestion).

A second option is to adopt a "default percentage" approach, whereby the hazard index limit of the HAP emitted by the facility is set at some percentage of one (*e.g.*, 20 percent or 0.2). This approach recognizes the fact that the facility in question is only one of many sources of threshold HAP to which people are typically exposed every day. Because noncancer risk assessment is predicated on total exposure or dose, and because risk assessments focus only on an individual source, establishing a hazard index limit of 0.2 would account for an assumption that 20 percent of an individual's total exposure is from that individual source. For the purposes of this discussion, we will call all sources of HAP, other than the facility in question, "background" sources. If the facility is allowed to emit HAP such that its own impacts could result in HI values of one, total exposures to threshold HAP in the vicinity of the facility could be substantially greater than one due to background sources, and this would not be protective of public health since only HI values below one are considered to be without appreciable risk of adverse health effects. Thus, setting the hazard index limit for the facility at some default percentage of one will provide a buffer which would help to ensure that total exposures to threshold HAP near the facility (*i.e.*, in combination with exposures due to background sources) will generally not exceed one and can

[4] Ibid.

[5] Senate Debate on Conference Report (October 27, 1990), reprinted in "A Legislative History of the Clean Air Act Amendments of 1990," Comm. Print S. Prt. 103–38 (1993) ("Legis. Hist." at 868.

generally be considered to be without appreciable risk of adverse health effects.

The EPA requests comment on using the "default percentage" approach and on setting the default hazard index limit at 0.2. The EPA is also requesting comment on whether an alternative HI limit, in some multiple of one, would be a more appropriate applicability cutoff.

A third option is to use available data (from scientific literature or EPA studies, for example) to determine background concentrations of HAP, possibly on a national or regional basis. These data would be used to estimate the exposures to HAP from non-PCWP sources in the vicinity of an individual facility. For example, the EPA's National-Scale Air Toxics Assessment (NATA)[6] and ATSDR's Toxicological Profiles[7] contain information about background concentrations of some HAP in the atmosphere and other media. The combined exposures from PCWP sources and from other sources (as determined from the literature or studies) would then not be allowed to exceed a hazard index limit of one. The EPA requests comment on the appropriateness of setting the hazard index limit at one for such an analysis.

A fourth option is to allow facilities to estimate or measure their own facility-specific background HAP concentrations for use in their analysis. With regard to the third and fourth options, the EPA requests comment on how these analyses could be structured. Specifically, EPA requests comment on how the analyses should take into account background exposure levels from air, water, food and soil encountered by the individuals exposed to PCWP emissions. In addition, we request comment on how such analyses should account for potential increases in exposures due to the use of a new or the increased use of a previously emitted HAP, or the effect of other nearby sources that release HAP.

The EPA requests comment on the feasibility and scientific validity of each of these or other approaches. Finally, EPA requests comment on how we should implement the section 112(d)(4) applicability cutoffs, including appropriate mechanisms for applying cutoffs to individual facilities. For example, would the title V permit process provide an appropriate mechanism?

Tiered analytical approach for predicting exposure. Establishing that a facility meets the cutoffs under section 112(d)(4) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would promote a tiered analytical approach for these determinations. A tiered analysis involves making successive refinements in modeling methodologies and input data to derive successively less conservative, more realistic estimates of pollutant concentrations in air and estimates of risk.

As a first tier of analysis, EPA could develop a series of simple look-up tables based on the results of air dispersion modeling conducted using conservative input assumptions. By specifying a limited number of input parameters, such as stack height, distance to property line, and emission rate, a facility could use these look-up tables to easily determine whether the emissions from their sources might cause a hazard index limit to be exceeded.

A facility that does not pass this initial conservative screening analysis could implement increasingly more site-specific but more resource-intensive tiers of analysis using EPA-approved modeling procedures in an attempt to demonstrate that exposure to emissions from the facility does not exceed the hazard index limit. The EPA's guidance could provide the basis for conducting such a tiered analysis.[8]

The EPA requests comment on methods for constructing and implementing a tiered analytical approach for determining applicability of the section 112(d)(4) criterion to specific PCWP sources. It is also possible that ambient monitoring data could be used to supplement or supplant the tiered modeling approach described above. It is envisioned that the appropriate monitoring to support such a determination could be extensive. The EPA requests comment on the appropriate use of monitoring in the determinations described above.

Accounting for dose-response relationships. In the past, EPA routinely treated carcinogens as non-threshold pollutants. The EPA recognizes that advances in risk assessment science and policy may affect the way EPA differentiates between threshold and non-threshold HAP. The EPA's Draft Revised Guidelines for Carcinogen Risk Assessment[9] suggest that carcinogens be assigned non-linear dose-response relationships where data warrant. Moreover, it is possible that dose-response curves for some pollutants may reach zero risk at a dose greater than zero, creating a threshold for carcinogenic effects. It is possible that future evaluations of the carcinogens emitted by this source category would determine that one or more of the carcinogens in the category is a threshold carcinogen or is a carcinogen that exhibits a non-linear dose-response relationship but does not have a threshold.

The dose-response assessments for formaldehyde and acetaldehyde are currently undergoing revision by the EPA. As part of this revision effort, EPA is evaluating formaldehyde and acetaldehyde as potential non-linear carcinogens. The revised dose-response assessments will be subject to review by the EPA Science Advisory Board, followed by full consensus review, before adoption into the EPA IRIS. At this time, EPA estimates that the consensus review will be completed by the end of 2003. The revision of the dose-response assessments could affect the potency factors of these HAP, as well as their status as threshold or non-threshold pollutants. At this time, the outcome is not known. In addition to the current reassessment by EPA, there have been several reassessments of the toxicity and carcinogenicity of formaldehyde in recent years, including work by the World Health Organization and the Canadian Ministry of Health.

The EPA requests comment on how we should consider the state of the science as it relates to the treatment of threshold pollutants when making determinations under section 112(d)(4). In addition, EPA requests comment on whether there is a level of emissions of a non-threshold carcinogenic HAP (*e.g.*, benzene, methylene chloride) at which it would be appropriate to allow a facility to use the approaches discussed in this section.

Risk assessment results. The results of the human health risk assessments described below are based on approaches for quantifying exposure, risk, and cancer incidence that carry significant assumptions, uncertainties, and limitations. For example, in conducting these types of analyses, there are typically many uncertainties regarding dose-response functions, levels of exposure, exposed populations, air quality modeling applications, emission levels, and control effectiveness. Because the estimates derived from the various scoping approaches are necessarily rough, we are concerned that they not convey a

[6] *See http://www.epa.gov/ttn/atw/nata.*

[7] *See http://www.atsdr.cdc.gov/toxpro2.html.*

[8] "A Tiered Modeling Approach for Assessing the Risks due to Sources of Hazardous Air Pollutants." EPA–450/4–92–001. David E. Guinnup, Office of Air Quality Planning and Standards, USEPA, March 1992.

[9] "Draft Revised Guidelines for Carcinogen Risk Assessment." NCEA–F–0644. USEPA, Risk Assessment Forum, July 1999. pp 3–9ff. *http://www.epa.gov/ncea/raf/pdfs/cancer_gls.pdf*

false sense of precision. It is expected that any point estimate of risk reduction or benefits generated by these approaches should be considered as part of a range of potential estimates.

If the final rule is implemented as proposed at all PCWP facilities, annual cancer incidence would be reduced from about 0.09 cases/year to about 0.02 cases/year, while the number of people at or above a cancer risk level of one in a million would be reduced from about 900,000 to 150,000. In addition, the number of people exposed to HI values equal to or greater than one was estimated to be reduced from about 270,000 to about 30,000, and the number of people exposed to HI values of 0.2 or greater was predicted to decrease from about 1,500,000 to about 250,000. (Details of these analyses are available in the docket.)

Based on the results of this rough assessment, if the section 112(d)(4) approach is applied only to threshold pollutants, EPA estimates that few, if any, of the 223 facilities in the plywood source category could obtain an exemption from the rule, since it appears that all or nearly all facilities emit some amount of one or more non-threshold pollutants. If the revised dose-response assessments for formaldehyde and acetaldehyde determine that they are threshold carcinogens, these estimates could increase. This application of the section 112(d)(4) approach is estimated to produce minimal potential cost savings.

The second scenario under the section 112(d)(4) provision would apply to both threshold and non-threshold pollutants. If this interpretation is selected, EPA estimates that, if a HI limit of one and a cancer risk level of 10^{-6} were used, as many as 33 of the 223 facilities in the source category may be exempt from the proposed rule and that, if a HI limit of 0.2 and a cancer risk level of 10^{-6} were used, as many as 26 of the 223 facilities may be exempt. The EPA estimates that the cost of the rule as proposed would be approximately $142 million per year, resulting in an annual cost savings of about $9 million per year (for a HI limit of one) or about $7 million per year (for a HI limit of 0.2) (as compared to establishing a MACT standard for all plants in the industry).

The EPA does not expect the third scenario, which would allow emission point exemptions, to be applicable for the PCWP source category because mixtures of threshold and non-threshold pollutants are co-emitted, and the same emission controls would apply to both. The risk estimates from this rough assessment are based on typical facility configurations (*i.e.*, model plants) and, as such, they are subject to significant uncertainties, such that the actual risks at any one facility could be significantly higher or lower. Therefore, while these risk estimates assist in providing a broad picture of impacts across the source category, they should not be the basis for an exemption from the requirements of the proposed rule. Rather, facility-specific risks would require site-specific data and a more refined analysis.

For either of the first two approaches described above, the actual number of facilities that would qualify for an exemption would depend upon site-specific risk assessments and the specified hazard index limit. If the section 112(d)(4) approach were adopted, the rulemaking would likely indicate that the requirements of the rule do not apply to any source that demonstrates, based on a tiered approach that includes EPA-approved modeling of the affected source's emissions, that the anticipated HAP exposures do not exceed the specified hazard index limit.

3. Subcategory Delisting Under Section 112(c)(9)(B) of the CAA

The EPA is authorized to establish categories and subcategories of sources, as appropriate, pursuant to CAA section 112(c)(1), in order to facilitate the development of MACT standards consistent with section 112 of the CAA. Further, section 112(c)(9)(B) allows EPA to delete a category (or subcategory) from the list of major sources for which MACT standards are to be developed when the following can be demonstrated: (1) In the case of carcinogenic pollutants, that "* * * no source in the category * * * emits (carcinogenic) air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source"; (2) in the case of pollutants that cause adverse noncancer health effects, that "* * * emissions from no source in the category or subcategory * * * exceed a level which is adequate to protect public health with an ample margin of safety"; and (3) in the case of pollutants that cause adverse environmental effects, that "* * * no adverse environmental effect will result from emissions from any source."

Given these authorities and the suggestions from the white paper prepared by industry representatives (see docket number A–98–44), EPA is considering whether it would be possible to establish a subcategory of facilities within the larger PCWP category that would meet the risk-based criteria for delisting. Such criteria would likely include the same requirements as described previously for the second scenario under the section 112(d)(4) approach, whereby a facility would be in the low-risk subcategory if its emissions of threshold pollutants do not result in exposures which exceed the HI limits and if its emissions of non-threshold pollutants do not result in exposures which exceed a cancer risk level of 10^{-6}. The EPA requests comment on what an appropriate HI limit would be for a determination that a facility be included in the low-risk subcategory.

Since each facility in such a subcategory would be a low-risk facility (*i.e.*, if each met these criteria), the subcategory could be delisted in accordance with section 112(c)(9), thereby limiting the costs and impacts of the proposed MACT rule to only those facilities that do not qualify for subcategorization and delisting. The EPA estimates that the maximum potential effect of this approach would be the same as that of applying the section 112(d)(4) approach that allows exemption of facilities emitting threshold and non-threshold pollutants if exemption criteria are met (*i.e.*, as many as 33 of the 223 facilities may be exempt under this approach, if an HI limit of one and a cancer risk level of 10^{-6} are used; or, as many as 26 of the 223 may be exempt if an HI limit of 0.2 and a cancer risk level of 10^{-6} are used).

Facilities seeking to be included in the delisted subcategory would be responsible for providing all data required to determine whether they are eligible for inclusion. Facilities that could not demonstrate that they are eligible to be included in the low-risk subcategory would be subject to MACT and possible future residual risk standards. The EPA solicits comment on implementing a risk-based approach for establishing subcategories of PCWP facilities.

Establishing that a facility qualifies for the low-risk subcategory under section 112(c)(9) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would employ the same tiered analytical approach described earlier in the section 112(d)(4) discussion for these determinations.

One concern that EPA has with respect to this section 112(c)(9) approach is the effect that it could have on the MACT floors. If many of the facilities in the low-risk subcategory are well-controlled, that could make the

MACT floor less stringent for the remaining facilities. One approach that has been suggested to mitigate this effect would be to establish the MACT floor now, based on controls in place for the entire category, and to allow facilities to become part of the low-risk subcategory in the future, after the MACT standard is established. This would allow low risk facilities to use the section 112(c)(9) exemption without affecting the MACT floor calculation. The EPA requests comment on this suggested approach.

Another approach under section 112(c)(9) would be to define a subcategory of facilities within the PCWP source category based upon technological differences, such as differences in production rate, emission vent flow rates, overall facility size, emissions characteristics, processes, or air pollution control device viability. The EPA requests comment on how we might establish PCWP subcategories based on these, or other, source characteristics. If it could then be determined that each source in this technologically-defined subcategory presents a low risk to the surrounding community, the subcategory could then be delisted in accordance with section 112(c)(9). The EPA requests comment on the concept of identifying technologically-based subcategories that may include only low-risk facilities within the PCWP source category.

If this section 112(c)(9) approach were adopted, the rulemaking would likely indicate that the rule does not apply to any source that demonstrates that it belongs in a subcategory which has been delisted under section 112(c)(9).

Consideration of criteria pollutants. Finally, EPA projects that adoption of the MACT floor level of controls would result in increases in NO_X emissions. This pollutant is a precursor in the formation of fine PM, which has been associated with a variety of adverse health effects (including premature mortality, chronic bronchitis, and increased frequency of asthma attacks). The EPA requests comment on the extent to which consideration should be given to the adverse effects of the possible increase in NO_X emissions from applying MACT technology, in the context of implementing our authority under section 112(c)(9) or other exemptions.

H. What Are the Economic Impacts?

The economic impact analysis shows that the expected price increases for affected output would range from only 0.7 to 2.5 percent as a result of the proposed NESHAP for PCWP manufacturers. The expected change in production of affected output is a reduction of 0.1 to 0.7 percent for PCWP manufacturers as a result of the proposed rule. There is only one plant closure expected out of the 223 facilities affected by the proposed rule. It should be noted that the baseline economic condition of the facility predicted to close rather than incur the costs of compliance with the proposed rule affects the closure estimate provided by the economic model, and that the facility predicted to close appears to have low profitability levels currently. Therefore, it is likely that there is no adverse impact expected to occur for those industries that produce output affected by the proposed rule, such as hardboard, softwood plywood and veneer, engineered wood products, and other wood composites.

I. What Are the Social Costs and Benefits?

Our assessment of costs and benefits of the proposed rule is detailed in the "Regulatory Impact Analysis for the Proposed Plywood and Composite Wood Products MACT." The Regulatory Impact Analysis (RIA) is located in Docket number A–98–44.

It is estimated that 3 years after implementation of the proposed requirements, HAP would be reduced by 9,700 Mg/yr (11,000 tons/yr) due to reductions in formaldehyde, acetaldehyde, acrolein, methanol, phenol and several other HAP from existing PCWP emission sources. The health effects associated with these HAP are discussed earlier in this preamble.

At this time, we are unable to provide a comprehensive quantification and monetization of the HAP-related benefits of this proposal. Nevertheless, it is possible to derive rough estimates for one of the more important benefit categories, *i.e.*, the potential number of cancer cases avoided and cancer risk reduced as a result of the imposition of the MACT level of control on this source category. Our analysis suggests that imposition of the MACT level of control would reduce cancer cases by zero to less than one case per year, on average, starting some years after implementation of the standards. We present these results in the RIA. This risk reduction estimate is uncertain and should be regarded as an extremely rough estimate and should be viewed in the context of the full spectrum of unquantified noncancer effects associated with the HAP reductions.

The control technologies used to reduce the level of HAP emitted from PCWP sources are also expected to reduce emissions of CO, PM_{10}, and VOC. It is estimated that CO emission reductions total approximately 10,000 Mg/yr (11,000 tons/yr), PM_{10} emission reductions total approximately 11,000 Mg/yr (13,000 tons/yr), and VOC emission reductions (approximated as THC) total approximately 25,000 Mg/yr (27,000 tons/yr). These estimated reductions occur from existing sources in operation 3 years after the implementation of the requirements of the proposed rule and are expected to continue throughout the life of the sources. Human health effects associated with exposure to CO include cardiovascular system and central nervous system (CNS) effects, which are directly related to reduced oxygen content of blood and which can result in modification of visual perception, hearing, motor and sensorimotor performance, vigilance, and cognitive ability. The VOC emissions reductions may lead to some reduction in ozone concentrations in areas in which the affected sources are located. There are both human health and welfare effects that result from exposure to ozone, and these effects are listed in Table 3 of this preamble.

At the present time, we cannot provide a monetary estimate for the benefits associated with the reductions in CO. We also did not provide a monetary estimate for the benefits associated with the changes in ozone concentrations that result from the VOC emission reductions since we are unable to do the necessary air quality modeling to estimate the ozone concentration changes. For PM_{10}, we did not provide a monetary estimate for the benefits associated with the reduction of the emissions, although these reductions are likely to have significant health benefits to populations living in the vicinity of affected sources.

There may be increases in NO_X emissions associated with the proposed rule as a result of increased use of incineration-based controls. These NO_X emission increases by themselves could cause some increase in ozone and PM concentrations, which could lead to impacts on human health and welfare as listed in Table 3. The potential impacts associated with increases in ambient PM and ozone due to these emission increases are discussed in the RIA. In addition to potential NO_X increases at affected sources, the proposed rule may also result in additional electricity use at affected sources due to application of controls. These potential increases in electricity use may increase emissions of SO_2 and NO_X from electricity generating utilities. As such, the proposed rule may result in additional health impacts from increased ambient PM and ozone from these increased

utility emissions. We did not quantify or monetize these impacts.

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon monoxide. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. These general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references.

A full listing of the benefit categories that could not be quantified or monetized in our analysis are provided in Table 3 of this preamble. A full appreciation of the overall economic consequences of the proposed PCWP standards requires consideration of all benefits and costs expected to result from today's proposed rule, not just those benefits and costs which could be expressed here in dollar terms.

TABLE 3.—UNQUANTIFIED BENEFIT CATEGORIES FROM HAP, OZONE-RELATED, AND PM EMISSIONS REDUCTIONS

	Unquantified effect categories associated with HAP	Unquantified effect categories associated with ozone	Unquantified effect categories associated with PM
Health Categories	Carcinogenicity mortality, Genotoxicity mortality, Noncancer lethality, Pulmonary function, decrement, Dermal irritation, Eye irritation, Neurotoxicity, Immunotoxicity, Pulmonary function decrement, Liver damage, Gastrointestinal toxicity, Kidney damage, Cardiovascular impairment, Hematopoietic (Blood disorders), Reproductive/Developmental toxicity.	Airway responsiveness, Pulmonary inflammation, Increased susceptibility to respiratory infection, Acute inflamation and respiratory cell damage, Chronic respiratory damage/Premature aging of lungs, Emergency room visits for asthma, Hospital admissions for respiratory diseases, Asthma attacks, Minor restricted activity days.	Premature mortality, Chronic bronchitis, Hospital admissions for chronic obstructive pulmonary disease, pneumonia, cardiovascular diseases, and asthma, Changes in pulmonary function, Morphological changes, Altered host defense mechanisms, Cancer, Other chronic respiratory disease, Emergency room visits for asthma, Lower and upper respiratory symptoms, Acute bronchitis, Shortness of breath, Minor restricted activity days, Asthma attacks, Work loss days.
Welfare Categories	Corrosion/Deterioration, Unpleasant odors, Transportation safety concerns, Yield reductions/Foliar injury, Biomass decrease, Species richness decline, Species diversity decline, Community size decrease, Organism lifespan, decrease, Trophic web shortening.	Ecosystem and vegetation effects in Class I areas (*e.g.*, national parks), Damage to urban ornamentals (*e.g.*, grass, flowers, shrubs, and trees in urban areas), Commercial field crops, Fruit and vegetable crops, Reduced yields of tree seedlings, commercial and non-commercial forests, Damage to ecosystems, Materials damage, Reduced worker productivity.	Materials damage, Damage to ecosystems (*e.g.*, acid sulfate deposition), Nitrates in drinking water.

V. Relationship to Other Standards and Programs Under the CAA and Other Statutes

A. Wood Building Products Surface Coating NESHAP Proposal

The proposed PCWP rule includes some miscellaneous coating operations that are performed where the substrate is manufactured. We included these miscellaneous coating operations in the proposed PCWP rule instead of the upcoming Wood Building Products Surface Coating NESHAP (40 CFR part 63, subpart QQQQ) so that most facilities would be subject to only one of the rules. The miscellaneous coating operations proposed today include the application of any of the following to plywood or composite wood products: edge seals, moisture sealants, anti-skid coatings, company logos, trademark or grade stamps, nail lines, synthetic patches, wood patches, wood putty, concrete forming oils, glues for veneer composing, and shelving edge fillers. In addition, miscellaneous coating operations also include the application of primer to OSB siding that occurs at the same site as the OSB manufacture.

B. Wood Furniture Manufacturing Operations NESHAP (40 CFR Part 63, Subpart JJ)

The Wood Furniture Manufacturing Operations NESHAP apply to wood furniture manufacturing facilities that are engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components that are located at a plant site that is a major source of HAP emissions. In the preamble to the final rule (60 FR 62936, December 7, 1995), we stated that wood furniture manufacturing operations involving urea-formaldehyde resins were excluded from the Wood Furniture Manufacturing Operations NESHAP and would be covered by the proposed PCWP rule. Today's proposed rule covers manufacturing operations at wood furniture manufacturing facilities that use urea-formaldehyde resins. These operations include, but are not limited to, the manufacture of hardwood plywood, particleboard, and medium density fiberboard, all of which are included in the definition of a PCWP manufacturing facility. Although some wood furniture plants may be subject to both the Wood Furniture Manufacturing Operations NESHAP and today's proposed rule, there are no overlapping

requirements for individual process units.

C. Combustion Related NESHAP

Plywood and composite wood products facilities operate combustion units such as boilers, fuel cells, and thermal oil heaters that supply heat to process units such as dryers and presses that are used in the manufacture of PCWP. When the combustion unit supplies heat by directly exhausting the combustion gas through a dryer, the dryer is considered a "direct-fired dryer." Therefore, the HAP emissions from a direct-fired dryer are actually a combination of the emissions from the combustion unit exhausting into the dryer and the emissions that result from drying the wood. Because today's proposed rule regulates emissions from direct-fired dryers, those combustion units associated with direct-fired dryers are excluded from the requirements of other combustion-related NESHAP, such as the Industrial/Commercial/Institutional Boilers NESHAP and the Process Heaters NESHAP. However, those combustion units that supply heat or steam to indirect-fired dryers or presses (*i.e.*, combustion unit exhaust does not contact wood particles or veneers), and those thermal oil heaters that supply hot oil for presses but which don't exhaust through dryers are not covered by today's proposed rule and would be subject to the requirements of the applicable combustion related NESHAP.

D. New Source Review/Prevention of Significant Deterioration Applicability

We expect that many of the PCWP facilities impacted by today's proposed rule will install RTOs to comply with the proposed HAP control requirements. However, RTOs can generate NO_X emissions during normal operation. If NO_X emission increases are great enough, they may trigger the need for preconstruction permits under the nonattainment new source review (NSR) or prevention of significant deterioration (PSD) program (referred to in the remainder of this preamble as "major NSR"). During the development of today's proposed rule, representatives from the PCWP industry requested that we consider the application of an RTO to reduce HAP emissions to be a pollution control project (PCP), as defined within the context of PSD and NSR, such that RTOs installed to meet today's proposed rule would qualify for an exemption from NSR/PSD.

In 1992, the EPA adopted an explicit PCP exclusion for electric utility steam generating units (57 FR 32314). In a July 1, 1994 guidance memorandum, we provided guidance to permitting authorities on the approvability of PCP exclusions for source categories other than electric utilities. In that guidance (available on the TTN; see "Pollution Control Projects and New Source Review (NSR) Applicability" from John S. Seitz, Director, OAQPS, to EPA Regional Air Division Directors), we indicated that add-on controls and fuel switches to less polluting fuels may qualify for an exclusion from major NSR as a PCP. To be eligible to be excluded from otherwise applicable major NSR requirements, a PCP must, on balance, be "environmentally beneficial," and the permitting authority must ensure that the project will not cause or contribute to a violation of the NAAQS or PSD increment, or adversely affect visibility or other air quality related values (AQRV) in a Class I area, and that offsetting reductions are secured in the case of a project which would result in a significant increase of a nonattainment pollutant. The permitting authority can make these determinations outside of the major NSR process. The 1994 guidance did not supercede existing NSR requirements, including approved State NSR programs, nor void or create an exclusion from any applicable minor source preconstruction review requirements in an approved SIP. Any minor NSR permitting requirements in a SIP would continue to apply, regardless of any exclusion from major NSR that might be approved for a source under the PCP exclusion policy.

In the July 1, 1994 guidance memorandum, we specifically identified the RTO as an example of an add-on control that is an appropriate candidate for a case-by-case exclusion from major NSR as a PCP. We believe that the current guidance on the PCP exclusion adequately provides for the possible exemption from major NSR for PCP resulting from today's proposed rule. Permitting authorities should follow that guidance to the extent allowed under the applicable SIP in order to determine whether the installation of an RTO in a given circumstance qualifies as a PCP. Projects that qualify for the exclusion would be covered under minor source regulations in the applicable SIP, and permitting authorities would be expected to provide adequate safeguards against NAAQS and increment violations and adverse impacts on AQRV in Federal Class I areas. Only in those areas where potential adverse impacts cannot be resolved through the minor NSR programs or other mechanisms would major NSR apply.

E. Interrelationship Between MACT Provisions and PSD

We have received comments from some in industry who would like to use the provisions of the proposed PCWP rule to satisfy requirements for PSD. While many of the proposed PCWP provisions for HAP may be used to comply with PSD, the PCWP provisions are not universally applicable. In cases where one rule is more stringent than the other, you must comply with both rules.

We do not usually state this explicitly in rule preambles because it is established as a matter of law and precedence. However, because of some misunderstandings from some in industry and our on-going enforcement review of PSD compliance in the PCWP industry, we believe it is helpful to discuss areas where the proposed PCWP rule and PSD may have different requirements.

First, the proposed PCWP rule is a rule that would regulate HAP. Decisions on control levels and compliance demonstrations are based on HAP reductions. If decisions had been based on control of VOC, the control level may have been different. For example, this proposed rule requires 90 percent reduction of HAP from affected process units. Prevention of significant deterioration may require control efficiencies in excess of 90 percent. Another example is which process units require control. In the proposed PCWP rule, the level of control that represents the MACT floor for dry rotary dryers and hardwood veneer dryers is no emissions reductions. We determined that requiring controls was not cost effective for HAP. However, these process units emit more VOC than HAP; therefore, we may determine for PSD that dry rotary dryers and hardwood veneer dryers should be controlled.

Second, we want to clarify that THC is not the same as VOC. Two of the compliance options in the proposed PCWP rule are based on measurement of THC, as carbon, either with or without methane, as a surrogate for measuring HAP. While THC, as carbon, is a good way to determine percent reduction of a control device for HAP of concern for the PCWP industry, it may not be appropriate for VOC.

F. Effluent Guidelines

Effluent guidelines applicable to categories and subcategories of industrial point sources are issued under authority of the Clean Water Act (sections 301, 304, 306, 307, 308, 402, and 501). The current effluent guidelines are applicable to many PCWP

facilities and are found at 40 CFR part 429. Effluent limitations for a number of the subcategories covered in 40 CFR part 429 prohibit discharge of process wastewater pollutants into navigable waters of the United States. Industry has requested that we propose to amend the effluent guidelines in 40 CFR part 429, specifically the definition of process wastewaters at § 429.11(c), which affects all subparts requiring no discharge of process wastewater pollutants, to allow discharge of certain wastewaters, specifically wastewaters associated with APCD operation and maintenance, by excluding them from the applicability of these subparts. Industry has asserted that effluent limitations for these wastewaters could be developed by permit writers on a case-by-case basis based upon best professional judgment. Industry comments are in Docket number A–98–44.

At this time, we are not proposing to amend the effluent guidelines because many PCWP facilities are disposing of these wastewaters in compliance with the existing regulations, for example, by recycling them in the process or discharging them to a publicly owned treatment works. We lack comprehensive information to support the industry's suggestion that simultaneous compliance with the proposed rule and the existing effluent guidelines would not be possible.

In order to consider industry's request, we would need to obtain additional and more-detailed information than currently available that: (1) Quantifies the volumes and pollutants present in the wastewaters generated by APCD used to comply with the proposed rule so that comparisons can be made with wastewaters regulated by the existing effluent guidelines, and (2) documents the industry's wastewater treatment and disposal practices to support the assertions that any additional APCD wastewaters that may not have been considered in the original rulemaking for part 429 are not or could not be disposed of in a manner compliant with the existing effluent guidelines. We are requesting comment and additional detailed information and supporting data from interested parties on whether 40 CFR part 429, subparts B, C, D, F, K, L, M, and O, should be amended by revising the applicability of any or all of these subparts requiring no discharge of process wastewater pollutants (*i.e.*, by changing the definition of process wastewater at § 429.11(c)), such that the effluent guidelines would not apply to wastewater produced by operation or maintenance of APCD that are used to comply with the proposed rule. Any new information and data will be considered and, if appropriate, could serve as the basis for amending the definition of process wastewater found at 40 CFR § 429.11(c) at the time the final PCWP MACT rule is promulgated. (The EPA would consider employing a direct final rule to promulgate any such amendment if we receive convincing supporting information as described above and do not receive significant adverse comment on this issue in response to today's proposed rule. If we do receive adverse comments, we would need to propose the amendment prior to promulgation.) If appropriate and promulgated, this amendment, or a similar amendment designed to achieve the same result, would allow for the discharge of such APCD wastewater that may result from compliance with the PCWP MACT rule. We are considering an amendment to 40 CFR § 429.11(c), to read as follows (amending language in italics): The term "process wastewater" specifically excludes non-contact cooling water, material storage yard runoff (either raw material or processed wood storage), *boiler blowdown, and wastewater from air pollution control devices installed to comply with the proposed national emissions standards for hazardous air pollutants (NESHAP) for plywood and composite wood products (PCWP) facilities (40 CFR § 63.22).* For the dry process hardboard, veneer, finishing, particleboard, and sawmills and planing mills subcategories, fire control water is excluded from the definition.

The actual discharge allowances would be determined initially on a case-by-case basis by NPDES permitting authorities using their best professional judgment (*See* 40 CFR § 125.3). (In this regard, the industry has suggested that discharge limitations could be expressed in the form of allowances for the discharges attributable to the proposed PCWP MACT rule.) If we promulgate an amendment to part 429 of the type described above at the time we promulgate the final PCWP MACT rule, we will consider, through the CWA section 304(m) planning process, whether it is appropriate to revise part 429 at a later time in order to establish category-or subcategory-specific effluent limitations and standards for such APCD wastewater discharges.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is a "significant regulatory action" because the annual costs of complying with the rule as proposed are expected to exceed $100 million. Consequently, this action was submitted to OMB for review under Executive Order 12866. Any written comments from OMB and written EPA responses are available in the docket (see **ADDRESSES** section of this preamble).

We did not estimate health and welfare benefits associated with changes in emissions of HAP, CO, VOC, PM, NO_X and SO2 for this proposed rule.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with

State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would not impose directly enforceable requirements on States, nor would it preempt them from adopting their own more stringent programs to control emissions from PCWP facilities. Moreover, States are not required under the CAA to take delegation of Federal NESHAP and bear their implementation costs, although States are encouraged and often choose to do so. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule. Although section 6 of Executive Order 13132 does not apply to this proposed rule, EPA is providing State and local officials an opportunity to comment on this proposed rule. A summary of the concerns raised during the notice and comment process and EPA's response to those concerns will be provided in the final rulemaking notice.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected plant sites are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The Agency does not have reason to believe the environmental health or safety risks associated with the emissions addressed by this proposed rule present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assess the results of early life exposure to the pollutants addressed by this proposed rule and suggest a disproportionate impact.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Since this rule is estimated to impose costs to the private sector in excess of $100 million per year, it is considered a significant regulatory action. Therefore, we have prepared the following statement with respect to sections 202 through 205 of the UMRA.

1. Statutory Authority

This proposed rule establishes control requirements for existing and new PCWP sources pursuant to section 112 of the CAA. The CAA requires NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This is commonly referred to as MACT. Section 112(d)(3) further

defines a minimum level of control that can be considered for MACT standards, commonly referred to as the MACT floor—which for new sources, is the level of control achieved by the best controlled similar source, and for existing sources is the level of control achieved by the average of the best performing 12 percent of sources in the category (or the best-performing five sources for categories with fewer than 30 sources).

Control technologies and their performance are discussed in the background information document for this proposal (Docket number A–98–44). We considered emission reductions, costs, environmental impacts, and energy impacts in selecting the proposed MACT standards. The proposed standards achieve sizable reductions in HAP and other pollutant emissions.

2. Social Costs and Benefits

The regulatory analyses prepared for this proposed rule, including our assessment of costs and benefits, is detailed in the "Regulatory Impact Analysis for the Proposed Plywood and Composite Wood Products NESHAP" in Docket A–98–44. Based on estimated compliance costs associated with this proposed rule and the predicted change in prices and production in the affected industries, the estimated social costs of this proposed rule are $134.2 million (1999 dollars). The social costs of this proposed rule are the costs imposed upon society as a result of efforts toward compliance, and include the effects upon consumers of products made by the affected facilities.

It is estimated that 3 years after implementation of the requirements as proposed, HAP would be reduced by 9,700 Mg/yr (11,000 tons/yr) due to reductions in formaldehyde, acetaldehyde, acrolein, methanol and other HAP from PCWP sources. Formaldehyde and acetaldehyde have been classified as "probable human carcinogens." Acrolein, methanol and the other HAP are not considered carcinogenic, but produce several other toxic effects. If implemented, the requirements of this proposed rule would also achieve reductions of 10,000 Mg/yr (11,000 tons/yr) of CO, approximately 11,000 Mg/yr (13,000 tons/yr) of PM_{10}, and approximately 25,000 Mg/yr (27,000 tons/yr) of VOC (approximated as THC). Exposure to CO can effect the cardiovascular system and the central nervous system. The PM emissions can result in fatalities and many respiratory problems (such as asthma or bronchitis).

At the present time, we cannot provide a monetary estimate for the benefits associated with the reductions in HAP and CO. For VOC, we are not able to estimate the benefits associated with the reductions due to a lack of available air quality modeling to estimate the change in ozone concentrations that occur with VOC emissions reductions. We estimated the benefits associated with health effects of PM_{10} but were unable to quantify all categories of benefits (particularly those associated with ecosystem and environmental effects). The estimated benefits include the effects of potential additional NO_X emissions that result from additional combustion controls. The estimates of the potential additional NO_X emissions are presented in Section IV of this preamble. Nitrogen oxides are transformed into PM_{10} in the atmosphere, and these emissions hence offset the benefits from the PM_{10} reductions mentioned above. Total monetized benefits for the PME_{10} and NO_X emissions changes using our preferred approach to value benefits is $8.5 million (1999 dollars), and $5.3 million (1999 dollars) using an alternative age-adjusted approach recommended by others. The two approaches to valuing benefits is discussed in more detail in this preamble in the Executive Order 12866 section and in the Regulatory Impact Analysis. The monetized benefits should be considered along with the many categories of benefits that we are unable to place a dollar value on to consider the total benefits of this proposed rule.

3. Regulatory Alternatives Considered

The proposed standards reflect the MACT floor, the least stringent regulatory alternative we may propose. In addition, we are proposing the least burdensome and most flexible monitoring, reporting, and recordkeeping requirements that we believe will assure compliance with the compliance options and requirements of this proposed rule. Therefore, the proposed regulatory alternative reflects the least costly, most cost-effective, and least burdensome regulatory option that achieves the objectives of the proposed rule.

4. Effects on the National Economy

The economic impact analysis for this proposed rule estimates effects upon employment and foreign trade for the industries affected by this proposed rule. The total reduction in employment for the affected industries is 0.3 percent of the current employment level (or 225 employees). This estimate includes the increase in employment among firms in these industries that do not incur any cost associated with the proposed rule. There is also minimal change in the foreign trade behavior for the firms in these industries since the level of imports of affected composite wood products only increases by less than 0.1 percent.

5. Consultation With Government Officials

Throughout the development of this proposed rule, we interacted with representatives of affected State and local officials to inform them of the progress of our rulemaking efforts. We also consulted with representatives from other entities affected by the proposed rule, such as the American Forest & Paper Association, National Council for Air and Stream Improvement, APA—The Engineered Wood Association, Composite Panel Association, American Hardboard Association, Hardwood Plywood and Veneer Association, and representatives from affected companies. We will continue to interact with government officials and other entities during the public comment period for this proposed rule and throughout development of the promulgated PCWP standards.

The number of small entities that are significantly affected by today's proposed PCWP standards is not expected to be substantial. This proposed rule contains no regulatory requirements that might significantly affect small governments because no PCWP facilities are owned by such governments. The full analysis of potential regulatory impacts on small organizations, small governments, and small businesses is included in the economic impact analysis in the docket and is listed at the beginning of today's action under **SUPPLEMENTARY INFORMATION**. Because the number of small entities that are likely to experience significant economic impacts as a result of today's proposed standards is not expected to be substantial, no plan to inform and advise small governments is required under section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a

substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business ranging from 500 to 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed rule on small entities, we certify that this action will not have a significant impact on a substantial number of small entities. In accordance with the RFA, we conducted an assessment of the proposed standards on small businesses in the industries affected by the proposed rule. Based on SBA size definitions for the affected industries and reported sales and employment data, the Agency identified 17 of the 52 companies, or 32 percent, owning affected facilities as small businesses. Although small businesses represent 32 percent of the companies within the source category, they are expected to incur only 8 percent of the total industry compliance costs of $142 million. There are only three small firms with compliance costs equal to or greater than 3 percent of their sales. In addition, there are seven small firms with cost-to-sales ratios between 1 and 3 percent.

We performed an economic impact analysis to estimate the changes in product price and production quantities for the firms affected by this proposed rule. The analysis shows that of the 32 facilities owned by affected small firms, only one would be expected to shut down rather than incur the cost of compliance with the proposed rule. Although any facility closure is cause for concern, it should be noted that the baseline economic condition of the facilities predicted to close affects the closure estimate provided by the economic model. Facilities which are already experiencing adverse economic conditions for reasons unconnected to this proposed rule are more vulnerable to the impact of any new costs than those that are not.

The analysis indicates that the proposed rule should not generate a significant impact on a substantial number of small entities for the PCWP manufacturing source category for the following reasons. First, of the ten small firms that have compliance costs greater than 1 percent of sales, only three have compliance costs of greater than 3 percent of sales. Second, the results of the economic impact analysis show that only one facility owned by a small firm out of the 32 facilities owned by affected small firms may close due to the implementation of this proposed rule. The facility that may close rather than incur the cost of compliance appears to have low profitability levels currently. It also should be noted that the estimate of compliance costs for this facility is likely to be an overestimate due to the lack of facility-specific data available to assign a precise control cost in this case. In sum, the analysis supports today's certification under the RFA because, while a few small firms may experience significant impacts, there will not be a substantial number incurring such a burden.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, we minimized the impact of this proposed rule on small entities in several ways. First, we considered subcategorization based on production and throughput level to determine whether smaller process units would have a different MACT floor than larger process units. Our data show that subcategorization based on size would not result in a less stringent level of control for the smaller process units. Second, we chose to set the control requirements at the MACT floor control level and not at a control level more stringent. Thus, the control level specified in the proposed PCWP rule is the least stringent allowed by the CAA. Third, the proposed rule contains multiple compliance options to provide facilities with the flexibility to comply in the least costly manner while maintaining a workable and enforceable rule. The compliance options include emissions averaging and production-based compliance options which allow inherently low-emitting process units to comply without installing add-on control devices and facilities to use innovative technology and pollution prevention methods. Fourth, the proposed rule includes multiple test method options for measuring methanol, formaldehyde, and total HAP. In addition, we worked with various trade associations during the development of the proposed rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (1984.01), and you may obtain a copy from Susan Auby by mail at Office of Environmental Information, Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. You may also download a copy off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the NESHAP General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the rule) is estimated to be 4,658 labor hours per year, at a total annual cost of $207,322. This estimate includes notifications that facilities are subject to the rule; notifications of performance tests; notifications of compliance status, including the results of performance tests and other initial compliance demonstrations that do not include performance tests; startup, shutdown, and malfunction reports; semiannual compliance reports; and recordkeeping. In addition to the requirements of 40 CFR part 63, subpart A, facilities that wish to implement emissions averaging provisions must submit an emissions averaging plan. Facilities may also submit a request for a routine control device maintenance exemption to justify the need for routine

maintenance on the control device and to show how the facilities plan to minimize emissions to the greatest extent possible during the maintenance. Total capital/startup costs associated with the testing, monitoring, reporting, and recordkeeping requirements over the 3-year period of the ICR are estimated to be $122,040, with operation and maintenance costs of $3,957.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: (1) Review instructions; (2) develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 9, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by February 10, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through annual reports to the OMB, with explanations when we do not use available and applicable voluntary consensus standards.

In this proposed rule, we are proposing requirements to use EPA Methods 1, 1a, 2, 2a, 2c, 2d, 2f, 2g, 3, 3a, 3b, 4, 18, 25a, 204, 204(a–f), 308, 316, 320, and SW 846 0011, and the NCASI methods previously discussed in this preamble. Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards that could be used in addition to the EPA methods.

No voluntary consensus standards were identified as applicable to this proposed rule. For EPA Methods 1a, 2a, 2d, 2f, 2g, 204, 204a–f, 308, 316, and SW 846 0011, no applicable voluntary consensus standards were found. The search and review results are documented in Docket A–98–44. For EPA Methods 1, 2, 2c, 3, 3a, 3b, 4, 18, and 25a, we identified voluntary consensus standards that would not be practical due to lack of equivalency, detail, and/or quality assurance/quality control requirements. Specific reasons why the voluntary consensus standards are not practical are detailed in Docket A–98–44. For EPA Methods 2, 3a, 25a, and 320, we identified voluntary consensus standards that are under development or under EPA review. These voluntary consensus standards are listed in Docket A–98–44. Therefore, we do not propose to use any voluntary consensus standards.

We are requesting comment on compliance demonstration requirements in this proposed rule and specifically invite you to identify potentially-applicable voluntary consensus standards. You should explain why this regulation should adopt a particular voluntary consensus standard in lieu of or in addition to EPA's methods and/or the NCASI methods. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A, was used).

Table 4 of proposed subpart DDDD lists the testing methods and performance standards included in the proposed regulations. Several of the methods have been used by States and industry for more than 10 years. Nevertheless, under § 63.7(e)(2)(ii) and (f), the proposal also allows any State or source to apply to EPA for permission to use an alternative method in place of any of the EPA testing methods or performance standards listed in Table 4 of proposed subpart DDDD.

I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1) (i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action." The proposed rule is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for the determination is as follows.

This proposed rule affects manufacturers in the softwood veneer and plywood (NAICS 321212), reconstituted wood products (NAICS 321219), and engineered wood products (NAICS 321213) industries. There is no crude oil, fuel, or coal production from these industries. Hence, there is no direct effect on such energy production related to implementation of this proposal. In fact, as previously mentioned in this preamble, there will be an increase in energy consumption, and hence an increase in energy

production, resulting from installation of RTO and WESP likely needed for sources to meet the requirements of the proposed rule. This increase in energy consumption is equal to 718 million kilowatt-hours/year (kWh/yr) for electricity and 45 million cubic meters/year (m^3/yr) for natural gas. These increases are equivalent to 0.012 percent of 1998 U.S. electricity production and 0.000001 percent of 1998 U.S. natural gas production.[10] It should be noted, however, that the reduction in demand for product output from these industries may lead to a negative indirect effect on such energy production, for the output reduction will lead to less energy use by these industries and thus some reduction in overall energy production.

For fuel production, the result of this indirect effect from reduced product output is a reduction of only about 1 barrel per day nationwide, or a 0.00001 percent reduction nationwide based on 1998 U.S. fuel production data.[11] For coal production, the resulting indirect effect from reduced product output is a reduction of only 2,000 tons per year nationwide, or only a 0.00001 percent reduction nationwide based on 1998 U.S. coal production data. For electricity production, the resulting indirect effect from reduced product output is a reduction of 42.8 million kWh/yr, or only a 0.00013 percent reduction nationwide based on 1998 U.S. electricity production data. Given that the estimated price increase for product output from any of the affected industries is no more than 2.5 percent, there should be no price increase for any energy type by more than this amount. The cost of energy distribution should not be affected by this proposal at all since the rule does not affect energy distribution facilities. Finally, with changes in net exports being a minimal percentage of domestic output (0.01 percent) from the affected industries, there will be only a negligible change in international trade, and hence in dependence on foreign energy supplies. No other adverse outcomes are expected to occur with regards to energy supplies.Thus, the net effect of this proposed rule on energy production is an increase in electricity output of 0.012 percent compared to 1998 output data, and a negligible change in output of other energy types. All of the results presented above account for the passthrough of costs to consumers, as well as the cost impact to producers. These results also account for how energy use is related to product output for the affected industries.[12] For more information on the estimated energy effects, please refer to the background memo[13] to these calculations and the economic impact analysis for the proposed rule. The background memo and economic impact analysis are available in the public docket.

Therefore, we conclude that the rule if implemented as proposed is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—[Amended]

2. Section 63.14 is amended by revising paragraph (f) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(f) The following material is available from the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI), Methods Manual, P.O. Box 133318, Research Triangle Park, NC 27709–3318, (919) 558–1987, or at *http://www.ncasi.org.*

(1) NCASI Method DI/MEOH–94.02, Methanol in Process Liquids GC/FID (Gas Chromatography/Flame Ionization Detection), August 1998, IBR approved for § 63.457(c)(3)(ii).

(2) NCASI Method CI/WP–98.01, Chilled Impinger Method For Use At Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol, 1998, IBR approved for proposed § 63.2262.

(3) NCASI Method IM/CAN/WP–99.01, Impinger/Canister Source Sampling Method For Speciated HAPs at Wood Products Facilities, 1999, IBR approved for proposed § 63.2262.

* * * * *

3. Part 63 is amended by adding subpart DDDD to read as follows:

Subpart DDDD—National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

What This Subpart Covers

Sec.

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63.2261 By what date must I conduct performance tests or other initial compliance demonstrations?

63.2262 How do I conduct performance tests and establish operating requirements?

63.2263 Initial compliance demonstration for a dry rotary dryer.

63.2264 Initial compliance demonstration for a hardwood veneer dryer.

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63.2266 Initial compliance demonstration for a veneer redryer.

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63.2268 What are my monitoring installation, operation, and maintenance requirements?

Continuous Compliance Requirements

63.2270 How do I monitor and collect data to demonstrate continuous compliance?

63.2271 How do I demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements?

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[10] U.S. Department of Energy, Energy Information Administration. Annual Energy Review, End-Use Energy Consumption for 1998. Located on the Internet at *http://www.eia.doe.gov/emeu/aer/enduse.html.*

[11] Ibid.

[12] U.S. Department of Energy, Energy Information Administration. 1998 Manufacturing Energy Consumption Survey. Located on the Internet at *http://www.eia.doe.gov/emeu/mecs/mecs98/datatables/contents.html.*

[13] U.S. Environmental Protection Agency. "Energy Impact Analysis of the Proposed Plywood and Composite Wood Products NESHAP." July 30, 2001.

Notifications, Reports, and Records

63.2280 What notifications must I submit and when?
63.2281 What reports must I submit and when?
63.2282 What records must I keep?
63.2283 In what form and how long must I keep my records?

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Table 1B to Subpart DDDD—Add-On Control Systems Compliance Options
Table 2 to Subpart DDDD—Operating Requirements
Table 3 to Subpart DDDD—Work Practice Requirements
Table 4 to Subpart DDDD—Requirements for Performance Tests
Table 5 to Subpart DDDD—Performance Testing and Initial Compliance Demonstrations for the Compliance Options and Operating Requirements
Table 6 to Subpart DDDD—Initial Compliance Demonstrations for Work Practice Requirements
Table 7 to Subpart DDDD—Continuous Compliance With the Compliance Options and Operating Requirements
Table 8 to Subpart DDDD—Continuous Compliance With the Work Practice Requirements
Table 9 to Subpart DDDD—Requirements for Reports
Table 10 to Subpart DDDD—Applicability of General Provisions to Subpart DDDD

Appendix

Appendix A to Subpart DDDD—Alternative Procedure to Determine Capture Efficiency From A Hot Press Enclosure in the Plywood and Composite Wood Products Industry Using Sulfur Hexafluoride Tracer Gas

What This Subpart Covers

§ 63.2230 What is the purpose of this subpart?

This subpart establishes national compliance options, operating requirements, and work practice requirements for hazardous air pollutants (HAP) emitted from plywood and composite wood products manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the compliance options, operating requirements, and work practice requirements.

§ 63.2231 Does this subpart apply to me?

This subpart applies to you if you meet the criteria in paragraphs (a) and (b) of this section.

(a) You own or operate a plywood and composite wood products (PCWP) manufacturing facility. A PCWP manufacturing facility is a plant site that manufactures plywood and/or composite wood products by bonding wood material (fibers, particles, strands, veneers, etc.) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. Plywood and composite wood products manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any facility. Plywood and composite wood products include (but are not limited to) plywood, veneer, particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams.

(b) The PCWP manufacturing facility is located at a major source of HAP emissions. A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.2232 What parts of my plant does this subpart cover?

(a) This rule applies to each new, reconstructed, or existing affected source at a PCWP manufacturing facility.

(b) The affected source is the collection of dryers, blenders, formers, presses, board coolers, and other process units associated with the manufacturing of plywood and composite wood products at a plant site. The affected source includes, but is not limited to, green end operations, drying operations, blending and forming operations, pressing and board cooling operations, and miscellaneous finishing operations (such as sanding, sawing, patching, edge sealing, and other finishing operations not subject to other NESHAP). The affected source also includes onsite storage of raw materials used in the manufacture of plywood and/or composite wood products, such as resins; onsite wastewater treatment operations specifically associated with plywood and composite wood products manufacturing; and miscellaneous coating operations (defined in § 63.2292). The affected source includes lumber kilns at PCWP manufacturing facilities and at any other kind of facility.

(c) An affected source is a new affected source if you commenced construction of the affected source after January 9, 2003 and you meet the applicability criteria at the time you commenced construction.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.2233 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraph (a)(1) or (2) of this section, whichever is applicable.

(1) If the initial startup of your affected source is before the effective date of the subpart, then you must comply with the compliance options, operating requirements, and work practice requirements for new and reconstructed sources in this subpart no later than the effective date of the subpart.

(2) If the initial startup of your affected source is after the effective date of the subpart, then you must comply with the compliance options, operating requirements, and work practice requirements for new and reconstructed sources in this subpart upon initial startup of your affected source.

(b) If you have an existing affected source, you must comply with the compliance options, operating requirements, and work practice requirements for existing sources no later than the date 3 years after the effective date of the subpart.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart by the date 3 years after the effective date of the subpart or upon initial startup of your affected source as a major source, whichever is later.

(d) You must meet the notification requirements according to the schedule in § 63.2280 and according to 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the compliance options, operating requirements, and work practice requirements in this subpart.

Compliance Options, Operating Requirements, and Work Practice Requirements

§ 63.2240 What are the compliance options and operating requirements and how must I meet them?

You must meet the compliance options and operating requirements described in Tables 1A, 1B, and 2 of this subpart and in paragraph (c) of this section by using one or more of the compliance options listed in paragraphs (a), (b), and (c) of this section. The process units subject to the compliance options are listed in Tables 1A and 1B (the same process units are listed in both tables) and are defined in § 63.2292. You need only to meet one of the compliance options outlined in paragraphs (a) through (c) of this section for each process unit. You cannot use multiple compliance options for a single process unit. (For example, you cannot use a production-based compliance option for one vent of a veneer dryer and an add-on control system compliance option for another vent on the same veneer dryer. You must use either the production-based compliance option or an add-on control system compliance option for the entire dryer.)

(a) *Production-based compliance options.* Meet the production-based total HAP compliance options in Table 1A of this subpart and the applicable operating requirements in Table 2 of this subpart. You may not use an add-on control system to meet the production-based compliance options.

(b) *Compliance options for add-on control systems.* Use an emissions control system and demonstrate that the resulting emissions meet the compliance options and operating requirements in Tables 1B and 2 of this subpart. If you own or operate a reconstituted wood product press at a new or existing affected source or a reconstituted wood product board cooler at a new affected source, and you choose to comply with one of the concentration-based compliance options for a control system outlet (presented as option numbers 2, 4, and 6 in Table 1B of this subpart), you must have a capture device that either meets the EPA Method 204 criteria for a permanent total enclosure (PTE) or achieves a capture efficiency of greater than or equal to 95 percent.

(c) *Emissions averaging compliance option (for existing sources only).* Using the procedures in paragraphs (c)(1) through (3) of this section, demonstrate that emissions included in the emissions average meet the compliance options and operating requirements. New sources may not use emissions averaging to comply with this subpart.

(1) *Calculation of required and actual mass removal.* Limit emissions of total HAP, as defined in § 63.2292, to include acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde from your affected source to the standard specified by Equations 1, 2, and 3 of this section.

$$RMR = 0.90 \times \left(\sum_{i=1}^{n} UCEP_i \times OH_i \right) \quad \text{(Eq. 1)}$$

$$AMR = \left(\sum_{i=1}^{n} CD_i \times OCEP_i \times OH_i \right) \quad \text{(Eq. 2)}$$

$$AMR \geq RMR \quad \text{(Eq. 3)}$$

Where:

RMR = required mass removal of total HAP from all process units generating debits (*i.e.*, all process units that are subject to the compliance options in Tables 1A and 1B of this subpart and that are either uncontrolled or under-controlled), pounds per semiannual period

AMR = actual mass removal of total HAP from all process units generating credits (*i.e.*, all process units that are controlled as part of the Emissions Averaging Plan), pounds per semiannual period

$UCEP_i$ = mass of total HAP from an uncontrolled or under-controlled process unit (i) that generates debits, pounds per hour

OH_i = number of hours a process unit (i) is operated during the semiannual period, hours per 6 month period

CD_i = control system efficiency for the emission point (i) for total HAP, expressed as a fraction, and not to exceed 90 percent, unitless

$OCEP_i$ = mass of total HAP from a process unit (i) that generates credits, pounds per hour

0.90 = required control system efficiency of 90 percent multiplied, unitless

(2) *Requirements for debits and credits.* You must calculate debits and credits as specified in paragraphs (c)(2)(i) through (vi) of this section.

(i) You must limit process units in the emissions average to those process units located at the existing affected source, as defined in § 63.2292.

(ii) You cannot use nonoperating process units to generate emissions averaging credits. You cannot use process units that are shutdown to generate emissions averaging debits or credits.

(iii) You may not include in your emissions average process units controlled to comply with a State, Tribal, or Federal rule other than this subpart, except when the control system installation and process unit inclusion in the emissions average both pre-date the effective date of the State, Tribal, or Federal rule.

(iv) You must use actual measurements of total HAP emissions from process units to calculate your required mass removal (RMR) and actual mass removal (AMR). The total HAP measurements must be obtained according to § 63.2262(b) through (d), (g), and (h), using the methods specified in Table 4 of this subpart.

(v) Your initial demonstration that the credit-generating process units will be capable of generating enough credits to offset the debits from the debit-generating process units must be made under representative operating conditions. After the compliance date, you must use actual operating data for all debit and credit calculations.

(vi) Do not include emissions from the following time periods in your emissions averaging calculations:

(A) Emissions during periods of startup, shutdown, and malfunction as

described in the startup, shutdown, and malfunction plan.

(B) Emissions during periods of monitoring malfunctions, associated repairs, and required quality assurance or control activities or during periods of control device maintenance covered in your routine control device maintenance exemption. No credits may be assigned to credit-generating process units, and maximum debits must be assigned to debit-generating process units during these periods.

(3) *Operating requirements.* You must meet the operating requirements in Table 2 of this subpart for each process unit or control device used in calculation of emissions averaging credits.

§ 63.2241 What are the work practice requirements and how must I meet them?

(a) You must meet each work practice requirement in Table 3 of this subpart that applies to you.

(b) As provided in § 63.6(g), we, the EPA, may choose to grant you permission to use an alternative to the work practice requirements in this section.

General Compliance Requirements

§ 63.2250 What are the requirements for periods of startup, shutdown, and malfunction?

(a) You must be in compliance with the compliance options, operating requirements, and the work practice requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction; prior to initial startup; and during the routine control device maintenance exemption specified in § 63.2251.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) The compliance options, operating requirements, and work practice requirements do not apply during times when the process unit(s) subject to the compliance options, operating requirements, and work practice requirements are not operating, or during scheduled startup and shutdown periods, and during malfunctions. These startup and shutdown periods must not exceed the minimum amount of time necessary for these events, and during these events, you must minimize emissions to the greatest extent possible.

(e) You must, at the beginning of each semiannual compliance period, record your control device maintenance schedule for that period. To the extent practical, startup and shutdown of emission control systems must be scheduled during times when process equipment is also shutdown for routine maintenance.

(f) If you use a catalytic oxidizer, you must maintain and operate the catalyst according to the manufacturer's specifications.

§ 63.2251 What are the requirements for the routine control device maintenance exemption?

(a) You may request a routine control device maintenance exemption from the Administrator. Your request must justify the need for the routine maintenance on the control device and the time required to accomplish the maintenance activities, describe the maintenance activities and the frequency of the maintenance activities, explain why the maintenance cannot be accomplished during process shutdowns, describe how you plan to minimize emissions to the greatest extent possible during the maintenance, and provide any other documentation required by the Administrator.

(b) The routine control device maintenance exemption must not exceed the percentages of process unit operating uptime in paragraphs (b)(1) and (2) of this section.

(1) If the control device is used to control a green rotary dryer, tube dryer, strand dryer, or pressurized refiner, then the routine control device maintenance exemption must not exceed 3 percent of annual operating uptime for each process unit controlled.

(2) If the control device is used to control a softwood veneer dryer, reconstituted wood product press, reconstituted wood product board cooler, hardboard oven, press predryer, or fiberboard mat dryer, then the routine control device maintenance exemption must not exceed 0.5 percent of annual operating uptime for each process unit controlled.

(3) If the control device is used to control a combination of equipment listed in both paragraphs (b)(1) and (2) of this section, such as a tube dryer and a reconstituted wood product press, then the routine control device maintenance exemption must not exceed 3 percent of annual operating uptime for each process unit controlled.

(c) The request for the routine control device maintenance exemption, if approved by the Administrator, must be incorporated by reference in and attached to the affected source's title V permit.

(d) The compliance options and operating requirements do not apply during times when control device maintenance covered under your approved routine control device maintenance exemption is performed. You must minimize emissions to the greatest extent possible during these routine control device maintenance periods.

(e) You must, at the beginning of each semiannual compliance period, record your control device maintenance schedule for that period. To the extent practical, startup and shutdown of emission control systems must be scheduled during times when process equipment is also shutdown.

Initial Compliance Requirements

§ 63.2260 How do I demonstrate initial compliance with the compliance options, operating requirements, and work practice requirements?

(a) To demonstrate initial compliance with the compliance options and operating requirements, you must conduct performance tests and establish each site-specific operating requirement in Table 2 of this subpart according to the requirements in § 63.2262 and Table 4 of this subpart. Combustion units with heat input capacity of greater than or equal to 44 megawatts that accept process exhausts into the flame zone are exempt from the initial performance testing and operating requirements for thermal oxidizers.

(b) You must demonstrate initial compliance with each compliance option, operating requirement, and work practice requirement that applies to you according to Tables 5 and 6 of this subpart and according to §§ 63.2260 through 63.2268 of this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.2280(d).

§ 63.2261 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) You must conduct performance tests upon initial startup or no later than 180 calendar days after the compliance date that is specified for your source in § 63.2233 and according to § 63.7(a)(2), whichever is later.

(b) You must conduct initial compliance demonstrations that do not require performance tests upon initial startup or no later than 30 calendar days after the compliance date that is specified for your source in § 63.2233, whichever is later.

§ 63.2262 How do I conduct performance tests and establish operating requirements?

(a) You must conduct each performance test according to the requirements in § 63.7(e)(1), the requirements in paragraphs (b) through (o) of this section, and according to the methods specified in Table 4 of this subpart.

(b) *Periods when performance tests must be conducted.*

(1) You must not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(2) You must test under representative operating conditions as defined in § 63.2292. You must describe representative operating conditions in your performance test report for the process and control systems and explain why they are representative.

(c) *Number of test runs.* You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour except for: testing of a temporary total enclosure (TTE) conducted using Methods 204A through 204F which require three separate test runs of at least 3 hours each; and testing of an enclosure conducted using the alternative tracer gas method in appendix A to this subpart which requires a minimum of three separate runs of at least 20 minutes each.

(d) *Location of sampling sites.* Sampling sites must be located at the inlet (if emission reduction testing or documentation of inlet methanol or formaldehyde concentration is required) and outlet of the control device and prior to any releases to the atmosphere.

(e) *Collection of monitoring data.* You must collect operating parameter monitoring system or continuous emissions monitoring system (CEMS) data at least every 15 minutes during the entire initial performance test and determine the parameter or concentration value for the operating requirement during the performance test using the methods specified in paragraphs (k) through (o) of this section.

(f) *Collection of production data.* To comply with any of the production-based compliance options, you must measure and record the process unit throughput during each test.

(g) *Nondetect data.* When determining total HAP, formaldehyde, methanol, or THC emission rates, all nondetect data, as defined in § 63.2292, must be treated as one-half of the method detection limit.

(h) *Calculation of percent reduction across a control system.* When determining the control system efficiency for any control system included in your emissions averaging plan (not to exceed 90 percent) and when complying with any of the compliance options based on percent reduction across a control system in Table 1B of this subpart, as part of the performance test, you must calculate the percent reduction using Equation 1 of this section:

$$PR = CE \times \frac{ER_{in} - ER_{out}}{ER_{in}}(100) \quad \text{(Eq. 1)}$$

Where:

PR = percent reduction, percent

CE = capture efficiency, percent (determined for reconstituted wood product presses and board coolers as required in Table 4 of this subpart)

ER_{in} = emission rate of total HAP (calculated as the sum of the emission rates of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde), THC, formaldehyde, or methanol in the inlet vent stream of the control device, pounds per hour

ER_{out} = emission rate of total HAP (calculated as the sum of the emission rates of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde), THC, formaldehyde, or methanol in the outlet vent stream of the control device, pounds per hour

(i) *Calculation of mass per unit production.* To comply with any of the production-based compliance options in Table 1A of this subpart, you must calculate your mass per unit production emissions for each test run using Equation 2 of this section:

$$MP = \frac{ER_{HAP}}{P \times CE} \quad \text{(Eq. 2)}$$

Where:

MP = mass per unit production, pounds per oven dried ton OR pounds per thousand square feet on a specified thickness basis (see paragraph (j) of this section if you need to convert from one thickness basis to another)

ER_{HAP} = emission rate of total HAP (calculated as the sum of the emission rates of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde) in the stack, pounds per hour

P = process unit production rate (throughput), oven dried tons per hour OR thousand square feet per hour on a specified thickness basis

CE = capture efficiency, percent (determined for reconstituted wood product presses and board coolers as required in Table 4 of this subpart)?≤

(j) *Thickness basis conversion.* Use Equation 3 of this section to convert from one thickness basis to another:

$$MSF_B = MSF_A \times \frac{A}{B} \quad \text{(Eq. 3)}$$

Where:

MSF_A = thousand square feet on an A-inch basis

MSF_B = thousand square feet on a B-inch basis

A = old thickness you are converting from, inches

B = new thickness you are converting to, inches

(k) *Establishing thermal oxidizer operating requirements.* If you operate a thermal oxidizer, you must establish your thermal oxidizer operating parameters according to paragraphs (k)(1) through (4) of this section.

(1) During the initial performance test, you must continuously monitor the firebox temperature during each of the required 1-hour test runs. The minimum firebox temperature must then be established as the average of the three minimum 15-minute firebox temperatures monitored during the three test runs. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(2) If you choose to monitor inlet static pressure during the initial performance test, you must continuously monitor the static pressure at the inlet of the thermal oxidizer during each of the required 1-hour test runs. The static pressure operating range must then be established as the maximum and minimum of the 15-minute static pressures monitored during the entire 3-hour test. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(3) If you choose to monitor stack gas flow during the initial performance test, you must continuously monitor the gas flow rate at the thermal oxidizer stack during each of the required 1-hour test runs. The maximum flow rate must then be established as the average of the three maximum 15-minute flow rates monitored during the three test runs. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(4) You may establish a different minimum firebox temperature, static

pressure operating range, or maximum stack gas flow rate for your thermal oxidizer by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraphs (k)(1) and (3) of this section that demonstrates compliance with the compliance options in Table 1B of this subpart.

(5) If your thermal oxidizer is a combustion unit with a heat input capacity greater than or equal to 44 megawatts, then you are exempt from the initial performance testing and monitoring requirements specified in paragraphs (k)(1) through (4) of this section. To demonstrate initial compliance, you must submit documentation with your Notification of Compliance Status showing that your combustion unit has a heat input capacity of greater than or equal to 44 megawatts and that process exhausts controlled by the combustion unit enter into the flame zone.

(l) *Establishing catalytic oxidizer operating requirements.* If you operate a catalytic oxidizer, you must establish your catalytic oxidizer operating parameters according to paragraphs (l)(1) through (4) of this section.

(1) During the initial performance test, you must continuously monitor the temperature upstream of the catalyst bed during the required 1-hour test runs. The minimum upstream temperature must then be established as the average of the three minimum 15-minute temperatures upstream of the catalyst bed monitored during the three test runs. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(2) If you choose to monitor inlet static pressure during the initial performance test, you must continuously monitor the static pressure at the inlet of the catalytic oxidizer during each of the required 1-hour test runs. The static pressure operating range must then be established as the maximum and minimum of the 15-minute static pressures monitored during the entire 3-hour test. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(3) If you choose to monitor stack gas flow during the initial performance test, you must continuously monitor the gas flow rate at the catalytic oxidizer stack during each of the required 1-hour test runs. The maximum flow rate must then be established as the average of the three maximum 15-minute flow rates monitored during the three test runs. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(4) You may establish a different minimum upstream temperature, static pressure operating range, or maximum stack gas flow rate for your catalytic oxidizer by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraphs (l)(1) through (3) of this section that demonstrates compliance with the compliance options in Table 1B of this subpart.

(m) *Establishing biofilter operating requirements.* If you operate a biofilter, you must establish your average biofilter operating requirements according to paragraphs (m)(1) through (3) of this section.

(1) During the initial performance test, you must monitor the temperature of the air stream entering the biofilter, pH of the biofilter effluent, and pressure drop across the biofilter bed. You must specify appropriate monitoring methods, monitoring frequencies, and averaging times for the parameters. You also must specify appropriate minimum limits, maximum limits, or operating ranges for the parameters you will monitor. You may base operating ranges on values recorded during previous performance tests provided that the data used to establish the operating ranges have been obtained using the test methods required in this subpart. If you use data from previous performance tests, you must certify that the biofilter and associated process unit(s) have not been modified subsequent to the date the historical data were collected.

(2) If historical operating records are not readily available (as would be the case for a new biofilter installation), you will be allowed up to 180 days following the compliance date to gather data and complete the requirements in paragraph (m)(1) of this section.

(3) You may establish different operating ranges for your biofilter operating parameters by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (m)(1) of this section that demonstrates compliance with the compliance options in Table 1B of this subpart.

(n) *Establishing uncontrolled process unit operating requirements.* If you operate a process unit that meets a compliance option in Table 1A of this subpart without the use of a control device, you must establish your process unit operating parameters according to paragraphs (n)(1) through (2) of this section.

(1) During the initial performance test, you must continuously monitor the process unit inlet temperature or operating temperature (whichever applies, as specified for different process units in Table 2 of this subpart) during each of the required 1-hour test runs. The maximum inlet temperature or maximum operating temperature must then be established as the average of the three maximum 15-minute temperatures monitored during the three test runs. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(2) You may establish a different maximum temperature for your process unit by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (n)(1) of this section that demonstrates compliance with the compliance options in Table 1A of this subpart.

(o) *Establishing operating requirements using total hydrocarbon (THC) CEMS.* If you choose to meet the operating requirements by monitoring THC concentration instead of monitoring control device or process operating parameters, you must establish your THC concentration operating requirement according to paragraphs (o)(1) through (2) of this section.

(1) During the initial performance test, you must continuously monitor THC concentration using your CEMS during each of the required 1-hour test runs. The maximum THC concentration must then be established as the average of the three maximum 15-minute THC concentrations monitored during the three test runs. Multiple 3-run performance tests may be conducted to establish a range of THC concentration values under different operating conditions.

(2) You may establish a different maximum THC concentration by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (o)(1) of this section that demonstrates compliance with the compliance options in Tables 1A and 1B of this subpart.

§ 63.2263 Initial compliance demonstration for a dry rotary dryer.

If you operate a dry rotary dryer, you must demonstrate that your dryer processes furnish with an inlet moisture content of less than or equal to 30 percent (by weight, dry basis) and operates with a dryer inlet temperature of less than or equal to 600 °F. You must designate and clearly identify each dry rotary dryer. You must record the inlet furnish moisture content (dry basis) and inlet dryer

operating temperature according to § 63.2268(a), (b), and (f) for a minimum of 30 calendar days. You must submit the highest recorded 24-hour average inlet furnish moisture content and the highest recorded 24-hour average dryer inlet temperature with your Notification of Compliance Status. In addition, submit with the Notification of Compliance Status a signed statement by a responsible official that certifies with truth, accuracy, and completeness that the dry rotary dryer will dry furnish with a maximum inlet moisture content less than or equal to 30 percent (by weight, dry basis) and will operate with a maximum inlet temperature of less than or equal to 600°F in the future.

§ 63.2264 Initial compliance demonstration for a hardwood veneer dryer.

If you operate a hardwood veneer dryer, you must record the annual volume percentage of softwood veneer species processed in the dryer as follows:

(a) Use Equation 1 of this section to calculate the annual volume percentage of softwood species dried:

$$SW_{\%} = \frac{SW}{T}(100) \qquad \text{(Eq. 1)}$$

Where:

$SW_{\%}$ = annual volume percent softwood species dried

SW = softwood veneer dried during the previous 12 months, thousand square feet (3/8-inch basis)

T = total softwood and hardwood veneer dried duringthe previous 12 months, thousand square feet (3/8-inch basis)

(b) You must designate and clearly identify each hardwood veneer dryer. Submit with the Notification of Compliance Status the annual volume percentage of softwood species dried in the dryer based on your dryer production for the 12 months prior to the compliance date specified for your source in § 63.2233. If you did not dry any softwood species in the dryer during the 12 months prior to the compliance date, then you need only to submit a statement indicating that no softwood species were dried. In addition, submit with the Notification of Compliance Status a signed statement by a responsible official that certifies with truth, accuracy, and completeness that the veneer dryer will be used to process less than 30 volume percent softwood species in the future.

§ 63.2265 Initial compliance demonstration for a softwood veneer dryer.

If you operate a softwood veneer dryer, you must develop a plan for review and approval for minimizing fugitive emissions from the veneer dryer heated zones, and you must submit the plan with your Notification of Compliance Status.

§ 63.2266 Initial compliance demonstration for a veneer redryer.

If you operate a veneer redryer, you must record the inlet moisture content of the veneer processed in the redryer according to § 63.2268(a) and (f) for a minimum of 30 calendar days. You must designate and clearly identify each veneer redryer. You must submit the highest recorded 24-hour average inlet veneer moisture content with your Notification of Compliance Status to show that your veneer redryer processes veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis). In addition, submit with the Notification of Compliance Status a signed statement by a responsible official that certifies with truth, accuracy, and completeness that the veneer redryer will dry veneer with a moisture content less than 25 percent (by weight, dry basis) in the future.

§ 63.2267 Initial compliance demonstration for a reconstituted wood product press or board cooler.

If you operate a reconstituted wood product press at a new or existing affected source or a reconstituted wood product board cooler at a new affected source, then you must verify the capture efficiency of the capture device for the press or board cooler using Methods 204 and 204A through 204F of 40 CFR part 51, appendix M (as appropriate) or using the alternative tracer gas method contained in appendix A to this subpart. You must submit the results of the capture efficiency verification with your Notification of Compliance Status.

§ 63.2268 What are my monitoring installation, operation, and maintenance requirements?

(a) *General continuous parameter monitoring requirements.* You must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to paragraphs (a)(1) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. To calculate a valid hourly value, you must have at least three equally spaced data values for that hour from a CPMS that is not out of control.

(2) At all times, you must maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(3) Except as provided in paragraph (a)(4) of this section, determine the 3-hour block average of all recorded readings, calculated after every 3 hours of operation as the average of the previous 3 operating hours (not including startup, shutdown, and malfunction or periods of control device maintenance covered by any approved routine control device maintenance exemption).

(4) For dry rotary dryer and veneer redryer wood moisture monitoring and for dry rotary dryer temperature monitoring, determine the 24-hour block average of all recorded readings, calculated after every 24 hours of operation as the average of the previous 24 operating hours (not including startup, shutdown, and malfunction). To calculate the average wood moisture or temperature for each 24-hour averaging period, you must have at least 75 percent of the hourly averages for that period using only hourly average values that are based on valid data (*i.e.*, not from periods when the monitor is out of control).

(5) Record the results of each inspection, calibration, and validation check.

(b) *Temperature monitoring.* For each temperature monitoring device, you must meet the requirements in paragraphs (a) and (b)(1) through (6) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) Use a temperature sensor with a minimum tolerance of 4 °F or 0.75 percent of the temperature value, whichever is larger.

(3) If a chart recorder is used, it must have a sensitivity in the minor division of at least 20 °F.

(4) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 °F of the process temperature sensor's reading.

(5) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(6) At least quarterly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) *Pressure monitoring.* For each pressure measurement device, you must

meet the requirements in paragraphs (a) and (c)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum tolerance of 0.5 inches of water column or a transducer with a minimum tolerance of 1 percent of the pressure range.

(4) Check pressure tap daily to ensure it is not plugged.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(7) At least quarterly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) *pH monitoring.* For each pH measurement device, you must meet the requirements in paragraphs (a) and (d)(1) through (4) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least quarterly, inspect all components for integrity and all electrical connections for continuity.

(e) *Flow monitoring.* For each flow measurement device, you must meet the requirements in paragraphs (a) and (e)(1) through (5) of this section.

(1) Locate the flow sensor and other necessary equipment such as straightening vanes in a position that provides a representative flow.

(2) Use a flow sensor with a minimum tolerance of 2 percent of the flow rate.

(3) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(4) Conduct a flow sensor calibration check at least semiannually.

(5) At least quarterly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(f) *Wood moisture monitoring.* For each furnish or veneer moisture meter, you must meet the requirements in paragraphs (a)(1), (2), (4) and (5) and paragraphs (f)(1) through (4) of this section.

(1) Use a moisture monitor with a minimum accuracy of 1 percent moisture or better. Alternatively, you may use a moisture monitor with a minimum accuracy of 5 percent moisture or better for dry rotary dryers used to dry furnish with less than 25 percent moisture or for veneer redryers used to redry veneer with less than 20 percent moisture.

(2) Locate the moisture meter in a position that provides a representative measure of furnish or veneer moisture.

(3) Check the moisture meter's calibration by manually determining the moisture content of samples of furnish or veneer at least once each day of process operation as follows:

(i) Collect a sample of furnish or veneer just as it passes by the meter.

(ii) Record the moisture meter reading for the sample of furnish or veneer collected.

(iii) Determine the moisture content of the furnish or veneer sample by first weighing the wet sample and thoroughly drying the sample until it reaches a constant weight in a bench-scale dryer. Use Equation 1 of this section to calculate the furnish or veneer moisture weight percent on a dry basis:

$$MC = \frac{W_{wet} - W_{dry}}{W_{dry}}(100) \qquad \text{(Eq. 1)}$$

Where:

MC = moisture content of wood material (weight percent, dry basis)

W_{wet} = original weight of the wood, pounds

W_{dry} = weight of the dried wood, pounds

(4) At least quarterly, inspect all components of the moisture meter for integrity and all electrical connections for continuity.

(g) *Continuous emission monitoring system(s).* Each CEMS must be installed, operated, and maintained according to paragraphs (g)(1) through (4) of this section.

(1) Each CEMS for monitoring THC concentration must be installed, operated, and maintained according to Performance Specification 8 of 40 CFR part 60, appendix B. You must also comply with Procedure 1 of 40 CFR part 60, appendix F.

(2) You must conduct a performance evaluation of each CEMS according to the requirements in 40 CFR 63.8 and according to Performance Specification 8 of 40 CFR part 60, appendix B.

(3) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) The CEMS data must be reduced as specified in § 63.8(g)(2) and paragraph (a)(3) of this section.

Continuous Compliance Requirements

§ 63.2270 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for, as appropriate, monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must conduct all monitoring in continuous operation at all times that the process unit is operating. For purposes of calculating data averages, you must not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities. You must use all the data collected during all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities or data recorded during periods of control device downtime covered in any approved routine control device maintenance exemption in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control system.

§ 63.2271 How do I demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements?

(a) You must demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements in §§ 63.2240 and 63.2241 that apply to you according to the methods specified in Tables 7 and 8 of this subpart.

(b) You must report each instance in which you did not meet each compliance option, operating requirement, and work practice

requirement in Tables 7 and 8 of this subpart that applies to you. This includes periods of startup, shutdown, or malfunction and periods of control device maintenance specified in paragraphs (b)(1) and (3) of this section. These instances are deviations from the compliance options, operating requirements, and work practice requirements in this subpart. These deviations must be reported according to the requirements in § 63.2281.

(1) During periods of startup, shutdown, or malfunction, you must operate in accordance with the SSMP.

(2) Consistent with § 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(3) Deviations that occur during periods of control device maintenance covered by any approved routine control device maintenance exemption are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the approved routine control device maintenance exemption.

Notifications, Reports, and Records

§ 63.2280 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), (f)(4) and (f)(6), 63.9(b) through (e), and (g) and (h) by the dates specified.

(b) You must submit an Initial Notification no later than 120 calendar days after the effective date of the subpart or after initial startup, whichever is later, as specified in § 63.9(b)(2) and (3).

(c) If you are required to conduct a performance test, you must submit a written notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as specified in § 63.7(b)(1).

(d) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 4, 5, and 6 of this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration required in Table 5 or 6 of this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Tables 5 and 6 of this subpart that includes a performance test conducted according to the requirements in Table 4 of this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(e) If you request a routine control device maintenance exemption according to § 63.2251, you must submit your request for the exemption no later than 30 days before the compliance date.

(f) If you use the emissions averaging compliance option in § 63.2240(c), you must submit an Emissions Averaging Plan to the Administrator for approval no later than 1 year before the compliance date or no later than 1 year before the date you would begin using an emissions average, whichever is later. The Emissions Averaging Plan must include the information in paragraphs (f)(1) through (6) of this section.

(1) Identification of all the process units to be included in the emissions average indicating which process units will be used to generate credits, and which process units that are subject to compliance options in Tables 1A and 1B of this subpart will be uncontrolled or under-controlled (used to generate debits).

(2) Description of the control system used to generate emission credits for each process unit used to generate credits.

(3) Determination of the total HAP control efficiency for the control system used to generate emission credits for each credit-generating process unit.

(4) Calculation of the RMR and AMR, as calculated using Equations 1 through 3 of § 63.2240(c)(1).

(5) Documentation of total HAP measurements made according to § 63.2240(c)(2)(iv) and other relevant documentation to support calculation of the RMR and AMR.

(6) A summary of the operating parameters you will monitor and monitoring methods for each credit-generating process unit.

(g) You must notify the Administrator within 30 days before you take any of the actions specified in paragraphs (g)(1) through (3) of this section.

(1) You modify or replace the control system for any process unit subject to the compliance options and operating requirements in this subpart.

(2) You shutdown any process unit included in your Emissions Averaging Plan.

(3) You change a continuous monitoring parameter or the value or range of values of a continuous monitoring parameter for any process unit or control device.

§ 63.2281 What reports must I submit and when?

(a) You must submit each report in Table 9 of this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 9 of this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.2233 ending on June 30 or December 31, and lasting at least 6 months, but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for the semiannual reporting period ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information specified in § 63.10(d)(5)(i).

(5) A description of control device maintenance performed while the control device was offline and one or more of the process units controlled by the control device was operating, including the information specified in paragraphs (c)(5)(i) through (iii) of this section.

(i) The date and time when the control device was shutdown and restarted.

(ii) Identification of the process units that were operating and the number of hours that each process unit operated while the control device was offline.

(iii) A statement of whether or not the control device maintenance was included in your approved routine control device maintenance exemption developed pursuant to § 63.2251. If the control device maintenance was included in your approved routine control device maintenance exemption, then you must report the information in paragraphs (c)(5)(iii)(A) through (C) of this section.

(A) The total amount of time that each process unit controlled by the control device operated during the semiannual compliance period and during the previous semiannual compliance period.

(B) The amount of time that each process unit controlled by the control device operated while the control device was down for maintenance covered under the routine control device maintenance exemption during the semiannual compliance period and during the previous semiannual compliance period.

(C) Based on the information recorded under paragraphs (c)(5)(iii)(A) and (B) of this section for each process unit, compute the annual percent of process unit operating uptime during which the control device was offline for routine maintenance using Equation 1 of this section.

$$RM = \frac{PU_p + PU_c}{DT_p + DT_c} \qquad \text{(Eq. 1)}$$

Where:

RM = Annual percentage of process unit uptime during which control device is down for routine control device maintenance

PU_p = Process unit uptime for the previous semiannual compliance period

PU_c = Process unit uptime for the current semiannual compliance period

DT_p = Control device downtime claimed under the routine control device maintenance exemption for the previous semiannual compliance period

DT_c = Control device downtime claimed under the routine control device maintenance exemption for the current semiannual compliance period

(6) The results of any performance tests conducted during the semiannual reporting period.

(7) If there are no deviations from any applicable compliance option or operating requirement, and there are no deviations from the requirements for work practice requirements in Table 8 of this subpart, a statement that there were no deviations from the compliance options, operating requirements, or work practice requirements during the reporting period.

(8) If there were no periods during which the continuous monitoring system(s) (CMS), including CEMS and CPMS, was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from a compliance option or operating requirement and for each deviation from the work practice requirements in Table 8 of this subpart that occurs at an affected source where you are not using a CMS to comply with the compliance options, operating requirements, or work practice requirements in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (6) of this section and the information in paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction and routine control device maintenance.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from a compliance option or operating requirement occurring at an affected source where you are using a CMS to comply with the compliance options and operating requirements in this subpart, you must include the information in paragraphs (c)(1) through (6) and the information in paragraphs (e)(1) through (11) of this section. This includes periods of startup, shutdown, and malfunction and routine control device maintenance.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction; during a period of control device maintenance covered in your approved routine control device maintenance exemption; or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control system problems, control device maintenance, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) A brief description of the process units.

(9) A brief description of the CMS.

(10) The date of the latest CMS certification or audit.

(11) A description of any changes in CMS, processes, or controls since the last reporting period.

(f) If you comply with the emissions averaging compliance option in § 63.2240(c), you must include in your semiannual compliance report calculations based on operating data from the semiannual reporting period that demonstrate that actual mass removal equals or exceeds the required mass removal.

(g) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to

Table 9 of this subpart along with, or as part of, the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any compliance option, operating requirement, or work practice requirement in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

§ 63.2282 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (4) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records in § 63.2250(e) relating to control device maintenance and documentation of your approved routine control device maintenance exemption, if you request such an exemption under § 63.2251.

(4) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in Tables 7 and 8 of this subpart to show continuous compliance with each compliance option, operating requirement, and work practice requirement that applies to you.

(c) For each CEMS, you must keep the following records.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (*i.e.*, superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to relative accuracy testing for CEMS as required in § 63.8(f)(6)(i).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(d) If you comply with the emissions averaging compliance option in § 63.2240(c), you must keep records of all information required to calculate emission debits and credits.

§ 63.2283 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review as specified in § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.2290 What parts of the General Provisions apply to me?

Table 10 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.2291 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the compliance options, operating requirements, and work practice requirements in §§ 63.2240 and 63.2241 as specified in § 63.6(g). For the purposes of delegation authority under 40 CFR part 63, subpart E, "compliance options" represent "emission limits"; "operating requirements" represent "operating limits"; and "work practice requirements" represent "work practice standards."

(2) Approval of major alternatives to test methods as specified in § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring as specified in § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting as specified in § 63.10(f) and as defined in § 63.90.

§ 63.2292 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, the General Provisions, and in this section as follows:

Affected source means the collection of dryers, blenders, formers, presses, board coolers, and other process units associated with the manufacturing of plywood and composite wood products at a plant site. The affected source includes, but is not limited to, green end operations, drying operations, blending and forming operations, pressing and board cooling operations, and miscellaneous finishing operations (such as sanding, sawing, patching, edge sealing, and other finishing operations not subject to other NESHAP). The affected source also includes onsite storage of raw materials used in the manufacture of plywood and/or composite wood products, such as resins; onsite wastewater treatment operations specifically associated with plywood and composite wood products manufacturing; and miscellaneous coating operations (defined elsewhere in this section). The affected source includes lumber kilns at PCWP manufacturing facilities and at any other kind of facility.

Biofilter means an enclosed control system such as a tank or series of tanks with a fixed roof that are filled with media (such as bark) and use microbiological activity to transform organic pollutants in a process exhaust stream to innocuous compounds such as carbon dioxide, water, and inorganic salts. Wastewater treatment systems such as aeration lagoons or activated sludge systems are not considered to be biofilters.

Capture device means a hood, enclosure, or other means of collecting emissions into a duct so that the emissions can be measured.

Capture efficiency means the fraction (expressed as a percentage) of the pollutants from an emission source that are collected by a capture device.

Catalytic oxidizer means a control system that combusts or oxidizes, in the presence of a catalyst, exhaust gas from a process unit. Catalytic oxidizers include regenerative catalytic oxidizers and thermal catalytic oxidizers.

Control device means any equipment that reduces the quantity of a hazardous air pollutant that is emitted to the air. The device may destroy the hazardous air pollutant or secure the hazardous air pollutant for subsequent recovery. Control devices include, but are not limited to, thermal or catalytic oxidizers, combustion units that incinerate process exhausts, biofilters, and condensers.

Control system or add-on control system means the combination of capture and control devices used to reduce hazardous air pollutant emissions to the atmosphere.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any compliance option, operating requirement, or work practice requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart, and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any compliance option, operating requirement, or work practice requirement in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

Dryer heated zones means the zones of a softwood veneer dryer or fiberboard mat dryer that are equipped with heating and hot air circulation units. The cooling zone(s) of the dryer through which ambient air is blown are not part of the dryer heated zones.

Dry rotary dryer means a rotary dryer that dries wood particles or fibers with a maximum inlet moisture content of less than or equal to 30 percent (by weight, dry basis) and operates with a maximum inlet temperature of less than or equal to 600°F. A dry rotary dryer is a process unit.

Dry forming means the process of making a mat of resinated fiber to be compressed into a reconstituted wood product such as particleboard, oriented strandboard (OSB), medium density fiberboard (MDF), or hardboard.

Fiber means the slender threadlike elements of wood or similar cellulosic material, which are separated by chemical and/or mechanical means, as in pulping, that can be formed into boards.

Fiberboard means a composite panel composed of cellulosic fibers (usually wood or agricultural material) made by wet forming and compacting a mat of fibers. Fiberboard density is less than 0.50 grams per cubic centimeter (31.5 pounds per cubic foot).

Fiberboard mat dryer means a dryer used to reduce the moisture of wet-formed wood fiber mats by operation at elevated temperature. A fiberboard mat dryer is a process unit.

Furnish means the fibers, particles, or strands used for making boards.

Glue-laminated beam means a structural wood beam made by bonding lumber together along its faces with resin.

Green rotary dryer means a rotary dryer that dries wood particles or fibers with an inlet moisture content of greater than 30 percent (by weight, dry basis) at any dryer inlet temperature or operates with an inlet temperature of greater than 600 °F with any inlet moisture content. A green rotary dryer is a process unit.

Hardboard means a composite panel composed of cellulosic fibers made by dry or wet forming and pressing of a resinated fiber mat. Hardboard has a density of 0.50 to 1.20 grams per cubic centimeter (31.5 to 75 pounds per cubic foot).

Hardboard oven means an oven used to heat treat or temper hardboard after hot pressing. Humidification chambers are not considered as part of hardboard ovens. A hardboard oven is a process unit.

Hardwood means the wood of a broad-leafed tree, either deciduous or evergreen. Examples of hardwoods include (but are not limited to) aspen, birch, and oak.

Hardwood veneer dryer means a dryer that removes excess moisture from veneer by conveying the veneer through a heated medium on rollers, belts, cables, or wire mesh. Hardwood veneer dryers are used to dry veneer with less than 30 percent softwood species on an annual volume basis. Veneer kilns that operate as batch units, veneer dryers heated by radio frequency or microwaves that are used to redry veneer, and veneer redryers (defined elsewhere in this section) that are heated by conventional means are not considered to be hardwood veneer dryers. A hardwood veneer dryer is a process unit.

Kiln-dried lumber means solid wood lumber that has been dried in a lumber kiln.

Laminated strand lumber (LSL) means a composite product formed into a billet made of thin wood strands cut from whole logs, resinated, and pressed together with the grain of each strand oriented parallel to the length of the finished product.

Laminated veneer lumber (LVL) means a composite product formed into a billet made from layers of resinated wood veneer sheets or pieces pressed together with the grain of each veneer aligned primarily along the length of the finished product. Laminated veneer lumber includes parallel strand lumber (PSL).

Lumber kiln means an enclosed dryer operated at elevated temperature to reduce the moisture content of lumber.

Medium density fiberboard (MDF) means a composite panel composed of cellulosic fibers (usually wood) made by dry forming and pressing of a resinated fiber mat.

Method detection limit means the minimum concentration of an analyte that can be determined with 99 percent confidence that the true value is greater than zero.

Miscellaneous coating operations means application of any of the following to plywood or composite wood products: Edge seals, moisture sealants, anti-skid coatings, company logos, trademark or grade stamps, nail lines, synthetic patches, wood patches, wood putty, concrete forming oils, glues for veneer composing, and shelving edge fillers. Miscellaneous coating operations also include the application of primer to OSB siding that occurs at the same site as OSB manufacture.

MSF means thousand square feet (92.9 square meters). Square footage of panels is usually measured on a thickness basis, such as ⅜-inch, to define the total volume of panels. Equation 6 of § 63.2262(j) shows how to convert from one thickness basis to another.

Nondetect data means, for the purposes of this subpart, any value that is below the method detection limit.

Oriented strandboard (OSB) means a composite panel produced from thin wood strands cut from whole logs, formed into resinated layers (with the grain of strands in one layer oriented perpendicular to the strands in adjacent layers), and pressed.

Oven-dried ton(s) (ODT) means tons of wood dried until all of the moisture in the wood is removed. One oven-dried ton equals 907 oven-dried kilograms.

Particle means a distinct fraction of wood or other cellulosic material produced mechanically and used as the aggregate for a particleboard. Particles are larger in size than fibers.

Particleboard means a composite panel composed of cellulosic materials (usually wood or agricultural fiber) in the form of discrete pieces or particles, as distinguished from fibers, which are pressed together with resin.

Permanent total enclosure (PTE) means a permanently installed

containment that meets the criteria of Method 204 (40 CFR part 51, appendix M).

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Plywood and composite wood products (PCWP) manufacturing facility means a plant site that manufactures plywood and/or composite wood products by bonding wood material (fibers, particles, strands, veneers, etc.) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. Plywood and composite wood products manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any facility. Plywood and composite wood products include (but are not limited to) plywood, veneer, particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams.

Plywood means a panel product consisting of layers of wood veneers hot pressed together with resin. Plywood includes panel products made by hot pressing (with resin) veneers to a substrate such as particleboard, MDF, or lumber.

Press predryer means a dryer used to reduce the moisture and elevate the temperature of a wet-formed fiber mat before the mat enters a hot press. A press predryer is a process unit.

Pressurized refiner means a piece of equipment operated under pressure for preheating (usually by steaming) wood material and refining (rubbing or grinding) the wood material into fibers. Pressurized refiners are operated with continuous infeed and outfeed of wood material and maintain elevated internal pressures (*i.e.*, there is no pressure release) throughout the preheating and refining process. A pressurized refiner is a process unit.

Process unit means equipment classified according to its function such as a blender, dryer, press, former, or board cooler.

Reconstituted wood product board cooler means a piece of equipment designed to reduce the temperature of a board by means of forced air or convection within a controlled time period after the board exits the reconstituted wood product press unloader. Board coolers include wicket and star type coolers commonly found at MDF and particleboard plants. Board coolers do not include cooling sections of dryers (*e.g.*, veneer dryers or fiberboard mat dryers) or coolers integrated into or following hardboard bake ovens or humidifiers. A reconstituted wood product board cooler is a process unit.

Reconstituted wood product press means a press, including (if applicable) the press unloader, that presses a resinated mat of wood fibers, particles, or strands between hot platens or hot rollers to compact and set the mat into a panel by simultaneous application of heat and pressure. Reconstituted wood product presses are used in the manufacture of hardboard, medium density fiberboard, particleboard, and oriented strandboard. Extruders are not considered to be reconstituted wood product presses. A reconstituted wood product press is a process unit.

Representative operating conditions means operation of a process unit during performance testing under the conditions that the process unit will typically be operating in the future, including use of a representative range of materials (*e.g.*, wood material of a typical species mix and moisture content or typical resin formulation) and representative operating temperature range.

Resin means the synthetic adhesive (including glue) or natural binder, including additives, used to bond wood or other cellulosic materials together to produce plywood and composite wood products.

Responsible official means responsible official as defined in 40 CFR 70.2 and 71.2.

Softwood means the wood of a coniferous tree. Examples of softwoods include (but are not limited to) Southern yellow pine, Douglas fir, and White spruce.

Softwood veneer dryer means a dryer that removes excess moisture from veneer by conveying the veneer through a heated medium on rollers, belts, cables, or wire mesh. Softwood veneer dryers are used to dry veneer with greater than or equal to 30 percent softwood species on an annual volume basis. Veneer kilns that operate as batch units, veneer dryers heated by radio frequency or microwaves that are used to redry veneer, and veneer redryers (defined elsewhere in this section) that are heated by conventional means are not considered to be softwood veneer dryers. A softwood veneer dryer is a process unit.

Startup means bringing equipment online and starting the production process.

Startup, initial means the first time equipment is put into operation. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startups (as defined in this section) following malfunction or shutdowns or following changes in product or between batch operations. Initial startup does not include startup of equipment that occurred when the source was an area source.

Startup, shutdown, and malfunction plan (SSMP) means a plan developed according to the provisions of § 63.6(e)(3).

Strand means a long (with respect to thickness and width), flat wood piece specially cut from a log for use in oriented strandboard, laminated strand lumber, or other wood strand-based product.

Strand dryer means a dryer operated at elevated temperature and used to reduce the moisture of wood strands used in the manufacture of OSB, LSL, or other wood strand-based products. A strand dryer is a process unit.

Temporary total enclosure (TTE) means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source, as defined in Method 204 of 40 CFR part 51, appendix M.

Thermal oxidizer means a control system that combusts or oxidizes exhaust gas from a process unit. Thermal oxidizers include regenerative thermal oxidizers and burners or combustion units that accept process exhausts in the flame zone.

Total hazardous air pollutant (HAP) emissions means, for purposes of this rulemaking, the sum of the emissions of the following six compounds: acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde.

Tube dryer means a single-stage or multistage dryer operated at elevated temperature and used to reduce the moisture of wood fibers or particles as they are conveyed (usually pneumatically) through the dryer. Resin may or may not be applied to the wood material before it enters the tube dryer. A tube dryer is a process unit.

Veneer means thin sheets of wood peeled or sliced from logs for use in the manufacture of wood products such as plywood, laminated veneer lumber, or other products.

Veneer redryer means a dryer heated by conventional means, such as direct wood-fired, direct-gas-fired, or steam heated, that is used to redry veneer that has been previously dried. Because the veneer dried in a veneer redryer has been previously dried, the inlet

moisture content of the veneer entering the redryer is less than 25 percent (by weight, dry basis). Batch units used to redry veneer (such as redry cookers) are not considered to be veneer redryers. A veneer redryer is a process unit.

Wet forming means the process of making a slurry of water, fiber, and additives into a mat of fibers to be compressed into a fiberboard or hardboard product.

Wood I-joists means a structural wood beam with an I-shaped cross section formed by bonding (with resin) wood or laminated veneer lumber flanges onto a web cut from a panel such as plywood or oriented strandboard.

Work practice requirement means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

TABLE 1A TO SUBPART DDDD.—PRODUCTION-BASED COMPLIANCE OPTIONS

For the following process units . . .	You must meet the following production-based compliance option (total HAP[a] basis) . . .
(1) Fiberboard mat dryer heated zones (at new affected sources only)	0.022 lb/MSF ½″
(2) Green rotary dryers	0.058 lb/ODT
(3) Hardboard ovens	0.022 lb/MSF ⅛″
(4) Press predryers (at new affected sources only)	0.037 lb/MSF ½″
(5) Pressurized refiners	0.039 lb/ODT
(6) Tube dryers	0.26 lb/ODT
(7) Reconstituted wood product board coolers (at new affected sources only)	0.015 lb/MSF ¾″
(8) Reconstituted wood product presses	0.30 lb/MSF ¾″
(9) Softwood veneer dryer heated zones	0.022 lb/MSF ⅜″
(10) Strand dryers	0.18 lb/ODT

[a] Total HAP, as defined in § 63.2292, includes acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. lb/ODT = pounds per oven dried ton; lb/MSF = pounds per thousand square feet with a specified thickness basis (inches). Section 63.2262(j) shows how to convert from one thickness basis to another.

TABLE 1B TO SUBPART DDDD.—ADD-ON CONTROL SYSTEMS COMPLIANCE OPTIONS

For each of the following process units . . .	You must comply with one of the following six compliance options by using an emissions control system . . . .
Fiberboard mat dryer heated zones (at new affected sources only); Green rotary dryers; Hardboard ovens; Press predryers (at new affected sources only); Pressurized refiners; Tube dryers; Reconstituted wood product board coolers (at new affected sources only); Reconstituted wood product presses; Softwood veneer dryer heated zones; and Strand dryers.	(1) Reduce emissions of total HAP, measured as THC (as carbon),[a] by 90 percent; or (2) Limit emissions of total HAP, measured as THC (as carbon),[a] to 20 parts per million by volume, dry (ppmvd); or (3) Reduce methanol emissions by 90 percent; or (4) Limit methanol emissions to less than or equal to 1 ppmvd if uncontrolled methanol emissions entering the control device are greater than or equal to 10 ppmvd; or (5) Reduce formaldehyde emissions by 90 percent; or (6) Limit formaldehyde emissions to less than or equal to 1 ppmvd if uncontrolled formaldehyde emissions entering the control device are greater than or equal to 10 ppmvd.

[a] You may choose to subtract methane from THC as carbon measurements.

TABLE 2 TO SUBPART DDDD.—OPERATING REQUIREMENTS

If you operate a(n) . . .	You must . . .	Or you must . . .	Or you must . . .
(1) Thermal oxidizer	Maintain the 3-hour block average firebox temperature above the minimum temperature established during the performance test; AND maintain in 3-hour block average static pressure at the inlet of the thermal oxidizer within the operating range established during the performance test.	Maintain the 3-hour block average firebox temperature above the minimum temperature established during the performance test; AND maintain the 3-hour block average gas flow at the outlet of the thermal oxidizer below the maximum flow rate established during the performance test.	Maintain the 3-hour block average THC concentration[a] in the thermal oxidizer exhaust below the maximum concentration established during performance test.

TABLE 2 TO SUBPART DDDD.—OPERATING REQUIREMENTS—Continued

If you operate a(n) . . .	You must . . .	Or you must . . .	Or you must . . .
(2) Catalytic oxidizer	Maintain the 3-hour block average temperature upstream of the catalyst bed above the minimum temperature established during the performance test; AND maintain the 3-hour block average static pressure at the inlet of the catalytic oxidizer within the operating range established during the performance test.	Maintain the 3-hour block average temperature upstrem of the catalyst bed above the minimum temperature established during the performance test; AND maintain the 3-hour block average gas flow at the outlet of the catalytic oxidizer below the maximum flow rate established during the performance test.	Maintain the 3-hour block average THC concentration[a] in the catalytic oxidizer exhaust below the maximum concentration established during the performance test.
(3) Biofilter	Maintain the temperature of the air stream entering the biofilter, pH of the biofilter effluent, and pressure drop across the biofilter bed within the ranges established according to §63.2262(m).	Maintain the 3-hour block average THC concentration[a] in the biofilter exhaust below the maximum concentration established during the performance test.	
(4) Control device other than a thermal oxidizer, catalytic oxidizer, or biofilter.	Petition the Administrator for site-specific operating parameter(s) to be established during the performance test and maintain the average operating parameter(s) within the range(s) established during the performance test.	Maintain the 3-hour block average THC concentration[a] in the control device exhaust below the maximu concentration established during the performance test.	
(5) Process unit that meets a compliance option in Table 1A of this subpart.	Maintain the 3-hour block average inlet temperature below the maximum inlet temperature established during the performance test if the process unit is a green rotary dryer, tube dryer, or strand dryer; OR maintain the 3-hour block average process unit operating temperature below the maximum operating temperature established during the performance test if the process unit is a hardboard oven, press predryer, or reconstituted wood product press; OR maintain the 3-hour block average operating temperature in each of the hot zones below the maximum hot zone temperatures established during the performance test if the process unit is a fiberboard mat dryer or softwood veneer dryer.	Maintain the 3-hour block average tHC concentration[a] in the process unit exhaust below the maximum concentration established during the performance test.	

[a] You may choose to substract methane from THC measurements.

TABLE 3 TO SUBPART DDDD.—WORK PRACTICE REQUIREMENTS

For the following process units at existing or new affected sources . . .	You must . . .
(1) Dry rotary dryers	Process furnish with a 24-hour block average inlet moisture content of less than or equal to 30 percent (by weight, dry basis); AND operate with a 24-hour block average inlet dryer temperature of less than or equal to 600°F.
(2) Hardwood veneer dryers	Process less than 30 volume percent softwood species on an annual basis.
(3) Softwood veneer dryers	Minimize fugitive emissions from the dryer doors through (proper maintenance procedures) and the green end of the dryers (though proper balancing of the heated zone exhausts).

TABLE 3 TO SUBPART DDDD.—WORK PRACTICE REQUIREMENTS—Continued

For the following process units at existing or new affected sources . . .	You must . . .
(4) Veneer redryers	Process veneer that has been previously dried, such that the 24-hour block average inlet moisture content of the veneer is less than or equal to 25 percent (by weight, dry basis).

TABLE 4 TO SUBPART DDDD.—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .
(1) Each process unit subject to a compliance option in Table 1A or 1B of this subpart or used in calculation of an emissions average under §63.2240(c).	Select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A (as appropriate).
(2) Each process unit subject to a compliance option in Table 1A or 1B of this subpart or used in calculation of an emissions average under §63.2240(c).	Determine velocity and volumetric flow rate.	Method 2 in addition to Method 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 (as appropriate).
(3) Each process unit subject to a compliance option in Table 1A or 1B of this subpart or used in calculation of an emissions average under §63.2240(c).	Conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A to 40 CFR part 60 (as appropriate).
(4) Each process unit subject to a compliance option in Table 1A or 1B of this subpart or used in calculation of an emissions average under §63.2240(c).	Measure moisture content of the stack gas.	Method 4 in appendix A to 40 CFR part 60.
(5) Each process unit subject to a compliance option in Table 1B of this subpart for which you choose to demonstrate compliance using a total HAP as THC compliance option.	Measure emissions of total HAP as THC.	Method 25A in appendix A to 40 CFR part 60. You may measure emissions of methane using EPA Method 18 in appendix A to 40 CFR part 60 and subtract the methane emissions from the emissions of total HAP as THC.
(6) Each process unit subject to a compliance option in Table 1A; OR for each process unit used in calculation of an emissions average under §63.2240(c).	Measure emissions of total HAP (as defined in §63.2292).	Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method IM/CAN/WP–99.01 (incorporated by reference, see §63.14(f)).
(7) Each process unit subject to a compliance option in Table 1B of this subpart for which you choose to demonstrate compliance using a methanol compliance option.	Measure emissions of methanol	Method 308 in appendix A to 40 CFR part 63; OR Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method CI/WP–98.01 (incorporated by reference, see §63.14(f)); OR the NCASI Method IM/CAN/WP–99.01 (incorporated by reference, see §63.14(f)).
(8) Each process unit subject to a compliance option in Table 1B of this subpart for which you choose to demonstrate compliance using a formaldehyde compliance option.	Measure emissions of formaldehyde.	Method 316 in appendix A to 40 CFR part 63; OR Method 320 in appendix A to 40 CFR part 63; OR Method 0011 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication No. SW–846) for formaldehyde; OR the NCASI Method CI/WP–98.01 (incorporated by reference, see §63.14(f)); OR the NCASI Method IM/CAN/WP–99.01 (incorporated by reference, see §63.14(f)).
(9) Each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in Table 1B or used in calculation of an emissions average under §63.2240(c).	Determine the percent capture efficiency of the enclosure directing emissions to an add-on control device.	Methods 204 and 204A through 204F of 40 CFR part 51, appendix M. Enclosures that meet the Method 204 requirements for a PTE are assumed to have a capture efficiency of 100%. Enclosures that do not meet the PTE requirements must determine the capture efficiency by constructing a TTE according to the requirements of Method 204 and applying Methods 204A through 204F (as appropriate). As an alternative to Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart.

TABLE 4 TO SUBPART DDDD.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .
(10) Each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in Table 1A of this subpart.	Determine the percent capture efficiency.	A TTE and Methods 204 and 204A through 204F (as appropriate) of 40 CFR part 51, appendix M. As an alternative to installing a TTE and using Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart.
(11) Each process unit subject to a compliance option in Tables 1A and 1B of this subpart or used in calculation of emissions averaging credits under §63.2240(c).	Establish the site-specific operating requirements (including the parameter limits or THC concentration limits) in Table 2 of this subpart.	Data from the parameter monitoring system or THC CEMS and the applicable performance test method(s).

TABLE 5 TO SUBPART DDDD.—PERFORMANCE TESTING AND INITIAL COMPLIANCE DEMONSTRATIONS FOR THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS

For each . . .	For the following compliance options and operating requirements . . .	You have demonstrated initial compliance if . . .
(1) Process unit listed in Table 1A of this subpart.	Meet the production-based compliance options listed in Table 1A of this subpart.	The average total HAP emissions measured using the methods in Table 4 of this subpart over the 3-hour initial performance test are no greater than the compliance option in Table 1A of this subpart; AND you have a record of the operating requirement(s) listed in Table 2 of this subpart for the process unit over the performance test during which emissions did not exceed the compliance option value.
(2) Process unit listed in Table 1B of this subpart.	Reduce emissions of total HAP, measured as THC, by 90 percent.	Total HAP emissions, measured using the methods in Table 4 of this subpart over the 3-hour performance test, are reduced by at least 90 percent, as calculated using the procedures in §63.2262; AND you have a record of the operating requirement(s) listed in Table 2 of this subpart for the process unit over the performance test during which emissions were reduced by at least 90 percent.
(3) Process unit listed in Table 1B of this subpart.	Limit emissions of total HAP, measured as THC, to 20 ppmvd.	The average total HAP emissions, measured using the methods in Table 4 of this subpart over the 3-hour initial performance test, do not exceed 20 ppmvd; AND you have a record of the operating requirement(s) listed in Table 2 of this subpart for the process unit over the performance test during which emissions did not exceed 20 ppmvd.
(4) Process unit listed in Table 1B of this subpart.	Reduce methanol or formaldehyde emissions by 90 percent.	The methanol or formaldehyde emissions measured using the methods in Table 4 of this subpart over the 3-hour initial performance test, are reduced by at least 90 percent, as calculated using the procedures in §63.2262; AND you have a record of the operating requirement(s) listed in Table 2 of this subpart for the process unit over the performance test during which emissions were reduced by at least 90 percent.
(5) Process unit listed in Table 1B of this subpart.	Limit methanol or formaldehyde emissions to less than or equal to 1 ppmvd (if uncontrolled emissions are greater than or equal to 10 ppmvd).	The average methanol or formaldehyde emissions, measured using the methods in Table 4 of this subpart over the 3-hour initial performance test, do not exceed 1 ppmvd; AND you have a record of the operating requirement(s) listed in Table 2 of this subpart for the process unit over the performance test during which emissions did not exceed 1 ppmvd. If the process unit is a reconstituted wood product press or a reconstituted wood product board cooler, your capture device either meets the EPA Method 204 criteria for a PTE or achieves a capture efficiency of greater than or equal to 95 percent.
(6) Reconstituted wood product press at a new or existing affected source, or reconstituted wood product board cooler at a new affected source.	Compliance options in Tables 1A and 1B of this subpart or the emissions averaging compliance option in §63.2240(c).	You submit the results of capture efficiency verification using the methods in Table 4 of this subpart with your Notification of Compliance Status.

TABLE 5 TO SUBPART DDDD.—PERFORMANCE TESTING AND INITIAL COMPLIANCE DEMONSTRATIONS FOR THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS—Continued

For each . . .	For the following compliance options and operating requirements . . .	You have demonstrated initial compliance if . . .
(7) Process unit listed in Table 1B of this subpart controlled by routing exhaust to a combustion unit with heat input capacity greater than or equal to 44 megawatts.	Compliance options in Table 1B of this subpart or the emissions averaging compliance option in §63.2240(c).	You submit with your Notification of Compliance Status documentation showing that your combustion unit has a heat input capacity greater than or equal to 44 megawatts and that the process exhausts controlled enter into the flame zone.

TABLE 6 TO SUBPART DDDD.—INITIAL COMPLIANCE DEMONSTRATIONS FOR WORK PRACTICE REQUIREMENTS

For each. . .	For the following work practice requirements. . .	You have demonstrated initial compliance if. . .
(1) Dry rotary dryer	Process furnish with an inlet moisture content less than or equal to 30 percent (by weight, dry basis) AND operate with an inlet dryer temperature of less than or equal to 600°F.	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer meets the criteria of a "dry rotary dryer" AND you have a record of the inlet moisture content and inlet dryer temperature (as required in §63.2263).
(2) Hardwood veneer dryer	Process less than 30 volume percent softwood species.	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer meets the criteria of a "hardwood veneer dryer" AND you have a record of the percentage of softwoods processed in the dryer (as required in §63.2264).
(3) Softwood veneer dryer	Minimize fugitive emissions from the dryer doors and the green end.	You meet the work practice requirement AND you submit with the Notification of Compliance Status a copy of your plan for minimizing fugitive emissions from the veneer dryer heated zones (as required in §63.2265).
(4) Veneer redryers	Process veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis).	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer operates only as a redryer AND you have a record of the veneer inlet moisture content of the veneer processed in the redryer (as required in §63.2266).

TABLE 7 TO SUBPART DDDD.—CONTINUOUS COMPLIANCE WITH THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS

For . . .	For the following compliance options and operating requirements . . .	You must demonstrate continuous compliance by . . .
(1) Each process unit listed in Tables 1A and 1B of this subpart or used in calculation of emissions averaging credits under §63.2240(c).	Compliance options in Tables 1A and 1B of this subpart or the emissions averaging compliance option in §63.2240(c) and the operating requirements in Table 2 of this subpart based on monitoring of operating parameters.	Collecting and recording the operating parameter monitoring system data listed in Table 2 of this subpart for the process unit according to §63.2268(a)–(e); AND reducing the operating parameter monitoring system data to the specified average in units of the applicable requirement according to calculations in §63.2268(a); AND maintaining the average operating parameter at or above the maximum, at or below the minimum, or within the range (whichever applies) established according to §63.2262.
(2) Each process unit listed in Tables 1A and 1B of this subpart or used in calculation of emissions averaging credits under §63.2240(c).	Compliance options in Tables 1A and 1B of this subpart or the emissions averaging compliance option in §63.2240(c) and the operating requirements in Table 2 of this subpart based on THC CEMS data.	Collecting and recording the THC monitoring data listed in Table 2 of this subpart for the process unit according to §63.2268(g); AND reducing the CEMS data to 3-hour block averages according to calculations in §63.2268(g); AND maintaining the 3-hour block average THC concentration in the exhaust gases less than or equal to the THC concentration established according to §63.2262.

TABLE 8 TO SUBPART DDDD.—CONTINUOUS COMPLIANCE WITH THE WORK PRACTICE REQUIREMENTS

For . . .	For the following work practice requirements . . .	You must demonstrate continuous compliance by . . .
(1) Dry rotary dryer	Process furnish with an inlet moisture content less than or equal to 30 percent (by weight, dry basis) AND operate with an inlet dryer temperature of less than or equal to 600 °F.	Maintaining the inlet furnish moisture content at less than or equal to 30 percent (by weight, dry basis) AND maintaining the inlet dryer temperature at less than or equal to 600 °F; AND keeping records of the inlet furnish moisture content and inlet dryer temperature.
(2) Hardwood veneer dryer	Process less than 30 volume percent softwood species.	Maintaining the volume percent softwood species processed below 30 percent AND keeping records of the volume percent softwood species processed.
(3) Softwood veneer dryer	Minimize fugitive emissions from the dryer doors and the green end.	Following (and documenting that you are following) your plan for minimizing fugitive emissions.
(4) Veneer redryers	Process veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis).	Maintaining the inlet moisture content of the veneer processed at or below 25 percent AND keeping records of the inlet moisture content of the veneer processed.

TABLE 9 TO SUBPART DDDD.—REQUIREMENTS FOR REPORTS

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
(1) Compliance report	The information in §63.2281(c) through (g)	Semiannually according to the requirements in §63.2281(b).
(2) Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP.	(i) Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	(ii) The information in §63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

TABLE 10 TO SUBPART DDDD.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD

Citation	Subject	Brief description	Applies to subpart DDDD
§63.1	Applicability	Initial applicability determination; Applicability after standard established; Permit requirements; Extensions, notifications.	Yes.
§63.2	Definitions	Definitions for part 63 standards	Yes.
§63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§63.4	Prohibited Activities	Prohibited Activities; Compliance date; Circumvention, severability.	Yes.
§63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§63.6(a)	Applicability	GP apply unless compliance extension; GP apply to area sources that become major.	Yes.
§63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§63.6(b)(6)	[Reserved]		

TABLE 10 TO SUBPART DDDD.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§63.6(c)(3)–(4)	[Reserved]		
§63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (e.g., 3 years).	Yes.
§63.6(d)	[Reserved]		
§63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for SSM and SSMP; Content of SSMP	Yes.
§63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM.	Yes.
§63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§63.6(h)(1)–(9)	Opacity/Visible Emission (VE) Standards.	Requirements for opacity and visible emission standards.	NA.
§63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§63.6(j)	Presidential Compliance Exemption	President may exempt source category from requirement to comply with rule.	Yes.
§63.7(a)(1)–(2)	Performance Test Dates	Dates for Conducting Initial Performance Testing and Other Compliance Demonstrations; Must conduct 180 days after first subject to rule.	Yes.
§63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test	Yes.
§63.7(b)(2)	Notification of Rescheduling	If have to reschedule performance test, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes.

TABLE 10 TO SUBPART DDDD.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.
§63.7(e)(3)	Test Run Duration	Must have three test runs of at least one hour each; compliance is based on arithmetic mean of three runs; specifies conditions when data from an additional test run can be used.	Yes.
§63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status; keep data for 5 years.	Yes.
§63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes.
§63.8(a)(2)	Performance Specifications	Performance Specifications in Appendix B of Part 60 apply.	Yes.
§63.8(a)(3)	[Reserved]		
§63.8(a)(4)	Monitoring with Flares	Requirements for flares in §63.11 apply	NA
§63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§63.8(c)(1)(i)	Routine and Predictable SSM	Follow the SSM plan for routine repairs; keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
§63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM Yes when action is not described in SSM plan.	Yes.
§63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements; review of source O&M procedures, records; manufacturer's instructions, recommendations; inspection.	Yes.
§63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission of parameter measurements; must verify operational status before or at performance test.	Yes.
§63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts; COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes.

TABLE 10 TO SUBPART DDDD.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.8(c)(5)	COMS Minimum Procedures	COMS minimum procedures	NA.
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high level calibration check requirements; out-of- control periods.	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.; must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions.	Yes.
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports..	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative Relative Accuracy Test	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least 4 equally spaced data points; data that can't be used in average.	Yes.
§ 63.9(a)	Notification Requirements	Applicability and State Delegation	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	Submit notification 120 days after effective date; notification of intent to construct/reconstruct; notification of commencement of construct/reconstruct; notification of startup; contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed BACT/LAER.	Yes
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	Yes.
§ 63.9(h)(1)–(6)	Notification of Compliance Status	Contents; due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than 1 source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; keep all records readily available; keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(iv)	Records related to Startup, Shutdown, and Malfunction.	Occurrence of each of operation (process equipment); occurrence of each malfunction of air pollution equipment; maintenance on air pollution control equipment; actions during startup, shutdown, and malfunction.	Yes.
§ 63.10(b)(2)(vi) and (x)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control	Yes.

TABLE 10 TO SUBPART DDDD.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§63.10(b)(2)(vii)–(ix)	Records	Measurements to demonstrate compliance with compliance options and operating requirements; performance test, performance evaluation, and visible emission observation results; measurements to determine conditions of performance tests and performance evaluations.	Yes.
§63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.
§63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§63.10(b) (3)	Records	Applicability Determinations	Yes.
§63.10(c)(1)–(6),(9)–(15)	Records	Additional Records for CMS	Yes.
§63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS.	No.
§63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes.
§63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes.
§63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	NA.
§63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance.	Yes.
§63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes.
§63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEM Reports on a unit; written copy of performance evaluation; 3 copies of COMS performance evaluation.	Yes.
§63.10(e)(3)	Reports	Excess Emission Reports	No.
§63.10(e)(4)	Reporting COMS data	Must submit COMS data with performance test data	NA.
§63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes.
§63.11	Flares	Requirements for flares	NA.
§63.12	Delegation	State authority to enforce standards	Yes.
§63.13	Addresses	Addresses where reports, notifications, and requests are send.	Yes.
§63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§63.15	Availability of Information	Public and confidential information	Yes.

Appendix A to Subpart DDDD—Alternative Procedure To Determine Capture Efficiency From A Hot Press Enclosure in the Plywood and Composite Wood Products Industry Using Sulfur Hexafluoride Tracer Gas

1.0 Scope and Application

This procedure has been developed specifically for the proposed rule for the plywood and composite wood products industry and is used to determine the capture efficiency of a partial hot press enclosure in that industry. This procedure is applicable for the determination of capture efficiency for press enclosures that are not considered to be permanent total enclosures (PTEs) as defined in EPA Method 204 and is proposed as an alternative to the construction of temporary total enclosures (TTEs). Sulfur hexafluoride (SF_6) is used as a tracer gas (other tracer gases may be used if approved by the Administrator). This gas is not indigenous to the ambient atmosphere and is nonreactive.

This procedure uses infrared spectrometry (IR) as the analytical technique. When the infrared spectrometer used is a Fourier-Transform Infrared spectrometer (FTIR), an alternate instrument calibration procedure may be used; the alternate calibration procedure is the calibration transfer standard (CTS) procedure of EPA Method 320. Other analytical techniques which are capable of

equivalent Method Performance (Section 13.0) also may be used. Specifically, gas chromatography with electron capture detection (GC/ECD) is an applicable technique for analysis of SF_6.

2.0 Summary of Method

A constant mass flow rate of SF_6 tracer gas is released through manifolds at multiple locations within the enclosure to mimic the release of HAP during the press process. This test method requires a minimum of three SF_6 injection points (two at the press unloader and one at the press) and provides details about considerations for locating the injection points. An infrared spectrometer (or GC/ECD) is used to measure the concentration of SF_6 at the inlet duct to the control device (outlet duct from enclosure). Simultaneously, EPA Method 2 is used to measure the flow rate at the inlet duct to the control device. The concentration and flow rate measurements are used to calculate the mass emission rate of SF_6 at the control device inlet. Through calculation of the mass of SF_6 released through the manifolds and the mass of SF_6 measured at the inlet to the control device, the capture efficiency of the enclosure is calculated.

In addition, optional samples of the ambient air may be taken at locations around the perimeter of the enclosure to quantify the ambient concentration of SF_6 and to identify those areas of the enclosure that may be performing less efficiently; these samples would be taken using disposable syringes and would be analyzed using a GC/ECD.

Finally, in addition to the requirements specified in this procedure, the data quality objectives (DQO) or lower confidence limit (LCL) criteria specified in Appendix A to 40 CFR part 63, subpart KK, Data Quality Objective and Lower Confidence Limit Approaches for Alternative Capture Efficiency Protocols and Test Methods, must also be satisfied. A minimum of three test runs are required for this procedure; however, additional test runs may be required based on the results of the DQO or LCL analysis.

3.0 Definitions

3.1 Capture efficiency (CE). The weight per unit time of SF_6entering the control device divided by the weight per unit time of SF_6 released through manifolds at multiple locations within the enclosure.

3.2 Control device (CD). The equipment used to reduce, by destruction or removal, press exhaust air pollutants prior to discharge to the ambient air.

3.3 Control/destruction efficiency (DE). The VOC or HAP removal efficiency of the control device.

3.4 Data Quality Objective (DQO) Approach. A statistical procedure to determine the precision of the data from a test series and to qualify the data in the determination of capture efficiency for compliance purposes. If the results of the DQO analysis of the initial three test runs do not satisfy the DQO criterion, the LCL approach can be used or additional test runs must be conducted. If additional test runs are conducted, then the DQO or LCL analysis is conducted using the data from both the initial test runs and all additional test runs.

3.5 Lower Confidence Limit (LCL) Approach. An alternative statistical procedure that can be used to qualify data in the determination of capture efficiency for compliance purposes. If the results of the LCL approach produce a CE that is too low for demonstrating compliance, then additional test runs must be conducted until the LCL or DQO is met. As with the DQO, data from all valid test runs must be used in the calculation.

3.6 Minimum Measurement Level (MML). The minimum tracer gas concentration expected to be measured during the test series. This value is selected by the tester based on the capabilities of the IR spectrometer (or GC/ECD) and the other known or measured parameters of the hot press enclosure to be tested. The selected MML must be above the low-level calibration standard and preferably below the mid-level calibration standard.

3.7 Method 204. The U.S. EPA Method 204, "Criteria For and Verification of a Permanent or Temporary Total Enclosure" (40 CFR part 51, Appendix M). If the permanent total enclosure (PTE) criteria in Method 204 are satisfied, the PTE around a hot press is assumed to be 100 percent capture efficient.

3.8 Method 205. The U.S. EPA Method 205, "Verification of Gas dilution Systems for Field Instrument Calibrations" (40 CFR part 51, Appendix M).

3.9 Method 320. The U.S. EPA Method 320, "Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transform Infrared (FTIR) Spectroscopy" (40 CFR part 63, Appendix A).

3.10 Overall capture and control efficiency (CCE). The collection and control/destruction efficiency of both the PPE and CD combined. The CCE is calculated as the product of the CE and DE.

3.11 Partial press enclosure (PPE). The physical barrier that "partially" encloses the press equipment, captures a significant amount of the associated emissions, and transports those emissions to the CD.

3.12 Test series. A minimum of three test runs or, when more than three runs are conducted, all of the test runs conducted.

4.0 Interferences

There are no known interferences.

5.0 Safety

Sulfur hexafluoride is a colorless, odorless, nonflammable liquefied gas. It is stable and nonreactive and, because it is noncorrosive, most structural materials are compatible with it. The Occupational Safety and Health Administration PEL–TWA and TLV–TWA concentrations are 1,000 parts per million. Sulfur hexafluoride is an asphyxiant. Exposure to an oxygen deficient atmosphere (less than 19.5 percent oxygen) may cause dizziness, drowsiness, nausea, vomiting, excess salivation, diminished mental alertness, loss of consciousness and death. Exposure to atmospheres containing less than 12 percent oxygen will bring about unconsciousness without warning and so quickly that the individuals cannot help themselves. Contact with liquid or cold vapor may cause frostbite. Avoid breathing sulfur hexafluoride gas. Self contained breathing apparatus may be required by rescue workers. Sulfur hexafluoride is not listed as a carcinogen or a potential carcinogen.

6.0 Equipment and Supplies

This method requires equipment and supplies for: (a) The injection of tracer gas into the enclosure, (b) the measurement of the tracer gas concentration in the exhaust gas entering the control device, and (c) the measurement of the volumetric flow rate of the exhaust gas entering the control device. In addition, the requisite equipment needed for EPA Methods 1—4 will be required. Equipment and supplies for optional ambient air sampling are discussed in Section 8.6.

6.1 Tracer Gas Injection.

6.1.1 Manifolds. This method requires the use of tracer gas supply cylinder(s) along with the appropriate flow control elements. Figure 1 shows a schematic drawing of the injection system showing potential locations for the tracer gas manifolds. Figure 2 shows a schematic drawing of the recommended configuration of the injection manifold. Three tracer gas discharge manifolds are required at a minimum.

6.1.2 Flow Control Meter. Flow control and measurement meter for measuring the quantity of tracer gas injected. A mass flow, volumetric flow, or critical orifice control meter can be used for this method. The meter must be accurate to within ± 5 percent at the flow rate used. This means that the flow meter must be calibrated against a primary standard for flow measurement at the appropriate flow rate.

6.2 Measurement of Tracer Gas Concentration.

6.2.1 Sampling Probes. Use Pyrex or stainless steel sampling probes of sufficient length to reach the traverse points calculated according to EPA Method 1.

6.2.2 Sampling Line. Use a heated Teflon sampling line to transport the sample to the analytical instrument.

6.2.3 Sampling Pump. Use a sampling pump capable of extracting sufficient sample from the duct and transporting to the analytical instrument.

6.2.4 Sample Conditioning System. Use a particulate filter sufficient to protect the sampling pump and analytical instrument. At the discretion of the tester and depending on the equipment used and the moisture content of the exhaust gas, it may be necessary to further condition the sample by removing moisture using a condenser.

6.2.5 Analytical Instrument. Use one of the following analytical instruments.

6.2.1.1 Spectrometer. Use an infrared spectrometer designed to measuring SF6 tracer gas and capable of meeting or exceeding the specifications of this procedure. An FTIR meeting the specifications of Method 320 may be used.

6.2.1.2 GC/ECD. Use a GC/ECD designed to measure SF6 tracer gas and capable of meeting or exceeding the specifications of this procedure.

6.2.6 Recorder. At a minimum, use a recorder with linear strip chart. An automated data acquisition system (DAS) is recommended.

6.3 Exhaust Gas Flow Rate Measurement. Use equipment specified for EPA Methods 2,

3, and 4 for measuring flow rate of exhaust gas at the inlet to the control device.

7.0 Reagents and Standards

7.1 Tracer Gas. Use SF6 as the tracer gas. The manufacturer of the SF6 tracer gas should provide a recommended shelf life for the tracer gas cylinder over which the concentration does not change more than ± 2 percent from the certified value. A gas mixture of SF6 diluted with nitrogen should be used; based on experience and calculations, pure SF6 gas is not necessary to conduct tracer gas testing. Select a concentration and flow rate that is appropriate for the analytical instrument's detection limit, the minimum measurement level (MML), and the exhaust gas flow rate from the enclosure (see section 8.1.1). You may use a tracer gas other than SF6 with the prior approval of the Administrator. If you use an approved tracer gas other than SF6, all references to SF6 in this protocol instead refer to the approved tracer gas.

7.2 Calibration Gases. The SF_6 calibration gases required will be dependent on the selected MML and the appropriate span selected for the test. Commercial cylinder gases certified by the manufacturer to be accurate to within 1 percent of the certified label value are preferable, although cylinder gases certified by the manufacturer to 2 percent accuracy are allowed. Additionally, the manufacturer of the SF6 calibration gases should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ± 2 percent from the certified value. Another option allowed by this method is for the tester to obtain high concentration certified cylinder gases and then use a dilution system meeting the requirements of EPA Method 205, 40 CFR part 51, Appendix M, to make multi-level calibration gas standards. Low-level, mid-level, and high-level calibration gases will be required. The MML must be above the low-level standard, the high-level standard must be no more than four times the low-level standard, and the mid-level standard must be approximately halfway between the high- and low-level standards. See section 12.1 for an example calculation of this procedure.

Note: If using an FTIR as the analytical instrument, the tester has the option of following the CTS procedures of Method 320; the calibration standards (and procedures) specified in Method 320 may be used in lieu of the calibration standards and procedures in this protocol.

7.2.1 Zero Gas. High purity nitrogen.

7.2.2 Low-Level Calibration Gas. An SF6 calibration gas in nitrogen with a concentration equivalent to 20 to 30 percent of the applicable span value.

7.2.3 Mid-Level Calibration Gas. An SF6 calibration gas in nitrogen with a concentration equivalent to 45 to 55 percent of the applicable span value.

7.2.4 High-Level Calibration Gas. An SF6 calibration gas in nitrogen with a concentration equivalent to 80 to 90 percent of the applicable span value.

8.0 Sample Collection, Preservation, Storage, and Transport

8.1 Test Design

8.1.1 Determination of Minimum Tracer Gas Flow Rate.

8.1.1.1 Determine (via design calculations or measurements) the approximate flow rate of the exhaust gas through the enclosure (acfm).

8.1.1.2 Calculate the minimum tracer gas injection rate necessary to assure a detectable SF6 concentration at the exhaust gas measurement point (see section 12.1 for calculation).

8.1.1.3 Select a flow meter for the injection system with an operating range appropriate for the injection rate selected.

8.1.2 Determination of the Approximate Time to Reach Equilibrium.

8.1.2.1 Determine the volume of the enclosure.

8.1.2.2 Calculate the air changes per minute of the enclosure by dividing the approximate exhaust flow rate (8.1.1.1 above) by the enclosed volume (8.1.2.1 above).

8.1.2.3 Calculate the time at which the tracer concentration in the enclosure will achieve approximate equilibrium. Divide 3 by the air changes per minute (8.1.2.2 above) to establish this time. This is the approximate length of time for the system to come to equilibrium. Concentration equilibrium occurs when the tracer concentration in the enclosure stops changing as a function of time for a constant tracer release rate. Because the press is continuously cycling, equilibrium may be exhibited by a repeating, but stable, cyclic pattern rather than a single constant concentration value. Assure sufficient tracer gas is available to allow the system to come to equilibrium, and to sample for a minimum of 20 minutes and repeat the procedure for a minimum of 3 test runs. Additional test runs may be required based on the results of the DQO and LCL analyses described in 40 CFR part 63, subpart KK, Appendix A.

8.1.3 Location of Injection Points. This method requires a minimum of three tracer gas injection points. The injection points should be located within leak prone, VOC/HAP-producing areas around the press, or horizontally within 12 inches of the defined equipment. One potential configuration of the injection points is depicted in Figure 1. The effect of wind, exfiltration through the building envelope, and air flowing through open building doors should be considered when locating tracer gas injection points within the PPE. The injection points should also be located at a vertical elevation equal to the VOC/HAP generating zones. The injection points should not be located beneath obstructions that would prevent a natural dispersion of the gas. Document the selected injection points in a drawing(s).

8.1.4 Location of Flow Measurement and Tracer Sampling. Accurate CD inlet gas flow rate measurements are critical to the success of this procedure. Select a measurement location meeting the criteria of EPA Method 1 (40 CFR part 60, Appendix A), Sampling and Velocity Traverses for Stationary Sources. Also, when selecting the measurement location, consider whether stratification of the tracer gas is likely at the location (e.g., do not select a location immediately after a point of air in-leakage to the duct).

8.2 Tracer Gas Release. Release the tracer gas at a calculated flow rate (see section 12.1 for calculation) through a minimum of three injection manifolds located as described above in 8.1.3. The tracer gas delivery lines must be routed into the enclosure and attached to the manifolds without violating the integrity of the enclosure.

8.3 Pretest Measurements.

8.3.1 Location of Sampling Point(s). If stratification is not suspected at the measurement location, select a single sample point located at the centroid of the CD inlet duct or at a point no closer to the CD inlet duct walls than 1 meter. If stratification is suspected, establish a "measurement line" that passes through the centroidal area and in the direction of any expected stratification. Locate three traverse points at 16.7, 50.0 and 83.3 percent of the measurement line and sample from each of these three points during each run, or follow the procedure in section 8.3.2 to verify whether stratification does or does not exist.

8.3.2 Stratification Verification. The presence or absence of stratification can be verified by using the following procedure. While the facility is operating normally, initiate tracer gas release into the PPE. For rectangular ducts, locate at least nine sample points in the cross section such that the sample points are the centroids of similarly-shaped, equal area divisions of the cross section. Measure the tracer gas concentration at each point. Calculate the mean value for all sample points. For circular ducts, conduct a 12-point traverse (*i.e.*, six points on each of the two perpendicular diameters) locating the sample points as described in 40 CFR part 60, Appendix A, Method 1. Perform the measurements and calculations as described above. Determine if the mean pollutant concentration is more than 10 percent different from any single point. If so, the cross section is considered to be stratified, and the tester may not use a single sample point location, but must use the three traverse points at 16.7, 50.0, and 83.3 percent of the entire measurement line. Other traverse points may be selected, provided that they can be shown to the satisfaction of the Administrator to provide a representative sample over the stack or duct cross section.

8.4 CD Inlet Gas Flow Rate Measurements. The procedures of EPA Methods 1–4 (40 CFR part 60, Appendix A) are used to determine the CD inlet gas flow rate. Molecular weight (Method (3) and moisture (Method (4) determinations are only required once for each test series. However, if the test series is not completed within 24 hours, then the molecular weight and moisture measurements should be repeated daily. As a minimum, velocity measurements are conducted according to the procedures of Methods 1 and 2 before and after each test run, as close to the start and end of the run as practicable. A velocity measurement between two runs satisfies both the criterion of "after" the run just completed and "before" the run to be initiated. Accurate exhaust gas flow rate measurements are critical to the success of this procedure. If significant temporal variations of flow rate are anticipated during the test run under normal process operating conditions, take

appropriate steps to accurately measure the flow rate during the test. Examples of steps that might be taken include: (1) Conducting additional velocity traverses during the test run; or (2) continuously monitoring a single point of average velocity during the run and using these data, in conjunction with the pre- and post-test traverses, to calculate an average velocity for the test run.

8.5 Tracer Gas Measurement Procedure.

8.5.1 Calibration Error Test. Immediately prior to the emission test (within 2 hours of the start of the test), introduce zero gas and high-level calibration gas at the calibration valve assembly. Zero and calibrate the analyzer according to the manufacturer's procedures using, respectively, nitrogen and the calibration gases. Calculate the predicted response for the low-level and mid-level gases based on a linear response line between the zero and high-level response. Then introduce the low-level and mid-level calibration gases successively to the measurement system. Record the analyzer responses for the low-level and mid-level calibration gases and determine the differences between the measurement system responses and the predicted responses using the equation in section 12.3. These differences must be less than 5 percent of the respective calibration gas value. If not, the measurement system must be replaced or repaired prior to testing. No adjustments to the measurement system shall be conducted after the calibration and before the drift determination (section 8.5.4). If adjustments are necessary before the completion of the test series, perform the drift checks prior to the required adjustments and repeat the calibration following the adjustments. If multiple electronic ranges are to be used, each additional range must be checked with a mid-level calibration gas to verify the multiplication factor.

Note: If using an FTIR for the analytical instrument, you may choose to follow the pretest preparation, evaluation, and calibration procedures of Method 320 (section 8.0) (40 CFR part 63, Appendix A) in lieu of the above procedure.

8.5.2 Response Time Test. Conduct this test once prior to each test series. Introduce zero gas into the measurement system at the calibration valve assembly. When the system output has stabilized, switch quickly to the high-level calibration gas. Record the time from the concentration change to the measurement system response equivalent to 95 percent of the step change. Repeat the test three times and average the results.

8.5.3 SF_6 Measurement. Sampling of the enclosure exhaust gas at the inlet to the CD should begin at the onset of tracer gas release. If necessary, adjust the tracer gas injection rate such that the measured tracer gas concentration at the CD inlet is within the spectrometer's calibration range (*i.e.*, between the MML and the span value). Once the tracer gas concentration reaches equilibrium, the SF_6 concentration should be measured using the infrared spectrometer continuously for at least 20 minutes per run. Continuously record (*i.e.*, record at least once per minute) the concentration. Conduct at least three test runs. On the recording chart, in the data acquisition system, or in a log book, make a note of periods of process interruption or cyclic operation such as the cycles of the hot press operation. Table 1 summarizes the physical measurements required for the press enclosure testing.

Note: If a GC/ECD is used as the analytical instrument, a continuous record (at least once per minute) likely will not be possible; make a minimum of five injections during each test run. Also, the minimum test run duration criterion of 20 minutes applies.

8.5.4 Drift Determination. Immediately following the completion of the test run, reintroduce the zero and mid-level calibration gases, one at a time, to the measurement system at the calibration valve assembly. (Make no adjustments to the measurement system until both the zero and calibration drift checks are made.) Record the analyzer responses for the zero and mid-level calibration gases and determine the difference between the instrument responses for each gas prior to and after the emission test run using the equation in section 12.4. If the drift values exceed the specified limits (section 13), invalidate the test results preceding the check and repeat the test following corrections to the measurement system. Alternatively, recalibrate the test measurement system as in section 8.5.1 and report the results using both sets of calibration data (*i.e.*, data determined prior to the test period and data determined following the test period).

Note: If using an FTIR for the analytical instrument, you may choose to follow the post-test calibration procedures of Method 320 (section 8.11.2) in lieu of the above procedures.

8.6 Ambient Air Sampling (Optional). Sampling the ambient air surrounding the enclosure is optional. However, taking these samples during the capture efficiency testing will identify those areas of the enclosure that may be performing less efficiently.

8.6.1 Location of Ambient Samples Outside the Enclosure (Optional). In selecting the sampling locations for collecting samples of the ambient air surrounding the enclosure, consider potential leak points, the direction of the release, and laminar flow characteristics in the area surrounding the enclosure. Samples should be collected from all sides of the enclosure, downstream in the prevailing room air flow, and in the operating personnel occupancy areas.

8.6.2 Collection of Ambient Samples (Optional). During the tracer gas release, collect ambient samples from the area surrounding the enclosure perimeter at predetermined location using disposable syringes or some other type of containers that are non-absorbent, inert and that have low permeability (*i.e.*, polyvinyl fluoride film or polyester film sample bags or polyethylene, polypropylene, nylon or glass bottles). The use of disposable syringes allows samples to be injected directly into a gas chromatograph. Concentration measurements taken around the perimeter of the enclosure provide evidence of capture performance and will assist in the identification of those areas of the enclosure that are performing less efficiently.

8.6.3 Analysis and Storage of Ambient Samples (Optional). Analyze the ambient samples using an analytical instrument calibrated and operated according to the procedures of this appendix or ASTM E 260 and ASTM E 697. Samples may be analyzed immediately after a sample is taken, or they may be stored for future analysis. Experience has shown no degradation of concentration in polypropylene syringes when stored for several months as long as the needle or syringe is plugged. Polypropylene syringes should be discarded after one use to eliminate the possibility of cross contamination of samples.

9.0 Quality Control

9.1 Sampling, System Leak Check. A sampling system leak check should be conducted prior to and after each test run to ensure the integrity of the sampling system.

9.2 Zero and Calibration Drift Tests

Section	Quality control measure	Effect
8.5.4	Zero and calibration drift tests	Ensures that bias introduced by drift in the measurement system output during the run is no greater than 3 percent of span.

10.0 Calibration and Standardization

10.1 Control Device Inlet Air Flow Rate Measurement Equipment. Follow the equipment calibration requirements specified in Methods 2, 3, and 4 for measuring the velocity, molecular weight, and moisture of the control device inlet air.

10.2 Tracer Gas Injection Rate. A dry gas volume flow meter, mass flow meter, or orifice can be used to measure the tracer gas injection flow rate. The selected flow measurement device must have an accuracy of greater than ± 5 percent at the field operating range. Prior to the test, verify the calibration of the selected flow measurement device using either a wet test meter, spirometer, or liquid displacement meter as the calibration device. Select a minimum of two flow rates to bracket the expected field

operating range of the flow meter. Conduct three calibration runs at each of the two selected flow rates. For each run, note the exact quantity of gas as determined by the calibration standard and the gas volume indicated by the flow meter. For each flow rate, calculate the average percent difference of the indicated flow compared to the calibration standard.

10.3 Spectrometer. Follow the calibration requirements specified by the equipment manufacturer for infrared spectrometer measurements and conduct the pretest calibration error test specified in section 8.5.1. Note: if using an FTIR analytical instrument see Method 320, section 10.

10.4 Gas Chromatograph. Follow the pretest calibration requirements specified in section 8.5.1.

10.4 Gas Chromatograph for Ambient Sampling (Optional). For the optional ambient sampling, follow the calibration requirements specified in section 8.5.1 or ASTM E 260 and E 697 and by the equipment manufacturer for gas chromatograph measurements.

11.0 Analytical Procedures

The sample collection and analysis are concurrent for this method (see section 8.0).

12.0 Calculations and Data Analysis

12.1 Estimate MML and Span. The MML is the minimum measurement level. The selection of this level is at the discretion of the tester. However, the MML must be higher than the low-level calibration standard and the tester must be able to measure at this level with a precision of ≤10 percent. As an example, select the MML as 10 times the instrument's published detection limit. The detection limit of one instrument is 0.01 parts per million by volume (ppm_v). Therefore, the MML would be 0.10 ppm_v. Select the low-level calibration standard as 0.08 ppm_v. The high-level standard would be four times the low-level standard or 0.32 ppm_v. A reasonable mid-level standard would then be 0.20 ppm_v (halfway between the low-level standard and the high-level standard). Finally, the span value would be approximately 0.40 ppm_v (the high-level value is 80 percent of the span). In this example, the following MML, calibration standards, and span values would apply:

MML = 0.10 ppm_v
Low-level standard = 0.08 ppm_v
Mid-level standard = 0.20 ppm_v
High-level standard = 0.32 ppm_v
Span value = 0.40 ppm_v

12.2 Estimate Tracer Gas Injection Rate for the Given Span. To estimate the minimum and maximum tracer gas injection rate, assume a worst case capture efficiency of 80 percent, and calculate the tracer gas flow rate based on known or measured parameters. To estimate the minimum tracer gas injection rate, assume that the MML concentration (10 times the IR detection limit in this example) is desired at the measurement location. The following equation can be used to estimate the minimum tracer gas injection rate:

$((Q_{T-MIN} \times 0.8)/Q_E) \times (C_T \div 100) \times 10^6 = MML$

$Q_{T-MIN} = 1.25 \times MML \times (Q_E / C_T) \times 10^{-4}$

Where:

Q_{T-MIN} = minimum volumetric flow rate of tracer gas injected, scfm
Q_E = volumetric flow rate of exhaust gas, scfm
C_T = Tracer gas (SF_6) concentration in gas blend, percent by volume
MML = minimum measured level, $ppm_v = 10 \times IR_{DL}$ (for this example)
IR_{DL} = IR detection limit, ppm_v

Standard conditions: 20 °C, 760 mm Hg.

To estimate the maximum tracer gas injection rate, assume that the span value is desired at the measurement location. The following equation can be used to estimate the maximum tracer gas injection rate:

$((Q_{T-MAX} \times 0.8)/Q_E) \times (C_T \div 100) \times 10^6 =$ span value

$Q_{T-MAX} = 1.25 \times$ span value $\times (Q_E / C_T) \times 10^{-4}$

Where:

Q_{T-MAX} = maximum volumetric flow rate of tracer gas injected, scfm
Span value = Instrument span value, ppm_v

The following example illustrates this calculation procedure:

Find the range of volumetric flow rate of tracer gas to be injected when the following parameters are known:

Q_E = 60,000 scfm (typical exhaust gas flow rate from a press enclosure)
C_T = 2 percent SF_6 in nitrogen
IR_{DL} = 0.01 ppm_v (per manufacturer's specifications)
MML = $10 \times IR_{DL}$ = 0.10 ppm_v
Span value = 0.40 ppm_v
Q_T = ?

Minimum tracer gas volumetric flow rate:

$Q_{T-MIN} = 1.25 \times MML \times (Q_E / C_T) \times 10^{-4}$

$Q_{T-MIN} = 1.25 \times 0.10 \times (60{,}000/2) \times 10^{-4} =$ 0.375 scfm

Maximum tracer gas volumetric flow rate:

$Q_{T-MAX} = 1.25 \times$ span value $\times (Q_E / C_T) \times 10^{-4}$

$Q_{T-MAX} = 1.25 \times 0.40 \times (60{,}000/2) \times 10^{-4} =$ 1.5 scfm

In this example, the estimated total volumetric flow rate of the two percent SF_6 tracer gas injected through the manifolds in the partial enclosure lies between 0.375 and 1.5 scfm.

12.3 Calibration Error. Calculate the calibration error for the low-level and mid-level calibration gases using the following equation:

$Err = |C_{std} - C_{meas}| \div C_{std} \times 100$

Where:

Err = Calibration error, percent
C_{std} = Low-level or mid-level calibration gas value, ppm_v
C_{meas} = Measured response to low-level or mid-level concentration gas, ppm_v

12.4 Calibration Drift. Calculate the calibration drift for the zero and low-level calibration gases using the following equation:

$D = |C_{initial} - C_{final}| \div C_{span} \times 100$

Where:

D = Calibration drift, percent
$C_{initial}$ = Low-level or mid-level calibration gas value measured before test run, ppm_v
C_{final} = Low-level or mid-level calibration gas value measured after test run, ppm_v
C_{span} = Span value, ppm_v

12.5 Calculate Capture Efficiency. The equation to calculate press enclosure capture efficiency is provided below:

$CE = (SF_{6-CD} + SF_{6-INJ}) \times 100$

Where:

CE = capture efficiency
SF_{6-CD} = mass of SF_6 measured at the inlet to the CD
SF_{6-INJ} = mass of SF_6 injected from the tracer source into the PPE

Calculate the CE for each of the initial three test runs. Then, follow the procedures outlined in section 12.6 to calculate the Overall Capture Efficiency.

12.6 Calculate Overall Capture Efficiency. After calculating the capture efficiency for each of the initial three test runs, follow the procedures in 40 CFR part 63, subpart KK, Appendix A to determine if the results of the testing can be used in determining compliance with the requirements of the proposed rule. There are two methods that can be used: the DQO and LCL methods. The DQO method is described in section 3 of 40 CFR part 63, subpart KK, Appendix A and provides a measure of the precision of the capture efficiency testing conducted. Section 3 of 40 CFR part 63, subpart KK, Appendix A provides an example calculation using results from a facility. If the DQO criteria are met using the first set of three test runs, then the facility can use the average capture efficiency of these test results to determine the capture efficiency of the partial hot press enclosure. If the DQO criteria are not met then the facility can conduct another set of three runs and run the DQO analysis again using the results from the six runs *OR* the facility can elect to use the LCL approach.

The LCL method is described in section 4 of 40 CFR part 63, subpart KK, Appendix A and provides sources that may be performing much better than their regulatory requirement a screening option by which they can demonstrate compliance. The LCL approach compares the 80 percent lower confidence limit for the mean measured CE value to the applicable regulatory requirement. If the LCL capture efficiency is higher than the applicable limit, then the facility is in initial compliance and would use the LCL capture efficiency as the capture efficiency to determine compliance. If the LCL capture efficiency is lower than the applicable limit, then the facility must perform additional test runs and re-run the DQO or LCL analysis.

13.0 Method Performance

13.1 Measurement System Performance Specifications.

13.1.1 Zero Drift. Less than ± 3 percent of the span value.

13.1.2 Calibration Drift. Less than ± 3 percent of the span value.

13.1.3 Calibration Error. Less than ± 5 percent of the calibration gas value.

13.2 Flow Measurement Specifications. The mass flow, volumetric flow, or critical orifice control meter used should have an accuracy of greater than ± 5 percent at the flow rate used.

13.3 Calibration and Tracer Gas Specifications. The manufacturer of the

calibration and tracer gases should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ± 2 percent from the certified value.

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 References

1. 40 CFR part 60, Appendix A, EPA Method 1—Sample and velocity traverses for stationary sources.

2. 40 CFR part 60, Appendix A, EPA Method 2—Determination of stack gas velocity and volumetric flow rate.

3. 40 CFR part 60, Appendix A, EPA Method 3—Gas analysis for the determination of dry molecular weight.

4. 40 CFR part 60, Appendix A, EPA Method 4—Determination of moisture content in stack gases.

5. SEMI F15–93 Test Method for Enclosures Using Sulfur Hexafluoride Tracer Gas and Gas Chromotography.

6. Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Directors, Revised Capture Efficiency Guidance for Control of Volatile Organic Compound Emissions, February 7, 1995. (That memorandum contains an attached technical document from Candace Sorrell, Emission Monitoring and Analysis Division, "Guidelines for Determining Capture Efficiency," January 9, 1994).

7. Technical Systems Audit of Testing at Plant "C," EPA–454/R–00–26, May 2000.

8. Material Safety Data Sheet for SF_6. Air Products and Chemicals, Inc. Website: *www3.airproducts.com*. October 2001.

17.0 Tables, Diagrams, Flowcharts, and Validation Data

TABLE 1.—SUMMARY OF CRITICAL PHYSICAL MEASUREMENTS FOR THE PRESS ENCLOSURE TESTING

Measurement	Measurement instrumentation	Measurement frequency	Measurement site
Tracer gas injection rate	Mass flow meter, volumetric flow meter or critical orifice.	Continuous	Injection manifolds (cylinder gas).
Tracer gas concentration at control device inlet.	Infrared Spectrometer or GC/ECD	Continuous (at least one reading per minute) for a minimum of 20 minutes.	Inlet duct to the control device (outlet duct of enclosure).
Volumetric air flow rate	EPA Methods 1, 2, 3, 4 (40 CFR part 60, Appendix A). • Velocity sensor (Manometer/ Pito t tube). • Thermocouple • Midget Impinger sampler • Orsat or Fyrite	Each test run for velocity (minimum); Daily for moisture and molecular weight.	Inlet duct to the control device (outlet duct of enclosure).

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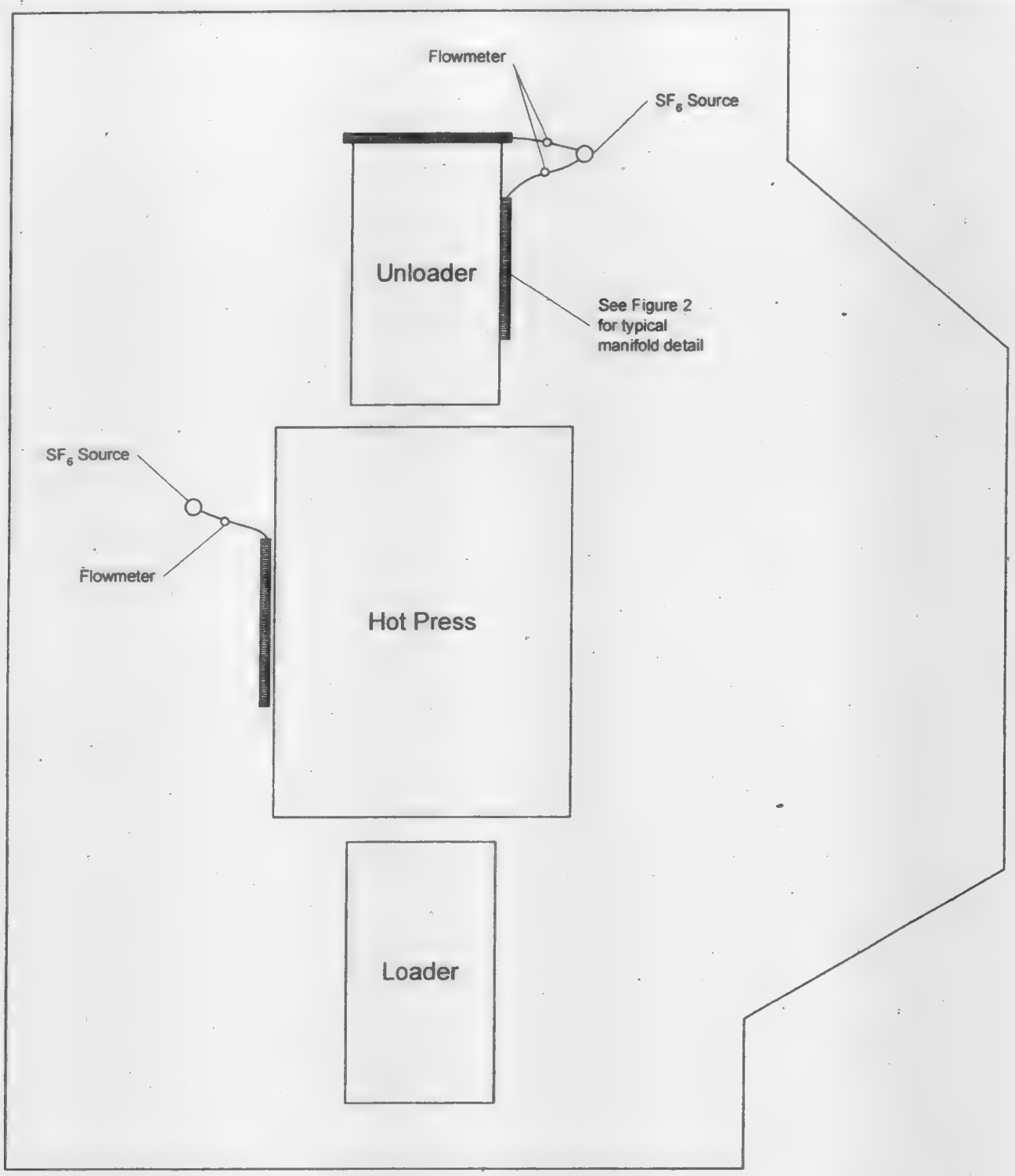

Figure 1. Plan view schematic of hot press and enclosure showing SF_6 manifold locations.

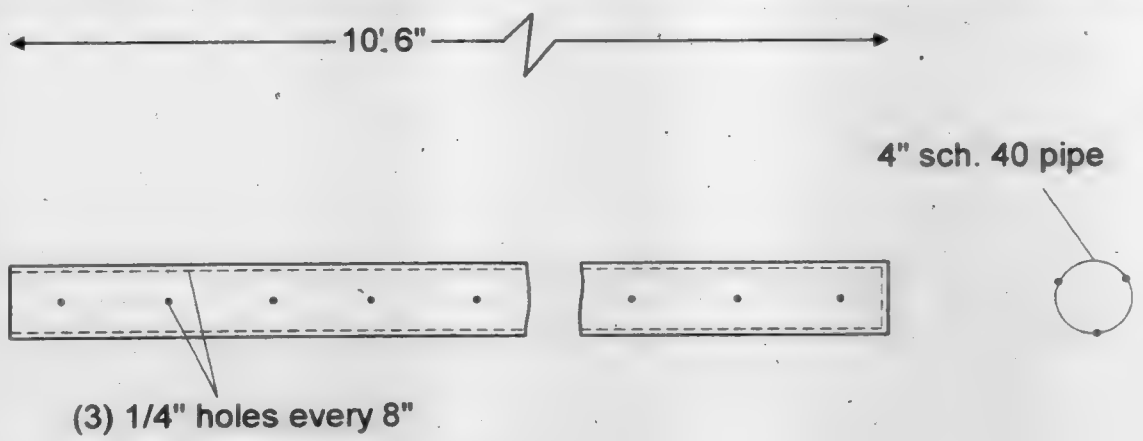

Figure 2. Schematic detail for manifold system for SF_6 injection.

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January 9, 2003

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107

Hazardous Materials: Temporary Reduction of Registration Fees; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. RSPA–00–8439 (HM–208D)]

RIN 2137–AD53

Hazardous Materials: Temporary Reduction of Registration Fees

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is reducing the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials, in order to eliminate the unexpended balance in the Hazardous Materials Emergency Preparedness Grants Fund. RSPA is also revising its regulations to provide that a not-for-profit organization will pay the same registration fee as a small business.

EFFECTIVE DATE: March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1992, the Research and Special Programs Administration (RSPA) has conducted a National registration program for persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce, under the mandate in 49 U.S.C. 5108. The purposes of the registration program are to (1) gather information about the transportation of hazardous material and (2) fund the Hazardous Materials Emergency Preparedness (HMEP) grants program that supports hazardous material emergency response planning and training activities by States, local governments, and Indian tribes and related activities. *See* 49 U.S.C. 5108(b), 5116. The law gives RSPA discretion to require additional persons to register, beyond those offerors and transporters of the categories and quantities of hazardous materials listed in 49 U.S.C. 5108(a)(1), and to set the annual registration fee between $250 and $5,000. *See* 49 U.S.C. 5108(a)(2), 5108(g)(2)(A).

Until 2000, only those persons who offered or transported the categories and quantities of hazardous materials set forth in § 5108(a)(1) were required to register, and the annual registration fee was set at the minimum level of $250 (plus a processing fee of $50). In each year through the July 1, 1999–June 30, 2000 registration year, the total registration fees collected by RSPA amounted to less than one-half of the total $14.3 million intended by Congress for training and planning grants and grant-related activities.

In a final rule published in the **Federal Register** (65 FR 7297) on February 14, 2000, RSPA expanded the base of registrants and adopted a two-tiered fee schedule under which the registration fee was set at $275 for a person meeting the Small Business Administration (SBA) criteria for a small business, and $1,975 for other persons (plus a $25 processing fee in all cases). A greater-than-anticipated number of persons has paid the higher registration fee applicable to a larger business. As a result, RSPA has collected more than $21 million in each registration year since 2000. These collections have created a surplus (unexpended balance) in the HMEP Fund because the current annual grants program obligations are limited to the $14.3 million designated by Congress. Section 5108(g)(2)(B) of 49 U.S.C. requires RSPA to adjust the amount being collected "to reflect any unexpended balance" in the HMEP Fund. Therefore, on December 7, 2000, we published a notice of proposed rulemaking (NPRM) in this docket proposing to temporarily lower the registration fee for all registrants for six registration years to $250 (plus a $25 processing fee) for small businesses and $475 (plus a $25 processing fee) for all other persons. 65 FR 76890. In addition, we proposed to specify that a not-for-profit organization (regardless of its size) pay the same fee as a small business; to reflect SBA's replacement of the Standard Industrial Classification (SIC) code system with the North American Industry Classification System (NAICS), and to allow payment by credit cards not previously authorized.

On September 16, 2002, RSPA published a final rule under Docket HM–208E (67 FR 58343) adopting the NAICS codes, allowing payment methods not previously authorized, and permitting registration via the Internet. However, we have delayed taking final action on the fee-related proposals in the December 7, 2000 NPRM because our budget requests to Congress for FY 2002 and FY 2003 proposed to fund a portion of RSPA's hazardous materials safety program from the excess registration fees (above the $14.3 million specified to be used for training and planning grants and grant-related activities). *See* the status documents we published in the **Federal Register** on May 2, 2001 (66 FR 22080), and March 14, 2002 (67 FR 11456). Since these proposals were not adopted by Congress in the FY 2002 DOT appropriations and the FY 2003 DOT appropriations bill is pending, we are now taking final action on the fee-related proposals in the December 7, 2000 NPRM.

II. Discussion of Comments and Regulatory Changes

A. General

RSPA received approximately 20 written comments to the December 7, 2000 NPRM. The commenters included representatives of organizations and individuals engaged in all modes of transportation of hazardous materials, agricultural retailers, petroleum marketers and distributors, chemical manufacturers, and industry associations representing a broad spectrum of businesses that transport or offer for transport hazardous materials.

B. Reduction of Registration Fees

Commenters supported reduction of the registration fees. However, some commenters opposed certain aspects of RSPA's proposal. Some commenters stated that RSPA should return to a single flat fee system or eliminate the requirement that a person must register if it offers or transports a quantity of hazardous materials required to be placarded.

For example, the American Trucking Associations (ATA) stated that it supports "the efforts of RSPA to adjust and refund registration fees in order to comply with statutory limits set forth in the HMTL," but it "still disagree[s] with the need for a two-tiered registration fee." National Tank Truck Carriers (NTTC) also "continues to believe that RSPA should reinstate a "single fee" system (as opposed to the proposed two-tiered structure)."

The Petroleum Marketers Association of America (PMAA) stated that RSPA "should revise the registration criteria by temporarily eliminating the requirement that all persons who offer for transportation or transport• hazardous materials required to be placarded be registered. However, if the agency will not eliminate this particular group of registrants from the fee requirement, PMAA believes that

temporarily reducing the registration fee for all persons required to register is the best solution in eliminating the unexpended balance."

The Fertilizer Institute (TFI) suggested that "RSPA consider capping the registration fee at $700 for other than small businesses, while leaving small business entities, minus the farm sector, at the current $250." TFI also urged RSPA to eliminate the registration requirement for a person who offers or transports hazardous materials that require placarding. TFI suggested that if RSPA insisted that all placarded loads require registration, then agricultural retailers and farm cooperatives should be specifically exempted from the registration requirement.

The Petroleum Transportation & Storage Association (PTSA) suggested that RSPA eliminate the administrative fee for all registrants and the registration fee for small cargo tanks under 3,500 gallons. PTSA urged RSPA "to use the unexpended funds to eliminate the annual registration fee for these ultra small shippers."

The National Propane Gas Association (NPGA) opposed the proposed reduction in the registration fees as being a "disproportionate fee reduction for large businesses over small companies" and adding additional confusion for companies trying to learn and comply with the registration requirements.

The International Sanitary Supply Association (ISSA) recommended that RSPA: (1) Eliminate the surplus over a four-year instead of a six-year period; (2) reduce the fees for small businesses to $150, and (3) reduce the fees for other than small businesses to $1,180.

On July 1, 2002, fifteen industry associations filed a lawsuit in the United States District Court for the District of Columbia asking for an order prohibiting RSPA from collecting any additional registration fees until RSPA adjusts the amount being collected to eliminate the unexpended surplus in the registration fee account. Counsel for plaintiffs in that lawsuit stated that 49 U.S.C. 5108(g)(2)(A) gives DOT the authority to go below the statutory minimum when it is trying to reduce any unexpended balance.

In the final rule (Docket No. HM–208C) we concluded that the registration program should: (1) Be simple, straightforward, and easily implemented and enforced; (2) employ an equity factor that reflects the differences between the risk imposed on the public by the business activities of large and small businesses; (3) ensure the adequacy of funding for the HMEP grants program; and (4) be consistent with the law. *See* 65 FR 7303. We found that the most appropriate way to meet these objectives was to expand the category of persons required to register to include all persons who offer for transportation or transport hazardous materials that require placarding (with a limited exception for farmers) and to adopt a two-tiered fee schedule under which persons meeting the SBA criteria for defining a small business would pay a lower fee than larger businesses.

For all the reasons discussed in the February 14, 2000 final rule, we still believe that the findings and conclusions discussed in that rule are justified and, as far as possible, should be followed in adjusting the registration fees to reduce the unexpended surplus in the HMEP grants fund. Therefore, we disagree with suggestions that we except from registration persons added in the 2000 final rule. The present system, using the placarding requirement as a primary determinant, is risk-based and facilitates enforcement—especially by State and local enforcement personnel.

The recommendation that the processing fee be eliminated and replaced by an increase in the grants fee for registrants that do not meet the SBA standards for a small business did not take into consideration that the costs of processing the registration statement are not expenses authorized to be paid from the grants account. The costs of administering the registration program are provided in the Department's annual budget authorizations from General Treasury funds—unlike the grants program expenses, which are statutorily authorized to be paid from the grants account. Although the separate statutory authority for the processing fee is permissive, it is the Department's understanding that this permissive authority reflects Congressional intent that the registration program costs be covered by collection of that fee.

When the NPRM was published in December 2000, we estimated that the unexpended balance in the grants fund was approximately $8.5 million (65 FR 76890, December 7, 2000). Since that time, two further collection cycles have occurred. The number of registrations received during a fiscal year (including registrations for prior years and fees paid in previous years for the current registration year) has remained constant at approximately 41,000, as has the percentage of registrants that have paid the larger business fee (approximately 15 percent). We currently estimate that, as of October 1, 2002, the unexpended balance in the grants fund was approximately $25 million.

Because of this increase in the unexpended balance, RSPA believes that it is necessary to adopt reductions in the registration fees that are even greater than originally proposed. Therefore, we are temporarily (for three years) reducing the registration fee for small businesses and non-profit organizations (regardless of their size) to $125 (plus a $25 processing fee) and for all other registrants to $275 (plus a $25 processing fee). RSPA is able to set the fee level for small businesses below the usual statutory minimum of $250 because the minimum (49 U.S.C. 5108(g)(2)(A)) is subject to the requirement (49 U.S.C. 5108(g)(2)(B)) that the Secretary adjust the amount being collected to reflect any unexpended balance.

Under this temporary fee system, we estimate that we will collect approximately $6.0 million each fiscal year, thus decreasing the grants fund balance by approximately $8.3 million a year. This estimate depends on the number of persons registering for the current and prior years remaining constant and the authorization for the HMEP grants program remaining constant at $14.3 million per year. At this rate of reduction, it will take about three years to deplete the surplus. Therefore, RSPA is temporarily reducing the registration fee for three years.

In the NPRM, we stated that we were not making a "permanent" change in registration fees because of uncertainty about the final registration numbers. We also stated that, within three years of the end of the proposed temporary six-year reduction in the registration fees, RSPA would reevaluate the registration fees. Because we have had three years under the new registration criteria and in order to ensure that no unnecessary surplus is created, we are now revising registration fee levels for the years after the period of temporary reduction.

Applying the objectives stated in Docket HM–208C, RSPA has determined that, beginning in registration year 2006–2007, small businesses and non-profit organizations (regardless of their size) should pay a registration fee of $250 (plus a $25 processing fee) and all other persons required to register should pay a registration fee of $975 (plus a $25 processing fee). Under this fee structure, we estimate that we will collect approximately $14.5 million per year.

We recognize that, depending on many factors that may vary over the years (including registrations received for prior years and unexpended grant obligations), it may take more or less than three years to deplete the current surplus. We also recognize that the fee structure that would go into effect with the 2006–2007 registration year may

need to be revised to avoid accumulating an unexpended balance. Consequently, RSPA will reevaluate the account balance and the fee levels, during the 2005–2006 registration year.

C. Not-for-Profit Organizations

We received comments in favor of and against the proposal to establish the registration fee for not-for-profit organizations at the same level as for small businesses. For example, ATA and PMAA supported the proposal to designate all not-for-profit organizations as small businesses. However, PMAA added that:

> The definition for a not-for-profit organization should be limited to 26 U.S.C. 501(c)(3) [because] many "large businesses," including electric multistate cooperatives, are classified as not-for-profit organizations. To reduce their fee to the same level as the fee for small business would be unfair, since these particular organizations compete with many small businesses.

In contrast, IME and NPGA opposed this proposal. IME stated that "RSPA compounds the error of a fee based on business size by suggesting that an organization's educational, religious, charitable and other similar purposes should also be factored into the determination of what is the appropriate contribution any registrant should make to the HMEPG."

NPGA stated, "DOT should limit its definition of non-profit organization solely to charitable organizations," and that, "this provision will have the effect of providing a competitive advantage in the energy marketplace to rural electric cooperatives (RECs), many of which sell propane and therefore operate contrary to the purposes for which they were originally chartered."

The SBA criteria for small business size standards apply to business entities organized for profit. 13 CFR 121.105(a). Therefore, non-profit organizations do not technically qualify as small businesses. After the February 14, 2000 final rule was adopted, RSPA applied SBA size criteria for appropriate SIC codes to non-profit organizations. However, nearly all of the not-for-profit organizations that are currently registered, which are mostly educational institutions and hospitals, exceed the SBA size standards for a small business.

To some extent, this may result from the SBA's focus on the characteristics of for-profit businesses in establishing the size standard for an industry group. In those infrequent instances where not-for-profit organizations constitute a significant portion of an industry group, the SBA may deliberately exclude the characteristics of not-for-profit organizations when considering the appropriate size standard. Because not-for-profit organizations generally are operated for educational, religious, charitable and other similar purposes, RSPA remains interested in helping them minimize their costs of operation and believes that, in so doing, we are following a precedent established by law in the exemption of such organizations from taxation.

We considered the comments recommending narrower criteria for not-for-profit organizations than proposed and concluded that our proposal remains the most straightforward resolution for dealing with entities that do not conform to SBA's criteria for a small business. To accept the PMAA's recommendation to limit the definition of not-for-profit organizations to those included in 26 U.S.C. 501(c)(3) or the NPGA's recommendation to limit the definition solely to "charitable organizations" would exclude organizations that the law exempts from taxation because of their non-profit status. We recognize that by providing a new fee category for not-for-profit organizations, some relatively large organizations may pay a reduced fee in the future, but RSPA considers the adoption of the proposed broader definition of not-for-profit organizations as defined by U.S. law to be more easily applied than any attempt to distinguish between types of non-profit organizations. Even though it seems unlikely that many registering organizations would be affected by the limitation of the definition to 26 U.S.C. 501(c)(3), we decided to retain the broader group included in 26 U.S.C. 501(a) and to adopt the proposal to establish a fee for all not-for-profit organizations at the same level as that for small businesses.

III. Refunds

In response to requests from industry, in the February 14, 2000 final rule (Docket No. HM–208C) RSPA amended the HMR to allow a person to register for up to three years in one registration statement. 49 CFR 107.612(c), 65 FR at 7309–10. Approximately 4,550 advance registrations for the 2003–2004 and 2004–2005 registration years have been received. Refunds will be provided for registrations paid in advance for those years at the higher fee levels in effect at the time of payment.

A letter will be sent approximately 45 days after the publication of this final rule to each registrant that, on that date, is due a refund for fees paid in advance for the 2003–2004 and 2004–2005 registration years. The letter will specify the amount of the refund and will be accompanied by a Form W–9, Request for Taxpayer Identification Number and Certification. The form must be submitted to RSPA before a refund can be made. Registrants that have submitted registrations including payment for the 2003–2004 and 2004–2005 registration years that do not receive a letter within this time frame should contact the registration office at 202–366–4109. Refunds will be made by checks issued by the U.S. Treasury after the Form W–9 is submitted. Persons who later pay in advance for the 2003–2004 and 2004–2005 registration years at the higher fee levels being reduced by this rule will be similarly contacted for the purpose of providing refunds for the overpayment.

Of the approximately 4,550 registrants due refunds, 4,250 small businesses will receive refunds of $150 (3,050) or $300 (1,200), and 300 others will receive refunds of $1,700 (200) or $3,400 (100).

IV. Rulemaking Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was subject to formal review by the Office of Management and Budget. This rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). RSPA has prepared a regulatory evaluation that is available for review in the public docket.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). The registration requirements do not impair the ability of States, local governments, or Indian tribes to impose their own fees or registration or permit requirements on persons who offer or transport hazardous materials in commerce. RSPA encourages States, local governments, and Indian tribes to adopt and enforce requirements in the HMR and the Federal registration requirement, in order to enhance compliance with a nationally uniform set of regulations on the transportation of hazardous materials.

The consultation and funding requirements of Executive Order 13132 do not apply because this rule does not adopt any regulation that:

(1) Has substantial direct effects on the States, the relationship between the National government and the States, or the distribution of power and

responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on State and local governments; or

(3) Preempts State law.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not have tribal implications, does not impose substantial direct compliance costs and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities.

In the February 14, 2000 final rule in Docket No. HM–208C, RSPA certified that that final rule did affect a significant number of small entities, but that the economic impact on these small entities will not be significant. 65 FR 7308–09. This final rule affects the same small entities that Docket HM–208C did and, therefore, this final rule affects a significant number of small entities. 65 FR 7307–09. Although this final rule is providing a $150 reduction in the combined annual fee that small businesses must pay, that reduction does not constitute a significant economic impact on a substantial number of small entities. Therefore, RSPA certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

F. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), reporting and recordkeeping requirements pertaining to the registration rule are specifically excepted from the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347) requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this rule. The temporary reduction of registration fees will continue to fund the HMEP grants program at the level recommended by Congress, eliminate the surplus in a reasonable amount of time, and continue the balance of equity established under Docket HM–208C. In addition, this course of action will continue to fund the HMEP grants program on a basis that is equitable, straightforward, enforceable, and sound and will eliminate the surplus in the most expedient manner possible. It will also permanently set the registration fees for the years after the surplus is eliminated and will stop creation of any unnecessary surplus. Reduction in the registration fees or elimination of the current surplus in the registration fees fund has no potential for environmental damage or contamination.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

2. In § 107.612, the introductory text of paragraph (b) is revised and new paragraphs (c) and (d) are added to read as follows:

§ 107.612 Amount of fee.

* * * * *

(b) *Registration years 2000–2001, 2001–2002 and 2002–2003.* For the registration years 2000–2001; 2001–2002, and 2002–2003, each person subject to the requirements of this subpart must pay an annual fee as follows:

* * * * *

(c) *Registration years 2003–2004, 2004–2005 and 2005–2006.* For registration years 2003–2004, 2004–2005, and 2005–2006, each person subject to the requirements of this subpart must pay an annual registration fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person's primary commercial activity, must pay an annual registration fee of $125 and the processing fee required by paragraph (c)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual registration fee of $125 and the processing fee required by paragraph (c)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (c)(1) or (c)(2) of this section must pay an annual registration fee of $275 and the processing fee required by paragraph (c)(4) of this section.

(4) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

(d) *Registration years 2006–2007 and following.* For each registration year beginning with 2006–2007, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person's primary commercial activity, must pay an annual registration fee of $250 and the processing fee required by paragraph (d)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual registration fee of $250 and the processing fee required by paragraph (d)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (d)(1) or (d)(2) of this section must pay an annual registration fee of $975 and the processing fee required by paragraph (d)(4) of this section.

(4) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

3. In § 107.616, paragraph (d)(2) is revised to read as follows:

§ 107.616 Payment procedures.

* * * * *

(d) * * *

(2) Pay a registration and processing fee as follows:

(i) For registration year 2002–2003, pay a registration fee of $275, a processing fee of $25, and an expedited handling fee of $50. The total fee is $350. Persons who do not meet the criteria for a small business, as specified in § 107.612(b)(1), must enclose an additional registration fee payment of $1,700 with the expedited follow-up material, for a total of $2,050 (registration fee—$1,975; processing fee—$25; expedited handling fee—$50);

(ii) For registration years 2003–2004, 2004–2005, and 2005–2006, pay a registration fee of $125, a processing fee of $25, and an expedited handling fee of $50. The total fee is $200. Persons who do not meet the criteria for a small business or are not a not-for-profit organization, as specified in § 107.612(c), must enclose an additional registration fee payment of $150 with the expedited follow-up material, for a total of $350 (registration fee—$275; processing fee—$25; expedited handling fee—$50); and

(iii) For registration years beginning with 2006–2007, pay a registration fee of $250, a processing fee of $25, and an expedited handling fee of $50. The total fee is $325. Persons who do not meet the criteria for a small business or are not a not-for-profit organization, as specified in § 107.612(d), must enclose an additional registration fee payment of $725 with the expedited follow-up material, for a total of $1,050 (registration fee—$975; processing fee—$25; expedited handling fee—$50); and

* * * * *

Issued in Washington, DC, on January 6; 2003, under authority delegated in 49 CFR Part 1.

Ellen G. Engleman,

Administrator.

[FR Doc. 03–436 Filed 1–8–03; 8:45 am]

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Federal Register

Thursday,
January 9, 2003

Part V

Environmental Protection Agency

40 CFR Part 112

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–7437–3]

RIN 2050–AC62

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency (EPA or we) is extending for a period of sixty days the dates for a facility to amend its Spill Prevention, Control, and Countermeasure (SPCC) Plan and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). We are taking this action to avoid the flood of individual extension requests it has become apparent we will otherwise receive from regulated facilities, and to allow for adequate consideration of comments we expect to receive on a proposed one-year extension of the dates published elsewhere in this issue of the **Federal Register**.

DATES: This interim final rule is effective on January 9, 2003.

ADDRESSES: The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B–102, Washington, DC 20460. The docket number for the final rule is OPA–2002–001. The docket is contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202–566–0276. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you $0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rule, contact Hugo Paul Fleischman at 703–603–8769 (fleischman.hugo@epa.gov); or Mark W. Howard at 703–603–8715 (howard.markw@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, Mail Code 5203G.

SUPPLEMENTARY INFORMATION: The contents of this preamble are as follows:

I. General Information
II. Entities Affected by This Rule
III. Statutory Authority
IV. Background
V. Today's Action
VI. Statutory and Executive Order Reviews

I. General Information

Introduction. By this interim final rule, the Environmental Protection Agency is extending by sixty days the dates in 40 CFR 112.3(a) and (b) for a facility to amend its Spill Prevention, Control, and Countermeasure (SPCC) Plan and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). During the period of this sixty-day extension, it will not be necessary for a facility owner or operator to file an extension request pursuant to § 112.3(f). Furthermore, for facilities that have already applied for an extension pursuant to § 112.3(f), today's interim final rule should render such requests moot.

A. How Can I Get Copies of the Background Materials Supporting Today's Interim Final Rule or Other Related Information?

1. EPA has established an official public docket for this interim final rule under Docket ID No. OPA–2002–001. The official public docket consists of the documents specifically referenced in this interim final rule and other information related to this interim final rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave., NW., EPA West Building, Room B–102, Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0276. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

II. Entities Affected by This Rule

Industry category	NAICS code
Crop and Animal Production	111–112
Crude Petroleum and Natural Gas Extraction	211111
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116
Electric Power Generation, Transmission, and Distribution	2211
Heavy Construction	234
Petroleum and Coal Products Manufacturing	324
Other Manufacturing	31–33

Industry category	NAICS code
Petroleum Bulk Stations and Terminals	42271
Automotive Rental and Leasing	5321
Heating Oil Dealers	454311
Transportation (including Pipelines), Warehousing, and Marinas	482–486/488112–48819/4883/48849/492–493/71393
Elementary and Secondary Schools, Colleges	6111–6113
Hospitals/Nursing and Residential Care Facilities	622–623

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

III. Statutory Authority

33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351

IV. Background

On July 17, 2002, at 67 FR 47042, EPA published final amendments to the Spill Prevention, Control, and Countermeasure (SPCC) rule. The rule was effective August 16, 2002. The rule included dates in § 112.3(a) and (b), by which a facility would have time to amend its SPCC Plan and implement its amended Plan (note that for facilities becoming operational after August 16, 2002, the rule contains dates for the preparation and implementation of a Plan in compliance with the amended rule). In light of new information, we have decided to extend those dates for a period of sixty days.

V. Today's Action

EPA is extending for a period of sixty days the dates in § 112.3(a) and (b). Since the promulgation of the SPCC rule in July 2002, EPA has received numerous complaints that the deadlines in the rule do not allow enough time for the regulated community to undertake the actions necessary to update (or prepare) their Plans in accordance with the amendments. Among the reasons given are that there is a shortage of Professional Engineers (PEs) in some areas, the need for the PE or his agent to make visits at sometimes remote facilities, and the need for the PE to certify that Plans meet requirements for which they have not yet had adequate training. It has also become apparent that unless the Agency issues this interim final rule, we will receive an overwhelming number of requests for individual extensions under 40 CFR 112.3(f). Thus, the Agency believes that the present compliance dates are too short, and it would be an inefficient use of scarce Agency resources to address this problem by processing a great number of individual extension requests. Because the first deadline in the rule is February 17, 2003, the Agency believes that immediate, near-term relief is needed, and is therefore extending the current deadlines by sixty days.

We are issuing this interim final rule in conjunction with a concurrent proposal (published elsewhere in this issue of the **Federal Register**) to extend by one year the dates in § 112.3(a) and (b). We believe a sixty-day extension is needed as quickly as possible to avoid potential confusion for facility owners and unnecessary administrative burdens on the Agency. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). EPA believes that notice- and comment rulemaking before the existing compliance dates in the SPCC rule (*i.e.*, February 17, 2003) is impracticable and contrary to the public interest, inasmuch as there is insufficient time to offer meaningful opportunity for public comment and provide appropriate, considered response by the Agency. Therefore, EPA believes it is necessary to use the interim final rulemaking process to extend by sixty days the compliance dates in § 112.3(a) and (b) while we complete a notice-and-comment rulemaking process that proposes to extend these compliance dates for a period of one year. Moreover, with respect to the effective date of this interim final rule, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—OMB Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, it has been determined that this interim final rule is not a "significant regulatory action" because it would only extend for sixty days the compliance dates in § 112.3(a) and (b). It would have no other substantive effect.

B. Paperwork Reduction Act

This interim final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (R.F.A.) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements

under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's interim final rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than $500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This interim final rule will temporarily reduce regulatory burden on all facilities by extending for sixty days the compliance dates in § 112.3(a) and (b). Further, the interim final rule will reduce costs for both existing and new facilities.

After considering the economic impacts of today's interim final rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this interim final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's interim final rule would reduce burden and costs on all facilities.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the rule would be to reduce burden and costs for regulated facilities, including small governments that are subject to the rule.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This interim final rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), EPA believes that States are free to impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the federal SPCC program and recognizes that some States have more stringent requirements. 56 FR 54612 (October 22, 1991). This interim final rule would not preempt state law or regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today's interim final rule would not significantly or uniquely affect communities of Indian tribal governments. Therefore, we have not consulted with a representative organization of tribal groups.

G. Executive Order 13045—Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This interim final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This interim final rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This interim final rule does not involve technical standards. Therefore, NTTA is inapplicable.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 3, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40 CFR, chapter I, part 112 of the Code of Federal Regulations, is amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Section 112.3 is amended by revising paragraphs (a) and (b) to read as follows:

PART 112—OIL POLLUTION PREVENTION

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

§ 112.3 Requirement to prepare and implement a spill prevention, control, and countermeasure plan.

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, on or before April 17, 2003, and must implement the amended Plan as soon as possible, but not later than October 18, 2003. If your onshore or offshore facility becomes operational after August 16, 2002, through October 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare a Plan on or before October 18, 2003, and fully implement it as soon as possible, but not later than October 18, 2003.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after October 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *

[FR Doc. 03–390 Filed 1–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–7437–4]

RIN 2050–AC62

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or we) is proposing to extend, by one year, the dates for a facility to amend its Spill Prevention, Control, and Countermeasure (SPCC) Plan, and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). We are proposing this extension to prevent the flood of individual extension requests it has become apparent we will otherwise receive.

DATES: Written comments must be received by January 29, 2003.

ADDRESSES: The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B–102, Washington, DC 20460. The docket number for the proposed rule is OPA–2002–001. The docket is contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202–566–0276. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you $0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this proposed rule, contact Hugo Paul Fleischman at 703–603–8769 *(fleischman.hugo@epa.gov);* or Mark W. Howard at 703–603–8715 *(howard.markw@epa.gov),* U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, Mail Code 5203G.

SUPPLEMENTARY INFORMATION: This proposal concerns a one-year extension of the deadlines in 40 CFR 112.3(a) and (b). The contents of this preamble are as follows:

I. General Information
II. Entities Affected by This Rule
III. Statutory Authority
IV. Background
V. Today's Action
VI. Statutory and Executive Order Reviews

I. General Information

Introduction. For the reasons explained in section V of this document, the Environmental Protection Agency (EPA or we) is proposing to extend, for one year, the dates in 40 CFR 112.3(a) and (b) for a facility to amend its Spill Prevention, Control, and Countermeasure (SPCC) Plan and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). During the period of the proposed extension, if it is finalized, it will not be necessary for a facility owner or operator to file an extension request pursuant to § 112.3(f). Furthermore, for facilities that have already applied for an extension pursuant to § 112.3(f), if this extension is finalized, it should render such requests moot.

We will address all public comments in a final rule based on this proposed rule. Any parties interested in commenting should do so at this time.

A. How Can I Get Copies of the Background Materials Supporting Today's Proposed Rule or Other Related Information?

1. EPA has established an official public docket for this proposed rule under Docket ID No. OPA–2002–001. The official public docket consists of the documents specifically referenced in this proposed rule and other information related to this proposed rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave. NW., EPA West Building, Room B–102, Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0276. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where

practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff. For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA will not consider late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the party submitting the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OPA–2002–001. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. *E-mail.* Comments may be sent by electronic mail (e-mail) to *Superfund.Docket@epamail.epa.gov.* Make sure this electronic copy is in an ASCII format that does not use special characters or encryption. Cite the docket Number OPA–2002–001 in your electronic file. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

3. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

4. *By Mail.* Send two (2) copies of your comments to: EPA Docket Center, U.S. Environmental Protection Agency Headquarters (EPA, HQ), Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OPA–2002–001.

5. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, EPA West Building, Room No. B–102, 1301 Constitution Ave., NW., Washington, DC 20004. Attention Docket ID No. OPA–2002–001. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

II. Entities Affected by This Rule

Industry category	NAICS code
Crop and Animal Production	111–112
Crude Petroleum and Natural Gas Extraction	211111
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116
Electric Power Generation, Transmission, and Distribution	2211
Heavy Construction	234
Petroleum and Coal Products Manufacturing	324
Other Manufacturing	31–33
Petroleum Bulk Stations and Terminals	42271
Automotive Rental and Leasing	5321
Heating Oil Dealers	454311
Transportation (including Pipelines), Warehousing, and Marinas	482–486/488112–48819/4883/48849/492–493/71393
Elementary and Secondary Schools, Colleges	6111–6113
Hospitals/Nursing and Residential Care Facilities	622–623

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

III. Statutory Authority

33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351

IV. Background

On July 17, 2002, at 67 FR 47042, EPA published final amendments to the Spill Prevention, Control, and Countermeasure (SPCC) rule. The rule was effective August 16, 2002. The rule included dates in § 112.3(a) and (b), by which a facility would have time to amend its SPCC Plan and implement its amended Plan (note that for facilities becoming operational after August 16, 2002, the rule contains dates for the preparation and implementation of a Plan in compliance with the amended rule). In light of new information, we

are proposing to extend those dates for a period of one year.

V. Today's Action

EPA is proposing to extend by one year the compliance dates in § 112.3(a) and (b). We are proposing this extension to allow affected facilities more time to comply with the rule. Since the promulgation of the amendments, the Agency has received numerous complaints that the deadlines in the rule do not allow enough time for the regulated community to undertake the actions necessary to update (or prepare) their Plans in accordance with the amendments. Among the reasons given are that there is a shortage of Professional Engineers (PEs) in some areas, the need for the PE or his agent to make visits at sometimes remote facilities, and the need for the PE to certify that Plans meet requirements for which they have not yet had adequate training. It has also become apparent that unless the Agency takes this action, we will receive an overwhelming number of requests for individual extensions under 40 CFR 112.3(f).

The Agency believes that the present compliance dates are too short, and it would therefore be an inefficient use of scarce Agency resources to address this problem by processing a great number of individual extension requests.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—OMB Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because it would only extend for one year the compliance dates in § 112.3(a) and (b). It would have no other substantive effect.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The R.F.A. generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than $500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule will temporarily reduce regulatory burden on all facilities by extending for one year the compliance dates in § 112.3(a) and (b). Further, the rule will reduce costs for both existing and new facilities.

After considering the economic impacts of today's rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year.

Today's rule would reduce burden and costs on all facilities.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the rule would be to reduce burden and costs for regulated facilities, including small governments that are subject to the rule.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), EPA believes that States are free to impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the federal SPCC program and recognizes that some States have more stringent requirements. 56 FR 54612 (Oct. 22, 1991). This rule would not preempt state law or regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today's rule would not significantly or uniquely affect communities of Indian tribal governments. Therefore, we have not consulted with a representative organization of tribal groups.

G. Executive Order 13045—Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, NTTA is inapplicable.

List of Subjects in 40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 3, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40 CFR, chapter I, part 112 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Section 112.3 is amended by revising paragraphs (a) and (b) to read as follows:

PART 112—OIL POLLUTION PREVENTION

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

§ 112.3 Requirement to prepare and implement a spill prevention, control, and countermeasure plan.

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, on or before February 17, 2004, and must implement the amended Plan as soon as possible, but not later than August 18, 2004. If your onshore or offshore facility becomes operational after August 16, 2002, through August 18, 2004, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare a Plan on or before August 18, 2004, and fully implement it as soon as possible, but not later than August 18, 2004.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after August 18, 2004, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *

[FR Doc. 03–391 Filed 1–8–03; 8:45 am]

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Federal Register

Thursday,
January 9, 2003

Part VI

General Services Administration

48 CFR Part 505
General Services Administration Acquisition Regulation; FedBizOpps Notice on Charging for E-mail Notification Service; Proposed Rule

GENERAL SERVICES ADMINISTRATION

48 CFR Part 505

[GSAR Case No. 2002–G501]

RIN 3090–AH67

General Services Administration Acquisition Regulation; FedBizOpps Notice on Charging for E-mail Notification Service

AGENCY: Office of Acquisition Policy, General ServicesAdministration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to charge subscribers to the value-added e-mail notification service of Federal Business Opportunities (FedBizOpps.gov) a modest annual fee beginning October 1, 2003. The charge will be only for the members of the public who elect to register for options 2 or 3 of the FedBizOpps Vendor Notification Service, specifically to (1) receive all notices from selected organizations and product service classifications, or (2) register to receive all procurement notices on the site.

DATES: Interested parties should submit comments in writing on or before February 10, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to—General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

E-mail comments submitted over the Internet should be addressed to—*gsarcase.2002-g501@gsa.gov*.

Please cite GSAR case 2002-G501 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–0650, or by e-mail at Edward.Loeb@gsa.gov. Please cite GSAR case 2002–G501.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Business Opportunities (FedBizOpps) is the Governmentwide point of entry where Government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. Use of FedBizOpps is discussed in part 5 of the Federal Acquisition Regulation. The General Services Administration (GSA) manages the Federal Business Opportunities *(FedBizOpps.gov)* site and currently provides, at no charge, an added-value e-mail notification service to the public on FedBizOpps activities. To help GSA recover some of the costs associated with providing these value-added services, GSA is planning to charge subscribers to this e-mail service (listed on the site as Vendor Notification Service) a modest annual fee beginning October 1, 2003. The charge will be only for the members of the public who elect to register for options 2 or 3 of the FedBizOpps Vendor Notification Service, specifically to (1) receive all notices from selected organizations and product service classifications, or (2) register to receive all procurement notices on the site. The anticipated fee for FY 2003 is $30. The public, however, will continue to be able to register to receive all notices related to a specific solicitation at no charge. Beyond e-mail notifications, the public will still be able to access, free of charge, all postings on FedBizOpps and download on a daily basis all synopses (a File Transfer Protocol datafeed file).

The subscription cost will be adjusted annually based upon subscriptions from the prior year so that the charges to the public represent a fair share of the costs of the FedBizOpps operations.

FedBizOpps predecessor, the GPO Commerce Business Daily (CBDNet), charged VANs and other subscribers a fee of $11,500 per year for their daily electronic (datafeed) file of synopses and $316 per year for their publication, FedBizOpps eliminated these charges. GPOs CBDNet did not provide value-added email notification services to vendors.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because GSA is just charging a nominal fee for requested value added services. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Part in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAM do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 505

Government procurement.

Dated: December 31, 2002.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

Therefore, GSA proposes amending 48 CFR part 505 as set forth below:

PART 505—PUBLICIZING CONTRACT ACTIONS

1. The authority citation for 48 CFR part 505 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Amend part 505 by adding section 505.102 to read as follows:

505.102 Availability of solicitations.

The General Services Administration (GSA), as the manager of the Federal Business Opportunities (FedbizOpps.gov) site, will charge a nominal fee to recover costs of operations for value-added services, specifically for an e-mail notification service to the public for FedBizOpps activities, to—

(a) Receive all notices from selected organizations and product service classifications; or

(b) Register to receive all procurement notices.

[FR Doc. 03–378 Filed 1–8–03; 8:45 am]

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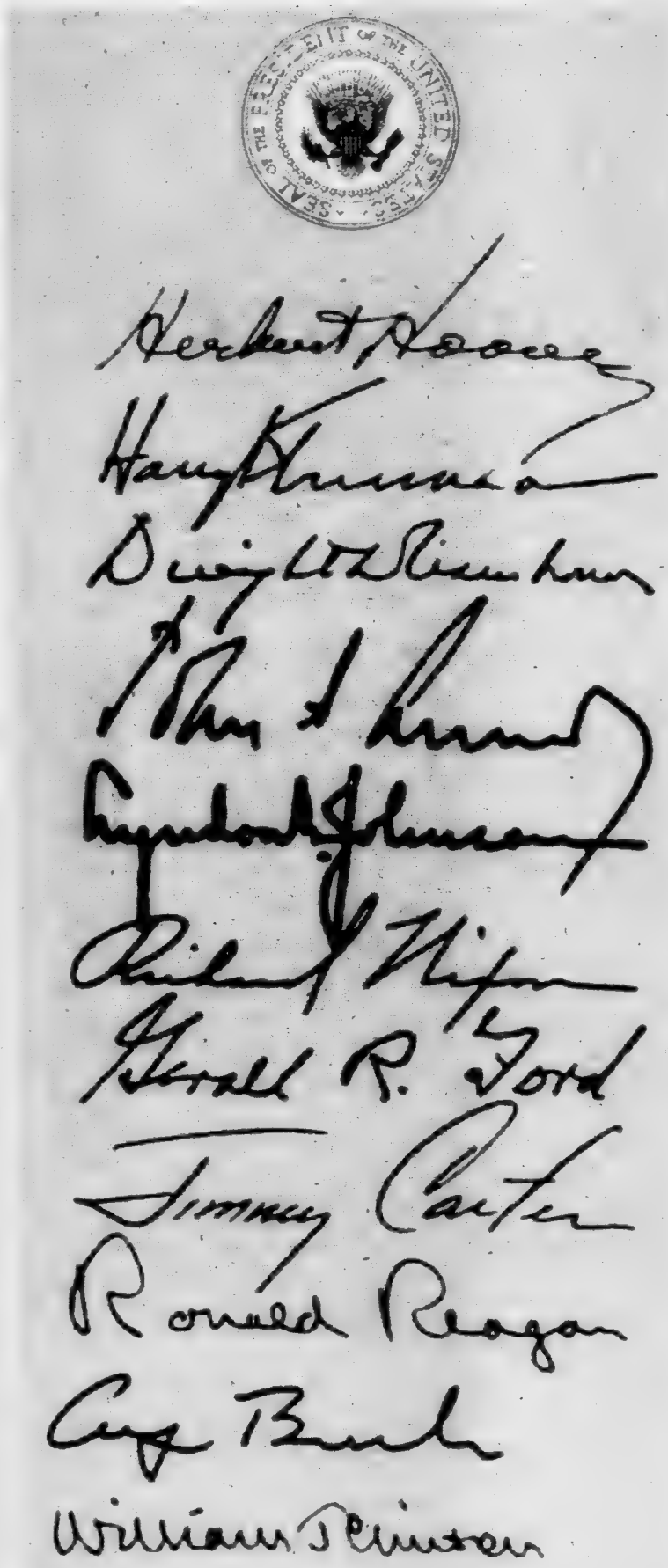

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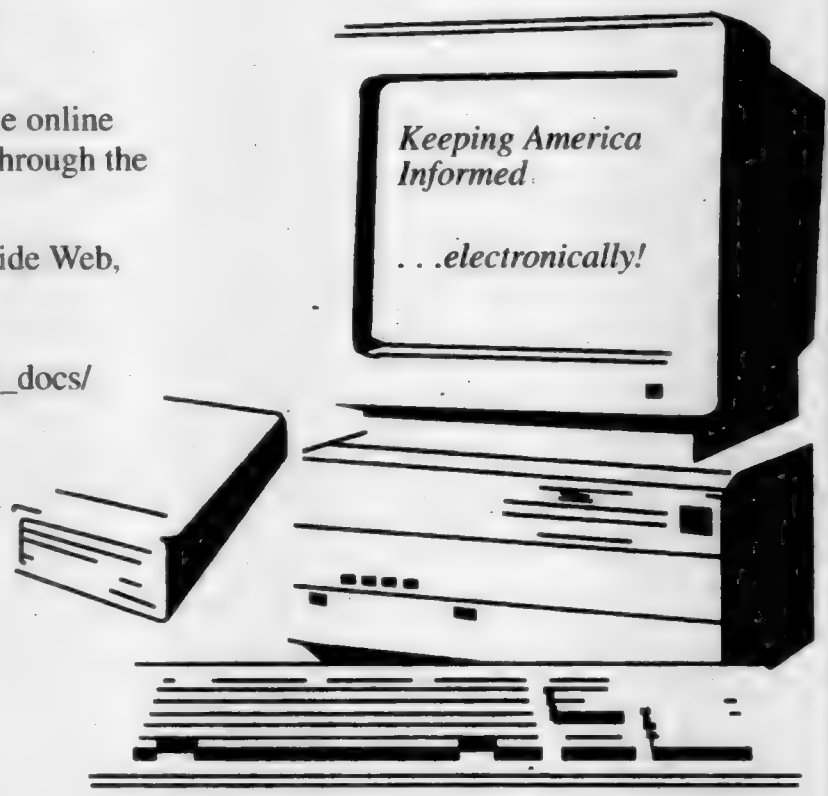

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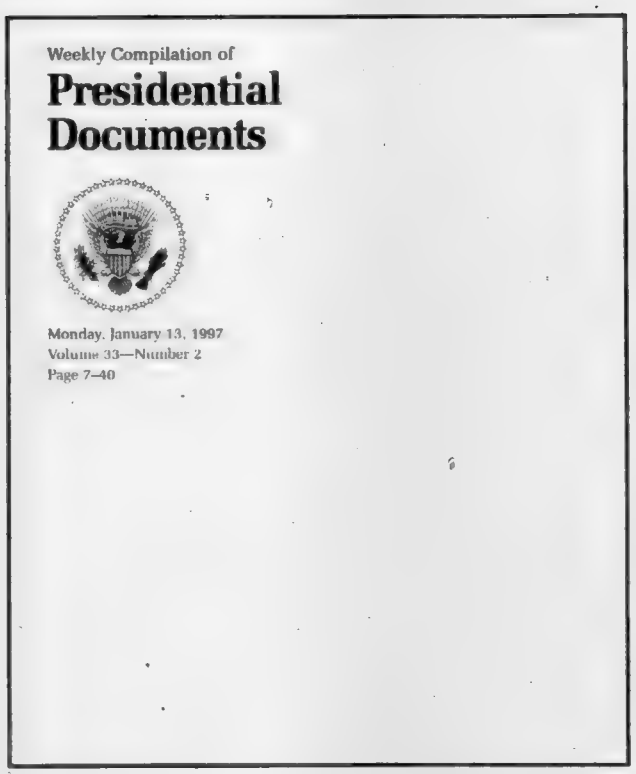

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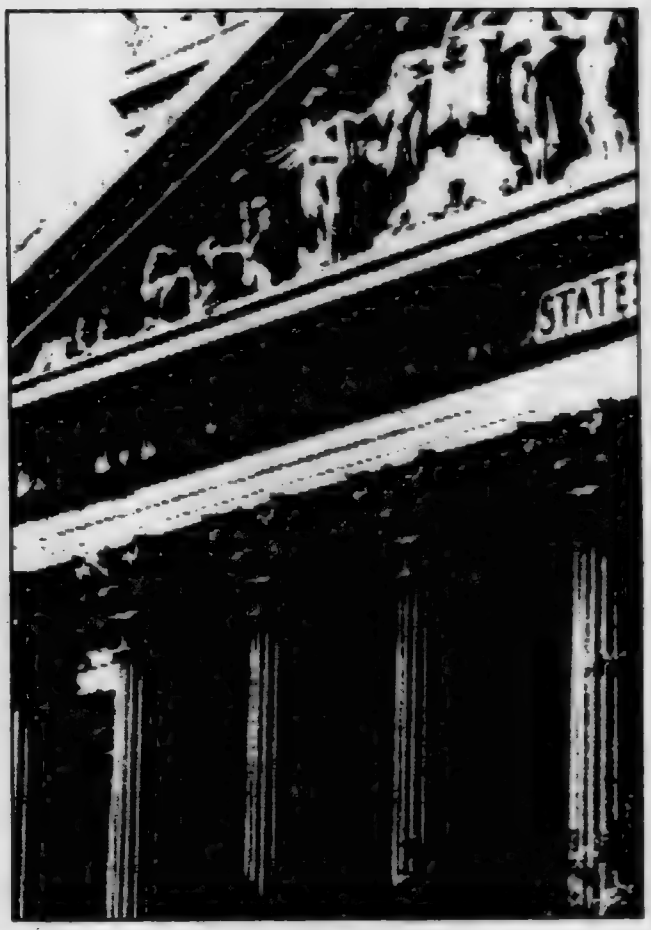

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Rules and Regulations

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Friday, January 10, 2003

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 97

[Docket ST–02–01]

RIN 0581–AC22

Plant Variety Protection Office, Fee Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing Plant Variety Protection (PVP) Office application, search, and certificate issuance fees by approximately 35 percent. The last fee increase in September 2000 is no longer adequate to cover current program obligations for administrative and information technology needs. The PVP Act requires that reasonable fees be collected from applicants seeking certification of protection in order to maintain the program.

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Fabian Q. Generao, USDA, AMS, Science and Technology, 14th & Independence Avenue, Room 3521–South Bldg., Washington, DC 20250, Tel. 202/720–0195, Fax. 202/720–4631

SUPPLEMENTARY INFORMATION:

1. Executive Order 12866

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

II. Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 670 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small business entities. There are more than 800 users of the PVP, of whom about 100 may file applications in a given year. Some of these users are small business entities under the criteria established by the Small Business Administration (13 CFR 121.201). The AMS has determined that this action would not have a significant economic impact on a substantial number of these small business entities.

The Plant Variety Protection (PVP) Office administers the PVP Act of 1970 (7 U.S.C. 2321 *et seq.*), and issues Certificates of Protection that provide intellectual property rights to developers of new varieties of plants. A Certificate of Protection is awarded to an owner of a variety after examination indicates that it is new, distinct from other varieties, genetically uniform, and stable through successive generations. This action will raise the fee charged to users of plant variety protection. The AMS estimates that the rule will yield an additional $270,000 during fiscal year (FY) 2003. The costs to private and public business entities will be proportioned to their use of the service, and shared equitably. The costs to individual users will be increased by 35 percent, or about $1,059.00 per application. Plant Variety Protection is a voluntary service. Any decision by developers to discontinue to the use of plant variety protection will not hinder private and public entities from marketing their varieties in commercial markets.

Every year, AMS reviews it user fee financial program to determine their fiscal condition. In the most recent review of the PVP program, the cost analysis indicated that the existing fee schedule will not generate sufficient revenues to cover program services and obligations while maintaining an adequate program reserve balance. From 1995 and through 2002, the PVP Office absorbed accumulated national and locality salary increases for Federal employees totaling 36 and 19 percent, respectively. These costs were offset by a fee increase of only 10 percent in September 2000.

AMS calculated the new fee schedule by projecting FY 2002 revenues of $903,000 and program obligations of $1,231,000. This indicates a projected loss to the program of $328,000 for FY 2003. At this rate, the trust fund balance would be nearly depleted by the end of FY 2004. With a fee increase of 35 percent, FY 2003 revenues and expenditures are projected to be $1,041,000 and $1,189,000, respectively. The trust fund balance is expected to be maintained at the FY 2003 level of $853,000, which satisfies Agency requirements.

III. Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect, nor will it preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of the rule.

IV. Paperwork Reduction Act

This rule does not contain any information collection or record keeping requirements that are subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background Information

The PVP Program is a voluntary, user fee-funded service, conducted under the Authority of the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*). The Act authorizes the Secretary of Agriculture to provide intellectual property rights that facilitate marketing of new varieties of seed-propagated crops and potatoes. The Act also requires that reasonable fees be collected from the users of the services to cover the costs of maintaining the program.

On August 2, 2000, AMS published a rule in the **Federal Register** (65 FR 47243) that increased Plant Variety Protection fees that became effective September 1, 2000.

In its analysis of projected costs for FY 2002, AMS identified administrative and information technology support as well as a 10 percent decrease in the number of applications submitted to the office. For FY 2002, user fee revenues and program obligations are projected to be $903,000 and $1,231,000, respectively, resulting in an estimated $328,000 program deficit. With a fee increase, FY 2003 revenues and

expenditures are projected to be $1,041,000 and $1,189,000 respectively. We estimate this rule would yield an additional $270,000 during FY 2003 that will offset increased program operating costs. The program will take additional cost cutting measures to eliminate the remaining deficit.

AMS used the fees currently charged as a base for calculating the new fee schedule for FY 2003. The fees set forth in Sec. 97.175 would be increased. The application fee will be increased from $320 to $432, the search fee from $2,385 to $3,220, and the issuance fee from $320 to $432. The fees for reviving an abandoned application, correcting or re-issuance of a certificate are increased from $320 to $432. The charge for granting an extension for responding to a request is increased from $55 to $74. The hourly charge for any other service not specified will increase from $66 to $89. The fee for appeal to the Secretary (refundable if appeal overturns the Commissioner's decision) is increased from $3,050 to $4,118. Reproduction of records, drawings, certificates, exhibits or printed materials, late payment, and replenish of seeds will increase by 35 percent. These fee increases are necessary to recover the costs of this fee-funded program.

The Plant Variety Protection Advisory Board has been informed of cost increases, including anticipated salary increases, and consulted on a fee increase in November 2001. The Board recommended that fees be increased. This rule makes the minimum changes in the regulations to implement the recommended increased fees to maintain the program as a fee-funded program.

Summary of Public Comment

A notice of the proposed rule was published in the **Federal Register** (67 FR 61545) on October 1, 2002. A 30-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impact of this action on small business.

The only comment received in response to the proposed revised regulatory text questioned whether the 35 percent increase of the existing fee schedule was truly warranted. Every year, AMS reviews it's user fee financed programs to determine their fiscal condition. In the most recent review of the PVP program, the cost analysis indicated that the existing fee schedule will not generate sufficient revenues to cover program services and obligations while maintaining an adequate program reserve balance. We estimate the final rule would yield an additional $270,000 during FY 2003, offsetting increased program operating costs, salaries and benefits, and technology improvements. From October 1, 2001 to September 30, 2002, the PVP program has reduced the backlog by 21 percent. With sufficient funds to cover overall operating costs, the program will continue to improve the efficiency and turnaround time in the processing of plant variety protection requests.

List of Subjects in 7 CFR Part 97

Plants, seeds.

For reasons set forth in the preamble, 7 CFR part 97 is amended as follows.

PART 97—PLANT VARIETY AND PROTECTION

1. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2321 *et seq.*

2. Section 97.175 is revised to read as follows:

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified in this section:

(a) Filing the application and notifying the public of filing—$432.00.

(b) Search or examination—$3,220.00.

(c) Allowance and issuance of certificate and notifying public of issuance—$432.00.

(d) Revive an abandoned application—$432.00.

(e) Reproduction of records, drawings, certificates, exhibits, or pointed material (copy per page of material)—$1.50.

(f) Authentication (each page)—$1.50.

(g) Correcting or re-issuance of a certificate—$432.00.

(h) Recording assignments (per certificate/application)—$38.00.

(i) Copies of 8 x 10 photographs in color—$38.00

(J) Additional fee for reconsideration—$432.00.

(k) Additional fee for late payment—$38.00.

(l) Additional fee for late replenishment of seed—$38.00.

(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)—$4,118.00.

(n) Granting of extensions for responding to a request—$74.00.

(o) Field inspections by a representative of the Plant Variety Protection Office, made at the request of the applicant, shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulation.

(p) Any other service not covered in this section will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $89.00 per employee-hour.

Dated: January 6, 2003.

A.J. Yates,

Administrator.

[FR Doc. 03–452 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–130–1]

Oriental Fruit Fly; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by quarantining a portion of Los Angeles and Orange Counties, CA, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of Oriental fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective January 6, 2003. We will consider all comments that we receive on or before March 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–130–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–130–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–130–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to

help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service reveal that a portion of Los Angeles and Orange Counties, CA, is infested with the Oriental fruit fly.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined area in Los Angeles and Orange Counties. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly into noninfested areas of the United States, we are amending the regulations in § 301.93–3 by designating a portion of Los Angeles and Orange Counties, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the rule portion of this document.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Oriental fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the Oriental fruit fly regulations by adding a portion of Los Angeles and Orange Counties, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from a quarantined area.

Within the quarantined area there are approximately 389 small entities that may be affected by this rule. These include 351 fruit sellers, 3 growers, 33 nurseries, 1 certified farmers' market, and 1 swapmeet. These 389 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate movement, so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Oriental fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for review in our reading room (information on the

location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. The environmental assessment and finding of no significant impact may also be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppq/lamiroff.pdf*.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 is revised to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.93–3, paragraph (c) is amended by adding, under the heading "CALIFORNIA", an entry for Los Angeles and Orange Counties to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles and Orange Counties. That portion of Los Angeles and Orange Counties in the La Mirada area bounded by a line as follows: Beginning at the intersection of Whittier Boulevard and Euclid Street; then south on Euclid Street to its intersection with La Palma Avenue; then west on La Palma Avenue to its intersection with Brookhurst Street; then south on Brookhurst Street to its intersection with Lincoln Avenue; then west on Lincoln Avenue to its intersection with Moody Street; then north on Moody Street to its intersection with Crescent Avenue; then west on Crescent Avenue to its intersection with Centralia Street; then west on Centralia Street to its intersection with Pioneer Boulevard; then north on Pioneer Boulevard to its intersection with 166th Street; then west on 166th Street to its intersection with Maidstone Avenue; then north on Maidstone Avenue to its intersection with Excelsior Drive; then east on Excelsior Drive to its intersection with Pioneer Boulevard; then north on Pioneer Boulevard to its intersection with Florence Avenue; then northeast on Florence Avenue to its intersection with Whittier Boulevard; then south and east on Whittier Boulevard to the point of beginning.

* * * * *

Done in Washington, DC, this 6th day of January 2003 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–491 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV02–906–1 FIR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, (USDA).

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7/10-bushel carton of oranges and grapefruit handled. The Committee locally administers the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley in Texas are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an

inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7/10-bushel carton of oranges and grapefruit.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 30, 2002, and unanimously recommended 2002–03 expenditures of $1,226,022 and an assessment rate of $0.12 per 7/10-bushel carton of oranges and grapefruit. The Committee met again on August 28, 2002, and recommended a decreased assessment rate of $0.11, with no change to the previously approved budget of $1,226,022. Thirteen of the 14 Committee members and alternates acting as members voted in support of the decrease. One Committee member voted against the decrease. In comparison, last year's budgeted expenditures were $1,236,777. The assessment rate of $0.11 is $0.01 lower than the rate previously in effect. The Committee voted to reduce the assessment rate after determining that its reserve fund was higher than necessary, and to lower handler assessment costs for 2002–03 by $100,000.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $810,500 for advertising, $179,000 for the Mexican Fruit Fly program, $107,845 for management and administration of the program, and $74,777 for compliance. Budgeted expenses for these items in 2001–02 were $810,500, $197,000, $104,500, and $74,777, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the year are estimated at 10 million 7/10-bushel cartons, which should provide $1,100,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $274,041) will be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 410 producers of oranges and grapefruit in the production area and approximately 15 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated Texas citrus industry profile shows that 6 of the 15 handlers (40 percent) shipped over 651,042 7/10-bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $7.68 per 7/10-bushel carton, these handlers could be considered large businesses under SBA's definition, and the remaining 9 handlers (60 percent) could be considered small businesses. Of the approximately 410 producers within the production area, few have sufficient acreage to generate sales in excess of $750,000. Thus, the majority of handlers and producers of Texas oranges and grapefruit may be classified as small entities.

This action continues to decrease the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7/10-bushel carton of oranges and grapefruit. The Committee recommended 2002–03 expenditures of $1,226,022 and an assessment rate of $0.11 per 7/10-bushel carton of oranges and grapefruit. The assessment rate of $0.11 is $0.01 lower than the previous rate. The quantity of assessable oranges and grapefruit for the 2002–03 fiscal year is estimated at 10 million cartons. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $810,500 for advertising, $179,000 for the Mexican Fruit Fly program, $107,845 for management and administration of the program, and $74,777 for compliance. Budgeted expenses for these items in 2001–02 were $810,500, $197,000, $104,500, and $74,777, respectively.

The Committee recommended the $0.11 assessment rate to lower its operating reserve to $171,249. With a $0.12 assessment rate, the Committee projected its reserve on July 31, 2003, to be $271,249, and it thought that was higher than needed to administer the

program. It also recommended the reduced rate to lower handler assessments by $100,000 during 2002–03.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $1,226,022, which included a decrease in the Mexican Fruit Fly program and an increase in the management and administration of the program. Budgeted expenses for the advertising program and the compliance program remained the same as last year. In arriving at the budget, the Committee considered information from various sources, including the Executive Committee. The Committee considered leaving the established higher assessment rate unchanged. However, it concluded that the reserves currently held by the Committee are higher than the Committee needs to administer the program.

The assessment rate of $0.11 per 7/10-bushel carton of assessable oranges and grapefruit was determined by dividing the total budget by the 10 million 7/10-bushel cartons of oranges and grapefruit estimated to be handled during the 2002–03 fiscal period. The $0.11 rate will provide $1,100,000 in assessment income. The additional $126,022 to fund the Committees estimated expenses will come from the Committee's reserve, a refund of an overpayment from the Mexican Fruit Fly program, and interest income.

A review of historical information (October 1998 through May 2002) and preliminary information pertaining to the upcoming fiscal period indicates that the packinghouse door price for the 2002–03 fiscal period could range, monthly, from $1.65 to $10.36 per 7/10-bushel carton of Texas oranges and grapefruit, depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower (packinghouse door) revenue could range between 6.67 percent and 1.06 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 28, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on October 7, 2002 (67 FR 62318). Copies of that rule were also mailed or sent via facsimile to all orange and grapefruit handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on December 6, 2002, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 67 FR 62318 on October 7, 2002, is adopted as a final rule without change.

Dated: January 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–454 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1208

[FV–02–710]

Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order; Termination

AGENCY: Agricultural Marketing Service, (USDA).

ACTION: Final rule; termination order.

SUMMARY: This final rule terminates the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order (Order) and its rules and regulations in their entirety. This action is necessary because the Order has not been in operation since 1997, and collection efforts under the Order have been exhausted. Therefore, there is no need to continue the program.

EFFECTIVE DATE: February 10, 2002.

FOR FURTHER INFORMATION CONTACT: Margaret B. Irby, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 2535–S, Washington, DC 20250–0244, telephone (202) 720–9915, fax (202) 205–2800, e-mail *margaret.irby@usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 [7 U.S.C. 6801–6814] (Act).

The U.S. Department of Agriculture (USDA or the Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this termination order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court.

This final rule terminates the Order and its rules and regulations.

The Act authorizes the creation of a generic program of promotion and information for fresh cut flowers and greens and became effective on December 14, 1993. The Order was issued on December 29, 1994, and the National PromoFlor Council (Council) was appointed to administer the Order under USDA supervision. The Order covered approximately 650 wholesale handlers (qualified first handlers) of

fresh cut flowers and greens with sales of $750,000 or more annually. In accordance with paragraph (h)(4) of § 6804 of the Act and paragraph (e) of § 1208.41 of the Order, the Council retained 10 percent of the assessment funds collected in an interest-bearing escrow account.

Paragraph (a)(1) of § 6806 of the Act requires USDA to conduct a referendum not later than three years after the issuance of the Order to ascertain whether the Order should be continued. Paragraph (a)(2) of that section requires that the Order be approved by a simple majority of all votes cast in the referendum in order to continue. The referendum was conducted from June 2 through 20, 1997.

In the referendum, only 42 percent of the voters voted to continue the program. Paragraph (d) of § 6806 of the Act and § 1208.60 of the Order, provide that, if the Department determines that termination of the Order is favored by a majority of all votes cast in the referendum, the Department shall terminate the collection of assessments under the Order not later than 180 days after the referendum results are announced. Therefore, the Department published a termination order in the **Federal Register** on July 28, 1997 [62 FR 40255], stating that termination of the Order was favored by a majority of the qualified handlers voting in the referendum and that the Order should therefore be terminated. The termination order eliminated the requirement for handlers to pay assessments as of July 29, 1997. The Act requires the Department to terminate activities under the Order as soon as practicable and in an orderly manner. The other provisions of the Order remained in effect in order to facilitate the collection of past-due assessments from 14 handlers.

In addition, in accordance with § 1208.61 of the Order, the Department appointed five members of the Council to serve as trustees for the purpose of liquidating the assets of the Council.

Paragraph (h)(4) of § 6804 of the Act provides that refunds of assessments shall be made out of the escrow account to those qualified handlers who apply for refunds prior to the conduct of the referendum and submitted satisfactory proof that they paid the assessment for which a refund is requested. If the amount in the escrow account is not sufficient to refund the total amount of assessments demanded, the amount of all such refunds shall be prorated among all eligible qualified handlers that demand the refunds. Section 1208.61 of the Order provides that refunds are to be made within 30 days of the date the results of the referendum are released by the Department. Due to the number of refund requests, handlers received refunds of about 12 cents for each dollar in assessments paid to the Council. After the refunds were made and the Council's assets were liquidated, a final audit of the Council's books was conducted.

As of July 29, 1997, 14 handlers owed a total of $433,483.50 in past-due assessments. To date, USDA has collected $283,130.00 in past-due assessments, $38,932.98 in late fees, and $4,500.00 in civil penalties from these handlers pursuant to final decisions by the Secretary of Agriculture in 14 administrative proceedings brought by the Agricultural Marketing Service (AMS). In accordance with instructions from the trustees, the past-due assessments and late fees were distributed to three floral industry groups. In accordance with the Act, the civil penalties were forwarded to the U.S. Department of the Treasury.

Collection efforts have been exhausted. Therefore, this action terminates all provisions of the Order and its rules and regulations.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Order is unique in that it was brought about through group action of essentially small entities acting on their own behalf. Thus, both the Act and the RFA have small entity orientation and compatibility.

The Order covered approximately 650 wholesale handlers (qualified handlers). Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5 million dollars. A majority of the qualified handlers may be classified as small entities.

This final rule terminates the Order covering fresh cut flowers and greens. Assessment obligations were terminated on July 29, 1997. The program has been inoperative since that time.

The floral industry has been operating without a promotion program since assessments were terminated. Reestablishing the Order would mean additional cost to the industry stemming from assessments to operate the Order (the last assessment was 0.5 percent of the gross sales price of the cut flowers and greens sold), reports to the Council, and recordkeeping. By not reinstating the Order, the industry benefits from avoiding these costs. Because the industry has been operating without the Order for five years, termination of the Order will have no noticeable effect on either small or large operations.

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection requirements under the Order were approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0096 and 0505–0001. When assessment collections were terminated on July 29, 1997, these information collection requirements were also suspended. Now that the Order is being terminated, these requirements are eliminated.

USDA has not identified any relevant federal rules that duplicate, overlap, or conflict with this final rule.

Termination Order

Termination of the Order was favored by a majority of the qualified handlers voting in a referendum conducted in 1997. The Act requires that, upon such a determination by referendum, the Department shall terminate the Order. The Order has been inoperative for five years, and assessment collection efforts have been exhausted. In addition, the assets of the Council have been liquidated, and a final audit of the Council's books has been conducted.

It is therefore ordered, that pursuant to section 6806 of the Act, the Order, and its rules and regulations [7 CFR Part 1208] are hereby terminated.

It is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this action into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because (1) termination of the Order was favored by a majority of qualified handlers voting in a referendum in 1997; (2) the Order has been inoperative for five years and assessment collection efforts have been exhausted; and (3) the assets of the Council have been liquidated and a final audit of the Council's books has been conducted.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Cut flowers, Cut greens, Promotion,

Reporting and recordkeeping requirements.

PART 1208—[REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 6802 *et seq.*, 7 CFR part 1208 is removed.

Dated: January 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–453 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–144]

Drawbridge Operation Regulations. Cape Cod Canal, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations that govern the Conrail Railroad Bridge across Cape Cod Canal, mile 0.7, at Bourne, Massachusetts. This temporary deviation will allow the bridge to remain closed at 60 feet above mean high water from 8 a.m. through 5 p.m., on 14 days in January, 2003. From 8 a.m. through 5 p.m. on February 3 and 6, 2003, the bridge may remain fully closed. This temporary deviation is necessary to facilitate vital unscheduled mechanical repairs at the bridge.

DATES: This deviation is effective from January 2, 2003, through February 6, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION: The vertical clearance under the Conrail Railroad Bridge in the open position is 135 feet at mean high water and 139 feet at mean low water. The draw is normally in the fully open position except for the passage of rail traffic. The existing regulations are listed at 33 CFR 117.589.

The owner of the bridge, the Army Corps of Engineers (ACOE), requested a temporary deviation from the Drawbridge Operation Regulations to facilitate vital unscheduled maintenance, the replacement of the counterweight guide rails, at the bridge. This work must be performed without delay to ensure continued safe reliable operation of the bridge.

The bridge owner advised the mariners who normally use this waterway about the necessary emergency repairs at the bridge and the temporary closures that will be required in order to facilitate the necessary repairs. No objections were received.

Under this temporary deviation the Conrail Railroad Bridge, mile 0.7, across the Cape Cod Canal, may remain closed at 60 feet above mean high water from 8 a.m. through 5 p.m. on January 2, 3, 8, 9, 10, 15, 16, 17, 22, 23, 24, 28, 29, and 30, 2003. From 8 a.m. through 5 p.m. on February 3 and 6, 2003, the bridge may remain fully closed.

Under the deviation schedule listed above, the bridge will be closed three days each week; however, the third day each week and the last week of the closure schedule were added as extra days in case the repair work is delayed by inclement weather.

Mariners may contact the U.S. Army Corps of Engineers Marine Traffic Controller 24-hour telephone line at (508) 759–4431 for the operational status of the bridge.

Thirty days notice to the Coast Guard for approval of this bridge maintenance was not given by the bridge owner and was not required because this work involves vital, unscheduled maintenance that must be performed without undue delay.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: December 27, 2002.

J.L. Grenier,

Captain, Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–484 Filed 1–9–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH118–3; FRL–7436–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves Ohio's State Implementation Plan (SIP) revisions for New Source Review (NSR) in nonattainment areas. Previously, EPA issued both a direct final approval and a proposed approval of Ohio's revisions. EPA withdrew the direct final action upon receiving adverse comments. In this action, EPA responds to the public comments received and announces EPA's final rulemaking action. In consideration of the comments and the requirements of the Clean Air Act (CAA), EPA now fully approves Ohio's nonattainment NSR program as an addition to the SIP.

Recently, EPA announced new regulations regarding changes to the NSR Program through efforts under "NSR Reform." Today's approval of Ohio's NSR SIP submission does not address EPA's new rules but is limited to portions of Ohio's program under prior existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any new requirements that EPA may promulgate as part of "NSR Reform."

DATES: This rule is effective on January 10, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location:

Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Kaushal Gupta at (312) 886–6803 or Jorge Acevedo at (312) 886–2263 before visiting the Region 5 office.

Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Kaushal Gupta, Environmental Engineer, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–

18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–6803. For further information regarding OEPA's rules for public notice procedure, please contact Jorge Acevedo, Environmental Engineer, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–2263.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

A. What Is the Purpose of This Document?
B. What Is the History of OEPA's Nonattainment NSR Program?
C. Are OEPA's Nonattainment NSR Rules Now Approvable?
D. What Were the Adverse Comments, and How Does EPA Respond to Them?
E. What Is Today's Action?

A. What Is the Purpose of This Document?

This document is our approval of Ohio's nonattainment NSR SIP revision requests dated from July 23, 1980, to August 19, 1999. On April 22, 1996, we proposed to conditionally approve the revision requests dated up to March 1, 1996 (61 FR 17669). Subsequently, OEPA submitted several rule changes which met our condition for full approval. On February 21, 2002, we issued a proposed approval (67 FR 7996) and a direct final approval (61 FR 7954) of the revision requests dated up to August 19, 1999. On April 16, 2002, we withdrew the direct final rule because we received adverse comments on it (67 FR 18497). The proposed approval remained in effect. Today, we follow up the proposed approval with full, final approval of the revision requests dated up to August 19, 1999.

B. What Is the History of Ohio's Nonattainment NSR Program?

OEPA submitted its first NSR SIP revision request on January 31, 1972, and submitted replacement regulations on June 6, 1973. The regulations submitted by the State provided requirements, such as best available technology, that were meant to be uniformly applied throughout the State.

The Clean Air Act Amendments (CAAA) of 1977 required States to go further than uniformly applied regulations. The CAAA of 1977 provided for the designation of areas within a State as "attainment" or "nonattainment." An "attainment" area meets NAAQS for one of six criteria pollutants: total suspended particulates, sulfur dioxide, ozone, carbon monoxide, nitrogen dioxide and lead. A "nonattainment" area does not meet the NAAQS for one or more of these pollutants. The CAAA of 1977 also required states to adopt more stringent regulations, such as offsets and lowest achievable emission rate (LAER), for new pollution sources in nonattainment areas.

On July 23, 1980, and September 25, 1980, OEPA submitted its NSR plan designed to meet the nonattainment area requirements of title I, part D of the CAA. We conditionally approved this plan on October 31, 1980, 45 FR 72119 (codification corrected on December 17, 1980, at 45 FR 82927). The conditional approval required OEPA to submit a part D NSR plan which refined the criteria for permit issuance and assured that the requirements of CAA sections 172 and 173 were met.

To satisfy the conditional approval, OEPA submitted a request to incorporate revised regulations in the SIP on October 4, 1982, and January 24, 1993. These revised regulations sought to incorporate title 40, part 51, Appendix S of the Code of Federal Regulations (CFR) as the Ohio NSR plan. We granted only limited approval of the revised regulations on September 8, 1993 (58 FR 47214), stating that the regulations did not satisfy the nonattainment area planning requirements of part D.

The CAAA of 1990 imposed further NSR requirements for nonattainment areas. Pursuant to these latter amendments, OEPA submitted a request to revise the entire SIP package on August 20, 1993. We proposed to disapprove the SIP revision request on March 4, 1994, because it did not satisfy the part D requirements of the CAA (59 FR 10349). The final disapproval of the State request was published on September 21, 1994 (59 FR 48392).

OEPA submitted another SIP revision request on March 1, 1996. On April 22, 1996 (61 FR 17669), we proposed to conditionally approve the general and nonattainment provisions for the SIP. We stated that the proposed provisions were deficient for not providing a definition for "pollution control project," and that this deficiency had to be corrected for the nonattainment provisions to be fully approved. OEPA subsequently submitted a number of revisions to its request dated March 1, 1996, April 16, 1997, September 5, 1997, December 4, 1997, and April 21, 1998. These revisions provide general provisions (OAC 3745–31–01 to 3745–31–10) and nonattainment area provisions (OAC 3745–31–21 to 3745–31–27).

The CAA further requires that the public be given sufficient time to comment on a permit before the permit is issued. To meet this requirement, OEPA submitted an August 19, 1999, request for approval of the incorporation of Ohio Administrative Code (OAC) 3745–47–01, 3745–47–02, 3745–47–03, 3745–05, 3745–47–07, and 3745–47–08 (D) into the SIP. These rules provide public notice procedures for both attainment and nonattainment construction permits.

On February 21, 2002, EPA simultaneously published a proposed approval (61 FR 7996) and a direct final approval (61 FR 7954) of Ohio's submitted NSR SIP revisions. In the direct final rulemaking, we stated that if we received adverse comments by March 25, 2002, the direct final approval would be withdrawn. We did receive adverse comments, and therefore withdrew the rule on April 16, 2002 (67 FR 18497). The proposed approval remained in effect. Today we are following up on our proposed approval by addressing the adverse comments that we received and setting forth our final approval of Ohio's NSR rules under the Clean Air Act.

C. Are OEPA's Nonattainment NSR Rules Now Approvable?

OEPA's nonattainment NSR rules are now approvable because they fulfill the requirement set by the April 22, 1996, conditional approval: they provide a definition for "pollution control project" as required by 40 CFR 51.165(a)(1)(xxv). The submitted rules also satisfy the minimum Federal requirements for a nonattainment NSR program.

D. What Were the Adverse Comments, and How Does EPA Respond to Them?

Below we summarize the substantive comments pertaining to the submitted rules, and our responses to them:

(1) Before granting final approval of any Ohio rules, EPA should complete its review of Ohio's programs in response to the petitions for withdrawal or revocation of OEPA's authority. That EPA's August 30, 2001, draft report of its review cited problems with OEPA's implementation of PSD rules indicates that problems could develop in an NSR program that takes a larger role at OEPA.

Response: USEPA is currently reviewing OEPA's implementation of the delegated PSD program in response to a petition submitted by D. David Altman on behalf of Ohio Citizen Action, the Ohio Environmental Council, Rivers Unlimited, and the Ohio Sierra Club. EPA intends to address any potential need on OEPA's part to

improve implementation of its PSD rules through EPA's ongoing review of OEPA's program. *See* Draft Report on U.S. EPA Review of Ohio Environmental Programs, August 30, 2001, United States Environmental Protection Agency. Any concerns that USEPA finds as a result of this review will be addressed through the process of the aforementioned review.

Today's approval only addresses whether or not specific provisions of Ohio's administrative code meet the Federal CAA criteria for an NSR program, and does not address any issues regarding how the code is, or will be, applied or enforced by Ohio. We believe that the submitted rules meet the criteria for approval under the CAA and no particular findings or conclusions pertaining to the EPA petition review should be inferred from today's approval.

(2) The public participation process in Ohio is flawed, and should be corrected before approval of Ohio's rules.

Response: The submitted rules comply with Federal NSR requirements for public participation under the CAA. Any concerns, if any, that U.S. EPA may have with Ohio's public participation process under Ohio's PSD program will be addressed through the ongoing review of Ohio's program. *See* response to comment #1.

(3) The approval should be withheld because OEPA does not have a training program that ensures a minimum level of training and consistency across the state, and because it currently has a very high level of vacancies with no system in place to expeditiously fill those vacancies.

Response: The submitted rules comply with Federal NSR requirements under the CAA. Any concerns, if any, that U.S. EPA may have with the level of vacancies under Ohio's PSD program will be addressed through the ongoing review of Ohio's program. *See* response to comment #1.

(4) The approval would take OEPA's NSR permitting activities from Federal scrutiny and move appeal jurisdiction from EPA to OEPA. Such transitions remove Federal safety measures.

Response: Under the Clean Air Act, this approval will not change our level of scrutiny of OEPA's permitting activities. We will retain oversight over OEPA's NSR program, and will continue to require public involvement in the program. The approval will also have no effect on appeal jurisdiction because nonattainment-area permits can only be appealed through the State.

(5) The approval should incorporate by reference all currently outstanding SIP changes, rather than merely on the March 1, 1996, revision request and several subsequent revisions.

Response: This final approval does not address SIP changes dated after August 19, 1999, because those changes have not been subjected to public notice. This approval only addresses the following: (1) All nonattainment NSR SIP changes dated on or before April 21, 1998, which were made available for public comment in the April 22, 1996, proposal for conditional approval and the February 21, 2002, proposed approval; (2) The August 19, 1999, SIP changes for public notice procedures pertaining to both attainment and nonattainment-area permits, which were made available for public comment in the February 21, 2002, proposed approval. For SIP changes dated after August 19, 1999, we will take a separate action to ensure that the public is given proper opportunity to comment on those changes.

(6) In the definition for "major stationary source," the submitted rules exclude pollutants regulated under CAA section 112 for attainment-area sources subject to 100-ton-per-year thresholds, while Federal regulations do not provide for such an exclusion.

Response: CAA section 112 is a separate program and is not regulated through NSR. NSR does not require the application of 100-ton-per-year thresholds to section 112 pollutants. In fact, CAA section 112(b)(6) prohibits the application of Prevention of Significant Deterioration (PSD) rules to the section 112 pollutants. Therefore, the rule that is the subject of this comment, OAC 3745–31–01 (SS), is consistent with the Federal definition.

(7) OEPA's definition for "major stationary source" is provided for attainment and nonattainment areas, but not for unclassified areas.

Response: As is inferred from the equal treatment of attainment and unclassified areas in 40 CFR 52.21(b)(14)(iii)(a), 52.21(b)(15)(i), and 52.21(i)(3), the Federal definition for "major stationary source" applies to unclassified areas and attainment areas equally. We interpret the submitted OEPA rule, OAC 3745–31–01 (SS), to carry the same inference. Therefore, "major stationary source" need not be defined separately for unclassified areas.

(8) In determining whether there has been a net emissions increase, the submitted rules limit the consideration of fugitive emissions to those source categories having 100-ton-per-year thresholds. The Federal regulations have no such limitation.

Response: We disagree that the Federal regulations have no such limitation. Under 40 CFR 51.165(a)(1)(iv)(C) and 51.165(a)(4), State rules may exempt fugitive emissions from consideration for a major source or major modification unless the source belongs to one of the source categories having 100-ton-per-year thresholds or the source is subject to section 111 (New Source Performance Standards) and section 112 (National Emissions Standards for Hazardous Air Pollutants) of the Clean Air Act. The Ohio rule, OAC 3745–31–01 (RR) is consistent with the Federal rules.

(9) In the submitted rules, the use of alternative fuel or raw material is exempted from the definition of "major modification" if the source was capable of accommodating it before December 21, 1976. It also exempts emission increases caused by increases in hours of operation or production rate if those increases were not prohibited by a Federally enforceable permit condition established after December 21, 1976. However, the Federal regulations set the critical date for both of these exemptions at January 6, 1975, not December 21, 1976.

Response: This comment refers to the Federal PSD rules at 40 CFR 51.166(a)(2)(iii)(e)–(f), which apply the January 6, 1975 date. The PSD rules are not relevant to today's approval, which addresses general and nonattainment NSR provisions. The submitted rule, OAC 3745–31–01(RR)(5)(a), applies the December 21, 1976, date required by the nonattainment NSR rules at 51.165(a)(1)(v)(C)(5)–(6). Therefore, the Ohio rule is consistent with the Federal rule.

(10) In the definition for "major modification," the submitted rules state that alternative fuel or raw material can be used as long as "the stationary source is approved to use under any permit issued under this ruling." The "ruling" to which this sentence refers to is unclear.

Response: We disagree that the word "ruling" is unclear in OAC 3745–31–01(RR)(5)(b). In the context of the definition, "ruling" refers to a permit issued under Ohio's SIP.

(11) The Federal definition for "net emissions increase" provides that an increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. OEPA's version of this definition, however, restricts only the consideration of sulfur dioxide and particulate matter (leaving out nitrogen oxides).

Response: This comment relates to maximum allowable increases and baseline dates, which do not apply to the nonattainment rules we are approving. They apply, instead, to the Ohio attainment rules which were conditionally approved on October 10, 2001 (66 FR 51570). Offsets, not maximum allowable increases, govern nonattainment areas.

(12) OEPA's definition for "net emissions increase" fails to specify that only PM–10 emissions can be used to evaluate the net increases for PM–10.

Response: We believe that it is inherent in this rule, OAC 3745–31–01(YY), that only PM–10 emissions can be used to evaluate net PM–10 increases. Ohio's rules distinctly set out the definitions and measuring procedures of particulate matter and PM–10 at OAC 3745–17. (The rules use the term "total suspended particulates" for PM–10.) The distinctions drawn in those rules apply to the definition of "net emissions increase." Therefore, we do not believe that the definition needs further clarification.

(13) OEPA's definition for "emissions unit" is made unclear by the sentence "This term does not include operations or activities that emit air pollutants regulated under State law but are not regulated under the Clean Air Act."

Response: We disagree that the definition for "emissions unit" is unclear at OAC 3745–31–01(AA). Under the submitted rule, any operation or activity that emits air pollutants regulated under the CAA is an "emissions unit." The clarifying sentence serves to distinguish CAA-regulated emissions units from those regulated only under State laws.

(14) The Federal definition of Best Available Control Technology specifically includes "fuel cleaning or treatment or innovative fuel combustion techniques," but OEPA's definition lists only "fuel combustion techniques."

Response: We interpret Best Available Control Technology (BACT) requirements to apply to any aspect of fuel combustion, cleaning, or treatment that affects emissions, and do not feel that the clause "including fuel combustion techniques" at OAC 3745–31–01(M) excludes any aspect of BACT. The clause does not preclude technologies beyond fuel combustion techniques because it is not all-inclusive. Therefore, the submitted rule is not limiting.

(15) The Federal definition of "clean coal technology" restricts it to the generation of electricity or process steam. Ohio's definition includes, in addition, "industrial products," which is an expansion beyond the Federal standard.

Response: We do not anticipate that Ohio's definition at OAC 3745–31–01(O) will be applied to any product or process that the Federal definition was not intended to cover. Nevertheless, we will advise OEPA to change its definition to match the Federal definition. We do not feel that the minor difference between the definitions warrants disapproval.

E. What Is Today's Action?

In this rule, EPA approves OEPA's requests for additions and revisions to OAC 3745–31–21 to 3745–31–27 submitted on March 1, 1996, April 16, 1997, September 5, 1997, December 4, 1997, and April 21, 1998. EPA also approves OEPA's August 19, 1999, request for additions to OAC 3745–47–01, 3745–47–02, 3745–47–03, 3745–05, 3745–47–07, and 3745–47–08 (D). EPA will take action on any subsequently submitted revision requests at a later time.

Today's action will take effect immediately upon publication as provided for by the good cause exemption of section 553 (d)(1) of the Administrative Procedure Act. This approval is a substantive rule that relieves a restriction on Ohio: sanctions would be imposed on Ohio if the SIP continued to lack nonattainment NSR provisions.

Recently, EPA announced new regulations regarding changes to the New Source Review Program through efforts under "New Source Review Reform". *See http://www.epa.gov/nsr/.* Today's approval of Ohio's NSR SIP submission does not address EPA's new rules but is limited to portions of Ohio's program under prior existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any new requirements that EPA may promulgate as part of New Source Review Reform.

F. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 23, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52,chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—*et seq.*

Subpart KK—Ohio

2. Section 52.1870 is amended by adding (c)(126) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(126) On March 1, 1996, and several subsequent dates, Ohio submitted revisions to its Permit to Install rules as a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Ohio Administrative Code (OAC) Rule 3745–31–21, effective April 27, 1998; OAC Rules 3745–31–22 through 3745–31–27, effective April 12, 1996; OAC Rules 3745–47–01, 3745–47–2, and 3745–47–03, effective June 30, 1981; OAC Rule 3745–47–05, effective June 30, 1981; OAC Rule 3745–47–07, effective June 30, 1981; and OAC Rule 3745–47–08(D), effective August 10, 1999.

[FR Doc. 03–336 Filed 1–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN148–1a; FRL–7436–2]

Redesignation and Approval and Promulgation of Indiana Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is redesignating Lake County, Indiana, to attainment for particulate matter with a nominal aerodynamic diameter of 10 microns or less (PM_{10}). EPA also approves Indiana's plan for continuing to attain the PM_{10} standards. Indiana requested these actions on September 25, 2002. In taking this action, EPA concludes that this area is meeting the national standards for PM_{10} and has acceptable plans for assuring continued attainment.

DATES: This rule is effective on March 11, 2003, unless the EPA receives relevant adverse written comments by February 10, 2003. If EPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067 before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. Review of Redesignation Request
A. Background
B. Review Under Statutory Criteria
1. Has the Area Attained the Standards?
2. Has EPA Fully Approved the Applicable Implementation Plan?
3. Is Attainment Due to Permanent and Enforceable Emission Reductions?
4. Does the Maintenance Plan Assure Continued Attainment?
5. Has the State Met the Requirements of Section 110 and Part D?
II. Rulemaking Action
III. Administrative Requirements

I. Review of Redesignation Request

A. Background

On November 6, 1991, EPA published a nonattainment designation for northern Lake County for the PM_{10} standards as given in Title 40 of the Code of Federal Regulations § 50.6 (40 CFR 50.6).[1] (See designations in 40 CFR 81.315.) These standards include a standard for annual average concentrations and a standard for 24-hour average concentrations. The area designated nonattainment included the cities of Gary, East Chicago, Hammond, and Whiting. On September 25, 2002, Indiana requested that the PM_{10} designation in 40 CFR 81.315 for this area in Lake County be changed from nonattainment to attainment. Included with this request were a summary of relevant air quality data, evidence of the opportunity for public review of this request (including a public hearing held July 18, 2002), and a discussion of how the various criteria for redesignation have been met.

Statutory criteria for redesignations from nonattainment to attainment are given in section 107(d)(3)(E) of the Clean Air Act. EPA may not promulgate such a redesignation unless: (i) The area has attained the applicable air quality standards, (ii) the area has a fully approved State Implementation Plan (SIP) under section 110(k) of the Act,

[1] EPA also set revised standards for PM_{10} as well as new standards for particles nominally 2.5 microns and smaller ($PM_{2.5}$), promulgated on July 18, 1997, and codified at 40 CFR 50:7. However, the Circuit Court of Appeals for the District of Columbia vacated the revised PM_{10} standards (*American Trucking Assoc.* v. *EPA*, 175 F.3d 1027). EPA has not promulgated designations for the revised PM_{10} standards. Today's action addresses the 1987 PM_{10} standards in 40 CFR 50.6, for which designations remain in effect in 40 CFR part 81.

(iii) EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions, (iv) EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act, and (v) the state has met all requirements applicable to the area under section 110 and part D of the Act.

EPA has issued a variety of relevant guidance memoranda interpreting the statutory criteria for redesignations and maintenance plans, most notably including a memorandum dated September 4, 1992, signed by the Director of EPA's Office of Air Quality Planning and Standards. In addition, regulations governing the evaluation of PM_{10} monitoring data are in appendix K to 40 CFR part 50.

B. Review Under Statutory Criteria

1. Has the Area Attained the Standards?

Title 40 CFR part 50, appendix K provides for evaluating three years of representative monitoring data. Indiana monitors PM_{10} concentrations at numerous locations in Lake County. Detailed results of this monitoring are available in EPA's Air Quality System (AQS) and on the Internet at *http://www.epa.gov/air/data/*. Indiana's submittal summarizes these air quality data.

For the most recent three calendar years, *i.e.*, 1999 to 2001, Indiana collected PM_{10} air quality data at five monitoring locations, including locations in Gary, Hammond, and East Chicago, where emissions are highest and the highest concentrations are expected. All sites recorded annual average concentrations below the annual average standard in all three years. Four of the five sites also recorded no exceedances of the 24-hour standard and thus clearly meet this standard. However, the fifth site, located in Gary at 201 Mississippi Street near the USX steel mill, recorded three exceedances in the 1999 to 2001 period. Thus, further analysis is necessary to determine whether this site meets the 24-hour standard.

The procedures in appendix K to 40 CFR part 50 for assessing compliance with the 24-hour standard estimate the number of days per year that the site is expected to exceed the level of the standard (150 micrograms per cubic meter). If a monitoring site collects complete information, the number of expected exceedances is simply equal to the number of measured exceedances. However, if data from a monitor are missing or inadequate for one or more days, these procedures provide for the assessment of the additional number (potentially fractional) of additional exceedances estimated to have occurred on unmonitored or inadequately monitored days. The number of expected exceedances is then the sum of the number of measured exceedances plus the additional inferred number of exceedances expected for unmonitored or inadequately monitored days. The number of expected exceedances is thus the likely total number of exceedances that a monitor would have recorded had it obtained complete data.

Since PM_{10} concentrations often vary by season, appendix K provides for estimation of expected exceedances separately for each quarter year. A location is attaining the standard if the monitor has a three-year average number of expected exceedances (rounded to the nearest tenth) of 1.0 or less.

The above Gary monitor recorded two exceedances in 1999, no exceedances in 2000, and one exceedance in 2001. The exceedances in 1999 both occurred in the last quarter. The monitor at this site is a continuous instrument that records hourly average values. The data obtained were adequate (at least 18 hours per day) to be considered complete for every day during the quarter. Therefore, the number of expected exceedances for 1999 at this site is equal to the 2.0 measured exceedances. The year 2000 had 0.0 expected exceedances. For 2001, the monitor recorded one exceedance in the first quarter out of 87 days with adequate data; three days in the first quarter had either no data or insufficient data. This leads to an estimated exceedances of 1.03, which rounds to a 2001 expected exceedances value of 1.0. Average expected exceedances for 1999 to 2001 then is 1.0. Consequently, this site is attaining the standard. More generally, since the monitoring includes representation of the worst-case locations in Lake County, EPA concludes that all of Lake County is attaining the PM_{10} standards.

2. Has EPA Fully Approved the Applicable Implementation Plan?

The principal relevant element of the SIP required under Part D of Title I of the Clean Air Act for Lake County is a plan for attaining the particulate matter standards. Indiana submitted this attainment plan on June 16, 1993, with subsequent supplemental submittals. EPA approved this attainment plan on June 15, 1995, at 60 FR 31412. Indiana submitted separate rules addressing requirements for nonattainment area new source review; EPA approved these rules as satisfying applicable requirements on October 7, 1994, at 59 FR 51108. While Clean Air Act section 172(c)(9) identifies a requirement for contingency plans, EPA has concluded that areas that are attaining the standards need not submit such contingency plans. (See 57 FR 13564, published April 16, 1992.) This reflects EPA's view that contingency plans under section 172(c)(9) are designed to address the possibility of an area failing to achieve the expected air quality improvement, that the need for such plans no longer exists after an area attains the standard, and that an area that has attained the standard and has a maintenance plan can rely on the contingency plans in the maintenance plan to address any recurrence of violations. Thus, EPA concludes that it has approved all required SIP elements for the Lake County particulate matter nonattainment area.

3. Is Attainment Due to Permanent and Enforceable Emission Reductions?

Indiana's SIP requires permanent emission reductions at a wide range of facilities including those facilities that Indiana's modeling has demonstrated to be the key contributors to prior air quality problems. The emission reductions result from installation of air pollution control equipment to capture and control particulate matter that was previously emitted. The reductions also result from ongoing measures to reduce emissions from plant roadways and storage piles. Enforceable emission limits adopted in Title 326 Indiana Administrative Code Article 6 and approved by EPA (as compiled at *http://www.epa.gov/region5/air/sips/sips.htm*) assure the permanence of these emission reductions. EPA thus concludes that permanent and enforceable emission reductions have enabled this county to attain the standards.

4. Does the Maintenance Plan Assure Continued Attainment?

Under section 175A of the Clean Air Act, maintenance plans must demonstrate continued attainment of the standards for 10 years after the redesignation. Thus, Indiana demonstrated maintenance through 2012. This demonstration focused on industrial sources, especially steel mills, which were the predominant cause of prior nonattainment in Lake County. Indiana compiled estimates of industrial source emissions for 1999 and anticipated emissions for 2012, projecting a 21 percent decline in emissions during that period. This indicates, in turn, that the area can be

expected to continue to attain the standards over the next 10 years.

In addition, the attainment plan that EPA approved in 1995 constitutes further evidence that Lake County can be expected to maintain the standards. This plan reflected maximum allowable emissions. By relying on an inventory of maximum allowable emissions from the most significant sources of particulate matter emissions in the area, the attainment plan demonstrated that the area would achieve and maintain attainment even if the sources operated at maximum capacity. This suggests that Lake County can be expected to maintain the standards permanently unless background impacts, particularly from area sources such as home heating and motor vehicles, increase significantly. Trends in home heating emissions can be deduced from trends in population, which in Lake County has essentially remained unchanged in the last five years and can be expected to remain essentially unchanged in the next 10 years as well. Motor vehicle emissions can be expected to decline, particularly as a result of new regulations reducing sulfur content of motor fuels and requiring lower emissions from both gasoline and diesel vehicles. Background concentrations of PM_{10} transported into the area can also be expected to decline as a result of sulfur dioxide emission reductions from the acid rain program. These factors suggest that Lake County can be expected to maintain the standards through 2012 and beyond.

Maintenance plans must include contingency measures in case violations of the air quality standards unexpectedly arise. Indiana has adopted a rule for contingency planning in 326 Indiana Administrative Code 6–1–11.2, which EPA approved on October 11, 2002, at 67 FR 63268. This rule provides two levels of response, depending on the severity of the air quality problem. A "Level II" response occurs when a year's second high concentration in the area exceeds 140 micrograms per cubic meter. In this case, the State would assess what controls need to be implemented to avoid violations of the standard. A "Level I" response occurs when a violation occurs (excluding circumstances where the violation is attributable to an exceptional event, malfunction, or noncompliance). In this case, the State assesses the origins of the violation and adopts any necessary control measures within 18 months. EPA believes that these provisions satisfy the requirements for contingency measures as part of Indiana's maintenance plan for particulate matter for Lake County.

Maintenance plans must also include commitments to continued air quality monitoring and to submittal of a reassessment of maintenance in 8 years. Indiana commits in its submittal to continue monitoring PM_{10} concentrations in accordance with its current monitoring plan. The core elements of Indiana's maintenance plan are permanent and will likely assure permanent maintenance, but the State nevertheless explicitly committed to submit the necessary additional maintenance plan in 8 years.

EPA's guidance memorandum of September 4, 1992, identifies various additional recommended features of maintenance plans. Many of these recommended features are not germane to pollutants like PM_{10} in areas like Lake County that have plans showing attainment even with key sources emitting their maximum allowable emissions. Indiana nevertheless included these features in its maintenance plan.

EPA's guidance states that "The State should develop an attainment emission inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS." (Section 5a) Attainment for PM_{10} in Lake County is assured not by limiting total emissions for the area to one specific level, but rather by defining allowable emissions for each location in the area and assuring that emissions for each location are at or below the allowable levels. Thus, the best "attainment emission inventory" for Lake County is the inventory of allowable emissions that Indiana used in its modeled attainment demonstration. Nevertheless, Indiana also provided estimates of more recent actual emissions.

Indiana has complied with the "Maintenance Demonstration and Monitoring Network" requirements of EPA's guidance of September 4, 1992 (sections 5b and c), as addressed above. Indiana satisfied the "Verification of Continued Attainment" requirement (section 5d) by periodically examining the air quality data that it will continue to collect. Finally, Indiana has satisfied the "Contingency Plan" requirements (section 5e), as addressed above. Thus, Indiana has satisfied all requirements for this maintenance plan.

5. Has the State Met the Requirements of Section 110 and Part D?

As noted in the rulemaking on Indiana's particulate matter plan cited above, published on June 15, 1995, at 60 FR 31412, Indiana has met the requirements of section 110 and Part D with respect to particulate matter planning in Lake County. That rulemaking focused on Indiana's plan for attaining the particulate matter standards in Lake County, which is the most significant relevant requirement under section 110 and Part D. That rulemaking also addressed related requirements for reasonably available control measures and for reasonable further progress. Indiana was not required to address transportation conformity for particulate matter because transportation sources are not significant contributors to PM_{10} concentrations in Lake County.

II. Rulemaking Action

EPA is redesignating Lake County, Indiana, to attainment for PM_{10}. In addition, EPA is approving Indiana's maintenance plan for this area.

Clean Air Act section 107(d)(3)(E) identifies five prerequisites for redesignation of areas from nonattainment to attainment. EPA concludes that these criteria are met with respect to PM_{10} in Lake County.

EPA is publishing these actions without a prior proposal because we view these as noncontroversial actions and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the redesignation and maintenance plan if adverse comments are filed. This rule will be effective on March 11, 2003 without further notice unless we receive relevant adverse written comment by February 10, 2003. If the EPA receives adverse comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely changes the attainment status of a portion of a county and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state request to change the attainment status of an area, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

Indiana's request for redesignation did not include any additional limitations on sources, and thus provided no opportunity to use voluntary consensus standards (VCS). Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovermental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 23, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.776 is amended by removing and reserving paragraph (j) and adding paragraph (r) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(j) [Reserved]

* * * * *

(r) Approval—EPA is approving the PM_{10} maintenance plan for Lake County that Indiana submitted on September 25, 2002.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 81.315 is amended by revising the particulate matter table entry to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Lake County: Cities of East Chicago, Hammond, Whiting, and Gary	03/11/03	Attainment.		
Vermillion County: Part of Clinton Township, Unclassifiable including sections 15, 16, 21, 22, 27, 28, 33, and 34.	10/27/97	Attainment.		
Rest of State	11/15/90	Unclassifiable.		

[FR Doc. 03–282 Filed 1–9–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 416, 418, 460, 482, 483, and 485

[CMS–3047–F]

RIN 0938–AK35

Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the fire safety standards for hospitals, long-term care facilities, intermediate care facilities for the mentally retarded, ambulatory surgery centers, hospices that provide inpatient services, religious nonmedical health care institutions, critical access hospitals, and Programs of All-Inclusive Care for the Elderly facilities. Further, this final rule adopts the 2000 edition of the Life Safety Code and eliminates references in our regulations to all earlier editions.

DATES: *Effective Date:* These regulations are effective on March 11, 2003. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of March 11, 2003.

Compliance Dates: All health care facilities referenced in this rule must comply with the requirements of this final rule on September 11, 2003, except that compliance with § 403.744(c), § 416.44(b)(4), § 418.100(d)(4), § 460.72(b)(3), § 482.41(b)(1)(iv), § 483.70(a)(4), § 483.470(j)(2)(iii), and § 485.623(d)(5) is not required until March 13, 2006.

FOR FURTHER INFORMATION CONTACT: Mayer Zimmerman, (410) 786–6839, James Merrill, (410) 786–6998, or Tamara Syrek Jensen, (410) 786–3529.

SUPPLEMENTARY INFORMATION:

I. Background

A. Life Safety Code

The Life Safety Code (LSC) is a compilation of fire safety requirements for new and existing buildings and is updated and published every 3 years by the National Fire Protection Association (NFPA), a private, nonprofit organization dedicated to reducing loss of life due to fire. The Medicare and Medicaid regulations have historically incorporated by reference these requirements along with Secretarial waiver authority. The statutory basis for incorporating NFPA's LSC for our providers is under the Secretary's general rulemaking authority at sections 1102 and 1871 of the Social Security Act.

We have not updated the LSC regulations for several years. We published a proposed rule in the **Federal Register** on August 1, 1990 (55 FR 31196) proposing to eliminate the use of the 1967 and 1973 editions of the LSC. In the August 1990 proposed rule, hospitals, nursing homes, and intermediate care facilities for the mentally retarded (ICFs/MR) would be required to comply with either the 1981 or 1985 editions of the LSC, depending on the date the provider entered the program. The proposed rule did not include ambulatory surgery centers (ASCs), hospices, or end-stage renal disease (ESRD) facilities. The August 1990 proposed rule also made no reference to the Program of the All-Inclusive Care for the Elderly (PACE) facilities, Critical Access Hospitals, and religious nonmedical health care institutions (RNHCIs) because these provider and supplier types did not exist when we published the August 1990 proposed rule.

On October 26, 2001, we published a proposed rule proposing to withdraw the August 1, 1990 proposed rule because the NFPA published four new editions of the LSC since the publication of our August 1990 proposed rule. Some accrediting organizations had adopted the 1997 edition of the LSC. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) which accredits over 4,000 hospitals, as well as ASCs, long-term care (LTC) facilities, and hospices that provide inpatient services has adopted the 1997 edition of the LSC. We had to update our requirements to a more recent edition of the LSC because the 1985 edition of the LSC had been superseded by later editions which incorporated the latest technology in fire protection.

B. The Proposed Rule of October 26, 2001 (66 FR 54179)

The 2000 edition of the LSC includes new provisions that we believe are vital to the health and safety of all patients and staff. The term "patient" represents the population in each of the provider-types discussed in this rule. We proposed not to grandfather any facility under these new provisions because the provisions would not impose an undue burden. Our intention is to ensure that patients and staff continue to experience the highest degree of fire safety possible.

In the past, our authority to grant waivers was critical to our ability to continuously improve fire safety in the Medicare and Medicaid programs and not impose an undue burden on providers. The Secretary has broad authority to grant waivers to hospitals under section 1861(e)(9)(C) of the Act, and to LTC facilities under sections 1819(d)(2)(B) and 1919(d)(2)(B) of the Act. For all other providers we have authority under the Secretary's general rulemaking authority to establish specific health and safety standards as well as under section 1871 of the Act. The proposed rule allows the Secretary to grant waivers on a case-by-case basis if specific provisions of the LSC would result in unreasonable hardship on the provider, and if the safety of patients would not be compromised. The Secretary may also accept a State's fire and safety code instead of the LSC if the State's fire and safety code adequately protects patients. Further, the NFPA's Fire Safety Evaluation System (FSES), an equivalency system, provides alternatives to meeting various provisions of the LSC, thereby achieving the same level of fire protection as the LSC.

In addition to the development of a proposed rule to adopt the 2000 edition of the LSC, we planned to propose a more efficient process that allows us to adopt future editions of the LSC in a more timely manner. We explored incorporating, by reference, the NFPA LSC without specific dates in the regulations text and publishing a **Federal Register** notice, instead of a proposed rule. We worked closely with the Office of the **Federal Register** (OFR) staff on our draft proposed approach; however, it has become clear that adoption of multiple successive editions of the LSC via reference is not possible. Changes in future editions of the LSC may be substantial, necessitating that we go through a proposed rule and public comment period. Moreover, we cannot automatically incorporate successive versions of the LSC because of the statutory restrictions of 5 U.S.C. section 552(a) and accompanying regulations at 1 CFR part 51. All LSC editions we adopt must include a specific edition and a copy of the edition cited must be on file at the OFR.

II. Provisions of the Proposed Regulations

A. General Description

In the October 26, 2001 proposed rule, we proposed to (1) require that all

providers and suppliers meet the provisions of the 2000 edition of the LSC with certain exceptions; and (2) remove references to all previous editions of the LSC.

B. The 2000 Edition of the Life Safety Code

Some requirements in the 2000 edition of the LSC are substantially different than earlier LSC editions. We solicited public comments regarding whether to adopt Chapter 5, "Performance Based Option," of the LSC. Specifically, we wanted to know (1) whether health care facilities are using performance based design; and (2) what benefits the facility receives by using performance based design.

The LSC fire safety goals establish outcomes to be achieved with regard to fire safety. These overall outcomes are communicated through specific requirements in the LSC. The performance based design option translates fire safety goals into performance objectives and performance criteria. Performance based design establishes broad goals and objectives with a team effort. The performance based design is applied to make the building safe as well as functional. The design is specific to the building. Computer fire models and other calculation methods are used in combination with the building design specifications, specified fire scenarios and assumptions to calculate the overall performance criteria and whether it meets the fire life safety goals and is in compliance with the intent of the LSC.

In the October 2001 proposed rule, we proposed not to adopt the roller latch provision in chapter 19, "Existing Health Care Occupancies," section 19.3.6.3.2 (exception No. 2), of the LSC for any facility. A roller latch is a type of door latching mechanism to keep a door closed. The 2000 edition of the LSC prohibits the use of roller latches on corridor doors in buildings not fully protected by an approved sprinkler system. Exception No. 2, however, allows for the use of roller latches under this prohibition, if the latch can withstand a specific level of force applied to it. We proposed not to adopt exception No. 2 regarding existing roller latches.

Through fire investigations, roller latches have proven to be an unreliable door latching mechanism requiring extensive on-going maintenance to operate properly. Many roller latches in fire situations failed to provide adequate protection to residents in their rooms during an emergency. Roller latches that are not properly maintained may be a danger to the health and safety of patients and staff. In addition, we have found through our online survey, certification, and reporting (OSCAR) system data report that doors that include roller latches are consistently one of our most cited deficiencies. In fact, in skilled nursing facilities roller latches in corridor doors are consistently the number one cited deficiency under the life safety requirements.

The estimated cost to remove roller latches on existing doors is $30,754,540 ($190 per door for 161,866 doors). We derived the cost estimate from information the American Health Care Association (AHCA) gave to us.

C. Analysis of Selected New Provisions in the 2000 Edition of the Life Safety Code

In the October 2001 proposed rule, we provided the LSC citation, a description of the requirement, an explanation of why we believe the requirement is critical to the safety of beneficiaries and a brief discussion of our analysis of the burden imposed by the requirement. We derived the cost estimates from information the AHCA gave to us. The following are new provisions in the 2000 edition of the LSC from chapter 19, "Existing Health Care Occupancies."

(1) 19.1.1.4.5—Renovations, Alterations, and Modernization—This provision requires that renovations, alterations, and modernizations comply with standards applicable to new construction when possible. Existing facilities that are extensively renovated must meet the requirements of a newly constructed facility, including the installation of sprinkler systems in nonsprinklered buildings. The Fire Analysis & Research Division of the NFPA has shown that sprinklers have been the most important life safety system installed in health care facilities. The LSC generally requires sprinkler systems in renovations, regardless of construction. The estimated cost of installing sprinkler systems in buildings that presently do not have them is $2.50 per square foot, or approximately $125,000 for a 50,000 square foot building. This requirement is not imposed on facilities not undergoing renovations. Approximately 2,550 facilities currently do not have sprinkler systems. Because a facility does not have to comply with this provision unless the facility chooses to renovate an existing building, we estimate approximately 128 facilities may be renovated in a year. The total amount to implement this provision would be $16,000,000 annually.

(2) 19.2.9—Emergency Lighting—This provision requires emergency lighting for a period of 1½ hours in health care facilities, enabling those inside to move about safely in an emergency. We proposed to phase in this requirement over a 3-year period, to allow for the normal replacement cycle of batteries used in emergency lighting systems. We believe this phase-in period would not adversely impact the health and safety of the beneficiaries. We estimate the cost to install this equipment will be $600 per light. Approximately 790 existing facilities do not have emergency lighting for 1½ hours. To be in compliance, we estimated that each building would need 12 emergency light units for a total of 9,482 units. The total amount to implement this provision over a 3-year period would be $5,452,150 or $1,817,383 annually.

(3) 19.3.1—Protection of Vertical Openings—Unprotected vertical openings (for example, open stairwells) permit fire and toxic gases to spread from one level to another in a building, making evacuation difficult, if not impossible. The estimated cost of compliance with this requirement is $2,938 per vertical opening. Approximately 9,877 vertical openings in 1,976 facilities would need to be upgraded for compliance. Total cost of compliance with this provision is $29,018,626.

(4) 19.3.4.3.2—Emergency Forces Notification—This provision requires the fire alarm system to provide automatic notification of a fire to emergency forces. This is of great importance to the protection of all patients. Any delay in the notification of fire or rescue personnel could adversely impact the health and safety of patients and expose them to a fire, smoke or toxic gases created by the fire. Approximately 2,750 buildings at $900 per facility would need to be connected to a fire alarm retransmission system. The cost is estimated to be a total of $2,475,000.

(5) 19.3.6.1—Corridors—This provision requires that all areas in nonsprinklered buildings be separated from the corridor by corridor walls that are fire-rated. This requirement, which provides a protected passageway for movement during an emergency, is necessary to increase the safety of the patients. The cost to upgrade a facility to meet this requirement is estimated to be approximately $7,124 for 1,976 buildings that currently meet the 1967 LSC and approximately $5,735 for 46 buildings meeting the 1973 LSC. The total estimated cost for compliance is $14,341,000.

(6) 19.7.5.2 & 19.7.5.3—Upholstered Furniture—These provisions allow patient-owned furniture to be brought

into the facility without meeting the requirements of 10.3.2(2) and 10.3.3 (regarding fire resistant furniture) if a single station smoke detector is placed in the sleeping room where the furniture is located. The cost to the facility is estimated at $100 per sleeping room where patient-owned furniture is located. We estimate approximately 18,498 smoke detectors would need to be installed at a total cost of $1,849,800.

In the October 2001 proposed rule, we proposed to retain our existing authority to waive provisions of the 2000 edition of the LSC, on a case-by-case basis, and thereby reduce the exposure to additional cost and burden for those facilities with unique situations that may justify the application of waivers. We may grant a waiver for a specific LSC requirement if (1) We determine that the waiver would not adversely affect patient and staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. Generally, a provider may request a waiver from its State agency. The State agency will review the request and make a recommendation to our appropriate regional office. Our regional office will review the waiver request and the State agency's recommendation and make a final decision. We cannot grant a waiver if patient safety is compromised in any way. A State may also request that the State fire and safety code be applied to all its facilities rather than the 2000 edition of the LSC we proposed in the October 2001 proposed rule. State law must impose the State fire and safety code. The State must submit the request to our appropriate regional office. The regional office will forward the request to our central office for a final determination.

We proposed to retain our authority to apply the Fire Safety Evaluation System (FSES) as an alternative approach to meeting the requirements of the LSC, as well as accept alternative State fire and safety codes as we discussed in section I.B in the October 2001 proposed rule.

D. Discussion of Fire Safety Requirements for Individual Providers and Suppliers

In the October 2001 proposed rule, we proposed changes to the requirements that affect all provider types, as described in sections II.A and II.B of this preamble. We proposed changes for distinct types of providers that include the following:

1. *Religious Nonmedical Health Care Institutions—Benefits, Conditions of Participation, and Payment:* 42 CFR 403.744 Condition of participation: Life safety from fire.

We proposed to retain the provisions of the existing interim final regulation for RNHCIs published in the **Federal Register** on November 30, 1999 (64 FR 67028), except as they conflict with the 2000 edition of the LSC and are not within the exceptions detailed in section II.B of this preamble (regarding our exceptions to the LSC).

2. *Ambulatory Surgery Centers:* 42 CFR 416.44 Condition for coverage: Environment.

We proposed to change the terminology in § 416.44 (b)(1) to reflect that the LSC refers to ASCs as Ambulatory Health Care Centers. We proposed that all ASCs meet the provisions applicable to Ambulatory Health Care Centers in the 2000 edition of the LSC, except as detailed in section II.B of this preamble, regardless of the number of patients the facility serves.

We believe the protection provided in the Ambulatory Health Care Centers chapter is necessary to protect the health and safety of patients who are incapable of taking action of self-preservation. We do not believe that the Business Occupancy chapter of the LSC (applied by some authorities having jurisdiction to ASCs treating fewer than four patients at a time) affords an adequate level of protection to patients in an ASC.

We also proposed to retain the discretion to accept compliance with fire and safety codes imposed by a State, if we determine that the State's fire and safety code will adequately protect patients in ASCs. We have included this provision in § 416.44 (b)(3).

3. *Hospice Care:* 42 CFR 418.100(d) Condition of participation: Hospices that provide inpatient care directly.

In the October 2001 proposed rule, we proposed that all inpatient hospices meet the provisions applicable to nursing homes in the 2000 edition of the LSC, with the exceptions discussed in section II.B of this preamble, regardless of the number of patients they serve. This is not a change in requirements, but merely a clarification that, for LSC purposes, an inpatient hospice is considered a nursing home, and not another type of occupancy.

We also proposed not to adopt for hospices chapter 18—section 3.4.5.3 of the 2000 edition of the LSC. This section requires new nursing homes to be equipped with corridor smoke detection systems. We believe there is no technical justification for this requirement because the 2000 edition of the LSC requires that newly constructed patient sleeping zones be provided with quick-response sprinklers. Quick-response sprinklers activate quickly enough to serve a detection function, thus making corridor smoke detection unnecessary. The 1991 and 1994 editions of the LSC required quick-response sprinklers in new nursing homes but did not require smoke detection. Therefore, we see no technical reason to require corridor smoke detection in new facilities and thus increase the cost of new construction without a parallel increase in safety.

We also proposed, in § 418.100(d)(3), to permit a hospice to meet a fire and safety code imposed by the State in lieu of the 2000 edition of the LSC if we determine that the State code adequately protects patients. We proposed to do this for two reasons: (1) To afford hospices the benefit of meeting a State code in lieu of the Federal requirements where the State code offers adequate protection; and (2) because we recognize that hospices are often located within buildings containing other providers already subject to this provision. For example, a hospice may be located entirely within a skilled nursing facility (SNF). If the SNF is exempt from the LSC by virtue of meeting a State code, other participating providers within the same building should also be afforded this exception.

We also proposed to remove § 418.100(d)(4), the requirement that blind and nonambulatory patients may not be housed above the street level floor unless the building is fully sprinklered or has achieved a passing score on the FSES comparison, which is less stringent than the LSC. The provision is redundant since any facility that meets the requirements of the 2000 edition of the LSC would, by definition, achieve a passing score on the FSES comparison. In addition, this requirement was removed from the SNF regulations in 1989; however, we did not remove it from the parallel hospice regulations.

4. *Programs of All-Inclusive Care for the Elderly (PACE):* 42 CFR 460.72 Physical environment.

In the October 2001 proposed rule, we proposed to retain most of the provisions of the existing interim final regulation for PACE that we published in the **Federal Register** on November 24, 1999 (64 FR 66234). PACE centers will continue to be required to meet the LSC specifications for the type of facilities in which the programs are located (that is, hospitals, office buildings, etc.).

We also proposed to require that a PACE center meet the requirements for use of fire alarm systems in accordance with the occupancy section of the LSC that applies to its building. Each occupancy section of the LSC also

requires evacuation plans, fire exit drills, and fire procedures, and these will be applicable to the PACE program.

We also proposed to retain § 460.72(b)(2)(i), which permits a PACE center to meet fire and safety requirements imposed by the State in lieu of the 2000 edition of the LSC if we determine that the State code adequately protects patients. We have done this for two reasons: (1) To afford a PACE center the benefit of meeting a State code in lieu of the Federal requirements where the State code offers adequate protection; and (2) because we recognize that PACE centers are often located within buildings containing other providers already subject to this provision. For example, a PACE center may be located within a hospital. If the hospital is exempt from the LSC by virtue of meeting a State code, other participating providers within the same building should also be afforded this exemption.

Further, in some buildings it may be impractical or impossible to provide a specific feature due to the construction of the building. Therefore, we proposed to retain § 460.72(b)(2)(ii), which allows for the waiver of specific provisions of the 2000 edition of the LSC that, if rigidly applied, would result in unreasonable hardship on the organization. We may waive specific provisions only if the waiver does not adversely affect the health and safety of the patients and staff.

5. *Conditions of Participation For Hospitals:* 42 CFR 482.41 Condition of participation: Physical environment.

In the October 2001 proposed rule, we proposed only the changes to this section described in sections II.A and II.B of this preamble, for the reasons described therein.

6. *Long-Term Care Facilities:* 42 CFR 483.70 Condition of participation: Physical environment.

As with hospices, we proposed not to adopt chapter 18-section 3.4.5.3 of the 2000 edition of the LSC for LTC facilities such as SNFs. This section requires new nursing homes to have corridor smoke detection systems. We believe there is no technical justification for this new requirement because the 2000 edition of the LSC requires that new construction patient sleeping zones be provided with quick-response sprinklers. We believe that quick-response sprinklers activate quickly enough to serve a detection function, thus making corridor smoke detection unnecessary. The 1991, 1994, and 1997 editions of the LSC required quick-response sprinklers in new nursing homes, but did not require smoke detection. Therefore, we do not see any technical reason to require smoke detection in new facilities and thus increase the cost of new construction without a parallel increase in safety.

7. *Intermediate Care Facilities for the Mentally Retarded:* 42 CFR 483.470 *Condition of participation:* Physical environment.

In the October 2001 proposed rule, we proposed to retain most of the provisions of the existing regulation for ICFs/MR. ICFs/MR will continue to be permitted to meet either the Residential Board and Care Occupancies chapter or the Health Care Occupancy chapter of the 2000 edition of the LSC, as appropriate.

We also proposed to retain the provision in § 483.470(j)(1)(ii) that allows the State survey agency to apply different chapters of the LSC to different buildings or parts of buildings so as not to place an undue burden on providers to have an entire building comply with the more stringent provisions of the Health Care chapter when they could instead meet the Board and Care for part of their facility, when appropriate.

We also proposed that, for ICFs/MR under Board and Care, the Evacuation Difficulty Index (EDI) must be determined by use of the Fire Safety Evaluation System for Board and Care Facilities (FSES/BC). In referring to the EDI, we proposed to remove the reference to Appendix F in § 483.470(j)(1)(iii). The FSES/BC is no longer an appendix of the LSC, but appears as its own NFPA document in the NFPA 101A Guide on Alternative Approaches to Life Safety. Additionally, we proposed to remove the reference to facilities of 16 beds or less from § 483.470(j)(1)(iii) to clarify that a larger facility could be subject to the Board and Care Chapter, and that its EDI would have to be calculated based on the FSES/BC. Again, this provision would allow certain ICFs/MR to meet the less restrictive Board and Care Chapter rather than the health care chapter.

In § 483.470(j)(2)(ii), we proposed to change "the Secretary" to "CMS" to more accurately reflect the statutory authority (this provision currently appears in § 483.470(j)(2)(i)(B)).

We also proposed in § 483.470(j)(3) that waivers of specific provisions of the 2000 edition of the LSC apply only to facilities that meet the LSC definition of a Health Care occupancy. There are no waivers for facilities under Board and Care, since the FSES/BC affords the flexibility of alternative arrangements for compliance.

III. Analysis of and Responses to Public Comments

We received approximately 160 timely public comments in response to the October 26, 2001 proposed rule. We received letters from State government officials, county government organizations, health care providers and provider organizations, and private citizens. We reviewed each comment and grouped like or related comments. The comments and our responses are summarized below.

A. General Comments

Comment: The majority of commenters expressed support of our adoption of the 2000 edition of the National Fire Protection Association (NFPA) Life Safety Code (LSC).

Response: We appreciate the support. Our current regulations allow health care providers to meet different editions of the LSC (that is, providers may meet the 1967, 1973 and 1985 editions of the LSC). These earlier editions are outdated and create confusion in the industry. The updated LSC includes new provisions vital to the health and safety of all our beneficiaries. This rule is intended to ensure that beneficiaries continue to experience the highest degree of fire safety possible.

B. Exceptions

Comment: Several commenters, while supporting the adoption of the LSC, urged us to adopt the LSC as written, with no exceptions. The commenters argued that by allowing exceptions to the NFPA LSC, we are violating the National Technology Transfer and Advancement Act (Pub. L. 104–113).

Response: Section 12 of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) codified an existing Office of Management and Budget (OMB) circular (OMB Circular A–119). Section 12 directs Federal agencies to use, to the extent not inconsistent with applicable law or otherwise impractical, technical standards that are developed or adopted by voluntary consensus standards organizations.

The National Technology Transfer and Advancement Act does not mandate that we use an entire code without exceptions if we determine it is impractical. We did not adopt the entire LSC as written because through our surveys, comments, and experience, we have determined that for the health and safety of patients and staff we could not adopt the LSC in its entirety.

We have "carved-out" two provisions from the LSC. These provisions are: (1) Roller latches; and (2) ambulatory facilities serving under four patients.

We are not allowing any exceptions for roller latches because roller latches are one of our top three deficiencies for life safety. Roller latches that are not properly maintained may be a danger to the health and safety of patients and staff. We have found through our OSCAR data report that doors that include roller latches are consistently one of our most cited deficiencies. In fact, in skilled nursing facilities, roller latches in corridor doors are consistently the number one cited deficiency under our life safety requirements.

We also define all ambulatory facilities as surgery centers regardless of the number of patients they serve. Under § 416.44, ASCs are required to maintain a fully equipped operating room for the types of surgery the ASC conducts for the surgery to be performed in a manner that protects the lives and ensures the physical safety of all individuals in the area. It is imperative that these facilities provide the protection of the Ambulatory Health Care chapter (chapters 20 and 21) rather than the Business Occupancy chapter of the 2000 edition of the LSC that pertains to physician offices or clinics because surgery is being performed in these facilities.

Comment: Several commenters opposed the October 2001 proposed rule's carve-out of the roller latch exception provision in the LSC (chapter 19–3.6.3.2 (exception No. 2)). The commenters claimed there is no evidence supporting our carve-out of the roller latch exception.

Response: As described above, roller latches that are not properly maintained may be a danger to the health and safety of patients and staff and are consistently one of our most cited deficiencies.

One of the most tragic examples of roller latch failure occurred in the fall of 1989 where a fire claimed 12 lives in a nursing home. In all the rooms where the door was closed and remained closed through out the fire, the patients lived. In the rooms where the door was open or originally closed but bounced open, the patients died. During our investigation, we tested the doors on the floor above the fire origin. We discovered the majority of the doors tested failed to stay closed because of the roller latches. In fact, as a result of the failure of the roller latches in this facility, the 1991 edition of the NFPA LSC prohibited the use of roller latches in new buildings.

Therefore, in this final rule, we are prohibiting the use of roller latches in existing and new buildings except for ASCs under Chapter 20 and Chapter 21. We understand the burden that may be caused to replace all existing roller latches and will phase-in this requirement over a 3-year period beginning March 11, 2003.

Comment: Many commenters supported the proposed rule's carve-out of the roller latch exception in the LSC (chapter 19–3.6.3.2).

Response: We appreciate the support. We believe, as discussed in our response to the previous comment, that prohibiting use of roller latches will allow patients and staff to experience the highest degree of fire safety possible.

Comment: Several commenters opposed the proposed exception to delete the smoke detector requirement for hospices and nursing facilities. Many believed smoke detectors are an inexpensive requirement for new facilities that provides an extra layer of protection.

Response: We agree with these comments and have changed the regulations text to no longer exempt new nursing homes or inpatient hospices from Chapter 18–3.4.5.3 of the LSC. Please note that this requirement does not apply to existing facilities, but only to new nursing homes or inpatient hospices.

C. Chapter 5—Performance Based Option

Comment: In the October 2001 proposed rule, we solicited comments on whether to adopt chapter 5, the performance based option of the LSC. Most of the comments we received specifically on chapter 5, the performance based option, stated that they had little experience with this option.

The performance based design option in chapter 5 of the LSC translates fire safety goals into performance objectives and performance criteria. Performance based design establishes broad goals and objectives with a team effort. The performance based design is applied to make the building safe as well as functional. The design is specific to the building. Computer fire models and other calculation methods are used in combination with the building design specifications, specified fire scenarios and assumptions to calculate the overall performance criteria and whether it meets the fire life safety goals and is in compliance with the intent of the code.

Response: We have decided to include chapter 5, the performance based option provision. We do not expect many providers to choose this option. However, we would like all providers to have the alternative to use the performance based option if the provider believes it would be beneficial for it to comply with the LSC.

Please note that the final rule will also continue to allow two other options besides the prescriptive requirements of the LSC. Health care facilities may choose the FSES, and a facility may apply for a waiver of specific provision of the LSC if it is unable to meet a specific requirement. We may grant a waiver for a specific LSC requirement if (1) we determine that the waiver would not adversely affect patient and staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. A provider may request a waiver from its State agency. The State agency will review the request and make a recommendation to our appropriate regional office. Our regional office will review the waiver request and the State agency's recommendation and make a final decision on the waiver request. We cannot grant a waiver if patient safety is compromised in any way.

D. State Codes

Comment: One commenter opposes the LSC because it would preempt State or local decision-making authority and create an unfunded mandate.

Response: If a State or local authority would rather use its State fire and safety code, this is an allowable option as long as the State fire and safety code is imposed by State law and adequately protects the life and safety of the patients. To request this option, the State must forward the request to its CMS regional office. The CMS regional office will forward the request to the CMS central office where a final determination will be made as to whether the State fire and safety code may be used in place of the NFPA LSC.

We also have retained our authority to waive provisions of the LSC, on a case-by-case basis. We may grant a waiver for a specific LSC requirement if we determine that the waiver would not adversely affect the patient or staff health and safety and it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. If a health care facility would like a waiver for a specific provision in the LSC, the facility must forward the request to their State survey agency. The State agency will review the request, make a recommendation and forward the request to the appropriate CMS regional office. The CMS regional office will review the State agency's recommendation and make a final decision.

Comment: Several commenters requested that the October 2001 proposed rule be revised to allow health care facilities to choose other codes that

are nationally recognized, such as the International Building Code and International Fire Code. Referencing only the NFPA's LSC in the final rule creates conflict for many jurisdictions that enforce other equivalent or more stringent fire and life safety requirements. By not referencing other applicable codes, CMS favors one code to the detriment of other codes.

Response: We continue to specifically cite the LSC because under sections 1819(d)(2)(B) and 1919(d)(2)(B) of the Act, nursing homes must meet the provisions of "such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association * * *." To avoid confusion and to be consistent for all provider types we require the LSC for all inpatient facilities. This is especially applicable for facilities with mixed occupancies. For example, a health care facility's west wing could be a nursing home while the rest of the facility is a hospital. It would be impractical as well as burdensome for the facility to follow the LSC for the nursing home and another health and safety code for the hospital. The regulation reflects this by requiring a single code for all inpatient health care facilities.

However, if a State's own fire and safety code would "adequately protect patients" and the State code is imposed by State law, the State may submit a request in writing to its CMS regional office. The CMS regional office will forward the request to the CMS central office. The CMS central office will make a final decision on whether the State code may be used in place of the NFPA LSC.

Comment: Several commenters support CMS's authority to "accept a State's fire and safety code instead of the LSC if the State's fire and safety code adequately protects patients." However, these same commenters stated that the CMS must have a system in place to evaluate any State code to determine that the requirement provides adequate protection for patients and staff.

Response: We appreciate the support for accepting State fire and safety codes in addition to the LSC. If a State chooses to use its fire and safety code rather than the LSC, it must be imposed by State law and adequately protect patients and staff. Any State that chooses this option should send the request to its CMS regional office. The regional office will forward the request to the CMS central office. The central office will make the final determination and respond in writing as to whether the State fire and safety code adequately protects patients and staff.

E. Ambulatory Surgical Centers (ASCs)

Comment: Some commenters believe that we should allow grandfathering for Ambulatory Surgical Centers (ASCs) that meet previous editions of the LSC. Some commenters stated that, at the very least, we should permit ASCs to postpone compliance with the 2000 edition of the LSC until the ASC undertakes a major renovation. The commenters stated that compliance with the 2000 edition of the LSC, especially for smaller ASCs would impose a financial burden. One commenter asked us to phase-in the requirements because it would be a financial hardship for most ASCs to comply with the 2000 edition of the LSC. The commenter suggested that we consider a couple of approaches for phasing in the 2000 edition of the LSC. For ASCs already Medicare-certified, the 2000 edition of the LSC would only need to be met if the ASC underwent a major renovation, or we could implement a timeline for full compliance to the 2000 edition of the LSC (for example, 5 years).

Response: It is not our intent to impose a retroactive requirement for ASCs. For existing ASCs, most provisions in the 2000 edition of the LSC are similar to past editions. Furthermore, existing facilities in compliance with early editions of the LSC are not required to upgrade to a later edition of the LSC for certain provisions. For example, an existing ASC is not required to upgrade its Type I Essential Electrical System (EES). Chapter 21–2.9.2 references NFPA 99, Standard for Health Care Facilities. This provision states that ASCs "shall be provided with an EES in accordance with NFPA 99, Standard for Health Care Facilities." Under NFPA 99 existing ASCs are able to continue to use existing electrical and medical gas systems that are in compliance with the earlier editions of the LSC provided the ASC continues to meet the edition of the LSC requirements when it was constructed. The referencing to the NFPA 99 for certain provisions (that is, EES, and medical gas) should relieve some burden for ASCs.

In addition, an ASC may also request a waiver for a specific provision of the LSC further reducing the exposure to additional cost and burden for ASCs with unique situations that can justify the application of waivers and will not endanger the health and safety of patients. A waiver may be granted for a specific LSC requirement if (1) we determine that the waiver would not adversely affect patient and staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. All waivers are determined on a case-by-case basis. An ASC may request a waiver from its State Agency. The State Agency will review the request and make a recommendation to the appropriate CMS regional office. The CMS regional office will review the waiver request and the State agency's recommendation and make a final decision on the waiver request. A waiver cannot be granted if patient safety is compromised in any way.

Comment: A few commenters objected to the requirements in the 2000 edition of the LSC that ASCs must have a Type I Essential System (EES) and upgrade their medical gas capabilities. Most of the ASCs, especially smaller ASCs, do not have a Type I EES or meet the medical gas requirement in the 2000 edition of the LSC. The commenters stated that the change to a Type I EES and to upgrade their medical gas capabilities will be a financial hardship on the ASCs.

Response: Only new facilities will be required to have a Type I EES or upgrade its medical gas capabilities. Existing ASC facilities in compliance with early editions of the LSC for EES and medical gas requirements are not required to upgrade to the 2000 edition of the LSC. Per chapter 21–2.9.2 and chapter 21–3.2.2, an ASC facility shall be in compliance with "NFPA 99, Standard for Health Care Facilities." Under NFPA 99 existing ASCs may continue to use existing electrical and medical gas systems that are in compliance with earlier editions of the LSC provided the ASC continues to meet the earlier edition of the LSC requirements when it was constructed. If the ASC fails to meet the earlier LSC requirements, the ASC must upgrade to the 2000 edition of the LSC. An ASC must also meet the 2000 edition of the LSC if its EES or medical gas system undergo alteration, modernization, or renovation.

Comment: Three commenters requested that ASCs be exempt from the fire-rated wall standards in Chapter 19–3.6.1 and the vertical opening standard in Chapter 19–3.1 of the 2000 edition of the LSC. The commenters explained that ASCs would be unable to comply with these requirements because most ASCs do not control spaces outside of their leased area.

Response: The commenters may have misunderstood which chapters apply to ASCs. Chapters 20 and 21 apply to ASCs, not chapter 19. This confusion may have been caused because we improperly cited chapter 19 in the ASC regulatory text. We deleted all chapter

19 provisions in the ASC regulatory text. Chapter 19 only applies to existing Health Care Facilities (for example, hospitals, nursing homes, etc.). Chapter 21 applies to existing ASCs. The related sections of chapter 21 are not significantly different than what existing ASCs are required to meet currently. For example, building construction type, vertical opening requirements and, fire alarm requirements have not changed from earlier editions of the life safety code.

Comment: Several commenters believed that ASCs should only be classified as Ambulatory Health Care Centers if they serve four or more patients who are rendered incapable of self-preservation. If there are less than four patients, we should not subject the ASC to more stringent requirements when the risk is not severe enough to warrant those restrictions and should be classified under the less stringent Business Occupancy chapter of the 2000 edition of the LSC.

Response: Ambulatory facilities are surgery centers regardless of the number of patients they serve. Under § 416.44, ASCs are required to maintain a fully equipped operating room for the types of surgery the ASC conducts in order for the surgery to be performed in a manner that protects the lives and ensures the physical safety of all individuals in the area. It is imperative that these facilities provide the protection of the Ambulatory Health Care Chapters (chapters 20 and 21) rather than the Business Occupancy chapter of the 2000 edition of the LSC that generally pertains to physician offices or clinics because surgery is being performed.

F. Critical Access Hospitals

Comment: Several commenters asked why Critical Access Hospitals (CAHs) were not included in the October 2001 proposed rule.

Response: We should have included CAHs in the October 2001 proposed rule. We corrected this mistake and added CAHs to the final rule at § 485.623(d). Similar to the other facilities, roller latches under chapter 19–3.6.3.2 (exception No. 2) will not be adopted. Thus, all existing CAHs will no longer be permitted to use roller latches. Through fire investigations, roller latches have proven to be an unreliable door latching mechanism requiring extensive maintenance to operate properly. We realize there is some burden with replacing existing roller latches and will phase in this requirement over a 3-year period beginning March 11, 2003. If a CAH believes that this rule (including the 3-year phase in period for the roller latches) imposes an unreasonable burden, the facility should contact its State Office to request a waiver. The State Agency will review the request for the waiver and make a recommendation to the appropriate CMS regional office. The CMS regional office will review the waiver and the State Agency's recommendation and make a final decision on the waiver request.

G. Miscellaneous

Comment: Two commenters asked us to define major and minor renovations to a facility.

Response: The difference between major and minor renovations has to do with the size and cost of the upgrade. Obviously, replacing a door would be a minor renovation, but adding a wing to a hospital would be a major renovation. We understand there may be times when it is difficult to determine if the renovation would qualify as a major renovation. These decisions are made on a case-by-case basis rather than a "one size fits all" requirement. If a facility is unsure if the renovation would be considered major or minor, the facility may call the State survey agency for an evaluation and final decision.

Comment: Some commenters requested that we adopt updated versions of the LSC more quickly in the future. One commenter requested that we adopt any updated version of the LSC within 90 days of the LSC publication.

Response: We agree and would like to revise our regulations to update the LSC in a more timely manner. However, we cannot adopt the LSC within 90 days of the LSC publication because under the Administrative Procedure Act (APA), we must give notice to the public that we are proposing to revise a regulation. Once we notify the public of the proposal, the public must have the opportunity to comment on the revisions, and we must answer the comments before the update becomes final and binding.

Comment: Some commenters asked when all health care facilities must be in compliance with this final rule.

Response: The final rule is effective 60 days after publication. However, to relieve some burden for providers, we are delaying enforcement of the 2000 edition of the LSC for six months until September 11, 2003. In addition, as stated earlier, because of the burden that may be imposed by the requirement to replace all existing roller latches we will phase in this requirement over a 3-year period beginning on March 11, 2003. We will also phase in the emergency lighting requirement (19.2.9) over a 3-year period beginning on March 11, 2003. We have revised the regulations text to reflect the phase-in period.

H. Burden Estimates

Comment: Several commenters stated that our "carve-out" of the roller latch exception would be a cost burden.

Response: Roller latches are one of our top three deficiencies and, based on prior incidents, we are concerned about the possible threats to patient safety. We believe that, in the interest of patient and staff safety, all roller latches must be removed. To help alleviate some of the burden to health care facilities, we will phase in this requirement over 3 years.

Comment: A couple of commenters questioned our cost estimates. The commenters stated that our reliance on the AHCA report only applied to nursing homes and the estimates were outdated.

Response: We agree and we reviewed our cost estimates and revised the cost impact for the final rule. All of the revised cost estimates were gathered using OSCAR data as well as figures sent as comments to the October 2001 proposed rule. The revision of our estimates reflects a significant decrease in the number of facilities using the 1985 edition of the LSC. Many of the older facilities that were originally included in our estimate have upgraded their facility using a more recent edition of the LSC rather than the 1985 edition. The total cost impact we originally estimated has changed because many of the items that need to be updated have already been done because older facilities have been phased out or upgraded. Therefore, the number of facilities we originally determined had to make upgrades has decreased.

We phased in two requirements of the LSC over a 3-year period. The requirements are: Emergency lighting (that is, 19.2.9) and replacing all roller latches (that is, 19.3.6.3.2). We phased in the emergency lighting requirement because it is standard practice to routinely replace emergency lighting system batteries every 3 years. Therefore, our decision to phase in the emergency lighting requirement over 3 years is to match providers' current cycle of replacing the batteries in their emergency lighting systems. We believe by phasing in this requirement, we will not adversely affect the health and safety of the patients or staff.

We also phased in over 3 years our requirement that all providers must replace roller latches. In the October 2001 proposed rule, we did not propose to phase in roller latches because we believed that it was an important issue

of ensuring fire safety for patients and staff. However, we received a large number of comments regarding the amount of time and the cost required to replace the roller latches. While we still believe that replacing roller latches is an important fire safety issue, we realize we have to balance the burden to providers with the impact this change will have. To alleviate some of the burden of the roller latch requirement, we are phasing in the requirement over 3 years. During this 3-year phase in period, we will continue to monitor, through our existing survey process, a facility's maintenance of its existing roller latches to ensure that they are maintained and operating properly. We believe that this will help ensure fire safety for patients and staff.

We did not phase in any other of the LSC requirements because we believe updating the other requirements is an important safeguard for ensuring fire safety to all patients and staff of each facility.

Below we outlined all the major changes a health care facility would have to undergo if the health care facility has not upgraded its facility since meeting earlier editions of the LSC. As in the October 26, 2001 proposed rule, below we have provided the LSC citation, a description of the requirement, an explanation of why we believe it is critical to the safety of patients to require it, and a brief discussion of our analysis of the burden imposed by the requirement. The following are new provisions in the 2000 edition of the LSC from chapter 19, "Existing Health Care Occupancies."

Please note that we did not include chapter 19, section 1.1.4.5 (Renovations, Alterations, and Modernization) in our total estimate. This provision is not a requirement of the final rule. This provision only applies if a health care facility chooses to extensively renovate its facility or build a new facility. Existing facilities that are extensively renovated must meet the requirements of a newly constructed facility, including the installation of sprinkler systems in nonsprinklered buildings. The Fire Analysis & Research Division of the NFPA has shown that sprinklers have been the most important life safety system installed in health care facilities. The LSC generally requires sprinkler systems in renovations, regardless of construction techniques or materials used in constructing the facility. The estimated cost of installing sprinkler systems in buildings that presently do not have them is $2.50 per square foot, or approximately $125,000 for a 50,000 square foot building. This requirement is not imposed on existing facilities. In the proposed rule we stated there were 255 facilities that do not have sprinkler systems. This was a typographical error. There are approximately 2,550 facilities that do not currently have sprinkler systems. Again, none of these facilities are required to install sprinkler systems under this final rule.

(1) 19.2.9—Emergency Lighting—This provision requires emergency lighting for a period of 1½ hours in health care facilities, enabling those inside to move about safely in an emergency. We proposed to phase-in this requirement over a 3-year period, to allow for the normal replacement cycle of batteries used in emergency lighting systems. We believe this phase in period would not adversely impact the health and safety of the patient. In the October 2001 proposed rule, we estimated that 790 existing facilities do not have emergency lighting for 1½ hours. Approximately 12 emergency light units would be needed for each facility. We estimated that the cost to be in compliance with this provision was $7,200 per facility. In the proposed rule we estimated that the total cost for all facilities to be upgraded under this provision would be $5,452,150.

Approximately 642 existing facilities do not have emergency lighting for 1½ hours. We estimate each facility would need approximately 12 emergency light units at a cost of $750 per light. We estimate it will cost each facility $9,000 to upgrade its emergency lighting. The total amount to implement this requirement for all facilities will be $1,926,000 for the first year. Because we are phasing in this requirement over 3 years, we estimate that it will be approximately $1,926,000 for each of the next 2 years.

(2) 19.3.1—Protection of Vertical Openings—Unprotected vertical openings (for example, open stairwells) permit fire, smoke, and toxic gases to spread from one level to another in a building, making evacuation difficult, if not impossible. In the October 2001 proposed rule, we estimated that to upgrade the vertical openings would be $2,938 per vertical opening. We estimated that 9,877 vertical openings in 1,976 facilities needed to be upgraded for a total cost of $29,018,626 or an average of $14,690 per facility.

We revised this figure estimating that 5,573 vertical openings in 1,115 facilities would be affected because many facilities have already upgraded their buildings to meet this requirement. Each vertical opening costs approximately $3,819. We estimate the facilities that need to be upgraded will need to install an average of five vertical openings. The total estimated cost is $21,283,687 for all facilities to be upgraded or an average of $19,095 per facility.

(3) 19.3.4.3.2—Emergency Forces Notification—This provision requires the fire alarm system to provide automatic notification of a fire to emergency forces. This is of great importance to the protection of all patients. Any delay in the notification of fire or rescue personnel could adversely impact the health and safety of patients and expose them to a fire, smoke, or toxic gases created by the fire. In the October 2001 proposed rule, we estimated that approximately 2,750 buildings at $900 per facility would need to be connected to a fire alarm retransmission system for a total estimated cost of $2,475,000.

We revised our cost estimates because the October 2001 proposed rule was incorrect. The proposed rule estimate did not account for installation. The one time cost to install a fire department or central monitoring station connection is $1,707 per facility. In addition, we estimate that there is a $97.50 monthly fee for the monitoring stations and telephone costs.

We determined that 2,358 buildings at $2,877 (installation fee + monthly fee for one year) per facility would need to be connected to a fire alarm retransmission system. We estimate that to be in compliance with this provision the total cost is approximately $6,783,966.

(4) 19.3.6.1—Corridors—This provision requires that all areas in nonsprinklered buildings must be separated from the corridor by corridor walls that are fire-rated. This requirement, which provides a protected passageway for movement during an emergency, is necessary to increase the safety of the patients. In the October 2001 proposed rule, we estimated that the cost to upgrade a facility to meet this requirement was $7,124 for 1,976 buildings that currently meet the 1967 LSC and approximately $5,735 for 46 buildings meeting the 1973 LSC.

We revised the proposed rule estimates and approximately 1,606 buildings currently meet the 1967 LSC and will need to be upgraded. We estimate that to upgrade facilities that currently meet the 1967 LSC is $14,871,560 or approximately $9,260 per facility.

We also calculated that 39 buildings currently meet the 1973 LSC. The estimated cost to upgrade the 39 buildings is $290,745, approximately $7,455 per facility.

The revised total cost estimate for all facilities to meet this requirement is $15,162,305.

(5) 19.7.5.2 & 19.7.5.3—Upholstered Furniture—These provisions allow patient-owned furniture to be brought into the facility without meeting the requirements of 10.3.2(2) and 10.3.3 (regarding fire resistant furniture) if a single station smoke detector is placed in the sleeping room where the furniture is located. This gives the facility a more home-like atmosphere. In the October 2001 proposed rule, we estimated that 18,498 smoke detectors would need to be installed at approximately $100 per smoke detector. We estimated in the proposed rule that the total cost to be in compliance with this provision was $1,849,800.

We revised this cost estimate because we believe 19,262 smoke detectors need to be installed rather than the 18,498 we estimated in the October 2001 proposed rule. We did not change our estimate of the cost of the smoke detector (that is, $100 per smoke detector). The total amount to be in compliance with this provision is $1,926,200.

(6) 19.3.6.3.2—Roller Latches—We "carved out" the exception the LSC allowed for roller latches in existing buildings. In the October 2001 proposed rule we estimated the total cost for all facilities to remove exiting roller latches was $30,754,540 ($190 per door for 161,866).

We revised the estimate and 190,303 roller latches must be replaced at a cost of $250 per roller latch, for a total cost estimate of $47,575,750. We are phasing in this requirement over 3 years. Thus, we estimate that it will cost $15,858,583 for the first year and $15,858,583 for each of the next 2 years.

In the October 2001 proposed rule, we proposed to retain our existing authority to waive provisions of the 2000 edition of the LSC, on a case-by-case basis, further reducing the exposure to additional cost and burden for facilities with unique situations that can justify the application of waivers, which we determine will not endanger the health and safety of patients.

We proposed to retain our authority to apply the FSES as an alternative approach to meeting the requirements of the LSC, as well as accept alternative State fire and safety codes discussed in section I.B in the October 2001 proposed rule.

IV. Provisions of the Final Regulations

For the most part, this final rule adopts the provisions of the October 26, 2001 proposed rule. Those provisions of this final rule that differ from the October 2001 proposed rule follow. In response to comments, we are revising § 485.623(d) to require all critical access hospitals (CAHs) to meet the applicable provisions of the 2000 edition of the LSC. The provision of the adopted 2000 edition of the LSC that does not apply to a CAH is chapter 19, "Existing Health Care Occupancies," section 19.3.6.3.2 (exception No. 2), roller latches.

We deleted the reference to chapter 19 (that is, 19.3.6.3.2) under the ASC regulatory text because it was improperly cited for ASCs. We cited chapter 19.3.6.3.2 because all roller latches must be replaced in existing health care occupancies. However, Chapter 19 does not apply to ASCs. ASCs are under chapter 20 (that is, new ASCs) and chapter 21 (that is, existing ASCs).

We also decided to include chapter 5, the performance based option provision. We do not expect many providers to choose this option. However, we would like all providers to have the alternative to use the performance based option if the provider believes it would be useful for it to comply with the LSC. In addition, we have provided for a 3-year phase in period for the requirements regarding roller latches and emergency lighting.

The final rule will continue to allow other options besides the prescriptive requirements of the LSC. Health care facilities may choose the FSES, and a facility may apply for a waiver of a specific provision of the LSC if it is unable to meet a specific requirement. We may grant a waiver for a specific LSC requirement if (1) we determine that the waiver would not adversely affect patient and staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. A provider may request a waiver from its State agency. The State agency will review the request and make a recommendation to the appropriate CMS regional office. The CMS regional office will review the waiver request and the State agency's recommendation and make a final decision on the waiver request. We cannot grant a waiver if patient safety is compromised in any way.

A State may also choose to use its fire and safety code rather than the LSC if the State fire and safety code is imposed by State law and adequately protect patients. Any State that chooses this option must send the request to its CMS regional office. The regional office will forward the request to the CMS central office. The central office will make the final determination and respond in writing as to whether the State fire and safety code adequately protects patients and staff. Lastly, we no longer exempt new nursing homes or new hospices providing inpatient care from chapter 18.3.4.5.3 of the LSC. Several commenters opposed the proposed exception to remove the smoke detector requirement for hospices and nursing facilities. Many commenters believe smoke detectors are an inexpensive requirement for new facilities and they provide an extra layer of protection. We agree and removed the exception from the regulations text in hospices at § 418.100(d) and nursing facilities at § 483.70(a).

V. Collection of Information Requirements

This rule does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Statement

A. Introduction

This final rule adopts the 2000 edition of the LSC. The objective is to provide safety to life during fires and other emergencies. Adoption and use of the 2000 edition of the LSC will bring us up-to-date in requiring the latest and best technology in fire protection for our beneficiaries. These requirements are designed to protect all patients and staff. The 2000 edition of the LSC also protects property and can reduce the dollar loss associated with a fire. For example, the 2000 edition of the LSC requires that any new construction install quick-response sprinkler systems increasing the level of protection to our beneficiaries. Adopting the 2000 edition of the LSC and removing references to all older editions of the LSC will eliminate confusion as to which edition a health care facility must follow. This is particularly important when a facility has multiple buildings constructed at differing times or a single building with multiple wings or additions constructed at different times. Instead of each building complying with different editions of the LSC, this final rule requires all the buildings to comply with the same edition of the LSC. The use of a single edition of the code should also contribute to lowering the cost of complying with the requirements for testing and maintenance of fire protection systems.

B. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and

the Regulatory Flexibility Act (RFA) (September 16, 1980 Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We have examined the impact of this final rule and we have determined that this rule is neither expected to meet the criteria to be considered economically significant, nor do we believe it will meet the criteria for a major rule. All entities affected by this rule are considered small entities. Therefore, a final regulatory impact analysis is not required for the same reasons explained in section VI.C of this rule.

We revised our estimate of the regulatory impact of this final rule from $96,356,599 to $63 million for the first year and $17.5 million for each of the next 2 years. The estimate appears lower than the estimate in the October 2001 proposed rule because unlike the October 2001 proposed rule, we are phasing in the requirement to replace all existing roller latches over 3 years. Thus, the cost estimate to replace the roller latches is reduced from approximately $48 million for the first year to approximately $16 million per year for 3 years. For a detailed description of our estimates for each provider, section II.C of this final rule outlines our cost estimates in the 2001 proposed rule, and section III.H of this final rule outlines our revised cost estimates for this rule as well as why we revised the estimates.

C. Impact on Small Entities and Rural Hospitals

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million in any one year (for details, see the Small Business Administration's regulation that sets forth size standards for health care industries at 65 FR 69432). For purposes of the RFA, all health care facilities affected by this regulation are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds.

Based on the Small Business Administration (SBA) and CMS data (these data can be found in the April 2002 CMS Statistics Publication No. 03437 or *www.cms.hhs.gov*), approximately 4,593 out of 6,650 hospitals are considered to be small businesses or nonprofit hospitals. We do not consider this rule to significantly impact these hospitals because the cost of this rule is less than 1 percent of the total costs for hospitals. According to the CMS 2002 national expenditure data, the total national costs for hospitals in 2002 was $412.1 billion. We estimate this rule will cost hospitals, including CAHs, approximately $8,263,848 for the first year and $4,131,924 for each of the next 2 years due to the phase in of emergency lighting and the replacement of all roller latches.

Based on the SBA and CMS data, approximately 3,064 out of 3,474 ASCs are considered to be small businesses or nonprofit providers. However, we do not consider this rule to significantly impact the ASCs because the cost of this rule is less than 1 percent of the total costs for ASCs. According to the CMS 2002 national expenditure data, the total national cost for ASCs in 2002 was $286.4 billion. We estimate that it will cost ASCs approximately $2,511,667 for the first year and $1,255,833 for each of the next 2 years due to the phase in of emergency lighting and the replacement of all roller latches.

Based on the SBA and CMS data, approximately 17,901 out of 23,500 LTC providers, inpatient hospices, and ICF/MR facilities are considered to be small businesses or nonprofit providers. We do not consider this rule to significantly impact the LTC providers, inpatient hospices, or ICF/MR facilities because the cost of this rule is less than 1 percent of the total costs for these providers. According to the CMS 2002 national expenditure data, the total national costs for LTC providers, inpatient hospices, and ICF/MR facilities in 2002 were $89.3 billion. Our cost estimate for compliance with this rule for LTC providers, inpatient hospices, and ICF/MR facilities is approximately $59,195,736 for the first year and $5,788,375 for each of the next 2 years due to the phase in of emergency lighting and the replacement of all roller latches. We combined the estimates of LTC facilities, inpatient hospices, and ICF/MR facilities because of the similarities in how the provider types are surveyed for compliance with the LSC and the items that must be upgraded to meet the 2000 edition of the LSC. In addition, most ICF/MR facilities will not be impacted by this rule because the majority of these facilities are fairly new and are considered a residential occupancy rather than the more stringent health care occupancy type. However, there are ICF/MR facilities that care for the more severely impaired. These ICF/MR facilities are similar to an LTC facility and will be impacted by the 2000 edition of the LSC.

Lastly, we do not believe this rule will affect PACE centers or RNHCI facilities because PACE and RNHCI are new programs and they already meet the 1997 edition of the LSC. The changes from the 1997 edition of the LSC to the 2000 edition of the LSC are negligible. For example, PACE centers and RNHCI facilities have 1.5-hour emergency lighting, no vertical opening problems, and do not have any roller latches. Moreover, because both of these providers are new programs, the SBA does not have an estimate as to how many are considered small businesses. We consider all RNHCIs to be nonprofit entities.

Please note we also provided a cost estimate for each of the provisions with respect to which we believe that each facility will need to upgrade to be in compliance with this final rule in section III.H.

The cost estimate does not take into account any waivers that may be granted. We will retain the existing authority to waive specific provisions of the 2000 edition of the LSC, further reducing the exposure to additional cost and burden for facilities with unique situations that can justify the application of waivers, and that we determine will not endanger the health and safety of patients.

The cost estimate does not factor in any cost reduction if we accept a State's fire and safety code instead of the NFPA's 2000 edition of the LSC. We have the authority to accept a State fire and safety code in lieu of the NFPA LSC if the State code is imposed by State law, and adequately protects patients.

We also note that the 2000 LSC permits the use of the FSES as an alternative approach that may also reduce the cost of compliance significantly. The FSES is an equivalency system. The FSES may allow a facility to comply with the LSC without having to make changes to the facility due to other offsetting or compensating fire protection features that exist in the facility.

We do not know the amount that any of the above waivers or alternatives may save a health care facility because each facility must be reviewed on a case-by-case basis to determine whether the facility will be granted a waiver for a specific provision of the LSC or use its State fire and safety code or if the facility chooses to use the FSES.

While we expect a revised edition of the LSC to be published in 2003, we believe it is imperative to publish this final rule, which incorporates the 2000 edition of the LSC in response to the needs of the providers, States, accrediting organizations, and the public for clarity and consistency with the current regulatory and accreditation setting. The 2000 edition of the LSC includes new provisions that we believe are vital to the health and safety of all patients and staff. This final rule is intended to ensure that beneficiaries continue to experience the highest degree of fire safety possible. We believe by adopting the 2000 edition of the LSC now instead of waiting for the release of the 2003 edition will (1) minimize the burden on health care providers because the standards we currently require most of the providers to follow are at least 15-years old and (2) increase the level of safety for patients and staff. Once the NFPA adopts the 2003 edition of the LSC, we will quickly begin the process of reviewing the revised edition with the intent to publish a proposed rule to set forth requirements we think would be beneficial to the providers, States, accrediting organizations, and the public. Providers, States, accrediting organizations, and the public are requesting that we publish this rule now rather than wait because many of the providers can only comply with our regulations by using older fire safety techniques.

D. The Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule will not have an effect on the governments mentioned, and the private sector costs will not be greater than the $110 million threshold. We discuss specific private sector costs in section VI.C of this rule.

E. Federalism

Executive Order 13132 establishes requirements that an agency must meet when it publishes a final rule that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has Federalism implications.

We have examined this final rule and have determined that this rule will not have a substantial effect on State, local, or tribal governments.

F. Anticipated Effects

While all health care facilities are affected by this regulation, most health care facilities will be affected minimally. Most changes that would occur would be minor and should not adversely impact patients. Each new edition of the LSC builds on prior editions; changes from one edition to the next have been relatively minor since 1985. Many health care providers have updated their facilities since 1985 and already meet most of the provisions in the 2000 edition of the LSC. In fact, most health care providers stated that they are exposed to additional work and expense without any gain in fire safety by continuing to abide by the 1985 edition of the Life Safety Code. For example, the JCAHO requires all its accredited facilities to meet the 1997 edition of the LSC, while Medicare requires all facilities to meet an earlier edition of the LSC. This has caused confusion, as well as additional burden to the health care facility in requesting waivers or changing some of the renovations to meet both editions of the LSC. Updating the LSC will not only relieve burden for health care providers but also assist in ensuring the health and safety of patients and staff.

By adopting the 2000 edition of the LSC, we will eliminate confusion as to which edition a health care facility must follow. The use of a single edition of the code should also contribute to lowering the cost of complying with the requirements for testing and maintenance of fire protection systems under multiple editions of the LSC.

1. Effects on Specific Entities

This rule will affect hospitals, LTC facilities, ICFs/MR, ASCs, hospices that provide inpatient services, RNHCIs, CAHs, and PACE Centers.

2. Effects on Other Providers

We do not expect this regulation to affect any other providers.

3. Effects on the Medicare and Medicaid Programs

If facilities decide to use the performance-based option to meet the requirements of the LSC, we estimate that it could cost approximately $3.5 million in the aggregate for States to survey facility plans using the performance-based option. We estimate that 25 states will be affected by the use of the performance-based option. Our estimate is based on the hiring of one fire protection engineer at an average of $60,000 annual salary and one engineer technician at an average $40,000 annual salary plus minimal travel and training expenses. We expect that we would have to additionally fund the States in order for them to be able to have the expertise to survey any facility using the performance-based option.

G. Alternatives Considered

The statutory basis for incorporating the NFPA's code for nursing homes is specific authority in the Act at sections 1819(d)(2) and 1919(d)(2). For hospitals, the statutory authority to adopt fire safety provisions is section 1861(e)(9) of the Act. To be consistent and to avoid confusion among health care providers, we incorporated the NFPA's 2000 edition of the LSC for all Medicare inpatient facilities under the Secretary's general rulemaking authority.

Alternatively, we could have chosen not to update the fire safety code. This is not an acceptable alternative because many health care facilities are exposed to additional work and expense without any gain in fire safety by continuing to abide by the 1985 edition of the Life Safety Code. For example, the JCAHO requires all its accredited facilities to meet the 1997 edition of the LSC, while Medicare requires all facilities to meet an earlier edition of the LSC. This has caused confusion, as well as additional burden to the health care facility in requesting waivers or changing some of the renovations to meet both editions of the LSC. Updating the LSC will not only relieve burden for health care providers but also assist in ensuring the health and safety of patients and staff.

Please note that while we incorporate the NFPA's 2000 edition of the LSC, all health care providers have other options besides the prescriptive requirements of the LSC. Health care facilities may choose the Fire Safety Evaluation System (FSES) and a facility may apply for a waiver of a specific provision of the LSC if it is unable to meet a specific

requirement. A waiver may be granted for a specific LSC requirement if (1) we determine that the waiver would not adversely affect patient and staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. A provider may request a waiver from its State Agency. The State Agency will review the request and make a recommendation to the appropriate CMS regional office. The CMS regional office will review the waiver request and the State agency's recommendation and make a final decision on the waiver request. A waiver cannot be granted if patient safety is compromised in any way.

H. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this final rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 403

Health insurance, Hospitals, Incorporation by reference, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 416

Health facilities, Incorporation by reference, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Incorporation by reference, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 460

Aged, Health, Incorporation by reference, Medicare, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant programs—health, Hospitals, Incorporation by reference, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Incorporation by reference, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs—health, Health facilities, Incorporation by reference, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare and Medicaid Services amends 42 CFR chapter IV as follows:

PART 403—SPECIAL PROGRAMS AND PROJECTS

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart G—Religious Nonmedical Health Care Institutions—Benefits, Conditions of Participation, and Payment

2. Section 403.744 is amended as follows:

a. The introductory text to paragraph (a) is republished.

b. Paragraph (a)(1) is revised.

c. Paragraph (c) is added.

§ 403.744 Condition of participation: Life safety from fire.

(a) *General.* An RNHCI must meet the following conditions:

(1) Except as otherwise provided in this section, the RNHCI must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes. Chapter 19.3.6.3.2, exception number 2 of the adopted Life Safety Code does not apply to an RNHCI.

* * * * *

(c) *Phase-in period.* An RNHCI must be in compliance with the following provisions beginning on March 13, 2006:

(1) Chapter 19.3.6.3.2, exception number 2.

(2) Chapter 19.2.9, Emergency Lighting.

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Specific Conditions for Coverage

2. Section 416.44 is amended as follows:

a. Paragraph (b)(1) is revised.

b. Paragraph (b)(3) is revised.

c. Paragraph (b)(4) is added.

§ 416.44 Condition for coverage—Environment.

* * * * *

(b) *Standard: Safety from fire.* (1) Except as otherwise provided in this section, the ASC must meet the provisions applicable to Ambulatory Health Care Centers of the 2000 edition of the Life Safety Code of the National Fire Protection Association, regardless of the number of patients served. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes.

* * * * *

(3) The provisions of the Life Safety Code do not apply in a State if CMS finds that a fire and safety code imposed by State law adequately protects patients in an ASC.

(4) An ASC must be in compliance with Chapter 21.2.9.1, Emergency Lighting, beginning on March 13, 2006.

* * * * *

PART 418—HOSPICE CARE

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart E—Conditions of Participation: Other Services

2. Section 418.100 is amended as follows:

a. Paragraph (d)(1) is revised.

b. Paragraph (d)(3) is revised.

c. Paragraph (d)(4) is revised.

§ 418.100 Condition of participation: Hospices that provide inpatient care directly.

* * * * *

(d) *Standard: Fire protection.* (1) Except as otherwise provided in this section, the hospice must meet the provisions applicable to nursing homes of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes. Chapter 19.3.6.3.2, exception number 2 of the adopted edition of the LSC does not apply to a hospice.

* * * * *

(3) The provisions of the adopted edition of the Life Safety Code do not apply in a State if CMS finds that a fire and safety code imposed by State law adequately protects patients in hospices.

(4) A hospice must be in compliance with the following provisions beginning on March 13, 2006:

(i) Chapter 19.3.6.3.2, exception number 2.

(ii) Chapter 19.2.9, Emergency Lighting.

* * * * *

PART 460—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

1. The authority citation for part 460 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395).

Subpart E—PACE Administrative Requirements

2. Section 460.72 is amended as follows:

a. Paragraph (b)(1) is revised.

b. Paragraph (b)(3) is added.

§ 460.72 Physical environment.

* * * * *

(b) *Fire safety—(1) General rule.* (i) Except as otherwise provided in this section, a PACE center must meet the applicable provisions of the 2000 edition of the Life Safety Code (LSC) of the National Fire Protection Association that apply to the type of setting in which the center is located. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes.

(ii) Chapter 19.3.6.3.2, exception number 2 of the adopted edition of the LSC does not apply to PACE centers.

* * * * *

(3) *Phase-in period:* A PACE center must be in compliance with the following provisions beginning on March 13, 2006:

(i) Chapter 19.3.6.3.2, exception number 2.

(ii) Chapter 19.2.9, Emergency Lighting.

* * * * *

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Basic Hospital Functions

2. Section 482.41 is amended as follows:

a. Paragraph (b)(1) introductory text is revised.

b. Paragraph (b)(1)(i) is revised.

c. Paragraph (b)(1)(iv) is added.

§ 482.41 Condition of participation: Physical environment.

* * * * *

(b) *Standard: Life safety from fire.* (1) Except as otherwise provided in this section, the hospital must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes.

(i) Chapter 19.3.6.3.2, exception number 2 of the adopted edition of the LSC does not apply to hospitals.

* * * * *

(iv) A hospital must be in compliance with the following provisions beginning on March 13, 2006:

(A) Chapter 19.3.6.3.2, exception number 2.

(B) Chapter 19.2.9, Emergency Lighting.

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

2. Section 483.70 is amended as follows:

a. Paragraph (a) introductory text is revised.

b. Paragraph (a)(4) is added.

§ 483.70 Physical environment.

* * * * *

(a) *Life safety from fire.* Except as otherwise provided in this section, the facility must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes. Chapter 19.3.6.3.2, exception number 2 of the adopted edition of the LSC does not apply to long-term care facilities.

* * * * *

(4) A long-term care facility must be in compliance with the following provisions beginning on March 13, 2006:

(i) Chapter 19.3.6.3.2, exception number 2.

(ii) Chapter 19.2.9, Emergency Lighting.

* * * * *

Subpart I—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

3. Section 483.470 is amended as follows:

a. Paragraph (j)(1)(i) is revised.

b. Paragraph (j)(1)(iii) is revised.

c. Paragraph (j)(2) is revised.

d. Paragraph (j)(3) is added.

§ 483.470 Condition of participation: Physical environment.

* * * * *

(j) *Standard: Fire protection*—(1) *General.* (i) Except as otherwise provided in this section, the facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes.

* * * * *

(iii) A facility that meets the LSC definition of a residential board and care occupancy must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the Fire Safety Evaluation System for Board and Care facilities (FSES/BC).

(2) *Exceptions for all facilities.* (i) Chapter 19.3.6.3.2, exception number 2 of the adopted LSC does not apply to a facility.

(ii) If CMS finds that the State has a fire and safety code imposed by State law that adequately protects a facility's clients, CMS may allow the State survey agency to apply the State's fire and safety code instead of the LSC.

(iii) The facility must be in compliance with the following provisions beginning on March 13, 2006:

(A) Chapter 19.3.6.3.2, exception number 2.

(B) Chapter 19.2.9, Emergency Lighting.

(3) *Facilities that meet the LSC definition of a health care occupancy.*

(i) After consideration of State survey agency recommendations, CMS may waive, for appropriate periods, specific provisions of the Life Safety Code if the following requirements are met:

(A) The waiver would not adversely affect the health and safety of the clients.

(B) Rigid application of specific provisions would result in an unreasonable hardship for the facility.

(ii) [Reserved]

* * * * *

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

Subpart F—Conditions of Participation: Critical Access Hospitals (CAHs)

2. Section 485.623 is amended as follows:

a. Paragraph (d)(1) is revised.

b. Paragraph (d)(2) is revised.

c. Paragraph (d)(5) is added.

§ 485.623 Condition of participation: Physical plant and environment.

* * * * *

(d) *Standard: Life safety from fire*—(1) Except as otherwise provided in this section, the CAH must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes. Chapter 19.3.6.3.2, exception number 2 of the adopted edition of the Life Safety Code does not apply to a CAH.

(2) If CMS finds that the State has a fire and safety code imposed by State law that adequately protects patients, CMS may allow the State survey agency to apply the State's fire and safety code instead of the LSC.

* * * * *

(5) A critical access hospital must be in compliance with the following provisions beginning on March 13, 2006:

(i) Chapter 19.3.6.3.2, exception number 2.

(ii) Chapter 19.2.9, Emergency Lighting.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: May 9, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 26, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–273 Filed 1–9–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI33

Migratory Bird Hunting; Approval of Tungsten-Iron-Nickel-Tin Shot as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We approve shot formulated of 65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin as nontoxic for hunting waterfowl and coots. We assessed possible effects of the tungsten-iron-nickel-tin (TINT) shot, and we believe that it does not present a significant toxicity threat to wildlife or their habitats and that further testing of the shot is not necessary. Approval of this shot provides another nontoxic option for hunters.

DATES: This rule takes effect on January 10, 2003.

ADDRESSES: Copies of the Environmental Assessment are available from the Chief of the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203–1610.

FOR FURTHER INFORMATION CONTACT: Bob Blohm, Acting Chief, or John J. Kreilich, Jr., Division of Migratory Bird Management, 703–358–1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703B–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Since the mid-1970s, we have sought to identify shot that is not significantly toxic to migratory birds or other wildlife. Compliance with the use of nontoxic shot has increased over the last few years (Anderson *et al.* 2000), and we believe that it will continue to increase with the approval and availability of other nontoxic shot types. Currently, steel, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, and tungsten-nickel-iron shot are approved as nontoxic.

The purpose of this rule is to approve the use of TINT shot in the tested formulation (65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin by weight) for waterfowl and coot hunting. This rule amends 50 CFR 20.21(j), which describes prohibited types of shot for waterfowl and coot hunting, to allow the use of this shot.

Background

On October 12, 2001, we received an application (Tier 1) under 50 CFR 20.134 from ENVIRON-Metal, Inc. for approval of HEVI-SHOT™ brand of Soft Shot in a 65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin formulation. The application included information on chemical characterization, production variability, use volume, toxicological effects, environmental fate and transport, and evaluation. In accordance with our regulation, on May 10, 2002, we published in the **Federal Register** a proposed rule indicating our intention to approve TINT shot. We have reviewed the Tier 1 application, the supporting data, and the public comment, and the Director, U.S. Fish and Wildlife Service, has concluded that this shot does not impose a significant danger to migratory birds and other wildlife or their habitats.

In addition, since the 2000–2001 hunting season is completed, tin (99.9 percent tin with 1 percent residual lead) shot is no longer authorized for use and therefore the reference to it in 50 CFR 20.21(j) is deleted.

Toxicity Information

Tungsten may be substituted for molybdenum in enzymes in mammals. Ingested tungsten salts reduce growth and can cause diarrhea, coma, and death in mammals (Bursian *et al.* 1996, Cohen *et al.* 1973, Karantassis 1924, Kinard and Van de Erve 1941, National Research Council 1980, Pham-Huu-Chanh 1965), but elemental tungsten is virtually insoluble and therefore essentially nontoxic. A dietary concentration of 94 parts-per-million (ppm) did not reduce weight gain in growing rats (Wei *et al.* 1987). Lifetime exposure to 5 ppm tungsten as sodium tungstate in drinking water produced no discernible adverse effects in rats (Schroeder and Mitchener 1975). At 100 ppm tungsten as sodium tungstate in drinking water, rats had decreased enzyme activity after 21 days (Cohen *et al.* 1973).

Chickens given a complete diet showed no adverse effects of 250 ppm sodium tungstate administered for 10 days in the diet. However, 500 ppm in the diet had detrimental effects on day-old chicks (Teekell and Watts 1959). Adult hens had reduced egg production and egg weight on a diet containing 1,000 ppm tungsten (Nell *et al.* 1981a). EPT (1999) concluded that 250 ppm in the diet would produce no observable adverse effects. Kelly *et al.* (1998) demonstrated no adverse effects on mallards dosed with tungsten-iron or tungsten-polymer shot according to nontoxic shot test protocols.

Most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten. As we found in our reviews of other tungsten shot types, we have no basis for concern about the toxicity of the tungsten in TINT shot to fish, mammals, or birds.

Nickel is a dietary requirement of mammals, with necessary consumption set at 50 to 80 parts per billion for the rat and chick (Nielsen and Sandstead 1974). Though it is necessary for some enzymes, nickel can compete with calcium, magnesium, and zinc for binding sites on many enzymes. Water-soluble nickel salts are poorly absorbed if ingested by rats (Nieboer *et al.* 1988). Nickel carbonate caused no treatment effects in rats fed 1,000 ppm for 3 to 4 months (Phatak and Patwardhan 1950). Rats fed 1,000 ppm nickel sulfate for 2 years showed reduced body and liver weights, an increase in the number of stillborn pups, and decrease in weanling weights through three generations (Ambrose *et al.* 1976). Nickel chloride was even more toxic; 1,000 ppm fed to young rats caused weight loss in 13 days (Schnegg and Kirchgessner 1976).

Soluble nickel salts are toxic to mammals, with an oral LD_{50} (lethal dose) of 136 mg/kg in mice, and 350 mg/kg in rats (Fairchild *et al.* 1977). Nickel catalyst (finely divided nickel in vegetable oil) fed to young rats at 250 ppm for 16 months, however, produced no detrimental effects (Phatak and Patwardhan 1950).

In chicks from hatching to 4 weeks of age, 300 ppm nickel as nickel carbonate or nickel acetate in the diet produced no observed adverse effects. However, concentrations of 500 ppm or more

reduced growth (Weber and Reid 1968). A diet containing 200 ppm nickel as nickel sulfate had no observed effects on mallard ducklings from 1 to 90 days of age. Diets of 800 ppm or more caused significant changes in physical condition of the ducklings (Cain and Pafford 1981). Eastin and O'Shea (1981) observed no apparent significant changes in pairs of breeding mallards fed diets containing up to 800 ppm nickel as nickel sulfate for 90 days. We have no basis for concern about the toxicity of nickel in TINT shot to fish, mammals, or birds.

Iron is an essential nutrient, so reported iron toxicosis in mammals, such as livestock, is primarily a phenomenon of overdosing. Maximum recommended dietary levels of iron range from 500 ppm for sheep to 3,000 ppm for pigs (National Research Council [NRC] 1980). Chickens require at least 55 ppm iron in the diet (Morck and Austic 1981). Chickens fed 1,600 ppm iron in an adequate diet displayed no ill effects (McGhee *et al.* 1965), and turkey poults fed 440 ppm in the diet also suffered no ill effects. The tests in which eight No. 4 tungsten-iron shot were administered to each mallard in a toxicity study indicated that the 45% iron content of the shot had no adverse effects on the test animals (Kelly *et al.* 1998). We have no basis for concern about the toxicity of iron in TINT shot to fish, mammals, or birds.

Elemental and inorganic tins have low toxicity, due largely to low absorption rate, low tissue accumulation, and rapid excretion rates. Inorganic tin is only slightly to moderately toxic to mammals. The oral LD_{50} values for tin (II) chloride for mice and rats are 250 and 700 mg/kg of body weight, respectively (WHO 1980).

A 150-day chronic toxicity/reproductive study conducted for tin shot revealed no adverse effects in mallards dosed with eight No. 4 sized shot. There were no significant changes in egg production, fertility, or hatchability of birds dosed with tin when compared to steel-dosed birds (Gallagher *et al.* 2000).

Environmental Fate

Elemental tungsten and iron are virtually insoluble in water and do not weather or degrade in the environment. Tungsten is stable in acids and does not easily form compounds with other substances. Preferential uptake by plants in acidic soil suggests uptake of tungsten when it has formed compounds with other substances rather than when it is in its elemental form (Kabata-Pendias and Pendias 1984).

Nickel is common in fresh waters, though usually at concentrations of less than 1 part per billion in locations unaffected by human activities. Pure nickel is not soluble in water. Free nickel may be part of chemical reactions, such as sorption, precipitation, and complexation. Reactions of nickel with anions are unlikely. Complexation with organic agents is poorly understood (U.S. Environmental Protection Agency [EPA] 1980). Water hardness is the dominant factor governing nickel effects on living things (Stokes 1988).

Tin occurs naturally in soils at 2 to 200 mg/g with areas of enrichment at much higher concentrations (up to 1,000 mg/g) (WHO 1980). However, in the United States, soil concentrations are between 1 and 5 ppm (Kabata-Pendias and Pendias 2001).

Environmental Concentrations

Calculation of the estimated environmental concentration (EEC) of a candidate shot in a terrestrial ecosystem is based on 69,000 shot per hectare (2.47 acre) (Bellrose 1959, 50 CFR 20.134). Assuming complete dissolution of the shot, the EEC for tungsten in soil is 15.09 mg/kg. The EECs for nickel and iron would be 0.65 and 2.41 mg/kg, respectively. The EEC for nickel (the only one of the four elements with an application limit) is substantially below the U.S. Environmental Protection Agency (EPA) biosolid application limit. The 0.65 mg/kg EEC for nickel also is far below the 16 to 35 mg/kg concentrations suggested as minimum sediment concentrations at which effects of the metal are likely to occur (EPA 1997, Ingersoll *et al.* 1996, Long and Morgan 1991, MacDonald *et al.* 2000, Smith *et al.* 1996). The EEC for tungsten from TINT shot is below that for the already-approved TNI shot. The EEC for iron is less than 0.01% of the typical background concentration, and the iron is in an insoluble form. The EEC for tin in soil is 5.06 mg/kg, one order of magnitude smaller than the 50 mg/kg suggested maximum concentration in surface soil tolerated by plants (Kabata-Pendias and Pendias 2001).

Calculation of the EEC in an aquatic ecosystem assumes complete erosion of 69,000 shot in one hectare (2.47 acre) of water 1 foot deep. The EECs for the elements in TINT shot in water are 3,218 µg/L for tungsten, 515 µg/L for iron, 139 µg/L for nickel, and 1,079 µg/L for tin. We concluded that a tungsten concentration of 10,500 µg/L posed no threat to aquatic life (62 FR 4877). The EEC for nickel from TINT shot is below the EPA acute water quality criterion of 1,400 µg/L in fresh water, but would exceed the 75 µg/L criterion for salt water. However, tests showed that corrosion of TINT shot occurs at very low rates. The amount of nickel liberated into seawater by eight No. 4 TINT shot for a 30-day exposure was 23% of the amount liberated by TNI. TINT shot is predicted to release 1.8 µg/L of nickel into 1 ha-ft of seawater over 1 year. This value is 2.4% of the acute criterion and less than 23% of the chronic criterion.

The EEC for iron is below the chronic criterion for protection of aquatic life and for tin; it is four times less than the Minnesota Water Quality Standard. Previous assessments of tungsten demonstrated dissolution at a rate of 10.5 mg/L (equal to 10,500 µg/L) and concluded no risk to aquatic life (62 FR 4877). The EEC of tungsten from TINT shot is 3,218 µg/L. This level is three times less than the 10,500 µg/L level previously mentioned.

Effects on Birds

Kraabel *et al.* (1996) surgically embedded tungsten-bismuth-tin shot in the pectoralis muscles of ducks to simulate wounding by gunfire and to test for toxic effects of the shot. The shot neither produced toxic effects nor induced adverse systemic effects in the ducks during the 8-week period of their study.

Nell *et al.* (1981a) fed laying hens (*Gallus domesticus*) 0.4 or 1.0 g/kg tungsten in a commercial mash for 5 months to assess reproductive performance. Weekly egg production was normal, and hatchability of fertile eggs was not affected. Exposure of chickens to large doses of tungsten either through injection or by feeding resulted in an increased tissue concentration of tungsten and a decreased concentration of molybdenum (Nell *et al.* 1981b). The loss of tungsten from the liver occurred in an exponential manner, with a half-life of 27 hours. The alterations in molybdenum metabolism seemed to be associated with tungsten intake rather than molybdenum deficiency. Death due to tungsten occurred when tissue concentrations increased to 25 ppm in the liver.

A 150-day chronic toxicity/reproductive study conducted for tin shot revealed no adverse effects in mallards dosed with eight No. 4 sized shot. In this investigation, there were no significant changes in egg production, fertility, or hatchability of birds dosed with tin when compared to steel-dosed birds (Gallagher *et al.* 2000).

Toxicity Studies

Ringelman *et al.* (1993) conducted a 32-day acute toxicity study that involved dosing game-farm mallards with tungsten-bismuth-tin shot in a relative composition of 39%, 44.5%, and 16.5% by weight, respectively. No dosed birds died during the trial, and their behavior was normal. Post-euthanization examination of tissues revealed no toxicity or damage related to shot exposure. Blood calcium differences between dosed and undosed birds were judged as unrelated to shot exposure. That study indicated that tungsten presented little hazard to waterfowl.

The Tier 1 application of TINT shot included analyses comparing corrosion data of TNI shot to TINT shot. Samples of both shot types were exposed to seawater for 10.8 days. The two seawater samples were then analyzed for nickel, iron, tungsten, and tin. Samples were then returned to fresh seawater and exposed for an additional 44.5 days, whereupon the seawater solutions were again analyzed for nickel, iron, tungsten, and tin.

The total release of nickel from TINT shot over the 55.3-day exposure was only 13% that of TNI shot. The results indicate that TINT shot shows lower rates of nickel release due to the collection of corrosive materials on surfaces that inhibit additional corrosion.

Assuming that a duck eats 10 No. 4 TINT shot in 1 day and that the shot are completely eroded in the gizzard in 24 hours, the duck would be exposed to .061g of nickel. This amount is slightly more than half of the .102g/day that Eastin and O'Shea (1981) found produced no ill effects on mallards. We believe, therefore, that consumption of nickel from TINT shot is unlikely to have detrimental effects on waterfowl.

Ingestion by Fish, Amphibians, Reptiles, or Mammals

Based on the best available information and past reviews of tungsten-based and tin shot, we expect no detrimental effects due to tungsten, iron, or tin on animals that might ingest TINT shot. We know of no studies of ingestion of nickel by reptiles or amphibians. The exposure of nickel to any animal in these taxa that might consume a TINT shot pellet would be lower, because the pellet likely would not be retained in most animals that might consume one. Their exposure to nickel would therefore be much lower than the worst-case scenario for waterfowl.

Nontoxic Shot Approval

The first condition for nontoxic shot approval is toxicity testing, Tiers 1, 2, or 3 (50 CFR § 20.134). Based on the results of past toxicity tests, we conclude that TINT shot does not pose a significant danger to migratory birds, other wildlife, or their habitats.

The second condition for approval is testing for residual lead levels. We determined that the maximum environmentally acceptable level of lead in shot is 1% (50 CFR § 20.134(b)(5)). ENVIRON—Metal, Inc. has documented that TINT shot meets this requirement.

The third condition for approval involves enforcement. Approval of any nontoxic shot is contingent upon the development and availability of a noninvasive field testing device (50 CFR § 20.134(b)(6)). TINT shotshells can be drawn to a magnet as a simple field detection method.

Public Comments

We received two comments on the May 10, 2002 proposed rule (67 FR 31754) to approve TINT shot for hunting waterfowl and coots. Both comments supported granting approval for use of the shot.

References

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NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we have prepared an Environmental Assessment (EA) for approval of TINT shot. The EA is available to the public at the location indicated in the **ADDRESSES** section.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall Ainsure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *" We have completed a Section 7 consultation under the ESA for this rule. The result of our consultation under Section 7 of the ESA is available to the public at the location indicated in the **ADDRESSES** section.

Executive Order 12866

This rule is not a significant regulatory action subject to OMB review under Executive Order 12866. OMB makes the final determination under E.O. 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

b. This rule will not create inconsistencies with other agencies' actions because the Service is the sole agency responsible for regulating activities under the Migratory Bird Treaty Act.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients because it has no mechanism to affect entitlements, grants, user fees, loan programs or the rights and obligations of their recipients.

d. This rule will not raise novel legal or policy issues because the Service has already approved six other nontoxic shot types.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. This rule approves an additional type of nontoxic shot that may be sold and used to hunt migratory birds; this rule provides one shot type in addition to the existing six that are approved. We have determined, however, that this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others.

Small Business Regulatory Enforcement Fairness Act

Similarly, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

a. This rule does not have an annual effect on the economy of $100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and found it to contain no information collection requirements.

Unfunded Mandates Reform Act

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, *et seq.*, that this rule-making will not impose a cost of $100 million or more in any given year on local or State government or private entities. This rule does not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because it is the Service's responsibility to regulate the take of migratory birds in the United States.

Civil Justice Reform—Executive Order 12988

We have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise privileges that would be otherwise unavailable and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, this proposed regulation does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) Executive Order 13175, and 512 DM 2, we have determined that this rule has no effects on Federally recognized Indian tribes.

Energy Effects

In accordance with Executive Order 13211, this rule, authorized by the Migratory Bird Treaty Act, does not significantly affect energy supply, distribution, and use. This rule is not a significant energy action and no Statement of Energy Effects is required.

Effective Date

Under the Administrative Procedure Act (5 U.S.C. 551–553), our normal practice is to publish rules with a 30-day delay in effective date. In this case, however, we use the "good cause" exemption under 5 U.S.C. 553(d)(3) to make this rule effective upon publication. This rule relieves a restriction, and it is not in the public interest to delay its effective date.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons discussed in the preamble, we amend part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; 16 U.S.C. 742 a–j, Pub. L. 106–108.

2. In § 20.21, revise paragraph (j) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron (40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or tungsten-nickel-iron (50% tungsten: 35% nickel: 15% iron with <1 percent residual lead) shot, or tungsten-iron-nickel-tin (65% tungsten: 10.4% iron: 2.8% nickel: 21.8% tin with < 1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, provided that this restriction applies only to the taking of Anatidae (ducks, geese, (including brant) and swans), coots (Fulica americana) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in § 20.108 as nontoxic shot zones.

Dated: December 11, 2002.

Craig Mason,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–518 Filed 1–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 112702C]

Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of U.S. fish quotas and an effort allocation; correction.

SUMMARY: This document corrects the notification of U.S. fish quotas and an effort allocation published in the **Federal Register** on December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301–713–2276.

SUPPLEMENTARY INFORMATION:

Need for Correction

An incorrect date was was published under the **DATES** heading of the notification of U.S. quota allocations and an effort allocation, FR Doc 02–30751, in the issue of December 4, 2002 (67 FR 72110). That document is corrected to read as follows:

On page 72110, column 2, line 8 "January 3, 2004" is corrected to read "January 24, 2003".

Dated: January 6, 2003.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–522 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020814193–2282–02; I.D. 070102C]

RIN 0648–AQ05

Fisheries of the Exclusive Economic Zone Off Alaska; Extend the Interim Groundfish Observer Program Through December 31, 2007, and Amend Regulations for the North Pacific Groundfish Observer Program; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule that was published in the **Federal Register** on December 6, 2002, which extended the applicability date of the existing regulations for the interim North Pacific Groundfish Observer Program.

DATES: Effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION:

Need for Correction

An incorrect paragraph designation was published under the **DATES** heading of the final rule, FR Doc. 02–30694, in the issue of December 6, 2002 (67 FR 72595). It is corrected as follows:

On page 72595, column 2, line 1 "679.79(a)(3)" is corrected to read "679.7(a)(3)".

Dated: January 6, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–521 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 7
Friday, January 10, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 24

[Docket No. 03–01]

RIN 1557–AC09

Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend 12 CFR part 24, the regulation governing national bank investments that are designed primarily to promote the public welfare. This proposal updates the definition section of the regulation to reflect the additional types of public welfare investment structures that have become more common in recent years and that are permissible under the governing statute. The proposal also clarifies the statutory standard that applies to the activities of those entities; simplifies the standards for making public welfare investments; clarifies how a national bank calculates the value of its public welfare investments for purposes of complying with the rule's investment limits; simplifies the regulation's investment self-certification and prior approval processes; and expands the list of examples of qualifying public welfare investments that satisfy the rule's requirements. These changes are intended to encourage additional public welfare investments by national banks by simplifying the regulation and further reducing unnecessary burden associated with part 24 investments.

DATES: Comments must be received March 11, 2003.

ADDRESSES: Please direct your comments to: Docket No. 03–01, Communications Division, Public Information Room, Mailstop 1–5, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit their comments by fax or by e-mail. You may send comments by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can make an appointment to inspect and photocopy comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: *OCC:* Michele Meyer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874–5750; or Barry Wides, Director, or Karen Bellesi, Investments Manager, Community Development Division, (202) 874–4930.

SUPPLEMENTARY INFORMATION:

I. Background

The OCC is proposing to amend 12 CFR part 24, which contains the rules relating to national banks' investments in community development corporations (CDCs), community development (CD) projects, and other public welfare investments. Part 24 implements 12 U.S.C. 24 (Eleventh), which authorizes national banks to make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities and families, subject to certain percentage-of-capital limitations. (The investments authorized by 12 U.S.C. 24 (Eleventh) are collectively referred to in this proposal as "public welfare investments.") The purpose of this proposal is to make it easier for national banks to use the public welfare investment authority that the statute and regulation provide, and to eliminate unnecessary regulatory burdens currently associated with the investment review and approval process.

The OCC originally adopted part 24 in 1993 and substantially revised the regulation in 1996.[1] The 1996 revisions encouraged national banks to make public welfare investments by eliminating unnecessarily burdensome provisions and streamlining the part 24 procedures. Among other things, the 1996 revisions: Modified the test for determining whether an investment primarily promotes the public welfare; streamlined the procedures for investment self-certification (which permits an eligible bank[2] to make a public welfare investment and notify the OCC after-the-fact) and prior approval of investments; and expanded the list of activities eligible for self-certification.

In 1999, we revised part 24 further by simplifying the prior approval and self-certification requirements that apply to national banks' public welfare investments, expanding the types of investments for which self-certification may be used by removing geographic restrictions, and permitting an eligible bank to self-certify in connection with any eligible public welfare investment.[3]

We are committed to continually reevaluating our rules to reduce unnecessary regulatory burden and simplify compliance, consistent with the safe and sound operation of national banks. Our experience since the 1999 revisions to part 24 has demonstrated the benefits of these efforts. In the year 2001, national banks self-certified compliance in 90 percent of all part 24 investments, compared with 65 percent in 1998. In the same year, national banks and their community partners committed $995 million to part 24 investments, compared with $1.7 million in 1998.

We believe that additional improvements to this regulation could further stimulate part 24 investments fully consistent with safety and soundness considerations. Toward that end, this proposal streamlines the rule to eliminate additional unnecessary regulatory burdens currently associated with the investment review and approval process, as described in greater detail in the next section of this preamble discussion. These changes are designed to further encourage national bank participation in the part 24 investment program, without

[1] *See* 58 FR 68464 (December 27, 1993); and 61 FR 49654 (September 23, 1996).

[2] An "eligible bank" is well capitalized; has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System and at least a "satisfactory" Community Reinvestment Act rating; and is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive. 12 CFR 24.2(e).

[3] *See* 64 FR 31160 (June 10, 1999).

compromising bank safety and soundness.

II. Description of the Proposal

Definitions (§ 24.2)

The proposal adds a new definition of "community and economic development entity." The new definition of "community development entity" replaces the current definition of "community development corporation." A community development corporation is defined in the current regulation as a corporation established by one or more insured financial institutions (with or without other investors) "to make one or more investments that meet the requirements of § 24.3."[4] The proposal defines a community and economic development entity (CDE) as an entity—such as a national bank community development subsidiary, community development financial institution, limited liability company, or limited partnership—that makes investments or conducts activities that primarily benefit low- and moderate-income individuals or areas or other areas targeted for redevelopment.

The proposed definition of CDE better reflects the scope of 12 U.S.C. 24 (Eleventh), which permits a national bank to "make [public welfare] investments directly or by purchasing interests in *an entity* primarily engaged in making such investments." 12 U.S.C. 24 (Eleventh) (emphasis added). The language of the statute does not restrict the entities in which a national bank may invest to a particular form of organization, provided the investing bank is not exposed to unlimited liability. Nor does the legislative history suggest that any such restriction was intended. Accordingly, the OCC has interpreted section 24 (Eleventh) broadly, permitting a national bank to invest in a variety of entities that make public welfare investments themselves or that use a national bank's investment to support other types of public welfare activities.[5] The proposed definition of CDE is consistent with this long-standing interpretation of the statute.

Public Welfare Investments (§ 24.3)

Section 24 (Eleventh) authorizes national banks to make investments "designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as through the provision of housing, services, or jobs)." Current § 24.3 implements this authority by providing that a national bank may make an investment under part 24 if two conditions are met. The first, set forth in current § 24.3(a), requires that the investment primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment[6] by providing or supporting one or more of four enumerated public welfare activities.[7] The second condition, set forth in current § 24.3(b), requires the bank to demonstrate non-bank community support for, or participation in, the investment.[8] The proposal simplifies the text of the first condition and deletes the second.

Under proposed § 24.3, a national bank may make a part 24 investment if the investment primarily benefits low- and moderate-income individuals or areas or other areas targeted for redevelopment by governmental entities.[9] The proposal deletes the four enumerated public welfare activities set forth in current § 24.3(a)(1)–(4). The list is merely illustrative of the types of investments a national bank may make under this part. It appears unnecessary in light of § 24.6, which sets forth examples of public welfare investments a national bank may make under this part (*see* the discussion that follows of proposed changes to § 24.6, including additional examples of permissible investments).

The OCC is also proposing to delete the community support demonstration requirement set forth in current § 24.3(b) because it is not required by statute or the comparable rules that apply to other financial institutions that have Federal statutory investment authority similar to section 24 (Eleventh)[10] and may limit a bank's flexibility in making public welfare investments by hinging the permissibility of the investment on factors other than the nature and purpose of the investment. Moreover, the OCC's experience in implementing part 24 suggests that investments that otherwise meet the requirements of part 24 will receive the support of the communities benefited.

Investment Limits (§ 24.4)

Section 24.4 of the current rule implements the investment limits imposed by 12 U.S.C. 24 (Eleventh). Under both the regulation and the statute, a national bank's aggregate public welfare investments may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the OCC determines that a higher amount will pose no significant risk to the deposit insurance fund. In no case, however, may a bank's aggregate outstanding part 24 investments exceed 10 percent of its capital and surplus.

The proposal amends § 24.4 to clarify that a bank should follow generally accepted accounting principles (GAAP) when calculating the aggregate amount of its part 24 investments, unless otherwise directed or permitted in writing by the OCC for prudential or safety and soundness reasons. Those reasons could exist, for example, if GAAP accounting permits a financially weak bank to increase investments in an unprofitable CDE.

Public Welfare Self-Certification and Prior Approval Procedures (§ 24.5)

Currently, an eligible national bank may make qualifying public welfare investments without prior notification

[4] 12 CFR 24.2(c). Current § 24.3 sets forth the criteria for a public welfare investment, including that the investment primarily benefits low- and moderate-income individuals or areas or other areas targeted for redevelopment, and that the bank demonstrates non-bank community support for the investment.

[5] The annual OCC Directory of National Bank Community Development Investments lists numerous public welfare activities conducted by CDEs, such as the development of affordable housing, job creation, and commercial revitalization. For the most recent examples of such activities, *see* "National Bank Community Development Investments, 2001 Directory."

[6] Under the current regulation, redevelopment areas are those targeted for redevelopment by "local, State, tribal or Federal government (including Federal enterprise communities and Federal empowerment zones) * * *" 12 CFR 24.3(a).

[7] These include affordable housing, equity or debt financing for small businesses, area revitalization or stabilization, and "other activities, services, or facilities that primarily promote the public welfare." 12 CFR 24.3(a).

[8] The current rule permits banks to demonstrate community support by, for example, having non-bank community representatives as members of the board of directors of a CDE or on a separate advisory board for the bank's community development activities; formation of formal business relationships between the bank and a community organization; contractual agreements with community partners to provide services in connection with the proposed investment; joint ventures with local small businesses; and financing for the proposed investment from the public sector or community development organizations or the receipt of Federal low-income housing tax credits by the project in which the investment is made. 12 CFR 24.3(b).

[9] Because the purposes and requirements of section 24 (Eleventh) and the Community Reinvestment Act are different, a part 24 investment does not necessarily qualify for consideration under the Community Reinvestment Act. For example, the Community Reinvestment Act limits the areas in which a bank may invest based on location and income levels, whereas part 24 places no geographic restrictions on a bank's public welfare investment and permits a bank to make an investment in an area that is not low-or moderate-income (provided the area has been targeted for redevelopment).

[10] We note that the Federal Reserve Board's community development regulation (12 CFR 208.22) implements nearly identical statutory authority (12 U.S.C. 338a) and does not require the demonstration of community support for an investment.

to, or approval by, the OCC by submitting a self-certification letter to the OCC within 10 working days after it makes the investment. For all other investments under part 24, a national bank must apply to the OCC for prior approval of an investment proposal. Unless otherwise notified in writing by the OCC, the proposed investment is deemed approved 30 calendar days from the date on which the OCC receives the proposal application.[11]

To emphasize that eligible national banks are not required to seek prior approval of public welfare investments that meet the requirements of §§ 24.3 and 24.4, the proposal changes the title of § 24.5 to "Public welfare investment after-the-fact notice and prior approval procedures," and references in the section to "self-certification" are changed to "after-the-fact notice." The OCC further proposes to simplify the part 24 investment notification processes and make them more consistent with the notification processes established under 12 CFR part 5 for certain equity investments.

Currently, § 24.5(a) requires that a bank's self-certification letter include: (i) The name of the CDC, CD Project, or other entity in which the bank has invested; (ii) the date the investment was made; (iii) the type of investment (equity or debt), the investment activity listed in § 24.3(a) that the investment primarily supports, and a brief description of the particular investment; (iv) the amount of the bank's total investment in the CDC, CD Project, or other entity, and the bank's aggregate outstanding part 24 investments, including the investment being self-certified; (v) the percentage of the bank's capital and surplus represented by the bank's aggregate outstanding part 24 investments, including the investment being self-certified; and (vi) a statement certifying compliance with the requirements of § 24.3 and § 24.4. In this respect, part 24 currently calls for significantly more detail than the procedures prescribed by part 5 that apply where a national bank makes other types of permissible equity investments. Under part 5, a national bank's written after-the-fact notice of certain equity investments must set forth simply "a description, and the amount, of the bank's investment."[12]

The proposal revises § 24.5 to make it more consistent with the part 5 equity investment notification procedures and to remove unnecessary administrative impediments to national bank public welfare investments. The proposal removes the first three elements currently required in a bank's self-certification letter (set forth at current § 24.5(a)(3)(i)–(iii)) to give a bank the flexibility to determine how best to describe a particular investment and to emphasize that such a description may be brief. The proposal also removes the requirement (set forth at current § 24.5(a)(3)(iv)) that a bank provide the amount of its aggregate outstanding part 24 investments because this element is redundant in light of the required certification of compliance with the investment limits set forth in § 24.4.

Thus, the proposal provides that a national bank may make an investment without prior notification to the OCC if the bank submits an after-the-fact notice to the OCC that includes: (i) A description of the bank's investment; (ii) the amount of the investment; (iii) the percentage of the bank's capital and surplus represented by the investment being self-certified and by the bank's aggregate outstanding public welfare investments; and (iv) a certification that the investment complies with the requirements of §§ 24.3 and 24.4. The proposal also applies these modified requirements to the investment prior approval process described in § 24.5(b).[13] The OCC expects the after-the-fact notices and the investment proposals submitted in accordance with these modified requirements will be significantly shorter than the materials submitted under the current rule.[14]

Examples of Qualifying Public Welfare Investments (§ 24.6)

The proposal revises § 24.6 to provide additional examples of the types of investments that meet the requirements of § 24.3. For ease of reference, this list is organized by type of activity (such as affordable housing, economic development and job creation, and investments in CDEs). This list is illustrative of the types of investments a bank may make under this part, and national banks are not limited to the listed investments in creating or expanding their public welfare investment programs.[15]

Conforming Amendments

As we have explained, the proposal changes the definition of "community development corporation" to "community and economic development entity" to better reflect the range of investment vehicles that may be used for making part 24 investments. The proposal revises the title of part 24 to reflect this change. Thus, the proposed title is "Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments."

The proposal also revises the authority statement of the rule (§ 24.1) to refer to "community and economic development entities" rather than "community development corporations."

III. Comments

The OCC requests comment on all aspects of this proposal, including the extent to which these proposed changes will encourage more national banks to make public welfare investments. Commenters are also invited to suggest other revisions that would simplify the standards or streamline the procedures currently contained in part 24.

IV. Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

V. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (November 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?

[11] *See* 12 CFR 24.5 and 24.6.

[12] *See* 12 CFR 5.36(d)(2).

[13] The proposal does not change the triggers for the prior approval process. Thus, a bank that is ineligible for the after-the-fact notice process must seek prior approval of its investments under 12 CFR 24.5(b)(1), unless the OCC has given it permission to use the after-the-fact notice process under 12 CFR 24.5(a)(4). An eligible bank must seek prior approval of: Investments that would exceed the five percent investment limit; investments in other real estate owned; or other investments determined by the OCC to be ineligible for the after-the-fact notice process. 12 CFR 24.4 and 24.5(a)(5).

[14] The OCC expects to revise the sample forms for investment notification and prior approval to reflect this expectation. These sample forms will be available through the OCC's Community Development Division, (202) 874–4930.

[15] For more examples of the types of investments a bank may make under part 24, *see* "National Bank Community Development Investments, 2000 Directory."

- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

VI. Regulatory Flexibility Act

An agency must prepare a Regulatory Flexibility Analysis if a rule it proposes will have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605. If, after an analysis of a rule, an agency determines that the rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) provides that the head of the agency may so certify.

The OCC has reviewed the impact this proposed rule will have on small national banks. For purposes of this Regulatory Flexibility Analysis and proposed regulation, the OCC defines "small national banks" to be those banks with less than $150 million in total assets. Based on that review, the OCC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal would reduce regulatory burden on all national banks by simplifying the requirements and procedures applicable to part 24 investments. The economic impact of this proposal on national banks, regardless of size, is not expected to be significant, though some national banks may benefit from a modest reduction in compliance costs.

VII. Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

VIII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking requires no further analysis under the Unfunded Mandates Act.

IX. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in this notice of proposed rulemaking have been submitted to OMB for review and approval under OMB Control Number 1557–0194.

The revisions of the information collections contained in the notice of proposed rulemaking are expected to reduce annual paperwork burden for respondents because it eliminates certain application and notification requirements. The information collection requirements in this notice of proposed rulemaking are contained in §§ 24.5(a) and 24.5(b). Section 24.5(a) requires a national bank to submit an after-the-fact notice of public welfare investments to the OCC. The time per response to complete an after-the-fact notice is estimated to be 1.5 hours and the number of respondents is estimated to be 195 national banks. Section 24.5(b) requires a national bank to submit an investment proposal to the OCC if the bank does not meet the requirements for after-the-fact notification. The time per response to complete an investment proposal is estimated to be 1.5 hours and the number of respondents is estimated to be 22.

Section 24.5(a)(4) contains an existing requirement for certain national banks to submit a letter requesting authority to submit after-the-fact notices of their investments. The time per response is approximately 30 minutes and the number of respondents is estimated to be four.

The likely respondents are national banks.

Estimated number of respondents: 221.

Estimated number of responses: 221 responses.

Estimated total burden hours: 327.5 hours.

The OCC invites comments on: (1) Whether the collection of information contained in the proposed rulemaking is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected:

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be sent to: Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, Legislative and Regulatory Activities Division, Attention: 1557–0194, 250 E Street, SW., Mailstop 8–4, Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit their comments by fax to 202–874–4889 or by e-mail to *jessie.dunaway@occ.treas.gov.*

Joseph F. Lackey, Jr., Desk Officer, Office of Information and Regulatory Affairs, Attention: 1557–0194, Office of Management and Budget, Room 10235, Washington, DC 20503. Comments may also be sent by e-mail to *jlackeyj@omb.eop.gov.*

List of Subjects in 12 CFR Part 24

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend part 24 of chapter I of title 12 of the Code of Federal Regulations as follows:

1–2. Revise the part heading of part 24 to read as follows:

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

3. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24 (Eleventh), 93a, 481 and 1818.

4. In part 24, revise all references to "community development corporation" and "CDC" to read "community and economic development entity" and "CDE."

5. In § 24.2, revise paragraph (c) to read as follows:

§ 24.2 Definitions.

* * * * *

(c) *Community and economic development entity* (CDE) means an entity that makes investments or conducts activities that primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment. The following is a non-exclusive list of examples of the types of entities that may be CDEs:

(1) National bank community development corporation subsidiaries;

(2) Private or nonbank community development corporations;

(3) CDFI Fund-certified Community Development Financial Institutions or Community Development Entities;

(4) Limited liability companies or limited partnerships;

(5) Community development loan funds or lending consortia;

(6) Community development real estate investment trusts;

(7) Business development companies;

(8) Community development closed-end mutual funds;

(9) Non-diversified closed-end investment companies; and

(10) Community development venture or equity capital funds.

* * * * *

6. Revise § 24.3 to read as follows:

§ 24.3 Public welfare investments.

A national bank may make an investment under this part if the investment primarily benefits low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment.

7. In § 24.4, revise paragraph (a) to read as follows:

§ 24.4 Investment limits.

(a) *Limits on aggregate outstanding investments.* A national bank's aggregate outstanding investments under this part may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the OCC determines, by written approval of the bank's proposed investment pursuant to § 24.5(b), that a higher amount will pose no significant risk to the deposit insurance fund. In no case may a bank's aggregate outstanding investments under this part exceed 10 percent of its capital and surplus. When calculating the aggregate amount of its aggregate outstanding investments under this part, a national bank should follow generally accepted accounting principles, unless otherwise directed or permitted in writing by the OCC for prudential or safety and soundness reasons.

* * * * *

8. In § 24.5:

a. Revise the section heading;

b. revise paragraphs (a) and

c. revise paragraphs (b)(1) and (b)(2) to read as follows:

§ 24.5 Public welfare investment after-the-fact notice and prior approval procedures.

(a) *After-the-fact notice of public welfare investments.* (1) Subject to § 24.4(a), an eligible bank may make an investment authorized by 12 U.S.C. 24 (Eleventh) and this part without prior notification to, or approval by, the OCC if the bank follows the after-the-fact notice procedures described in this section.

(2) An eligible bank shall provide an after-the-fact notification of an investment, within 10 working days after it makes the investment, to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(3) The bank's after-the-fact-notice must include:

(i) A description of the bank's investment;

(ii) The amount of the investment;

(iii) The percentage of the bank's capital and surplus represented by the current investment being self-certified and by the bank's aggregate outstanding public welfare investments, including the investment that is the subject of the after-the-fact notice; and

(iv) A statement certifying that the investment complies with the requirements of §§ 24.3 and 24.4.

(4) A national bank that is not an eligible bank but that is at least adequately capitalized, and has a composite rating of at least 3 with improving trends under the Uniform Financial Institutions Rating System, may submit a letter to the Community Development Division requesting authority to submit after-the-fact notices of its investments. The Community Development Division considers these requests on a case-by-case basis.

(5) Notwithstanding the provisions of this section, a bank may not submit an after-the-fact notice of an investment if:

(i) The investment involves properties carried on the bank's books as "other real estate owned"; or

(ii) The OCC determines, in published guidance, that the investment is inappropriate for after-the-fact notice.

(b) *Investments requiring prior approval.* (1) If a national bank does not meet the requirements for after-the-fact investment notification set forth in this part, the bank must submit an investment proposal to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) The bank's investment proposal must include:

(i) A description of the bank's investment;

(ii) The amount of the investment;

(iii) The percentage of the bank's capital and surplus represented by the proposed investment and by the bank's aggregate outstanding public welfare investments, including the proposed investment; and

(iv) A statement certifying that the investment complies with the requirements of §§ 24.3 and 24.4.

* * * * *

9. Revise § 24.6 to read as follows:

§ 24.6 Examples of qualifying public welfare investments.

Investments that primarily support the following types of activities are examples of investments that meet the requirements of § 24.3:

(a) Affordable housing activities, including:

(1) Investments in an entity that finances, acquires, develops, rehabilitates, manages, sells, or rents housing primarily for low- and moderate-income individuals;

(2) Investments in a project that develops or operates transitional housing for the homeless;

(3) Investments in a project that develops or operates special needs housing for disabled or elderly low- and moderate-income persons; and

(4) Investments in a project that qualifies for the Federal low-income housing tax credit;

(b) Economic development and job creation investments, including:

(1) Investments that finance small businesses (including equity or debt financing and investments in an entity that provides loan guarantees) that are located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments in an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a low- and moderate-income area and occupied primarily by small businesses, or that is occupied primarily by small businesses that produce or retain permanent jobs, the majority of which

are held by low- and moderate-income individuals; and

(3) Investments in low- and moderate-income areas that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(c) Investments in community development entities, including:

(1) Investments in a national bank that has been approved by the OCC as a national bank with a community development focus;

(2) Investments in a community development financial institution, as defined in 12 U.S.C. 4742(5);

(3) Investments in a community development entity that is eligible to receive New Markets tax credits under 26 U.S.C. 45D; and

(d) Other public welfare investments, including:

(1) Investments that provide credit counseling, job training, community development research, and similar technical assistance services for non-profit community development organizations, low- and moderate-income individuals or areas, or small businesses located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments of a type approved by the Federal Reserve Board under 12 CFR 208.22 for state member banks that are consistent with the requirements of § 24.3; and

(3) Investments of a type previously determined by the OCC to be permissible under this part.

Dated: December 23, 2002.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–362 Filed 1–9–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–550]

RIN 1218–AB97

Commercial Diving Operations

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; request for comments and scheduling of informal public hearings.

SUMMARY: OSHA is proposing to amend its Commercial Diving Operations standards to allow employers of recreational diving instructors and diving guides to use an alternative to the decompression-chamber requirements for post-dive procedures and mixed-gas diving. The proposed alternative would apply only when these employees are engaging in recreational diving instruction and diving guide duties using an open-circuit, a semi-closed-circuit, or a closed-circuit self-contained underwater breathing apparatus supplied with a breathing gas consisting of a high percentage of oxygen mixed with nitrogen.

DATES: Submit written hearing requests and comments regarding this proposal, including comments on the information-collection determination described in Section V of the preamble ("Paperwork Reduction Act)," by the following dates:

Hard copy. Submitted (postmarked or sent) by April 10, 2003.

Facsimile and electronic transmission. Sent by April 10, 2003.

Please see the section entitled "Supplementary Information" below for additional information on submitting written comments and hearing requests:

ADDRESSES: *Comments and Attachments: Regular mail, express delivery, hand-delivery, and messenger service.* Submit three copies of written comments and attachments to the OSHA Docket Office, Docket No. S–550, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Please note that security-related problems may result in significant delays in receiving comments and other written materials by regular mail. Telephone the OSHA Docket Office at (202) 693–2350 for information regarding security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service.

Facsimile. Transmit written comments (including attachments) consisting of 10 or fewer pages by facsimile to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket No. S–550, in your comments.

Electronic. Submit comments electronically through the Internet at *http://ecomments.osha.gov*. Please note that you cannot attach materials such as studies or journal articles to electronic comments. If you have such materials, you must submit three copies of them to the OSHA Docket Office at the address above. These materials must clearly identify your electronic comments by name, date, subject, and docket number so we can attach them to your comments.

All comments and submissions will be available for inspection and copying in the OSHA Docket Office at the address above. Comments and submissions posted on OSHA's Web page will be available at *http://www.osha.gov*. Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available on the OSHA Web page and for assistance in using this Web page to locate docket submissions. Because comments sent to the docket or to OSHA's Web page are available for public inspection, the Agency cautions interested parties against including in these comments personal information such as social security numbers and birth dates.

Hearing Requests: Send hearing requests in quadruplicate to Ms.Veneta E. Chatmon, Office of Public Affairs, Docket No. S–550, Room N–3649, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. Interested parties may transmit these requests by facsimile to Ms. Chatmon at (202) 693–1634.

FOR FURTHER INFORMATION: For general information and press inquiries, contact Ms. Bonnie Friedman, Office of Information and Consumer Affairs, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Ms. Joanne Slattery, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2056 or fax (202) 693–1663. Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210; telephone (202) 693–1888. For an electronic copy of this notice, go to OSHA's Web site (*http://www.osha.gov*), and select "**Federal Register**," "Date of Publication," and then "2002."

SUPPLEMENTARY INFORMATION:

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XII. Proposed Amendment to the Standard

I. Background

The Agency published a final rule in 1977 regulating the occupational safety and health employees engaged in commercial diving operations under 29 CFR part 1910, subpart T (42 FR 37668). In 1999, acting under Section 6(d) of the Occupational Safety and Health Act of 1970 ("OSH Act"; 29 U.S.C. 655), OSHA published an order granting a permanent variance to Dixie Divers, Inc. ("Dixie") (Ex. 2–11). The permanent variance exempted Dixie from OSHA's decompression-chamber requirements specified at § 1910.423(b)(2) and (c)(3)(iii), and § 1910.426(b)(1) when its recreational diving instructors and diving guides engage in underwater instructional and guiding operations. The variance applies only to mixed-gas diving operations at a maximum depth of 130 feet of sea water ("fsw") performed within the no-decompression limits; employees used a breathing-gas mixture consisting of a high percentage of O_2 mixed with nitrogen (*i.e.*, a nitrox breathing-gas mixture) supplied by an open-circuit, semi-closed-circuit or closed-circuit SCUBA. In issuing the permanent variance, the Agency noted that it met or exceeded the level of protection afforded by OSHA's decompression-chamber requirements.

In a letter dated February 4, 2000, Mr. Jeff Nadler, Vice President of the Professional Association of Diving Instructors Americas, requested guidance from OSHA regarding other employers of recreational diving instructors who complied with the conditions of the permanent variance granted to Dixie (Ex. 3–1). The Agency responded to Mr. Nadler on May 3, 2000, stating that it would consider such employers "to be in de minimis violation of the decompression-chamber requirements specified at paragraphs (b)(2) and (c)(3)(iii) of § 1910.423(b)(2), and paragraph (b)(1) of § 1910.426(b)(1)." OSHA noted that "[d]e minimis violations carry no penalties, do not require abatement and no citations are issued."

While the de minimis policy may provide regulatory relief to some employers, it has several disadvantages. For example, many employers prefer not to invoke the policy because they remain in violation of the applicable standard even though the violation is only "technical" and has no enforcement consequences (see OSHA's "Field Inspection Reference Manual," chapter III, paragraph C.2.g. (September 26, 1994)). Additionally, some employers may not know of the policy and, therefore, are unable to benefit from it. Accordingly, the Agency is now proposing to amend its Commercial Diving Operations ("CDO") standards to incorporate the terms and conditions of the Dixie Divers variance into the standard itself. OSHA believes that the proposed amendment would improve the effectiveness of recreational diving instructors and diving guides by enabling them to remain at the maximum diving depth without developing decompression sickness ("DCS") or arterial gas embolism ("AGE") when they return to the surface. By preventing DCS and AGE under these conditions, the proposed amendment would make a decompression chamber near the dive site unnecessary for these divers.

II. Summary and Explanation of the Proposal

OSHA has now had nearly three years of experience with the conditions of the permanent variance granted to Dixie (and with the subsequent application of these conditions by other employers under the de minimis policy). Based on this experience, the Agency believes that diving operations involving recreational instruction and guiding, when performed under the alternative conditions specified in this proposed rule, either meet or exceed the level of employee protection afforded by the diving standard's decompression-chamber requirements. The purpose of having a decompression chamber available and ready for use at the dive site is to treat DCS, which may occur from breathing air or mixed gases at diving depths and durations that require decompression, and AGE, which may result from over-pressurizing the lungs, usually while ascending rapidly to the surface during a dive.

As with the permanent variance granted to Dixie, this proposed rulemaking would impose a number of conditions on employers of recreational diving instructors and diving guides. The following sections describe these conditions, and provide the rationale for including them in this proposal.

A. Proposed §§ 1910.401(a)(3) and 1910.402 ("Definitions")

Proposed § 1910.401(a)(3) specifies that this regulatory alternative would apply only to recreational diving instructors and diving guides who are engaging solely in recreational diving instruction and dive-guiding operations. In this regard, OSHA is proposing to add definitions of "recreational diving instruction" and "dive-guiding operations" to § 1910.402 of the CDO standards to clarify the application of the proposed alternative. Accordingly, "recreational diving instruction" would mean the training of diving students in the use of recreational diving procedures and the safe operation of diving equipment, including open-circuit, semi-closed-circuit, or closed-circuit SCUBA during dives; additionally, "dive-guiding operations" would mean the leading of groups of trained sports divers, who use open-circuit, semi-closed-circuit, or closed-circuit SCUBA, to local undersea diving locations for recreational purposes. In addition, proposed § 1910.401(a)(3) requires that employers ensure that the instructors and guides conduct these dives within the no-decompression limits, and use a nitrox breathing-gas mixture consisting of a high percentage of O_2 (more than 22% by volume) mixed with nitrogen and supplied by an open-circuit, semi-closed-circuit, or closed-circuit self-contained underwater breathing apparatus; employers also must comply with the requirements specified in Appendix C of subpart T.

As noted in the Dixie Diver variance (64 FR 71257), OSHA believes that by limiting application of the proposed alternative as discussed above, recreational diving instructors and diving guides who dive according to the proposed requirements would receive a level of safety and protection equivalent to recreational diving instructors who are exempted from the CDO standards altogether under § 1910.401(a)(2)(i); the recreational diving instructors covered

by § 1910.401(a)(2)(i) must use compressed air supplied to open-circuit SCUBAs under no-decompression diving limits. Therefore, under the proposed alternative, the Agency would not require employers to maintain a decompression chamber at the dive site when they comply with the specified requirements because it believes that compliance with these requirements will reduce the risk of AGE and DCS to the minimal levels already experienced by recreational diving instructors covered by § 1910.401(a)(2)(i).

B. Alternative Conditions of Proposed Appendix C

Proposed Appendix C would be mandatory for any employer who uses the alternative means of compliance for recreational diving instructors and diving guides. The following section sets out the requirements in proposed Appendix C, and provides the rationale for each requirement.

1. Equipment Requirements for Rebreathers

(a) *Manufacturer's instructions.* Proposed Condition 1(a) requires employers to ensure that their recreational diving instructors and diving guides (hereafter, "divers") use rebreathers (*i.e.*, semi-closed circuit and closed-circuit SCUBA) according to the rebreather manufacturer's instructions. The manufacturers of these rebreathers select and develop the characteristics and parameters of SCUBA equipment, design and integrate the equipment accordingly, procure or manufacture the equipment components, and then assemble and test the final products. Accordingly, a wide range of SCUBA designs and capabilities are available, and no uniform standards govern the design, function, and use of this equipment. Therefore, OSHA believes that the SCUBA manufacturer is in the best position to identify and specify the components, configuration, and operation of its product, a position that several SCUBA manufacturers endorse (see Ex. 3–4, p. 14–2).

(b) *Counterlungs.* Under the proposed condition, employers must ensure that each rebreather has a counterlung (also referred to as an "inhalation bag" or "breathing bag") that supplies a sufficient volume of breathing gas to the divers to sustain their respiration rate, and that contains a baffle system that prevents moisture from entering the scrubber or breathing hoses. Counterlungs are low-breathing-resistance reservoirs that supply the nitrox breathing-gas mixture to a diver during inhalation; accordingly, the National Oceanic and Atmospheric Administration (NOAA) considers counterlungs a necessity for rebreather diving (see Ex. 3–12, p. 14–3).

While the proposed condition does not specify a particular counterlung configuration, it would require that the counterlung have a minimum volumetric displacement sufficient to sustain a diver's respiration rate during diving operations. In this regard, OSHA believes that rebreather manufacturers currently provide this information as a usual and customary practice. Accordingly, the proposal would require the employer to ensure that its divers' rebreathers have adequate counterlung volume, and that their divers use the rebreathers according to the manufacturer's instructions. The employer of these divers is in the best position to determine the respiratory requirements associated with their diving operations, and to identify and select a rebreather based on these requirements.

The proposed condition also specifies that a rebreather must contain a baffle system that keeps moisture from entering the scrubber. Accordingly, the proposed baffle system would prevent rapid deterioration of the CO_2-sorbent material housed in the scrubber, thereby decreasing the risk of CO_2 toxicity (see Ex. 3–12, p. 14–8).

(c) *Moisture traps.* Proposed Condition 1(c) requires that the employer use a moisture trap in the breathing loop of each rebreather, and that both the moisture trap and its location in the breathing loop be approved by the rebreather manufacturer. Moisture traps are necessary to keep water out of the CO_2-absorbing canisters; when such water leakage occurs, it can substantially reduce the CO_2-absorbing properties of the sorbent material inside the canister. Evidence from the record of the Dixie Diver variance proceedings (Exs. 3–5, 3–6, and 3–7) indicates that moisture traps are available commercially and that existing rebreathers routinely use them.

(d) *Moisture sensors.* Under proposed Condition 1(d), employers must ensure that each rebreather has a continuously functioning moisture sensor that connects to a visual (*e.g.*, digital, graphic, or analog) or auditory (*e.g.*, voice, pure tone) alarm that warns divers of moisture in the breathing loop in sufficient time to terminate the dive and return safely to the surface. Moisture sensors detect excessive water leakage into the canister that can compromise the CO_2-sorbent material; therefore, they supplement the information provided by CO_2 sensors (see proposed Condition 1(e) below). Therefore, moisture sensors warn divers of hazardous water leakage into the canister, allowing them to return to the surface before CO_2 in the recycled breathing gas reaches dangerous levels. Information submitted in response to the Dixie's variance request (Ex. 3–7) indicates that moisture sensors are commercially available.

Rebreather manufacturers determine the appropriate design and location of moisture sensors and moisture traps for their products. The proposal requires employers to ensure that their divers use these components consistent with the rebreather manufacturer's instructions. The moisture sensor must alert the diver of moisture in the breathing loop in sufficient time to terminate the dive and return safely to the surface.

(e) *CO_2 sensors.* An important component in controlling excessive CO_2 is the CO_2 sensor. Proposed Condition 1(e) specifies that employers must ensure that each rebreather contains a continuously functioning CO_2 sensor in the breathing loop, and that the rebreather manufacturer has approved the CO_2 sensor and its location in the breathing loop. Additionally, employers must integrate this CO_2 sensor with an alarm that operates in a visual (*e.g.*, digital, graphic, or analog) or auditory (*e.g.*, voice, pure tone) mode, is readily detectable by divers under the diving conditions in which they operate, and remains continuously activated when the inhaled CO_2 level reaches and exceeds 0.005 atmospheres absolute ("ATA").[1]

(f) *Calibrating CO_2 sensors.* To ensure that CO_2 sensors operate correctly, proposed Condition 1(f) states that employers must, before each day's diving operations (and more often when necessary) calibrate each CO_2 sensor according to the sensor manufacturer's instructions. In doing so, they are to maintain the accuracy of the equipment and procedures used to perform the calibration to within 10% of a CO_2 concentration of 0.005 atmospheres absolute or less according to the sensor manufacturer's instructions. Using this equipment, they must calibrate the CO_2 sensor to within 10% of a CO_2 concentration of 0.005 ATA or less.

(g) *Faulty CO_2 sensors.* When a sensor fails to meet this accuracy standard, proposed Condition 1(g) requires employers to replace the faulty sensor, and to ensure the accuracy of the

[1] ATA, as used in this notice, is the partial pressure of a constituent gas in the total pressure of a breathing gas. When the percentage of the constituent gas in the breathing gas remains constant throughout a dive, its partial pressure or ATA, increases in direct proportion to increases in diving depth.

replacement sensor before placing the rebreather in operation. Determining the accuracy of CO_2 sensors is necessary to enable employers to eliminate sensors that are unreliable or that cannot function under rugged diving conditions. Using a test or standard gas containing a CO_2 concentration of 0.005 ATA or less will ensure that the sensors can accurately detect CO_2 levels that can be harmful to the divers (see Ex. 3–12, p. 3–10). In view of the harmful effects that can result from high levels of CO_2, the sensors need to have a maximum error rate of no more than 10% of a CO_2 partial pressure of 0.005 ATA. This limit would provide an adequate safety margin to allow employees to detect CO_2 accumulation, make a preliminary effort to identify the cause and adjust breathing-system controls, and ascend to the surface if necessary.

(h) *CO_2-sorbent materials.* This proposed condition allows employers to implement the manufacturers' schedules for replacing the canister of CO_2-sorbent material in the rebreather as an alternative to using continuously functioning CO_2 sensors (see proposed Condition 1(e)). The proposed condition permits employers to use such a schedule only after the rebreather manufacturer develops the schedule according to the canister-testing protocol specified below in proposed Condition 11. This proposed requirement would ensure that the canister-replacement schedule meets quality-control criteria, including an assessment of the physical properties of the CO_2-sorbent material and an evaluation of the canister's effectiveness using a standard canister-testing protocol (*e.g.*, see proposed Condition 11 ("Testing Protocol for Determining the CO_2 Limits of Rebreather Canisters"). The protocol would permit the employer to make reliable estimates of canister duration, thereby allowing replacement of the canister before the CO_2-sorbent material fails and the diver breathes excessive levels of CO_2.

(i) *Commercially pre-packed cartridges.* When the employer uses a CO_2-sorbent replacement schedule, proposed Condition 1(i) requires the employer to ensure that each rebreather uses a manufactured (*i.e.*, commercially pre-packed), disposable scrubber cartridge. This cartridge must contain a CO_2-sorbent material that is approved by the rebreather manufacturer and is capable of removing CO_2 from the divers' exhaled gas. In this regard, the canister must maintain the CO_2 level in the breathable gas (*i.e.*, the gas a diver is inhaling directly from the regulator) below a partial pressure of 0.01 ATA.[2] The Agency believes that this proposed condition would ensure proper compression and uniform distribution of the sorbent material in the cartridge, thereby preventing "channeling" in the material.[3] By preventing channeling, the proposed condition would lower the diver's risk of rebreathing exhaled breathing gas that is high in CO_2.

(j) *Alternative to commercially pre-packed cartridges.* Under this proposed condition, employers may fill CO_2 scrubber cartridges manually instead of using commercially pre-packed cartridges. This practice would be acceptable if the employer meets all of the following conditions: The rebreather manufacturer permits employers to use this alternative method; the employer implements the alternative method according to the rebreather manufacturer's instructions; and the employer can demonstrate that the alternative method meets the performance requirements for commercially pre-packed cartridges specified by proposed Conditions 1(h) and 1(i). Therefore, the employer must be able to demonstrate to an OSHA compliance officer during an inspection that the manually filled cartridges are at least as effective as commercially pre-packed cartridges in removing CO_2 from the breathing loop. The Agency believes that employers can obtain information regarding the effectiveness of manually filled and pre-packed cartridges from the rebreather manufacturers.

(k) *Information module.* Condition 1(k) specifies that employers must ensure that their divers use an information module that provides them with critical dive information regarding electrical functions, gas pressures, and water temperature. For all rebreathers, the module must contain visual or auditory warning devices that would alert the diver to electrical weaknesses or failures (*e.g.*, solenoid failure, low battery levels). In addition, modules used in semi-closed circuit rebreathers must contain visual displays for the partial pressure of CO_2, or deviations above and below a preset CO_2 partial pressure of 0.005 ATA. For closed-circuit rebreathers, the module also must have visual displays for the partial pressures of O_2 and CO_2, or deviations above and below a preset CO_2 partial pressure of 0.005 ATA and a preset O_2 partial pressure of 1.40 ATA, plus a visual display for both gas temperature in the breathing loop and water temperature (see the discussion of water- and gas-temperature sensors under proposed Condition (2)(a) below). Warning divers of electrical weaknesses and failures would alert them that they should stop relying on their electrically operated equipment, especially sensors, and take protective actions. Providing information about O_2 and CO_2 partial pressures will alert divers to toxic levels of these gases in time for them to prevent extended exposure.

While employers could provide recreational diving instructors and diving guides with dive-decompression computers for these purposes, OSHA believes that such computers are unnecessary because the divers would be diving within no-decompression limits, and the technical capability of dive-decompression computers far exceeds what is needed for no-decompression dives.

(l) *Checking electrical power and circuits.* As noted above for proposed Condition 1(k), the information module must warn divers of low battery voltage when they are operating either semi-closed-circuit and closed-circuit rebreathers. In this regard, a partial or total electronic failure could interfere with sensor and control systems and have serious safety consequences for the diver. Therefore, OSHA believes that the diver's safety depends on properly operating electrical power supplies and electrical and electronic circuits. Accordingly, the proposed alternative would require employers to ensure that the electrical power supplies and electrical and electronic circuits in each rebreather are operating as required by the rebreather manufacturer's instructions. The employer must check for proper operation prior to beginning diving operations each day, and more often when necessary.

2. Special Requirements for Closed-Circuit Rebreathers

(a) *Supply-pressure and temperature sensors.* This proposed condition requires employers to ensure that closed-circuit rebreathers use supply-pressure sensors for the O_2 and diluent gases (*i.e.*, air or nitrogen), as well as continuously functioning sensors for detecting temperature in the inhalation side of the breathing loop and in the ambient water. Supply-pressure sensors

[2] NOAA finds that physiological "strain" responses begin to develop with exposure to CO_2 concentrations over 0.03 ATA (Ex. 3–12, p. 3–10). Therefore, OSHA believes that a threshold limit for CO_2 of 0.01 ATA will provide divers with an adequate margin of protection from these effects.

[3] "Channeling" describes open spaces (or channels) that form in the sorbent material, and that permit exhaled breathing gas to pass through that part of the material to the inhalation side of the breathing apparatus with little or no absorption of the CO_2 contained in the exhaled breathing gas. This condition typically results from failing to compress the sorbent material uniformly in the canister (*e.g.*, by shaking the canister vigorously).

would inform divers of the remaining supply of breathing-gas ingredients (*i.e.*, O_2 and air or nitrogen), thereby preventing an unexpected loss of breathing gas during a dive; Low gas supplies would alert the divers to an unusually high consumption of breathing gas, indicating a possible problem with the rebreather. A gas loss also could increase the need for a diver to make a rapid (*i.e.*, emergency) ascent to the surface during a dive, which could result in over-pressurization of the lungs associated with AGE.

OSHA believes that temperature sensors improve diver safety. Water-temperature sensors alert divers to the possibility of hypothermia. In addition, the efficiency of the CO_2-sorbent material deteriorates with decreasing temperatures (see Reference (4), Section III below). Breathing-loop temperature sensors and water-temperature sensors allow divers to estimate the duration of their CO_2-sorbent material. When divers are able to estimate the duration of their CO_2-sorbent material, they can judge how long they can continue diving even if their CO_2 sensors malfunction.

(b) *O_2 sensors.* Under this proposed condition, employers must ensure that at least two O_2 sensors are located in the inhalation side of the breathing loop, and that these O_2 sensors function continuously, are temperature compensated, and approved by the rebreather manufacturer. OSHA believes that this proposal would provide the divers with critical information regarding O_2 levels in the breathing gas, thereby preventing O_2 deficiency or O_2 toxicity resulting, respectively, from low or high O_2 levels in the breathing-gas mixture. By assuring appropriate levels of O_2, the proposed condition would minimize the need for emergency escape and, as a consequence, reduce the risk of developing AGE.

(c) *Calibrating O_2 sensors.* Proposed Condition 2(c) specifies that employers, before the start of each day's diving operations, and more often when necessary, must calibrate O_2 sensors as required by the sensor manufacturer's instructions. Therefore, before they place a rebreather in operation, employers must: (i) Ensure that the equipment and procedures used to perform the calibration are accurate to within 1% of the O_2 fraction by volume; (ii) maintain the accuracy of the calibration equipment as required by the manufacturer of the equipment; (iii) ensure that the sensors are accurate to within 1% of the O_2 fraction by volume; (iv) replace O_2 sensors when they fail to meet the accuracy requirements specified above in proposed Condition 2(c)(iii); and (v) ensure that the replacement O_2 sensors meet the accuracy requirements specified above in proposed Condition 2(c)(iii).

As noted under proposed Condition 3 below, maintaining accurate O_2 levels in the breathing loop is critical to a diver's safety and health. To assure effective operation of O_2 sensors for this purpose, the introduction to proposed Condition 2(c) would require the employer to assess the accuracy of O_2 sensors before the start of each day's diving operations, and more often when necessary. Such an approach is consistent with the usual and customary practices of the rebreather community (see Ex. 3–4, pp. 4–1 through 4–13, and 14–2). In addition, the introduction proposes that the calibration procedures conform to the sensor manufacturer's instructions; this proposal would ensure that the sensors measure accurately the partial pressure of O_2 in the breathing loop.

Proposed Condition 2(c) would provide assurance that divers always have accurate information regarding the level of O_2 in the breathing loop, thereby enabling them to take corrective action should the O_2 level exceed the parameters proposed below in Condition 3 (*e.g.*, decrease O_2 concentration, switch to the "bail-out system" and egress to the surface (see proposed Condition 7 below)).[4] Therefore, accurate information regarding the O_2 level is critical to preventing the central nervous system and pulmonary effects of O_2 toxicity (see proposed Condition 3 below for a detailed discussion of these effects).

In view of the harmful effects that can result from breathing high levels of O_2, OSHA believes that O_2 sensors and associated calibrating equipment and procedures need to be accurate to "within 1% of the O_2 fraction by volume." Assuming that the O_2 sensor and calibrating equipment-procedure each underestimate O_2 at the maximum proposed rate of 1%, and that the diver is breathing a nitrox mix containing 40% O_2 by volume or an O_2 partial pressure of 1.40 ATA (the maximum O_2 concentrations permitted under proposed Condition 3 below), the error would be ±0.8% when the O_2 gauge shows the O_2 level in the breathing loop to be 40% by volume, or ±0.028 ATA when it shows the O_2 level to be 1.40 ATA. The Agency believes that this level of error is acceptable, and well within the O_2 toxicity limits demonstrated by the available evidence (see proposed Condition 3 below). Therefore, this level of accuracy would provide an adequate safety margin for the divers to detect anomalous O_2 concentrations, to attempt to identify the cause and adjust breathing-system controls, and to ascend to the surface when necessary.

(d) *Controlling O_2 delivery.* This proposed condition requires employers to ensure that closed-circuit rebreathers have: (i) A gas-controller package with electrically-operated solenoid O_2-supply valves; (ii) a pressure-activated regulator with a second-stage diluent-gas addition valve; (iii) a manually-operated gas-supply bypass valve to add O_2 and diluent gas to the breathing loop; and (iv) separate O_2 and diluent-gas cylinders to supply the breathing-gas mixture. Under this proposed condition, closed-circuit rebreathers must automatically inject O_2 into the breathing loop to maintain the pre-established O_2 partial pressure in the breathable gas, and automatically add diluent gas (*i.e.*, nitrogen or air) through the regulator to compensate for decreases in gas volume during descent. The diver must also be able to control these functions manually using gas-supply bypass valves provided on the equipment. This equipment would maintain O_2 levels in the breathable gas within the range of partial pressures specified by proposed Condition 3 below, thereby providing assurance that sufficient and reliable breathing-gas pressure are available to deliver breathable gas to the diver without adversely affecting the diver's breathing effort. By reducing the diver's breathing effort, these proposed conditions would reduce CO_2 accumulation caused by an increased rate of breathing and, in turn, would lower the risk of CO_2 toxicity. In addition, by maintaining O_2 in the breathing loop at pre-established levels, this proposal would ensure that divers conform to the pre-established 24-hour single-exposure O_2 limit selected under proposed Condition 4 below.

Paragraph (iv) of proposed Condition 2 requires that employers use separate cylinders to provide the O_2 and diluent gas in the breathing-gas mixture. This proposal would give the diver independent control of these breathing-gas components; such control could be automatic or manual, or some combination of these two modes.

3. O_2 Concentration in the Breathing Gas

Under this proposed condition, employers must ensure that the fraction of O_2 in the nitrox breathing-gas mixture exceeds the fraction of O_2 in compressed air (*i.e.*, more than 22% by volume). For rebreathers, the fraction of O_2 must never exceed an O_2 partial

[4] Although low O_2 levels are rare under nitrox breathing conditions, the sensors also would detect levels of O_2 less than 22% by volume (see proposed Condition 3 below).

pressure of 1.40 ATA; and for open-circuit SCUBA, the O_2 fraction must never exceed 40% by volume or an O_2 partial pressure of 1.40 ATA, whichever exposes divers to less O_2. The proposed requirement that the fraction of O_2 be more than 22% is consistent with the definition of nitrox breathing-gas mixtures, *i.e.*, that they contain more O_2 than air. Specifying upper limits for the O_2 component in the nitrox breathing-gas mixture would prevent divers from developing O_2 toxicity.

The available evidence supports the Agency's conclusion that exposure to a maximum O_2 level of 1.40 ATA (or 40% by volume for open-circuit SCUBA) would prevent O_2 toxicity.[5] Several previous studies found that no O_2 toxicity developed while breathing 1.40 ATA of O_2 for extended periods, but breathing 1.60 ATA of O_2 for the same periods resulted in a significant increase in O_2 toxicity (see Exs. 3–4 (pp. 3–5 through 3–16, P–15 and P–16, and P–37 through P–43), 3–9, and 3–10). OSHA could find no studies showing that O_2 toxicity developed when divers used O_2 at the partial pressures and for the durations proposed in this rulemaking, although in one study, two divers developed pulmonary toxicity when exposed to 1.40 ATA of O_2 for a total of 55 hours over a 3-day period (Ex. 3–4, p. 3–9). However, such an exposure is far in excess of the maximum time limit that recreational divers would experience, or that the O_2-exposure limits specified in the 2001 NOAA Diving Manual or 1995 DSAT[6] report would permit (see discussion regarding proposed Condition 4(a) below).

4. Limiting O_2 Partial Pressure and Diving Depth

(a) *Limiting O_2 partial pressure.* Proposed Condition 4(a) identifies the procedures employers would use to prevent O_2 toxicity. Accordingly, employers must: (i) Determine a diver's O_2 exposure duration using the maximum partial-pressure O_2 exposure during the dive and the total dive time (*i.e.*, from the time the diver leaves the surface until the diver returns to the surface); and (ii) using the diver's exposure duration, ensure that a diver exposed to partial pressures of O_2 between 0.60 and 1.40 ATA does not exceed the 24-hour single-exposure O_2 limits specified by the 2001 NOAA Diving Manual (see Section III below, Reference (1), p. 3–23) or by the 1995 DSAT report entitled "Enriched Air Operations and Resources Guide" (see Section III below, Reference (2), p. 34).

The risk of O_2 toxicity increases with O_2 partial pressure (*i.e.*, dive depth) and dive duration. Therefore, as required by proposed Condition 4(a)(i), employers must use both of these factors to determine O_2 exposure durations.

Proposed Condition 4(a)(ii) refers to 24-hour single-exposure O_2 limits specified in the 2001 NOAA Diving Manual and the 1995 DSAT report entitled "Enriched Air Operations and Resources Guide." Both NOAA and DSAT developed their O_2-exposure limits using models and theories extensively tested in the field for safety and efficacy. The recreational diving industry recognizes and uses both procedures, and, as OSHA noted in granting a permanent variance to Dixie, both procedures would afford divers adequate protection against O_2 toxicity.

Under proposed Condition 4(a), when the employer determines exposure durations and limits divers' exposures accordingly, the Agency believes that they will reduce the divers' risk of O_2 toxicity to the rate found among divers who breathe compressed air from open-circuit SCUBA during no-decompression dives.

(b) *Limiting diving depth.* This proposed condition requires that employers limit the divers covered by this proposed alternative to a maximum depth of 130 fsw or to a maximum O_2 partial pressure of 1.40 ATA, whichever exposes them to less O_2; this proposed condition would apply regardless of the diving equipment they use. This proposed condition would impose an additional constraint on O_2 exposure, further reducing the risk of O_2 toxicity. Moreover, the proposed condition would aid in preventing DCS by limiting the divers' nitrogen exposure; this limitation occurs because O_2 displaces nitrogen in the volume of breathing gas available for use. Therefore, limiting nitrogen exposure and restricting diving depth to 130 fsw would reduce the risk of DCS and, consequently, the need for decompression chambers.

Lowering the partial pressure of nitrogen in a diver's body fluids and tissues, especially in the central nervous system, also would decrease the risk of nitrogen narcosis. Nitrogen narcosis is an anesthetic condition that results when high partial pressures of nitrogen are present in central nervous system tissues; the condition can impair a diver's performance and, in severe cases can result in injury or death (see Section III below, Reference (1), p. 3–20).

5. Mixing and Analyzing the Breathing Gas

(a) *Mixing of breathing gas by the employer.* Under this proposed condition, when employers prepare the breathing-gas mixture, they must: (i) Ensure that properly trained personnel mix nitrox breathing gases, and that nitrogen is the only inert gas used in the breathing-gas mixture; and (ii) ensure that they mix the appropriate breathing-gas mixture before delivering it to the breathing-gas cylinders, using the continuous-flow or partial-pressure mixing techniques specified in the 2001 NOAA Diving Manual, or using a filter-membrane system. This provision would provide quality control over the mixing process, so that the breathing-gas mixture contains the correct proportions of O_2 and diluent gas (*i.e.*, air or nitrogen). It also limits the diluent gas to air or nitrogen because OSHA believes that not enough information is available on other inert diluent gases (*e.g.*, helium, argon, neon, hydrogen) or on trimix (three gas) breathing-gas mixtures to ensure the health and safety of divers under the diving conditions specified by this proposal.

This proposed condition also states a general requirement that mixing processes produce the proper proportions of O_2 and diluent gas prior to filling the SCUBA cylinders; this requirement would provide assurance that the divers' breathing-gas mixtures are correct and safe for use. In addition, it specifies that employers must select from among several mixing techniques commonly used and accepted by the diving industry. These techniques include the use of a "filter-membrane system," a recently developed mixing technique that de-nitrogenates air (*i.e.*, removes nitrogen from air using a filter membrane).[7] After reviewing the technical literature available for this mixing system, the Agency believes that filter-membrane systems, which are commercially available from several manufacturers, would reduce the hazards associated with producing high-O_2 breathing-gas mixtures (*e.g.*, fire, explosion) because the proportion of O_2

[5] Excessive O_2 can impair a diver's central nervous system, resulting in seizures (and, as a consequence, death by drowning); it also can damage to the lungs and compromised pulmonary function.

[6] "DSAT" is an acronym for "Diving Science and Technology," the research component of the International Professional Association of Diving Instructors, Inc., a trade association representing recreational diving instructors.

[7] Filter-membrane systems produce nitrox breathing-gas mixtures in two steps: First, they route air through filters to remove hydrocarbons and other contaminants; then they pass the decontaminated air through membranes that transfer O_2 across the membrane fibers at higher rates than nitrogen (hence, "de-nitrogenating" the air). As the rate of air flow across the membrane fibers increases, the resulting ratio of O_2 to nitrogen also increases.

in these systems never exceeds 40% by volume.

(b) *Analyzing O_2.* This proposed condition requires employers, before the start of each day's diving operations, to determine the O_2 fraction of the breathing-gas mixture using an O_2 analyzer. In doing so, they must: (i) Ensure that the O_2 analyzer is accurate to within 1% of the O_2 fraction by volume; and (ii) maintain this accuracy as required by the manufacturer of the analyzer. These provisions would ensure that the proportions of O_2 and diluent gas in the breathing-gas mixtures conform to pre-established levels of these gases, thereby ensuring that divers remain within the 24-hour single-exposure O_2 limits under proposed Condition 4 above. The accuracy requirements specified by these provisions are consistent with the accuracy requirements for O_2 found in other requirements of this proposal, and serve the same purpose described for these requirements (see the detailed discussion of these requirements in proposed Condition 2(c) above).

(c) *Commercially supplied breathing gas.* When the breathing gas is a commercially supplied nitrox breathing-gas mixture, this proposed condition requires employers to ensure that the O_2 is Grade A (also known as "aviator's oxygen") or Grade B (referred to as "medical-industrial oxygen"), and meets the specifications, including the purity requirements, found in the ANSI-Compressed Gas Association Commodity Specification for Air, G–7.1–1997. In addition, employers must ensure that the commercial supplier: (i) Determines the O_2 fraction in the breathing-gas mixture using an analytic method that is accurate to within 1% of the O_2 fraction by volume; (ii) makes this determination when the mixture is in the charged tank and after disconnecting the charged tank from the charging apparatus; (iii) documents the O_2 fraction in the mixture; and (iv) provides the employer with a written certification of the O_2 analysis.

OSHA believes that many employers covered by this proposal purchase breathing-gas mixtures commercially. Specifying grades A and B for the O_2 would ensure that divers use the purest O_2 with optimal moisture content in their nitrox breathing-gas mixtures, thereby preventing them from inhaling contaminants, including hydrocarbons, that are known safety hazards. In addition, the O_2 would be at comfortable moisture levels, which would help maintain normal pulmonary function.

The proposed condition also controls the O_2 levels in the mixture by requiring that the accuracy of the method used to analyze O_2 conforms to the tolerance limits specified above under proposed Condition 5(b). The commercial suppliers must analyze the breathing-gas mixture actually contained in the SCUBA cylinders to determine the fraction of O_2 that the divers will breathe, unaffected by O_2 in the storage banks used to fill the SCUBA cylinders. The employer must ensure that the supplier of the breathing-gas mixture documents the O_2 fraction contained in the cylinder mixture, and certifies these results in writing. The written certification serves as a measure of quality assurance, and provides employers with documentation that the breathing-gas mixture contains the required fraction of O_2.

(d) *Using a compressor.* When employers produce nitrox breathing-gas mixtures, before using a compressor in which the gas pressure in any system component exceeds 125 psi, this proposed condition requires them to do the following: (i) Have the compressor manufacturer certify in writing that the compressor is suitable for mixing high-pressure air with the highest O_2 fraction used in the nitrox breathing-gas mixture; (ii) ensure that the compressor is oil-less or oil-free and rated for O_2 service unless the employer complies with the requirements of proposed Condition 5(e) below; and (iii) ensure that the compressor meets the requirements specified in paragraph (i)(1) and (i)(2) of § 1910.430 whenever the highest O_2 fraction used in the mixing process exceeds 40% by volume. The purpose of these proposed conditions is to prevent O_2 explosions during the mixing process, the risk of which increases when gas pressure in a system component exceeds 125 psi.

The requirements of Condition 5(d) would provide quality assurance that the compressor is designed and built so that its components cannot serve as ignition sources that could cause an O_2 explosion. However, if the compressors are not rated as oil-less or oil-free (*i.e.*, oil is used to lubricate components), paragraph (ii) of this condition requires that the compressors comply with the provisions of Condition 5(e) below to prevent the lubricating oil from serving as an ignition source. Paragraph (iii) of this condition addresses cascading processes in which an employer takes O_2 from storage banks that contain O_2 concentrations higher than 40% by volume, and mixes it with diluent gas from separate cylinder banks. The mixed product is a final breathing-gas mixture that does not exceed 40% by volume as required above by proposed Condition 3. Equipment used for this purpose must comply with paragraphs (i)(1) and (i)(2) of § 1910.430 ("Oxygen safety"). These paragraphs require employers to use equipment designed for O_2 service and to clean the equipment of flammable materials before such use. Together with the other provisions of this proposed condition, these equipment requirements would reduce the risk of an O_2 explosion.

(e) *Oil-lubricated compressors.* Before an employer produces nitrox breathing-gas mixtures using an oil-lubricated compressor to mix high-pressure air with O_2, and regardless of the gas pressure in any system component, this proposed condition requires that the employer: (i) Have the compressor manufacturer certify in writing that the compressor is suitable for mixing the high-pressure air with the highest O_2 fraction used in the nitrox breathing-gas mixture; (ii) filter the high-pressure air to produce O_2-compatible air; (iii) have the filter-system manufacturer certify in writing that the filter system used for this purpose is suitable for producing O_2-compatible air; (iv) continuously monitor the air downstream from the filter for hydrocarbon contamination; and (v) use only uncontaminated air (*i.e.*, air containing no hydrocarbon particulates) for the nitrox breathing-gas mixture.

Oil-based lubricants contain hydrocarbons that can ignite in the presence of an enriched O_2 environment during the mixing process, causing an explosion that can injure or kill employees. OSHA believes that these proposed requirements would reduce this risk by ensuring that high-pressure O_2 being pumped through the compressor remains isolated from the oil-based lubricant. Under the proposed conditions, the employer's actions will assure that the air used for the nitrox breathing-gas mixture is not contaminated, while the manufacturer's certification will provide assurance that the equipment will produce and filter this mixture safely. As an additional safety precaution, the monitoring requirement proposed under paragraph (v) would warn the employer that high-pressure O_2 is mixing with the oil-based lubricant, and to take emergency action (*e.g.*, shut off O_2 flow to the compressor and then purge the compressor with an inert gas).

(f) *Compliance with other OSHA standards.* Under this proposed condition, employers must ensure that SCUBA equipment using nitrox breathing-gas mixtures or pure O_2 under high pressure (*i.e.*, exceeding 125 psi) complies with the requirements specified by paragraphs (i)(1) and (i)(2) of § 1910.430. This provision ensures

that this equipment is free of ignition sources that could cause an O_2 explosion. As noted above in the discussion of proposed Condition 3(d)(iii), paragraphs (i)(1) and (i)(2) of § 1910.430 would reduce this risk by requiring employers to use diving equipment designed for O_2 service and to clean the equipment of flammable materials before such use.[8]

6. Use of No-Decompression Limits

(a) *No-decompression procedures.* Under this proposed condition, employers must ensure that divers using nitrox breathing-gas mixtures remain within the no-decompression limits specified for single and repetitive air diving and published in the 2001 NOAA Diving Manual (see Section III below, Reference (1)) or the 1994 DSAT report entitled "Development and Validation of No-Stop Decompression Procedures for Recreational Diving: The DSAT Recreational Dive Planner" (see Section III below, Reference (3)). This proposed condition allows employers to use the no-decompression limits published in the 2001 NOAA Diving Manual or the 1994 DSAT no-decompression tables. OSHA intends to ensure that the divers using nitrox mixtures under the proposed alternative receive the same protection against DCS as is afforded to divers who use air. For this reason, the proposed condition requires that employers ensure that their divers never exceed the no-decompression limits published in either the 2001 NOAA Diving Manual or 1994 DSAT report; in determining these limits, employers must use the partial pressure of nitrogen in the nitrox breathing-gas mixture to derive the equivalent air depth for a specific dive duration (see Ex. 3–12, p. 15–7).

OSHA believes that by adopting these no-decompression limits, the proposed alternative would protect recreational diving instructors and diving guides at least as well as the use of compressed air supplied to open-circuit SCUBAs under no-decompression diving limits. The 1994 DSAT no-decompression limits have been determined to be reliable and valid, based on extensive laboratory and field testing, and have been widely accepted by both the diving and scientific communities (see Appendix E ("Comment and critique from the field") of the 1994 DSAT report).

In determining its no-decompression limits for nitrox breathing-gas mixtures in its 2001 Diving Manual, NOAA applies the equivalent-air-depth ("EAD") formula. Divers using nitrox breathing-gas mixtures can use the EAD formula to determine accurately the no-decompression limits for different nitrogen partial pressures. NOAA applies its EAD formula in determining what equivalent air decompression limits to use with nitrox breathing-gas mixtures. The formula assumes that equivalent nitrogen partial pressures and dive durations will result in similar DCS risk to dives performed with air. OSHA believes that the NOAA EAD formula can accurately estimate the DCS risk associated with nitrox breathing-gas mixtures based on equivalent nitrogen partial pressures and dive durations used in air diving. In the record granting a permanent variance to Dixie, OSHA received evidence addressing the safety and efficacy of the EAD formula from Dr. Edward D. Thalmann (Ex. 2–7). Dr. Thalmann is a world-renowned expert in treating diving-related medical emergencies among recreational divers; he is also the author of a number of scientific publications that address the causes and treatment of diving-related medical emergencies, especially DCS. Based on this research and his field experience, Dr. Thalmann stated that DCS associated with breathing a nitrox gas mixture "should not be substantially different in incidence and severity compared to diving on air[,] provided the [n]itrox no-decompression times are computed from accepted air no-decompression limits using the [NOAA] EAD [formula]." Dr. Thalmann concluded that, within these constraints, "there is no rationale for having different requirements for * * * air and [n]itrox no-decompression diving." Based on Dr. Thalmann's comments, OSHA concludes that NOAA's EAD formula will translate accurately the partial pressure of nitrogen in a nitrox breathing-gas mixture to an equivalent air depth for a specific dive duration, and that employers can rely on this formula to determine safe no-decompression limits for their divers based on the equivalent air dives.

(b) *Dive-decompression computers.* This proposed condition permits employers to use dive-decompression computers designed to regulate decompression when the computers use the NOAA or DSAT no-decompression limits specified in proposed Condition 6(a) and provide output that reliably represents these limits. OSHA believes that dive-decompression computers are unnecessary because the divers would be diving within no-decompression limits, and the technical capability of most dive-decompression computers exceeds the requirements of no-decompression dives. Nevertheless, the proposal would allow employers the flexibility to use either manual calculations or dive-decompression computers to determine the no-decompression schedules, with the use of dive-decompression computers for this purpose being optional. However, when employers choose to use these computers, they also must provide their diver with specific decompression information, and have a hard-copy of the appropriate decompression tables at the dive site (see proposed Condition 9(c) below). Thus, the proposal specifies the conditions that employers must meet to ensure that their employees' diving activities conform to accepted no-decompression practices, whether or not they use dive-decompression computers.

The Agency finds that restricting the no-decompression limits programmed into the computers to those limits published by the 2001 NOAA Diving Manual and the 1994 DSAT report would prevent employers from using the computers to provide alternate no-decompression limits that could place divers at higher risk for DCS. Operating under this constraint, OSHA concludes that computers may provide an advantage over manual calculations because manual calculations are subject to human error, and computers may reduce such error.

7. Emergency Egress

(a) *Bail-out system for all SCUBAs.* For emergencies involving SCUBA malfunctions that could endanger diver health and safety (*e.g.*, high CO_2 levels), proposed Condition 7(a) requires employers to equip their divers with a reliable emergency-egress system (*i.e.*, a "bail-out system"). The bail-out system would contain a separate supply of breathing gas, which can include air. In addition, the bail-out system would provide the breathing gas to the second stage of the SCUBA regulator. Accordingly, the proposed bail-out system would provide divers with the capability to shift to a known, safe, and immediately available breathing gas, and to terminate the dive safely whenever a CO_2-related problem or other emergency occurs.

(b) *Alternative bail-out system for open-circuit SCUBA.* The proposal would provide an alternative to the bail-out for divers using open-circuit SCUBA. Accordingly, when open-

[8] In addition, employers must comply with other OSHA standards that ensure accurate mixing and decontamination (especially hydrocarbon removal) of nitrox breathing gases, and that employees are protected properly during these activities. These standards include the appropriate provisions of §§ 1910.101 ("Compressed gas (general requirements)") and 1910.169 ("Air receivers").

circuit SCUBA provides the nitrox breathing-gas mixture, the proposal would permit employers to use the emergency-egress procedure (*i.e.*, a reserve breathing-gas supply) specified for open-circuit SCUBA by paragraph (c)(4)(i) of § 1910.424 instead of a separate bail-out breathing-gas system.

Paragraph (c)(4)(i) of § 1910.424 is an emergency-escape provision in OSHA's existing CDO standards that applies to divers who use air-supplied open-circuit SCUBA. Under this provision, employers can maintain a reserve supply of breathing-gas in the breathing-gas cylinders carried by the diver, and that the diver can access in an emergency by manually activating a J valve located on the supply manifold. Having already recognized the safety afforded to divers by this system in the context of air-supplied, open-circuit SCUBA diving, the Agency believes that it would provide a similar level of protection to divers who use open-circuit SCUBA supplied with nitrox breathing-gas mixtures.

(c) *Safety requirements.* This proposed condition requires employers to provide their divers with a system that performs reliably and supplies sufficient emergency breathing gas to enable the diver to terminate the dive and return safely to the surface. Accordingly, this proposed requirement would ensure that the bail-out system used by employees, whether it is an independent or integrated bail-out system, will function appropriately when needed by the diver for emergency egress. The bail-out system must enable the diver to terminate the dive and make a safe and orderly ascent to the surface under "worst-case" conditions, thereby preventing over-pressurization of the lungs associated with AGE. However, OSHA is not proposing a specific capacity for bail-out systems because it believes that the SCUBA manufacturers are in the best position to make this determination. In this regard, a rebreather manufacturer could determine the capacity that is needed for the bail-out system based on critical diving parameters (*e.g.*, depth of dive and breathing rate) provided by the employer.

8. Treating Diving-Related Medical Emergencies

(a) *Availability of medical resources.* This proposed condition requires that employers, prior to beginning diving operations each day, ensure that: (i) A hospital, qualified health-care professionals, and the nearest Coast Guard Coordination Center (or an equivalent rescue service operated by a State, county, or municipal agency) are available for diving-related medical emergencies; (ii) each dive site has a means to alert these treatment resources in a timely manner when a diving-related medical emergency occurs; and (iii) transportation to a suitable decompression chamber is readily available when no decompression chamber is at the dive site, and that this transportation can deliver the injured diver to the decompression chamber within two hours travel time from the dive site. Overall, the proposed provisions would avoid unnecessary delay in treating diving-related injuries by confirming that resources are on call and available to render appropriate treatment, by alerting them to the occurrence of a diving-related medical injury so they can initiate treatment action (*e.g.*, using a pre-programmed electronic system, list of telephone numbers), and by providing timely transportation for the injured diver to the treatment facility. OSHA believes that reducing treatment delay will improve the likelihood that an injured diver will recuperate fully from any diving-related injury.

Prior to granting the permanent variance to Dixie, OSHA requested Dr. Edward D. Thalmann to render an opinion on the likely incidence of AGE and DCS under the proposed variance conditions. In doing so, Dr. Thalmann reviewed available research studies, as well as data from the Diver Alert Network ("DAN") (Ex. 2–7). With regard to AGE, Dr. Thalmann stated, "[AGE] is a rare occurrence and can be avoided with proper training and experience," that it "is essentially independent of the time at depth," and that "there is no evidence * * * [to] suggest that the occurrence and outcome of [AGE] would be any different breathing a [n]itrox mixture [other] than air." In addressing DCS, Dr. Thalmann noted that DCS associated with breathing a nitrox gas mixture "should not be substantially different in incidence and severity compared to diving on air[,] provided the [n]itrox no-decompression times are computed from accepted air no-decompression limits using the [NOAA] EAD [formula]."

Dr. Thalmann then discussed the two-hour transportation limit proposed for the Dixie variance by reviewing the available DAN data; he cautioned that these data "apply to recreational diving only where the vast majority of diving is within no-decompression limits." Under these conditions, he found that for both pain-only DCS and DCS with severe neurological symptoms, a treatment delay of four hours can occur without diminishing treatment success (*i.e.*, complete relief of symptoms). In summary, Dr. Thalmann stated, "There is no significant body of evidence to suggest that, so long as one is diving within accepted no-decompression limits breathing air or [n]itrox, having access to a recompression facility within 4 hours is inadequate." For the reasons set forth in Dr. Thalmann's expert opinion, OSHA believes that the proposed condition for availability of medical treatment would provide adequate employee safety.

(b) *O_2 treatment.* Oxygen treatment is the preferred means of initially treating AGE and DCS (see Section III below, Reference (1), pp. 3–19 and 3–28). This proposed condition would require the employer to ensure that portable O_2 equipment is available at the dive site to treat an injured diver. This equipment must deliver pure O_2 to a transparent mask that covers the injured diver's nose and mouth. To provide assurance that the O_2 is suitable for treatment purposes, this proposed condition also requires employers to use only O_2 that meets the criteria for Medical USP oxygen (Type I, Quality Verification Level A) of CGA G–4.3–2000 ("Commodity Specification for Oxygen"). Additionally, sufficient O_2 must be available to administer to the injured diver from the time the employer recognizes the symptoms of a diving-related medical emergency until the injured diver reaches a decompression chamber for treatment. This proposed condition would require that the O_2 supplied for this purpose be pure O_2, and that the injured diver receive the O_2 continuously from the time an employer detects the diving-related medical emergency until the diver begins treatment in a decompression chamber. These provisions would ensure that injured divers receive the maximum dose of O_2 possible to enhance treatment effectiveness. The transparent mask covering the diver's nose and mouth allows attendants to monitor the diver's breathing and provides an effective seal against O_2 loss.

(c) *Treatment personnel.* This proposed condition requires the employer to ensure that at least two attendants (either employees or non-employees) qualified in first-aid and administering O_2 treatment are available at the dive site to treat diving-related medical emergencies before starting each day's diving operations, and to verify their qualifications before using them for this purpose. Under these proposed requirements, only qualified personnel would administer initial treatment to injured divers. OSHA believes that personnel qualified in first aid and O_2 treatment would stabilize the

injured diver as rapidly as possible, thereby improving the effectiveness of subsequent treatment regimens. Regarding the use of non-employees, the Agency notes that the main purpose of the proposed condition is to ensure that properly qualified personnel are available for initial treatment, regardless of their employment status. However, recognizing that the employer may not be familiar with the qualifications of the non-employee involved in this procedure, OSHA is proposing that employers verify their qualifications prior to using them for this purpose.

9. Diving Logs and Decompression Tables

(a) *Diving log.* This proposed condition requires employers, before beginning diving operations, to (i) designate an employee or non-employee to make entries in a diving log, and (ii) verify that this designee understands the diving and medical terminology, as well as the proper procedures, for making such entries. Recognizing that many employers of recreational divers and diving guides are small businesses that may have difficulty finding an employee to make entries in the diving log, OSHA is proposing to allow non-employees to make entries in the log. The Agency believes that any properly qualified individual can make such entries, provided the employer verifies their qualifications before using them for this purpose; these qualifications include an understanding of the diving and medical terminology and established procedures needed to enter the required information accurately in a diving log.

(b) *Diving log requirements.* Proposed Condition 9(b) specifies that employers must: (i) Ensure that diving logs meet the information requirements specified by § 1910.423(d), including the requirement for DCS information when appropriate; and (ii) maintain diving logs in accordance with the provisions of § 1910.440, including the requirements for record availability, access to records by employees and OSHA, and retention of records. Employers covered by this proposal already are required to comply with these provisions because their employees breathe a mixed gas (*i.e.*, nitrox) during diving operations; this proposed paragraph merely emphasizes this important obligation. In addition, during inspections, OSHA intends to review these records to determine whether the procedures proposed in this rulemaking are providing adequate protection to recreational diving instructors and diving guides.

(c) *Availability of decompression tables.* This proposed condition requires employers to have a hard-copy of the no-decompression tables used for the dives (see proposed Condition 6(a) above) readily available at the dive site, whether or not the divers use dive-decompression computers. This condition would ensure that the parameters of the no-decompression limits are readily available and accessible as a reference source. In addition, a hard-copy of the decompression tables would serve both as a reference source should decompression become necessary, and as a back-up resource to divers with dive-decompression computers.

10. Diver Training

Under proposed Condition 10, employers must ensure that their divers receive training that enables them to perform their work safely and effectively while using open-circuit SCUBAs or rebreathers supplied with nitrox breathing-gas mixtures. Training would include the following areas: Recognizing the effects of breathing excessive CO_2 and O_2; taking appropriate action after detecting the effects of breathing excessive CO_2 and O_2; and properly evaluating, operating, and maintaining their diving equipment under the diving conditions they encounter. OSHA believes that such training would provide divers with the basic skills and knowledge necessary to ensure that diving is performed safely.

The proposed provision is performance-based, requiring employers to ensure that their employees are trained to perform safely and effectively while using open-circuit SCUBAs or rebreathers supplied with nitrox breathing-gas mixtures. In this regard, the Agency believes that employers are in the best position to determine when the training that their divers obtain is adequate to perform their jobs safely and effectively. However, the provision specifies several critical tasks that the recreational diving instructors and diving guides would have to perform safely and effectively, including detecting and managing excessive levels of CO_2 and O_2, and being able to evaluate, operate, and maintain their diving equipment. Such training would enable divers to take remedial action to prevent and escape the life-threatening effects of CO_2 and O_2 toxicity, including convulsions and loss of consciousness. In addition, OSHA believes that divers who know how to evaluate, operate, and maintain their open-circuit SCUBAs and rebreathers under the diving conditions they encounter will be less likely to require emergency egress because of equipment failure, thereby reducing the incidence of AGE from rapid ascents to the surface.

11. Testing Protocol for Determining the CO_2 Limits of Rebreather Canisters

This proposed condition specifies the requirements employers must follow when they use a schedule to replace depleted CO_2-sorbent material instead of using CO_2 sensors to detect when the material is no longer absorbing CO_2 effectively (see proposed Condition 1(h) above). Employers may use a CO_2-sorbent replacement schedule developed by a rebreather manufacturer only when the manufacturer has tested the canisters according to the proposed canister-testing protocol in Appendix C. The Agency adapted this protocol from the canister-testing parameters and statistical procedures developed by the U.S. Navy Experimental Diving Unit ("NEDU") (see, respectively, Ex. 3–11 and Reference (4), Section III below); the NEDU is the only Federal agency involved in testing CO_2-sorbent replacement schedules. OSHA believes that the NEDU protocol provides valid and reliable data for determining CO_2-sorbent replacement schedules because they are carefully executed and control significant variables that deplete CO_2-sorbent materials, such as breathing rate (by using breathing machines) and ambient temperature.

(a) *Quality-control assessment of CO_2-sorbent material.* Under this proposed condition, employers must use CO_2-sorbent materials in rebreathers that have the necessary physical properties as determined by the following procedures: (i) The NATO CO_2 absorbent-activity test to assess the capacity of the material to absorb CO_2; (ii) the RoTap shaker and nested sieves to determine granule-size distribution; (iii) the NEDU-derived Schlegel test to assess the friability of the CO_2-sorbent material; and (iv) the NEDU's MeshFit software to evaluate mesh size conformance to specifications. These procedures would provide a quality-control assessment of CO_2-sorbent materials. By ensuring that these materials meet the physical criteria established by these procedures, employers would improve the reliability with which they estimate canister durations during diving operations; improved estimates would enable divers to replace CO_2-sorbent material before it fails (*i.e.*, before CO_2 increases to dangerous levels).

(b) *Testing canister function.* This proposed condition requires employers to provide divers with canisters for their rebreathers that have been tested using a protocol consisting of specified canister-testing methods, procedures,

and statistical analyses. This proposed canister-testing protocol measures the performance effects on canisters of the following three factors: Depth, exercise level (*i.e.*, ventilation rate), and water temperature. Depth is the maximum depth at which a diver would use the CO_2-sorbent material, which for this proposed amendment is 130 fsw. For the other variables, OSHA has selected three combinations of ventilation rates and CO_2-injection rates from the NEDU protocol to simulate three diverse levels of exercise (light, moderate, and heavy). The four water temperatures used in the proposed protocol are 40, 50, 70, and 90 degrees F (4.4, 10.0, 21.1, and 32.2 degrees C, respectively); these temperatures represent the wide range of water temperatures that recreational diving instructors and diving guides are likely to encounter.

For this application, the Agency has revised the NEDU protocol slightly by: Limiting the maximum depth to 130 fsw; requiring an O_2 fraction of 0.28 in the nitrox breathing-gas mixture (this fraction being the maximum O_2 concentration permitted at this depth by this proposal); providing tolerance limits for water temperatures; and defining canister duration as the time taken to reach 0.005 ATA of CO_2 (0.005 ATA of CO_2 is the level specified in this proposal as the maximum allowable amount of CO_2 in the breathing gas). In addition, the proposed protocol expressly prohibits the use of CO_2-sorbent replacement schedules based on extrapolation of the protocol results. NEDU's statistical procedures (see Section III below, Reference (4)) do not provide a method for extrapolating the duration of CO_2-sorbent materials beyond the results obtained during the canister-testing trials. Accordingly, the proposed canister-testing protocol provides improved validity and reliability of canister-replacement schedules, and will enable employers to replace CO_2-sorbent materials in a timely manner.

III. References

The preamble to this proposal cites the following references:

(1) National Oceanic and Atmospheric Administration (2001). NOAA Diving Manual: Diving for Science and Technology. Joiner, J. T. (ed.). Best Publishing Co., Flagstaff, AZ. (Ex. 3–12.)

(2) Diving Science and Technology (1995). "Analysis of Proposed Oxygen Exposure Limits for DSAT Oxygen Exposure Table Against Existing Database of Manned Oxygen Test Dives." Enriched Air Operations and Resource Guide. International PADI, Inc., Rancho Santa Margarita, California. (Ex. 3–13.)

(3) R. W. Hamilton, R. E. Rogers, M. R. Powell, and R. D. Vann (1994). "Development and Validation of No-Stop Decompression Procedures for Recreational Diving: The DSAT Recreational Dive Planner." Hamilton Research, Ltd., Tarrytown, New York. (Ex. 3–14.)

(4) J. R. Clarke. "Statistically Based CO_2 Canister Duration Limits for Closed-Circuit Underwater Breathing Apparatus." U.S. Navy Experimental Diving Unit, Report 2–99, 1999. (Ex. 2–9.)

Copies of these references are available from the OSHA's Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 or fax (202) 693–1648.

IV. Legal Considerations

Employers covered by this proposal currently are covered by OSHA's Commercial Diving Operations (CDO) standards at 29 CFR 1910, subpart T. The requirements of these standards are protecting their employees from significant risk. In issuing the variance from this standard, the Agency determined that the practices and protections in the variance would provide recreational diving instructors and diving guides with comparable protection to that provided by the CDO standards. The present proposal would extend these alternative protections to all such instructors and guides. In this regard, the proposed amendment would not replace existing requirements, but instead would be a limited alternative to them. Therefore, OSHA finds that the proposed amendment would not directly increase or decrease the protection afforded to employees, nor would it increase employers' compliance burdens. As demonstrated in the following sections, the proposed revision likely would reduce employers' compliance burdens by eliminating the requirement to have a decompression chamber at the dive site when they comply with the conditions specified in the proposed amendment.

V. Preliminary Economic Analysis and Regulatory Flexibility Certification

The proposed amendment is not a significant rulemaking under Executive Order 12866, or a "major rule" under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act (SBREFA). The proposal would impose no additional costs on any private or public sector entity, and does not meet any of the criteria for a significant or major rule specified by the Executive Order or relevant statutes.

OSHA believes that the proposed amendment likely would offer employers of recreational diving instructors and diving guides an opportunity to expand these services into nitrox diving operations by eliminating costs associated with purchasing and maintaining a decompression chamber at the dive site when they comply with the conditions specified in the proposed amendment. By providing regulatory flexibility to these employers, the proposal may reduce their costs and increase productive time. Therefore, the Agency concludes that the proposed amendment would not impose any additional costs on these employers; consequently, the proposal requires no preliminary economic analysis. Furthermore, because the proposal imposes no costs on employers, OSHA certifies that it would not have a significant impact on a substantial number of small businesses; accordingly, the Agency need not prepare an initial regulatory flexibility analysis.

VI. Paperwork Reduction Act

After a thorough analysis of the proposal, OSHA believes that it contains the following two collection-of-information (*i.e.*, paperwork) requirements: Conditions 9(b)(i) and 9(b)(ii) of proposed Appendix C. Condition 9(b)(i) requires employers to ensure that the diving log conforms to the requirements specified by paragraph (d) ("Record of dive") of § 1910.423, while Condition 9(b)(ii) specifies that employers must keep a record of the dive in accordance with § 1910.440 ("Recordkeeping requirements"). However, these paperwork requirements already apply to these employers under subpart T, regardless of this proposal, because their divers are using a mixed (*i.e.*, nitrox) gas breathing supply. The regulatory alternative in this proposed rulemaking only exempts the covered employers from having to maintain decompression chambers at the dive site, and does not exempt them from the other provisions of subpart T that apply to mixed-gas diving operations. Accordingly, the Agency already incorporates the time and cost burdens associated with these two paperwork requirements under Control No. 1218–0069.

Interested parties who wish to comment on OSHA's determination that this proposal contains no additional paperwork requirements must send their written comments to the Office of Information and Regulatory Affairs,

Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, 726 Jackson Place, NW., Washington, DC 20503. The Agency also encourages commenters to submit their comments on this paperwork determination to OSHA along with their other comments on the proposed rule.

VII. Federalism

The Agency has reviewed the proposed amendment to its Commercial Diving Operations standards according to the most recent Executive Order on Federalism (Executive Order 13132, 64 FR 43225, August 10, 1999). This Executive Order requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking actions that restrict their policy options, and take such actions only when clear constitutional authority exists and the problem is of national scope. The Executive Order allows Federal agencies to preempt State law only with the expressed consent of Congress; in such cases, Federal agencies must limit preemption of State law to the extent possible.

Under section 18 of the OSH Act, Congress expressly provides OSHA with authority to preempt State occupational safety and health standards to the extent that the Agency promulgates a Federal standard under section 6 of the OSH Act. Accordingly, section 18 of the OSH Act authorizes the Agency to preempt State promulgation and enforcement of requirements dealing with occupational safety and health issues covered by OSHA standards unless the State has an OSHA-approved occupational safety and health plan (*i.e.*, is a State-plan State). (See *Gade* v. *National Solid Wastes Management Association*, 112 S. Ct. 2374 (1992).) Therefore, with respect to States that do not have OSHA-approved plans, the Agency concludes that this proposal conforms to the preemption provisions of the OSH Act. Additionally, section 18 of the OSH Act prohibits States without approved plans from issuing citations for violations of OSHA standards; the Agency finds that the proposed rulemaking does not expand this limitation.

OSHA has authority under Executive Order 13132 to propose this amendment to its Commercial Diving Operations standards because the problems addressed by these requirements are national in scope. In this regard, the proposed amendment offers thousands of employers across the nation whose divers provide recreational diving instruction and dive-guiding services an opportunity to expand these services into nitrox diving operations, and to do so without the expense involved in purchasing a decompression chamber. The proposed amendment would provide employers in every State with alternative means of compliance to protect their recreational diving instructors and diving guides from the risks of decompression sickness and arterial gas embolism while using a breathing-gas mixture consisting of a high percentage of oxygen mixed with nitrogen supplied by an open-circuit, semi-closed-circuit, or closed-circuit self-contained breathing apparatus.

Section 18(c)(2) of the OSH Act (29 U.S.C. 667(c)(2)) requires State-plan States to adopt OSHA standards, or develop alternatives, that are at least as effective as the OSHA amendment. The States have already adopted OSHA's Commercial Diving Operations (CDO) standards at 29 CFR 1910, subpart T, in particular, the decompression chamber provisions of paragraphs (b)(2) and (c)(3)(iii) of § 1910.423(b)(2) and paragraph (b)(1) of § 1910.426(b)(1). Compliance with the proposed amendment would only provide employers with an alternative to the requirements of the CDO standards; therefore, the alternative is not, itself, a mandatory standard. Accordingly, State-plan States are not obligated to adopt the final amendment that results from this rulemaking. Nevertheless, OSHA strongly encourages them to adopt to the final amendment to provide compliance options to employers in their States.

VIII. State Plans

The Agency strongly encourages the 23 States and two Territories with their own OSHA-approved occupational safety and health plans to revise their current Commercial Diving Operations standards when the Agency publishes the final amendment that results from this rulemaking. OSHA believes that such a revision would provide employers in the State-plan States the economic benefits that are likely to accrue from its enactment, while protecting the safety and health of recreational diving instructors and diving guides. These States and Territories are: Alaska, Arizona, California, Connecticut, New York (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

IX. Unfunded Mandates

OSHA reviewed the proposed amendment according to the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. As discussed above in section V ("Preliminary Economic Analysis and Regulatory Flexibility Certification") of this preamble, the Agency has made a preliminary determination that the proposed amendment imposes no additional costs on any private or public sector entity. The substantive content of the proposed amendment applies only to employers of recreational diving instructors and diving guides, and compliance with the proposed amendment would be strictly optional for the employers. Accordingly, the proposed amendment would require no additional expenditures by either public or private employers.

OSHA standards do not apply to State and local governments, except in States that have voluntarily elected to adopt a State plan approved by the Agency. Consequently, the proposed amendment does not meet the definition of a "federal intergovernmental mandate" (see section 421(5) of the UMRA (2 U.S.C. 658(5)). In conclusion, the proposed amendment does not mandate that State, local, and tribal governments adopt new, unfunded regulatory obligations.

X. Applicability of Existing Consensus Standards

OSHA is not aware of any national consensus standards that are similar to the amendment that it is proposing in this rulemaking.

XI. Public Participation

The Agency requests members of the public to submit written comments and other information concerning this proposal. These comments may include objections to the proposal with or without a hearing request, as well as comments that endorse or support the proposed amendment set forth in this notice. OSHA welcomes such comments and information so that the record of this rulemaking will represent a balanced public response on the issues involved. See the sections above titled **DATES** and **ADDRESSES** for information on submitting these comments and information to the Agency. Submissions received within the specified comment period will become part of the record, and will be available for public inspection and copying in the OSHA Docket Office.

Under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, members of the public may request an informal hearing by following the instructions under the section of this **Federal Register** notice titled **ADDRESSES.** These requests must include the objections to the proposal

that warrant a hearing. The party making objections that are part of a hearing request must:

- Include their name and address.
- Ensure that the request is sent or postmarked no later than April 10, 2003.
- Separately number each objection.
- Specify with particularity the grounds for each objection.
- Include a detailed summary of the evidence supporting each objection which they plan to offer at the requested hearing.

List of Subjects in 29 CFR Part 1910

Decompression chamber; Diving; Diving instruction; Occupational safety and health; Safety.

Authority and Signature

John Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency issues the proposed amendment under the following authorities: Sections 4, 6, and 8 of the OSH Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 5–2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC on January 3, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

XII. Proposed Amendment to Standard

For the reasons stated in the preamble, the Agency proposes to amend 29 CFR part 1910, subpart T as follows:

PART 1910—[AMENDED]

Subpart T—[AMENDED]

1. Revise the authority citation for subpart T of part 1910 to read as follows:

Authority: Sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); sec. 107, Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); sec. 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order Nos. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable; 29 CFR part 1911.

2. Add new paragraph (a)(3) to § 1910.401 to read as follows:

§ 1910.401 Scope and application.

* * * * *

(a) * * *

(3) *Alternative requirements for recreational diving instructors and diving guides.* Employers of recreational diving instructors and diving guides may forego the decompression-chamber requirements specified by paragraphs (b)(2) and (c)(2)(iii) of § 1910.423 and paragraph (b)(1) of § 1910.426 when they meet all of the following conditions:

(i) The instructor or guide is engaging solely in recreational diving instruction or dive-guiding operations;

(ii) The instructor or guide is diving within the no-decompression limits in these operations;

(iii) The instructor or guide is using a nitrox breathing-gas mixture consisting of a high percentage of oxygen (more than 22% by volume) mixed with nitrogen;

(iv) The instructor or guide is using an open-circuit, semi-closed-circuit, or closed-circuit self-contained underwater breathing apparatus (SCUBA); and

(v) The employer of the instructor or guide is complying with all requirements of Appendix C of this subpart.

* * * * *

3. Add definitions for "Dive-guiding operations" and "Recreational diving instructors" in alphabetical order to § 1910.402 to read as follows:

§ 1910.402 Definitions.

* * * * *

Dive-guiding operations means leading small groups of trained sports divers, who use open-circuit, semi-closed-circuit, or closed-circuit SCUBA, to local undersea diving locations for recreational purposes.

* * * * *

Recreational diving instruction means training diving students in the use of recreational diving procedures and the safe operation of diving equipment, including open-circuit, semi-closed-circuit, or closed-circuit SCUBA during dives.

* * * * *

4. Add a new Appendix C to 29 CFR part 1910, subpart T to read as follows:

Appendix C to Subpart T of Part 1910—Alternative Conditions Under § 1910.401(a)(3) for Recreational Diving Instructors and Diving Guides (Mandatory)

Paragraph (a)(3) of § 1910.401 specifies that employers of recreational diving instructors and diving guides (hereafter, "divers") who comply with all conditions in this Appendix C do not need to provide a decompression chamber for their recreational diving training and dive-guiding operations as required under § 1910.423(b)(2) or (c)(3), or § 1910.426 (b)(1).

1. Equipment Requirements for Rebreathers

(a) Employers must ensure that employees operate each rebreather (*i.e.*, semi-closed-circuit and closed-circuit self-contained underwater breathing apparatuses (hereafter, "SCUBAs")) according to the rebreather manufacturer's instructions.

(b) Employers are to ensure that each rebreather has a counterlung that supplies a volume of breathing gas to their divers that is sufficient to sustain the divers' respiration rate, and that contains a baffle system that keeps moisture from entering the scrubber.

(c) Employers must place a moisture trap in the breathing loop of the rebreather, and ensure that:

(i) The rebreather manufacturer approves both the moisture trap and its location in the breathing loop; and

(ii) Employees use the moisture trap according to the rebreather manufacturer's instructions.

(d) Employers must ensure that each rebreather has a continuously functioning moisture sensor, and that:

(i) The moisture sensor connects to a visual (*e.g.*, digital, graphic, analog) or auditory (*e.g.*, voice, pure tone) alarm that is readily detectable by the divers under the diving conditions in which they operate and warns them of moisture in the breathing loop in sufficient time to terminate the dive and return safely to the surface; and

(ii) The divers use the moisture sensor according to the rebreather manufacturer's instructions.

(e) Employers are to ensure that each rebreather contains a continuously functioning CO_2 sensor in the breathing loop, and that:

(i) The rebreather manufacturer approves the location of the CO_2 sensor in the breathing loop;

(ii) The CO_2 sensor is integrated with an alarm that operates in a visual (*e.g.*, digital, graphic, analog) or auditory (*e.g.*, voice, pure tone) mode that is readily detectable by the divers under the diving conditions in which they operate; and

(iii) The CO_2 sensor remains continuously activated when the inhaled CO_2 level reaches and exceeds 0.005 ATA.

(f) Before each day's diving operations, and more often when necessary, employers must calibrate the CO_2 sensor according to the sensor manufacturer's instructions, and ensure that:

(i) The equipment and procedures used to perform this calibration are accurate to within 10% of a CO_2 concentration of 0.005 ATA or less;

(ii) They maintain this accuracy as required by the sensor manufacturer's instructions; and

(iii) The calibration of the CO_2 sensor is accurate to within 10% of a CO_2 concentration of 0.005 ATA or less.

(g) Employers must replace the CO_2 sensor when it fails to meet the accuracy requirements specified above in paragraph 1(f)(iii), and ensure that the replacement CO_2 sensor meets the accuracy requirements specified above in paragraph 1(f)(iii) before placing the rebreather in operation.

(h) As an alternative to using a continuously functioning CO_2 sensor,

employers may use schedules for replacing CO_2-sorbent material provided by the rebreather manufacturer. When doing so, employers must use:

(i) A CO_2-sorbent replacement schedule only when the rebreather manufacturer has developed the replacement schedule according to the canister-testing protocol specified below in Condition 11; and

(ii) A rebreather at a water temperature that is lower than the minimum, or higher than the maximum, water temperature used in the canister-testing protocol specified below in Condition 11 only when the rebreather manufacturer adds that lower or higher temperature to the protocol.

(i) When using CO_2-sorbent replacement schedules, employers must ensure that each rebreather uses a manufactured (*i.e.*, commercially pre-packed), disposable scrubber cartridge containing a CO_2-sorbent material that:

(i) Is approved by the rebreather manufacturer;

(ii) Removes CO_2 from the diver's exhaled gas; and

(iii) Maintains the CO_2 level in the breathable gas (*i.e.*, the gas that a diver inhales directly from the regulator) below a partial pressure of 0.01 atmospheres absolute ("ATA").

(j) As an alternative to manufactured, disposable scrubber cartridges, employers may fill CO_2 scrubber cartridges manually with CO_2-sorbent material when:

(i) The rebreather manufacturer permits manual filling of scrubber cartridges;

(ii) The employer fills the scrubber cartridges according to the rebreather manufacturer's instructions;

(iii) The employer replaces the CO_2-sorbent material using a replacement schedule developed under paragraph 1(h) above; and

(iv) The employer demonstrates that manual filling meets the requirements specified above in paragraph 1(i).

(k) Employers must ensure that each rebreather has an information module that provides:

(i) Visual (*e.g.*, digital, graphic, analog) or auditory (*e.g.*, voice, pure tone) displays that effectively warn their divers of solenoid failure (when the rebreather uses solenoids) and other electrical weaknesses or failures (*e.g.*, low battery voltage);

(ii) For semi-closed circuit rebreathers, visual displays for the partial pressure of CO_2, or deviations above and below a preset CO_2 partial pressure of 0.005 ATA; and

(iii) For closed-circuit rebreathers, visual displays for: Partial pressures of O_2 and CO_2, or deviations above and below a preset CO_2 partial pressure of 0.005 ATA and a preset O_2 partial pressure of 1.40 ATA; gas temperature in the breathing loop; and water temperature.

(l) Before each day's diving operations, and more often when necessary, employers must ensure that the electrical power supplies and electrical and electronic circuits in each rebreather are operating as required by the rebreather manufacturer's instructions.

2. Special Requirements for Closed-Circuit Rebreathers

(a) Employers must ensure that closed-circuit rebreathers use supply-pressure sensors for the O_2 and diluent (*i.e.*, air or nitrogen) gases and continuously functioning sensors for detecting temperature in the inhalation side of the gas-loop and the ambient water.

(b) Employers are to ensure that:

(i) At least two O_2 sensors are located in the inhalation side of the breathing loop; and

(ii) The O_2 sensors are: Functioning continuously; temperature-compensated; and approved by the rebreather manufacturer.

(c) Before each day's diving operations, and more often when necessary, employers must calibrate O_2 sensors as required by the sensor manufacturer's instructions. In doing so, they must:

(i) Ensure that the equipment and procedures used to perform the calibration are accurate to within 1% of the O_2 fraction by volume;

(ii) Maintain this accuracy as required by the manufacturer of the calibration equipment;

(iii) Ensure that the sensors are accurate to within 1% of the O_2 fraction by volume;

(iv) Replace O_2 sensors when they fail to meet the accuracy requirements specified above in paragraph 2(c)(iii); and

(v) Ensure that the replacement O_2 sensors meet the accuracy requirements specified above in paragraph 2(c)(iii) before they place a rebreather in operation.

(d) Employers must ensure that closed-circuit rebreathers have:

(i) A gas-controller package with electrically-operated solenoid O_2-supply valves;

(ii) A pressure-activated regulator with a second-stage diluent-gas addition valve;

(iii) A manually operated gas-supply bypass valve to add O_2 or diluent gas to the breathing loop; and

(iv) Separate O_2 and diluent-gas cylinders to supply the breathing-gas mixture.

3. O_2 Concentration in the Breathing Gas

Employers must ensure that the fraction of O_2 in the nitrox breathing-gas mixture:

(a) Is greater than the fraction of O_2 in compressed air (*i.e.*, exceeds 22% by volume);

(b) For open-circuit SCUBA, never exceeds a maximum fraction of breathable O_2 of 40% by volume or a maximum O partial pressure of 1.40 ATA, whichever exposes divers to less O_2; and

(c) For rebreathers, never exceeds a maximum O_2 partial pressure of 1.40 ATA.

4. Limiting O_2 Partial Pressure and Diving Depth

(a) Regarding O_2 exposure, employers must:

(i) Ensure that the exposure of their divers to partial pressures of O_2 between 0.60 and 1.40 ATA does not exceed the 24-hour single-exposure time limits specified either by the 2001 National Oceanic and Atmospheric Administration Diving Manual (the "2001 NOAA Diving Manual") or by the report entitled "Enriched Air Operations and Resources Guide," published in 1995 by the Professional Association of Diving Instructors (known commonly as the "1995 DSAT Oxygen Exposure Table") (see References (1) and (2) at the end of this appendix for complete information regarding these references); and

(ii) Determine a diver's O_2-exposure duration using the diver's maximum O_2 exposure (partial pressure of O_2) during the dive and the total dive time (*i.e.*, from the time the diver leaves the surface until the diver returns to the surface).

(b) Regardless of the diving equipment used, employers must ensure that their divers do not exceed a depth of 130 feet of sea water ("fsw") or to a maximum O_2 partial pressure of 1.40 ATA, whichever exposes them to less O_2.

5. Mixing and Analyzing the Breathing Gas

(a) Employers must ensure that:

(i) Properly trained personnel mix nitrox-breathing gases, and that nitrogen is the only inert gas used in the breathing-gas mixture; and

(ii) When mixing nitrox-breathing gases, they mix the appropriate breathing gas before delivering the mixture to the breathing-gas cylinders, using the continuous-flow or partial-pressure mixing techniques specified in the 2001 NOAA Diving Manual, or using a filter-membrane system.

(b) Before the start of each day's diving operations, employers must determine the O_2 fraction of the breathing-gas mixture using an O_2 analyzer. In doing so, they must:

(i) Ensure that the O_2 analyzer is accurate to within 1% of the O_2 fraction by volume; and

(ii) Maintain this accuracy as required by the manufacturer of the analyzer.

(c) When the breathing gas is a commercially supplied nitrox breathing-gas mixture, employers must ensure that the O_2 is Grade A (also known as "aviator's oxygen") or Grade B (referred to as "industrial-medical oxygen"), and meets the specifications, including the purity requirements, found in the ANSI-Compressed Gas Association Commodity Specification for Air, G–7.1–1997. In addition, employers are to ensure that the commercial suppliers:

(i) Determine the O_2 fraction in the breathing-gas mixture using an analytic method that is accurate to within 1% of the O_2 fraction by volume;

(ii) Make this determination when the mixture is in the charged tank and after disconnecting the charged tank from the charging apparatus;

(iii) Document the O_2 fraction in the mixture; and

(iv) Provide the employer with a written certification of the O_2 analysis.

(d) Before producing nitrox breathing-gas mixtures using a compressor in which the gas pressure in any system component exceeds 125 pounds per square inch (psi), employers must:

(i) Have the compressor manufacturer certify in writing that the compressor is suitable for mixing high-pressure air with the highest O_2 fraction used in the nitrox breathing-gas mixture;

(ii) Ensure that the compressor is oil-less or oil-free and rated for O_2 service, unless they comply with the requirements of paragraph 5(e) below; and

(iii) Ensure that the compressor meets the requirements specified in paragraphs (i)(1) and (i)(2) of § 1910.430 whenever the highest O_2 fraction used in the mixing process exceeds 40%.

(e) Before employers produce nitrox breathing-gas mixtures using an oil-lubricated compressor to mix high-pressure air with O_2, and regardless of the gas pressure in any system component, they must:

(i) Use only uncontaminated air (*i.e.*, air containing no hydrocarbon particulates) for the nitrox breathing-gas mixture;

(ii) Have the compressor manufacturer certify in writing that the compressor is suitable for mixing the high-pressure air with the highest O_2 fraction used in the nitrox breathing-gas mixture;

(iii) Filter the high-pressure air to produce O_2-compatible air;

(iv) Have the filter-system manufacturer certify in writing that the filter system used for this purpose is suitable for producing O_2-compatible air; and

(v) Continuously monitor the air downstream from the filter for hydrocarbon contamination.

(f) Employers are to ensure that diving equipment using nitrox breathing-gas mixtures or pure O_2 under high pressure (*i.e.*, exceeding 125 psi) conforms to the O_2-service requirements specified in paragraphs (i)(1) and (i)(2) of § 1910.430.

6. Use of No-Decompression Limits

(a) For diving conducted while using nitrox breathing-gas mixtures, employers must ensure that each of their divers remains within the no-decompression limits specified for single and repetitive air diving and published in the 2001 NOAA Diving Manual or the report entitled "Development and Validation of No-Stop Decompression Procedures for Recreational Diving: The DSAT Recreational Dive Planner," published in 1994 by Hamilton Research Ltd. (known commonly as the "1994 DSAT No-Decompression Tables"). (See References (1) and (3) at the end of this appendix for complete information regarding these references.)

(b) Employers may permit their divers to use dive-decompression computers designed to regulate decompression when the dive-decompression computer uses the no-decompression limits specified above in paragraph 6(a), and provides output that reliably represents those limits.

7. Emergency Egress

(a) Regardless of the diving equipment used by divers (*i.e.*, open-circuit SCUBA or rebreathers), employers must ensure that the diving equipment consists of an open-circuit emergency-egress system (a "bail-out" system) in which the second stage of the regulator connects to a separate supply of emergency breathing gas, and the emergency breathing gas consists of air or the same nitrox breathing-gas mixture used during the dive.

(b) For open-circuit SCUBA, employers may use as an alternative to the "bail-out" system specified above under Condition (7)(a), the emergency-egress system (*i.e.*, the reserve breathing-gas supply) specified for open-circuit SCUBA by § 1910.424(c)(4)(i).

(c) Employers must ensure that the bail-out or alternative system performs reliably and provides sufficient emergency breathing gas to enable the diver to terminate the dive and return safely to the surface.

8. Treating Diving-Related Medical Emergencies

(a) Before each day's diving operations, employers must:

(i) Verify that a hospital, qualified health-care professionals, and the nearest Coast Guard Coordination Center (or an equivalent rescue service operated by a State, county, or municipal agency) are available to treat diving-related medical emergencies;

(ii) Ensure that each dive site has a means to alert these treatment resources in a timely manner when a diving-related medical emergency occurs; and

(iii) Ensure that transportation to a suitable decompression chamber is readily available when no decompression chamber is at the dive site, and that this transportation can deliver the injured diver to the decompression chamber within two (2) hours travel time from the dive site.

(b) Employers must ensure that portable O_2 equipment is available at the dive site to treat injured divers. In doing so, employers must ensure that:

(i) The equipment delivers medical-grade O_2 that meets the requirements for Medical USP oxygen (Type I, Quality Verification Level A) of CGA G–4.3–2000 ("Commodity Specification for Oxygen");

(ii) The equipment delivers this O_2 to a transparent mask that covers the injured diver's nose and mouth; and

(iii) Sufficient O_2 is available for administration to the injured diver from the time the employer recognizes the symptoms of a diving-related medical emergency until the injured diver reaches a decompression chamber for treatment.

(c) Before each day's diving operations, employers must:

(i) Ensure that at least two attendants, either employees or non-employees, qualified in first-aid and administering O_2 treatment are available at the dive site to treat diving-related medical emergencies; and

(ii) Verify their qualifications for this task.

9. Diving Logs and Decompression Tables

(a) Before starting each day's diving operations, employers must:

(i) Designate an employee or a non-employee to make entries in a diving log; and

(ii) Verify that this designee understands the diving and medical terminology, and proper procedures, for making correct entries in the diving log.

(b) Employers are to:

(i) Ensure that the diving log conforms to the requirements specified by paragraph (d) ("Record of dive") of § 1910.423; and

(ii) Keep a record of the dive in accordance with § 1910.440 ("Recordkeeping requirements").

(c) Employers must ensure that a hard-copy of the decompression tables used for the dives (as specified above in paragraph 6(a)) is readily available at the dive site, whether or not your divers use dive-decompression computers.

10. Diver Training

Employers must ensure that their divers receive training that enables them to perform their work safely and effectively while using open-circuit SCUBAs or rebreathers supplied with nitrox breathing-gas mixtures. Accordingly, the divers must be able to demonstrate that they can perform critical tasks safely and effectively, including, but not limited to: Recognizing the effects of breathing excessive CO_2 and O_2; taking appropriate action after detecting excessive levels of CO_2 and O_2; and properly evaluating, operating, and maintaining their diving equipment under the diving conditions they encounter.

11. Testing Protocol for Determining the CO_2 Limits of Rebreather Canisters

(a) Employers must ensure that the rebreather manufacturer used the following procedures for determining that the CO_2-sorbent material meets the specifications of the material's manufacturer:

(i) The NATO CO_2 absorbent-activity test;

(ii) The RoTap shaker and nested sieves;

(iii) The Navy Experimental Diving Unit ("NEDU")-derived Schlegel test; and

(iv) The NEDU's MeshFit software;

(b) Employers must ensure that the rebreather manufacturer applied the following canister-testing materials, methods, procedures, and statistical analyses:

(i) A nitrox breathing-gas mixture that has an O_2 fraction maintained at 0.28 (equivalent to 1.4 ATA of O_2 at 130 fsw, the maximum O_2 concentration permitted at this depth);

(ii) While operating the rebreather at a maximum depth of 130 fsw, used a breathing machine to continuously ventilate the rebreather with breathing gas that is at 100% humidity and warmed to a temperature of 98.6 degrees F (37 degrees C) in the heating-humidification chamber;

(iii) Measured the O_2 concentration of the inhalation breathing gas delivered to the mouthpiece;

(iv) Tested the canisters using the three ventilation rates listed in the following table (with the required breathing-machine tidal volumes and frequencies, and CO_2-injection rates, provided for each ventilation rate):

Ventilation rates (Lpm, ATPS [1]).	Breathing machine tidal volumes (L)	Breathing machine frequencies (breaths per min.)	CO_2 injection rates (Lpm, STPD [2])
22.5	1.5	15	0.90
40.0	2.0	20	1.35
62.5	2.5	25	2.25

[1] ATPS means ambient temperature and pressure, saturated with water.

[2] STPD means standard temperature and pressure, dry; the standard temperature is 32 degrees F (0 degrees C).

(v) When using a work rate (*i.e.*, breathing-machine tidal volume and frequency) other than the work rates listed in the table above, added the appropriate combinations of ventilation rates and CO_2-injection rates;

(vi) Performed the CO_2 injection at a constant (steady) and continuous rate during each testing trial;

(vii) Determined canister duration using a minimum of four (4) water temperatures, including 40, 50, 70, and 90 degrees F (4.4, 10.0, 21.1, and 32.2 degrees C, respectively).

(viii) Monitored the breathing-gas temperature at the rebreather mouthpiece (at

the "chrome T" connector), and ensured that this temperature conforms to the temperature of a diver's exhaled breath at the water temperature and ventilation rate used during the testing trial;[9]

(ix) Implemented at least eight (8) testing trials for each combination of temperature and ventilation-CO_2-injection rates (*e.g.*, eight testing trials at 40 degrees F using a ventilation rate of 22.5 Lpm at a CO_2-injection rate of 0.90 Lpm);

(x) Allowed the water temperature to vary no more than ± 2.0 degrees F (± 1.0 degree C) *between* each of the eight testing trials, and no more than ± 1.0 degree F (± 0.5 degree C) *within* each testing trial;

(xi) Used the average temperature for each set of eight testing trials in the statistical analysis of the testing-trial results, with the testing-trial results being the time taken for the inhaled breathing gas to reach 0.005 ATA of CO_2 (*i.e.*, the canister-duration results);

(xii) Analyzed the canister-duration results using the repeated-measures statistics described in NEDU Report 2–99 (see Reference (4) at the end of this appendix for complete information regarding this reference);

(xiii) Specified the replacement schedule for the CO_2-sorbent materials in terms of the lower prediction line (or limit) of the 95% confidence interval; and

(xiv) Derived replacement schedules only by interpolating among, but not by extrapolating beyond, the depth, water temperatures, and exercise levels used during canister testing.

12. References

This section provides detailed information regarding the references cited in this appendix.

(1) National Oceanic and Atmospheric Administration (2001). NOAA Diving Manual: Diving for Science and Technology. Joiner, J. T. (ed.). Best Publishing Co., Flagstaff, AZ.

(2) Diving Science and Technology (1995). "Analysis of Proposed Oxygen Exposure Limits for DSAT Oxygen Exposure Table Against Existing Database of Manned Oxygen Test Dives." Enriched Air Operations and Resource Guide. International PADI, Inc., Rancho Santa Margarita, California.

(3) R. W. Hamilton, R. E. Rogers, M. R. Powell, and R. D. Vann (1994). "Development and Validation of No-Stop Decompression Procedures for Recreational Diving: The DSAT Recreational Dive Planner." Hamilton Research, Ltd., Tarrytown, New York.

(4) J. R. Clarke. "Statistically Based CO_2 Canister Duration Limits for Closed-Circuit Underwater Breathing Apparatus." U.S. Navy Experimental Diving Unit, Report 2–99, 1999.

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[FR Doc. 03–372 Filed 1–9–03; 8:45 am]

BILLING CODE 4510–26–P

[9] NEDU can provide the manufacturer with information on the temperature of a diver's exhaled breath at various water temperatures and ventilation rates, as well as techniques and procedures used to maintain these temperatures during the testing trials.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN148–1b; FRL–7436–3]

Redesignation and Approval and Promulgation of Indiana Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to redesignate Lake County, Indiana, to attainment for particulate matter with a nominal aerodynamic diameter of 10 microns or less (PM_{10}). EPA also proposes to approve Indiana's plan for continuing to attain the PM_{10} standards.

DATES: Written comments on this proposed rule must arrive on or before February 10, 2003.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, *summerhays.john@epa.gov*, (312) 886–6067.

SUPPLEMENTARY INFORMATION: On September 25, 2002, Indiana requested that EPA redesignate Lake County from nonattainment to attainment for PM_{10}. The criteria for redesignations from nonattainment to attainment are in section 107(d)(3)(E) of the Clean Air Act. EPA proposes to conclude that (i) Lake County has attained the PM_{10} air quality standards, (ii) EPA has fully approved the applicable State Implementation Plan (SIP) under section 110(k) of the Act, (iii) the improvement in air quality in the area is due to permanent and enforceable emission reductions, (iv) the maintenance plan for the area satisfies section 175A of the Act, and (v) the state has met all requirements applicable to the area under section 110 and part D of the Act. Based on these findings, EPA proposes to approve Indiana's maintenance plan and redesignate Lake County, Indiana, to attainment for PM_{10}.

For additional information see the direct final rule published in the rules section of this **Federal Register**.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovermental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 et seq.

Dated: December 23, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 03–283 Filed 1–9–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[021213308–2308–01, 111802B]

RIN 0648–AQ60

List of Fisheries for 2003

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes changes for 2003 to the List of Fisheries (LOF) as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2003 reflects new information on interactions between commercial fisheries and marine mammals. Under the MMPA, NMFS must place each commercial fishery on the LOF into one of three categories based upon the level of serious injury and mortality of marine mammals that occurs incidental to that fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: Comments must be received by February 10, 2003.

ADDRESSES: Send comments to Chief, Marine Mammal Conservation Division,

Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding the burden-hour estimates or any other aspect of the collection of information requirements contained in this proposed rule should be sent to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, DC 20503.

Registration information, materials, and marine mammal reporting forms may be obtained from the following regional offices:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs.

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin.

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Don Peterson.

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office.

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Tanya Dobrzynski, Office of Protected Resources, 301–713–2322; Kim Thounhurst, Northeast Region, 978–281–9138; Katie Moore, Southeast Region, 727–570–5312; Cathy Campbell, Southwest Region, 562–980–4060; Brent Norberg, Northwest Region, 206–526–6733; Amy Van Atten, Alaska Region, 907–586–7642. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Under section 118 of the MMPA, NMFS must publish, at least annually, an LOF that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery (16 U.S.C. 1387 (c)(1)). The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

How Does NMFS Determine in which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the Potential Biological Removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for Section 118 at 50 CFR 229.2.

Tier 1: If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of this stock, all fisheries interacting with this stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2, Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how threshold percentages between the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Note that, since fisheries are categorized on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and a distinct Category for a different marine mammal stock. A fishery is typically placed on the LOF at its highest level of classification (e.g., a fishery that qualifies for Category III for one marine mammal stock and for Category II for another marine mammals stock will be listed under Category II).

Other Criteria That May Be Considered

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality qualifies for Category II by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator (50 CFR 229.2).

How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This proposed rule includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization from NMFS in order to lawfully incidentally take a marine mammal in a commercial fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

Fishers must register with the Marine Mammal Authorization Program (MMAP) by contacting the relevant NMFS Regional Office (see **ADDRESSES**) unless they participate in a fishery that has an integrated registration program (described below). Upon receipt of a completed registration, NMFS will issue vessel or gear owners physical evidence of a current and valid registration that must be displayed or that must be in the possession of the master of each vessel

while fishing in accordance with Section 118 of the MMPA (16 U.S.C. 1387(c)(3)(A)).

What is the Process for Registering in an Integrated Fishery?

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to submit registration or renewal materials or pay the $25 registration fee. Following is a list of integrated fisheries and a summary of the integration process for each Region. Fishers who operate in an integrated fishery and have not received registration materials should contact their NMFS Regional Office (see **ADDRESSES**).

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA:

1. All Alaska Category II fisheries.
2. All Washington and Oregon Category II fisheries.
3. Northeast Regional fisheries for which a state or Federal permit is required. Individuals fishing in fisheries for which no state or Federal permit is required must register with NMFS by contacting the Northeast Regional Office (see **ADDRESSES**).
4. All North Carolina, South Carolina, Georgia, and Florida Category II fisheries for which a state permit is required.

Alaska Region

The Alaska Region has integrated MMAP registration for Alaska Category II fisheries with the Alaska State system for registering commercial vessels and permitting commercial fishers. Therefore, if a vessel owner plans to participate in one or more of the Category II fisheries and is licensed under the State of Alaska's Commercial Fisheries Entry Program, the vessel owner will be registered automatically in the MMAP and will not have to submit MMAP registration or renewal materials or pay a processing fee. The information required for MMAP registration will be obtained by NMFS directly from the State of Alaska and will be automatically incorporated into the NMFS MMAP database. At the beginning of each calendar year, permitted vessel owners and set net operators will be sent an MMAP certificate for that year, an MMAP decal, the terms and conditions of the authorization, and marine mammal injury and mortality reporting forms. MMAP certificates will be valid only if presented with a valid fishing permit.

Northwest Region

Washington and Oregon have integrated MMAP registration with existing permit programs for all Washington and Oregon Category II fisheries. These states issue MMAP certificates for Category II fisheries as part of the fishing license renewal process. MMAP certificates will be valid only if presented with a valid fishing permit. If a vessel owner plans to participate in one or more of the Category II fisheries or has a license issued by the states of Oregon or Washington, the vessel owner will be registered automatically in the MMAP and will not have to submit MMAP registration or renewal materials or pay a processing fee.

Southwest Region

No Southwest Region fisheries are integrated under the MMAP.

Northeast Region

In the Northeast Region, MMAP registration is integrated with existing fishing permit processes for all fishers engaged in Category I or II fisheries for which a state or federal permit is required. At the beginning of each calendar year, these vessel owners will be sent an MMAP certificate for that year, the terms and conditions of the authorization, and marine mammal and injury reporting forms. However, all state and Federal permit holders that receive new permits for Category I or II fisheries after the beginning of the calendar year must submit a registration or renewal application to NMFS Northeast Regional Office (see **ADDRESSES**). MMAP certificates will be valid only if presented with a valid state or Federal fishing permit. Individuals fishing in Category I or II fisheries in the Northeast Region for which state or federal permits are not required must register under the MMAP by submitting a registration or renewal form to NMFS Northeast Regional Office (see **ADDRESSES**). No fees are required for either integrated or non-integrated fisheries.

Southeast Region

NMFS has integrated registration for all participants in North Carolina, South Carolina, Georgia, and Florida Category II fisheries for which a state permit is required. Therefore, for these fisheries, the vessel owner will be registered automatically in the MMAP and will not have to submit MMAP registration or renewal materials or pay a processing fee. At the beginning of each calendar year, these vessel owners will be sent an MMAP certificate for that year, the terms and conditions of the authorization, and marine mammal and injury reporting forms. MMAP certificates will be valid only if presented with a valid state permit. All fishers who plan to participate in any other Category I or II fishery in the Southeast Region must register under the MMAP by submitting a registration or renewal form and the processing fee to NMFS. The Southeast Region is currently working towards integrating additional state and federal licensing and permitting systems with the MMAP.

How Do I Renew My Registration Under the MMPA?

Regional Offices, except for the Northeast Region, annually send renewal packets to participants in Category I or II fisheries that have previously registered; however, it is the responsibility of the fisher to ensure that registration or renewal forms are completed and submitted to NMFS at least 30 days in advance of fishing. Individuals who have not received a renewal packet by January 1 or are registering for the first time should request a registration form from the appropriate Regional Office (see **ADDRESSES**).

Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report all incidental injuries or mortalities of marine mammals that occur during commercial fishing operations to NMFS. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the absence of any wound or other evidence of an injury, and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

Am I Required to Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans.

Sources of Information Reviewed for the Proposed 2003 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all observed fisheries to determine whether changes in fishery classification were warranted. NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that is not included in the SARs.

NMFS SARs provide the best available information on both the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels for marine mammal stocks.

The information contained in the SARs is reviewed by regional scientific review groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and the Caribbean. The SRGs were created by the MMPA to review the science that goes into the stock assessment reports and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

The proposed LOF for 2003 was based on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), and the draft SARs for 2002 (67 FR 19417, April 19, 2002).

Summary of Changes to the Proposed LOF for 2003

With the following exceptions, the placement and definitions of U.S. commercial fisheries are identical to those provided in the LOF for 2002. The following summarizes changes in fishery classification, fishery definition, fisheries listed on the LOF, number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery, that are proposed for the 2003 LOF.

Commercial Fisheries in the Pacific Ocean: Fishery Classification

Alaska Bering Sea Aleutian Islands Groundfish Trawl Fishery

NMFS proposes to elevate the Alaska (AK) Bering Sea and Aleutian Islands (BSAI) groundfish trawl fishery to Category II based on a review of observer data from 1995–1999 and the following tier analysis. Observer coverage in the AK BSAI groundfish trawl fishery ranged from 53 percent to 76 percent per year between 1990 and 2000. Marine mammal species incidentally injured or killed in the AK BSAI groundfish trawl fishery include: western North Pacific stock of humpback whales, eastern North Pacific stock of resident killer whales, eastern North Pacific stock of transient killer whales, central North Pacific stock of humpback whales, western U.S. stock of Steller sea lions, northeast Pacific stock of fin whales, North Pacific stock of Pacific white-sided dolphin, Bering Sea stock of harbor porpoise, Eastern Pacific stock of northern fur seals, Bering Sea stock of harbor seals, Alaska stock of bearded seals, Alaska stock of ringed seals, Alaska stock of spotted seals, Alaska stock of Dall's porpoise, Alaska stock of ribbon seals, CA breeding stock of northern elephant seals, Alaska stock of sea otters, and Alaska stock of Pacific walrus.

Tier 1 Evaluation: Total annual incidental mortality and serious injury across all fisheries is greater than or equal to 10 percent of the PBR levels for the following stocks: western North Pacific humpback whales, eastern North Pacific resident killer whales, eastern North Pacific transient killer whales, central North Pacific humpback whales, and western U.S. Steller sea lions. Therefore, the AK BSAI Groundfish Trawl Fishery is subject to Tier 2 analysis.

Tier 2 Evaluation: Total annual mortality and serious injury of the western North Pacific stock of humpback whales in this fishery is 0.4 animals per year, or 57.1 percent of the PBR level (0.7 animals per year). Because this level of mortality and serious injury exceeds 50 percent of the PBR level, this fishery qualifies for elevation to Category I.

Total annual mortality and serious injury of the eastern North Pacific transient stock of killer whales in this fishery is 0.6 animals per year, or 14.3 percent of the PBR level (2.8 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for elevation to Category II.

Total annual mortality and serious injury of the eastern North Pacific resident stock of killer whales in this fishery is 0.6 animals per year, or 8.3 percent of the PBR level (7.2 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for elevation to Category II.

Total annual mortality and serious injury of the central North Pacific stock of humpback whales in this fishery is 0.4 animals per year, or 5.4 percent of the PBR level (7.4 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for elevation to Category II.

Total annual mortality and serious injury of the western U.S. stock of Steller sea lions in this fishery is 7.8 animals per year, or 3.8 percent of the PBR level (208 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for elevation to Category II.

The data presented above, specifically the serious injury and mortality of western North Pacific humpback whales, appears to justify placement of the AK BSAI groundfish trawl fishery into Category I. However, NMFS considered additional information about the data. The PBR level for western North Pacific humpback whales is based on a minimum population estimate of 367 animals, which may be an underestimate of the true population size. Recent vessel surveys of a small portion of the Bering Sea resulted in an estimate of approximately 1,100 humpback whales. However, it is not possible to determine what portion of this estimate can be assigned to the central stock versus the western stock of humpback whales. If the minimum population estimate for the western stock is underestimated by only 43 animals, total annual mortality and serious injury in this fishery would be less than 50 percent of the PBR level and the fishery would qualify for Category II.

Additionally, it is not known whether the humpback whale mortalities incidental to this fishery (1 in 1998 and 1 in 1999) should be assigned to the western or central stocks. The mortalities are assigned to both stocks (i.e., 2 mortalities assigned to the western stock and 2 mortalities assigned to the central stock) and therefore the mortalities are "double-counted" in the above tier analysis. If one mortality was from the western stock and one mortality was from the central stock, NMFS could not justify placing this fishery in Category I.

Finally, this analysis reflects observer data through 1999. Based on preliminary data from 2000, one unidentified large whale was killed incidental to this fishery. Photographs

of this incident clearly show that the unidentified animal was not a humpback whale. Further examination of the photographs may provide additional insight as to the species. Preliminary data from 2000 also indicate that the numbers of Steller sea lions seriously injured or killed remained roughly comparable to the numbers in previous years (approximately 6–7 animals per year).

For the reasons listed above, NMFS proposes to elevate the AK BSAI groundfish trawl fishery to Category II.

California/Oregon Thresher Shark/Swordfish Drift Gillnet Fishery (≥14 in. mesh)

NMFS proposes to reclassify the Category I California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery (≥14 in. mesh) as Category II. This fishery includes all vessels using drift gillnets of greater than or equal to 14 inch stretched mesh to target thresher shark and swordfish off California and Oregon. It operates primarily outside of state waters to about 150 miles offshore, and ranges from the U.S./Mexico border north to the Columbia River in Oregon. Observer coverage in this fishery ranged from 22.7 percent to 20.4 percent from 1997 to 2001.

The Pacific Offshore Cetacean Take Reduction Team (Team) was convened in 1996 to address incidental mortality and serious injury of marine mammals in this fishery. NMFS implemented a Pacific Offshore Cetacean Take Reduction Plan (Plan) in 1997 based on the Team's recommendations. As a result of the Plan, serious injury and mortality of marine mammals has been reduced to below 50 percent of the PBR level for the marine mammal stocks interacting with this fishery. Therefore, NMFS proposes to reclassify this fishery as Category II. NMFS will continue to place observers on vessels participating in this fishery and work with the Team to monitor and address entanglement of marine mammals in the fishery. The Team supported the reclassification of this fishery at their meeting in May 2002.

NMFS' analysis of the incidental mortality and serious injury of marine mammals in this fishery is based on observer data collected between 1997 and 2001. Marine mammals incidentally injured or killed in the CA/OR thresher shark/swordfish drift gillnet fishery between 1997 and 2001 include: U.S. stock of CA sea lions, CA breeding stock of northern elephant seals, California/Oregon/Washington (CA/OR/WA) stock of Dall's porpoise, CA/OR/WA Northern and Southern stocks of Pacific white-sided dolphin, CA/OR/WA stock of Risso's dolphin, CA/OR/WA stock of short-beaked common dolphin, CA/OR/WA stock of long-beaked common dolphin, CA/OR/WA stock of northern right-whale dolphin, CA/OR/WA stock of short-finned pilot whales, CA/OR/WA stock of sperm whales, CA/OR/WA stock of fin whales, and eastern North Pacific stock of gray whales. There are approximately 113 participants in this fishery, which is the number of permits issued for this fishery by California Department of Fish and Game in 2001. Following is the Tier analysis supporting the reclassification of this fishery.

Tier 1 Evaluation: The estimated total annual incidental mortality and serious injury across all fisheries is greater than 10 percent of the PBR levels for the following stocks: U.S. stock of CA sea lions, CA/OR/WA stock of northern right-whale dolphin, CA/OR/WA stock of short-finned pilot whales, CA/OR/WA stock of sperm whales, and CA/OR/WA stock of fin whales. Therefore, this fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: The average annual estimated mortality and serious injury of California sea lions incidental to the CA/OR thresher shark/swordfish drift gillnet fishery during 1997–2001 was 82 animals per year, or 1.2 percent of the PBR level for California sea lions (6,591 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

The average annual estimated mortality and serious injury of northern right-whale dolphins incidental to this fishery during this period was 23.8 animals per year, or 24.5 percent of the PBR level for this stock (97 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

The average annual estimated mortality and serious injury of short-finned pilot whales incidental to this fishery from 1997–2001 was 1.2 animals per year, or 21.1 percent of the PBR level for this stock (5.7 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

The average annual estimated mortality and serious injury of sperm whales incidental to this fishery during this period was 1 animal per year, or 47.8 percent of the PBR level for this stock (2.1 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

The average annual estimated mortality and serious injury of fin whales incidental to this fishery from 1997 to 2001 was 1 animal per year, or 31.3 percent of the PBR level for this stock (3.2 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR level for all marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as Category II.

AK Cook Inlet Salmon Drift Gillnet Fishery

NMFS proposes to reclassify the Cook Inlet salmon drift gillnet fishery from Category II to Category III. The Category II Cook Inlet salmon drift gillnet fishery was observed in 1999 and 2000. One serious injury of a Gulf of Alaska harbor porpoise was observed in the drift gillnet fishery during the 2000 fishing season. This take constitutes less than 1 percent of the PBR for Gulf of Alaska harbor porpoise (PBR = 166). There were no other marine mammal stocks reported interacting with this fishery during the 1999–2000 fishing seasons. Based on the observed level of take in this fishery, NMFS proposes to reclassify the fishery as Category III at this time. An analysis of all takes in this fishery from 1995–2000, relative to the classification criteria support a reclassification from Category III to Category II.

AK Cook Inlet Salmon Set Gillnet Fishery

The Category II Cook Inlet set gillnet fishery was observed in 1999 and 2000. No serious injuries or mortalities of marine mammals were observed in this fishery. Therefore, NMFS proposes to reclassify this fishery from Category II to Category III.

Addition of Fisheries to the LOF

CA Yellowtail, Barracuda, White Seabass, and Tuna Drift Gillnet Fishery (mesh size > 3.5 inches and <14 inches)

NMFS proposes to add the CA yellowtail, barracuda, white seabass,

and tuna drift gillnet fishery (mesh size > 3.5 inches and < 14 inches) to the LOF as a Category II fishery based on this fishery's similarity to other drift gillnet fisheries, and therefore, its potential to entangle marine mammals. California Department of Fish and Game logbook and landings data for 1999–2001 indicate that there are approximately 24 vessels that use drift gillnets of greater than 3.5 inches and less than 14 inches to target yellowtail, barracuda, and white seabass of southern California, as well as to target bluefin and albacore tuna primarily off central California. These drift gillnets are up to 6,000 feet long and are set at the surface. Of the 24 vessels known to participate in this fishery in 1999–2001, 19 vessels targeted white seabass during 1999 and 2000, making a total of 277 sets; 7 vessels targeted yellowtail during 1999 and 2000, making a total of 45 sets; and 7 vessels targeted tuna, making a total of 43 sets in 2001.

NMFS does not currently have observer data on the mortality or serious injury of marine mammals incidental to this fishery. Nonetheless, this fishery has a potential to entangle marine mammals because other drift gillnet fisheries with similar characteristics are known to entangle marine mammals. The CA/OR thresher shark/swordfish drift gillnet fishery, for instance, which uses a larger mesh size, historically resulted in frequent incidental mortality and serious injury of marine mammals and is currently subject to take reduction plan regulations. These regulations include requirements to use acoustic pingers on drift gillnets and to set gillnets at least 36 feet below the surface in order to reduce the likelihood of entanglement of marine mammals. While NMFS is uncertain of the likelihood that this new smaller mesh drift gillnet fishery will entangle marine mammals, there are similarities between this fishery and the CA/OR thresher shark/swordfish drift gillnet fishery. As a result, NMFS proposes that this fishery be placed in Category II, based on analogy with the CA/OR thresher shark/swordfish fishery and other gillnet fisheries. This fishery would include all vessels using drift gillnets of mesh size greater than 3.5 inches and less than 14 inches to target yellowtail, barracuda, white seabass and tuna off California.

In July 2002, NMFS began placing observers on some vessels in this fishery to better assess its potential to entangle marine mammals. Based on information collected by observers, NMFS will reassess the categorization of this fishery in a future LOF and evaluate whether this fishery should be addressed by the Pacific Offshore Cetacean Take Reduction Team.

Removals of Fisheries from the LOF

CA Shark/Bonito Longline/Set Line Fishery

In the final LOF for 1998 (63 FR 5748, 5750, February 4, 1998), NMFS revised the name of the CA shark/bonito longline/set line fishery to the CA offshore longline fishery because the fishery primarily targeted swordfish and tunas. Because of a technical error, this name change was not carried forward into the LOF for subsequent years and the fishery remained listed as the CA shark/bonito longline/set line fishery. NMFS is not proposing to implement this name change at this time as it would be duplicative of the CA pelagic longline fishery discussed below. Additionally, there is no evidence that this fishery currently operates. Rather, NMFS proposes to remove the CA shark/bonito longline/set line from the LOF.

Fishery Name and Organizational Changes and Clarifications

Alaska Crustacean Pot Fishery

All shrimp and crab pot fisheries in Alaska are grouped into the Category III Alaska crustacean pot fishery. Since 1996, there have been at least 11 reports of humpback whales entangled in pot gear from the Alaska crustacean pot fishery. Of these entanglements, at least 2 likely caused serious injuries leading to the mortality of the entangled humpback whale. While all 11 of the entanglements were observed in areas where the central North Pacific stock of humpback whales is found, it is not clear whether the entangling gear originated in these same areas. For example, one report identified the gear as tanner crab gear, but the tanner crab fishery has not been active in the known range of the central North Pacific stock of humpback whales since 1996.

NMFS has been studying the stock structure of central North Pacific humpback whales and may propose to separate a portion of the stock that forages in southeast Alaska from the remainder of the stock in the draft 2003 Stock Assessment Report. During this revision, additional effort will be made to determine the likely sources of the pot gear entanglements for central North Pacific humpback whales. NMFS proposes to retain the Alaska crustacean pot fishery in Category III at this time, but will evaluate whether or not to reclassify this fishery in the 2004 LOF, once more information is obtained about humpback whale stock structure.

CA Angel Shark/Halibut and Other Species Large Mesh (>3.5 in. mesh) Set Gillnet Fishery

The CA angel shark/halibut and other species large mesh set gillnet fishery includes all vessels using set gillnets of greater than 3.5 inches stretched mesh to target angel shark and halibut, as well as other species, such as yellowtail and white seabass. This fishery operates off southern and central California. It is a Category I fishery because the average estimated annual mortality and serious injury of the Monterey Bay stock of harbor porpoise in this fishery exceeds 50 percent of the PBR level (11 animals per year) for this stock.

NMFS proposes to remove the reference to "large mesh" in the name of this fishery, and rename it the "CA angel shark/halibut and other species set gillnet fishery (>3.5 in. mesh)." According to 50 CFR Part 229.2, a large mesh gillnet is a gillnet with a mesh size of 7 to 18 inches. Since the CA angel shark/halibut and other species set gillnet fishery uses a mesh size of greater than 3.5 inches, NMFS believes that the term "large mesh" is not applicable to this fishery.

In September 2002, the California Department of Fish and Game issued permanent regulations prohibiting set gillnet fishing in ocean waters that are 60 fathoms or less in depth in central California from Point Reyes to Point Arguello, citing concerns over the incidental take of seabirds and sea otters. NMFS expects that this closure will result in a significant reduction in effort in this fishery off central California, and subsequently, in incidental mortality and serious injury of harbor porpoise.

CA Longline Fishery

NMFS proposes to revise the name of the "CA longline fishery" to the "CA pelagic longline fishery." As was explained in the proposed LOF for 2001 (66 FR 6545, 6552, January 22, 2001), this fishery is directed primarily toward swordfish caught outside the U.S. Exclusive Economic Zone off California but unloaded in California ports. The name "CA pelagic longline fishery" more accurately describes this fishery and will eliminate confusion between this fishery and the WA/OR/CA groundfish, bottomfish longline/set line fishery, which is a demersal longline fishery.

CA Set and Drift Gillnet Fisheries that Use a Stretched Mesh Size of 3.5 Inches or Less

NMFS is not proposing to change the definition or categorization of this

Category III fishery, but provides the following explanation for clarification and comparison with gillnet fisheries for which changes are proposed. This fishery includes CA gillnet fisheries that use a mesh size of 3.5 inches or less that target white croaker, bonito, flying fish, herring, smelt, shad, bottomfish, mullet, perch, and rockfish. There have been no observed or reported incidental takes of marine mammals in this fishery. Due to the small mesh used in this fishery, the likelihood of incidental marine mammal mortality and serious injury is very low. For these reasons, this fishery remains in Category III.

CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery

NMFS proposes to modify the name of this Category I (proposed Category II) fishery to clarify that it includes drift gillnets of greater than or equal to 14 inches stretched mesh only. NMFS proposes to rename the fishery the "CA/OR thresher shark/swordfish drift gillnet fishery (≥14 in. mesh).

Number of Vessels/Persons

AK Bering Sea Aleutian Islands Groundfish Longline/Set Line Fishery

NMFS proposes to change the number of participants in this fishery from 115 to 148 based on 2000 data.

AK Gulf of Alaska Groundfish Longline/Set Line Fishery

NMFS proposes to change the number of participants in this fishery from 876 to 1030 based on 2000 data.

AK Bering Sea Aleutian Islands Groundfish Trawl Fishery

NMFS proposes to change the number of participants in this fishery from 166 to 157 based on 2000 data.

AK Gulf of Alaska Groundfish Trawl Fishery

NMFS proposes to change the number of participants in this fishery from 198 to 145 based on 2000 data.

AK Bering Sea, Gulf of Alaska Finfish Pot Fishery

NMFS proposes to change the number of participants in this fishery from 257 to 314 based on 2000 data.

CA Longline Fishery

NMFS proposes to change the number of participants in this fishery from 45 to 30 to reflect current effort in this fishery.

CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery

NMFS proposes to revise the number of participants in this fishery to 113, which is the number of permits issued for this fishery by the California Department of Fish and Game in 2001.

List of Species that are Incidentally Injured or Killed

AK Bering Sea Aleutian Islands Groundfish Trawl Fishery

NMFS proposes to remove the Gulf of Alaska stock of harbor seal from the list of marine mammal species and stocks incidentally injured or killed by the AK BSAI groundfish trawl fishery because there is no known interaction between this stock of harbor porpoise and this fishery.

NMFS proposes to add the Northeast Pacific stock of fin whales to the list of marine mammal species and stocks incidentally injured or killed by the AK Bering Sea Aleutian Islands groundfish trawl fishery because this stock is known to interact with this fishery and was inadvertently omitted from the list of marine mammal species in the past.

CA Herring Purse Seine Fishery

NMFS proposes to remove the CA coastal stock of bottlenose dolphins from the list of marine mammal species and stocks incidentally injured or killed in the CA herring purse seine fishery. The designation of this stock as interacting with this fishery was based on one interaction from the early 1990s reported in a logbook; however, neither the species identification, nor the location of the take, was ever verified. No other bottlenose dolphins are known to have interacted with this fishery.

CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery (≥14 in. mesh)

NMFS proposes to add the CA/OR/WA stock of fin whales and the eastern North Pacific stock of gray whales to the list of marine mammals incidentally injured or killed in the CA/OR thresher shark/swordfish drift gillnet fishery (≥14 in. mesh). Interactions between each of these marine mammal stocks and this fishery have been documented in previous Stock Assessment Reports. The absence of these marine mammals from previous LOFs was in error. Therefore, NMFS proposes to correct this oversight in the 2003 LOF.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean: Fishery Classification

Atlantic Mixed Species Trap/Pot Fishery

NMFS proposes to add the "Atlantic mixed species trap/pot fishery" to the LOF to encompass the Northeast trap/pot fishery, the Mid-Atlantic mixed species trap/pot fishery, and the U.S. Mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot fisheries and include any other trap/pot gear that is not included in other trap/pot fisheries specifically identified in the LOF. Additionally, NMFS proposes to list the Atlantic mixed species trap/pot fishery as a Category II fishery. This fishery would extend throughout U.S. Atlantic waters from Maine to Florida.

NMFS has documented entanglement of whales, pinnipeds, and small cetaceans in fixed gear. Often, however, the gear involved in whale entanglements cannot be attributed to a specific fixed gear fishery. Lobster pot gear, in particular, has been identified in whale entanglements. Between 1995 and 1999, at least two serious injuries or mortalities of right whales were attributed to lobster trap/pot gear. Trap/pot gear is generally fished either as single pots with one buoy line or as strings of pots with one or more buoy lines. Whales may become entangled in the vertical or horizontal components of the gear (e.g., buoy lines and groundlines). The Gulf of Maine/ U.S. Mid-Atlantic lobster trap/pot fishery was elevated to Category I in the 1997 LOF (62 FR 33, January 2, 1997) because of evidence of incidental take resulting in serious injury and mortality of right whales, and the fishery was renamed the Northeast/Mid-Atlantic American lobster trap/pot fishery in the 2001 LOF (66 FR 42780, August, 15, 2001). Additionally, small cetaceans and pinnipeds occasionally become entangled in buoy lines and traps. The Atlantic blue crab trap/pot fishery was elevated to Category II in the 2001 LOF (66 FR 42780, August 15, 2001) based on a review of fishery interaction data from bottlenose dolphin strandings.

Other trap/pot fisheries in the Northeast, Mid-Atlantic, and South Atlantic use gear components similar to those used in the Northeast/Mid-Atlantic American lobster trap/pot fishery and the Atlantic blue crab trap/pot fishery, and therefore, may take marine mammals where fishing effort overlaps with marine mammal distribution. While the majority of records of entanglements in fixed gear cannot be attributed to a specific fishery, it is likely that some entanglements occurred in trap/pot fisheries other than lobster and blue crab trap/pot fisheries. These other trap/pot fisheries may occasionally result in incidental serious injury and mortality to marine mammals. Therefore, NMFS proposes to reclassify these fixed gear fisheries based on analogy with the Northeast/Mid-Atlantic American lobster trap/pot fishery and the Atlantic blue crab trap/pot fishery. NMFS does not believe that the rate of incidental

serious injury/mortality in non-lobster trap/pot fisheries would be at the Category I level because, while the exact number of participants is unknown, there are far fewer participants in these fixed gear fisheries than in the lobster fishery. Therefore, NMFS proposes to capture these other trap/pot fisheries in the newly named Atlantic mixed species trap/pot fishery and to classify this fishery as Category II.

Specifically, this fishery would combine the Category II Northeast trap/pot fishery, the Category III Mid-Atlantic mixed species trap/pot fishery, and the Category III U.S. Mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot fishery and include any other trap/pot gear that is not included in other trap/pot fisheries specifically identified in the LOF. An estimate of the number of participants in the Atlantic mixed species trap/pot fishery is currently unavailable. The marine mammal species or stocks incidentally injured and killed in these trap/pot fisheries include the Western North Atlantic stock of fin whales, the Gulf of Maine stock of humpback whales, the Canadian east coast stock of Minke whales, and the Gulf of Maine/Bay of Fundy stock of harbor porpoise.

The Category I Northeast/Mid-Atlantic American lobster trap/pot fishery and the Category II Atlantic blue crab trap/pot fishery would retain their separate listings under the LOF. The Category III Florida spiny lobster trap/pot, Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot, and U.S. Mid-Atlantic eel trap/pot fisheries would remain as separate fisheries in Category III because the operation of these trap/pot fisheries does not overlap with right whale distribution and these particular fisheries are not known to interact with marine mammals except on rare occasions. The Southeastern U.S. Atlantic, Gulf of Mexico golden crab fishery would also remain a separate fishery in Category III because this fishery is a deep water fishery that does not use vertical buoy lines typically used in other trap/pot fisheries.

Gulf of Mexico Blue Crab Trap/Pot Fishery

NMFS continues to monitor incidental mortality and serious injury of marine mammals in the Gulf of Mexico blue crab trap/pot fishery. Initially, NMFS proposed to elevate the fishery to Category II in the 2001 LOF based on documented interactions with Gulf of Mexico stocks ofbottlenose dolphins. NMFS will continue to monitor this fishery while maintaining it in Category III in the 2003 LOF. Over the next year, NMFS will work with the Gulf States Marine Fisheries Commission and the National Sea Grant Extension Enhancement Program to improve data on bottlenose dolphin entanglements and to reduce incidental takes of bottlenose dolphins in this fishery by removing derelict traps and educating crabbers. NMFS will reevaluate this fishery in the 2004 LOF.

Gulf of Mexico Gillnet Fishery

NMFS proposes to elevate the Gulf of Mexico gillnet fishery to Category II. In the 2001 LOF (66 FR 42780, August 15, 2001), NMFS combined the Category III Gulf of Mexico inshore gillnet, Gulf of Mexico coastal gillnet, and Gulf of Mexico king and Spanish mackerel gillnet fisheries into one fishery named the "Gulf of Mexico gillnet fishery." NMFS initially proposed to elevate this fishery to Category II based on documented interactions with Gulf of Mexico stocks of bottlenose dolphins. Ultimately, NMFS decided to reevaluate the available data and maintained the fishery in Category III in the 2001 LOF.

Estimates of incidental mortality and serious injury of marine mammals in this fishery are derived primarily from stranding data. Although gillnet effort has been declining in the Gulf of Mexico, a reevaluation of stranding data indicates that bottlenose dolphin strandings continue to occur in areas where gillnet fishing occurs. Because of the small population size of some of the dolphin stocks in the bays, sounds, and estuaries of the Gulf of Mexico, the PBR levels for these stocks are also low, and one interaction every few years can exceed the thresholds for Tier I and Category I and II levels. Based on analogy with other gillnet fisheries, the Atlantic Scientific Review Group's recommendation that NMFS elevate all gillnet fisheries to at least Category II unless there is evidence to the contrary, and the stranding data presented in the following Tier anlaysis, NMFS proposes to elevate the Gulf of Mexico gillnet fishery to Category II. There are approximately 724 participants in this fishery. The species or stocks incidentally injured and killed in this fishery include the Western, Northern, and Eastern Gulf of Mexico coastal stocks of bottlenose dolphins and the Gulf of Mexico Bay, Sound, and Estuarine stocks of bottlenose dolphins. Gulf of Mexico Bay, Sound, and Estuarine stocks of bottlenose dolphins have been broken down into a series of smaller stocks based on geographic area (e.g., Charlotte Harbor, Mississippi River Delta) given information that these bottlenose dolphins exhibit finely-scaled population structure and occur in relatively discrete communities throughout these areas. PBR levels have been calculated for each smaller stock where abundance estimates are available.

Tier 1 Evaluation: NMFS reviewed data from stranded bottlenose dolphins from the Gulf of Mexico that were necropsied and examined for signs of human interaction. Between 1997 and 2000, stranding network members in Gulf of Mexico states recovered 39 bottlenose dolphins from the Gulf of Mexico Bay, Sound, and Estuarine stocks (approximately 10 animals per year) that died as a result of human interactions. Of the 39 animals recovered, up to 12 showed evidence that gillnet interactions could have caused the resulting mortality. Of the 12 animals with signs of gillnet interaction, the cause of death of 5 of the animals was clearly attributable to gillnet gear. Therefore, gillnet gear accounted for the mortality of a minimum of 1.25 animals per year, averaged over the 4 years from 1997 to 2000. More specifically, the 5 dolphins were distributed in the following areas over a period of 4 years from 1997 to 2000: 1 from Charlotte Harbor (PBR = 1.5 animals per year) for an annual mortality of 17 percent of the PBR level; 2 from Mississippi Sound (PBR = 13 animals per year) for an annual mortality of 4 percent of the PBR level; and one each from the Mississippi River Delta and Vermillion Bay, where abundance estimates, and therefore the PBR levels, are unknown because no dolphins were sighted in surveys of those areas. Incidental mortality and serious injury of Charlotte Harbor bottlenose dolphins in this fishery alone exceeds 10 percent of the PBR level for this stock. Therefore, this fishery is subject to Tier 2 analysis.

Tier 2 Evaluation: The incidental mortality and serious injury of Charlotte Harbor bottlenose dolphins and Mississippi Sound bottlenose dolphins in the Gulf of Mexico gillnet fishery exceeds 1 percent of the PBR level, but is less than 50 percent of the PBR level, for each of these marine mammal stocks. Therefore, NMFS proposes to elevate this fishery to Category II.

Mid-Atlantic Coastal Gillnet Fishery

NMFS proposes to elevate the Mid-Atlantic coastal gillnet fishery to Category I as justified by the following tier analysis. Marine mammal species and stocks incidentally injured and killed by this fishery include: the Gulf of Maine stock of humpback whales, the Canadian east coast stock of Minke whales, the western North Atlantic (WNA) offshore and coastal stocks of bottlenose dolphin, the Gulf of Maine/

Bay of Fundy stock of harbor porpoise, the WNA stock of harbor seals, the WNA stock of harp seals, the WNA stocks of long-finned and short-finned pilot whales, the WNA stock of white-sided dolphin, and the WNA stock of common dolphin. There are approximately 655 participants in this fishery. The following tier analysis supports elevation of this fishery to Category I.

Tier 1 Evaluation: NMFS' observer program has documented incidental mortality and serious injury of the WNA coastal stock of bottlenose dolphins in the Mid-Atlantic coastal gillnet fishery. For management purposes, coastal bottlenose dolphins have been assigned to seven management units based on the results of genetic, stable isotope ratio, photo-identification, and telemetry studies. Incidental mortality and serious injury of the WNA coastal stock of bottlenose dolphins across all fisheries exceeds 10 percent of the PBR level for this stock of bottlenose dolphins. Therefore, this fishery is subject to Tier 2 analysis.

Tier 2 Evaluation: Annual incidental mortality and serious injury in the Mid-Atlantic coastal gillnet fishery has been estimated from observer coverage. The Mid-Atlantic coastal gillnet fishery causes an estimated incidental mortality and serious injury of 233 WNA coastal bottlenose dolphins per year, which exceeds the PBR (171 animals per year) for this stock. Because the annual incidental mortality and serious injury in the Mid-Atlantic coastal gillnet fishery exceeds 50 percent of the PBR for this stock, the fishery qualifies for reclassification as a Category I fishery.

Addition of Fisheries to the LOF

See discussion of U.S. Atlantic Trap/Pot Mixed Species Fishery.

Removals of Fisheries from the LOF

No changes proposed.

Fishery Name and Organizational ChangesNo changes proposed.

Number of Vessels/PersonsNo changes proposed.

List of Species that are Incidentally Injured or Killed

No changes proposed.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the 1996 LOF is used.

The tables also list the marine mammal species and stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience injury or mortality in a given fishery, but also includes species or stocks for which there are anecdotal or historical, but not necessarily current, records of interaction. Additionally, species identified by logbook entries may not be verified. Therefore, not all species or stocks identified are the reason for a fishery's placement in a given category. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995).

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Category I		
GILLNET FISHERIES:		
CA angel shark/halibut and other species (>3.5 in mesh) set gillnet	58	Harbor porpoise, central CA Common dolphin, short-beaked, CA/OR/WA Common dolphin, long-beaked CA California sea lion, U.S. Harbor seal, CA Northern elephant seal, CA breeding Sea otter, CA
Category II		
GILLNET FISHERIES:		
AK Bristol Bay salmon drift gillnet	1,903	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Spotted seal, AK Pacific white-sided dolphin, North Pacific
AK Bristol Bay salmon set gillnet	1,014	Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Northern fur seal, Eastern Pacific Spotted seal, AK
AK Kodiak salmon set gillnet	188	Harbor seal, GOA Harbor porpoise, GOA Sea otter, AK
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK Peninsula/Aleutian Islands salmon drift gillnet	164	Northern fur seal, Eastern Pacific Harbor seal, GOA Harbor porpoise, Bering Sea Dall's porpoise, AK
AK Peninsula/Aleutian Islands salmon set gillnet	116	Steller sea lion, Western U.S. Harbor porpoise, Bering Sea
AK Prince William Sound salmon drift gillnet	541	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Harbor seal, GOA Pacific white-sided dolphin, North Pacific. Harbor porpoise, GOA Dall's porpoise, AK Sea Otter, AK
AK Southeast salmon drift gillnet	481	Steller sea lion, Eastern U.S. Harbor seal, Southeast AK Pacific white-sided dolphin, North Pacific Harbor porpoise, Southeast AK Dall's porpoise, AK Humpback whale, central North Pacific
AK Yakutat salmon set gillnet	170	Harbor seal, Southeast AK Gray whale, Eastern North Pacific
CA/OR thresher shark/swordfish drift gillnet (≥ 14 in. mesh)	113	Steller sea lion, Eastern U.S. Sperm whale, CA/OR/WA Dall's porpoise, CA/OR/WA Northern Pacific white-sided dolphin, CA/OR/WA Southern Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore Short-beaked common dolphin CA/OR/WA Long-beaked common dolphin CA/OR/WA Northern right-whale dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA Baird's beaked whale, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Cuvier's beaked whale, CA/OR/WA Pygmy sperm whale, CA/OR/WA California sea lion, U.S. Northern elephant seal, CA breeding Humpback whale, CA/OR/WA-Mexico Minke whale, CA/OR/WA Striped dolphin, CA/OR/WA Killer whale, CA/OR/WA Pacific coast Northern fur seal, San Miguel Island
CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery (mesh size >3.5 inches and <14 inches).	24	None documented
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line Treaty Indian fishing is excluded).	725	Harbor porpoise, inland WA Dall's porpoise, CA/OR/WA Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	416	Humpback whale, central North Pacific
CA anchovy, mackerel, tuna purse seine	150	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
TRAWL FISHERIES:		
AK Bering Sea and Aleutian Islands Groundfish Trawl	157	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Pacific white-sided dolphin, North Pacific Harbor porpoise, Bering Sea Harbor seal, Bering Sea Bearded seal, AK Ringed seal, AK Spotted seal, AK Dall's porpoise, AK Ribbon seal, AK Northern elephant seal, CA breeding Sea otter, AK Pacific walrus, AK Humpback whale, Central North Pacific Humpback whale, Western North Pacific Fin whale, Northeast Pacific
AK miscellaneous finfish pair trawl	2	None documented
LONGLINE FISHERIES:		
California pelagic longline	30	California sea lion
OR swordfish floating longline	2	None documented
OR blue shark floating longline	1	None documented
Category III		
GILLNET FISHERIES:		
AK Cook Inlet salmon drift gillnet	576	Steller sea lion, Western U.S. Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet
AK Cook Inlet salmon set gillnet	745	Steller sea lion, Western U.S. Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Steller sea lion, Western U.S. Harbor seal, GOA
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented
AK octopus/squid purse seine	2	None documented
AK roe herring and food/bait herring beach seine	0	None documented
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II).	953	Harbor seal, GOA
CA herring purse seine	100	California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	120	None documented
HI opelu/akule net	16	None documented
HI purse seine	18	None documented
HI throw net, cast net	47	None documented

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA salmon enhancement rearing pen	>1	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Western U.S. Steller sea lion, Eastern U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
Guam tuna troll	50	None documented
HI net unclassified	106	None documented
HI trolling, rod and reel	1,795	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	148	Northern elephant seal, CA breeding Killer whale, Eastern North Pacific resident Killer whale, transient Steller sea lion, Western U.S. Pacific white-sided dolphin, North Pacific Dall's porpoise, AK Harbor seal, Bering Sea
AK Gulf of Alaska groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	1,030	Steller sea lion, Western U.S. Harbor seal, Southeast AK Northern elephant seal, CA breeding
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish).	731	None documented
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Humpback whale, Central North Pacific False killer whales, HI Risso's dolphin, HI Bottlenose dolphin, HI Spinner dolphin, HI Short-finned pilot whale, HI Sperm whale, HI
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		
AK food/bait herring trawl	3	None documented
AK Gulf of Alaska groundfish trawl	145	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Harbor seal, GOA Dall's porpoise, AK Northern elephant seal, CA breeding Fin whale, Northeast Pacific
AK miscellaneous finfish otter or beam trawl	6	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
WA, OR, CA groundfish trawl	585	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Pacific white-sided dolphin, central North Pacific Dall's porpoise, CA/OR/WA California sea lion, U.S. Harbor seal, OR/WA coast
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea, Gulf of Alaska finfish pot	314	Harbor seal, GOA Harbor seal, Bering Sea Sea otter, AK
AK crustacean pot	1,852	Harbor porpoise, Southeast AK

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	None documented
WA, OR, CA sablefish pot	176	None documented
WA, OR shrimp pot & trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	15	Hawaiian monk seal
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	<50	None documented
HI aku boat, pole and line	54	None documented
HI deep sea bottomfish	434	Hawaiian monk seal
Hi inshore handline	650	Bottlenose dolphin, HI
HI tuna	144	Rough-toothed dolphin, HI Bottlenose dolphin, HI Hawaiian monk seal
WA groundfish, bottomfish jig	679	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	228	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented
BAIT PENS:		
WA/OR/CA bait pens	13	None documented
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI coral diving	2	None documented
HI fish pond	10	None documented
HI handpick	135	None documented
HI lobster diving	6	None documented
HI squiding, spear	267	None documented
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented
HI "other"	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

List of Abbreviations Used in Table 1: AK--Alaska; CA--California; GOA-- Gulf of Alaska; HI--Hawaii; OR--Oregon; WA--Washington.

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Category I		
GILLNET FISHERIES:		
Mid-Atlantic coastal gillnet	>655	Humpback whale, Gulf of Maine Minke whale, Canadian east coast Bottlenose dolphin, WNA offshore Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA Common dolphin, WNA
Northeast sink gillnet	341	North Atlantic right whale, WNA Humpback whale, WNA Minke whale, Canadian east coast Killer whale, WNA White-sided dolphin, WNA Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, WNA Common dolphin, WNA Fin whale, WNA Spotted dolphin, WNA False killer whale, WNA Harp seal, WNA
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	<200	Humpback whale, WNA Minke whale, Canadian east coast Risso's dolphin, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA Common dolphin, WNA Atlantic spotted dolphin, WNA Pantropical spotted dolphin, WNA Striped dolphin, WNA Bottlenose dolphin, WNA offshore Bottlenose dolphin, GMX Outer Continental Shelf Bottlenose dolphin, GMX Continental Shelf Edge and Slope Atlantic spotted dolphin, Northern GMX Pantropical spotted dolphin, Northern GMX Risso's dolphin, Northern GMX Harbor porpoise, GME/BF
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	North Atlantic right whale, WNA Humpback whale, WNA Fin whale, WNA Minke whale, Canadian east coast Harbor seal, WNA
TRAWL FISHERIES:		
Atlantic squid, mackerel, butterfish trawl	620	Common dolphin, WNA Risso's dolphin, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Category II		
GILLNET FISHERIES:		
Gulf of Mexico gillnet	724	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, and Estuarine
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal
Northeast anchored float gillnet	133	Humpback whale, WNA White-sided dolphin, WNA Harbor seal, WNA
Northeast drift gillnet	unknown	None documented
Southeast Atlantic gillnet	779	Bottlenose dolphin, WNA coastal

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Southeastern U.S. Atlantic shark gillnet	12	Bottlenose dolphin, WNA coastal North Atlantic right whale, WNA Atlantic spotted dolphin, WNA
TRAWL FISHERIES:		
Atlantic herring midwater trawl (including pair trawl)	17	Harbor seal, WNA
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal West Indian manatee, FL
Atlantic mixed species trap/pot	unknown	Fin whale, WNA Humback whale, Gule of Maine Minke whale, Canadian east coast Harbor porpoise, GME/BF
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal
POUND NET FISHERIES:		
Virginia pound net	187	Bottlenose dolphin, WNA coastal
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Chesapeake Bay inshore gillnet	45	Harbor porpoise, GME/BF
Delaware Bay inshore gillnet	60	Humpback whale, WNA Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
Long Island Sound inshore gillnet	20	Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	Humpback whale, WNA Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
TRAWL FISHERIES:		
Calico scallops trawl	12	None documented
Crab trawl	400	None documented
Georgia, South Carolina, Maryland whelk trawl	25	None documented
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented
Gulf of Maine northern shrimp trawl	320	None documented
Gulf of Mexico butterfish trawl	2	Atlantic spotted dolphin, Eastern GMX Pantropical spotted dolphin, Eastern GMX
Gulf of Mexico mixed species trawl	20	None documented
Mid-Atlantic mixed species trawl	>1,000	None documented
North Atlantic bottom trawl	1,052	Long-finned pilot whale, WNA Short-finned pilot whale, WNA Common dolphin, WNA White-sided dolphin, WNA Striped dolphin, WNA Bottlenose dolphin, WNA offshore
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal
U.S. Atlantic monkfish trawl	unknown	Common dolphin, WNA
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal Humpback whale, WNA
U.S. Atlantic tuna purse seine	unknown	None documented
U.S. Mid-Atlantic hand seine	>250	None documented

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
LONGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine tub trawl groundfish bottom longline/ hook-and-line ..	46	Harbor seal, WNA Gray seal, Northwest North Atlantic Humpback whale, WNA
Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon.	26,223	Humpback whale, WNA
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/ hook-and-line.	124	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, U.S. Mid-Atlantic pelagic hook-and-line/harpoon.	1,446	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern Gulf of Mexico coastal
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	North Atlantic right whale, WNA Humpback whale, WNA Minke whale, Canadian east coast Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, Northwest North Atlantic
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/ pound net (except the North Carolina roe mullet stop net).	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented

List of Abbreviations Used in Table 2: FL--Florida; GA--Georgia; GME/BF-- Gulf of Maine/Bay of Fundy; GMX--Gulf of Mexico; NC--North Carolina; SC-- South Carolina; TX--Texas; WNA--Western North Atlantic.

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities. For convenience, the factual basis leading to the certification is repeated below.

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA, obtain an Authorization Certificate, and pay a fee of $25. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. NMFS has estimated that approximately 40,000 fishing vessels operate in Category I or II fisheries, and therefore, are required to register. However, registration has been integrated with existing state or Federal registration programs for the majority of these fisheries so that the majority of fishers do not need to register separately under the MMPA. Currently, approximately 5,800 fishers register directly with NMFS under the MMPA authorization program.

An additional 935 fishers would be eligible to register as a result of this proposed rule. However, these fishers may already participate in Category I or II fisheries for which they currently register under the MMPA or participate in Federal or state fisheries with integrated registration programs, such as fisheries in Alaska, and therefore, would not be required to register separately under the MMPA or pay an additional $25 registration fee. Fisheries that this rule proposes to elevate to Category II and whose participants would be required to register include the Alaska Bering Sea and Aleutian Islands Groundfish Trawl fishery (157 participants) and the Gulf of Mexico gillnet fishery (724 participants). Addition of the California yellowtail, barracuda, white seabass, tuna drift gillnet fishery (mesh size > 3.5 in. and < 14 in.) to the LOF as a Category II fishery would require 24 additional participants to register. Addition of the Atlantic mixed species trap/pot fishery to the LOF as a Category II fishery, which involves combining the Northeast trap/pot fishery (already Category II), the Mid-Atlantic mixed species trap/pot fishery, and the U.S. Mid-Atlantic and Southeast U.S. Atlantic black seabass trap/pot fishery would require at least an additional 30 participants to register since it would require elevating the Mid-Atlantic mixed species trap/pot fishery (number of participants unknown) and the U.S. Mid-Atlantic and Southeast U.S. Atlantic black seabass trap/pot fishery (30 participants) to Category II.

Though this rule affects a substantial number of small entities, the $25 registration fee, with respect to anticipated revenues, is not considered a significant economic impact. As a result of this certification, an initial regulatory flexibility analysis was not prepared.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the OMB under OMB control number 0648-0293 (0.25 hours per report for new registrants and 0.15 hours per report for renewals). The requirement for reporting marine mammal injuries or moralities has been approved by OMB under OMB control number 0648-0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA (1995 EA). The 1995 EA concluded that implementation of those regulations would not have a significant impact on the human environment. This proposed rule would not make any significant change in the management of reclassified fisheries, and therefore, this proposed rule is not expected to change the analysis or conclusion of the 1995 EA. If NMFS takes a management action, for example, through the development of a Take Reduction Plan (TRP), NMFS will first prepare an environmental document as required under NEPA specific to that action.

This proposed rule will not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under section 7 of the ESA for that action.

This proposed rule will have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs or take reduction teams.

This proposed rule will not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: January 03, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–523 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 021113274–2274–01; I.D. 031501A]

RIN 0648–AO79

Atlantic Highly Migratory Species; Exempted Fishing Activities: Reopening of Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: NMFS is reopening the deadline for filing comments on the proposed rule published December 6, 2002, which would modify existing exempted fishing regulations for Atlantic highly migratory species (HMS). Comments are currently due to be filed by 5 p.m. eastern standard time, on January 6, 2003. The comment period is being reopened to comply with requests submitted by a number of constituents who potentially could be affected by the proposed rule.

DATES: The effective data for reopening the comment period is January 10, 2003 through March 17, 2003. Comments must be received by 5 p.m. eastern standard time, on March 17, 2003.

ADDRESSES: Written comments on the proposed rule should be submitted to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments regarding the collection-of-information requirement contained in this proposed rule should be sent to the Highly Migratory Species Management Division (F/SF1), 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer). Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly or Heather Stirratt at 301–713–2347, fax 301–713–1917, e-mail *Sari.Kiraly@noaa.gov*.

SUPPLEMENTARY INFORMATION: The proposed rule was published on December 6, 2002 (67 FR 72629).

Subsequently, a public hearing was held on December 17, 2002, in Orlando, Florida. At the public hearing and in written correspondence a number of constituents who potentially could be affected by the proposed rule requested that the comment period be extended. This is to allow more time for preparing comments in response to the proposed rule. To that effect, the comment period is reopened until March 17, 2003.

Dated: January 6, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–520 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 7
Friday, January 10, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 03–001–1]

Declaration of Extraordinary Emergency Because of Exotic Newcastle Disease

Exotic Newcastle disease (END) has been confirmed in the State of California. The disease has been confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption, and in commercial poultry.

END is a contagious and fatal viral disease affecting domestic, wild, and caged poultry and birds. It is one of the most infectious diseases of poultry in the world, and is so virulent that many birds die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry. This disease in poultry and birds is characterized by respiratory signs accompanied by nervous manifestations, gastrointestinal lesions, and swelling of the head.

END is spread primarily through direct contact between healthy birds or poultry and the bodily discharges of infected birds or poultry. Within an infected flock, END is transmitted by direct contact, contaminated feeding and watering equipment, and aerosols produced by coughing, gasping, and other respiratory disturbances. Dissemination between flocks over long distances is often due to movement of contaminated equipment and service personnel, such as vaccination crews. Movement of carrier birds and those in an incubating stage accounts for most of the outbreaks in the pet bird industry.

The existence of END in California represents a threat to the U.S. poultry and bird industries. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce. The Department has reviewed the measures being taken by California to control and eradicate END and has consulted with the appropriate State Government and Indian tribal officials in California. Based on such review and consultation, the Department has determined that the measures being taken by the State are inadequate to control or eradicate END. Therefore, the Department has determined that an extraordinary emergency exists because of END in California.

This declaration of extraordinary emergency authorizes the Secretary to (1) hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary to prevent the dissemination of END and (2) prohibit or restrict the movement or use within the State of California, or any portion of the State of California, of any animal or article, means of conveyance, or facility if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of END. The appropriate State Government and Indian tribal officials in California have been informed of these facts.

Effective Date: This declaration of extraordinary emergency shall become effective January 6, 2003.

Ann M. Veneman,
Secretary of Agriculture.
[FR Doc. 03–492 Filed 1–9–03; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman Report, (5) Status of Project Proposals, (6) Update on Approved Projects, (7) Follow Up Presentation/Sunflower CRMP (8) General Discussion, (9) House Committee Report.

DATES: The meeting will be held on January 9, 2003 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 7, 2003 will have the opportunity to address the committee at those sessions.

Dated: January 6, 2003.
James F. Giachino,
Designated Federal Official.
[FR Doc. 03–481 Filed 1–9–03; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, (USDA).
ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss project development for 2003 and project updates for 2002. Agenda topics will include electing a chairperson for 2003, project proposal form modifications, and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and

Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on January 28, 2003, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: January 6, 2003.

David T. Bull,

Forest Supervisor.

[FR Doc. 03–487 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, (USDA).

ACTION: Notice of resource advisory committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination ACt of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, January 20, 2003. The Madera Resource Advisory Committee will meet at the U.S.D.A. Forest Service Office, 57003 Road 225, North Fork, CA. The purpose of the meeting is to update RAC committee outreach and RAC Proposal presentations.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, January 20, 2003. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the U.S.D.A. Forest Service Office, 57003 Road 225, North Fork, CA.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) update RAC committee outreach, and (2) RAC Proposal presentations. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 3, 2002.

David W. Martin,

District Ranger.

[FR Doc. 03–488 Filed 1–9–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed collection; comment request.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the annual certifications of nonprofit agencies serving people who have severe disabilities (Committee Form 404).

DATES: Comments must be submitted on or before February 10, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen F. Lee, Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or be electronically e-mailed to *Karen_F._Lee@omb.eop.gov.* Requests for copies of documents pertaining to the collection should be addressed to Committee for Purchase From People Who Are Blind or Severely Disabled, Attention: Janet Yandik, Information Management Specialist, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259 or e-mailed to *jyandik@jwod.gov.*

SUPPLEMENTARY INFORMATION: The Committee has an annual certification form for nonprofit agencies serving people who have severe disabilities (Committee Form 404, OMB Control Number 3037–0002.)

Information on the form is needed to ensure that nonprofit agencies serving people who have severe disabilities, that participate in the Javits-Wagner-O'Day program, continue to meet the requirements of 41 U.S.C. 46–48c.

Committee Form 404 has been modified to add the following items:

1. In Section 5, Certification: A line will be added for the Agency Executive's email address.

2. In Section 7, Data for Work Performed under Javits-Wagner-O'Day (JWOD) Act Only: A line will be added to count the number of people who are severely disabled, who worked on JWOD products and the number of people who are severely disabled who worked on JWOD services.

3. In Section 8, Placement and Promotion of People With Severe Disabilities: A third column will be added entitled "Direct Placement" to account for individuals placed into competitive or supported employment, but cannot currently be accounted for under the JWOD and NON-JWOD categories.

4. In Section 9, Sales Data: A block will be added to collect sales data from Base Supply Centers separate from the service sales.

Sheryl D. Kennerly,

Director of Information Management.

[FR Doc. 03–506 Filed 1–9–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed collection; comment request.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 30 days for public comment in response to the notice. This notice solicits comments on requirements relating to the annual certifications of

nonprofit agencies serving people who are blind (Committee Form 403).

DATES: Comments must be submitted on or before February 10, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen F. Lee, Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or be electronically e-mailed to *Karen_F._Lee@omb.eop.gov*. Requests for copies of documents pertaining to the collection should be addressed to Committee for Purchase From People Who Are Blind or Severely Disabled, Attention: Janet Yandik, Information Management Specialist, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259 or e-mailed to *jyandik@jwod.gov*.

SUPPLEMENTARY INFORMATION: The Committee has an annual certification form for nonprofit agencies serving people who are blind (Committee Form 403, OMB Control Number 3037–0001.)

Information on the form is needed to ensure that nonprofit agencies serving people who are blind, that participate in the Javits-Wagner-O'Day program, continue to meet the requirements of 41 U.S.C. 46–48c.

Committee Form 403 has been modified to add the following items:

1. In Section 5, Certification: A line will be added for the Agency Executive's email address.

2. In Section 7, Data for Work Performed under Javits-Wagner-O'Day (JWOD) Act Only: A line will be added to count the number of people who are blind, who worked on JWOD products and the number of people who are blind who worked on JWOD services.

3. In Section 8, Placement and Promotion of People Who Are Blind: A third column will be added entitled "Direct Placement" to account for individuals placed into competitive or supported employment, but cannot currently be accounted for under the JWOD and NON-JWOD categories.

4. In Section 9, Sales Data: A block will be added to collect sales data from Base Supply Centers separate from the service sales.

Sheryl D. Kennerly,

Director of Information Management.

[FR Doc. 03–507 Filed 1–9–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received On or Before: February 9, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center, Oceana Naval Air Station, Virginia Beach, Virginia.
NPA: Virginia Industries for the Blind, Charlottesville, Virginia.
Contract Activity: Fleet and Industries Supply Center, Norfolk, Virginia.

Service Type/Location: Grounds Maintenance, Naval & Marine Corps Reserve Center-Sacramento, Sacramento, California.
NPA: Easter Seal Society of Superior California, Sacramento, California.
Contract Activity: Naval Facilities Engineering Command, Alameda, California.

Service Type/Location: Janitorial/ Custodial, U.S. Property and Fiscal Office Offices, Building 01, U.S. Property and Fiscal Warehouse, Building 02, Combined Support Maintenance Shop, Building 04.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contract Activity: Illinois Air National Guard, Springfield, Illinois.

Service Type/Location: Janitorial/ Custodial, U.S. Army Reserve Center, Cincinnati, Ohio.
NPA: CRI, Inc., Cincinnati, Ohio.
Contract Activity: HQ, 88th Regional Support Command, Fort Snelling, Minnesota.

Service Type/Location: Janitorial/ Custodial, U.S. Coast Guard Cutter Aspen, Yerba Buena Island, San Francisco, California.
NPA: Toolworks, Inc., San Francisco, California.
Contract Activity: U.S. Coast Guard Integrated Support Command, Alameda, California.

Service Type/Location: Janitorial/ Custodial, USCG, Sandy Hook Detachment, Highlands, New Jersey.
NPA: Monmouth Center for Vocational Rehabilitation, Eatontown, NJ.
Contract Activity: USCG Activities New York, Staten Island, New York.

Service Type/Location: Janitorial/ Custodial, VA Medical Center—1st Floor, Indianapolis, Indiana.
NPA: GW Commercial Services, Inc., Indianapolis, Indiana.
Contract Activity: VA Medical Center, Indianapolis, Indiana.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–504 Filed 1–9–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to the procurement list products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the procurement list products previously furnished by such agencies.

EFFECTIVE DATE: February 9, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On August 30, October 4, November 1, and November 15, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 55776, 62224, 66607, and 69186) of proposed additions to the procurement list.

The following comments pertain to highlighters, fluorescent and free-ink.

Comments were received from the current contractor in response to a request for sales data. While admitting that the items proposed for addition to the procurement list represent a very small part of the company's sales, the contractor noted that it had recently been affected by another addition to the procurement list, and that the company has been on a Federal supply schedule for these items for nearly 20 years. The contractor stated that it would be very difficult to recover from these impacts in the current business environment, with government purchasers bundling contracts and closing supply depots. The contractor also noted that stores operated on Federal installations by nonprofit agencies in the Committee's program compete with small companies like the contractor. The contractor did not provide data on the extent of sales lost to these stores.

The impact of the current and recent procurement list addition mentioned by the contractor together amount to only a very small percentage of the contractor's total sales. In addition, the contractor will retain its current Federal supply schedule contract until it expires in 2005. The schedule in question is a multiple award schedule, so the contractor is guaranteed only a minimum amount of sales and must compete for the rest with other schedule holders. Therefore, the contractor's longtime status as a schedule contractor and the sales it may have lost to the Federal installation stores do not add much weight to the impacts which the Committee has considered in deciding that this procurement list addition will not have a severe adverse impact on the contractor.

The following comments pertain to can, friction top and container, fuel sample.

Comments were received from the current contractor in response to a request for sales information. The commenter stated that the items proposed for addition to the procurement list represented a significant minority of the gross revenues the commenter is receiving on this specific contract. The commenter also stated that that individual packaging of the items is the most difficult and expensive part of the production process, and requested that it be allowed an opportunity to supply the unfinished items to the nonprofit agency designated by the Committee to provide them to the government.

The Committee looks to a company's total sales, not to revenues on a specific contract, when assessing the severity of the impact of a procurement list addition on a contractor. In this case, the contract value of the items being added to the procurement list represents a very small portion of the commenter's total sales. The designated nonprofit agency will be buying the unfinished items from the same source as the commenter did, so it would not be economically feasible to involve the commenter in the purchase, as the presence of the commenter in the chain of transactions would likely only increase the cost of the items.

The Following Material Pertains to All of the Items Being Added to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.
2. The action will result in authorizing small entities to furnish the products and services to the government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the procurement list.

Accordingly, the following products and services are added to the procurement list:

Products

Product/NSN: Bag, trash, cloth, 2090–01–478–3561.
NPA: West Texas Lighthouse for the Blind, San Angelo, Texas.
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.
Product/NSN: Binder, looseleaf, 7510–01–368–3486, 7510–01–412–6338.
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Can, friction top, 8110–00–178–8291, 8110–00–178–8292.
NPA: East Texas Lighthouse for the Blind, Tyler, Texas.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Container fuel sample, 8110–01–371–8315.
NPA: East Texas Lighthouse for the Blind, Tyler, Texas.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Highlighter, fluorescent, flat, 7520–00–NIB–1620, 7520–01–238–1728.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Highlighters, free-ink, flat, 7520–00–NIB–1625, 7520–00–NIB–1630, 7520–00–NIB–1631.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: U.S. Geological Survey visual identity clothing, Baseball cap, delta dark green w/USGS identifier/8405–00–NIB–0182, Baseball cap, navy w/USGS identifier/8405–00–NIB–0183, T-shirt, ash w/USGS identifier/8415–00–NIB–0229, T-shirt, orange w/USGS identifier/8415–00–NIB–0230, T-shirt, navy blue w/USGS identifier/8415–00–NIB–0231, Polo shirt, dark green w/USGS identifier/8415–00–NIB–0232, Sweatshirt, dark green w/USGS identifier/8415–00–NIB–0233, Cruiser vest, orange w/USGS identifier/8465–00–NIB–0098, Cruiser vest, khaki w/USGS identifier/8465–00–NIB–0099.

NPA: Delaware Division for the Visually Impaired, New Castle, Delaware.

Contract Activity: U.S. Geological Survey, Reston, Virginia.

Services

Service Type/Location: Janitorial and mailroom operations, Environmental Protection Agency, Environmental Science Center, Fort Meade, Maryland.

NPA: Goodwill Industries of the Chesapeake, Inc., Baltimore, Maryland.

Contract Activity: Environmental Protection Agency, Philadelphia, Pennsylvania.

Service Type/Location: Janitorial/custodial, U.S. Army Reserve Center, Pewaukee, Wisconsin.

NPA: Milwaukee Center for Independence, Inc., Milwaukee, Wisconsin.

Contract Activity: HQ, 88th Regional Support Command, Fort Snelling, Minnesota.

Service Type/Location: Office Supply Center, Richard Bolling Federal Building, Kansas City, Missouri.

NPA: Alphapointe Association for the Blind, Kansas City, Missouri.

Contract Activity: U.S. Army Corps of Engineers, Kansas City, Missouri.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the products to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the procurement list.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are deleted from the procurement list:

Products

Product/NSN: Card set, guide, file, 7530–00–861–1263, 7530–00–861–1272.

NPA: Georgia Industries for the Blind, Bainbridge, Georgia.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Disk, flexible, 7045–01–251–7527, 7045–01–365–2070, 7045–01–365–2071, 7045–01–209–2193.

NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Product/NSN: Strap assembly, litter, 1680–00–878–6964.

NPA: Huntsville Rehabilitation Foundation, Huntsville, Alabama.

Contract Activity: Defense Supply Center Richmond, Richmond, Virginia.

Product/NSN: Tape, computer, 7045–01–119–6357.

NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.

Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.

Product/NSN: Tape, electronic data processing, 7045–01–338–6542.

NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.

Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–505 Filed 1–9–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–847]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order in Part: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review and intent to revoke order in part.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and section 351.216(b) of the Department of Commerce's (the Department's) regulations, NKK Corporation (NKK) and Mitsubishi International Steel, Inc. (MISI) filed a request for a changed circumstances review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from Japan. Specifically, NKK and MISI request that the Department revoke the antidumping duty order with respect to two abrasion-resistant steel products produced by NKK that are described below. The domestic industry has affirmatively expressed no interest in the continuation of the order with respect to these products. In response to the request, the Department is initiating a changed circumstances review and issuing a notice of intent to revoke, in part, the antidumping duty order on CTL plate from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Jack K. Dulberger or Mark Manning, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5505 and (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2002, NKK and MISI requested that the Department revoke the antidumping duty order on CTL plate from Japan with respect to two abrasion-resistant steel products produced by NKK: "NK-EH-360 (NK Everhard 360)" and "NK-EH-500 (NK Everhard 500)." *See* NKK's and MISI's letter to the Secretary, dated November 27, 2002 (Changed Circumstances Review Request). Specifically, NKK and MISI request that the Department revoke the order with respect to imports meeting the following detailed product descriptions: (1) NK-EH-360: a) Physical Properties: thickness ranging from 6–50 mm, Brinell Hardness: 361 min.; b) Heat Treatment: controlled heat treatment; and c) Chemical Composition (percent weight): C: 0.20 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max.,

Cr: 0.40 max., Ti: 0.005–0.020, B: 0.004 max; and (2) NK-EH-500: a) Physical Properties: thickness ranging from 6–50 mm, Brinell Hardness: 477 min.; b) Heat Treatment: controlled heat treatment; and c) Chemical Composition (percent weight): C: 0.35 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.80 max., Ti: 0.005–0.020, B: 0.004 max. *See* Changed Circumstances Review Request at 2. The order with regard to imports of other CTL plate from Japan is not affected by this request.

On December 17 and 18, 2002, Bethlehem Steel Corporation, IPSCO Steel Inc., Nucor Corporation, and United States Steel Corporation, producers of the domestic like product and, with the exception of Nucor Corporation, petitioners in the antidumping duty investigation of CTL plate from Japan, stated that they do not object to the exclusion of these two NKK products from the scope of the order. *See* Memorandum to the File from Jack Dulberger, dated December 19, 2002, which is on file in Import Administration's Central Records Unit, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room B-099, Washington, DC 20230.

Scope of the Order

The products covered by this antidumping duty order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of the order are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")-for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to the order is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by the order is dispositive.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke, in Part

Section 751(d)(1) of the Act and section 351.222 (g) of the Department's regulations provide that the Department may revoke an antidumping or countervailing duty order, in whole or in part, after conducting a changed circumstances review and concluding from the available information that changed circumstances sufficient to warrant revocation or termination exist. The Department may conclude that changed circumstances sufficient to warrant revocation (in whole or in part) exist when producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the order, in whole or in part. *See* section 782(h) of the Act and section 351.222 (g)(1) of the Department's regulations. Based on affirmative statements by domestic producers of the like product, Bethlehem Steel Corporation, IPSCO Steel Inc., Nucor Corporation, and United States Steel Corporation, no interest exists in continuing the order with respect to the abrasion-resistant steel products (*i.e.*, NK-EH-360 and NK-EH-500) that meet the specifications listed above in the "Background" section of this notice.

Therefore, we are hereby notifying the public of our intent to revoke, in part, the antidumping duty order on CTL plate from Japan with respect to imports of two abrasion-resistant steel products (*i.e.*, NK-EH-360 and NK-EH-500) that meet the above-mentioned specifications. We intend to modify the scope of the order on CTL plate from Japan to read as follows:

The products covered by this antidumping duty order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of these orders are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is

achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")-for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of these orders are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these orders unless otherwise specifically excluded. The following products are specifically excluded from these orders: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500, NK-EH-360 (NK Everhard 360), NK-EH-500 (NK Everhard 500)). (NK-EH-360 has the following specifications: a) Physical Properties: thickness ranging from 6–50 mm, Brinell Hardness: 361 min.; b) Heat Treatment: controlled heat treatment; and c) Chemical Composition (percent weight): C: 0.20 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.40 max., Ti: 0.005–0.020, B: 0.004 max. NK-EH-500 has the following specifications: a) Physical Properties: thickness ranging from 6–50 mm, Brinell Hardness: 477 min.; b) Heat Treatment: controlled heat treatment; and c) Chemical Composition (percent weight): C: 0.35 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.80 max., Ti: 0.005–0.020, B: 0.004 max); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these orders is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by these orders is dispositive.

Furthermore, pursuant to section 351.221(c)(3)(ii) of the Department's regulations, because domestic producers have expressed a lack of interest, we determine that expedited action is warranted and have combined in this notice the notices of initiation and preliminary results.

If the final partial revocation occurs, we intend to instruct the U.S. Customs Service (Customs) to liquidate without regard to applicable antidumping duties, and refund any estimated antidumping duties collected on, all unliquidated entries of the two abrasion-resistant steel products (*i.e.*, NK-EH-360 and NK-EH-500) that meet the above-noted specifications entered, or withdrawn from warehouse, for consumption on or after February 1, 2002. We will also instruct Customs to pay interest on such refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 2002, in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on the two abrasion-resistant steel products (*i.e.*, NK-EH-360 and NK-EH-500), and meeting the above-noted specifications, will continue unless, and until, we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Also, interested parties may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs and/or written comments may be submitted by interested parties not later than 14 days after the date of publication of this notice. Pursuant to section 351.309(d)(1) of the Department's regulations, rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with section 351.303 of the Department's regulations and shall be served on all interested parties on the Department's service list. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will issue the final results of this review within the time limits established in section 351.216 (e) of its regulations.

This notice is published in accordance with section 751(b)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: January 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–524 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-823–808]

Amendment to the Agreement Between the United States Department of Commerce and the Government of Ukraine Suspending the Antidumping Investigation on Cut-to-Length Carbon Steel Plate from Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to the Agreement Between the United States Department of Commerce and the Government of Ukraine Suspending the Antidumping Investigation on Cut-to-Length Carbon Steel Plate from Ukraine.

SUMMARY: The Department of Commerce (the Department) and the Government of Ukraine (GOU) have signed an

Amendment to the Agreement Suspending the Antidumping Investigation on Cut-Length Plate from Ukraine.

EFFECTIVE DATE: December 20, 2002

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1997, the Department published in the Federal Register the text of an Agreement between the Department and the GOU suspending the antidumping investigation involving certain cut-to-length carbon steel plate (62 FR 61766). Pursuant to section XII of the Agreement, the export limits on the volume of subject merchandise expired on November 1, 2002. On November 12, 2002 the Department and the GOU initialed an Amendment to provide for the continuation of exports of cut-to-length plate from Ukraine to the United States until November 1, 2003. The Department subsequently released the Amendment to interested parties for comment. No interested party filed comments and, therefore, the Department and the GOU signed a final Amendment on December 20, 2002. The text of the final Amendment follows this notice.

Dated: December 20, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–526 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–848]

Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On August 12, 2002, the Department of Commerce (the Department) published the preliminary results of its new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) for Shouzhou Huaxiang Foodstuffs Co., Ltd (Shouzhou Huaxiang) and North Supreme Seafood (Zhejiang) Co., Ltd. (North Supreme). *See Notice of Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 52442 (August 12, 2002) (*Preliminary Results*). These new shipper reviews cover the periods September 1, 2000 through August 31, 2001 for Shouzhou Huaxiang and September 1, 2000 through October 15, 2001 for North Supreme. Based on a request by North Supreme, the POR was extended by 45 days to cover the entries of its shipments into the United States. *See Memorandum Re: Extension of the Period of Review in the New Shipper Administrative Review of Freshwater Crawfish Tail Meat From the People's Republic of China, from Holly Hawkins, Analyst, Group III, Office 7, Through Dana Mermelstein, Program Manager, Group III, Office 7, to the File*, dated April 29, 2002.

Based on our analysis of the comments received, we are rescinding the new shipper review of North Supreme. Furthermore, we have made changes to the margin calculation for Shouzhou Huaxiang. Therefore, the final results for these companies differ from the preliminary results. The final weighted-average dumping margin for Shouzhou Huaxiang is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Thomas Gilgunn; Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0780 and (202) 482–4236, respectively.

SUPPLEMENTARY INFORMATION:

Background

The companies covered by these new shipper reviews are North Supreme and Shouzhou Huaxiang. Since the publication of the *Preliminary Results*, the following events have occurred. On September 11, 2002, we received timely case briefs from the petitioners and from North Supreme and Shouzhou Huaxiang. On September 16, 2002, we received timely rebuttal briefs from petitioner, North Supreme and Shouzhou Huaxiang. On October 10, 2002, the Department conducted a public hearing on the issues presented by interested parties in their case and rebuttal briefs. On November 8, 2002, the Department issued an additional questionnaire requesting information from each respondent concerning the *bona fides* of their sales in these new shipper reviews. The Department received responses to these questionnaires on November 18, 2002. We received comments on these responses from petitioners (in the form of additional factual information and argument as provided under section 351.301(c)(1) of the Department's regulations) on November 25, 2002, and rebuttal comments from Shouzhou Huaxiang and North Supreme on December 3, 2002, and December 13, 2002. We requested additional information from the respondents on November 25, 2002, and we received responses from the respondents on December 3, 2002. In accordance with section 351.301(c)(1) of the Department's regulations, we received factual information from petitioners on December 10, 2002 that was submitted in order to rebut or clarify new factual information submitted by respondents. We received information from respondents on December 13, 2002, that was also submitted to rebut or clarify new factual information submitted by petitioners in their December 10, 2002 response.

The Department has now completed these reviews in accordance with section 751 (a)(2)(B) of the Act.

Scope of the Antidumping Duty Order

The merchandise covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes

only. The written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties to these new shipper reviews are addressed in the *Issues and Decision Memorandum for the Final Rescission of the New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for North Supreme Seafood and for the Final Results of the New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for Shouzhou Huaxiang*, dated January 2, 2003 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in *Decision Memo*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce Building. In addition, a complete version of *Decision Memo* can be accessed directly on the internet at http://ia.ita.doc.gov. The paper copy and electronic version of *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made one change in the margin calculation for Shouzhu Huaxiang. We have removed from our calculation of normal value an offset for the production and sale of crawfish scrap. For a discussion of the issues for each company, refer to the *Decision Memo*. Since we are rescinding the new shipper review with respect to North Supreme, North Supreme will be subject to the PRC-wide rate.

Valuation of Crawfish Input

For this final decision in these crawfish new shipper reviews, we are using the trade statistics for whole live freshwater crawfish imports into Spain from Portugal, for September 1, 2000, through August 31, 2001, as published by the Agencia Estatal de Administracion Tributaria on its website on October 7, 2002. *See Memorandum Re: Final Data for the Surrogate Valuation of Whole Live Freshwater Crawfish, From Adina Teodorescu, Case Analyst, Office of AD/CVD Enforcement VII, Through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, To the File*, dated (November 19, 2002).

Rescission of New Shipper Review for North Supreme

In order to sustain a new shipper review, the exporter or producer must show that there was a *bona fide* first sale to the United States in accordance with 19 CFR 351.214(b)(2)(iv)(C). In these new shipper reviews, we have examined the *bona fides* of the sales under review for North Supreme and Shouzhou Huaxiang. *See Memorandum to Joseph A. Spetrini through Barbara E. Tillman: Freshwater Crawfish Tail Meat from The People's Republic of China: Whether the Sales in the New Shipper Review of North Supreme Are Bona Fide*, dated January 2, 2003 (*North Supreme Memo*).

Because much of the information relied upon in our analysis of whether these North Supreme's sales were *bona fide* is business proprietary, our full analysis is contained in the *North Supreme Memo*. For the reasons discussed therein and in the accompanying *Issues and Decision Memo*, we find that the new shipper sales made by North Supreme were not *bona fide*. North Supreme's new shipper sales were commercially unreasonable, were atypical of normal business practices, and were at prices and quantities that did not reflect its normal business practices. Therefore it is appropriate to rescind this new shipper review for North Supreme. For Shouzhou Huaxiang, we find that its sales were *bona fide*. Our reasoning is set forth in the *Department's Position on Comment 1* in the *Decision Memo*.

Final Results of Review

We determine that the following weighted-average margins exist for the period September 1, 2000 through August, 2001 for Shouzhou Huaxiang:

Manufacturer and Exporter	Time Period	Margin (percent)
Shouzhou Huaxiang	9/1/00–8/31/01	15.44

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review for Shouzhou Huaxiang. For North Supreme, the assessment rate will be the cash deposit rate at which the merchandise was entered. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from North Supreme Seafood and Shouzhou Huaxiang of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register**. The following cash deposit requirements will be effective upon publication of these final results for this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act. For crawfish tail meat produced and exported by Shouzhou Huaxiang, we will establish a per kilogram cash deposit rate which will be equivalent to the company-specific cash deposit established in this review. For crawfish tail meat exported by North Supreme, since we are rescinding the review, we will apply as the cash deposit rate the PRC-wide rate, which is currently 223.01 percent. There are no changes to the rates applicable to any other company under this order.

The Department will disclose calculations performed in connection with these final results of reviews within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent

assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These new shipper reviews and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: January 2, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

List of Issues

1. The Bona Fides of North Supreme's and Shouzhou Huaxiang's Sales
2. Surrogate Value for Whole, Live Crawfish
3. Shouzhou Huaxiang's Scrap Credit
4. Application of Chain Rates

[FR Doc. 03–525 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, application No. 02–00003.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Corn Refiners Association ("CRA"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (2001). The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

High fructose corn syrup ("HFCS") in the following two forms: 42 percent fructose and 55 percent fructose and enriched HFCS (greater than 55 percent fructose).

Export Markets

HFCS for which tariff-rate quota (TRQ) rights are allocated will be exported only to Mexico.

Export Trade Activities and Methods of Operation

Purpose

The CRA will manage the system as set forth below for allocating rights to ship under tariff-rate quotas (TRQs) permitting duty-free entry of U.S. HFCS into Mexico.

The CRA shall permit any producer of HFCS in the United States to become a member of the association for purposes of receiving TRQ rights under this system and shall seek an amendment of this Certificate to make such a producer a member under this Certificate.

TRQ Administrator

The CRA will contract with an independent third-party administrator who will bear responsibility for administering the TRQ System, subject to general oversight and supervision by the Board of Directors of the CRA. The administrator may not be otherwise related to the CRA or any member or in any way engaged in the production, distribution or sale of HFCS.

TRQ System

The administrator shall allocate TRQ rights based on the share each member's U.S. HFCS production capacity represents of total U.S. HFCS production capacity. The administrator may advise each member individually of the quantity of TRQ rights allocated to that member. In accordance with those allocations, the administrator shall, upon the request of a member, issue to the member evidence of TRQ rights to ship a specified quantity of U.S. HFCS duty-free to Mexico up to the outstanding total of the member's allocation.

Evidence of TRQ rights issued by the administrator shall be freely transferable. Transfers of TRQ rights are subject to the normal application of the antitrust laws.

Confidential Information

Each member may provide to the administrator information regarding its capacity to produce HFCS in the United States for the purpose of calculating the member's allocation of TRQ rights.

Any non-public, company-specific business information or data submitted by an applicant for membership, by a member, or by any other person in connection with the TRQ System shall be marked "confidential" and submitted to the administrator, who shall maintain its confidentiality. The administrator shall not disclose such confidential information to any member other than the submitter, or to any officers, agents, or employees of any member other than the submitter, and shall not disclose such confidential information to any other person except to another neutral third party as necessary to make the determination for which the information was submitted, to allocate TRQ quantities, or in connection with reports to the U.S. Department of Commerce as required by the Certificate or the arbitration of a dispute.

Cooperation with the U.S. and Mexican Governments

The CRA will provide to the U.S. Government and the Government of Mexico whatever information and consultations may be useful in order to facilitate cooperation between the governments concerning the implementation and operation of the TRQ System. Furthermore, directly or through the U.S. Government, the CRA will endeavor to accommodate any information requests from the Government of Mexico (while protecting confidential information entrusted to the administrator), and will consult with the Government of Mexico as appropriate. All such information and consultations shall be subject to the provision on Confidential Information (above) and the Terms and Conditions (below).

Definition

Neutral third-party, as used in this Certificate of Review, means a party not related to CRA or any member and who is not engaged in the production, distribution or sale of HFCS.

Members (Within the Meaning of Section 325.(1) of the Regulations)

Members (in addition to the CRA): A.E. Staley Manufacturing Company, Decatur, Illinois (subsidiary of Tate & Lyle plc, London, United Kingdom); Archer Daniels Midland Company, Decatur, Illinois; Cargill, Incorporated, Minneapolis, Minnesota; Corn Products International, Inc., Westchester, Illinois; National Starch and Chemical Company, Bridgewater, New Jersey (subsidiary of ICI plc, London, United Kingdom); Penford Corporation, Bellevue, Washington; and Roquette America, Inc., Keokuk, Iowa (subsidiary of Roquette Frères, Lestrem, France).

Protection Provided by Certificate

This Certificate protects the CRA, its members, and directors, officers, and employees acting on behalf of the CRA and its members from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Terms and Conditions of Certificate

1. In engaging in export trade activities and methods of operation, neither CRA, any member, the administrator, nor any neutral third-party shall intentionally disclose, directly or indirectly, to any member (including parent companies, subsidiaries, or other entities related to any member) any information regarding any other member's costs, production, inventories, domestic prices, domestic sales, domestic customers, capacity to produce HFCS for domestic sale, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless such information is already generally available to the trade or public.

2. CRA and its members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the export trade, export trade activities and methods of operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the regulations.

Other Conduct

Nothing in this Certificate prohibits the CRA and its members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to CRA by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of CRA or its members or (b) the legality of such business plans of CRA or its members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985).

In accordance with the authority granted under the Act and the Regulations, this Certificate of Review is hereby issued to the Corn Refiners Association, Inc.

The effective date of the Certificate is December 30, 2002. A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 30, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–451 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Payment of Patent and Trademark Office Fees by Credit Card.

Form Number(s): PTO–2038.

Agency Approval Number: 0651–0043.

Type of Request: Revision of a currently approved collection.

Burden: 29,497 hours annually.

Number of Respondents: 327,308 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 12 minutes (0.2 hours) to gather the necessary information, prepare, and submit the Credit Card Payment Form or 2 minutes (0.03 hours) to prepare and submit the Electronic Credit Card Payment Form.

Needs and Uses: The USPTO charges fees for processing and other services related to patents, trademarks, and information products, which may be paid by credit card. The Electronic Credit Card Payment Form is being added to this collection and allows the public to submit credit card payments online. The public uses this collection to submit credit card information in order to pay various fees and to indicate the purpose of the payment being submitted. The USPTO uses this information to determine whether the appropriate fee amount has been submitted and to process these credit card payments. The use of separate credit card payment forms is necessary in order to protect the confidentiality of the submitted credit card information and exclude this information from the patent and trademark records that are open to public inspection.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local, or tribal governments.

Frequency: On occasion for recordkeeping and reporting.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, by phone at (703) 308–7400, or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before February 10, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: January 6, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–500 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Technology Administration

Technology Administration Performance Review Board Membership

The Technology Administration Performance Review Board (TA PRB) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the TA PRB and supersedes the list published in **Federal Register** Document 02–19569, Vol. 67. No. 149, page 50422, dated August 2, 2002.

Charles Clark (C), Chief, Electron & Optical Physics Division, Physics Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 13/31/04 (Limited).

Belinda L. Collins (C), Deputy Director for Technology Services, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 13/31/04 (Limited).

Stephen Freiman (C), Deputy Director, Materials Science & Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 13/31/04 (Limited).

Daniel Hurley (C), Director of Communication and Information, Infrastructure Assurance Program, National Telecommunications and Information Administration, Washington, DC 20230, *Appointment Expires:* 13/31/03 (General).

Christian Israel (NC), Deputy Assistant Secretary for Technology Policy, Technology Administration, Department of Commerce, Washington, DC 20230, *Appointment Expires:* 12/31/04 (General).

Richard F. Kayser (C), Director for Technology Services, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 13/31/04 (Limited).

William F. Koch (C), Deputy Director, Chemical Science & Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 13/31/04 (Limited).

Willie E. May (C), Chief, Analytical Chemistry Division, Chemical Science & Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 13/31/04 (Limited).

Tyra Dent Smith (C), Chief, Human Resources Division, Census Bureau, Washington, DC 20233, *Appointment Expires:* 13/31/04 (Limited).

John F. Sopko (C), Deputy Director, National Technical Information Service, Springfield, VA 22161, *Appointment Expires:* 13/31/04 (Limited).

Dennis Swyt (C), Chief Precision Engineering Division, Manufacturing Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899–8210, *Appointment Expires:* 12/31/04 (Limited).

Kathleen Taylor (C), Chief, Employment and Labor Law Division, Assistant General Counsel for Administration, Office of the General Counsel, Office of the Secretary, Washington, DC 20230, *Appointment Expires:* 12/31/03 (General).

Susan Zevin (C), Deputy Director, Information Technology Laboratory, Information Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899–8900, *Appointment Expires:* 12/31/03 (Limited).

Dated: December 22, 2002.

Benjamin H. Wu,

Deputy Under Secretary for Technology, Technology Administration, Department of Commerce.

[FR Doc. 03–485 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–18–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act; Meeting

AGENCY: Consumer Product Safety Commission Washington, DC 20207.

TIME AND DATE: Thursday, January 16, 2003 2 p.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Part Open to the Public; Part Closed.

MATTERS TO BE CONSIDERED:

Open to the Public

1. *CPSC Vice Chairman:* The Commission will elect a Vice Chairman.

Closed to the Public

2. *Compliance Status Report:* The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: January 6, 2003.

Todd A. Stevenson,

Secretary.

[FR Doc. 03–647 Filed 1–8–03; 2:40 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice. The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by February 10, 2003.

Title, Form Number, and OMB Number: Offered Candidate Procedures; USMA forms 5–490, 2–66, 847, 5–489, 5–519, 8–2, 6–154, 5–515, 534, 5–516, 480–1, 5–499; OMB Number 0702–0062.

Type of Request: Reinstatement.

Number of Respondents: 16,600.

Responses per Respondent: 1.

Annual Responses: 16,600.

Average Burden per Response: 70 minutes (average).

Annual Burden Hours: 1,937.

Needs and Uses: Candidates to the United States Military Academy (USMA) provide personal background information, which allows the USMA Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by the Office of West Point Institutional Research for correlation with success in graduation and military careers. The purpose of this activity is to obtain a group of applicants who eventually may be evaluated for admission to the USMA.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 2202–4302.

Dated: December 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–449 Filed 1–9–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 11, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 7, 2003.

John D. Tressler

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New Collection.

Title: Electronic Debit Payment Option for Student Loans (JS).

Frequency: Other: one time.

Affected Public: Businesses or other for-profit, Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 108541;

Burden Hours: 2.

Abstract: The need for an Electronic Debit Account Program will give the borrower another option in which to repay federally funded student loans via automatic debit deductions from their checking accounts.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 1118. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.reese@ed.gov.* Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–531 Filed 1–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 10, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 7, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension of a currently approved collection.

Title: Guaranty Agency Financial Report (JS).

Frequency: Monthly, annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary), Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 612;

Burden Hours: 33660.

Abstract: The Guaranty Agency Financial Report is used to request payments from and make payments to the Department of Education under the FFEL program authorized by Title IV, Part B of the HEA of 1965, as amended. The report is also used to monitor the agency's financial activities, including activities concerning its federal fund; operating fund and the agency's restricted account.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Lew Oleinick at (202) 205–3516 or at his e-mail address *lew.oleinick@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–530 Filed 1–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary proposes funding priorities under the Rehabilitation Engineering Research Center (RERC) program for up to nine Rehabilitation Engineering Research Centers under the National Institute on Disability and Rehabilitation Research (NIDRR) for Fiscal Years (FYs) 2003–2005. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before February 10, 2003.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priorities in a notice in the **Federal Register.** We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register.** When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: The proposed priorities support President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priorities are also in concert with NIDRR's Long-Range Plan, which can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/#LRP.*

Rehabilitation Engineering Research Centers Program

We may make awards for up to 60 months through grants or cooperative agreements to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and

training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. Each RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

Description of Rehabilitation Engineering Research Centers

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers and (2) study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services and (2) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must provide training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

General RERC Requirements

The following requirements apply to each RERC pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these requirements will be assessed using applicable selection criteria in the peer review process.

Each RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings. Each RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

Each RERC must develop and implement in the first three months of the grant a plan that describes how the center will include, as appropriate, individuals with disabilities or their representatives in all phases of center activities including research, development, training, dissemination, and evaluation.

Each RERC must develop and implement in the first year of the grant, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the RERC's research results to persons with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties.

Each RERC must develop and implement in the first year of the grant, in consultation with the NIDRR-funded RERC on Technology Transfer or other entities as appropriate, a plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace.

Each RERC must conduct a state-of-the-science conference on its respective area of research in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant.

Each RERC will be expected to coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer.

Priorities

Background

Technology plays a vital role in the lives of millions of disabled and older Americans. Advances in assistive technology and adoption of principles of universal design have significantly improved the quality of life for these individuals. Individuals with significant disabilities regularly use products developed as the result of rehabilitation and biomedical research to achieve and maintain maximum physical function, live independently, study and learn, and attain gainful employment. The range of engineering research has broadened to encompass not only assistive technology but also technology at the systems level (*i.e.*, the built environment, information and communication technologies, transportation, etc.) and technology that interfaces between the individual and systems technology and is basic to community integration.

The NIDRR RERC program has been a major force in the development of technology to enhance independent function for individuals with disabilities. The RERCs are recognized as national centers of excellence in their respective areas and collectively represent the largest federally supported program responsible for advancing rehabilitation engineering research. For example, the RERC program was an early pioneer in the development of augmentative communication and has been at the forefront of prosthetics and orthotics research for both children and adults. RERCs have played a major role in the development of voluntary standards that industry uses when developing wheelchairs, wheelchair restraint systems, information technologies, and the World Wide Web. The RERC on Low Vision and Blindness helped develop talking sign technologies that are currently being utilized in major cities in both the United States and Japan to help blind and visually impaired individuals navigate city streets and subways. RERCs have been a driving force in the development of universal design principles that can be applied to the built environment, information technology and telecommunications, transportation, and consumer products. RERC research activities also contributed to the clinical use of electromyography, gait analysis, and functional electrical stimulation.

Advancements in basic biomedical science and technology have resulted in new opportunities to enhance further the lives of people with disabilities. Recent advances in biomaterials research, composite technologies, information and telecommunication technologies, nanotechnologies, micro electro mechanical systems (MEMS), sensor technologies, and the neurosciences provide a wealth of opportunities for individuals with disabilities and should be incorporated into research focused on disability and rehabilitation.

NIDRR intends to fund up to nine new RERCs in FY 2003. Applicants must select one of the following priority topic areas: (a) Hearing enhancement; (b) prosthetics and orthotics; (c) communication enhancement; (d) measurement and monitoring of functional performance; (e) technology access for land mine survivors; (f) universal interface and information technologies; (g) telerehabilitation; (h) accessible public transportation; (i) wheeled mobility; (j) cognitive technologies; and (k) technology

transfer. Applicants are allowed to submit more than one proposal as long as each proposal addresses only one RERC topic area.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a letter of intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed RERC, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals and objectives of the proposed RERC and a description of its research and development activities at a sufficient level of detail to allow potential peer reviewers to be selected; (3) a list of proposed RERC staff including the center Director and key personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

The signed, original LOI must be received by NIDRR no later than four weeks after the notice of final funding priorities for this competition is published in the **Federal Register**. Submission of a LOI is a prerequisite for eligibility to submit an application. With prior approval, an email or facsimile copy of a LOI will be accepted, but the signed original must be sent to: William Peterson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3425, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact William Peterson at (202) 205–9192 or by email at: *william.peterson@ed.gov*.

Proposed Priorities

The Assistant Secretary proposes to fund up to nine RERCs that will focus on innovative technological solutions, new knowledge, and concepts to promote the health, safety, independence, employment, active engagement in daily activities, and quality of life of persons with disabilities. Each RERC must:

(1) Contribute substantially to the technical and scientific knowledge-base relevant to its respective subject area;

(2) Research, develop, and evaluate innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its respective subject area;

(3) Identify, implement, and evaluate, in collaboration with the relevant industry, professional associations, and institutions of higher education, innovative approaches to expand research capacity in its respective field of study;

(4) Monitor trends and evolving product concepts that represent and signify future directions for technologies in its respective area of research; and

(5) Provide technical assistance to public and private organizations responsible for developing policies, guidelines, and standards that affect its respective area of research.

(6) Each RERC must focus on one of the following priority topic areas:

(a) *Hearing Enhancement:* This center must research and develop methods, systems, and technologies that will assist hearing professionals with the process of matching hearing technology to individuals with hearing loss and associated conditions such as tinnitus. This includes improving the compatibility of hearing enhancement technologies with various environments such as school, work, recreation, and social settings;

(b) *Prosthetics and Orthotics:* This center must increase understanding of the scientific and engineering principles pertaining to human locomotion, reaching, grasping, and manipulation, and incorporate those principles into the design and fitting of prosthetic and orthotic devices;

(c) *Communication Enhancement:* This center must research and develop augmentative and alternative communication technologies and strategies that will enhance the communicative capacity of individuals of all ages with significant communication disorders across environments (*i.e.*, education, employment, recreation, social);

(d) *Measurement and Monitoring of Functional Performance:* This center must research and develop technologies and methods that effectively assess the outcomes of rehabilitation therapies by combining measurements of physiological performance with measures of functional performance;

(e) *Technology Access for Land Mine Survivors:* This center must address the unique rehabilitation needs of land mine survivors of all ages and develop low-cost replacement limbs, orthotics, and assistive technologies using indigenous materials and expertise from respective countries that will benefit the quality of life for individuals who have been severely injured due to land mine explosions;

(f) *Universal Interface and Information Technologies:* This center must research and develop innovative technological solutions for, and promote universal access to, current and emerging information technologies and technology interfaces that promote a seamless integration of the multiple technologies used by individuals with disabilities in the home, the community, and the workplace. This center must work collaboratively with the RERC on Telecommunication Access, the RERC on Mobile Wireless Technologies, and the NIDRR-funded Information Technology Technical Assistance and Training Center;

(g) *Telerehabilitation:* This center must research and develop methods, systems, and technologies that support remote delivery of rehabilitation and home health care services for individuals who have limited local access to comprehensive medical and rehabilitation outpatient services;

(h) *Accessible Public Transportation:* This center must research and develop methods, systems, and devices that will promote and enhance the ability of people with disabilities to safely, comfortably, and efficiently identify destination information, embark/disembark, and use restroom facilities on various types of public transportation systems such as passenger trains and airplanes;

(i) *Wheeled Mobility:* This center must research and develop innovative technologies and strategies that will improve the current state of the science, design standards, and usability of wheeled mobility devices and wheelchair seating systems;

(j) *Cognitive Technologies:* This center must research, develop, and evaluate innovative technologies and approaches that will have a positive impact on the way in which individuals with significant cognitive disabilities function independently within their communities and workplace; and

(k) *Technology Transfer:* This center must research and develop innovative ways to facilitate and improve the process of moving new, useful, and more effective assistive technology inventions and applications from the prototype phase to the marketplace. This center will be expected to provide technical assistance to all RERCs on issues pertaining to technology transfer, including the development of long-range technology transfer plans.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet

at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.133E, Rehabilitation Engineering Research Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Dated: January 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–529 Filed 1–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Wind Farm at the Nevada Test Site

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of withdrawal.

SUMMARY: On July 25, 2001, the Department of Energy (DOE), National Nuclear Security Administration (NNSA) announced its intent to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for the proposed Wind Farm at the Nevada Test Site (NTS) in Nye County, Nevada. This EIS would evaluate the range of reasonable alternatives for a private enterprise project to construct, operate, and maintain a wind farm for production of electrical power. The action alternatives considered included a range of electrical generating capacities up to about 600 megawatts (MW) at various locations on the NTS. On July 5, 2002, the Administrator of the NNSA decided to cancel consideration of the wind farm proposal on the NTS due to potentially significant adverse impacts to national security missions of the U. S. Air Force at the Nevada Test and Training Range (NTTR), which has boundaries contiguous with the NTS on three sides. Therefore, further processing of the preliminary draft EIS, which was under review in NNSA, is no longer warranted. The notice of intent to prepare an EIS is withdrawn and the NEPA process is hereby terminated.

FOR FURTHER INFORMATION CONTACT: For information on the Wind Farm Project, please contact: Kevin D. Thornton, National Nuclear Security Administration Nevada Operations Office, P.O. Box 98518, Las Vegas, NV 89193–8518. Telephone (702) 295–1541; facsimile (702) 295–0625; electronic mail: *thornton@nv.doe.gov.*

For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 encouraged DOE to minimize the social and economic impacts on workers and communities affected by downsizing of defense-related facilities. Among other things, section 3161 authorized DOE to encourage private sector economic development at its sites and facilities. In the record of decision for the "Final Environmental Impact Statement for the Nevada Test Site and Off-Site Locations in the State of Nevada" (DOE/EIS 0243), DOE decided, in part, to continue to support ongoing program operations and pursue diversification of uses to include non-defense and private use. The proposed wind farm would be a private sector enterprise located on the NTS.

DOE received a proposal from M&N Wind Power, Inc. and Siemens to construct, operate, and maintain a wind farm at the NTS. Full implementation of the proposal would have consisted of up to 545 wind turbines generating up to approximately 600 MW. The wind farm would encompass about 432 hectares (1069 acres) of land. NNSA Nevada Operations Office (NV) began preparation of an environmental assessment (EA) for the proposed project in November 2000. Following public review of the pre-approval draft EA, NNSA/NV determined that a finding of no significant impact could not be supported and that an EIS would be required. Preparation of the EIS began with publication of a notice of intent to prepare an EIS in the **Federal Register** on July 25, 2001. On July 3, 2002, the U.S. Air Force wrote a letter to the Manager of NNSA/NV which indicated, based on the results of a classified study, that the presence of large wind turbines on the NTS would be incompatible with the mission of the NTTR. The primary concern was for significant adverse impacts to certain NTTR missions within the ranges surrounding the NTS. Some of those mission capabilities are unique to the NTTR and impacts caused by wind turbines could adversely affect national security. During the same timeframe Air Force officials articulated these concerns in a classified briefing to the NNSA Administrator. Based on the concerns articulated by the Air Force, the Administrator of NNSA decided to cancel consideration of the wind farm proposal on the NTS. Therefore, further processing of the preliminary draft EIS, which was under review within NNSA, is no longer warranted. The notice of intent to prepare an EIS is withdrawn and the NEPA process is hereby terminated.

Issued in Washington, DC, this 20th day of December, 2002.

Linton Brooks,

Acting Administrator, National Nuclear Security Administration.

[FR Doc. 03–499 Filed 1–9–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–38–000]

Cargill Power Markets, LLC, Complainant, v. Midwest Independent Transmission System Operator, Inc., Respondent; Notice of Complaint Requesting Fast Track Processing

January 3, 2003.

Take notice that on December 31, 2002, Cargill Power Markets, LLC (CPM), filed with the Federal Energy Regulatory Commission (Commission), a complaint against Midwest Independent Transmission System Operator, Inc. (MISO) requesting fast track processing by the Commission. CPM alleges that MISO has violated its open access transmission tariff and Commission policy by recalling CPM's confirmed Long-Term Firm Point-to-Point reservation.

CPM states that a copy of its complaint was served on MISO.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before January 15, 2003. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–466 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–220–000]

Chandeleur Pipe Line Company; Notice of Tariff Filing

January 3, 2003.

Take notice that on December 30, 2002, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets listed below to become effective February 1, 2003:

First Revised Sheet No. 1
Original Sheet No. 2A
Third Revised Sheet No. 6
Original Sheet No. 6B
Third Revised Sheet No. 8
First Revised Sheet No. 10
First Revised Sheet No. 12
Second Revised Sheet No. 13
First Revised Sheet No. 15
First Revised Sheet No. 17
Original Sheet No. 25A
Original Sheet No. 27A
Original Sheet No. 30A
Fourth Revised Sheet No. 34
Second Revised Sheet No. 35
Second Revised Sheet No. 36
Second Revised Sheet No. 37
Second Revised Sheet No. 39
First Revised Sheet No. 40
First Revised Sheet No. 42
Third Revised Sheet No. 43A
Original Sheet No. 53A
Original Sheet No. 54A
First Revised Sheet No. 56A
Original Sheet No. 58A
First Revised Sheet No. 60
First Revised Sheet No. 62
Third Revised Sheet No. 2
First Revised Sheet No. 4
Second Revised Sheet No. 6A
Second Revised Sheet No. 7
First Revised Sheet No. 9
Second Revised Sheet No. 11
Original Sheet No. 12A
Second Revised Sheet No. 14
First Revised Sheet No. 16
First Revised Sheet No. 25
Fourth Revised Sheet No. 27
Second Revised Sheet No. 30
Third Revised Sheet No. 33
Original Sheet No. 34A
Original Sheet No. 35A
Original Sheet No. 36A
Second Revised Sheet No. 38
Original Sheet No. 39A
First Revised Sheet No. 41
Fifth Revised Sheet No. 43
First Revised Sheet No. 53
First Revised Sheet No. 54
Second Revised Sheet No. 56
First Revised Sheet No. 58
First Revised Sheet No. 59
First Revised Sheet No. 61
First Revised Sheet No. 63

Chandeleur asserts that the purpose of this filing is to clean up its FERC Gas Tariff in a "housekeeping" filing, and that the tariff sheets correct such items as typographical errors, page formatting, vague language, and remove electronic bulletin board language.

Chandeleur states that it has served copies of the filing upon its firm and interruptible customers, and state commissions, and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–469 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–324–005]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

January 3, 2003.

Take notice that on December 4, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing a response to the Commission's Order on Compliance filing issued November 4, 2002 (101 FERC ¶61,156 (2002).

Gulf South states that the appropriate cost-based price of the fuel gas Gulf South transferred to the cash pool was $2.16, and $1.98 as suggested in the order. Gulf South asserts that if the Commission rejects the compliance filing based upon a $2.16 transfer price, Gulf South seeks rehearing of the Commission's holding that an accounting adjustment made to comply with Generally Accepted Accounting Principles (GAAP) provides an appropriate basis to adjust the "historical average weighted cost of excess retained fuel.

Gulf South states that if the Commission does not accept $2.16 as the appropriate transfer price, Gulf South will suffer further financial loss because it will be precluded from recovering the actual cost of the fuel gas transferred to operate the cash pool service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 10, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202)502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–470 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 400–038]

Williard Janke Complainant, v. Public Service Company of Colorado, Respondent; Notice of Complaint, Request for Fast Track Processing, and Petition for Relief

January 3, 2003.

Take notice that on December 31, 2002, Mr. Williard Janke (Petitioner) filed with the Federal Energy Regulatory Commission (Commission), a Complaint against the Public Service Company of Colorado, licensee of the Tacoma-Ames Project, FERC Project No. 400, alleging various violations of the issued license for the Tacoma-Ames Project and the Commission's regulations under part 12. Petitioner has also requested Fast Track Processing of the Complaint and is petitioning for several forms of relief including a stay of the Licensee's authority to grant permission to cross over and along the Ames penstock and penstock route.

Petitioner states that copies of the Complaint have been served upon the Licensee and the private property owner that has maintained an access road across and along a portion of the Ames penstock route and penstock.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before January 21, 2003. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–468 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–13–000]

Northwest Pipeline Corporation; Notice of Intent To Prepare an Environmental Assessment of the Proposed Clackamas Project and Request for Comments on Environmental Issues

January 3, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Clackamas Project involving abandonment of facilities by Northwest Pipeline Corporation (Northwest) in Clackamas County, Oregon.[1] These facilities would consist of 1.42 miles of pipeline on its Camas to Eugene Lateral (Lateral) that would be abandoned. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

[1] Northwest's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Northwestprovided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

Northwest proposes to abandon in place and by removal 1.42 miles (7,500 feet) of its 16-inch-diameter Lateral from mileposts (MPs) 19.57 to 20.99. part of this pipeline crosses the Clackamas River. River scour from high flood events has exposed part of the pipeline traversing the Clackamas River and poses a navigational hazard for recreational users. Northwest plans to take the this portion of the Lateral out of service. Service from the Lateral would be maintained by Northwest's use of a 20-inch-diameter loop that parallels the Lateral. Northwest seeks authority to:

- Abandon in place a 5,850-foot-long segment of pipeline from MP 19.57 near the Southeast Portland Meter Station to MP 19.68 on the north bank of the north channel of the Clackamas River;
- Abandon by removal a 370-foot-long segment of pipeline from MP 19.68 to MP 19.75 in the north channel of the Clackamas River. No disturbance of Northwest's parallel 20-inch-diameter loop is required;
- Abandon in place a 1,267-foot-long segment of pipeline from MP 20.75 to MP 20.99 beginning at the northern edge of an island that separates the north and south channels of the Clackamas River, and ending just north of the Oregon City Compressor Station;
- Construct and operate a temporary pig launching facility within the existing fenced-in yard of the Southeast Portland Meter Station, and a temporary pig receiving facility just north of the Oregon City Compressor Station.

The segments of pipeline to be abandoned in place will be purged with nitrogen and capped. The location of the project facilities is shown in appendix 1, figures 1–3.[2]

Land Requirements for Construction

Construction of the proposed facilities would require 13.9 acres of land, most of which would be temporary right-of-way. This land is comprised of residential property, riverine shoreline (river island), emergent and forested wetlands, and open water. No new permanent right-of-way would be required, and all temporary right-of-way would be restored to previous condition. Northwest plans to retain and maintain as before its permanent right-of-way along all portions of the pipeline to be abandoned.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries,and wetlands
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety.

We will make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public particfpation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northwest. This preliminary list of issues may be changed based on your comments and our analysis.

- Residential area in and around the Eiler's Circle access road and the SR 224 access road on the north side of the Clackamas River.
- Suitable habitat for federally listed or proposed threatened and endangered species, including Coho salmon, Chinook salmon, steeled and cutthroat trout, may occur in the project area.
- Temporary disturbance of 7.7 acres of wetlands and open water associated with the Clackamas River, including temporary construction of a dry-area structure in the north channel.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

1. Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
2. Label one copy of the comments for the attention of Gas.2 Branch.
3. Reference Docket No. CP03–013–000.
4. Mail your comments so that they will be received in Washington, DC on or before February 3, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2). [4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–465 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–41–000, et al.]

Canadian Niagara Power Company, Limited, et al.; Electric Rate and Corporate Filings

January 3, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Canadian Niagara Power Company, Limited

[Docket No. EC03–41–000]

Take notice that on January 2, 2003, Canadian Niagara Power Company Limited tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 203 of the Federal Power Act, 16 U.S.C. Section 824b (1994), and part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization to dispose of jurisdictional facilities pursuant to an intra-corporate reorganization of Canadian Niagara Power Company Limited and Fortis Inc.

Comment Date: January 23, 2003.

2. GenWest, LLC

[Docket No. EG03–34–000]

Take notice that on December 30, 2002, GenWest, LLC (GenWest) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

GenWest states that it will develop, own and operate a 590 MW electric generating facility located at Apex, Nevada, and sell electric energy exclusively at wholesale. GenWest's principal business offices are located at 400 North 5th Street, Phoenix, Arizona.

Comment Date: January 24, 2003.

3. Entergy Services, Inc.

[Docket No. ER03–171–001]

Take notice that on December 13, 2002, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc. (Entergy Mississippi), tendered for filing for informational purposes the Agreement for the Lease of Silver Creek Substation between Entergy Mississippi and South Mississippi Electric Association (SMEPA), dated July 1, 2002, as additional information in support of the Interconnection and Operating Agreement between Entergy Mississippi and SMEPA filed in this docket on November 7, 2002.

Comment Date: January 17, 2003.

4. GenWest, LLC

[Docket No. ER03–352–000]

Take notice that on December 30, 2002, GenWest, LLC (GenWest) filed an initial rate schedule to sell power at market-based rates.

Comment Date: January 21, 2003.

5. San Diego Gas & Electric Company

[Docket No. ER03–353–000]

Take notice that on December 30, 2002, San Diego Gas & Electric (SDG&E) tendered for filing a change in rate for the Transmission Revenue Balancing Account Adjustment and its Transmission Access Charge Balancing Account Adjustment set forth in its Transmission Owner Tariff. The effect of this rate change is to reduce rates for jurisdictional transmission service utilizing that portion of the California Independent System Operator-controlled grid owned by SDG&E. SDG&E requests that this rate change be made effective January 1, 2003.

SDG&E states that copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment Date: January 21, 2003.

6. Ormet Primary Aluminum Corporation

[Docket No. ER03–354–000]

Take notice that on December 30, 2002, Ormet Power Marketing, LLC

(Ormet Power Marketing) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Ormet Power Marketing Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Ormet Power Marketing states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Ormet Power Marketing is not in the business of generating or transmitting electric power. Ormet Corporation, parent of Ormet Power Marketing, and its subsidiaries produce a wide range of aluminum products for the fabrication, extrusion and conversion markets.

Comment Date: January 21, 2003.

7. Southern Company Services, Inc.

[Docket No. ER03–355–000]

Take notice that on December 30, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed one rollover transmission service agreement under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). Specifically, this agreement is a firm point-to-point transmission service agreement for rollover service with Oglethorpe Power Corporation (First Revised Service Agreement No. 431).

Comment Date: January 21, 2003.

8. San Diego Gas & Electric Company

[Docket No. ER03–356–000]

Take notice that on December 30, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its forecast of the charges it will pay for Reliability Must Run (RMR) services under contracts administered by the California Independent System Operator (CAISO) for the year 2003 along with its proposed rates for recovery of the RMR charges. Under Section 5.2.8 of the CAISO Tariff, SDG&E is the Responsible Utility (RU) for payments to owners of RMR generation units within its service territory. SDG&E recovers its costs for those payments through a dedicated rate component. SDG&E requests an effective date of January 1, 2003 for the proposed rate.

SDG&E states that copies of the filing have been served on the CAISO and on the California Public Utilities Commission.

Comment Date: January 21, 2003.

9. Soyland Power Cooperative, Inc.

[Docket No. ER03–357–000]

Take notice that on December 30, 2002, Soyland Power Cooperative, Inc. (Soyland) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of cancellation of its all-requirements service contract with M.J.M. Electric Cooperative, Inc. (MJM). Soyland states that MJM has withdrawn from membership in Soyland, and Soyland will no longer provide all-requirements electric service to MJM.

Soyland requests an effective date of December 31, 2002 for the notice of cancellation. Soyland states that a copy of the filing has been served on MJM.

Comment Date: January 21, 2003.

10. Pacific Gas and Electric Company

[Docket No. ER03–358–000]

Take notice that on December 31, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing Generator Special Facilities Agreements (GSFAs), Generator Interconnection Agreements (GIAs) and Letter Agreements Supplementing, Clarifying, and Modifying the Generator Special Facilities Agreement (Supplemental Letter Agreements) between PG&E and the following Calpine-owned parties: Gilroy Energy Center, LLC (Gilroy); Los Esteros Critical Energy Facility, LLC (Los Esteros); Yuba City Energy Center, LLC (Yuba City); Metcalf Energy Center, LLC (Metcalf); Lambie Energy Center, LLC (Lambie); Goose Haven Energy Center, LLC (Goose Haven); and Creed Energy Center, LLC (Creed); King City Energy Center, LLC (King City); Feather River Energy Center, LLC (Feather River); Riverview Energy Center, LLC (Riverview); Wolfskill Energy Center, LLC (Wolfskill); and Delta Energy Center, LLC (DEC).

PG&E states that copies of this filing have been served upon Calpine, Gilroy, Los Esteros, Yuba City, Metcalf, Lambie, Goose Haven, Creed, King City, Feather River, Riverview, Wolfskill, DEC, the California Independent System Operator Corporation and the CPUC.

Comment Date: January 21, 2003.

11. Midwest Energy, Inc.

[Docket No. ES03–15–001]

Take notice that on December 23, 2002, Midwest Energy, Inc. submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment seeks to reduce the amount of long-term debt that Midwest Energy, Inc. proposes to issue from $37,714,286 to $34,204,626.

Comment Date: January 17, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–471 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Establishing Procedural Schedule for the Relicensing and a Deadline for Submission of Final Amendments

January 3, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License:

b. *Project No.:* 2233–043.

c. *Date Filed:* December 27, 2002.

d. *Applicant:* Portland General Electric Company.

e. *Name of Project:* Willamette Falls Hydroelectric Project.

f. *Location:* On the Willamette River in Clackamas County, Oregon near the towns of Oregon City and West Linn.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a.

h. *Applicant Contact:* Julie S. Keil, Portland General Electric Company, 121 SW Salmon Street, Portland, Oregon 97204, (503) 464–8864; Bruce Martin, Blue Heron Paper Company, 419 Main Street, Oregon City, Oregon.

i. *FERC Contact:* John Blair (202) 502–6092 or *john.blair@FERC.gov.*

j. *The existing project:* Portland General Electric (PGE) and Blue Heron Paper Company (BHPC) propose to continue operation of the Willamette Falls Hydroelectric Project on the Willamette River. The dam is a 2300 feet long horseshoe shaped concrete structure that caps the crest of Willamette Falls. The Project is operated run-of-river. It is comprised of two separate hydroelectric generating developments located on the east (Oregon City) and west (West Linn) sides of Willamette Falls. The Project has a total generation capacity of 17.5 megawatts (MW) 16 MW at PGE's T.W. Sullivan plant and 1.5 MW at BHPC. T.W. Sullivan powerhouse contains 13 vertical turbine generators; BHPC powerhouse contains 2 horizontal turbine generators.

k. A copy of the application is on file with the Commission and is available for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. The number must be proceeded by the letter "P". For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item "h" above.

l. With this notice, we are initiating consultation with the Oregon State Historic Preservation Officer (SHPO), as required by '106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency or Acceptance Letter February 2003.

Notice soliciting comments, final terms and conditions February 2003.

Notice of the availability of the draft EA September 2003.

Notice of the availability of the final EA January 2004.

Ready for Commission's decision on the application February 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice soliciting comments, final terms and conditions.

Magalie R. Salas,

Secretary.

[FR Doc. 03–467 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7437–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; See List of ICRs Planned to be Submitted in Section A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following three continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB): (1) National Pollutant Discharge Elimination System and Sewage Sludge Management State Program Requirements, EPA ICR No. 0168.07, OMB Control No. 2040–0057, expiring on April 30, 2003, (2) National Pollutant Discharge Elimination System Modification and Variance Requests, EPA ICR No. 0029.08, OMB Control No. 2040–0068, expiring on April 30, 2003, and (3) Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits, EPA ICR No. 0226.17, OMB Control No. 2040–0086, expiring on April 30, 2003. Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of the **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be submitted on or before March 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Section I.B. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Please direct questions or requests for copies of these ICR to: Jack Faulk, Industrial Branch, Water Permits Division, Office of Wastewater Management; tel.: (202) 564–0768, fax: (202) 564–6431; or e-mail: *faulk.jack@epa.gov.* Or see Section I.C of the **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

I. General Information for All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

A. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. Docket. EPA has established an official public docket for these ICRs under: (1) Docket ID No. OW–2002–0063 for National Pollutant Discharge Elimination System and Sewage Sludge Management State Program Requirements, EPA ICR No. 0168.07, OMB Control No. 2040–0057; (2) Docket ID No. OW–2002–0064 for National Pollutant Discharge Elimination System Modification and Variance Requests, EPA ICR No. 0029.08, OMB Control No. 2040–0068; and (3) Docket ID No. OW–2002–0065 for Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits, EPA ICR No. 0226.17, OMB Control No. 2040–0086.

The official public docket consists of the documents specifically referenced in the ICRs, any public comments received, and other information related to these ICRs. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B135, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments in formulating a final decision. If you wish to submit CBI or information that is otherwise protected by statute, please contact the person listed in **FOR FURTHER INFORMATION CONTACT.** Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically. If you submit an electronic comment as described below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in the appropriate Docket ID No. (*i.e.*, OW–2002–0063, OW–2002–0064, or OW–2002–0065). The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to: *ow-docket@epa.gov*, Attention Docket ID No. (please use appropriate Docket ID number, either) OW–2002–0063, OW–2002–0064, or OW–2002–0065. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's

electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send four of copies of your comments to: Water Docket, Environmental Protection Agency, Mail code: #4101T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. (please use appropriate Docket ID number, either) OW–2002–0063, OW–2002–0064, or OW–2002–0065.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC, Attention Docket ID No. (please use appropriate Docket ID number, either) OW–2002–0063, OW–2002–0064, or OW–2002–0065. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

C. What Should I Consider as I Prepare My Comments for EPA?

.You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

D. What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

II. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following three continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) National Pollutant Discharge Elimination System and Sewage Sludge Management State Program Requirements, EPA ICR No. 0168.07, OMB Control No. 2040–0057, expiring on April 30, 2003.

(2) National Pollutant Discharge Elimination System Modification and Variance Requests, EPA ICR No. 0029.08, OMB Control No. 2040–0068, expiring on April 30, 2003.

(3) Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits, EPA ICR No. 0226.17, OMB Control No. 2040–0086, expiring on April 30, 2003.

A. Contact Individual for ICRs

For all three ICRs, please contact: Jack Faulk, Industrial Branch, Water Permits Division, Office of Wastewater Management; tel.: (202) 564–0768, fax: (202) 564–6431; or e-mail: faulk.jack@epa.gov.

B. Individual ICRs

(1) National Pollutant Discharge Elimination System and Sewage Sludge Management State Program Requirements, EPA ICR No. 0168.07, OMB Control No. 2040–0057, expiring on April 30, 2003.

Affected Entities: Entities potentially affected by this action are those State and Tribal governments and governments of U.S. Territories that are authorized by EPA to administer the National Pollutant Discharge Elimination System (NPDES) Permitting Program.

Abstract: Under the NPDES program, States, Federally Recognized Indian Tribes, and U.S. Territories, hereafter referred to as States, may acquire the authority to issue permits. States that administer NPDES programs are also required to obtain pretreatment authority (authority to require publicly owned treatment works (POTWs) to establish pretreatment programs and to require that indirect dischargers meet pretreatment standards) and authority to issue permits to federal facilities. These governments have the option of acquiring authority to issue general permits (permits that cover a category or categories of similar discharges). States with existing NPDES programs must submit requests for program modifications to add pretreatment, Federal facilities, or general permit authority. In addition, as federal statutes and regulations are modified, States must submit program modifications to ensure that their program continues to meet Federal requirements.

States have the option of obtaining a sludge management program. This program may be a component of a State NPDES Program, or it may be administered as a separate program. To obtain a NPDES or sludge program, a State must submit an application that includes a program description, an Attorney General's Statement, draft Memorandum of Agreement (MOA) with the EPA Region, and copies of the State's statutes and regulations.

Once a State obtains authority for an NPDES or sludge program, it becomes responsible for implementing the program in that jurisdiction. The State must retain records on the permittees and perform inspections. In addition, when a State obtains NPDES or sludge authority, EPA must oversee the program. Thus, States must submit permit information and compliance reports to the EPA.

When EPA issues a permit in an unauthorized State, that State must certify that the permit requirements comply with State water laws. According to the Clean Water Act (CWA) (section 510), States may adopt discharge requirements that are equal to or more stringent than requirements in the CWA or Federal regulations.

The purpose of this ICR is to revise and extend the current recordkeeping and reporting requirements associated with State NPDES and sludge programs. There are three categories of reporting requirements that are covered by this ICR. The first category, "State Program

Requests," includes the activities States must complete to request a new NPDES or sludge program, or to modify an existing program. The second category, "State Program Implementation," includes the activities that approved States must complete to implement an existing program, and also certification requirements for non-NPDES States. The third category, "State Program Oversight," includes activities required of NPDES States so that EPA may satisfy its statutory requirements for state program oversight. The information collected by EPA is used to evaluate the adequacy of States' NPDES or sludge program and to provide EPA with the information necessary to fulfill its statutory oversight functions over State program performance and individual permit actions. EPA will use this information to evaluate States' requests for full or partial program approval and program modifications. In order to evaluate the adequacy of a State's proposed program, appropriate information must be provided to ensure that proper procedures, regulations, and statutes are in place and consistent with the CWA requirements.

Burden Statement: The public reporting and burden for collecting information is estimated to average 966,966 hours annually. EPA estimates an average of 19,226 responses each year.

This estimate includes the time required to review the instructions, search existing data sources, gather and maintain all necessary data, and complete and review the information collected. The respondents are the 50 States, 7 U.S. Territories, and 567 Federally-Recognized Indian Tribes (of which 45 States and 1 Territory are authorized to administer the NPDES Program); the burden per respondent is variable although the majority of the burden is on the 45 States and 1 Territory that are authorized to administer the NPDES Program.

(2) National Pollutant Discharge Elimination System Modification and Variance Requests, EPA ICR No. 0029.08, OMB Control No. 2040–0068, expiring on April 30, 2003.

Affected Entities: Entities potentially affected by this action are NPDES permit applicants that request a variance from the conditions that would normally be imposed on the applicant's discharge or NPDES permittees that request a modification of the NPDES or sewage sludge management permit conditions.

Abstract: This ICR calculates the burden and costs associated with modifications and variances made to NPDES permits and to the National Sewage Sludge Management Program permit requirements. The regulations specified at 40 CFR 122.62 and 122.63 specify information a facility must report in order for the U.S. Environmental Protection Agency (EPA) to determine whether a permit modification is warranted. A NPDES permit applicant may request a variance from the conditions that would normally be imposed on the applicant's discharge. An applicant must submit information so the permitting authority can assess whether the facility is eligible for a variance, and what deviation from Clean Water Act (CWA) provisions is necessary. In general, EPA and authorized States use the information to determine whether: (1) The conditions or requirements that would warrant a modification or variance exist, and (2) the progress toward achieving the goals of the Clean Water Act will continue if the modification or variance is granted. Other uses for the information provided include: Updating records on permitted facilities, supporting enforcement actions, and overall program management, including policy and budget development and responding to Congressional inquiries.

Burden Statement: EPA estimates that a total of 13,091 NPDES permittees will submit Modification and Variance Requests each year. Nationally, NPDES permittees will spend 57,051 hours collecting information for and preparing these requests. Each permittee submitting a request will spend an average of 4.36 hours preparing a request (57,051 burden hours divided by 13,091 permittees). However, there is a wide range in the actual time spent on the preparation of modification and variance requests.

State government burden is also a respondent burden for this ICR. Total State government burden hours for the 45 States and 1 Territory authorized to administer the NPDES Program are estimated to be 246,946 for reviewing and approving these modification and variance requests.

The total respondent burden hours are 303,997 for 13,137 respondents.

(3) Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits, EPA ICR No. 0226.17, OMB Control No. 2040–0086, expiring on April 30, 2003.

Affected entities: Publicly owned treatment works (POTWs), privately owned treatment works, new and existing manufacturing and commercial dischargers, storm water dischargers, treatment works treating domestic sewage (TWTDS), and other entities that apply for NPDES permits.

Abstract: This ICR calculates the burden and costs associated with permit applications for NPDES discharges and sewage sludge management activities. EPA uses the data contained in applications and supplemental information requests to set appropriate permit conditions, issue permits, and assess permit compliance. EPA maintains certain national application information in databases, that assists permit writers in determining permit conditions. For most permits, EPA has developed standard application forms. In some cases, such as requests for additional information and storm water applications from municipal separate sewer systems, standard forms do not exist because standard forms are not appropriate for the information collected or because they have not been developed. Application forms correspond to the different types of applicants, each form requesting information necessary for issuing permits to the associated applicants. Applicants include POTWs, privately owned treatment works, new and existing manufacturing and commercial dischargers, storm water dischargers, TWTDS, and others. Depending on the application form they are using, applicants may be required to supply information about their facilities, discharges, treatment systems, sewage sludge use and disposal practices, pollutant sampling data, or other relevant information. Section 308 of the Clean Water Act authorized EPA to request from dischargers any information that may be reasonably required to carry out the objectives and provisions of the Act. Under this authority, EPA sometimes requests information supplemental to that contained in permit applications. In its burden and cost calculations, this ICR includes requests for information supplemental to permit applications. Other parts of the Clean Water Act and federal regulations authorize EPA to collect information that supplements permit applications, such as section 403(c). This ICR calculates the burden and costs for all information collection activities associated with applications for permits. Application information is necessary to obtain an NPDES or sewage sludge permit.

Burden Statement: The total respondent burden nation-wide for the Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits is 1,306,704 burden hours for 291,898 permittee respondents per year. Additionally, the 45 State and 1 Territory respondents

authorized to administer the NPDES Program incur a burden of 92,033 hours annually.

Dated: January 6, 2003.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–516 Filed 1–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6636–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*. Weekly receipt of Environmental Impact Statements Filed December 30, 2002 Through January 03, 2003 Pursuant to 40 CFR 1506.9.

EIS No. 030000, DRAFT EIS, FHW, TX, TX–121 Highway from Interstate Highway 30 to Farm-to-Market 1187 (FM 1187) in Forth Worth, Construction, USCG Section 9, COE Section 10 and 404 Permits, Tarrant County, TX, Comment Period Ends: February 24, 2003, Contact: Patrick Bauer (512) 536–5950.

EIS No. 030001, FINAL EIS, FHW, MO, U.S. Route 50 East-Central Corridor Study, Highway Improvements from Route 50 to Route 63 east of Jefferson City, Major Transportation Investment Analysis, Osage, Gasconade, and Franklin Counties, MO, Wait Period Ends: February 10, 2003, Contact: Don Neumann (573) 636–7104.

EIS No. 030002, DRAFT EIS, AFS, CO, Trout-West Hazardous Fuels Reduction Project, Proposed Action to Reduce Fuels, Pike-San Isabel National Forest, Trout and West Creek Watersheds, Teller, El Paso and Douglas Counties, CO, Comment Period Ends: March 03, 2003, Contact: Rochelle Desser (541) 592–4075. This document is available on the Internet at: (*http://www.fs.fed.us/r2/psicc/spl/twest.htm.*)

EIS No. 030003, FINAL EIS, FSA, Programmatic EIS—Conservation Reserve Program Implementation and Expansion, Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), in the United States, Wait Period Ends: February 10, 2003, Contact: Don Steck (202) 690–0224. This document is available on the Internet at: *http://www.fsa.usda.gov/cepd/epb/nepa/htm.*

EIS No. 030004, DRAFT EIS, FTA, LA, Desire Streetcar Ling Project, Restoration of Streetcar Service Along North Rampart Street/St. Claude Avenue between Canal Street and Poland Avenue, Regional Transit Authority of New Orleans, New Orleans, LA, Comment Period Ends: February 24, 2003, Contact: Jesse Balleza (817) 978–0559.

EIS No. 030005, DRAFT SUPPLEMENT, DOE, WA, Kangley-Echo Lake Transmission Line Project, Construct a New 500 Kilovolt (kV) Transmission Line, Updated Information on the Re-evaluating Alternative Not Analyzed, COE Section 10 and Permits (DOE/EIS–0317), King County, WA, Comment Period Ends: February 24, 2003, Contact: Gene Lynard (503) 230–3790.

Dated: January 07, 2003.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 03–528 Filed 1–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7438–1]

EPA National Advisory Council for Environmental Policy and Technology—Compliance Assistance Advisory Committee; Notification of Public Advisory Committee Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee teleconference meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Compliance Assistance Advisory Committee (CAAC) under the National Advisory Council for Environmental Policy and Technology (NACEPT) will meet in a public teleconference on Friday, January 24, 2003, from 11 a.m. to 1 p.m. eastern time. The meeting will be hosted out of Conference Room #6148, U.S. EPA, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, or how to register and obtain the phone number, please contact the individuals listed below.

Background: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Pub. L. 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serves as a sounding board for new strategies that the Agency is developing. The CAAC, a subcommittee of NACEPT, provides a Federal advisory forum from which the Agency can receive valuable multi-stakeholder advice and recommendations on enhancing EPA's compliance assistance program.

Purpose of Meeting: EPA is developing its new FY 2003–2008 Strategic Plan to serve as the Agency's road map for the next 5 years. The Strategic Plan will lay out EPA's five long-term goals and guide the Agency in establishing the annual goals it will need to meet along the way. It will help EPA to measure how far it has come towards achieving its goals and to recognize where it needs to adjust its approaches or directions to achieve better results. Finally, it will provide a basis from which EPA's managers can focus on the highest priority environmental issues and ensure that the Agency uses taxpayer dollars effectively. EPA is building its Strategic Plan around five goals, centered on the themes of air, water, land, communities and ecosystems, and compliance and environmental stewardship. These themes reflect EPA's mission, "to protect human health and the environment." In addition, the Plan will discuss strategies the Agency is applying across all five goals, in areas such as science, human capital, innovation, information, homeland security, and partnerships.

The Compliance Assistance Advisory Committee (CAAC) will review and comment on EPA's Strategic Plan Architecture and identify opportunities for EPA to enhance the compliance assistance program. The comments submitted by the CAAC will be presented to the NACEPT Council for their review and approval at a future date. EPA is currently soliciting public comments on the draft goals and objectives that will provide the structure for the new Strategic Plan.

Availability of Review Materials: EPA's draft FY 2003–2008 Strategic Plan Architecture is available electronically from EPA's Office of Chief Financial Officer, at *http://www.epa.gov/ocfopage/plan/plan.htm.*

FOR FURTHER INFORMATION CONTACT: Members of the public wishing to gain access to the conference room on the

day of the meeting must contact Ms. Joanne Berman, Designated Federal Officer for the CAAC, U.S. Environmental Protection Agency (2224A), Office of Enforcement and Compliance Assurance, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–7064, fax at (202) 564–7083; or via email at *berman.joanne@epa.gov*. Written comments from the public are welcome any time before or at the time of the meeting.

The agenda will be available to the public upon request. Written comments from the public are welcome any time before, during or after the meeting.

General Information: Additional information concerning the National Advisory Council for Environmental Policy and Technology (NACEPT) can be found on our web site (*http://www.epa.gov/ocem*).

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Berman at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 8, 2003.

Frederick F. Stiehl,

Acting Director, Office of Compliance.

[FR Doc. 03–619 Filed 1–9–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of a collection of information under the emergency processing procedures in the Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by January 27, 2003. The approval will authorize FEMA to use the collection through July 31, 2003. FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information.

SUPPLEMENTARY INFORMATION: Section 404 of the Robert R. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, authorizes Hazard Mitigation Grant Program awards to grantees to administer the program, which is a post-disaster program that contributes funds toward the cost of hazard mitigation activities in order to reduce the risk of future damage, hardship, loss or suffering in any area affected by a major disaster. Grantees are defined as any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, or an Indian tribal government that chooses to act as a grantee. Subgrantees can be a State agency, local government, private nonprofit organization, or Indian tribal government to which a subgrant is awarded, and which is accountable to the grantee for the use of the funds provided. In addition, grantees must report quarterly to FEMA as to the performance and financial status of the grant.

Collection of Information

Title: Hazard Mitigation Grant Program Application and Reporting.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0207.

Abstract: FEMA will use HMGP subgrant applications submitted by the Grantee to determine whether the Grantee's proposed use of the funds meets the requirements and intent of the program. The application will provide FEMA the required information to determine whether the mitigation activity proposed for funding meets eligibility criteria, including environmental review, and to objectively evaluate its merits. The eligibility reviews must be completed and approved by FEMA before a subgrant can be awarded and the eligible activity initiated. Grantees must report on a quarterly basis, certifying how the funds are being used and reporting on the progress of activities funded under the subgrant awards made to the Grantee by FEMA.

Affected Public: State, local or tribal government, and not-for-profit institutions.

Estimated Total Annual Burden Hours:

Type of collection forms	Number of respondents (A)	Number of responses/ respondent (B)	Total number of annual responses	Hours per response and recordkeeping	Annual burden hours (A* B* C)
SF–424 (Application face sheet)	52	1	52	2 hours	104
FEMA Form 20–20 Budget—Non-Construction	52	15	780	9.7 hours	7,566
FEMA Form 20–16, 20–16A, 20–16B, 20–16C (Summary of assurances & certifications).	52	1	52	1 hour	52
SF LLL (lobbying disclosure)	52	1	52	10 minutes	8.7
Project Narrative (section 209.8(b)	52	15	780	12 hours	9,360
Benefit—Cost Determination	52	14	728	5 hours	3,640
Environmental Review	52	14	728	7.5 hours	5,460
HMGP Desk Reference	52	1	52	4 hours	208
Property Acquisition Handbook for Local Communities	52	10	520	4 hours	2,080

Type of collection forms	Number of respondents (A)	Number of responses/ respondent (B)	Total number of annual responses	Hours per response and recordkeeping	Annual burden hours (A* B* C)
FEMA Exhibit A (deed restrictions on property acquired).	1,763	1	1,763	30 minutes	881.5
OMB Circular A–94	52	15	780	2 hours	1,560
OMB Circular A–87 or A–122	52	15	780	2 hours	1,560
FEMA Form 20–17 Outlay Report and Request for Reimbursement.	52	15	780	17.2 hours	13,416
FEMA Form 20–10—Financial Status Report, Quarterly Progress Report.	52	4	208	10.5 hours	2,184
FEMA Form 20–18 Report of Government Property	52	6	312	4.2	1,310.4
FEMA 20–19 Report of Unobligated Balance (or substitute).	52	6	312	4 hours	1,248
Annual Audit & Audit Trail Requirements	52	1	52	30 hours	1560
Total Burden for HMGP	1,815	145	8,523		52,198.6

Estimated Cost: FEMA estimates hour burden costs to be $1,246,503 annually. The cost is based on the number of burden hours for each type of information collection/form, as indicated above, and the estimated wage rate for those individuals responsible for collecting the information or completing the form. FEMA assumes that urban and regional planners are the most likely staff to have responsibility for information collected and forms completed at the State level. Wage rates were determined using data from the Department of Labor, Bureau of Labor Statistics (BLS), which indicates that the median hourly earnings of urban and regional planners for 2000 are $23.88.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses. Submit comments to the OMB within 30 days of the date of this notice. To ensure that FEMA is fully aware of any comments or concerns that you share with OMB, please provide us with a copy of your comments. FEMA will continue to accept comments for 60 days from the date of this notice.

OMB Addressee: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Emergency Management Agency, 725 17th Street, NW., Washington, DC 20503.

FEMA Addressee: Submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology and Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: For additional information contact Deborah Ingram, Federal Insurance and Mitigation Administration, at (202) 646–3856. Contact Ms. Anderson at (202) 646–2625, facsimile number (202) 646–3347, or e-mail address *InformationCollections@fema.gov* for copies of the proposed collection of information.

Dated: December 30, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–472 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1445–DR]

Alaska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–1445–DR), dated December 4, 2002, and related determinations.

EFFECTIVE DATE: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is reopened due to additional flooding, caused by the same weather "block" that spawned the initial set of storms, and which is of the same nature, in the same location, causing the same type of impact as the initial event; occurs close in time to the initial event in the interim period between the request and the declaration; and on its own has impacts that meet the threshold to warrant supplemental federal disaster assistance. The incident period for this declared disaster is now October 23, 2002, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis

Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–474 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1445–DR]

Alaska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–1445–DR), dated December 4, 2002, and related determinations.

EFFECTIVE DATE: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 20, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–475 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1446–DR]

Guam; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of Guam, (FEMA–1446–DR), dated December 8, 2002, and related determinations.

EFFECTIVE DATE: December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 16, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–476 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1446–DR]

Guam; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Territory of Guam, (FEMA–1446–DR), dated December 8, 2002, and related determinations.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Territory of Guam is hereby amended to include Categories C through G under the Public Assistance program for the Territory of Guam determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 8, 2002:

The Territory of Guam for Categories C through G under the Public Assistance program (already designated for debris removal and emergency protective measures (Categories A and B), including direct Federal Assistance, at 75 percent Federal funding).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–477 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1447–DR]

Northern Mariana Islands; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of the Northern Mariana Islands, (FEMA–1447–DR), dated December 11, 2002, and related determinations.

EFFECTIVE DATE: December 24, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the

Commonwealth of the Northern Mariana Islands is hereby amended to include Individual Assistance for the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 11, 2002:

The Island of Rota for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B) under Public Assistance, including direct Federal assistance, at 75 percent Federal funding).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–478 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1447–DR]

Northern Mariana Islands; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands, (FEMA–1447–DR), dated December 11, 2002, and related determinations.

EFFECTIVE DATE: December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 16, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–479 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1447–DR]

Northern Mariana Islands; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of the Northern Mariana Islands, (FEMA–1447–DR), dated December 11, 2002, and related determinations.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of the Northern Mariana Islands is hereby amended to include Categories C through G under the Public Assistance program for the Island of Rota determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 11, 2002:

Island of Rota for Categories C through G under the Public Assistance program (already designated for debris removal and emergency protective measures (Categories A and B), including direct Federal Assistance, at 75 percent Federal funding).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–480 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting/Conference Call, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting via conference call.

SUMMARY: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: January 15, 2003.

Place: Building J, Room 236, National Emergency Training Center, Emmitsburg, Maryland.

Time: January 15, 2003, 1–3 p.m.

Proposed Agenda: Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public in the Emmitsburg commuting area with seating available on a first-come, first-served basis. The meeting is open to the public; however, teleconference lines are limited. Members of the general public who plan to participate in the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before January 13, 2003. Dial-in information will be provided to those wishing to participate via telephone.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: December 23, 2002.

R. David Paulison,

U.S. Fire Administrator.

[FR Doc. 03–473 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02-32976) published on page 79931 of the issue for Tuesday, December 31, 2002.

Under the Federal Reserve Bank of Chicago heading, the entry for Antonia Whalen, Clementine Whalen and Nathaniel Whalen, all of Chicago, Illinois, and Amanda Whalen, Portland, Oregon, acting in concert with their parents, Wayne W. Whalen and Paula Wolff, Chicago, Illinois, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. WPW Associates, L.P., Chicago, Illinois, and Antonia Whalen, Clementine Whalen and Nathaniel Whalen, all of Chicago, Illinois, and Amanda Whalen, Portland, Oregon, acting in concert with their parents, Wayne W. Whalen and Paula Wolff, Chicago, Illinois; all to retain ownership of the outstanding shares of Unionbancorp, Inc., Ottawa, Illinois, and thereby indirectly retain voting shares of Unionbank, Streator, Illinois; Unionbank/Central, Princeton, Illinois; Unionbank/West, Macomb, Illinois, and Unionbank/Northwest, Hanover, Illinois.

Comments on this application must be received by January 15, 2003.

Board of Governors of the Federal Reserve System, January 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–448 Filed 1–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 24, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. IBERIABANK Corporation, New Iberia, Louisiana; to indirectly acquire Cadence Holdings, L.L.C., Lafayette, Louisiana, through the acquisition of Acadiana Bancshares, Inc., Lafayette, Louisiana, and thereby engage in consumer lending, pursuant to § 225.28(b)(1) of Regulation Y, the issuance and sale of money orders, travelers checks and similar consumer–type payment instruments, pursuant to § 225.28(b)(13) of Regulation Y, and check cashing services and wire money transfer services, pursuant to Popular, Inc., 84 Fed. Res. Bull. 481 (1998).

Board of Governors of the Federal Reserve System, January 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–447 Filed 1–9–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Program Announcement 03012]

Public Health Conference Support Cooperative Agreement Program; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

The CDC program is authorized under section 317 (k) (2) of the Public Health Service Act, [42 U.S.C. 241] as amended. The Catalog of Federal Domestic Assistance number is 93.283.

The ATSDR program is authorized under sections 104 (i)(14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), [42 U.S.C. 9604(i)(14) and (15)]. The Catalog of Federal Domestic Assistance number is 93.161 for ATSDR.

B. Purpose

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Public Health Conference Support. This program addresses the "Healthy People 2010" focus areas of Arthritis, Osteoporosis, and Chronic Back Conditions, Cancer, Diabetes, Disability and Secondary Conditions, Educational and Community-Based Programs, Environmental Health, Heart Disease and Stroke, Immunization and Infectious Diseases, Injury and Violence Prevention, Maternal, Infant and Child Health, Occupational Safety and Health, Oral Health, Physical Activity and Fitness, Public Health Infrastructure, Respiratory Diseases, Sexually Transmitted Diseases, and Tobacco Use. HIV Conferences are not permitted under this announcement For a copy of "Healthy People 2010," visit the Internet site *http://www.health.gov/healthypeople*.

The purpose of conference support funding is to provide partial support for specific non-Federal conferences (not a series) in the areas of health promotion and disease prevention information and education programs, and applied research.

Conference support by CDC/ATSDR creates the appearance of CDC/ATSDR co-sponsorship and Congress has required that there will be active participation by CDC/ATSDR in the development and approval of the conference agenda to make sure there are no subjects that would embarrass the Government or be an improper use of funds. CDC/ATSDR funds will be expended only for approved portions of the conference.

The mission of CDC is to promote health and improve the quality of life by preventing and controlling disease, injury, and disability.

CDC supports faith-based organizations, local, Tribal, State, academic, national, and international health efforts to prevent unnecessary disease, disability, and premature death,

and to improve the quality of life. This support often takes the form of education, and the transfer of high quality research findings and public health strategies and practices through symposia, seminars, and workshops. Through the support of conferences and meetings (not a series) in the areas of public health research, education, prevention research in program and policy development in managed care and prevention application, CDC is meeting its overall goal of dissemination and implementation of new cost-effective intervention strategies.

ATSDR focus areas are: (1) Health effects of hazardous substances in the environment; (2) disease and toxic substance exposure registries; (3) hazardous substance removal and remediation; (4) emergency response to toxic and environmental disasters; (5) risk communication; (6) environmental disease surveillance; and (7) investigation and research on hazardous substances in the environment. The mission of ATSDR is to prevent both exposure and adverse human health effects that diminish the quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment.

ATSDR's systematic approaches are needed for linking applicable resources in public health with individuals and organizations involved in the practice of applying such research. Mechanisms are also needed to shorten the time frame between the development of disease prevention and health promotion techniques and their practical application. ATSDR believes that conferences and similar meetings (not a series) that permit individuals to engage in hazardous substances and environmental health research, education, and application (related to actual and/or potential human exposure to toxic substances) to interact, are critical for the development and implementation of effective programs to prevent adverse health effects from hazardous substances.

C. Eligible Applicants

Applications for CDC support may be submitted by public, private non-profit, and faith-based organizations. Public and private non-profit entities include State and local governments or their bona fide agents, faith-based organizations, voluntary associations, foundations, civic groups, scientific or professional associations, universities, and Federally-recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Only conferences planned for July 1, 2003 through September 30, 2004 are eligible to apply under this announcement.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal Funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

Applications for ATSDR support may be submitted by the official public health agencies of the States, or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, The Republic of the Marshall Island, the Republic of Palau, and Federally-recognized Indian Tribal governments. State organizations, including State universities, State colleges, and State research institutions must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered an eligible applicant. Also eligible are nationally recognized associations of health professionals and other chartered organizations generally recognized as demonstrating a need for information to protect the public from the health effects of exposure to hazardous substances. Faith-based organizations are also encouraged to apply.

D. Funding

Availability of Funds

Approximately $1,100,000 may be available from CDC in FY 2003 to fund approximately 60 to 80 awards. It is expected that the average award will be $20,000. For FY 2003, awards will be made for one cycle with a 12-month budget period within a 12-month project period. Funding estimates may change.

Approximately $50,000 is available from ATSDR in FY 2003 to fund approximately six awards. It is expected that the average award will be $8,000, ranging from $5,000 to $10,000. It is expected that the awards will begin on or about sixty days before the date of the conference and will be made for a 12-month budget period within a 12-month project period. Funding estimates may change.

Use of Funds

1. Funds may be used for direct cost expenditures: Salaries; speaker fees (for services rendered); rental of necessary conference—related equipment; registration fees; and transportation costs (not to exceed economy class fare) for non-Federal individuals.

2. Funds may be used for only those parts of the conference specifically supported by CDC or ATSDR as documented in the grant award.

3. Funds may not be used for the purchase of equipment; payments of honoraria (for conferring distinction); alterations or renovations; organizational dues; support entertainment or personal expenses; food or snack breaks; cost of travel and payment of a Federal employee; per diem or expenses for local participants (other than local mileage). Travel for Federal employees will be supported by CDC/ATSDR. Travel for other Federal employees will be supported by the employees' Federal agency.

4. Funds may not be used for reimbursement of indirect costs.

5. CDC and ATSDR will not fund 100 percent of any conference proposed under this announcement. Part of the cost of the proposed conference must be supported with other than Federal funds.

6. CDC and ATSDR will not fund a conference after it has taken place.

7. Federal funds may not be used to fund novelty items or souvenirs.

E. Program Requirements

CDC and Recipient Activities

Grantees must meet the following requirements:

1. The conference organizer(s) may use CDC's/ATSDR's name only in factual publicity for the conference. CDC/ATSDR involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, products, or the content of speakers' presentations.

2. Any conference co-sponsored under this announcement shall be held in facilities that are fully accessible to the public as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Accessibility under ADAAG addresses accommodations for persons with sensory impairments as well as persons with physical disabilities or mobility limitations.

3. Manage all activities related to program content (*e.g.*, objectives, topics, attendees, session design, workshops, special exhibits, speaker's fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC or ATSDR project personnel.

4. Provide draft copies of the agenda and proposed ancillary activities to CDC or ATSDR for approval. All but 10 percent of the total funds awarded for the proposed conference will be initially restricted pending approval of a full,

final agenda by CDC or ATSDR. The remaining 90 percent of funds will be released by letter to the grantee upon the approval of the final agenda. CDC and ATSDR reserve the right to terminate co-sponsorship at any time.

5. Determine and manage all promotional activities (*e.g.*, title, logo, announcements, mailers, press, etc.). CDC or ATSDR must review and approve any materials with reference to CDC or ATSDR involvement or support.

6. Manage all registration processes with participants, invitees, and registrants (*e.g.*, travel, reservations, correspondence, conference materials and handouts, badges, registration procedures, etc.).

7. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

8. Analyze data from conference activities that pertain to the impact of prevention.

9. Adequately assess the increase of knowledge, and change in attitudes, and behaviors of the target audience.

F. Content

Letter of Intent (LOI)

A letter of intent (LOI) is required for this Program Announcement.

Letter of Intent (LOI) instructions: Interested applicants are required to submit an original and two copies of a two to three-page in-depth, typewritten Letter of Intent (LOI). Use English only and avoid jargon and unusual abbreviations. Upon review of the LOIs, CDC or ATSDR will extend written invitations to perspective applicants to submit applications. CDC or ATSDR will accept applications by invitation only. Availability of funds may limit the number of applicants that receive funding. The LOI should specifically describe and will be evaluated on the following criteria:

1. Summary of conference format—projected agenda (including list of principal areas or topics to be addressed), including speakers or facilitator. Information should also be provided about all other national, regional, and local conferences held on the same or similar subject during the last three years. Include the following requirements on the first page:

a. The name of the organization
b. Primary contact person's name
c. Mailing address
d. Telephone number and
e. If available, fax number and e-mail address (30 points)

2. Justification for the conference, including the problems it intends to clarify and the developments it may stimulate, and a full description of your organization's purpose, experience and mission. (25 Points)

3. Expected registration " the intended audience, approximate number, and profession of persons expected to attend. (15 points)

4. Date(s) of conference—inclusive dates (not a series) of conference (LOIs without date of conference will be considered non-responsive to this program announcement and returned to the applicant without review). (15 points)

5. Location of city, state, and physical facilities required for the conduct of the meeting. (10 points)

6. Title of the proposed conference—include the term "conference," "symposium," "workshop," or similar designation. (5 points)

The LOI must include the estimated total cost of the conference and the percentage of the total cost (which must be less than 100 percent) being requested from CDC or ATSDR. Requests for 100 percent funding will be considered non-responsive to this program announcement and will be returned to the applicant without review. No appendices, booklets, or other documents accompanying the LOI will be considered.

An invitation to submit an application will be made on the basis of the proposed conference's relationship, as outlined in the LOI, to the CDC or ATSDR funding priorities and the availability of funds. LOIs should be sent using overnight mail service, or U.S. postal service.

The three-page limitation, (inclusive of letterhead and Signatures) must be observed or the LOI will be returned without review.

Applications

Applicants may apply to CDC or ATSDR for conference support only after their LOI has been reviewed by CDC, ATSDR, and a written invitation, including an application form, has been received by the prospective applicant.

An invitation to submit an application does not constitute a commitment on the part of CDC or ATSDR to fund the application.

In addition to the following required information, use the information in the Program Requirements and Evaluation Criteria sections to develop the application content:

1. A project summary cover sheet that includes:

a. Name of organization
b. Name of conference
c. Location of conference
d. Date(s) of conference
e. Intended audience and number
f. Dollar amount requested
g. Total conference budget amount

2. A brief background of the organization—include the organizational history, purpose, and previous experience related to the proposed conference topic.

3. A clear statement of the need for and purpose of the conference. This statement should also describe any problems the conference will address or seek to solve, and the action items or resolutions it may stimulate.

4. An elaboration on the conference objectives and target audience. A list should be included of the principal areas or topics to be addressed. A proposed or final agenda must be included.

5. A clear description of the evaluation plan and how it will assess the accomplishments of the conference objectives. A sample of the evaluation instrument that will be used must be included and a step-by-step schedule and detailed operation plan of major conference planning activities necessary to attain specified objectives.

6. Biographical sketches are required for the individuals responsible for planning and implementing the conference. Experience and training related to conference planning and implementation as it relates to the proposed topic should be noted.

7. Letters of endorsement or support—Letters of endorsement or support for the sponsoring organization and its capability to perform the proposed conference activity.

8. Budget plan and justification—A clearly justified budget narrative that is consistent with the purpose, objectives, and operation plan of the conference. The narrative will consist of a budget that includes the share requested from this grant as well as those funds from other sources, including organizations, institutions, conference income, and/or registration fees.

General Instructions

The narrative should be longer than 12 double-spaced pages, printed on one side, with one-inch margins, and 12-point font. Use English only and avoid jargon and unusual abbreviations. Pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two required copies of the application must be submitted unstapled and unbound. Materials that are part of the basic plan should not be in the appendices.

Send LOIs and Applications to: Technical Information Management Section, PA03012, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920

Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

G. Submission and Deadline

For conferences July 1, 2003–Sept. 30, 2004

Letter of Intent (LOI) due date: March 1, 2003.

Application due date: May 1, 2003.

Expected Award date: July 1, 2003.

Submit an original and two signed copies of the LOI to the: Technical Information Section PA03012, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Application Forms

Applicants invited to apply should also submit the original and two copies of PHS form 5161–1, (OMB Number 0937–0189). Forms are in the application kit. Forms are also available at: *http://forms.psc.gov/forms/PHS/PHS–5161–1.pdf.*

Deadline

Filing deadlines have now been imposed for all conference support grants, and dates should be strictly followed by applicants to ensure that their LOI's are received in a timely manner.

There will be one conference support review this year and awards will be made in the month of July, 2003.

If your conference dates fall between Oct 1, 2002 and June 30, 2003, you should have applied under the previous Program Announcement 02004, otherwise your LOI will be considered unresponsive to Program Announcement 03012.

If your conference dates fall between July 1, 2003 to September 30, 2004, you should apply under this program announcement.

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Letter of Intent

A conference is a symposium, seminar, workshop, or any other organized and formal meeting lasting one day or more (not a series), where persons assemble to exchange information and views, explore, or clarify a defined subject, problem, or area of knowledge, whether or not a published report results from such meeting. The conference should support CDC or ATSDR's public health principles in furtherance of CDC's mission or ATSDR's mission. CDC will review the LOIs and compare conference objectives with our respective missions and funding priorities to determine if a full application will be invited. Less than 33 percent of LOI applicants are invited to submit full applications.

Application

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Section 1.a., is ATSDR specific.

Section 1.b., is CDC specific.

Section 1.c., and all other sections in these criteria are applicable to both CDC and ATSDR. Each application will be given a pass of fail based on the following criteria:

1. Proposed Program and Technical Approach

a. The public health significance of the proposed conference, including the degree to which the conference can be expected to influence the prevention of exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases and other sources of pollution present in the environment. (Applicable to ATSDR applications only)

b. The applicant's description of the proposed conference as it relates to specific non-Federal conferences in the areas of health promotion and disease prevention information/education programs (except mental health, and substance abuse), including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices. Evaluation will also be based on the extent of the applicant's collaboration with other organizations serving the intended audience (Applicable to all CDC applications except ATSDR). The applicant's description of conference objectives in terms of quality, specificity, and the feasibility of the conference based on the operational plan will also be evaluated.

2. Applicant's Capability

The applicant's capability includes the adequacy of the applicant's resources (additional sources of funding, organization's strengths, staff time, proposed physical facilities, etc.) available for conducting conference activities.

3. The Qualifications of Program Personnel

Evaluation will be based on the extent to which the application has described:

a. The qualifications, experience, and commitment of the principal staff person, and their ability to devote adequate time and effort to provide effective leadership.

b. The competence of associate staff persons, discussion leaders, speakers, and presenters to accomplish conference objectives.

c. The degree to which the applicant demonstrates the knowledge of nationwide and educational efforts currently underway which may affect, and be affected by, the proposed conference.

4. Conference Objectives

a. The overall quality, reasonableness, feasibility, and logic of the designed conference objectives, including the overall work plan and timetable for accomplishment.

b. The likelihood of accomplishing conference objectives as they relate to disease prevention and health promotion goals, and the feasibility of the project in terms of the operational plan.

5. Evaluation Methods

Evaluation instrument(s) for the conference should adequately assess increased knowledge, attitudes, and behaviors of the target audience.

6. Budget Justification and Adequacy of Facilities

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of grant funds. The application will also be reviewed as to the adequacy of existing or proposed facilities and resources for conducting conference activities.

I. Other Requirements

Technical Reporting Requirements

Provide the CDC with original plus two copies of:

1. A performance report, or in lieu of a performance report, proceedings of the conference, no later than 90 days after the end of the budget/project period.

2. Financial status report, no later than 90 days after the end of the budget/project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–15 Proof of Non-Profit Status
AR–20 Conference Support

J. Where To Obtain Additional Information

To receive additional written information, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. See also the CDC home page on the Internet: *http://www.cdc.gov/od/pgo/funding/03012.htm*.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Rick Jaeger, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone: (770) 488–2727, Email address: *rjaeger@cdc.gov*.

For program technical assistance, contact: Janet Telman, Funding Resource Specialist, Office of the Director Extramural Services Activity, Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, MS K38, Atlanta, Georgia 30341–3714, Telephone: (770) 488–2834, Email address: *jtelman@cdc.gov*.

Dated: January 6, 2003.

Sandra R. Manning, CGFM,

Director, Program and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–486 Filed 1–9–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–10080, CMS–R–262, CMS–R–13, and CMS–484]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* New collection; *Title of Information Collection:* Publications Use Study; *Form No.:* CMS–10080 (OMB# 0938–NEW); *Use:* CMS/CBC needs to conduct this research to evaluate how CMS meets beneficiaries' informational needs about health care benefits and choices, as directed by the Balanced Budget Act of 1997. This telephone survey will gather data on publications users' demographics, usage patterns, and attitudes toward Medicare publications. Research findings will support the improvement of an dissemination of Medicare publications; *Frequency:* Quarterly; *Affected Public:* Individuals or households; *Number of Respondents:* 3,000; *Total Annual Responses:* 3,000; *Total Annual Hours:* 850.

(2) *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* The Adjusted Community Rate (ACRP) Medicare+Choice (M+C) Plan Benefit Package (PBP) and Supporting Regulations in 42 CFR 417.401, 422.1–422.10, 422.50–422.80, 422.100–422.132, and 422.300–422.312. *Form No.:* CMS–R–262 (OMB# 0938–0763); *Use:* Under part C of the Social Security Act, a Medicare+Choice (M+C) organization is required to offer at least one plan benefit package that is approved and prices properly to all Medicare beneficiaries residing in the plan service area. This software is used by M+C organizations to describe their plan benefit package(s); *Frequency:* On occasion, annually, and as required by new legislation; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 600.

(3) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions of Coverage for Organ Procurement Organizations (OPOs) and Supporting Regulations in 42 CFR, Section 486.301–.325. *Form No.:* CMS–R–13 (OMB# 0938–0688); *Use:* OPOs are required to submit accurate data to CMS concerning population and information on donors and organs on an annual basis in order to assure maximum effectiveness in the procurement and distribution of organs; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 59; *Total Annual Responses:* 59; *Total Annual Hours:* 1.

(4) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy and Supporting Regulations 42 CFR 410.38 and 42 CFR 424.5; *Form No.:* 0938–0534 (CMS–484); *Use:* This form is used to determine if oxygen is reasonable and necessary pursuant to Medicare Statute; Medicare claims for home oxygen therapy must be supported by the treating physician's statement and other information including estimate length of need (# of months), diagnosis codes (ICD–9) etc.; *Frequency:* As needed; *Affected Public:* Business or other for-profit; *Number of Respondents:* 175,000; *Total Annual Responses:* 500,000; *Total Annual Hours:* 50,000.

To obtain copies of the supporting statement and any related forms for the

proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 2, 2003.

John P. Burke, III,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–482 Filed 1–9–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–10024, CMS–10041, CMS–377/378 and CMS–R–54]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Health Survey (MHS); *Form No.:* CMS–10024 (OMB# 0938–0844)

(Note: This collection was published under CMS–10074/0938–NEW during the 60-day **Federal Register** notice comment period).

Use: The Centers for Medicare & Medicaid Services has developed a survey, the PHS, that is similar to the Health Outcomes Survey (HOS). The main purpose of the PHS is to collect health status information that may be used to adjust Medicare payments to PACE organizations. It has been successfully pilot-tested to assess response rates and accuracy of responses under different distribution approaches. The pilot test enabled CMS to select an approach whereby PACE enrollees will be sent surveys to fill out and can request assistance from family or professionals.; *Frequency:* Annually; *Affected Public:* Individuals or households, not-for-profit institutions; *Number of Respondents:* 8,550; *Total Annual Responses:* 5,814; *Total Annual Hours:* 1082.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Long Term Care Awareness Project; *Form No.:* CMS–10041 (OMB# 0938–0825); *Use:* CMS–CBC needs to collect these data to pilot test a national campaign to educate current and future Medicare beneficiaries and their families about long term health care needs, as requested in the Presidential Initiative for Fiscal Year 2000 Budget. Project findings will be used to design and implement a nationwide campaign. Respondents will be from two groups: 55–70 year-olds and persons with disability who are 18–64 years of age; *Frequency:* Quarterly; *Affected Public:* Individuals or households; *Number of Respondents:* 2000; *Total Annual Responses:* 2000; *Total Annual Hours:* 667.

(3) Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Request for Certification, CMS–377 and the Ambulatory Surgical Center Survey Report Form, CMS–378 and CMS-R–0054 Supporting Regulations Contained in 42 CFR 416.1 thru 416.49; *Form No.:* CMS–0377/0378/R–0054 (OMB# 0938–0200); *Use:* The ASC request for certification form is utilized as an application for facilities wishing to participate in the Medicare program as an ASC. This form initiates the process of obtaining a decision as to whether the conditions of coverage are met. It also promotes data retrieval from the Online Data Input Edit (ODIE system, a subsystem of the Online Survey Certification and Report (OSCAR) system by CMS Regional Offices (RO)). The ASC report form is an instrument used by the State survey agency to record data collection in order to determine supplier compliance with individual conditions of coverage and to report it to the Federal government. The form is primarily a coding worksheet designed to facilitate data reduction and retrieval into the ODIE/OSCAR system at the HCFA ROs. This form includes basic information on compliance (*i.e.*, met, not met and explanatory statements) and does not require any descriptive information regarding the survey activity itself.; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 3,600; *Total Annual Responses:* 3,675; *Total Annual Hours:* 1,875. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 2, 2003.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–483 Filed 1–9–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0529]

Pfizer, Inc.; Withdrawal of Approval of a New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for REZULIN (troglitazone) Tablets held by Pfizer, Inc., 235 East 42d Street, New York, NY 10017. Pfizer has voluntarily withdrawn this NDA because the product is no longer marketed, thereby waiving its opportunity for a hearing.

DATES: Effective January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a letter dated May 1, 2002, Pfizer, Inc., requested that FDA withdraw under § 314.150(d) (21 CFR 314.150(d)), NDA 20–720 for REZULIN (troglitazone) Tablets, stating that The Warner-Lambert Co., which Pfizer acquired in June 2000, discontinued marketing the product in March 2000. REZULIN (troglitazone) Tablets, a treatment for type 2 diabetes, was voluntarily withdrawn after review of safety data showed that the drug is more toxic to the liver than two other more recently approved drugs that offer a similar benefit. Pfizer waived its opportunity for a hearing, provided under § 314.150(a) and (b).

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.105(a)), approval of the NDA 20–720, and all amendments and supplements thereto, is withdrawn. Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the act (21 U.S.C. 355(a) and 331(d)).

Dated: December 16, 2002.

Jane Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–493 Filed 1–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Medical Device User Fee Rates for Fiscal Year 2003 and Interim Procedures; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 21, 2002 (67 FR 70228). The document announced the rates and interim procedures for medical device user fees for fiscal year (FY) 2003. The document was inadvertently published with confusing language regarding the fee that must be paid by a small business that submits a 510(k) premarket notification for FDA review during FY 2003. The document intended to state that all 510(k)s submitted for FDA review during FY 2003 are subject to a standard fee of $2,187, and that all submitters who are subject to a fee, including a small business, are required to pay this fee. This document corrects that error.

ADDRESSES: Persons with access to the Internet may obtain further information on the Medical Device User Fee and Modernization Act of 2002 at http://www.fda.gov/cdrh/mdufma or http://www.fda.gov/cber/mdufma/mdufma.htm.

FOR FURTHER INFORMATION CONTACT: Frank Claunts, Office of Management and Systems (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–29572, appearing on page 70228 in the **Federal Register** of Thursday, November 21, 2002, the following corrections are made:

1. On page 70228, in the third column, under "III. Fee Calculations for FY 2003," the fourth sentence is corrected to read "Table 1 of this document summarizes the types of applications that are subject to a fee, the full fee amount expressed as a percent of the fee for a PMA, the full (standard) fee for FY 2003, and the fee that may be paid by a qualified small business."

2. On page 70229, in the second column, the first full sentence is corrected to read "For premarket notification submissions, a small business will pay the full (standard) fee of $2,187."

3. On page 70229, in table 1, in the third column, in the last row, "2,187" is corrected to read "2,1871".

4. On page 70229, under table 1, add the following footnote to read as follows: "[1]A small business will pay the full (standard) fee of $2,187 for a premarket notification submitted to FDA during FY 2003. A small business fee, set at 80 percent of the standard 510(k) fee, will be available beginning FY 2004."

Dated: January 6, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–494 Filed 1–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NIH Intramural Research Training Award, Program Application

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on Friday, October 4, 2002, page 62253 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: NIH Intramural Research Training Award, Program Application; Type of Information Collection Request: Revision of OMB No. 0925–0299; Expiration date 03/31/2003; Need and Use of Information Collection: The proposed information collection activity is for the purpose of collecting data related to the availability of Training Fellowships under the NIH Intramural Research Training Award Program. This information must be submitted in order to receive due consideration for an award and will be used to determine the eligibility and quality of potential awardees. Frequency of Response: On occasion. Affected Public: Individuals seeking Intramural Training award

opportunities. Type of Respondents: Postdoctoral, Predoctoral, Postbaccalaureate, Technical, and Student IRTA applicants.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondent	Estimated number for respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Postdoctoral IRTA	1,375	1.00	1.00	1,375
Predoctoral	306	1.00	1.00	306
Postbaccalaureate	793	1.00	1.00	793
Technical IRTA	83	1.00	1.00	83
Student IRTA	3,800	1.00	1.00	3,800
References for all IRTA categories	15,188	1.00	0.33	5,012
Total	21,545	1.00	0.5276862	11,369

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and the clarity of information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Edie Bishop, Personnel Management Specialist, Office of Human Resources, OD, NIH, Building 31, Room B3C07, 31 Center Drive MSC. 2203, Bethesda, MD, 20892–2203, or call non-toll-free number (301) 496–1443, or E-mail your request, including your address to: *Bishope@od.nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: January 3, 2003.

Frederick C. Walker,

Acting Director, Office of Human Resources.

[FR Doc. 03–439 Filed 1–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: January 28–30, 2003.

Time: January 28, 2003, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Time: January 29, 2003, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Time: January 30, 2003, 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW. Washington, DC 20007.

Contact Person: Nancy B. Saunders, PhD., Scientific Review Administrator, Division of Extramural Activities, NIAID, NIH, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 3, 2003.

Anna Snouffer.

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–440 Filed 1–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential

trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: February 5–6, 2003.

Closed: February 5, 2003, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: February 6, 2003, 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate the Board of Scientific Counselors' Report.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1–E2, Bethesda, MD 20892.

Open: February 6, 2003, 9:30 a.m. to 3:30 p.m.

Agenda: Program documents.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1–E2, Bethesda, MD 20892.

Contact Person: Kenneth R. Warren, Phd, Director, Office of Scientific Affairs, National Institute on Alcohol Abuse, and Alcoholism, National Institutes of Health, Willco Building, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, (301) 443–4375, *kwarren@niaaa.nih.gov*.

Information is also available on the Institute's/Center's home page: *silk.nih.gov/silk/niaaa1/about/roster.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 3, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–441 Filed 1–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personall privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ACISR & DCISR Center-Adult.

Date: February 7, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, (301) 443–7216, *hhaigler@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ACISR and DCISR Centers for Child Research.

Date: February 10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, national Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, (301) 443–7216, *hhaigler@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Services Research Review Committee.

Date: February 12–13, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Martha Ann Carey, PHD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1606, *mcarey@mail.nih.gov*.

[FR Doc. 03–442 Filed 1–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: February 4–5, 2003.

Closed: February 4, 2003, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Open: February 5, 2003, 8 a.m. to 12:15 p.m.

Agenda: Call to Order, Task Force on Minority Aging Research Report, and other presentations.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Closed: February 5, 2003, 12:15 p.m. to 3 p.m.

Agenda: To review and evaluate program documents.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, (301) 496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 3, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–443 Filed 1–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Cognitive Decline with Aging.

Date: January 29–30, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Plaza Hotel, 815 Main Street, Ft. Worth, TX.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, (301) 496–7705.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Role of Insulin Pathways in Aging.

Date: February 10–11, 2003.

Time: 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton Riverwalk North, 110 Lexington Avenue, San Antonio, TX 78205.

Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9666, *harwoodj@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Immunology of Aged T Cells.

Date: February 17–18, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Empress Hotel, 7766 Fay Avenue, La Jolla, CA 92037.

Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9666, *harwoodj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 3, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–444 Filed 1–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the Project Rehabilitation and Restitution Program

—New—The Rehabilitation and Restitution initiative of SAMHSA's Center for Substance Abuse Treatment seeks to reduce recidivism and increase psychosocial functioning and pro-social lifestyle among substance abusing state correctional prisoners. Hypotheses of the study are that providing intensive, long-term case management services will facilitate a pro-social lifestyle leading to higher rates of sealing or expunging of criminal records and that the prospect of stigma reduction provided by a sealed criminal record will motivate offenders to remain crime and drug free for a least three years after completing judicial supervision.

The project consists of (1) providing technical assistance to develop and implement intensive case management services, and (2) an evaluation of the effectiveness of the intensive case management services in increasing the number of people eligible to have their records sealed. The study is confined to jurisdictions with statutes permitting records to be sealed. Two counties in Ohio involving an urban setting (Cuyahoga county which includes the city of Cleveland) and a rural setting (Clermont county adjacent to Kentucky) were selected based on responses to an RFA. Subjects in each county will be drawn from referrals by parole and probation to Treatment Accountability for Safer Communities (TASC) case management programs in the two counties.

The target population consists of individuals entering parole or probation who are first time nonviolent felons with a history of substance abuse and are eligible to have their records sealed. Technical assistance to participating counties will be provided to (1) develop, an intensive case management treatment model designed to increase the proportion of offenders eligible to have records sealed, and (2) involve the various stake holders, such as case managers, parole officers, district attorney's office, public defender, and judges in the implementation of the case management model. A formative evaluation will provide feedback on the implementation of the program. A systems evaluation will examine the number of services offered to the felons, and changes in attitudes towards sealing records on the part of critical stakeholders, such as district attorney offices, judges and service providers. An outcomes evaluation will examine the effect of the intensive case management model on the eligibility to have records sealed, social, psychological and health status, HIV risk behavior, and the actual proportion of subjects who have their records sealed.

The experimental study consists of two groups of randomly assigned

subjects. An intent-to-treat group is scheduled to receive intensive case management consisting of an intensive TASC case management model during the one-year period of supervision followed by an additional three years of less intensive case management services. A control group will receive treatment as usual, consisting of the TASC case management model now in place. The evaluation procedures will consist of a baseline interview and follow-up interviews over a 4-year period that tracks outcomes to the point at which subjects are eligible for sealing of records. Follow-up interviews and file studies will test for a wide array of possible effects, including recidivism, employment, education, drug use, family relationships, support of children, mental and physical health, HIV/AIDS risk factors, assumption of personal responsibility and life adjustment factors.

The evaluation will involve 880 projected participants over a four-year period. Evaluation interviews will take place at baseline, 6 months, 12 months, and 42 months. Each interview will last 1½ to 2 hours depending on the memory and speed of the respondents. The interview goal is a minimum 80% completion rate. Interview data will be supplemented by a file study of arrest records and the number of criminal records expunged. Additionally, two focus groups of clients in the intent to treat group will be conducted in each county at 3, 6, 12, 18, 24, and 30 months to provide feedback on client perceptions of the case management programs. One group at each site will consist of clients in compliance with the program and one group will consist of clients not in compliance. Groups will consist of 8 to 10 participants chosen at random from the compliant and noncompliant clients. Additional file study data will be gathered on the number of case management sessions and the number and frequency of other interventions in the intent-to-treat and control groups.

Data collection	Number of respondents	Responses/ respondent	Hours per response	Total hr. burden
Baseline Interview	880	1	1.37	1,206
Follow-up Battery: 6-, 12-, & 42-month	880	3	1.85	4,884
Client Focus Groups: 3-, 6-, 12-, 18-, 24- & 30-month	120	1	1.50	180
File Data Collection (Staff Time) MCSIS, Ohio DRC, TASC	3	3	2.00	18
Quality Assurance (Treatment Program Staff) Multimodality Quality Assurance (MQA)	6	1	.75	5
Stake Holders:				
Workshops/meetings evaluation form	18	10	.08	14
Attitudes Towards Sealing Records	18	3	.08	4
Stakeholders Focus Group	12	1	1.50	18
Total Burden	925			6,329
4-Year Annual Average	925			1,582

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 6, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–490 Filed 1–9–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Evaluation of Mentoring and Family Strengthening Youth Substance Abuse Prevention Initiatives—New—The basis for the current cross-site evaluation originates from two previous efforts funded by SAMHSA's Center for Substance Abuse Prevention (CSAP) aimed at providing prevention services for high-risk youth: (1) Project Youth Connect—Mentoring and (2) Parent and Family Strengthening. The Project Youth Connect Program, funded in 1998, was designed to determine the effectiveness of a paid mentor/advocate model in improving life achievement outcomes for youth 9 to 15 years of age and their families. The Parent/Family Strengthening Program was designed to present science-based program models that would be selected for implementation within local communities. Funding for the parent/family strengthening program was distributed in two cohorts, with Cohort 1 receiving funding in 1998 and Cohort 2 receiving funding in 1999. Both cohorts were funded for a period of 24 months to address the gap between effective family-based prevention interventions and their availability in States, communities and other organizations.

The goal of the current cross-site evaluation seeks to build upon these previous efforts by evaluating the impact of a three-year Mentoring and Family Strengthening prevention program targeting high-risk youth and their caregivers on reducing risk factors related to, and enhancing protective factors against, substance abuse. Seven mentoring and nine family strengthening study sites were funded by SAMHSA/CSAP as of September 2001 to participate in this cross-site study. The primary objectives of the cross-site evaluation are to: (1) Assess the process of implementing program models with diverse target groups, (2) measure the effectiveness of specified intervention strategies such as cultural enrichment activities, educational and vocational resources, or computer-based curricula, and (3) determine the success of the Mentoring and Family Strengthening Programs in delaying, preventing, and/or reducing the use of alcohol, tobacco, and other drugs (ATOD) among youth and caregivers at risk for such behaviors. Conducting this evaluation will assist SAMHSA/CSAP in promoting and disseminating optimally effective prevention programs.

The CSAP GPRA Adult and Youth questionnaires, which have been approved by OMB (OMB No. 0930–0208) for use in all CSAP prevention services programs, will be used to measure ATOD use and risk factors associated with ATOD abuse among program participants and comparison subjects. Scales from the CSAP Core Measures list (OMB No. 0930–0230) and the CSAP National Youth Survey (OMB No. 0930–0178) will be used to measure other important risk and protective factors. The cross-site instrument (containing CSAP GPRA, scales from the CSAP Core Measures list, and scales from the CSAP National Youth Survey) is augmented with additional scales in order to measure other important risk factors such as family conflict and parental stress. Protective factors that serve to guard against ATOD abuse include educational aspirations, school connectedness, and family cohesion. Data will also be gathered from program reports using a "dosage form" that will document services provided to youth and their adult caregivers.

The evaluation data will be collected through self-report questionnaires administered to program and comparison youth and adults, and to Mentors at the Mentoring Study Sites. Each youth and adult in the intervention and comparison group will complete questionnaires at three different times: (1) Baseline, (2) program exit and (3) 6-month follow up. Each Mentor will complete a background information form at baseline; mentees will complete a questionnaire about their mentor at program exit and at 6-month follow up. The dosage form will be completed by Mentors and Family Strengthening program staff on a weekly basis for program youth and adults.

Sample size, respondent burden, and intrusiveness have been minimized to be consistent with the cross-site evaluation objectives. Procedures are employed to safeguard the privacy and confidentiality of participants. Every effort has been made to coordinate cross-site data collection with local data collection efforts in order to minimize respondent burden. Pilot tests assisted in controlling burden and ensuring the user-relevance of questions.

Evaluation results will have significant implications for the substance abuse prevention field, the allocation of grant funds, and evaluation activities conducted by multiple Federal, state, and local government agencies. Results will be used to develop federal policy in support of SAMHSA/CSAP program initiatives, inform the public of lessons learned and findings, improve existing programs, and promote replication and dissemination of effective prevention strategies.

The following table shows the estimated annualized burden for data collection.

Response type	Number of respondents	Responses/ respondent	Average burden/ response (hrs.)	Total burden hours
*Youth (intervention and comparison)	2,500	3	.50	3,750
*Adult Family Strengthening (intervention and comparison)	1,250	3	.50	1,875
**Adult Mentoring	1,250	3	.667	2,501
Mentor Information Form	121	1	.167	20
Mentee Measure Form	692	2	.250	346
Weekly Dosage Form—Family Strengthening Staff	46	4,000	.083	15,272
Weekly Dosage Form—paid mentors	21	18,900	.083	32,943
Weekly Dosage Form—volunteer mentors	100	200	.083	1,660
Total	5,167			58,367
3-Yr. Average Annual	1,722			19,456

*Average response burden does not include the 20 minutes for completing the CSAP GPRA Tool (OMB No. 0930–0208) or 10 minutes for completing questions that are part of the Core Measures (OMB No. 0930–0230) for the Youth Questionnaires and the Adult Family Strengthening Questionnaire.

**The Adult Mentoring Questionnaire does not include CSAP GPRA Tool.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 2, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–489 Filed 1–9–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–02]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*. No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 3, 2003.

Mark R. Johnston,

Deputy Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–358 Filed 1–9–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Jamul Indian Village 101 Acre Fee-to-Trust Transfer and Casino Project, San Diego County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), in cooperation with the Jamul Indian Village and the National Indian Gaming Commission (NIGC), intends to file a draft Environmental Impact Statement (DEIS) with the U.S. Environmental Protection Agency for the proposed approval of a 101-acre fee-to-trust transfer, a gaming management contract and the construction of associated casino and support facilities. Details on the proposed action, location and areas of environmental concern addressed in the DEIS are provided in the **SUPPLEMENTARY INFORMATION** section. This notice also announces a public hearing to receive comments on the DEIS.

DATES: Written comments on the DEIS must arrive by March 2, 2003. The public hearing will be held on February 6, 2003, from 6 p.m. to 10 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Ronald Jaeger, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825–1846. Please include your name, return address and the caption, "DEIS Comments, Jamul Indian Village 101 Acre Fee-to-Trust and Casino Project, San Diego County, California," on the first page of your written comments.

The public hearing will be at the El Cajon Community Center, 195 East Douglas, El Cajon, California 92020. This meeting will be co-hosted by the BIA and Jamul Indian Village.

To obtain a copy of the DEIS, please write or call William Allan, Environmental Protection Specialist, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825–1846, telephone (916) 978–6043. Copies of the DEIS are also available for review at the Jamul Indian Village Tribal Administration Office, 14191 Highway 94, Jamul, California 91935, and at the following two public libraries: San Diego County Library—El Cajon Branch, 201 East Douglas Avenue, El Cajon, California 92020; and San Diego County Library—Fletcher Hills Branch, 576 Garfield Avenue, El Cajon, California 92020.

FOR FURTHER INFORMATION CONTACT: William Allan, (916) 978–6043.

SUPPLEMENTARY INFORMATION: The Jamul Indian Village is located in eastern San Diego County, California, approximately one mile south of the community of Jamul. The project area is bordered by Melody Road to the north, vacant and residentially developed land to the west, vacant land to the south and State Route 94 to the east. State Route 94 provides direct access to downtown San Diego, approximately 20 miles to the west, where it intersects with Interstate 5.

The Jamul Indian Village proposes that 101 acres of land be taken into trust and that a casino, parking, hotel and other facilities supporting the casino be constructed on the existing Jamul Indian Village site and the 101-acre trust acquisition. The gaming facility will be managed by Lakes Kean Argovitz Resorts-California, LLC, (LKAR–CA) on behalf of the Tribal Government, pursuant to the terms of the management agreement between the Tribal Government and LKAR–CA. The BIA serves as the Lead Agency for National Environmental Policy Act (NEPA) compliance, with the NIGC, which is responsible for approval of the gaming management contract, acting as a Cooperating Agency.

Alternatives to the proposed project that are considered in the DEIS include: (1) Trust acquisition and casino and hotel construction (the proposed action); (2) trust acquisition, casino and retail development; (3) trust acquisition and retail development; (4) trust acquisition, hotel/casino north of Melody Road; and (5) no action.

Environmental issues addressed in the DEIS include land and water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resource use patterns, public services, environmental justice, growth inducing effects, and cumulative impacts.

Public Comment Solicitation

Comments, including names and addresses of respondents, will be available for public review at the BIA mailing address shown in the **ADDRESSES** section, during regular business hours, 9 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR part 1500 through1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: January 2, 2003.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–517 Filed 1–9–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–03–1430–ER]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Flood Control Master Plan, Clark County Regional Flood Control District

AGENCY: Bureau of Land Management, Las Vegas Field Office.

COOPERATING AGENCY: U.S. Army Corps of Engineers, Sacramento District.

ACTION: Notice of intent to prepare a supplemental Environmental Impact Statement (SEIS) for the Flood Control Master Plan, Clark County Regional Flood Control District (CCRFCD).

SUMMARY: This document provides notice that the BLM intends to prepare an SEIS of the Final Environmental Impact Statement for the Flood Control Master Plan, Clark County Regional Flood Control District, approved on June 4, 1991, by record of decision. The project area is located in Clark County,

Nevada, hydrographic basins 212 and 167. This activity encompasses private and public lands within the Las Vegas Valley and Boulder City, Nevada. The SEIS will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with the U.S. Army Corps of Engineers (USACE), Sacramento District and interested parties to identify any local concerns. The public scoping process will help identify issues and concerns including an evaluation of the existing Final Environmental Impact Statement (FEIS) for the Flood Control Master Plan in the context of the needs and interests of the public.

DATES: This notice initiates the public scoping process. Comments and concerns on issues can be submitted in writing to the address listed below and will be accepted throughout the 30-day scoping period. All public meetings will be announced through the local news media, newsletters, and the BLM web site at *www.blm.nv.gov* at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held throughout the SEIS scoping and preparation period. Public scoping meetings will be held from 6–8 p.m. Pacific standard time on January 22, 2003, at the CCRFCD, RTC Building, Room 108, 600 S. Grand Central Parkway, Las Vegas, Nevada 89106; and on January 23, 2003, from 6–8 p.m. Pacific standard time at the Henderson Convention Center and Visitors Bureau, 200 Water Street, Henderson, Nevada 89015. Early participation is encouraged and will provide guidance and suggestions for the future management of flood control facilities within the Las Vegas Valley. In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the BLM draft SEIS.

ADDRESSES: Written comments should be sent to the Bureau of Land Management, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130–2301; Fax (702) 515–5023. Documents pertinent to this proposal may be examined at the Las Vegas Field Office or the CCRFCD. The CCRFCD is located at 600 S. Grand Parkway, Suite 300, Las Vegas, NV 89106–4511.

Comments, including names and street addresses of respondents, will be available for public review at the Las Vegas Field Office during regular business hours (7:30 a.m. through 4:15 p.m.), Monday through Friday, except holidays, and may be published as part of the SEIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Jeffrey Steinmetz, BLM, Las Vegas Field Office, Telephone (702) 515–5097; e-mail *jsteinme@blm.gov*, or Anna Wharton, at (702) 515–5095: e-mail *awharton@blm.gov*.

SUPPLEMENTARY INFORMATION: The changing needs and interests of the public and the growth within the Las Vegas Valley necessitates a revision to the Flood Control Master Plan FEIS published in 1991 for the Las Vegas Field Office and CCRFCD. Preliminary issues and management concerns have been identified by BLM and CCRFCD personnel, their consultant, and other agencies. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The major issue themes that will be addressed in the SEIS include: Impacts to surface water hydrology and water quality; protection of federally-listed species, state-listed species, and BLM sensitive species; minimizing impacts to air quality; minimizing visibility impacts; balancing conflicting and compatible land uses; protection of cultural and paleontological resources; cumulative impacts of the project; and the creation of a new project-specific analysis procedure for future flood control facilities.

After gathering public comments on what issues the SEIS should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the SEIS;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of the SEIS.

Rationale will be provided in the SEIS for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the SEIS. The public is encouraged to help identify these questions and concerns during the scoping phase. An interdisciplinary approach will be used to develop the SEIS in order to consider the variety of resource issues and concerns identified. Disciplines involved in the SEIS process will include specialists with expertise in soils, minerals and geology; hydrology; botany; wildlife and fisheries; transportation; visual resources; air quality; lands and realty; outdoor recreation; archaeology; paleontology; and sociology and economics.

Mark T. Morse,
Field Manager.

[FR Doc. 03–594 Filed 1–9–03; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Lake Management Plan/Final Environmental Impact Statement, Lake Mead National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality regulations (40 CFR part 1500–1508), the National Park Service, Department of the Interior, has prepared a Lake Management Plan and Final Environmental Impact Statement identifying and evaluating four alternatives for Lakes Mead and Mohave within Lake Mead National Recreation Area. The foreseeable potential for environmental impacts, and appropriate mitigation, are identified and assessed for each alternative. When approved, the plan is intended to guide management actions during the next 15–20 years.

DATES: Notice of an approved record of decision will be published in the **Federal Register** not sooner than 30 days after the final document has been distributed.

ADDRESSES: Copies of the Final Environmental Impact Statement/Lake Management Plan may be obtained by writing to Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada, 89005, or it may be viewed on the Internet at *www.nps.gov/lame/planning*.

FOR FURTHER INFORMATION CONTACT: Jim Holland, Management Assistant, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada, 89005. e-mail: *Jim_Holland@nps.gov.* Phone: (702) 293–8986.

SUPPLEMENTARY INFORMATION: The Lake Mead NRA General Management Plan completed in 1986 establishes land based management zones and strategies for meeting those goals. Since that time, management issues have surfaced that have not been adequately addressed or resolved in the previous planning efforts. These issues relate to the increase in recreational use of the lakes, visitor conflicts and safety, potential impacts on park resources from water-related recreation and personal watercraft use. The overall objective of this lake management plan is to improve the management of Lakes Mead and Mohave, while providing for the long-term protection of park resources and allowing a range of recreational opportunities to support visitor needs.

Proposal: The preferred alternative has been modified in the Lake Management Plan/Final Environmental Impact Statement. There have been modifications made to the lake zoning and carrying capacity sections and the uses allowed in the primitive and semiprimitive zones. The temporal zoning in Black Canyon and the boating in proximity sections of the plan have also been revised.

The Lake Management Plan (Alternative C—Preferred) would allow for a slight increase in boating levels (5,055 boats at any one time). Facility expansion could occur at Cottonwood Cove on Lake Mohave and at Callville Bay, Echo Bay, Overton Beach and Temple Bar on Lake Mead. Additional public launch facilities could be constructed at Eldorado Canyon along Lake Mohave and at Stewarts Point on Lake Mead. A new road could be constructed to provide improved access to the north shore of the Boulder Basin on Lake Mead.

The park waters would be managed for a range of recreational settings from primitive to urban. Five percent of the park waters would be managed for primitive and semiprimitive settings, 39% for rural natural, 21% for urban natural and 35% as urban park. The primitive areas would be managed for non-motorized use but would allow electric trolling motors and semiprimitive areas would be managed for flat wake speed or with a horsepower restriction. Personal watercraft would be prohibited from operating in primitive and semiprimitive settings but authorized to operate in rural natural, urban natural and urban park settings.

Black Canyon would be managed for temporal recreational settings with two days per week being primitive (no motors) and five days per week between Labor Day and Memorial Day as semiprimitive. In Black Canyon where there is a constant river current, the semiprimitive zone flat wake restriction is replaced with an engine size restriction of 65-horsepower or less. Between Memorial Day and Labor Day, Black Canyon would be managed as rural natural allowing generally unrestricted boating access five days per week (due to the narrow canyon environment, houseboats, wake boarding and water skiing are prohibited).

In consultation with the States of Arizona and Nevada, a 200-foot flat wake zone would be established around beaches frequented by bathers, boats at the shoreline and persons in the water or at the shoreline. This is to establish a safe shoreline environment for shoreline users. The National Park Service will work with the respective states to develop uniform boating laws on Lakes Mead and Mohave and pursue mandatory boating education programs. Alcohol consumption while operating a boat would be prohibited.

Sanitation and public education requirements would be implemented and a clean-up program initiated. Glass beverage containers and styrofoam would be prohibited within the park. Water quality would be enhanced by requiring all boaters camping overnight to possess a marine head or portable toilet.

The Environmental Protection Agency regulation requiring the marine industry to improve the efficiency of engines by the year 2006 would be accelerated at Lake Mead NRA; requiring exclusive use of the new direct injection two-stroke engines, or equivalent, for motorized vessels starting 2012.

This alternative was identified at the environmentally preferred alternative as it best meets the requirement of section 101 of the National Environmental Policy Act. It would help provide a wide range of beneficial uses without degradation and would improve the safety of the recreation area. This alternative would preserve important aspects of our natural heritage while providing an environment that supports diversity and a variety of individual choices.

Alternatives: Alternative A maintains the status quo Lake Mead NRA, as described in chapter 3, Affected Environment. It provides a baseline from which to compare other alternatives, to evaluate the magnitude of proposed changes, and to measure the environmental effects of those changes. Under this alternative, management would continue to follow the 1986 General Management Plan zoning and capacities. By taking no new management actions including the promulgation of a personal watercraft rule, this alternative results in a permanent ban of personal watercraft use.

Alternative B would cap the number of boats at any one time at the current level (4,393 boats at any one time). No facilities would be expanded and no new launch ramps would be constructed. Ten percent of the park waters would be managed for primitive and semi-primitive settings. Personal watercraft would be authorized to operate in the rural natural, urban natural and urban park settings. A 100-foot flat wake zone would be established around the shoreline of both Lakes Mead and Mohave. Sanitation and litter initiatives would be improved but boats camping overnight would not be required to possess a porta-potty or marine toilet. All boat engines including personal watercraft would be required to meet the 2006 EPA manufacturer standards. Upon the approval of the plan, all engines not meeting these standards would be prohibited from operating on the waters of Lake Mead NRA.

Alternative D would provide for a greater increase in boating activity (5,800 boats at any one time). Facility expansion would be similar to *Alternative C* but allow larger increases in the marina slip and rental craft numbers. None of the park waters would be zoned for primitive or semiprimitve settings and there would be no restriction on personal watercraft use. A 300-foot flat wake zones would be established around the shoreline of both Lakes Mead and Mohave. Alcohol consumption while operating a boat would be prohibited and glass and Styrofoam containers would be prohibited. The National Park Service would require all Lake Mead and Mohave boaters to take a boater education course. Boaters camping overnight would be required to possess a porta-potty or marine head. There would be no restriction on the use on carburated two-stroke engines.

Planning Background: The Lake Management Plan and Draft Environmental Impact Statement (DEIS) were prepared by the National Park Service (NPS) pursuant to the National Environmental Policy Act. A scoping notice was published in the **Federal Register** on May 3, 1993. General issues

and specific concerns already raised during previous relevant planning processes were provided to the public. Over a five-year period a series of public scoping and public informational meetings were held. Public scoping comments were received through this entire process. During this scoping period, the NPS facilitated over 100 discussions and briefings to interested members of the public, congressional delegations, Indian tribes, elected officials, other agencies, public service organizations, educational institutions, and other entities. Over 1,000 letters were received concerning the management of recreational use of the waters of Lake Mead NRA.

The Lake Management Plan/DEIS—formally announced for public review per notice of availability published in the **Federal Register** on April 19, 2002—was sent directly to all individuals, organizations, and agencies which had previously contacted the park; copies could also be obtained in the park, by mail, at public meetings, and were available for review at local and regional libraries (*i.e.*, Las Vegas, Henderson, Boulder City, Laughlin, Bullhead City, Kingman, Overton, Mesquite and St. George). Additional copies were sent to public libraries in Southern California including Needles, San Bernardino, Victorville, Barstow, Irvine, Long Beach, Northridge and Los Angeles. Finally, the complete document was posted on the Lake Mead National Recreation Area Webpage (*http://www.nps.gov/lame/planning*). Written comments were accepted through June 26, 2002. Approximately 10,000 comments were received; of these 6,000 were electronic form letters and 1,000 were printed post cards; all were duly considered and adjustments were made to the draft plan. The issues focused on boating access, zoning, carrying capacity, shoreline wakeless zones and personal watercraft use. All written comments have been logged, archived and are available for public review in the park's research library.

In order to further foster public review and comment, six public meetings were held throughout the region—all were conducted in communities, cities and towns neighboring Lake Mead National Recreation Area. All meetings were conducted in an open house format (where participants could view displays and talk with park management and planning staff). At each of these meetings, written comment forms could be submitted or oral testimony was documented by a court reporter. Approximately 750 persons attended these meetings and the majority submitted written or oral comments. In addition, presentations were made before the Laughlin Town Board and the Searchlight Town Board.

Decision Process: Subsequent to release of the Lake Management Plan/Final Environmental Impact Statement, notice of an approved record of decision shall be published in the **Federal Register** not sooner than 30 days after the final document has been distributed. This is expected to occur by the end of December 2002. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Lake Mead National Recreation Area.

Dated: November 25, 2002.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 03–118 Filed 1–9–03; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[USITC SE-03-001]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: January 27, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–421–2 (Market Disruption)(Certain Steel Wire Garment Hangers from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination on market disruption to the President on January 27, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 8, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–659 Filed 1–8–03; 3:00 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Mountain Health Care Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment and Competitive Impact Statement have been filed in a civil antitrust case, *United States of America* v. *Mountain Health Care, Civil* Action No. 1:02CV288–T, in the United States District Court for the District of Western North Carolina. The Complaint alleges that Mountain Health Care ("MHC") and its participating physicians developed a uniform fee schedule and used that fee schedule in negotiations with managed care purchasers in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. In order to restore competition, the proposed Final Judgment requires that MHC be dissolved. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 7th Street, NW., and at the Office of the Clerk of the United States District Court for the District of Western North Carolina. The documents may also be found on the Antitrust Division's Web site, *ltte://www.usdoj.gov/atr.*

Public comment on the proposed Final Judgement is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark J. Botti, Chief; Litigation I; Antitrust Division; United States Department of Justice; 1401 H Street., NW.; Room 4000; Washington, DC 20530 (Tel.: (202) 307–0001).

Constance K. Robinson,

Director of Operations.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Western District of North Carolina.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not

withdrawn its consent, which it may do at any time before the entry of the proposed final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

3. Defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof s though the same were in full force and effect as an order of the Court.

4. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: October 2, 2002.

For Plaintiff United States of America:

Weun Wang,

Litigation II Section, Antitrust Division, U.S. Department of Justice.

September 26, 2002.

For Defendant Mountain Health Care, P.A.:

John J. Miles,

Ober, Kaler, Grimes & Shriver, Counsel for Defendant Mountain Health Care, P.A.

Final Judgment

Whereas, defendant has represented to the United States that its dissolution as ordered herein can and will be made promptly and that defendant later will raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now, therefore, before taking any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, *it is hereby ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II. Definitions

As used in this Final Judgment:

A. "Mountain Health Care" means defendant Mountain Health Care P.A., a North Carolina corporation, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, shareholders, participating members, and its directors, officers, managers, agents, and employees.

B. "Participate" in an entity means to be a partner, shareholder, owner, member, or employee of such entity, or to provide services, agree to provide services, or offer to provide services, to a payer through such entity.

C. "Payer" means any person that pays, or arranges for payment, for all or any part of any provider services for itself or for any other person.

D. "Person" means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. "Preexisting contract" means a contract that was in effect prior to the date of the filing of the Complaint in this matter.

F. "Provider" means a doctor of allopathic medicine, a doctor of osteopathic medicine, or any other person licensed by the state to provide ancillary health care services.

III. Applicability

This Final Judgment applies to defendant Mountain health Care and all other persons in active concert or participation with Mountain Health Care who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Dissolution of Mountain Health Care

A. Defendant will cause the complete and permanent dissolution of Mountain Health Care as an on-going business entity by no later than 120 calendar days after the filing of the Complaint in this matter, or 10 days after notice of the entry of this Final Judgment by this Court, whichever is later.

B. Beginning immediately after filing of the Complaint in this matter:

1. defendant will not enter into any new contracts with any payers for the provision of provider services or renew any terms of any preexisting contract with any payer for the provision of provider services;

2. defendant will terminate all preexisting contracts with payers by no later than 120 calendar days after the filing of the Complaint in this matter, or 10 days after notice of the entry of this Final Judgment by this Court, whichever is later.

C. Defendant will cease doing business of any kind or manner at the expiration of 120 calendar days after the filing of the Complaint in this matter, or 10 days after notice of the entry of this Final Judgment by this Court, whichever is later.

D. Within 14 calendar days after the date of filing of the Complaint in this matter, defendant will distribute by first-class mail:

1. to the chief executive officer of each payer then under contract with Mountain Health Care, a copy of the Complaint, this Final Judgment, a notice of the dissolution required under § IV, and a notice of contract termination pursuant § IV.B.2;

2. to each provider then participating in Mountain Health Care, a copy of the Complaint, this Final Judgment, and a notice of the dissolution required under section IV.

V. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether this Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal offices, shall be permitted:

1. Access during office hours of defendant to inspect and copy, or at plaintiff's option, to require defendant to provide copies of, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the custody or possession or under the control of defendant relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendant's officers, employees, and agents, who may have their individual counsel present, regarding any such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendant.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, made to defendant's principal offices, defendant shall submit written reports, under oath if requested, relating to any matter contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to the United States, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 calendar days notice shall be given defendant by the United States prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

VI. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

VII. Public Interest

Entry of this Final Judgment is in the public interest.

VIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

Dated: _____, 2003.

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2 of the Antitrust Procedures and Penalties Act

("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The plaintiff filed a civil antitrust Complaint on December 13, 2002, in the United States District Court for the Western District of North Carolina, alleging that Mountain Health Care and its participating physicians have participated in an agreement which has unreasonable restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. As alleged in the Complaint, this agreement has artificially raised the reimbursements paid to physicians in Western North Carolina by managed care companies, health insurance companies, third party administrators and employers (collectively "managed care purchasers") who provide health care benefits directly to their employees and enrollees. The Complaint requests that Mountain Health Care be ordered to promptly dissolve.

The proposed Final Judgment requires Mountain Health Care to dissolve within one hundred twenty (120) calendar days after the filing of the Final Judgment, or within ten (10) days after notice of entry of the Final Judgment by the Court, whichever is later, unless the United States grants an extension of time.

The plaintiff and the defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. Background

Mountain Health Care, a physician network joint venture, is a professional corporation that incorporated in 1994 under the laws of North Carolina, and which is located in Asheville, North Carolina. Mountain Health Care is comprised of more than 1,200 participating physicians practicing in Western North Carolina, consisting of Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey counties. It is entirely owned by its participating physicians, although not all participating physicians are owners; the shareholders and the majority of its board are physicians. Mountain Health Care sells its physician network to managed care purchasers, and its member physicians and medical practices offer health care services to consumers located in North Carolina.

Mountain Health Care's members constitute the vast majority of the physicians in private practice in Asheville, North Carolina, and surrounding Buncombe County, representing virtually every medical specialty. In certain practice specialities, 100 percent of the Asheville area physicians are Mountain Health Care members. The group includes the majority of physicians with admitting privileges at Mission St. Joseph's Hospital, the only hospital available to the general public in Asheville, North Carolina, and surrounding Buncombe County.

Physicians frequently contract with managed care purchasers who provide health care benefits directly to their employees and enrollees. These contracts establish the terms and conditions, including price, under which physicians will provide care to the employees and enrollees of the health care plans offered by managed care purchasers. In order to gain access to managed care purchasers' enrollees, physicians often negotiate rates below their customary fees. As a result of these lower rates, contracts with managed care purchasers may lower the costs of health care for their enrollees. Independent physicians and medical practices compete against each other to offer health care services to managed care purchasers. Each physician or medical group decides whether or not to enter into a contract with a particular managed care purchaser, and independently negotiates the terms of such an agreement. Managed care purchasers are representatives of the ultimate consumers, and higher rates to managed care purchasers lead to higher health care costs for the ultimate consumers.

B. The Violation

The Mountain Health Care joint venture brought together a large group of physicians with the objective of increasing their bargaining power with managed care purchasers; indeed, Mountain Health Care was created by its participating physicians to maximize physician reimbursement in Western North Carolina. The participating physicians authorized Mountain Health Care to represent them in negotiations with managed care purchasers, even though many of the independent physicians and medical practices that make up Mountain Health Care would have competed against each other. To facilitate such negotiations, Mountain Health Care and its participating physicians developed a uniform fee schedule for use in negotiations with managed care purchasers. The fee schedule was developed, in part, by comparing and blending the rates of multiple physicians. Mountain Health Care then adopted the uniform fee schedule that applied to all its members—nearly every physician in Asheville and the surrounding area.

For several years, using the uniform fee schedule, Mountain Health Care has negotiated for its participating physicians with managed care purchasers. Thus, it has acted as a vehicle for collective decisions by its participating physicians on price and other significant terms of dealing. Mountain Health Care has incorporated the fee schedule into contracts with health plans, thereby setting reimbursement rates its various participating physicians would receive from managed care purchasers. Under such contracts that provide access to the Mountain Health Care network of physicians, each competing physician is paid the same amount for the same service.

Mountain Health Care did not engage in any activity that might justify collective agreements on the prices its members would charge for their services. Its participating physicians have not clinically or financially integrated their practices to create significant efficiencies to the benefit of managed care purchasers and their employees and enrollees.

C. The Competitive Effects of the Violation

The agreement on a uniform fee schedule has had anticompetitive results. Through use of the uniform fee schedule, Mountain Health Care has operated as a price-setting organization. Without Mountain Health Care, the participating physicians normally would have competed against each other for managed care purchasers. Instead, the participating physicians authorized Mountain Health Care to negotiate and set common prices and other competitively significant terms with managed care purchasers. Through Mountain Health Care, its participating physicians collectively agreed on prices for services rendered under Mountain Health Care contracts, an agreement in violation of Section 1 of the Sherman Act.

Mountain Health Care's imposition of a uniform fee schedule increased physician reimbursement fees to managed care purchasers throughout Western North Carolina. The physician reimbursement rates that have resulted from Mountain Health Care's negotiations with managed care purchasers are higher than those which would have resulted from individual negotiations with each competing independent physician or medical practice that participates in Mountain Health Care. With the large majority of physicians in Asheville and the surround area as members of Mountain Health Care and adhering to its uniform fee schedule, few, if any, competitive alternatives remained for managed care purchasers. The agreement on a uniform fee schedule, implemented through Mountain Health Care, eliminated meaningful competition for health care services in Asheville and the surrounding area.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to end the illegal concerted action alleged in the Complaint by requiring the defendant to dissolve within 120 days. This time period will allow the defendant's customers adequate time to seek alternative means of procuring physician services. This dissolution will reestablish competition below many of the independent participating physicians and medical practices of Mountain Health Care. This competition will benefit the purchasers of physician services by enabling them to negotiate with independent physicians and practice groups and enabling them to negotiate price independently, instead of being forced to pay the fees outlined in Mountain Health Care's uniform fee schedule.

Unless the United States grants an extension of time, Mountain Health Care's dissolution must be completed within one hundred twenty (120) calendar days after the filing of the Final Judgment, or ten (10) days

after notice of entry of the Final Judgment by the Court, whichever is later. The Final Judgment imposes certain obligations on Mountain Health care with respect to facilitating its dissolution, including providing notice to its members and customers.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register**. Written comments should be submitted to: Mark J. Botti, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendant Mountain Health Care. The United States is satisfied, however, that the dissolution of Mountain Health Care proposed in the Final Judgment will more quickly achieve the primary objective of a trial on the merits—reestablishing competition in the relevant market.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment is "in the public interest." In making that determination, the court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C 16(e) (emphasis added). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (DC Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [1] Rather, absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[2]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462–63 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1458. Predecent requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A "proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interests.'" [4]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Since the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," if follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. Id.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.
Dated: December 18, 2002. Washington, DC

Respectfully submitted,

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[1] 119 Cong. Rec. 24,598 (1973). See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, those procedures are discretionary (15 U.S.C. 16(f)). A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H. R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH ¶61,508, at 71,980 (W.D. Mo. 1977); see also *United States* v. *Loew's Inc.*, 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[3] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. See also *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[4] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (quoting Gillette, 406 F. Supp. at 716), aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).

Mark J. Botti,
Weeun Wang,
David C. Kelly,
Steven R. Brodsky,
Barry L. Creech,
Karl D. Knutsen.
U.S. Department of Justice, Antitrust Division, Litigation I Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, 202–307–0001.

Certificate of Service

I hereby certify that I served a copy of the foregoing Competitive Impact Statement via First Class United States Mail, this 18th day of December, 2002, on:

For Defendant Mountain Health Care.

Jeri Kumar, Esq.,
D.B & T. Building, Suite 510, Asheville, NC 28801.

I hereby certify that I personally served a copy of the foregoing Competitive Impact Statement, this 18th day of December, 2002, on:

For Defendant Mountain Health Care.

Jeff Miles,
Ober, Kaler, Grimes & Shriver, Suite 5000, 1401 H Street, NW, Washington, DC 20005, (202) 326–5008.

David C. Kelly.

[FR Doc. 03–503 Filed 1–9–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to insure that requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed new collection of administrative and survey data on the Individual Training Account (ITA) experiment. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 11, 2003.

ADDRESSES: Janet Javar, U.S. Department of Labor, Employment and Training Administration/Office of Policy and Research, Rm. N–5637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–3677 (this is not a toll-free number); *jjavar@doleta.gov;* Fax: (202) 693–2766 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION

I. Background

The Individual Training Account (ITA) experiment is designed to test different approaches to managing customer choice in the administration of Individual Training Accounts (ITAs). Established under the Workforce Investment Act (WIA) of 1998, ITAs are intended to empower U.S. Department of Labor (DOL) customers to choose the training services they need.

WIA allows state and local offices a great deal of flexibility in deciding how much guidance and financial support they will provide to ITA recipients. The ITA experiment will test three approaches that differ widely in both the resources made available to customers and the involvement of local counselors to guide customer choice. The three ITA approaches range from a highly structured model to a pure voucher model:

- In Approach 1, local counselors steer their customers to training that is expected to yield a high return (in the form of increased earnings) relative to the resources invested in training. Moreover, counselors can approve or disapprove customers' program selections and set the value of the ITA to fund approved selections.
- In Approach 2, customers receive a fixed ITA award. Local counselors then help customers select training that seems appropriate and feasible, given customers' skills and their fixed ITA awards and other financial resources they have available to pay for training.
- In Approach 3, customers are offered a fixed ITA award, but they are allowed to choose any state-approved training option and to formulate their program selections independently if they so desire.

Each of the local sites that participates in the study will operate all three of these ITA approaches. Local customers that need training and are determined eligible for an ITA will be randomly assigned to one of the approaches.

The evaluation of the ITA experiment will include two parts. The first part will be an analysis of the implementation and operation of the three ITA approaches. This analysis will be based on data collected during three rounds of visits to the six sites participating in the experiment. During these visits, researchers will examine the implementation and operation of the three ITA approaches from various perspectives, including those of state and local administrators, one-stop counselors, customers, and training providers. The experiment is being conducted in Des Plaines, IL; Charlotte, NC; Atlanta, GA; Phoenix, AZ; Bridgeport, CT; and Jacksonville, FL.

The second component of the evaluation will be an analysis of customer outcomes and the returns on the investment in training.

This analysis will focus on the differences in customer outcomes, such as training choices, employment, and earnings, generated by the three ITA approaches. Data for this analysis will be drawn from Unemployment Insurance (UI) wage records and other administrative records, a computer-based Study Tracking System (STS) developed specifically for the experiment, and a follow-up survey of customers approximately 15 months after random assignment.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The data for the analysis of customer outcomes and the returns on the investment in training will come from three primary sources: (1) UI wage

records, (2) UI program data, and (3) the 15-month follow-up survey of customers. UI wage records will be the primary source of employment and earnings data. The UI program data system will provide information on UI eligibility and receipt. The UI wage records and program data will be collected from the six states in which the study sites are located and up to two neighboring states in which participants in the experiment are likely to file for UI benefits or jobs.

The follow-up survey will collect data items unavailable from administrative records. It will provide more detailed information on employment outcomes—such as wage rates and fringe benefits—than UI wage records and more detailed information on household composition and other demographic characteristics. The follow-up survey will be the only source for data on: Perceptions of and attitudes toward the services and levels of customer choice provided by each ITA approach, job search behavior after random assignment, and characteristics of post-training jobs.

Type of Review: New.

Agency: Employment and Training Administration.

Title: The Evaluation of the Individual Training Account Experiment.

Agency Number: 1205–0NEW.

Affected Public: Individuals, state government.

Cite/Reference:

Cite/reference	Total respondents	Frequency	Average time per response	Burden (hours)
State administrative data request	8	Two times	8 hours	128
ITA Follow-up survey	3,762	One time	30 min.	1,881
Totals	3,770			2,009

Total Burden Cost: $1,167,183.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information request; they will also become a matter of public record.

Dated: January 3, 2003.

Gerard F. Fiala,

Administrator.

[FR Doc. 03–527 Filed 1–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY020003 (Mar. 1, 2002)

Volume II

Maryland
MD020002 (Mar. 1, 2002)
MD020055 (Mar. 1, 2002)

Volume III

Kentucky
KY020001 (Mar. 1, 2002)
KY020002 (Mar. 1, 2002)
KY020003 (Mar. 1, 2002)
KY020004 (Mar. 1, 2002)
KY020006 (Mar. 1, 2002)
KY020007 (Mar. 1, 2002)
KY020025 (Mar. 1, 2002)
KY020027 (Mar. 1, 2002)
KY020028 (Mar. 1, 2002)
KY020029 (Mar. 1, 2002)
KY020032 (Mar. 1, 2002)
KY020035 (Mar. 1, 2002)
KY020039 (Mar. 1, 2002)
KY020044 (Mar. 1, 2002)
Mississippi
MS020001 (Mar. 1, 2002)
MS020003 (Mar. 1, 2002)
MS020050 (Mar. 1, 2002)
MS020055 (Mar. 1, 2002)

Volume IV

Illinois
IL020016 (Mar. 1, 2002)
IL020018 (Mar. 1, 2002)
Ohio
OH020001 (Mar. 1, 2002)
OH020002 (Mar. 1, 2002)
OH020003 (Mar. 1, 2002)
OH020006 (Mar. 1, 2002)
OH020007 (Mar. 1, 2002)
OH020008 (Mar. 1, 2002)
OH020009 (Mar. 1, 2002)
OH020013 (Mar. 1, 2002)
OH020014 (Mar. 1, 2002)
OH020020 (Mar. 1, 2002)
OH020023 (Mar. 1, 2002)
OH020024 (Mar. 1, 2002)
OH020026 (Mar. 1, 2002)
OH020028 (Mar. 1, 2002)
OH020029 (Mar. 1, 2002)
OH020032 (Mar. 1, 2002)
OH020033 (Mar. 1, 2002)
OH020035 (Mar. 1, 2002)
OH020036 (Mar. 1, 2002)
OH020037 (Mar. 1, 2002)
OH020038 (Mar. 1, 2002)

Volume V

Arkansas
AR020001 (Mar. 1, 2002)
AR020003 (Mar. 1, 2002)
AR020008 (Mar. 1, 2002)
AR020023 (Mar. 1, 2002)
AR020027 (Mar. 1, 2002)
Louisiana
LA020005 (Mar. 1, 2002)
LA020009 (Mar. 1, 2002)
LA020012 (Mar. 1, 2002)
LA020014 (Mar. 1, 2002)
LA020015 (Mar. 1, 2002)
LA020018 (Mar. 1, 2002)
LA020052 (Mar. 1, 2002)
LA020053 (Mar. 1, 2002)
New Mexico
NM020001 (Mar. 1, 2002)
NM020005 (Mar. 1, 2002)

Volume VI

Colorado
CO020001 (Mar. 1, 2002)
CO020002 (Mar. 1, 2002)
CO020003 (Mar. 1, 2002)
CO020004 (Mar. 1, 2002)
CO020005 (Mar. 1, 2002)
CO020006 (Mar. 1, 2002)
CO020007 (Mar. 1, 2002)
CO020008 (Mar. 1, 2002)
CO020009 (Mar. 1, 2002)
CO020010 (Mar. 1, 2002)
CO02011 (Mar. 1, 2002)
CO02012 (Mar. 1, 2002)
CO02013 (Mar. 1, 2002)
CO02014 (Mar. 1, 2002)
CO02015 (Mar. 1, 2002)
CO02016 (Mar. 1, 2002)
CO02017 (Mar. 1, 2002)
Oregon
OR020001 (Mar. 1, 2002)
OR020004 (Mar. 1, 2002)
OR020007 (Mar. 1, 2002)
OR020017 (Mar. 1, 2002)
Wyoming
WY020004 (Mar. 1, 2002)
WY020008 (Mar. 1, 2002)
WY020009 (Mar. 1, 2002)
WY020023 (Mar. 1, 2002)

Volume VII

California
CA020001 (Mar. 1, 2002)
CA020002 (Mar. 1, 2002)
CA020009 (Mar. 1, 2002)
CA020013 (Mar. 1, 2002)
CA020027 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
CA020029 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)
Hawaii
HI020001 (Mar. 1, 2002)
Nevada
NV020002 (Mar. 1, 2002)
NV020005 (Mar. 1, 2002)
NV020009 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)of* the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly tot he user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s) be sure to specify the State(s) of interest, since subscriptions may be ordered for any of all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 31st day of December 2002.

Carl J. Poleskey

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–280 Filed 1–9–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Monterey Coal Company

[Docket No. M–2002–113–C]

Monterey Coal Company, 14300 Brushy Mound Road, Carlinville, Illinois 62626 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) at its No. 1 Mine (MSHA I.D. No. 11–00726) located in Macoupin County, Illinois. The petitioner requests a modification of the existing standard to allow belt air to be used to ventilate working places from a location inby the furthest inby conveyor drive for the remaining length of the panels. The petitioner states that during panel development, the location is inby the main conveyor drive near the belt head, and during longwall mining, the location is inby the tripper/booster drive, usually positioned not greater than 8,000 feet inby the belt head. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. PC Contracting, Inc.

[Docket No. M–2002–114–C]

PC Contracting, Inc., P.O. Box 1630, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (Escapeways; bituminous and lignite mines) at its PC #2 Mine (MSHA I.D. No. 15–18304) located in Knox County, Kentucky. The petitioner proposes to use two ten-pound portable chemical fire extinguishers in the operator's deck of each Mescher tractor operated at the PC #2 mine. The petitioner states that the equipment operator will inspect each fire extinguisher on a daily basis prior to entering the primary escapeway. The petitioner further states that a record of the daily inspection will be kept at the mine, and a sufficient number of spare fire extinguishers will be maintained at the mine in case a defective fire extinguisher is detected. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. PC Contracting, Inc.

[Docket No. M–2002–115–C]

PC Contracting, Inc., P.O. Box 1630, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (Methane monitors) at its PC #2 Mine (MSHA I.D. No. 15–18304) located in Knox County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators in lieu of machine mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner has listed specific terms and conditions that would be followed when implementing its proposed alternative method at the PC #2 Mine. The petitioner asserts that this petition is based on the safety of the miners and not primarily from an economic standpoint and that the proposed alternative method provides no less than the same measure of protection as the existing standard.

4. Energy West Mining Company

[Docket No. M–2002–116–C]

Energy West Mining Company, Box 310, 15 North Main, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.701 (Grounding metallic frames, casings, and other enclosures of electric equipment) at its Deer Creek Mine (MSHA I.D. No. 42–00121) located in Emery County, Utah. This standard requires frames of electric equipment to be grounded using approved methods. The petitioner requests a modification of the standard to allow the electrical grounding requirements for portable diesel-driven electric generators to be waived based on the use of ground fault detection, ground wire monitoring and other circuit protection means, such as short circuit, overcurrent and undervoltage protection. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Energy West Mining Company

[Docket No. M–2002–117–C]

Energy West Mining Company, Box 310, 15 North Main, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.901(a) (Protection of low- and medium-voltage three-phase circuits used underground) at its Deer Creek Mine (MSHA I.D. No. 42–00121) located in Emery County, Utah. This standard requires low- and medium-voltage three-phase alternating-current circuits to contain either a direct or a derived neutral which is grounded through a suitable resistor at the power center. The petitioner requests a modification of the standard to allow the electrical grounding requirements for portable diesel-driven electric generators to be waived based on the use of ground fault detection, ground wire monitoring, and other circuit protection means, such as short circuit, overcurrent and undervoltage protection. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Canyon Fuel Company, LLC

[Docket No. M–2002–118–C]

Canyon Fuel Company, LLC, HC 35 Box 380, Helper, Utah 84526–9804 has filed a petition to modify the application of 30 CFR 75.507 (Power connection points) at its Skyline Mine No. 3 (I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to allow the installation and use of a non-permissible, 4,160-volt AC power submersible pump in a cased borehole which penetrates an abandoned and sealed portion of the Skyline Mine No. 3, Level 2 workings. The petitioner states that the pump will be located above the roof horizon and the electrical components of the pump will be separated from the atmosphere of the sealed and abandoned area, and the pump will be under water continuously where water has accumulated above the level of the roof up into the borehole. The petitioner further states that the electrical equipment that provides power to the pump is located on the surface. The petitioner asserts that the use of a non-permissible pump will enhance the petitioner's ability to control water levels in abandoned and sealed sections of the mine; that application of the existing standard would result in a diminution of safety to the miners; and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. H & M Coal Company

[Docket No. M–2002–119–C]

H & M Coal Company, 48 Meadowview Road, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 49.2 (Availability of mine rescue teams) at its Rocky top Mine (MSHA I.D. No. 36–09072) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. H & M Coal Company

[Docket No. M–2002–120–C]

H & M Coal Company, 48 Meadowview Road, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (Quantity and location of firefighting equipment) at its Rocky Top Mine (MSHA I.D. No. 36–09072) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit use of portable fire extinguishers only to replace existing requirements where rock dust, water cars, and other water storage equipped with three (3) ten quart pails is not practical. The petitioner proposes to use two (2) portable fire extinguishers near the slope bottom, and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection for the Rocky Top Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. H & M Coal Company

[Docket No. M–2002–121–C]

H & M Coal Company, 48 Meadowview Road, Pine Grove, Pennsylvania 17963 has filed a petition

to modify the application of 30 CFR 75.1200(d) & (i) (Mine map) to its Rocky Top Mine (MSHA I.D. No. 36–09072) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope. The petitioner also proposes to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except those veins that are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings that fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

10. H & M Coal Company

[Docket No. M–2002–122–C]

H & M Coal Company, 48 Meadowview Road, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202 and 30 CFR 75.1202–1(a) (Temporary notations, revisions, and supplements) to its Rocky Top Mine (MSHA I.D. No. 36–09072) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever either a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before February 10, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 3rd day of January 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–446 Filed 1–9–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Federal Advisory Committee on International Exhibitions

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions (FACIE), will be held by teleconference from 2 p.m.–4 p.m. on Wednesday, January 29, 2003 in Room 709 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: January 6, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–519 Filed 1–9–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 3 p.m. Tuesday, January 7, 2003.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. section 552b(c)(2) (internal personnel rules and practices); and (9)(B) (disclosure would significantly frustrate implementation of a proposed agency action . . .).

MATTERS TO BE CONSIDERED:

Internal Administrative Matters.

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Acting Executive Secretary, Washington, DC 20570, Telephone: (202) 273–1067.

Dated: Washington, DC, January 7, 2003.

By the Direction of the Board.

Lester A. Heltzer,

Acting Executive Secretary.

[FR Doc. 03–612 Filed 1–8–03; 12:20 pm]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 10, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement

the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The Applications Received are as Follows:

Permit Application No. 2003–017

1. *Applicant:* Bruce D. Sidell, School of Marine Sciences, University of Maine, 5751 Murray Hall, Orono, ME 04469–5751.

Activity for Which Permit Is Requested

Introduce Non-indigenous species into Antarctica. The applicant proposes use frozen fish tissues from species native to Patagonian Chile as bait (mixture of Macruronis magellanicus and Dissostichus eleginoides) in fishing traps/pots in the Antarctic Peninsula. The specimens collected, with particular emphasis upon Channichthyid ice fishes, will be taken to the Palmer Station aquarium facilities and used to study the physiology and biochemistry of Antarctic fishes. The applicant proposes to fish a maximum of 15 traps and estimates using a maximum of 15 blocks of frozen fish bait (10–15kg).

Location

Antarctic Peninsula area in the vicinities of Low, Brabant, Anvers, and Livingston Island, as well as Dellman Bay.

Dates

April 5, 2003 to August 30, 2005.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–450 Filed 1–9–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Dominion Nuclear Connecticut, Inc., Millstone Power Station, Unit 2; Establishment of Atomic Safety and Licensing Board

[Docket No. 50–336–OLA–2; ASLBP No. 03–808–02–OLA]

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding: Dominion Nuclear Connecticut, Inc., Millstone Power Station, Unit 2.

This Board is being established pursuant to a notice of consideration of issuance of an operating license amendment, proposed no significant hazards consideration determination, and opportunity for a hearing published in the **Federal Register** (67 FR 68731 (Nov. 12, 2002)). The proceeding involves a petition for intervention submitted December 12, 2002, by the Connecticut Coalition Against Millstone and the STAR Foundation challenging a request by Dominion Nuclear Connecticut, Inc., to amend the operating license for the Millstone Power Station, Unit 2. The amendment would change certain facility technical specifications relating to containment closure during activities in the spent fuel pool area.

The Board is comprised of the following administrative judges: Ann M. Young, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Dr. Thomas S. Elleman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission. Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 6th day of January 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–496 Filed 1–9–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Office of Nuclear Material Safety and Safeguards Consolidated Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Nuclear Regulatory Commission's (NRC) Office of Nuclear Material Safety and Safeguards (NMSS) is announcing the availability of a draft document "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness" (NUREG–1757, Vol. 3), for public comment. This document provides guidance for compliance with the financial assurance, recordkeeping, and timeliness criteria for decommissioning of 10 CFR parts 30, 40, 70, and 72. The guidance is intended for NRC staff, licensees, and the public. The guidance is being developed in response to the NMSS performance goals, in the NRC's Strategic Plan, of: (1) Making NRC activities and decisions more effective, efficient, and realistic; and (2) reducing unnecessary regulatory burden on stakeholders. NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the document is available to the NRC staff. This draft document is being issued for comment only and is not intended for interim use. The NRC will review public comments received on the draft document. In response to those comments, suggested changes will be incorporated, where appropriate, and a final document will be issued for use.

DATES: Comments on this draft document should be submitted by March 11, 2003. Comments received after that date will be considered to the extent practicable.

ADDRESSES: NUREG–1757, Volume 3, is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. NUREG–1757, Volume 3, is also available electronically from the ADAMS Electronic Reading Room on the NRC Web site at: *http://www.nrc.gov/reading-rm/adams.html*, and on the NRC Web site at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff*.

A free single copy of NUREG–1757, Volume 3, will be available to interested parties until the supply is exhausted. Such copies may be requested by writing to the U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001 or submitting e-mail to *distribution@nrc.gov*.

Members of the public are invited and encouraged to submit written comments

to: Duane W. Schmidt, Project Manager, Office of Nuclear Material Safety and Safeguards, Mail Stop T–7F27, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments may also be sent electronically to *decomcomments@nrc.gov*. Copies of comments received may be examined at the ADAMS Electronic Reading Room on the NRC web site, and in the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION, CONTACT: Duane W. Schmidt, Mail Stop T–7F27, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6919; Internet: *dws2@nrc.gov*.

SUPPLEMENTARY INFORMATION: As part of its redesign of the materials license program, NMSS is consolidating and updating numerous decommissioning guidance documents into a three-volume NUREG report. The three volumes are as follows: (1) Decommissioning Process for Materials Licensees; (2) Characterization, Survey, and Determination of Radiological Criteria; and (3) Financial Assurance, Recordkeeping, and Timeliness. Volume 3 of this NUREG series, entitled "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness," is the third of these three volumes and, when finalized, is intended for use by applicants, licensees, NRC license reviewers, other NRC personnel, and Agreement State staff.

The approaches to compliance with the financial assurance, recordkeeping, and timeliness requirements described in Volume 3 of NUREG–1757 will help to identify the information (subject matter and level of detail) needed for a wide range of radioactive materials users licensed by NRC. Volume 3 of the NUREG provides guidance for compliance with the requirements for (1) financial assurance for decommissioning, (2) recordkeeping for decommissioning, and (3) timeliness in decommissioning of materials facilities. Specifically, Volume 3 provides guidance relevant to demonstrating compliance with 10 CFR 30.35, 30.36, 40.36, 40.42, 70.25, 70.38, and 72.54. Volume 3 updates and builds upon the risk-informed approach used in the NMSS Decommissioning Standard Review Plan (NUREG–1727, September 2000), and, in whole or in part, incorporates the parts of NUREG–1727 that provide guidance for demonstrating compliance with the financial assurance, recordkeeping, and timeliness requirements. This draft Volume 3 describes and makes available to the public (1) issues related to demonstrating compliance with financial assurance and decommissioning recordkeeping and timeliness requirements that licensees may wish to consider, (2) guidance on addressing these issues, and (3) methods and approaches that are acceptable to NRC staff.

When published as a final report, the guidance in draft NUREG–1757, Volume 3, should be used by fuel cycle, fuel storage, and materials licensees in preparing financial assurance plans and instruments, recordkeeping plans, decommissioning license amendment requests, decommissioning plans, and related compliance documents. Other NRC licensees may find this information useful, but they are not the subject of this NUREG. When finalized, NRC staff will use the policies and procedures discussed in Volume 3 to evaluate a licensee's financial assurance for decommissioning, recordkeeping for decommissioning, and timeliness in decommissioning. This NUREG will not substitute for regulations, and compliance with it will not be required. Methods and solutions different from those in this NUREG will be acceptable, if they provide a basis for concluding that the decommissioning actions are in compliance with the Commission's regulations.

Further information on the overall decommissioning guidance consolidation and updating project can be found in the **Federal Register** notice publishing the plan for the project (66 *FR* 21793).

Commentors are encouraged to submit their written comments on NUREG–1757, Volume 3, to the addresses listed above. In particular, the NRC staff requests input on the application of decommissioning timeliness requirements to onsite disposals (burial grounds), discussed in Section 2.4 of the draft Volume 3. To ensure efficient and complete comment resolution, commentors are requested to reference the section, page, and line numbers of the document to which the comment applies, if possible.

Dated at Rockville, MD, this 2nd day of January, 2003.

For the Nuclear Regulatory Commission.

Claudia Craig,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–495 Filed 1–9–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27635]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

January 6, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 27, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 27, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Dominion Resources, Inc. (70–9477)

Dominion Resources, Inc., ("DRI"), 120 Tredegar Street, Richmond, VA 23219, a registered holding company under the Act, has filed a post-effective amendment to its application-declaration in this file under section 10 of the Act.

DRI requests authorization to continue its process of divesting the holdings of its subsidiary Dominion Capital, Inc., ("DCI") beyond the third anniversary of the effective date of the

merger (January 28, 2000) authorized in the Commission's order of December 15, 1999 (HCAR No. 27113) ("Merger Order"), authorizing DRI's proposed acquisition of Consolidated Natural Gas Company ("Merger").

At the time of the Merger Order DCI was, through its subsidiaries, a diversified financial services company with its core operations in commercial finance, corporate finance, and consumer finance. Under the terms of the Merger Order, DCI and each of its subsidiaries were to be divested within three years of the Merger.[1] DRI states that in accordance with the Merger Order DRI has diligently undertaken to divest the businesses and assets of DCI. DRI states that it has succeeded in reducing the assets of DCI by a factor of two thirds, from a balance as of December 31, 1999, of $3,576,460,000 to a balance as of September 30, 2002, of $1,175,164,000. DRI states that its efforts to divest itself of DCI have been frustrated by the economic recession, low interest rates, and the diverse assets held by DCI. DRI therefore requests that the Commission issue an order authorizing an extension of the time to accomplish divestiture until January 28, 2006, and reserve jurisdiction over any further extension of time which may be required.

DRI states that it proposes to continue an expeditious and prudent program of divesting the assets and lines of business of DCI and to apply the resulting proceeds to reduce the debt portion of DRI's consolidated capitalization. DRI proposes to conduct an annual evaluation as of June 30th of each year of the feasibility of expediting the divestiture of DCI's remaining assets and lines of business in light of changing business and financial market conditions (including the relative feasibility of selling assets at that time or subsequently in order to recover fair value).

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–498 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

[1] DRI was allowed to retain the owner-lessor interest held by DCI in a hydroelectric facility in Vidalia, Louisiana that is leased to Catalyst Old River Hydroelectric Limited Partnership.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25882; 812–12484]

Van Kampen Funds Inc., et al.; Notice of Application

January 3, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 26(a)(2)(D) of the Act.

Summary of Application: Applicants request an order to supercede a prior order ("Prior Order") [1] to permit certain unit investment trusts ("UIT's") to deposit trust assets in the custody of foreign banks and securities depositories.

Applicants: Van Kampen Funds Inc. (the "Sponsor") and Van Kampen Focus Portfolios (the "Trust").

Filing Dates: The application was filed on March 21, 2001 and amended on December 19, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 28, 2003 and should be accompanied by proof of service on the applicants in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 1 Parkview Plaza, P.O. Box 5555, Oakbrook Terrace, IL 60181–5555.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

[1] Investment Company Act Release Nos. 23032 (Feb. 20, 1998) (notice) and 23069 (Mar. 18, 1998) (order).

Applicants' Representations

1. The Sponsor is a broker-dealer registered under the Securities and Exchange Act of 1934. The Trust is registered under the Act and consists of several UITs registered or to be registered under the Securities Act of 1933 ("Trust Series"). Each Trust Series is created under the laws of the United States pursuant to a trust agreement that will contain information specific to that Trust Series and which will incorporate by reference a master trust indenture (the "Indenture") among the Sponsor, a bank (as defined in section 2(a)(5) of the Act), an evaluator and a supervisor. Applicants request that any order granted pursuant to the application extend to any future UIT sponsored by the Sponsor or an entity controlling, controlled by, or under common control with the Sponsor (together with the Trust, the "Trusts" and their series, "Trust Series") and any bank which acts as trustee (a "Trustee") for any Trust Series.

2. Several Trust Series have investment objectives that specify the investment of assets in non-United States securities. To date, the existing Trust Series which invest in foreign securities have been able to deposit such securities in the custody of foreign banks and securities depositories pursuant to the Prior Order. Applicants state that the Commission granted the Prior Order before the most recent amendments to rule 17f-5 under the Act and the adoption of rule 17f–7 under the Act [2] and seek to amend the Prior Order to reflect these changes. Applicants therefore request an order to supercede the Prior Order to permit the Trust Series to deposit investments, including foreign currencies, for which the primary market is outside the United States and such cash and cash equivalents as reasonably necessary to effect the Trust Series' transactions in those investments (collectively, "Foreign Investments"), with any foreign bank or securities depository subject to the requirements described below.

Applicants' Legal Analysis

1. Under sections 2(a)(5) and 26(a)(1) of the Act, the trustee of a UIT must be a bank that is subject to regulation by the U.S. government or one of the states. Section 26(a)(2)(D) also requires that the

[2] See Investment Company Act Rel. Nos. 23815 (April 29, 1999) (proposing release) and 24424 (April 27, 2000) (adopting release).

trust indenture provide that the trustee "shall have possession of all securities and other property in which the funds of the trust are invested * * * and shall segregate and hold the same in trust * * * until distribution thereof to the security holders of the trust." Under these provisions, the only foreign entity that qualifies as a UIT custodian is an overseas branch of a U.S. bank.

2. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of person, securities, or transactions, from any provisions of the Act or any rule or regulation under the Act if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Rules 17f–5 and 17f–7 under the Act govern the custody of assets of registered management investment companies overseas. Applicants seek an order under section 6(c) exempting them and any U.S. bank that acts as Trustee for any Trust Series from section 26(a)(2)(D) of the Act to the extent necessary to permit a Trustee to deposit Foreign Investments with an eligible foreign custodian as that term is defined in Rule 17f–5 under the Act ("Eligible Foreign Custodian") or with an eligible securities depository as that term is defined in Rule 17f–7 under the Act ("Eligible Securities Depository").

4. Under the proposed arrangements, a Trust Series would comply with all of the requirements of rule 17f–5, except that the Trustee will perform the duties and responsibilities that are normally performed by the foreign custody manager as described in rule 17f–5(c) ("Foreign Custody Manager"). Applicants state that the Trustee will fulfill the duties of a Foreign Custody Manager under rule 17f–5 to select an Eligible Foreign Custodian and monitor the foreign custody arrangements. Applicants assert that the Trustee will have the expertise and generally be in the best position to make the determinations required by rule 17f–5. Under the proposed arrangements, a Trust Series also will comply with all of the requirements of rule 17f–7, with the Trustee providing the risk analysis to the Sponsor, monitoring the custody risks associated with maintaining Foreign Investments with an Eligible Securities Depositary on a continuing basis, and promptly notifying the Sponsor of any material change in the risks. Applicants also state that the Sponsor will be required to take appropriate action in response to a notification by the Trustee.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Indenture will contain provisions under which the Trustee agrees to indemnify the Trust Series against the risk of loss of Trust Series' Foreign Investments held with an Eligible Foreign Custodian in accordance with the foreign custody contract.

2. The Indenture will contain provisions under which the Trustee agrees to exercise reasonable care, prudence, and diligence such as a person having responsibility for the safekeeping of Trust Series assets would exercise, and to be liable to the Trust Series for any loss occurring as a result of the Trustee's failure to do so.

3. The Indenture will contain provisions under which the Trustee agrees to perform all the duties assigned by rule 17f–5, as now in effect, or as it may be amended in the future, to a Foreign Custody Manager. A Trustee's duties under this condition will not be delegated.

4. The Indenture will contain provisions under which the Trustee agrees that it (or the Trustee's agent) will (i) Provide the Sponsor with an analysis of the custody risks associated with maintaining assets with an Eligible Securities Depository; (ii) monitor the custody risks associated with maintaining assets with the Eligible Securities Depository on a continuing basis and promptly notify the Sponsor of any material change in these risks; and (iii) exercise reasonable care, prudence and diligence in performing the foregoing duties.

5. The Sponsor will be required to take appropriate action in response to a notification by the Trustee provided pursuant to condition 4 above.

6. The Trust Series' prospectus will contain such disclosure regarding foreign securities and foreign custody as is required for management investment companies by Forms N–1A and N–2. The prospectus also will contain disclosure concerning the Sponsor's responsibilities pursuant to condition 5 above.

7. The Trustee will maintain and keep current written records regarding the basis for the choice or continued use of each foreign custodian. These records will be preserved for a period of not less than six years from the end of the fiscal year in which the Trust Series was terminated, the first two years in an easily accessible place. The records will be available for inspection at the Trustee's main office during the Trustee's usual business hours, by unitholders and by the Commission or its staff.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–461 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25881; 812–12658]

Gladstone Capital Corporation; Notice of Application

January 3, 2003.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant, Gladstone Capital Corporation, requests an order approving a proposal to issue stock options to directors who are not officers or employees of the applicant (the "Non-employee Directors") pursuant to its Amended and Restated 2001 Equity Incentive Plan (the "Plan").

FILING DATES: The application was filed on October 11, 2001, and amended on October 2, 2002, and January 2, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 28, 2003, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicant, 1616 Anderson Road, Suite 208, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at

(202) 942–0611, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Applicant, a Maryland corporation, is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.[1] Applicant's primary business is making loans to small and medium-sized companies. Applicant states that its investment objective is to achieve a high level of current income. Applicant's investment decisions are made by its board of directors (the "Board") based on the recommendations of a credit committee comprised of senior management. Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving the grant of nonstatutory stock options pursuant to the Plan to its Non-employee Directors.[2] Applicant has a six member Board. Three of the five current members are not "interested persons" (as defined in section 2(a)(19) of the Act) of the applicant ("Disinterested Directors").[3] The Plan was approved by both the Board and applicant's stockholders on July 23, 2001. On August 8, 2001, the Board and applicant's stockholders amended the Plan to increase the number of options that may be granted under the Plan. On September 23, 2002, the Board amended the Plan to adjust the method for determining the exercise price of options granted pursuant to the Plan. The grant of options to current Non-employee Directors under the Plan will be made on the date the Commission issues an order on the application (the "Order Date").

3. Each Non-employee Director serving on the Order Date will be entitled to receive an option to purchase 10,000 shares of applicant's common stock (the "Initial Grants"), which will vest in two equal installments of 5,000 shares on each of the first two anniversaries of August 23, 2001, the date of applicant's initial public offering of its common stock.[4] Each new Non-employee Director joining the Board after the Order Date will be entitled to receive an option to purchase 10,000 shares of applicant's common stock (the "New Director Grants"), which will be awarded when such individual joins the Board. Additionally, at the time of each annual meeting of applicant's stockholders, beginning with the 2002 annual meeting of stockholders, applicant will grant each incumbent Non-employee Director an additional option to purchase 10,000 shares of its common stock (the "Annual Grants"). The options granted under the New Director Grants and the Annual Grants will vest in two equal installments of 5,000 shares on each of the first two anniversaries of the date of grant.[5]

4. The exercise price of the options will not be less than the current market value of, or if no market value exists, the current net asset value per share of, applicant's common stock on the date of the grant.[6] Under the Plan, "current market value" is defined as the closing sales price of the shares as quoted on the NASDAQ National Market, or alternatively, on the exchange where applicant's shares are traded, on the day the option is granted.

5. Options granted under the Plan will expire within 10 years from the date of grant. In the event of death or disability of a Non-employee Director during the director's service, unexercised options immediately become exercisable and may be exercised only during the period of eighteen months following the date of death or twelve months following the date of disability, but in no event after the respective expiration date of such options. In the event of the termination of a Non-employee Director's directorship for a reason other than by death or disability, an option, to the extent then exercisable, may be exercised only during a period of three months following the date of termination, but in no event after the respective expiration date of such options. The options may not be transferred except for disposition by will or the laws of descent and distribution.

6. Applicant's officers and employees, including any employee directors, also are eligible to receive stock options under the Plan. The total number of shares of common stock currently issuable under the Plan is 1,500,000 shares, representing approximately 13.7% of the 10,071,844 shares of applicant's common stock outstanding as of December 31, 2002. As of December 31, 2002, applicant had issued options to purchase 1,410,000 shares to its officers and employees (including officer-directors) under the Plan. After the Initial Grants and the Annual Grants for 2002 are granted to the three current Non-employee Directors, 40,000 shares of applicant's common stock would remain eligible for awards under the Plan.

7. On December 5, 2002, the Board approved a proposal to amend the Plan to increase the number of shares authorized for issuance under the Plan to 2,000,000 shares (the "Pool Increase Proposal"). Applicant will present the Pool Increase Proposal to its stockholders at its 2003 annual stockholders meeting, which is expected to be held on February 24, 2003. The Pool Increase Proposal, if approved, would represent approximately 17.4% of the shares of applicant's common stock outstanding as of December 31, 2002. Applicant will not issue any options to its officers, employees (including officer-directors) and Non-employee Directors beyond those currently remaining available for grant under the Plan unless and until its stockholders approve the Pool Increase Proposal.

8. Applicant has no warrants, options or rights to purchase its outstanding voting securities other than those granted to its officers and employees pursuant to the Plan. The Plan as it relates to the Non-Employee Directors will not be modified materially from the description in the application without obtaining an order of the Commission or approval of the Commission staff.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] Each Non-employee Director receives an annual director's fee of $10,000, a fee of $1,000 for each Board meeting attended (with no additional compensation payable in connection with committee meetings), and reimbursement for related expenses.

[3] The applicant's Board presently has one vacancy. All of applicant's Non-employee Directors are Disinterested Directors.

[4] In the case of one Non-employee Director, the options will vest on each of the first two anniversaries of June 5, 2002, the date that such Non-employee Director joined the Board.

[5] The options granted under the Annual Grants for 2002 will vest on each of the first two anniversaries of March 26, 2002, the date of applicant's 2002 annual meeting of stockholders.

[6] The exercise price of the Initial Grants and the Annual Grants for 2002 will be the current market value of, or if no market value exists, the current net asset value per share of, applicant's common stock on the Order Date.

Act. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (i) The options expire by their terms within ten years; (ii) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (iii) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (iv) the options are not transferable except for disposition by gift, will or intestacy; (v) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (vi) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that the terms of the Plan meet all the requirements of section 61(a)(3)(B) of the Act. Applicant states in support of the application that the Non-employee Directors are actively involved in the oversight of applicant's affairs and that it relies on the judgment and experience of the Board. Applicant also states that the Non-employee Directors provide guidance and advice on operational issues, underwriting policies, credit policies, asset valuation, and strategic direction, as well as serving on committees. Applicant believes that the options to be granted to the Non-employee Directors provide significant incentives for the Non-employee Directors to remain on the Board and to devote their best efforts to the success of applicant's business. Applicant also states that the options will provide a means for the Non-employee Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with the interests of applicant's stockholders.

4. Applicant submits that the granting of options to the Non-employee Directors to purchase shares of applicant's common stock is fair and reasonable and does not involve overreaching of applicant or its stockholders. Applicant states that the number of voting securities that would result from the exercise of all options issued or issuable to officers, employees, and Non-employee Directors under the Plan, assuming approval of the Pool Increase Proposal, is 2,000,000 shares, or approximately 17.4% of applicant's outstanding common stock, which is below the percentage limitations in the Act. The total number of options issuable under the Plan that may be granted in any one year to Non-employee Directors represents about 0.4% of applicant's outstanding common stock. Applicant asserts that, given the small amount of common stock issuable upon exercise of the options, the exercise of options pursuant to the Plan would not have a substantial dilutive effect on the net asset value of applicant's stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–462 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 395, January 3, 2003]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF CLOSED MEETING: Additional Meeting.

The Securities and Exchange Commission held an additional Closed Meeting during the week of January 6, 2003.

An additional Closed Meeting was held on Monday, January 6, 2003 at 1:30 p.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the Closed Meeting. Certain staff members who have an interest in the matters were also present.

The subject matter of the Closed Meeting held on Monday, January 6, 2003 was:

Regulatory matter bearing enforcement implication.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 8, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–667 Filed 1–8–03; 3:59 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 13, 2003: A Closed Meeting will be held on Tuesday, January 14, 2003, at 10 a.m., and an Open Meeting will be held on Wednesday, January 15, 2003, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, January 14, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Amicus participation.

The subject matter of the Open Meeting scheduled for Wednesday, January 15, 2003 will be:

1. The Commission will consider adopting new rules and amendments regarding the use of pro forma financial information in order to implement Section 401(b) of the Sarbanes-Oxley Act of 2002. In addition, the Commission will consider an amendment to Form 8-K requiring the submission of earnings announcements and releases.

2. The Commission will consider whether to adopt new rules to prohibit an issuer's directors and executive officers from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity securities transactions, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. These rules implement Section 306(a) of the Sarbanes-Oxley Act of 2002. In addition, the rules will require issuers to provide advance notice to their directors and executive officers and the Commission of the imposition of a pension plan blackout period.

3. The Commission will consider whether to adopt new disclosure requirements mandated by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. The new rules require a company subject to the reporting requirements of the Securities Exchange Act of 1934 to disclose: (1) Whether it has adopted a code of ethics that applies to certain of its senior officers; and (2) whether a financial expert serves on the company's audit committee. The Commission will consider whether to adopt rules under Section 404 of the Sarbanes-Oxley Act relating to internal control reports by management in a separate release at a later date—these rules were proposed in the same release as the rules under Sections 406 and 407.

4. The Commission will consider whether to adopt Regulation Analyst Certification, a new rule that would require research analysts to provide certifications regarding the views they express in research reports and public appearances and to provide disclosures regarding any compensation they may have received related to those views and recommendations.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 8, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–668 Filed 1–8–03; 4:00 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47123; File No. SR–Amex–00–48]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 To Amend Amex Rule 590, Minor Rule Violation Fine Systems

January 3, 2003.

On August 17, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Amex's Minor Rule Violation Fine Plan ("Plan"). On December 7, 2000, the Amex amended the proposal.[3] The Amex again amended the proposal on January 29, 2001.[4] On March 19, 2001, the proposed rule change, as modified by Amendment Nos. 1 and 2, was published for notice and comment in the **Federal Register**.[5] The Commission received no comments on the proposed rule change. On December 23, 2002, the Amex amended the proposed rule change.[6] This order approves the proposed rule change as modified by Amendment Nos. 1 and 2. Simultaneously, the Commission provides notice of filing of Amendment No. 3 and grants accelerated approval of Amendment No 3.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [7] and, in particular, the requirements of section 6 of the Act [8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6) of the Act [9] in that it will provide a procedure whereby member organizations can be appropriately disciplined in those instances when a rule violation is minor in nature, but a sanction more serious than an admonition letter is appropriate. Additionally, the Commission finds the proposed rule change is consistent with the requirements of sections 6(b)(7) [10] and 6(d)(1) [11] of the Act. Section 6(b)(7) requires the rules of an exchange to be in accordance with the provisions of section 6(d) of the Act, and, in general, to provide a fair procedure for the disciplining of members and persons associated with members. Section 6(d)(1) requires an exchange to bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record, in any proceeding to determine whether a member or person associated with a member should be disciplined. Finally, the Commission finds the proposal is consistent with

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* December 1, 2000 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, and attachments ("Amendment No. 1"). In Amendment No. 1, the Amex made technical changes to the proposed rule language to clarify which language was added and which language was rearranged.

[4] *See* January 26, 2001 letter from William Floyd-Jones, Jr., Esq., to Nancy J. Sanow, Assistant Director, Division, Commission, and attachments ("Amendment No. 2"). While the cover letter indicates that Amendment No. 2 replaces and supersedes the original filing, Amendment No. 2 only replaces and supersedes the proposed rule language provided in the original proposal and Amendment No. 1. Telephone conversation March 12, 2001 between William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, and Joseph P. Morra, Special Counsel, Division, Commission.

[5] *See* Securities Exchange Act Release No. 44066 (March 12, 2001), 66 FR 15511.

[6] *See* December 20, 2002 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, and attachments ("Amendment No. 3"). In Amendment No. 3, the Amex removed the following rules from the list of rules that the Amex originally proposed to add to the Plan: (1) Violations of the Amex's short sale borrowing policies; (2) failure to liquidate positions as directed by the Amex that are over applicable position limits; and (3) failure to comply with the Amex's restrictions on transactions and exercises in specified options. As a result of Amendment No. 3, the only rules that the Amex proposes to administer pursuant to the Plan are violation of SEC Rule 11Ac1–4 (commonly referred to as the "Limit Order Display Rule," and violation of the Amex's rules regarding the deactivation of Quote Assist (Amex Rule 170, Commentary .10).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(6).

[10] 15 U.S.C. 78f(b)(7).

[11] 15 U.S.C. 78f(d)(1).

Rule 19d–1(c)(2) under the Act [12] that governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Amex will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Plan, on a case by case basis, or if a violation requires formal disciplinary action.

The Commission finds good cause for approving proposed Amendment No. 3 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Amex filed Amendment No. 3 to remove certain rules from the proposal. Removal of these rules from the proposal presents no novel issues that would require further notice and comment before approving this modification. Therefore, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

In approving this proposed rule change, the Commission recognizes that certain aspects of the proposal will require additional time for implementation, while other aspects of the proposed rule change can be implemented upon Commission approval. The Commission expects that the Amex will implement as much of the proposed rule change's terms and conditions as is possible upon approval, and will implement the remaining provisions of the proposed rule change as soon as practicable thereafter.[13]

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 3 that are filed with the Commission, and all written communications relating to Amendment No. 3 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–00–48 and should be submitted by January 31, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–00–48), as amended by Amendment Nos. 1 and 2, be, and it hereby is, approved, and that Amendment No. 3 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–458 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 240.19d–1(c)(2).

[13] For example, the Amex will require additional time to implement the new Committee structure for the Minor Floor Violation Disciplinary Committee. The Amex anticipates it will be able to implement the new structure after the April 23, 2003 meeting of the Amex Board. *See* January 3, 2003 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Joseph P. Morra, Special Counsel, Division, Commission (via e-mail).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47119; File No. SR–Amex–2002–97]

Self Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Initial and Continued Listing Standards

January 3, 2003.

On November 20, 2002, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend sections 101, 102, and 1003 of the Amex *Company Guide* to modify initial and continued listing standards.

The proposed rule change was published for comment in the **Federal Register** on December 4, 2002.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[6] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange proposes to adopt a new initial listing standard (in addition to existing standards) which is designed to permit an assessment of an issuer's suitability for listing on the basis of compliance with total market capitalization or total assets and revenues in substitution of shareholders' equity. The Amex also proposes that corresponding revisions be adopted to the continued listing standards to provide that a listed company will not be subject to delisting (assuming compliance with other applicable standards) even if it has experienced net losses or losses from continuing operations, and does not satisfy existing equity requirements,[7] if it is in compliance with following requirements:

- Total value of market capitalization: $50 million, or
- Total assets and revenue: $50 million each (in most recent fiscal year or two of last three most recently completed fiscal years), and
- At least 1,100,000 shares publicly held, a market value of publicly held shares of at least $15,000,000 and 400 round lot shareholders.

The Commission believes that the proposed rule change will allow for the evaluation of an issuer's listing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 46887 (November 22, 2002), 67 FR 72239 (December 4, 2002).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] Section 1003(a) of the Amex Company Guide provides that a listed company which has sustained losses in two of its three, three of its four, or five of its most recent fiscal years will be subject to delisting if its stockholders' equity is less than $2 million, $4 million or $6 million, respectively.

eligibility against additional comprehensive criteria. The Commission notes that the proposal is not materially different from standards in place at other marketplaces; both the New York Stock Exchange, Inc. and The Nasdaq Stock Market, Inc. listing standards contain a variety of alternative qualifications standards, including standards based on measures of market capitalization, revenue and assets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR-Amex-2002-97) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-459 Filed 1-9-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47115; File No. SR-NYSE-2002-62]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Initial Fees and Continuing Annual Fees for Domestic and Non-U.S. Issuers, Technical Original Listing Fees, and Supplemental Listing Applications Fees

December 31, 2002.

I. Introduction

On November 20, 2002, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] and Rule 19b-4 thereunder,[2] a proposed rule change to increase and simplify the continuing annual listing fee pricing for all listed companies (excluding closed-end funds), and to increase the fee for technical original listings and supplemental listing applications. The NYSE also proposes to make permanent an overall $1 million per-issuer fee cap that has been in effect on a pilot basis and is scheduled to expire on December 31, 2002.[3] Notice of the proposed rule change was published for comment in the **Federal Register** on December 16, 2002.[4] On December 30, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[5] This order approves the NYSE's proposed rule change on an accelerated basis, publishes notice of Amendment No. 1, and grants accelerated approval to Amendment No. 1.

II. Description

A. Background

As noted above, the proposed rule change would increase the fees the NYSE charges to issuers that are listed on the NYSE and simplify the fee schedule that provides for such fees. The NYSE proposes to make the fees effective as of January 1, 2003.

B. Changes to the Fee Schedule

The NYSE proposes to increase the "technical original" listing fee. Currently, Section 902.02B of the NYSE Listed Company Manual provides for a "reduced initial fee" of $5,300 when a company makes a technical change in the nature of the company without substantively affecting the equity position or rights of its common shareholders. This fee, often referred to as a "technical original" listing fee, applies when, for example, a company changes its state of incorporation or reincorporates, forms a holding company which replaces the listed company, or does a reverse split. The NYSE proposes to increase this fee from $5,300 to $15,000.

Section 902.02B of the NYSE Listed Company Manual also specifies that the minimum fee for the consideration of any listing application is $1,500. When shares are being issued concurrently with the application, the company is charged the greatest of the per-share rate, this minimum fee, or the "technical original" listing fee described in the immediately preceding paragraph. The NYSE is proposing to increase the minimum initial fee from $1,500 to $2,500.

The NYSE proposes to amend Section 902.02C of the NYSE Listed Company Manual, which relates to the continuing annual listing fee.[6] Continuing annual fees for each issuer are based on the number of its securities listed (including American Depositary Securities represented by American Depositary Receipts), and there is a schedule of per-share rates set forth in Section 902.02C (Section 902.04C for non-U.S. companies) of the NYSE Listed Company Manual. Currently, that schedule is tiered, with a per-share rate of $1,650 per million shares for the first and second million shares, and a per-share rate of $830 per million shares for additional shares beyond two million. Likewise, the minimum fee that an issuer pays to continue to be listed on the NYSE is subject to a tiered structure, whereby an issuer is subject to a variable annual fee minimum based upon the number of shares it lists. The NYSE is proposing to eliminate the tiers, so that the per-share rate will be $930 per million shares subject to a minimum continuing annual fee of $35,000, as provided for in Section 902.04C of the proposed rule change to the NYSE Listed Company Manual.

The impact of these proposed changes to the continuing annual fee as described below will be capped for each issuer at $75,000 for calendar 2003, and at $150,000 for calendar 2004.[7] For a company hitting both those caps, the full impact of these price changes would not be borne until calendar year 2005.

Continuing annual fees, which are set forth in Section 902.02C and Section 902.04C of the NYSE Listed Company

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[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 43163 (August 16, 2000), 65 FR 51389 (August 23, 2000) (SR-NYSE-00-16).

[4] *See* Securities Exchange Act Release No. 46960 (December 6, 2002), 67 FR 77124 (December 16, 2002) (SR-NYSE-2002-62). The 15-day comment period expired on December 31, 2002.

[5] *See* Letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 27, 2002 ("Amendment No. 1"). In Amendment No. 1, the NYSE requested that the Commission either approve the proposed rule change after thirty days following publication in the **Federal Register** with retroactive effectiveness to January 1, 2003, or find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. In addition, the NYSE provided the Commission with copies of four letters from issuers responding to correspondence from the NYSE in early October that announced the NYSE's intention to implement the new fee schedule. (The Commission also received a copy of one of the letters following publication of the notice in the **Federal Register**.) Furthermore, the NYSE set forth its view as to why it believed the Commission had good cause to accelerate the effectiveness of the proposed rule change prior to the thirtieth day after publication of the notice in the **Federal Register**.

[6] At this time, the NYSE is not proposing to change the continuing annual fees as applied to closed-end funds listed on the NYSE, which continue to be subject to the fee schedule currently in effect. The Commission notes, however, that the NYSE is in the process of developing a revised fee schedule for closed-end fund issuers. Telephone conversation between Annmarie Tierny, Senior Counsel, Office of General Counsel, NYSE and Tim Fox, Law Clerk, Division of Market Regulation, December 5, 2002. In addition, no changes are being proposed to the several specific pricing provisions provided in Section 902.02C for "fund families" with a number of funds listed on the NYSE.

[7] The Commission notes that the NYSE communicated these fee caps to issuers in correspondence sent to the issuers dated in early October of 2002. *See* Amendment No. 1.

Manual, are assessed separately on each class of security issued. Because some companies have more than one class of common stock listed on the NYSE, the NYSE currently provides that if one class pays the $35,000 minimum fee, the other class(es) are subject to lower minima (ranging from $16,170 to $32,320) depending on the number of shares listed. To simplify this structure, the NYSE is proposing to amend Sections 902.02C and 902.04C of the NYSE Listed Company Manual so that when a company has multiple classes of common stock listed on the NYSE, the class with the greatest number of shares outstanding will be subject to the $35,000 minimum, and each additional class of common stock will be subject to a minimum fee of $20,000 per class.

Under Section 902.02C of the NYSE Listed Company Manual, classes of securities other than common stock are currently subject to the same continuing annual fee rate schedule as common stock, but with a lower minimum fee of $3,600, rather than $35,000. Accordingly, the NYSE proposes that the new rate schedule of $930 per million shares will apply to these securities, and the applicable minimum will be raised from $3,600 to $5,000. In the case of a company with listed preferred stock that does not have common stock listed at the NYSE, the original listed preferred issue will be subject to the $35,000 minimum annual fee, although other classes listed will be subject to the $5,000 minimum.

Section 902.03B of the NYSE Listed Company Manual currently provides for a special set of "range minima" applicable to short-term securities, that subjects such issues to *higher* minimum continuing annual fees than are otherwise applied to non-common stock securities as described in the preceding paragraph. To eliminate this anomaly, the NYSE proposes to amend Section 902.03B of the NYSE Listed Company Manual to apply to such "short term securities" the new rate schedule of $930 per million shares, and to also apply the same $5,000 annual minimum as is applicable to other non-common stock securities.

Section 902.02C of the NYSE Listed Company Manual currently removes from the calculation of continuing annual fees any shares that have been listed for a period of 15 years or more. This policy results in companies having disparate continuing annual fees despite having a similar number of stocks listed on the NYSE. The NYSE proposes to eliminate this policy for all listed companies with the exception of closed-end funds.

Finally, the NYSE proposes to make permanent a $1 million per-issuer fee cap that was implemented starting with the 2000 calendar year.[8] That cap, codified in Section 902.02 of the NYSE Listed Company Manual, by its terms was put into effect on a pilot basis through calendar 2002. The NYSE believes that the cap avoids overburdening any particular company in an unusual year. Accordingly, the NYSE proposes to make the pilot permanent.

C. Amendment No. 1

In Amendment No. 1, the NYSE provided the Commission with copies of four letters from issuers responding to correspondence from the NYSE sent in early October that announced the NYSE's intention to implement the new fee schedule.[9] A copy of one of those letters was submitted to the Commission as a comment letter responding to the proposed rule change.[10] In general, the four letters criticized the magnitude of the percentage increase to which they would be subject, citing the down economy as a poor time to impose additional fees.

In responding to the concerns that the letters addressed, the NYSE suggested that those issuers who would be most adversely affected by the proposed rule change, would be those issuers affected by the discontinuance of the "15 year policy," which represents approximately 8% of the NYSE's list. The NYSE stated that it discontinued the 15-year policy because, in part, the policy resulted in disparate annual fees for companies with similar amounts of stock listed on the NYSE.

The NYSE also pointed out that it lengthened the phase-in period of the proposed fee schedule so that increases for any single issuer would be capped at $75,000 for calendar 2003, and at $150,000 for calendar 2004. For a company hitting both those caps, the full impact of these price changes would not be borne until calendar 2005. The NYSE represented that this phase-in of the proposed rule change was designed to impose the fee increases in as fair a manner as possible

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended is consistent with Section 6(b) of the Act[11] in general and furthers the objectives of Section 6(b)(4).[12] The Commission believes that the proposal is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its issuers.[13]

The Commission believes that the NYSE's proposed rule change should help to ensure that the NYSE will have adequate revenue to satisfy the increasing costs for operations, technology, regulation and infrastructure. The Commission notes that the NYSE will receive higher initial fees from equity issuers as a result of the proposed rule change, and that the NYSE believes that it will receive more revenue as a result of the modification to the continuing annual fee that it proposes. Moreover, the Commission believes that the proposed rule change should simplify the fee schedule for NYSE issuers. For example, the NYSE proposes to eliminate the tiered structure of Sections 902.02C,[14] 902.03B and 902.04C of the NYSE Listed Company Manual (Continuing Annual Fees), whereby an issuer pays certain rates and is subject to particular minima, based upon the number of shares it lists on the NYSE. In its place, the NYSE proposes to impose a single per-share rate ($930 per million shares), and a simplified minimum fee structure.

The Commission believes that the NYSE's proposal to make permanent the $1 million per-issuer cap on listing fees in any given calendar year should help to ensure that a particular issuer will not be overburdened by listing fees in an unusual year.

The Commission believes that discontinuance of the "15-year policy,"

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[8] *See* Securities Exchange Act Release No. 43163 (August 16, 2000), 65 FR 51389 (August 23, 2000) (SR–NYSE–00–16).

[9] *See* letter from M. Michele Burns, Executive Vice President and Chief Financial Officer, Delta Air Lines, Inc. to Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE, dated October 29, 2002, letter from Dennis J. Broderick, Senior Vice President, General Counsel and Secretary, Federated Department Stores, Inc. to Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE, dated November 7, 2002, letter from Edward E. Thiele, Senior Vice President, Rowan Companies, Inc to Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE, dated November 14, 2002, and letter from Jeffrey C. Cambpell, Senior Vice President and Chief Financial Officer, AMR Corporation to Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE, dated December 2, 2002.

[10] *See* letter from M. Michele Burns, Executive Vice President and Chief Financial Officer, Delta Air Lines, Inc. to Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE, dated October 29, 2002, which the Commission received on December 26, 2002.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] The Commission notes that the NYSE proposes to maintain the tiered structure in Section 902.02C of the NYSE Listed Company Manual so that closed-end fund issuers continue to pay a variable continuing listing fee, based upon the number of shares they list on the NYSE.

[15] pursuant to which shares listed for a continuous period of 15 years or more were eliminated from the calculation of continuing annual fees, should eliminate disparities in annual fees for companies with similar amounts of stock listed on the NYSE. Moreover, the Commission notes the NYSE's belief that only a limited percentage of listed companies —8%— will be affected by the discontinuance of the 15-year policy. Finally, the Commission believes that the phase-in of the proposed fee schedule over a three-year period should mitigate the impact of the proposed fee schedule on issuers

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**, and prior to the expiration of the public comment period, ending December 31, 2002.[16] The Commission believes that good cause exists to justify accelerated effectiveness of the proposed rule change, in part, because the pilot program of Section 902.02 of the NYSE Listed Company Manual, which currently institutes the $1 million per-issuer fee cap on a pilot basis is due to expire on December 31, 2002. In finding good cause to accelerate effectiveness on this basis, the Commission notes that the NYSE has represented to the Commission that the expiration of the pilot program at any time before the effective date of this proposed rule change could lead to significant operational and billing problems.[17]

Finally, the accelerated approval of the proposed rule change will enable the new fee schedule to be in effect on January 1, 2003, the date which the NYSE wishes to make the new fees applicable. Therefore, the Commission finds that granting accelerated approval to the proposed rule change, as amended, is appropriate and consistent with Section 19(b)(2) of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–62 and should be submitted by January 31, 2003.

V. Order Granting Accelerated Approval

The original rule proposal was published for public comment on December 16, 2002.[19] The NYSE submitted Amendment No. 1 to the proposed rule on December 30, 2002 in order to respond to four letters, which it had received prior to the filing of the proposed rule change, in which four issuers expressed their views opposing the proposed increase in listing fees.[20] For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder. Moreover, the Commission finds that there is good cause to grant accelerated approval to the proposed rule change and Amendment No. 1, thereto.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change and Amendment No. 1 thereto (SR–NYSE–2002–62) are approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–497 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

[15] The Commission notes that the NYSE proposes to maintain the 15 year policy in Section 902.02C of the NYSE Listed Company Manual for closed-end fund issuers.

[16] The Commission notes that it had received one letter regarding the proposed rule change as of the close of business, December 31, 2002. *See* note 10, *supra.*

[17] *See* Item 7, Amendment No. 1.

[18] 15 U.S.C. 78s(b)(2).

[19] *See* Securities Exchange Act Release No. 46960 (December 6, 2002), 67 FR 77124 (December 16, 2002) (SR–NYSE–2002–62).

[20] In Amendment No. 1, the NYSE also requested accelerated approval and articulated its view as to why the Commission should find good cause to accelerate the effectiveness of the proposed rule change.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47124; File No. SR–Phlx–2002–84]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Off-Floor Trader Fees

January 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to require: (1) Future off-floor traders to pay an initial registration fee of $100, an increase from $50; and (2) current and future off-floor traders registered as of April 1 of each year to pay an annual fee of $350, an increase from $250. An off-floor trader is a person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the Designated Examination Authority ("DEA") for the solicitation or handling of business in securities, including trading securities for the account of the member or participant organization, and who is not otherwise required to register with the Exchange.[3] The proposed increase in the initial registration fee is to become effective January 2, 2003, with the increased annual fee to be implemented April 1, 2003.[4] The text of the proposed rule change is available at the principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Off-floor traders are required to file the Uniform Application for Securities Industry Registration or Transfer form ("form U–4") with the Exchange. *See* Phlx rule 604(e)(i).

[4] The Exchange has not designated the Off-Floor Trader Registration Fee as eligible for the monthly credit. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49). The monthly credit allows Exchange members to receive a monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other such amounts.

offices of the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase initial and annual off-floor trader fees to generate additional revenue to help off-set the Exchange's costs associated with conducting off-floor trader examinations, including administrative costs, such as cost incurred in conducting background checks on the individuals to whom the fees apply, processing of forms, fingerprint charges, and requests for disciplinary history from the Central Registration Depository.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and rule 19b–4(f)(2) thereunder,[8] as establishing or changing a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–84 and should be submitted by January 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–456 Filed 1–9–03; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47120; File No. SR–Phlx–2002–83]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Extension of Its Pilot Program To Implement Its Existing Fee Schedule for Electronic Communication Networks

January 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend its two-year pilot program for an additional one-year period, in order to continue to impose a $2,500 monthly fee for Electronic Communications Networks ("ECNs") that are member organizations and send order flow to the Exchange's equity trading floor.[3] The pilot program is due to expire on January 31, 2003.[4]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As stated in the Phlx fee schedule, the term ECN shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part. The term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or any system operated by or on behalf of an OTC market maker or exchange market maker as principal, other than riskless principal.

[4] *See* Exchange Act Release No. 45456 (February 19, 2002), 67 FR 8831 (February 26, 2002) (SR–Phlx–2002–08) (extending the initial ECN fee pilot program).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Exchange's current ECN pilot program that imposes a $2,500 monthly fee for ECNs that are member organizations and send order flow to the Exchange's equity trading floor for an additional one-year period, until January 31, 2004.[5] According to the Exchange, the continuation of the $2,500 fee is intended to attract equity order flow from ECNs to the Exchange by continuing to substitute a fixed monthly fee, in light of the potential for high volumes of order flow from ECNs.[6]

The monthly fee will continue to apply to ECN order flow to the Exchange's equity trading floor, including from ECNs that either became members or began sending order flow after the commencement of the program. The $2,500 fee would continue to apply to ECN that are not acting as a Phlx specialist or floor broker.[7]

Currently, no ECN operates from the Exchange's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the equity trading floor, it would be subject to various floor-related fees respecting its floor operations.[8] In addition, an ECN's transactions as a floor broker would be subject to the equity transaction value charge, and its specialist trades would be subject to other charges.[9] Even if the ECN were acting as a floor broker or specialist with respect to some trades, those trades for which it was not acting as a floor broker or specialist, but rather an ECN, would be subject only to the flat monthly fee and not other transaction charges.

An ECN that only operates as a specialist or floor broker would not have to pay the monthly fee, because it would, instead, be paying the normal transaction charges applicable to floor brokers and specialists.

An ECN would also continue to be subject to, if applicable, the following membership-related fees: Membership dues or Foreign Currency User Fees, Foreign Currency Option Participation Fee, Capital Funding Fee, Application Fee, Initiation Fee, Transfer Fee, Phlx CCH Guide Fee, Examinations Fee, Technology Fee, Review/Process Subordinated Loans Fee, Registered Representative Registration Fees, and Off-Floor Trader Initial Registration Fee, Annual Fee, and Remote Specialist fees

Because the $2,500 fee is a flat monthly fee as opposed to a per-transaction fee, it is intended to encourage ECN volume. Currently, the equity transaction value charge (that would otherwise apply to an ECN's equity trades) ranges from $.00 to $.0075 per share per transaction, with a $50 maximum fee per trade side, and various other applicable discounts. Thus, many variables determine whether the proposed monthly $2,500 fee is generally more favorable than the equity transaction value charge, depending upon the number of trades, size of the trade and type (*i.e.*, PACE). As a general matter, the Exchange believes that $2,500 would be more favorable to the ECN because it is a fixed amount.

The Exchange believes that the monthly ECN fee provides competitive fees with appropriate incentives, thus providing a reasonable method to attract large order flow providers, such as ECNs, to the Exchange. The Phlx believes that additional order flow enhances liquidity, and improves the Exchange's competitive position in equity trading. The Exchange believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to the Exchange. Specifically, ECNs operate a unique electronic agency business, similar to a securities exchange, as opposed to directly executing orders for their own customers as principal or agent.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[10] in general, and section 6(b)(4) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes the unique character of ECNs, and believes that the fixed monthly fee is a reasonable method of attracting a new form of order flow to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and subparagraph (f)(2) of rule 19b–4[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

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[5] The $2,500 monthly fee applies regardless of the ECN's average daily Phlx equity volume.

[6] In order to recoup costs due pays pursuant to section 31(b) of the Act, the Exchange intends to continue to apply such fee to ECNs, as the current fee schedule reflects.

[7] An ECN would continue to incur specialist or equity floor brokerage transaction fees if it acts as a Phlx specialist or floor broker.

[8] These include the Trading Post/Booth Fee, Trading Post w/Kiosk Fee, Kiosk Construction Fee (when requested by specialist), Controller Space Fee, Floor Facility Fee, Shelf Space on Equity Option Trading Floor Fee, Computer Equipment Services, Repairs or Replacements Fee and Computer Relocation Requests Fee. Certain communications fees could also apply, such as the Direct Wire to the Floor Fee, Telephone System Line Extensions, Wireless Telephone System, Tether Initial Connectivity Fee, Tether Monthly Service Fee, Execution Services/Communication Charge, Stock Execution Machine Registration Fee (Equity Floor), Equity, Option, or FCO Transmission Charge, FCO Pricing Tape, Option Report Service Fee, Quotron Equipment Fee, Instinet, Reuters Equipment Pass-Through Fee and the Option Mailgram Service Fee.

[9] The PACE Specialist Charge is a fee imposed on specialist transactions only and the Equity Floor Brokerage Assessment and Equity Floor Brokerage Transaction Fee apply to floor brokerage activity.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–83 and should be submitted by January 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–457 Filed 1–9–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47118; File No. SR–Phlx–2002–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 and No. 2 thereto by the Philadelphia Stock Exchange, Inc. to Adopt a Seat Transaction Policy and Add Supplementary Material to Phlx Rule 708

January 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. On December 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On December 27, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a Seat Transaction Policy for Governors, Committee Members and Associated Member Organizations ("Seat Transaction Policy" or the "Policy"), described in further detail below, which, if approved, will form a part of the Exchange's Code of Conduct for Governors and Committee Members (the "Governance Members Code of Conduct"), which prohibits Exchange Governors, Committee Members and Member Firms associated with them from engaging in purchases or sales of Exchange "Seats" (as further defined below), except in accordance with the Policy. The Policy generally restricts such Seat Transactions if a Governance Member is in possession of Material Confidential Information[5] of the Exchange, except in accordance with the procedures set forth in the Policy. In addition, the Exchange proposes to amend Phlx Rule 708, *Acts Detrimental to the Interest and Welfare of the Exchange*, by adding commentary that provides notice to members and member organizations that any violation of the Exchange's Seat Transaction Policy constitutes a violation of Phlx Rule 708. Below is the text of the proposed rule change. Proposed new language is in italics.

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Philadelphia Stock Exchange

Code of Conduct for Board Members and Committee Members

Articles I. thru IV. No change.

Article V. Seat Transaction Policy for Governors and Committee Members

Chinese Wall

A Chinese Wall, also known as an Information Barrier, is an internal written policy of an Exchange or PBOT member firm or member organization that is designed to prevent the disclosure by a Governor or Committee Member associated with such Exchange or PBOT member firm or member organization, or FCO Participant or FCO Participant Organization (collectively, "Member Organizations"), of non-public, confidential or otherwise sensitive Exchange or PBOT information possessed by such Governor or Committee Member to any third party, including, without limitation, any employee, agent, associated person, representative or consultant of such Member Organization, as the case may be.

Material Confidential Information

Material Confidential Information includes any information that is proprietary to the Exchange, which a reasonable person would consider significant or important when purchasing or selling a Seat.

Seat Transaction

A transaction pursuant to which a Covered Person or a Member Organization purchases or sells a Seat.

Special Committee on Seat Transactions

The Special Committee on Governor and Committee Member Seat Transactions ("Special Committee") is a Special Committee of the Board having jurisdiction over all Seat Transactions by Covered Persons or Member Organizations.

Window Period

A Window Period is a period of time, imposed by the Special Committee on Seat Transactions, during which a Covered Person or associated Member Organization may not engage in a Seat Transaction, such as a period of time prior to the announcement of new products to be traded on the Exchange, prior to the announcement of a corporate transaction involving the Exchange, prior to the announcement of certain regulatory actions affecting the Exchange, prior to the announcement of an increase or decrease in fees to be paid by the Exchange members, or prior to the announcement of any significant action by the Board of Governors or any Committee.

1. Responsibility for Compliance

(a) Each Covered Person[6] bears personal responsibility for complying with this Seat Transaction Policy. Each Member Organization associated with a Covered Person must also comply with this Seat Transaction Policy. Where a

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 13, 2002 ("Amendment No.1"). Amendment No. 1 replaces Phlx's original proposal in its entirety.

[4] See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 27, 2002 ("Amendment No. 2"). Amendment No. 2 makes certain technical changes to the proposed rule change.

[5] *See* definition of Material Confidential Information, below.

[6] As used in the Seat Transaction Policy, "Covered Person" shall mean any person who serves the Exchange as a Board Member or as a Committee Member.

Covered Person serves as a principal, director or officer of a Member Organization, any Seat Transaction by that Member Organization, without more, has the potential for violating the duties described in this Code of Conduct. Seat Transactions by such Member Organizations are subject to review by the Special Committee.

(b) If the Special Committee permits the Covered Person or Member Organization to proceed with a transaction, in accordance with the procedures provided herein, the Covered Person and/or Member Organization nonetheless retains ultimate responsibility for determining whether to proceed with the Seat Transaction and what their disclosure obligations are to the other party in the Seat Transaction. The decision of the Special Committee is for the sole benefit of the Exchange, and is not intended to insulate the Covered Person or Member Organization from responsibility for their conduct in connection with a Seat Transaction under any applicable law. This Seat Transaction Policy is limited to whether the Covered Person or Member Organization's conduct complies with this Code of Conduct and does not purport to affect the rights and obligations of Covered Persons, Member Organizations and others under applicable law and/or contract.

2. Authority to Review Seat Transactions for Compliance with Code of Conduct

The Board of Governors has established a Special Committee on Seat Transactions ("Special Committee"), which shall have full authority to review Seat Transactions by Covered Persons and associated Member Organizations. Every Covered Person and any associated Member Organization shall cooperate fully with any such review. The Special Committee may initiate a review of a Seat Transaction at the request of the Covered Person or associated Member Organization prior to the consummation of the Seat Transaction. The Special Committee may also initiate a review of a Seat Transaction at the direction of the Board of Governors, the Executive Committee, or on its own initiative.

3. Special Committee Procedures

(a) The Special Committee shall have three members, all of whom are Governors and at least one of whom is a Public Governor. The Special Committee's decisions are governed by Section 10–3(a) of the Phlx By-Laws. In addition, the Board of Governors directs that at least one of the members making any quorum be a Public Governor. At the time a Seat Transaction is contemplated, a Covered Person is obliged to notify the Board of Governors by contacting, in writing, the General Counsel, Deputy General Counsel, Corporate Secretary, or Assistant Secretary of any pending Seat Transaction. The Special Committee shall convene promptly after such notification to review the Seat Transaction. The Special Committee shall make all reasonable efforts to respond to the Covered Person rapidly and within a time frame requested by the Covered Person. It is understood that in some cases the Special Committee will be asked to review a Seat Transaction within 24 hours of notification by the Covered Person. In any case, the Special Committee must either render a decision, conduct an interview with the Covered Person, or request additional information from the Covered Person within 15 business days from the time of request. If the Special Committee conducts an interview with the Covered Person or requests additional information from the Covered Person, then the Special Committee must render a decision within 30 business days from the later to occur of (i) the interview, or (ii) if further information is requested by the Special Committee; all requested information is supplied to the Special Committee, provided that a Covered Person may waive compliance with these deadlines. The Special Committee shall render its decision, in writing, to the Covered Person or Member Organization, as well as to the Board of Governors, in regard to whether the proposed Seat Transaction complies with this Seat Transaction Policy and the Code of Conduct. All decisions of the Special Committee may be appealed to the Board of Governors by an aggrieved Covered Person or Member Organization by written notice filed with the Corporate Secretary within thirty (30) days of such Special Committee decision.

(b) The Special Committee is authorized to interview the Covered Person and others in the associated Member Organization involved in a Seat Transaction. The Special Committee shall determine whether the information in the possession of the Covered Person or Member Organization is Confidential Information as defined in the Code of Conduct. The Special Committee shall then determine whether such Confidential Information is Material Confidential Information. The Special Committee shall determine whether any Material Confidential Information must be disclosed in connection with the Seat Transaction and, if so, what Material Confidential Information should be disclosed. The Special Committee shall also determine whether an agreement protecting the confidentiality of such Material Confidential Information and which names the Exchange as an intended third-party beneficiary should be in place between the Covered Person or the Member Organization and the other party to the Seat Transaction prior to the disclosure. The Special Committee is authorized to develop general standards and procedures in connection with its evaluation of Seat Transactions by Covered Persons.

(c) If the Special Committee determines that Material Confidential Information should not be disclosed, it may prohibit the Covered Person or Member Organization from proceeding with the transaction until such time as the Material Confidential Information is no longer confidential or material or until such time as the Material Confidential Information may be disclosed. The determination by the Special Committee (including, without limitation, the Special Committee's views concerning the sufficiency or insufficiency of a Member Organization's Chinese Wall arrangements for purposes of this policy, as described in section 4 below) is in no way a legal determination as to whether the Confidential Information is material from the point of view of federal or state law (e.g., under the federal securities laws or state common law concerning fraud or misrepresentation) or whether the Covered Person or Member Organization would have any liability to a party other than the Exchange for proceeding with a Seat Transaction. Covered Persons and Member Organizations should be reminded that they should consult with their own counsel about all matters arising from Seat Transactions when the Covered Person is in possession of Confidential Information.

4. Scope of Special Committee's Jurisdiction

The Special Committee is authorized to render binding decisions regarding Seat Transactions where a Covered Person or an associated Member Organization is involved. The Special Committee's determination shall be limited to: (1) Whether a Seat Transaction may proceed without any disclosure of Material Confidential Information; (2) whether the Member Organization involved in the Seat Transaction has a "Chinese Wall" or information barrier in place to prevent disclosure of Material Confidential Information and, if so, whether such

"Chinese Wall" or information barrier should be regarded as being sufficient to justify the Special Committee to permit a Member Organization or person affiliated therewith, who is not a Covered Person and who is not in possession of Material Confidential Information to proceed with the Seat Transaction; (3) whether the Seat Transaction may proceed only after approved disclosures of Material Confidential Information to the other party in the Seat Transaction and, in such event, whether a confidentiality agreement is needed to protect any Material Confidential Information from being disclosed; or (4) whether the Seat Transaction can not proceed at the current time or during certain Window Periods established by the Special Committee.

5. Consequences of Violations of Seat Transaction Policy

Violations of this Seat Transaction Policy will result in appropriate disciplinary action in accordance with Exchange Rules (which may include, without limitation, Phlx Rule 708). In addition, where it has been determined that applicable laws, rules or regulations may have been violated in connection with a violation of this Seat Transaction Policy, appropriate disciplinary action may include legal action by the Exchange or PBOT or the referral of the matter to an appropriate governmental agency.

6. Right of Appeal of Special Committee Decisions

Decisions of the Special Committee may be appealed by the Covered Person or associated Member Organization to the Board of Governors as if such decision were rendered by a Standing Committee of the Board of Governors, in accordance with Phlx By-Laws 11–1(a) and 11–2. The decision on review by the advisory committee on appeals of the Board of Governors pursuant to Phlx By-Law 11–2 shall constitute a final decision by the Exchange, upon the acceptance by the Board of Governors of the advisory opinion of such advisory committee on appeals.

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Rule 708. Acts Detrimental to the Interest or Welfare of the Exchange

A member, member organization, or person associated with or employed by a member or member organization shall not engage in acts detrimental to the interest or welfare of the Exchange.

Commentary:

.01 Acts which could be deemed detrimental to the interest or welfare of the Exchange include, but are not limited to, the following:

(a) thru (e) No change.

(f) any action by a member of the Board of Governors or any Exchange Committee, or by any member organization associated with such member, which contravenes the Seat Transaction Policy contained in Article V of the Code of Conduct for Governors and Committee Members.

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II. Self-Regulatory Organization's Statement Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is (i) To amend the Exchange's Code of Conduct for Governors and Committee Members, by adopting a Seat Transaction Policy, which generally prohibits members of the Phlx Board of Governors or of any Exchange Committee (a "Governance Member")[7] and any Phlx member firm or corporation associated with such Governance Member (a "Member Organization") from engaging in purchases or sales of Exchange memberships, except in compliance with the Policy, and (ii) to codify the Exchange's policy that a violation of the Exchange's Seat Transaction Policy by a Governance Member or any Member Organization constitutes a violation of Phlx Rule 708, *Acts Detrimental to the Interest and Welfare of the Exchange,* and such conduct is therefore subject to disciplinary action by the Exchange.[8]

The proposed rule change would establish procedures for the purchase or sale[9] of a Phlx membership, foreign currency option ("FCO") participation, or Philadelphia Board of Trade ("PBOT") membership (each an "Exchange Seat" or a "Seat"), by a Governance Member or Member Organization. In general, the Policy prohibits such Seat Transactions while such Governance Member or Member Organization possesses "Material Confidential Information" of the Exchange except insofar as such transaction complies with the Policy. In addition, proposed commentary to Phlx Rule 708 would make clear that violations of the Policy may constitute an act detrimental to the interests and welfare of the Exchange and therefore that rule. Accordingly, both the Seat Transaction Policy and the proposed amendment of commentary to Phlx Rule 708 would, pursuant to Phlx By-Laws 18–1 and 18–3, expressly allow the Exchange to bring a disciplinary action, as appropriate, against Governance Members and Member Organizations for violations of the Seat Transaction Policy. Neither the Seat Transaction Policy nor the proposed amendment of Phlx Rule 708, Commentary .01 would apply to Exchange members other than Governors, Committee Members and their associated Member Organizations.

Background

The Exchange adopted the Seat Transaction Policy as an amendment to the Governance Members Code of Conduct. The Seat Transaction Policy recognizes that Governance Members may be subject to conflicting duties whenever they engage in a transaction to purchase or sell an Exchange Seat.

On the one hand, a Governance Member, or a Member Organization for which such Governor is an officer or director, must own or lease an Exchange

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[7] The Exchange notes that the Policy uses the term "Covered Person" instead of the term "Governance Member," which is used here. These terms are synonymous.

[8] The Exchange notes that Phlx Rule 708, as well as Phlx Rule 707 (pertaining to just and equitable principles of trade), could apply to a wide variety of situations. The specific scenarios listed in the commentary to Phlx Rules 707 and 708 are intended to illustrate some, but not all, of the situations that violate these Rules. As stated in the Commission's order approving Phlx Rule 708, the Exchange has determined, for various reasons, to list certain conduct that violates Phlx Rule 708, but not others. *See* Exchange Act Release No. 33850 (April 1, 1994), 59 FR 16874 (April 8, 1994) (File No. SR–Phlx–93–53). Similarly, the Exchange also notes that it has previously amended the commentary to Phlx Rule 707 in order to add certain violations of the Phlx Code of Conduct to the non-exclusive list of potential violations of Phlx Rule 707. *See, e.g.*, Exchange Release No. 43739 (December 19, 2000) 65 FR 82440 (December 28, 2000) (File No. SR–Phlx–00–94) (order approving proposal to prohibit members, member organizations, and persons associated with or employed by a member or member organization from engaging in harassment or other improper behavior in connection with listing or competitive practices).

[9] The Governance Members Code of Conduct provisions described herein would only address the purchase or sale of a Seat, not other transactions involving Seats, such as lease transactions.

Seat to conduct business on the Exchange. Governance Members and Member Organizations may also purchase an Exchange Seat in order to lease it to third persons with the expectation of lease income and appreciation in the value of the Exchange Seat itself. However, as a result of their governance positions on the Board or on an Exchange Committee, Governance Members may learn Material Confidential Information regarding the Exchange that may affect the value of all Exchange Seats, or the value of particular Exchange Seats. As defined in the Seat Transaction Policy, Material Confidential Information is confidential and proprietary to the Exchange and may not, under the Governance Members Code of Conduct, Exchange policy, and applicable law, be disclosed or used for personal gain.

On the other hand, the Exchange notes that failure to disclose Material Confidential Information to a potential purchaser or seller of an Exchange Seat could expose the Governance Member and/or Member Organization to liability to the potential purchaser or seller under state law. Any time a Governance Member purchases or sells an Exchange Seat while the Governance Member possesses such Material Confidential Information, the Exchange states that the Governance Member and (as a consequence of information sharing by such Governance Member with other persons at his/her associated Member Organization) Member Organization could be exposed to disciplinary action, liability, and disrepute. The Exchange states that such conduct by the Governance Member or Member Organization could also expose the Exchange to disrepute.

Therefore, the Exchange adopted the Seat Transaction Policy in order to resolve the tension between a Governance Member's and/or Member Organization's legitimate business needs to purchase or sell Exchange Seats from time to time and the Exchange's legitimate business interest in preventing disclosure of Material Confidential Information to anyone involved in a Seat Transaction.

The Exchange notes that in many cases, disclosure of Material Confidential Information to the other purchaser or seller in the Seat Transaction would put the Governance Member or Member Organization and the buyer or seller on equal footing in order to negotiate a fair price for the Seat—and could in some cases be legally required in order to avoid liability to the party with whom the Governance Member or Member Organization is dealing. However, Governance Members are required by the Governance Members Code of Conduct to keep Material Confidential Information confidential. The Exchange states that the Seat Transaction Policy is designed to accommodate both of these interests by allowing a Special Committee to review the facts surrounding a seat transaction and, if necessary, to impose conditions on the seat transaction in order to prevent or limit disclosure of Material Confidential Information of the Exchange to third parties.

Seat Transaction Policy

In Articles V.1 and V.2 of the proposed Seat Transaction Policy, the Exchange proposes to create a new Special Committee (the "Special Committee") of the Board of Governors that would oversee Seat Transactions by Governance Members and Member Organizations.[10] Article V.3 would provide that the Special Committee, which is to be composed of three members, all of whom are Governors and at least one of whom is a Public Governor, would be responsible for examining the facts of each proposed Seat Transaction by a Governance Member or Member Organization.[11] Article V.4 of the Seat Transaction Policy empowers the Special Committee to prohibit any Governance Member or Member Organization from entering into a Seat Transaction while they possess Material Confidential Information of the Exchange.

Article V.3 of the Seat Transaction Policy further provides that the Special Committee may impose certain specified restrictions upon a Seat Transaction to prevent potential misuse or disclosure of Material Confidential Information by the Governance Member or Member Organization,[12] or by the person or firm on the other side of the Seat Transaction. As proposed, the Special Committee would determine whether it is appropriate for such Material Confidential Information to be disclosed by the Governance Member or Member Organization in connection with a proposed Seat Transaction. The Special Committee would also require that a confidentiality agreement be established between the Governance Member or Member Organization and the person on the other side of the Seat Transaction. If such a confidentiality agreement is required, the Seat Transaction Policy would require that the Exchange be named as an intended third-party beneficiary of the agreement.

Proposed Article V.4 provides that, the Special Committee may prohibit any Governance Member or Member Organization from consummating a Seat Transaction under conditions contrary to the conditions set forth by the Special Committee, or during certain "window periods"[13] specified by the Special Committee.

Governance Member Responsibilities

Proposed Article V.3(a) requires that at the time a Seat Transaction is contemplated, the Governance Member or Member Organization notify the Board of Governors by notifying certain Exchange officers.[14] Article V.3(a) further requires that the Special Committee convene promptly after such

[10] If the entire Special Committee cannot be convened, the Special Committee may proceed with a quorum of its members or may proceed with substituted members appointed by the Board of Governors or the Board's Executive Committee. By-law Article X, section 10–3(a) sets the quorum of the Special Committee as the majority of its members then in office. A quorum of the Special Committee, therefore, is two members. In addition to the quorum requirements in By-law Article X, section 10–3(a), the Board directs that at least one of the members making a quorum be a Public Governor. The Special Committee could take action, pursuant to By-law Article X, section 10–3(a), if a majority of those voting at a meeting at which a quorum is present vote in favor of the motion at hand, provided at least two vote. The Board of Governors or the Board's Executive Committee could appoint substituted members to the Special Committee, as needed. By-law Article IV, Section 4–4(b)(xix) empowers the Board to designate and appoint special committees, such as the one at hand. The Board may appoint additional Governors to the Special Committee to fill-in for absent Governors. In addition, the Board's Executive Committee, by resolution of the Board passed on December 11, 2002, may appoint Governors to the Special Committee to fill-in for absent Governors.

[11] The members of the Special Committee are subject to the conflict avoidance and recusal provisions that are in By-law Article IV, Section 4–8 and in the Governance Member Code of Conduct, Article III.6.

[12] The Exchange states that the Seat Transaction Policy recognizes that it may not in all instances be appropriate to attribute Material Confidential Information possessed by a Governance Member to the entire Member Organization for which he/she serves as an officer or director. Consistent with the policies of the federal securities laws (see, *e.g.*, Rule 14e–3 under the Act, 17 CFR 240.14e–3, and Phlx Rule 1020(f)), the Policy authorizes the Special Committee to review any information barriers that a Member Organization may have established to restrict the flow of Material Confidential Information within its organization and to take the existence of such information barriers into account when reviewing a proposed Seat Transaction.

[13] An example of a "window period" during which Seat Transactions may be prohibited is prior to the announcement of a significant transaction involving the Exchange.

[14] Except to the extent that the Special Committee excuses a Governance Member or Member Organization as provided in the next sentence, this is mandatory in respect of all Seat Transactions by Governance Members and their Member Organizations. However, the Special Committee could excuse the Governance Member or Member Organization from this disclosure requirement if the Special Committee determines that all or certain future disclosures are rendered unnecessary by the implementation and operation of the information barriers described in footnote 12, above.

notification to review the proposed Seat Transaction. Understanding that the Governance Member or Member Organization may need to act quickly in order to consummate a Seat Transaction, Article V.3(a) of the Seat Transaction Policy mandates the Special Committee to make all reasonable efforts to respond to the Governance Member or Member Organization rapidly and within a time frame requested by such person. The Seat Transaction Policy therefore anticipates that, in certain cases, the Special Committee will be asked to review a Seat Transaction within 24 hours of notification of the Board of Governors by the Governance Member or Member Organization. In any case, the Special Committee must either render a decision, conduct an interview with the Governance Member, or request additional information from the Governance Member within 15 business days from the time of request. If the Special Committee conducts an interview with the Governance Member or requests additional information from the Governance Member, than the Special Committee must render a decision within 30 business days from the later to occur of (i) the interview or, (ii) if further information is requested by the Special Committee, all requested information is supplied to the Special Committee; provided that a Governance Member may waive compliance with these deadlines.

Special Committee Procedures

Article V.4 of the Seat Transaction Policy requires the Special Committee to render a binding written decision to the Governance Member or Member Organization, as well as to the Board of Governors, regarding whether the proposed Seat Transaction complies with the Seat Transaction Policy. Articles V.3 and V.4 provide further procedures to be followed by the Special Committee in reviewing Seat Transactions. An aggrieved Governance Member or Member Organization may appeal decisions of the Special Committee to the Board of Governors consistent with Article XI of the Phlx By-Laws, by filing a written notice with the Secretary of the Exchange within thirty (30) days of the Special Committee's decision.

Proposed Articles V.3(d) and V.4 specify the remedies that the Special Committee may impose in the event it determines that a Governance Member or Member organization possess Material Confidential Information at the time of a Seat Transaction. These remedies include (i) prohibiting the Seat Transaction until such time as the Material Confidential Information is no longer confidential; (ii) requiring that Material Confidential Information be disclosed to the other party, but only after a non-disclosure agreement between the parties is in place; and (iii) disallowing the Seat Transaction to proceed, but only during certain "window periods" established by the Special Committee.

Disciplinary Consequences

Under amended Phlx Rule 708, the Exchange proposes to provide notice to Governance Members and Member Organizations that the failure by any Governance Member or Member Organization to comply with the Seat Transaction Policy constitutes a violation of Phlx Rule 708, *Acts Detrimental to the Interest and Welfare of the Exchange*, and would thereby subject such Governance Member or Member Organization to disciplinary action by the Exchange pursuant to Phlx By-Laws 18–1 and 18–3.[15] The Exchange states that Article V.3(b) of the Seat Transaction Policy makes clear that any determination by the Special Committee is for the sole benefit of the Exchange and is limited to the question whether a Governance Member or Member Organization's conduct complies with the Governance Member Code of Conduct. The Special Committee's decisions do not constitute legal advice and are not intended to affect the rights and obligations of Governance Members and Member Organizations under any applicable law or under any contract with third parties, including purchasers or sellers of Exchange Seats.

2. Statutory Basis

The Phlx believes that the proposed rule change, as amended, is consistent with the provisions of section 6 of the Act,[16] in general, and in particular, with sections 6(b)(3) and 6(b)(5) of the Act,[17] in that it is designed to regulate fairly and in the public interest the administration of the Exchange; with section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices; and with section 6(b)(6), in that it is designed to appropriately discipline members for violation of the rules of the Exchange. Specifically, the Phlx believes that the Seat Transaction Policy, as specified in the Governance Members Code of Conduct, and Rule 708, as amended, should discourage fraudulent and manipulative acts and practices in connection with the purchase or sale of Exchange Seats by Governance Members, who owe a fiduciary duty to the Exchange and its members, and by Member Organizations, which are each prohibited from taking actions that are detrimental to the interests or welfare of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies

[15] The Exchange notes that conduct that violates the Seat Transaction Policy could also violate various laws and that no inference should be drawn that the Exchange's remedies for violative conduct are limited to disciplinary action under By-Laws 18–1 and 18–3. However, the Exchange notes that Seats have never been regarded as "securities" for purposes of the federal securities laws. Therefore, Seat Transactions would not be subject to the provisions of the federal securities laws prohibiting deceptive and manipulative practices "in connection with the sale of securities." (*See, e.g.*, Section 10 of the Act, 15 U.S.C. 78j, and Rule 10b–5 under the Act, 17 CFR 240.10b–5.) *See Ferreri v. Goldberg Securities, Inc.*, 1989 WL 11073, 2–3 (E.D. Pa. 1989)("it is the view of this Court that plaintiff's two [Seats] do not constitute 'securities'"); letter to Clifford Lefebvre, Esq., Baker, Nelson & Williams from John Heneghan, Deputy Chief Counsel, Office of the Chief Counsel, Commission dated March 12, 1973; letter to European Mercantile Exchange Limited from Brian Lynch, Attorney-Adviser, Division of Corporation Finance, Commission dated October 11, 1988; letter to American Stock Exchange—NASD from Michael Hyatte, Special Counsel, Division of Corporation Finance, Commission, dated July 10, 1998.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(3) and (b)(5).

thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–34 and should be submitted by January 31, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–460 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3473]

State of Alaska (Amendment #2)

In accordance with information received from the Federal Emergency Management Agency dated December 20, 2002, the above-numbered declaration is hereby amended to establish the incident period as beginning on October 23, 2002 and continuing through December 20, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is February 3, 2003, and for economic injury the deadline is September 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 31, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–508 Filed 1–9–03; 8:45 am]

BILLING CODE 8025–01–P

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3475]

Territory of Guam (Amendment #1)

In accordance with information received from the Federal Emergency Management Agency dated December 16, 2002, the above-numbered declaration is hereby amended to establish the incident period as beginning on December 8, 2002 and continuing through December 16, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is February 18, 2003, and for economic injury the deadline is September 19, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 31, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–513 Filed 1–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9T74]

State of New York

Westchester County and the contiguous counties of Bronx, Orange, Putnam and Rockland in the State of New York; Fairfield County in Connecticut; and Bergen County in New Jersey constitute an economic injury disaster loan area due to a fire that occurred on November 7, 2002, in the City of Mount Vernon in Westchester County. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on October 3, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South, 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.324 percent.

The numbers assigned for economic injury for this disaster are 9T7400 for New York; 9T7500 for Connecticut; and 9T7600 for New Jersey.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: January 3, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–511 Filed 1–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P002]

State of North Carolina (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated December 20, 2002, the above numbered declaration is hereby amended to include Caldwell, Davie, Edgecombe, Johnston, Northampton, Polk, Warren, Wayne and Wilson Counties in the State of North Carolina as disaster areas due to damages caused by a severe ice storm occurring from December 4, 2002, and continuing through December 6, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is February 10, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: December 31, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–510 Filed 1–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3479]

Commonwealth of the Northern Mariana Islands (Amendment #1)

In accordance with information received from the Federal Emergency Management Agency dated December 16, 2002, the above-numbered declaration is hereby amended to establish the incident period as beginning on December 8, 2002 and continuing through December 16, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is February 24, 2003, and for economic injury the deadline is September 24, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 31, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–509 Filed 1–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459]

State of Texas (Amendment #6)

In accordance with a notice received from the Federal Emergency Management Agency, dated December 24, 2002, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 16, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–512 Filed 1–9–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4247]

International Joint Commission To Hold Hearings on Water Uses in the Great Lakes Basin

The International Joint Commission (IJC) will hold a series of public hearings to obtain comment from the public on action taken by governments on the issue of water uses in the Great Lakes basin before reporting to the Governments of Canada and the United States. The hearings are scheduled to take place at the following dates and locations:

Toronto, January 20, 2003, City Hall, 100 Queen Street West, Toronto, Ontario, Council Chamber, 7 p.m.

Chicago, January 21, 2003, Drake Hotel, 140 East Walton Place, Chicago, Illinois, Michigan Room, 3 p.m. & 7 p.m.

Montréal, February 3, 2003, Queen Elizabeth Hotel, 900 René-Lévesque blvd., Montréal, Québec, Room St. Maurice, 7 p.m.

The IJC published a comprehensive report entitled *Protection of the Waters of the Great Lakes* in 2000. In that report the IJC recommended that it review the issue after three years to provide an update on how matters had changed over that period of time. In late 2000 the governments subsequently agreed.

In June of last year, the Commission appointed the International Water Uses Review Task Force to assist it in carrying out the three-year review. The Task Force reviewed the many technical, policy and legal developments that have taken place in the basin and reviewed actions taken by federal, state and provincial authorities to address the issues raised in the Commission's 2000 report.

The Task Force has now completed its work and submitted its report to the Commission. That report is available on the Commission's Web site: *http://www.ijc.org*. Hard copies of the report are also available from either one of the Commission's offices listed below. The report of the Task Force represents the views and analysis of the Task Force and not necessarily the views of the Commission. The Commission will prepare its report to governments based on its own analysis, the report of the Task Force, and comments received concerning the Task Force report and other related matters.

In addition to the public hearings listed above, the IJC invites all interested parties to submit written comment on this investigation to: Secretary, U.S. Section, 1250 23rd Street NW., Suite 100, Washington, DC 20440, Fax: 202.736.9015, *Commission@washington.ijc.org*.

Due to the security clearing of mail, communications with the IJC's Washington office should be by fax or email to ensure timely receipt. It would be most helpful if written comments were received by February 10, 2003.

The International Joint Commission is a binational Canada-U.S. organization established by the Boundary Waters Treaty of 1909. It assists the governments in managing waters along the border for the benefit of both countries in a variety of ways including examining issues referred to it by the two federal governments.

Dated: January 6, 2003.

Gerald Galloway,

Secretary, United States Section, International Joint Commission.

[FR Doc. 03–502 Filed 1–9–03; 8:45 am]

BILLING CODE 4710–14–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1543).

TIME AND DATE: 9 a.m. (EST), January 14, 2003, TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on November 20, 2002.

New Business

C—Energy

C1. Supplement to Contract No. 99999075 with Bechtel Power Corporation for installation of replacement steam generators for Sequoyah Nuclear Plant Unit 1 and Watts Bar Nuclear Plant Unit 1.

C2. Extension of Voith Siemens Hydro Power Generation Partnering Agreement—Contract No. 1752.

E—Real Property Transactions

E1. Sale or noncommercial, nonexclusive permanent easements for construction and maintenance of recreational water-use facilities, affecting approximately .18 acre of Tellico Reservoir shoreline in Monroe County, Tennessee, Tract Nos. XTELR–234RE and XTELR–235RE.

E2. Sale of a 19-year commercial recreation lease, affecting approximately 79 acres of land on Watts Bar Reservoir in Roane County, Tennessee, Tract No. XWBR–714L.

E3. Deed modification to remove the right to re-enter and take possession, affecting approximately 5 acres of land on Chickamauga Reservoir in Hamilton County, Tennessee, Tract No. XCR–444, S.7X.

E4. Deed modification to allow placement of fill and construction of a residence, affecting .3 acre of former TVA land on Wheeler Reservoir in Limestone County, Alabama, Tract No. XWR222, S.4X.

E5. Grant of a permanent easement for a existing pump station and sewer line expansion of Stevenson Utility Board, affecting approximately 2.8 acres of land on Guntersville Reservoir in Jackson County, Alabama, Tract No. XTGR–171S.

F—Other

F1. Approval to file condemnation cases to acquire transmission line easements and rights-of-way affecting Tract Nos. BBG–8, –9, –12, –13, and –22, Batesville-Blue Goose Transmission Line, Panola County, Mississippi; Tract No. SBFP–93, Sebastopol Switching Station-Five Points, Scott County, Mississippi; and Tract Nos. SWM–31, —32, –33, –35, and –75, Sweetwater-Madisonville Transmission Line, Monroe County, Tennessee; and right to enter affecting tract No. 2WCJR–1001TE, Waynesville–Clifton City Transmission Line, Wayne County, Tennessee.

Information Items

1. Approval of a supplement to the contract with Numanco, LLC, for professional staffing services related to the Browns Ferry Nuclear Plant Unit 1 recovery effort and the replacement of steam generators at the Watts Bar and Sequoyah Nuclear Plants.

2. Approval of a supplement to the contract with General Electric Company to cover nuclear steam supply and turbine-generator services and material for the Browns Ferry Nuclear Plant Unit 1 recovery effort.

3. Approval of the abandonment of a portion of the Great Falls-Sparta Transmission Line tap to West Sparta easement affecting approximately 5.1 acres (Tract No. SPAT–7) in exchange for transmission line easement rights affecting approximately 6 acres (Tract No. SPATR–1) in White County, Tennessee.

4. Approval of public auction sale of the former Eastern Area Radiological Laboratory site, affecting approximately 16.8 acres of Tellico Reservoir land in Monroe County, Tennessee, Tract No. XTELR–233.

5. Approval for interconnection arrangements with independent power producers (IPPs) and policy changes on credits IPPs may apply to TVA's transmission service charges.

6. Approval of Fiscal Year 2002 Winning Performance Incentive Plan Payout.

7. Approval of the Discount Energy Unit program and modification of the distributor loan program.

8. Approval of amendments to the Rules and Regulations of the TVA Retirement System and to the provisions of the TVA Savings and Deferral Retirement Plan (401(k) Plan) to comply with the IRS requirements concerning the definition of employee compensation upon which pension benefits and 401(k) Plan matching contribution can be calculated.

9. Approval of recommendations resulting from the 67th Annual Wage Conference concerning wage rates for annual employees represented by the International Brotherhood of Teamsters for 2003–2005.

10. Approval of recommendations resulting from the 67th Annual Wage Conference concerning Construction Project Agreement (Hourly) wage rates for 2003 for trades and labor work performed by contractors of TVA.

11. Approval of recommendations resulting from the 67th Annual Wage Conference concerning wage rates for annual employees represented by the Trades and Labor Council for 2003.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: January 7, 2003.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 03–644 Filed 1–8–03; 2:09 pm]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Carver and Scott Counties, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a tier I Environmental Impact Statement (EIS) will be prepared for a proposal to improve capacity on Trunk Highway (TH) 41 between TH 169 and proposed TH 212, including a crossing of the Minnesota River, in Scott and Carver Counties, Minnesota. The east-west boundaries of the study area are between County State Aid Highway (CSAH)/TH 101 at the Chanhassen/Shakopee border and County Road 45 just west of Carver. the tier I EIS will include the analysis needed for a location decision.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Brian Isaacson, Project Manager, Minnesota Department of Transportation—Metro Division, Water's Edge Building, 1500 West County Road B–2, Roseville, Minnesota 55113, Telephone (651) 582–1659.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare tier I EIS on a proposal to improve capacity on TH 41 between proposed TH 212 and TH 169, the north-south limits of the study area. The east-west boundaries of the study area are between CSAH/TH 101 at the Chanhassen/Shakopee border and County Road 45 just west of the City of Carver in Scott and Carver Counties, Minnesota. The proposed action is being considered to preserve an alignment for the construction of future highway capacity improvements, including a crossing of the Minnesota River, to address the need for improved capacity.

The tier I EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) no-build, (2) improvements to the existing TH 41 corridor, and (3) one or more new alignment alternatives for TH 41.

The tier II EIS will be prepared in approximately 15 years. At that time, design alternatives for the preferred alignment will be considered and environmental impacts and mitigation will be studied in greater detail. The construction of the preferred alternative is planned for implementation after the year 2020.

It is anticipated that the "TH41 Scoping Document/Draft Scoping Decision Document" will be published in approximately June 2003. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the tier I EIS. A 30 day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting. A tier I draft EIS will be prepared based on the outcome of the scoping process. Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited form all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Dated: Issued on: December 31, 2002.

(Catalog of Federal Domestic Assistance Program Number 20205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program)

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 03–445 Filed 1–9–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–02–13546; Notice 2]

RIN 2127–AI72

Event Data Recorders

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Extension of comment period.

SUMMARY: NHTSA received a petition asking us to extend the comment period for our request for comments concerning what future role the agency should take related to the continued development and installation of Event Data Recorders (EDRs) in motor vehicles. To provide interested persons additional time to prepare comments, we are extending the comment period from January 9, 2003, to February 28, 2003.

DATES: Written comments must be received by February 28, 2003.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) website at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590:

For technical and policy issues: Dr. William Fan, Office of Crashworthiness Standards, NVS–112, telephone (202) 366–4922, facsimile (202) 366–4329.

For legal issues: J. Edward Glancy, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION: On October 11, 2002, NHTSA published in the **Federal Register** (67 FR 63493) a request for comments concerning Event Data Recorders (EDRs) in motor vehicles. EDRs collect vehicle and occupant-based crash information.[1]

Over the past several years, NHTSA has been actively involved with EDRs. The agency's involvement has included sponsoring two working groups, using data from EDRs in crash investigations, and conducting research and development. Particularly since the two working groups have completed their work, we requested comments on what future role the agency should take related to the continued development and installation of EDRs in motor vehicles. We established a comment closing date of January 9, 2003.

The National Association of EMS Physicians (NAEMSP) requested an extension of the comment period, to March 31, 2003. It noted that it will hold its 2003 Annual Meeting on January 16 to 18. NAEMSP stated that if the extension were granted, it would solicit comments from its membership, and collate the comments for submission on March 31. That organization stated that it would like the opportunity to submit comments in order to benefit patient health and outcomes.

After considering NAEMSP's request, we have decided that it would be in the public interest to extend the comment period. However, we believe a somewhat shorter extension is appropriate. We are extending the comment period until February 28, 2003. This date is approximately six weeks after NAEMSP's Annual Meeting. We believe that will provide sufficient time for that organization to solicit comments from its membership and collate the comments for submission to the agency.

Privacy concerns: All comments (other than those containing confidential business information) submitted to any of our dockets are converted into electronic form. Anyone is able to search the electronic form of those comments by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

[1] Since the term "EDR" can be used to cover many different types of devices, we included a definition of the term for purposes of our request for comments. We explained that when we used "EDR" in the request for comments, we were referring to a device that is installed in a motor vehicle to record technical vehicle and occupant-based information for a brief period of time (*i.e.*, seconds, not minutes) before, during and after a crash. For instance, EDRs may record (1) pre-crash vehicle dynamics and system status, (2) driver inputs, (3) vehicle crash signature, (4) restraint usage/deployment status, and (5) certain post-crash data such as the activation of an automatic collision notification (ACN) system. We stated we were not using the term to include any type of device that either makes an audio or video record or logs data such as hours of service for truck operators.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: January 3, 2003.

Noble N. Bowie,

Director, Office of Planning and Consumer Standards.

[FR Doc. 03–501 Filed 1–7–03; 2:47 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13708]

RIN 2127–AG93

Federal Motor Vehicle Standards; Child Restraints; Review: Evaluation of Child Safety Seat Registration

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report reviewing and evaluating the seat registration-form requirements of its existing Safety Standard 213, Child Restraint Systems. The report's title is Evaluation of Child Safety Seat Registration.

DATES: Comments must be received no later than May 12, 2003.

ADDRESSES: Report: You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Communications Services (NPO–503), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. A summary of the report is available on the Internet for viewing on line at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/809518.html*. The full report is available on the Internet in PDF format at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/pdf/809518.pdf*.

Comments: All comments should refer to the Docket number of this notice (NHTSA–2002–13708). You may submit your comments in writing to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. You may also submit your

comments electronically by logging onto the Dockets Management System website at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

You may call Docket Management at 202–366–9324 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, NPO–321, Planning, Evaluation, and Budget, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–2560. FAX: 202–366–2559. E-mail: *ckahane@nhtsa.dot.gov*.

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA Web site at *http://www.nhtsa.dot.gov* and click "Regulations & Standards" underneath "Vehicle & Equipment Information" on the home page; then click "Regulatory Evaluation" on the "Regulations & Standards" page.

SUPPLEMENTARY INFORMATION: Beginning March 1993, Federal Motor Vehicle Safety Standard 213 required manufacturers to provide a postage-paid registration form with each new child safety seat sold, with the goal of increasing consumer response to child seat recalls. Before March 1993, registration was voluntary for manufacturers.

It is estimated that registration increased from 3 percent prior to 1993, to an average 27 percent over the years 1996 through 2000. Based on data from 1990 through 2000, the repair rate for recalled child seats also increased, from 13.8 percent before the registration requirement to 21.5 percent once the requirement was in effect. The cost to consumers for child seat registration and notification is approximately 43 cents per seat sold in the United States.

How Can I Influence NHTSA's Thinking on This Evaluation?

NHTSA welcomes public review of this preliminary report and invites reviewers to submit comments about the data, the statistical methods used in the analyses, and/or additional information. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement the report. If the comments warrant a significant revision, then NHTSA will either add an appendix to the report or publish a revised report; otherwise, this preliminary report will serve as the final report.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2002–13708) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System Website at *http://dms.dot.gov* and click on "Help" to obtain instructions.

We also request, but do not require you to send a copy to Marie Walz, Evaluation Division, NPO–321, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (alternatively, FAX to 202–366–2559 or e-mail to *Marie.Walz@nhtsa.dot.gov*). She can check if your comments have been received at the Docket and she can expedite their review by NHTSA.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–110, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).
2. On that page, click on "Simple Search."
3. On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm/*) type in the five-digit Docket number shown at the beginning of this notice (13708). Click on "Search."
4. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Rose A. McMurray,

Associate Administrator for Planning, Evaluation, and Budget.

[FR Doc. 03–463 Filed 1–9–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20996]

East West Resorts Transportation LLC; East West Resorts Transportation II, LLC; Colorado Mountain Express, LLC; and Resort Express LLC—Merger—East West Resorts Transportation, LLC

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: East West Resorts Transportation, LLC (EWRT I), East West Resorts Transportation II, LLC (EWRT II), both noncarriers, Colorado Mountain Express, LLC (CME) and Resort Express, LLC (RE), both motor carriers of passengers, jointly filed an application under 49 U.S.C. 14303 to merge EWRT I and EWRT II with EWRT I as the surviving entity. Additionally, incident to the merger, the parties seek the transfer of the operating rights of CME to RE followed by the lease of all the operating rights of RE by CME. Finally, the parties seek the following name changes: (1) EWRT I to East West Resort Transportation Holdings, LLC; (2) CME to East West Resort Transportation, LLC; and (3) RE to TMS, LLC. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by February 24, 2003. Applicant may file a reply by March 11, 2003. If no comments are filed by February 24, 2003, the tentative approval becomes final on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20996 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Thomas J. Burke, Jr., 1625 Broadway, Suite 1600, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 565–1600. (Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: EWRT I and EWRT II are holding companies controlled by Charles I. Madison, Harry H. Frampton III, and John C. Goff. CME, a wholly owned subsidiary of EWRT I, is authorized to provide special and charter operations pursuant to federally issued authority in Docket Nos. MC–169174 and MC–174332. RE, a wholly owned subsidiary of EWRT II, is authorized to provide regular route interstate operations pursuant to Federally issued authority in Docket No. MC–181367.

Applicants state that ultimate control over the properties will remain the same and that the purpose of the merger and related transfer and lease is "entity simplification." Applicants contend that approval of the transaction will enable CME, under a unified management structure, to achieve such operating efficiencies as fuel conservation and reduced vehicle congestion and exhaust emissions.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction that we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicants have shown that the proposed transaction will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information may be obtained from applicants' representative.

On the basis of the application, we find that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at: *www.stb.dot.gov*.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on February 24, 2003, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: January 3, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–398 Filed 1–9–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 190X)]

Union Pacific Railroad Company—Abandonment Exemption—In Dunn County, WI

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 subpart F–*Exempt Abandonments* to abandon a 2.00-mile line of railroad, known as the Menomonie Industrial Lead, extending from milepost 0.90 near Stout Oak Street to milepost 2.90 near 12th Avenue West, in Dunn County, WI. The line traverses United States Postal Service Zip Code 54751.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under

Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 9, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 21, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 30, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 17, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by January 10, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 3, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–397 Filed 1–8–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Federal Retirement Thrift Investment Board

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EST) January 21, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the December 16, 2002, Board member meeting.

2. Executive Director's report, including the following items:

- Legislative report,
- Investment report, and
- Participation information.

3. Status of new record keeping system.

4. Discussion with Ann Combs, Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

Parts Closed to the Public

5. Discussion of litigation matters (closed portion of meeting).

6. Discussion of personnel matters (closed portion of meeting).

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 7, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–601 Filed 1–8–03; 11:54 am].

BILLING CODE 6760–01–M

Corrections

Federal Register
Vol. 68, No. 7
Friday, January 10, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 36, and 91

[Docket No. FAA–2000–7587 Amdt No. 21–81, 36–24 & 91–275]

RIN 2120–AH03

Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

Correction

In the issue of Thursday, October 10, 2002, appearing on pages 63194–63196, in the correction of rule document 02-15835, there were multiple errors. The corrections appear as follows:

1. On page 63194, in the first column, under the heading, **Correction**, in the first line, "15385" should read, "15835".

2. On the same page, in the second column, in correction 17., in the fourth line, "the reference for" should read, "reference for".

Appendix A to Part 36 — [Corrected]

3. On page 63195, in the third column, in correction 74., in the second line, "A36.3.6.7 Analysis systems" should read, "A36.3.7 *Analysis systems*".

4. On page 63196, in the third column, in correction 83., in the fifth line, "frequency" should read, "frequency range".

5. On the same page, in the table, in correction 84., under the column titled, "Meaning", in the first line, "percieved" should read, "perceived".

6. On the same page, in the first column, in correction 85., in the fifth line, after "PNL(k)", remove the remaining text of the correction paragraph.

[FR Doc. C2–15835 Filed 1–9–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. FAA–2000–7587 Amdt No. 21–81, 36–24 &91–275]

RIN 2120–AH03

Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

Correction

In rule document 02–15835 beginning on page 45194 in the issue of Monday, July 8, 2002, make the following corrections:

1. On the same page, in the same column, in the same section, in paragraph (c)(1)(ix), in the third line, "Nose" should read, "Noise".

2. On the same page, in the same column, in the same section, in the same paragaph, in the fourth and fifth lines, "Requirements for systems measure one—Third" should read, "Requirements for Systems to Measure One-Third".

Appendix A to Part 36 — [Corrected]

3. On page 45215, in the second column, at paragraph A36.3.6.3, in the third line from the bottom, "Frequency" should read, "frequency".

Appendix B to Part 36 — [Corrected]

4. On page 45235, in the second column, in section B36.3(a)(2), in the fifth and sixth lines, "[the effective date of this final rule]" should read, "August 7, 2002".

5. On page 45236, in the first column, in section B36.7(b)(3), in the sixth line, "[the effective date of this final rule]" should read, "August 7, 2002".

[FR Doc. C2–15835 Filed 1–9–03; 8:45 am]

BILLING CODE 1505–01–D

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To provide for a 5-month extension of the Temporary Extended Unemployment Compensation Act of 2002 and for a transition period for individuals receiving compensation when the program under such Act ends. (Jan. 8, 2003; 117 Stat. 3)

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Presidential Documents

Title 3—

The President

Presidential Determination No. 03–09 of January 7, 2003

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section (2)(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $11 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund to address unexpected urgent refugee and migration needs arising from the crises in Côte d'Ivoire and Liberia, and from the return of refugees to Sierra Leone and Angola. These funds may be used, as appropriate, to provide contributions to international, governmental, and nongovernmental organizations.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to arrange for the publication of this memorandum in the **Federal Register**.

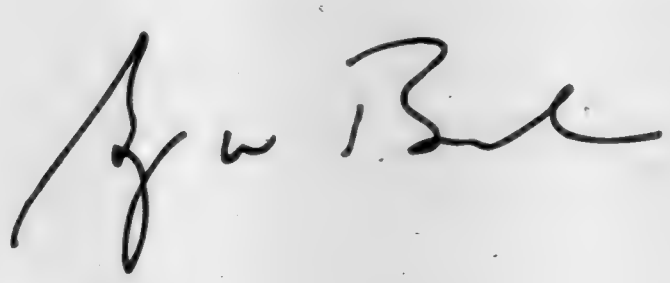

THE WHITE HOUSE,
Washington, January 7, 2003.

[FR Doc. 03–725
Filed 1–10–03; 8:45 am]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ61

Prevailing Rate Systems; Definition of Santa Clara, CA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule that abolishes the Alameda-Contra Costa, CA, nonappropriated fund (NAF) Federal Wage System wage area and establishes a new Santa Clara, CA, NAF wage area. This change was necessary because the closure of the Army and Air Force Exchange Service Distribution Center in Oakland left the Alameda-Contra Costa wage area without a host activity to conduct a local wage survey. Full-scale surveys for the Santa Clara wage area will be conducted in September of each even-numbered fiscal year.

DATES: Effective Date: This regulation is effective on February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Chenty I. Carpenter, (202) 606–2838; FAX: (202) 606–0824; or e-mail *cicarpen@opm.gov*.

SUPPLEMENTARY INFORMATION: On July 17, 2002, the Office of Personnel Management (OPM) published an interim rule (67 FR 46839) that abolished the Alameda-Contra Costa, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and established a new Santa Clara, CA, NAF wage area. The interim rule had a 30-day public comment period, during which OPM received no comments. The change was necessary because the closure of the Army and Air Force Exchange Service Distribution Center in Oakland left the Alameda-Contra Costa wage area without a host activity to conduct a local wage survey. The new Santa Clara NAF wage area will now consist of Santa Clara County as the survey area. The area of application for the Santa Clara, CA, wage area will include Alameda, Contra Costa, and San Mateo Counties. A full-scale survey for the Santa Clara wage area was conducted in September 2002.

Under 5 U.S.C. 5343(a), NAF FWS wage area boundaries may not extend beyond the immediate locality where NAF employees work. OPM may establish an NAF wage area under 5 CFR 532.219 when a minimum of 26 NAF wage employees are employed in a survey area and sufficient private employment exists within the survey area to provide adequate data for establishing an NAF wage schedule. Santa Clara County meets the regulatory criteria to be a separate NAF wage area, and the Department of Defense recommended that Santa Clara County be redefined as the sole survey county for the new FWS NAF wage area, and that Alameda, Contra Costa, and San Mateo Counties be defined as areas of application counties.

OPM regulations at 5 CFR 532.219 require a minimum of 1,800 private enterprise employees in establishments within the scope of a NAF survey in order to establish a separate wage area within the survey specifications. Because Alameda, Contra Costa, and San Mateo Counties will have continuing NAF employment and do not meet the regulatory criteria in 5 CFR 532.219 to be separate survey areas, they must be considered areas of application to Santa Clara County. The Department of Defense conducted a full scale survey in Santa Clara County in September 2002. The Federal Prevailing Rate Advisory Committee, the national labor-management committee that advises OPM on FWS pay matters, recommended these changes by consensus.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (67 FR 46839) amending 5 CFR part 532 published on July 17, 2002, is adopted as final with no changes.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–400 Filed 1–10–03; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 02–117–2]

Exotic Newcastle Disease; Additions to Quarantined Area and Applicability of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the exotic Newcastle disease regulations by quarantining Imperial, Orange, San Diego, Santa Barbara, and Ventura Counties, CA, and the previously non-quarantined portions of Riverside and San Bernardino Counties, CA, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread exotic Newcastle disease from the quarantined area. We are also amending the regulations to provide that the prohibitions and restrictions that apply to the interstate movement of birds, poultry, products, and materials that could spread exotic Newcastle disease will also apply to the intrastate movement of those articles in situations where the Secretary of Agriculture has issued a declaration of extraordinary emergency. These actions are necessary on an emergency basis to prevent the spread of exotic Newcastle disease from the quarantined area.

DATES: This interim rule was effective January 7, 2003. We will consider all comments that we receive on or before March 14, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or

by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–117–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–117–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–117–2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The regulations in "Subpart A—Exotic Newcastle Disease (END)" (9 CFR 82.1 through 82.15, referred to below as the regulations) were established to prevent the spread of END in the United States in the event of an outbreak. In § 82.3, paragraph (a) provides that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END. Less than an entire State will be designated as a quarantined area only if the State enforces restrictions on intrastate movements from the quarantined area that are at least as stringent as the regulations. The regulations prohibit or restrict the interstate movement of birds, poultry, products, and materials that could spread END from quarantined areas. Areas quarantined because of END are listed in § 82.3, paragraph (c).

On October 1, 2002, END was confirmed in the State of California. The disease has been confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption, and in commercial poultry.

In an interim rule effective on November 21, 2002, and published in the **Federal Register** on November 26, 2002 (67 FR 70674–70675, Docket No. 02–117–1), we amended the regulations in § 82.3(c) by quarantining Los Angeles County and portions of Riverside and San Bernardino Counties and restricting the interstate movement of birds, poultry, products, and materials that could spread END from the quarantined area.

In this interim rule, we are quarantining additional counties in California, either because END has been confirmed in those counties or because of the geographical proximity of those counties to areas in which END has been confirmed. Specifically, we are amending § 82.3(c) of the regulations by adding Imperial, Orange, San Diego, Santa Barbara, and Ventura Counties and the previously non-quarantined portions of Riverside and San Bernardino Counties to the quarantined area for END and by prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area.

On January 6, 2003 the Secretary of Agriculture signed a declaration of extraordinary emergency with respect to the END situation in California. As provided under sec. 10407 of the Animal Health Protection Act (7 U.S.C. 8306), that declaration of extraordinary emergency authorizes the Secretary to (1) hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary to prevent the dissemination of END and (2) prohibit or restrict the movement or use within the State of California, or any portion of the State of California, of any animal or article, means of conveyance, or facility if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of END.

As noted previously, the regulations in §§ 82.1 through 82.15 prohibit or restrict the interstate movement from quarantined areas of birds, poultry, products, and materials that could spread END. In light of the Secretary's declaration of extraordinary emergency and its accompanying authority to prohibit or restrict, if necessary to prevent the spread of END, the movement or use within the State of California of any animal or article, means of conveyance, or facility, we are amending the regulations to provide that the provisions of the regulations regarding interstate movement will also apply to intrastate movement. This provision, which we are adding as a new § 82.16, specifies that the applicability of the regulations to intrastate movement holds only in situations where the Secretary has issued a declaration of extraordinary emergency and only until such time as the Secretary terminates that declaration.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent END from spreading to other States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations by quarantining Imperial, Orange, San Diego, Santa Barbara, and Ventura Counties, CA, and the previously non-quarantined portions of Riverside and San Bernardino Counties, CA, and by prohibiting or restricting the movement of birds, poultry, products, and

materials that could spread END from the quarantined area. This rule also amends the regulations to provide that the prohibitions and restrictions that apply to the interstate movement of birds, poultry, products, and materials that could spread END will also apply to the intrastate movement of those articles in situations where the Secretary of Agriculture has issued a declaration of extraordinary emergency. These actions are necessary on an emergency basis to prevent the spread of END from the quarantined area.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 82 is amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

1. The authority citation for part 82 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. In § 82.3, paragraph (c) is revised to read as follows:

§ 82.3 Quarantined areas.

* * * * *

(c) The following areas are quarantined because of END:

California

Imperial County. The entire county.
Los Angeles County. The entire county.
Orange County. The entire county.
Riverside County. The entire county.
San Bernardino County. The entire county.
San Diego County. The entire county.
Santa Barbara County. The entire county.
Ventura County. The entire county.

3. In "Subpart A—Exotic Newcastle Disease (END)," a new § 82.16 is added to read as follows:

§ 82.16 Extraordinary emergencies; applicability of regulations.

When, in accordance with sec. 10407 of the Animal Health Protection Act (7 U.S.C. 8306), the Secretary of Agriculture determines that an extraordinary emergency exists because of END, the regulations in this subpart regarding interstate movement shall be applicable to intrastate movement within any State or portion of a State subject to the Secretary's declaration of extraordinary emergency until such time as the Secretary terminates that declaration.

Done in Washington, DC, this 7th day of January, 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–573 Filed 1–10–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–250–AD; Amendment 39–13013; AD 2003–01–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) series airplanes, that requires replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors. This amendment is prompted by mandatory continuing airworthiness information from a civil airworthiness authority. The actions specified by this AD are intended to prevent false smoke warnings from the smoke detectors in the cargo compartment. A false smoke warning prompts the flightcrew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire. Repeated false smoke warnings create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted.

DATES: Effective February 18, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 18, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes was published as a second supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 16, 2002 (67 FR 53525). That action proposed to require replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors. That action also proposed to include spare part information.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to Applicability

We have revised the applicability of the final rule to identify model designations as published in the most recent type certificate data sheet for the affected models.

Explanation of Editorial Change

We have changed the service bulletin citations throughout this final rule to exclude the CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet and Service Bulletin Comment Sheet—Facsimile Reply Sheet. (Those forms are intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletins and report compliance; however, this AD does not include such requirements.)

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 281 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors, and that the average labor rate is $60 per work hour. The cost of required parts is approximately $4,136 ($876 for one smoke detector kit and $1,630 each for two smoke detectors). Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,195,936, or $4,256 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–01–02 **Bombardier, Inc. (Formerly Canadair):** Amendment 39–13013. Docket 2001–NM–250–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) series airplanes, serial numbers 7003 through 7480 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent false smoke warnings from the smoke detectors in the cargo compartment, which prompt the flightcrew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire, or which create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD: Replace the existing smoke detectors having part number (P/N) 473052, which are located in the cargo compartment, with new, improved smoke detectors having P/N 473597–19, in accordance with Bombardier Service Bulletin 601R–26–016, Revision B, dated August 10, 2001, excluding CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet and Service Bulletin Comment Sheet—Facsimile Reply Sheet; or Revision C, dated August 17, 2001, excluding CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet and Service Bulletin Comment Sheet—Facsimile Reply Sheet.

Spares

(b) As of the effective date of this AD, no person shall install Walter Kidde Aerospace smoke detectors having P/N 473052 on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with Bombardier Service Bulletin 601R–26–016, Revision B, dated August 10, 2001, excluding CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet and

Service Bulletin Comment Sheet—Facsimile Reply Sheet; or Bombardier Service Bulletin 601R–26–016, Revision C, dated August 17, 2001, excluding CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet and Service Bulletin Comment Sheet—Facsimile Reply Sheet. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–21, dated May 23, 2001.

Effective Date

(f) This amendment becomes effective on February 18, 2003.

Issued in Renton, Washington, on December 31, 2002.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–332 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–44–AD; Amendment 39–13016; AD 2003–01–05]

RIN 2120–AA64

Airworthiness Directives; General Electric Co. CF6–80A Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Co. (GE) CF6–80A series turbofan engines. This action requires the following initial and repetitive inspections of certain part number (P/N) stage 1 high pressure turbine (HPT) rotor disks for cracks:

- Etch preparations and fluorescent penetrant inspections.
- Visual inspections.
- Eddy current inspections.

This amendment is prompted by a Boeing 767 airplane recently experiencing a stage 1 HPT rotor disk separation resulting in uncontained engine failure. The actions specified in this AD are intended to detect cracks in the bottoms of the dovetail slots that could propagate to failure of the disk and cause an uncontained engine failure.

DATES: Effective January 28, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 28, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–44–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anthony W. Cerra Jr., Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7128, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: On December 8, 2002, a Boeing 767–200 equipped with GE CF6–80A series engines experienced an uncontained failure of a stage 1 HPT rotor disk during climb. The results of the investigation indicate that the stage 1 HPT rotor disk failure was the result of a crack that initiated in an aft corner edge of the bottom of a dovetail slot. The crack propagated in fatigue to critical crack size, and subsequently resulted in disk rupture and separation.

In September 2000, a U.S. operator experienced a similar uncontained failure of the stage 1 HPT rotor disk during a ground maintenance run of a CF6–80C2 engine. The investigation of that failure had indicated that a crack initiated in the dovetail slot bottom aft edge. The root cause of the crack initiation remains unknown. However, cracks, burrs, or damage sustained in the dovetail slot bottom corner radii from improper handling and processing during new part manufacture and/or during maintenance were suspect for the September 2000 event. AD 2001–10–07, which became effective on June 28, 2001, was issued to mandate inspections of the CF6–80C2 stage 1 HPT rotor disk dovetail slot bottoms.

Since 1995, shop level inspections have found eleven stage 1 HPT rotor disks from CF6–80A series engines and CF6–80C2 series engines with crack-like indications in the dovetail slot bottoms. These indications resulted from material inclusions, toolmarks, broach burrs, and unknown causes. Of these eleven disks, three have been CF6–80A series engine stage 1 HPT rotor disks, with cracks in the dovetail slot bottom aft corner radius. Of the three that have been –80A series engine disks, two indications were associated with non-propagating broaching burrs occurring during manufacture, while no root cause was identified for the third. Only the third disk had crack propagation.

The failure of the disk involved in the recent CF6–80A series engine event was also caused by a crack that initiated in the dovetail slot bottom aft edge. This event is still under investigation. Therefore, this final rule; request for comments is an interim action until a root cause is established for the crack initiation and/or additional corrective actions are identified. The actions specified by this AD are intended to detect cracks in the bottoms of the dovetail slots that could propagate to failure of the disk and cause an uncontained engine failure. This condition, if not corrected, could result in stage 1 HPT rotor disk separation resulting in uncontained engine failure.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of GE Service Bulletin (SB) CF6–80A S/B 72–0779, dated March 20, 2002 that describes procedures for etch preparation, fluorescent penetrant, visual, and eddy current inspections of the following stage 1 HPT rotor disks P/N's used on CF6–80A, –80A1, –80A2, and –80A3 series turbofan engines:

9234M67G22	9234M67G24	9234M67G25	9234M67G26
9362M58G02	9362M58G06	9362M58G07	9362M58G09
9367M45G02	9367M45G04	9367M45G09	N/A

Differences Between This AD and the Manufacturer's Service Information

SB CF6–80A S/B 72–0779, dated March 20, 2002, only requires a one-time inspection at the next exposure of disks that have accumulated operating cycles, and requires no inspection of new disks that have not yet accumulated operating cycles. This AD requires initial and repetitive inspections of the affected P/N's of stage 1 HPT rotor disks, as specified in the following paragraph.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF6–80A, –80A1, –80A2, and –80A3 series turbofan engines of the same type design, this AD is being issued to detect cracks in the bottoms of the dovetail slots that could propagate to failure of the disk and cause an uncontained engine failure. This AD requires:

- For stage 1 HPT rotor disks not currently installed in engines, before further flight, inspection of disk dovetail slot bottoms. Any disk that meets or exceeds the reject criteria of SB CF6–80A S/B 72–0779, dated March 20, 2002, is not to be installed into any engine.
- For stage 1 HPT rotor disks that have been inspected in accordance with SB CF6–80A S/B 72–0779, dated March 20, 2002, before the effective date of this AD, inspection of the disk dovetail slot bottoms at each piece-part exposure of the disk, and replacement of disks as necessary.
- For stage 1 HPT rotor disks that have not been inspected in accordance with SB CF6–80A S/B 72–0779, dated March 20, 2002, before the effective date of this AD, inspection of the disk dovetail slot bottoms at next engine shop visit, and each piece-part exposure of the disk, and replacement of disks as necessary.
- A mandatory reporting requirement which mandates that within 5 calendar days of an inspection, any results that equal or exceed the reject criteria be reported to the FAA's Engine and Propeller Directorate, Engine Certification Office.

The actions are required to be done in accordance with the service bulletin described previously.

Interim Actions

The actions specified in the AD are considered interim actions and further action is anticipated based on the continuing investigation of the stage 1 HPT rotor disk cracking.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–44–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–01–05 General Electric Co.: Amendment 39–13016. Docket No. 2002–NE–44–AD.

Applicability

This airworthiness directive (AD) is applicable to General Electric Co. (GE) CF6–

80A, –80A1, –80A2, and –80A3 series turbofan engines with the stage 1 high pressure turbine (HPT) rotor disks part numbers (P/N's) listed in the following Table 1:

TABLE 1.—STAGE 1 HPT ROTOR DISKS P/N'S AFFECTED

9234M67G22	9234M67G24	9234M67G25	9234M67G26
9362M58G02	9362M58G06	9362M58G07	9362M58G09
9367M45G02	9367M45G04	9367M45G09	N/A

These engines are installed on, but not limited to, Airbus Industrie A310 and Boeing 767 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To detect cracks in the bottoms of the dovetail slots that could propagate to failure of the disk and cause an uncontained engine failure, do the following in accordance with paragraphs 3.A. through 3.C.(10)(h) of the Accomplishment Instructions of GE Service Bulletin (SB) CF6–80A S/B 72–0779, dated March 20, 2002:

(a) For stage 1 HPT rotor disks not currently installed in engines, before further flight, inspect the disk dovetail slot bottoms. Do not install any disk that meets or exceeds the reject criteria of the above service bulletin, into any engine.

(b) For stage 1 HPT rotor disks that have been inspected in accordance with the above service bulletin before the effective date of this AD, inspect the disk dovetail slot bottoms at each piece-part exposure of the disk, and replace disk as necessary.

(c) For stage 1 HPT rotor disks that have not been inspected in accordance with the above service bulletin before the effective date of this AD, inspect the disk dovetail slot bottoms at next engine shop visit, and each piece-part exposure of the disk, and replace disk as necessary.

Definitions

(d) An engine shop visit is defined as the induction of an engine into a shop, where the separation of a major engine flange will occur after the effective date of this AD.

(e) Piece-part exposure is defined as:

(1) The part being considered completely disassembled, when done in accordance with the disassembly instructions of the manufacturer's or other FAA-approved engine manual; AND

(2) The part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

Reporting Requirements

(f) Report within 5 calendar days of inspection the results of inspections that equal or exceed the reject criteria to: Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128; fax (781) 238–7199. Reporting requirements have been approved by the Office of Management and Budget (OMB) control number 2120–0056. Be sure to include the following information:

(1) Engine model in which the stage 1 HPT rotor disk was installed.

(2) Disk Part Number.

(3) Disk Serial Number.

(4) Disk Cycles-Since-New.

(5) Disk Cycles-Since-Last Inspection.

(6) Date and Location of Inspection.

Note 2: The FAA recommends recording the inspection results on GE Form 1653–1, found in GE SB CF6–80A S/B 72–0779, dated March 20, 2002, and sending the data to GE Airline Support Engineering.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(i) The inspections must be done in accordance with General Electric Co. Service Bulletin CF6–80A S/B 72–0779, dated March 20, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on January 28, 2003.

Issued in Burlington, Massachusetts, on January 2, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–331 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–166–AD; Amendment 39–13009; AD 2002–26–20]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), and DC–9–83 (MD–83) Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), and DC–9–83 (MD–83) airplanes, and Model MD–88 airplanes, that requires an inspection of the disconnect panel area above the aft left lavatory for chafed or damaged wires or unacceptable clearance between the wires and adjacent structure, and corrective actions, if necessary. The actions specified by this AD are intended to prevent chafing of wires at the disconnect panel above the aft left lavatory, which could result in electrical arcing, and consequent fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Effective February 18, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 18, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes was published in the **Federal Register** on March 14, 2002 (67 FR 11453). That action proposed to require an inspection of the disconnect panel area above the aft left lavatory for chafed or damaged wires or unacceptable clearance between the wires and adjacent structure, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Withdraw Proposed AD

One commenter suggests that the FAA reconsider mandating the service bulletin referenced in the proposed AD until other methods of resolution are investigated. Specifically, the commenter would like the FAA to work with Jamco and Boeing to develop a better solution, such as modifying the connector bracket and protecting the adjacent wire bundle. The commenter states that its airplanes have had wire chafing in the disconnect panel area above the aft left lavatory, and necessary precautions were taken to preclude further damage. The commenter notes that removing the corner of the electrical connector bracket and protecting the affected wire bundle with Teflon tape has provided an effective resolution to eliminate wire chafing on its airplanes. The commenter adds that the corrective action specified in the proposed AD that would require adjusting the clearance to 0.50 inch with the use of "tie-wraps," cannot be attained without creating a preload condition that could cause additional wire damage. A second commenter supports these concerns and suggests that the FAA withdraw the proposed AD and develop a more effective solution.

We do not agree with the commenters. We investigated the commenters' concerns and found that the airplane manufacturer did, in fact, inspect the wires in the aft left disconnect panel for a preload condition. The inspection revealed that a preload condition should not exist on the wires if they are "properly secured" with tie-wraps to obtain the 0.50-inch minimum clearance between the wires and the adjacent structure. If a preload condition is in some way created by adding the tie-wraps to the wires per the instructions in the service bulletin, the tie-wraps on the wire bundle, including the tie-wraps above the bundle, should be cut and reinstalled to obtain the 0.50-inch clearance, which will eliminate the preload condition. The manufacturer also investigated the possibility of cutting off the corner of the electrical connector bracket to eliminate the possibility of wire chafing, but there was a risk of damaging the existing wires with the tooling device used. No change to the final rule is necessary in this regard. However, if data are submitted that provide an alternative procedure that will offer an acceptable level of safety, we would consider this under the provisions for an alternative method of compliance, as provided in paragraph (b) of this final rule.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Appendix (and Evaluation Form). The service bulletin recommends that report findings be submitted to the manufacturer using the Appendix of the service bulletin. However, this AD does not require that operators submit reports of inspection findings.

Explanation of Change to Applicability

We have changed the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,198 airplanes of the affected design in the worldwide fleet. The FAA estimates that 586 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $35,160, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–20 McDonnell Douglas: Amendment 39–13009. Docket 2000–NM–166–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), and DC–9–83 (MD–83) airplanes, and Model MD–88 airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin MD80–24A184, dated October 26, 2000; equipped with Jamco lavatories.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of wires at the disconnect panel above the aft left lavatory, which could result in electrical arcing, and consequent fire in the cabin, accomplish the following:

Inspection and Corrective Actions

(a) Within 120 days from the effective date of this AD, perform a general visual inspection of the disconnect panel area above the aft left lavatory for damaged or chafed wires or unacceptable clearance between the wires and structure, in accordance with Boeing Alert Service Bulletin MD80–24A184, excluding Appendix and Evaluation Form, all dated October 26, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) Condition 1. If no damaged or chafed wire and if acceptable clearance (*i.e.*, 0.50-inch minimum) between the wires and adjacent structure is found, no further action is required by this AD.

(2) Condition 2. If no chafed or damaged wire and if unacceptable clearance between the wires and adjacent structure is found, before further flight, secure wires using tie-wraps to obtain a 0.50-inch minimum clearance, in accordance with the service bulletin.

(3) Condition 3. If any chafed or damaged wire and unacceptable clearance between the wires and adjacent structure is found, before further flight, repair or replace any chafed or damaged wire with a new wire and secure wires using tie-wraps to obtain a 0.50-inch minimum clearance, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin MD80–24A184, excluding Appendix and Evaluation Form, all dated October 26, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on February 18, 2003.

Issued in Renton, Washington, on January 2, 2003.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–327 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–315–AD; Amendment 39–13011; AD 2002–26–22]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Hawker 800XP airplanes, that requires installing jumper wires on the computer control switches to power the digital electronic engine control when overspeed protection is selected, and tying and stowing the jumper wires on the switches. The actions specified by this AD are intended to prevent loss of the overspeed protection function without the flightcrew's awareness, due to missing jumper wires, which could result in engine overspeed and possible uncommanded engine shutdown. This action is intended to address the identified unsafe condition.

DATES: Effective February 18, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 18, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Department 62, PO Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA),

Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Aerospace Engineer, Airframe and Propulsion Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4153; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800XP airplanes was published in the **Federal Register** on September 25, 2002 (67 FR 60191). That action proposed to require installing jumper wires on the computer control switches to power the digital electronic engine control when overspeed protection is selected, and tying and stowing the jumper wires on the switches.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Service Bulletin/Kit Drawing Report Fax. (This form is intended to be completed by operators and submitted to the manufacturer to report compliance; however, this AD does not include such a requirement.)

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 250 Model 800XP airplanes of the affected design in the worldwide fleet. The FAA estimates that 193 airplanes of U.S. registry will be affected by this AD. It will take approximately 5 work hours per airplane for airplanes with two oxygen bottles, and 6 work hours per airplane for airplanes with three oxygen bottles, to accomplish the required actions, at an average labor rate of $60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $300 per airplane (for airplanes with two oxygen bottles) or $360 per airplane (for airplanes with three oxygen bottles).

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–22 Raytheon Aircraft Company: Amendment 39–13011. Docket 2001–NM–315–AD.

Applicability: Model Hawker 800XP airplanes, as listed in Raytheon Service Bulletin SB 76–3480, dated August 2001, excluding Service Bulletin/Kit Drawing Report Fax; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the overspeed protection function without the flightcrew's awareness, due to missing jumper wires, which could result in engine overspeed and possible uncommanded engine shutdown, accomplish the following:

Jumper Wire Installation

(a) Within 3 months or 300 flight hours after the effective date of this AD, whichever occurs first, do the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD per Raytheon Service Bulletin SB 76–3480, dated August 2001, excluding Service Bulletin/Kit Drawing Report Fax.

(1) Install a four-inch jumper wire between terminals 1 and 3 on the computer control switch "NF."

(2) Install a six-inch jumper wire between terminals 1 and 3 on the computer control switch "NG."

(3) Tie and stow the jumper wires on the computer control switches "NF" and "NG" using tie-wrap.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Raytheon Service Bulletin SB 76–3480, dated August 2001, excluding Service Bulletin/Kit Drawing Report Fax. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Department 62, PO Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on February 18, 2003.

Issued in Renton; Washington, on December 30, 2002.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–150 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–56–AD; Amendment 39–13002; AD 2002–26–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes Modified by Supplemental Type Certificate ST01869AT–D

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 767–300 series airplanes modified by supplemental type certificate ST01869AT–D. This action requires modifying the passenger entertainment system (PES) and revising the airplane flight manual. This action is necessary to ensure that the airplane crew is able to remove electrical power from the PES when necessary and is advised of appropriate procedures for such action. Inability to remove power from the PES during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective January 28, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 28, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–56–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from TIMCO Engineered Systems, Inc., 623 Radar Road, Greensboro, North Carolina 27410. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Chupka, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6070; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

The Federal Aviation Administration (FAA) recently completed a review of in-flight entertainment (IFE) systems certified by supplemental type certificate (STC) and installed on transport category airplanes. The review focused on the interface between the IFE system and airplane electrical system, with the objective of determining if any unsafe conditions exist with regard to the interface. STCs issued between 1992 and 2000 were considered for the review.

The type of IFE systems considered for review were those that contain video monitors (cathode ray tubes or liquid crystal displays; either hanging above the aisle or mounted on individual seat backs or seat trays), or complex circuitry (*i.e.*, power supplies, electronic distribution boxes, extensive wire routing, relatively high power consumption, multiple layers of circuit protection, etc.). In addition, in-seat power supply systems that provide power to more than 20 percent of the total passenger seats were also considered for the review. The types of IFE systems not considered for review include systems that provide only audio signals to each passenger seat, ordinary in-flight telephone systems (*e.g.*, one telephone handset per group of seats or bulkhead-mounted telephones), systems that only have a video monitor on the forward bulkhead(s) (or a projection system) to provide passengers with basic airplane and flight information, and in-seat power supply systems that provide power to less than 20 percent of the total passenger seats.

Items considered during the review include the following:

- Can the electrical bus(es) supplying power to the IFE system be deenergized when necessary without removing power from systems that may be required for continued safe flight and landing?
- Can IFE system power be removed when required without pulling IFE system circuit breakers (*i.e.*, is there a switch (dedicated to the IFE system or a combination of loads) located in the flight deck or cabin that can be used to remove IFE power?)?
- If the IFE system requires changes to flight crew procedures, has the airplane flight manual (AFM) been properly amended?
- If the IFE system requires changes to cabin crew procedures, have they been properly amended?
- Does the IFE system require periodic or special maintenance?

In all, approximately 180 IFE systems approved by STC were reviewed by the

FAA. The review results indicate that potential unsafe conditions exist on some IFE systems installed on various transport category airplanes. These conditions can be summarized as:

- Electrical bus(es) supplying power to the IFE system cannot be deenergized when necessary without removing power from systems that may be required for continued safe flight and landing.
- Power cannot be removed from the IFE system when required without pulling IFE system circuit breakers (*i.e.*, there is no switch dedicated to the IFE system or combination of systems for the purpose of removing power).
- Installation of the IFE system has affected crew (flight crew and/or cabin crew) procedures, but the procedures have not been properly revised.

FAA's Determination

As part of its review of IFE systems, the FAA has determined that an unsafe condition exists on Boeing Model 767–300 series airplanes modified by STC ST01869AT–D. The passenger entertainment system (PES) on these airplanes is connected to an electrical bus that cannot be deactivated without also removing power from airplane systems necessary for safe flight and landing. There is no other means to remove power from the PES. Additionally, the airplane manufacturer's published flight crew and cabin crew emergency procedures do not advise the flight crew and cabin crew that power cannot be removed from the PES. This condition, if not corrected, could result in inability to remove power from the PES during a non-normal or emergency situation, and consequent inability to control smoke or fumes in the airplane flight deck or cabin.

Explanation of Relevant Service Information

The FAA has reviewed and approved TIMCO Service Bulletin TSB–767–23–005, Revision J, dated August 29, 2001; as revised by TIMCO Engineering Change Orders TSB–767–23–005, Revision J, K1, dated September 10, 2001; K2, dated September 18, 2001; and K3, dated September 28, 2001. That service bulletin describes procedures for modifying the PES by installing two new relays and additional wiring so that the power switch located in the flight compartment can be used to remove power completely from the PES. The service documents also describe procedures for installing a switch guard on the power switch for the PES. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The FAA also has reviewed and approved TIMCO Airplane Flight Manual Supplement for Boeing B767–300, TIM–AFM–01034, Revision A, dated October 12, 2001, which revises the procedures under the heading "Electrical Smoke or Fire" in the "Emergency Procedures" section of the AFM to provide instructions for the cabin crew to remove power from the PES in an emergency.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to ensure that the airplane crew is able to remove electrical power from the PES when necessary and is advised of appropriate procedures for such action. Inability to remove power from the PES during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This AD requires accomplishment of the actions specified in the service bulletin described previously. This AD also would require revising procedures to be followed in the event of smoke or fire in the airplane, as contained under the heading "Electrical Smoke or Fire" in the "Emergency Procedures" section of the AFM. Accomplishment of these actions is intended to adequately address the identified unsafe condition.

In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the amount of time necessary to accomplish the proposed actions, and the practical aspect of accomplishing the proposed actions within an interval of time that parallels normal scheduled maintenance for the affected operators. In consideration of these factors, the FAA has determined that 18 months after the effective date of this AD represents an appropriate interval of time allowable wherein an acceptable level of safety can be maintained.

Other Relevant Rulemaking

The FAA has previously issued several ADs that address unsafe conditions and require corrective actions similar to those that will be required by this AD. These other ADs, and the airplane models and STCs to which they apply, are as follows:

Model/Series	STC Number	AD Reference
Airbus A340–211	ST0902AC–D	AD 2001–18–01, amendment 39–12427 (66 FR 46939, September 10, 2001)
Boeing 737–300	ST00171SE	AD 2001–14–10, amendment 39–12321 (66 FR 36455, July 12, 2001)
Boeing 737–700	ST09100AC–D ST09104AC–D ST09105AC–D ST09106AC–D	AD 2001–14–12, amendment 39–12323 (66 FR 36452, July 12, 2001)
Boeing 747–100 and –200	SA8622SW	AD 2001–14–11, amendment 39–12322 (66 FR 36453, July 12, 2001)
Boeing 747–100 and –200	ST00196SE	AD 2001–16–19, amendment 39–12388 (66 FR 43068, August 17, 2001)
Boeing 747–400	SA8843SW	AD 2001–14–15, amendment 12326 (66 FR 36447, July 12, 2001)
Boeing 747SP	ST09097AC–D	AD 2001–14–14, amendment 39–12325 (66 FR 36449, July 12, 2001)
Boeing 757–200	SA1727GL	AD 2001–14–01, amendment 39–12311 (66 FR 36149, July 11, 2001)
Boeing 767–200	SA4998NM	AD 2001–16–21, amendment 39–12390 (66 FR 43072, August 17, 2001)

Model/Series	STC Number	AD Reference
Boeing 767–200	SA5134NM	AD 2001–16–20, amendment 39–12389 (66 FR 43066, August 17, 2001)
Boeing 767–200	ST09022AC–D	AD 2001–14–13, amendment 39–12324 (66 FR 36450, July 12, 2001)
Boeing 767–300	SA5765NM SA5978NM	AD 2001–16–17, amendment 39–12386 (66 FR 42937, August 16, 2001)
Boeing 767–300	SA7019NM–D	AD 2001–18–08, amendment 39–12434 (66 FR 46517, September 6, 2001)
Boeing 767–300	ST00118SE	AD 2001–14–04, amendment 39–12314 (66 FR 36699, July 13, 2001)
Boeing 767–300	ST00157SE	AD 2001–16–18, amendment 39–12387 (66 FR 43070, August 17, 2001)
McDonnell Douglas DC–9–51 and DC–9–83	SA8026NM	AD 2001–14–02, amendment 39–12312 (66 FR 36456, July 12, 2001)
McDonnell Douglas DC–10–30	SA8452SW	AD 2001–16–22, amendment 39–12391 (66 FR 43074, August 17, 2001)
McDonnell Douglas DC–10–30	ST00054SE	AD 2001–13–03, amendment 39–12313 (66 FR 36150, July 11, 2001)

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 17 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $1,020 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–56–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT . Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–26–14 Boeing: Amendment 39–13002. Docket 2002–NM–56–AD.

Applicability: Model 767–300 series airplanes modified by supplemental type certificate (STC) ST01869AT–D, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To ensure that the airplane crew is able to remove electrical power from the passenger entertainment system (PES) when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the PES system installed on the airplane according to TIMCO Service Bulletin TSB–767–23–005, Revision J, dated August 29, 2001; as revised by TIMCO Engineering Change Orders TSB–767–23–005, Revision J, K1, dated September 10, 2001; K2, dated September 18, 2001; and K3, dated September 28, 2001.

(2) Before further flight after accomplishing paragraph (a)(1) of this AD, revise the procedures under "Electrical Smoke or Fire" in the "Emergency Procedures" section of the FAA-approved airplane flight manual (AFM) to include TIMCO Airplane Flight Manual Supplement for Boeing B767–300, TIM–AFM–01034, Revision A, dated October 12, 2001. When the information in that AFM supplement has been incorporated into the FAA-approved general revisions of the AFM, the general revisions may be incorporated into the AFM, and the AFM supplement may be removed from the AFM.

Part Installation

(b) As of the effective date of this AD, no person may install a PES on any airplane according to STC ST01869AT–D, unless the PES is modified and the AFM is revised according to this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with TIMCO Service Bulletin TSB–767–23–005, Revision J, dated August 29, 2001; as revised by TIMCO Engineering Change Order TSB–767–23–005, Revision J, K1, dated September 10, 2001; TIMCO Engineering Change Order TSB–767–23–005, Revision J, K2, dated September 18, 2001; and TIMCO Engineering Change Order TSB–767–23–005, Revision J, K3, dated September 28, 2001; and TIMCO Airplane Flight Manual Supplement for Boeing B767–300, TIM–AFM–01034, Revision A, dated October 12, 2001; as applicable. TIMCO Service Bulletin TSB–767–23–005, Revision J, dated August 29, 2001, includes the following effective pages:

Page number	Revision letter shown on page	Date shown on page
1–25	J	August 29, 2001.
Engineering Change Order TSB–767–23–005, K1		
1–9	J	September 10, 2001.
Engineering Change Order TSB–767–23–005, K2		
1–9	J	September 18, 2001.
Engineering Change Order TSB–767–23–005, K3		
1–2	J	September 28, 2001.

(Only the title page of the service bulletin and the first page of the Engineering Change Orders contain the issue date of those documents; no other page of those documents contains this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from TIMCO Engineered Systems, Inc., 623 Radar Road, Greensboro, North Carolina 27410. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 28, 2003.

Issued in Renton, Washington, on December 27, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–50 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–46–AD; Amendment 39–13018; AD 2003–02–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and –400D Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 and –400D series airplanes, that requires repetitive inspections to detect discrepancies of the drip shield and supports located above the rudder pedal mechanisms; corrective action, if necessary; and eventual modification of the drip shield, which would terminate the repetitive inspections. The actions specified by this AD are intended to prevent unrestrained drip shields from interfering with the rudder pedal mechanism, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 18, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 18, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clint Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1622; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes was published in the **Federal Register** on June 28, 2002 (67 FR 43570). That action proposed to require repetitive inspections to detect discrepancies of the drip shield and supports located above the rudder pedal mechanisms; corrective action, if necessary; and eventual modification of the drip shield, which would terminate the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter concurs with the proposed AD.

Request To Clarify Applicability

One commenter asks that the applicability in the proposed AD be clarified. The commenter suggests adding Model 747–400 series airplanes certificated in the "passenger" category, in lieu of "any" category, to the applicability section. The commenter states that the drip shields referenced in the proposed AD are not installed on Model 747–400F (freighter) series airplanes.

We agree with the commenter that the applicability should be clarified; however, not in the manner proposed. Per the 747 Type Certificate Data Sheet, which specifies Model 747–400, –400D, and –400F series airplanes, we have clarified the applicability throughout this final rule to specify Model 747–400 and –400D series airplanes only.

Request To Extend Repetitive Inspection Interval

One commenter reiterates the statement in the differences section of the proposed AD that specifies the repetitive inspection interval for the "C-check" as every 3,000 flight hours. The commenter asks that an interval of 6,000 flight hours or 18 months be allowed as a substitute for the "C-check" recommended in the referenced service bulletin, in that it is a more appropriate interval, and appropriately limits both long- and short-haul airplanes. The commenter notes that the Boeing 747–400 Maintenance Planning Document recommends 6,000 flight hours or 18 months as the "C-check" interval, and recent data indicate that the average inspection interval for the fleet is 5,750 flight hours. The commenter adds that imposing an interval of 3,000 flight hours would force some operators to conduct twice as many inspections with less time and manpower available, with no apparent improvement in airplane safety.

We agree with the commenter. Substantiating data were submitted indicating that an extension of the repetitive inspection interval to 6,000 flight hours or 18 months, whichever is first, provides an acceptable level of safety. We find that such an extension in the repetitive inspection interval will allow the inspections to be completed during regularly scheduled maintenance visits. Paragraphs (a)(1) and (a)(2) of this final rule have been changed accordingly.

Request To Change Certain Wording

One commenter suggests that certain wording specified in Figure 2 of the Accomplishment Instructions of the referenced service bulletin be changed. The note in Figure 2 states, "Plate clips found dis-bonded from the dripshield should be re-installed with rivets." The commenter asks that the word "should" be changed to "must." The commenter does not give a reason for the request.

We do not agree with the commenter. Although the note in Figure 2 of the Accomplishment Instructions of the referenced service bulletin does not definitively specify that discrepant plate clips must be reinstalled with rivets, paragraph (c) of this AD mandates the requirements for installing the rivets. No change to the final rule is necessary in this regard.

Change to Final Rule

Because the language in Note 3 of the proposed AD is regulatory in nature, that note has been redesignated as paragraph (b) of this final rule. Subsequent paragraphs have been reordered accordingly.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 498 airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $3,600, or $60 per airplane, per inspection cycle.

It will take approximately 3 work hours per airplane to accomplish the terminating action, at an average labor rate of $60 per work hour. The cost of required parts will be minimal. Based on these figures, the cost impact of the required terminating action on U.S.

operators is estimated to be $10,800, or $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–02–02 Boeing: Amendment 39–13018. Docket 2002–NM–46–AD.

Applicability: Model 747–400 and -400D series airplanes, certificated in any category; as listed in Boeing Service Bulletin 747–25A3271, Revision 1, dated December 19, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent unrestrained drip shields from interfering with the rudder pedal mechanism, which could result in reduced controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Within 1,200 flight hours after the effective date of this AD: Perform a general visual inspection of the drip shield and supports of the forward rudder quadrant to detect discrepancies (less than 0.50-inch clearance from the components in the forward rudder quadrant, disbonded clip plates, and missing fasteners), in accordance with Figure 1 of the Accomplishment Instructions of Boeing Service Bulletin 747–25A3271, Revision 1, dated December 19, 2001, excluding Evaluation Form.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no discrepancy is found: Repeat the inspection thereafter at least every 6,000 flight hours or 18 months, whichever is first, until the terminating action required by paragraph (c) of this AD has been accomplished.

(2) If any discrepancy is found during any inspection required by this paragraph: Before further flight, perform the specified corrective actions in accordance with Figure 1 of the Accomplishment Instructions of the service bulletin. Thereafter, repeat the inspection at least every 6,000 flight hours or 18 months, whichever is first, until the terminating action required by paragraph (c) of this AD has been accomplished.

(b) Accomplishment before the effective date of this AD of an inspection and applicable corrective actions in accordance with Boeing Alert Service Bulletin 747–25A3271, dated April 12, 2001, is acceptable for compliance with the initial inspection requirement of paragraph (a) of this AD.

Terminating Action

(c) Within 2 years after the effective date of this AD, modify the drip shield by installing blind rivets in each clip plate and changing the part numbers of the clip plates and drip shield, in accordance with Figure 2 of the Accomplishment Instructions of Boeing Service Bulletin 747–25A3271, Revision 1, dated December 19, 2001, excluding Evaluation Form.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–25A3271, Revision 1, dated December 19, 2001, excluding Evaluation Form. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 18, 2003.

Issued in Renton, Washington, on January 6, 2003.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–559 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 020813189–2330–02]

RIN 0691–AA44

Direct Investment Surveys: BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2002

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises regulations for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States.

The BE–12 survey is mandatory and is conducted once every 5 years by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The benchmark survey will be conducted for 2002. BEA will send the survey to potential respondents in February of the year 2003; responses will be due by May 31, 2003. The prior benchmark survey was conducted for 1997. The benchmark survey covers virtually the entire universe of foreign direct investment in the United States in terms of value, and is BEA's most comprehensive survey of such investment in terms of subject matter.

The revised rule raises the reporting threshold on the BE–12(SF) short form and the BE–12 Bank form from $3 million to $10 million; directs that only nonbank majority-owned U.S. affiliates of foreign companies report on the BE–12(LF) long form; raises the reporting threshold on the BE–12(LF) long form from $100 million to $125 million; and directs bank holding companies to file a fully consolidated report, including all nonbank operations, on the BE–12 Bank form. (Previously, the nonbanking operations were reported on a separate BE–12(LF) long form or BE–12(SF) short form.) These changes will reduce respondent burden, especially for small companies and bank holding companies.

DATES: This final rule will be effective February 12, 2003.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: On September 12, 2002, the Bureau of Economic Analysis (BEA) published in the **Federal Register** (67 FR 57767) a notice of proposed rulemaking setting forth revised reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2002. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule, except for minor language changes to remove a possible source of ambiguity with respect to the due date for filing Form BE–12(X), report for claiming exemption from filing a BE–12(LF) long form, BE–12 (SF) short form, or BE–12 Bank form.

This final rule amends 15 CFR 806.17 to set forth revised reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2002. The Bureau of Economic Analysis, U.S. Department of Commerce, will conduct the survey under the Inter-national Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, "the Act."

Section 4(b) of the Act requires that with respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter. In conducting surveys (of U.S. direct investment abroad and foreign direct investment in the United States) pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible identify the location, nature, and magnitude of, and changes in the total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates; information on the balance sheet of parents and affiliates and related financial data, income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and related information regarding trade (including trade in both goods and services) between a parent and each of its affiliates and between each parent or affiliate and any other person; collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level; obtain information on tax payments by parents and affiliates by country; and determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA. The benchmark survey is a census; it covers virtually the entire universe of foreign direct investment in the United States in terms of value, and is BEA's most comprehensive survey of such investment in terms of subject matter. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). The data are needed to measure the size and economic significance of foreign direct investment in the United States, to measure changes in such investment, and to assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. The data are disaggregated by industry of U.S. affiliate, by country and industry of foreign parent or ultimate beneficial owner, and, for selected items, by State.

The data will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies. Data from the benchmark survey on U.S. affiliates' employee compensation, profits, interest receipts and expenses, depreciation, and income and other taxes are used by BEA to compute U.S. affiliates' gross product or value added. The estimates are used to measure U.S. affiliates' share of U.S. gross domestic product and to evaluate affiliates' profitability and productivity. Data on employment by affiliates are used to

link enterprise-level data on foreign-owned companies collected in the benchmark survey to establishment-level data for the same companies collected by the Census Bureau.

It should be noted that, aside from their use in compiling the U.S. national and international economic accounts, the benchmark survey data are primarily intended as general purpose statistics. Based on past experience, areas of particular and lasting analytical and policy interest include trade in goods and services, employment and employee compensation, profitability, regional location, taxes, and technology. These areas, all of which are addressed by the proposed survey, are also ones for which the Act specifically requires data to be collected. Another area of continuing policy interest, particularly at the State and local levels, is the impact of foreign direct investment on individual States. The data in the survey disaggregated by State are intended to address needs in this area.

The forms to be used in the survey are:

1. Form BE–12(LF) (Long Form)—Report for nonbank majority-owned U.S. affiliates (a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interests of all foreign parents of the U.S. affiliate exceed 50 percent) with assets, sales or gross operating revenues, or net income greater than $125 million (positive or negative);

2. Form BE–12(SF) (Short Form)—Report for nonbank majority-owned U.S. affiliates with assets, sales or gross operating revenues, or net income greater than $10 million, but not greater than $125 million (positive or negative) and nonbank minority-owned U.S. affiliates (owned 50 percent or less) with assets, sales or gross operating revenues, or net income greater than $10 million (positive or negative). U.S. affiliates with total assets, sales or gross operating revenues, and net income between $10 million and $30 million (positive or negative) will be required to report only selected data items on the short form;

3. Form BE–12 Bank—Report for U.S. affiliates that are banks, bank holding companies, or banking and nonbanking operations of bank holding companies; and

4. Form BE–12(X)—Report for claiming exemption from filing a BE–12(LF) long form, BE–12(SF) short form, or BE–12 Bank form.

Executive Order 13132

This final rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule covers collections of information subject to the provisions of the PRA. The OMB has approved this collection and assigned to it OMB Control Number 0608–0042. The collection will display this control number.

The survey is expected to result in the filing of reports from approximately 17,700 respondents. The respondent burden for this collection of information is estimated to vary from 20 minutes to 715 hours per response, with an average of 11.3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden of the survey is estimated at about 199,500 hours (17,700 times 11.3 hours average burden).

Comments regarding the burden estimate or any aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0042, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)) that this final rulemaking will not have a significant economic impact on a substantial number of small entities. Few small businesses as defined by the RFA are foreign owned; those that are and have total assets, sales or gross operating revenues, and net income each equal to or less than $10 million are not required to report on the BE–12 (LF) long form, BE–12(SF) short form, or BE–12 Bank form. To further reduce reporting burden for smaller companies, the reporting threshold for filing a BE–12(LF) long form has been raised to $125 million, from $100 million in the 1997 survey, and companies with total assets, sales or gross operating revenues and net income (positive or negative) between $10 million and $30 million will be required to report only selected data items on the BE–12(SF) short form. Accordingly, this action will relieve reporting burdens on small entities.

List of Subjects in 15 CFR Part 806

International transactions, Economic statistics, Foreign investment in the United States, Penalties, Reporting and record keeping requirements.

Dated: December 18, 2002.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR Part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.17 is revised to read as follows:

§ 806.17 Rules and regulations for BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2002

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 2002. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.15(a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given in this section.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2002, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4, or electronically using BEA's Automated Survey Transmission and Retrieval (ASTAR) system. This may be accomplished by completing and returning either Form BE–12(X) within

30 days of the date it was received, if Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank do not apply, or by completing and returning Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank, whichever is applicable, by May 31, 2003.

(b) *Who must report.* A BE–12 report is required for each U.S. affiliate, *i.e.*, for each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 2002 fiscal year. A report is required even though the foreign person's ownership interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE–12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—2002 (Long Form) must be completed and filed by May 31, 2003, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year and that was majority-owned by one or more foreign parents (a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent), if:

(i) It is not a bank or a bank holding company, and is not owned directly or indirectly by a U.S. bank holding company, and

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded $125 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes;

(C) Net income after provision for U.S. income taxes.

(2) Form BE–12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—2002 (Short Form) must be completed and filed by May 31, 2003 by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year, if:

(i) It is not a bank or a bank holding company, and is not owned directly or indirectly by a U.S. bank holding company, and

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, one or more of the following three items for a majority-owned U.S. affiliate (not just the foreign parent's share) exceeded $10 million, but no one item exceeded $125 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes;

(C) Net income after provision for U.S. income taxes, or

(iii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, one or more of the following three items for a minority-owned U.S. affiliate (not just the foreign parent's share) exceeded $10 million, (positive or negative) at the end of, or for, its 2002 fiscal year (a "minority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less):

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes;

(C) Net income after provision for U.S. income taxes.

(3) Form BE–12 Bank—Benchmark Survey of Foreign Direct Investment in the United States—2002 BANK must be completed and filed by May 31, 2003, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year, if:

(i) The U.S. affiliate is in "banking", which, for purposes of the BE–12 survey, covers business enterprises engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, U.S. branches and agencies of foreign banks whether or not they accept domestic deposits, savings and loans, savings banks, and bank holding companies, including all subsidiaries or units of a bank holding company and

(ii) On a fully consolidated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded $10 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes;

(C) Net income after provision for U.S. income taxes.

(4) Form BE–12(X)—Benchmark Survey of Foreign Direct Investment in the United States—2002 Claim for Exemption from Filing BE–12(LF), BE–12(SF), or BE–12 Bank must be completed and filed within 30 days of the date it was received by:

(i) Each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year (whether or not the U.S. affiliate, or its agent, is contacted by BEA concerning its being subject to reporting in the 2002 benchmark survey), but is exempt from filing Form BE–12(LF), Form BE–12(SF), and Form BE–12 Bank; and

(ii) Each U.S. business enterprise, or its agent, that is contacted, in writing, by BEA concerning its being subject to reporting in the 2002 benchmark survey but that is not otherwise required to file the Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately.

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file form BE–12(LF), BE–12(SF), or Form BE–12 Bank if each of the following three items for the U.S. affiliate (not just the foreign parent's share) did not exceed $10 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(i) Total assets (do not net out liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; and

(iii) Net income after provision for U.S. income taxes.

(2) If a U.S. business enterprise was a U.S. affiliate at the end of its 2002 fiscal year but is exempt from filing a completed Form BE–12(LF), BE–12(SF), or Form BE–12 Bank, it must nevertheless file a completed and certified Form BE–12(X).

(f) *Due date.* A fully completed and certified Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank is due to be filed with BEA not later than May 31, 2003. A fully completed and certified Form BE–12(X) is due to be filed with BEA within 30 days of the date it was received.

[FR Doc. 03–629 Filed 1–10–03; 8:45 am]

BILLING CODE 3510–06–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9035]

RIN 1545–AX99

Constructive Transfers and Transfers of Property to a Third Party on Behalf of a Spouse

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the tax treatment of redemptions, during marriage or incident to divorce, of stock in a corporation owned by a spouse or former spouse.

DATES: *Effective Date:* These regulations are effective January 13, 2003.

Applicability Date: These regulations are applicable to redemptions of stock on or after January 13, 2003 that are pursuant to instruments in effect after January 13, 2003. These regulations are also applicable to redemptions before January 13, 2003 or that are pursuant to instruments in effect before January 13, 2003 if the spouses or former spouses execute a written agreement on or after August 3, 2001, that satisfies the requirements of § 1.1041–2(c)(1) or (2).

FOR FURTHER INFORMATION CONTACT: Edward C. Schwartz at (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1751. Responses to this collection of information are required for certain taxpayers to redeem stock in a corporation and utilize the special rule in § 1.1041–2(c) of these regulations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent/recordkeeper varies from 20 minutes to one hour, depending on individual circumstances, with an estimated average of 30 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On August 3, 2001, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking under section 1041 relating to certain redemptions, during marriage or incident to divorce, of stock in a corporation owned by a spouse or former spouse (REG–107151–00)(2001–2 C.B. 370)[66 FR 40659]). Written and electronic comments were solicited, and a public hearing was scheduled for December 14, 2001. Several comments were received and are discussed below. Because no requests to speak were timely received, the public hearing was cancelled. After consideration of all comments received, the proposed regulations under section 1041 are adopted as revised by this Treasury decision.

Explanation and Summary of Comments

1. Special Rules in Cases of Written Agreements Between the Spouses

The proposed regulations provided generally that if a corporation redeemed stock owned by a transferor spouse and the redemption resulted in a constructive distribution to the nontransferor spouse under applicable tax law, then the redemption would be taxable to the nontransferor spouse as if the nontransferor spouse had actually received the redemption proceeds. The proposed regulations contained a special rule in § 1.1041–2(c) allowing the spouses the option of treating the redemption as resulting in a constructive distribution to the nontransferor spouse, and therefore taxable to the nontransferor spouse, even if the redemption would not result in a constructive distribution to the nontransferor spouse under applicable tax law. The proposed regulations provided that the spouses could elect the special rule by providing in the divorce or separation instrument, or other written agreement, that the spouses must file their Federal income tax returns in a manner that reflects that the transferor spouse transferred the redeemed stock to the nontransferor spouse in exchange for the redemption proceeds and the corporation redeemed the stock from the nontransferor spouse in exchange for the redemption proceeds. The proposed regulations also provided that the special rule would be effective for written agreements executed on or after August 3, 2001, that met these requirements.

Commentators expressed concern that the proposed regulations contained no provision addressing the situation where the redemption results in a constructive distribution to the nontransferor spouse under applicable tax law, but the spouses nevertheless would like to agree that the redemption will be treated as a redemption distribution to the transferor spouse. They suggested that the final regulations expand the special rule in § 1.1041–2(c) to allow the spouses to agree in the divorce or separation instrument, or other valid written agreement, that the redemption will be taxable to the transferor spouse notwithstanding that the redemption might otherwise result in a constructive distribution to the nontransferor spouse under applicable tax law.

The IRS and Treasury Department believe that this suggestion is consistent with the policy of section 1041 and its legislative history, which is to provide flexibility to spouses and former spouses concerning the structuring of their property transfers during marriage and incident to divorce. Accordingly, this suggestion has been adopted in § 1.1041–2(c) of the final regulations. New *Example 2* in § 1.1041–2(d) illustrates the application of this new special rule.

The manner of electing the special rule also has been modified somewhat in the final regulations. Under the final regulations, the spouses can elect the special rule by expressly providing, in a divorce or separation instrument or other valid written agreement, that expressly supersedes any other instrument or agreement concerning the purchase, sale, redemption, or other disposition of the stock that is the subject of the redemption, their mutual intent concerning whether the redemption should be treated as a redemption distribution to the transferor spouse or to the nontransferor spouse. The IRS and Treasury Department will treat a divorce or separation instrument or other valid written agreement executed on or after August 3, 2001, and before May 13, 2003 that meets the

requirements of the special rule of the proposed regulations as also meeting the requirements of the special rule in paragraph (c)(2) of the final regulations.

2. Constructive Distribution Standard

Some commentators also expressed concern that taxpayers and divorce practitioners may not be aware of the situations in which a redemption of stock owned by the transferor spouse could result in a constructive distribution to the nontransferor spouse under applicable tax law. They therefore suggested that the final regulations either provide that the redemption will be treated as a redemption distribution to the transferor spouse regardless of applicable tax law, unless the spouses provide otherwise in a written agreement and file their federal income tax returns accordingly, or provide specific definitions and examples of situations in which a redemption would result in a constructive distribution to the nontransferor spouse under applicable tax law.

The IRS and Treasury Department continue to believe that the approach in the proposed regulations is appropriate. Under existing tax law, a redemption of stock owned by one shareholder may result in a constructive distribution to another shareholder if such nonredeeming shareholder has a primary and unconditional obligation to purchase the redeeming shareholder's stock. *See Rev.* Rul. 69–608 (1969–2 C.B. 42), *Wall* v. *United States*, 164 F.2d 462 (4th Cir. 1947), and *Sullivan* v. *United States*, 363 F.2d 724 (8th Cir. 1966). This "primary and unconditional obligation" standard applies to all redemptions, including those involving stock of closely held corporations by spouses or former spouses. A rule that provides that a redemption of stock owned by the transferor spouse will always be treated as a redemption distribution to the transferor spouse would be inconsistent with this established law. Furthermore, if taxpayers and divorce practitioners are uncertain about the application of the "primary and unconditional obligation" standard, they may take advantage of the special rules of § 1.1041–2(c), which permit spouses to avoid any question of whether a redemption results in a constructive distribution to the nontransferor spouse under applicable tax law relating to the primary and unconditional obligation standard by providing in a written agreement which spouse will bear the tax consequences of the redemption.

3. Withdrawal of § 1.1041–1T(c), Q&A–9

Section 1.1041–1T(c), Q&A–9, of the temporary Income Tax Regulations provides that there are three situations in which a transfer of property to a third party on behalf of a spouse or former spouse will qualify under section 1041 (provided all other requirements of that section are met): (1) if such transfer is required by the divorce or separation instrument; (2) if the transfer is pursuant to a written request of the other spouse; and (3) where the transferor spouse receives a written consent or ratification from the nontransferor spouse. Under Q&A–9, a transfer of property made to a third party on behalf of a spouse is treated first as a deemed transfer of the property made directly to the nontransferor spouse in a transfer to which section 1041 applies, and then as a deemed transfer of the property from the nontransferor spouse to the third party in a transaction to which section 1041 does not apply.

Two commentators recommended that Q&A–9 be withdrawn. They suggested that retaining that provision would lead to confusion since it would apply to all transfers of property other than stock redemptions while this final regulation would apply only to stock redemptions. Another commentator advocated replacing existing Q&A–9 with a single standard applicable to all transfers of property to third parties under which the tax consequences of the transfer would follow the transfer's form unless the spouses agreed in writing otherwise.

The "on behalf of" standard has not led to the same confusion and litigation outside the area of stock redemptions because, in such cases, it does not conflict with any other standard of tax law. *See, e.g., Ingham* v. *United States*, 167 F.3d 1240 (9th Cir. 1999). In addition, as discussed above, a single standard applicable to all transfers of property to third parties under which the tax consequences of the transfer would follow the transfer's form would be inconsistent with the primary and unconditional obligation standard applicable to stock redemptions under existing tax law. Consequently, the IRS and Treasury Department continue to believe that the final regulations should be limited to stock redemptions and that Q&A–9 should not be withdrawn.

4. Use of IRS Form To Designate Intent

One commentator proposed that the final regulations include a requirement that the spouses or former spouses attach a form to their Federal income tax returns showing which spouse or former spouse has the tax consequences of the redemption. After careful consideration, the IRS and Treasury Department have concluded that requiring spouses, and particularly spouses who have divorced or are divorcing, to complete and file an additional form in order to obtain the result of the special rules would unnecessarily increase the administrative burden on taxpayers and on the IRS. The divorce or separation instrument, or other valid written agreement of the spouses, provides adequate evidence of the spouses' intent regarding which spouse has the tax consequences of the redemption.

5. Legal Guardians and/or Executors of Estates of Spouses

One commentator suggested that the final regulations provide specific authority for a legal guardian of a spouse or former spouse or the executor of a spouse's or former spouse's estate to elect the application of one of the special rules of § 1.1041–2(c). However, a legal guardian, custodian, or executor of an estate that has the general authority to act on behalf of a spouse or former spouse (or his or her estate) for federal income tax purposes needs no additional or special authority to elect one of the special rules under § 1.1041–2(c). Accordingly, this suggestion has not been adopted.

6. Other Changes

In an effort to improve the clarity of the final regulations, the order of the two paragraphs in § 1.1041–2(a) has been reversed and conforming changes have been made in the remainder of the final regulations. Also, the final regulations remove the provision of the proposed regulations that would have limited their application to transactions in which both spouses or former spouses own stock immediately before or after the redemption. On further reflection, the IRS and Treasury Department believe it is appropriate to apply the regulations to all stock redemptions, regardless of whether both spouses own stock of the corporation before or after the redemption.

7. Effective Date

One comment was received suggesting that the effective date provision of the final regulations be changed to include all stock redemptions that were pending on the day the proposed regulations were issued (August 2, 2001) and to include all cases involving stock redemptions at issue on that date at any level of audit, review, appeal, or collection by the IRS or before the Tax Court or any other

federal court. It was argued that this proposal would be consistent with the current state of the law and would resolve numerous cases involving taxpayers and the IRS. Adopting this suggestion would have the effect of making the application of the final regulations retroactive. Apart from the special rules of § 1.1041–2(c), which are based upon the stated intent of the spouses, the IRS and Treasury do not believe it is appropriate to apply the final regulations retroactively. Therefore, the final regulations do not adopt this suggestion.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Edward C. Schwartz of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.1041–1T, paragraph (c) is amended by adding a sentence at the end of A–9 to read as follows:

§ 1.1041–1T Treatment of transfers of property between spouses or incident to divorce (temporary).

* * * * *

(c) * * *

A–9: * * * This A–9 shall not apply to transfers to which § 1.1041–2 applies.

* * * * *

Par. 3. Section 1.1041–2 is added to read as follows:

§ 1.1041–2 Redemptions of stock.

(a) *In general*—(1) *Redemptions of stock not resulting in constructive distributions.* Notwithstanding Q&A–9 of § 1.1041–1T(c), if a corporation redeems stock owned by a spouse or former spouse (transferor spouse), and the transferor spouse's receipt of property in respect of such redeemed stock is not treated, under applicable tax law, as resulting in a constructive distribution to the other spouse or former spouse (nontransferor spouse), then the form of the stock redemption shall be respected for Federal income tax purposes. Therefore, the transferor spouse will be treated as having received a distribution from the corporation in redemption of stock.

(2) *Redemptions of stock resulting in constructive distributions.* Notwithstanding Q&A–9 of § 1.1041–1T(c), if a corporation redeems stock owned by a transferor spouse, and the transferor spouse's receipt of property in respect of such redeemed stock is treated, under applicable tax law, as resulting in a constructive distribution to the nontransferor spouse, then the redeemed stock shall be deemed first to be transferred by the transferor spouse to the nontransferor spouse and then to be transferred by the nontransferor spouse to the redeeming corporation. Any property actually received by the transferor spouse from the redeeming corporation in respect of the redeemed stock shall be deemed first to be transferred by the corporation to the nontransferor spouse in redemption of such spouse's stock and then to be transferred by the nontransferor spouse to the transferor spouse.

(b) *Tax consequences*—(1) *Transfers described in paragraph (a)(1) of this section.* Section 1041 will not apply to any of the transfers described in paragraph (a)(1) of this section. See section 302 for rules relating to the tax consequences of certain redemptions; redemptions characterized as distributions under section 302(d) will be subject to section 301 if received from a Subchapter C corporation or section 1368 if received from a Subchapter S corporation.

(2) *Transfers described in paragraph (a)(2) of this section.* The tax consequences of each deemed transfer described in paragraph (a)(2) of this section are determined under applicable provisions of the Internal Revenue Code as if the spouses had actually made such transfers. Accordingly, section 1041 applies to any deemed transfer of the stock and redemption proceeds between the transferor spouse and the nontransferor spouse, provided the requirements of section 1041 are otherwise satisfied with respect to such deemed transfer. Section 1041, however, will not apply to any deemed transfer of stock by the nontransferor spouse to the redeeming corporation in exchange for the redemption proceeds. *See* section 302 for rules relating to the tax consequences of certain redemptions; redemptions characterized as distributions under section 302(d) will be subject to section 301 if received from a Subchapter C corporation or section 1368 if received from a Subchapter S corporation.

(c) *Special rules in case of agreements between spouses or former spouses*— (1) *Transferor spouse taxable.* Notwithstanding applicable tax law, a transferor spouse's receipt of property in respect of the redeemed stock shall be treated as a distribution to the transferor spouse in redemption of such stock for purposes of paragraph (a)(1) of this section, and shall not be treated as resulting in a constructive distribution to the nontransferor spouse for purposes of paragraph (a)(2) of this section, if a divorce or separation instrument, or a valid written agreement between the transferor spouse and the nontransferor spouse, expressly provides that—

(i) Both spouses or former spouses intend for the redemption to be treated, for Federal income tax purposes, as a redemption distribution to the transferor spouse; and

(ii) Such instrument or agreement supersedes any other instrument or agreement concerning the purchase, sale, redemption, or other disposition of the stock that is the subject of the redemption.

(2) *Nontransferor spouse taxable.* Notwithstanding applicable tax law, a transferor spouse's receipt of property in respect of the redeemed stock shall be treated as resulting in a constructive distribution to the nontransferor spouse for purposes of paragraph (a)(2) of this section, and shall not be treated as a distribution to the transferor spouse in redemption of such stock for purposes of paragraph (a)(1) of this section, if a divorce or separation instrument, or a

valid written agreement between the transferor spouse and the nontransferor spouse, expressly provides that—

(i) Both spouses or former spouses intend for the redemption to be treated, for Federal income tax purposes, as resulting in a constructive distribution to the nontransferor spouse; and

(ii) Such instrument or agreement supersedes any other instrument or agreement concerning the purchase, sale, redemption, or other disposition of the stock that is the subject of the redemption.

(3) *Execution of agreements.* For purposes of this paragraph (c), a divorce or separation instrument must be effective, or a valid written agreement must be executed by both spouses or former spouses, prior to the date on which the transferor spouse (in the case of paragraph (c)(1) of this section) or the nontransferor spouse (in the case of paragraph (c)(2) of this section) files such spouse's first timely filed Federal income tax return for the year that includes the date of the stock redemption, but no later than the date such return is due (including extensions).

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. Corporation X has 100 shares outstanding. A and B each own 50 shares. A and B divorce. The divorce instrument requires B to purchase A's shares, and A to sell A's shares to B, in exchange for $100x. Corporation X redeems A's shares for $100x. Assume that, under applicable tax law, B has a primary and unconditional obligation to purchase A's stock, and therefore the stock redemption results in a constructive distribution to B. Also assume that the special rule of paragraph (c)(1) of this section does not apply. Accordingly, under paragraphs (a)(2) and (b)(2) of this section, A shall be treated as transferring A's stock of Corporation X to B in a transfer to which section 1041 applies (assuming the requirements of section 1041 are otherwise satisfied), B shall be treated as transferring the Corporation X stock B is deemed to have received from A to Corporation X in exchange for $100x in an exchange to which section 1041 does not apply and sections 302(d) and 301 apply, and B shall be treated as transferring the $100x to A in a transfer to which section 1041 applies.

Example 2. Assume the same facts as *Example 1*, except that the divorce instrument provides as follows: "A and B agree that the redemption will be treated for Federal income tax purposes as a redemption distribution to A." The divorce instrument further provides that it "supersedes all other instruments or agreements concerning the purchase, sale, redemption, or other disposition of the stock that is the subject of the redemption." By virtue of the special rule of paragraph (c)(1) of this section and under paragraphs (a)(1) and (b)(1) of this section, the tax consequences of the redemption shall be determined in accordance with its form as a redemption of A's shares by Corporation X and shall not be treated as resulting in a constructive distribution to B. See section 302.

Example 3. Assume the same facts as *Example 1*, except that the divorce instrument requires A to sell A's shares to Corporation X in exchange for a note. B guarantees Corporation X's payment of the note. Assume that, under applicable tax law, B does not have a primary and unconditional obligation to purchase A's stock, and therefore the stock redemption does not result in a constructive distribution to B. Also assume that the special rule of paragraph (c)(2) of this section does not apply. Accordingly, under paragraphs (a)(1) and (b)(1) of this section, the tax consequences of the redemption shall be determined in accordance with its form as a redemption of A's shares by Corporation X. See section 302.

Example 4. Assume the same facts as *Example 3*, except that the divorce instrument provides as follows: "A and B agree the redemption shall be treated, for Federal income tax purposes, as resulting in a constructive distribution to B." The divorce instrument further provides that it "supersedes any other instrument or agreement concerning the purchase, sale, redemption, or other disposition of the stock that is the subject of the redemption." By virtue of the special rule of paragraph (c)(2) of this section, the redemption is treated as resulting in a constructive distribution to B for purposes of paragraph (a)(2) of this section. Accordingly, under paragraphs (a)(2) and (b)(2) of this section, A shall be treated as transferring A's stock of Corporation X to B in a transfer to which section 1041 applies (assuming the requirements of section 1041 are otherwise satisfied), B shall be treated as transferring the Corporation X stock B is deemed to have received from A to Corporation X in exchange for a note in an exchange to which section 1041 does not apply and sections 302(d) and 301 apply, and B shall be treated as transferring the note to A in a transfer to which section 1041 applies.

(e) *Effective date.* Except as otherwise provided in this paragraph, this section is applicable to redemptions of stock on or after January 13, 2003, except for redemptions of stock that are pursuant to instruments in effect before January 13, 2003. For redemptions of stock before January 13, 2003 and redemptions of stock that are pursuant to instruments in effect before January 13, 2003, see § 1.1041–1T(c), A–9. However, these regulations will be applicable to redemptions described in the preceding sentence of this paragraph (e) if the spouses or former spouses execute a written agreement on or after August 3, 2001 that satisfies the requirements of one of the special rules in paragraph (c) of this section with respect to such redemption. A divorce or separation instrument or valid written agreement executed on or after August 3, 2001, and before May 13, 2003 that meets the requirements of the special rule in Regulations Project REG–107151–00 published in 2001–2 C.B. 370 (*see* § 601.601(d)(2) of this chapter) will be treated as also meeting the requirements of the special rule in paragraph (c)(2) of this section.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1041–2	1545–1751
* * * * *	

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: December 30, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–646 Filed 1–10–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7436–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Wildcat Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final notice of deletion of the Wildcat Landfill Superfund Site (Site), located in Kent County, near Dover, Delaware, from the National Priorities List (NPL). The NPL, promulgated

pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA because EPA, with the concurrence of the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control, has determined that responsible parties or other persons have implemented all appropriate response actions required under CERCLA and, therefore, no further response action pursuant to CERCLA is appropriate.

DATES: This direct final deletion will be effective March 14, 2003 unless EPA receives adverse comments by February 12, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Mr. Hilary M. Thornton, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3323.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103–2029, (215) 814–5254, Monday through Friday, 8 a.m. to 5 p.m.; and in Delaware at the Delaware Department of Natural Resources and Environmental Control, Site Investigation and Restoration Branch, 391 Lukens Drive, New Castle, DE 19720, (302) 395–2600, Monday through Friday, 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Hilary M. Thornton, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3323 or 1–800–553–2509.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region III is publishing this direct final notice of deletion of the Wildcat Landfill Superfund Site from the NPL.

EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective March 14, 2003 unless EPA receives adverse comments by February 12, 2003 on this notice or the parallel notice of intent to delete published in the "Proposed Rules" section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this notice or the notice of intent to delete, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Wildcat Landfill Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA, in consultation with the State, shall consider whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA § 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of Delaware on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The State of Delaware concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice or the companion notice of intent to delete also published in today's **Federal Register**, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate.

The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for further Fund-financed remedial actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location and History

The Wildcat Landfill Superfund Site is a 44-acre landfill situated on the west bank of the St. Jones River in Kent County, Delaware approximately two and one-half miles southeast of the city of Dover. The Site was operated as a permitted sanitary landfill between 1962 and 1973, accepting both municipal and industrial wastes. Industrial wastes suspected to have been disposed of include latex waste and paint sludges. Throughout its 11 years of operation the landfill routinely violated operating and other permits issued by regulating agencies.

EPA conducted the initial Site Investigation in May 1982. EPA proposed the Site to the NPL on December 30, 1982, and added it to the NPL on September 8, 1983 (48 FR 40673).

Remedial Investigation and Feasibility Study (RI/FS)

The Delaware Department of Natural Resources and Environmental Control (DNREC) began the remedial investigation (RI) in September 1985 and began the feasibility study (FS) in November 1987. EPA and DNREC issued the RI/FS report in May 1988. The results of the RI were generally as follows:

—The primary contaminants of concern at the Site were trace metals and organic contaminants in on-site groundwater, and inorganics in surface water and sediments in the northwest pond and leachate seeps near the pond.
—The landfill contained some buried, intact drums; the contents of the drums had relatively high concentrations of organic contaminants, primarily styrene.
—Nearby domestic and commercial wells are all to the west or southwest of the Site; none of these wells was contaminated by the landfill. However, wells immediately southwest of the Site were thought to be susceptible to contamination.
—A net loss of 29 acres of wetland environment resulted from placement of the landfill on pre-existing wetlands.

The FS provided an in-depth analysis of several potential remedial alternatives. The FS concluded that if no action were taken there would be a potential threat to human health and the environment through dermal contact with landfill contents or leachate seeps. There were also potential risks associated with future releases of contaminants from the landfill into the groundwater and, subsequently, into the surface water. The FS provided a detailed analysis of the following alternatives: (1) No action; (2) institutional controls and monitoring; (3) institutional and surface controls; (4a) containment with a soil cap; and (4b) containment with a soil/clay cap. The FS also analyzed EPA and DNREC's preferred alternative, which was a combination of certain elements of the above alternatives. No response activities using CERCLA removal authority were conducted at the Site.

Record of Decision (ROD) Findings

The Site was divided into two Operable Units, with Operable Unit 1 (OU1) including the landfill proper, and Operable Unit 2 (OU2) including the northwest pond and the so-called racetrack pond or replacement pond, which was created southeast of the landfill. EPA issued a Record of Decision (ROD) for OU1 on June 29, 1988. The ROD for OU1 included:

—Implementation of institutional controls (including groundwater management zones and restrictions on use of the property);
—Posting warning signs;
—Replacement of shallow water supply wells adjacent to the Site;
—Covering exposed wastes on the landfill with soil;
—Off-site disposal of drums;
—Installing one additional groundwater monitoring well; and
—Monitoring of the shallow (Columbia) aquifer.

On November 28, 1988, EPA issued a ROD for OU2. The ROD for OU2 included:

—Draining and back-filling the northwest pond;
—Creating a replacement pond (racetrack pond) to be joined with the existing deepwater pond located southeast of the landfill;
—Installing one monitoring well upgradient of the new racetrack pond to monitor the landfill; and
—Implementation of institutional controls to ensure that the integrity of the newly-created racetrack pond and the filled northwest pond is maintained.

After a period of negotiations with the potentially responsible parties, the State, EPA, and a group of Settlors entered into a Consent Decree for implementation of the Remedial Design/Remedial Action for both operable units. In December 1989 the Settlors submitted Remedial Design (RD) plans and specifications for regulatory review. Black and Veatch Science and Technology Corporation prepared the engineering plans and specifications on behalf of the Settlors. The U.S. Army Corps of Engineers reviewed these plans and provided comments to EPA. In February 1991, the State and EPA granted conditional approval of a revised set of RD plans and specifications.

Remedial Action Activities

The Settlors proposed Sevenson Environmental Services as the Remedial Action (RA) Contractor. EPA, after consultation with the State and the U.S. Army Corps of Engineers, approved the use of Sevenson. The Settlors started construction of the RA for both operable units in July 1991. The U.S. Army Corps of Engineers provided field oversight of the RA for EPA.

During construction a larger-than-anticipated number of drums were discovered along the northern and eastern fringes of the landfill. The State, EPA, and the Settlors subsequently developed a management plan for staging, sorting, and disposing of the unanticipated drums. The State established and continues to maintain a Groundwater Management Zone for the Site and certain areas adjacent to the Site. A pre-final construction inspection was conducted by the State, EPA, and the Settlors on April 1, 1992. The final construction inspection followed on May 14, 1992.

On April 26, 2002, documents entitled "Environmental Protection Easement and Declaration of Restrictive Covenants" were recorded at the Office of Recorder of Deeds for Kent County, Delaware, for each of the parcels comprising the Site in order to implement the institutional controls required by the OU1 and OU2 RODs.

The RA for OU1 and OU2 eliminated the principal threat posed by the Site by reducing the potential for direct contact with the contents of the landfill and the sediments of the northwest pond. The RA also reduced the potential for erosion of landfill contents into the St. Jones River. Finally, the RA provides for monitoring of the groundwater in the vicinity of the landfill to ensure the continued effectiveness of the RA.

Operation and Maintenance

Operation and maintenance (O&M) activities at the Site include annual groundwater monitoring and an annual inspection. The annual inspection looks at the condition of a variety of items to ensure they are operating as intended so the remedy remains protective. Items inspected include: Site security and access (fences, gates, locks, and roads); the landfill surface, including both capped and uncapped areas; monitoring wells; the riverbank, looking for evidence of storm damage or erosion; and the replacement pond.

Groundwater monitoring data show a clear overall downward trend in contaminant levels. The levels of some contaminants in some wells (notably lead and benzene in MW–4) remain sufficiently high to merit continued monitoring. EPA will continue groundwater monitoring until all compounds are at levels that allow for unlimited use and unrestricted exposure.

Five-Year Review

In 1996, EPA conducted its first Five-Year Review of the Site to determine if the remedy was protective of human health and the environment. There were two known deficiencies that affected the protectiveness of the remedy at the time of the Five-Year Review: (1) The institutional controls called for in the RODs were not yet fully implemented; and (2) there were unresolved issues related to who would perform O&M at the Site and for how long. Because of these deficiencies, EPA concluded that the remedy was not protective at that time. EPA conducted its second Five-Year Review in 2001. Progress had been made on resolving the two deficiencies, but they were still present. EPA again concluded the remedy was not protective at that time. Both deficiencies have since been resolved, and EPA has since concluded that the remedy is fully protective of human health and the environment.

Since waste is being left in place at the landfill, EPA will continue to conduct Five-Year Reviews at the Site. The next Five-Year Review is scheduled for October 2006.

Site Redevelopment

The Site has limited commercial redevelopment potential, but would make an excellent park, nature preserve, or open space greenway, subject to compliance with the institutional controls and operation and maintenance requirements. The landfill waste remains in place and must not be disturbed by construction activities. No wells, except monitoring wells, may be drilled in the landfill area. EPA and DNREC will review the safety of any proposed redevelopment.

Community Involvement

Public participation activities have been satisfied as required in CERCLA § 113(k), 42 U.S.C. 9613(k), and CERCLA § 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

One of the criteria for site deletion, set forth in § 300.425(e)(1)(i) of the NCP, specifies that EPA may delete a site from the NPL if "[r]esponsible parties or other persons have implemented all appropriate response actions required." EPA, with the concurrence of the State of Delaware, believes that this criterion has been met. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective March 14, 2003 unless EPA receives adverse comments by February 12, 2003 on this notice or the parallel notice of intent to delete published in the "Proposed Rules" section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. EPA will also prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 20, 2002.

Donald S. Welsh,

Regional Administrator, EPA Region III.

For the reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended under Delaware ("DE") by removing the site entry for "Wildcat Landfill, Dover."

[FR Doc. 03–515 Filed 1–10–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7533]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (email) *mike.grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of

the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of Pmodification	Community No.
Alabama: Madison	City of Madison	November 20, 2002; November 27, 2002; *Madison County Record.*	The Honorable Jan Wells, Mayor of the City of Madison, 100 Hughes Road, Madison, Alabama 35758.	November 12, 2002	010308 D
Florida: Polk	Unincorporated Areas	October 16, 2002; October 23, 2002; *The Ledger.*	Mr. Jim W. Keene, Polk County Manager, 330 West Church Street, P.O. Box 9005, Drawer CA01, Bartow, Florida 33831–9005.	January 22, 2003	120261 F
Massachusetts: Barnstable	Town of Falmouth	October 29, 2002; November 5, 2002; *Cape Cod Times.*	Mr. Robert L. Whritenour, Jr., Falmouth Town Administrator, 59 Town Hall Square, Falmouth, Massachusetts 02540.	October 22, 2002	255211 F
Minnesota: Hennepin	City of Golden Valley	November 21, 2002; November 28, 2002; *Sun-Post.*	The Honorable Linda Loomis, Mayor of the City of Golden Valley, Golden Valley City Hall, 7800 Golden Valley Road, Golden Valley, Minnesota 55427.	November 12, 2002	270162
Mississippi: Rankin	Unincorporated Areas	November 27, 2002; December 4, 2002; *Rankin County News.*	Mr. Ken Martin, President of the Rankin County Board of Supervisors, 211 East Government Street, Brandon, Mississippi 39042.	November 20, 2002	280142 C
New Hampshire: Grafton	Town of Plymouth	November 14, 2002; *The Record Enterprise.*	Mr. John Tucker, Chairman of the Town of Plymouth, Board of Selectmen, Plymouth Town Hall, 6 Post Office Square, Plymouth, Massachusetts 03264.	December 14, 2002	330072 C
New Jersey: Atlantic	City of Brigantine	November 29, 2002; December 6, 2002 *Beachcomer News.*	Mr. George McDermott, Brigantine City Manager, Brigantine Muncipal Building, 1417 West Brigantine Avenue, Brigantine, New Jersey 08203.	November 20, 2002	345286 B
New York: Herkimer	Village of Herkimer	November 15, 2002; *Evening Telegram.*	The Honorable Mark Ainsworth, Mayor of the Village of Herkimer, 120 Green Street, Herkimer, New York 13350.	May 5, 2003	360307 C
Pennsylvania: Lackawanna	Borough of Blakely	October 25, 2002; November 1, 2002; *Scranton Times.*	The Honorable Robert Klinko, Mayor of the Borough of Blakely, 6262 Jenkins Street, Peckville, Pennsylvania 18452.	October 16, 2002	420525 A
Virginia: Fauquier	Unincorporated Areas	November 7, 2002; November 14, 2003; *Fauquier Citizen.*	Mr. G. Robert Lee, Fauquier County Administrator, 40 Culpeper Street, Warrenton, Virginia 20186.	February 13, 2003	510055 A
Virginia: Fauquier	Unicorporated Areas	November 14, 2002; November 21, 2002; *Fauquier Citizen.*	Mr. G. Robert Lee, Fauquier County Administrator, 40 Culpeper Street, Warrenton, Virginia 20816.	February 20, 2003	510055 A

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 31, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–608 Filed 1–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (email) *mike.grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and 90 days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief Executive officer of community	Effective date of modification	Community number
Alabama: Lee—(FEMA Docket No. D–7525).	City of Auburn	August 1, 2002; August 8, 2002; *Opelika-Auburn News.*	The Honorable Bill Ham, Jr., Mayor of the City of Auburn, 144 Tichenor Avenue, Auburn, Alabama 36830.	May 20, 2002	010144 E
Alabama: Jefferson—(FEMA Docket No. D–7525).	Unincorporated Areas	May 17, 2002; May 22, 2002; *The Birmingham News.*	Mr. Gary White, President of the Jefferson County, Commission Courthouse, Room 680A, 716 Richard Arrington Jr., Boulevard North, Birmingham, Alabama 35203.	August 21, 2002	010217 E
Alabama: Mobile—(FEMA Docket No. D–7525).	Unincorporated Areas	April 17, 2002; April 24, 2002; *Mobile Register.*	Mr. Joe W. Ruffer,Director of Public Works, Mobile Government Plaza, 205 Government Street, Mobile, Alabama 36604–1600.	April 10, 2002	015008 J
Connecticut: Fairfield—(FEMA Docket No. D–7527).	City of Danbury	June 6, 2002; June 13, 2002; *The News-Times.*	The Honorable Mark D. Boughton, Mayor of the City of Danbury, 155 Deer Hill Avenue, Danbury, Connecticut 06810.	September 12, 2002	090004 B
Delaware: New Castle—(FEMA Docket No. D–7525).	Unincorporated Areas	March 25, 2002; April 1, 2002; *The News Journal.*	Mr. Thomas P. Gordon, New Castle County Executive, Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.	July 1, 2002	105085 D
Florida: Clay—(FEMA Docket No. D–7527).	Unincorporated Areas	July 24, 2002; July 31, 2002; *The Florida Times-Union.*	Mr. Robert M. Wilson, Clay County Manager, P.O. Box 1366, Green Cove Springs, Florida 32043.	July 17, 2002	120064 D
Florida: Lee—(FEMA Docket No. D–7527).	Unincorporated Areas	June 28, 2002; July 5, 2002; *News-Press.*	Mr. Robert Janes, Chairman of the Lee County, Board of Commissioners, P.O. Box 398, Fort Myers, Florida 33902–0398.	June 21, 2002	125124 D&E
Florida: Polk—(FEMA Docket No. D–7527).	City of Lakeland	April 3, 2002; April 10, 2002; *The Ledger.*	Mr. Roger D. Haar, City Manager for the City of Lakeland, Lakeland City Hall, 228 South Massachusetts Avenue, Lakeland, Florida 33801–5086.	March 27, 2002	120267 F
Florida: Polk—(FEMA Docket No. D–7527).	Unincorporated Areas	August 1, 2002; August 8, 2002; *The Ledger.*	Mr. Jim W. Keene, Polk County Manager, 330 West Church Street, P.O. Box 9005, Drawer CA01, Bartow, Florida 33831–9005.	May 14, 2002	120261 F
Georgia:Fulton—(FEMA Docket No. D–7525).	City of Alpharetta	March 28, 2002; April 4, 2002; *The Revue & News.*	The Honorable Charles E. Martin, Mayor of the City of Alpharetta, City Hall, Two South Main Street, Alpharetta, Georgia 30004.	March 21, 2002	130084 D
Kentucky: Daviess—(FEMA Docket No. D–7527).	City of Owensboro	August 5, 2002; August 12, 2002; *Messenger-Inquirer.*	The Honorable Waymond O. Morris, Mayor of the City of Owensboro, P.O. Box 10003, Owensboro, Kentucky 42302–9003.	November 11, 2002	210063 C
Maine: Penobscot—(FEMA Docket No. D–7527).	City of Brewer	June 4, 2002; June 11, 2002; *Bangor Daily News.*	The Honorable Michael Celli, Mayor of the City of Brewer, City Hall, 80 North Main Street, Brewer, Maine 04412.	September 10, 2002	230104 B
Maryland: Frederick—(FEMA Docket No. D–7527).	Unincorporated Areas	July 22, 2002; July 29, 2002; *Frederick News Post.*	Mr. Ron Hart, Frederick County Manager, 12 East Church		240027 A

Maryland: Frederick—(FEMA Docket No. D–7527).	Unincorporated Areas	July 22, 2002; July 29, 2002; *Frederick News Post.*	Mr. Ron Hart, Frederick County Manager, 12 East Church Street, Frederick, Maryland 21701.	.....	240027 A
Michigan: Oakland—(FEMA Docket No. D–7527).	City of Novi	July 4, 2002; July 11, 2002; *Novi News.*	The Honorable Richard Clark, Mayor of the City of Novi, Civic Center, 45175 West Ten Mile Road, Novi, Michigan 48375–3024.	June 25, 2002	260175 C
Michigan: Macomb—(FEMA Docket No. D–7527).	City of Sterling Heights	June 9, 2002; June 16, 2002; *The Source.*	The Honorable Richard J. Notte, Mayor of the City of Sterling Heights, P.O. Box 8009, 40555 Utica Road, Sterling Heights, Michigan 48311–8009.	July 3, 2002	260128 E
Mississippi: Lafayette—(FEMA Docket No. D–7527).	City of Oxford	May 22, 2002; May 29, 2002; *Oxford Eagle.*	The Honorable Richard Howorth, Mayor of the City of Oxford, City Hall, 107 Courthouse Square, Oxford, Mississippi 38655.	August 21, 2002	280094 B
North Carolina: Durham—(FEMA Docket No. D–7525).	City of Durham	June 4, 2002; June 11, 2002; *The Herald-Sun.*	The Honorable William V. Bell, Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.	September 10, 2002	370086 G
North Carolina: Durham—(FEMA Docket No. D–7525).	Unincorporated Areas	June 4, 2002; June 11, 2002; *The Herald-Sun.*	Mr. Michael M. Ruffin, Durham County Manager, 200 East Main Street, 2nd Floor, Durham, North Carolina 27701.	September 10, 2002	370085 G
North Carolina: Wake—(FEMA Docket No. D–7529).	Town of Wake Forest	May 9, 2002; May 16, 2002; *The Wake Weekly.*	The Honorable George C. Mackie, Jr., Mayor of the Town of Wake Forest, 401 Elm Street, Wake Forest, North Carolina 27587.	May 2, 2002	370244 E
Ohio: Franklin—(FEMA Docket No. D–7527).	Unincorporated Areas	June 5, 2002; June 12, 2002; *Daily Reporter.*	Ms. Arline Shoemaker, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, Ohio 43215.	September 11, 2002	390167 G
Ohio: Franklin—(FEMA Docket No. D–7529).	City of Grove City	June 5, 2002; June 12, 2002; *Grove City Record.*	The Honorable Cheryl Grossman, Mayor of the City of Grove City, 4035 Broadway, Grove City, Ohio 43123.	September 11, 2002	390173 G
Ohio: Franklin—(FEMA Docket No. D–7527).	Village of Urbancrest	June 5, 2002; June 12, 2002; *Grove City Record.*	The Honorable Marlin R. West, Mayor of the Village of Urbancrest, 3357 Central Avenue, Urbancrest, Ohio 43123.	September 11, 2002	390893 G
Pennsylvania: Chester—(FEMA Docket No. D–7523).	Township of East Bradford	April 25, 2002; May 2, 2002; *Daily Local News.*	Mr. John T. Jordan, Chairman of the Township of East Bradford Board of Supervisors, 666 Copeland School Road, West Chester, Pennsylvania 19380.	August 1, 2002	420276 D
Pennsylvania: Montgomery—(FEMA Docket No. D–7525).	Borough of Emsworth	May 29, 2002; June 5, 2002; *The Citizen.*	The Honorable Keith Johnston, Mayor of the Borough of Emsworth, 171 Center Avenue, Pittsburgh, Pennsylvania 15202.	September 4, 2002	420034 D
Pennsylvania: Allegheny—(FEMA Docket No. D–7527).	City of Pittsburgh	July 9, 2002; July 16, 2002; *Pittsburgh Post Gazette.*	The Honorable Thomas Murphy, Mayor of the City of Pittsburgh, 5th Floor, City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219.	October 15, 2002	4200063

State and County	Location	Dates and name of newspaper where notice was published	Chief Executive officer of community	Effective date of modification	Community number
Puerto Rico (FEMA Docket No. D–7525).	Commonwealth	May 31, 2002; June 7, 2002; *The San Juan Star.*	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, Office of the Governor, P.O. Box 9020082, San Juan, Puerto Rico 00901.	September 6, 2002	720000 E
Rhode Island: Washington—(FEMA Docket No. D–7527).	Town of Westerly	June 19, 2002; June 26, 2002; *The Westerly Sun.*	Mr. Samuel Azzinaro, Westerly Town Council President, Westerly Town Hall, 45 Broad Street, Westerly, Rhode Island 02891.	June 12, 2002	445410 E
Tennessee: Fayette—(FEMA Docket No. D–7527).	Unincorporated Areas	May 22, 2002; May 29, 2002; *The Fayette Falcon.*	The Honorable Jim Voss, Mayor of Fayette County, P.O. Box 218, Somerville, Tennessee 38068.	August 28, 2002	470352 B
Tennessee: Sumner and Davison—(FEMA Docket No. D–7525).	City of Goodlettsville	August 5, 2002; August 12, 2002; *The Tennessean.*	The Honorable Bobby T. Jones, Mayor of the City of Goodlettsville, 105 South Main Street, Goodlettsville, Tennessee 37072.	November 22, 2002	470287 F
Virginia: Augusta—(FEMA Docket No. D–7527).	Unincorporated Areas	May 28, 2002; June 4, 2002; *The Daily News Record.*	Mr. Patrick J. Coffield, Augusta County Administrator, P.O. Box 590, Verona, Virginia 24482–0590.	September 3, 2002	510013 B
Virginia: Henrico—(FEMA Docket No. D–7527).	Unincorporated Areas	July 19, 2002; July 26, 2002; *The Richmond Times.*	Mr. James B. Donati, Jr., Chairman of the Henrico County, Board of Supervisors, P.O. Box 27032, Richmond, Virginia 23273.	October 25, 2002	510077 B
Virginia: Loudoun—(FEMA Docket No. D–7525).	Unincorporated Areas	June 12, 2002; June 19, 2002; Loudoun Times Mirror.	Mr. Kirby Bowers, Loudoun County Administrator, 1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, Virginia 20177–7000.	June 3, 2002	510090 D
Virginia: Loudoun—(FEMA Docket No. D–7525).	Unincorporated Areas	May 15, 2002; May 22, 2002; *Loudoun Times Mirror.*	Mr. Kirby Bowers, Loudoun County Administrator, 1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, Virginia 20177–7000.	August 21, 2002	510090 D

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 31, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–607 Filed 1–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *mike.grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of Flooding and Location	#Depth in feet above ground. +Elevation in feet (NGVD) •Elevation in feet (NAVD)
DELAWARE	
Kent County (Unincorporated Areas) (FEMA Docket No. D–7536)	
Andrews Lake:	
Approximately 1,525 feet downstream of Andrews Lake Road	*9
Approximately 1.25 miles upstream of Andrews Lake Road	*22
Kent County (Unincorporated Areas)	
Beaverdam Ditch:	
At confluence with Tidy Island Creek	*46
Approximately 90 feet upstream of Taraila Road	*57
Kent County (Unincorporated Areas)	
Browns Branch North:	
At the downstream side of the northbound lane of U.S. Route 13	*42
At the downstream side of the southbound lane of U.S. Route 13	*43
Kent County (Unincorporated Areas)	
Browns Branch South:	
At Route 431	*41
Approximately 1.04 miles upstream of Route 431	*48
Kent County (Unincorporated Areas), City of Dover	
Cahoon Branch:	
At confluence with Maidstone Branch	*32
Approximately 50 feet downstream of Navit Road	*58
Kent County (Unincorporated Areas)	
Choptank River:	
Approximately 1.33 miles downstream of Still Road	*22
Approximately 0.5 mile upstream of confluence of Culbreth Marsh Ditch	*37
Kent County (Unincorporated Areas)	
Coursey Pond:	
Approximately 1,030 feet downstream of Canterbury Road	*9
Approximately 1.3 miles upstream of Canterbury Road	*13
Kent County (Unincorporated Areas)	
Cow Marsh Creek:	
At confluence with Choptank River	*26

Source of Flooding and Location	#Depth in feet above ground. ÷Elevation in feet (NGVD) •Elevation in feet (NAVD)
At confluence of Willow Grove Prong	*51
Culbreth Marsh Ditch:	
At confluence with Choptank River	*37
Approximately 300 feet upstream of Lucks Drive	*49
Kent County (Unincorporated Areas), Town of Smyrna, Town of Leipsic, City of Milford, City of Dover, Town of Frederica, Town of Boweres, Town of Little Creek	
Delaware Bay:	
At intersection of Big Stone Beach Road and Scotts Corner Road	*9
Approximately 375 feet north of intersection of North Street and Pearson Avenue Bowers, Woodland Beach	*13
Kent County (Unincorporated Areas), Town of Smyrna, Town of Clayton	
Duck Creek:	
Approximately 1,660 feet downstream of Smyrna Landing Road	*9
Approximately 300 feet upstream of State Route 15	*29
Kent County (Unincorporated Areas), City of Dover	
Fork Branch:	
At confluence with St. Jones River	*27
Approximately 100 feet upstream of Shaws Corner Road	*64
Kent County (Unincorporated Areas)	
Green Branch:	
At confluence with Marshyhope Creek	*41
Approximately 1,200 feet upstream of Layton Corners Road	*56
Kent County (Unincorporated Areas), Town of Smyrna	
Green's Branch:	
Approximately 500 feet downstream of Main Street	*9
At CONRAIL	*27
Kent County (Unincorporated Areas)	
Horsepen Arm:	
At confluence with Marshyhope Creek	*54
Approximately 650 feet upstream of Park Brown Road	*58
Kent County (Unincorporated Areas), City of Dover	
Little River:	
Just downstream of State Route 8	*9
Approximately 0.7 mile upstream of West Wind Drive	*25
Kent County (Unincorporated Areas), City of Dover	
Maidstone Branch:	
At the confluence with St. Jones River	*27
Approximately 750 feet upstream of Sharon Hill Road	*49
Kent County (Unincorporated Areas).	
Marshyhope Creek:	
At the downstream county boundary	*35
At the confluence of Horsepen Arm	*54
Kent County (Unincorporated Areas)	
Marshyhope Ditch:	
At the confluence with Marshyhope Creek	*54
Approximately 500 feet upstream of Park Brown Road	*56
Kent County (Unincorporated Areas)	
McColley Pond:	
Approximately 1,325 feet downstream of Canterbury Road	*9
Approximately 1.4 miles upstream of Canterbury Road	*12
Kent County (Unincorporated Areas)	
McGinnis Pond:	
Approximately 1,125 feet downstream of McGinnis Pond Road	*9
Approximately 1.0 mile upstream of McGinnis Pond	*20
Kent County (Unincorporated Areas), Town of Smyrna	
Mill Creek:	
At U.S. Route 13	*9
At State Route 137	*17
Kent County (Unincorporated Areas), City of Dover	
Morgan Branch:	
Approximately 0.4 mile upstream of the confluence with Little River	*10
Approximately 1.5 miles upstream of Little Creek Road	*17
Kent County (Unincorporated Areas)	
Penrose Branch:	
Approximately 750 feet upstream of Sharon Hill Road	*49
Approximately 1.9 miles upstream of Pearsons Corner Road	*66
Kent County (Unincorporated Areas), Town of Clayton	
Providence Creek:	
Approximately 300 feet upstream of U.S. Route 15	*29
Approximately 300 feet upstream of Alley Mill Road	*43
Kent County (Unincorporated Areas), City of Dover	
Puncheon Branch:	
Approximately 0.5 mile downstream of U.S. Route 113A	*9
Approximately 900 feet downstream of U.S. Route 113A	*9
Kent County (Unincorporated Areas), City of Dover	
St. Jones River:	
Approximately 1,170 feet downstream of Court Street	*10
Approximately 1.11 miles upstream of West College Square	*27
Kent County (Unincorporated Areas)	
Tappahanna Ditch:	
At the confluence with Tidy Island Creek	*46
Approximately 200 feet upstream of U.S. Route 8	*64
Kent County (Unincorporated Areas), City of Milford	
Tantrough Branch:	
At City of Milford corporate limits	*15
Approximately 0.62 mile upstream of Blairs Pond Dam	*34
Kent County (Unincorporated Areas)	
Tidy Island Creek:	
Approximately 3,300 feet downstream of Mahan Corner Road	*44
At the confluence of Beaverdam Ditch and Tappahanna Ditch	*46
Kent County (Unincorporated Areas)	
Willow Grove Prong:	
At confluence with Cow Marsh Creek	*51
Approximately 850 feet upstream of Honeysuckle Road	*57
Kent County (Unincorporated Areas)	

Maps available for inspection at the Kent County Planning Division, 414 Federal Street, Dover, Delaware.

Town of Bowers

Maps available for inspection at the North Bowers Fire Hall, Rural Drive #1 Bowers, Frederica, Delaware.

Town of Clayton

Maps available for inspection at the Clayton Town Hall, 105 Main Street, Clayton, Delaware.

City of Dover

Maps available for inspection at the Dover City Hall, 15 East Lockerman Street, Dover, Delaware.

Town of Frederica

Maps available for inspection at the Frederica Town Hall, David Street, Frederica, Delaware.

Town of Leipsic

Maps available for inspection at Leipsic Town Hall, 192 Front Street, Leipsic, Delaware.

Town of Little Creek

Maps available for inspection at the Little Creek Town Hall, 204 Main Street, Little Creek, Delaware.

Source of Flooding and Location	#Depth in feet above ground. +Elevation in feet (NGVD) •Elevation in feet (NAVD)
City of Milford	
Maps available for inspection at the Milford City Hall, 201 South Walnut Street, Milford, Delaware.	
Town of Smyrna	
Maps available for inspection at the Smyrna Town Hall, 27 South Market Street, Plaza, Smyrna, Delaware.	
FLORIDA	
Charlotte County (Unincorporated Areas) (FEMA Docket No. D–7530)	
Auburn Waterway:	
At the confluence with Pellam Waterway	*8
At Hillsborough Boulevard	*12
Broad Creek:	
At the upstream side of Copley Drive	*9
Approximately 1 mile upstream of Airport Road	*12
Broad Creek Tributary:	
At the confluence with Broad Creek	*10
Just upstream of Piper Road	*23
Courtland Waterway:	
At the confluence with Auburn Waterway	*8
At Hillsborough Boulevard	*13
Crestview-Lionheart Connector Waterway:	
At the confluence with Crestview Waterway	*16
At divergence from Lionheart Waterway	*16
Crestview Waterway:	
At the confluence with West Spring Lake	*9
At Hillsborough Boulevard	*16
Delavan Waterway:	
At the confluence with Fordham Waterway	*21
Approximately 475 feet upstream of Comstock Boulevard	*21
Elkcam Waterway:	
Approximately 1,900 feet upstream of U.S. Route 41	*9
Approximately 1.2 miles upstream of Peachland Boulevard	*19
Fordham Waterway:	
Approximately 1,750 feet upstream of U.S. Route 41	*9
Approximately 1.0 mile upstream of Peachland Boulevard	*21
Kings Highway East Outfall:	
At the downstream side of Westchester Boulevard	*9
Approximately 780 feet upstream of Suncoast Boulevard	*13
Kings Highway West Outfall:	
Approximately 150 feet upstream of Westchester Boulevard	*10
Approximately 1,080 feet upstream of MacDougall Avenue	*16
Lionheart Waterway:	
At the county boundary	*19
Approximately 170 feet upstream of U.S. Route 41	*9
Newgate Waterway:	
Approximately 1.2 miles upstream of the confluence with Early Waterway	*8
Approximately 2.2 miles upstream of Jenning's Boulevard	*10
Niagara Waterway:	
At the confluence with Fordham Waterway	*9
At Peachland Boulevard	*19
Pellam Waterway:	
Approximately 2.1 miles upstream of Holly Avenue	*8
At Hillsborough Boulevard	*14
Pelton Circle Waterway:	
At the confluence with Crestview Waterway	*16
Approximately 0.5 mile upstream of confluence with Crestview Waterway	*16
Rampart Outfall:	
Approximately 0.3 mile upstream of Harborview Road	*9
Just upstream of Rampart Boulevard	*22
Sunset Waterway:	
At the confluence with Lionheart Waterway	*13
At the County boundary	*20
Yale Waterway:	
At the confluence with Fordham Waterway	*13
Approximately 475 feet upstream of Sheehan Boulevard	*14
Gulf of Mexico:	
Approximately 1,200 feet southwest of the intersection of Gulf Boulevard and South Gulf Boulevard	*16
Approximately 200 feet east of the intersection of County Route 775 and Cap Haza Drive	*10
Charlotte County (Unincorporated Areas)	
Maps available for inspection at the Charlotte County Community Development Department, Charlotte County Administration Building, 18500 Murdock Circle, Port Charlotte, Florida.	
PENNSYLVANIA	
Allegheny County (All Jurisdictions)	
Borough of Crafton, Township of Robinson, Borough of Rosslyn Farms, and Borough of Thornburg (FEMA Docket No. D–7536).	
Chartiers Creek:	
At the upstream side of Ingram Avenue	*748
Approximately 300 feet downstream of Chartiers Avenue	*754
Borough of Crafton	
Maps available for inspection at the Crafton Borough Hall, 100 Stotz Avenue, Pittsburgh, Pennsylvania.	
Township of Robinson	
Maps available for inspection at Robinson Township Municipal Building, 1000 Church Hill Road, Pittsburgh, Pennsylvania.	
Borough of Rosslyn Farms	
Maps available for inspection at Rosslyn Farms Borough Municipal Office, 421 Kings Highway, Carnegie, Pennsylvania.	
Borough of Thornburg	
Maps available for inspection at the Thornburg Borough Office, 235 Tech Road, Pittsburgh, Pennsylvania.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 31, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–606 Filed 1–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *mike.grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. **Federal Register**This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of Flooding and Location	#Depth in feet above ground.
MAINE	
Newry (Town), Oxford County (FEMA Docket No. D–7542)	
Sunday River:	
At downstream corporate limits	*648
At upstream corporate limits	*845
Barkers Brook:	
At the confluence with Sunday River	*649
A point approximately 240 feet upstream of Broadway Drive	*1,112
Maps available for inspection at the Newry Town Hall, 422 Bear River Road, Newry, Maine.	
Turner (Town), Androscoggin County (FEMA Docket No. D–7546)	
Nezinscot River:	
At confluence with Androscoggin River	*274
At upstream corporate limits	*315
Androscoggin River:	
At downstream corporate limits	*264
At upstream corporate limits	*281
Maps available for inspection at the Turner Town Office, 11 Turner Center Road, Turner, Maine.	
NEW YORK	
Plattsburgh (City), Clinton County (FEMA Docket No. D–7538)	
Saranac River:	
Approximately 200 feet upstream of Delaware and Hudson Railroad	*103
At the upstream corporate limits	*189
Maps available for inspection at the Plattsburgh City Building Inspector's Office, 41 City Hall Place, Plattsburgh, New York.	
Plattsburgh (Town), Clinton County (FEMA Docket No. D–7538)	
Saranac River:	
Approximately 0.75 mile downstream of Indian Rapids Dam	*188
Approximately 1.9 mile upstream of Harney Bridge Road	*736
Maps available for inspection at the Plattsburgh Town Hall, 151 Banker Road, Plattsburgh, New York.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 31, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–605 Filed 1–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Mike M. Grimm, Acting, Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *mike.grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
ALASKA	
Matanuska-Susitna (City), Borough County (FEMA Docket No. B–7318)	
Talkeetna River Overflow:	
Just west of Talkeetna Spur Highway	*341
At East Bank of Talkeetna River	*351
Maps are available for inspection at the Code Compliance Department, 350 East Dahlia Avenue, Palmer, Alaska.	
CALIFORNIA	
Tehama County and Incorporated Areas, (FEMA Docket No. B–7430)	
Reeds Creek:	
Approximately 250 feet upstream of Paskenta Road	*285
Approximately 1,000 feet upstream of confluence of Pine Creek	*309
Maps are available for inspection at the Tehama County Building Department, 444 Oak Street, Red Bluff, California.	
MISSOURI	
Clay County and Incorporated Areas, (FEMA Docket No. B–7427)	
East Fork Fishing River:	
Confluence with Fishing River	*745
Just upstream of 112th Street	*749
Approximately 3,800 feet downstream of Seabold Road	*756
Fishing River:	
Just upstream of Clay/Ray County Border	*730
Just upstream of Jesse James Farm Road	*778
Just downstream of Interstate 35 bridge	*788
Approximately 4,800 feet upstream of Highway A	*859
Crockett Creek:	
Approximately 250 feet upstream of confluence with Holmes Creek	*772
Just downstream of 12th Street	*783
Just upstream of Stockdale Road	*790
Holmes Creek:	
Approximately 250 feet upstream confluence of Crockett Creek	*772
Just upstream of Summersette Road	*777
Just upstream of Highway 33	*813
Clear Creek:	
Confluence with Fishing River	*777
Just upstream of 140th Street bridge	*778
Just downstream of Interstate 35	*794
Approximately 6,300 feet upstream of Nation Road	*824
First Creek:	
Confluence with Second Creek (Approximately 1,000 feet downstream of Highway 92 bridge)	*818
Just upstream of 144th Street bridge	*851
Approximately 2,600 feet upstream of 144th Street bridge	*860
Second Creek:	
Approximately 1,550 feet upstream of Main Street	*814
Confluence of First Creek (Approximately 1,000 feet downstream of Highway 92 bridge)	*818
Rocky Branch:	
Approximately 1,150 feet upstream from confluence with Wilkerson Creek	*846
Polecat Creek:	
Confluence with Wilkerson Creek	*881
Approximately 2,500 feet upstream of Mt. Olive Road	*932

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Wilkerson Creek:	
Approximately 1,500 feet upstream of confluence with Little Platte River	*816
Just downstream of Highway 92	*840
Approximately 5,000 feet upstream of 132nd Street bridge	*906
Maps are available for inspection at 234 West Shrader Street, Suite C., Liberty, Missouri.	
Excelsior Springs (City), Clay County, (FEMA Docket No. B–7427)	
East Fork Fishing River:	
Approximately 3,800 feet downstream of Seabold Road	*756
Just upstream of Seabold Road	*759
Maps are available for inspection at City Hall, 201 East Broadway, Excelsior Springs, Missouri.	
Kearney (City), Clay County, (FEMA Docket No. B–7427)	
Fishing River:	
Approximately 5,000 feet downstream of Highway 3	*780
Just downstream of Burlington North Railroad bridge	*786
Clear Creek:	
Approximately 1,150 feet downstream of Summit Street	*783
Just downstream of Interstate 35	*794
Approximately 1,000 feet upstream of Highway 33	*801
Maps are available for inspection at City Hall, 100 East Washington Street, Kearney, Missouri.	
Mosby (City), Clay County, (FEMA Docket No. B–7427)	
Fishing River:	
Approximately 1,600 feet downstream of Mosby Road	*763
Approximately 400 feet upstream of U.S. Highway 69	*777
Holmes Creek:	
At the confluence with Fishing River	*772
Approximately 350 feet upstream of West Mosby Road	*772
Crockett Creek:	
Confluence with Holmes Creek	*772
Approximately 350 feet upstream of the confluence with Holmes Creek	*772
Maps are available for inspection at City Hall, 12312 4th Street, Mosby, Missouri.	
Prathersville (Village), Clay County, (FEMA Docket No. B–7427)	
Fishing River:	
Approximately 6,600 feet downstream of Highway H	*752
Just downstream of Highway H	*757
Approximately 1,600 feet downstream of Mosby Road	*764
Williams Creek:	
At the confluence with Fishing River	*760
Approximately 550 feet upstream of the Chicago Rock Island and Pacific Railroad	*764
Maps are available for inspection at City Hall, 12212 County Road, Excelsior Springs, Missouri.	
Smithville (City), Clay County, (FEMA Docket No. B–7427)	
First Creek:	
Approximately 2,900 feet upstream of 144th Street	*861
Rocky Branch:	
Confluence with Wilkerson Creek	*846
Just upstream of 140th Street	*865
Wilkerson Creek:	
Confluence with Little Platte River	*814
Approximately 1,500 feet downstream of 144th Street bridge	*851
Second Creek:	
Confluence with Little Platte River	*814
Approximately 1,550 feet upstream from Main Street	*814
Maps are available for inspection at City Hall, 107 Main Street, Smithville, Missouri.	
NORTH DAKOTA	
Langdon (City), Cavalier County, (FEMA Docket No. B–7430)	
Mulberry Creek:	
Approximately 250 feet downstream of Highway 5	+1,597
Confluence of 5th Street Coulee	+1,600
Just downstream of Highway 1	+1,608
ND Highway 1 Ditch:	
Approximately 450 feet upstream of Simplot Crossing	+1,609
Approximately 1,500 feet upstream of Highway	+1,612
Diversion Channel:	
Approximately 300 feet downstream of 10th Street	+1,610
Approximately 700 feet upstream of 10th Street	+1,612
5th Street Coulee:	
Confluence with Mulberry Creek	+1,600
Just downstream of 12th Avenue	+1,605
Approximately 1,400 feet upstream of 18th Avenue	+1,609
Maps are available for inspection at City Hall, 324 Eighth Avenue, Langdon, North Dakota.	
SOUTH DAKOTA	
Minnehaha County and Incorporated Areas, (FEMA Docket No. B–7430)	
Skunk Creek:	
Approximately 4,400 feet downstream of U.S. Highway 16	*1,431
Just upstream of County Route 139	*1,444
Approximately 150 feet upstream of County Route 142	*1,448
Maps are available for inspection at the County Administration Building, 415 North Dakota Avenue, Sioux Falls, South Dakota.	
Hill City (City), Pennington County (FEMA Docket No. B–7424)	
Spring Creek:	
At approximately 50 feet upstream of Hill City power line located at approximately 2,000 feet upstream of U.S. Highway 385 and 16	*4,937
At approximately 1,400 feet upstream of Poplar Street and Bishop Mountain Avenue Intersection	*5,013
Newton Fork Creek:	
At Museum Drive	*4,967
Approximately 1,900 feet upstream of Museum Drive	*4,981
Maps are available for inspection at the City Hall, 324 Main Street, Hill City, South Dakota.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
NEW MEXICO		
Quay County and Incorporated Areas, (FEMA Docket No. B–7430)		
Arroyo 1:		
Confluence with Lake Tucumcari	+4,016	Quay County (Uninc. Areas).
Just downstream Chicago Rock Island and Pacific Railroad	+4,040	
Arroyo 1A:		
Confluence with Arroyo 1	+4,033	Quay County (Uninc. Areas).
Approximately 245 feet upstream of Quay Road AL	+4,080	
Arroyo 2:		
Confluence with Lake Tucumcari	+4,016	Quay County (Uninc. Areas).
Approximately 4,100 feet upstream of confluence with Lake Tucumcari.	+4,043	
Arroyo 3:		
Confluence with Lake Tucumcari	+4,016	Quay County (Uninc. Areas), City of Tucumcari.
Approximately 1,750 feet upstream of U.S. Highway 54	+4,079	
Arroyo 4:		
Confluence with Lake Tucumcari	+4,016	Quay County (Uninc. Areas), City of Tucumcari.
Just downstream of New Mexico Highway 18	+4,139	
Arroyo 4D:		
Confluence with Arroyo 4	+4,036	Quay County (Uninc. Areas).
Approximately 650 feet upstream of U.S. Interstate 40	+4,063	
Arroyo 4D Overflow:		
Confluence with Lake Tucumcari	+4,016	Quay County (Uninc. Areas), City of Tucumcari.
Just downstream of Tucumcari Boulevard	+4,033	
Confluence with Lake Tucumcari	+4,016	
Approximately 420 feet downstream of Laughlin Avenue	+4,023	
Arroyo 4F (Rankin Draw):		
Just upstream of Tucumcari Boulevard	+4,034	Quay County (Uninc. Areas), City of Tucumcari.
Approximately 180 feet upstream of South Monroe Street	+4,089	
Arroyo 5:		
Approximately 2,300 feet downstream of Chicago Rock Island and Pacific Railroad.	+4,057	Quay County (Uninc. Areas), City of Tucumcari.
Approximately 2,650 feet upstream of the confluence of Arroyo 5B.	+4,159	
Arroyo 5B:		
Confluence with Arroyo 5	+4,124	Quay County (Uninc. Areas).
Approximately 1,900 feet upstream of the confluence with Arroyo 5.	+4,150	
Arroyo 6:		
Approximately 2,850 feet downstream of Chicago Rock Island and Pacific Railroad.	+4,068	Quay County (Uninc. Areas), City of Tucumcari.
Approximately 4,100 feet upstream of Eastbound Interstate 40.	+4,185	
Arroyo 6A:		
Confluence with Arroyo 6	+4,096	Quay County (Uninc. Areas), City of Tucumcari.
Approximately 2,500 feet upstream of I–40 Ramp A	+4,169	
Arroyo 7 (Bluewater Creek):		
Approximately 2,600 feet downstream of confluence of Arroyo 7A.	+4,061	Quay County (Uninc. Areas), City of Tucumcari.
Approximately 4,500 feet upstream of confluence of Arroyo 7B.	+4,109	
Arroyo 7B:		
At confluence with Arroyo 7	+4,091	Quay County (Uninc. Areas), City of Tucumcari.
Approximately 3,500 feet upstream of confluence of Arroyo 7C.	+4,131	
Arroyo 7C:		
At confluence with Arroyo 7B	+4,108	Quay County (Uninc. Areas), City of Tucumcari.
At Chicago Rock Island and Pacific Railroad	+4,155	
San Jon Creek:		
Approximately 1,000 feet upstream of sewage disposal area	+4,021	Village of San Jon and Quay County (Uninc. Areas).
Approximately 450 feet downstream of Fourth Street	+4,034	

ADDRESSES

Quay County (Unincorporated Areas)

Maps are available for inspection at Quay County Clerks Office, 300 South 3rd Street, Tucumcari, New Mexico.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
City of Tucumcari: **Maps are available for inspection** at City Hall, 512 South 8th Street, Tucumcari, New Mexico. **Village of San Jon:** **Maps are available for inspection** at City Hall, 507 Elm Avenue, San Jon, New Mexico.		
OKLAHOMA		
Kingfisher County and Incorporated Areas, (FEMA Docket No. B–7430)		
Cimarron River:		
Approximately 9,000 feet downstream of the confluence with Campbell Creek.	*969	Kingfisher County (Uninc. Areas).
Approximately 750 feet downstream of County Road NS282	*1,044	
Approximately 2,800 feet upstream of County Road EW60 ..	*1,120	
Kingfisher Creek:		
At confluence with Cimarron River	*1,018	Kingfisher County (Uninc. Areas), City of Kingfisher.
Approximately 1,000 feet downstream of 13th Street	*1,047	
Little Turkey Creek:		
Approximately 1,000 feet upstream of County Road EW68 ..	*1,063	Kingfisher County (Uninc. Areas).
Approximately 3,200 feet upstream of State Highway 81	*1,116	
Turkey Creek (Main Channel):		
Approximately 60 feet upstream of County Road EW715	*1,038	Kingfisher County (Uninc. Areas).
Approximately 4,500 feet upstream of U.S. Highway 81	*1,093	
Turkey Creek Split Flow:		
Approximately 2,400 feet downstream of U.S. Route 81	*1,028	Kingfisher County (Uninc. Areas), Town of Dover.
Approximately 1,400 feet upstream of County Road EW71 ..	*1,043	
ADDRESSES **Kingfisher County (Unincorporated Areas)** **Maps are available for inspection** at the Kingfisher County Floodplain Administrator's Office, County Courthouse, 101 South Main Street, Room 5, Kingfisher, Oklahoma. **City of Kingfisher:** **Maps are available for inspection** at City Hall, 301 North Main Street, Kingfisher, Oklahoma. **Town of Dover:** **Maps are available for inspection** at the Town Hall, 101 North Chisholm, Dover, Oklahoma.		

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 31, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–604 Filed 1–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3364; MM Docket No. 00–53; RM–9823, RM–9950]

Radio Broadcasting Services; Barnesville and Detroit Lakes, MN, and Enderlin, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a Petition for Reconsideration filed by Triad Broadcasting Company, LLC and a Petition for Reconsideration filed by Enderlin Broadcasting Company, this document allots Channel 233C1 to Enderlin, North Dakota, and modifies the reference coordinates for the Channel 236C1 allotment at Barnesville, Minnesota. *See* 66 FR 829, published January 8, 2002. The reference coordinates for the Channel 236C1 allotment at Barnesville, Minnesota, are now 46–40–27 and 96–13–39. The reference coordinates for the Channel 233C1 allotment at Enderlin, North Dakota, are 46–25–00 and 97–15–00. With this action, the proceeding is terminated.

DATES: Effective January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 00–53, adopted December 13, 2002, and released December 16, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Enderlin, Channel 233C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–536 Filed 1–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3506; MB Docket No. 02–198; RM–10513]

Radio Broadcasting Services; Hilton Head Island, Hollywood, and Port Royal, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, at the request of Apex Broadcasting, Inc., licensee of Station WJZX(FM), Port Royal, South Carolina, and Monterey Licenses, LLC licensee of Station WLOW(FM), Hilton Head Island, South Carolina the Commission reallots Channel 259C from Port Royal to Hollywood, South Carolina, as the community's first local aural transmission service and modify the license of Station WJZX(FM) to reflect the new community. To accommodate this change, they propose to reallot Channel 300C2 from Hilton Head Island to Port Royal to retain Port Royal's sole local aural transmission service and modify the license of Station WLOW(FM) to reflect the new community. Channel 259C is reallotted from Port Royal to Hollywood at Station WJZX(FM)'s current transmitter site 41.2 km (25.6 miles) southwest of the community at coordinates 32–25–10 NL and 80–28–30 WL. Channel 300C2 is reallotted from Hilton Head Island to Port Royal at Station WLOW(FM)'s current transmitter site 22.3 km (13.9 miles) southwest of the community at coordinates 32–13–36 NL and 80–50–53 WL.

DATES: Effective February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–198, adopted December 18, 2002, and released December 20, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 300C2 at Hilton Head Island, by adding Hollywood, Channel 259C, by removing Channel 259C and adding Channel 300C2 at Port Royal.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–535 Filed 1–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3363; MM Docket No. 02–197; RM–10509]

Radio Broadcasting Services; Bishopville and Lamar, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 67 FR 52925 (August 14, 2002), this document reallots Channel 229A from Bishopville, South Carolina, to Lamar, South Carolina, and provides Lamar with its first local aural transmission service. The coordinates for Channel 229A at Lamar are 34–07–10 North Latitude and 80–08–49 West Longitude.

DATES: Effective January 24, 2003.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–197, adopted December 4, 2002, and released December 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Lamar, Channel 229A, and removing Bishopville, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–532 Filed 1–10–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 8
Monday, January 13, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN: 0560–AG52

Tobacco Marketing Cards, Penalties, Identification of Marketings and Recordkeeping and Reporting Requirements

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Farm Service Agency (FSA) and Commodity Credit Corporation (CCC) propose to amend regulations in order to provide for a system to electronically report non-auction purchases of burley and flue-cured tobacco at common delivery points known as receiving stations, and for the registration of these receiving stations. These changes are necessary because, with most burley and flue-cured tobacco currently being sold through private contract arrangements rather than the traditional auction system, meeting the current reporting requirements—manual reports on paper—would be extremely burdensome to the buyers of the tobacco. Also, an electronic reporting system will provide FSA with a nearly error-free method of tracking producer sales, because human error will be virtually eliminated. The proposed electronic reporting will permit the quick recording of large quantities of tobacco purchased and the equally quick reporting of these purchases to FSA for purposes of monitoring the flow of marketed tobacco. This proposed reporting system is voluntary and therefore any buyer who might find the system burdensome may comply with the record keeping and reporting requirements which are currently in place.

DATES: Submit comments about this proposed rule on or before February 12, 2003. Submit comments about the information collection (the paperwork burden) on or before March 14, 2003.

ADDRESSES: Mail or hand deliver public comments about the proposed rule or about the information collection to Director, Tobacco Division, FSA, USDA, 1400 Independence Avenue, SW., Room 5750–S, STOP 0514, Washington, DC 20250–0514. Comments may be sent by facsimile to (202) 720–0549. Comments may be sent by e-mail to: *tob_comments@wdc.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco Division, (202) 720–2715.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This proposed rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB). A summary of the cost benefit assessment is included in the Background section explaining the actions this rule will take.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Unfunded Mandates

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Assistance Programs

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance to which this rule applies, are: 10.051—Commodity Loans and Loan Deficiency Payments.

Environmental Evaluation

FSA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), neither an Environmental Impact Statement nor an environmental assessment is required.

Paperwork Reduction Act

Title: 7 CFR 723—Tobacco; 7 CFR 1464—Tobacco.

OMB Control Number: 0560–0182.

Type of Request: Request for approval of a revised information collection and for approval of new information collection activities.

Abstract: USDA will collect information from eligible tobacco producers by ballot referenda in order to determine such issues as whether marketing quotas will be in effect for certain kinds of tobacco or whether producers in certain states will be allowed to lease their tobacco quota across county lines. Such referenda, secured voluntarily from eligible voters, provide, for instance, for the continuation of a marketing quota system and thereby a price support program. Referenda are conducted by the Secretary of Agriculture (the Secretary) in accordance with the Agricultural Adjustment Act of 1938 as amended (1938 Act). The 1938 Act requires:

- A referendum of the farmers who were engaged in the production of the crop of tobacco immediately prior to the referendum in order to determine whether these farmers are in favor of, or opposed to, national marketing quotas for the upcoming 3 marketing years, section 312;
- A referendum of active flue-cured tobacco producers to determine whether they favor or oppose permitting the sale of flue-cured tobacco allotment or quota within their respective States, section 316; and
- A referendum which would permit the Secretary to allow for the lease and

transfer of burley tobacco across county lines within certain States, section 319.

Likewise, USDA will collect such information in the form of reports and record-keeping requirements which are necessary to meet the provisions of the 1938 Act which require that the tobacco marketing quota program resists both an excessive supply and the disorderly marketing of tobacco. The purchase information to be collected from receiving stations is to be used to maintain an orderly flow of tobacco by providing a reconcilable audit trail of tobacco allotted, grown, and then sold.

The information to be collected from receiving stations is the same information that dealers, purchasing tobacco directly from farmers outside the auction warehouse venue, are required to submit according to current regulations. Certain reporting modifications are proposed, however, in order to enable receiving stations to capture and transmit tobacco marketing information required by USDA using computer technology. Marketing data collected from receiving station purchases combined with that of dealer purchases and of auction market sales, provides a view of tobacco production throughout the nation. These total figures are available to Congress, and the USDA, Office of Inspector General (OIG), and National Agricultural Statistical Service (NASS).

Any new information collection requirements that result from this rule will be submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq*).

Estimate of Respondent Burden: The estimated average public reporting burden for the collection of information is as follows:

Respondents: Eligible Tobacco Farmers voting in a referendum and receiving station officials.

Estimated Number of Respondents: 239,535.

Estimated Annual Number of Responses: 246,087.

Estimated Total Annual Burden Hours on Respondents: 22,133.

In addition to commenting on the substance of the regulation, the public is invited to comment on the information collection. Proposed topics include the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information technology; or (d) ways to minimize the burden of the information collection on those who are to respond. The information collection package may be obtained from the Tobacco Division, at the address listed below. Comments regarding the information collections may be sent to the Desk Officer for Agriculture, Office of Information and Regulator Affairs, OMB, Washington, DC 20503; and to Tobacco Division, FSA, USDA, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514.

Public Participation

Interested persons are invited to participate in this proposed rule making by submitting written data, views, or arguments. Comments relating to the economic effects that might result from adoption of the proposals in this rule are also invited. All comments received on or before the closing date for comments will be considered before action is taken on this proposed rule. The proposals contained in this rule may be changed in light of comments received from the public. All comments should reference the Regulation Identifier Number (RIN) and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Director during regular business hours.

Background

The Agricultural Adjustment Act of 1938 (the 1938 Act) requires farmers growing burley and flue-cured tobacco, in states in which marketing quotas for those kinds of tobacco are in effect, to have a marketing allotment, or quota, system. Annually, the Secretary determines and announces the amount of these kinds of tobacco which may be marketed during the marketing year. The total marketing quota for burley and flue-cured tobaccos for 2001 were 880,900,000 pounds (548,900,000 flue-cured and 332,000,000 burley). These national quotas are then apportioned among the States for allocation to the farms on which the quota is produced, thus establishing individual farm marketing quotas. Further, the Secretary requires collection of penalties upon those pounds of tobacco marketed from any farm in excess of that farm's marketing quota. In order to monitor tobacco marketing, certain procedures have been established to collect the following information for each marketing year:

- The amount of tobacco allotted to each farm for sale; and the amount of tobacco actually sold from each farm. The primary methods of collecting and verifying this data are:
- A marketing card issued for each farm which carries on the reverse side the total number of pounds of tobacco which may be sold from that farm without incurring a penalty; and
- A separate sale bill for each market transaction itemizing the number of pounds purchased.

There are two ways to buy tobacco:

- A buyer goes to a tobacco auction warehouse and competitively bids for displayed tobacco; or
- A buyer goes to a tobacco farm and buys directly from the grower.

At each of these market venues, notations are made on the marketing card to reflect the amount of tobacco sold or purchased in the transaction, and a sale bill is prepared. At the close of the market season, a reconciliation is done for each farm: the totals on a farm's marketing card are compared to the totals of a farm's sale bills.

At an auction warehouse, a tobacco grower presents a stiff, embossed, plastic marketing card which is put into a machine that is provided and serviced by FSA (similar to those used in early credit card days) which imprints farm-specific information necessary to track tobacco marketings directly onto each sales bill. However, a buyer who purchases directly from a grower does not have access to the imprint machine and must complete all farm-specific information by hand. Historically, 97% of tobacco has been sold at auction; and 3% purchased directly from the growers. The 2001 marketing year almost reversed these proportions and thus put an extreme reporting burden on those who purchase directly from the growers.

The Current Reporting Rule

This rule proposes to reduce the burden by allowing reports to be submitted electronically. Current rules do not provide for electronic reporting. Customers who buy large quantities of tobacco at receiving stations may submit farm-specific marketing information electronically under this rule. A marketing card with a thermal imprinted bar code will be provided to growers who will deliver tobacco to receiving station(s). The bar code will provide the same farm-specific information necessary to track tobacco marketings that is currently included in the traditional embossed card. These proposed changes will allow each buyer to develop a tobacco purchasing practice tailored to its needs while allowing FSA to track marketed quota. Further, FSA will benefit by obtaining market information within 48 hours, rather than weeks after the close of a market season as is the case with the old

paper based system. Also, it will reduce the amount of human error inherent in manually entering data. Thus, electronic reporting of tobacco sales will provide a more effective method of monitoring quota and greatly reduce the likelihood of fraud.

Economic Evaluation

Electronic reporting is expected to save approximately $500,000 annually by eliminating manual processing of reports and the related printing, delivery, handling, and storage expenses. In addition, personnel at the receiving stations may save as much as 20,000 hours of labor annually by not having to manually report each purchase. Thus, this proposed rule will cost buyers substantially less than complying with current requirements for manually reporting tobacco purchases.

Conclusion

Reports from receiving stations will be maintained separately from those of "auction warehouses" and "dealers," in addition to the reporting being done electronically. The proposed reporting changes will benefit both the buyer and FSA:

- Buyers will not have to maintain both a manual and an electronic accounting of the purchase; and
- FSA will receive more timely reports of tobacco marketings and not have to manually input sales information.

The Proposed Rule

For the reasons stated in the preamble, the Farm Service Agency proposes to amend Part 723 and Part 1464 of the Regulations of the Department of Agriculture as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR Part 723 will continue to read as follows:

Authority: 7 U.S.C. 1301–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Amend § 723.104 by adding the following terms to paragraph (b) in the proper alphabetical order:

§ 723.104 Definitions.

* * * * *

Contract Purchase. A non-auction purchase of tobacco between a buying tobacco company and a producer, who have previously entered into a contract describing conditions of the purchase.

Contract Tobacco. Non-auction tobacco purchased by a tobacco buying company from a producer in accordance with a contract describing conditions of the purchase.

* * * * *

Floor Scrap. Scrap or leaves of tobacco that accumulate on a receiving station floor before purchase during the regular course of business.

* * * * *

Purchase Date. Date on which the gross amount of the purchase price of first marketing of tobacco is determined.

Purchase Day. Calendar day the tobacco was marketed at a receiving station.

* * * * *

Receiving Station. A buying company-designated place where producers market tobacco under contract with the buying company.

Receiving Station Agent. A representative of the receiving station.

Receiving Station Gross Pounds Purchased. Sum of the weight of all purchased producer tobacco on a receiving station floor.

Receiving Station Official. A buying company designee at the receiving station with legal authority to obligate the buying company and who will be a point of contact concerning the day-to-day operations of the receiving station.

* * * * *

Staging area. An area within the receiving station in which producer tobacco is unloaded and prepared to be marketed.

3. In § 723.305 revise paragraph (a)(1) introductory text to read as follows and remove paragraph (e)(4):

§ 723.305 Issuance of marketing cards.

(a) * * *

(1) A marketing card (MQ–76, MQ–76–C, or MQ–77) shall be issued for the current marketing year for each farm having quota tobacco available for marketing. Cards shall be issued in the name of the farm operator except that:

* * * * *

4. In § 723.309 revise paragraphs (b) and (c), and add paragraph (d) to read as follows:

§ 723.309 Persons to pay penalty.

* * * * *

(b) *Receiving station purchase.* The penalty due on marketings by a producer through a receiving station purchase shall be paid by the receiving station official, who may deduct an amount equivalent to the penalty from the price paid to the producer.

(c) *Non-auction sale.* The penalty due on tobacco acquired directly from a producer or dealer, other than at an auction sale or receiving station purchase, shall be paid by the person acquiring the tobacco, who may deduct an amount equivalent to the penalty from the price paid to the producer or dealer in the case of a sale.

(d) *Marketing outside the United States.* The penalty due on marketings by a producer or dealer directly to any person outside the United States shall be paid by the producer or dealer making the sale.

5. In § 723.310 revise paragraphs (a) and (c) to read as follows:

§ 723.310 Date penalty is due.

(a) *Payment of penalty.* Penalties shall become due at the time the tobacco is marketed, except that in the case of false identification or failure to account for disposition, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount due to the State FSA office not later than the end of the calendar week in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Farm Service Agency may be used to pay any penalty, but any such draft, money order, or check shall be received subject to payment at par.

* * * * *

(c) *Receiving station purchases or non-auction sales.* Receiving station purchases or non-auction sales of excess tobacco shall be subject to the full rate of penalty, and such shall be paid in full even though the penalty may exceed the proceeds for the sale of tobacco.

6. In § 723.311 revise paragraphs (b)(3), (d)(2), (d)(2)(i), and (e) and add paragraph (b)(4) to read as follows:

§ 723.311 Lien for penalty; liability of persons who are affiliated with indebted person or who permit the indebted person to use their identification card.

* * * * *

(b) * * *

(3) In the case of an indebted dealer, the debt is entered on the debt record of the State FSA office for the State in which the dealer is required to file reports; and

(4) In the case of an indebted receiving station official, the debt is entered on the debt record of the State FSA office for the State in which the receiving station is located.

* * * * *

(d)(1) * * *

(2) A dealer, warehouse operator or receiving station official who permits an indebted person to use such dealer's or warehouse operator's identification card or receiving station official's identification number to market tobacco shall be liable for the amounts due by the indebted person to the United States

under this part up to the amount of the value of the tobacco so marketed. In addition, unless the Deputy Administrator determines otherwise, any persons or person, who as a warehouse operator, dealer, or receiving station official becomes affiliated with any person who at the time of affiliation is indebted under this part to the United States, shall be liable for the amount of the debt owed to the United States by the person with whom such person or persons become affiliated up to the amount of the value of any tobacco which is marketed by such affiliated warehouse operator, dealer, or receiving station official during the time of the affiliation with the indebted person. Affiliation may include any relationship in which the parties have a common interest in tobacco, or in an enterprise or entity involved in the marketing, processing, or handling of tobacco, or where the parties both hold a position of responsibility or ownership in such an enterprise or entity, or where there is common ownership of a business involved in the transaction, as determined by the Deputy Administrator. A warehouse operator, dealer, or receiving station official may also be considered to be affiliated with an indebted person when such warehouse operator, dealer, or receiving station official is associated with a person who is both:

(i) An employee or otherwise authorized to buy and sell tobacco for such warehouse operator, dealer, or receiving station official; and

(ii) * * *

(e) *TMQ lien notation.* Upon notification that a TMQ lien has been established, the producer marketing card (MQ–76 or MQ–76–C) or dealer identification card (MQ–79–2) shall be returned immediately to the issuing office for recording the TMQ lien. Failure to immediately return the applicable card will result in FSA notifying all registered warehouse operators, dealers, and receiving station officials of the TMQ lien information and of their responsibilities for collecting the TMQ lien. The card shall be promptly returned to the producer or dealer after it is annotated with the TMQ lien.

* * * * *

7. In § 723.313 revise paragraphs (a)(1) introductory text, (a)(2), (a)(3), (b), (e), and (f) to read as follows:

§ 723.313 Identification of marketings.

(a) * * *

(1) *Identification of producer marketings.* Each auction and non-auction marketing of burley or flue-cured tobacco shall be identified by a valid marketing card, Form MQ–76 or MQ–76–C, issued for the farm. The reverse side of the marketing card shall show in pounds:

* * * * *

(2) *Cross-references of tobacco sale bill number to prior sale bill.* Each warehouse operator and receiving station official, for each lot of tobacco weighed in on the warehouse floor or receiving station floor for sale the same day, shall cross-reference the tobacco sale bill to each prior tobacco sale bill for tobacco identified by the same marketing card. To accomplish the cross-reference, each other tobacco sale bill number shall be entered by the warehouse operator or receiving station official in the "Remarks" space on the tobacco sale bill, on all copies, at the time such tobacco is weighed at the warehouse.

(3) *Recording producer sale.* Each producer sale at auction shall be recorded on Form MQ–72–1, Report of Tobacco Auction Sale, and each producer sale at a non-auction receiving station shall be electronically recorded in a format and transmitted according to standards issued by the Deputy Administrator. Receiving station officials may request approval from the Deputy Administrator to manually record on Form MQ–72–C, Report of Receiving Station Purchase, for producer sales. Dealer purchases shall be executed on Form MQ–72–2 and the data shall be entered on Form MQ–76–C. For producer sales at auction, Form MQ–72–1 and Form MQ–76 shall be executed only by the FSA marketing recorder. For producer sales at a receiving station, Form MQ–72–C and Form MQ–76–C shall be executed only by the FSA marketing recorder.

(4) * * *

(b) *Dark air-cured, fire-cured, or Virginia sun-cured tobacco.* With respect to dark air-cured, fire-cured, or Virginia sun-cured tobacco:

(1) *Identification of producer marketings.* Each marketing of such kind of tobacco from a farm shall be identified by a valid marketing card issued for the farm for the respective kind of a tobacco, either an MQ–76, MQ–76–C or MQ–77 (including sale memo). With respect to each non-auction sale from:

(i) A within quota farm a check mark shall be entered on the inside of MQ–76, and

(ii) An excess farm for which an MQ–77 is issued, an executed bill of nonauction sale shall be prepared, and such bill of nonauction sale shall be delivered to a marketing recorder or other person who is authorized to issue sale memos.

(2) *Other persons authorized to execute MQ–76, MQ–76–C or MQ–77 (including sale memo).*

(i) A warehouse operator who has been authorized during the current marketing year on MQ–78, Tobacco Warehouse Organization, may record a sale on MQ–76 or MQ–77 (including the issuance of a sale memo) to identify a sale for a farm if a marketing recorder is not available at the warehouse when the marketing card is presented.

(ii) A receiving station official who has been so authorized by the Deputy Administrator during the current marketing year may record a sale on MQ–76–C (including the issuance of a sale memo) to identify a sale for a farm if a marketing recorder is not available at the receiving station when the marketing card is presented.

(iii) Any warehouse operator, receiving station official or dealer, who engages in the business of acquiring scrap tobacco from farmers, and who has been authorized on MQ–78 or MQ–78–C, may for each purchase of scrap tobacco execute an MQ–76, MQ–76–C or MQ–77 (including a sale memo if the bill of non-auction sale has been executed).

(3) *Verification of sales processed during the absence of marketing recorder.* Any person authorized on MQ–78 or MQ–78–C by the Deputy Administrator to act as a marketing recorder shall promptly present to a marketing recorder for verification each warehouse bill (floor sheet) or receiving station sales bill processed and identified by an MQ–76, MQ–76–C, or MQ–77 (including any sale memos) executed in the absence of a marketing recorder.

(4) *Authorization to act as marketing recorder.* The authorization on MQ–78 or MQ–78–C for persons may be granted by the Deputy Administrator or may be withdrawn by the Deputy Administrator if such action is determined to be necessary to properly enforce the regulations in this part.

(e) *Verification of penalties by warehouse operators, receiving station officials, or dealers.* Each sale of tobacco by a producer which is subject to penalty and which has been recorded by a marketing recorder shall be verified by a warehouse operator, receiving station official, or dealer to determine whether the amount of the penalty shown to be due has been correctly computed. Such warehouse operator or receiving station official shall not be relieved of any liability for the amount of penalty due because of any error which may occur in computing the penalty and recording the sale.

(f) *Check register.* The serial number of the tobacco sale bill(s) shall be recorded by the warehouse operator or receiving station official on the check register or check stub for the check written covering the sale of tobacco by a producer.

* * * * *

8. In § 723.401 revise the section title, re-designate paragraphs (b) through (e) as paragraphs (c) through (f), and add a new paragraph (b) to read as follows:

§ 723.401 Registration of burley and flue-cured tobacco warehouse operators, receiving station officials and dealers.

* * * * *

(b) *Receiving station registration.* For burley and flue-cured tobacco, any receiving station official purchasing either flue-cured or burley tobacco shall be registered with the U.S. Department of Agriculture, and such registration shall be filed with the Director, Tobacco and Peanuts Division.

* * * * *

9. Revise § 723.402 to read as follows:

§ 723.402 Warehouse or receiving station authorized to retain producer marketing cards between sales.

(a) *General.* Notwithstanding any other provisions of this part, to facilitate the scheduling of a farmer's tobacco to the warehouse or receiving station, the marketing card, with the permission of the producer, may be retained at an eligible warehouse or receiving station between sales even though no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for, as provided in this section.

(b) *Warehouse or receiving station eligible to retain producer marketing cards between sales.* A warehouse or receiving station shall be eligible to retain producer marketing cards between sales if the operator or official thereof shall:

(1) Execute and file on a form approved by FSA a written request with the State FSA committee (or county FSA committee if designated by the State FSA committee);

(2) Agree to be responsible to FSA for an amount of money equal to the amount that may be assessed against any producer as marketing quota penalties, if the marketing that is the basis of assessment of penalty occurred while the warehouse or receiving station was authorized to have custody of the marketing card, for:

(i) Burley or flue-cured tobacco, for any over marketing resulting from errors made at the warehouse or receiving station in entering "balance after sale" pounds on the producer's marketing card or failure to deduct pounds sold on producer's marketing card;

(ii) Tobacco falsely identified for marketing by use of the producer's marketing card;

(iii) Producer's failure to account for any tobacco marketed by use of the producer's marketing card; or

(iv) Any burley or flue-cured tobacco marketed at the warehouse or receiving station in excess of 103 percent of quota as shown on the producer's marketing card;

(3) Agree to maintain an accurate and up-to-date journal containing a listing of all producer marketing cards retained by the warehouse or receiving station to facilitate the scheduling of farmers' tobacco. Such journals shall be maintained for the length of time and under the conditions required for other warehouse or receiving station records. The journal shall show for each card retained the:

(i) Name of the operator;

(ii) Serial number of farm (including state and county codes and farm number);

(iii) Marketing card number, if applicable;

(iv) Date marketing card was obtained from producer; and

(v) Date marketing card was returned to producer;

(4) Agree to return producer marketing card to the producer at any time the producer may so request, or in the absence of a request, return it to the producer within 7 days after the close of the warehouse or receiving station for the season; and

(5) Agree that this authorization may be terminated by FSA for failure to comply with provisions of this agreement.

(c) *Penalties are considered to be the responsibility of warehouse operators and receiving station officials.* Notwithstanding any other provision of this part, a warehouse operator or receiving station official who executes and files a written request with the Director, Tobacco and Peanuts Division for authorization to retain producers' marketing cards at the warehouse or receiving station, with producer's permission, shall be responsible to FSA for an amount of money equal to the amount that may be assessed against the producer as marketing quota penalties if the marketing that is the basis of such assessment occurred while the warehouse or receiving station was authorized to have custody of the marketing card, for:

(1) Any burley or flue-cured tobacco, for any over marketing resulting from errors made at the warehouse or receiving station in entering "balance after sale" pounds on the producer's marketing card or failure to deduct pounds sold on the producer's marketing card. However, the warehouse operator or receiving station official shall not be responsible for any penalty under this subparagraph, if such penalty would not have been assessed against the producer in accordance with § 723.409(e) of this part;

(2) Tobacco falsely identified for marketing by use of the producer's marketing card;

(3) Producer's failure to account for any tobacco marketed by use of such producer's marketing card; or

(4) With respect to burley or flue-cured producers, tobacco marketed at the warehouse or receiving station in excess of 103 percent of quota as shown on the producer's marketing card.

10. In § 723.403 revise the section title, remove paragraph (h), re-designate paragraphs (i) through (v) as paragraphs (h) through (u), and revise paragraphs (d)(1)(ii), (d)(1)(iv), (e)(2), (e)(10)(iii), and newly redesignated (l) to read as follows:

§ 723.403 Auction warehouse operators and receiving station officials; records and reports.

* * * * *

(d)(1) * * *

(ii) For flue-cured and burley tobacco, registration number assigned the warehouse by the Department;

(iii) * * *

(iv) For flue-cured and burley tobacco, the identification of other producers having an interest in the tobacco;

* * * * *

(e) * * *

(2) *Recording farm identification.* For burley and flue-cured tobacco, at the time the tobacco is weighed in, the warehouse operator or receiving station official shall record on the tobacco sale bill, the State and county codes and the farm serial number from the marketing card (MQ–76 or MQ–76–C) issued for the farm from which the tobacco is to be marketed.

* * * * *

(10) * * *

(iii) *Non-auction purchase by a warehouse operator.* The warehouse operator shall deduct, from the balance of the "103 percent of quota" entry on the marketing card (MQ–76–C), the pounds of tobacco purchased as a non-auction purchase. In addition, each warehouse operator shall record on Form MQ–79 and on Form MQ–72–2, Report of Tobacco Non-auction Purchase, each non-auction purchase of tobacco made by such warehouse operator. The data to be reported on

Form MQ–72–2 is set forth in Sec. 723.404 of this part.

* * * * *

(l) *Bill-out invoice.* For flue-cured and burley tobacco, when the tobacco has been sold at auction, the bill-out invoice to the buyer shall include the warehouse registration number on which the lot of tobacco was recorded on the sale bill.

* * * * *

11. In § 723.404 revise the section title and paragraph (c)(2)(iii) to read as follows:

§ 723.404 Dealer's and receiving station's records and reports, excluding cigar tobacco buyers.

* * * * *

(c) * * *

(2) * * *

(iii) For non-auction purchases which are made from producer by the dealer or the receiving station official, the dealer or receiving station official shall remit the producer's and the dealer's or receiving station's share of the No Net Cost Assessment as provided in part 1464 of this title. The dealer may deduct the producer's share of the assessment from the price paid for the tobacco. However, the No Net Cost Assessment shall not be remitted from a producer who identifies the tobacco for marketing with a marketing card which has zero pounds as the 103 percent entry on the marketing card; a marketing penalty at the full rate shall be collected on the marketings identified by such card. The amount of the No Net Cost Assessment which is applicable to tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

* * * * *

12. In § 723.405 revise the section title and add a new paragraph (c) to read as follows:

§ 723.405 Dealers exempt from regular records and reports on MQ–79; season report for dealers; and receiving station resale records and reports exempt from daily reporting.

* * * * *

(c) Any receiving station who acquires tobacco in the form in which tobacco ordinarily is sold by producers and resells such tobacco shall be subject to the requirements of this part.

(1) This paragraph is applicable only to burley and flue-cured tobacco. Each receiving station official shall make a report to the Director, TPD not later than February 1 of each year for flue-cured and April 1 for burley tobacco, showing:

(i) The receiving station's USDA identification number;

(ii) Source;

(iii) Dealer USDA identification number; and

(iv) Pounds of all tobacco, in the form normally marketed by producers, purchased or sold through resale.

(2) For resale purchases for each receiving station, the report shall include the following information:

(i) USDA registration number (receiving station code),

(ii) Name and address of receiving station,

(iii) Gross pounds purchased,

(iv) Name and address of seller, and

(v) Seller's number (dealer's registration number, receiving station code, or farm number, including State and county code).

(3) For resale sales for each receiving station, the report shall include the following information:

(i) USDA registration number (receiving station code),

(ii) Name and address of receiving station,

(iii) Gross pounds sold,

(iv) Name and address of purchaser, and

(v) Purchaser's number (dealer registration number, receiving station code, or farm number, including State and county code).

13. In § 723.408 revise paragraph (d)(2)(i)(B) to read as follows:

§ 723.408 Producer's records and reports.

* * * * *

(d) * * *

(B) MQ–76 or MQ–76–C, to the accuracy of the Record of Sales recorded on the card.

* * * * *

14. In § 723.409 revise the section title and paragraphs (b) introductory text and (b)(4) to read as follows:

§ 723.409 Producer violations, penalties; false identification collections and remittances by dealers, buyers, handlers, warehouses, receiving stations and other parties; related issues.

* * * * *

(b) *Special provisions for tobacco buyers, dealers, handlers, warehouse operators, receiving station officials and others who acquire, handle, or facilitate the marketing of tobacco.* Notwithstanding the provisions of paragraph (a) of this section and other provisions of this part:

* * * * *

(4) If a penalty is collected and remitted by a buyer, dealer, receiving station official or warehouse operator that is shown not to be due or only partially due, then the overpayment shall be refunded to the appropriate party. It is the responsibility of the person who collected the penalty and the person who sold the tobacco involved to show to the satisfaction of FSA that such penalty is not due in the full amount collected.

* * * * *

15. Revise § 723.410 to read as follows:

§ 723.410 Penalties considered to be due from warehouse operators, receiving station officials, dealers, buyers and others excluding the producer.

Subject to any additional requirements or provisions for remittances which are contained in § 723.409 of this part, any marketing of tobacco under one of the following conditions shall be considered, subject to rebuttal, to be a marketing of excess tobacco:

(a) *Auction sale without burley or flue-cured tobacco marketing card.* For burley and flue-cured tobacco, any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card at the time of marketing shall be considered to be a marketing of excess tobacco and the penalty thereon shall be collected and remitted by the warehouse operator unless, prior to marketing, an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(b) *Auction sale without dark air-cured, fire-cured, or Virginia sun-cured tobacco marketing card.* For dark air-cured, fire-cured, or Virginia sun-cured tobacco, any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card (MQ–76 or MQ–77, including sale memo) on or before the last warehouse sale day of the marketing season, or within 4 weeks following the date of marketing, whichever comes first, shall be identified by an MQ–82, and shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the warehouse operator.

(c) *Burley or flue-cured tobacco non-auction sale.* For burley and flue-cured tobacco, any non auction marketing of tobacco which:

(1) Is not identified by a valid marketing card (MQ–76–C) and recorded at the time of marketing on MQ–79, Dealer's Report, the marketing card, and MQ–72–2, Report of Tobacco Non-auction Purchase; or,

(2) If purchased prior to the opening of the local auction market for the current year, it is not identified by a valid marketing card and recorded on MQ–79, the marketing card, and MQ–72–2, Report of Tobacco Non-auction Purchase on or before the end of the calendar week (which includes the first

sale day of the local auction markets). The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ–79, unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(d) *Non auction sale, except burley, flue-cured, and cigar tobacco.* For dark air-cured, fire-cured, or Virginia sun-cured tobacco, any Non-auction sale of tobacco which:

(1) Is not identified by an MQ–76 or MQ–77 (including a valid sale memo); and

(2) Is not recorded on MQ–79, Dealer's Record, on or before the end of the calendar week in which the tobacco was purchased; or

(3) If purchased prior to the opening of the local auction market for the current year, is not identified by an MQ–76 or MQ–77 (including a valid sale memo), and recorded on MQ–79 on or before the end of the calendar week (which includes the first day of the local auction markets). The penalty thereon shall be paid by the purchaser of such tobacco.

(e) *Burley and flue-cured tobacco sold at a receiving station.* For burley and flue-cured tobacco, any receiving station marketing of tobacco which:

(1) Is not identified by a valid marketing card (MQ–76–C) and recorded at the time of marketing on MQ–80–C, MQ–76–C and MQ–72–C, on or before the day of the purchase. The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ–80–C unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(f) *Failure to obtain an MQ–76 and sale memo, and failure to record a sale on MQ–76-cigar tobacco.* Any sale of cigar tobacco for which a dealer:

(1) If within quota, fails to record the sale on the marketing card issued for the farm; or

(2) If the tobacco was produced on a farm for which an excess marketing card was issued, fails to obtain a valid sale memo by the end of the sale date. The penalty thereon shall be paid by the buyer who fails to make the record.

(g) *Leaf account tobacco.* If warehouse resales exceed prior leaf account purchases, such marketings shall be considered to be a marketing of excess tobacco unless such warehouse operator furnishes evidence acceptable to the State FSA committee showing that such marketing is not a marketing of excess tobacco. However, acceptable evidence shall not be based on the warehouse operator's proof of purchases of tobacco that is not in the form normally marketed by producers. Such evidence is not acceptable even though it may indicate that the resales exceed prior leaf account purchases because of the blending of tobacco with the warehouse operator's prior purchases.

(h) *Dealer tobacco—burley and flue-cured.* The burley or flue-cured tobacco resales by a dealer (as shown or due to be shown on MQ–79), which are in excess of such dealer's total prior purchases of the respective kind of tobacco, shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time marketing takes place which results in the excess. If the resale which results in penalty being due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. If the resale which results in penalty being due is made at non-auction, the purchaser shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the applicable State FSA office.

(i) *Receiving Station Tobacco—burley and flue-cured.* The burley and flue-cured tobacco resales by a receiving station which are in excess of such buying company's total prior purchases of the respective kind of tobacco shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time of the marketing which results in the excess. If the resale which results in a penalty due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. If the resale which results in penalty being due is made at non-auction, the purchaser shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the applicable State FSA office, unless such buying company furnishes evidence acceptable to the State FSA committee showing that such marketing is not a marketing of excess tobacco. However, evidence acceptable to the State FSA committee shall not be based on the receiving station's proof of purchase of tobacco that is not in the form normally marketed by producers even though such evidence may indicate that resales exceed prior purchases as a result of the blending of tobacco, which was not in the form normally marketed by producers, with the receiving station official's prior purchases of tobacco. Multiple receiving stations purchasing as a single buying company may transfer pounds purchased at individual receiving stations that will be resold, to the buying company's dealer record for resale. A receiving station registration number cannot be used to resell tobacco at auction.

(j) *Resales not reported.* Any resale of tobacco which is required to be reported by a warehouse operator, receiving station official or dealer, but which is not reported within the time and in the manner required, shall be considered to be a marketing of excess tobacco, unless and until such warehouse operator, receiving station official or dealer furnishes proof of such resale which is acceptable to the Director, TPD. The penalty thereon shall be paid by the warehouse operator, receiving station official or dealer who fails to make the report as required.

(k) *Marketing falsely identified by a person other than the producer of the tobacco.* If any marketing of tobacco by a person other than the producer is identified by a marketing card other than the marketing card issued for the farm on which the tobacco was produced, and the source of production of the tobacco is unknown, such marketing shall be presumed to be a marketing of excess tobacco. The marketing quota penalty shall be paid by the person who marketed the tobacco.

(l) *Carryover tobacco, except cigar tobacco.* Any tobacco on hand, except for cigar tobacco, and reported or due to be reported under § 723.403 of this part for warehouse operators, § 723.417 of this part for receiving station officials, and § 723.404 of this part for dealers shall, be included as a resale in determining whether an account for a kind of tobacco has excess resales. Unless the warehouse operator or receiving station official furnishes proof acceptable to the State FSA committee, and unless the dealer furnishes proof acceptable to the State FSA executive director, showing that such account does not represent excess tobacco, penalty at the full rate for the respective kind of tobacco shall be paid thereon by such warehouse operator, receiving station official or dealer.

(m) *Unrecorded sale of cigar tobacco.* Any sale of cigar tobacco which is not recorded on MQ–79 CF&B, Buyer's Record Book, by the 10th day of the month following the month during which the sale occurred, shall be presumed to be a marketing of excess tobacco. The penalty thereon shall be paid by the buyer who fails to make the record.

(n) *Floor scrap.* Any receiving station official who markets floor scrap shall be subject to a civil penalty of 150 percent of the average market price for the immediately preceding marketing year, as determined by the U.S. Department of

Agriculture. The calculated penalty shall be rounded to the nearest whole cent. Any floor scrap on hand more than 30 days shall be considered sold. The floor scrap on hand shall be weighed, and the weight certified to, by the receiving station official, with such weighing to be done in the presence of a representative of either the county or the state FSA committee. Floor scrap which is destroyed within 30 days in the presence of an FSA representative shall not be considered as marketed when determining the total quantity of floor scrap marketed. If the County FSA Committee determines that floor scrap was marketed in the current year, the person responsible for such marketing shall be notified of the determination and afforded an opportunity to request reconsideration of such determination in accordance with the provisions of part 750 of this chapter. A determination that a civil penalty is due for marketing floor scrap shall not become final and shall not be assessed until such person has been afforded an opportunity for a hearing and such person has exhausted the applicable administrative remedies. Notice of assessment shall require such person to pay the civil penalty to "Farm Service Agency, USDA" within 15 days after the mailing date of said notice.

(o) *Floor sweepings.* Any person who markets floor sweepings in excess of allowable floor sweepings shall be subject to a civil penalty of 150 percent of the average market price for the immediately preceding marketing year, as determined by the U.S. Department of Agriculture. The calculated penalty rate shall be rounded to the nearest whole cent. Any floor sweepings on hand more than 30 days (15 days with respect to flue-cured tobacco) after the warehouse closes for the auction season shall be considered marketed. The floor sweepings on hand shall be weighed by the warehouse operator and the weight shall be certified by the warehouse operator, such weighing to be done in the presence of a representative of either the county FSA committee or the State FSA committee. Floor sweepings which are destroyed in the presence of a representative of the county FSA committee, within 30 days (15 days with respect to flue-cured tobacco) after the warehouse closes shall not be considered as marketed when determining the quantity of floor sweepings marketed. If the county FSA committee determines, after the warehouse has been closed for the auction season for more than 30 days (15 days with respect to flue-cured tobacco), that the cumulative quantity of floor sweepings marketed and considered marketed in the current marketing year is in excess of the allowable floor sweepings, the person responsible for such marketings shall be given notice of the determination and shall be afforded an opportunity to request reconsideration of such determination in accordance with the provisions of part 780 of this chapter. A determination that a civil penalty is due for marketing floor sweepings in excess of the allowable floor sweepings shall not become final and shall not be assessed until such person has been afforded an opportunity for a hearing and such person has exhausted the applicable administrative remedies. The notice of assessment shall require such person to pay the civil penalty to the "Farm Service Agency, USDA" within 15 days after the mailing of the notice.

(p) *Blending tobacco not in the form normally marketed by producers—burley and flue-cured tobacco.* Tobacco purchased from processors or manufacturers that is considered not in the form normally marketed by producers, and which is blended with tobacco in the form normally marketed by producers, shall not be credited as a purchase to the dealer's or warehouse operator's account by the State FSA committee when reconciling the warehouse operator's leaf account or the dealer's purchases and resales. Tobacco not in the form normally marketed by producers, and which is blended with other tobacco, shall be deemed to be excess tobacco and penalty shall be due on the pounds of tobacco by which a warehouse operator's or dealer's resales exceed prior purchases.

(q) *Advances and other cases in which the producer's marketing card is used improperly.* For tobacco of any kind to which this part applies, if tobacco is marketed by a person by using the producer's marketing card, or the tobacco is pledged for a price support loan by using that card, but under the provisions of part 1464 of this title, the producer is deemed to have not been an "eligible producer" with respect to the disposition of that tobacco at the time because of an advance or other pre-auction arrangement, then such disposition of the tobacco shall be considered a false identification of the tobacco and may be considered to be a marketing of excess tobacco. In such cases the person who paid the advance, took possession of the tobacco, or made the agreement with the producer which made the producer no longer an "eligible producer" with respect to the tobacco, shall be jointly and severally liable with the producer for any penalty with respect to such disposition which is levied against the producer under the provisions of the part. Furthermore, if such disposition is determined to be a marketing of excess tobacco, this person shall be liable for a penalty calculated by using the penalty rate for the tobacco involved multiplied by the pounds of tobacco involved. These remedies shall be in addition to any other remedies which may apply, including but not limited to, any liability for a refund of any price support loan advances which were paid in the name of, or for the account of, the producer of the tobacco.

16. In § 723.411:

a. Redisgnate paragraph (b) introductory text as (b)(1) and paragraphs (b)(1) through (7) and (b)(1)(i) through (vii) respectively.

b. Designate the undesignated paragraph following newly redesignated (b)(1)(vii) as (b)(2).

c. Revise newly redesignated paragraphs (b)(1)(vii) and (b)(2).

d. Redesignate paragraph (c) introductory text as (c)(1) and paragraphs (c)(1) thorugh (c)(6) as (c)(1)(i) through (vi) respectively.

e. Designate the undesignated paragraph following newly redesignated (c)(1)(vi) as (c)(2)

f. Revise newly redesignated paragraphs (c)(1)(yi) and (c)(2).

The revisions read as follows:

§ 723.411 Records and reports regarding hauling, processing, and storage of tobacco.

* * * * *

(b)(1) * * *

(vii) *Persons to whom delivered and pounds involved.*

(2) Any such firm shall report this information to the State FSA office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and for tobacco purchased at auction or tobacco which was previously reported on Form MQ–79 or MQ–80–C. Where such firm qualifies for the exemption in § 723.405 of this part, such firm is required to report only such tobacco received that does not belong to such firm.

(c)(1) * * *

(vi) *The person to whom delivered and pounds involved.*

(2) Any such firm shall report this information to the State FSA office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased by such firm at auction or for which such firm had previously reported on Form MQ–79 or MQ–80–C.

Where such firm qualifies for the exemption in § 723.405 of this part, the firm is only required to report such tobacco received for storage that does not belong to such firm.

17. Revise § 723.412 to read as follows:

§ 723.412 Separate records and reports from persons engaged in tobacco related businesses.

Any person who is required to keep any record or make any report as a warehouse operator, receiving station official; dealer, trucker, or as a person engaged in the hauling, processing, or storage of tobacco and who is engaged in more than one such business, shall keep such records as will enable such person to make separate reports for each such business in which such person is engaged to the same extent for each such business as if the person were engaged in no other business.

18. In § 723.414 revise the section title and paragraphs (a)(2) introductory text, (a)(2)(i), (a)(2)(ii), (b), and (c) to read as follows:

§ 723.414 Failure to keep records and make reports or making false reports or records.

(a) * * *

(2) *Failure to obtain producer marketing card or sale memo.* The failure of any dealer, receiving station official, or warehouse operator to obtain either of the following shall constitute a failure to make a report:

(i) Producer's marketing card, MQ–76, MQ–76–C, or MQ–77, to identify a sale of producer tobacco, or

(ii) Dealer identification card, MQ–79–2, to cover a resale of tobacco.

(b) *False representation—warehouse operators, receiving station officials, dealers, and processors.* The monetary penalties described in this part are in addition to penalties prescribed by other criminal statutes including 18 U.S.C. 231, which provides for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, for a person convicted of knowingly and willingly committing such acts as making a false acreage report, altering a marketing card, falsely identifying tobacco or buying and selling unused "103 percent of quota poundage" on marketing cards.

(c) *Misrepresentation and scheme or device.* A warehouse operator, receiving station official, or dealer who is determined by FSA to have knowingly done one or more of the following, shall pay a marketing quota penalty as prescribed in this part:

(1) Adopted any scheme or device which tends to defeat the purpose of the tobacco program;

(2) Made any fraudulent representation;

(3) Misused a MQ–76, MQ–76–C or MQ–79–2; or

(4) Sold excess tobacco.

19. Add § 723.417 to read as follows:

§ 723.417 Receiving station official's records and reports.

(a) *Report on Form MQ–78–C, Tobacco Receiving Station Registration.* Each receiving station official shall annually, prior to the beginning of the marketing year, furnish the Director, TPD an executed Form MQ–78–C showing:

(1) Form of business organization, buying company name, street address, including city, state and zip code;

(2) Names, street addresses and phone numbers of receiving station official and bookkeeper;

(3) Names, physical addresses and phone numbers of receiving station officials having financial interests in other dealer operations, auction warehouses and other receiving stations; and

(4) Names, addresses and phone numbers of custodians of receiving station records and their locations.

(b) *Separate records and reports.* Each receiving station official shall keep the records and make the reports separately for each quota kind of tobacco as provided in this section.

(c) *Record of marketing.* Each receiving station official shall:

(1) For non-auction receiving station purchases, keep such records as will enable the receiving station official as applicable, to furnish the following information to FSA with respect to each purchase of tobacco made at such receiving station:

(i) The name of the operator of the farm on which the tobacco was produced, including farm serial number, state and county code and the name of the producer, in the case of a sale by a producer;

(ii) Date of purchase;

(iii) Number of pounds purchased; and

(iv) Amount of any penalty.

(2) Reserved.

(d) *Tobacco sale bill for burley and flue-cured tobacco.*

(1) Each receiving station shall use tobacco sale bills furnished at the receiving station's expense showing, as a minimum, the following information:

(i) Tobacco sale bill number;

(ii) Registration number assigned to the receiving station by the Department;

(iii) Name and street address of receiving station where purchase occurred;

(iv) The identification of other producers having an interest in the tobacco;

(v) Date of purchase;

(vi) Number of pounds in each lot;

(vii) Name and address of producer;

(viii) Farm number (including State and county codes) for producer tobacco;

(ix) Poundage balance before purchase for producer tobacco based on 103 percent of farm quota;

(x) Gross number of pounds purchased and balance available for sale after purchase;

(xi) Sale price for each lot and gross purchase price for all lots sold;

(xii) Marketing quota penalty collected; and

(xiii) Amount withheld from purchase price to cover liens due the United States.

(2) At the end of each purchase day, the tobacco sales bills shall be sorted and filed in numerical order by purchase date, and lot tickets shall be filed in an orderly manner by sale dates and by numerical order.

(e) *Identification of tobacco for marketing.*

(1) *Marketing card.* Each marketing of tobacco from a farm in any State for which a farm marketing quota has been established for any kind of tobacco shall be identified by a marketing card (MQ–76–C) issued for the farm on which such tobacco was produced (unless prior to the marketing of such tobacco an Agricultural Marketing Service inspection certification is obtained showing that the tobacco offered for sale is a kind of tobacco not subject to marketing quotas).

(2) *Recording farm identification.* For burley and flue-cured tobacco, at the time the tobacco is staged to be weighed, the receiving station official shall affix a lot ticket containing the operator's name, address, the farm serial number (including the state and county codes) from the marketing card (MQ–76–C) for the farm from which the tobacco is marketed and a unique lot ticket number assigned by the receiving station to the lot of tobacco, provided:

(i) The receiving station official, in order to facilitate scheduling, may stage producer tobacco one purchase day prior to purchase; and

(ii) The receiving station official shall record the unique lot ticket number, the farm serial number (including state and county codes), and the weight of tobacco on the sales bill for the farm at the time of weighing. The price and grade shall be entered at the time of purchase.

(3) *Return of marketing card.* For tobacco that is to be purchased by the receiving station, the receiving station

official shall retain the marketing card (MQ–76–C) until the producer has been paid and the FSA marketing recorder has recorded the sale on the reverse side of the MQ–76–C or the tobacco is removed from the receiving station by the producer, at which time the marketing card (MQ–76–C) shall be returned to the producer. In any case where a producer's marketing card (MQ–76–C) is found in the possession of a receiving station official, and there is no producer from the farm for which the card is issued with tobacco on the floor for sale, or with tobacco for which settlement is not yet complete, such card will be picked up by an FSA representative and returned to the producer. The receiving station official shall be responsible for the safekeeping and proper use of the marketing card during such person's retention of the marketing card.

(4) *Copy of sale bill.* The receiving station official shall furnish to the producer a copy of the tobacco sale bill for any tobacco purchased.

(5) *Lot ticket.* At the time the tobacco is weighed for marketing, the receiving station official shall record the weight of the lot of tobacco on both the tobacco sale bill and the lot ticket. The lot ticket number shall be recorded on the sale bill.

(f) *Non-auction sale to a receiving station.* If the total pounds purchased by a receiving station exceed the balance of the "103 percent of quota" on the farm marketing card, the sale bill shall show the pounds on which penalty is due and the amount of the penalty.

(g) *Payee name to be shown on receiving station check.* Any receiving station which issues a check to cover the purchase of tobacco, shall issue such check only in the name of the payee. A receiving station check shall not be issued in the name of the seller and bearer, for example "John Doe or Bearer."

(h) *Receiving station data for burley and flue-cured tobacco.*

(1) Each official of a burley or flue-cured receiving station shall prepare, at the end of each sale day, an MQ–80–C, Daily Receiving Station Sales Summary, which is to include the following information:

(i) Total pounds purchased,

(ii) Total gross dollar amount of purchases,

(iii) Total penalty pounds,

(iv) Total amount of penalty,

(v) The applicable farm serial number (including state and county codes) for penalty purchases,

(vi) Beginning sale's bill number (numbers must be sequential during the season and all sale bill numbers must be accounted for),

(vii) Ending sale bill number, and

(viii) Daily weights of producer floor scrap.

(2) As to the information required to be entered on MQ–80–C, Daily Receiving Station Sales Summary, by the marketing recorder, the receiving station official shall keep and make available such records as will enable the marketing recorder to enter thereon the total number of Forms MQ–72–C (manual and electronic) for the purchase day and the sum of the pounds purchased.

(3) At the end of the season, each receiving station official shall:

(i) Report on the final MQ–80–C for the season the quantity of floor scrap on hand, if any, and its location;

(ii) Producer floor scrap tobacco shall be destroyed within five days of the last purchase day and the destruction thereof witnessed by an FSA representative;

(iii) Permit its inspection by an FSA representative; and

(iv) Ship all purchased tobacco within five days of the last purchase day of the marketing season.

(i) *Ship-out record.* For flue-cured and burley tobacco, when the tobacco has been shipped from the receiving station to the processor, the ship-out bill of lading shall include the receiving station registration number, name and address, bill of lading number (must be sequential starting with the first ship-out record), lot ticket numbers for tobacco being shipped, date of shipment and delivery point name and address, and any other information deemed necessary by the Deputy Administrator.

(j) *Producer rejections.* When a producer rejects the sale of a lot of tobacco, and the tobacco has been authorized for payment and the sale bill presented to the producer for approval, the receiving station official shall not change the MQ–76–C or MQ–80–C on which the sale was reported.

(k) A remittance for all penalties shown by the entries on Form MQ–80–C shall be remitted to the marketing recorder on the date the penalty was assessed.

(l) *Producer tobacco.* Producer tobacco (first sale) in possession of a receiving station official which has not previously been identified as a purchase shall be recorded and reported on MQ–80–C as excess tobacco purchased by the receiving station. Penalty shall be due on this tobacco at the full penalty rate for the respective kind of tobacco.

* * * * *

7 CFR Chapter XIV

20. Part 1464 is amended as follows:

PART 1464—TOBACCO

21. The authority citation for 7 CFR 1464 will continue to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b, 714c.

22. In § 1464.10 revise paragraphs (i)(1)(i), (i)(2), (i)(3)(i), (i)(5) and (j)(1) to read as follows:

§ 1464.10 No net cost tobacco fund or account.

* * * * *

(i) * * *

(1) * * *

(i) From any dealer, warehouse operator, or receiving station official who acquired the tobacco involved from the producer; or

* * * * *

(2) A dealer, warehouse operator, or receiving station official may deduct the amount of any producer contribution or assessment from the price paid to the producer for such tobacco.

(3) * * *

(i) From the dealer, warehouse operator, or receiving station official who acquired the tobacco involved from the producer; or

* * * * *

(5) All dealers, warehouse operators, or receiving station officials who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable association within 15 days of the date on which the tobacco was marketed except as provided in paragraphs (i)(5)(i) and (ii).

* * * * *

(j) * * *

(1) If any dealer, warehouse operator, or receiving station official fails to collect and remit any contributions or assessments according to the provisions of this section, such person shall be liable, in addition to that amount of contributions or assessments and any late payment charges, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco for the immediately preceding year, on the quantity of tobacco as to which failure occurs. Such a penalty shall only be assessed after the person has been notified of the pending assessment of the penalty and the person has been afforded an opportunity for a hearing with respect to the assessment of the penalty. However, such marketing penalty shall not be assessed if such contributions or assessments are collected and remitted

not later than 15 days after the date required by this part.

* * * * *

Signed at Washington, DC, on December 31, 2002.

Teresa C. Lasseter,

Administrator, Farm Service Agency and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 03–368 Filed 1–10–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–311–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet series 100) series airplanes, that currently requires repetitive lubrication with grease of the sliding shaft of the input plunger of the brake control valve assembly. This action would add requirements for modifying the brake control valve assembly, and subsequent repetitive lubrications of the valve. Accomplishment of the modification would terminate the repetitive lubrications of the sliding shaft of the input plunger required by the existing AD. This proposal is prompted by reports of temporary loss of braking action upon landing. The actions specified by the proposed AD are intended to prevent temporary loss of braking action due to the freezing of moisture of the input plunger of the brake control valve during steep descent.

DATES: Comments must be received by February 12, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000NM–311–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–311–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–311–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–311–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 12, 1994, the FAA issued AD 93–21–04, amendment 39–8801 (59 FR 2952, January 20, 1994), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet series 100) series airplanes, to require repetitive lubrication with grease of the sliding shaft of the input plunger of the brake control valve assembly. That action was prompted by reports of temporary loss of braking action upon landing. The requirements of that AD are intended to prevent temporary loss of braking action due to the freezing of moisture on the input plunger of the brake control valve during steep descent.

Action Since Issuance of Previous Rule

Since the issuance of that AD, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, issued Canadian airworthiness directive CF–93–26R2, dated January 18, 1994, in order to assure the continued airworthiness of these airplanes in Canada. The Canadian airworthiness directive requires, among other things, modifying the brake control valve assembly by installing new greasing provisions, and subsequent repetitive lubrications of the valve using the newly installed grease fittings.

Bombardier has issued Service Bulletin S.B. 601R–32–017, dated November 9, 1993. The service bulletin describes procedures for modification of the brake control valve assembly, and subsequent repetitive lubrications of the valve. Accomplishment of the modification eliminates the need for the existing repetitive lubrications of the sliding shaft of the input plunger required by AD 93–21–04. The modification includes installing a new crossbeam assembly into the dual-brake

control valve, torquing bolts, and inspecting for leaks. The new crossbeam assembly incorporates a lubrication fitting to allow lubrication of the brake control valve plungers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93–21–04 to continue to require lubrication with grease of the sliding shaft of the input plunger of the brake control valve assembly. The proposed AD would add requirements for modifying the brake control valve assembly; and subsequent repetitive lubrications of the valve. Accomplishment of the modification would terminate the repetitive lubrications of the sliding shaft of the input plunger. The new actions would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between Proposed Rule and Canadian Airworthiness Directive

The proposed AD would differ from the parallel Canadian airworthiness directive in that it would NOT require the following actions:

- Revising the Airplane Flight Manual to provide the flightcrew with operational procedures for abnormal brake-pedal action; and
- Cleaning and drying the bushings and plungers, and applying lubricant to these components.

We have determined that these actions are unnecessary because those actions are intended to mitigate the identified unsafe condition before accomplishment of Bombardier Service Bulletin 601R–32–017. The modification of the brake control valve assembly and subsequent lubrication schedule specified in that service bulletin render the preceding actions unnecessary. TCCA has no objections to our proposed requirements.

Cost Impact

There are approximately 2 Model CL–600–2B19 (Regional Jet series 100) series airplanes of U.S. registry that are affected by AD 93–21–04. The actions that are currently required by that AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $120, or $60 per airplane.

There are approximately 194 Model CL–600–2B19 series airplanes of U.S. registry that would be affected by this proposed AD.

The modification that is proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,812 per airplane. Based on these figures, the cost impact of the proposed modification of this AD on U.S. operators is estimated to be $786,088, or $4,052 per airplane.

The lubrication of the brake control valve that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed lubrication of this AD on U.S. operators is estimated to be $11,640, or $60 per airplane, per lubrication.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8801 (59 FR 2952, January 20, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 2000–NM–311–AD. Supersedes AD 93–21–04, Amendment 39–8801.

Applicability: Model CL–600–2B19 (Regional Jet series 100) series airplanes, serial numbers 7003 and subsequent, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent temporary loss of braking action due to the freezing of moisture on the input plunger of the brake control valve during steep descent, accomplish the following:

Requirements of AD 93–21–04

Lubrications

(a) Within 3 days after February 4, 1994 (the effective date of AD 93–21–04, amendment 39–8801), and thereafter at intervals not to exceed 3 days, lubricate with grease the sliding shaft of the input plunger of the brake control valve assembly per Canadair Regional Jet Alert Service Bulletin S.B.A601R–32–016, dated October 14, 1993, until modification of the brake control valve, as required by paragraph (b) of this AD, is accomplished.

New Actions Required By This AD

Modification

(b) Within 12 months after the effective date of this AD: Modify the brake control valve assembly by accomplishing all the actions specified in Bombardier Service Bulletin S.B. 601R–32–017, dated November 9, 1993, per the service bulletin. Such modification terminates the repetitive lubrications of the sliding shaft of the input plunger of the brake control valve assembly required by paragraph (a) of this AD.

Repetitive Lubrications

(c) Within 1,500 flight hours after doing the modification required by paragraph (b) of this AD, and thereafter at intervals of 1,500 flight hours, lubricate with grease the brake control valve per paragraph 2.B.(18) of the Accomplishment Instructions of Bombardier Service Bulletin S.B. 601R–32–017, dated November 9, 1993.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 93–21–04, amendment 39–8801, are approved as alternative methods of compliance with this AD.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–93–26R2, dated January 18, 1994.

Issued in Renton, Washington, on January 7, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–642 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket Nos. 02N–0276 and 02N–0278]

Proposed Regulations Implementing Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; satellite downlink public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting (via satellite downlink) to discuss proposed regulations implementing two sections in Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act) regarding Registration of Food Facilities (Docket No. 02N–0276) and Prior Notice of Imported Food Shipments (Docket No. 02N–0278). FDA expects to publish shortly in the **Federal Register** proposed rules implementing each of these provisions. The purpose of the satellite downlink public meeting is to provide information on the proposed rules to the public and to provide the public an opportunity to ask questions or to provide comment.

DATES: Satellite Downlink Public Meeting I—Wednesday, January 29, 2003, 1 to 3 p.m. eastern standard time. Questions submitted in advance must be received by the contact person by close of business (4:30 p.m.) on January 24, 2003.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations where the satellite downlink may be viewed. A written transcript of the meeting will be available for viewing at Dockets Management Branch (DMB) (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and through the Web site at http://www.fda.gov/oc/bioterrorism/bioact.html. A copy of the videotaped meeting may also be viewed at DMB.

FOR FURTHER INFORMATION CONTACT: Louis J. Carson, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2130, FAX: 301–436–2605, e-mail: Louis.Carson@cfsan.fda.gov, for general questions about the downlink, submission of advance questions, and requests for a taped version of the meeting. Registration for specific downlink locations should be directed to the appropriate contact person listed in table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION: The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act includes four provisions in Title III (Protecting Safety and Security of Food and Drug Supply), Subtitle A (Protection of Food Supply) that require the Secretary of Health and Human Services, through FDA, to develop implementing regulations on an expedited basis. These four provisions are section 305 (Registration of Food Facilities); section 307 (Prior Notice of Imported Food Shipments); section 306 (Maintenance and Inspection of Records for Foods); and section 303 (Administrative Detention). FDA soon will be publishing in the **Federal Register** notices of proposed rulemakings for each of these provisions. During the satellite downlink public meeting, FDA will explain the proposed rules on Registration of Food Facilities and Prior Notice of Imported Food Shipments and will answer questions. The satellite downlink public meeting will be offered in English with French and Spanish translation and will be simulcast live in English, French, and Spanish for North, Central, and South America (including, Hawaii and Alaska).

Interested persons may submit questions concerning the proposals in advance of the downlink meeting. The deadline for the submission of questions is provided in the **DATES** section of this notice. Questions submitted in advance will be used by the session moderator to help clarify issues of concern and provide information about the

proposals. The viewing audience may telephone or fax questions to FDA officials during the live downlink.

FDA is planning a second satellite downlink meeting during which FDA will explain the proposed rules that FDA will publish shortly to implement sections 306 and 303 of the Bioterrorism Act. That meeting will be announced in a future **Federal Register** notice. FDA also plans to develop additional regulations, safety measures, and guidance documents to implement other provisions of the Bioterrorism Act. Information about the public meetings, a list of additional non-FDA Web sites for viewing the public meetings, contact information, the provisions of the Bioterrorism Act under FDA's jurisdiction, and the agency's implementation plans are available at http://www.fda.gov/oc/bioterrorism/bioact.html.

Proposed rules

The proposed regulations that will be addressed at the satellite downlink public meeting announced in this document concern the following provisions of the Bioterrorism Act:

• *Section 305: Registration of Food Facilities*—The Bioterrorism Act requires the owner, operator, or agent-in-charge of domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA no later than December 12, 2003. Farms, restaurants, retail food establishments, non-profit food establishments that prepare or serve food directly to the consumer, and fishing vessels not engaged in processing, as defined in 21 CFR 123.3(k), are exempt from this requirement. Also exempt are foreign facilities if the food from the facility undergoes further processing or packaging by another facility outside of the United States. FDA must issue final regulations no later than December 12, 2003, but facilities must register by this date in accordance with the Bioterrorism Act even if the regulations are not finalized. FDA plans to publish a final rule by October 12, 2003.

• *Section 307: Prior Notice of Imported Food Shipments*—The Bioterrorism Act specifies that on or after December 12, 2003, FDA must receive prior notice of each article of food imported or offered for import into the United States. FDA must issue the final regulation by December 12, 2003. If the regulation is not final by that date, the Bioterrorism Act still requires FDA to receive prior notice of not less than 8 hours and not more than 5 days until the regulation takes effect. The agency plans to publish a final rule by October 12, 2003.

A list of non-FDA parties providing other locations for viewing the downlink is provided in table 1 of this document. The parties listed are providing this service free of charge in the interest of providing information to their constituents and to assist in creating a public process.

TABLE 1.—SATELLITE DOWNLINK PUBLIC MEETING I—SECTION 305: REGISTRATION OF FOOD FACILITIES AND SECTION 307: PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS

Date: January 29, 2003
Locations and Contact Information:
Location: Advanced Training Center, 275 Oak St., Buffalo, NY 14203, 716–855–7050 **Contact**: Diana Monaco, U.S. FDA/Buffalo Office, 300 Pearl St., suite 100, Buffalo, NY 14202, 716–551–4461, ext. 3118, FAX: 716–551–3845, e-mail: dmonaco@ora.fda.gov
Location: U.S. FDA, Chicago District Office, 550 W. Jackson Blvd., 16th floor, Chicago, IL 60661, 312–596–4205 **Contact**: Darlene Bailey, U.S. FDA/Chicago District Office, 550 W. Jackson Blvd., Chicago, IL 60661, 312–596–4205, FAX: 312–596–4170, e-mail: dbailey@ora.fda.gov
Location: Lake Washington Technical School, 11605 132nd Ave. NE., rm. W–404, Kirkland, WA 98034, 425–739–8100 **Contact**: Sue Hutchcroft, U.S. FDA/Seattle District Office, 22201 23rd Dr., SE., Bothell, WA 98021, 425–483–4953, FAX: 425–483–4996, e-mail: shutchcr@ora.fda.gov
Location: VA Medical Center, 4th Floor Auditorium, 2002 Holcombe Blvd., Houston, TX 77030, 713–794–7143 **Contact**: Sheryl McConnell, U.S. FDA/Dallas District Office Houston Resident Post, 1445 North Loop, West, suite 420, Houston, TX 77008, 713–802–9095, ext. 115, FAX: 713–802–0906, e-mail: smcconne@ora.fda.gov
Location: Laredo Public Library, 1120 East Calton Rd., Laredo, TX 78041, 956–795–2400 **Contact**: Julio Salazar, U.S. FDA/Southwest Import District, 715 Bob Bullock Loop, rm. 75, Laredo, TX 78045, 956–729–9691, ext. 1103, FAX: 956–729–0997, e-mail: jsalazar@ora.fda.gov

TABLE 1.—SATELLITE DOWNLINK PUBLIC MEETING I—SECTION 305: REGISTRATION OF FOOD FACILITIES AND SECTION 307: PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS—Continued

Date: January 29, 2003
Locations and Contact Information:
Location: Center for Food Safety and Applied Nutrition, U.S. FDA, Auditorium, 5100 Paint Branch Pkwy., College Park, MD, 301–436–2428 **Contact**: Tonya Poindexter, U.S. FDA/Center for Food Safety and Applied Nutrition, rm. 3B035, College Park, MD, 301–436–1544, FAX: 301–436–1584, e-mail: tonya.poindexter@cfsan.fda.gov

Registration: To register for the satellite downlink public meeting, contact the persons listed previously for the site you want to attend. Space is limited and registration will be closed at each site when maximum seating capacity for that site is reached (between 100–200 persons per site). Send registration information (including name, title, firm name, address, telephone number, e-mail address, and fax number) to the contact identified in table 1 of this document at least 2 workdays before the meeting. You may register by e-mail, fax, or telephone.

If you need special accommodations due to a disability, please notify the contact person listed in table 1 of this document at least 7 days in advance of the meeting.

In addition, any interested parties with access to a satellite dish may view the downlink meetings at the following coordinates:

Live simulcast in English (channel 6.8), French (channel 5.8), and Spanish (channel 6.2)

For the United States (including Alaska and Hawaii) and Canada

C Band
Galaxy 9 @ 127 degrees west
Ch 3 Horizontal
Downlink frequency 3740 MHz

For South and Central America

Digital
PAS 9 @ 58 west
Slot A Digital -
Ch 24 Horizontal
Downlink frequency 4160 MHz

Video rebroadcasts will be played at several locations throughout the world. Dates, and viewing times for the video rebroadcasts for Europe, Asia, Australia, New Zealand can be found on FDA's bioterrorism Web site (http://www.fda.gov/oc/bioterrorism/bioact.html). Information on additional video rebroadcasts in English, Spanish,

and French will also be available at http://www.fda.gov/oc/bioterrorism/bioact.html.

Transcripts: Within 3 weeks of the satellite downlink public meeting, written transcripts in English, French, and Spanish will be available for viewing at DMB (see **ADDRESSES**) and posted on the following Web sites: http://www.fda.gov/oc/bioterrorism/bioact.html. A written transcript of the satellite downlink meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, within 3 weeks of the satellite downlink public meeting at a cost of 10 cents per page. Contact Lou Carson for a copy of the videotaped meeting. A copy of the video taped meeting may also be viewed at DMB.

Dated: January 3, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–660 Filed 1–8–03; 4:09 pm]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–7437–9]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Proposed rule—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD), South Coast Air Quality Management District (South Coast AQMD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before February 12, 2003.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XXVII, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

DOCKET: Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XXVII. This docket is available for public inspection and copying Monday—Friday during regular business hours at the following locations:

EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XXVII, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XXVII, Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4125.

I. Background information

A. Why is EPA taking this action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by three local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What criteria were used to evaluate rules submitted to update 40 CFR part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

B. What rule revisions were submitted to update 40 CFR part 55?

1. After review of the rule submitted by Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following new rule applicable to OCS sources for which the Santa Barbara County APCD is designated as the COA:

Rule #	Rule names	Adoption date
360	Emissions of Oxide of Nitrogen from Large Water Heaters and Small Boilers	10/17/02

2. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following new rule applicable to OCS sources for which the South Coast AQMD is designated as the COA (note: no requirements that are not related to the attainment and maintenance of federal and state ambient air quality standards will be incorporated to regulate toxics):

Rule #	Rule names	Adoption date
1168	Adhesive and Sealant applications	07/12/02
1171	Solvent Cleaning Operations	08/02/02

3. After review of the rule submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule correction for a previous submitted rule applicable to OCS source for which the Ventura County APCD is designated as the COA:

Rule #	Rule names	Adoption date
74.9	Stationary Internal Combustion Engines	11/14/00

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements

unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because consistency updates do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

H. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant action under Executive Order 12866.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Continental shelf, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 24, 2002

Jack P. Broadbent,

Acting Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(F),(G) and (H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources.*

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

APPENDIX TO PART 55—[AMENDED]

3. Appendix A to CFR part 55 is proposed to be amended by revising paragraph (b)(6), (7) and (8) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) Local requirements.

* * * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 5/20/99)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Adopted 7/15/99)
Rule 201 Permits Required (Adopted 4/17/97)
Rule 202 Exemptions to Rule 201 (Adopted 4/17/97)
Rule 203 Transfer (Adopted 4/17/97)
Rule 204 Applications (Adopted 4/17/97)
Rule 205 Standards for Granting Applications (Adopted 4/17/97)
Rule 206 Conditional Approval of Authority To Construct or Permit To Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 4/17/97)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 4/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 11/15/01)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 7/19/01)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 1/18/01)

Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 1/20/00)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions From Reciprocating Internal Combustion Engines (Adopted 4/17/97)
Rule 342 Control of Oxides of Nitrogen (NO_X) From Boilers, Steam Generators and Process Heaters) (Adopted 4/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Adopted 1/18/01)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 9/16/99)
Rule 353 Adhesives and Sealants (Adopted 8/19/99)
Rule 359 Flares and Thermal Oxidizers (6/28/94)
Rule 360 Emissions of Oxides of Nitrogen From Large Water Heaters and Small Boilers (Adopted 10/17/02)
Rule 370 Potential To Emit—Limitations for Part 70 Sources (Adopted 6/15/95)
Rule 505 Breakdown Conditions Sections A.,B.1, and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 4/17/97)
Rule 802 Nonattainment Review (Adopted 4/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 4/17/97)
Rule 804 Emission Offsets (Adopted 4/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 4/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 5/20/99)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 4/17/97)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

(7) *The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Parts I, II and III):

Rule 102 Definition of Terms (Adopted 10/19/01)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 8/18/00)
Rule 112 Definition of Minor Violation and Guidelines for Issuane of Notice To Comply (Adopted 11/13/98)
Rule 118 Emergencies (Adopted 12/7/95)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit and Burn Authorization for Open Burning (12/21/01)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications and Regulation II—List and Criteria Identifying Information required of Applicants Seeking a Permit to Construct from the SCAQMD (Adopted 4/10/98)
Rule 212 Standards for Approving Permits (Adopted 12/7/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Continuous Emission Monitoring (Adopted 5/14/99)
Rule 218.1 Continuous Emission Monitoring Performance Specifications (Adopted 5/14/99)
Rule 218.1 Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 5/14/99)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 11/17/00)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/11/01) except (e)(7)and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/11/01)
Rule 304.1 Analyses Fees (Adopted 5/11/01)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/11/01)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/11/01)
Rule 401 Visible Emissions (Adopted 11/9/01)
Rule 403 Fugitive Dust (Adopted 12/11/98)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a)and (e)only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 6/12/98)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 9/15/00)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 12/15/00)
Rule 444 Open Burning (Adopted 12/21/01)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 8/13/99)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77) Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 12/21/01)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 708 Plans (Rescinded 9/8/95)
Regulation IX—New Source Performance Standards (Adopted 5/11/01)
Reg. X National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 5/11/01)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/9/01)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous- and Liquid Fueled Internal Combustion Engines (Adopted 11/14/97)
Rule 1113 Architectural Coatings (Adopted 7/20/01)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/10/99)
Rule 1122 Solvent Degreasers (Adopted 9/21/01)

Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1125 Metal Containers, Closure, and Coil Coating Operations (adopted 1/13/95)
Rule 1132 Further Control of VOC Emissions from High-Emitting Spray Booth Facilitites (Adopted 1/19/01)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1137 PM10 Emission Reductions from Woodworking Operations (Adopted 2/01/02)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 11/17/00)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1168 Adhesive and Sealant Applications (Adopted 6/07/02)
Rule 1171 Solvent Cleaning Operations (Adopted 08/2/02)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1178 Further Reductions of VOC Emissions from Storage Tanks at Petroleum Facilities (Adopted 12/21/01)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 10/20/00)
Rule 1303 Requirements (Adopted 4/20/01)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 10/20/00)
Rule 1313 Permits to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 7/10/98)
Rule 1612.1 Mobile Source Credit Generation Pilot Program (Adopted 3/16/01)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 7/10/98)
Rule 1701 General (Adopted 8/13/99)
Rule 1702 Definitions (Adopted 8/13/99)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 8/13/99)
Rule 1706 Emission Calculations (Adopted 8/13/99)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 5/11/01)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X) Emissions (Adopted 5/11/01)
Rule 2004 Requirements (Adopted 5/11/01) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 4/20/01) except (i)
Rule 2006 Permits (Adopted 5/11/01)
Rule 2007 Trading Requirements (Adopted 5/11/01)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 5/11/01)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions (Adopted 5/11/01)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Adopted 5/11/01)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 5/11/11) except (b)(1)(G) and (b)(3)(B)
Rule 2020 RECLAIM Reserve (Adopted 5/11/01)
Rule 2100 Registration of Portable Equipment (Adopted 7/11/97)
Rule 2506 Area Source Credits for NO_X and SO_X (Adopted 12/10/99)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 3/16/01)
Rule 3004 Permit Types and Content (Adopted 12/12/97)
Rule 3005 Permit Revisions (Adopted 3/16/01)
Rule 3006 Public Participation (Adopted 11/14/97)
Rule 3007 Effect of Permit (Adopted 10/8/93)
Rule 3008 Potential To Emit Limitations (3/16/01)
XXXI Acid Rain Permit Program (Adopted 2/10/95)
(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*:
Rule 2 Definitions (Adopted 11/10/98)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 5/14/02)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 7/9/96)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 5/14/02)
Rule 26.2 New Source Review—Requirements (Adopted 5/14/02)
Rule 26.3 New Source Review—Exemptions (Adopted 5/14/02)
Rule 26.6 New Source Review—Calculations (Adopted 5/14/02)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 26.11 New Source Review—ERC Evaluation At Time of Use (Adopted 5/14/02)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 4/10/01)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 4/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 4/10/01)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 4/10/01)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 4/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 4/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42 Permit Fees (Adopted 5/14/02)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)

Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 4/10/01)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS (Adopted 04/10/01)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 11/13/01)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 1/08/02)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 11/14/00)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/95)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_x (Adopted 4/9/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 6/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 1/08/02)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)
Rule 230 Notice to Comply (Adopted 11/9/99)

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[FR Doc. 03–618 Filed 1–10–03; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0346; FRL–7285–5]

Propanoic Acid, and its Calcium and Sodium Salts; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of propanoic acid, and its calcium and sodium salts when used as either an inert or active ingredient in pesticide formulations that are applied to growing crops or raw agricultural commodites (RAC) before or after harvest, and for pesticide formulations that are applied to animals, under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). This document also proposes to reorganize the existing tolerance exemptions for propanoic acid and its salts.

DATES: Comments, identified by docket ID number OPP–2002–0346, must be received on or before March 14, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Treva Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8373 and e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0346. The official public docket consists of the documents specifically referenced in this action, any public comments received, and

other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title;_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0346. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0346. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0346.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm.

119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0346. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background and Statutory Findings

In the **Federal Register** of February 12, 1997 (62 FR 6228) (FRL–5583–9), EPA issued a notice under section 408 of the FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 6F4770) by Nayfa Industries, Inc., c/o 1625 K St., N.W., Suite 501, Washington, D.C. 20006. The petition requested that 40 CFR 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the fungicide propionic acid, also known as propanoic acid (CAS Reg. No. 79–09–4) in or on the raw agricultural commodities sugarbeets, potatoes, and sweet potatoes. This notice included a summary of the petition prepared by Nayfa Industries, Inc., the petitioner. There were no comments received in response to the notice of filing. The Agency has not yet issued a final rule for this petition, and has, in fact, determined to issue a proposed rule.

The Agency is now issuing this rule as a proposal for two reasons: First, the calcium and sodium salt forms of propanoic acid are being added to the existing exemptions from the requirement of a tolerance of propanoic acid (40 CFR 180.1023). Second, based on a review and evaluation of the available data, the Agency believes that a broader use than what was requested by the petitioner is appropriate. The Agency is proposing to remove the existing tolerance exemptions for propionic acid and sodium propionate in 40 CFR 180.1001(c). These exemptions from the requirement of a tolerance will be covered by the proposed revisions to 40 CFR 180.1023. No uses would be lost as a result of these actions. Since the 1997 publication of the Notice of Filing, the Agency has completed the Tolerance Reassessment process for propanoic acid. Based on the results of that reassessment, EPA on its own initiative, under section 408(e) of the FFDCA, 21 U.S.C. 346a, is proposing to establish an unlimited exemption from the requirement of a tolerance for residues of propanoic acid (CAS Reg. No. 79–09–4); propanoic acid, calcium salt (CAS Reg. No. 4075–81–4); and propanoic acid, sodium salt (CAS Reg. No. 187–40–6), when used as either an active or inert ingredient in pesticide formulations that are applied to growing crops or raw agricultural commodities and in pesticide formulations that are applied to animals.

The data used by the Agency to make the safety determination for propanoic acid included data that was generated using the sodium and calcium salts of propanoic acid. Often, when conducting animal tests using an acid, such as propanoic acid, as the test substance, the acid must be neutralized (converted to a salt - in this case the calcium and sodium salt) to conduct the tests. Therefore, the Agency is proposing that these two salts of propanoic acid also be included in the tolerance exemption expression.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemptionfrom the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure.

Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for the establishment of an exemption from the requirement of a tolerance for residues of propanoic acid and its calcium and sodium salts. EPA's assessment of exposures and risks associated with establishing the exemption from the requirement of a tolerance follows.

III. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the

toxic effects caused by propanoic acid and its calcium and sodium salts are discussed in this unit.

Propanoic acid is a three carbon acid with a molecular formula of CH_3CH_2COOH. It is considered to be a medium strong acid. It occurs naturally in animal and dairy products such as butter and cheese. Propanoic acid and the salts of propanoic acid are direct food additives. (discussed in unit III.7.) The toxicological database for propanoic acid was determined to be adequate for reregistration eligibility at the time that the Reregistration Eligibility Document (RED) was completed in September 1991. A comprehensive search of the open literature from 1991 forward and a search for in-house toxicological data failed to reveal any new information on propanoic acid which would change the toxicological findings in the RED. Therefore, the toxicological findings/ data from the Propionic Acid RED (which also addresses the calcium and sodium salts) are applicable to this current evaluation.

1. *Acute toxicity.* Technical propanoic acid is of moderate to low acute toxcity via the oral, dermal, and inhalation routes of exposure (toxicity category of III), and is not a skin sensitizer. However, propanoic acid is acutely toxic in eye and dermal irritation tests (toxicity category I).

2. *Subchronic toxicity.* No subchronic toxicity data are available on propanoic acid itself; however, data on calcium and sodium propionate are used to assess subchronic toxicity. Rats fed calcium or sodium propionate at one percent of the diet (equivalent to 750 milligrams/kilogram/ day (mg/kg/day) of propanoic acid) for four weeks followed by 3% (equivalent to 1,200 mg/kg/day of propanoic acid) for three weeks showed no changes in weight gain compared to the the controls. Rats fed 5% propanoic acid in the diet (approximately 5,000 mg/kg body weight) for 110 days developed lesions of the forestomach.

Propanoic acid was given in the feed to dogs at 220, 735, or 2,066 mg/kg/day for 90 days. The high dose dogs showed reduced food consumption, increased incidence of epithelial hyperplasia in the esophagus, and increased nitrite in the urine. These effects were no longer present in dogs held for a six week recovery period. In a limited 90–day dog study with calcium propionate (2,523 mg/kg/day) the dogs showed vomiting and diarrhea.

3. *Chronic toxicity.* Twenty male rats per group were fed four percent propanoic acid in the diet for 2 years. The highest dose animals had hyperplasia and hyperplastic ulcers in the forestomach. Rats fed bread containing sodium propionate (4,000 mg/kg/day) for a year showed no adverse effects, nor did rats fed a similar diet for 32 weeks, other than an initial depression of growth.

4 *Developmental toxicity.* No maternal or fetal effects were seen upon feeding calcium propionate to pregnant animals at rates up to 300 mg/kg/day for hamsters and rabbits.

5. *Mutagenicity*

Propanoic acid gave negative results in mutagencity assays in five strains of *S. Typhimurium*, and one strain of *S. Cerevisiae*, with and without activation.

Additional data on calcium and sodium propionate indicated that both tested negative for mutagenicity in *S. Typhimurium*, and *S. Cerevisiae*.

6. *Metabolism* Propanoic acid is produced in large quantities in ruminants (dairy cows), thus accounting for its presence in butter and dairy products. In humans, propanoic acid is one of the metabolic products from the breakdown of several amino acids. Propanoic acid is formed as the body oxidizes longer chain odd-numbered fatty acids or the side chain of cholesterol. It is a normal intermediary metabolite in the body that is utilized by most organs and tissues, and can be metabolized to glucose, carbohydrates, amino acids, and lipids.

If directly ingested, propanoic acid is rapidly absorbed from the mammalian gastrointestinal tract, and thus enters a known metabolic pathway.

7. *FDA uses.* The Food and Drug Administration (FDA) has approved various uses of propanoic acid, and its calcium and sodium salts. Under 21 CFR 178.1010, propanoic acid can be used in food contact surface sanitizing solutions when the ready-for-use end-use concentration does not exceed 297 ppm. The calcium salt of propanoic acid is affirmed Generally Recognized As Safe (GRAS) under 21 CFR 184.1221. It is used as a mold inibitor in bread. The sodium salt of propanoic acid is affirmed GRAS under 21 CFR 184.1784. It is used as a mold inhibitor in cakes and unleavened goods and as a chemical preservative in animal drugs and feeds. Propanoic acid is affirmed GRAS under 21 CFR 184.1081. It is an antimicrobial agent and a flavoring agent.

8. *Findings of the United Nations Food and Agriculture Organization/ World Health Organization (FAO/WHO) Expert Committee on Food Additives.* Propanoic acid has been examined at several meetings of the FAO/WHO Joint Expert Committee on Food Additives (JECFA). The Seventeenth Report contained the following information: "In human plasma propionic acid represents 0% to 4% of the total fatty acid and is a by-product of normal intermediate metabolism. Absorbed propionate is removed by the liver, kidneys, heart, muscle and adipose tissue. The liver can deal with 4.5 g free acid or 5.8 g sodium propionate per hour."

In 1973, the Committee determined that "propionate is a normal intermediary metabolite, and a normal constituent of foods." Based on an understanding of this metabolic information, the Committee also determined that it was not necessary to specify an estimate of acceptable daily intake (ADI) in man. It was specified as "unlimited." This finding was reviewed in 1997: The 1973 ADI was maintained.

9. *Conclusions on the Toxicity of Propanoic Acid and its Calcium and Sodium Salts.* Propanoic acid demonstrates an acute toxicity profile that is consistent with that of an acid: it is highly acutely toxic for eye and dermal irritation, i.e., it is corrosive to the eyes and skin. These effects are most appropriately addressed through the use of protective equipment and labeling, not through establishment of tolerance exemptions.

The JECFA monograph deemed propanoic to be of such low concern that the acceptable daily intake is "not specified." A consideration in this decision was the understanding that "propionate is a normal intermediary metabolite, and a normal constituent of foods." Propanoic acid and its calcium and sodium salts are FDA affirmed GRAS direct food additives.

When considering the oral exposure pathway, the most relevant in establishing a tolerance exemption, propanoic acid and its calcium and sodium salts have low toxic potential. There are no concerns for mutagencity, carcinogenicity, or developmental or reproductive concerns. Propanoic acid is a normal component of metabolism in the human body. The human body has a known pathway to metabolize propanoic acid. No additional data are necessary to assess the toxicity of these chemicals.

IV. Aggregate Assessment

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens. lawns, or buildings (residential and other indoor uses).

For propanoic acid and its calcium and sodium salts a qualitative assessment for all pathways of human exposure (food, drinking water, and residential) is appropriate given their low toxic potential for the oral route of exposure, that humans of all ages are highly exposed to propanoic acid from natural sources, and the human body has a known pathway for metabolizing propanoic acid.

V.Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify or revoke a tolerance or tolerance exemption, the Agency considers "available information" concerning the cumulative effects of a particular chemical's residues and other substances that have a common mechanism of toxicity." Propanoic acid and its calcium and sodium salts are lower toxicity chemicals. EPA does not have, at this time, available data to determine whether propanoic acid and its calcium and sodium salts have a common mechanism of toxicity with other substances or how to include these pesticide chemicals in a cumulative risk assessment.

VI. Determination of Safety for U.S. Population, Infants and Children

Based on the available data, the lower toxicity of propanoic acid and its calcium and sodium salts, and considering the FDA affirmed GRAS uses and the JEFCA finding of the unlimited ADI, EPA concludes that propanoic acid and its calcium and sodium salts do not pose a dietary risk under reasonably foreseeable circumstances. Accordingly, EPA finds that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to propanoic acid and its calcium and sodium salts. For propanoic acid and its calcium and sodium salts, due to the expected low oral toxicity, a safety factor analysis has not been used to assess the risk. For the same reasons and especially considering the available developmental toxicity information, the additional tenfold safety factor for the protection of infants and children is unnecessary.

VII. Other Considerations

1. *Endocrine disruptors.* FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing propanoic acid and its calcium and sodium salts for endocrine effects may be required.

2. *Analytical enforcement methodology* An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

3. *Existing exemptions* Several tolerance exemptions for the residues of propionic acid, have been established in 40 CFR 180.1023. Under 40 CFR 180.1023(a) propionic acid or a mixture of methylene bispropionate and oxy(bismethylene) bisproprionate is exempted from the requirement of a tolerance when used as a fungicide on 22 commodities. In addition exemptions from the requirement of tolerances from residues of propionic acid (see 40 CFR 180.1023(b)) have been established in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, milk, and eggs when applied as a bactericide/fungicide to livestock drinking water, poultry litter, and storage areas for silage and grain. The two above exemptions are only being modified for the nomenclature change from propionic to propanoic acid.

The current exemption under 40 CFR 180.1023(c) will be replaced by a new tolerance exemption which covers the existing exemptions under (c), but is broader and will also include the calcium and sodium salts of propanoic acid.

Exemptions from the requirement of a tolerance have been established in 40 CFR 180.1001(c) for sodium propionate with a use as a preservative and for propionic acid with a use as a catalyst in the pesticide formulation. These exemptions are now duplicative and will be removed.

D. International Residue Limits

The Agency is not aware of any country requiring a tolerance for propanoic acid and its calcium and sodium salts nor have any CODEX Maximum Residue Levels (MRLS) been established for any food crops at this time.

VIII. Conclusion

Based on the information in the record, summarized in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of propanoic acid, calcium propionate, and sodium propionate. Accordingly, EPA finds that exempting propanoic acid; propanoic acid, calcium salt; and propanoic acid, sodium salt from the requirement of a tolerance will be safe. With the establishment of this tolerance exemption in 40 CFR180.1023(c), the existing tolerance exemptions for inert ingredients in 40 CFR 180.1001(c) are duplicative and can be removed.

IX. Regulatory Assessment Requirements

This proposed rule establishes a consolidated and expanded exemption from the requirement for a tolerance under section 408(d) of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial

number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Establishing an exemption from the requirement of a pesticide tolerance (or, expanding and consolidating a tolerance exemption, as is proposed today), is in effect, the removal of a regulatory restriction on pesticide residues in food and thus such an action will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.""Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 2, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

PART 180.1001 [Amended]

2. Section 180.1001 is amended in paragraph (c) by removing from the table, the entries for "propionic acid" and "sodium propionate."

3. Section 180.1023 is amended in paragraph (a) and (b) by revising the term "propionic acid" to read "propanoic acid;" and by revising paragraph (c) to read as follows:

§ 180.1023 Propanoic acid and its sodium and calcium salts; exemptions from the requirement of a tolerance.

* * * * *

(c) Residues of propanoic acid (CAS Reg. No. 79–09–4), propanoic acid, calcium salt (CAS. Reg. No. 4075–81–4), and propanoic acid, sodium salt (CAS Reg. No. 137–40–6) are exempted from the requirement of a tolerance when used as either an active or inert ingredient in accordance with good agricultural practice in pesticide formulations applied to growing crops, to raw agricultural commodities after harvest, and to animals.

[FR Doc. 03–615 Filed 1–10–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7436–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Wildcat Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is issuing a notice of intent to delete the Wildcat Landfill Superfund Site (Site), located in Kent County, near Dover, Delaware, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), is found at Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA, with the concurrence of the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control, has determined that responsible parties or other persons have implemented all appropriate response actions required under CERCLA and, therefore, no further response action pursuant to CERCLA is appropriate. However, this deletion does not preclude future actions under CERCLA.

In the "Rules and Regulations" section of today's **Federal Register**, EPA is publishing a direct final notice of deletion of the Wildcat Landfill Superfund Site without prior notice of

intent to delete because EPA views this as a noncontroversial revision and anticipates no adverse comment. EPA has explained its reasons for this deletion in the direct final notice of deletion. If EPA receives no adverse comment(s) on this notice of intent to delete or on the direct final notice of deletion, EPA will not take further action on this notice of intent to delete. If EPA receives adverse comment(s), EPA will withdraw the direct final notice of deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. EPA will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, *see* the direct final notice of deletion which is located in the "Rules and Regulations" section of this **Federal Register**.

DATES: Comments concerning this Site must be received by February 12, 2003.

ADDRESSES: Written comments should be addressed to: Mr. Hilary M. Thornton, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3323.

FOR FURTHER INFORMATION CONTACT: Mr. Hilary M. Thornton, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3323 or 1–800–553–2509.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final notice of deletion which is located in the "Rules and Regulations" section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following addresses: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103–2029, (215) 814–5254, Monday through Friday, 8 a.m. to 5 p.m.; and in Delaware at the Delaware Department of Natural Resources and Environmental Control, Site Investigation and Restoration Branch, 391 Lukens Drive, New Castle, DE 19720, (302) 395–2600, Monday through Friday, 8 a.m. to 4 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: December 20, 2002.

Donald S. Welsh,

Regional Administrator, U.S. EPA Region III.

[FR Doc. 03–514 Filed 1–10–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7550]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *mike.grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
MISSISSIPPI				
Rankin County (Unincorporated Areas)				
Eutacutachee Creek	Approximately 250 feet from the confluence of Pelahatchie Creek.	None	•333	Rankin County (Unincorporated Areas)
	Approximately 760 feet upstream of International Paper Road.	None	•387	
Eutacutachee Creek Tributary 1.	At the confluence with Eutacutachee Creek	None	•360	Rankin County (Unincorporated Areas)
	Approximately 7,070 feet upstream of the confluence with Eutacutachee Creek.	None	•383	
Eutacutachee Creek Tributary 2.	At the confluence with Eutacutachee Creek	None	•372	Rankin County (Unincorporated Areas)
	Approximately 4,763 feet upstream of the confluence with Eutacutachee Creek.	None	•380	
Eutacutachee Creek Tributary 3.	At the confluence with Eutacutachee Creek	None	•360	Rankin County (Unincorporated Areas)
	Approximately 0.7 mile upstream of Rankin Road	None	•387	
Eutacutachee Creek Tributary 4.	At the confluence with Eutacutachee Creek	None	•355	Rankin County (Unincorporated Areas)
	Approximately 100 feet upstream of Gulde-Shiloh Road.	None	•390	
Prairie Branch Tributary 1.	At the confluence with Prairie Branch Canal	•280	•279	Town of Flowood
	Approximately 800 feet upstream of U.S. Highway 475.	None	•284	
Pelahatchie Bay Unnamed Tributary.	At Pearl River Valley Water Supply District corporate limits.	None	•307	Rankin County (Unincorporated Areas)
	Approximately 510 feet upstream of Pearl River Valley Water Supply District corporate limits.	None	•307	
Pearl River Tributary 2 ...	At upstream side of Old U.S. Highway 49	•271	•270	City of Richland
	Approximately 0.4 mile upstream of Old U.S. Highway 49.	•271	•270	
Woodrun Creek	Approximately 175 feet downstream of Interstate Route 20.	None	•337	City of Brandon, City of Pearl
	Approximately 125 feet upstream of Mississippi Salvage Road.	None	•360	
Terrapin Skin Creek	Approximately 0.5 mile downstream of North Deer Ridge.	•372	•371	Rankin County (Unincorporated Areas), City of Brandon
	Approximately 0.7 mile upstream of North Deer Ridge.	None	•395	
Hog Creek	Approximately 650 feet upstream of State Route 475.	•283	•282	Town of Flowood
	Approximately 200 feet upstream of State Highway 468.	•284	•285	
Richland Creek	Approximately 1.4 miles upstream of State Highway 471.	•343	•344	Rankin County (Unincorporated Areas), City of Brandon
	Approximately 1.1 miles upstream of U.S. Highway 80.	None	•373	
Pelahatchie Creek Tributary 1.	Just upstream of State Route 43	•352	•351	Town of Pelahatchie
	Approximately 375 feet upstream of Ragan Road	None	•370	
Pearl River Tributary 3 ...	Approximately 3,000 feet downstream of U.S. Highway 25.	•283	•282	Town of Flowood
	Approximately 150 feet upstream of Flowood Drive	•283	•282	

Rankin County (Unincorporated Areas)

Maps available for inspection at the Rankin County Building, 211 East Government, Brandon, Mississippi.

Send comments to Mr. Ken Martin, President of the Rankin County Board of Supervisors, 211 East Government, Brandon, Mississippi 39042.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
City of Brandon				
Maps available for inspection at the Brandon City Hall, 201 North College Street, Brandon, Mississippi.				
Send comments to The Honorable Truitt M. Grubbs, Mayor of the City of Brandon, P.O. Box 1539, Brandon, Mississippi 39043.				
Town of Flowood				
Maps available for inspection at the Flowood Town Hall, 2101 Airport Road, Flowood, Mississippi.				
Send comments to The Honorable Gary Rhoads, Mayor of the Town of Flowood, P.O. Box 320069, Flowood, Mississippi 39232.				
City of Pearl				
Maps available for inspection at the Pearl City Hall, 2420 Old Brandon Road, Pearl, Mississippi.				
Send comments to The Honorable Jimmy Foster, Mayor of the City of Pearl, P.O. Box 5948, Pearl, Mississippi 39288–5948.				
Town of Pelahatchie				
Maps available for inspection at the Pelahatchie City Hall, 705 Second Street, Pelahatchie, Mississippi.				
Send comments to The Honorable Knox Ross, Jr., Mayor of the Town of Pelahatchie, P.O. Box 229, Pelahatchie, Mississippi 39145.				
City of Richland				
Maps available for inspection at the Richland City Hall, 380 Scarborough Street, Richland, Mississippi.				
Send comments to The Honorable Shirley Hall, Mayor of the City of Richland, P.O. Box 180609, Richland, Mississippi 39218.				
NORTH CAROLINA				
Scotland County (Unincorporated Areas)				
Beaverdam Creek	At the confluence with Juniper Creek	None	•246	Scotland County (Unincorporated Areas)
	Approximately 1.5 miles upstream of Nashville Church Road.	None	•263	
Big Branch	At the confluence with Bridge Creek	None	•155	City of Laurinburg, Scotland County (Unincorporated Areas)
	Approximately 0.5 mile upstream of Interstate 74	None	•214	
Big Muddy Creek	At the confluence with the Lumber River	None	•266	Scotland County (Unincorporated Areas)
	At the County boundary	None	•311	
Bridge Creek	At the confluence with Leith Creek	None	•146	City of Laurinburg, Scotland County (Unincorporated Areas)
	Approximately 1,640 feet upstream of Andrew Jackson Highway/Interstate 74—Business.	None	•229	
Crawford Branch	At the confluence with Gum Swamp Creek	None	•242	Scotland County (Unincorporated Areas)
	Approximately 1.3 miles upstream of Crawford Lake Road.	None	•271	
Crooked Creek	Approximately 700 feet downstream of the State boundary.	None	•225	Scotland County (Unincorporated Areas)
	Approximately 100 feet downstream of County Line Road.	None	•243	
Gum Swamp Creek	At Pea Bridge Road	None	•149	City of Laurinburg, Scotland County (Unincorporated Areas)
	Approximately 0.5 mile upstream of Sneads Grove Road.	None	•329	
Gum Swamp Creek Tributary.	At the confluence with Richmond Mill Lake/Gum Swamp Creek.	None	•210	Scotland County (Unincorporated Areas)
	Approximately 0.7 mile upstream of Gillis Road	None	•223	
Joes Creek	At the confluence with Gum Swamp Creek	None	•178	Scotland County (Unincorporated Areas)
	Approximately 1,000 feet downstream of CSX Transportation.	None	•258	
Joes Creek Tributary	At the confluence with Joes Creek	None	•219	Scotland County (Unincorporated Areas)
	Approximately 100 feet downstream of Scotland County Line Road.	None	•261	
Jordan Creek	At the confluence with Juniper Creek	None	•192	Scotland County (Unincorporated Areas)
	Approximately 950 feet downstream of Timmons Road.	None	•300	
Juniper Creek	At the confluence with Shoe Heel Creek	None	•179	Scotland County (Unincorporated Areas)
	Approximately 1.8 miles upstream of Nashville Church Road.	None	•259	
Juniper Creek Tributary 1	At the confluence with Juniper Creek	None	•180	Scotland County (Unincorporated Areas)
	Approximately 750 feet upstream of Lee Lane	None	•221	
Leith Creek	At the County boundary	None	•136	Town of East Laurinburg, City of Laurinburg, Scotland County (Unincorporated Areas)
	Approximately 1,500 feet upstream of Old Wire Road.	None	•248	
Leith Creek Tributary 1	At the confluence with Leith Creek	None	•137	Scotland County (Unincorporated Areas)

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 50 feet downstream of Pea Bridge Road.	None	•157	
Leith Creek Tributary 2 ...	At the confluence with Leith Creek	None	•175	Scotland County (Unincorporated Areas)
	Approximately 325 feet downstream of Andrew Jackson Highway/Interstate 74—Business.	None	•189	
Little Creek	At the confluence with Leith Creek	•180	•186	City of Laurinburg, Scotland County (Unincorporated Areas)
	Approximately 125 feet downstream of Aberdeen Road/Interstate 501–15.	None	•233	
Little Juniper Creek	At the confluence with Juniper Creek	None	•197	Scotland County (Unincorporated Areas)
	Approximately 280 feet upstream of Aberdeen Road/Interstates 01–15.	None	•256	
Little Juniper Creek Tributary.	At the confluence with Little Juniper Creek	None	•227	Scotland County (Unincorporated Areas)
	Approximately 0.7 mile upstream of Aberdeen Road/Interstate 501–15.	None	•264	
Little Shoe Heel Creek ...	At the confluence with Shoe Heel Creek	None	•213	Scotland County (Unincorporated Areas)
	Approximately 1.7 miles upstream of North Turnpike Road.	None	•331	
Little Shoe Heel Creek Tributary.	At the confluence with Little Shoe Heel Creek	None	•223	Scotland County (Unincorporated Areas)
	Approximately 150 feet downstream of Arch McLean Road.	None	•257	
Lower Beaverdam Creek	At the confluence with Gum Swamp Creek	None	•180	Scotland County (Unincorporated Areas)
	Approximately 1,900 feet upstream of Old Wire Road.	None	•215	
Lumber River	Approximately 3.0 miles upstream of McGirts Bridge Road.	None	•205	Scotland County (Unincorporated Areas), Town of Wagram
	At the County boundary	None	•268	
Shoe Heel Creek	Approximately 700 feet downstream of Old Maxton Road.	None	•164	Scotland County (Unincorporated Areas)
	Approximately 1.6 miles upstream of Jane Shaw Road.	None	•268	
Steer Branch	At the confluence with Leith Creek	None	•144	Scotland County (Unincorporated Areas)
	Approximately 50 feet downstream of CSX Transportation.	None	•169	
Towers Fork	At the confluence with Big Muddy Creek	None	•302	Scotland County (Unincorporated Areas)
	Approximately 1.3 miles upstream of the confluence with Big Muddy Creek.	None	•319	
Upper Beaverdam Creek	At the confluence with Richmond Mill Lake/Gum Swamp Creek.	None	•210	Scotland County (Unincorporated Areas)
	Approximately 800 feet upstream of Marston Road	None	•225	
Water Creek	At the confluence with Gum Swamp Creek	None	•153	Scotland County (Unincorporated Areas)
	Approximately 1.4 miles upstream of Fox Crossings.	None	•178	

Scotland County (Unincorporated Areas)

Maps available for inspection at the Scotland County Governmental Annexation Building, 231 East Cronly Street, Laurinburg, North Carolina.

Send comments to Mr. Scott T. Sauer, Scotland County Manager, P.O. Box 489, Laurinburg, NC 28353.

Town of East Laurinburg

Maps available for inspection at the East Laurinburg Municipal Building, 28 Fourth Street, Laurinburg, North Carolina.

Send comments to The Honorable Douglas R. Miller, Mayor of the Town of East Laurinburg, P.O. Box 1106, 11 Third Street, East Laurinburg, North Carolina 28353.

City of Laurinburg

Maps available for inspection at the Laurinburg City Hall, 305 West Church Street, Laurinburg, North Carolina.

Send comments to The Honorable Ann B. Slaughter, Mayor of the City of Laurinburg, P.O. Box 249, Laurinburg, North Carolina 28352.

Town of Wagram

Maps available for inspection at the Wagram Town Offices, 24341 Riverton Road, Wagram, North Carolina.

Send comments to The Honorable Milton W. Farmer, Mayor of the Town of Wagram, P.O. Box 118, Wagram, North Carolina 28396.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 31, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–610 Filed 1–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7548]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *mike.grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Massachusetts	Chelmsford (Town), Middlesex County.	River Meadow Brook	Downstream corporate limit	*103	*105
			Approximately 20 feet upstream of Mill Road.	*115	*117
		Putnam Brook	At confluence with River Meadow Brook	*111	*112
			Approximately 560 feet above confluence with River Meadow Brook.	*111	*112

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the Chelmsford Town Office, 50 Billerica Road, Chelmsford, Massachusetts. Send comments to Mr. William Dalton, Chairman of the Town of Chelmsford Board of Selectmen, 50 Billerica Road, Chelmsford, Massachusetts 01824-2777.					
Mississippi	Monticello (Town), Lawrence County.	Runnels Creek	At confluence with Pearl River	None	*192
			Just downstream of Thomas E. Jolly Drive.	None	*205
		Runnels Creek Tributary A.	At confluence with Runnels Creek	None	*201
			Approximately 1,125 feet upstream of Graham Road.	None	*204
		Runnels Creek Tributary B.	At confluence with Tributary A	None	*202
			Just downstream of State Route 27	None	*214
		Runnels Creek Tributary C.	At confluence with Tributary B	None	*206
			Just downstream of Thomas E. Jolly Drive.	None	*212
Maps available for inspection at the Monticello Town Hall, 202 Jefferson Street, Monticello, Mississippi. Send comments to The Honorable Dave Nichols, III, Mayor of the Town of Monticello, P.O. Box 822, Monticello, Mississippi 39654.					
Pennsylvania	College (Township), Centre County.	Cedar Run	Approximately 60 feet downstream of the confluence with Spring Creek.	None	*1,036
			At upstream corporate limits	None	*1,078
Maps available for inspection at the College Township Municipal Building, 1481 East College Avenue, State College, Pennsylvania. Send comments to Mr. Adam Brumbaugh, College Township Manager, 1481 East College Avenue, State College, Pennsylvania 16801.					
Pennsylvania	Harris (Township), Centre County.	Cedar Run	Approximately 2,680 feet downstream of the railroad.	None	*1,078
			Approximately 125 feet upstream of Rock Hill Road.	None	*1,114
		Mackey's Run	At the confluence with Cedar Run	None	*1,105
			Approximately 217 feet upstream of Rock Hill Road.	None	*1,108
		Spring Creek	At the corporate limits, coincident with Mary Elizabeth Street.	*1,054	*1,056
Maps available for inspection at the Harris Township Municipal Office, 224 East Main Street, Boalsburg, Pennsylvania. Send comments to Mr. Joseph Chesworth, Chairperson of the Township of Harris, P.O. Box 20, Boalsburg, Pennsylvania 16827.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 31, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–609 Filed 1–10–03; 8:45 am]

BILLING CODE 6718–04–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3215; MB Docket No. 02–365; RM–10451]

Radio Broadcasting Services; Laramie, WY and Timnath, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Laramie Mountain Broadcasting, L.L.C., licensee of Station KIMX, Laramie, Wyoming, requesting the reallotment of Channel 288C2 to Timnath, Colorado, as that community's first local aural transmission service, and modification of its authorization accordingly. The petitioner's modification proposal complies with the provisions of Section 1.420(i) of the Commission's Rules and therefore, we will not accept competing expressions of interest in the use of Channel 288C2 at Timnath, Colorado. Coordinates used for this proposal are 40–44–31 NL and 105–14–15 WL, representing a restricted transmitter site located 31.9 kilometers (19.8 miles) northwest of Timnath, Colorado. This proposal is located within the protected areas of the Table Mountain Radio Receiving Zone, Boulder County, Colorado, and will require compliance with Section 73.1030(b) of the Commission's Rules.

DATES: Comments must be filed on or before January 30, 2003, and reply comments on or before February 14, 2003.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: A. Wray Fitch, III, Esq., Gammon & Grange, P.C., 8280 Greensboro Drive, 7th Floor, McLean, VA 22102–3807.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No.

02–365, adopted December 6, 2002, and released December 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile 202–863–2898, or via e-mail *qualtexint@aol.com*..

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

On February 12, 2001, the authorization for Station KIMX, Channel 288C3 at Laramie, Wyoming, was amended by a one-step application to specify Channel 288C2.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Timnath, Channel 288C2.

3. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 288C3 at Laramie.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–533 Filed 1–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3567; MB Docket No. 02–388; RM–10624]

Television Broadcasting Services; Sterling and Fort Morgan, Colorado

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rule making requests comments on a petition for rulemaking filed by Channel 20 TV Company ("Petitioner"), licensee of Station KUPN(TV), NTSC Channel 3, and permittee of Digital Channel 23, Sterling, Colorado. Petitioner proposes to change Station KUPN(TV)'s community of license from Sterling to Fort Morgan, Colorado. The coordinates for Petitioner's proposed new location are: 39–56–18 NL and 103–52–06 WL.

Petitioner's reallotment proposal complies with the provisions of section 1.420(i) of the Commission's rules, and therefore, the Commission will not accept competing expressions of interest in the use of NTSC Channel 3 and Digital Channel 23 at Fort Morgan, Colorado, or require the Petitioner to demonstrate the availability of additional equivalent class channels for use by other parties.

DATES: Comments must be filed on or before February 14, 2003, and reply comments on or before March 3, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner's counsel, as follows: Edward W. Hummers, Jr., Esq., Holly Rachel Smith, Esq., Holland & Knight LLP; 2099 Pennsylvania Ave., NW., Suite 100; Washington, DC 20006–6801.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MB Docket No. 02–388, adopted December 20, 2002, and released December 24, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Colorado, is amended by removing Channel 3 at Sterling, and by adding Fort Morgan, Channel 3.

3. Section 73.622(b), the Table of DTV Allotments under Colorado, is amended by adding Fort Morgan, Channel 23.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–664 Filed 1–10–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 010703A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3–day Council meeting on January 28, 29, and 30, 2003, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday January 28, 29, and 30, 2003. The meeting will begin at 9:00 a.m. on Tuesday and 8:30 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Marriott Courtyard, 1000 Market Street, Portsmouth, NH 03801; telephone (603) 436–2121. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, January 28, 2003

Following introductions, there will be a public review workshop held to discuss the results of the 36th Northeast Regional Stock Assessment Workshop (SAW). Species to be reviewed include yellowtail flounder, winter flounder, northern shrimp, and striped bass. At the conclusion of the SAW presentation, the Transboundary Management Guidance Committee will brief the Council on its December 17–18, 2002, meeting on the U.S./Canada Resource Sharing Agreement discussions. The Groundfish Committee will report following a lunch break. Items to be covered include review of the time line for development of Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP), including a discussion of analytic and peer review requirements necessary to complete the amendment; implications of considering different rebuilding periods, alternatives that should be analyzed under different rebuilding time periods, and possible elimination of alternatives from further consideration; development of a recommendation to NOAA Fisheries for implementation of a DAS leasing program to be implemented prior to the adoption of Amendment 13 and preliminary discussion of measures to implement the U.S./Canada Resource Sharing Agreement. The Council also has scheduled a scoping meeting for Amendment 2 to the Spiny Dogfish FMP on Tuesday January 28 at 7 p.m.

Wednesday, January 29, 2003

The Scallop Committee will review and seek approval of the Draft Supplemental Environmental Impact Statement (SEIS) for Amendment 10 to the Atlantic Sea Scallop FMP. Issues to be considered include: an area rotation system and access to the Georges Bank groundfish closed areas; measures to minimize habitat and bycatch impacts; changes to the framework adjustment process, as well as day-at-sea adjustments and other changes to the plan as required. Interim measures to access the Georges Bank areas and closed areas elsewhere in 2004 also will be included. Following approval of this document, the Council will schedule a series of public hearings to seek public comments on the draft Amendment 10 alternatives and the associated SEIS.

Thursday, January 30, 2003

The meeting will reconvene with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. This will be followed by a brief public comment period during which any member of the public may bring forward items relevant to Council business but not otherwise listed on the agenda for this meeting. The NOAA Fisheries Regional Administrator will then conduct a formal consultation with the Council on the American Lobster FMP, providing members with an opportunity to comment on regulations, both proposed and future, developed by the Atlantic States Marine Fisheries Commission. The Whiting Committee will ask for approval of final action on Framework Adjustment 38 to the Northeast Multispecies FMP (whiting, red hake, and offshore hake). Measures include the establishment of an exempted grate raised footrope trawl fishery in the inshore Gulf of Maine, with specifications for a season, fishing area, mesh size, gear restrictions, whiting possession limits, and other incidental catch limits. The Council also will consider a new control date to determine future participation in the small mesh multispecies fishery. Before adjourning for the day, the Council is expected to approve final Northeast Skate Complex FMP submission documents, including a description of management measures, draft regulations, and a summary of impacts. The FMP includes permit and reporting requirements; prohibitions on the possession of barndoor skate, thorny skate, and smooth skate in the Gulf of Maine and a possession limit for the skate wing fishery.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: January 7, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–635 Filed 1–10–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 8
Monday, January 13, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–122–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the National Poultry Improvement Plan.

DATES: We will consider all comments that we receive on or before March 14, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–122–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–122–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–122–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the National Poultry Improvement Plan, contact Mr. Andrew Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: National Poultry Improvement Plan.

OMB Number: 0579–0007.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for, among other things, administering the National Poultry Improvement Plan (NPIP), the primary purpose of which is to protect the health of the U.S. poultry population. NPIP is a voluntary Federal-State cooperative program for the improvement of poultry breeding flocks and products through disease control techniques.

Administering the NPIP requires us to engage in a number of information collection activities, which are described below. We are asking the Office of Management and Budget (OMB) to approve the continued use of these information collection activities, which are critical to our ability to prevent the spread of contagious poultry diseases within the United States.

Flock Selecting and Testing Report (VS Form 9–2)

This form is used by authorized agents and State inspectors when breeding flocks are selected and tested. The form provides space for the number of birds tested and the results of the test. This form also identifies a given flock as to owner, hatchery affiliation, stock, type, purpose, classification, and most importantly, flock location. Since most of the flocks are supply flocks for the same hatchery, it is extremely important to know the location of the flock. The information on this form is of critical importance when an investigation must be conducted to determine the source of a hatchery-disseminated or egg-transmitted disease.

Report of Sales of Hatching Eggs, Chicks, and Poults (VS Form 9–3)

NPIP participants use this form to record any interstate sales of their hatching eggs, chicks, and poults. This document is used by both APHIS and the receiving State to monitor the movements of these items. This form also serves as a vital investigative aid when APHIS is attempting to track down the source of a poultry disease. These records must be maintained by producers for 3 years.

Summary of Breeding Flock Participation (VS Form 9–4)

This report form, which is completed by State animal health authorities, contains a summary of blood testing work and of flock participation by classes and breeding status. It is distributed to Official State Agencies from our offices at the end of the testing year in June and must be returned to us in July. With this information, we can publish our Tables on Hatchery and Flock Participation, which serve as an important tool in monitoring the health status of participating flocks.

Report of NPIP Hatchery Participation or Change (VS Form 9–5)

This form is completed by the Official State Agency to record an NPIP participant's decision to withdraw from the program, or to record a producer's decision to join the program. This document is also used to record a change in disease program classification. This form allows us to effectively monitor participation in the NPIP, and to maintain an up-to-date list of program participants, their addresses, and other important information concerning their poultry operations.

Investigation of Salmonella and Arizona Isolations (VS Form 9–7)

If a multi-State disease outbreak occurs, the NPIP will conduct an investigation and share the resulting information with all the States involved. VS form 9–7 is one of the tools used to

complete this investigation; it provides the investigating State agency with a uniform method of compiling and analyzing information that can subsequently be used to study trends, economic importance, and other matters. This form is arranged in sections so that the disease investigations can be completed in stages by different inspectors, depending upon the location of the flock, hatchery, and breeding flock. The inspector obtains some of the needed information by interviewing the appropriate poultry producers. When several States are involved in a pullorum-typhoid infection, the completed form will be sent to each of the States involved so that all of them will be aware of the investigation's outcome.

Sentinel Birds Banded for Identification Prior to Flock Vaccination

When a Federally licensed *Salmonella enteritidis* bacterin is used to vaccinate a flock, 350 birds must remain unvaccinated so that they can be used to conduct the necessary serological tests for *Salmonella pullorum* and *Salmonella gallinarum*. These test birds must be banded so that they can be recognized as sentinel birds. A report is submitted annually to APHIS, from the various States, with information from their participants and data required by the various disease control programs of the NPIP.

Request for Salmonella Serotyping (VS Form 10–3)

This is a National Veterinary Services Laboratory (NVSL) form that must be completed by State or APHIS personnel who are submitting samples for salmonella serotyping. If samples were sent to NVSL without this form, lab personnel would have no way of identifying any given sample as to the flock from which it came, or even the disease for which the sample is to be tested.

Printing and Mailing Computerized Printouts

These printouts are constructed by hatchery operators who ship large numbers of small chick orders all across the United States. These computerized lists contain all the information found on a VS form 9–3, but reduce the paperwork load substantially because they are computer generated. These printouts are sent every month to those States that request them. The States use these printouts to monitor the number of small chicks they are receiving.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.4742 hours per response.

Respondents: Flock owners, breeders, hatchery operators, and State veterinary medical officers.

Estimated Number of Respondents: 9,000.

Estimated Number of Responses per Respondent: 8.8562.

Estimated Annual Number of Responses: 79,706.

Estimated Total Annual Burden on Respondents: 37,797 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of January, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–574 Filed 1–10–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD NOVEMBER 23, 2002–DECEMBER 19, 2002

Firm Name	Address	Date petition accepted	Product
Amak River Legacy, Inc.	P.O. Box 1020 Rochester, WA 98579	11/27/02	Salmon.
Waytec Electronics Corporation	1104 Mc Conville Road Lynchburg, VA 24506.	11/27/02	Printed circuit boards.
Nifty-Bar, Inc.	450 Whitney Road, West Penfield, NY 14526.	10/10/02	Flat rolled carbon and stainless steel.
Gilbert Mold & Die, Inc.	6424 Highway 43 South Harrison, AR 72601.	12/10/02	Plastic molds and dies.
Woodbine Alaska Fish Company	P.O. Box 757 Rio Vista, CA 94571	12/10/02	Salmon.
Dennis F. Shangin dba F/V Miranda Leigh.	P.O. Box 3104 Soldotna, AK 99669	12/11/02	Salmon.
Spiel Associates, Inc.	45–01 Northern Boulevard Long Island City, NY 11101.	12/12/02	Book binding machinery.
Quick Point, Inc.	1717 Fenpark Drive Fenton, MO 63026	12/17/02	Plastic drinkware and golf towels.
Craftique, Inc.	1257 West Center Street Mebane, NC	12/17/02	Wooden bedroom, dining room and accent furniture.
Advance Screw Products Corporation	8 Deep Rock Road Rochester, NY 14624	12/17/02	Metal shafts for photocopying apparatus.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: January 2, 2003.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 03–569 Filed 1–10–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 1–2003]

Foreign-Trade Zone 57–Asheville, North Carolina, Expansion of Manufacturing Authority—Subzone 57B Volvo Construction Equipment North America, Inc. (Construction Equipment)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Volvo Construction Equipment North America, Inc. (Volvo CENA), to expand the scope of manufacturing authority under zone procedures within Subzone 57B, at the Volvo CENA plant located at sites in the Asheville, North Carolina area. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 7, 2003.

Subzone 57B was approved by the Board in 2000 at sites located at 2169 Hendersonville Rd. (U.S. Rt. 25), in Skyland, North Carolina and at 1856 Hendersonville Rd., in Asheville. Authority was granted for the manufacture of articulated haulers and wheel loaders (Board Order 1164, 66 FR 28890, 5/25/2001).

Volvo CENA is now proposing to expand the scope of manufacturing activity conducted under zone procedures at Subzone 57B to include additional finished products (skid-steer loaders and compaction rollers). These finished products fall into categories which enter the United States duty-free. Volvo CENA's application indicates that foreign-sourced materials under the proposed expanded scope fall into categories which are already included in the scope of authority granted pursuant to the company's original subzone application (65 FR 47377, 8/2/2000).

Expanded subzone authority would exempt Volvo CENA from Customs duty payments on foreign components when used in export production of the new products. On its domestic sales, Volvo CENA would be able to choose the lower duty rate that applies to the new finished products for foreign components, when applicable.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is February 12, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 27, 2003.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 521 East Morehead St., Suite 435, Charlotte, NC 28202.

Dated: January 7, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–633 Filed 1–10–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils from the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Rescission in Part of the Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) has preliminarily determined that sales by the respondents in this review, covering the period December 1, 2000, through November 30, 2001, have been made below normal value (NV). In addition, pursuant to their requests, we are rescinding this review with respect to Orient International Holding Shanghai Foreign Trade Co., Ltd. (SFTC) and China First Pencil Co., Ltd. (CFP). Furthermore, we are preliminarily rescinding this review with respect to Kaiyuan Group Corporation (Kaiyuan) and Laizhou City Guangming Pencil-Making Co., Ltd. (Laizhou), because these companies reported that they made no shipments of subject merchandise to the United States during the period of review (POR). If these preliminary results are adopted in the final results of this review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on all appropriate entries. The Department invites interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Crystal Crittenden, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4474 and (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The POR is December 1, 2000 through November 30, 2001.

Background

On December 3, 2001, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC), covering the period December 1, 2000 through November 30, 2001. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 60183–84 (December 3, 2001).

On December 26, 2001, in accordance with 19 CFR 351.213(b), a U.S. importer, Simmons Rennolds Associates, LLC, a PRC exporter, Kaiyuan/Shandong Rongxin Import and Export Co., Ltd., and a PRC producer of pencils, Laizhou, requested an administrative review of the order on certain cased pencils from the PRC. On December 31, 2001, CFP and SFTC requested an administrative review of their exports of subject merchandise to the United States. In addition, on December 31, 2001, Tianjin Custom Wood Processing Co., Ltd. (TCW) requested a review of its exports of subject merchandise to the United States.[1]

The Department published a notice of initiation of an antidumping duty administrative review covering CFP's, SFTC's and CalCedar-Tianjin's exports on January 29, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 4236–37 (January 29, 2002). In that notice, the Department inadvertently omitted Kaiyuan Group Corporation /Shandong Rongxin Import and Export Co., Ltd. and Laizhou from the list of companies to be reviewed. The Department published a notice of initiation of an antidumping duty administrative review covering Kaiyuan Group Corporation (Kaiyuan) and Laizhou on February 26, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 8780–81 (February 26, 2002). We initiated the review on Kaiyuan believing that the names Kaiyuan and Shandong Rongxin Import and Export Co., Ltd. (Shandong), refer to the same company. Subsequent to our initiation of the review, we learned that Kaiyuan and Shandong are different companies which should have been listed separately in the initiation notice. Shandong, which is owned in part by Kaiyuan, was the exporter of subject merchandise during the POR while Kaiyuan had no business operations during the POR. Thus, as noted below, we are preliminarily rescinding this review with respect to Kaiyuan. Therefore, we are conducting a review of Shandong's exports of subject merchandise and will preliminarily assign the appropriate dumping margin to Shandong, if it qualifies for a separate rate. However, we will continue to examine the relationship between Kaiyuan and Shandong in assigning dumping margins for the final results of review.

On January 11, 2002, we issued antidumping duty questionnaires to CFP, SFTC, and CalCedar-Tianjin. On February 20, 2002, we issued an antidumping duty questionnaire to Shandong and Laizhou. In its March 26, 2002 response to the Department's questionnaire, Laizhou stated that it did not export subject merchandise to the United States during the POR. On April 24, 2002, within 90 days of publication of the initiation notice for this review, SFTC withdrew its request for an administrative review. On July 31, 2002, CFP withdrew its request for an administrative review. Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results of a review within the statutory time limit of 245 days. On August 16, 2002, in accordance with the Act, the Department extended the time limit for the preliminary results of this review until December 31, 2002 (*see Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 55197 (August 28, 2002)).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this order are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Preliminary Partial Rescission of Review

We are preliminarily rescinding this review with respect to Kaiyuan and Laizhou because they reported that they made no shipments of subject merchandise to the United States during the POR. The Department reviewed Customs data which supports the claims that these companies did not export subject merchandise to the United States during the POR.

Final Partial Rescission of Review

In addition, we are rescinding this review with respect to CFP and SFTC because these companies withdrew their requests for review and no other interested party requested a review of either company. Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. SFTC withdrew its request for review within the 90 day time limit. Accordingly, we are rescinding the administrative review of SFTC's exports of subject merchandise for the period December 1, 2000 through November 30, 2001, and will issue appropriate assessment instructions to Customs. On July 31, 2002, CFP withdrew its request for review. Although this withdrawal came after the 90-day period for withdrawing a review request, there were no other requests to review CFP and it is otherwise reasonable to rescind the review. *See* 19 CFR 351.213 which provides the Secretary the authority to extend the deadline for companies to withdraw requests for review. Further, this action is consistent with the Department's practice. *See e.g., Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 40913 (June 14, 2002) where, pursuant to a request filed after the 90 day deadline, the Department rescinded the review with respect to one respondent. Therefore, the Department has decided

[1] TCW is wholly-owned by California Cedar Products Company (CalCedar). CalCedar is a privately held U.S. company incorporated in the State of California. Hereinafter we have referred to the entity CalCedar, including its subsidiary TCW, as CalCedar-Tianjin.

that it is reasonable to accept CFP's withdrawal of its request for review.

Separate Rates Determination

In proceedings involving nonmarket economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Shandong and CalCedar-Tianjin provided the separate rates information requested by the Department and reported that their export activities are not subject to government control.

We examined the separate rates information provided by Shandong and CalCedar-Tianjin in order to determine whether the companies are eligible for a separate rate. The Department's separate rates test, which is used to determine whether an exporter is independent from government control, does not consider, in general, macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut- to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities so as to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). In accordance with the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20508 (May 6, 1991).

Shandong and CalCedar-Tianjin reported that the merchandise under review was not subject to restrictive stipulations associated with their export licenses (*e.g.*, pencils were not on any government list of products subject to export restrictions or subject to special export licensing requirements). Shandong and CalCedar-Tianjin submitted copies of their business licenses in their questionnaire responses. We found no inconsistencies with their statements regarding the absence of restrictive stipulations associated with their business licenses. Furthermore, Shandong and CalCedar-Tianjin submitted copies of PRC legislation demonstrating the statutory authority for establishing the *de jure* absence of government control over the companies. Thus, we believe that the evidence on the record supports a preliminary finding of absence of *de jure* governmental control based on: (1) an absence of restrictive stipulations associated with the business licenses of CalCedar-Tianjin and Shandong; and (2) the applicable legislative enactments decentralizing control of PRC companies.

2. Absence of *De Facto* Control

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or are subject to, the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87 (May 2, 1994); *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide*, 56 FR at 22587 (May 2, 1994). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Shandong and CalCedar-Tianjin reported that they determine prices for sales of the subject merchandise based on market principles, the cost of the merchandise, and profit. Moreover, Shandong and CalCedar-Tianjin stated that they negotiated the price directly with their customers. Also, Shandong and CalCedar-Tianjin claimed that their prices are not subject to review or guidance from any governmental organization. In addition, the record indicates that Shandong and CalCedar-Tianjin have the authority to negotiate and sign contracts and other agreements. Further, Shandong and CalCedar-Tianjin claimed that their negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of their contracts.

Furthermore, Shandong and CalCedar-Tianjin reported that they have autonomy in making decisions regarding the selection of management. Shandong and CalCedar-Tianjin indicated that their selection of management is not subject to review or guidance from any governmental organization and there is no evidence on the record to suggest that there is any governmental involvement in the selection of the management of Shandong and CalCedar-Tianjin.

Finally, Shandong reported that it retains the proceeds of its export sales, and its management determines how to use profits. CalCedar-Tianjin stated that it operates in accordance with market principles and calculates profits and losses in a normal commercial manner. There is no evidence on the record with respect to Shandong or CalCedar-Tianjin to suggest that there is any governmental involvement in decisions regarding disposition of profits or financing of losses.

Therefore, we find that the evidence on the record supports a preliminary finding of absence of *de facto*

governmental control based on record statements and supporting documentation showing that: (1) Shandong and CalCedar-Tianjin set their own export prices independent of the government and without the approval of a government authority; (2) Shandong and CalCedar-Tianjin have the authority to negotiate and sign contracts and other agreements; (3) Shandong and CalCedar-Tianjin have adequate autonomy from the government regarding the selection of management; and (4) Shandong and CalCedar-Tianjin retain the proceeds from their sales and make independent decisions regarding the disposition of profits or financing of losses.

The evidence placed on the record of this review by Shandong and CalCedar-Tianjin demonstrates an absence of government control, both in law and in fact, with respect to their exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, for the purposes of these preliminary results, we are granting a separate rate to both Shandong and CalCedar-Tianjin.

Fair Value Comparisons

To determine whether the respondents' sales of subject merchandise were made at less than NV, for Shandong, we compared the export price (EP) to NV, as described in the *Export Price* and *Normal Value* sections of this notice, below. For CalCedar-Tianjin, we compared the constructed export price (CEP) to NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice, below.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an EP for sales by Shandong to the United States because the subject merchandise was sold directly to an unaffiliated customer in the United States prior to importation and CEP methodology was not otherwise indicated. We made deductions from the sales price for foreign inland freight, foreign brokerage and handling, and domestic inland insurance. Each of these services was provided by a NME vendor, and thus, we based the deductions for these movement charges on surrogate values.

We valued foreign brokerage and handling using Indian values that were reported in the public version of the questionnaire response placed on the record in *Certain Stainless Steel Wire Rod from India; Preliminary Results of Antidumping Duty Administrative and New Shipper Review*, 63 FR 48184 (September 9, 1998) (*India Wire Rod*). We valued domestic inland insurance using the Department's recently revised *Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the PRC* (available on the Department's website at http://ia.ita.doc.gov/factorv/prc/). We identify the source used to value foreign inland freight in the *Normal Value* section of this notice, below. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF's) publication, *International Financial Statistics*.

Constructed Export Price

In accordance with section 772(b) of the Act, the Department calculated a CEP for sales by CalCedar-Tianjin to the United States because the first sale to unaffiliated purchasers occurred after importation of the merchandise into the United States. CalCedar-Tianjin sold the subject merchandise to unaffiliated U.S. customers through its U.S. operations. We calculated CEP based on FOB and delivered prices from the respondent's U.S. parent company to unaffiliated customers. In accordance with section 772(c) of the Act, we deducted from the starting price movement charges including foreign inland freight, international freight, marine insurance, U.S. inland freight, U.S. customs duties, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, as applicable, we made deductions for the following selling expenses that related to economic activity occurring in the United States: indirect selling expenses, inventory carrying costs, and direct selling expenses (imputed credit expenses). In accordance with section 772(d)(3) of the Act, we deducted from the starting price an amount for profit.

Because all of the subject merchandise exported by CalCedar-Tianjin during the POR was shipped to the United States using a market-economy shipper and the shipper was paid using a market-economy currency, we used the reported cost of international freight to calculate CEP rather than a surrogate value. Additionally, all shipments of CalCedar-Tianjin's subject merchandise were insured through a market-economy marine insurance provider and the provider was paid using a market-economy currency. Therefore we used the actual price paid for marine insurance for all of CalCedar-Tianjin's sales. *See Non-Frozen Apple Juice Concentrate from the People's Republic of China; Preliminary Results of 1999–2001 Administrative Review and Partial Rescission of Review*, 67 FR 45451, 45466 (July 9, 2002), where the Department noted that when some or all of a specific company's ocean freight or marine insurance was provided directly by market economy companies and paid for in a market economy currency, it is appropriate to use the reported market economy ocean freight or marine insurance cost for all U.S. sales made by that company. Also, see 19 CFR 351.408(c)(1).

As noted in the EP section above, we valued foreign brokerage and handling using an Indian value for brokerage and handling identified in *India Wire Rod*. Because this value was in effect during a period that is not contemporaneous with the POR, we inflated the value using the Indian WPI. We identify the source used to value foreign inland freight in the *Normal Value* section of this notice, below.

Normal Value

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production (FOP) methodology if: (1) the subject merchandise is exported from a NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the methodology used by the Department to calculate the NV of merchandise exported from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME. Since none of the parties to this proceeding contested such treatment, we calculated NV in accordance with section 773(c)(3) and (4) of the Act and section 351.408(c) of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOPs utilized in producing pencils include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOPs, to the extent possible, using the costs of the FOP in a market economy that is (1) at a level of economic development comparable to the PRC, and (2) a significant producer of comparable merchandise. We determined that India is comparable to

the PRC in terms of per capita gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. In instances where Indian surrogate value information was not available, we relied on Indonesian, Philippine, and U.S. values as noted below. Indonesia and the Philippines are also comparable to the PRC in terms of per capita gross national product and the national distribution of labor, and are significant producers of comparable merchandise. *See Memorandum From Jeffrey May, Director, Office of Policy, to Holly Kuga, Senior Office Director, AD/CVD Enforcement*, dated July 31, 2002, and *Memorandum from Paul Stolz to File*, dated December 16, 2002, which are on file in the Central Records Unit (CRU), room B-099 of the main Commerce building. We valued Chinese Lindenwood, the wood product used to produce pencils in the PRC, using publicly available, published U.S. prices for American Basswood because price information for Chinese Lindenwood and American Basswood is not available elsewhere.[2]

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOPs using surrogate values that were in effect during the POR. However, when we were unable to obtain the surrogate values in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the WPI for India as published in *International Financial Statistics*. We valued the FOP as follows:

1) We calculated a surrogate value for Chinese Lindenwood Pencil Slats using publicly available U.S. lumber prices for Basswood published in the *2002 Hardwood Market Report* for the period December 2000 to November 2001.

2) We valued the following material inputs using Indian import data from the Monthly Statistics of the Foreign Trade of India (MSFTI) for December 2000 November 2001: erasers, ferrules, wax, glue, foil, color leads/cores and scrap wood.

3) We valued black cores/leads using Indian import data from the Eximkey.com database, operated by the Asis Group, Asis Infotech Pvt. Ltd.

4) In accordance with section 351.408 (c)(1) of the Department's regulations, for CalCedar-Tianjin, we valued cedar pencil stock and stain at their actual acquisition cost because these inputs were purchased from a market economy supplier in a market economy currency. Specifically, CalCedar-Tianjin, purchased these inputs using U.S. dollars. Furthermore, we valued cedar pencil stock that was produced by CalCedar-Tianjin, in the United States and used in the PRC to produce subject merchandise using CalCedar-Tianjin's cost of production in the United States.

5) We valued the following packing materials using Indian import data from the MSFTI for December 2000 November 2001: plastic straps, plastic bags, cartons, packing boxes, packing tape, labels, corrugated cardboard, and pallets.

6) We valued energy inputs as follows: we valued natural gas using the Indonesian value reported in the publication *Energy Prices and Taxes, Quarterly Statistics (Third Quarter 2001)*, published by the International Energy Agency. We valued electricity using the 2002 industry/commercial category-wise average tariff for electricity (U.S. dollars/kWh) used by Indian industrial enterprises from the publicly available *Key World Energy Statistics (2002) (Energy Statistics)*, published by the International Energy Agency. We also valued diesel fuel using the Indian value reported in the publication *Energy Statistics*.

7) We valued water using the Indian value reported in the publication *Second Water Utilities Data Book (1997)*, published by the Asian Development Bank.

8) In accordance with 19 CFR 351.408(c)(3), we valued labor using a regression-based wage rate for the PRC listed in the Import Administration web site under "Expected Wages of Selected NME Countries." See http://ia.ita.doc.gov/wages.

9) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using the financial statements of Asia Wood International Corporation, a Philippine wood products producer. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

10) We used the following sources to value truck and rail freight services incurred to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to the producers. We valued truck freight services using the 1999 rate quotes reported by Indian freight companies and used in the less than fair value investigation of bulk aspirin from the PRC. *See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000). We valued rail freight services using the April 1995 rates published by the Indian Railway Conference Association. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR.

For further discussion of the surrogate values used in this review, see the *Memorandum From The Team Regarding Selection of Surrogate Values for Factors of Production for the Preliminary Results of the Administrative Review of Certain Cased Pencils from the People's Republic of China*, (December 31, 2002), which is on file in the CRU-Public File.

Use of Partial Facts Available

Section 776(a)(1) of the Act provides for the use of facts available if information needed by the Department to make a determination is not on the record. In this review, one of the pencil producers that supplied Shandong with pencils refused to report any information regarding its FOP. Because the necessary information regarding this producer's FOP is not on the record, the Department has resorted to the use of facts available in order to calculate the margin on Shandong's sales of the uncooperative producer's pencils.

Pursuant to section 776(b) of the Act, when the Department uses facts available in reaching its determination, it may apply adverse inferences, if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 771(9) of the Act defines an interested party as "a foreign manufacturer, producer, or exporter ... of subject merchandise ... ." Because the producer in question is an interested party within the meaning of section 776(b) of the Act, and it is the party who failed to supply the requested information, we believe it is appropriate to consider the producer's actions in this matter when determining whether it is appropriate to apply an adverse inference with respect to the use of partial facts available.

[2] Chinese Lindenwood and American Basswood are virtually the same type of wood. U.S. prices for American Basswood were used to value Chinese Lindenwood in the less than fair value investigation. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cased Pencils from the People's Republic of China*, 59 FR 55625, 55632 (1994). This methodology was upheld by the Court of International Trade. *See Writing Instrument Manufacturers Association, Pencil Section, et al. v. United States*, Slip Op. 97-151 (Ct. Int'l. Trade, Nov. 13, 1997) at 16.

The record in this review indicates that the interested party at issue here, the uncooperative producer, failed to act to the best of its ability to comply with a request for information. The record contains correspondence between Shandong and the uncooperative producer in which the producer conveyed its intention not to participate in the review. The uncooperative producer stated that it would not supply the requested information because the quantity of pencils it supplied to Shandong was "very small." This interested party producer never offered to supply even a limited amount of the requested information nor did it suggest any alternatives which might satisfy the Department's requirements. Therefore, we find that the use of an adverse inference in selecting from among the facts otherwise available is warranted. This position is consistent with that taken by the Department in *Ferrovanadium and Nitrided Vanadium From the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review*, 62 FR 65656, 65658 (December 15, 1997) wherein the Department stated that "by failing to respond Chusovoy {the producer} is an interested party which has not cooperated to the best of its ability under section 776 (b) of the Act. Therefore, we have continued to use an adverse inference in selecting from the facts available to determine the margins for Galt's sales of Chusovoy-produced merchandise ...".

In making an adverse inference, section 776(b) of the Act states that the Department may rely upon information derived from (1) the petition, (2) the final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record. As partial adverse facts available, we have assigned the highest margin calculated for any of Shandong's sales, to its sales of subject merchandise manufactured by the uncooperative producer. We believe that this margin will create the proper deterrent to non-cooperation with the Department in future reviews. In addition, it serves as a reasonable estimate of Shandong's dumping margin on these sales because it is based on Shandong's own reported information.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 2000 through November 30, 2001:

Manufacturer/exporter	Margin (percent)
Shandong Rongxin Import and Export Co., Ltd.	27.22
California Cedar Products Company/. Tianjin Custom Wood Processing Co., Ltd.	2.02

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) in accordance with 19 CFR 351.309(c)(1)(ii) and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs in accordance with 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. We will issue a memorandum identifying the date of a hearing, if one is requested, and deadlines for the submission of case briefs and rebuttal briefs. The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for CalCedar-Tianjin we have calculated importer-specific assessment rates for merchandise subject to this review. We divided the total dumping margin (calculated as the difference between NV and CEP) for the importer by the entered value of the reviewed sale. Where the importer-specific assessment rate is above *de minimis*, we will direct Customs to assess the resulting ad valorem rate against the entered value of the entry of the subject merchandise by that importer during the POR. For Shandong, we have calculated exporter-specific duty assessment rates for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. We calculated exporter-specific assessment rates for Shandong because there was no information on the record which identified the importers of record. The Department will issue appropriate assessment instructions directly to the Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates, calculated as described above, on each of the importer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed PRC or non-PRC exporter with a separate rate not covered in this review, the cash deposit rate will be the company-specific rates established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of this review; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties

occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: December 31, 2002.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–631 Filed 1–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580–851]

Dynamic Random Access Memory Semiconductors from the Republic of Korea: Extension of Time Limit for Preliminary Determination of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary determination of countervailing duty investigation.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary determination in the countervailing duty investigation of dynamic random access memory semiconductors from the Republic of Korea from January 27, 2003 until no later than March 31, 2003. This extension is made pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Ryan Langan at (202) 482–0176 or (202) 482–2613, respectively; Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Extension of Due Date for Preliminary Determinations

On November 27, 2002, the Department of Commerce ("the Department") initiated the countervailing duty investigation of dynamic random access memory semiconductors from the Republic of Korea. *See Notice of Initiation of Countervailing Duty Investigation: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 67 FR 70927 (November 27, 2002). Currently, the preliminary determination is due no later than January 27, 2003. However, pursuant to section 703(c)(1)(B) of the Act, we have determined that this investigation is "extraordinarily complicated" and are, therefore, extending the due date for the preliminary determination to no later than March 31, 2003.

Under section 703(c)(1)(B), the Department can extend the period for reaching a preliminary determination until not later than the 130th day after the date on which the administering authority initiates an investigation if:

(B) the administering authority concludes that the parties concerned are cooperating and determines that

(i) the case is extraordinarily complicated by reason of

(I) the number and complexity of the alleged countervailable subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination.

In this investigation, we find that all concerned parties are cooperating. We also find that this investigation is extraordinarily complicated due to the number and complexity of the alleged countervailable subsidy practices. We note that it is the Department's position that the appropriate criterion for analysis is not the number of programs in question, but rather the specific transactions (*e.g.*, equity infusions, debt-to-equity conversions, etc.) applied under those programs, which are numerous and appropriately categorized as "practices." In this investigation, the Department will examine 35 programs, many of which have never before been investigated. These allegations present novel issues, including equity infusions, debt forgiveness, bailouts involving new loans and multiple loan refinancings of existing loans. Moreover, the investigation presents the significant general issue of Korean directed credit and, more specifically, whether this directed credit is specific to the semiconductor industry. These issues will require a significant amount of information and complex analysis. The Department must also determine the extent to which the particular countervailable subsidies are used by the individual respondent producers/exporters.

Accordingly, we deem this investigation to be extraordinarily complicated and determine that additional time is necessary to make the preliminary determination. Therefore, pursuant to section 703(c)(1)(B) of the Act, we are postponing the preliminary determination in this investigation until no later than March 31, 2003.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: January 6, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–632 Filed 1–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010803A]

Proposed Information Collection; Comment Request; National Marine Sanctuaries - Socioeconomic Impacts of Marine Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 14, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Vernon R. Leeworthy at *Bob.Leeworthy@noaa.gov* or call 301–713–3000.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to give users of National Marine Sanctuaries fair representation in monitoring the socioeconomic impacts of a network of marine reserves (no take areas) in the Channel Islands

National Marine Sanctuary. The proposed information collection is a follow-up to the previous efforts that established baseline estimates of socioeconomic activities in the Channel Islands National Marine Sanctuary. The baseline information was used to estimate the expected impacts of implementing proposed marine reserves. The new information will be used in a monitoring program to test whether, and to what extent, the estimated "expected" socioeconomic impacts actually occur.

II. Method of Collection

Respondents complete paper forms assisted by a NOAA data collector.

III. Data

OMB Number: 0648–0408.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 665.

Estimated Time PerResponse: 2 hours.

Estimated Total Annual Burden Hours: 1,330.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–634 Filed 1–10–03; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010703D]

Pacific Fishery Management Council; Public Meeting/Workshop

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will hold a workshop to review the NMFS Northwest Fisheries Science Center's (NWFSC) bycatch model, and make recommendations regarding how new observer data would be incorporated into the bycatch model.

DATES: The three-day workshop will begin on Monday, January 27, 2003 at 10 a.m. and conclude on Wednesday, January 29, 2003. On Tuesday, January 28 and Wednesday, January 29, the workshop will convene at 8 a.m. and continue until business for the day is completed. Public comments will be allowed at times to be specified by the chair.

ADDRESSES: The workshop will be held at NMFS Northwest Fisheries Science Center, in room 370 W, 2725 Montlake Boulevard East, Seattle, WA 98112; (206) 860–3200.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Ed Waters, Fishery Economics Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to review the NWFSC bycatch model and to consider how the new observer data being collected by NWFSC would be incorporated into the bycatch model. The workshop panel will include two members each from the Pacific Fishery Management Council's Scientific and Statistical Committee (SSC) Economics Subcommittee, the SSC Groundfish Subcommittee, the Council's Groundfish Management Team (GMT), the Council's Groundfish Advisory Subpanel (GAP), and independent experts. The chair of the SSC Economics Subcommittee will chair the panel.

Specific tasks for the panel include, (1) review existing literature and methodologies for estimating bycatch rates and discards (including the use of observer data), (2) review code, documentation and results for the NWFSC bycatch model, (3) review status and coverage of NMFS West Coast observer data, (4) review proposals for incorporating observer data into the 2003 bycatch model, and (5) report findings and recommendations to the Council. A complete agenda and terms of reference for the workshop will be posted on the Council's website (*http://www.pcouncil.org/*).

Although nonemergency issues not contained in the workshop meeting agenda may come before the panel for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the panel's intent to take final action to address the emergency.

Special Accommodations

The meeting site is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Michael Lemon at (206) 860–3341, at least 5 days prior to the meeting date.

Dated: January 8, 200.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–636 Filed 1–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010703C]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The 82nd meeting of the Western Pacific Fishery Council's Scientific and Statistical Committee (SSC) will convene January 28 - 30, 2003 in Honolulu, HI.

DATES: The SSC meeting will be held from 9 a.m. to 5 p.m. on January 28, 2003, and from 8:30 a.m. to 5 p.m. on January, 29–30 2003.

ADDRESSES: The 82nd SSC meeting will be held at the Council office conference

room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed can change.

Tuesday, January 28, 2003, 9 a.m.

1. Marine Mammals

a. Monk seal research
b. Monk Seal Recovery Team

2. Crustaceans Fisheries

a. Northwestern Hawaiian Islands lobster research

3. Bottomfish

a. Guam bottomfish management

4. Northwestern Hawaiian Islands/Main Hawaiian Islands Hawaii Undersea Research Laboratory research

Wednesday, 17 May 2000, 8:30 a.m.

5. Pelagic Fisheries

a. Hawaii and American Samoa third quarter longline reports for 2002
b. American Samoa longline observer program
c. American Samoa limited entry program
d. November 2002 Short-tail albatross Biological Opinion
e. Sea turtle conservation and management
i. November 2002 Western Pacific Pelagic Fisheries Biological Opinion
ii. Honolulu Lab mitigation turtle research
iii. Southern longline area closure
iv. Turtle population models
v. Council and NMFS turtle projects
vi. NMFS Technical Expert Workshop
f. International Meetings and Issues
i. Second International Fishers Forum
ii. Third Preparatory Conference for the Establishment of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific

Thursday,18 May 2000, 8:30 a.m.

6. Ecosystem and Habitat

a. Northwestern Hawaiian Islands Coral Reef Sanctuary
b. Northwestern Hawaiian Islands Symposium
c. National Marine Fisheries Service Northwestern Hawaiian Islands Science Workshop
d. Marine Protected Area Working Group

7. Other Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: January 8, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–637 Filed 1–10–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Availability of the Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 2003

January 7, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Keith Daly, Computer Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION: The Committee for the Implementation of Textile Agreements (CITA) announces that the 2003 Correlation, based on the Harmonized Tariff Schedule of the United States, will be available in January 2003 as part of the Office of Textiles and Apparel (OTEXA) Publications CD-Rom.

The CD-Rom may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room H3100, Washington, DC 20230, ATTN: Barbara Anderson, at a cost of $25. Checks or money orders should be made payable to the U.S. Department of Commerce. The 2003 Correlation will also be available on the OTEXA website at http://otexa.ita.doc.gov/corr.htm.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–622 Filed 1–10–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Planning and Steering Advisory Committee (PSAC)

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The purpose of this meeting is to discuss topics relevant to SSBN security. This meeting was previously announced in 67 FR 71154, November 29, 2002, and has since been rescheduled for the date and time shown below.

DATES: The meeting will be held on Wednesday, January 22, 2003, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Center for Naval Analyses, 4825 Mark Center, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James Latsko, CNO (N775C2), 2000 Navy Pentagon, NC–1, Washington, DC 20350–2000, (703) 604–7392.

SUPPLEMENTARY INFORMATION: This notice of closed meeting is provided *per* the Federal Advisory Committee Act (5 U.S.C. App. 2). The entire agenda will consist of classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

Dated: January 8, 2003.

R. E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–675 Filed 1–10–03; 8:45 am]

BILLING CODE 3810–FF–P

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sunshine Act Meeting; Notice

AGENCY: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8 a.m. to 4 p.m., February 4, 2003.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8 a.m. Meeting—Board of Regents

(1) Approval of Minutes—October 24, 2002
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: January 8, 2003.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–778 Filed 1–9–03; 3:35 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package, 1910–0300, Environment, Safety and Health, to the Office of Management and Budget for extension under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This package contains information collections that are used by Departmental management to exercise management oversight and control over management and operating (M&O) contractors of DOE's government-owned contractor-operated (GOCO) facilities, offsite contractors, and the public. The contractor management oversight and control function concerns the ways in which DOE contractors provide goods and services for DOE organization and activities in accordance with the terms of their contracts; the applicable statutory, regulatory and mission support requirements of the Department; and regulations in the functional area covered by this package.

DATES: Comments must be filed on or before February 12, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. (Also, please notify the DOE contact listed in this notice.)

ADDRESSES: Address comments to DOE Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), Room 10102, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to Susan L. Frey, Director, Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer, IM–11/Germantown Bld., U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585–1290.

SUPPLEMENTARY INFORMATION: (1) *Title:* Environment, Safety and Health; (2) *Current OMB Control number:* 1910–0300; (3) *Summary:* A three-year extension is requested which includes both mandatory and voluntary response obligations; (4) *Purpose:* This information is required by the Department to ensure that the Departmental environment, safety and health resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractor; (5) *Type of Respondents:* DOE management and operating contractors and offsite contractors; (6) *Estimated number of responses:* 11,344; (7) *Estimated total burden hours:* 258,131.

STATUTORY AUTHORITY: Depart of Energy Organization Act, Public Law 92–01 Issued in Washington, DC, on January 7, 2003.

Susan L. Frey,

Director, Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer.

[FR Doc. 03–583 Filed 1–10–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Submitted for OMB Review and Comment.

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and approval.

SUMMARY: The Department of Energy (DOE) has submitted the proposed collection of information described in this Notice to the Office of Management and Budget (OMB) for review and approval, in accordance with the Paperwork Reduction Act of 1995. This electronic form will certify to DOE that respondents who wish to purchase DOE high-risk personal property will comply with all applicable U.S. Laws and Regulations.

DATES: Comments regarding this collection must be filed on or before February 12, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the time period allowed by this Notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–7318. In addition, please notify the DOE contact listed in this Notice.

ADDRESSES: Address comments to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to Susan L. Frey, Director, Records Management Division, IM–11/ Germantown Bldg., Office of Business and Information Management, Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave., SW., Washington DC, 20585–1290.

SUPPLEMENTARY INFORMATION: This package contains: (1) *Title*: End-Use Certificate; *(2) OMB Control No.*: NEW; *(3) Type of Request*: New; *(4) Purpose*: When acquiring High Risk Property from the Department of Energy, the End-Use Certificate (EUC) will be used to check respondents to determine if they are responsible, not debarred bidders, Specially Designated Nationals or Blocked Persons, or have not violated U.S. export laws, and to advise recipients that when property is to be exported, they must comply with all applicable U.S. Laws and Regulations, including the Arms Export Control Act (22 U.S.C. 2751 et seq); Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq); continued under

Executive Order 12924; International Traffic in Arms Regulations (ITAR) (22 CFR 120 et seq); Export Administration Regulations (EAR) (15 CFR 730 et seq); Foreign Assets Control Regulations (OFAC) (31 CFR 500 et seq); and the Espionage Act (18 U.S.C. 793 et seq). *(5) Type of Respondents*: Individuals or households; business or other for-profits, not-for-profit institutions; farms and state, local or tribal Government; *(6) Estimated Number of Respondents*: 5,000 perspective purchases; *(7) Estimated Total Burden Hours*: 1,650.

Statutory Authority: Paperwork Reduction Act of 1995, Public Law No. 104–13, 44 U.S.C Section 3507(a).

Issued in Washington, DC, on January 7, 2003.

Susan L. Frey,

Director, Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer.

[FR Doc. 03–584 Filed 1–10–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Energy (DOE), has submitted an information collection package to the OMB for renewal under the Paperwork Reduction Act of 1995. The package requests a 3-year extension of its financial management information collection, OMB Control Number 1910–0500. This information is required by the Department to ensure that financial management resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors.

DATES: Comments regarding the information collection package should be submitted to the OMB Desk Officer at the following address no later than February 12, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. In addition, please notify the DOE contact listed in this Notice.

ADDRESSES: Address comments to the DOE Desk Officer, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503. Comments should also be addressed to Susan L. Frey, Director, Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer, IM–11/Germantown Bld., U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585–1290.

SUPPLEMENTARY INFORMATION: The package contains: *(1) Title*: Financial Management; *(2) Current OMB Control Number*: 1910–0500; *(3) Purpose*: This information is required by the Department to ensure that financial management resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors; *(4) Type of Respondents*: DOE management and operating contractors and offsite contractors; *(5) Estimated Number of Responses*: 12,626; *(6) Estimated Total Burden Hours*: 152,704, including recordkeeping hours, required to provide the information; *(7) Number of Collections*: The package contains 10 information and/or recordkeeping requirements.

STATUTORY AUTHORITY: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC on January 7, 2003.

Susan L. Frey,

Director, Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer.

[FR Doc. 03–585 Filed 1–10–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Presolicitation # DE–PS36–03GO93005]

Low Wind Speed Technology for Small Wind Turbines

AGENCY: Golden Field Office, U.S. Department of Energy.

ACTION: Notice of presolicitation request for comments and expression of interest.

SUMMARY: The U.S. Department of Energy (DOE) is announcing its intention to issue a solicitation for financial assistance and is seeking expressions of interest and comments on a proposed approach to cost-shared, public-private projects for the development of cost-effective small wind turbines (100 kilowatts or less), for use in distributed power applications at low wind speeds throughout the United States. The purpose of this announcement is to obtain an indication of the level of interest by industry participants and seek comments on the proposed scope of a low wind speed, small wind turbine development solicitation.

DATES: Expressions of interest and comments to the planned solicitation are due January 24, 2003. The solicitation is planned to be issued approximately 30 days after comments are received. Should DOE decide to proceed, a formal solicitation will be issued.

ADDRESSES: To obtain a copy of the solicitation, once issued, interested parties should access the DOE Golden Field Office Home Page at *http://www.golden.doe.gov/businessopportunities.html*, click on "Solicitations," and then access the solicitation number identified above. The DOE Golden Field Office Home Page will provide a link to the solicitation synopsis in the Industry Interactive Procurement System (IIPS) web site and provide instructions on using IIPS. The solicitation will also be available directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Contract Activity, for those solicitations issued by the Golden Field Office. To be notified when the solicitation is issued, join the Solicitation Mailing List specific to this notice through IIPS. DOE will not issue paper copies of the solicitation. For questions regarding the operation of IIPS, contact the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or at (800) 683–0751.

FOR FURTHER INFORMATION: Questions or requests for additional information should be sent electronically to *godwt@nrel.gov*. Expressions of interest and comments on the proposed solicitation should be submitted electronically to *godwt@nrel.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) is soliciting expressions of interest and comments on a proposed approach to cost-shared, public-private projects for the development of cost-effective small wind turbines (100 kilowatts or less), for use in distributed power applications in low wind speed areas throughout the United States, and primarily targeting residential and small business uses. A major focus of the DOE Wind Program is the development of wind turbine

technology that is cost effective for use in the vast areas of the Nation with lower wind speeds than are currently economically viable. The low wind speed small wind turbine development activities are planned as cooperative efforts with industry, and guided by several principles: (1) Public/private partnerships will be developed to support continuing innovation. These partnerships are intended to be flexible and adaptive, support multiple pathways, and offer opportunities for new players to enter the program; (2) wind program research and testing activities will be closely aligned to support these partnerships; (3) applied systems integration activities will guide portfolio planning and technology transfer; and (4) program evaluations will be performed regularly using performance-based management techniques as the basis for performance criteria, periodic review, and adjustment.

The goal of this low wind speed technology effort is to develop a class of small wind turbines (100 kW or less) for residential and small business applications that provide cost effective performance in Class 3 wind resources by 2007. To achieve this goal, DOE intends to provide financial support via Grants and Cooperative Agreements for public-private partnerships to complete concept studies, component development, and/or turbine prototype development for multiple technology pathways. Given the range of turbine sizes and applications of interest, performance goals for each partnership effort will be established individually. The objective for each effort is to achieve the level of cost effectiveness in Class 3 wind resources that can be achieved in Class 5 resources with current baseline technology. Applicants will propose an appropriate cost performance target for Class 3 wind resources.

Industry partnerships and related supporting research and testing activities will be coordinated to facilitate technology transfer and transition of conceptual design and component development projects into system development. All partnership activities will be periodically reviewed against established milestones as the basis for funding and planning adjustments needed to optimize the portfolio for success. Under the planned solicitation, DOE will be soliciting applications for: (1) Conceptual Design Studies, (2) Component Development, and (3) Prototype Turbine Development projects, for small-scale turbine designs (less than 100 kilowatts) for distributed power applications.

Conceptual Design Studies (Technical Area 1) are envisioned as 6–12 month efforts with a maximum of DOE funding being $100,000 for any single award. No cost share will be required. Awards for Conceptual Design Studies are anticipated to be Grants.

Component Development (Technical Area 2) is envisioned as an 18 to 24 month effort with the DOE funding being between $500,000 and $1 million for any single award. The program anticipates a cost-shared agreement with a minimum cost share requirement of 30% by the offeror. As the program intends to be substantially involved, awards are expected to be Cooperative Agreements.

Prototype Turbine Development (Technical Area 3) is envisioned as a three-year effort with a maximum DOE funding of $1,500,000 for any single award. The program intends to use a cost-shared agreement with a minimum cost share requirement of 50% by the offeror. As DOE intends to be substantially involved, awards are expected to be Cooperative Agreements. Initial prototype wind turbines are expected to complete field-testing by 2007.

The program expects to award one to three agreements under each Technical Area with projects incrementally funded on a fiscal year basis. Additional consideration in the evaluation process will be given for cost sharing in excess of the minimum required amount. Applicants may submit more than one application under any or all the Technical Areas. However, diversity of technology and participants within the DOE Wind Program will be factors in selecting applications for negotiation of award.

Throughout the projects, the program will encourage the use of best business and project-management practices. Disciplined engineering development processes, including rigorous laboratory and field tests to verify component and subsystem designs, will be emphasized.

Applications need to include a description of the proposed concept in sufficient detail as to allow evaluation by a group of knowledgeable reviewers; identify planned teaming arrangements; and include a proposed budget and schedule. The program expects a majority of the work to be performed within the United States, and applicants will be asked to demonstrate the economic benefits of the proposed project to the United States. Qualified business and technical professionals will evaluate the written applications. Awards will be based upon technical viability, projected Cost of Energy (COE), capabilities, and the likelihood of achieving program goals and objectives.

The American World Energy Association (AWEA) U.S. Small Wind Turbine Industry Roadmap document (*http://www.awea.org/smallwind/documents/31958.pdf*) identifies specific areas of interest that relate to future advances in distributed wind technology. These areas of interest include: (1) Reduction in turbine system costs; (2) reduction in manufacturing costs; (3) improvements in reliability; (4) improvements in power electronics design and reliability; (5) reduction of noise; (6) development of better analytical tools; (7) improvement in overspeed control knowledge; and (8) development of more cost-effective, taller towers.

Expressions of interest are sought from potential applicants to the forthcoming solicitation, and comments on the proposed plan are sought from all interested parties. Expressions of interest should not include detailed proposals, but should include the following information: (1) The names, addresses, telephone and facsimile numbers, and electronic mail address of the primary contact person for the planned application; (2) potential participants, their affiliation, and proposed roles, including the need for support from National Laboratories such as the National Renewable Energy Laboratory (NREL) or Sandia National Laboratory (SNL); (3) comments on the proposed solicitation; (4) a statement indicating the Technical Area under which an application for financial assistance should be submitted; and (5) a brief description of the concept to be proposed. Responses to this notice should not exceed five pages.

To be considered, responses should be received by January 24, 2003. Once issued, Solicitation number DE–PS36–03GO93005 will include complete information including technical aspects, funding, application preparation instructions, evaluation criteria, and other factors that will be considered when selecting applications for funding. Issuance of the solicitation is planned for February 2003, with applications due approximately 60 calendar days after the solicitation is issued. Information on Financial Assistance Regulations (10 CFR 600), proposal firms, award format, or post award forms can be obtained through the DOE Golden Field Office Home Page *http://www.golden.doe.gov/businessopportunities.html*.

Issued in Golden, Colorado, on December 17, 2002.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–582 Filed 1–10–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0044; FRL–7279–7]

Educational Outreach and Baseline Assessment of Existing Exposure and Risks of Exposure to Lead Poisoning of Tribal Children; Notice of Funds Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting grant proposals from Indian Tribes to support Tribal lead outreach and educational awareness and conduct baseline assessment of existing exposure and risks of exposure to lead poisoning of Tribal children. EPA is awarding grants which will provide approximately $1.4 million to Indian Tribes to perform those activities and to encourage Indian Tribes to consider continuing such activities in the future. This notice describes eligibility, activities, application procedures and requirements, and evaluation criteria.

DATES: All grant proposals must be received on or before March 14, 2003.

ADDRESSES: Grant proposals must be submitted by mail. Please follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0516; e-mail address: watford.darlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federally Recognized Indian Tribe or Tribal Consortium. For the purposes of this notice, a partnership between two or more Federally Recognized Indian Tribes is considered a consortium. Potentially affected entities may include, but are not limited to:

921150 American Indian and Alaskan Native Tribal Governments.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the **Federal Register** document published by the Bureau of Indian Affairs (BIA) on March 13, 2000 (65 FR 13298) which lists all Federally Recognized Indian Tribes. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0044. The official public docket consists of documents specifically referenced in this action and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

You may also access this document at the Office of Pollution Prevention and Toxics Lead Home Page at http://www.epa.gov/lead/new.htm.

C. How and To Whom Do I Submit a Grant Proposal?

You may submit one original and three double-sided copies of the grant proposal through the mail to: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

For overnight/express delivery service, send grant proposals to: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1301 Constitution Ave., NW., EPA West (Old Customs Bldg.), 4th Floor Connecting Wing, Room 4355, Washington, DC 20004–0001.

II. What Action is the Agency Taking?

EPA is soliciting proposals from Tribes or Tribal Consortia for grants to support educational outreach activities and/or baseline assessment of existing exposure and risks of exposure to lead poisoning of Tribal children. The educational outreach grants will provide Tribes with the means to launch efforts to educate Tribal families about dangers to children of exposure to lead-based paint hazards. The baseline assessments may include inspecting pre-1978 Tribal housing and/or child-occupied facilities for lead-based paint hazards, blood-lead screening to collect blood-lead level data of Tribal children, testing of paint, dust, and soil for hazardous lead levels, training individuals to perform lead inspections and risk assessments, and

funding contractor support necessary to implement these activities. EPA is awarding grants which will provide approximately $1.4 million for Tribes or Tribal Consortia to perform these activities. Decisions on awarding the grant funds will be made based on the evaluation of the proposals using the criteria specified in Unit III. Tribes or Tribal Consortia that submit qualifying proposals will be notified by EPA and will be required to submit official grant applications.

III. What Should I Consider as I Prepare My Grant Proposal?

A. Scope and Purpose

The purpose of these grants is to support Tribal lead awareness outreach (educational) activities and the efforts of Indian Tribes to identify children's risks to lead by conducting a baseline assessment of existing exposure and/or potential lead exposures. The outreach activities may be provided to children, parents, daycare providers, and legal custodians on the potential health risks associated with lead exposure. As a result of the baseline assessment, Tribes may use the resulting data to evaluate whether there is a need to develop and implement an authorized Tribal lead-based paint program (40 CFR 745.324).

B. Eligibility

Eligible recipients are any Federally Recognized Indian Tribes or Tribal Consortia only. Federally Recognized Indian Tribes are listed in the **Federal Register** document published by the BIA on March 13, 2000 (65 FR 13298). Only one grant proposal may be submitted by each Tribe or Tribal Consortia under this notice. However, the grant proposal may include outreach activities, baseline assessment activities, or both. There are no requirements for matching funding under this grant program. There is no requirement that a Tribe provide documentation that it meets the treatment in a manner similar to a State (TAS) standard.

C. Activities to be Funded

EPA will provide financial assistance in the form of grants to Indian Tribes or Tribal Consortia to conduct any or all of the following activities:

1. *Outreach (educational) activities.* EPA will provide financial assistance in the form of grants to Indian Tribes or Tribal Consortia to develop and conduct organized outreach efforts to educate Tribal families about the dangers to children from exposure to lead-based paint hazards, distribute educational information, and encourage Tribal families to have their children screened for lead poisoning and have their homes tested for lead hazards. Activities may include, but are not limited to, training medical professionals, developing culturally specific lead outreach materials, distributing pamphlets, and establishing an in-home education program to visit the homes of young Tribal children.

Tribes may develop their own outreach materials; however, the use and reproduction of pre-existing products is strongly encouraged and preferred. EPA is aware that many State, Tribal, and local departments of health and environmental protection, as well as advocacy groups and community development groups, have developed useful lead poisoning prevention materials to conduct outreach and awareness (educational) activities. EPA and other Federal agencies have developed, and currently provide, a wide range of outreach materials available from the National Lead Information Center (1–800–424–LEAD). Trained specialists at the Center can help identify specific types of lead awareness materials that already exist and thereby avoid spending the limited resources to recreate these materials. Grant funding may be used to duplicate existing lead outreach materials or to develop and implement a lead poisoning awareness and prevention program. Any new lead awareness materials developed must be consistent with the Federal (EPA, Department of Housing and Urban Development (HUD), and Centers for Disease Control and Prevention (CDC, formerly the Centers for Disease Control)) lead hazard awareness and poisoning prevention programs (www.epa.gov/lead, www.hud.gov/offices/lead/, and http://www.cdc.gov/nceh/lead/lead.htm) and receive approval from the appropriate EPA Regional Lead Contacts (see list of Regional Lead Contacts in Unit III.C.2.v.) prior to distribution.

2. *Baseline assessment activities*—i. *Conduct blood-lead screening of Tribal children age 6 years and under.* For blood-lead screening activities, the focus should be on Tribal children between the ages of 12–36 months because blood-lead levels tend to be highest in this age group, and more children in this age group tend to have blood-lead levels >10 (micrograms/deciliter (µg/dL). The CDC's recommended level of concern that encourages followup activities is 10 µg/dL, with specific actions/interventions recommended at various elevated blood-lead levels. All blood-lead samples collected from Tribal children must be analyzed using a Clinical Laboratory Improvement Amendments (CLIA)-certified laboratory. Portable, hand-held blood-lead analyzers may be used, but must be operated by a laboratory that is CLIA certified for moderately complex analysis. CLIA, published in 1992 (42 CFR part 405), is administered by the Centers for Medicare and Medicaid Services (CMS, formerly the Health Care Finance Administration). CLIA-certified laboratories must successfully participate in a testing proficiency program that is CLIA approved. Information regarding CLIA may be downloaded from the CMS web site at http://www.cms.gov/clia/.

ii. *Conduct inspections and risk assessments of pre-1978 Tribal housing and/or child occupied facilities for lead-based paint hazards.* (Housing and facilities may be owned or occupied by Tribal members.) This includes collection and analysis of paint, dust, and soil samples for hazardous lead levels. Inspections and risk assessments may only be conducted by individuals certified by EPA for Indian country in the EPA Region where the Tribe is located or certified by the recipient Tribe if the Tribe has received EPA program authorization. Inspections and risk assessments must be conducted according to the work practice standards found in 40 CFR 745.227 or those of the authorized Tribal program. Analysis of paint, dust, and soil samples must be conducted by a National Lead Laboratory Accreditation Program (NLLAP) recognized laboratory. EPA has established the NLLAP to recognize laboratories that demonstrate the ability to analyze paint chip, dust, or soil samples for lead. NLLAP provides the public with a list of laboratories that have met EPA requirements and demonstrated the capability to accurately analyze paint chip, dust, or soil samples for lead. A current list of NLLAP-recognized laboratories can be obtained by calling the National Lead Information Center at 1–800–424–LEAD.

iii. *Train workers to perform lead inspections and risk assessments.* Grant funds may be used for initial, refresher, or any other training and/or third party testing required to obtain certification (as discussed in Unit III.C.2.ii.) to perform lead-based paint inspections and risk assessments. Grant funds cannot be used to pay for any administrative fees for certification to conduct lead inspections and/or risk assessments.

iv. *Compile and summarize demographic data collected from activities listed in Unit III.C.2.i–iii.* In order for Tribes to qualify for other Federal funds for lead activities, sufficient data needs to be compiled and well organized. It is strongly

recommended that Tribes develop or use an existing data management system (manual or automated) to collect and maintain the data collected during the project, including laboratory results and data on followup cases for Tribal children with elevated blood-lead levels. This information may be essential in determining if Tribes have the capacity for a Tribal lead program (40 CFR 745.324) and are eligible for other Federal funding for lead activities. (An existing Tribal tracking system, Tribal Relational Environmental Numeric Health Database System or (TRENHDS), may be viewed or downloaded from http://www.bluejaydata.com/trenhds.) It is recommended that the data include: Tribe or Tribal Consortium name and location; an identifier that protects the privacy of the child; age of housing in which the child resides; age of the child (in months); gender; sample media (blood, soil, dust, or paint); date of sample collection; method of sample collection (for blood samples indicate whether method was capillary or venous); laboratory analysis method and date; the levels of lead in blood (in micrograms per deciliter (μg/dL)); soil (in micrograms per gram (μg/g)); dust (in micrograms per square foot (μg/ft^2)); and paint (in micrograms per gram (μg/g) or milligrams per centimeter square (mg/cm^2)); the number of homes and/or child-occupied facilities where risk assessments or inspections were conducted; the number of paint, dust, and soil samples collected; and possible exposure routes from other sources (such as hobby materials, pottery, parent occupational exposure, special native foods, medications, etc.) for each Tribal child screened.

v. *Quality assurance.* All environmental or health-related measurements or data generation must adequately address the requirements of 40 CFR 31.45 relating to quality assurance/quality control. Information on EPA quality assurance requirements may be downloaded from the EPA Quality Staff web site at www.epa.gov/quality. To begin the process of developing the quality assurance documentation, a quality assurance project plan template has been developed that may be helpful to use as a guide. The template may be downloaded from the EPA/OPPT web site at www.epa.gov/lead/new.htm. For further guidance on preparation of the quality documentation and specific EPA Regional Office approval requirements, please contact the appropriate EPA Regional Lead Contact listed in this unit.

Region I: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), Regional Contact—James M. Bryson, USEPA Region I, One Congress St., Suite 1100 (CPT), Boston, MA 02114–0203. Telephone number: (617) 918–1524.

Region II: (New Jersey, New York, Puerto Rico, and the Virgin Islands), Regional Contact—Lou Bevilacqua, USEPA Region II, MS–225, 2890 Woodbridge Ave., Edison, NJ 08837. Telephone number: (732) 321–6671.

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia), Regional Contact—Roberta Riccio, USEPA Region III (3WC33), 1650 Arch St., Philadelphia, PA 19103–2029. Telephone number: (215) 814–3107.

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee), Regional Contact—Rose Anne Rudd, USEPA Region IV, 61 Forsyth St., SW., Atlanta, GA 30303. Telephone number: (404) 562–8998.

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin), Regional Contact—David Turpin, USEPA Region V (DT–8J), 77 W. Jackson Blvd., Chicago, IL 60604. Telephone number: (312) 886–7836.

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas), Regional Contact—Brian Burgess, USEPA Region VI, 1445 Ross Ave., 12th Floor (6MD–RP), Dallas, TX 75202. Telephone number: (214) 665–7534.

Region VII: (Iowa, Kansas, Missouri, and Nebraska), Regional Contact—Margaret Stockdale, USEPA Region VII, ARTD/RALI, 901 North 5th, Kansas City, KS 66101. Telephone number: (913) 551–7936.

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming), Regional Contact—David Combs, USEPA Region VIII, 999 18th St., Suite 300, Denver, CO 80202. Telephone number: (303) 312–6021.

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, and Guam), Regional Contact—Mary Aycock, USEPA Region IX (CMD–4), 75 Hawthorne St., San Francisco, CA 94105. Telephone number: (415) 947–4169.

Region X: (Alaska, Idaho, Oregon, and Washington), Regional Contact—Barbara Ross, USEPA Region X, Solid Waste and Toxics Unit (WCM–128), 1200 Sixth Ave., Seattle, WA 98101. Telephone number: (206) 553–1985.

D. Travel to Conferences

Grant funds may be used to support travel expenses and attendance of key Tribal lead program personnel at EPA Regional and National Lead conferences.

E. Project Duration

Projects are expected to be completed within 2 years of award of the grant.

F. Ineligible Costs

Examples of ineligible costs under this grant, include the following:

1. Buying real property, such as land or buildings.
2. Lead hazard reduction activities, such as performing interim controls or abatement (as defined in 40 CFR 745.223).
3. Construction activities, such as renovation, remodeling, or building a structure.
4. Office equipment that costs more than 10% of the amount of the grant, such as a copying machine or a color printer.
5. Analysis equipment in excess of 10% of the amount of the grant.
6. Lead-based paint certification fees for individuals and firms.
7. Contractor support in excess of 25% of the amount of the grant award, except where contract services include blood-lead analysis, training, and/or lead-based paint inspections and risk assessments.
8. Duplication of any lead-related activities that have been previously funded by EPA, or other Federal Government sources.
9. Case-management costs, including treatment for Tribal children with elevated blood-lead levels (e.g., followup visits by a doctor or chelation therapy).

EPA is extremely interested in knowing what actions Tribes plan to follow regarding monitoring, education, and/or treatment for children whose blood-lead levels are determined to be elevated (>10 μg/dL) while screened under this grant. It is important that the children who are found to have elevated blood-lead levels are treated. A description of specific steps and related information for followup activities must be included in the work plan section of the grant proposal.

G. Grant Proposal Requirements

Submit one original and three double-sided copies of the grant proposal, including a return mailing address. Grant proposals must be unbound, stapled, or clipped in the upper left-hand corner, on white paper, and with page numbers. The deadline for EPA's receipt of grant proposals is March 14, 2003. If the Tribe has conducted, or is currently working on a related project(s), a brief description of those projects, funding sources, primary commitments, and an indication as to whether those commitments were met must be included in the grant proposal. The description must also indicate how the proposed project is different from other funded work conducted by the Tribe(s) or unfunded work conducted by another entity (e.g., Indian Health Service, Superfund), and how the proposed project will not duplicate previous or on-going projects. It is important to note that funds cannot be

awarded to conduct activities which have been previously funded through any other Federal grant program.

Grant proposals should be clearly marked to indicate any information that is to be considered confidential. EPA will make final confidentiality decisions in accordance with Agency regulations in 40 CFR part 2, subpart B. All initial grant proposals received under this notice are subject to the dispute resolution process defined at 40 CFR 30.63 and part 31, subpart F.

This notice is one of two EPA notices that announce the availability of funds to conduct various lead-based paint activities. The second notice, which was published in the **Federal Register** issue of September 18, 2002 (67 FR 58788) (FRL–7191–8), Solicitation of Applications for Lead-Based Paint Program Grants; Notice of Availability of Funds, announces the availability of the lead-based paint section 404(g) lead grant program. Although a Tribe may apply to receive grant funding from both notices, they each have very distinct objectives. The grant program opportunities described in this notice may serve as a precursor to, but not as an equivalent or supplement to, the section 404(g) lead-based paint grant program. The section 404(g) lead-based paint grant program involves infrastructure development for the anticipated implementation of a lead-based paint training and certification program and does not include the activities (testing for lead in blood, paint, dust, or soil samples, or the general outreach and education activities) listed in this notice. Tribes may determine from the sample results and data interpretation that they obtain from the grant program described in this notice, that they have a need to develop a lead-based paint grant program and may apply for section 404(g) grant funds. Alternatively, a Tribe may decide that it is not in their best interest to pursue such a training and certification oversight program. Tribes or Tribal Consortia with an EPA-approved lead-based paint program may become eligible for other Federal funding opportunities for lead activities.

H. Work Plan

To be considered for selection under this grant program, grant proposals must include a completed work plan as described in this unit. Tribes may elect to submit a grant proposal for outreach and/or baseline assessment activities. However, only one grant proposal will be accepted from each Tribe or Tribal Consortia in response to this notice. The work plan must describe the proposed project. The work plan must be 4–6 typed pages in length (excluding appendices). One page is one side of a single-spaced typed page. The pages must be letter size (10 or 12 characters per inch (cpi)) and must have margins that are at least 1 inch. The format for the work plan must be organized and outlined as follows:

Section I. Work Plan for Educational Outreach Grant Proposal

A. Title of Project, Table of Contents, and Summary

B. Outreach (Educational) Activities

This section should include, but not be limited to, the following items/activities: Purpose, goal, and scope of the project; types of lead educational material that will be used and/or reproduced; types, if any, of lead educational materials that will be developed; distribution and delivery plans; and percentage estimate of the number of Tribal families who will receive the lead awareness information. The grant proposal must include a statement which describes how the effectiveness of the project will be determined.

C. Project Management

Include a description of staff positions, roles, and responsibilities, a description of experience in or potential to conduct activities described in B; efforts of partnership and collaboration with other local-health agencies, extent of contractor support, schedule and/or a time line showing the major activities and estimated time frames for initiation and completion, and a budget summary.

D. Budget

Provide a reasonable budget that is clearly identifiable with work plan activities.

E. Appendices

The appendices must be no more than 10 pages total and follow the same paging and spacing description as provided in this outline.

i. Resumes of key personnel (also include title, description, and reference name with phone number for work on previous or current grants or contracts within the last 5 years).

ii. Letters of support from Tribal representatives for Tribal Consortia. For individual Tribes, include a letter or resolution from Tribal Council or Chairperson showing support for and commitment to the project. (If it is not possible to obtain a letter/resolution from the Tribal Council or Chairperson to submit with your application, an interim letter of explanation must be included with the application.) The letter/resolution will still be required prior to award of the grant.

iii. Detailed information on other lead-based paint or lead-related activities conducted by the Tribe or Tribal Consortium.

Section II. Work Plan for Baseline Assessment Grant Proposal

A. Title of Project, Table of Contents, and Summary

B. Baseline Assessment Activities

This section should include the purpose, goal, and approach of the project. This section should also include a discussion of the separate phases of the project; the criteria for selecting properties to be inspected and/or to have risk assessments performed and children screened; methods to be used for data collection and quality control; and training and certification of individuals to perform lead-based paint evaluation activities. The grant proposal must include a statement which describes how the effectiveness of the project will be determined.

C. Project Management

Include a description of staff positions, roles, and responsibilities, a description of experience in or potential to conduct activities described in section B.; efforts of partnership and collaboration with other local-health agencies, extent of contractor support, schedule and/or time line showing the major activities and estimated time frames for initiation and completion, and a budget summary.

D. Budget

Provide a reasonable budget that is clearly identifiable with work plan activities.

E. Appendices

The appendices must be no more than 10 pages total and follow the same paging and spacing description as provided in this outline.

i. Resumes of key personnel (also include title, description, and reference name with phone number for work on previous or current grants or contracts with the Federal Government within the last 5 years).

ii. Letters of support from Tribal representatives for Tribal Consortia. For individual Tribes, include a letter or resolution from Tribal Council or Chairperson showing support for and commitment to the project. (If it is not possible to obtain a letter/resolution from the Tribal Council or Chairperson to submit with your application, an interim letter of explanation must be included with the application.) The letter/resolution will still be required prior to award of the grant.

iii. Detailed information on other lead-based paint or lead-related activities (if applicable).

I. Funding

Applicants may receive grants of up to $50,000 for an outreach (education) project, $75,000 for baseline assessment activities, and $125,000 for a combined grant proposal for both outreach (education) and baseline assessment activities. A separate budget breakdown is required to indicate outreach and baseline assessment funds in combined grant proposals.

Final distribution of the funds will be dependent upon the number of qualified applicants, Tribal populations served by each grant, and other factors, as deemed appropriate by EPA (i.e., the evaluation criteria as stated in Unit III.K.). Tribes may use a portion of the grant funds for contractor support for these activities; however, contractor support may not account for more than 25% of the amount of the grant, except where contract services include blood-lead analysis, training, and/or lead-based paint inspections and risk assessments).

J. Post Award Requirements

EPA's quality assurance requirements must be complied with before any environmental or health-related measurements or data are initiated under this grant. These requirements are addressed in 40 CFR 31.45 relating to quality assurance/quality control. Information on EPA quality assurance requirements may be downloaded from the EPA Quality Staff web site at www.epa.gov/quality. For further guidance on preparation of the quality documentation, and specific EPA Regional approval requirements, please contact the appropriate EPA Regional Lead Contact as listed in Unit III.C.2.v.

The grantee must provide EPA with written progress reports within 30 days of the end of each quarter and a report at the end of the project period.

K. Evaluation Criteria

EPA will review all proposals for quality, strength, and completeness against the following criteria. The Agency will use the proposals to select projects to be funded under this grant program. EPA reserves the right to reject all proposals and make no awards. The lead outreach (educational) awareness and baseline assessment activities grant proposals will be reviewed and evaluated separately. The maximum rating score for each grant proposal will be 105 points (five bonus points for in-kind services). Based upon the evaluation results, a Tribe or Tribal Consortium that submits grant proposals for both the lead outreach (educational) awareness and baseline assessment may receive a grant for one or both activities.

1. *Lead outreach (educational) grant proposal criteria*—i. *General (20 points).* The overall description of implementing the Tribal lead outreach (educational) awareness program in the proposal must address the goals of this notice of funding availability as detailed in Unit III.A. It must include reasonable and attainable goals and an approach that is clearly detailed. The proposal must describe the method that will be used to determine the effectiveness of the project. The proposal must provide detailed information on all lead-based paint or lead-related outreach/educational activities for which the Tribe has received funding from any Federal, State, or local government.

ii. *Outreach activities (40 points).* The grant proposal should fully describe the proposed educational outreach efforts for Tribal Indian communities. The messages in the grant proposal should be consistent with EPA/HUD/CDC lead-based paint program policies, guidelines, regulations, and recommendations. The following elements will be specifically evaluated:

- Types of existing lead educational material to be used and/or reproduced (i.e., reports, pamphlets, brochures, video tapes, CD ROMs, etc.); types, if any, of lead awareness (educational) outreach materials that will be developed.
- Method of distribution of materials throughout the Tribal population.
- How the messages will be delivered, e.g., lecture, written material distribution, one-on-one interviews.
- Printing, special video taping, advertising (billboards, posters, flyers), collaboration with radio or television, or other methods used to reach the Tribal Indian population regarding the outreach effort.
- Percentage estimate of the number of Tribal families who will receive the lead awareness information; efforts that will be employed to target hard-to-reach Tribal communities to inform families about childhood lead poisoning and screening, if applicable; the number of people/families/medical personnel/etc., who will be reached.
- An indication as to whether the proposed outreach materials and activities are suitable for the target audience (i.e., appropriate language comprehension and cultural identification).

iii. *Project management (30 points).* The grant proposal should describe the staff positions, roles, and responsibilities, and their qualifications. The following elements will also be evaluated: Resumes of key personnel; Tribal experience in or potential to conduct activities such as those described in the "Outreach Activities" section; previous experience managing similar projects; and availability of references; access to properly trained staff and facilities to conduct the project; schedule for completing the project; and the extent of activities to be performed by a contractor.

iv. *Budget (10 points plus 5 bonus points).* The evaluation will be based on the extent to which the proposed budget is reasonable, clear, and consistent with the intended use of the funds. Although matching funds are not required, up to five bonus points will be given to grant proposals indicating financial contributions and/or in-kind services provided to the project.

2. *Baseline assessment proposal criteria*—i. *General (20 points).* The overall description of the Tribal lead baseline assessment program will be evaluated. The grant proposal must address the goals of this notice as detailed in Unit III.A. It must include reasonable and attainable goals and an approach that is clearly detailed. The proposal must include a statement which describes how the effectiveness of the project will be determined. The grant proposal must provide detailed information on all lead-based paint or lead-related activities for which the Tribe has received funding from any Federal, State, or local government.

ii. *Baseline assessment activities (40 points)*

- *Blood-lead screening activities.* The grant proposal will be evaluated on the description of the sampling, collection, handling, and analysis activities; the data collection and tracking system, quality control measures; the description of the facility/facilities where the blood-lead sampling will occur (i.e., school, library, health department facility, clinic, private building, mobile van, etc.); and the estimated number and a percentage estimate of the number of Tribal children to be screened in the project. The evaluation will also be based on the description of the method that will be used to solicit maximum participation of Tribal children; the methods, (i.e., printing, video taping, collaboration with radio or television, etc.) to be used to reach the Indian population regarding the blood-lead screening effort; efforts to be used to ensure patient confidentiality; and a description of how the CLIA standards will be met.
- *Inspection/risk assessment of Tribal housing.* The proposal will be evaluated on the description of residential/child occupied properties that will undergo lead-based paint inspection and/or risk assessment; the selection criteria used to identify the properties; the description of methods used to reach Tribal population regarding lead paint inspections and/or risk assessment efforts; the description of inspection, risk assessment, and sampling and analysis procedures; the qualifications of inspection personnel; and the description of reporting procedures. All inspections and risk assessments must be conducted according to the work practice standards

found in 40 CFR 745.227 or those of an authorized Tribal program.

- *Paint, dust, and soil testing.* The grant proposal evaluation will be based on the description of the sampling, collection, handling, and analysis activities; the description of the data that will be collected, tracked, and reported to EPA; the quality control measures implemented, and a description of how NLLAP-recognized laboratories will be used for analysis.
- *Training.* Use of EPA accredited training providers or training providers approved by an EPA authorized state or Tribe for risk assessments and inspections and use of inspectors and/or risk assessors certified by EPA or by an EPA authorized State or Tribe.

iii. *Project management (30 points).* The grant proposal will be evaluated based on the description of the staff positions, roles and responsibilities, and their qualifications. The following elements will also be evaluated: Resumes of key personnel; Tribal experience in or potential to conduct activities such as those described in the "Inspection/Risk Assessment of Tribal Housing," and "Paint, Dust, and Soil Testing" sections; previous experience managing similar projects; and availability of references; access to properly trained staff and facilities to conduct the project; schedule for completing the project; and the extent of activities to be performed by a contractor.

iv. *Budget (10 points plus 5 bonus points).* The evaluation will be based on the extent to which the proposed budget is reasonable, clear, and consistent with the intended use of the funds. Although matching funds are not required, up to five bonus points will be given to grant proposals indicating financial contributions and/or in-kind services provided to the project.

IV. Statutory Authority and Regulation

Section 10 of the Toxic Substances Control Act (TSCA), as supplemented by Public Law No. 106–74, authorizes EPA to award grants for the purpose of conducting research, development, monitoring, education, training, demonstrations, and studies necessary to carry out the purposes of the Act. Presently, these funds are not eligible for use in a Performance Partnership Agreement. The Catalog of Federal Domestic Assistance (CFDA) Number is 66.715 (Childhood Blood-Lead Screening and Lead Awareness Outreach for Indian Tribes). Executive Order 12372, Intergovernmental Review of Federal Programs does not apply to this assistance program since grant proposals will be submitted in lieu of comments on developing this program.

V. Submission to Congress and the Comptroller General

Grant solicitations such as this are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Grants-Indians, Indians, Lead, Maternal and child health.

Dated: December 19, 2002.

Margaret Schneider,

Acting Director, Office of Pollution Prevention and Toxics.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7438–2]

Water Quality Trading Policy; Issuance of Final Policy

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: On May 15, 2002, the U.S. Environmental Protection Agency (EPA) invited public comment on its proposed Water Quality Trading Policy ("proposed policy"). Comments from the public were received through July 15, 2002. Public comments were reviewed by EPA and revisions were made to the proposed policy. Today's notice announces availability of EPA's final Water Quality Trading Policy. The final policy describes ways that water quality trading programs may be aligned with the Clean Water Act and implementing regulations, and describes elements of environmentally sound trading programs. Water quality trading is a voluntary, incentive-based approach that can offer greater efficiency in restoring or protecting water bodies. Trading allows a source to meet its regulatory obligations by using pollutant reductions created by another party with lower pollution control costs. EPA's final Water Quality Trading Policy offers guidance to states and tribes on developing and implementing water quality trading programs.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID Number OW–2002–0016. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in A.1.

Access to the Water Quality Trading Policy is also available electronically at EPA's trading Web site *http://www.epa.gov/owow/watershed/trading.htm.*

B. Text of Water Quality Trading Policy

I. Background and Purpose of the Policy

The Clean Water Act (CWA) [1] was enacted in 1972 to restore and maintain the chemical, physical, and biological integrity of the nation's waters. It established a national policy that called for the discharge of pollutants to be eliminated and established interim goals for protecting fish, wildlife and recreational uses. The CWA also established a national policy for development and implementation of programs so the goals of the Act could be met through controls of point and nonpoint sources of pollution. Congress recognized and preserved the primary responsibilities and rights of the States to prevent, reduce and eliminate pollution.

The application of technology and water quality based requirements through the National Pollutant Discharge Elimination System (NPDES) permit program has achieved and remains critical to success in controlling point source pollution and restoring the nation's waters. Despite these accomplishments approximately 40% of the rivers, 45% of the streams and 50% of the lakes that have been assessed still do not support their designated uses [2]. Sources of pollution such as urban storm water, agricultural runoff and atmospheric deposition continue to threaten our nation's waters. Nutrient and sediment loading from agriculture and storm water are significant contributors to water quality problems such as hypoxia in the Gulf of Mexico and decreased fish populations in Chesapeake Bay. Population growth and development place increasing demands on the environment making it more difficult to achieve and maintain water quality standards.

Finding solutions to these complex water quality problems requires innovative approaches that are aligned with core water programs. Water quality trading is an approach that offers greater efficiency in achieving water quality goals on a watershed basis. It allows one source to meet its regulatory obligations by using pollutant reductions created by another source that has lower pollution control costs. Trading capitalizes on economies of scale and the control cost differentials among and between sources.

The United States Environmental Protection Agency (EPA) believes that market-based approaches such as water quality trading provide greater flexibility and have potential to achieve water quality and environmental benefits greater than would otherwise be achieved under more traditional regulatory approaches. Market-based programs can achieve water quality goals at a substantial economic savings. EPA estimates that in 1997 annual private point source control costs were about $14 billion and public point source costs were about $34 billion.[3] The National Cost to Implement Total Maximum Daily Loads (TMDLs) Draft Report estimates that flexible approaches to improving water quality could save $900 million dollars annually compared to the least flexible approach. (EPA, August 2001). Nitrogen trading among publicly owned treatment works in Connecticut that discharge into Long Island Sound is expected to achieve the required reductions under a TMDL while saving over $200 million dollars in control costs.

Market-based approaches can also create economic incentives for innovation, emerging technology, voluntary pollution reductions and greater efficiency in improving the quality of the nation's waters.

The purpose of this policy is to encourage states, interstate agencies and tribes to develop and implement water quality trading programs for nutrients, sediments and other pollutants where opportunities exist to achieve water quality improvements at reduced costs. More specifically, the policy is intended to encourage voluntary trading programs that facilitate implementation of TMDLs, reduce the costs of compliance with CWA regulations, establish incentives for voluntary reductions and promote watershed-based initiatives. A number of states are in various stages of developing trading programs. This policy provides guidance for states, interstate agencies and tribes to assist them in developing and implementing such programs.

This policy addresses issues left open by and limitations encountered implementing projects and programs under EPA's January 1996 Effluent Trading In Watersheds Policy and May 1996 Draft Framework for Watershed-Based Trading ("Draft Framework"). This policy should be given precedence over any inconsistencies with the Draft Framework.

This policy draws upon lessons from a number of recent pilot trading projects and state experiences in developing water quality trading programs. These initiatives demonstrate how trading can occur under the CWA and existing federal regulations. They illustrate the importance of voluntary watershed-based partnerships, inter-agency cooperation and public participation in implementation of trading programs. They show that flexible market-based approaches can facilitate states and tribes finding solutions to complex and diverse water quality and socioeconomic issues. These efforts have also highlighted the importance of keeping transaction and administrative costs manageable while retaining accountability. The lessons learned from these efforts have informed the development of this policy.

This policy describes various requirements of the CWA and implementing regulations that are relevant to water quality trading, including: requirements to obtain permits (Sections 402 and 404), antibacksliding provisions (Section 303(d)(4) and Section 402(o)), the development of water quality standards including antidegradation policy (Section 303(c)), federal NPDES permit regulations (40 CFR Parts 122, 123 and 124), TMDLs (Section 303d(1)) and water quality management plans (40 CFR Part 130). These CWA provisions and regulations contain legally binding requirements. This policy does not substitute for those provisions or requirements. In addition, this policy identifies general elements and provisions that EPA believes are important for creating credible water quality trading programs.

When EPA makes a decision with regard to any particular permit, TMDL, water quality standards or water quality management plan that includes provisions for trading to occur, it will make each decision on a case-by-case basis guided by the applicable requirements of the CWA and implementing regulations and the specific facts and circumstances involved.

II. Trading Objectives

EPA supports implementation of water quality trading by states, interstate agencies and tribes where trading:

A. Achieves early reductions and progress towards water quality standards pending development of TMDLs for impaired waters.

[1] Federal Water Pollution Control Act (Public Law 92-500, as amended), 33 U.S.C. Sec. 1251, *et seq.*

[2] About 33 percent of the nation's water have been assessed by States and tribes pursuant to Section 305(b) of the Clean Water Act (National Water Quality Inventory: 2000 Report, EPA). The proportion of non-assessed water that do not meet designated uses is likely lower since assessments tend to be focused in known problem areas.

[3] A Retrospective Assessment of the costs of the Clean Water Act: 1972–1977 (EPA, October, 2000).

B. Reduces the cost of implementing TMDLs through greater efficiency and flexible approaches.

C. Establishes economic incentives for voluntary pollutant reductions from point and nonpoint sources within a watershed.

D. Reduces the cost of compliance with water quality-based requirements.

E. Offsets new or increased discharges resulting from growth in order to maintain levels of water quality that support all designated uses.

F. Achieves greater environmental benefits than those under existing regulatory programs. EPA supports the creation of water quality trading credits in ways that achieve ancillary environmental benefits beyond the required reductions in specific pollutant loads, such as the creation and restoration of wetlands, floodplains and wildlife and/or waterfowl habitat.

G. Secures long-term improvements in water quality through the purchase and retirement of credits by any entity.

H. Combines ecological services to achieve multiple environmental and economic benefits, such as wetland restoration or the implementation of management practices that improve water quality and habitat.

III. Water Quality Trading Policy Statement

A. *CWA Requirements.* Water quality trading and other market-based programs must be consistent with the CWA.

B. *Trading Areas.* All water quality trading should occur within a watershed or a defined area for which a TMDL has been approved. Establishing defined trading areas that coincide with a watershed or TMDL boundary results in trades that affect the same water body or stream segment and helps ensure that water quality standards are maintained or achieved throughout the trading area and contiguous waters.

C. *Pollutants and Parameters Traded.* EPA supports trading that involves nutrients (*e.g.*, total phosphorus and total nitrogen) or sediment loads. In addition, EPA recognizes that trading of pollutants other than nutrients and sediments has the potential to improve water quality and achieve ancillary environmental benefits if trades and trading programs are properly designed. EPA believes that such trades may pose a higher level of risk and should receive a higher level of scrutiny to ensure that they are consistent with water quality standards. EPA may support trades that involve pollutants other than nutrients and sediments on a case-by-case basis where prior approval is provided through an NPDES permit, a TMDL or in the context of a watershed plan or pilot trading project that is supported by a state, tribe or EPA.

EPA also supports cross-pollutant trading for oxygen-related pollutants where adequate information exists to establish and correlate impacts on water quality. Reducing upstream nutrient levels to offset a downstream biochemical oxygen demand or to improve a depressed in-stream dissolved oxygen level are examples of cross-pollutant trading.

EPA does not currently support trading of pollutants considered by EPA to be persistent bioaccumulative toxics (PBTs). EPA would consider a limited number of pilot projects over the next two to three years to obtain more information regarding trading of PBTs. EPA believes pilot projects may be appropriate where the predominant loads do not come from point sources, trading achieves a substantial reduction of the PBT traded and where trading does not cause an exceedance of an aquatic life or human health criterion. Based on the findings of these pilot projects, EPA will consider making revisions to its policy.

Where state or tribal water quality standards allow for mixing zones, EPA does not support any trading activity that would exceed an acute aquatic life criteria within a mixing zone or a chronic aquatic life or human health criteria at the edge of a mixing zone using design flows specified in the water quality standards.

D. *Baselines for Water Quality Trading.* As explained below, the baselines for generating pollution reduction credits should be derived from and consistent with water quality standards. The term pollution reduction credits ("credits"), as used in this policy, means pollutant reductions greater than those required by a regulatory requirement or established under a TMDL.

For example, where a TMDL has been approved or established by EPA, the applicable point source waste load allocation or nonpoint source load allocation would establish the baselines for generating credits. For trades that occur where water quality fully supports designated uses, or in impaired waters prior to a TMDL being established, the baseline for point sources should be established by the applicable water quality based effluent limitation, a quantified performance requirement or a management practice derived from water quality standards. In these scenarios the baseline for nonpoint sources should be the level of pollutant load associated with existing land uses and management practices that comply with applicable state, local or tribal regulations.

E. When Trading May Occur

1. *Trading to Maintain Water Quality Standards.* Trading may be used to maintain high water quality in waters where water quality standards are attained, such as by compensating for new or increased discharges of pollutants.

2. *Pre-TMDL Trading In Impaired Waters.* EPA supports pre-TMDL trading in impaired waters to achieve progress towards or the attainment of water quality standards. EPA believes this may be accomplished by individual trades that achieve a net reduction of the pollutant traded or by watershed-scale trading programs that reduce loadings to a specified cap supported by baseline information on pollutant sources and loadings.

EPA also supports pre-TMDL trading that achieves a direct environmental benefit relevant to the conditions or causes of impairment to achieve progress towards restoring designated uses where reducing pollutant loads alone is not sufficient or as cost-effective.

If pre-TMDL trading does not result in the attainment of applicable water quality standards, EPA expects a TMDL to be developed. After a TMDL has been approved or established by EPA, the reductions made to generate credits for pre-TMDL trading may no longer be adequate to generate credits under the TMDL. This will depend on the remaining level of reduction needed to achieve water quality standards and, where applicable, the allocation of point and nonpoint source pollutant loads established by the TMDL.

3. *TMDL Trading.* Trades and trading programs in impaired waters for which a TMDL has been approved or established by EPA should be consistent with the assumptions and requirements upon which the TMDL is established. EPA encourages the inclusion of specific trading provisions in the TMDL itself, in NPDES permits, in watershed plans and the continuing planning process. EPA does not support any trading activity that would delay implementation of a TMDL approved or established by EPA or that would cause the combined point source and nonpoint source loadings to exceed the cap established by a TMDL.

4. *Technology-Based Trading.* EPA does not support trading to comply with existing technology-based effluent limitations except as expressly authorized by federal regulations. Existing technology-based effluent guidelines for the iron and steel

industry allow intraplant trading of conventional, nonconventional and toxic pollutants between outfalls under certain circumstances (40 CFR 420.03).

EPA will consider including provisions for trading in the development of new and revised technology-based effluent guidelines and other regulations to achieve technology-based requirements, reduce implementation costs and increase environmental benefits.

5. *Pretreatment Trading.* EPA supports a municipality or regional sewerage authority developing and implementing trading programs among industrial users that are consistent with the pretreatment regulatory requirements at 40 CFR Part 403 and the municipality's or authority's NPDES permit.

6. *Intra-Plant Trading.* EPA supports intra-plant trading that involves the generation and use of credits between multiple outfalls that discharge to the same receiving water from a single facility that has been issued an NPDES permit.

F. *Alignment With The CWA.* Provisions for water quality trading should be aligned with and incorporated into core water quality programs. EPA believes this may be done by including provisions for trading in water quality management plans, the continuing planning process, watershed plans, water quality standards, including antidegradation policy and, by incorporating provisions for trading into TMDLs and NPDES permits.

When developing water quality trades and trading programs, states and tribes should, at a minimum, take into account the following provisions of the CWA and implementing regulations:

1. *Requirements to Obtain Permits.* Sources and activities that are required to obtain a federal permit pursuant to Sections 402 or 404 of the CWA must do so to participate in a trade or trading program.

2. *Incorporating Provisions For Trading Into Permits.* In some cases, specific trades may be identified in NPDES permits, including requirements related to the control of nonpoint sources where appropriate. EPA also supports several flexible approaches for incorporating provisions for trading into NPDES permits: (i) General conditions in a permit that authorize trading and describe appropriate conditions and restrictions for trading to occur, (ii) the use of variable permit limits that may be adjusted up or down based on the quantity of credits generated or used; and/or, (iii) the use of alternate permit limits or conditions that establish restrictions on the amount of a point source's pollution reduction obligation that may be achieved by the use of credits if trading occurs. EPA also encourages the use of watershed general permits, where appropriate, to establish pollutant-specific limitations for a group of sources in the same or similar categories to achieve net pollutant reductions or water quality goals through trading. Watershed permits issued to point sources should include facility specific effluent limitations or other conditions that would apply in the event the pollutant cap established by the watershed permit is exceeded.

3. *Public Notice, Comment and Opportunity For Hearing.* Notice, comment and opportunity for hearing must be provided for all NPDES permits (40 CFR 124). NPDES permits and fact sheets should describe how baselines and conditions or limits for trading have been established and how they are consistent with water quality standards. EPA does not expect that an NPDES permit would need to be modified to incorporate an individual trade if that permit contains authorization and provisions for trading to occur and the public was given notice and an opportunity to comment and/or attend a public hearing at the time the permit was issued.

4. *Consistency With Standard Methods.* Where methods and procedures (*e.g.*, sampling protocols, monitoring frequencies) are specified by federal regulations or in NPDES permits, they should continue to be used where applicable for measuring compliance for point sources that engage in trading. EPA believes this is necessary to provide clear and consistent standards for measuring compliance and to ensure that appropriate enforcement action can be taken.

5. *Protecting Designated Uses.* EPA does not support any use of credits or trading activity that would cause an impairment of existing or designated uses, adversely affect water quality at an intake for drinking water supply or that would exceed a cap established under a TMDL.

6. *Antibacksliding.* EPA believes that the antibacksliding provisions of Section 303(d)(4) of the CWA will generally be satisfied where a point source increases its discharge through the use of credits in accordance with alternate or variable water quality based effluent limitations contained in an NPDES permit, in a manner consistent with provisions for trading under a TMDL, or consistent with the provisions for pre-TMDL trading included in a watershed plan.

These antibacksliding provisions will also generally be satisfied where a point source generates pollution reduction credits by reducing its discharge below a water quality based effluent limitation (WQBEL) that implements a TMDL or is otherwise established to meet water quality standards and it later decides to discontinue generating credits, provided that the total pollutant load to the receiving water is not increased, or is otherwise consistent with state or tribal antidegradation policy.

7. *Antidegradation.* Trading should be consistent with applicable water quality standards, including a state's and tribe's antidegradation policy established to maintain and protect existing instream water uses and the level of water quality necessary to support them, as well as high quality waters and outstanding national resource waters (40 CFR 131.12). EPA recommends that state or tribal antidegradation policies include provisions for trading to occur without requiring antidegradation review for high quality waters. EPA does not believe that trades and trading programs will result in "lower water quality" as that term is used in 40 CFR 131.12(a)(2), or that antidegradation review would be required under EPA's regulations when the trades or trading programs achieve a *no net increase* of the pollutant traded and do not result in any impairment of designated uses.

G. *Common Elements of Credible Trading Programs.* EPA believes that, in addition to including provisions to be consistent with the GWA, trading programs should include the following general elements to be credible and successful:

1. *Legal Authority and Mechanisms.* Clear legal authority and mechanisms are necessary for trading to occur. EPA believes the CWA provides authority for EPA, states and tribes to develop a variety of programs and activities to control pollution, including trading programs. The CWA and federal regulations provide authority to incorporate provisions for trading into NPDES permits issued to point sources and for trading under TMDLs that include provisions for trading to occur.

In addition, states and tribes should use specific legal mechanisms to facilitate trading. Provisions for trading may be established through various mechanisms, including: legislation, rule making, incorporating provisions for trading into NPDES permits and establishing provisions for trading in TMDLs or watershed plans. These provisions may incorporate or be supplemented by private contracts between sources or third-party contracts where the third party provides an indemnification or enforcement function.

2. *Units of Trade.* Clearly defined units of trade are necessary for trading to occur. Pollutant specific credits are examples of tradable units for water quality trading. These may be expressed in rates or mass per unit time as appropriate to be consistent with the time periods that are used to determine compliance with NPDES permit limitations or other regulatory requirements.

3. *Creation and Duration of Credits.* Credits should be generated before or during the same period they are used to comply with a monthly, seasonal or annual limitation or requirement specified in an NPDES permit. Credits may be generated as long as the pollution controls or management practices are functioning as expected.

4. *Quantifying Credits and Addressing Uncertainty.* Standardized protocols are necessary to quantify pollutant loads, load reductions, and credits. States and tribes should develop procedures to account for the generation and use of credits in NPDES permits and discharge monitoring reports in order to track the generation and use of credits between sources and assess compliance.

Where trading involves nonpoint sources, states and tribes should adopt methods to account for the greater uncertainty in estimates of nonpoint source loads and reductions. Greater uncertainty in nonpoint source estimates is due to several factors including but not limited to variability in precipitation, variable performance of land management practices, time lag between implementation of some practices and full performance, and the effect of soils, cover and slope on pollutant load delivery to receiving waters.

EPA supports a number of approaches to compensate for nonpoint source uncertainty. These include monitoring to verify load reductions, the use of greater than 1:1 trading ratios between nonpoint and point sources, using demonstrated performance values or conservative assumptions in estimating the effectiveness of nonpoint source management practices, using site- or trade-specific discount factors, and retiring a percentage of nonpoint source reductions for each transaction or a predetermined number of credits. Where appropriate, states and tribes may elect to establish a reserve pool of credits that would be available to compensate for unanticipated shortfalls in the quantity of credits that are actually generated.

The site-specific procedures and protocols used in water quality trading programs that involve agriculture and forestry operations should be developed by states and tribes in consultation with United States Department of Agriculture (USDA) agencies. Those procedures should estimate nutrient or sediment load delivery to the stream segment, water body or watershed where trading occurs. Numerous methods and procedures to determine nutrient and sediment load reductions associated with conservation practices on agricultural and forest land have been developed or used by the USDA agencies, including the Natural Resources Conservation Service, Forest Service, Agricultural Research Service and the Cooperative State, Research, Education and Extension Service. Some of these methods may be applied to water quality trading.

As an example, the Revised Universal Soil Loss Equation (RUSLE) may be used in some locations to estimate the sediment yield at the end of a slope in agricultural settings. The sediment yield at the end of a slope coupled with an appropriate method to estimate sediment delivery to the receiving waters can provide a reasonable estimate of sediment load and load reductions. Representative soil sampling to determine the phosphorus content of soils can be used with this approach to estimate non-soluble sediment-bound phosphorus loads and load reductions. Different methods are appropriate to estimate soluble phosphorus and nitrogen loads and load reductions.

EPA and the USDA are working with other agencies to evaluate existing methods and to develop improved methods and procedures for estimating loads from agricultural and forestry lands. More precise estimations will be possible as technologies improve and new technologies are developed. For storm water runoff other than agriculture, EPA recommends monitoring or modeling to estimate pollutant loads and load reductions. EPA believes this may be based on local hydrology and actual data or pollutant loading factors that relate land use patterns, percent imperviousness or percent disturbed land and controls or management practices in a watershed to per acre or per unit pollutant loads, where other methods are not specified in a permit or regulation.

5. *Compliance and Enforcement Provisions.* Mechanisms for determining and ensuring compliance are essential for all trades and trading programs. These may include a combination of record keeping, monitoring, reporting and inspections. Compliance audits should be conducted frequently enough to ensure that a high level of compliance is maintained across the program. States and tribes should establish clear enforceable mechanisms consistent with NPDES regulations that ensure legal accountability for the generation of credits that are traded. In the event of default by another source generating credits, an NPDES permittee using those credits is responsible for complying with the effluent limitations that would apply if the trade had not occurred. EPA also recommends that states and tribes consider providing periodic accounting and reconciliation periods and establishing appropriate enforcement provisions for failure to generate the quantity of credits that are traded.

EPA recommends that states and tribes consider the role of compliance history in determining source eligibility to participate in trading.

EPA recommends that states and tribes consider including provisions to address situations where nonpoint source controls and management practices that are implemented to generate credits fail due to extreme weather conditions or other circumstances that are beyond the control of the source.

6. *Public Participation And access to Information.* EPA supports public participation at the earliest stages and throughout the development of water quality trading programs to strengthen program effectiveness and credibility.

Easy and timely public access to information is necessary for markets to function efficiently and for the public to monitor trading activity. EPA encourages states and tribes to make electronically available to the public information on the sources that trade, the quantity of credits generated and used on a watershed basis, market prices where available, and delineations of watershed and trading boundaries. This information is necessary to identify potential trading opportunities, allow easy aggregation of credits, reduce transaction costs and establish public credibility.

7. *Program Evaluations.* Periodic assessments of environmental and economic effectiveness should be conducted and program revisions made as needed. Environmental evaluations should include ambient monitoring to ensure impairments of designated uses (including existing uses) do not occur and to document water quality conditions. Studies should be performed to quantify nonpoint source load reductions, validate nonpoint source pollutant removal efficiencies and determine whether the anticipated water quality objectives have been achieved. Economic evaluations should include the number and type of trades, the price paid for pollutant reduction credits, transaction costs, the costs

incurred to administer the program, and where possible any net cost savings resulting from trading.

The results of program evaluations should be made available to the public. An opportunity for comment should also be provided on changes to the program as necessary to ensure that water quality objectives and economic efficiencies are achieved, and that trading does not result in an impairment of designated uses (including existing uses).

I. *EPA's Oversight Role.* States and tribes are encouraged to consult with EPA throughout development of trading programs to facilitate alignment with the CWA. EPA has various oversight responsibilities under the CWA, including approval or establishment of TMDLs, approval of revisions to state or tribal water quality standards, review of NPDES permits and provisions for reviewing and making recommendations regarding revisions to a state's or tribe's water quality management plans through the continuing planning process. In general, EPA does not believe that the development and implementation by states and tribes of trading programs consistent with the provisions of this policy necessarily warrant a higher level of scrutiny under these oversight authorities than is appropriate for activities not involving trading. However, where questions or concerns arise, EPA will use its oversight authorities to ensure that trades and trading programs are fully consistent with the CWA and its implementing regulations.

FOR FURTHER INFORMATION CONTACT: David Batchelor, EPA Office of Water, 202–564–5764, *batchelor.david@epa.gov*, or Lynda Hall Wynn, EPA Office of Water, 202–564–0472, *wynn.lynda@epa.gov;* or Mahesh Podar, EPA Office of Water, 202–564–5778, *podar.mahesh@epa.gov.*

Dated: January 2, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

[FR Doc. 03–620 Filed 1–10–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 30, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 14, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0395.

Title: The ARMIS USOA Report; the ARMIS Service Quality Report; and the ARMIS Infrastructure Report.

Report Nos: FCC Reports 43–02; 43–05; and 43–07.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 49.

Estimated Time Per Response: 483 hours.

Frequency of Response: Annual reporting requirements and recordkeeping requirement.

Total Annual Burden: 23,674 hours.

Total Annual Cost: N/A.

Needs and Uses: The USOA Report provides the annual results of the carriers' activities for each account of the Uniform System of Accounts. The Service Quality Report provides service quality information in the areas of interexchange access service, installation and repair intervals, local service installation and repair intervals, trunk blockage, and total switch downtime for price cap carriers. The Infrastructure Report provides switch deployment capabilities data. The Commission is revising this collection because they have completed an internal review of the reporting and recordkeeping requirements to streamline the collection and reduce public burden.

OMB Control No.: 3060–0496.

Title: The ARMIS Operating Data Report.

Report No.: FCC Report 43–08.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 53.

Estimated Time Per Response: 139 hours.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Total Annual Burden: 7,349 hours.

Total Annual Cost: N/A.

Needs and Uses: The Operating Data Report collects annual statistical data in a consistent format that is essential for the Commission to monitor network growth, usage, and reliability. The Commission is revising this collection because they have completed an internal review of the reporting and recordkeeping requirements to streamline the collection and reduce public burden.

OMB Control No.: 3060–0511.

Title: ARMIS Access Report.

Report No.: FCC Report 43–04.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 84.

Estimated Time Per Response: 157 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 13,188 hours.

Total Annual Cost: N/A.

Needs and Uses: The Access Report is needed to administer the Commission's accounting, jurisdictional separations and access charge rules; to analyze revenue requirements and rates of return, and to collect financial data from Tier 1 incumbent local exchange carriers. The Commission is revising this collection because they have completed an internal review of the

reporting and recordkeeping requirements to streamline the collection and reduce public burden.

OMB Control No.: 3060–0512.

Title: The ARMIS Annual Summary Report.

Report No.: FCC Report 43–01.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 115.

Estimated Time Per Response: 93 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 10,695 hours.

Total Annual Cost: N/A.

Needs and Uses: The Annual Summary Report contains financial and operating data and is used to monitor the incumbent local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. The Commission is revising this collection because they have completed an internal review of the reporting and recordkeeping requirements to streamline the collection and reduce public burden.

OMB Control No.: 3060–0513.

Title: ARMIS Joint Cost Report.

Report No.: FCC Report 43–03.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 85.

Estimated Time Per Response: 76 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 6,460 hours.

Total Annual Cost: N/A.

Needs and Uses: The Joint Cost Report is needed to administer our joint cost rules (Part 64) and to analyze data in order to prevent cross-subsidization of non-regulated operations by the regulated operations of Tier 1 carriers. The Commission is revising this collection because they have completed an internal review of the reporting and recordkeeping requirements to streamline the collection and reduce public burden.

OMB Control No.: 3060–0763.

Title: The ARMIS Customer Satisfaction Report.

Report No.: FCC Report 43–06.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 7.

Estimated Time Per Response: 720 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 5,040 hours.

Total Annual Cost: N/A.

Needs and Uses: The Customer Satisfaction Report reflects the results of customer satisfaction based on surveys conducted by individual carriers from their customers. The Commission is revising this collection because they have completed an internal review of the reporting and recordkeeping requirements to streamline the collection and reduce public burden.

OMB Control No.: 3060–0855.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form Nos: FCC Forms 499, 499–A and 499–Q.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 5,500 respondents; 15,500 responses.

Estimated Time Per Response: 11.5 hours.

Frequency of Response: On occasion, annual, quarterly, and one time reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 164,487 hours.

Total Annual Cost: N/A.

Needs and Uses: Telecommunications carriers (and certain other providers of telecommunications services) must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. The Commission modified the existing methodology used to assess contributions that carriers make to the federal universal service support mechanisms. This will entail altering to the current revenue reporting requirements to which interstate telecommunications carriers are subject under Part 54 of the Commission's rules. The Office of Management and Budget (OMB) approved this information collection as an emergency request on 12/18/02. We are now extending the approval for this information collection and seeking the regular three-year approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–576 Filed 1–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice.

SUMMARY: Background: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer –Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer–Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Report:

Report title: Report of Terms of Credit Card Plans

Agency form number: FR 2572

OMB Control number: 7100–0239

Frequency: Semi–annual

Reporters: Financial institutions

Annual reporting hours: 75 hours

Estimated average hours per response: 0.25 hours

Number of respondents: 150

Small businesses are affected.

General description of report: This information collection is voluntary (15 U.S.C. §1646(b)) and is not given confidential treatment.

Abstract: This report collects data on credit card pricing and availability from a sample of at least 150 financial

institutions that offer credit cards to the general public. The information is reported to the Congress and made available to the public in order to promote competition within the industry. The Board publishes the information in a brochure titled "SHOP: The Card You Pick Can Save You Money" (SHOP), available through Publication Services at the Board and on the Board's public web site, www.federalreserve.gov/pubs/shop.

Board of Governors of the Federal Reserve System, January 7, 2003.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 03–568 Filed 1–10–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 27, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Sabina Bosshard, Winona, Minnesota, and William H. Bosshard, La Crosse, Wisconsin; to acquire shares of Clayton Bankshares, Inc., Clayton, Wisconsin, and thereby indirectly acquire shares of Citizens State Bank of Clayton, Clayton, Wisconsin.

Board of Governors of the Federal Reserve System, January 7, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–566 Filed 1–10–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 6, 2003.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Mizuho Financial Group, Tokyo, Japan; become a bank holding company by acquiring Mizuho Holdings, Inc., Tokyo, Japan, and thereby indirectly acquire ownership in Mizuho Corporate Bank of California, Los Angeles, California; Mizuho Corporate Bank (USA), New York, New York, and Mizuho Trust & Banking Co. (USA), New York, New York.

In connection with this application, Mizuho Asset Trust & Banking Co., Ltd., Tokyo, Japan; has applied to acquire 100 percent of the voting shares of Mizuho Trust & Banking Co., Ltd. (USA), New York, New York, and Mizuho Trust & Banking Co., Ltd., Tokyo, Japan.

In connection with these applications, Applicant also has applied to acquire the nonbanking companies to Mizuho Holdings, Inc., including Mizuho Capital Markets Corporation, New York, New York; Mizuho Securities USA Inc., Hoboken, New Jersey; The Bridgeford Group (NY), Inc., New York, New York; DLIBJ Asset Management U.S.A., Inc., New York, New York, and Shinko Securities (USA), Inc., New York, New York, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y; activities related to extending credit, pursuant to section 225.28(b)(2) of Regulation Y; providing leasing services, pursuant to section 225.28(b)(3) of Regulation Y; owning, controlling, or operating an industrial bank, pursuant to section 225.28(b)(4) of Regulation Y; performing trust company functions, pursuant to section 225.28(b)(5) of Regulation Y; providing investment and financial advisory services, pursuant to section 225.28(b)(6) of Regulation Y; providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactions services, pursuant to section 225.28(b)(7)(i)(v) of Regulation Y; underwriting and dealing in government obligations and money market instruments in which state member banks may underwrite and deal under 12 U.S.C. sections 335 and 24(7), and investing and trading activities, pursuant to section 225.28(b)(8)(i) and (ii) of Regulation Y; providing management consulting services, pursuant to section 225.28(b)(9) of Regulation Y; engaging in specific insurance agency activities through a subsidiary that engaged in such activities on May 1, 1982, pursuant to section 225.28(b)(11)(v) of Regulation Y; community development activities, pursuant to section 225.28(b)(12) of Regulation Y; and in data processing and transmission activities, pursuant to section 225.28(b)(14) of Regulation Y.

2. First Bancorp, San Juan, Puerto Rico; to acquire up to 9.9 percent of the common stock of PanAmerican Bancorp, Hollywood, Florida, and thereby indirectly acquire voting shares of PanAmerican Bank, Hollywood, Florida.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Amtrust, Inc., Dubuque, Iowa; to acquire 9.9 percent of the voting shares of United American Bank, San Mateo, California, a *de novo* bank in organization.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Bank of Mulberry Employee Stock Ownership Trust, Mulberry, Arkansas, and its subsidiary, ACME Holding Company, Inc., Mulberry, Arkansas, to acquire 81.65 percent of the voting shares of Madison Corporation, Little Rock, Arkansas, and thereby indirectly acquire voting shares of Madison Bank & Trust Company, Kingston, Arkansas.

E. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1, Finlayson Bancshares, Inc., Finlayson, Minnesota; to acquire 100 percent of the voting shares of Floodwood Agency, Inc., Duluth, Minnesota, and thereby indirectly acquire voting shares of First State Bank of Floodwood, Floodwood, Minnesota.

• Board of Governors of the Federal Reserve System, January 7, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–567 Filed 1–10–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–34]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: School Associated Violent Death Surveillance System—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC). The Division of Violence Prevention (DVP), National Center for Injury Prevention and Control (NCIPC) proposes to develop a system for the surveillance of school-associated homicides and suicides. The system will rely on existing public records and interviews with law enforcement officials and school officials. The purpose of the system is to (1) estimate the rate of school-associated violent death in the United States and (2) identify common features of school-associated violent deaths. The proposed system will contribute to the understanding of fatal violence associated with schools, guide further research in the area, and help direct ongoing and future prevention programs.

Violence is the leading cause of death among young people, and increasingly recognized as an important public health and social issue. In 1998, over 3,500 school aged children (5 to 18 years old) in the United States died violent deaths due to suicide, homicide, and unintentional firearm injuries. The vast majority of these fatal injuries were not school associated. However, whenever a homicide or suicide occurs in or around school, it becomes a matter of particularly intense public interest and concern. NCIPC conducted the first scientific study of school-associated violent deaths during the 1992–99 academic years to establish the true extent of this highly visible problem.

Despite the important role of schools as a setting for violence research and prevention interventions, relatively little scientific or systematic work has been done to describe the nature and level of fatal violence associated with schools. Until NCIPC conducted the first nationwide investigation of violent deaths associated with schools, public health and education officials had to rely on limited local studies and estimated numbers to describe the extent of school-associated violent death.

The proposed system will draw cases from the entire United States in attempting to capture all cases of school-associated violent deaths that have occurred. Investigators will review public records and published press reports concerning each school-associated violent death. For each identified case, investigators will also interview an investigating law enforcement official (defined as a police officer, police chief, or district attorney), and a school official (defined as a school principal, school superintendent, school counselor, school teacher, or school support staff) who are knowledgeable about the case in question. Researchers will request information on both the victim and alleged offender(s)—including demographic data, their academic and criminal records, and their relationship to one another. They will also collect data on the time and location of the death; the circumstances, motive, and method of the fatal injury; and the security and violence prevention activities in the school and community where the death occurred, before and after the fatal injury event. There are no costs to the respondents.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total annual burden (in hrs.)
School Officials	35	1	1	35
Police Officials	35	1	1	35
Total				70

Dated: January 3, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–645 Filed 1–10–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Refugee State-of-Origin Report ORR–11.

OMB No.: 0970–0043.

Description: The information collection of the ORR–11 (Refugee State-of-Origin Report) is designed to satisfy the statutory requirements of the Immigration and Nationality Act. Section 412(a)(3) of the Act requires ORR to compile and maintain data on the secondary migration of refugees within the United States after arrival.

In order to meet this legislative requirement, ORR requires each State to submit an annual count of the number of refugees who were initially resettled in another State. The State does this by counting the number of refugees with social security numbers indicating residence in another State at the time of arrival in the U.S. (The first three digits of the social security number indicate the State of residence of the applicant.)

Data submitted by the States are compiled and analyzed by the ORR statistician, who then prepares a summary report which is included in ORR's annual Report to Congress. The primary use of the data is to quantify and analyze refugee secondary migration among the 50 States. ORR uses these data to adjust its refugee arrival totals in order to calculate the ORR social service allocation.

Respondents: State, Local or Tribal.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State-of-Origin Report	50	1	4.333	217

Estimated Total Annual Burden Hours: 217.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration of Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 7, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–563 Filed 1–10–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Revised Form OCSE–100, State Plan for Child Support Under Title IV–D of the Social Security Act.

OMB No.: 0970–0017.

Description: The state plan preprint and amendments serve as a contract with OCSE in outlining the activities the state will perform as required by law in order for states to receive federal funds. We are asking for approval to revise one state plan preprint page to reflect new federal requirements regarding medical support enforcement.

Response: 54.

ANNUAL BURDEN ESTIMATES

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–100	54	1	.72	39

Estimated Total Annual Burden Hours: 39.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment

is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: December 16, 2002.

Robert Sargis,

Reports Clearance Officer

[FR Doc. 03–564 Filed 1–10–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: DHHS/ACF Rural Welfare-to-Work Strategies Demonstration Evaluation Project 18-Month Survey.

OMB No.: New collection.

Description: The Rural Welfare-to-Work Strategies Demonstration Evaluation Project, which was developed and funded by the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS), is a national evaluation to determine the benefits and cost-effectiveness of methods designed to aid current or former Temporary Assistance for Needy Families (TANF) recipients or other low-income families as they transition from welfare to the employment arena. This evaluation chiefly attempts to address four research questions:

- What are the issues and challenges associated with operating the new welfare-to-work services and policy approaches being studied.
- How effective are the welfare-to-work programs under the project in increasing employment and earnings and in improving other measures?
- What are the net costs of the welfare-to-work programs, and do the programs' benefits outweigh the costs?
- What approaches should policymakers and program managers consider in designing strategies to improve the efficacy of welfare-to-work strategies for families in rural areas?

The evaluation employs a multi-pronged approach to answer the research questions. These approaches include: (1) An impact study, which will examine the differences between control and intervention groups with respect to factors such as employment rates, earnings, and welfare receipt; (2) a cost-benefit analysis, which will calculate estimates of net program cost-effectiveness; and (3) an in-depth process study, which will identify implementation issues and challenges, examine program costs, and provide details on how programs achieve observed results. The data collected during the conduct of this study will be used for the following purposes:

- To study rural welfare-to-work programs' effects on factors such as employment, earnings, educational attainment, family composition;
- To collect data on a wider range of outcome measures—such as job acquisition, retention, and advancement, job quality, educational attainment, and employment barriers—than is available through welfare or unemployment insurance records, in order to understand how individuals are being affected by the demonstration programs;
- To support research on the implementation of welfare-to-work programs across sites;
- To obtain program participation and service use information important to the evaluation's cost-benefit component; and
- To obtain contact information for a future follow-up survey that will be important to achieving high response rates for that survey.

Respondents: The respondents of the 18-month follow-up survey are current and former TANF recipients, or individuals in families at risk of needing TANF benefits (working poor, hard-to-employ) from the three states participating in the evaluation (Illinois, Nebraska, and Tennessee). The survey will be administered to both intervention and control groups in each participating site. The estimated sample size for the survey is 3,400 individuals, including projected samples of 2,200 in Tennessee, and 600 each in Illinois and Nebraska. The survey will be conducted primarily by telephone, with field interviews conducted with those individuals who cannot be interviewed by telephone.

Respondents of the process study data collection efforts (interviews, case studies, and focus groups) include State and local-level agency staff from welfare agencies and other organizations. These individuals include program directors and site managers, program line staff, workforce development staff, TANF agency staff, and community partners and employers. Approximately 105 staff members per site are expected to participate in semi-structured interviews, 21 in case conferences, and 108 in focus groups, across the three demonstration sites.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
18-Month Follow-up Survey	963	1	45 minutes or .75 hours	723
Process Study Data Collection Staff Interviews	105	1	75 minutes or 1.15 hours	120.8
Process Study Data Collection Staff Case Conferences	21	1	30 minutes or .5 hours	10.5
Process Study Data Collection Staff Focus Groups	108	1	90 minutes or 1.5 hours	162

Estimated Total Annual Burden Hours: 1016.3.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW.,

Washington, DC 20503. Attn: Desk Officer for ACF.

Dated: January 7, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–639 Filed 1–10–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0566]

Renee Peugeot; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Renee Peugeot from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Peugeot was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product. Ms. Peugeot failed to request a hearing and, therefore, has waived her opportunity for a hearing concerning this action.

DATES: This order is effective January 13, 2003.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicole K. Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On August 31, 2000, the U.S. District Court for the Northern District of Alabama entered judgment against Ms. Peugeot for two counts of making false statements to an agency of the United States, two counts of mail fraud, and one count of conspiracy to commit offenses against the United States, Federal felony offenses under 18 U.S.C. 2, 1001, 1341, and 371, respectively. These offenses were committed as part of the development of a new drug for which Ms. Peugeot was conducting efficacy trials.

As a result of this conviction, FDA served Ms. Peugeot by certified mail on May 8, 2002, a notice proposing to permanently debar Ms. Peugeot from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Ms. Peugeot an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(A) of the act (21 U.S.C. 335a(a)(2)(A)), that Ms. Peugeot was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product. Ms. Peugeot was provided 30 days to file objections and request a hearing. Ms. Peugeot did not request a hearing. Her failure to request a hearing constitutes a waiver of her opportunity for a hearing and a waiver of any contentions concerning her debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a)(2)(A) of the act, and under authority delegated to her (21 CFR 5.34), finds that Ms. Renee Peugeot has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product.

As a result of the foregoing finding, Ms. Renee Peugeot is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), (see sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Ms. Peugeot, in any capacity, during her period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Ms. Peugeot, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Ms. Peugeot during her period of debarment.

Any application by Ms. Peugeot for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 01N–0566 and sent to the Dockets Management Branch (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 2002.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–663 Filed 1–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0565]

Harry W. Snyder, Jr.; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Harry W. Snyder, Jr., from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Snyder was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product. Mr. Snyder failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

DATES: This order is effective January 13, 2003.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicole K. Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On August 31, 2000, the U.S. District Court for the Northern District of Alabama entered judgment against Mr. Snyder for two counts of making false statements to an agency of the United States, two counts of mail fraud, and one count of conspiracy to commit

offenses against the United States, Federal felony offenses under 18 U.S.C. 2, 1001, 1341, and 371, respectively. These offenses were committed as part of the development of a new drug for which Mr. Snyder was conducting efficacy trials.

As a result of this conviction, FDA served Mr. Snyder by certified mail on May 8, 2002, a notice proposing to permanently debar Mr. Snyder from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Mr. Snyder an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(A) of the act (21 U.S.C. 335a(a)(2)(A)), that Mr. Snyder was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product. Mr. Snyder was provided 30 days to file objections and request a hearing. Mr. Snyder did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a)(2)(A) of the act, and under authority delegated to her (21 CFR 5.34), finds that Mr. Harry W. Snyder, Jr., has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product.

As a result of the foregoing finding, Mr. Harry W. Snyder, Jr., is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), (see sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Snyder, in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Snyder, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Snyder during his period of debarment.

Any application by Mr. Snyder for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 01N–0565 and sent to the Dockets Management Branch (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 2002.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–661 Filed 1–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 02M–0298, 02M–0299, 02M–0295, 02M–0381, 02M–0310, 02M–0348, 02M–0335, 02M–0353, 02M–0352, 02M–0336, 02M–0322, 02M–0361, 02M–0412, 02M–0409]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**, providing instead to post this information on the Internet on FDA's home page at http://www.fda.gov. In addition, the regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from July 1, 2002, through September 30, 2002. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE JULY 1, 2002, THROUGH SEPTEMBER 30, 2002.

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P990017(S30)/02M–0298	Guidant Cardiac and Vascular Surgery Group.	ANCURE Aortoiliac Endograft System	April 24, 2002.
P990027(S2)/02M–0299	Bausch & Lomb Surgical, Inc.	TECHNOLAS 217A Excimer Laser System	May 17, 2002.
P870024(S43)/02M–0295	Paragon Vision Sciences.	PARAGON CRT (Paflufocon B), PARAGON CRT 100 (Paflufocon D), PARAGON QUADRA RG (Paflufocon B), and PARAGON QUADRA RG 100 (Paflufocon D).	June 13, 2002.
P010031/02M–0381	Medtronic, Inc.	INSYNC ICD Model 7272 Dual Chamber Implantable Cardioverter With Resynchronization Therapy and Model 9969 Application Software.	June 26, 2002.
P000058/02M–0310	Medtronic Sofamor Danek, Inc.	INFUSE BONE GRAFT/LT-CAGE Lumbar Tapered Fusion Device.	July 2, 2002.
P890017(S10)/02M–0348	Cordis Corp.	PALMAZ Balloon-Expandable Stent (Models P104R, P154R, P204R).	July 10, 2002.
P990018(S2)/02M–0335	Menicon Co., Ltd.	MENICON Z (Tisilfocon A) Rigid Gas Permeable Contact Lens.	July 12, 2002.
P960040(S26)/02M–0353	Guidant Corp.	VENTAK PRIZM 2 VR/DR Models 1860/1861; VENTAK PRIZM VR/DR Models 1850/1851/1855/1856; VENTAK PRIZM VR/DR HE Models 1852/1853, VENTAK Mini IV Models 1790/1793/1796; and VENTAK Mini III HE Model 1789.	July 18, 2002.
P910077(S37)/02M–0352	Guidant Corp.	VENTAK PRIZM 2 VR/DR Models 1860/1861; VENTAK PRIZM VR/DR Models 1850/1851/1855/1856; VENTAK PRIZM VR/DR HE Models 1852/1853, VENTAK Mini IV Models 1790/1793/1796; and VENTAK Mini III HE Model 1789.	July 18, 2002.
P010039/02M–0336	Siemens Medical Solutions USA, Inc.	Siemens SONOCUR Basic	July 19, 2002.
P020003/02M–0322	Mentor Corp.	Mentor Saline-Filled Testicular Prosthesis	July 19, 2002.
H010004/02M–0361	Guidant Corp.	NEUROLINK System, Including NEUROLINK Stent and Delivery Catheter and NEUROLINK Balloon Dilatation Catheter.	August 9, 2002.
P990026(S8)/02M–0412	Cygnus, Inc.	GlucoWatch G2 Biographer	August 26, 2002.
H020002/02M–0409	SMART Therapeutics, Inc.	Neuroform Microdelivery Stent System	September 11, 2002.

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: December 24, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–662 Filed 1–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–12]

Housing Counseling Program Announcement of Funding Awards for Fiscal Year 2002

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a SuperNOFA competition for funding of HUD-approved counseling agencies to provide counseling services. This announcement contains the names and addresses of the agencies selected for funding and the amount. Additionally, this announcement outlines various noncompetitive housing counseling awards made by the Department.

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Director, Program Support Division, Room 9266, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2121. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service on 1–800–877–8339 or (202) 708–9300. (With the exception of the "800" number, these are not toll free numbers.)

SUPPLEMENTARY INFORMATION: The Housing Counseling Program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). HUD enters into agreement with qualified public or private nonprofit organizations to provide housing counseling services to low- and moderate-income individuals and families nationwide. The services include providing information, advice and assistance to renters, first-time homebuyers, homeowners, and senior citizens in areas such as pre-purchase counseling, financial management, property maintenance and other forms of housing assistance to improve the clients' housing conditions and meet the responsibilities of tenancy and homeownership.

The purpose of the grant is to assist HUD-approved housing counseling agencies in providing housing counseling services to HUD-related and other clients. HUD funding of approved

housing counseling agencies is not guaranteed and when funds are awarded, a HUD grant does not cover all expenses incurred by an agency to deliver housing counseling services. Counseling agencies must actively seek additional funds from other sources such as city, county, state and federal agencies and from private entities to ensure that they have sufficient operating funds. The availability of housing counseling program grants depends upon whether the U.S. Congress appropriates funds for this purpose, the amount of those funds, and the outcome of the competitions for award.

The 2002 grantees announced in Appendix A of this notice were selected for funding through a competition announced in a NOFA published in the **Federal Register** on March 26, 2002 (67 FR 14051), for the housing counseling program. Applications submitted for each competition were scored and selected for funding on the basis of selection criteria contained in the notice. HUD awarded $18,249,998 million in housing counseling grants to 334 housing counseling organizations nationwide: 306 local agencies, 12 intermediaries, and 16 State housing finance agencies. HUD also awarded two competitive housing counseling grants, totaling $250,000, to provide counseling services to families and individuals living in the Colonias, the Southwest Border Region of the U.S. These grants were awarded to West Tennessee Legal Services in the amount of $225,200 and Community Development Corporation of Brownsville, TX in the amount of $24,800.

Additionally, HUD awarded one noncompetitive housing counseling grant in the amount of $749,650 to the American Association of Retired Persons (AARP) to provide housing counseling services related to the Home Equity Conversion (HECM) Program.

Finally, HUD awarded three noncompetitive grants totaling $1.5 million to three organizations to provide counseling services to families and individuals living in properties eligible for participation in HUD's Mark to Market and Mark-up-to-Market programs. These grants were made in accordance with section 514 of the legislation entitled Multifamily Assisted Housing Reform and Affordability Act of 1997. Each of the following three groups were awarded a grant in the amount of $500,000: the National Foundation for Credit Counseling (NFCC), the Housing Partnership Network, and the Neighborhood Reinvestment Corporation (NRC).

The Catalog of Federal Domestic Assistance number for this program is 14.169.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and award amounts as provided in Appendix A.

Dated: December 23, 2002.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

Appendix A

Fiscal Year 2002 Funding Awards for the Housing Counseling Program

Intermediary Organizations (12)

Acorn Housing Corporation, 846 N. Broad Street, Philadelphia, PA 19130, Amount Awarded: $1,167,044.00

Catholic Charities USA, 1731 King Street, Suite 200, Alexandria, VA 22314, Amount Awarded: $760,328.00

Citizens' Housing and Planning Association, 18 Tremont Street, Suite 401, Boston, MA 02108, Amount Awarded: $500,000.00

Housing Opportunities, Inc., 133 Seventh Avenue, P.O. Box 9, McKeesport, PA 15132, Amount Awarded: $760,328.00

McAuley Institute, 8300 Colesville Road, Suite 310, Silver Spring, MD 20910, Amount Awarded: $237,409.00

National Association of Real Estate Brokers, 1301 East 85th Avenue, Oakland, CA 94621–1605, Amount Awarded: $411,715.00

National Council of La Raza, 1111 19th Street, NW., Suite 1000, Washington, DC 20036, Amount Awarded: $1,050,839.00

National Foundation for Credit Counseling, 801 Roeder Road, Suite 900, Silver Spring, MD 20910, Amount Awarded: $1,500,000.00

National Urban League, 120 Wall Street, New York, NY 10005, Amount Awarded: $760,328.00

Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Washington, DC 20005–3100, Amount Awarded: $1,399,453.00

The Housing Partnership Network, Inc., 160 State Street, 5th Floor, Boston, MA 02109, Amount Awarded: $1,457,555.00

West Tennessee Legal Services, Inc., 210 West Main Street, P.O. Box 2066, Jackson, TN 38301, Amount Awarded: $395,000.00

State Housing Finance Agencies (16)

Atlanta (SHFA)

Georgia Housing & Finance Authority, 60 Executive Park South, NE, Atlanta, GA 30329–2231, Amount Awarded: $77,607.00

Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601, Amount Awarded: $72,766.00

Mississippi Home Corporation, 735 Riverside Drive, P.O. Box 22369, Jackson, MS 39225–3369, Amount Awarded: $34,043.00

Tennessee Housing Development Agency, 404 James Robertson Pkwy, Suite 1114, Nashville, TN 37243, Amount Awarded: $38,600.00

Virgin Islands Housing Finance Authority, 210–3A Altona Frostco Building, Suite 101, St. Thomas, VQ 00802, Amount Awarded: $32,000.00

Denver (SHFA)

South Dakota Housing Development Authority, P.O. Box 1237, Pierre, SD 57501–1237, Amount Awarded: $100,000.00

Philadelphia (SHFA)

Delaware State Housing Authority, Carvel State Building 801 North French Street, 10th Floor, Wilmington, DE 19801, Amount Awarded: $16,357.00

Maine State Housing Authority, 353 Water Street, Augusta, ME 04330–4633, Amount Awarded: $53,268.00

New Hampshire Housing Finance Authority, P.O. Box 5087, Manchester, NH 03108, Amount Awarded: $27,714.00

New Jersey Housing & Mortgage Finance Agency, 637 South Clinton Avenue, Trenton, NJ 08611, Amount Awarded: $22,036.00

Pennsylvania Housing Finance Agency, 2101 North Front Street, Harrisburg, PA 17105, Amount Awarded: $56,108.00

Rhode Island Housing & Mortgage Finance Corporation, 44 Washington Street, Providence, RI 02903, Amount Awarded: $27,714.00

State of Michigan, 735 E. Michigan, P.O. Box 30044—MSHDA, Lansing, MI 48909, Amount Awarded: $24,875.00

Virginia Housing Development Authority, 601 S. Belvedere Street, Richmond, VA 23220, Amount Awarded: $39,072.00

Santa Ana (SHFA)

Idaho Housing and Finance Association, 565 W. Myrtle, P.O. Box 7899, Boise, ID 83707–1899, Amount Awarded: $40,893.00

Washington State Housing Finance Commission, 1000 Second Avenue, Suite 2700, Seattle, WA 98104–1046, Amount Awarded: $183,392.00

Local Organizations (308)

Atlanta (HOC)

Access Living of Metropolitan Chicago, 614 West Roosevelt Road, Chicago, IL 60607, Amount Awarded: $35,303.00

Affordable Housing Coalition, 34 Wall Street, Suite 607, Asheville, NC 28801, Amount Awarded: $35,303.00

Affordable Housing Corporation, 601 S. Adams Street, Marion, IN 46953, Amount Awarded: $12,576.00

Alabama Council on Human Relations, P.O. Drawer 1632, 319 West Glenn Avenue, Auburn, AL 36831–1632, Amount Awarded: $5,000.00

Anderson Housing Authority, 528 West 11th Street, Anderson, IN 46016, Amount Awarded: $24,481.00

Appalachian Housing & Redevelopment Corporation, 800 North Fifth Avenue, Rome, GA 30162, Amount Awarded: $26,645.00

Birmingham Urban League, Inc., 1229 3rd Avenue North, P.O. Box 11269, Birmingham, AL 35203, Amount Awarded: $16,905.00

Campbellsville Housing and Redevelopment Authority, P.O. Box 597, 400 Ingram

Avenue, Campbellsville, KY 42718, Amount Awarded: $11,494.00
Carolina Regional Legal Services, Inc., P.O. Box 479, 279 West Evans Street, Florence, SC 29503–0479, Amount Awarded: $17,987.00
CDBG Operations Corporation, Inc., 301 River Park Drive, East St. Louis, IL 62201, Amount Awarded: $29,892.00
CEFS Economic Opportunity Corporation, 1805 S. Banker Street, P.O. Box 928, Effingham, IL 62401, Amount Awarded: $14,740.00
CEIBA Housing & Economic Development Corporation, Avenue Lauro Pinero #252 (Altos), P.O. Box 203, Ceiba, PR 00735, Amount Awarded: $9,329.00
Chicago Commons Association, 3645 West Chicago Avenue, Chicago, IL 60651, Amount Awarded: $32,057.00
Citizens for Affordable Housing, Inc., 1719 West End Avenue, Suite 322W, Nashville, TN 37203, Amount Awarded: $10,411.00
City of Albany, Georgia, 230 S. Jackson St., Suite 315, Albany, GA 31701, Amount Awarded: $14,740.00
City of Bloomington House, P.O. Box 100, 401 North Morton Street, Bloomington, IN 47402, Amount Awarded: $22,316.00
Cobb Housing, Inc., 700 Sandy Plains Road, Suite B–8, Marietta, GA 30066, Amount Awarded: $14,740.00
Community Action & Community Development Agency, P.O. Box 1788, 207 Commerce Circle, SW., Decatur, AL 35601, Amount Awarded: $25,563.00
Community Action Agency Huntsville/ Madison & Limestone, 3516 Springfield Road, P.O. Box 3975, Huntsville, AL 35810–0975, Amount Awarded: $7,165.00
Community Action Agency of Northwest AL, 745 Thompson Street, Florence, AL 35630, Amount Awarded: $10,000.00
Community and Economic Development Assoc. of Cook County, 208 South LaSalle, Suite 1900, Chicago, IL 60604–1001, Amount Awarded: $21,234.00
Community Equity Investments, Inc. (CEII), 302 North Barcelona Street, Pensacola, FL 32501, Amount Awarded: $15,823.00
Community Housing Initiative, Inc., P.O. Box 410522, 3033 College Wood Drive, Melbourne, FL 32941, Amount Awarded: $11,485.00
Consumer Credit Counseling of NWI, Inc., 3637 Grant Street, Gary, IN 46408–1439, Amount Awarded: $12,576.00
Consumer Credit Counseling Service of FL. Gulf Coast, Inc., 5201 W. Kennedy Blvd., Suite 110, Tampa, FL 33609, Amount Awarded: $22,316.00
Consumer Credit Counseling Service of Forsyth County, Inc., 8064 North Point Boulevard, Suite 204, Winston-Salem, NC 27106, Amount Awarded: $27,727.00
Consumer Credit Counseling Service of West Florida, 14 Palafox Place, Pensacola, FL 32501, Amount Awarded: $10,411.00
Consumer Credit Counseling Service of Western NC, 50 South French Broad Ave., Suite 227, Ashville, NC 28801, Amount Awarded: $24,481.00
Cumberland Community Action Program, Inc., P.O. Box 2009, 316 Green Street, Fayetteville, NC 28302, Amount Awarded: $28,810.00
Dekalb Fulton Housing Counseling Center, Inc., 4151 Memorial Drive, Suite 107–E, Decatur, GA 30032, Amount Awarded: $34,221.00
Dupage Homeownership Center, Inc., 1333 North Main Street, Wheaton, IL 60187, Amount Awarded: $32,490.00
East Athens Development Corporation, Inc., 410 McKinley Drive, Suite 101, Athens, GA 30601, Amount Awarded: $33,139.00
Economic Opportunity for Savannah-Chatham County Area, Inc., 618 West Anderson Street, P.O. Box 1353, Savannah, GA 31401, Amount Awarded: $35,303.00
Elizabeth City State University, 1704 Weeksville Road, Campus Box 761, Elizabeth City, NC 27909, Amount Awarded: $28,875.00
Family and Children's Services of Chattanooga, Inc., CCCS 5704 Marlin Road, Suite 2300, Chattanooga, TN 37411, Amount Awarded: $12,576.00
Family Counseling Services, 220 Coral Sands Drive, Rockledge, FL 32955, Amount Awarded: $35,303.00
Family Service Center, 1800 Main Street, Columbia, SC 29201, Amount Awarded: $17,987.00
Family Services, Inc., 4925 Lacross Road, Suite 215, North Charleston, SC 29406, Amount Awarded: $12,576.00
Fort Wayne Urban League, Inc., 227 East Washington Boulevard, Fort Wayne, IN 46802, Amount Awarded: $7,165.00
Gainesville/Hall County Neighborhood Revitalization, P.O. Box 642, Gainesville, GA 30503, Amount Awarded: $25,563.00
Goldenrule Housing & Community Development, 417 East 2nd Street, Sanford, FL 32771, Amount Awarded: $7,165.00
Greenville County Human Relations Commission, 301 University Ridge, Suite 1600, Greenville, SC 29601, Amount Awarded: $20,000.00
Gulf Coast Community Action Agency, Inc., 500 24th Street, P.O. Box 519, Gulfport, MS 39502–0519, Amount Awarded: $37,468.00
Gwinnett Housing Resource Partnership, Inc., 3453 Holcomb Bridge Road, Suite 140, Norcross, GA 30092, Amount Awarded: $36,386.00
Hammond Housing Authority, 7329 Columbia Circle—West, Hammond, IN 46324, Amount Awarded: $19,069.00
Homekeeping Mortgage Default Counseling, 2808 Four Seasons Blvd., Greensboro, NC 27406, Amount Awarded: $9,329.00
Homes in Partnership, Inc., 235 E. Fifth Street, P.O. Box 761, Apopka, FL 32704–0761, Amount Awarded: $9,329.00
Hoosier Uplands Economic Development Corporation, 521 West Main Street, Mitchell, IN 47446, Amount Awarded: $11,494.00
Hope of Evansville, Inc., 608 Cherry Street, Evansville, IN 47713, Amount Awarded: $17,987.00
Housing and Economic Leadership Partners, Inc., 485 Huntington Road, Suite 200, Athens, GA 30606, Amount Awarded: $20,000.00
Housing and Neighborhood Dev. Serv of Central Florida, 990 North Bennett Avenue, Winter Park, FL 32789, Amount Awarded: $28,810.00
Housing Authority of the Birmingham District, 1826 3rd Avenue South, Birmingham, AL 25233, Amount Awarded: $12,576.00
Housing Authority of the City of Fort Wayne, P.O. Box 13489, 2013 South Anthony Blvd., Fort Wayne, IN 46869–3489, Amount Awarded: $13,658.00
Housing Authority of the City of High Point, 500 East Russell Avenue, Post Office Box 1779, High Point, NC 27260, Amount Awarded: $28,810.00
Housing Authority of the County of Lake, 33928 North Route 45, Grayslake, IL 60030, Amount Awarded: $12,003.00
Housing Development Corporation of St. Joseph County, 1200 County City Building, South Bend, IN 46601, Amount Awarded: $17,987.00
Housing Education and Economic Development, 3405 Medgar Evers Blvd., Jackson, MS 39213, Amount Awarded: $20,152.00
Indianapolis Urban League, 777 Indiana Avenue, Indianapolis, IN 46202, Amount Awarded: $13,658.00
Jefferson County Committee for Economic Opportunity, 300 Eighth Ave. West, Birmingham, AL 35204, Amount Awarded: $5,000.00
Johnston-Lee Community Action, Inc., P.O. Drawer 711, 1102 Massey Street Smithfield, NC 27577, Amount Awarded: $11,494.00
Latin American Association, 2665 Buford Highway, Atlanta, GA 30324, Amount Awarded: $26,645.00
Latin United Community Housing Association, 3541 W. North Avenue, Chicago, IL 60647, Amount Awarded: $32,057.00
Legal Assistance Foundation of Chicago, 111 West Jackson Blvd., Chicago, IL 60604, Amount Awarded: $33,139.00
Lincoln Hills Development Corporation, 302 Main Street, P.O. Box 336, Tell City, IN 47586, Amount Awarded: $9,329.00
Manatee Coalition for Affordable Housing, Inc., 319 6th Avenue West, Bradenton, FL 34205, Amount Awarded: $25,563.00
Manatee Opportunity Council, Inc., 369 6th Avenue West, Bradenton, FL 34205, Amount Awarded: $17,987.00
Memphis Area Legal Services, 109 N. Main, Suite 200, Memphis, TN 38103–5013, Amount Awarded: $29,892.00
Miami Beach Community Development Corporation, 945 Pennsylvania Avenue, 2nd Floor, Miami Beach, FL 33139, Amount Awarded: $23,398.00
Mid-Florida Housing Partnership, Inc., 330 North Street, P.O. Box 1345, Daytona Beach, FL 32114, Amount Awarded: $15,823.00
Middle Georgia Community Action Agency, Inc., P.O. Box 2286, 121 Prince Street, Warner Robins, GA 31099, Amount Awarded: $28,600.00
Mobile Housing Board, 151 South Claiborne Street, P.O. Box 1345, Mobile, AL 36633–1345, Amount Awarded: $9,329.00
Muncie Homeownership and Development Center, 407 South Walnut Street, Muncie, IN 47305, Amount Awarded: $10,411.00
Neighborhood Housing Opportunities, Inc., 1548 Poplar Avenue, Memphis, TN 38104, Amount Awarded: $12,000.00

Northeastern Community Development Corp., P.O. Box 367, 154 Highway 158 East, Camden, NC 27921, Amount Awarded: $17,987.00
Northwestern Regional Housing Authority, P.O. Box 2510, 869 Hwy. 105 Ext., Boone, NC 28607, Amount Awarded: $25,563.00
Ocala Housing Authority, 233 S.W. 3rd Street, Ocala, FL 34474, Amount Awarded: $25,000.00
Organized Community Action Program, P.O. Box 908, Troy, AL 36081, Amount Awarded: $8,247.00
Partnership for Homeownership, Inc., 3180 Adloff Lane, Suite 400, Springfield, IL 62703, Amount Awarded: $5,000.00
Purchase Area Housing Corporation, P.O. Box 588, Mayfield, KY 42066, Amount Awarded: $7,165.00
Reach, Inc, 126 North Broadway, Lexington, KY 40507, Amount Awarded: $8,247.00
Realtor-Community Housing Foundation, 2250 Regency Road, Lexington, KY 40503, Amount Awarded: $12,576.00
Residential Resources, Inc., 602 Gallatin Road, Suite 102, Nashville, TN 37206, Amount Awarded: $17,987.00
River City Community Development Corporation, 501 E. Main Street, Elizabeth City, NC 27909, Amount Awarded: $5,000.00
Rogers Park Community Council, 1530 W. Morse Avenue, Chicago, IL 60626, Amount Awarded: $6,082.00
Sacred Heart Southern Missions Housing Corp., 6144 Highway 161 North, P.O. Box 365, Walls, MS 38680, Amount Awarded: $19,069.00
Sampson County CDC, 9936 Hobbton Highway, Clinton, NC 28328, Amount Awarded: $21,234.00
Sandhills Community Action Program, Inc., 103 Saunders Street, P O. Box 937, Carthage, NC 28327, Amount Awarded: $13,658.00
South Suburban Housing Center, 18220 Harwood Avenue, Suite 1, Homewood, IL 60430, Amount Awarded: $20,152.00
Spanish Coalition for Housing, 4035 West North Avenue, Chicago, IL 60639, Amount Awarded: $25,563.00
Tallahassee Lenders' Consortium Inc., 1114 East Tennessee Street, Tallahassee, FL 32308, Amount Awarded: $23,398.00
Tallahassee Urban League, Inc., 923 Old Bainbridge Road, Tallahassee, FL 32303, Amount Awarded: $19,069.00
Tenant Services & Housing Counseling, Inc., 136 North Martin Luther King Blvd., *Lexington, KY 40507, Amount Awarded:* $16,905.00
The Center for Affordable Housing, Inc., 203 E. Third Street, Suite 201, Sanford, FL 32771, Amount Awarded: $21,150.00
The Housing Authority of the City of Montgomery, 1020 Bell Street, Montgomery, AL 36104–3056, Amount Awarded: $8,247.00
Trident United Way, 6296 Rivers Avenue, P.O. Box 63305, North Charleston, SC 29419, Amount Awarded: $20,152.00
Unified Government of Athens-Clarke County, P.O. Box 1868, 375 Satula Ave., Athens, GA 30601, Amount Awarded: $26,645.00
Vollintine Evergreen Community Association (VECA)–CDC, 1680 Jackson Avenue, Memphis, TN 38107, Amount Awarded: $10,411.00
Wateree Community Action, Inc., P.O. Box 1838, 13 South Main Street, Sumter, SC 29150, Amount Awarded: $15,000.00
West Perrine Community Development Corporation, 17623 Homestead Avenue, Miami, FL 33157, Amount Awarded: $5,000.00
Willow Nonprofit Housing, Inc., P.O. Box 383, 200 A Commerce Street, Hayneville, AL 36040, Amount Awarded: $9,329.00
Wilmington Housing Finance and Development, P.O. Box 547, 310 North Front Street, Wilmington, NC 28402, Amount Awarded: $30,000.00
Woodbine Community Organization, 222 Oriel Avenue, Nashville, TN 37210, Amount Awarded: $26,645.00

Denver (HOC)

Adams County Housing Authority, 7190 Colorado Blvd., Commerce City, CO 80022, Amount Awarded: $56,739.00
Boulder County Housing Authority, P.O. Box 471, Boulder, CO 80306, Amount Awarded: $44,700.00
Carver County Housing & Redevelopment Authority, 705 Walnut Street, Chaska, MN 55318, Amount Awarded: $45,908.00
CCCS of Central Oklahoma, Inc., 3230 N. Rockwell Avenue, Bethany, OK 73008, Amount Awarded: $37,495.00
Chickasaw Nation, Division of Housing, P.O. Box 788, Ada, OK 74821–0788, Amount Awarded: $19,050.00
City of Fort Worth, Housing Department, 1000 Throckmorton Street, Fort Worth, TX 76102, Amount Awarded: $60,349.00
City of San Antonio, 115 Plaza de Armas, Suite 230, San Antonio, TX 78205, Amount Awarded: $27,854.00
Community Action Agency of Oklahoma City and OK/CN Counties, 1900 N.W. 10th Street, Oklahoma City, OK 73106, Amount Awarded: $21,080.00
Community Action Project of Tulsa County, 717 S. Houston Avenue, Suite 200, Tulsa, OK 74127, Amount Awarded: $50,000.00
Community Action Services, 257 East Center Street, Provo, UT 84606, Amount Awarded: $32,000.00
Community Action, Inc. of Rock and Walworth Counties, 2300 Kellogg Avenue, Janesville, WI 53546, Amount Awarded: $15,000.00
Community Development Authority of the City of Madison, 215 Martin Luther King Jr. Blvd, Suite 318, P.O. Box 1785, Madison, WI 53701–1785, Amount Awarded: $61,176.00
Community Development Corporation of Brownsville, 901 East Levee Street, Brownsville, TX 78520, Amount Awarded: $45,000.00
Community Development Support Association (CDSA), 2615 E. Randolph, Enid, OK 73701, Amount Awarded: $30,000.00
Community Services League, 300 W. Maple, P.O. Box 4178, Independence, MO 64051, Amount Awarded: $36,303.00
Dakota Plains Legal Services, Inc., 528 Kansas City Street, Rapid City, SD 57709, Amount Awarded: $20,000.00
Family Housing Advisory Services, Inc., 2416 Lake Street, Omaha, NE 68111, Amount Awarded: $100,000.00
Family Management Credit Counselors, Inc. (FMCCI), 1409 W. 4th Street, Waterloo, IA 50702, Amount Awarded: $20,000.00
Hawkeye Area Community Action Program, Inc., 1515 Hawkeye Drive, P.O. Box 490, Hiawatha, IA 52233–0490, Amount Awarded: $25,000.00
High Plains Community Development Corp. Inc., 130 East Second Street, Chadron, NE 69337, Amount Awarded: $39,914.00
Housing and Credit Counseling, Inc., 1195 SW Buchanan, Suite 101, Topeka, KS 66604–1183, Amount Awarded: $71,180.00
Housing Authority of the City of Muskogee, 220 North 40th Street, Muskogee, OK 74401, Amount Awarded: $6,191.00
Housing Authority of the City of Stillwater, 807 S. Lowry, Stillwater, OK 74074, Amount Awarded: $24,244.00
Housing Options Provided for the Elderly, 4265 Shaw, St. Louis, MO 63110, Amount Awarded: $12,000.00
Housing Partners of Tulsa, Inc., P.O. Box 6369, Tulsa, OK 74148, Amount Awarded: $27,854.00
Interfaith of Natrona County, Inc., 1514 East 12th Street, #303, Casper, WY 82601, Amount Awarded: $7,419.00
Iowa Citizens for Community Improvement, 2005 Forest Avenue, Des Moines, IA 50311, Amount Awarded: $25,000.00
Justine Petersen Housing & Reinvestment Corp., 5031 Northrup Avenue, St. Louis, MO 63110, Amount Awarded: $82,012.00
KI Bois Community Action Foundation, Inc., P.O. Box 727, Stigler, OK 74462, Amount Awarded: $17,081.00
Lafayette Consolidated Government, P.O. Box 4017-C, Lafayette, LA 70502–4017, Amount Awarded: $20,000.00
Legal Aid of Central Texas, 2201 Post Road, Suite 104, Austin, TX 78704, Amount Awarded: $50,000.00
Legal Aid Society of Albuquerque, Inc., P.O. Box 25486, Albuquerque, NM 87125–5486, Amount Awarded: $30,000.00
Legal Services of Eastern Missouri, Inc., 4232 Forest Park Avenue, St. Louis, MO 63108, Amount Awarded: $68,493.00
Lincoln Action Program, Inc., 210 O Street, Lincoln, NE 68508, Amount Awarded: $32,500.00
Metro Affordable Housing Corporation, 5118 Gallagher Avenue, Laredo, TX 78041, Amount Awarded: $9,802.00
Neighbor to Neighbor, Inc., 424 Pine Street, Suite 203, Fort Collins, CO 80524, Amount Awarded: $30,000.00
Norman Housing Authority, 700 N. Berry Road, Norman, OK 73069, Amount Awarded: $45,908.00
Northeast Denver Housing Center, 1735 Gaylord Street, Denver, CO 80206, Amount Awarded: $12,221.00
Northern Arapaho Tribal Housing, P.O. Box 8236, Ethete, WY 82520, Amount Awarded: $29,082.00
Oglala Sioux Tribe Partnership for Housing, Inc., P.O. Box 3001, Pine Ridge, SD 57770, Amount Awarded: $19,442.00
Senior Housing, Inc., 2021 East Hennipin, Suite 372, Minneapolis, MN 55413, Amount Awarded: $18,249.00,
Southeastern North Dakota Community Action Agency, 3233 South University Drive, P.O. Box 2683, Fargo, ND 58104, Amount Awarded: $14,000.00

Southern Minnesota Regional Legal Service, 700 Minnesota Building, 46 East Fourth Street, St. Paul, MN 55101, Amount Awarded: $30,000.00
St. Paul Urban League, 401 Selby Avenue, St. Paul, MN 55102, Amount Awarded: $30,000.00
T.A.C.T.I.C.S., Inc, DBA Pilot City Neighborhood Services, 1315 Penn Avenue North, Minneapolis, MN 55411, Amount Awarded: $5,000.00
United Neighbors, Inc., 808 Harrison Street, Davenport, IA 52803, Amount Awarded: $13,412.00
Universal Housing Development Corp., P.O. Box 846, Russellville, AR 72811, Amount Awarded: $44,716.00
West Central Missouri Community Action Agency, 106 W. 4th, P.O. Box 125, Appleton City, MO 64724, Amount Awarded: $12,221.00
Women's Opportunity & Resource Development, 127 N. Higgins, Suite 307, Missoula, MT 59802, Amount Awarded: $30,000.00
Youth Education and Health in Soulard, 1921 S. 9th Street, St. Louis, MO 63104, Amount Awarded: $17,971.00
Philadelphia (HOC)
Affordable Homes of Millville Ecumenical (Ahome), Inc., P.O. Box 241, Millville, NJ 08332, Amount Awarded: $6,950.00
Albany County Rural Housing Alliance, Inc., P.O. Box 407, 24 Martin Road, Voorheesville, NY 12186, Amount Awarded: $17,383.00
Arundel Community Development Services, Inc., 2660 Riva Road, Suite 210, Annapolis, MD 21401, Amount Awarded: $22,020.00
Asian Americans for Equality, Inc., 111 Division Street, New York, NY 10002, Amount Awarded: $19,122.00
Belmont Shelter Corporation, 1195 Main Street, Buffalo, NY 14209–2196, Amount Awarded: $17,962.00
Berks Community Action Program/Budget Counseling Center, P.O. Box 22, Berks County, Reading, PA 19603–0022, Amount Awarded: $15,644.00
Berkshire County Regional Housing Authority, 150 North Street, Pittsfield, MA 01201, Amount Awarded: $16,803.00
Better Housing League of Greater Cincinnati, 2400 Reading Road, Cincinnati, OH 45202, Amount Awarded: $20,860.00
Better Neighborhoods Incorporated, 986 Albany Street, Schenectady, NY 12307, Amount Awarded: $21,440.00,
Bishop Sheen Ecumenical Housing Foundation, Inc., 935 East Avenue, Suite 300, Rochester, NY 14607, Amount Awarded: $18,500.00
Catholic Charities, Diocese of Metuchen, 540–550 Route 22 East (Bridgewater), Somerset, NJ 08807, Amount Awarded: $8,688.00
Center City Neighborhood Development Corporation, 1824 Main Street, Niagara Falls, NY 14305, Amount Awarded: $18,542.00
Chautauqua Opportunities, Inc., 17 West Courtney Street, Dunkirk, NY 14048, Amount Awarded: $22,600.00
Chester Community Improvement Project, 412 Avenue of the States, Chester, PA 19016, Amount Awarded: $16,223.00
Citizen Action of New Jersey, 400 Main Street, Hackensack, NJ 07601, Amount Awarded: $15,064.00
City of Frederick, 100 South Market Street, Frederick County, Frederick, MD 21701, Amount Awarded: $8,000.00
Coastal Enterprises, Inc., 36 Water Street, P.O. Box 268, Wiscasset, ME 04578, Amount Awarded: $19,122.00
Commission on Economic Opportunity, 165 Amber Lane, P.O. Box 1127, Wilkes-Barre, PA 18703, Amount Awarded: $16,223.00
Community Action Commission of Belmont Cty, 410 Fox-Shannon Place, St. Clairsville, OH 43950, Amount Awarded: $20,281.00
Community Action Committee of the Lehigh Valley, Inc., 651 East Broad Street, Bethlehem, PA 18018, Amount Awarded: $19,122.00
Community Action in Self Help, Inc., 48 Water Street, Lyons, NY 14489, Amount Awarded: $5,790.00
Community Action Program-Madison County, 3 East Main Street, P.O. Box 249, Morrisville, NY 13408, Amount Awarded: $22,600.00
Community Action Southwest, 150 West Beau Street, Suite 304, Washington, PA 15301, Amount Awarded: $10,427.00
Community Assistance Network, Inc., 7701 Dunmanway, Baltimore, MD 21222, Amount Awarded: $13,325.00
Community Development Corporation of Long Island, 2100 Middle Country Road, Centereach, NY 11720, Amount Awarded: $20,281.00
Community Housing, Inc., 613 Washington Street, Wilmington, DE 19801, Amount Awarded: $19,701.00
Community Service Network Inc., 52 Broadway, Stoneham, MA 01800, Amount Awarded: $17,962.00
Consumer Credit Counseling Service of Greater Washington, 15847 Crabbs Branch Way, Rockville, MD 20855, Amount Awarded: $14,485.00
Consumer Credit Counseling Service of the Kanawha Valley, 8 Capitol Street, Suite 200, Kanawha Valley, Charleston, WV 25301, Amount Awarded: $7,529.00
Cortland Housing Assistance Council, Inc., 159 Main Street, Cortland, NY 13045, Amount Awarded: $12,746.00
County Commissioners of Carroll County, 10 Distillery Drive, Suite 101, Westminster, MD 21157–5194, Amount Awarded: $17,383.00
Credit Counseling Centers, Inc., 111 Westcott Road, South Portland, ME 04106, Amount Awarded: $13,905.00
Cypress Hills Local Development Corp., 625 Jamaica Avenue, Kings County, Brooklyn, NY 11208, Amount Awarded: $20,860.00
Detroit Non-Profit Housing Corporation, 1200 Sixth Street, Suite 404, Detroit, MI 48226, Amount Awarded: $6,950.00
Druid Heights Community Development Corporation, 1821 McCulloh Street, Baltimore, MD 21217, Amount Awarded: $14,485.00
Fair Housing Contact Service, 333 South Main Street, Suite 300, Akron, OH 44308, Amount Awarded: $7,529.00
Family and Children's Association, 336 Fulton Avenue, Hempstead, NY 11550, Amount Awarded: $19,701.00
Family Service—Upper Ohio Valley, 51 Eleventh Street, Wheeling, WV 26003, Amount Awarded: $5,790.00
Fayette County Community Action Agency, Inc., 140 N. Beeson Avenue, Uniontown, PA 15401, Amount Awarded: $6,950.00
Garfield Jubilee Association, Inc., 5138 Penn Avenue, Pittsburgh, PA 15224, Amount Awarded: $15,000.00
Garrett County Community Action Committee, Inc., 104 E. Center Street, Oakland, MD 21550, Amount Awarded: $15,644.00
Govans Economic Management Senate, Inc., 4324 York Road, Suite 203, Baltimore, MD 21212, Amount Awarded: $17,383.00
Greater Boston Legal Services, Inc., 197 Friend Street, Boston, MA 02114, Amount Awarded: $18,542.00
Greater Erie Community Action Committee, 18 West 9th Street, Erie, PA 16501, Amount Awarded: $12,746.00
Harford County, 15 South Main Street, Suite 106, Harford County, Bel Air, MD 21014, Amount Awarded: $12,166.00
Harlem Park Revitalization Corporation, 1017 Edmondson Avenue, Baltimore, MD 21223, Amount Awarded: $15,064.00
Hill Development Corporation of New Haven, 649 Howard Avenue, New Haven, CT 06519, Amount Awarded: $11,007.00
Home Partnership, Inc., 1221 B Brass Mill Road, Belcamp, MD 21017, Amount Awarded: $15,000.00
Homes on the Hill Community Development Corporation, 12 South Terrace Avenue, Columbus, OH 43204, Amount Awarded: $5,211.00
Housing Authority of the City of Paterson, 60 Van Houten Street, Paterson, NJ 07509, Amount Awarded: $5,790.00
Housing Authority of the County of Butler, 114 Woody Drive, Butler, PA 16001, Amount Awarded: $20,860.00
Housing Coalition of Central Jersey, 78 New Street, New Brunswick, NJ 08901, Amount Awarded: $12,166.00
Housing Consortium for Disabled Individuals, 4701 Pine Street, Box 28, Philadelphia, PA 19143, Amount Awarded: $15,064.00
Housing Council of York, Inc., 116 North George Street, York County, York, PA 17401, Amount Awarded: $16,223.00
Housing Counseling Services, Inc., 2430 Ontario Road, NW., Washington, DC 20009, Amount Awarded: $19,122.00
Housing Initiative Partnership, Inc., 4310 Gallatin Street, 3rd Floor, Hyattsville, MD 20781, Amount Awarded: $20,281.00
Housing Opportunities Made Equal of Richmond, Inc., 2201 West Broad Street, Suite 200, Richmond, VA 23220, Amount Awarded: $20,860.00
Jamaica Housing Improvement, Inc, 161–10 Jamaica Avenue, Suite 601, Jamaica, NY 11432, Amount Awarded: $19,701.00
Jersey Counseling & Housing Development, Inc., 1840 South Broadway, Camden City, NJ 08104, Amount Awarded: $13,905.00
Kanawha Institute for Social Research and Action, 124 Marshall Avenue, Dunbar, WV 25064, Amount Awarded: $17,383.00
Long Island Housing Services, Inc., 3900 Veterans Memorial Highway, Suite 251, Bohemia, NY 11716, Amount Awarded: $12,746.00

Lutheran Housing Corporation, 13944 Euclid Avenue, Suite 208, East Cleveland, OH 44112, Amount Awarded: $5,211.00
Lynchburg Community Action Group, Inc., 926 Commerce Street, Lynchburg, VA 24504, Amount Awarded: $9,268.00
Margert Community Corporation, 1931 Mott Avenue, Room 412, Far Rockaway, NY 11691, Amount Awarded: $17,962.00
Marshall Heights Community Dev., Org, 3939 Benning Road, NE., Washington, DC 20019, Amount Awarded: $13,325.00
Maryland Rural Development Corporation, P.O. Box 4848, Annapolis, MD 21403, Amount Awarded: $10,427.00
Massillon Urban League, 325 Third Street, SE., Massillon, OH 44646, Amount Awarded: $18,542.00
Metro Interfaith Services, Inc., 21 New Street, Binghamton, NY 13903, Amount Awarded: $15,000.00
Michigan Housing Counselors, Inc., 237 S.B. Gratiot Avenue, Mt. Clemens, MI 48043, Amount Awarded: $5,790.00
Mid-Ohio Regional Planning Commission, 285 East Main Street, Franklin County, Columbus, OH 43215–5272, Amount Awarded: $20,281.00
Monmouth County Board of Chosen Freeholders, P.O. Box 3000, Freehold, NJ 07728, Amount Awarded: $14,485.00
Ncall Research, Inc., 20 East Division Street, P.O. Box 1092, Dover, DE 19903–1092, Amount Awarded: $19,122.00
Near Northeast Community Improvement Corporation, 1326 Florida Avenue, NE., Washington, DC 20002, Amount Awarded: $12,746.00
Neighborhood House, Inc., 1218 B Street, New Castle County, Wilmington, DE 19801, Amount Awarded: $15,644.00
Neighborhood Housing Services of New Britain, Inc., 223 Broad Street, New Britain, CT 06053, Amount Awarded: $18,542.00
Neighborhood Housing Services of NYC, 121 W. 27th Street, 4th Floor, New York, NY 10001, Amount Awarded: $10,427.00
Neighbors Helping Neighbors, Inc., 443 39th Street, Brooklyn, NY 11232, Amount Awarded: $22,020.00
Northfield Community LDC of SI, Inc., 160 Heberton Avenue, Staten Island, NY 10302, Amount Awarded: $13,905.00
Northwest Counseling Service, Inc., 5001 North Broad Street, Philadelphia, PA 19141, Amount Awarded: $19,701.00
Northwest Michigan Human Services Agency, Inc., 3963 Three Mile Rd., Traverse City, MI 49686, Amount Awarded: $16,223.00
Nueva Esperanza, 4261 North 5th Street, Philadelphia, PA 19140, Amount Awarded: $7,529.00
O.C.E.A.N., Inc., 40 Washington Street, Tom River, NJ 08754, Amount Awarded: $8,688.00
Oakland County Michigan, 1200 North Telegraph Road, Oakland County, Pontiac, MI 48341–0414, Amount Awarded: $20,281.00
Open Housing Center, Inc., 45 John Street, Suite #308, New York, NY 10038, Amount Awarded: $5,790.00
Opportunities for Chenango, Inc., P.O. Box 470, 44 West Main Street, Norwich, NY 13815–0470, Amount Awarded: $16,640.00
Philadelphia Council for Community Advancement, 100 North 17th Street, Suite 700, Philadelphia, PA 19107, Amount Awarded: $20,860.00
Phoenix Non-Profit Housing Corp., 1640 Porter Street, Detroit, MI 48216, Amount Awarded: $5,211.00
Phoenixville Homes, P.O. Box 67, Spring City, PA 19475, Amount Awarded: $5,790.00
Piedmont Housing Alliance, 2000 Holiday Drive, Suite 200, Charlottesville, VA 22901, Amount Awarded: $9,848.00
Pine Tree Legal Assistance, Inc., 88 Federal Street, Portland, ME 04112, Amount Awarded: $17,962.00
Plymouth Redevelopment Authority, 11 Lincoln Street, Plymouth, MA 02360, Amount Awarded: $16,223.00
Prince William County, 8033 Ashton Avenue, Suite 105, Manassas, VA 20109, Amount Awarded: $9,848.00
Pro-Home, Inc., 45 School Street, Taunton, MA 02780, Amount Awarded: $15,644.00
Putnam County Housing Corporation, 11 Seminary Hill Road, Carmel, NY 10512, Amount Awarded: $19,701.00
Quincy Community Action Programs, Inc., 1509 Hancock Street, Norfolk County, Quincy, MA 02169, Amount Awarded: $17,962.00
Roanoke Redevelopment and Housing Authority, 2624 Salem Turnpike, NW., P.O. Box 6359, Roanoke, VA 24107, Amount Awarded: $8,688.00
Rockland Housing Action Coalition, Inc, 747 Chestnut Street, Chestnut Ridge, NY 10977, Amount Awarded: $15,644.00
Roots of Mankind Corporation, Park Place Professional Center, 5835 Allentown Road, Suitland, MD 20746, Amount Awarded: $9,848.00
Rural Sullivan Housing Corporation, P.O. Box 1497, Monticello, NY 12701, Amount Awarded: $15,000.00
Rural Ulster Preservation Company, Inc., 289 Fair Street, Ulster County, Kingston, NY 12401, Amount Awarded: $17,383.00
Schuylkill Community Action, 206 North Second Street, Pottsville, PA 17901, Amount Awarded: $17,962.00
Shore Up, Inc., 520 Snow Hill Road, P.O. Box 430, Salisbury, MD 21803, Amount Awarded: $15,644.00
Somerset County Coalition on Affordable Housing, One West Main Street, 2nd Floor, Somerville, NJ 08876, Amount Awarded: $21,440.00
South Bronx Action Group, Inc., 384 149th Street, Bronx, NY 10455, Amount Awarded: $5,211.00
Southeast Community Development Corporation, 10 South Wolfe Street, Baltimore, MD 21231, Amount Awarded: $21,440.00
Southside Community Development & Housing Corp., 1624 Hull Street, Richmond, VA 23224, Amount Awarded: $8,688.00
St. Ambrose Housing Aid Center, 321 East 25th Street, Baltimore, MD 21218, Amount Awarded: $13,325.00
St. James Community Development Corporation, 260 Broadway, Suite 300, Newark, NJ 07104, Amount Awarded: $13,905.00
Tabor Community Services Inc., 439 East King Street, Lancaster, PA 17602, Amount Awarded: $16,223.00
Telamon Corporation, 4913 Fithzhugh Avenue, Suite 202, Richmond, VA 23230, Amount Awarded: $6,370.00
The Fair Housing Council of Capital Region, Inc., 2100 North Sixth Street, Dauphin County, Harrisburg, PA 17110, Amount Awarded: $5,211.00
The Housing Council in the Monroe County Area, 183 East Main Street, Suite 1100, Rochester, NY 14604, Amount Awarded: $20,281.00
The Trehab Center, 10 Public Avenue, P.O. Box 366, Montrose, PA 18801, Amount Awarded: $20,000.00
The Way Home, 214 Spruce Street, Manchester, NH 03103, Amount Awarded: $22,020.00
Total Action Against Poverty (TAP), 145 Campbell Avenue, SW., Roanoke, VA 24001–2868, Amount Awarded: $20,281.00
Trcil Services, Inc., 900 Rebecca Avenue, Wilkinsburg, PA 15221, Amount Awarded: $13,325.00
Tri-Churches Hqusing, Inc., 815 Scott Street, Baltimore, MD 21230, Amount Awarded: $14,000.00
Tri-County Community Action Program, 30 Exchange Street, Berlin, NH 03570, Amount Awarded: $12,746.00
Unemployment Information Center, 1201 Chestnut Street, Suite 702, Philadelphia, PA 19107, Amount Awarded: $14,485.00
United Neighborhood Centers of Lackawanna County, Inc., 425 Alder Street, Scranton, PA 18505, Amount Awarded: $6,370.00
University Legal Services, 300 I Street, NE., Suite 202, Washington, DC 20002, Amount Awarded: $6,370.00
Urban League of Rhode Island, Inc., 246 Prairie Avenue, Providence County, Providence, RI 02905, Amount Awarded: $16,803.00
Washington County Community Action Council, Inc., 101 Summit Avenue, Hagerstown, MD 21740, Amount Awarded: $17,962.00
West Harlem Group Assistance, Inc., 1524/28 Amsterdam Avenue, New York, NY 10031, Amount Awarded: $17,962.00
Westchester Residential Opportunities, Inc., 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605, Amount Awarded: $19,701.00
YWCA of New Castle County, 233 King Street, Wilmington, DE 19801, Amount Awarded: $20,000.00
Santa Ana (Colonias)
Community Development Corp. of Brownsville, 901 E. Levee Street, Brownsville, TX 78520, Amount Awarded: $24,800.00
West Tennessee Legal Services, 210 W Main Street, Jackson, TN 38301, Amount Awarded: $225,200.00
Santa Ana-(HOC)
Administration of Resources and Choices, 209 South Tucson Blvd., P.O. Box 86802, Tucson, AZ 85754, Amount Awarded: $38,232.00
CCCS of Alaska, 208 East 4th Avenue, Anchorage, AK 99501, Amount Awarded: $94,565.00

CCCS of Mid Counties, 2575 Grand Canal Blvd, Suite 100, Stockton, CA 95207, Amount Awarded: $40,841.00
CCCS of Orange County, P.O. Box 11330, 1920 Old Tustin Avenue, Santa Ana, CA 92711–1330, Amount Awarded: $15,207.00
CCCS of San Diego and Imperial Counties, 1550 Hotel Circle N., Suite 110, San Diego, CA 92108–2907, Amount Awarded: $33,354.00
CCCS of South Nevada, 3650 S. Decatur, Suite 30, Las Vegas, NV 89103, Amount Awarded: $40,841.00
Community Action Agency, 124 New 6th Street, Lewiston, ID 83501, Amount Awarded: $56,523.00
Community Housing & Credit Counseling Center (CHCCC), 1001 Willow Street, Chico, CA 95928, Amount Awarded: $10,142.00
Community Housing Resource Center, 3801–A Main Street, Vancouver, WA 98663, Amount Awarded: $58,724.00
Consumer Credit Counselors of Kern County, Inc., 5300 Lennox Avenue, Suite 200, Bakersfield, CA 93309, Amount Awarded: $100,000.00
County of Santa Barbara Housing Authority, 815 W. Ocean Avenue, P.O. Box 397, Lompoc, CA 93438–0397, Amount Awarded: $7,533.00
County of Santa Cruz Housing Authority, 2160 41st Avenue, Capitola, CA 95010–2060, Amount Awarded: $18,500.00
Eden Council for Hope and Opportunity, 770 A Street, Hayward, CA 94541, Amount Awarded: $28,700.00
Fair Housing Council of Orange County, 201 S. Broadway, Santa Ana, CA 92701, Amount Awarded: $45,000.00
Fremont Public Association, P.O. Box 31151, Seattle, WA 98103, Amount Awarded: $75,000.00
Inland Fair Housing and Mediation Board, 1005 Begonia Avenue, Ontario, CA 91762, Amount Awarded: $65,485.00
Labor's Community Service Agency, 5818 N. 7th Street #100, Phoenix, AZ 85014, Amount Awarded: $51,350.00
Legal Aid Society of Hawaii, 924 Bethel Street, Honolulu, HI 96813, Amount Awarded: $25,000.00
Neighborhood House Association, 5660 Copley Drive, San Diego, CA 92111, Amount Awarded: $7,533.00
Open Door Counseling Social Service, 34420 SW Tualatin Valley Highway, Hillsboro, OR 97123, Amount Awarded: $25,492.00
Pierce County Department of Community Services, 8811 South Tacoma Way, Suite 201, Lakewood, WA 98499–4588, Amount Awarded: $30,000.00
Portland Housing Center, 3233 NE Sandy Boulevard, Portland, OR 97232, Amount Awarded: $40,000.00
Project Sentinel, 430 Sherman Avenue, Suite 308, Palo Alto, CA 94306, Amount Awarded: $75,000.00
Sacramento Neighborhood Housing Services, Inc., 3453 5th Avenue, Sacramento, CA 95817, Amount Awarded: $57,000.00
San Diego Home Loan Counseling Service, 3180 University Avenue, Suite 430, San Diego, CA 92104, Amount Awarded: $100,000.00
Spokane Neighborhood Action Program, 2116 East First Avenue, Spokane, WA 99202, Amount Awarded: $77,434.00
Springboard, Non-Profit Consumer Credit Mgmt., 6370 Magnolia Avenue, Suite 200, Riverside, CA 92056, Amount Awarded: $97,097.00
Umpqua Community Action Network, 2448 West Harvard, Roseburg, OR 97470, Amount Awarded: $30,000.00

[FR Doc. 03–540 Filed 1–10–03; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Multistate Conservation Grant Program; Priority List for Conservation Projects.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of priority list.

SUMMARY: We, the U.S. Fish and Wildlife Service, are publishing, in this document, the priority list submitted by the International Association of Fish and Wildlife Agencies for the Multistate Conservation Grant Program. This notice is required by the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000. Grants may be made from this priority list.

FOR FURTHER INFORMATION CONTACT: Chris McKay, National Grants Manager, Division of Federal Aid, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4020, Arlington, Virginia 22203; phone (703) 358–2156; or e-mail *chris_mckay@fws.gov*.

SUPPLEMENTARY INFORMATION: The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Pub. L. 106–408) (Improvement Act) established a Multistate Conservation Grant Program within the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669k) and Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777m) (Restoration Acts). The Improvement Act authorizes grants of up to $3 million annually from funds available under each of the Restoration Acts, for a total of up to $6 million annually. Grants may be made from a priority list of projects submitted by the International Association of Fish and Wildlife Agencies (IAFWA), which represent the State fish and wildlife agencies. The Service Director, exercising the authority of the Secretary, need not fund all recommended projects, but may not fund projects that are not recommended.

To be eligible for consideration by the IAFWA, a project must benefit fish and/or wildlife conservation in at least 26 States, a majority of the States in a Fish and Wildlife Service Region, or a regional association of State fish and wildlife agencies. Grants may be made to a State or group of States, to non-governmental organizations, and, for the purpose of carrying out the National Survey of Fishing, Hunting and Wildlife-Associated Recreation, the U.S. Fish and Wildlife Service.

The priority list of projects submitted by the IAFWA follows:

Project title	Applicant	Wildlife funds (in dollars)	Sport fish funds (in dollars)
Wildlife Values in the West	Western Association of Fish & Wildlife Agencies (WAFWA).	223,961	223,961
Step Outside	National Shooting Sports Foundation	92,600	92,600
Becoming an Outdoors Woman	University of Wisconsin—Stevens Point.	93,050	93,050
Women in the Outdoors	National Wild Turkey Federation	77,500	77,500
The Trailblazer Adventure Program	U.S. Sportsmen's Alliance Foundation.	80,000	80,000
Automated Wildlife Data Systems Program Coordination	IAFWA Automated Wildlife Data Systems Task Force.	81,840	81,840
Provide Adaptive Equipment to State Fish & Game Departments to Assist Physically Challenged Individuals in Traditional Outdoor Activities.	Paralyzed Veterans of America	44,000	
Measuring Public Opinion of Fish and Wildlife Agencies in 13 Northeast States.	Northeast Conservation Information & Education Association.	175,000	175,000
Continued Support for State "Hooked on Fishing—Not on Drugs" Programs	Future Fisherman Foundation		51,500

Project title	Applicant	Wildlife funds (in dollars)	Sport fish funds (in dollars)
"The Northern Bobwhite Conservation Initiative: Moving the Plan Forward"	Tennessee Wildlife Resources Agency.	225,000	
Chronic Wasting Disease Prevention and Management Planning	IAFWA Wildlife Health Task Force	357,500	
Fish & Wildlife Reference Service: Managing and Providing Information to State Wildlife and Natural Resources Agencies.	KRA Corporation	249,779	249,779
* Evaluation of the Fish and Wildlife Reference Service	Virginia Polytechnic Institute & State University.	20,356	20,356
Data Management Support for the Chronic Wasting Disease Initiative	Virginia Polytechnic Institute & State University.	92,154	
Unwanted Aquatic Species: A Two-Year Project to Address State, Regional and National Aquatic Invasive Species Issues.	IAFWA Fisheries & Water Resources Policy Committee.		391,840
Conservation Communication Team	IAFWA Education, Outreach & Diversity Committee and Point to Point Communications.	114,000	114,000
National 4–H Sportfishing Initiative	National 4–H Sportfishing Committee of the Texas 4–H Youth Development Foundation.		150,623
Creating Master Naturalist programs	Texas Parks & Wildlife Department	97,325	97,325
National Housing Incident Clearinghouse	International Hunter Education Association.	66,800	
Wildlife Law News Weekly Alert and Online Services	Center for Wildlife Law at the University of New Mexico Institute of Public Law.	40,500	40,500
Management Assistance Team	IAFWA	408,272	408,272
Sage Grouse Data Management: Making States' Data Available to Conservation Planning Teams.	WAFWA Sage Grouse and Columbian Sharp-tailed Grouse Technical Committee.	27,800	
Bird Conservation for the Nation: Support for State All-Bird Conservation Efforts.	IAFWA Bird Conservation Committee	214,520	
Assessing Ownership, Use and Modifications of Trapping Systems, and Familiarity of Trapping BMPs by Trappers in the United States.	IAFWA Furbearer Resources Task Force; Education, Outreach & Diversity Committee; and Wildlife Resources Policy Committee.	118,800	
Development of a Detailed National Conservation Need for a National Fishing, Hunting, and Wildlife-Associated Recreation Survey.	IAFWA National Grants Committee	125,000	125,000
Totals		3,025,757	2,473,146

* Denotes project submitted pending a final decision of the IAFWA Executive Committee, which is expected December 13, 2002.

The total cost of the proposed Wildlife Restoration projects is more than the amount allocated by Congress for this program. If we were to fund all of these projects, funds allocated, but not spent, from Fiscal Year (FY) 2002 would be used to make up the difference for FY 2003. The rest of the funding would come from FY 2004 and FY 2005 allocations because six of these projects are multi-year projects.

We expect to decide by January 10, 2003, which of the listed projects will be awarded a FY 2003 Multistate Conservation Grant. We will also publish the list of the awards in the **Federal Register** immediately afterwards.

Dated: November 27, 2002.

Steve Williams,

Director.

[FR Doc. 03–565 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Guidance on Streamlining Section 7 Consultation on Hazardous Fuels Treatment Projects

AGENCIES: Fish and Wildlife Service (USFWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (Services) announce the availability of guidance on alternative approaches for streamlining section 7 consultation on hazardous fuels treatment projects. This guidance presents options for land management agencies and the Services for streamlining consultation conducted under section 7 of the Endangered Species Act of 1973, as amended (ESA). The guidance encourages early coordination and cooperation at the project planning stage, "batching" of similar projects, and use of design criteria or screens to streamline the consultation process while minimizing the potential for adverse effects to listed species and their habitats at both the landscape and site-specific levels. All procedures identified in this document are consistent with the requirements of section 7(a)(2) of the ESA and its implementing regulations (50 CFR part 402).

ADDRESSES: Electronic copies of this guidance may be obtained from the USFWS World Wide Web consultation home page at *http://endangered.fws.gov/consultations/streamlining.pdf*. Written copies of this guidance may be obtained from the Chief of the Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants, United States Fish and Wildlife Service, 4401

North Fairfax Drive, Room 420, Arlington, Virginia 22203, or the Chief of the Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Rick Sayers, Chief, Branch of Consultation and Habitat Conservation Planning (Telephone 703/358–2106, Facsimile 703/358–1735).

SUPPLEMENTARY INFORMATION:

Background

In response to recent damaging wildland fires, the Departments of the Interior and Agriculture have developed the National Fire Plan, which, among other things, calls for a substantial increase in the number of forested acres treated annually to reduce hazardous fuels. With this effort comes an increased workload related to compliance with various environmental laws and regulations such as the Endangered Species Act of 1973, as amended (ESA).

Under section 7(a)(2) of the ESA, each Federal agency must, in consultation with the Services, ensure that any action it funds, authorizes, or carries out will not jeopardize the continued existence of listed species or adversely modify designated critical habitat. Thus land management agencies must complete section 7 consultation in accordance with procedures identified at 50 CFR part 402 for each fuels treatment project they propose prior to implementation. It is essential that these consultations be carried out as quickly and efficiently as possible to promote the timely implementation of preventative actions that will help to ensure public safety.

This is one of the goals of the President's recently announced Healthy Forest Initiative, which will implement core components of the National Fire Plan. As part of this initiative the Services have developed the subject guidance document to assist in streamlining the section 7 consultation process for hazardous fuels treatment projects. This guidance is founded on the principle that by engaging in early planning and coordination the Services and action agencies can identify and address potential conflicts between fuels treatment projects and listed species conservation during the project design phase while there is the maximum flexibility to modify projects. Incorporating listed species' needs into the project design process, typically in the form of the development of design criteria, is one of the most effective methods of streamlining the section 7 consultation process.

The guidance provides options for both fire management agencies and the Services and is designed to contain sufficient flexibility to meet the individual needs of varied circumstances across the landscape. While the guidance presents no new or additional requirements, it takes several streamlining techniques that have been successfully used in different areas of the country and under different circumstances, such as the development of design criteria or "screens," the batching of similar projects, and the use of programmatic consultations, and offers ways they can be used individually or in combination to effectively streamline the section 7 consultation process. All procedures identified in the guidance document are consistent with the requirements of section 7(a)(2) of the Act and its implementing regulations (50 CFR part 402).

Finally, despite the best of intentions, at times the section 7 consultation process has been unduly slowed by disputes among consulting agencies. In an effort to reduce the potential for such delays, the guidance provides a dispute resolution process. This process involves elevation procedures designed to provide timely resolution to such disputes.

The Services are publishing this notice in order to advise other agencies and the public of the existence of the subject guidance and encourage its use.

Authority: The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 8, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: October 11, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–577 Filed 1–10–03; 8:45 am]

BILLING CODE 3510–22 and 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Guidance on Evaluating the Net Benefit of Hazardous Fuels Treatment Projects

AGENCIES: Fish and Wildlife Service (USFWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (Services) announce the availability of guidance on evaluating the net benefit of projects that reduce hazardous fuels. The guidance recommends that managers evaluate the net benefits of such projects during the consultation process conducted under section 7 of the Endangered Species Act of 1973, as amended (Act). While reducing hazardous fuels may have short- or long-term adverse effects on some species, the long-term net benefit can be substantial and sustaining to the species. This guidance will help ensure consistency in the approach the Services use to analyze the risks and benefits of implementing projects to reduce hazardous fuels.

ADDRESSES: Electronic copies of this guidance may be obtained from the USFWS World Wide Web Consultation Home Page at: *http://endangered.fws.gov/consultations/forestplan.html*. Written copies of this guidance may be obtained from the Chief of the Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203, or the Chief of the Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Rick Sayers, Chief, Branch of Consultation and Habitat Conservation Planning (Telephone 703/358–2106, Facsimile 703/358–1735).

SUPPLEMENTARY INFORMATION:

Background

In response to recent damaging wildland fires, the Departments of the

Interior and Agriculture have developed the National Fire Plan, which, among other things, calls for a substantial increase in the number of forested acres treated annually to reduce hazardous fuels. As part of this effort, agencies must consult with the Services, in accordance with section 7 of the Act and comply with other applicable requirements of various environmental laws and regulations.

Under section 7(a)(2) of the Act, each Federal agency must, in consultation with the Services, ensure that any action it funds, authorizes, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or adversely modify designated critical habitat. Therefore, Federal land management agencies must complete section 7 consultation in accordance with procedures identified at 50 CFR part 402 before implementing any project to reduce hazardous fuels. It is essential that these consultations be carried out as quickly and efficiently as possible to promote the timely implementation of preventative actions that will help to ensure public safety.

Preventative actions that will help ensure public safety are among the goals of the President's recently announced Healthy Forest Initiative, which will implement core components of the National Fire Plan. As part of the Healthy Forest Initiative, the Services have developed a guidance document to ensure consistency in the approach the Services use to analyze the risks and benefits of implementing actions to reduce hazardous fuels during the section 7 consultation process.

Some projects may have short-term adverse effects on some endangered and threatened listed species; however, at the same time, these projects present opportunities for significant long-term benefits to those species and their habitats. The guidance document encourages the Services to evaluate and balance the long-term benefits of fuels reduction projects, including the benefits of restoring the natural fire regimes and native vegetation, as well as the long-term risks of catastrophic wildfire, against any short- or long-term adverse effects.

All procedures identified in the guidance document are consistent with the requirements of section 7(a)(2) of the Act and its implementing regulations (50 CFR part 402).

The Services are publishing this notice in order to advise other agencies and the public of the availability of the guidance document and to encourage its use.

Authority: The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 20, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: December 27, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–578 Filed 1–10–03; 8:45 am]

BILLING CODE 3510–22–P; 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–033–1232–EA, SRP–070–03–01 and SRP–070–03–02]

Notice of Temporary Closure of Selected Public Lands in La Paz County, Arizona, During the Operation of the 2003 Parker 250 and Parker 425 Desert Races

AGENCY: Bureau of Land Management.

ACTION: Temporary Closure of Selected Public Lands in La Paz County, Arizona, during the operation of the 2003 Parker 250 and Parker 425 Desert Races.

SUMMARY: The Bureau of Land Management (BLM) Lake Havasu Field Office announces the temporary closure of selected public lands under its administration in La Paz County, Arizona. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the officially permitted running of the 2003 Parker 250 and Parker 425 Desert Races. This closure is effective during the Parker 250 Race from 6 p.m. MST on January 3, 2003 and ending at 8 p.m. MST on January 5, 2003; in addition, the closure is effective for the Parker 425 Race, beginning at 10 a.m. (MST) February 6, 2003 and ending at midnight (MST) on February 8, 2003.

All public lands, including county maintained roads and highways located on public lands, that are located within two miles of the designated racecourse are subject to this temporary closure. Official maps maintained by the BLM's Lake Havasu Field Office define the designated racecourse.

The following acts are prohibited during the temporary closure:

1. Driving or being present on designated racecourse. This restriction does not apply to race participants, race officials and emergency vehicles.

2. Vehicle parking or stopping in areas affected by the closure, except where such is specifically allowed (designated spectator areas).

3. Camping in any area, except in the designated spectator areas.

4. Discharge of firearms.

5. Possession or use of any fireworks.

6. Cutting or collecting firewood of any kind, including dead and down wood or other vegetative material.

7. Operating any vehicle (except for registered race vehicles), including off-highway vehicles, which is not registered and equipped for street and highway operation.

8. Operating any vehicle in the area of the closure at a speed of more than 35 mph. This does not apply to registered race vehicles during the race, while on the designated racecourse.

9. Parking any vehicle in violation of posted restrictions.

10. Parking any vehicle in a manner that obstructs or impedes normal traffic movement.

11. Driving any vehicle around or past any "road closed" sign or traffic control barrier.

12. Failing to obey any person authorized to direct traffic, including law enforcement officers and designated race officials.

13. Failing to observe Spectator Area quiet hours of 10 PM to 6 AM.

14. Failing to keep campsite or race viewing site free of trash and litter.

15. Allowing any pet or other animal to be unrestrained by a leash of not more than 6 feet in length.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona, or La Paz County. Authority for closure of public lands is found in 43 CFR 8340, subpart 8341; 43 CFR 8360, subpart 8364.1; and 43 CFR 2930. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $100,000 and/or imprisoned for not more than 12 months (18 U.S.C. 3571(b)(5).

FOR FURTHER INFORMATION CONTACT: Bryan Pittman, District Law Enforcement Ranger, BLM Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (928) 505–1200.

SUPPLEMENTARY INFORMATION: The racecourse is as described in general terms as follows: Beginning at the eastern boundary of the Colorado River Indian Tribe Reservation in Osborne Wash, it runs east along Shea Road, then east along the Parker-Swansea Road to the Central Arizona Project Canal, then north along the CAP Canal, to and along the maintained county road that runs from the east end of Shea Road to Mineral Wash, then southeast along the maintained county road that runs to

Midway, then east along the Transmission Pass Road through State Trust lands located in Butler Valley. The route re-enters public lands for a short distance west of Alamo Lake Road, then re-enters State Trust Lands in Butler Valley, then onto public lands again on the Butler Valley Road northwest of Graham Well and proceeds west to the "Bouse Y", which is located north of Bouse, Arizona. The route then proceeds north along the Bouse-Midway Road to Midway. From Midway, it proceeds west along the north boundary of the East Cactus Plain Wilderness Area to the Parker-Swansea Road. It then proceeds west on the Parker-Swansea Road to the CAP Canal, along the north boundary of the Cactus Plain Wilderness Study Area to Osborne, Wash. From there it proceeds west along the Osborne, Wash to the CRIT Reservation boundary.

Dated: October 25, 2002.

Donald Ellsworth,

Field Manager, Lake Havasu Field Office.

[FR Doc. 03–590 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–090–1220–AA]

Notice of Seasonal Closure of Public Lands to Motorized Vehicle Use

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of seasonal closure of certain public lands located in Lincoln County, Wyoming, to all types of motor vehicle use.

SUMMARY: The Record of Decision (ROD) and approved Kemmerer Resource Management Plan (RMP) ROD, dated April 29, 1986, states that big game winter ranges may be closed to minimize stress to wintering animals.

After consulting with the Wyoming Game and Fish Department, all Bureau of Land Management (BLM)-administered public land surface, including existing roads and two-tracks, are closed in the Raymond Mountain Wilderness Study Area (WSA), Slate Creek, Rock Creek, and Bridger Creek winter ranges to all types of motorized vehicle travel (*e.g.*, snowmobiles, all-terrain vehicles, pickups, motorcycles, sport utility vehicles, *etc.*) from January 1, 2003, until April 30, 2003. Use of these areas by nonmotorized means is still allowed. This action is necessary for the protection of crucial winter range habitat for elk, moose, antelope, and mule deer. No motorized vehicle travel into these areas will be allowed unless specifically authorized (in writing) by the authorized officer (BLM Kemmerer Field Manager), except for highways or county roads. Personnel of the Wyoming Game and Fish Department, Department of Agriculture, APHIS, Wildlife Services, Lincoln and Uinta County Sheriff's Offices, and the BLM are exempt from this closure when performing official duties. Operators of existing oil and gas facilities may perform maintenance and pumping, as approved, and livestock operators may perform permitted activities. After April 30, motorized vehicle access is limited to existing roads and two-tracks, as described in the Kemmerer RMP ROD dated April 29, 1986.

SUPPLEMENTARY INFORMATION: The BLM Kemmerer Field Office is responsible for management of crucial winter range habitat located on public lands within Lincoln County. These crucial wildlife winter range habitat areas and the management thereof, are addressed in the Kemmerer RMP. The RMP states that seasonal closures for motorized vehicles may be used to protect big game winter range. Closures will vary depending on conditions and are implemented in coordination with the Wyoming Game and Fish Department (Kemmerer RMP, page 25 and 27). The Raymond Mountain WSA, Slate Creek, Rock Creek, and Bridger Creek areas are crucial wintering ranges for elk, moose, antelope, and mule deer. This seasonal closure is necessary to protect wintering deer, moose, and elk, which are suffering from the effects of a 3-year drought. Low forage production associated with the drought has caused animals to go into winter in very poor condition. Additionally, forage production on winter ranges is also reduced. These impacts to wintering wildlife are currently compounded by significant human activity, such as day and night wildlife observation, photo/videography, snowmobiling, and antler gathering. The use of motorized vehicles during difficult winter periods can increase the number of animals that will die on the winter range and can decrease production of young during the following summer. Therefore, a seasonal closure is necessary to relieve impacts from the use of motorized vehicles on wintering big game animals.

The following BLM-administered lands are included in this closure: The Raymond Mountain WSA is located approximately 15 miles north of Cokeville and contains 32,956 acres. The Slate Creek area includes all BLM-administered lands south of Fontenelle Creek, west and north of Route 189, and east of the crest of Slate Creek Ridge, and contains 111,100 acres. The Rock Creek area includes all BLM-administered lands south of County Road 204 (Pine Creek Road), west of the crest of Dempsey Ridge, west of Fossil Butte National Monument, north and east of Highway 30, and contains 105,750 acres. The Bridger Creek area includes all BLM-administered lands south of Highway 30, west of Fossil Ridge, west of Bear River Divide, north of the Uinta—Lincoln County line, east of the Utah—Wyoming border, and southeast of Highway 89, and contains 98,400 acres.

Maps of these seasonal closure areas will be posted with this notice at key locations that provide access into the closure areas, as well as at the Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming 83101–9710.

Authority for closure orders is provided in regulation 43 CFR, subparts 8341.2 and 8364.1. Violations of this closure are punishable by a fine not to exceed $1000.00, and/or imprisonment not to exceed 12 months.

DATES: This seasonal closure will be effective from January 1, 2003, until April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Wally Mierzejewski, Outdoor Recreation Planner, or Jim Wright, Wildlife Biologist, Bureau of Land Management, 312 Highway 189 North, Kemmerer, Wyoming 83101, or contact by telephone at 307–828–4500.

Dated: October 10, 2002.

Alan L. Kesterke,

Acting State Director.

[FR Doc. 03–592 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–054–1220–AA; GP–03–0019]

Notice of Closure; Notice of Permanent Motor Vehicle Restriction on Public Lands; Deschutes/Crook County, OR

AGENCY: Bureau of Land Management, Prineville District, Deschutes Resource Area/Field Office.

ACTION: Notice is hereby given that off-highway vehicle (OHV) travel within the Millican Valley OHV Trail System is restricted to designated routes only. The Millican Valley OHV Trail System is located approximately 20 miles East of Bend, Oregon in Crook and Deschutes Counties. Specifically, this closure order

applies to all public lands within the following perimeter description:

Perimeter Description: Beginning at the intersection of State Highway 20 and BLM road #6521, then southeast on Highway 20 to the Horse Ridge summit, then southwest to road #6515–A and northwest. The perimeter then goes south through private property until it reaches road # 6515–AA and south to the junction with road #6515–C, then along road #6515–C south to County Road 2015, then east to County Road 2016. The perimeter then follows the BLM/Forest Service property boundary east, south and east again crossing Forest Service roads 23 and 25 perpendicularly. The perimeter turns north between ranges 14 and 15 east, turning east on the north edge of section 19 of T20S R15E. It follows the BLM/private property boundary north running into the old Bend to Burns road. The perimeter then follows the old road east, continuing into the airstrip and finally Highway 20. At section 32 of T19S R 16E the perimeter follows the BLM/private property boundary north. The perimeter continues along the property boundaries in a generally northeasterly direction until it runs into and follows road #6522 northwest. It then turns north on the section line between 14 and 15 and 10 and 11 and turns west following the northern section lines of 10, 9, 8 and 7 of T19S R16E and section 12 of T19S R15E. The perimeter then turns north again following the section line between 1 and 2 of T19S R 15 E. At this point it follows the contour of West Butte until it runs into the southwest corner of the private property in section 18 of T18S R16E. The perimeter then goes north along the west section line of 7 and 6 to the middle of 6 where it follows the BLM/private property line east and north to the north section line of section 6. It turns north and goes through private property in the east quarter of section 31 in T17S R16E. It again follows the private property boundary east and north through sections 30 and 29. In section 29 it follows an existing road east and north until it meets SW Reservoir Road. The perimeter crosses SW Reservoir Road and follows road # 6555–B in a northwesterly direction until it runs into private property. It follows the private property line west and north to the north quarter of section 35, T16S R15E. Here, it turns west and runs into the high voltage transmission line with steel supports. It follows the transmission line south to the southern section line of section 21, T17S R15E. The perimenter follows section 21 west and continues west on Alfalfa Market Road to the powerline supported by double wooden poles. The perimeter follows this powerline south to its intersection with the previously mentioned transmission line and again goes south following the steel tower transmission line to road #5620–B. The perimeter follows #5620–B until it intersects with #6521 and follows #6521 to the point of beginning.

SUMMARY: The BLM is required to restrict motorized use to designated trails within the Millican Valley OHV Trail System. In addition, there are seasonal restrictions on those portions of the trail system called North and South Millican. North Millican is considered that portion of the trail system between Highway 20 and Kitchen Hill and is closed to OHV's from December 1st through April 30th. South Millican is the area of the trail system south of Highway 20. It is closed to OHV's from December 1st through July 31st. These restrictions are necessary to comply with the federal consent judgment in *Central Oregon Forest Issues Committee, Oregon Natural Desert Association and Oregon Natural Resources Council* v. *James G. Kenna, Deschutes Area Manager, Prineville District, Bureau of Land Management,* Civil Action No. 98–29–ST (D. OR.) that was lodged with the United States District Court for the District of Oregon on November 23, 1999.

This 1999 federal consent judgment resulted from the settlement of a lawsuit between the Oregon Forest Issues Committee and other environmental organizations who took BLM to federal court in 1998, regarding its environmental assessment/management plan for the Millican Valley OHV Trail System. In December 1999, the federal court requested BLM obtain public comments regarding the proposed federal court consent judgment.

Public comments were considered and reviewed by the federal court judge before the consent judgment was finalized. The Millican Valley OHV Trail System interim map was produced as a result.

DATES: This closure will take effect on the date this notice is published in the **Federal Register**. The closure will remain in effect until the BLM modifies or rescinds this order.

ADDRESSES: Bureau of Land Management, Deschutes Resource Area, 3050 NE. 3rd Street, Prineville, OR 97754.

FOR FURTHER INFORMATION CONTACT: Contact Sarah Schartz, OHV Coordinator, 3050 NE. 3rd Street, Prineville, OR 97754. (541) 416–6865.

Discussion of Rules: The public lands affected by this proposed OHV restriction are all lands administered by the BLM within the Millican Valley OHV Trail System. Maps are available at entry points to the trail system as well as BLM and Forest Service offices in Central Oregon. In addition, maps are distributed to OHV dealerships around Central Oregon and they are available on the World Wide Web. Trails are numbered and signed on the ground, as are the seasonal closures.

For the purpose of this restriction "off-highway vehicle" is defined as any motorized vehicle capable of, or designed for, travel on or immediately over land, water or other natural terrain, excluding: (1) Any non-amphibious registered motorboat; (2) any military, fire, emergency or law enforcement vehicle while being used for emergency purposes; (3) any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved; (4) vehicles in official use; and (5) any combat or combat support vehicle when used in times of national defense emergencies.

Prohibited Acts: Under 43 CFR 8360.0–7 The Bureau of Land Management will enforce the following rules within the Millican Valley OHV Trail System:

a. Operation of an OHV off designated routes is prohibited, and

b. Operation of an OHV within the North Millican portion of the Millican Valley OHV Trail System is prohibited from December 1st through April 30th, and

c. Operation of an OHV within the South Millican portion of the Millican Valley OHV Trail System is prohibited from December 1st through July 31st.

Exemptions: This closure does not apply to persons who are exempt from these rules (including: Federal, State, or local officer or employee in the scope of his or her duties, members of any organized rescue or fire-fighting force in performance of an official duty, and any person authorized in writing by the Bureau of Land Management).

Penalties: The authorities for this closure are section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360.0–7. Any person who violates this closure may be fined no more than $1000 or imprisoned for no more than 12 months, or both. Such violations may

also be subject to the higher fines provided for by 18 U.S.C. 3571.

Rachel A. Carver,

Acting, District Manager, Prineville District, Oregon, Bureau of Land Management.

[FR Doc. 03–600 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–01; NMNM 105874]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 105874 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 2002, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective March 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

Dated: November 22, 2002.

Lourdes B. Ortiz,

Land Law Examiner.

[FR Doc. 03–593 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1430–ET; NMNM 20]

Public Land Order No. 7550; Revocation of Public Land Order No. 4146; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order in its entirety as to 190.36 acres withdrawn to protect the Mexican Duck Habitat Development Project. The withdrawal is no longer needed. The lands will be opened to surface entry and mining.

EFFECTIVE DATE: February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502, 505–438–7597.

SUPPLEMENTARY INFORMATION: The Mexican Duck has been removed from the threatened and endangered species lists for both the State of New Mexico and the Federal Government. Therefore, the withdrawal is no longer needed.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 4146, which withdrew 190.36 acres to protect the Mexican Duck Habitat Development Project, is hereby revoked in its entirety as it affects the following described lands:

New Mexico Principal Meridian

T. 25 S., R. 21 W.,
Sec. 31, lots 3 and 4.
T. 26 S., R. 22 W.,
Sec. 1, lots 8 and 9, SW¼NE¼, NW¼SE¼.

The area described contains 190.36 acres, in Hidalgo County.

2. At 10 a.m. on February 12, 2003, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 12, 2003, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on February 12, 2003, the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands included in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: December 23, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–598 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau Of Land Management

[NV–930–1430–FM; N–74701]

Esmeralda County, Nevada; Notice of Realty Action: Termination of Segregation; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice of termination of segregation.

SUMMARY: This notice terminates the segregative effect on land known as the Chiatovich Land Exchange and opens the land to operation under the public land laws and the mining laws.

EFFECTIVE DATE: February 12, 2003.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, William S. Fisher, Assistant Field Manager, Tonopah Field Station, Post Office Box 911, Tonopah, NV 89049–0911.

FOR FURTHER INFORMATION CONTACT: Wendy Barlow, Realty Specialist, at the above address or telephone (775) 482–7806.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by appendix 1 of Bureau of Land Management Manual 1203 dated November 25, 1998, that portion identified below as being part of the Chiatovich Exchange is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

Silver Peak

T. 2 S., R. 39 E.,
Sec. 15, S½SE¼;
Sec. 21, S½NE¼, SE¼;
Sec. 22, E½SE¼NE¼SW¼, N½NW¼NW¼SW¼, S½N½SW¼NW¼SW¼, S½SW¼NW¼SW¼, SE¼NW¼SW¼, N½SW¼SW¼, W½SW¼SW¼SW¼, (portion of) NE¼SW¼SW¼SW¼, (portion of) SE¼SW¼SW¼SW¼, E½E½SE¼SW¼, SE¼SW¼SW¼.

Containing 440.0 acres, more or less in Esmeralda County.

Goldfield

T. 2 S., R. 42 E.,
Sec. 35, E½NW¼, NE¼SW¼.

Containing 20.0 acres more or less in Esmeralda County.

Notation to the public land records effective on October 22, 2001, segregated the proposed exchange lands from all other forms of appropriation under the public land laws, including location under the United States mining laws and the mineral leasing laws. The exchange proposal has been withdrawn, therefore, is no longer needed. At 9 a.m. on February 12, 2003, the lands described above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 13, 2002.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. 03–595 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–76308]

Esmeralda County, Nevada; Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Nevada

AGENCY: Bureau of Land Management.

ACTION: Recreation and Public Purposes (R&PP) Act Classification.

SUMMARY: The following public lands in Dyer, Esmeralda County, Nevada, have been examined and found suitable for classification for lease or conveyance to the Esmeralda County Parks and Recreation Department under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*), and under sec. 7 of the Taylor Grazing Act, 43 U.S.C. 315 f, and E.O. 6910. The Esmeralda County Parks and Recreation Department proposes to use the land for community expansion development of the fairground and rodeo complex, recreational complex, and the lands for a public trails park.

Mount Diablo Meridian, Nevada

T. 3 S., R. 35 E.,
Sec. 9, NW¼NE¼, NW¼, SE¼SW¼, W½SW¼.

Containing 310 acres more or less.

This action is a motion by the Bureau of Land Management to make available lands identified and designated as disposal lands under the Tonopah Resource Management Plan, dated October 6, 1997, and are not needed for Federal purposes. Lease or conveyance of the lands for recreational or public purpose use is consistent with current BLM land use planning and would be in the public interest.

The lease or conveyance of the lands will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391 (43 U.S.C. 945).

2. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

5. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (43 U.S.C. 1761) for powerline purposes granted to Valley Electric Association, its successor or assignees, by right-of-way No. N–55278.

6. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (43 U.S.C. 1761) for powerline purposes granted to Valley Electric Association, its successor or assignees, by right-of-way No. N–051579.

7. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (43 U.S.C. 1761) for telephone and telegraph purposes granted to Nevada Bell, its successor or assignees, by right-of-way No. N–035353. Expires June 29, 2032.

8. A right-of-way authorized for a Federal Aid Highway (sec 107) under the Act of August 27, 1958, as amended, 72 Stat. 892 (23 U.S.C. 107(D)), by right-of-way No. NVCC–0 020855 issued to the Nevada Department of Transportation.

9. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Assistant Field Manager, Tonopah Field Office, Post Office Box 911, Tonopah, Nevada 89049–0911.

Classification Comments: Interested persons may submit comments involving the suitability of the land for community expansion of the development of the fairground and rodeo complex, recreational complex, and the lands for a public trails park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: November 12, 2002.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. 03–596 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; NV–55282]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Lease and Conveyance of Public Lands in Esmeralda County, Dyer, NV

AGENCY: Bureau of Land Management.

ACTION: Classification of public land for recreation and public purposes lease and conveyance.

SUMMARY: The following described public land in Esmeralda County, Nevada has been examined and found suitable for lease or conveyance to Esmeralda County under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The lands are hereby classified for use as a community center, parking lot, and related facilities, in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910, as suitable.

Mount Diablo Meridian

T. 3 S., R. 35 E.,
Sec. 9, E½SE¼SE¼SE¼NW¼,
E½NE¼SE¼SE¼NW¼,
E½SE¼NE¼SE¼NW¼,
E½NE¼NE¼SE¼NW¼,
SE¼SE¼SE¼NE¼NW¼,
S½SW¼SW¼NW¼NE¼,
S½SE¼SW¼NW¼NE¼,
S½SW¼SE¼NW¼NE¼.

Containing 9.375 acres more or less.

This action will make lands which are not needed for Federal purposes and are identified for disposal in the Tonopah Resource Management Plan, available to support community expansion. Lease or conveyance of the lands for recreational or public purpose use would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Tonopah, Nevada. Esmeralda County has applied for a patent to the land under the R&PP Act, as an addition to the Fish Lake Valley Community Center and Park.

Lease or conveyance (patent) of the lands will be subject to the following terms and conditions:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

5. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (43 U.S.C. 1761) for powerline purposed granted to Valley Electric Association, its successor or assignees, by right-of-way No. N–55278.

6. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (43 U.S.C. 1761) for powerline purposed granted to Valley Electric Association, its successor or assignees, by right-of-way No. N–051579.

7. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (43 U.S.C. 1761) for telephone and telegraph purposes granted to Nevada Bell, its successor or assignees, by right-of-way No. N–035353. Expires June 29, 2032.

8. A right-of-way authorized for a Federal Aid Highway (Sec 107) under the Act of August 27, 1958, as amended 72 Stat. 892 (23 U.S.C. 107(D)), by right-of-way No. NVCC–0 020855 issued to the Nevada Department of Transportation.

9. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Segregation

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act, leasing under the mineral leasing laws, and mineral material disposal laws.

Classification Comments

Interested parties may submit comments involving the suitability of the land for community expansion. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for community expansion.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands to the Assistant Field Station Manager, Tonopah Field Station, P.O. Box 911, Tonopah, NV 89049. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication of this notice in the **Federal Register**. The lands will not be offered for lease and conveyance until after classification becomes effective.

FOR FUTHER INFORMATION CONTACT: Realty Specialist, Wendy Barlow, Bureau of Land Management, Tonopah Field Station, Post Office Box 911, Tonopah, Nevada 89049–0911 or telephone (775) 482–7806.

Dated: November 13, 2002.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. 03–597 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–1610–DQ; GP–02–0233]

Notice of Availability for the Lakeview Proposed Resource Management Plan and Final Environmental Impact Statement

AGENCY: Lakeview District (Oregon), Bureau of Land Management.

ACTION: Notice of availability for the Lakeview Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS).

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA), the Bureau of Land Management (BLM) intends to make the PRMP/FEIS available for public review and comment. This planning activity encompasses approximately 3.2 million acres of public land managed by the Lakeview Resource Area, Lakeview District, located in Lake and Harney Counties in southeastern Oregon. In addition, a small, contiguous portion of Modoc and Washoe Counties located in northeastern California and northwestern Nevada, falling within the administrative boundary of the Surprise Field Office in Cedarville, California, but managed by the Lakeview Resource Area is also included for analysis purposes. The BLM has and will continue to work closely with all interested parties to identify management decisions that are best suited to the needs of the public. Final decisions will supercede the High Desert, Warner Lakes, and Lost River Management Framework Plans and provide direction for management of these public lands for approximately 20 years.

DATES: The public has the opportunity to protest the Proposed Resource Management Plan. The BLM Planning Regulations, 43 CFR 1610.5–2, state that any person who participated in the planning process and has an interest which may be adversely affected may protest. A protest may raise only those issues which were submitted for the record during the planning process. Any protests must be filed within 30 days of the date the Environmental Protection Agency publishes its notice of availability of the Final Environmental Impact Statement. Specific dates of the protest period will be announced through the local news media, letters or postcards, and the BLM web site (see the internet address below). Written protests may be submitted during the protest period at the following address: Director (210), Bureau of Land Management, Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035. To be considered timely, your protest must be postmarked no later than the last day of the protest period. Though not a requirement, we suggest that you send your protest by certified mail, return receipt requested. In addition you can use the overnight address (FedEX or USPS) as an option for next day delivery: Director (210), Bureau of Land Management, Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036. You are also encouraged, but not required, to forward a copy of your protest to the Lakeview District Manager at the address listed below. This may allow us to resolve the protest through clarification of intent or alternative dispute resolution methods. To be considered complete, your protest must contain (at a minimum) the following information:

(1) Name, mailing address, telephone number and the affected interest of the person filing the protest(s).

(2) A statement of the issue or issues being protested.

(3) A statement of the part or parts of the proposed plan being protested. To the extent possible, reference specific pages, paragraphs, and sections of the document.

(4) A copy of all your documents addressing the issue or issues which were discussed with the BLM for the record.

(5) A concise statement explaining why the proposed decision is believed to be incorrect. This is a critical part of your protest. Document all relevant facts, as much as possible. A protest that merely expresses disagreement with the State Director's proposed decision without providing any supporting data will not be considered a valid protest.

FOR FURTHER INFORMATION: Contact Paul Whitman, Bureau of Land Management, 1301 South G Street, Lakeview, Oregon 97630. Telephone (541–947–2177), Fax (541–947–6399), e-mail (*pwhitman@or.blm.gov*). Documents pertinent to this proposal may be examined at the Lakeview Resource Area office in Lakeview, Oregon during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays). Interested persons may also review the PRMP/FEIS on the Internet at *www.or.blm.gov/Lakeview/Planning*. A hard copy or a CD–ROM of the document may be requested at the address and phone number above.

SUPPLEMENTARY INFORMATION: This land use plan focuses on the principles of multiple use management and sustained yield as prescribed by section 202 of the FLPMA. The Proposed RMP/FEIS considers and analyzes five alternatives. These alternatives have been developed based on extensive public input following scoping (July 1999), review of the summary of the Analysis of the Management Situation (July 2000), review and comment on the Draft RMP/EIS (October 2001–January 2002), and numerous meetings with local governments, tribes and the Southeast Oregon Resource Advisory Council. The alternatives provide for a wide array of alternative land use allocations and management direction. The alternatives provide for variable levels of commodity production, resource protection, and authorized land and resource uses, including utility corridors, energy and non-energy mineral leasing, livestock grazing and various forms of recreation. Alternative D (as modified by public comment on the Draft RMP/EIS) provides a balance of resource uses and protection and is identified as the agency's Proposed Plan. An Approved RMP/Record of Decision is expected to be available for public review in late 2002 after resolution of any protests.

Dated: May 15, 2002.

Scott R. Florence,

Field Manager, Lakeview Resource Area.

[FR Doc. 03–611 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Land Management. The lands we surveyed are:

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, Mineral Survey No. 907B, and the 1891 meanders of the Salmon River in section 19, and the subdivision of section 19, the survey of the 2000–2002 meanders of the Salmon River in section 19, the survey of 2000–2002 meanders of certain islands in the Salmon River in section 19, the survey of the 2000–2002 fixed and limiting boundary on an island in the Salmon River in section 19, and the survey of the 2000–2002 partition line between lots 5 and 15 in section 19, in T. 23 N., R. 22 E., Boise Meridian, Idaho, was accepted October 31, 2002.

The plat representing the dependent resurvey of a portion of the south boundary, the subdivisional lines, and the 1891 meanders of the right bank of the Salmon River in section 35, and the survey of the 2001 meanders of the right bank of the Salmon River and partition lines in section 35, in T. 20 N., R. 21 E., Boise Meridian, Idaho was accepted November 6, 2002.

The plat representing the corrective dependent resurvey of portions of the east boundary, subdivisional lines, original 1897 meanders of the left and right banks of the Snake River in section 25, and of the subdivision of section 25, and the dependent resurvey of a portion of the subdivisional lines and original 1897 meanders of the left bank of the Snake River in section 24, and the further subdivision of section 25 and the survey of the 2001–2002 meanders of Rock Island, designated as lot 9 in section 25, in T. 10 S., R. 21 E., Boise Meridian, Idaho, was accepted November 7, 2002.

The plat constitutes the entire survey record of the dependent resurvey of portions of the west boundary and subdivisional lines, and the metes-and-bounds survey in section 19, in T. 3 N., R. 30 E., Boise Meridian, Idaho, was accepted November 7, 2002.

The plat of the dependent resurvey of portions of the west boundary, subdivisional lines, certain mineral surveys in sections 17, 18, 19, 20, 21, 28, and 29, and mineral segregation survey of the Elvin lode claim in section 17, now designated as lot 8, section 17, and the subdivision of section 17, and the survey of a portion of the subdivisional lines, in T. 13 N., R. 27 E., Boise Meridian, Idaho, was accepted November 13, 2002.

This survey was executed at the request of the U.S.D.A. Forest Service for administrative management purposes. The land surveyed is:

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 14, 23, and 24, in T. 7 S., R. 34 E., Boise Meridian, Idaho, was accepted December 5, 2002.

Dated: January 7, 2003.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 03–570 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–02–9820–BJ–WY01]

Survey of Plat Filing; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plats of survey of the described lands, 30 calender days from the date of this publication, in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the U.S. Forest Service, and are necessary to determine the boundaries of the Medicine Bow National Forest. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 10 and 11, Township 18 North, Range 82 West, Sixth Principal Meridian, Wyoming, was accepted December 31, 2002.

Copies of the preceding described plats are available to the public.

Dated: January 6, 2003.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 03–640 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–02–1910–BJ–4467]

Notice of Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plats of survey of the following described lands, thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, PO Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Indian Affairs, and are necessary for the management of tribal lands. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the subdivisional lines and subdivision of section lines, and the subdivision of section 19, Township 1 North, Range 4 East, Wind River Meridian, Wyoming, was accepted December 31, 2002.

Copies of the preceding described plats are available to the public.

Dated: January 6, 2003.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 03–641 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 31044–01]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service, proposes to withdraw approximately 7,840 acres of National Forest System land to protect the Diamond Rim Quartz Crystal Interpretive Area. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may by law be made of National Forest System land. This application replaces withdrawal application AZA 31044, which has been canceled.

DATES: Comments should be received on or before April 14, 2003.

ADDRESSES: Comments should be sent to the Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona 85006.

FOR FURTHER INFORMATION CONTACT: Karyn Harbour, Tonto National Forest, 602–225–5200, or Rod Byers, Payson Ranger District, 520–474–7900.

SUPPLEMENTARY INFORMATION: On April 22, 2002, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Tonto National Forest

Gila and Salt River Meridian

T. 11 N., R. 11 E.,
- Sec. 1;
- Sec. 2;
- Sec. 3;
- Sec. 4, E½;
- Sec. 10;
- Sec. 11;
- Sec. 12;
- Sec. 13;
- Sec. 14;
- Sec. 15, NE¼;
- Sec. 23, N½;
- Sec. 24, N½.

T. 11½ N., R. 11 E.,
- Sec. 33, E½;
- Sec. 34;
- Sec. 35, W½ and SE¼;
- Sec. 36, SW¼.

The area described contains approximately 7,840 acres in Gila County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Forest Supervisor of the Tonto National Forest.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Application AZA 31044, published in the 64 FR 49023, September 9, 1999, has been canceled.

Steven J. Gobat,

Acting Deputy State Director, Resources Division.

[FR Doc. 03–589 Filed 1–10–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 31894]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service proposes to withdraw 1,907.87 acres of National Forest System land to protect the geologic and scenic values of the Red Mountain Geologic Area. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may by law be made of National Forest System land.

DATES: Comments should be received on or before April 14, 2003.

ADDRESSES: Comments should be sent to the Forest Supervisor, Coconino National Forest, 2323 E. Greenlaw Lane, Flagstaff, Arizona 86004.

FOR FURTHER INFORMATION CONTACT: Pete Mourtsen, Coconino National Forest, 928–527–3414.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Coconino National Forest

Gila and Salt River Meridian

T. 25 N., R. 5 E.,
Sec. 20, S½N½, and S½;
Sec. 21, lots 3 to 8, inclusive, and W½SE¼;
Sec. 28, W½E½, and W½;
Sec. 29.

The area described contains 1,907.87 acres in Coconino County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Coconino National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Coconino National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Daniel H. Nowell,

Acting Deputy State Director, Resources Division.

[FR Doc. 03–591 Filed 1–10–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; HAG–0299; OROR–16756]

Proposed Withdrawal Extension and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to extend Public Land Order No. 6476 for another 20 year period. This order withdrew National Forest System land from location and entry under the mining laws to protect and preserve the best stand of redwoods at the northern limits of the species range for research and educational values, and to protect the sensitive fauna and endangered species within the Wheeler Creek Research Natural Area. The land has been and will remain open to mineral leasing. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by April 14, 2003.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Siskiyou National Forest, 333W. 8th Street, P.O. Box 520, Medford, Oregon 97501–0209, or the Bureau of Land Management, Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Roger Mendenhall, Realty Specialist, Siskiyou National Forest, 541–471–6521, or Charles R. Roy, BLM Oregon/Washington State Office, 503–808–6189.

SUPPLEMENTARY INFORMATION: On July 1, 2002, U.S. Department of Agriculture, Forest Service, requested that Public Land Order No. 6476 be extended for an additional 20 year period. This withdrawal was made to protect and preserve the best stand of redwoods at the northern limits of the species range for research and educational values, and to protect the sensitive fauna and endangered species within the Wheeler Creek Research Natural Area in Curry County, Oregon. Public Land Order No. 6476 will expire on October 4, 2003.

The withdrawal comprises approximately 334 acres of National Forest System land. It is located in T. 40 S., R. 12 W., Willamette Meridian, as described in Public Land Order No. 6476. A complete description of the land can be provided by the Oregon State Office at the address shown above.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension, or request for a public meeting may present their views in writing to the Oregon State Director of the Bureau of Land Management, or Forest Supervisor.

If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days prior to the scheduled date of the meeting.

The withdrawal application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Robert D. DeViney Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 03–599 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Temporary Contract for Belle Haven Marina, Inc.

AGENCY: National Park Service (NPS).

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.24, public notice is hereby given that the Director intends to award a temporary concession contract to Belle Haven Marina, Inc. to avoid the interruption of visitor services.

EFFECTIVE DATE: January 1, 2003.

SUPPLEMENTARY INFORMATION: The contract between George Washington Memorial Parkway (GWMP) and Belle Haven Marina, Inc. expires December 31, 2002. The NPS has determined that a temporary contract is necessary in order to avoid interruption of visitor services and that all reasonable alternatives to the award of a temporary contract have been considered and found infeasible. The term of the temporary contract will be for a period of two years. This temporary contract will provide the time for GWMP to obtain technical assistance on the marina market, the business opportunity, and scientific data collection on the environmental impacts of proposed alternatives. GWMP is planning to have the Environmental Assessment (EA) completed by Spring 2003. The EA will allow GWMP to make a determination of necessary and appropriate services with respect to the marina so a prospectus may be issued leading to the competitive selection of a concessioner for a new long-term concession contract.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lavelle, Concession Specialist, George Washington Memorial Parkway at (703) 289–2536.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 03–588 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF INTERIOR

National Park Service

Extension for Expiring Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2002. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
CC–CHOH001–89	Fletcher's Boat House, Inc	C&O Canal N.H.P.
LP–CHOH002–88	Swain's Lock	C&O Canal N.H.P.
CC–ROCR003–89	Golf Course Specialists, Inc	Rock Creek Park.
CC300080001	Buzzard Point Boatyard, Inc	National Capital Parks-East.
CP–NACC006–98	Thanh Van Vo and Hung Thi Nguyen	National Capital Parks-Central.
CC300080002	Prince William Travel Trailer Village, Inc	Prince William Forest Park.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 15, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–586 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 14, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by January 28, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places

ARIZONA

Maricopa County

Hunt Bass Hatchery Caretaker's House, Phoenix Zoo Grounds, 455 N. Galvin Pkwy., Phoenix, 02001723

Mesa Journal—Tribune FHA Demonstration Home, 238 W. 2nd St., Mesa, 02001721

Navajo County

Baird's Chevelon Steps, Address Restricted, Winslow, 02001724

CALIFORNIA

Orange County

Villa Park School, 10551 Center Dr., Villa Park, 02001725

CONNECTICUT

New Haven County

Westville Village Historic District, Roughly along Blake St. and Whalley Ave., New Haven, 02001727

Windham County

Forty-Seventh Camp of Rochambeau's Army, Address Restricted, Windham, 02001732

GUAM

Guam County

Guam Legislative Building Site, 163 Chalan Santo Papa Juan Pablo Dos, Hagatna, 02001722

IDAHO

Elmore County

Atlanta Ranger Station Historic District, Boise National Forest, Atlanta, 02001726

MASSACHUSETTS

Middlesex County

Brookside Historic District, 1–44 Brookside, 5 Moore Rd., 1–7 Coolidge Ave., Westford, 02001729

McLean Hospital National Register District, 115 Mill St., Belmont, 02001733

NORTH CAROLINA

Wake County

Heartsfield—Perry Farm, NC 2224, 0.1 mi. SE of NC 2300, Rolesville, 02001728

OHIO

Seneca County

National Home, Daughters of America, 652 N. Sandusky St., Tiffin, 02001730

TEXAS

Harris County

Saturn V Launch Vehicle, Johnson Space Center, Houston, 02001731

UTAH

Box Elder County

Anderson, Martin, House, (Brigham City MPS) 105 N 300 W, Brigham City, 02001735

Fawson, Alfred and Marie, House, (Brigham City MPS) 66 S 100 W, Brigham City, 02001736

Forsgren, Peter and Anna Christena, House, 59 S 100 E, Brigham City, 02001737

Hoist, Christian and Annie, House, (Brigham City MPS) 495 S 200 E, Brigham City, 02001738

Kane County

Paryy Lodge, (Kanab, Utah MPS) 89 E. Center St., Kanab, 02001734

Salt Lake County

Salt Lake City East Side Historic District (Boundary Increase), Roughly bounded 400 South, University St., 900 South, and 700 East, Salt Lake City, 02001739

WISCONSIN

Kenosha County

Washington Park Clubhouse, 2205 Washington Rd., Kenosha, 02001740

Due to procedural error this nomination is being reprinted for comment:

NEW YORK

Tioga County

Halsey Valley Grand Army of Republic (GAR) Meeting Hall, Hamilton Valley Rd., Spencer vicinity, 02001646

[FR Doc. 03–587 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–484]

In the Matter of Certain Machine Vision Systems, Parts and Components Thereof and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 12, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cognex Corporation of Natick, Massachusetts. Letters supplementing the complaint were filed on December 20, 2002, December 23, 2002, and December 31, 2002. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States and the sale within the United States after importation of certain machine vision systems, parts and components thereof and products containing same by reason of infringement of claims 1 and 10 of U.S. Patent No. 6,301,396, claim 1 of U.S. Patent No. 5,960,125, claim 1 of U.S. Patent No. 5,978,521, or claim 1 of U.S. Patent No. 5,978,080. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, at the conclusion of the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.*

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 7, 2003, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain machine vision systems, parts or components thereof, or products containing same by reason of infringement of claims 1 or 10 of U.S. Patent No. 6,301,396, claim 1 of U.S. Patent No. 5,960,125, claim 1 of U.S. Patent No. 5,978,521, or claim 1 of U.S. Patent No. 5,978,080, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served: (a) The complainant is—Cognex Corporation, One Vision Drive, Natick, Massachusetts 01760.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nikon Corporation, Fuji Building, 2–3, Marunouchi 3-chome, Chiyoda-ku, Tokyo 100–831, Japan.

Nikon Precision, Inc., 1399 Shoreway Road, Belmont, CA 94002–4107.

Aval Data Corporation, 25–10, Asahi-Machi 1-chome, Machida City, Tokyo 194–0023, Japan.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Delbert R. Terrill, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the

complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Issued: January 8, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–638 Filed 1–10–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Caterpillar Inc.: Structural Health Integrated Electronic Life Determination ("Shield")

Notice is hereby given that, on November 19, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Caterpillar has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Caterpillar Inc., Mossville, IL; Motorola, Inc., Schaumburg, IL; and Native American Technologies Company, Golden, CO. The nature and objectives of the venture are to develop and demonstrate an on-board, electronic, real time structural health monitoring system for metals. The activities of this Joint Venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–627 Filed 1–10–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—FreedomCAR Hydrogen Storage and Vehicle Interface Technical Team

Notice is hereby given that, on December 3, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), FreedomCAR Hydrogen Storage and Vehicle Interface Technical Team has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are General Motors Corporation, Detroit, MI; DaimlerChrysler Corporation, Auburn Hills, MI; and Ford Motor Company, Dearborn, MI. The nature and objectives of the venture are to conduct joint research necessary to develop and demonstrate commercially viable technology for storage of hydrogen on board vehicles and the various interfaces between the hydrogen storage unit and other components of the vehicle. The research will support FreedomCAR, a joint effort of the Federal government and the U.S. auto industry to develop affordable, hydrogen-powered vehicles. To accomplish this objective, the parties, working in conjunction with government entities, universities and suppliers, will conduct workshops, experiments and other acts allowed by the National Cooperative Research and Production Act that would advance those goals.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–624 Filed 1–10–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Hop Breeding Company, LLC

Notice is hereby given that, on December 3, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Hop Breeding Company, LLC has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are John I. Haas, Inc., Washington, DC; and Yakima Chief Ranches, LLC, Sunnyside, WA. The nature and objectives of the venture are to develop pest-resistant and disease-resistant hop varieties with strong commercial qualities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–628 Filed 1–10–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on December 11, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Act Consultants, Ltd., Sheffield, United Kingdom has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project.

Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on September 16, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 6, 2002 (67 FR 67648).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–625 Filed 1–10–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on December 10, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kong Kok-King (individual member), Tokyo, Japan has been added as a party to this venture. Also, Murata Machinery, Ltd., Tokyo, Japan; Oki Data Corp., Gunma, Japan; and Seiko Espon Corp., Nagan, Japan have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on September 17, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 6, 2002 (67 FR 67650).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–626 Filed 1–10–03; 8:45 am]

BILLING CODE 4410–11–M

LEGAL SERVICES CORPORATION

Notice of Availability of 2003 Competitive Grant Funds for Service Area OH–19 in Ohio

AGENCY: Legal Services Corporation.

ACTION: Solicitation of Proposals for the Provision of Civil Legal Services for Basic Field-General service area OH–19 in Ohio.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal services to the poor. Congress has adopted legislation requiring LSC to utilize a system of competitive bidding for the award of grants and contracts.

LSC hereby announces that it is reopening the 2003 grants competition for service area OH–19 in Ohio and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to the eligible client population. The exact amount of congressionally appropriated funds and the date and terms of their availability for calendar year 2003 are not known, although it is anticipated that the funding amount will be similar to calendar year 2002 funding.

DATES: Request for Proposals (RFP) are available from *http://www.ain.lsc.gov.* A Notice of Intent to Compete is due by 5:00 p.m. ET, February 14, 2003. Grant proposals must be received at LSC by 5:00 p.m. ET, March 14, 2003.

ADDRESSES: Legal Services Corporation—Competitive Grants; 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Mounia Bensalah, Grants Coordinator, Office of Program Performance, (202) 336–8914.

SUPPLEMENTARY INFORMATION: LSC is seeking proposals from non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, and from private attorneys, groups of private attorneys or law firms, state or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The RFP, containing the grant application, guidelines, proposal content requirements, specific selection criteria, and the description of service area OH–19 is available at *http://www.ain.lsc.gov.*

Issue Dated: January 8, 2003.

Michael A. Genz,

Director, Office of Program Performance.

[FR Doc. 03–649 Filed 1–10–03; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (03—001)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Required Central Contractor Registration.

OMB Number: 2700–0097.

Type of review: Extension.

Need and Uses: The information obtained in this collection will be used to populate the vendor database in the NASA Integrated Financial Management (IFM) System.

Affected Public: Business or other for-profit; Federal Government; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 10,200.

Annual Responses: 1,200.
Hours Per Request: Approximately 15 minutes/request.
Annual Burden Hours: 3,130.
Frequency of Report: One time.

Patricia Dunnington,
Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 03–575 Filed 1–10–03; 8:45 am]
BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No(s). (as shown in Attachment 1); License No(s). (as shown in Attachment 1); EA–02–261]

In the Matter of all Operating Power Reactor Licensees; Order Modifying Licenses (Effective Immediately)

I

The licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing operation of nuclear power plants in accordance with the Atomic Energy Act of 1954 and title 10 of the Code of Federal Regulations (10 CFR), part 50. Commission regulations at 10 CFR 50.54(p)(1) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55, 73.56, and 73.57.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On February 25, 2002, the Commission issued Orders to the licensees of operating power reactors to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements which emerged from NRC's ongoing comprehensive security review.

As a result of its consideration of licensees' access authorization programs as part of the comprehensive security review, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent measures to improve access authorization at operating power reactors. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order,[1] on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security will continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety and interest require that this Order be immediately effective.

III

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50 and 73, it is hereby ordered, effective immediately, that all licenses identified in Attachment 1 to this Order are modified as follows:

A. All Licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the Licensee's security plan. The Licensees shall immediately begin implementation of the requirements in Attachment 2 to the Order and shall complete implementation no later than July 7, 2003, with the exception of compensatory measure B.1.1, which shall be implemented no later than April 7, 2003, and C.1.6 and C.1.8, which shall be completed no later than January 7, 2004.

B.1. All Licensees shall, within 20 days of the date of this Order, notify the Commission (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall also provide justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact safe operation of the facility must notify the Commission, within 20 days of the date of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. All Licensees shall, within 20 days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

2. All Licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding the provisions of 10 CFR 50.54(p), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 50.4. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

[1] Attachment 2 contains SAFEGUARDS information and will not be released to the public.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit a response to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The response may consent to this Order. Unless the response consents to this Order, the response shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any response or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that decontrolled answers (no Safeguards Information) and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[2]

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move that the presiding officer set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section III above shall be final 20 days from the date of this Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 7th day of January, 2003.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Attachment 1

Gregory Baker, Braidwood Station, Units 1 & 2, Exelon Generation Company, LLC, Docket Nos. STN 50–456 & STN 50–457, License Nos. NPF–72 & NPF–77, 35100 S. Rt. 53, Suite 84, Braceville, IL 60407

Mr. Jay K. Thayer, Site Vice President, Vermont Yankee Nuclear Power Station, Entergy Nuclear Vermont Yankee, LLC, Docket No. 50–271, License No. DPR–28, 185 Old Ferry Road, Brattleboro, VT 05302–0500

Mark Bezilla, Vice President, Beaver Valley Power Station, Units 1 & 2, FirstEnergy Nuclear Power Operating Company, Docket Nos. 50–334 & 50–412, License Nos. DPR–66 & NPF–73, P.O. Box 4, Route 168, Shippingport, PA 15077–0004

Ashok S. Bhatnagar, Site Vice President, Browns Ferry Nuclear Plant, Units 1, 2, & 3, Docket Nos. 50–259, 50–260, & 50–296, License Nos. DPR–33, DPR–52 & DPR–68, Tennessee Valley Authority, Intersection Limestone Country Roads 20 and 25, Athens, AL 35611

Denny Braund, Shearon Harris Nuclear Power Plant, Unit 1, Carolina Power & Light Company, Docket No. 50–400, License No. NPF–63, 5413 Shearon Harris Road, New Hill, NC 27562

Allen Brittain, Security Superintendent, Brunswick Steam Electric Plant, Units 1 & 2, Carolina Power & Light Company, Docket Nos. 50–325 & 50–324, License Nos. DPR–71 & DPR–62, Highway 27, 2.5 Miles North, Southport, NC 28461

Greg D. Brown, Grand Gulf Nuclear Station, Unit 1, Entergy Operations, Inc., Docket No. 50–416, License No. NPF–29, Bald Hill Road—Waterloo Road, Port Gibson, MS 39150

Michael Bruecks, Three Mile Island Nuclear Station, Unit 1, Amergen Energy Company, LLC, Docket No. 50–289, License No. DPR–50, Route 441 South, Middletown, PA 17057

Stephen A. Byrne, Senior Vice President-Nuclear Operations, Virgil C. Summer Nuclear Station, Unit 1, South Carolina Electric & Gas Company, Docket No. 50–395, License No. NPF–12, Hwy 215 N at Bradham Blvd., Jenkinsville, SC 29065

Mr. John T. Conway, Site Vice President, Nine Mile Point Nuclear Station, Units 1 & 2, Nine Mile Point Nuclear Station, LLC, Docket Nos. 50–220 & 50–410, License Nos. DPR–63 & NPF–69, 348 Lake Road, Oswego, NY 13126

David Combs, Byron Station, Units 1 & 2, Exelon Generation Company, LLC, Docket Nos. STN 50–454 & STN 50–455, License Nos. NPF–37 & NPF–66, 4450 N. German Church Road, Byron, IL 61010

Douglas Cooper, Site Vice President, Palisades Plant, Nuclear Management Company, LLC, Docket No. 50–255, License No. DPR–20, 27780 Blue Star, Memorial Highway, Covert, MI 49043

William T. Cottle, President & Chief Executive Officer, South Texas Project Electric Generating Company, Units 1 & 2, STP Nuclear Operating Company, Docket Nos. 50–498 & 50–499, License Nos. NPF–76 & NPF–80, 8 Miles West of Wadsworth, on FM 521, Wadsworth, TX 77483

Michael H. Crowthers, Supervising Engineer, Susquehanna Steam Electric Station, Units 1 & 2, PPL Susquehanna, LLC, Docket Nos. 50–387 & 50–388, License Nos. NPF–14 & NPF–22, 2 North Ninth Street, GENA61, Allentown, PA 18101

J. Mark Dunbar, Security Manager, Callaway Plant, Unit 1, Ameren Union Electric Company, Docket No. STN 50–483, License No. NPF–30, Highway CC, (5 Miles North of Highway 94), Portland, MO 65067

David Erbe, Security Manager, Wolf Creek Generating Station, Unit 1, Wolf Creek Nuclear Operating Corporation, Docket No. STN 50–482, License No. NPF–42, 1550 Oten Lane, NE, Burlington, KS 66839

William A. Evans, William B. McGuire Nuclear Station, Units 1 & 2, Duke Energy Corporation, Docket Nos. 50–369 & 50–370, License Nos. NPF–9 & NPF–17, Mail—MG01SC 12700 Hagers Ferry Road, Huntersville, NC 28078

Rick Ewart, Security Manager, Oyster Creek Nuclear Generating Station, AmerGen Energy Company, LLC, Docket No. 50–219, License No. DPR–16, Route 9, Forked River, NJ 08731

Mark Fencl, Security Manager, Point Beach Nuclear Plant, Units 1 & 2, Nuclear

[2] The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please *see* 67 FR 20884, April 29, 2002.

Management Company, LLC, Docket Nos. 50–266 & 50–301, License Nos. DPR–24 & DPR–27, 610 Nuclear Road, Two Rivers, WI 54241

Mark Findlay, Director, Kewaunee Nuclear Power Plant, Nuclear Management Corporation, Docket No. 50–305, License No. DPR–43, 700 First Street, Hudson, WI 54016

Marty Folding, Security Superintendent, Crystal River, Unit 3 Nuclear Generating Plant, Florida Power Corporation, Docket No. 50–302, License No. DPR–72, Crystal River Energy Complex 15760 West Power Line Street (NAID), Crystal River, FL 34428–6708

W. Gary Gates, Vice President for Nuclear Ops, Fort Calhoun Station, Unit 1, Omaha Public Power District, Docket No. 50–285, License No. DPR–40, 444 S. 16th Street Mall, Omaha, NE 68102

Valheria Gengler, Dresden Nuclear Power Station, Units 2 & 3, Exelon Generation Company, Docket Nos. 50–237 & 50–249, License Nos. DPR–19 & DPR–25, 6500 North Dresden Road, Morris, IL 60450–9765

Neil Harris, Comanche Peak Steam Electric Station, Units 1 & 2, TXU Generation Company LP, Docket Nos. 50–445 & 50–446, License Nos. NPF–87 & NPF–89, FM 56, 5 Miles North of Glen Rose, Glen Rose, TX 76043

J. Haley, Security Manager, James A FitzPatrick Nuclear Power Plant, Entergy Nuclear Operations, Inc., Docket No. 50–333, License No. DPR–59, 268 Lake Road, Lycoming, NY 13093

Jerry Sims, Project Coordinator Nuclear Security (B031), Southern Nuclear Operating Company, Inc., Joseph M. Farley Nuclear Plant, Units 1 & 2, Docket Nos. 50–348 & 50–364, License Nos. NPF–2 & NPF–8, Vogtle Electric Generating Plant, Units 1 & 2, Docket Nos. 50–424 & 50–425, License Nos. NPF–68 & NPF–81, 42 Inverness Center Parkway, Birmingham, AL 35242

Michael R. Higgins, Superintendent of Plant Security, Arkansas Nuclear One, Units 1 & 2, Entergy Operations, Inc., Docket Nos. 50–313 & 50–368, License Nos. DPR–51 & NPF–6, 1448 S.R. 333, Russellville, AR 72802

Andre James, Security Manager, River Bend Station, Entergy Operations, Inc., Docket No. 50–458, License No. NPF–47, 639 Loyola Avenue, New Orleans, LA 70113

William S. Johns, Site Security Supervisor, Turkey Point Nuclear Generating Station, Units 3 & 4, Florida Power & Light Company, Docket Nos. 50–250 & 50–251, License Nos. DPR–31 & DPR–41, 9760 SW 344th Street, Florida City, FL 33035

Michael Kansler, Chief Nuclear Officer, Indian Point Nuclear Generating Station, Units 2 & 3, Entergy Nuclear Operations, Inc., Docket Nos. 50–247 & 50–286, License Nos. DPR–26 & DPR–64, 295 Broadway, Suite 1, Buchanan, NY 10511–0249

Michael Bellamy, Senior Vice President, Pilgrim Nuclear Power Station, Unit 1, Entergy Nuclear Generation Company, Docket No. 50–293, License No. DPR–35, RFD #1 Rocky Hill Road, Plymouth, MA 02360

P.E. Katz, Vice President, Calvert Cliffs Nuclear Power Plant, Units 1 & 2, Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 & 50–318, License Nos. DPR–53 & DPR–69, 1650 Lusby Parkway, Lusby, MD 20657–4702

Ben Kindred, Security Manager, Duane Arnold Energy Center, Nuclear Management Company, LLC, Docket No. 50–331, License No. DPR–49, 3277 DAEC Road, Polo, Iowa 52324

Terry King, Security Manager, Oconee Nuclear Station, Units 1, 2, & 3, Duke Energy Corporation, Docket Nos. 50–269, 50–270 & 50–287, License Nos. DPR–38, DPR–47 & DPR–55, 7800 Rochester Highway, Seneca, SC 29672

Joe Korte, Nuclear Security Manager, Fermi, Unit 2, Detroit Edison Company, Docket No. 50–341, License No. NPF–43, 6400 N. Dixie Highway, Newport, MI 48166

Brian B. Linde, Security Manager, Monticello Nuclear Generating Plant, Nuclear Management Company, Docket No. 263, License No. DPR–22, 2807 W. Highway 75, Monticello, MN 55362

Cortis Luffman, Surry Power Station, Unit 1 & 2, Virginia Electric & Power Company, Docket Nos. 50–280 & 50–281, License Nos. DPR–32 & DPR–37, 5570 Hog Island Road, Surry, VA 23883–0315

Tim Maddy, Manager, Station Nuclear Security, North Anna Power Station, Units 1 & 2, Virginia Electric & Power Company, Docket Nos. 50–338 & 50–339, License Nos. NPF–4 & NPF–7, 1022 Haley Drive, Mineral, Virginia 23117

Thomas Mahon, Security Manager, Perry Nuclear Power, Unit 1, FirstEnergy Nuclear Operating Company (FENOC), Docket No. 50–440, License No. NPF–58, 10 North Center Street, Perry, OH 44081

Robert C. Mecredy, Vice President, Nuclear Operations, R.E. Ginna Nuclear power Plant, Rochester Gas & Electric Corporation, Docket No. 50–244, License No. DPR–18, 89 East Avenue, Rochester, NY 14649

J.V. Parrish, Chief Executive Officer, Columbia Generating Station, Energy Northwest, Docket No. 50–397, License No. NPF–21, Snake River Warehouse, North Power Plant Loop, Richland, WA 99352

G.R. Peterson, Vice President Catawba Site, Catawba Nuclear Station, Units 1 & 2, Duke Energy Corporation, Docket Nos. 50–413 & 50–414, License Nos. NPF–35 & NPF–52, 4800 Concord Road, York, SC 29745

James M. Preschel, Regulatory Programs Manager, Seabrook Station, Unit 1, North Atlantic Energy Service Corporation, Docket No. 50–443, License No. NPF–86, FPL Energy Seabrook, LLC, Seabrook, NH 03874

J. Alan Price, Site Vice President, c/o Mr. David A. Smith, Millstone Power Station, Units 2 & 3, Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 & 50–423, License Nos. DPR–65 & NPF–49, Rope Ferry Road, Waterford, CN 06385

Michael W. Priebe, Dept. Leader-Security Operations, Palo Verde Nuclear Generating, Units 1, 2 & 3, Arizona Public Service Company, Docket Nos. STN 50–528, 50–529, & STN 50–530, License Nos. NPF–41, NPF–51 & NPF–74, 5801 S. Wintersburg Road, Tonapah, Arizona 85354–7529

Harold B. Ray, Executive Vice President, San Onofre Nuclear Station, Units 2 & 3, Southern California Edison Company, 500 Pacific Coast Highway, Docket Nos. 50–361 & 50–362, License Nos. NPF–10 & NPF–15, Building D3D, San Clemente, CA 92672

Gregory M. Rueger, Senior Vice President, Diablo Canyon Nuclear Power Plant, Units 1 & 2, Pacific Gas & Electric Company, Docket Nos. 50–275 & 50–323, License Nos. DPR–80 & DPR–82, Mail-B32, 77 Beale Street, San Francisco, CA 94105

Bonnie A. Schnetzler, Security Manager, Watts Bar Nuclear Plant, Unit 1, Tennessee Valley Authority, Docket No. 50–390, License No. NPF–90, Highway 68 Near Spring City, Spring City, TN 37381

Gary Sheel, Security Manager, Davis-Besse Nuclear Power Station, Unit 1, FirstEnergy Nuclear Operating Company (FENOC), Docket No. 50–346, License No. NPF–3, 5501 N. State, Route 2, Oak Harbor, OH 43449

Jerry Sims, Project Coordinator Nuclear Security (B031), Edwin I. Hatch Nuclear Plant, Units 1 & 2, Southern Nuclear Operating Company, Inc., Docket Nos. 50–321 & 50–366, License Nos. DPR–57 & NPF–5, 42 Inverness Center Park, Birmingham, AL 35242

Tim Tulon, Site Vice President, Quad Cities Nuclear Power Station, Units 1 & 2, Exelon Generation Company, Docket Nos. 50–254 & 50–265, License Nos. DPR–29 & DPR–30, 22710—206th Ave., North, Cordova, IL 61242

J. Michael Pacilio, Site Vice President, Clinton Power Station, Unit 1, AmerGen Energy Company, LLC, Docket No. 50–461, License No. NPF–62, Route 54 east, 6 miles, Clinton, IL 61727

Kenneth Stevens, Security Manager, Sequoyah Nuclear Plant, Units 1 & 2 (OPS5N), Tennessee Valley Authority (TVA), Docket Nos. 50–327 & 50–328, License Nos. DPR–77 & DPR–79, Sequoyah Road, Soddy Daisy, TN 37384

Ted Straub, Manager of Nuclear Security & Fire, Security Center, Salem Nuclear Generating Station, Units 1 & 2, Docket Nos. 50–272 & 50–311, DPR–70 & DPR–75, Hope Creek Generating Station, Docket No. 50–354, License No. NPF–57, PSEG Nuclear LLC, End of Buttonwood Road, Hancocks Bridge, NJ 08038

Peter R. Supplee, Limerick Generating Station, Units 1 & 2, Exelon Generation Company, LLC, Docket No. 50–352 & 50–353, License Nos. NPF–39 & NPF–85, Evergreen & Sanatoga Road, TSC 1–2, Sanatoga, PA 19464

Joseph E. Venable, Vice President, Operations, Waterford Steam Electric Generating Station, Unit 3, Entergy Operations, Inc., Docket No. 50–382, License No. NPF–38, 17265 River Road, Killona, LA 70066–0751

Wayne Trump, Manager—Site Security, Peach Bottom Atomic Power Station, Units 2 & 3, Exelon Generation Company, LLC, Docket Nos. 50–277 & 50–278, License Nos. DPR–44 & DPR–56, 1848 Lay Road, Delta, PA 17314

Gary L. Varnes, Site Security Manager, St. Lucie Nuclear Plant, Units 1 & 2, Florida Power & Light Company, Docket Nos. 50–

335 & 50–389, License Nos. DPR–67 & NPF–16, 6351 South Ocean Drive, Jensen Beach, FL 34957

John Waddell, Nuclear Security Manager, Prairie Island & Nuclear Company, Nuclear Management Generating Plant, Units 1 & 2 Docket Nos. 50–282 & 50–306, License Nos. DPR–42 & DPR–60, 1717 Wakonade Drive East, Welch, MN 55089

Cindy Wilson, LaSalle County Station, Units 1 & 2, Exelon Generation Company, Docket Nos. 50–373 & 50–374, License Nos. NPF–11 & NPF–18, 2601 North 21st Road, Marseilles, IL 61341–9757

Mr. Clay C. Warren, Vice President of Nuclear, Cooper Nuclear Station, Nebraska Public Power District, Docket No. 50–298, License Nos. DPR–46, 2 Miles South of Brownsville, Brownsville, NE 68321

Scott Young, Security Superintendent, H.B. Robinson Steam Electric Plant, Unit 2, Carolina Power & Light Company, Docket No. 50–261, License No. DPR–23, 3581 West Entrance Road, Hartsville, SC 29550

A. Christopher Bakken, Senior Vice President and Chief Nuclear Officer, Donald C. Cook Nuclear Plant, Units 1 & 2, Docket Nos. 50–315 & 50–316, License Nos. DPR–58 & DPR–74, Indiana Michigan Power Group, 500 Circle Drive, Buchanan, MI 49107

[FR Doc. 03–572 Filed 1–10–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 25–15

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995 and 5 CFR 1320), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–15, Notice of Change in Student's Status, is used to collect sufficient information from adult children of deceased Federal employees or annuitants to assure that the child continues to be eligible for payments from OPM.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 2,500 certifications are processed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 1,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–399 Filed 1–10–03; 8:45 am]

BILLING CODE 6325–50–P

POSTAL RATE COMMISSION

Sunshine Act Meeting

AGENCY: Postal Rate Commission.

TIME AND DATE: 3 p.m., Tuesday, January 14, 2003.

PLACE: Commission conference room, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel issues.

CONTACT PERSON FOR MORE INFORMATION: Steven W. Williams, Secretary, 202–789–6842.

Dated: January 9, 2003.

Steven W. Williams,

Secretary

[FR Doc. 03–779 Filed 1–9–03; 3:35 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation FD; SEC File No. 270–475; OMB Control No. 3235–0536.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management Budget for extension and approval.

Regulation FD—Other Disclosure Materials requires public disclosure of material information from issuers of publicly traded securities so that investors have current information upon which to base investment decisions. The purpose of the regulation is to require that: (1) When an issuer intentionally discloses material information it do so through public disclosure, not selective disclosure; and (2) whenever an issuer learns that it has made a non-intentional material selective disclosure, the issuer make prompt public disclosure of that information. Regulation FD was adopted due to a concern that the practice of selective disclosure leads to a loss of investor confidence in the integrity of our capital markets. It is estimated that approximately 13,000 issuers file correspondence under Regulation FD. The filer prepares 25% of the 290,000 annual burden hours for a total of 72,500 burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate

Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 30, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–602 Filed 1–10–03; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Rate for Attorney Fee Assessment Beginning in 2003

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: The Social Security Administration is announcing that the attorney fee assessment rate under section 206(d) of the Act, 42 U.S.C. 406(d), is 6.3 percent for 2003.

FOR FURTHER INFORMATION CONTACT: John B. Watson, Social Security Administration, Office of the General Counsel, Phone: (410) 965–3137, email *John.Watson@ssa.gov.*

SUPPLEMENTARY INFORMATION: Section 406 of Pub. L. 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, established an assessment for the services required to determine and certify payments to attorneys from the benefits due claimants under Title II of the Act. This provision is codified in section 206 of the Act (42 U.S.C. 406). The legislation set the assessment for calendar year 2000 at 6.3 percent of the amount that would be required to be certified for direct payment to the attorney under section 206(a)(4) or 206(b)(1) before the application of the assessment. For subsequent years, the legislation requires the Commissioner of Social Security to determine the percentage rate necessary to achieve full recovery of the costs of determining and certifying fees to attorneys, but not in excess of 6.3 percent. The Commissioner of Social Security has determined, based on the best available data, that the current rate of 6.3 percent will continue for 2003. We will continue to review our costs on a yearly basis.

Dated: January 3, 2003.

Dale W. Sopper,

Acting Deputy Commissioner for Finance Assessment and Management.

[FR Doc. 03–538 Filed 1–10–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Arnold Palmer Regional Airport, Latrobe, Pennsylvania

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps (NEM) submitted by the Westmoreland County Airport Authority for the Arnold Palmer Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program (NCP) that was submitted for Arnold Palmer Regional Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before June 22, 2003.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 24, 2002. The public comment period ends February 22, 2003.

FOR FURTHER INFORMATION CONTACT: James Byers, Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Camp Hill, PA 17011. Telephone (717) 730–2833. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Arnold Palmer Regional Airport are in compliance with applicable requirements of part 150, effective December 24, 2002. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 22, 2003. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Westmoreland County Airport Authority submitted to the FAA on December 6, 2002 noise exposure maps, descriptions and other documentation which were produced during the Arnold Palmer Regional Airport part 150 Noise Compatibility Study conducted between March 1999 and November 2002. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Westmoreland County Airport Authority. The specific maps under consideration are "1999 Noise Exposure Map" (NEM1) and "2004 Noise Exposure Map" (NEM2) with "Recommended Noise Compatibility Program" (NCP) in the submission. The documentation that constitutes the "Noise Exposure Maps" as defined in section 150.7 of part 150 includes: NEM1 and NEM2 contain current and forecast condition graphics such as depiction of the airport and its boundaries and runway configurations; land uses such as hospitals, libraries, churches, historical points, schools, nursing homes, commercial and industrial areas, community service areas, and residential areas; and the areas within the DNL 60, 65, 70 and 75. Estimates of the number of people residing within the DNL 60, 65, 70 and 75 are found in Table V–1. The locations of noise monitoring sites are found in Exhibit IV–6. Flight tracks for the existing condition and the five-year forecasted timeframes are found in Exhibits IV–3, IV–4, and IV–5. The type

and frequency of aircraft operations (including nighttime operations) are found in Tables IV–6, IV–7, and IV–8. The Westmoreland County Airport Authority has determined that single family residential land uses in the airport environs are generally incompatible with noise levels above DNL 60 dBA. The Authority proposes to work with members of the Unity Township Zoning Hearing Board and the Unity Township Board of Supervisors to adopt a more stringent designation of noncompatibility for Unity Township (see Table III–1 of the NCP) than the federal/FAA standards as expressed in Table 1 of FAR part 150.

Comparability of Conditions: Federal part 150 regulations require the preparation of noise exposure contours based on forecast aircraft operations at the airport for five years from the date of submission and that reasonable assumptions concerning fleet mix, flight patterns, and planned airport developments be incorporated. The initial schedule of the Arnold Palmer Regional Airport's Part 150 Study indicated that the Noise Exposure Maps would be submitted near the end of 1999. Therefore, 2004 operating levels were used for the Future NEM/NCP. The NEMs were ultimately submitted to the FAA in November 2000 and the NCP was submitted in March 2001. Subsequently, at the FAA's request, certain pages of the NEM and NCP reports were revised and resubmitted in February 2002. To address additional comments received on the NEM and NCP from the FAA Environmental and Airspace Divisions, the Westmoreland County Airport Authority prepared another revision in June 2002.

A comparison of the 2004 and 2008 forecasts was completed (*see* Table II–3 NEM report) and it was found that there would be less than 3 percent difference between the two conditions (2004 = 48,318 annual aircraft operations and 2008 = 49, 524 annual aircraft operations). The difference in aircraft operations between the two forecast years is 1,206 annual aircraft operations or approximately 3 operations per day. In addition, there is nothing to indicate that there would be significant changes in flight patterns, runway use, or fleet mix between 2004 and 2008. Therefore, the 2004 Future NEM/NCP noise contours are representative of 2007/2008 conditions as well. This determination is effective on December 24, 2002. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposures contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Arnold Palmer Regional Airport, also effective on December 24, 2002. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 22, 2003.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations: Westmoreland County Airport Authority, 200 Pleasant Unity Road Suite 103, Latrobe, PA 15650 and Federal Aviation Administration, Harrisburg Airports District Office, 3905 Suite 506, Hartzdale Drive, Camp Hill, PA 17011.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Camp Hill, Pennsylvania, December 24, 2002.

Sharon A. Daboin,

Manager Harrisburg Airports District Office.

[FR Doc. 03–653 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–70]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 3, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13875–1 at the beginning of your comments. If you wish to receive confirmation that the

FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Mark S. Orr (816–329–4151), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 3, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13875–1.
Petitioner: West Pacific Air, LLC.
Section of 14 CFR Affected: 14 CFR part 23, § 23.973(f).

Description of Relief Sought: West Pacific Air, LLC seeks exemption from 14 CFR 23.973(f) to install Pratt & Whitney Canada PT6 engines in Beech Model A36, A36TC, and B36TC airplanes. For the Beech Model A36, A36TC, and B36TC airplanes, the present fuel filler inside diameter is 2.375 inches to preclude the introduction of turbine engine fuel (Jet-A or similar) into the fuel system that supplies a reciprocating engine. The exemption will permit West Pacific Air, LLC to install Pratt & Whitney Canada PT6 engines in Beech Model airplanes without increasing the diameter of the fuel filler openings per § 23.973(f). The requested exemption from strict compliance with the requirement of 14 CFR part 23, § 23.973(f), is based on the following points: the large filler diameter will not preclude the introduction of Av-gas in a system intended for Jet-A, Av-gas is an approved emergency fuel for the PT6A–21 and –34 engines installed by this project; consequently it is not possible to misfuel this aircraft; all fuel tank fillers will be placarded for Jet-A, which will fulfill the goal of providing a visual cue for the use of Jet-A-fuel; and the modified fuel system will be tested to the pressure requirements associated with the worse case fuel (100LL Av-gas) to ensure that a mistaken introduction of this fuel will not have a detrimental effect on engine performance or safety of flight.

[FR Doc. 03–657 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held January 23, 2003 starting at 9:00 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc. 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 850, Washington, DC 20036, telephone (202)833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The agenda will include:

- January 23:
- Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting)
- Publication Consideration/Approval
  - Final Draft, Next Generation Air/Ground Communication System (NEXCOM) Safety and Performance Requirements (SPR), RTCA Paper No. 263–02/PMC–246, prepared by SC–198.
- Discussion:
  - Special Committee Chairman's Reports
- Action Item Review:
  - Action Item 02–02—Electronic Flight Bag (EFB) Activities Necessity for PMC Ad Hoc Group to Interpret/Review Committee Tasks
- Other Business:
  - EUROCAE Activity
- Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 30, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–652 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In November 2002, there were five applications approved. This notice also includes information on four applications, approved in October 2002, inadvertently left off the October 2002 notice. Additionally, ten approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Jackson Hole Airport Board, Jackson, Wyoming.
Application Number: 02–08–C–00–JAC.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $953,023.
Earliest Charge Effective Date: December 1, 2002.
Estimated Charge Expiration Date: November 1, 2004.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Aircraft parking apron expansion.
Security improvements.
Friction measuring equipment.
Snow removal equipment.
Terminal design.
Decision Date: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Chicago—Department of Aviation, Chicago, Illinois.

Application Number: 02–14–C–00–ORD.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $2,565,000.
Earliest Charge Effective Date: December 1, 2016.
Estimated Charge Expiration Date: February 1, 2017.
Class of Air Carriers Not Required to Collect PFC's: Air taxi.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport (ORD).
Brief Description of Projects Approved for Collection at ORD and Use at Gary/Chicago Airport:
Acquire snow removal equipment (snow broom).
Expand snow removal equipment building.
Rehabilitate runway 12/30.
Terminal apron expansion and loading bridge installation.
Decision Date: October 22, 2002.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, Chicago Airports District Office, (847) 294–7335.

Public Agency: City of Minot, North Dakota.
Application Number: 02–06–C–00–MOT.
Application Type: Impose and use a PFC.
PFC Level: $4.50..
Total PFC Revenue Approved in This Decision: $2,432,182.
Earliest Charge Effective Date: April 1, 2003.
Estimated Charge Expiration Date: July 1, 2011.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operating filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Minot International Airport.
Brief Description of Projects Approved for Collection and Use:
Runway 13/31 reconstruction, runway 13/31 and taxiway C translation and extension, associate taxiway reconstruction, other associated installations and relocations, and project implementation.
Land avigation easements.
Friction measuring equipment.
Install airport perimeter fencing and associated outflow attenuation structures.
Preparation of PFC amendment ($3.00 to $4.50).
Preparation of PFC.
Snow removal equipment.
Construct 48-inch storm sewer.
Decision Date: October 22, 2002.

FOR FURTHER INFORMATION CONTACT: Steven J. Obenauer, Bismarck Airports District Office, (701) 323–7380.

Public Agency: Huntsville-Madison County Airport Authority, Huntsville, Alabama.
Application Number: 02–12–C–00–HSV.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $2,649,591.
Earliest Charge Effective Date: September 1, 2004.
Estimated Charge Expiration Date: September 1, 2005.
Classes of Air Carriers Not Required to Collect PFC's: (1) Air taxi/commercial operators; and (2) certified route air carriers having fewer than 500 annual passenger enplanements.
Determination: Approved. Based on the information in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Huntsville International Airport.
Brief Description of Projects Approved for Collection and Use:
West runway extension to 12,600 feet.
Noise mitigation/land acquisition (Murphy property—101.7 acres).
Security vehicle.
Decision Date: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Keafur Grimes, Jackson Airports District Office, (601) 664–9886.

Public Agency: Airport Authority of Washoe County, Reno, Nevada.
Application Number: 02–06–C–00–RNO.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $10,000,000.
Earliest Charge Effective Date: February 1, 2003.
Estimated Charge Expiration Date: November 1, 2003.
Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.
Determination: Approved. Based on the information in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Reno/Tahoe International Airport.
Brief Description of Project Approved for Collection and Use: Acquisition of Lazovich and B&C properties.
Decision Date: November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: City of Pierre, South Dakota.
Application Number: 02–01–C–00–PIR.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $366,239.
Earliest Charge Effective Date: February 1, 2003.
Estimated Charge Expiration Date: June 1, 2008.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Preparation of initial PFC.
Rehabilitation of runway 7/25.
Taxiway C reconstruction.
General aviation ramp replacement.
Snow removal equipment.
Passenger loading ramp.
Air carrier terminal apron construction/rehabilitation.
Update airport master plan and airport layout plan.
Perimeter wildlife fence and airport boundary fence.
General aviation apron improvements.
Decision Date: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas T. Schauer, Bismarck Airports District Office, (701) 323–7380.

Public Agency: Gallatin Airport Authority, Belgrade, Montana.
Application Number: 02–02–C–00–BZN.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $1,790,000.
Earliest Charge Effective Date: May 1, 2003.
Estimated Charge Expiration Date: April 1, 2006.
Class or Air Carriers Not Required to Collect PFC'S: Air taxi/ commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on the information in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent to the total annual enplanements at Gallatin Field Airport.
Brief Description of Projects Approved for Collection and Use:
Equipment storage building.
Terminal ramp expansion.
Broom/sweeper.

Taxiway and apron resurfacing.
Runway 12/30 resurfacing.
Decision Date: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: David S. Stelling, Helena Airports District Office, (406) 449–5271.

Public Agency: Jackson County Airport Authority, Medford, Oregon.
Application Number: 02–08–C–00–MFR.
Application Type: Impose and use of PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $105,000.
Earliest Charge Effective Date: May 1, 2004.
Estimated Charge Expiration Date: July 1, 2004.
Class of Air Carriers Not Required to Collect PFC'S: Operations by air taxi/commercial operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25-mile radius of the airport.
Determination: Approved. Based on the information in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Rogue valley International—Medford Airport.
Brief Description of Project Approved for Collection and Use: Security enhancements.
Decision Date: November 22, 2002

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Bradford Regional Airport Authority, Lewis Run, Pennsylvania.
Application Number: 02–02–C–00–BFD.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $414,738.
Earliest Charge Effective Date: May 1, 2003.
Estimated Charge Expiration Date: December 1, 2009.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operations filing FAA Form 1800–31.
Determination: Approved. Based on the information in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Bradford Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Passenger chairlift.
T-Hangar taxiway and drainage swale.
Runway 5/23 lighting.
Parallel taxiway to runway 32 phase I.
Water treatment plant upgrade.
Parallel taxiway runway 14, phase II.
Airport master plan.
Rehabilitate taxiways A and B.
Rehabilitate taxiways.
Acquire multi-purpose safety vehicle.
Conduct 5 year environmental assessment.
Rehabilitate runway 5/23/improve runway 5 end safety area.
Snow removal equipment—tractor and plow.
Snow removal equipment—plow.
PFC application formulation and administration.
Brief Description of Projects Approved for Collection:
Deicing equipment/facility.
Rehabilitate access road.
Land acquisition/obstruction removal.
Runway 32 safety area, phase II.
Decision Date: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date.
*00–03–C–01–EAT, Wenatchee, WA	04/08/02	$240,687	$312,087	10/01/02	02/01/03
98–01–C–02–HRL, Harlingen, TX	10/24/02	4,166,654	4,247,721	01/01/02	01/01/02
01–04–C–01–RIC, Richmond, VA	11/04/02	4,570,342	3,900,333	11/01/16	09/01/16
98–07–I–04–PHL, Philadelphia, PA	11/07/02	946,267,790	986,693,869	02/01/11	12/01/12
99–08–U–03–PHL, Philadelphia, PA	11/07/02	NA	NA	02/01/11	12/01/12
94–01–C–04–MOD, Modesto, CA	11/08/02	204,806	227,249	05/01/99	05/01/99
97–03–C–01–ONT, Ontario, CA	11/08/02	45,680,000	80,680,000	01/01/03	09/01/05
94–01–C–03–TUP, Tupelo, MS	11/15/02	430,550	457,216	03/01/04	06/01/03
98–02–U–02–TUP, Tupelo, MS	11/15/02	NA	NA	03/01/04	06/01/03
01–07–C–01–CRW, Charleston, WV	11/21/02	1,456,248	1,456,248	09/01/03	04/01/03

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Wenatchee, WA, this change is effective on July 1, 2002.

Issued in Washington, DC on January 6, 2003.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 03–654 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tyler Pounds Regional Airport, Tyler, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tyler Pounds Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 12, 2003.

ADDRESSES: Comments on this application may be mailed or delivered

in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611; Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Davis Dickson, Manager of Tyler Pounds Regional Airport at the following address: Airport Manager, Tyler Pounds Regional Airport, 700 Skyway Blvd., Suite 201, Tyler, TX 75704.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

This application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tyler Pounds Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 23, 2002 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 15, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: April 1, 2008.

Proposed charge expiration date: February 1, 2017.

Total estimated PFC revenue: $2,140,662.

PFC application number: 03–04–C–00–TYR.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

1. Acquire and Install One Passenger Loading Bridge
2. Construct Terminal Apron and Security Fencing
3. Terminal Site Clearing and Utility Site Preparation
4. Construct Terminal Building
5. Seal Coat Runway 4/22
6. PFC Application and Administrative Fees

Proposed class or classes of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person a the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Tyler Pounds Regional Airport.

Issued in Fort Worth, Texas on December 24, 2002.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 03–655 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Programmatic 4(f) Evaluation and Approval for Federal Highway Administration (FHWA) Projects That Necessitate the Use of Bridges Over the National Register of Historic Places (NRHP) Listed or Eligible New York State Canal System (Historic Canal System)

This statement sets forth the basis for a programmatic section 4(f) evaluation and approval that there are no feasible and prudent alternatives to the use of bridges eligible for or listed on the NRHP (Historic Bridges) over the Historic Canal System to be replaced with Federal transportation funds and that the projects include all possible planning to minimize harm resulting from such use. This programmatic 4(f) evaluation satisfies the requirements of section 4(f) for all projects that meet the applicability criteria listed below. No individual section 4(f) evaluation needs to be prepared for such projects. This approval is made pursuant to section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303, and section 18(a) of the Federal-Aid Highway Act of 1968, 23 U.S.C. 138.

Use

This programmatic 4(f) evaluation is to be used in conjunction with 36 CFR part 800 Programmatic Agreement for Bridges over the New York State Canal System (Canal Agreement) executed April 16, 2001. The Canal Agreement satisfies the section 106 requirements for canal bridge projects developed and agreed to be the FHWA, the New York State Department of Transportation (NYSDOT), the State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP). The evaluation of alternatives and documentation prepared for the section 106 process shall be used as the basis for the FHWA finding that there are no prudent and feasible alternatives to the use of the affected bridge on the Historic Canal System.

The resources covered by this programmatic section 4(f) evaluation include Historic Bridges which are eligible for the NHRP as contributing elements to the Historic Canal System. Though these Historic Bridges are on the Historic Canal System, they must perform as an integral part of a modern transportation system. When they do not or cannot, they must be replaced in order to assure public safety while maintaining system continuity and integrity. For the purpose of this programmatic section 4(f) evaluation, a proposed action will constitute a "use" of a Historic Bridge that is on the Historic Canal System when the action will have an adverse effect as applied by the requirements of section 106 of the National Historic Preservation Act and 36 CFR part 800. Rehabilitation of a Historic Bridge will rarely constitute an adverse effect on the Historic Canal System.

Applicability

This programmatic section 4(f) evaluation may be applied by the FHWA to projects or approvals which meet the following criteria:

1. The Historic Bridge is to be replaced or rehabilitated with Federal funds.
2. The project will require the use of a Historic Bridge that is on the Historic Canal System.
3. The project will have an adverse effect on Historic Bridges and/or the Historic Canal System.
4. The bridge is not a National Historic Landmark.
5. The project will not impact any areas of archaeological sensitivity that have the potential to yield sites containing important research information. If a site exists, it does not warrant preservation in place as: (1) It is not considered valuable for its permanent *in-situ* public interpretive value, (2) the technology exists for satisfactory data recovery (even if data

recovery is not determined appropriate treatment at this time, (3) the site has no traditional cultural significance to Indian tribes, and (4) the site does not contain or is unlikely to contain human remains, funerary objects, sacred objects or items of cultural patrimony as defined by the Native American Graves Protection and Repatriation Act of 1990.

6. The FHWA Division Administrator determines that the facts of the project match those set forth in the sections of this document labeled Alternatives, Findings, and Measures to Minimize Harm.

7. Agreement among the FHWA, NYSDOT, the State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) has been reached through the Programmatic Agreement for Historic Bridges over the Historic Canal System or individually through procedures pursuant to section 106 of the NHPA.

Alternatives

The following alternatives avoid any use of the historic resource:

1. Do nothing.

2. Replacement of the same design type (*i.e.*, build a new truss bridge to replace a truss bridge that is not individually eligible on the NRHP.)

3. Build a new structure at a different location without affecting the integrity of the Historic Bridge, or the Historic Canal System as determined by the Canal Agreement or procedures individually implementing the NHPA.

4. Rehabilitation, including minor widening, of an existing bridge without affecting its visual characterization from the shore and the canal.

5. Removal of a bridge that does not contribute to the Historic Canal System.

6. Sale or transfer of ownership of a Historic Bridge with covenant to retain its character.

7. Rehabilitation of an individually eligible Historic Bridge without affecting the historic integrity of the bridge or of the Historic Canal System, as determined by the Canal Agreement or procedures individually implementing the NHPA.

This list is intended to be all-inclusive. The programmatic section 4(f) evaluation does not apply if a reasonable alternative is identified that is not discussed in this document. The project record must clearly demonstrate that each of the above alternatives was fully evaluated and it must further demonstrate that all applicability criteria listed above were met before the FHWA Division Administrator concluded that the programmatic section 4(f) evaluation applied to the project.

Findings

In order for this programmatic section 4(f) evaluation to be applied to a project, each of the following findings must be supported by the circumstances, studies, and consultations on the project:

1. *Do Nothing.* The do nothing alternative has been studied. The do nothing alternative ignores the basic transportation need. For the following reasons this alternative is not feasible and prudent:

a. Maintenance—The do nothing alternative does not correct the situation that causes the Historic Bridge to be considered structurally deficient or deteriorated. These deficiencies can lead to sudden collapse and potential injury or loss of life. Normal maintenance is not considered adequate to cope with the situation.

b. Safety—The do nothing alternative does not correct the situation that causes the Historic Bridge to be considered deficient. Because of these deficiencies the bridge poses serious and unacceptable safety hazards to the traveling public or places intolerable restriction on transport and travel.

2. *Build on New Location Without Using the Historic Bridge.* Investigations have been conducted to construct a bridge on a new location or parallel to the Historic Bridge (allowing for a one-way couplet), but for one or more of the following reasons, this alternative is not feasible and prudent:

a. Terrain—The present bridge structure has already been located at the only feasible and prudent site, *i.e.*, a gap in the land form, the narrowest point of the river canyon, etc. Construction of a new bridge at another site will result in extraordinary bridge and roadway approach costs, extraordinary difficulty of construction, and/or extraordinary disruption to established traffic patterns.

b. Adverse Social, Economic, or Environmental Effects—Building a new bridge away from the present site would result in social, economic, or environmental impact of extraordinary magnitude. Such impacts as extensive severing of productive farmlands, displacement of a significant number of families or businesses, serious disruption of established travel patterns, and access and damage to wetlands may individually or cumulatively weigh heavily against relocation to a new site.

c. Engineering and Economy—Where difficulty associated with the new location is less extreme than those encountered above, a new site would not be feasible and prudent where cost and engineering difficulties reach extraordinary magnitude. Factors supporting this conclusion include significantly increased roadway and structure costs, serious foundation problems, or extreme difficulty in reaching the new site with construction equipment. Additional design and safety factors to be considered include an ability to achieve minimum design standards or to meet requirements of various permitting agencies such as those involved with navigation, pollution, and the environment.

d. Preservation of the Historic Bridge—It is not feasible and prudent to preserve the existing bridge, even if a new bridge were to be built at a new location. This could occur when the Historic Bridge is beyond rehabilitation for a transportation or an alternative use, when no responsible party can be located to maintain and preserve the bridge, or when a permitting authority requires removal or demolition of the Historic Bridge.

3. *Rehabilitation without affecting the historic integrity of the bridge.* Studies of rehabilitation measures have been conducted, but, for one or more of the following reasons, this alternative is not feasible and prudent:

a. The Historic Bridge is so structurally deficient that it cannot be rehabilitated to meet minimum acceptable load requirements without affecting the historic integrity of the bridge.

b. The Historic Bridge is seriously deficient geometrically and cannot be widened to meet the minimum required capacity of the highway system on which it is located without affecting the historic integrity of the bridge. Flexibility in the application of the American Association of State Highway and Transportation Officials geometric standards should be exercised as permitting in 23 CFR part 625 during the analysis of this alternative.

Measures To Minimize Harm

This programmatic section 4(f) evaluation and approval may be used only for projects where the FHWA Division Administrator, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm. This has occurred when:

1. For bridges that are to be rehabilitated, the historic integrity of the bridge is preserved, to the greatest extent possible, consistent with unavoidable transportation needs, safety, and load requirements;

2. FHWA ensures that, in accordance with the Canal Agreement, the Historic

American Engineering Record (HAER) standard records appropriate for documentation of the bridges are prepared for bridges that are removed, demolished, or are rehabilitated to the point that the historic integrity is affected.

3. For bridges that are to be replaced, the existing bridge is made available for an alternative use, provided a responsible party agrees to maintain and preserve the bridge; and

4. For bridges that are adversely affected, agreement among the NYSDOT, SHPO, and FHWA, is reached through the Canal Agreement, or through procedures individually implementing the NHPA, on measures to minimize harm and those measures are incorporated into the project. This programmatic section 4(f) evaluation does not apply to projects where such an agreement cannot be reached.

Procedures

This programmatic section 4(f) evaluation applies only when the FHWA Division Administrator:

1. Determines that the project meets the applicability criteria set forth above;

2. Determines that all of the alternatives set forth in the findings section have been fully evaluated;

3. Determines by use of the findings in this document that there are no feasible and prudent alternatives to the use of the historic bridge;

4. Determines that the project complies with the Measures to Minimize Harm section of this document;

5. Assures that implementation of the measures to minimize harm is completed;

6. Documents in the project file that the programmatic section 4(f) evaluation applies to the project on which it is to be used and;

7. Insures that the provisions of the Canal Agreement are followed to protect the integrity of the Historic Bridge and Historic Canal System.

Coordination

The Programmatic Agreement concerning Historic Bridges over the Historic Canal System is being coordinated with the New York State Department of Transportation and the New York State Historic Preservation Officer. Pursuant to section 4(f), this programmatic agreement is being coordinated with the New York State Department of Transportation, the New York State Canal Corporation, and Departments of the Interior, Agriculture, and Housing and Urban Development.

Before applying this programmatic evaluation to projects requiring an individual bridge permit, the District Administrator shall coordinate with the U.S. Coast Guard District Commander.

Issued on January 6, 2003.

Vincent P. Barone,

Assistant Division Administrator, New York Division, Federal Highway Administration.

[FR Doc. 03–571 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2000–7165, FMCSA–2000–7363, and FMCSA–2000–8203]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA's decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for nine individuals.

DATES: This decision is effective January 13, 2003. Comments from interested persons should be submitted by February 12, 2003.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov*. Please include the docket numbers that appear in the heading of this document in your submission. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. §§ 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles in interstate commerce, for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for receiving an exemption (including renewals) are set out in 49 CFR Part 381. This notice addresses nine individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these nine petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are:

Timothy J. Bryant	Thomas D. Laws	Clifford C. Priesmeyer.
Robert J. Johnson	Leo L. McMurray	George S. Rayson.
Charles R. Kuderer	Jimmy R. Millage	Gerald R. Rietmann.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's

or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the nine applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285, 63 FR 54519, 65 FR 33406, 65 FR 57234, 65 FR 45817, 65 FR 77066), and three of the applicants have previously satisfied the conditions for renewing an exemption (65 FR 66293, 65 FR 77069). Each of these nine applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by February 12, 2003.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: January 7, 2003.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

[FR Doc. 03–579 Filed 1–10–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 2, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 10, 2003 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0020.
Form Number: None.
Type of Review: Extension.
Title: Anti-Money Laundering Programs for Money Services, Businesses, Mutual Funds, and Operators of Credit Card Systems.
Description: This information collection, which applies to money services businesses, mutual funds, and operators of credit card systems, will help to ensure that such entities are not used to facilitate money laundering or terrorist financing, and will enable federal agencies to examine such entities for compliance with the anti-money laundering program requirements.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 203,006.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Estimated Total Reporting/Recordkeeping Burden: 20,000 hours.
Clearance Officer: Steve Rudzinski, (703) 905–3845, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 03–560 Filed 1–10–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 03–03]

Recordation of Trade Name: "ORTHOTEC"

AGENCY: Customs Service, Treasury.

ACTION: Notice of final action.

SUMMARY: This document provides notice that "ORTHOTEC" is recorded by Customs as the trade name for Orthotec, L.L.C., a Delaware Limited Liability Company organized under the laws of the State of Delaware, located at 9595 Wilshire Blvd., Suite 502, Beverly Hills, California 90212. This application for trade name recordation was properly submitted to Customs and published in the **Federal Register**. As no public comments in opposition to the recordation of this trade name was received by Customs within the 60-day comment period, the trade name is duly recorded with Customs and will remain in force as long as this trade name is used by this corporation, unless other action is required.

EFFECTIVE DATE: January 7, 2003.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Savoy, Intellectual Property Rights Branch, Office of Regulations & Rulings, U.S. Customs Service, 1300

Pennsylvania Avenue, NW., (Mint Annex) Washington, DC 20229; (202) 572–8710.

SUPPLEMENTARY INFORMATION:

Background

Trade names adopted by business entities may be recorded with Customs to afford the particular business entity with increased commercial protection. Customs procedure for recording trade names is provided at § 133.12 of the Customs Regulations (19 CFR 133.12) pursuant to section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124). Pursuant to this regulatory provision, the Orthotec, L.L.C., a Delaware Limited Liability Company organized under the laws of the State of Delaware, and located at 9595 Wilshire Blvd., Suite 502, Beverly Hill, California 90212, applied to Customs for protection of its trade name "ORTHOTEC".

On Thursday, November 7, 2002, a notice of application for the recordation of the trade name "ORTHOTEC" was published in the **Federal Register** (67 FR 67894). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name and received not later than January 6, 2003. The comment period closed January 6, 2003. No comments were received during the comment period. Accordingly, as provided by § 133.12 of the Customs Regulations, "ORTHOTEC" is recorded with Customs as the trade name of Orthotec, L.L.C., and will remain in force as long as this trade name is used by this corporation, unless other action is required.

The trade name is used on medical devices, more specifically, surgical implants made of stainless steel or titanium for spinal surgery, comprised of hooks, bolts, screws, rods, instruments and containers to hold the goods and instruments.

Dated: January 7, 2003.

Joanne Roman Stump,

Chief, Intellectual Property Rights Branch.

[FR Doc. 03–648 Filed 1–10–03; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register
Vol. 68, No. 8
Monday, January 13, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[PA181–4181a; FRL–7399–4]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Pennsylvania; Redesignation of the Allegheny County Carbon Monoxide Nonattainment Area and Approval of Miscellaneous Revisions

Correction

In rule document 02–28495 beginning on page 68521 in the issue of Tuesday, November 12, 2002, make the following correction:

§ 81.339 [Corrected]

On page 68526, in the table, in § 81.339, in the second column, under the date heading, "1/13/02" should read, "1/13/03."

[FR Doc. C2–28495 Filed 1–10–03; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 98–204; FCC–02–303]

RIN 4223

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

Correction

Federal Register document 02–32474 was inadvertently published in the Rules and Regulations section in the issue of Tuesday, December 24, 2002, on pages 78387–78388. It should have appeared in the Proposed Rules section.

[FR Doc. C2–32474 Filed 1–10–03; 8:45 am]

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees' Group Life Insurance Program: New Age Bands and New Premiums

Correction

In notice document 02–32891 beginning on page 79659 in the issue of Monday, December 30, 2002 make the following corrections:

1. On page 79660, in the second column, in the 14th line, "not" should read, "no".

2. On the same page, in the same column, in the 19th line, "declaining" should read, "declining".

3. On the same page, in the third column, in the first full paragraph, in the fourth line, "not" should read, "no".

4. On the same page, in the same column, in the same paragraph, in the 10th line, "increases" should read, "increase".

5. On the same page, in the same column, the second full paragraph, in the second line "(Ages s70–74)" should read, "(Ages 70–74)".

6. On the same page, in the same column, in the same paragraph, in the third line, "Ages 80 & Over)" should read, "(Ages 80 & Over)".

[FR Doc. C2–32891 Filed 1–10–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14089; Airspace Docket No. 02–ACE–13]

Modification of Class E Airspace; Caruthersville, MO

Correction

In rule document 03–61 beginning on page 490 in the issue of Monday, January 6, 2003, make the following corrections:

1. On page 490, in the third column, under the heading **The Direct Final Rule Procedure**, in the ninth line, "designation" should read, "designating".

2. On the same page, in the same column, under the same heading, in the 21st line, "below" should read, "above".

3. On the same page, in the same column, under the heading **Comments Invited**, in the fitfh line, "basic" should read, "basis".

[FR Doc. C3–61 Filed 1–10–03; 8:45 am]

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Federal Register

Monday,
January 13, 2003

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Industrial/Commercial/Institutional Boilers and Process Heaters; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0058; FRL–7418–9]

RIN 2060–AG69

National Emission Standards for Hazardous Air Pollutants for Industrial/ Commercial/Institutional Boilers and Process Heaters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing national emission standards for hazardous air pollutants (NESHAP) for industrial/ commercial/institutional boilers and process heaters. The EPA has identified industrial/commercial/ institutional boilers and process heaters as major sources of hazardous air pollutants (HAP) emissions. The proposed rule would implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emissions standards reflecting the application of the maximum achievable control technology (MACT). The proposed rule would reduce HAP emissions by 58,000 tons per year, hydrogen chloride—a substance that is not considered to be a carcinogen—accounts for 42,000 tons per year (72 percent) of total HAP emissions reductions. The proposed rule would protect air quality and promote the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA.

The HAP emitted by facilities in the boiler and process heater source category include arsenic, cadmium, chromium, hydrogen chloride (HCl), hydrogen fluoride, lead, manganese, mercury, and nickel. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation to the lung, skin, and mucus membranes, effects on the central nervous system, kidney damage, and cancer. The adverse health effects associated with the exposure to these specific HAP are further described in this preamble. In general, these findings have only been shown with concentrations higher than those typically in the ambient air.

DATES: *Comments.* Submit comments on or before March 14, 2003.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by February 3, 2003, a public hearing will be held on February 12, 2003.

ADDRESSES: *Comments.* Comments may be submitted by mail (in duplicate, if possible) to EPA Docket Center (Air Docket), U.S. EPA West (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2002–0058. By hand delivery/courier, comments may be submitted (in duplicate, if possible) to EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2002–0058. Also, comments may be submitted electronically according to the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, North Carolina, or an alternate site nearby.

Docket. Docket ID No. OAR–2002–0058 contains supporting information used in developing the proposed rule. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW, Washington, DC 20460 in room B108, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Eddinger, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5426, fax number (919) 541–5450, e-mail: *eddinger.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The promulgation of the proposed rule would affect the following North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes.

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry using a boiler or process heater as defined in the proposed rule.	211	13	Extractors of crude petroleum and natural gas.
	321	24	Manufacturers of lumber and wood products.
	322	26	Pulp and paper mills.
	325	28	Chemical manufacturers.
	324	29	Petroleum refineries, and manufacturers of coal products.
	316, 326, 339	30	Manufacturers of rubber and miscellaneous plastic products.
	331	33	Steel works, blast furnaces.
	332	34	Electroplating, plating, polishing, anodizing, and coloring.
	336	37	Manufacturers of motor vehicle parts and accessories.
	221	49	Electric, gas, and sanitary services.
	622	80	Health services.
	611	82	Educational services.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, *etc.*, is regulated by this action, you should examine the applicability criteria in § 63.7485 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

How Can I Get Copies of This Document and Other Related Information?

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0058. The official public docket consists of the documents specifically referenced in this action, any public comments

received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B108, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. The EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." The EPA is not required to consider these late comments. However, late comments may be considered if time permits.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2002–0058. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2002–0058. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate if possible) to: Air and Radiation Docket and Information Center, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0058. The EPA requests a separate copy also be sent to the contact person listed above (see **FOR FURTHER INFORMATION CONTACT**).

By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, Room B108, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2002–0058. Such deliveries are only accepted during the Docket's

normal hours of operation as identified above.

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Mr. Jim Eddinger, c/o OAQPS Document Control Officer (Room C404–2), U.S. EPA, Research Triangle Park, 27711, Attention Docket ID No. OAR–2002–0058. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Kelly Hayes, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Kelly Hayes to verify the time, date, and location of the hearing.

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information presented at a public hearing, if held.

Outline. The information presented in this preamble is organized as follows:

I. Background Information
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B. What is the regulatory development background of the source categories in the proposed rule?
C. What is the statutory authority for the proposed rule?
D. What is the relationship between the proposed rule and other combustion rules?
E. What are the health effects of pollutants emitted from industrial/commercial/institutional boilers and process heaters?
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B. What pollutants are emitted?
C. What is the affected source?
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E. What emission limitations and work practice standards must I meet?
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E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Background Information

A. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires EPA to promulgate regulations for the control of HAP emissions from each source category listed under section 112(c) of the CAA. The statute requires the regulations to reflect the maximum degree of reductions in emissions of HAP that is achievable taking into consideration the cost of achieving emissions reductions, any nonair quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT. The MACT based regulation can be based on the emissions reductions achievable through application of measures, processes, methods, systems, or techniques

including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitutions of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage or fugitive emission point; (4) design, equipment, work practices, or operational standards as provided in subsection 112(h) of the CAA; or (5) a combination of the above.

For new sources, MACT based standards cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT based standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the best performing 5 sources for categories or subcategories with fewer than 30 sources.

In essence, these MACT based standards would ensure that all major sources of toxic air emissions achieve the level of control already being achieved by the better-controlled and lower-emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more a year. At the same time, this approach provides a level economic playing field, ensuring that facilities that employ cleaner processes and good emission controls are not disadvantaged relative to competitors with poorer controls.

B. What Is the Regulatory Development Background of the Source Categories in the Proposed Rule?

In September 1996, EPA chartered the Industrial Combustion Coordinated Rulemaking (ICCR) advisory committee under the Federal Advisory Committee Act (FACA). The committee's objective was to develop recommendations for regulations for several combustion source categories under sections 112 and 129 of the CAA. The ICCR advisory committee, known as the Coordinating Committee, formed Source Work Groups for the various combustion types covered under the ICCR. One of the work groups was formed to research issues related to boilers; another was formed to research issues related to process heaters. The Boiler and Process Heater Work Groups submitted recommendations, information, and data analysis results to the Coordinating Committee, which in turn considered them and submitted recommendations and information to EPA. The Committee's recommendations were considered by EPA in developing the proposed rule for boilers and process heaters. The Committee's 2-year charter expired in September 1998.

Following the expiration of the ICCR FACA charter, EPA decided to combine boilers with units in the process heater source category covering indirect-fired units, and to regulate both under the proposed NESHAP. This was done because indirect-fired process heaters and boilers are similar devices, burn similar fuel, have similar emission characteristics, and emissions from each can be controlled using similar control devices or techniques.

C. What Is the Statutory Authority for the Proposed Rule?

Section 112 of the CAA requires that EPA promulgate regulations requiring the control of HAP emissions from major sources and certain area sources. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and (f) of the CAA and, in appropriate circumstances, work practice standards under section 112(h) of the CAA.

An initial list of categories of major and area sources of HAP selected for regulation in accordance with section 112(c) of the CAA was published in the **Federal Register** on July 16, 1992 (57 FR 31576). Industrial boilers, commercial and institutional boilers, and process heaters are three of the listed 174 categories of sources. The listing was based on the Administrator's determination that they may reasonably be anticipated to emit several of the 188 listed HAP in quantities sufficient to designate them as major sources.

D. What Is the Relationship Between the Proposed Rule and Other Combustion Rules?

The proposed rule regulates source categories covering industrial boilers, institutional and commercial boilers, and process heaters. These source categories potentially include combustion units that are already regulated by other MACT standards. Therefore, we are excluding from today's proposed rule any units that are already or will be subject to regulation under another MACT standard.

The commercial and industrial solid waste incinerators (CISWI) standards (40 CFR 60, subparts CCCC and DDDD) regulate commercial and industrial nonhazardous solid waste incinerators. Sources subject to the CISWI rules are exempt from the requirements of the proposed rule.

The utility HAP study Report to Congress provides information used to determine whether fossil fuel-fired utility boilers should be regulated in a future MACT standard. A fossil fuel-fired utility boiler is a fossil fuel-fired combustion unit with a heat input greater than 25 megawatts that serves a generator producing electricity for sale. Fossil fuel-fired utility boilers are exempt from the proposed rule. Nonfossil fuel-fired utility boilers are covered by the proposed rule.

The EPA's Office of Solid Waste is in the process of developing MACT based standards for hazardous waste boilers. Boilers burning hazardous waste are not included in the proposed rule.

In 1986, EPA had codified new source performance standards (NSPS) for industrial boilers (40 CFR part 60, subparts Db and Dc) and revised portions of them in 1999. The NSPS regulates emissions of particulate matter (PM), sulfur dioxide, and nitrogen oxides from boilers constructed after June 19, 1984. Sources subject to the NSPS are still subject to the proposed rule because the proposed rule regulates sources of hazardous air pollutants while the NSPS does not. However, in developing the proposed rule for industrial/commercial/institutional boilers and process heaters, EPA minimized the monitoring requirements, testing requirements, and recordkeeping requirements to avoid duplicating requirements.

Because of the broad applicability of the proposed rule due to the definition of a process heater, certain process heaters could appear to fit the applicability of another existing MACT rule. We have, therefore, included in the list of combustion units exempt from the proposed rule refining kettles subject to the secondary lead MACT rule (40 CFR 63, subpart X). This is one combustion unit meeting the definition of a process heater, that we are specifically aware of, that is covered by another MACT standard. Therefore, we are requesting comments on other process heaters that are already or will be subject to regulation under another MACT standard.

E. What Are the Health Effects of Pollutants Emitted From Industrial/Commercial/Institutional Boilers and Process Heaters?

Today's proposed rule protects air quality and promotes the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. As noted above, emissions data collected during development of the proposed rule show that hydrogen chloride emissions represent the predominant HAP emitted by industrial boilers, accounting for 59 percent of the total HAP emissions. Industrial boilers and process heaters also emit lesser amounts of hydrogen fluoride, accounting for about 5 percent of total HAP emissions, and metals (arsenic, cadmium, chromium, mercury, manganese, nickel, and lead), accounting for about 4 percent of total HAP emissions. Exposure to these HAP is associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, irritation of the lung, skin, and mucus membranes, effects on the central nervous system, and damage to the kidneys), and acute health disorders (*e.g.*, lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the kidney and central nervous system). We have classified two of the HAP as human carcinogens and three as probable human carcinogens. We do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, today's proposed rule would reduce emissions and subsequent exposures.

1. Arsenic

Acute (short-term) high-level inhalation exposure to arsenic dust or fumes has resulted in gastrointestinal effects (nausea, diarrhea, abdominal pain), and central and peripheral nervous system disorders. Chronic (long-term) inhalation exposure to inorganic arsenic in humans is associated with irritation of the skin and mucous membranes. Human data suggest a relationship between inhalation exposure of women working at or living near metal smelters and an increased risk of reproductive effects, such as spontaneous abortions. Inorganic arsenic exposure in humans by the inhalation route has been shown to be strongly associated with lung cancer, while ingestion of inorganic arsenic in humans has been linked to a form of skin cancer and also to bladder, liver, and lung cancer. The EPA has classified inorganic arsenic as a Group A, human carcinogen.

2. Cadmium

The acute (short-term) effects of cadmium inhalation in humans consist mainly of effects on the lung, such as pulmonary irritation. Chronic (long-term) inhalation or oral exposure to cadmium leads to a build-up of cadmium in the kidneys that can cause kidney disease. Cadmium has been shown to be a developmental toxicant in animals, resulting in fetal malformations and other effects, but no conclusive evidence exists in humans. An association between cadmium exposure and an increased risk of lung cancer has been reported from human studies, but these studies are inconclusive due to confounding factors. Animal studies have demonstrated an increase in lung cancer from long-term inhalation exposure to cadmium. The EPA has classified cadmium as a Group B1, probable carcinogen.

3. Chromium

Chromium may be emitted in two forms, trivalent chromium (chromium III) or hexavalent chromium (chromium VI). The respiratory tract is the major target organ for chromium VI toxicity, for acute (short-term) and chronic (long-term) inhalation exposures. Shortness of breath, coughing, and wheezing have been reported from acute exposure to chromium VI, while perforations and ulcerations of the septum, bronchitis, decreased pulmonary function, pneumonia, and other respiratory effects have been noted from chronic exposure. Limited human studies suggest that chromium VI inhalation exposure may be associated with complications during pregnancy and childbirth, while animal studies have not reported reproductive effects from inhalation exposure to chromium VI. Human and animal studies have clearly established that inhaled chromium VI is a carcinogen, resulting in an increased risk of lung cancer. The EPA has classified chromium VI as a Group A, human carcinogen.

Chromium III is less toxic than chromium VI. The respiratory tract is also the major target organ for chromium III toxicity, similar to chromium VI. Chromium III is an essential element in humans, with a daily intake of 50 to 200 micrograms per day recommended for an adult. The body can detoxify some amount of chromium VI to chromium III. The EPA has not classified chromium III with respect to carcinogenicity.

4. Hydrogen Chloride

Hydrogen chloride, also called hydrochloric acid, is corrosive to the eyes, skin, and mucous membranes. Acute (short-term) inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic (long-term) occupational exposure to hydrochloric acid has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of hydrochloric acid in humans. In rats exposed to hydrochloric acid by inhalation, altered estrus cycles have been reported in females and increased fetal mortality and decreased fetal weight have been reported in offspring. The EPA has not classified hydrochloric acid for carcinogenicity.

5. Hydrogen Fluoride

Acute (short-term) inhalation exposure to gaseous hydrogen fluoride can cause severe respiratory damage in humans, including severe irritation and pulmonary edema. Chronic (long-term) exposure to fluoride at low levels has a beneficial effect of dental cavity prevention and may also be useful for the treatment of osteoporosis. Exposure to higher levels of fluoride may cause dental fluorosis. One study reported menstrual irregularities in women occupationally exposed to fluoride. The EPA has not classified hydrogen fluoride for carcinogenicity.

6. Lead

Lead is a very toxic element, causing a variety of effects at low dose levels. Brain damage, kidney damage, and gastrointestinal distress may occur from acute (short-term) exposure to high levels of lead in humans. Chronic (long-term) exposure to lead in humans results in effects on the blood, central nervous system (CNS), blood pressure, and kidneys. Children are particularly sensitive to the chronic effects of lead, with slowed cognitive development, reduced growth and other effects reported. Reproductive effects, such as decreased sperm count in men and spontaneous abortions in women, have been associated with lead exposure. The developing fetus is at particular risk from maternal lead exposure, with low birth weight and slowed postnatal neurobehavioral development noted. Human studies are inconclusive regarding lead exposure and cancer, while animal studies have reported an increase in kidney cancer from lead

exposure by the oral route. The EPA has classified lead as a Group B2, probable human carcinogen.

7. Manganese

Health effects in humans have been associated with both deficiencies and excess intakes of manganese. Chronic (long-term) exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a recommended daily allowance of 2 to 5 milligrams per day. Chronic exposure to high levels of manganese by inhalation in humans results primarily in CNS effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Manganism, characterized by feelings of weakness and lethargy, tremors, a mask-like face, and psychological disturbances, may result from chronic exposure to higher levels. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. The EPA has classified manganese in Group D, not classifiable as to carcinogenicity in humans.

8. Mercury

Mercury exists in three forms: elemental mercury, inorganic mercury compounds (primarily mercuric chloride), and organic mercury compounds (primarily methyl mercury). Each form exhibits different health effects. Various major sources may release elemental or inorganic mercury; environmental methyl mercury is typically formed by biological processes after mercury has precipitated from the air.

Acute (short-term) exposure to high levels of elemental mercury in humans results in CNS effects such as tremors, mood changes, and slowed sensory and motor nerve function. High inhalation exposures can also cause kidney damage and effects on the gastrointestinal tract and respiratory system. Chronic (long-term) exposure to elemental mercury in humans also affects the CNS, with effects such as increased excitability, irritability, excessive shyness, and tremors. The EPA has not classified elemental mercury with respect to cancer.

Acute exposure to inorganic mercury by the oral route may result in effects such as nausea, vomiting, and severe abdominal pain. The major effect from chronic exposure to inorganic mercury is kidney damage. Reproductive and developmental animal studies have reported effects such as alterations in testicular tissue, increased embryo resorption rates, and abnormalities of development. Mercuric chloride (an inorganic mercury compound) exposure has been shown to result in forestomach, thyroid, and renal tumors in experimental animals. The EPA has classified mercuric chloride as a Group C, possible human carcinogen.

9. Nickel

Nickel is an essential element in some animal species, and it has been suggested it may be essential for human nutrition. Nickel dermatitis, consisting of itching of the fingers, hand and forearms, is the most common effect in humans from chronic (long-term) skin contact with nickel.

Respiratory effects have also been reported in humans from inhalation exposure to nickel. No information is available regarding the reproductive or developmental effects of nickel in humans, but animal studies have reported such effects. Human and animal studies have reported an increased risk of lung and nasal cancers from exposure to nickel refinery dusts and nickel subsulfide. Animal studies of soluble nickel compounds (*i.e.*, nickel carbonyl) have reported lung tumors. The EPA has classified nickel refinery subsulfide as Group A, human carcinogens and nickel carbonyl as a Group B2, probable human carcinogen.

II. Summary of the Proposed Rule

A. What Source Categories and Subcategories Are Affected by the Proposed Rule?

The proposed rule affects industrial boilers, institutional and commercial boilers, and process heaters. In the proposed rule process heaters are defined as units in which the combustion gases do not directly come into contact with process gases in the combustion chamber (*e.g.*, indirect fired). Boiler means an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water. Combustion units are not subject to the proposed rule simply by virtue of having a waste heat boiler. A waste heat boiler (or heat recovery steam generator) is a device that recovers normally unused energy and converts it to usable heat. Emissions from a combustion unit with a waste heat boiler are regulated by the applicable standards for the particular type of combustion unit. For example, emissions from a commercial or industrial solid waste incineration unit, or other incineration unit with a waste heat boiler are regulated by standards established under section 129 of the CAA.

Hot water heaters also are not regulated under today's proposed rule. A hot water heater is a closed vessel in which water is heated by combustion of gaseous fuel and is withdrawn for use external to the vessel at pressures not exceeding 160 pounds per square inch gauge and water temperatures not exceeding 210 degree Fahrenheit.

B. What Pollutants Are Emitted?

Boilers and process heaters emit PM, volatile organic compounds, and hazardous air pollutants, depending on the material burned. Solid and liquid fuel-fired units emit metals, halogenated compounds and organic compounds. Gas fuel-fired units emit mostly organic compounds.

C. What Is the Affected Source?

The affected source is each individual industrial, commercial, or institutional boiler or process heater located at a major facility. The affected source does not include units that are municipal waste combustors (40 CFR part 60, subparts AAAA, BBBB, Eb or Cb), medical waste incinerators (40 CFR part 60, subpart Ce and Ec), fossil fuel-fired electric utility steam generating units, commercial and industrial solid waste incineration units (40 CFR part 60, subparts CCCC or DDDD), recovery boilers or furnaces (40 CFR part 63, subpart MM), ethylene cracking furnaces (40 CRF part 63, subpart YY), or hazardous waste combustion units required to have a permit under section 3005 of the Solid Waste Disposal Act or are subject to 40 CFR part 63, subpart EEE.

D. Does the Proposed Rule Apply to Me?

The proposed rule applies to you if you own or operate a boiler or process heater at a major source meeting the requirements discussed previously in this preamble. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more a year.

E. What Emission Limitations and Work Practice Standards Must I Meet?

You must meet the emission limits and work practice standards for the subcategories in Table 1 of this preamble for each of the pollutants listed. Emission limits and work practice standards were developed for new and existing sources; and for large, small, and limited use solid, liquid, and gas fuel-fired units. Large units are those

watertube boilers and process heaters with heat input capacities greater than 10 million British thermal units per hour (MMBtu/hr). Small units are any firetube boilers or any boiler and process heater with heat input capacities less than or equal to 10 MMBtu/hr. Limited use units are those large units with capacity utilizations less than or equal to 10 percent as required in a federally enforceable permit.

If your new or existing boiler or process heater is permitted to burn a solid fuel (either as a primary fuel or a backup fuel), or any combination of solid fuel with liquid or gaseous fuel, the unit is in one of the solid subcategories. If your new or existing boiler or process heater burns a liquid fuel, or a liquid fuel in combination with a gaseous fuel, the unit is in one of the liquid subcategories. If your new or existing boiler or process heater burns a gaseous fuel only, the unit is in the gas subcategory.

TABLE 1.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR BOILERS AND PROCESS HEATERS

[Pounds per million British thermal units]

Source	Subcategory	Particulate matter (PM)	or	Total selected metals	Hydrogen chloride (HCl)	Mercury (Hg)	Carbon Monoxide (CO)(ppm@3%oxygen)
New Boiler, or Process Heater.	Solid Fuel, Large Unit	0.026	or	0.0001	0.02	0.000003	400
	Solid Fuel, Small Unit	0.026	or	0.0001	0.02	0.000003	.....
	Solid Fuel, Limited Use.	0.026	or	0.0001	0.02	0.000003	400
	Liquid Fuel, Large Unit.	0.03	.....	.....	0.0005	.....	400
	Liquid Fuel, Small Unit	0.03	.....	0.0009	.....	.....	
	Liquid Fuel, Limited Use.	0.03	.....	.....	0.0009	.....	400
	Gaseous Fuel Large Unit.	.....	.....	.....	.....	.....	400
	Gaseous Fuel Small Unit.	.....	.....	.....	.....		
	Gaseous Fuel Limited Use.	.....	.....	.....	.....	.....	400
Existing Boiler or Process Heater.	Solid Fuel, Large Unit	0.07	or	0.001	0.09	0.000007	.....
	Solid Fuel, Small Unit	.....	.....	.....	.....	.....	.....
	Solid Fuel, Limited Used.	0.2	or	0.001	.....	.....	.....
	Liquid Fuel, Large Unit.	.....	.....	.....	.....	.....	.....
	Liquid Fuel, Small Unit	.....	.....	.....	.....	.....	.....
	Liquid Fuel, Limited Use.	.....	.....	.....	.....	.....	.....
	Gaseous Fuel	.....	.....	.....	.....	.....	.....

For solid fuel-fired boilers or process heaters, we are proposing to allow sources to choose one of two emission limit options: (1) Existing and new affected sources may choose to limit PM emissions to the level listed in Table 1 of this preamble or (2) existing and new affected sources may choose to limit total selected metals emissions to the level listed in Table 1 of this preamble.

If you do not use an add-on control or use an add-on control other than a wet scrubber, you must maintain opacity level to less than or equal to the level established during the compliance test for mercury and PM or total selected metals, and maintain the fuel chlorine content to less than or equal to the operating level established during the HCl compliance test.

If you use a wet scrubber, you must maintain the minimum pH, pressure drop and liquid flow-rate above the operating levels established during the performance tests.

If you use a dry scrubber, you must maintain opacity level and the minimum sorbent injection rate established during the performance test.

If you use an electrostatic precipitator (ESP) in combination with a wet scrubber and cannot monitor the opacity, you must maintain the average secondary current and voltage or total power input established during the performance test.

There is an alternative compliance procedure and operating limit for meeting the total selected metals emission limit option or the mercury emission limit option. If you have no control or do not want to take credit of metals reductions with your existing control device, and can show that total metals in the fuel would be less than the metals emission level, then you can monitor the metals fuel analysis to meet the metals emissions limitations. Similarly, if you do not have an emission control device or you otherwise would rather comply by limiting the mercury input at your facility, and can show that mercury in the fuel would be less than the mercury emission level, then you can monitor the mercury fuel analysis to meet the mercury emission limitations.

If your unit is a new source in the large or limited use subcategories, it must meet a carbon monoxide (CO) emission limit of 400 parts per million corrected to 3 percent oxygen. If your new or existing source is controlled with a fabric filter, then you must install a bag leak detection system such that the bag detection system alarm does not sound more than 5 percent of the operating time during a 6-month period.

F. What Are the Testing and Initial Compliance Requirements?

As the owner or operator of a new or existing boiler or process heater, you must conduct performance tests to demonstrate compliance with any applicable emission limits. The applicable emission limits and,

therefore, the required performance tests are different depending on the subcategory classification of the unit. Existing units in the small solid fuel subcategory and in any of the liquid or gaseous fuel subcategories do not have applicable emission limits and, therefore, are not required to conduct stack tests. Other units are required to conduct the following compliance tests where applicable:

(1) Conduct initial and annual stack tests to determine compliance with the PM emission limits using EPA Method 5 or Method 17 in appendix A to part 60 of this chapter.

(2) Affected sources in the solid fuel subcategories may choose to comply with an alternative total selected metals emission limit instead of PM. Sources would then conduct initial and annual stack tests to determine compliance with the total selected metals emission limit using EPA Method 29 in appendix A to part 60 of this chapter.

(3) Conduct initial and annual stack tests to determine compliance with the mercury emission limits using EPA method 29 in appendix A to part 60 of this chapter (for boilers with rated heat input capacities of less than 250 MMBtu per hour) or the draft ASTM Z65907, "Standard Method for Both Speciated and Elemental Mercury Determination," (for boilers with rated heat input capacities of greater than 250 MMBtu per hour).

(4) Conduct initial and annual stack tests to determine compliance with the HCl emission limits using EPA Method 26 in appendix A to part 60 of this chapter (for boilers without wet scrubbers) or EPA Method 26A in appendix A to part 60 of this chapter (for boilers with wet scrubbers).

(5) Use EPA Method 19 in appendix A to part 60 of this chapter to convert measured concentration values to pound per million British thermal units (Btu) values.

(6) For new units in any of the liquid fuel subcategories that do not burn residual oil, instead of conducting an initial compliance test you may submit a signed statement in the Notification of Compliance Status report that indicates that you only burn liquid fossil fuels other than residual oil.

As part of the initial compliance demonstration, you must monitor specified operating parameters during the initial performance tests that demonstrate compliance with the PM (or metals), mercury, and HCl emission limits. You must calculate the average parameter values measured during each 1-hour test run over the 3-hour performance test. The minimum or maximum of the three average values (depending on the parameter measured) for each applicable parameter is established as a site-specific operating limit. The applicable operating parameters for which operating limits must be established are based on the emissions limits applicable to your unit as well as the types of add-on controls on the unit. A summary of the operating limits that must be established for the various types of the following units:

(1) For boilers and process heaters without wet scrubbers that must comply with the mercury emission limit and either a PM emission limit or a total selected metals emission limit, you must measure opacity during the performance test and calculate the 6-minute averages. The maximum 1-hour average measured establishes your site-specific opacity operating limit. Or, if the unit is controlled with a fabric filter, instead of setting an opacity operating limit, the fabric filter must be operated such that the required bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period.

(2) For boilers and process heaters without wet or dry scrubbers that must comply with an HCl emission limit, you must measure the average chlorine content level in the input fuel(s) during the HCl performance test. This is your maximum chlorine input operating limit. If you plan to burn a new fuel, a fuel from a new mixture, or a fuel from a new supplier than what was burned during the initial performance test, then you must recalculate the maximum chlorine input anticipated from the new fuels based on supplier data or own fuel analysis. If the results of recalculating the chlorine input exceeds the average chlorine content level established during the initial test then you must conduct a new performance test to demonstrate compliance with the HCl emission limit.

(3) For boilers and process heaters with wet scrubbers that must comply with a mercury, PM and/or an HCl emission limit, you must measure pressure drop and liquid flow-rate of the scrubber during the performance test, and calculate the average value for each test run. The minimum test run average establishes your site-specific pressure drop and liquid flow-rate operating levels. If different average parameter levels are measured during the mercury, PM (or metals) and HCl tests, the highest of the average values becomes your site-specific operating limit. If you are complying with an HCl emission limit, you must measure pH during the performance test for HCl and determine the average for each test run and the minimum value for the performance test. This establishes your minimum pH operating limit.

(4) For boilers and process heaters with dry scrubbers that must comply with a PM or mercury emission limit, you must measure opacity during the PM performance test as described above. If you must also comply with an HCl emission limit, you must measure the sorbent injection rate during the performance test for HCl, and calculate the average for each test run. The minimum test run average established during the performance test is your site-specific minimum sorbent injection rate operating limit.

(5) For boilers and process heaters with fabric filters in combination with wet scrubbers that must comply with a mercury emission limit, PM emission limit and/or an HCl emission limit, you must measure the pH, pressure drop, and liquid flow-rate of the wet scrubber during the performance test and calculate the average value for each test run. The minimum test run average establishes your site-specific pH, pressure drop, and liquid flow-rate operating limits for the wet scrubber. Furthermore, the fabric filter must be operated such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period.

(6) For boilers and process heaters with ESP in combination with wet scrubbers that must comply with a mercury, PM and/or an HCl emission limit, you must measure the pH, pressure drop, and liquid flow-rate of the wet scrubber during the HCl performance test and you must measure the voltage and current of the ESP collection plates during the mercury and PM (or metals) performance test. Calculate the average value of these parameters for each test run. The minimum test run averages establish your site-specific minimum pH, pressure drop, and liquid flow-rate operating limit for the wet scrubber and the minimum voltage and current operating limits for the ESP plates.

(7) For boilers that choose to comply with the alternative total selected metals emission limit instead of PM and have either no add-on controls or add-on controls for which you do not want to take credit for any emission reduction of metals, you must measure the total selected metals content of the inlet fuel that was burned during the total selected metals performance test. This value is your maximum fuel inlet metals content operating limit. If you plan to burn a new fuel, a fuel from a new mixture, or a fuel from a new supplier than what was burned during the initial performance test, then you must

recalculate the maximum metals input anticipated from the new fuels based on supplier data or own fuel analysis. If the results of recalculating the metals input exceeds the average metals content level established during the initial test then you must conduct a new performance test to demonstrate compliance with the alternate total selected metals emission limit.

(8) For boilers that choose to demonstrate compliance with the mercury emission limit on the basis of fuel analysis and have no add-on controls or add-on controls for which you do not want to take credit for any emission reduction of mercury, you must measure the mercury content of the inlet fuel that was burned during the mercury performance test. This value is your maximum fuel inlet mercury operating limit. If you plan to burn a new fuel, a fuel from a new mixture, or a fuel from a new supplier than what was burned during the initial performance test, then you must recalculate the maximum mercury input anticipated from the new fuels based on supplier data or own fuel analysis. If the results of recalculating the mercury input exceeds the average mercury content level established during the initial test then you must conduct a new performance test to demonstrate compliance with the mercury emission limit.

(9) For new boilers and process heaters in any of the large or limited use subcategories, you must monitor CO during the performance tests for PM (or metals) and/or HCl to demonstrate that average CO emissions are at or below an exhaust concentration of 400 parts per million (ppm) by volume on a dry basis corrected to 3 percent oxygen.

G. What Are the Continuous Compliance Requirements?

To demonstrate continuous compliance with the emission limitations, you must monitor and comply with the applicable site-specific operating limits established during the following performance tests:

(1) For boilers and process heaters without wet scrubbers that must comply with a mercury emission limit and either a PM emission limit or a total selected metals emission limit, you must continuously monitor opacity and maintain the 3-hour block average at or below your site-specific opacity operating limit. Or, if the unit is controlled with a fabric filter, instead of continuous monitoring opacity, the fabric filter must be continuously operated such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period.

(2) For boilers and process heaters without wet or dry scrubbers that must comply with an HCl emission limit, you must maintain daily records of fuel use that demonstrate that you have burned no new fuels such that you have maintained the fuel chlorine content level at or below your site-specific maximum chlorine input operating limit. If you plan to burn a new fuel, a fuel from a new mixture, or a fuel from a new supplier than what was burned during the initial performance test, then you must recalculate the maximum chlorine input anticipated from the new fuels based on supplier data or own fuel analysis. If the results of recalculating the chlorine input exceeds the average chlorine content level established during the initial test then you must conduct a new performance test to demonstrate continuous compliance with the HCl emission limit.

(3) For boilers and process heaters with wet scrubbers that must comply with a mercury, PM and/or an HCl emission limit, you must monitor pressure drop and liquid flow-rate of the scrubber and maintain the 3-hour block averages at or above the operating limits established during the performance test. You must monitor the pH of the scrubber and maintain the 3-hour block average at or above the operating limit established during the performance test to demonstrate continuous compliance with the HCl emission limits.

(4) For boilers and process heaters with dry scrubbers that must comply with a PM or mercury emission limit, you must monitor and maintain opacity levels as described above to demonstrate continuous compliance with the PM emission limits. If you must also comply with an HCl emission limit, you must continuously monitor the sorbent injection rate and maintain it at or above the operating limits established during the HCl performance test.

(5) For boilers and process heaters with fabric filters in combination with wet scrubbers, you must monitor the pH, pressure drop, and liquid flow-rate of the wet scrubber and maintain the levels at or above the operating limits established during the HCl performance test. You must also maintain the operation of the fabric filter such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period.

(6) For boilers and process heaters with ESP in combination with wet scrubbers that must comply with a mercury, PM and/or an HCl emission limit, you must monitor the pH, pressure drop, and liquid flow-rate of the wet scrubber and maintain the 3-hour block averages at or above the operating limits established during the HCl performance test and you must monitor the voltage and current of the ESP collection plates and maintain the 3-hour block averages at or above the operating limits established during the mercury or PM (or metals) performance test.

(7) For boilers that choose to comply with the alternative total selected metals limit instead of PM emission limit based on fuel analysis rather than on performance testing, you must maintain daily fuel records that demonstrate that you burned no new fuels or fuels from a new supplier such that the total selected metals content of the inlet fuel was maintained at or below your maximum fuel inlet metals content operating limit set during the metals performance test. If you plan to burn a new fuel, a fuel from a new mixture, or a fuel from a new supplier than what was burned during the initial performance test, then you must recalculate the maximum metals input anticipated from the new fuels based on supplier data or own fuel analysis. If the results of recalculating the metals input exceeds the average metals content level established during the initial test then you must conduct a new performance test to demonstrate continuous compliance with the alternate selected metals emission limit.

(8) For boilers that choose to comply with the mercury emission limit based on fuel analysis rather than on performance testing, you must maintain daily fuel records that demonstrate that you burned no new fuels or fuels from a new supplier such that the total selected mercury content of the inlet fuel was maintained at or below your maximum fuel inlet metals content operating limit set during the mercury performance test. If you plan to burn a new fuel, a fuel from a new mixture, or a fuel from a new supplier than what was burned during the initial performance test, then you must recalculate the maximum mercury input anticipated from the new fuels based on supplier data or own fuel analysis. If the results of recalculating the mercury input exceeds the average mercury content level established during the initial test then you must conduct a new performance test to demonstrate continuous compliance with the mercury emission limit.

(9) For new boilers and process heaters in any of the large or limited use subcategories, you must continuously monitor CO and maintain the average CO emissions at or below 400 ppm by

volume on a dry basis corrected to 3 percent oxygen to demonstrate compliance with the work practice standards. Upon detecting an excursion or exceedance, you must restore operation of the unit to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance. Such actions may include initial inspections and evaluation, recording that operations returned to normal without operator action, or any necessary follow-up actions to return operation to below the work practice standard.

If a control device other than the ones specified in this section is used to comply with the proposed rule, you must establish site-specific operating limits and establish appropriate continuous monitoring requirements, as approved by the Administrator.

H. What Are the Notification, Recordkeeping and Reporting Requirements?

You must keep the following records:

(1) All reports and notifications submitted to comply with the proposed rule.

(2) Continuous monitoring data as required in the proposed rule.

(3) Each instance in which you did not meet each emission limit and each operating limit, including periods of startup, shutdown, and malfunction (*i.e.*, deviations from the proposed rule).

(4) Daily hours of operation by each source.

(5) Total fuel use by each affected source electing to comply with an emission limit based on fuel analysis for each 30-day period along with a description of the fuel, the total fuel usage amounts and units of measure, and information on the supplier and original source of the fuel.

(6) Calculations and supporting information of chlorine fuel input, as required in the proposed rule.

(7) Calculations and supporting information of total selected metals and mercury fuel input, as required in the proposed rule, if applicable.

(8) A signed statement, as required in the proposed rule, indicating you burned no new fuels, no fuels from a new supplier, or no new fuel mixture or the recalculation of chlorine input to demonstrate that the new fuel, new mixture, new source still meets chlorine fuel input levels.

(9) A signed statement, as required in the proposed rule, indicating you burned no new fuels, no fuels from a new supplier, or no new fuel mixture or the recalculation of total selected metals fuel input to demonstrate that the new fuel, new fuel mixture, or fuel from a new source still meets the total selected metals fuel input levels.

(10) A signed statement, as required in the proposed rule, indicating you burned no new fuels, no fuels from a new supplier, or no new fuel mixture or the recalculation of mercury fuel input to demonstrate that the new fuel, new fuel mixture, or fuel from a new source still meets the mercury fuel input levels.

(11) A copy of the results of all performance tests, fuel analysis, opacity observations, performance evaluations, or other compliance demonstrations conducted to demonstrate initial or continuous compliance with the proposed rule.

(12) A copy of any Federally enforceable permit that limits the annual capacity factor of the source to less than or equal to 10 percent.

(13) A copy of your site-specific startup, shutdown, and malfunction plan.

(14) A copy of your site-specific monitoring plan developed for the proposed rule, if applicable.

You must submit the following reports and notifications:

(1) Notifications required by the General Provisions.

(2) Initial Notification no later than 120 calendar days after you become subject to this subpart.

(3) Notification of Intent to conduct performance tests and/or compliance demonstration at least 60 calendar days before the performance test and/or compliance demonstration is scheduled.

(4) Notification of Compliance Status 60 calendar days following completion of the performance test and/or compliance demonstration.

(5) Compliance reports semi-annually.

III. Rationale of the Proposed Rule

A. How Did EPA Determine Which Pollution Sources Would Be Regulated Under the Proposed Rule?

The proposed rule regulates source categories covering industrial boilers, institutional and commercial boilers, and process heaters. These source categories potentially include combustion units that are already regulated by other MACT standards. Therefore, we are excluding from today's proposed rule any units that are already or will be subject to regulation under another MACT standard. A list of combustion units excluded from the proposed rule is discussed previously in this preamble. The CAA specifically requires that fossil fuel-fired steam generating units of more than 25 megawatts that produce electricity for sale (*i.e.*, utility boilers) be reviewed separately by EPA. Consequently, the proposed rule does not regulate fossil fuel-fired utility boilers greater than 25 megawatts, but does regulate fossil fuel-fired units less than 25 megawatts and all nonfossil fuel-fired utility boilers. The proposed rule also does not regulate emissions from combustion units with waste heat boilers, unless such units would otherwise be subject to the emission limitations in today's proposed rule. For example, emissions from any commercial or industrial solid waste incinerator (CISWI) or other incinerator unit that has a waste heat boiler will be covered by regulations promulgated under section 129 of the CAA.

During the ICCR FACA, the scope of the process heater source category was limited to regulate only indirect-fired units. Direct-fired units are covered in other MACT standards or rulemakings pertaining to industrial process operations. For example, lime kilns are covered by the Pulp and Paper NESHAP (40 CFR part 63, subpart S). Indirect-fired process heaters are similar to boilers in fuel use, emissions, and applicable controls, and, therefore, it is appropriate for EPA to combine this category of units with industrial, commercial and institutional boilers for purposes of developing emission standards.

Also during the ICCR FACA process, EPA received comments from stakeholders regarding the potential for the proposed rule to regulate small hot water heaters located at major source facilities. Many industrial facilities have office buildings located onsite which use hot water heaters. Such hot water heaters, by their design and operation, could be considered boilers. However, since hot water heaters generally are small and use natural gas as fuel, their emissions are negligible compared to the emissions from the industrial operations that make such facilities major sources, and compared to boilers that are used for industrial, commercial, or institutional purposes. Moreover, such hot water heaters are more appropriately described as residential-type boilers, not industrial, commercial or institutional boilers. Consequently, we are including a definition of hot water heaters that includes fuel, size, pressure and temperature limitations that we believe are appropriate to

distinguish between residential-type units and industrial, commercial or institutional units. Therefore, the proposed rule regulates industrial, commercial, and institutional boilers and process heaters located at major source facilities but excludes residential-type hot water heaters.

The Clean Air Act allows EPA to divide source categories into subcategories when differences between given types of units lead to corresponding differences in the nature of emissions and the technical feasibility of applying emission control techniques. The design, operating, and emissions information that EPA has reviewed indicates the need to subcategorize boilers and process heaters based on the physical state of the fuel burned, *i.e.*, solid, liquid, or gas. Data indicate that there are significant design and operational differences between units that burn solid, liquid and gaseous fuels.

Boiler systems are designed for specific fuel types and will encounter problems if a fuel with characteristics other than those originally specified is fired. While many boilers in the population database are indicated to co-fire liquids or gases with solid fuels, in actuality most of these commonly use fuel oil or natural gas as a startup fuel only. Other co-fired units are specifically designed to fire combinations of solids, liquids, and gases. Changes to the fuel type (solid, liquid, or gas) would require extensive changes to the fuel handling and feeding system (*e.g.*, a stoker using wood as fuel would need to be redesigned to handle fuel oil or gaseous fuel). Additionally, the burners and combustion chamber would need to be redesigned and modified to handle different fuel types and account for increases or decreases in the fuel volume and shape. In some cases, the changes may reduce the capacity and efficiency of the boiler or process heater. An additional effect of these changes would be extensive retrofit costs.

Emissions from boilers and process heaters burning solids, liquids, and gaseous fuels will also differ. Boilers and process heaters emit a number of different types of HAP emissions. In general, their formation is dependent upon the composition of the fuel. The combustion quality and temperature may also play an important role. The fuel dependent HAP emissions from boilers and process heaters are metals, including mercury, and acid gases. These fuel dependent HAP emissions generally can be controlled by either changing the fuel property before combustion or by removing the HAP from the flue gas after combustion. Organic HAP, on the other hand, are formed from incomplete combustion and are much less influenced by the characteristics of the fuel being burned. The degree of combustion may be greatly influenced by three general factors: time, turbulence, and temperature. These factors are a function of the design of the boiler or process heater which is dependent in part on the type of fuel being burned.

Solid fuel-fired units will emit larger amounts of PM and metals depending on the solid fuel burned. Liquid and gaseous fuel-fired units generally emit larger amounts of organic HAP. Because these different types of units have different emission characteristics which may influence the feasibility of effectiveness of emission control, they should be regulated separately (*i.e.*, subcategorized). Thus, these categories appropriately identify distinctly different types of units subject to regulation.

Accordingly, EPA decided to subcategorize boilers and process heaters into solid, liquid and gaseous fuel subcategories in order to account for these differences in emissions and applicable controls. The solid fuel subcategory includes boilers and process heaters burning any amount of solid fuel (including units burning a combination of solid fuel and liquid or gaseous fuel). The gaseous fuel subcategory includes units only burning gaseous fuel. The liquid fuel subcategory includes all remaining boilers and process heaters.

Small boilers and process heaters were also identified as a subcategory. These small units typically are package units having capacities less than 10 MMBtu/hr heat input or use a combustor design (*i.e.*, firetube or cast iron) which is not common in large units. Large boilers generally are field-erected using the watertube combustor design with capacities above 10 MMBtu/hr. As discussed above, the design of the boiler or process heater will influence the completeness of the combustion process which will influence the formation of organic HAP emissions. The vast majority of these small units use natural gas as fuel. Additionally, most existing State and Federal regulations for boilers and process heaters do not regulate units with a heat input capacity of less than 10 MMBtu/hr, due to their low emissions. Consequently, we decided to further subcategorize boilers and process heaters within each fuel category by creating subcategories for large units (watertube boilers and process heaters greater than 10 MMBtu/hr capacity) and small units (all firetube boilers and boilers and process heaters of any other type with less than or equal to 10 MMBtu/hr capacity).

A review of the information gathered on boilers also shows that a number of units operate as backup, emergency, or peaking units that operate infrequently. Back-up or emergency units only operate if another boiler that is the regular source of energy or steam is not operating (for example due to a shutdown for maintenance and repair). Peaking units operate only during peak energy use periods, typically in the summer months. The boiler database indicates that these infrequently operated units typically operate 10 percent of the year or less. These limited use boilers, when called upon to operate, must respond without failure and without lengthy periods of startup. While these are potential sources of emissions, and it is appropriate for EPA to address them in the proposal, the Agency believes that their use and operation are different compared to typical industrial, commercial, and institutional boilers. Consequently, we decided that such limited use units should have their own subcategory. Therefore, the proposed rule has subcategories for boilers and process heaters having a capacity utilization of less than 10 percent.

In summary, we have identified nine subcategories of boilers and process heaters located at major sources: (1) Large solid fuel-fired boilers and process heaters (sizes greater than 10 MMBtu/hr), (2) large liquid fuel-fired boilers and process heaters (sizes greater than 10 MMBtu/hr), (3) large gaseous fuel-fired boilers and process heaters (sizes greater than 10 MMBtu/hr), (4) small solid fuel-fired boilers and process heaters (firetubes or any unit less than or equal to 10 MMBtu/hr), (5) small liquid fuel-fired boilers and process heaters (sizes less than or equal to 10 MMBtu/hr), (6) small gaseous fuel-fired boilers and process heaters (sizes less than or equal to 10 MMBtu/hr), (7) limited use solid fuel-fired boilers and process heaters (large units with capacity utilization less than or equal to 10 percent), (8) limited use liquid fuel-fired boilers and process heaters (large units with capacity utilization less than or equal to 10 percent), and (9) limited use gaseous fuel-fired boilers and process heaters (large units with capacity utilization less than or equal to 10 percent).

B. How Did EPA Select the Format for the Proposed Rule?

The proposed rule includes emission limits for PM, selected metallic HAP,

mercury, and HCl for six of the nine subcategories. The selection of emission limitations as the format for the proposed rule provides flexibility for the regulated community by allowing a regulated source to choose any control technology or technique to meet the emission limits, rather than requiring each unit to use a prescribed method that may not be appropriate in each case. This is particularly relevant for boilers and process heaters, because they can burn many different types of fuels with greatly varying emission profiles and owners need flexibility to use the control devices that are best for their particular emission characteristics.

The EPA selected an outlet emission rate format because outlet data are available for boilers and process heaters that use the control techniques that provide the greatest reduction in HAP emissions. The individual limits reflect the achievable performance of boilers and process heaters using the appropriate controls for each type of emissions.

The EPA is proposing numerical emission rate limits as a mass of pollutant emitted per heat energy input to the boiler or process heater. The most typical units for the limits are pounds of pollutant emitted per million Btu of heat input. The mass per heat input units are consistent with other Federal and many State boiler regulations and allows easy comparison between such requirements. Additionally, the proposed rule contains an option to monitor inlet chlorine, mercury, and metals content in the fuel to meet outlet emission rate limits. This option can only be done on a mass basis.

The EPA considered percent reduction and outlet concentration as alternative formats for the pollutants regulated. However, an outlet concentration limit could not be accurately correlated to the chlorine content in the inlet fuel. An outlet concentration limit would also not be consistent with the format of other regulations. Affected units would already be complying with a mass per heat input limit, so EPA did not believe that a concentration limit would provide any additional benefits or flexibility. Additionally, data were insufficient to determine percent reductions that control devices achieve. Furthermore, a percent reduction requirement would limit the flexibility of the regulated community by requiring the use of a control device. Therefore, neither alternative was selected as the format for the proposed rule. The EPA requests comments on the appropriateness of percent reduction requirements and outlet concentration limit requirements, and any data upon which those requirements could be based.

Boilers and process heaters can emit a wide variety of compounds, depending on the fuel burned. The boiler emissions test database lists over 100 possible HAP. Because of the large number of HAP potentially present and the disparity in the quantity and quality of the emissions information available, EPA grouped the HAP into four common categories: mercury, non-mercury metallic HAP, inorganic HAP, and organic HAP. In general, the pollutants within each group have similar characteristics and can be controlled with the same techniques. For example, non-mercury metallic HAP can be controlled with PM controls. The EPA chose to look at mercury separately from other metallic HAP due to its different chemical characteristics and applicable controls.

Next, EPA identified compounds that could be used as surrogates for all the compounds in each pollutant category. For the non-mercury metallic HAP, EPA chose to use PM as a surrogate. Most, if not all, non-mercury metallic HAP emitted from combustion sources will appear on the flue gas fly-ash. Therefore, the same control techniques that would be used to control the fly-ash PM will control non-mercury metallic HAP. Particulate matter was also chosen instead of specific metallic HAP because all fuels do not emit the same type and amount of metallic HAP but most generally emit PM that includes some amount and combination of metallic HAP. The use of PM as a surrogate will also eliminate the cost of performance testing to comply with numerous standards for individual metals.

However, the Agency is sensitive to the fact that some sources that burn fuels containing very little metals, but would have sufficient PM emissions to require control under the PM provisions of the proposed rule. In such cases, PM would not be an appropriate surrogate for metallic HAP. Therefore, the Agency is also proposing an alternative metals emission limit. A source may choose to comply with the alternative metals emissions limit instead of the PM limit to meet the proposed rule. The metals emission limit is for the sum of emissions of eight selected metals: arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium. The eight represent the most common and the largest emitted metallic HAP from boilers and process heaters.

For inorganic HAP, EPA chose to use HCl as a surrogate. The emissions test information available to EPA indicate that the primary inorganic HAP emitted from boilers and process heaters are acid gases, with HCl present in the largest amounts. Other inorganic compounds emitted are found in much smaller quantities. Also, control technologies that would reduce HCl would also control other inorganic compounds that are acid gases. Thus, the best controls for HCl would also be the best controls for other inorganic HAP that are acid gases. Therefore, HCl is a good surrogate for inorganic HAP because controlling HCl will result in a corresponding control of other inorganic HAP emissions.

For organic HAP, EPA chose to use CO as a surrogate to represent the variety of organic compounds, including dioxins, emitted from the various fuels burned in boilers and process heaters. Because CO is a good indicator of incomplete combustion, there is a direct correlation between CO emissions and the formation of organic HAP emissions. Monitoring equipment for CO is readily available, which is not the case for organic HAP. Also, it is significantly easier and less expensive to measure and monitor CO emissions than to measure and monitor emissions of each individual organic HAP. Therefore, using CO as a surrogate for organic HAP is a reasonable approach because minimizing CO emissions will result in minimizing organic HAP emissions.

In addition to meeting emission limits, today's proposal would also require sources to establish control device operating parameter limits and continuously monitor control device operating parameters. Each source would establish site-specific values for the relevant parameters during performance tests, and use the parameter values to demonstrate compliance with the emission limits. We selected different operating parameters for each type of potential control device. The parameters were selected because they are good indicators of proper control device operation and performance, are consistent with other standards, and are feasible to monitor. The operating limits reasonably assure that the control devices continue to operate in a manner that will achieve the same level of control as during the performance test.

C. How Did EPA Determine the Proposed Emission Limitations for Existing Units?

All standards established pursuant to section 112(d)(2) of the CAA must reflect MACT, the maximum degree of reduction in emissions of air pollutants that the Administrator, taking into consideration the cost of achieving such

emissions reductions, and any nonair quality health and environmental impacts and energy requirements, determined is achievable for each category. For existing sources, MACT cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources for categories and subcategories with 30 or more sources. This requirement constitutes the MACT floor for existing boilers and process heaters. However, EPA may not consider costs or other impacts in determining the MACT floor. The EPA must consider cost, nonair quality health and environmental impacts, and energy requirements in connection with any standards that are more stringent than the MACT floor (beyond-the-floor controls).

D. How Did EPA Determine the MACT Floor for Existing Units?

We considered several approaches to identifying MACT floor for existing industrial, commercial, and institutional boilers and process heaters. Based on recent court decisions, in most cases the most acceptable approach for determining the MACT floor is likely to involve primarily the consideration of available emissions test data. Using such an approach, EPA might calculate the MACT floor for a category of sources by ranking the emission test results from units within the category from lowest to highest, and then taking the numerical average of the test results from the best performing (lowest emitting) 12 percent of sources.

However, after review of the available HAP emission test data, we determined that it was inappropriate to use this MACT floor approach to establish emission limits for boilers and process heaters. The main problem with using only the HAP emissions data is that, based on the test data alone, uncontrolled units (or units with low efficiency add-on controls) were frequently identified as being among the best performing 12 percent of sources in a subcategory, while many units with high efficiency controls were not. However, these uncontrolled or poorly controlled units are not truly among the best controlled units in the category. Rather, the emissions from these units are relatively low because of particular characteristics of the fuel that they burn, that cannot reasonably be replicated by other units in the category or subcategory. In fact, we expect just this kind of variability in emission rates given the variety of fuel types included within each subcategory of boilers and process heaters.

A review of fuel analyses indicate that the concentration of HAP (metals, HCl, mercury) vary greatly, not only between fuel types, but also within each fuel type. Some fuels even have pollutant concentration levels below the detection limit of the applicable analytical test method. Therefore, a unit without any add-on controls, but burning a fuel containing lower amounts of HAP, can have emission levels that are lower than the emissions from a unit with the best available add-on controls. If only the available HAP emissions data are used, the resulting MACT floor levels would be unachievable for many existing units, even those that employ the most effective available emission control technology. For example, an uncontrolled boiler burning wood may have lower emissions of mercury than a well controlled boiler burning coal. In fact, coal burning boilers may never be able to achieve the mercury HAP level of the wood-fired unit, no matter what add-on controls are used. In this instance, establishing a MACT standard based on emission data alone would force the coal units to switch to different fuels to achieve the MACT limits. As discussed later in this section, fuel switching is not an appropriate or available control option for identifying the MACT floors for boilers and process heaters.

Another problem with using only emissions data is that there is no HAP emissions information available to the Agency for some of the subcategories. This is consistent with the fact that units in these source categories have not historically been required to test for HAP emissions.

We also considered using HAP emission limits contained in State regulations and permits as a surrogate for actual emission data in order to identify the emissions levels from the best performing units in the category for purposes of establishing MACT standards. However, we found no State regulations or State permits that specifically limit HAP emissions from these sources.

Consequently, we concluded that the most appropriate approach for determining MACT floors for boilers and process heaters was to look at the control options used by the units within each subcategory in order to identify the best performing units. Information was available regarding the emission control options employed by the population of boilers identified by the EPA. We considered several possible control controls (*i.e.*, factors that influence emissions), including fuel substitution, process changes and work practices, and add-on control technologies.

We considered first whether fuel switching would be an appropriate control option for sources in each subcategory. We considered the feasibility of fuel switching to other fuels used in the subcategory and to fuels from other subcategories. This consideration included determining whether switching fuels would achieve lower HAP emissions. A second consideration was whether fuel switching could be technically achieved by boilers and process heaters in the subcategory considering the existing design of boilers and process heaters. We also considered the availability of various types of fuel.

After considering these factors, we determined that fuel switching was not an appropriate control technology for purposes of determining the MACT floor level of control for any subcategory. This decision was based on the overall effect of fuel switching on HAP emissions, technical and design considerations discussed previously in this preamble, and concerns about fuel availability.

Based on the data available in the emissions database, we determined that while fuel switching from solid fuels to gaseous or liquid fuels would decrease PM and some metals emissions, emissions of some organic HAP would increase, resulting in uncertain benefits. This determination is discussed in the memorandum "Development of Fuel Switching Costs and Emission Reductions for Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants" located in the docket. We believe that it is inappropriate in a MACT rulemaking to consider as MACT a control option that potentially will decrease emissions of one HAP while increasing emissions of another HAP. In order to adopt such a strategy, EPA would need to assess the relative risk associated with each HAP emitted, and determine whether requiring the control in question would result in overall lower risk. Such an analysis is not appropriate at this stage in the regulatory process.

A similar determination was made when considering fuel switching to cleaner fuels within a subcategory. For example, the term "clean coal" refers to coal that is lower in sulfur content and not necessarily lower in HAP content. Data gathered by EPA also indicates that within specific coal types HAP content can vary significantly. Switching to a low sulfur coal may actually increase emissions of some HAP. Therefore, it is not appropriate for EPA to include fuel switching to a low sulfur coal as part of the MACT standards for boilers and process heaters. Fuel switching from coal to biomass would result in similar

impacts on HAP emissions. While this would reduce metallic HAP emissions, it would likely increase emissions of organics based on information in the emissions database.

Another factor considered was the availability of alternative fuel types. Natural gas pipelines are not available in all regions of the U.S., and natural gas is simply not available as a fuel for many industrial, commercial, and institutional boilers and process heaters. Moreover, even where pipelines provide access to natural gas, supplies of natural gas may not be adequate. For example, it is common practice in cities during winter months (or periods of peak demand) to prioritize natural gas usage for residential areas before industrial usage. Requiring EPA regulated combustion units to switch to natural gas would place an even greater strain on natural gas resources. Consequently, even where pipelines exist, some units would not be able to run at normal or full capacity during these times if shortages were to occur. Therefore, under any circumstances, there would be some units that could not comply with a requirement to switch to natural gas.

Similar problems for fuel switching to biomass could arise. Existing sources burning biomass generally are combusting a recovered material from the manufacturing or agriculture process. Industrial, commercial, and institutional facilities that are not associated with the wood products industry or agriculture may not have access to a sufficient supply of biomass materials to replace their fossil fuel.

As discussed previously in this preamble, there is a significant concern that switching fuels would be infeasible for sources designed and operated to burn specific fuel types. Changes in the type of fuel burned by a boiler or process heater (solid, liquid, or gas) may require extensive changes to the fuel handling and feeding system (*e.g.*, a stoker using wood as fuel would need to be redesigned to handle fuel oil or gaseous fuel). Additionally, burners and combustion chamber designs are generally not capable of handling different fuel types, and generally cannot accommodate increases or decreases in the fuel volume and shape. Design changes to allow different fuel use, in some cases, may reduce the capacity and efficiency of the boiler or process heater. Reduced efficiency may result in less complete combustion and, thus, an increase in organic HAP emissions. For the reasons discussed above, we decided that fuel switching to cleaner solid fuels or to liquid or gaseous fuels is not an appropriate criteria for identifying the MACT floor level of control for units in the boilers and process heaters category.

We also concluded that process changes or work practices were not appropriate criteria for identifying the MACT floor level of control for units in the boilers and process heaters category. The HAP emissions from boilers and process heaters are primarily dependent upon the composition of the fuel. Fuel dependent HAP are metals, including mercury, and acid gases. Fuel dependent HAP are typically controlled by removing them from the flue gas after combustion. Therefore, they are not affected by the operation of the boiler or process heater. Consequently, process changes would be ineffective in reducing these fuel-related HAP emissions.

On the other hand, organic HAP can be formed from incomplete combustion of the fuel. Combustion is defined as the rapid chemical combination of oxygen with the combustible elements of a fuel. The objective of good combustion is to release all the energy in the fuel while minimizing losses from combustion imperfections and excess air. The combination of the fuel with the oxygen requires temperature (high enough to ignite the fuel constituents), mixing or turbulence (to provide intimate oxygen-fuel contact), and sufficient time (to complete the process), sometimes referred to the three Ts of combustion. Good combustion practice (GCP), in terms of boilers and process heaters, could be defined as the system design and work practices expected to minimize organic HAP emissions. The GCP control strategy could include a number of combustion conditions and work practices which are applied collectively to achieve this goal.

While few sources in EPA's database specifically reported using good combustion practices, the data that we have suggests that boilers and process heaters within each subcategory might use any of a wide variety of different work practices, depending on the characteristics of the individual unit. The lack of information, and lack of a uniform approach to assuring combustion efficiency, is not surprising given the extreme diversity of boilers and process heaters, and given the fact that no applicable Federal standards, and most applicable State standards, do not include work practice requirements for boilers and process heaters. Even those States that do have such requirements do not require the same work practices. For example, CO emissions are generally a good indicator of incomplete combustion, and, therefore, low CO emissions might reflect good combustion practices. Therefore, we considered whether existing CO monitoring requirements and emission limits might be used to establish good combustion practice standards for boilers and process heaters. (As discussed previously in this preamble, CO is also a surrogate for organic HAP emissions in the proposed rule.) The population databases did not contain information regarding whether existing units monitored CO emissions. Therefore, we reviewed State regulations applicable to boilers and process heaters, and then for each subcategory we matched the applicability of State CO monitoring requirements or emission limits with information on the locations and characteristics of the boilers and process heaters in the population database. Ultimately, we found that very few units (less than 6 percent) in any subcategory were subject to CO monitoring requirements or emission limits. We concluded that this information did not allow EPA to identify a level of performance that was representative of good combustion across the various units in any subcategory.

Consequently, EPA was unable to identify any uniform requirements or set of work practices that would meaningfully reflect the use of good combustion practices, or that could be meaningfully implemented across any subcategory of boilers and process heaters. Therefore, EPA is not establishing combustion practice requirements as a part of the MACT floor for existing units. However, we have considered the appropriateness of such requirements in the context of evaluation possible beyond-the-floor options.

In general, boilers and process heaters are designed for good combustion. Facilities have an economic incentive to ensure that fuel is not wasted, and the combustion device operates properly and is appropriately maintained. In fact, existing boilers and process heaters are used typically as high efficiency control devices to control (reduce) emission streams containing organic compounds from various process operations. Therefore, EPA's inability to establish a combustion practice requirement as part of the MACT floor for existing sources in this category should not reduce the incentive for owners and operators to run their boilers and process heaters at top efficiency.

We request comment, and emissions information, regarding whether there are any uniform GCP practices that would be appropriate for minimizing organic HAP emissions from any subcategory of

industrial, commercial, and institutional boilers and process heaters.

As a result of the preceding evaluation of the feasibility of establishing emission limits based on control techniques such as fuel switching and good combustion practices, we concluded that add-on control technology should be the primary factor for purposes of identifying the best controlled units within each subcategory of boilers and process heaters. In order to determine the MACT floor based primarily on add-on control technologies, we first examined the population database of existing sources. Units not meeting the definition of an industrial, commercial, or institutional boiler or process heater, and units located at area sources were removed from the database. The remaining units were divided first into three subcategories based on fuel state: gaseous fuel-fired, liquid fuel-fired, and solid fuel-fired units. Each of these three subcategories was then further divided into subcategories based on capacity: (1) Large units (watertube boilers and process heaters with heat inputs greater than 10 MMBtu/hr); (2) small units (firetube boilers and any boiler and process heater with a maximum rated heat input capacity of 10 MMBtu/hr or less); and (3) limited use units with capacity utilization less than 10 percent.

We identified the types of air pollution control techniques currently used by existing boilers and process heaters in each subcategory. We ranked those controls according to their effectiveness in removing the different categories of pollutants; including metallic HAP and PM, inorganic HAP such as acid gases, mercury, and organic HAP. The EPA ranked these existing control technologies by incorporating recommendations made by the ICCR, and by reviewing emissions test data, previous EPA studies, and other literature, as well as by using engineering judgement.

Based upon the emissions reduction potential of existing air pollution control techniques, we listed all the boilers and process heaters in the population database in order of decreasing control device effectiveness within each subcategory for each pollutant type. Then we identified the top 12 percent of units within each category based on this ranking, and determined what kind of emission control technology, or combination of technologies, the units in the top 12 percent employed. Finally, we looked at the emissions test data from boilers and process heaters that used the same control technology, or technologies, as the units in the top 12 percent to estimate the average emissions limitation achieved by these units.

The last part in the process described above, involving the calculation of numerical emission limits, was a two-step analysis. The first step involved calculating a numerical average of an appropriate subset of the emission test data from units using the same technology, or technologies, as the units in the top 12 percent. Based on the initial ranking, we determined what proportion of the units using a particular technology were among the top 12 percent of units in the subcategory. Then we looked at a corresponding proportion of the emission test data from units using that type of control technology, and produced an overall average measured performance level. For example, in the large solid-fuel subcategory, approximately 14 percent of units used the best performing control technology for PM/metallic HAP (baghouses). In order to rank the units using the best technology for which we had emission test data, we generated unit by unit measured performance levels by averaging the multiple tests from each individual unit (if multiple tests were available). Then we looked at the best 12/14 of the units for which we generated such individual averages, and averaged the unit by unit averages from all of these units. This resulted in an overall average measured emissions performance level for units representative of the top 12 percent of units in the subcategory.

The second step in this part of the process involved generating and applying an appropriate variability factor to account for unavoidable variations in emissions due primarily to uncontrollable differences in fuel characteristics and ordinary operational variability. First, we identified all the units for which we had emission test data using the same technology, or technologies, as units in the top 12 percent. Then, for each such unit with multiple emission tests, we calculated the variability in the measured emissions from that unit by dividing the highest three-run test result by the lowest three-run test result. Finally, we calculated the overall variability in the measured emissions from these units by averaging all the individual unit variability factors, and we applied this overall variability factor to the overall average measured emissions performance level (as described above) to derive a emission limit representative of the average emission limitation achieved by the top 12 percent of units.

This approach reasonably ensures that the emission limit selected as the MACT floor adequately represents the average level of control actually achieved by units in the top 12 percent, considering ordinary operational variability. Both the analysis of the measured emissions from units representative of the top 12 percent, and the variability analysis, are reasonably designed to provide a meaningful estimate of the average performance, or central tendency, of the best controlled 12 percent of units in a given subcategory. Using such an approach, including a variability factor, is reasonable because the estimated performance of the best controlled units must account for variability in the performance of the units over time and under different operational conditions. Absent comprehensive emission data, there is no reason to believe that any individual unit could consistently achieve the emission performance demonstrated by a limited set of emission tests. Because, each emission test is but a snapshot of actual and ongoing performance, taken at one moment in time, evaluating the snapshots collectively is the best way to estimate the unavoidable variation in emissions expected to occur and recur over time at similarly controlled units in the category (or subcategory). As a result, the most reasonable methodology for determining the variability among the best controlled units is to evaluate the overall variability in the performance of the particular control technology that those units use, by examining the variability among the emission test results (the performance snapshots) for all similarly controlled units (excluding any emission values from tests that did not represent a proper functioning system). Accordingly, we have used the available emissions data to reasonably estimate the variability of the top performing units in each subcategory.

The EPA's review of emissions data indicates that some boilers and process heaters within each subcategory may be able to meet the floor emission levels without using the air pollution control technology that is used by the top 12 percent of units in the subcategory. This is to be expected given the variety of fuel types, fuel input rates, and boiler designs included within each subcategory and the resulting variability in emission rates. Thus, for instance, boilers or process heaters within the large unit solid fuel subcategory that burn lower percentages of solid fuels may be able to achieve the emission levels for the large unit solid fuel subcategory without the need for additional control devices.

Furthermore, solid fuels, especially coal, are very heterogeneous and can

vary in composition by location. Coal analysis data obtained from the electric utility industry in another rulemaking contained information on the mercury, chlorine, and ash content of various coals. A preliminary review of this data indicate that the composition can vary greatly from location to location, and also within a particular location. Based on the range of variation of mercury, chlorine, and ash content in coal, it is possible for a unit with a lower performing control system to have emission levels lower than a unit considered to be included in the best performing 12 percent of the units.

This situation is reflected in the emissions information used to set the MACT floor emission limits. In some instances there are boilers with ESP or other controls that achieve similar, or lower, outlet emission levels of non-mercury metallic HAP, PM, or mercury than fabric filters. In most cases, this is due to concentrations entering these other control devices being lower, even though the percent reduction achieved is lower than fabric filters.

Additionally, the design of some control devices may have a substantial effect on their emissions reductions capability. For example, fabric filters are largely insensitive to the physical characteristics of the inlet gas stream. Thus, their design does not vary widely, and emissions reductions are expected to be similar (*e.g.* 99 percent reduction of PM). However, ESP design can vary significantly. Some ESP are two fields, others may have three or four. The more fields the larger the emissions reductions for PM. Similarly, other devices can be designed to achieve higher emissions reductions. This level of detail was not available for the information used to develop the MACT floor emission limits.

Consequently, since fuel substitution has been determined not to be an appropriate MACT floor control technology, EPA still considers the fabric filter to be the best performing control for non-mercury metallic HAP, PM, and mercury and only emissions information for fabric filters was used to develop emission limits.

For existing unit subcategories where less than 12 percent of units in the subcategory use any type of control technology, we could not use the same approach to identify the average level of control achieved by the top 12 percent. Therefore, we looked to see if we could estimate the central tendency of the best controlled units by looking at the median unit of the top 12 percent (the unit at the 94th percentile). Under such circumstances, if the median unit of the top 12 percent is using some control technology, we might use the measured emission performance of that individual unit as the basis for estimating an appropriate average level of control of the top 12 percent. For subcategories where even the median unit is using no control technology, the average control of the top 12 percent of units is no emissions reductions.

A detailed discussion of the MACT floor methodology is presented in the memorandum "MACT Floor Analysis for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants" in the docket.

1. Existing Solid Fuel Boilers and Process Heaters

a. Large Units—Heat Inputs Greater than 10 MMBtu/hr. The most effective control technologies identified for removing non-mercury metallic HAP and PM are fabric filters. About 14 percent of solid fuel-fired boilers and process heaters use fabric filters. Because greater than 12 percent of units in the category use this technology, and because there are no options reasonably available for reducing HAP emissions other than add-on control, we consider sources with fabric filters to be the best controlled sources in this subcategory for purposes of metallic HAP and PM emissions. Thus, it is appropriate to use the measured performance of sources with fabric filters as the basis for establishing the MACT floor for non-mercury metallic HAP and PM for existing boilers and process heaters in this subcategory.

As described earlier, a PM level is set as a surrogate for non-mercury metallic HAP. The MACT floor emission level based on PM test data from the solid fuel units with fabric filters representing the top 12 percent, and incorporating operational variability (using results from multiple tests on best performing units), is 0.07 lb PM/MMBtu. We are also providing an alternative metals limit of 0.001 lb metals/MMBtu which can be used to show compliance in cases where metal HAP emissions are low in proportion to PM emissions. This is because, according to the emissions database, some biomass units have low metals content but high PM emissions. The emission level for metals was selected from metals test data associated with PM emission tests from fabric filters that met the MACT floor PM emission level.

The most effective control technologies identified for removing inorganic HAP that are acid gases, such as HCl, are wet scrubbers and packed bed scrubbers. These technologies are used by about 13 percent of the boilers and process heaters in the large solid fuel subcategory. About 12 percent of solid fuel-fired boilers and process heaters use wet or dry scrubbers, and approximately 1 percent use packed bed scrubbers.

Because greater than 12 percent of units in the category use this technology, and because there are no options reasonably available for reducing HAP emission other than add-on control, we consider sources with wet or dry scrubbers and packed bed scrubbers to be the best controlled sources in this subcategory for purposes of inorganic HAP emissions. Thus, it is appropriate to use the measured performance of sources with wet or dry scrubbers and packed bed scrubbers as the basis for establishing the MACT floor for inorganic HAP for existing boilers and process heaters in this subcategory. The MACT floor emission level based on HCl emissions test data from units using wet or dry scrubbers and packed bed scrubbers representing the top 12 percent, and incorporating operational variability, is 0.09 lb HCl/MMBtu.

Based on test information on utility boilers, we have concluded that fabric filters are the most effective technology for controlling mercury emissions. As discussed previously, approximately 14 percent of sources in the subcategory use fabric filters. The MACT floor emission level for mercury, based on the measured performance of units with fabric filters representing the top 12 percent, and incorporating operational variability, is 0.000007 lb mercury/MMBtu.

Although EPA used information from utility boilers to conclude that fabric filters are the most effective control technology for controlling mercury emissions, this same information suggests that different fuel characteristics (*e.g.* mercury and chlorine content of the fuel burned) can lead to both different outlet mercury (Hg) concentrations and different control efficiencies for equivalent control devices.[1] We have emissions test results for mercury emissions from seven industrial boilers and process heaters equipped with fabric filters. The Agency has information about the general type of fuel being burned during

[1] The speciation of mercury in the flue gas is believed to affect the amount of mercury captured by control devices. Mercury can be present in both vapor form (as insoluble elemental mercury and as soluble oxidized mercury (such as, mercury chloride)) and in particulate form. The capture of elemental mercury is reportedly more difficult than the capture of oxidized mercury or mercury in particulate form.

the emission tests, such as coal, wood, or some mixture of fuel types. However, we have no detailed information about the specific characteristics (such as mercury or chlorine content) of the fuel being burned during those emissions tests. Nonetheless, we believe that the use of variability factors adequately accounts for potential variations in fuel mercury and chloride content.

However, because we have very limited data on actual emissions from industrial boilers and process heaters, the Agency is soliciting comment on whether the variability analysis in the current proposal adequately addresses the impact that fuel characteristics (such as mercury and chlorine content) can have on mercury emissions from a source equipped with fabric filters. As discussed earlier, the Agency is not currently considering fuel switching as a control option in setting the MACT floor. Therefore, the Agency requests specific information regarding both the mercury and chlorine content characteristics of the fuel used in, and the mercury emissions from, industrial boilers and process heaters equipped with well designed and operated fabric filters.

Comments on this issue should include specific data regarding both the characteristics of the fuel burned (including mercury and chlorine content along with any other pertinent characteristics) and current mercury emissions of these industrial boilers and process heaters.

For organic HAP, we attempted to determine the level of control being achieved by the top 12 percent of units within the subcategory, however, less than 6 percent of the units in this subcategory use any type of organic HAP control (by limiting CO emissions). Thus, while a small proportion of units in the subcategory monitor and control their CO emissions (and, therefore, limit emissions of organic HAP), the majority of units in the subcategory (and in the top 12 percent) do not control these emissions. Because so few units control emissions of organic HAP, we could not calculate an average limitation achieved by the top 12 percent as we did for metallic HAP/PM, inorganic HAP/HCl, and mercury. We looked then at whether the median unit of the top 12 percent might provide some indication of the central tendency of the top 12 percent. However, because fewer than 6 percent of units are controlled, the median unit reflects no emissions reductions for organic HAP. Therefore, we concluded that the MACT floor for existing sources in this subcategory is no emissions reductions for organic HAP.

Consequently, EPA determined that, in general, the combination of fabric filter and wet scrubber control technologies forms the basis for the MACT floor level of control for existing large solid fuel boilers or process heaters. We recognize that some boilers and process heaters that use technologies other than those used as the basis of the MACT floor can achieve the MACT floor emission levels. For example, emission test data show that many boilers with well designed and operated ESP can meet the MACT floor emission levels for non-mercury metallic HAP and PM, even though the floor emission level for these pollutants is based on units using a fabric filters (however, we would not expect that all units using ESP would be able to meet the emission limits in the proposed rule).

b. Small Units—Heat Inputs Less than or Equal to 10 MMBtu/hr. For each pollutant group (non-mercury metallic HAP and PM, mercury, inorganic HAP/HCl, and organic HAP), less than 6 percent of the units in this subcategory used control techniques that limit emissions. Because so few units in the subcategory control emissions of HAP, we could not calculate an average limitation achieved by the top 12 percent for any HAP grouping. We looked then at whether the median unit of the top 12 percent might provide some indication of the central tendency of the top 12 percent for any HAP grouping. However, because fewer than 6 percent of units in each HAP grouping used controls or limited emissions, the median unit for each HAP grouping reflects no emissions reduction.

Therefore, we determined that the MACT floor emission level for existing units for each of the pollutant categories in this subcategory is no emissions reductions.

c. Limited Use Units—Capacity Utilizations Less than or Equal to 10 Percent. The most effective control technologies identified for removing non-mercury metallic HAP and PM are ESP and fabric filters. Less than 2 percent of limited use solid fuel-fired boilers and process heaters use fabric filters, and 14 percent use ESP. Therefore, we used the measured performance of units using ESP and fabric filters as the basis for the MACT floor for non-mercury metallic HAP and PM. We established a PM level as a surrogate for non-mercury metallic HAP control, reflecting the emission test data from units using ESP and fabric filters that were representative of the top 12 percent of units in the subcategory.

The emissions test database did not contain test data for limited use boilers and process heaters. In order to develop emission levels for this subcategory, we decided to use information from units in the large solid fuel subcategory. We considered this to be an appropriate methodology because although the units in this subcategory are different enough to warrant their own subcategory (*i.e.*, different purposes and operation), emissions of the specific types of HAP for which limits are being proposed (HCl and non-mercury metals) are expected to be related more to the type of fuel burned and the type of control used, than to unit operation. Consequently, we determined that emissions information from the large solid fuel subcategory could be used to establish MACT floor levels for this subcategory because the fuels and controls are similar. The MACT floor emission level based on this test data, considering operational variability, is 0.02 lb PM/MMBtu. We are also providing an alternative metals limit of 0.001 lb metals/MMBtu which can be used to show compliance in cases where metal HAP emissions are low in proportion to PM emissions. The emissions database indicates that some biomass units have low metals content but high PM emissions. The emission level for metals was selected from metals test data associated with PM emission tests from fabric filters that met the MACT floor PM emission level.

Similar control technology analyses were done for the boilers and process heaters in this subcategory for the other pollutant groups of interest, including inorganic HAP, organic HAP and mercury. For each of these pollutant groups, less than 6 percent of the units in this subcategory used control techniques that limit emissions. Because so few units in the subcategory control emissions of these HAP, we could not calculate an average limitation achieved by the top 12 percent for inorganic HAP, organic HAP and mercury. We looked then at whether the median unit of the top 12 percent might provide some indication of the central tendency of the top 12 percent for any of these HAP groupings. However, because fewer than 6 percent of units in each HAP grouping used controls or limited emissions, the median unit for each HAP grouping reflects no emission reductions. Therefore, we concluded that the MACT floor for inorganic HAP, organic HAP and mercury in this subcategory is no emissions reductions. Consequently, we determined that ESP and fabric filters, which achieve non-mercury metallic HAP and PM control, form the basis for the MACT floor level of control for

existing solid fuel boilers and process heaters in this subcategory.

2. Existing Liquid Fuel Boilers and Process Heaters

Emission data for liquid subcategories were inadequate to identify the best performing sources for reasons described previously in this preamble. We also found no State regulations or permits which specifically limit HAP emissions from these sources. Therefore, we examined control technology information to identify a MACT floor. We found that less than 6 percent of the units in each of the liquid subcategories used control techniques that would reduce non-mercury metallic HAP and PM, mercury, organic HAP, or acid gases, (such as HCl). Therefore, we concluded, for each subcategory of liquid fueled boilers and process heaters, that the MACT floor is no emission reductions for non-mercury metallic HAP, mercury, inorganic HAP, and organic HAP.

3. Existing Gaseous Fuel Boilers and Process Heaters

Emission data for gas subcategories were inadequate to identify the best performing sources for reasons described in section III.D of this preamble. We also found no State regulations or permits that specifically limit HAP emissions from these sources. Therefore, we examined control technology information to identify a MACT floor. We found that no existing units in the gaseous fuel-fired subcategories were using control technologies that achieve consistently lower emission rates than uncontrolled sources for any of the pollutant groups of interest. Therefore, we are unable to identify the best performing 12 percent of units in the subcategories. Consequently, EPA determined that no existing source MACT floor based on control technologies could be identified for gaseous fuel-fired units. Therefore, we concluded the MACT floor for existing sources in this subcategory is no emissions reductions for non-mercury metallic HAP, mercury, inorganic HAP, and organic HAP.

E. How Did EPA Consider Beyond-the-Floor Options for Existing Units?

Once the MACT floor determinations were done for each subcategory, EPA considered various regulatory options more stringent than the MACT floor level of control (*i.e.*, technologies or other work practices that could result in lower emissions) for the different subcategories.

Maintaining and monitoring CO levels was identified as a possible control for organic HAP. In addition to looking at whether CO limits should be a part of the MACT floor, we looked at this option as a beyond-the-floor option. However, information was not available to estimate the HAP emissions reductions that would be associated with CO monitoring and emission limits. This option would also require a high cost to install and operate CO monitors. Given the cost and the uncertain emissions reductions that might be achieved, we chose to not require CO monitoring and emission limits as MACT.

The following sections discuss the beyond-the-floor options analyzed to control emissions of metallic HAP, mercury, and inorganic HAP. Based on the analysis in these sections, EPA decided to not go beyond the MACT floor level of control for the proposed rule for any of the subcategories of existing sources. A detailed description of the beyond-the-floor consideration is in the memorandum "Methodology for Estimating Cost and Emissions Impacts for Industrial, Commercial, Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants" in the docket.

1. Existing Solid Fuel Units

a. Large Units—Heat Inputs Greater than 10 MMBtu/hr. Besides fuel switching, we identified a better designed and operated fabric filter (the MACT floor for new units) as a control technology that could achieve greater emissions reductions of metallic HAP and PM emissions than the MACT floor level of control. Consequently, EPA analyzed the emissions reductions and additional cost of adopting an emission limit representative of the performance of a unit with a better designed and operated fabric filter. The additional annualized cost to comply with this emission limit was estimated to be approximately 500 million dollars with an additional emission reduction of approximately 100 tons of metallic HAP. The results indicated that while additional emissions reductions would be realized, the costs would be too high to consider it a feasible beyond-the-floor option. Nonair quality health, environmental impacts, and energy effects were not significant factors, because there would be little difference in the nonair quality health and environmental impacts of replacing existing fabric filters with improved performance fabric filters. Therefore, we did not select these controls as MACT. Fuel switching was not considered a feasible beyond-the-floor option for the same reasons described previously in this preamble.

We identified packed bed scrubbers as a control technology that could achieve greater emissions reductions of inorganic HAP, like HCl, than the MACT floor level of control. Consequently, EPA analyzed the emissions reductions and additional cost of adopting an emission limit representative of the performance of a unit with a packed bed scrubber. The additional annualized cost to comply with this emission limit (using a packed bed scrubber) was estimated to be approximately 900 million dollars with an additional emission reduction of approximately 20,000 tons of HCl. The results indicated that while additional emissions reductions would be realized, the costs would be too high to consider it a feasible beyond-the-floor option. Nonair quality health, environmental impacts, and energy effects were not significant factors, because there would be little difference in the nonair quality health and environmental impacts between packed bed scrubbers and the technology that is likely to be used to meet the MACT floor level of control. Therefore, we did not select these controls as MACT.

In reviewing potential regulatory options for existing sources, EPA identified one existing industrial boiler that was using a technology, carbon injection, used in other industries to achieve greater control of mercury emissions than the MACT floor level of control. However, emission data indicated that this unit was not achieving mercury emission reduction. The EPA does not have information that would show carbon injection is effective for reducing mercury emissions from industrial, commercial, and institutional boilers and process heaters. Therefore, carbon injection was not evaluated as a regulatory options.

However, EPA requests comments on whether carbon injection should be considered as a beyond-the-floor option and whether existing industrial, commercial, or institutional boilers and process heaters could use carbon injection technology, or other control techniques to consistently achieve mercury emission levels that are lower than levels from similar sources with the MACT floor level of control. Comments should include information on emissions, current demonstrated applications, and costs, including retrofit costs. The EPA is aware that research continues on ways to improve mercury capture by PM controls, sorbent injection, and the development of novel techniques. The EPA requests comment and information on the effectiveness of such control

technologies in reducing mercury emissions.

b. Small Units—Heat Inputs Less than or Equal to 10 MMBtu/hr. The MACT floor for this subcategory is no emission reductions. To control non-mercury metallic HAP and mercury, we analyzed the beyond-the-floor option of a fabric filter which was identified, generally, as the most effective control device for non-mercury metallic HAP and mercury. To control inorganic HAP such as HCl, we analyzed the beyond-the-floor option of a wet scrubber since it was identified as the least cost option.

The total annualized cost of complying with the fabric filter option was estimated to be 10 million dollars, with an estimated emission reduction of 1.9 tons per year of non-mercury metallic HAP and 0.003 tons of mercury. The annualized cost of complying with the wet scrubber option was estimated to be 11 million dollars, with an emission reduction of 48 tons per year of HCl. The results of this analysis indicated that while additional emissions reductions could be realized, the costs would be too high to consider them feasible options. Therefore, we did not select these controls as MACT. Nonair quality health, environmental impacts, and energy effects were not significant factors.

c. Limited Use Units—Capacity Utilizations Less than or Equal to 10 Percent. The MACT floor level for this subcategory for non-mercury metallic HAP control is 0.2 lb PM/MMBtu (this level of control can generally be achieved by using an ESP or fabric filter). Although fabric filters were identified as being more effective, many ESP can achieve similar levels. Any additional emission reduction from using a fabric filter would be minimal and costly considering retrofit costs for existing units that already have ESP. Therefore, a beyond-the-floor option for metallic HAP was not analyzed in detail. However, a beyond-the-floor option based on the level of performance of a fabric filter was analyzed for mercury control. The total annualized costs of the fabric filter option was estimated to be an additional 21 million dollars, with an estimated emission reduction of 0.04 tons of mercury.

The MACT floor for inorganic HAP in this subcategory was no emission reductions. For beyond-the-floor control of inorganic HAP, we analyzed the level of performance generally achievable by a wet scrubber since it was identified as the least cost option. The total annualized costs of the wet scrubber option was estimated to be 49 million dollars, with an estimated emission reduction of 463 tons per year of HCl.

The results of the beyond-the-floor analyses indicated that while additional emissions reductions could be realized, the costs would be too high to consider them feasible options. Therefore, we did not select these controls as MACT. Nonair quality health, environmental impacts, and energy effects were not significant factors.

2. Existing Liquid Fuel Units

The MACT floor for each liquid fuel subcategory is no emission reductions. For beyond-the-floor options for the liquid subcategory, EPA identified several PM controls (*e.g.*, fabric filters, ESP, and venturi scrubbers) that would reduce non-mercury metallic HAP emissions. For the beyond-the-floor analysis, we analyzed the cost and emission reduction of applying a high efficiency PM control device, such as a fabric filter, since these would be more likely to be installed for units firing liquid fuel. We identified wet scrubbers as a technology beyond-the-floor option for reduction of inorganic HAP, such as HCl. We identified fabric filters as a beyond-the-floor technology option for reduction of mercury. Consequently, EPA analyzed the emissions reductions and additional cost of applying high efficiency PM controls and wet scrubbers on liquid fuel-fired units. The additional total annualized cost of a high efficiency PM control device (such as a fabric filter) was estimated to be 460 million dollars, with an additional estimated emission reduction of 1,500 tons per year for non-mercury metallic HAP and 3 tons per year for mercury. The annualized cost of a wet scrubbers was estimated to be an additional 480 million dollars, with an additional HCl reduction of 30 tons per year. The results indicated that while additional emissions reductions would be realized, the costs would be too high to consider them feasible options. Nonair quality health, environmental impacts, and energy effects were not significant factors. Therefore, EPA chose to not select these controls as MACT for existing liquid units.

3. Existing Gas-Fired Units

The MACT floor for each gaseous fuel subcategory is no emission reductions. The great majority, if not all, of the emissions from gas-fired units are organic HAP. As discussed previously in this preamble, CO monitoring and emission limits were considered as a beyond-the-floor option, but were not selected as MACT given the costs and uncertain HAP reductions achieved. Therefore, no beyond-the-floor control technique was analyzed for organic HAP, and MACT is no emission reduction of non-mercury metallic HAP, mercury, inorganic HAP, and organic HAP.

4. Fuel Switching as a Beyond-the-Floor Option

For the solid fuel and liquid fuel subcategories, fuel switching to natural gas is a regulatory option more stringent than the MACT floor level of control that would reduce mercury, metallic HAP, and inorganic HAP emissions. We determined that fuel switching was not an appropriate beyond-the-floor option for the reasons discussed previously in this preamble. For example, natural gas supplies are not available in some areas, and supplies to industrial customers can be limited during periods when natural gas demand exceeds supply. Furthermore, in some cases, organic HAP would be increased by fuel switching. Additionally, the estimated emissions reductions that would be achieved if solid and liquid fuel units switched to natural gas were compared with the estimated cost of converting existing solid fuel and liquid fuel units to fire natural gas. The annualized cost of fuel switching was estimated to be $12 billion. The additional emission reduction associated with fuel switching was estimated to be 1,500 tons per year for metallic HAP, 11 tons per year for mercury, and 13,000 tons per year for inorganic HAP. Additional detail on the calculation procedures is provided in the memorandum "Development of Fuel Switching Costs and Emissions Reductions for Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants" in the docket.

F. Should EPA Consider Different Subcategories for Solid Fuel Boilers and Process Heaters?

The boilers and process heaters source category is tremendously heterogeneous. The EPA has attempted to identify subcategories that provide the most reasonable basis for grouping and estimating the performance of generally similar units using the available data. We believe that the subcategories we selected are appropriate, given the variety and combination of fuels that sources in the category burn and the fact that any individual unit may use a different combination of fuels over time.

However, among the solid fuel units, the available emission test data could suggest that units burning only wood might perform sufficiently similar to each other, and sufficiently differently

from other (fossil fuel burning) solid fuel units, to warrant additional subcategorization. Nonetheless, we believe, for purposes of today's proposal, that it is appropriate to treat wood burning and non-wood burning solid fuel units as a single category. We believe, given the available data, that this approach most reasonably accounts for variations in emissions that can occur as a result of different fuels and/or fuel combinations, and changes in fuel use over time, and that it provides a reasonable basis for establishing an appropriate standard.

However, if we were to create a separate subcategory for wood burning units, we would establish MACT in a manner consistent with the approach taken for other solid fuel units. We would identify the types of emission control used by the best controlled source (and the top 12 percent of units in the subcategory), and we would estimate the performance of the best controlled units by looking at representative emission test data and applying an appropriate variability factor. A preliminary review of the wood burning units in the database suggests that the MACT floors for such units would probably be related to the performance of ESP and/or scrubbers.

The EPA requests comments on whether additional or different subcategories should be considered. Comments should include detailed information regarding why a new or different subcategory is appropriate (based on the available data or adequate data submitted with the comment), how EPA should define any additional/different subcategories, how EPA should account for varied or changing fuel mixtures, and how EPA should use the available data to determine the MACT floor for any new or different categories.

G. How Did EPA Determine the Proposed Emission Limitations for New Units?

All standards established pursuant to section 112 of the CAA must reflect MACT, the maximum degree of reduction in emissions of air pollutants that the Administrator, taking into consideration the cost of achieving such emissions reductions, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for each category. The CAA specifies that MACT for new boilers and process heaters shall not be less stringent than the emission control that is achieved in practice by the best-controlled similar source—this minimum level of stringency is the MACT floor for new units. However, EPA may not consider costs or other impacts in determining the MACT floor. The EPA must consider cost, nonair quality health and environmental impacts, and energy requirements in connection with any standards that are more stringent than the MACT floor (beyond-the-floor controls).

H. How Did EPA Determine the MACT Floor for New Units?

Similar to the MACT floor process used for existing units, we considered several approaches to identifying MACT floors for new industrial, commercial, and institutional boilers and process heaters. First, we considered using only the emission test data from boilers and process heaters to set the MACT floor. However, as discussed previously in this preamble, we determined that it was inappropriate in the proposed rulemaking to develop MACT floor emission limits based on HAP emissions test information alone.

We then considered using HAP emission limits contained in State regulations and permits as a surrogate to actual emission data in order to identify the emissions levels from the best performing units in the category for purposes of establishing MACT standards. However, we found no State regulations or State permits which specifically limit HAP emissions from these sources.

Consequently, we concluded that the most appropriate approach for identifying the top performing units in each subcategory of boilers and process heaters is to look at the control technologies used by the units within each subcategory. Information was available on the add-on control technologies employed by the population of boilers identified by the EPA. We considered several possible control options (*i.e.*, factors that influence emissions), including fuel substitution, process changes and work practices, and add-on control technologies.

We considered first whether fuel switching would be an appropriate control option for sources in each subcategory. We considered the feasibility of both fuel switching to other fuels used in the subcategory and to fuels from other subcategories. This consideration included determining whether switching fuels would achieve lower HAP emissions. A second consideration was whether fuel switching could be technically achieved by boilers and process heaters in the subcategory based on design considerations. We also considered the availability of various types of fuel.

As discussed previously in this preamble, we determined that fuel switching was not an appropriate control technology for purposes of determining the MACT floor level of control for any subcategory. This decision was based on the overall effect of fuel switching on HAP emissions, technical and design considerations discussed previously in this preamble, and concerns about fuel availability. Additional discussion of fuel switching is presented previously in this preamble and in the memorandum "Development of Fuel Switching Costs and Emission Reductions for Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants" located in the docket.

Based on the data available in the emissions database, we determined that while fuel switching would decrease some HAP, emissions of some organic HAP would increase, resulting in uncertain benefits. We believe that it is inappropriate in a MACT rulemaking to consider as MACT a control option that potentially will decrease emissions of one HAP while increasing emissions of another HAP. A detailed discussion of the consideration of fuel switching is discussed previously in this preamble.

We also concluded that process changes or work practices were not appropriate criteria for identifying the MACT floor level of control for units in the boilers and process heaters category. The HAP emissions from boilers and process heaters are primarily dependent upon the composition of the fuel. Fuel dependent HAP are metals, including mercury, and acid gases. Fuel dependent HAP are typically controlled by removing them from the flue gas after combustion. Therefore, they are not affected by the operation of the boiler or process heater. Consequently, process changes would be ineffective in reducing these fuel-related emissions.

On the other hand, organic HAP can be formed from incomplete combustion of the fuel. Combustion is defined as the rapid chemical combination of oxygen with the combustible elements of a fuel. The objective of good combustion is to release all the energy in the fuel while minimizing losses from combustion imperfections and excess air. The combination of the fuel with the oxygen requires temperature (high enough to ignite the fuel constituents), mixing or turbulence (to provide intimate oxygen-fuel contact), and sufficient time (to complete the process), sometimes referred to the three Ts of combustion. Good combustion practice, in terms of boilers and process heaters, could be defined as the system design and work practices expected to minimize organic HAP emissions. The GCP control

strategy could include a number of combustion conditions and work practices which are applied collectively to achieve this goal.

While few sources in EPA's database specifically reported using good combustion practices, the data that we have suggests that boilers and process heaters within each subcategory might use any of a wide variety of different work practices, depending on the characteristics of the individual unit. The lack of information, and lack of a uniform approach to assuring combustion efficiency, is not surprising given the extreme diversity of boilers and process heaters, and given the fact that no applicable Federal standards, and most applicable State standards, do not include work practice requirements for boilers and process heaters. Even those States that do have such requirements do not require the same work practices.

Consequently, EPA was unable to identify any uniform requirements or set of work practices that would meaningfully reflect the use of good combustion practices, or that could be meaningfully implemented across any subcategory of boilers and process heaters. Therefore, EPA is not establishing combustion practice requirements as a part of the MACT floor for new units. However, we have considered the appropriateness of such requirements in the context of evaluating possible above the floor options.

In general, boilers and process heaters are designed for good combustion. Facilities have an economic incentive to ensure that fuel is not wasted, and the combustion device operates properly and is appropriately maintained. In fact, existing boilers and process heaters are used as high efficiency control devices to control (reduce) emission streams containing organic compounds from various process operations. Therefore, EPA's inability to establish a combustion practice requirements as a part of the MACT floor for new sources in this category should not reduce the incentive for owners and operators to run their boilers and process heaters at top efficiency.

Nonetheless, we consider monitoring and maintaining CO emission levels to be associated with minimizing emissions of organic HAP. Carbon monoxide is generally an indicator of incomplete combustion because CO will burn to carbon dioxide if adequate oxygen is available. Therefore, controlling CO emissions can be a mechanism for ensuring combustion efficiency and may be viewed as a kind of GCP. As discussed previously in this preamble, CO is considered a surrogate for organic HAP emissions in the proposed rule.

To determine if CO monitoring would be the basis of the new source MACT floor for organic emissions control, we examined available information. The population databases did not contain information on existing units monitoring CO emissions. We reviewed State regulations applicable to boilers and process heaters that required the use of CO monitoring to maintain a specific CO limit. We then matched the applicability of each of the State regulations with information on the locations and characteristics of the boilers and process heaters in the population database for each subcategory to determine if each subcategory would have at least one unit that would be required to meet the CO requirements. The analysis of the State regulations indicated that at least one of the boilers and process heaters in the large and limited use subcategories for solid fuel, liquid fuel, and gaseous fuel were required to monitor CO emissions and meet a CO limit of 400 parts per million. Therefore, the new source MACT floor level of control includes a CO work practice standard of 400 parts per million for large and limited use units, reflecting the MACT floor level of control for emissions of organic HAP.

We concluded for new units that, except for CO monitoring for organic HAP, add-on control technology is the only factor that significantly controls emissions. To determine the MACT floor for new sources, EPA reviewed the population database of existing major sources. Data for units not meeting the definition of an industrial, commercial, or institutional boiler or process heater were removed from the database. Also, boilers and process heaters that would not be covered by the proposed rule, including units located at area source facilities, were not included in the analyses. As with the existing source analysis, the remaining units in the population database were first divided into three subcategories: gaseous fuel-fired units, liquid fuel-fired units, and solid fuel-fired units. They were further divided into normal use units (units with greater than 10 percent capacity utilization) and limited use units (units with less than or equal to 10 percent capacity utilization) based on hours of operation and additional descriptions provided in the population database. Units were further divided into large units (greater than 10 MMBtu/hr heat input) and small units (less than or equal to 10 MMBtu/hr heat input).

Based upon the emission reduction potential of existing air pollution control devices, EPA listed all the boilers and process heaters in the population database in order of decreasing control device effectiveness for each subcategory and each type of pollutant. Once the ranking of all existing boilers and process heaters was completed for each subcategory and type of pollutant, EPA identified, for each grouping, the control technology used by the best controlled unit. Then, for each pollutant type in each subcategory, we used the available emission test data from units using the best control technology to identify the single unit with the best average measured performance. We then calculated an emission limit, based on the measured performance of this single unit, by applying an appropriate variability factor to account for unavoidable variations in emissions due to uncontrollable variations in fuel characteristics.

The approach that we use to calculate the MACT floors for new sources is somewhat different from the approach that we use to calculate the MACT floors for existing sources. While the MACT floors for existing units are intended to reflect the average performance achieved by a representative group of sources, the MACT floors for new units are meant to reflect the emission control that is achieved in practice by the best controlled source. Thus, for existing units, we are concerned about estimating the central tendency of a set of multiple units, while for new units, we are concerned about estimating the level of control that is representative of that achieved by a single best controlled source. As with the analysis for existing sources the new unit analysis must account for variability. To accomplish this for new sources, for the fuel dependent HAP emissions, we attempt to determine what the best controlled source can achieve in light of the inherent and unavoidable variations in the HAP content of the fuel that such unit might potentially use. For non-fuel dependent HAP emissions, on the other hand, we look at the inherent variability of the control technology used by sources in the category. These approaches, respectively, represent the most reasonable way to estimate performance for purposes of establishing MACT floors for new units, given the data available.

Thus, for new units, after identifying the best control technology for each pollutant group within each subcategory (based on the control technology rankings), EPA examined the emissions

data available for boilers and process heaters controlled by these technologies to determine achievable emission levels for PM (as a surrogate for non-mercury metallic HAP); total selected non-mercury metallic HAP, mercury, HCl (as a surrogate for inorganic HAP), and CO (as a surrogate for organic HAP). First, we identified the units using the best control technology for which we had emissions data. We then averaged the emission data for any unit with multiple test results, and rank these units based on the unit by unit average measured emissions performance. Then, we identified the unit with the best average measured emissions performance. Finally, to estimate the emission control achievable by this unit, we applied a variability factor to the average measured emissions performance of the best unit. For fuel dependent HAP emissions (mercury and HCl), we calculated the variability factor by looking at data on HAP variability in coal from an analysis of coal properties obtained through a utility-related information collection request. We derived the fuel dependent variability factor by dividing the highest observed HAP concentration by the lowest observed HAP concentration from the utility coal analysis. There is no reason to expect that utilities use significantly different coal than is available to industrial boilers and process heaters, and coal is the solid fuel that is routinely used in such units that has generally the greatest degree of HAP variability. Once we calculated the fuel dependent variability factors, we applied these factors to the average measured emissions performance of the unit with the best data to derive the MACT floor level of control. This approach reasonably estimates the best source's level of control, adjusted for unavoidable variation in fuel characteristics which have a direct impact on emissions.

For non-fuel dependent HAP emissions (PM/metallic HAP), we calculated the appropriate variability factor in the same general manner as we did for existing units. We calculated a variability factor for each unit using the same control technology as the unit with the best emissions data, and then calculated the overall variability in the measured emissions from units using this technology by averaging all the individual unit variability factors. Finally, we applied this overall variability factor to the average measured emissions performance of the unit with the best emissions data.

For new unit subcategories where no units in the subcategory employed any type of control technology, we could not identify data to represent the level of control of the best controlled similar unit. Accordingly, the MACT floor level of control for such subcategories is no emissions reductions.

A detailed description of the MACT floor determination is in the memorandum "MACT Floor Analysis for Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants" in the docket.

1. New Solid Fuel-Fired Units

a. Large Units—Heat Inputs Greater than 10 MMBtu/hr. The most effective control technology identified for removing non-mercury metallic HAP and PM is fabric filters. Therefore, because there are no options reasonably available for reducing non-mercury metallic HAP emissions other than add-on control, we consider a source with a fabric filter to be the best controlled similar unit in this subcategory for purposes of non-mercury metallic HAP and PM emissions. Thus, it is appropriate to use the measured performance of the best controlled source with a fabric filter as the basis for establishing the MACT floor for non-mercury metallic HAP and PM for new boilers and process heaters in this subcategory.

As described earlier, a PM level is set as a surrogate for non-mercury metallic HAP. The MACT floor emission level based on PM test data from the solid fuel unit with a fabric filter representing the best controlled similar unit, and incorporating operational variability, is 0.026 lb PM/MMBtu. We are also providing an alternative metals limit of 0.0001 lb metals/MMBtu which can be used to show compliance in cases where metals HAP emissions are low in proportion to PM emissions. This is because, according to the emissions database, some biomass units have low metals content but high PM emissions. The emission level for metals was selected from metals test data associated with PM emission tests from fabric filters that met the MACT floor PM emission level.

The most effective control technologies identified for removing inorganic HAP including acid gases, such as HCl, are wet or dry scrubbers. Wet scrubbers is a generic term that is most often used to describe venturi scrubbers, but can include packed bed scrubbers, impingement scrubbers, etc. One percent of boilers and process heaters in this subcategory reported using a packed bed scrubber. Emission test data from other industries suggests that packed bed scrubbers achieve consistently lower emission levels than other types of wet scrubbers. Because there are no options reasonably available for reducing HCl emissions other than add-on control, we consider a source with a packed bed scrubber to be the best controlled similar source in this subcategory for purpose of HCl emissions. The MACT floor emission level based on HCl test data from the solid fuel unit with a wet scrubber representing the best controlled similar unit, and incorporating operational variability, is 0.02 lb HCl/MMBtu.

For mercury control, one technology, carbon injection, that has demonstrated mercury reductions in other source categories (*i.e.*, municipal waste combustors), was identified as being used on one existing industrial boiler. However, test data on this carbon injection system indicated that this unit was not achieving mercury emissions reductions. Therefore, we did not consider carbon injection to be a MACT floor control technology for industrial, commercial, and institutional boilers and process heaters. Data from electric utility boilers indicate that fabric filters are the most effective technology for controlling mercury emissions. Therefore, we consider a source with a fabric filter to be the best controlled similar source in this subcategory for purpose of mercury emissions. The MACT floor emission level based on mercury test data from the solid fuel unit with a fabric filter representing the best controlled similar unit, and incorporating operational variability, is 0.000003 lb mercury/MMBtu.

Although EPA used information from utility boilers to conclude that fabric filters are the most effective control technology for controlling mercury emissions, this same information suggests that different fuel characteristics (*e.g.* mercury and chlorine content of the fuel burned) can lead to different outlet Hg concentrations and different control efficiencies for equivalent control devices. We have information about the general type of fuel being burned during the emission tests. However, we have no detailed information about the specific characteristics (such as mercury or chlorine content) of the fuel being burned during the emissions tests for the best controlled source. Nonetheless, EPA believes that the use of variability factors adequately accounts for potential variations in fuel mercury and chloride content.

However, because we have very limited data on actual emissions from industrial boilers and process heaters, the Agency is soliciting comment on whether the variability analysis in the

current proposal adequately addresses the impact that fuel characteristics (such as mercury and chlorine content) can have on mercury emissions from sources equipped with fabric filters. As discussed earlier, the Agency is not currently considering fuel switching as a control option in setting the MACT floor. Therefore, the Agency requests specific information regarding both the mercury and chlorine content characteristics of the fuel used in, and the mercury emissions from, industrial boilers and process heaters equipped with well designed and operated fabric filters.

Comments on this issue should include specific data regarding both the characteristics of the fuel burned (including mercury and chlorine content along with any other pertinent characteristics) and current mercury emissions of these industrial boilers and process heaters.

Similar control technology analysis was done for the boilers and process heaters in this subcategory for organic HAP. One control technique, controlling inlet temperature to the PM control device, that has demonstrated controlling downstream formation of dioxins in other source categories (*e.g.*, municipal waste combustors) was analyzed for industrial boilers. Inlet and outlet dioxins test data were available on four boilers controlled with PM control devices. In all cases, no increase in dioxins emissions were indicated across the PM control device even at high inlet temperatures. However, we are requesting comment on controls that would achieve reductions of organic HAP, including any additional data that might be available. The EPA did find that CO monitoring can reduce organic HAP emissions, and has included it in the new source MACT floors as described previously in this preamble.

In light of this analysis, EPA determined that, in general, the combination of a fabric filter, a packed bed scrubber, and CO monitoring forms the basis for the MACT floor level of control for new solid fuel boilers and process heaters in this subcategory.

b. Small Units—Heat Inputs Less than or Equal to 10 MMBtu/hr. The most effective control technology identified for removing non-mercury metallic HAP and PM is fabric filters. Because there are no options reasonably available for reducing non-mercury metallic HAP emissions other than add-on control, we consider a source with a fabric filter to be the best controlled similar unit in this subcategory for purposes of non-mercury metallic HAP and PM emissions. The most effective control technology identified for units in this subcategory for removing acid gases, such as HCl, is wet scrubbers. The most effective control technology identified for removing mercury is fabric filters.

The EPA identified no control technology being used in the existing population of boilers and process heaters that consistently achieved lower emission rates than uncontrolled levels, such that a best controlled similar source for organic HAP could be identified. Therefore, we concluded that the MACT floor for new sources in this subcategory is no emissions reductions for organic HAP. Furthermore, CO monitoring is not required for small boilers and process heaters by any State rules.

Consequently, EPA determined that the combination of a fabric filter and a wet scrubber forms the basis for the MACT floor level of control for new solid fuel boilers and process heaters in this subcategory.

The emissions database did not contain test data for boilers and process heaters less than 10 MMBtu/hr heat input. In order to develop emission levels for this subcategory, we decided to use test data from units in the large solid subcategory. We considered this to be an appropriate methodology because although the units in this subcategory are different enough to warrant their own subcategory (*i.e.*, different designs and emissions), emissions of the specific HAP for which limits are being proposed (HCl, mercury, PM and metals) are expected to be related more to the type of fuel burned and the type of control used than to the unit design. Consequently, we determined that emissions test data from units greater than 10 MMBtu/hr heat input could be used to establish the MACT floor levels for this subcategory for HCl, PM, non-mercury metallic HAP (using PM as a surrogate), and mercury because the fuels and controls are similar.

The MACT floor emission levels based on emissions data from the unit representing the best controlled similar source, and incorporating operational variability, are 0.026 lb PM/MMBtu or 0.0001 lb selected non-mercury metals/MMBtu, 0.000003 lb mercury/MMBtu, and 0.02 lb HCl/MMBtu. We are requesting comment on using emission data from another subcategory to develop emission levels for this subcategory. We are also requesting any available emissions information for this subcategory.

c. Limited Use Units—Capacity Utilizations Less than or Equal to 10 Percent. The most effective control technology identified for removing non-mercury metallic HAP, PM, and mercury is fabric filters. Therefore, we consider a source with a fabric filter to be the best controlled similar unit in this subcategory for purposes of non-mercury metallic HAP, PM, and mercury emissions. The most effective control technology identified for units in this subcategory for removing acid gases, such as HCl, is wet scrubbers.

The EPA did find that monitoring CO is used by at least one unit and can minimize organic HAP emissions, and has included it in the new source MACT floor for this subcategory as described previously in this preamble.

Therefore, based on this analysis, EPA determined that the combination of a fabric filter, a wet scrubber, and CO monitoring forms the basis for the MACT floor level of control for new solid fuel boilers and process heaters in this subcategory.

The emissions test database did not contain test data for limited use boilers and process heaters. In order to develop emission levels for this subcategory, we decided to use test data from units in the large solid fuel subcategory. We considered this to be an appropriate methodology because although the units in this subcategory are different enough to warrant their own subcategory (*i.e.*, different purposes and operation), emissions of the specific types of HAP for which limits are being proposed (HCl, mercury, and metals) are expected to be related more to the type of fuel burned and the type of control used, than to unit operation. Consequently, we determined that emissions information from the large solid fuel subcategory could be used to establish MACT floor levels for this subcategory because the fuels and controls are similar. The MACT floor emission levels based on test data from unit representing the best controlled similar source, and incorporating operational variability, are 0.026 lb PM/MMBtu or 0.0001 lb metals/MMBtu, 0.000003 lb mercury/MMBtu, and 0.02 lb HCl/MMBtu. We are requesting comment on using emission data from another subcategory to develop emission levels for this subcategory. We are also requesting any available emissions information for this subcategory.

2. New Liquid Fuel-Fired Units

a. Large Units—Heat Inputs Greater than 10 MMBtu/hr. The most effective control technology identified for removing non-mercury metallic HAP and PM is ESP. Therefore, because there are no options reasonably available for reducing non-mercury metallic HAP emissions other than add-on control, we consider a source with an ESP to be the best controlled similar unit in this subcategory for purposes of non-

mercury metallic HAP and PM emissions.

As discussed earlier, a PM level is set as a surrogate for non-mercury metallic HAP. The emissions database did not contain test data for boilers and process heaters with ESP. In order to develop a PM emission level for this subcategory, we decided to use test data from oil-fired utility boilers controlled with ESP. We considered this to be an appropriate methodology because although the units in this subcategory are generally smaller than utility boilers, emissions of the specific HAP for which limits are being proposed (PM as a surrogate for metals) are expected to be related more to the type of fuel burned and the type of control used than to the size of the unit. Consequently, we determined that emissions test data from oil-fired utility boilers could be used to establish the MACT floor levels for this subcategory for non-mercury metallic HAP (using PM as a surrogate) because the fuels and controls are similar.

The MACT floor emission level based on PM emissions data from the unit representing the best controlled similar source, and incorporating operational variability, is 0.03 lb PM/MMBtu. Unlike for solid fuel subcategories, we are not aware of any liquid fuels that are low in metals but would have high PM emissions. Therefore, we are not proposing an alternative metals standard for the liquid subcategories.

The most effective control technology identified for removing inorganic HAP that are acid gases, such as HCl, are packed bed scrubbers. Because there are no options reasonably available for reducing HCl emissions other than add-on control, we consider a source with a packed bed scrubber to be the best controlled similar source in this subcategory for purpose of HCl emissions. The emissions database did not contain HCl test data for liquid fuel boilers and process heaters. In order to develop a HCl emission level for this subcategory, we decided to use available fuel analysis data from oil-fired units and emission reduction performance of well designed and operated packed bed scrubbers. We considered this to be an appropriate methodology because this approach reasonably estimates the best source's level of control, adjusted for unavoidable variation in fuel characteristics which have a direct impact on emissions. The MACT floor emission level based on the estimated performance from a liquid fuel unit with a packed scrubber representing the best controlled similar unit, and incorporating operational variability, is 0.0005 lb HCl/MMBtu.

Similar control technology analyses were done for the boilers and process heaters in this subcategory for mercury and organic HAP.

Information in the emissions database or from other source categories does not show that control technologies, such as fabric filters, ESP, or wet scrubbers, achieve reductions in mercury emissions from liquid fuel-fired industrial, commercial, and institutional boilers and process heaters. Therefore, EPA identified no control technology being used in the existing population of boilers and process heaters in these subcategories that consistently achieved lower emission rates than uncontrolled levels, such that a best controlled similar source for organic HAP could be identified. However, we did find that monitoring CO is a good combustion practice that can reduce organic HAP emissions, and have included it in the new source MACT floor as described previously in this preamble. We concluded the MACT floor for new sources in this subcategory is no emissions reductions for mercury.

In light of this analysis, the EPA determined that, in general, the combination of an ESP, a packed bed scrubber, and CO monitoring forms the basis for the MACT floor level of control for new liquid fuel boilers and process heaters in this subcategory.

b. Small Units—Heat Inputs Less than or Equal to 10 MMBtu/hr. The most effective control technology identified for removing non-mercury metallic HAP used by units in this subcategory is ESP. Therefore, because there are no options reasonably available for reducing non-mercury metallic HAP emissions other than add-on control, we consider a source with an ESP to be the best controlled similar unit in this subcategory for purposes of non-mercury metallic HAP and PM emissions. The most effective control technology identified for units in this subcategory for removing acid gases, such as HCl, is wet scrubbers.

Information in the emissions database or from other source categories does not show that control technologies, such as fabric filters, ESP, or wet scrubbers, achieve reductions in mercury emissions from liquid fuel-fired industrial, commercial, and institutional boilers and process heaters. Therefore, EPA could not identify a control technology being used in the existing population of boilers and process heaters that consistently achieved lower emission rates than uncontrolled levels, such that a best controlled similar source for mercury or organic HAP could be identified. We concluded the MACT floor for new sources in this subcategory is no emissions reductions for mercury or organic HAP.

Thus, EPA determined that the combination of a fabric filter and a wet scrubber forms the basis for the MACT floor level of control for new liquid fuel boilers and process heaters in this subcategory.

The emissions test database did not contain test data for liquid fuel boilers and process heaters less than 10 MMBtu/hr heat input capacity. In order to develop emission levels for this subcategory, we decided to use information from units in the large liquid fuel subcategory. We considered this to be an appropriate methodology because although the units in this subcategory are different enough to warrant their own subcategory (*i.e.*, different designs and emissions), emissions of the specific types of HAP for which limits are being proposed (HCl and metals) are expected to be more related to the type of fuel burned and the type of control than to unit design. Consequently, we determined that emissions information from units greater than 10 MMBtu/hr heat input capacity could be used to establish MACT floor levels for this subcategory because the fuels and controls are similar. The MACT floor emission level based on PM test data from a liquid fuel unit with an ESP representing the best controlled similar unit, and incorporating operational variability, is 0.03 lb PM/MMBtu. The MACT floor emission level based on a liquid fuel unit with a wet scrubber representing the best controlled similar unit, and incorporating operational variability, is 0.0009 lb HCl/MMBtu. We are requesting comment on using emission data from another subcategory to develop emission levels for this subcategory. We are also requesting any available emissions information for this subcategory.

c. Limited Use Units—Capacity Utilizations Less than or Equal to 10 Percent. The most effective control technology identified for removing non-mercury metallic HAP used by units in this subcategory is ESP. Therefore, because there are no options reasonably available for reducing non-mercury metallic HAP emissions other than add-on control, we consider a source with an ESP to be the best controlled similar unit in this subcategory for purposes of non-mercury metallic HAP and PM emissions. The most effective control technology identified for units in this subcategory for removing acid gases, such as HCl, is wet scrubbers.

Information in the emissions database or from other source categories does not show that other control technologies,

such as fabric filters, ESP, or wet scrubbers, achieve reductions in mercury emissions from liquid fuel-fired industrial, commercial, and institutional boilers and process heaters. The EPA identified no control technology being used in the existing population of boilers and process heaters that consistently achieved lower emission rates than uncontrolled levels, such that a best controlled similar source for mercury could be identified. We concluded the MACT floor for new sources in this subcategory is no emissions reductions for mercury.

We did find that monitoring CO can reduce organic HAP emissions and is used by at least one unit in this subcategory, and have included it in the new source MACT floor as described previously in this preamble.

Therefore, based on this analysis, EPA determined that the combination of a fabric filter, a wet scrubber, and CO monitoring forms the basis for the MACT floor level of control for new liquid fuel boilers and process heaters in this subcategory.

The emissions test database did not contain test data for limited use liquid fuel boilers and process heaters. In order to develop emission levels for this subcategory, we decided to use information from units in the large liquid fuel subcategory. We considered this to be an appropriate methodology because although the units in this subcategory are different enough to warrant their own subcategory (*i.e.*, different purposes and operation), emissions of the specific HAP for which limits are being proposed (HCl and metals) are more related to the type of fuel burned and the type of control used than to unit operation. Consequently, we determined that emissions information from units greater than 10 MMBtu/hr heat input capacity could be used to establish MACT floor levels for this subcategory because the fuels and controls are similar. The MACT floor emission level based on PM test data from a liquid fuel unit with an ESP representing the best controlled similar unit, and incorporating operational variability, is 0.03 lb PM/MMBtu. The MACT floor emission level based on a liquid fuel unit with a wet scrubber representing the best controlled similar unit, and incorporating operational variability, is 0.0009 lb HCl/MMBtu. We are requesting comment on using emission data from another subcategory to develop emission levels for this subcategory. We are also requesting any available emissions information for this subcategory.

3. Gaseous Fuel Subcategories

No existing units were using control technologies that achieve consistently lower emission rates than uncontrolled sources for any of the pollutant groups of interest, except organic HAP. At least one unit in the population database in the large and limited use gaseous fuel subcategories is required to monitor CO. Therefore, the MACT floor for gaseous fuel-fired units includes a CO monitoring requirement and emission limit, as described previously in this preamble, but it does not include any emission limits for PM, metallic HAP, mercury, or inorganic HAP based on the utilization of add-on control technology.

I. How Did EPA Consider Beyond-the-Floor for New Units?

The MACT floor level of control for new units is based on the emission control that is achieved in practice by the best controlled similar source within each of the subcategories. No technologies were identified that would achieve non-mercury metals reduction greater than the new source floors for the liquid and solid subcategories or CO monitoring for the solid, liquid, and gaseous subcategories. For inorganic HAP control, we determined that packed bed scrubbers achieve higher emissions reductions than MACT floors consisting of a wet scrubber. Packed bed scrubbers are the technology basis of the MACT floor for the large unit subcategory, but wet scrubbers were the technology basis of the floors for the small unit and limited unit subcategories. Therefore, we examined the cost and emission reduction benefits of applying a packed bed scrubber as a beyond-the-floor option for new solid and liquid units within the small and limited use subcategories. The results of this analysis indicated that annualized costs would be an additional 2 million dollars per year for additional reductions of approximately three tons of HCl per year. We determined that costs were excessive for the limited emissions reductions that would be achieved. Nonair quality health, environmental impacts, and energy effects were not significant factors, because there would be little difference in the nonair quality health and environmental impacts between packed bed scrubbers and wet scrubbers. Therefore, EPA did not select this beyond-the-floor option, and the proposed new source MACT level of control for PM, metallic HAP, and inorganic HAP (HCl) is the same as the MACT floor level of control for all of the subcategories.

In reviewing potential regulatory options beyond the new source MACT floor level of control, EPA identified one existing solid fuel-fired industrial boiler that was using carbon injection technology for mercury control. However, emission data obtained from this unit indicated that it was not achieving mercury emission reduction from the uncontrolled levels. Moreover, we do not have information to otherwise show that carbon injection is effective for reducing mercury emissions from industrial, commercial, and institutional boilers and process heaters. Information in the emissions database or from other source categories does not show that other control technologies, such as fabric filters, ESP, or wet scrubbers, achieve reductions in mercury emissions from liquid fuel-fired industrial, commercial, and institutional boilers and process heaters. Therefore, carbon injection, for solid fuel units, and other control techniques, for liquid fuel units, were not evaluated as regulatory options. However, EPA requests comments on whether carbon injection and/or other control techniques should be considered as beyond-the-floor options and whether new industrial, commercial, or institutional boilers and process heaters could use carbon injection technology, or other control techniques to consistently achieve mercury emission levels that are lower than levels from similar sources without such controls. Comments should include information on emissions, current demonstrated applications, and costs.

For the solid fuel and liquid fuel subcategories, fuel switching to natural gas is a potential regulatory option beyond the new source floor level of control that would reduce mercury and metallic HAP emissions. However, based on current trends within the industry, EPA projects that the majority of new boilers and process heaters will be built to fire natural gas as opposed to solid and liquid fuels such that the overall emissions reductions associated with this option would be minimal while the total cost of fuel switching would be approximately 600 million dollars. The additional emissions reductions would be 30 tons per year of HCl, 90 tons per year of inorganic HAP and 120 tons per year of total non-mercury metallic HAP. Section III.D of this preamble provides additional rationale for not going beyond the floor to require fuel switching. For example, natural gas supplies are not available in some areas, and supplies to industrial customers can be limited during periods when natural gas demand exceeds

supply. Thus, this potential control option may be unavailable to many sources in practice. Furthermore, organic HAP may be increased by fuel switching. Limited emissions reductions in combination with the high cost of fuel switching and considerations about the availability and technical feasibility of fuel switching makes this an unreasonable regulatory option that was not considered further. Nonair quality health, environmental impacts, and energy effects were not significant factors. No beyond-the-floor options for gas-fired boilers were identified.

Based on the analysis discussed above, EPA decided to not go beyond the MACT floor level of control for new sources for MACT in the proposed rule. A detailed description of the beyond-the-floor consideration is in the memorandum "Methodology for Estimating Cost and Emissions Impacts for Industrial, Commercial, Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants" in the docket.

J. How Did EPA Determine Testing and Monitoring Requirements for the Proposed Rule?

The CAA requires us to develop regulations that include monitoring and testing requirements. The purpose of these requirements is to allow us to determine whether an affected source is operating in compliance with the proposed rule. The proposed monitoring and testing requirements are discussed below.

1. Testing

The proposed rule requires you to perform an initial performance test for PM (or total selected metals), mercury, and HCl if you are required to meet an emission limit. Additionally, the proposed rule requires annual performance tests to ensure on an ongoing basis that the air pollution control device is operating properly and its performance has not deteriorated. The majority of emissions tests upon which the proposed emission limits are based were conducted using approved EPA test methods.

If you conduct a performance test, you would also determine parameter operating limits during the tests. The majority of test methods that the proposed rule would require for the performance tests have been required under many other EPA standards. No applicable voluntary consensus standards were identified.

If you are required to meet an HCl emission limit and do not have a scrubber or elect to take no credit for the scrubber emissions reductions, you must record the average chlorine content level in the input fuel as an operating limit. However, if you plan to burn a new fuel, a fuel from a new mixture, or a fuel from a new supply than what was burned during the initial performance test, then you must recalculate the chlorine input. If the results of recalculating the chlorine input exceeds the average chlorine level established during the initial performance test, you must conduct a new performance test to demonstrate compliance with the emission level.

We are also allowing you to record the mercury in the input fuels as an operating limit if you elect to take no credit for the control device emission reduction. However, if you plan to burn a new fuel, a fuel from a new mixture, or a fuel from a new supply than what was burned during the initial performance test, then you must recalculate the mercury input. If the results of the recalculation exceed the average level established during the initial performance test, you must conduct a new performance test to demonstrate compliance with the mercury emission level.

We are also allowing you to record the total selected metals in the input fuels as an operating limit if you choose to comply with the metals emission limit instead of the PM limit. However, if you plan to burn a new fuel, a fuel from a new mixture, or a fuel from a new supply than what was burned during the initial performance test, then you must recalculate the total selected metals input. If the results of the recalculation exceed the average level established during the initial performance test, you must conduct a new performance test to demonstrate compliance with the metals emission level.

2. Continuous Monitoring

The most direct means of ensuring compliance with emission limits is the use of continuous emission monitoring systems (CEMS). We consider other options when CEMS are not available or when the impacts of including such requirements are considered unreasonable. When monitoring options other than CEMS are considered, it is often necessary for us to balance more reasonable costs against the quality or accuracy of the actual emissions monitoring data. Although monitoring of operating parameters cannot provide a direct measurement of emissions, it is often a suitable substitute for CEMS. The information provided can be used to ensure that air pollution control equipment is operating properly. Because the parameter requirements are calibrated during the initial and annual stack tests, they provide a reasonable surrogate for direct monitoring of emissions. This information reasonably assures the public that the reductions envisioned by the proposed rule are being achieved.

The EPA evaluated the cost of applying HCl CEMS to boilers and process heaters. For HCl CEM monitoring, capital costs were estimated to be $88,000 per unit and annualized costs were estimated to be $33,000 per unit. We determined the costs would make them an unreasonable monitoring option. In addition, toxic metals are not directly measurable with CEMS, and CEMS for PM have not been demonstrated in the United States for the purpose of determining compliance.

To ensure continuous compliance with the proposed emission limits and/or operating limits, the proposed rule would require continuous parameter monitoring of control devices and recordkeeping. We selected the following requirements based on reasonable cost, ease of execution, and usefulness of the resulting data to both the owners or operators and EPA for ensuring continuous compliance with the emission limits and/or operating limits.

We are proposing that certain parameters be continuously monitored for the types of control devices commonly used in the industry. These parameters include opacity monitoring except for wet scrubbers; pH, pressure drop and liquid flow-rate for wet scrubbers; and sorbent injection rate for dry scrubbers. You must also install a bag leak detection system for fabric filters. If you cannot monitor opacity for control systems with an ESP then you must monitor the secondary current and voltage or total power input for the ESP. These monitoring parameters have been used in other standards for similar industries. The values of these parameters are established during the initial or most recent performance test that demonstrates compliance. These values are your operating limits for the control device.

You would be required to set parameters based on 1-hour block averages during the compliance test, and demonstrate continuous compliance by monitoring 3-hour block average values for most parameters. We selected this averaging period to reflect operating conditions during the performance test to ensure the control system is continuously operating at the same or better level as during a performance test demonstrating compliance with the emission limits.

To demonstrate continuous compliance with the emission and operating limits, you would also need daily records of the quantity, type, and origin of each fuel burned and hours of operation of the affected source. If you are complying with the chlorine or total selected metals fuel input option, you must keep records of the calculations supporting your determination of the chlorine and total selected metals content in the fuel.

K. How Did EPA Determine Compliance Times for the Proposed Rule?

Section 112 of the CAA specifies the dates by which affected sources must comply with the emission standards. New or reconstructed units must be in compliance with the proposed rule immediately upon startup or [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], whichever is later. Existing sources are allowed 3 years to comply with the final rule. This is the maximum period allowed by the CAA. We believe that 3 years for compliance is necessary to allow adequate time to design, install and test control systems that will be retrofitted onto existing boilers, as well as obtain permits for the use of add-on controls.

L. How Did EPA Determine the Required Records and Reports for the Proposed Rule?

You would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 10 of the proposed subpart DDDDD. We evaluated the General Provisions requirements and included those we determined to be the minimum notification, recordkeeping, and reporting necessary to ensure compliance with, and effective enforcement of, the proposed rule.

We are also requiring that you keep daily records of the total fuel use by each affected source, subject to an emission limit or work practice standard, along with a description of the fuel, the total fuel usage amounts and units of measure, and information on the supplier and original source of the fuel. This information is necessary to ensure that the affected source is complying with the emission limits from the correct subcategory.

We are requiring additional recordkeeping if you choose to comply with the chlorine, mercury or total selected metals fuel input option. You will need to keep records of the calculations and supporting information used to develop the chlorine, mercury, or total selected metals fuel input operating limit.

M. How Does the Proposed Rule Affect Permits?

The CAA requires that sources subject to the proposed rule be operated pursuant to a permit issued under EPA-approved State operating permit program. The operating permit programs are developed under title V of the CAA and the implementing regulations under 40 CFR parts 70 and 71. If you are operating in the first 3 years of your operating permit, you will need to obtain a revised permit to incorporate the proposed rule. If you are in the last 2 years of your operating permit, you will need to incorporate the proposed rule into the next renewal of your permit.

N. What Alternative Provisions Are Being Considered?

The EPA is considering a bubbling compliance alternative for determining compliance with the non-mercury metallic HAP, HCl, mercury, and PM standards for existing sources. The bubbling compliance alternative would allow owners and operators to set non-mercury metals, mercury, HCl, and PM emissions limits for each existing boiler or process heater in the same subcategory such that if these limits are met, the total emissions from all existing boilers or process heaters in the subcategory are less than or equal to a subcategory specific bubble limit. The subcategory specific bubble limit would be the proposed emissions limits for non-mercury metallic HAP, mercury, HCl, and PM.

The bubbling compliance alternative would not be applicable to new sources and could only be used between boilers and process heaters in the same subcategory. For example, bubbling between a solid fuel-fired boiler greater than 10 million Btu/hour could only be conducted with other solid fuel-fired boilers or process heaters with heat input capacities greater than 10 million Btu/hour. Also, owners or owners of existing sources subject to the Industrial Boiler New Source Performance Standards (NSPS) (40 CFR part 60, subparts Db and Dc) would be required to continue to meet the PM emission standard of that NSPS regardless of whether they are complying with the bubbling alternative or not (because the NSPS is a separate regulatory requirement which remains in place).

Owners or operators that would choose to comply with the HAP metals, mercury, HCl, or PM standards using the bubbling compliance alternative would be required to submit HAP metals, mercury, HCl, and/or PM emissions limits to the Administrator for approval for each existing source included in the bubbling compliance alternative. Before emissions limits would be approved, the owner or operator would need to submit documentation demonstrating that if the emissions limits for each source (*e.g.*, each boiler or heater) are met, the entire group of sources within the bubbling compliance alternative would be in compliance with the subcategory-wide allowable non-mercury metallic HAP, mercury, HCl, and PM emission levels. Once approved by the Administrator, the non-mercury metallic HAP, mercury, HCl, and PM emissions levels would be incorporated into the operating permit for the source. Thereafter, the owner and operator of the facility would demonstrate compliance with the standards by demonstrating that each boiler or process heater included in the bubbling compliance alternative emits less than or equal to the approved non-mercury metallic HAP, mercury, HCl, and PM emissions limits for that source.

The EPA is considering this bubbling compliance alternative as part of the EPA's general policy of encouraging the use of flexible compliance approaches where they can be properly monitored and enforced. Emissions averaging can provide sources the flexibility to comply in the least costly manner while still maintaining regulation that is workable and enforceable. However, to implement this alternative, the final rule will need to define the affected source more broadly to include all the existing boilers and process heaters for each subcategory located at the same facility. Therefore, EPA is soliciting comments on the bubbling compliance alternative, whether EPA should specify this bubbling compliance alternative in the final rule, and whether new units added to an existing affected source should be included as part of, and applicable to, the existing source bubble limit. Comments should include information on the potential cost savings a facility could expect from implementation of the bubbling compliance provision, along with supporting documentation for this estimated cost saving.

IV. Impacts of the Proposed Rule

A. What Are the Air Impacts?

Table 2 of this preamble illustrates, for each subcategory, the emissions reductions achieved by the proposed rule (*i.e.*, the difference in emissions between a boiler or process heater controlled to the floor level of control and boilers or process heaters at the current baseline) for new and existing sources. Nationwide emissions of

selected HAP (*i.e.*, HCl, hydrogen fluoride, lead, and nickel) will be reduced by 58,500 tons per year for existing units and 73 tons per year for new units. Emissions of HCl will be reduced by 42,000 tons per year for existing units and 72 tons per year for new units. Emissions of mercury will be reduced by 1.9 tons per year for existing units and 0.006 tons per year for new units. Emissions of PM will be reduced by 565,000 tons per year for existing units and 480 tons per year for new units. Emissions of total selected non-mercury metals (*i.e.*, arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium) will be reduced by 1,100 tons per year for existing units and will be reduced by 1.4 tons per year for new units. In addition, emissions of sulfur dioxide are established to be reduced by 113,000 tons per year for existing sources and 110 tons per year for new sources. A discussion of the methodology used to estimate emissions and emissions reductions is presented in "Estimation of Baseline Emissions and Emissions Reductions for Industrial, Commercial, and Institutional Boilers and Process Heaters" in the docket.

TABLE 2.—SUMMARY OF EMISSIONS REDUCTIONS FOR EXISTING AND NEW SOURCES

[Tons/yr]

Source	Subcategory	HCl	PM	Non mercury metals[a]	Mercury
Existing Units	Large solid units	42,100	560,000	1,100	2
	Small solid units	0	0	0	0
	Limited use solid units	0	2,800	8	0.002
	Liquid units	0	0	0	0
	Gaseous units	0	0	0	0
New Units	Large solid units	70	31	0.01	0.006
	Small solid units	2.4	440	1.4	0.0006
	Limited use solid units	0.2	11	0.02	0.00002
	Liquid units	0	0	0	0
	Gaseous units	0	0	0	0

[a] Includes arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium.

B. What Are the Water and Solid Waste Impacts?

The EPA estimated the additional water usage that would result from the MACT floor level of control to be 110 million gallons per year for existing sources and 0.6 million gallons per year for new sources. In addition to the increased water usage, an additional 3.7 million gallons per year of wastewater would be produced for existing sources and 0.6 million gallons per year for new sources. The costs of treating the additional wastewater are $18,000 for existing sources and $2,300 for new sources. These costs are accounted for in the control costs estimates.

The EPA estimated the additional solid waste that would result from the MACT floor level of control to be 102,000 tons per year for existing sources and 1 ton per year for new sources. The costs of handling the additional solid waste generated are $1.5 million for existing sources and $17,000 for new sources. These costs are also accounted for in the control costs estimates.

A discussion of the methodology used to estimate impacts is presented in "Estimation of Impacts for Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP" in the Docket.

C. What Are the Energy Impacts?

The EPA expects an increase of approximately 1,130 million kilowatt hours (kWh) in national annual energy usage as a result of the proposed rule. Of this amount, 1,120 million kWh would be from existing sources and 13 million kWh are estimated from new sources. The increase results from the electricity required to operate control devices installed to meet the proposed rule, such as wet scrubbers and fabric filters.

D. What Are the Control Costs?

To estimate the national cost impacts of the proposed rule for existing sources, EPA developed several model boilers and process heaters and determined the cost of control equipment for these model boilers. The EPA assigned a model boiler or heater to each existing unit in the database based on the fuel, size, design, and current controls. The analysis considered all air pollution control equipment currently in operation at existing boilers and process heaters. Model costs were then assigned to all existing units that could not otherwise meet the proposed emission limits. The resulting total national cost impact of the proposed rule is 1,790 million dollars in capital expenditures and 860 million dollars per year in total annual costs. The total capital and annual costs include costs for testing, monitoring, and recordkeeping and reporting. Table 3 of this preamble shows the capital and annual cost impacts for each subcategory. Costs include testing and monitoring costs, but not recordkeeping and reporting costs.

TABLE 3.—SUMMARY OF CAPITAL AND ANNUAL COSTS FOR NEW AND EXISTING SOURCES

Source	Subcategory	Estimated/ projected number of affected units	Annualized cost (10^6 $/yr)	Capital costs (10^6 $)
Existing Units	Large solid units	3,481	814	1,605
	Small solid units	327	0	0
	Limited use solid units	249	23	105
	Liquid units	7,251	0	0
	Gaseous units	46,892	0	0

TABLE 3.—SUMMARY OF CAPITAL AND ANNUAL COSTS FOR NEW AND EXISTING SOURCES—Continued

Source	Subcategory	Estimated/ projected number of affected units	Annualized cost (10^6 $/yr)	Capital costs (10^6 $)
New Units	Large solid units	211	10	21
	Small solid units	25	3	3
	Limited use solid units	11	1	1
	Large liquid units	90	1	3
	Small liquid units	164	0	0
	Limited use liquid units	51	0.3	2
	Gaseous units	3,463	11	51

Using Department of Energy projections on fuel expenditures, the number of additional boilers that could be potentially constructed was estimated. The resulting total national cost impact of the proposed rule in the 5th year is 58 million dollars in capital expenditures and 18.6 million dollars per year in total annual costs. Costs are mainly for testing and monitoring.

A discussion of the methodology used to estimate cost impacts is presented in "Methodology and Results of Estimating the Cost of Complying with the Industrial, Commercial, and Institutional Boiler and Process Heater NESHAP" in the Docket.

E. Can We Achieve the Goals of the Proposed Rule in a Less Costly Manner?

We have made every effort in developing this proposal to minimize the cost to the regulated community and allow maximum flexibility in compliance options consistent with our statutory obligations. We recognize, however, that the proposal may still require some facilities to take costly steps to further control emissions even though those emissions may not result in exposures which could pose an excess individual lifetime cancer risk greater than one in one million or which exceed thresholds determined to provide an ample margin of safety for protecting public health and the environment from the effects of hazardous air pollutants. We are, therefore, specifically soliciting comment on whether there are further ways to structure the proposed rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment.

Representatives of the plywood and composite wood products industry provided EPA with descriptions of three mechanisms that they believed could be used to implement more cost-effective reductions in risk. The docket for today's proposed rule contains white papers prepared by industry that outline their proposed approaches. These approaches could be effective in focusing regulatory controls on facilities that pose significant risks and avoiding the imposition of high costs on facilities that pose little risk to public health or the environment, and we are seeking public comment on the utility of each of these approaches with respect to this rule.

One of the approaches, an applicability cutoff for threshold pollutants, would be implemented under the authority of CAA section 112(d)(4); the second approach, subcategorization and delisting, would be implemented under the authority of CAA sections 112(c)(1) and 112(c)(9); and, the third approach, would involve the use of a concentration-based applicability threshold. We are seeking comment on whether these approaches are legally justified and, if so, we ask for information that could be used to support such approaches.

The maximum achievable control technology, or MACT, program outlined in CAA section 112(d) is intended to reduce emissions of HAP through the application of MACT to major sources of toxic air pollutants. Section 112(c)(9) of the CAA is intended to allow EPA to avoid setting MACT standards for categories or subcategories of sources that pose less than a specified level of risk to public health and the environment. The EPA requests comment on whether the proposals described here appropriately rely on these provisions of CAA section 112: While both approaches focus on assessing the inhalation exposures of HAP emitted by a source, EPA specifically requests comment on the appropriateness and necessity of extending these approaches to account for non-inhalation exposures or to account for adverse environmental impacts. In addition to the specific requests for comment noted in this section, we are also interested in any information or comment concerning technical limitations, environmental and cost impacts, compliance assurance, legal rationale, and implementation relevant to the identified approaches. We also request comment on appropriate practicable and verifiable methods to ensure that sources' emissions remain below levels that protect public health and the environment. We will evaluate all comments before determining whether either of the three approaches will be included in the final rule.

1. Industry Emissions and Potential Health Effects

To estimate the potential baseline risks posed by the Industrial Boiler and Process Heater source category, EPA performed a crude risk analysis of the source category that focused only on cancer risks. The results of the analysis are based on approaches for estimating cancer incidence that carry significant assumptions, uncertainties, and limitations. Based on the assessment, if the proposed rule is implemented at all facilities in the source category, cancer incidence in the U.S. may be reduced by as many as tens of cases per year. Due to the uncertainties associated with the analysis, this analysis should be regarded as one perspective on the estimate of annual cancer incidence reduction; the true risk reductions are unknown. (Details of this assessment are available in two memoranda in the docket: Memorandum on "Method for Approximate ("Top Down") Estimates of Aggregate Cancer Risk Associated with Two Maximum Achievable Control Technology (MACT) Source Categories: Reciprocating Internal Combustion Engines (RICE) and Industrial/ Commercial/Institutional Boilers" and Memorandum on "Additional Perspectives on ("Top Down") Estimates of Aggregate Cancer Risk Associated with Industrial/Commercial/ Institutional Boilers".)

2. Applicability Cutoffs for Threshold Pollutants Under Section 112(d)(4) of the CAA

The first approach is an applicability cutoff for threshold pollutants that is based on EPA's authority under CAA section 112(d)(4) to establish standards for HAP which are threshold pollutants. A threshold pollutant is one for which there is a concentration or dose below which adverse effects are not expected to occur over a lifetime of exposure. For such pollutants, CAA section 112(d)(4) allows EPA to consider the threshold level, with an ample margin of safety, when establishing emission standards. Specifically, CAA section 112(d)(4) allows EPA to establish emission standards that are not based upon the maximum achievable control technology specified under CAA section 112(d)(2) for pollutants for which a health threshold has been established. Such standards may be less stringent than MACT. Historically, EPA has interpreted CAA section 112(d)(4) to allow categories of sources that emit only threshold pollutants to avoid further regulation if those emissions result in ambient levels that do not exceed the threshold, with an ample margin of safety.[2]

A different interpretation would allow us to exempt individual facilities within a source category that meet the CAA section 112(d)(4) requirements. There are three potential scenarios under this interpretation of the CAA section 112(d)(4) provision. One scenario would allow an exemption for individual facilities that emit only threshold pollutants and can demonstrate that their emissions of threshold pollutants would not result in air concentrations above the threshold levels, with an ample margin of safety, even if the category is otherwise subject to MACT. A second scenario would allow the CAA section 112(d)(4) provision to be applied to both threshold and nonthreshold pollutants, using the one in a million cancer risk level for decision making for nonthreshold pollutants.

A third scenario would allow a CAA section 112(d)(4) exemption at a facility that emits both threshold and nonthreshold pollutants. For those emission points where only threshold pollutants are emitted and where emissions of the threshold pollutants would not result in air concentrations above the threshold levels, with an ample margin of safety, those emission points could be exempt from the MACT standard. The MACT standard would still apply to nonthreshold emissions from other emission points at the source. For this third scenario, emission points that emit a combination of threshold and nonthreshold pollutants that are co-controlled by MACT would still be subject to the MACT level of control. However, any threshold HAP eligible for exemption under CAA section 112(d)(4) that are controlled by control devices different from those controlling non-threshold HAP would be able to use the exemption, and the facility would still be subject to the parts of the standard that control nonthreshold pollutants or that control both threshold and nonthreshold pollutants.

a. Estimation of hazard quotients and hazard indices. Under the CAA section 112(d)(4) approach, EPA would have to determine that emissions of each of the threshold pollutants emitted by industrial boiler and process heater sources at the facility do not result in exposures which exceed the threshold levels, with an ample margin of safety. The common approach for evaluating the potential hazard of a threshold air pollutant is to calculate a hazard quotient by dividing the pollutant's inhalation exposure concentration (often assumed to be equivalent to its estimated concentration in air at a location where people could be exposed) by the pollutant's inhalation Reference Concentration (RfC). An RfC is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure that, over a lifetime, likely would not result in the occurrence of adverse health effects in humans, including sensitive individuals. The EPA typically establishes an RfC by applying uncertainty factors to the critical toxic effect derived from the lowest- or no-observed-adverse-effect level of a pollutant.[3] A hazard quotient less than one means that the exposure concentration of the pollutant is less than the RfC, and, therefore, presumed to be without appreciable risk of adverse health effects. A hazard quotient greater than one means that the exposure concentration of the pollutant is greater than the RfC. Further, EPA guidance for assessing exposures to mixtures of threshold pollutants recommends calculating a hazard index (HI) by summing the individual hazard quotients for those pollutants in the mixture that affect the same target organ or system by the same mechanism.[4] Hazard index values would be interpreted similarly to hazard quotients; values below one would generally be considered to be without appreciable risk of adverse health effects, and values above one would generally be cause for concern.

For the determinations discussed herein, EPA would generally plan to use RfC values contained in EPA's toxicology database, the Integrated Risk Information System (IRIS). When a pollutant does not have an approved RfC in IRIS, or when a pollutant is a carcinogen, EPA would have to determine whether a threshold exists based upon the availability of specific data on the pollutant's mode or mechanism of action, potentially using a health threshold value from an alternative source, such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the California Environmental Protection Agency (CalEPA). Table 4 of this preamble provides RfC, as well as unit risk estimates, for the HAP emitted by facilities in the industrial boiler and process heater source category. A unit risk estimate is defined as the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 microgram per cubic meter (µg/m3) in air.

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[2] *See* 63 FR 18754, 18765–66 (April 15, 1998) (Pulp and Paper Combustion Sources Proposal NESHAP).

[3] "Methods for Derivation of Inhalation Reference Concentrations and Applications of Inhalation Dosimetry." EPA–600/8–90–066F, Office of Research and Development, USEPA, October 1994.

[4] "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum Technical Panel," EPA/630/R–00/002. USEPA, August 2000. *http://www.epa.gov/nceawww1/pdfs/chem mix/chem mix 08 2001.pdf.*

TABLE 4.—DOSE-RESPONSE ASSESSMENT VALUES FOR HAP REPORTED EMITTED BY THE INDUSTRIAL BOILER AND PROCESS HEATER SOURCE CATEGORY

Chemical name	CAS No.	Reference concentration [a] (mg/m^3)	Unit risk estimate [b] (1/(μg/m^3))
Acetaldehyde	75–07–0	9.0E–IRIS 03	2.2E–06 IRIS
Acrolein	107–02–8	2.0E–IRIS 05	
Arsenic compounds	7440–38–2	3.0E–CAL 05	4.3E–03 IRIS
Benzene	71–43–2	6.0E–CAL 02	7.8E–06 IRIS
Beryllium compounds	7440–41–7	2.0E–IRIS 05	2.4E–03 IRIS
Cadmium compounds	7440–43–9	2.0E–CAL 05	1.8E–03 IRIS
Chromium (VI) compounds	18540–29–9	1.0E–IRIS 04	1.2E–02 IRIS
Dibenzofuran	132–64–9		
Dibutylphthalate	84–74–2		
p-Dichlorobenzene	106–46–7	8.0E–IRIS 01	1.1E–05 CAL
Ethyl benzene	100–41–4	1.0E+0 IRIS 0	
Formaldehyde	50–00–0	9.8E–ATSDR 03	1.3E–05 IRIS
Hydrochloric acid	7647–01–0	2.0E–IRIS 02	
Hydrogen fluoride	7664–39–3	3.0E–P–CAL 02	
Lead compounds	7439–92–1	1.5E–EPA 03 ORD	1.2E–05 CAL
Manganese compounds	7439–96–5	5.0E–IRIS 05	
Mercury compounds	HG_CMPDS	9.0E–CAL 05	
Methyl chloroform	71–55–6	1.0E+0 CAL 0	
Methyl ethyl ketone	78–93–3	1.0E+0 IRIS 0	
Methylene chloride	75–09–2	1.0E+0 ATSDR 0	4.7E–07 IRIS
Nickel compounds	7440–02–0	2.0E–ATSDR 04	
Nickel subsulfide	12035–72–2		4.8E–04 IRIS
PAHs (shown below as 7-PAH)			
Benzo (a) anthracene	56–55–3		1.1E–04 CAL
Benzo (b) fluoranthene	205–99–2		1.1E–04 CAL
Benzo (k) fluoranthene	207–08–9		1.1E–04 CAL
Benzo (a) pyrene	50–32–8		1.1E–03 CAL
Chrysene	218–01–9		1.1E–05 CAL
Dibenz (a,h) anthracene	53–70–3		1.2E–03 CAL
Indeno (1,2,3-cd) pyrene	193–39–5		1.4E–04 CAL
Phosphorus [c]			
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746–01–6	4.0E–CAL 08	3.3E+01 EPA ORD
Toluene	108–88–3	4.0E–IRIS 01	
m-Xylene [c]	108–38–3		
o-Xylene [c]	95–47–6		
Xylenes (mixed)	1330–20–7	4.3E–ATSDR 01	

[a] Reference Concentration: An estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups which include children, asthmatics and the elderly) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from various types of human or animal data, with uncertainty factors generally applied to reflect limitations of the data used.

[b] Unit Risk Estimate: The upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 μg/m^3 in air. The interpretation of the Unit Risk Estimate would be as follows: if the Unit Risk Estimate = 1.5 × 10–6 per μg/m^3, 1.5 excess tumors are expected to develop per 1,000,000 people if exposed daily for a lifetime to 1 μg of the chemical in 1 cubic meter of air. Unit Risk Estimates are considered upper bound estimates, meaning they represent a plausible upper limit to the true value. (Note that this is usually not a true statistical confidence limit.) The true risk is likely to be less, but could be greater.

[c] No dose-response assessment is available.

Sources:
IRIS = EPA Integrated Risk Information System (*http://www.epa.gov/iris/subst/index.html*).
ATSDR = U.S. Agency for Toxic Substances and Disease Registry (*http://www.atsdr.cdc.gov/mrls.html*).
CAL = California Office of Environmental Health Hazard Assessment (*http://www.oehha.ca.gov/air/hot_spots/index.html*).

To establish an applicability cutoff under CAA section 112(d)(4), EPA would need to define ambient air exposure concentration limits for any threshold pollutants involved. There are several factors to consider when establishing such concentrations. First, we would need to ensure that the concentrations that would be established would protect public health with an ample margin of safety. As discussed above, the approach EPA commonly uses when evaluating the potential hazard of a threshold air pollutant is to calculate the pollutant's hazard quotient, which is the exposure concentration divided by the RfC.

EPA's "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures" suggests that the noncancer health effects associated with a mixture of pollutants ideally are assessed by considering the pollutants' common mechanisms of toxicity. The guidance also suggests, however, that when exposures to mixtures of pollutants are being evaluated, the risk assessor may calculate a HI. The recommended method is to calculate multiple hazard indices for each exposure route of interest, and for a single specific toxic effect or toxicity to a single target organ. The default approach recommended by the guidance is to sum the hazard quotients for those pollutants that induce the same toxic effect or affect the same target organ. A mixture is then assessed by several HI, each representing one toxic effect or target organ. The guidance notes that the pollutants included in the HI calculation are any pollutants that show the effect being assessed, regardless of the critical effect upon which the RfC is based. The guidance cautions that if the

target organ or toxic effect for which the HI is calculated is different from the RfC's critical effect, then the RfC for that chemical will be an overestimate, that is, the resultant HI potentially may be overprotective. Conversely, since the calculation of an HI does not account for the fact that the potency of a mixture of HAP can be more potent than the sum of the individual HAP potencies, an HI may potentially be underprotective in some situations.

b. *Options for establishing a hazard index limit.* One consideration in establishing a hazard index limit is whether the analysis considers the total ambient air concentrations of all the emitted HAP to which the public is exposed.[5] There are at least several options for establishing a hazard index limit for the CAA section 112(d)(4) analysis that reflect, to varying degrees, public exposure.

One option is to allow the hazard index posed by all threshold HAP emitted from sources at the facility to be no greater than one. This approach is protective if no additional threshold HAP exposures would be anticipated from other sources in the vicinity of the facility or through other routes of exposure (*e.g.*, through ingestion).

A second option is to adopt a default percentage approach, whereby the hazard index limit of the HAP emitted by the facility is set at some percentage of one (*e.g.*, 20 percent or 0.2). This approach recognizes the fact that the facility in question is only one of many sources of threshold HAP to which people are typically exposed every day. Because noncancer risk assessment is predicated on total exposure or dose, and because risk assessments focus only on an individual source, establishing a hazard index limit of 0.2 would account for an assumption that 20 percent of an individual's total exposure is from that individual source. For the purposes of this discussion, we will call all sources of HAP, other than the facility in question, background sources. If the facility is allowed to emit HAP such that its own impacts could result in HI values of one, total exposures to threshold HAP in the vicinity of the facility could be substantially greater than one due to background sources, and this would not be protective of public health, since only HI values below one are considered to be without appreciable risk of adverse health effects. Thus, setting the hazard index limit for the facility at some default percentage of one will provide a buffer which would help to ensure that total exposures to threshold HAP near the facility (*i.e.*, in combination with exposures due to background sources) will generally not exceed one, and can generally be considered to be without appreciable risk of adverse health effects.

The EPA requests comment on using the default percentage approach and on setting the default hazard index limit at 0.2. The EPA is also requesting comment on whether an alternative HI limit, in some multiple of one would be a more appropriate applicability cutoff.

A third option is to use available data (from scientific literature or EPA studies, for example) to determine background concentrations of HAP, possibly on a national or regional basis. These data would be used to estimate the exposures to HAP from non-industrial boiler and process heater sources in the vicinity of an individual facility. For example, the EPA's National-scale Air Toxics Assessment (NATA)[6] and ATSDR's Toxicological Profiles[7] contain information about background concentrations of some HAP in the atmosphere and other media. The combined exposures from these sources and from other sources (as determined from the literature or studies) would then not be allowed to exceed a hazard index limit of one. The EPA requests comment on the appropriateness of setting the hazard index limit at one for such an analysis.

A fourth option is to allow facilities to estimate or measure their own facility-specific background HAP concentrations for use in their analysis. With regard to the third and fourth options, the EPA requests comment on how these analyses could be structured. Specifically, EPA requests comment on how the analyses should take into account background exposure levels from air, water, food and soil encountered by the individuals exposed to emissions from industrial boilers and process heaters. In addition, we request comment on how such analyses should account for potential increases in exposures due to the use of new HAP or the increased use of a previously emitted HAP, or the effect of other nearby sources that release HAP.

EPA requests comment on the feasibility and scientific validity of each of these or other approaches. Finally, EPA requests comment on how we should implement the CAA section 112(d)(4) applicability cutoffs, including appropriate mechanisms for applying cutoffs to individual facilities. For example, would the title V permit process provide an appropriate mechanism?

c. *Tiered analytical approach for predicting exposure.* Establishing that a facility meets the cutoffs established under CAA section 112(d)(4) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would promote a tiered analytical approach for these determinations. A tiered analysis involves making successive refinements in modeling methodologies and input data to derive successively less conservative, more realistic estimates of pollutant concentrations in air and estimates of risk.

As a first tier of analysis, EPA could develop a series of simple look-up tables based on the results of air dispersion modeling conducted using conservative input assumptions. By specifying a limited number of input parameters, such as stack height, distance to property line, and emission rate, a facility could use these look-up tables to determine easily whether the emissions from their sources might cause a hazard index limit to be exceeded.

A facility that does not pass this initial conservative screening analysis could implement increasingly more site-specific but more resource-intensive tiers of analysis using EPA-approved modeling procedures, in an attempt to demonstrate that exposure to emissions from the facility does not exceed the hazard index limit. The EPA's guidance could provide the basis for conducting such a tiered analysis.[8]

The EPA requests comment on methods for constructing and implementing a tiered analytical approach for determining applicability of the CAA section 112(d)(4) criterion to specific industrial boiler and process heater sources. It is also possible that ambient monitoring data could be used to supplement or supplant the tiered modeling approach described above. It is envisioned that the appropriate monitoring to support such a determination could be extensive. The EPA requests comment on the appropriate use of monitoring in the determinations described above.

d. Accounting for dose-response relationships. In the past, EPA routinely treated carcinogens as nonthreshold pollutants. The EPA recognizes that

[5] Senate Debate on Conference Report (October 27, 1990), reprinted in "A Legislative History of the Clean Air Act Amendments of 1990," Comm. Print S. Prt. 103–38 (1993) ("Legis. Hist.") at 868.

[6] *See http://www.epa.gov/ttn/atw/nata.*

[7] *See http://www.atsdr.cdc.gov/toxpro2.html.*

[8] "A Tiered Modeling Approach for Assessing the Risks due to Sources of Hazardous Air Pollutants." EPA–450/4–92–001. David E. Guinnup, Office of Air Quality Planning and Standards, USEPA, March 1992.

advances in risk assessment science and policy may affect the way EPA differentiates between threshold and nonthreshold HAP. The EPA's draft Guidelines for Carcinogen Risk Assessment [9] suggest that carcinogens be assigned non-linear dose-response relationships where data warrant. Moreover, it is possible that dose-response curves for some pollutants may reach zero risk at a dose greater than zero, creating a threshold for carcinogenic effects. It is possible that future evaluations of the carcinogens emitted by this source category would determine that one or more of the carcinogens in the category is a threshold carcinogen or is a carcinogen that exhibits a non-linear dose-response relationship but does not have a threshold.

The dose-response assessments for formaldehyde and acetaldehyde are currently undergoing revision by the EPA. As part of this revision effort, EPA is evaluating formaldehyde and acetaldehyde as potential non-linear carcinogens. The revised dose-response assessments will be subject to review by the EPA Science Advisory Board, followed by full consensus review, before adoption into the EPA Integrated Risk Information System. At this time, EPA estimates that the consensus review will be completed by the end of 2003. The revision of the dose-response assessments could affect the potency factors of these HAP, as well as their status as threshold or nonthreshold pollutants. At this time, the outcome is not known. In addition to the current reassessment by EPA, there have been several reassessments of the toxicity and carcinogenicity of formaldehyde in recent years, including work by the World Health Organization and the Canadian Ministry of Health.

The EPA requests comment on how we should consider the state of the science as it relates to the treatment of threshold pollutants when making determinations under CAA section 112(d)(4). In addition, EPA requests comment on whether there is a level of emissions of a nonthreshold carcinogenic HAP (*e.g.*, benzene, methylene chloride) at which it would be appropriate to allow a facility to use the approaches discussed in this section.

If the CAA section 112(d)(4) approach were adopted, the proposed rulemaking would likely indicate that the requirements of the rule do not apply to any source that demonstrates, based on a tiered approach that includes EPA-approved modeling of the affected source's emissions, that the anticipated HAP exposures do not exceed the specified hazard index limit.

3. Applicability Cutoffs From Hydrogen Chloride Controls Under CAA Section 112(d)(4) of the CAA

This approach is an applicability cutoff for the threshold pollutant hydrogen chloride that is based on EPA's authority under CAA section 112(d)(4). Industry's suggested approach interprets this provision to allow EPA to exempt, from the hydrogen chloride controls, individual facilities that can demonstrate that their emissions of hydrogen chloride will not result in air concentrations above the inhalation reference concentration for hydrogen chloride, even if the category is otherwise subject to MACT.

If this approach were adopted, the proposed rulemaking would likely indicate that the requirements of the rule pertaining to hydrochloric acid do not apply to any source that demonstrates, based on EPA-approved modeling of the affected source's emissions, that the anticipated hydrochloric acid exposures do not exceed the inhalation reference concentration for hydrochloric acid.

4. Subcategory Delisting Under Section 112(c)(9)(B) of the CAA

The EPA is authorized to establish categories and subcategories of sources, as appropriate, pursuant to CAA section 112(c)(1), in order to facilitate the development of MACT standards consistent with section 112 of the CAA. Further, CAA section 112(c)(9)(B) allows EPA to delete a category (or subcategory) from the list of major sources for which MACT standards are to be developed when the following can be demonstrated: (1) In the case of carcinogenic pollutants, that "no source in the category * * * emits (carcinogenic) air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source"; (2) in the case of pollutants that cause adverse noncancer health effects, that "emissions from no source in the category or subcategory * * * exceed a level which is adequate to protect public health with an ample margin of safety"; and (3) in the case of pollutants that cause adverse environmental effects, that "no adverse environmental effect will result from emissions from any source."

Given these authorities and the suggestions from the white paper prepared by industry representatives (see docket number OAR–2002–0058), EPA is considering whether it would be possible to establish a subcategory of facilities within the larger industrial boiler and process heater source category that would meet the risk-based criteria for delisting. Such criteria would likely include the same requirements as described previously for the second scenario under the CAA section 112(d)(4) approach, whereby a facility would be in the low-risk subcategory if its emissions of threshold pollutants do not result in exposures which exceed the HI limits and if its emissions of nonthreshold pollutants do not result in exposures which exceed a cancer risk level of 10^{-6}. The EPA requests comment on what an appropriate HI limit would be for a determination that a facility be included in the low-risk subcategory.

Since each facility in such a subcategory would be a low-risk facility (*i.e.*, if each met these criteria), the subcategory could be delisted in accordance with CAA section 112(c)(9), thereby limiting the costs and impacts of the proposed rule to only those facilities that do not qualify for subcategorization and delisting.

Facilities seeking to be included in the delisted subcategory would be responsible for providing all data required to determine whether they are eligible for inclusion. Facilities that could not demonstrate that they are eligible to be included in the low-risk subcategory would be subject to MACT and possible future residual risk standards. The EPA solicits comment on implementing a risk-based approach for establishing subcategories of industrial boiler and process heater facilities.

Establishing that a facility qualifies for the low-risk subcategory under CAA section 112(c)(9) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would employ the same tiered analytical approach described earlier in the CAA section 112(d)(4) discussion for these determinations.

One concern that EPA has with respect to this CAA section 112(c)(9) approach is the effect that it could have on the MACT floors. If many of the facilities in the low-risk subcategory are well-controlled, that could make the MACT floor less stringent for the remaining facilities. One approach that has been suggested to mitigate this effect would be to establish the MACT floor now based on controls in place for the

[9] "Draft Revised Guidelines for Carcinogen Risk Assessment." NCEA–F–0644. USEPA, Risk Assessment Forum, July 1999. pp 3–9ff. *http://www.epa.gov/ncea/raf/pdfs/cancer_gls.pdf.*

entire category and to allow facilities to become part of the low-risk subcategory in the future, after the MACT based standards are established. This would allow low risk facilities to use the CAA section 112(c)(9) exemption without affecting the MACT floor calculation. The EPA requests comment on this suggested approach.

Another approach under CAA section 112(c)(9) would be to define a subcategory of facilities within the industrial boiler and process heater source category based upon technological differences, such as differences in production rate, emission vent flow-rates, overall facility size, emissions characteristics, processes, or air pollution control device viability. The EPA requests comment on how we might establish industrial boiler and process heater subcategories based on these, or other, source characteristics. If it could then be determined that each source in this technologically-defined subcategory presents a low risk to the surrounding community, the subcategory could then be delisted in accordance with CAA section 112(c)(9). The EPA requests comment on the concept of identifying technologically-based subcategories that may include only low-risk facilities within this source category.

If this CAA section 112(c)(9) approach were adopted, the rulemaking would likely indicate that the rule does not apply to any source that demonstrates that it belongs in a subcategory which has been delisted under CAA section 112(c)(9).

F. What Are the Economic Impacts?

The economic impact analysis shows that the expected price increase for output in the 40 affected industries would be no more than 0.04 percent as a result of the proposed rule for industrial boilers and process heaters. The expected change in production of affected output is a reduction of only 0.03 percent or less in the same industries. In addition, impacts to affected energy markets show that prices of petroleum, natural gas, electricity and coal should increase by no more than 0.05 percent as a result of implementation of the proposed rule, and output of these types of energy should decrease by no more than 0.01 percent. Therefore, it is likely that there is no adverse impact expected to occur for those industries that produce output affected by the proposed rule, such as lumber and wood products, chemical manufacturers, petroleum refining, and furniture manufacturing.

G. What Are the Social Costs and Benefits of the Proposed Rule?

Our assessment of costs and benefits of the proposed rule is detailed in the "Regulatory Impact Analysis for the Proposed Industrial, Commercial, and Institutional Boilers and Process Heaters MACT." The Regulatory Impact Analysis (RIA) is located in the Docket.

It is estimated that 3 years after implementation of the proposed requirements, HAP would be reduced by 58,500 tons/yr (53,200 megagrams per year (Mg/yr)) due to reductions in hydrochloric acid, arsenic, mercury, hydrofluoric acid, and several other HAP from existing affected emission sources. Of these reductions, 42,000 tons/yr (38,200 Mg/yr) are of hydrochloric acid. In addition to these reductions, there are 73 tons/yr (66 Mg/yr) of HAP reductions expected from new sources. Of these reductions, virtually all of them are of hydrochloric acid. The health effects associated with these HAP are discussed earlier in this preamble. While it is beneficial to society to reduce these HAP, we are unable to quantify and provide a monetized estimate of the benefits at this time.

Despite our inability to quantify and provide monetized benefit estimates from HAP reductions, it is possible to derive rough estimates for one of the more important benefit categories, *i.e.*, the potential number of cancer cases avoided and cancer risk reduced as a result of the imposition of the MACT level of control on this source category. Our analysis suggests that imposition of the MACT level of control would reduce cancer cases by possibly tens of cases per year, on average, starting some years after implementation of the standard. This risk reduction estimate is uncertain and should be regarded as an extremely rough estimate, and should be viewed in the context of the full spectrum of unquantified noncancer effects associated with the HAP reductions. Noncancer effects associated with the HAP are presented earlier in this preamble.

The control technologies used to reduce the level of HAP emitted from affected sources are also expected to reduce emissions of PM (PM_{10}, $PM_{2.5}$), and sulfur dioxide (SO_2). It is estimated that PM_{10} emissions reductions total approximately 562,000 tons/yr (510,000 Mg/yr), $PM_{2.5}$ emissions reductions total approximately 159,000 tons/yr (145,000 Mg/yr), and SO_2 emissions reductions total approximately 102,670 Mg/yr (113,000 tons/yr). These estimated reductions occur from existing sources in operation 3 years after the implementation of the requirements of the proposed rule and are expected to continue throughout the life of the sources.

Human health effects associated with exposure to PM_{10} and $PM_{2.5}$ include premature mortality (short-term exposure to PM_{10} and long-term exposure to $PM_{2.5}$), chronic bronchitis, additional hospital admissions from respiratory and cardiovascular causes, acute respiratory symptoms, and other effects. Welfare effects associated with PM_{10} and $PM_{2.5}$ emissions include impaired recreational and residential visibility, household soiling, and materials damage. As SO_2 emissions transform into PM, they can lead to the same health and welfare effects listed above.

For PM_{10} and $PM_{2.5}$, we did provide a monetary estimate for the benefits associated with the reduction of the emissions, and we have conducted several analyses recently that estimate the monetized benefits of PM reductions, including: the RIA of the PM/Ozone national ambient air quality standards (NAAQS) (1997), the Nitrogen Oxide (NO_X) State Implementation Plan (SIP) Call (1998), the CAA section 126 RIA (1999), a study conducted for section 812(b) of the CAA (1999), the Tier 2/Gasoline Sulfur Standards (1999), and the Heavy Duty Engine/Diesel Fuel Standards (2000).

On September 26, 2002, the National Academy of Sciences (NAS) released a report on its review of the Agency's methodology for analyzing the health benefits of measures taken to reduce air pollution. The report focused on EPA's approach for estimating the health benefits of regulations designed to reduce concentrations of airborne particulate matter (PM).

In its report, the NAS said that EPA has generally used a reasonable framework for analyzing the health benefits of PM-control measures. It recommended, however, that the Agency take a number of steps to improve its benefits analysis. In particular, the NAS stated that the Agency should:

—Include benefits estimates for a range of regulatory options;
—Estimate benefits for intervals, such as every 5 years, rather than a single year;
—Clearly state the projected baseline statistics used in estimating health benefits, including those for air emissions, air quality, and health outcomes;
—Examine whether implementation of proposed regulations might cause unintended impacts on human health or the environment;

—When appropriate, use data from non-U.S. studies to broaden age ranges to which current estimates apply and to include more types of relevant health outcomes; and
—Begin to move the assessment of uncertainties from its ancillary analyses into its primary analyses by conducting probabilistic, multiple-source uncertainty analyses. This assessment should be based on available data and expert judgment.

Although the NAS made a number of recommendations for improvement in EPA's approach, it found that the studies selected by EPA for use in its benefits analysis were generally reasonable choices. In particular, the NAS agreed with EPA's decision to use cohort studies to derive benefits estimates. It also concluded that the Agency's selection of the American Cancer Society (ACS) study for the evaluation of PM-related premature mortality was reasonable, although it noted the publication of new cohort studies that should be evaluated by the Agency.

Several of the NAS recommendations addressed the issue of uncertainty and how the Agency can better analyze and communicate the uncertainties associated with its benefits assessments. In particular, the Committee expressed concern about the Agency's reliance on a single value from its analysis and suggested that EPA develop a probabilistic approach for analyzing the health benefits of proposed regulatory actions. The Agency agrees with this suggestion and is working to develop such an approach for use in future rulemakings.

In this benefits analysis for the proposed rule, the Agency has used an interim approach that shows the impact of several important alternative assumptions about the estimation and valuation of reductions in premature mortality and chronic bronchitis. This approach, which was developed in the context of the Agency's Clear Skies analysis, provides an alternative estimate of health benefits using the time series studies in place of cohort studies, as well as alternative valuation methods for mortality and chronic bronchitis risk reductions.

For the proposed rule, we conducted an air quality assessment to determine the change in ambient concentrations of PM_{10} and $PM_{2.5}$ that result from reductions of PM and SO_2 at existing affected facilities. Our air quality analysis was conducted using the source-receptor (S–R) matrix model, a model that provides changes in PM_{10} and $PM_{2.5}$ concentrations based on changes in PM and/or PM precursor emissions. Unfortunately, our data is not able to define the exact location of the reductions for every affected boiler and process heater. The air quality analysis was conducted for emissions reductions from those emissions sources that have a known link to a specific control device, which represents approximately 50 percent of the total emissions reductions mentioned above. Using this subset of information, we utilized the S–R matrix to determined the air quality change nationwide. The results of the air quality assessment served as input to a model that estimates the total monetary value of benefits of the health effects listed above. Total benefits associated with this portion of the analysis are $8.2 billion in the year 2005 (presented in 1999 dollars).

For those emissions reductions from affected sources that do not have a known link to a specific control device, the results of the air quality analysis serve as a reasonable approximation of air quality changes to transfer to the remaining emissions reductions of the proposed rule. Because there is not a reasonable way to apportion the total benefits of the combined impact of the PM and SO_2 reductions from the air quality and benefit analyses completed above, we performed two additional S–R matrix analyses. One analysis was performed to evaluate the impact on air quality of the PM reductions alone (holding SO_2 unchanged), and one to evaluate the impact on air quality from the SO_2 reductions alone (holding PM unchanged). With independent PM and SO_2 air quality assessments, we can determine the total benefit associated with each component of total pollutant reductions. The total benefit associated with the PM and SO_2 reductions with unspecified location are $7.9 billion.

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon monoxide. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. While these general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references, the key uncertainties which have a bearing on the results of the benefit-cost analysis of today's action are the following:

1. The exclusion of potentially significant benefit categories (*e.g.*, health and ecological benefits of reduction in hazardous air pollutants emissions);
2. Errors in measurement and projection for variables such as population growth;
3. Uncertainties in the estimation of future year emissions inventories and air quality;
4. Uncertainties associated with the extrapolation of air quality monitoring data to some unmonitored areas required to better capture the effects of the standards on the affected population;
5. Variability in the estimated relationships of health and welfare effects to changes in pollutant concentrations; and
6. Uncertainties associated with the benefit transfer approach.

Despite these uncertainties, we believe the benefit-cost analysis provides a reasonable indication of the expected economic benefits of the industrial boilers and process heaters MACT under two different sets of assumptions.

We have used two approaches (base and alternative estimates) to provide benefits in health effects and in monetary terms. They differ in the method used to estimate and value reduced incidences of mortality and chronic bronchitis, which is explained in detail in the RIA. While there is a substantial difference in the specific estimates, both approaches show that the industrial boilers and process heaters MACT may provide benefits to public health, whether expressed as health improvements or as economic benefits. These include prolonging lives, reducing cases of chronic bronchitis and hospital admissions, and reducing thousands of cases in other indicators of adverse health effects, such as work loss days, restricted activity days, and days with asthma attacks. In addition, there are a number of health and environmental effects which we were unable to quantify or monetize. These effects, denoted by "B" are additive to the both the base and alternative estimates of benefits. Results also reflect the use of two different discount rates for the valuation of reduced incidences of mortality; a 3 percent rate which is recommended by EPA's Guidelines for Preparing Economic Analyses (U.S.

EPA, 2000a), and 7 percent which is recommended by OMB Circular A–94 (OMB, 1992).

More specifically, the base estimate of benefits reflects the use of peer-reviewed methodologies developed for earlier risk and benefit-cost assessments related to the Clean Air Act, such as the regulatory assessments of the Heavy Duty Diesel and Tier II rules and the section 812 Report to Congress. The alternative estimate explores important aspects of the key elements underlying estimates of the benefits of reducing PM and SO_2 emissions, specifically focusing on estimation and valuation of mortality risk reduction and valuation of chronic bronchitis. The alternative estimate of mortality reduction relies on recent scientific studies finding an association between increased mortality and short-term exposure to particulate matter over days to weeks, while the base estimate relies on a recent reanalysis of earlier studies that associate long-term exposure to fine particles with increased mortality. The alternative estimate differs in the following ways: it explicitly omits any impact of long-term exposure on premature mortality, it uses different data on valuation and makes adjustments relating to the health status and potential longevity of the populations most likely affected by PM, it also uses a cost-of-illness method to value reductions in cases of chronic bronchitis while the base estimate is based on individual's willingness to pay (WTP) to avoid a case of chronic bronchitis. In addition, one key area of uncertainty is the value of a statistical life (VSL) for risk reductions in mortality, which is also the category of benefits that accounts for a large portion of the total benefit estimate. The adoption of a value for the projected reduction in the risk of premature mortality is the subject of continuing discussion within the economic and public policy analysis community. There is general agreement that the value to an individual of a reduction in mortality risk can vary based on several factors, including the age of the individual, the type of risk, the level of control the individual has over the risk, the individual's attitude toward risk, and the health status of the individual.

The Environmental Economics Advisory Committee (EEAC) of the EPA Science Advisory Board (SAB) recently issued an advisory report which states that "the theoretically appropriate method is to calculate willingness to pay for individuals whose ages correspond to those of the affected population, and that it is preferable to base these calculations on empirical estimates of WTP by age." (EPA–SAB–EEAC–00–013). In developing our base estimate of the benefits of premature mortality reductions, we have appropriately discounted over the lag period between exposure and premature mortality. However, the empirical basis for adjusting the current $6 million VSL for other factors does not yet justify including these in our base estimate. A discussion of these factors is contained in the RIA and supporting documents. The EPA recognizes the need for additional research by the scientific community to develop additional empirical support for adjustments to VSL for the factors mentioned above. Furthermore, EPA prefers not to draw distinctions in the monetary value assigned to the lives saved even if they differ in age, health status, socioeconomic status, gender or other characteristic of the adult population.

Given the advice from the SAB, we employed the suggested approach for the benefit analysis of the Heavy Duty Engine/Diesel Fuel standards conducted in 2000 to the Industrial, Commercial, and Institutional Boiler and Process Heater MACT discussed in this preamble. A full discussion of considerations made in our presentation of benefits is summarized in the preamble of the Final Heavy Duty Diesel Program issued in December 2000, and in all supporting documentation and analyses of the Heavy Duty Diesel Program, and in the RIA for the proposed rulemaking.

In addition to the presentation of mortality valuation, our estimate also includes a "B" to represent those additional health and environmental benefits which could not be expressed in quantitative incidence and/or economic value terms. A full listing of the benefit categories that could not be quantified or monetized in our estimate are provided in the RIA for the proposed rule. A full appreciation of the overall economic consequences of the proposed industrial boiler and process heater standards requires consideration of all benefits and costs expected to result from today's proposed rule, not just those benefits and costs which could be expressed here in dollar terms. A full listing of the benefit categories that could not be quantified or monetized in our estimate are provided in Table 5 of this preamble.

TABLE 5.—UNQUANTIFIED BENEFIT CATEGORIES

	Unquantified benefit categories associated with HAP	Unquantified benefit categories associated with PM
Health Categories	Airway responsiveness Pulmonary inflammation Increased susceptibility to respiratory infection Acute inflammation and respiratory cell damage Chronic respiratory damage/Premature aging of lungs Emergency room visits for asthma	Changes in pulmonary function. Morphological changes. Altered host defense mechanisms. Cancer. Other chronic respiratory disease. Emergency room visits for asthma. Emergency room visits for non-asthma respiratory and cardiovascular causes. Lower and upper respiratory symptoms. Acute bronchitis. Shortness of breath. Increased school absence rates.
Welfare Categories	Ecosystem and vegetation effects Damage to urban ornamentals (*e.g.*, grass, flowers, shrubs, and trees in urban areas) Commercial field crops Fruit and vegetable crops Reduced yields of tree seedlings, commercial and non- commercial forests. Damage to ecosystems Materials damage	Materials damage. Damage to ecosystems (*e.g.*, acid sulfate deposition). Nitrates in drinking water. Visibility in recreational and residential areas.

In summary, the base estimate using the VSL approach yields a total monetized benefit estimate of $16.1 billion + B (1999 dollars) in 2005 when using a 3 percent interest rate (or approximately $15.4 billion + B when using a 7 percent interest rate). The alternative estimate totals approximately $2.4 billion + B when using a 3 percent interest rate (or approximately $2.6 billion + B when using a 7 percent interest rate).

Using the results of the benefit analysis, we can use benefit-cost comparison (or net benefits) as another tool to evaluate the reallocation of society's resources needed to address the pollution externality created by the operation of industrial boilers and process heaters. The additional costs of internalizing the pollution produced at major sources of emissions from industrial boilers and process heaters are compared to the improvement in society's well-being from a cleaner and healthier environment. Comparing benefits of the proposed rule to the costs imposed by alternative ways to control emissions optimally identifies a strategy that results in the highest net benefit to society. In the case of the proposed rule, we are proposing only one option, the minimal level of control mandated by the CAA, or the MACT floor. Other alternatives that lead to higher levels of control (or beyond-the-floor alternatives) lead to higher estimates of benefits net of costs, but also lead to additional economic impacts including more substantial impacts to small entities. For more details, please refer to the RIA for the proposed rule.

Table 6 of this preamble presents a summary of costs, benefits, and net benefits (*i.e.*, benefits minus costs). Based on estimated compliance costs associated with the proposed rule and the predicted change in prices and production in the affected industries, the estimated social costs of the proposed rule are $780 million (1999 dollars). Social costs are different from compliance costs in that social costs take into account the interactions between affected producers and the consumers of affected products in response to the imposition of the compliance costs.

Therefore, the Agency's base estimate of monetized benefits net of costs is $15.2 billion + B (1999 dollars) in 2005 when using a 3 percent discount rate (or approximately $15 billion + B when using a 7 percent discount rate). However, using the more conservative alternative estimate of benefits, net benefits are $1.5 billion + B (1999 dollars) under a 3 percent discount rate (or approximately $1.7 billion + B when using a 7 percent discount rate).

In both cases, net benefits would be greater if all the benefits of the HAP and other pollutant reductions could be quantified. Notable omissions to the net benefits include all benefits of HAP reductions, including reduced cancer incidences, toxic morbidity effects, and cardiovascular and CNS effects. It is also important to note that not all benefits of SO_2 and PM reductions have been monetized.

TABLE 6.—ANNUAL NET BENEFITS OF THE INDUSTRIAL BOILERS AND PROCESS HEATERS NESHAP IN 2005 [A]

	MACT floor (million 1999$)	Beyond the MACT floor (million 1999$)
Social Costs [B]	$837	$1,923
Social Benefits: [B, C, D]		
HAP-related health and welfare benefits	Not monetized	Not monetized.
PM-related welfare benefits	Not monetized	Not monetized.
SO_2 - and PM-related health benefits:		
Primary Estimate		
—Using 3% Discount Rate	$16,300 + B	$17,230 + B.
Using 7% Discount Rate	$15,430 + B	$16,310 + B.
Alternative Estimate		
—Using 3% Discount Rate	$2,350 + B	$2,380 + B.
—Using 7% Discount Rate	$2,585 + B	$2,620 + B.
Net Benefits (Benefits – Costs): [C, D]		
Primary Estimate		
—Using 3% Discount Rate	$15,465	$15,305 + B.
—Using 7% Discount Rate	$14,595	$14,385 + B.
Alternative Estimate		
—Using 3% Discount Rate	$1,515	$455 + B.
—Using 7% Discount Rate	$1,750	$700 + B.

[A] All costs and benefits are rounded to the nearest $5 million. Thus, figures presented in this table may not exactly equal benefit and cost numbers presented in earlier sections of the chapter.

[B] Note that costs are the total costs of reducing all pollutants, including HAP as well as SO_2 and PM_{10}. Benefits in this table are associated only with PM and SO_2 reductions.

[C] Not all possible benefits or disbenefits are quantified and monetized in this analysis. Potential benefit categories that have not been quantified and monetized are listed in Table 8–13. B is the sum of all unquantified benefits and disbenefits.

[D] Monetized benefits are presented using two different discount rates. Results calculated using 3 percent discount rate are recommended by EPA's *Guidelines for Preparing Economic Analyses* (U.S. EPA, 2000a). Results calculated using 7 percent discount rate are recommended by OMB Circular A–94 (OMB, 1992).

V. Public Participation and Requests for Comment

The ICCR Federal Advisory Committee (*i.e.*, the Coordinating Committee), which is discussed previously in this preamble, was designed and created to foster active participation from stakeholders, including environmental groups, regulated industries, local governments, Federal agencies, and State and local regulatory agencies. The stakeholders were able to participate in the development of FACA committee recommendations on many regulatory issues.

The ICCR Coordinating Committee also encouraged the public to provide

input on its data and recommendations throughout the 2-year charter. To enhance the public's ability to participate, EPA maintained a bulletin board on the Technology Transfer Network to disseminate information on the ICCR Coordinating Committee and Work Group meeting schedules and minutes, works in progress, and final recommendations. The public could submit comments on any information posted on the bulletin board to members of the ICCR Coordinating Committee or Work Group. Individuals could also attend the ICCR Coordinating Committee and Work Group meetings and comment on the information being presented and discussed. After the FACA charter expired, individual stakeholders and members of the public were encourage to submit individual comments and information to EPA staff. On several occasions after the FACA charter expired, EPA met with individual stakeholder groups to discuss the status of the proposed rulemaking and to hear their concerns and comments regarding the proposed rulemaking.

To continue participation of stakeholders in the rulemaking process, EPA is requesting comments and data to support the proposed rule. The EPA requests comments on all aspects of the proposed rule from all interested parties.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Agency has determined that the proposed rule is a "significant regulatory action" because it has an annual effect on the economy of over $100 million. As such, this proposed action was submitted to OMB for review.

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

The agency is required by section 112 of the CAA, to establish the standards in the proposed rule. The proposed rule primarily affects private industry, and does not impose significant economic costs on State or local governments. The proposed rule does not include an express provision preempting State or local regulations. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule.

Although section 6 of Executive Order 13132 does not apply to the proposed rule, we consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of the proposed rule. This consultation took place during the ICCR FACA committee meetings where members representing State and local governments participated in developing recommendations for EPA's combustion-related rulemakings, including the proposed rule. The concerns raised by representatives of State and local governments were considered during the development of the proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The proposed rule does not have tribal implications, as specified in Executive Order 13175.

The proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. We do not know of any industrial-commercial-institutional boilers or process heaters owned or operated by Indian tribal governments. However, if there are any, the effect of the proposed rule on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Thus, Executive Order 13175 does not apply to the proposed rule. The EPA specifically solicits additional comment on the proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the proposed rule is preferable to other potentially effective and reasonably feasible alternatives.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L.

104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Accordingly, we have prepared a written statement entitled "Unfunded Mandates Reform Act Analysis for the Proposed Industrial Boilers and Process Heaters NESHAP" under section 202 of the UMRA which is summarized below.

1. Statutory Authority

As discussed in section I of this preamble, the statutory authority for the proposed rulemaking is section 112 of the CAA. Title III of the CAA Amendments was enacted to reduce nationwide air toxic emissions. Section 112(b) of the CAA lists the 188 chemicals, compounds, or groups of chemicals deemed by Congress to be HAP. These toxic air pollutants are to be regulated by NESHAP.

Section 112(d) of the CAA directs us to develop NESHAP which require existing and new major sources to control emissions of HAP using MACT based standards. This NESHAP applies to all industrial, commercial, and institutional boilers and process heaters located at major sources of HAP emissions.

In compliance with section 205(a) of the UMRA, we identified and considered a reasonable number of regulatory alternatives. Additional information on the costs and environmental impacts of these regulatory alternatives is presented in the docket.

The regulatory alternative upon which the proposed rule is based represents the MACT floor for industrial boilers and process heaters and, as a result, it is the least costly and least burdensome alternative.

2. Social Costs and Benefits

The regulatory impact analysis prepared for the proposed rule including the Agency's assessment of costs and benefits, is detailed in the "Regulatory Impact Analysis for the Proposed Industrial Boilers and Process Heaters MACT" in the docket. Based on estimated compliance costs associated with the proposed rule and the predicted change in prices and production in the affected industries, the estimated social costs of the proposed rule are $780 million (1999 dollars).

It is estimated that 5 years after implementation of the proposed rule, HAP will be reduced by 58,500 tons per year due to reductions in arsenic, beryllium, dioxin, hydrochloric acid, and several other HAP from industrial boilers and process heaters. Studies have determined a relationship between exposure to these HAP and the onset of cancer, however, there are some questions remaining on how cancers that may result from exposure to these HAP can be quantified in terms of dollars. Therefore, the Agency is unable to provide a monetized estimate of the benefits of the HAP reduced by the proposed rule at this time. However, there are significant reductions in PM and in SO_2 that occur. Reductions of 560,000 tons of PM with a diameter of less than or equal to 10 micrometers (PM_{10}), 159,000 tons of PM with a diameter of less than or equal to 2.5 micrometers (PM_{10}), and 112,000 tons of SO_2 are expected to occur. These reductions occur from existing sources in operation 5 years after the implementation of the regulation and are expected to continue throughout the life of the affected sources. The major health effect that results from these PM and SO_2 emissions reductions is a reduction in premature mortality. Other health effects that occur are reductions in chronic bronchitis, asthma attacks, and work-lost days (*i.e.*, days when employees are unable to work).

While we are unable to monetize the benefits associated with the HAP emissions reductions, we are able to monetize the benefits associated with the PM and SO_2 emissions reductions. For SO_2 and PM, we estimated the benefits associated with health effects of PM but were unable to quantify all categories of benefits (particularly those associated with ecosystem and environmental effects). Unquantified benefits are noted with "B" in the estimates presented below. Our base estimate of the monetized benefits in 2005 associated with the implementation of the proposed alternative is $16.1 billion (1999 dollars) when using a 3 percent discount rate (or approximately $15.4 billion + B when using a 7 percent discount rate). This estimate, at a 3 percent discount rate, is about $15 billion (1999 dollars) higher than the estimated social costs shown earlier in this section. The alternative estimate of benefits is $2.4 billion (1999 dollars) when using a 3 percent discount rate (or approximately $2.6 billion + B when using a 7 percent discount rate). This estimate, at a 3 percent discount rate, is about $1.5 billion higher than the estimated social costs. The general approach to value benefits is discussed in more detail earlier in this preamble. For more detailed information on the benefits estimated for the proposed rulemaking, refer to the RIA in the docket.

3. Future and Disproportionate Costs

The Unfunded Mandates Act requires that we estimate, where accurate estimation is reasonably feasible, future compliance costs imposed by the proposed rule and any disproportionate budgetary effects. Our estimates of the future compliance costs of the proposed rule are discussed previously in this preamble.

We do not believe that there will be any disproportionate budgetary effects of the proposed rule on any particular areas of the country, State or local governments, types of communities (*e.g.*, urban, rural), or particular industry segments. This is true for the 257 facilities owned by 54 different government bodies and is borne out by the results of the "Economic Impact Analysis of the Proposed Industrial Boilers and Process Heaters NESHAP,"

the results of which are discussed previously in this preamble.

4. Effects on the National Economy

The Unfunded Mandates Act requires that we estimate the effect of the proposed rule on the national economy. To the extent feasible, we must estimate the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of the U.S. goods and services, if we determine that accurate estimates are reasonably feasible and that such effect is relevant and material.

The nationwide economic impact of the proposed rule is presented in the "Economic Impact Analysis for the Industrial Boilers and Process Heaters MACT" in the docket. This analysis provides estimates of the effect of the proposed rule on some of the categories mentioned above. The results of the economic impact analysis are summarized previously in this preamble. The results show that there will be little impact on prices and output from the affected industries, and little impact on communities that may be affected by the proposed rule. In addition, there should be little impact on energy markets (in this case, coal, natural gas, petroleum products, and electricity). Hence, the potential impacts on the categories mentioned above should be minimal.

5. Consultation with Government Officials

The Unfunded Mandates Act requires that we describe the extent of the Agency's prior consultation with affected State, local, and tribal officials, summarize the officials' comments or concerns, and summarize our response to those comments or concerns. In addition, section 203 of the UMRA requires that we develop a plan for informing and advising small governments that may be significantly or uniquely impacted by a proposal. Although the proposed rule does not affect any State, local, or Tribal governments, we have consulted with State and local air pollution control officials. We also have held meetings on the proposed rule with many of the stakeholders from numerous individual companies, environmental groups, consultants and vendors, labor unions, and other interested parties. We have added materials to the Air Docket to document these meetings.

In addition, we have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. While some small governments may have some sources affected by the proposed rule, the impacts are not expected to be significant. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards by the North American Industry Classification System category of the owning entity. The range of small business size standards for the 40 affected industries ranges from 500 to 1,000 employees, except for petroleum refining and electric utilities. In these latter two industries, the size standard is 1,500 employees and a mass throughput of 75,000 barrels/day or less, and 4 million kilowatt-hours of production or less, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of the proposed rule on small entities, EPA certifies that this action will not have a significant impact on a substantial number of small entities. Based on SBA size definitions for the affected industries and reported sales and employment data, the Agency identified 185 of the 576 companies, or 32 percent, owning affected facilities as small businesses. Although small businesses represent 32 percent of the companies within the source category, they are expected to incur 4 percent of the total compliance costs of $862.7 million (1998 dollars). There are only ten small firms with compliance costs equal to or greater than 3 percent of their sales. In addition, there are 24 small firms with cost-to-sales ratios between 1 and 3 percent.

An economic impact analysis was performed to estimate the changes in product price and production quantities for the proposed rule. As mentioned in the summary of economic impacts, the estimated changes in prices and output for affected firms is no more than 0.05 percent.

This analysis indicates that the proposed rule should not generate a significant impact on a substantial number of small entities for following reasons. First, there are 34 small firms (or 18 percent of all affected small firms) with compliance costs equal to or greater than 1 percent of their sales. Of these, ten small firms (or 5 percent of all affected small firms) with compliance costs equal to or greater than 3 percent of their sales. Second, the results of the economic impact analysis show minimal impacts on prices and output from affected firms, including small entities, due to the implementation of the proposed rule. For more information, consult the docket for the proposed rule.

The proposed rule will not have a significant economic impact on a substantial number of small entities as a result of several decisions EPA made regarding the development of the rule which resulted in limiting the impact of the rule on small entities. First, as mentioned earlier in this preamble, EPA identified small units (heat input of 10 MMBtu/hr or less) and limited use boilers (operate less than 10 percent of the time) as separate subcategories different from large units. Many small and limited use units are located at small entities. As also discussed earlier, the results of the MACT floor analysis for these subcategories of existing sources was that no MACT floor could be identified except for the limited use solid fuel subcategory which is less stringent than the MACT floor for large units. Furthermore, the results of the beyond-the-floor analysis for these subcategories indicated that the costs would be too high to consider them feasible options. Consequently, the proposed rule contains no emission limitations for any of the existing small and limited use subcategories except the existing limited use solid fuel subcategory. In addition, the proposed alternative metals emission limit resulted in minimizing the impacts on small entities since some of the potential entities burning a fuel containing very little metals are small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

G. Paperwork Reduction Act

The information collection requirements in the proposed rule will be submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2028.01) and a copy may be obtained from Susan Auby by mail at the Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) is estimated to be $165 million. This includes 2.7 million labor hours per year at a total labor cost of $142 million per year, and total non-labor capital costs of $24 million per year. This estimate includes a one-time performance test, semiannual excess emission reports, maintenance inspections, notifications, and recordkeeping. Monitoring costs were also included in the cost estimates presented in the control costs impacts estimates in section IV.D of this preamble. The total burden for the Federal government (averaged over the first 3 years after the effective date of the standard) is estimated to be 346,000 hours per year at a total labor cost of $14 million per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 13, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by February 12, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposed rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 *note*) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget, with explanations when an agency does not use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. The EPA cites the following standards in the proposed rule: EPA Methods 1, 2, 2F, 2G, 3A, 3B, 4, 5, 5D, 17, 19, 26, 26A, 29 of 40 CFR part 60. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 2F, 2G, 5D, and 19. The search and review results have been documented and are placed in the docket for the proposed rule.

The three voluntary consensus standards described below were identified as acceptable alternatives to EPA test methods for the purposes of the proposed rule.

The voluntary consensus standard ASME PTC 19–10–1981—Part 10, "Flue and Exhaust Gas Analyses," is cited in the proposed rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981—Part 10 is an acceptable alternative to Method 3B.

The voluntary consensus standard ASTM D6522–00, "Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers" is an acceptable alternative to EPA Method 3A for identifying carbon monoxide and oxygen concentrations for the proposed rule when the fuel is natural gas.

The voluntary consensus standard ASTM Z65907, "Standard Method for Both Speciated and Elemental Mercury Determination," is an acceptable alternative to EPA Method 29 (portion for mercury only) for the purpose of the proposed rule. This standard can be used in the proposed rule to determine the mercury concentration in stack gases for boilers with rated heat input capacities of greater than 250 MMBtu per hour.

In addition to the voluntary consensus standards EPA uses in the proposed rule, the search for emissions measurement procedures identified 15 other voluntary consensus standards.

The EPA determined that 13 of these 15 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the proposed rule were impractical alternatives to EPA test methods for the purposes of the rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the 13 methods are discussed below.

The voluntary consensus standard ASTM D3154–00, "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," is impractical as an alternative to EPA Methods 1, 2, 3B, and 4 for the purposes of the proposed rulemaking since the standard appears to lack in quality control and quality assurance requirements. Specifically, ASTM D3154–00 does not include the following: (1) Proof that openings of standard pitot tube have not plugged during the test; (2) if differential pressure gauges other than inclined manometers (*e.g.*, magnehelic gauges) are used, their calibration must be checked after each test series; and (3) the frequency and validity range for calibration of the temperature sensors.

The voluntary consensus standard ASTM D3464–96 (2001), "Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer," is impractical as an alternative to EPA Method 2 for the purposes of the proposed rule primarily because applicability specifications are not clearly defined, *e.g.*, range of gas composition, temperature limits. Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard limit EPA's ability to make a definitive comparison of the method in these areas.

The voluntary consensus standard ISO 10780:1994, "Stationary Source Emissions-Measurement of Velocity and Volume Flow-Rate of Gas Streams in Ducts," is impractical as an alternative to EPA Method 2 in the proposed rule. The standard recommends the use of an L-shaped pitot, which historically has not been recommended by EPA. The EPA specifies the S-type design which has large openings that are less likely to plug up with dust.

The voluntary consensus standard, CAN/CSA Z223.2–M86 (1999), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," is unacceptable as a substitute for EPA Method 3A since it does not include quantitative specifications for measurement system performance, most notably the calibration procedures and instrument performance characteristics. The instrument performance characteristics that are provided are nonmandatory and also do not provide the same level of quality assurance as the EPA methods. For example, the zero and span/calibration drift is only checked weekly, whereas the EPA methods requires drift checks after each run.

Two very similar voluntary consensus standards, ASTM D5835–95 (2001), "Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration," and ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," are impractical alternatives to EPA Method 3A for the purposes of the proposed rule because they lack in detail and quality assurance/quality control requirements. Specifically, these two standards do not include the following: (1) Sensitivity of the method; (2) acceptable levels of analyzer calibration error; (3) acceptable levels of sampling system bias; (4) zero drift and calibration drift limits, time span, and required testing frequency; (5) a method to test the interference response of the analyzer; (6) procedures to determine the minimum sampling time per run and minimum measurement time; and (7) specifications for data recorders, in terms of resolution (all types) and recording intervals (digital and analog recorders, only).

The voluntary consensus standard ISO 12039:2001, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," is not acceptable as an alternative to EPA Method 3A. This ISO standard is similar to EPA Method 3A, but is missing some key features. In terms of sampling, the hardware required by ISO 12039:2001 does not include a 3-way calibration valve assembly or equivalent to block the sample gas flow while calibration gases are introduced. In its calibration procedures, ISO 12039:2001 only specifies a two-point calibration while EPA Method 3A specifies a three-point calibration. Also, ISO 12039:2001 does not specify performance criteria for calibration error, calibration drift, or sampling system bias tests as in the EPA method, although checks of these quality control features are required by the ISO standard.

The voluntary consensus standard ASME PTC–38–80 R85 (1985), "Determination of the Concentration of Particulate Matter in Gas Streams," is not acceptable as an alternative for EPA Method 5 because ASTM PTC–38–80 is not specific about equipment requirements, and instead presents the options available and the pro's and con's of each option. The key specific differences between ASME PTC–38–80 and the EPA methods are that the ASME standard: (1) Allows in-stack filter placement as compared to the out-of-stack filter placement in EPA Methods 5 and 17; (2) allows many different types of nozzles, pitots, and filtering equipment; (3) does not specify a filter weighing protocol or a minimum allowable filter weight fluctuation as in the EPA methods; and (4) allows filter paper to be only 99 percent efficient, as compared to the 99.95 percent efficiency required by the EPA methods.

The voluntary consensus standard ASTM D3685/D3685M–98, "Test Methods for Sampling and Determination of Particulate Matter in Stack Gases," is similar to EPA Methods 5 and 17, but is lacking in the following areas that are needed to produce quality, representative particulate data:

(1) Requirement that the filter holder temperature should be between 120°C and 134°C, and not just "above the acid dew-point;" (2) detailed specifications for measuring and monitoring the filter holder temperature during sampling; (3) procedures similar to EPA Methods 1, 2, 3, and 4, that are required by EPA Method 5; (4) technical guidance for performing the Method 5 sampling procedures, *e.g.*, maintaining and monitoring sampling train operating temperatures, specific leak check guidelines and procedures, and use of reagent blanks for determining and subtracting background contamination; and (5) detailed equipment and/or operational requirements, *e.g.*, component exchange leak checks, use of glass cyclones for heavy particulate loading and/or water droplets, operating under a negative stack pressure, exchanging particulate loaded filters, sampling preparation and implementation guidance, sample recovery guidance, data reduction guidance, and particulate sample calculations input.

The voluntary consensus standard ISO 9096:1992, "Determination of Concentration and Mass Flow-Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method," is not acceptable as an alternative for EPA Method 5. Although sections of ISO 9096 incorporate EPA Methods 1, 2, and 5 to some degree, this ISO standard is not equivalent to EPA Method 5 for collection of particulate matter. The standard ISO 9096 does not provide applicable technical guidance for performing many of the integral

procedures specified in Methods 1, 2, and 5. Major performance and operational details are lacking or nonexistent, and detailed quality assurance/quality control guidance for the sampling operations required to produce quality, representative particulate data (*e.g.*, guidance for maintaining and monitoring train operating temperatures, specific leak check guidelines and procedures, and sample preparation and recovery procedures) are not provided by the standard, as in EPA Method 5. Also, details of equipment and/or operational requirements, such as those specified in EPA Method 5, are not included in the ISO standard, *e.g.*, stack gas moisture measurements, data reduction guidance, and particulate sample calculations.

The voluntary consensus standard CAN/CSA Z223.1–M1977, "Method for the Determination of Particulate Mass Flows in Enclosed Gas Streams," is not acceptable as an alternative for EPA Method 5. Detailed technical procedures and quality control measures that are required in EPA Methods 1, 2, 3, and 4 are not included in CAN/CSA Z223.1. Second, CAN/CSA Z223.1 does not include the EPA Method 5 filter weighing requirement to repeat weighing every 6 hours until a constant weight is achieved. Third, EPA Method 5 requires the filter weight to be reported to the nearest 0.1 mg, while CAN/CSA Z223.1 requires only to the nearest 0.5 mg. Also, CAN/CSA Z223.1 allows the use of a standard pitot for velocity measurement when plugging of the tube opening is not expected to be a problem. Whereas, EPA Method 5 requires an S-shaped pitot.

The voluntary consensus standard EN 1911–1,2,3 (1998), "Stationary Source Emissions—Manual Method of Determination of HCl—Part 1: Sampling of Gases Ratified European Text—Part 2: Gaseous Compounds Absorption Ratified European Text—Part 3: Adsorption Solutions Analysis and Calculation Ratified European Text," is impractical as an alternative to EPA Methods 26 and 26A. Part 3 of this standard cannot be considered equivalent to EPA Method 26 or 26A because the sample absorbing solution (water) would be expected to capture both HCl and chlorine gas, if present, without the ability to distinguish between the two. The EPA Methods 26 and 26A use an acidified absorbing solution to first separate HCl and chlorine gas so that they can be selectively absorbed, analyzed, and reported separately. In addition, in EN 1911 the absorption efficiency for chlorine gas would be expected to vary as the pH of the water changed during sampling.

The voluntary consensus standard EN 13211 (1998), is not acceptable as an alternative to the mercury portion of EPA Method 29 primarily because it is not validated for use with impingers, as in the EPA method, although the method describes procedures for the use of impingers. This European standard is validated for the use of fritted bubblers only and requires the use of a side (split) stream arrangement for isokinetic sampling because of the low sampling rate of the bubblers (up to 3 liters per minute, maximum). Also, only two bubblers (or impingers) are required by EN 13211, whereas EPA Method 29 require the use of six impingers. In addition, EN 13211 does not include many of the quality control procedures of EPA Method 29, especially for the use and calibration of temperature sensors and controllers, sampling train assembly and disassembly, and filter weighing.

Two of the 15 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2.

Section 63.7520 and Tables 4A through 4D to subpart DDDDD, 40 CFR part 63, list the EPA testing methods included in the proposed rule. Under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, (66 FR 28355, May 22, 2001), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as significant energy actions. Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action." The proposed rule is not a "significant regulatory action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for the determination is as follows.

The reduction in petroleum product output, which includes reductions in fuel production, is estimated at only 0.001 percent, or about 68 barrels per day based on 2000 U.S. fuel production nationwide. That is a minimal reduction in nationwide petroleum product output. The reduction in coal production is estimated at only 0.014 percent, or about 3.5 million tons per year (or less than 1,000 tons per day) based on 2000 U.S. coal production nationwide. The combination of the increase in electricity usage estimated in section IV. C of this preamble with the effect of the increased price of affected output yields an increase in electricity output estimated at only 0.012 percent, or about 0.72 billion kilowatt-hours per year based on 2000 U.S. electricity production nationwide. All energy price changes estimated show no increase in price more than 0.05 percent nationwide, and a similar result occurs for energy distribution costs. We also expect that there will be no discernable impact on the import of foreign energy supplies, and no other adverse outcomes are expected to occur with regards to energy supplies. All of the results presented above account for the pass through of costs to consumers, as well as the cost impact to producers. For more information on the estimated energy effects, please refer to the economic impact analysis for the proposed rule. The analysis is available in the public docket.

Therefore, we conclude that the proposed rule when implemented is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart DDDDD to read as follows:

Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters

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Table 4.D to Subpart DDDDD of Part 63—Requirements for Performance Tests for Hydrogen Chloride Emissions from Boilers or Process Heaters in Large, Limited Use, or Small Liquid Fuel Subcategories
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Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters

What This Subpart Covers

§ 63.7480 What is the purpose of this subpart?

This subpart establishes national emission limitations and work practice standards for hazardous air pollutants emitted from industrial, commercial, and institutional boilers and process heaters. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and work practice standards.

§ 63.7485 Am I subject to this subpart?

You are subject to this subpart if you own or operate an industrial, commercial, or institutional boiler or process heater that is located at, or is part of, a major source of hazardous air pollutants (HAP) emissions, except as specifically exempted in § 63.7490.

(a) An industrial, commercial, or institutional boiler is an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water. Waste heat boilers are excluded. A process heater is an enclosed device using controlled flame with the unit's primary purpose being to transfer heat indirectly to process streams (liquids, gases, or solids) instead of generating steam.

(b) A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of

22.68 megagrams (25 tons) or more per year.

§ 63.7490 What parts of my facility does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source.

(b) The affected source is each industrial, commercial, or institutional boiler or process heater, as defined in § 63.7485 that is not one of the types of combustion units listed in § 63.7490(b)(1) through (10).

(1) A municipal waste combustor covered by 40 CFR part 60, subpart AAAA, subpart BBBB, subpart Eb or subpart Cb.

(2) A hospital/medical/infectious waste incinerator covered by 40 CFR part 60, subpart Ce or subpart Ec.

(3) An electric utility steam generating unit that is a fossil fuel-fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale is considered an electric utility steam generating unit.

(4) A boiler or process heater required to have a permit under section 3005 of the Solid Waste Disposal Act or covered by 40 CFR part 63, subpart EEE (*e.g.*, hazardous waste combustors).

(5) A commercial and industrial solid waste incineration unit covered by 40 CFR part 60, subpart CCCC or subpart DDDD.

(6) A recovery boiler or furnace covered by 40 CFR part 63, subpart MM.

(7) A boiler or process heater that is used specifically for research and development. This does not include units that only provide steam to a process at a research and development facility.

(8) A hot water heater as defined in this subpart.

(9) A refining kettle covered by 40 CFR part 63, subpart X.

(10) An ethylene cracking furnace covered by 40 CFR part 63, subpart YY.

(c) An affected source is a new affected source if you commenced construction of the affected source after January 13, 2003 and you meet the applicability criteria at the time you commenced construction.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.7495 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraph (a)(1) or (2) of this section.

(1) If you start up your affected source before [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], then you must comply with the emission limitations and work practice standards for new and reconstructed sources in this subpart no later than [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER].

(2) If you startup your affected source after [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], then you must comply with the emission limitations and work practice standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations for existing sources no later than 3 years after [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER].

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, paragraphs (c)(1) and (2) of this section apply to you.

(1) Any new or reconstructed boiler or process heater at the existing facility must be in compliance with this subpart upon startup.

(2) Any existing boiler or process heater at the existing facility must be in compliance with this subpart within 3 years after the facility becomes a major source.

(d) You must meet the notification requirements in § 63.7545 according to the schedule in § 63.7545 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission limitations and work practice standards in this subpart.

Emission Limitations and Work Practice Standards

§ 63.7500 What emission limitations and work practice standards must I meet?

(a) You must meet the requirements in paragraphs (a)(1) through (3) of this section.

(1) You must meet each emission limit in Table 1 to this subpart that applies to you.

(2) You must meet each operating limit in Tables 2.A and 2.B to this subpart that applies to you. If you use a control device or combination of control devices not covered in Tables 2.A or 2.B to this subpart, or you wish to establish and monitor an alternative operating limit and alternative monitoring parameters, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

(3) You must meet each work practice standard in Table 3 to this subpart that applies to you.

(b) If your new or reconstructed boiler or process heater is in one of the liquid fuel subcategories (the large liquid fuel subcategory, the limited use liquid fuel subcategory, or the small liquid fuel subcategory) and burns only fossil fuels and other gases and does not burn any residual oil, you are subject to the emission limits in Table 1 to this subpart, but you are not required to conduct a performance test to demonstrate compliance with the emission limits. However, you must meet all applicable requirements in §§ 63.7530 and 63.7535.

(c) As provided in § 63.6(g), the Environmental Protection Agency (EPA) may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.7505 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) and the work practice standards in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop a site-specific monitoring plan according to the requirements in paragraphs (c)(1) through (4) of this section.

(1) For each monitoring system required in this section, you must develop and submit for approval a site-specific monitoring plan that addresses paragraphs (c)(1)(i) through (iii) of this section.

(i) Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction systems; and

(iii) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(2) In your site-specific monitoring plan, you must also address paragraphs (c)(2)(i) through (iii) of this section.

(i) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (c)(3), and (c)(4)(ii);

(ii) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(iii) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1) and (e)(2)(i).

(3) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(4) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

(d) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

Testing and Initial Compliance Requirements

§ 63.7510 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) For each existing affected source, you must conduct performance tests, set operating limits, and conduct monitoring equipment performance evaluations by the compliance date that is specified for your source in § 63.7495 and according to the applicable provisions in § 63.7(a)(2) as cited in Table 10 to this subpart.

(b) For each new or reconstructed affected source, you must conduct performance tests, set operating limits, and conduct monitoring equipment performance evaluations within 180 calendar days after the compliance date that is specified for your source in § 63.7495 and according to the provisions in § 63.7(a)(2) as cited in Table 10 to this subpart.

§ 63.7515 When must I conduct subsequent performance tests?

(a) You must conduct all applicable performance tests according to the procedures in § 63.7520 on an annual basis unless you follow the requirements listed in paragraphs (b) through (h) of this section. The first subsequent performance tests must be completed within 12 months of the initial performance test but no earlier than 10 months after the initial performance test and every 12 months thereafter, unless you follow the requirements listed in paragraphs (b) through (h) of this section.

(b) You can conduct performance tests less often for a given pollutant if you have test data for at least 3 years, and all stack tests for the pollutant (particulate matter, hydrogen chloride, mercury, or total selected metals) for over 3 consecutive years show that you comply with the emission limit. In this case, you do not have to conduct a stack test for that pollutant for the next 2 years. You must do a stack test during the third year and no more than 36 months following the previous stack test.

(c) If your boiler or process heater continues to meet the emission limit for particulate matter, hydrogen chloride, mercury, or total selected metals, you may choose to conduct stack tests for these pollutants every third year, but each such test must be within 36 months of the previous stack test.

(d) If a stack test shows noncompliance with an emission limit for particulate matter, hydrogen chloride, mercury, or total selected metals, you must conduct annual stack tests for that pollutant until all stack tests over a 3-year period show compliance.

(e) You are not required to conduct a performance test for total selected metals annually if you choose to comply with the alternative total selected metals emission limit instead of particulate matter, and your operating limit is the total selected metals fuel input. You must still meet all applicable continuous compliance requirements in § 63.7540.

(f) You are not required to conduct a performance test for hydrogen chloride annually if your operating limit for hydrogen chloride is chlorine fuel input. You must still meet all applicable continuous compliance requirements in § 63.7540.

(g) You are not required to conduct a performance test for mercury annually if your operating limit for mercury is mercury fuel input. You must still meet all applicable continuous compliance requirements in § 63.7540.

(h) You must report the results of annual performance tests within 60 days after the completion of the tests. This report should also verify that the operating limits for your affected source have not changed or provide documentation of revised operating parameters established as specified in Tables 4.A through 4.E to this subpart. The reports for all subsequent performance tests should include all applicable information required in § 63.7550.

§ 63.7520 What performance tests, design evaluations, and other procedures must I use?

(a) You must conduct all performance tests according to § 63.7(c), (d), (f), and (h). You must also develop a site-specific test plan according to the requirements in § 63.7(c).

(b) You must conduct each performance test in Tables 4.A through 4.E to this subpart that applies to you.

(c) For boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and other gases and do not burn any residual oil, you are not required to conduct a performance test to demonstrate compliance with the emission limits.

(d) You must conduct each performance test under the specific conditions listed in Tables 4.A through 4.E to this subpart. You must conduct performance tests at the representative process operating conditions that are expected to result in the highest emissions of hydrogen chloride, particulate matter, and mercury, and you must demonstrate initial compliance and establish your operating limits based on this test. This requirement could result in the need to conduct more than one performance test. If you choose to comply with the alternative total selected metals emission limit instead of particulate matter, you must conduct all performance tests at the representative process operating conditions that are expected to result in the highest emissions of hydrogen chloride, total selected metals and mercury.

(e) You may not conduct performance tests during periods of startup, shutdown, or malfunction.

(f) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(g) To determine compliance with the emission limits, you must use the F-Factor methodology and equations in sections 12.2 and 12.3 of EPA Method 19 of appendix A of this part to convert the measured particulate matter concentrations, the measured hydrogen chloride concentrations, the measured total selected metals concentrations, and the measured mercury concentrations that result from the initial performance test to pound per million British thermal unit (MMBtu) heat input emission rates. Method 26A of appendix A of this part must be used for the hydrogen chloride performance test for those boilers and process heaters with wet scrubbers. All other boilers and process heaters must use Method 26 of

appendix A of this part for the hydrogen chloride performance test.

(h) For performance tests using Method 5, Method 29, Method 26A and Method 17 of appendix A of this part, use Method 1 of appendix A of this part to select the sampling location and number of traverse points. For Method 26 of appendix A of this part, you must use a minimum of three traverse points.

(i) If you use a control device or combination of control devices not covered in Tables 4.A through 4.E to this subpart, or you wish to establish and monitor an alternative operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.7525 What are my monitoring, installation, operation, and maintenance requirements?

(a) Each continuous emissions monitoring system (CEMS) for carbon monoxide must be installed, operated, and maintained according to the procedures in paragraphs (a)(1) through (4) of this section by the compliance date.

(1) Each CEMS must be installed, operated, and maintained according to Performance Specification (PS) 4A of 40 CFR part 60, appendix B, and according to the site-specific monitoring plan developed according to § 63.7505(c).

(2) You must conduct a performance evaluation of each CEMS according to the requirements in § 63.8 and according to PS 4A of 40 CFR part 60, appendix B.

(3) Each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) The CEMS data must be reduced as specified in § 63.8(g)(2).

(b) Each continuous opacity monitoring system (COMS) must be installed, operated, certified and maintained according to the procedures in paragraphs (b)(1) through (7) of this section by the compliance date.

(1) Each COMS must be installed, operated, and maintained according to PS 1 of 40 CFR part 60, appendix B.

(2) You must conduct a performance evaluation of each COMS according to the requirements in § 63.8 and according to PS 1 of 40 CFR part 60, appendix B.

(3) As specified in § 63.8(c)(4)(i), each COMS must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(4) The COMS data must be reduced as specified in § 63.8(g)(2).

(5) You must include in your site-specific monitoring plan procedures and acceptance criteria for operating and maintaining each COMS according to the requirements in § 63.8(d). At a minimum, the monitoring plan must include a daily calibration drift assessment, a quarterly performance audit, and an annual zero alignment audit of each COMS.

(6) You must operate and maintain each COMS according to the requirements in the monitoring plan and the requirements of § 63.8(e). Identify periods the COMS is out-of-control including any periods that the COMS fails to pass a daily calibration drift assessment, a quarterly performance audit, or an annual zero alignment audit.

(7) You must determine and record all the 6-minute averages and 3-hour block averages collected for periods during which the COMS is not out-of-control.

(c) You must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to the requirements in § 63.8 and the procedures in paragraphs (c)(1) through (5) of this section by the compliance date specified in § 63.7495.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four successive cycles of operation to have a valid hour of data.

(2) Except for, monitoring malfunctions, associated repairs and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must conduct all monitoring in continuous operation at all times that the unit is operating. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(3) For purposes of calculating data averages, you must not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities. You must use all the data collected during all other periods in assessing compliance. Any period for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

(4) Determine the 3-hour block average of all recorded readings, except as provided in paragraph (c)(3) of this section.

(5) Record the results of each inspection, calibration, and validation check.

(d) For the equipment to monitor voltage and secondary current (or total power input) of the electrostatic precipitator (ESP), you must meet the requirements in paragraphs (c) and (d)(1) and (2) of this section.

(1) Use the ESP manufacturer's installed voltage and secondary current monitoring equipment to measure voltage and secondary current to the ESP.

(2) At least monthly, inspect all components of the CPMS for integrity and all electrical connections for continuity.

(e) For the equipment to monitor sorbent injection rate (*e.g.*, weigh belt, weigh hopper, or hopper flow measurement device), you must meet the requirements in paragraphs (c) and (e)(1) through (4) of this section.

(1) Locate the device in a position(s) that provides a representative measurement of the total sorbent injection rate.

(2) Install and calibrate the device in accordance with manufacturer's procedures and specifications.

(3) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(4) At least annually, calibrate the device in accordance with the manufacturer's procedures and specifications.

(f) If you use a fabric filter to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (f)(1) through (8) of this section.

(1) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(2) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations and in accordance with the guidance provided in "Fabric Filter Bag Leak Detection Guidance," EPA–454/R–98–015, September 1997.

(3) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(4) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(5) The bag leak detection system must be equipped with a device to

continuously record the output signal from the sensor.

(6) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(7) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

§ 63.7530 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) You must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to Tables 5.A through 5.E and 6 to this subpart.

(b) For new or reconstructed boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and other gases and do not burn any residual oil, you are not required to conduct a performance test to demonstrate compliance with the emission limits.

(1) To demonstrate initial compliance, you must include a signed statement in the Notification of Compliance Status report required in § 63.7545(e) that indicates you burn only liquid fossil fuels other than residual oils either alone or in combination with gaseous fuels.

(2) You must also keep records, as required in § 63.7555, that demonstrate that you burn only liquid fossil fuels other than residual oils either alone or in combination with gaseous fuels.

(c) You must establish each site-specific operating limit in Tables 2.A and 2.B to this subpart that applies to you according to the requirements in § 63.7520, Tables 4.A through 4.E to this subpart, and paragraphs (c)(1) through (6) of this section, as applicable.

(1) If you do not use a wet or dry scrubber, you must set your operating limit for hydrogen chloride emissions based on the chlorine fuel input established during the initial performance test according to the procedures in paragraphs (c)(1)(i) and (ii) of this section.

(i) During the initial performance test for hydrogen chloride, you must measure the average hourly fuel input, average chlorine concentration, and average heat input of each fuel burned during the 3-hour performance test.

(ii) You must set your operating limit for hydrogen chloride using Equation 1 of this section:

$$Cl_{input} = \sum_{i=1}^{n} \left| \frac{(C_i)(Q_i)}{H_{v,i}} \right| \qquad \text{(Eq. 1)}$$

Where:

Cl_{input} = Average amount of chlorine entering the boiler or process heater through fuels burned in units of pounds per Btu. This is the operating limit.

C_i = Average concentration of chlorine in fuel, i, during each of the three 1-hour test periods as measured using the test methods specified in Tables 4.C and 4.D to this subpart, in units of pound per pound for solid fuels, pounds per gallon for liquid fuels, or pound per dry standard cubic foot for gaseous fuels.

Q_i = Average hourly input of fuel, i, during each of the three 1-hour test periods in units of pound per hour for solid fuels, gallons per hour for liquid fuels, or dry standard cubic feet per hour for gaseous fuels. If you do not burn multiple fuels during the performance test, it is not necessary to determine the value of this term. Insert a value of "1" for Q_i.

$H_{v,i}$ = Average heat input of fuel, i, during each of the three 1-hour test periods in units of Btu per hour as measured by the test methods indicated in Tables 4.C and 4.D to this subpart.

n = Number of different fuel types in the worst-case fuel input stream burned during each of the three 1-hour performance tests.

(2) If you do not use a wet scrubber, you must establish an opacity operating limit during the initial performance test for particulate matter or total selected metals and mercury. This opacity level must not exceed 20 percent.

(3) If you use a wet scrubber and you conduct separate performance tests for particulate matter, hydrogen chloride, and mercury emissions, you must establish one set of operating limits for pH, liquid flow-rate, and pressure drop. The pH must be the level established during the hydrogen chloride performance test. The liquid flow-rate and pressure drop operating limits must be the highest of the values established during the performance tests.

(4) If you do not use a control device or do not want to take credit for the control device and you choose to comply with the alternative total selected metals emission limit instead of particulate matter, you must set your operating limit for total selected metals emissions based on the metals fuel input established during the initial performance test according to the procedures in paragraphs (c)(4)(i) and (ii) of this section.

(i) During the initial performance test for total selected metals, you must measure the average hourly fuel input if you burn a combination of multiple fuels, average total selected metals concentration of the fuel input, and average heat input of each fuel burned during the 3-hour performance test.

(ii) You must set your operating limit for total selected metals using Equation 2 of this section:

$$Metals_{input} = \sum_{i=1}^{n} \left[\frac{(M_i)(Q_i)}{H_{v,i}} \right] \qquad \text{(Eq. 2)}$$

Where:

$Metals_{input}$ = Average amount of total selected metals entering the boiler or process heater through fuels burned in units of pounds per Btu. This is the operating limit.

M_i = Average concentration of total selected metals in fuel, i, during each of the three 1-hour test periods as measured using the test methods specified in Table 4.E to this subpart, in units of pound per pound for solid fuels, pound per gallon for liquid fuels, or pound per dry standard cubic foot for gaseous fuels.

Q_i = Average hourly input of fuel, i, during each of the three 1-hour test periods in units of pounds per hour for solid fuels, gallons per hour for liquid fuels, or dry standard cubic feet per hour for gaseous fuels. If you do not burn multiple fuels during the performance test, it is

not necessary to determine the value of this term. Insert a value of "1" for Q_j.

$Hv_{,i}$ = Average heat input of fuel, i, during each of the three 1-hour test periods in units of Btu per hour as measured by the test methods indicated in Table 4.E to this subpart.

n = Number of different fuel types in the worst-case fuel input stream burned during the 3-hour performance test.

(5) If you do not use a control device or do not want to take credit for the control device, you must set your operating limit for mercury emissions based on the mercury fuel input established during the initial performance test according to the procedures in paragraphs (c)(5)(i) and (ii) of this section.

(i) During the initial performance test for mercury, you must measure the average hourly fuel input if you burn a combination of multiple fuels, average mercury concentration of the fuel input, and average heat input of each fuel burned during the 3-hour performance test.

(ii) You must set your operating limit for mercury using Equation 3 of this section:

$$\text{Mercury}_{\text{input}} = \sum_{i=1}^{n} \left[\frac{(HG_i)(Q_i)}{H_{v,i}} \right] \qquad \text{(Eq. 3)}$$

Where:

$\text{Mercury}_{\text{input}}$ = Average amount of mercury entering the boiler or process heater through fuels burned in units of pounds per Btu. This is the operating limit.

HG_i = Average concentration of mercury in fuel, i, during each of the three 1-hour test periods as measured using the test methods specified in Table 4.E to this subpart, in units of pound per pound for solid fuels, pound per gallon for liquid fuels, or pound per dry standard cubic foot for gaseous fuels.

Q_i = Average hourly input of fuel, i, during each of the three 1-hour test periods in units of pounds per hour for solid fuels, gallons per hour for liquid fuels, or dry standard cubic feet per hour for gaseous fuels. If you do not burn multiple fuels during the performance test, it is not necessary to determine the value of this term. Insert a value of "1" for Q_i.

$H_{v,i}$ = Average heat input of fuel, i, during each of the three 1-hour test periods in units of Btu per hour as measured by the test methods indicated in Table 4.E to this subpart.

n = Number of different fuel types in the worst-case fuel input stream burned during the 3-hour performance test.

(6) You must establish parameter operating limits according to paragraphs (c)(6)(i) through (v) of this section.

(i) To establish an opacity operating limit, you must set the maximum opacity operating limit equal to the maximum 1-hour average opacity value measured during the three-run performance test for particulate matter or total selected metals and mercury, or 20 percent, whichever is lower.

(ii) To establish operating limits for a wet scrubber, you must set the minimum operating limits for pH, liquid flow-rate, and pressure drop equal to the minimum 1-hour average values measured during the three-run performance test.

(iii) To establish operating limits for an electrostatic precipitator, you must set the minimum operating limits for voltage and secondary current (or total power input) equal to the minimum 1-hour average values measured during the three-run performance test.

(iv) To establish operating limits for a dry scrubber, you must set the minimum sorbent injection rate operating limit equal to the minimum 1-hour average value measured during the three-run performance test.

(v) The operating limit for fabric filters requires that a bag leak detection system be installed according to the requirements in § 63.7525, and that each fabric filter must be operated such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month period.

(d) You must submit the Notification of Compliance Status report containing the results of the initial compliance demonstration according to the requirements in § 63.7545(e).

Continuous Compliance Requirements

§ 63.7535 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, or required quality assurance or control activities, in data averages and calculations used to report emission or operating levels. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.7540 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit, operating limit, and work practice standard in Tables 1 through 3 to this subpart that applies to you according to the methods specified in Tables 7.A, 7.B, and 8 to this subpart and paragraphs (a)(1) through (9) of this section.

(1) For affected sources electing to comply with an emission limit based on fuel analysis, you must keep records of all fuels burned in each boiler or process heater during the reporting period to demonstrate that all fuels used would result in lower emissions of particulate matter or total selected metals, lower emissions of hydrogen chloride, and lower emissions of mercury than the emissions from the worst-case fuel input that was burned during the initial performance test. You must also keep records that demonstrate that all fuels burned during the reporting period were obtained from the same suppliers as those fuels burned during the performance test.

(2) For new or reconstructed boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and other gases and do not burn any residual oil, you are not required to set and maintain operating limits to demonstrate continuous compliance with the emission limits. To demonstrate continuous compliance with the emission limits, you must include a signed statement in each semiannual compliance report required in § 63.7550 that indicates you burned

only liquid fossil fuels other than residual oils, either alone or in combination with gaseous fuels, during the reporting period; and you must also keep records, as required in paragraph (a)(1) of this section and § 63.7555, that demonstrate that you burn only liquid fossil fuels other than residual oils, either alone or in combination with gaseous fuels.

(3) If you plan to burn a new type of fuel, a fuel from a new supplier, or a new mixture of fuels and your operating limit for hydrogen chloride is chlorine input, you must demonstrate continuous compliance by recalculating the chlorine input using Equation 1 of § 63.7530 according to the procedures specified in paragraphs (a)(3)(i) through (iii) of this section.

(i) Determine for any new fuel the heating value and the chlorine concentration, based on supplier data or own fuel analysis, according to the provisions in the site-specific test plan developed according to the requirements in § 63.7520(a).

(ii) Estimate the maximum hourly input at which each fuel will be burned.

(iii) Recalculate the amount of chlorine that would be put into the boiler or process heater during an hour under these new conditions using Equation 1 of § 63.7530.

(4) If you plan to burn a new type of fuel, a fuel from a new supplier or a new mixture of fuels, your operating limit for hydrogen chloride is chlorine input, and the results of recalculating the chlorine input using Equation 1 of § 63.7530 are higher than the chlorine input operating limit established during the initial performance test, then you must conduct a new performance test according to the procedures in § 63.7520 to demonstrate that the hydrogen chloride emissions do not exceed the emission limitation. You must also establish a new operating limit based on this performance test according to the procedures in § 63.7530(c).

(5) If you plan to burn a new type of fuel, a fuel from a new supplier, or a new mixture of fuels and you choose to comply with the alternative total selected metals emission limit instead of particulate matter and your operating limit is the total selected metals fuel content, you must demonstrate continuous compliance with your operating limit by recalculating the total selected metals input using Equation 2 of § 63.7530 according to the procedures specified in paragraphs (a)(5)(i) through (iii) of this section.

(i) Determine for any new fuel the heating value and the total selected metals concentration; based on supplier data or own fuel analysis, according to the provisions in the site-specific test plan developed according to the requirements in § 63.7520(a).

(ii) Estimate the maximum hourly input at which each fuel will be burned.

(iii) Recalculate the amount of total selected metals that would be put into the boiler or process heater during an hour under these new conditions using Equation 2 of § 63.7530.

(6) If you plan to burn a new type of fuel, a fuel from a new supplier or a new mixture of fuels, you choose to comply with the alternative total selected metals emission limit instead of particulate matter, and the results of recalculating the total selected metals input using Equation 2 of § 63.7530 are higher than the total selected metals operating limit established during the initial performance test, then you must conduct a new performance test according to the procedures in § 63.7520 to demonstrate that the total selected metals emissions do not exceed the emission limit. You must also establish a new operating limit based on this performance test according to the procedures in § 63.7530(c).

(7) If you plan to burn a new type of fuel, a fuel from a new supplier, or a new mixture of fuels and your operating limit for mercury emissions is the mercury fuel content, you must demonstrate continuous compliance with your operating limit by recalculating the mercury input using Equation 3 of § 63.7530 according to the procedures specified in paragraphs (a)(7)(i) through (iii) of this section.

(i) Determine for any new fuel the heating value and the mercury concentration, based on supplier data or own fuel analysis, according to the provisions in the site-specific test plan developed according to the requirements in § 63.7520(a).

(ii) Estimate the maximum hourly input at which each fuel will be burned.

(iii) Recalculate the amount of mercury that would be put into the boiler or process heater during an hour under these new conditions using Equation 3 of § 63.7530.

(8) If you plan to burn a new type of fuel, a fuel from a new supplier or a new mixture of fuels, and the results of recalculating the mercury input using Equation 3 of § 63.7530 are higher than the mercury operating limit established during the initial performance test, then you must conduct a new performance test according to the procedures in § 63.7520 to demonstrate that the mercury emissions do not exceed the emission limit. You must also establish a new operating limit based on this performance test according to the procedures in § 63.7530(c).

(9) If your unit is controlled with a fabric filter, you must demonstrate continuous compliance with the operating limits for fabric filters by operating each fabric filter system such that the bag leak detection system does not sound more than 5 percent of the operating time during a 6-month period and by keeping records of the date, time, and duration of each alarm, the time corrective action was initiated and completed, a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of the operating time during each 6-month period that the alarm sounds. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken to initiate corrective action.

(b) You must report each instance in which you did not meet each emission limit and each operating limit in Tables 7.A and 7.B to this subpart that apply to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet the work practice requirements in Table 8 to this subpart that apply to you. These instances are deviations from the emission limitations and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.7550.

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with the startup, shutdown, and malfunction plan as required in § 63.7505(d).

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.7545 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8 (e), 63.8(f)(4) and

(6), and 63.9 (b) through (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you startup your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], you must submit an Initial Notification not later than 120 calendar days after [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER]. The Initial Notification must include the information required in paragraphs (b)(1) and (2) of this section, as applicable.

(1) If your affected source has an annual capacity factor of greater than 10 percent, your Initial Notification must include the information required by § 63.9(b)(2).

(2) If your affected source has a federally enforceable permit that limits the annual capacity factor to less than or equal to 10 percent such that the unit is in one of the limited use subcategories (the limited use solid fuel subcategory, the limited use liquid fuel subcategory, or the limited use gaseous fuel subcategory), your Initial Notification must include the information required by § 63.9(b)(2) and also a signed statement indicating your affected source has a federally enforceable permit that limits the annual capacity factor to less than or equal to 10 percent.

(c) As specified in § 63.9(b)(3), if you startup your new or reconstructed affected source on or after [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart. The Initial Notification must include the information required in paragraphs (c)(1) and (2) of this section, as applicable.

(1) If your affected source has an annual capacity factor of greater than 10 percent, your Initial Notification must include the information required by § 63.9(b)(3).

(2) If your affected source has a federally enforceable permit that limits the annual capacity factor to less than or equal to 10 percent such that the unit is in one of the limited use subcategories, your Initial Notification must include the information required by § 63.9(b)(3) and also a signed statement indicating your affected source has a federally enforceable permit that limits the annual capacity factor to less than or equal to 10 percent.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration as specified in Tables 4.A through 4.E, 5.A through 5.E, or 6 to this subpart, you must submit a Notification of Compliance Status report according to § 63.9(h)(2)(ii) and the requirements specified in paragraphs (e)(1)(i) through (e)(1)(vii) of this section.

(1) For each initial compliance demonstration, you must submit the Notification of Compliance Status report, including all performance test results, before the close of business on the 60th calendar day following the completion of the performance test and/or other initial compliance demonstrations according to § 63.10(d)(2). The Notification of Compliance Status report must contain all the information specified in paragraphs (e)(l)(i) through (vii) of this section, as applicable.

(i) A description of the affected source(s) including identification of which subcategory the source is in, the capacity of the source, a description of the add-on controls used on the source description of the fuel(s) burned, and justification for the worst-case fuel burned during the performance test.

(ii) Summary of the results of all performance tests, fuel analyses, and calculations conducted to demonstrate initial compliance including all established operating limits.

(iii) Identification of whether you are complying with the particulate matter emission limit or the alternative total selected metals emission limit.

(iv) A signed certification that you have met all applicable emission limitations and work practice standards.

(v) A summary of the carbon monoxide emissions monitoring data recorded during the performance test to show that you have met the work practice standard in Table 6 to this subpart, if applicable.

(vi) If your new or reconstructed boiler or process heater is in one of the liquid fuel subcategories and burns only liquid fossil fuels other than residual oil either alone or in combination with gaseous fuels, you must submit a signed statement certifying this in your Notification of Compliance Status report.

(vii) If you had a deviation from any emission limitation or work practice standard, you must also submit a description of the deviation, the duration of the deviation, and the corrective action taken in the Notification of Compliance Status report.

§ 63.7550 What reports must I submit and when?

(a) You must submit each report in Table 9 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 9 to this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7495 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.7495.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.7495.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information required in paragraphs (c) (1) through (11) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) The total fuel use by each affected source electing to comply with an emission limit based on fuel analysis for each calendar month within the

semiannual reporting period including, but not limited to, a description of the fuel, the total fuel usage amount with units of measure, and information on the supplier of the fuel and original source location of the fuel.

(5) A summary of the results of the annual performance tests and documentation of any operating limits that were reestablished during this test, if applicable.

(6) A signed statement indicating that you burned no new types of fuel, no fuels from a new supplier, or no new fuel mixture. Or, if you did burn a new type of fuel, a fuel from a new supplier, or a new fuel mixture and your operating limit for hydrogen chloride is fuel chlorine input, you must submit the calculation of chlorine input, using Equation 1 of § 63.7530, that demonstrates that your source is still within its operating limit for hydrogen chloride emissions. If you burned a new type of fuel, fuel from a new supplier, or a new fuel mixture and your operating limit for the alternative total selected metals emission limit is fuel total selected metals input, you must submit the calculation of total selected metals input, using Equation 2 of § 63.7530, that demonstrates that your source is still within its operating limit for total selected metals emissions. If you burned a new type of fuel, fuel from a new supplier, or a new fuel mixture and your operating limit for mercury is fuel mercury input, you must submit the calculation of mercury input, using Equation 3 of § 63.7530, that demonstrates that your source is still within its operating limit for mercury emissions.

(7) If you wish to burn a new type of fuel, a fuel from a new supplier, or a new fuel mixture, and you cannot demonstrate compliance with the hydrogen chloride operating limit using Equation 1 of § 63.7530, the total selected metals operating limit using Equation 2 of § 63.7530, or the mercury operating limit using Equation 3 of § 63.7530, you must include in the compliance report a statement indicating the intent to conduct a new performance test under the new worst-case conditions.

(8) The average daily hours of operation by each source for each calendar month within the semiannual reporting period.

(9) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(10) If there are no deviations from any emission limitations (emission limits or operating limits) in this subpart that apply to you and there are no deviations from the requirements for work practice standards in Table 8 to this subpart, a statement that there were no deviations from the emission limitations or work practice standards during the reporting period.

(11) If there were no periods during which the CMS, including CEMS, COMS, and CPMS, were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS were out-of-control during the reporting period.

(d) For each deviation from an emission limitation (emission limits or operating limits) in this subpart and for each deviation from the requirements for work practice standards in Table 8 to this subpart that occurs at an affected source where you are not using CMS to comply with that emission limitation or work practice standard, the compliance report must contain the information in paragraphs (c) (1) through (11) of this section and the information required in paragraphs (d) (1) through (4) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) A description of the deviation and which limitation you deviated from.

(3) Information on the number, duration, and cause of deviations (including unknown cause), as applicable, and the corrective action taken.

(4) A copy of the test report if the annual performance test showed a deviation from the emission limit for particulate matter or the alternative total selected metals limit, a deviation from the hydrogen chloride emission limit, or a deviation from the mercury emission limit.

(e) For each deviation from an emission limitation (emission limitation and operating limit) or work practice standard in this subpart occurring at an affected source where you are using a CMS to comply with that emission limitation or work practice standard, you must include the information in paragraphs (c) (1) through (11) of this section and the information required in paragraphs (e) (1) through (12) of this section. This includes periods of startup, shutdown, and malfunction and any deviations from your site-specific monitoring plan as required in § 63.7505(c).

(1) The date and time that each malfunction started and stopped and description of the nature of the deviation (*i.e.*, what you deviated from).

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) An identification of each parameter that was monitored at the affected source for which there was a deviation, including opacity, carbon monoxide, and operating parameters for wet scrubbers and other control devices.

(9) A brief description of the source for which there was a deviation.

(10) A brief description of each CMS for which there was a deviation.

(11) The date of the latest CMS certification or audit for the system for which there was a deviation.

(12) A description of any changes in CMSs, processes, or controls since the last reporting period for the source for which there was a deviation.

(f) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 9 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), or work practice standard in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report.

However, submission of a compliance report does not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

§ 63.7555 What records must I keep?

(a) You must keep records according to paragraphs (a) (1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status or semiannual compliance report that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests or other compliance demonstrations, performance evaluations, and opacity observations as required in § 63.10(b)(2)(viii).

(b) For each CEMS, CPMS, and COMS, you must keep records according to paragraphs (b) (1) through (5) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for COMS during a performance evaluation as required in § 63.6(h)(7) (i) and (ii).

(3) Previous (*i.e.*, superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Request for alternatives to relative accuracy test for CEMS as required in § 63.8(f)(6)(i).

(5) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required in Tables 7.A, 7.B, and 8 to this subpart including records of all monitoring data and calculated averages for applicable operating limits such as opacity, pressure drop, carbon monoxide, and pH to show continuous compliance with each emission limitation, operating limit and work practice standard that applies to you.

(d) You must also keep the records in paragraphs (d) (1) through (5) of this section.

(1) You must keep records of daily fuel use by each source electing to comply with an emission limit based on fuel analysis, including the type(s) of fuel, amount(s) used, and the supplier(s) and original source location(s).

(2) You must keep records of daily hours of operation by each source.

(3) A copy of all calculations and supporting documentation of chlorine fuel input, using Equation 1 of § 63.7530, that were done to demonstrate continuous compliance with the hydrogen chloride emission limitation. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum fuel input.

(4) A copy of all calculations and supporting documentation of total selected metals fuel input, using Equation 2 of § 63.7530, that were done to demonstrate continuous compliance with the total selected metals emission limitation. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum fuel input.

(5) A copy of all calculations and supporting documentation of mercury fuel input, using Equation 3 of § 63.7530, that were done to demonstrate continuous compliance with the mercury emission limitation. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum fuel input.

(e) If your boiler or process heater has a federally enforceable permit that limits the annual capacity factor to less than or equal to 10 percent such that the unit is in one of the limited use subcategories, you must keep the records in paragraphs (e) (1) and (2) of this section.

(1) A copy of the federally enforceable permit that limits the annual capacity factor of the source to less than or equal to 10 percent.

(2) Fuel use records for the days the boiler or process heater was operating.

§ 63.7560 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.7565 What parts of the General Provisions apply to me?

Table 10 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.7570 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority to this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency. The U.S. EPA retains oversight of this rule and can take enforcement actions, as appropriate.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (5) of this section.

(1) Approval of alternatives to the non-opacity emission limits and work practice standards in § 63.7500(a) through (c) under § 63.6(g).

(2) Approval of alternative opacity emission limits in § 63.7500(a) under § 63.6(h)(9).

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7575 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Annual capacity factor means the ratio between the actual heat input to a boiler or process heater from the fuels burned during a calendar year and the potential heat input to the boiler or process heater had it been operated for 8,760 hours during a calendar year at the maximum steady state design heat input capacity.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.*, baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on electrodynamic, triboelectric, light scattering, light

transmittance, or other principle to monitor relative particulate matter loadings.

Biomass fuel means wood, wood residue, and wood products (*e.g.*, trees, tree stumps, tree limbs, bark, lumber, sawdust, sanderdust, chips, scraps, slabs, millings, and shavings); vegetative agricultural and silvicultural materials, such as logging residues (slash), nut and grain hulls and chaff (*e.g.*, almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds.

Boiler means an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water. Waste heat boilers are excluded from this definition.

Coal means all solid fuels classifiable as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials in ASTM D388–77, "Standard Specification for Classification of Coals by Rank," coal refuse, and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat including, but not limited to, solvent-refined coal, coal-oil mixtures, and coal-water mixtures, are included in this definition for the purposes to this subpart.

Coal refuse means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (6,000 Btu per pound) on a dry basis.

Commercial/Institutional boiler means a boiler used in commercial establishments or institutional establishments such as medical centers, research centers, institutions of higher education, hotels, and laundries to provide electricity, steam, and/or hot water.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Distillate oil means fuel oils that contain 0.05 weight percent nitrogen or less and comply with the specifications for fuel oil numbers 1 and 2, as defined by the American Society for Testing and Materials in ASTM D396–78, "Standard Specifications for Fuel Oils."

Dry scrubber means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gas in the exhaust stream forming a dry powder material.

Electric utility steam generating unit means a fossil fuel-fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale is considered an electric utility steam generating unit.

Electrostatic precipitator means an add-on air pollution control device used to capture particulate matter by charging the particles using an electrostatic field, collecting the particles using a grounded collecting surface, and transporting the particles into a hopper.

Emission limitation means any emission limit or operating limit.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or 51.18 and 51.24.

Firetube boiler means a boiler in which hot gases of combustion pass through the tubes and water contacts the outside surfaces of the tubes.

Fossil fuel means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such materials.

Gaseous fuel includes, but is not limited to, natural gas, process gas, refinery gas and biogas.

Heat input means heat derived from combustion of fuel in a boiler or process heater and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources such as gas turbines, internal combustion engines, kilns, etc.

Hot water heater means a closed vessel in which water is heated by combustion of gaseous fuel and is withdrawn for use external to the vessel at pressures not exceeding 160 pounds per square inch gauge (psig), including the apparatus by which the heat is generated and all controls and devices necessary to prevent water temperatures from exceeding 210°F (99°C).

Industrial boiler means a boiler used in manufacturing, processing, mining, and refining or any other industry to provide steam, hot water, and/or electricity.

Large gaseous fuel subcategory means any boiler or process heater that burns only gaseous fuels not combined with any liquid or solid fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and has an annual capacity factor of greater than 10 percent.

Large liquid fuel subcategory means any boiler or process heater that does not burn any solid fuel and burns any liquid fuel either alone or in combination with gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and has an annual capacity factor of greater than 10 percent.

Large solid fuel subcategory means any watertube boiler or process heater that burns any amount of solid fuel either alone or in combination with liquid or gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and has an annual capacity factor of greater than 10 percent.

Limited use gaseous fuel subcategory includes any boiler or process heater that burns only gaseous fuels not combined with any liquid or solid fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and has a federally enforceable annual average capacity factor of equal to or less than 10 percent.

Limited use liquid fuel subcategory includes any boiler or process heater that does not burn any solid fuel and burns any liquid fuel either alone or in combination with gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and has a federally enforceable annual average capacity factor of equal to or less than 10 percent.

Limited use solid fuel subcategory includes any boiler or process heater that burns any amount of solid fuel either alone or in combination with liquid or gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and has a federally enforceable annual average capacity factor of equal to or less than 10 percent.

Liquid fossil fuel means petroleum, distillate oil, residual oil and any form of liquid fuel derived from such material.

Liquid fuel includes, but is not limited to, distillate oil, residual oil, waste oil, and process liquids.

Natural gas means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or

(2) Liquid petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835–82, "Standard Specification for Liquid Petroleum Gases."

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Particulate matter means any finely divided solid or liquid material, other than uncombined water, as measured by the test methods specified under this subpart, or an alternative method.

Process heater means an enclosed device using controlled flame, and the unit's primary purpose is to transfer heat indirectly to a process stream (liquid, gas, or solid) or to a heat transfer material for use in a process unit instead of generating steam. Process heaters are devices in which the combustion gases do not directly come into contact with process materials.

Residual oil means crude oil, fuel oil numbers 1 and 2 that have a nitrogen content greater than 0.05 weight percent, and all fuel oil numbers 4, 5 and 6, as defined by the American Society for Testing and Materials in ASTM D396–78, "Standard Specifications for Fuel Oils."

Responsible official means responsible official as defined in § 70.2.

Small gaseous fuel subcategory includes any boiler or process heater that burns only gaseous fuels not combined with any liquid or solid fuels, and has a rated capacity of less than or equal to 10 MMBtu per hour heat input.

Small liquid fuel subcategory includes any boiler or process heater that does not burn any solid fuel, and burns any liquid fuel either alone or in combination with gaseous fuels, and has a rated capacity of less than or equal to 10 MMBtu per hour heat input.

Small solid fuel subcategory includes any firetube boiler that burns any amount of solid fuel either alone or in combination with liquid or gaseous fuels, and any other boiler or process heater that burns any amount of solid fuel either alone or in combination with liquid or gaseous fuels, and has a rated capacity of less than or equal to 10 MMBtu per hour heat input.

Solid fuel includes, but is not limited to, coal, wood, biomass, tires, plastics, and other nonfossil solid materials.

Total selected metals means the combination of the following metallic hazardous air pollutants: arsenic, beryllium, cadmium, chromium, lead, manganese, nickel and selenium.

Waste heat boiler means a device that recovers normally unused energy and converts it to usable heat. Waste heat boilers are also referred to as heat recovery steam generators.

Watertube boiler means a boiler in which water passes through the tubes and hot gases of combustion pass over the outside surfaces of the tubes.

Wet scrubber means any add-on air pollution control device that mixes an aqueous stream or slurry with the exhaust gases from a boiler or process heater to control emissions of particulate matter and/or to absorb and neutralize acid gases, such as hydrogen chloride.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

Tables to Subpart DDDDD of Part 63

As stated in § 63.7500, you must comply with the following applicable emission limits:

TABLE 1 TO SUBPART DDDDD OF PART 63—EMISSION LIMITS

For . . .	You must meet these emission limits . . .
1. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory.	a. Emissions of particulate matter must not exceed 0.026 lb per MMBtu of heat input; or b. Emissions of total selected metals must not exceed 0.0001 lb per MMBtu of heat input. c. Emissions of hydrogen chloride must not exceed 0.02 lb per MMBtu of heat input. d. Emissions of mercury must not exceed 0.000003 lb per MMBtu of heat input.
2. Each new or reconstructed industrial, commercial, institutional boiler or process heater in the large liquid fuel subcategory.	a. Emissions of particulate matter must not exceed 0.03 lb per MMBtu of heat input. b. emissions of hydrogen chloride must not exceed 0.0005 lb per MMBtu of heat input.
3. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the limited use solid fuel subcategory.	a. Emissions of particulate matter must not exceed 0.026 lb per MMBtu of heat input; or b. Emissions of total selected metals must not exceed 0.0001 lb per MMBtu of heat input c. Emissions of hydrogen chloride must not exceed 0.02 lb per MMBtu of heat input. d. Emissions of mercury must not exceed 0.000003 lb per MMBtu of heat input.
4. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the limited use liquid fuel subcategory.	a. Emissions of particulate matter must not exceed 0.03 lb per MMBtu of heat input. b. Emissions of hydrogen chloride must not exceed 0.0009 lb per MMBtu of heat input.

TABLE 1 TO SUBPART DDDDD OF PART 63—EMISSION LIMITS—Continued

For . . .	You must meet these emission limits . . .
5. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the small solid fuel subcategory.	a. Emissions of particulate matter must not exceed 0.026 lb per MMBtu of heat input; or b. Emissions of total selected metals must not exceed 0.0001 lb per MMBtu of heat input. c. Emissions of hydrogen chloride must not exceed 0.02 lb per MMBtu of heat input. d. Emissions of mercury must not exceed 0.000003 lb per MMBtu of heat input.
6. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the small liquid fuel subcategory.	a. Emissions of particulate matter must not exceed 0.03 lb per MMBtu of heat input. b. emissions of hydrogen chloride must not exceed 0.0909 lb per MMBtu of heat input.
7. Each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory..	a. Emissions of particulate matter must not exceed 0.07 lb per MMBtu of heat input; or b. Emissions of total selected metals must not exceed 0.001 lb per MMBtu of heat input. c. Emissions of hydrogen chloride must not exceed 0.09 lb per MMBtu of heat input. d. Emissions of mercury must not exceed 0.000007 lb per MMBtu of heat input.
8. Each existing industrial, commercial, or institutional boiler or process heater in the limited use solid fuel subcategory.	a. Emissions of particulate matter must not exceed 0.21 lb per MMBtu of heat input; or b. Emissions of total selected metals must not exceed 0.001 lb per MMBtu of heat input.

As stated in § 63.7500, you must comply with the applicable operating limits:

TABLE 2.A TO SUBPART DDDDD OF PART 63—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS IN THE LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES

For...	That is controlled with...	You must meet these operating limits...
1. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory.	a. An add-on contol other than a wet scrubber or a dry scrubber	i. Maintain opacity to less than or equal to the operating level established during the performance test according to the provisions in § 63.7530(c) that demonstrated compliance with the emission limits for particulate matter and mercury or the opacity level established during the performance test according to the provisions in § 63.7530(c) that demonstrated compliance with the alternative emission limitation for total selected metals and the mercury emission limit; and ii. Maintain the fuel chlorine content to less than or equal to the operating level established during the performance test according to the provisions in § 63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride.
	b. A fabric filter either alone or in combination with an add-on control other than a wet scrubber or a dry scrubber.	i. Maintain the fabric filter operation such that the operating limit established for fabric filters in § 63.7530(c)(6)(v) is maintained; and ii. Maintain the fuel chlorine content to less than or equal to the operating level established during the performance test according to the provisions in § 63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride.

TABLE 2.A TO SUBPART DDDDD OF PART 63—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS IN THE LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For...	That is controlled with...	You must meet these operating limits...
	c. A wet scrubber	Maintain the minimum pH, pressure drop, and liquid flow-rate at or above the operating levels established during the performance test according to provisions in §63.7530(c) that demonstrated compliance with the emission limits for particulate matter, mercury, and hydrogen chloride or the levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for hydrogen chloride, mercury, and the alternative total selected metals emission limit.
	d. A wet scrubber in combination with a fabric filter.	i. Maintain the minimum pH, pressure drop, and liquid flow-rate of the wet scrubber at or above the operating levels established during the performance test according to provisions in §63.7530(c) that demonstrated compliance with the emission limits for particulate matter, hydrogen chloride, and mercury or the levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for hydrogen chloride, mercury, and the alternative total selected metals emission limit; and ii. Maintain the fabric filter operation such that the operating limit established for fabric filters in §63.7530(c)(6)(v) is maintained.
	e. A wet scrubber in combination with an electrostatic precipitator.	Maintain the minimum pH, pressure drop, and liquid flow-rate of the wet scrubber and the minimum voltage and secondary current or total power input of the electrostatic precipitator at or above the operating levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for particulate matter, hydrogen chloride, and mercury or the levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for hydrogen chloride, mercury, and the alternative total selected metals emission limit.
	f. A dry scrubber	i. Maintain the minimum sorbent injection rate of the dry scrubber at or above the operating levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride emissions; and ii. Maintain opacity to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for particulate matter and mercury emissions or the opacity level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the alternative emission limits for total selected metals and the mercury emission limit.

TABLE 2.A TO SUBPART DDDDD OF PART 63—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS IN THE LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For...	That is controlled with...	You must meet these operating limits...
	g. A dry scrubber in combination with a fabric filter.	i. Maintain minimum sorbent injection rate of the dry scrubber at or above the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride emissions; and ii. Maintain the fabric filter operation such that the operating limit established for fabric filters in §63.7530(c)(6)(v) is maintained.
2. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory that is complying with the alternative total selected metals emission limit instead of the particulate matter emission limit (this is an option for those units that can demonstrate compliance on the basis of fuel analysis without controls).	a. Either no add-on controls or add-on controls for which you do not wish to take credit for any emission reduction of total selected metals or mercury.	i. Maintain the fuel total selected metals content to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for total selected metals; and ii. Maintain the fuel chlorine content to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride; and iii. Maintain the fuel mercury content to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for mercury.
3. Each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory.	a. An add-on control other than a wet scrubber or a dry scrubber.	i. Maintain opacity to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for particulate matter and mercury or the opacity level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the alternative emission limit for total selected metals and the mercury emission limit; and ii. Maintain the fuel chlorine content to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride.
	b. A fabric filter either alone or in combination with an add-on control other than a wet scrubber or a dry scrubber.	i. Maintain the fabric filter operation such that the operating limit established for fabric filters in §63.7530(c)(6)(v) is maintained; and ii. Maintain the fuel chlorine content to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride.
	c. A wet scrubber	Maintain the minimum pH, pressure drop, and liquid flow-rate at or above the operating levels established during the performance test according to provisions in §63.7530(c) that demonstrated compliance with the emission limits for particulate matter, hydrogen chloride, and mercury emissions or the levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for hydrogen chloride, mercury, and the alternative total selected metals emission limit.

TABLE 2.A TO SUBPART DDDDD OF PART 63—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS IN THE LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For...	That is controlled with...	You must meet these operating limits...
	d. A wet scrubber in combination with a fabric filter.	i. Maintain the minimum pH, pressure drop, and liquid flow-rate of the wet scrubber at or above the operating levels established during the performance test according to provisions in §63.7530(c) that demonstrated compliance with the emission limits for particulate matter, hydrogen chloride, and mercury emissions or the levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for hydrogen chloride, mercury, and the alternative total selected metals emission limit; and ii. Maintain the fabric filter operation such that the operating limit established for fabric filters in §63.7530(c)(6)(v) is maintained.
	e. A wet scrubber in combination with an electrostatic precipitator.	Maintain the minimum pH, pressure drop, and liquid flow-rate of the wet scrubber and the minimum voltage and secondary current or total power input of the electrostatic precipitator at or above the operating levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for particulate matter, hydrogen chloride, and mercury emissions or the levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for hydrogen chloride, mercury, and the alternative total selected metals emission limit.
	f. A dry scrubber	i. Maintain the minimum sorbent injection rate of the dry scrubber at or above the operating levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride emissions; and ii. Maintain opacity to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for particulate matter and mercury or the opacity level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the alternative emission limit for total selected metals and the mercury emission limit.
	g. A dry scrubber in combination with a fabric filter.	i. Maintain minimum sorbent injection rate of the dry scrubber at or above the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride emissions; and ii. Maintain the fabric filter operation such that the operating limit established for fabric filters in §63.7530(c)(6)(v) is maintained.

TABLE 2.A TO SUBPART DDDDD OF PART 63—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS IN THE LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For...	That is controlled with...	You must meet these operating limits...
4. Each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory that is complying with the alternative total selected metals emission limit instead of the particulate matter emission limit (this is an option for those units that can demonstrate compliance on the basis of fuel analysis without controls).	a. Either no add-on controls or add-on controls for which you do not wish to take credit for any emission reduction of total selected metals or mercury.	i. Maintain the fuel total selected metals content to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for total selected metals; and ii. Maintain the fuel chlorine content to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride; and iii. Maintain the fuel mercury content to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for mercury.
5. Each existing industrial, commercial, or institutional boiler or process heater in the limited use solid fuel subcategory.	a. An add-on control other than a wet scrubber.	Maintain opacity to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for particulate matter or the operating level established during the performance test that demonstrated compliance with the alternative emission limit for total selected metals.
	b. A fabric filter either alone or in combination with an add-on control other than a wet scrubber.	i. Maintain opacity to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for particulate matter or the operating level established during the performance test that demonstrated compliance with the alternative emission limit for total selected metals; and ii. Maintain the fabric filter operation such that the operating limit established for fabric filters in §63.7530(c)(6)(v) is maintained.
	c. A wet scrubber	Maintain the minimum pressure drop and liquid flow-rate at or above the operating levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for particulate matter emissions or the levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the alternative total selected metals emission limit.
	d. A wet scrubber in combination with a fabric filter.	i. Maintain the minimum pressure drop and liquid flow-rate at or above the operating levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for particulate matter emissions or the levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the alternative total selected metals emission limit; and ii. Maintain the fabric filter operation such that the operating limit established for fabric filters in §63.7530(c)(6)(v) is maintained.

TABLE 2.A TO SUBPART DDDDD OF PART 63—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS IN THE LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For...	That is controlled with...	You must meet these operating limits...
	e. A wet scrubber in combination with an electrostatic c precipitator.	Maintain the minimum pressure drop and liquid flow-rate of the wet scrubber and the minimum voltage and secondary current of the electrostatic precipitator at or above the operating levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for particulate matter emissions or the levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the alternative total selected metals emission limit.
6. Each existing industrial, commercial, or institutional boiler or process heater in the limited use solid fuel subcategory that is complying with the alternative total selected metals emission limit instead of the particulate matter emission limit (this is an option for those units that can demonstrate compliance on the basis of fuel analysis without controls).	Either no add-on controls for which you do not wish to take credit for any emission reduction of total selected metals.	Maintain the fuel total selected metals content to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for total selected metals.

As stated in §63.7500, you must comply with the following applicable operating limits:

TABLE 2.B TO SUBPART DDDDD OF PART 63—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS IN THE LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES

For . . .	That is controlled with . . .	You must meet these operating limits . . .
1. Each new or reconstructed industrial, commercial, institutional boiler or process heater in the large liquid fuel subcategory, the limited use liquid fuel subcategory, or the small liquid fuel subcategory (boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and gases and do not burn any residual oil are excluded from this operating limit).	a. An add-on control other than a wet scrubber or a dry scrubber.	i. Maintain opacity to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for particulate matter; and ii. Maintain the fuel chlorine content to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride.
	b. A fabric filter either alone or in combination with an add-on control other than a wet scrubber or a dry scrubber.	i. Maintain the fabric filter operation such that the operating limit established for fabric filters in §63.7530(c)(6)(v) is maintained; and ii, Maintain the fuel chlorine content to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride.
	c. A wet scrubber	Maintain the minimum pH, pressure drop, and liquid flow-rate at or above the operating levels established during the performance test according to provisions in §63.7530(c) that demonstrated compliance with the emission limits for particulate matter emissions and hydrogen chloride emissions.
	d. A wet scrubber in combination with a fabric filter.	i. Maintain the minimum pH, pressure drop, and liquid flow-rate of the wet scrubber at or above the operating levels established during the performance test according to provisions in §63.7530(c) that demonstrated compliance with the emission limits for particulate matter emissions and hydrogen chloride emissions; and ii. Maintain the fabric filter operation such that the operating limit established for fabric filters in §63.7530(c)(6)(v) is maintained.

TABLE 2.B TO SUBPART DDDDD OF PART 63—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS IN THE LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	You must meet these operating limits . . .
	e. A wet scrubber in combination with an electrostatic precipitator.	Maintain the minimum pH, pressure drop, and liquid flow-rate of the wet scrubber and the minimum voltage and secondary current or total power input of the electrostatic precipitator at or above the operating levels established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for particulate matter emissions and hydrogen chloride emissions.
	f. A dry scrubber	i. Maintain the minimum sorbent injection rate of the dry scrubber at or above the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limits for hydrogen chloride emissions; and ii. maintain opacity to less than or equal to the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for particulate matter emissions.
	g. A dry scrubber in combination with a fabric filter.	i. Maintain the minimum sorbent injection rate of the dry scrubber at or above the operating level established during the performance test according to the provisions in §63.7530(c) that demonstrated compliance with the emission limit for hydrogen chloride emissions; and ii. Maintain the fabric filter operation such that the operating limit established for fabric filters in §63.7530(c)(6)(v) is maintained.

As stated in §63.7500, you must comply with the following applicable work practice standards:

TABLE 3 TO SUBPART DDDDD OF PART 63—WORK PRACTICE STANDARDS

For each . . .	You must . . .
1. New or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the large liquid fuel subcategory, or the large gaseous fuel subcategory.	Continuously monitor carbon monoxide emissions according to the procedures in §63.7525(a) to maintain carbon monoxide emissions at or below an exhaust concentration of 400 ppm by volume on a dry basis corrected to 3 percent oxygen. The averaging time shall be 1 calendar day.
2. New or reconstructed industrial, commercial, or institutional boiler or process heater in the limited use solid fuel subcategory, the limited use liquid fuel subcategory, or the limited use gaseous fuel subcategory.	Continuously monitor carbon monoxide emissions according to the procedures in §63.7525(a) to maintain carbon monoxide emissions at or below an exhaust concentration of 400 ppm by volume on a dry basis corrected to 3 percent oxygen. The averaging time shall be 1 calendar day.

As stated in §63.7520, you must comply with the following requirements for performance test for existing, new or reconstructed affected sources:

TABLE 4.A TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR PARTICULATE MATTER EMISSIONS OR TOTAL SELECTED METALS EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each new reconstructed, or existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory.	a. Any type of device	1. Select sampling ports location and the number of traverse points.	Method 1 of 40 CFR part 60, appendix A.	

TABLE 4.A TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR PARTICULATE MATTER EMISSIONS OR TOTAL SELECTED METALS EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
		ii. Determine velocity and volumetric flow-rate of the stack gas.	Either Method 2 in appendix A to part 60 of this chapter, Method 2F in appendix A to part 60 of this chapter, or Method 2G of appendix A to part 60 of this chapter..	
		iii. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B in appendix A to part 60 of this chapter.	
		iv. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	
	b. Any type of device except positive pressure fabric filters.	Measure the particulate matter emission concentrations.	Method 5 in appendix A to part 60 of this chapter or Method 17 in appendix A to part 60 of this chapter.	
	c. Positive pressure fabric filters.	Measure the particulate matter emission concentrations.	Method 5D in appendix A to part 60 of this chapter	
	d. Any type of device	Convert emissions concentrations to lb per MMBtu emission rates.	The F-factor methodology in Method 19 in appendix A to part 60 of this chapter.	
2. Each new reconstructed, or existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, limited use solid fuel subcategory, or the small solid fuel subcategory that is complying with the alternative total selected metals emission limit instead of particulate matter.	Any type of device	Measure the total selected metals emissions concentrations.	Method 29 in appendix A to part 60 of this chapter.	
3. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber.	i. Establish a site-specific maximum opacity level according to provisions in § 63.7530(c).	(1) Data from the continuous opacity monitoring system and the PM or total selected metals performance test.	(a) You must collect opacity monitoring data every 10 seconds during the entire period of the three-run PM or total selected metals performance test; and (b) Determine the maximum opacity level of all the 1-hour averages taken during the three-run performance test.
	b. A wet scrubber	i. Establish a site-specific minimum pressure drop and minimum liquid flow-rate operating limit for the wet scrubber according to the provisions in § 63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors and the PM or total selected metals performance test.	(a) You must collect pressure drop and liquid flow-rate data every 15 minutes during the entire period of the three-run PM or total selected metals performance test; and (b) determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.
	c. A wet scrubber in combination with a fabric filter.	i. Establish a site-specific minimum pressure drop and liquid flow-rate operating limit for the wet scrubber according to the provisions in § 63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors and the PM or total selected metals performance test.	(a) You must collect pressure drop and liquid flow-rate data for the wet scrubber every 15 minutes during the entire period of the three-run PM or total selected metals performance test; and (b) Determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.

TABLE 4.A TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR PARTICULATE MATTER EMISSIONS OR TOTAL SELECTED METALS EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
	d. A wet scrubber in combination with an electrostatic precipitator.	i. Establish a site-specific minimum pressure drop and liquid flow-rate for the wet scrubber and minimum voltage and secondary current or total power input of the electrostatic precipitator according to the provisions in § 63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors for the wet scrubber and from total current and voltage monitors for the electrostatic precipitator or and the PM or total selected metals performance test.	(a) You must collect pressure drop and liquid flow-rate data for the wet scrubber and secondary current and voltage or total power input for the electrostatic precipitator every 15 minutes during the entire period of the three-run PM or total selected metals performance test; and (b) Determine the average for each by computing the average of all 15-minute readings taken during the test run.
4. Each new or reconstructed industrial, commercial, institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory that is complying with the alternative total selected metals emission limit instead of the particulate matter emission limit (this is an option for those units that can demonstrate compliance on the basis of fuel analysis without controls).	a. Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in total selected metals.	i. Establish a site-specific maximum inlet fuel total selected metals content operating limit according to the provisions in § 63.7530(c).	(1) The fuel total selected metals content analysis results and the calculations done according to the provisions in § 63.7530(c).	(a) You must collect one sample of the worst-case fuel stream entering the boiler or process heater for each test run during the three-run performance test; and (b) Determine the total selected metals content and heating value of the sample according to your site-specific test plan as required in § 63.7520(a); and (c) Determine the maximum total selected metals content operating limit according to the procedures in § 63.7530(c).
5. Each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory or the limited use solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber.	i. Establish a site-specific maximum opacity level according to provisions in § 63.7530(c).	(1) Data from the continuous opacity monitoring system and the PM or total selected metals performance test.	(a) You must collect opacity monitoring date every 10 seconds during the entire period of the three-run PM or total selected metals performance test; and (b) Determine the maximum opacity level for all the 1-hour averages taken during the three-run performance test.
	b. A wet scrubber	i. Establish a site-specific minimum pressure drop and minimum liquid flow-rate operating limit for the wet scrubber according to the provisions in § 63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors and the PM or total selected metals performance test.	(a) You must collect pressure drop and liquid flow-rate data every 15 minutes during the entire period of the three-run PM or total selected metals performance test; and (b) Determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.
	c. A wet scrubber in combination with a fabric filter.	i. Establish a site-specific minimum pressure drop and liquid flow-rate operating limit for the wet scrubber according to the provisions in § 63.7530(c)(3).	(1) Data from the pressure drop liquid flow-rate monitors and the PM or total selected metals performance test.	(a) You must collect pressure drop and liquid flow-rate data for the wet scrubber every 15 minutes during the entire period of the three-run PM or total selected metals performance test; and (b) Determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.

TABLE 4.A TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR PARTICULATE MATTER EMISSIONS OR TOTAL SELECTED METALS EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
	d. A wet scrubber in combination with an electro-static precipitator.	i. Establish a site-specific minimum pressure drop and liquid flow-rate for the wet scrubber and minimum voltage and secondary current or total power input of the electrostatic precipitator according to the provisions in § 63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors for the wet scrubber and from the current and voltage monitors for the electrostatic precipitator and the PM or total selected metals performance test.	(a) You must collect pressure drop and liquid flow-rate data for the wet scrubber and secondary current and voltage or total power input for the electrostatic precipitator every 15 minutes during the entire period of the three-run PM or total selected metals performance test; and b. Determine the average for each by computing the average of all 15-minute readings taken during each test run.
6. Each existing industrial, commercial or institutional boiler or process heater in the large solid fuel subcategory or the limited use solid fuel subcategory that is complying with the alternative total selected metals emission limit instead of the particulate matter emission limit (this is an option for those units that can demonstrate compliance on the basis of fuel analysis without controls).	a. Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in total selected metals.	i. Establish a site-specific maximum inlet fuel total selected metals content operating limit according to the provisions in § 63.7530(c).	(1) The fuel total selected metals content analysis results and the calculations done according to the provisions in § 63.7530(c).	(a) You must collect one sample of the worst-case fuel stream entering the boiler or process heater for each test run during the three-run performance test; and (b) Determine the total selected metals content and heating value of the sample according to your site-specific test plan as required in § 63.7520(a); and (c) Determine the maximum total selected metals content operating limit according to the procedures in § 63.7530(c).

As stated in § 63.7520, you must comply with the following requirements for performance tests for new or reconstructed affected sources:

TABLE 4.B TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR PARTICULATE MATTER EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large liquid fuel subcategory, the limited use liquid fuel subcategory, or the small liquid fuel subcategory (boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and other gases and do not burn residual oil are excluded from this performance test).	a. Any type of device	i. Select sampling ports location and the number of traverse points.	Method 1 of 40 CFR part 60 appendix A.	
		ii. Determine velocity and volumetri c flow-rate of the stack gas.	Either Method 2 in appendix A to part 60 of this chapter, Method 2F in appendix A to part 60 of this chapter or Method 2G of appendix A to part 60 of this chapter..	
		iii. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B in appendix A to part 60 of this chapter.	
		iv. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	
		v. Measure the particulate matter emission concentrations.	Method 5 in appendix A to part 60 of this chapter or Method 17 in appendix A to part 60 of this chapter.	
		vi. Convert emissions concentrations to lb per MMBtu emission rates.	The F-factor methodology in Method 19 in appendix A to part 60 of this chapter.	

TABLE 4.B TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR PARTICULATE MATTER EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Positive pressure fabric filters.	Measure the particulate matter emission concentrations.	Method 5D in appendix A to part 60 of this chapter.	
	c. Either no add-on controls or an add-on control other than a wet scrubber.	i. Establish a site-specific maximum opacity level according to the provisions in § 63.7530(c).	(1) Data from the continuous opacity monitoring system and the PM performance test.	(a) You must collect opacity monitoring data every 10 seconds during the entire period of the three-run PM performance test; and (b) Determine the maximum opacity level for all the 1-hour averages taken during the three-run performance test.
	d. A wet scrubber	i. Establish a site-specific minimum pressure drop and minimum liquid flow-rate operating limit for the web scrubber according to the provisions in § 63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors and the PM performance test.	(a) You must collect pressure drop and liquid flow-rate data every 15 minutes during the entire period of the three-run PM performance test; and (b) Determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.
	e. A wet scrubber in combination with a fabric filter.	i. Establish a site-specific minimum pressure drop and liquid flow-rate operating limit for the set scrubber according to the provisions in § 63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors and the PM performance test.	(a) You must collect pressure drop and liquid flow-rate data for the wet scrubber every 15 minutes during the entire period of the three-run PM performance test; and (b) Determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.
	f. A wet scrubber in combination with an electrostatic precipitator.	i. Establish a site-specific minimum pressure drop and liquid flow-rate operating limit for the wet scrubber and a site-specific minimum voltage and secondary or total power input current operating limit for the electrostatic precipitator according to the provisions in § 63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors for the wet scrubber and from the current and voltage monitors for the electrostatic precipitator and the PM performance test.	(a) You must collect pressure drop and liquid flow-rate data for the wet scrubber and secondary current and voltage data or total power input for the electrostatic precipitator every 15 minutes during the entire period of the three-run PM performance test; (b) Determine the average for each by computing the average of all 15-minute readings taken during each test run.

As stated in § 63.7520, you must comply with the following requirements for performance tests for existing, new or reconstructed affected sources:

TABLE 4.C TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR HYDROGEN CHLORIDE EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USED, OR SMALL SOLID FUEL SUBCATEGORIES

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, limited use solid fuel subcategory, or small solid fuel subcategory and each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory.	a. Any type of device	i. Select sampling ports location and the number of traverse points.	Method 1 of 40 CFR part 60 appendix A.	
		ii. Determine velocity and volumetric flow-rate of the stack gas.	Either Method 2 in appendix A to part 60 of this chapter, Method 2F in appendix A to part 60 of this chapter or Method 2G of appendix A to part 60 of this chapter.	
		iii. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B in appendix A to part 60 of this chapter.	
		iv. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	
	b. Either no add-on controls or an add-on control other than a wet scrubber.	Measure the hydrogen chloride emissions concentrations.	Method 26 in appendix A to part 60 of this chapter.	
	c. A wet scrubber	Measure the hydrogen chloride emissions concentrations.	Method 26A in appendix A to part 60 of this chapter.	
	d. Any type of device	Convert emissions concentrations to lb per MMBtu emission rates.	The F-factor methodology in Method 19 in appendix A to part 60 of this chapter.	
2. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber or a dry scrubber.	i. Establish a site-specific maximum inlet fuel chlorine content operating limit according to the provisions in § 63.7530(c).	(1) The fuel chlorine content analysis results and data from the hydrogen chloride performance test.	(a) You must collect one sample of the fuel stream entering the boiler or process heater for each test run during the three-run hydrogen chloride performance test; and (b) Determine the chlorine content and heating value of each fuel sample; and (c) Determine the maximum chlorine content operating limit according to the procedures in § 63.7530(c) and the procedures in your site-specific test plan as required in § 63.7520(a).
	b. A wet scrubber	i. Establish site-specific minimum pH, pressure drop, and liquid flow-rate operating limits for the wet scrubber according to the provisions in § 63.7530(c)(3).	(1) Data from the pH, presure drop, and liquid flow-rate monitors and the hydrogen chloride performance test.	(a) You must collect pH, pressure drop, and liquid flow-rate data every 15 minutes during the entire period of the three-run hydrogen chloride performance test; and (b) Determine the average pH, pressure drop, and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.
	c. A dry scrubber	i. Establish site-specific minimum sorbent injection rate operating limit for the dry scrubber according to the provisions in § 63.7530(c).	(1) Data from the sorbent injection rate monitors and the hydrogen chloride performance test.	(a) You must collect sorbent injection rate data every 15 minutes during the entire period of the three-run hydrogen chloride performance test; and (b) Determine the average sorbent injection rate of each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.

TABLE 4.C TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR HYDROGEN CHLORIDE EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USED, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
3. Each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber or a dry scrubber.	i. Establish a site-specific maximum inlet fuel chlorine content operating limit according to the provisions in § 63.7530(c).	(1) The fuel chlorine content analysis results and data from the hydrogen chloride performance test.	(a) You must collect one sample of the fuel stream entering the boiler or process heater for each test run during the three-run hydrogen chloride performance test; and (b) Determine the chlorine content and heating value of each fuel sample; and (c) Determine the maximum chlorine content operating limit according to the procedures in § 63.7530(c) and the procedures in your site-specific test plan as required in § 63.7520(a).
	b. A wet scrubber	i. Establish site-specific minimum pH, pressure drop, and liquid flow-rate operating limits for the wet scrubber according to the provisions in § 63.7530(c)(3).	(1) Data from the pH, pressure drop, and liquid flow-rate monitors and the hydrogen chloride performance test.	(a) You must collect pH, pressure drop, and liquid flow-rate data every 15 minutes during the entire period of the three-run hydrogen chloride performance test; and (b) Determine the average pH, pressure drop, and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.
	c. A dry scrubber	i. Establish site-specific minimum sorbent injection rate operating limits for the dry scrubber according to the provisions in § 63.7530(c).	(1) Data from the sorbent injection rate monitors and the hydrogen chloride performance test.	(a) You must collect sorbent injection rate data every 15 minutes during the entire period of the three-run hydrogen chloride performance test; and (b) Determine the average sorbent injection rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.

As stated in § 63.7520, you must comply with the following requirements for performance tests for new or reconstructed affected sources:

TABLE 4.D TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR HYDROGEN CHLORIDE EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large liquid fuel subcategory, the limited use liquid fuel subcategory, or the small liquid fuel subcategory (boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and other gases and do not burn residual oil are excluded from this performance test).	a. Any type of device	i. Select sampling ports location and the number of traverse points.	Method 1 of 40 CFR part 60 appendix A.	
		ii. Determine velocity and volumetric flow-rate of the stack gas.	Either Method 2 in appendix A to part 60 of this chapter, Method 2F in appendix A to part 60 of this chapter or Method 2G of appendix A to part 60 of this chapter.	

TABLE 4.D TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR HYDROGEN CHLORIDE EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
		iii. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B in appendix A to part 60 of this chapter.	
		iv. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	
	b. Either no add-on controls or an add-on control other than a wet scrubber.	Measure the hydrogen chloride emissions concentrations.	Method 26 in appendix A to part 60 of this chapter.	
	c. A wet scrubber	Measure the hydrogen chloride emissions concentrations.	Method 26A in appendix A to part 60 of this chapter.	
	d. Any type of device	Convert emissions concentrations to lb per MMBtu emission rates.	The F-factor methodology in Method 19 in appendix A to part 60 of this chapter..	
	e. Either no add-on controls or an add-on control other than a wet scrubber or a dry scrubber.	i. Establish a site-specific maximum inlet fuel chlorine content operating limit according to the provisions in § 63.7530(c).	(1) The fuel chlorine content analysis results and data from the hydrogen chloride performance test.	(a) You must collect one sample of the fuel stream entering the boiler or process heater from each test run during the three-run hydrogen chloride performance test; and (b) Determine the chlorine content and heating value of each fuel sample; and (c) Determine the average chlorine content operating limit according to the procedures in § 63.7530(c) and the procedures in your site-specific test plan as required in § 63.7520(a).
	f. A wet scrubber	i. Establish site-specific minimum pH, pressure drop, and liquid flow-rate operating limits for the wet scrubber according to the provisions in § 63.7530(c)(3).	(1) Data from the pH, pressure drop, and liquid flow-rate monitors and the hydrogen chloride performance test.	(a) You must collect pH, pressure drop, and liquid flow-rate data every 15 minutes during the entire period of the three-run hydrogen chloride performance test; and (b) Determine the average pH, pressure drop, and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.
	g. A dry scrubber	i. Establish site-specific minimum sorbent injection rate operating limit for the dry scrubber according to the provisions in § 63.7530(c).	(1) Data from the sorbent injection rate monitors and the hydrogen chloride performance test.	(a) You must collect sorbent injection rate data every 15 minutes during the entire period of the three-run hydrogen chloride performance test; and (b) Determine the average sorbent injection rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.

As stated in § 63.7520, you must comply with the following requirements for performance test for existing, new or reconstructed affected sources:

TABLE 4.E TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR MERCURY EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE OF SMALL SOLID FUEL SUBCATERGORIES

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each new reconstructed, or existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory.	a. Any type of device	i. Select sampling ports location and the number of traverse points.	Method 1 of 40 CFR part 60, appendix A.	

TABLE 4.E TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR MERCURY EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE OF SMALL SOLID FUEL SUBCATERGORIES—Continued

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
		ii. Determine velocity and volumetric flow-rate of the stack gas.	Either Method 2 in appendix A to part 60 of this chapter, Method 2F in appendix A to part 60 of this chapter, or Method 2G of appendix A to part 60 of this chapter.	
		iii. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B in appendix A to part 60 of this chapter.	
		iv. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	
		v. Convert emissions concentrations to lb per MMBtu emission rates.	The F-factor methodology in Method 19 in appendix A to part 60 of this chapter.	
2. each new reconstructed, or existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, limited use solid fuel subcategory, or the small solid fuel subcategory that has a rated heat input capacity of less than 250 MMBtu per hour.	Any type of device	Measure the mercury emissions concentrations.	Method 29 in appendix A to part 60 of this chapter.	
3. Each new reconstructed, or existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory or limited use solid fuel subcategory that has a rated heat input capacity of greater than 250 MMBtu per hour.	Any type of device	Measure the mercury emissions concentrations.	.....	DRAFT ASTM Z65907 "Standard Method for Both Speciated and Elemental Mercury Determination.
4. Each new reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber.	i. Establish a site-specific maximum opacity level according to provisions in § 63.7530(c).	(1) Data from the continuous opacity monitoring system and the mercury performance test.	(a) You must collect opacity monitoring data every 10 seconds during the entire period of the three-run mercury performance test; and (b) determine the maximum opacity level of all the 1-hour averages taken during the three-run performance test.
	b. A wet scrubber	i. Establish a site-specific minimum pressure drop and minimum liquid flow-rate operating limit for the wet scrubber according to the provisions in § 63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors and the mercury performance test.	(a) You must collect pressure drop and liquid flow-rate data every 15 minutes during the entire period of the three-run mercury performance test; and (b) Determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.
	c. A wet scrubber in combination with a fabric filter.	i. Establish a site-specific minimum pressure drop and liquid flow-rate operating limit for the wet scrubber according to the provisions in § 63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors and the mercury performance test.	(a) You must collect pressure drop and liquid flow-rate data for the wet scrubber every 15 minutes during the entire period of the three-run mercury performance test; and (b) Determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.

TABLE 4.E TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR MERCURY EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE OF SMALL SOLID FUEL SUBCATERGORIES—Continued

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
	d. A wet scrubber in combination with an electrostatic precipitator.	i. Establish a site-specific minimum pressure drop and liquid flow-rate for the wet scrubber and minimum voltage and secondary current or total power input of the electrostatic precipitator according to the provisions in §63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors for the wet scrubber and from the current and voltage monitors for the electrostatic precipitator and the mercury performance test.	(a) You must collect pressure drop and liquid flow-rate data for the wet scrubber and secondary current and voltage or total power input for the electrostatic precipitator every 15 minutes during the entire period of the three-run mercury performance test; and (b) Determine the average for each by computing the average of all 15-minute readings taken during the test run.
5. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory that is complying with the alternative total selected metals emission limit instead of the particulate matter emission limit (this is an option for those units that can demonstrate compliance on the basis of fuel analysis without controls).	a. Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in mercury.	i. Establish a site-specific maximum inlet fuel mercury content operating limit according to the provisions in §63.7530(c).	(1) The fuel mercury content analysis results and the calculations done according to the provisions in §63.7530(c).	(a) You must collect one sample of the worst-case fuel stream entering the boiler or process heater for each test run during the three-run performance test; and (b) Determine the mercury content and heating value of the sample according to your site-specific test plan as required in §63.7520(a); and (c) Determine the maximum mercury content operating limit according to the procedures in §63.7530(c).
6. Each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber.	i. Establish a site-specific maximum opacity level according to provisions in §63.7530 (c).	(1) Data from the continuous opacity monitoring system and the mercury performance test.	(a) You must collect opacity monitoring data every 10 seconds during the entire period of the three-run mercury performance test; and (b) Determine the maximum opacity level for all the 1-hour averages taken during the three-run performance test.
	b. A wet scrubber	i. Establish a site-specific minimum pressure drop and minimum liquid flow-rate operating limit for the wet scrubber according to the provisions in §63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors and the mercury performance test.	(a) You must collect pressure drop and liquid flow-rate data every 15 minutes during the entire period of the three-run mercury performance test; and (b) Determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.
	c. A wet scrubber in combination with a fabric filter.	i. Establish a site-specific minimum pressure drop and liquid flow-rate operating limit for the wet scrubber according to the provisions in §63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors and the mercury performance test.	(a) You must collect pressure drop and liquid flow-rate data for the wet scrubber every 15 minutes during the entire period of the three-run mercury performance test; and (b) Determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during the test run.

TABLE 4.E TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR MERCURY EMISSIONS FROM BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE OF SMALL SOLID FUEL SUBCATERGORIES—Continued

For . . .	That is controlled with . . .	You must . . .	Using . . .	According to the following requirements . . .
	d. A wet scrubber in combination with an electro-static precipitator.	i. Establish a site-specific minimum pressure drop and liquid flow-rate for the wet scrubber and minimum voltage and secondary current or total power input of the electrostatic precipitator according to the provisions in § 63.7530(c)(3).	(1) Data from the pressure drop and liquid flow-rate monitors for the wet scrubber and from the current and voltage monitors for the electrostatic precipitator and the mercury performance test.	(a) You must collect pressure drop and liquid flow-rate data for the wet scrubber and secondary current and voltage or total power input for the electrostatic precipitator every 15 minutes during the entire period of the three-run mercury performance test; and (b) Determine the average for each by computing the average of all 15-minute readings taken during each test run.
	e. Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in mercury.	i. Establish a site-specific maximum inlet fuel mercury content operating limit according to the provisions in § 63.7530(c).	(1) The fuel mercury content analysis results and the calculations done according to the provisions in § 63.7530(c).	(a) You must collect one sample of the worst-case fuel stream entering the boiler or process heater for each test run during the three-run performance test; and (b) Determine the mercury content and heating value of the sample according to your site-specific test plan as required in § 63.7520(a); and (c) Determine the maximum mercury content operating limit according to the procedures in § 63.7530(c).

As stated in § 63.7530, you must show initial compliance with the emission limitations for affected sources according to the following:

TABLE 5.A TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR PARTICULATE MATTER OR TOTAL SELECTED METALS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
1. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber.	i. 0.026 lb particulate matter per MMBtu heat input or 0.0001 lb total selected metals per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; or the average emissions in units of lb total selected metals per MMBtu heat input measured using total selected metals emission concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and

TABLE 5.A TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR PARTICULATE MATTER OR TOTAL SELECTED METALS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
			(2) You keep a record of the average site-specific opacity level for each test run over the three-run performance test during which particulate matter or total selected metals emissions did not exceed the emissions limit; or if the unit is controlled with a fabric filter, instead of establishing a site-specific opacity level you keep records of the installation and calibration data and the manufacturer's certification of the bag leak detection system as required in § 63.7525(i).
	b. A wet scrubber	i. 0.026 lb particulate matter per MMBtu heat input or 0.0001 lb total selected metals per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; or the average emissions in units of lb total selected metals per MMBtu heat input measured using total selected metals emission concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which particulate matter or total selected metals emissions did not exceed the emissions limit.
	c. A wet scrubber in combination with a fabric filter.	i. 0.026 lb particulate matter per MMBtu heat input or 0.0001 lb total selected metals per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentrations and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; or the average emissions in units of lb total selected metals per MMBtu heat input measured using total selected metals emission concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and

TABLE 5.A TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR PARTICULATE MATTER OR TOTAL SELECTED METALS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
			(2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which particulate matter or total selected metals emissions did not exceed the emissions limit; and (3) You keep records of the installation and calibration data and the manufacturers certification of the bag leak detection system as required in § 63.7525(i).
	d. A wet scrubber in combination with an electrostatic precipitator.	i. 0.026 lb particulate matter per MMBtu heat input or 0.0001 lb total selected metals per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; or the average emissions in units of lb total selected metals per MMBtu heat input measured using total selected metals emission concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber and the average secondary current and voltage or total power input of the electrostatic precipitator for each test run.
2. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory that is complying with the alternative total selected metals emission limit instead of the particulate matter emission limit (this is an option for those units that can demonstrate compliance on the basis of fuel analysis without controls).	a. Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in total selected metals.	i. 0.0001 lb total selected metals per MMBtu heat input.	(1) The calculated emissions using Equation 2 of § 63.7530(c) and converted to lb total selected metals per MMBtu heat input does not exceed the emission limit; and (2) You keep a record of the fuel analysis, calculations, and the maximum fuel total selected metals input at which you demonstrated. compliance.

TABLE 5.A TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR PARTICULATE MATTER OR TOTAL SELECTED METALS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
3. Each existing industrial, or commercial, institutional boiler or process heater in the large solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber.	i. 0.07 lb particulate matter per MMBtu heat input or 0.001 lb total selected metals per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; or the average emissions in units of lb total selected metals per MMBtu heat input measured using total selected metals emission concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limits; and (2) You keep a record of the average site-specific opacity level for each test run over the 3-hour performance test during which particulate matter or total selected metals emissions did not exceed the emissions limit; or if the unit is controlled with a fabric filter, instead of establishing a site-specific opacity level you keep records of the installation and calibration data and the manufacturer's certification of the bag leak detection system as required in § 63.7525(i).
	b. A wet scrubber	i. 0.07 lb particulate matter per MMBtu heat input or 0.001 lb total selected metals per MMBtu heat input or 0.001 lb total selected metals per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; or the average emissions in units of lb total selected metals per MMBtu heat input measured using total selected metals emission concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which particulate matter or total selected metals emissions did not exceed the emissions limit.

TABLE 5.A TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR PARTICULATE MATTER OR TOTAL SELECTED METALS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
	c. Wet scrubber in combination with a fabric filter.	i. 0.07 lb particulate matter per MMBtu heat input or 0.001 lb total selected metals per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; or the average emissions in units of lb total selected metals per MMBtu heat input measured using total selected metals emission concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which particulate matter or total selected metals emissions did not exceed the emissions limit; and (3) You keep records of the installation and calibration data and the manufacturer's certification of the bag leak detection system as required in § 63.7525(i).
	d. A wet scrubber in combination with an electrostatic precipitator.	i. 0.07 lb particulate matter per MMBtu heat input or 0.001 lb total selected metals per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; or the average emissions in units of lb total selected metals per MMBtu heat input measured using total selected metals emission concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber and the average secondary current and voltage or total power input of the electrostatic precipitator for each test run.

TABLE 5.A TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR PARTICULATE MATTER OR TOTAL SELECTED METALS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
	e. Either no add-on controls or an add-on control other than a wet scrubber.	i. 0.21 lb particulate matter per MMBtu heat input or 0.001 lb total selected metals per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; or the average emissions in units of lb total selected metals per MMBtu heat input measured using total selected metals emission concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific opacity level for each test run over the 3-hour performance test during which particulate matter or total selected metals emissions did not exceed the emissions limit; or if the unit is controlled with a fabric filter, instead of establishing a site-specific opacity level you keep records of the installation and calibration data and the manufacturer's certification of the bag leak detection system as required in §63.7525(i).
	f. A wet scrubber	i. 0.21 lb particulate matter per MMBtu heat input or 0.001 lb total selected metals per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; or the average emissions in units of lb total selected metals per MMBtu heat input measured using total selected metals emission concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which particulate matter or total selected metals emissions did not exceed the emissions limit.

TABLE 5.A TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR PARTICULATE MATTER OR TOTAL SELECTED METALS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
	g. A wet scrubber in combination with a fabric filter.	i. 0.21 lb particulate matter per MMBtu heat input or 0.001 lb total selected metals per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; or the average emissions in units of lb total selected metals per MMBtu heat input measured using total selected metals emission concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which particulate matter of total selected metals emissions did not exceed the emissions limit; and (3) You keep records of the installation and calibration data and the manufacture's certification of the bag leak detection system as required in § 63.7525(i).
	h. A wet scrubber in combination with an electrostatic precipitator.	i. 0.21 lb particulate matter per MMBtu heat input or 0.001 lb total selected metals per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; or the average emissions in units of lb total selected metals per MMBtu heat input measured using total selected metals emission concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber and the average secondary current and voltage or total power input of the electrostatic precipitator for each test run.

TABLE 5.A TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR PARTICULATE MATTER OR TOTAL SELECTED METALS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
4. Each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory or the limited use solid fuel subcategory that is complying with the alternative total selected metals emission limit instead of the particulate matter emission limit (this is an option for those units that can demonstrate compliance on the basis of fuel analysis without controls).	a. Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in total selected metals.	i. 0.001 lb total selected metals per MMBtu heat input.	(1) The calculated emissions using Equation 2 of § 63.7530(c) and converted to lb total selected metals per MMBtu heat input does not exceed the emission limit; and (2) You keep a record of the fuel analysis, calculations, and the maximum fuel total selected metals input at which you demonstrated compliance.

As stated in § 63.7530, you must show initial compliance with the emission limitations for affected sources according to the following:

TABLE 5.B TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR PARTICULATE MATTER FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
1. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large liquid fuel subcategory, the limited use liquid fuel subcategory or the small liquid fuel subcategory (boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and other gases and do not burn any residual oil are excluded from this requirement).	a. Either no reconstructed add-on controls or an add-on control other than a scrubber.	i. 0.03 lb particulate matter per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBTU heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific opacity level for each test run over the three-run performance test during which particulate matter emissions did not exceed the emissions limit; or if the unit is controlled with a fabric filter, instead of establishing a site-specific opacity level you keep records of the installation and calibration data and the manufacturer's certification of the bag leak detection system as required in § 63.7525(i).
	b. A wet scrubber	i. 0.03 lb particulate matter per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which particulate matter emissions did not exceed the emissions limit.

TABLE 5.B TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR PARTICULATE MATTER FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
	c. A wet scrubber in combination with a fabric filter.	i. 0.03 lb particulate matter per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which particulate matter emissions did not exceed the emissions limit; and (3) You keep records of the installation and calibration data and the manufacturer's certification of the bag leak detection system as required in § 63.7525(i).
	d. A wet scrubber in combination with an electrostatic precipitator.	i. 0.03 lb particulate matter per MMBtu heat input.	(1) The average emissions in units of lb particulate matter per MMBtu heat input, measured using PM emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber and the average secondary current and voltage or total power input of the electrostatic precipitator for each test run over the three-run performance test during which particulate matter emissions did not exceed the emissions limit.
2. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in one of the liquid fuel subcategories that burns only liquid fossil fuels other than residual oil either alone or in combination with gaseous fuels.	a. Any type of device	i. 0.03 lb particulate matter per MMBtu heat input.	(1) You submit a signed statement in the Notification of Compliance Status report required in § 63.7545(e), that indicated you burn only liquid fossil fuels other than residual oil either alone or in combination with gaseous fuels; and (2) You keep records, as required in § 63.7555, that demonstrate that you burn only liquid fossil fuels other than residual oil either alone or in combination with gaseous fuels.

As stated in § 63.7530, you must show initial compliance with the emission limitations for affected sources according to the following:

TABLE 5.C TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR HYDROGEN CHLORIDE FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
1. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber or a dry scrubber.	i. 0.02 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific fuel chlorine content level for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.
	b. A wet scrubber	i. 0.02 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pH, pressure drop, and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.
	c. A dry scrubber	i. 0.02 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific sorbent injection rate of the dry scrubber for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.
2. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the limited use solid fuel subcategory or the small solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber or a dry scrubber.	i. 0.02 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific fuel chlorine content level for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.

TABLE 5.C TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR HYDROGEN CHLORIDE FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
	b. A wet scrubber	i. 0.02 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pH, pressure drop, and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.
	c. A dry scrubber	i. 0.02 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific sorbent injection rate of the dry scrubber for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.
3. Each existing industrial, commercial, institutional boiler or process heater in the large solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber or a dry scrubber.	i. 0.09 lb hydrogen chloride per MMBtu per heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific fuel chlorine content level for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.
	b. A wet scrubber	i. 0.09 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pH, pressure drop, and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.

TABLE 5.C TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR HYDROGEN CHLORIDE FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
	c. A dry scrubber	i. 0.09 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific sorbent injection rate of the dry scrubber for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.

As stated in § 63.7530, you must show initial compliance with the emission limitations for affected sources according to the following:

TABLE 5.D TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR HYDROGEN CHLORIDE FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
1. Each new or reconstructed commercial, or industrial, boiler or process heater in the liquid fuel subcategory (boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and other gases and do not burn any residual oil are excluded from this requirement).	a. Either no add-on controls or an add-on control other than a wet scrubber or a dry scrubber.	i. 0.0005 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific fuel chlorine content level for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.
	b. A wet scrubber	i. 0.0005 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pH, pressure drop, and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.

TABLE 5.D TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR HYDROGEN CHLORIDE FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
	c. A dry scrubber	i. 0.0005 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific sorbent injection rate of the dry scrubber for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.
2. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large limited use liquid fuel subcategory or the small liquid fuel subcategory (boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and other gases and do not burn any residual oil are excluded from this requirement).	a. Either no add-on controls or an add-on control other than a web scrubber or a dry scrubber.	i. 0.0009 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific fuel chlorine content level for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.
3. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the limited use liquid fuel subcategory or the small liquid fuel subcategory (boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and other gases and do not burn any residual oil are excluded from this requirement).	a. A wet scrubber	i. 0.0009 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pH, pressure drop, and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.

TABLE 5.D TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR HYDROGEN CHLORIDE FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
	b. A dry scrubber	i. 0.0009 lb hydrogen chloride per MMBtu heat input.	(1) The average emissions in units of lb hydrogen chloride per MMBtu heat input, measured using hydrogen chloride emissions concentration and Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific sorbent injection rate of the dry scrubber for each test run over the three-run performance test during which hydrogen chloride emissions did not exceed the emissions limit.
4. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in one of the liquid fuel subcategories that burns only liquid fossil fuels other than residual oil either alone or in combination with gaseous fuels.	a. Any type of device	i. 0.0005 lb hydrogen chloride per MMBtu heat input for units in the large liquid fuel subcategory or 0.0009 lb hydrogen chloride per MMBtu heat input for units in the limited use or small liquid fuel subcategories.	(1) You submit a signed statement in the Notification of Compliance Status report required in §63.7545(e) that indicates you burn only liquid fossil fuels other than residual oil either alone or in combination with gaseous fuels; and (2) You keep records, as required in §63.7555, that demonstrate that you burn only liquid fossil fuels other than residual oil either alone or in combination with gaseous fuels.

As stated in §63.7530, you must show initial compliance with the emission limitations for affected sources according to the following:

TABLE 5.E TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR MERCURY FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
1. Each new or reconstructed industrial, commercial or institutional boiler or process heater in large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory.	a. Either no add-on control or an add-on control other than wet scrubber.	i. 0.000003 lb merecury per MMBtu heat input.	(1) The average emissions in units of lb mercury per MMBtu heat input, measured using mercury emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific opacity level for each test run over the three-run performance test during which mercury emissions did not exceed the emissions limit; or if the unit is controlled with a fabric filter, instead of establishing a site-specific opacity level you keep records of the installation and calibration data and the manufacturer's certification of the bag leak detection system as required in §63.7525(i).

TABLE 5.E TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR MERCURY FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
	b. A wet scrubber	i. 0.000003 lb mercury per MMBtu heat input.	(1) The average emissions in units of lb mercury per MMBtu heat input, measured using mercury emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which mercury emissions did not exceed the emissions limit.
	c. A wet scrubber in combination with a fabric filter.	i. 0.000003 lb mercury per MMBtu heat input.	(1) The average emissions in units of lb mercury per MMBtu heat input, measured using mercury emissions concentrations and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which mercury emissions did not exceed the emissions limit; and (3) You keep records of the installation and calibration data and the manufacturers certification of the bag leak detection system as required in § 63.7525(i).
	d. A wet scrubber in combination with an electrostatic precipitator.	i. 0.000003 lb mercury per MMBtu heat input.	(1) The average emissions in units of lb mercury per MMBtu heat input, measured using mercury emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber and the average secondary current and voltage or total power input of the electrostatic precipitator for each test run.
2. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory (this is an option for those units that can demonstrate compliance on the basis of fuel analysis without controls).	a. Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in mercury.	i. 0.000003 lb mercury per MMBtu heat input.	(1) The calculated emissions using Equation 3 of § 63.7530(c) and converted to lb mercury per MMBtu heat input does exceed the emission limit; and (2) You keep a record of fuel analysis, calculations, and the maximum fuel mercury input at which you demonstrated compliance.

TABLE 5.E TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR MERCURY FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
3. Each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber.	i. 0.000007 lb mercury MMBtu heat input.	(1) The average emissions in units of lb mercury per MMBtu heat input, measured using mercury emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific opacity level for each test run over the 3-hour performance test during which mercury emissions did not exceed the emissions limit; or if the unit is controlled with a fabric filter, instead of establishing a site-specific opacity level you keep records of the installation and calibration data and the manufacturer's certification of the bag leak detection system as required in § 63.7525(i).
	b. A wet scrubber	i. 0.000007 lb mercury per MMBtu heat input.	(1) The average emissions in units of lb mercury per MMBtu heat input, measured using mercury emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which mercury metals emissions did not exceed the emissions limit.
	c. A wet scrubber in combination with a fabric filter.	i. 0.000007 lb mercury per MMBtu heat input.	(1) The average emissions in units of lb mercury per MMBtu heat input, measured using mercury emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber for each test run over the three-run performance test during which mercury emissions did not exceed the emissions limit; and (3) You keep records of the installation and calibration data and the manufacturer's certification of the bag leak detection system as required in § 63.7525(i).

TABLE 5.E TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR MERCURY FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
	d. A wet scrubber in combination with an electrostatic precipitator.	i. 0.000007 lb mercury per MMBtu heat input.	(1) The average emissions in units of lb mercury per MMBtu heat input, measured using mercury emissions concentration and sections 12.2 and 12.3 of Method 19 of appendix A over the three-run performance test period, do not exceed the emission limit; and (2) You keep a record of the average site-specific pressure drop and liquid flow-rate of the wet scrubber and the average secondary current and voltage or total power input of the electrostatic precipitator for each test run.
4. Each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory (this is an option for those units that can demonstrate compliance on the basis of fuel analysis without controls).	a. Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in mercury.	i. 0.000007 per mercury per MMBtu heat input.	(1) The calculated mercury emissions using Equation 3 of §63.7530(c) and converted to lb mercury per MMBtu heat input does not exceed the emission limit; and (2) You keep a record of the fuel analysis, calculations, and maximum fuel mercury input at which you demonstrated compliance.

As stated in §63.7530, you must show initial compliance with the applicable work practice standards for affected sources according to the following:

TABLE 6 TO SUBPART DDDDD OF PART 63—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	For the following work practice standard . . .	You have demonstrated initial compliance if . . .
1. New or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the large liquid fuel subcategory, or the large gaseous fuel subcategory.	a. Continuously monitor carbon monoxide emissions according to the procedures in §63.7525(a) to maintain carbon monoxide emissions at or below an exhaust concentration of 400 ppm by volume on a dry basis corrected to 3 percent oxygen (the averaging time shall be one calendar day).	i. You have met work practice standard; and ii. As part of the Notification of Compliance Status, you submit the carbon monoxide emissions monitoring data recorded during the performance test collected according to the procedures required in §63.7525(a); and iii. Report the maximum carbon monoxide emissions levels that occurred during the test that demonstrates the carbon monoxide concentrations were below the 400 ppm concentration.
2. New or reconstructed industrial, commercial, or institutional boiler or process heater in the limited use solid fuel subcategory, the limited use liquid fuel subcategory, or the limited use gaseous fuel subcategory.	a. Continuously monitor carbon monoxide emissions according to the procedures in §63.7525(a) to maintain carbon monoxide emissions at or below an exhaust concentration of 400 ppm by volume on a dry basis corrected to 3 percent oxygen. The average time shall be 1 calendar day.	i. You have met the work practice standard; and ii. As part of the Notification of Compliance Status, you submit the carbon monoxide emissions monitoring data recorded during the performance test collected according to the procedures required in §63.7525(a); and iii. Report the maximum carbon monoxide emissions levels that occurred during the test that demonstrates the carbon monoxide concentrations were below the 400 ppm concentration.

As stated in §63.7540, you must show continuous compliance with the emission limitations for affected sources according to the following:

TABLE 7.A TO SUBPART DDDDD OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES

For . . .	That is controlled with . . .	For the following emission limitation . . .	You must demonstrate continuous compliance by . . .
1. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber or dry scrubber.	i. Opacity levels must not exceed the operating limit set during the PM or total selected metals and mercury performance tests and fuel chlorine content must not exceed the maximum operating limit set during the hydrogen chloride performance test according to the procedures in §63.7530(c).	(1) Collecting the opacity monitoring system data according to §§63.7525(b) and 63.7535; and (2) Reducing the opacity monitoring data to 6-minute averages; and (3) Maintaining the 3-hour block average opacity levels at or below the limit established during the performance test; or if the unit is controlled with a fabric filter, instead of maintaining opacity maintaining the operation of the fabric filter such that the requirements in §63.7540(a)(9) are met; and (4) Keeping daily records of fuel use and following the procedures in §63.7540(a) and, therefore, maintaining the fuel chlorine content level at or below the limit set during the performance test.
	b. A wet scrubber	i. pH, pressure drop, and liquid flow-rate must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the pH, pressure drop, and liquid flow-rate monitoring system data according to §§63.7525 and 63.7535; and (2) Reducing the data to 3-hour block averages; and (3) Maintaining the 3-hour average pH, pressure drop, and liquid flow-rate levels at or above the limits established during the performance test.
	c. A wet scrubber in combination with a fabric filter.	i. pH, pressure drop, and liquid flow-rate for the wet scrubber and pressure drop for the fabric filter must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the pH, pressure drop, and liquid flow-rate monitoring system data for the wet scrubber and the pressure drop monitoring system data for the fabric filter according to §§63.7525 and 63.7535; and (2) Reducing the data to 3-hour block averages; and (3) Maintaining the 3-hour average pH, pressure drop, and liquid flow-rate of the wet scrubber and the 3-hour average pressure drop of the fabric filter at or above the limits established during the performance test; and (4) Maintaining the fabric filter operation such that the requirements in 63.7540(a)(9) are met.

TABLE 7.A TO SUBPART DDDDD OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You must demonstrate continuous compliance by . . .
	d. A wet scrubber in combination with an electrostatic precipitator.	i. pH, pressure drop, and liquid flow-rate for the wet scrubber and secondary current and voltage or total power input for the electrostatic precipitator must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the pH, pressure drop, and liquid flow-rate monitoring system data for the wet scrubber and the secondary current and voltage monitoring system data or total power input data for the electrostatic precipitator according to §§ 63.7525 and 63.7535; and (2) Reducing the data to 3-hour block averages; and (3) Maintaining the 3-hour average pH, pressure drop, and liquid flow-rate of the wet scrubber and the 3-hour average secondary current and voltage or total power input of the electrostatic precipitator at or above the limits established during the performance test.
	e. A dry scrubber	i. Opacity levels must not exceed the operating limit set during the performance test and sorbent injection rate of the dry scrubber must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the opacity monitoring system data according to §§ 63.7525(b) and 63.7535; and (2) Reducing the opacity monitoring data to 6-minute averages; and (3) Maintaining the 3-hour block average opacity levels at or below the limit established during the performance test; and (4) Collecting the sorbent injection rate monitoring system data for the dry scrubber according to §§ 63.7525 and 63.7535; and (5) Reducing the data to 3-hour block averages; and (6) Maintaining the 3-hour average sorbent injection rate level at or above the limits established during the performance test.
2. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory that is complying with the alternative total selected metals emission limit instead of the particulate matter emission limit (this is an option for those that can demonstrate compliance on the basis of fuel analysis without controls).	Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in total selected metals.	Fuel total selected metals content must not exceed the operating limit set during the performance test according to the provisions in § 63.7530(a).	Keeping daily records of fuel use and follow the procedures in § 63.7540(a) and, therefore, maintain the fuel total selected metals content level at or below the limit set during the performance test.
3. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory, the limited use solid fuel subcategory, or the small solid fuel subcategory that can demonstrate compliance with the mercury emission limit on the basis of fuel analysis without controls).	Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in mercury.	Fuel mercury content must not exceed the operating limit set during the performance test according to the provisions in § 63.7530)(a).	Keeping daily records of fuel use and follow the procedures in § 63.7540(a) and, therefore, maintain the fuel mercury content level at or below the limit set during the performance test.

TABLE 7.A TO SUBPART DDDDD OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You must demonstrate continuous compliance by . . .
4. Each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber or dry scrubber.	i. Opacity levels must not exceed the operating limit set during the PM or total selected metals and mercury performance test and fuel chlorine content must not exceed the maximum operating limit set during the hydrogen chloride performance test according to the procedures in §63.7530(c).	(1) Collecting the opacity monitoring system data according to §§63.7525(b) and 63.7535; and (2) Reducing the opacity monitoring data to 6-minute averages; and (3) Maintaining the 3-hour block average opacity levels at or below the limit established during the performance test; or if the unit is controlled with a fabric filter, instead of maintaining opacity maintaining the operation of the fabric filter such that the requirements in §63.7540(a)(9) are met; and (4) Keeping daily records of fuel use and following the procedures in §63.7540(a) and, therefore, maintaining the fuel chlorine content level at or below the limit set during the performance test.
	b. A wet scrubber	i. pH, pressure drop, and liquid flow-rate must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the pH, pressure drop, and liquid flow-rate monitoring system data according to §§63.7525 and 63.7535; and (2) Reducing the data to 3-hour block averages; and (3) Maintaining the 3-hour average pH, pressure drop, and liquid flow-rate levels at or above the limits established during the performance test.
	c. A wet scrubber in combination with a fabric filter.	i. pH, pressure drop, and liquid flow-rate for the wet scrubber and pressure drop for the fabric filter must be greater than or equal to minimum operating limits set during the performance test.	(1) Collecting the pH, pressure drop, and liquid flow-rate monitoring system data for the wet scrubber and the pressure drop monitoring system data for the fabric filter according to §§63.7525 and 63.7535; and (2) Reducting the data to 3-hour block averages; and (3) Maintaining the 3-hour average pH, pressure drop, and liquid flow-rate of the wet scrubber and the 3-hour average pressure drop of the fabric filter at or above the limits established during the performance test; and (4) Maintaining the fabric filter operation such that the requirements in §63.7540(a)(9) are met.

TABLE 7.A TO SUBPART DDDDD OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You must demonstrate continuous compliance by . . .
	d. A wet scrubber in combination with an electrostatic precipitator.	i. pH, pressure drop, and liquid flow-rate for the wet scrubber and secondary current and voltage or total power input for the electrostatic precipitator must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the pH, pressure drop, and liquid flow-rate monitoring system data for the wet scrubber and the secondary current and voltage monitoring system data or total power input data for electrostatic precipitator according to §§ 63.7525 and 63.7535; and (2) Reducing the data to 3-hour block averages; and (3) Maintaining the 3-hour average pH, pressure drop, and liquid flow-rate of the wet scrubber and the 3-hour average secondary current and voltage or total power input of the electrostatic precipitator at or above the limits established during the performance test.
	e. A dry scrubber	i. Opacity levels must not exceed the operating limit set during the performance test and sorbent injection rate of the dry scrubber must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the opacity monitoring system data according to §§ 63.7525(b) and 63.7535; and (2) Reducing the opacity monitoring data to 6-minute averages; and (3) Maintaining the 3-hour block average opacity levels at or below the limit established during the performance test; and (4) Collecting the sorbent injection rate monitoring system data for the dry scrubber according to §§ 63.7525 and 63.7535; and (5) Reducing the data to 3-hour block averages; and (6) Maintaining the 3-hour average sorbent injection rate levels at or above the limits established during the performance test.
5. Each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory that is complying with the alternative total selected metals emission limit instead of the particulate matter emission limit (this is an option for those that can demonstrate compliance on the basis of fuel analysis without controls).	Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in total selected metals.	Fuel total selected metals content must not exceed the operating limit set during the performance test according to the provisions in § 63.7530(a) keeping daily records of fuel use and following the procedures in § 63.7540(a) and, therefore, maintaining the fuel total selected metals content level at or below the limit set during the performance tests.	
6. Each existing industrial, commercial, or institutional boiler or process heater in the large solid fuel subcategory that can demonstrate compliance with the mercury emission limit on the basis of fuel analysis without controls.	Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in mercury.	Fuel mercury content must not exceed the operating limit set during the performance test according to the provisions in § 63.7530(a).	Keeping daily records of fuel use and following the procedures in § 63.7540(a) and, therefore, maintaining the fuel mercury content level at or below the limit set during the performance test.

TABLE 7.A TO SUBPART DDDDD OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You must demonstrate continuous compliance by . . .
7. Each existing industrial, commercial, or institutional boiler or process heater in the limited use solid fuel subcategory.	a. Either no add-on controls or an add-on control other than a wet scrubber or dry scrubber.	i. Opacity levels must not exceed the operating limit set during the PM or total selected metals performance test according to the procedures in §63.7530(c).	(1) Collecting the opacity monitoring system data according to §§63.7525(b) and 63.7535; and (2) Reducing the opacity monitoring data to 6-minute averages; and (3) Maintaining the 3-hour block average opacity levels at or below the limit established during the performance test; and (4) If the unit is controlled with a fabric filter, maintaining the operation of the fabric filter such that the requirements in §63.7540(a)(9) are met.
	b. A wet scrubber	i. Pressure drop and liquid flow-rate must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the pressure drop and liquid flow-rate monitoring system data according to §§63.7525 and 63.7535; and (2) Reducing the data to 3-hour block averages; and (3) Maintaining the 3-hour average pressure drop and liquid flow-rate levels at or above the limits established during the performance test.
	c. A wet scrubber in combination with a fabric filter.	i. Pressure drop and liquid flow-rate for the wet scrubber and pressure drop for the fabric filter must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the pressure drop and liquid flow-rate monitoring system data for the wet scrubber and the pressure drop monitoring system data for the fabric filter according to §§63.7525 and 63.7535; and (2) Reducing the data to 3-hour block averages; and (3) Maintaining the 3-hour average pressure drop and liquid flow-rate of the wet scrubber and the 3-hour average pressure drop of the fabric filter at or above the limits established during the performance test; and (4) Maintaining the fabric filter operation such that the requirements in §63.7540(a)(9) are met.
	d. A wet scrubber in combination with an electrostatic precipitator.	i. Pressure drop and liquid flow-rate for the wet scrubber and secondary current and voltage or total power input for the electrostatic precipitator must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the pressure drop and liquid flow-rate monitoring system data for the wet scrubber and the secondary current and voltage monitoring system data or total power input data for the electrostatic precipitator according to §§63.7525 and 63.7535; and (2) Reducing the data to 3-hour block averages; and (3) Maintaining the 3-hour average pressure drop and liquid flow-rate of the wet scrubber and the 3-hour average secondary current and voltage or total power input of the electrostatic precipitator at or above the limits established during the performance test.

TABLE 7.A TO SUBPART DDDDD OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL SOLID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You must demonstrate continuous compliance by . . .
	e. A dry scrubber	i. Opacity levels must not exceed the operating limit set during the performance test.	(1) Collecting the opacity monitoring system data according to §§ 63.7525(b) and 63.7535; and (2) Reducing the opacity monitoring data to 6-minute averages; and (3) Maintaining the 3-hour block average opacity levels at or below the limit established during the performance test.
8. Each existing industrial commercial, and institutional boiler or process in the limited use solid fuel subcategory that is complying with the alternative total selected metals emission limit instead of the particulate matter emission limit (this is an option for those that can demonstrate compliance on the basis of fuel analysis without controls).	Either no add-on controls or an add-on control for which you do not wish to take credit for reductions in total selected metals.	Fuel total selected metals content must not exceed the operating limit set during the performance test according to the provisions in § 63.7530(a).	Keeping daily records of fuel use and following the procedures in § 63.7540(a) and, therefore, maintaining the fuel total selected metals content level at or below the limit set during the performance test.

As stated in § 63.7540, you must show continuous compliance with the emission limitation for affected sources according to the following:

TABLE 7.B TO SUBPART DDDDD OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES

For . . .	That is controlled with . . .	For the following emission limitation . . .	You must demonstrate continuous compliance by. . .
1. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in the large liquid fuel subcategory, the limited use liquid fuel subcategory, or the small liquid fuel subcategory (boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and gases and do not burn any residual oil are excluded from this requirement).	a. Either no add-on controls or an add-on control other than a wet scrubber or a dry scrubber.	i. Opacity levels must not exceed the operating limit set during the performance test and fuel chlorine content must not exceed the maximum operating limit set during the performance test according to the procedures in § 63.7530(c).	(1) Collecting the opacity monitoring system data according to §§ 63.7525(b) and 63.7535; and (2) Reducing the opacity monitoring data to 6-minute averages; and (3) Maintaining the 3-hour block average opacity levels at or below the limit established during the performance test; or if the unit is controlled with a fabric filter, instead of maintaining opacity maintaining the operation of the fabric filter such that the requirements in § 63.7540(a)(9) are met; and (4) Keeping daily records of fuel use and following the procedures in § 63.7540(a) and, therefore, maintaining the fuel chlorine content level at or below the limit set during the performance test.
	b. A wet scrubber	i. pH, pressure drop, and liquid flow-rate must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the pH, pressure drop, and liquid flow-rate monitoring system data according to §§ 63.7525 and 63.7535; and (2) Reducing the data to 3-hour block averages; and (3) Maintaining the 3-hour average pH, pressure drop, and liquid flow-rate levels at or above the limits established during the performance test.

TABLE 7.B TO SUBPART DDDDD OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You must demonstrate continuous compliance by. . .
	c. A wet scrubber in combination with a fabric filter.	i. pH, pressure drop, and liquid flow-rate for the wet scrubber and pressure drop for the fabric filter must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the pH, pressure drop, and liquid flow-rate monitoring system data for the wet scrubber and the pressure drop monitoring system data for the fabric filter according to §§ 63.7525 and 63.7535; and (2) Reducing the data to 3-hour block averages; and (3) Maintaining the 3-hour average pH, pressure drop, and liquid flow-rate of the wet scrubber and the 3-hour average pressure drop of the fabric filter at or above the limits established during the performance test; and (4) Maintaining the operation of the fabric filter such that the requirements in § 63.7540(a)(9) are met.
	d. A wet scrubber in combination with an electrostatic precipitator.	i. pH, pressure drop, and liquid flow-rate for the wet scrubber and secondary current and voltage or total power input for the electrostatic precipitator must be greater than or equal to the minimum operating limits set during the performance test.	(1) Collecting the pH, pressure drop, and liquid flow-rate monitoring system data for the wet scrubber and the secondary current and voltage monitoring system data or total power input data for the electrostatic precipitator according to §§ 63.7525 and 63.7535; and (2) Reducing the data to 3-hour block averages; and (3) Maintaining the 3-hour average pH, pressure drop, and liquid flow-rate of the wet scrubber and the 3-hour average secondary current and voltage or total power input of the electrostatic precipitator at or above the limits established during the performance test.
	e. A dry scrubber	i. Sorbent injection rate of the dry scrubber must be greater than or equal to the minimum operating limits set during the performance test and opacity levels must not exceed the operating limit set during the performance test.	(1) Collecting the sorbent injection rate monitoring system data according to §§ 63.7525 and 63.7535; and (2) Reducing the data to 3-hour block averages; and (3) Maintaining the 3-hour average sorbent injection rate levels at or above the limits established during the performance test; and (4) Collecting the opacity monitoring system data according to § 63.7525(b) and reducing the opacity monitoring data to 6-minute averages and maintaining the 3-hour average opacity levels at or below the limit established during the performance test.

TABLE 7.B TO SUBPART DDDDD OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS FOR BOILERS OR PROCESS HEATERS IN LARGE, LIMITED USE, OR SMALL LIQUID FUEL SUBCATEGORIES—Continued

For . . .	That is controlled with . . .	For the following emission limitation . . .	You must demonstrate continuous compliance by. . .
2. Each new or reconstructed industrial, commercial, or institutional boiler or process heater in one of the liquid fuel subcategories that burns only liquid fossil fuels other than residual oil either alone or in combination with gaseous fuels.	a. Any type of device	i. 0.03 lb particulate matter per MMBtu heat input.	(1) Including a signed statement in each semiannual compliance report required in § 63.7550 that indicates you burned only liquid fossil fuels other than residual oil either alone or in combination with gaseous fuels during the compliance period; and (2) By keeping records, as required in § 63.7555, that demonstrate that you burn only liquid fossil fuels other than residual oil either alone or in combination with gaseous fuels.

As stated in § 63.7540, you must show continuous compliance with the applicable work practice standards for affected sources according to the following:

TABLE 8 TO SUBPART DDDDD OF PART 63—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

For the following work practice standard . . .	You must demonstrate continuous compliance by . . .
1. Carbon monoxide limit for new or reconstructed industrial, commercial, or institutional boilers or process heaters in the large solid fuel subcategory, the large liquid fuel subcategory, the large gaseous fuel subcategory, the limited use solid fuel subcategory, the limited use liquid fuel subcategory, or the limited use gaseous fuel subcategory.	a. Continuously monitoring carbon monoxide levels according to §§ 63.7525(a) and 63.7535; and b. Maintaining a carbon monoxide level below an exhaust concentration of 400 ppm by volume on a dry basis at all times except during startup, shutdown, or malfunction; and c. Keeping records of carbon monoxide levels as required in § 63.7555(b). The averaging period shall be a calendar day.

As stated in § 63.7550, you must comply with the following requirements for reports:

TABLE 9 TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR REPORTS

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. Information required in § 63.7550(c)(1)–(11); and	Semiannually according to the requirements in § 63.7550(b).
	b. If there are no deviations from any emission limitation (emission limit and operating limit) that applies to you and there are no deviations from the requirements for work practice standards in Table 8 to this subpart that apply to you, a statement that there were no deviations from the emission limitations and work practice standards during the reporting period. If there were no periods during which the continuous monitoring systems, including continuous emissions monitoring system, continuous opacity monitoring system, and operating parameter monitoring systems, were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the continuous monitoring systems were out-of-control during the reporting period; and	See item 1.a of this table.
	c. If you have a deviation from any emission limitation (emission limit and operating limit) or work practice standard during the reporting period, the report must contain the information in § 63.7550(d). If there were periods during which the continuous monitoring systems, including continuous emissions monitoring system, continuous opacity monitoring system, and operating parameter monitoring systems, were out-of-control, as specified in § 63.8(c)(7), the report must contain the information in § 63.7550(e); and	See item 1.a of this table.

TABLE 9 TO SUBPART DDDDD OF PART 63—REQUIREMENTS FOR REPORTS—Continued

You must submit a(n)	The report must contain . . .	You must submit the report . . .
	d. If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in §63.10(d)(5)(i).	See item 1.a of this table.
2. An immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan.	a. Actions taken for the event and the information in §63.10(d)(5)(ii).	i. By fax or telephone within 2 working days after starting actions inconsistent with the plan; and ii. By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority. (§63.10(d)(5)(ii)).

As stated in §63.7565, you must comply with the applicable General Provisions according to the following:

TABLE 10 TO SUBPART DDDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD

Citation	Subject	Brief description	Explanation
§63.1	Applicability	Initial Applicability Determination; Applicability After Standard Established; Permit Requirements; Extensions, Notifications.	Yes.
§63.2	Definitions	Definitions for part 63 standards	Yes.
§63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§63.4	Prohibited Activities	Prohibited Activities; Compliance date; Circumvention, Severability.	Yes.
§63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§63.6(a)	Applicability	i. GP apply unless compliance extension; and ii. GP apply to area sources that become major	Yes. Yes.
§63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for 112(f).	Yes.
§63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§63.6(b)(6)	[Reserved].		
§63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§63.6(c)(1)–(2)	Compliance Dates for Existing Sources	i. Comply according to date in subpart, which must be no later than 3 years after effective date; and ii. For 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes. Yes.
§63.6(c)(3)–(4)	[Reserved].		
§63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§63.6(d)	[Reserved].		
§63.6(e)(1)–(2)	Operation & Maintenance	i. Operate to minimize emissions at all times; and	Yes.
		ii. Correct malfunctions as soon as practicable; and iii. Operation and maintenance requirements independently enforceable information Administrator will use to determine if operation and maintenance requirements were met.	Yes. Yes.

TABLE 10 TO SUBPART DDDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

Citation	Subject	Brief description	Explanation
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for SSM and startup, shutdown, malfunction plan. Content of SSMP	Yes.
§ 63.6(f)(1)	Compliance Except During SSM	Comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)(1)	Compliance with Opacity/VE Standards	Comply with opacity/VE emission limitations at all times except during SSM.	Yes.
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/Visible Emission (VE) Standards.	If standard does not state test method, use Method 9 for opacity and Method 22 for VE.	No.
§ 63.6(h)(2)(ii)	[Reserved].		
§ 63.6(h)(2)(iii)	Using Previous Tests to Demonstrate Compliance with Opacity/VE Standards.	Criteria for when previous opacity/VE testing can be used to show compliance with this rule.	Yes.
§ 63.6(h)(3)	[Reserved].		
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Notify Administrator of anticipated date of observation	No.
§ 63.6(h)(5)(i), (iii)–(v)	Conducting Opacity/VE Observations	Dates and Schedule for conducting opacity/VE observations.	No.
§ 63.6(h)(5)(ii)	Opacity Test Duration and Averaging Times.	Must have at least 3 hours of observation with thirty, 6-minute averages.	No.
§ 63.6(h)(6)	Records of Conditions During Opacity/VE Observations.	Keep records available and allow Administrator to inspect.	No.
§ 63.6(h)(7)(i)	Report continuous opacity monitoring system Monitoring Data from Performance Test.	Submit continuous opacity monitoring system data with other performance test data.	Yes.
§ 63.6(h)(7)(ii)	Using continuous opacity monitoring system instead of Method 9.	Can submit continuous opacity monitoring system data instead of Method 9 results even if rule requires Method 9, but must notify Administrator before performance test.	No.
§ 63.6(h)(7)(iii)	Averaging time for continuous opacity monitoring system during performance test.	To determine compliance, must reduce continuous opacity monitoring system data to 6-minute averages.	Yes.
§ 63.6(h)(7)(iv)	Continuous opacity monitoring system requirements.	Demonstrate that continuous opacity monitoring system performance evaluations are conducted according to §§ 63.8(e), continuous opacity monitoring system are properly maintained and operated according to 63.8(c) and data quality as § 63.8(d).	Yes.
§ 63.6(h)(7)(v)	Determining Compliance with Opacity/VE Standards.	Continuous opacity monitoring system is probative but not conclusive evidence of compliance with opacity standard, even if Method 9 observation shows otherwise. Requirements for continuous opacity monitoring system to be probative evidence-proper maintenance, meeting PS 1, and data have not been altered.	Yes.
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Administrator will use all continuous opacity monitoring system, Method 9, and Method 22 results, as well as information about operation and maintenance to determine compliance.	Yes.

TABLE 10 TO SUBPART DDDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

Citation	Subject	Brief description	Explanation
§ 63.6(h)(9)	Adjusted Opacity Standard	Procedures for Administrator to adjust an opacity standard.	Yes.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category from requirement to comply with rule.	Yes.
§ 63.7(a)(1)	Performance Test Dates	Dates for Conducting Initial Performance Testing and Other Compliance Demonstrations.	Yes.
§ 63.7(a)(2)(i)	Performance Test Dates	New source with initial startup date before effective date has 180 days after effective date to demonstrate compliance.	Yes.
§ 63.7(a)(2)(ii)	Performance Test Dates	New source with initial startup date after effective date has 180 days after initial startup date to demonstrate compliance.	Yes.
§ 63.7(a)(2)(iii)	Performance Test Dates	i. Existing source subject to standard established pursuant to 112(d) has 180 days after compliance date to demonstrate compliance; and ii. Existing source with startup date after effective date has 180 days after startup to demonstrate compliance.	No. Yes.
§ 63.7(a)(2)(iv)	Performance Test Dates	Existing source subject to standard established pursuant to 112(f) has 180 days after compliance date to demonstrate compliance.	No.
§ 63.7(a)(2)(v)	Performance Test Dates	Existing source that applied for extension of compliance has 180 days after termination date of extension to demonstrate compliance.	Yes.
§ 63.7(a)(2)(vi)	Performance Test Dates	New source subject to standard established pursuant to 112(f) that commenced construction after proposal date of 112(d) standard but before proposal date of 112(f) standard, has 180 days after compliance date to demonstrate compliance.	No.
§ 63.7(a)(2)(vii–viii)	[Reserved].		
§ 63.7(a)(2)(ix)	Performance Test Dates	i. New source that commenced construction between proposal and promulgation dates, when promulgated standard is more stringent than proposed standard, has 180 days after effective date or 180 days after startup of source, whichever is later, to demonstrate compliance; and. ii. If source initially demonstrates compliance with less stringent proposed standard, it has 3 years and 180 days after the effective date of the standard or 180 days after startup of source, whichever is later, to demonstrate compliance with promulgated standard.	Yes. No.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA Section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.

TABLE 10 TO SUBPART DDDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

Citation	Subject	Brief description	Explanation
§ 63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: i. Test plan approval procedures; and ii. Performance audit requirements; and iii. Internal and External QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for test facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	i. Performance tests must be conducted under representative conditions; and ii. Cannot conduct performance tests during SSM; and iii. Not a deviation to exceed standard during SSM; and iv. Upon request of Administrator, make available records necessary to determine conditions of performance tests	No. Yes. Yes. Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	i. Must have three separate test runs; and ii. Compliance is based on arithmetic mean of three runs; and iii. Conditions when data from an additional test run can be used	Yes. Yes. Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis	i. Must include raw data in performance test report; and ii. Must submit performance test data 60 days after end of test with the Notification of Compliance Status; and iii. Keep data for 5 years	Yes. Yes. Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Subject to all monitoring requirements in standard	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares	Unless your rule says otherwise, the requirements for flares in § 63.11 apply.	No.
§ 63.8(b)(1)(i)–(ii)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(1)(iii)	Monitoring	Flares not subject to this section unless otherwise specified in relevant standard.	No.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	i. Specific requirements for installing monitoring systems; and ii. Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; and iii. If more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes. Yes. Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	i. Follow the SSM plan for routine repairs. Keep parts for routine repairs readily available.	Yes.

TABLE 10 TO SUBPART DDDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

Citation	Subject	Brief description	Explanation
		ii. Reporting requirements for SSM when action is described in SSM plan.	Yes.
§63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements SSM when action is not described in SSM plan.	Yes.
§63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	i. How Administrator determines if source complying with operation and maintenance requirements; and ii. Review of source O&M procedures, records, Manufacturer's instructions, recommendations, and inspection of monitoring system.	Yes. Yes.
§63.8(c)(2)–(3)	Monitoring System Installation	i. Must install to get representative emission and parameter measurements; and ii. Must verify operational status before or at performance test.	Yes. Yes.
§63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	Continuous monitoring systems must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	No.
§63.8(c)(4)(i)	Continuous Monitoring System (CMS) Requirements.	Continuous opacity monitoring system must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period.	Yes.
§63.8(c)(4)(ii)	Continuous Monitoring System (CMS) Requirements.	Continuous emissions monitoring system must have a minimum of one cycle of operation for each successive 15-minute period.	No.
§63.8(c)(7)–(8)	Continuous monitoring systems Requirements.	Out-of-control periods, including reporting	Yes.
§63.8(d)	Continuous monitoring systems Quality Control.	i. Requirements for continuous monitoring systems quality control, including calibration, etc.; and ii. Must keep quality control plan on record for the life of the affected source. Keep old versions for 5 years after revisions.	Yes. Yes.
§63.8(e)	Continuous monitoring systems Performance Evaluation.	Notification, performance evaluation test plan, reports	Yes.
§63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§63.8(f)(6)	Alternative to Relative Accuracy Test	Procedures for Administrator to approve alternative relative accuracy tests for continuous emissions monitoring system.	No.
§63.8(g)(1)–(4)	Data Reduction	i. Continuous opacity monitoring system 6-minute averages calculated over at least 36 evenly spaced data points; and ii. Continuous emissions monitoring system 1-hour averages computed over at least 4 equally spaced data points.	Yes. Yes.
§63.8(g)(5)	Data Reduction	Data that cannot be used in computing averages for continuous emissions monitoring system and continuous opacity monitoring system.	No.
§63.9(a)	Notification Requirements	Applicability and State Delegation	Yes.
§63.9(b)(1)–(5)	Initial Notifications	i. Submit notification 120 days after effective date; and ii. Notification of intent to construct/reconstruct; and iii. Notification of commencement of construct/reconstruct; Notification of startup; and iv. contents of each	Yes. Yes. Yes. Yes.

TABLE 10 TO SUBPART DDDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

Citation	Subject	Brief description	Explanation
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed BACT/LAER.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	Yes.
§ 63.9(g)	Additional Notifications When Using Continuous Monitoring Systems.	i. Notification of performance evaluation; and ii. Notification using continuous opacity monitoring system data; and iii. Notification that exceeded criterion for relative accuracy.	Yes. Yes. Yes.
§ 63.9(h)(1)–(6)	Notification of Compliance Status	i. Contents; and ii. Due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after. iii. When to submit to Federal vs. State authority	Yes. Yes. Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/Reporting	i. Applies to all, unless compliance extension; and ii. When to submit to Federal vx. State authority; and iii. Procedures for owners of more than 1 source	Yes. Yes. Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	i. General Requirements; and ii. Keep all records readily available; and iii. Keep for 5 years	Yes. Yes. Yes.
§ 63.10(b)(2)(i)–(v)	Records related to Startup, Shutdown, and Malfunction.	i. Occurrence of each of operation (process equipment); and ii. Occurrence of each malfunction of air pollution equipment; and iii. Maintenance on air pollution control equipment; and iv. Actions during startup, shutdown, and malfunction.	Yes. Yes. Yes. Yes.
§ 63.10(b)(2)(vi) and (x–xi)	Continuous monitoring systems Records.	i. Malfunctions, inoperative, out-of-control; and monitoring inoperative, out-of-systems control; and ii. Calibration checks; and iii. Adjustments, maintenance	Yes. Yes. Yes.
§ 63.10(b)(2)(vii)–(ix)	Records	i. Measurements to demonstrate compliance with emission limitations; and ii. Performance test, performance evaluation, and visible emission observation results; and iii. Measurements to determine conditions of performance tests and performance evaluations.	Yes. Yes. Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1)–(6), (9)–(15)	Records	Additional Records for continuous monitoring systems.	Yes.

TABLE 10 TO SUBPART DDDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

Citation	Subject	Brief description	Explanation
§63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for continuous monitoring systems.	No.
§63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes.
§63.10(d)(2)	Report of Performance Test Results	When to submit to Federal or State authority	Yes.
§63.10(d)(3)	Reporting Opacity or VE Observations	What to report and when	Yes.
§63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes.
§63.10(e)(1)–(2)	Additional continuous monitoring systems Reports.	i. Must report results for each CEM on a unit; and	Yes.
		ii. Written copy of performance evaluation; and	Yes.
		iii. Three copies of continuous opacity monitoring system performance evaluation.	Yes.
§63.10(e)(3)	Reports	Excess Emission Reports	No.
§63.10(e)(3)(i–iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	No.
§63.10(e)(3)(iv–v)	Excess Emissions Reports	i. Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedance (now defined as deviations); and	No.
		ii. Provisions to request semiannual reporting after compliance for one year; and	No.
		iii. Submit report by 30th day following end of quarter or calendar half; and	No.
		iv. If there has not been an exceedance or excess emission (now defined as deviations), report contents is a statement that there have been no deviations.	No.
§63.10(e)(3)(iv–v)	Excess Emissions Reports	Must submit report containing all of the information in §63.10(c)(5–13), §63.8(c)(7–8).	No.
§63.10(e)(3)(vi–viii)	Excess Emissions Report and Summary Report.	i. Requirements for reporting excess emissions for continuous monitoring systems (now called deviations)	No.
		ii. Requires all of the information in §63.10(c)(5–13), §63.8(c)(7–8).	No.
§63.10(e)(4)	Reporting continuous opacity monitoring system data.	Must submit continuous opacity monitoring system data with performance test data.	Yes.
§63.10(f)	Waiver for Recordkeeping/Reporting	Procedures for Administrator to waive	Yes.

TABLE 10 TO SUBPART DDDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

Citation	Subject	Brief description	Explanation
§63.11	Flares	Requirements for flares	No.
§63.12	Delegation	State authority to enforce standards	Yes.
§63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§63.15	Availability of Information	Public and confidential information	Yes.

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January 13, 2003

Part III

Department of Housing and Urban Development

24 CFR Parts 25 and 203

FHA Single Family Mortgage Insurance; Lender Accountability for Appraisals; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 25 and 203

[Docket No. FR–4722–P–01]

RIN 2502–AH78

FHA Single Family Mortgage Insurance; Lender Accountability for Appraisals

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule clarifies and strengthens HUD's regulations concerning the responsibilities of lenders approved by the Federal Housing Administration (FHA) in the selection of appraisers to perform appraisals on properties that will be the security for FHA insured mortgages. First, the proposed rule provides that lenders are to be held strictly accountable for the quality of appraisals on properties securing FHA insured mortgages. Further, the proposed rule specifically provides that lenders who submit appraisals to HUD that do not meet FHA requirements are subject to the imposition of sanctions by the HUD Mortgagee Review Board. The proposed rule would apply to both sponsor lenders, who underwrite loans, and loan correspondent lenders, who originate loans on behalf of their sponsors. HUD believes these proposed changes will help protect the FHA Insurance Fund, ensure better compliance with appraisal standards, and help to ensure that homebuyers receive an accurate statement of appraised value.

DATES: *Comments Due Date:* March 14, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the office of the Department's Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. FHA Appraisals

The success of the Federal Housing Administration (FHA) single family mortgage insurance program, and HUD's ability to protect the FHA Insurance Fund, begins with the quality of appraisals on properties that secure FHA mortgages. Section 203(b)(1) of the National Housing Act (12 U.S.C. 1709(b)(10)) provides the method for calculating the maximum mortgage amount that FHA can insure. The calculations required by the statute are based on the appraised value of the property that is security for the mortgage. If a mortgagor defaults and the lender [1] conveys property title to HUD in exchange for payment of mortgage insurance benefits, FHA then must manage and sell the property in order to recoup its insurance loss. If the appraisal was accurate, FHA's loss will be minimal. However, if the appraisal was inaccurate or the appraiser neglected to report readily observable defects, FHA's losses could be increased.

HUD has implemented several policies to help ensure the accuracy and completeness of appraisals on properties securing FHA insured mortgages. For example, HUD has established the FHA Appraiser Roster (Appraiser Roster), which lists those appraisers who are eligible to perform FHA single family appraisals. To be eligible for placement on the Appraiser Roster, an appraiser must be state licensed or certified and pass a test on FHA appraisal methods. Further, the appraiser must not be listed on the General Services Administration's Suspension and Debarment List, HUD's Limited Denial of Participation List, or HUD's Credit Alert Interactive Voice Response System. HUD maintains the Appraiser Roster to provide a means by which HUD can ensure the competency of appraisers performing FHA appraisals. Placement on the Appraiser Roster means that an appraiser is qualified to perform FHA appraisals; it does not mean that the appraiser is approved by FHA, nor does it provide a guarantee or warranty that the appraiser's work will meet FHA standards. The FHA Appraiser Roster regulations are located at 24 CFR part 200, subpart G.

The FHA single family mortgage insurance regulations at 24 CFR 203.5(e)(1) provide that "[a] mortgagee shall have the property appraised in accordance with such standards as the Secretary may prescribe." These standards are contained in HUD Handbook 4150.2, entitled "Valuation Analysis for Home Mortgage Insurance," which each appraiser receives upon applying to be placed on the FHA Appraiser Roster. All appraisers on the Appraiser Roster are required to read and comply with the handbook in performing appraisals of properties that will be security for FHA insured mortgage loans (*see* § 200.206 of the Appraiser Roster regulations). A copy of Handbook 4150.2 may be downloaded from HUD's Client Information and Policy System (HUDCLIPS) internet homepage at *http://www.hudclips.org.*

B. Lender Responsibilities Concerning FHA Appraisals

Almost all FHA insured mortgage loans are originated under the Direct Endorsement process. Under this process, a lender selects an appraiser from the Appraiser Roster. The appraiser appraises the property and then submits an appraisal report and accompanying documentation to the lender. The lender's Direct Endorsement underwriter (or, in the case of a loan correspondent, its sponsor's Direct Endorsement underwriter) reviews the appraisal documentation. Under § 203.255(b)(5), when a mortgage is submitted to FHA under the Direct Endorsement process, the application must contain, among other things, "[a]n underwriter certification, on a form prescribed by the Secretary, stating that the underwriter has personally reviewed the appraisal report ... and that the proposed mortgage complies with HUD underwriting requirements." Consequently, a lender is required, through its underwriter, to review the appraisal documentation to assure that the documentation meets the FHA requirements contained in HUD Handbook 4150.2 and amendatory issuances.

HUD's regulation at § 203.255(b) explicitly authorizes the Secretary to determine if there is any information indicating that any required certification (including the appraisal certification) "is false, misleading or constitutes fraud or misrepresentation on the part of any party, or that the mortgage fails to meet any statutory or regulatory requirement." Further, the Mortgagee Review Board regulations at 24 CFR 25.9 authorize the imposition of

[1] This proposed rule uses the terms "lender" and "mortgagee" interchangeably.

administrative sanctions against a lender who submits such a false certification in connection with any FHA insured mortgage transaction. The responsibilities of a lender in ensuring the quality of FHA appraisals are also emphasized in the guidance issued by HUD through Mortgagee Letters. For example, Mortgagee Letter 94–54, issued on November 7, 1994, provides that "mortgagees that select their own appraisers must accept responsibility, equally with the appraisers, for the integrity, accuracy, and thoroughness of the appraisals, and will be held accountable by HUD" (this guidance was reiterated by FHA Mortgagee Letter 97–45, issued on November 25, 1997). Further, Mortgagee Letter 97–22, issued on May 20, 1997, reminds lenders "that if the appraiser they selected provides a poor or even fraudulent appraisal which leads the Department to insure a mortgage at an inflated amount, the lender is held equally responsible with the appraiser for the violation." Copies of these Mortgagee Letters may be downloaded from HUD's Client Information and Policy System (HUDCLIPS) internet website at *http://www.hudclips.org*.

II. This Proposed Rule

A. Need for Proposed Rule

FHA has found that most appraisers perform appraisals in accordance with FHA standards. There are some instances, however, in which some lenders tacitly require appraisers to make the appraisal computations match the sales price to ensure that a home sale and mortgage loan closes for the appraiser to obtain additional business. Other instances have occurred, including recent episodes of predatory lending activity in several areas of the country, whereby lenders, realtors, investors, and others have participated in so-called property "flipping" schemes to inflate home prices and perpetuate sales that generate fees and charges to participants in the transaction. There are additional examples of fraudulent activity that could have been prevented if the underwriters had properly reviewed the appraisal reports.

This proposed rule would clarify and strengthen HUD's regulations concerning the responsibilities of lenders in assuring the quality of FHA appraisals. The proposed rule will ensure accountability of lenders for poor appraisals and thereby protect the FHA Insurance Fund, ensure better compliance with appraisal standards, and help to ensure that homebuyers receive an accurate statement of appraised value. The proposed changes would apply to both sponsor lenders, who underwrite loans, and loan correspondent lenders, who originate loans on behalf of their sponsors.

There are numerous tools that lenders may use to determine whether an appraisal satisfies FHA requirements. Reviewing appraisal documentation and performing quality assurance reviews are two such methods. New technology is available, such as Automated Valuation Model (AVM), which can be used to determine whether the value derived by an appraiser is within reason. A lender may wish to do business only with appraisers who carry errors and omissions (E&O) insurance. Such coverage may help in reducing possible schemes that result in fraud. There are numerous other steps that lenders can take to ensure that an appraisal package satisfies FHA requirements. The purpose of this proposed rule is not to mandate that lenders must follow a specific course of action to ensure compliance with FHA appraisal requirements. Each lender has the discretion to choose the means by which it will ensure such compliance. The purpose of the proposed rule is to require that a lender act to ensure appraisal quality and to emphasize that the lender will bear responsibility if an appraisal does not satisfy FHA requirements.

B. Proposed Changes to FHA Regulations

The proposed rule would make the following changes to the existing FHA regulations:

1. *Mortgagee Review Board (§ 25.9).* The proposed rule would clarify that a mortgagee is subject to administrative action by HUD's Mortgagee Review Board for submitting to HUD an appraisal that does not satisfy FHA appraisal requirements in connection with an insured mortgage transaction. Specifically, a new § 25.9(ee) would be added to explicitly include the obtaining and submitting of appraisals that do not satisfy FHA appraisal requirements among the list of actions subject to administrative sanction. As provided in § 25.3, which contains the definitions applicable to Mortgagee Review Board proceedings, the term "mortgagee" includes both underwriting and loan correspondent lenders.

2. *Lender accountability for appraisal (§ 203.5).* The proposed rule also would codify HUD's policy that lenders must ensure that the appraisals satisfy FHA appraisal requirements and are responsible, equally with appraisers, for the quality of appraisals on properties that secure FHA insured mortgage loans. The proposed rule would amend § 203.5, which describes the Direct Endorsement process, to specify that a lender must ensure that appraisals satisfy FHA requirements and is responsible for the quality of the appraisals. A Direct Endorsement mortgagee, and any of its loan correspondent lenders, that submit, or cause to be submitted, an appraisal or related documentation that does not satisfy FHA requirements may be sanctioned by the Mortgagee Review Board. The proposed rule would also amend § 203.5 to re-emphasize that a lender must select an appraiser listed on the FHA Appraiser Roster.

III. Issue Highlighted for Public Comment

While HUD invites public comment on all aspects of this proposed rule, it is particularly interested in comments regarding the possible consequences of the rule on the majority of FHA lenders and appraisers who comply with FHA standards. HUD believes that the proposed regulatory changes are necessary to ensure the accountability of lenders for poor appraisals and thereby protect the FHA Insurance Fund, ensure better compliance with appraisal standards, and help to ensure that homebuyers receive an accurate statement of appraised value. However, HUD recognizes that the proposed changes may also have unintended negative consequences on those lenders and appraisers who already comply with applicable FHA regulations and policies. Accordingly, HUD invites interested members of the public to submit their comments on such possible unintended impacts, as well as to offer suggestions on less burdensome methods to accomplish the stated goals of the proposed rule.

IV. Small Business Concerns Related to Mortgagee Review Board Actions Against Lenders

As discussed below in this preamble, HUD has determined that this rule will not have a significant economic impact on a substantial number of small entities. However, the proposed rule may nonetheless result in HUD's Mortgagee Review Board imposing an administrative sanction on a small lender or appraiser due to a submitted appraisal that is inconsistent with FHA requirements, or taking other appropriate enforcement action against a small lender or appraiser. With respect to such compliance efforts, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (referred to as "SBREFA") requires the

Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small businesses at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21,.1998 (63 FR 28214), HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

V. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Office of General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Environmental Impact

This proposed rule would not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c), this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*).

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would not establish, or substantively modify, HUD policy and procedures regarding lender accountability for FHA appraisals. Rather, the regulatory changes will clarify HUD's existing policy of holding lenders equally responsible with appraisers for the quality of such appraisals. Further, the proposed changes are designed to ensure the integrity of appraisals on properties securing FHA insured mortgages. To the extent that the regulatory amendments have an economic impact, it will be on those lenders and appraisers who submit appraisals that are inconsistent with FHA requirements. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers for the programs affected by this proposed rule are 14.117 and 14.133.

List of Subjects

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (government agencies).

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 25 and 203 to read as follows:

PART 25—MORTGAGEE REVIEW BOARD

1. The authority citation for 24 CFR part 25 continues to read as follows:

Authority: 12 U.S.C. 1708(c), 1708(d), 1709(s), 1715b and 1735(f)–14; 42 U.S.C. 3535(d).

2. Amend § 25.9 by redesignating paragraph (ee) as paragraph (ff) and adding a new paragraph (ee) to read as follows:

§ 25.9 Grounds for an administrative action.

* * * * *

(ee) Submitting, or causing to be submitted, with an application for FHA mortgage insurance an appraisal, valuation condition sheet, or any other documentation relating to an appraisal that does not satisfy FHA requirements.

* * * * *

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

4. Amend § 203.5 by adding a sentence at the end of paragraph (e)(1)

and adding a new paragraph (e)(3) to read as follows:

§ 203.5 Direct Endorsement process.

* * * * *

(e) * * *

(1) * * * A mortgagee must select an appraiser whose name is on the FHA Appraiser Roster, in accordance with 24 CFR part 200, subpart G.

* * * * *

(3) A mortgagee and an appraiser must ensure that an appraisal and related documentation satisfy FHA appraisal requirements and shall bear equal responsibility for the quality of the appraisal in satisfying such requirements. A Direct Endorsement Mortgagee (and any of its loan correspondent lenders) that submits, or causes to be submitted, an appraisal or related documentation that does not satisfy FHA requirements is subject to administrative sanction by the Mortgagee Review Board pursuant to § 25.9 of this title.

Dated: December 3, 2002.

Mel Martinez,

Secretary.

[FR Doc. 03–539 Filed 1–10–03; 8:45 am]

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Federal Register

Monday,
January 13, 2003

Part IV

Department of Housing and Urban Development

Redelegation of Authority to the Field Office Directors; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–01]

Regional Director—New England Region; Redelegation of Authority to the Field Office Director of the Hartford Field Office

AGENCY: Office of the Regional Director—New England Region, HUD.

ACTION: Notice of redelegation of authority to the Field Office Director of the Hartford Field Office.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authorities to HUD Regional Directors. *See*, 67 FR 13790 (March 26, 2002). That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA). Pursuant to that delegation, Regional Directors have been delegated specific authorities pertaining to cross-program coordination, personnel management, administrative management, resource management, and representation regarding matters under their respective jurisdictions. That delegation also permitted the Regional Directors to redelegate certain of those operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be in writing and identify the specific authorities redelegated. In addition, prior to publication, each redelegation should be reviewed by the Regional Counsel for that jurisdiction, and by the Headquarters Office of Field Policy and Management. In this redelegation of authority, the Regional Director—New England Region redelegates to the Field Office Director of the Hartford Field Office certain operational management authorities, as specified below.

EFFECTIVE DATE: October 21, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—New England Region redelegates to the Field Office Director of the Hartford Field Office authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office Level;
- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority of 67 FR 13790 (March 26, 2002), the Regional Director can trigger review by Headquarters through the Assistant Deputy for Field Management and Policy.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director;
- Approving short-term details across program area lines (up to thirty days). The Regional Director may authorize an additional thirty days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Serving as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing, and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*;
- Approving program travel requests; and
- Redistributing up to 20 percent of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters, and the Office of Public Affairs;
- Administering the local office's web page and internet resources; and,
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director of the Hartford Field Office may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002). Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 12, 2002.

Kevin J. Keogh,

Regional Director—New England Region, Department of Housing and and Urban Development.

[FR Doc. 03–541 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–02]

Regional Director—New England Region; Redelegation of Authority to the Field Office Director of the Bangor Field Office

AGENCY: Office of the Regional Director—New England Region, HUD.

ACTION: Notice of redelegation of authority to the Field Office Director of the Bangor Field Office.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authorities to HUD Regional Directors. *See,* 67 FR 13790 (March 26, 2002). That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA). Pursuant to that delegation, Regional Directors have been delegated specific authorities pertaining to cross-program coordination, personnel management, administrative management, resource management, and representation regarding matters under their respective jurisdictions. That delegation also permitted the Regional Directors to redelegate certain of those operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be in writing and identify the specific authorities redelegated. In addition, prior to publication, each redelegation should be reviewed by the Regional Counsel for that jurisdiction, and by the Headquarters Office of Field Policy and Management. In this redelegation of authority, the Regional Director—New England Region redelegates to the Field Office Director of the Bangor Field Office certain operational management authorities, as specified below.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov.*

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—New England Region redelegates to the Field Office Director of the Bangor Field Office authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office Level;
- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director;
- Approving short-term details across program area lines (up to thirty days). The Regional Director may authorize an additional thirty days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Serving as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*;
- Approving program travel requests; and
- Redistributing up to 20 percent of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters, and the Office of Public Affairs;
- Administering the local office's Web page and internet resources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director of the Bangor Field Office may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002). Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 12, 2002.

Kevin J. Keogh,

Regional Director—New England Region, Department of Housing and Urban Development.

[FR Doc. 03–542 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Regional Director—New England Region

[Docket No. FR–4806–D–03]

Regional Director—New England Region; Redelegation of Authority to the Field Office Director of the Manchester Field Office

AGENCY: Office of the Regional Director—New England Region, HUD.

ACTION: Notice of redelegation of authority to the Field Office Director of the Manchester Field Office.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authorities to HUD Regional Directors. *See,* 67 FR 13790 (March 26, 2002). That delegation

provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA). Pursuant to that delegation, Regional Directors have been delegated specific authorities pertaining to cross-program coordination, personnel management, administrative management, resource management, and representation regarding matters under their respective jurisdictions. That delegation also permitted the Regional Directors to redelegate certain of those operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be in writing and identify the specific authorities redelegated. In addition, prior to publication, each redelegation should be reviewed by the Regional Counsel for that jurisdiction, and by the Headquarters Office of Field Policy and Management. In this redelegation of authority, the Regional Director " New England Region redelegates to the Field Office Director of the Manchester Field Office certain operational management authorities, as specified below.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov.*

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—New England Region redelegates to the Field Office Director of the Manchester Field Office authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office Level;
- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director;
- Approving short-term details across program area lines (up to thirty days). The Regional Director may authorize an additional thirty days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Serving as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*;
- Approving program travel requests; and
- Redistributing up to 20% of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters, and the Office of Public Affairs;
- Administering the local office's Web page and internet resources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director of the Manchester Field Office may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002). Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 12, 2002.

Kevin J. Keogh,

Regional Director—New England Region, Department of Housing and Urban Development.

[FR Doc. 03–543 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–04]

Regional Director—New England Region; Redelegation of Authority to the Field Office Director of the Providence Field Office

AGENCY: Office of the Regional Director—New England Region, HUD.

ACTION: Notice of redelegation of authority to the Field Office Director of the Providence Field Office.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authorities to HUD Regional Directors. *See*, 67 FR 13790 (March 26, 2002). That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX);

Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA). Pursuant to that delegation, Regional Directors have been delegated specific authorities pertaining to cross-program coordination, personnel management, administrative management, resource management, and representation regarding matters under their respective jurisdictions. That delegation also permitted the Regional Directors to redelegate certain of those operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be in writing and identify the specific authorities redelegated. In addition, prior to publication, each redelegation should be reviewed by the Regional Counsel for that jurisdiction, and by the Headquarters Office of Field Policy and Management. In this redelegation of authority, the Regional Director—New England Region redelegates to the Field Office Director of the Providence Field Office certain operational management authorities, as specified below.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—New England Region redelegates to the Field Office Director of the Providence Field Office authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office Level;
- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director;
- Approving short-term details across program area lines (up to thirty days). The Regional Director may authorize an additional thirty days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Serving as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*;
- Approving program travel requests; and
- Redistributing up to 20 percent of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters, and the Office of Public Affairs;
- Administering the local office's Web page and internet resources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director of the Providence Field Office may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002). Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 12, 2002.

Kevin J. Keogh,

Regional Director—New England Region, Department of Housing and Urban Development.

[FR Doc. 03–544 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–05]

Regional Director—New England Region; Redelegation of Authority to the Field Office Director of the Burlington Field Office

AGENCY: Office of the Regional Director—New England Region, HUD.

ACTION: Notice of redelegation of authority to the Field Office Director of the Burlington Field Office.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authorities to HUD Regional Directors. *See*, 67 FR 13790 (March 26, 2002). That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA). Pursuant to that delegation, Regional Directors have been delegated specific authorities pertaining to cross-program coordination, personnel management, administrative management, resource management, and representation regarding matters under their respective jurisdictions. That delegation also permitted the Regional

Directors to redelegate certain of those operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be in writing and identify the specific authorities redelegated. In addition, prior to publication, each redelegation should be reviewed by the Regional Counsel for that jurisdiction, and by the Headquarters Office of Field Policy and Management. In this redelegation of authority, the Regional Director—New England Region redelegates to the Field Office Director of the Burlington Field Office certain operational management authorities, as specified below.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—New England Region redelegates to the Field Office Director of the Burlington Field Office authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office Level;
- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director;
- Approving short-term details across program area lines (up to thirty days). The Regional Director may authorize an additional thirty days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Serving as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*;
- Approving program travel requests; and
- Redistributing up to 20 percent of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters, and the Office of Public Affairs;
- Administering the local office's web page and internet resources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director of the Burlington Field Office may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002). Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 12, 2002.

Kevin J. Keogh,

Regional Director—New England Region, Department of Housing and Urban Development.

[FR Doc. 03–545 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–06]

Redelegation of Authority to Field Office Director Buffalo Field Office

AGENCY: Office of the Regional Director—Region II, HUD.

ACTION: Notice of redelegation of authority to Field Office Director—Buffalo, NY Field Office.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authority to HUD Regional Directors. *See*, 67 FR 13790 (March 26, 2002.) That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA.) Under that delegation, Regional Directors were delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters within their respective region. That delegation also permitted the Regional Directors to redelegate certain operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be *in writing* and identify the *specific authorities* redelegated. Redelegations of authority should be reviewed by the appropriate Regional Counsel for that jurisdiction, and the Office of Field Policy and Management, Headquarters, *prior* to signature and publication. In this redelegation of authority, the Regional Director—Region II redelegates certain operational

management authorities, as specified below to the Field Office Director—Buffalo Field Office.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—Region II redelegates to the Field Office Director—Buffalo Field Office authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office level;
- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger a review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director—Buffalo, Field Office;
- Approving short-term details across program area lines (not to exceed thirty days). Regional Directors may authorize an additional 30 days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Acting as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing, and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*;
- Approving program travel requests; and
- Redistributing up to 20 percent of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation.

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters and the Office of Public Affairs;
- Administering the local office's Web page and internet sources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director—Buffalo, Field Office may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002.) section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 2002.

Marisel Morales,

Regional Director—Region II, Department of Housing and Urban Development.

[FR Doc. 03–546 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–07]

Redelegation of Authority to Field Office Director Albany Field Office

AGENCY: Office of the Regional Director—Region II, HUD.

ACTION: Notice of redelegation of authority to Field Office Director—Albany, NY Field Office.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authority to HUD Regional Directors: *See*, 67 FR 13790 (March 26, 2002.) That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA.) Under that delegation, Regional Directors were delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters within their respective region. That delegation also permitted the Regional Directors to redelegate certain operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be *in writing* and identify the *specific authorities* redelegated. Redelegations of authority should be reviewed by the appropriate Regional Counsel for that jurisdiction, and the Office of Field Policy and Management, Headquarters, *prior to* signature and publication. In this redelegation of authority, the Regional Director—Region II redelegates certain operational management authorities, as specified below to the Field Office Director—Albany Field Office.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments

or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—Region II redelegates to the Field Office Director—Albany Field Office authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office level;
- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger a review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director " Albany, Field Office;
- Approving short-term details across program area lines (not to exceed thirty days). Regional Directors may authorize an additional 30 days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Acting as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing, and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*;
- Approving program travel requests; and
- Redistributing up to 20 percent of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters and the Office of Public Affairs;
- Administering the local office's Web page and internet sources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director—Albany, Field Office may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002.) Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 2002.

Marisel Morales,

Regional Director—Region II, Department of Housing and Urban Development.

[FR Doc. 03–547 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–08]

Redelegation of Authority to Field Office Director; Newark Field Office

AGENCY: Office of the Regional Director " Region II, HUD.

ACTION: Notice of redelegation of authority to Field Office Director—Newark, NJ Field Office.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authority to HUD Regional Directors. *See*, 67 FR 13790 (March 26, 2002.) That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA.) Under that delegation, Regional Directors were delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters within their respective region. That delegation also permitted the Regional Directors to redelegate certain operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be *in writing* and identify the *specific authorities* redelegated. Redelegations of authority should be reviewed by the appropriate Regional Counsel for that jurisdiction, and the Office of Field Policy and Management, Headquarters, *prior to* signature and publication. In this redelegation of authority, the Regional Director—Region II redelegates certain operational management authorities, as specified below to the Field Office Director—Newark Field Office.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—Region II redelegates to the Field Office Director—Newark Field Office authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

• Developing and implementing Management Plans at the Field Office level;

• Coordinating cross-program projects and Field Office Quality Management Reviews;

• Preparing briefing papers and hot issues documents;

• Leading disaster relief efforts; and

• Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger a review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

• Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director—Newark, Field Office;

• Approving short-term details across program area lines (not to exceed thirty days). Regional Directors may authorize an additional 30 days;

• Approving leave requests for managers and supervisors;

• Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;

• Acting as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and

• Managing and conducting labor/management relations.

3. Administrative Management

• Determining official office hours, opening, emergency closing, and emergency procedures.

4. Resource Management

• Managing the administrative budget, *e.g.*, training, equipment, *etc.*;

• Approving program travel requests; and

• Redistributing up to 20 percent of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

• Developing and maintaining the lead point of contact with local officials, at the Field Office level;

• Maintaining the role as principal point of contact with industry groups, at the Field Office level;

• Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;

• Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters and the Office of Public Affairs;

• Administering the local office's Web page and internet sources; and

• Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director—Newark, Field Office may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002.) Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 2002.

Marisel Morales,

Regional Director—Region II, Department of Housing and Urban Development.

[FR Doc. 03–548 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–09]

Redelegation of Authority to Field Office Director; Camden Field Office

AGENCY: Office of the Regional Director—Region II, HUD.

ACTION: Notice of redelegation of authority to Field Office Director—Camden, NJ Field Office.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authority to HUD Regional Directors. *See*, 67 FR 13790 (March 26, 2002.) That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA.) Under that delegation, Regional Directors were delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters within their respective region. That delegation also permitted the Regional Directors to redelegate certain operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be *in writing* and identify the *specific authorities* redelegated. Redelegations of authority should be reviewed by the appropriate Regional Counsel for that jurisdiction, and the Office of Field Policy and Management, Headquarters, *prior to* signature and publication. In this redelegation of authority, the Regional Director—Region II redelegates certain operational management authorities, as specified below to the Field Office Director—Camden Field Office.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—Region II redelegates to the Field Office Director—Camden Field Office authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

• Developing and implementing Management Plans at the Field Office level;

• Coordinating cross-program projects and Field Office Quality Management Reviews;

• Preparing briefing papers and hot issues documents;

• Leading disaster relief efforts; and

• Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional

Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger a review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director—Camden, Field Office;
- Approving short-term details across program area lines (not to exceed thirty days). Regional Directors may authorize an additional 30 days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Acting as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official officè hours, opening, emergency closing, and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*;
- Approving program travel requests; and
- Redistributing up to 20% of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters and the Office of Public Affairs;
- Administering the local office's Web page and internet sources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director—Camden, Field Office may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002.) section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 2002.

Marisel Morales,

Regional Director—Region II, Department of Housing and Urban Development.

[FR Doc. 03–549 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–10]

Redelegation of Authority to Field Office Director—Richmond, VA; Baltimore, MD; Charleston, WV; Pittsburgh, PA; Washington, DC; and Wilmington, DE

AGENCY: Office of the Regional Director—Region III (Philadelphia, PA), HUD.

ACTION: Notice of redelegation of authority to Field Office Director—Richmond, VA; Baltimore, MD; Charleston, WV; Pittsburgh, PA; Washington, DC; and Wilmington, DE.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authority to HUD Regional Directors. *See*, 67 FR 13790 (March 26, 2002). That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA). Under that delegation, Regional Directors were delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters within their respective region. That delegation also permitted the Regional Directors to redelegate certain operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be in writing and identify the specific authorities redelegated. Redelegations of authority should be reviewed by the appropriate Regional Counsel for that jurisdiction, and the Office of Field Policy and Management, Headquarters, prior to signature and publication. In this redelegation of authority, the Regional Director—Region III (Philadelphia, PA) redelegates certain operational management authorities, as specified below to the Field Office Directors—Richmond, VA; Baltimore, MD; Charleston, WV; Pittsburgh, PA; Washington, DC; and Wilmington, DE.

EFFECTIVE DATE: October 18, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—Region III (Philadelphia, PA) redelegates to the Field Office Directors—Richmond, VA; Baltimore, MD; Charleston, WV; Pittsburgh, PA; Washington, DC; and Wilmington, DE authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

a. Developing and implementing Management Plans at the Field Office level;

b. Coordinating cross-program projects and Field Office Quality Management Reviews;

c. Preparing briefing papers and hot issues documents;

d. Leading disaster relief efforts; and

e. Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger a review by Headquarters through the

Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

a. Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Directors;

b. Approving short-term details across program area lines not to exceed thirty days. Regional Directors may authorize an additional 30 days;

c. Approving leave requests for managers and supervisors;

d. Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;

e. Acting as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and

f. Managing and conducting labor-management relations

3. Administrative Management

a. Determining official office hours, opening, emergency closing and emergency procedures.

4. Resource Management

a. Managing the administrative budget, *e.g.*, training, equipment, *etc.*;

b. Approving program travel requests; and

c. Redistributing up to 20% of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

a. Developing and maintaining the lead point of contact with local officials, at the Field Office level;

b. Maintaining the role as principal point of contact with industry groups, at the Field Office level;

c. Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;

d. Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters, and the Office of Public Affairs.

e. Administering the local office's Web page and internet sources; and

f. Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director—Richmond, VA; Baltimore, MD; Charleston, WV; Pittsburgh, PA; Washington, DC; and Wilmington, DE may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002.) section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 18, 2002.

Milton R. Pratt, Jr.,

Regional Director, Region III.

[FR Doc. 03–550 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–11]

Redelegation of Authority to Field Office Director—Birmingham, AL; Columbia, SC; Greensboro, NC; Jackson, MS; Jacksonville, FL; Knoxville, TN; Louisville, KY; Memphis, TN; Miami, FL; Nashville, TN; Orlando, FL; San Juan, PR; and Tampa, FL

AGENCY: Office of the Regional Director—Region IV (Atlanta, GA), HUD.

ACTION: Notice of redelegation of authority to Field Office Directors—Birmingham, Alabama; Columbia, South Carolina; Greensboro, North Carolina; Jackson, Mississippi; Jacksonville, Florida; Knoxville, Tennessee; Louisville, Kentucky; Memphis, Tennessee; Miami, Florida; Nashville, Tennessee; Orlando Florida; San Juan, Puerto Rico; and Tampa, Florida.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authority to HUD Regional Directors. *See*, 67 FR 13790 (March 26, 2002.) That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA.) Under that delegation, Regional Directors were delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters within their respective region. That delegation also permitted the Regional Directors to redelegate certain operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be *in writing* and identify the *specific authorities* redelegated. Redelegations of authority should be reviewed by the appropriate Regional Counsel for that jurisdiction, and the Office of Field Policy and Management, Headquarters, *prior to* signature and publication. In this redelegation of authority, the Regional Director—Region IV (Atlanta, GA) redelegates certain operational management authorities, as specified below, to the Field Office Directors—Birmingham, Alabama; Columbia, South Carolina; Greensboro, North Carolina; Jackson, Mississippi; Jacksonville, Florida; Knoxville, Tennessee; Louisville, Kentucky; Memphis, Tennessee; Miami, Florida; Nashville, Tennessee; Orlando Florida; San Juan, Puerto Rico; and Tampa, Florida.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—Region IV (Atlanta, GA) redelegates to the Field Office Directors—Birmingham, Alabama; Columbia, South Carolina; Greensboro, North Carolina; Jackson, Mississippi; Jacksonville, Florida; Knoxville, Tennessee; Louisville, Kentucky; Memphis, Tennessee; Miami, Florida; Nashville, Tennessee; Orlando, Florida; San Juan, Puerto Rico; and Tampa, Florida; authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office level;

- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger a review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director;
- Approving short-term details across program area lines (not to exceed thirty days). Regional Directors may authorize an additional 30 days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Acting as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*;
- Approving program travel requests; and
- Redistributing up to 20 percent of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters and the Office of Public Affairs;
- Administering the local office's Web page and internet sources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director—Birmingham, Alabama; Columbia, South Carolina; Greensboro, North Carolina; Jackson, Mississippi; Jacksonville, Florida; Knoxville, Tennessee; Louisville, Kentucky; Memphis, Tennessee; Miami, Florida; Nashville, Tennessee; Orlando, Florida; San Juan, Puerto Rico; and Tampa, Florida; may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002.) section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: October 11, 2002.

Brian E. Noyes,

Regional Director, Region IV (Atlanta, GA), Department of Housing and Urban Development.

[FR Doc. 03–551 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–12]

Redelegation of Authority to Field Office Director—Minneapolis, MN; Milwaukee, WI; Indianapolis, IN; Grand Rapids, MI; Flint, MI; Detroit, MI; Cincinnati, OH; Cleveland, OH; Columbus, OH; Springfield, IL

AGENCY: Office of the Regional Director—Region V (Chicago, IL), HUD.

ACTION: Notice of redelegation of authority to Field Office Directors—Minneapolis, MN; Milwaukee, WI; Indianapolis, IN; Grand Rapids, MI; Flint, MI; Detroit, MI; Cincinnati, OH; Cleveland, OH; Columbus, OH; and Springfield, IL.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authority to HUD Regional Directors. *See*, 67 FR 13790 (March 26, 2002.) That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA.). Under that delegation, Regional Directors were delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters within their respective region. That delegation also permitted the Regional Directors to redelegate certain operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be *in writing* and identify the *specific authorities* redelegated. Redelegations of authority should be reviewed by the appropriate Regional Counsel for that jurisdiction, and the Office of Field Policy and Management, Headquarters, *prior to* signature and publication. In this redelegation of authority, the Regional Director—Region V (Chicago, IL) redelegates certain operational management authorities, as specified below to the Field Office Directors—Minneapolis, MN; Milwaukee, WI; Indianapolis, IN; Grand Rapids, MI; Flint, MI; Detroit, MI; Cincinnati, OH; Cleveland, OH; Columbus, OH; and Springfield, IL.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—Region V (Chicago, IL) redelegates to the Field Office Directors—Minneapolis, MN; Milwaukee, WI; Indianapolis, IN; Grand Rapids, MI; Flint, MI; Detroit, MI;

Cincinnati, OH; Cleveland, OH; Columbus, OH; and Springfield, IL; authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office level;
- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger a review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director;
- Approving short-term details across program area lines (not to exceed thirty days). Regional Directors may authorize an additional 30 days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Acting as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*;
- Approving program travel requests; and
- Redistributing up to 20% of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters and the Office of Public Affairs;
- Administering the local office's Web page and internet sources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director—Minneapolis, MN; Milwaukee, WI; Indianapolis, IN; Grand Rapids, MI; Flint, MI; Detroit, MI; Cincinnati, OH; Cleveland, OH; Columbus, OH; and Springfield, IL; may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002.) section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 2002.

Joseph P. Galvan,

Regional Director, Region V—Chicago, Department of Housing and Urban Development.

[FR Doc. 03–552 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–13]

Redelegation of Authority to Field Office Director—Albuquerque, NM; Dallas, TX; Houston, TX; Lubbock, TX; San Antonio, TX; Little Rock, AR; New Orleans, LA; Shreveport, LA; Oklahoma City, OK; and Tulsa, OK

AGENCY: Office of the Regional Director—Region VI, HUD.

ACTION: Notice of redelegation of authority to field office directors—Albuquerque, NM; Dallas, TX; Houston, TX; Lubbock, TX; San Antonio, TX; Little Rock, AR; New Orleans, LA; Shreveport, LA; Oklahoma City, OK; and Tulsa, OK.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authority to HUD Regional Directors. *See*, 67 FR 13790 (March 26, 2002.) That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA.) Under that delegation, Regional Directors were delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters within their respective region. That delegation also permitted the Regional Directors to redelegate certain operational management authorities to Field Office Directors under their respective jurisdictions. In this redelegation of authority, the Regional Director—Region VI redelegates certain operational management authorities, as specified below to the Field Office Directors—Albuquerque, NM; Dallas, TX; Houston, TX; Lubbock, TX; San Antonio, TX; Little Rock, AR; New Orleans, LA; Shreveport, LA; Oklahoma City, OK; and Tulsa, OK.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (this is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—Region VI redelegates to the Field Office Directors—Albuquerque, NM; Dallas, TX; Houston, TX; Lubbock, TX; San Antonio, TX; Little Rock, AR; New Orleans, LA; Shreveport, LA; Oklahoma City, OK; and Tulsa, OK, authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office level;
- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger a review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Directors—Albuquerque, NM; Dallas, TX; Houston, TX; Lubbock, TX; San Antonio, TX; Little Rock, AR; New Orleans, LA; Shreveport, LA; Oklahoma City, OK; and Tulsa, OK;
- Approving short-term details across program area lines (not to exceed thirty days). Regional Directors may authorize an additional 30 days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Acting as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing, and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*; and
- Approving program travel requests; and
- Redistributing up to 20 percent of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters, and the Office of Public Affairs;
- Administering the local office's Web page and internet sources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director—Albuquerque, NM; Dallas, TX; Houston, TX; Lubbock, TX; San Antonio, TX; Little Rock, AR; New Orleans, LA; Shreveport, LA; Oklahoma City, OK; and Tulsa, OK, may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002.) Section (d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 2002.

A. Cynthia Leon,

Regional Director—Region VI, Department of Housing and Urban Development.

[FR Doc. 03–553 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–14]

Redelegation of Authority to Field Office Director—Region VII Field Offices of Omaha, NE, Des Moines, IA and St. Louis, MO

AGENCY: Office of the Regional Director—Region VII, (Kansas City), HUD.

ACTION: Notice of redelegation of authority to Field Office Directors in the field offices of Omaha, NE, Des Moines, IA and St Louis, MO.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authority to HUD Regional Directors. 67 FR 13790 (March 26, 2002). That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA.) Under that delegation, Regional Directors were delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters within their respective regions. That delegation also permitted the Regional Directors to redelegate certain operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be in writing and identify the specific authorities redelegated. Redelegations of authority should be reviewed by the appropriate Regional Counsel for that jurisdiction, and the Office of Field Policy and Management, Headquarters, prior to signature and publication. In this redelegation of authority, the Regional Director—Region VII redelegates certain operational management authorities, as specified below to the Field Office Director in the field offices of Omaha, NE, Des Moines, IA and St Louis, MO.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—Region VII redelegates to the Field Office Director in the field offices of Omaha, NE, Des Moines, IA and St Louis, MO authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office level;
- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger a review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director;
- Approving short-term details across program area lines (not to exceed thirty days). Regional Directors may authorize an additional 30 days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Acting as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*;
- Approving program travel requests.
- Redistributing up to 20 percent of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters and the Office of Public Affairs;
- Administering the local office's Web page and internet sources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director in Omaha, NE, Des Moines, IA and St Louis, MO; may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002s) section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 2002.

Macie L. Houston,

Regional Director, Region VII (Kansas City).

[FR Doc. 03–554 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–15]

Redelegation of Authority to Field Office Director—Casper, WY; Fargo, ND; Helena, MT; Salt Lake City, UT; Sioux Falls, SD

AGENCY: Office of the Regional Director—Region VIII (Denver, CO), HUD.

ACTION: Notice of redelegation of authority to Field Office Directors—Casper, Wyoming; Fargo, North Dakota; Helena, Montana; Salt Lake City, Utah; Sioux Falls, South Dakota

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authority to HUD Regional Directors. *See*, 67 FR 13790 (March 26, 2002.) That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA.). Under that delegation, Regional Directors were delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters within their respective region. That delegation also permitted the Regional Directors to redelegate certain operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be in writing and identify the specific authorities redelegated. Redelegations of authority should be reviewed by the appropriate Regional Counsel for that jurisdiction, and the Office of Field Policy and Management, Headquarters, prior to signature and publication. In this redelegation of authority, the Regional Director—Region VIII (Denver, CO) redelegates certain operational management authorities, as specified below to the Field Office Directors—Casper, Wyoming; Fargo, North Dakota; Helena, Montana; Salt Lake City, Utah; Sioux Falls, South Dakota.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov*.

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—Region VIII (Denver, CO) redelegates to the Field Office Directors—Casper, Wyoming; Fargo, North Dakota; Helena, Montana; Salt Lake City, Utah, and Sioux Falls, South Dakota; authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office level;

- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger a review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

- Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Director;
- Approving short-term details across program area lines (not to exceed thirty days). Regional Directors may authorize an additional 30 days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Acting as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing and emergency procedures.

4. Resource Management

- Managing the administrative budget, *e.g.*, training, equipment, *etc.*;
- Approving program travel requests; and
- Redistributing up to 20% of travel funds among program areas in coordination with the Regional Director and the Assistant Deputy Secretary for Field Policy and Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters and the Office of Public Affairs;
- Administering the local office's Web page and internet sources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director—Casper, Wyoming; Fargo, North Dakota; Helena, Montana; Salt Lake City, Utah; and Sioux Falls, South Dakota; may not further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002.) section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 2002.

John K. Carson,

Regional Director, Region VIII—Denver, Department of Housing and Urban Development.

[FR Doc. 03–555 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–16]

Redelegation of Authority to Field Office Directors—Region IX (San Francisco)

AGENCY: Office of the Regional Director—San Francisco, HUD.

ACTION: Notice of redelegation of authority to Field Office Director—Region IX, in the Field Offices of Fresno, CA; Honolulu, HI; Los Angeles, CA; San Diego, CA; Santa Ana, CA; Las Vegas, NV; Reno, NV; Phoenix, AZ; Tucson, AZ; and Sacramento, CA

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authority to HUD Regional Directors. See, 67 FR 13790 (March 26, 2002). That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA). Under that delegation, Regional Directors were delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters within their respective region. That delegation also permitted the Regional Directors to redelegate certain operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be *in writing* and identify the *specific authorities* redelegated. Redelegations of authority should be reviewed by the appropriate Regional Counsel for that jurisdiction, and the Office of Field Policy and Management, Headquarters, *prior to* signature and publication. In this redelegation of authority, the Regional Director—San Francisco redelegates certain operational management authorities, as specified below to the Field Office Directors—Region IX (San Francisco).

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov.*

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—San Francisco redelegates to the Field Office Director in the field offices of Fresno, CA; Honolulu, HI; Los Angeles, CA; San Diego, CA; Santa Ana, CA; Reno, NV; Phoenix, AZ; Las Vegas, NV; Tucson, AZ; and Sacramento, CA, authority as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

- Developing and implementing Management Plans at the Field Office level;
- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;

• Leading disaster relief efforts; and

• Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger a review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

• Providing input on the performance ratings of managers and supervisors within the jurisdiction of the Field Office Directors—Region IX (San Francisco;

• Approving short-term details across program area lines (not to exceed thirty days). Regional Directors may authorize an additional 30 days;

• Approving leave requests for managers and supervisors;

• Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;

• Acting as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and

• Managing and conducting labor/management relations.

3. Administrative Management

• Determining official office hours, opening, emergency closing and emergency procedures.

4. Resource Management

• Managing the administrative budget, *e.g.*, training, equipment, *etc.*;

• Approving program travel requests;

• Redistributing up to 20% of travel funds among program areas.

5. Representation.

• Developing and maintaining the lead point of contact with local officials, at the Field Office level;

• Maintaining the role as principal point of contact with industry groups, at the Field Office level;

• Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;

• Responding to all media inquiries, at the Field Office level, as designated by the Regional Director on a case-by-case basis, in conjunction with the Regional Director, Headquarters and the Office of Public Affairs;

• Administering the local office's Web page and Internet sources; and

• Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Directors, Region IX (San Francisco), may not further redelegate the specific operational management authorities redelegated within this document. This document supersedes any prior redelegations to managers and supervisors in the field.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002.) Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 2002.

Lily A. Lee,

Acting Regional Director—Region IX (San Francisco), Department of Housing and Urban Development.

[FR Doc. 03–556 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4806–D–17]

Redelegation of Authority to Field Office Directors—Anchorage, Portland, Boise, and Spokane

AGENCY: Office of the Regional Director—Region X, HUD.

ACTION: Notice of redelegation of authority to Field Office Directors—Anchorage Alaska, Portland Oregon, Boise Idaho, and Spokane Washington.

SUMMARY: The Deputy Secretary of HUD, through the Assistant Deputy Secretary for Field Policy and Management, has delegated certain operational management authority to HUD Regional Directors. See, 67 FR 13790 (March 26, 2002.) That delegation provided Regional Directors with the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA) and Region X (Seattle, WA.) Under that delegation, Regional Directors were delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters within their respective region. That delegation also permitted the Regional Directors to redelegate certain operational management authorities to Field Office Directors under their respective jurisdictions. All such redelegations must be *in writing* and identify the *specific authorities* redelegated. Redelegations of authority should be reviewed by the appropriate Regional Counsel for that jurisdiction, and the Office of Field Policy and Management, Headquarters, *prior* to signature and publication. In this redelegation of authority, the Regional Director—Region X, redelegates certain operational management authorities, as specified below to the Field Office Directors in Anchorage Alaska, Portland Oregon, Boise Idaho, and Spokane Washington.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1123 (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Comments or questions can be submitted through the Internet to *Bob_Etchison@hud.gov.*

SUPPLEMENTARY INFORMATION: This redelegation of authority is designed to improve efficiency, effectiveness, and accountability of management operations. It is designed to help provide a managerial framework that promotes customer service and encourages coordination among and within the field offices.

Accordingly, the Regional Director—Region X redelegates to the Field Office Directors in Anchorage, Portland, Boise, and Spokane authority within his or her respective jurisdiction as follows:

Section A. Authority Redelegated

1. Cross-Program Coordination

• Developing and implementing Management Plans at the Field Office level;

• Coordinating cross-program projects and Field Office Quality Management Reviews;

• Preparing briefing papers and hot issues documents;

• Leading disaster relief efforts; and

• Consulting with program directors on major program decisions. Where there is a disagreement, the Field Office Director shall consult with the Regional Director. Consistent with the Delegation of Authority at 67 FR 13790 (March 26, 2002), the Regional Director can trigger a review by Headquarters through the Assistant Deputy Secretary for Field Policy and Management.

2. Personnel Management

• Providing input on the performance ratings of managers and supervisors

within the jurisdiction of the Field Office Directors;

- Approving short-term details across program area lines (not to exceed thirty days). Regional Directors may authorize an additional 30 days;
- Approving leave requests for managers and supervisors;
- Participating in the hiring process for managers and supervisors within the jurisdiction of the Field Office Director;
- Acting as supervisor, or when necessary, assigning a supervisor, to outstationed staff; and
- Managing and conducting labor/management relations.

3. Administrative Management

- Determining official office hours, opening, emergency closing and emergency procedures.

4. Managing the Administrative Budget, e.g., Training, Equipment, etc.

- Resource Management.;
- Approving program travel requests; and
- Redistribute up to 20% of travel funds among program areas in coordination with the Regional Director and Assistant Deputy Secretary for Field Policy and Management.

5. Representation

- Developing and maintaining the lead point of contact with local officials, at the Field Office level;
- Maintaining the role as principal point of contact with industry groups, at the Field Office level;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications, at the Field Office level;
- Responding on a case-by-case basis, to media inquiries, at the Field Office level, in conjunction with the Regional Director, Headquarters, and the Office of Public Affairs;
- Administering the local office's Web page and internet sources; and
- Monitoring and evaluating customer service at the Field Office level.

Section B. No Authority To Further Redelegate

The Field Office Director *may not* further redelegate the specific operational management authorities redelegated within this document. All previous delegated or redelegated authority to field office managers and supervisors inconsistent with this Redelegation of Authority is hereby revoked.

Authority: Delegation of Authority to Regional Directors, 67 FR 13790 (March 26, 2002.) Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 2002.

John W. Meyers,

Regional Director—Region X, Department of Housing and Urban Development.

[FR Doc. 03–557 Filed 1–10–03; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Monday,
January 13, 2003

Part V

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Naval Base Ventura County, Point Mugu and Port Hueneme, California; Proposed Rules

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Naval Base Ventura County, Point Mugu, CA

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to amend its regulations to establish a restricted area in waters adjacent to Naval Base Ventura County, Point Mugu, California. This amendment would prohibit vessels from entering a six-mile-long by one-quarter-mile-wide section of the Pacific Ocean along the shoreline between the up-coast limit and the down-coast limit of Point Mugu without first obtaining permission from the Commanding Officer of Naval Base Ventura County. This amendment is necessary to safeguard U.S. Navy vessels and United States Government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature.

DATES: Written comments must be submitted on or before February 12, 2003.

ADDRESSES: Send comments to U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Mark D. Cohen, Corps of Engineers, Los Angeles District, Regulatory Branch, at (213) 452–3413.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbor Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is proposing to amend the restricted area regulations in 33 CFR part 334 by establishing a restricted area at 334.1126. The proposed restricted area would permanently establish formal advanced notification procedures for all vessels seeking to enter a six-mile-long by one-quarter-mile-wide section of the Pacific Ocean along the shoreline between the up-coast limit and the down-coast limit of Point Mugu.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of executive order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small business and small governments). The Corps of Engineers expects that the economic impact of this modified restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal would have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

The Los Angeles District is in the process of preparing an Environmental Assessment (EA) for this action. Although not expected at this time, based on the minor nature of the proposed additional restricted area regulations, an Environmental Impact Statement (EIS) would be prepared if determined appropriate. When the NEPA documentation is completed, it will be available for review at the Los Angeles District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** paragraph, above.

d. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small Governments would not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.1126 is added to read as follows:

§ 334.1126 Naval Base Ventura County, Point Mugu, California; restricted area.

(a) *The area.* The restricted area at Naval Base Ventura County Point Mugu incorporates its shoreline and connects the following points: latitude 34°7′9.9″, longitude 119°9′35.6″ (up-coast shoreline point); latitude 34°7′0.0″, longitude 119°9′46.7″; latitude 34°6′44.9″, longitude 119°9′22.5″; latitude 34°6′30.2″, longitude 119°8′59.0″; latitude 34°6′20.5″, longitude 119°8′46.7″; latitude 34°6′8.4″, longitude 119°8′25.2″; latitude 34°5′53.7′; longitude 119°7′59.5″; latitude 34°5′45.9″, longitude 119°7′41.5″; latitude 34°5′40.1″, longitude 119°7′21.0″; latitude 34°5′33.6″, longitude 119°6′58.1″; latitude 34°5′31.2″, longitude 119°6′37.9″; latitude 34°5′31.0″, longitude 119°6′22.2″; latitude 34°5′32.9″, longitude 119°6′14.4″; latitude 34°5′44.7″, longitude 119°5′54.0″; latitude 34°5′45.2″, longitude 119°5′43.5″; latitude 34°5′41.0″, longitude 119°5′21.2″; latitude 34°5′42.2″, longitude 119°5′13.3″; latitude 34°5′27.8″, longitude 119°4′49.5″; latitude 34°5′17.9″, longitude 119°4′27.9″; latitude 34°5′5.7″, longitude 119°3′59.90″; latitude 34°5′17.9″, longitude 119°3′55.4″ (down-coast shoreline point).

(b) *The regulation.* No vessels may enter the restricted area unless permission is obtained in advance from the Commanding Officer of Naval Base Ventura County.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding Officer of the U.S. Naval Base Ventura County, and such agencies or persons as he/she may designate.

Dated: December 31, 2002.

Lawrence A. Lang,

Acting Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 03–561 Filed 1–10–03; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Naval Base Ventura County, Port Hueneme, CA

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of Proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to amend its regulations to establish a new restricted area in waters adjacent to Naval Base Ventura County, Port Hueneme, California. This amendment would prohibit vessels and persons from entering Port Hueneme Harbor, from the seaward ends of the two entrance jetties to the shoreline, without first obtaining permission from the Captain of the Port or the Commanding Officer of Naval Base Ventura County. This amendment is necessary to safeguard U.S. Navy vessels and United States Government facilities from sabotage and other subversive acts, accidents, or incidents of a similar nature.

DATES: Written comments must be submitted on or before February 12, 2003.

ADDRESSES: Send comments to U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Mark D. Cohen, Corps of Engineers, Los Angeles District, Regulatory Branch, at (213) 452–3413.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the River and Harbor Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps of Engineers is proposing to amend the restricted area regulations in 33 CFR part 334 by adding a restricted area at 334.1127. More informal advanced notification procedures similar to those proposed have been in place. In addition, pursuant to federal regulations at 33 CFR 165, the U.S. Coast Guard has extended until June 15, 2003, a temporary security zone that imposes advanced notification requirements for all vessels entering Port Hueneme Harbor. The U.S. Coast Guard extended the effective period of the temporary security zone to continue protecting U.S. Navy vessels and facilities at Port Hueneme from vessel-borne threats until a permanent restricted area is established. The proposed restricted area would permanently establish formal advanced notification procedures for all vessels and persons seeking to enter Port Hueneme Harbor landward of the seaward limits or ends of the two entrance jetties.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of executive order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small business and small governments). The Corps of Engineers expects that the economic impact of this new restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal would have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

The Los Angeles District is in the process of preparing an Environmental Assessment (EA) for this action. Although not expected at this time, based on the minor nature of the proposed additional restricted area regulations, an Environmental Impact Statement (EIS) would be prepared if determined appropriate. When the NEPA documentation is completed, it will be available for review at the Los Angeles District office listed at the end of the FOR FURTHER INFORMATION CONTACT paragraph, above.

d. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small governments would not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.1127 is added to read as follows:

§ 334.1127 Naval Base Ventura County, Port Hueneme, California; Restricted Area.

(a) *The area.* The waters within Port Hueneme Harbor, beginning at the seaward ends of the two Port Hueneme Harbor entrance jetties, with the northwestern entrance jetty end occurring at latitude 34°8′37.0″ N, longitude 119°12′58.8″ W and the southeastern entrance jetty occurring at latitude 34°8′34.8″ N, longitude 119°12′43.2″ W and extending northeasterly to the shoreline.

(b) *The regulation.* No vessels or persons may enter the restricted area unless permission is obtained in advance from Captain of the Port or the Commanding Officer of Naval Base Ventura County. Commercial vessels that are required to make Advanced Notifications of Arrival shall continue to do so. All vessels must obtain clearance from "Control 1" over marine radio channel 06 VHF–FM prior to crossing the COLREGS (Collision Regulations) demarcation line. Vessels without marine radio capability must obtain clearance in advance by contacting "Control 1" via telephone at (805) 982–3938 prior to crossing the COLREGS demarcation line. The COLREGS demarcation line is defined as an imaginary line approximately 1,500 feet in length connecting the seaward limits or ends of the two Port Hueneme Harbor entrance jetties, with the northwestern jetty end occurring at latitude 34°8′37.0″ N, longitude 119°12′58.8″ W and the southeastern entrance jetty occurring at 34°8′34.8″ N, longitude 119°12′43.2″ W.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding Officer of the U.S. Naval Base Ventura County, or any such agencies or persons as he/she may designate.

Dated: December 31, 2002.

Lawrence A. Lang,

Acting Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 03–562 Filed 1–10–03; 8:45 am]

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de Havilland; comments due by 1-22-03; published 11-15-02 [FR 02-28999]
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LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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S. 23/P.L. 108–1

To provide for a 5-month extension of the Temporary Extended Unemployment Compensation Act of 2002 and for a transition period for individuals receiving compensation when the program under such Act ends. (Jan. 8, 2003; 117 Stat. 3)

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-048-00001-1)	9.00	Jan. 1, 2002
3 (1997 Compilation and Parts 100 and 101)	(869-048-00002-0)	59.00	[1] Jan. 1, 2002
4	(869-048-00003-8)	9.00	[4] Jan. 1, 2002
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Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

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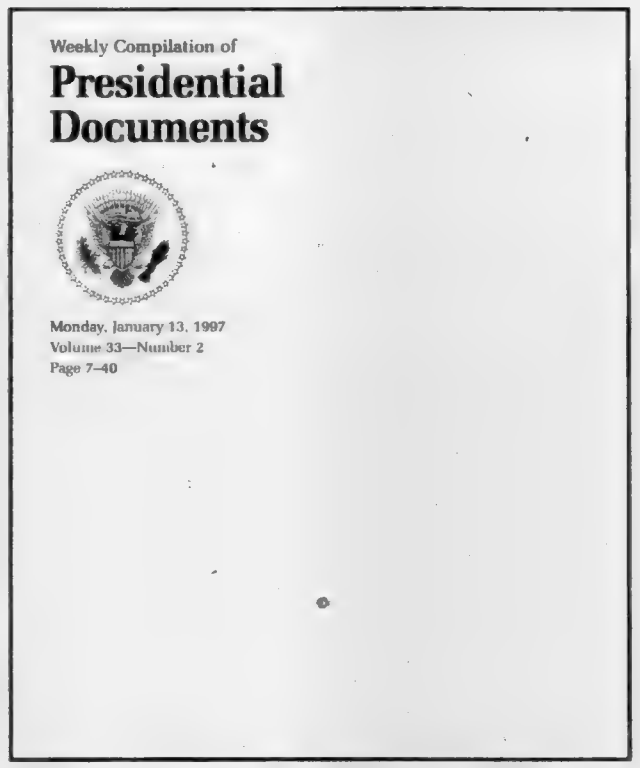

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2003–1]

Contribution Limitations and Prohibitions; Correction

AGENCY: Federal Election Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Election Commission published a correction to the final rules governing contribution limitations and prohibitions in the **Federal Register** on December 27, 2002 (67 FR 78959). The correction, in part, delayed the January 1, 2003 effective date for revised 11 CFR 110.9. Due to a typographical error, the date of the delayed effective date for this section was published as January 13, 2002; the correct delayed effective date for this section should have read January 13, 2003.

EFFECTIVE DATES: The revision of 11 CFR 110.9 published on November 19, 2002 (67 FR 69928) is effective January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission published in the **Federal Register** on December 27, 2002, Notice 2002–30 to delay the effective date of the revisions to 11 CFR 110.9 contained in the Contribution Limitations and Prohibitions; Final Rule. 67 FR 78959; *see also* 67 FR 69928 (November 19, 2002) (Contribution Limitations and Prohibitions; Final Rule). Due to a typographical error, Notice 2002–30 incorrectly stated that the delayed effective date for revised 11 CFR 110.9 would be January 13, 2002 rather than January 13, 2003. Consequently, this Notice corrects the delayed effective date for revised 11 CFR 110.9 to January 13, 2003.

Correction of Publication

Accordingly, the publication on December 27, 2002 (67 FR 78959) of the correction to the final regulations, which was the subject of Notice 2002–30, is revised as follows:

On page 78959 in the **DATES** section in the second and third line of the second column, change "January 13, 2002" to read "January 13, 2003."

Dated: January 8, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–666 Filed 1–13–03; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A; Docket No. R–1141]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors is publishing final amendments to Regulation A to reflect its approval of the initial interest rates for extensions of primary and secondary credit. The amendments also correct a typographical error. These amendments supersede the text of one section of the final rule that the Board approved on October 31, 2002, and published in the **Federal Register** on November 7, 2002. The new primary and secondary credit rates do not indicate a change in the stance of monetary policy.

EFFECTIVE DATE: January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Madigan, Deputy Director (202/452–3828) or William Nelson, Senior Economist (202/452–3579), Division of Monetary Affairs; or Stephanie Martin, Assistant General Counsel (202/452–3198) or Adrianne Threatt, Counsel (202/452–3554), Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: On October 31, 2002, the Board announced that it would eliminate the adjustment and extended credit programs and replace them with new primary and secondary credit programs, effective January 9, 2003 (67 FR 67777, November 7, 2002). Reserve Banks will offer primary credit for very short terms (usually overnight) as a backup source of liquidity to depository institutions that the Reserve Banks deem to be in generally sound financial condition. The Board expects that most depository institutions will qualify for primary credit. Under appropriate circumstances, Reserve Banks may extend secondary credit as a backup source of liquidity to depository institutions that do not qualify for primary credit.

The preamble to the Board's final rule indicated the Board's expectation that the initial interest rate for primary credit would be 100 basis points above the prevailing target federal funds rate of the Federal Open Market Committee (FOMC) and that the initial secondary credit rate would be 50 basis points above the primary credit rate. At the time it published its final rule, the Board did not know what the target federal funds rate would be on January 9, 2003, and thus could not determine the initial primary and secondary credit rates. Section 201.51(a)–(b) of the October 2002 final rule therefore simply described the above-market rates for primary and secondary credit but did not list the actual rates to be in effect on January 9, 2003.

On January 6, 2003, the Federal Reserve Board approved requests by each of the 12 Federal Reserve Banks to establish an initial interest rate for primary credit of 2.25 percent, which is 100 basis points above the current target federal funds rate. The Board also approved requests by the 12 Federal Reserve Banks to establish an initial secondary credit rate of 2.75 percent. These new primary and secondary credit rates will be listed in tables contained at § 201.51(a)–(b). The Board also has amended § 201.51(c) to correct a typographical error in the cross-reference to § 201.4. These amendments supersede the text of § 201.51(a)–(c) that appeared in the Board's October 2002 final rule.

The Board reiterates that the new primary and secondary credit rates simply implement the new, above-market lending programs and do not affect the stance of monetary policy, as

indexed by the FOMC's current target of 1.25 percent for the federal funds rate. The Reserve Banks will continue to establish rates on primary, secondary, and seasonal credit at least every two weeks, subject to review and determination of the Board of Governors, through the same procedures that have been used in the past to set the rates on adjustment, extended, and seasonal credit.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significant adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

2. Section 201.51 (a) through (c) is revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	2.25	January 9, 2003.
New York	2.25	January 9, 2003.
Philadelphia	2.25	January 9, 2003.
Cleveland	2.25	January 9, 2003.
Richmond	2.25	January 9, 2003.
Atlanta	2.25	January 9, 2003.
Chicago	2.25	January 9, 2003.
St. Louis	2.25	January 9, 2003.
Minneapolis	2.25	January 9, 2003.
Kansas City	2.25	January 9, 2003.
Dallas	2.25	January 9, 2003.
San Francisco	2.25	January 9, 2003.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	2.75	January 9, 2003.
New York	2.75	January 9, 2003.
Philadelphia	2.75	January 9, 2003.
Cleveland	2.75	January 9, 2003.
Richmond	2.75	January 9, 2003.
Atlanta	2.75	January 9, 2003.
Chicago	2.75	January 9, 2003.
St. Louis	2.75	January 9, 2003.
Minneapolis	2.75	January 9, 2003.
Kansas City	2.75	January 9, 2003.
Dallas	2.75	January 9, 2003.
San Francisco	2.75	January 9, 2003.

(c) *Seasonal credit.* The rate for seasonal credit extended to depository institutions under § 201.4(c) is a flexible rate that takes into account rates on market sources of funds.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 8, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–621 Filed 1–13–03; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30349; Amdt. No. 3040]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable

airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 14, 2003. The compliance rate for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independent Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97:

Air Traffic Control, Airports, incorporation by reference, and Navigation (Air).

Issued in Washington, DC on January 3, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.95 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC Number	Subject
12/11/02	PA	Bedford	BEDFORD COUNTY	2/2732	GPS RWY 32, Orig-B
12/16/02	MD	Annapolis	LEE	2/2859	RNAV (GPS) RWY 30, Orig.
12/18/02	VA	Roanoke	ROANOKE REGIONAL/ WOODR UM FIELD.	2/2903	RNAV (GPS) RWY 33, Orig-A.
12/20/02	OR	Portland	PORTLAND INTL	2/2955	NDB RWY 28R, Amdt 11.
12/20/02	OR	Portland	PORTLAND INTL	2/2956	ILS RWY 10L, Amdt 1C.
12/20/02	OR	Portland	PORTLAND INTL	2/2957	ILS RWY 28L Orig-B.
12/20/02	OR	Portland	PORTLAND INTL	2/2958	ILS RWY 28R, Amdt 12B.
12/20/02	OR	Portland	PORTLAND INTL	2/2959	LOC/DME RWY 21, Amdt 7A.
12/20/02	OR	Portland	PORTLAND INTL	2/2961	VOR/DME RWY 21, Orig-A.
12/20/02	OR	Portland	PORTLAND INTL	2/2962	VOR RWY 28R, Amdt 2.
12/20/02	OR	Portland	PORTLAND INTL	2/2963	VOR–A, Amdt 9A
12/20/02	NY	New York	JOHN F. KENNEDY INTL	2/2966	ILS RWY 4R, Amdt 29A.
12/20/02	OR	Portland	PORTLAND INTL	2/2967	ILS RWY 10R (CAT I, II, III) Amdt 31A.
12/30/02	NM	Las Cruces	LAS CRUCES INTL	2/3098	ILS RWY 30, Amdt 1.

[FR Doc. 03–651 Filed 1–13–03; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 744 and 774

[Docket No. 021216312–2312–01]

RIN 0694–AC66

Revision of Export Controls for General Purpose Microprocessors

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final Rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement revisions to national security controls for microprocessors that were agreed upon in the February 2002 meeting of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). This final rule removes license requirements for exports and reexports of general purpose microprocessors to most destinations to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement. This rule retains license requirements for exports and reexports to designated terrorist-supporting countries. In addition, this rule establishes a new license requirement for the export or reexport of general purpose microprocessors if, at the time of the export or reexport, the exporter or reexporter knows, has reason to know, or is informed by BIS that the item will be or is intended to be used for a "military end-use" in a country that is of concern for national security reasons or by a "military end-user" in such a country. This license requirement does not apply to items for the official use by personnel and agencies of the U.S. Government or agencies of a cooperating government in a country of concern for national security reasons. The license review standard for applications to export or reexport general purpose microprocessors subject to this license requirement is a presumption of denial. No license exceptions are available for this license requirement.

EFFECTIVE DATE: This rule is effective: January 14, 2003.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Office of Exporter Services, Bureau of Exoprt Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

This rule implements changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement) in February 2002. General purpose microprocessors, which are produced in very large volumes and sold through a variety of channels, are used in numerous civilian applications worldwide, such as personal computers, cellular telephones, personal digital assistants, and wireless base stations. General purpose microprocessors may also be used in a wide variety of military applications and weapons systems. The continuous, rapid increase in microprocessor capabilities has necessitated frequent adjustment to export control parameters to avoid expending limited export control resources on mass market items.

While some general purpose microprocessors will remain under the classification of Export Control Classification Number (ECCN) 3A001 on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR), this rule moves most general purpose microprocessors to ECCN 3A991. Specifically, 3A001.a.3.a is removed and reserved and 3A991.a.1 is created to control the export and reexport of "microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having a "composite theoretical performance" ("CTP") of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more to countries in "AT column 1" of the Commerce Country Chart (see Supplement No. 1 of part 738 of the EAR) for anti-terrorism (AT) reasons. Currently, North Korea, Sudan and Syria are listed in "AT column 1." However, the Commerce Country Chart directs you to part 746 of the EAR to determine license requirements for other state sponsors of terrorism, *i.e.*, Cuba, Iran, Iraq, and Libya.

This rule also creates a new § 744.17, "Restrictions on certain exports and reexports of general purpose microprocessors for 'military end-uses' and to 'military end-users.' In addition to the license requirements for AT reasons specified in ECCN 3A991.a.1 on the CCL and §§ 742.9, 742.10 and 742.18 of the EAR, no one may export or reexport an item classified under ECCN 3A991.a.1 without a license if, at the time of the export or reexport, the exporter or reexporter knows, has reason to know, or is informed by BIS, that the item will be or is intended to be used for a 'military end-use,' as defined in paragraph (d) of this section, in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR); or by a 'military end-user,' as defined in paragraph (e) of this section, in Country Group D:1. The definitions of the term "know" and "knowledge" set forth in section 772.1 of the EAR apply to this license requirement. This rule also defines, for purposes of the newly created § 774.17, the terms 'military end-use' and 'military end-user.' In addition, this rule adds a new Supplement No. 1 to part 744 to give examples of military items in which this type of microprocessor could be used. This license requirement does not apply to items for the official use by personnel and agencies of the U.S. Government or agencies of a cooperating government in a Country Group D:1 country. See § 740.11(b)(3) of the EAR for definitions of "agency of the U.S. Government" and "agency of a cooperating government." The license review standard for applications to export or reexport general purpose microprocessors under section 744.17 is a presumption of denial. No license exceptions are available for this license requirement.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001 (66 FR 44025, 3 CFR, 2001 Comp., p. 783)), as extended by the Notice of August 14, 2002 (67 FR 53721, August 16, 2002), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade.

Accordingly, parts 744 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 744—[AMENDED]

1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Publ. L. 106–387; Sec. 221, Publ. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

2. Part 744 is amended by adding a new § 744.17, and adding a new Supplement No. 1, to read as follows:

§ 744.17 Restrictions on certain exports and reexports of general purpose microprocessors for "military end-uses" and to "military end-users."

(a) *General prohibition.* In addition to the license requirements for anti-terrorism reasons set forth in part 742 of the EAR, you may not export or reexport commodities described in ECCN 3A991.a.1 on the CCL ("microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having a "composite theoretical performance" ("CTP") of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more), without a license if, at the time of the export or reexport, you know, have reason to know, or are informed by BIS that the item will be or is intended to be used for a "military end-use," as defined in paragraph (d) of this section, in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR); or by a "military end-user," as defined in paragraph (e) of this section, in Country Group D:1. This license requirement does not apply to exports or reexports of items for the official use by personnel and agencies of the U.S. Government or agencies of a cooperating government. See § 740.11(b)(3) of the EAR for definitions of "agency of the U.S. Government" and "agency of a cooperating government".

(b) *Additional prohibition on exporters or reexporters informed by BIS.* BIS may inform an exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for export or reexport of items described in ECCN 3A991.a.1 to specified end-users, because BIS has determined that there is an unacceptable risk of diversion to the uses or users described in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration.

The absence of any such notification does not excuse the exporter or reexporter from compliance with the license requirements of paragraph (a) of this section.

(c) *License review standards.* There is a presumption of denial for applications to export or reexport items subject to this section.

(d) *Military end-use.* In this section, the phrase "military end-use" means incorporation into: a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations) or the International Munitions List (IML) (as set out on the Wassenaar Arrangement website at *http:\\www.wassenaar.org*); commodities listed under ECCN's ending in "A018" on the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR; or any item that is designed for the "use", "development", "production", or deployment of military items described on the USML, the IML, or commodities listed under ECCN's ending in "A018" on the CCL. Supplement No. 1 of this part lists examples of 'military end-use.'

(e) *Military end-user.* In this section, the term "military end-user" means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support "military end-uses" as defined in paragraph (d) of this section.

(f) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

Supplement No. 1 to Part 744—Military End-Use Examples for § 744.17

(a) *Examples of military end-uses (as described in § 744.17 (d) of this part) of general-purpose microprocessors classified as ECCN 3A991.a.1 includes employing such microprocessors in the "use", "development", "production", or deployment of:*

(1) Cruise missiles;

(2) Electronic suites of military aircraft and helicopters;

(3) Radar for searching, targeting, or tracking systems;

(4) Command/control/communications or navigation systems;

(5) Unmanned aerial vehicles capable of performing military reconnaissance, surveillance, or combat support;

(6) Rocket or missile systems;

(7) Electronic or information warfare systems; or

(8) Intelligence, reconnaissance, or surveillance systems suitable for supporting military operations.

(b) [Reserved]

PART 774—[AMENDED]

3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended by revising the License Exception section, and the Items paragraph of the List of Items Controlled section, to read as follows:

3A001 Electronic Components, as Follows (*see* List of Items Controlled)

* * * * *

License Exceptions

LVS: N/A for MT or NP
Yes for:
$1500: 3A001.c
$3000: 3A001.b.1, b.2, b.3, .d, .e and .f
$5000: 3A001.a, and .b.4 to b.7
GBS: Yes for 3A001.a.1.b, a.2 to a.12, b.2, and b.8 (except for TWTAs exceeding 18 GHz).
CIV: Yes for 3A001.a.3.b, a.3.c, a.4, a.7, and a.11.

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

Note 2: Integrated circuits include the following types: "Monolithic integrated circuits"; "Hybrid integrated circuits"; "Multichip integrated circuits"; "Film type integrated circuits", including silicon-on-sapphire integrated circuits; "Optical integrated circuits".

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher; or

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher;

a.2. "Microprocessor microcircuits", "microcomputer microcircuits", microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or "optical integrated circuits" designed for "signal processing", field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125°C);

a.2.b. Rated for operation at an ambient temperature below 218 K (–55°C); or

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (–55°C) to 398 K (125° C);

Note: 3A001.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. "Microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits, having any of the following characteristics:

Note: 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. [Reserved]

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; or

a.3.c. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel "microprocessor microcircuits" with a transfer rate exceeding 150 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 5 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time of less than 200 ns; or

a.5.a.3. A resolution of more than 12 bit with a total conversion time of less than 2 µs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a "settling time" of less than 10 ns;

Technical Note: 1. A resolution of n bit corresponds to a quantization of 2^n levels.

2. Total conversion time is the inverse of the sample rate.

a.6. Electro-optical and "optical integrated circuits" designed for "signal processing" having all of the following:

a.6.a. One or more than one internal "laser" diode;

a.6.b. One or more than one internal light detecting element; and

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical "basic gate propagation delay time" of less than 0.1 ns; or

a.7.c. A toggle frequency exceeding 133 MHz;

Note: 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. [Reserved]

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,000 terminals;

a.10.b. A typical "basic gate propagation delay time" of less than 0.1 ns; or

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); or

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than $(N \log_2 N)/20{,}480$ ms, where N is the number of points;

Technical Note: When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500 μs.

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

Note 1: 3A001.b.1 does not control tubes designed or rated for operation in any frequency band which meets all of the following characteristics:

(a.) Does not exceed 31 GHz; and

(b.) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

Note 2: 3A001.b.1 does not control non-'space-qualified" tubes which meet all the following characteristics:

(a.) An average output power equal to or less than 50 W; *and*

(b.) Designed or rated for operation in any frequency band which meets all of the following characteristics:

(1.) Exceeds 31 GHz but does not exceed 43.5 GHz; *and*

(2.) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies exceeding 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with a "fractional bandwidth" of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An "instantaneous bandwidth" of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An "instantaneous bandwidth" of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; or

b.1.a.4.c. Being "space qualified";

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 A/cm²;

b.2. Microwave integrated circuits or modules having all of the following:

b.2.a. Containing "monolithic integrated circuits" having one or more active circuit elements; and

b.2.b. Operating at frequencies above 3 GHz;

Note 1: 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in any frequency band which meets all of the following characteristics:

(a.) Does not exceed 31 GHz; and

(b.) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

Note 2: 3A001.b.2 does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, having any of the following:

b.4.a. Operating frequencies exceeding 10.5 GHz and an "instantaneous bandwidth" of more than half an octave; or

b.4.b. Operating frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 μs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; or

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. Microwave "assemblies" capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; and

b.8.c. A volume of less than 400cm³

Note: 3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is "allocated by the ITU" for radio-communications services, but not for radio-determination.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; or

c.1.b.4. A dispersive delay of more than 10 μs; or

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 μs or

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic "signal processing" devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of the "superconductive" constituents, with any of the following:

d.1. Current switching for digital circuits using "superconductive" gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; or

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

Note: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm³ (*e.g.*, standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30°C) to above 343 K (70°C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours © being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20°C) to above 333 K (60°C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average

current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m² at an operating temperature of 301 K (28°C) under a tungsten illumination of 1 kW/m² at 2,800 K (2,527°C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; and

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; and

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. "Superconductive" electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A001.e.3 does not control "superconductive" electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; and

e.3.c. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm²;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; or f.2. An accuracy better than ± 2.5 seconds of arc.

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A991 is amended by revising the License Requirement section, and the Items paragraph of the List of Items Controlled section, to read as follows:

3A991 Electronic Devices and Components Not Controlled by 3A001

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1

License Requirements Notes

1. Microprocessors with a CTP below 550 MTOPS listed in paragraphs (a)(2) or (a)(3) of this entry may be shipped NLR (No License Required) when destined to North Korea, provided restrictions set forth in other sections of the EAR (e.g., end-use restrictions), do not apply.

2. See 744.17 of the EAR for additional license requirements for commodities classified as 3A991.a.1.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. "Microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having any of the following:

a.1. A "composite theoretical performance" ("CTP") of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more;

a.2. A clock frequency rate exceeding 25 MHz; or

a.3. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel "microprocessor microcircuits" with a transfer rate of 2.5 Mbyte/s.

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; or

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; or

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; or

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Analog-to-digital converters having a resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 10 ns;

d. Field programmable logic devices having either of the following:

d.1. An equivalent gate count of more than 5000 (2 input gates); or

d.2. A toggle frequency exceeding 100 MHz;

e. Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms.

f. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

f.1. More than 144 terminals; or

f.2. A typical "basic propagation delay time" of less than 0.4 ns.

g. Traveling wave tubes, pulsed or continuous wave, as follows:

g.1. Coupled cavity tubes, or derivatives thereof;

g.2. Helix tubes, or derivatives thereof, with any of the following:

g.2.a. An "instantaneous bandwidth" of half an octave or more; and

g.2.b. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

g.2.c. An "instantaneous bandwidth" of less than half an octave; and

g.2.d. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

h. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

i. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves in materials), having either of the following:

i.1. A carrier frequency exceeding 1 GHz; or

i.2. A carrier frequency of 1 GHz or less; and

i.2.a. A frequency side-lobe rejection exceeding 55 Db;

i.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; or

i.2.c. A dispersive delay of more than 10 microseconds.

j. Batteries, as follows:

Note: 3A991 .j does not control batteries with volumes equal to or less than 26 cm³ (e.g., standard C-cells or UM–2 batteries).

j.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30°C) to above 343 K (70°C);

j.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours " being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20°C) to above 333 K (60°C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

k. "Superconductive" electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, having all of the following:

Note: 3A991.k does not control "superconductive" electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

k.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

k.2. Inner diameter of the current carrying windings of more than 250 mm; and

k.3. Rated for a magnetic induction of more than 8T or "overall current density" in the winding of more than 300 A/mm2.

l. Circuits or systems for electromagnetic energy storage, containing components manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents, having all of the following:

L.1. Resonant operating frequencies exceeding 1 MHz;

L.2. A stored energy density of 1 MJ/M^3 or more; and

L.3. A discharge time of less than 1 ms;

m. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

n. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

* * * * *

Dated: December 30, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 03–714 Filed 1–13–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 02–62]

RIN 1515–AD11

Presentation of Vessel Cargo Declaration to Customs Before Cargo Is Laden Aboard Vessel at Foreign Port for Transport to the United States; Technical Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; technical correction.

SUMMARY: This document contains a technical correction to the final regulations (T.D. 02–62), which were published Thursday, October 31, 2002. The regulations required the advance and accurate presentation of certain vessel cargo declaration information to Customs prior to lading the cargo aboard the vessel at the foreign port and encouraged the presentation of this information electronically.

EFFECTIVE DATE: December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Kimberly Nott, Office of Field Operations, (202–927–0042).

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2002, Customs published a final rule document in the **Federal Register** (67 FR 66318) as T.D. 02–62. The final rule concerned the requirement to provide advance and accurate presentation to Customs of certain vessel cargo declaration information prior to lading the cargo aboard the vessel at the foreign port and encouraged the presentation of this information electronically.

This correction concerns when a transmission of the required cargo declaration information must be made by an eligible non-vessel operating common carrier (NVOCC). Specifically, in T.D. 02–62, § 4.7(b)(2) of the Customs Regulations (19 CFR 4.7(b)(2)) correctly provided that Customs must receive from the vessel carrier the vessel's Cargo Declaration, Customs Form 1302, or a Customs-approved electronic equivalent, 24 hours before such cargo was laden aboard the vessel at the foreign port. By contrast, § 4.7(b)(3)(i) inadvertently stated in effect that if an eligible NVOCC elected to file such cargo declaration information with Customs, the NVOCC would have to electronically transmit this information to Customs 24 hours before the related cargo was laden aboard the vessel at the foreign port.

However, under T.D. 02–62, both vessel carriers and NVOCCs were properly intended to be subject to the same 24-hour advance presentation requirement. As such, it was intended that under § 4.7(b)(3)(i) Customs likewise receive from a participating NVOCC the necessary cargo declaration information 24 hours before the related cargo was laden aboard the vessel at the foreign port. This document corrects that unintended inconsistency.

Correction of Publication

Accordingly, the publication on October 31, 2002 of the final regulations (T.D. 02–62), which were the subject of FR Doc. 02–27661, is corrected as follows:

On page 66331, in the second column, in § 4.7, in the first sentence of paragraph (b)(3)(i), on line 14, add between the words "Vessel Automated Manifest System (AMS)" and "24 or more hours" the words "that must be received".

Dated: January 9, 2003.

Michael T. Schmitz,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 03–741 Filed 1–13–03; 8:45 am]

BILLING CODE 4820–02–P

Proposed Rules

Federal Register
Vol. 68, No. 9
Tuesday, January 14, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–53–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to inspect the front and rear surfaces of the pressure dome for damage and cracks, and, if necessary, accomplish repairs. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to detect and correct damage and cracks to the pressure dome, which could lead to rapid decompression.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 24, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE–53-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–53–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on this Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–53–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that drill and/or rivet tool damage could have occurred in areas around the edges of the rear pressure dome during assembly of the Models PC–12 and PC–12/45 airplanes.

Pilatus has received 19 reports of damaged pressure domes. The reported damage included nicks and scratches. This type of damage could also occur on the forward surface of the pressure dome.

What Are the Consequences if the Condition Is Not Corrected?

The damage to the pressure dome could result in cracks in the pressure dome and lead to rapid decompression.

Is There Service Information That Applies To This Subject?

Pilatus has issued PC–12 Service Bulletin Number 53–003, Revision No. 1, dated July 26, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—inspecting the pressure dome for damage/cracks; and

—repairing the pressure dome.

What Action Did the FOCA Take?

The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2002–608, dated November 1, 2002, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design that are on the U.S. registry;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 280 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × $60 per hour = $480	No parts required	$480	$480 × 280 = $134,400

We estimate the following costs to accomplish any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
16 workhours × $60 per hour = $960.	No parts required.	$960

Compliance Time of this Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is within 90 days after the effective date of this AD, unless already accomplished.

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Failure of the pressure dome is only unsafe during airplane operation. However, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours TIS as it would be for as airplane with 500 hours TIS. For this reason, FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Company Ltd.: Docket No. 2002–CE–53–AD

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, that are certificated in any category, with the following serial numbers: 101 through 380, 382 through 385, 387 through 395, 398 through 406, 408, 409, 413, 415, and 417.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage and cracks to the pressure dome, which could lead to rapid decompression.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the pressure dome for crack/nick/scratch damage.	Within the next 90 days after the effective date of this AD, unless already accomplished.	In accordance with Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 53–003, Revision 1, dated July 26, 2002, and the applicable maintenance manual.
(2) If during the inspection required by paragraph (d)(1) of this AD, type "A" or "B" nick/scratch damage (as specified in the service information) is found, accomplish repairs.	Prior to further flight after the inspection in which the type "A" or "B" nick/scratch damage is found.	In accordance with Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 53–003, Revision 1, dated July 26, 2002, and the applicable maintenance manual.
(3) Pursuant to paragraph (d)(2) of this AD, if a repair was done in which metal was removed to a depth of more than 0.008 inches (0.2 millimeter) (type "C"), you must obtain approval of the repair scheme from the manufacturer through FAA at the address specified in paragraph (f) of this AD. If you do not receive through FAA an approval within 90 days or 600 takeoff/landings of the repair date, whichever occurs later, the aircraft is restricted to unpressurized flight only.	Within 90 days or 600 takeoffs/landings of the repair date, whichever occurs first.	In accordance with Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 53–003, Revision 1, dated July 26, 2002, and the applicable maintenance manual.
(4) If during the inspection required by paragraph (d)(1) of this AD, type "C" nick/scratch damage (as specified in the service information) is found, use a 10X magnified visual inspection to repetitively inspect for cracks. If cracks are found:.	If type "C" damage is found, inspect for cracks prior to further flight and every 10 hours TIS thereafter. Obtain an FAA approval within 90 days or 600 takeoffs/landings, whichever occurs first, from the date of repair for type of "C" damage. An FAA approval is required to fly pressurized beyond 90 days or 600 landings/takeoffs, whichever occurs first, from date of repair for type "C damage.	In accordance with Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 53–003, Revision 1, dated July 26, 2002, and the applicable maintenance manual.
(i) Obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (f) of this AD.		
(ii) Incorporate this repair scheme		
(5) If damage is found outside of the inspection area during the inspection required by paragraph (d)(1) of this AD, do not apply any of the repair procedures from Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 53–003, Revision 1, dated July 26, 2002, to damage. If such damage is found:.	Prior to further flight after the inspection in which the damage outside the inspection area is found.	Obtain this repair scheme through FAA at the address specified in paragraph (f) of this AD.
(i) Obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (f) of this AD.		
(ii) Incorporate this repair scheme.		

Note 1: As earlier specified in this AD, flight is not permitted if crack damage is found.

Note 2: As earlier specified in this AD, FAA approval is required to fly pressurized beyond 90 days or 600 takeoffs/landings, whichever occurs first, from date of repair for type "C" damage.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in Swiss AD Number HB 2002–608, dated November 1, 2002.

Issued in Kansas City, Missouri, on January 8, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–672 Filed 1–13–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–52–AD]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10 and S10–V Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Stemme GmbH & Co. KG (Stemme) Models S10 and S10–V sailplanes. This proposed AD would require you to modify the engine compartment fuel and oil system and firewall. This proposed AD is the result of FAA's determination that the actions required in AD 2002–22–04 should also be accomplished on other sailplanes of similar type design. The actions specified by this proposed AD are intended to reduce the potential for a fire to ignite in the engine compartment and to increase the containment of an engine fire in the engine compartment. A fire in the engine compartment could lead to loss of control of the sailplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 21, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–52–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–52–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–52–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, reported an incident of an in-flight fire on a Model S10-VT sailplane. The accident investigation revealed that the fire was not contained in the engine compartment. The manufacturer conducted a design review and determined that modifications to the fuel and oil system and the firewall design will significantly reduce the potential for a fire to ignite in the engine compartment and increase the containment of an engine fire in the engine compartment.

This condition caused us to issue AD 2002–22–04, Amendment 39–12928 (67 FR 66547, November 1, 2002). AD 2002–22–04 requires the following on certain Model S10–VT airplanes:

—modify the engine compartment fuel and oil system; and

—modify the firewall by sealing all gaps.

Although Stemme Models S10 and S10–V sailplanes have a different engine installation (non-turbocharged), they are of similar type design as Stemme Model S10–VT sailplanes. We have determined that similar modifications should also be incorporated on these sailplanes. The LBA has determined that these modifications are not mandatory for sailplanes registered outside of the United States.

What are the consequences if the condition is not corrected? If this condition is not prevented, there is potential for a fire to ignite in the engine compartment and spread into the cockpit. Such a condition could lead to loss of control of the sailplane.

Is there service information that applies to this subject on the affected airplanes? Stemme has issued Service Bulletin Document Number A31–10–057, dated June 7, 2001, Service Bulletin Document Number A31–10–063, dated September 11, 2002 , and Installation Instruction Document Number A34–10–063E, dated August 26, 2002.

What are the provisions of this service information? These service documents include procedures for:

—modifying the engine compartment fuel and oil system; and

—modifying the firewall by sealing all gaps.

Was this in accordance with the bilateral airworthiness agreement? These sailplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the LBA kept FAA informed of its decision on this matter.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA decided? The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop

on other Stemme Models S10 and S10–V sailplanes of the same type design that are on the U.S. registry;

—similar actions specified in AD 2002–22–04 should also be accomplished on these sailplane models;

—the actions specified in the previously-referenced service information should be accomplished on the affected sailplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service information.

Cost Impact

How many sailplanes would this proposed AD impact? We estimate that this proposed AD affects 15 sailplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes? We estimate the following costs to accomplish the proposed modifications:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
10 workhours × $60 per hour = $600	$620	$1,220	$1,220 × 15 = $18,300.

Compliance Time of this Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is "within the next 50 hours time-in-service (TIS) or 6 months after the effective date of this AD, whichever occurs first."

Why is the compliance time of this proposed AD presented in both hours TIS and calendar time? The unsafe condition on these sailplanes is not a result of the number of times the sailplane is operated. Sailplane operation varies among operators. For example, one operator may operate the sailplane 50 hours TIS in 6 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of this proposed AD should be specified in both hours TIS and calendar time in order to ensure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Stemme Gmbh & Co. KG: Docket No. 2002–CE–52–AD

(a) *What sailplanes are affected by this AD?* This AD affects Models S10 and S10–V sailplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the sailplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to reduce the potential for a fire to ignite in the engine compartment and to increase the containment of an engine fire in the engine compartment. A fire in the engine compartment could lead to loss of control of the sailplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Modify the firewall by sealing all gaps and modify the fuel and oil lines in the engine compartment.	Within the next 50 hours time-in-service (TIS) or 6 months after the effective date of this AD, whichever occurs first.	Modify the firewall in accordance with Stemme Service Bulletin A31–10–057, dated June 7, 2001, as specified in Stemme Service Bulletin A31–10–063, dated September 11, 2002. Modify the fuel and oil lines in accordance with Stemme Service Bulletin A31–10–063, dated September 11, 2002, and Stemme Installation Instruction A34–10–063E, dated August 26, 2002.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an

FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

Note: This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 8, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–673 Filed 1–13–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. FAA–2002–13918; Notice No. 02–19]

RIN 2120–AH43

Revisions to Passenger Facility Charge Rule for Compensation to Air Carriers; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM the FAA issued on November 20, 2002. In that document, the FAA proposed to amend the passenger facility charge regulation (PFC) by changing the amount and unit of collection that a carrier may retain for collecting and handling PFC revenue. This extension is a result of a joint request from the American Association of Airport Executives (AAAE) and the Airports Council International—North America (ACI–NA).

DATES: Send your comments on or before February 12, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13918 at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also send comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joseph Hebert, Passenger Facility Charge Branch, APP–530, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 267–3845, facsimile (202) 267–5302.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On November 20, 2002, the FAA issued Notice No. 02–19, Revisions to Passenger Facility Charge Rule for Compensation to Air Carriers (67 FR 70878, November 27, 2002). Comments to that document were to be received on or before January 13, 2003.

On December 20, 2002, AAAE and ACI–NA jointly asked the FAA to extend the comment period to Notice No. 02–19 an additional 120 days. In the request, AAAE and ACI–NA note that air carriers had six years to collect economic data presented in the proposal supporting their request for an increase in PFC handling charges. AAAE and ACI–NA assert that 45 days is not enough time for other interested parties to review and comment on the air carrier economic data, especially since two holidays fell within the comment period.

In response to the AAAE and ACI–NA joint request for an extension of the comment period, the Air Transport Association (ATA) submitted a letter to the public docket on December 30, 2002, urging FAA to deny the request for an extension. ATA asserts that the air carrier data was compiled using procedures recommended by the Department of Transportation Office of the Inspector General. ATA contends that the data is reliable and finds that additional time to review the data is not necessary.

The FAA has considered these arguments and finds that an extension of the comment period to Notice No. 02–19 is in the public interest considering that two holidays fell within the comment period. However,

the FAA believes that a 120-day extension would be excessive. The FAA believes an additional 30 days would be adequate for interested parties to review the economic data presented in the proposal and provide meaningful comment to Notice No. 02–19. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed AAAE's and ACI–NA's joint request for an extension of the comment period to Notice No. 02–09. The FAA finds that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action. AAAE and ACI–NA have demonstrated substantive interest in the proposed rule and good cause for the extension.

Accordingly, the comment period to Notice No. 02–19 is extended until February 12, 2003.

Issued in Washington, DC, January 10, 2003.

Benito DeLeon,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 03–820 Filed 1–10–03; 12:04 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S–051]

RIN 1218–AB51

Fire Protection in Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of Proposed Rulemaking; correction.

SUMMARY: In the December 11, 2002, **Federal Register**, OSHA published a proposed standard for Fire Protection in Shipyard Employment, Subpart P of 29 CFR Part 1915 (67 FR 76214). The docket number that was published in the "Supplementary Information: Addresses" section of the preamble, H–011G, is incorrect. OSHA is correcting these errors.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210 (202–219–8148).

SUPPLEMENTARY INFORMATION:

Correction of Publication

On page 76214, in the first and second columns, the docket number "H–011G" is corrected to read "S–051" both places it appears.

Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The actions in this document are taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 5–2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC this 30th day of December, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–401 Filed 1–13–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC89

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Documents Incorporated by Reference—API RP 14F and API RP 14FZ

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: MMS is proposing to update one document already incorporated by reference into our regulations, and add another document to be incorporated by reference for the first time into our regulations governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS). These revisions will ensure that lessees use the best available and safest technologies while operating in the OCS. The updated document, API RP 14F, is the Fourth Edition of the American Petroleum Institute's (API) Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Division 1 and Division 2 Locations. The new document, API RP 14FZ, is titled "Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1 and Zone 2 Locations."

DATES: We will consider all comments we receive by March 17, 2003. We will begin reviewing comments then and may not fully consider comments we receive after March 17, 2003.

ADDRESSES: Mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team (Comments). If you wish to e-mail your comments, the address is *rules.comments@MMS.gov*. Reference "1010AC89—API RP 14F and API RP 14FZ" in your subject line. Include your name and return address in the message and mark it for return receipt.

FOR FURTHER INFORMATION CONTACT: Richard Ensele, Operations Analysis Branch, at (703) 787–1583, or David Nedorostek, Operations Analysis Branch, at (703) 787–1029.

SUPPLEMENTARY INFORMATION: We use standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry for establishing requirements for activities in the OCS. This practice, known as incorporation by reference, allows us to incorporate the provisions of technical standards into the regulations without increasing the volume of the Code of Federal Regulations. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, then has the force and effect of law. We hold operators/lessees accountable for complying with the documents incorporated by reference in our regulations. The regulations, found at 1 CFR Part 51, govern how MMS and other Federal agencies incorporate various documents by reference. Agencies can only incorporate by reference through publication in the **Federal Register**. Agencies must also gain approval from the Director of the Federal Register for each publication incorporated by reference. Incorporation by reference of a document or publication is limited to the specific edition or to the specific edition and supplement or addendum cited in the regulations.

This proposed rule will update API RP 14F, Third Edition, September 1, 1991, Recommended Practice for Design

and Installation of Electrical Systems for Offshore Production Platforms that is currently incorporated by reference into MMS regulations in 30 CFR 250.114. The proposed rule will also incorporate by reference into MMS regulations at 30 CFR 250.114, for the first time, the provisions of API RP 14FZ. The provisions of 30 CFR 250.114 apply only to platforms, artificial islands, fixed structures, and their facilities. Therefore, any requirements for floating facilities in these two documents will not apply. Under the Memorandum of Understanding (MOU) between the Minerals Management Service, U.S. Department of the Interior and the United States Coast Guard (USCG), U.S. Department of Transportation, dated December 16, 1998, the USCG is responsible for electrical systems on floating facilities. Additionally, according to the MOU, the USCG is responsible for aids to navigation, emergency lighting, survival craft, and general alarms, so any such references in these two documents do not apply.

We have reviewed these documents and have determined that the latest editions of both documents should be incorporated into the regulations to ensure the use of the best available and safest technologies. The title of API RP 14F has been changed in the Fourth Edition to conform with API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, which is currently incorporated into MMS regulations. Our review shows that the changes between the old (Third) edition and the new (Fourth) edition are minor. Most of the changes apply to floating facilities, and are, therefore, not part of this rulemaking for the reasons cited above. In addition, the Third Edition is not readily available to affected parties because it is out of print. The oil and gas industry is already building new structures in accordance with the provisions of the Fourth Edition of this standard. Also, the Fourth Edition has been revised using an API standard editorial format.

Summary of the Changes in the Fourth Edition of API RP 14F Pertaining to Platforms, Artificial Islands, Fixed Structures, and their Facilities

In the fourth edition of 14F several subsections that were contained in the third edition have been consolidated in a subsection titled Protection Techniques Related to Equipment Installed in Locations Classified as Division 1 and Division 2. These include explosion proof equipment, hermetically sealed devices, intrinsically safe devices, nonincendive equipment, and purged enclosures. No new requirements were imposed.

In the fourth edition of 14F, cable-shielding considerations have been added to the Electrical Distribution Systems section. This allows for the installation of metal clad cables in lieu of sealed conduits for electrical wiring. The use of metal clad cables could result in savings to industry of up to 40% over the use of sealed conduits and conventional wiring practices. Both methods of cable shielding provide for equal safety.

Subsections have been added to the fourth edition of 14F to cover advances in technology in battery-powered DC supply systems (uninterruptible power supplies), electric oil-immersion heaters, cathodic protection, and hand held electronic devices. These four new subsections cover equipment that is now in standard use on OCS structures, but that was not in the early 1990's when the third edition was completed. These new subsections should not impose any new costs on the industry, since operators are already using this equipment.

Review of API RP 14FZ

The two recommended practices addressed by this rulemaking are nearly identical. The original version (14F) is to be used with the electrical classification system contained in API RP 500. This system of electrical classification differentiates locations by "Divisions." This document (API RP 500) is already incorporated by reference into the regulations. A similar document, API RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1, and Zone 2, is also currently incorporated by reference into the regulations. This system classifies hazardous locations by "Zones" based on how long a hazardous vapor is present. The new 14FZ document is to be used with API RP 505. The difference between the two pairs of documents, 14F/500 and 14FZ/505, is that 14F/500 uses two "Divisions" to classify hazardous areas while 14FZ/505 uses three "Zones" to define these classified hazardous areas. The 14F document defines techniques for protection from fires in the Division system. The 14FZ document defines protection techniques in the Zone system for hazardous locations. Both systems provide for safe work environments for personnel. The protection techniques identified for the Division system are not all acceptable for the Zone system, and vice versa. The Zone system identifies more protection techniques than the Division system, however, both systems have proven their safety by comparisons of both systems through the National Electrical Code, Factory Mutual, and Underwriters Laboratories. The operator could realize cost savings if the Zone system (505/14FZ) is used in classifying and designing electrical systems. We are proposing to incorporate the new API RP 14FZ to complete the set of documents in the regulations, and give lessees a choice in installing electrical systems. The incorporation of API RP 14FZ will not impose any additional costs on the industry, since it is nearly identical to API RP 14F and may result in cost savings. The operators must use one set of documents or the other to design and install electrical systems on their facilities. The costs for complying with the documents are similar. We're merely giving the industry a choice in regard to classifying and installing electrical systems under the API RP 500 system or the API RP 505 system.

Procedural Matters

Public Comments Procedure

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address you must state this prominently at the beginning of the comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Background

This proposed rulemaking will update one document that is currently incorporated by reference in the regulations and will add another document to those incorporated by reference in the regulations. The differences between the Third Edition and the Fourth Edition of API RP 14F are very minor. The minor differences will not cause a significant economic effect on any entity (small or large), and may result in cost savings due to the inclusion of metal clad cable. In fact, the

oil and gas industry is already building structures using the new standard. Therefore, this regulation's impact on the entire industry is minor. The addition of API RP 14FZ will give the industry a choice in designing and installing electrical systems on offshore facilities.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The rule may have a positive economic impact because of the cost savings from using shielded cables in lieu of sealed conduits. Otherwise, the documents do not contain any significant revisions that will cause lessees or operators to change their business practices. The documents will not require the retrofitting of any facilities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department of the Interior (DOI) certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the RF Act (5 U.S.C. 601 *et seq.*). The provisions of this rule will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The Small Business Administration (SBA) defines small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

The API documents proposed for incorporation into MMS regulations cover electrical installations on offshore structures. The documents to be incorporated by this rule have been used by the industry for many years, and the latest editions represent state-of-the-art industry equipment and practices. The structures currently being built are being constructed according to the requirements in either API RP 14F (Fourth Edition) or API RP 14FZ.

The proposed rule's purpose is to update one document that is currently incorporated by reference in the regulations, and to incorporate by reference a new nearly identical document into the regulations. The differences between the newer document and the older document are very minor. The updated document consolidates several subsections in a new subsection covering protection techniques. In addition, cable shielding considerations were added to the updated document. This allows for the installation of metal clad cables in lieu of sealed conduits. The use of metal clad cables could result in savings to industry of up to 40% over the use of sealed conduits and conventional wiring practices. Other subsections have been added to the updated document to cover advances in technology. New subsections cover equipment that is now in standard use on OCS facilities, but that was not in use in the early 1990's when the older Third Edition was completed, and incorporated into the regulations. These new subsections should not impose any additional costs to industry, since operators are already using this new equipment and technology. By incorporating both 14F and 14FZ, which are nearly identical, but utilize different classification systems, we are giving the industry a choice in electrical classification methods.

Under the North American Industry Classification System Code 211111, Crude Petroleum and Natural Gas Extraction, MMS estimates that a total of 1,380 firms drill oil and gas wells onshore and offshore. The group affected by this rule is the approximately 130 companies that are offshore lessees/operators. According to SBA criteria, approximately 90 companies are small business (70 percent). As discussed above, this rule imposes no new operational requirements, reporting burdens, or other measures that would increase costs to lessees/operators, large or small. Therefore, this rule has no significant economic impact on small entities.

Comments from the public are important to us. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The proposed rule will not cause any significant costs to lessees or operators. The only costs will be the purchase of the new documents and minor revisions to some operating and maintenance procedures. The minor revisions to operating and maintenance procedures may result in some minor costs or may actually result in minor cost savings.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

(c) Does not have significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act (PRA) of 1995

There are no information collection requirements associated with this rule. The DOI has determined that this regulation does not contain information collection requirements pursuant to the PRA (44 U.S.C. 3501 *et seq.*) We will not be submitting an information collection request to OMB.

Federalism (Executive Order 13132)

According to Executive Order 13132, the rule does not have significant Federalism effects. This rule will not substantially and directly affect the relationship between the federal and state governments. This rule will simply update one document and add one document incorporated by reference to ensure that the industry uses the best and safest technologies. This rule does not impose costs on states or localities. Any costs incurred affect only the oil industry and will be minor.

Takings Implication Assessment (Executive Order 12630)

According to Executive Order 12630, this rule does not have significant

Takings implications. A Takings Implication Assessment is not required.

Energy Supply, Distribution, or Use (Executive Order 13211)

The rule does not have a significant effect on energy supply, distribution, or use because it merely updates one standard already incorporated by reference and adds a new standard to be incorporated by reference that will provide for uniform maintenance and inspection practices. Thus, a Statement of Energy Supply, Distribution, or Use is not required.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required.

Unfunded Mandates Reform Act (UMRA) of 1995

This rule does not impose an unfunded mandate on state, local, and tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. A statement, containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*), is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: December 23, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service proposes to amend 30 CFR Part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 250.114, paragraph (c) is revised to read as follows:

§ 250.114 How must I install and operate electrical equipment?

* * * * *

(c) You must install all electrical systems according to API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Division 1 and Division 2 Locations (incorporated by reference as specified in § 250.198), or API RP 14FZ, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1, and Zone 2 Locations (incorporated by reference as specified in § 250.198).

* * * * *

3. In § 250.198, in the table in paragraph (e), the entry for API RP 14F is revised and a new entry for document API RP 14FZ is added in alphanumeric order to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of document	Incorporated by reference at
* * * * * * *	
API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Division 1 and Division 2 Locations, Fourth Edition, June 1999, API Stock No. G14F04.	§ 250.114(c); § 250,803(b)(9)(v); § 250.1629(b)(4)(v)
API RP 14FZ, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1, and Zone 2 Locations, First Edition, September 2001, API Stock No, G14FZ1.	§ 250.114(c); § 250.803(b)(9)(v); § 250.1629(b)(4)(v)
* * * * * * *	

4. In § 250.803, paragraph (b)(9)(v) is revised to read as follows:

§ 250.803 Additional production system requirements.

* * * * *

(9) * * *

(v) Fire- and gas-detection systems must be an approved type, designed and installed according to API RP 14C, API RP 14G, and API RP 14F or API RP 14FZ (the preceding four documents incorporated by reference as specified in § 250.198).

* * * * *

5. In § 250.1629, paragraph (b)(4)(v) is revised to read as follows:

§ 250.1629 Additional production and fuel gas system requirements.

* * * * *

(4) * * *

(v) Fire- and gas-detection systems must be an approved type, designed and installed according to API RP 14C, API RP 14G, and API RP 14F or API RP 14FZ (the preceding four documents incorporated by reference as specified in § 250.198).

* * * * *

[FR Doc. 03–665 Filed 1–13–03; 8:45 am]

BILLING CODE 4310–MR–P

Notices

Federal Register
Vol. 68, No. 9
Tuesday, January 14, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service (RHS), Rural Utilities Service (RUS), Rural Business-Cooperative Service (RBS), and Farm Service Agency (FSA), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named Agencies to request an extension for the currently approved information collection in support of the servicing of Community and Direct Business Programs Loans and Grants.

DATES: Comments on this notice must be received by March 17, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: For inquiries on the Information Collection Package, contact Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043. For program content, contact Beth Jones, Senior Loan Specialist, Community Programs Servicing and Special Authorities Branch, RHS, USDA, 1400 Independence Ave., SW., Mail Stop 0787, Washington, DC 20250–0787, Telephone (202) 720–1498, E-mail *epjones@rdmail.rural.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* 7 CFR 1951–E, Servicing of Community and Direct Business Programs Loans and Grants.

OMB Number: 0575–0066.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The following Community and Direct Business Programs Loans and Grants are serviced by this currently approved docket (0575–0066): The Community Facilities loan and grant program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes through the Community Facilities program for the development of essential community facilities primarily serving rural residents. The Economic Opportunity Act of 1964, Title 3 (Pub. L. 88–452), authorizes Economic Cooperative Loans to assist incorporated and unincorporated associations to provide to low-income rural families essential processing, purchasing, or marketing services, supplies, or facilities.

The Food Security Act of 1985, section 1323 (Pub. L. 99–198), authorizes loan guarantees and grants to Nonprofit National Corporations to provide technical and financial assistance to for-profit or nonprofit local businesses in rural areas.

The Water and Waste Disposal program is authorized by section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) to provide basic human amenities, alleviate health hazards, and promote the orderly growth of the rural areas of the Nation by meeting the need for new and improved water and waste disposal systems.

The Business and Industry program is authorized by section 310 B (7 U.S.C. 1932) (Pub. L. 92–419, August 30,1972) of the Consolidated Farm and Rural Development Act to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities, including pollution abatement control.

The Consolidated Farm and Rural Development Act, section 310 B(c) (7 U.S.C. 1932(c)), authorizes Rural Business Enterprise Grants to public bodies and nonprofit corporations to facilitate the development of private businesses in rural areas.

The Consolidated Farm and Rural Development Act, section 310 B(f)(i) (7 U.S.C. 1932(c)), authorized Rural Cooperative Development Grants to nonprofit institutions for the purpose of enabling such institutions to establish and operate centers for rural cooperative development.

The FSA is authorized by 25 U.S.C. 488–494 to make loans through its Indian Tribal Land Acquisition loan program to individuals, tribes, or tribal corporations, within tribal reservations and Alaskan communities. The authority for FSA to make loans for grazing, irrigation and drainage, and farm ownership recreation loans is provided by the Consolidated Farm and Rural Development Act CONACT)(7 U.S.C. 1926 330–381).

The purpose of the loan and grant servicing function for the above programs is to assist recipients to meet the objectives of the loans and grants, repay loans on schedule, comply with agreements, and protect the Government's financial interest. Routine servicing responsibilities include collection of payments, compliance reviews, security inspections, review of financial reports, determining applicant/borrower eligibility and project feasibility for various servicing actions, and supervision activities.

Supervision by the Agencies include, but is not limited to: Review of budgets, management reports, audits and financial statements; performing security inspections and providing, arranging, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; and performing civil rights compliance reviews.

Information will be collected by the field offices from applicants, borrowers, consultants, lenders, and attorneys.

Failure to collect information could result in improper servicing of these loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: State, local or tribal Governments, Not-for-profit institutions, businesses, and individuals.

Estimated Number of Respondents: 275.

Estimated Number of Responses per Respondent: 2.

Estimated Number of Responses: 421.

Estimated Total Annual Burden on Respondents: 465.

Copies of the information collection can be obtained from Cheryl Thompson,

Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, 7th Floor, Room 701, 300 7th Street, SW., Washington, DC 20024. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 16, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

Dated: December 20, 2002.

John Rosso,

Administrator, Rural Business-Cooperative Service.

Dated: December 20, 2002.

Hilda Legg,

Administrator, Rural Utilities Service.

Dated: December 23, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–726 Filed 1–13–03; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–047N]

Codex Alimentarius Commission: 35th Session of the Codex Committee on Food Additives and Contaminants

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture, and the Food And Drug Administration (FDA) are sponsoring a public meeting on January 30, 2003, to provide information and receive public comments on agenda items that will be discussed at the meeting of the Codex Committee on Food Additives and Contaminants (CCFAC), which will be held in Arusha, Tanzania, on March 17–21, 2003. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the Thirty-fifth Session of the Additives and Contaminants Committee of the Codex Alimentarius Commission (Codex) and to address items on the Agenda for the 35th CCFAC.

DATES: The public meeting is scheduled for Thursday, January 30, 2003, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in the Auditorium, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland. To receive copies of the documents referenced in the notice contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/ccfac35/fa03_01e.htm*. If you have comments, please send an original and two copies to the FSIS Docket Clerk and reference Docket # 02–047N. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157. Attendees are requested to pre-register as soon as possible by e-mail to *USCCFAC@CFSAN.FDA.GOV*.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and EPA manage and carry out U.S. Codex activities.

The Codex Committee on Food Additives and Contaminants establishes or endorses maximum or guideline levels for individual food additives, for contaminants (including environmental contaminants), and for naturally occurring toxicants in foodstuffs and animal feeds. In addition the Committee prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives; recommends specifications of identity and purity for food additives for adoption by the Commission; considers methods of analysis for the determination of food additives and contaminants in food; and considers and elaborates standards or codes for related subjects such as the labelling of food additives when sold as such, and food irradiation. The Committee is chaired by The Netherlands.

Issues To Be Discussed at the Public Meeting

The provisional agenda items will be discussed during the public meeting:

1. Adoption of the Agenda (CX/FAC 03/1).

2. Matters referred by the Codex Alimentarius Commission and other Codex Committees (CX/FAC 03/2).

3. Summary Report of the 59th Meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA).

4. Action Required as a Result of Changes in ADI Status and other Toxicological Recommendations (CX/FAC 03/3).

5. Comments Submitted on the Proposed Draft Risk Assessment Policy Statement for the Application of Risk Analysis Principles to the Standard Setting Activities of the CCFAC in Conjunction with the Risk Assessments Performed by the JECFA.

Food Additives

6. Endorsement and/or Revision of Maximum Levels for Food Additives in Codex Standards (CX/FAC 03/5).

7. Consideration of the Codex General Standard for Food Additives.

(a) Report of the ad hoc Working Group on the Codex General Standard for Food Additives.

(b) Proposed Draft Revised Preamble to the Codex General Standard for Food Additives (CX/FAC 03/6).

(c) Proposed Draft Revised Food Category System of the Codex General Standard for Food Additives (CX/FAC 03/7).

(d) Comments Submitted on the Proposed Draft and Draft Revisions to Table 1 of the Codex General Standard for Food Additives in response to CL 2002/10–FAC and CL 2002/44–FAC.

(e) Comments Submitted on the Draft Revisions to the Annex to Table 3 of the Codex General Standard for Food Additives submitted in response to CL 2002/10–FAC.

8. Comments Submitted on the Discussion Paper on Processing Aids and Carriers (CX/FAC 02/9) in response to CL 2002/10–FAC.

9. Discussion Paper on the Use of Active Chlorine (CX/FAC 03/11).

10. (a) Draft Revised Codex General Standard for Irradiated Foods (CX/FAC 03/12).

(a) Consideration of a Revision or Amendments to the Guidelines Levels for Radionuclides in Foods Following Accidental Nuclear Contamination for Use in International Trade (CAC/GL 5–1989), including Guideline Levels for Radionuclides for Long-Term Use (CX/FAC 03/13).

11. (a) Report of the ad hoc Working Group on Specifications.

(b) Specifications for the Identity and Purity of Food Additives Arising from the 59th JECFA Meeting (CX/FAC 03/14).

12. (a) Comments Submitted on Revisions to the International Numbering System in response to CL 2002/29–FAC.

(b) Discussion Paper on the Harmonization of Terms Used by Codex and the Joint FAO/WHO Expert Committee on Food Additives for Sub-Classes and Technological Functions (CX/FAC 032/16).

Contaminants

13. Endorsement and/or Revision of Maximum Levels for Contaminants in Codex Standards (CX/FAC 03/17).

14. Codex General Standard for Contaminants and Toxins in Foods.

(a) Report of the ad hoc Working Group on Contaminants and Toxins.

(b) Schedule 1 of the Proposed Draft Codex General Standard for Contaminants and Toxins in Foods. (CX/FAC 03/18).

(c) Proposed Draft Principles for Exposure Assessment of Contaminants and Toxins in Foods (CX/FAC 03/19).

15. Mycotoxins in Food and Feed.

(a) Comments Submitted on the Proposed Draft Code of Practice for the Prevention of Patulin. Contamination in Apple Juice and Apple Juice Ingredients in Other Beverages in Response to CL 2002/29–FAC.

(b) Comments Submitted on the Draft Maximum Level for Patulin in Apple Juice and Apple Juice Ingredients in Other Beverages in Response to CL 2002/10–FAC.

(c) Comments Submitted on the Draft Code of Practice for the Prevention (Reduction) of Mycotoxin Contamination in Cereals, Including Annexes on Ochratoxin A, Zearalenone, Fumonisin and Tricothecenes in response to CL 2002/29–FAC.

(d) Discussion Paper on Aflatoxins in Tree Nuts, Including Information Submitted on Aflatoxin Contamination and Methods of Analysis for the Determination of Aflatoxin in Tree Nuts in response to CL 2002/10–FAC (CX/FAC 03/23).

(e) Proposed Draft Code of Practice for the Reduction of Aflatoxin Contamination in Tree Nuts (CX/FAC 03/24).

(f) Discussion Paper on the Development of a Code of Practice for the Reduction of Aflatoxin Contamination in Peanuts (CX/FAC 03/25).

(g) Discussion Paper on Dexoynivalenol, Including Information and Data Submitted on the Occurrence of Deoxynivalenol in Cereals in Response to CL 2002/10–FAC (CX/FAC 02/29).

16. Industrial and Environmental Contaminants in Foods

(a) Comments Submitted on the Draft Maximum Levels for Lead in Fish in Response to CL 2002/10–FAC.

(b) Comments Submitted on the Maximum Level for Lead in Milk and Milk Fat in Response to CL 2002/10–FAC.

(c) Proposed Draft Code of Practice for the Prevention and Reduction of Lead in Food (CX.FAC 03/28).

(d) Discussion Paper on Tin (CX/FAC 03/29).

(e) Comments Submitted on the Proposed Draft Maximum Levels for Tin in Response to CL 2002/10–FAC.

(f) Comments Submitted on the Proposed Draft Maximum Levels for Cadmium in Response to CL 2002/10–FAC.

(g) Position Paper on Dioxins and Dioxin Like PCBs, including Informaiton Submitted on Actual Levels and Methods of Analysis for Dioxin and Dioxin-Like PCBs in Response to CL 2002/10–FAC (CX/FAC 03/32).

(h) Proposed Draft Code of Practice for Source Directed Measures to Reduce Dioxin and Dioxin Like PCB Contamination of Foods (CX/FAC 03/33)

(i) Position Paper on Chloropropanols (CX/FAC 03/34).

General Issues

17. Comments Submitted on the Priority List of Food Additives, Contaminants and Naturally Occurring Toxicants Proposed for Evaluation by JECFA in response to CL 2002/10–FAC (CX/FAC 02/30).

18. Other Business and Future Work

Each issue listed will be fully described in documents distributed, or to be distributed, by The Netherlands' Secretariat to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the January 30th public meeting, the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (see **ADDRESSES**). Written comments should state that they relate to activities of the 35th CCFAC and Docket # 02–047N.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC on January 8, 2003.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 03–694 Filed 1–13–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of Form RD 410–8 "Applicant Reference Letter."

DATES: Comments on this notice must be received by March 17, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Gale Richardson, Loan Specialist, Single Family Housing, Rural Housing Service, 1400 Independence Avenue, SW., Mail Stop 0783, Washington, DC 20250–0783, Telephone (202) 720–1459.

SUPPLEMENTARY INFORMATION: Title: Form RD 410–8, "Applicant Reference Letter."

OMB Number: 0575–0091.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS), under section 502 of Title V of the Housing Act of 1949, as amended, provides financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, which will provide modest, decent, safe, and sanitary housing to eligible individuals in rural areas. To assist a customer, they must provide the Agency with a standard housing application (used by government and private lenders), and provide documentation, including their credit history, to support the same. Form RD 410–8 is used to obtain information about an applicant's credit history that might not appear on a credit report. It is used to document an ability to handle credit effectively for applicants who have not used sources of credit that appear on a credit report.

This form provides a mechanism for following up on repayment history for debts reported by the applicant on the application that do not appear on the credit report. This information is used by the Loan Originator serving the area in which the applicant or borrower will live to determine whether the applicant's credit history meets the Agency criteria. In addition to supplementing or verifying other debts when a credit report is limited and unavailable to determine the applicant's eligibility and credit worthiness, the Form RD 410–8 is widely used by the Agency because credit reports are not always used to obtain credit information when an applicant/borrower lives in a remote area.

RHS must, by law, make available to the applicant, upon request, the source of information used to make an adverse decision. Individual references may be solicited with the clear understanding that if the information is used to deny credit the information will be made available to the applicant upon request. Without this information, the Agency is unable to determine if a customer would qualify for services.

Estimate of Burden: Public burden for this collection of information is estimated to average 6 minutes per response.

Respondents: Applicants seeking direct single family housing loans and grants from the Agency.

Estimated Number of Respondents: 10,000.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 10,000.

Estimated Total Annual Burden on Respondents: 1,000 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Housing Service, including whether the information will have practical utility; (b) the accuracy of the Rural Housing Service's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, and DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 2, 2003.

David J. Villano,

Acting Administrator, Rural Housing Service.

[FR Doc. 03–711 Filed 1–13–03; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corporation; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to a request from Georgia Transmission Corporation for financing assistance from RUS to finance the construction of a 230/115 kV switching station and a 230 kV transmission line in Heard and Coweta Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at *bquigel@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: Georgia Transmission Corporation proposes to construct a 230 kV transmission line between its existing Yellowdirt Substation located within the boundary of Plant Wansley in Heard County, Georgia, to a proposed 230 kV switching station to be located in Coweta County, Georgia. The proposed switching station is to be identified as the Dresden Switching Station. The Dresden Switching Station will be located approximately 0.4 miles south of the intersection of Highway 34 and Quimby Jackson Road at the intersection of the Municipal Electric Authority of Georgia's existing Yates-LaGrange 230 kV and Georgia Power Company's 500 kV O'Hara-Wansley Transmission Lines. The proposed transmission line will parallel Georgia Power Company's 500 kV O'Hara-Wansley Transmission line

for 7 miles, then turn west and be routed for 1.12 miles, cross the Chattahoochee River, and traverse another mile to connect to the Yellowdirt Substation.

The transmission line conductors and static wire would be supported by concrete, single-pole, self-supporting and guyed structures. Georgia Transmission Corporation will need to purchase and clear an additional 75-feet of easement for 7 miles where the proposed transmission line will parallel Georgia Power Company's existing 500 kV transmission line and 100-feet of easement for 2.12 miles where the transmission line is cross country.

Copies of the Finding of No Significant Impact are available from RUS at the address provided herein or from Ms. Gayle Houston of Georgia Transmission Corporation, 2100 East Exchange Place, Tucker, Georgia 30085–2088 telephone (770) 270–7748. Ms. Houston's e-mail address is *gayle.houston@gatrans.com*

Dated: December 12, 2002.

Alfred Rodgers,

Acting Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 03–712 Filed 1–13–03; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the South Dakota Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on Wednesday, February 12, 2003, at the Holiday Inn City Centre, 100 West 8th Street, Sioux Falls, South Dakota 57104. The purpose of the planning meeting with briefing is to review the status of research on criminal justice issues affecting Native Americans and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 6, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–693 Filed 1–13–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–802]

Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On September 10, 2002, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 2000, through July 31, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: January 14, 2003.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Brian Ellman, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3477 or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2002, the Department of Commerce (the Department) published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. *See Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico*, 67 FR 57379 (September 10, 2002) (*Preliminary Results*).

We invited parties to comment on our *Preliminary Results*. In October 2001, we received case and rebuttal briefs from the petitioner, the Southern Tier Cement Committee, and from the respondents, CEMEX, S.A. de C.V. (CEMEX), and GCC Cemento, S.A. de C.V. (GCCC). The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and customs purposes only. The Department's written description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Susan Kuhbach, Acting Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary, dated January 8, 2003, which is hereby adopted by this notice. The Decision Memorandum is on file in Import Administration's Central Records Unit, Room B-099 of the main Department of Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly from the Internet at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have corrected certain programming and clerical errors in our preliminary results, where applicable. These changes are discussed in the

relevant sections of the Decision Memorandum.

Final Results of Review

We determine that the following weighted-average margin exists for the collapsed parties, CEMEX and GCCC, for the period August 1, 2000, through July 31, 2001:

Exporter/manufacturer	Weighted-average percentage margin
CEMEX/GCCC	73.74

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. In accordance with 19 CFR 351.212(b), we have calculated an exporter/importer-specific assessment value. For the sales in the United States through the respondent's affiliated U.S. parties, we divided the total dumping margin for the reviewed sales by the total entered value of those reviewed sales. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the entries during the review period (see 19 CFR 351.212(a)).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Cash-Deposit Requirements

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of gray portland cement and clinker from Mexico,entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash-deposit rate for CEMEX/GCCC will be 73.74 percent; (2) for previously investigated or reviewed companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous reviews or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be 61.85 percent, which was the "all others" rate in the LTFV investigation. See *Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico*, 55 FR 29244 (July 18, 1990). The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: January 8, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix - Issues in the Decision Memorandum

1. Revocation
2. Sales-Below-Cost Test
3. Arm's-Length Test
4. Regional Assessment
5. Bag vs. Bulk
6. Customer Misclassification
7. Ordinary Course of Trade
8. Interest Rate for Credit Expenses
9. Cash Deposits
10. Ministerial Errors

[FR Doc. 03–728 Filed 1–13–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122–814]

Pure Magnesium from Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of 2000/2001 Administrative Review and Determination Not to Revoke Order in Part.

SUMMARY: On September 9, 2002, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 2000, through July 31, 2001. This review covers imports of pure magnesium from one producer/exporter. We gave interested parties an opportunity to comment on the preliminary results.

For our final results, we have found that sales of the subject merchandise have not been made below normal value. We will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company. Furthermore, we are not revoking the antidumping duty order with respect to pure magnesium from Canada produced by Norsk Hydro Canada, Inc.

EFFECTIVE DATE: January 14, 2003.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or Scott Holland, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0189 or (202) 482–1279, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the preliminary results in this review (*see Pure Magnesium from Canada; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Intent Not to Revoke Order in Part*, 67 FR 57217 (September 9, 2002) ("Preliminary Results")), the following events have occurred:

On October 9, 2002, U.S. Magnesium LLC ("the petitioner"), filed a case brief.

Scope of the Order

The product covered by this order is pure magnesium. Pure unwrought

magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope currently classifiable under subheading 8104.11.0000 of the Harmonized Tariff Schedule ("HTS"). The HTS item number is provided for convenience and for customs purposes. The written description of the scope of the order remains dispositive.

Period of Review

The period of review ("POR") is August 1, 2000, through July 31, 2001.

Determination Not to Revoke

The Department of Commerce ("the Department") "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Tariff Act of 1930, as amended ("the Act"). While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value ("NV") in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) the continued application of the antidumping duty order is not otherwise necessary to offset dumping; and (3) the company has agreed to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2).

Pursuant to 19 CFR 351.222(e)(1), Norsk Hydro Canada Inc. ("NHCI") requested revocation of the antidumping duty order. The request was accompanied by certifications that NHCI had not sold the subject merchandise at less than NV during the current period of review and would not do so in the future. NHCI also certified that it sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. Finally, NHCI agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that NHCI sold the subject merchandise at less than NV subsequent to the revocation.

We must determine, as a threshold matter, in accordance with 19 CFR 351.222(e)(1)(ii), whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request. In our *Preliminary Results*, we determined that NHCI did not sell the subject merchandise in the United States in commercial quantities during the POR. *See Preliminary Results* 67 FR at 57219; *see also* the Memorandum from Team to Richard W. Moreland, "Commercial Quantities," dated September 3, 2002, for a discussion of NHCI's selling activity.

After consideration of the comments that were submitted in response to the *Preliminary Results*, we continue to find that NHCI did not sell the subject merchandise in the United States in commercial quantities during at least one of the three years cited by NHCI to support its request for revocation. Further, since the *Preliminary Results*, no facts have arisen to change the Department's decision. *See* "Issues and Decision Memorandum for the 2000/2001 Administrative Review of Pure Magnesium from Canada; Final Results" from Susan Kuhbach, Acting Deputy Assistant Secretary AD/CVD Enforcement Group I, Import Administration, to Faryar Shirzad, Assistant Secretary Import Administration, dated January 7, 2003 ("*Decision Memorandum*"). Therefore, we continue to find that NHCI does not qualify for revocation of the order on pure magnesium under 19 CFR 351.222(e)(1)(ii).

Fair Value Comparisons

To determine whether sales of pure magnesium from Canada to the United States were made at less than normal value, we compared export price ("EP") to NV. Our calculations followed the methodologies described in the *Preliminary Results*.

Changes from the Preliminary Results

We calculated EP and NV based on the same methodologies described in the *Preliminary Results*.

Analysis of Comments Received

The sole issue raised in the case brief in this administrative review is addressed in the *Decision Memorandum*, which is hereby adopted by this notice. A list identifying the issue which the petitioner has raised and to which we have responded in the *Decision Memorandum* is attached to this notice as an Appendix. Parties can find a complete discussion of the issue raised in this review and the corresponding recommendation in this *Decision Memorandum*, which is on file in the Central Records Unit, room B-099 of the main Department of Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/frnhome.htm. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of the Review

As a result of this review, we determine that the following percentage weighted-average margin exists for the period August 1, 2000, through July 31, 2001:

Manufacturer/Exporter	Margin
Norsk Hydro Canada Inc.	Zero

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we will direct the Customs Service to apply the assessment rates against each of the importer's/customer's entries during the review period. Where an importer (or customer)-specific *ad valorem* rate was less than *de minimis*, we will direct the Customs Service to liquidate without regard to antidumping duties.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions

directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for NHCI will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 21.00 percent, the "All Others" rate made effective by the less-than-fair-value investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the only reminder to parties subject to the administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/ destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: January 7, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Issues and Decision Memorandum

Comment 1: Commercial Quantities Benchmark

[FR Doc. 03–727 Filed 1–13–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010603C]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that the U.S. Fish and Wildlife Service (USFWS) has submitted 10 Hatchery and Genetic Management Plans (HGMP) pursuant to the protective regulations promulgated for salmon and steelhead in the Columbia River basin listed under the Endangered Species Act of 1973, as amended (ESA). The HGMPs specify the future management of hatchery programs potentially affecting the Lower Columbia River (LCR) chum salmon, LCR chinook salmon, LCR steelhead, Upper Willamette River (UWR) chinook salmon, and Middle Columbia River (MCR) steelhead in the States of Oregon and Washington. This document serves to notify the public of the availability of the HGMPs for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft HGMPs must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on February 13, 2003.

ADDRESSES: Written comments and requests for copies of the draft HGMPs should be addressed to Richard Turner, Sustainable Fisheries Division, Hatchery and Inland Fisheries Branch, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232 or faxed to (503) 872–2737. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Richard Turner, Portland, OR at phone number (503) 736–4737 or e-mail: *rich.turner@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the LCR chum salmon (*Oncorhynchus keta*), LCR chinook salmon (*O. tshawytscha*), LCR steelhead (*O. mykiss*), UWR chinook salmon (*O. tshawytscha*), and MCR steelhead (*O. mykiss*) Evolutionarily Significant Units (ESU).

Background

The USFWS has submitted to NMFS 10 HGMPs for artificial propagation programs potentially affecting listed adults and juveniles of the LCR chum salmon, LCR chinook salmon, LCR steelhead, UWR chinook salmon, and MCR steelhead ESUs (Table 1). The Little White Salmon/Willard National Fish Hatchery (NFH) Complex rears and releases spring chinook salmon, upriver bright fall chinook salmon, and coho salmon. These programs use hatchery adults that return annually to the Little White Salmon NFH at the mouth of the Little White Salmon River in the state of Washington for broodstock. The spring chinook salmon and coho salmon artificial propagation programs are funded by NMFS through the Mitchell Act, and the upriver bright fall chinook salmon program is funded by the U.S. Army Corps of Engineers as part of the John Day Dam mitigation program.

TABLE 1. HATCHERY AND GENETIC MANAGEMENT PLANS AND LEAD MANAGEMENT AGENCIES.

Hatchery and Genetic Management Plan	Lead Agencies
Little White Salmon/Willard NFH Complex Coho Salmon	USFWS
Little White Salmon/Willard NFH Complex Spring Chinook Salmon	USFWS
Little White Salmon/Willard NFH Complex Upriver Bright Fall Chinook Salmon	USFWS
Carson NFH Spring Chinook Salmon	USFWS
Spring Creek NFH Tule Fall Chinook Salmon	USFWS
Eagle Creek NFH Coho Salmon	USFWS
Eagle Creek NFH Winter Steelhead	USFWS
Warm Springs NFH Warm Springs River Spring Chinook Salmon	USFWS
Touchet River Endemic Summer Steelhead	WDFW/USFWS
Walla Walla River Summer Steelhead—Lyons Ferry Hatchery Stock	WDFW/USFWS

The spring chinook salmon program at the Carson NFH rears and releases Carson stock spring chinook salmon into the Wind River in the state of Washington. This program is funded through the Mitchell Act. Spring Creek NFH rears and releases tule fall chinook salmon from the hatchery located on the mainstem Columbia River above Bonneville Dam. This is funded through the Mitchell Act. These Mitchell Act programs are designed and funded to support Tribal Treaty fisheries and non-treaty commercial and recreational fisheries as mitigation for hydro-system development and habitat loss due to the construction and operation of the Federal mainstem dams on the Columbia River. The proposed artificial propagation programs at Little White Salmon/Willard Complex, Carson NFH, and Spring Creek NFH use hatchery returns for broodstock and are not expected to handle salmonid adults that are listed under the ESA.

The Eagle Creek NFH rears and releases coho salmon, and early-run winter steelhead. These programs use hatchery adults that return annually to the Eagle Creek NFH on Eagle Creek, a major tributary to the Clackamas River in Oregon for broodstock. The coho salmon and winter steelhead artificial propagation programs are funded by NMFS through the Mitchell Act.

The Eagle Creek NFH coho salmon program rears and releases early run coho salmon on station at the Eagle Creek NFH. Coho adults that return to the hatchery from September to November are used for broodstock. Enough broodstock is collected to provide for an on-station release of 500,000 smolts annually to support ocean and mainstem commercial fisheries and to provide recreational fishing harvest opportunities in the lower Clackamas River and Eagle Creek. Additional coho broodstock is collected to provide eyed eggs and fingerlings to the Nez Perce Tribe in Idaho for restoration programs in the Clearwater River basin in Idaho and to provide fingerling coho salmon to the Clatsop County Economic Development Commission for development and operation of terminal fisheries in Youngs Bay, Tongue Point, and Blind Slough, Oregon.

The Eagle Creek NFH winter steelhead program rears and releases non-listed early-run winter steelhead on station at the Eagle Creek NFH to support local recreational fisheries. Broodstock for the program is collected from returning hatchery adults that swim into the hatchery from November through March. These Mitchell Act programs are designed and funded to support Tribal Treaty fisheries and non-treaty commercial and recreational fisheries as mitigation for hydro-system development and habitat loss due to the construction and operation of the federal mainstem dams on the Columbia River. The proposed artificial propagation programs at Eagle Creek NFH have the potential to handle up to two adult salmonids that are listed under the ESA when collecting broodstock.

The Warm Springs spring chinook program uses natural and hatchery produced spring chinook salmon that return to the Warm Springs NFH, located on the Warm Springs River (tributary to the Deschutes River in Oregon). These populations are not listed. This program is funded by the USFWS and is operated cooperatively with the Confederated Tribes of the Warm Springs Reservation of Oregon. During broodstock collection activities and during the operation of the fish ladder and trap at the Warm Springs NFH, listed MCR summer steelhead will be handled and released and hatchery steelhead will be collected and removed to prevent non-endemic summer steelhead from spawning naturally with listed summer steelhead.

The purpose of the Touchet River endemic summer steelhead HGMP is to develop an artificial propagation program that uses natural and hatchery produced summer steelhead broodstock that are endemic to the Touchet River, a tributary to the Walla Walla River in Washington. This program is designed to use the locally-adapted broodstock to replace the non-endemic Lyons Ferry State Fish Hatchery summer steelhead program that currently releases hatchery summer steelhead into the Touchet River. This program will collect broodstock from both listed naturally produced steelhead and hatchery produced endemic stock steelhead returning to an adult fish trap on the Touchet River in Dayton, Washington. The adults collected for broodstock will be spawned and released back into the Touchet River and the eggs transferred to the Lyons Ferry State Fish Hatchery for incubation and rearing. All steelhead smolts will be marked and then acclimated at the Dayton Acclimation Ponds prior to release into the Touchet River or will be released directly into the upper Touchet River basin above the Dayton adult fish trap.

The Walla Walla River summer steelhead program uses the Lyons Ferry Hatchery summer steelhead stock to augment recreational fisheries in the lower mainstem Walla Walla and Touchet rivers. Lyons Ferry Hatchery summer steelhead broodstock is collected from hatchery adults returning to the Lyons Ferry Hatchery on the mainstem Snake River in Washington. Releases of hatchery fish from this program have declined in recent years to address ESA concerns and continue to be evaluated for further reductions or modification.

These two programs are operated by the Washington Department of Fish and Wildlife (WDFW) and funded by the USFWS through the Lower Snake River Compensation Plan as mitigation for lost recreational fisheries resulting from the construction and operation of the four Lower Snake River dams.

Impacts on the listed LCR and MCR ESUs are specified in the HGMPs and are expected to be low. A variety of monitoring and evaluation tasks are specified in the HGMPs to assess the contribution of hatchery releases to fisheries and to assess impacts on naturally spawning populations of LCR chum salmon, LCR chinook salmon, LCR steelhead, and MCR steelhead. The USFWS and WDFW will annually review the hatchery operations, smolt releases, and adult returns within the provisions of the HGMPs. The USFWS and WDFW will conduct, at a minimum of every 5 years, a comprehensive review to evaluate the effectiveness of the HGMPs.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422), NMFS may approve an HGMP if it meets criteria set forth in § 223.203 (b)(5)(i)(A) through (K). Prior to final approval of an HGMP, NMFS must publish notification announcing its availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with fishery harvest provided that an FMEP has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule.

Dated: January 8, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–696 Filed 1–13–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021218316–2316–01; I.D. 111402A]

RIN 0648–ZB37

Financial Assistance for Research and Development Projects in Chesapeake Bay to Strengthen, Develop and/or Improve the Stock Conditions of the Chesapeake Bay Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability of funds.

SUMMARY: A total of up to $1,500,000 in Fiscal Year (FY) 2003 funds is anticipated to be made available by Congress through the NOAA Chesapeake Bay Office to assist in carrying out research and development projects that address various aspects of Chesapeake Bay fisheries (commercial and recreational), including coastal and estuarine research, monitoring, modeling, and assessment; fisheries research and stock assessments; data management; and, multiple species interactions through cooperative agreements. About $800,000 of the base amount is available to initiate new projects in FY 2003, as described in this announcement. It is the intent of the NOAA Chesapeake Bay Office to continue with several existing relationships and to make awards through this program for currently funded multiple year projects pending acceptable scientific review. NMFS issues this document to set forth instructions on how to apply for financial assistance, and how NMFS will determine which applications will be selected for funding.

DATES: Applications for funding under this program must be received by 5 p.m. eastern standard time on March 17, 2003. Applications received after that time will not be considered for funding. Applications will not be accepted electronically nor by facsimile machine submission.

ADDRESSES: You can obtain an application package from, and send completed applications to: Derek Orner, National Marine Fisheries Service, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403. You can also obtain the application package from the Chesapeake Bay Fisheries Research Program Home Page *http://noaa.chesapeakebay.net/fisheries.*

FOR FURTHER INFORMATION CONTACT: Derek Orner, National Marine Fisheries Service, NOAA Chesapeake Bay Office, 410/267–5660; or e-mail: *derek.orner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. *Authority.* The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753a, authorizes the Secretary of Commerce (Secretary), for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several states, and with non-profit organizations relating to cooperative research units. The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c, to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of fisheries, resources thereof, and for fisheries habitat restoration. This announcement is subject to the availability of funding under the Departments of Commerce (DOC), Justice, State, the Judiciary, and Related Agencies Appropriations Act of 2003 which makes funds available to the Secretary.

B. *Catalog of Federal Assistance (CFDA).* The Chesapeake Bay Fisheries Research Program is listed in the "Catalog of Federal Domestic Assistance" under number 11.457, entitled Chesapeake Bay Studies.

C. *Program Description.* The Chesapeake Bay Stock Assessment Committee (CBSAC) was established in 1985 to plan and review Baywide resource assessments, coordinate relevant actions of state and Federal agencies, report on fisheries status and trends, and determine, fund and review research projects. The program implements a Baywide plan for the assessment of commercially, recreationally, and selected ecologically important species in the Chesapeake Bay. In 1988, CBSAC developed a Baywide Stock Assessment Plan, in response to provisions in the Chesapeake Bay Agreement of 1987. The Plan identified that key obstacles to assessing Bay stocks was the lack of consistent, Baywide, fishery-dependent and fishery-independent data. Research projects funded since 1988 have focused on developing and improving fishery-independent surveys and catch statistics for key Bay species, such as striped bass, oysters, blue crabs and alosids. Stock assessment research is essential, given the recent declines in harvest and apparent stock condition for many of the important species of the Chesapeake Bay. The Fisheries Steering Committee was established in 2001 to guide the various Chesapeake Bay fisheries' issues including management and research.

II. Funding Priorities

Proposals should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multi-disciplinary. Coordinated efforts involving multiple eligible applicants or persons are encouraged. Proposals must address one of the priorities listed here. If the proposal addresses more than one priority, it should list first on the application the priority that most closely reflects the objective of the proposals.

(A) *Stock Assessment Research* - Consideration for funding will be given to applications that address the following stock assessment research and management priorities for the Chesapeake Bay. These priorities are not listed in any particular order:

(1) Assessments of the abundance, productivity, distribution, and exploitation patterns of important Chesapeake Bay finfish and shellfish resources. Proposals may include research on life history characteristics, larval dynamics, stock-recruitment relationships, and schedules of vital rates. Descriptions of stock structure, demographics and spatial distribution would also be appropriate. It is anticipated that proposals will combine analyses of existing fishery-dependent and fishery-independent data.

(2) Development and/or implementation of a program to provide a reliable data base for estimating the impact of recreational fishing on living marine resources in Chesapeake Bay. Projects should:

a. Conduct a review of any work previously conducted on the development of methods for conducting a Baywide recreational survey;

b. Implement on a Baywide scale based on earlier work (if applicable);

c. Provide reliable estimates of recreational catch, fishing effort, catch rates, size composition, and sex ratios

for all components of the recreational fishery.

(3) Blue Crab Stock Assessment Analyses

a. Stock assessment of blue crab in Chesapeake Bay has been hampered by inadequate fishery data. Because of this shortcoming, previous assessments/ analyses were conducted using less data intensive techniques. Based on activities in part funded through this program in recent years, there is a need and a capability to more formally assess the status of this important resource. Proposals addressing this priority should expect for the final report to undergo a stock assessment review similar to that utilized by the NMFS - Northeast Science Center's SAW/SARC process.

b. Managing a fishery as complicated as the blue crab is difficult and with the blue crab maintaining its dominance in Chesapeake Bay fisheries, it is critical to understand/determine whether management approaches introduced by the Bay states are beneficial to the fishery or if there are potentially other alternatives. There is also a need to compare the management approaches across the states to explore the bi-state management of the resource.

c. Design and develop an integrated Baywide blue crab mark and recapture study that will provide information on growth, natural mortality, fishing mortality, size selectivity, catchability, reporting rates and the distribution of harvest among the fisheries. Results should be informative with respect to the reproductive frequency of female crabs, and longevity.

(4) Improvement or implementation of the collection of fishery-dependent data within Chesapeake Bay. Projects can involve either the commercial and/or recreational components of the fishery. Projects should focus on collecting biological data (size, sex, age, diet), and catch and effort data from Baywide harvests of significant finfish and shellfish fisheries to provide accurate, statistically representative information on the spatial and temporal characteristics of the harvest. Proposals may involve designs for port-sampling of landings, or on-board analysis of the catch, analysis of intercepts and telephone surveys. Proposals that document information on by-catch and discard mortality would be relevant and are encouraged.

The proposals should recognize current efforts to collect biological data from Bay fisheries and attempt to define the optimal, regional (Maryland, Potomac River Fisheries Commission, and Virginia jurisdictions) sampling program.

(5) Improvement and/or implementation of Chesapeake Bay fisheries database tools (including oracle database systems and web-based public access) for the various fishery-dependent and fishery-independent data currently and historically available in Chesapeake Bay. This activity should not be limited to only gaining access to current or historically available data to make it more accessible, but also to mining this data to develop indices of relative abundance where applicable. Proposals are encouraged to coordinate with the Atlantic Coastal Cooperative Statistics Program (ACCSP) and/or the Northeast Area Monitoring Assessment Program (NEAMAP) activities.

(B) *Multispecies Management and Research* - The Chesapeake Bay is a complex and dynamic ecosystem that supports many fisheries that are economically important both regionally and nationally. To date, these resources have been managed on a single species basis. While the single species approach has served us well, the existence of both biological and technical (by-catch) interactions in most Chesapeake Bay fisheries point to the need to move toward a wider, multispecies perspective. This viewpoint was wholeheartedly endorsed at a workshop of regional, national and international scientists held to address the potential utility of multispecies approaches to fisheries management in the Chesapeake Bay (STAC Publication 98–002, *www.chesapeake.org).* The ultimate objective of this research and monitoring is to lead to the development of an ecosystem plan for Chesapeake Bay fisheries, within which the rational exploitation of individual species can be determined.

Consideration for funding will be given to applications that address the following multispecies management and research priorities for the Chesapeake Bay. Priorities are not listed in any implied order:

(1) Fishery-independent Surveys. Plan, develop and conduct coordinated Baywide surveys to regularly estimate species abundances, trends and biological characteristics (e.g., age/size structure, recruitments, growth and mortality rates, food habitats) for economically and ecologically important key species. Proposals within this task should:

a. Review and assess existing fishery independent sampling programs conducted by regional agencies to evaluate their potential applicability to the Chesapeake Bay. This may include evaluation of the use of fixed and random sampling protocols, with or without stratification, and the sampling characteristics of different gear types.

b. Develop and initiate a Baywide, coordinated, fishery-independent survey that may include multiple gear, such as benthic and midwater trawling, and hydroacoustics to characterize the status and trends in the abundance, distribution and characteristics of key Chesapeake Bay finfish and shellfish.

(2) Retrospective Analyzes. Document and quantify multispecies interactions among economically and ecologically important finfish and shellfish within the Chesapeake Bay. The proposed work should lead to the identification of the 'strong' interactions within the Chesapeake Bay fisheries system. Work may involve analysis of commercial and recreational catch and effort data, the analysis of the patterns of diets and energy flows within the fisheries system, or multivariate analyses of abundance relationships within the fisheries system and their relationship to environmental and habitat characteristics.

(3) Multispecies Assessment / Ecosystem Modeling. Apply and assess alternative multispecies fisheries models to the Chesapeake Bay fisheries systems. The submitted proposal should detail the development of a multispecies or ecosystem model focusing on core Chesapeake Bay species. Examples of possible approaches include, but are not limited to: multispecies biomass dynamic, multispecies yield per recruit, multispecies virtual population analysis, multispecies bioenergetics, spatial-physical predator-prey, trophic production and ecosystem simulation models. Model approaches should seek to predict constraints and patterns in the fisheries production of the Chesapeake Bay system.

(4) In an ecosystem-based approach to fisheries management, it is important to understand and develop reference points related to the total removals of the system to fully appreciate the impact those fishery removals have on food webs. All sources of removals to quantify the level of total removals to the Chesapeake Bay system should be identified and thresholds and sustainable levels of removals should be identified. This threshold should be an upper limit on the biomass of fish and shellfish that can be removed from Chesapeake Bay annually. Sustainable or target levels of removals should also be identified.

(C) *Fisheries Ecosystem Plan (FEP) Research and Implementation* - The NOAA Chesapeake Bay Office has initiated development of an FEP for Chesapeake Bay. An FEP is an umbrella document containing information on the

structure and function of the ecosystem in which fishing activities occur, so that managers can be aware of the effects their decisions have on the ecosystem, and the effects other components of the ecosystem may have on fisheries. Development of FEPs for each major ecosystem was recommended by the NMFS-appointed Ecosystem Principles Advisory Panel which was formed under a mandate by the Sustainable Fisheries Act of 1996. (See the Panel's Report to Congress at: *http://www.nmfs.noaa.gov/sfa/EPAPrpt.pdf.*) The initial FEP will reflect the existing state of knowledge about the Chesapeake Bay ecosystem. Effective FEP implementation and ultimate success of the Bay's FEP initiative will require new research to characterize critical components of the ecosystem. The total value of the proposals selected for funding under this priority cannot exceed $100,000 of the base amount. Priorities are not listed in any particular order.

(1) Design and implementation of surveys to identify habitats, spawning areas, and feeding grounds for significant Chesapeake Bay species.

(2) Promote a higher level of understanding of the relationships between fisheries, the ecosystem, society and the environment. Proposals may include:

a. Improving the understanding of the 'multiple pathways' that can affect managed species and members of their significant food webs. Pathways might include (but are not limited to): the effects of habitat degradation and restoration, influences of the spatial arrangement of habitats, effects of environmental fluctuations or climate change, and the impact of changes in predator-prey relationships.

b. Characterizing uncertainty in key parameters used to support fisheries management decisions. This should include the ability to show the risks associated with the estimated uncertainty.

c. Describing the social and economic drivers of both commercial and recreational sectors of the Chesapeake Bay fishing industry.

d. Determining the relevance of existing, or proposed, indicators of ecosystem health (especially to meet the objective of linking fisheries and human health to the supporting Chesapeake Bay ecosystem).

e. Development of a data management system for linking fisheries and habitat management in Chesapeake Bay. This integrated data management system should link information on habitat requirements, significant food webs, and management activities.

III. Funding

A. *Funding Availability.* This document describes how interested persons can apply for funding under the Chesapeake Bay Fisheries Research Program, and how funding decisions will be made.

This solicitation announces that funding of up to $1,500,000 may be available through the Chesapeake Bay Fisheries Research Program. It is the intent of the NOAA Chesapeake Bay Office to continue with several existing relationships and to make awards through this program for projects pending successful progress reports and review. Applicants are hereby given notice that funds have not yet been appropriated for this program. This announcement does not guarantee that sufficient funds will be available to make awards for all selected applications submitted under this program. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and the NOAA representatives.

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published October 30, 2002 (67 FR 66109), is applicable to this solicitation.

B. *Duration and Terms of Funding.* Under this solicitation, NCBO will fund Chesapeake Bay Fisheries Research Projects as 12 month cooperative agreements. The cooperative agreement has been determined to be the appropriate funding instrument because of the substantial involvement of NCBO in:

1. Developing program research priorities;

2. Evaluating the performance of the program for effectiveness in meeting regional goals for Chesapeake Bay stock assessments;

3. Monitoring the progress of each funded project;

4. Holding periodic workshops with investigators; and

5. Working with recipients to prepare annual reports summarizing current accomplishments of the Chesapeake Bay Stock Assessment Committee.

Proposals may be considered for continuation beyond the first project and budget period. Proposals may be submitted for up to 3 years. However, funds will be made available for only a 12–month award period and any continuation of the award period will be subject to an approved scope of work, satisfactory progress, a panel review, and available funding to continue the award. No assurances for a funding continuation exists; funding will be at the complete discretion of NOAA.

First-year proposals must include a full description of the activities and budget for the first year as described in this announcement, and should include a summary description of the proposed work for each subsequent year and an estimated budget by line item (without supporting budget detail pages) for review and analysis. If selected for funding, the applicant will be required to submit a full proposal for the second year by the deadline announced in the following year's competitive cycle. Proposals will be evaluated through a review panel process, but will not be subject to competition with new proposals.

C. *Cost-sharing Requirements.* Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required by the Chesapeake Bay Fisheries Research Program but is strongly encouraged. Federal funds may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the final selection process.

IV. How to Apply

A. *Eligible Applicants.* Eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

The Department of Commerce National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

B. *Project Start Dates.* Projects should not be scheduled to begin before May 1, 2003.

C. *Format.* 1. Applications for project funding must be complete and must follow the format described in this document.

Applicants must identify the specific research priority or priorities to which they are responding. If the proposal addresses more than one priority, it should list first on the application the priority that most closely reflects the objective of the proposals. For applications containing more than one project, each project component must be identified individually using the format specified in this section. If an application is not in response to a priority, it should so state. Applicants should not assume prior knowledge on the part of NCBO as to the relative merits of the project described in the application.

Applications must not be bound and must be one-sided. Applicants are required to submit 1 signed original and 2 copies of the full proposal. All incomplete applications will be returned to the applicant.

2. Applications must be submitted in the following format:

(a) *Cover sheet:* An applicant must use OMB Standard Form 424 (revised 7/97) as the cover sheet for each project. Applicants may obtain copies of these forms from the NOAA Chesapeake Bay Office (see **ADDRESSES**) or from the NOAA Grants Management Division website, *http://www.rdc.noaa.gov/grants/*.

(b) *SF–424A - Budget form*: All applicants must use a Standard Budget Form (SF–424A) required for all Federal cooperative agreements.

(c) *Form CD–511.* All applicants must submit a CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying".

(d) *SF424B.* All applicants must submit a SF–424B, "Assurances of Non-Construction Programs".

(e) CD–436 "Applicant for Funding Assistance". Must be submitted with applications from non-profit organizations, Joint Ventures, Corporations, Partnerships, and Sole Proprietorships. Officials of state and local governments and officials of accredited colleges and universities are exempt.

(f) *Project summary (1–page limit):* It is recommended that each proposal contain a summary of not more than one page that provides the following:

(1) Project title.

(2) Project status (new vs. continuation).

(3) Project duration (beginning and ending dates).

(4) Name, address, e-mail, and telephone number of applicant.

(5) Principal Investigator(s) (PI).

(6) Project objectives.

(7) Summary of work to be performed.

(8) Total Federal funds requested.

(9) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.

(10) Total project cost.

(g) *Project description* - (including results from prior support): Each project must be completely and accurately described. The main body of the proposal should be a clear statement of the work to be undertaken and should include: specific objectives and performance measures for the period of the proposed work and the expected significance; relation to longer-term goals of the PI's project; and relation to other work planned, anticipated, or underway under Federal Assistance. The project description must not exceed 15 pages in length. Visual materials, including charts, graphs, maps, photographs and other pictorial presentations are not included in the 15–page limitation. If an application is awarded, NCBO will make all portions of the project description available to the public for review; therefore, NCBO cannot guarantee the confidentiality of any information submitted as part of any project, nor will NCBO accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

(1) *Identification of problem(s):* Describe the specific problem or priority to be addressed (see section II above).

(2) *Project objectives:* The project description must identify the following three project objectives: (1) Identify the specific priority listed earlier in the solicitation to which the proposed projects respond, if any. (2) Identify the problem/opportunity you intend to address and describe its significance to the fishing community. (3) State what you expect the project to accomplish.

If you are applying to continue a project previously funded under the Chesapeake Bay Fisheries Research Program, describe in detail your progress to date and explain why you need additional funding.

Objectives should be:

(a) Simple and easily understandable.

(b) As specific and quantitative as possible.

(c) Clear with respect to the "what and when" and should avoid the "how and why.

(d) Attainable within the time, money, and human resources available.

(e) Use action verbs that are accomplishment oriented.

(f)Identify specific performance measures.

(3) *Project narrative:* The project narrative is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective(s).

Investigators submitting proposals in response to this announcement are strongly encouraged to develop inter-institutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. Such collaborative efforts will be factored into the final funding decision.

Each project narrative must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the project narrative.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. A detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures that are to be attained in each project month covered by the project narrative. Table format should follow sequential month rather than calendar month (i.e. Project period Month 1, Month 2... versus October, November ...)

(4) *Benefits or results expected:* Identify and document the results or benefits to be derived from the proposed activities.

(5) *Need for Government financial assistance:* Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(6) *Federal, state and local government activities:* List any programs (Federal, state, or local government or activities, including Sea Grant, state

Coastal Zone Management Programs, NOAA Oyster Disease Research Program, the state/Federal Chesapeake Bay Program, etc.) this project would affect and describe the relationship between the project and those plans or activities.

(7) *Project management:* Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

(8) *Results from prior Chesapeake Bay Fisheries Research support:* If any PI or co-PI identified on the project has received Chesapeake Bay Fisheries Research or Chesapeake Bay Stock Assessment Committee (CBSAC) support in the past 5 years, information on the prior award(s) is required. The following information must be provided:

(a) The NOAA award number, amount and period of support;

(b) The title of the project;

(c) Summary of the results of the completed work, including, for a research project, any contribution to the development of human resources in science/biology;

(d) Publications resulting from the award (Reprints may be submitted, and are requested, for documentation if applicable);

(e) Brief description of available data, samples, physical collections and other related research products not described elsewhere; and

(f) If the proposal is for renewed support, a description of the relation of the completed work to the proposed work.

(9) *Monitoring of project performance:* Identify who will participate in monitoring the project.

(10) *Project impacts:* Describe how these products or services will be made available to the fisheries and management communities.

(11) *Education and outreach:* How will this project provide a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nations' natural resources?

(12) *Evaluation of project:* The applicant is required to provide an evaluation of project accomplishments and progress towards the project objectives and performance measures at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical feasibility, or to quantify the results of the project in promoting increased production, product quality and safety, management effectiveness, or other measurable factors.

(13) *Total project costs and budget narrative:* Total project costs are the amount of funds required to accomplish what is proposed in the Project Description, and includes contributions and donations. A standard budget form (SF–424A) is available from the offices listed and on the internet (see **ADDRESSES**). NMFS will not consider fees or profits as allowable costs for grantees.

All costs must be shown in a detailed budget narrative. Explain the calculations and provide a narrative to support specific items or activities, such as personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. The date, period covered, and findings for the most recent financial audit performed, as well as the name of the audit firm, the contact person, and phone number and address, must be also provided.

(h) *Supporting documentation:* Provide any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

IV. Review Process, Criteria and Selection Procedures

A. *Initial Evaluation of Applications.* Applications will be reviewed by NCBO to assure that they meet all requirements of this announcement, including eligibility and relevance to the Chesapeake Bay Fisheries Research Program. Proposals that do not support the technical and management priorities of the Chesapeake Bay, as defined in section II. above will not be considered for funding.

B. *Consultation with Experts in the Field of Stock Assessment and Fisheries Research.* For applications meeting the requirements of this solicitation, NCBO will conduct an individual technical evaluation (via mail/electronic mail) of each project. This review normally will involve experts from both NOAA and non-NOAA organizations. All comments submitted to NCBO will be taken into consideration in the evaluation of projects. Reviewers will be asked to review independently and to provide a score and comments based on the following four criteria (total of 50 possible points):

1. Problem description and conceptual approach for resolution, especially the applicant's comprehension of the problem(s), familiarity with related work that is completed or ongoing, and the overall concept proposed to resolve the problem(s) (15 points).

2. Soundness of project design/ technical approach, especially whether the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and weaknesses of the technical design proposed for problem resolution (20 points).

3. Project management and experience and qualifications of personnel, including organization and management of the project, and the personnel experience and qualifications (5 points).

4. Justification and allocation of the budget in terms of the work to be performed (10 points).

C. *Review Panel.* NCBO will convene a review panel consisting of at least three regional experts (both NOAA and non-NOAA panelists) in the scientific and management aspects of fisheries research.

1. Projects considered for continuation. The review panel will collectively discuss existing proposals that were awarded with the possibility of continuation. Review panel members will take into consideration the technical reviewer's comments, the successful completion of the project within the previously defined project period, whether the goals of the projects were achieved, and the cost effectiveness of the project. Review panel members will then independently determine whether the projects should be considered for continuation. No consensus advice will be given by the review panel members.

2. New proposals. The review panel will then collectively discuss new proposals as a panel, incorporating the evaluation provided by the technical

reviewers. The panel members may then take into account the following: (a) diversity of geographic location, (b) diversity of applicants, (c) proposed budget and (d) Chesapeake Bay management priorities. Each review panel member will then provide a numerical ranking of the submitted new proposals along with suggestions for modifications and/or improvements (i.e., budget, personnel, technical approach, etc.). No consensus advice will be given by the review panel members.

D. *Funding Decision.* After applications have been evaluated and ranked numerically by the review panel, the Director of the NCBO, in consultation with Program Staff, will determine the projects to be recommended for funding based upon the technical evaluations and panel review comments, and determine the amount of funds available for the program. Numeric ranking will be the primary consideration for deciding which of the proposals will be selected for funding. In making the final selections, NCBO may consider continuation projects, matching leverage, costs, geographical distribution, inter-jurisdictional and inter-institutional collaboration and duplication with other federally funded projects. Accordingly, numerical ranking is not the sole factor in deciding which proposals will be selected for funding. The Director of the NCBO will prepare a written justification for any recommendations for funding that fall outside the ranking order, or for any cost adjustments. The exact amount of funds awarded to each project will be determined in pre-award negotiations among the applicant, the Grants Office, and NCBO staff. Potential grantees should not initiate projects in expectation of Federal funding until an award document signed by an authorized NOAA official has been received.

E. Applications not selected for funding will be held in the Program Office for a period of at least 12 months and then destroyed.

V. Administrative Requirements

A. *Obligations of the Applicant*

Periodic workshops—Investigators will be expected to prepare for and attend one or two workshops with other Fisheries Research Program researchers to encourage interdisciplinary dialogue and collaboration.

B. *Other Requirements*

1. *Indirect Cost Rate.* The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs for this Program. Applicants with indirect costs above 25 percent may use the amount above the 25 percent level as cost sharing. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

2. *Pre-award Notification Requirements.* The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published October 30, 2002 (67 FR 66109), is applicable to this solicitation.

3. *Financial Management Certifications/preaward Accounting Survey*—Successful applicants, at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable Office of Management and Budget (OMB) Circulars prior to execution of the award. Any first-time applicant for Federal grant funds may be subject to a preaward accounting survey by the DOC specified in the applicable OMB Circulars/Code of Federal Regulations prior to execution of the award.

Classification

This action has been determined to be "not significant" for purposes of Executive Order 12866. Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Pursuant to Section 553(a)(2) of the Administrative Procedure Act, prior notice and an opportunity for public comment are not required for this notification concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms (SF) 424, 424A, and 424B have been approved by OMB under their respective control numbers 0348–0043, 0348–0044, and 0348–0040. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: January 7, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–703 Filed 1–13–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010603B]

Receipt of an Application for Direct Take Permit (1412)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of availability for public comment.

SUMMARY: NMFS has received an application for a direct take permit (Permit 1412) from the Confederated Tribes of the Colville Reservation (Colville Tribes) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, the Colville Tribes have prepared a Conservation Plan, in the form of a Hatchery and Genetic Management Plan (HGMP), designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the direct and incidental take of ESA-listed adult and juvenile salmonids associated with carrying out the hatchery program for endangered Upper Columbia River steelhead in the Okanogan River and its tributaries in the state of Washington. The duration of the proposed Permit is 5 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All

comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments from interested parties on the Permit application and HGMP must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 pm Pacific daylight time on February 13, 2003.

ADDRESSES: Written comments on the application and HMGP should be sent to Kristine Petersen, Sustainable Fisheries Division, F/NWR2, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232. Comments may also be sent via fax to 503/872–2737. Comments will not be accepted if submitted via e-mail or the Internet. Requests for copies of the permit application and Conservation Plan should be directed to the Sustainable Fisheries Division, F/NWR2, 525 NE Oregon Street, Suite 510, Portland, OR 97232. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments received will also be available for public inspection, by appointment, during normal business hours by calling 503/230–5409.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen, Portland, OR (ph: 503/230–5409, fax: 503/872–2737, e-mail: Kristine.Petersen@noaa.gov).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species for scientific purposes or to enhance the propagation or survival of the species under section 10(a)(1)(A) of the ESA. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following evolutionarily significant unit (ESU) is included in the HGMP and Permit application:

Steelhead (*Oncorhynchus mykiss*): endangered, naturally produced and artificially propagated Upper Columbia River (UCR).

The Upper Columbia River Basin steelhead ESU was listed as endangered on August 18, 1997 (62 FR 43937). Included in the listing decision was the determination that the Wells Hatchery stock was part of the ESU and essential for recovery efforts. This conclusion is primarily based on very low estimates of the recruits per spawner ratio, which indicate that productivity of naturally spawning steelhead in this ESU is far below the replacement rate.

On October 23, 2002, the Colville Tribes submitted an application to NMFS for an ESA section 10(a)(1)(A) permit for the take of ESA-listed anadromous fish species associated with operation of hatchery programs producing hatchery steelhead for release into Omak Creek, a third order tributary of the Columbia River, in 2004 to 2009. The proposed programs produce steelhead of native stock to enhance local naturally spawning salmon populations.

Hatchery and Genetics Management Plan

The HGMP prepared by the Colville Tribes describes measures designed to monitor, minimize, and mitigate the take of ESA-listed anadromous steelhead and the incidental takes of ESA-listed salmon associated with the following steelhead hatchery program that is proposed to be implemented from 2003 through 2009:

Artificial propagation of steelhead is intended to recover and enhance the natural steelhead population in Omak Creek and the Okanogan River Basin. The Colville Tribes propose to collect up to 16 adult steelhead for broodstock from Omak Creek. Holding and spawning of broodstock would be conducted at the Colville Tribal Trout Hatchery. Steelhead eggs would be incubated and initial rearing would occur at the Colville Tribal Trout Hatchery. Steelhead smolts would be raised to a size range of 10 to 15 fish per pound and released into Omak Creek using a tank truck. The proposed steelhead program goal is approximately 40,000 smolts released in April or May.

Mortalities of ESA-listed fish associated with the steelhead hatchery programs are requested at levels specified in the Permit application. The Colville Tribes are proposing to limit broodstock collection, and juvenile fish production and release methods applied at the hatcheries such that the direct impacts on ESA-listed salmonids will be minimized.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(A) of the ESA. If it is determined that the requirements are met, a permit will be issued to the Colville Tribes for the steelhead enhancement program in the Okanogan River Basin. NMFS will publish a record of its final action in the **Federal Register**.

Dated: January 8, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–697 Filed 1–13–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 02–84–LNG, 02–89–LNG, et al.]

El Paso Merchant Energy, L.P. (Formerly El Paso Merchant Energy-Gas, L.P.), Distrigas LLC, et al.; Orders Granting Authority to Import and Export Natural Gas Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during December 2002, it issued Orders granting authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web Site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 7, 2003.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS
[DOE/FE Authority]

Order No.	Date Issued	Import/Exporter FE Docket No.	Import Volume	Export Volume	Comments
1832	12–02–02	El Paso Merchant Energy L.P., (Formerly El Paso Merchant Energy-Gas, L.P.), 02–84–LNG.	200 Bcf	.....	Import LNG from various international sources beginning on December 31, 2002, and extending through December 30, 2004.
1833	12–03–02	Distrigas LLC, 02–89–LNG	100 Bcf	.....	Import LNG from various international sources beginning on December 9, 2002, and extending through December 8, 2004.
1834	12–09–02	KeySpan-Ravenswood, L.L.C., 02–86–NG.	44 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on June 1, 2003, and extending through May 31, 2005.
1835	12–09–02	The Berkshire Gas Company, 02–88–NG.	1 Bcf		Import and export a combined total of natural gas from to Canada, beginning on January 15, 2002, and extending through January 14, 2004.
1836	12–10–02	Northern Utilities, Inc., 02–90–NG	3 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 15, 2003, and extending through January 14, 2005.
1837	12–19–02	Engage Energy Canada, L.P., 02–82–LNG.	1,000 Bcf		Import and export a combined total of natural gas, including liquefied natural gas, from and to Canada, beginning on January 1, 2003, and extending through December 31, 2004.
1838	12–30–02	PPG Canada Inc., 02–99–NG	.....	8,4 Bcf	Export natural gas to Canada, beginning on January 1, 2003, and extending through December 31, 2004.

[FR Doc. 03–683 Filed 1–13–03; 8:45 am]
BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

[FE Docket No. 02–96–NG]

Office of Fossil Energy; Northern Utilities, Inc.; Order Granting Long-Term Authority to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on January 7, 2003, it issued DOE/FE Order No. 1839 granting Northern Utilities, Inc. (Northern Utilities) authority to import up to 62,748 Mcf per day of natural gas from Canada, beginning on January 15, 2003, and extending through April 1, 2005. The natural gas will be purchased from ENCANA Corporation to serve its customers in Maine and New Hampshire.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 7, 2003.
Clifford Tomaszewski,
Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.
[FR Doc. 03–681 Filed 1–13–03; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Raymond-Cosmopolis Transmission Line Rebuild Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's proposal to rebuild the Raymond-Cosmopolis 115-kilovolt transmission line in western Washington State. The proposed rebuild is needed to increase transmission line capacity and to address safety and reliability concerns because the transmission-line is old, physically worn, and structurally unsound in some areas. The 18.3-mile-long transmission line traverses wetlands and floodplains located in both Pacific and Grays Harbor Counties.

DATES: Comments are due to the address below no later than January 29, 2003.

ADDRESSES: Submit comments to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon 97212. Internet address: *comment@bpa.gov.*

FOR FURTHER INFORMATION, CONTACT: Kimberly St.Hilaire—KEC–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–5361, fax number 503–230–5699.

SUPPLEMENTARY INFORMATION: In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

Floodplains. Six existing structures are located within the 100-year floodplains of three waterways within the project area, as depicted on Federal Emergency Management Administration (FEMA) maps. Impacts to floodplains would include the removal of existing structures and construction of proposed structures within floodplains, road construction, and road improvements. During the design phase, efforts were made to avoid impacts to floodplains

and to minimize them by moving structures and roads out of floodplains where possible.

Two structures are located within the floodplain of Lower Salmon Creek. These existing structures would be removed without excavation (cut at ground level) and replaced within the floodplain. The holes that would be augered to imbed the tubular steel structures would be several feet larger in diameter than the base of the structure, which would be less than 70 inches in diameter. No road construction or road improvements are proposed with the Lower Salmon Creek floodplain.

Within the North River floodplain, one existing structure is on the floodplain boundary and one area of roadwork is proposed within the floodplain. Structure 121, on the floodplain boundary, would be moved 10 feet, placing it just outside the floodplain. Road improvements would be made within the southern portion of the floodplain (north of Structure 120). Roadwork would extend up a slope at the edge of the floodplain. The area where roadwork would be done is separated from the main floodplain area by a county road (North River Road). Road improvements would include rocking and widening approximately 250 feet of the existing road, and also installing a culvert and gate at the edge of the existing county road.

Within the Little North River floodplain, three existing structures are located within the floodplain or on the floodplain boundary and one area of roadwork is proposed. Structure 136, adjacent to an existing access road, would be removed and the proposed structure would be constructed at the edge of the floodplain boundary. Roadwork is proposed just south of Structure 136. Roadwork would consist of improvements to the existing road to provide improved access to this structure. The road would be rocked and widened. Structure 142 is within the floodplain and would be replaced within the floodplain within several feet of the existing structure. Structure 143 is at the edge of the floodplain on FEMA maps, but because it is approximately 100 feet in elevation higher than the elevation of the Little North River, it is very unlikely that it would be inundated during a 100-year flood event. This structure will be moved to the north, placing it outside but very near the floodplain boundary.

Wetlands. Wetlands determination and delineation work was conducted within the project area in August of 2002. This investigation identified numerous wetland areas within or crossing the transmission line right-of-way. Nine existing structures are within wetlands, but only two of the proposed structures would be in wetlands. Other existing and proposed structures are near wetlands, but direct impacts to wetlands would be avoided where possible by restricting access to these areas during construction.

During the design phase, the transmission line was realigned outside the existing right-of-ways in two areas to avoid wetlands. Structures 34 and 35 would be moved to the west to avoid a large wetland area around Structure 35. Structures 91, 92, 93, and 94 would be moved to the west because existing Structures 92 and 93 are within the wetlands associated with Joe Creek and no access exists to these structures.

During the design phase of the project, impacts to wetlands were avoided where possible, by relocating individual structures and roads in adjacent uplands within the existing right-of-way. In some areas it was not possible to relocate structures into adjacent uplands because the wetlands are too extensive to avoid them. In other areas, roads or approaches would traverse wetlands because there is no other route that avoids wetlands. Where wetlands could not be avoided by roads, efforts were made to minimize the impacts to wetlands by locating as much of the road as possible in adjacent upland or by proposing to construct temporary roads.

The impact on wetlands from removing nine existing structures would be low. Removal of existing structures could cause minor and temporary damage to wetland vegetation and soils. Structures in wetlands would be cut at the base with no soil disturbance and lifted or dragged out of the wetland area. Some structures would be left in place if landowners agree.

Impacts on wetlands from installing new structures in wetlands are expected to be moderate and mostly temporary. Proposed Structures 28 and 72 would be erected in wetlands; both would be suspension structures, the type of structures that require the smallest disturbance area. Permanent disturbance of wetlands would be limited to the portions of wetlands that are excavated or filled to embed the structure base.

Impacts to wetlands from constructing access roads are limited to a few areas where there are no alternatives because there are no uplands adjacent to the structures. Approaches (short spur roads) within wetlands would be constructed to access Structures 28 and 72. Between Structures 15 and 16, a stream and associated wetland area would be crossed by creating a ford (rocky area). Structures 47 and 48 can only be accessed by traversing a large emergent wetland. Impacts to wetlands would be minimized by creating a temporary access road on geotextile fabric, and then removed and restored once construction is complete.

Construction of structures and roads near wetlands could temporarily disturb wetland areas, with the size of disturbance area dependent on the type of structure. Efforts would be made to avoid construction activities within wetlands and to minimize impacts by restricting work while wetland soils are not dry.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on January 6, 2003.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 03–682 Filed 1–13–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–228–000]

Alliance Pipeline L.P.; Notice of Proposed Change in FERC Gas Tariff

January 8, 2003.

Take notice that on December 31, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 253, proposed to become effective February 1, 2003.

By its filing, Alliance proposes to amend the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit Alliance to terminate a temporary release of capacity, upon 30-days written notice to the replacement shipper, where (i) Alliance has terminated the releasing shipper's Firm Transportation Agreement or Master Capacity Release Agreement in accordance with GTC section 8 (Default and Termination); and (ii) the rate stated in the replacement shipper's applicable Capacity Release Schedule is less than the rate that the releasing shipper was obligated to pay Alliance.

Alliance further proposes that a replacement shipper may avoid termination of the temporary release if, prior to the end of the 30-day notice period, the replacement shipper agrees that, beginning the first day after the end of the 30-day notice period, it will pay, for the remainder of the term of the release, either the rate the former

releasing shipper was obligated to pay Alliance, the maximum applicable Recourse Reservation and Usage Charges as stated in the tariff for the applicable service, or a rate mutually agreed upon by Alliance and the Shipper.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–753 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–29–002]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

January 8, 2003.

Take notice that on January 6, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute First Revised Sheet No. 461, to be effective November 17, 2002.

CEGT states that the purpose of this filing is to reflect a pagination correction associated with its November 20th compliance filing in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–754 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–092]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

January 8, 2003.

Take notice that on December 31, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective January 1, 2003:

Original Sheet No. 663
Original Sheet No. 664
Sheet Nos. 665–699

CEGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–756 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–092]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

January 8, 2003.

Take notice that on December 31, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective January 1, 2003:

Original Sheet No. 663
Original Sheet No. 664
Sheet Nos. 665–699

CEGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–757 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–094]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

January 8 , 2003.

Take notice that on January 6, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 461, to be effective November 18, 2002.

CEGT states that the purpose of this filing is to correct the pagination contained in this docket and to withdraw the tariff sheet filed in the above referenced docket on December 23, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–758 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–222–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2003.

Take notice that on December 31, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Thirteenth Revised Sheet No. 44, with a proposed effective date of February 1, 2003.

Columbia submits this Periodic RAM Filing pursuant to the provisions of section 35.2, "Retainage Adjustment Mechanism (RAM)," of the general terms and conditions of its Tariff. Thirteenth Revised Sheet No. 44 sets forth the retainage factors applicable to Columbia's transportation services, as revised by this filing. Pursuant to this filing, Columbia is proposing to adjust its transportation retainage percentage from 2.398% to 2.417%.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–747 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–049]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

January 8, 2003.

Take notice that on December 31, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of February 1, 2003:

Sixty-second Revised Sheet No. 25

Sixty-second Revised Sheet No. 26
Sixty-second Revised Sheet No. 27
Fifty-third Revised Sheet No. 28
Seventh Revised Sheet No. 28B
Eighteenth Revised Sheet No. 29
Twenty-eighth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to an order issued by the Commission on September 15, 1999, that approved an uncontested settlement in the above-referenced proceeding. Columbia Gas Transmission Corporation, 88 FERC 61,217 (1999). The settlement established environmental cost recovery through unit components of base rates, all as more fully set forth in article VI of the settlement agreement filed April 5, 1999 (Phase II Settlement).

Columbia is required to file annually a limited NGA section 4 filing to adjust its environmental unit components effective February 1 to recover its environmental costs covered by the Phase II Settlement, within agreed-upon ceilings and recovery percentages. For the annual period February 1, 2003, through January 31, 2004, the Phase II Settlement permits Columbia to collect "no more than $14 million annually in Main Program Costs", and "no more than $3 million annually in Storage Well Program Costs." per article VI(B) of the Phase II Settlement.

Columbia states that the instant filing satisfies that requirement. It provides for the February 1, 2003, effectiveness of revised unit components designed to collect $12 million in main program costs and to flowback an over-recovery of $ 0.5 million of storage well program costs.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–755 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–073]

Columbia Gulf Transmission Company; Notice of Compliance Filing

January 8, 2003.

Take notice that on January 6, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1,Substitute First Revised Sheet No. 20G, with an effective date of December 1, 2002.

Columbia Gulf states that it is filing this tariff sheet to correct an inadvertent error in its December 9, 2002 filing in Docket No. RP96–389–067.

Columbia Gulf states further that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–759 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–717–002]

El Paso Natural Gas Company; Notice of Application

January 8, 2003.

Take notice that on December 23, 2002, El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado, 80944, in Docket No. CP98–717–002 filed a petition, pursuant to section 7(b) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) rules and regulations, to further amend the orders issued on January 15, 1999 [1], as amended on August 10, 2000 [2], at Docket Nos. CP98–717–000 and 001. El Paso seeks amended authorization to modify the method of abandonment for its 12–3/4" O.D. El Paso-Douglas Loop Line ("Line No. 1005"), all as more fully set forth in its petition which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Any questions regarding El Paso's petition to amend should be directed to Mr. Robert T. Tomlinson, Director, Regulatory Affairs, El Paso Natural Gas. Company, P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–3788 or by fax at (719) 667–7534.

El Paso states that by order issued January 15, 1999, at Docket No. CP98–717–000, the Commission granted El Paso authorization for the abandonment, by removal, to the extent practicable, of three segments, totaling approximately 49.16 miles, of El Paso's 12–3/4" O.D. El Paso-Douglas Loop Line ("Line No.

[1] *See* 86 FERC ¶ 61,042 (1999).
[2] *See* 92 FERC ¶ 62,127 (2000).

1005"), with appurtenances, located in Dona Ana and Luna Counties, New Mexico. Subsequently, on March 28, 2000, El Paso filed an application at Docket No. CP98–717–001 requesting amended authorization to abandon the facilities granted by the January 15, 1999, order. Specifically, El Paso sought Commission authorization to abandon approximately 44 miles of Line No. 1005 by transfer to El Paso Energy Communications Company ("EPECC") for use as conduit for fiber optic cable, with the remaining 5.16 miles to be abandoned in place. Thereafter, on August 10, 2000, the Commission granted El Paso authority to amend its certificate at Docket No. CP98–717–001.

El Paso explains that although the Commission approved its amended application on August 10, 2000, El Paso has been unable to consummate the conveyance of the approximate 44 miles of Line No. 1005 to EPECC due to the suspension of EPECC's fiber optic expansion plans. Therefore, EPECC is no longer desirous of acquiring the 44 miles of Line No. 1005 from El Paso. Based on this change in circumstances, El Paso no longer intends to convey the 44-mile segment of Line No. 1005 and, instead, now desires to abandon the entire 49.16 miles of Line No. 1005 in place. Accordingly, El Paso is seeking to amend the January 15, 1999, order, as amended, modifying El Paso's method of abandonment of Line No. 1005 from abandonment by transfer to abandonment in place.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: January 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–744 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–221–000]

High Island Offshore System, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2003.

Take notice that on December 31, 2002, High Island Offshore System, L.L.C. (HIOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective February 1, 2003.

HIOS states that the proposed rate changes result in a decrease in total system revenues from jurisdictional service by approximately $ .5 million annually, based on the 12-month base period ending September 30, 2002, as adjusted for known and measurable changes through the nine month test period ending June 30, 2003.

HIOS states the rate change is necessary to compensate HIOS for its operating costs and allows HIOS to recover a reasonable depreciation expense, an increase in negative salvage expenses and a management fee.

HIOS states that a full copy of its filing is being served on all jurisdictional customers, applicable state commissions and interested parties that have requested service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–746 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–411–005 and RP01–44–007]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

January 8, 2003.

Take notice that on December 31, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Sheet No. 65A; Original Sheet No. 65B;

Original Sheet No. 65C; Original Sheet No. 65D; Original Sheet No. 65E; and Fourth Revised Sheet No. 66, with an effective date of November 1, 2002.

Iroquois states that these sheets were submitted in compliance with the Commission's October 31, 2002, order on compliance filing issued in Docket No. RP00–411–000, *et al.*

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–745 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–226–000]

Kern River Gas Transmission Company; Notice of Tariff Filing

January 8, 2003.

Take notice that on December 31, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 490, with an effective date of February 1, 2003.

Kern River states that the filing is being made to submit Rate Schedule KRF–1 transportation service agreements between Kern River and National Fuel Marketing Company, LLC; and Kern River and Duke Energy Trading & Marketing, LLC., that do not conform to Kern River's Rate Schedule KRF–1, and to reference these agreements in Kern River's tariff.

Kern River states that it has served copies of the filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–751 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–227–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

January 8, 2003.

Take notice that on December 31, 2002, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fiftieth Revised Sheet No. 9, to become effective January 1, 2003.

National states that under article II, section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. Further, National is required to charge the recalculated monthly rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under section 1 of article II. National states that the recalculation as shown at page 3 of Appendix E produced an IG rate of $0.22 per dth. In addition, article III, section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages. electronic filings. *See* 18 CFR

385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–752 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–075]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

January 8, 2003.

Take notice that on December 31, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain revised tariff sheets, to be effective January 1, 2003.

Natural states that the purpose of this filing is to implement an extension to an existing negotiated rate transaction with Nicor Gas under Natural's Rate Schedule FTS, DSS and NSS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–761 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–076]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

January 8, 2003.

Take notice that on January 2, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective January 1, 2003.

Natural states that the purpose of this filing is to implement a permanent release of a portion of firm transportation service capacity under an existing negotiated rate transaction with Aquila Merchant Services, Inc. (Aquila) under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–762 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–022]

Questar Pipeline Company; Notice of Negotiated Rates

January 8, 2003.

Take notice that on January 2, 2003, Questar Pipeline Company (Questar) tendered for filing a tariff filing to implement a negotiated-rate contract for BP Energy Company, as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.*

Questar states that the Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar further notes that it submitts its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar states that copies of this filing have been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–763 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–166–004]

Stingray Pipeline Company, L.L.C.; Notice of Compliance Filing

January 8, 2003.

Take notice that on December 31, 2002, Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twelfth Revised Sheet No. 5; with a proposed effective date of January 1, 2003.

Stingray states that on September 19, 2002, it filed a stipulation and agreement (Settlement) to resolve all issues pending in this proceeding. By letter order dated December 24, 2002 the Commission approved the settlement and directed Stingray to file within fifteen days tariff sheets implementing the Settlement rates. As directed by the Commission, Stingray is submitting the revised tariff sheet to implement the rates provided for in the Settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–760 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–224–000]

Tennessee Gas Pipeline Company; Notice of Tariff Revisions

January 8, 2003.

Take notice that on December 31, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Third Revised Sheet No. 588 and Second Revised Sheet 589, to be made effective on February 1, 2003.

Tennessee states that the revised tariff sheets modify the pro forma Balancing Agreement for Use at Delivery Points in order to allow for a term of less than, or longer than, one year.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–749 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–225–000]

Texas Eastern Transmission, L.P.; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2003.

Take notice that on December 31, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, revised tariff sheets listed on Appendix A to the filing, to become effective February 1, 2003.

Texas Eastern states that these revised tariff sheets are filed pursuant to section 15.1, Electric Power Cost (EPC) Adjustment, of the general terms and conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1. Texas Eastern states that section 15.1 provides that Texas Eastern shall file to be effective each February 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account.

Texas Eastern states that the rate changes proposed to the primary firm capacity reservation charges, usage rates and 100% load factor average costs for

full Access Area Boundary service from the Access Area Zone, East Louisiana, to the three market area zones are as follows:

Zone	Reservation	Usage	100% LF
Market 1	$(0.001)/dth	$(0.0013)/dth	$(0.0013)/dth
Market 2	$(0.001)/dth	$(0.0043)/dth	$(0.0043)/dth
Market 3	$(0.002)/dth	$(0.0063)/dth	$(0.0064)/dth

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–750 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–223–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

January 8, 2003.

Take notice that on December 31, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets to become effective February 1, 2003:

Second Revised Volume No. 1

Forty-Ninth Revised Sheet No. 15
Twenty-Fifth Revised Sheet No. 15A
Forty-Ninth Revised Sheet No. 16
Twenty-Fifth Revised Sheet No. 16A
Forty-Seventh Revised Sheet No. 18
Twenty-Fifth Revised Sheet No. 18A
Twenty-Fifth Revised Sheet No. 19
Twenty-Fifth Revised Sheet No. 20

Original Volume No. 2

Ninety-Second Revised Sheet No. 11B

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's fuel reimbursement adjustment provision contained in section 38 of the general terms and conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–748 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2395–020,2421–020, 2473–019 and 2640–027]

Wisconsin Department of Natural Resources v. Flambeau Hydro, L.L.C.; Notice of Complaint

January 7, 2003.

Take notice that on December 11, 2002, the State of Wisconsin Department of Natural Resources (Wisconsin DNR) filed a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2002), and part I of the Federal Power Act, 16 U.S.C. 791, *et seq.*, against Flambeau Hydro, L.L.C. (Flambeau), licensee for the Pixley Project No. 2395, Lower Project No. 2421, Crowley Rapids Project No. 2473, and Upper Project No. 2640. The projects are located on the north fork of the Flambeau River in Price County, Wisconsin.

Wisconsin DNR states that Flambeau has failed to file with the Commission 22 compliance submittals required by the licenses for the above named projects and 7 other submittals required by the Commission staff. Wisconsin DNR requests Commission action, including imposition of penalties of up

to $10,000 per day for each instance of noncompliance with license and Commission staff requirements as described in a June 18, 2002 Commission staff compliance order. Wisconsin DNR also seeks revocation of the licenses if Flambeau has not completed all required licensee consultations with resource agencies and submitted all compliance filings within 90 days of the issuance date of this notice.

Copies of the complaint are on file with the Commission and are available for public inspection in the Commission's Public Reference Room. The complaint may also be viewed on the Internet at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Any person desiring to be heard or to protest this filing should file comments, a motion to intervene, or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

The licensee's answer to the complaint and all comments, motions, or protests must be filed on or before January 23, 2003. Any entity wishing to become a party must file a motion to intervene. The answer to the complaint, comments, motions to intervene, and protests may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(ii), and the instructions on the Commission's Web site under the "e-filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–700 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3149–004, et al.]

Nevada Power Company, et al.; Electric Rate and Corporate Filings

January 7, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Nevada Power Company

[Docket No. ER01–3149–004]

Take notice that on January 2, 2003, Nevada Power Company tendered for filing its compliance filing making the changes to the Interconnection and Operation Agreement (Agreement) between Nevada Power Company and Mirant Las Vegas, LLC required by the Commission's November 22, 2002 order in this docket.

Comment Date: January 23, 2003.

2. ISO New England Inc.

[Docket No. ER02–2153–002]

Take notice that on January 3, 2003, ISO New England Inc. submitted a compliance report in this proceeding.

Copies of said filing have been served upon all parties to this proceeding and the New England utility regulatory agencies, and electronically upon the New England Power Pool participants.

Comment Date: January 24, 2003.

3. California Power Exchange Corporation

[Docket No. ER02–2234–005]

Take notice that on December 31, 2002, the California Power Exchange Corporation made a filing to comply with the Commission's December 20, 2002 order in this proceeding (101 FERC ¶61,330).

Comment Date: January 21, 2003.

4. Southern California Edison Company

[Docket No. ER02–2496–001]

Take notice that on January 6, 2003, Southern California Edison Company (SCE) submitted for filing a compliance filing regarding refunds for Scheduling and Dispatching (S&D) services SCE rendered in 2002.

The purpose of this filing is to comply with the Commission's Letter Order in Docket No. ER02–2496–000 issued October 23, 2002, accepting SCE's proposed rate for 2002 S&D services and ordering SCE to submit a refund report.

Copies of this filing were served upon Public Utilities Commission of the State of California, Arizona Public Service, M-S-R Public Power, and The Metropolitan Water District of Southern California.

Comment Date: January 27, 2003.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2595–002]

Take notice that on December 23, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO), pursuant to the November 22, 2002 Order in Docket No. ER02–2595–000, tendered for filing an Informational Filing regarding its efforts to develop and implement the processes and systems required for the Midwest ISO to administer day-ahead and real-time energy markets in the Midwest (the Energy Markets), including development of the systems and processes necessary to facilitate the distribution and use of Financial Transmission Rights (FTRs) and implement appropriate Market Mitigation Measures.

The Midwest ISO seeks waiver of the Commission's Regulations, 18 CFR 385.2010 with respect to service on all parties on the official service list in this proceeding. The Midwest ISO states that it has notified via electronic mail all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region that the filing has been posted electronically on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: January 13, 2003.

6. ISO New England Inc.

[Docket No. ER03–147–001]

Take notice that on January 3, 2003, ISO New England Inc. submitted its compliance filing in response to the Commission's December 19, 2002 Order in the above-captioned docket.

Copies of said filing have been served upon all parties to this proceeding, and upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment Date: January 24, 2003.

7. American Ref-Fuel Company of Essex County

[Docket No. ER03–170–001]

Take notice that on January 2, 2003, American Ref-Fuel Company of Essex County tendered for filing under Section 205 of the Federal Power Act a substitute tariff sheet in compliance with the delegated letter order issued on December 26, 2002 in the above-captioned docket.

Comment Date: January 23, 2003.

8. Geysers Power Company, L.L.C.

[Docket No. ER03–184–001]

Take notice that on December 31, 2002, Geysers Power Company, LLC, (Geysers Power) tendered for filing substitute rate schedule sheets to the

November 14, 2002, filing in this docket setting forth revisions to the Geysers Main Reliability Must-Run Agreement between Geysers Power and the California Independent System Operator Corporation for calendar year 2003.

Comment Date: January 21, 2003.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–331–001]

Take notice that on January 3, 2003, PJM Interconnection, L.L.C. (PJM), amended its December 24, 2002 filing in this docket. In its December 24, 2002 filing, PJM submitted amendments to the Appendix to Attachment K of the PJM Open Access Transmission Tariff and Schedule 1 of the Amended and Restated Operating Agreement (Operating Agreement) to modify the provisions relating to the determination of eligibility to receive Operating Reserves credits during Maximum Generation Emergency conditions. The revised Operating Agreement pages, however, inadvertently were omitted from the filing. Therefore, PJM hereby amends its December 24, 2002 filing to include the revised pages of Schedule 1 of the Operating Agreement that inadvertently were omitted from its December 24, 2002 filing.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: January 24, 2003.

10. Duke Energy Corporation

[Docket No. ER03–359–000]

Take notice that on December 31, 2002, Duke Energy Corporation, on behalf of Duke Power, (collectively, Duke), tendered for filing: (1) Proposed revisions to Duke's Rate Schedule No. 10–A; and (2) Amendment No. 1 to the Settlement Agreement between Duke and the City of Concord, North Carolina; the Town of Dallas, North Carolina; the Public Works Commission of the Town of Due West, South Carolina; the Town of Forest City, North Carolina; the City of Kings Mountain, North Carolina; the Town of Prosperity, South Carolina; Lockhart Power Company; and Clemson University. Duke requests an effective date for the proposed revisions to Rate Schedule No. 10–A of January 1, 2003.

Comment Date: January 21, 2003.

11. PJM Interconnection, L.L.C.

[Docket No. ER03–360–000]

Take notice that on December 31, 2002, PJM Interconnection, L.L.C. (PJM), filed a revision to Schedule 9 of the PJM Open Access Transmission Tariff (PJM Tariff), to correct an error in a recently approved change to Schedule 9 that will take effect on January 1, 2003.

PJM states that copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region. PJM also proposes an effective date of January 1, 2003 for the revision.

Comment Date: January 21, 2003.

12. New England Power Pool

[Docket No. ER03–361–000]

Take notice that on December 31, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to: (1) Permit NEPOOL to expand its membership to include AIG Energy Trading Inc. (AIGET) and Industrial Power Services Corp. (IPSC); and (2) to terminate the memberships of Public Service Company of Colorado (PSCC), Town of Wiscasset (Wiscasset), and Exeter & Hampton Electric Company (Exeter). The Participants Committee requests the following effective dates: December 1, 2002 for the termination of PSCC; December 2, 2002 for the termination of Exeter; January 1, 2003 for the commencement of participation in NEPOOL by AIGET and the termination of Wiscasset; and March 1, 2003 for commencement of participation in NEPOOL by IPSC.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: January 21, 2003.

13. Midwest Independent Transmission System Operator, Inc.

American Transmission Company LLC

[Docket No. ER03–362–000]

Take notice that on December 31, 2002, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) tendered for filing proposed changes to its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, to revise its formula rate to reflect changes to certain rate calculations applicable to the American Transmission Company LLC (ATCLLC) rate zone (Zone 1). The revised tariff sheets contain proposed revisions to ATCLLC's formula rate true-up mechanism to implement a one-time change to the calculation of the rate true-up to offset a revenue shortfall year 2001 with the estimated over-collection of costs in year 2002. The revised tariff sheets also contain a revised formula for the collection of ATCLLC's start-up costs, which calculates ATCLLC's start-up cost adder on a straight-line basis.

Both of the proposed changes reduce the amounts collected from transmission customers. The Midwest ISO requests waiver of the Commission's notice requirements to allow the proposed changes to be made effective on January 1, 2003.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all required parties. The Midwest ISO has posted this filing on its Internet site at *www.midwestiso.org*, and the Midwest ISO or ATCLLC will provide hard copies to any interested parties upon request.

Comment Date: January 21, 2003.

14. Entergy Services, Inc.

[Docket No. ER03–363–000]

Take notice that on December 31, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Long-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and City Water and Light of The City of Jonesboro, Arkansas.

Comment Date: January 23, 2003.

15. Alliant Energy Corporate Services, Inc.

[Docket No. ER03–364–000]

Take notice that on December 31, 2002, Alliant Energy Corporate Services, Inc. (Alliant Energy Corporate Services) tendered for filing an unexecuted First Amendment to the Interconnection and Transmission Service Agreement between Iowa Southern Utilities Company, an Alliant Energy-IPL predecessor, and Northeast Missouri Electric Power Cooperative.

Alliant Energy Corporate Services requests an effective date of March 1, 2003, for the filed Amendment. Alliant Energy Corporate Services accordingly seeks waiver of the Commission's notice requirements. Alliant Energy Corporate Services states that a copy of this filing has been served upon the Public Service Commission of Wisconsin, the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Utilities Commission.

Comment Date: January 23, 2003.

16. California Independent System Operator Corporation

[Docket No. ER03–365–000]

Take notice that on December 31, 2002, the California Independent System Operator Corporation (ISO) submitted for Commission filing and acceptance the Utility Distribution Company Operating Agreement (UDC

Operating Agreement) between the ISO and the City of Banning, California. The ISO requests that the UDC Operating Agreement be made effective as of January 1, 2003. The ISO requests privileged treatment, pursuant to 18 CFR 388.112, with regard to portions of the filing.

The ISO states that it has served copies of this filing upon the City of Banning, California, and the Public Utilities Commission of the State of California.

Comment Date: January 23, 2003.

17. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–366–000]

Take notice that on December 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, which revisions are intended to comply with Commission's July 5, 2002 Order requesting the Midwest ISO incorporate its Joint Open Access Transmission Tariff (JOATT) into its Midwest ISO Open Access Transmission Tariff (OATT). Applicant requests an effective date of January 1, 2003.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: January 23, 2003.

18. Soyland Power Cooperative, Inc.

[Docket No. ER03–367–000]

Take notice that on December 31, 2002, Soyland Power Cooperative, Inc. (Soyland) tendered for filing with the Federal Energy Regulatory Commission (the Commission) an Agreement Regarding Use of Soyland Owned Lines and Substation Assets (Facilities Use Agreement) between Soyland and M.J.M. Electric Cooperative, Inc. (MJM).

Soyland requests that the Commission grant all waivers necessary to allow the agreement to become effective on January 1, 2003. Soyland states that a copy of the filing has been served on MJM.

Comment Date: January 23, 2003.

19. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–368–000]

Take notice that on December 31, 2002, Midwest Independent System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Cancellation pursuant to 18 CFR 35.15 to reflect the cancellation of its Joint Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 2, with a proposed effective date of January 1, 2003.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: January 23, 2003.

20. Duke Energy Corporation

[Docket No. ER03–369–000]

Take notice that on December 12, 2002, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing a Notice of Cancellation of an Interconnection and Operating Agreement by and between Duke Electric Transmission and GenPower Anderson, LLC, Second Revised Rate Schedule No. 277 under FERC Electric Tariff No. 4. Duke requests and effective date for the cancellation of November 6, 2002.

Comment Date: January 17, 2003.

21. Entergy Services, Inc.

[Docket No. ER03–370–000]

Take notice that on January 2, 2003, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc. (Entergy Mississippi), tendered for filing the Agreement for Establishment of the Silver Creek Generating Facility as an Off-System Delivery Point (Agreement) between Entergy Mississippi and South Mississippi Electric Power Association. The Agreement modifies Exhibit A of Rate Schedule No. 251.

Comment Date: January 23, 2003.

22. Concord Electric Company Exeter & Hampton Electric Company

[Docket No. ER03–371–000]

Take notice that on January 2, 2003, Concord Electric Company (CECo) and Exeter & Hampton Electric Company (E&H), filed a Notice of Cancellation with the Federal Energy Regulatory Commission pursuant to Sections 35.15 and 131.53 of the Commission's Rules and Regulations, 18 CFR 35.15 and 131.53. CECo and E&H seek to cancel their Open Access Transmission Tariffs, designated, respectively as FERC Electric Tariff, Original Volume No. 2 and FERC Electric Tariff, Original Volume No. 1. CECo and E&H request that the cancellation be made effective as of December 2, 2002.

Comment Date: January 23, 2003.

23. Peak Power Generating Company, Inc.

[Docket No. ER03–372–000]

Take notice that on January 2, 2003, Peak Power Generating Company, Inc. (Peak Power) tendered for filing a Notice of Succession pursuant to Section 35.16 of the Commission's Regulations. As a result of a name change, Peak Power is succeeding to the tariffs and related service agreements of RAMCO, Inc., effective December 17, 2002.

Comment Date: January 23, 2003.

24. WPS Resources Operating Companies

[Docket No. ER03–373–000]

Take notice that on January 2, 2003, Wisconsin Public Service Corporation and Upper Peninsula Power Company (together WPS Resources) tendered for filing a Joint Ancillary Services Tariff, FERC Electric Tariff, Original Volume No. 2 (JAST). WPS Resources states that the JAST will ultimately replace its Open Access Transmission Tariff (OATT). WPS Resources no longer provides transmission service because it has transferred ownership of its transmission facilities to the American Transmission Company LLC, which has transferred operational control of those facilities to the Midwest Independent System Operator. WPS Resources states that it will eventually cancel its OATT after the Commission accepts the JAST for filing and all applicable service agreements under its OATT have been replaced by service agreements under the JAST.

WPS Resources respectfully requests that the JAST become effective on March 3, 2003. WPS Resources also states that copies of the filing were served upon all customers under the WPS Resources Operating Companies OATT, the Public Service Commission

of Wisconsin and the Michigan Public Service Commission.

Comment Date: January 23, 2003.

25. Unitil Energy Systems, Inc.

[Docket No. ER03–374–000]

Take notice that on January 2, 2003, Unitil Energy Systems, Inc. (UES), filed a Notice of Succession with the Federal Energy Regulatory Commission pursuant to Sections 35.16 and 131.51 of the Commission's Rules and Regulations, 18 CFR 35.16 and 131.51. UES adopted and ratified all applicable rate schedules filed with the Federal Energy Regulatory Commission by Concord Electric Company and Exeter & Hampton Electric Company. UES also resubmitted its rate schedules to conform them to the formatting requirements of Order No. 614. UES requested that the revised rate schedules be made effective as of December 2, 2002.

Comment Date: January 23, 2003.

26. Warrensburg Hydro Power Limited Partnership Sissonville Limited Partnership NYSD Limited Partnership

[Docket No. ER03–375–000]

Take notice that Warrensburg Hydro Power Limited Partnership, Sissonville Limited Partnership, and NYSD Limited Partnership tendered for filing on January 2, 2003, the following agreements:

Warrensburg Hydro Power Limited (Warrensburg): Letter Agreement to Amend PSA No. 1298, dated October 25, 2002, (signed by Warrensburg on October 29, 2002; signed by NMPC on December 3, 2002), to extend the termination date to December 31, 2003;

Sissonville Limited Partnership (Sissonville): Letter Agreement to Amend PSA No. 1299, dated October 25, 2002, (signed by Sissonville on October 29, 2002; signed by NMPC on December 3, 2002), to extend the termination date to December 31, 2003; and

NYSD Limited Partnership (NYSD): Letter Agreement to Amend PSA No. 1300, dated October 25, 2002, (signed by NYSD on October 29, 2002; signed by NMPC on December 3, 2002), to extend the termination date to December 31, 2003.

Copies of the filings were provided to Niagara Mohawk Power Corporation and New York Public Service Commission. Warrensburg, Sissonville and NYSD have requested that further notice requirement be waived and the executed agreements be allowed to become effective November 1, 2002.

Comment Date: January 23, 2003.

27. NorthWestern Energy

[Docket No. ER03–376–000]

Take notice that on January 3, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern Energy), filed with the Federal Energy Regulatory Commission a Notice of Succession pursuant to Section 35.16 of the Commission's regulations, 18 CFR 35.16, and revised tariff sheets to NorthWestern Energy's FERC Electric Tariff, to reflect that, as a result of a name change, NorthWestern Energy is succeeding to the FERC Electric Tariff of Northwestern Public Service Company, effective January 3, 2003.

Comment Date: January 24, 2003.

28. Florida Power Corporation

[Docket No. ER03–377–000]

Take notice that Florida Power Corporation (FPC), on January 3, 2003, tendered for filing a revision to its Cost-Based Wholesale Power Sales Tariff, FERC Electric Tariff, First Revised Volume No. 9 (CR–1 Tariff). The CR–1 Tariff is revised to eliminate a provision referencing FPC's fuel adjustment clause. FPC requests that the revision become effective on April 22, 1998.

FPC states that copies of the filing were served upon the Florida Public Service Commission and those customers taking service from FPC under the CR–1 Tariff.

Comment Date: January 24, 2003.

29. Midwest Independent Transmission System Operator, Inc., *et al.*

[Docket No. ER03–378–000]

Take notice that on January 3, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing an Interconnection and Operating Agreement entered into by the Midwest ISO, Interstate Power and Light Company (a wholly owned subsidiary of Alliant Energy Corporation), and FPL Energy Hancock County Wind, LLC.

Comment Date: January 24, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–702 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2552–058]

FPL Energy Maine Hydro, LLC; Notice of Availability of Draft Environmental Assessment

January 7, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) reviewed the application for surrender of project license for the Fort Halifax Project, located on the Sebasticook River, Kennebec County, Maine, and prepared an environmental assessment (EA) for the project. In this EA, staff analyze the potential environmental effects of the surrender of license and conclude that the surrender, or any other alternative considered, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link.

Enter the docket number (prefaced by P- and excluding the last three digits) in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Any comments should be filed by February 14, 2003, and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Fort Halifax Project No. 2552–058," to all comments. For further information, please contact Robert Fletcher at (202) 502–8901, or at *robert.fletcher@ferc.gov* or Jean Potvin at (202) 502–8901 or at *jean.potvin@ferc.gov*.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–701 Filed 1–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

January 7, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Applications:* New Major Licenses.

b. *Projects:* Spring Gap-Stanislaus Project No. 2130–033, Donnells-Curtis Transmission Line Project No. 2118–007, Beardsley/Donnells Project No. 2005–012, and Tulloch Project No. 2067–020.

c. *Dates Filed:* P–2130 and P–2118 filed December 26, 2002; P–2005 and P–2067 filed December 23, 2002.

d. *Applicant:* Pacific Gas and Electric Company, current licensee for P–2130 and P–2118; and Tri-Dam Project, current licensee for P–2005 and P–2067.

e. *Location:* On the Middle Fork, South Fork, and mainstem of the Stanislaus River in Toulumne and Calaveras counties, California. All of the Beardsley/Donnell Project, most of the Spring Gap-Stanislaus Project, and all of the Donnell-Curtis Transmission Line Project are located within the Stanislaus National Forest.

f. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)-825(r).

g. *Applicant Contact:* Mr. Randy Livingston, Pacific Gas and Electric Company, PO Box 770000, Mail Code: N11C, San Francisco, CA 94117; and Mr. Steve Felte, Tri-Dam Project, P.O. Box 1158, Pinecrest, CA 95364.

h. *FERC Contact:* Susan O'Brien, (202) 502–8449 or *susan.obrien@ferc.gov*.

i. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k. below.

j. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the applications on their merits, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the applications, and serve a copy of the request on the applicant.

k. *Deadline for filing additional study requests and requests for cooperating agency status:* February 24, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. This application is not ready for environmental analysis at this time.

m. The existing Spring Gap-Stanislaus Project is composed of four developments: Relief, Pinecrest, Spring Gap, and Stanislaus. It has a combined capacity of 98 MW.

The existing Donnells-Curtis Transmission Line Project is a 115 kV transmission line. Portions of the transmission line under FERC jurisdiction include an 8-mile segment extending from Donnells Powerhouse to Spring Gap Junction and the 2.2-mile tap line from Beardsley Powerhouse to Beardsley Junction.

The existing Beardsley/Donnell Project is composed of the Beardsley and Donnell Developments and has a combined capacity of 64 MW.

The existing Tulloch Project is composed of a single development and has a capacity of 17.1 MW.

n. A copy of the applications are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

o. With this notice, we are initiating consultation with the California State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter: March 2003
Request Additional Information: March 2003
Issue Scoping Document 1 for comments: June 2003
Hold Scoping Meeting: July 2003
Request Additional Information (if necessary): September 2003
Issue Scoping Document 2: September 2003
Notice that applications are ready for environmental analysis: September 2003
Notice of the availability of the draft NEPA document: March 2004
Initiate 10(j) process: May 2004

Notice of the availability of the final NEPA document: September 2004
Ready for Commission decision on the application: December 2004

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,
Secretary.

[FR Doc. 03–699 Filed 1–13–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–3–000]

Capital Availability for Energy Markets; Agenda for Technical Conference and Announcement of Time Change

January 8, 2003.

As announced on December 20, 2002, the Federal Energy Regulatory Commission (FERC) is holding a technical conference on capital availability for energy markets. The conference is scheduled for Thursday, January 16, 2003, at FERC headquarters, 888 First Street, NE., Washington, DC, in the Commission Meeting Room (Room 2C).

This conference will explore the status of capital available for energy market needs including infrastructure. Speakers include representatives of investment banks, commercial banks, insurance companies, hedge funds, credit rating agencies and other similar institutions as well as market participants and customers. In addition to FERC, representatives of other relevant agencies will attend.

This one-day conference will begin at 9:30 a.m. (not 8:30 a.m. as previously announced) and will conclude at 4:30 p.m. All interested parties are invited to attend. There is no registration fee.

The vision of FERC is dependable, affordable energy through competitive markets. Current conditions in energy markets are causing concern due to questions of capital availability, credit-worthiness of market participants, and market uncertainty. In holding this conference, FERC will be looking forward to an informative discussion on what problems exist and what their potential solutions are, along with what actions can be taken by FERC.

Capitol Connection will cover this meeting live over the Internet, as well as via telephone and satellite. For a fee, you can receive these meetings in your office, at home, or anywhere in the world. To find out more about Capitol Connection's live Internet, phone bridge, or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100, or visit www.capitolconnection.org.

The conference will be transcribed; transcripts will be available to view electronically under this docket number seven days after the conference. Those interested in obtaining transcripts of the conference need to contact Ace Federal Reporters at (202) 347–3700 or (800) 336–6646. Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703) 715–7999.

The Agenda and the list of participants is attached. For additional information, please contact Anita Herrera of FERC's Office of Market Oversight & Investigations at 202–502–8150 or by e-mail, *Anita.Herrera@ferc.gov.*

Magalie R. Salas,
Secretary.

Capital Availability for Energy Markets

[Docket No. AD03–3–000]

Agenda for Technical Conference

JANUARY 16, 2003. Welcoming remarks by The Chairman and Commissioners.

Panel I—Capital Investors, 9:30 a.m.–11 a.m.

Richard Kaufman, Credit Lyonnais.
Doug Kimmelman, Goldman Sachs.
Kit Konolige, Morgan Stanley.
Donald Peterson, GE Financial Services.
Kara Silva, MBIA Insurance Corp.
Evan Silverstein, SILCAP, LLC.
Joachim Schnabel, Teachers Insurance and Annuity Association College Retirement Equities Fund (TIAA–CREF).

Panel II—Market Analysts, 11 a.m.–12:30 p.m

Carole Coale, Prudential Securities.
John Diaz, Moody's Energy Rating Service.
Steve Fleishman, Merrill Lynch.
Richard Hunter, Fitch Ratings.
Suzanne Smith, Standard & Poor's.
Christine Tezak, Schwab Capital Markets WRG.
Jone Lin-Wang, Cambridge Energy Research Associates.

Lunch Break 12:30 p.m.–1:30 p.m.

Panel III—Market Participants, 1:30 p.m.–3 p.m.

Larry Downes, New Jersey Natural Gas, American Gas Association.
Robert Kelly, Calpine Corporation.
Obie O'Brien, Apache Corporation, Coalition for Energy Market Integrity and Transparency.
William Transier, Ocean Energy, Natural Gas Supply Association.
Representative, Exelon Corporation.
Representative, American Public Power Association.
Representative, Electricity Consumers Resource Council.
Representative, Interstate Natural Gas Association of America.

Panel IV—Regulatory & Private Agencies/ Organizations, 3 p.m.–4:30 p.m.

Neel Foster, Financial Accounting Standards Board.
Rick Mattoon, Federal Reserve Bank of Chicago.
Mike Smith, Committee of Chief Risk Officers.
Representative, Rural Utilities Service, U.S. Department of Agriculture.

Panels I—III will address: First 30–40 minutes of each panel—5 minute opening remarks from each panelist.

What are the causes of the current problems of capital availability for the energy markets?
—What is the energy industry's investment attractiveness?
—What barriers to needed investment exist in the energy industry?
—What investment is needed to support competitive energy markets?
—What capital is needed to support energy trading activities, and how much and what type of investment is needed to support the addition of physical assets by sector—production, transmission, and distribution?
—What capital structure is needed?
—What financing is needed, project versus balance sheet financing?
—What is the timing of these investments?
—What are the potential solutions to existing barriers in the energy industry?
From the private industry?
From FERC policy?
From other regulatory agency policy?

Panels IV will address: First 30 minutes of the panel—5 minute opening remarks from each panelist.

—What roles / responsibilities does your agency / organization play in the energy market?
—What solutions to barriers for capital availability are in progress?
—What coordination is needed with other agencies / organizations?

[FR Doc. 03–743 Filed 1–13–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Notice

January 8, 2003.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 15, 2003, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION Magalie R. Salas, Secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

815th Meeting—January 15, 2003; Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1,000, Agency Administrative Matters
A–2.
Docket# AD02–7,000, Customer Matters, Reliability, Security and Market Operations
A–3.
Seams Resolution Presentation
A–4.
Staff Presentation on Winter Market Assessment
A–5.
Staff Presentation on Commission Use of Natural Gas Price Indices

Markets, Tariffs and Rates—Electric

E–1. Docket# EL03–23, 000, Pacer Power LLC
E–2. Docket# ER03–216, 000, Midwest Independent Transmission System Operator, Inc., and TransLink Development Company, LLC
E–3.
Docket# PL03–1, 000, Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid
E–4.
Docket# EC02–113, 000, Cinergy Services, Inc., on behalf of PSI Energy, Inc., CinCap Madison, LLC and CinCap VII, LLC
E–5.
Omitted
E–6.
Omitted
E–7.
Docket# ER02–912, 000, Otter Tail Power Company
Other#s
ER02–912, 001, Otter Tail Power Company
ER02–912, 002, Otter Tail Power Company
ER02–912, 003, Otter Tail Power Company
ER02–912 004, Otter Tail Power Company
ER02–912 005, Otter Tail Power Company
ER02–1728 000, Otter Tail Power Company
ER02–1729 000, Otter Tail Power Company
ER02–1730 000, Otter Tail Power Company
ER02–1730 001, Otter Tail Power Company
ER02–1731 000, Otter Tail Power Company
ER02–1732 000, Otter Tail Power Company
ER02–1733 000, Otter Tail Power Company
E–8.
Docket#, ER02–977, 000, Wisconsin Power & Light Company
E–9.
Omitted
E–10.
Omitted
E–11.
Omitted
E–12.
Docket# ER02–1656, 010, California Independent System Operator Corporation
Other#S EL01–68, 025, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Electricity Coordinating Council
ER02–1656, 011, California Independent System Operator Corporation
ER02–1656, 012, California Independent System Operator Corporation
ER02–2576, 002, California Independent System Operator Corporation
E–13.
Docket# EL02–108, 000, *Truckee Donner Public Utility District* v. *Idaho Power Company*, IDACORP Energy, L.P., and IDACORP, Inc.
E–14.
Omitted
E–15.
Docket# RT03–1, 000, Communications with Independent Market Monitors
E–16.
Docket#
ER02–863, 000, Midwest Independent Transmission System Operator, Inc.
Other#S EL02–68, 000, *Southern Minnesota Municipal Power Agency* v. *Alliant Energy Corporate Services, Inc.*
ER02–330, 000, Alliant Energy Corporate Services, Inc.
ER02–330, 001, Alliant Energy Corporate Services, Inc.
ER02–863, 001, Midwest Independent Transmission System Operator, Inc.
E–17.
Docket# ER03–215, 000, Mirant Delta, LLC and Mirant Potrero, LLC

Markets, Tariffs and Rates—Gas

G–1.
Docket# RM00–6,002, Well Category Determinations
G–2.
Docket# RP03–206, 000, ANR Pipeline Company
G–3.
Docket# RP03–213, 000, Gulf South Pipeline Company, LP
G–4.
Docket# RP02–362, 001, PG&E Gas Transmission, Northwest Corp.
Other#s RP02–362, 002, PG&E Gas Transmission, Northwest Corp.
G–5.
Docket# RP96–200, 086, CenterPoint Energy Gas Transmission Company (Formerly Reliant Energy Gas Transmission Company)
Other#s RP96–200,089, CenterPoint Energy Gas Transmission
Company (Formerly Reliant Energy Gas Transmission Company)
G–6.
Docket# RP03–143,000, Tennessee Gas Pipeline Company
G–7.
Docket# CP88–391,027, Transcontinental Gas Pipe Line Corporation
Other#s CP88–391, 028, Transcontinental Gas Pipe Line Corporation
RP93–162, 012, Transcontinental Gas Pipe Line Corporation
RP93–162, 013, Transcontinental Gas Pipe Line Corporation
G–8.
Docket# RP03–82, 000, Kern River Company
G–9.
Docket# RP00–335, 002, Black Marlin Pipeline Company
Other#s RP01–414, 002, Black Marlin Pipeline Company
G–10.
Docket# RP96–312, 105, Tennessee Gas Pipeline Company
G–11.
Omitted
G–12.
Omitted
G–13.
Docket# RP99–480, 003, Texas Eastern Transmission, LP

Energy Projects—Hydro

H–1.
Docket# P–460, 000, City of Tacoma, Washington
H–2.
Docket# P–2738, 049, New York State Electric & Gas Corporation
H–3.
Docket# P–2145, 047, Public Utility District No. 1 of Chelan County, Washington
Other#s P–943, 077, Public Utility District No. 1 of Chelan
County, Washington
H–4.
Omitted
H–5.
Omitted
H–6.
Omitted
H–7.
Docket# P–10461, 011, Erie Boulevard Hydropower, L.P.
Other#s P–10462, 011, Erie Boulevard Hydropower, L.P.
H–8.
Omitted
H–9.
Docket# P–2816, 019, North Hartland, LLC

Energy Projects—Certificates

C–1.
Docket# RM03–4, 000, Emergency Reconstruction of Interstate
Natural Gas Facilities under the Natural Gas Act
Other#s AD02–14, 000, Emergency Reconstruction of Interstate Natural Gas Facilities under the Natural Gas Act
C–2.
Docket# CP01–384, 002, Islander East Pipeline Company, LLC
Other#S CP01–385, 002, Islander East Pipeline Company, LLC

CP01–386, 002, Islander East Pipeline Company, LLC
CP01–387, 002, Algonquin Gas Transmission Company
C–3.
Docket# CP01–176, 004, Georgia Strait Crossing Pipeline LP
Other#S CP01–177, 002, Georgia Strait Crossing Pipeline LP
CP01–178, 002, Georgia Strait Crossing Pipeline LP
CP01–179, 002, Georgia Strait Crossing Pipeline LP

Magalie R. Salas,
Secretary.
[FR Doc. 03–832 Filed 1–10–03; 11:08 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend; Sunshine Act

January 8, 2003.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 15, 2003, (Within a relatively short time before or after the regular Commission Meeting).

PLACE: Hearing Room 6, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries, And Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on January 15, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,
Secretary.
[FR Doc. 03–833 Filed 1–10–03; 11:08 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–036]

New York Power Authority; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

January 7, 2003.

On April 14, 2000, the Federal Energy Regulatory Commission (Commission) issued a notice for the St. Lawrence-FDR Power Project proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement (PA) for managing properties included in or eligible for inclusion in the National Register of Historic Places. On June 5, 2000, the restricted service list was modified to include the Department of the Interior (Interior). On August 2, 2001, the restricted service list was modified to: (1) Change the address for Mr. Thomas Tatham; (2) change the contact for the Saint Regis Mohawk Tribe; (3) change the contact for Interior; and (4) delete Mr. Robert Dean. On June 26, 2002, the restricted service list was modified to change for the Bureau of Indian Affairs. The St. Lawrence-FDR Power Project is located on the St. Lawrence River, in St. Lawrence County, New York. The New York Power Authority is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established. The following changes to the existing restricted service list are noted.

The address for Mr. James Teitt has changed. Remove Chief Brian Skidders as the contact for the Mohawk Nation Council of Chiefs.

As a result of these changes, the revised final restricted service list, for the purpose of commenting on the PA for the St. Lawrence-FDR Power Project, is as follows:

Dr. Robert Kuhn,
Dr. Laura Henley Dean, NY Office of Parks, Recreation, Advisory Council on Historic Preservation, and Historic Preservation, The Old Post Office Building, Suite 803, Peebles Island, PO Box 189, 1100 Pennsylvania Avenue, NW., Waterford, NY 12188–0189 Washington, DC 20004
William Slade, New York Power Authority, 123 Main Street, White Plains, NY 10601
Thomas Tatham, New York Power Authority, 123 Main Street, White Plains, NY 10601
Kevin Mendik, National Park Service, 15 State Street, Boston, MA 02109
Judith M. Stolfo, Department of the Interior, Office of the Regional Solicitor, One Gateway Center, Suite 612, Newton, MA 02458–2802
Dr. James Kardatzke, Eastern Region Office, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, TN 37214
Francis Boots, THPO, Saint Regis Mohawk Tribe, 412 State Route 37, Hogansburg, NY 13655
Salli Benedict, Henry Lickers, Mohawk Council of Akwesasne, PO Box 579, Cornwall, Ontario K6H 5T3
Maxine Cole, Akwesasne Task Force on the Environment, PO Box 992, Hogansburg, NY 13655
David Blaha, Environmental Resources Management, 2666 Riva Road, Suite 200, Annapolis, MD 21401
James Teitt, Environmental Resources Management, Northwoods II, Suite 30, 8101 N. High Street, Columbus, OH 43235
Kimberly Owens
Mohawk Nation Council of Chiefs, 1849 C Street, NW. Washington, DC 20240, Department of the Interior, Box 366, Rooseveltown, NY 13683

Magalie R. Salas,
Secretary.
[FR Doc. 03–698 Filed 1–13–03; 8:45 am]
BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7438–3]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in the following case: Communities for a Better Environment, *et al.* v. U.S. EPA, No. 02–70191 (9th Circuit). This case concerns the U.S. Environmental Protection Agency's (EPA) full approval of the part 70 operating permit program for the Bay Area Air Quality Management District in the State of California, published at 66 FR 63503 (December 7, 2001). The proposed settlement agreement was signed by the last party on January 7, 2003.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

DATES: Written comments on the proposed settlement agreement must be received by February 13, 2003.

ADDRESSES: Written comments should be sent to Paul Cort, Office of Regional Counsel, U.S. EPA (ORC–2), 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement agreement is available on EPA's webpage at *http://www.epa.gov/region09/air/index.html*. You may also obtain a copy from David Wampler, Region IX Air Permits Office, U.S. EPA (AIR–3), 75 Hawthorne Street, San Francisco, CA 94109, (415) 972–3975.

SUPPLEMENTARY INFORMATION: EPA granted full approval of the 34 California part 70 operating permit programs (also known as "title V" permit programs) on November 29, 2001. 66 FR 63503 (December 7, 2001). Communities for a Better Environment and Our Children's Earth Foundation filed petitions challenging EPA's approval of the Bay Area Air Quality Management District ("BAAQMD" or "District") part 70 program. Petitioners alleged deficiencies in the District's program related to the exemption for portable equipment and the definition of "administrative permit amendment." The parties engaged in settlement discussions and entered the Ninth Circuit Mediation Program.

The proposed settlement agreement outlines rulemaking actions and deadlines to be met by the District. If the District fails to take any of the outlined actions or fails to meet any of the specified deadlines, the settlement agreement provides that EPA will send a proposed Notice of Deficiency (NOD) for publication to the Office of the Federal Register no later than 30 days from the relevant deadline. After considering comment on the proposed NOD, EPA shall forward to the Office of Federal Register a final rulemaking on the NOD within 90 days after publication of the proposal.

As appropriate, the proposed NOD will inform the District that the portable engine exemption in BAAQMD Rule 2–6–113 must be revised to be consistent with the term "stationary source" as it is defined in the Clean Air Act, 42 U.S.C. 7602(z), and EPA's implementing regulations, 40 CFR 70.2, as well as the definition of "nonroad engine" at 40 CFR 89.2. In addition, if applicable, the notice of proposed rulemaking shall inform the District that the definition of "administrative permit amendment" in BAAQMD Rule 2–6–201 must be revised to be consistent with the definition of "administrative permit amendment" set forth in 40 CFR 70.7(d)(i)—(iv).

Dated: January 7, 2003.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 03–738 Filed 1–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0359; FRL–7286–5]

Modified Acrylic Polymer; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0359, must be received on or before February 13, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Treva C. Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311
- Pesticide manufacturing (NAICS code 25532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0359. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the

collection of materials that are available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties, or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0359. The system is an "anonymous access" system, which means, EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2002–0359. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2002–0359.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2002–0359. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim

information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 2, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(d)(3). The summary of the petition was prepared by Alco Chemical, and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

Alco Chemical

PP 3E6539

EPA has received a pesticide petition ([3E6539]) from Alco Chemical, 909 Mueller Drive, Chattanooga, TN 37406–0401 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to revise an existing exemption from the requirement of a tolerance for modified acrylic polymers located in 40 CFR 180.960 EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The existing tolerance exemption reads as follows: Acrylic polymers composed of one or more of the following monomers: Acrylic acid, methyl acrylate, ethyl acrylate, butyl acrylate, hydroxyethyl acrylate, hydroxypropyl acrylate, hydroxybutyl acrylate, carboxyethyl acrylate, methacrylic acid, methyl methacrylate, ethyl methacrylate, butyl methacrylate, isobutyl methacrylate, hydroxyethyl methacrylate, hydroxypropyl methacrylate, hydroxybutyl methacrylate, lauryl methacrylate, and stearyl methacrylate; with none and/or one or more of the following monomers: Acrylamide, N-methyl acrylamide, N-octylacrylamide, maleic anhydride, maleic acid, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate; and their corresponding sodium potassium, ammonium, isopropylamine, triethylamine, monoethanolamine, and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu), 1,200. No CAS registry number is associated with the exemption.

Alco Chemical Company is requesting that the exemption be revised to include N,N-dimethyl acrylamide by inserting N,N-dimethyl acrylamide between N-methyl acrylamide and N-octyl acrylamide.

Magnitude of residues. Alco is petitioning for an exemption from the requirement of a tolerance based upon the polymer's compliance with the Low Risk Polymer criteria per 40 CFR 723.250. Therefore, an analytical method to determine residues in raw agricultural commodities has not been proposed. No residue chemistry data or environmental fate data are presented in the petition as the Agency does not generally require some or all of the listed studies to rule on the exemption from the requirement of a tolerance for a low risk polymer inert ingredient.

A. Toxicological Profile

The Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances, as well as, polymers that typically are not readily absorbed. Alco believes that N,N-dimethyl acrylamide acrylic acid polymers conform to the definition of a polymer given in 40 CFR 723.250 and meets the criteria used to identify a low risk polymer. Alco also believes that based on this substance's conformance to the above mentioned criteria, no mammalian toxicity is anticipated from dietary, inhalation or dermal exposure to emulsion polymers and that emulsion polymers will present minimal or no risk.

1. This polymer is not a cationic substance.
2. It contains as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.
3. It does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

4. This polymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. It is not manufactured or imported from monomers and/or other reactants that are not already on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA Section 5 exemption.

6. It is not a water absorbing polymer.

7. The minimum average molecular weight of the above mentioned polymer is greater than 10,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the GI tract are generally incapable of eliciting a toxic response. This polymer has an oligomer content less than 2% below MW 500 and less than 5% MW 1,000.

Alco believes sufficient information was submitted in the petition to assess the hazards of the N,N-dimethyl acrylamide acrylic acid polymer. No toxicology data were presented in the petition as the Agency does not generally require some or all of the listed studies to rule on the exemption from the requirement of a tolerance for an inert ingredient. Based on this polymer's conforming to the definition of a polymer and meeting the criteria of a low risk polymer under 40 CFR 723.250, Alco believes there are no concerns for risks associated with toxicity.

8. *Endocrine disruption.* There is no evidence that the polymer is an endocrine disrupter. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

B. Aggregate Exposure

1. *Dietary exposure.* Some modified acrylic polymers may be used in contact with food as components of containers used to manufacture, process, or store food when regulated for such use under the FFDCA. Modified acrylic polymers with a molecular weight greater than 1,000 daltons are not readily absorbed through the intact gastrointestinal tract and are considered incapable of eliciting a toxic response.

2. *Non-dietary exposure.* Typical uses of modified acrylic polymers are in the inks and coatings and industrial water treatment industries. In these uses the primary exposures are dermal, however, modified acrylic polymers with a molecular weight significantly greater than 400 are not readily absorbed through the intact skin and are considered incapable of eliciting a toxic response.

C. Cumulative Effects

There is data to support a conclusion of negligible cumulative risk for modified acrylic polymers. Polymers with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response. Therefore, there is no reasonable expectation of increased risk due to cumulative exposure. Based on this polymer conforming to the definition of a polymer and meeting the criteria of a low risk polymer under 40 CFR 723.250, Alco believes there are no concerns for risks associated with cumulative effects.

[FR Doc. 03–739 Filed 1–13–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7438–9]

Innovative Technologies for Remote Collection of Data for the National Children's Study; Notice: Request for Information

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for information for Innovative Technologies for Remote Collection of Data for the National Children's Study.

SUMMARY: This request for information from the National Center for Environmental Assessment, Office of Research and Development for Innovative Technologies for Remote Collection of Data for the National Children's Study is for state-of-the-art technology (currently available and those possible in the future) to enhance data collection for this longitudinal study currently being planned by a coalition of federal agencies. This request for information (RFI) is intended strictly for market research purposes and may not lead to a solicitation or contract.

The National Children's Study (NCS) is a large long-term study of environmental influences on children's health and development. This study will explore a broad range of environmental factors, both helpful and harmful, that influence the health and well-being of children. For this study, environment is broadly defined to include chemical, physical, social, and behavioral influences on children, and to better understand the role of these factors on health and disease. More information on the NCS is available at *http://www.NationalChildrensStudy.gov.*

In initial discussions, the NCS Technology Group, consisting of technology experts within the federal government, has highlighted the utility of remote collection of data for longitudinal studies. Approaches identified include the use of Personal Digital Assistant (PDA), wireless technology, the Internet, and other technologies currently in development for collection of data between in-person visits/appointments. The three major areas discussed include: (1) Collection of questionnaire data (*e.g.*, diaries, symptom check lists, information on doctor's visits, and medications); (2) measurement and transmittal of environmental measurements (*e.g.*, devices that measure indoor or outdoor air quality, store the data over time, and transmit it to a central data location either by phone hook-up or wireless technology; devices used that collect samples, *e.g.*, dust or volatile organic compounds that can be sent to laboratories for analysis; and Global Positional System (GPS) devices that would transmit location for use in Geographic Information Systems (GIS) analyses); and (3) measurement and transmittal of health/biological measurements such as physiological measures (*e.g.*, blood pressure, heart rate, and weight).

The information provided as a response to this RFI will be included with background material in a meeting being planned to discuss these issues. Presentations and discussions during this workshop will identify the most promising and urgent of the above issues, identify existing technology that could be used or adapted for use, along with a discussion of security and confidentiality. For example, regardless of the study design, use of remote technologies for collection of questionnaire data will be a data collection method implemented from the beginning of the study. Other items will be ranked by urgency and amount of lead time needed for development. Part of this exercise would be the identification of pros and cons of the proposed technology.

The government is also seeking information from hardware and software

vendors to ensure that all available commercial-off-the-shelf (COTS) products that provide capabilities applicable to the NCS have been identified. All manufacturers and suppliers of appropriate technology that could be applied to support the NCS are offered this opportunity to describe how the government can best employ their products to meet the NCS mission needs.

In addition to currently available products, the government wants to understand the capabilities of leading-edge products currently under development that will be available by mid Fiscal Year 2004. The information submitted will be used to assist the government in the continuing development of its NCS implementation strategy.

This RFI is the first of several steps to solicit input and interest from the vendor community and to promote competition in response to needed technology for the NCS. We expect to issue other RFIs as planning evolves.

DATES: Information should be submitted via website not later than January 31, 2003, to *http://www.NationalChildrensStudy.gov.* Responses submitted after this date will not be accepted. The government will not request additional information or discuss submissions received in response to this-RFI with individual responders.

ADDRESSES: Submit responses to *NCS.Technology@epa.gov (http://www.NationalChildrensStudy.gov).* Responses are limited to a total of 20 pages, and in WordPerfect or Microsoft Word. Page size must be 8.5 × 11", font must be 12 point or larger, and margins must be at least 1 inch. Briefly describe your product, the company that produces it, and the company's other products, services, history, ownership, and information you deem relevant. Provide points of contact for the product, including name, address (also include web address, if available), phone/fax number, and email address. Discuss technical feasibility alternatives and provide nonbinding order-of-magnitude cost and estimates of developmental time for the alternatives. Hardware and software vendors should submit a concept paper describing how the product could meet potential NCS needs. Indicate whether your product is commercially available or is on the General Services Administration Federal Supply Schedule. Supplemental product brochures or marketing materials outlining specifications and capabilities also may be submitted, and will not be counted in the overall page count limits.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Sherry G. Selevan, Ph.D.; mailing address: National Center for Environmental Assessment-Washington (8623D), U.S. Environmental Protection Agency, Washington, DC 20460; telephone: 202–564–3312; facsimile: 202–565–0078; e-mail: *selevan.sherry@epa.gov.*

SUPPLEMENTARY INFORMATION:

Disclaimer

This RFI is issued for information and planning purposes only and does not constitute a solicitation. The government does not intend to award a contract on the basis of this RFI or to otherwise pay for information received in response to this RFI. Responses to the RFI will not be returned, and because they will be available for background material for a workshop, submission will not be treated as proprietary. Information provided in response to this RFI will be used to assess tradeoffs and alternatives available for determining how to proceed in the planning process for the NCS and may lead to the development of a specification for the NCS. In accordance with FAR 15.201(e), responses to this RFI are not offers and cannot be accepted by the government to form a binding contract. Responders are solely responsible for all expenses associated with responding to this RFI.

Dated: January 3, 2003.

George Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 03–735 Filed 1–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7438–4]

Koppers Charleston Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of modified proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an Administrative Settlement with Beazer East, Inc. for response costs pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9622(h)(1) concerning the Koppers Charleston Superfund Site (Site) located in Charleston, Charleston County, South Carolina. EPA will consider public comments on the modified proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U. S. EPA, Region 4, (WMD–CPSB), 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: December 23, 2002.

James T. Miller, Acting Chief,

CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–737 Filed 1–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7438–6]

Clean Water Act Section 303(d): Notice Final Agency Action Withdrawing of 1 Total Maximum Daily Load (TMDL)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of 1 TMDL.

Subject: This notice announces EPA final action withdrawing of the TMDL for atrazine in the water column that EPA established pursuant to the Clean Water Act ("CWA") section 303(d), for Louisiana subsegment 080903, Big Creek from the confluence with the Boeuf River to the headwaters (including Big Colewa Bayou). EPA is withdrawing this TMDL because the draft criteria value for atrazine used in screening the waterbody to determine whether it meets Louisiana water quality standards and for calculation of allowable load allocations was draft only and had not been through the complete public notice process and had not been finalized. In place of the draft atrazine criteria number of 12 µg/l, EPA is establishing a screening value of 36 µg/l as calculated by one possible procedure found in Louisiana water quality standards (LAC 33:IX,1113.C.6). Based on this new screening value of 36 µg/l, Big Creek is not, and was not at the time EPA established this TMDL, impaired by atrazine and should not be listed on Louisiana's current CWA

section 303(d) list for atrazine. Thus, EPA is withdrawing this TMDL.

Background: EPA established this atrazine TMDL under CWA section 303(d) on February 28, 2001, to satisfy a consent decree obligation in the lawsuit styled *Sierra Club* v. *Clifford*, Civ. No. 96–0527 (E.D. La.). The Waterbody subsegment 080903, Big Creek from the confluence with the Boeuf River to the headwaters (including Big Colewa Bayou) was listed on the Louisiana Section 303(d) list of impaired waters as impaired due to pesticides, under the "no toxics in toxic amounts" narrative Louisiana water quality standard (LAC 33:IX,1113.B.5).

Since the State of Louisiana does not have a numeric water quality criterion for the protection of aquatic life for atrazine, EPA derived a numeric interpretation of the State of Louisiana's narrative water quality criterion for toxic substances using EPA's Draft Criteria Document for atrazine (Ambient Aquatic Life Water Quality Criteria for Atrazine—Draft, EPA 822–D–010002, August 2001) and used that interpretation as the basis for establishing the Big Creek TMDL for atrazine.

During the comment period for this TMDL, commenters submitted information stating that under Louisiana water quality standard provisions (LAC 33:IX,1113.C.6) it was not appropriate to use a draft criterion document value and that the Louisiana procedures should be used. EPA has evaluated these comments and has concluded that using the calculation procedure found in the Louisiana water quality standards provisions is more appropriate for establishing a screening value for atrazine in this particular case. Based on its modification of the screening value used for interpretation of Louisiana's narrative water quality criterion of "no toxics in toxic amounts," EPA concluded that the applicable water quality standard for the Big Creek is not, and was not at the time EPA established this TMDL, exceeded for atrazine in the water column.

Therefore, in the exercise of its discretion, EPA is withdrawing the Big Creek TMDL established in February 2001 for atrazine. Because Big Creek is not listed for atrazine on the Louisiana 303(d) list, LDEQ has no present obligation under the CWA to submit to EPA a TMDL for atrazine for Big Creek, nor does the CWA require EPA to maintain this TMDL. Three other TMDLs for Big Creek, DDT, carbofuran, and methyl parathion are not affected by this determination.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

Dated: December 20, 2002.

Jayne Fontenot,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–736 Filed 1–13–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 7, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Forest Merger Corporation and FBR TRS Holdings, Inc., both in Arlington, Virginia; to become bank holding companies by merging with Friedman, Billings, Ramsey Group, Inc., and FBR Asset Investment Corporation, both in Arlington, Virginia, and thereby indirectly acquiring FBR Bancorp, Inc., Arlington, Virginia, and FBR National Bank and Trust, Bethesda, Maryland. After the merger, Applicants would be renamed Friedman, Billings, Ramsey Group, Inc.

Applicants also have applied to acquire indirectly more than 5 percent of the voting shares of Pacific Credit Capital, Inc., and its subsidiary Pacific Crest Bank, both in Agoura Hills, California; Hingham Institution for Savings, Hingham, Massachusetts; ITLA Capital Corporation, and its subsidiary, Imperial Capital Bank, both in La Jolla, California.

Applicants also have applied to acquire indirectly more than 5 percent of the voting shares of Quaker City Bancorp, Inc., and its subsidiary, Quaker City Bank, both in Whittier, California; and First Bell Bancorp, Inc., Pittsburgh, Pennsylvania, and its subsidiary Bell Federal Savings and Loan Association, Bellevue, Pennsylvania, and thereby engage in operating savings associations, pursuant to § 228.25(b)(4) of Regulation Y.

2. MountainBank Financial Corporation, Hendersonville, North Carolina; to merge with Cardinal Bankshares Corporation, Floyd, Virginia, and thereby indirectly acquire voting shares of The Bank of Floyd, Floyd, Virginia.

3. MountainBank Financial Corporation, Hendersonville, North Carolina; to merge with CNB Holdings, Inc., Pulaski, Virginia, and thereby indirectly acquire voting shares of Community National Bank, Pulaski, Virginia.

Board of Governors of the Federal Reserve System, January 8, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–670 Filed 1–13–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

On January 3, 2003, the Federal Reserve Board named ten new members to its Consumer Advisory Council for three–year terms and designated a new Chair and Vice Chair of the Council for 2003.The Council advises the Board on the exercise of its responsibilities under the Consumer Credit Protection Act and on other matters in the area of consumer financial services. The Council meets three times a year in Washington, D.C.

Ronald Reiter was designated Chair; his term runs through December 2003. Mr. Reiter is Supervising Deputy Attorney General for the California Department of Justice.

Agnes Bundy Scanlan was designated Vice Chair; her term on the Council

ends in December 2004. Ms. Scanlan is Managing Director and Chief Compliance Officer for FleetBoston Financial.

The ten new members are:

Susan Bredehoft
Cherry Hill, New Jersey

Ms. Bredehoft is Senior Vice President for Compliance Risk Management for Commerce Bancorp. She has responsibility for developing and implementing the compliance risk management program for consumer protection and disclosure regulations, privacy, fair lending, community reinvestment, and anti–money laundering regulations. Previously, Ms. Bredehoft was Senior Vice President and Director of Compliance for Summit Bancorp, where she managed the community reinvestment and compliance programs. She has spoken on community development, fair lending, compliance, and audit topics. Ms. Bredehoft is the Chair of the Finance and Audit Committee for the New Jersey Community Loan Fund, serves on the Compliance Committee of the New Jersey Banker's Association, and is a Trustee of St. Peter's College in Jersey City, N.J.

Dan Dixon
Washington, District of Columbia

Mr. Dixon is Group Senior Vice President and Director of Government Relations for World Savings Bank, FSB. During his career at World, his responsibilities have included mortgage loan origination and servicing, customer relations, regulatory compliance, and community outreach. In addition, Mr. Dixon serves on the Board of Neighborhood Housing Services of America, Inc. (NHSA), a national non–profit secondary mortgage market intermediary. For six years, he was Chairman of NHSA. At NHSA, he supported introduction of a new loan product for low–income borrowers with funding from the Federal Home Loan Bank Affordable Housing Program. Mr. Dixon previously served on the Board of East Bay Habitat for Humanity in Oakland, CA.

James Garner
Tampa, Florida

Mr. Garner is Senior Vice President and Associate General Counsel for Washington Mutual Inc., an organization providing consumer banking, mortgage lending, commercial banking, and consumer financial services. Mr. Garner leads a group of attorneys and manages the consumer finance company subsidiary's compliance department. He recently participated in the development of Responsible Mortgage Lending Principles for the organization and participates in the company's Fair Lending Steering and the Public Policy Issues Management committees. Mr. Garner also works on a pilot program to move subprime customers into the organization's prime lending segment and regularly meets with consumer advocate groups to discuss predatory lending and responsible lending practices. Mr. Garner chairs a subcommittee for the Law Committee of the American Financial Services Committee and is an officer and member of the Governing Committee on the Conference on Consumer Finance Law.

Charles Gatson
Kansas City, Missouri

Mr. Gatson is Vice President of Midtown Community Development Corporation doing business as Community Builders of Kansas City, an affiliate of Model Cities Health Corporation, an organization that provides innovative social, health–care, and community economic development services to the urban community. Mr. Gatson directs the corporation's community economic development efforts that include a $100 million urban revitalization program in Kansas City's urban core. The program includes a health–care facility, single and multi–family housing and an 85,000 square foot H & R Block customer service center in a predominantly African American community. Mr. Gatson is a member of many civic organizations, including the Urban League of Greater Kansas City, the Urban Land Institute's Inner City Advisor Coordinating Committee, and Fannie Mae's Housing Impact Advisory Committee. In 2002, he received the James A. Johnson Community Fellows Award from the Fannie Mae Foundation.

James King
Cincinnati, Ohio

Mr. King is President and Chief Executive Officer of the Community Redevelopment Group in Cincinnati. His responsibilities include administering the day–to–day operations of residential and commercial development and construction, marketing and management for two community development corporations, the Avondale Redevelopment Corporation and the Walnut Hills Redevelopment Foundation. Mr. King is a member of several community organizations including the City of Cincinnati Economic Development Task Force, the National Congress for Community Economic Development, and the Neighborhood Development Corporations Association of Cincinnati. He is also co–chair of Cincinnati CAN (Community Action Now) and a member of The Federal Home Loan Bank of Cincinnati Advisory Council and the Cincinnati Park Board Master Plan Advisory Committee. In 2001, Mr. King received the James A. Johnson Community Fellow award from the Fannie Mae Foundation.

Elsie Meeks
Kyle, South Dakota

Ms. Meeks is the Executive Director of First Nations Oweesta Corporation, a subsidiary corporation of First Nations Development Institute. The corporation focuses on enhancing the capacity of Native American tribes and communities by providing technical assistance and training for the development and expansion of Native American community development financial institutions. Previously, Ms. Meeks helped develop and was Executive Director of The Lakota Fund, which is a Native American community development financial institution on the Pine Ridge Indian Reservation in southwestern South Dakota, specializing in small business development and microenterprise development. Ms. Meeks is a board member of the National Community Capital Association, and, in 1994, received the "South Dakota Minority Small Business Advocate of the Year" award. She was appointed by Senate Majority Leader Tom Daschle to serve as the first Native American on the U.S. Commission on Civil Rights.

Mark Pinsky
Philadelphia, Pennsylvania

Mr. Pinsky is President and Chief Executive Officer of the National Community Capital Association, a leading network of community development financial institutions (CDFIs). He is responsible for the association's strategic direction and performance and has created new products including the Equity Equivalent Investment and the Virtual Learning Center. Mr. Pinsky is widely recognized as the voice of the CDFI industry and the leading advocate for a strong, performance–based CDFI Fund in the U.S. Department of Treasury. He has published and lectured extensively on CDFI's and the Community Reinvestment Act. In 2002, he provided the keynote address at the 3rd Annual UK Community Development Finance Conference in Scotland and spoke on "Lessons from the U.S. CDFI Industry."

Benjamin Robinson
Charlotte, North Carolina

Mr. Robinson has been Senior Vice President, Strategy Management Executive, responsible for issues management, national alliances, and national programs for Bank of America since October 2002. Previously, he was

Vice President and Chief Privacy Officer of MasterCard International, and President and Chief Executive Officer, MasterCard Cardholder Solutions, Inc. His responsibilities included overall management of MasterCard Cardholder Solutions, Inc. and managing and implementing privacy policies, regulations, and compliance for MasterCard International domestically and abroad. Mr. Robinson has also served as a congressional advisor on banking issues including the Community Reinvestment Act, Equal Credit Opportunity Act, Home Mortgage Disclosure Act, and Fair Housing Act for a subcommittee of the U.S. House of Representatives' Committee on Banking, Finance, and Urban Affairs.

Diane Thompson
East St. Louis, Illinois

Ms. Thompson is a Supervising Attorney for the Housing and Consumer Rights Unit at the Land of Lincoln Legal Assistance Foundation. She supervises consumer rights litigation and works with community organizations on affordable housing and community economic development. She also supervises comprehensive homeless advocacy and homeless prevention projects in one of the poorest and most economically depressed cities in the country. She has expertise in the Truthin–Lending and Home Ownership and Equity Protection Acts and is an experienced anti–predatory lending advocate and litigator in the St. Louis area. Mrs. Thompson is involved in several community activities, including the Metropolitan St. Louis Equal Housing Opportunity Council and Project Kids, Inc.

Clint Walker
Wilmington, Delaware

Mr. Walker is the General Counsel and Chief Administrative Officer of Juniper Financial Corporation, established in 2000. Mr. Walker is part of the founding team of the credit card bank which is based on the concept of applying the best practices of a traditional credit card business with the best aspects of electronic banking to create an innovative and improved customer experience. His responsibilities include legal, compliance, regulatory and legislative activities, the Community Reinvestment Act, and community affairs. Prior to his position at Juniper, Mr. Walker was General Counsel at both First USA Bank, N.A. and Citibank Maryland. He has extensive experience in both the credit card industry and emerging e–commerce financial applications.

Council members whose terms continue through 2003 are:

Anthony Abbate
President and Chief Executive Officer
Interchange Bank
Saddle Brook, New Jersey

Manuel Casanova, Jr.
Executive Vice President
International Bank of Commerce
Brownsville, Texas

Constance K. Chamberlin
President and Chief Executive Officer
Housing Opportunities Made Equal
Richmond, Virginia

Earl Jarolimek
Vice President/CorporateCompliance Officer
Community First Bankshares
Fargo, North Dakota

J. Patrick Liddy
Director of Compliance
Fifth Third Bancorp
Cincinnati, Ohio

Oscar Marquis
Attorney
Hunton and Williams
Park Ridge, Illinois

Elizabeth Renuart
Staff Attorney
National Consumer Law Center
Boston, Massachusetts

Council members whose terms continue through 2004 are:

Janie Barrera
President and Chief Executive Officer
ACCION Texas
San Antonio, Texas

Ken P. Bordelon
Chief Executive Officer
E Federal Credit Union
Baton Rouge, Louisiana

Robin Coffey
Vice President
Harris Trust and Savings Bank
Chicago, Illinois

Thomas FitzGibbon
Senior Vice President
MB Financial Bank, N.A.
Chicago, Illinois

Larry Hawkins
President and Chief Executive Officer
Unity National Bank
Houston, Texas

Ruhi Maker
Senior Attorney
Public Interest
Law Office of Rochester
Rochester, New York

Patricia McCoy
Professor of Law
Department of Economics
Massachusetts Institute of Technology
Cambridge, Massachusetts

Debra S. Reyes
President
Neighborhood lending Partners, Inc.
Tampa, Florida

Benson Roberts
Vice President for Policy
Local Initiatives Support Corporation
Washington, District of Columbia

Hubert Van Tol
Co–Director
Fairness in Rural Lending
Sparta, Wisconsin

Board of Governors of the Federal Reserve System, January 8, 2003.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 03–671 Filed 1–13–03; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day 03–35]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Menthol Crossover Study—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC). CDC proposes a study to measure differences in African-American and Caucasian smokers in the dose and metabolism of chemicals in smoke from menthol and non-menthol cigarettes.

African-American smokers are more likely than Caucasian smokers to

develop some forms of cancer and to have shorter long-term survival after diagnosis. More than 65% of African American smokers smoke menthol cigarettes, compared with about 23% of white smokers. Smoking menthol cigarettes has been associated with higher blood-cotinine levels. Cotinine is a product of the metabolism of nicotine, and the higher cotinine levels suggest that menthol may enable a smoker to obtain more nicotine from each cigarette. In addition, people who smoke menthol cigarettes also have higher levels of carbon monoxide in their breath than do people who smoke non-menthol cigarettes, and an elevated carbon monoxide level is a risk factor for cardiovascular disease. Additionally, the presence of menthol in cigarettes may change the way people smoke cigarettes.

All previous studies have compared people who smoke menthol cigarettes with those who smoke non-menthol cigarettes; and it is not known whether increased cotinine and carbon monoxide levels in people who smoke menthol cigarettes are attributable to racial or ethnic differences, or a combination of multiple factors. In addition, no previous study has examined the differences between urinary levels of cancer-causing chemicals in people who smoke menthol or non-menthol cigarettes and correlated these findings with smoke exposure intake estimates using salivary cotinine and filter solanesol.

For this two-part crossover study, we will recruit African-American and Caucasian smokers of both sexes who smoke either menthol or non-menthol cigarettes as study subjects. We will determine smoking history then randomly assign each participant to smoking either menthol or non-menthol cigarettes for an initial 2-week period. Study participants then will switch to the opposite type of cigarette for the next 2 weeks. At baseline, and after each 2-week period, we will measure the way the participants smoke the test cigarettes to determine smoking topography. Saliva, urine, and breath samples will be collected to measure by-products of smoking, and participants will complete a brief smoking-history questionnaire. There is no cost to respondents.

Forms	No. of respondents	No. of responses/respondent	Average burden/response (in hours)	Total burden in hours
Response to Flyer: Screening Interview Form	200	1	5	17
Site Visits: Check in Study Information—Visit 1, 2, 3	71	3	15	53
Consent Form Questionnaire—Visit 1, 2, 3	71	3	15	53
Urine Sample and Saliva Sample—Visit 1, 2, 3	71	3	15	53
Breath Carbon monoxide (CO) Sample—Test Smoke 1, Breath CO Sample, Breath CO Sample, Test Smoke 2, Breath CO Sample—Visit 1, 2, 3	71	3	45	160
Sample Test—Cigarettes Distribute Baggies & Cigarettes—Visit 1, and 2	71	2	15	36
Instructions and Check out—Visit 1 and 2	71	2	15	36
Smoking Cessation Advice—Visit 3 only	71	1	15	18
Final Check Out—Visit 3 only	71	1	15	18
Total				444

Dated: January 8, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning, and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 03–674 Filed 1–13–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

[OMB #0925–0479]

Proposed Collection; Comment Request; Evaluation of the NIDCD Partnership Program

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Deafness and Other Communication Disorders (NIDCD), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Evaluation of the NIDCD Partnership Program. *Type of Information Collection Request:* EXTENSION. *Need and Use of Information Collection:* The NIDCD was established to support biomedical and behavioral research and research training in hearing, smell, balance, taste, voice, speech and language. Although minorities and women will dominate the work force within the next decade, both groups are underrepresented in the science and health professional field. Because of this concern, the NIDCD, with assistance from the Office of Research on Minority Health, established the Partnership Program in 1994 to increase the number of minority scientists and health care professionals doing research on communication and communication disorders. The proposed survey will yield data about: (1) Reasons for participation in the program; (2) satisfaction of participants with the program and (3) how participation in the program has lead to the pursuit of a career in the health field. This survey will track the Partnership Program's success at increasing the number of women and minorities who are scientists. *Frequency of Response:* One. *Affected Public:* Individuals. *Type of Respondent:* Partnership Program Participants. The annual reporting burden is as follows: *Estimated Number of Respondents:* 76; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.5; and *Estimated Total Annual Burden Hours Requested:* 38. The annualized cost to respondents is estimated at: $380. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Note: The following table is acceptable for the Respondent and Burden Estimate Information, if appropriate, instead of the text as shown above.)

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Initial program participant survey	16	1	0.5	8
Follow up survey of participant	60	1	0.5	30
Total	76			38

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for fulfillment of the NIDCD mission, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed data collection, including the validity of the methodology; (3) ways to enhance the quality, utility, and clarity of the data collection and (4) ways to minimize the burden of the collection of information on the respondents, including appropriate use of automated collection techniques and information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Kay Johnson Graham, EEO Officer, Office of Equal Employment Opportunity, NIDCD, NIH, Building 31, Room 3C08, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 496–3403 or E-mail your request, including your address to: *johnsonk@ms.nidcd.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

SUPPLEMENTARY INFORMATION: Under the PRA, (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to provide a 60-day notice in the Federal Register concerning proposed collections of information before submitting the collection to OMB for approval. To comply with this requirement, NIDCD is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, NIDCD invites comments on: (1) Whether the proposed collection of information is necessary for fulfillment of the NIDCD mission, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed data collection, including the validity of the methodology; (3) ways to enhance the quality, utility, and clarity of the data collection; and (4) ways to minimize the burden of the collection of information on the respondents, including appropriate use of automated collection techniques and information technology.

The NIDCD Partnership Program was designed to maximize research and research training opportunities for undergraduates, graduate and professional students, and faculty from populations that are underrepresented in the biomedical professions. Participants are recruited from four academic institutions that developed partnerships with the NIDCD: The University of Alaska System, The Atlanta University Center, Gallaudent University, and the University of Puerto Rico.

Anecdotal feedback indicates that program participants, mentors, and liaisons find the program to provide interesting and unique opportunities. However, there is little systematic evidence evaluating the level of the Program's success or failure. The proposed surveys will attempt to assess how participants' experiences with the Partnership Program have influenced career and educational choices; current activities of participants (*e.g.*, courses of study, jobs); benefits and costs of program participation to the program participants, mentors, and liaisons; and suggestions for improving the Program. This information, will provide concrete evidence for continued funding of the Program.

Two separate surveys are proposed. The first survey will collect baseline information from participants as they enter the program. The baseline survey will explore participants' expectations and goals on entering the program, their current career and/or educational plans, and reasons for choosing to participate. The second survey will gather Follow up and tracking information of past participants and will be administered annually. This survey will ask about current contact information, current career educational activities, satisfaction with the program, and whether expectations were met.

Potential respondents of either survey will be asked to participate in a telephone survey that should take less than 30 minutes to complete. Respondents who cannot schedule 30 minutes of time or have communications disorders which make telephone conversations difficult will be given the opportunity to respond by alternate means such as fax and e-mail. All participants from the inception of the program will be included in this evaluation process. Participants for 1999 have not yet been chosen, but it is anticipated that the total number of participants since 1994 will not exceed 70.

Dated: January 6, 2003.

David Kerr,

Executive Officer, NIDCD.

[FR Doc. 03–716 Filed 1–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Clinical Research.

Date: January 14–15, 2003.

Time: January 14, 2003, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: The Inn Chase Park Plaza, 212–232 N. Kingshighway Blvd., St. Louis, MO 63108.

Contact Person: John L. Meyer, Ph.D., Deputy Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892–7965, 301–435–0806, meyerj@ncrr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–720 Filed 1–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Stem Cell.

Date: January 24, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Scientific Review Office, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 21754, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, Ph.D., National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, ACTIVE-PHASE II.

Date: January 29, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Ave., Gateway, 7201 Wisconsin Ave., 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, Ph.D., National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Dysfunctional Mitochondria of Aging.

Date: January 30–31, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 6, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–717 Filed 1–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Otitis Media.

Date: February 10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contract Person: Ali A. Azadegan DVM, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, EPS–400C, 6120 Executive Blvd MSC 7180, Bethesda, MD, 20892–7180, (301) 496–8683, *azadegan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–718 Filed 1–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee,

Date: January 28–30, 2003.

Time: January 28, 2003, 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, Monterey, Two Portola Plaza, Monterey, CA 93940.

Time: January 29, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, Monterey, Two Portola Plaza, Monterey, CA 93940.

Time: January 30, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, Monterey, Two Portola Plaza, Monterey, CA 93940.

Contact Person: Nancy B. Saunders, Ph.D., Scientific Review Administrator, Division of Extramural Activities, NIAID, NIH, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, NSC 7616, Bethesda, MD, 20892–7616, 301–496–2550, *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–719 Filed 1–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Anxiety Intervention.

Date: February 4, 2003.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Eating Disorder Intervention.

Date: February 6, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Research Review Committee.

Date: February 11–12, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: David I. Sommers, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–721 Filed 1–13–03; 8:45 am]

BILLING CODE 4140–01–NN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Respiratory pathogens Reference Laboratory Support.

Date: February 7, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6700 B Rockledge Drive, NIH/NIAID, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Paula S. Strickland, Ph.D., scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–722 Filed 1–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Emphasis Panel, CIPRA Multi-Project Research Grant Program.

Date: February 4, 2003.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Roberta Binder, Ph.D., Scientific Review Administrator, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, Rm 2155, Bethesda, MD, 20892, 301–496–7966, *rb169n@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–723 Filed 1–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Emphasis Panel, Basic and Clinical Studies of Anterior Eye Diseases.

Date: January 15, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 1, 1 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Custer, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–724 Filed 1–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–913–1630–PD]

Notice of Final Supplementary Rules for Public Land Administered by the Bureau of Land Management in Colorado Relating to the Unlawful Use of Alcohol by Underage Persons, Driving Under the Influence of Alcohol and/or Drugs, and Drug Paraphernalia Use and Possession on Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules for public land within the State of Colorado.

SUMMARY: The Bureau of Land Management (BLM) is publishing supplementary rules to apply to the public lands within the State of Colorado. The rules relate to the illegal use of alcohol and drugs on the public lands. The BLM needs the supplementary rules to protect natural resources and the health and safety of public land users. These supplementary rules will allow BLM Law Enforcement Officers to enforce on public lands regulations pertaining to Alcohol and Drug laws in a manner consistent with current State of Colorado State laws as contained in the Colorado Revised Statutes.

EFFECTIVE DATE: February 13, 2003.

ADDRESSES: You may send inquiries or suggestions to Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge, John Silence at (303) 239–3803.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Supplementary Rules

These supplementary rules apply to all the public lands within the State of Colorado. In keeping with the BLM's performance goal to reduce threats to public health, safety, and property, these supplementary rules are necessary to protect the natural resources and to provide for safe public recreation and public health; to reduce the potential for damage to the environment; and to enhance the safety of visitors and neighboring residents. Alcohol-related offenses are a growing problem on the public lands. Unlawful consumption of alcohol and drugs, and abuses of alcohol and drugs, such as driving while under the influence, pose a significant health and safety hazard to all users and uses of the public lands and can result in the destruction of natural resources and property, and/or cause physical injury/death. In addition, drug-related offenses, including the possession of drug paraphernalia, result in the legitimization and encouragement of the illegal use of controlled substances by making the drug culture more visible and enticing. Further, the ready availability of drug paraphernalia tends to promote, suggest, or increase the public acceptability of the illegal use of controlled substances. In keeping with BLM's policy regarding the reduction of illegal use of controlled substances on public lands, and due to undesirable impacts on the public lands, the greatest of which is the threat to visitor safety and the safety of BLM employees, the BLM Colorado Law Enforcement Program will continue aggressive pursuit of ways to eliminate the possession, use, manufacturing, and trafficking of controlled substances, as well as the use and availability of drug paraphernalia on public lands, and will seek prosecution of those persons responsible for such activity. These supplementary rules allow BLM Law Enforcement Officers to enforce on public lands regulations pertaining to Alcohol and Drug laws in a manner patterning current State of Colorado State laws as contained in the Colorado Revised Statutes in an effort to further the working relationship and partnerships formed with numerous Sheriff's Departments throughout Colorado and the Colorado State Patrol.

II. Discussion of Public Comments

We received one comment on the proposed supplementary rules. This comment supported the proposed supplementary rules without change. Therefore, we are publishing the final supplementary rules without substantive changes.

III. Procedural Information

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under

Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are directed at preventing unlawful personal behavior on public lands, for purposes of protecting public health and safety. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These interim final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. The supplementary rules merely enable BLM law enforcement personnel to enforce regulations pertaining to unlawful possession/use of alcohol and drugs in a manner patterning current State of Colorado laws, as contained in the Colorado Revised Statutes, where appropriate on public lands.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The final supplementary rules do not pertain specifically to commercial or governmental entities of any size, but contain rules to protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that these final supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). Again, the supplementary rules pertain only to individuals who may wish to use alcohol or drugs on the public lands. In this respect, the regulation of such use is necessary to protect the public lands and facilities and those, including small business concessioners and outfitters, who use them. The supplementary rules have no effect on business, commercial or industrial use of the public lands.

Unfunded Mandates Reform Act

These final supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these interim final supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The final supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The final supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules apply in only one state, Colorado, and do not address jurisdictional issues involving the Colorado State government. Therefore, in accordance with Executive Order 13132, BLM has determined that these final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with E.O. 13175, we have found that these final supplementary rules do not include policies that have tribal implications. Since the rules do not change BLM policy and do not involve Indian reservation lands or resources, we have determined that the government-to-government relationships should remain unaffected. The supplementary rules only prohibit the use of alcoholic beverages and illegal drugs on public lands.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, Colorado State Office of BLM has determined that these final supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the interim final supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The final supplementary rules will enable BLM law enforcement personnel to cite persons for unlawful possession/use of alcohol or drugs on public lands for the purpose of protecting public health and safety. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section, above.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These final supplementary rules do not comprise a significant energy action. The rules will not have an adverse effect on energy supplies, production, or consumption. They only addresses use of alcoholic beverages and drugs on public lands, and have no conceivable connection with energy policy.

Author

The principal author of these supplementary rules is Special Agent David Moore of the Colorado State Office, BLM, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

For the reasons stated in the Preamble, and under the authority of 43 CFR 8365.1–6, the Colorado State Director, Bureau of Land Management, issues supplementary rules for public lands in Colorado, to read as follows:

Douglas M. Koza,

State Director, Colorado.

Supplementary Rules on Possession and Use of Drugs and Alcohol on Public Lands

The Colorado State Office issues these supplementary rules under the Federal Land Policy and Management Act (FLPMA) 43 U.S.C. 1740 and 43 CFR 8365.1–6. Enforcement authority for these supplementary rules is found in FLPMA, 43 U.S.C. 1733.

A. Unlawful Possession, and/or Consumption of an Ethyl Alcohol Beverage

1. Definitions

a. As defined in Colorado Revised Statutes Title 18, Article 13, Section 122 (1)(b); "Etyhl alcohol" means any substance which is or contains ethyl alcohol.

b. "Possession of ethyl alcohol" means that a person has or holds any amount of ethyl alcohol anywhere on his person, or that a person owns or has custody of ethyl alcohol, or has ethyl alcohol within his immediate presence or control.

3. Prohibited Acts

a. If you are under 21 years of age, you must not purchase, possess, or consume any ethyl alcohol beverages or products on public lands.

b. You must not misrepresent your age or the age of any other person for the purpose of purchasing or otherwise obtaining any ethyl alcohol beverages or products on public lands.

c. You must not sell, offer to sell, or otherwise furnish or supply any ethyl alcohol beverages or products to any person under the age of 21 years on public lands.

B. Driving Under the Influence of Alcohol and/or a Narcotic or Dangerous Drug

1. Definitions

a. As defined in the Colorado Revised Statutes Title 42, Article 4, Section 1301 (1)(f); "Driving under the influence" means driving a vehicle when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, which alcohol alone, or one or more drugs alone, or alcohol combined with one or more drugs affects the person to a degree that the person is substantially incapable, either mentally or physically, or both mentally and physically, to exercise clear judgement, sufficient physical control, or due care in the safe operation of a vehicle.

b. As defined in the Colorado Revised Statutes Title 42, Article 4, Section 1301 (5)(c): If there was at such time 0.10 or more grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or if there was at such time 0.10 or more grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath, it shall be presumed that the defendant was under the influence of alcohol.

c. As defined in the Colorado Revised Statutes Title 42, Article 4, Section 1301 (1)(g): "Driving while ability impaired" means driving a vehicle when a person has consumed alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, which alcohol alone, or one or more drugs alone, or alcohol combined with one or more drugs, affects the person to the slightest degree so that the person is less able than the person ordinarily would have been, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.

d. As defined in the Colorado Revised Statutes Title 42, Article 4, Section 1301 (5)(b): If there was at such time in excess of 0.05 but less than 0.10 grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or if there was at such time in excess of 0.05 but less than 0.10 grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath, such fact shall give rise to the presumption that the defendant's ability to operate a vehicle was impaired by the consumption of alcohol, and such fact may also be considered with other competent evidence in determining whether or not the defendant was under the influence of alcohol.

2. *Prohibited act.* You must not operate a motor vehicle on public lands while under the influence, or while your abilities are impaired as described and defined above in items B.1.a–d.

C. Drug Paraphernalia

You must not possess any drug paraphernalia, as described by Colorado Revised Statutes Title 18, Article 18, Section 426, on public lands.

D. *Penalties.* Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you violate or fail to comply with any of the provisions in sections A., B., and C. of these supplementary rules, you may be subject to a fine under 18 U.S.C. 3571 or other penalties under 43 U.S.C. 1733.

[FR Doc. 03–679 Filed 1–13–03; 8:45 am]

BILLING CODE 4310–JB–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1013 (Final)]

Saccharin From China

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1013 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of saccharin, provided for in subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 27, 2002.

FOR FURTHER INFORMATION CONTACT: D.J. Na (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) Sodium saccharin (American Chemical Society Chemical Abstract Service (CAS) Registry #128–44–9); (2) calcium saccharin (CAS Registry #6485–34–3); (3) acid (or insoluble) saccharin (CAS Registry #81–07–2); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray-dried powder, and liquid forms."

assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of saccharin from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on July 11, 2002, by PMC Specialties Group Inc., Cincinnati, OH.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on February 27, 2003, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on March 13, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 7, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 10, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 6, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 20, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 20, 2003. On April 10, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 14, 2003, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means except to the extent provided by section 201.8 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 8, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–684 Filed 1–13–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Northrup Grumman Corporation and TRW Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant tot he Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Northrop Grumman Corporation and TRW, Inc.*, Civil No. 1:02 CV 02432 (GK).

On December 11, 2002, the United States filed a Complaint alleging that Northrop's acquisition of TRW would lessen competition substantially in development, production, and sale of radar reconnaissance satellite systems and electro-optical/infrared reconnaissance satellite systems, and the payloads for those systems, in the United States, in violation of section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires the defendant Northrop to act in a non-discriminatory manner in making teaming and purchase decisions on programs in which, by virtue of the

acquisition of TRW, it will be able to compete as both a prime contractor and the supplier of the payloads for the program. Copies of the Complaint, the proposed Final Judgment, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20004 (telephone: 202–514–2692), and at the Clerk's Office of the U.S. Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 60-days of the date of this notice. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: (202) 307–0924).

Constance K. Robinson,

Director of Operations.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On December 11, 2002, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Northrop Grumman Corporation ("Northrop") of TRW Inc. ("TRW") would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Northrop is one of two companies that can supply certain payloads used in reconnaissance satellite systems sold to the U.S. Government, and that TRW is one of only a few companies with the capability to act as a prime contractor on U.S. reconnaissance satellite programs that use these payloads. The payloads at issue include radar sensors, which detect objects through radio waves, and electro-optical/infrared ("EO/IR") sensors, which detect radiation emitted or reflected from objects within the electromagnetic spectrum from far infrared through far ultraviolet. The Complaint alleges that Northrop's acquisition of TRW will give Northrop the incentive and ability to lessen competition by favoring its in-house payload and/or prime contractor capabilities to the detriment or foreclosure of its competitors, and/or by refusing to sell, or selling only at disadvantageous terms, its in-house capabilities to its competitors. It further alleges that the acquisition will harm the U.S. Government because it will pose an immediate danger to competition in two current or future programs, the Space Based Radar and the Space Based InfraRed System-Low programs.

The prayer for relief in the Complaint seeks: (1) a judgment that the proposed acquisition would violate section 7 of the Clayton Act, and (2) a permanent injunction preventing any contract, agreement, understanding, or plan the effect of which would be to combine Northrop and TRW.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Northrop to complete its acquisition of TRW, but require that Northrop submit to strict oversight by the U.S. Department of Defense ("DoD") to ensure that Northrop does not use its position as a combined reconnaissance satellite system prime contractor and reconnaissance satellite payload provider to harm competition for or in reconnaissance satellite system programs.

The proposed Final Judgment requires that, when Northrop: (1) Is the prime contractor for a U.S. Government satellite program; (2) has the responsibility to select a radar or EO/IR payload; and (3) has the opportunity to select its own payload, Northrop will select the payload on a competitive and non-discriminatory basis. It also requires that Northrop act in a non-discriminatory manner in providing information to its own in-house team and to its payload competitors, and in making personnel, resource allocation, and satellite system design decisions. These non-discrimination provisions would apply, for example, to Northrop's post-merger selection of a payload provider for the SBIRS–Low program, for which TRW has already been selected as the prime contractor. To ensure that these provisions of the Final Judgment are enforced, the decree requires that the Secretary of Defense appoint a Compliance Officer to oversee Northrop's selection process, and provides for the Secretary of the Air Force to resolve any disputes.

The proposed Final Judgment also requires that, when Northrop is a competitor or potential competitor to be the prime contractor on a U.S. Government reconnaissance satellite system program in which Northrop has the opportunity to select its own radar or EO/IR payload, Northrop will supply other prime contractors with the Northrop payload in a manner that does not favor Northrop's in-house team. It further requires that Northrop negotiate and enter into non-exclusive teaming agreements with other prime contractors that desire to use the Northrop payloads, which agreements may not favor Northrop's in-house team. To ensure that these goals are achieved, the proposed Final Judgment provides for direct oversight of Northrop's teaming decisions by the Compliance Officer and ultimately by the Secretary of the Air Force.

The proposed final Judgment further requires that Northrop maintain its payload and satellite prime businesses as separate entities, establish firewalls, and take other actions to protect the information provided by other payload providers or prime contractors. Northrop's actions in this regard again would be subject to review by the Compliance Officer.

In addition to the continuing oversight of the Compliance Office and DoD generally, the parties to the proposed Final Judgment shall be subject to the continuing supervisory jurisdiction of the Court over the Final Judgment and the independent authority of the Antitrust Division to ensure compliance with, and seek enforcement of, all provisions of the Judgment. The Antitrust Division to ensure compliance with, and seek enforcement of all provisions of the Judgment. The Antitrust Division is authorized to seek from Northrop a civil penalty of up to $10 million for each violation of the proposed Final Judgment.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Northrop is a Delaware corporation with its principal place of business in Los Angeles, California. Northrop is one of two leading suppliers of radar and EO/IR payloads for reconnaissance satellite systems. Northrop's primary radar and EO/IR operations are in its Electronic Systems Sector facilities in Baltimore, Maryland and Azusa. California. In 2001, Northrop represented net sales of approximately $13.6 billion, including $4.7 billion in sales by its Electronic Systems Sector.

TRW is an Ohio corporation with its principal place of business in Cleveland, Ohio. The company's offices are located in California, Ohio, Georgia, and Florida. Its Space & Electronics and System divisions produce sophisticated satellite systems. In fact, TRW is one of the few companies with the ability to serve as a prime contractor for reconnaissance satellite system. In 2001, TRW has sales of roughly $16.4 billion, including $5.2 billion form the Space & Electronics and Systems divisions.

On June 30, 2002, Northrop and TRW entered into an agreement pursuant to which Northrop would acquire TRW in a transaction valued at approximately $7.8 billion. The parties closed the transaction on December 11, 2002.

B. The Relevant Markets

Reconnaissance systems are electronic systems that gather and transmit information that maybe useful to the United States' military and intelligence forces. These systems may be located on a number of types of platforms, including aircraft and, most relevant for the purposes of this case satellites. Reconnaissance systems may gather information using various types of sensors, but the most relevant types for purposes of this proceeding are radar and EO/IR.

Reconnaissance satellite systems have advantages, and face challenges, that are not applicable to airborne or other types of reconnaissance systems. Reconnaissance satellite systems can gather information about a given geographic area for a much longer time than any other system, and can provide surveillance over geographic areas that aircraft or other platforms cannot reach. Because they operate at such great distances

from their targets, however, space-based systems also require much more capable and sophisticated sensors than do other kinds of reconnaissance systems. Furthermore, because space based systems cannot be maintained or repaired once they are launched, the components of the system must be designed and manufactured to withstand the rigors of constant use, over many years, without requiring any refurbishment or repair. Finally, components of reconnaissance satellite systems must be hardened against radiation, able to withstand the harsh environment of space, and capable of operating in substantial temperature ranges.

A reconnaissance satellite system consists of one or more satellites and associated ground facilities for support and data processing. A reconnaissance satellite has two primary components—the unmanned spacecraft itself, generally known as the "bus," and one or more assemblies of sensors and other components, usually refereed to as the "Payload." The payload enables the satellite to perform a specific reconnaissance mission. While the bus and the payload are separate products, the system and its payload have to be jointly developed because their performance is interdependent. The lead ("prime") contractor for a reconnaissance satellite system has overall responsibility for the design, development, production, and integration of the system components. The prime contractor typically produces the spacecraft, and either produces or procures the ground facility components. The prime contractor may also produce or acquire launch vehicles or services for the satellites. The prime contractor typically acquires the payload from another manufacturer, and the U.S. Government relies on prime contractors to select payloads based on their competitive merits so as to optimize over all system performance.

TRW is one of the few companies that has the capability to be the prime contractor on a U.S. reconnaissance satellite system. Northrop is one of only two companies that has the capability to be the radar or EO/IR payload provider on U.S. reconnaissance satellite systems.

Radar Reconnaissance Satellite Systems

Radar is the process of sending out radio waves and listening for the echoes that result when they strike and bounce off an object. The United States deploys many types of radars using distinctive signal processing technologies. Imaging radars, for example, can create photograph-like images and identify and track moving targets. Because radars can see through clouds, operate at night, and function independently of the energy emitted by a target, radar reconnaissance satellite systems will be able to gather information of a type and under conditions that cannot be duplicated by other types of reconnaissance satellite systems.

The Space-Based Radar ("SBR") program is a DoD program intended to develop and produce an operational radar reconnaissance satellite system. The Request for Proposal for SBR is expected to be issued in early 2003, and the first SBR satellite launch is scheduled for 2010. TRW is one of a few companies with the capability to be the prime contractor for the SBR program. The only companies with the capability to supply the advanced radar sensors for the SBR program are Northrop and one other company, both of which have been developing their radar capabilities, and receiving funds and evaluations from the U.S. Government, in anticipation of the SBR program. It is expected that the potential prime contractors and radar reconnaissance satellite payload providers will have to form teams for the SBR competition no later than 2003.

The Complaint alleges that the development, production, and sale of radar reconnaissance satellite systems is a product market. As described above, the mission and performance characteristics of such systems are sufficiently different from the mission and performance characteristics of non-radar reconnaissance satellite systems, and from non-space-based radar reconnaissance systems, that a small but significant increase in prices for radar reconnaissance satellite systems would not cause the only customer, the U.S. Government, to switch to other types of systems so as to make such a price increase unprofitable and unsustainable.

The Complaint also alleges that the development, production and sale of radar reconnaissance satellite payloads is a product market. As described above, the mission and performance characteristics of such payloads are sufficiently different from the mission and performance characteristics of non-radar reconnaissance satellite payloads, and from non-space-based radar reconnaissance payloads that a small but significant increase in prices for radar reconnaissance satellite payloads would not cause the only customer, the U.S. Government, or prime contractors competing to provide reconnaissance systems to the U.S. Government, to switch to other types of systems or other types of payloads, so as to make such a price increase unprofitable and unsustainable.

EO/IR Reconnaissance Satellite Systems

EO/IR systems detect electromagnetic radiation emitted or reflected from objects within the spectrum from far infrared to far ultraviolet. These components are used to detect, locate, identify, or track a target. EO/IR Early Warning ("EW") systems are used in missile defense programs to detect the hot plumes of a missile launch. EO/IR sensors may be found on a number of different platforms, including aircraft and satellites, and are already used as part of the Defense Support Program ("DSP") satellite system to provide early missile warning.

The current programs designed to provide space-based EO/IR reconnaissance capabilities are called the Space-Based Infrared System ("SBIRS") High and SBIRS-Low. SBIRS-High will provide a system of satellites orbiting thousands of miles above the earth, scanning large sections of the planet for signs of a missile launch, and warning of that event if it occurs. One of TRW's competitors will serve as the prime contractor for SBIRS-High, and Northrop will supply the EO/IR payload. SBIRS-High will serve to provide essentially the same mission as the current DSP program, but will employ higher-performance instrumentation. SBIRS-Low is a planned system of satellites in lower-earth orbit that will "acquire" a missile and track it so that it may be intercepted. The acquisition function proposed for SBIRS-Low is similar to the work being done by DSP and planned for SBIRS-High; in contrast, the tracking function planned for SBIRS-Low is a different and much more technically difficult one.

The Missile Defense Agency ("MDA"), Which Controls the SBIRS program, established a "national team" for SBIRS-Low in April 2002, naming TRW as the prime contractor. The MDA plan calls for a continuing competition between the only two potential payload suppliers. Northrup and another company, throughout the SBIRS-Low program. The competition between the two SBIRS-Low payload suppliers is to be run by TRW as the prime contractor. TRW, with nominal oversight from the United States, will choose the winner of the payload competition.

The Complaint alleges that the development, production, and sale of EO/IR systems can provide coverage of geographic areas that cannot be reached by other EO/IR systems and can provide persistent coverage of specific geographic areas. Further, EO/IR systems can detect missile launches and track missiles better than other types of reconnaissance systems. A small but significant increase in prices for space-based EO/IR systems would not cause the only customer, the U.S. Government, to switch to other types of systems so as to make such a price increase unprofitable and unsustainable.

The Complaint also alleges that the development, production and sale of EO/IR reconnaissance satellite payloads is a product market. Space-based EO/IR payloads are specially designed to work in a space-based EO/IR reconnaissance satellite system: other space-based payloads cannot perform the same missions or be used in EO/IR reconnaissance satellite systems. A small but significant increase in prices for EO/IR reconnaissance satellite payloads would not cause the only customer, the U.S. Government, or prime contractors competing to provide reconnaissance systems to the U.S. Government, to switch to other types of systems or other types of payloads, so as to make such a prime increase unprofitable and unsustainable.

C. Harm to Competition as a Consequence of the Acquisition

If Northrop purchases TRW, it will own one of the few companies capable of competing as a prime contractor for radar or EO/IR reconnaissance satellite systems. TRW has demonstrated its technical, financial, and organizational ability to bid for, win, and perform on complex U.S. Government space systems by competing for and winning a number of such programs. Similarly, Northrop is one of only two companies with the capability to produce the payloads to be used on radar and EO/IR reconnaissance satellite systems.

Absent the protections afforded by the proposed consent decree, Northrop would have to incentive and ability post-merger to deny its competitors access to either its prime contractor or payload capabilities. If

Northrop has already been chosen to be a prime, it will have the incentive and ability to choose its own payload, lessening the incentive of competitors to compete for the program, and harming the U.S. Government by diminishing innovation and increasing program costs.

A further effect of the merger is the threat that it poses to proprietary information of rival primes and payload suppliers that enter into teaming agreements with Northrop. Absent the protections afforded by the proposed Final Judgment, a reconnaissance satellite system prime contractor that teams with Northrop risks the loss of its proprietary information to the former TRW's satellite system business, and a radar or EO/IR supplier that teams with the former TRW satellite system business risks the loss of its proprietary information to Northrop.

Effect of the Merger on the SBR Program

If Northrop owns TRW, it will have the incentive to deny access to the Northrop payloads if it believes that doing so will lessen the ability of its competitors to compete successfully for the specific reconnaissance satellite system program. This incentive will be strongest when Northrop believes that the presence on a team of either the Northrop payload or the TRW prime contractor capabilities provides the greatest chance of deciding the competition in that team's favor.

The SBR program is an immediate example of how the merged firm would have the ability and incentive to deny its competitors access to a Northrop payload. TRW plans to compete to be the prime contractor for the SBR program, and is a likely bidder on future space-based radar programs as well. Northrop is one of only two companies with the ability to provide payloads for radar reconnaissance satellite system programs, including the SBR program. The prime contractors and radar payload providers must work together at an early stage to develop an integrated system that can perform the mission required by the SBR program. The competition for the SBR program will be between teams, each with a potential prime contractor and potential payload provider. The U.S. Government will choose the team that offers the best value. No prime contractor/radar payload teams have yet been formed.

An important factor in competing for the SBR program is the performance of the radar payload. The purpose of any space-based radar program is to gather and transmit information with the use of radar technology, and the team with the best-performing radar will have an advantage in the competition. The U.S. Government is likely to prefer Northrop to supply the SRB payload, and so is more likely to award the prime contract to a team including a Northrop payload. The prime contractors and Northrop are aware of this.

After the proposed acquisition, Northrop will thus have the ability and incentive to foreclose SBR prime contractor competitors by denying them the Northrop payload or by making personnel, investment, design, and other payload-related decisions that disadvantage those competitors. Northrop's incentive to do so is straightforward—by winning both the SBR prime contractor competition and the SBR payload competition, it will make more money than if it wins only the SBR payload competition under existing DoD regulations. Northrop could not earn the same profit by simply raising its payload price because DoD has the ability to audit defense subcontractor costs and prevent overcharging through various pressures and the threat of lost future business. In economic terms, Northrop is not able to extract all of the economic rents at the payload level. The ability to obtain additional, otherwise unobtainable, profits by being both the prime contractor and the payload supplier gives Northrop the incentive to foreclose competitors.

Absent the protections afforded by the proposed consent decree, the United States would be harmed because innovation in the SBR program and similar future programs would be lessened, and the United States would be less likely to obtain a radar reconnaissance satellite system that includes both the best prime contractor and the best radar payload provider.

Effect of the Merger on the SBIRS-Low Program

If the post-merger Northrop has already been chosen to be the prime contractor on an EO/IR reconnaissance satellite system program, it will have the incentive and ability to choose its own payload for that system and program on a basis other than the competitive merits. If Northrop should choose its own payload under these circumstances, it would lessen the ability and incentive of competitors to compete for the payload, and thus harm the United States by diminishing innovation and increasing program costs.

Prior to the merger, TRW was selected as the prime contractor for SBIRS-Low, and has the authority to choose the EO/IR payload that will be used on the satellite, subject to the approval of the U.S. Government. Before that selection is made, the government's SBIRS-Low acquisition strategy calls for continuing competition between Northrop and the only other supplier to provide the payload. Under an agreement with the U.S. Government, TRW was given broad authority to run that competition and determine the winner. This authority has passed to, and may be exercised by, Northrop through its purchase of TRW.

Northrop will benefit after the acquisition if the Northrop EO/IR payload is chosen for SBIRS-Low. Northrop will receive the additional profit generated by the EO/IR payload contract, and will be in an improved position to win future EO/IR payload contracts because of the experience gained through SBIRS-Low. Northrop thus has the incentive to influence the competition to increase the chances that its payload will be chosen.

Even though the U.S. Government has the authority to approve the SBIRS-Low payload choice made by a post-merger Northrop, Northrop as the prime contractor will still have the ability to influence the competition. Northrop would be able to effect design changes to the SBIRS-Low satellite or the system as a whole that would favor the Northrop payload or increase the costs to competitors of designing and producing a winning payload.

Northrop's post-merger ability to influence the selection of itself as the supplier for the SBIRS-Low payload will substantially lessen competition by reducing the ability of its competitor to win the award even if its payload is a better value for the United States. The United States will be harmed by its inability to obtain the best-quality SBIRS-Low payload at the lowest cost.

Entry

Successful entry into the complex, high technology markets for radar reconnaissance satellite systems, radar reconnaissance satellite payloads, EO/IR reconnaissance satellite systems, and EO/IR reconnaissance satellite payloads would not be timely, likely, or sufficient to deter any unilateral or coordinated exercise of market power as a result of the transaction. It would be extremely difficult for a new entrant to establish the technological expertise required to compete successfully in any of these markets. competitions are intermittent and infrequent, and require a substantial initial investment.

Potential Harm

The Complaint summarizes the potential harm to competition resulting from the proposed merger. It alleges that the transaction will likely have the following anticompetitive effects, among others: competition generally in the development, production, and sale of radar reconnaissance satellite systems, radar reconnaissance satellite payloads, EO/IR reconnaissance satellite systems, and EO/IR reconnaissance satellite payloads would be substantially lessened; prices for radar reconnaissance satellite systems, radar reconnaissance satellite payloads, EO/IR reconnaissance satellite systems, and EO/IR reconnaissance satellite payloads would likely increase; and quality and innovation in each of these markets would decline.

III. Explanation of the Proposed Final Judgment

The vertical combination of Northrop and TRW offers benefits to the United States that could not be obtained if structural relief were imposed. *See* section VI, *infra*. The United States, therefore, has consented in the unique circumstances of this case to the strict behavioral remedies described below. The proposed Final Judgment preserves competition in the relevant radar or EO/IR reconnaissance satellite system and payload markets by requiring specific non-discriminatory conduct from Northrop to prevent the foreclosure from these markets of competing prime contractors and payload providers. Section IV.A of the proposed Final Judgment sets out requirements to ensure that Northrop will select the payload on a non-discriminatory basis when Northrop has already been selected as the prime contractor for a given reconnaissance satellite system program. This section addresses immediate competitive concerns related to Northrop's post-merger conduct in the SBIRS-Low program, as well as conduct in future reconnaissance satellite system programs where Northrop is selected as the prime contractor.

Section IV.B ensures that, after the merger, Northrop will make its payloads available on a non-discriminatory basis to other prime contractor competitors in those reconnaissance satellite system programs for which Northrop has not yet been selected as the prime contractor or the payload provider. It addresses immediate competitive concerns related to Northrop's post-merger conduct in the SBR program, as well as conduct in future reconnaissance satellite system programs for which Northrop is a prime contract competitor and has the opportunity to select its own radar or EO/IR payload. Section IV.F establishes firewall provisions designed to protect the confidential business information of Northrop's satellite prime competitors and radar and EO/IR payload competitors. Four final Sections of the proposed Final Judgment ensure compliance with its terms. Section V provides for the appointment of a Compliance Officer and defines his or her powers and responsibilities; Section VI reserves important investigatory and enforcement powers for the Antitrust Division of the United States Department of Justice; Section VII permits the Court to impose substantial civil penalties for violations of the Final Judgment; and Section VIII confirms the Court's continuing jurisdiction to modify and enforce the proposed Final Judgment.

Non-Discrimination

Section IV.A of the proposed Final Judgment establishes that when Northrop is the prime contractor for a reconnaissance satellite system program, is responsible for selecting the payload, and has the opportunity to select its own payload, Northrop must select the payload on a competitive and non-discriminatory basis. To ensure that it makes an impartial payload selection, Northrop must propose and obtain approval of payload source selection criteria from the Compliance Officer and communicate the criteria to all competing payload suppliers. Should the Compliance Officer not approve the criteria, the Secretary of the Air Force shall have the sole discretion to approve, alter, or set the selection criteria. Under these circumstances, Northrop shall also provide information regarding its reconnaissance satellite systems to its in-house proposal teams and bona fide payload competitors, and make all personnel, resource allocation, and satellite system design decisions on a non-discriminatory basis. If Northrop selects its own payload, it must fully explain the basis for that selection to and seek the prior approval of the Compliance Officer. Where, however, Northrop notifies the Compliance Officer that it has elected not to use or supply its payload to itself as prime contractor, it need not comply with the above requirements.

Section IV.B requires that when Northrop is either a competitor or potential competitor for a prime contractor position on a reconnaissance satellite system program in which it has the opportunity to select its own payload, it must supply its payload on a non-discriminatory basis to all prime contractors that have expressed to Northrop a potential desire to utilize it. To that end, Northrop is required to supply its payload and related information to all such prime contractors in a manner that does not favor its in-house proposal team. For the purpose of bidding on satellite competitions and similar activities, it must also negotiate in good faith with such prime contractors to enter into commercially reasonable nonexclusive teaming agreement and contracts that do not discriminate in favor of its in-house proposal team. These teaming agreements will be subject to the approval of the Compliance Officer and the Secretary of the Air Force. Northrop also must, on a non-discriminatory basis, make all personnel, resource allocation, and design decisions concerning its payload and provide information regarding its payload to contractors with which it has teamed. If the Compliance Officer concludes that Northrop has failed to comply with these requirements, the Secretary of the Air Force has the sole discretion to decide with whom, and on what terms, Northrop enters into such teaming relationships.

The non-discrimination rules of Section IV.A and IV.B are the central provisions of this proposed Final Judgment and apply to a wide variety of conduct: the provision of information to competitors and in-house teams, payload selection criteria, payload selection, entering into contracts or teaming agreements, and numerous other decisions affecting such matters as personnel, design and investment. The term "discriminate" is defined in Section II.N. of the proposed Final Judgment as meaning "to choose or advantage Northrop or to reject or disadvantage a Northrop prime or payload competitor for any reason other than the competitive merits; provided, however, that the determination of compliance or non-compliance with the non-discrimination provisions of this Final Judgment shall take into account that different firms will take different competitive approaches that may result in differences, individually or collectively * * *" in a number of factors.

What this means in practice is that the United States will require Northrop to be equally aggressive in supporting all competing teams. While different firms will follow different competitive and technical approaches when competing for reconnaissance satellite systems and payloads, differences in treatment must be merit-driven. Northrop will not be permitted to favor its in-house approach and undermine competing teams and their innovation approaches. The proposed Final Judgment recognizes that discrimination may result from either a single event, such as a important design decision, or from a series of smaller actions.

Sections IV.A and IV.B of the Final Judgment preserve competition by providing other payload and prime contract competitors the opportunity to provide meaningful competition in their respective markets and by ensuring that Northrop makes payload selections in the best interests of the U.S. Government. Absent these requirements, Northrop could deny other payload competitors access to its reconnaissance satellite systems information or make discriminatory selections regarding its satellite systems, thereby precluding competitors from competing to provide the payload. Likewise, Northrop could deny access to its payloads and thereby deny its prime contractor competitors the opportunity to provide meaningful competition, and deny the U.S. Government the benefits of that competition. These provisions ensure that DoD has the maximum possible number of potential teaming possibilities in response to a request for proposals and that the highest-value payload and reconnaissance satellite system are selected. Absent these provisions, foreclosure by Northrop would reduce incentives to innovate and reduce the number of innovation approaches, thus harming the U.S. Government.

Firewalls

Section IV.F of the proposed Final Judgment requires that Northrop maintain its payload business separate and apart from its satellite prime business.[1] These provisions prevent the flow of information between the two businesses by requiring Northrop to establish separate communication networks, maintain separate locations, and use reasonable efforts to avoid transferring employees between the businesses. These firewall provisions further prevent Northrop's payload business from making available to its satellite prime business any non-public information provided by a prime contract competitor to Northrop as the payload provider. This will preserve competition by assuring other prime contract competitors that their confidential reconnaissance satellite system information will not be shared with Northrop's satellite prime business, thereby encouraging them to team their satellite systems with Northrop's payloads, providing DoD with the maximum number of teaming possibilities, and preserving the greatest number of innovation paths. Similar provisions assure other payload competitors that their confidential payload information will not be shared with Northrop's payload business.

Enforcement

To assure compliance with the Final Judgment. Section V requires the Secretary of Defense to appoint a Compliance Officer who, by the terms of the Final Judgment, has all necessary investigative and enforcement powers. The Compliance Officer, an employee of the U.S. Government, is authorized to hire, at the expense of Northrop, a team of contractors and other technical personnel to assist him or her in monitoring and ensuring compliance with the proposed Final Judgment. The team is limited to ten hired consultants, absent the approval of the Secretary of the Air Force to increase that number. Northrop may not object to the Compliance Officer selected by the Secretary of Defense, must use its best efforts to assist the Compliance Officer, and may take no action to interfere with or impede his or her duties. In practice, it is expected that the Compliance Officer will be proactive and will intercede early on to address and remedy any issues informally.

[1] The proposed Final Judgment describes this business as the "current TRW Space & Electronics Satellite Systems business." This unit, which conducts TRW's satellite system prime contracting business, will conduct that business for the combined company, and the proposed Final Judgment will apply to any future reorganization.

The consequences of a violation of the proposed Final Judgment, apart from the significant civil penalties discussed below, are severe and substantial. Under Section IV.A of the proposed Final Judgment, if the Compliance Officer concludes that Northrop discriminated in its own favor in either its payload selection or the selection process, the Secretary of the Air Force is given "the sole discretion to choose the [p]ayload supplier" and to dismiss Northrop's selection. Under Section IV.B of the proposed final Judgment, if the Compliance Officer concludes that Northrop discriminated in favor of its in-house team, or failed to negotiate in good faith or enter into a commercially reasonable teaming agreement or contract, the Secretary of the Air Force is given "the sole discretion to decide with whom, and on what terms, Northrop enters into such teaming relationships. * * * " In effect, if the Compliance Officer determines that Northrop has discriminated in its own favor in a manner prohibited by the proposed Final Judgment, the Secretary of the Air Force is authorized to reverse any decision made by Northrop and to determine whether and on what terms Northrop will participate in the bid under consideration. These provisions collectively ensure that the U.S. Government, after the merger, will be able to detect discriminatory conduct prohibited by the proposed Final Judgment and to remedy quickly any selection or agreement that violates the proposed Final Judgment.

Sections VI, VII and VIII of the proposed Final Judgment confirm the significant investigative and enforcement authority of the Antitrust Division of the U.S. Department of Justice in this matter and the continuing supervisory jurisdiction of the Court in implementing the Judgment. The Antitrust Division, among other things, will be permitted to inspect and copy Northrop's documents; interview Northrop's officers, employees, or agents; and request reports from Northrop. The Antitrust Division will also have the discretion to seek enforcement of the proposed Final Judgment from the Court, which may order Northrop to pay civil penalties of up to $10 million for each violation of the Final Judgment. It is anticipated that the Antitrust Division and the General Counsel of the DoD will work closely together in enforcing the terms of the Final Judgment, and the Antitrust Division may take enforcement actions either on the recommendation of the General Counsel of the DoD or on its own initiative.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available For Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, if the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest. 15 U.S.C. 16(e).

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. 15 U.S.C. 16(b). Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the United States' responses will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court will retain jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Northrop and TRW. The United States could have brought suit and sought preliminary and permanent injunctions against Northrop's acquisition of TRW.

When the United States determines that a horizontal or vertical merger would result in a substantial lessening of competition, it generally seeks to block the merger or obtain structural relief. However, when a merger offers significant efficiencies, which cannot be obtained absent the merger or if a structural remedy is imposed, the United States will consider behavioral remedies.

With respect to this transaction, DoD, the only customer for the highly complex reconnaissance satellite systems affected by the transaction, determined that, with an appropriate decree resolving the vertical integration problems identified, the proposed acquisition offers the possibility of increased competition for DoD space requirements generally and of significant competitive benefits to DoD that would not be realized if the merger did not occur. Following a thorough review of the transaction, DoD concluded that entry of the proposed Final Judgment would remedy its potential anticompetitive effects, while permitting the potential achievements of significant benefits. Given the DoD's conclusion that the United States would benefit from the transaction if the competitive problems could be remedied, and given the importance of a vertically integrated firm structure to the achievement of those benefits, the Department of Justice determined that the proposed Final Judgment, containing strict behavioral prohibitions and significant potential sanctions, is the best available means of satisfying the public interest in competition. Neither the Department of Justice nor the DoD considers this proposed Final Judgment to be a general approval of behavioral remedies for all vertical or horizontal mergers, but rather consider it appropriate here under the unique circumstances of this case.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the [C]ourt is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [2] Rather "absent a showing of corrupt failure of the government to discharge its duty, the Court,

[2] 119 Cong. Rec. 24598 (1973). *See also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong. 2d See. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."[3]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "enage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), (quoting *United States* v. *Bechtek Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also, Microsoft*, 56 F.3d 1458 (D.C. Cir. 1995). Precedent requires that

"[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instanc, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree."[4]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest'."[5]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating the proposed Final Judgment.

For Plaintiff United States of America:

J. Robert Kramer II, Chief, Litigation II Section, PA Bar No. 23963.

Maribeth Petrizzi, Assistant Chief, Litigation II Section.

Robert W. Wilder, Trial Attorney, Virginia Bar No. 14479, U.S. Department of Justice, Antitrust Division, 1401 H St., NW., Suite 3000, Washington, DC 20530, (202) 307–0924, (202) 307–6283 (Facsimile).

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[3] *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

[4] *United States* v. *Bechtel*, 658 F.2d at 666 (internal citations omitted)(emphasis added); *accord United States* v. *BNS Inc.*, 858 F.2d at 463; *United States* v. *Nat'l Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 715. *See also United States* v. *Am. Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

[5] *United States* v. *Am. Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. at 716); *see also United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619. 622 (W.D. Ky. 1985).

Dated: December 23, 2002.

Certificate of Service

I, Robert W. Wilder, hereby certify that on December 23, 2002, I caused copies of the foregoing Competitive Impact Statement to be served on defendants Northrop Grumman Corporation and TRW, as indicated below:

Counsel for Defendant Northrop Grumman: James R. Loftis, III, Esquire, Gibson, Dunn & Crutcher LLP, 1050 Connecticut Ave. NW., Suite 900, Washington, DC 20036–5306, *Telephone No.:* (202) 955–8500, *Facsimile No.:* (202) 467–0539, Via Facsimile and U.S. Mail.

Counsel for Defendant TRW Corporation: Brian C. Mohr, Esquire, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW., Washington, DC 20005–2111, *Telephone No.:* (202) 371–7774, *Facsimile No.:* (202) 661–9067, Via Facsimile and U.S. Mail.

Robert W. Wilder, Virginia Bar No. 14479, U.S. Department of Justice, Antitrust Division, 1401 H. Street, NW., Suite 3000, Washington, DC 20530, *Telephone No.:* (202) 307–6336.

Stipulation and Order

It is hereby Stipulated by and between the undersigned parties, subject to approval and entry by the Court, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed with an entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. If the United States has withdrawn its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provision of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the required actions set forth in Sections IV and V of the proposed Final Judgment can and will be implemented and followed and that the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained therein.

7. This Stipulation shall be effective only upon the closing of the Northrop Grumman/TRW transaction.

Respectfully submitted,

For Plaintiff

United States of America: J. Robert Kramer II, Pennsylvania Bar No. 23963, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530, *Telephone:* (202) 307–0924, *Facsimile*: (202) 307–6283.

For Defendant

Northrop Grumman Corporation: Robert E. Nelson, Corporate Vice President, Business Strategy, Northrop Grumman Corporation, 1840 Century Park East, Los Angeles, California 90067, *Telephone*: (310) 201–3493, *Fax*: (310) 201–3494.

For Defendant TRW Inc.: William B. Lawrence, Ohio State Bar No. 0031971, Executive Vice President, General Counsel, and Secretary, TRW, Inc., 1900 Richmond Road, Cleveland, Ohio 44124, Telephone: (216) 291–7230, Fax: (216) 291–7872.

Dated: December 11, 2002.

Order

It is so ordered, this_____day of_____, 2002.

_____

United States District Court Judge

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint in this action on December 11, 2002, and plaintiff and defendants, Northrop Grumman Corporation ("Northrop") and TRW Inc. ("TRW"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of fact or law herein: and

Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court; and

Whereas, plaintiff requires defendants to agree to certain procedures for the purpose of remedying the loss of competition alleged in the Complaint; and

Whereas, defendants have represented to the United States that the procedures required below can and will be implemented and followed and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below:

Now Therefore, before the taking of any testimony, and without trial or adjudication

of any issue of fact or law herein, and upon consent of the parties hereto, it is ordered, Adjudged and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definition

As used in this Final Judgment:

A. "Northrop" means defendant Northrop Grumman Corporation, a Delaware corporation with its headquarters in Los Angeles, California, its successors and assigns, and its subsidiaries, division, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees and, after consummation of the acquisition of TRW, all TRW businesses, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees acquired by Northrop.

B. "TRW" means defendant TRW Inc., an Ohio corporation with its headquarters in Cleveland, Ohio, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Defendants" means, collectively or individually as the context requires, Northrop and/or TRW.

D. "DoD" means the United States Department of Defense.

E. "Secretary of Defense" means the United States Secretary of Defense, the Deputy Secretary of Defense, or the Secretary of Defense's designee.

F. "Secretary of the Air Force" means the United States Secretary of the Air Force or the Secretary of the Air Force's designee.

G. "Prime" or "Prime Contractor" means any entity engaged in the research, development, manufacture, sale and/or integration of Satellite Systems that sells or competes to sell Satellite Systems directly to the United States government.

H. "Payload" means the assembly or assemblies on a Satellite that, using electro-optical technology, infrared technology, or radar technology, enable a Satellite to perform a specific mission. Payload also shall include, with the assembly or assemblies, all related components, software, interfaces, any other items within the assembly or assemblies that enable the Payload to perform its contemplated function, and all related technical data and information customarily provided by a Payload supplier to a Prime Contractor prior to entering into, or ion the course of working pursuant to, a teaming agreement or contract. Data and information customarily provided includes the types of data and information provided by Northrop to its inhouse Prime contract proposal team. Payload expressly excludes those payloads whose primary mission is communications.

I. "Satellite" means an unmanned vehicle that is launched with a Payload for the purpose of collecting and/or transmitting data back to Earth and that is designed either to orbit the Earth or to travel away from the Earth.

J. "Satellite Systems" means any Satellite and a system or series of systems designed, developed, or utilized in connection with the operation of a Satellite and corresponding subsystems and ground systems. Satellite Systems also shall include all information related to interfaces and any other defining parameters or specifications that enable the Payload to perform its contemplated function, and all related technical data and information, customarily provided by a Satellite Systems Prime Contractor to a Payload supplier prior to entering into, or in the course of working pursuant to, a teaming agreement or contract. Information and data customarily provided includes the types of information and data provided by Northrop to its in-house Payload proposal team.

K. "Northrop Payload Business" means that portion of Northrop engaged in the research, development, manufacture, or sale of Payloads, excluding former TRW Payload entities.

L. "Northrop Satellite Prime Business" means that portion of Northrop, or the TRW entity acquired by Northrop, that is engaged in the Satellite Systems integration business, including the research, development, manufacture, or sale of Satellite Systems or otherwise conducting business as a Satellite Systems integrator, and that performs contracts directly for the United States government.

M. "United States Government Satellite Program" or "Program" means any Satellite program executed by the DoD, which includes the National Reconnaissance Office.

N. "Discriminate" means to choose or advantage Northrop, or to reject or disadvantage a Northrop Prime or Payload competitor, in the procurement process for any reason other than the competitive merits; provided, however, that the determination of compliance or non-compliance with the non-discrimination provisions of this Final Judgment shall take into account that different firms will take different competitive approaches that may result in differences, individually and collectively, in price, schedule, quality, data, personnel, investment (including but not limited to, independent research and development), technology, innovations, design, and risk.

O. The terms "and" and "or" have both conjunctive and disjunctive meanings.

P. The terms "he" and "his" also include "she" and "her."

III. Applicability

This Final Judgment applies to Northrop and TRW, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Required Conduct

A. When Northrop is the Prime Contractor for a United States Government Satellite Program, has the responsibility to select a Payload for the Satellite, and has the opportunity to select its own Payload, the following is required:

(1) *Northrop shall:*

(a) Select the Payload on a competitive and non-discriminatory basis:

(b) on a non-discriminatory basis, provide information, as set forth in Definition J, regarding Satellite Systems to its in-house Payload proposal teams and any bona fide Payload competitors;

(c) make all personnel, resource allocation, and design decisions regarding Satellite Systems on a non-discriminatory basis; and

(d) propose non-discriminatory Payload source selection criteria, obtain approval from the Compliance Officer (as defined in Section V, below) for such criteria before the Payload providers are formally solicited, and communicate the approved source selection criteria to all competing Payload suppliers. The Compliance Officer shall not unreasonably withhold approval of the selection criteria and shall approve or reject the selection criteria within ten (10) business days of receipt of the criteria. If the Compliance Officer does not approve of the source selection criteria proposed by Northrop, the Compliance Officer shall refer the matter to the Secretary of the Air Force, who shall have the sole discretion to set non-discriminatory source selection criteria to be used by Northrop. The Secretary of the Air Force shall approve or alter the source selection criteria within five (5) business days of the decision of the Compliance Officer.

(2) When Northrop is the Prime Contractor for a United States Government Satellite Program, if it has decided to select a Northrop Payload, it shall seek the prior approval of the Compliance Officer and fully explain the reasons for the proposed source selection. The Compliance Officer shall review the proposed selection of Northrop, and shall approve or reject the selection within ten (10) business days of receiving the selection. If the Compliance Officer concludes that Northrop discriminated in its own favor, either in its Payload selection or the selection process, he shall refer the matter to the Secretary of the Air Force, who shall have the sole discretion to choose the Payload supplier. The Secretary of the Air Force shall approve or alter the selection within ten (10) business days of the decision of the Compliance Officer.

(3) In the event Northrop notifies the Compliance Officer in writing that: (i) Northrop, as the Prime Contractor, elects not to use the Northrop Payload; or (ii) the Northrop Payload Business elects not to supply its Payload to the Northrop Satellite Prime Business. Northrop need not comply with the requirements of Section IV.A after such notice.

B. When Northrop is a competitor (or, for potential future Programs, when Northrop has the capability to compete and has taken steps in anticipation of potentially competing) to be the Prime Contractor on a United States Government Satellite Program in which Northrop has the opportunity to select its own Payload, the following is required:

(1) Northrop shall:

(a) For each Program or potential future Program for which a Prime Contractor notifies Northrop that it potentially desires to

have Northrop supply the Payload, supply such Prime Contractor its Payload in a manner that does not discriminate in favor of its in-house proposal team against any other Prime Contractor on any basis, including but not limited to, price, schedule, quality, data, personnel, investment (including but not limited to, independent research and development), technology, innovations, design, and risk;

(b) for each Program or potential future Program for which a Prime Contractor notifies Northrop of a bona fide potential desire to have Northrop supply the Payload, negotiate in good faith with such Prime Contractor to enter into commercially reasonable nonexclusive teaming agreements and contracts for the purpose of bidding on Satellite competitions and similar activities; such agreements and contracts shall not discriminate in favor of its in-house proposal team against any other Prime Contractor on any basis, including but not limited to, price, schedule, quality, data, personnel, investment (including but not limited to, independent research and development), technology, innovations, design, and risk;

(c) prior to entering into any such teaming agreements and contracts, provide to the Compliance Officer copies of such agreements for his approval. The Compliance Officer shall not unreasonably withhold approval of such agreements and contracts, and shall approve or reject the agreements and contracts within five (5) business days of receipt of the agreement or contract. If the compliance Officer does not approve of the terms of an agreement or contract, the Compliance Officer shall refer the matter to the Secretary of the Air Force, and Northrop shall enter into teaming agreements and contracts on specific terms as required by the Secretary of the Air Force, in his sole discretion, such decision to be made within five (5) days of the decision of the Compliance Officer;

(d) on a non-discriminatory basis, provide information, as set forth in Definition H, regarding its Payload to its in-house proposal team(s) and to any Prime Contractor that has notified Northrop of a bona fide potential desire to have Northrop supply its Payload or with which Northrop has teamed to supply its Payload; and

(e) make all personnel, resource allocation, and design decisions regarding the Payload on a non-discriminatory basis between its in-house proposal team(s) and any Prime Contractor with which Northrop has teamed to supply its Payload.

(2) If the Compliance Officer concludes that Northrop has discriminated in favor of its in-house proposal team, failed to negotiate a teaming agreement or contract in good faith, or refused to enter into a commercially reasonable teaming agreement or contract, the Compliance Officer shall refer the matter to the Secretary of the Air Force who shall have the sole discretion to decide with whom, and on what terms. Northrop enters into such teaming relationships, such decision to be made within five (5) business days of the decision of the Compliance Officer.

(3) Notwithstanding any provisions of this Section IV.B, Northrop may refuse to supply a Payload to any Satellite Systems Prime if the number and/or burden of Satellite Systems Primes seeking the benefit of this Section becomes unreasonably large. In such event, Northrop shall notify the compliance Officer, who shall review the decision and make a recommendation to the Secretary of the Air Force within ten (10) business days. The Secretary of the Air Force shall have the sole discretion to decide with whom, and on what terms. Northrop enters into such teaming relationships, such decision to be made within ten (10) business days of the decision of the Compliance Officer.

(4) In the event that Northrop notifies the Compliance Officer in writing that: (i) Northrop, as the Prime Contractor, elects not to use the Northrop Payload; or (ii) the Northrop Payload business elects not to supply its Payload to the Northrop Satellite Prime Business; or (iii) Northrop elects not to compete at either the Prime or Payload level. Northrop need not comply with the requirements of Section IV.B after such notice.

C. When the Northrop Payload Business enters into teaming agreements or contracts or similar intra-company arrangements that function as teaming agreements with the Northrop Satellite Prime Business or with any other potentially competing Prime Contractor for any Program or potential future Program, and the team engages in joint investment or development activity for that Program, the provisions in this Final Judgment requiring non-discriminatory behavior shall not require that Northrop disclose the products and/or other results of such joint investments or developments of one team to any other team for the Program or potential future Program.

D. The provision of any information, technology, or product to any party pursuant to this Final Judgment shall be subject to appropriate confidentiality agreements on the treatment of competition-sensitive, national security-sensitive, ITAR-controlled, and/or proprietary information.

E. No provision of this Final Judgment shall require Northrop to provide products, services, or technology to any party without commercially reasonable compensation.

F. Northrop shall maintain the current TRW Space & Electronics Satellite Systems business ("S&E Business") separate and apart from the Northrop Payload Business. To assure the above. Northrop:

(1) Shall establish a separately protected communications network for the S&E Business as distinct from the Northrop Payload Business:

(2) shall maintain separate physical locations for each such business:

(3) shall use commercially reasonable efforts to avoid transferring employees between the S&E Business and the Northrop Payload Business, and shall not transfer personnel, including employees and independent contractors, between the S&E Business and the Northrop Payload Business without first requiring such transferred personnel to acknowledge the restrictions of this Final Judgment as set forth herein. Records of such transfers, and copies of any such acknowledgments, shall be maintained during the term of this Final Judgment, and shall be available for inspection. Northrop shall notify the Compliance Officer of any such transfers:

(4) shall now allow the S&E Business to provide, disclose, or otherwise make available to the Northrop Payload Business any non-public information of any Payload competitor. All non-public information that a Payload competitor provides to the S&E Business shall be used only in Northrop's capacity as a Prime Contractor. The Northrop Payload Business shall not provide, disclose, or otherwise make avaiable to the S&E Business any non-public information of any Prime Contractor. All non-public information that a Prime Contractor provides to the Northrop Payload Business shall be used only in Northrop's capacity as a Payload supplier; provided, however, that the provisions of this paragraph shall not apply if the owner of the information consents to a broader lawful use of that information.

(5) shall within fifteen (15) business days of the closing of the transaction, submit a detailed plan for maintaining the Northrop Payload Business separate and apart from the S&E Business to the General Counsel of the DoD and the Assistant Attorney General in charge of the Antitrust Division, and the Assistant Attorney General in charge of the Antitrust Division, in consultation with the General Counsel of the DoD, shall in his sole discretion make changes to such plan to ensure compliance with the terms of this Final Judgment; and

(6) provided, that nothing in this Final Judgment shall require a separation of Northrop's Payload team and the team for the S&E Business at the implementation stage of a Program that has been awarded to Northrop at the Prime and Payload level.

G. Northrop shall inform all personnel of both the Northrop Payload Business and the S&E Business of the terms and requirements of this Final Judgment and require all personnel to adhere to such provisions.

H. When this Final Judgment places time limits on certain actions by the Compliance Officer and the Secretary of the Air Force, such limits may be modified by mutual agreement between the Compliance Officer or the Secretary of Air Force and Northrop.

I. (1) Northrop shall bear all its costs of monitoring, complying with, or enforcing this Final Judgment, and all such reasonable costs of the DoD arising solely from monitoring, complying with, or enforcing this Final Judgment, excluding the salaries and benefits of United States government employees, and including but not limited to, the costs of the Compliance Officer and the costs associated with the retention of third parties to assist the Compliance Officer.

(2) Northrop shall not charge to the DoD, either directly or indirectly, any costs of DoD referred to in Section IV.I(1). Northrop shall not charge to DoD, either directly or indirectly, any of Nortrop's costs, referred to in Section IV.I(1), including any remedial costs, as defined by Section IV.I(3); provided, however, that costs referred to in Sectin IV.I(1) incurred by Northrop, other than remedial costs, associated with normal business activities that could reasonably have been undertaken by Northrop in the absence of this Final Judgment are not subject to the

charging restrictions of this Section IV.I(2), whether or not such activities are affected by this Final Judgment; and further provided that, in the event that the Antitrust Division seeks to have the Court find Northrop in contempt or impose civil penalties and the conduct at issue is held by the Court to be compliant with the non-discrimination provisions of this Final Judgment, the remedial costs disallowed pursuant to this Section may be charged to DoD.

(3) remedial costs are those costs, incurred by Northrop, relating directly to the administration of measures to remedy conduct of Northrop in violation of this Final Judgment, where the following conditions are met:

(a) the conduct of Northrop was not undertaken pursuant to prior written direction or approval of the Compliance Officer:

(b) the Secretary of the Air Force has taken action in accordance with Sections IV.A(2) or IV.B(2) indicating concurrence with the Compliance Officer's conclusion that Northrop has engaged in conduct in violation of this Final Judgment with respect to a United States Government Satellite Program; and

(c) said costs are incurred after the date of the Secretary of the Air Force's action.

V. Appointment of Compliance Officer

To effect the procedures set forth in this Final Judgment, the Secretary of Defense shall appoint a Compliance Officer, who shall be an employee of the United States government. The Compliance Officer shall oversee compliance by the defendants with the terms of this Final Judgment, and shall have the power and authority to oversee such compliance and such other powers as this Court deems appropriate.

A. To perform his duties and responsibilities, and subject to any legally recognized privilege, the Compliance Officer may:

(1) Investigate any complaint or representation made to him or made available to him with respect to any matter arising in relation to or connected with compliance by Northrop with this Final Judgment;

(2) interview any Northrop personnel, subject to the reasonable convenience of such personnel, without restraint or interference by Northrop;

(3) during normal business hours, inspect and copy any document in the possession, custody of Northrop;

(4) during normal business hours, obtain reasonable access to any systems or equipment to which Northrop personnel have access;

(5) during normal business hours, obtain access to and inspect any physical facility, building, or other premises to which Northrop personnel have access;

(6) require Northrop to provide compilations of documents, data, and other information to Compliance Officer in such form as the Compliance Officer may direct;

(7) solicit and accept comments from third parties;

(8) utilize DoD or other United States government staff as appropriate to assist in the execution of the Final Judgment;

(9) hire, at the cost and expense of Northrop, a third party (or third parties) to assist in the execution of this Final Judgment, which third party (or third parties) shall be solely accountable to the Compliance Officer, and shall have such duties responsibilities as determined by the Compliance Officer and that do not exceed the Compliance Officer's duties and responsibilities as set forth in the Final Judgment; provided, however, that the professional staff (including third party consultants) reporting to the Compliance Officer shall be no larger than ten (10) persons (measured by full-time equivalents), with such maximum to be expanded solely with the permission of the Secretary of the Air Force as necessary to the execution of this Final Judgment; and provided that such professional staff (including third party consultants) shall maintain the confidentiality of business sensitive or proprietary information and documents of Northrop or any other person; and

(10) advise Northrop as soon as practical of the material nature of assertions or allegations of noncompliance that the Compliance Officer intends to investigate and, within reasonable time limits set by the Compliance Officer, attempt to resolve any deficiencies in Northrop's performing its obligations under this Final Judgment.

B. Defendants shall not object to the Compliance Officer chosen by the Secretary of Defense.

C. Defendants shall use their best efforts to assist the Compliance Officer in accomplishing the procedures established in this Final Judgment. Defendants shall take no action to interfere with or to impede the Compliance Officer's accomplishment of these procedures.

D. Defendants shall furnish to the Compliance Officer a compliance report, to be submitted as directed by the Compliance Officer, but in any event no less frequently than on an annual basis or more frequently than quarterly. The compliance report shall contain an affidavit that describes the actions defendants have taken and the steps defendants have implemented to comply with the terms of this Final Judgment. The Compliance Officer may direct defendants to include in their report any other information the Compliance Officer deems useful or necessary.

E. The Compliance Officer shall report in writing on an annual basis to the Secretary of the Air Force, the General Counsel of the DoD and the Assistant Attorney General in charge of the Antitrust Division a summary of the actions the Compliance Officer has undertaken in performing his duties pursuant to this Final Judgment. Such report shall include any compliance reports submitted by defendants to the Compliance Officer pursuant to Subsection D above. If the Compliance Officer is unable to perform his duties for whatever reason the Compliance Officer shall promptly notify the above individuals. The Secretary of Defense shall then appoint another Compliance Officer. The Secretary of Defense shall have the sole discretion to replace the Compliance Officer at any time when the Secretary of Defense considers such action appropriate.

F. If the Compliance Officer has reason to believe that there has been a failure of the defendants to comply with any term of this Final Judgment, he shall notify the Secretary of the Air Force and the General Counsel of the DoD. As soon as practical, the Compliance Officer shall inform Northrop that he has notified the Secretary of the Air Force and the general Counsel of the DoD of the failure and the material nature of the assertion or allegation of noncompliance.

VI. Compliance

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated and subject to any legally recognized privilege, from time to time duly authorized representatives of the Antitrust Division, including consultants and other persons retained by plaintiff, shall upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice of defendants be permitted:

(1) Access during defendants office hours to inspect and copy or at plaintiff's option to require defendants to provide copies of, all books, ledgers, correspondence, memoranda, accounts, records, and documents in the possession, custody, or control of defendants relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record defendants officers, employees, or agents, who may have their individual counsel present regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of the Attorney general or of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports under oath if requested, with respect to any matter contained in the Final Judgment and the Stipulation and Order.

C. No information or documents obtained by the means provided in this Section shall be divulged by a representative of plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material. "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules Civil Procedure," then ten (10) business days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grant jury proceeding) to which defendants are not a party.

E. When the General Counsel of the DoD has reason to believe that there has been a failure by the defendants to comply with any

term of this Final Judgment, the General Counsel of the DoD shall notify the Assistant Attorney General in charge of the Antitrust Division.

F. The Assistant Attorney General in charge of the Antitrust Division shall have the sole discretion to seek appropriate enforcement of this Final Judgment with the Court, either as the result of a referral or on the Antitrust Division's own initiative.

VII. Civil Penalties

The Court may order Northrop to pay a civil penalty of up to $10 million for each violation of this Final Judgment.

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Third Party Rights

Nothing in this Final Judgment is intended to confer upon any other persons any rights or remedies of any nature whatsoever hereunder or by reason of this Final Judgment.

X. Expiration of Final Judgment

This Final Judgment shall expire seven (7) years from the date of entry; provided that, before the expiration of this Final Judgment, plaintiff, after consultation with DoD, may petition the Court to extend the Final Judgment for a period of up to three (3) years. In no event shall the terms of this Final Judgment exceed a period of ten (10) years.

XI. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

[FR Doc. 03–623 Filed 1–13–03; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–002)]

NASA Advisory Council, Biological and Physical Research Advisory Committee, Space Station Utilization Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, Space Station Utilization Advisory Subcommittee (SSUAS).

DATES: Monday, February 3, 2003, 8 a.m. to 5 p.m., and Tuesday, February 4, 2003, 8 a.m. to 5 p.m.

ADDRESSES: South Shore Harbour Resort, 2500 South Shore Blvd., League, Texas 77573.

FOR FURTHER INFORMATION CONTACT: Dr. Neal Pellis, Code U, National Aeronautics and Space Administration, Houston, TX 77058, (281) 483–2357.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting will include the following topics:

- Research Report on Increment Five Research Plans for Increments 6 and 7
- Telecon with Investigators
- Operations Report
- Office of Biological and Physical Research Report
- International Space Station (ISS) Program Status/Plans
- ISS Payloads Office Report
- Response to Prior Recommendations
- Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–658 Filed 1–13–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnerships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Partnerships Advisory Panel (National Services), to the National Council on the Arts will be held by teleconference from 2 p.m. to 3 p.m. on January 21, 2003 from the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

This meeting will be open to the public. Topics will include review of the National Services application and discussion of guidelines and policy issues.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Andi Mathis, State and Regional Specialist, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5430.

Dated: January 9, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–831 Filed 1–13–03; 8:45 am]

BILLING CODE 7537–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–2]

Virginia Electric and Power Company; Notice of Docketing, Notice of Proposed Action, and Notice of Opportunity for a Hearing for Renewal of Materials License SNM–2501 for the Surry Independent Spent Fuel Storage Installation

The U. S. Nuclear Regulatory Commission (NRC or Commission) is considering an application dated April 29, 2002, for the renewal of materials license SNM–2501 under the provisions of 10 CFR part 72, from Virginia Electric and Power Company (the applicant or Virginia Power) for the receipt, possession, storage and transfer of spent fuel and other radioactive materials associated with spent fuel at the Surry Independent Spent Fuel Storage Installation (ISFSI), located at the Surry Nuclear Power Station site in Surry County, Virginia. If granted, the renewed license will authorize the applicant to continue to store spent fuel in a dry cask storage system at the applicant's Surry ISFSI. Pursuant to the provisions of 10 CFR part 72, the renewal term of the license for the ISFSI would be twenty (20) years; however, the applicant has submitted a separate exemption request with the license renewal application, which, if granted,

would allow the license to be renewed for 40 years.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–2.

Prior to issuance of the requested license, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The issuance of the renewed materials license will not be approved until the NRC has reviewed the application and has concluded that renewal of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental evaluation, in accordance with 10 CFR part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and finding of no significant impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register**.

By thirty (30) days from the date of publication of this notice in the **Federal Register**, the applicant may file a request for a hearing; and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the subject materials license. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr*. If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the NRC may, upon satisfactory completion of all required evaluations, issue the materials license without further prior notice.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without requesting leave of the Atomic Safety and Licensing Board up to 15 days prior to the holding of the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk or may be delivered to the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. David A. Christian, Senior Vice President—Nuclear Operations and Chief Nuclear Officer, Virginia Electric and Power Company, 5000 Dominion Boulevard, Glen Allen, VA 23060–6711. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the NRC by a toll-free telephone call (800–368–5642, Extension 415–8500) to James R. Hall, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, with the following message: petitioner's name and telephone number; date petition was mailed; facility name; and publication date and page number of this **Federal Register** notice.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884 (April 29, 2002).

absent a determination by the Commission, the presiding Officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, shall use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, Subpart G apply.

For further details with respect to this application, see the application dated April 29, 2002, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of January 2003.

For the Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–705 Filed 1–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Renewal

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Charter of the Advisory Committee on Reactor Safeguards (ACRS).

SUMMARY: The Advisory Committee on Reactor Safeguards was established by Section 29 of the Atomic Energy Act (AEA) in 1954. Its purpose is to provide advice to the Commission with regard to the hazards of proposed or existing reactor facilities, to review each application for a construction permit or operating license for certain facilities specified in the AEA, and such other duties as the Commission may request. The AEA as amended by PL 100–456 also specifies that the Defense Nuclear Safety Board may obtain the advice and recommendations of the ACRS.

Membership on the Committee includes individuals experienced in reactor operations, management; probabilistic risk assessment; analysis of reactor accident phenomena; design of nuclear power plant structures, systems and components; materials science; and mechanical, civil, and electrical engineering.

The Nuclear Regulatory Commission has determined that renewal of the charter for the ACRS until December 19, 2004 is in the public interest in connection with the statutory responsibilities assigned to the ACRS. This action is being taken in accordance with the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, NRC, Washington, DC 20555; telephone: (301) 415–1963.

Dated: January 8, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–708 Filed 1–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District, Fort Calhoun Station, Unit 1; Notice of Availability of the Draft Supplement 12 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of Fort Calhoun Station, Unit 1

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating license DPR–40 for an additional 20 years of operation at Fort Calhoun Station, Unit 1. Fort Calhoun Station, Unit 1 is located in Washington County, Nebraska. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available electronically for public inspection in the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web Site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

In addition, the Blair Public Library, 210 South 17th Street, Blair, Nebraska, and the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska have agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by April 10, 2003. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by the Internet at *Ft_Calhoun_EIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and from the PARS component of NRC's ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on February 26, 2003, at the Days Hotel Carlisle, 10909 M Street, Omaha, Nebraska. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Jack Cushing by telephone at 1–800–368–5642, extension 1424, or by Internet at *Ft_Calhoun_EIS@nrc.gov* no later than February 21, 2003. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Cushing's attention no later than February 21, 2003, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION, CONTACT: Mr. Jack Cushing, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Cushing may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 6th day of January 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–706 Filed 1–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Export Nuclear Grade Graphite

Pursuant to 10 CFR 110.70(b)(3) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the request to export nuclear grade graphite noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this export request follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No., and docket No.	Description of material			
	Material type	Total qty	End use	Country of destination
SGL Carbon, LLC; November 20, 2002; December 26, 2002; XMAT0404; 11005384.	Nuclear Grade Graphite.	11,617,833.0 Kilograms (over 5 years).	For industrial and commercial non-nuclear end use.	Various.

Dated this 3rd day of January 2003 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Edward T. Baker,

Deputy Director, Office of International Programs.

[FR Doc. 03–709 Filed 1–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Export Nuclear Grade Graphite

Pursuant to 10 CFR 110.70(b)(3) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the request to export nuclear grade graphite noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this export request follows.

NRC EXPORT LICENSE APPLICATION NUCLEAR GRADE GRAPHITE

Name of applicant, date of application, date received, application No., and docket No.	Description of material			
	Material type	Total qty	End use	Country of destination
SGL Carbon, LLC; November 20, 2002; December 26, 2002; XMAT0403; 11005383.	Nuclear Grade Graphite.	869,000.0 Kilograms.	For industrial and commercial non-nuclear end use.	Canada.

For the Nuclear Regulatory Commission.

Dated this 3rd day of January, 2003 at Rockville, Maryland.

Edward T. Baker,

Deputy Director, Office of International Programs.

[FR Doc. 03–710 Filed 1–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Export a Utilization Facility

Pursuant to 10 CFR 110.70(b)(1) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export a utilization facility as defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION FOR A UTILIZATION FACILITY

Name of applicant, date of application, date received, application No. docket No.	Description of facility	End use	Country of destination
Westinghouse Electric Company; December 13, 2002; December 16, 2002; XR167; 11005387.	Equipment including primary coolant pump for construction for four (4) nuclear utilization facilites, 1000 Mwe each. Approximate Value: $450,000,000.00.	Shin Kori 1&2 Shin Wolsong 1&2.	Republic of Korea.

Dated this 7th day of January 2003 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Edward T. Baker,

Deputy Director, Office of International Programs.

[FR Doc. 03–707 Filed 1–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 13, 20, 27, February 3, 10, 17, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of January 13, 2003

Tuesday, January 14, 2003.

10 a.m. Discussion of security issues (closed-Ex. 1).

1 p.m. Briefing on NRC Lessons Learned: Davis-Besse Reactor Vessel Head (RVH) Degradation (public meeting).

Note: New starting time for this meeting. (Contact: Stacey Rosenberg, 301–415–1733.)

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

Week of Janury 20, 2003—Tentative

Thursday, January 23, 2003.

2 p.m. Briefing on status of Office of Nuclear Material Safety and Safeguards (NMSS) programs, performance, and plans—materials safety (public meeting) (contact: Claudia Seelig, 301–415–7243).

This meeting will be webcast at the Web address—*http://www.nrc.gov.*

Week of January 27, 2003—Tentative

There are no meetings scheduled for the week of January 27, 2003.

Week of February 3, 2003—Tentative

Tuesday, February 4, 2003.

10 a.m. Briefing on status of Office of Chief Information Officer (OCIO) programs, performance, and plans (public meeting) (contact: Jackie Silber, 301–415–7330).

This meeting will be webcast at the Web address—*http://www.nrc.gov.*

Week of Februry 10, 2003—Tentative

Monday, February 10, 2003.

10 a.m. Briefing on status of Office of Nuclear Reactor Regulation (NRR) programs, performance, and plans (public meeting) (contact: Michael Case, 301–415–1275).

This meeting will be webcast at the Web address—*http://www.nrc.gov.*

Tuesday, February 11, 2003.

10 a.m. Briefing on status of Office of Chief Financial Officer (OCFO) programs, performance, and plans (public meeting) (contact: Lars Solander, 301–415–6080).

This meeting will be webcast at the Web address—*http://www.nrc.gov.*

Week of February 17, 2003—Tentative

There are no meetings scheduled for the week of February 17, 2003.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information David Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 9, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–861 Filed 1–10–03; 12:38 pm]

BILLING CODE 4590–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13098]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the New York Stock Exchange, Inc. (Case, LLC (Formerly Case Corporation), 7¼% Notes (Due 2016))

January 8, 2003.

Case, LLC (formerly Case Corporation), a limited liability company organized under the laws of the State of Delaware ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 7¼% Notes (due 2016)("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

Fiatallis North America, Inc., the sole Member of the Issuer ("Sole Member") approved a resolution on November 29, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Issuer's Security from the Exchange, the Sole Member noted the following: (i) The Security is held by a limited number of registered holders; (ii) the Security trades infrequently on the NYSE and the Issuer does not anticipate that such trading volume might increase appreciably; (iii) the costs associated with the continued listing of the Security are disproportionately high, given the limited trading volume; (iv) the Issuer is not obligated by the terms of the indenture under which the Security was issued or by any other document to maintain a listing for the Security on the NYSE or any other exchange; (v) the Issuer believes that delisting the Security will not have a material impact on the holders of the Security and; (vi) the Security is not listed on any other exchange. The Issuer has been informed that a number of investment banks are market markers in the Security.

The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before January 31, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–692 Filed 1–13–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47135; File No. SR–GSCC–2002–10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish a Comprehensive Standard of Care and Limit GSCC's Liability to Its Members

January 7, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 10, 2002, the Government

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC is seeking to establish a comprehensive standard of care and limitation of liability with respect to its members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC is seeking to establish a comprehensive standard of care and limitation of liability with respect to its members. Historically, the Commission has left to user-governed clearing agencies the question of how to allocate losses associated with, among other things, clearing agency functions.[3] The Commission has reviewed clearing agency services on a case-by-case basis and in determining the appropriate standard of care has balanced the need for a high degree of clearing agency care with the effect the resulting liabilities may have on clearing agency operations, costs, and safekeeping of securities and funds.[4] Because standards of care represent an allocation of rights and liabilities between a clearing agency and its participants, which are sophisticated financial entities, the Commission has refrained from establishing a unique federal standard of care and has allowed clearing agencies and other self-regulatory organizations and their participants to establish their own standard of care.[5]

GSCC believes that adopting a uniform rule[6] limiting GSCC's liability to its members to direct losses caused by GSCC's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of Action: (a) Memorializes an appropriate commercial standard of care that will protect GSCC from undue liability; (b) permits the resources of GSCC to be appropriately utilized for promoting the accurate clearance and settlement of securities; and (c) is consistent with similar rules adopted by other self-regulatory organizations and approved by the Commission.[7]

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder applicable to GSCC because it will permit the resources of GSCC to be appropriately utilized for promoting the accurate clearance and settlement of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–GSCC–2002–10. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC.

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[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] Securities Exchange Act Release Nos. 20221 (September 23, 1983), 48 FR 45167 and 22940 (February 24, 1986), 51 FR 7169.

[4] *Id.*

[5] *Id.*

[6] The rule change is as follows: Section 3 " Limitation on Liability of the Corporation Notwithstanding any other provision in the Rules: (a) The Corporation will not be liable for any action taken, or any delay or failure to take any action, hereunder or otherwise to fulfill the Corporation's obligations to its Members, other than for losses caused directly by the Corporation's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action. Under no circumstances will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency, of any third party, including, without limitation, any depository, custodian, sub-custodian, clearing or settlement system, transfer agent, registrar, data communication service or delivery service ("Third Party"), unless the Corporation was grossly negligent, engaged in willful misconduct, or in violation of Federal securities laws for which there is a private right of action in selecting such Third Party; and

(b) Under no circumstances will the Corporation be liable for any indirect, consequential, incidental, special, punitive or exemplary loss or damage (including, but not limited to, loss of business, loss of profits, trading losses, loss of opportunity and loss of use) howsoever suffered or incurred, regardless of whether the Corporation has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.

[7] *See, e.g.*, Securities Exchange Act Release Nos. 37421 (July 11, 1996), 61 FR 37513 (SR–CBOE–96–02) and 37563 (August 14, 1996), 61 FR 43285 (SR–PSE–96–21).

[8] 15 U.S.C. 78q–1.

All submissions should refer to File No. SR–GSCC–2002–10 and should be submitted by February 4, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–691 Filed 1–13–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47130; File No. SR–NQLX–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Liffe Markets, LLC Proposing To Adopt Listing Standards for Physically-Settled Security Futures Contracts That Have Underlying Securities Constituting Shares of an Exchange-Traded Fund, Registered Closed-End Management Investment Company, or Trust-Issued Receipts

January 6, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–7 under the Act,[2] notice is hereby given that on January 6, 2003, Nasdaq Liffe Markets, LLC ("NQLX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in items I, II, and III below, which items have been prepared by the NQLX. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

On January 6, 2003, NQLX submitted the proposed rule change to the Commodities Futures Trading Commission ("CFTC") for approval. Under section 19(b)(7)(B) of the Act,[3] the proposed rule change may take effect upon approval by the CFTC.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

First, NQLX proposes to adopt rule changes to its listing standards for physically-settled security futures contracts (NQLX rules 902 and 903) that have underlying securities constituting shares of an exchange-traded fund, shares of a registered closed-end management investment company, or trust-issued receipts. Second, NQLX proposes to correct typographical errors and to add clarifying language to certain other provisions of NQLX rules 902 and 903. NQLX believes that these proposed rule changes are consistent with the requirements under section 6(h)(3) of the Act[4] and the criteria under Section 2(a)(1)(D)(i) of the Commodities Exchange Act ("CEA"),[5] as modified by joint orders of the Commission and the CFTC.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NQLX has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in item IV below. These statements are set forth in sections A, B, and C below.

The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in brackets.

Rule 902 Initial Listing Standards: Physically-Settled Security Futures Contract

(a) (1)–(2) No change.

(b) Initial Listing Standards-Underlying Securities are Single Securities: To initially list a physically-settled Security Futures Contract with an underlying single security, the single security must:

(1)–(4) No change.

(5) Have at least seven million shares *or receipts evidencing the underlying security* outstanding owned by Persons that are not required to report their securities holdings pursuant to section 16(a) of the Securities Exchange Act;

(6) Have at least 2,000 holders *when the underlying security is not shares of an exchange-traded fund, shares of a registered closed-end management investment company, or trust-issued receipts;*

(7) *(i)* Have average daily trading volume (in all markets in which the underlying security has traded) of at least 109,000 shares *or receipts evidencing the underlying security in each of the preceding 12 months when the underlying security is not shares of an exchange-traded fund, shares of a registered closed-end management investment company, or trust-issued receipts, or*

(ii) Have total trading volume (in all markets in which the underlying security has traded) of at least 2.4 million shares or receipts evidencing the underlying security in the preceding 12 months when the underlying security is shares of an exchange-traded fund, shares of a registered closed-end management investment company, or trust-issued receipts;

(8) Have a market price per [share] *security* of at least $7.50 (calculated by the lowest closing price reported in any market on which the underlying security traded[,]) for the majority of trading days during the three calendar months before listing[)];

(9) No change.

(c)–(e) No change.

Rule 903 Maintenance Listing Standards-Physically-Settled Security Futures Contracts

(a) (1)–(5) No change.

(b) No change.

(c) Maintenance Standards-Underlying Securities are Single Securities Other than Shares of Exchange-Traded Funds, Shares of Registered Closed-End Management Investment Companies, or Trust-Issued Receipts: When the underlying of a physically-settled Security Futures Contract is a single security other than shares of exchange-traded funds, shares of registered closed-end management investment companies, or trust-issued receipts, to list a new delivery month of the Security Futures Contract, the single security must:

(1) Continue to meet the requirements of rule 902(b)(1), (2), and (4)[,];

(2) Have an issuer that meets requirements of rule 902(b)(3) or corrects any applicable reporting failure within 30 days after the required filing date[,];

(3) Have at least 6.3 million shares *or receipts evidencing the underlying security* outstanding owned by Persons other than those required to report their security holdings under section 16(a) of the Securities Exchange Act[,];

(4) Have at least 1,600 holders[,];

(5) Have average daily trading volume (across all markets that trade the underlying security) of at least 82,000 shares *or receipts evidencing the underlying security* in each of the preceding 12 months;

(6) Have a market price per [share] *security* of at least $5.00 on a majority of the trading days during the past six calendar months (measured by the

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 15 U.S.C. 78s(b)(7)(B).

[4] 15 U.S.C. 78f(h)(3).

[5] 7 U.S.C. 2(a)(1)(D)(i).

[6] *See* Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001), and Joint Order Granting the Modification of Listing Standards Requirements (Exchange Traded Funds, Trust Issued Receipts and shares of Closed-End Funds), Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002).

highest closing price reported for the underlying security in any market trading the underlying); provided, however, that NQLX may waive this requirement and open for trading a new delivery month of the Security Futures Contract, if:

(i)–(ii) No change.

(iii) The average daily trading volume in the underlying security (in all markets that trade the underlying) has been at least 109,000 shares *or receipts evidencing the underlying security* in each of the prior 12 months; and

(iv) The market price per share of *or receipts evidencing* the underlying security[;]*:*

(A) No change.

(B) Is at least $3.00 on the day NQLX lists the new delivery month for trading[.]*;*

(7) No change.

(d)–(f) No change.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NQLX proposes to adopt revisions to its current listing standards to clarify the particular listing standards applicable when the underlying securities of a security futures contract are shares of exchange-traded funds, trust-issued receipts, or shares of closed-end funds. Specifically, the proposed rule change makes two things clear.[7] First, the requirement that the underlying security be held by at least 2,000 holders does not apply when the underlying securities are shares of exchange-traded funds, trust-issued receipts, or shares of closed-end funds. Second, when the underlying securities are shares of exchange-traded funds, trust-issued receipts, or shares of closed-end funds, instead of requiring an average daily trading volume of at least 109,000 securities in each of the preceding 12 months, the revised rules would require total trading volume of at least 2.4 million securities in the preceding 12 months. The remaining proposed changes correct typographical errors and add clarifying language to certain provisions of NQLX rules 902 and 903.

NQLX believes that its proposed rule changes comply with the requirements under section 6(h)(3) of the Act[8] and the criteria under section 2(a)(1)(D)(i) of the CEA,[9] as modified by joint orders of the Commission and the CFTC, and that its listing standards are no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association.[10]

2. Statutory Basis

NQLX files these proposed rule changes pursuant to section 19(b)(7) of the Act.[11] NQLX believes that these proposed rule changes are consistent with the requirements of the Commodity Futures Modernization Act of 2000,[12] including the requirement that trading in a listed security futures is not readily susceptible to manipulation of its price nor to causing or being used to manipulate the price of the underlying security, options on the security, or options on a group or index including the security.[13] NQLX further believes that its proposed rule changes comply with the requirements under section 6(h)(3) of the Act[14] and the criteria under section 2(a)(1)(D)(i) of the CEA;[15] as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rule changes are consistent with the provisions of section 6 of the Act,[16] in general, and section 6(b)(5) of the Act,[17] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

NQLX neither solicited nor received written comment on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Concurrent with the filing of the proposed rule change with the Commission, NQLX has filed a written certification with the CFTC under section 5c(c)[18] of the CEA and CFTC regulation part 38.4[19] in which NQLX certifies that its proposed changes to NQLX rules 902 and 903 comply with the CEA. Changes to proposed NQLX rules 902 and 903 are effective the day after their filing with the CFTC.

Within 60 days of the date of effectiveness of the proposed rule changes, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule changes and require that the proposed rule changes be refiled in accordance with the provisions of section 19(b)(1) of the Act.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of NQLX. Electronically submitted comments will be posted on the Commission's website (*http://www.sec.gov*). All submissions should refer to File No. SR–NQLX–2003–01 and should be submitted by February 4, 2003.

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[7] NQLX notes that a similar proposal has been adopted by OneChicago, LLC, another designated contract market and national securities exchange currently listing security futures products. *See* Securities Exchange Act Release No. 47114 (December 31, 2002).

[8] 15 U.S.C. 78f(h)(3).

[9] 7 U.S.C. 2(a)(1)(D)(i).

[10] 15 U.S.C. 78f(h)(3)(C).

[11] 15 U.S.C. 78s(b)(7).

[12] Pub. L. 106–554, 114 Stat. 2763 (2000).

[13] 15 U.S.C. 78f(h)(3)(H).

[14] 15 U.S.C. 78f(h)(3).

[15] 7 U.S.C. 2(a)(1)(D)(i).

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

[18] 7 U.S.C. 7a–2(c).

[19] 17 CFR 38.4.

[20] 15 U.S.C. 78s(b)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–669 Filed 1–13–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P003]

State of Arkansas

As a result of the President's major disaster declaration for Public Assistance on January 6, 2003, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit businesses that provide essential services of a governmental nature. I find that Baxter, Clay, Cleburne, Craighead, Fulton, Greene, Independence, Izard, Jackson, Lawrence, Newton, Poinsett, Randolph, Searcy, Sharp, Stone, Van Buren and White Counties in the State of Arkansas constitute a disaster area due to damages caused by a severe ice storm occurring from December 3, 2002, and continuing through December 4, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 7, 2003, at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Non-profit organizations without credit available elsewhere	3.324
Non-profit organizations with credit available elsewhere	5.500

The number assigned to this disaster for physical damage is P00311.

Dated: January 7, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–677 Filed 1–13–03; 8:45 am]

BILLING CODE 8025–01–P

[21] 17 CFR 200.30–3(a)(75).

SMALL BUSINESS ADMINISTRATION

Region II Regulatory Fairness Board Hearing

The Small Business Administration Region II Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Wednesday, January 29, 2003 at 9 a.m. (EST) at the State House Annex, 4th Floor, Assembly Budget Committee Hearing Room, State Street, Trenton, New Jersey 08650, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Natalie Hall in writing or by fax, in order to be put on the agenda. Natalie Hall, U.S. Small Business Administration, New Jersey District Office, 2 Gateway Center, 15th Floor, Newark, NJ 07102, phone (973) 645–3581, fax (973) 645–6265, e-mail *natalie.hall@sba.gov*.

For more information, see our Web site at *www.sba.gov/ombudsman*.

Dated: January 8, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–715 Filed 1–13–03; 8:45 am]

BILLING CODE 8025–01–U

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, the Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below: (OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503. Fax: 202–395–6974. (SSA).Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1300 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

I. The information collection listed below is pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

Statement of Income and Resources—0960–0124. The information collected on form SSA–8010–BK is used in Supplemental Security Income (SSI) claims and redeterminations to obtain information about the income and resources of: Ineligible spouses, parents/spouses of parents, and children living in the claimant's/beneficiary's household; essential persons; and sponsors of aliens (including spouses of sponsors who live with the sponsor). The information is needed to make initial or continuing eligibility determinations for SSI claimants/beneficiaries who are subject to deeming. If eligible, the information is used to determine the amount of the SSI payment. The respondents are persons whose income and/or resources must be considered in determining the eligibility of SSI claimants or beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 341,000.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 142,083 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Internet Social Security Disability Report—Child—20 CFR 404.1512 and*

416.912—0960–NEW. SSA is developing an Internet Social Security Disability Report—Child. This Internet application, I3820, will collect information about a child who is applying for disabled child's benefits. It will solicit the details of the child's condition, how the condition affects the child's day-to-day life, and his or her medical treatment sources and/or other medical sources of evidence. Respondents will provide information on the disabled child by completing a series of screens on a personal computer. The information will then be transmitted to SSA electronically. However, until such time as SSA develops an acceptable electronic signature process and implements a Disability Determination Services (DDS) electronic disability process, applicants will also print, sign and mail a text formatted summary of the answers given on I3820. They will also print, sign and mail copies of the medical release form (SSA–827). The information collected on I3820 will be used by the State DDS's to develop medical evidence and to assess the alleged disability. The respondents will be applicants for child's disability benefits who opt to file via the Internet.

Type of Request: New information collection.

Number of Respondents: 52,300.

Frequency of Response: 1.

Average Burden Per Response: 2 hours.

Estimated Annual Burden: 104,600 Hours.

2. *Work Activity Report—Employee—0960–0059.* Form SSA–821–BK collects information that determines whether individuals have worked in employment after becoming disabled and, if so, whether the work is substantial gainful activity. The data is reviewed and evaluated to determine if the recipient continues to meet the disability requirements of the law. The respondents are title II beneficiaries and title XVI recipients.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 300,000.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated Annual Burden: 225,000 hours.

3. *Permanent Residence Under Color of Law—20 CFR, Subpart P, 416.1615 and 416.1618—0960–0451.* Under Public Law (Pub. L.) 104–193, effective August 22, 1996, a noncitizen must be a "qualified alien" and meet certain additional requirements in order to be eligible for SSI. This law also established an exception to the new requirements for certain "nonqualified aliens" (*i.e.*, noncitizens who are not qualified aliens) who were receiving SSI on August 22, 1996. The exception allowed nonqualified aliens to remain on the rolls until September 30, 1997, at which time benefits would be suspended if the aliens had not acquired qualified alien status. Pub. L. 105–33 extended the suspension date to September 30, 1998, and Pub. L. 105–306, enacted October 28, 1998, provided that nonqualified aliens who were receiving SSI on August 22, 1996, would remain eligible after September 30, 1998, as long as other requirements were met (*e.g.*, income and resources, etc.). SSI eligibility for this group of aliens, "grandfathered nonqualified aliens," would continue to be determined based on the rules governing alien eligibility in effect prior to August 22, 1996, *i.e.*, the PRUCOL standard. Under this standard, PRUCOL aliens must present evidence of their status to SSA at the time of application and periodically thereafter. SSA will verify the validity of the evidence of PRUCOL aliens with the Immigration and Naturalization Service (INS). Based on the INS response, SSA will determine whether the individual is eligible for SSI payments. The respondents are alien applicants for and recipients of SSI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 9,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 750 hours.

4. *Instructions for Completion of Federal Assistance Application—0960–0184.* The information on form SSA–96 will be used to assist the Commissioner in selecting grant proposals for funding based on their technical merits. The information will also assist in evaluating the soundness of the design of the proposed activities, the possibilities of obtaining productive results, the adequacy of resources to conduct the activities and the relationship to other similar activities that have been or are being conducted. The respondents are State and local governments, State-designated protection and advocacy groups, colleges and universities and profit and nonprofit private organizations.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200.

Frequency of Response: 8.

Average Burden Per Response: 14 hours.

Estimated Annual Burden: 22,400 hours.

5. *Certificate of Election for Reduced Spouse's Benefits—0960–0398.* SSA uses the information on the certificate of election, collected on form SSA–25, as the spouse's request for reduced benefits for the month of filing, and for months preceding the month of filing, as designated by the spouse (but not to exceed 12 months). The spouse must file a certificate of election with SSA to elect reduced benefits, if an entitled spouse (age 62–64) no longer has an entitled child in care. The respondents are individuals or households.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 1,000 hours.

6. *Annual Registration Statement Identifying Separated Participants with Deferred Benefits, Schedule SSA—0960–0606.* Schedule SSA is a form filed annually as part of a series of pension plan documents required by section 6057 of the IRS Code. Administrators of pension benefit plans are required to report specific information on future plan benefits for those participants who left plan coverage during the year. SSA maintains the information until a claim for Social Security benefits has been approved. At that time, SSA notifies the beneficiary of his/her potential eligibility for payments from the private pension plan. The respondents are administrators of pension benefit plans or their service providers employed to prepare the schedule SSA on behalf of the pension benefit plan. Below are the estimates of the cost and hour burdens for completing and filing schedule SSA(s). We have used an average to estimate the hour burden. However, the burden may be greater or smaller depending on whether the respondent is a large or small pension benefit plan and how many schedule SSA's are filed in a given year.

Type of request: Extension of an OMB-approved information collection.

Number of Respondents: 88,000.

Frequency of Response: Annually.

Average Burden Per Respondent: 2.5 hours.

Estimated Annual Burden: 220,000 hours.

Estimated Annual Cost Burden for All Respondents: $12,194,400.

7. *Internet Report of Continuing Disability Interview—20 CFR 404.1589 and 20 CFR 416.989—0960–NEW.*

Background

The Government Paperwork Elimination Act (GPEA) of 1998 directed Federal agencies to develop electronic service delivery instruments as an alternative to traditional paper-based methods. As a result, the Social Security Administration is actively expanding its Internet services to enable citizens to complete the application process as well as to process their requests for post-entitlement transactions online. One of the initiatives in this process is the development of the Internet version of the current paper-based form entitled Report of Continuing Disability Interview, SSA–454–BK, which is used by the agency in the continuing disability review (CDR) process.

The Collection

SSA will use the Internet Report of Continuing Disability Interview (I454) to collect information from individuals receiving disability benefits or their representatives. The information collected will be used to determine whether a person who receives Social Security benefits and/or SSI, based on disability or blindness continues to be disabled. The report will update the record of the disabled individual, providing information on recent medical treatment, vocational and educational experiences, work activity and evaluations of the potential for return to work. On the basis of the responses, additional medical and other evidence is developed to assist SSA in determining whether their disability continues or has ended, and if so when the disability ended. Respondents to I454 are disabled individuals scheduled for CDRs.

Type of request: New information collection.

Number of Respondents: 85,200.

Frequency of Response: 1 per respondent.

Average Burden Per Response: 120 minutes.

Estimated Annual Burden: 170,400 hours.

8. *Vocational Rehabilitation "301" Program Development—20 CFR, 404.408, 404.460 & 404.468, Subpart E and 20 CFR, 404.1588, Subpart P–0960–0282.* SSA uses form SSA–4290 to collect information to determine whether an individual, whose disability or blindness has ceased, is eligible for continued benefit payments because of participation in an approved program of vocational rehabilitation services, employment services or other support services. The respondents are State vocational rehabilitation agencies, other public or private providers of vocational rehabilitation services and employment services or other support services.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 8,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 2,000 hours.

9. *Medicaid Use Report, 20 CFR 416.268—0960–0267.* The information required by this regulation is used by SSA to determine if an individual is entitled to special SSI payments. The respondents are SSI recipients whose payments were stopped based on earnings from work.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 3,000 hours.

10. *Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Adult, Form SSA–3988–TEST; Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Child, Form SSA–3989–TEST—20 CFR Subpart B—416.204—0960–0643.*

Background

The Social Security Act mandates periodic redeterminations of the non-medical factors that relate to the SSI recipients' continuing eligibility for SSI payments. Recent SSA studies have indicated that as many as two-thirds of all scheduled redeterminations completed, with the assistance of a SSA employee, did not result in any change in circumstances that affected payment. Therefore, SSA is planning to increase the number of respondents and revise the test methodology of the currently approved test forms. The expansion of the test is needed to further validate whether the test redetermination process actually results in significant operational savings and a decrease in recipient inconvenience, while still timely obtaining the accurate data needed to determine continuing eligibility through the process.

The Collection

A test of forms SSA–3988–TEST and SSA–3989–TEST will be used to determine whether SSI recipients have met and continue to meet all statutory and regulatory non-medical requirements for SSI eligibility, and whether they have been and are still receiving the correct payment amount. The SSA–3988–TEST and SSA–3989–TEST are designed as self-help forms that will be mailed to recipients or to their representative payees for completion and return to SSA. The objectives of the expanded test are to determine the public's ability to understand and accurately complete the test forms. The respondents are recipients of SSI benefits or their representatives. In addition, SSA wants to determine the public's ability to understand and accurately complete a supplemental SSA–3988, which will be directed to a sample of beneficiaries that continue to receive Medicaid, but whose earnings from work are too high to allow payment of SSI benefits.

Type of Request: Revision of an OMB-approved information collection.

	Respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–3988–TEST	46,500	1	20 min	15,500
SSA–3988–SUP–TEST2	2000	1	21 min	700
SS–3989–TEST	8,500	1	20 min	2,833
Total burden				19,033

11. *Letter to Employer Requesting Information about Wages Earned by a Beneficiary—20 CFR, Subpart I, 404.801—0960–0034.* SSA uses the data collected on form SSA–L725 to establish the exact amount of wages earned by a beneficiary in situations where the information in SSA records is incomplete or has been questioned. The respondents are employers of wage earners whose earnings records are incomplete or have been questioned.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 150,000.

Frequency of Response: 1.

Average Burden Per Response: 40 minutes.

Estimated Annual Burden: 100,000 hours.

12. *Reporting Changes that Affect Your Social Security Payment—20 CFR 404, Subpart D and Subpart E—0960–0073.* SSA uses the information collected on form SSA–1425 to determine continuing entitlement to title II Social Security benefits and to determine the proper benefit amount. The respondents are Social Security beneficiaries who need to report an event that could affect payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 70,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 5,833 hours.

13. *Report of New Information in Disability Cases—20 CFR 404, Subpart D & Subpart P—0960–0071.* The information collected on form SSA–612 is used to update the disability records of respondents, based on changes reported. The form is used to gather information on a number of topics that can affect the beneficiary's or the applicant's entitlement to disability benefits. This includes, but is not limited to, information about a return to work, improvement in the medical condition, Workers' Compensation settlements or representative payee issues. The respondents are applicants for and recipients of Title II Disability Benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 27,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2,250 hours.

Dated: January 7, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–678 Filed 1–13–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4248]

Office of the Procurement Executive; 30-Day Notice of Proposed Information Collection: Department of State; Acquisition Regulation (DOSAR); OMB Control Number 1405–0050

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Administration, Office of the Procurement Executive.

Title of Information Collection: Department of State Acquisition Regulation (DOSAR).

Frequency: On occasion.

Form Number: N/A.

Respondents: Any business, other for-profit, individual, not-for-profit, or household organizations wishing to receive Department of State contracts.

Estimated Number of Respondents: 2,790.

Average Hours Per Response: Varies.

Total Estimated Burden: 225,503 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Gladys Gines, Procurement Analyst, Office of the Procurement Executive, 2201 C Street, NW, SA–6, Room 603, U.S. Department of State, Washington, DC 20520; telephone at (703) 516–1691. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on (202) 395–3897.

Dated: December 18, 2002.

Lloyd W. Pratsch,

Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. 03–695 Filed 1–13–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending December 27, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–14151.
Date Filed: December 23, 2002.
Parties: Members of the International Air Transport Association.
Subject: TC31 North and Central Pacific—TC3–Central America, South America.

PTC31 N&C/CIRC 0228 dated November 19, 2002

TC3–Central America, South America Resolutions r–1–r–14

Tables—PTC31 N&C/CIRC Fares 0096 dated November 26, 2002

Minutes—PTC31 N&C/CIRC 0232 dated December 20, 2002

Intended effective date: April 1, 2003

Docket Number: OST–2002–14164.
Date Filed: December 23, 2002.
Parties: Members of the International Air Transport Association.
Subject:

TC31 North and Central Pacific and TC31 Circle Pacific

PTC31 N&C/CIRC 0224 dated November 19, 2002

PTC31 N&C/CIRC 0225 dated November 19, 2002

PTC31 N&C/CIRC 0226 dated November 19, 2002

PTC31 N&C/CIRC 0227 dated November 19, 2002

PTC31 N&C/CIRC 0229 dated November 19, 2002

Minutes—PTC31 N&C/CIRC 0232 dated December 20, 2002

Tables—PTC31 N&C/CIRC FARES 0093 dated November 26, 2002

PTC31 N&C/CIRC FARES 0094 dated November 26, 2002

PTC31 N&C/CIRC FARES 0095 dated November 26, 2002

Intended effective date: April 1, 2003.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 03–687 Filed 1–13–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 3, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–14178.

Date Filed: December 30, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 21, 2003.

Description: Application of Israir Airlines and Tourism Ltd., pursuant to 49 U.S.C. 41301, 14 CFR part 211 and subpart B, requesting a foreign air carrier permit enabling Israir to engage in charter foreign air transportation of persons and property between a point or points in Israel and a point or points in the United States and in other charter trips in foreign air transportation, subject to the terms, conditions and limitations of the Department's regulations governing charters.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 03–688 Filed 1–13–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 27, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–14145.

Date Filed: December 23, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 13, 2003.

Description: Application of Mid-Atlantic Freight, Inc., pursuant to 49 U.S.C. Section 41738 and Subpart B, requesting authority to operate scheduled passenger service as a commuter air carrier between Norfolk, VA, Pine Island, NC and Manteo, NC, with flights beginning and ending in Manteo, NC.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 03–689 Filed 1–13–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities: Proposed Collection; Comment Request—FRA F 6180.71, U.S. DOT AAR Crossing Inventory Form

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements (ICRs) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than March 17, 2003.

ADDRESSES: Submit written comments on the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–0017." Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Debra Steward at *debra.steward@fra.dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically,

FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activity that FRA will submit for clearance by OMB as required under the PRA:

Title: U.S. DOT–AAR Crossing Inventory Form.

OMB Control Number: 2130–0017.

Form Number: FRA F 6180.71.

Expiration: March 31, 2003.

Type of Request: Revision of a currently approved collection.

Abstract: Form FRA 6180.71 is a voluntary form and is used by States and railroads to periodically update certain cite specific highway-rail crossing information which is then transmitted to FRA for input into the National Inventory File. This information has been collected on the U.S. DOT–AAR Crossing Inventory Form since 1974 and maintained in the National Inventory File database since 1975. The primary purpose of the National Inventory is to provide for the existence of a uniform database which can be merged with accident data and used to analyze information for planning and implementation of crossing safety improvement programs by public, private, and governmental agencies responsible for highway-rail crossing safety. Following the official establishment of the National Inventory in 1975, the Federal Railroad Administration (FRA) assumed the principal responsibility as custodian for the maintenance and continued development of the U.S. DOT/AAR National Highway-Rail Crossing Inventory Program. The major goal of the Program is to provide federal, state, and local governments, as well as the railroad industry, information for the improvement of safety at highway-rail crossings. Good management practices necessitate maintaining the database with current information. The data will continue to be useful only if maintained and updated as inventory changes occur. FRA previously cleared the reporting and recordkeeping burden for this form under Office of Management and Budget (OMB) clearance number 2130–0017. OMB approved the burden for this form through March 31, 2003. Based on the most recent information available, FRA estimates approximately 96,000 updates per year. Although this represents a substantial increase in the number of updates from the previous estimate of responses, the total recordkeeping and reporting burden for this information collection will actually decline by 1,716 hours. The reduction in burden is due to a large increase in the estimated number of electronic records which will be kept over the next three years. FRA is requesting a new three-year approval from OMB for this information collection.

Affected Public: Railroads and State governments.

Estimated Total Number of Responses Per Year: 95,969 updates.

Estimated Response Time per Form: .25 hr. (2,056 form updates); .50 hr. per mass update list (300 mass update lists containing 5,433 updates); .50 hr. per electronic foreign file (700 electronic foreign files containing 77,158 updates); and .03333 hr. per GX computer update (11,322 updates on 36 GX computer disks).

Total Annual Burden: 1,388 hours.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on January 9, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–686 Filed 1–13–03; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund: Open Meeting of the Community Development Advisory Board: Change of Meeting Location

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of open meeting; Change of meeting location.

SUMMARY: On December 27, 2002, the Community Development Financial Institutions Fund (the "Fund") announced (67 FR 79242) that there will be a meeting of the Community Development Advisory Board on January 21 and 22, 2003. This notice is to announce that the location of the meeting has been changed. The Community Development Advisory Board meeting will be held at the offices of the Fund, which are located at 601 13th Street, NW., Suite 200–South, Washington, DC.

FOR FURTHER INFORMATION, CONTACT: The Office of External Affairs of the Fund, U.S. Department of Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC, 20005, (202) 622–9046 (this is not a toll free number). Other information regarding the Fund and its programs may be obtained through the Fund's Web site at *http://www.cdfifund.gov*.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–860 Filed 1–13–03; 8:45 am]

BILLING CODE 4810–70–P

Corrections

Federal Register

Vol. 68, No. 9

Tuesday, January 14, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021114275–2275–01]

Joint Hurricane Testbed (JHT) Opportunities for Transfer of Research and Technology Into Tropical Cyclone Analysis and Forecast Operations

Correction

In notice document 03–57 beginning on page 359 in the issue of Friday, January 3, 2003, make the following corrections:

1. On page 360, in the first column, under the heading **ADDRESSES**, in the first line, "Preapplication" should read, "Preapplications".

2. On the same page, in the second column, under the heading **III. Program Description**, in the first paragraph, in the 11th line, "PIs to responding" should read, "PIs responding".

3. On the same page, in the same column, under the same heading, in the same paragraph, in the 13th line, "PIs allow" should read, "PIs to allow".

4. On the same page, in the third column, under the same heading, in paragraph (2), in the first line, "for" should read, " by".

5. On page 362, in the second column, under the heading **VII. Award Period**, in the first paragraph, in the 17th line from the bottom, "time line." should read, "time line,".

6. On the same page, in the same column, under the same heading, in the second paragraph, in the fourth line, "appropriately" should read, "approximately".

7. On page 363, in the third column, under the heading **IX. Evaluation Criteria**, in paragraph D., in the first line, "Appropriations" should read, "Appropriateness".

8. On the same page, in the same column, under the heading **X. Selection Procedures**, in the first paragraph, in the fourth line from the bottom, "Directors" should read, "Director".

9. On page 364, in the first column, under the same heading, in the first paragraph, in the seventh line from the bottom, "applications" should read, "applicants".

[FR Doc. C3–57 Filed 1–13–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
January 14, 2003

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0060; FRL–7417–8]

RIN 2060–AG67

National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for stationary combustion turbines. We have identified stationary combustion turbines as major sources of hazardous air pollutants (HAP) emissions such as formaldehyde, toluene, benzene, and acetaldehyde. The proposed NESHAP would implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT) for combustion turbines. We estimate that 20 percent of the stationary combustion turbines affected by the proposed rule will be located at major sources. As a result, the environmental, energy, and economic impacts presented in this preamble reflect these estimates. The proposed standards would protect public health by reducing exposure to air pollution, by reducing total national HAP emissions by an estimated 81 tons/year in the 5th year after the standards are promulgated. This action also proposes to add Method 323 of 40 CFR part 63, appendix A for the measurement of formaldehyde emissions from natural gas-fired stationary sources.

DATES: *Comments.* Submit comments on or before February 13, 2003.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by January 24, 2003, we will hold a public hearing on January 29, 2003.

ADDRESSES: Comments may be submitted by mail (in duplicate, if possible) to EPA West (Air Docket), U.S. EPA (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0060. By hand delivery/courier, comments may be submitted (in duplicate, if possible) to EPA Docket Center (Air Docket), U.S. EPA, MD–6102T), Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0060. Comments may be submitted electronically according to the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, North Carolina.

Docket. Docket No. OAR–2002–0060 contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460 in room B102, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Sims Roy, Combustion Group, Emission Standards Division (MD–C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5263; facsimile number (919) 541–5450; electronic mail address *roy.sims@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in the regulation.	4911	2211	Electric power generation, transmission, or distribution.
	4922	486210	Natural gas transmission.
	1311	211111	Crude petroleum and natural gas production.
	1321	211112	Natural gas liquids producers.
	4931	221	Electric and other services combined.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.6085 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0060. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B108, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify

whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. The EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." The EPA is not required to consider these late comments. However, late comments may be considered if time permits.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2002–0060. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2002–0060. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate if possible) to: Air and Radiation Docket and Information Center, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. OAR–2002–0060. The EPA requests a separate copy also be sent to the contact person listed above (see **FOR FURTHER INFORMATION CONTACT**).

By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, Room B108, 1301 Constitution Ave., NW, Washington, DC, 20460, Attention Docket ID No. OAR–2002–0060. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Mr. Sims Roy, c/o OAQPS Document Control Officer (Room C404–2), U.S. EPA, Research Triangle Park, 27711, Attention Docket ID No. OAR–2002–0060. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CDROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mrs. Kelly Hayes, Combustion Group, Emission Standards Division (MD–C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5578 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Mrs. Hayes to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information presented at a public hearing, if held.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the regulatory development background of the source category?
B. What is the source of authority for development of NESHAP?
C. What criteria are used in the development of NESHAP?
D. What are the health effects associated with HAP from stationary combustion turbines?
II. Summary of the Proposed Rule
A. Am I subject to the proposed rule?
B. What source categories and subcategories are affected by the proposed rule?
C. What are the primary sources of HAP emissions and what are the emissions?
D. What are the emission limitations and operating limitations?
E. What are the initial compliance requirements?
F. What are the continuous compliance provisions?
G. What monitoring and testing methods are available to measure these low concentrations of CO and formaldehyde?
H. What are the notification, recordkeeping and reporting requirements?
III. Rationale for Selecting the Proposed Standards
A. How did we select the source category and any subcategories?
B. What about stationary combustion turbines located at area sources?
C. What is the affected source?
D. How did we determine the basis and level of the proposed emission limitations for existing sources?
E. How did we determine the basis and level of the proposed emission limitations and operating limitations for new sources?
F. How did we select the format of the standard for new diffusion flame combustion turbines?
G. How did we select the initial compliance requirements?
H. How did we select the continuous compliance requirements?
I. How did we select the monitoring and testing methods to measure these low concentrations of CO and formaldehyde?
J. How did we select the notification, recordkeeping and reporting requirements?
IV. Summary of Environmental, Energy and Economic Impacts
A. What are the air quality impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the nonair health, environmental and energy impacts?
V. Solicitation of Comments and Public Participation
A. General
B. Can we achieve the goals of the proposed rule in a less costly manner?
C. Limited Use Subcategory
VI. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

I. Background

A. What Is the Regulatory Development Background of the Source Category?

In September 1996, we chartered the Industrial Combustion Coordinated Rulemaking (ICCR) advisory committee under the Federal Advisory Committee Act (FACA). The committee's objective was to develop recommendations for regulations for several combustion source categories under sections 112 and 129 of the CAA. The ICCR advisory committee, also known as the Coordinating Committee, formed Source Work Groups for the various combustor types covered under the ICCR. One work group, the Combustion Turbine Work Group, was formed to research issues related to stationary combustion turbines. The Combustion Turbine Work Group submitted recommendations, information, and data analyses to the Coordinating Committee, which in turn considered them and submitted recommendations and information to us. The Committee's 2-year charter expired in September 1998. We considered the Committee's recommendations in developing the proposed rule for stationary combustion turbines.

B. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The stationary turbine source category was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 ton/yr of any one HAP or 25 ton/yr of any combination of HAP.

C. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better controlled and lower emitting sources in each source category or subcategory. For new sources, the MACT standards cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in the category or subcategory (or the best performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions

reductions, any nonair quality health and environmental impacts, and energy requirements.

D. What Are the Health Effects Associated With HAP From Stationary Combustion Turbines?

Emission data collected during development of the proposed NESHAP show that several HAP are emitted from stationary combustion turbines. These HAP emissions are formed during combustion or result from HAP compounds contained in the fuel burned.

Among the HAP which have been measured in emission tests that were conducted at natural gas fired and distillate oil fired combustion turbines are; 1,3 butadiene, acetaldehyde, acrolein, benzene, ethylbenzene, formaldehyde, naphthalene, poly aromatic hydrocarbons (PAH) propylene oxide, toluene, and xylenes. Metallic HAP from distillate oil fired stationary combustion turbines that have been measured are: arsenic, beryllium, cadmium, chromium, lead, manganese, mercury, nickel, and selenium.

Although numerous HAP may be emitted from combustion turbines, only a few account for essentially all the mass of HAP emissions from stationary combustion turbines. These HAP are: formaldehyde, toluene, benzene, and acetaldehyde.

The HAP emitted in the largest quantity is formaldehyde. Formaldehyde is a probable human carcinogen and can cause irritation of the eyes and respiratory tract, coughing, dry throat, tightening of the chest, headache, and heart palpitations. Acute inhalation has caused bronchitis, pulmonary edema, pneumonitis, pneumonia, and death due to respiratory failure. Long-term exposure can cause dermatitis and sensitization of the skin and respiratory tract.

Other HAP emitted in significant quantities from stationary combustion turbines include toluene, benzene, and acetaldehyde. The health effect of primary concern for toluene is dysfunction of the central nervous system (CNS). Toluene vapor also causes narcosis. Controlled exposure of human subjects produced mild fatigue, weakness, confusion, lacrimation, and paresthesia; at higher exposure levels there were also euphoria, headache, dizziness, dilated pupils, and nausea. After effects included nervousness, muscular fatigue, and insomnia persisting for several days. Acute exposure may cause irritation of the eyes, respiratory tract, and skin. It may also cause fatigue, weakness, confusion, headache, and drowsiness. Very high concentrations may cause unconsciousness and death.

Benzene is a known human carcinogen. The health effects of benzene include nerve inflammation, CNS depression, and cardiac sensitization. Chronic exposure to benzene can cause fatigue, nervousness, irritability, blurred vision, and labored breathing and has produced anorexia and irreversible injury to the blood-forming organs; effects include aplastic anemia and leukemia. Acute exposure can cause dizziness, euphoria, giddiness, headache, nausea, staggering gait, weakness, drowsiness, respiratory irritation, pulmonary edema, pneumonia, gastrointestinal irritation, convulsions, and paralysis. Benzene can also cause irritation to the skin, eyes, and mucous membranes.

Acetaldehyde is a probable human carcinogen. The health effects for acetaldehyde are irritation of the eyes, mucous membranes, skin, and upper respiratory tract, and it is a CNS depressant in humans. Chronic exposure can cause conjunctivitis, coughing, difficult breathing, and dermatitis. Chronic exposure may cause heart and kidney damage, embryotoxicity, and teratogenic effects. Acetaldehyde is a potential carcinogen in humans.

H. Summary of the Proposed Rule

A. Am I Subject to the Proposed Rule?

The proposed rule applies to you if you own or operate a stationary combustion turbine which is located at a major source of HAP emissions. A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

Section 112(n)(4) of the CAA requires that the aggregation of HAP for purposes of determining whether an oil and gas production facility is major or nonmajor be done only with respect to particular sites within the source and not on a total aggregated site basis. We incorporated the requirements of section 112(n)(4) of the CAA into our NESHAP for Oil and Natural Gas Production Facilities in subpart HH of part 63. As in subpart HH, we plan to aggregate HAP emissions for the purposes of determining a major HAP source for turbines only with respect to particular sites within an oil and gas production facility. The sites are called surface sites and may include a combination of any of the following equipment; glycol dehydrators, tanks which have potential for flash emissions, reciprocating internal combustion engines and combustion turbines.

Six subcategories have been defined within the stationary combustion turbine source category. While all stationary combustion turbines are subject to the proposed rule, each subcategory has distinct requirements. For example, existing diffusion flame combustion turbines and stationary combustion turbines with a rated peak power output of less than 1.0 megawatt (MW) (at International Organization for Standardization (ISO) standard day conditions) are not required to comply with emission limitations, recordkeeping or reporting requirements in the proposed rule. New or reconstructed stationary combustion turbines and existing lean premix stationary combustion turbines with a rated peak power output of 1.0 MW or more that either operate exclusively as an emergency stationary combustion turbine, as a limited use stationary combustion turbine, or as a stationary combustion turbine which burns landfill gas or digester gas as its primary fuel must only comply with the initial notification requirements. New or reconstructed diffusion flame or lean premix combustion turbines must comply with emission limitations, recordkeeping and reporting requirements in the proposed rule. The emission limitations for each subcategory are summarized in Table 2 of this preamble. You must determine your source's subcategory to determine which requirements apply to your source.

The proposed rule does not apply to stationary combustion turbines located at an area source of HAP emissions. An area source of HAP emissions is a plant site that does not emit any single HAP at a rate of 10 tons (9.07 megagrams) or greater per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or greater per year. To determine whether a facility is a major source, EPA will accept HAP emissions estimated using HAP emission factors listed in Table 1 of this preamble.

TABLE 1.—SUMMARY OF HAP EMISSION FACTORS

Turbine	Load	Fuel	HAP emission factor (lb/MMBtu)
Diffusion Flame	All loads	Natural Gas	0.0188
Diffusion Flame	>80%	Natural Gas	0.00479
Diffusion Flame	All loads	Diesel	0.00241
Diffusion Flame	>80%	Diesel	0.00233
Lean Premix	All loads	Natural Gas	0.000644
Lean Premix	>80%	Natural Gas	0.000212

If the turbine mainly operates at high load, the emission factor for greater than 80 percent load should be used. If the turbine operates on varying loads, the emission factor for all loads should be used. Emission factors were developed based on data from the combustion turbines emissions database. A copy of the emissions database may be downloaded off the internet at *http://www.epa.gov/ttn/atw/combust/turbine/turbpg.html*.

The proposed rule does not cover duct burners. They are part of the waste heat recovery unit in a combined cycle system. Waste heat recovery units, whether part of a cogeneration system or a combined cycle system, are steam generating units and are not covered by the proposed rule.

Finally, the proposed rule does not apply to stationary combustion engine test cells/stands since these facilities will be covered by another NESHAP, 40 CFR part 63, subpart PPPPP.

B. What Source Categories and Subcategories Are Affected by the Proposed Rule?

The proposed rule covers stationary combustion turbines. A stationary combustion turbine is any simple cycle stationary combustion turbine, any regenerative/recuperative cycle stationary combustion turbine, the combustion turbine portion of any stationary cogeneration cycle combustion system, or the combustion turbine portion of any stationary combined cycle steam/electric generating system. Stationary means that the combustion turbine is not self propelled or intended to be propelled while performing its function. The combustion turbine may, however, be mounted on a vehicle for portability or transportability.

Stationary combustion turbines have been divided into the following six subcategories: (1) Emergency stationary combustion turbines, (2) limited use stationary combustion turbines, (3) stationary combustion turbines which fire landfill gas or digester gas as their primary fuel, (4) stationary combustion turbines of less than 1 MW rated peak power output, (5) stationary diffusion flame combustion turbines, and (6) stationary lean premix combustion turbines.

An emergency stationary combustion turbine means any stationary combustion turbine that operates as a mechanical or electrical power source when the primary power source for a facility has been rendered inoperable by an emergency situation. One example is emergency power for critical networks or equipment when electric power from the normal source of power is interrupted. Another example is to pump water in the case of fire or flood. Peaking units at electric utilities and other types of stationary combustion turbines that typically operate at low capacity factors, but are not confined to operation in an emergency, are not emergency stationary combustion turbines.

A limited use stationary combustion turbine means any stationary combustion turbine that operates 50 hours or less per calendar year. One example is a stationary combustion turbine used to stabilize electrical power voltage and protect sensitive electronic equipment during periods of brown outs. Another example is periodic operation of an emergency stationary combustion turbine to check readiness or perform maintenance checks. Since electrical power has not been interrupted during these readiness and maintenance checks, the stationary combustion turbine is not operating as an emergency stationary combustion turbine.

We are specifically soliciting comments on creating a subcategory of limited use combustion turbines with a capacity utilization of 10 percent or less. This is further discussed in the "Solicitation of Comments and Public Participation" section of this preamble.

Stationary combustion turbines which fire landfill gas or digester gas as their primary fuel qualify as a separate subcategory because the types of control available for these turbines are limited.

Stationary combustion turbines of less than 1 MW rated peak power output were also identified as a subcategory. These small stationary combustion turbines are few in number and, to our knowledge, none use emission control technology to reduce HAP. Given the very small size of these stationary combustion turbines and the lack of application of HAP emission control technologies, we have concerns about the applicability of HAP emission control technology to them.

The stationary diffusion flame combustion turbines subcategory includes only diffusion flame combustion turbines that are greater than 1 MW rated peak power output and are not emergency stationary combustion turbines, limited use stationary combustion turbines, or stationary combustion turbines which fire landfill gas or digester gas as their primary fuel. In a diffusion flame combustor, the fuel and air are injected at the combustor and are mixed only by diffusion prior to ignition. Hazardous air pollutants emissions from these turbines can be significantly decreased with the addition of air pollution control equipment.

The stationary lean premix combustion turbines subcategory includes only lean premix combustion turbines that are greater than 1 MW rated peak power output and are not emergency stationary combustion turbines, limited use stationary combustion turbines, or stationary combustion turbines which fire landfill gas or digester gas as their primary fuel. Lean premix technology, introduced in the 1990's, was developed to reduce NO_X emissions without the use of add on controls. In a staged lean premix combustor, the air and fuel are thoroughly mixed to form a lean mixture before delivery to the combustor. The staged entry limits the flame temperature and the residence time at the peak flame temperature. Lean premix combustors emit lower levels of NO_X, carbon monoxide (CO), formaldehyde and other HAP than diffusion flame combustion turbines.

C. What Are the Primary Sources of HAP Emissions and What Are the Emissions?

The sources of emissions are the exhaust gases from combustion of gaseous and liquid fuels in a stationary combustion turbine. Hazardous air pollutants that are present in the exhaust gases from stationary combustion turbines include formaldehyde, toluene, benzene, and acetaldehyde.

D. What Are the Emission Limitations and Operating Limitations?

As the owner or operator of an existing lean premix stationary combustion turbine or a new or reconstructed stationary combustion turbine located at a major source of HAP emissions, you must comply with one of the following two emission limitations by the effective date of the standard (or upon startup if you start up your stationary combustion turbine after the effective date of the standard): (1) Reduce CO emissions in the exhaust from the new or reconstructed stationary combustion turbine by 95 percent or more, if you use an oxidation catalyst emission control device; or (2) reduce the concentration of formaldehyde in the exhaust from the new or reconstructed stationary combustion turbine to 43 parts per billion by volume or less, dry basis (ppbvd), at 15 percent oxygen, if you use means other than an oxidation catalyst emission control device.

There are no operating limitations if you choose to comply with the emission limitation for CO emission reduction. If you comply with the emission limitation for formaldehyde emissions and your stationary combustion turbine is not lean premix or diffusion flame, you must comply with any additional operating limitations approved by the Administrator, as discussed later.

Finally, as mentioned earlier, stationary combustion turbines with a rated peak power output of less than 1.0 MW, emergency stationary combustion turbines, limited use stationary combustion turbines, and stationary combustion turbines which burn landfill gas or digester gas as their primary fuel, are not required to comply with these emission limitations. In addition, existing diffusion flame stationary combustion turbines, are not required to comply with these emission limitations. The emission limitations for each subcategory are summarized in Table 2 of this preamble.

TABLE 2.—SUMMARY OF EMISSION LIMITATIONS

Subcategory	Emission limitation	Comment
Existing Diffusion Flame Stationary Combustion Turbine ≥ 1.0 MW.	None	No requirements.
Existing Lean Premix Stationary Combustion Turbine ≥ 1.0 MW. or New/Reconstructed Stationary Combustion Turbine ≥ 1.0 MW.	(1) Reduce CO emissions by 95% or more, if you use an oxidation catalyst emission control device. or (2) Reduce the concentration of formaldehyde to 43 ppbvd @ 15% O_2, if you use means other than an oxidation catalyst emission control device.	
Emergency Stationary Combustion Turbine or Limited Use Stationary Combustion Turbine or Landfill/Digester Gas Stationary Combustion Turbine.	No emission limitations	Initial notification requirements only.
≤ 1 MW Stationary Combustion Turbine	None	No requirements.

E. What Are the Initial Compliance Requirements?

The initial compliance requirements for a stationary combustion turbine vary depending on the subcategory of your combustion turbine and your control strategy.

If you operate a new or reconstructed stationary combustion turbine and comply with the emission limitation for CO emission reduction, you must install a continuous emission monitoring system (CEMS) to measure CO and either carbon dioxide or oxygen simultaneously at the inlet and outlet of the oxidation catalyst emission control device. To demonstrate initial compliance, you must conduct an initial performance evaluation using Performance Specifications 3 and 4A of 40 CFR part 60, appendix B. You must demonstrate that the reduction of CO emissions is at least 95 percent using the first 4-hour average after a successful performance evaluation. Your inlet and outlet measurements must be on a dry basis and corrected to 15 percent oxygen or equivalent carbon dioxide content. You must also conduct an annual relative accuracy test audit (RATA) of the CEMS using Performance Specifications 3 and 4A of 40 CFR part 60, appendix B.

If you operate a new or reconstructed combustion turbine or an existing lean premix combustion turbine and comply with the emission limitation for formaldehyde emissions, you must conduct an initial performance test using Test Method 320 of 40 CFR part 63, appendix A; ARB Method 430 of California Environmental Protection Agency, Air Resources Board, 2020 L Street, Sacramento, CA 95812; or EPA Solid Waste (SW)–846 Method 0011 to demonstrate that the outlet concentration of formaldehyde is 43 ppbvd or less (corrected to 15 percent oxygen). Natural gas-fired sources may also use the proposed Test Method 323 of 40 CFR part 63, appendix A, to measure formaldehyde. To correct to 15 percent oxygen, dry basis, you must measure oxygen using Method 3A or 3B of 40 CFR part 60, appendix A, and moisture using Method 4 of 40 CFR part 60, appendix A.

As stated previously, if you choose to comply with the emission limitation for formaldehyde emissions and your stationary combustion turbine is not lean premix or diffusion flame, you must also petition the Administrator for approval of operating limitations or approval of no operating limitations.

If you petition the Administrator for approval of operating limitations, your petition must include the following: (1) Identification of the specific parameters

you propose to use as operating limitations; (2) a discussion of the relationship between these parameters and HAP emissions, identifying how HAP emissions change with changes in these parameters and how limitations on these parameters will serve to limit HAP emissions; (3) a discussion of how you will establish the upper and/or lower values for these parameters which will establish the limits on these parameters in the operating limitations; (4) a discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments; and (5) a discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

If you petition the Administrator for approval of no operating limitations, your petition must include the following: (1) Identification of the parameters associated with operation of the stationary combustion turbine and any emission control device which could change intentionally (*e.g.*, operator adjustment, automatic controller adjustment, etc.) or unintentionally (*e.g.*, wear and tear, error, etc.) on a routine basis or over time; (2) a discussion of the relationship, if any, between changes in these parameters and changes in HAP emissions; (3) for those parameters with a relationship to HAP emissions, a discussion of whether establishing limitations on these parameters would serve to limit HAP emissions; (4) for those parameters with a relationship to HAP emissions, a discussion of how you could establish upper and/or lower values for these parameters which would establish limits on these parameters in operating limitations; (5) for those parameters with a relationship to HAP emissions, a discussion identifying the methods you could use to measure these parameters and the instruments you could use to monitor them, as well as the relative accuracy and precision of these methods and instruments; (6) for these parameters, a discussion identifying the frequency and methods for recalibrating the instruments you could use to monitor them; and (7) a discussion of why, from your point of view, it is infeasible or unreasonable to adopt these parameters as operating limitations.

F. What Are the Continuous Compliance Provisions?

Several general continuous compliance requirements apply to stationary combustion turbines required to comply with the emission limitations. You are required to comply with the emission limitations and the operating limitations (if applicable) at all times, except during startup, shutdown, and malfunction of your stationary combustion turbine. You must also operate and maintain your stationary combustion turbine, air pollution control equipment, and monitoring equipment according to good air pollution control practices at all times, including startup, shutdown, and malfunction. You must conduct all monitoring at all times that the stationary combustion turbine is operating, except during periods of malfunction of the monitoring equipment or necessary repairs and quality assurance or control activities, such as calibration checks.

To demonstrate continuous compliance with the CO emission reduction limitation, you must calibrate and operate your CEMS according to the requirements in 40 CFR 63.8. You must continuously monitor and record the CO concentration before and after the oxidation catalyst emission control device and calculate the percent reduction of CO emissions hourly. The reduction in CO emissions must be 95 percent or more, based on a rolling 4-hour average, averaged every hour.

To demonstrate continuous compliance with the operating limitations (if applicable), you must continuously monitor the values of any parameters which have been approved by the Administrator as operating limitations.

The proposed rule does not require your lean premix combustion turbine to demonstrate continuous compliance. It is assumed that if you meet the low NO_X emission levels required by your federally enforceable permit (or guaranteed by the turbine manufacturer if there is no permit level), your turbine is in compliance with the 43 ppbvd formaldehyde emission limit.

G. What Monitoring and Testing Methods Are Available to Measure These Low Concentrations of CO and Formaldehyde?

Continuous emissions monitoring systems are available which can accurately measure CO emission reduction at the low concentrations found in the combustion turbine exhaust following an oxidation catalyst emission control device. Our performance specification for CO CEMS (PS–4A) of 40 CFR part 60, appendix A, however, has not been updated recently and does not reflect the performance capabilities of these systems. We are currently undertaking a review of PS–4A of 40 CFR part 60, appendix A, for CO CEMS and, in conjunction with this effort, we solicit comments on the performance capabilities of CO CEMS and their ability to accurately measure the low concentrations of CO experienced in the exhaust of a combustion turbine following an oxidation catalyst emission control device.

Similarly, our Fourier Transform Infrared (FTIR) test method, Method 320 of 40 CFR part 63, appendix A, as well as EPA SW–846 Method 0011 and CARB Method 430, can be used to accurately measure formaldehyde concentrations in the exhaust of a combustion turbine as low as 43 ppbvd. As these test methods are currently written, however, they do not provide for this level of accuracy. These methods must be used with some revisions to achieve such accuracy.

As a result, we are currently undertaking a review of our FTIR method, Method 320 of 40 CFR part 63, appendix A, to incorporate revisions to ensure it can be used to accurately measure formaldehyde concentrations as low as 43 ppbvd in the exhaust from a combustion turbine. In conjunction with this effort, we solicit comments on revisions to Method 320 of 40 CFR part 63, appendix A, to ensure accurate measurement of such low concentrations of formaldehyde.

We are also proposing to add Method 323 of 40 CFR part 63, appendix A. Method 323 is for the measurement of formaldehyde emissions from natural gas-fired stationary sources using acetyl acetone derivitization. We solicit comments on the use of this method to measure low concentrations of formaldehyde.

H. What Are the Notification, Recordkeeping and Reporting Requirements?

You must submit all of the applicable notifications as listed in the NESHAP General Provisions (40 CFR part 63, subpart A), including an initial notification, notification of performance test or evaluation, and a notification of compliance, for each stationary combustion turbine which must comply with the emission limitations. If your new or reconstructed source is located at a major source, has greater than 1 MW rated peak power output, and is an emergency stationary combustion turbine, limited use stationary combustion turbine or a combustion turbine which fires landfill or digester gas as its primary fuel, you must submit only an initial notification.

For each combustion turbine subject to the emission limitations, you must

record all of the data necessary to determine if you are in compliance with the emission limitations. Your records must be in a form suitable and readily available for review. You must also keep each record for 5 years following the date of each occurrence, measurement, maintenance, report, or record. Records must remain on site for at least 2 years and then can be maintained off site for the remaining 3 years.

You must submit a compliance report semiannually for each new or reconstructed stationary combustion turbine that must comply with the CO emission reduction limitation. This report must contain the company name and address, a statement by a responsible official that the report is accurate, a statement of compliance, or documentation of any deviation from the requirements of the proposed rule during the reporting period.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category and Any Subcategories?

Stationary combustion turbines can be major sources of HAP emissions and, as a result, we listed them as a major source category for regulatory development under section 112 of the CAA. Section 112 of the CAA allows us to establish subcategories within a source category for the purpose of regulation. Consequently, we evaluated several criteria associated with stationary combustion turbines which might serve as potential subcategories.

We identified six subcategories of stationary combustion turbines located at major sources: (1) Emergency stationary combustion turbines, (2) limited use stationary combustion turbines, (3) stationary combustion turbines which fire landfill gas or digester gas as their primary fuel, (4) stationary combustion turbines of less than 1 MW rated peak power output, (5) stationary diffusion flame combustion turbines, and (6) stationary lean premix combustion turbines.

Stationary combustion turbines can be classified as either diffusion flame or lean premix. We examined formaldehyde test data for both diffusion flame and lean premix stationary combustion turbines and observed that uncontrolled formaldehyde emissions for stationary lean premix combustion turbines are significantly lower than those of stationary diffusion flame combustion turbines. An analysis of the formaldehyde emissions data shows that uncontrolled formaldehyde emissions from stationary lean premix combustion turbines are comparable to controlled formaldehyde emissions from stationary diffusion flame combustion turbines controlled with oxidation catalyst systems. Due to the difference in the two technologies, we decided to establish subcategories for diffusion flame and lean premix stationary combustion turbines.

We identified emergency stationary combustion turbines as a subcategory. Emergency stationary combustion turbines operate only in emergencies, such as a loss of power provided by another source. These types of stationary combustion turbines operate infrequently and, when called upon to operate, must respond without failure and without lengthy periods of startup. These conditions limit the applicability of HAP emission control technology to emergency stationary combustion turbines.

Limited use stationary combustion turbines were also identified as a subcategory. These types of stationary combustion turbines are operated 50 hours per calendar year or less. They are used primarily to stabilize electrical power voltage levels during periods of brown outs to prevent damage to sensitive electronic equipment. As with emergency stationary combustion turbines, they are operated infrequently and, when called upon to operate, must respond without failure and without lengthy periods of startup. These conditions limit the applicability of HAP emission control technology.

Similarly, stationary combustion turbines which fire landfill gas or digester gas as their primary fuel were identified as a subcategory. Landfill and digester gases contain a family of chemicals referred to as siloxanes, which limit the application of HAP emission control technology.

Stationary combustion turbines of less than 1 MW rated peak power output were also identified as a subcategory. We believe these small stationary combustion turbines are few in number and, to our knowledge, none use emission control technology to reduce HAP. Given the very small size of these stationary combustion turbines and the lack of application of HAP emission control technologies, we have concerns about the applicability of HAP emission control technology to them.

B. What About Stationary Combustion Turbines Located at Area Sources?

The proposed rule does not apply to stationary combustion turbines located at an area source of HAP emissions. In developing our Urban Air Toxics Strategy, we identified area sources we believe warrant regulation to protect the environment and the public health and satisfy the statutory requirements in section 112 of the CAA pertaining to area sources. Stationary combustion turbines located at area sources were not included on that list. As a result, the proposed rule does not apply to these stationary combustion turbines.

C. What Is the Affected Source?

The proposed rule applies to any stationary combustion turbine located at a major source. Consequently, stationary combustion turbines located at major sources of HAP emissions are the affected source under the proposed rule.

D. How Did We Determine the Basis and Level of the Proposed Emission Limitations for Existing Sources?

As established in section 112 of the CAA, the MACT standards must be no less stringent than the MACT floor. The MACT floor for existing sources is the average emission limitation achieved by the best performing 12 percent of existing sources.

1. MACT Floor for Existing Diffusion Flame Combustion Turbines

To determine the MACT floor for existing stationary diffusion flame combustion turbines, we primarily consulted two databases: an inventory database and an emissions database. The MACT floors and MACT for stationary diffusion flame combustion turbines located at major sources were developed through the analyses of these databases.

The inventory database provides population information on stationary combustion turbines in the United States (U.S.) and was constructed in order to support the proposed rulemaking. Data in the inventory database are based on information from available databases, such as the Aerometric Information Retrieval System (AIRS), the Ozone Transport and Assessment Group (OTAG), and State and local agencies' databases. The first version of the database was released in 1997. Subsequent versions have been released reflecting additional or updated data. The most recent release of the database is version 4, released in November 1998.

The inventory database contains information on approximately 4,800 stationary combustion turbines. The current stationary combustion turbine population is estimated to be about 8,000 turbines. Therefore, the inventory database represents about 60 percent of the stationary combustion turbines in the U.S. At least 90 percent of those turbines are assumed to be diffusion flame combustion turbines, based on

conversations with turbine manufacturers.

The information contained in the inventory database is believed to be representative of stationary combustion turbines primarily because of its comprehensiveness. The database includes both small and large stationary combustion turbines in different user segments. Forty-eight percent are "industrial," 39 percent are "utility," and 13 percent are "pipeline." Note that independent power producers (IPP) are included in the utility and industrial segments.

We examined the inventory database for information on HAP emission control technology. There were no turbines controlled with oxidation catalyst systems in the inventory database so we used information supplied by catalyst vendors. There are about 200 oxidation catalyst systems installed in the U.S. The only control technology currently proven to reduce HAP emissions from stationary diffusion flame combustion turbines is an oxidation catalyst emission control device, such as a CO oxidation catalyst. These control devices are used to reduce CO emissions and are currently installed on several stationary combustion turbines. However, less than 3 percent of existing stationary diffusion flame combustion turbines in the U.S., based on information in our inventory database and information from catalyst vendors, are equipped with oxidation catalyst emission control devices; thus, the average of the best performing 12 percent of existing diffusion flame combustion turbines is no HAP emissions reductions.

We also investigated the use of good operating practices for stationary diffusion flame combustion turbines to determine if the use of such practices might identify a MACT floor. There are no references in the inventory database to good operating practices for any stationary combustion turbines.

Most stationary diffusion flame combustion turbines will not operate unless preset conditions established by the manufacturer are met. Stationary diffusion flame combustion turbines, by manufacturer design, permit little operator involvement and there are no operating parameters, such as air/fuel ratio, for the operator to adjust. We concluded, therefore, that there are no specific good operating practices which could reduce HAP emissions or which could serve to identify a MACT floor.

We also investigated switching fuels in existing diffusion flame combustion turbines using fuels which result in higher HAP emissions with fuels that result in lower HAP emissions. When we compared the HAP emissions of the various fuels from combustion turbines using the April 2000 revision of Chapter 3.1 (Stationary Gas Turbines) of "Compilation of Air Pollutant Emission Factors AP–42, Fifth Edition, Volume 1: Stationary Point and Area Sources," we could not find a fuel that was clearly less HAP emitting. The summation of emission factors for various HAP when using natural gas (usually considered the cleanest fuel), diesel fuel, landfill, or digester gas were comparable based on the emission factor information that is available. Therefore, we could not identify a MACT floor based on use of a particular fuel.

Another approach we investigated to identify a MACT floor was to review the requirements in existing State regulations and permits. No State regulations exist for HAP emission limits for stationary combustion turbines. Only one State permit limitation for a single HAP (benzene) was identified. Therefore, we were unable to use State regulations or permits to identify a MACT floor.

As a result, we concluded the MACT floor for existing stationary diffusion flame combustion turbines is no emissions reductions.

2. MACT for Existing Diffusion Flame Combustion Turbines

To determine MACT for existing stationary diffusion flame combustion turbines, we evaluated regulatory alternatives more stringent than the MACT floor. For existing diffusion flame sources, in terms of an emission control technology which could serve as the basis for MACT, we considered two beyond-the-floor options. The first option considered was the use of an oxidation catalyst emission control device. However, we concluded that the incremental cost per ton of HAP removed for this option is excessive.

The incremental cost per ton is the difference in annual costs between this regulatory option and the MACT floor divided by the difference in annual emissions. It is often used as a measure of the economic feasibility of applying emission control technology to a source.

We also considered the nonair health, environmental, and energy impacts of an oxidation catalyst system, as discussed previously in this preamble, and concluded that there would be only a small energy impact and no nonair health or environmental impacts. However, as stated above, we did not adopt this regulatory option due to cost considerations.

The second option considered was to switch fuels in existing turbines using fuels which result in higher HAP emissions with fuels that result in lower HAP emissions. As stated above, we could not find a fuel that was clearly less HAP emitting. Therefore, we could find no basis to further consider fuel switching as a beyond-the-floor HAP emissions reductions option. We were unable to identify any other beyond-the-floor regulatory option to consider. As discussed above, we are not aware of any specific good operating practices for diffusion flame turbines that could reduce HAP emissions. As a result, we concluded that MACT for existing diffusion flame combustion turbines is the MACT floor (*i.e.*, no emissions reductions).

3. MACT Floor for Existing Lean Premix Combustion Turbines

There are an estimated 800 lean premix combustion turbines in the U.S., of which 160 are estimated to be major sources. For existing lean premix combustion turbines, we must establish a MACT floor which represents the average emission limitation achieved by the best performing 12 percent of the existing sources for which we have emissions information. We have emissions information on five existing lean premix combustion turbines. Therefore, we plan to establish the MACT floor based on the performance of the best performing lean premix combustion turbine. (This best performing turbine represents the top 20 percent of the existing turbines for which we have emissions information and will also be used to establish the MACT floor for new lean premix combustion turbines.) The best performing existing lean premix combustion turbine achieved a level of formaldehyde concentration emission which averaged 6.1 parts per billion (ppb) formaldehyde at 15 percent oxygen (O2). This is the best performer out of five lean premix combustion turbine tests for which we have data. The three-run average formaldehyde emissions from these five turbines ranged from 6.1 to 41 ppb formaldehyde. The formaldehyde concentrations for the individual runs for the best performing turbine were 5.1 ppb, 5.7 ppb, and 7.7 ppb.

The test method that was used to measure the emissions from the best performing turbine was California Air Resources Board (CARB) Method 430. We do not believe that the MACT emission limit should be set lower than the limit of detection of the method. If it were, we could not determine whether a source with test results at the limit of detection was actually in compliance with the MACT emission limit. For the test runs on the best

performing turbine, we determined that the method had a minimum detection level (MDL) of between 2 and 3 ppb formaldehyde. We expect the MDL to vary somewhat in actual practice and, thus, do not assume that the MDL would be the same if the method were run by another person or at another laboratory. We have no information regarding the distribution of the CARB Method 430 MDL actually achieved by other testers. We want to ensure that the MACT floor reflects the variability in the limit of detection determined by different, competent testers throughout the U.S. using the same method, *i.e.*, CARB Method 430. We only have one test, the test conducted on the best performing turbine, to try to determine a limit of detection for this method, and this is not enough information to determine the variability in the limit of detection among different testers. If we had sufficient information on the limit of detection determined by different competent testers using Method 430, under similar conditions, we would analyze the results to determine the average limit of detection and its standard deviation. To establish a limit of detection that would be achievable by approximately 99 percent of all the testers, we would add three times the standard deviation to the average limit of detection. Since we do not have this information, we can attempt to estimate it. We believe that it is reasonable to assume that the standard deviation of the limit of detection is no greater than the single estimate of the limit that we have. If we multiply the single value of the limit of detection by three and add it to itself, the result is an estimate of the upper bound for the limit of detection that is four times the single measured value that we have. Based on the considerations above, the lowest MACT floor that we believe would take into account the variability in the MDL is 12 ppb. This level provides a safety factor of four to account for uncertainty in whether testers could routinely achieve a limit of detection of 2 to 3 ppb formaldehyde.

The combustion turbine MACT would be a national standard, and therefore, the MACT limit should reflect variations in the performance of the best performing turbine that could occur. There are two major sources of variability that together produce the total variability observed in the emissions sample results. These sources of variability are: the actual variability in the emissions, and the variability associated with procedures for sampling and analyzing the emissions samples. We believe there is substantial basis to conclude that sources of variability unrelated to turbine performance account for the differences in formaldehyde emissions concentrations between the five turbines. We discuss these sources of variability in more detail below.

When we began investigating the possible sources of the actual (non-sampling, non-analytical) variability in lean premix combustion turbine emissions, we realized that turbine performance was only one of several possible sources of that variability, and that turbine emissions also could vary widely due to environmental and operational factors that are unrelated to turbine performance and that are beyond an operator's control.

Specifically, formaldehyde concentrations are expected to vary temporally (*e.g.*, seasonally) and spatially (*e.g.*, geographically) due to environmental and operational factors such as temperature, humidity, atmospheric pressure, fuel quality, and the concentrations of formaldehyde present in the ambient air. It is our judgement that if the turbines were tested at various times during the year and at various locations throughout the U.S., the concentration of formaldehyde emitted by a given turbine could vary by a factor of seven or more, solely due to geographic and temporal differences in temperature, humidity, atmospheric pressure, fuel quality, and formaldehyde concentration in the ambient air. This factor is based not only on the short term variability of the data for the turbine with the lowest reported formaldehyde emissions, but also on the test data from all five turbines.

Variations in temperature, humidity, atmospheric pressure, and fuel quality are known to have resulted in fluctuations in criteria pollutant stack concentrations (*e.g.*, NO_X, VOC, and CO), and we anticipate that they also would cause variations in formaldehyde concentrations in the combustion turbine stack. An owner or operator cannot control the variability of environmental parameters such as ambient temperature, humidity, or atmospheric pressure. With regard to fuel quality, an owner or operator cannot control the quality of the natural gas delivered through a pipeline, or the nature and concentration of natural gas additives or contaminants. The five turbines for which we have formaldehyde emissions data operate at four locations in the Western U.S. that are at considerably different altitudes. Moreover, each of the five turbines was sampled over only a 3-hour period, and the five sampling events occurred in four different months of the year: April, May, June (two turbines), and December. Therefore, we believe that the variability in formaldehyde concentration of the turbine emissions will be greater than the variability reflected in the 3-hour sampling period.

Furthermore, we believe that the variability observed in the available turbine emissions data may reflect the variability of formaldehyde concentrations in ambient air—much of which is due to natural causes. The average concentration of formaldehyde in ambient air varies between 2 and 25 ppb within the U.S., with a U.S. annual average urban concentration of 5.17 ug/m^3 (4.2 ppb).[1] The difference between hourly maximum and minimum formaldehyde concentrations across the U.S. would be even greater than the average annual 23 ppb range in U.S. formaldehyde concentrations. We do not have information that specifically shows that the ambient concentration of formaldehyde affects the stack outlet concentration of formaldehyde. We expect that some formaldehyde, especially the portion that goes through the combustors, would be destroyed. However, about two-thirds of the inlet combustion turbine air bypasses the combustors. We are not sure that all of the ambient formaldehyde that enters with the combustion air is destroyed and, therefore, ambient formaldehyde may affect the formaldehyde concentration in the outlet stack of the combustion turbine. For example, if half of the ambient formaldehyde passes through to the outlet stack, the annual average contribution of ambient formaldehyde to the stack formaldehyde concentration may be in the 10 ppb range in some parts of the U.S. This means that hourly formaldehyde emissions from the outlet stack of a given turbine could differ by over 10 ppb based solely on the region of the country where the turbine is located.

Sampling variability is a result of the fact that it is impossible to collect two samples in exactly the same way. Sampling variability occurs both when an individual intends to collect replicate samples of the same emissions stream, and when sampling is conducted by different personnel using different procedures and different equipment under different physical conditions. If the same sampling personnel collect a suite of samples using the same equipment and procedures, the variability of the sampling results will be reduced. However, a given individual or a given piece of equipment may impart bias, a

[1] 1998 National Air Quality and Emission Trends Report, Table 5–2 and Figure 5–1a.

systematic error, into the sampling procedure. In the context of an aggregate of data collected by different personnel using different procedures and different equipment under different physical conditions, this bias could have the effect of increasing the variability of the data. The emissions sample results for the five turbines evaluated for the proposed rule were provided by state agencies, and samples were not collected by the same sampling personnel, or even personnel acting in coordination with one another and following the same sampling plan and methodologies, increasing the non-systematic sampling-induced variability across the five sets of turbine samples and also increasing the chance that any bias imposed on each set of turbine samples might also increase the variability of the results. Moreover, two different sampling and analysis procedures were used to collect the samples, EPA Method 0011 and CARB Method 430, likely introducing additional variability into the sampling procedure. For example, EPA generally recognizes that the quality assurance/quality control (QA/QC) protocols for CARB Method 430 are more rigorous than those for EPA Method 0011. Similar to sampling variability, variability occurs when samples are analyzed at the same time in the same laboratory (*e.g.*, variability is seen in the results of a laboratory's repeated analysis of the same sample) and occurs when samples are analyzed by different laboratories. For example, analytic variability may result from the use of different analytical procedures, different equipment, different laboratory environments, different reagents, different sampling handling procedures, and different analysts. The emissions samples evaluated for the proposed rule were analyzed in different laboratories, by different analysts, and using two different analytical procedures. The EPA suspects that sampling and analytic variability may be a significant source of the variability of formaldehyde emissions results reported for the five tested turbines, and that if stricter QA/QC protocols were followed, the results for the five turbines might have been closer in magnitude.

One measure of overall variability (*i.e.*, variability from all sources—environmental, operational, test method, etc.) is the variability of formaldehyde concentration that the best performing turbine demonstrated during the three test runs. The formaldehyde concentration varied between 5.1 and 7.7 ppb formaldehyde, a factor of 1.5 during only a 3-hour period. Another measure of formaldehyde concentration variability is the variability in formaldehyde concentration from the five lean premix combustion turbines tested. As stated previously, the average formaldehyde concentration varied between 6.1 and 41 ppb (a factor of seven). We reviewed the emission test reports and could not find any specific reason to account for the variability. These tests were properly conducted, and the lean premix combustion turbines were operating properly. Therefore, we believe that at least some portion, and possibly all, of that variability is due to factors other than turbine performance. As a result, we believe that some variability in formaldehyde concentration of the best performing turbine will occur beyond the variability reflected by the three test runs. It is our judgement that if the best performing turbine were tested at various times during the year and at various locations throughout the U.S., the overall formaldehyde concentration of the best performing turbine could vary by a factor of seven or more. This factor is based on the short term variability of the test data from the best performing turbine and also on the test data from the five turbine tests mentioned previously. Therefore, we believe that 43 ppbvd formaldehyde is a reasonable approximation of the performance of the best performing turbine, taking into account all of the types of variability discussed above. As a result, we are proposing an emission limit of 43 ppbvd formaldehyde as the MACT floor for existing lean premix combustion turbines.

The lean premix combustor turbine technology varies to some extent regarding its uncontrolled emissions of NO_X and CO and possibly HAP. The data that we have obtained for the five source tests were based primarily on lean premix combustor turbines that can achieve lower than 15 ppm NO_X and less than 5 ppm CO (at full load) at 15 percent O_2 without add-on controls. Lean premix combustor turbines which have these characteristics are the types of lean premix combustor turbines that we believe will most likely achieve the 43 ppb formaldehyde emission limit. Other types of lean premix combustor turbines which achieve 45 ppm NO_X and as high as 200 ppm CO at 15 percent O_2 may not achieve the 43 ppb formaldehyde emission limit. Typically, the lean premix combustor turbines in the latter category are smaller aeroderivative turbines.

Therefore, we realize that not all lean premix combustor turbines will be able to achieve the 43 ppb formaldehyde emission limitation and some will have to install add-on controls. Most new turbines projected to be installed at power plants are expected to be able to achieve the 43 ppb emission limitation.

We request public comment on the proposed MACT floor level for existing lean premix combustion turbines. We are particularly interested in obtaining information on the annual/seasonal and geographic variability in formaldehyde emissions that occur for lean premix combustion turbines. Formaldehyde emission test reports that were conducted over time for the same lean premix combustion turbine would be especially helpful. We are also soliciting information regarding the contribution of ambient formaldehyde to the variability of outlet stack concentrations of formaldehyde.

4. MACT for Existing Lean Premix Combustion Turbines

To determine MACT for existing stationary lean premix combustion turbines, we evaluated regulatory alternatives more stringent than the MACT floor. For existing lean premix turbines, in terms of an emission control technology which could serve as the basis for MACT, we considered the use of an oxidation catalyst emission control device. According to catalyst vendors, oxidation catalyst emission control is being used on some existing lean premix combustion turbines, however, we lack specific data regarding the performance of turbines with such controls. The concentration of formaldehyde in the exhaust stream from lean premix combustion turbines is already significantly lower than the concentration of formaldehyde in the exhaust stream from diffusion flame combustion turbines, and any reduction achieved by oxidation catalyst control would be difficult to measure. Thus, we concluded that the incremental cost per ton of HAP removed for that option is excessive. We also considered the use of good operating practices to reduce HAP emissions, but determined that we could not identify specific good operating practices that would reduce HAP emissions. Similarly, we also considered requiring the use of a particular fuel to reduce HAP emissions but concluded that fuel switching would not result in further HAP emissions reductions. As a result, we are proposing to set MACT for existing lean premix combustion turbines at the MACT floor (*i.e.*, 43 ppbvd formaldehyde).

E. How Did We Determine the Basis and Level of the Proposed Emission Limitations and Operating Limitations for New Sources?

For new sources, the MACT floor is defined as the emission control that is achieved in practice by the best controlled similar source.

1. MACT Floor for New Diffusion Flame Combustion Turbines

To identify the MACT floor for new stationary combustion turbines located at major sources, we consulted the inventory database and oxidation catalyst vendor information. As mentioned earlier, oxidation catalyst emission control devices are currently installed on about 3 percent of stationary diffusion flame combustion turbines. This 3 percent represents about 200 stationary combustion turbines. We also considered whether the best controlled diffusion flame combustion turbine might be using good operating practices or a particular fuel that would reduce HAP emissions further and concluded, as we had previously in this preamble for existing sources, that we could not identify specific good operating practices that would reduce HAP emissions, and that fuel switching would not result in further HAP emissions reductions. We concluded, therefore, that the level of HAP emission control achieved by the use of oxidation catalyst emission control devices is the MACT floor for new stationary combustion turbines.

After establishing this basis for the MACT floor, we determined the level of performance based on the data available in the emissions database. The emissions database, which is a compilation of available HAP emission test reports, was created for the purpose of supporting rulemaking for the proposed rule. The majority of HAP emission test reports collected were conducted in California as part of the AB 2588 (Air Toxics "Hot Spots" Information Assessment Act of 1987) program. Complete copies of HAP emission test reports for stationary combustion turbines were gathered from all air districts in California and from other sources, such as the EPA Source Test Information Retrieval System (STIRS). Other States, including Washington, Texas, Pennsylvania, and New Jersey, and trade associations such as the Western States Petroleum Association (WSPA) and the Gas Research Institute (GRI) were also contacted for available HAP emission test reports.

We then examined the emission control efficiency achieved by an oxidation catalyst emission control device on a stationary combustion turbine. We concluded that CO emission reductions are a good surrogate for HAP emissions reductions for oxidation catalyst emission control devices.

This conclusion that CO emission reductions are a good surrogate for HAP emissions reductions achieved through the use of oxidation catalyst emission control devices is also supported by data we have collected from the use of oxidation catalyst emission control devices on stationary reciprocating internal combustion engines (RICE). These data from stationary RICE also show a direct relationship between CO emission reductions and HAP emissions reductions. When oxidation catalyst emission control devices are used to reduce CO emissions, they will reduce HAP emissions.

The emissions database contains several emission test reports that measured HAP and CO emissions from stationary combustion turbines, but no emission test reports that measure the emission reduction efficiency of an oxidation catalyst emission control device (measuring CO and HAP emissions both before and after the control device). However, we obtained information from a catalyst vendor for two tests for one turbine. The results of those tests show that a CO reduction of 95 to 98 percent was achieved using an oxidation catalyst control system. We reviewed the test report for the data to assure that the turbine was operated correctly and that there was no turbine or control device malfunction; we found no discrepancy. In addition to emissions testing data, we reviewed design data from oxidation catalyst vendors for the systems installed in the U.S. The typical emission reduction for turbines that have been installed is 90 percent CO emission reduction, with a few systems that are designed to be 95 percent or greater.

We reviewed other factors such as operator training in addition to the control technology itself that could potentially result in better emission reduction, but we found no effect of those factors on the control efficiency. Based on the conclusions and data, we believe that 95 percent represents the level of control that can be achieved by the best controlled similar source. As a result, we concluded that the level of performance associated with the MACT floor (*i.e.*, use of an oxidation catalyst emission control device) is an emission reduction efficiency of 95 percent or more for CO. The MACT floor for new stationary diffusion flame combustion turbines is, therefore, a CO emission reduction efficiency of 95 percent or more, using an oxidation catalyst control system.

2. MACT for New Diffusion Flame Combustion Turbines

We were unable to identify any beyond-the-floor regulatory alternatives for new stationary combustion turbines. We know of no emission control technology currently available which can reduce HAP emissions to levels lower than that achieved through the use of oxidation catalyst emission control devices. Similarly, we know of no work practice that could further reduce HAP emissions. In addition, fuel switching will not result in further reductions of HAP emissions. We concluded, therefore, that MACT for new diffusion flame stationary combustion turbines is equivalent to the MACT floor. It should be noted that the majority of new combustion turbines are expected to be lean premix combustion turbines based on the significantly reduced emissions of NO_X, CO, and formaldehyde. We estimate that less than 5 percent of new combustion turbines will be diffusion flame. Diesel-fired combustion turbines cannot be operated in the lean premix mode, and these turbines would have to install an oxidation catalyst system.

3. MACT Floor for New Lean Premix Combustion Turbines

To determine the MACT floor for new stationary lean premix combustion turbines, we based our analysis on the same emissions data for formaldehyde that we used for the existing MACT floor. The MACT floor for existing lean premix combustion turbines is based on the performance of the best performing lean premix combustion turbine; this same level of performance can, therefore, be used to determine the MACT floor for new lean premix combustion turbines. As discussed previously in the existing source MACT, we believe that 43 ppbvd formaldehyde represents the best performing turbine. The MACT floor for new lean premix combustion turbines is, therefore, an emission limit of 43 ppbvd formaldehyde.

4. MACT for New Lean Premix Combustion Turbines

To determine MACT for new stationary lean premix combustion turbines, we evaluated regulatory alternatives more stringent than the MACT floor. As with existing lean premix combustion turbines, we considered the use of an oxidation catalyst control system. However, although catalyst vendors have indicated that some existing lean

premix combustion turbines are using oxidation catalyst emission control, we lack specific data regarding the performance of turbines with such controls. The HAP concentration in the lean premix combustion turbine exhaust is very low and, therefore, would be difficult to measure if it were further reduced through the installation of an oxidation catalyst. Due to the low HAP levels, the cost per ton of HAP removed would be very high. We concluded, therefore, that MACT for new stationary lean premix combustion turbines is equivalent to the MACT floor.

5. MACT for Other Subcategories

Although the proposed rule would apply to all stationary combustion turbines located at major sources of HAP emissions, emergency stationary combustion turbines, limited use stationary combustion turbines, stationary combustion turbines which fire landfill gas or digester gas as their primary fuel, and stationary combustion turbines of less than 1 MW rated peak power output are not required to meet the emission limitations or operating limitations.

For each of the subcategories of stationary combustion turbines, as mentioned earlier, we have concerns about the applicability of emission control technology. For example, emergency stationary combustion turbines operate infrequently. In addition, when called upon to operate they must respond immediately without failure and without lengthy startup periods. This infrequent operation limits the applicability of HAP emission control technology.

Limited use stationary combustion turbines also operate infrequently. As with emergency stationary combustion turbines, it is this infrequent operation that limits the applicability of HAP emission control technology.

Landfill and digester gases contain a family of silicon based gases called siloxanes. Combustion of siloxanes forms compounds that can foul post-combustion catalysts, rendering catalysts inoperable within a very short time period. Pretreatment of exhaust gases to remove siloxanes was investigated. However, no pretreatment systems are in use and their long term effectiveness is unknown. We also considered fuel switching for this subcategory of turbines. Switching to a different fuel such as natural gas or diesel would potentially allow the turbine to apply an oxidation catalyst emission control device. However, fuel switching would defeat the purpose of using this type of fuel which would then either be allowed to escape uncontrolled or would be burned in a flare with no energy recovery. We believe that switching landfill or digester gas to another fuel is inappropriate and is an environmentally inferior option.

For stationary combustion turbines of less than 1 MW rated peak power output, we have concerns about the effectiveness of scaling down the oxidation catalyst emission control technology. Just as there are often unforeseen problems associated with scaling up a technology, there can be problems associated with scaling down a technology.

As a result, we identified subcategories for each of these types of stationary combustion turbines and investigated MACT floors and MACT for each subcategory. As expected, since we identified these types of stationary combustion turbines as separate subcategories based on concerns about the applicability of emission control technology, we found no stationary combustion turbines in these subcategories using any emission control technology to reduce HAP emissions. As discussed above, we are not aware of any work practices that might constitute a MACT floor, nor did we find that the use of a particular fuel results in HAP emissions reductions. The MACT floor, therefore, for each of these subcategories is no emissions reduction.

Despite our concerns with the applicability of emission control technology, we examined the cost per ton of HAP removed for these subcategories. Whether our concerns are warranted or not, we consider the incremental cost per ton of HAP removed excessive—primarily because of the very small reduction in HAP emissions that would result.

We also considered the nonair health, environmental, and energy impacts of an oxidation catalyst system, as discussed previously in this preamble, and concluded that there would be only a small energy impact and no nonair health or environmental impacts. However, as stated above, we did not adopt this regulatory option due to cost considerations and concerns about the applicability of this technology to these subcategories. We were not able to identify any other means of achieving HAP emissions reductions for these subcategories.

As a result, for all of these reasons, we conclude that MACT for these subcategories is the MACT floor (*i.e.*, no emissions reductions).

F. How Did We Select the Format of the Standard for New Diffusion Flame Combustion Turbines?

We are proposing two options for complying with the standard for new diffusion flame combustion turbines. You may reduce CO by 95 percent if you use an oxidation catalyst emission control device, or reduce the concentration of formaldehyde in the exhaust from the turbine to 43 ppb by volume or less, dry basis, at 15 percent oxygen.

We considered proposing an emission limitation for HAP, but are proposing a CO emission reduction limitation as a surrogate for a HAP emission limitation. We have decided to propose the use of the CO emission reduction limitation as a surrogate for the HAP emission limitation, because CO monitoring is currently being used by combustion turbine owners and operators, it is significantly easier and less expensive to measure and monitor CO than to measure and monitor each HAP, and because we believe that CO reduction is a good measure of performance of the oxidation catalyst emission control device. Monitoring equipment for CO is readily available, which is not the case for HAP monitoring equipment.

We are also proposing a percent reduction in CO emissions as the emission limitation, rather than a single value for CO emissions. The data upon which MACT are based show that while the level of CO emissions entering an oxidation catalyst emission control device may vary, the oxidation catalyst emission control device is able to maintain a CO emission reduction efficiency of 95 percent or more.

We are also proposing an alternative emission limitation for formaldehyde emissions. You may choose to comply with the emission limitation for CO emission reduction (if you use an oxidation catalyst emission control device) or you may choose to comply with the emission limitation for formaldehyde emission concentration (if you use some means other than an oxidation catalyst control device to reduce HAP emissions). We would like to promote the development and eventual use of alternative emission control technologies (including pollution prevention technologies) to reduce HAP emissions, and we believe an alternative emission limitation written in terms of formaldehyde emissions will serve to do so. We are soliciting information on HAP and CO emissions data from alternative emission control technologies during the comment period. We are particularly interested in obtaining test reports

where HAP and CO emissions reductions were measured with methods that we are recommending to be used to measure HAP in the proposed rule.

For the emission limitation, we propose to use formaldehyde as a surrogate for all HAP. Formaldehyde is the HAP emitted in the highest concentrations from stationary combustion turbines. In addition, the emission data show that HAP emission levels and formaldehyde emission levels are related, in the sense that when emissions of one are low, emissions of the other are low and vice versa. This leads us to conclude that emission control technologies which lead to reductions in formaldehyde emissions will lead to reductions in HAP emissions.

The emission limitation for formaldehyde is in units of parts per billion, and all measurements must be corrected to 15 percent oxygen, dry basis, to provide a common basis. A volume concentration was chosen for the emission limitation because it can be measured directly.

We based the alternative emission limitation on the ability of lean premix technology to reduce emissions to 43 ppbvd (at 15 percent oxygen). The reduction in formaldehyde emissions is approximately equivalent to that achieved when CO emissions are reduced by 95 percent through the use of an oxidation catalyst emission control device.

As discussed later, we consider the cost of formaldehyde CEMS excessive for the purpose of ensuring continuous compliance with this emission limitation for formaldehyde emissions. As a result, we selected stack emission testing to demonstrate compliance with the emission limitation.

G. How Did We Select the Initial Compliance Requirements?

The emissions tests which form the basis of the proposed rule were conducted using EPA or CARB test methods. The proposed rule requires the use of these EPA or CARB test methods to determine compliance. This ensures that the same procedures that were used to obtain the emission data upon which the emission limitations are based are used for compliance testing. By using the same test methods, we eliminate the possibility of measurement bias and interference influencing determinations of compliance.

For sources complying with the emission limitation to reduce CO emissions, an initial performance evaluation is required. The performance evaluation will validate performance of the CEMS. The proposed rule also requires an annual relative accuracy test audit (RATA) to ensure that performance of the CEMS does not deteriorate over time. The first 4-hour period following this performance evaluation of the CO CEMS will be used to determine initial compliance with the CO emission reduction limitation.

New and reconstructed sources and existing lean premix combustor turbines complying with the emission limitation to reduce formaldehyde emissions are required to conduct an initial performance test. The purpose of the initial test is to demonstrate initial compliance with the formaldehyde emission limitation.

H. How Did We Select the Continuous Compliance Requirements?

If you must comply with the emission limitations, continuous compliance with these requirements is required at all times except during startup, shutdown, and malfunction of your stationary combustion turbine. You are not required to develop a startup, shutdown or malfunction plan since we do not believe meaningful procedures could be developed.

We consider the use of CEMS the best means of ensuring continuous compliance with emission limitations, and alternatives to CEMS are considered only if we consider the use of a CEMS technically or economically infeasible. For sources complying with the emission limitation for CO emission reduction, we believe it is feasible to require a CEMS because the costs for a CO CEMS are reasonable. Thus, the proposed rule requires the use of a CO CEMS to continuously monitor the reduction in CO emissions.

For sources complying with the emission limitation for formaldehyde emissions, we also considered requiring a CEMS; however, we concluded that the costs of a formaldehyde CEMS were excessive. We considered requiring those sources to continuously monitor operating load to demonstrate continuous compliance because the data establishing the formaldehyde outlet concentration level are based on tests that were done at high loads. However, we believe that the performance of a stationary lean premix combustion turbine at high load is also indicative of its operation at lower loads. In fact, the operator can make no parameter adjustments that would lead to lower emissions.

We request comments on the continued monitoring of stationary lean premix combustion turbines that have demonstrated initial compliance. The stationary lean premix combustion turbines are low NO_X emitting and are permitted to continuously attain the permitted NO_X levels. The same technology that results in the maintenance of low NO_X levels is also related to the achievement of low HAP emissions. Therefore, we would like to solicit comments on the feasibility of requiring no additional testing or monitoring after the lean premix stationary combustion turbine has demonstrated initial compliance and is relying on the NO_X permit levels, or low NO_X levels characteristic of lean premix combustor turbines (*e.g.* NO_X levels guaranteed by the manufacturer) if there are no permit levels, to assure continuing good performance. We are proposing this in an attempt to streamline the continuous testing, monitoring, and reporting requirements.

Finally, since we are unsure what new HAP emission control technologies might emerge, we do not know whether it will be necessary to establish additional operating limitations to ensure continuous compliance with the formaldehyde emission limitation for sources that are not lean premix or diffusion flame. Thus, as outlined earlier, the proposed rule requires you to petition the Administrator for approval of additional operating limitations or for approval of no additional operating limitations.

I. How Did We Select the Monitoring and Testing Methods to Measure These Low Concentrations of CO and Formaldehyde?

We believe CEMS are available which can measure CO emissions at the low concentrations found in the exhaust from a stationary combustion turbine following an oxidation catalyst emission control device. Our performance specifications for CO CEMS (PS4 and PS4A), however, have not been updated recently and do not reflect the performance capabilities of such systems at these low CO concentration levels.

As a result, we solicit comments on the performance capabilities of state-of-the-art CO CEMS and their ability to accurately measure the low concentrations of CO experienced in the exhaust of a stationary combustion turbine following an oxidation catalyst emission control device. We also solicit comments with specific recommendations on the changes we should make to our performance specifications for CO CEMS (PS4 and PS4A) to ensure the installation and use of CEMS which can be used to determine compliance with the proposed emission limitation for CO emission reduction. In addition, we

solicit comments on the availability of instruments capable of meeting the changes they recommend to our performance specifications for CO CEMS.

Today's proposal specifies the use of Method 10 as the reference method to certify the performance of the CO CEMS. We also believe Method 10 is capable of measuring CO concentrations as low as those experienced in the exhaust of a stationary combustion turbine following an oxidation catalyst emission control device. However, the performance criteria in addenda A of Method 10 have not been revised recently and are not suitable for certifying the performance of a CO CEMS at these low CO concentrations. Specifically, we believe the range and minimum detectable sensitivity should be changed to reflect target concentrations as low as 0.1 parts per million (ppm) CO in some cases. We also expect that dual range instruments will be necessary to measure CO concentrations at the inlet and at the outlet of an oxidation catalyst emission control device.

As a result, we solicit comments with specific recommendations on the changes we should make to Method 10 and the performance criteria in addenda A. We also solicit comments on the availability of instruments capable of meeting the changes they recommend to Method 10 and the performance criteria in addenda A, while also meeting the remaining addenda A performance criteria.

With regard to formaldehyde, we believe systems meeting the requirements of Method 320, a self-validating FTIR method, can be used to attain detection limits for formaldehyde concentrations below 43 ppbvd. We expect path lengths in the range of 100 to 125 meters and state-of-the-art digital signal processing (to reduce signal to noise ratio) would be needed. Method 320 also includes formaldehyde spike recovery criteria, which require spike recoveries of 70 to 130 percent.

While we believe FTIR systems can meet Method 320 and measure formaldehyde concentrations at these low levels, we have limited experience with their use. As a result, we solicit comments on the ability and use of FTIR systems to meet the validation and quality assurance requirements of Method 320 for the purpose of determining compliance with the emission limitation for formaldehyde emissions.

As an alternative to Method 320, we are proposing Method 323 for natural gas-fired sources. Method 323 uses the acetyl acetone colorimetric method to measure formaldehyde emissions in the exhaust of natural gas-fired, stationary combustion sources. We believe the proposed method can measure low concentrations of formaldehyde at a cost which is less than or equal to the cost of testing using Method 320; therefore, we solicit comments on the use of Method 323 by natural gas-fired sources to demonstrate compliance with the formaldehyde emission limitation.

We also believe CARB Method 430 and EPA SW–846 Method 0011 are capable of measuring formaldehyde concentrations at these low levels. Accordingly, we solicit comments on the use of CARB 430 and EPA SW–846 Method 0011 to determine compliance with the emission limitations for formaldehyde.

Based on the comments we receive on CO CEMS, we anticipate revising Method 10 and our performance specifications (PS4 and PS4A) for CO CEMS to ensure the installation and use of CEMS suitable for determining compliance with the emission limitation for CO emission reduction. If we should promulgate today's proposed rule for stationary combustion turbines before completing these revisions, however, we may require all new and reconstructed stationary combustion turbines subject to the final rule to demonstrate compliance with the formaldehyde emission limitation, or a formaldehyde percent reduction limitation similar to the CO percent reduction emission limitation, until we have adopted final revisions to Method 10 and our performance specifications for CO CEMS.

On the other hand, if the comments we receive lead us to conclude that CO CEMS are not capable of being used to determine compliance with the emission limitation for CO emission reduction, there are several alternatives we may consider. One alternative would be to delete the proposed percent reduction emission limitation for CO and require compliance with a comparable formaldehyde percent reduction limitation. This alternative would require periodic stack emission testing before and after the control device and would also require owners and operators to petition the Administrator for additional operating limitations, as proposed today for those choosing to comply with the emission limitation for formaldehyde. Another alternative would be to delete the proposed emission limitation for CO emission reduction and require compliance with the proposed emission limitation for formaldehyde. This alternative could require more frequent emission testing and could also require owners and operators to petition the Administrator for additional operating limitations.

Another alternative would be to require the use of Method 320 (*i.e.*, FTIR systems) to determine compliance with the emission limitation for CO emission reduction. This alternative could also require more frequent emission testing and require owners and operators to petition the Administrator for additional operating limitations, as proposed today for those choosing to comply with the emission limitation for formaldehyde.

Based on the comments we receive on FTIR systems and Method 320, we may develop additional or revised criteria for the use of FTIR systems and/or Method 320 to determine compliance with the emission limitation for formaldehyde.

If we should conclude that neither CO CEMS or FTIR systems are capable of being used to determine compliance with the emission limitations for CO or formaldehyde emissions, then we may delete the emission limitations for CO and formaldehyde emissions and adopt an emission limitation consisting of an equipment and work practice requirement. This alternative would require the use of oxidation catalyst emission control devices which meet specific and narrow design and operating criteria.

We believe the emission limitations we are proposing for CO emission reduction and formaldehyde emission concentration are superior to these alternatives for a number of reasons. We believe that the CO emission limitation is better because it is easier and cheaper to continuously monitor CO, and it has been shown to be a good surrogate for HAP. Also, we prefer to have an emission limitation rather than an equipment or work practice standard. An emission limitation is superior because it ensures that emissions are below a certain level, as demonstrated by a CEMS or performance testing. However, we solicit comments on these alternatives, should we conclude that the proposed emission limitations for CO emission reduction and formaldehyde emission concentration are inappropriate because of difficulties in monitoring or measuring CO emission reduction or formaldehyde emission concentration to determine compliance. We also solicit suggestions and recommendations for other alternatives, should we conclude the proposed emission limitations are inappropriate because of monitoring or measurement difficulties.

J. How Did We Select the Notification, Recordkeeping and Reporting Requirements?

The proposed notification, recordkeeping, and reporting requirements are based on the NESHAP General Provisions of 40 CFR part 63.

IV. Summary of Environmental, Energy and Economic Impacts

We estimate that 20 percent of the stationary combustion turbines affected by the proposed rule will be located at major sources. As a result, the environmental, energy, and economic impacts presented in this preamble reflect these estimates.

A. What Are the Air Quality Impacts?

The proposed rule will reduce total national HAP emissions by an estimated 81 tons/year in the 5th year after the standards are promulgated. The emissions reductions achieved by the proposed rule would be due to the sources that install an oxidation catalyst control system. We estimate that about 10 existing lean premix combustion turbines will install oxidation catalyst control to comply with the standard. In addition, we estimate that about 5 percent of new stationary combustion turbines will install oxidation catalyst control to comply with the standards. The other 95 percent of new stationary combustion turbines will be lean premix, a pollution prevention technology which in most cases does not require the use of oxidation catalyst control. The lean premix turbines are currently being installed to meet NO_X emission standards. The reduction of HAP emissions for these stationary combustion turbines is difficult to assess because it is a pollution prevention technology and is being installed to meet NO_X limits, not as a result of MACT for stationary combustion turbines. Therefore, as stated previously, the HAP emissions reductions obtained by the proposed rule result only from the sources that install an oxidation catalyst control system.

To estimate air impacts, national HAP emissions in the absence of the proposed rule (*i.e.*, HAP emission baseline) were calculated using an emission factor from the emissions database. We assumed new stationary combustion turbines are operated 8,760 hours annually. We then assumed a HAP reduction of 95 percent, achieved by using oxidation catalyst emission control devices to comply with the emission limitation to reduce CO emissions, and applied this reduction to the baseline HAP emissions to estimate total national HAP emission reduction. The total national HAP emission reduction is the sum of formaldehyde, acetaldehyde, benzene, and toluene emission reductions. In addition to HAP emission reductions, the proposed rule will reduce criteria air pollutant emissions, primarily CO emissions.

B. What Are the Cost Impacts?

The national total annualized cost of the proposed rule in the 5th year following promulgation is estimated to be about $21.5 million. Approximately $267,500 of that amount is the estimated annualized cost for monitoring, recordkeeping, and reporting. To calculate the annualized control costs, we obtained estimates of the capital costs of oxidation catalyst emission control devices from vendors. We then calculated the national total annualized costs of control for the new stationary combustion turbines installing oxidation catalyst emission control in the next 5 years. Our projection of new stationary combustion turbine capacity that will come online over the next 5 years is based on review of permit data gathered by EPA from 1998 to the present time, confidential projection data from turbine manufacturers, and published sales data. We believe this projection is a reasonable estimate based on the available information.

C. What Are the Economic Impacts?

The EPA prepared an economic impact analysis to evaluate the impacts the proposed rule would have on the combustion turbines producers, consumers of goods and services produces by combustion turbines, and society. The analysis shows minimal changes in prices and output for products made by the 24 industries affected by the proposed rule. The price increase for affected output is less than 0.01 percent and the reduction in output is less than 0.01 percent for each affected industry. Estimates of impacts on fuel markets show price increases of less than 0.012 percent for petroleum products and natural gas, and price increases of 0.13 and 0.17 percent for base-load and peak-load electricity, respectively. The price of coal is expected to decline by about 0.06 percent, and this is due to a small reduction in demand for this fuel type. Reductions in output are expected to be less than 0.16 percent for each energy type, including base-load and peak-load electricity. The social costs of the proposed rule are estimated at $13.3 million (1998 dollars). Social costs include the compliance costs, but also include those costs that reflect changes in the national economy due to changes in consumer and producer behavior resulting from the compliance costs associated with a regulation. In this case, changes in energy use among both consumers and producers to reduce the impact of the regulatory requirements of the proposed rule on them lead to the estimated social costs being somewhat less than the total annualized compliance cost estimate of $21.5 million (1998$). The primary reason for the much lower social cost estimate is the increase in electricity supply generated by existing unaffected sources, which mostly offsets the impact of increased electricity prices to consumers.

For more information on these impacts, please refer to the economic impact analysis in the public docket.

D. What Are the Nonair Health, Environmental and Energy Impacts?

The only energy requirement is a small increase in fuel consumption resulting from back pressure caused by operating an oxidation catalyst emission control device. This energy impact is small in comparison to the costs of other impacts. There are no known nonair environmental or health impacts as a result of the implementation of the rule as proposed.

V. Solicitation of Comments and Public Participation

A. General

We are requesting comments on the proposed rule. We request comments on all aspects of the proposed rule, such as the proposed emission limitations and operating limitations, recordkeeping and monitoring requirements, as well as aspects you may feel have not been addressed.

Specifically, we request comments on the performance capabilities of state-of-the-art CO CEMS and their ability to measure the low concentrations of CO in the exhaust of a stationary combustion turbine following an oxidation catalyst emission control device. We also request comments with recommendations on changes commenters believe we should make to our performance specifications for CO CEMS (PS4 and PS4A) of 40 CFR part 60, appendix B, and to Method 10 of 40 CFR part 60, appendix A, and the performance criteria in addenda A to Method 10. In addition, we request comments from these commenters on the availability of instruments capable of meeting the changes they recommend to our performance specifications for CO CEMS (PS4 and PS4A) of 40 CFR part 60, Method 10 of 40 CFR part 60,

appendix A, and addenda A to method 10.

As also mentioned earlier, we request comments on the ability and use of FTIR systems to meet the validation and quality assurance requirements of Method 320 of 40 CFR part 63, appendix A, for the purpose of determining compliance with the emission limitation for formaldehyde emissions. In addition, we request comments on the use of Method 323 of 40 CFR part 63, appendix A, SW–846 Method 0011, and CARB 430 to determine compliance with the emission limitations for formaldehyde.

We request any HAP emissions test data available from stationary combustion turbines; however, if you submit HAP emissions test data, please submit the full and complete emission test report with this data. Without a complete emission test report, which includes sections describing the stationary combustion turbine and its operation during the test as well as identifying the stationary combustion turbine for purposes of verification, discussion of the test methods employed and the Quality Assurance/ Quality Control (QA/QC) procedures followed, the raw data sheets, all the calculations, etc., which such reports contain, submittal of HAP emission data by itself is of little use.

B. Can We Achieve the Goals of the Proposed Rule in a Less Costly Manner?

We have made every effort in developing the proposal to minimize the cost to the regulated community and allow maximum flexibility in compliance options consistent with our statutory obligations. We recognize, however, that the proposal may still require some facilities to take costly steps to further control emissions even though those emissions may not result in exposures which could pose an excess individual lifetime cancer risk greater than one in 1 million or exceed thresholds determined to provide an ample margin of safety for protecting public health and the environment from the effects of HAP. We also recognize that in some cases the proposal may require facilities to undertake emissions testing and monitoring even when the rule will not require them to reduce emissions at all. However, this is necessary to assure the proper initial performance and continuing performance of the emission reduction-pollution prevention technology. We are, therefore, specifically soliciting comment on whether there are further ways to structure the proposed rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment.

Representatives of the plywood and composite wood products industry provided EPA with descriptions of three mechanisms that they believed could be used to implement more cost-effective reductions in risk. The docket for today's proposed rule contains white papers prepared by the plywood and composite wood products industry that outline their proposed approaches (see docket OAR–2002–0060). These approaches could be effective in focusing regulatory controls on facilities that pose significant risks and avoiding the imposition of high costs on facilities that pose little risk to public health or the environment, and we are seeking public comment on the utility of each of these approaches with respect to the proposed rule.

One of the approaches, an applicability cutoff for threshold pollutants, would be implemented under the authority of CAA section 112(d)(4); the second approach, subcategorization and delisting, would be implemented under the authority of CAA sections 112(c)(1) and 112(c)(9); and the third approach would involve the use of a concentration-based applicability threshold. We are seeking comment on whether these approaches are legally justified and, if so, we ask for information that could be used to support such approaches. In addition, on August 21, 2002, the Agency received a petition from the Gas Turbine Association (GTA) requesting that natural gas fueled combustion turbines be delisted and a study that they believed would justify delisting. Section 112(c)(9) of the CAA provides EPA with the authority to delist categories or subcategories either in response to the petition of any person or upon the Administrator's own motion. The GTA states that the study supports a determination that HAP emissions from gas turbines would not result in a lifetime cancer risk greater than one in a million to the individual in the population most exposed to the emissions or non-carcinogenic health risk exceeding a level which is adequate to protect public health with an ample margin of safety. We have reviewed the GTA study and responded to the GTA on October 11, 2002 with questions and areas that we believe need further analysis. The EPA's request for further information and all information provided by the petitioner to date is located in the docket for today's proposed rule.

The MACT program outlined in CAA section 112(d) is intended to reduce emissions of HAP through the application of MACT to major sources of toxic air pollutants. Section 112(c)(9) is intended to allow EPA to avoid setting MACT standards for sources or subcategories of sources that pose less than a specified level of risk to public health and the environment. The EPA requests comment on whether the proposals described here appropriately coordinate these provisions of CAA section 112. The two health-based approaches focus on assessing inhalation exposures or accounting for adverse environmental impacts. EPA specifically requests comment on the appropriateness and necessity of extending these approaches to account for non-inhalation exposures of certain HAP which may deposit from the atmosphere after being emitted into the air or to account for adverse environmental impacts. In addition to the specific requests for comment noted in this section, we are also interested in any information or comment concerning technical limitations, environmental and cost impacts, compliance assurance, legal rationale, and implementation relevant to the identified approaches. We also request comment on appropriate practicable and verifiable methods to ensure that sources' emissions remain below levels that protect public health and the environment. We will evaluate all comments before determining whether to include an approach in the final rule.

1. Industry HAP Emissions and Potential Health Effects

For the stationary combustion turbines source category, four HAP account for essentially all of the mass of HAP emissions. Those four HAP are formaldehyde, toluene, benzene, and acetaldehyde. Additional HAP which have been measured in emission tests that were conducted at natural gas fired and distillate oil fired combustion turbines are: 1,3 butadiene, acrolein, ethylbenzene, naphthalene, polycyclic aromatic hydrocarbons (PAH), propylene oxide, and xylenes. The following metallic HAP emissions have been measured from distillate oil fired stationary combustion turbines: arsenic, beryllium, cadmium, chromium, lead, manganese, mercury, nickel, and selenium.

Of the four HAP emitted in the largest quantities by this source category, all can cause toxic effects following sufficient exposure. The potential toxic effects of these four HAP are discussed previously in this preamble.

In accordance with section 112(k), EPA developed a list of 33 HAP which present the greatest threat to public

health in the largest number of urban areas. Of the four predominant HAP, three (acetaldehyde, benzene, and formaldehyde) are included on this list for the EPA's Urban Air Toxics Program. Eleven of the other emitted HAP (acrolein, arsenic compounds, beryllium compounds, 1,3-butadiene, cadmium compounds, chromium compounds, lead compounds, manganese compounds, mercury compounds, nickel compounds, and PAH (as POM)) also appear on the list. In November 1998, EPA published "A Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants." None of the predominant four HAP emitted by stationary combustion turbine operations appears on the published list of compounds referred to in the EPA's PBT strategy. Three of the other HAP (mercury compounds, cadmium compounds, and PAH) appear on the list.

Of the HAP emitted by stationary combustion turbine operations, fifteen (acetaldehyde, acrolein, arsenic compounds, benzene, beryllium compounds, 1,3-butadiene, cadmium compounds, chromium compounds, formaldehyde, lead compounds, mercury compounds, naphthalene, nickel compounds, PAH, and propylene oxide) are carcinogens that, at present, are not considered to have thresholds for cancer effects. Formaldehyde, however, is a potential threshold carcinogen, and EPA is currently revising the dose-response assessment for formaldehyde.

2. Applicability Cutoffs for Threshold Pollutants Under Section 112(d)(4) of the CAA

The first approach is an applicability cutoff for threshold pollutants that is based on EPA's authority under CAA section 112(d)(4) to establish standards for HAP which are threshold pollutants. A threshold pollutant is one for which there is a concentration or dose below which adverse effects are not expected to occur over a lifetime of exposure. For such pollutants, CAA section 112(d)(4) allows EPA to consider the threshold level, with an ample margin of safety, when establishing emissions standards. Specifically, CAA section 112(d)(4) allows EPA to establish emission standards that are not based upon the MACT specified under CAA section 112(d)(2) for pollutants for which a health threshold has been established. Such standards may be less stringent than MACT. Historically, EPA has interpreted CAA section 112(d)(4) to allow categories of sources that emit only threshold pollutants to avoid further regulation if those emissions result in ambient levels that do not exceed the threshold, with an ample margin of safety.[2]

A different interpretation would allow us to exempt individual facilities within a source category that meet the CAA section 112(d)(4) requirements. There are three potential scenarios under this interpretation of the CAA section 112(d)(4) provision. One scenario would allow an exemption for individual facilities that emit only threshold pollutants and can demonstrate that their emissions of threshold pollutants would not result in air concentrations above the threshold levels, with an ample margin of safety, even if the category is otherwise subject to MACT. A second scenario would allow the CAA section 112(d)(4) provision to be applied to both threshold and non-threshold pollutants, using the one in a million cancer risk level for decisionmaking for non-threshold pollutants.

A third scenario would allow a CAA section 112(d)(4) exemption at a facility that emits both threshold and non-threshold pollutants. For those emission points where only threshold pollutants are emitted and where emissions of the threshold pollutants would not result in air concentrations above the threshold levels, with an ample margin of safety, those emission points could be exempt from the MACT standards. The MACT standards would still apply to non-threshold emissions from other emission points at the source. For this third scenario, emission points that emit a combination of threshold and nonthreshold pollutants that are co-controlled by MACT would still be subject to the MACT level of control. However, any threshold HAP eligible for exemption under CAA section 112(d)(4) that are controlled by control devices different from those controlling nonthreshold HAP would be able to use the exemption, and the facility would still be subject to the parts of the standards that control non-threshold pollutants or that control both threshold and non-threshold pollutants.

a. Estimation of hazard quotients and hazard indices. Under the CAA section 112(d)(4) approach, EPA would have to determine that emissions of each of the threshold pollutants emitted by stationary combustion turbines at the facility do not result in exposures which exceed the threshold levels, with an ample margin of safety.The common approach for evaluating the potential hazard of a threshold air pollutant is to calculate a hazard quotient by dividing the pollutant's inhalation exposure concentration (often assumed to be equivalent to its estimated concentration in air at a location where people could be exposed) by the pollutant's inhalation Reference Concentration (RfC). An RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure that, over a lifetime, likely would not result in the occurrence of adverse health effects in humans, including sensitive individuals.

The EPA typically establishes an RfC by applying uncertainty factors to the critical toxic effect derived from the lowest- or no-observed-adverse-effect level of a pollutant.[3] A hazard quotient less than one means that the exposure concentration of the pollutant is less than the RfC, and, therefore, presumed to be without appreciable risk of adverse health effects. A hazard quotient greater than one means that the exposure concentration of the pollutant is greater than the RfC. Further, EPA guidance for assessing exposures to mixtures of threshold pollutants recommends calculating a hazard index (HI) by summing the individual hazard quotients for those pollutants in the mixture that affect the same target organ or system by the same mechanism.[4] The HI values would be interpreted similarly to hazard quotients; values below one would generally be considered to be without appreciable risk of adverse health effects, and values above one would generally be cause for concern.

For the determinations discussed herein, EPA would generally plan to use RfC values contained in EPA's toxicology database, the Integrated Risk Information System (IRIS). When a pollutant does not have an approved RfC in IRIS, or when a pollutant is a carcinogen, EPA would have to determine whether a threshold exists based upon the availability of specific data on the pollutant's mode or mechanism of action, potentially using a health threshold value from an alternative source such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the California Environmental Protection Agency (CalEPA).

Table 3 provides RfC, as well as unit risk estimates, for the HAP emitted by

[2] See 63 FR 18754, 18765–66 (April 15, 1998) (Pulp and Paper Sources Proposed NESHAP)

[3] "Methods for Derivation of Inhalation Reference Concentrations and Applications of Inhalation Dosimetry." EPA–600/8–90–066F, Office of Research and Development, USEPA, October 1994.

[4] "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum Technical Panel." EPA/630/R–00/002. USEPA, August 2000. *http://www.epa.gov/nceawww1/pdfs/chem_mix/chem_mix08_2001.pdf.*[2]

combustion turbine operations. A unit risk estimate is defined as the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 ug/m^3 in the air.

TABLE 3.—DOSE-RESPONSE ASSESSMENT VALUES FOR HAP REPORTED EMITTED BY THE COMBUSTION TURBINE SOURCE CATEGORY

Chemical name	CAS No.	Reference concentration [a] (mg/m^3)	Unit risk estimate [b] (1/(ug/m^3))
Acetaldehyde	75–07–0	9.0E–03 IRIS	2.2E–06 IRIS
Acrolein	107–02–8	2.0E–05 IRIS	
Arsenic compounds	7440–38–2	3.0E–05 CAL	4.3E–03 IRIS
Benzene	71–43–2	6.0E–02 CAL	7.8E–06 IRIS
Beryllium compounds	7440–41–7	2.0E–05 IRIS	2.4E–03 IRIS
1,3-Butadiene	106–99–0	2.0E–03 IRIS	3.0E–05 EPA ORD
Cadmium compounds	7440–43–9	2.0E–05 IRIS	1.8E–03 IRIS
Chromium (VI) compounds	18540–29–9	1.0E–04 IRIS	1.2E–02 IRIS
Ethyl benzene	100–41–4	1.0E+00 IRIS	
Formaldehyde	50–00–0	9.8E–03 ATSDR	1.3E–05 IRIS
Lead compounds	7439–92–1		1.2E–05 CAL
Manganese compounds	7439–96–5	5.0E–05 IRIS	
Mercury compounds	HG_CMPDS	9.0E–05 CAL	
Naphthalene	91–20–3	3.0E–03 IRIS	
Nickel compounds	7440–02–0	2.0E–04 ATSDR	9.1E–01 CAL
PAH (shown below as 7–PAH)			
Benzo (a) anthracene	56–55–3		1.1E–04 CAL
Benzo (b) fluoranthene	205–99–2		1.1E–04 CAL
Benzo (k) fluoranthene	207–08–9		1.1E–04 CAL
Benzo (a) pyrene	50–32–8		1.1E–03 CAL
Chrysene	218–01–9		1.1E–05 CAL
Dibenz (a,h) anthracene	53–70–3		1.2E–03 CAL
Indeno (1,2,3-cd) pyrene	193–39–5		1.4E–04 CAL
Propylene oxide	75–56–9	3.0E–02 IRIS	3.7E–06 IRIS
Selenium compounds	7782–49–2	2.0E–02 CAL	
Toluene	108–88–3	4.0E–01 IRIS	
Xylenes (mixed)	1330–20–7	4.3E–01 ATSDR	

[a] Reference Concentration: An estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups which include children, asthmatics, and the elderly) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from various types of human or animal data, with uncertainty factors generally applied to reflect limitations of the data used.

[b] Unit Risk Estimate: The upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 ug/m^3 in air. The interpretation of the Unit Risk Estimate would be as follows: If the Unit Risk Estimate = 1.5 × 10–6 per ug/m^3, 1.5 excess tumors are expected to develop per 1,000,000 people if exposed daily for a lifetime to 1 ug of the chemical in 1 cubic meter of air. Unit Risk Estimates are considered upper bound estimates, meaning they represent a plausible upper limit to the true value. (Note that this is usually not a true statistical confidence limit.) The true risk is likely to be less, but could be greater.

Sources:
IRIS = EPA Integrated Risk Information System (*http://www.epa.gov/iris/subst/index.html*).
ATSDR = U.S. Agency for Toxic Substances and Disease Registry (*http://www.atsdr.cdc.gov/mrls.html*).
CAL = California Office of Environmental Health Hazard Assessment. (*http://www.oehha.ca.gov/air/hot_spots/index.html*).
HEAST = EPA Health Effects Assessment Summary Tables (#PB(=97–921199, July 1997).

To establish an applicability cutoff under CAA section 112(d)(4), EPA would need to define ambient air exposure concentration limits for any threshold pollutants involved. There are several factors to consider when establishing such concentrations. First we would need to ensure that the concentrations that would be established would protect public health with an ample margin of safety. As discussed above, the approach EPA commonly uses when evaluating the potential hazard of a threshold air pollutant is to calculate the pollutant's hazard quotient, which is the exposure concentration divided by the RfC. The EPA's "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures" suggests that the noncancer health effects associated with a mixture of pollutants ideally are assessed by considering the pollutants' common mechanisms of toxicity [5]. The guidance also suggests that when exposures to mixtures of pollutants are being evaluated, the risk assessor may calculate a HI. The recommended method is to calculate multiple hazard indices for each exposure route of interest, and for a single specific toxic effect or toxicity to a single target organ. The default approach recommended by the guidance is to sum the hazard quotients for those pollutants that induce the same toxic effect or affect the same target organ. A mixture is then assessed by several HI, each representing one toxic effect or target organ. The guidance notes that the pollutants included in the HI calculation are any pollutants that show the effect being assessed, regardless of the critical effect upon which the RfC is based. The guidance cautions that if the target organ or toxic effect for which the HI is calculated is different from the RfC's critical effect, then the RfC for that chemical will be an overestimate, that is, the resultant HI potentially may be overprotective. Conversely, since the calculation of a HI does not account for the fact that the potency of a mixture of HAP can be more potent than the sum of the individual HAP potencies, a HI may potentially be underprotective in some situations.

[5] ibid.

b. Options for establishing a HI limit. One consideration in establishing a HI limit is whether the analysis considers the total ambient air concentrations of all the emitted HAP to which the public is exposed [6]. There are several options for establishing a HI limit for the § 112(d)(4) analysis that reflect, to varying degrees, public exposure.

One option is to allow the hazard index posed by all threshold HAP emitted by combustion turbines at the facility to be no greater than one. This approach is protective if no additional threshold HAP exposures would be anticipated from other sources at, or in the vicinity of, the facility or through other routes of exposure (*i.e.*, through ingestion).

A second option is to adopt a default percentage approach, whereby the HI limit of the HAP emitted by the facility is set at some percentage or fraction of one (*e.g.*, 20 percent or 0.2). This approach recognizes the fact that the facility in question is only one of many sources of threshold HAP to which people are typically exposed every day. Because noncancer risk assessment is predicated on total exposure or dose, and because risk assessments focus only on an individual source, establishing a HI limit of 0.2 would account for an assumption that 20 percent of an individual's total exposure is from that individual source. For the purposes of this discussion, we will call all sources of HAP, other than operations within the source category at the facility in question, "background" sources. If the affected source is allowed to emit HAP such that its own impacts could result in HI values of one, total exposures to threshold HAP in the vicinity of the facility could be substantially greater than one due to background sources, and this would not be protective of public health, since only HI values below one are considered to be without appreciable risk of adverse health effects. Thus, setting the HI limit for the facility at some default percentage of one will provide a buffer which would help to ensure that total exposures to threshold HAP near the facility (*i.e.*, in combination with exposures due to background sources) will generally not exceed one, and can generally be considered to be without appreciable risk of adverse health effects.

The EPA requests comment on using the default percentage approach and on setting the default HI limit at 0.2. The EPA is also requesting comment on whether an alternative HI limit, in some multiple of one, would be a more appropriate applicability cutoff.

A third option is to use available data (from scientific literature or EPA studies, for example) to determine background concentrations of HAP, possibly on a national or regional basis. These data would be used to estimate the exposures to HAP from non-combustion turbine sources in the vicinity of an individual facility. For example, EPA's National Scale Air Toxics Assessment (NATA) [7] and ATSDR's Toxicological Profiles [8] contain information about background concentrations of some HAP in the atmosphere and other media. The combined exposures from an affected source and from background emissions (as determined from the literature or studies) would then not be allowed to exceed a HI limit of 1. The EPA requests comment on the appropriateness of setting the hazard index limit at one for such an analysis.

A fourth option is to allow facilities to estimate or measure their own facility-specific background HAP concentrations for use in their analysis. With regard to the third and fourth options, EPA requests comment on how these analyses could be structured. Specifically, EPA requests comment on how the analyses should take into account background exposure levels from air, water, food and soil encountered by the individuals exposed to emissions from this source category. In addition, we request comment on how such analyses should account for potential increases in exposures due to the use of a new HAP or the increased use of a previously emitted HAP, or the effect of other nearby sources that release HAP.

The EPA requests comment on the feasibility and scientific validity of each of these or other options. Finally, EPA requests comment on how we should implement the CAA section 112(d)(4) applicability cutoffs, including appropriate mechanisms for applying cutoffs to individual facilities. For example, would the title V permit process provide an appropriate mechanism?

c. Tiered analytical approach for predicting exposure. Establishing that a facility meets the cutoffs established under CAA section 112(d)(4) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would promote a tiered analytical approach for these determinations. A tiered analysis involves making successive refinements in modeling methodologies and input data to derive successively less conservative, more realistic estimates of pollutant concentrations in air and estimates of risk.

As a first tier of analysis, EPA could develop a series of simple look-up tables based on the results of air dispersion modeling conducted using conservative input assumptions. By specifying a limited number of input parameters, such as stack height, distance to property line, and emission rate, a facility could use these look-up tables to determine easily whether the emissions from their sources might cause a hazard index limit to be exceeded.

A facility that does not pass this initial conservative screening analysis could implement increasingly more site-specific but more resource-intensive tiers of analysis using EPA-approved modeling procedures, in an attempt to demonstrate that their facility does not exceed the HI limit. Existing EPA guidance could provide the basis for conducting such a tiered analysis. [9]

The EPA requests comment on methods for constructing and implementing a tiered analysis for determining applicability of the CAA section 112(d)(4) criterion to specific combustion turbine sources. Ambient monitoring data could possibly be used to supplement or supplant the tiered modeling analysis described above. We envision that the appropriate monitoring to support such a determination could be extensive. The EPA requests comment on the appropriate use of monitoring in the determinations described above.

d. Accounting for dose-response relationships. In the past, EPA routinely treated carcinogens as nonthreshold pollutants. The EPA recognizes that advances in risk assessment science and policy may affect the way EPA differentiates between threshold and nonthreshold HAP. The EPA's draft Guidelines for Carcinogen Risk Assessment [10] suggest that carcinogens be assigned non-linear dose-response relationships where data warrant. Moreover, it is possible that dose-response curves for some pollutants may reach zero risk at a dose greater

[6] Senate Debate on Conference Report (October 27, 1990), reprinted in "A Legislative History of the Clean Air Act Amendments of 1990," Comm. Print S. Prt. 103–38 (1993) ("Legis. Hist.") at 868.

[7] *See http://www.epa.gov/ttn/atw/nata.*

[8] *See http://www.atsdr.cdc.gov/toxpro2.html.*

[9] "A Tiered Modeling Approach for Assessing the Risks due to Sources of Hazardous Air Pollutants." EPA–450/4–92–001. David E. Guinnup, Office of Air Quality Planning and Standards, USEPA, March 1992.

[10] "Draft Revised Guidelines for Carcinogen Risk Assessment." NCEA–F–0644, USEPA, Risk Assessment Forum, July 1999. pp 3–9ff. *http://www.epa.gov/ncea/raf/pdfs/cancer_gls.pdf.*

than zero, creating a threshold for carcinogenic effects. It is possible that future evaluations of the carcinogens emitted by this source category would determine that one or more of the carcinogens in the category is a threshold carcinogen or is a carcinogen that exhibits a non-linear dose-response relationship but does not have a threshold.

The dose-response assessment for formaldehyde is currently undergoing revision by EPA. As part of this revision effort, EPA is evaluating formaldehyde as a potential non-linear carcinogen. The revised dose-response assessment will be subject to review by the EPA Science Advisory Board, followed by full consensus review, before adoption into the EPA IRIS. At this time, EPA estimates that the consensus review will be completed by the end of 2003. The revision of the dose-response assessment could affect the potency factor of formaldehyde, as well as its status as a threshold or nonthreshold pollutant. At this time, the outcome is not known. In addition to the current reassessment by EPA, there have been several reassessments of the toxicity and carcinogenicity of formaldehyde in recent years, including work by the World Health Organization and the Canadian Ministry of Health.

The EPA requests comment on how we should consider the state of the science as it relates to the treatment of threshold pollutants when making determinations under CAA section CAA section 112(d)(4). In addition, EPA requests comment on whether there is a level of emissions of a non-threshold carcinogenic HAP at which it would be appropriate to allow a facility to use the scenarios discussed under the CAA section 112(d)(4) approach.

If the CAA section 112(d)(4) approach were adopted, the requirements of the rule as proposed would not apply to any source that demonstrates, based on a tiered analysis that includes EPA-approved modeling of the affected source's emissions, that the anticipated HAP exposures do not exceed the specified HI limit.

3. Subcategory Delisting Under Section 112(c)(9)(B) of the CAA

The EPA is authorized to establish categories and subcategories of sources, as appropriate, pursuant to CAA section 112(c)(1), in order to facilitate the development of MACT standards consistent with section 112 of the CAA. Further, section CAA section 112(c)(9)(B) allows EPA to delete a category (or subcategory) from the list of major sources for which MACT standards are to be developed when the following can be demonstrated: (1) In the case of carcinogenic pollutants, that "no source in the category * * * emits [carcinogenic] air pollutants in quantities which may cause a lifetime risk of cancer greater than one in 1 million to the individual in the population who is most exposed to emissions of such pollutants from the source"; (2) in the case of pollutants that cause adverse noncancer health effects, that "emissions from no source in the category or subcategory * * * exceed a level which is adequate to protect public health with an ample margin of safety"; and (3) in the case of pollutants that cause adverse environmental effects, that "no adverse environmental effect will result from emissions from any source."

One way in which the Agency could use these authorities would be to define a subcategory of facilities within the source category based upon technological differences, such as differences in turbine design characteristics, fuel type, production rate, emission vent flow rates, overall facility size, emissions characteristics, processes, or air pollution control device viability. The EPA requests comment on how we might establish subcategories based on these, or other, source characteristics. If it could then be determined that each source in this technologically-defined subcategory presents a low risk to the surrounding community, the subcategory could then be delisted in accordance with CAA section 112(c)(9). The GTA letter discussed above provides two examples of technological differences that may allow us to create subcategories of stationary combustion turbines. Those subcategories could be delisted if it were demonstrated that they met the requirements of CAA section 112(c)(9).

The GTA letter includes information on the risks created by emissions from lean-premix turbines. We are already proposing a subcategory for lean-premix turbines and in that discussion describe how these turbines are clearly technologically different from other types of stationary combustion turbines. While the GTA letter did not provide sufficient information for us to delist lean-premix turbines at this time, lean-premix turbines are a subcategory that could be delisted if GTA or other commenters provide sufficient information for us to determine that this subcategory satisfies the requirements of CAA section 112(c)(9).

Natural gas fired turbines are another example of a subcategory that might be delisted under this approach. We have created subcategories based on fuel type in other MACT rules and believe that fuel type could be an appropriate way of subcategorizing stationary combustion turbines or of creating further subdivisions within the subcategories contained in the proposed rule. We are not proposing a subcategory for natural gas fired turbines at this time, although we could create such a subcategory in the future, if appropriate. While the information presented in GTA's letter is not sufficient for us to make this determination at this time, additional information on the emissions and risks from natural gas fired turbines could lead us to delist natural gas fired turbines under this approach.

The EPA requests comment on the concept of identifying technologically-based subcategories that may include only low-risk facilities within the combustion turbine source category and on the specific examples presented above.

Another approach to using the authority granted in CAA section 112(c)(9) is presented in the white paper prepared by representatives of the plywood and composite wood products industry (see docket OAR 2002–0060). The EPA is considering whether it would be possible to establish a subcategory of facilities within the larger source category that would meet the risk-based criteria for delisting. Such criteria would likely include the same requirements as described previously for the second scenario under the CAA section 112(d)(4) approach, whereby a facility would be in the low-risk subcategory if its emissions of threshold pollutants do not result in exposures which exceed the HI limits and if its emissions of nonthreshold pollutants do not exceed a cancer risk level of 10^{-6}. The EPA requests comment on what an appropriate HI limit would be for a determination that a facility be included in the low-risk subcategory.

Since each facility in such a subcategory would be a low-risk facility (*i.e.*, if each met these criteria), the subcategory could be delisted in accordance with CAA section 112(c)(9), thereby limiting the costs and impacts of the proposed MACT rule to only those facilities that do not qualify for subcategorization and delisting.

Facilities seeking to be included in the delisted subcategory would be responsible for providing all data required to determine whether they are eligible for inclusion. Facilities that could not demonstrate that they are eligible to be included in the low-risk subcategory would be subject to MACT and possible future residual risk standards. The EPA solicits comment on

implementing a risk-based approach for establishing subcategories of stationary combustion turbines.

Since each facility in such a subcategory would be a low-risk facility (*i.e.*, if each met these criteria), the subcategory could be delisted in accordance with CAA section 112(c)(9), thereby limiting the costs and impacts of the proposed MACT rule to only those facilities that do not qualify for subcategorization and delisting.

Establishing that a facility qualifies for the low-risk subcategory under CAA section 112(c)(9) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would employ the same tiered analysis described earlier in the CAA section 112 (d)(4) discussion for these determinations.

One concern that EPA has with respect to the CAA section 112(c)(9) approach is the effect that it could have on the MACT floors. If many of the facilities in the low-risk subcategory are well-controlled, that could make the MACT floor less stringent for the remaining facilities. One approach that has been suggested to mitigate this effect would be to establish the MACT floor now based on controls in place for the entire category and to allow facilities to become part of the low-risk subcategory in the future, after the MACT standards are established. This would allow low-risk facilities to use the CAA section 112(c)(9) exemption without affecting the MACT floor calculation. The EPA requests comment on this suggested approach.

If a CAA section 112(c)(9) approach were adopted, the requirements of the rule as proposed would not apply to any source that demonstrates that it belongs in a subcategory which has been delisted under CAA section 112(c)(9).

C. Limited Use Subcategory

We are soliciting comments on creating a subcategory of limited use stationary combustion turbines with capacity utilization of 10 percent or less (876 or fewer hours of annual operation). Units in this subcategory would include combustion turbines used for electric power peak shaving that are called upon to operate fewer than 876 hours per year. These units operate only during peak energy use periods, typically in the summer months. We believe that these infrequently operated units typically operate 10 percent of the year or less. While these are potential sources of emissions, and it is appropriate for EPA to address them in the proposed rule, the Agency believes that their use and operation are different compared to typical combustion turbines. We believe that it may be appropriate for such limited use units to have their own subcategory. Therefore, we are soliciting comment on subcategorizing combustion turbines having a capacity utilization of less than 10 percent.

We are interested in comments on creating a subcategory for limited use peak shaving (less than 10 percent capacity utilization) combustion turbines. We are interested in comments on the validity and appropriateness under the CAA for a subcategory for limited use peak shaving combustion turbines, data on the levels of control currently achieved by such combustion turbines, and any technical limitations that might make it impossible to achieve control of emissions from limited use peak shaving combustion turbines.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that the proposed rule is a "significant regulatory action" within the meaning of the Executive Order. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are included in the docket.

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

We are required by section 112 of the CAA, 42 U.S.C. § 7412, to establish the standards in the proposed rule. The proposed rule primarily affects private industry, and does not impose significant economic costs on State or local governments. The proposed rule does not include an express provision preempting State or local regulations. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule.

Although section 6 of Executive Order 13132 does not apply to the proposed rule, we consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of the proposed rule. This consultation took place during the ICCR FACA committee meetings where members representing State and local governments participated in developing recommendations for EPA's combustion-related rulemakings, including the proposed rule. The concerns raised by representatives of State and local governments were considered during the development of the proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule from State and local officials.

C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal

implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. We do not know of any stationary combustion turbines owned or operated by Indian tribal governments. However, if there are any, the effect of these rules on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Thus, Executive Order 13175 does not apply to the proposed rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 (66 FR 28355, May 22, 2001), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1) (i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action." The proposed rule is a significant regulatory action within the meaning of Executive Order 12866. We have, therefore, prepared a Statement of Energy Effects for this action as follows.

The increase in petroleum product output, which includes increases in fuel production, is estimated at 0.003 percent, or about 475 barrels per day based on 2000 U.S. fuel production nationwide. The reduction in coal production is estimated at 0.006 percent, or about 700,000 short tons per year based on 2000 U.S. coal production nationwide. The reduction in electricity output is estimated at 0.02 percent, or about 4.9 billion kilowatt-hours per year based on 2000 U.S. electricity production nationwide. Production of natural gas is expected to increase by 3.0 million cubic feet (ft^3) per day. The maximum of all energy price increases, which include increases in natural gas prices as well as those for petroleum products, coal, and electricity, is estimated to be the 0.18 percent increase in peak-load electricity rates nationwide. Energy distribution costs may increase by roughly no more than the same amount as electricity rates. We expect that there will be no discernable impact on the import of foreign energy supplies, and no other adverse outcomes are expected to occur with regards to energy supplies. Also, the increase in cost of energy production should be minimal given the very small increase in fuel consumption resulting from back pressure related to operation of oxidation catalyst emission control devices. All of the estimates presented above account for some passthrough of costs to consumers as well as the direct cost impact to producers. For more information on these estimated energy effects, please refer to the economic impact analysis for the proposed rule. This analysis is available in the public docket.

No new combustion turbines with a capacity of less than 1.0 MW will be affected. Also, the control level applied to affected new combustion turbines is the minimum that can be applied consistent with the provisions of the Clean Air Act.

Therefore, we conclude that the proposed rule when implemented will not have a significant adverse effect on the supply, distribution, or use of energy.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule contains a Federal mandate that will not result in expenditures of $100 million or more

for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Accordingly, we have not prepared a written statement under section 202 of the UMRA.

1. Statutory Authority

As discussed in previously in this preamble, the statutory authority for the proposed rulemaking is section 112 of the CAA. Title III of the CAA was enacted to reduce nationwide air toxic emissions. Section 112(b) of the CAA lists the 188 chemicals, compounds, or groups of chemicals deemed by Congress to be HAP. These toxic air pollutants are to be regulated by NESHAP.

Section 112(d) of the CAA directs us to develop NESHAP which require existing and new major sources to control emissions of HAP using MACT. The NESHAP apply to all stationary combustion turbines located at major sources of HAP emissions, however, only new or reconstructed stationary combustion turbines have substantive regulatory requirements.

In compliance with section 205(a) we identified and considered a reasonable number of regulatory alternatives. Additional information on the costs and environmental impacts of the regulatory alternatives is presented in the "Stationary Combustion Turbines Control Options Cost Information Summary" in the docket.

The regulatory alternative upon which the proposed rule is based represents the MACT floor for stationary combustion turbines and, as a result, it is the least costly and least burdensome alternative. In addition, we have conducted an economic impact analysis of today's proposed rule that includes the impacts on State and local government entities in order to provide information on the effects of the proposed rule on such entities. The analysis is available in the docket for the proposed rule.

2. Consultation With Government Officials

The Unfunded Mandates Act requires that we describe the extent of the Agency's prior consultation with affected State, local, and tribal officials, summarize the officials' comments or concerns, and summarize our response to those comments or concerns.

In addition, section 203 of the UMRA requires that we develop a plan for informing and advising small governments that may be significantly or uniquely impacted by a proposal. Although the proposed rule does not significantly affect any State, local, or tribal governments, we have consulted with State and local air pollution control officials. We also have held meetings on the proposed rule with many of the stakeholders from numerous individual companies, environmental groups, consultants and vendors, labor unions, and other interested parties. We have added materials to the Air docket to document those meetings.

In addition, we have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, depending on size definition for the affected North American Industry Classification System (NAICS) code, or fewer than 4 billion kW-hr per year of electricity usage; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that small entities in 6 NAICS codes are affected by the proposed rule, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR 121).

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This certification is based upon (1) examining the impacts to small entities based on the existing combustion turbines inventory, and presuming that the existing mix of combustion turbines among industries is a good approximation of the mix of turbines that will be installed and affected by the proposed rule up to 2005, and (2) considering influences on the decision by small entities to install new turbines. We have determined, based on the existing combustion turbines inventory, that 29 small entities out of 300 in the industries impacted by the proposed rule may be affected. None of these small entities will incur control costs associated with the proposed rule, but will incur monitoring, recordkeeping, and reporting costs and the costs of performance testing. These 29 small entities own 51 affected turbines in the existing combustion turbines inventory, which represents only 2.5 percent of the existing turbines overall. Of these entities, 22 of these entities are small communities and 7 are affected small firms. None of the 29 affected small entities are estimated to have compliance costs that exceed one-half of 1 percent of their revenues. The median compliance costs to affected small entities is only 0.07 percent of sales. In addition, the proposed rule is likely to also increase profits at the many small firms and increase revenues for the many small communities using combustion turbines that are not affected by the rule as a result of the very slight increase in market prices. Thus, we conclude that the proposed rule will not have a significant impact on a substantial number of small entities. It should be noted that it is likely that the ongoing deregulation of the electric power industry across the nation should minimize the proposed rule's impacts on small entities. Increased competition in the electric power industry is forecasted to decrease the market price for wholesale electric power. Open access to the grid and lower market prices for electricity will make it less attractive for local communities to purchase and operate new combustion turbines. For more information on the results of the analysis of small entity impacts, please refer to the economic impact analysis in the docket.

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the rule on small entities. In the proposed rule, the Agency is applying the minimum level of control and the minimum level of monitoring, recordkeeping, and reporting to affected sources allowed by the Clean Air Act. In addition, as mentioned earlier in the preamble, new turbines with capacities under 1.0 MW are not covered by the

proposed rule. This provision should reduce the level of small entity impacts. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

The information collection requirements in the proposed rule will be submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared (ICR No. 1967.01) and a copy may be obtained from Susan Auby by mail at the Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue NW, Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) is estimated to be 8,458 labor hours per year at a total annual cost of $2.4 million. This estimate includes a one-time performance test, semiannual excess emission reports, maintenance inspections, notifications, and recordkeeping. Total capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $515,262, with operation and maintenance costs of $21,047 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked Attention: Desk Officer for EPA. Include the ICR number in any correspondence.

Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 14, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by February 13, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rulemaking involves technical standards. We propose in the rule to use EPA Methods 1, 1A, 3A, 3B, 4 of 40 CFR part 60, appendix A; Method 320 of 40 CFR part 63, appendix A; Method 323 of 40 CFR part 63, appendix A; Performance Specification (PS) 3, PS 4A of 40 CFR part 60, appendix B; EPA SW–846 Method 0011; and ARB Method 430, California Environmental Protection Agency, Air Resources Board, 2020 L Street, Sacramento, CA 95812. Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 3B of 40 CFR part 60, appendix A; PS 3, PS 4 of 40 CFR part 60, appendix B; and ARB Method 430, California Environmental Protection Agency, Air Resources Board, 2020 L Street, Sacramento, CA 95812. The search and review results have been documented and are placed in the docket for the proposed rule.

This search for emission measurement procedures identified nine voluntary consensus standards. We determined that six of these nine standards were impractical alternatives to EPA test methods for the purposes of the proposed rulemaking. Therefore, we do not propose to adopt these standards today. The reasons for this determination for the six methods are discussed below.

Two of the six voluntary consensus standards are impractical alternatives to EPA test methods for the purposes of the proposed rulemaking because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM E337–84 (Reapproved 1996), "Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures)," for EPA Method 4; and CAN/CSA Z223.2–M86(1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," for EPA Method 3A of 40 CFR part 60, appendix A.

Four of the six voluntary consensus standards are impractical alternatives to EPA test methods for the purposes of the proposed rulemaking because they

lacked sufficient quality assurance and quality control requirements necessary for EPA compliance assurance requirements: ASTM D3154–91, "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA Methods 1, 2, 2C, 3, 3B, and 4 of 40 CFR part 60, appendix A; ASTM D5835–95, "Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration," for EPA Method 3A of 40 part 60, appendix A; ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," for EPA Method 3A of 40 CFR part 60, appendix A; and ISO 9096:1992, "Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method," for EPA Method 5 of 40 CFR part 60, appendix A.

The following three of the nine voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the proposed rulemaking because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 1 (and possibly 2) of 40 CFR part 60, appendix A; ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A of 40 CFR part 60, appendix A; and ASTM D6348–98, "Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy," for EPA Method 320 of 40 CFR part 63, appendix A. While we are not proposing to include these three voluntary consensus standards in today's proposal, we will consider the standards when final.

For the voluntary consensus standard, ASTM D6348–98, Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy, we have submitted comments to ASTM regarding EPA's technical evaluation of ASTM D6348–98. Currently, the ASTM Subcommittee D22–03 is undertaking a revision of the ASTM standard in part to address EPA's comments. Upon successful ASTM balloting and demonstration of technical equivalency with the EPA's FTIR methods, the revised ASTM standard could be incorporated by reference into the proposed rule at a later date.

We are taking comment on the compliance demonstration requirements in the proposed rulemaking and specifically invite the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why the proposed rule should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, Appendix A, was used).

Tables 3 and 5 of proposed subpart YYYY list the EPA testing methods and performance standards included in the proposed rule. Under § 63.8 of 40 CFR part 63, subpart A, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is proposed to be amended by adding subpart YYYY to read as follows:

Subpart YYYY—National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

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What This Subpart Covers

§ 63.6080 What is the purpose of subpart YYYY?

Subpart YYYY establishes national emission limitations and operating limitations for hazardous air pollutants (HAP) emissions from stationary combustion turbines located at major sources of HAP emissions and requirements to demonstrate initial and continuous compliance with the emission and operating limitations.

§ 63.6085 Am I Subject to This Subpart?

You are subject to this subpart if you own or operate a stationary combustion turbine located at a major source of HAP emissions.

(a) A stationary combustion turbine is one that is not self propelled or intended to be propelled while performing its function, although it may be mounted on a vehicle for portability or transportability. Stationary combustion turbines covered by this subpart include simple cycle stationary combustion turbines, regenerative/recuperative cycle stationary combustion turbines, cogeneration cycle stationary combustion turbines, and combined cycle stationary combustion turbines.

(b) A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year, except that for oil and gas production facilities, a major source of HAP emissions is determined for each surface site.

§ 63.6090 What parts of my plant does this subpart cover?

This subpart applies to each affected source.

(a) *Affected source.* An affected source is any existing, new, or reconstructed stationary combustion turbine located at a major source of HAP emissions.

(1) *Existing stationary combustion turbine.* A stationary combustion turbine is existing if you commenced construction or reconstruction of the stationary combustion turbine on or before January 14, 2003. A change in ownership of an existing stationary combustion turbine does not make that stationary combustion turbine a new or reconstructed stationary combustion turbine.

(2) *New stationary turbine.* A stationary combustion turbine is new if you commenced construction of the stationary combustion turbine after January 14, 2003.

(3) *Reconstructed stationary turbine.* A stationary combustion turbine is reconstructed if you meet the definition of reconstruction in § 63.2 of subpart A of this part and reconstruction is commenced after January 14, 2003.

(b) *Exceptions.* (1) A new or reconstructed stationary combustion turbine located at a major source or an existing lean premix stationary combustion turbine located at a major source which meets any of the following criteria does not have to meet the requirements of this subpart and of subpart A of this part except for the initial notification requirements of § 63.6145(d):

(i) The stationary combustion turbine is an emergency stationary combustion turbine;

(ii) The stationary combustion turbine is a limited use stationary combustion turbine; or

(iii) The stationary combustion turbine burns landfill gas or digester gas as the primary fuel.

(2) An existing, new, or reconstructed stationary combustion turbine with a rated peak power output of less than 1.0 megawatt (MW) at International Organization for Standardization (ISO) standard day conditions, which is located at a major source, does not have to meet the requirements of this subpart and of subpart A of this part.

(3) Existing diffusion flame stationary combustion turbines do not have to meet the requirements of this subpart and of subpart A of this part.

(4) Combustion turbine engine test cells/stands do not have to meet the requirements of this subpart but may have to meet the requirements of subpart A of this part if subject to another subpart.

§ 63.6092 Are duct burners and waste heat recovery units covered by subpart YYYY?

No, duct burners and waste heat recovery units are considered steam generating units and are not covered under this subpart.

§ 63.6095 When do I have to comply with this subpart?

(a) *Affected sources.* (1) If you start up your new or reconstructed stationary combustion turbine before [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], you must comply with the emission limitations and operating limitations in this subpart no later than [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER].

(2) If you start up your new or reconstructed stationary combustion turbine after [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], you must comply with the emission limitations and operating limitations in this subpart upon startup of your affected source.

(3) If you have an existing stationary combustion turbine, you must comply with the emission limitations and operating limitations in this subpart no later than 3 years after [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER].

(b) *Area sources that become major sources.* If your new or reconstructed stationary combustion turbine is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, it must be in compliance with this subpart when it becomes a major source.

(c) You must meet the notification requirements in § 63.6145 according to the schedule in § 63.6145 and in 40 CFR part 63, subpart A.

Emission and Operating Limitations

§ 63.6100 What emission and operating limitations must I meet?

For each stationary combustion turbine with a rated peak power output of 1.0 MW or greater at ISO standard day conditions located at a major source, which is not:

(a) An emergency stationary combustion turbine;

(b) A stationary combustion turbine burning landfill gas or digester gas as its primary fuel;

(c) A limited use stationary combustion turbine; or

(d) An existing diffusion flame stationary combustion turbine; you must comply with the emission limitations and operating limitations in Table 1 and Table 2 of this subpart.

General Compliance Requirements

§ 63.6105 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations and operating limitations which apply to you at all times except during startup, shutdown, and malfunctions.

(b) If you must comply with emission and operating limitations, you must operate and maintain your stationary combustion turbine, oxidation catalyst emission control device or other air pollution control equipment, and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times including during startup, shutdown, and malfunction.

Testing and Initial Compliance Requirements

§ 63.6110 By what date must I conduct the initial performance tests or other initial compliance demonstrations?

You must conduct the initial performance tests or other initial compliance demonstrations in Table 4 of this subpart that apply to you within 180 calendar days after the compliance date that is specified for your stationary combustion turbine in § 63.6095 and according to the provisions in § 63.7(a)(2).

§ 63.6115 When must I conduct subsequent performance tests?

If you are complying with the formaldehyde emission concentration limitation and your stationary combustion turbine is lean premix, this section applies to you. If you are not attaining low NO_X levels, as permitted by an enforcement agency, or if there are not permit levels and you are not attaining low NO_X levels characteristic of lean premix combustion (*e.g.*, NO_X levels guaranteed by the manufacturer), additional performance testing may be required by the enforcement agency.

§ 63.6120 What performance tests and other procedures must I use?

(a) You must conduct each performance test in Table 3 of this subpart that applies to you.

(b) For demonstrations of initial compliance with the emission limitation for carbon monoxide (CO) reduction, you must complete the actions described in paragraphs b(1) and (2) of this section.

(1) Normalize the CO concentrations at the inlet and outlet of the oxidation catalyst emission control device to a dry basis and to 15 percent oxygen or an equivalent percent carbon dioxide (CO_2).

(2) Calculate the percent reduction of CO using the following equation 1 of this section:

$$\frac{C_i - C_o}{C_i} \times 100 = R \qquad \text{Eq. 1}$$

Where:

C_i = CO concentration at inlet of the oxidation catalyst emission control device

C_o = CO concentration at the outlet of the oxidation catalyst emission control device

R = percent reduction in CO emissions.

(3) The initial demonstration of compliance consists of the first 4-hour average percent reduction in CO recorded after completion of the performance evaluation of the CEMS.

(c) Each performance test must be conducted according to the requirements of the General Provisions at § 63.7(e)(1) and under the specific conditions in Table 2 of this subpart.

(d) Do not conduct performance tests or compliance evaluations during periods of startup, shutdown, or malfunction.

(e) If you comply with the emission limit for formaldehyde emission concentration, you must conduct three separate test runs for each performance test, and each test run must last at least 1 hour.

(f) If you comply with the emission limitation for formaldehyde emission concentration and your stationary combustion turbine is not diffusion flame or lean premix, you must petition the Administrator for additional operating limitations to be established during the initial performance test and continuously monitored thereafter, or for approval of no additional operating limitations. You must not conduct the initial performance test until after the petition has been approved by the Administrator.

(g) If you comply with the emission limitation for formaldehyde emission concentration and your stationary combustion turbine is not diffusion flame or lean premix and you petition the Administrator for approval of additional operating limitations, your petition must include the following information described in paragraphs (g)(1) through (5) of this section.

(1) Identification of the specific parameters you propose to use as additional operating limitations;

(2) A discussion of the relationship between these parameters and HAP emissions, identifying how HAP emissions change with changes in these parameters and how limitations on these parameters will serve to limit HAP emissions;

(3) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the limits on these parameters in the operating limitations;

(4) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments; and

(5) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

(h) If you comply with the emission limitation for formaldehyde emission concentration and you petition the Administrator for approval of no additional operating limitations, your petition must include the information described in paragraphs (h)(1) through (7) of this section.

(1) Identification of the parameters associated with operation of the stationary combustion turbine and any emission control device which could change intentionally (e.g, operator adjustment, automatic controller adjustment, etc.) or unintentionally (e.g., wear and tear, error, etc.) on a routine basis or over time;

(2) A discussion of the relationship, if any, between changes in the parameters and changes in HAP emissions;

(3) For the parameters which could change in such a way as to increase HAP emissions, a discussion of whether establishing limitations on the parameters would serve to limit HAP emissions;

(4) For the parameters which could change in such a way as to increase HAP emissions, a discussion of how you could establish upper and/or lower values for the parameters which would establish limits on the parameters in operating limitations;

(5) For the parameters, a discussion identifying the methods you could use to measure them and the instruments you could use to monitor them, as well as the relative accuracy and precision of the methods and instruments;

(6) For the parameters, a discussion identifying the frequency and methods for recalibrating the instruments you could use to monitor them; and

(7) A discussion of why, from your point of view, it is infeasible or unreasonable to adopt the parameters as operating limitations.

§ 63.6125 What are my monitor installation, operation, and maintenance requirements?

(a) If you comply with the emission limitation for CO reduction, you must install, operate, and maintain a CEMS to monitor CO and either oxygen or CO_2 at both the inlet and outlet of the oxidation catalyst emission control device according to the requirements described in paragraphs (a)(1) through (4) of this section.

(1) You must install, operate, and maintain each CEMS according to the applicable Performance Specification of 40 CFR part 60, appendix B (PS–4A).

(2) You must conduct a performance evaluation of each CEMS according to the requirements in 40 CFR 63.8 and according to the applicablePerformance Specification of 40 CFR part 60, appendix B.

(3) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each consecutive 15-minute period. You must have at least two data points, each representing a different 15-minute period within the same hour to have a valid hour of data.

(4) Continuous emission monitoring system data must be reduced as specified in § 63.8(g)(2) and recorded in parts per million (ppm) CO at 15 percent oxygen or equivalent CO_2 concentration.

(b) If you have monitors that are subject to paragraph (a) of this section, you must properly maintain and operate the monitors continuously according to the requirements described in paragraphs (b)(1) and (2) of this section.

(1) Proper maintenance. You must maintain the monitoring equipment at all times that the turbine is operating, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(2) Continued operation. You must conduct all monitoring in continuous operation at all times that the combustion turbine is operating, except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments). Data recorded during monitoring malfunctions, associated repairs, out-of-control periods, and required quality assurance or control activities shall not be used for purposes of calculating data averages. You must use all of the data collected from all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring equipment to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

§ 63.6130 How do I demonstrate initial compliance with the emission limitations?

(a) You must demonstrate initial compliance with each emission and operating limitation that applies to you according to Table 4 of this subpart.

(b) You must submit the Notification of Compliance Status containing results of the initial compliance demonstration according to the requirements in § 63.6145(f).

Continuous Compliance Requirements

§ 63.6135 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring in continuous operation at all times the stationary combustion turbine is operating.

(b) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing the performance of the control device or in assessing emissions from the new or reconstructed stationary combustion turbine.

§ 63.6140 How do I demonstrate continuous compliance with the emission and operating limitations?

(a) You must demonstrate continuous compliance with each emission limitation and operating limitation in Table 1 and Table 2 of this subpart according to methods specified in Table 5 and Table 6 of this subpart.

(b) You must report each instance in which you did not meet each emission limitation or operating limitation. You must also report each instance in which you did not meet the requirements in Table 8 of this subpart that apply to you. These instances are deviations from the emission and operating limitations in this subpart. These deviations must be reported according to the requirements in § 63.6150.

(c) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, and malfunction are not violations.

Notifications, Reports, and Records

§ 63.6145 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), 63.8(f)(4) and (6), and 63.9(b) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your combustion turbine before [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], you must submit an Initial Notification not later than 120 calendar days after [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER].

(c) As specified in § 63.9(b), if you start up your new or reconstructed stationary combustion turbine on or after [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to submit an Initial Notification but are otherwise not affected by the requirements of this subpart, in accordance with § 63.6090(b), your notification should include the information in § 63.9(b)(2)(i) through (v) and a statement that your new or reconstructed stationary combustion turbine has no additional requirements and explain the basis of the exclusion (for example, that it operates exclusively as an emergency stationary combustion turbine).

(e) If you are required to conduct an initial performance test, you must submit a notification of intent to conduct an initial performance test at least 60 calendar days before the initial performance test is scheduled to begin as required in § 63.7(b)(1).

(f) If you are required to comply with either the emission limitation for CO reduction or the emission limitation for formaldehyde emission concentration, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration with the emission limitation for CO reduction, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each performance test required to demonstrate compliance with the emission limitation for formaldehyde emission concentration, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test.

§ 63.6150 What reports must I submit and when?

(a) Any one who owns or operates a new or reconstructed stationary combustion turbine which must meet the emission limitation for CO reduction must submit a semiannual compliance report according to Table 7 of this subpart by the date specified in paragraphs (a)(1) through (5) of this section unless the Administrator has approved a different schedule, according to the information described in paragraphs (a)(1) through (5) of this section.

(1) The first semiannual compliance report must cover the period beginning on the compliance date specified in § 63.6095 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date specified in § 63.6095.

(2) The first semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified in § 63.6095.

(3) Each subsequent semiannual compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each new or reconstructed stationary combustion turbine that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established the date for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) The semiannual compliance report must contain the information described in paragraphs (b)(1) through (4) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there is no deviation from any emission limitation that applies to you, a statement that there was no deviation from the emission limitations during the reporting period and that no CEMS was inoperative, inactive, malfunctioning, out of control, repaired, or adjusted.

(c) For each deviation from an emission limitation that occurs where you are not using a CEMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (b)(1) through (3) of this section and the information contained in paragraphs (c)(1) through (3) of this section.

(1) The total operating time of each new or reconstructed combustion turbine during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(3) Information on the number, duration, and cause for monitor downtime incidents (including unknown cause, if applicable, other than downtime associated with zero and span and other daily calibration checks).

(d) For each deviation from an emission limitation occurring where you are using a CEMS to comply with an emission limitation, you must include the information in paragraphs (c)(1) through (3) of this section and the information included in paragraphs (d)(1) through (11) of this section.

(1) The date and time that each deviation started and stopped.

(2) The date and time that each CEMS was inoperative except for zero (low-level) and high-level checks.

(3) The date and time that each CEMS was out-of-control including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period (recorded in 4-hour periods), and the total duration as a percent of the total operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CEMS downtime during the reporting period (reported in 4-hour periods), and the total duration of CEMS downtime as a percent of the total turbine operating time during that reporting period.

(8) A breakdown of the total duration of CEMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, non-monitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes and other unknown causes.

(9) The monitoring equipment manufacturer(s) and model number(s) of each monitor.

(10) The date of the latest CEMS certification or audit.

(11) A description of any changes in CEMS or controls since the last reporting period.

§ 63.6155 What records must I keep?

(a) You must keep the records as described in paragraphs (a)(1) through (5) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(3) Records of the occurrence and duration of each startup, shutdown, or malfunction as required in § 63.10(b)(2)(i).

(4) Records of the occurrence and duration of each malfunction of the air pollution control equipment, if applicable, as required in § 63.10(b)(2)(ii).

(5) Records of all maintenance on the air pollution control equipment as required in § 63.10(b)(iii).

(b) For each CEMS, you must keep the records as described in paragraphs (b)(1) through (3) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (*i.e.*, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to the relative accuracy test for CEMS as required in § 63.8(f)(6)(i), if applicable.

(c) You must keep the records required in Tables 5 and 6 of this subpart to show continuous compliance with each emission limitation and operating limitation that applies to you.

§ 63.6160 In what form and how long must I keep my records?

(a) You must maintain all applicable records in such a manner that they can be readily accessed and are suitable for inspection according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must retain your records of the most recent 2 years on site or your records must be accessible on site. Your records of the remaining 3 years may be retained off site.

Other Requirements and Information

§ 63.6165 What parts of the General Provisions apply to me?

Table 8 of this subpart shows which parts of the General Provisions in § 63.1 through 13 apply to you.

§ 63.6170 Who implements and enforces this subpart?

(a) This subpart is implemented and enforced by the U.S. EPA or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the U.S. EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out whether this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are:

(1) Approval of alternatives to the emission limitations or operating limitations in § 63.6100 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.6175 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA; in 40 CFR 63.2, the General Provisions of this part; and in this section:

Area source means any stationary source of HAP that is not a major source as defined in this part.

Associated equipment as used in this subpart and as referred to in section 112(n)(4) of the CAA, means equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the well bore to the point of custody transfer, except glycol dehydration units, storage vessels with potential for flash emissions, combustion turbines, and stationary reciprocating internal combustion engines.

CAA means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Public Law 101–549, 104 Stat. 2399).

Cogeneration cycle stationary combustion turbine means any stationary combustion turbine that recovers heat from the stationary combustion turbine exhaust gases using an exhaust heat exchanger, such as a heat recovery steam generator.

Combined cycle stationary combustion turbine means any stationary combustion turbine that recovers heat from the stationary combustion turbine exhaust gases using an exhaust heat exchanger to generate steam for use in a steam turbine.

Combustion turbine engine test cells/stands means engine test cells/stands, as defined in subpart PPPPP of this part, that test stationary combustion turbines.

Custody transfer means the transfer of hydrocarbon liquids or natural gas: after processing and/or treatment in the producing operations, or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation. For the purposes of this subpart, the point at which such liquids or natural gas enters a natural gas processing plant is a point of custody transfer.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation or operating limitation;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation or operating limitation in this subpart during malfunction, regardless or whether or not such failure is permitted by this subpart.

Diffusion flame stationary combustion turbine means any stationary combustion turbine where fuel and air are injected at the combustor and are mixed only by diffusion prior to ignition.

Digester gas means any gaseous by-product of wastewater treatment formed through the anaerobic decomposition of organic waste materials and composed principally of methane and CO_2.

Emergency stationary combustion turbine means any stationary combustion turbine that operates as a mechanical or electrical power source when the primary source of power is interrupted by an emergency situation. Examples include stationary combustion turbines used to produce power for critical networks or equipment when electric power from the local utility is interrupted, or stationary combustion turbines used to pump water in the case of fire or flood, etc. Emergency stationary combustion turbines do not include stationary combustion turbines used as peaking units at electric utilities or stationary combustion turbines at industrial facilities that typically operate at low capacity factors.

Hazardous air pollutant (HAP) means any air pollutant listed in or pursuant to section 112(b) of the CAA.

ISO standard day conditions means 288 degrees Kelvin (15 °C), 60 percent relative humidity and 101.3 kilopascals pressure.

Landfill gas means a gaseous by-product of the land application of municipal refuse formed through the anaerobic decomposition of waste materials and composed principally of methane and CO_2.

Lean premix stationary combustion turbine means any stationary combustion turbine where the air and fuel are thoroughly mixed to form a lean mixture before delivery to the combustor.

Limited use stationary combustion turbine means any stationary combustion turbine which is operated 50 hours or less per calendar year.

Major Source, as used in this subpart, shall have the same meaning as in § 63.2, except that:

(1) Emissions from any oil or gas exploration or production well (with its associated equipment (as defined in this section)) and emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units, to determine whether such emission points or stations are major sources, even when emission points are in a contiguous area or under common control except when they are on the same surface site;

(2) For oil and gas production facilities, emissions from processes, operations, or equipment that are not part of the same oil and gas production facility, as defined in this section, shall not be aggregated; and

(3) For production field facilities, only HAP emissions from glycol dehydration units, storage tanks with flash emissions potential, combustion turbines and reciprocating internal combustion engines shall be aggregated for a major source determination.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Oil and gas production facility as used in this subpart means any grouping of equipment where hydrocarbon liquids are processed, upgraded (*i.e.,* remove impurities or other constituents to meet contract specifications), or stored prior to the point of custody transfer; or where natural gas is processed, upgraded, or stored prior to entering the natural gas transmission and storage source category. For purposes of a major source determination, facility (including a building, structure, or installation) means oil and natural gas production and processing equipment that is located within the boundaries of an individual surface site as defined in this section. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Pieces of production equipment or groupings of equipment located on different oil and gas leases, mineral fee tracts, lease tracts, subsurface or surface unit areas,

surface fee tracts, surface lease tracts, or separate surface sites, whether or not connected by a road, waterway, power line or pipeline, shall not be considered part of the same facility. Examples of facilities in the oil and natural gas production source category include, but are not limited to, well sites, satellite tank batteries, central tank batteries, a compressor station that transports natural gas to a natural gas processing plant, and natural gas processing plants.

Oxidation catalyst emission control device means an emission control device that incorporates catalytic oxidation to reduce CO emissions.

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Production field facility means those oil and gas production facilities located prior to the point of custody transfer.

Regenerative/recuperative cycle stationary combustion turbine means any stationary combustion turbine that recovers heat from the stationary combustion turbine exhaust gases using an exhaust heat exchanger to preheat the combustion air entering the combustion chamber of the stationary combustion turbine.

Simple cycle stationary combustion turbine means any stationary combustion turbine that does not recover heat from the stationary combustion turbine exhaust gases.

Surface site means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

Tables to Subpart YYYY of Part 63

As stated in §§ 63.6100 and 63.6140, you must comply with the following emission limitations:

TABLE 1 TO SUBPART YYYY OF PART 63.—EMISSION LIMITATIONS

For . . .	You must meet one of the following emission limitations . . .
1. each stationary combustion turbine described in § 63.6100	a. achieve a reduction in CO of 95 percent or greater, measured before and after an oxidation catalyst emission control device is installed to treat all of the stationary combustion turbine exhaust gases, if you install an oxidation catalyst emission control device or b. limit the concentration of formaldehyde to 43 ppbvd or less at 15 percent O_2, if you do not install an oxidation catalyst emission control device.

As stated in §§ 63.6100 and 63.6140, you must comply with the following operating limitations:

TABLE 2 TO SUBPART YYYY OF PART 63.—OPERATING LIMITATIONS

For . . .	You must . . .
1. Each stationary combustion turbine complying with the emission limitation for CO reduction.	Meet no operating limitations.
2. Each stationary combustion turbine complying with the emission limitation for formaldehyde emission concentration that is diffusion flame or lean premix.	Meet no operating limitations.
3. Each stationary combustion turbine complying with the emission limitation for formaldehyde emission concentration that is not diffusion flame or lean premix.	You must comply with any additional operating limitations approved by the Administrator.

As stated in § 63.6120, you must comply with the following requirements for performance tests and initial compliance demonstrations:

TABLE 3 OF SUBPART YYYY OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND INITIAL COMPLIANCE DEMONSTRATIONS

For each stationary combustion turbine complying with . . .	You must . .	Using . . .	According to the following requirements . . .
1. The emission limitation for CO reduction.	Demonstrate a reduction in CO of 95 percent or more.	A CEMS for CO and either O_2 or CO_2 to monitor at both the inlet and outlet of the oxidation catalyst emission control device.	This demonstration is conducted immediately following a successful performance evaluation of the CEMS as required in § 63.6125(a). The demonstration consists of the first 4-hour average of measurements. The reduction in CO is calculated using the equation in § 63.6120 and must be normalized to 15 percent O_2 or equivalent percent CO_2.

TABLE 3 OF SUBPART YYYY OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND INITIAL COMPLIANCE DEMONSTRATIONS—Continued

For each stationary combustion turbine complying with . . .	You must . .	Using . . .	According to the following requirements . . .
2. The emission limitation for formaldehyde emission concentration.	a. Demonstrate formaldehyde emissions are 43 ppbvd or less by a performance test and.	i. Test Method 320 of 40 CFR part 63, appendix A; or EPA SW–846 Method 0011; or California Environmental Protection Agency, Air Resources Board, Method 430* formaldehyde and acetaldehyde in emissions from stationary sources, adopted Sept 12, 1989, amended December 13, 1991 (ARB Method 430)*; or if your affected source fires natural gas, Test Method 323 of 40 CFR part 63, appendix A; or other methods approved by the Administrator.	(1) Formaldehyde concentration must be corrected to 15 percent O_2, dry basis. Results of this test consist of the average of the three 1 hour runs.
	b. Select the sampling port location and the number of traverse points and.	i. Method 1 or 1A of 40 CFR part 60, appendix A § 63.7(d)(1)(i).	(1) If using an air pollution control device, the sampling site must be located at the outlet of the air pollution control device.
	c. Determine the O_2 concentration at the sampling port location.	i. Method 3A or 3B of 40 CFR part 60, appendix A.	(1) Measurements to determine O_2 concentration must be made at the same time as the performance test.

*You may obtain a copy of ARB Method 430 from the California Environmental Protection Agency, Air Resources Board, 2020 L Street, Sacramento, CA 95812, or you may download a copy of ARB Method 430 from ARB's web site (http://www.arb.ca.gov/testmeth/vol3/vol3.htm).

As stated in §§ 63.6110 and 63.6130, you must comply with the following requirements to demonstrate initial compliance with emission limitations:

TABLE 4 TO SUBPART YYYY OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

For the . . .	You have demonstrated initial compliance if . . .
1. Emission limitation for CO reduction	The average reduction of CO emissions is at least 95 percent, dry basis.
2. Emission limitation for formaldehyde	The average formaldehyde concentration is 43 ppbvd or less at 15 percent O_2.

As stated in §§ 63.6135 and 63.6140, you must comply with the following requirements to demonstrate continuing compliance with emissions limitations:

TABLE 5 OF SUBPART YYYY OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS

For the . . .	You must demonstrate continous compliance by . . .
1. Emission limitation for CO reduction	a. Collecting the CEMS data according to § 63.6125(a), reducing the measurements to 1-hour averages, calculating the percent reduction in CO emissions according to § 63.6120; and b. Demonstrating a reduction in CO of 95 percent or more over each 4-hour averaging period; and c. Applying 40 CFR part 60 appendix F, procedure 1.

As stated in §§ 63.6135 and 63.6140, you must comply with the following requirements to demonstrate continuing compliance with operating limitations:

TABLE 6 OF SUBPART YYYY OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITATIONS

For the emission limitation . . .	For the operating limitation . . .	You must demonstrate continuous compliance by . . .
For formaldehyde	To comply with operating limitations approved by the Administrator.	Collect the data according to § 63.6120(g) and maintain the operating parameters within the operating limits.

As stated in §§ 63.6145 and 63.6150, you must comply with the following requirements for reports:

TABLE 7 OF SUBPART YYYY OF PART 63:—REQUIREMENTS FOR REPORTS

If you own or operate a stationary combustion turbine which must comply with the CO emission reduction limitation, you must submit a . . .		
Semiannual compliance report	If there is no deviation from any emission limitation or operating limitation, a statement that you have had no deviation from the emission limitation or operating limitation during the reporting period and that no CEMS or CPMS was inoperative, inactive, out-of-control, repaired, or adjusted. If you had a deviation from any emission limitation or operating limitation during the reporting period, the report must contain the information in §63.6150(d) or (e), as applicable.	Semiannually, according to the requirements in §63,6150.

You must comply with the applicable General Provisions requirements:

TABLE 8 OF SUBPART YYYY OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYY

Citation	Subject	Applies to subpart YYYY	Explanation
§63.1(a)(1)	General applicability of the General Provisions.	Yes	Additional terms defined in §63.6175.
§63.1(a)(2)–(4)		Yes..	
§63.1(a)(5)	[Reserved].		
§63.1(a)(6)–(7)	Contact for source category information; extension of compliance through early reduction.	Yes.	
§63.1(a)(8)		No	Refers to State programs.
§63.1(a)(9)	[Reserved].		
§63.1(a)(10)–(14)		Yes..	
§63.1(b)(1)	Initial applicability	Yes	Subpart YYYY clarifies applicability at §63.6085.
§63.1(b)(2)	Title V operating permit-reference to part 70	Yes	All major affected sources are required to obtain a title V permit.
§63.1(b)(3)	Record of applicability determination	Yes.	
§63.1(c)(1)	Applicability after standards are set	Yes	Subpart YYYY clarifies the applicability of each paragraph of subpart A to sources subject to subpart YYYY.
§63.1(c)(2)	Title V permit requirement for sources	No	Area sources are not subject to area subpart YYYY.
§63.1(c)(3)	[Reserved].		
§63.1(c)(4)	Extension of compliance for existing sources	Yes.	
§63.1(c)(5)	Notification requirements for an area source becoming a major source.	Yes	
§63.1(d)	[Reserved].		
§63.1(e)	Applicability of permit program before a relevant standard has been set.	Yes.	
§63.2	Definitions	Yes	Additional terms defined in §63.6175.
§63.3	Units and abbreviations	Yes.	
§63.4	Prohibited activities	Yes.	
§63.5(a)	Construction and reconstruction applicability	Yes.	

TABLE 8 OF SUBPART YYYY OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYY—Continued

Citation	Subject	Applies to subpart YYYY	Explanation
§63.5(b)(1)	Requirements upon construction or reconstruction.	Yes.	
§63.5(b)(2)	[Reserved].		
§63.5(b)(3)	Approval of construction	Yes.	
§63.5(b)(4)	Notification of construction	Yes.	
§63.5(b)(5)	Compliance	Yes.	
§63.5(b)(6)	Addition of equipment	Yes.	
§63.5(c)	[Reserved].		
§63.5(d)	Application for construction reconstruction	Yes.	
§63.5(e)	Approval of construction or reconstruction	Yes.	
§63.5(f)	Approval of construction or reconstruction based on prior State review.	Yes.	
§63.6(a)	Applicability	Yes.	
§63.6(b)(1)–(2)	Compliance dates for new and reconstructed sources.	Yes.	
§63.6(b)(3)	Compliance dates for sources constructed or reconstructed before effective date.	No	Compliance is required by startup or effective date.
§63.6(b)(4)	Compliance dates for sources also subject to §112(f) standards.	Yes.	
§63.6(b)(5)	Notification	Yes.	
§63.6(b)(6)	[Reserved].		
§63.6(b)(7)	Compliance dates for new and reconstructed area sources that become major.	Yes.	
§63.6(c)(1)–(2)	Compliance dates for existing sources	Yes.	
§63.6(c)(3)–(4)	[Reserved].		
§63.6(c)(5)	Compliance dates for existing area sources that become major.	Yes.	
§63.6(d)	[Reserved].		
§63.6(e)(1)–(2)	Operation and maintenance	Yes	Except that you are not required to have a startup, shutdown, and malfunction plan (SSMP).
§63.6(e)(3)	SSMP	No.	
§63.6(f)(1)	Applicability of standards except during start-up, shutdown, or malfunction (SSM).	Yes.	
§63.6(f)(2)	Methods for determining compliance	Yes.	
§63.6(f)(3)	Finding of compliance	Yes.	
§63.6(g)(1)–(3)	Use of alternative standard	Yes.	
§63.6(h)	Opacity and visible emission standards	No	Subpart YYYY does not contain opacity or visible emission standards.
§63.6(i)	Compliance extension procedures and criteria	Yes.	
§63.6(j)	Presidential compliance exemption	Yes.	

TABLE 8 OF SUBPART YYYY OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYY—Continued

Citation	Subject	Applies to subpart YYYY	Explanation
§ 63.7(a)(1)–(2)	Performance test dates	Yes	Subpart YYYY contains performance test dates at § 63.6110.
§ 63.7(a)(3)	Section 114 authority	Yes.	
§ 63.7(b)(1)	Notification of performance test	Yes.	
§ 63.7(b)(2)	Notification of rescheduling	Yes.	
§ 63.7(c)	Quality assurance/test plan	Yes.	
§ 63.7(d)	Testing facilities	Yes.	
§ 63.7(e)(1)	Conditions for conducting performance tests	Yes.	
§ 63.7(e)(2)	Conduct of performance tests and reduction of data.	Yes	Subpart YYYY specifies test methods at § 63.6120.
§ 63.7(e)(3)	Test run duration	Yes.	
§ 63.7(e)(4)	Administrator may require other testing under section 114 of the CAA.	Yes.	
§ 63.7(f)	Alternative test method provisions	Yes.	
§ 63.7(g)	Performance test data analysis, record-keeping, and reporting.	Yes.	
§ 63.7(h)	Waiver of tests	Yes.	
§ 63.8(a)(1)	Applicability of monitoring requirements	Yes	Subpart YYYY contains specific requirements for monitoring at § 63.6125.
§ 63.8(a)(2)	Performance specifications	Yes.	
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with flares	No.	
§ 63.8(b)(1)	Monitoring	Yes.	
§ 63.8(b)(2)–(3)	Multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)	Monitoring system operation and maintenance.		
§ 63.8(c)(1)(i)	Routine and predictable SSM	No	Subpart YYYY does not require SSMP.
§ 63.8(c)(1)(ii)	SSM not in SSMP	No	Subpart YYYY does not require SSMP.
§ 63.8(c)(1)(iii)	Compliance with operation and maintenance requirements.	Yes.	
§ 63.8(c)(2)–(3)	Monitoring system installation	Yes.	
§ 63.8(c)(4)	Continuous monitoring system (CMS) requirements.	Yes	Except that subpart YYYY does not require continuous opacity monitoring systems (COMS).
§ 63.8(c)(5)	COMS minimum procedures	No.	
§ 63.8(c)(6)–(8)	CMS requirements	Yes	Except that subpart YYYY does not require COMS.
§ 63.8(d)	CMS quality control	Yes.	
§ 63.8(e)	CMS performance evaluation	Yes	Except for § 63.8(e)(5)(ii), which applies to COMS.
§ 63.8(f)(1)–(5)	Alternative monitoring method	Yes.	

TABLE 8 OF SUBPART YYYY OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYY—Continued

Citation	Subject	Applies to subpart YYYY	Explanation
§ 63.8(f)(6)	Alternative to relative accuracy test	Yes.	
§ 63.8(g)	Data reduction	Yes	Except that provisions for COMS are not applicable. Averaging periods for demonstrating compliance are specified at §§ 63.6135 and 63.6140.
§ 63.9(a)	Applicability and State delegation of notification requirements.	Yes.	
§ 63.9(b)(1)–(5)	Initial notifications	Yes.	
§ 63.9(c)	Request for compliance extension	No	Compliance extensions do not apply to new or reconstructed sources.
§ 63.9(d)	Notification of special compliance requirements for new sources.	Yes.	
§ 63.9(e)	Notification of performance test	Yes.	
§ 63.9(f)	Notification of visible emissions/opacity test	No.	
§ 63.9(g)(1)	Notification of performance evaluation	Yes.	
§ 63.9(g)(2)	Notification of use of COMS data	No	Subpart YYYY does not contain opacity or VE standards.
§ 63.9(g)(3)	Notification that criterion for alternative to relative accuracy test audit (RATA) is exceeded.	Yes	If alternative is in use.
§ 63.9(h)(1)–(6)	Notification of compliance status	Yes	Except that notifications for sources not conducting performance tests are due 30 days after completion of performance evaluations.
§ 63.9(i)	Adjustment of submittal deadlines	Yes.	
§ 63.9(j)	Change in previous information	Yes.	
§ 63.10(a)	Administrative provisions for recordkeeping and reporting.	Yes.	
§ 63.10(b)(1)	Record retention	Yes.	
§ 63.10(b)(2)(i)–(iii)	Records related to SSM	Yes.	
§ 63.10(b)(2)(iv)–(v)	Records related to actions during SSM	No	Subpart YYYY does not require SSMP so requirements to demonstrate conformance or nonconformance with SSMP are not applicable.
§ 63.10(b)(2)(vi)–(xi)	CMS records	Yes.	
§ 63.10(b)(2)(xii)	Record when under waiver	Yes.	
§ 63.10(b)(2)(xiii)	Records when using alternative to RATA	Yes	For CO standard if using RATA alternative.
§ 63.10(b)(2)(xiv)	Records of supporting documentation	Yes.	
§ 63.10(b)(3)	Records of applicability determination	Yes.	
§ 63.10(c)(1)	Additional records for sources using CEMS	Yes.	
§ 63.10(d)(1)	General reporting requirements	Yes.	
§ 63.10(d)(2)	Report of performance test results	Yes.	
§ 63.10(d)(3)	Reporting opacity or VE observations	No	Subpart YYYY does not contain opacity or VE standards.

TABLE 8 OF SUBPART YYYY OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYY—Continued

Citation	Subject	Applies to subpart YYYY	Explanation
§ 63.10(d)(4)	Progress reports	No	Compliance extensions do not apply to new or reconstructed sources.
§ 63.10(d)(5)	Startup, shutdown, and malfunction reports	No	Subpart YYYY does not require reporting of startup, shutdowns, or malfunctions.
§ 63.10(e)(1) and (2)(i)	Additional CMS reports	Yes.	
§ 63.10(e)(2)(ii)	COMS-related report	No	Subpart YYYY does not require COMS.
§ 63.10(e)(3)	Excess emissions and parameter exceedances reports.	Yes.	
§ 63.10(e)(4)	Reporting COMS data	No	Subpart YYYY does not require COMS.
§ 63.10(f)	Waiver for recordkeeping and reporting	Yes.	
§ 63.11	Flares	No.	
§ 63.12	State authority and delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by reference	Yes.	
§ 63.15	Availability of information	Yes.	

3. Appendix A to Part 63 is proposed to be amended by adding, in numerical order, Method 323 to read as follows:

Appendix A to Part 63—Test Methods

* * * * *

Method 323—Measurement of Formaldehyde Emissions from Natural Gas-Fired Stationary Sources—Acetyl Acetone Derivitization Method

1.0 Introduction

This method describes the sampling and analysis procedures of the acetyl acetone colorimetric method for measuring formaldehyde emissions in the exhaust of natural gas-fired, stationary combustion sources. This method, which was prepared by the Gas Research Institute (GRI), is based on the Chilled Impinger Train Method for Methanol, Acetone, Acetaldehyde, Methyl Ethyl Ketone, and Formaldehyde (Technical Bulletin No. 684) developed and published by the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI).[1] However, this method has been prepared specifically for formaldehyde and does not include specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) for methanol, acetone, acetaldehyde, and methyl ethyl ketone. To obtain reliable results, persons using this method should have a thorough knowledge of at least Methods 1, 2, 3, and 4 of 40 CFR part 60, appendix A.

1.1 Scope and Application

1.1.1 *Analytes.* The only analyte measured by this method is formaldehyde (CAS Number 50–00–0).

1.1.2 *Applicability.* This method is for analyzing formaldehyde emissions from uncontrolled and controlled natural gas-fired, stationary combustion sources.

1.1.3 *Data Quality Objectives.* If you adhere to the quality control and quality assurance requirements of this method, then you and future users of your data will be able to assess the quality of the data you obtain and estimate the uncertainty in the measurements.

2.0 Summary of Method

An emission sample from the combustion exhaust is drawn through a midget impinger train containing chilled reagent water to absorb formaldehyde. The formaldehyde concentration in the impinger is determined by reaction with acetyl acetone to form a colored derivative which is measured colorimetrically.

3.0 Definitions

[Reserved]

4.0 Interferences

The presence of acetaldehyde, amines, polymers of formaldehyde, periodate, and sulfites can cause interferences with the acetyl acetone procedure which is used to determine the formaldehyde concentration. However, based on experience gained from extensive testing of natural gas-fired combustion sources using FTIR to measure a variety of compounds, GRI expects only acetaldehyde to be potentially present when combusting natural gas. Acetaldehyde has been reported to be a significant interferent only when present at concentrations above 50 ppm.[4] However, GRI reports that the concentration of acetaldehyde from gas-fired sources is very low (typically below the FTIR detection limit of around 0.5 ppmv); therefore, the potential positive bias due to acetaldehyde interference is expected to be negligible.

5.0 Safety

5.1 Prior to applying the method in the field, a site-specific Health and Safety Plan should be prepared. General safety precautions include the use of steel-toed boots, safety glasses, hard hats, and work gloves. In certain cases, facility policy may require the use of fire-resistant clothing while on-site. Since the method involves testing at high-temperature sampling locations, precautions must be taken to limit the potential for exposure to high-temperature gases and surfaces while inserting or removing the sample probe. In warm locations, precautions must also be taken to avoid dehydration.

5.2 Potential chemical hazards associated with sampling include formaldehyde, nitrogen oxides (NO_X), and carbon monoxide (CO). Formalin solution, used for field spiking, is an aqueous solution containing formaldehyde and methanol. Formaldehyde is a skin, eye, and respiratory irritant and a carcinogen, and should be handled accordingly. Eye and skin contact and inhalation of formaldehyde vapors should be avoided.

Natural gas-fired combustion sources can potentially emit CO at toxic concentrations. Care should be taken to minimize exposure to the sample gas while inserting or removing the sample probe. If the work area is enclosed, personal CO monitors should be used to insure that the concentration of CO in the work area is maintained at safe levels.

5.3 Potential chemical hazards associated with the analytical procedures include acetyl acetone and glacial acetic acid. Acetyl acetone is an irritant to the skin and respiratory system, as well as being moderately toxic. Glacial acetic acid is highly

corrosive and is an irritant to the skin, eyes, and respiratory system. Eye and skin contact and inhalation of vapors should be avoided. Acetyl acetone and glacial acetic acid have flash points of 41°C (105.8°F) and 43°C (109.4°F), respectively. Exposure to heat or flame should be avoided.

6.0 Equipment and Supplies

6.1 *Sampling Probe.* Quartz glass probe with stainless steel sheath or stainless steel probe.

6.2 *Teflon Tubing.* Teflon tubing to connect the sample probe to the impinger train. A heated sample line is not needed since the sample transfer system is rinsed to recover condensed formaldehyde and the rinsate combined with the impinger contents prior to sample analysis.

6.3 *Midget Impingers.* Three midget impingers are required for sample collection. The first impinger serves as a moisture knockout, the second impinger contains 20 mL of reagent water, and the third impinger contains silica gel to remove residual moisture from the sample prior to the dry gas meter.

6.4 *Vacuum Pump.* Vacuum pump capable of delivering a controlled extraction flow rate between 0.2 and 0.4 L/min.

6.5 *Flow Measurement Device.* A rotameter or other flow measurement device to indicate consistent sample flow.

6.6 *Dry Gas Meter.* A dry gas meter is used to measure the total sample volume collected. The dry gas meter must be sufficiently accurate to measure the sample volume to within 2 percent, calibrated at the selected flow rate and conditions actually encountered during sampling, and equipped with a temperature sensor (dial thermometer, or equivalent) capable of measuring temperature accurately to within 3 °C (5.4 °F).

6.7 *Spectrophotometer.* A spectrophotometer is required for formaldehyde analysis, and must be capable of measuring absorbance at 412 nm.

7.0 Reagents and Standards

7.1 Sampling Reagents

7.1.1 *Reagent water.* Deionized, distilled, organic-free water. This water is used as the capture solution, for rinsing the sample probe, sample line, and impingers at the completion of the sampling run, in reagent dilutions, and in blanks.

7.1.2 *Ice.* Ice is necessary to pack around the impingers during sampling in order to keep the impingers cold. Ice is also needed for sample transport and storage.

7.2 Analysis

7.2.1 *Acetyl acetone Reagent.* Prepare the acetyl acetone reagent by dissolving 15.4 g of ammonium acetate in 50 mL of reagent water in a 100-mL volumetric flask. To this solution, add 0.20 mL of acetyl acetone and 0.30 mL of glacial acetic acid. Mix the solution thoroughly, then dilute to 100 mL with reagent water. The solution can be stored in a brown glass bottle in the refrigerator, and is stable for at least two weeks.

7.2.2 *Formaldehyde.* Reagent grade.

7.2.3 *Ammonium Acetate.*

7.2.4 *Glacial Acetic Acid.*

8.0 Sample Collection, Preservation, Storage, and Transport

8.1 Pre-test

8.1.1 Collect information about the site characteristics such as exhaust pipe diameter, gas flow rates, port location, access to ports, and safety requirements during a pre-test site survey. You should then decide the sample collection period per run and the target sample flow rate based on your best estimate of the formaldehyde concentration likely to be present. You want to assure that sufficient formaldehyde is captured in the impinger solution so that it can be measured precisely by the spectrophotometer. You may use Equation 323–1 to design your test program. As a guideline for optimum performance, if you can, design your test so that the liquid concentration (C_l)is approximately 10 times the assumed spectrophotometer detection limit of 0.2 ppmw. However, since actual detection limits are instrument specific, we also suggest that you confirm that the laboratory equipment can meet or exceed this detection limit.

8.1.2 Prepare and then weigh the midget impingers prior to configuring the sampling train. The first impinger is initially dry. The second impinger contains 20 mL of reagent water, and the third impinger contains silica gel that is added before weighing the impinger. Each prepared impinger is weighed and the pre-sampling weight is recorded to the nearest 0.5 gm.

8.1.3 Assemble the sampling train (see Figure 1). Ice is packed around the impingers in order to keep them cold during sample collection. A small amount of water may be added to the ice to improve thermal transfer.

8.1.4 Perform a sampling system leak-check (from the probe tip to the pump outlet) as follows: Connect a rotameter to the outlet of the pump. Close off the inlet to the probe and observe the leak rate. The leak rate must be less than 2 percent of the planned sampling rate of 0.2 or 0.4 L/min.

8.1.5 Source gas temperature and static pressure should also be considered prior to field sampling to ensure adequate safety precautions during sampling.

8.2 Sample Collection

8.2.1 Set the sample flow rate between 0.2—0.4 L/min, depending upon the anticipated concentration of formaldehyde in the engine exhaust. (You may have to refer to published data[5,6] for anticipated concentration levels.) If no information is available for the anticipated levels of formaldehyde, use the higher sampling rate of 0.4 L/min.

8.2.2 Record the sampling flow rate every 5–10 minutes during the sample collection period.

8.2.3 Monitor the amount of ice surrounding the impingers and add ice as necessary to maintain the proper impinger temperature. Remove excess water as needed to maintain an adequate amount of ice.

8.2.4 Record measured leak rate, beginning and ending times and dry gas meter readings for each sampling run, impinger weights before and after sampling, and sampling flow rates and dry gas meter exhaust temperature every 5–10 minutes during the run, in a signed and dated notebook.

8.2.5 If possible, monitor and record the fuel flow rate to the engine and the exhaust oxygen concentration during the sampling period. This data can be used to estimate the engine exhaust flow rate based on the Method 19 approach. This approach, if accurate fuel flow rates can be determined, is preferred for reciprocating IC engine exhaust flow rate estimation due to the pulsating nature of the engine exhaust. The F-Factor procedures described in Method 19 may be used based on measurement of fuel flow rate and exhaust oxygen concentration. One example equation is Equation 323–2.

8.3 *Post-test.* Perform a sampling system leak-check (from the probe tip to pump outlet). Connect a rotameter to the outlet of the pump. Close off the inlet to the probe and observe the leak rate. The leak rate must be less than 2 percent of the sampling rate. Weigh and record each impinger immediately after sampling to determine the moisture weight gain. The impinger weights are measured before transferring the impinger contents, and before rinsing the sample probe and sample line. The moisture content of the exhaust gas is determined by measuring the weight gain of the impinger solutions and volume of gas sampled as described in Method 4. Rinse the sample probe and sample line with reagent water. Transfer the impinger catch to an amber 40-mL VOA bottle with a Teflon-lined cap. If there is a small amount of liquid in the dropout impinger (<10 mL), the impinger catches can be combined in one 40 mL VOA bottle. If there is a larger amount of liquid in the dropout impinger, use a larger VOA bottle to combine the impinger catches. Rinse the impingers and combine the rinsate from the sample probe, sample line, and impingers with the impinger catch. In general, combined rinse volumes should not exceed 10 mL. The volume of the rinses during sample recovery should not be excessive as this may result in your having to use a larger VOA bottle. This in turn would raise the detection limit of the method since after combining the rinses with the impinger catches in the VOA bottle, the bottle should be filled with reagent water to eliminate the headspace in the sample vial. Keep the sample bottles over ice until analyzed on-site or received at the laboratory. Samples should be analyzed as soon as possible to minimize possible sample degradation. Based on a limited number of previous analyses, samples held in refrigerated conditions showed some sample degradation over time.

8.4 Quality Control Samples

8.4.1 *Field Duplicates.* During at least one run, a pair of samples should be collected concurrently and analyzed as separate samples. Results of the field duplicate samples should be identified and reported with the sample results. The percent difference in exhaust (stack) concentration indicated by field duplicates should be within 20 percent of their mean concentration. Data are to be flagged as suspect if the duplicates do not meet the acceptance criteria.

8.4.2 *Spiked Samples.* An aliquot of one sample from each source sample set should be spiked at 2 to 3 times the formaldehyde level found in the unspiked sample. It is also recommended that a second aliquot of the same sample be spiked at around half the level of the first spike; however, the second spike is not mandatory. The results are acceptable if the measured spike recovery is 80 to 120 percent. Use Equation 323–4. Data are to be flagged as suspect if the spike recovery do not meet the acceptance criteria.

8.4.3 Field Blank. A field blank consisting of reagent water placed in a clean impinger train, taken to the test site but not sampled, then recovered and analyzed in the same manner as the other samples, should be collected with each set of source samples. The field blank results should be less than 50 percent of the lowest calibration standard used in the sample analysis. If this criteria is not met, the data should be flagged as suspect.

9.0 Quality Control

QA/QC Specification	Acceptance criteria	Frequency	Corrective action
Leak-check—Sections 8.1.4, 8.3	<2% of Sampling rate	Pre- and Post-sampling	Pre-sampling: Repair leak and re-check Post-sampling: Flag data and repeat run if for regulatory compliance.
Sample flow rate	Between 0.2 and 0.4 L/min	Throughout sampling	Adjust.
VOA vial headspace	No headspace	After sample recovery	Flag data.
Sample preservation	Maintain on ice	After sample recovery	Flag data.
Sample hold time	14 day maximum	After sample recovery	Flag data.
Field Duplicates—Section 8.4.1	Within 20% of mean of original and duplicate sample.	One duplicate per source sample set.	Flag data.
Spiked Sample—Section 8.4.2	Recovery between 80 and 120%	One spike per source sample set	Flag data.
Field Blank—Section 8.4.3	<50% of the lowest calibration standard.	One blank per source sample set	Flag data.
Calibration Linearity—Section 10.1	Correlation coefficient of 0.99 or higher.	Per source sample set	Repeat calibration procedures.
Calibration Check Standard—Section 10.3.	Within 10% of theoretical value	One calibration check per source sample set.	Repeat check, remake standard and repeat, repeat calibration.
Lab Duplicates—Section 11.2.1	Within 10% of mean of original and duplicate sample analysis.	One duplicate per 10 samples	Flag data.
Analytical Blanks—Section 11.2.2	<50% of the lowest calibration standard.	One blank per source sample set	Clean glassware/analytical equipment and repeat.

10.0 Calibration and Standardization

10.1 *Spectrophotometer Calibration.* Prepare a stock solution of 10 ppm formaldehyde. Prepare a series of calibration standards from the stock solution by adding 0, 0.1, 0.3, 0.7, 1.0, and 1.5 mL of stock solution (corresponding to 0, 1.0, 3.0, 7.0, 10.0, and 15.0 µg formaldehyde, respectively) to screw-capped vials. Adjust each vial's volume to 2.0 mL with reagent water. Add 2.0 mL of acetyl acetone reagent, thoroughly mix the solution, and place the vials in a water bath (or heating block) at 60 °C for 10 minutes. Remove the vials and allow to cool to room temperature. Transfer each solution to a cuvette and measure the absorbance at 412 nm using the spectrophotometer. Develop a calibration curve from the analytical results of these standards. The acceptance criteria for the spectrophotometer calibration is a correlation coefficient of 0.99 or higher. If this criteria is not met, the calibration procedures should be repeated.

10.2 *Spectrophotometer Zero.* The spectrophotometer should be zeroed with reagent water when analyzing each set of samples.

10.3—*Calibration Checks.* Calibration checks consisting of analyzing a standard separate from the calibration standards must be performed with each set of samples. The calibration check standard should not be prepared from the calibration stock solution. The result of the check standard must be within 10 percent of the theoretical value to be acceptable. If the acceptance criteria are not met, the standard must be reanalyzed. If still unacceptable, a new calibration curve must be prepared using freshly prepared standards.

11.0 Analytical Procedure

11.1 *Sample Analysis.* A 2.0-mL aliquot of the impinger catch/rinsate is transferred to a screw-capped vial. Two mL of the acetyl acetone reagent are added and the solution is thoroughly mixed. Once mixed, the vial is placed in a water bath (or heating block) at 60 °C for 10 minutes. Remove the vial and allow to cool to room temperature. Transfer the solution to a cuvette and measure the absorbance using the spectrophotometer at 412 nm. The quantity of formaldehyde present is determined by comparing the sample response to the calibration curve. Use Equation 323–5. If the sample response is out of the calibration range, the sample must be diluted and reanalyzed. Such dilutions must be performed on another aliquot of the original sample before the addition of the acetyl acetone reagent. The full procedure is repeated with the diluted sample.

11.2 Analytical Quality Control

11.2.1 *Laboratory Duplicates.* Two aliquots of one sample from each source sample set should be prepared and analyzed (with a minimum of one pair of aliquots for every 10 samples). The percent difference between aliquot analysis should be within 10 percent of their mean. Use Equation 323–3. Data are flagged if the laboratory duplicates do not meet this criteria.

11.2.2 *Analytical blanks.* Blank samples (reagent water) should be incorporated into each sample set to evaluate the possible presence of any cross-contamination. The acceptance criteria for the analytical blank is less than 50 percent of the lowest calibration standard. If the analytical blank does not meet this criteria, the glassware/analytical equipment should be cleaned and the analytical blank repeated.

12.0 Calculations and Data Analysis

12.1 Nomenclature

A = measured absorbance of 2 mL aliquot
B = estimated sampling rate, lpm
C_l = target concentration in liquid, ppmw
D = estimated stack formaldehyde concentration (ppmv)
E = estimated liquid volume, normally 40, mL (the size of the VOA used)
C_{form} = formaldehyde concentration in gas stream, ppmvd
$C_{form\ @15\%\ O2}$ = formaldehyde concentration in gas stream corrected to 15% oxygen, ppmvd
C_{sm} = measured concentration of formaldehyde in the spiked aliquot
C_u = measured concentration of formaldehyde in the unspiked aliquot of the same sample
Cs = calculated concentration of formaldehyde spiking solution added to the spiked aliquot
df = dilution factor, 1 unless dilution of the sample was needed to reduce the absorbance into the calibration range
F_d = dry basis F-factor from Method 19, dscf per million btu
GCV_g = Gross calorific value (or higher heating value), btu per scf
K_c = spectrophotometer calibration factor, slope of the least square regression line (**Note:** Most spreadsheets are capable of calculating a least squares line.)
K_1 = 0.3855 °K/mm Hg for metric units, (17.65 °R/in.Hg for English units.)
MW = molecular weight, 30 g/g-mole, for formaldehyde

24.05 = mole specific volume constant, liters per g-mole
m = mass of formaldehyde in liquid sample, mg
P_{std} = Standard pressure, 760 mm Hg (29.92 in.Hg)
P_{bar} = Barometric pressure, mm Hg (in.Hg)
PD = Percent Difference
Q_e = exhaust flow rate, dscf per minute
Q_g = natural gas fuel flow rate, scf per minute
T_m = Average DGM absolute temperature, °K (°R).
T_{std} = Standard absolute temperature, 293 °K (528 °R).
t = sample time (minutes)
V_m = Dry gas volume as measured by the DGM, dcm (dcf).
$V_{m(std)}$ = Dry gas volume measured by the DGM, corrected to standard conditions, dscm (dscf).
V_t = actual total volume of impinger catch/rinsate, mL
V_a = volume (2.0) of aliquot analyzed, mL
X_1 = first value
X_2 = second value
O_{2d} = oxygen concentration measured, percent by volume, dry basis
%R = percent recovery of spike
Z_u = volume fraction of unspiked (native) sample contained in the final spiked aliquot [*e.g.*, Vu/(Vu + Vs), where Vu + Vs should = 2.0 mL]
Z_s = volume fraction of spike solution contained in the final spiked aliquot [*e.g.*, Vs/(Vu + Vs)]
R = 0.02405 dscm per g-mole, for metric units
Y = Dry Gas Meter calibration factor

12.2 Pretest Design

$$C_l = \frac{B*t*D*30}{24.05*E} \qquad \text{Eq. 323-1}$$

12.3 Exhaust Flow Rate

$$Q = \frac{F_d Q_g G C V_g}{10^6}\left[\frac{20.9}{20.9 - O_{2d}}\right] \qquad \text{Eq. 323-2}$$

12.4 Percent Difference.—(Applicable to Field and Lab Duplicates)

$$PD = \frac{(X_1 - X_2)}{\left(\frac{X_1 + X_2}{2}\right)} * 100 \qquad \text{Eq. 323-3}$$

12.5 Percent Recovery of Spike

$$\%R = \frac{(C_{sm} - Z_u C_u)}{Z_s C_s} * 100 \qquad \text{Eq. 323-4}$$

12.6 Mass of Formaldehyde in Liquid Sample

$$m = K_c A F\left(\frac{V_t}{V_a}\right) \qquad \text{Eq. 323-5}$$

12.7 Dry Sample Gas Volume, Corrected to Standard Conditions

$$V_{m(std)} = \frac{(V_m Y T_{std} P_{bar})}{(T_m P_{std})} \qquad \text{Eq. 323-6}$$

$$= \frac{K_i Y V_m P_{bar}}{T_m}$$

12.8 Formaldehyde Concentration in Gas Stream

$$c_{form} = \frac{R}{MW}\left(\frac{m}{V_{m(std)}}\right)\left(\frac{1\,g}{1000\,mg}\right)\left(1\times10^6\ ppm\right) \qquad \text{Eq. 323-7}$$

12.9 Formaldehyde Concentration, Corrected to 15% Oxygen

$$c_{form@15\%O_2} = c_{form} * \frac{(20.9 - 15)}{(20.9 - O_{2d})} \qquad \text{Eq. 323-8}$$

13.0 Method Performance

13.1 *Precision.* Based on a Method 301 validation using quad train arrangement with post sampling spiking study of the method at a natural gas-fired IC engine, the relative standard deviation of six pairs of unspiked samples was 11.2 percent at a mean stack gas concentration of 16.7 ppmvd.

13.2 *Bias.* No bias correction is allowed. The single Method 301 validation study of the method at a natural gas-fired IC engine, indicated a bias correction factor of 0.91 for that set of data. An earlier spiking study got similar average percent spike recovery when spiking into a blank sample. This data set is too limited to justify using a bias correction factor for future tests at other sources.

13.3 *Range.* The range of this method for formaldehyde is 0.2 to 7.5 ppmw in the liquid phase. (This corresponds to a range of 0.27 to 10 ppmv in the engine exhaust if sampling at a rate of 0.4 Lpm for 60 minutes and using a 40 mL VOA bottle.) If the liquid sample concentration is above this range, perform the appropriate dilution for accurate measurement. Any dilutions must be taken from new aliquots of the original sample before reanalysis.

13.4 *Sample Stability.* Based on a sample stability study conducted in conjunction with the method validation, sample degradation for 7 and 14-day hold times does not exceed 2.3 and 4.6 percent, respectively, based on a 95 percent level of confidence. Therefore, the recommended maximum sample holding time for the underivatized impinger catch/rinsate is 14 days, where projected sample degradation is below 5 percent.

14.0 Pollution Prevention

Sample gas from the combustion source exhaust is vented to the atmosphere after passing through the chilled impinger sampling train. Reagent solutions and samples should be collected for disposal as aqueous waste.

15.0 Waste Management

Standards of formaldehyde and the analytical reagents should be handled according to the Material Safety Data Sheets.

16.0 References

[1] National Council of the Paper Industry for Air and Stream Improvement, Inc., "Volatile Organic Emissions from Pulp and Paper Mill Sources, Part X—Test Methods, Quality Assurance/Quality Control Procedures, and Data Analysis Protocols," Technical Bulletin No. 684, December 1994.

[2] National Council of the Paper Industry for Air and Stream Improvement, Inc., "Field Validation of a Source Sampling Method for Formaldehyde, Methanol, and Phenol at Wood Products Mills," 1997 TAPPI International Environmental Conference.

[3] Roy F. Weston, Inc., "Formaldehyde Sampling Method Field Evaluation and Emission Test Report for Georgia-Pacific Resins, Inc., Russellville, South Carolina," August 1996.

[4] Hoechst Celanese Method CL 8–4, "Standard Test Method for Free Formaldehyde in Air Using Acetyl acetone," Revision 0, September 1986.

[5] Shareef, G.S., *et al.* "Measurement of Air Toxic Emissions from Natural Gas-Fired Internal Combustion Engines at Natural Gas Transmission and Storage Facilities." Report No. GRI–96/0009.1, Gas Research Institute, Chicago, Illinois, February 1996.

[6] Gundappa, M., *et al.* "Characteristics of Formaldehyde Emissions from Natural Gas-Fired Reciprocating Internal Combustion Engines in Gas Transmission. Volume I: Phase I Predictive Model for Estimating Formaldehyde Emissions from 2–Stroke Engines." Report No. GRI–97/0376.1, Gas

Research Institute, Chicago, Illinois, September 1997.

17.0 Tables, Diagrams, Flowcharts, and Validation Data

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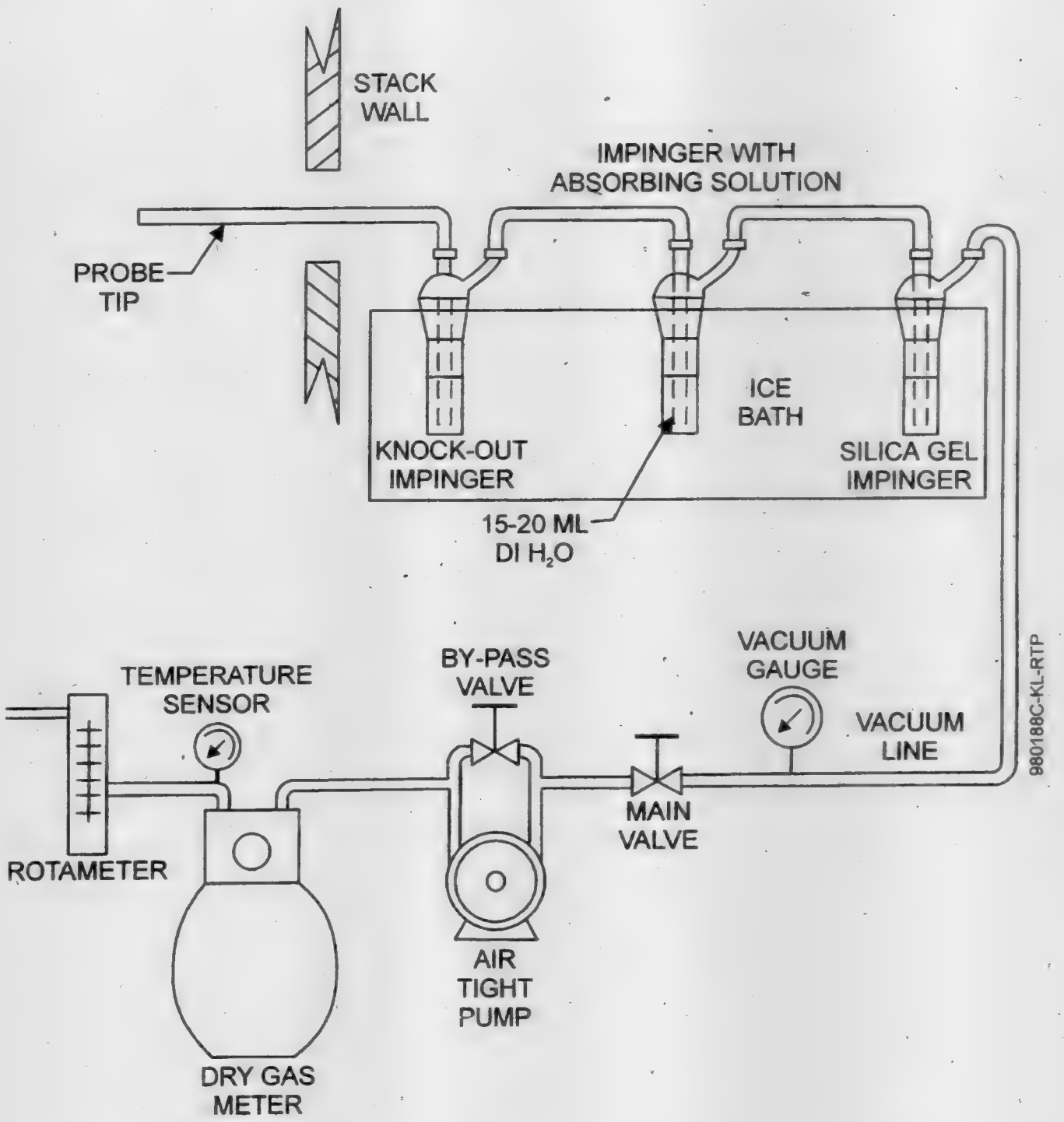

Figure 323-1. Chilled Impinger Train Sampling System

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Federal Register

Tuesday,
January 14, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Design Standards for Fuselage Doors on Transport Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2003–14193; Notice No. 03–01]

RIN 2120–AH34

Design Standards for Fuselage Doors on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to amend the design standards for fuselage doors, hatches, and exits on transport category airplanes. This action would improve door integrity by providing design criteria that would ensure that doors remain secure under all circumstances that service experience has shown can happen. Adopting this proposal also would relieve a certification burden on industry by eliminating regulatory differences between the airworthiness standards and related guidance material of the United States and Europe.

DATES: Send your comments on or before April 14, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14193 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard. You also may submit comments through the Internet to: *http://dms.dot.gov.*

You may review the public docket containing comments to proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Federal Aviation Administration, Airframe/Cabin Safety Branch (ANM–115), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This NPRM?

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written documents.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

How Can I Obtain a Copy of This NPRM?

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's web page at *http://www.faa.gov/avr/arm/nprm.cfm?nav=nprm;* or

(3) Accessing the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Be sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

What Prompted this Proposed Rule?

Following a major accident in 1974, which involved the opening of a fuselage door on a transport category airplane during flight, the FAA amended the applicable safety standards to provide a higher level of safety for fuselage doors. In 1980, the FAA issued amendment 25–54 to Title 14, Code of Federal Regulations (CFR), part 25 (45 FR 60172, September 11, 1980). The objective of this amendment was to provide a level of safety in doors that would be consistent with the level of safety required for other critical systems on the airplane, such as primary flight controls. This was achieved by:

- Requiring redundancy and fail-safe features in the door operating systems, and
- Providing protection from anticipated human errors.

In 1989, another wide-body transport category airplane lost a lower lobe cargo door during flight, along with a portion of fuselage structure above the door. Because of this accident and other similar accidents, the Air Transport Association (ATA) of America formed an industry task force to review door designs on transport category airplanes. This group was chartered to review the design and operation of doors on the current fleet of transport airplanes, and to recommend actions that would prevent any further unintended opening of outward opening doors. The group also reviewed relevant current regulations and advisory material, and provided recommendations to the FAA for necessary rule changes. The ATA submitted its recommendations to the FAA in a report entitled, "ATA Cargo Door Task Force Final Report," dated May 15, 1991.

What NTSB Safety Recommendations are Related to this Proposed Rule?

As a result of its investigation of the airplane accidents associated with fuselage doors opening during flight, the National Transportation Safety Board (NTSB) also issued several Safety Recommendations concerning doors on transport category airplanes. The NTSB asked the FAA to consider the following recommendations:

Safety Recommendation A–89–092: "Issue an airworthiness directive to require that the manual drive units and electrical actuators for the Boeing 747 cargo doors have torque-limiting devices

to ensure the lock sectors, modified in accordance with the requirements of Airworthiness Directive (AD)–88–12–04 [amendment 39–5934 (53 FR 18079, May 20, 1988)], cannot be overridden during mechanical or electrical operation of the latch cams."

Safety Recommendation A–89–093: "Issue an airworthiness directive for non-plug cargo doors on all transport category airplanes requiring the installation of positive indicators to ground personnel and flight crews confirming the actual position of both the latch cams and locks, independently."

Safety Recommendation A–89–094: "Require that fail-safe design considerations for non-plug cargo doors on present and future transport category airplanes account for conceivable human errors, in addition to electrical and mechanical malfunctions."

Safety Recommendation A–92–21: "Require that the electrical actuating system for non-plug cargo doors on transport category aircraft provide for the removal of all electrical power from circuits on the door after closure (except for any indicating circuit power necessary to provide positive indication that the door is properly latched and locked) to eliminate the possibility of uncommanded actuator movements caused by wiring short circuits."

The FAA responded to these Safety Recommendations by issuing various airworthiness directives, applicable to the current fleet of transport category airplanes, and requiring relevant modifications and inspections of the fuselage doors.

Subsequent to the conclusion of the harmonization activity (as discussed below) that led to this proposal, the FAA received an additional safety recommendation from the NTSB, A–02–020. The NTSB recommends that the FAA "Require all newly certificated transport category airplanes [to] have a system for each emergency exit door to relieve pressure so that they can only be opened on the ground after a safe differential pressure level is attained." We have not yet determined the appropriate course of action with regard to this recommendation, and no regulatory action is being proposed at this time. However, we solicit comments on this recommendation and, if appropriate, will develop a supplemental Notice of Proposed Rulemaking to propose an additional provision addressing this issue.

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR), part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)-25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is "Harmonization" and How Did It Start?

Although part 25 and JAR–25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial additional costs to manufacturers and operators. These additional costs, however, frequently do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to "harmonize" their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider "harmonization" of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 74 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language "recommended" by ARAC. If the FAA accepts an ARAC recommendation, the

agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC concurred with the draft NPRM, without changes.

Discussion of the Proposal

What Is the General Scope of the Proposal?

The scope of this proposal is to revise and reorganize the existing rules in 14 CFR part 25 to provide the following:

1. Clarification of the existing design requirements for doors.
2. Definitive criteria for the door design requirements that are covered in the existing rules by general text.
3. Additional fail-safe requirements and detailed door design requirements, based on the recommendations of the NTSB and the ATA, and on current industry practice.

What Definitions Apply to the Proposed Rule?

To understand the rest of this proposal, the following definitions are helpful:

A *latch* is a movable mechanical element that, when engaged, prevents the door from opening.

A *lock* is a mechanical element that monitors the latch position and, when engaged, prevents the latch from becoming disengaged.

Latched means the latches are fully engaged with their structural counterparts and held in position by the latch operating mechanism.

Locked means the locks are fully engaged.

Latching mechanism includes the latch operating mechanism and the latches.

Locking mechanism includes the lock operating mechanism and the locks.

Closed means the door has been placed within the doorframe in such a position that the latches can be operated to the "latched" condition.

Fully closed means the door is placed within the doorframe in the position that it will occupy when the latches are in the latched condition.

What Are the Specific Proposed Changes?

This action proposes changes mainly to § 25.783, "Doors." First, the title of § 25.783 would be changed from the current "Doors" to "Fuselage doors" to more accurately reflect the applicability of this revised section. The term "doors," as used in this proposed revision of § 25.783, would also include hatches, openable windows, access panels, covers, etc., on the exterior of the fuselage that do not require the use of tools to open or close. This also would include each door or hatch through a pressure bulkhead, including any bulkhead that is specifically designed to function as a secondary pressure bulkhead under the prescribed failure conditions of 14 CFR part 25.

Other specific changes to § 25.783 are as follows:

Proposed Changes to § 25.783(a)

The format and portions of the text of paragraph (a) would be totally revised. The proposed text would describe the types of doors to which this section of the regulations is applicable, and would clarify the fact that the requirements apply to the unpressurized portions of flight as well as to pressurized flight.

Proposed paragraph (a) also would provide the general design requirements for doors. These general design requirements are not substantively different from the requirements contained in existing § 25.783. A reference to the locking requirements in § 25.607 ("Fasteners") would be included in paragraph (a). Experience has shown that it is advisable to add this reference to ensure that these requirements are not overlooked during the door design process. One provision of this proposed requirement, which is new, would require the removal of all power that could initiate the unlatching and unlocking of the door during flight. It is based on NTSB Safety Recommendation A–92–21, discussed previously.

Proposed Changes to § 25.783(b)

Paragraph (b) would be revised to require safeguards against both inadvertent and deliberate opening of doors during flight. It would clarify the existing requirement that doors must be prevented from opening inadvertently (that is, not deliberately, and without forethought, consideration, or consultation) by people on board the airplane during flight. The intent of this requirement is to protect both the passenger and the airplane from hazards resulting from the unintentional actions by persons on board.

In addition, the proposal would make it clear that the door must be safeguarded against the deliberate opening during flight by persons on board. The proposed text requires that the possibility of deliberate opening be minimized. The intent of this requirement is that, for doors in pressurized compartments, it should not be possible to open the doors after takeoff, when the compartment is pressured to a significant level. (During approach, takeoff, and landing when compartment differential pressure is lower, intentional opening may be possible; however, during these short phases of the flight, all passengers are expected to be seated with seat belts fastened. The exposure to deliberate opening would therefore be minimized.) Further guidance on this subject is given in draft Advisory Circular 25.783–1X, discussed later in this document.

Further, for doors that can be opened under significant cabin pressure, or for doors in non-pressurized airplanes, the use of an auxiliary securing means, such as speed-activated or barometrically-activated devices, may be necessary. Paragraph (b) would require that, if auxiliary devices are used, they must be designed so no single failure or malfunction could prevent more than one exit from opening. Past interpretations of existing paragraph (f) have resulted in this type of design requirement being applied to type certification projects.

Proposed Changes to 25.783(c)

Paragraph (c) would restate the existing requirements of paragraph (f) for a provision to prevent the airplane from becoming pressurized if the door is not fully closed, latched, and locked. The current requirement states:

External doors must have provisions to prevent the initiation of pressurization of the airplane to an unsafe level if the door is not fully closed and locked * * *"

However, this proposal would remove the phrase, "the initiation of" from this text because it is inconsistent and confusing with regard to a common method of preventing pressurization that employs vent doors. Mechanical vent doors allow the pressurization system to initiate and a small amount of pressure may exist as the air flows through the vents. The revised text would correct this inconsistency. It also would allow for certain types of doors that:

- Can safely and reliably act as their own venting mechanism when not fully closed and latched; or
- Would automatically close and latch, as appropriate to the door design, before an unsafe level of pressure is reached.

For these doors without an independent means, the assessment for a safe and reliable closing would include consideration of single failures and adverse conditions, such as debris in the doorway.

Paragraph (c)(1) would provide a definitive criterion for the reliability level of the pressurization prevention system and would read: "The provision must be designed to function after any single failure, or after any combination of failures not shown to be extremely improbable." This criterion is consistent with:

- The interpretation of the general text of the existing rule, and
- The current industry practice for new designs.

The FAA does not intend that the proposed criterion impose a new level of reliability for mechanical vent systems that is more stringent than that established by typical fail-safe designs. However, it would provide a definitive criterion for use in evaluating these vent systems or other systems that may interconnect with the airplane's pressurization system. A means for preventing pressurization that functions with a high degree of reliability despite operator and flightcrew errors would be consistent with NTSB Safety Recommendation A–89–094, described previously, which recommends fail-safe features that account for conceivable human errors.

Paragraph (c)(2) would exempt certain doors that meet the requirements of proposed paragraph (h) from the requirement to have a separate means to prevent pressurization. Generally such doors would have to either remain open, so that pressurization cannot take place, or must close and latch as pressurization takes place. Under this provision, these doors would have to be shown not to create a hazardous condition, assuming single failures in the latching mechanism as well as jams due to failures or debris. This would have to be shown from every possible position during the pressurization process. This proposal formalizes and standardizes previous equivalent level of safety findings made under the provisions of § 21.21(b)(1).

Proposed Changes to § 25.783(d)

Paragraph (d) would provide requirements for the detail design and fail-safe features of latching and locking mechanisms. Advisory Circular (AC) 25.783–1 "Fuselage Doors, Hatches, and Exits," dated December 10, 1986, currently recommends some of these design features; the proposed rule would make these features mandatory.

The detail design requirements for latches and locks contained in this proposal are consistent with current industry practice, as applied to doors whose initial movement is not inward. However, the applicability of the proposed requirement would be extended to any door, regardless of the direction of initial movement.

Paragraph (d) also would require the latching mechanism to be designed to eliminate forces that would drive the latches to the open position. However, the FAA recognizes there still may be ratcheting forces that could progressively move the latches to the *unlatched* position. Therefore, the rule also would require the latching system to be designed such that the latches are positively secured without regard to the position of the locks.

Proposed paragraph (d)(3)(iii) contains the requirement for a fail-safe criterion for the locking system that would apply only to outward opening doors while under pressure. Since all the locks are usually designed as a single locking system, it is possible that single failures in the locking system could result in the unlocking of several or all the latches. Although the latches would continue to be held in the latched position by the latch system securing means, the FAA has determined that, for the most critical designs, during pressurized flight, single failures in the locking system should not unlock more latches than are needed to restrain the door.

Proposed paragraphs (d)(5) and (6) contain detail requirements for the lock elements and locking system to ensure that they will restrain the latches under anticipated loading conditions, and to ensure that the locks cannot be engaged unless the door is properly latched. Experience has shown these features to be fundamental to the design of a safe door.

Finally, proposed paragraph (d)(7) would exclude the requirement for a locking system from any door for which unlatching was not a hazard. In that case, a locking mechanism would not add to the safety of the door, since unlatching (which is what a locking mechanism is supposed to prevent) does not create a hazardous condition.

Proposed Changes to § 25.783(e)

Paragraph (e) would require warning, caution, and advisory indications for doors. These requirements for indication are similar to the current provisions for indication of door status in this section, but provide added features consistent with NTSB and ATA recommendations. The prescribed "improbable" level for an erroneous indication that the door is fully closed, latched, and locked is proposed to be the same as the requirement of existing paragraph (e). However, the applicability would be extended to each door, if unlatching of the door in flight could be a hazard.

Paragraph (e) also would require an aural warning before takeoff for any door that is not fully closed, latched, and locked if opening of the door would not allow safe flight. The FAA has determined that this requirement is necessary, based on service history, including the crash of an airplane shortly after takeoff as a result of aerodynamic interference from an open cargo door. This system should function in a manner similar to the takeoff configuration warning systems required by § 25.703 ("Takeoff warning system").

Paragraph (e) also would require that there be a positive means to display indications and signals to the door operator. This proposed requirement is consistent with NTSB Safety Recommendation A–89–093, discussed previously.

Proposed Changes to § 25.783(f)

This proposal would revise paragraph (f) to require a provision for direct visual inspections to determine that the door is fully closed, latched, and locked. The specific location and quantity of the viewing means would depend on the specific design, but might not require a viewing means for each lock, provided that the number of visual indicators provided would not give a false indication. This proposed requirement is similar to that of the existing paragraph (b), which requires a means for direct visual inspection of the locking mechanism. However, this proposal would extend the requirements to apply to any door, irrespective of the direction of initial movement, if the unlatched door could be a safety hazard.

Proposed Changes to § 25.783(g)

This proposal would revise paragraph (g) to provide relief from certain requirements of the current rule that are applicable to access panels not subject to pressurization and for which opening would be inconsequential to safety. In addition, the proposal would provide relief from certain of the current requirements applicable to:

- Maintenance doors that are not a safety hazard if opened; and
- Removable emergency exits, because they are not used in normal operation and therefore not subjected to the same level of human error, abuse, and damage as other doors and hatches.

Proposed Changes to § 25.783(h)

Paragraph (h) would prescribe detail design features that a door would need to have if it were to be considered as a door that is "not a hazard" when this phrase is used in other paragraphs of § 25.783. This paragraph effectively defines the criteria under which a door

could become a potential hazard. The criteria include hazards due to decompression, aerodynamic interference, interaction with other systems or structure (for example, through the door departing the airplane and impacting an engine or control surface). For the purposes of this determination, opening by persons is treated separately from the tendency of the door to remain closed when under pressure. However, both are considerations that must be satisfied to determine that the door is not a hazard.

Proposed Changes to § 25.783(i)

The current requirements of paragraph (i) that apply to the design of air stairs (integral stair installed in a passenger entry door that is qualified as a passenger emergency exit) would be removed from existing § 25.783 and added in § 25.810 ("Emergency egress assist means and escape routes") as a new paragraph (e), without change in text. The FAA considers that manufacturers, applicants, and others seeking compliance with rules would be better served by having these requirements located in the same section of the rules where other related requirements are found.

Proposed Changes to § 25.783(j)

The special requirement for lavatory doors contained in current paragraph (j) would be removed and placed in a new § 25.820 ("Lavatory doors"), with only minor editorial changes in text. The FAA considers that less confusion will be caused, and the regulated public will be better served, if all requirements about this particular subject are located in one separate place.

Other Proposed Changes

Several other provisions currently in § 25.783 would be deleted, since they duplicate the requirements applicable to emergency exit design that are contained in, or would be moved without substantive change to, other sections of part 25. The FAA considers that less confusion would be caused, and that the regulated public would be better served, if all requirements concerning a particular subject are located in one place. The FAA proposes the following specific changes:

§ 25.809(b) ("Emergency exit arrangement"):

This paragraph would be revised by adding a new paragraph (b)(3) to require that each emergency exit must be capable of being opened, when there is no fuselage deformation, "even though persons may be crowded against the door on the inside of the airplane." This specific requirement is currently a part of § 25.783(b), but is more appropriate as part of the emergency exit arrangement requirements of § 25.809.

§ 25.809(c):

This paragraph would be revised to include the requirement that the means of opening emergency exits also must be marked so it can be readily located and operated, even in darkness. This requirement is currently located in § 25.783(b), but is more appropriate as part of the emergency exit arrangement requirements of § 25.809.

§ 25.809(f):

This paragraph would be revised to require that the external door be located where persons using it will not be endangered by the propellers when appropriate operating procedures are used. This requirement currently is found in § 25.783(d), but is more applicable to the emergency exit arrangement requirements of § 25.809. Existing § 25.809(f) is redundant with the requirements for locking mechanisms contained in § 25.783.

In addition, the FAA is also proposing to correct an error in the current regulations as follows:

§ 25.807 ("Emergency exits"):

Existing § 25.783 requires that passenger entry doors also meet the airworthiness standards required for emergency exits. In addition, the current JAR 25.807, issued by the European JAA, requires that certain other fuselage doors, as well as passenger entry doors, meet the same standards as emergency exits. Before the adoption of Amendment 25–88 (61 FR 57956, November 8, 1996), part 25 also contained a requirement similar to that of JAR 25.807; however, that requirement was unintentionally omitted when Amendment 25–88 was adopted. This proposed rule would correct this discrepancy by setting forth this requirement in a revised § 25.807(h), and by revising § 25.783 to refer to that section.

Specifically, the proposed § 25.807(h) would be revised to refer to "other exits" that must meet the applicable emergency exit requirements of §§ 25.809 through 25.812. Those exits include:

- Each emergency exit in the passenger compartment in excess of the minimum number of required emergency exits;
- Floor-level doors or exits that are accessible from the passenger compartment and larger than a Type II exit, but less than 46 inches wide; and
- Other ventral or tail cone passenger exits.

This provision is intended to address doors or other means of egress accessible from the passenger cabin. The width limit of 46 inches was derived from cargo doors that have been installed in smaller transport category airplanes. That is, cargo doors are not required to be exits. However, this provision does not relieve any emergency exit for which passenger credit is received from any of the applicable requirements.

Is Existing FAA Advisory Material Adequate?

The FAA also proposes to revise AC 25.783–1. The revised AC would describe an acceptable means, but not the only means, for complying with the proposed revised regulations described in this NPRM. The AC would provide guidance for showing compliance with structural and functional safety standards for doors and their operating systems. The availability of the proposed AC revision for public comment will be announced in the **Federal Register** in the near future.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

The FAA has determined that this proposal has minimal costs, and that it is neither "a significant regulatory action" as defined in Executive Order 12866, nor "significant" as defined in DOT's Regulatory Policies and Procedures. Further, this proposed rule

would not have a significant economic impact on a substantial number of small entities, would reduce barriers to international trade, and would not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

The DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposed rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. Accordingly, the FAA has determined that the expected impact of this proposed rule is so minimal that the proposed rule does not warrant a full evaluation. We provide the basis for this determination as follows.

Currently, airplane manufacturers must satisfy both part 25 and the European JAR–25 standards to certificate transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. As explained in detail previously, these efforts are referred to as "harmonization."

The proposed rule would amend the current fuselage door standard contained in 14 CFR part 25 with a new improved door standard. This new standard would set forth, as a regulatory requirement, some of the existing technical guidance criteria that have been determined to be necessary for safety but which, up to this point, have not been included in the regulations. In addition, the proposed rule addresses recommendations from the NTSB and the Air Transport Association (ATA) task force on doors.

If adopted, the proposal would harmonize the FAA and JAA requirements for fuselage doors. Adopting this proposal would also relieve a certification burden on industry by eliminating regulatory differences between the airworthiness standards and related guidance material of the United States and Europe.

Costs of the Proposed Rule

The FAA identified only one section, 25.783(b), of the proposed rule where manufacturers indicated that a measurable cost would exist. For the other proposed changes, the FAA has not made specific cost estimates but has provided qualitative cost indications.

1. *Paragraph 25.783(a)* is descriptive and has no expected cost.

2. *Paragraph 25.783(b)* relates to opening by persons. The requirement to consider deliberate opening is new, but is expected to be accommodated in existing design practices for all but one United States manufacturer. (Requirements regarding inadvertent opening are not new). One manufacturer would incur an estimated cost of $0.75 million, which would include the requirements for the prevention of intentional opening of the doors.

3. *Paragraph 25.783(c)* covers means to prevent pressurization. The requirement to consider single failures in the pressurization-inhibit system is new, but is believed to be industry practice. Thus, there is likely to be very little, if any, cost for a new design. The provision to permit certain doors to forego this system is actually cost-relieving, and could result in a minor cost reduction in some cases.

4. *Paragraph 25.783(d)* covers latching and locking. Most of these changes are the incorporation of recommendations currently contained in an advisory circular. The vast majority of airplanes already comply, and basic design practice is to comply with these requirements. Therefore, these requirements, while new, should have minimal cost impact. The requirement for each latch to have a lock, which must monitor the latch position, is a formalization of existing practice. The requirement to eliminate forces in the latching mechanism that could load the locks is new, and may not be complied with in all cases currently . The FAA believes that these costs are minimal.

5. *Paragraph 25.783(e)* covers warning, caution, and advisory indications. The reliability of the door indication system would be required to be higher for all doors. This would have only a small cost impact, as would the requirement for an aural warning for certain doors, and the requirement to provide an indication to the door operator.

6. *Paragraph 25.783(f)* contains the visual inspection provision requirement. The requirement for direct visual inspection is extended to more door types, and may add costs in some cases.

7. *Paragraph 25.783(g)* deals with certain maintenance doors, removable emergency exits, and access panels. The current rule does not provide the relief that the proposed rule does, although the AC has indicated that relief is possible. This provision could reduce costs in some cases.

8. *Paragraph 25.783(h)* covers doors that are not a hazard and is intended to provide relief for certain doors, so it could reduce costs.

9. *Paragraphs 25.783(i), 25.783(j), 25.809(b), 25.809(c), and 25.809(f)* move text to another section.

10. *Paragraph 25.807* simply corrects an unintended deletion.

Summary of Benefit and Cost Considerations

The proposed rule is expected to:

- Maintain or provide a slight increase in the level of safety,
- Have only a relatively small effect on costs when compared to current industry practice, and
- Provide some cost savings to manufacturers by avoiding duplicative testing and reporting that could result from the existence of differing requirements under the current standards.

This rule would codify existing guidance, standard industry practice, and industry recommendations for the design standards for fuselage doors, which would prevent a reoccurrence of the 1974 accident. The FAA believes that the cost savings from a single certification requirement exceed the minimal additional compliance cost. The FAA therefore considers that the proposed rule would be cost-beneficial. This is reinforced by industry's support for the proposal. We invite comments on the effects of this proposed regulation. We would particularly appreciate relevant quantitative data relating to any additional costs (or reductions in costs) believed likely to result from the proposed rule. The costs of interest are the increases or decreases, compared to costs associated with what is believed likely to be industry practice in the absence of the proposed rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 50 U.S.C. 601–612, as amended, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle,

the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including businesses and governments.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

If, however, an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons:

First, the proposed rule is expected to provide relief from some regulatory costs. The proposed rule would require that manufacturers of transport category aircraft meet a single certification requirement, rather than different standards for the United States and Europe. Manufacturers of the affected airplanes are believed to already meet most standards that would be required by the proposed rule, or expect to meet most of these standards.

Second, all affected U.S. transport-aircraft category manufacturers exceed the Small Business Administration small-entity criterion of 1,500 employees for aircraft manufacturers, as published by the Small Business Administration in 13 CFR part 121, Small Business Size Regulations; Size Standards, (65 FR 53533, September 5, 2000). The current U.S. part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation. All of these manufacturers have more than 1,500 employees and therefore do not qualify as small entities.

Since there are no affected small entity manufacturers of the airplanes covered by the proposed rule, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would reduce trade barriers by narrowing the differences between U.S. standards and European international standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1532–1538, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We therefore determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is the FAA's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. We have determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines the FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with the FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and the FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this

document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Recording and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, and 44704.

2. Section 25.783 is revised to read as follows:

§ 25.783 Fuselage doors.

(a) *General.* This section applies to fuselage doors, which includes all doors, hatches, openable windows, access panels, covers, etc., on the exterior of the fuselage that do not require the use of tools to open or close. This also applies to each door or hatch through a pressure bulkhead, including any bulkhead that is specifically designed to function as a secondary bulkhead under the prescribed failure conditions of part 25. These doors must meet the requirements of this section, taking into account both pressurized and unpressurized flight, and must be designed as follows:

(1) Each door must have means to safeguard against opening in flight as a result of mechanical failure, or failure of each single structural element.

(2) Each door that could be a hazard if it unlatches must be designed so that opening during pressurized and unpressurized flight from the fully closed, latched, and locked condition is extremely improbable. This must be shown by safety analysis.

(3) Each element of each door operating system must be designed or, where impracticable, distinctively and permanently marked, to minimize the probability of incorrect assembly and adjustment that could result in a malfunction.

(4) All sources of power that could initiate unlocking or unlatching of each door must be automatically isolated from the latching and locking systems prior to flight and it must not be possible to restore power to the door during flight.

(5) Each removable bolt, screw, nut, pin, or other removable fastener must meet the locking requirements of § 25.607.

(6) Certain doors, as specified by § 25.807(h), must also meet the applicable requirements of §§ 25.809 through 25.812 for emergency exits.

(b) *Opening by persons.* There must be a means to safeguard each door against opening during flight due to inadvertent action by persons. In addition, design precautions must be taken to minimize the possibility for a person to open a door intentionally during flight. If these precautions include the use of auxiliary devices, those devices and their controlling systems must be designed so that:

(1) no single failure will prevent more than one exit from being opened, and

(2) failures that would prevent opening of the exit after landing are improbable.

(c) *Pressurization prevention means.* There must be a provision to prevent pressurization of the airplane to an unsafe level if any door subject to pressurization is not fully closed, latched, and locked.

(1) The provision must be designed to function after any single failure, or after any combination of failures not shown to be extremely improbable.

(2) Doors that meet the conditions described in paragraph (h) of this section are not required to have a dedicated pressurization prevention means if, from every possible position of the door, it will remain open to the extent that it prevents pressurization or safely close and latch as pressurization takes place. This must also be shown with each single failure and malfunction, except that:

(i) with failures or malfunctions in the latching mechanism, it need not latch after closing, and

(ii) with jamming as a result of mechanical failure or blocking debris, the door need not close and latch if it can be shown that the pressurization loads on the jammed door or mechanism would not result in an unsafe condition.

(d) *Latching and locking.* The latching and locking mechanisms must be designed as follows:

(1) There must be a provision to latch each door.

(2) The latches and their operating mechanism must be designed so that, under all airplane flight and ground loading conditions, with the door latched, there is no force or torque tending to unlatch the latches. In addition, the latching system must include a means to secure the latches in the latched position. This means must be independent of the locking system.

(3) Each door subject to pressurization, and for which the initial opening movement is not inward, must—

(i) have an individual lock for each latch,

(ii) have the lock located as close as practicable to the latch, and

(iii) be designed so that, during pressurized flight, no single failure in the locking system would prevent the locks from restraining the latches as necessary to secure the door.

(4) Each door for which the initial opening movement is inward, and unlatching of the door could result in a hazard, must have a locking means to prevent the latches from becoming disengaged. The locking means must ensure sufficient latching to prevent opening of the door even with a single failure of the latching mechanism.

(5) It must not be possible to position the lock in the locked position if the latch and the latching mechanism are not in the latched position.

(6) It must not be possible to unlatch the latches with the locks in the locked position. Locks must be designed to withstand the limit loads resulting from—

(i) the maximum operator effort when the latches are operated manually;

(ii) the powered latch actuators, if installed; and

(iii) the relative motion between the latch and the structural counterpart.

(7) Each door for which unlatching would not result in a hazard is not required to have a locking mechanism meeting the requirements of paragraphs (d)(3) through (d)(6) of this section.

(e) *Warning, caution, and advisory indications.* Doors must be provided with the following indications:

(1) There must be a positive means to indicate at the door operator's station for each door that all required operations to close, latch, and lock the door have been completed.

(2) There must be a positive means clearly visible from the operator station for each door to indicate if the door is not fully closed, latched, and locked for each door that could be a hazard if unlatched.

(3) There must be a visual means on the flight deck to signal the pilots if any door is not fully closed, latched, and locked. The means must be designed such that any failure or combination of failures that would result in an erroneous closed, latched, and locked indication is improbable for—

(i) each door that is subject to pressurization and for which the initial opening movement is not inward, or

(ii) each door that could be a hazard if unlatched.

(4) There must be an aural warning to the pilots prior to or during the initial portion of takeoff roll if any door is not fully closed, latched, and locked, and its opening would prevent a safe takeoff and return to landing.

(f) *Visual inspection provision.* Each door for which unlatching could be a hazard must have a provision for direct visual inspection to determine, without ambiguity, if the door is fully closed, latched, and locked. The provision must be permanent and discernible under operational lighting conditions, or by means of a flashlight or equivalent light source.

(g) *Certain maintenance doors, removable emergency exits, and access panels.* Some doors not normally opened except for maintenance purposes or emergency evacuation and some access panels need not comply with certain paragraphs of this section as follows:

(1) Access panels that are not subject to cabin pressurization and would not be a hazard if open during flight need not comply with paragraphs (a) through (f) of this section, but must have a means to prevent inadvertent opening during flight.

(2) Inward-opening removable emergency exits that are not normally removed, except for maintenance purposes or emergency evacuation, and flight deck-openable windows need not comply with paragraphs (c) and (f) of this section.

(3) Maintenance doors that meet the conditions of paragraph (h) of this section, and for which a placard is provided limiting use to maintenance access, need not comply with paragraphs (c) and (f) of this section.

(h) *Doors that are not a hazard.* For the purposes of this section, a door is considered not to be a hazard in the unlatched condition during flight, provided it can be shown to meet all of the following conditions:

(1) Doors in pressurized compartments would remain in the fully closed position if not restrained by the latches when subject to a pressure greater than ½ psi. Opening by persons, either inadvertently or intentionally, need not be considered in making this determination.

(2) The door would remain inside the airplane or remain attached to the airplane if it opens either in pressurized or unpressurized portions of the flight. This determination must include the consideration of inadvertent and intentional opening by persons during either pressurized or unpressurized portions of the flight.

(3) The disengagement of the latches during flight would not allow depressurization of the cabin to an unsafe level. This safety assessment must include the physiological effects on the occupants.

(4) The open door during flight would not create aerodynamic interference that could preclude safe flight and landing.

(5) The airplane would meet the structural design requirements with the door open. This assessment must include the aeroelastic stability requirements of § 25.629, as well as the strength requirements of this subpart.

(6) The unlatching or opening of the door must not preclude safe flight and landing as a result of interaction with other systems or structures.

3. Amend § 25.807 by revising paragraph (h) to read as follows:

§ 25.807 Emergency exits.

* * * * *

(h) *Other exits.* The following exits also must meet the applicable emergency exit requirements of §§ 25.809 through 25.812, and must be readily accessible:

(1) Each emergency exit in the passenger compartment in excess of the minimum number of required emergency exits.

(2) Any other floor-level door or exit that is accessible from the passenger compartment and is as large or larger than a Type II exit, but less than 46 inches wide.

(3) Any other ventral or tail cone passenger exit.

* * * * *

4. Amend § 25.809 by adding a new paragraph (b)(3) and by revising paragraphs (c) and (f) to read as follows:

§ 25.809 Emergency exit arrangement.

* * * * *

(b) * * *

(3) Even though persons may be crowded against the door on the inside of the airplane.

(c) The means of opening emergency exits must be simple and obvious; may not require exceptional effort; and must be arranged and marked so that it can be readily located and operated, even in darkness. Internal exit-opening means involving sequence operations (such as operation of two handles or latches, or the release of safety catches) may be used for flightcrew emergency exits if it can be reasonably established that these means are simple and obvious to crewmembers trained in their use.

* * * * *

(f) Each door must be located where persons using them will not be endangered by the propellers when appropriate operating procedures are used.

* * * * *

5. Amend § 25.810 by adding a new paragraph (e) to read as follows:

§ 25.810 Emergency egress assist means and escape routes.

* * * * *

(e) If an integral stair is installed in a passenger entry door that is qualified as a passenger emergency exit, the stair must be designed so that, under the following conditions, the effectiveness of passenger emergency egress will not be impaired:

(1) The door, integral stair, and operating mechanism have been subjected to the inertia forces specified in § 25.561(b)(3), acting separately relative to the surrounding structure.

(2) The airplane is in the normal ground attitude and in each of the attitudes corresponding to collapse of one or more legs of the landing gear.

* * * * *

6. Add a new § 25.820 to read as follows:

§ 25.820 Lavatory doors.

All lavatory doors must be designed to preclude anyone from becoming trapped inside the lavatory. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools.

Issued in Renton, Washington, on December 20, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–581 Filed 1–13–03; 8:45 am]

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Federal Register

Tuesday,
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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Transponder Continuous Operation; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2002–14081; NPRM No. 03–02]

RIN 2120–AH67

Transponder Continuous Operation

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would amend the instrument and equipment requirements for airplanes operated in domestic, flag, and supplemental operations. Specifically, the Federal Aviation Administration (FAA) proposes to require affected airplanes to have the capability to help assure immediate activation of the designated air traffic control (ATC) hijack alert code, and continuous transmission of that code to ATC during a hijack situation. The FAA is proposing this action in response to the heightened threat to U.S. civil aviation. The FAA believes that this capability would help provide ATC personnel with more time to initiate a national security response to a potential airplane hijack situation.

DATES: Send your comments on or before March 17, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–14081 at the beginning of your comments.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Richard E. Jennings, Aircraft Certification Service, Aircraft Engineering Division, AIR–130, Federal Aviation Administration, c/o Atlanta ACO, 1895 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone (770) 703–6090; facsimile (770) 703–6055, e-mail *Richard.Jennings@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file comments we receive in the docket, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Comments regarding national security information or sensitive security information should not be submitted directly to the public docket. These comments should be submitted according to procedures for safeguarding sensitive security information and sent to: Armen A. Sahagian, Office of Civil Aviation Security, Program Manager, Aircraft Security, ACP–400, Room 323, Transportation Security Administration, 800 Independence Avenue, SW., Washington, DC 20591, Docket No. FAA–2002–14081. Questions on these procedures may be directed to Armen Sahagian. These comments will be reviewed to determine appropriateness for inclusion in the public docket system.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

On September 11, 2001, four U.S.-registered commercial airliners operating under the provisions of 14 CFR part 121 were hijacked and subsequently crashed, resulting in great loss of life and extensive damage to occupied buildings. In order to reduce the likelihood of such an event reoccurring, the FAA initiated a complete review of aircraft and airport security procedures. Based on this review, the FAA has determined that it is necessary to propose certain new regulations that would increase the desired level of safety and security.

If adopted, these proposed amendments would require that a single action by the pilot or copilot (or flight engineer, where appropriate) immediately activate the air traffic control (ATC) transponder beacon code "7500," which is the International Civil Aviation Organization (ICAO) code indicating to ATC that an aircraft is being subjected to unlawful interference, that is, being hijacked.

Before the events of September 11, a flight crew would have responded appropriately to an airborne hijack situation by acceding to a hijacker's demands, flying the aircraft to the instructed destination, and allowing the appropriate authorities to resolve the situation. Before September 11, however, no one had envisioned a hijacking situation in which a hijacker would take control of a commercial

aircraft and successfully use that aircraft as a weapon. Of the four aircraft involved in the events of September 11, none of the flight crews were able to switch to the designated hijack alert code, thus delaying ATC awareness of the unfolding situation. Further, the transponders on three of the four airplanes ceased replying to ATC radar interrogations within minutes of departing from their assigned routes. These events have changed profoundly the way in which a future hijack situation may be handled, and more generally, our concept of what is considered appropriate aviation safety and security.

In response to the events of September 11, the Secretary of Transportation established the Rapid Response Teams (RRT) for Aircraft Security and Airport Security to identify measures to improve aviation security. The Aircraft Security Team was composed of individuals from the aviation industry, including airplane designers and manufacturers, airline operators, airline pilots, and flight attendants. Additionally, the teams consulted with and considered input from concerned private citizens and other sectors of industry. The RRT for Aircraft Security considered changes to aircraft design and operation that could (1) deny or at least delay any unauthorized access to the flight deck, (2) better train crewmembers to deal with security risks, and (3) ensure the flow of information from an aircraft to ATC. The RRT for Airport Security focused on such issues as improved screening of passengers, baggage, and aircraft and airport personnel prior to direct contact with an aircraft.

On October 1, 2001, the RRT for Aircraft Security submitted its report to the Secretary of Transportation for consideration. [This report is available in Docket No. FAA–2002–14081.] The report included 17 recommendations to help counter a situation in which an airplane might be hijacked and used as a weapon. Recommendation No. 16 called for the creation of an FAA-industry task force to determine the necessary modifications for airplane transponders to assure continuous transmission of a hijack signal, even if the fight deck-selected code or function is disabled. The task force was to examine the following: all alternatives that would allow pilots the ability to set and lock-in the hijack code so that a hijacker could not disable it; a "panic button" that would initiate the hijack code during an emergency situation; and an independent transponder that could not be disabled by the hijacker.

Based on that RRT recommendation, the Air Transport Association of America (ATA) volunteered to facilitate formation of an FAA-Industry Transponder Task Force. The Task Force was composed of representatives from U.S. and foreign passenger and cargo airlines; FAA; Transport Canada; various industry associations; research and development centers funded by the U.S. Government; and manufacturers of airplanes, transponders, and transponder controls.

At the time the Task Force was formed, several design concepts that could potentially satisfy RRT Recommendation No. 16 had been formulated. In evaluating these concepts and other suggestions, the Task Force assumed as its basis that any transponder system modifications should (1) allow for the rapid selection of the hijack alert code, and (2) assure continuous transmission of this code once it had been activated. The Task Force also assumed that the flight deck doors on airplanes operated under part 121 would be modified for increased strength, allowing additional time for the flight crew to initiate the hijack alert code.

The Task Force evaluated the three most promising design concepts and submitted a final report to the FAA on November 5, 2001. The report also identified potential vulnerabilities in the various design concepts, and therefore, because of national security considerations, the details of this report are not being released to the general public for review or placed in the public docket. However, this proposed rule is based, in part, on the efforts of the Task Force. A redacted version of this report is available in Docket No. FAA–2002–14081.

These actions taken by the FAA and the aviation industry following the events of September 11 are directly in line with the Aviation and Transportation Security Act of 2001 (Act), Public Law 107–71. Section 104, Paragraph (b), Sub-Paragraph (2), of the Act states that "the FAA Administrator may develop and implement methods to ensure continuous operation of an aircraft transponder in the event of an emergency."

Related Activity

In response to the September 11 attacks, the FAA has initiated several regulatory actions. On January 10, 2002, the FAA issued a final rule temporarily authorizing variances from existing flightcrew compartment door design standards for the doors and allowing for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This rule mandated these modifications on aircraft in certain passenger and cargo carrying operations. Also on January 10, 2002, the FAA issued a final rule requiring certain airplanes operated under part 121 to be equipped with a means to protect the flight deck from unauthorized intrusion and small arms fire or fragmentation devices. The FAA believes these related rulemaking activities will significantly reduce the danger to the flying public by preventing future terrorists from gaining access to an airplane's flight deck.

Since this document was drafted, a number of other security measures have been adopted in response to the Aviation Security Act of 2001. The FAA welcomes and encourages comments about how this proposal, when considering these other security measures that have been adopted, would contribute further to safety and security and how this additional proposal would affect the aviation industry.

Current Requirements

All air carrier aircraft are required to be equipped with an ATC transponder (see 14 CFR 91.215 and 121.345), which in normal operation provides a radar beacon identity code and altitude (Modes 3A/C) for ATC use in controlling aircraft in en route and terminal areas of operations. During normal operations it is expected that a flight crew could manually dial-in a new ATC-directed Mode 3A transponder radar beacon code, through the transponder control panel, in roughly five to ten seconds. However, under the stress of a hijack situation it may take considerably longer than ten seconds to dial-in the designated hijack alert code, or it may not be possible at all if the flight crew is distracted by a flight deck intruder. In addition, during a hijack situation, the current requirements do not prevent an airplane's ATC transponder from being switched to the "standby" position, or having its circuit breaker "pulled"—actions which would disable the transponder's response to an ATC ground radar beacon interrogation.

The designated hijack alert code is "7500," which is defined in section 2.1.4 of Volume IV of the International Civil Aviation Organization (ICAO) Annex 10 as the appropriate code to indicate to ATC that an aircraft is being subjected to unlawful interference.

General Discussion of the Proposal

If an aircraft were to be used as a terrorist weapon, there are numerous

targets of opportunity that could be destroyed by a large airplane. With this in mind, the FAA proposes to add a new § 121.346 to require all airplanes operated under part 121 to be modified to provide the capability for the immediate notification to ATC of a hijack situation, and for the transponder to continuously transmit the emergency transponder code once activated. At this time, the FAA is proposing that the rule should apply only to passenger and cargo airplanes operated under part 121. The FAA invites interested persons to comment on the applicability of these requirements to aircraft operated under 14 CFR parts 91, 125, 129, or 135. If the FAA determines that additional aircraft should be included, a separate proposal will be issued.

Paragraph (a) of the proposed rule would require that a single action would immediately set the airplane's ATC transponder Mode 3A beacon code to "7500," which would be picked up by ATC ground surveillance radar. The proposal would require the "single action" method of activation, for example a switch or a button, to be accessible to both the pilot and copilot (and flight engineer, where appropriate). The FAA believes that activation through a single action would greatly enhance the flight crew's ability to quickly enable the transponder hijack alert code and thus ensure faster recognition of the hijack situation by ATC. However, the FAA also has determined that there should be a means to protect against unintentional activation of the hijack alert code. Therefore, as an example, a motion that lifts a guarded switch or breaks a frangible wire in the process of activation would still be considered a single action.

Paragraph (b) of the proposed rule would require that three conditions be met upon activation of the hijack alert code. Paragraph (b)(1) would require that the transponder's Mode C, or altitude reporting function, be maintained with activation of the hijack alert code. Altitude reporting would help ATC positively identify the hijacked airplane, and keep other aircraft safely out of its projected path.

Paragraph (b)(2) would require that a visual indication be provided to the flight crew as positive feedback of activation. A recent incident has shown the FAA the importance of this feedback to the flight crew. An airplane with a system similar to that proposed by this rule departed on a flight without realizing that the hijack alert code had been activated. Upon takeoff, ATC immediately detected the hijack alert code and challenged the flight crew. The airplane subsequently returned to its departure airport, escorted by two military fighter aircraft. On further investigation, it was determined that the airplane's hijack alert code had been activated unintentionally by ground personnel. Had the flight crew been provided a visual indication that the system had been activated, the crew could have corrected the situation before departure, averting a cost to the airline and disruption to the flow of the local air traffic.

Paragraph (b)(3) would require installation considerations to help ensure continuous operation of the ATC transponder hijack alert code once it is activated. The FAA believes that continuous operation considerations should include inhibiting any further inputs from the ATC transponder control panel, for example any attempts to change beacon codes or to switch the transponder to standby, as well as for improving the security for electrical power to the transponder equipment. In addition, the FAA believes that resetting the ATC transponder to a normal mode of operation should be through a ground action by appropriate personnel. Where practical, this resetting action should not be accessible from within the airplane. Because inhibiting any further inputs to the transponder control panel would also prevent turning off altitude reporting at the request of ATC, the flight crew would be unable to comply with the requirements of § 91.217(a). Therefore, paragraph (b)(3) also would provide relief from § 91.217(a) when the capability described in proposed § 121.346 is activated.

Common airplane transponder installations provide for separate electrical power breakers in the flight deck for each of the two installed ATC transponders. As proposed, this rule would require (upon activating the hijack alert code) the removal of power from the electrical breakers for the ATC transponders in the flight deck, and the transfer of power to remotely mounted breakers not accessible from the flight deck or cabin. This design change would prevent removing electrical power from the transponders as flight crews would perform when required to do so.

Because the FAA does not want to cause a complete redesign of an airplane's electrical system, and because the FAA realizes that transponder operation could be silenced by the removal of all electrical power, the FAA has used the phrase "* * * must not be able, by reasonable means, to disable the transponder * * *" to mean that no person onboard the airplane should be able to remove power from the transponder simply by pulling the associated circuit breaker.

Deactivation of the ATC transponder by means of removal of significant airplane electrical power to the detriment of airplane operations or obtaining access to a part of the airplane normally not accessible by the crew, are not considered *reasonable*.

It is expected that most part 121 operators will add the capability required by § 121.346 to function with the existing ATC transponder equipment installed on their airplanes. However, some operators may desire not to alter their existing equipment configuration, and instead choose to install an additional and dedicated ATC transponder to meet the requirements of this proposed rule. Because one cannot assure that a hijacker will, in fact, disable an airplane's normally operating ATC transponder, it is possible that more than one transponder could be operating and attempting to respond to the ATC secondary surveillance interrogation. This could result in an inaccurate reply, and subsequent rejection of both transponders' Mode 3A/C beacon codes by the ATC ground interrogator. To prevent this situation, operators who choose to install an additional and dedicated transponder to meet these proposed requirements should provide a means to inhibit replies from all other ATC transponders installed on the airplane at the time that this dedicated ATC transponder is activated.

Given the importance of these proposed requirements, the FAA would prefer to put them into effect as quickly as possible. However, the FAA is aware that operators will need approved installation data in order to accomplish the airplane modifications required by this proposed rule. Therefore, the FAA proposes a compliance date of March 29, 2005. This date also was selected to coincide with the current compliance date for Terrain Awareness and Warning Systems (14 CFR 121.354(b)), to minimize the amount of downtime for any given airplane. Assuming that the final rule for this proposal is issued by December 31, 2002, operators would have approximately 27 months to accomplish the required modifications. This would allow approximately 6 months to support development of the approved installation data, including for example equipment modifications, manufacturer's service bulletins, and Supplemental Type Certificates, and 21 months for operators to schedule the necessary airplane downtime to complete the actual modification. Because the airplanes in question are maintained under a continuous

airworthiness maintenance program, which includes a heavy maintenance visit scheduled approximately each 12 months, the FAA believes that operators could conclude any modifications required by this proposed rule within the time constraints of a single heavy maintenance cycle. The FAA believes the March 2005 compliance date would minimize the financial burden for affected operators as well as provide a long-term aviation safety benefit.

Initial Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this act requires agencies to consider international standards and, where appropriate, use them as the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on State, local, or tribal governments, in the aggregate, or on the private sector, likely to result in a total expenditure of $100 million or more (adjusted for inflation) in any one year.

In conducting these analyses, the FAA determined the following: the benefits of this proposed rule justify its costs; it would be a "significant regulatory action" as defined in section 3(f) of Executive Order 12866; it would be "significant" as defined in DOT's Regulatory Policies and Procedures; it would not have a significant impact on a substantial number of small entities; it would have no effect on trade-sensitive activity; and it would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, available in the docket, as summarized below.

Benefits and Costs

This proposed rule is part of a series of rulemaking actions aimed at preventing or deterring a similar occurrence to the September 11 attacks. It is designed to ensure immediate ATC notification of a hijack situation, and to assist in maintaining ATC tracking of the hijacked airplanes for purposes of national security. As such, the benefits of this proposed rule are to ensure the security of the American public.

The cost of another catastrophic terrorist act cannot be reasonably measured in dollars. As it was witnessed on September 11, terrorist acts can result in the complete destruction of an aircraft with the loss of all on board, and with collateral damage far exceeding that of the aircraft and passengers. The main benefit related to this proposed rule is the averted loss of life by taking corrective action.

The economic and social costs of the September 11 attacks have been measured in the billions of dollars, and another terrorist attack could be far more costly. Therefore, the FAA attributes the benefits of this proposed rule to the series of rules designed to ensure the safety and security of the American public. Such benefits cannot be reasonably quantified nor allocated between the multiple actions taken to avoid a repeat of the attack. In addition to preventing the extraordinary costs of another attack, this proposed rule responds to the interest of the U.S. Congress as specified in the Aviation and Transportation Security Act.

The FAA estimates that 7,394 airplanes would be potentially affected by the proposed rule. Given that the deadline to comply with this proposed rule is tentatively set for March 2005 (27 months after the expected issuance of the final rule), the FAA assumes that all retrofitting expenses would be spread evenly, on a monthly basis, between January 2003 and March 2005.

The estimated capital cost to upgrade airplanes with transponders capable of continuous operation in hijack mode is approximately $3,000 for each airplane. This figure was provided by transponder and transponder control manufacturers, aircraft manufacturers, and airlines that received quotes from suppliers. Purchasing the compliant transponder controls or software upgrade for a fleet of 7,394 airplanes would cost $22.2 million, over the three-year period. The industry also estimated overall certification costs for the software and hardware to be $1,000,000, to be incurred in 2002.

The software or hardware investment is only a portion of the cost to the industry. Locking a transponder into continuous operation is a relatively inexpensive and easy solution. Every transponder manufacturer claimed that a software upgrade would not require any downtime. The transponder could be removed from the airplane in a matter of minutes, replaced by a substitute transponder while the software upgrades were implemented (airlines indicated an abundance of transponders), and then reinstalled. The simplest, and quickest, solution for some operators is a transponder software upload, which is expected to be on the market for less than $3,000, and which could be accomplished on the airplane (that is, the transponder would not have to be removed). This update could be accomplished in about 5 minutes, and would allow the transponder to lock out all other inputs after the hijack alert code is entered.

To comply with the proposed rule, operators also would need to install a method of rapid activation and isolate electrical power to the transponder control equipment. The labor cost, therefore, would likely be the same, regardless of the solution chosen, because there would be a need to wire a method of rapid activation and isolate the electrical power. Industry identified these tasks as being labor-intensive. Airline technicians would require approximately 52 work hours per aircraft to wire a method of rapid activation and/or install a transponder control in the avionics bay. At an average hourly rate of $50, this translates into $19.2 million to retrofit the entire affected fleet. The upgrade would have to be performed during a "C" or "D" check, or place the aircraft out of service for a 2-day period. Alternatively, because the task would not need to be completed in one setting, the wiring could be performed in stages during several overnight maintenance sessions. In addition, the parts and supplies for this wiring would cost about $1,000 per aircraft. For the entire fleet, this would mean approximately $7.4 million over the 3 years.

The FAA conservatively estimated that all passenger and cargo airplanes affected by the proposed rule would incur downtime costs, at a fleet-wide average opportunity cost of $5,178 per aircraft. This opportunity cost of capital represents the return foregone by having invested in the airplane rather than investing in securities. This figure reflects a fleet-wide average value of $15.0 million per airplane, multiplied by the industry's return on investment of 6.3 percent for the year 2000, for 2 days of lost service. The total cost of airplane downtime is calculated to be approximately $38.3 million, spread over the 3 years. The FAA believes the estimate of downtime is a high-side estimate because most operators will

perform the conversion during normal scheduled maintenance. A compliance date of 2005 will allow operators adequate time to schedule the upgrades within regular maintenance intervals.

Cumulatively, the proposed rule is expected to cost the industry up to $88.1 million ($78.9 million discounted) between 2002 and 2005. However, the cost to the industry could be as low as $49.8 million ($44.6 million discounted), if no downtime costs were incurred. Accordingly, the FAA believes that the proposed rule is cost-beneficial and is necessary to ensure the level of aviation security expected by the American public.

The FAA solicits comments from affected entities with respect to these findings and determinations, and requests that all comments be accompanied by clear documentation.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the proposed rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. This proposed rule will not have a significant impact on a substantial number of small entities, therefore a full Regulatory Flexibility Analysis is not necessary.

To determine the potential economic impact on small entities conducting business as part 121 operators, the FAA first estimated the number of small entities affected by this proposed rule. The FAA then estimated the compliance cost and, subsequently, the economic impact. Using the criterion from the North American Industry Classification System of the Small Business Administration (SBA), the FAA identified approximately 100 operators that qualify as small businesses, and developed a random list of 50 air carriers to further analyze.

Estimating the compliance cost and economic impact for each small entity involved several analytical steps. First, we obtained from the BACK Associates Fleet Database the fleet of aircraft operated by the small entities. Second, we estimated the purchase and installation cost of the transponder solution and method of rapid activation for the fleet of each small entity. The purchase cost of the transponder solution was estimated to be approximately $3,000 per airplane, with an additional $1,000 in parts and supplies, and $2,600 in labor. Additionally, downtime costs were estimated at approximately $5,178 per aircraft, resulting in a total per airplane cost of $11,778. This per airplane cost was then multiplied by the number of affected aircraft in the air carrier's fleet to obtain a total cost per operator.

The degree to which small entities can "afford" the cost of compliance is determined by the availability of financial resources. The implementation costs of this proposed rule could be financed, paid for using existing company assets, or borrowed. As a proxy for the firm's ability to afford the cost of compliance, the FAA calculated the ratio of the total cost of the rule as a percentage of annual revenue. The FAA expects that the cost of the proposed rule would exceed 2 percent of total revenue for no more than two entities. The FAA does not believe that two is a substantial number of small entities.

In the interest of fully assessing the impact of this proposed rule on small entities, the FAA explored the potential competitive impact. The FAA examined the route structures and specific markets of the three firms who would be most affected (as a percentage of revenues) by the proposed rule, Chautauqua Airlines, Pan Am, and Grand Canyon Airlines. Chautauqua Airlines operates under a codeshare agreement at major hubs as an America West, American Airlines (since the purchase of TWA), and U.S. Airways affiliate, whereas Pan Am is an independent airline operating mostly at second-tier airports. These two air carriers sometimes compete with large airlines (which would incur the same fixed and marginal cost per airplane), but many routes served could be considered local monopolies in which the affected airline is the only provider of service. As a result of operating in these "niche" markets, an air carrier would be able to pass some of the cost to its customers. In the more competitive air tour business, keeping costs down is critical, because affected air carriers likely would not be able to pass costs down to customers. However, Grand Canyon Airlines is a dominant player in that market and its main competitors are not other airplane tour operators, but rather helicopter tour operators, with significantly higher operating costs. Thus, as a result of this proposed rule, there is expected to be little change in competition, and little change in market share within the industry.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979, 19 U.S.C. 2531–2533, prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that the objective of this proposed rule is the safety and security of the United States, and therefore not considered an unnecessary obstacle to international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1531–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency proposed rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a

proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), states that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals or proposed rules.

This proposed rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this proposed rule will have no effect on ICAO Standards and Recommended Practices or ICAO Procedures for Air Navigation Services during normal airplane operations. However, it should be noted that, upon activation of the hijack code, the flight crew would not be able to perform the transponder actions outlined in ICAO Procedures for Air Navigation Services. These actions include modifying the Mode 3A transponder code, turning the transponder to standby or off, or inhibiting the transponder altitude reporting function. It is not expected that ATC personnel would request any of these actions during an actual hijack situation.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to all aircraft operated under the provisions of part 121, it could, if adopted, affect interstate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently in interstate operations in Alaska.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice of proposed rulemaking would not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposal has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the proposal is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Air transportation, Air traffic control, Aircraft, Aviation safety, Federal Aviation Administration, Radio equipment, Transponder.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of Title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, Sec. 104, Pub. L. 107–71, 115 Stat. 597–647.

2. Add § 121.346 to read as follows:

§ 121.346 ATC transponder operation.

(a) After March 29, 2005, no person may operate an airplane unless that airplane has the capability to allow each flight crewmember to quickly activate the ATC transponder Mode 3A beacon code "7500" through a single action that includes protection from inadvertent activation.

(b) Upon activation of the ATC transponder Mode 3A beacon code, as described in paragraph (a) of this section:

(1) The ATC transponder must continue to report the airplane's altitude;

(2) There must be a visual indication to the flight crew that the activation has occurred; and

(3) A person onboard that airplane must not be able, by reasonable means, to disable the transponder or change its code during the remainder of the flight. In this case, the pilot-in-command need not comply with the requirements of § 91.217(a) of this chapter.

Issued in Washington, DC, on January 8, 2003.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 03–685 Filed 1–13–03; 8:45 am]

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Part V

The President

Proclamation 7637—To Modify Duty-Free Treatment Under the Generalized System of Preferences

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Presidential Documents

Title 3—

The President

Proclamation 7637 of January 10, 2003

To Modify Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

Pursuant to section 502 of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2462), the President is authorized to designate countries as beneficiary developing countries, and to designate any beneficiary developing country as a least-developed beneficiary developing country, for purposes of the Generalized System of Preferences (GSP).

Pursuant to section 503(c)(1) of title V of the 1974 Act (19 U.S.C. 2463(c)(1)), the President may withdraw, suspend, or limit the application of duty-free treatment accorded under this title with respect to any article.

Section 503(d)(5) of the 1974 Act (19 U.S.C. 2463(d)(5)) provides that any waiver granted under section 503(d) of the 1974 Act (19 U.S.C. 2463(d)) shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

Section 506A(b)(1) of the 1974 Act (19 U.S.C. 2466a(b)(1)) authorizes the President to provide duty-free treatment for any article described in section 503(b)(1)(B) through (G) of the 1974 Act (19 U.S.C. 2463(b)(1)(B)–(G)) that is the growth, product, or manufacture of a designated beneficiary sub-Saharan African country, if, after receiving the advice of the United States International Trade Commission (USITC), the President determines that such article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries.

Pursuant to section 502 of the 1974 Act, and taking into account the factors set forth in section 502(c) (19 U.S.C. 2462(c)), I have decided to designate Afghanistan as a beneficiary developing country for purposes of the GSP.

Pursuant to section 502 of the 1974 Act, and having considered the factors set forth in sections 501 and 502(c), I have also decided to designate Afghanistan as a least-developed beneficiary developing country for purposes of the GSP.

Pursuant to section 503(c)(1) of the 1974 Act, and having considered the factors set forth in sections 501 and 502(c), I have determined to withdraw the application of duty-free treatment under the GSP accorded to a certain article from Chile.

Pursuant to section 503(d)(5), I have determined that the waiver granted under section 503(d) to Chile for a certain article is no longer warranted due to changed circumstances.

Pursuant to section 506A(b)(1) of the 1974 Act, and having received the advice of the USITC, I have determined that a certain article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries. I have decided to provide duty-free treatment to this article when imported from any beneficiary sub-Saharan African country.

Section 604 of the 1974 Act (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other acts

affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including title V and section 604 of the 1974 Act (19 U.S.C. 2461–7, 2483), do proclaim that:

(1) In order to reflect in the HTS the addition of Afghanistan as a beneficiary developing country and as a least-developed beneficiary developing country under the GSP, and the withdrawal of duty-free treatment under the GSP accorded to a certain article from Chile, general note 4 to the HTS is modified as provided in section A of the Annex to this proclamation.

(2) In order to provide duty-free treatment for a certain article when imported from a beneficiary sub-Saharan African country, the HTS is modified by amending and sub-dividing the nomenclature of an existing HTS subheading as provided in section B of the Annex to this proclamation.

(3) In order to provide that Chile should not be treated as a beneficiary developing country with respect to a certain eligible article for purposes of the GSP, the Rates of Duty 1–Special subcolumn for the HTS subheading enumerated in section C of the Annex to this proclamation is modified as provided in such section.

(4) A waiver of the application of section 503(c)(2) of the 1974 Act (19 U.S.C. 2463(c)(2)) previously granted to Chile for HTS subheading 0811.20.20 shall be terminated on the date of publication of this proclamation in the *Federal Register*

(5) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(6) (a) The modifications made by section A of the Annex to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in that section.

(b) The modifications made by section B of the Annex to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the date of publication of this proclamation in the *Federal Register*.

(c) The modifications made by section C of the Annex to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the thirtieth day after the date of publication of this proclamation in the *Federal Register*.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.

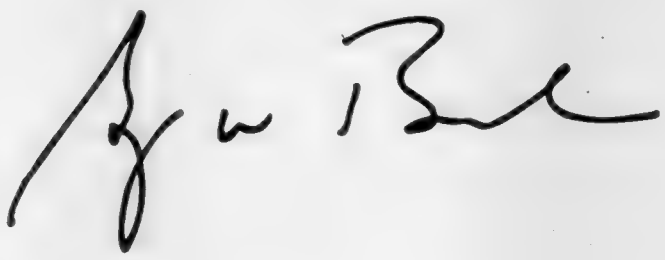

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Annex

Modifications to the Harmonized Tariff Schedule of the United States (HTS)

Section A. Modifications to general note 4 of the HTS:

(1). Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the date of publication of this proclamation in the Federal Register, general note 4(a) is modified by adding in alphabetical order "Afghanistan" to the list entitled "Independent Countries".

(2). Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the thirtieth day after the date of publication of this proclamation in the Federal Register, general note 4(d) is modified by adding in numerical sequence "0811.20.20 Chile".

(3). Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the sixtieth day after the date of publication of this proclamation in the Federal Register, general note 4(b)(i) is modified by adding in alphabetical order "Afghanistan".

Section B. The HTS is modified as provided in this section, with bracketed matter included to assist in the understanding of proclaimed modifications. The following provisions supersede matter now in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the date of publication of this proclamation in the Federal Register, the HTS is modified as follows:

Subheading 8111.00.45 is superseded by:

	[Manganese and articles thereof,...]		
	[Other:]		
	"Unwrought manganese:		
8111.00.47	Flake containing at least 99.5 percent by weight of manganese	14%	
		Free (A+,CA,D,E, IL,J,MX)	20%
		(JO)	5.6%
8111.00.49	Other	14%	
		Free (A+,CA,E,IL, J,MX)	20%"
			5.6% (JO)

Conforming change:

For HTS subheadings 8111.00.47 and 8111.00.49, on January 1 for each of the years listed below, the rate of duty followed by the symbol "JO" in parentheses in the Rates of Duty 1-Special subcolumn is deleted and the following rates of duty are inserted for such subheadings in lieu thereof in the year specified.

2004	2005
2.8%	Free

Section C. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the thirtieth day after the date of publication of this proclamation in the Federal Register, for HTS subheading 0811.20.20, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting an "A*" in lieu thereof.

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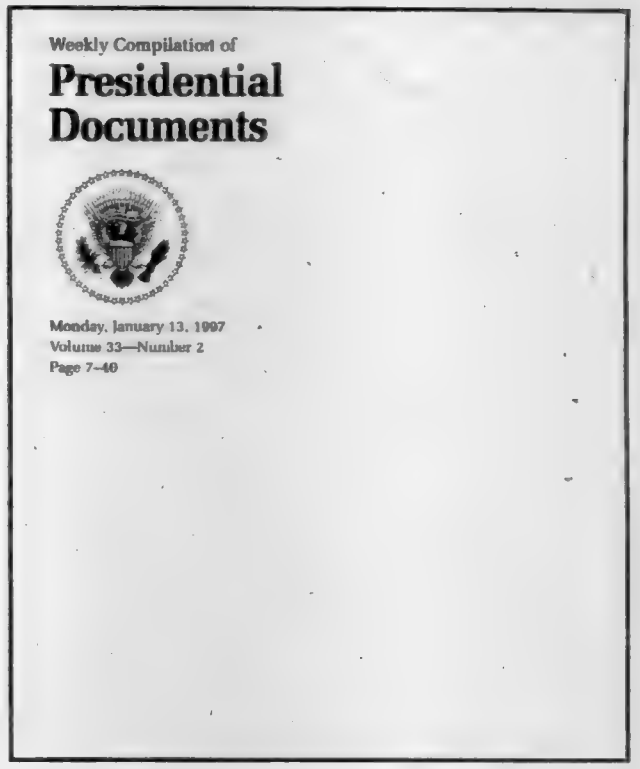

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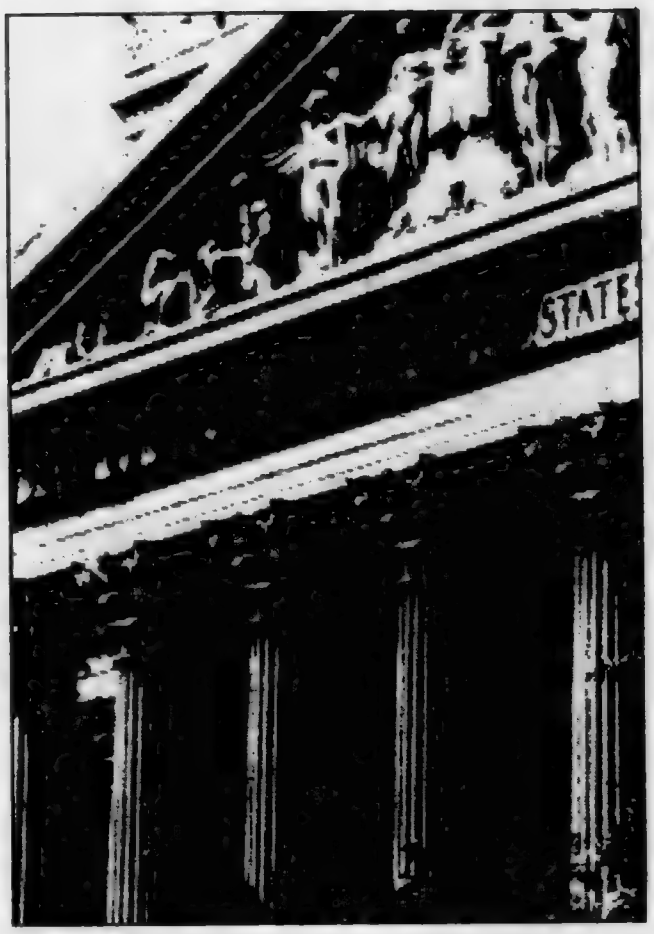

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Rules and Regulations

Federal Register
Vol. 68, No. 10
Wednesday, January 15, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 25, and 97

[Docket No. FAA–2002–13982; Amendment Nos. 1–49, 25–208, 97–1333]

RIN 2120–AD40

1–g Stall Speed as the Basis for Compliance With Part 25 of the Federal Aviation Regulations; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: In the November 26, 2002, issue of the **Federal Register**, the FAA published a final rule regarding 1–g stall speed as a basis for compliance with part 25 of the Federal Aviation Regulations (67 FR 70812). The final rule, as published, erroneously contained a former docket number. It contained an erroneous reference to a publication of a notice of proposed advisory circular revisions. It also contained a change to a part 25 section that was previously changed by an earlier amendment, and is therefore moot to this rulemaking. This document serves to correct these errors.

EFFECTIVE DATE: December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Don Stimson, telephone (425) 227–1129.

SUPPLEMENTARY INFORMATION:

Background

These amendments are based on notice of proposed rulemaking (NPRM) Notice No. 95–17, which was published in the **Federal Register** on January 18, 1996 (61 FR 1260), FAA Docket No. 28404. The final rule, published November 26, 2002 at 67 FR 70812, should have been given a new docket number, based on the fact that the FAA now uses the Department of Transportation's Docket Management System (DMS) instead of the former FAA Docket System. The FAA transitioned to a new DMS maintained by the Department of Transportation during the course of this final rulemaking. At earlier stages of the rulemaking, the FAA Docket Number was 28404. Under the new DMS, the docket number is FAA–2002–13982. The final rule, as published, erroneously used the old, FAA docket number instead of the new DMS docket number.

The final rule docket erroneously made a reference to the publication (on November 12, 2002) of a notice of proposed advisory revisions. The advisory circular revisions have not yet been published and the document should have read that a notice of proposed advisory circular revisions will be published in the **Federal Register** shortly after publication of this final rule.

The final rule document contained a change to § 25.735, Brakes and braking systems, which was previously changed with Amendment 25–107. Therefore, the change made in this final rule document was unnecessary, and the appropriate text is reinstated.

Correction to Preamble of Final Rule

Document Number 02–29667, Amendment Nos. 1–49, 25–108, 97–133, published in the **Federal Register** on November 26, 2002 (67 FR 70812), is corrected as follows:

1. On page 70812, in the first column, fourth line, change "Docket No. 28404" to read "Docket No. FAA–2002–13982."

2. On page 78017, in the second column, fourth line, revise the last sentence of the paragraph to read: "A notice of proposed advisory circular revisions will be published in the **Federal Register** shortly after publication of this final rule."

Correcting Amendment to 14 CFR Part 25

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. Section 25.735 is corrected by revising paragraphs (f)(2) and (g) to read as follows:

§ 25.735 Brakes and braking systems.

* * * * *

(f) * * *

(2) Maximum kinetic energy accelerate-stop. The maximum kinetic energy accelerate-stop is a rejected takeoff for the most critical combination of airplane takeoff weight and speed. The accelerate-stop brake kinetic energy absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that the wheel, brake, and tire assembly is capable of absorbing not less than this level of kinetic energy throughout the defined wear range of the brake. The energy absorption rate derived from the airplane manufacturer's braking requirements must be achieved. The mean deceleration must not be less than 6 fps \2\.

* * * * *

(g) Brake condition after high kinetic energy dynamometer stop(s). Following the high kinetic energy stop demonstration(s) required by paragraph (f) of this section, with the parking brake promptly and fully applied for at least 3 minutes, it must be demonstrated that for at least 5 minutes from application of the parking brake, no condition occurs (or has occurred during the stop), including fire associated with the tire or wheel and brake assembly, that could prejudice the safe and complete evacuation of the airplane.

* * * * *

Issued in Washington, DC, on January 6, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–656 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–14–AD; Amendment 39–13015; AD 2003–01–04]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, 205A–1, 205B and 212 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Bell Helicopter Textron Inc. (BHTI) model helicopters. This action requires conducting various inspections associated with the main rotor grip (grip). If a crack is found, this AD requires replacing the grip before further flight. If delamination of the buffer pad on the grip tang inner surface is found, this AD requires inspecting the grip surface for corrosion or other damage and repairing or replacing the grip if corrosion or other damage is found. This AD also requires determining and recording the hours time-in-service (TIS) and the engine start/stop cycles for each grip on a component history card or equivalent record. Also, this action requires reporting certain inspection results and information to the FAA. This amendment is prompted by the discovery of 13 grips that cracked in the lower tang, three of which cracked in flight. The actions specified by this AD are intended to prevent failure of a grip, separation of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective January 30, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 30, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the specified BHTI model helicopters. This AD is prompted by 3 in-flight grip failures and 2 recent incidents of cracked grips discovered during a 1200-hour inspection and on a scheduled 2400-hour overhaul, which brings the total to 13 grips that have cracked in the lower tang. The two recent cracks originated in the lower tang blade bolt bore. No anomalies or damage to the blade, blade bolt bore, or buffer pad tang surface was found. Cracking for all of the grips has been attributed to mechanical damage from improper blade bolt bushing installation, improper rework of the buffer pad tang surface, or subsurface fatigue damage. All of the fatigue cracks have occurred on grips, part number (P/N) 204–011–121–009 and –121, installed on BHTI Model 212 helicopters; P/N 204–011–121–005, –009, and –113 are also very similar in design. Based on the failures that have occurred on grips, P/N 204–011–121–009 and –121, the manufacturer performed a fatigue analysis on grip, P/N 204–011–121–117, and discovered that the assigned life limit was inaccurate.

Hence, the FAA has determined that the other similarly-designed grips that are subjected to the same forces and loads as well as those grips adversely impacted by the inaccurate life limit may be susceptible to the same fatigue cracking as occurred on the Model 212 helicopter. Therefore, in addition to the repetitive ultrasonic (UT) inspection required for the Model 212 helicopter, the UT inspection also needs to be performed on the Model 204B, 205A, and 205A–1 helicopters with grip, P/N 204–011–121–117, installed. Additionally, when the service life for grips, P/N 201–011–121–005, –113, and –117, was established, we did not anticipate that these grips would be installed on the Model 205B helicopters, which has a higher power rating that is equivalent to the power rating of the twin-engine Model 212 helicopter. Operations at the higher power rating cause additional fatigue stresses on those grips installed on the Model 205B helicopter. Further, Supplemental Type Certificate (STC) SH5132NM, in part, allows the installation of grips, P/N 204–011–121–009 and –121, on the Model 205A–1 helicopter. This STC also allows the installation of additional dynamic components, including heavier main rotor blades, which add greater fatigue stresses to the P/N 204–011–121–009 and –121 grips. The actions specified in this AD are intended to prevent failure of a grip, separation of a main rotor blade, and subsequent loss of control of the helicopter.

The FAA has reviewed the following BHTI service information:

- Operations Safety Notices 204–85–6, 205–85–9, and 212–85–13 all dated November 14, 1985.
- Alert Service Bulletin (ASB) 212–94–92, Revision A, dated March 13, 1995, which describes procedures for inspection and overhaul requirements of certain grips.
- ASB's 212–02–116, Revision A, dated October 30, 2002, and 205B–02–39, Revision B, dated November 22, 2002, which specify a UT inspection of certain grips; and the attached Nondestructive Inspection Procedure, Log No. 00–340, Revision E, dated April 9, 2002.

A crack in a grip creates a critical unsafe condition. This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, this AD is being issued to prevent failure of a grip, separation of a main rotor blade, and subsequent loss of control of the helicopter. This AD requires the following actions:

- Within 10 hours TIS, determining and recording the hours TIS and the engine start/stop cycles for each grip on a component history card or equivalent record. On the single-engine model helicopters, one "engine start/stop cycle" occurs when the engine is started. On the Model 212 helicopter, one "engine start/stop cycle" occurs when either one or both engines are started. The intent is to add one "engine start/stop cycle" each time helicopter power starts the main rotor system turning.
- Within 10 hours TIS and thereafter at intervals not to exceed 25 hours TIS, visually inspecting the exposed surfaces of the upper and lower tangs of each grip for a crack, using a 10-power or higher magnifying glass.
- Initially and at specified intervals depending on the hours TIS or the engine start/stop cycles, whichever occurs first, conducting initial and repetitive UT inspections for the grips in accordance with the Nondestructive Inspection Procedure, Log No. 00–340, Revision E, dated April 9, 2002.
- At intervals not to exceed 1200 hours or 24 months, whichever occurs first, inspecting each buffer pad on the tang inner surfaces for delamination and removing the buffer pad and inspecting the grip surface for corrosion and other damage if delamination is found.
- Within 2400 hours TIS or at the next overhaul of the main rotor hub, whichever occurs first, and thereafter at

intervals not to exceed 2400 hours TIS, inspecting the surface of each grip for corrosion or other damage and conducting a fluorescent-penetrant inspection of the grip for a crack.

• Before further flight, replacing any grip with a crack, corrosion, or damage with an airworthy grip or repairing a grip with damage or corrosion if the damage or corrosion is within certain limits.

• Reporting certain inspection results and information to the FAA in accordance with Appendix 1 of this AD.

These AD actions are intended to be interim actions. The FAA is collecting data for further analysis to assist in determining appropriate terminating action.

The UT inspection of the grip must be performed by a UT Level I Special, Level II, or Level III inspector, qualified under the guidelines established by MIL–STD–410E, ATA Specification 105, AIA–NAS–410, or an FAA-accepted equivalent for qualification standards of Nondestructive Testing inspection/evaluation personnel. Recurrent training and examinations are part of the qualification requirements.

The short compliance time involved is required because the previously described critical unsafe condition of cracking in the grips can adversely affect the controllability and structural integrity of the helicopter. Therefore, this AD requires, before 10 hours TIS, visually inspecting the exposed surfaces of each grip for a crack and, before further flight, replacing or repairing the grip, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that this AD will affect 110 helicopters and that it will take approximately 7 work hours to create and maintain the records, 6.25 work hours to conduct the inspections, and 10 work hours to replace the grip, at an average labor rate of $60 per work hour. Required parts will cost approximately $18,390 per grip replaced. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $315,330, assuming replacement of a total of 12 grips.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–14–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–01–04 Bell Helicopter Textron, Inc.: Amendment 39–13015. Docket No. 2002–SW–14–AD.

Applicability: The following model helicopters with the listed part number (P/N) installed, certificated in any category:

Model	With main rotor grip (Grip) P/N
(1) 205B	204–011–121–005, –009, –113, –117, or –121.
(2) 212	204–011–121–009 or –121.
(3) 204B	204–011–121–005 if the grip was ever installed on a Model 205B helicopter.
(4) 205A and 205A–1	204–011–121–005 or –113 if the grip was ever installed on a Model 205B helicopter.
(5) 204B, 205A, and 205A–1	204–011–121–117.
(6) 205A–1	204–011–121–009 or –121 modified in accordance with Supplemental Type Certificate (STC) SH5132NM.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a grip, separation of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), create a component history card or equivalent record and determine and record the total hours TIS for each grip. If the total hours TIS cannot be determined from the helicopter records, assume and record 900 hours TIS for each year the grip has been installed on any helicopter. Continue to count and record the hours TIS and begin to count and record the number of times the helicopter engine(s) are started (engine start/stop cycles).

(b) Within 10 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, without removing the main rotor blades:

(1) Clean the exposed surfaces of the upper and lower tangs of each grip with denatured alcohol. Wipe dry.

(2) Using a 10-power or higher magnifying glass, visually inspect the exposed surfaces of the upper and lower tangs of each grip for a crack. Pay particular attention to the lower surface of each lower grip tang from the main rotor blade bolt-bushing flange to the leading and trailing edge of each grip tang. See Figure 1 as follows:

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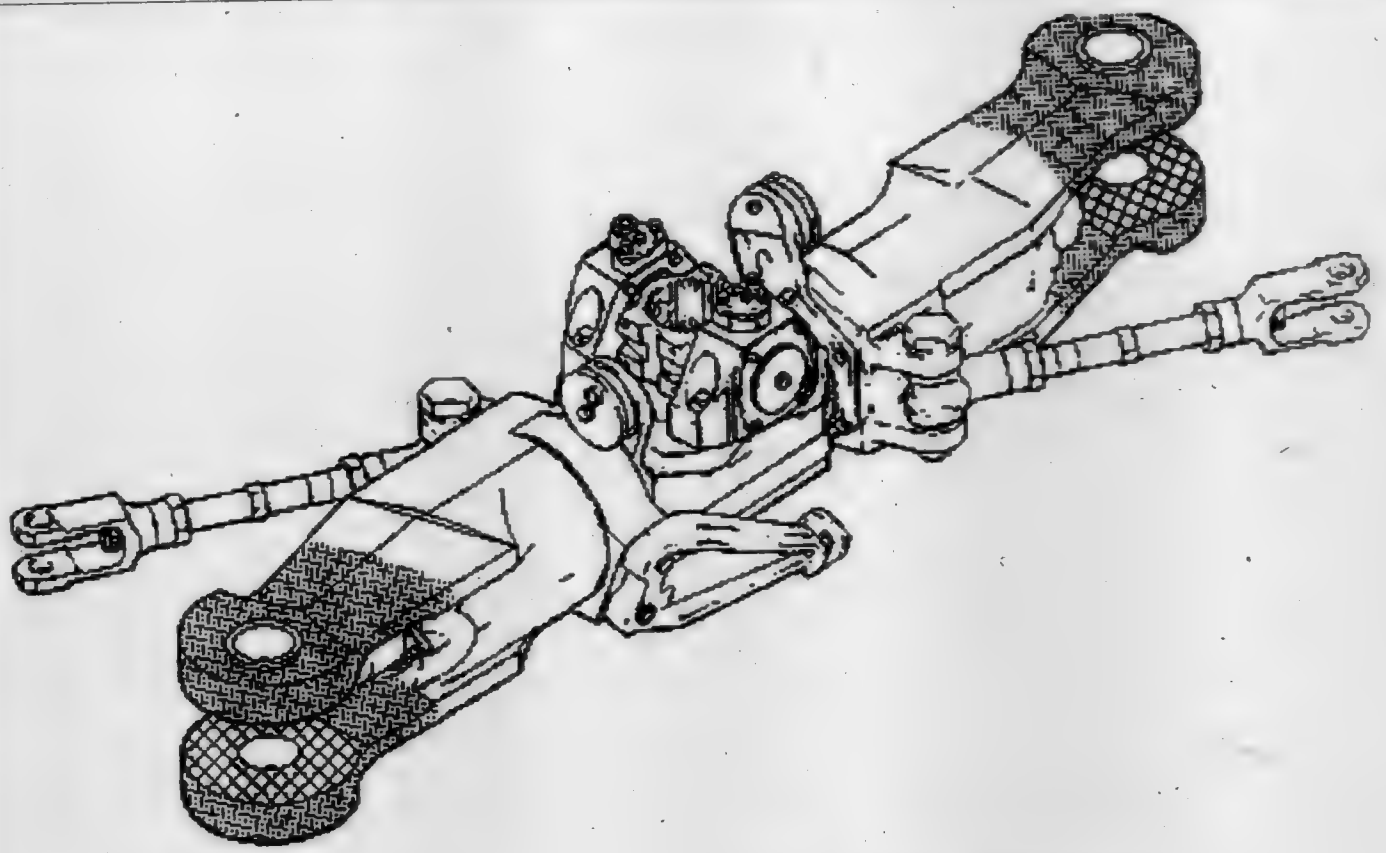

Figure 1. Inspection of Main Rotor Hub Grip Tangs

(c) Ultrasonic (UT) inspect each grip shown in the following table of this AD in accordance with the Bell Helicopter Textron, Inc. (BHTI) Nondestructive Inspection Procedure, Log No. 00–340, Revision E, dated April 9, 2002.

TABLE 1

UT Inspect Grip P/N	Within 30 days, for a Grip with the following or more hours TIS	Thereafter, at intervals not to exceed the following hours TIS or the engine start/stop cycles, whichever occurs first	
		Hours TIS	Engine start/stop cycles
(1) 204–011–121–009	4000	400	1600
(2) 204–011–121–121	500	150	600
(3) 204–011–121–005, or –113 if the grip was EVER installed on a Model 205B helicopter	4000	400	1600
(4) 204–011–121–117 if the grip was NEVER installed on a Model 205B helicopter	4000	150	600
(5) 204–011–121–117 if the grip was EVER installed on a Model 205B helicopter	500	150	600
(6) 204–011–121–009 if the grip is installed on a Model 205A–1 helicopter modified in accordance with STC SH5132NM	4000	400	1600
(7) 204–011–121–121 if the grip is installed on a Model 205A–1 helicopter modified in accordance with STC SH5132NM	500	150	600

The UT inspection of the grip must be performed by a Non-Destructive Testing (NDT) UT Level I Special, Level II, or Level III inspector who is qualified under the guidelines established by MIL–STD–410E, ATA Specification 105, AIA–NAS–410, or an FAA-accepted equivalent for qualification standards of NDT Inspection/Evaluation Personnel.

Note 2: You can find the Nondestructive Inspection Procedure attached to BHTI Alert Service Bulletin (ASB) 205B–02–39, Revision B, dated November 22, 2002, or BHTI ASB 212–02–116, Revision A, dated October 30, 2002.

(d) At intervals not to exceed 1200 hours TIS or 24 months, whichever occurs first:

(1) Remove each main rotor blade, and

(2) Inspect each grip buffer pad on the inner surfaces of each grip tang for delamination (see Figure 1 of this AD). If there is any delamination, remove the buffer pad and inspect the grip surface for corrosion or other damage.

Note 3: This inspection interval coincides with the main rotor tension-torsion strap replacement times.

(e) Within 2400 hours TIS or at the next overhaul of the main rotor hub, whichever occurs first, and thereafter at intervals not to exceed 2400 hours TIS:

(1) Remove each main rotor blade.

(2) Remove each grip buffer pad (if installed) from the inner surfaces of each grip tang.

(3) Inspect the grip surfaces for corrosion or other damage.

(4) Fluorescent-penetrant inspect (FPI) the grip for a crack, paying particular attention to the upper and lower grip tangs. When inspecting grips, P/N 204–011–121–005, –09, and –113, pay particular attention to the leading and trailing edges of the grip barrel.

Note 4: FPI procedures are contained in BHTI's Standard Practices Manual, BHT–ALL–SPM.

(f) Before further flight:

(1) Replace with an airworthy grip any grip with a crack.

(2) Replace with an airworthy grip or repair, if within maximum repair damage limits, any grip with any corrosion or other damage.

Note 5: The maximum repair damage limitations are found in the applicable Component and Repair Overhaul Manual.

Note 6: BHTI Operations Safety Notice 204–85–6, 205–85–9 and 212–85–13, all dated November 14, 1985, and BHTI ASB 212–94–92, Revision A, dated March 13, 1995, also pertain to the subject of this AD.

(g) Within 24 hours for any grip found with a crack and within 7 days for any grip inspected per paragraph (e) of this AD, report to the FAA Rotorcraft Certification Office the information requested in Appendix 1 to this AD. The information collection requirements of this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(i) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(j) The inspections shall be done in accordance with the Bell Helicopter Textron Nondestructive Inspection Procedures of Log No. 00–340, Rev. E, dated April 9, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. Copies may be inspected at the FAA, Office of the Regional Counsel; Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on January 30, 2003.

Appendix 1 to AD 2003–01–04

AD Compliance Inspection Report (Sample Format)

Provide the following information and mail or fax it to: Manager, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas, 76193–0170, USA, Fax: 817–222–5783.

Aircraft Registration No:
Helicopter Model:
Helicopter Serial Number:

Owner and Operator of the Helicopter:
Contact Phone Number:
Grip Part Number:
Grip Serial Number:
Grip Total Hours Time-in-Service (TIS) at Inspection:
Grip Hours TIS since Overhaul:
Grip Start/Stop Cycles and Associated Hours TIS since Last Reported:

Description of Findings

Who performed the inspection?

Date and location the inspection was performed:

Crack Found (Y/N)? If yes, describe the crack size, location, orientation (provide a sketch or pictures with the grip part and serial numbers).

Which inspection was being performed when the crack was discovered?

Has the grip ever been installed on another model helicopter? If so, provide the models and associated hours.

Provide any other comments.

Issued in Fort Worth, Texas, on December 31, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–328 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–34–AD; Amendment 39–13017; AD 2003–02–01]

RIN 2120–AA64

Airworthiness Directives; Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) ALF502L–2, ALF502L–2C, ALF502R–3 and ALF502R–3A Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) ALF502L–2, ALF502L–2C, ALF502R–3 and ALF502R–3A series turbofan engines. This action requires inspection of the flow divider primary, secondary, and drain tube assemblies for security and proper clamping. This amendment is prompted by a fire in the engine nacelle of an ALF502L–2C powered airplane caused by fracture of the flow divider left primary fuel tube, due to high-cycle fatigue resulting from a missing support clamp. The actions specified in this AD are intended to prevent fire in the engine nacelle, in-flight shutdown, and possible damage to the engine.

DATES: Effective January 30, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 30, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–34–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *"9-ane-adcomment@faa.gov"*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming), Attn: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003, telephone: (602) 365–2493; fax: (602) 365–5577. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office (LAACO), FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has been informed that a Bombardier CL–600 airplane powered by ALF502L–2C engines had a fire in the nacelle of the number one engine, resulting from fracturing of the flow divider left primary fuel tube. The fracture was due to high-cycle fatigue caused by a missing support clamp. This action mandates inspection of the flow divider primary, secondary, and drain tube assemblies for security and proper clamping. The actions specified in this AD are intended to prevent fire in the engine nacelle. This condition, if not corrected, could result in an in-flight shutdown and possible damage to the engine.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Honeywell Alert Service Bulletin (ASB) ALF/LF A73–1013, dated October 18, 2002, that describes procedures for inspection of the flow divider primary, secondary, and drain tube assemblies for security and proper clamping.

Differences Between This AD and the Manufacturer's Service Information

Although Honeywell ASB ALF/LF A73–1013 requires compliance within 75 hours after receipt of the service bulletin, this AD requires compliance within 100 flight hours after the effective date of this AD, allowing operators more time to schedule and perform inspections.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) ALF502L–2, ALF502L–2C, ALF502R–3 and ALF502R–3A series turbofan engines, this AD is being issued to prevent fire in the engine nacelle, in-flight-shutdown, and possible damage to the engine. This AD requires inspection of the flow divider primary, secondary and drain tube assemblies for security and proper clamping. The actions are required to be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that

supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–34–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–02–01 Honeywell International, Inc.: Amendment 39–13017. Docket No. 2002–NE–34–AD.

Applicability

This airworthiness directive (AD) is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) ALF502L–2, ALF502L–2C, ALF502R–3 and ALF502R–3A series turbofan engines with tube assemblies, part numbers 2–193–340–02, 2–173–600–03, 2–173–110–02, 2–173–120–03, and 2–193–350–02 installed. These engines are installed on, but not limited to Bombardier CL–600–1A11 and BAE Systems BAe146–100A, –200A and –300A series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done. To prevent fire in the engine nacelle, in-flight shutdown, and possible damage to the engine, do the following:

One-time Inspection of Flow Divider Tube Assemblies

(a) Within 100 flight hours after the effective date of this AD, inspect the flow divider primary, secondary, and drain tubes for proper clamp installation, in accordance with Paragraph 2.A.(1) and 2.A.(2) of the Accomplishment Instructions of Honeywell International, Inc. Alert Service Bulletin ALF/LF A73–1013, dated October 18, 2002

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO) Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to ■ location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(d) The inspection must be done in accordance with Honeywell Alert Service Bulletin ALF/LF A73–1013, dated October 18, 2002.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming), Attn: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003, telephone: (602) 365–2493; fax: (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 30, 2003.

Issued in Burlington, Massachusetts, on January 6, 2003.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–643 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30348; Amdt. No. 3039]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are

needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new organizational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 15, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 15, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form document which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA forms 8360–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on January 3, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulation (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAQV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAP, identified as follows:

** * * Effective February 20, 2003*

Covington, LA, Greater St. Tammany, VOR/DME–A, Orig (CANCELLED)

Covington, LA, Greater St. Tammany, GPS RWYA 17, Orig-A (CANCELLED)

* * * *Effective February 20, 2003*

Danielson, CT, Danielson, RNAV (GPS) Rwy 31, Orig (CANCELLED)
Huntington, IN, Huntington Muni, VOR/DME–A, Amdt 1
Huntington, IN, Huntington Muni, NDB RWY 9, Amdt 1
Huntington, IN, Huntington Muni, RNAV (GPS) RWY 9, Orig
Huntington, IN, Huntington Muni, RNAV (GPS) RWY 27, Orig
Huntington, IN, Huntington Muni, GPS RWY 9, Amdt 1, (CANCELLED)
Huntington, IN, Huntington Muni, GPS RWY 27, Orig, (CANCELLED)
Wichita, KS, Beech Factory, RNAV (GPS) Rwy 18, Orig (CANCELLED)
Wichita, KS, Beech Factory, RNAV (GPS) Rwy 36, Orig
Wichita, KS, Beech Factory, RNAV (GPS) Rwy 18, Orig
Wichita, KS, Beech Factory, GPS Rwy 36, Orig (CANCELLED)
Leesville, LA, Leesville, NDB RWY 36, Amdt 1
Leesville, LA, Leesville, RNAV (GPS) RWY 36, Orig
Owosso, MI, Owosso Community, RNAV (GPS) RWY 10, Orig
Sikeston, MO, Sikeston Memorial Muni, NDB RWY 20, Amdt 8A (CANCELLED)
Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, LOC BC RWY 15R, Amdt 11A (CANCELLED)
Lake Geneva, WI, Grand Geneva Resort, RNAV (GPS) RWY 23, Orig

[FR Doc. 03–650 Filed 1–14–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR part 390

[Docket No. RM02–10–000; Order No. 891]

Electronic Registration

December 20, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of extension of effective date.

SUMMARY: The Federal Energy Regulatory Commission is extending the effective date of its requirement that users of its online applications register electronically. This extension is necessary because the eRegistration system will not be sufficiently implemented by the original effective date of January 7, 2003.

FOR FURTHER INFORMATION CONTACT:
Christopher Cook (information technology advisor), Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8102.
Wilbur Miller (legal advisor), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8953.

1. On August 5, 2002, the Commission issued Order No. 891, establishing a system of electronic registration to act as a gateway to its online services.[1] The eRegistration system will allow users to input identifying information only once as a precursor to using services such as electronic filing, electronic subscription, or electronic service. The registration system has been available on the Commission's web site, *http://www.ferc.gov*, since September as a voluntary system. Order No. 891 provided that eRegistration would become mandatory on January 7, 2003.[2]

2. Currently, eRegistration is not fully integrated with the online services with which it will operate, and this was expected to be the case on the original effective date. The Commission thus will extend the effective date until adequate integration is achieved. Once the system is ready, the Secretary of the Commission will issue a notice of the time when the eRegistration requirement will become effective. In the interim, eRegistration may be a prerequisite for the use of some informational services, such as electronic subscription.

The Commission orders: The effective date of 18 CFR 390.1 is extended until the new effective date is announced by the Secretary.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–834 Filed 1–14–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–2361

Schedules of Controlled Substances: Exempt Anabolic Steroid Products

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Interim rule and request for comments.

SUMMARY: The Drug Enforcement Administration (DEA) is designating two pharmaceutical preparations as exempt anabolic steriod products under the Controlled Substances Act. This action is part of the ongoing implementation of the Anabolic Steriod Control Act of 1990.

DATES: *Effective date:* January 15, 2003.

Comment date: Comments must be received on or before March 17. 2003.

ADDRESSES: Comments must be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT:
Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

The Anabolic Steroids Control Act (ASCA) of 1990 (title XIX of Pub. L. 101–647) placed anabolic steroids into schedule III of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). Section 1903 of the ASCA provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) if the products have no significant potential for abuse. The authority to exempt these products was delegated from the Attorney general to the Administrator of the Drug Enforcement Administration (28 CFR 0.1009b)), who, in turn, redelegated this authority to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (28 CFR appendix to subpart R, section 7, paragraph (g)). The procedure for implementing this section of the ASCA is found in § 1308.33 of title 21 of the Code of Federal Regulations. An application which was in conformance with § 1308.33 of title 21 of the Code of Federal regulations was received and was forwarded to the Secretary of Health and Human Services for his evaluation. The purpose of this rule is to identify two products which, the Deputy Assistant Administrator, Office of Diversion Control, finds meet the exempt anabolic steroid product criteria.

Anabolic Steroid Products Being Added to the List of Products Exempted From Application of the CSA

DEA received a letter dated June 18, 2002, written tot he DEA on behalf of Syntho Pharmaceuticals Inc., and two

[1] See 18 CFR part 390 (2001).

[2] FERC Stats. & Regs. ¶ 31,132, at p. 30,195 (2002), codifying requirement at 18 CFR § 390.1.

petitions to exempt from control under the CSA a two products each containing esterified estrogens and methyltestosterone. In a letter dated July 16, 2002, DEA provided a copy of these petitions to the Department of Health and Human Services (HHS) along with a request for evaluation and recommendation. In a letter dated September 14, 2002, the Assistant Secretary of Health for HHS recommended that both Syntest H.S. and Syntest D.S. be exempted from controls under the CSA based on their similarity to the products, Estratest H.S. and Estratest, respectively, both of which have been exempted from control under the CSA. A subsequent examination of DEA databases did not reveal any evidence of abuse or diversion of Estratest H.S. and Estratest.

The Deputy Assistant Administrator, having reviewed the application, recommendation of the Secretary, and other relevant information, finds that Syntest H.S. and Syntest D.S. have no significant potential for abuse. Information on these products is given below.

EXEMPT ANABOLIC PRODUCTS

Trade name	Company	Form	Ingredients	Quantity
Syntest H.S	Syntho Pharmaceuticals, Farmingdale, NY.	Tablets	Esterfied Estrogrens	0.62mg/Tablet.
			Methylestosterone	1.25mg/Tablet.
Syntest D.S	Syntho Pharmaceuticals, Farmingdale, NY.	Tablets	Esterfied Estrogrens	1.25mg/Tablet.
			Methylestosterone	2.5mg/Tablet.

Therefore, the Deputy Assistant Administrator hereby orders that the above anabolic steroid products be added to the list of products excluded from application of the CSA and referenced in 21 CFR 1308.34

Interested persons are invited to submit their comments in writing with regard to this interim rule. If any comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which this order is based, the Deputy Assistant Administrator shall immediately suspend the effectiveness of this order until she may reconsider the application in light of the comments and objections filed. Thereafter, the Deputy Assistant Administrator shall reinstate, revoke, or amend her original order as she determines appropriate.

Regulatory Certifications

Regulatory Flexibility Act

The granting of exemption status relieves persons who handle the exempted products in the course of legitimate business from the registration, record keeping, security, and other requirements imposed by the CSA. Accordingly, the Deputy Assistant Administrator certifies that this action will not have a significant economic impact upon a substantial number of small entities whose interest must be considered under the Regulatory Flexibility Act. (5 U.S.C. 605(b)).

Executive Order 12866

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of Executive Order 12866. Accordingly, this action is not subject to those provisions of Executive Order 12l778 which are contingent upon review by OMB. Nevertheless, the Deputy Assistant Administrator has determined that this is not a "major rule," as that term is used in Executive Order 12866, and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of Executive Order 12788.

Executive Order 12988

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This interim rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own law. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This interim rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: January 6, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03–772 Filed 1–14–03; 8:45 am]

BILLING CODE 4410–09–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in February 2003. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: February 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during February 2003, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during February 2003, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during February 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.10 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for January 2003) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for January 2003) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during February 2003, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 112, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
112	2–1–03	3–1–03	3.75	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 112, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
112	2–1–03	3–1–03	3.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t=
February 2003	.0510	1–20	.0525	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of January 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–829 Filed 1–14–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami 02–156]

RIN 2115–AA97

Security Zones; Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing security zones in the Captain of the Port Miami area for national security reasons to protect the public and ports from potential subversive acts. Similar security zones have been in effect under temporary rules following the terrorist attacks of September 11, 2001, on the World Trade Center and Pentagon. Entry into these zones will be prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative.

DATES: This rule is effective from December 16, 2002 until 11:59 p.m. on February 15, 2003.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of (COTP Miami-02–156) and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Jennifer Sadowski, Waterways Management Division Officer, Coast Guard Marine Safety Office Miami, at (305) 535–8750.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. We did publish a NPRM on November 5, 2002 (67 FR 67342) proposing to make these same security zones permanent. The comment period for the NPRM closed on December 5, 2002 and this temporary rule will ensure vessels are protected while we draft the final rule.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and place enforcement vessels in the vicinity to advise mariners of the restriction.

Background and Purpose

The terrorist attacks of September 2001 killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly around those vessels and facilities which are frequented by foreign nationals and maintain an interest to national security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sep. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sep. 20, 2002) (continuing national emergency

with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations)). Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorist attacks are likely. The Captain of the Port (COTP) of Miami has determined that there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Ports of Palm Beach, Miami, Port Everglades, and Key West, Florida. These security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

The Coast Guard Captain of the Port of Miami established temporary security zones in these areas following the September 11, 2001 attacks. Those temporary rules are as follows:

On September 11, 2001, the COTP issued a temporary final rule (TFR) (67 FR 9194, 9195, February 28, 2002, Docket # COTP Miami 01–093) establishing 100-yard security zones around certain vessels in the Port of Palm Beach, Miami, Port Everglades, and Key West, FL, that expired September 25, 2001. On September 25, 2001, the COTP issued another TFR (67 FR 1101, January 9, 2002, COTP Miami 01–115) that maintained these 100-yard security zones around certain vessels in the Ports of Palm Beach, Miami, Port Everglades, and Key West, FL, and added a reference to specific points (buoys) where moving zones were activated and deactivated. This second TFR expired on June 15, 2002.

On October 7, 2001, the COTP issued a TFR (67 FR 6652, February 13, 2002, COTP Miami 01–116) establishing fixed security zones in Port Everglades and Miami, FL, that expired June 15, 2002.

On October 11, 2001, the COTP issued a TFR (67 FR 4177, January 29, 2002, COTP Miami 01–122) establishing a fixed-security zone for Port Everglades, FL, that expired June 15, 2002.

All of the above security zones were extended by a TFR issued on June 13, 2002 (67 FR 46389, COTP Miami-02-054) until December 15, 2002. On November 5, 2002, we published a NPRM proposing to create permanent security zones in various ports throughout South Florida (67 FR 67342). We received one comment on the proposed rule. This temporary rule is necessary to ensure vessels are protected while we complete drafting the final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because we anticipate these security zones may only impact vessel traffic for short periods of times. Alternate vessel traffic routes have also been accounted for to assist in minimizing delays. Also, the Captain of the Port of Miami may allow persons or vessels to enter a security zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic effect upon a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because we anticipate these security zones may only impact vessel traffic for short periods of times. Alternate vessel traffic routes have also been identified to assist in minimizing delays. Also, the Captain of the Port of Miami may allow persons or vessels to enter a security zone on a case-by-case basis. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Jennifer Sadowski at (305) 535–8750.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because no environmental changes will be affected with the security zone implementation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add new § 165.T07–156 to read as follows:

§ 165.T07–156 Security Zones; Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, Florida.

(a) *Location.* The following areas are security zones:

(1) *Fixed and moving security zones around vessels in the Ports of Palm Beach, Port Everglades, Miami, and Key West, Florida.* Moving security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, during transits entering or departing the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida. These moving security zones are activated when the subject vessel passes: "LW" buoy, at approximate position 26°46.3′ N, 080°00.6′ W, when entering the Port of Palm Beach, passes "PE" buoy, at approximate position 26°05.5′ N, 080°04.8′ W, when entering Port Everglades; the "M" buoy, at approximate position 25°46.1′ N, 080°05.0′ W, when entering the Port of Miami; and "KW" buoy, at approximate position 24°27.7′ N, 081°48.1′ W, when entering the Port of Key West. Fixed security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard or liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, while they are docked in the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida.

(2) *Fixed security zone in the Port of Miami, Florida.* A fixed security zone encompasses all waters between Watson Park and Star Island on the MacArthur Causeway south to the Port of Miami. The western boundary is formed by an imaginary line from points 25°46.79′ N, 080°10.90′ W, to 25°46.77′ N, 080°10.92′ W to 25°46.88′ N, 080°10.84′ W, and ending on Watson Park at 25°47.00′ N, 080°10.67′ W. The eastern boundary is formed by an imaginary line from the traffic light located at Bridge Road, in approximate position 25°46.33′ N, 080°09.12′ W, which leads to Star Island, and MacArthur Causeway directly extending across the Main Channel to the Port of Miami, at 25°46.26′ N, 080°09.18′ W. The fixed security zone is activated when two or more passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, enter or moor within this zone.

(i) Vessels may be allowed to transit the Main Channel when only one passenger vessel or vessel carrying cargoes of particular hazard are berthed, by staying on the north side of the law enforcement boats and cruise ship tenders which will mark a transit lane in channel.

(ii) When passenger vessels are not berthed on the Main Channel, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(3) *Fixed security zones in the Port Everglades.* A fixed security zone encompasses all waters west of an imaginary line starting at the northern most point 26°05.98′ N, 080°07.15′ W, near the west side of the 17th Street Causeway Bridge, to the southern most point 26°05.41′ N, 080°06.96′ W, on the northern tip of pier 22. An additional fixed security zone encompasses the Intracoastal Waterway between a line connecting point 26°05.41′ N, 080°06.97′ W, on the northern tip of berth 22 and a point directly east across the Intracoastal Waterway to 26°05.41′ N, 080°06.74′ W; and a line drawn from the corner of Port Everglades berth 29 at point 26°04.72′ N, 080°06.92′ W, easterly across the Intracoastal Waterway to John U. Lloyd Beach, State Recreational Area at point 26°04.72′ N, 080°06.81′ W.

(i) Vessels may be allowed to transit the Intracoastal Waterway when passenger vessels or vessels carrying cargoes of particular hazard are berthed, by staying east of the law enforcement boats and cruise ship tenders, which will mark a transit lane in the Intracoastal Waterway.

(ii) Periodically, vessels may be required to temporarily hold their positions while large commercial traffic operates in this area. Vessels in this security zone must follow the orders of the COTP or his designated representative, who may be embarked in law enforcement or other vessels on scene. When passenger vessels are not berthed on the Intracoastal Waterway, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(b) *Regulations.* (1) Prior to commencing the movement, the person directing the movement of a passenger vessel, a vessel carrying cargoes of particular hazard, or a vessel carrying liquefied hazardous gas (LHG) as defined in Title 33, Code of Federal Regulations parts 120, 126 and 127 respectively, is encouraged to make a security broadcast on VHF Marine Band Radio, Channel 13 (156.65 MHz) to

advise mariners of the moving security zone activation and intended transit.

(2) In accordance with the general regulations § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port Miami or his designated representative. Other vessels such as pilot boats, cruise ship tenders, tug boats and contracted security vessels may assist the Coast Guard Captain of the Port under the direction of his designated representative by monitoring these zones strictly to advise mariners of the restrictions. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 13 (156.65 MHz) when the security zones are being enforced.

(3) Persons desiring to enter or transit the area of the security zone may contact the Captain of the Port on VHF Marine Band Radio, Channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(4) The Captain of the Port Miami may waive any of the requirements of this subpart for any vessel upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this subpart is unnecessary or impractical for the purpose of port security, safety or environmental safety.

(c) *Definition.* As used in this section, cruise ship means a passenger vessel greater than 100 feet in length and over 100 gross tons that is authorized to carry more than 12 passengers for hire making voyages lasting more than 24 hours, except for a ferry.

(d) *Dates.* This section is effective from December 16, 2002 until 11:59 p.m. on February 15, 2003.

(e) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: December 16, 2002.

J.A. Watson, IV,

Captain, Coast Guard, Captain of the Port Miami.

[FR Doc. 03–740 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 140–1a; FRL–7433–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) conditionally approves rules, submitted by the State of Indiana as revisions to its State Implementation Plan (SIP), for Prevention of Significant Deterioration (PSD) provisions for attainment areas for the Indiana Department of Environmental Management (IDEM).

DATES: This rule will become effective March 3, 2003 unless EPA receives adverse written comments by February 14, 2003. If EPA receives adverse written comments, it will publish a timely withdrawal of the rule in the **Federal Register**, and inform the public that the rule will not take effect.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Julie Capasso at (312) 886–1426 before visiting the Region 5 office. Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Julie Capasso, Environmental Scientist, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–1426.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

A. What is the purpose of this document?
B. What is the history of IDEM's PSD program?
C. Who is affected by this action?
D. Approvability Analysis
E. What is today's final action?
F. Regulatory Assessment Requirements

A. What Is the Purpose of This Document?

This document is our conditional approval of the SIP revision request that IDEM has submitted for its PSD program.

B. What Is the History of IDEM's PSD Program?

On September 30, 1980, EPA delegated to IDEM the authority to implement and enforce the federal PSD program. On April 11, 2001, IDEM submitted a request to EPA to revise its SIP to incorporate its PSD regulations. On February 1, 2002, IDEM submitted to EPA a revised request resolving issues identified by EPA during an informal review. IDEM withdrew the previous request on February 27, 2002. On May 28, 2002, EPA sent a letter to IDEM deeming the February 1, 2002 submittal complete, and initiated the processing of the request.

Indiana's February 1, 2002 submission consists of the addition to the SIP of: 326 IAC 2–2, PSD rules; 326 IAC 2–1.1–6, Public notice; and 326 IAC 2–1.1–8, Time periods for determination on permit applications. IDEM previously submitted sections 326 IAC 2–1.1–6 and 326 IAC 2–1.1–8, and at EPA's request, is resubmitting them as part of this SIP submittal request.

C. Who Is Affected by This Action?

Indiana has already adopted these PSD rules; therefore, air pollution sources will not be subject to any additional requirements. This action merely approves the State rules into the SIP, making them federally enforceable under the Clean Air Act (CAA). Because this is now a federally-approved State program instead of a delegated federal program, anyone wishing to appeal a PSD permit will have to do so under the State's environmental appeals process.

D. Approvability Analysis

I. 326 IAC 2–2–1: Definitions

Unless otherwise specified below, definitions in 326 IAC 2–2–1 are consistent with definitions in 40 CFR 51.166(b).

EPA has noted wording discrepancies between the Federal rules and the following rules: In 326 IAC 2–2–1(y)(5), the words "and this subdivision" are superfluous. In 326 IAC 2–2–1(gg), IDEM should replace "U.S. EPA" with "IDEM" in the following sentence: "U.S. EPA shall give expedited consideration to permit applications * * *." In 326 IAC 2–2–6(b)(5), the words "whichever is later" are not necessary. These wording differences do not constitute approvability issues. IDEM agrees to

address them the first time that it reopens the rules.

The Federal definition of "major modification" excludes from a physical change or a change in the method of operation the use by a stationary source of an alternative fuel or raw material which the source was capable of accommodating before January 1, 1975, unless the change is prohibited under any permit condition established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 40 CFR 51.166. 40 CFR Subpart I contains requirements pertaining to minor new source review permits. Indiana's rule 326 IAC 2–2–1(x)(2)(E)(i) provides that the use of an alternative fuel or raw material is a change in the method of operation if prohibited by a condition of a permit issued pursuant to the authority of the PSD or major new source review programs, but does not address other new source review provisions. The omission of the reference to minor new source review provisions in 326 IAC 2–2–1(x)(2)(E)(i) was inadvertent. Indiana is not aware of any new source review permits that were not issued pursuant to PSD or major new source review authority that contain restrictions on the use of an alternative fuel or raw material; however, Indiana agrees to address this inadvertent omission within one year of the effective date of this conditional approval.

II. 326 IAC 2–2–6: Increment Consumption

326 IAC 2–2–6(a) only allows a source or major modification to consume 80% of the maximum increase allowed in the 40 CFR 51.166(c). The State's increment consumption requirements are more stringent than the Federal rule, and are therefore approvable.

III. 326 IAC 2–2–12: Permit Rescission

326 IAC 2–2–12 provides that sources may request that IDEM rescind requirements in permits issued prior to January 1, 2002. The comparable federal rule, 40 CFR 52.21(w)(2), provides for rescission of terms from permits issued prior to August 7, 1987. The Federal provision relates to the transition between Total Suspended Particulate (TSP) and particulate matter with an aerodynamic diameter of 10 microns or less (PM–10). IDEM has informed EPA that it interprets 326 IAC 2–2–12 to be consistent with 40 CFR 52.21(w) in that it would only consider use of this subsection to rescind conditions related to TSP. Therefore, EPA believes that these provisions are approvable.

E. What Is Today's Final Action?

EPA is conditionally approving the following rules because with the exception of the inadvertent omission of minor new source review permits from the exemption to the definition of "major modification," the following sections of the State's Rules are consistent with EPA's regulations at 40 CFR 51.166:326 IAC 2–2–2, Applicability; 326 IAC 2–2–3, Control technology; 326 IAC 2–2–4, Air quality analysis; 326 IAC 2–2–5, Air quality impact; 326 IAC 2–2–7, Additional analysis; 326 IAC 2–2–8, Source obligation; 326 IAC 2–2–9, Innovative control technology; 326 IAC 2–2–10, Source information; 326 IAC 2–2–11, Stack height provisions; 326 IAC 2–2–13, Area designation and redesignation; 326 IAC 2–2–14, Sources impacting Federal Class I areas: Additional requirements; 326 IAC 2–2–15, Public participation; 326 IAC 2–2–16, Ambient air ceilings; 326 IAC 2–1.1–6, Public notice, and 326 IAC 2–1.1–8, Time periods for determination on permit applications. Because it is unlikely that Indiana has limited the ability of any sources to use alternative fuels or raw materials through a minor new source review permit, and because Indiana has committed in a December 12, 2002 letter to correct this minor deficiency within one year of the effective date of this approval, EPA believes that it is appropriate to grant conditional approval. However, should Indiana fail to correct this deficiency within a year of this action, EPA will initiate withdrawal of this approval. Although EPA is approving Indiana's PSD SIP, EPA emphasizes that it has a responsibility to insure that all states properly implement their preconstruction permitting programs. EPA's approval of Indiana's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Indiana are consistent with the requirements of the CAA, EPA regulations and the SIP.

Today's approval of Indiana's SIP revision submission is limited to existing rules. EPA is taking no position on whether Indiana will need to make changes to its new source review rules to meet any requirements that EPA may promulgate as part of new source review reform.

EPA is publishing this direct final conditional approval of the Indiana PSD SIP submitted on February 1, 2002. We view this action as noncontroversial, and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to withdraw the State Plan should adverse or critical written comments be filed. This approval action will be effective without further notice unless EPA receives relevant adverse written comment by February 14, 2003. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 3, 2003.

F. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 18, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-*et seq.*

2. Section 52.770 is amended by adding (c)(147) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(147) On February 1, 2002, Indiana submitted its Prevention of Significant Deterioration rules as a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Title 326 of the Indiana Administrative Code, Rules 2–2–1, 2–2–2, 2–2–3, 2–2–4, 2–2–5, 2–2–6, 2–2–7, 2–2–8, 2–2–9, 2–2–10, 2–2–11, 2–2–12, 2–2–13, 2–2–14, 2–2–15 and 2–2–16. Filed with the Secretary of State on March 23, 2001, effective April 22, 2001.

(B) Title 326 of the Indiana Administrative Code, Rules 2–1.1–6 and 2–1.1–8. Filed with the Secretary of State on November 25, 1998, effective December 25, 1998. Errata filed with the Secretary of State on May 12, 1999, effective June 11, 1999.

* * * * *

[FR Doc. 03–616 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD137–3090a; FRL–7420–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revision to the Control of Volatile Organic Compound Emissions From Screen Printing and Digital Imaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Maryland State Implementation Plan (SIP). The revision consists of the establishment of reasonable available control technology (RACT) to limit volatile organic compound (VOC) emissions from an overprint varnish that is used in the cosmetic industry. The revision also adds new definitions and amends certain existing definitions for terms used in the regulation. EPA is approving this revision to the State of Maryland SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on March 17, 2003, without further notice, unless EPA receives adverse written comment by February 14, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Walter Wilkie, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460, and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On February 12, 1999, the Maryland Department of the Environment (MDE) submitted a formal revision to its State Implementation Plan (SIP) revising the Code of Maryland Administrative Regulation (COMAR) 26.11.19.18, Control of Volatile Organic Compound Emissions from Screen Printing. This revision amended the previous

regulation .18 by adding RACT standards for VOC emissions from digital imaging operations throughout the state. The same limits for screen printing from the previous screen printing regulation were retained (62 FR 53544, October 15, 1997). The February 12, 1999, submittal also revised Maryland's screen printing regulations to eliminate expired interim dates and limits, and repealed the existing sections B–I, and added new sections B–G. A definition for the term "digital imaging" was also added to the rule. This regulation was adopted by MDE on August 4, 1998, and became effective on August 24, 1998. EPA approved MDE's revision to its screen printing and digital imaging regulation on June 17, 1999 (64 FR 32415).

II. Summary of SIP Revision

On June 21, 2002, MDE submitted a formal revision to its SIP revising COMAR 26.11.19.18, Control of Volatile Organic Compound Emissions from Screen Printing and Digital Imaging, section C, General Requirements for Screen Printing. This revision establishes a VOC limit for overprint varnish. Overprint varnish is a FDA-regulated coating that is used by the cosmetic industry to prevent lipstick from adhering to the plastic film on sample cards sold to retail stores. Specifically, this SIP revision establishes a maximum VOC content, as applied, for overprint varnish on any substrate, of 6.03 pounds of VOC per gallon. All of the previous limits in Maryland's existing screen printing regulation have been retained. As a result, COMAR 26.11.19.18C(1)(a)–(c) has been renumbered as COMAR 26.11.19.18C(1)(b)-(d) to reflect the addition of the new requirement. This SIP revision also amends the definitions section of this rule, COMAR 26.11.19.18A, by adding a definition for the term "Overprint varnish" at COMAR 26.11.19.18A(10–1), and revising the current definition of "Clear coating" at COMAR 26.11.19.18A(4)(a) and (b) for clarification purposes.

The CAA requires each revision to a state implementation plan to be reviewed to make sure that the revision does not interfere with any applicable requirements concerning reasonable further progress (ROP) and attainment. Currently, there is one source, the Color Prelude Company, located in Anne Arundel County, Maryland, that will be affected by this revision. Growth projections for emissions from this category have been accounted for in the Maryland ROP and attainment demonstration. EPA has concluded that this regulation will not negatively impact any ROP or attainment demonstration of the ozone national ambient air quality standard (NAAQS) previously submitted by the State of Maryland, and is therefore approvable as a revision to the Maryland SIP.

III. Final Action

EPA is approving a revision to the State of Maryland SIP which was submitted on June 21, 2002, by the Maryland Department of the Environment (MDE) establishing a state-wide VOC limit to control emissions from an overprint varnish that is used in the cosmetic industry, and adds and revises definitions for terms used in the regulation. All previously approved screen printing and digital imaging requirements have been retained.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 17, 2003, without further notice unless EPA receives adverse comment by February 14, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, establishing a VOC limit for an overprint varnish that is used in screen printing by the cosmetic industry in Maryland, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 4, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(177) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(177) Revisions to the Code of Maryland Administrative Regulation (COMAR) 26.11.19.18 pertaining to the establishment of a VOC limit for overprint varnish used in the cosmetic industry, submitted on June 21, 2002, by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of June 21, 2002, from the Maryland Department of the Environment transmitting amendments to Regulation .18, Control of Volatile Organic Compound Emissions from Screen Printing and Digital Imaging, under COMAR 26.11.19, Volatile Organic Compounds from Specific Processes.

(B) Additions and Revisions to COMAR 26.11.19.18, Control of Volatile Organic Compound Emissions from Screen Printing and Digital Imaging under COMAR 26.11.19, Volatile Organic Compounds from Specific Processes, effective June 10, 2002:

(*1*) Revised COMAR 26.11.19.18A(4)(a) and added COMAR 26.11.19.18A(4)(b), revising the definition of the term "Clear coating."

(*2*) Added COMAR 26.11.19.18A (10–1), adding a definition for the term "Overprint varnish."

(*3*) Added COMAR 26.11.19.18C(1)(a) (General Requirements for Screen Printing). Former COMAR 26.11.19.18C(1)(a) through (c) is renumbered as 26.11.19.18C(1)(b) through (d).

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(177)(i) of this section.

[FR Doc. 03–729 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MD–T5–2002–01a; FRL–7440–2]

Clean Air Act Full Approval of Operating Permit Program; Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; final full approval.

SUMMARY: The EPA is taking final action to grant full approval of the State of Maryland's operating permit program. Maryland's operating permit program was submitted in response to the Clean Air Act Amendments of 1990 that required each state to develop, and submit to EPA, a program for issuing operating permits to all major stationary sources and to certain other sources within the state's jurisdiction. The EPA granted final interim approval of Maryland's operating permit program on July 3, 1996. The State of Maryland amended its operating permit program to address the deficiencies identified in the final interim approval action, and this final rulemaking action approves those amendments. The EPA proposed full approval of Maryland's operating permit program in the **Federal Register** on September 10, 2002. This final rulemaking summarizes the comments EPA received on the September 10, 2002 proposal, provides EPA's responses, and promulgates final full approval of the State of Maryland's operating permit program.

DATES: This final rule is effective on February 14, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

FOR FURTHER INFORMATION CONTACT: David Campbell, Permits and Technical Assessment Branch at (215) 814–2196 or by e-mail at *campbell.dave@.epa.gov*.

SUPPLEMENTARY INFORMATION: On July 15, 2002, the State of Maryland submitted amendments to its State operating permit program. These amendments are the subject of this document and this section provides additional information on the amendments by addressing the following questions:

What Is the State Operating Permit Program?
Why Is EPA Taking This Action?
What Action Is Being Taken by EPA?
What Were the Concerns Raised by the Commenters?
How Does This Action Affect the Part 71 Program in Maryland?

What Is the State Operating Permit Program?

The Clean Air Act Amendments of 1990 required all states to develop operating permit programs that meet certain federal criteria. When implementing the operating permit programs, the states require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its

applicable Clean Air Act requirements into a federally enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the state environmental agency can more easily understand what Clean Air Act requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the Clean Air Act or in the EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of "major" sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM10); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the Clean Air Act; or those that emit or have the potential to emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

Why Is EPA Taking This Action?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 CFR part 70, EPA granted interim approval contingent upon the state revising its program to correct the deficiencies. Because the Maryland operating permit program substantially, but not fully, met the requirements of part 70, EPA granted final interim approval of Maryland's program in a rule promulgated on July 3, 1996 (61 FR 34733). The interim approval notice described the conditions that had to be met in order for the Maryland operating permit program to receive full approval. Initially, Maryland's interim approval period, during which it was required to address its interim approval deficiencies, was scheduled to lapse two years after the effective date of the final interim approval action. However, EPA extended the interim approval period until December 1, 2001 for 86 operating permit programs, including Maryland's, in a rule promulgated on May 22, 2000 (65 FR 32035).

Maryland was unable to fully address each of the conditions it had to meet in order to be considered for full approval by December 1, 2001. Therefore, Maryland's interim approval has lapsed and the State has suspended its implementation of an approved program pursuant to 40 CFR part 70. Lapse of the part 70 program did not cause the State's operating permit program regulations to become disapproved or rescinded, although Maryland has not implemented or enforced these provisions during the period of the lapse. On December 5, 2001 (66 FR 63236), EPA announced that the 40 CFR part 71 federal operating permit program became effective in Maryland on December 1, 2001. In that same announcement, EPA granted full delegation to Maryland to implement and enforce the 40 CFR part 71 program. The 40 CFR part 71 program will be effective in Maryland until the State is granted final full approval of its program.

On July 15, 2002, Maryland submitted to EPA amendments to its title V operating permit program. These amendments are intended to correct deficiencies identified by EPA when it granted final interim approval of Maryland's program in 1996. In addition, Maryland also made revisions to its operating permit program since its program received final interim approval in 1996. The revisions were not intended to address any of the identified interim approval deficiencies. Rather, the intent of these discretionary program changes was to improve implementation of the existing program. The approval of the discretionary program revisions is not necessary in order for Maryland to adequately address its interim approval deficiencies, nor must they be approved prior to Maryland receiving full approval.

The EPA proposed final full approval of Maryland's operating permit program on September 10, 2002 (67 FR 57496). On October 10, 2002, EPA received comments from Earthjustice pursuant to the September 10, 2002 notice of proposed rulemaking granting final full approval of Maryland's operating permit program.

It should be noted that in response to a separate, earlier action, Earthjustice provided EPA with comments regarding Maryland's permit program. As discussed above, in May 2002 EPA extended the interim approval period for Maryland, among others, until December 1, 2001. The extension was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice. That notice was published on December 11, 2000 (65 FR 77376).

In response to the December 11, 2000 notice, EPA received a March 12, 2001 letter from Earthjustice identifying what it believed to be deficiencies with respect to the Maryland title V program. The EPA notified Earthjustice in a letter dated December 14, 2001 that the Agency would not respond to Earthjustice's March 12, 2001 comments at that time but that EPA would consider the comments and provide a written response to each comment at a later date.

In its September 10, 2002 **Federal Register** notice proposing to fully approve Maryland's operating permit program, EPA stated that we did not intend to take formal action on Earthjustice's March 12, 2001 comment letter in any final rulemaking action pertaining to the final full approval. In the proposed rulemaking notice, EPA announced that it would publish a notice of deficiency (NOD) pursuant to 40 CFR 70.4(i) and 70.10(b) when we determine that a deficiency exists, or we will notify the commenter, in writing, to explain our reasons for not making a finding of deficiency.

On September 23, 2002, EPA formally responded to Earthjustice's March 12, 2001 comments. In our response, we explain that we did not agree with the Earthjustice's assertions and detail our reasons for not issuing a notice of deficiency with regard to Maryland's program. In the near future, a notice of availability will be published in the **Federal Register** notifying the public that we have responded, in writing, to these comments and how the public may obtain a copy of our responses. The EPA's September 23, 2002 letter is currently available at the following web address: (*http://www.epa.gov/air/oaqps/permits/response/maryland.pdf*).

As mentioned above, on October 10, 2002, EPA received comments from Earthjustice pursuant to the September 10, 2002 notice of proposed rulemaking granting final full approval of Maryland's operating permit program. A number of the issue raised by Earthjustice are the same as those raised in its March 12, 2001 comment letter. The October 10, 2002 letter also raised a number of issues that previously had not been raised.

What Action Is Being Taken by EPA?

EPA is granting final full approval to Maryland's revised part 70 operating permits program. For the reasons discussed below, EPA's final full approval is based on Maryland's satisfactory correction of the nine program deficiencies identified when EPA granted final interim approval of Maryland's operating permit program on June 3, 1996, and it also includes other revisions that Maryland has made to improve its program since receiving interim approval. The operating permit program amendments submitted by Maryland on July 15, 2002, considered together with that portion of Maryland's operating permit program that was earlier approved on an interim basis fully satisfy the minimum requirements of 40 CFR part 70 and the Clean Air Act. Furthermore, EPA has determined that Earthjustice's October 10, 2002 comments relating to Maryland's interim approval deficiencies do not identify deficiencies in Maryland's part 70 program.

In addition, EPA is responding to Earthjustice's October 10, 2002 comments alleging other deficiencies in Maryland's part 70 program, including comments related to those first made by Earthjustice on March 12, 2001 and addressed in EPA's September 23, 2002 response and comments first raised on October 10, 2002. While EPA believes it is not obligated to respond to comments that do not pertain to interim approval deficiencies in this rulemaking, EPA has concluded that none of the concerns raised in those comments constitute deficiencies in the Maryland operating permit program. If a court should determine that EPA is obligated to respond to those additional comments in order to grant final full approval to Maryland's part 70 program, then the responses set forth in this notice should be considered EPA's final action in response to those comments.

What Were the Concerns Raised by the Commenters?

The EPA received one comment letter during the public comment period. In its October 10, 2002 letter, Earthjustice commented on the proper scope of EPA's full approval of Maryland's part 70 program. Earthjustice also commented on several specific aspects of Maryland's program, which can be grouped into three categories. First, Earthjustice commented on a number of the corrections Maryland made to its program in order to address the deficiencies that EPA previously determined must be corrected in order for the State to receive full approval of its program. These program deficiencies, called interim approval deficiencies, were identified when EPA granted final interim approval of Maryland's program in 1996. As discussed in the notice of proposed rulemaking, Maryland was required to address each of the nine deficiencies identified by EPA in order to be eligible for full approval of its program. Second, Earthjustice commented on a number of alleged deficiencies that it first raised in its March 12, 2001 letter and that EPA addressed in the Agency's September 23, 2002 response. Finally, Earthjustice provided comments alleging, for the first, time, that certain other issues constitute deficiencies in Maryland's program.

Earthjustice asserts that in order to fully approve Maryland's part 70 program, EPA must determine that the entire program complies with the Clean Air Act and part 70, and that EPA's proposal to grant full approval based solely on Maryland's correction of its interim approval deficiencies is inconsistent with section 502(d)(1) of the Clean Air Act, which authorizes EPA to approve a state operating permit program "to the extent that the program meets the requirements of [the Clean Air Act and EPA's implementing regulations]." Accordingly, Earthjustice asserts that EPA cannot grant full approval of Maryland's part 70 program without first addressing all alleged deficiencies identified by Earthjustice in its October 10, 2002 comment letter.

The EPA is aware that Earthjustice has alleged deficiencies other than those interim approval deficiencies listed in Maryland's June 3, 1996 final interim approval notice, and EPA agrees that those allegations must be addressed through appropriate actions by EPA and/or the State of Maryland. Indeed, EPA is responding to those allegations in this notice. For the reasons discussed below, however, we disagree that the deficiencies alleged in the October 10, 2001 comment letter that do not pertain to interim approval deficiencies prohibit EPA from granting full approval of Maryland's operating permit program at this time.

Title V of the Clean Air Act, 42 U.S.C. 7661–7661f, provides a framework for the development, submission and approval of state operating permit programs. Following the development and submission of a state program, the Act provides two different approval options that EPA may utilize in acting on state submissions. *See* 42 U.S.C. 7661a(d) and (g). Pursuant to section 502(d), EPA "may approve a program to the extent that the program meets the requirements of [the Clean Air Act and implementing regulations]." The EPA may act on such program submissions by approving or disapproving, in whole or in part, the state program. If a program is disapproved, section 502(d) requires the Administrator to notify the Governor of the State of "any revisions or modifications necessary to obtain approval."

An alternative option for acting on state programs is provided by the interim approval provision of section 502(g), which states: "If a program . . . substantially meets the requirements of [title V], but is not fully approvable, the Administrator may by rule grant the program interim approval." This provision provides EPA with the authority to act on state programs that substantially, but do not fully, meet the requirements of title V and part 70. Only those program submissions that meet the requirements of eleven key program areas are eligible to receive interim approval. *See* 40 CFR 70.4(d)(3)(i)–(xi). Finally, section 502(g) directs EPA to "specify the changes that must be made before the program can receive full approval." 42 U.S.C. 7661a(g); 40 CFR 70.4(e)(3). This explicit directive encompasses another, implicit one: Once a state with interim approval corrects the specified deficiencies then it will be eligible for full program approval. The EPA believes this is so even if deficiencies have been identified sometime after final interim approval, either because the deficiencies arose after EPA granted interim approval or, if the deficiencies existed at that time, EPA failed to identify them as such in proposing to grant interim approval. Thus, the Clean Air Act clearly addresses initial title V program submissions by outlining the alternate mechanisms of sections 502(d) and 502(g). However, the statute does not specifically address Maryland's situation, where the State's interim approval has lapsed and the State has submitted a revised part 70 program, rather than an initial program.

The EPA believes that the interim approval provision, section 502(g), is not applicable to Maryland's current situation. Section 502(g) expressly provides that interim approval "shall expire" on a date certain and "may not be renewed." The EPA agreed in resolving the Sierra Club's interim approval litigation not to extend interim approvals beyond December 1, 2001, the date when Maryland's interim approval expired.

The EPA believes, however, that under section 502(d) and the notice of deficiency mechanism authorized by section 502(i), it is appropriate to grant Maryland's revised part 70 program full

approval based solely on Maryland's correction of its interim approval deficiencies and to separately address any deficiencies alleged or identified post-interim approval. Section 502(d) requires that the Administrator, upon disapproving a state's initial program submission, formally notify the state of changes that must be made prior to full approval. Similarly, while not directly applicable here, section 502(g) requires EPA to notify a state of changes needed as conditions of full approval. It would be inconsistent with the structure of these provisions for EPA to deny full approval to Maryland's revised part 70 program because of newly alleged deficiencies, where Maryland's interim approval has lapsed but EPA has not yet had an opportunity to evaluate the allegations or provide notice of any identified deficiencies to the State.

Furthermore, the notice of deficiency mechanism authorized by section 502(i) provides a means for EPA to require a state to correct any newly identified deficiencies while granting full approval to the state's program. Section 502(i)(4) of the Act and 40 CFR 70.4(i) and 70.10 authorize EPA to issue a notice of deficiency (NOD) whenever EPA makes a determination that a permitting authority is not adequately administering or enforcing an approved part 70 program, or that the state's permit program is inadequate in any other way. Consistent with these provisions, any NOD issued by EPA will specify a reasonable time-frame for the permitting authority to correct the identified deficiency. Requiring Maryland to correct deficiencies that have been alleged or identified as recently as October 2002 in order to receive full approval would run counter to the statutory and regulatory process that is already in place to deal with newly identified program deficiencies.

As discussed above, the interim approval status of Maryland's title V operating permit program lapsed on December 1, 2001. Since that time, Maryland has been implementing the delegated federal operating permit program pursuant to 40 CFR part 71. Maryland has also addressed all of the interim approval deficiencies and has fulfilled the conditions identified by EPA in order for the State to be eligible for full approval. Denying the State's program full approval because of issues alleged as recently as October 2002 would cause disruption and further delay in the issuance of title V permits to major stationary sources in Maryland. As explained above, we do not believe that title V of the Clean Air Act requires such a result. Rather, EPA believes that in the case of Maryland, where interim approval lapsed, the appropriate mechanism for dealing with additional deficiencies that are identified after the program received interim approval but prior to a revised program receiving full approval is twofold: full approval based solely on the State's correction of its interim approval deficiencies and, if necessary, issuance of a notice of deficiency to address any newly identified deficiencies. It should be noted that NODs may also be issued by EPA after a program has been granted full approval. Following the defined process for the identification of deficiencies and the issuance of NODs will provide the State an adequate amount of time after such findings to implement any necessary changes without unduly disrupting the entire State operating permit program. At the same time, addressing any newly identified problems separately from the full approval process will not cause these issues to go unaddressed. To the contrary, if EPA determines that any of the alleged deficiencies in Maryland's program are well-founded, it will issue a NOD and place Maryland on notice that it must promptly correct the non-interim approval deficiencies within a specified time period or face Clean Air Act sanctions and withdrawal of program approval.

Therefore, EPA disagrees with Earthjustice that the Agency must consider all alleged deficiencies prior to granting full approval of Maryland's operating permit program. Through EPA's full approval rulemaking, interested parties have had an opportunity to identify any concerns they may have with the various aspects of Maryland's title V operating permit program. In light of the above discussion, the Agency has grouped Earthjustice's comments into three categories. The first category of comments are those related to deficiencies identified by EPA when we granted final interim approval of Maryland's program in 1996. The second category are those comments that address issues regarding Maryland's program that Earthjustice raised on March 12, 2001 and for which EPA provided formal responses in a letter to Earthjustice on September 23, 2002. The final category pertains to comments raised by Earthjustice regarding portions of Maryland's program that were approved by EPA when the Agency granted final interim approval in 1996 and that were not the subject of the proposed full approval rulemaking action published on September 10, 2002. As noted above, Maryland also made regulatory amendments to its program in addition to changes it made to address the program deficiencies identified by EPA. Earthjustice did not provide comments on any of these regulatory amendments.

Only EPA's responses to the comments related to interim approval corrections are integral to EPA's full approval of its operating permit program announced in this rulemaking. Should it be determined that EPA's consideration of the other two categories of comments in Earthjustice's October 10, 2002 letter as being outside the scope of the full approval action is inconsistent with the Clean Air Act, its implementing regulations, and the Administrative Procedures Act, 5 U.S.C. 551 *et seq.*, the Agency's responses to those comments provided below shall be considered EPA's final action in response to those comments.

A. Comments Related to Interim Approval Corrections

The following discussion responds to comments provided by Earthjustice on October 10, 2002 that pertain directly to the corrections Maryland made in order to address issues identified by EPA when it granted the State final interim approval in 1996. As discussed above, EPA believes it must respond to these comments because they are germane to this action to grant final full approval of Maryland's program. The EPA finds that Maryland has corrected all of its interim approval deficiencies.

Comment: The commenter believes Maryland's operating permit program regulations violate 40 CFR 70.5(c) and 40 CFR 70.5(c)(3)(i) by granting the State unfettered discretion to exempt units from permit application requirements even though they are not identified on a "list" that is approved by EPA as part of the State's program.

Response: The EPA disagrees with the commenter's assertion that Maryland's program does not meet the minimum requirements of 40 CFR 70.5(c) regarding permit application content. Maryland's regulations at Code of Maryland Regulations (COMAR) 26.11.03.04(A) exempt permittees from the obligation to provide in their permit applications detailed emissions and operational information for specific types or categories of emission units. Maryland's regulations enumerate 13 emission units or categories that are not required to be included in permit applications. These so-called "insignificant activities" represent emission units that are expected to have very low potential emissions and are not likely to be subject to any applicable requirements. The commenter has not raised a concern with the insignificant

activities listed in Maryland's regulations. However, the commenter expresses concern that Maryland may employ COMAR 26.11.03.04(A)(14) to expand the approved list of 13 enumerated insignificant activities without the appropriate level of EPA review and approval.

Maryland revised the language of the COMAR 26.11.03.04(A)(14) in order to address a deficiency identified by EPA when the State's program was granted interim approval. Originally, Maryland's regulations exempted from permit applications emission units without applicable requirements of the Clean Air Act. The EPA was concerned that the exemption was too bread because permittees exercising the exemption did not have to identify the specific emission units or activities to the State, EPA and the public and that the exempted units may not be part of an EPA-approved insignificant activity list. In response to EPA's concerns, Maryland modified the language of COMAR 26.11.03.04(A)(14) to require the State to agree with any recommendation that an emission unit or activity be considered an insignificant activity. Therefore, Maryland may amend the list of 13 insignificant activities enumerated in its regulations by supplementing its regulatory insignificant activity list with a non-regulatory list of activities. The EPA expects that activities added to Maryland's list pursuant to COMAR 26.11.03.04(A)(14) will be consistent with the activities included in COMAR 26.11.03.04(A)(1)-(13) and with EPA's criteria for insignificant activities.

The title V implementing regulations at 40 CFR 70.5(c) do not require insignificant activity lists to be codified as part of a state's operating permit program regulations. However, the federal regulations do require insignificant activity lists to be approved by EPA as part of a state's program. Although Maryland's regulations do not explicitly require that EPA approve of any insignificant activities added by the State using the authority of COMAR 26.11.03.04(A)(14), EPA interprets Maryland's regulations as expressing the State's intent and obligation to submit such added activities to EPA for approval as part of the Maryland operating permit program. This interpretation is consistent with the State's ongoing obligation to keep EPA apprised of any changes to its program as required by 40 CFR 70.4(i). Thus, 40 CFR 70.5(c) requires any insignificant activity list employed by Maryland to be approved as part of its program by EPA and 40 CFR 70.4(i) requires the State to keep EPA informed of any changes it intends to make to its approved program. If Maryland were to fail to seek EPA approval of amendments to its insignificant activity list, EPA could determine, pursuant to 40 CFR 70.10(b), that the State was failing to administer and enforce its approved program. Were EPA to make such a determination, Maryland would be obligated to submit the necessary program revisions and could face program withdrawal and sanctions as articulated by 40 CFR 70.10. It should be noted that the requirement of the State to implement its approved program applies generically and at all times and not only to the insignificant activity provisions.

The EPA confirmed Maryland's understanding of the State's ongoing obligation to inform EPA of all proposed program modifications and to seek EPA approval of such program changes. As documented in a December 12, 2002 memorandum from David Campbell, Air Protection Division, EPA Region III to the docket file for this action (hereafter, the December 12, 2002 memorandum), Maryland confirmed EPA's interpretation of COMAR 26.11.03.04 and related that it understands its duty to seek approval of revisions to its operating permit program, including any changes to the insignificant activity list.

Comment: The commenter believes Maryland's operating permit program regulations do not require general permits to be issued in accordance with the mandatory public participation procedures provided by 40 CFR 70.7(h). The commenter also expresses concern that Maryland's program does not clearly provide for adequate review by EPA and affected states and does not affirm citizens' authority to petition EPA to object to general permits.

Response: Maryland's regulations at COMAR 26.11.07(A)(3) require general permits to complete "all of the public, affected State, and EPA notification, comment, and review procedures required by this regulation." The EPA did not correctly interpret the full scope of the public participation procedures of COMAR 26.11.07 when it reviewed the regulation as part of Maryland's original program submittal in 1995. At that time, EPA incorrectly believed that the provisions of COMAR 26.11.07 applied only to permits or permit modifications for individual sources and not to general permits. As a result, EPA identified the lack of adequate public participation for general permits as a program deficiency when it granted Maryland interim approval. In its interim approval actions, EPA directed Maryland to revise its program to add requirements to its general permit provisions to clarify that general permits must undergo appropriate EPA and affected state review and that the State shall maintain records of public comments raised during the public participation process for general permits.

It is important to note that the public participation procedures of COMAR 26.11.07 were approved by EPA as meeting the minimum requirements of 40 CFR 70.7(h). As discussed above, when EPA granted interim approval of Maryland's program in 1996 it interpreted the requirements of COMAR 26.11.07 as applying only to permits for individual sources. In that context, the Agency found the provisions acceptable and no comments were received pertaining to the public participation provisions at that time. The EPA now understands that the public participation provisions of COMAR 26.11.07 also apply to general permits and has confirmed its interpretation of these provisions with Maryland. (*See* December 12, 2002 memorandum.) The federal requirements for general permits at 40 CFR 70.6(d) requires that general permits must be subject to public participation procedures consistent with 40 CFR 70.7(h) and must comply with all requirements applicable to other part 70 permits. The provisions of COMAR 26.11.07 and COMAR 26.11.03.21 satisfy these requirements.

The provisions of COMAR 26.11.03.21 that apply specifically to general permits should be interpreted to be additional requirements on these type of permits above and beyond those that apply to permits for individual sources. This interpretation is supported by the language of COMAR 26.11.03.21(A) that states that "[a]ny general permit shall comply with all requirements applicable to other part 70 permits. * * *" It should be noted that COMAR 26.11.03.21(A) indicates that general permits must also satisfy the public participation requirements of Maryland's Administrative Procedure Act, State Government Article, section 10–101 *et seq.*

With regard to citizens' authority to petition EPA, COMAR 26.11.03.07(G) and COMAR 26.11.03.10 affirm the authority of citizens to petition EPA to object to a permit. The provisions of these regulations apply to both permits for individual sources and general permits. Likewise, the provisions of COMAR 26.11.03.08 and 26.11.03.09 regarding affected state and EPA review, respectively, apply to permits for individual sources and general permits. Each of these provisions have been previously determined to be consistent

with the relevant requirements of 40 CFR part 70.

While EPA now understands that such changes were not necessary, Maryland made the changes to its regulations as recommended when EPA granted final interim approval in 1996. The changes made by Maryland simply underscore the requirement that general permits must be subject to the public participation procedures and EPA and affected state review afforded permits for individual permits.

Comment: The commenter believes that the permit modification procedures that apply to Maryland's general permits violate 40 CFR part 70. The applicable federal regulations do not allow an individual source operating under a general permit to unilaterally request a change to the general permit and proceed to make operational changes prior to modification of the terms of the general permit.

Response: Maryland's regulations do not allow an individual source operating under a general permit to formally request a change to the general permit and to proceed to make operational changes prior to modification of the general permit. As discussed above, Maryland must follow all of the public participation procedures as required by the rulemaking provisions of the State's Administrative Procedures Act prior to making a change to the general permit. Subsequent to making the change to the general permit, the State would have to revise the general permit by following all of the public participation requirements required of such actions by its operating permit regulations, namely COMAR 26.11.03.07. Therefore, it is impractical for an individual source that is covered by an existing general permit to appropriately apply for a modification of the general permit that would effect that source as well as any other source covered by the general permit.

Since Maryland must initiate any action to revise the general permit, the only available mechanism for such revisions are derived from COMAR 26.11.03.20 which governs the reopening of operating permits by Maryland. Maryland's regulations indicate that such permit revision procedures as administrative amendments and minor and significant permit modifications may only be initiated by permittees. As mentioned above, individual permittees may not initiate the rulemaking procedures that are necessary to revise general permits in Maryland. It should be noted that Maryland's Administrative Procedures Act allows the public to petition the State to request a specific rulemaking action. Thus, an individual source may petition the State to make a revision to an existing general permit, however, Maryland is not obligated in any way by its operating permit regulations to respond to such petitions.

As part of its interim approval action, EPA identified concerns with the manner in which Maryland's regulations addressed general permit modifications. Maryland's regulations had provided the State with the authority to define the appropriate permit modification procedures on a case-specific basis or within the legal construction of a general permit. EPA felt that these provisions provided too much discretion to Maryland in terms of how future modifications to general permits would proceed. In order to address the interim approval deficiency, Maryland removed the authority to define general permit modification procedures on an informal basis or as part of the framework of a general permit. In its interim approval action, EPA further directed Maryland to clarify that the procedures for making revisions to general permits are consistent with 40 CFR 70.7(e) which governs permit modifications. Maryland addressed this issue by stating in its regulations at COMAR 26.11.03.21(L) that the permit revisions procedures that apply to permits for individual sources also apply to general permits. The EPA determined in the final interim approval action that the permit modification procedures that apply to permits for individual sources are consistent with 40 CFR 70.7(e) and the minimum requirements of part 70.

The regulations at 40 CFR 70.6(d) governing general permits provide limited discussion regarding the expected or required permit modification procedures for general permits other than requiring general permits to "comply with all requirements applicable to other part 70 permits." From this reference, it is inferred in the absence of more specific regulatory language regarding general permit modification procedures, that the permit modification procedures for permits for individual sources articulated at 40 CFR 70.7(e) would be applicable to general permits. Therefore, Maryland has amended its regulations regarding the modification procedures for general permits as directed by EPA and in a manner consistent with the minimum requirements of part 70.

As discussed above, EPA did not have a complete understanding of Maryland's regulations with regard to the general permit provisions when it granted final interim approval in 1996. The requirements of COMAR 26.11.03.21(L) are, as a practical matter, not applicable to modifications of general permits since only the State of Maryland may revise general permits by initiating its rulemaking procedures and then using its authority to reopen the existing general permit.

It should be noted that if an affected individual source were to attempt to seek a revision to an existing general permit, there would be a number of safeguards and negative ramifications that should minimize the potential for erroneous implementation of the permit revision process on the source's part. First, it is assumed that the source would submit some form of application or formal request seeking a modification to the general permit. As part of that request, Maryland's permit modification procedures requires applicants to certify that they are using the appropriate permit revision process when filing a revision request. Upon receipt of the modification request, Maryland would deny the application on grounds that the source was not authorized to request such a change to a general permit. Furthermore, if the applicant preceded to make the change it is requesting prior to the State responding to the request, the applicant would not be operating consistent with its approved permit and could face associated enforcement and penalty ramifications. The EPA confirmed this understanding of COMAR 26.11.03.21 and how Maryland would implement its general permit provisions. (*See* December 12, 2002 memorandum.)

B. Comments Pertaining to Issues Raised in Earthjustice's March 12, 2002 Letter

The following discussion responds to comments provided by Earthjustice on October 10, 2002 regarding issues that Earthjustice initially raised as part of its March 12, 2002 letter to EPA. As discussed above, EPA provided its formal responses regarding these issues to Earthjustice on September 23, 2002 and has made those responses available to the public. The Agency does not believe it is required to respond to these comments as part of its action to grant final full approval to Maryland. Nonetheless, the following responses are provided to clarify our original responses and to respond to additional points raised by Earthjustice regarding these matters in its October 10, 2002 letter.

Comment: The commenter believes that EPA must unequivocally determine that Ann. Code Md. 2–106 does not interfere with the public's ability to enforce permit conditions in federal

court under section 304 of the Clean Air Act, 42 U.S.C. 7604. The commenter also asserts that EPA's determination must, at a minimum, be supported by an opinion from the Maryland Attorney General's office.

Response: Ann. Code Md. 2–106 states:

> 2–106—Rights of persons other than this State.
>
> (a) Presumption and finding of fact.—A determination by the Department that air pollution exists or that a rule or regulation has been disregarded or violated does not create any presumption of law or finding of fact for the benefit of any person other than this State.
>
> (b) Proceedings.—Any proceedings under this title shall be brought by the Department for the benefit of the people of this State.
>
> (c) Actionable rights.—No person other than this State acquires actionable rights by virtue of this title.

While this State statute does prevent citizens from bringing suit in federal or state court to enforce provisions of Maryland's air quality control law, the plain and unambiguous language of Ann. Code Md. 2–106 limits its scope to proceedings brought "under this title" or "by virtue of this title" (the "title" in question being Maryland's Title 2, entitled "Ambient Air Quality Control"). Therefore, the statute does not affect any right conferred by any federal law. Section 304 of the Clean Air Act, 42 U.S.C. 7604, is federal law, and beyond the self-limiting reach of the language of Ann. Code Md. 2–106.

Our previous response cited *Maryland Waste Coalition* v. *SCM Corp.*, 616 F. Supp. 1474, 1477 (D. Md. 1985). While we cited this case because the court specifically observed that Ann. Code Md. 2–106(c) allows only the State, and not private citizens, to bring an action to enforce the Maryland air pollution laws, it is worth noting that the *SCM* court did not cite Ann. Code Md. 2–106 as a bar to the citizen suit brought by the plaintiff pursuant to section 304 of the Clean Air Act. (The court did find that certain of the plaintiff's claims were barred by section 304 to the extent that the plaintiff claims overlapped those in a previously filed enforcement action brought by EPA.)

Furthermore, as we also pointed out in our prior response, "had Maryland attempted to prescribe the types, kinds and weights to be ascribed to evidence entered in a federal forum, such an action would have obvious implications on the system of federalism established by the United States' Constitution."

Had Maryland attempted with Ann. Code Md. 2–106 to divest a right to bring a citizen suit under federal law in a federal court, the federalism implications would be just as apparent. Such a stark conflict with the federal statute would be nullified by the Supremacy Clause of the United States Constitution, which provides, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding." U.S. Const. art. VI, Paragraph 2.

Under the Supremacy Clause, everyone must follow federal law in the face of conflicting state law. "It is basic to this constitutional command that all conflicting state provisions be without effect." *Maryland* v. *Louisiana*, 451 U.S. 725, 746 (1981), citing *McCulloch* v. *Maryland*, 4 Wheat. 316, 427 (1819). "[A] state statute is void to the extent it conflicts with a federal statute—if, for example, 'compliance with both federal and state regulations is a physical impossibility' or where the law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Id.* (internal citations omitted).

Ann. Code Md. 2–106 does not on its face conflict with or present an obstacle to the full purpose and objective of Section 304 of the Clean Air Act. Even if such a conflict existed, the statute would be unconstitutional based on the Supremacy Clause as interpreted by the Supreme Court. Therefore, EPA can unequivocally state that Ann. Code Md. 2–106 does not conflict with or affect any rights conferred by Section 304 of the Clean Air Act, including the public's ability to enforce title V permit conditions in federal court. The EPA does not believe that obtaining an opinion from the Maryland Attorney General would add anything to this analysis.

Comment: The commenter believes that a provision of Maryland law, Ann. Code Md. 2–611, illegally shields violators from enforcement so long as they operate in compliance with a compliance plan.

Response: The EPA disagrees with this comment. On September 23, 2002, EPA responded to a comment submitted on March 12, 2001 with respect to Ann. Code Md. 2–611. The original comment erroneously stated that this statutory provision "amounts to a blanket waiver or suspension of applicable requirements, and an amendment of the permit without following required modification procedures, all in violation of title V, and that "the provision could preclude citizens and EPA from enforcing permit requirements * * *" The EPA's response was based in part on the Maryland Attorney General's interpretation of this provision. To give the proper context to the current comment, we believe that it is helpful to set forth EPA's response to the original comment in full below:

EPA Response to Comment 6: Ann. Code Md. 2–611 provides:

> A person is not subject to action for a violation of this title or any rule or regulation adopted under this title so long as the person acts in accordance with a plan for compliance that (1) the person has submitted to the Secretary; and (2) the Secretary has approved, with or without amendments, on the recommendation of the Air Management Administration. The Secretary shall act on any plan for compliance within 90 days after the plan for compliance is submitted to the Secretary.

When a State is diligently prosecuting a facility for violations of its permit, it is typical and reasonable to give a facility a compliance schedule to bring a facility into compliance with its permit conditions. Indeed, EPA's regulations at 40 CFR 70.5(c)(8)(iii)(C) and 70.6(c)(3) require that a title V permit application and permit include a compliance plan containing a compliance schedule for requirements for which the covered source is not in compliance at the time of permit issuance. If a facility must modify its permit due to the conditions of a compliance plan, then that facility should follow all proper procedures to modify its permit as needed. This Maryland law does not allow a title V source to bypass the permit modification process. In addition, the State law does not prevent EPA from enforcing permit requirements (as noted in response to Comment 2, Maryland law does not contain a general citizen suit provision to enforce violations of its air pollution regulations, including permit requirements; however, this is not a legal deficiency in the Maryland program).

Further, neither EPA nor MDE [Maryland Department of Environment] interprets Ann. Code Md. 2–611 as a blanket waiver or suspension of any other applicable requirements for a source. Maryland has submitted to EPA a an opinion from the Maryland Attorney General that affirms MDE and EPA's position that the law applies only to violations that are expressly addressed by the compliance plan. See Attachment 4. EPA does not agree that Ann. Code Md 2–611 represents a deficiency in the State's part 70 program.

The commenter apparently accepts EPA's explanation with respect to the points addressed above, but now asserts

a new defect with Ann. Code Md. 2–611, namely that "it exempts a person from enforcement action for a violation of an air pollution limitation 'so long as the person acts in accordance with a plan for compliance.'" Such an exemption, the commenter asserts "explicitly violates Part 70's prohibition against a compliance schedule that 'sanction[s] noncompliance with, the applicable requirements on which it is based.'" 40 CFR 70.5(c)(8)(iii)(C).

However, the commenter has alleged a conflict between 40 CFR 70.5(c)(8)(iii)(C) and Ann. Code. Md. 2–611 that does not exist either explicitly or implicitly. The language of 40 CFR 70.5(c)(8) speaks to the contents of the compliance schedule. Under 70.5(c)(8) any compliance schedule must meet certain criteria. For example, 40 CFR 70.5(c)(8)(iii)(C) requires that the schedule "include a schedule of remedial measures, including an enforceable sequence of actions with milestones, *leading to compliance with any applicable requirements* * * *" (Emphasis added.) Further, the schedule must be "at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject." The last requirement is that "the schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

The federal regulations at 40 CFR 70.5(c)(8)(iii)(C) contemplate that a compliance schedule may be little more than the recitation of requirements set forth in a judicial consent decree or an administrative order that has been agreed to between the source and a state or federal enforcement agency to fully and finally settle a dispute with the source. Any such compliance schedule necessarily would be supplemental to the existing applicable requirements on which its based. The title V permits, judicial consent decree or administrative order that defines the schedule may not, in of themselves, amend the underlying legal instruments such as state regulations or permits that establish the subject applicable requirements. Indeed, the regulatory language makes clear that a compliance plan must lead to compliance with all applicable requirements. The commenter seems to suggest that the requirement that the compliance schedule "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based," essentially means that is mandatory that such schedules reopen concluded matters. The Agency does not believe that ever was the intent of this provision.

Instead, when all provisions of 40 CFR 70.5(c)(8)(iii)(C) are read in *pari materia* the prohibition of sanctioning noncompliance with underlying applicable requirements necessarily must refer to *all* applicable requirements, including judicial consent decrees and administrative orders (a term broad enough to easily encompass the type of plan for compliance contemplated by Ann. Code. Md. 2–611) with which a source is legally obligated to comply.

Comment: The commenter believes that Maryland has failed to adequately implement its operating permit program because the State did not issue all of its initial permits in accordance with the statutory three-year schedule.

Response: On December 1, 2001, EPA's interim approval of Maryland's title V operating permit program lapsed because the State was unable to submit all of the program revisions necessary to satisfactorily address the deficiencies identified by EPA when it granted the State final interim approval. At the time of program lapse, Maryland had not taken final action on all of its initial operating permit program applications. Also on December 1, 2001, EPA granted to Maryland the full delegation of authority to implement and enforce the federal operating permit program requirements established at 40 CFR part 71. Once the requirements of 40 CFR part 71 took effect, the State of Maryland could no longer issue federally enforceable permits pursuant to its own program regulations. The part 71 permit program established a new schedule for the submittal of permit applications and issuance of permits by Maryland. That schedule required Maryland to issue part 71 permits to the remaining initial permit applicants by December 1, 2004. As of December 1, 2001, 47 sources had not received initial title V permits in Maryland.

As discussed in the September 23, 2002 letter, the State of Maryland has committed to EPA that it will issue the remaining 47 permits within two years of receiving final full approval of its operating permit program. The two year time frame is consistent with the time provided other states that had failed to issue all of their initial operating permits within the statutory time-frame. As noted by the commenter, a number of states provided letters to EPA in December 2001 committing to issue their remaining permits within two years. The EPA believes Maryland is capable of achieving or surpassing its commitment and will closely monitor the State's permit issuance rates once the final full approval of its program is effective. Should Maryland fail to make adequate progress toward meeting its commitment, the Agency will pursue options to address the situation, including the issuance of a notice of deficiency.

Comment: The commenter believes that Maryland has inadequately implemented is operating permit program with respect to the operating permit program reporting requirements for required monitoring.

Response: As discussed in our September 23, 2002 response, EPA disagrees with Earthjustice's assertion that Maryland is not implementing its monitoring report requirements in a manner consistent with the minimum requirements of part 70. Maryland's regulations with respect to requiring permittees to submit reports of any required monitoring at least every six months (hereafter, "six-month monitoring reports") are consistent with the requirements of 40 CFR 70.6(a)(3)(iii)(A). The provisions of 40 CFR 70.6(a)(iii)(A) do not specify the form or content of acceptable six-month monitoring reports other than the requirement that all deviations from permits requirements must be clearly identified in the reports. Therefore, considerable latitude has been provided to permitting authorities to develop specific reporting requirements in individual permits in order to satisfy the six-month monitoring report requirements. The EPA believes that Maryland has issued permits that reasonably provide adequate monitoring information to assess compliance in a timely fashion and that the permit requirements meet the minimum requirements of 40 CFR 70.6(a)(3)(iii)(A).

As noted in EPA's September 23, 2002 letter, Maryland has committed to modifying the manner in which it implements the six-month monitoring report requirements in individual permits. Upon the effective date of the final full approval, Maryland has committed to issue permits that clarify that six-month monitoring reports are required over all periods, including those when no deviations or excess emissions occurred. This change will affirm that the permits meet the requirement to submit monitoring reports every six months. The EPA believes Maryland is capable of meeting this commitment and will monitor the permits issued by Maryland once final full approval of its program becomes effective. The Agency feels it is prudent to allow Maryland an opportunity to demonstrate its ability to meet its commitment prior to determining whether a notice of deficiency is warranted.

The EPA also does not believe it is necessary at this time to require Maryland to reopen all existing permits to further clarify the six-month monitoring report requirements. If the Agency becomes aware of a particular existing permit that, based on the facts specific to that permit, warrants reopening to clarify the six-month monitoring reporting requirements, EPA will proceed with the appropriate actions to ensure the permit is revised. At this time, the Agency believes that Maryland should focus its resources on reestablishing its program and issuing the remaining initial permits.

Comment: The commenter believes Maryland's minor permit modification procedures apply to changes that must be subject to significant permit modification procedures. Specifically, the commenter is concerned that Maryland could inappropriately add new requirements to a permit or change the required test method specified in a permit via the minor modification process when such modifications could represent significant modifications.

Response: Maryland's regulations at COMAR 26.11.03.16 specify the types of changes that may qualify to be processed as minor permit modifications. One of the requirements a proposed change must meet in order to be considered a minor permit modification is that the change is not required to be processed as a significant modification. While other provisions of COMAR 26.11.03.16 identify specific types of modifications that could be processed as minor permit modifications, COMAR 26.11.03.16(B)(6) requires that all minor modifications must also meet the test that they do not represent significant permit modifications. Therefore, it is important to evaluate Maryland's regulations with respect to the criteria for significant permit modification. Maryland's criteria for significant permit modifications at COMAR 26.11.03.17 are consistent with 40 CFR 70.7(e)(4). In summary, Maryland's and EPA's regulations require any changes to a permit that represent a significant change in existing monitoring conditions and any relaxation of reporting or recordkeeping conditions must be treated as a significant modification.

According to COMAR 26.11.03.16, the addition of a new applicable monitoring, reporting, and recordkeeping requirement or the specification of a different approved test method must not be considered a significant change or relaxation of existing permit conditions in order to be considered a minor modification. If such changes constitute a significant change or relaxation, Maryland's regulations requires the such changes to be processed as significant permit modifications.

In constructing its minor permit modification procedures, it appears that Maryland has attempted to provide more direction to permittees in terms of the types of changes that may be considered minor modifications than is provided in the federal regulations at 40 CFR 70.7(e). Other than this added specificity, COMAR 26.11.03.16 is consistent with the minor permit modification procedures expressed at 40 CFR 70.7(e)(2). As discussed above, this added detail does not authorize sources to make changes using the minor modification procedures that would otherwise be considered significant permit modifications. Furthermore, 40 CFR 70.4(b)(13) and 70.7(e) do not require permit programs to establish modification procedures that are identical to the federal requirements. Rather, state procedures must be substantially equivalent to procedures outlined in 40 CFR 70.7(e). The EPA believes that Maryland's permit modification procedures are substantially equivalent to 40 CFR 70.7(e) and provide adequate safeguards to prevent inappropriate application of the permit modification procedures.

C. Comments Related to Issues Raised in Earthjustice's October 10, 2002 Letter

The following discussion responds to comments provided by Earthjustice on October 10, 2002 regarding issues that are being identified for the first time. Earthjustice's October 10, 2002 letter raises concerns with portions of Maryland's program that were approved by EPA in 1996 and that were not the subject of the proposed full approval rulemaking action published on September 10, 2002. The Agency does not believe it is required to respond to these comments in order to grant final full approval to Maryland. Nonetheless, the following responses are provided to reinforce the merits of our approval of the relevant program provisions in 1996. In the event that a court finds that EPA is obligated to respond to these comments in order to grant final full approval to Maryland's program, then the following responses should be considered EPA's final action on the issues raised.

Comment: The commenter believes that Maryland's operating permit program regulations are unclear regarding whether all emissions units, including "insignificant" emissions units, are included in operating permits. The commenter is particularly concerned that only "relevant" emission units are covered by operating permits.

Response: Maryland's operating permit program regulations require, pursuant to numerous provisions, that all applicable requirements be identified in permit applications and permits. The federal regulations at 40 CFR 70.3(c) indicate that permits for major sources shall include "all applicable requirements for all relevant emission units." Maryland's regulations at COMAR 26.11.03.05(A) are virtually identical to the federal regulations, including the reference to "relevant" emission units. Maryland's regulations, like the federal regulations, do not ascribe further meaning to the term "relevant" emission units. COMAR 26.11.02.01(B)(18) defines the term "emission unit" to include "a part or activity of a stationary source, including an installation, that emits or has the potential to emit a regulated air pollutant or hazardous air pollutant listed under § 112(b) of the Clean Air Act." In other words, Maryland does not limit the applicability of its operating permit program to certain types of units at major sources. In addition, like EPA's regulations at 40 CFR 70.6(a)(1), Maryland's regulations at COMAR 26.11.03.06(A)(1) require that part 70 permits assure compliance with all applicable requirements of the Clean Air Act. Thus, under the Clean Air Act, part 70 and Maryland's regulations, any permit for a major source must assure compliance with all applicable requirements for any and all emission units at that source. Maryland's regulations meet the minimum federal requirements.

Furthermore, Maryland's regulations governing permit application content at COMAR 26.11.03.03(B)(14), 26.11.03.03(E), and 26.11.04(C) require applicants to provide all information to implement and enforce any applicable requirements or determine the applicability of such requirements; determine if a source is subject to all applicable requirements; and, ensure that all applicable requirements of the Clean Air Act are included in the permit, regardless of whether or not the emission unit is a "relevant" unit or an insignificant activity as defined in Maryland's regulations. Maryland's regulations at COMAR 26.11.03.04(D) further confirms that insignificant activities or emission units are not exempt from any applicable requirements of the Clean Air Act other than those related to the amount of information applicants must provide in permit applications regarding those activities.

The commenter expressed a concern with a specific provision of Maryland's permit regulations, COMAR 26.11.03.01(G), that affects the general applicability of the title V operating permit program. This provision indicates that major sources with title V operating permits are not required to also obtain a State operating permit for those emission units at the source covered by the title V operating permit. The commenter suggests that the language of this provision in some way implies that there are emission units at major sources that may not be "covered" by the title V operating permit even if they have applicable requirements of the Clean Air Act. In this context, the term "covered" should be interpreted to indicate that the title V operating permit reflects federally-enforceable applicable requirements of the Clean Air Act for the emission unit in question. Maryland's regulations are indicating that if an emission unit does not have any applicable requirements of the Clean Air Act that emission unit would not be "covered" by the title V permit for purposes of the major source's obligation to also obtain a State operating permit. As discussed above, Maryland's title V regulations require permits to reflect all applicable requirements of the Clean Air Act for all emission units.

In other words, an emission unit at a major source may not have any Clean Air Act requirements, but it may be subject to State-only enforceable requirements. If that is the case, the major source must seek a State operating permit to "cover" that emission unit and to reflect its State-only enforceable applicable requirement. Maryland wants to ensure that all emission units at major sources are covered by either a title V operating permit or State operating permit, with all federal applicable requirements contained in the title V operating permit and any State-only enforceable requirements reflected in the State operating permit. Pursuant to COMAR 26.11.03.05(C), Maryland may also include State-only enforceable conditions in title V permits.

Comment: The commenter believes Maryland's operating permit program regulations improperly allow a facility to operate pursuant to a general permit prior to the State's approval of its application.

Response: The federal regulations at 40 CFR 70.5(a)(2) and 70.7(a)(4) that describe the permit application review procedures indicate that, among other things, permit applications that have not been formally deemed incomplete by the permitting authority within 60 days of receipt shall be deemed complete. These procedures as they are applied to general permits are modified by 40 CFR 70.7(a)(1)(i) in that complete applications for general permits do not have to be received prior to issuance of the subject general permit. Maryland's regulations at COMAR 26.11.03.02(C) are consistent with the federal regulations because they provide that a permit application is deemed complete within 60 days of receipt if the State has not informed the applicant that the application is incomplete or that additional information is required.

As discussed earlier, 40 CFR 70.6(d) and COMAR 26.11.03.21 which establish the procedural requirements applicable to general permits clearly indicate that general permits shall comply with all requirements applicable to permits for individual sources. This includes the application procedures of 40 CFR 70.5(a)(2) and 70.7(a)(4) and COMAR 26.11.03.02(C) that apply to permits for individual sources. The commenter points out that COMAR 26.11.03.21(H) provides that a response to each general permit application may not be provided and that the general permit may specify a reasonable time after which the application is deemed acceptable. This provision is consistent with 40 CFR 70.5(a)(2) and 70.7(a)(4) which allows for applications to be deemed acceptable after a fixed period of time if no response is provided by the permitting authority. It should be noted that COMAR 26.11.03.21(G) indicates that the State may grant a determination that a particular applicant qualifies for a general permit. Also, COMAR 26.11.03.21(I) indicates that Maryland may issue an applicant for a general permit a letter or other document approving or deny the application. Likewise, Maryland is required by COMAR 26.11.03.13(A)(4) to take action on an application for a general permit as specified in the framework of the general permit. These provisions establish the authority and expectation that the State intends to actively respond to applications for general permits much in the same manner Maryland responds to permit applications for individual sources.

In further support of this interpretation, the granting of a major source's application request for authorization to operate under a general permit does not, according to 40 CFR 70.7(d)(6)(2) and COMAR 26.11.03.21(G), represent a final permit action for purposes of judicial review. In other words, the State takes final permit action when it issues the final general permit and not when individual sources subsequently request to be covered by the general permit. Thus, the requirements of 42 U.S.C. 7661b(c), 40 CFR 70.4(b)(6) and 70.7(a)(2) regarding the permitting authorities' obligation to take action on permit applications by issuing or denying permits within the specified time periods are not directly applicable to the general permit process. As noted above, the federal requirements for general permits anticipate that permitting authorities will take final action on permits prior to individual sources applying for coverage under the general permit. It would be impractical to expect permitting authorities to act on permit applications in a certain time frame when no such applications may be submitted. In other words, sources requiring permits would not submit applications to be covered by a general permit before the general permit exists, therefore, the permitting authority would not have permit applications to respond to until it had already fulfilled its obligation by taking final action on the general permit. Again, practical application of the procedures for general permits do not clearly align with all of the applicable requirements established for permits for individual sources.

The commenter is concerned that an applicant for a general permit that does not qualify may operate under the terms of the general permit if the State fails to respond to its general permit application in a timely fashion. The construction of Maryland's general permit provisions require the State to explicitly define the criteria by which sources may qualify for the general permit. Further, COMAR 26.11.03.21(E) limits general permits to major sources that qualify and COMAR 26.11.03.21(C) stipulates that applicants are subject to enforcement action for operating without a permit if it is determined that they do not qualify for coverage under the general permit.

The EPA appreciates the apparent tension between a number of the provisions in Maryland's regulations governing general permits, particularly with regard to COMAR 26.11.03.21(H) and the obligation of the State to actively respond to permit applications. While EPA interprets Maryland's regulations to meet the minimum requirements of the Clean Air Act and 40 CFR part 70, the Agency expects the State to employ its authority to ensure that only qualified applicants are covered by any general permits issued by Maryland. No general permits have been issued by Maryland to date and the State has indicated informally that the prospects of such issuance in the future are minimal. (See December 12, 2002 memorandum.) Should the State

develop a general permit, the EPA expects that Maryland would use its authority under COMAR 26.11.03.13(A)(1)(a) and 26.11.03.21(F), (G) and (I) to provide procedures in the general permit that expressly require an applicant to obtain an affirmative determination from the State that it qualifies for the general permit prior to being considered covered by the general permit.

Comment: The commenter believes that Maryland's operating permit program regulations are inconsistent with 40 CFR part 70 with respect to the administrative amendment procedures. Specifically, the commenter is concerned that Maryland and EPA, on an ad hoc basis, may approve permit changes as qualifying for processing as administrative amendments even though they do not meet the regulatory criteria for processing as administrative amendments. The commenter asserts that because the public receives no notice of administrative amendments, the public must receive an opportunity to evaluate whether particular types of administrative amendments are appropriate.

Response: Maryland's regulations at COMAR 26.11.03.15 define six types or categories of permit changes that may be processed as administrative amendments in a manner consistent with 40 CFR part 70.7(d). In large part, the language of Maryland's regulations is identical to the federal regulations governing administrative amendments. The last category in both regulations indicate that other unspecified permit changes may be considered administrative amendments provided the changes are similar to those explicitly defined in the regulation and that EPA approves the types of changes as being similar to the other approved changes. Specifically, the federal provisions at 40 CFR 70.7(d)(1)(vi) state that only changes that EPA "has determined as part of the approved program to be similar to those in paragraphs (d)(1)(i) through (iv) of this section," may be considered administrative amendments. Maryland's regulation at COMAR 26.11.03.15(B)(6) states that any change "as approved by the EPA, which is similar to those in Section B(1)—(4) of this regulation" may be considered an administrative amendment.

The EPA does not share the commenter's concern that EPA or Maryland will use the slightly different phrasing of COMAR 26.11.03.15(B)(6) to informally change the approved list of changes that may be processed as administrative amendments under 40 CFR 70.6(d)(1). The EPA would consider any proposed change to the approved list of administrative amendment categories as a revision to Maryland's approved program as defined by 40 CFR 70.4(i). As such, the revision would have to be approved by EPA consistent with 40 CFR 70.4(i)(2). Should Maryland attempt to modify its approved list of changes qualifying for processing as administrative amendments and implement the modified list without first seeking EPA approval, the Agency would find pursuant to 40 CFR 70.10(b) that the State was failing to implement and enforce its approved program. Such a finding would require the State to submit the necessary program revisions or face program withdrawal and other sanctions provided by the Clean Air Act and part 70.

The intended effect of 40 CFR 70.7(d)(1)(vi) is to provide EPA with the authority to approve as part of a state's program additional types of permit changes that qualify for processing as administrative amendments. The expectation is that the state would specifically list the types of changes that the state proposes to be eligible for processing as administrative amendments as part of the state's operating permit regulations and submit those regulations to EPA for approval as revisions to the state's program. Maryland's regulation is simply reiterating the authority of the State to propose additional types of changes and the requirement that EPA must approve such changes. Maryland's regulations can in no way amend or alter the means by which EPA can approve changes to the State's approved program as provided by the Clean Air Act and 40 CFR part 70.

Comment: The commenter believes Maryland's operating permit program regulations impermissibly allow changes at a source to occur without a permit revision even when such change constitutes a modification under title I of the Clean Air Act.

Response: EPA stated its interpretation of what constitutes a "title I modification" under the current 40 CFR part 70 in the preamble to proposed revisions to 40 CFR parts 70 and 71 that were published in the **Federal Register** on August 31, 1995 (60 FR 45530). In particular, EPA stated that the term "title I modifications" under the current regulations should be read to exclude changes subject to the minor new source review program in section 110(a)(2)(C) of the Clean Air Act. The rationale for this interpretation is set forth at 60 FR at 45545–45546.

Prior to the lapse of interim approval, Maryland was implementing its program consistent with EPA's current interpretation of what represents a title I modification. EPA fully expects that Maryland will implement its fully-approve operating permit program consistent with its past practices and EPA's current interpretation of what represents a title I modification.

How Does This Action Affect the Part 71 Program in Maryland?

The EPA is fully approving Maryland's title V operating permit program. Upon the effective date of this action, the part 71 program will no longer be effective in Maryland. Likewise, the delegation of the authority to implement and enforcement the part 71 program to Maryland will be terminated. However, a part 71 program could become effective at a future date if EPA makes a finding that Maryland's title V program fails to meet the requirements of part 70. If such a finding is made, the Agency will use its authority and follow the procedures under section 502(i) of the Clean Air Act and 40 CFR 70.10.

Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this final approval is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have

substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, *see* 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on February 14, 2003.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action granting final full approval of Maryland's title V operating permit program may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: January 9, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (b) in the entry for Maryland to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Maryland

* * * * *

(b) The Maryland Department of Environmental Quality submitted operating permit program amendments on July 15, 2002. The program amendments contained in the July 15, 2002 submittal adequately addressed the conditions of the interim approval effective on August 2, 1996. The State is hereby granted final full approval effective on February 14, 2003.

* * * * *

[FR Doc. 03–959 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–43, MM Docket No. 01–306, RM–10152]

Digital Television Broadcast Service; Hartford, CT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Fox Television Stations, Inc., substitutes DTV channel 31 for DTV channel 5 for Tribune Television Corporation's station WTIC–TV at Hartford, Connecticut. *See* 66 FR 54970, October 31, 2001. DTV channel 31 can be allotted to Hartford, Connecticut, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 41–42–13 N. and 72–49–57 W. with a power of 500, HAAT of 492 meters and with a DTV service population of 3641 thousand. Since the community of Hartford is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–306, adopted January 7, 2003, and released January 8, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Connecticut, is amended by removing DTV channel 5 and adding DTV channel 31 at Hartford.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–815 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3171; MM Docket No. 99–239; RM–9658]

Radio Broadcasting Services; Johannesburg and Edwards, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: At the request of Amaturo Group of Los Angeles, Ltd., this document dismisses a petition for reconsideration filed by Amaturo Group of Los Angeles, Ltd., seeking reconsideration of the *Report and Order* in this proceeding. *See* 65 FR 53639, September 5, 2000. This petition for reconsideration was opposed by Adelman Communications, Inc, and petitioner filed a response. Petitioner subsequently filed a request to withdraw the petition for reconsideration, contingent on the finality of the *Report and Order* in MM Docket No. 99–329. This docket is now final. All parties filed affidavits attesting to the fact that it no consideration was promised or paid.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 99–239, adopted December 13, 2002, and released December 16, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals 11, 445 12th Street, SW., Room CY–B402, Washington, DC. 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–810 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 68, No. 10
Wednesday, January 15, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 735

RIN: 3206–AJ74

Employee Responsibilities and Conduct

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing a plain language rewrite of its regulations regarding the standards that govern employee responsibilities and conduct as part of a broader review of OPM's regulations. The purpose of the revisions is to make the regulations more readable.

DATES: Comments must be submitted on or before March 17, 2003.

ADDRESSES: Send or deliver written comments to Wade Plunkett, Principal Deputy Ethics Official, Office of the General Counsel, Office of Personnel Management, Room 7532, 1900 E St., NW., Washington, DC 20415, or FAX: 202–606–0082 or e-mail them to wmplunke@opm.gov.

FOR FURTHER INFORMATION CONTACT: Wade Plunkett, by telephone at 202–606–1700; or by FAX at 202–606–0082 or by e-mail at *wmplunke@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM is revising part 735, which deals with employee responsibility and conduct, as part of a larger review of OPM regulations for plain language purposes. The purpose of this revision to part 735 is not to make substantive changes, but rather to make part 735 more readable. The proposed regulations have been converted to a question-and-answer format, and we have made minor changes to the wording to enhance clarity.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 735

Conflicts of interest, Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM proposes to revise part 735 as follows:

PART 735—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Note: Part 1001, added to this subchapter at 31 FR 873, January 22, 1966, and revised at 32 FR 11113, August 1, 1967, 36 FR 6874, April 9, 1971, and 61 FR 36996, July 16, 1996, supplement this part 735.

Subpart A—General Provisions

Sec.
735.101 Definitions.
735.102 What are the grounds for disciplinary action?
735.103 What other regulations pertain to employee conduct?

Subpart B—Standards of Conduct

Sec.
735.201 What are the restrictions on gambling?
735.202 What are the restrictions that safeguard the examination process?
735.203 What are the restrictions on conduct prejudicial to the Government?

Authority: 5 U.S.C. 7301; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 735.101 Definitions.

In this part:

Agency means an Executive agency (other than the General Accounting Office) as defined by 5 U.S.C. 105, the Postal Service, and the Postal Rate Commission.

Employee means any officer or employee of an agency, including a special Government employee, but does not include a member of the uniformed services.

Government means the United States Government.

Special Government employee means those officers or employees specified in 18 U.S.C. 202(a) except those employed in the legislative branch or by the District of Columbia.

Uniformed services has the meaning given that term by 5 U.S.C. 2101(3).

§ 735.102 What are grounds for disciplinary action?

An employee's violation of any of the regulations in subpart B of this part may be cause for disciplinary action by the employee's agency, which may be in addition to any penalty prescribed by law.

§ 735.103 What other regulations pertain to employee conduct?

In addition to the standards of conduct in subpart B of this part, an employee shall comply with the standards of ethical conduct in 5 CFR part 2635, as well as any supplemental regulation issued by the employee's agency under 5 CFR 2635.105. An employee's violation of those regulations may cause the employee's agency to take disciplinary action, or corrective action as that term is used in 5 CFR part 2635. Such disciplinary action or corrective action may be in addition to any penalty prescribed by law.

Subpart B—Standards of Conduct

§ 735.201 What are the restrictions on gambling?

(a) While on Government-owned or leased property or on duty for the Government, an employee shall not conduct or participate in any gambling activity, including operating a gambling device, conducting a lottery or pool, participating in a game for money or property, or selling or purchasing a numbers slip or ticket.

(b) This section does not preclude activities:

(1) Necessitated by an employee's official duties; or

(2) Occurring under section 7 of Executive Order 12353 and similar agency-approved activities.

§ 735.202 What are the restrictions that safeguard the examination process?

(a) An employee shall not, with or without compensation, teach, lecture, or write for the purpose of the preparation of a person or class of persons for an examination of the Office of Personnel Management (OPM) or Board of

Examiners for the Foreign Service that depends on information obtained as a result of the employee's Government employment.

(b) This section does not preclude the preparation described in paragraph (a) of this section if:

(1) The information upon which the preparation is based has been made available to the general public or will be made available on request; or

(2) Such preparation is authorized in writing by the Director of OPM, or his or her designee, or by the Director General of the Foreign Service, or his or her designee, as applicable.

§ 735.203 What are the restrictions on conduct prejudicial to the Government?

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

[FR Doc. 03–818 Filed 1–14–03; 8:45 am]

BILLING CODE 6325–48–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1794

RIN 0572–AB73

Environmental Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its existing environmental regulations, Environmental Policies and Procedures, which have served as RUS' implementation of the National Environmental Policy Act (NEPA) in compliance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA. Based on a greater use of small-scale and distributed generation and renewable resources, and the agency's experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a more effective and efficient manner.

DATES: Written comments must be received by RUS or bear a postmark or equivalent, no later than February 14, 2003.

ADDRESSES: Written comments should be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff; Rural Utilities Service, Stop 1571, 1400 Independence Ave., SW., Washington, DC 20250–1571. Telephone (202) 720–1784. E-mail address: *lwolfe@rus.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which requires consultation with State and local officials. *See* the final rule related notice titled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibilility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS has determined that this proposed rule, if adopted, would not have significant impact on a substantial number of small entities. The proposed rule would serve to clarify the existing regulation and to change the existing classification of selected minor actions to generally streamline the environmental review process for such actions. Most of the proposed changes in the proposed rule should result in modest cost savings and ease the regulatory compliance burden for affected applicants.

Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572–0117 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments of the private sector. Thus, this proposed rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Program Affected

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Background

On December 11, 1998, the Rural Utilities Service (RUS) published 7 CFR Part 1794, Environmental Policies and Procedures, as a final rule in the **Federal Register** (63 FR 68648) covering the actions of the electric, telecommunications, and water and waste programs. Based on a greater emphasis within the electric industry on the use of small-scale and distributed generation and renewable resources, and the agency's experience and review of its existing procedures, RUS has

determined that several changes are necessary for its environmental review process to operate in a more effective and efficient manner.

This proposed rule contains a variety of changes from the provisions of the current rule. Most of these revisions are minor or merely intended to clarify existing RUS policy and procedure and to ensure that procedures are consistent among the three RUS programs. Other revisions expand upon the existing types of actions that are subject to environmental review or reclassify actions within categories.

Within subpart A, the term "distributed generation" has been added to the list of definitions and the term "Environmental Analysis (EVAL)" has been deleted from the list of definitions in § 1794.6. A fourth bulletin was issued in early 2002 that provides guidance in preparing for and carrying out scoping for electric generation and transmission projects that require either an environmental assessment with scoping or an environmental impact statement. Further information on the four RUS guidance bulletins is provided in § 1794.7.

Within subpart B, language clarifying RUS policy regarding the completion of RUS environmental review process for certain categories of actions has been added to § 1794.14(a).

Within subpart C, a number of additional listings to the existing classification and changes to selected listings within the existing classification are being proposed. These proposed reclassifications involve minor actions proposed by applicants, which rarely, if ever, result in significant environmental impact or public interest. These changes will streamline environmental review of minor actions, and will allow the agency to focus its resources on larger projects. RUS believes that the proposed changes will provide adequate safeguards to identify any unusual circumstances that may require additional agency scrutiny.

Within § 1794.21(a), RUS proposes to add separate categories for generating facilities of less than 100 kilowatts and the co-firing of bio-fuels and refuse derived fuels at existing fossil-fueled generating stations. Within § 1794.22(a), RUS proposes to modify the capacity thresholds for distributed generation facilities at existing sites. Two new categories of proposals involving natural gas pipelines and combined cycle facilities at existing sites would be added to § 1794.22(a).

In addition to including fuel cell and combined cycle generation in the same listings as combustion turbines, RUS proposes to add three new categories of proposals within § 1794.23. Proposed length and capacity threshold changes within § 1794.23, reflect changes that would be made in § 1794.22(a). Within §§ 1794.24 and 1794.25 the only proposed change would include fuel cell and combined cycle generation in the same listing as combustion turbines.

RUS proposes to modify its procedures in subparts E through G of this part. In §§ 1794.43 and 1794.44, RUS would eliminate the requirement to publish in the **Federal Register**, notice of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) availability for electric and telecommunications proposed actions described in § 1794.23. RUS has determined that no appreciable benefit has resulted from publishing a separate **Federal Register** notice for proposals in that category. By this change the notice requirements for all three programs would be consistent for all EA proposals described in § 1794.23. Electric proposals described in § 1794.24 would still be subject to this requirement.

RUS would modify its policy regarding the use of a contractor prepared Environmental Impact Statement (EIS). Under the existing regulation, the EIS would either be developed by RUS from an applicant prepared Environmental Analysis (EVAL) or prepared with the assistance of a consultant selected by RUS. Based on its experience in recent years, RUS expects to utilize the services of a consultant selected by and working for RUS for all actions requiring the preparation of an EIS. RUS does not contemplate preparing a draft or final EIS relying on an applicant prepared EVAL, as currently stated in § 1794.61(b). Therefore, RUS proposes to delete § 1794.61(b). Also, the applicant submitted document for all proposals will be titled an environmental report (ER). Previously, the applicant supplied document for a § 1794.24 proposal was an EVAL. These proposed changes would affect §§ 1794.50, 1794.52 through 1794.54, and 1794.61.

List of Subjects in 7 CFR Part 1794

Environmental impact statements, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, is proposed to be amended by revising part 1794 to read as follows:

PART 1794—ENVIRONMENTAL POLICIES AND PROCEDURES

1. The authority citation for part 1794 continues to read as follows:

Authority: 7 U.S.C. 6941 *et seq.*, 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500–1508.

2. Section 1794.6 is amended by:

A. Removing the definition for "Environmental Analysis (EVAL)";

B. Adding the definition for "Distributed Generation", and

C. Amending the definition for "Environmental Report (ER) by revising the first sentence.

These amendments are to read as follows:

§ 1794.6 Definitions.

* * * * *

Environmental Report (ER). The environmental documentation normally submitted by applicants for proposed actions subject to compliance with §§ 1794.22 through 1794.24. * * *

* * * * *

Distributed Generation. The generation of electricity by a sufficiently small electric generating system as to allow interconnection of the system near the point of service at distribution voltages or customer voltages. A distributed generating system may be fueled by any source, including but not limited to renewable energy sources.

* * * * *

3. Section 1794.7(a) is revised to read as follows:

§ 1794.7 Guidance.

(a) *Electric and Telecommunications Programs.* For further guidance in the preparation of public notices and environmental documents, RUS has prepared a series of program specific guidance bulletins. RUS Bulletin 1724A–600 provides guidance in preparing the ER for proposed actions classified as categorical exclusions (CEs) (§ 1794.22(a)); RUS Bulletin 1794A–601 provides guidance in preparing the ER for proposed actions which require EAs (§ 1794.23(b) and (c)); and RUS Bulletin 1794A–603 provides guidance in conducting scoping for proposed actions classified as requiring an EA with scoping or an EIS. Copies of these bulletins are available upon request by contacting the Rural Utilities Service, Publications Office, Program Development and Regulatory Analysis, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522.

* * * * *

4. Section 1794.15(a) is amended by adding new paragraphs (a)(1), (a)(2), and (a)(3), to read as follows:

§ 1794.15 Limitations on actions during the NEPA process.

(a) * * *

(1) A categorical exclusion determination has been made for proposals listed under §§ 1794.21 and 1794.22.

(2) Applicant notices announcing the RUS FONSI determination have been published for proposals listed under §§ 1794.23 and 1794.24.

(3) Applicant notices announcing the RUS Record of Decision have been published for proposals listed under § 1794.25.

* * * * *

5. Section 1794.21 is amended by adding new paragraphs (b)(25) and (26) to read as follows:

§ 1794.21 Categorically excluded proposals without an ER.

* * * * *

(b) * * *

(25) Electric generating facilities of less than 100 kilowatts at any one site for the purpose of providing limited service to customers or facilities such as stock tanks and irrigation pumps.

(26) New bulk commodity storage and associated handling facilities within existing fossil-fueled generating station boundaries for the purpose of co-firing bio-fuels and refuse derived fuels. A description of the facilities to be constructed shall be provided to RUS.

* * * * *

6. Section 1794.22 is amended by revising paragraphs (a)(8) and (9) and by adding new paragraphs (a)(12) and (13) to read as follows:

§ 1794.22 Categorically excluded proposals requiring an ER.

(a) * * *

(8) Construction of distributed generation totaling 10 MW or less at an existing utility, industrial, commercial or educational facility site. There is no capacity limit for a generating facility located at or adjacent to an existing landfill site that is powered by refuse derived fuel. All new associated facilities and related electric power lines shall be covered in the ER;

(9) Installation of new generating units or the replacement of existing generating units at a hydroelectric facility or dam which result in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the ER;

* * * * *

(12) Installing a heat recovery steam generator and steam turbine with a rating of 200 MW or less on an existing combustion turbine generation site for the purpose of combined cycle operation. All new associated facilities and related electric power lines shall be covered in the ER.

(13) Construction of a natural gas pipeline (ten miles or less in length) to serve an existing gas-fueled generating facility.

* * * * *

7. Section 1794.23 is amended by:

A. Revising paragraphs (c)(1), (c)(2), and (c)(3), and

B. Adding new paragraphs (c)(12) and (c)(13)

This revision and additions are to read as follows:

§ 1794.23 Proposals normally requiring an EA.

* * * * *

(c) * * *

(1) Construction of fuel cell, combustion turbine, combined cycle, or diesel generating facilities of 50 MW (nameplate rating) or less at a new site (no existing generating capacity) except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(2) Construction of fuel cell, combustion turbine, combined cycle, or diesel generating facilities of 100 MW (nameplate rating) or less at an existing generating site, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(3) Construction of any other type of new electric generating facility of 20 MW (nameplate rating) or less, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

* * * * *

(12) Installing a heat recovery steam generator and steam turbine with a rating of more than 200 MW on an existing combustion turbine generation site for the purpose of combined cycle operation. All new associated facilities and related electric power lines shall be covered in the EA.

(13) Construction of a natural gas pipeline (more than ten miles in length) to serve an existing gas-fueled generating facility.

8. Section 1794.24(b)(2) is revised to read as follows:

§ 1794.24 Proposals normally requiring an EA with scoping.

* * * * *

(b) * * *

(2) Construction of fuel cell, combustion turbine, combined cycle, and diesel generating facilities of more than 50 MW at a new site or more than 100 MW at an existing site; and the construction of any other type of electric generating facility of more than 20 MW but not more than 50 MW (nameplate rating). All new associated facilities and related electric power lines shall be covered in any EA or EIS that is prepared.

* * * * *

9. Section 1794.25(a)(1) is revised to read as follows:

§ 1794.25 Proposals normally requiring an EIS.

* * * * *

(a) * * *

(1) New electric generating facilities of more than 50 MW (nameplate rating) other than fuel cell, combustion turbine, combined cycle, or diesel generators. All new associated facilities and related electric power lines shall be covered in the EIS; and

* * * * *

§ 1794.43 [Amended]

10. Amend § 1794.43 by:

A. Removing paragraph (b), and

B. Amending paragraph (a) by removing the paragraph designation and the heading "General".

11. Section 1794.44 is revised to read as follows:

§ 1794.44 Timing of agency action.

RUS may take its final action on proposed actions requiring an EA (§ 1794.23) at any time after publication of the applicant notices that a FONSI has been made and any required review period has expired. When substantive comments are received on the EA, RUS may provide an additional period (15 days) for public review following the publication of its FONSI determination. Final action shall not be taken until this review period has expired.

12. Section 1794.50 is revised to read as follows:

§ 1794.50 Normal sequence.

For proposed actions covered by § 1794.24 and other actions determined by the Administrator to require an EA with Scoping, RUS and the applicant will follow the same procedures for scoping and the requirements for notices and documents as for proposed actions normally requiring an EIS through the point at where project scoping has been completed. Following project scoping, RUS will make a judgment to have an EA prepared or contract for the preparation of an EIS.

13. Section 1794.51(a) is revised to read as follows:

§ 1794.51 Preparation for scoping.

(a) As soon as practicable after RUS and the applicant have developed a schedule for the environmental review process, RUS shall have its notice of intent to prepare an EA or EIS and schedule scoping meetings (§ 1794.13) published in the **Federal Register** (see 40 CFR 1508.22). The applicant shall have published, in a timely manner, a notice similar to RUS' notice.

* * * * *

14. Section 1794.52(d) is amended by removing the last sentence and adding a new sentence at the end of the paragraph to read as follows:

§ 1794.52 Scoping meetings.

* * * * *

(d) * * * The applicant or its consultant shall prepare a record of the scoping meeting. The record shall consist of a transcript when a traditional meeting format is used or a summary report when an open house format is used.

* * * * *

15. Section 1794.53 is revised to read as follows:

§ 1794.53 Environmental report.

(a) After scoping procedures have been completed, RUS shall require the applicant to develop and submit an ER. The ER shall be prepared under the supervision and guidance of RUS staff and RUS shall evaluate and be responsible for the accuracy of all information contained therein.

(b) The applicant's ER will normally serve as the RUS EA. After RUS has reviewed and found the ER to be satisfactory, the applicant shall provide RUS with a sufficient number of copies of the ER to satisfy the RUS distribution plan.

(c) The ER shall include a summary of the construction and operation monitoring and mitigation measures for the proposed action. These measures may be revised as appropriate in response to comments and other information, and shall be incorporated by summary or reference into the FONSI.

16. Section 1794.54 is revised to read as follows:

§ 1794.54 Agency determination.

Following the scoping process and the development of a satisfactory ER by the applicant or its consultant that will serve as the agency's EA, RUS shall determine whether the proposed action is a major Federal action significantly affecting the quality of the human environment. If RUS determines the action is significant, RUS will continue with the procedures in subpart G of this part. If RUS determines the action is not significant, RUS will proceed in accordance with §§ 1794.42 through 1794.44, except that RUS shall have a notice published in the **Federal Register** that announces the availability of the EA and FONSI.

§ 1794.61 [Amended]

17. Section 1794.61 is amended by:

A. Removing paragraph (b).

B. Redesignating paragraph (a) as the introductory text; paragraph (a)(1) as (a); paragraph (a)(2) as (b); and paragraph (a)(3) as (c).

Dated: December 24, 2002.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 03–713 Filed 1–14–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, and 401

[FRL–7439–8]

RIN 2040–AB74

Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of "Waters of the United States"

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DOD; and Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) are today issuing an advance notice of proposed rulemaking (ANPRM) in order to obtain early comment on issues associated with the scope of waters that are subject to the Clean Water Act (CWA), in light of the U.S. Supreme Court decision in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) *(SWANCC)*.

Today's ANPRM requests public input on issues associated with the definition of "waters of the United States" and also solicits information or data from the general public, the scientific community, and Federal and State resource agencies on the implications of the *SWANCC* decision for jurisdictional decisions under the CWA. The goal of the agencies is to develop proposed regulations that will further the public interest by clarifying what waters are subject to CWA jurisdiction and affording full protection to these waters through an appropriate focus of Federal and State resources consistent with the CWA. The input received from the public in response to today's ANPRM will be used by the agencies to determine the issues to be addressed and the substantive approach for a future proposed rulemaking addressing the scope of CWA jurisdiction.

Pending this rulemaking, should questions arise, the regulated community should seek assistance from the Corps and EPA, in accordance with the joint memorandum attached as Appendix A.

DATES: In order to be considered, comments or information in response to this ANPRM must be postmarked or e-mailed on or before March 3, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Mail comments to: Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No: OW–2002–0050.

FOR FURTHER INFORMATION CONTACT: For information on this ANPRM, contact either Donna Downing, U.S. Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds (4502T), 1200 Pennsylvania Avenue N.W., Washington, DC 20460, phone: (202) 566–1366, e-mail: *CWAwaters@epa.gov*, or Ted Rugiel, U.S. Army Corps of Engineers, ATTN CECW–OR, 441 G Street NW., Washington, DC 20314–1000, phone: (202) 761–4595, e-mail: *Thaddeus.J.Rugiel@HQ02.USACE.ARMY.MIL*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Potentially Regulated Entities

Persons or entities that discharge pollutants (including dredged or fill material) to "waters of the U.S." could be regulated by a rulemaking based on this ANPRM. The CWA generally prohibits the discharge of pollutants into "waters of the U.S." without a permit issued by EPA or a State or Tribe approved by EPA under section 402 of the Act, or, in the case of dredged or fill material, by the Corps or an approved

State or Tribe under section 404 of the Act. In addition, under the CWA, States or approved Tribes establish water quality standards for "waters of the U.S.", and also may assume responsibility for issuance of CWA permits for discharges into waters and wetlands subject to the Act. Today's ANPRM seeks public input on what, if any, revisions in light of SWANCC might be appropriate to the regulations that define "waters of the U.S.", and today's ANPRM thus would be of interest to all entities discharging to, or regulating, such waters. In addition, because the Oil Pollution Act (OPA) is applicable to waters and wetlands subject to the CWA, today's ANPRM may have implications for persons or entities subject to the OPA. Examples of entities potentially regulated include:

Category	Examples of potentially regulated entities
State/Tribal governments or instrumentalities.	State/Tribal agencies or instrumentalities that discharge or spill pollutants into waters of the U.S.
Local governments or instrumentalities.	Local governments or instrumentalities that discharge or spill pollutants into waters of the U.S.
Federal government agencies or instrumentalities.	Federal government agencies or instrumentalities that discharge or spill pollutants into waters of the U.S.
Industrial, commercial, or agricultural entities.	Industrial, commercial, or agricultural entities that discharge or spill pollutants into waters of the U.S.
Land developers and landowners.	Land developers and landowners that discharge or spill pollutants into waters of the U.S.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that are likely to be regulated by a rulemaking based on this ANPRM. This table lists the types of entities that we are now aware of that could potentially be regulated. Other types of entities not listed in the table could also be regulated. To determine whether your organization or its activities could be regulated, you should carefully examine the discussion in this ANPRM. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* The agencies have established an official public docket for this action under Docket ID No. OW–2002–0050. The official public docket consists of the documents specifically referenced in this ANPRM, any public comments received, and other information related to this ANPRM. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. You may have to pay a reasonable fee for copying.

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Internet under the Federal Register listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select search, then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.B.1.

For those who submit public comments, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number (OW–2002–0050) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked late. The agencies are not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket,

and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the agencies may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select search, and then key in Docket ID No. OW–2002–0050. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *CWAwaters@epa.gov*, Attention Docket ID No. OW–2002–0050. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send four copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. OW–2002–0050.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC, Attention Docket ID No. OW–2002–0050. Such deliveries are only accepted during the Docket's normal hours of operation as identified in I.B.1.

D. What Should I Consider as I Prepare My Comments?

You may find the following suggestions helpful for preparing your comments:

a. Explain your views as clearly as possible.

b. Describe any assumptions that you used.

c. Provide any technical information and/or data on which you based your views.

d. If you estimate potential burden or costs, explain how you arrived at your estimate.

e. Provide specific examples to illustrate your concerns.

f. Offer alternatives.

g. Make sure to submit your comments by the comment period deadline identified.

h. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. The Importance of Updating the Regulations

The agencies have not engaged in a review of the regulations with the public concerning CWA jurisdiction for some time. This ANPRM will help ensure that the regulations are consistent with the CWA and the public understands what waters are subject to CWA jurisdiction. The goal of the agencies is to develop proposed regulations that will further the public interest by clarifying what waters are subject to CWA jurisdiction and affording full protection to these waters through an appropriate focus of Federal and State resources consistent with the CWA. It is appropriate to review the regulations to ensure that they are consistent with the *SWANCC* decision. *SWANCC* eliminates CWA jurisdiction over isolated waters that are intrastate and non-navigable, where the sole basis for asserting CWA jurisdiction is the actual or potential use of the waters as habitat for migratory birds that cross State lines in their migrations. *SWANCC* also calls into question whether CWA jurisdiction over isolated, intrastate, non-navigable waters could now be predicated on the other factors listed in the "Migratory Bird Rule" or the other rationales of 33 CFR 328.3(a)(3)(i)–(iii).

Although the *SWANCC* case itself specifically involves section 404 of the CWA, the Court's decision may also affect the scope of regulatory jurisdiction under other provisions of the CWA, including programs under sections 303, 311, 401, and 402. Under each of these sections, the relevant agencies have jurisdiction over "waters of the United States." The agencies will consider the potential implications of the rulemaking for these other sections.

- *Section 404 dredged and fill material permit program.* This program establishes a permitting system to regulate discharges of dredged or fill material into waters of the United States.
- *Section 303 water quality standards program.* Under this program, States and authorized Indian Tribes establish water quality standards for navigable waters to "protect the public health or welfare" and "enhance the quality of water", "taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agriculture, industrial, and other purposes, and also taking into consideration their use and value for navigation."
- *Section 311 spill program and the Oil Pollution Act (OPA).* Section 311 of the CWA addresses pollution from both oil and hazardous substance releases. Together with the Oil Pollution Act, it provides EPA and the U.S. Coast Guard with the authority to establish a program for preventing, preparing for, and responding to spills that occur in navigable waters of the United States.
- *Section 401 State water-quality certification program.* Section 401 provides that no Federal permit or license for activities that might result in a discharge to navigable waters may be issued unless a section 401 water-quality certification is obtained from or waived by States or authorized Tribes.
- *Section 402 National Pollutant Discharge Elimination System (NPDES) permitting program.* This program establishes a permitting system to regulate point source discharges of pollutants (other than dredged or fill material) into waters of the United States.

III. Legislative and Regulatory Context

The Federal Water Pollution Control Act Amendments, now known as the Clean Water Act (CWA), was enacted in 1972. In the years since its enactment, the scope of waters regulated under the CWA has been discussed in regulations, legislation, and judicial decisions.

The CWA was intended to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. 1251(a). Its specific provisions were designed to improve upon the protection of the Nation's waters provided under earlier statutory schemes such as the Rivers and Harbors Act of 1899 ("RHA") (33 U.S.C. 403, 407, 411) and the Federal Water Pollution Control Act of 1948 (62 Stat. 1155) and its subsequent amendments through 1970. In doing so, Congress recognized "the primary responsibilities and rights of States to prevent, reduce,

and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources * * *" 33 U.S.C. 1251(b).

The jurisdictional scope of the CWA is "navigable waters," defined in the statute as "waters of the United States, including the territorial seas." CWA section 502(7), 33 U.S.C. 1362(7). The existing CWA section 404 regulations define "waters of the United States" as follows:

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) which are used or could be used for industrial purposes by industries in interstate commerce.

(4) All impoundments of waters otherwise defined as waters of the United States under the definition;

(5) Tributaries of waters identified in paragraphs (a)(1)–(4) of this section;

(6) The territorial seas;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)–(6) of this section.

(8) Waters of the United States do not include prior converted cropland ... Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds ...) are not waters of the United States. 40 CFR.230.3(s); 33 CFR 328.3(a).

Counterpart and substantively similar regulatory definitions appear at 40 CFR 110.1, 112.2, 116.3, 117.1, 122.2, 232.2, 300.5, part 300 App. E, 302.3 and 401.11 (hereafter referred to as "the counterpart definitions").

In regulatory preambles, both the Corps and EPA provided examples of additional types of links to interstate commerce which might serve as a basis under 40 CFR 230.3(a)(3) and 33 CFR 328.3(a)(3) for establishing CWA jurisdiction over intrastate waters which were not part of the tributary system or their adjacent wetlands. These included use of waters (1) as habitat by birds protected by Migratory Bird Treaties or which cross State lines, (2) as habitat for endangered species, or (3) to irrigate crops sold in commerce. 51 FR 41217 (November 13, 1986), 53 FR 20765 (June 6, 1988). These examples became known as the "Migratory Bird Rule," even though the examples were neither a rule nor entirely about birds. The Migratory Bird Rule later became the focus of the *SWANCC* case.

IV. Potential Natural Resource Implications

To date, some quantitative studies and anecdotal data provide early estimates of potential resource implications of the *SWANCC* decision. One of the purposes of the ANPRM is to solicit additional information, data, or studies addressing the extent of resource impacts to isolated, intrastate, non-navigable waters.

Non-navigable intrastate isolated waters occur throughout the country. Their extent depends on a variety of factors including topography, climate, and hydrologic forces. Preliminary assessments of potential resource impacts vary widely depending on the scenarios considered. See, *e.g.*, Ducks Unlimited, "The SWANCC Decision: Implications for Wetlands and Waterfowl" (September 2001) (available at *http://www.ducks.org/conservation/404_report.asp*); ASWM, "SWANCC Decision and the State Regulation of Wetlands," (June 2001) (available at *http://www.aswm.org*).

There is an extensive body of knowledge about the functions and values of wetlands, which include flood risk reduction, water quality improvement, fish and wildlife habitat, and maintenance of the hydrologic integrity of aquatic ecosystems. The ANPRM seeks information regarding the functions and values of wetlands and other waters that may be affected by the issues discussed in this ANPRM.

V. Solicitation of Comments

The agencies are seeking comment on issues related to the jurisdictional status of isolated waters under the CWA which the public wishes to call to our attention. To assist the public in considering these issues, the following discussion and specific questions are presented. The agencies will carefully consider the responses received to this ANPRM in determining what regulatory changes may be appropriate and the issues to be addressed in a proposed rulemaking to clarify CWA jurisdiction.

The *SWANCC* holding eliminates CWA jurisdiction over isolated, intrastate, non-navigable waters where the sole basis for asserting CWA jurisdiction is the actual or potential use of the waters as habitat for migratory birds that cross State lines in their migrations. 531 U.S. at 174 ("We hold that 33 CFR 328.3(a)(3) (1999), as clarified and applied to petitioner's balefill site pursuant to the "Migratory Bird Rule," 51 FR 41217 (1986), exceeds the authority granted to respondents under section 404(a) of the CWA."). The agencies seek comment on the use of the factors in 33 CFR 328.3(a)(3)(i)–(iii) or the counterpart regulations in determining CWA jurisdiction over isolated, intrastate, non-navigable waters.

The agencies solicit comment from the public on the following issues:

(1) Whether, and, if so, under what circumstances, the factors listed in 33 CFR 328.3(a)(3)(i)–(iii) (*i.e.*, use of the water by interstate or foreign travelers for recreational or other purposes, the presence of fish or shellfish that could be taken and sold in interstate commerce, the use of the water for industrial purposes by industries in interstate commerce) or any other factors provide a basis for determining CWA jurisdiction over isolated, intrastate, non-navigable waters?

(2) Whether the regulations should define "isolated waters," and if so, what factors should be considered in determining whether a water is or is not isolated for jurisdictional purposes?

Solicitation of Information

In answering the questions set forth above, please provide, as appropriate, any information (*e.g.*, scientific and technical studies and data, analysis of environmental impacts, effects on interstate commerce, other impacts, etc.) supporting your views, and specific recommendations on how to implement such views. Additionally, we invite your views as to whether any other revisions are needed to the existing regulations on which waters are jurisdictional under the CWA. As noted elsewhere in this document, the agencies are also soliciting data and information on the availability and effectiveness of other Federal or State programs for the protection of aquatic resources, and on the functions and values of wetlands and other waters that may be affected by the issues discussed in this ANPRM.

VI. Related Federal and State Authorities

The *SWANCC* decision addresses CWA jurisdiction, and other Federal or

State laws and programs may still protect a water and related ecosystem even if that water is no longer jurisdictional under the CWA following *SWANCC*. The Federal government remains committed to wetlands protection through the Food Security Act's Swampbuster requirements and Federal agricultural program benefits and restoration through such Federal programs as the Wetlands Reserve Program (administered by the U.S. Department of Agriculture), grant making programs such as Partners in Wildlife (administered by the Fish and Wildlife Service), the Coastal Wetlands Restoration Program (administered by the National Marine Fisheries Service), the State Grant, Five Star Restoration, and National Estuary Programs (administered by EPA), and the Migratory Bird Conservation Commission (composed of the Secretaries of Interior and Agriculture, the Administrator of EPA and Members of Congress).

The *SWANCC* decision also highlights the role of States in protecting waters not addressed by Federal law. Prior to *SWANCC*, fifteen States had programs that addressed isolated wetlands. Since *SWANCC*, additional States have considered, and two have adopted, legislation to protect isolated waters. The Federal agencies have a number of initiatives to assist States in these efforts to protect wetlands. For example, EPA's Wetland Program Development Grants are available to assist States, Tribes, and local governments for building their wetland program capacities. In addition, the U.S. Department of Justice and other Federal agencies co-sponsored a national wetlands conference with the National Governors Association Center for Best Practices, National Conference of State Legislatures, the Association of State Wetlands Managers, and the National Association of Attorneys General. This conference and the dialogue that has ensued will promote close collaboration between Federal agencies and States in developing, implementing, and enforcing wetlands protection programs. EPA also is providing funding to the National Governors Association Center for Best Practices to assist States in developing appropriate policies and actions to protect intrastate isolated waters.

In light of this, the agencies solicit information and data from the general public, the scientific community, and Federal and State resource agencies on the availability and effectiveness of other Federal or State programs for the protection of aquatic resources and practical experience with their implementation. The agencies are also interested in data and comments from State and local agencies on the effect of no longer asserting jurisdiction over some of the waters (and discharges to those waters) in a watershed on the implementation of Total Maximum Daily Loads (TMDLs) and attainment of water quality standards.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA and the Corps must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this Advanced Notice of Proposed Rulemaking is a "significant regulatory action" in light of the provisions of paragraph (4) above as it raises novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. National Environmental Policy Act

As required by the National Environmental Policy Act (NEPA), the Corps prepares appropriate environmental documentation for its activities affecting the quality of the human environment. The Corps has determined that today's Advance Notice of Proposed Rulemaking merely solicits early comment on issues associated with the scope of waters that are properly subject to the CWA, and information or data from the general public, the scientific community, and Federal and State resource agencies on the implications of the *SWANCC* decision for the protection of aquatic resources. In light of this, the Corps has determined that today's ANPRM does not constitute a major Federal action significantly affecting the quality of the human environment, and thus does not require the preparation of an Environmental Impact Statement (EIS).

Dated: January 10, 2003.

Christine Todd Whitman,

Administrator, Environmental Protection Agency.

Dated: January 10, 2003.

R.L. Brownlee,

Acting Assistant Secretary of the Army, (Civil Works), Department of the Army.

Note: The following guidance document will not appear in the Code of Federal Regulations.

Appendix A

Joint Memorandum

Introduction

This document provides clarifying guidance regarding the Supreme Court's decision in *Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Engineers*, 531 U.S. 159 (2001) ("SWANCC") and addresses several legal issues concerning Clean Water Act ("CWA") jurisdiction that have arisen since *SWANCC* in various factual scenarios involving federal regulation of "navigable waters." Because the case law interpreting *SWANCC* has developed over the last two years, the Agencies are issuing this updated guidance, which supersedes prior guidance on this issue. The Corps and EPA are also initiating a rulemaking process to collect information and to consider jurisdictional issues as set forth in the attached ANPRM. Jurisdictional decisions will be based on Supreme Court cases including *United States* v. *Riverside Bayview Homes*, 474 U.S. 121 (1985) and *SWANCC*, regulations, and applicable case law in each jurisdiction.

Background

In *SWANCC*, the Supreme Court held that the Army Corps of Engineers had exceeded its authority in asserting CWA jurisdiction pursuant to section 404(a) over isolated, intrastate, non-navigable waters under 33 C.F.R. 328.3(a)(3), based on their use as habitat for migratory birds pursuant to preamble language commonly referred to as the "Migratory Bird Rule," 51 FR 41217 (1986). "Navigable waters" are defined in section 502 of the CWA to mean "waters of the United States, including the territorial seas." In *SWANCC*, the Court determined that the term "navigable" had significance in indicating the authority Congress intended to exercise in asserting CWA jurisdiction. 531 U.S. at 172. After reviewing the jurisdictional scope of the statutory definition of "navigable waters" in section 502, the Court concluded that neither the text of the statute nor its legislative history supported the

Corps' assertion of jurisdiction over the waters involved in *SWANCC*. *Id.* at 170–171.

In *SWANCC*, the Supreme Court recognized that "Congress passed the CWA for the stated purpose of 'restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters'" and also noted that "Congress chose to 'recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources.'" *Id.* at 166–67 (citing 33 U.S.C. 1251(a) and (b)). However, expressing "serious constitutional and federalism questions" raised by the Corps' interpretation of the CWA, the Court stated that "where an administrative interpretation of a statute invokes the outer limits of Congress' power, we expect a clear indication that Congress intended that result." *Id.* at 174, 172. Finding "nothing approaching a clear statement from Congress that it intended section 404(a) to reach an abandoned sand and gravel pit" (*id.* at 174), the Court held that the Migratory Bird Rule, as applied to petitioners' property, exceeded the agencies' authority under section 404(a). *Id.* at 174.

The Scope of CWA Jurisdiction After SWANCC

Because *SWANCC* limited use of 33 CFR § 328.3(a)(3) as a basis of jurisdiction over certain isolated waters, it has focused greater attention on CWA jurisdiction generally, and specifically over tributaries to jurisdictional waters and over wetlands that are "adjacent wetlands" for CWA purposes.

As indicated, section 502 of the CWA defines the term navigable waters to mean "waters of the United States, including the territorial seas." The Supreme Court has recognized that this definition clearly includes those waters that are considered traditional navigable waters. In *SWANCC*, the Court noted that while "the word 'navigable' in the statute was of 'limited import'" (quoting *Riverside*, 474 U.S. 121 (1985)), "the term 'navigable' has at least the import of showing us what Congress had in mind as its authority for enacting the CWA: traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made." 531 U.S. at 172. In addition, the Court reiterated in *SWANCC* that Congress evidenced its intent to regulate "at least some waters that would not be deemed 'navigable' under the classical understanding of that term." *SWANCC* at 171 (quoting *Riverside*, 474 U.S. at 133). Relying on that intent, for many years, EPA and the Corps have interpreted their regulations to assert CWA jurisdiction over non-navigable tributaries of navigable waters and their adjacent wetlands. Courts have upheld the view that traditional navigable waters and, generally speaking, their tributary systems (and their adjacent wetlands) remain subject to CWA jurisdiction.

Several federal district and appellate courts have addressed the effect of *SWANCC* on CWA jurisdiction, and the case law on the precise scope of federal CWA jurisdiction in light of *SWANCC* is still developing. While a majority of cases hold that *SWANCC* applies only to waters that are isolated, intrastate and non-navigable, several courts have interpreted *SWANCC*'s reasoning to apply to waters other than the isolated waters at issue in that case. This memorandum attempts to add greater clarity concerning federal CWA jurisdiction following *SWANCC* by identifying specific categories of waters, explaining which categories of waters are jurisdictional or non-jurisdictional, and pointing out where more refined factual and legal analysis will be required to make a jurisdictional determination.

Although the *SWANCC* case itself specifically involved Section 404 of the CWA, the Court's decision may affect the scope of regulatory jurisdiction under other provisions of the CWA as well, including the Section 402 NPDES program, the Section 311 oil spill program, water quality standards under Section 303, and Section 401 water quality certification. Under each of these sections, the relevant agencies have jurisdiction over "waters of the United States." CWA section 502(7).

This memorandum does not discuss the exact factual predicates that are necessary to establish jurisdiction in individual cases. We recognize that the field staff and the public could benefit from additional guidance on how to apply the applicable legal principles to individual cases.[1] Should questions arise concerning CWA jurisdiction, the regulated community should seek assistance from the Corps and EPA.

A. Isolated, Intrastate Waters That are Non-Navigable

SWANCC squarely eliminates CWA jurisdiction over isolated waters that are intrastate and non-navigable, where the sole basis for asserting CWA jurisdiction is the actual or potential use of the waters as habitat for migratory birds that cross state lines in their migrations. 531 U.S. at 174 ("We hold that 33 CFR § 328.3(a)(3) (1999), as clarified and applied to petitioner's balefill site pursuant to the 'Migratory Bird Rule,' 51 FR 41217 (1986), exceeds the authority granted to respondents under § 404(a) of the CWA."). The EPA and the Corps are now precluded from asserting CWA jurisdiction in such situations, including over waters such as isolated, non-navigable, intrastate vernal pools, playa lakes and pocosins. *SWANCC* also calls into question whether CWA jurisdiction over isolated, intrastate, non-navigable waters could now be predicated on the other factors listed in the Migratory Bird Rule, 51 FR 41217 (*i.e.*, use of the water as habitat for birds protected by Migratory Bird Treaties; use of the water as habitat for Federally protected endangered or threatened species; or use of the water to irrigate crops sold in interstate commerce).

By the same token, in light of *SWANCC*, it is uncertain whether there remains any basis for jurisdiction under the other rationales of § 328.3(a)(3)(i)–(iii) over isolated, non-navigable, intrastate waters (*i.e.*, use of the water by interstate or foreign travelers for recreational or other purposes; the presence of fish or shellfish that could be taken and sold in interstate commerce; use of the water for industrial purposes by industries in interstate commerce). Furthermore, within the states comprising the Fourth Circuit, CWA jurisdiction under 33 CFR § 328.3(a)(3) in its entirety has been precluded since 1997 by the Fourth Circuit's ruling in *United States* v. *Wilson*, 133 F. 3d 251, 257 (4th Cir. 1997) (invalidating 33 CFR § 328.3(a)(3)).

In view of *SWANCC*, neither agency will assert CWA jurisdiction over isolated waters that are both intrastate and non-navigable, where the sole basis available for asserting CWA jurisdiction rests on any of the factors listed in the "Migratory Bird Rule." In addition, in view of the uncertainties after *SWANCC* concerning jurisdiction over isolated waters that are both intrastate and non-navigable based on other grounds listed in 33 CFR § 328.3(a)(3)(i)–(iii), field staff should seek formal project-specific Headquarters approval prior to asserting jurisdiction over such waters, including permitting and enforcement actions.

B. Traditional Navigable Waters

As noted, traditional navigable waters are jurisdictional. Traditional navigable waters are waters that are subject to the ebb and flow of the tide, or waters that are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. 33 CFR § 328.3(a)(1); *United States* v. *Appalachian Elec. Power Co.*, 311 U.S. 377, 407–408 (1940) (water considered navigable, although not navigable at present but could be made navigable with reasonable improvements); *Economy Light & Power Co.* v. *United States*, 256 U.S. 113 (1911) (dams and other structures do not eliminate navigability); *SWANCC*, 531 U.S. at 172 (referring to traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made).[2]

In accord with the analysis in *SWANCC*, waters that fall within the definition of traditional navigable waters remain jurisdictional under the CWA. Thus, isolated, intrastate waters that are capable of supporting navigation by watercraft remain subject to CWA jurisdiction after SWANCC if they are traditional navigable waters, *i.e.*, if they meet any of the tests for being navigable-in-fact. *See, e.g.*, *Colvin* v. *United States* 181 F. Supp. 2d 1050 (C.D. Cal. 2001) (isolated

[1] The CWA provisions and regulations described in this document contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. It does not impose legally binding requirements on EPA, the Corps, or the regulated community, and may not apply to a particular situation depending on the circumstances. Any decisions regarding a particular water will be based on the applicable statutes, regulations, and case law. Therefore, interested person are free to raise questions and objections about the appropriateness of the application of this guidance to a particular situation, and EPA and/or the Corps will consider whether or not the recommendations or interpretations of this guidance are appropriate in that situation based on the law and regulations.

[2] These traditional navigable waters are not limited to those regulated under Section 10 of the Rivers and Harbors Act of 1899; traditional navigable waters include waters which, although used, susceptibale to use, or historically used, to transport goods or people in commerce, do not form part of a continuous wateborne highway.

man-made water body capable of boating found to be "water of the United States").

C. Adjacent Wetlands

(1) Wetlands Adjacent to Traditional Navigable Waters

CWA jurisdiction also extends to wetlands that are adjacent to traditional navigable waters. The Supreme Court did not disturb its earlier holding in *Riverside* when it rendered its decision in *SWANCC*. *Riverside* dealt with a wetland adjacent to Black Creek, a traditional navigable water. 474 U.S. 121 (1985); *see also SWANCC*, 531 U.S. at 167 ("[i]n *Riverside*, we held that the Corps had section 404(a) jurisdiction over wetlands that actually abutted on a navigable waterway"). The Court in *Riverside* found that "Congress'; concern for the protection of water quality and aquatic ecosystems indicated its intent to regulate wetlands 'inseparably bound up with' " jurisdictional waters. 474 U.S. at 134. Thus, wetlands adjacent to traditional navigable waters clearly remain jurisdictional after *SWANCC*. The Corps and EPA currently define 'adjacent' as "bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes, and the like are 'adjacent wetlands.' " 33 CFR § 328.3(b); 40 CFR § 230.3(b). The Supreme Court has not itself defined the term "adjacent," nor stated whether the basis for adjacency is geographic proximity or hydrology.

(2) Wetlands Adjacent to Non-Navigable Waters

The reasoning in Riverside, as followed by a number of post-SWANCC courts, supports jurisdiction over wetlands adjacent to non-navigable waters that are tributaries to navigable waters. Since SWANCC, some courts have expressed the view that SWANCC raised questions about adjacency jurisdiction, so that wetlands are jurisdictional only if they are adjacent to navigable waters. *See, e.g., Rice* v. *Harken*, discussed *infra*.

D. Tributaries

A number of court decisions have held that *SWANCC* does not change the principle that CWA jurisdiction extends to tributaries of navigable waters. *See, e.g., Headwaters* v. *Talent Irrigation Dist.*, 243 F.3d 526, 534 (9th Cir. 2001) ("Even tributaries that flow intermittently are 'waters of the United States' "); *United States* v. *Interstate Gen. Co*, No. 01–4513, slip op. at 7, 2002 WL 1421411 (4th Cir. July 2, 2002), *aff'ing* 152 F. Supp. 2d 843 (D. Md. 2001) (refusing to grant writ of coram nobis; rejecting argument that *SWANCC* eliminated jurisdiction over wetlands adjacent to non-navigable tributaries); *United States* v. *Krilich*, 393F.3d 784 (7th Cir. 2002) (rejecting motion to vacate consent decree, finding that *SWANCC* did not alter regulations interpreting "waters of the U.S." other than 33 C.F.R. § 328.3(a)(3)); *Community Ass. for Restoration of the Env't* v. *Henry Bosma Dairy*, 305 F.3d 953 (9th Cir. 2002) (drain that flowed into a canal that flows into a river is jurisdictional); *Idaho Rural Council* v. *Bosma*, 143 F. Supp. 2d 1169, 1178 (D. Idaho 2001) ("waters of the United States include waters that are tributary to navigable waters"); *Aiello* v. *Town of Brookhaven*, 136 F. Supp. 2d 81, 118 (E.D. N.Y. 2001) (non-navigable pond and creek determined to be tributaries of navigable waters, and therefore "waters of the United States under the CWA"). Jurisdiction has been recognized even when the tributaries in question flow for a significant distance before reaching a navigable water or are several times removed from the navigable waters (*i.e.*, "tributaries of tributaries"). *See, e.g., United States* v. *Lamplight Equestrian Ctr.*, No. 00 C 6486, 2002 WL 360652, at *8 (ND. Ill. Mar. 8, 2002) ("Even where the distance from the tributary to the navigable water is significant, the quality of the tributary is still vital to the quality of navigable waters"); *United States* v. *Buday*, 138 F. Supp. 2d 1282, 1291–92 (D. Mont. 2001) ("water quality of tributaries * * * distant though the tributaries may be from navigable streams, is vital to the quality of navigable waters"); *United States* v. *Rueth Dev. Co.*, No. 2:96CV540, 2001 WL 17580078 (N.D. Ind. Sept. 26, 2001) (refusing to reopen a consent decree in a CWA case and determining that jurisdiction remained over wetlands adjacent to a non-navigable (man-made) waterway that flows into a navigable water).

Some courts have interpreted the reasoning in *SWANCC* to potentially circumscribe CWA jurisdiction over tributaries by finding CWA jurisdiction attaches only where navigable waters and waters immediately adjacent to navigable waters are involved. *Rice* v. *Harken* is the leading case taking the narrowest view of CWA jurisdiction after *SWANCC*. 250 F.3d 264 (5th Cir. 2001) (rehearing denied). *Harken* interpreted the scope of "navigable waters" under the Oil Pollution Act (OPA). The Fifth Circuit relied on *SWANCC* to conclude "it appears that a body of water is subject to regulation under the CWA if the body of water is actually navigable or is adjacent to an open body of navigable water." 250 F.3d at 269. The analysis in *Harken* implies that the Fifth Circuit might limit CWA jurisdiction to only those tributaries that are traditionally navigable or immediately adjacent to a navigable water.

A few post-*SWANCC* district court opinions have relied on *Harken* or reasoning similar to that employed by the Harken court to limit jurisdiction. *See, e.g., United States* v. *Rapanos*, 190 F. Supp. 2d 1011(E.D. Mich. 2002) (government appeal pending) ("the Court finds as a matter of law that the wetlands on Defendant's property were not directly adjacent to navigable waters, and therefore, the government cannot regulate Defendant's property."); *United States* v. *Needham*, No. 6:01–CV–01897, 2002 WL 1162790 (W.D. La. Jan. 23, 2002) (government appeal pending) (district court affirmed finding of no liability by bankruptcy court for debtors under OPA for discharge of oil since drainage ditch into which oil was discharged was found to be neither a navigable water nor adjacent to an open body of navigable water). *See alsoUnited States* v. *Newdunn*, 195 F. Supp. 2d 751 (E.D. Va. 2002) (government appeal pending) (wetlands and tributaries not contiguous or adjacent to navigable waters are outside CWA jurisdiction); *United States* v. *RGM Corp.*, 222 F. Supp. 2d 780 (E.D. Va. 2002) (government appeal pending) (wetlands on property not contiguous to navigable river and, thus, jurisdiction not established based upon adjacency to navigable water).

Another question that has arisen is whether CWA jurisdiction is affected when a surface tributary to jurisdictional waters flows for some of its length through ditches, culverts, pipes, storm sewers, or similar manmade conveyances. A number of courts have held that waters with manmade features are jurisdictional. For example, in *Headwaters Inc.* v. *Talent Irrigation District*, the Ninth Circuit held that manmade irrigation canals that diverted water from one set of natural streams and lakes to other streams and creeks were connected as tributaries to waters of the United States, and consequently fell within the purview of CWA jurisdiction. 243 F.3d at 533–34. However, some courts have taken a different view of the circumstances under which man-made conveyances satisfy the requirements for CWA jurisdiction. *See, e.g., Newdunn*, 195 F. Supp. 2d at 765 (government appeal pending) (court determined that Corps had failed to carry its burden of establishing CWA jurisdiction over wetlands from which surface water had to pass through a spur ditch, a series of man-made ditches and culverts as well as non-navigable portions of a creek before finally reaching navigable waters).

A number of courts have held that waters connected to traditional navigable waters only intermittently or ephemerally are subject to CWA jurisdiction. The language and reasoning in the Ninth Circuit's decision in *Headwaters Inc.* v. *Talent Irrigation District* indicates that the intermittent flow of waters does not affect CWA jurisdiction. 243 F.3d at 534 ("Even tributaries that flow intermittently are 'waters of the United States.' "). Other cases, however, have suggested that *SWANCC* eliminated from CWA jurisdiction some waters that flow only intermittently. *See, e.g., Newdunn*, 195 F. Supp. 2d at 764, 767–68 (government appeal pending) (ditches and culverts with intermittent flow not jurisdictional).

A factor in determining jurisdiction over waters with intermittent flows is the presence or absence of an ordinary high water mark (OHWM). Corps regulations provide that, in the absence of adjacent wetlands, the lateral limits of non-tidal waters extend to the OHWM (33 CFR 328.4(c)(1)). One court has interpreted this regulation to require the presence of a continuous OHWM. *United States* v. *RGM*, 222 F. Supp. 2d 780 (E.D. Va. 2002) (government appeal pending).

Conclusion

In light of *SWANCC*, field staff should not assert CWA jurisdiction over isolated waters that are both intrastate and non-navigable; where the sole basis available for asserting CWA jurisdiction rests on any of the factors listed in the "Migratory Bird Rule." In addition, field staff should seek formal project-specific HQ approval prior to asserting jurisdiction over waters based on

other factors listed in 33 CFR 328.3(a)(3)(i)–(iii).

Field staff should continue to assert jurisdiction over traditional navigable waters (and adjacent wetlands) and, generally speaking, their tributary systems (and adjacent wetlands). Field staff should make jurisdictional and permitting decisions on a case-by-case basis considering this guidance, applicable regulations, and any additional relevant court decisions. Where questions remain, the regulated community should seek assistance from the agencies on questions of jurisdiction.

Robert E. Fabricant,

General Counsel, Environmental Protection Agency

Steven J. Morello,

General Counsel, Department of the Army.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN140–1b; FRL–7433–6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to conditionally approve rules submitted by the State of Indiana as revisions to its State Implementation Plan(SIP) for prevention of significant deterioration (PSD) provisions for attainment areas for the Indiana Department of Environmental Management.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by February 14, 2003.

ADDRESSES: Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the State's request is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Capasso, Environmental Scientist, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–1426.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" are used we mean the EPA.

I. What action is EPA taking today?
II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to conditionally approve rules submitted by the State of Indiana as revisions to its State Implementation Plan (SIP) for prevention of significant deterioration (PSD) provisions for attainment areas for the Indiana Department of Environmental Management.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules and regulations section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: December 18, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–617 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD137–3090b; FRL–7420–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revision to the Control of Volatile Organic Compound Emissions From Screen Printing and Digital Imaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland establishing reasonable available control technology (RACT) to limit volatile organic compound (VOC) emissions from an overprint varnish that is used in the cosmetic industry. This action also proposes to add new definitions and amend certain existing definitions for terms used in the regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 14, 2003.

ADDRESSES: Written comments should be addressed to Walter Wilkie, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, at the EPA Region III address above, or by e-mail at *wentworth.ellen@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action pertaining to the establishment of a VOC limit for an overprint varnish used in the cosmetic industry throughout the state of Maryland with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 4, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–730 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[WT Docket No. 01–90; ET Docket No. 98–95; RM–9096; FCC 02–302]

Regarding Dedicated Short-Range Communication Services in the 5.850–5.925 GHz Band (5.9 GHz Band)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, a notice of proposed rulemaking, the Federal Communications Commission (FCC) proposes service rules for the Dedicated Short-Range Communications Systems in the 5.850–5.925 GHz band (5.9 GHz band) to govern the licensing and use of this band. The NPRM seeks public comment on numerous issues concerning the service rules.

DATES: Comments are due on or before March 17, 2003, and reply comments are due on or before April 15, 2003.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Nancy M. Zaczek at (202) 418–7590, Gerardo Mejia at (202) 418–2895 or via e-mail at *nzaczek@fcc.gov* or *gmejia @fcc.gov*, or via TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Notice of Proposed Rulemaking*, FCC 02–302, adopted on November 7, 2002, and released on November 15, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In this *Notice of Proposed Rulemaking and Order* (*NPRM and Order*), the FCC propose service rules to govern the licensing and use of the 5.850–5.925 GHz band (5.9 GHz band) for Dedicated Short-Range Communications (DSRC) services in the Intelligent Transportation System (ITS) radio service. Specifically in this *NPRM and Order:*

- The FCC proposes to permit entities providing public safety DSRC operations to use the 5.9 GHz band;
- For public safety entities, the FCC proposes to apply the application, licensing and processing rules under part 90 of the FCC's rules;

2. The FCC generally seeks comment on the following issues:

- Whether to license Roadside Units (RSUs) by site or geographic area;
- Whether to permit non-public safety radio DSRC operations in the 5.9 GHz band:
- In the event that the FCC allows non-public safety radio applications in the 5.9 GHz band and in the event that the licensing scheme the FCC selects for those ITS applications results in mutually exclusive licenses, the FCC proposes to apply competitive bidding procedures under the FCC's part 1 competitive bidding rules;
- The definition of public safety in the context of ITS;
- The definition of Dedicated Short-Range Communication Service (DSRCS);
- The interoperability necessary for DSRC operations and how this interoperability should be achieved;
- Whether to license On Board Units (OBUs) associated with fixed systems under the associated RSU license;
- Whether the OBUs not associated with a fixed system should be licensed by rule or unlicensed under part 15;
- The appropriate licensing scheme or schemes for this band;
- Various channelization plans;
- Various technical matters; and
- Use of this band in Mexican and Canadian border areas.

3. Dismissal of Petitions for Reconsideration. Further, the FCC also seeks comment on issues raised by two Petitions for Reconsideration or Clarification of the Allocation Report and Order. PanAmSat sought reconsideration of the FCC's decision that prior coordination between DSRC operations applications and Fixed Satellite Service (FSS) uplinks is unnecessary. Mark IV Industries sought reconsideration or clarification of the power levels and emission mask requirements established in the Allocation Report and Order. The FCC dismisses these two petitions for reconsideration as moot because the FCC is seeking comment on the issues raised through this NPRM, and, with the benefit of a fuller record, will address those issues in this proceeding, *i.e.*, WT Docket 01–90.

I. Procedural Matters

A. Initial Regulatory Flexibility Analysis

4. The FCC has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Notice of Proposed Rulemaking; it is contained further. The FCC requests written public comment on the analysis. Comments must be filed in accordance with the same filing deadlines as comments filed in response to the notice of proposed rulemaking, and must have a separate and distinct heading designating them as responses to the IRFA. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this notice of proposed rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Paperwork Reduction Analysis

5. This NPRM contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, the FCC invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due March 17, 2003. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the FCC, including whether the information shall have practical utility; (b) the accuracy of the FCC's burden estimates; (c) ways to

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

6. Written comments by the public on the proposed information collections are due March 17, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before March 17, 2003. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jbHerman@fcc.gov* and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *jthornto@mb.eop.gov*.

C. Ex Parte Presentations

7. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the FCC's rules.

D. Comment Dates

8. Pursuant to §§ 1.415 and 1.419 of the FCC's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 17, 2003, and reply to comments on or before April 15, 2003. Comments may be filed using the FCC's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121(1998).

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, *i.e.* WT Docket 01–90, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the FCC continues to experience delays in receiving U.S. Postal Service mail). The FCC's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the FCC's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the FCC's Secretary, Office of the Secretary, Federal Communications Commission.

II. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act ("RFA"), the FCC has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in the notice of proposed rulemaking (NPRM), WT Docket No. 01–90. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM as provided above. The FCC will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

11. In this NPRM, the FCC proposes licensing, service, and operating rules for the 5.850–5.925 GHz band for use by Dedicated Short Range Communications (DSRC) Services in the provision of Intelligent Transportation Systems (ITS) services. DSRC communications are used for the non-voice wireless transfer of data over short distances between roadside and mobile units, between mobile units, and between portable and mobile units to perform operations related to the improvement of traffic flow, traffic safety, and other intelligent transportation service applications in a variety of environments. This action is taken as a follow-up to the Allocation Report and Order, in which the FCC stated that it would defer licensing and service rules to a later proceeding.

B. Legal Basis for Proposed Rules

12. The proposed action is authorized under sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the FCC

estimates that 81,600 (96%) are small entities.

14. With respect to the 5.9 GHz band, the FCC has not yet determined how many licenses will be awarded. Moreover, the FCC does not yet know how many applicants or licensees will be small entities. The FCC therefore assume that, for purposes of the FCC's evaluations and conclusions in the IRFA, all prospective licensees are small entities, as that term is defined by the SBA or by the FCC's proposed small business definitions for these bands. The FCC invites comment on this analysis.

15. In addition, the FCC notes that the SBA has developed size standards for wireless small businesses within the two separate Economic Census categories of Paging and of Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS codes 517211, 517212. According to the FCC's most recent Telephone Trends Report data, 1,761 companies reported that they were engaged in the provision of wireless service. Telephone Trends Report, Table 5.3. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. Id. Consequently, the FCC estimates that most wireless service providers are small entities.

16. The FCC has not developed a definition of small entities specifically applicable to Dedicated Short-Range Communications Manufacturers (DSRC Manufacturers). However, the SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees. Census data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers to total manufacturers in this category is approximately 61.35%, so the FCC estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Given the above, the FCC estimates that the great majority of wireless communications equipment manufacturers are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

17. In the NPRM, the FCC seeks comment on whether to designate a portion of the band for public safety and non-public safety radio. Should the FCC decide to license a portion of the 5.9 GHz band for public safety purposes, those licensees will be required to submit an application through the Universal Licensing System using form 601. Other possible requirements include complying with part 90 of the FCC's rules and part 15 of the agency's rules if unlicensed operations are permitted.

18. Should the FCC adopt a licensing scheme that results in mutually exclusive applications, applicants for licenses will be required to submit short-form auction applications using FCC form 175. In addition, winning bidders must submit long-form license applications through the Universal Licensing System using FCC form 601, and other appropriate forms. Licensees will also be required to apply for an individual station license by filing FCC form 601 for those individual stations that (1) require submission of an Environmental Assessment under section 1.1307 of the FCC's rules; (2) require international coordination; (3) would operate in the quiet zones listed in section 1.924 of the FCC's rules; or (4) require coordination with the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). Licensees will be required to identify on form 601 the type of service or services they intend to provide. The FCC seeks comment of how these filing requirements can be modified to reduce the burden on small entities.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

20. The FCC has reduced the burdens wherever possible. To minimize any negative impact, however, the FCC propose certain incentives for small entities that will redound to their benefit. The FCC proposes the use of bidding credits for small entities that participate in auctions of licenses that are conducted pursuant to the rules proposed in this NPRM. The FCC proposes to define a "small business" as an entity with average annual gross revenues for the preceding three years not to exceed $15 million and a "very small business" as an entity with average gross revenues for the preceding three years not to exceed $3 million. The FCC believes that these bidding credits will help small entities compete in FCC auctions and acquire licenses. The FCC seeks comment on its proposed small business definitions and bidding credits, including information on factors that may affect the capital requirements of the type of services a licensee may seek to provide.

21. The regulatory burdens the FCC has retained, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. The FCC will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The FCC seeks comment on significant alternatives commenters believe the FCC should adopt.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

22. None.

III. Ordering Clauses

23. Pursuant to sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332, notice is hereby given of the proposed regulatory changes described in this notice of proposed rulemaking and order, and that comment is sought on these proposals.

24. The petitions for reconsideration or clarification of the allocation report and order, ET Docket No. 98–95, filed by PanAmSat Corporation and Mark IV Industries Limited, I.V.H.S. Division are dismissed as moot.

25. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this notice of proposed rulemaking and order, including the Initial Regulatory Flexibility Analysis, to the Chief

Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–812 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–1996–1437]

RIN 2105–AD23

Privacy Act of 1974; Proposed Implementation

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: DOT proposes to add a system of records to the list of DOT Privacy Act Systems of Records that are exempt from one or more provisions of the Privacy Act. Public comment is invited.

DATES: Comments are due March 17, 2003.

ADDRESSES: Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL401, Docket No. OST–1996–1437, Department of Transportation, SVC–124, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, from 9 a.m. to 5 p.m. ET Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Yvonne Coates, Office of the Chief Information Officer, Department of Transportation, Washington, DC (202) 366–6964.

SUPPLEMENTARY INFORMATION: *Additional exempt system.* It is DOT practice to identify a Privacy Act system of records that is exempt from one or more provisions of the Privacy Act (pursuant to 5 U.S.C. 552a(k)) both in the system notice published in the **Federal Register** for public comment and in an Appendix to DOT's regulations implementing the Privacy Act (49 CFR Part 10, Appendix). This amendment proposes exemption from portions of the Privacy Act of a proposed Transportation Security Administration (TSA) system, whose establishment is currently the subject of public comment:

Aviation Security-Screening Records (ASSR) (DOT/TSA 010) would enable the TSA to maintain a security-screening system for air transportation. This system contains information regarding TSA's conduct of risk assessments required by 49 U.S.C. 114 and 44903. The system may be used, generally, to review, analyze, and assess threats to transportation security and respond accordingly.

Due to the national security and law enforcement aspects of the proposed system, DOT proposes to treat this system as it treats other law enforcement systems, by exempting it from the following provisions of the Privacy Act: (c)(3) (Accounting of Certain Disclosures); (d) (Access to Records); (e)(1) (Relevancy and Necessity of Information); (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules), (1) to the extent that ASSR contains information properly classified in the interest of national security, in accordance with 5 U.S.C. 552a(k) (1) and (2) to the extent that ASSR contains investigatory material compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2).

Analysis of Regulatory Impacts

This proposal is not a "significant regulatory action" within the meaning of Executive Order 12886. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal would not have a significant economic impact on a substantial number of small entities, because the reporting requirements, themselves, are not changed and because it applies only to information on individuals.

This proposal would not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Collection of Information

This proposal contains a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Application for collection authority is pending.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregated, $100 million or more in any one year the UMRA analysis is required. This proposal would not impose Federal mandates on any State, local, or tribal governments or the private sector.

List of Subjects in 49 CFR Part 10

Privacy.

In consideration of the foregoing, DOT proposes to amend part 10 of Title 49, Code of Federal Regulations, as follows:

1. The authority citation for part 10 would continue to read as follows:

Authority: Pub.L. 93–579; 49 U.S.C. 322.

2. Part II. A of the Appendix would be amended by adding new paragraph 21.

3. Part II. G of the Appendix would be amended by adding new paragraph 3.

The additions would read as follows:

Part II. Specific exemptions.

A. * * *

21. Aviation Security-Screening Records (ASSR), DOT/TSA 010.

* * * * *

G. * * *

3. Aviation Security-Screening Records (ASSR), DOT/TSA 010, maintained by the Transportation Security Administration.

* * * * *

Issued in Washington, DC, on January 9, 2003.

Eugene K. Taylor, Jr.,

Acting Chief Information Officer.

[FR Doc. 03–828 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking from Xportation Safety Concepts, Incorporated, requesting that NHTSA amend an air bag warning label requirement in the Federal motor vehicle safety standard for child restraints. The standard requires that each child restraint that can be used rear-facing bear a label directing caregivers not to place the child restraint on the front seat with an air bag, and provides other related warnings. The petitioner suggests that if a rear-facing child restraint is able to limit forces imposed on a test dummy by a deploying air bag, the child restraint should be excluded from the warning label requirement. The petitioner believes that its rear-facing child restraint is such a restraint.

NHTSA is denying the petition because the petitioner's suggested methodology for testing the capability of rear-facing child restraints to protect against air bag forces does not adequately assess the safety risks that air bags pose to children. Further, there is no other available test that assures that a child restraint will perform well with the myriad of air bag systems in current and future vehicles. The agency reaffirms the merits of urging parents to place infants in a rear-facing child restraint in a rear seating position because a child is safer there than in a front passenger seating position. This document also presents other reasons for denying the petition.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at 202–366–0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at 202–366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC., 20590.

SUPPLEMENTARY INFORMATION:

Background

To prevent or mitigate the effects of a crash, Federal Motor Vehicle Safety Standard No. 208 requires that vehicles be equipped with seat belts and, for front seat occupants, air bags that provide protection in frontal crashes. Lap/shoulder belts, when used properly, are highly effective in reducing the risk of fatal and moderate-to-critical injury. Frontal air bags are also highly effective in reducing fatalities. Between 1986 and July 1, 2002, air bags saved an estimated 9,325 front seat occupants (7,786 drivers: 2,180 belted and 5,606 unbelted; and 1,539 front-right passengers: 431 belted and 1,108 unbelted). The number of lives saved annually by air bags is continuing to increase as the percentage of air bag-equipped vehicles on the road increases.

However, while air bags are saving an increasing number of people each year in moderate and high speed crashes, some air bags, particularly those installed in vehicles manufactured prior to model year (MY) 1998, have also caused fatalities, especially to unrestrained, out-of-position children, in relatively low speed crashes. As of October 1, 2002, NHTSA's Special Crash Investigation (SCI) program has confirmed a total of 221 fatalities induced by the deployment of an air bag. Of that total, 137 were children, 74 were adult drivers, and 10 were adult passengers. The number of air bag-related fatalities generally increased from 1990 (1) to 1997 (53), and decreased from 1997 to 2001 (6 confirmed [1]) and 2002 (2 confirmed). The following table sets forth the number of confirmed air bag-related fatalities by crash year.

COUNTS FOR CONFIRMED* AIR BAG RELATED FATALITIES BY CRASH YEAR

[Through 10/01/02]

Fatals by Year	Children in rear-facing child safety seat (RFCSS)	Children not in RFCSS	Adult drivers	Adult passengers	Totals by year (confirmed)	Females 62" or less (confirmed)
1990	0	0	1	0	1	1
1991	0	0	4	0	4	1
1992	0	0	3	0	3	2
1993	0	1	4	0	5	2
1994	0	5	8	0	13	1
1995	3	5	5	0	13	4
1996	6	19	7	2	34	2
1997	4	27	18	4	53	4
1998	5	27	13	2	47	6
1999	3	18	3	0	24	2
2000	0	8	5	2	16	3
2001	1	3	2	0	6	0
2002	0	2	0	0	2	0
2003	0	0	0	0	0	0
Total	22	115	74	10	221	28

*Confirmed cases are those where the air bag has been confirmed to be the injury mechanism.

Infants in rear-facing child restraints have been killed by air bags primarily because their riding position places them close to the air bag. A rear-facing infant seat that is installed in the front seat of a vehicle with a passenger air bag

[1] Confirmed means that the Special Crash Investigation has been completed.

will almost always position the infant's head very close to that air bag. Closeness is a problem because, in order for an air bag to cushion an occupant's head, neck, chest and abdomen and keep the occupant from hitting the steering wheel, windshield or instrument panel, the air bag must move into place quickly. The force of a deploying air bag is typically greatest close to the air bag module as the air bag begins to inflate. If occupants are very close to or in contact with the cover of an air bag, they can be hit with enough force to cause serious injury or death when the air bag begins to inflate. Twenty-two fatally-injured infants were close to the air bag because they were in rear-facing infant seats installed directly in front of a passenger air bag.

In recent years, significant changes have occurred that have reduced the number of persons killed by air bags. As a result of public education programs, improved labeling, and media coverage, the public is much more aware of the dangers air bags pose to children in the front seat and is taking steps to reduce those dangers. Children are riding in the back seat more regularly. In cars with passenger air bags, the percentage of toddlers and infants riding in the back seat increased from about 70 percent in 1995 to about 90 percent in 1999. Technological changes in the design of air bag systems have also reduced the risk posed by air bags. These changes include reducing the air bag outputs (*i.e.*, pressure rise rate and the peak pressure), relocating the air bag modules farther away from the driver and passenger, and changes to features of air bags. Additional technological changes will be made in the future. NHTSA has amended Standard No. 208 by adding a wide variety of new requirements, test procedures, and injury criteria to require that future air bags be designed to create less risk of serious injury than current air bags, particularly for small women and young children. 65 FR 30680, May 12, 2000; as amended 66 FR 65376, December 18, 2001.

Petition for Rulemaking

Today's document responds to a December 3, 2001 petition for rulemaking from a child restraint manufacturer that seeks to amend Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems" (49 CFR 571.213), to implement changes that the petitioner believes would aid the sale of its restraints. The petitioner, Xportation Safety Concepts, Inc. (Xportation), believes it has developed an "air bag resistant, rear-facing infant restraint." The petitioner further believes that it has identified a test procedure that can be used to demonstrate the compatibility of its infant restraints with an air bag. Xportation asks that the test procedure be added to Standard No. 213, and that child restraints shown, when tested in accordance with that test procedure, to be able to limit sufficiently the forces that are imposed on a test dummy restrained in the child restraint be excluded from the requirement to bear the air bag warning label specified in S5.5.2(k)(4) and Figure 10 of the standard. The label, which is required to be a permanent and prominent part of rear-facing restraints, is intended to provide greater assurance that caregivers are aware of the dangers posed by passenger air bags to children in rear-facing restraints.

Xportation's very brief petition did not discuss in any level of detail the suggested test procedure, the test devices, or the injury criteria. It did not provide any test data regarding its child restraint. Instead, Xportation stated that the standard should be amended because: (a) The agency indicated in a rulemaking document (59 FR 7643; February 16, 1994) that it would consider a test procedure then under development by the Society of Automotive Engineers (SAE) for testing child restraints with air bags for incorporation into Standard No. 213; and, (b) in the petitioner's view, since the SAE-developed test procedure was completed, the agency should now proceed to incorporate the work of SAE and others into the standard to facilitate the manufacture of "air bag resistant infant restraints." Xportation did not discuss the merits of the work, but attached a bibliography to its petition and referred to documents referenced in the bibliography.

The following constitutes the bulk of the petition:

> The [SAE] task force completed the aforementioned guidelines, which were published by the Society of Automotive Engineers as a Surface Vehicle Information Report (Reference 1). Section 7 of the document discusses dynamic test procedures, and section 10 describes the test fixture. The seating portion of the fixture resembles that of the FMVSS 213 test fixture, and it is likely that its features could be incorporated into that fixture.
>
> At the request of the CRABI [2] Task Force, the SAE Infant Dummy Task Force developed specifications for the 6 Month Old and 12 Month Old CRABI Dummies, and they are now readily available (Reference 2). Further, a member of the CRABI Task Force has developed the appropriate injury assessment values for the 6 Month Old Dummy (Reference 3).
>
> NHTSA, in its early efforts to determine the interaction of child restraints and passenger air bags, conducted a number of impact simulations using a HYGE sled. The study was reported in Reference 4. In the report, it is noted that the test buck is similar to the buck design in the CRABI Task Force Information Report, and that it used the Standard 213 seat. The report further notes that the Standard 213 seat was modified to have the same seat cushion and seat back attitudes as the seat in the CRABI buck.
>
> We submit that there are now a test procedure, a test buck, dummies, and injury assessment values, all of the elements necessary to allow the agency to proceed with rulemaking to accommodate air bag resistant, rear-facing infant restraints. The rulemaking will, of course, include the incorporation of the CRABI dummies into 49 CFR part 572.[3]

[2] CRABI: Child Restraint Air Bag Interaction. (Footnote not in quoted text.)

Discussion

Previous Rulemaking

In 1994, before there were any injuries or fatalities to infants in rear-facing restraints caused by an air bag, NHTSA issued a final rule that required these restraints to have a warning label against using the restraint in any vehicle seating position equipped with an air bag (59 FR 7643). Public comments on the notice of proposed rulemaking (NPRM) preceding the rule expressed concerns that the rule would restrict child restraint design in the face of what was then only a theoretical risk posed to children. In response, the agency stated that it "[did] not intend for this rule to impede the development of rear-facing restraints that are compatible with an air bag." The agency explained that it was monitoring the work of a task force on Child Restraint and Air Bag Interaction (CRABI) formed by the Society of Automotive Engineers (SAE), particularly the work on test procedures that could evaluate the performance of an infant restraint when used with a passenger air bag. NHTSA stated that if the CRABI task force were to develop a test procedure from its guidelines, NHTSA would evaluate it to determine whether the procedure is appropriate for Standard No. 213. "Among other things," the agency stated, "the procedure would have to be suitable for

[3] "Reference 1" in petitioner's bibliography was "Guidelines For Evaluating Child Restraint System Interactions With Deploying Airbags." SAE J2189 (March 1993); Reference 2 was "FTSS Product Catalog; CRABI 6 Month Older Infant Dummy 910420–000; 12 Month Old Child Dummy 921022–000;" Reference 3 was "Injury Assessment Values for the CRABI 6–Month Infant Dummy in a Rear-Facing Infant Restraint With Airbag Development. SAE 950872," J.W. Melvin, 1995; and Reference 4 was "Child Restraint/Passenger Air Bag Interaction Analysis. Final Report, HS 808 004," L.K. Sullivan, 1992. (Footnote not in quoted text.)

testing all types of infant restraints, and be able to provide test results that assess the performance of the restraint in the real world." The agency also stated that it "will consider a test procedure for incorporation into Standard 213 as soon as a suitable one is developed" (59 FR 7646).

We do not agree with Xportation that the CRABI test procedure merits adoption into the Federal safety standard or that child restraints tested to the procedure need not be labeled with the air bag warning label that all rear-facing restraints must now bear. The agency's knowledge of air bags has changed tremendously since 1994, when NHTSA undertook the rulemaking that first required an air bag warning label. We undertook the air bag warning rulemaking after finding in NHTSA laboratory sled tests with top- and mid-mounted air bags that the air bags produced substantial increases in the values for the head injury criterion (HIC) and chest acceleration of dummies seated in rear-facing restraints, compared to the values for dummies in rear-facing restraints tested with no air bag. There had not yet been any deaths or injuries caused by an air bag at that time. At that time, the agency was guardedly optimistic about the possibility that a suitable test procedure could develop out of the CRABI task force work that would obviate the need for requiring all rear-facing restraints to have an air bag warning label.

Beginning in 1994, however, the risk posed by passenger air bags to infants in rear-facing restraints began to manifest itself in real-world deaths and injuries. Three air bag-related fatalities were children in rear-facing restraints in 1995, 6 in 1996, 4 in 1997, 5 in 1998, and 3 in 1999.[4] NHTSA developed various strategies to counter the rising number of fatally-injured children in rear-facing child restraints, including amending Standard No. 213 to make the warning label more direct in its warning and much more conspicuous (61 FR 60206; November 27, 1996). The agency, together with the automobile industry and child passenger advocates, also began a vigorous and successful consumer information campaign to get children seated in the back seat rather than in the front passenger seat.

We also became much more knowledgeable about air bags. In December 1997, to better understand air bag design and performance characteristics, NHTSA sent an information request to nine automobile manufacturers requesting detailed technical information on then-current industry practices on air bag technologies and how design and performance had evolved through the 1990s. The agency analyzed the responses and identified numerous trends in air bag design both on the driver side and the passenger side. The information showed that manufacturers have made many changes to air bag design. "Air Bag Technology In Light Passenger Vehicles," Hinch *et al.*, October 26, 1999 (*see* Docket 2814–47).

This information has led us to evaluate the CRABI procedure in a better informed, more critical light. While at one point we were somewhat optimistic about the CRABI procedure, we now do not believe that it or any other procedure adequately assesses the safety risks to rear-facing children from an air bag.

Review of the SAE procedure

The CRABI procedure is set forth in the SAE's Surface Vehicle Information Report SAE J2189, "Guidelines for Evaluating Child Restraint System Interactions With Deploying Airbags," March 1993. As noted by the SAE in that document, there are many uncertainties associated with the procedure. The SAE explained that the document is styled an "information report," as opposed to a "recommended practice," "because of the general inexperience in testing the interaction between child restraint systems and deploying air bags and the lack of real-world accident data." The explanation continues:

> This document describes dummies, procedures, and configurations that can be used for investigating the interactions that occur between a deploying airbag and a CRS [child restraint system]. Static tests may be used to sort CRS/airbag interaction on a comparative basis in either an actual or a simulated vehicle environment. Systems that appear to warrant further testing may be subjected to an appropriate dynamic test at a speed near that needed to deploy an airbag or at a higher speed commonly used to evaluate CRS performance. No test matrix is specified at this time for evaluating either a CRS or an airbag during interaction with each other. Instead, engineering judgment based on prior experience with CRS and/or airbag testing should be used in selecting the tests to be conducted with each individual system. Such tests may be aimed not only at producing interactions with the most severe results but also at identifying those conditions that produce the least interaction and/or satisfactory CRS performance results. Baseline tests to indicate the performance of a CRS in the absence of airbag deployment are also recommended for comparison purposes.

The CRABI test procedure could be an acceptable *starting point* in evaluating the performance of particular child restraints with specific air bag systems. However, NHTSA believes that the procedure alone would not be able to provide test results that sufficiently assess the performance of a restraint in the real world. J2189 does not specify a test matrix, but relies on the tester's engineering judgment as to the test configurations and conditions that should be used. Xportation provides no explanation or discussion as to which configurations and conditions it believes need or need not be specified that would assure the safe performance of a child restraint with the air bags in existing and future model year vehicles.

Perhaps the reason that Xportation did not do so is because it is virtually impossible to do so. J2189 is predicated on the tester's being able to tune the air bag system to simulate a specific air bag system. If J2189 were incorporated into Standard No. 213, a very limited type of air bag system would be simulated by the standard. Yet, NHTSA's survey data (Hinch *et al., supra*) show great variation in air bag system characteristics and performance. Moreover, air bag systems have changed significantly in recent years. Some of the changes reduced the aggressivity of air bags, such as by reducing air bag outputs in the most recent model year vehicles compared to the earlier generation vehicles. Some of the changes involved changes in inflator characteristics, new air bag shapes, sizes, fabrics, venting systems and venting levels, occupant size and location sensors, seat position sensors, belt use sensors, and crash severity sensors, as well as computation algorithms that use the information in making air bag deployment decisions. Manufacturers also seem to be on the threshold of making a significant leap in introduction of sophisticated technologies to improve air bag performance. In short, a test procedure that only replicates one or a few types of air bag systems does not assure that a child restraint that meets performance criteria tested to that procedure will perform adequately with the myriad of air bag designs currently on the road and those that will be installed in future vehicles.

The safety risk posed to infants in rear-facing child restraints by deploying air bags is so great that a test procedure used to assess the performance of the child restraint must carefully evaluate that risk. For example, if an "air bag-resistant" child restraint fails to work, an infant in that restraint is almost certain to be injured when the air bag deploys. Xportation has not provided data showing that a child would not be injured by a type of air bag system that

[4] There were 0 in 2000 and 1 in 2001.

was not simulated by the J2189 procedure, or that the child would be protected if the restraint were misused.[5] Nor did Xportation provide data showing that the test dummies could satisfactorily evaluate the harm resulting from a deploying air bag. In the absence of such data, we conclude that the suggested amendment would subject rear-facing infants to too high a risk of injury from an air bag.

As a practical matter, NHTSA cannot test products in every configuration or circumstance they could be used. However, this limitation is generally acceptable since test procedures simulating a relatively narrow set of real world circumstances generally have a positive impact on individuals in a broader range of circumstances. However, in this particular case, testing to a test procedure of one sort could have severe consequences to a child in a broad range of circumstances. Thus, we deem the requirements and test procedures to be too narrow and not adequately representative of types of air bag systems not simulated by the J2189 procedure.

The agency will not attempt to develop a suitable test procedure in response to the petition. Developing a suitable test procedure (assuming that it would be practicable to do so) would use agency resources that are better spent on areas that would result in definite safety benefits. Moreover, for the reasons stated above, we believe that no procedure could adequately assure the overall safety of children. There is a risk of injury associated with the forces imposed by the air bag on a rear-facing infant.[6] There are no such risks when the child is in the back seat. Even in vehicles without air bags, infants, as well as other occupants, are 26 percent safer against fatality when seated in the rear seat than in the front seat. Thus, even if air bag risks could be completely controlled, overall safety would be diminished if some infants were restrained in the front seat instead of in the rear seat, which would occur if petitioner's suggested amendment was adopted. Keeping infants restrained in the rear seat instead of in the front seat assures that a more injurious event would not be substituted for a less injurious one.[7]

Xportation has argued that placing children in the back increases the risk for crashes because of the possibility of distraction due to parents' having to turn to attend to them. Based on a review of 2000 Fatal Analysis Reporting System (FARS) data[8], a total of 3,946 drivers (or 6.9 percent of all drivers involved in fatal crashes) were determined to be inattentive. However, the 2000 FARS database does not distinguish between various causes of inattentiveness, such as talking, eating, cell phone use, or attending to a child in either the front or rear seat. As such, the agency is unable to definitively ascertain from this data whether children are more or less of a distraction in the front seat as compared to the rear seat. However, placing children in rear seats does significantly increase the chances that the child will survive a crash should one occur as noted in the preceding paragraph.

In conclusion, NHTSA has evaluated the test procedure suggested by the petitioner for incorporation into the Federal standard. We conclude that the procedure does not go far enough in assessing the injury risk posed by air bags to infants in rear-facing restraints. Further, we affirm the continuing merit of urging parents to place infants in rear-facing restraints in a rear seating position, since the infants are safer there than in a front passenger seating position. This message saves lives.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Accordingly, the petition is denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on January 9, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–821 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–59–P

[5] The SAE explains in J2189 that the information report "addresses only the effects of the interactions between deploying airbags and child restraint systems that would have been considered properly installed and used in the right and center front passenger positions before the advent of passenger airbags and may be properly installed there in the future. Child restraint misuse is not otherwise addressed in this document."

[6] Limits on the force levels imposed on the dummy indicate an injury risk assessment above which the risk of injury is unacceptably high. The risk of injury of force levels below the threshold, while lower, still exists.

[7] For vehicles with either (a) no rear seats, or (b) rear seats that are too small to accommodate rear-facing child restraints in accordance with the provision of S4.5.4.1(b) of FMVSS No. 208, vehicle manufacturers may install a device (an on/off switch) that deactivates the air bag at the front passenger position. In addition, under appropriate circumstances, owners of all vehicles may obtain an on/off switch (see 49 CFR part 595).

[8] "Traffic Safety Facts 2000: A Compilation of Motor Vehicle Crash Data From the Fatal Analysis Reporting System and the General Estimates System," National Highway Traffic Safety Administration, National Center for Statistic and Analysis, December 2001.

Notices

Federal Register
Vol. 68, No. 10
Wednesday, January 15, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

TE–43 GIWW Bankline Restoration Project; Terrebonne Parish, Louisiana

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the GIWW Bankline Restoration Project, Terrebonne Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

The project will protect critically eroding portions of the southern bank of the GIWW that acts as an interface between the fragile fresh marshes and the flowing, turbulent water of the GIWW. The proposed project consists of 37,000 feet of bankline restoration and protection along the foreshore of the southern bank of the GIWW.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,
State Conservationist.

[FR Doc. 03–797 Filed 1–14–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Porter Bayou Watershed, Bolivar and Sunflower Counties, Mississippi

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for Porter Bayou Watershed, Bolivar and Sunflower Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, Telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federal assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns a watershed plan to provide flood protection and watershed protection. Alternatives under consideration include conservation land treatment using best management practices and channel work.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agency individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from Homer L. Wilkes at the above address or telephone number.

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

Dated: December 20, 2002.

Homer L. Wilkes,
State Conservationist.

[FR Doc. 03–796 Filed 1–14–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475–703]

Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 10 , 2002, the Department of Commerce (the Department) published the preliminary results of its thirteenth administrative review of the antidumping duty order on Granular Polytetrafluoroethylene (PTFE) Resin from Italy. The review covers one producer/exporter of the subject merchandise, Ausimont SpA, and its U.S. affiliate, Ausimont USA (Ausimont). The period of review (POR)

is August 1, 2000, through July 31, 2001. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the Final Results of Review section.

EFFECTIVE DATE: January 15, 2003.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Keith Nickerson, at (202) 482–1756 or (202) 482–3813, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2002, the Department published in the **Federal Register** the preliminary results of the thirteenth administrative review of the antidumping duty order on PTFE resin from Italy. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy*, 67 FR 57376 (September 10, 2002) (*Preliminary Results*). On September 17, 2002, we received from Ausimont its response to sections B and D of the supplemental questionnaire.

We invited parties to comment on the *Preliminary Results*. On October 10, 2002, we received case briefs from both the petitioner, E.I. Dupont de Nemours & Company (Dupont) and Ausimont. On October 17, 2002, we received rebuttal briefs from both Dupont and Ausimont. The Department rejected, and requested resubmission of, DuPont's rebuttal brief on October 28, 2002, because that brief advanced a new argument not present in the petitioner's case brief and not responsive to arguments in the respondent's case brief. The petitioner resubmitted its rebuttal brief on November 1, 2002. Additionally, on October 31, 2002, the Department issued a second supplemental questionnaire to Ausimont. Ausimont submitted its response to this questionnaire on November 14, 2002, and the petitioner submitted comments on Ausimont's response on November 25, 2002.

A public hearing was held on December 9, 2002, at which the parties discussed the issues contained in the case and rebuttal briefs, as well as Ausimont's second supplemental questionnaire response and the petitioner's November 25, 2002, comments.

Scope of the Review

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See Final Affirmative Determination; Granular Polytetrafluoroethylene Resin from Italy*, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTS). We are providing this HTS number for convenience and U.S. Customs purposes only. The written description of the scope remains dispositive.

Analysis of Comments Received

All issues raised in the case briefs, and post-briefing submissions, by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (*Decision Memorandum*) from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 8, 2003, which is hereby adopted by this notice. Attached to this notice, as an appendix, is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this memorandum, which is on file in the Central Records Unit (CRU), Room B-099 of the main Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at ia.ita.doc.gov. The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we made the following adjustments to the calculation methodology in determining the final dumping margins in the proceeding:

- We were unable to calculate the margin for a substantial quantity of unreported further manufactured sales and, therefore, we applied adverse facts available to the quantity of unreported sales. *See* Comment 1 of the *Decision Memorandum*.
- In calculating both the costs of production for the cost test and the constructed export price (CEP) profit ratio, we used a general and administrative (G&A) expenses rate based on adverse facts available. *See* Comment 2 of the *Decision Memorandum*.
- We treated home market "off spec" sales, which were reported after the preliminary results, as non-prime merchandise, and did not compare them to U.S. sales of prime merchandise. *See* Comment 4 of the *Decision Memorandum*.
- For home market sales with missing inland freight expenses, as facts available, we applied the freight expense from the most similar sale in terms of customer, product, quantity and destination. *See Final Results Calculation Memorandum* to Constance Handley from Vicki Schepker and Keith Nickerson, dated January 8, 2003, (*Calculation Memorandum*) also on file in the CRU.
- We used Ausimont's POR costs, reported after the preliminary results, in the final results calculation. *See Calculation Memorandum*.
- For further manufactured sales, we used the revised further manufacturing costs provided in Ausimont's November 14, 2002, supplemental questionnaire response. *See* Comment 6 of the *Decision Memorandum*.
- We made adjustments to packing, variable and total cost, and indirect selling expense variables, where appropriate, to reflect proper currencies and units of measure. *See Calculation Memorandum*.

These adjustments are discussed in the *Decision Memorandum* and in the *Calculation Memorandum*.

Facts Available

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition, a final determination in an investigation, any previous administrative review, or any other

information placed on the record. In this case, the Department has applied partial facts available for a quantity of unreported sales and the general and administrative expense ratio. (*See* the *Decision Memorandum* at comments 1 and 2).

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period of August 1, 2000, through July 31, 2001:

Exporter/Manufacturer	Weighted-Average Margin Percentage
Ausimont SpA	12.08

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer-specific assessment rate is above de minimis we will instruct the Customs Service to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) for the exporter/manufacturer covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 46.46 percent, the "All Others" rate established in the less-than-fair-value investigation (53 FR 26096, July 11, 1988). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 8, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

1. Unreported further manufactured sales
2. Calculation of the CEP profit ratio
3. Application of the special rule
4. Treatment of sales of off-spec merchandise
5. Treatment of negative margins
6. Packing expenses for further manufactured sales
7. Issuance of draft final results
8. Factory overhead and G&A expenses for further manufactured sales

[FR Doc. 03–883 Filed 1–14–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description, obtain a copy of the mission statement from the Project Officer indicated below.

U.S. Automotive Parts and Components Business Development Mission to Russia

Moscow, Samara and Togliatti, April 6–12, 2003, Recruitment closes on February 14, 2003.

For further information contact: Ms. Phyllis Bradley, U.S. Department of Commerce, telephone 202–482–2085, or e-mail to *Phyllis.Bradley@mail.doc.gov*—or, in Russia, Mr. Geoffrey Cleasby, U.S. Embassy, Moscow, telephone 7–095–737–5030, fax 7–095–737–5033, or e-mail to *Geoffrey.Cleasby@mail.doc.gov*

Aerospace Executive Service at Latin America Defentech—Fourth International Exhibition & Conference on Defense Technology

Rio de Janeiro, Brazil, April 22–24, 2003, Recruitment closes on March 10, 2003.

For further information contact: Mr. Jason Sproule, U.S. Department of Commerce, telephone 949–660–1688, ext. 151, or e-mail to *Jason.Sproule@mail.doc.gov*

Assistant Secretarial Business Development Mission to Morocco and Egypt

Casablanca, Rabat and Cairo, May 25–June 2, 2003, Recruitment closes on March 12, 2003.

For further information contact: Ms. Caroline McCall, U.S. Department of Commerce, telephone 202–482–2499, or e-mail to *Trade.Missions@mail.doc.gov*

Aerospace Executive Service Program at the Paris Air Show

Paris, France, June 16–18, 2003, Recruitment closes on April 18, 2003.

For further information contact: Ms. Danielle Dooley, U.S. Department of Commerce, telephone 303–844–6623, ext. 14, or e-mail to *Danielle.Dooley@mail.doc.gov*

Medical Device Trade Mission to Panama, Guatemala and Honduras

Panama City, Guatemala City and Tegucigalpa, July 13–19, 2003, Recruitment closes on May 16, 2003.

For further information contact: Mr. Steven Harper, U.S. Department of Commerce, telephone 202–482–2991, or e-mail to *Steven_Harper@ita.doc.gov*

Recruitment and selection of private sector participants for these trade

missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

For further information contact: Mr. Thomas Nisbet, U.S. Department of Commerce, telephone 202–482–5657, or e-mail *Tom_Nisbet@ita.doc.gov*

Dated: January 9, 2003.

Thomas H. Nisbet,

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 03–865 Filed 1–14–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Jointly Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of jointly owned invention available for licensing.

SUMMARY: The invention listed below is jointly owned by the U.S. Government, as represented by the Department of Commerce, and JMAR Research, Inc. The Department of Commerce's ownership in this invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, e-mail: *mclague@nist.gov*, or fax: 301–869–2751. Any request for information should include the NIST Docket number and title for invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is: [Docket No.: 99–027US]

Title: Parallel X-ray Nanotomography.

Abstract: An apparatus for nanotomography uses an x-ray source comprising a laser generated plasma. X-rays generated in the x-ray source are collected and focused using a collector optic onto a sample. The collector optic is preferably comprised of Wolter optics combining reflection off an ellipsoid with a reflection off a hyperboloid. X-rays emitted from the sample are focused with an objective lens assembly. The objective lens assembly includes an array of fresnel zone plates. An image formation and acquisition apparatus form an image based on the received X-rays. The array of fresnel zone places is an important feature of the invention, as the array dramatically improves the intensity of the x-rays reaching the detector over a conventional objective lens. A laser-based x-ray source is also key to the invention, generating an x-ray beam of sufficient intensity to provide sufficient counting statistics for a tomographic reconstruction to be obtained.

Dated: January 8, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–774 Filed 1–14–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Thursday, January 30, 2003, from 8 a.m. to 3:30 p.m. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program with over 60 centers across the country serving America's 360,000 small manufacturers. The centers are true federal state partnerships using federal, state and local funds to provide services. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to update the board on the latest program developments at MEP and for the Board to discuss future strategic direction of the program and its current plans. The agenda will include a briefing on the state and health of the system under the current state of the budget while under a continuing resolution, a report on the National Brand Meeting in December 2002 and the status across the system and a new direction at MEP to set up a Research team to delve into the area of the importance of manufacturing in the U.S. economy. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Monday, January 27, and she will provide you with instructions for admittance. Mrs. Peter's email address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene January 30, 2003 at 8 a.m. and will adjourn at 3:30 p.m. on January 30, 2003.

ADDRESSES: The meeting will be held in the Employee's Lounge, Administration Building, at NIST, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Linda Acierto, Senior Policy Advisor, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–5033.

Dated: January 8, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–775 Filed 1–14–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Doc. No. 030109006–3006–01, I.D. 010903B]

Taking and Importing of Marine Mammals; Decision Regarding the Impact of Purse Seine Fishing on Depleted Dolphin Stocks

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: This Notice announces that on December 31, 2002, the Assistant Administrator for the National Marine Fisheries Service, on behalf of the

Secretary of Commerce, determined that the chase and intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the Eastern Tropical Pacific Ocean (ETP). This finding determines the definition of dolphin-safe for tuna products containing tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States.

DATES: This finding became effective December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Nicole R. Le Boeuf, Office of Protected Resources, NOAA Fisheries, 1315 East-West Highway, Silver Spring, Maryland, 20910. 301–713–2322, ext. 156.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act and the Dolphin Protection Consumer Information Act (DPCIA), as amended by the International Dolphin Conservation Program Act, require the Secretary of Commerce to conduct specified scientific research and make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program, and any other relevant information, as to whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the ETP.

On December 31, 2002, the Assistant Administrator for the National Marine Fisheries Service, on behalf of the Secretary of Commerce, determined that the chase and intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the ETP. A copy of the finding and the rationale supporting the finding are set forth below. Copies of supporting documentation referenced in the rationale may be found on the Internet at *http://www.nmfs.noaa.gov/prot_res/PR2/Tuna_Dolphin/tunadolphin.html*.

This finding determines the definition of dolphin-safe for tuna products containing tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States. As a result of this finding, the dolphin-safe labeling standard shall be that prescribed by section (h)(1) of the DPCIA. Therefore, dolphins can be encircled or chased, but no dolphins can be killed or seriously injured in the set in which the tuna was harvested.

DATES: This finding was effective December 31, 2002.

Dated: January 9, 2003.

William T. Hogarth,

Assistant Administrator, National Marine Fisheries Service.

Final Finding Required by the Dolphin Protection Consumer Information Act, 16 U.S.C. 1385(g)(2).

The Dolphin Protection Consumer Information Act (DPCIA) requires the Secretary of Commerce (Secretary) to make a final finding by December 31, 2002 on whether the intentional deployment on or the encirclement of dolphin with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the Eastern Tropical Pacific (ETP) region. 16 U.S.C. 1385(g)(2) The authority to make the finding has been delegated to the NOAA Assistant Administrator for Fisheries. Based on the information reviewed, I hereby find the intentional deployment on or encirclement of dolphin with purse seine nets in not having a significant adverse effect on any depleted dolphin stock in the ETP.

Summary

Since the late 1950's, the predominant tuna fishing method in the ETP has been to encircle schools of dolphins with a purse seine fishing net to capture the tuna concentrated below. Hundreds of thousands of dolphins died as a result of this practice in the early years of this fishery. Marine Mammal Protection Act (MMPA) provisions, improved fishing techniques, and international cooperation have resulted in greatly reduced dolphin mortality.

In 1997, the MMPA and the DPCIA were amended by the International Dolphin Conservation Program Act (IDCPA), to require the Secretary to conduct specified scientific research and make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program (IDCP), and any other relevant information, whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the ETP. This finding changes the dolphin-safe labeling standard as it applies to tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States. The finding must be made by December 31, 2002, and the research findings must be submitted to Congress within 90 days.

To arrive at a finding, NOAA Fisheries, in consultation with the Marine Mammal Commission (MMC) and the Inter-American Tropical Tuna Commission (IATTC), conducted "a study of the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the ETP." Based on the research results and the other best available information, I have concluded that the intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the ETP. This finding means that the dolphin-safe labeling standard shall be that prescribed by section (h)(1) of the DPCIA. Therefore, dolphin-safe means that dolphins can be encircled or chased, but no dolphins can be killed or seriously injured in the set in which the tuna was harvested. This finding will become effective immediately.

A **Federal Register** Notice will be published containing more information on this finding. The Final Science Report will be submitted to Congress within 90 days.

December 31, 2002.

William T. Hogarth, Ph.D.,

Assistant Administrator for Fisheries.

Organized Decision Process (ODP) Development and Analysis

Background

The Marine Mammal Protection Act (MMPA) and the Dolphin Protection Consumer Information Act (DPCIA), as amended by the International Dolphin Conservation Program Act (IDCPA), require the Secretary of Commerce to conduct specified scientific research and make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program (IDCP), and any other relevant information, as to whether or not the intentional deployment on or encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the eastern tropical Pacific Ocean (ETP). The Secretary's finding serves as the basis for determining the definition of "dolphin-safe" as applicable to tuna harvested by purse seine vessels with carrying capacities of greater than 400 short tons operating in the ETP. Further, the DPCIA required the Secretary to make an initial finding in 1999, and a final finding no later than December 31, 2002.

On April 29, 1999, the National Marine Fisheries Service (NOAA Fisheries), on behalf of the Secretary, made an initial finding that there was insufficient evidence at that time to determine whether the deployment on and encirclement of dolphins by the

tuna purse seine fishery was having a significant adverse impact on any depleted dolphin stock in the ETP (64 FR 24590). Also in 1999, NOAA Fisheries submitted a Report to Congress containing the preliminary research findings to support that initial finding. That Report also described a decision analysis framework to evaluate quantitatively the various types of information gathered in the required studies in order to make the initial finding. The U.S. District Court for the Northern District of California, in *Brower* v. *Daley*, 93 F. Supp. 2d 1071 (N. D. Ca. 2000), set aside the 1999 determination, and that ruling was affirmed by the Ninth Circuit Court of Appeals in *Brower* v. *Evans*, 257 F. 3d 1058 (9th Cir. 2001).

The final research results provide substantially more information to support the final finding than was available for the initial finding in 1999. Some of this new information includes: updated dolphin abundance data, updated mortality estimates based on observer data, an updated review of scientific literature on stress in marine mammals, results from a necropsy study of dolphins killed in the fishery, a review of historical demographic and biological data related to dolphins involved in the fishery, results from the chase-recapture experiment, as well as information regarding variability in the biological and physical parameters of the ETP ecosystem over time. In making the final finding, all research required by the IDCPA was completed and considered.

To accommodate this newly available scientific information and ensure transparency in the development of its decision, NOAA Fisheries revised its decision-making process for the final finding. On February 15, 2002, NOAA Fisheries published a proposed Organized Decision Process (ODP) in the **Federal Register**. The ODP was designed to establish a framework for making the final finding. Comments were received on this proposal from the Inter-American Tropical Tuna Commission (IATTC), the Marine Mammal Commission (MMC), environmental organizations, the U.S. and the foreign tuna industries, members of the public, the U.S. Departments of State and Justice, two members of the U.S. Congress, and several foreign nations, among others. After careful consideration of these comments, NOAA Fisheries made revisions, as appropriate, and, on August 23, 2002, adopted a final ODP

The ODP differs from the previous decision framework primarily in that it takes into account different levels of uncertainty inherent in research of this nature. The ODP allows the Secretary to consider many different types of the information in light of the uncertainty and appropriately weigh the information based on the level of confidence that exists for the information. The ODP is also distinct from NOAA Fisheries' earlier decision framework in that it includes a mechanism for weighing information based on high standards for determining what is the best information available. As prescribed by the ODP, the weight given to the available scientific information will be determined by the degree to which it meets the following elements: (1) Relevance, (2) timeliness, (3) passed independent peer-review, and (4) available to NOAA Fisheries for verification.

The ODP defined the terms included in the weighting criteria. "Relevance" was defined to mean the scientific information is pertinent to the use of the information. "Timeliness" was defined to mean the relevancy of scientific information least degraded by the passage of time. "Passed independent peer review" was defined to mean the scientific information has been published in a refereed scientific journal in its field or independently read and criticized in writing by at least two peers; the criticism was disposed of either by acceptance or rebuttal, as appropriate by the author(s); and the disposition of the criticism by the author(s) was independently determined to be appropriate and adequate. Verification was defined to mean that the data, procedures, methods, equipment, mathematics, statistics, models, computer software, and anything else used to produce the scientific information are to be submitted to NMFS in a timely manner such that the scientific information may be replicated or rejected. For the final finding, "in a timely manner" was stated in the ODP as being material received as of May 1, 2002.

The NOAA Fisheries' ODP considers separate measures of fishery and environmental effects on dolphins, consisting of a series of questions for consideration in reaching the final finding. They are as follows: (1) The Ecosystem Question; (2) the Direct Mortality Question; (3) the Indirect Effects Question; and (4) the Growth Rate Question. For the Direct Mortality and the Growth Rate Questions, there are basic thresholds in the ODP that result in a "yes" or "no" answer. If the answer to the Direct Mortality Question is "yes", then the Secretary will conclude that the fishery is having a significant adverse impact. Similarly, if the answer to the Growth Rate Question is "no", then the Secretary will conclude that the fishery is having a significant adverse impact. Conversely, a "no" and a "yes" answer, respectively, would result in a finding of no significant adverse impact. For the Ecosystem and the Indirect Effects Questions, the Secretary will review the available information as well as the evidence presented by members of two expert panels in reaching final conclusions. The questions found in the ODP, along with the information used to reach the appropriate answers and rationale for each, are found below.

Research Conducted Pursuant to Section 304(a) of the MMPA

Pursuant to section 304(a) of the MMPA, NOAA Fisheries completed four years of specified research to support the Secretary's finding regarding the impact of the tuna purse seine fishery on depleted dolphin stocks in the ETP, in consultation with the MMC and the IATTC. The research program was broadly structured to include four components: abundance estimation, ecosystem studies, stress and other fishery effect studies, and stock assessment. The results of the required research were subjected to rigorous, independent peer reviews to ensure that the Secretary is provided with information of the highest caliber in making the final finding. NOAA Fisheries will submit these results in its Final Science Report to Congress within 90 days of the finding. A brief summary of each of the major categories of research follows.

Abundance Estimation. Knowledge of dolphin population levels is key to understanding the overall status of these stocks. Current dolphin abundance estimates were derived from research vessel surveys conducted in the ETP during 1998, 1999, and 2000, using improved analytical methods for abundance estimation. Survey data from nine earlier abundance surveys dating back to 1979 were also re-analyzed using these new methods. This time series of abundance estimates provides the core information for evaluations of trends, population growth rates, and ultimately stock assessment analyses for the three depleted dolphin stocks.

Ecosystem Studies. For a long-lived animal such as a dolphin, carrying capacity is more likely to be affected by long-term (over decades) changes rather than those occurring short-term (inter-annual or seasonal). NOAA Fisheries' ecosystem studies focused on investigations of temporal variation in as many parts of the ETP ecosystem as possible. These included physical and

biological oceanography, a range of trophic levels from the lowest (phytoplankton) to the highest (top predators), and as many species within each trophic level as possible.

Stress and Other Indirect Fishery Effects. Stress studies are also mandated by the MMPA amendments to address the concern that chase and encirclement during fishing operations might affect dolphins in ways that might not necessarily result in their immediate and observable death in the nets, but that could impede recovery. These are often called "cryptic" effects. Four related research projects generally termed "stress studies" were specifically required by U.S. law to study the effect of intentional encirclement on dolphins and dolphin stocks: a stress literature review, a necropsy study, a review of historical data, and a field study involving the repeated chasing and capturing of dolphins. The key lines of investigation included research on potential separation of dolphin cows and calves, measurement of acute and chronic physiological effects that could result in injury or death, observation of behavioral responses to fishing activities, and estimation of the average number of times a dolphin might be chased and encircled per-year per-stock.

Stock Assessments. The final component of the research, the stock assessment modeling, provides quantitative estimates of dolphin population growth rates and depletion levels, as well as a framework for testing hypotheses about the effects on dolphins of changes in carrying capacity and potential fishery effects. Of primary interest was an evaluation of the current population size relative to the population size that can be sustained by the ecosystem in the absence of human-induced mortality. This has a direct bearing on the potential rate of recovery for these depleted stocks and provides a means of evaluating the observed population growth rate in the context of the ecosystem and uncertainties associated with the estimates of abundance and mortality. Unfortunately, this question cannot be addressed for coastal spotted dolphins because historical estimates of mortality and abundance are not available for this stock.

Information Obtained Under the IDCP and Other Relevant Information

Pursuant to the MMPA, the Secretary is also required to consider "information obtained under the IDCP" and "other relevant information" when making the final finding. To this end, NOAA Fisheries worked with the IATTC to obtain various types of information relevant to this decision. This information included data on the number of dolphin sets made by the fishery and dolphin mortality reported by the IATTC observer program, among other things.

NOAA Fisheries also invited interested members of the public to submit such information for consideration. In order to properly assess and evaluate this outside information with sufficient time for making the finding by the date required in the statute (December 31, 2002), the deadline for submission of information was May 1, 2002. For the purposes of weighing outside information, NOAA Fisheries determined that information submitted by the deadline was submitted in a timely manner and is given greater weight than information that was submitted after this deadline. There was only one submission of outside scientific information by May 1, 2002. This consisted of a review by the IATTC of three previously published NOAA Fisheries papers on the subject of dolphin stress and other indirect effects of the tuna purse seine fishery on dolphins. NOAA Fisheries considers the review relevant, since it was received in a timely manner and was able to be evaluated and verified. The document is currently under review with a scientific journal, but otherwise has not been independently peer reviewed.

NOAA Fisheries submitted its Final Science Report to the IATTC and the MMC for their review as a mechanism by which to provide the Secretary with the best information in making the final finding. NOAA Fisheries received general comments from the MMC. The IATTC submitted comments pertaining to the NOAA Fisheries Science Report, as well as additional information and analyses. NOAA Fisheries considers this information relevant, although it was not able to thoroughly evaluate and verify the information. NOAA Fisheries did, however, prepare a cursory assessment of the IATTC's comments for consideration. In summary, the IATTC's comments include in-depth analyses of relevant information and specific comments pertaining to the analysis and interpretation of information by NOAA Fisheries. The IATTC's response also concludes that the fishery is not having a significant adverse impact on depleted dolphin stocks in the ETP. The MMC's comments concluded that there is insufficient evidence to determine that the fishery is not having a significant impact on depleted stocks and that there is only inconclusive evidence that the intentional chase and encirclement of dolphins by the fishery is having adverse impacts on the recovery of dolphin stocks. While this information is relevant and was considered in making the finding, it cannot be weighed as heavily as the information contained in NOAA Fisheries' Final Science Report.

Expert Panels

NOAA Fisheries appointed two panels of independent scientific experts to provide individual opinions regarding the answers to the Ecosystem and the Indirect Effects questions as a means of assisting in answering the two questions in the ODP for which there are the most complex and/or uncertain data (67 FR 31279). The panelists were nominated by the public, with the help of several scientific and professional societies, and were chosen by a committee of individuals which included representatives from NOAA Fisheries, the IATTC, the MMC, and an independent scientific body. The individual experts based their opinions on a review of the results from the required research program, information obtained under the IDCP, and other relevant information, along with the expert knowledge that these individuals possess as leaders in their respective fields.

Analysis

The Ecosystem Question. During the period of the fishery, has the carrying capacity of the ETP for dolphins declined substantially or has the ecological structure of the ETP changed substantially in any way that could impede depleted dolphin stocks from growing at rates expected in a static ecosystem? Or has the carrying capacity increased substantially or has the ecological structure changed in any way that could promote depleted dolphin stocks to grow at rates faster than expected in a static ecosystem?

Changes in an ecosystem can fundamentally affect the carrying capacity of a species that inhabits that ecosystem. Changes that adversely affect the habitat of a species, including its prey, likely will result in a decrease in the carrying capacity of that species. For depleted species, such adverse changes also will likely slow the rate at which these species recover.

Because substantial changes in an ecosystem can affect a depleted population or stock's recovery, the ODP considers scientific evidence of whether a significant ecosystem change has occurred in the ETP and if so, how that change may be impacting depleted dolphin stocks. In considering the possible effects of ecosystem changes, NOAA Fisheries collected or reviewed

physical and biological oceanography data, including information on a range of trophic levels from the lowest (phytoplankton) to the highest (top predators), and as many species within each trophic level as possible. NOAA Fisheries also solicited the opinions from members of a separate Ecosystems Panel, comprised of independent scientific experts in biological oceanography and ecology.

Available scientific information reveals the existence of periodic, low frequency changes within the ETP. These longer, decadal-changes are evident from sea surface temperature data beginning in 1901. Notably, a shift occurred in the late 1970s that was detected throughout the Pacific Ocean. Changes at that time in the physical environment and in biological communities were clearly documented in the North Pacific Ocean. In the ETP, this shift resulted in a warming of less than 1°C. Coincident with increase in temperature in the ETP, there was a weakening of trade winds and a small change in surface chlorophyll. No other responses to this late 1970s shift have been reported, but biological data prior to 1976 are sparse or currently unavailable in a form that would allow comparisons with more recent data.

In addition to periodic, low-frequency ecosystem changes, the ETP ecosystem is periodically affected by the El Nino/Southern Oscillation (ENSO), which occurs on two to seven year periods. All investigations by NOAA Fisheries indicated that variability associated with ENSO events is the predominant variability throughout the ecosystem, having a much greater effect than periodic decadal-scale changes. These ecosystem changes are in part supported by analyses of data on prey fishes, squids, and seabirds collected by NOAA Fisheries during dolphin surveys since 1986. The broader significance of these changes, however, is limited given the absence of comparable data prior to the early 1980s.

NOAA Fisheries' research indicates that dramatic reductions in carrying capacity caused by ecosystem changes is considered unlikely. If an ecosystem change dramatic enough to impact dolphin stocks had occurred, it is unlikely that the only animals affected would be dolphins. Data on a wide range of habitat variables and species were collected, beginning in 1986, as part of the NOAA Fisheries dolphin assessment cruises. No dramatic shifts were detected. However, NOAA's ability to determine existence and magnitude of ecosystem changes in the ETP, together with the effect of those changes upon depleted stocks, is significantly limited by a paucity of relevant scientific information. Questions remain as to the actual carrying capacity of depleted stocks under even optimal conditions. Additionally, there are few data available concerning the ETP ecosystem prior to the late 1970s, hindering the ability to examine low frequency ecosystem changes and their effect on depleted marine mammal stocks. Assessments are further limited by the possibility that even small changes in background physical conditions can have large effects upon species within that ecosystem.

The potential effect of ecosystem changes was addressed by the five members of the Ecosystem Panel, each of whom had significantly different expertise to bring to bear on their individual opinions. The Ecosystem Expert Panel members' assessments were based on their review of the NOAA Fisheries Final Science Report, and relevant oceanographic and ecosystem data from the period of the fishery.

All experts agreed that historical surface temperature data indicate that since the mid 1970s, the Pacific Ocean has been in a warm phase of the Pacific Decadal Oscillation (PDO). Within the ETP, this PDO cycle has resulted in a surface temperature increase of 2 degrees centigrade above temperatures documented during a cold phase which occurred in the 1950s and 1960s. (Report of Michael Landry). While increased temperatures may result in some positive effects, most experts agreed that temperature increases would result in a deeper thermocline, which in turn would reduce the availability of prey species for depleted marine mammals.

In addition to ecological changes brought on by PDO, experts also noted environmental changes attributable to ENSO. Like PDO, changes associated with ENSO result in increased surface water temperatures. Evidence indicates that prey fish are substantially depressed during ENSO. (Reports of Read, Landry, and Stewart).

According to these experts, the extent to which these PDO and ENSO warming cycles have affected depleted marine mammal stocks is unknown, but potentially significant. One expert concluded that it is unlikely that the ecological structure of the ETP has changed substantially in a way that could significantly impede or promote the population growth of depleted stocks. (Report of Andrew Read). Others, expressed a different view. In Landry's view, "such changes provide a credible explanation for at least part of the observed slow recovery of dolphin stocks * * *." In the view of Stewart, "the argument is persuasive that the carrying capacity of the ETP, relative to the ecologies and life histories of northern offshore spotted dolphins and eastern spinner dolphins, is lower now (and the past several or more years), that [sic] it was prior to and during the early phase of the fishery." Moreover, Stewart concludes that depleted stocks had begun to recover after direct mortality declined below the replacement rate in the 1980s, but that this recovery may have been interrupted by warm water events in the 1990s. Barber notes that, "There are indications that the biological productivity of the ETP has changed in response to the low-frequency physical variability known as PDO. These indications, while speculative, require that we not rule out the possibility that the carrying capacity of the ETP for dolphins has declined and that this decline has affected recovery of the population. * * * We also cannot rule out the possibility that the ecological structure of the ETP has changed substantially in a way that could impede the recovery of the dolphin stocks."

Panel experts agree with NOAA's view that there is insufficient information to adequately assess the existence or magnitude of ecosystem changes, or the extent to which these changes have impacted depleted dolphins. As one expert noted, "* * * we do not have a sufficient understanding of the structure or function of the ETP ecosystem to answer this question. Our knowledge of the ecological interactions of dolphins and other ecosystem components, including yellowfin tuna, is so rudimentary that in most cases, we cannot predict whether a particular environmental change might promote or impede the population growth of dolphins. Furthermore, we do not have a sufficient time-scale of observations to allow tests of hypotheses regarding such ecological changes and their effects." (Report of Andrew Read).

Comments of the IATTC state that between 1986–1990 and 1998–2000, population surveys indicate that large numbers of non-depleted dolphins moved into the fishery off Central America. By competing for common food sources, this migration could have significantly affected the carrying capacity of depleted dolphins and hindered recovery. The MMC commented that available information is insufficient to support a conclusion that ecosystem changes have impacted dolphin recovery, but the MMC provided no additional information on this point.

Based upon the above information, remaining data gaps, and expert opinions, NOAA Fisheries cannot determine whether the carrying capacity of the ETP for dolphins has declined substantially or that the ecological structure of the ETP has changed substantially in a way that could impede depleted dolphin stocks from growing at rates expected in a static ecosystem.

The Direct Mortality Question. For any depleted stock, does the estimate of the total fishery-attributed dolphin mortality, obtained by adding together estimates of direct mortality and, where appropriate, quantifiable levels of indirect mortality, exceed the mortality standard considered appropriate by the Secretary?

Direct mortality as reported by observers is a known and easily quantifiable impact of the tuna purse seine fishery on depleted ETP dolphin stocks. To answer this question, NOAA Fisheries calculated the potential biological removal (PBR) levels for each depleted dolphin stock in the ETP. The PBR is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size. Direct mortality and estimates of indirect mortality (where appropriate) were compared to the PBR levels and other mortality standards for each stock. Additionally, possible changes in the carrying capacity and/or the ecosystem structure of the ETP were considered but deemed scientifically inconclusive.

The ODP calls for comparison between the level of direct mortality and a "mortality standard considered appropriate by the Secretary." The ODP therefore allows flexibility in determining what the threshold should be, specifically because the results of analyses on indirect mortality as well as ecosystem changes might have called for a threshold lower than PBR. For example, if there had been sufficient sample sizes to make population-level inferences of the impact of indirect effects, and/or if there had been strong evidence of a dramatic reduction in carrying capacity due to ecosystem changes, then a level of mortality close to PBR might have been considered too high.

The average of the abundance estimates for the most recent surveys are 641,153 northeastern offshore spotted dolphins, 448,608 eastern spinner dolphins, and 143,725 coastal spotted dolphins. The coefficients of variation (CV) for these estimates are approximately 17%, 23%, and 36%, respectively. CV is a measure of the variability of the estimate. Much of the essential information regarding coastal spotted dolphins is lacking, especially from the early years of the fishery. This lack of information prevents NOAA Fisheries from further refining the precision of this stock's abundance estimation.

Reported levels of dolphin mortality for each stock have been very low in recent years (far less than PBR levels for approximately a decade) and have only rarely exceeded the strict stock-specific mortality limits set forth by the IDCP. These stock mortality limits (SMLs) are roughly 10% of the PBR standard. For this decision, the PBR standard, an established standard of mortality, provides the best insight into the significance of reported mortality to the dolphin stocks. By contrast, SMLs are not strictly science-based values, but rather reflect the lowest possible mortality achievable by the fishery and values that should be biologically insignificant to dolphin stocks. Comparing reported mortality to established standards of mortality, such as the PBR and the SML systems, can provide insight into the significance of reported mortality to the dolphin stocks. In 2001, the most recent year for which annual mortality estimates are available, the total reported mortality was 466 eastern spinner dolphins, 656 northeastern offshore spotted dolphins, and two spotted dolphins. PBR levels during this same time period were for 1298 eastern spinner dolphins, 2367 northeastern offshore spotted dolphins, and 1073 coastal spotted dolphins.

The only source of quantifiable information on levels of indirect mortality comes from investigations into the separation of cow-calf pairs during fishing operations. Analyses of purse seine sets from 1973 to 1990, in which all killed dolphins were examined, led to the conclusion that there is some separation of calves from their mothers. Based on reasonable assumptions about length of nursing dependency, NOAA Fisheries estimated that mortality was underestimated by 10–15% for spotted dolphins and 6–10% for spinner dolphins in this sample. Reported mortality for 2001, when combined with cow-calf separation estimates, is approximately: 31% of PBR for northeastern offshore spotted dolphin and 39% of PBR for eastern spinner dolphin. There is currently no way to quantify indirect mortality for coastal spotted dolphins. Therefore, direct mortality is based on that reported by the on-board observer programs and is only 0.2% of PBR for coastal spotted dolphin. When reported mortality for 2001 is combined with the estimate of cow-calf separation, quantifiable direct mortality is well below the PBR level for each stock.

NOAA Fisheries has a relatively high degree of confidence in both the dolphin abundance estimates and in a minimum estimate of mortality owed to cow-calf separation. Additionally, the IDCP utilizes 100% observer coverage to obtain dolphin mortality information, so unlike most other fisheries around the world, dolphin mortality is enumerated rather than estimated. Based on these data, information regarding dolphin mortality in the fishery obtained through the IDCP, and in consideration of the opinions of the Ecosystem Expert Panel, direct mortality does not exceed PBR, or any other appropriate mortality standard, for any of the depleted dolphin stocks.

The Indirect Effects Question. For each stock, is the estimated number of dolphins affected by the tuna fishery, considering data on sets per year, mortality attributable to the fishery, indicators of stress in blood, skin and other tissues, cow-calf separation, and other relevant indirect effects information, at a magnitude and degree that would risk recovery or appreciably delay recovery to its optimum sustainable population (OSP) level (how and to what degree)?

While direct mortality from sources in the tuna fishery causes a known impact on dolphin stocks, there are possible means by which the fishery could be indirectly impacting dolphins. Therefore, an assessment of indirect effects is relevant to making the final finding. Sources of indirect mortality include cow-calf separation and may include other types of effects resulting from chase and capture, which could compromise the health of at least some of the dolphins involved. The answer to this question was based on information collected and/or evaluated by NOAA Fisheries, as well as on opinions of individual members of a panel of independent scientific experts in veterinary science, physiology, and other stress-related fields (the Indirect Effects Panel).

In the aggregate, available data suggest the possibility that purse-seining activities result in indirect effects that negatively impact dolphins. However, available data are insufficient to determine whether the fishery is causing indirect effects of sufficient magnitude to either risk recovery or appreciably delay recovery. Completed research has included a combination of field experiments, retrospective analyses, direct observation, and mathematical modeling, to address a

broad range of stress-related effects and other factors that might lead to unobserved dolphin mortalities. These data, however, are insufficient to quantify potential population-level impacts or determine whether population recovery might be delayed, because sample sizes were small and baseline data unavailable. For example, in implementing a specifically mandated necropsy program that was conducted between 1998 and 2000, it was possible to obtain samples from only 56 dolphins; a number that is insufficient to make population-level inferences. Additionally, a chase-encirclement stress study, was conducted during August and October of 2001. Because of the experiment's complexity and logistical challenges, it was recognized from the outset that sample sizes for the studies would be limited and that population-level inferences were unlikely.

Notwithstanding these data limitations, NOAA Fisheries examined specific indirect effects that may negatively impact dolphin stocks. Specifically, NOAA Fisheries examined the possibility that cow-calf pairs are separated during chase and encirclement, causing the subsequent death of the calf. Analyses of purse-seine sets suggests that some separation occurs. However, more conclusive mortality estimates relative to chase do not exist, as direct observations currently are not feasible. Additional mortality associated with separation is possible in instances where dolphins are chased but not encircled. However, mortality estimates relative to chase do not exist, as direct observations are not feasible. Even if correct, estimates of confirmed indirect dolphin mortality due to cow-calf separation do not substantially increase the total levels of mortality for each stock.

Additionally, NOAA Fisheries investigated the frequency with which the fishery interacts with individual dolphins and with the dolphin stocks as a whole each year. For northeastern offshore spotted dolphins, there are over 5,000 dolphin sets per year, resulting in 6.8 million dolphins chased per year and 2.0 million dolphins encircled per year (on average for 1998–2000). For eastern spinner dolphins, there are about 2,500 sets per year, 2.5 million dolphins chased per year, and 300,000 dolphins encircled per year. For coastal spotted dolphins, there are about 154 sets per year, 284,300 dolphins chased per year, and 39,700 dolphins captured per year. NOAA Fisheries estimated that a northeastern offshore spotted dolphin is chased 10.6 and encircled 3.2 times, an eastern spinner dolphin is chased 5.6 and encircled 0.7, and a coastal spotted dolphin is chased 2.0 times and encircled 0.3 times per year on average. Unfortunately, there is much uncertainty surrounding these statistically estimated averages. Moreover, there are insufficient data to determine the impact of stress and other chase-related effects on dolphin populations. Additional research must be done on this before there will be sufficient data to yield definitive results.

Experts noted that there is inadequate information to make a determination on the existence or extent of indirect effects, as they relate to dolphin recovery. To assist the Secretary in answering this difficult question, a panel of five experts was asked to address the issue of indirect mortality. All five expert panelists indicated that indirect fishery effects, especially cow-calf separation and increased likelihood of predation, may account for the lack of expected dolphin recovery. The strength of their opinions varied greatly, however, noting the large amounts of uncertainty in the data. The IATTC noted that indirect effects (such as cow-calf separation, elevated stress hormones and enzymes, and heart damage) are speculative, given the absence of adequate data. The MMC provided no additional studies, but agreed that, "* * * existing information does not provide a sufficient basis for quantifying any increased levels of mortality that occur during chase operations, reproductive failure resulting from stress, facilitated predation, post-release capture myopathy, or disruption of the tuna-dolphin bond."

In sum the available information on indirect effects, including much of the information regarding cow-calf separation, is limited, and therefore bars population-level inferences of the effects of stress on dolphin stocks. Additional research is necessary to better understand these more complex effects on dolphin stocks. Accordingly, the best available information, including data on sets per year, mortality attributable to the fishery, indicators of stress in blood, skin and other tissues, cow-calf separation, the Expert Panel opinions, and other relevant information, indicates that indirect effects caused by purse-seine fishing are not impacting dolphins to a degree that would risk or appreciably delay recovery to optimum population levels.

The Growth Rate Question. For each depleted dolphin stock, is the observed population growth rate sufficient to ensure that each stock's recovery to OSP is not appreciably delayed?

To answer this question, NOAA Fisheries fit a population model to a time series of research vessel abundance estimates, using the time series of estimates of the incidental mortality from tuna vessel observer data (TVOD) collected by IATTC and national program observers, as well as TVOD as indices of abundance in a subset of the analyses. NOAA Fisheries also estimated growth rates for each dolphin stock and measures of uncertainty for each estimate. Finally, assessments from the members of the Ecosystem Panel were used when considering the estimated growth rates.

The assessment modeling produced additional information on the current depletion levels of two of the three depleted dolphin stocks. Depleted means that a marine mammal population's abundance is less than 60% of its carrying capacity or the maximum size of a particular population that can be sustained within a given area or habitat. Northeastern offshore spotted dolphins are at 20% and eastern spinner dolphins at 35% of their pre-fishery population levels and thus remain depleted under the MMPA. Similar estimates for coastal spotted dolphins are unavailable, due to a lack of data on fishery-related mortality and time-series abundance estimates from the early years of the fishery.

NOAA Fisheries estimated a "one-slope" and "two-slope" model of growth rates for dolphin populations. While the one-slope model assumes a constant growth over the period studied, the two-slope model allows for a change in the growth rate. The one-slope model indicates that the dolphin stocks are growing at low rates (1–2%) although there is a 95% confidence that they are not declining. The two-slope model results indicate that the growth rate decreased, but was still positive, for one stock but became negative for a second stock during this past decade. The two models produce roughly equally probable results.

Another important consideration in assessing the impact of the fishery on depleted stocks is to determine the time to recovery for these stocks under current conditions. Using the growth rates mentioned above in a population model, estimated times to recovery were determined for these two stocks. When abundances of the depleted stocks are projected into the future, the one-slope model predicts recovery in 78 years for northeastern offshore spotted dolphins, and in 65 years for eastern spinner dolphins. The two-slope model, having roughly equivalent support by the data, predicts that neither stock would recover in at least 200 years. This two-

slope model shows that the northeastern offshore spotted dolphin abundance would stay constant, while eastern spinner abundance would decline, assuming that there have been no change in carrying capacity since the late 1950s.

[FR Doc. 03–798 Filed 1–14–03; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Notice, Roundtable on Convergence of Communications Technologies, "Voice over Internet Protocol (VoIP)"

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will host an afternoon roundtable discussion on Voice over Internet Protocol (VoIP). The roundtable will address the technical and functional aspects of VoIP, the state of the VoIP marketplace, and the policy and regulatory issues that may arise with use of such convergence technology.

DATES: The roundtable will be held 1 p.m. to 5 p.m., Wednesday, February 12, 2003.

ADDRESSES: The roundtable will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC in Room 4830. (Entrance to the Department of Commerce is on 14th Street between Constitution and Pennsylvania avenues.) This roundtable is open to the public. To facilitate entry into the Department of Commerce, please have a photo identification and/or U.S. Government building pass, if applicable.

FOR FURTHER INFORMATION CONTACT: Jennifer Guy, Office of the Assistant Secretary for Communications and Information, at (202) 482–1840, or electronic mail: *jguy@ntia.doc.gov*. Media inquiries should be directed to the Office of Public Affairs, NTIA, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: Advancements in the development of Internet Protocol (IP) technologies are expanding the viability of IP-based networks to support additional features, including the transmission of voice, commonly referred to as VoIP. While traditional telephone service uses circuit-switched technology to establish a dedicated line between communicating parties, VoIP applications use packet-switched technology that divides the voice transmission into packets of data and sends them over the fastest available route. VoIP systems may use bandwidth more efficiently and may represent cost savings for providers and subscribers by using a single network for both voice and data. VoIP has been developing over the last decade, with a number of companies already deploying the service or announcing introduction in the near future.

NTIA's roundtable will address the issues necessary to understand VoIP, how it works, the marketplace trends, and the impacts VoIP may have on communications and information policies and regulations. As the principal adviser to the President on communications and information policies, NTIA is vested with "[t]he authority to conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology." 47 U.S.C. § 902(M). The roundtable dialogue will help the Administration to better understand the technology, its relation to the telecommunications market, especially to broadband, and prepare for participation in other venues, including the International Telecommunications Union (ITU).

The roundtable will be divided into three sessions. First, NTIA will present a brief overview of VoIP, featuring a demonstration of VoIP technology using the Commerce Department's newly-installed VoIP telephone system. Two panel discussions will follow: the first panel will focus on the VoIP marketplace, and the second panel will address policy considerations for VoIP. Each of these sessions will also include a brief audience question and answer session.

The roundtable will be webcast. A final, updated copy of the agenda, including a link for the webcast will be available on NTIA's web page at *www.ntia.doc.gov*.

Public Participation

This meeting will be open to the public. Seating for public attendees is limited and is available on a first-come, first served basis. The roundtable will be physically accessible to people with disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Jennifer Guy (see contact information above) at least three (3) days prior to the meeting.

Dated: January 9, 2003.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 03–801 Filed 1–14–03; 8:45 am]
BILLING CODE 3510–60–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Public Key Infrastructure (PKI) Certificate Action Form

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 17, 2003.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at (703) 308–7400; or by electronic mail at *susan.brown@uspto.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Fred Whiteside, Information Technology Security Program Office, USPTO, Washington, DC 20231; by telephone at (703) 308–6973; or by electronic mail at *frederick.whiteside@uspto.gov*.

SUPPLEMENTARY INFORMATION

I. Abstract

The Government Paperwork Elimination Act (GPEA) directs federal agencies to implement electronic commerce systems that will enable the collection and dissemination of information while also ensuring the security and validity of information that is transmitted electronically. In support of the GPEA and its own electronic filing initiatives, the United States Patent and Trademark Office (USPTO) has implemented Public Key Infrastructure (PKI) technology to support electronic commerce between the USPTO and its customers. PKI is a set of hardware, software, policies and procedures used to provide several important security services for the electronic business activities of the USPTO. Using PKI ensures the

confidentiality of unpublished patent applications in accordance with 35 U.S.C. 122 and Article 30 of the Patent Cooperation Treaty.

In order to provide the necessary security for its electronic commerce system, the USPTO uses PKI technology to protect the integrity and confidentiality of information submitted electronically to the USPTO. PKI employs public and private encryption keys to authenticate the customer's identity and support secure communication between the customer and the USPTO. Customers may submit a request to the USPTO for a digital certificate, which enables the customer to download and use the Entrust cryptographic software to create the encryption keys necessary for electronic identity verification and secure transactions with the USPTO. This digital certificate is required in order to access secure online systems that are provided by the USPTO, such as obtaining patent application information through the Patent Application Information Retrieval (PAIR) system or filing patent applications and related documents electronically.

This information collection includes the Certificate Action Form (PTO–2042), which is used by the public to request a digital certificate. This form is available for download from the USPTO Web site. This form may also be used by customers to request the revocation of a digital certificate or key recovery in the event of a lost or corrupted certificate. Requests for a certificate must include a notarized signature in order to verify the identity of the applicant. In addition, a Subscriber Agreement is included with the Certificate Action Form to ensure that customers understand their obligations regarding the use of the digital certificates as well as the Entrust software, which authorized users may download from the USPTO Web site. The Certificate Action Form collects personal information that is subject to the Privacy Act of 1974 and is covered by a System of Records Notice that was published in the **Federal Register** (Vol. 65, No. 80) on April 25, 2000.

II. Method of Collection

By mail or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0045.

Form Number(s): PTO–2042.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; farms; the Federal Government; and State, local or tribal governments.

Estimated Number of Respondents: 8,000 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to read the instructions and Subscriber Agreement, gather the necessary information, prepare, and submit the Certificate Action Form (PTO–2042).

Estimated Total Annual Respondent Burden Hours: 4,000 hours per year.

Estimated Total Annual Respondent Cost Burden: $564,000 per year. The USPTO expects that the information in this collection will be prepared by attorneys and paraprofessionals, as well as independent inventors. Using the professional rate of $252 per hour for associate attorneys in private firms and the rate of $30 per hour for paraprofessionals and independent inventors, the USPTO estimates that the average hourly rate for all respondents for this collection will be $141 per hour. Therefore, the respondent cost burden for this collection will be $564,000 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Certificate Action Form (including Subscriber Agreement)	30 minutes	8,000	4,000
Total		8,000	4,000

Estimated Total Annual Non-hour Respondent Cost Burden: $2,960. There are no capital start-up or maintenance costs or filing fees associated with this information collection. However, customers may incur postage costs when submitting the Certificate Action Form to the USPTO by mail. The USPTO estimates that the first-class postage cost for a mailed Certificate Action Form will be 37 cents, for a total non-hour respondent cost burden in the form of postage costs of $2,960 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 8, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–773 Filed 1–14–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed reinstatement of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information

collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on or before March 17, 2003.

ADDRESSES: Written comments and recommendations on the information collection should be sent to TRICARE Management Activity, Health Program Analysis and Evaluation, 5111 Leesburg Pike, Falls Church, VA, Attn: Ms. Kim Frazier.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address. Or call TRICARE Management Activity 703–681–3636.

Title, Associated Forms, and OMB Number: Armed Forces Health Professions Loan Repayment Program Loan Information Form.

Needs and Uses: Form will be used by Loan program participants, to submit to lenders through their Service Representatives, to obtain verification of loan application data.

Affected Public: Individuals or household, Federal government.

Annual Burden Hours: 50.

Number of Respondents: 100.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion, only when a beneficiary is insured under circumstances creating possible liability in a third party.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Title 10, U.S.C., requires applicants to submit this form, to their Service representative, prior to participation in the Health Loan Repayment Program (HPLR). Lenders will verify the data submitted and respond back to the Service Representative. All loans must meet federal standards and be approved by the Defense Finance and Accounting Service prior to disbursement of funds.

Dated: January 8, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–783 Filed 1–14–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 14, 2003.

Title, Form Number, and OMB Number: Candidate Procedures; USMA Forms 21–16, 21–23, 21–25, 21–26, 5–520, 5–518, FL 546, FL 481, 5–2, 5–26, 5–515, FL 480–1, FL 520, FL 261, 21–8, 21–14, 5–497; OMB Number 0702–0061.

Type of Request: Reinstatement.

Number of Respondents: 92,525.

Responses per Respondent: 1.

Annual Responses: 92,525.

Average Burden per Response: 225 minutes (average).

Annual Burden Hours: 11,720.

Needs and Uses: Candidates to the United States Military Academy (USMA) provide personal background information, which allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher, at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 8, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–782 Filed 1–14–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Practice Implementation Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Business Practice Implementation Board (DBB) will meet in open session on Wednesday, January 29, 2003, at the Pentagon, Washington, DC from 0900 until 1000. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board's Human Resource Task Group will deliberate on its findings and proposed recommendations related to tasks assigned last year. Additional, task groups may deliberate on proposed recommendations.

DATES: Wednesday, January 29, 2003, 0900 to 1000 hrs.

ADDRESSES: Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The DBB may be contacted at: Defense Business Practice Implementation Board, 1100 Defense Pentagon, Washington, DC 20301–1100, via E-mail *DBB@osd.pentagon.mil*, or via phone at (703) 695–0505.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contact the DBB no later than Wednesday, January 22 for further information about admission as seating is limited.

Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by Tuesday, January 21 to allow time for distribution to the Board members prior to the meeting.

Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding thirty-minutes.

Dated: January 8, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–781 Filed 1–14–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Alternative Fuel Vehicle Acquisition Reports

AGENCY: Department of Defense.

ACTION: Notice of availability.

SUMMARY: Pursuant to 42 United States Code 13218, the Department of Defense gives notice that the Department's 1998–2001 alternative fuel vehicle compliance reports are available on-line at *https://www.denix.osd.mil/denix/Public/Library/AFV/afv.html*. The 2002 reports are being prepared and will be posted to this site. Additional information concerning the Department's alternative fuel vehicle program is contained in the Defense Environmental Quality Program Annual Reports to Congress, available on line at *https://www.denix.osd.mil/denix/Public/News/news.html#osd*.

FOR FURTHER INFORMATION CONTACT: Lt Col Bruce Harding at (703) 604–1831, or via e-mail at *bruce.harding@osd.mil*.

Dated: January 8, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–780 Filed 1–14–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 02–97–NG]

Bay State Gas Company; Order Granting Long-Term Authority to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on January 7, 2003, it issued DOE/FE Order No. 1843 granting Bay State Gas Company (Bay State) authority to import up to 62,748 Mcf per day of natural gas from Canada, beginning on January 15, 2003, and extending through April 1, 2005. The natural gas will be purchased from ENCANA Corporation to serve its customers in Massachusetts.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 9, 2003.

Clifford Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

[FR Doc. 03–882 Filed 1–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. PP–230–3]

Application to Transfer Presidential Permit; International Transmission Company, ITC Holdings Corp, DTE Energy Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: International Transmission Company (ITC), ITC Holdings Corp., and DTE Energy Company have jointly applied to transfer Presidential Permit PP–230–2 from ITC to a new corporate entity that will not be affiliated with DTE Energy.

DATES: Comments, protests or requests to intervene must be submitted on or before January 30, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038. Existing Presidential permits are not transferable or assignable. However, in the event of a proposed voluntary transfer of facilities, in accordance with the regulations at 10 CFR 205.323, the existing permit holder and the transferee are required to file a joint application with DOE that includes a statement of reasons for the transfer.

On April 19, 2001, DOE granted Presidential Permit PP–235–2 to ITC for four existing international electric transmission facilities that cross the U.S.-Canadian border. These permitted facilities include:

(1) One 230,000-volt (230–kV) transmission line, including one 675-MVA phase-shifting transformer connecting the Bunce Creek Station, located in Marysville, Michigan, with Hydro One's Scott Transformer Station, located in Sarnia, Ontario (identified as the B3N facility);

(2) One 230–kV transmission line connecting the Waterman Station, located in Detroit, Michigan, with Hydro One's J. Clark Keith Generating Station, located in Windsor, Ontario (identified as the J5D facility);

(3) One 345–kV transmission line connecting the St. Clair Generating Station, located in East China Township, Michigan, with Hydro One's Lambton Generating Station, located in Moore Township, Ontario (identified as the L4D facility); and

(4) One 230–kV transmission line connecting the St. Clair Generating Station with Hydro One's Lambton Generating Station (identified as the L51D facility).

Presidential permits originally were granted to Detroit Edison for the construction, operation, maintenance, and connection of these facilities. However, as a result of a series of corporate actions and divestitures, these facilities were transferred to ITC.

On January 6, 2003, ITC, ITC Holdings Corp., and DTE Energy Company (collectively, the "Applicants") jointly filed an application with DOE to transfer Presidential Permit PP–230–2 from ITC to a new corporate entity that will be created following a series of corporate restructurings. The purpose of the joint application is to ensure that the authority contained in the Presidential permit will continue in force and be transferred from one corporate entity to the next as the series of corporate restructurings are accomplished and the subject facilities are voluntarily transferred. In the instant application, the Applicants indicate that there will be no physical changes to any of the existing permitted facilities and that the subject facilities will continue to be operated in accordance with all of the terms and conditions contained in Presidential Permit PP–230–2.

The Applicants are expecting that the Federal Energy Regulatory Commission will take final action on the series of corporate restructurings by February 20, 2003, and the Applicants have requested that DOE expedite the processing of this application so that a final decision on the request to transfer the Presidential permit be completed by that date. Accordingly, DOE has

shortened the comment period for this proceeding to 15 days.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the joint application to transfer Presidential Permit PP–230–2 should be clearly marked with Docket PP–230–3. Additional copies are to be filed directly with M. Douglas Dunn, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005, R. Michael Sweeney and Bonnie A. Suchman, Troutman Sanders LLP, 401 9th Street, NW., Suite 1000, Washington, DC 20004, and Raymond O. Sturdy, Jr., DTE Energy Company, 2000 2nd Avenue, Detroit, MI 48226.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," and then "Pending Procedures" from the options menus.

Issued in Washington, DC, on January 10, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–881 Filed 1–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–013]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rates

January 9, 2003.

Take notice that on December 31, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing two executed service agreements between Transco and BP Energy Company that contain negotiated rates under Transco's Rate Schedule FT.

Transco states that these service agreements are the result of the permanent releases of two service agreements containing negotiated rates previously filed by Transco pertaining to its MarketLink and Leidy East Expansion Projects. Aquila Energy Marketing (Aquila), one of Transco's MarketLink and Leidy East shippers, agreed to permanently release all of its firm MarketLink transportation service (25,000 dekatherms of gas per day) and all of its firm Leidy East transportation service (25,000 dekatherms of gas per day) to BP Energy Company effective January 1, 2003, at the same negotiated rates and primary term contained in Aquila's existing service agreements. For both service agreements, the effective date of the permanent release is January 1, 2003.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–890 Filed 1–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for a New License

January 9, 2003.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing*: Notice of Intent to File an Application for New License.

b. *Project No*: 2230.

c. *Date filed*: November 13, 2002.

d. *Submitted By*: City and Borough of Sitka, Alaska.

e. *Name of Project:* Blue Lake Hydroelectric Project.

f. *Location:* The Blue Lake project is located 5 miles east of the City of Sitka, on Sawmill Creek (formerly Medvetcha River) at stream mile 2.7.

g. *Filed Pursuant to*: Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at the City and Borough of Sitka, 105 Jarvis Street, Sitka, Alaska 99835, (907) 747–6633.

i. *FERC Contact:* Nicholas Jayjack, 202–502–6073, *Nicholas.Jayjack@ferc.gov*.

j. *Expiration Date of Current License*: March 31, 2008.

k. *Project Description*: The project includes a 211-foot high dam with a crest length of 256 feet, a submerged concrete intake structure, a 1,225-acre reservoir (Blue Lake), a 7,110-foot long power conduit consisting of both steel penstock and unlined tunnel segments, three powerhouses with a combined capacity of 7.5 megawatts, and three transmission lines with a combined length of 6.5 miles. The project occupies

812 acres of U.S. lands administered by the U.S. Forest Service.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2230. Pursuant to 18 CFR 16.9(b)(1), each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 2006.

A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–888 Filed 1–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–085]

Notice of Application for Non-project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

January 9, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use of Project Lands.

b. *Project No*: 349–085.

c. *Date Filed:* December 17, 2002.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Project.

f. *Location:* The project is located on the Tallapoosa River in the counties of Coosa, Elmore, and Tallapoosa, Alabama. The Willow Point Golf and Country Club site does not involve federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and sections 799 and 801.

h. *Applicant Contact:* Mr. Alan L. Peeples, Alabama Power Company, P.O. Box 2641, 600 North 18th Street, Birmingham, Alabama, 35291. Telephone (205) 257–1401, or E-mail address: *alpeeple@southernco.com.*

i. FERC Contacts: Any questions on this notice should be addressed to: Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov* .

j. Deadline for filing comments and or motions: January 31, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–349–085) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Requests*: The licensee proposes to grant an easement for the renovation of the golf course at Willow Point Golf and Country Club on Lake Martin in Tallapoosa County, Alabama. The proposal includes the mechanical excavation from the lake bottom of 2110 cubic yards of material. About 1200 cubic yards of this excavated material will be used to fill 0.16 acres of Martin Reservoir with the remaining material placed at other non-project locations on the golf course. This will result in approximately 910 cubic yards net increase in the storage volume of the reservoir. Finally, the proposal includes the addition of two rock boulder seawalls. One seawall will be located in the area of the excavation work and will be approximately 462.5 feet long. The second seawall will be approximately 225 feet long and will be located along the existing shoreline which will be backfilled to the 490-foot project boundary.

l. *Location of the Applications*: The filing is available for review at the Commission in the Public Reference Room , located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCONLINESUPPORT@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–889 Filed 1–14–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0329; FRL–7282–9]

Asulam; Availability of Tolerance Reassessment Eligibility Decision Documents for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60–day public comment period on the Tolerance Reassessment Eligibility Decision (TRED) documents for the pesticide active ingredient asulam. The TRED represents EPA's formal regulatory assessment of the human health data base of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Comments, identified by docket ID number OPP–2002–0329, must be received on or before March 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Chemical Review Manager, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8062; e-mail address; fuller.demson@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0329. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. To access RED documents and RED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Home Page, at http://www.epa.gov/pesticides/reregistration/status.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs

further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0329. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0329. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0329.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0329. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA has assessed the risks of asulam and reached a Tolerance Reassessment Eligibility Decision (TRED) for this pesticide. Since no risk mitigation measures were adopted, asulam fits into its own risk cup--its individual, aggregate risks are within acceptable levels. The RED for asulam was completed in 1995. At that time, the Agency assessed the risk for dietary, worker, and ecological concerns. With the passage of FQPA, the tolerances for asulam needed to be reassessed according to the FQPA safety standard. In this current assessment, the Agency looked at only dietary concerns from food and drinking water.

Asulam is a selective postemergent systemic carbamate herbicide registered for sugarcane, christmas tree plantations, ornamentals, turf (use for sod farms only) and non-cropland uses (boundary fences, fencerows, hedgerows, lumberyards, storage areas and industrial facilities, and warehouse lots). There are no residential uses for asulam products.

Dietary risks for asulam are below the Agency's level of concern for the general U.S. population and all population subgroups. Drinking water risks are also below EPA's level of concern, therefore the Agency is not concerned with potential exposure to asulam through surface water and ground water.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely decisions and to involve the public. Therefore, EPA is issuing this TRED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. If any comment significantly affects a TRED, EPA will amend the TRED by publishing the amendment in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this TRED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products, and either reregistering

products or taking "other appropriate regulatory action."

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 19, 2002.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

FR Doc. 03–849 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0246; FRL–7284–4]

Bis(Tributyltin) Oxide and Tributyltin Methacrylate; Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by International Paint Inc. and Hempel Coatings (USA), Inc. to voluntarily cancel registrations of three antifouling paint products containing tributyltin compounds. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register** and provide for a 30–day comment period.

DATES: Comments must be received on or before February 14, 2003.

FOR FURTHER INFORMATION CONTACT: By mail: Jill Bloom, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Room 604W53, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8019; e-mail: bloom.jill@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although, this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0246. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0246 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0246. Electronic comments also may be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel certain pesticide products registered under section 3 of FIFRA. International Paint Inc. has voluntarily requested that EPA cancel two of its product registrations containing tributyltin compounds. Hempel Coatings (USA), Inc. has voluntarily

requested that EPA cancel its sole product registration containing tributyltin compounds. These registrations are listed in Table 1 of this unit:

TABLE 1.–REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Company Name	Registration number	Product Name	Active Ingredients
International Paint Inc.	67543–8	XL–48	Tributyltin methacrylate
International Paint Inc.	2693–123	Interswift BKA007 Red	Bis(tributyltin)oxide tributyltin methacrylate
Hempel Coatings (USA),	10250–53	Hempel's Antifouling Combic 76990–51110 Red	Bis(tributyltin)oxide tributyltin methacrylate

International Paint Inc. requested these actions in letters dated May 17, 2002 and June 3, 2002 for its products with EPA registration numbers 67543–8 and 2693–123, respectively. On June 19, 2002, International Paint Inc. requested that it be allowed to continue to sell and distribute existing stocks of these products until December 1, 2002. On July 26, 2002, International Paint Inc. waived the 180–day period that typically has been allowed before certain requests for voluntary cancellation are approved or denied.

Hempel Coatings (USA), Inc. requested the voluntary cancellation of its product with EPA registration number 10250–53 in a letter dated July 8, 2002. In that same letter, the registrant requested that it be allowed to continue to sell and distribute existing stocks of the subject product until December 31, 2002, and waived the 180–day period that typically has been allowed before certain requests for voluntary cancellation are approved or denied.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in ascending sequence by EPA company number:

TABLE 2.–REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
2693	International Paint Inc. 2270 Morris Avenue Union, NJ 07083
10250	Hempel Coatings (USA). Inc. 600 Conroe Park North Conroe, TX 77303–5056
67543	International Paint Inc. 2270 Morris Avenue Union, NJ 07083

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and provide a 30–day period for comments on the notice. Thereafter, the Administrator may act on such a request.

IV. Procedures for Withdrawal of Request

Both International Paint Inc. and Hempel Coatings (USA), Inc. have waived any right to withdraw their requests for voluntary cancellation of the products listed in Table 1 in Unit II.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term "existing stocks" will be defined, pursuant to the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless, the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Any sale, distribution, or use of existing stocks after the effective date of the cancellation order that is not consistent with the terms of the cancellation order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA, unless it is for purposes of shipping such stocks for relabeling, repackaging, export consistent with the requirements of section 17 of FIFRA, or disposal.

In the cancellation orders issued in response to the requests for voluntary cancellation cited in this notice, the Agency proposes to include the following provisions for treatment of any existing stocks of the products identified in Table 1 in Unit II.

All sale, distribution, or use by International Paint Inc. of existing stocks of its affected products listed in Table 1 in Unit II. will be unlawful under FIFRA after December 1, 2002. Any stocks of such products not in the hands of the registrant may continue to be sold, distributed, and used until such stocks are exhausted.

All sale, distribution, or use by Hempel Coatings (USA), Inc. of existing stocks of its affected product listed in Table 1 in Unit II. will be unlawful under FIFRA after December 31, 2002. Any stocks of such products not in the hands of the registrant may continue to be sold, distributed, and used until such stocks are exhausted.

List of Subjects

Environmental protection, Pesticides and pests.

December 24, 2002.

Lois Rossi,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 03–613 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0339; FRL–7285–1]

Fluroxypyr; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of fluroxypyr in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0339, must be received on or before February 14, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0339. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk

or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0339. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2002–0339. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0339.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0339. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 31, 2002.

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Dow AgroSciences

PP 9F6050

EPA has received a pesticide petition (9F6050) from Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for combined residues of fluroxypyr 1-methylheptyl ester [1-methylheptyl ((4-amino-3,5-dicloro-6-fluoro-2-pyridinyl)oxy)acetate or fluroxypyr MHE] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid], free and conjugated, all expressed as fluroxypyr, in or on the following raw

agricultural commodities at 0.02 parts per million (ppm) for kernels plus cob with husk removed, and 1.0 ppm for forage. Tolerances for residues of fluroxypyr MHE in or on field corn are being proposed in support of this registration as follows: Grain, 0.02 ppm; forage, 1.0 ppm; and stover, 0.5 ppm. Tolerances for residues of fluroxypyr MHE in or on sorghum as follows: Sorghum grain, 0.02 ppm; sorghum forage, 2.0 ppm; sorghum stover, 4.0 ppm. Tolerances for residues of fluroxypyr MHE in or on grasses as follows: Grass forage, 120 ppm; grass hay, 160 ppm; and grass silage, 100 ppm. Based on the above tolerances and an animal feeding study, increased tolerances are also proposed for fluroxypyr MHE and fluroxypyr, expressed as combined residues of total fluroxypyr, in or on the following animal commodities: Milk of cattle, goats, hogs, horses and sheep, 0.3 ppm; and kidney of cattle, goats, hogs, horses and sheep, 1.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Fluroxypyr is a systemic herbicide that is readily translocated and rapidly converts to the acid form following absorption. Fluroxypyr moves readily throughout the plant via the phloem (nutrient transporting) system and to a lesser extent through the xylem (water-transporting). Fluroxypyr is distributed throughout the entire plant, including the meristems and other developing plant parts.

2. *Analytical method.* There is a practical method (GC with MS detection) for measuring levels of fluroxypyr MHE in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set for, the proposed tolerances. Fluroxypyr has been tested through the FDAs Multi-residue Methodology, Protocols C, D. and E. The results have been published in the FDA Pesticide Analytical Manual, Volume I.

3. *Magnitude of residues.* The metabolism of fluroxypyr MHE in plants and animals (goats and poultry) is adequately understood for the purposes of these tolerances. Magnitudes of residue studies were conducted for field corn, sweet corn, sorghum and grasses. A process products study was not conducted in field corn since residues of fluroxypyr MHE were not detected in corn grain at 5X the application rate. In addition, processing of sorghum was not conducted since residue data for flour are not required at this time because sorghum flour is used exclusively in the U.S. as a component for drywall, and not as either a human food or a feedstuff. No residues of fluroxypyr are expected in root or leafy vegetable crops grown in rotation to fluroxypyr-treated field corn, sweet corn, sorghum, and grasses, after a 30–day plant-back interval at the maximum allowable label rate of 8 oz active ingredient/Acre. Field corn, sweet corn, sorghum and grasses grown in rotation may contain low levels of fluroxypyr residues; however, the tolerance values proposed for these crops will adequately assure compliance with the labeled use patterns.

B. Toxicological Profile

1. *Acute toxicity.* Fluroxypyr MHE has low acute toxicity. The rat oral LD_{50} is >5,000 milligrams/kilogram (mg/kg), the rabbit dermal LD_{50} is >2,000 mg/kg, and the rat inhalation LC_{50} is >1.0 mg/L (1,000 mg/cubic meter). In addition, fluroxypyr MHE is not a skin sensitizer in guinea pigs, has no dermal irritation in rabbits, and shows mild ocular irritation in rabbits. The end use formulation of fluroxypyr MHE has a similar low acute toxicity profile.

2. *Genotoxicity.* Short-term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* chromosomal aberration assay using rat lymphocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with fluroxypyr MHE. These studies show a lack of genotoxicity. In addition, short-term assays for genotoxicity consisting of an Ames metabolic activation test, possible induction of point mutations at the HGPRT-Locus of Chinese hamster ovary cells, *in vivo* and *in vitro* chromosomal aberrations in the Chinese hamster ovary cells, unscheduled DNA synthesis in human embryonic cells, and an assay in mouse lymphoma cells have been conducted with fluroxypyr. These studies also show a lack of genotoxicity.

3. *Reproductive and developmental toxicity.* Developmental studies in rats and rabbits were conducted with both fluroxypyr MHE and fluroxypyr. Studies with fluroxypyr MHE showed maternal and fetal no observed adverse effect levels (NOAELs) of 300 mg/kg/day (rat) and 500 mg/kg/day (rabbit). Studies with fluroxypyr showed NOAELs in the rat of 250 mg/kg/day for maternal effects and 500 mg/kg/day for fetal effects and a NOAEL in the rabbit of 250 mg/kg/day for both maternal and fetal effects. These studies show that fluroxypyr and fluroxypyr MHE are not teratogenic nor will they interfere with *in utero* development. Two multi-generation reproduction studies were conducted with fluroxypyr in rats. The first in Wistar rats showed no effect on fertility or reproductive performance and had a NOAEL of 500 mg/kg/day (highest dose tested). The second study in Sprague-Dawley rats showed a parental NOAEL for systemic effects of 100 mg/kg/day in male rats and 500 mg/kg/day in female rats. The NOAEL for reproductive effects was 750 mg/kg/day for males and 1,000 mg/kg/day for females (highest dose tested). The NOAEL for neonatal effects was 500 mg/kg/day.

4. *Subchronic toxicity.* Fluroxypyr MHE showed a NOAEL of 1,000 mg/kg/day in a 90–day rat dietary study and a 21–day rabbit dermal study. Ninety–day feeding studies with fluroxypyr showed NOAELs of 80 mg/kg/day (Wistar rats), 700 mg/kg/day (Fischer 344 rats), 1,342 mg/kg/day (male mice), and 1,748 mg/kg/day (female mice). In a 4–week dietary, range finding study with fluroxypyr in dogs, the NOAEL found was >50 mg/kg/day.

5. *Chronic toxicity.* Based on chronic testing with fluroxypyr in the mouse, dog, and rat (two studies), a reference dose (RfD) of 0.8 mg/kg/day is proposed for fluroxypyr and fluroxypyr MHE. The RfD has incorporated a 100-fold safety factor to the NOAEL found in the rat chronic test. NOAELs found in the chronic dietary studies are as follows: 150 mg/kg/day (dog), 300 mg/kg/day (mouse), 80 mg/kg/day (Wistar rats), 100 mg/kg/day (male Fischer 344 rats), and 500 mg/kg/day (female Fischer 344 rats).

6. *Animal metabolism.* Both fluroxypyr and fluroxypyr MHE have been evaluated in rat metabolism studies. In summary, these studies show that fluroxypyr MHE is rapidly hydrolyzed and the fate of the hydrolysis products, fluroxypyr and 1-methylheptanol, are independent of whether they were given as the ester or the acid. Fluroxypyr, *per se*, was extensively absorbed and rapidly excreted principally unchanged in the urine; 1-methylheptanol also was rapidly absorbed and rapidly eliminated. Repeated administration of fluroxypyr MHE was not associated with accumulation in tissues. Also, the metabolism and pharmacokinetics of 1-methylheptanol are comparable to that of the methylheptyl portion of fluroxypyr MHE.

7. *Metabolite toxicology.* Administration of fluroxypyr, as the

acid or methylheptyl ester, in a variety of toxicological studies has produced similar effects. The principal response to sufficiently high dosages, whether administered over the short-term or, in some cases, over a lifetime, was nephrosis. Fluroxypyr is an organic acid that is actively excreted into the urine by the kidney. Thus, the target organ and dose response relationship for fluroxypyr toxicity is entirely consistent with the data on the toxicokinetics of fluroxypyr. Metabolism studies have shown that fluroxypyr MHE is rapidly and completely hydrolyzed to fluroxypyr acid and methylheptanol.

8. *Endocrine disruption*. There is no evidence to suggest that fluroxypyr and fluroxypyr MHE have an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure—Acute dietary exposure and risk*. A Tier I acute dietary exposure and risk assessment was conducted. Potential dietary exposure and risk was estimated using DEEM™ software (Dietary Exposure Evaluation Model, Version 7.075, Novigen Sciences, Inc., Washington, DC). A deterministic analysis was conducted by combining the distribution of single-day food consumption events with residues assumed at tolerance levels for each commodity to obtain a distribution of exposure. In this report, acute dietary risk was assessed at the 95th percentile of exposure.

i. *Food*. Very conservative assumptions were made in this dietary risk assessment. The dietary exposure assessment was based on all commodities with tolerances for fluroxypyr established at 40 CFR 180.535 together with proposed tolerances for field corn, sweet corn, grain sorghum, and forage grass and hay, including revised tolerances for milk and meat. It was assumed that fluroxypyr residues were present at tolerance or proposed tolerance levels and that 100% of the crops were treated. The USDA food consumption data from 1989–92 were used by DEEM in estimating acute dietary exposure. Acute dietary risk was assessed using an acute RfD of 1.25 mg/kg/day, based on a maternal NOAEL of 125 mg/kg/day from a rat developmental toxicity study and an uncertainty factor of 100 (10X for interspecies extrapolation and 10X for intraspecies variation). There was no indication of increased susceptibility in young animals to prenatal or postnatal exposure to fluroxypyr in the toxicology studies. Therefore, an FQPA additional safety factor for infants and children was not included in this assessment. Acute dietary exposure at the 95th percentile for females 13 to 50 years old is estimated at 0.004939 mg/kg/day, which occupies 0.4% of the acute RfD. Pregnant females are estimated to have acute dietary exposure of 0.006582 mg/kg/day at the 95th percentile, which occupies 0.53% of the acute RfD. Adverse effects are not expected for exposures occupying 100% or less of the RfD. Therefore, acute dietary exposure and risk are well within acceptable levels.

A chronic dietary assessment estimated that dietary exposure would occupy only 0.4% of the RfD for the overall U.S. population and 1.3% of the RfD for children 1 to 6 years of age, the population subgroup estimated to be most highly exposed.

ii. *Drinking water—Acute drinking water exposure and risk*. There are no established Maximum Contaminant Levels for residues of fluroxypyr in drinking water and health advisory levels for fluroxypyr in drinking water have not been established.

Potential drinking water concentrations of fluroxypyr were estimated in ground water and surface water using the Screening Concentration in Ground Water (SCI-GROW) and the Generic Expected Environmental Concentration (GENEEC) models, respectively. Both GENEEC and SCI-GROW are Tier I screening level models that use conservative assumptions. SCI-GROW estimates pesticide concentrations in shallow, highly vulnerable ground water. GENEEC simulates a 1 hectare by 2 meters deep edge of the field farm pond that receives pesticide runoff from a treated 10 hectare field. The estimated concentration of fluroxypyr in ground water according to SCI-GROW is 0.16 µg/L. The estimated peak concentration of fluroxypyr in surface water using GENEEC is 20.88 µg/L.

To calculate the Drinking Water Levels of Concern (DWLOC) for acute exposure relative to an acute toxicity endpoint, the acute dietary exposure (from the DEEM analysis) was subtracted from the acute RfD to obtain the acceptable upper limit of fluroxypyr in drinking water for acute exposure. DWLOCs were then calculated using default values for adult female body weight (60 kg) and water consumption (2 L/day).

The upper-bound estimated fluroxypyr concentration in ground water (0.16 µg/L) and surface water (20.88 µg/L) are substantially below the acute DWLOCs of 37,352 µg/L and 37,303 for females 13 to 50 years old and pregnant females, respectively. Aggregated acute fluroxypyr exposure for pregnant females and females 13 to 50 years old resulting from dietary exposure and upper-bound drinking water exposure is well within acceptable limits of exposure and risk.

The chronic DWLOC for both the overall U.S. population and children 1 to 6 years of age was over 3,000-fold greater than residue levels in surface water or ground water estimated by conservative screening-level models. Therefore, chronic exposure and risk is expected to be well within acceptable levels.

2. *Non-dietary exposure*. The proposed use of fluroxypyr on residential turf presents the potential for non-occupational, non-dietary (or residential) exposure. Transferable foliar residue data from a fluroxypyr study on turf was used instead of default residue values.

Post-application dermal exposure for adults and toddlers was estimated for the day of application (day 0) since the exposure potential is greatest at this time. Transferable residue of fluroxypyr from turf was found to range from 0.03 to 0.74% (used as a high end stimate) of the fluroxypyr applied and to dissipate with a half-life ranging from 1.4 to 2.5 days.

Homeowners may be exposed to fluroxypyr during application to turf and also may have dermal exposure due to post-application activity on the treated turf.

Homeowner exposure during the application of fluroxypyr to turf includes both dermal and inhalation exposure. Surrogate dermal and inhalation exposure data from Pesticide Handlers Exposure Database (PHED V1.1) was used in estimating applicator exposure. The PHED surrogate data used to estimate exposure assumes residential applicator attire to include short pants, short-sleeve shirt, and no gloves. The applicator exposure estimate was based on a broadcast application using a garden hose end sprayer. Applicator dermal and inhalation exposure was estimated to be 0.0986 mg/kg/day and 0.00003 mg/kg/day, respectively.

Adult post-application dermal exposure from treated turf on the day of application was estimated to be 0.0172 mg/kg/day. The combined dermal exposure from application along with post-application activity is 0.1158 mg/kg/day (0.0986 mg/kg/day + 0.0172 mg/kg/day). Oral post-application exposure is not expected for adults and was not included in this assessment. The Margin of Exposure (MOE) for dermal exposure is 8,635 and for inhalation exposure 2,666,667. These MOEs are substantially greater than 100, indicating that risk

from these potential exposures is well within an acceptable level.

Consistent with the scenario described above for the general adult population, female adult homeowners may experience exposure to fluroxypyr during application to turf as well as from post-application exposure. Female applicator dermal and inhalation exposure was estimated to be 0.115 mg/kg/day and 0.00004 mg/kg/day, respectively. Additionally, female adults may also experience post-application dermal exposure from treated turf on the day of application. Post-application dermal exposure for females was estimated to be 0.0201 mg/kg/day. Since dermal absorption is assumed to be 100% and since both dermal and inhalation exposure are being evaluated against the same toxicity endpoint, total potential exposure from fluroxypyr use on turf can be estimated by simply adding the dermal and inhalation exposure. The combined exposure is 0.13514 mg/kg/day (0.115 mg/kg/day + 0.00004 mg/kg/day + 0.0201 mg/kg/day). Using a NOAEL of 125 mg/kg/day, the MOE is calculated to be 925 (125 mg/kg/day / 0.13514 mg/kg/day). The MOE for female adults as a result of potential dermal and inhalation exposure from residential use of fluroxypyr on turf is well above 100, indicating that risk is within acceptable levels.

Golfers may have dermal exposure to fluroxypyr due to post-application activity on the treated turf. Dermal exposure for adult golfers was estimated on the day of treatment (day 0) to provide a high-end estimate of exposure. Exposure was estimated based on a transfer coefficient of 500 cm^2/hr (1) and an exposure time of 4 hours. Exposure was estimated to be 0.001186 mg/kg/day. A MOE of 843,170 was calculated based on an assumption of 100% dermal absorption and a NOAEL of 1,000 mg/kg/day. Given a MOE of three orders of magnitude greater than 100, risk is well within acceptable levels.

Potential exposure for female golfers was estimated to be 0.001383 mg/kg/day. A MOE of 90,383 was calculated based on an assumption of 100% dermal absorption and a NOAEL of 125 mg/kg/day. The MOE is substantially greater than 100, indicating that risk is well within acceptable levels.

Toddlers may have exposure due to post-application activity on treated turf. When a pesticide in liquid formulation is applied to turfgrass, toddlers may experience post-application exposure through dermal exposure and also through oral exposure due to hand-to-mouth transfer of pesticide residue, ingestion of treated turfgrass and incidental ingestion of soil from treated areas.

Toddler post-application dermal exposure from treated turf on the day of application was estimated to be 0.0288 mg/kg/day. Oral exposure due to hand-to-mouth transfer of residues was estimated to be 0.0011 mg/kg/day. Oral exposure due to ingestion of treated grass was estimated to be 0.0019 mg/kg/day. Combined oral exposure from hand-to-mouth transfer of residues and ingestion of treated grass is 0.0030 mg/kg/day (0.0011 mg/kg/day + 0.0019 mg/kg/day). The MOE for dermal exposure is 34,722 and oral exposure is 26,667, both of them well above 100, indicating that risk is well within acceptable levels.

Use of fluroxypyr on turf results in potential short-term residential exposure for adults and children. Potential short-term dietary and residential exposures were combined into aggregate MOE values. Potential exposure through drinking water was not included in the aggregate MOEs, but was evaluated in aggregate through use of a DWLOC calculated for short-term exposure. The aggregate MOEs for adults and toddlers ranged from 906 to 29,335, but all were well above 100, indicating an adequate margin of safety. Additionally, the short-term DWLOCs for toddlers and adults were over 3,000-fold greater than potential fluroxypyr residues in drinking water predicted by conservative screening level models. Therefore, aggregate short-term exposure and risk for children and adults is expected to be well within acceptable levels.

D. Cumulative Effects

The potential for cumulative effects of fluroxypyr MHE and fluroxypyr and other substances that have a common mechanism of toxicity is also considered. There is no reliable information to indicate that toxic effects produced by fluroxypyr MHE and fluroxypyr would be cumulative with those of any other pesticide chemical. Thus, it is appropriate to consider only the potential risks of fluroxypyr MHE and fluroxypyr in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Acute dietary exposure for pregnant females to residues of fluroxypyr from current and proposed uses was estimated to occupy 0.53% of the acute RfD, indicating very little risk. Additionally, the acute DWLOC was calculated to be over 1,700 fold greater than potential fluroxypyr residue in drinking water predicted by conservative screening level models.

Potential dietary and residential exposures were combined into an aggregate MOE value. Those MOEs range from 906 to 29,335. The aggregate MOEs are well above 100, indicating risk is well within acceptable levels. Additionally, the DWLOCs were over 11,000-fold greater than potential fluroxypyr residue in drinking water. Chronic dietary exposure to residues of fluroxypyr from current and proposed uses was estimated to occupy 0.4% of the RfD. The DWLOC was calculated to be over 11,000 fold greater than potential fluroxypyr residue in drinking water.

It is concluded that there is a reasonable certainty that no harm will result to the general U.S. population, pregnant females or developing young from acute aggregate, short-term or chronic aggregate exposures to fluroxypyr residues from current and proposed uses.

2. *Infants and children.* FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for fluroxypyr MHE relative to prenatal and postnatal effects for children is complete. There were no indications of neurotoxicity and developmental toxicity was not observed in the absence of maternal toxicity. It is concluded that there is no indication of increased sensitivity of infants and children relative to adults and that an additional FQPA safety factor is not required.

The acute and short-term exposures were assessed for pregnant females to evaluate the risk for developmental toxicity and it was concluded that there was reasonable certainty of no harm from aggregate acute or short-term exposures resulting from current and proposed uses of fluroxypyr.

Toddlers may experience short-term dermal and oral exposure to fluroxypyr as a result of post-application activities on treated residential turf. Additionally, there is the potential for exposure to fluroxypyr through residue in food and drinking water. Tier I assessments were conducted to develop very conservative estimates of potential exposure through residential, dietary and drinking water pathways.

Potential dietary and residential exposures were combined into an aggregate MOE value. The aggregate MOE was 5,120, well above 100, indicating risk is well within acceptable

levels. Additionally, the DWLOC was over 3,000-fold greater than potential fluroxypyr residue in drinking water.

Chronic dietary exposure to residues of fluroxypyr from current and proposed uses was estimated to occupy 1.3% of the RfD for children 1 to 6 years old, the population subgroup predicted to be most highly exposed. Additionally, the DWLOC was calculated to be over 3,000 fold greater than potential fluroxypyr residue in drinking water predicted by conservative screening level models.

Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from acute dietary, short-term and chronic aggregate exposures to fluroxypyr residues from current and proposed uses.

F. International Tolerances

There are no Codex maximum residue levels established for residues of fluroxypyr MHE and fluroxypyr on any food or feed crop.

[FR Doc. 03–848 Filed 1–14–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0356; FRL–7286–4]

Bifenazate; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of Bifenazate in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0356, must be received on or before February 14, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0356. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the

photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0356. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2002–0356. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0356.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0356. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as

required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number (IR–4) and Crompton Manufacturing Company, Inc.

PP 3E6517

EPA has received a pesticide petition (3E6517) from the Interregional Research Project Number (IR–4), 681 U.S. Hwy. #1 South, North Brunswick, NJ 08902 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.572 by establishing tolerances for residues of bifenazate, (diazinecarboxylic acid, 2-(4-methoxy-[1,1′-biphenyl]-3-yl),1-methylethylester) in or on the following raw agricultural commodities (RACs): Vegetable, cucurbit, group at 0.6 part per million (ppm); vegetable, fruiting, group at 2.0 ppm; peppermint, tops at 25 ppm; spearmint, tops at 25 ppm; nut, tree, group at 0.2 ppm; almond, hulls at 10 ppm; okra at 2.0 ppm; and pistachio at 0.2 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by Crompton Manufacturing Company, Inc. (formerly Uniroyal Chemical Company), Middlebury, CT 06749.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residues of bifenazate in plants is adequately understood. The major residue in all plant metabolism studies is bifenazate. A minor, but significant metabolite is the diazene D3598, which was found to interconvert readily to/from bifenazate in the plant matrix during the analytical procedure.

2. *Analytical method.* Crompton has developed practical analytical methodology for detecting and measuring residues of bifenazate in or on RACs. As D3598, a significant metabolite, was found to interconvert readily to/from bifenazate, the analytical method was designed to convert all residues of D3598 to the parent compound (bifenazate) for analysis. The method utilizes reversed phase high performance liquid chromotography (HPLC) to separate the bifenazate from matrix derived interferences, and oxidative coulometric electrochemical detection for the identification and quantification of this analyte.

B. Toxicological Profile

1. *Acute toxicity.* Bifenazate technical, acramite-50WS, and floramite SC have low acute oral, dermal, and inhalation toxicity in laboratory animals. The oral lethal dose LD_{50} in rats and mice is greater than 5 grams/kilogram (g/kg) for acramite-50WS and the technical material. The oral LD_{50} of floramite SC is greater than 5 g/kg in males and greater than 2 g/kg in females. The dermal LD_{50} in rats of bifenazate technical and both formulations is greater than 5 g/kg. The inhalation lethal concentration LC_{50} in the rats of bifenazate technical, acramite-50WS and floramite SC was found to be greater than 4.4, 5.2, and 1.8 milligrams/liter (mg/L), respectively. In eye irritation studies, acramite-50WS was a slight irritant, and bifenazate technical was non-irritating. Floramite SC was found to be irritating to the eyes. All 3 products were found to be non-irritating to the skin of rabbits and non-sensitizing on the skin of guinea pigs.

2. *Genotoxicity.* Bifenazate was evaluated and found to be negative in the Ames Reverse Mutation, Mouse Lymphoma, chinese hamster ovary (CHO) chromosome aberration and mouse micronucleus assays.

3. *Reproductive and developmental toxicity*—i. *Rabbit developmental study.* A range-finding study conducted in pregnant New Zealand white rabbits at dosage levels of 125, 250, 500, 750, and 1,000 milligrams/kilogram/day (mg/kg/day) demonstrated maternal toxicity at dosage levels of 500 mg/kg/day and greater and abortions at dosage levels of 250 mg/kg/day and greater. Bifenazate was then administered by oral gavage to pregnant New Zealand white rabbits at dosage levels of 10, 50, and 200 mg/kg/day. No test article related effects were seen at any dose level. The no observable adverse effect level (NOAEL) for maternal and developmental toxicity was greater than 200 mg/kg/day.

ii. *Rat developmental study.* Bifenazate did not produce developmental toxicity when administered by oral gavage to pregnant Sprague-Dawley CD rats at dosage levels of 10, 100, and 500 mg/kg/day. A reduction in maternal body weight gain was seen at dosage levels of 100 and 500 mg/kg/day. Clinical observations at 500 mg/kg/day included red material/staining on body surfaces, pale extremities, and brown discharge. No developmental or teratogenic effects were observed at any dosage level. The NOAEL for maternal toxicity was 10 mg/kg/day and the NOAEL for developmental toxicity was greater than 500 mg/kg/day.

iii. *Rat reproduction study.* Bifenazate showed no effects on reproduction when fed to 2–generations of male and female Sprague-Dawley CD rats at dietary concentrations of 20, 80, and 200 ppm. At a dosage level of 200 ppm there was a reduction in body weight gain in F0 males and females. Food consumption was unaffected. There was a reduction in body weight gain in F1 females at all dosage levels and in F1 males at 80 and 200 ppm in the absence of effects on food consumption. Since the 20 ppm F1 males did not have a significant reduction in body weight gain, this dosage level can be considered a NOAEL for systemic adult toxicity. The reduction in body weight gain in the F1 females at 20 ppm would not be considered biologically significant because no effects were observed on reproductive parameters or in the F2 litter. The reproductive and developmental NOAEL was greater than 200 ppm (10 mg/kg/day).

4. *Subchronic toxicity*—i. *Thirteen–week rat feeding study.* Bifenazate was fed to male and female Sprague Dawley CD rats for 13 weeks at dietary concentrations of 40, 200, and 400 ppm. At dosage levels of 200 and 400 ppm there was a reduction in red blood cell (RBC) count and hemoglobin (Hgb). Food intake was reduced for 200 ppm females and 200 and 400 ppm males. Histopathological effects were seen in the liver, spleen, and adrenal cortex in males and females at 200 and/or 400 pm. The maximum tolerated dose (MTD) was exceeded in females at 200 ppm and in males and females at 400 ppm. The NOAEL for subchronic toxicity in rats was 40 ppm (2 mg/kg/day).

ii. *Neurotoxicity assessment.* No treatment related effects were seen on neuro-behavior in a Standard Functional Observation Battery conducted at weeks 8 and 13 of the rat feeding study. No overt signs of anti-cholinergic activity, and no statistically significant effects on cholinesterase (ChE) activity were seen in rats in a 2–week feeding study at dose levels up to 400 ppm. Plasma, erythrocyte and brain ChE activity were evaluated in male and female rats fed bifenazate-treated diet at 0, 20, 200, or 400 ppm for 2 weeks. All animals survived until study termination and effects were only seen on body weight gain and food

consumption. The NOAEL for cholinergic inhibition was greater than 400 ppm (20 mg/kg/day).

iii. *Thirteen–week dog feeding study.* Bifenazate was fed to male and female Beagle dogs for 13 weeks at dietary concentrations of 40, 400, and 1,000 ppm. At dosage levels of 400 and 1,000 ppm there was a reduction in RBC count, Hgb and hematocrit (HCT). Liver weights were increased at 400 and 1,000 ppm and centrilobular hepatocellular hypertrophy was seen in females at 400 ppm and males and females at 1,000 ppm. The NOAEL for subchronic toxicity in dogs was 40 ppm (1 mg/kg/day).

5. *Chronic toxicity*—i. *Dog chronic feeding study.* Bifenazate was fed to male and female Beagle dogs for 1–year at dietary concentrations of 40, 400, and 1,000 ppm. At dose levels of 400 and 1,000 ppm, there was a reduction in food consumption in males and reduced body weight gain in males and females. There was a reduction in RBC count, Hgb, and HCT and an increase in bilirubin at 400 and 1,000 ppm. Histopathological effects on bone marrow, kidney, and liver were also seen at these dose levels. The NOAEL for chronic toxicity in dogs was 40 ppm (1 mg/kg/day).

ii. *Rat chronic feeding/carcinogenicity study.* Bifenazate was not carcinogenic in rats when fed to male and female Sprague-Dawley CD rats for 2 years at dietary concentrations of 20, 80, and 160 in females or 20, 80, and 200 ppm in males. Body weight gain was reduced in males and females at the high dosage levels. A reduction in RBC count and an increase in splenic pigment were seen in females at 160 ppm, while high dose males exhibited a reduction in total cholesterol and an increase in splenic pigment. At a dose level of 80 ppm there was a reduction in body weight gain, a decrease in RBC count and an increase in splenic pigment in females. There was no increase in tumor incidence in males or females as a result of bifenazate administration. The NOAEL for chronic toxicity in rats was 20 ppm (1 mg/kg/day).

iii. *Mouse carcinogenicity study.* Bifenazate was not carcinogenic when fed to male and female CD–1 mice for 18 months at dietary concentrations of 10, 100, and 175 ppm in females and 10, 100, and 225 ppm in males. Body weight gain was reduced in males and females at the high dose level. A reduction in RBC, total leukocyte and lymphocyte counts was seen in males at 225 ppm. There was no increase in tumor incidence in males or females as a result of bifenazate administration.

6. *Animal metabolism.* In rat, ^{14}C-bifenazate, ^{14}C-phenyl hydrazine carboxylic acid, 2-(4-methoxy-1,1-biphenyl-3-yl)-1-methylethyl ester was extensively metabolized when it was given orally in 2 dose levels low (10 mg/kg), and high (1,000 mg/kg). Although ¾ of the dosed radioactivity was excreted in the feces, bifenazate depicted a good degree of absorption as indicated from the level of radioactivity in the bile. In the bile radioactivity study, about 70% of the C–14 was collected from the cannulated bile ducts of low dosed rats indicating an active level of absorption and enterohepatic circulation.

7. *Metabolite toxicology.* In a single dose oral toxicity limit test in rats, the oral LD_{50} of the diazene product of bifenazate was estimated to be approximately 5,000 mg/kg. At 2 hours and at 7 days post-dosing, no effects were seen on erythrocyte cholinesterase inhibition (ChEI) in male or female rats. In addition, no effect on plasma ChEI was seen in male rats at 7 days only. Since this effect was seen only in plasma of females at one time point, it is most likely a pseudo-cholinesterase effect without biological significance. In a dermal toxicity screen, the LD_{50} of the diazene was estimated to be >2,000 mg/kg.

8. *Endocrine disruption.* There are no known reported adverse reproductive or developmental effects in domestic animals or wildlife as a result of exposure to this chemical. A standard battery of required toxicity tests have been conducted on bifenazate. No effects were seen in the reproduction or developmental studies to indicate that bifenazate has an effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* Based on dietary, drinking water, and non-occupational exposure assessments, there is reasonable certainty of no harm to the U.S. population, any population subgroup, or infants and children from chronic exposure to bifenazate.

i. *Food.* Chronic dietary exposure was estimated using dietary exposure evaluation model DEEM™ tolerance levels, and 100% crop treated. Processing factors were used for apple and grape juice. The chronic dietary exposure to the U.S. population (total) was estimated as 0.003093 mg/kg bwt/day, and was 30.9% of the reference dose (RfD). Exposure to non-nursing infants, the highest exposed population subgroup, was 0.007238 mg/kg bwt/day (72.4% of the RfD), and exposure to children was 0.006627 mg/kg bwt/day (66.3% of the RfD).

ii. *Drinking water.* The residue of concern in drinking water was determined to be D1989. Chronic estimated environmental concentrations (EECs) of D1989 in surface water and ground water were generated using FIRST and the screening concentration in ground water (SCI-GROW) (1 application at 0.75 lbs active ingredient/acre). The FIRST model generated an EEC of 0.114 part per billion (ppb), whereas, the SCI-GROW model generated an EEC of 0.0119 ppb. These EEC values are much lower than the drinking water levels of concern (LOC) (227 ppb for adults, 27.6 ppb for infants and children). Therefore, exposure to potential residues in drinking water is expected to be negligible.

2. *Non-dietary exposure.* Food uses described in this petition are strictly agricultural, and will not add to any residential non-dietary exposure that may exist.

D. Cumulative Effects

The mechanism/mode of action of bifenazate on the mammalian RBC, which is the target organ in the species tested, remains to be elucidated. The lack of information on bifenazate mode of action precludes an assessment of cumulative effects.

E. Safety Determination

1. *U.S. population.* Based on the toxicology data base and available information on anticipated residues, chronic dietary exposure to the U.S. population (total) was 30.9% of the RfD. Exposure to potential residues in drinking water is expected to be negligible, as drinking water levels of concern (DWLOCs) are substantially higher than modeled acute and long-term EECs. The margin of exposure (MOEs) from the limited potential for short-term exposure from residential uses was >1,000. Based on these assessments, it can be concluded that there is reasonable certainty of no harm to the U.S. population or any population subgroup from exposure to bifenazate.

2. *Infants and children.* The chronic dietary exposure was 72.4% of the RfD for infants, and 66.3% for children. Exposure to potential residues in drinking water is expected to be negligible, as DWLOCs are substantially higher than modeled acute and long-term EECs. The MOEs from the limited potential for short-term exposure from residential uses was >1,000. Based on these assessments, it can be concluded that there is reasonable certainty of no harm to infants and children from exposure to bifenazate.

F. International Tolerances

There are no Codex or other international maxium residue levels (MRLs) on tolerances for the requested uses with the exception of cherries in Japan. In Japan, the following MRLs have been established: Citrus 0.2 and 1.0; apple 2.0; pear 2.0; peach 0.2; cherry 3.0; strawberry 3.0; watermelon 0.2; and tea 2.0. There are no other current MRLs or tolerances for bifenazate.

[FR Doc. 03–850 Filed 1–14–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0163; FRL–7283–8]

Primisulfuron-methyl; Report of the FQPA Tolerance Reassessment Progress and Risk Management Decision (TRED); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the "Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for Primisulfuron-methyl." EPA has reassessed the 24 tolerances, or legal limits, established for residues of primisulfuron-methyl in/on raw agricultural commodities. These tolerances are now considered safe under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the FQPA of 1996.

FOR FURTHER INFORMATION CONTACT: Christina Scheltema, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2201; fax number: (703) 308–8005; e-mail address: *scheltema.christina@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0163. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* To access the TRED document and fact sheet electronically, go directly to the REDs table on the EPA Office of Pesticide Programs web site, at *http://www.epa.gov/pesticides/reregistration/status.htm.* For a complete list of available documents supporting the TRED, see the electronic version of the public docket, which is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments for documents that are open to public comment, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number or chemical name.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

II. What Action is the Agency Taking?

EPA has assessed the risks associated with current and proposed food uses of primisulfuron-methyl, reassessed 24 existing tolerances, and reached a tolerance reassessment and risk management decision. The Agency is announcing the availability of the resulting report of the FQPA Tolerance Reassessment Progress and Risk Management Decision for Primisulfuron-methyl, also known as a TRED.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a tolerance revocation occurs. EPA has reviewed and made the requisite safety finding for the tolerances established for residues of primisulfuron-methyl in/on raw agricultural commodities.

The Agency has determined that there are no dietary (food or drinking water) or aggregate risks of concern from the use of primisulfuron-methyl, so mitigation of these risks is not necessary. EPA is able to make the FQPA safety finding for all current and proposed uses of primisulfuorn-methyl. Therefore, 23 existing tolerances for primisulfuron-methyl have been reassessed and remain unchanged, and 1 tolerance on sweet corn will be revoked because current labels prohibit use on sweet corn. Although EPA is considering a petition for a new use on Kentucky bluegrass grown for seed, the Agency has not yet made a decision to register this new use or establish any associated tolerances.

EPA works extensively with affected parties to reach the tolerance reassessment decisions presented in

TREDs. Therefore, the Agency is issuing the primisulfuron-methyl TRED as a final decision without a formal public comment period.

List of Subjects

Environmental protection, Pesticides and pests, Primisulfuron-methyl.

Dated: December 19, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–630 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Market Access Agreement

AGENCY: Farm Credit Administration (FCA).

ACTION: Notice of Draft Amended and Restated Market Access Agreement; request for comments.

SUMMARY: The FCA is publishing for comment the Draft Amended and Restated Market Access Agreement (Draft Restated MAA) proposed to be entered into by all of the banks of the Farm Credit System (System) and the Federal Farm Credit Banks Funding Corporation (Funding Corporation). This Draft Restated MAA is an update to the original MAA approved by the FCA on August 17, 1994, and published in the **Federal Register** on August 23, 1994 (59 FR 43344). The Draft Restated MAA sets forth the rights and responsibilities of each of the parties when the condition of a bank falls below pre-established financial thresholds.

DATES: The FCA is seeking comments from the public on the Draft Restated MAA and will take into consideration those comments prior to the decision to grant approval. Written comments must be received on or before February 14, 2003.

ADDRESSES: Send us your comments by electronic mail to *"reg-comm@fca.gov"* or through the Pending Regulations section of FCA's Web site, *"www.fca.gov."* You may also send written comments to Andrew Jacob, Assistant Director, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or by facsimile transmission to (703) 734–5784. You may review copies of all comments received at FCA's office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Samuel R. Coleman, CFA, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434,

or

James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION: System banks and the Funding Corporation entered into the original Market Access Agreement (MAA) on September 1, 1994, to help control the risk of each System bank by outlining each party's respective rights and responsibilities in the event the condition of a System bank fell below certain financial thresholds. As part of the original MAA, System banks and the Funding Corporation agreed to periodic reviews of the terms of the MAA to consider whether any amendments were appropriate. The Draft Restated MAA updates the original MAA and provides for more stringent financial performance requirements on each System bank.

The Draft Restated MAA, consistent with the approach of the original MAA, establishes certain financial thresholds at which conditions are placed on the activities of a bank or a bank's access to participation in Systemwide and consolidated obligations is restricted. The Draft Restated MAA establishes three categories, which are based on each bank's net collateral ratio, permanent capital ratio, and scores under the Contractual Inter-bank Performance Agreement (CIPA is an agreement among the System banks, the Farm Credit System Financial Assistance Corporation, and the Funding Corporation that establishes certain financial performance criteria).

As a bank's financial condition declines, it moves into Category I, then Category II, and finally Category III. When a bank reaches Category I, it is required to provide certain additional information to a committee of bank and Funding Corporation representatives established under the Draft Restated MAA, the Monitoring and Advisory Committee, including information as to how it will improve its financial condition. When a bank reaches Category II, in addition to being required to provide additional information, the bank is limited to joining in the issuance of Systemwide and consolidated obligations only in those amounts necessary for the bank to be able to roll over its maturing debt. When the bank reaches Category III, the bank is precluded from joining in the issuance of Systemwide and consolidated obligations.

The Draft Restated MAA includes provisions that enable a bank in Category II or III to request the opportunity to continue its access to the market. The Agreement also provides that the FCA may override a decision to impose Category III prohibitions on access to the market for a period of 60 days, which may be renewed for an additional 60-day period.

The original MAA continues in effect until the Draft Restated MAA is approved by the necessary parties, including FCA. The FCA is publishing the Draft Restated MAA for comment by any interested member of the public. The FCA will take these comments into consideration prior to the decision to approve the Draft Restated MAA.

Based on the foregoing, the FCA is now seeking public comment on the Draft Restated MAA as set forth below:

AMENDED AND RESTATED MARKET ACCESS AGREEMENT

AMONG

AgAmerica, FCB,

AGFIRST FARM CREDIT BANK,

AgriBank, FCB,

COBANK, ACB,

Farm Credit Bank Of Texas,

Farm Credit

Bank Of Wichita,

Western Farm Credit Bank

AND

Federal Farm Credit Banks Funding Corporation

This AMENDED AND RESTATED MARKET ACCESS AGREEMENT (the "Restated MAA") is entered into among AgAmerica, FCB, AgFirst Farm Credit Bank, AgriBank, FCB, CoBank, ACB, the Farm Credit Bank of Texas, the Farm Credit Bank of Wichita, the Western Farm Credit Bank and the Federal Farm Credit Banks Funding Corporation.

WHEREAS, the Banks and the Funding Corporation entered into the Market Access Agreement, dated September 1, 1994 and effective as of November 23, 1994, referred to herein as "the Agreement," for the reasons stated therein; and

WHEREAS, the Agreement provides that the Banks and the Funding Corporation shall review the Agreement and consider whether any amendments to it are appropriate during the years 2000 and 2006 and at such more frequent intervals as the Banks and the Funding Corporation may agree; and

WHEREAS, the Agreement provides that, in connection with such review, the Monitoring and Advisory Committee, referred to herein as the "Committee," shall report to the boards of directors of the Banks and the Funding Corporation on the operation of the Agreement and recommend

any amendments the Committee considers appropriate; and

WHEREAS, the Committee met on October 5–6, 2000, November 30, 2000, November 2, 2001 and January 24, 2002 and recommended certain amendments for presentation to the Banks and the Funding Corporation ("Draft Restated MAA"); and

WHEREAS, the boards of directors of the Banks and of the Funding Corporation approved the Draft Restated MAA in principle; and

WHEREAS, thereafter, the Draft Restated MAA was sent to FCA for approval and to the Insurance Corporation for an expression of support; and

WHEREAS, FCA published the Draft Restated MAA in the **Federal Register** and sought comments thereon; and

WHEREAS, after considering the comments received, FCA approved the Restated MAA [, subject to certain conditions,] and a notice of such approval was published in the **Federal Register**; and

WHEREAS, subsequently the Insurance Corporation expressed its support of the Restated MAA; and

[WHEREAS, the Restated MAA includes further changes adopted to satisfy the conditions to FCA's approval; and]

WHEREAS, the Parties are mindful of FCA's independent authority under Section 5.17(a)(10) of the Act to ensure the safety and soundness of Banks, FCA's independent authority under Sections 4.2 and 4.9 of the Act to approve the terms of specific issuances of Debt Securities, the Insurance Corporation's independent authority under Section 5.61 of the Act to assist troubled Banks, and the Banks' independent obligations under Section 4.3(c) of the Act to maintain necessary collateral levels for Debt Securities; and

WHEREAS, the Banks are entering into this Restated MAA pursuant to, inter alia, Section 4.2(c) and (d) of the Act; and

WHEREAS, the Funding Corporation is prepared to adopt as the "conditions of participation" that it understands to be required by Section 4.9(b)(2) of the Act each Bank's compliance with the terms and conditions of this Restated MAA; and

WHEREAS, the Funding Corporation believes the execution and implementation of this Restated MAA will materially accomplish the objectives which it has concluded are appropriate for a market access program under Section 4.9(b)(2) of the Act; and

WHEREAS, prior to the adoption of the Agreement, the Funding Corporation adopted and maintained in place a Market Access and Risk Alert Program designed to fulfill what it understood to be its responsibilities under Section 4.9(b)(2) of the Act with respect to determining "conditions of participation," which Program was discontinued by the Funding Corporation in accordance with the terms of the Agreement; and

WHEREAS, the Funding Corporation is entering into this Restated MAA pursuant to, *inter alia*, Section 4.9(b)(2) of the Act; and

WHEREAS, the Parties believe that the execution and implementation of this Restated MAA will accomplish the objectives intended to be achieved by the Agreement,

NOW THEREFORE, in consideration of the foregoing, the mutual promises and agreements herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

ARTICLE I—CATEGORIES

Section 1.01. *Scorekeeper.* The Scorekeeper, for purposes of this Restated MAA, shall be the same as the Scorekeeper under Section 4.1 of CIPA.

Section 1.02. *CIPA Oversight Body.* The CIPA Oversight Body, for purposes of this Restated MAA, shall be the same as the Oversight Body under Section 6.1 of CIPA.

Section 1.03. *CIPA Scores.* Net Composite Scores and Average Net Composite Scores, for purposes of this Restated MAA, shall be the same as those determined under Article II of CIPA and the Model referred to therein, as in effect on January 1, 1997, and as amended under CIPA or replaced by successor provisions under CIPA in the future, to the extent such future amendments or replacements are by agreement of all the Banks.

Section 1.04. *Net Collateral and Permanent Capital Ratios.* Each Bank shall report to the Scorekeeper within fifteen days after the end of each month its Net Collateral Ratio and Permanent Capital Ratio as of the last day of that month. Should any Bank later correct or revise, or be required to correct or revise, any past financial data in a way that would cause any Net Collateral Ratio or Permanent Capital Ratio previously reported hereunder to have been different, the Bank shall promptly report a revised Ratio to the Scorekeeper. Should the Scorekeeper consider it necessary to verify any Net Collateral Ratio or Permanent Capital Ratio, it shall so report to the Committee, or, if the Committee is not in existence, to the CIPA Oversight Body, and the Committee or the CIPA Oversight Body, as the case may be, may verify the Ratios as it deems appropriate, through reviews of Bank records by its designees (including experts or consultants retained by it) or otherwise. The reporting Bank shall cooperate in any such verification, and the other Banks shall provide such assistance in conducting any such verification as the Committee or the CIPA Oversight Body, as the case may be, may reasonably request.

Section 1.05. *Category I.* A Bank shall be in Category I if it (a) has an Average Net Composite Score of 50.0 or more, but less than 60.0, for the most recent calendar quarter for which an Average Net Composite Score is available, (b) has a Net Composite Score of 45.0 or more, but less than 60.0, for the most recent calendar quarter for which a Net Composite Score is available, (c) has a Net Collateral Ratio of 103.00% or more, but less than 104.00%, for the last day of the most recent month, or (d) has a Permanent Capital Ratio of 7.00% or more, but less than 8.00%, for the period ending on the last day of the most recent month.

Section 1.06. *Category II.* A Bank shall be in Category II if it (a) has an Average Net Composite Score of 35.0 or more, but less than 50.0, for the most recent calendar quarter for which an Average Net Composite Score is available, (b) has a Net Composite Score of 30.0 or more, but less than 45.0, for the most recent calendar quarter for which a Net Composite Score is available, (c) has a Net Collateral Ratio of 102.00% or more, but less than 103.00%, for the last day of the most recent month, (d) has a Permanent Capital Ratio of 5.00% or more, but less than 7.00%, for the period ending on the last day of the most recent month, or (e) is in Category I and has failed to provide information to the Committee as required by Article III within two Business Days after receipt of written notice from the Committee of such failure.

Section 1.07. *Category III.* A Bank shall be in Category III if it (a) has an Average Net Composite Score of less than 35.0 for the most recent calendar quarter for which an Average Net Composite Score is available, (b) has a Net Composite Score of less than 30.0 for the most recent calendar quarter for which a Net Composite Score is available, (c) has a Net Collateral Ratio of less than 102.00% for the last day of the most recent month, (d) has a Permanent Capital Ratio of less than 5.00% for the period ending on the last day of the most recent month, or (e) is in Category II and has failed to provide information to the Committee as required by Article III within two Business Days after receipt of written notice from the Committee of such failure.

Section 1.08. *Highest Category.* If a Bank would come within more than one Category by reason of the various provisions of Sections 1.05 through 1.07, it shall be considered to be in the highest-numbered Category for which it qualifies (*e.g.*, Category III rather than Category II).

Section 1.09. *Notice by Scorekeeper.* Within twenty days of the end of each month, after receiving the reports due under Section 1.04 within fifteen days of the end of the prior month, the Scorekeeper shall provide to all Banks, all Associations discounting with or otherwise receiving funding from a Bank that is in Category I, II or III, FCA, the Insurance Corporation, the Funding Corporation if it is not the Scorekeeper, and either the CIPA Oversight Body or, if it is in existence, the Committee a notice identifying the Banks, if any, that are in Categories I, II and III, or stating that no Banks are in such Categories.

ARTICLE II—THE COMMITTEE

Section 2.01. *Formation.* A Monitoring and Advisory Committee (the "Committee") shall be formed at the instance of the CIPA Oversight Body within seven days of the date that it receives a notice from the Scorekeeper under Section 1.09 that any Bank is in Category I, II or III (unless such a Committee is already in existence). The Committee shall remain in existence thereafter for so long as the most recent notice from the Scorekeeper under Section 1.09 indicates that any Bank is in Category I, II or III. If not already in existence, the Committee may also be formed (a) at the instance of the CIPA Oversight Body at any other time, in order to consider a Continued Access Request that has been submitted or is expected to be submitted, (b) for purposes of preparing the reports described in Section 7.05, and (c) as provided for in Section 8.04(b).

Section 2.02. *Composition.* The Committee shall be made up of two representatives of each Bank and two representatives of the Funding Corporation. One of the representatives of each Bank shall be that Bank's representative on the CIPA Oversight Body. The other representative of each Bank shall be an individual designated by the Bank's board of directors, who may be a member of the Bank's board of directors or a senior officer of the Bank, in the discretion of the board. One of the representatives of the Funding Corporation shall be an outside director of the Funding Corporation designated by the Funding Corporation board of directors. The other representative of the Funding Corporation shall be designated by the board of directors of the Funding Corporation from among the members of its board and/or its senior officers. The removal and replacement of the Committee members designated directly by Bank boards of directors and by the Funding Corporation shall be in the sole discretion of each Bank board and of the Funding Corporation, respectively. A replacement for a member of the CIPA Oversight Body shall automatically replace such member on the Committee.

Section 2.03. *Authority and Responsibilities.* The Committee shall have the authority and responsibilities specified in this Article II, in Sections 1.04, 3.01, 3.02, 3.05, 3.06, 4.02, 7.05, 8.04 and 8.08, and in Article VI, and such incidental powers as are necessary and appropriate to effectuating such authority and responsibilities.

Section 2.04. *Meetings.* The initial meeting of the Committee shall be held at the call of the Chairman of the CIPA Oversight Body or a majority of the Parties entitled to vote on Committee business (with each Party acting through at least one of its representatives). Thereafter, the Committee shall meet at the call of the Chairman of the Committee or a majority of the Parties entitled to vote on Committee business (with each Party acting through at least one of its representatives). Written notice of each meeting shall be given to each member by the Chairman or his or her designee not less than 48 hours prior to the time of the meeting. A meeting may be held without such notice upon the signing of a waiver of notice by all of the Parties entitled to vote on Committee business (with each Party acting through at least one of its representatives). A majority of the Parties entitled to vote on Committee business (with each Party acting through at least one of its representatives) shall constitute a quorum for the conduct of business, *provided, however,* that if a quorum cannot be raised after seven days of efforts, the Parties that attend a meeting upon proper notice thereafter shall constitute a quorum. A meeting may be held by a telephone conference arrangement allowing each speaker to be heard by all others in attendance.

Section 2.05. *Action Without a Meeting.* Action may be taken by the Committee without a meeting if each Bank and the Funding Corporation (with each Party acting through at least one of its representatives) consents in writing to consideration of a matter without a meeting and a majority of the Parties entitled to vote on Committee business (with each Party acting through at least one of its representatives) approves the action in writing, which writings shall be kept with the minutes of the Committee.

Section 2.06. *Voting.* Each Bank and the Funding Corporation shall have one vote on Committee business. Voting on Committee business (including recommendations on Continued Access Decisions, but not the ultimate vote on Continued Access Decisions, which is addressed in Article VI) shall be by a simple majority of the Parties entitled to vote on Committee business that are present (physically or by telephone) through at least one representative. If a Bank or the Funding Corporation has two representatives present, they shall agree in casting the vote of the Bank or the Funding Corporation, and if they cannot agree on a particular matter, that Bank or the Funding Corporation shall not cast a vote on that matter, and, in determining the necessary majority (but not in determining a quorum), shall not be counted as a Party entitled to vote on that matter.

Section 2.07. *Officers.* The Committee shall elect from among its members a Chairman, a Vice Chairman, a Secretary and such other officers as it shall from time to time deem appropriate. The Chairman shall chair the meetings of the Committee and have such other duties as the Committee may delegate to him or her. The Vice Chairman shall perform such duties of the Chairman as the Chairman is unable to perform, and shall have such other duties as the Committee may delegate to him or her. The Secretary shall keep the minutes and maintain the minute book of the Committee. Other officers shall have such duties as the Committee may delegate to them.

Section 2.08. *Retention of Staff, Consultants and Experts.* The Committee shall be authorized to retain staff, consultants and experts as it deems necessary and appropriate in its sole discretion.

Section 2.09. *Expenses.* Any compensation of each member of the Committee for time spent on Committee business and for his or her out-of-pocket expenses, such as travel, shall be paid by the Party that designated that member to the Committee or to the CIPA Oversight Body. All other expenses incurred by the Committee shall be borne by the Banks and assessed by the Funding Corporation based on the formula then used by the Funding Corporation to allocate its operating expenses.

Section 2.10. *Custody of Records.* All information received by the Committee pursuant to this Restated MAA, and all Committee minutes, shall be lodged, while not in active use by the Committee, at the Funding Corporation, and shall be deemed records of the Funding Corporation for purposes of FCA examination. The Parties agree that documents in active use by the Committee may also be examined by FCA.

ARTICLE III—PROVISION OF INFORMATION

Section 3.01. *Information To Be Provided By All Banks in Categories I, II and III.* If a Bank is in Category I, II or III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and if the prior monthly notice by the Scorekeeper did not indicate that the Bank was in any Category, then the Bank shall within thirty days of receipt of the latest notice provide to the Committee: (a) a detailed explanation of the causes of its being in that Category, (b) an action plan to improve its financial situation so that it is no longer in any of the three Categories, (c) a timetable for achieving that result, (d) the materials and information listed in Attachment 1 hereto (in addition to fulfilling the other obligations specified in Attachment 1 hereto) and (e) such other pertinent materials and information as the Committee shall, within seven days of receiving notice from the Scorekeeper, request in writing from the Bank. Such Bank shall summarize, aggregate or analyze data, as well as provide raw data, in such manner as the Committee may request. Such information shall be promptly updated (without any need for a request by the Committee) whenever the facts significantly change, and shall also be updated or supplemented as the Committee so requests in writing of the Bank by such deadlines as the Committee may reasonably specify.

Section 3.02. *Additional Information To Be Provided By Banks in Categories II and III.* If a Bank is in Category II or III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and if the prior monthly notice by the Scorekeeper did not indicate that the Bank was in Category II or III, then the Bank shall within thirty days of receipt of the latest notice provide to the Committee, in addition to the information required by Section 3.01, the materials and information listed in Attachment 2 hereto (in addition to fulfilling the other obligations specified in Attachment 2 hereto). Such information shall be promptly updated (without any need for a request by the Committee) whenever the facts significantly change, and shall also be updated or supplemented as the Committee so requests in writing of the Bank by such deadlines as the Committee may reasonably specify.

Section 3.03. *Documents or Information Relating to Communications With FCA or the Insurance Corporation.* Notwithstanding Sections 3.01 and 3.02, a Bank shall not disclose to the Committee any communications between the Bank and FCA or the Insurance Corporation, as the case may be, or documents describing such communications, except as consented to by, and subject to such restrictive conditions as may be imposed by, FCA or the Insurance Corporation, as the case may be. However, facts regarding the Bank's condition or plans that pre-existed a communication with FCA or the Insurance Corporation and then were included in such a communication are not barred from disclosure by this section. The Committee shall decide on a case-by-case basis whether to request copies of such communications and documents from FCA or the Insurance Corporation, as the case may be. Each Bank hereby consents to the disclosure of such communications and documents to the Committee if consented to by FCA or the Insurance Corporation, as the case may be. Nothing in this section shall preclude a Bank from making disclosures to the System Disclosure Agent necessary to allow the System Disclosure Agent to comply

with its obligations under the securities laws or other applicable law or regulations with regard to disclosure to investors.

Section 3.04. *Sources of Information; Certification.* Information provided to the Committee under Sections 3.01 and 3.02 shall, to the extent applicable, be data used in the preparation of financial statements in accordance with generally accepted accounting principles, or data used in the preparation of call reports submitted to FCA pursuant to 12 C.F.R. pt. 621, subpt. B, as amended from time to time, or any successor thereto. A Bank shall certify, through its chief executive officer or, if there is no chief executive officer, a senior executive officer, the completeness and accuracy of all information provided to the Committee under Sections 3.01 and 3.02.

Section 3.05. *Failure to Provide Information.* If a Bank fails to provide information to the Committee as and when required under Sections 3.01 and 3.02, and does not correct such failure within two Business Days of receipt of the written notice by the Committee of the failure, then the Committee shall so advise the Scorekeeper.

Section 3.06. *Provision of Information to Banks.* Any information provided to the Committee under Sections 3.01 and 3.02 shall be provided by the Committee to any Bank upon request. A Bank shall not have the right under this Restated MAA to obtain information directly from another Bank.

Section 3.07. *Cessation of Obligations.* A Bank's obligation to provide information to the Committee under Section 3.01 shall cease as soon as the Bank is no longer in Category I, II or III, as indicated in the most recent notice from the Scorekeeper under Section 1.09. A Bank's obligation to provide to the Committee information under Section 3.02 shall cease as soon as the Bank is no longer in Category II or III, as indicated in the most recent notice from the Scorekeeper under Section 1.09.

ARTICLE IV—RESTRICTIONS ON MARKET ACCESS

Section 4.01. *Final Restrictions.* As of the Effective Date, a Bank in Category II, as indicated in the most recent notice from the Scorekeeper under Section 1.09, (a) shall be permitted to participate in issues of Debt Securities only to the extent necessary to roll over the principal (net of any original issue discount) of maturing debt, and (b) shall comply with the Additional Restrictions.

Section 4.02. *Category II Interim Restrictions.* From the day that a Bank receives a notice from the Scorekeeper that it is in Category II until (a) 10 days thereafter, if the Bank does not by that day submit a Continued Access Request to the Committee, or (b) if the Bank does by that day submit a Continued Access Request to the Committee, the seventh day following the day that notice is received that the Request is granted or denied, the Bank (i) may participate in issues of Debt Securities only to the extent necessary to roll over the principal (net of any original issue discount) of maturing debt unless the Committee, taking into account the criteria in Section 6.03, shall specifically authorize participation to a greater extent, and (ii) shall comply with the Additional Restrictions. Notwithstanding the foregoing, the Category II Interim Restrictions shall not go into effect if a Continued Access Request has already been granted in anticipation of the formal notice that the Bank is in Category II.

Section 4.03. *FCA Action.* The Final Restrictions and the Category II Interim Restrictions shall go into effect without the need for case-by-case approval by FCA.

Section 4.04. *Cessation of Restrictions.* The Final Restrictions and the Category II Interim Restrictions shall cease as soon as the Bank is no longer in Category II, as indicated in the most recent notice from the Scorekeeper under Section 1.09. The Bank shall continue, however, to be subject to such other obligations under this Restated MAA as may apply to it by reason of its being in another Category.

ARTICLE V—PROHIBITION OF MARKET ACCESS

Section 5.01. *Final Prohibition.* As of the Effective Date, a Bank in Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, (a) shall be prohibited from participating in issues of Debt Securities, and (b) shall comply with the Additional Restrictions.

Section 5.02. *Category III Interim Restrictions.* From the day that a Bank receives a notice from the Scorekeeper that it is in Category III until (a) 25 days thereafter, if the Bank does not by that day submit a Continued Access Request to the Committee, or (b) if the Bank does by that day submit a Continued Access Request to the Committee, the seventh day following the day that notice is received that the Request is granted or denied, the Bank (i) may participate in issues of Debt Securities only to the extent necessary to roll over the principal (net of any original issue discount) of maturing debt, and (ii) shall comply with the Additional Restrictions. Notwithstanding the foregoing, the Category III Interim Restrictions shall not go into effect if a Continued Access Request has already been granted in anticipation of the formal notice that the Bank is in Category III.

Section 5.03. *FCA Action.* The Category III Interim Restrictions shall go into effect without the need for case-by-case approval by FCA. The Parties agree that the Final Prohibition shall go into effect without the need for approval by FCA; *provided, however,* that FCA may override the Final Prohibition, for such time period up to 60 days as FCA may specify (or, if FCA does not so specify, for 60 days), by so ordering before the Effective Date, and may renew such an override once only, for such time period up to 60 additional days as FCA may specify (or, if FCA does not so specify, for 60 days), by so ordering before the expiration of the initial override period. If the Final Prohibition is overridden by FCA, the Category III Interim Restrictions shall remain in effect.

Section 5.04. *Cessation of Restrictions.* The Final Prohibition and the Category III Interim Restrictions shall cease as soon as the Bank is no longer in Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09. The Bank shall continue, however, to be subject to such other obligations under this Restated MAA as may apply to it by reason of its being in another Category.

ARTICLE VI—CONTINUED ACCESS DECISIONS

Section 6.01. *Process.* The process for action on Continued Access Requests shall be as follows:

(a) *Submission of Request.* A Bank may submit a Continued Access Request for consideration by the Committee at any time, including (i) prior to formal notice from the Scorekeeper that it is in Category II or III, if the Bank anticipates such notice, and (ii) subsequent to the Effective Date of Final Restrictions or a Final Prohibition.

(b) *Committee Recommendation.* After review of the Request, the supporting information and any other pertinent information available to the Committee, the Committee shall arrive at a recommendation regarding the Request (including, if the recommendation is to grant the Request, recommendations as to the expiration date of the Continued Access Decision and as to any conditions to be imposed on the Decision). The Funding Corporation, drawing upon its expertise and specialized knowledge, shall provide to the Committee all pertinent information in its possession (and the Banks authorize the Funding Corporation to provide such information to the Committee for its use as provided herein, and, to that limited extent only, waive their right to require the Funding Corporation to maintain the confidentiality of such information). The Committee shall send its recommendation and a statement of the reasons therefore, including a description of any considerations that were expressed for and against the recommendation by members of the Committee during its deliberations, together with the Request, the supporting information, a report of how the members of the Committee voted on the recommendation, report by the Funding Corporation concerning its position on the recommendation, and any other material information that was considered by the Committee, to all Banks and the Funding Corporation by overnight delivery service within fourteen days after receiving the Request. If the Committee fails to act within such fourteen-day period, the Continued Access Request shall be deemed forwarded to all Banks entitled to vote thereon for their consideration. If the Committee has failed to act, the Funding Corporation shall send to all Banks, within two days following the deadline for Committee action, a report concerning the position of the Funding Corporation on the Continued Access Request.

(c) *Vote on the Request.* The Banks entitled to vote on the Request shall be all Banks other than those in Category II and III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and other than the Bank requesting the Continued Access Decision. Within ten days of receiving the Committee's recommendation and the accompanying materials (or, if the Committee failed to act within fourteen days, within ten days following the fourteenth day), the board of directors of each Bank entitled to vote on

the Request, or its designee, after review of the recommendation, the accompanying materials, the report of the Funding Corporation, and any other pertinent information, shall vote to grant or deny the Request (as modified or supplemented by any recommendations of the Committee as to the expiration date of the Continued Access Decision and as to conditions to be imposed on the Decision), and shall provide written notice of its vote to the Committee. If the Committee has recommended in favor of a Continued Access Decision, the vote of a Bank shall be either to accept or reject the Committee's recommendation, including the recommended expiration date and conditions; if the Committee has recommended against a Continued Access Decision or has failed to act, the vote of a Bank shall be either to grant the Continued Access Request on the terms requested by the requesting Bank, or to deny it. Failure to vote within the ten-day period shall be considered a "no" vote. A Continued Access Request shall be granted only upon a 75% Vote within the ten-day period, and shall be considered denied if a 75% Vote is not forthcoming by that day.

(d) *Notice.* The Committee shall promptly provide written notice to the Parties, FCA and the Insurance Corporation of the granting or denial of the Request, and, if the Request was granted, of all the particulars of the Continued Access Decision.

Section 6.02. *Provision of Information to FCA and the Insurance Corporation.* FCA and the Insurance Corporation shall be advised by the Committee of the submission of a Continued Access Request, shall be provided by the Committee with appropriate materials relating to the Request, and shall be advised by the Committee of the recommendation made by the Committee concerning the Request.

Section 6.03. *Criteria.* The Committee, in arriving at its recommendation on a Continued Access Request, and the voting Banks, in voting on a Continued Access Request, shall consider (a) the present financial strength of the Bank in issue, (b) the prospects for financial recovery of the Bank in issue, (c) the probable costs of particular courses of action to the Banks and the Insurance Fund, (d) any intentions expressed by the Insurance Corporation with regard to assisting or working with the Bank in issue, (e) any existing lending commitments and any particular high-quality new lending opportunities of the Bank, (f) seasonal variations in the borrowing needs of the Bank, (g) whether the Bank's independent public accountants have included a Going Concern Qualification in the most recent combined financial statements of the Bank and its constituent Associations, and (h) any other matters deemed pertinent.

Section 6.04. *Expiration Date.* A Continued Access Decision shall have such expiration date as the Committee recommends and is approved by a 75% Vote. If the Committee recommends against or fails to act on a Continued Access Request, and it is subsequently approved by a 75% Vote, the expiration date of the Continued Access Decision shall be the earlier of the date requested by the Bank or 180 days from the date the Request is granted. A Continued Access Decision may be terminated prior to that date, or renewed for an additional term, upon a new recommendation by the Committee and 75% Vote. A Continued Access Decision (including any conditions to which it may be subject) will terminate automatically as soon as the Bank is no longer in the same Category as it was when it requested the Decision, as indicated in the most recent notice from the Scorekeeper under Section 1.09.

Section 6.05. *Conditions.* A Continued Access Decision shall be subject to such conditions as the Committee recommends and are approved by a 75% Vote. If specifically approved by a 75% Vote, administration of the details of the conditions and ongoing refinement of the conditions to take account of changing circumstances can be left to the Committee or such subcommittee as it may establish for that purpose. Among the conditions that may be imposed on a Continued Access Decision are (a) a requirement of remedial action by the Bank, failing which the Continued Access Decision will terminate, (b) a requirement of other appropriate conduct on the part of the Bank (such as compliance with the Additional Restrictions), failing which the Continued Access Decision will terminate, and (c) specific restrictions on continued borrowing by the Bank, such as a provision allowing a Bank in Category II to borrow only for specified types of business in addition to rolling over the principal of maturing debt, or allowing such a Bank only to roll over interest on maturing debt in addition to rolling over the principal of maturing debt, or a provision allowing a Bank in Category III to roll over a portion of its maturing debt. The Committee shall be responsible for monitoring and determining compliance with conditions, and shall promptly advise the Parties of any failure by a Bank to comply with conditions. The Committee's determination with respect to compliance with conditions shall be final, until and unless overturned or modified in arbitration pursuant to Section 7.08.

Section 6.06. *FCA Action.* The Parties agree that a Continued Access Decision shall go into effect without the need for approval by FCA, but that FCA may override the Continued Access Decision, for such time period as FCA may specify (or, if FCA does not so specify, until a new Continued Access Decision is made pursuant to a recommendation of the Committee and a 75% Vote, in which case it is again subject to override by FCA), by so ordering at any time.

Section 6.07. *Notice to FCA of Intent to File Continued Access Request.* A Bank that receives notice that it is in Category III shall advise FCA, within ten days of receiving such notice, whether it intends to file a Continued Access Request.

ARTICLE VII—OTHER

Section 7.01. *Conditions Precedent.* This Restated MAA shall go into effect on January 1, 2003, *provided, however,* that on or before that date each Party has executed a certificate in substantially the form of Attachment 3 hereto that all of the following conditions precedent have been satisfied: (a) the delivery to the Banks of an opinion of Covington & Burling in substantially the form of Attachment 4 hereto, (b) the delivery to the Funding Corporation of an opinion of Sutherland, Asbill & Brennan in substantially the form of Attachment 5 hereto, (c) adoption by each of the Banks and the Funding Corporation of a resolution in substantially the form of Attachment 6 hereto, (d) action by the Insurance Corporation, through its board, expressing its support for this Restated MAA, and (e) action by FCA, through its board, approving this Restated MAA pursuant to Section 4.2(c) and Section 4.2(d) of the Act, and (without necessarily expressing any view as to the proper interpretation of Section 4.9(b)(2) of the Act) approving this Restated MAA pursuant to Section 4.9(b)(2) of the Act insofar as such approval may be required, which action shall (i) indicate that the entry into and compliance with this Restated MAA by the Funding Corporation fully satisfy such obligations as the Funding Corporation may have with respect to establishing "conditions of participation" for market access under Section 4.9(b)(2), and (ii) contain no reservations or other conditions or qualifications except for those which may be specifically agreed to by the Funding Corporation's board of directors and the other Parties.

Upon execution of its certificate, each Party shall forward a copy to the Funding Corporation, attn. Kathleen Mullarkey, General Counsel, which shall advise all other Parties when a complete set of certificates is received.

If this Restated MAA becomes effective in accordance with this Section 7.01, the Agreement shall be amended and restated by this Restated MAA as of that date without further action of the Parties. If any term, provision, covenant or restriction of this Restated MAA is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Restated MAA shall remain in full force and effect and shall in no way be affected, impaired or invalidated. If any term, provision, covenant or restriction of this Restated MAA that purports to amend a term, provision, covenant or restriction of the Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, such term, provision, covenant or restriction of the Agreement shall be considered to have continued and to be continuing in full force and effect at all times since this Restated MAA has purported to be in effect. The parties agree that notwithstanding the occurrence of any of the foregoing events they will treat, to the maximum extent permitted by law, all actions theretofore taken pursuant to this Restated MAA as valid and binding actions of the parties.

Section 7.02. *Representations and Warranties.* Each Party represents and warrants to the other Parties that (a) it has duly executed and delivered this Restated MAA, (b) its performance of this Restated MAA in accordance with its terms will not conflict with or result in the breach of or

violation of any of the terms or conditions of, or constitute (or with notice or lapse of time or both constitute) a default under any order, judgment or decree applicable to it, or any instrument, contract or other agreement to which it is a party or by which it is bound, (c) it is duly constituted and validly existing under the laws of the United States, (d) it has the corporate and other authority, and has obtained all necessary approvals, to enter into this Restated MAA and perform all of its obligations hereunder, and (e) its performance of this Restated MAA in accordance with its terms will not conflict with or result in the breach of or violation of any of the terms or conditions of, or constitute (or with notice or lapse of time or both constitute) a default under its charter (with respect to the Party Banks), or its bylaws.

Section 7.03. *Additional Covenants.*

(a) Each Bank agrees to notify the other Parties and the Scorekeeper if, at any time, it anticipates that within the following three months it will come to be in Category I, II or III, or will move from one Category to another.

(b) Whenever a Bank is subject to Final Restrictions, a Final Prohibition, Category II Interim Restrictions, Category III Interim Restrictions, or a Continued Access Decision, the Committee shall promptly so notify the Funding Corporation, and the Funding Corporation shall take all necessary steps to ensure that the Bank participates in issues of Debt Securities only to the extent permitted thereunder. The Funding Corporation may rely on the determination of the Committee as to whether a Bank has complied with a condition to a Continued Access Decision.

(c) Each Bank agrees that it will not at any time that it is in Category I, II or III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and will not without twelve months' prior notice to all other Banks and the Funding Corporation at any other time, either (i) withdraw, or (ii) modify, in a fashion that would impede the issuance of Debt Securities, the funding resolution it has adopted pursuant to Section 4.4(b) of the Act. Should a violation of this covenant be asserted, and should the Bank deny same, the funding resolution shall be deemed still to be in full effect, without modification, until arbitration of the matter is completed, and each Bank, by entering into this Restated MAA, consents to emergency injunctive relief to enforce this provision. Nothing in this Restated MAA shall be construed to restrict any Party's ability to take the position that a Bank's withdrawal or modification of its funding resolution is not authorized by law.

(d) Each Bank agrees that it will not at any time that it is in Category I, II or III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and will not without twelve months' prior notice to all other Banks and the System Disclosure Agent at any other time, fail to report information to the System Disclosure Agent pursuant to the Disclosure Program for the issuance of Debt Securities and for the System Disclosure Agent to have a reasonable basis for making disclosures pursuant to the Disclosure Program. Should the System Disclosure Agent assert a violation of this covenant, and should the Bank deny same, the Bank shall furnish such information as the System Disclosure Agent shall request until arbitration of the matter is completed, and each Bank, by entering into this Restated MAA, consents to emergency injunctive relief to enforce this provision. Nothing in this Restated MAA shall be construed to restrict the ability of the System Disclosure Agent to comply with its obligations under the securities laws or other applicable law or regulations with regard to disclosure to investors.

(e) Without implying that suit may be brought on any other matter, each Bank and the Funding Corporation specifically agree not to bring suit to challenge this Restated MAA or to challenge any Final Prohibition, Final Restrictions, Category II Interim Restrictions, Category III Interim Restrictions, Continued Access Decision, denial of a Continued Access Request or recommendation of the Committee with respect to a Continued Access Request arrived at in accordance with this Restated MAA. This provision shall not be construed to preclude judicial actions under the U.S. Arbitration Act, 9 U.S.C. " 1–15, to enforce or vacate arbitration decisions rendered pursuant to Section 7.08, or for an order that arbitration proceed pursuant to Section 7.08.

(f) The Funding Corporation agrees that it will not reinstitute the Market Access and Risk Alert Program, or adopt a similar such program for so long as both (i) this Restated MAA is in effect and (ii) Section 4.9(b)(2) of the Act is not amended in a manner which would require, nor is there any other change in applicable law or regulations which would require, the Funding Corporation to establish "conditions of participation" different from those contained in this Restated MAA. Should the condition described in (ii) no longer apply and the Funding Corporation adopt a market access program, this Restated MAA shall be deemed terminated. All Banks reserve the right to argue, if the conditions described in clauses (i) or (ii) of the preceding sentence should no longer apply and the Funding Corporation should adopt such a program, that any such program adopted by the Funding Corporation is contrary to law, either because Section 4.9(b)(2) of the Act does not authorize such a program, or for any other reason, and the entry by any Bank into this Restated MAA shall not be construed as waiving such right.

(g) It is expressly agreed that the Agreement, FCA approval of the Agreement, this Restated MAA and FCA approval hereof do not provide any grounds for challenging FCA or Insurance Corporation actions with respect to the creation of or the conduct of receiverships or conservatorships. Without limiting the preceding statement, each Bank specifically and expressly agrees and acknowledges that it cannot, and agrees that it shall not, attempt to challenge FCA's appointment of a receiver or conservator for itself or any other System institution or FCA's or the Insurance Corporation's actions in the conduct of any receivership or conservatorship (i) on the basis of this Restated MAA or FCA's approval of this Restated MAA; or (ii) on the grounds that Category II Interim Restrictions, Final Restrictions, Category III Interim Restrictions, or Final Prohibitions were or were not imposed, whether by reason of FCA's or the Insurance Corporation's action or inaction or otherwise. The Banks jointly and severally agree that they shall indemnify and hold harmless FCA and the Insurance Corporation against all costs, expenses, and damages, including without limitation, attorneys' fees and litigation costs, resulting from any such challenge by any Party.

Section 7.04. *Termination.* This Restated MAA shall terminate on December 31, 2011, or at an earlier date if so agreed in writing by 75% of all the Banks. Commencing a year before December 31, 2011, the Parties shall meet to consider its extension. Except as provided in Section 7.03(f), it is understood that the termination of this Restated MAA shall not affect any rights and obligations of the Funding Corporation under Section 4.9(b)(2) of the Act.

Section 7.05. *Periodic Review.* During the years 2003, 2006 and 2009, and at such more frequent intervals as the Parties may agree, the Banks and the Funding Corporation, through their boards of directors, shall review this Restated MAA and consider whether any amendments to it are appropriate. In connection with such review, the Committee shall report to the boards on the operation of the Restated MAA and recommend any amendments it considers appropriate.

Section 7.06. *Confidentiality.* The Parties may disclose this Restated MAA and any amendments to it and any actions taken pursuant to this Restated MAA to restrict or prohibit borrowing by a Bank. All other information relating to this Restated MAA shall be kept confidential and shall be used solely for purposes of this Restated MAA, except that, to the extent permitted by applicable law and regulations, such information may be disclosed by (a) the System Disclosure Agent under the Disclosure Program, (b) a Bank, upon coordination of such disclosure with the System Disclosure Agent, as the Bank deems appropriate for purposes of the Bank's disclosures to borrowers or shareholders; (c) a Bank as deemed appropriate for purposes of disclosure to transacting parties (subject, to the extent the Bank reasonably can obtain such agreement, to such a transacting party's agreeing to keep the information confidential) of material information relating to that Bank, or (d) any Party in order to comply with legal or regulatory obligations. Notwithstanding the preceding sentence, the Parties shall make every effort, to the extent consistent with legal requirements, securities disclosure obligations and other business necessities, to preserve the confidentiality of information provided to the Committee by a Bank and designated as "Proprietary and Confidential." Any expert or consultant retained in connection with this Restated MAA shall execute a written undertaking to preserve the confidentiality of any information received in connection with this Restated MAA. Notwithstanding the foregoing, nothing in this Restated MAA shall prevent Parties from disclosing information to FCA or the Insurance Corporation.

Section 7.07. *Amendments.* This Restated MAA may be amended only by the written agreement of all the Parties.

Section 7.08. *Dispute Resolution.* All disputes between or among Parties relating to this Restated MAA shall be submitted to final and binding arbitration pursuant to the U.S. Arbitration Act, 9 U.S.C. " 1–15, *provided,* however, that any recommendation by the Committee regarding a Continued Access Request (including, if the recommendation is to grant the Request, recommendations as to the expiration date of the Continued Access Decision and as to any conditions to be imposed on the Decision), and any vote by a Bank on a Continued Access Request, shall be final and not subject to arbitration. Arbitrations shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association before a single arbitrator. An arbitrator shall be selected within fourteen days of the initiation of arbitration by any Party, and the arbitrator shall render a decision within thirty days of his or her selection.

Section 7.09. *Governing Law.* This Restated MAA shall be governed by and construed in accordance with the Federal laws of the United States of America, and, to the extent of the absence of Federal law, in accordance with the laws of the State of New York excluding any conflict of law provisions that would cause the law of any jurisdiction other than New York to be applied; *provided, however,* that in the event of any conflict between the U.S. Arbitration Act and applicable Federal or New York law, the U.S. Arbitration Act shall control.

Section 7.10. *Notices.* Notices under this Restated MAA shall be in writing, shall be sent both by facsimile transmission and by overnight delivery service, and shall be deemed received on the Business Day after they are sent.

Notices shall be addressed as follows unless such address is changed by written notice hereunder:

To AgAmerica, FCB:
AgAmerica, FCB
375 Jackson Street
St. Paul, MN 55101
Attention: President and Chief Executive Officer
Fax: 651–282–8494

To AgFirst Farm Credit Bank:
AgFirst Farm Credit Bank
Farm Credit Bank Building
1401 Hampton Street
Columbia, SC 29201
Attention: President and Chief Executive Officer
Fax: 803–254–1776

To AgriBank, FCB:
AgriBank, FCB
375 Jackson Street
St. Paul, MN 55101
Attention: President and Chief Executive Officer
Fax: 651–282–8494

To CoBank, ACB:
CoBank, ACB
5500 South Quebec Street
Englewood, CO 80111
Attention: President and Chief Executive Officer
Fax: 303–740–4002

To the Farm Credit Bank of Texas:
Farm Credit Bank of Texas
6210 Highway 290 East
Austin, TX 78723
Attention: President and Chief Executive Officer
Fax: 512–465–0775

To Farm Credit Bank of Wichita:
Farm Credit Bank of Wichita
Farm Credit Bank Building
245 North Waco
Wichita, KS 67202
Attention: President and Chief Executive Officer
Fax: 316–266–5126

To Western Farm Credit Bank:
Western Farm Credit Bank
Farm Credit Bank Building
245 North Waco
Wichita, KS 67202
Attention: President and Chief Executive Officer
Fax: 316–266–5126

To Federal Farm Credit Banks Funding Corporation:
Federal Farm Credit Banks Funding Corporation
10 Exchange Place
Suite 1401
Jersey City, NJ 07302
Attention: President and Chief Executive Officer
Fax: 201–200–8109

To the Farm Credit System Insurance Corporation:
Farm Credit System Insurance Corporation
1501 Farm Credit Drive
McLean, Virginia 22102
Attention: Chairman
Fax: 703–790–9088

To the Farm Credit Administration:
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22102–5090
Attention: Chairman
Fax: 703–734–5784

To the CIPA Oversight Body:
At such address and fax number as shall be supplied to the Parties from time to time by the Chairman of the CIPA Oversight Body.

To the Committee:
At such address and fax number as shall be supplied by the Committee, which the Committee shall promptly transmit to each Party.

To a Scorekeeper other than the Funding Corporation:
At such address and fax number as shall be supplied by such Scorekeeper, which such Scorekeeper shall promptly transmit to each Party.

Section 7.11. *Headings; Conjunctive/Disjunctive; Singular/Plural.* The headings of any article or section of this Restated MAA are for convenience only and shall not be used to interpret any provision of the Restated MAA. Uses of the conjunctive include the disjunctive, and vice versa, unless the context clearly requires otherwise. Uses of the singular include the plural, and vice versa, unless the context clearly requires otherwise.

Section 7.12. *Successors and Assigns.* Except as provided in the definitions of "Bank" and "Banks" in Article IX, this Restated MAA shall inure to the benefit of and be binding upon the successors and assigns of the Parties, including entities resulting from the merger or consolidation of one or more Banks.

Section 7.13. *Counterparts.* This Restated MAA, and any document provided for hereunder, may be executed in one or more counterparts.

Section 7.14. *Waiver.* Any provision of this Restated MAA may be waived, but only if such waiver is in writing and is signed by all Parties to this Restated MAA.

Section 7.15. *Entire Agreement.* Except as provisions of CIPA are cited in this Restated MAA (which provisions are expressly incorporated herein by reference), this Restated MAA sets forth the entire agreement of the Parties and supersedes all prior understandings or agreements, oral or written, among the Parties with respect to the subject matter hereof.

Section 7.16. *Relation to CIPA.* This Restated MAA and CIPA are separate agreements, and invalidation of one does not affect the other. Should CIPA be invalidated or terminated, the Parties will take the necessary steps to maintain those aspects of CIPA that are referred to in Sections 1.01, 1.02 and 1.03, and to replace the CIPA Oversight Body for purposes of continued administration of this Restated MAA.

Section 7.17. *Third Parties.* Except as provided in Sections 2.10, 3.03, 7.03(g), 7.21 and 7.22, this Restated MAA is for the benefit of the Parties and their respective successors and assigns, and no rights are intended to be, or are, created hereunder for the benefit of any third party.

Section 7.18. *Time Is Of The Essence.* Time is of the essence in interpreting and performing this Restated MAA.

Section 7.19. *Statutory Collateral Requirement.* Nothing in this Restated MAA shall be construed to permit a Bank to participate in issues of Debt Securities or other obligations if it does not satisfy the collateral requirements of Section 4.3(c) of the Act. For purposes of this Section, "Bank" shall include any System bank in conservatorship or receivership.

Section 7.20. *Termination of System Status.* Nothing in this Restated MAA shall be construed to preclude a Bank from terminating its status as a System institution pursuant to Section 7.10 of the Act, or from at that time withdrawing, as from that time forward, the funding resolution it has adopted pursuant to Section 4.4(b) of the Act. A Bank that terminates its System status shall cease to have any rights or obligations under this Restated MAA, except that it shall continue to be subject to Article VIII with respect to claims accruing through the date of such termination of System status.

Section 7.21. *Restrictions Concerning Subsequent Litigation.* It is expressly agreed by the Banks that (a) characterization or categorization of Banks, (b) information furnished to the Committee or other Banks, and (c) discussions or decisions of the Banks or Committee under this Restated MAA shall not be used in any subsequent litigation

challenging FCA's or the Insurance Corporation's action or inaction.

Section 7.22. *Effect of this Agreement.* Neither this Restated MAA nor FCA approval hereof shall in any way restrict or qualify the authority of FCA or the Insurance Corporation to exercise any of the powers, rights, or duties granted by law to FCA or the Insurance Corporation.

ARTICLE VIII—INDEMNIFICATION

Section 8.01. *Definitions.* As used in this Article VIII:

(a) "Indemnified Party" means any Bank, the Funding Corporation, the Committee, the Scorekeeper, or any of the past, present or future directors, officers, stockholders, employees or agents of the foregoing.

(b) "Damages" means any and all losses, costs, liabilities, damages and expenses, including, without limitation, court costs and reasonable fees and expenses of attorneys expended in investigation, settlement and defense (at the trial and appellate levels and otherwise), which are incurred by an Indemnified Party as a result of or in connection with a claim alleging liability to any non-Party for actions taken pursuant to or in connection with this Restated MAA. Except to the extent otherwise provided in this Article VIII, Damages shall be deemed to have been incurred by reason of a final settlement or the dismissal with prejudice of any such claim, or the issuance of a final nonappealable order by a court of competent jurisdiction which ultimately disposes of such a claim, whether favorably or unfavorably.

Section 8.02. *Indemnity.* To the extent consistent with governing law, the Banks, jointly and severally, shall indemnify and hold harmless each Indemnified Party against and in respect of Damages, *provided, however,* that an Indemnified Party shall not be entitled to indemnification under this Article VIII in connection with conduct of such Indemnified Party constituting gross negligence, willful misconduct, intentional tort or criminal act, or in connection with civil money penalties imposed by FCA. In addition, the Banks, jointly and severally, shall indemnify an Indemnified Party for all costs and expenses (including, without limitation, fees and expenses of attorneys) incurred reasonably and in good faith by an Indemnified Party in connection with the successful enforcement of rights under any provision of this Article VIII.

Section 8.03. *Advancement of Expenses.* The Banks, jointly and severally, shall advance to an Indemnified Party, as and when incurred by the Indemnified Party, all reasonable expenses, court costs and attorneys' fees incurred by such Indemnified Party in defending any proceeding involving a claim against such Indemnified Party based upon or alleging any matter that constitutes, or if sustained would constitute, a matter in respect of which indemnification is provided for in Section 8.02, so long as the Indemnified Party provides the Banks with a written undertaking to repay all amounts so advanced if it is ultimately determined by a court in a final nonappealable order or by agreement of the Banks and the Indemnified Party that the Indemnified Party is not entitled to be indemnified under Section 8.02.

Section 8.04. *Assertion of Claim.*

(a) Promptly after the receipt by an Indemnified Party of notice of the assertion of any claim or the commencement of any action against him, her or it in respect of which indemnity may be sought against the Banks hereunder (an "Assertion"), such Indemnified Party shall apprise the Banks, through a notice to each of them, of such Assertion. The failure to so notify the Banks shall not relieve the Banks of liability they may have to such Indemnified Party hereunder, except to the extent that failure to give such notice results in material prejudice to the Banks.

(b) Any Bank receiving a notice under paragraph (a) shall forward it to the Committee (which, if not in existence, shall be formed at the instance of such Bank to consider the matter). The Banks, through the Committee, shall be entitled to participate in, and to the extent the Banks, through the Committee, elect in writing on thirty days' notice, to assume, the defense of an Assertion, at their own expense, with counsel chosen by them and satisfactory to the Indemnified Party. Notwithstanding that the Banks, through the Committee, shall have elected by such written notice to assume the defense of any Assertion, such Indemnified Party shall have the right to participate in the investigation and defense thereof, with separate counsel chosen by such Indemnified Party, but in such event the fees and expenses of such separate counsel shall be paid by such Indemnified Party and shall not be subject to indemnification by the Banks unless (i) the Banks, through the Committee, shall have agreed to pay such fees and expenses, (ii) the Banks shall have failed to assume the defense of such Assertion and to employ counsel satisfactory to such Indemnified Party, or (iii) in the reasonable judgment of such Indemnified Party, based upon advice of his, her or its counsel, a conflict of interest may exist between the Banks and such Indemnified Party with respect to such Assertion, in which case, if such Indemnified Party notifies the Banks, through the Committee, that such Indemnified Party elects to employ separate counsel at the Banks' expense, the Banks shall not have the right to assume the defense of such Assertion on behalf of such Indemnified Party. Notwithstanding anything to the contrary in this Article VIII, neither the Banks, through the Committee, nor the Indemnified Party shall settle or compromise any action or consent to the entering of any judgment (x) without the prior written consent of the other, which consent shall not be unreasonably withheld, and (y) without obtaining, as an unconditional term of such settlement, compromise or consent, the delivery by the claimant or plaintiff to such Indemnified Party of a duly executed written release of such Indemnified Party from all liability in respect of such Assertion, which release shall be satisfactory in form and substance to counsel to such Indemnified Party. The Funding Corporation shall not be entitled to vote on actions by the Committee under this paragraph (b) or Section 8.08.

Section 8.05. *Remedies; Survival.* The indemnification, rights and remedies provided to an Indemnified Party under this Article VIII shall be (i) in addition to and not in substitution for any other rights and remedies to which any of the Indemnified Parties may be entitled, under any other agreement with any other Person, or otherwise at law or in equity, and (ii) provided prior to and without regard to any other indemnification available to any Indemnified Party. This Article VIII shall survive the termination of this Restated MAA.

Section 8.06. *No Rights in Third Parties.* This Restated MAA shall not confer upon any Person other than the Indemnified Party any rights or remedies of any nature or kind whatsoever under or by reason of the indemnification provided for in this Article VIII.

Section 8.07. *Subrogation; Insurance.* Upon the payment by the Banks to an Indemnified Party of any amounts for which an Indemnified Party shall be entitled to indemnification under this Article VIII, if the Indemnified Party shall also have the right to recover such amount under any commercial insurance, the Banks shall be subrogated to such rights to the extent of the indemnification actually paid. Where coverage under such commercial insurance may exist, the Indemnified Party shall promptly file and diligently pursue a claim under said insurance. Any amounts paid pursuant to such claim shall be refunded to the Banks to the extent the Banks have provided indemnification payments under this Article VIII, *provided, however,* that recovery under such insurance shall not be deemed a condition precedent to the indemnification obligations of the Banks under this Article VIII.

Section 8.08. *Sharing in Costs.* The Banks shall share in the costs of any indemnification payment hereunder as the Committee shall determine.

ARTICLE IX—DEFINITIONS

The following definitions are used in this Restated MAA:

"Act" means the Farm Credit Act of 1971, 12 U.S.C. 2001, *et seq.*, as amended from time to time, or any successors thereto.

The "Additional Restrictions" are that a Bank (a) shall manage its asset/liability mix so as not to increase, and, to the extent possible, so as to reduce or eliminate, any Interest-Rate Sensitivity Deduction in its Net Composite Score, and (b) shall not increase the dollar amount of any liabilities, or take any action giving rise to a lien or pledge on its assets, senior to its liability on Debt Securities other than (i) tax liabilities and secured liabilities arising in the ordinary course of business through activities other than borrowing, such as mechanic's liens or judgment liens, and (ii) secured liabilities, or an action giving rise to such a lien or pledge, incurred in the ordinary course of business as the result of issuing secured debt or entering into repurchase agreements, *provided, however,* that such debt issuances and agreements may be undertaken to the extent that the proceeds therefrom are used to repay the principal of outstanding Debt Securities and the value of the collateral securing the debt issuances or the agreements

(computed in the same manner as provided under Section 4.3(c) of the Act) does not exceed the amount of principal so repaid.

"Agreement" means that certain Market Access Agreement, dated September 1, 1994 and effective as of November 23, 1994, among the Banks and the Funding Corporation.

"Associations" means agricultural credit associations, federal land bank associations, federal land credit associations and production credit associations.

"Average Net Composite Score" is defined in Section 1.03.

"Bank" means a bank of the Farm Credit System, other than (except where noted) any bank in conservatorship or receivership.

"Banks" means the banks of the Farm Credit System, other than (except where noted) any banks in conservatorship or receivership.

"Business Day" means any day other than a Saturday, Sunday or Federal holiday.

"Business Plan" means the business plan required under 12 C.F.R. 618.8440, as amended from time to time, or any successors thereto.

"CIPA" means that certain Amended and Restated Contractual Interbank Performance Agreement Among the Banks of the Farm Credit System, the Farm Credit System Financial Assistance Corporation and the Federal Farm Credit Banks Funding Corporation, the Scorekeeper, Dated as of January 1, 1997, as amended from time to time, or any successor thereto.

"CIPA Oversight Body" is defined in Section 1.02.

"Category I" is defined in Section 1.05.

"Category II" is defined in Section 1.06.

"Category II Interim Restrictions" means the requirements set forth in Section 4.02.

"Category III" is defined in Section 1.07.

"Category III Interim Restrictions" means the requirements set forth in Section 5.02.

"Collateral" is defined as in Section 4.3(c) of the Act and the regulations thereunder, as amended from time to time, or any successors thereto.

"Collateralized Obligations" means obligations required by Section 4.3(c) of the Act to be backed by collateral as set forth therein.

The "Committee" is defined in Section 2.01.

"Continued Access Decision" means a decision, subject to the procedures, terms and conditions described in Article VI, that Final Restrictions or a Final Prohibition not go into effect, or be lifted.

"Continued Access Request" means a request for a Continued Access Decision.

"Days" means calendar days, unless the term Business Days is used.

"Debt Securities" means Systemwide and consolidated obligations issued through the Funding Corporation, within the meaning of Sections 4.2(c), 4.2(d) and 4.9 of the Act.

"Disclosure Program" means the program established, pursuant to resolutions of the Banks and the Funding Corporation adopted in 1987 and last substantively revised in 1994, for disclosure at the Systemwide level of financial and other information in connection with the issuance of Debt Securities, as amended from time to time, or any successor thereto.

The "Effective Date" is (a) the tenth day after a Bank receives a notification from the Scorekeeper that it is in Category II or the twenty-fifth day after a Bank receives a notification from the Scorekeeper that it is in Category III, in each case if the Bank does not by that day submit a Continued Access Request to the Committee, or (b) if the Bank does by that day submit a Continued Access Request to the Committee, the seventh day following the day that notice is received that the Request is denied.

"FCA" means the Farm Credit Administration.

"Final Prohibition" means the requirements set forth in Section 5.01.

"Final Restrictions" means the requirements set forth in Section 4.01.

"Funding Corporation" means the Federal Farm Credit Banks Funding Corporation.

"Going Concern Qualification" means a qualification expressed pursuant to Statement of Auditing Standards No. 59, "The Auditor's Consideration of an Entity's Ability to Continue As a Going Concern."

"Insurance Corporation" means the Farm Credit System Insurance Corporation.

"Insurance Fund" means the Farm Credit Insurance Fund maintained by the Insurance Corporation pursuant to Section 5.60 of the Act.

"Interest-Rate Sensitivity Deduction" is defined as in Article II of CIPA, and the Model referred to therein, as amended from time to time, or any successor thereto.

"Liquidity Deficiency Deduction" is defined as in Article II of CIPA, and the Model referred to therein, as amended from time to time, or any successor thereto.

"Net Collateral" means a Bank's collateral as defined in 12 C.F.R. 615.5050, as amended from time to time, or any successors thereto (except that eligible investments as described in 12 C.F.R. 615.5140, as amended from time to time, or any successors thereto, are to be valued at their amortized cost), less an amount equal to that portion of the allocated investments of affiliated Associations that is not counted as permanent capital by the Bank.

"Net Collateral Ratio" means a Bank's Net Collateral divided by Bank-only total liabilities (i.e., the total liabilities used to compute the net collateral ratio defined in 12 C.F.R. 615.5301(d), as amended from time to time or any successors thereto).

"Net Composite Score" is defined in Section 1.03.

"Parties" means the parties to this Restated MAA. A bank in conservatorship or receivership is not a party to this Restated MAA.

"Permanent Capital" is defined as in Section 4.3A(a)(1) of the Act and the regulations thereunder, as amended from time to time, or any successors thereto.

"Permanent Capital Ratio" means a Bank's Permanent Capital as a percentage of its Risk-Adjusted Asset Base.

"Person" means any human being, partnership, association, joint venture, corporation, legal representative or trust, or any other entity.

"Risk-Adjusted Asset Base" is defined as in 12 C.F.R. 615.5210(e), as amended from time to time, or any successor thereto.

"Scorekeeper" is defined in Section 1.01.

"75% Vote" means an affirmative vote, through each voting Bank's board of directors or its designee, of at least 75% of those Banks that are entitled to vote on a matter.

"System" means the Farm Credit System.

"System Disclosure Agent" means the Funding Corporation or such other disclosure agent as all Banks shall unanimously agree upon, to the extent permitted by law or regulation. For purposes of this definition, "Banks" shall include any System bank in conservatorship or receivership."

Dated: January 9, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–800 Filed 1–14–03; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 8, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 17, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0810.

Title: Procedures for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Time Per Response: 60 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 6,200 hours.

Total Annual Cost: N/A.

Needs and Uses: 47 U.S.C. 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible. The Commission must evaluate whether such telecommunications carriers meet the eligibility criteria set forth in the Act. In an Order, the Commission concludes that petitions for designation filed under section 214(e)(6) relating to "near reservation" areas will not be considered as petitions relating to tribal lands and as a result, petitioners seeking ETC designation in such areas must follow the procedures set forth in the Twelfth Report and Order for non-tribal lands prior to submitting a request for designation to this Commission under section 214(e)(6).

OMB Control No.: 3060–0855.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form No.: FCC Forms 499–A and 499–Q.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 5,500 respondents, 15,500 responses.

Estimated Time Per Response: 30 hours.

Frequency of Response: On occasion, annual, quarterly, one-time and other reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 164,487 hours.

Total Annual Cost: N/A.

Needs and Uses: Pursuant to the Communications Act of 1934, as amended, telecommunications carriers (and certain other providers of telecommunications services) must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. The Commission modified the existing methodology used to assess contributions that carriers make to the federal universal service support mechanisms. The modifications adopted will entail altering to the current revenue reporting requirements to which interstate telecommunications carriers are subject under part 54 of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–766 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 6, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 14, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0718.

Title: Part 101 Governing the Terrestrial Microwave Radio Service.

Form No: N/A.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 20,025 respondents; (1,025 reporting responses and 19,000 recordkeepers).

Estimated Time Per Response: 20,489 hours.

Frequency of Response: On occasion and every 10 reporting requirements and recordkeeping requirement.

Total Annual Burden: 20,489 hours.

Total Annual Cost: $91,000.

Needs and Uses: Part 101 requires various information to be filed and maintained by the respondent to determine the technical, legal and other qualifications of applications to operate a station in the public and private operational fixed services. The information is also used to determine whether the public interest, convenience and necessity are being served as required by 47 U.S.C. 309. The Commission staff also uses this information to ensure that applicants and licensees comply with ownership and transfer restrictions imposed by section 310 of the Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–765 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–3606]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the rechartering of the Consumer Advisory Committee, formerly known as the Consumer/Disability Telecommunications Advisory Committee (hereinafter "the Committee"), whose purpose is to make recommendations to the Federal Communications Commission ("FCC" or "Commission") regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as American Indians and persons living in rural areas) in proceedings before the Commission. The Commission also requests applications for membership on the Committee.

DATES: Applications should be received no later than January 31, 2003.

ADDRESSES: Applications should be sent to the Federal Communications Commission, Consumer & Governmental Affairs Bureau, Attn.: Scott Marshall, via e-mail to *cac@fcc.gov*, via facsimile to 202–418–6509 or via U.S. Mail, to 445 12th Street, SW., Room 5A824, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 202–418–2809 (voice), 202–418–0179 (TTY), or e-mail *smarshal@fcc.gov*.

SUPPLEMENTARY INFORMATION: A public notice, which announced the rechartering of the Consumer Advisory Committee (formerly known as the Consumer/Disability Telecommunications Advisory Committee), was released on December 31, 2002.

Electronic Access and Filing

A copy of this notice also is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. The notice also is posted on the Commission's Web site at *www.fcc.gov/cgb/cac*. Applications for membership on the Committee may be sent to the Commission via email addressed to Consumer & Governmental Affairs Bureau, Attn.: Scott Marshall, *cac@fcc.gov*, may be transmitted via facsimile to 202–418–6509, or may be sent via U.S. mail to 445 12th Street, SW., Room 5A824, Washington, DC 20554.

Background

The establishment of the Committee was announced by public notice dated November 30, 2000, 15 FCC Rcd 23798, as published in the **Federal Register** (65 FR 76265, December 6, 2000). On November 20, 2002, the initial Charter of the Committee terminated. The Charter was renewed for another two year term, and the name of the Committee was changed to the Consumer Advisory Committee to better reflect its mandate and activities. The Committee is organized under, and will operate in accordance with, the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (1988).

The mission of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as American Indians and persons living in rural areas) in proceedings before the Commission.

Each meeting of the full Committee will be open to the public. A notice of each meeting will be published in the **Federal Register** at least 15 days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection.

Functions of the Committee

The topics to be addressed by the Committee will include, but are not limited to, the following areas:

- Consumer protection and education (*e.g.*, cramming, slamming, consumer friendly billing, detariffing, bundling of services, Lifeline/Linkup programs, customer service, privacy, telemarketing abuses, and outreach to underserved populations, such as Native Americans and persons living in rural areas).
- Access by people with disabilities (*e.g.*, telecommunications relay services, closed captioning, accessible billing and access to telecommunications products and services).
- Impact upon consumers of new and emerging technologies (*e.g.*, availability of broadband, digital television, cable, satellite, low power FM, and the convergence of these and emerging technologies).
- Implementation of Commission rules and consumer participation in the FCC rulemaking process.

During calendar year 2003, it is anticipated that the Committee will meet in Washington, DC for three one-day meetings on April 11, June 27, and November 14. In addition, as needed, working groups will be established to facilitate the Committee's work between meetings of the full Committee. Meetings will be fully accessible to individuals with disabilities.

Membership

The Commission seeks applications from interested organizations, from both the public and private sectors, that wish to be considered for membership on the Committee. Selections will be made on the basis of factors such as expertise and diversity of viewpoints that are necessary to address effectively the questions before the Committee. Applicants should be recognized experts in their fields, including, but not limited to, consumer advocacy, disabilities, underserved populations (*e.g.*, persons living in rural areas and tribal communities), telecommunications infra-structure and equipment, telecommunications services (including wireless), and broadcast/cable services. The number of Committee members will be established to effectively accomplish the Committee's work. Organizations with similar interests are encouraged to nominate one person to represent their interests.

Members must be willing to commit to a 2-year term of service, should be willing and able to attend three 1-day meetings per year in Washington, DC, and are also expected to participate in deliberations of at least one working group. The Commission is unable to pay *per diem* or travel costs.

Applications for Membership/ Deadline

Applications should be received by the Commission no later than January 31, 2003, and should be sent to the Federal Communications Commission, Consumer & Governmental Affairs Bureau, Attn.: Scott Marshall, via e-mail to *cac@fcc.gov*, via facsimile to 202–418–6509 or via U.S. mail to 445 12th Street, SW., Room 5A824, Washington, DC 20554.

Due to the extensive security screening of incoming mail since September 11, 2001, delivery of mail sent to the FCC may be delayed. Therefore, we encourage submission by email or fax. If an application is sent via U.S. mail, we encourage applicants to follow up with a phone call to Scott Marshall, 202–418–2809, or 202–418–0179 (TTY), to confirm receipt. A specified application form is not required. However, applications should include the name of the organization, the representative's name, the name of an alternate representative, title, address

and telephone number, a statement of the interests represented and the issues of interest to the applicant, and a detailed description of the applicant's knowledge and qualifications to serve on the Committee. The application should further be supported by a statement indicating a willingness to serve on the Committee for a 2 year period of time; a commitment to attend three 1-day meetings per year in Washington, DC at the applicant's own expense; and a commitment to work on at least one working group. Members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities that are, or will be, regulated by or have interests before the Commission.

After the applications have been reviewed, the Commission will publish a notice in the **Federal Register** announcing the appointment of the Committee members and the first meeting date of the Committee. It is anticipated that the first Committee meeting will take place on April 11, 2003.

Federal Communications Commission.

K. Dane Snowden,

Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–814 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–3371]

Wireless Telecommunications Bureau Seeks To Verify ITFS, MDS, and MMDS License Status and Pending Applications; Requests for Extension of Response Date Filed by Troutman Sanders LLP and the Wireless Communications Association International/The National ITFS Association

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission (FCC) extends the time until February 3, 2003 for all Instructional Television Fixed Service, Multipoint Distribution Service, and Multichannel Multipoint Distribution Service licensees to respond to the October 18, 2002 *Public Notice* requiring all Instructional Television Fixed Service (ITFS), Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS) (collectively, the "Services") licensees and applicants to verify licensing information and associated technical data, and submit required corrections.

FOR FURTHER INFORMATION CONTACT: Legal Matters: contact John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, at (202) 418–0680.

For all questions regarding data corrections, and how to file those corrections, contact the Licensing Support Hotline at 1–888–225–5322 and select option 2.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, DA 02–3371, released on December 5, 2002. The full text of this document is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. On October 18, 2002, 67 FR 69010, November 14, 2002, the Wireless Telecommunications Bureau (WTB or Bureau) required all Instructional Television Fixed Service (ITFS), Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS) (collectively, the "Services") licensees and applicants in the Services to review licensing information and associated technical data. Specifically, licensees and applicants in the Services were required to verify the available information concerning their licenses and applications, make any necessary corrections concerning that data, and, under certain circumstances, submit corrections or responses to that data by December 17, 2002.

2. On November 25, 2002, the law firm of Troutman Sanders LLP requested a sixty-day extension of time, on behalf of several wireless cable clients, to comply with the *BLS License Inventory Public Notice.* On November 27, 2002, the Wireless Communications Association International and the National ITFS Association (WCA/NIA) jointly filed a similar request. For the reasons stated below, the FCC grants the requests in part and extends the time to respond to the *BLS License Inventory Public Notice* until February 3, 2003.

3. In their requests, Troutman Sanders and WCA/NIA argue that the process of reviewing the FCC's licensing records regarding the Services and preparing corrections is taking far longer than the Bureau anticipated because the vast majority of records require corrections or additional information. WCA/NIA assert that there are a limited number of people with the necessary experience with the MDS and ITFS licensing processes to evaluate the FCC's licensing records, determine whether corrections are needed, and prepare the necessary changes. WCA/NIA also represent that many ITFS licensees will be closed from the middle of December through the middle of January because of the holiday season.

4. Although the FCC does not routinely grant extensions of time, the importance of ensuring that the FCC's licensing records are accurate, and the challenges that licensees and applicants in the Services are facing, indicate that an extension of the December 17, 2002 deadline is appropriate. The FCC does not believe, however, that a sixty-day extension is warranted. In this connection, the FCC notes that electronic application filing has been suspended in the Services. The FCC is concerned that delays in the verification of licensing data and submission of corrections could unduly hinder the Bureau's efforts towards developing accurate licensing records and resuming electronic filing in the Services in an expeditious and efficient manner. Based upon the record before us, the FCC believes the current extension of time would be sufficient to allow licensees and applicants to respond to the *BLS License Inventory Public Notice* and provide any needed corrections. The February 3, 2003 date is beyond the mid-December to mid-January timeframe in which WCA/NIA identified that many ITFS licensees are closed for business. As a result of this extension, licensees and applicants in the Services will have had over 100 days to review the FCC's licensing records and prepare any necessary corrections and responses.

I. Ordering Clauses

5. Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and § 1.46 of the FCC's rules, 47 CFR 1.46, that the requests filed by Troutman Sanders LLP on November 24, 2002 and by the Wireless Communications Association International and the National ITFS Association on November 27. 2002 are granted to the extent stated herein and are otherwise denied in all other respects.

6. Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and § 1.46 of the FCC's rules, 47 CFR 1.46, and that the time for licensees and applicants to respond to the *BLS License Inventory Public Notice* is extended until February 3, 2003.

7. This action is taken under delegated authority pursuant to §§ 0.131 and 0.331 of the FCC's rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–811 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–3372]

Clarifies Public Notice Relating to Verification of ITFS, MDS, and MMDS License Status and Pending Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document clarifies two issues relating to a Federal Communications Commission (FCC) Public Notice released on October 18, 2002 requiring all Instructional Television Fixed Service (ITFS), Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS) (collectively, the "Services") licensees and applicants to review licensing information and associated technical data.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Legal Matters: contact John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, at (202) 418–0680.

For all questions regarding data corrections, and how to file those corrections, contact the Licensing Support Hotline at 1–888–225–5322 and select option 2.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Public Notice,* DA 02–3372, released on December 5, 2002. The full text of this document is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.* Licensees and applicants should visit *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html* in order to review the tables. For all questions regarding technical aspects of public access to BLS data, contact the FCC Technical Support Hotline: Call 202–414–1250 (TTY 202–414–1255) or e-mail to *ulscomm@fcc.gov.* The hotline is available Monday through Friday 8 a.m. to 6 p.m. Eastern Time. All calls to the hotline are recorded.

On October 18, 2002, 67 FR 69529, November 18, 2002, the Wireless Telecommunications Bureau (WTB) issued a public notice requiring all Instructional Television Fixed Service (ITFS), Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS) (collectively, the "Services") licensees and applicants to review licensing information and associated technical data. Licensees and applicants are required to verify the available information concerning their licenses and applications, make any necessary corrections concerning that data, and, under certain circumstances, submit corrections or responses to that data by February 3, 2003. By this public notice, WTB clarifies two issues relating to the *BLS License Inventory Public Notice.*

First, with respect to licenses in the Services, if a licensee believes that all information pertaining to a license (including both the license tables and the additional technical information available at *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html)* is accurate, the licensee is not required to submit a response with respect to that license. With respect to pending applications filed prior to March 25, 2002, however, a response is required even if all the information relating to that pending application is correct. Specifically, the applicant must: (1) affirm, in writing, within sixty days of the release of this public notice, that continued processing of the application is requested, by contacting the FCC at the addresses listed below, and (2) submit a copy of the application with the written affirmation request.

If the information requested is being sent via United States Postal Service, licensees and applicants must use the following address: Federal Communications Commission, MDS/ITFS Database Corrections, 1270 Fairfield Road, Gettysburg, PA 17325.

Correspondence sent by overnight mail couriers (*e.g.,* Federal Express, United Parcel Service, Airborne), hand-delivery or messenger must be addressed to: Federal Communications Commission, MDS/ITFS Database Corrections, 1120 Fairfield Road, Gettysburg, PA 17325.

Second, ITFS licensees and applicants are not required to verify data relating to receive sites. The FCC notes that ITFS licensees are currently prohibited from registering new receive sites. Moreover, while receive sites registered prior to September 17, 1998 are still entitled to interference protection, most such receive sites receive protection because they are located within the thirty-five mile protected service area of the ITFS station. Under those circumstances, and given the fact that many ITFS stations have a large number of registered receive sites, the FCC concludes that it would be unduly burdensome to require ITFS licensees to verify data relating to receive sites at this time. The FCC encourages ITFS licensees with grandfathered receive sites outside the thirty-five mile protected service area to review the data relating to receive sites and to submit corrections if the data does not accurately reflect the receive site, as registered with the FCC on September 17, 1998. The FCC nonetheless note that the prohibition on registering new ITFS receive sites remains in effect.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–813 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice; altered Privacy Act system of records; revision of one routine use; addition of one new routine use; and cancellation of one system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a (e)(4) and (e)(11), the

Federal Communications Commission (FCC or Commission) proposes to alter a system of records, FCC/Central-6, "Personnel Investigation Records." The altered system of records will incorporate the provisions of FCC/OMD–4, "Security Office Control Files," including the addition of two routine uses from FCC/OMD–4; revision of one routine use; and addition of one new routine use incorporating the data elements and uses for the Workplace Violence Form; and make other edits and revisions as necessary. The FCC will cancel FCC/OMB–4.

DATES: In accordance with 5 U.S.C. 552a (e)(4) and (e)(11), any interested person may submit written comments concerning the proposed altered system of records on or before February 14, 2003. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system may submit comments on or before February 24, 2003. The proposed system shall become effective without further notice February 24, 2003 unless the FCC receives comments that would require a contrary determination. As required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, the FCC has submitted reports on this proposed altered system to OMB and both Houses of Congress.

ADDRESSES: Comments should be sent to Les Smith, Privacy Act Clerk, Performance Evaluation and Records Management (PERM), Room 1–A804, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *lesmith@fcc.gov*.

FOR FURTHER INFORMATION: Contact Les Smith, Performance Evaluation and Records Management (PERM), Room 1–A804, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–0217 or via the Internet at *lesmith@fcc.gov*; or Eric Botker, Security Office, Associate Managing Director-Administrative Operations (AMD–AO), Security Operations Center, Federal Communications Commission (FCC), 445 12th Street, SW., Room 1–B458, Washington, DC 20554, (202) 418–7884 or via the Internet at *ebotker@fcc.gov*.

SUPPLEMENTARY INFORMATION: As required by the *Privacy Act of 1974*, as amended, 5 U.S.C. 552a (e)(4) and (e)(11), this document sets forth notice of the proposed altered system of records maintained by the FCC; addition of two routine uses to FCC/Central-6 that were formerly in FCC/OMD–4; revision of one routine use in FCC/Central-6 to incorporate elements formerly in FCC/OMD–4; addition of one new routine use to incorporate uses in the Workplace Violence Form; and cancellation of one system of records, FCC/OMD–4. This agency previously gave complete notice of the two systems of records covered under this Notice by publication in the **Federal Register** on October 23, 2000, 65 FR 63468. This notice is a summary of more detailed information, which may be viewed at the location given in the **ADDRESSES** section above. The purposes for altering FCC/Central-6, "Personnel Investigation Records" are to merge FCC/OMD–4, "Security Office Control Files" into this system of records to eliminate possible duplications of functions and records; to add new data elements, new purposes, and one new routine use; to update the statutory authority to maintain the information that the Commission may collect when the Workplace Violence Form is introduced; and otherwise to alter, update, and revise this system of records as necessary.

The FCC proposes to achieve these purposes by altering this system of records, FCC/Central-6, "Personnel Investigation Records with these changes:

The incorporation of the data elements of another system of records, FCC/OMD–4, "Security Office Control Files," into FCC/Central-6;

The elimination of FCC/OMD–4;

The transfer of two routine uses formerly in FCC/OMD–4 to address new and/or revised uses:

Routine use (7) allows disclosure to the security officers of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to their request(s) for verification of security clearances of FCC employees to have access to classified data or areas where their official duties require such access.

Routine use (8) allows disclosure to request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant or pertinent enforcement information or records, such as licenses, if necessary to obtain information relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a grant or other benefit.

The revision of one routine use to incorporate uses formerly in FCC/OMD–4:

Routine use (5) allows disclosure to designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, in response to their request, when such agency, office, or establishment conducts an investigation of the individual for the purpose of hiring, firing, or retention, granting a security clearance, making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or classifying jobs, letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's purpose.

The addition of one new routine use to include the data elements, information, and purposes for the Workplace Violence Form:

Routine use (9) allows disclosure to the Merit System Protection Board (MSPB) during the course of the MSPB's investigation of the individual's appeal, following the Commission's adverse action against the individual.

The alteration, revision, or modification of various data elements in FCC/Central-6, including editorial changes to update, simplify, or clarify, as necessary, this system of records.

The FCC Security Officer and the Personnel Security Specialist in the Security Office will use the records in FCC/Central-6 to provide investigative information to determine compliance with Federal regulations and/or an individual's suitability and fitness for Federal employment, access to classified information or restricted areas, position sensitivity, security clearances, evaluations of qualifications, and loyalty to the U.S; to evaluate qualifications and suitability to perform contractual services for the U.S. Government; to document such determinations; to respond to an inquiry conducted under the President's Program to Eliminate Waste and Fraud in the Government; to take action on, or respond to a complaint about a threat, harassment, intimidation, violence, or other inappropriate behavior involving one or more FCC employees and/or contract employees; and to counsel employees.

Records in this system will be available for public inspection at the location given above, The functions in this system of records will be performed by the FCC Security Officer and the Personnel Security Specialist in the Security Office.

This notice meets the requirement documenting the change in the Commission's system of records, and provides the public, Congress, and the Office of Management and Budget (OMB) an opportunity to comment.

FCC/Central-6

SYSTEM NAME:

Personal Investigation Records.

SECURITY CLASSIFICATION:

There is no specific security classification for this system; however, data or records within the system may have national defense/foreign policy classifications up through secret.

SYSTEN LOCATION:

Security Operations Center, Assistant Managing Director-Administrative Offices (AMD–AO), Office of Managing Director, Federal Communications Commission (FCC), 445 12th Street, SW., Room 1–B458, Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current and former FCC employees, applicants for employment in the Federal service, and contractors.

2. Individuals considered for access to classified information or restricted areas and/or security determinations such as contractors, experts, instructors, and consultants to Federal programs.

3. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in Federal programs under a co-operative agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Data needed to identify an individual and his/her security clearance for both FCC and contract employees: individual's last, first, and middle names (filed alphabetically by last name); Social Security Number; date of birth; place of birth; Bureau/ Office/Contractor Company; position title; security classification; types and dates of investigations; agency conducting investigation, investigation dates, clearance level granted, and position sensitivity level; and remarks.

2. Data needed to investigate an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for violations against the law; reports of interviews with present and former supervisors, co-workers, associates, educators, etc; reports about the individual's qualifications for a position; reports of inquiries with law enforcement agencies, employers, and educational institutions attended; reports of action after OPM or FBI section 8(d) Full Field Investigation; Notices of Security Investigation and other information developed from the above described Certificates of Clearance; and in some instances, a photograph of the subject.

3. Data to needed to investigate allegations of misconduct by an FCC employee;

4. Data needed to investigate miscellaneous complaints not covered by the FCC's formal or informal grievance procedure; and

5. Data needed to conduct inquiries under the "President's Program to Eliminate Waste and Fraud in Government."

6. Data needed to investigate violence, threats, harassment, intimidation, or other inappropriate behavior that causes an FCC employee or contractor to fear for his/her personal safety in the FCC workplace: case number; victim's name; office telephone number; room number; organization bureau/office/division/ branch; duty station; position; supervisor; supervisor's telephone number; location of incident; activity at time of incident; circumstances surrounding the incident; perpetrator; name(s) and telephone number(s) of witness(es); injured party(s); medical treatment(s); medical report; property damages; report(s) to police and/or Federal Protective Services; and other miscellaneous information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 5; 29 CFR part 1960; 47 CFR 19.735–107; 5 U.S.C. 1303, 1304, 3301, 7902; and Executive Orders 10450, 11222, 12065, and 12196.

PURPOSE(S):

FCC Security Officer and the Personnel Security Specialist of the Security Office use the records in this system to provide investigative information to determine compliance with Federal regulations and/or to make a determination about an individual's suitability and fitness for Federal employment, access to classified information or restricted areas, position sensitivity, security clearances, evaluations of qualifications, and loyalty to the U.S; to evaluate qualifications and suitability to perform contractual services for the U.S. Government; to document such determinations; to respond to an inquiry conducted under the President's Program to Eliminate Waste and Fraud in the Government; to take action on, or to respond to a complaint about a threat, harassment, intimidation, violence, or other inappropriate behavior involving one or more FCC employees and/or contract employees; and to counsel employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation, or order where there is an indication of a violation or potential violation of a statute, regulation, rule, or order.

2. A record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry an individual has made to the Congressional office.

3. A record for this system of records maybe disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

4. A record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body.

5. A record from this system may be disclosed to designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, in response to their request, when such agency, office, or establishment conducts an investigation of the individual for the purpose of hiring, firing, or retention, granting a security clearance, making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or classifying jobs, letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's purpose.

6. A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicatory body when:

(a) The United States, the Commission, a component of the Commission, or when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation.

7. A record from this system may be disclosed to the security officers of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to their request(s) for verification of security clearances of FCC employees to

have access to classified data or areas where their official duties require such access.

8. A record in this system may be disclosed to request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant or pertinent enforcement information or records, such as licenses, if necessary to obtain information relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a grant or other benefit.

9. A record from this system may be disclosed to the Merit System Protection Board (MSPB) during the course of the MSPB's investigation of the individual's appeal, following the Commission's adverse action against the individual.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system of records include both paper and electronic records. Paper records are stored in file folders in security containers. The electronic records are maintained in a computer database.

RETRIEVABILITY:

Records are retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Paper records are maintained in file folders and stored in approved security containers, within a secure, access-controlled area with an intrusion alarm. Access is limited to approved security office and administrative personnel.

The electronic records are maintained in a "stand-alone" computer database, which is secured through controlled access and passwords restricted to security and administrative personnel on a "need to know" basis. The computers are located in a room with a simplex lock and intrusive alarm systems. The computer databases are maintained on a computer that is not connected to the FCC computer network. The databases are backed-up on a daily basis to floppy disk(s), which are then stored in a secured area.

RETENTION AND DISPOSAL:

Both paper and electronic records are retained during employment or while an individual is actively involved in federal programs. As appropriate, records are returned to investigating agencies after employment terminates; otherwise, the records are retained for five years from the date that the employee leaves the Commission.

Investigative files and the computer database, which show the completion of an investigation, are retained for 15 years, except for investigations involving potential actionable issue(s), which will be maintained for 25 years plus the current year from the date of the most recent investigative activity. Paper records are destroyed by shredding. Electronic records are destroyed by electronic erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Security Operations Center, Office of Managing Director, Federal Communications Commission (FCC), 445 12th Street, SW., Room 1–B458, Washington, DC 20554.

NOTIFICATION, RECORD ACCESS AND CONTESTING RECORD PROCEDURES:

This system is exempt from the requirement that the agency publish the procedures for notifying an individual, at his or her request, if the system contains a record pertaining to him/her, for gaining access to such record, and for contesting the contents of the record.

RECORD SOURCE CATEGORIES:

This system is exempt from the requirement that the agency publish the categories of sources of records in this system.

EXEMPTION FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from sections (c)(3), (d), (e)(4)(G), (H), and (I), and (f) of the *Privacy Act of 1974*, 5 U.S.C. 552a, and from 47 CFR 0.554–0.557 of the Commission's rules. These provisions concern the notification, record access, and contesting procedures described above, and also the publication of record sources. The system is exempt from these provisions because it contains the following types of information:

1. Investigative material compiled for law enforcement purposes as defined in section (k)(2) of the Privacy Act.

2. Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy, as stated in section (k)(1) of the Privacy Act.

3. Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, as described in section (k)(5) of the Privacy Act, as amended.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

[FR Doc. 03–884 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Recordkeeping and Confirmation Requirements for Securities Transactions."

DATES: Comments must be submitted on or before March 11, 2003.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898–7453, Legal Division, Room MB–3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to "Recordkeeping and Confirmation Requirements for Securities Transactions." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (Internet address: *comments@fdic.gov*). Comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Recordkeeping and Confirmation Requirements for Securities Transactions.

OMB Number: 3064–0028.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 4,732.

Average annual burden hours per Respondent: 27.91.

Estimated Total Annual Burden: 132,070 hours.

General Description of Collection: The information collection requirements are contained in 12 CFR 344. The regulation's purpose is to ensure that purchasers of securities in transactions effected by insured state nonmember banks are provided with adequate information concerning the transactions. The regulation is also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to the securities transactions they effect.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 10th day of January, 2003.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 03–867 Filed 1–14–03; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Interagency Notice of Change in Director or Executive Officer.

OMB Number: 3064–0097.

Annual Burden:

Estimated annual number of respondents: 200.

Estimated time per response: 2 hours.

Total annual burden hours: 400 hours.

Expiration Date of OMB Clearance: January 31, 2003.

SUPPLEMENTARY INFORMATION: The Interagency Notice of Change in Director or Executive Officer is submitted regarding the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer. The information is used by the FDIC to make an evaluation of the general character of individuals who will be involved in the management of depository institutions, as required by statute.

2. *Type of Review:* Renewal of a currently approved collection.

Title: Customer Assistance.

OMB Number: 3064–0134.

Annual Burden:

Estimated number of respondents: 5,000.

Estimated time per response: 30 minutes.

Total annual burden hours: 2,500 hours.

Expiration Date of OMB Clearance: January 31, 2003.

SUPPLEMENTARY INFORMATION: This collection permits the FDIC to collect information from customers of financial institutions who have inquiries or complaints about service. Customers may document their complaints or inquiries to the FDIC using a letter or on an optional form.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before February 14, 2003, to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: January 10, 2003.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 03–866 Filed 1–14–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2003–N–1]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted the information collection entitled "Community Support Requirements" to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on January 31, 2003.

DATES: Interested persons may submit comments on or before February 14, 2003.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503. Address requests for copies of the information collection and supporting documentation to Elaine L. Baker, Secretary to the Board, by telephone at 202/408–2837, by electronic mail at *bakere@fhfb.gov*, or by regular mail at the Federal Housing Finance Board,

1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Emma Fitzgerald, Program Analyst, Community Investment and Affordable Housing Division, Office of Supervision, by telephone at 202/408–2874, by electronic mail at *fitzgeralde@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Federal Housing Finance Board (Finance Board) to promulgate regulations establishing standards of community investment or service that Federal Home Loan Bank (FHLBank) members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). In establishing these community support requirements for FHLBank members, the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901, *et seq.*, and record of lending to first-time homebuyers. 12 U.S.C. 1430(g)(2). Part 944 of the Finance Board's regulations implements section 10(g) of the Bank Act. *See* 12 CFR part 944. The rule provides uniform community support standards all FHLBank members must meet and review criteria Finance Board staff must apply to determine compliance with section 10(g). More specifically, section 944.2 of the rule implements the statutory community support requirement. 12 CFR 944.2. Section 944.3 establishes community support standards for the two statutory factors—CRA and first-time homebuyer performance—and provides guidance to a respondent on how it may satisfy the standards. 12 CFR 944.3. Sections 944.4 and 944.5 establish the procedures and criteria the Finance Board uses in determining whether FHLBank members satisfy the statutory and regulatory community support requirements. 12 CFR 944.4 and 944.5.

The information collection contained in Form 96–01, the Community Support Statement Form, and sections 944.2 through 944.5 of the rule is necessary to enable and is used by the Finance Board to determine whether FHLBank members satisfy the statutory and regulatory community support requirements. Only FHLBank members that meet these requirements may maintain continued access to long-term FHLBank advances. *See* 12 U.S.C. 1430(g).

The OMB number for the information collection is 3069–0003. The OMB clearance for the information collection expires on January 31, 2003.

The likely respondents are institutions that are members of a FHLBank.

B. Burden Estimate

The Finance Board estimates that a total annual average of 3970 FHLBank members will file a Community Support Statement, with one submission per member. The estimate for the average hours per submission is one hour. The estimate for the total annual hour burden for members that must file a Community Support Statement is 3970 hours (3970 members × 1 submission per member × 1 hour).

The Finance Board estimates a total annual average of 15 FHLBank members will submit a request to remove a restriction on access to long-term advances, with 1 request per member. The estimate for the average hours per reinstatement request is one hour. The estimate for the annual hour burden for reinstatement requests is 15 hours (15 members × 1 request per member × approximately 1.0 hour).

The Finance Board estimates that the total annual hour burden for all respondents is 3985 hours ((3970 members × 1 Community Support Statement per member +15 members × 1 reinstatement request per member) × 1.0 hour).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on October 15, 2002. *See* 67 FR 63660 (Oct. 15, 2002). The 60-day comment period closed on December 16, 2002. The Finance Board received one comment suggesting that it obtain CRA ratings from the Federal Financial Institution Examination Council (FFIEC) website instead of from members to reduce the reporting burden on members and eliminate in its entirety the reporting requirement for members with an "outstanding" CRA rating. At this time, obtaining CRA ratings from the FFIEC website is not an option because FFIEC generally reports CRA ratings three to six months after a CRA examination is completed while members receive the CRA rating immediately after an examination. Because of the delay in reporting on the FFIEC website, the Finance Board will continue to require members to report their most recent CRA rating on the Community Support Statement.

Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: January 8, 2003.

Donald Demitros,

Chief Information Officer.

[FR Doc. 03–870 Filed 1–14–03; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011603–001.

Title: Great White Fleet and Tropical Shipping & Construction Co., Ltd. Slot Charter Agreement.

Parties: Great White Fleet Ltd., Great White Fleet (US) Ltd., Tropical Shipping & Construction Co., Ltd.

Synopsis: The proposed modification would substitute Great White Fleet (US) Ltd. for Great White Fleet Ltd., a Bermuda company, as a party to the agreement.

Agreement No.: 011800–001.

Title: Dole Ocean Cargo Express, Inc./Maersk Sealand Slot Charter Agreement.

Parties: Dole Ocean Cargo Express, Inc., A.P. Moller-Maersk Sealand.

Synopsis: The proposed modification would increase the number of slots that Dole will charter to Maersk Sealand under the agreement.

Agreement No.: 011836.

Title: WWL/K-Line Americas Space Charter Agreement.

Parties: Wallenius Wilhelmsen Lines AS, Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed agreement would authorize the parties to share vessel space for the transportation of vehicles and other cargo in the trade between U.S. Atlantic and Gulf ports and ports on the East Coasts of Mexico and South America.

Agreement No.: 011837.

Title: HUAL/EUKOR Caribbean and Central America Space Charter Agreement.

Parties: HUAL AS, EUKOR Car Carriers, Inc.

Synopsis: The proposed agreement would authorize the parties to share vessel space for the transportation of rolling stock from U.S. Atlantic ports, including Puerto Rico, to ports in and on the Caribbean Sea. The parties request expedited review.

Dated: January 10, 2003.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–875 Filed 1–14–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 17754N.
Name: Adcom Express, Inc. dba Adcom Worldwide.
Address: 7424 W. 78th Street, Edina, MN 55439.
Date Revoked: December 15, 2002.
Reason: Failed to maintain a valid bond.

License Number: 13465F.
Name: AMT Freight, Inc.
Address: 2500 Logistics Drive, Battle Creek, MI 49015.
Date Revoked: November 21, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15453NF.
Name: B & H Overseas Shipping & Moving L.L.C.
Address: 695 Windsor Street, Hartford, CT 06120.
Date Revoked: December 15, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17663N.
Name: Data Cargo Co., Inc.
Address: 8757 NW 35th Street, Miami, FL 33172.
Date Revoked: December 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16525F.
Name: J-Lec Corp.
Address: 5405 NW 102nd Avenue, Suite 223, Sunrise, FL 33351.
Date Revoked: November 24, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17558N.
Name: JTK International Trading, Inc. dba Coastline Trans.
Address: 3200 Wilshire Blvd., Suite 1750 So. Tower, Los Angeles, CA 90010.
Date Revoked: December 18, 2002.
Reason: Failed to maintain a valid bond.

License Number: 13106N
Name: Knopf International, Inc.
Address: 2397 So. Dove Street, Alexandria, VA 22314.
Date Revoked: December 12, 2002.
Reason: Failed to maintain a valid bond.

License Number: 527F.
Name: Moran Shipping Agencies Inc. dba Patterson Wylde & Co.
Address: 1110 Wellington Avenue, Cranston, RI 02910.
Date Revoked: December 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11326N.
Name: Multimodal Service (NY) Inc.
Address: Cross Island Plaza, Suite 207, 133–33 Brookville Blvd., Rosedale, NY 11422.
Date Revoked: December 12, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4592F.
Name: Natasha International Freight, Inc.
Address: 12912 SW 133 Court, Suite A, Miami, FL 33186.
Date Revoked: November 30, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17240N.
Name: O.K. Shipping, Inc.
Address: 17936 E. Ajax Circle, City of Industry, CA 91748.
Date Revoked: December 5, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4262NF.
Name: Omni Express International, Inc.
Address: 10501 South La Cienega Blvd., Los Angeles, CA 90045.
Date Revoked: December 15, 2002.
Reason: Failed to maintain valid bonds.

License Number: 4485F.
Name: Prem International, Inc.
Address: 8412 NW 70th Street, Miami, FL 33166.
Date Revoked: December 6, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16996F.
Name: UC Bridge Inc.
Address: 210 West Walnut Street, Suite #A, Compton, CA 90220.
Date Revoked: November 24, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16971N.
Name: Wil Can (USA) Group Inc.
Address: 167–10 So. Conduit Avenue, Suite 210, Jamaica, NY 11434.
Date Revoked: November 30, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4134F.
Name: World Exchange, Inc.
Address: 8840 Bellanca Avenue, Los Angeles, CA 90045.
Date Revoked: November 2, 2002.
Reason: Failed to maintain a valid bond.

License Number: 2674F.
Name: World Express Cargo, Inc.
Address: 12613 Executive Drive, Suite 700, Stafford, TX 77477.
Date Revoked: December 8, 2002.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–874 Filed 1–14–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Zaklee International Corporation, 777 Henderson Blvd., Bay 2A, Folcroft, PA 190132, *Officers:* Daniel Zakorchemny, President, (Qualifying Individual), Sung Yin Zakorchemny, Vice President.

G & F West Indies Shipping, 1416 Blue Hill Avenue, #1, Boston, MA 02126, Duncan B. Greenwood, Soul Proprietor.

Montero Shipping Corp., 2341 Hoffman Street, Bronx, NY 10458, *Officer:* Derqui Noel Montero, President, (Qualifying Individual).

Logistics Unlimited, Inc., 23187 La Cadena, Laguna Hills, CA 92653, *Officers:* Michelle Rouillard, Vice President, (Qualifying Individual), Ted Shown, President.

Dated: January 10, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–873 Filed 1–14–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 29, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. David Bryan Cook; J.D. Cook Testamentary Trust, David B. Cook, Trustee; Bobbie Jean Cook; David Alexander Cook, all of Middlesboro, Kentucky, and Erin Elizabeth Bell, Louisville, Kentucky; to retain control of the voting shares of HFB Financial Corporation, Middlesboro, Kentucky, and thereby indirectly retain control of the voting shares of Home Federal Bank Corporation, Middlesboro, Kentucky.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. G. Harrison Scott; Shannon R. Scott; Sharry R. Scott; and J. Slade Lewis, all of Slidell, Louisiana, also known as The Scott Family Limited Liability Partnership; to acquire voting shares of BOL Bancshares, Inc., New Orleans, Louisiana, and thereby indirectly acquire voting shares of Bank of Louisiana, New Orleans, Louisiana.

Board of Governors of the Federal Reserve System, January 9, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–742 Filed 1–14–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: OBJECTIVE WORK PLAN, ANA Program Narrative, Application for Federal Assistance.

OMB No.: 0980–0204.

Description: The information collected by Program Narrative; Application for Federal Assistance, the Objective Work Plan, is needed to properly administer and monitor the Administration for Native Americans (ANA) Program's competitive areas—Social and Economic Development Strategies (SEDS), ANA Environmental Regulatory Enhancement, Native Language Preservation, and ANA Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities by providing information in an application for a grant award. This data is used by legislatively-mandated Native American review panels, and ANA, as the basis for recommendations for the decisions to award competitive ANA grants.

Respondents: Tribal Govt. Native non-profits, Tribal Colleges & Universities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OWP	650	1	28	18,200

Estimated Total Annual Burden Hours: 18,200.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 9, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–802 Filed 1–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93587–2003]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans, ACF, DHHS.

ACTION: Announcement of availability of competitive financial assistance to promote the survival and continuing vitality of Native American languages.

Catalog of Federal Domestic Assistance Program Number: 93.587 Promoting the Survival and Continuing Vitality of Native American languages.

SUMMARY: The Administration for Native Americans (ANA) announces the availability of Fiscal Year 2003 funds for Native American Language projects. Financial assistance provided by ANA is designed to assist applicants in designing projects which will promote the survival and continuing vitality of Native American Language.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete; they are provided for information only. The applicant bears sole responsibility to assure that the copy download and/or printed from any other source is accurate and complete. Copies of this program announcement and many of the required forms may be obtained by calling the toll-free ANA applicant help desk or electronically at the ANA World Wide Web address *http://www.acf.hhs.gov/programs/ana/.*

Closing Date: The closing date for submission of applications is March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Contact the ANA Applicant Help Desk at 202–690–7776 or toll free at 1–877–922–9262 for assistance.

Part I: Supplementary Information

A. Purpose and Availability of Funds

The purpose of this notice is to announce the availability for fiscal year 2003 financial assistance to eligible applicants for the purposes of assisting Native Americans in ensuring the survival and continuing vitality of their languages. Financial assistance awards made under this program announcement will be on a competitive basis and the proposals will be reviewed against the evaluation criteria in this announcement.

Approximately $2,000,000 in Fiscal Year 2003 has been allocated for category I and II grants.

For Category I, Planning Grants (projects length: 12 months), the funding level for a budget period of 12 months will be up to $60,000.

For Category II, Design and/or Implementation Grants (project length: up to 36 months), the funding level for a budget period of 12 months will be up to $150,000.

In accordance with current agency policies, ANA may fund additional highly ranked applications if additional funds become available prior to the next competition.

ANA continues a variety of requirements directed towards enforcing its policy that an eligible grant recipient may only have one active ANA grant awarded from a competitive area at any time. Therefore, while eligible applicants may compete for a Native American language grant in either of the two categories, an applicant may only submit one application and no applicant may receive more than one Native American language grant.

Ongoing for fiscal year 2003, are two White House Initiatives relating to Hawaiians and Pacific Islanders, and People with Disabilities. In accordance with the Executive Order on Asian American and Pacific Islanders, ANA encourages greater participation from Hawaiian and Pacific Islander communities. The Executive Order on People with Disabilities encourages all communities to address the needs of people with disabilities in all programs in accordance with the Americans with Disabilities Act (ADA). ANA encourages all Native communities to address the needs of people with disabilities in all aspects of their programs. ANA also encourages greater participation from Native organizations serving people with disabilities.

Note: Organizations from Palau are no longer eligible for assistance under ANA programs.

B. Background

The Congress has recognized that the history of past policies of the United States toward Indian and other Native American languages has resulted in a dramatic decrease in the number of Native American languages that have survived over the past 500 years. Consequently, the Native American Languages Act (Title 1, Pub. L. 101–477) was enacted to address this decline. This legislation vested the United States government with the responsibility to work together with Native Americans to ensure the survival of cultures and languages unique to Native America. This law declared that it is the policy of the United States to "preserve, protect and promote the rights and freedom of Native Americans to use, practice and develop Native American languages". While the Congress made a significant first step in passing this legislation in 1990, it served only as a declaration of policy. No program initiatives were proposed, nor any funds authorized to enact any significant programs in furtherance of this policy. In 1992, Congressional testimony provided estimates that of the several hundred languages that once existed, only about 150 are still spoken or remembered toady. Furthermore, only 20 are spoken by persons of all ages, 30 are spoken by adults of all ages, about 60 are spoken by middle-aged adults, and 45 are spoken by the most elderly. In response to this testimony, the Congress passed the Native American Languages Act of 1992 (the Act), Public Law 102–524, to assist Native Americans in assuring the survival and continuing vitality of their languages. Passage of the Act was an important second step in an attempt to ensure the survival and continuation of Native languages. It provided the basic foundation upon which tribal nations can rebuild their economic strength and enhance the rich cultural diversity. The Federal government recognizes the substantial loss of Native American languages over the past several hundred years, and acknowledges the nature and magnitude of the status of Native American languages will be better defined when eligible applicants under the Act have completed language assessments. The Administration for Native Americans (ANA) believes that the responsibility for achieving self-sufficiency rests with the governing bodies of Indian Tribes, Alaska Native villages, and in the leadership of Native American groups. This belief supports the ANA principle that the local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs that support the community's long-range goals.

Therefore, since preserving a language and ensuring its continuation is generally one of the first steps taken toward strengthening a group's identity, activities proposed under this program announcement will contribute to the social development of Native communities and significantly contribute to their efforts toward self-sufficiency.

The Administration for Native Americans recognizes that eligible

applicants must have the opportunity to develop their own language plans, improve technical capabilities, and have access to the necessary financial and technical resources in order to assess, plan, develop and implement programs to assure the survival and continuing vitality of their languages. ANA also recognizes that potential applicants may have specialized knowledge and capabilities to address specific language concerns at various levels. This program announcement reflects these special needs and circumstances.

C. ANA Program and Administration Policies

Applicants must comply with the following programming policies.

- Funds will not be awarded for projects addressing dead languages. For purposes of this announcement, dead languages are those languages that are no longer spoken by any tribal member or community member.
- At the end of the project period, products or project models of Native American language grants funded by this program announcement should be sent to the designated ANA repository. Federally recognized Indian Tribes are not required to comply with this condition. The Commissioner shall determine the repository for copies of products from Native American language grants funded under this program announcement.

Applicants must comply with the following administrative policies:

- Current Native American language grantees whose project period extends beyond September 30, 2003, or who have requested an extension of the grant project beyond that date, are not eligible to apply for a grant under the same program area and may not compete for additional Native American language grants.
- Applicants for Category I may propose a 12- to 17-month project period.
- Applicants for Category II may propose up to 36-month projects.
- Applicants must describe a locally determined strategy to carry out a proposed project with fundable objectives and activities.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- ANA will not accept applicants from Tribal components which are tribally-authorized divisions of a larger Tribe, unless the application includes a tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under the Native American languages program both for the current competition and for the duration of the approved grant period, should the application be funded.
- If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a tribal resolution that clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under the Native American languages program both for the current competition and for the duration of the approved grant period, should the application be funded.
- ANA will only accept one application that serves or impacts a reservation, Tribe, or Native American community.
- Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the Federally recognized Tribe or State in which the corporation or association is domiciled. Organizations incorporating in American Somoa are cautioned that the Samoan government relies exclusively upon IRS determinations of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for these organizations for the purpose of eligibility for ANA funds.
- If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that a majority of its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with this requirement, applicants should provide information, such as by-laws or board regulations, establishing that at least a majority of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.
- Grantees must provide at least a 20 percent matching share of the total approved cost of the project. The total approved cost of the project is the sum of the federal request and the non-Federal share. Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Island are covered under Section 501(d) of Public Law 95–134, as amended (78 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). Therefore, no match is required for grants to these insular areas.
- An itemized budget detailing the applicant's Federal and non-Federal share, and the source(s), must be included as an application.
- If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

D. Proposed Projects To Be Funded

Category I—Planning Grants

The purpose of a Planning Grant is to conduct an assessment and to develop the plan needed to describe the current status of the language(s) to be addressed and to establish community long-range goal(s) to ensure its survival. Project activities may include, but are not limited to:

- Data collection, compilation, organization and description of current language status through a "formal" method (e.g. work performed by a linguist, and/or a language survey conducted by community members) or an "informal" method (e.g. a community consensus of the language status based on elders, tribal scholars, and/or other community members);
- Establishment of community long-range language goals; and
- Acquisition of necessary training and technical assistance to administer the project and achieve project goal(s).

Category II—Design and/or Implementation Grants

The purposes of Design and/or Implementation Grants are so Tribes or communities may design and/or implement a language program to achieve their long-range goal(s) and to accommodate the Tribe or community in reaching their long-term language goal(s). The types of projects ANA may fund under Category II include, but are not limited to:

• Establishment and support of a community Native American language project to bring older and younger Native Americans together to facilities and encourage the teaching of Native American language skills from one generation to another;

• Establishment of a project to train Native American to teach Native American language to others or to enable them to serve as interpreters or translators of such languages;

• Development, printing, and dissemination of materials to be used for the teaching and enhancement of Native American languages;

• Establishment or support of a project to train Native Americans to produce or participate in television or radio programs to be broadcast in Native American language;

• Compilation, transcription and analysis of oral testimony to record and preserve Native American languages; and

• To purchase specialized equipment (including audio and video recording equipment, computers, and software) necessary to achieve the project objectives. The applicant must fully justify the need for this equipment and explain how it will be used to achieve the project objectives.

Applicants under Category II must be able to document that: language information has been collected and analyzed, that it is current (compiled within 36 months prior to the grant application); and, the community has established long-range language goals.

E. Eligible Applicants

Applications from the Republic of Palau are no longer eligible for assistance under ANA programs. Palau ceased to be a Trust Territory of the United States by virtue of the compact of Free Association Act.

The following organizations are eligible to apply under this competitive area:

• Federally recognized Indian Tribes;]

• Consortia of Indian Tribes;

• Incorporated non-federally recognized Tribes;

• Incorporated nonprofit multi-purpose community-based Indian organizations;

• Urban Indian Centers;

• National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;

• Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

• Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

• Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;

• Nonprofit Native organizations in Alaska with village specific projects;

• Public and nonprofit private agencies serving Native Hawaiians (The populations served may be located on these islands or on the continental United States);

• Public and nonprofit private agencies serving native peoples from Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands. The populations served may be located on these islands or in the United States;

• Tribally controlled community colleges, tribally controlled post-secondary vocational institutions;

• Native controlled colleges and universities located in Hawaii, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, which serve Native American Pacific Islanders; and

• Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional Councils) as recognized by the Bureau of Indian Affairs.

• Participating Organizations: If a tribal organization, or other eligible applicant, decides that the objective of its proposed Native American language project would be accomplished more effectively through a partnership arrangement with a tribal school, college, or university, the applicant shall identify such school, college or university as a participating organization in its' application. Under a partnership agreement, the applicant will be responsible for the fiscal, administrative and programmatic management of the grant.

F. Grantee Share of the Project

Grantees must provide at least a 20 percent matching share of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. For example, a project requesting $100,000 in Federal funds must provide a non-federal share match of at least $25,000 (20% total approved project cost or 25% of federal request).

The non-Federal share may be met by cash or in-kind contributions. Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal match.

As per 45 CFR 74.2, in-kind contributions are defined as "the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program".

In addition, an applicant may include other Federal funding sources where legislation authorizes using specific types of funds for match, examples follow:

• Indian Child Welfare funds, through the Department of Interior;

• Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and

• Community Development Block Grant funds, through the Department of Housing and Urban Development.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Applications originating from American Samoa, Guam or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). Therefore, for grants under this Native American language program, no match is required for grants to these insular areas.

G. Review Criteria

The proposed project should address the purposes of the Native American Language Acts stated and described in the Section I.B, "Background" of this announcement.

The evaluation criteria below are closely inter-related. Proposed projects will be reviewed on a competitive basis using the following separate sets of evaluation criteria; one set for Planning grant applications, the other set for Design and/or Implementation grant applications. Points are awarded only for applications that respond to these criteria.

Category I: Planning Grants

(1) Current Status of Native American Language(s) (15 points)

The application fully describes the current status of Native American language(s) in the community. Since obtaining this data may be part of the planning grant application being reviewed, applicants can meet this requirement by explaining their current language status and providing a detailed

description of any circumstances or barriers which have prevented the collection of community language data. If documentation exists, describe it in terms of current language status.

(2) Goals and Available Resources (25 points)

(a) The application describes the proposed project's long-range goals and strategies, including:

- How the specific long-range community goal(s) relate to the proposed project.
- How the goal(s) fit within the context of the current language status.
- The application explains how the community and the tribal government (where one exists) intend to achieve these goals.
- Applicants must indicate in their application how they intend to involve elders and other community members in the development of language goals and strategies, and in evaluation of project outcomes.
- Demonstrate community and Tribal government support for the project. The type of community served will determine the type of documentation necessary. Ways to demonstrate support include:
- A resolution from Tribes or tribal organizations stating that community involvement has occurred in project planning;
- Community surveys and questionnaires, including those developed to determine the level of community support for tribal resolutions; and
- Minutes of community meetings, tribal presentations and discussion forums.
- Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and native organizations should describe their membership and define how the organization operates.

(b) Available resources (other than ANA and the non-federal share) which will assist and be coordinated with the project are described.

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

If the applicant proposes to enter into a partnership arrangement with a school, college or university, documentation of this commitment must be included in the application.

(3) Project Approach: Objectives and Activities (30 points)

The application provides a narrative on the overall approach and operation of proposed project throughout entire project period. The application proposes a specific project Objective Work Plan (OWP). The proposed objectives in the Objective Work Plan(s) relate to the goal to ensure the survival and continuing vitality of Native American language(s). More specifically, they will achieve the Tribe's or Native American community's language goals for the proposed project.

The OWP includes project objectives and specific activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- The tribal government's and community's active involvement in the continuing participation of Native American language speakers;
- Measurable or quantifiable results or outcomes;
- How the results or outcomes relate to the community's long-range goals or the establishment of those goals;
- The approach supports a project that will be completed, or self-sustaining, or financed by other than ANA funds at the end of the project period.
- How the project can be accomplished with the available or expected resources during the project period;
- How the main activities will be accomplished;
- Who specifically will conduct the activities under each objective; and
- What the next steps may be after the Planning project is completed.

The project application, including the Objective Work Plan, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.

The Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities. Applicants are encouraged to follow the recommended ANA application kit format however, it is not a requirement. The relevant information included in an Objective Work Plan should indicate what is to be achieved, how, by whom, when with indicators of evaluation.

(4) Organizational Capabilities/ Qualifications (20 points)

(a) Organizational Capability

- The management and administrative structure of the applicant is explained.
- Evidence of the applicant's ability to manage a project of the proposed scope is well defined.
- The application clearly demonstrates the successful management of projects of similar scope by the organization and or by the individual designated to manage the project.
- An organizational chart is included that indicates where the proposed project will fit within the current structure.

(b) Organization/Project Staff Qualifications

- Position descriptions and/or resumes of project personnel, including those of consultants, are presented.
- The position descriptions and/or resumes relate specifically to the staff proposed in the Approach section and in the proposed budget of the application.
- Position descriptions very clearly describe the position and its duties, and clearly relate to the personnel staffing pattern required to achieve the project objectives.
- Resumes demonstrate that the proposed staff are qualified to carry out the proposed activities. Resumes clearly identify which project staff position they fill. Resumes must be included if individuals have been identified for positions in the application.
- Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project.

Note: Applicants are encouraged to give preference to Native Americans in hiring staff and contracting services under an approved ANA grant.

(5) Budget (10 points)

A detailed and fully explained budget is provided for the budget period requested which:

- Aligns with budget categories in Section B of the Budget Information of the application (SF424–A)
- Includes a fully explained non-Federal share budget and its source(s).
- Justifies sufficient cost and necessary details to facilitate the determination of allowable cost and the relevance of these costs to the proposed project.

• Requests funds that are appropriate and necessary for the scope of the proposed project.

• Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This expenditure is mandatory for new grantees and optional for grantees that have had an ANA grant in the past. This travel and training should occur as soon as practical.

• Where implemented, includes an employee fringe benefit budget that provides grant-funded employees with a retirement plan in addition to Social Security.

The applicant is strongly encouraged to provide a retirement plan fringe benefit for grant-funded employees' salaries up to five (5) percent. ANA supports a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

• The plan exists for the benefit of the grant-funded staff; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.

• The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.

Other plans may be submitted for review and approval during grant award negotiations. Alternate plans may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc.

Category II: Design and/or Implementation Grants

(1) Current Status of Native American language(s) (10 points)

(a) The application fully describes the current status of the Native American language to be addressed; current status is defined as data complied within the previous 48 months. The describion of the current status minimally includes the following information:

• Number of speakers.
• Age of speakers.
• Gender of speakers.
• Level(s) of fluency.
• Number of first language speakers (Native language as the first language acquired).
• Number of second language speakers (Native language as the second language required).
• Where Native language is used (e.g., home, court system, religious ceremonies; church, media, school, governance and cultural activities).
• Source of data (formal and/or informal).
• Rate of language loss or gain.

(b) The application fully describes existing community language or language training programs and projects, if any, in support of the Native American language to be addressed by the proposed project. The description should answer the following:

(1) Has applicant had a community language or language training program within the last 48 months? Within the last 10 years? If so, fully describe the program(s), and include the following:

• Program goals.
• Number of program participants.
• Number of speakers.
• Age range of participants (e.g., 0–5, 6–10, –11–18, etc.).
• Number of language teachers.
• Criteria used to acknowledge competency of language teachers.
• Resources available to the applicant (e.g., valid grammars, dictionaries, and orthographies or describe other suitable resources).
• Program achievements.

(2) If applicant has never had a language program, a detailed explanation of what barriers or circumstances prevented the establishment of a community language program should be included.

(2) Goals and Available Resources (20 points)

(a) The application describes the proposed project's long-range goals and strategies, including:

• How the specific Native American long-range community goal(s) relate to the proposed project; and
• How the goal(s) fit within the context of the current language status;
• A clearly delineated strategy to assist in assuring the survival and continued vitality of the Native American language addressed in the community.
• The application explains how the community and the tribal government (where one exists) intend to achieve these goals.
• All Tribes and communities, however, must indicate in their application how they intend to involve elders and other community members in development of language goals and strategies, and in evaluation of project outcomes. The type of community served will determine the type of documentation necessary to demonstrate participation.
• A resolution from Tribes or tribal organizations stating that community involvement has occurred in project planning. Ways to demonstrate community and tribal government support for the project include: Community surveys and questionnaires, including those developed to determine the level of community support for tribal resolution; and minutes of community meetings, tribal presentations and discussion forums.
• Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(b) Available Resources (other than ANA and the non-federal share) Available resources that will assist and be coordinated with the project are described. Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

If the applicant proposes to enter into a partnership arrangement with a school, college or university, documentation of this commitment must be included in the application.

(3) Project Approach: Objectives and Activities (30 points)

The proposed objectives in the Objective Work Plan(s) related to the goal to ensure the survival and continuing vitality of Native American language(s). More specifically, together they will achieve the Tribe's or Native American community's language goals for the proposed project. If the project is for more than one year, the application includes Objective Work Plans for each year (budget period) proposed. Each Objective Work Plan clearly describes:

• The tribal government's and community's active involvement in the continuing participation of Native American language speakers;
• Measurable or quantifiable results or outcomes;
• How they relate to the community's long-range goals or the establishment of those goals;
• How the project can be accomplished with the available or expected resources during the project period;

- How the main activities will be accomplished;
- Who specifically will conduct the activities under each objective; and
- The approach supports a project that will be completed, or self-sustaining, or financed by other than ANA funds at the end of the project period.

Applicants proposing multi-year projects under Category II must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

Multi-year projects under Category II must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

The project application, including the Objective Work Plan(s), must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.

The Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities. Applicants are encouraged to follow the recommended ANA application kit format however, it is not a requirement. The relevant information included in an Objective Work Plan should indicate what is to be achieved, how, by whom, when and indicators of evaluation.

(4) Organizational Capabilities/ Qualifications (15 points)

The management and administrative structure of the applicant is explained.

(a) Organizational Capability

- Evidence of the applicant's ability to manage a project of the proposed scope is well defined.
- The application clearly demonstrates the successful management of projects of similar scope by the organization and or by the individual designated to manage the project.
- An organizational chart indicating where the proposed Language project fits within the current organization is included.

(b) Organization/Project Staff Qualifications

- Position descriptions and/or resumes of project personnel, including those of consultants, are presented.
- The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Section and in the proposed budget of the application.
- Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required to achieve the project objectives.
- Resumes demonstrate that the proposed staff is qualified to carry out the proposed activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are encouraged to give preference to Native Americans in hiring staff and contracting services under an approved ANA grant.

(5) Budget (10 points)

Detailed Federal and Non-federal Share budgets and detailed budget justifications are provided for each budget period requested. The budget includes a line item justification for each requested budget category as listed in Section B of the Budget Categories Section on the SF 424A.

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies sufficient cost and provides necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.
- Requests funds that are appropriate and necessary for the scope of the proposed project.
- Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training the technical assistance conference. This expenditure is mandatory for new grant recipients and optional for grantees that have had ANA grants in the past. This travel and training should occur as soon as practical.
- Where implemented, includes an employee fringe benefit budget that provides grant-funded employees with a retirement plan in addition to Social Security. The applicant is strongly encouraged to provide a retirement plan fringe benefit for grant-funded employees' salaries up to five (5) percent. ANA supports a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:
- The plan exists for the benefit of the grant-funded staff; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant. An alternate plan may be submitted for review and approval during grant award negotiations. Other plans may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc.

(6) Evaluation, Sharing and Preservation Plans (15 points)

The application should include the following three (3) plans:

(1) An "Evaluation Plan" with a baseline to measure project outcomes, including, but not limited to, describing effective language growth in the community (e.g., an increase of Native American language use). This plan will be the basis for evaluating the community's progress in achieving its language goals and objectives.

(2) A "Sharing Plan" that identifies how the project's methodology, research data, outcomes or other products can be shared and modified for use by other Tribes or communities. If this is not feasible or culturally apropriate, provide the reasons. The goal is to provide opportunities to ensure the survival and the continuing vituality of Native languages.

(3) A "Preservation Plan" to preserve project products describes how the products of the project will be preserved through archival or other culturally appropriate methods, for the benefit of future generations.

H. Application Due Date

The closing date for submission of applications under this program announcement is March 28, 2003.

Part II: General Guidance to Applicants

The following is provided to assist applicants in the development of a competitive application.

A. Definitions

- *Language Preservation:* is the maintenance of a language so that it will not decline into non-use.
- *Language vitality:* is the is the active use of a language in a wide range of domains of human life.

• *Language Replication:* is the application of a language program model developed in one community to other linguistically similar communities.

• *Language Survival:* is the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.

• *Multi-purpose Community-based Native American Organization:* is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or Officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.

• *Multi-year Project:* is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

• *Budget Period:* is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.

• *Core Administration:* is funding for staff salaries for those functions that support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

• *Real Property:* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

• *Construction:* is the term that specifies a project supported through a discretionary grant or cooperative agreement, to support the initial building of a facility.

B. Activities That Cannot Be Funded

The Administration for Native Americans does not fund:

• Projects that operate indefinitely or require ANA funding on a recurring basis.

• Projects in which a grantee would provide training and/or technical assistance (T/TA to other Tribes or Native American organizations which are otherwise eligible to apply to ANA ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives is acceptable.

• The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

• ANA will not fund the purchase of real property.

• ANA will not fund construction.

• ANA will not fund objectives or activities for the support of core administration of an organization.

• Costs of fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates. They must also be allocated their share of the organization's indirect costs if they represent activities which: (1) Include the salaries of personnel; (2) occupy space; and (3) benefit from the organization's indirect costs.

• Projects or activities that generally will not meet the purposes of this announcement are discussed further in Section G, "General Guidance to Applicants", below.

C. Multi-Year Projects

Only Category II, "Design and/or Implementation", projects may be developed as multi-year projects, i.e., for up to three years. The information in this section is not applicable to Category I, Planning projects.

A multi-year project is a project on a single theme that requires more than 12 to 17 months to complete. It affords the applicant an opportunity to develop and address more complex and in-depth strategies. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period. Initial awards, on a competitive basis, will be for a one-year budget period (up to 17 months), although project periods may be for three years.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-to-three year project period, will be funded in subsequent years on a non-competitive basis. Continuation grants are subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

D. Intergovernmental Review of Federal Programs

Executive Order 12372 or 45 CFR part 100 does not cover this program.

E. The Application Process

1. Application Submission

(a) By Mail

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the closing date to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., Mail Stop: Aerospace Center 8th Floor West, Washington, DC 20447–0002, Attention: Lois B. Hodge, ANA No. 93587–2003.

(b) By Courier or Hand Delivery

Applications hand-carried by applicants, applicant couriers, or by overnight express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the ours of 8 a.m. and 4 p.m. at: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Attention: Lois B. Hodge, ANA No. 93587–2003.

2. Application Consideration

The ANA Commissioner determine the final action to be taken on each grant application received under this program announcement. The Commissioner's funding decision is based on the review panel's analysis of the application,

recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and requires this program announcement, and the availability of funds.

Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ACF. An incomplete application is one that is:

- Missing Standard Form (SF) 424.
- Does not have an authorized signature on the SF 424. The application's Standard Form 424 must be signed by an individual authorized (1) to act for the applicant Tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.
- Does not include proof of non-profit status, if applicable.

Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. Independent review panels consisting of reviewers familiar with American Indian Tribes and Native American communities and organizations, and Native American languages evaluate each application using the published criteria in this announcement. As a result of the review, a normalized numerical score will be assigned to each application.

Each Tribe, Native American organization, or other eligible applicant may compete for one grant award under this program announcement.

The Administration for Native Americans will accept only one application for this program announcement from any one applicant. If an eligible applicant sends in two applications for this program announcement, the one with the earlier postmark will be accepted for review unless the applicant withdraw the earlier application.

Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

F. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark will undergo a pre-review of determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and,
- The application is signed by an authorized representative; and
- Submitted by the deadline; and
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation and the project described is an allowable type. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Application subjected to the pre-review described above which fail to satisfy one or more of the listed requirements will be considered ineligible and excluded from competitive evaluation.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Section G: Review Criteria. The criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. Projects will not be ranked based on general financial need.

ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.

After the Commissioner has made decisions on all applicants funded with fiscal year 2003 funds, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a panel review summary including recommendations for improving the application.

3. Appeal of Ineligibility

Applicants, who are initially excluded from competitive evaluation because of ineligibility, may appeal the ANA decision of their ineligibility. Likewise, applicants may also appeal an ANA decision that their proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

G. General Guidance to Applicants

Application Kit: (OMB approved, control number 0980–0204, expires April 30, 2003). The application kit contains the necessary forms and instructions to apply for a grant under this program announcement. Application kits may be obtained from ANA Training and Technical Assistance (t/TA) providers.

Training and Technical Assistance: ANA employs contractors to provide short-term training and technical assistance to eligible applicants. T/TA is available under these contracts for a wide range of needs however, the contractors are not authorized to write applications. The T/TA is provided at no cost to the eligible entity. To obtain an application kit and/or, training and technical assistance, applicants are encouraged to contact the T/TA provider within the appropriate service area. To locate the T/TA provider currently serving the region you are located in you may call the ANA Help Desk at 1–877–922–9262; or visit the ANA web site at: *http://www.acf.hhs.gov/programs/ana/.*

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservation groups are encouraged to include a description of what constitute their specific "community".
- Applications from National Indian and Native American organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.
- Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. For Tribes, a current signed resolution from the governing body of the Tribe supporting the project proposal stating that there has been community involvement in the planning of this

project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members Tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

• Supporting documentation, including letters of support, if available, or other settlements from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project.

• In the ANA project narrative, "Resources Available to the Proposed Project", the applicant should describe any specific financial circumstances that may impact on the project. Include such circumstances as any monetary or land settlements made to the applicant and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not using these resources for the project.

2. Technical Guidance

• Applications that were not funded under a previous closing date may be resubmitted. However, for resubmission applicants should make a reference to the changes or reasons for not making changes in their current ANA application which are based on the ANA panel review comments.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• The Administration for Native Americans will not fund essentially identical projects serving the same constituency. If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.

• For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of federally recognized Indian Tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional Councils). Other federally recognized Indian Tribes, which are not included on this list (e.g., those Tribes that have been recently recognized or restored by the United States Congress), are also eligible to apply for ANA funds.

• The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or month per unit. During negotiation, ANA may delete such expenditures from the budget of an otherwise approved application, if not fully justified by the applicant and deemed not appropriate to the needs of the project.

• Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

3. Grant Administrative Guidance

• The application's Standard Form(SF) 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans recommended that the pages of the application be numbered sequentially and that a table of contents and tabbing of the sections is provided.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The applicant should specify the entire project period length on the first page of the SF 424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the SF 424 specify a conflicting length of project period, ANA will consider the project period specified on the SF 424 as the official request.

• Line 15a on the SF 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.

• Applicants may propose up to a 17-month project and budget period under Category I and up to a 36-month project period under Category II.

4. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

• Core administration functions, or other activities, which essentially support only the applicant's ongoing administrative functions.

• Project goals which are not responsive to this program announcement.

• Proposals from consortia of Tribes that are not specific with regard to support from, and roles of, member Tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members.

• Proposals from consortia of Tribes should have individual objectives that are related to the larger goal of the proposed project. Project objectives may be tailored to each consortia member, but within the context of a common goal for the consortia. In situations where both tribal consortia and a Tribe who belongs to the consortia receives ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member Tribes.

• Projects that will not be completed, or self-sustaining, or supported by other than ANA funds, at the end of the project period. All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources or project generated revenue. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

• Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire budget period.

• Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, Tribe or village.

H. Paperwork Reduction Act of 1995 (Pub. L. 10413)

The Program Narrative information collection with this Program Announcement is approved under 0980–0204, Expiration Date 04/30/2003. Public reporting burden for this collection of information is estimated to average 29.5 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency

may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

I. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section E, The Application Process. The Administration for Native Americans cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ANA electronically will not be accepted regardless of date or time of submission and time of receipt. Videotapes and cassette tapes may not be included as part of a grant application for panel review. Applications and related materials postmarked after the closing date will be classified as late.

1. Deadlines

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date or postmarked on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (excluding Federal holidays). Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

2. Late Applications

Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadlines

The Administration for Children and Families may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is a widespread disruption of the mails. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

(Catalog of Federal Domestic Assistance Program Number: 93.587 Promoting the Survival and Continuing Vitality of Native American languages)

Dated: January 2, 2003.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. 03–817 Filed 1–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–01]

Notice of Proposed Information Collection: Comment Request; Title I Property Improvement and Manufactured Home Loan Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 17, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collected techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Title I Property Improvement & Manufactured Home Loan Program.

OMB Control Number, if applicable: 2502–0328.

Description of the need for the information and proposed use: Title I loans are made by private sector lenders and insured by HUD against loss from defaults. HUD uses this information to evaluate individual lenders on their overall program performance. The information collected is also used to determine claim eligibility.

Agency form numbers, if applicable: HUD–637, 646, 27029, 27030, 55013, 55014, 56001, 56001MH, 56002, 56002MH, 56004, 92802.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of hours needed to prepare the information collection is 14,739; the number of respondents is 91,215 generating approximately 91,215 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the responses varies from one minute to one hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: December 26, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–787 Filed 1–14–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4816–N–01]

Notice of Proposed Information Collection: Comment Request; Implementation of the Housing for Older Persons Act of 1995

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement established under the final rule implementing the Housing for Older Persons Act of 1995 (HOPA) will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the information collection requirement.

DATES: *Comments Due Date:* March 17, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection requirement. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Turner Russell, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 5210, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Turner Russell, Director, Enforcement Support Division, Office of Fair Housing and Equal Opportunity, Room 5208, 451 7th Street, SW., Washington, DC 20410, Telephone: (202) 619–8041 (this is not a toll-free number). Hearing of speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection requirement to the OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected, and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title of Regulation: 24 CFR Part 100, Implementation of the Housing for Older Persons act of 1995; final rule.

OMB Control Number, if applicable: 2529–0046.

Description of the need for the information and proposed use: In the Fair Housing Amendments Act of 1988 (the Act) [42 U.S.C. 3601 *et seq.*], Congress prohibited discrimination in the sale or rental of housing based on familiar status (families with children under 18 years of age). However, at § 3607(b)(2) of the act, Congress exempted 3 categories of "housing for older persons" from liability for familial status discrimination: (1) Housing provided under any State or program which the Secretary of HUD determines is specifically designed and operated to assist elderly persons; (2) housing intended for, and solely occupied by, persons 62 years of age or older; and (3) housing intended and operated for occupancy by at least one person 55 years of age or older per unit ("55 or older" housing). In December 1995, Congress passed the "Housing for Older Persons Act of 1995 (HOPA)" [Public Law 104–76]. The HOPA modified the "55 or older" housing" exemption provided under the Act by eliminating the requirement for "significant facilities and services specifically designed to meet the physical or social needs of older persons." The HOPA still requires that at least 80 percent of the occupied units must be occupied by at least one person who is 55 years of age or older; and that housing providers must publish and adhere to policies and procedures that demonstrate the intent to provide housing for persons 55 years of age or older. In addition, the HOPA mandates compliance with "rules issued by the Secretary for verification of occupancy, which shall * * * provide for [age] verification by reliable surveys and affidavits."

The final rule does not significantly increase the record keeping burden. It describes in greater detail the documentation that HUD will consider when determining whether or not a community or facility qualifies for the "55 or older" housing exemption. Further, § 100.305(e)(5) of the final rule provides a non-extendible one-year transition period (May 3, 1999–May 3, 2000) for existing communities or facilities that wish to qualify for the "55 or older" housing exemption. An existing community or facility that fails to complete the transition by the expiration of that period must stop reserving vacant units for "55 or older" residents; market available housing to the general public regardless of familial status; and rescind all policies, practices, and procedures that discriminate against residents with minor children. By definition, such communities would no longer need to collect or maintain occupancy/age verification information for purposes of the "55 or older" housing exemption.

The information collection requirements contained in §§ 100.306 and 100.307 of the final rule are necessary to satisfy the criteria for the "55 and older" housing exemption under the HOPA. The information required under the act, the HOPA, and the HOPA final rule will be collected in the normal course of business in connection with the sale, rental, or occupancy of dwelling units within a "55 or older" housing community or facility. The statutory and regulatory requirement to publish and adhere to age verification policies and procedures for current and prospective occupants is the usual and customary practice of the "senior housing" industry without regard to the requirements of the Act or the HOPA. The procedures for verifying ages of current residents may require an initial survey and periodic review and update of existing records. The creation of such records should occur in the normal course of sale or rental transactions and should require minimal time.

Three types of information would be collected under the final rule. The publication of a community's housing policies and procedures is not confidential by nature of the fact that such policies and procedures must be disclosed to current and prospective residents, and to residential real estate professionals. The occupancy survey results must be available for public inspection. The survey summary need not contain confidential information because it may simply indicate the total number dwelling units occupied by persons 55 years of age or older. The supporting age verification records may contain some private information, which would be protected from disclosure unless the community or facility claims the "55 or older" housing exemption as a defense to a jurisdictional familial status discrimination complaint filed with HUD.

HUD's Office of Fair Housing and Equal Opportunity will only request disclosure of this information by a housing provider when HUD investigates a jurisdictional familial

status discrimination complaint, and the housing provider claims the "55 or older" housing exemption as an affirmative defense to the complaint.

Agency form numbers(s), if applicable: None.

Members of affected public: Both the HOPA and the HOPA final rule require that small businesses and other small entities that operate housing intended for occupancy by persons 55 years of age or older to routinely collect and update age verification information necessary to meet the eligibility criteria for the "55 or older" housing exemption. The record keeping requirements are the responsibility of the housing provider that wishes to qualify for the exemption.

Estimation of the total numbers of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: The information collection requirements of the HOPA final rule are the responsibility of the community or facility that claims eligibility for the "55 or older" housing exemption provided under the HOPA. Since the HOPA does not require HUD certification or registration for "55 or older" communities or facilities, it is difficult to estimate the number of communities or facilities that intend to collect this information in order to qualify for the exemption. When the proposed rule was published for public comment in January 1997, HUD estimated that approximately 1,000 communities or facilities would seek the exemption. HUD also estimated that the occupancy/age verification data would require routine updating with each new housing transaction within the community or facility, and that the number of such transactions per year might vary significantly depending on the size and nature of the community. HUD estimated the average number of housing transactions per year at "10 per community." HUD concluded that the publication of policies and procedures "* * *is likely to be a one-time event and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden for the three collections is 5,500 hours."

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 34, as amended.

Dated: January 8, 2003.

Diana Ortiz,

Director, Office of Enforcement.

[FR Doc. 03–788 Filed 1–14–03; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Bimonthly Meeting

Notice is hereby given in accordance with section 552b of Title 5, U.S.C., that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, February 6, 2003.

The Commission was established pursuant to Pub. L. 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 4 p.m. at the Corporate Offices of Gateway Healthcare, Inc. located at 249 Roosevelt Ave., Second Floor Board Conference Room, in Pawtucket, RI for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762-0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director BRVNHCC.

[FR Doc. 03–799 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by February 14, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Larry P. Carlson, N. Muskegon, MI, PRT–066199

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Joseph F, Hickey, Milwaukee, WI, PRT–066094

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Philip L. Rank, Westfield, WI, PRT–061812

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa

for the purpose of enhancement of the survival of the species.

Applicant: R. Vaughn Gourley, Las Vegas, NV, PRT–066213

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Wayne R. La Pierre, Vienna, VA, PRT–066214

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Lost Creek Animal Sanctuary Foundation, Mound Valley, KS, PRT–062377, 062378, and 063083

The applicant requests a permit to export, re-export, and re-import captive-born tiger (*Panthera tigris*) and captive-born African leopard (*Panthera pardus*) to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Applicant: Gianni Mattiolo c/o Lost Creek Animal Sanctuary Foundation, Mound Valley, KS, PRT–063335 and 064068

The applicant requests a permit to export, re-export, and re-import captive-born tiger (*Panthera tigris*) and captive-born African leopard (*Panthera pardus*) to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Raymond Mancuso, Jupiter, FL, PRT–066169

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Soundpolar bear population in Canada for personal use.

Applicant: James F. Mitchell, Newhall, CA, PRT–064772

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: December 20, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–837 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by February 14, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Matson's Laboratory, LLC., Milltown, MT, PRT–065981

The applicant requests a permit to import teeth collected from wood bison (*Bison bison athabascae*) in the Mackenzi Sanctuary herd, from the Department of Renewable Resources, Government of the Northwest Territories, Canada, for the purpose of scientific research. This notification covers activities conducted by the applicant over a period of 5 years.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: December 27, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–838 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by February 14, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Thomas Productions, Inc., Las Vegas, NV., PRT–066158 and 066159.

The applicant requests permits to export, re-export, and re-import two captive-born tigers (*Panthera tigris*) to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Applicant: The Peregrine Fund, Boise, ID., PRT–065258.

The applicant requests a permit to import, export, and re-export multiple shipments of biological samples from wild, captive-held, and/or captive born endangered species of the order Falconiformes and Strigiformes from worldwide sources, for the purpose of scientific research. No animals can be intentionally killed for the purpose of collecting specimens. Any invasively collected samples can only be collected by trained personnel. This notification covers activities conducted by the applicant over a period of five years.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: January 3, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–839 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: On September 10, 2002, a notice was published in the **Federal Register** (67 FR 57445), that an application had been filed with the Fish and Wildlife Service by Ken Vorisek for a permit (PRT–061106) to import one polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on December 13, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On October 7, 2002, a notice was published in the **Federal Register** (67 FR 62490), that an application had been filed with the Fish and Wildlife Service by James Leroy Scull, Jr. for a permit (PRT–061116) to import one polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on December 12, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: December 20, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–840 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Service Regulations Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Fish and Wildlife Service (hereinafter Service) will conduct an open meeting on January 23, 2003, to identify and discuss preliminary issues concerning the 2003–04 migratory bird hunting regulations.

DATES: The meeting will be held January 23, 2003.

ADDRESSES: The Service Regulations Committee will meet at the Arlington Square Building, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 200 A/B, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Representatives from the Service, the Service's Migratory Bird Regulations Committee, and Flyway Council Consultants will meet on January 23, 2003, at 8:30 a.m. to identify preliminary issues concerning the 2003–04 migratory bird hunting regulations for discussion and review by the Flyway Councils at their March meetings.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee attended by any person outside the Department, these meetings are open to public observation. Members of the public may submit written comments on the matters discussed to the Director.

Dated: January 7, 2003..

Thomas O. Melius,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–836 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–01–24 1A

Extension of Approved Information Collection, OMB Approval Number 1004–0188

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from individuals who request rights-of-way on public lands that BLM administers under the regulations 43 CFR part 2800 and 43 CFR part 2880. The nonform information under 43 CFR part 2800 and 43 CFR part 2880 will allow BLM to:

(1) Process plans of development for complex right-of-way projects;

(2) Review and file location and project maps;

(3) Adjudicate applications for reductions in cost recovery fees;

(4) Properly assess rents on communication site rights-of-way;

(5) Determine whether or not applicants are qualified to hold right-of-way grants; and

(6) Determine the amount of fees that the applicants or grant holders owe the United States.

DATES: You must submit your comments to BLM at the address below on or before March 17, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (630), Bureau of Land Management, Mailstop 401LS, 1849 C Street, NW., Washington, DC 20240.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0188" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Realty Use Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM needs the information to administer its right-of-way program. Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the Secretary of the Interior to issue and renew rights-of-way through public lands under its jurisdiction. These rights-of-way uses are reservoirs, ditches, pipes and pipelines, electrical general and transmission systems, communication systems, roads, airways, and livestock driveways. BLM requires each right-of-way grant holder to reimburse for all reasonable administrative costs to process an application and monitor the right-of-way grant in accordance with section 504(g).

Section 28 of the Mineral Leasing Act of 1920 (MLA), as amended, 30 U.S.C. 185 *et seq.*, authorizes the Secretary of the Interior to issue right-of-way grants through public lands to transport oil, gas, synthetic liquid or gaseous fuels or other refined products. The Act also allows for temporary use permits to supplement each oil and gas pipeline grant to construct, operate, maintain and terminate the pipeline, and to protect public health and safety. BLM requires right-of-way permit holders to reimburse for actual costs to process application for oil and gas pipeline grants under paragraph (f) of section 28.

The nonform information in the regulations under 43 CFR part 2800 and 43 CFR part 2880 authorizes BLM to collect this information to administer the rights-of-way program. Without this information, BLM would not be able to properly administer its right-of-way program.

Based upon BLM experience and recent tabulations of activity, we process approximately 5,066 applications each year. Depending on the complexity of the applications for rights-of-way, responses vary from 8 to 40 hours to complete. The estimated number of responses per year is 5,066. The estimated total annual burden is 126,650 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: January 8, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–776 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–FA–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1044–0114

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1994, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from owners of unpatented claims, mill sites, and tunnel sites. BLM uses Forms 3830–2 and 3830–3 to collect this information to:

(1) Record such claims and sites;

(2) Determined the land status at the time of location;

(3) Collect annual maintenance and location fees;

(4) Process Waivers of annual fees;

(5) Process annual affidavits of labor or notices of intent to hold a mining claim or site;

(6) Process requests for deferments from assessment work;

(7) Process transfers of interest; and

(8) Adjudicate such claims and sites.

The regulations under 43 CFR part 3830–3833, 3840–3843, 3850–3852 authorized BLM to collect the above information to manage the general mining law activities on public lands.

DATES: You must submit your comments to BLM at the address below on or

before March 17, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (630), Bureau of Land Management, Mailstop 401LS, 1849 C Street, NW., Washington DC 20240.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0114" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Roger A. Haskins on (202) 452–0372 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Haskins.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Federal Land Policy and Management Act of 1976, 30 U.S.C. 28f (Pub. L. 105–277), and the regulations under 43 CFR parts 3830–3833, 3840–3843, 3850–3852 authorizes BLM to collect information from owners of unpatented claims, mill sites and tunnel sites to manage the general mining law activities on public lands.

BLM uses Form 3830–2 (Maintenance Fee Waiver) to collect the information to waive the $100 annual maintenance fee that owners of unpatented mining claims, mill sites, and tunnel sites must pay. The owners of unpatented mining claims, mill sites, and tunnel sites must submit the following information to BLM:

(1) The mining claims names and BLM serial numbers;

(2) A declaration that the owners own or have interest in 10 or fewer claims or sites;

(3) A declaration of compliance with the assessment work requirements;

(4) The names and addresses of all owners of the claims and sites; and

(5) The owners'/agents' signatures.

BLM uses Form 3830–3 (Notice of Intent to Locate A Lode or Placer Mining Claim(s) and/or A Tunnel Site(s) and Lands Patented Under the Stock Raising Homestead Act of 1916, amended to collect information on an applicant who files a notice of intent to locate or explore for a mining claim or tunnel site. The applicant must submit the following information to BLM:

(1) The name and mailing address of the applicant filing the notice of intent to locate or explore for a mining claim or tunnel site;

(2) A legal land description of the lands which the notice of intent will apply;

(3) A brief description of the proposed mineral activities;

(4) A map and legal land description of lands subject to mineral exploration;

(5) The name, address, and phone number of the person managing the activities; and

(6) The dates the activities will take place.

BLM uses the information on recording claims, annual assessment work, notice of intent to hold, and transfer of interest to:

(1) Determine the number and location of unpatented mining claims, mill sites and tunnel sites located on Federal lands to assist in the surface management of these lands and any minerals found there;

(2) Remove any cloud on the title to those lands due to abandoned mining claims;

(3) Provide information as to the location of active claims; and

(4) Keep informed of transfers of interest and ownership.

Without this information, BLM could not protect the rights of surface and mineral owners. Also, the Government's ability to locate, control, and manage surface disturbance is compromised.

Based upon BLM experience, the public reporting information collection burden takes eight minutes per response. The respondents are owners of unpatented mining claims, mill sites, and tunnel sites located on public lands and individuals or organizations who seek to explore for or locate a mining claim. The estimated number of responses per year is 236,852 and the total annual burden is 31,580 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: January 9, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–777 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of meeting date change.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Thursday and Friday, Feb. 27 and 28, 2003, at the BLM's Eagle Lake Field Office, 2950 Riverside Dr., Susanville, CA. The meeting date is changed from an earlier announced date of January 9 and 10, 2003.

SUPPLEMENTARY INFORMATION: The original meeting notice was published in the **Federal Register** on December 9, 2002 (Vol. 67, No. 236, page 72969). Details, including the meeting location, starting time and agenda items, are unchanged from that publication.

FOR FURTHER INFORMATION CONTACT: Tim Burke, Alturas Field Manager, at (530) 233–4666.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 03–784 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–40–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Bankruptcy and Criminal Procedure, and Rules of Evidence

AGENCY: Advisory Committees on Rules of Bankruptcy and Criminal Procedure,

and Rules of Evidence, Judicial Conference of the United States.

ACTION: Notice of cancellation of two open hearings and rescheduling of one open hearing.

SUMMARY: The following public hearings on proposed rules amendments have been canceled:

- Bankruptcy Rules in Washington, DC., on January 24, 2003; and
- Criminal Rules in Atlanta, Georgia, on January 31, 2003.

The public hearing on proposed amendments to the Evidence Rules, originally scheduled for January 27, 2003, has been rescheduled for April 25, 2003, in Washington, DC. Original notice of hearings appeared in the **Federal Register** of August 23, 2002.

Notice of Open Hearings

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, One Columbus Circle, NE., Washington, DC 20544, telephone (202) 502–1820.

Dated: January 9, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–835 Filed 1–14–03; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated July 29, 2002, and published in the **Federal Register** on August 19, 2002, (67 FR 53810), Abbott Laboratories, 1776 North Centennial Drive, McPherson, Kansas 67460–1247, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The firm plans to import the remifentanil to manufacture Ultiva for the U.S. market.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Abbott Laboratories to import remifentanil is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Abbott Laboratories on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal regulations, section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: December 13, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–769 Filed 1–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated June 10, 2002, and published in the **Federal Register** on June 20, 2002, (67 FR 42059), Celltech Manufacturing CA, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the listed controlled substance to make finished dosage forms for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Celltech Manufacturing CA, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Celltech Manufacturing CA, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security system, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacture of the basic class of controlled substance listed above is granted.

Dated: December 13, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–768 Filed 1–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2002, and published in the **Federal Register** on June 20, 2002, (67 FR 42059), National Center for Development of Natural Products, The University of Mississippi, 135 Coy Waller Lab Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm plans to bulk manufacture for product development.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of National Center for Development of Natural Products to manufacture the listed controlled substances is consistent with the public interest at this time. This determination was based on, among other things, DEA's on-site investigation of the National Center for Development for Natural Products. The investigation included inspection and testing of the applicant's qualifications and experience, verification of the applicant's compliance with state and local laws, and a review of the firm's background and history. DEA has further determined that the registration will be consistent with United States obligations under international treaties. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of

controlled substances listed above is granted.

Dated: December 13, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–767 Filed 1–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 24, 2002, and published in the **Federal Register** on July 10, 2002, (67 FR 45765), Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocanabinols (7370)	I
Alphamethadol (9605)	I
Cocaine (9041)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import the listed controlled substances to manufacture controlled substances for use in drug abuse testing kits.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Roche Diagnostics Corporation to import listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roche Diagnostic Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigation have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basis classes of controlled substances listed above.

Dated: December 13, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–771 Filed 1–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated July 12, 2002, and published in the **Federal Register** on August 6, 2002, (67 FR 50899), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

The firm plans to import the coca leaves to manufacture bulk controlled substance.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Stepan Company, Natural Products Department to import coca leaves is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Stepan Company, Natural Products Department on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: December 13, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–770 Filed 1–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,888 & A; Jasper Cabinet Co., Jasper, IN and Ferdinand, IN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,428; Zenith Dye and Finishing Corp., Paterson, NJ

The investigation revealed that criterion (a)(2)(A) (1.C) (Increased imports) and (a)(2)(B)(II. C.1) (Has shifted production to a country not under the free trade agreement with the US) have not been met.

TA–W–50,060; GKN Sinter Metals, Gallipolis, OH

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,142; Midas International Corp., Muffler Corp. of American Div., Hartford, WI

TA–W–50,013; Georgia-Pacific Corp., OSB Plant, Baileyville, ME

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–50,211; Trigon Engineering Co., Little Rock, AR

TA–W–42,012; ACS, Inc., Phoenix, AZ

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not a supplier or downstream producer for trade-affected companies.

TA–W–50,262; Engineered Polymers Corp., a Subsidiary of GBR Holding Corp., Formerly a Subsidiary of Cookson Investments, a Subsidiary of Cookson Group PLC, Mora, MN

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,308; Shipping Systems, Inc., a Subsidiary of Bancroft Bag, Crossett, AR: October 2, 2001.

TA–W–42,200; Multi-Tool, Inc., Saegertown, PA: August 27, 2001.

TA–W–41,840; Corbin, LTD, Huntington, WV: June 21, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–50,178; Evanite Fiber Corp., a Subsidiary of Hollingsworth & Vose Co., Hardboard Div., Corvallis, OR: November 2, 2001.

TA–W–50,089; E-Mu Systems, Scots Valley, CA: November 5, 2001.

TA–W–50,144; Saint-Gobain Abrasives, Flowery Branch, GA: November 12, 2001.

TA–W–50,295; Vaughan Furniture Co., Galax, VA: November 6, 2001.

TA–W–50,146; Tetra Tool Company, Erie, PA: November 12, 2001.

TA–W–50,400; Staktek Group L.P., Austin, TX: December 13, 2001.

TA–W–50,214; Arvin/Meritor, Oshkosh Facility, Oshkosh, WI: November 27, 2001.

TA–W–50,195; Zsml Corp., Pacoima, CA: November 14, 2001.

TA–W–50,176; Idaho Circuit Technology Corp., Glenns Ferry, ID: November 22, 2001.

TA–W–50,174; Burgess Norton Manufacturing Co., Div. of Amsted Industries, Muskegon, MI: November 9, 2001.

TA–W–50,145; Ardco Holdings, Inc., Formerly Anthony International, Scottsboro, AL: November 19, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–50,277; Heico-Ohmite, LLC, Skokie, IL: December 3, 2001.

TA–W–50,113; Fleming Lumber Co., Inc., Milligan, FL: November 18, 2001.

TA–W–50,140; Basler Electric Co., Corning, AR: November 18, 2001.

TA–W–50,301; DeLong Sportswear, Inc., Quanah, TX: December 11, 2001.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm as been met.

TA–W–50,071; Graphic Metals, Inc., Bay City, MI: November 11, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

NAFTA–TAA–06650; State of Alaska Commercial Fisheries Entry Commission Permit #595360, Dillingham, AK

The investigation revealed that criteria (2) has not been met. Sales or production, or both, did not decline during the relevant period as required for certification.

NAFTA–TAA–07214; Permit #60370A, Egegik, AK

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06438 & A; Corbin, LTD, Ashland, KY and Huntington, WV: August 1, 2001.

I hereby certify that the aforementioned determinations were issued during the months of December, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 6, 2003.

Edward A. Tomchick

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–804 Filed 1–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,976]

Black and Decker, North American Power Tools, Including Leased Workers of Employment Control, Inc., Easton, Maryland; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 10, 2002, applicable to workers of Black and Decker, North American Power Tools, Easton, Maryland. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67422).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that leased workers of Employment Control, Inc. were employed at Black and Decker, North American Power Tools to produce corded power tools as well as provide administrative support service for the production of corded power tools at the Easton, Maryland location of the subject firm.

Based on these findings, the Department is amending the certification to include leased workers of Employment Control, Inc. employed at Black and Decker, North American Power Tools, Easton, Maryland.

The intent of the Department's certification is to include all workers of Black and Decker, North American Power Tools who were adversely affected by increased imports and a shift in production to Mexico.

The amended notice applicable to TA–W–41,976 is hereby issued as follows:

All workers of Black and Decker, North American Power Tools, Easton, Maryland, engaged in production of corded power tools, including leased workers of Employment Control, Inc. engaged in employment related to the production of corded power tools at Black and Decker, North American Power Tools, Easton, Maryland who became totally or partially separated from employment on or after August 1, 2001, through October 10, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of January, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–807 Filed 1–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,581 and TA–W–41,581A]

The Cincinnati Gear Company, Cincinnati, Ohio, and the Cincinnati Gear Company, Erlanger, Kentucky; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 22, 2002, applicable to workers of The Cincinnati Gear Company, Cincinnati, Ohio. The notice was published in the **Federal Register** on December 23, 2002 (67 FR 78252).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of gears and transmissions.

New findings show that worker separations occurred at the Erlanger, Kentucky facility of The Cincinnati Gear Company. The workers were engaged in the production of gears and transmissions and the final assembly of the entire unit until all production ceased in May 2002.

Accordingly, the Department is amending the certification to cover workers at The Cincinnati Gear Company, Erlanger, Kentucky.

The intent of the Department's certification is to include all workers of The Cincinnati Gear Company who were adversely affected by increased imports and to also correctly identify the name of the subject firm to read The Cincinnati Gear Company.

The amended notice applicable to TA–W–41,581 is hereby issued as follows:

All workers of The Cincinnati Gear Company, Cincinnati, Ohio (TA–W–41,581), and Erlanger, Kentucky (TA–W–41,581A), who became totally or partially separated from employment on or after May 1, 2001, through November 22, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 2nd day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–809 Filed 1–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,069]

L.W. Packard & Co., Inc. Ashland, New Hampshire; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 29, 2002, applicable to workers of L.W. Packard & Co., Inc., Ashland, New Hampshire. The notice was published in the **Federal Register** on December 23, 2002 (67 FR 78258).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Findings show that the Department issued certification coverage to all workers of the subject firm's Ashland, New Hampshire location.

The investigation conducted for the subject firm was conducted on behalf of workers producing woolen fabrics for ladies' and men's coats. The investigation revealed that customer imports of woolen fabrics increased while sales, production and employment declined during the period of the investigation.

Information provided by the State also shows that workers of the subject firm have ceased production of woolen fabrics. Workers currently employed at the facility perform other services and are separately identifiable from workers who produced woolen fabrics.

Based on these findings, the Department is amending the certification to cover all workers of L.W. Packard & Co., Inc., Ashland, New Hampshire, engaged in employment related to the production of woolen fabrics.

It is the intent of the Department to include all workers engaged in employment related to the production of woolen fabric of L.W. Packard & Co., Inc. Ashland, New Hampshire adversely

affected by increased imports of woolen fabrics.

The amended notice applicable to TA–W–50,069 is hereby issued as follows:

All workers of L.W. Packard & Co., Inc., Ashland, New Hampshire, engaged in employment related to the production of woolen fabrics, who became totally or partially separated from employment on or after November 8, 2001, through two years from the date of the original certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of January 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–806 Filed 1–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,418]

RHO Industries, Buffalo, New York; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 29, 2002, the Union of Needletrades Industrial and Textile Employees, Rochester Regional Joint Board requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of RHO Industries, Buffalo, New York was issued on June 28, 2002, and was published in the **Federal Register** on July 18, 2002 (67 FR 47400).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The investigation findings revealed that criterion (3) of the group eligibility requirements of section 222 of the Trade Act of 1974 was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the subject firm. The company did not import chest piece inter-linings during the relevant period. The workers produced chest piece inter-linings.

The request for reconsideration alleges that the company went out of business since they could not raise prices due to alleged foreign competition undercutting the company's prices.

A review of data supplied during the initial investigation shows that the company was not impacted by imports of chest piece inter-linings. The company and a major declining customer that accounted for virtually all of the company's sales did not import chest piece inter-linings during 2000 through March 2002.

The allegation that the company could not raise prices, due to foreign competition undercutting the firms price is not relevant to meeting the eligibility requirements of section 223 of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of January 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–805 Filed 1–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,469 and TA–W–41,469A]

Telect, Liberty Lake, Washington, Including Employees of Telect Located in Illinois; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 19, 2002, applicable to workers of Telect, Liberty Lake, Washington. The notice was published in the **Federal Register** on September 10, 2002 (67 FR 57453).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving employees of the Liberty Lake, Washington facility of Telect located in Illinois. These employees provided sales function services for the production of fiber optic patchcords and pigtails at the Liberty Lake, Washington location of the subject firm.

The intent of the Department's certification is to include all workers of Telect who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,469 is hereby issued as follows:

All workers of Telect, Liberty Lake, Washington (TA–W–41,469), including employees of Telect, Liberty Lake, Washington, located in Illinois (TA–W–41,469A), who became totally or partially separated from employment on or after April 16, 2001, through August 19, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–808 Filed 1–14–03; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit Nos. 1 and 2 Exemption

1.0 Background

PSEG Nuclear LLC (PSEG or the licensee) is the holder of Facility Operating License Nos. DPR–70 and DPR–75 which authorize operation of the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), respectively. The licenses provide, among other things, that the Salem Nuclear Generating Station, Unit Nos. 1 and 2 are subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Salem County, New Jersey.

2.0 Purpose

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 55.59(c), a facility's licensed operator requalification program must be conducted for a continuous period not to exceed 2 years and upon conclusion must be promptly followed, pursuant to a continuous schedule, by successive requalification programs.

The Code of Federal Regulations at 10 CFR 55.11 states that "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

3.0 Discussion

By letter dated October 28, 2002, PSEG requested a change to the Salem operator licensing requalification training program completion date. This request constitutes a request for exemption under 10 CFR 55.11 from schedule requirements of 10 CFR 55.59(c). The schedule exemption requested would extend the period for completing the Salem requalification training program from October 3, 2002, to January 9, 2003. The next requalification period would begin on January 14, 2003, and end on December 31, 2004, with subsequent requalification periods remaining on a January to December schedule.

The schedule change will allow the facility licensee to align the Salem requalification program with the requalification program of their Hope Creek Generating Station. The affected licensed operators will continue to demonstrate and possess the required levels of knowledge, skills, and abilities needed to safely operate the plant. The limited 3-month delay in completion of the requalification program will include a Special Training Segment for licensed operators. Thus, there is a negligible effect on operator qualification.

4.0 Conclusion

The Commission has determined that pursuant to 10 CFR 55.11, granting an exemption to the facility licensee from the schedule requirements in 10 CFR 55.59(c), by allowing Salem a one-time extension in the allowed time for completing the licensed operator requalification training program, is authorized by law and will not endanger life or property and is otherwise in the public interest.

Therefore, the Commission hereby grants PSEG Nuclear LLC an exemption on a one-time only basis from the schedule requirements of 10 CFR 55.59(c), to allow the completion date for the licensed operator requalification training program at Salem to be extended from October 3, 2002, to January 9, 2003. The next requalification training program will commence on January 14, 2003, and be completed by December 31, 2004, with subsequent 2-year requalification programs to continue on a January to December schedule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 1213).

This exemption is effective upon issuance, and expires on January 9, 2003.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 9th day of January 2003.

Bruce A. Boger,

Director, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–863 Filed 1–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–28641]

Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of environmental assessment and finding of no significant impact related to license amendment to the Department of the Air Force Master Materials License No. 42–23539–01AF, Department of the Air Force, USAF Radioisotope Committee, HQ AFMOA/SGPR, 8901 18th Street, Brooks AFB, Texas, 78235–5217.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to the Department of the Air Force Master Materials License No. 42–23539–01AF to authorize decommissioning of its Site OT–10 training facility at Kirtland AFB and has prepared an environmental assessment in support of this action. Based upon the environmental assessment, the NRC has concluded that a finding of no significant impact is appropriate, and, therefore an Environmental Impact Statement is unnecessary.

FOR FURTHER INFORMATION CONTACT: Rachel S. Browder, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas, 76011; telephone (817) 276–6552 or email *rsb3@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared an environmental assessment related to a license amendment to Materials License 42–23539–01AF, authorizing decommissioning of the Site OT–10 at Kirtland AFB. On the basis of this environmental assessment, the NRC has concluded that this licensing action would not have any significant adverse effect on the quality of the human environment, and therefore, an Environmental Impact Statement is not required.

Environmental Assessment

1.0 Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the U.S. Air Force's (USAF's) request for approval of the Kirtland Air Force Base (AFB) Decommissioning Plan (DP), located in Albuquerque, New Mexico. The licensee requested that four former Defense Nuclear Weapons School (DNWS) Radiation Training Sites at Kirtland AFB's be released for unrestricted use. The four training sites were identified for remediation under the USAF's Installation Restoration Program as Site OT–10. The purpose of this environmental assessment (EA) is to assess the environmental consequences of this license amendment request.

1.1 Background

The DNWS Radiation Training Sites are located in the north central part of Kirtland AFB. From 1961 to 1990, these sites were used to train radiological response personnel to detect contamination generated during simulated nuclear weapons accidents. Known quantities of Brazilian thorium oxide sludge were applied and tilled into site soils to simulate dispersed plutonium. The training sites are owned by the U.S. Government and regulated by the NRC under the USAF Master Materials License No. 42–23539–01AF. Four inactive training sites (TS5, TS6, TS7 and TS8) comprise Kirtland AFB's Installation Restoration Program Site OT–10 and are being decommissioned to meet the NRC requirements for unrestricted use, as defined in NRC regulations.

The OT–10 training sites consist of approximately 43 acres, in which approximately 9.2 acres (3.7 hectares) were affected with elevated thorium

concentrations at the time of the most recent investigation.

The licensee submitted the DP in July 2000. A revised August 2002 DP was transmitted by cover letter dated November 19, 2002, with the final site-specific derived concentration guideline levels (DCGLs) submitted on October 2, 2002. In accordance with 10 CFR 40.42, the DP describes the site conditions, the planned decommissioning activities, radiation safety program, planned final radiation survey, and the cost estimate for decommissioning. Decommissioning would occur for approximately 1½ years, tentatively from January 2003, and is expected to continue throughout 2003. Submittal of the final status survey report to the NRC is planned for early 2004.

The radioactive contaminated soil would be removed in accordance with the DP and the licensee's standard operating procedures. The licensee has committed to excavating contaminated soil, vegetation, and debris and transferring them directly to intermodal containers, sampling and analyzing the excavated materials, manifesting the waste, and transporting the waste containers to a licensed disposal facility. The radioactive material would be packaged, handled and stored according to the appropriate health and safety procedures. Packaging contaminated soil would conform to the Department of Transportation (DOT) regulations and the disposal site requirements. The USAF would transfer the contaminated soil in intermodal containers by truck to West Control Specialist (WCS) in Andrews County, Texas, or in intermodal containers by rail or truck to Envirocare of Utah.

1.2 Purpose and Need for Proposed Action

The purpose of the proposed action is to reduce residual contamination at the site for unrestricted use and removal of the OT–10 training site from the license. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for decommissioning that ensures protection of the public health and safety and environment.

2.0 Alternatives, Including the Proposed Action

2.1 Proposed Action

The proposed action is to decontaminate and remediate the OT–10 training sites to release for unrestricted use as delineated in 10 CFR part 20, subpart E, that being 25 mrem/year total effective dose equivalent (TEDE) to the critical group (*i.e.*, resident farmer scenario).

The ultimate goal of the decommissioning is to release the OT–10 training sites from the USAF Master Materials License. The general decommissioning would result in the excavation of the source material from the OT–10 training sites to meet the unrestricted use criteria. The excavated material would be transported to a licensed low-level radioactive waste (LLRW) facility (*e.g.*, Envirocare of Utah) for disposal. The unimportant quantities of source material, as defined in 10 CFR 40.13, would be shipped to a burial facility (*e.g.*, West Control Specialist (WCS) facility in Andrews, TX). Following any necessary remediation, the licensee would perform final status surveys in the area in accordance with the NRC approved DP.

2.2 Alternatives to the Proposed Action

There are no alternatives to the proposed actions besides taking no action.

2.2.1 No Action

NRC considered the no-action alternative relative to USAF's request for approval of the DP. The no-action alternative would mean that NRC would not approve the DP and, therefore, would not be able to amend the license. The no-action alternative is not acceptable because it would conflict with NRC's requirement in 10 CFR 40.42, "Expiration and termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas," of timely remediation at facilities or outdoor areas that have ceased NRC licensed operations. Therefore, the no-action alternative is not considered to be reasonable and is not analyzed further in this EA.

3.0 Affected Environment

Eight training sites were established in November 1961 in the north-central part of Kirtland AFB, which is located in Albuquerque, New Mexico (USAF, 2001b). Training activities were discontinued at four of the training sites in 1990. These four training sites, designated as OT–10 under the USAF's Installation and Restoration Program, are located south of Pennsylvania Avenue, on Kirtland AFB. TS8 was also used as a storage site and has two storage bunkers located within its fenced area. In addition, TS6 contains solid waste management unit (SWMU) SS–69, a 50-ft by 50-ft fenced area previously used to store drums of thorium oxide sludge, contaminated soil and waste fuels. SWMU SS–69 is managed as a separate corrective action unit under Kirtland AFB's Resource Conservation and Recovery Act (RCRA) part B permit.

The following sections provide detailed information on the specific environmental resources and subject areas relevant to the nature of the proposed action.

3.1 Physiography, Geology and Soils

Kirtland AFB is located on a high, semiarid piedmont alluvial plain and adjacent foothills, about 5 miles east of the Rio Grande. The alluvial plain is cut by the east-west trending Tijeras Arroyo, which drains into the Rio Grande. The western portion of Kirtland AFB lies within the Albuquerque-Belen Basin. The Albuquerque-Belen structural basin contains the through-flowing Rio Grande and lies within a series of grabens and structural basins called the Rio Grande Rift. The deposits consist of interbedded gravel, sand silt, and clay, the bulk of which are referred to as the Santa Fe Group. The soils types consist of Tome very fine sandy loam, Gila fine sandy loam, Bluepoint-Kokan association, Wink fine sandy loam and Tijeras gravelly fine sandy loam.

The Santa Fe Group contains sediments which were deposited as an alluvial fan, playa and fluvial deposits that filled the subsiding basin. The thicknesses of most basin-fill deposits are greater than 3,000 feet, although the thickness varies considerably because of faulting in the basin. The Santa Fe Group contains beds of unconsolidated to loosely consolidated sediment and interbedded volcanic rock. The materials range in size from boulders to clay.

3.2 Meteorology, Climatology, and Air Quality

The climate at Kirtland AFB is typical of a high-desert plateau, with low precipitation, wide temperature extremes and typically, clear sunny days. The mean annual precipitation is about 8.4 inches and the mean annual snowfall is 1.25 inches. Summer rains typically account for nearly half of the annual moisture, in the form of brief but heavy local thunderstorms. The prevailing wind direction from May through October is south to southeast, and the mean wind speed is about 8 knots. From November through April, the prevailing wind direction is north to northwest, and the mean wind speed is 7 knots.

3.3 Water Resources

The four training sites are located in the Hydrogeologic Region of Kirtland AFB. The estimated hydrologic

conductivity in this unit ranges from less than 0.3 ft/day to greater than 30 ft/day. The depth to groundwater is between 300 to 500 ft. Groundwater is thought to be unconfined in the upper portion of the aquifer, but this may not be true in all areas. The uppermost aquifer occurs within the Santa Fe Group.

A shallow saturation zone above the regional aquifer, approximately 200 to 250 ft below ground surface has been identified in the Hydrogeologic Region. This zone is located adjacent to and northwest of the Kirtland AFB landfill. It is associated with either a system of multiple perched aquifers or a groundwater mound. The extent of a shallower saturation zone has not been defined and it is unknown if it exists in the vicinity of the four training sites.

3.4 Ecology

The four former training sites that are to be decommissioned are in the Plains and Great Basin Grasslands. These grasslands are generally flat and open, lying from 4,900 to 7,500 feet in elevation. Common vegetation includes needle-and-thread, galleta grass, sand dropseed, grama grasses, Indian ricegrass, fourwing saltbush, broom snakeweed, sagebrush, winter fat, and yucca.

According to the Kirtland AFB Integrated Natural Resource Management Plan, there are no known federally listed threatened or endangered species on the AFB. The western burrowing owl (Athene cunicularia hypugaea) is a federal species of concern that has been observed on Kirtland AFB. This bird nests in prairie dog towns. The loggerhead shrike (Lanius ludovicianus) is also a federal species of concern. Loggerhead shrikes occupy grassland, pinyon-juniper, and riparian habitats. This species has been observed on the AFB and is found in the area throughout the year.

The gray vireo (Vireo vicinior) is the only state-listed threatened species known to be on the AFB. Gray vireos have been observed in ungrazed juniper woodland at the base of the western foothills of the Manzanita Mountains at elevations between 5,900 and 6,600 feet. This area is located in the easternmost portion of the AFB. Site OT–10 would not present attractive habitat to the gray vireo because of its distance from vireo nesting areas.

Critical habitats are those areas considered essential for maintaining or restoring threatened or endangered species populations. Neither the New Mexico Department of Game and Fish nor the U.S. Fish and Wildlife Service has designated or identified any critical habitat on the AFB.

3.5 Noise

The land use for the training sites and surrounding areas is classified as public or institutional and noise generated by the proposed decommissioning would not affect residents. Noise is quantified by decibels (dB), weighted by a day-night average sound level (DNL). A DNL of 65 dB is often utilized in planning and represents a compromise between community impact and the need for aviation and industrial activities. Areas exposed to DNL above 65 dB are generally not considered suitable for residential use. The DNL in and around the runways at Kirtland AFB typically exceeds 65 dB. Therefore, the immediate areas surrounding the base runways, including the proposed decommissioning area, are not classified for residential use.

Existing potential noise sources at Kirtland AFB are aircraft, firing ranges, explosive testing, and motor vehicles. An assessment of aircraft noise, including Kirtland aircraft operations, was performed at the Albuquerque International Sunport. The noise baseline attributed to aircraft noise in the proposed OT–10 decommissioning area is 65–70 dB.

Firing ranges and weapons training ranges contribute to moderate, localized noise impacts at Kirtland AFB. Harmful noise levels; that is, those exceeding 140 dB, from weapons testing activities remain within the boundaries/buffer zone of the Kirtland AFB. However, explosive detonations with noise levels of this magnitude are limited to 6–10 tests per year.

Off-road vehicle noise sources, including military transport and military weapons vehicles, are the primary sources of noise from the training and withdraw areas at Kirtland AFB. The military vehicles operate well below speeds of street traffic and measurements have shown that the military vehicles are up to 10 dB noisier than heavy trucks.

Noise generated by motor vehicles is more prevalent in congested areas of Kirtland AFB. Motor vehicle noise was evaluated in a 1995 Kirtland AFB study in a 24-hour traffic count at Gibson Gate and resulted in 71 dB, averaged over a 24-hour period.

Noise impact analyses conducted for the current activities at the Kirtland AFB concluded that there are no adverse impacts to people or wildlife. Military training activities at the AFB are conducted in remote areas, buffered by land, and are restricted to authorized personnel.

3.6 Historical and Cultural Resources

The area directly surrounding the proposed project area was surveyed for cultural resources and one historic site was located. This site would not be disturbed by the proposed action. No other historic properties have been located surrounding the project area.

3.7 Summary of Radiological Conditions

The four training sites which have been discontinued from use and have been identified by the USAF for decommissioning, were used to train U.S. Department of Defense (DOD), U.S. Department of Energy (DOE), Federal Emergency Management Agency (FEMA), and other federal and state personnel in the detection of dispersed contamination resulting from simulated nuclear weapons accidents. Known quantities of Brazilian thorium oxide sludge were applied and tilled into site soils to simulate dispersed radiological contamination. The thorium oxide sludge served as a low hazard analog for plutonium. A total estimated inventory of approximately 602 kilograms (kg) of thorium-232 was applied at the inactive sites. The estimated thorium-232 inventory, by site, is presented in the following table.

Training site	Approximate area of site in acres (hectares)	Approximate area contaminated in acres (hectares)	Estimated thorium-232 (kg)
TS5	13 (5.26)	1.7 (0.687)	215
TS6	19 (7.69)	6.7 (2.71)	307
TS7	8 (3.23)	0.6 (0.24)	36
TS8	2 (0.81)	0.4 (0.16)	44

USAF had characterized the OT–10 training sites during four investigations between 1988 and 2001. The first investigation was a limited site survey conducted between December 1985 and January 1990. The first extensive scan investigation was performed between October 1994 and May 1995, which included surface gamma surveys and soil sampling to delineate the general extent of the contamination. The most recent investigation was conducted in 1996 and 1998 and included an assessment of radionuclides and chemicals in the background soil and contaminated soil in the training sites, geophysical surveys of the sites, a health physics assessment and radionuclide grain size analysis. During the 2001 survey, the licensee selected a non-impacted background area and performed extensive analyses for background data. Additionally, the licensee performed building surveys of the two bunkers located in TS8.

The quantities and concentrations of thorium-232 contaminated soil above background, at the four training sites are summarized in the following table. The data was taken from the results of the 1994 to 1995 investigation.

Training site	Soil contaminated (yd^3)	Avg depth of contamination (in)	Avg Th-232 concentration (pCi/g)	Range of Th-232 concentration (pCi/g)
TS5	5,637	16	67.9	2.2–421.6
TS6	15,599	16	100.8	2.8–683.4
TS7	60	16	55.4	2.3–466
TS8	6,223	16	76.4	2.1–1,047.9

Approximately 9.2 acres (3.7 hectares) of the 43.2 acre (17.48 hectares) site are impacted with Brazilian thorium oxide sludge. The contaminants of potential concern associated with thorium oxide sludge include thorium-232 and its decay progeny and to a lesser extent, uranium-238 and its decay progeny. The extent of contamination is limited to the immediate vicinity of the training sites and to a maximum depth of 5 feet (1.524 meters) below ground surface. The vertical extent of ground contamination is typically 1–2 feet (0.61 meters) below ground surface. An estimated 27,500 cubic yards yd^3 (21,025 m^3) are radiologically contaminated.

The licensee considered five environmental pathways for the determination of the DCGL based on the conceptual modeling for Kirtland AFB. These five pathways include: external radiation, inhalation of particulates and radon, ingestion of soil and plant foods. There are no indications of contamination migration into surface water drainages or groundwater.

3.7.1 Radiological Status of Structures and Equipment

The DP outlines procedures for decommissioning Buildings 28005 and 28010 at training site TS8. The contamination on the interior surfaces of these storage bunkers exceeds the limits established in 10 CFR 20.1402, for the radiological criteria for unrestricted use for building surfaces. The interior surfaces of the bunkers would be cleaned and tested to determine if the remaining contamination level is acceptable. Demolition and disposal of these buildings would be performed if the contamination cannot be removed. Additionally, the licensee has established action levels that would ensure effluent releases generated during decommissioning activities, such as scabbling or demolition, are below the levels allowed by 10 CFR part 20. The NRC would require the USAF to comply with the regulations established in 10 CFR part 20, to ensure the doses would be bounded by 25 mrem.

3.7.2 Radiological Status of Surface and Subsurface Soils

The licensee performed analysis of collected soil samples, scanning measurements and used historical information to classify soil survey units. The licensee calculated concentration guidelines for surface contamination of soils in the impacted areas of the training sites using RESRAD code, Version 6.1. The DCGLs would define the maximum amount of residual contamination in soils that would satisfy the NRC's regulations in 10 CFR part 20, subpart E, "Radiological Criteria for License Termination."

4.0 Environmental Impacts

There are limited potential short-term environmental impacts associated with the proposed decommissioning activities. The following sections discuss possible impacts on the environment resulting from approval of the DP.

4.1 Non-Radiological Impacts

Completion of the decommissioning activities would allow for unrestricted use of the site. The proposed decommissioning action would have a positive environmental impact on the area since low-level radioactive contamination would be removed from the soil above the aquifer.

4.1.1 Land Use and Socioeconomic Impacts

This action would not have an adverse impact on future land use. Kirtland AFB has used the training sites since they were established in 1961. Remediation activities would provide a long-term positive impact to local socioeconomic conditions. Currently, land areas at Site OT–10 cannot be used for activities other than radiological training because dose rates associated with contamination there can exceed 25 mrem/year. Removal of radiologically contaminated materials would free the sites for recreational, residential, and/or industrial use. In addition, removal of Site OT–10 from administrative controls would release economic resources for use elsewhere.

4.1.2 Air Quality

There are no expected adverse impacts to air quality as a result of planned decommissioning activities. There would be a slight increase in dust emissions during the removal of the contaminated soil; however, there is little likelihood that airborne radioactive material would be a problem on the site during any operation conducted for the remediation. USAF would minimize the potential for airborne effluent releases by using light water spray to suppress the dust during activities that could generate significant quantities of dust. Activities that could generate significant quantities of dust include the excavation of the soil, processing and packaging of the remediated soil into the intermodal containers. Heavily traveled, clean areas would also be sprayed lightly.

4.1.3 Water Resources

This action would not have an adverse impact on water resources. The Kirtland AFB OT–10 training sites are not located in a flood plain of any streams or rivers. There are no wetlands located in the project area. There would

be no water bodies diverted in order to remediate the training sites. Accumulating rainwater in affected areas would be dammed, mixed with contaminated soils, and/or left to evaporate. Only small quantities of water would be used for dust suppression.

4.1.4 Ecological Resources

No long-term impacts to ecological resources are expected. However, short term impacts to flora and fauna would occur. The excavated areas would be graded to match pre-decommissioning topography and replaced with natural vegetation to blend with the landscape. The shrubs and grasses removed from radiologically impacted land areas would be replaced at the end of the project. Burrowing animals would likely leave the site during decommissioning activities and return when site vegetation has reestablished.

Kirtland AFB consulted with state and federal caretakers of natural heritage information. The licensee reviewed the Kirtland AFB Integrated Natural Resources Management Plan and Threatened and Endangered Species Survey of Kirtland AFB, New Mexico. According to the Kirtland AFB Integrated Natural Resource Management Plan, there are no known federally listed threatened or endangered species on the AFB. The New Mexico Natural Heritage Program (NMNHP) and the U.S. Fish and Wildlife Service (USFWS) were specifically requested to search their records for information on threatened or endangered species in the geographic areas where the decommissioning activities would occur; that is, Bernalillo County, Township 9 North, Range 4 East, Sections 7, 8, 9, 16, 17, and 18. The NMNHP and the USFWS determined that the proposed decommissioning activities would have no effect on federally listed endangered or threatened species.

The western burrowing owl (Athene cunicularia hypugaea) is a federal species of concern that has been observed on Kirtland AFB. Kirtland AFB personnel would survey the OT–10 sites immediately prior to decommissioning activities. If encountered, burrowing owls would be relocated, as documented in the DP.

4.1.5 Noise Impacts

Because noise levels are expected to exceed regulatory limits, site contractors would be required to apply hearing protection measures to protect workers. The storage bunkers which may be demolished, would be performed using a backhoe equipped with shears and/or jackhammer. According to the study at the University of Washington, these activities have a mean 1-minute noise level of 86.1 dB. The noise generated from the decommissioning activities result from excavating equipment (front-end loader, dozer, and backhoe), a crane, water trucks, and light and heavy truck traffic. Soil in hot spots would be excavated from the surface to an estimated depth of 1 to 2 feet below the ground surface, using a backhoe. Soil in areas of dispersed contamination would be removed using a dozer. Front-end loaders or backhoes would transfer the contaminated soil, surface debris, and vegetation into steel intermodal containers. A crane would transfer the intermodal containers to transport trucks. All construction activities would occur during daytime hours. According to a study conducted by the University of Washington, the average noise generated at construction sites during "site preparation" is 82.7 affective decibels (dBA). Site preparation (site grading, debris and vegetation removal) noise levels are assumed comparable to the activities associated with the proposed decommissioning. In addition, the U.S. Army Corps of Engineers (USACE) set a noise exposure limit for construction sites of 85 dBA, which is consistent with National Institute for Occupational Safety and Health and U.S. Occupational Safety and Health Administration (OSHA) limits (90 dBA, 29 CFR 1910.95).

4.1.6 Historical and Cultural Resources Impact

The Site OT–10 decommissioning activities pose no long or short-term impacts to cultural/historical resources. After surveying for cultural resources, one historic site was located. However, this site would not be disturbed by the proposed action. No other historic properties have been located surrounding the project area. Therefore, the proposed project would have no adverse effect to historic properties or cultural resources. If cultural resources, including Indian artifacts, are found within the project area during decommissioning, work would discontinue and Kirtland AFB personnel would follow procedures outlined in the Kirtland AFB Cultural Resource Management Plan. By letter dated, April 9, 2002, the New Mexico State Historic Preservation Officer stated that this project would have a no adverse effect to historic properties.

4.1.7 Visual Resources

Only short-term impacts to site aesthetics would occur. Construction equipment would obstruct views. However, there are no homes near the training sites which would be impacted. The shrubs and grasses removed from radiologically impacted land areas would be replaced at the end of the project. In addition, removal of debris and fences and potentially the Bunkers 28005 and 28010 at training site TS8, would improve site aesthetics.

4.1.8 Transportation

It is estimated there would be 1370 intermodal containers of contaminated soil and debris shipped offsite. Each truck would carry one intermodal container loaded with approximately 19 cubic yards of waste. It is estimated that 10 to 12 trucks will leave the base per day, 5 days per week for 7 to 8 months. There would be approximately 685 shipments by truck and/or rail to Envirocare of Utah in Clive, Utah, and 685 shipments by truck to Waste Control Specialists in Andrews County, Texas. Containers shipped to Envirocare will travel west on Gibson Boulevard to either Interstate 25 (truck shipments) or rail siding at 100 Woodward Road (rail shipments). If rail transport is utilized, the intermodal containers would be loaded onto six-position railcars with approximately 115 railcars utilized to transport the intermodals. Containers destined for WCS will travel north on Eubank Boulevard then west on Interstate 40 and south on State Highway 285.

The addition of 10 to 12 trucks to a documented traffic volume on Gibson Boulevard of 27,000 to 45,000 vehicles per day poses a negligible impact to traffic volume (TransCore, 2001). Ten to 12 trucks add less than 0.03 to 0.04 percent to the daily vehicle load.

Under normal operating conditions there is no expected dose to vehicle operators and members of the public, since the wastes are of low activity and would be shipped in U.S. DOT-compliant, strong-tight containers. The only radiological risks associated with the transport of the wastes would involve the cleanup of any spilled material. In the unlikely event that a spill were to occur during transport, radiological controls would most likely be implemented during the cleanup of the spilled waste material. Therefore, the risks associated with the transport of the waste material is minimal.

4.1.9 Occupational Health Impacts

Short and long-term impacts to human health, in terms of industrial hygiene, are possible. A Site-Specific Health and Safety Plan (HSP) that addresses known and reasonably anticipated health and safety hazards would be provided to site workers

(USAF, 2001a). The HSP is intended to provide enough information to site personnel to prevent and minimize personal injuries, illnesses, and physical damage to equipment, supplies, and property. The HSP contains a code of safe practices for oversight activities on this project. Contractors performing heavy equipment operations would be required to submit activity hazard analyses covering work means and methods and the anticipated hazards and controls.

4.2 Radiological Impacts

Occupational doses to decommissioning workers are expected to be low and well within the limits of 10 CFR part 20. No radiation exposure to any member of the public is expected, and public exposure would therefore also be less than the applicable public exposure limits of 10 CFR part 20. In addition, the licensee would install a security fence around each training site to control access and prevent unauthorized, untrained or unprotected personnel from entering the site. Therefore, the environmental impacts from the proposed action are expected to be small.

Short and long-term impacts to human health due to radiological exposure are not expected. These include the potential release to the environment of airborne effluents, which may contain low-levels of radioactive contamination during certain activities such as excavation, packaging and waste transportation. NRC regulation 10 CFR part 20 specifies the maximum amounts of radioactive materials that a licensee can release from a site in the form of either airborne or liquid effluents. The licensee has described in the DP, the controls established when these activities are being conducted. The controls include the use of light water spray to control the emissions of dust and work area particulate sampling. Site controls would be implemented to prevent unauthorized, untrained, or unprotected personnel from entering the site, to limit the spread of contamination, and to reduce the radiation exposures to safe ALARA levels. A radiation safety program would be implemented to protect site workers.

The licensee performed analysis of collected soil samples, scanning measurements and used historical information to classify soil survey units. The licensee calculated concentration guidelines for surface contamination of soils in the impacted areas of the training sites using RESRAD code, version 6.1. The DCGLs would define the maximum amount of residual contamination in soils that would satisfy the NRC's regulations in 10 CFR part 20, subpart E, "Radiological Criteria for License Termination." The NRC would not approve the DP unless it met the 25 mrem for unrestricted release criteria and the doses would be bounded by 25 mrem.

Additionally, the interior surfaces of the bunkers would be cleaned and tested to determine if the remaining contamination level is acceptable. Demolition and disposal of these buildings would be performed if the contamination cannot be removed. Additionally, the licensee has established action levels that would ensure effluent releases generated during decommissioning activities, such as scabbling or demolition, are below the levels allowed by 10 CFR part 20. The NRC would require the USAF to comply with the regulations established in 10 CFR part 20, to ensure the doses would be bounded by 25 mrem.

4.3 Cumulative Impacts

The NRC has evaluated whether cumulative environmental impacts could result from an incremental impact of the proposed action when added to other past, present, or reasonably foreseeable future actions in the area. The proposed NRC approval of the DP, when combined with known effects on resource areas at the site, are not anticipated to result in any cumulative impacts at the site.

5.0 Monitoring

The licensee has described in the DP the controls established when activities are being conducted which may have the potential of releasing airborne effluents to the environment. The USAF would implement an environmental air monitoring program. Daily air monitoring would be performed to quantify the amount of alpha radiation being generated by invasive (*e.g.*, clearing, grubbing, excavating and loading) decommissioning activities. The controls established include the use of ambient air and exposure monitoring and monitoring of personnel. The NRC would require the USAF to comply with the regulations established in 10 CFR part 20, which specifies the maximum amount of radiological materials that a licensee can release from a site in the form of either airborne or liquid effluents. The licensee has established action levels that would ensure that effluent releases during decommissioning activities are below the levels allowed in 10 CFR part 20. The licensee has committed to implementing a health physics program for the protection of the workers and the environment.

6.0 Conclusions

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are not significant, and therefore, do not warrant denial of the license amendment request. The NRC staff believes that the proposed action would result in minimal environmental impacts. The staff has determined that the proposed action of decommissioning Site OT–10 to the remediation levels would result in reduced residual contamination levels at Kirtland AFB training sites, enabling release of the areas for unrestricted use and termination of the area from the Air Force Master Materials License, is the appropriate alternative for selection.

7.0 Agencies and Persons Consulted

The NRC staff has prepared this environmental assessment (EA) with input from the State of New Mexico's Office of Cultural Affair, by letter dated April 9, 2002, and the U.S. Fish and Wildlife Service, by letter dated March 28, 2002. By letter dated February 7, 2002, after considering the documentation submitted by the licensee concerning the location of the decommissioning project, the State of New Mexico's Natural Heritage Program determined that there were no records of special interest species affected by the referenced project. In its letter, the State of New Mexico's Office of Cultural Affairs indicated that the proposed action would not adversely affect any historic properties. The U.S. Fish and Wildlife Service, indicated in its letter, that the described action would have no effect on listed species, wetlands, or other important wildlife resources. The staff provided a draft of this EA to the State of New Mexico for review. This EA was revised to reflect the State's input where appropriate. Accordingly, it has been determined that a finding of no significant impact is appropriate.

The Department of the Air Force's request for the proposed action was previously noticed in the **Federal Register** on 66 FR 33579, on Friday, June 22, 2001, along with a notice of opportunity to request a hearing and an opportunity to provide public comment on the action and its environmental impacts.

The Department of the Air Force's request for the proposed action and other related documents are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. The DP may be found in ADAMS at

Accession Numbers ML011560740 and ML023390060; while other documentation may be found at ML022490164 and ML022490363. Any questions with respect to this action should be referred to D. Blair Spitzberg, Ph.D., Chief, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas, 76011–4005. Telephone: (817) 860–8191, fax number (817) 860–8188.

Dated in Arlington, Texas, this 8th day of January, 2003.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. 03–862 Filed 1–14–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 60 calendar days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Bruce I. Campbell, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527, (202) 336–8563.

Summary of Form Under Review

Type of Request: Form Renewal.
Title: Sponsor Disclosure Report.
Form Number: OPIC–129.
Frequency of Use: Once per major sponsor, per project.
Type of Respondents: Business or other institutions.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies sponsoring projects overseas.
Reporting Hours: 5 hour per project.
Number of Responses; 150 per year.
Federal Cost: $12,730 per year.
Authority for Information Collection: Sections 231 and 234(a) of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The OPIC 129 form is the principal document used by OPIC to gather information from project sponsors on whether a project might harm the U.S., a describes sponsor activities with the U.S. Government and other information for underwriting an analysis of a project.

Dated: December 30, 2002.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 03–816 Filed 1–14–03; 8:45 am]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in January 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in February 2003. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the first quarter (January through March) of 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in January 2003 is 4.92 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between February 2002 and January 2003.

For premium payment years beginning in:	The required interest rate is:
February 2002	5.45
March 2002	5.40
April 2002	5.71
May 2002	5.68
June 2002	5.65
July 2002	5.52
August 2002	5.39
September 2002	5.08

For premium payment years beginning in:	The required interest rate is:
October 2002	4.76
November 2002	4.93
December 2002	4.96
January 2003	4.92

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the first quarter (January through March) of 2003, as announced by the IRS, is 5 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	12/31/02	6
1/1/03	3/31/03	5

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the first quarter (January through March) of 2003 (*i.e.*, the rate reported for December 16, 2002) is 4.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75
1/1/03	3/31/03	4.25

Multiemployer Plan Valuations Following Mass Withdrawal The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in February 2003 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of January 2003.

Joseph H. Grant,

Deputy Executive Director and Chief, Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–830 Filed 1–14–03; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission; Office of Filings and Information Services; Washington, DC 20549.

Extension:

Rule 15g–6, Sec File No. 270–349, OMB Control No. 3235–0395

Rule 17a–8, Sec File No. 270–53, OMB Control No. 3235–0092

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

• Rule 15g–6—Account statements for penny stock customers.

Rule 15g–6 under the Securities Exchange Act of 1934 (the "Act") requires brokers and dealers that sell penny stocks to their customers to provide monthly account statements containing information with regard to the penny stocks held in customer accounts. The information is required to be provided to customers of broker-dealers that effect penny stock transactions in order to provide those customers with information that is not now publicly available. Without this information, investors would be less able to protect themselves from fraud and to make informed investment decisions.

The staff estimates that there are approximately 270 broker-dealers that are subject to the rule. The staff estimates that the firms affected by the rule will, at any one time, have approximately 150 new customers with whom they have effected transactions in penny stocks, each of whom would receive a maximum of 12 account statements per year, for a total of 1,800 account statements annually for each firm (150 customers × 12 account statements/customer). The staff estimates that a broker-dealer would expend approximately three minutes in processing the information required for each account statement. Accordingly, the estimated average annual burden would equal 90 hours (1,800 account statements × 3 minutes/account statement × 1 hour/60 minutes), and the estimated average total burden would equal 24,300 hours (90 hours × 270).

• Rule 17a–8—Financial Recordkeeping and Reporting of Currency and Foreign Transactions.

Rule 17a–8 under the Act requires brokers and dealers to make and keep certain reports and records concerning their currency and monetary instrument transactions. The requirements allow the Commission to ensure that brokers and dealers are in compliance with the Currency and Foreign Transactions Reporting Act of 1970 ("Bank Secrecy Act") and with the Department of the Treasury regulations under that Act. The reports and records required under this rule initially are required under Department of the Treasury regulations, and additional burden hours and costs are not imposed by this rule.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 8, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–791 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 2a–7, SEC File No. 270–258, OMB Control No. 3235–0268.

Notice is hereby given that under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget, a request for extension of approval for rule 2a–7 (17 CFR 270.2a–7) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Act").

Rule 2a–7 governs money market funds. Money market funds are open-end management investment companies that differ from other open-end management investment companies in that they seek to maintain a stable price per share, usually $1.00. The rule exempts money market funds from the valuation requirements of the Act and, subject to certain risk-limiting conditions, permits money market funds to use the "amortized cost method" of asset valuation or the "penny-rounding method" of share pricing.

Rule 2a–7 imposes certain recordkeeping and reporting obligations on money market funds. The board of directors of a money market fund, in supervising the fund's operations, must establish written procedures designed to stabilize the fund's net asset value ("NAV"). The board also must adopt guidelines and procedures relating to certain responsibilities it delegates to the fund's adviser. These procedures and guidelines typically address various aspects of the fund's operations. The fund must maintain and preserve for six years a written copy of both procedures and guidelines. The fund also must maintain and preserve for six years a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, to be included in the board's minutes. In addition, the fund must maintain and preserve for three years written records of certain credit risk analyses, evaluations with respect to securities subject to demand features or guarantees, and determinations with respect to adjustable rate securities and asset backed securities. If the board takes action with respect to defaulted securities, events of insolvency, or deviations in share price, the fund must file with the Commission an exhibit to form N–SAR describing the nature and circumstances of the action. If any portfolio security fails to meet certain eligibility standards under the rule, the fund also must identify those securities in an exhibit to form N–SAR. After certain events of default or insolvency relating to a portfolio security, the fund must notify the Commission of the event and the actions the fund intends to take in response to the situation.

The recordkeeping requirements in rule 2a–7 are designed to enable Commission staff in its examinations of money market funds to determine compliance with the rule, as well as to ensure that money market funds have established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios. The reporting requirements of rule 2a–7 are intended to assist Commission staff in overseeing money market funds.

Commission staff estimates that 891 money market funds are subject to rule

2a–7 each year.[1] The staff estimates that each of these funds spends an average of 539 hours each year to document credit risk analyses, and determinations regarding adjustable rate securities, asset backed securities, and securities subject to a demand feature or guarantee.[2] In addition, each year an estimated average of three money market funds each spends approximately one-half hour to record (in the board minutes) board determinations and actions in response to certain events of default or insolvency, and to notify the Commission of the event.[3] Finally, Commission staff estimates that in the first year of operation, the board of directors, counsel, and staff of an average of 15 new money market funds each spends 38.5 hours to formulate and establish written procedures for stabilizing the fund's NAV and guidelines for delegating certain of the board's responsibilities to the fund's adviser. Based on these estimates, Commission staff estimates the total burden of the rule's paperwork requirements for money market funds to be 480,830 hours.[4] This is an increase from the previous estimate of 319,211 hours. The increase is attributable to updated information from money market funds regarding hourly burdens, a more accurate calculation of the component parts of some information collection burdens, and the significant differences in burden hours reported by the funds selected at random to be surveyed in different submission years.

These estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules.

In addition to the burden hours, Commission staff estimates that money market funds will incur costs to preserve records, as required under rule 2a–7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records.[5] Commission staff estimates that the amount an individual fund may spend ranges from $100 per year to $1 million. Based on an average cost of $0.0000052 per dollar of assets under management for small and medium-sized funds to $0.0000024 per dollar of assets under management for large funds,[6] the staff estimates compliance with rule 2a–7 costs the fund industry approximately $5 million.[7] Based on responses from individuals in the money market fund industry, the staff estimates that some of the largest fund complexes have created computer programs for maintaining and preserving compliance records for rule 2a–7. Based on a cost of $0.0000097 per dollar of assets under management for large funds, the staff estimates that the total annualized capital/startup costs range from $0 for small funds to $20 million for all large funds. Commission staff further estimates, however, that even absent the requirements of rule 2a–7, money market funds would spend at least half of the amount for capital costs ($10 million) and for record preservation ($2.5 million) to establish and maintain these records and the systems for preserving them as a part of sound business practices to ensure diversification and minimal credit risk in a portfolio for a fund that seeks to maintain a stable price per share.

The collections of information required by rule 2a–7 are necessary to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the information above to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–789 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

[1] This estimate is based on information in the Money Fund Vision database, compiled by iMoneyNet (Sept. 6, 1999).

[2] This average is based on discussions with individuals at money market funds and their advisers. The amount of time may vary significantly for individual money market funds.

[3] This number may vary significantly from year to year.

[4] This estimate is based on the following calculation: ((891 × 539) + (3 × 1) + (15 × 38.5)) = 480,830.

[5] The amount of assets under management in money market funds ranges from approximately $100,000 to $70.6 billion.

[6] For purpose of this PRA submission, Commission staff used the following categories for fund sizes: (i) Small—money market funds with $50 million or less in assets under management, (ii) medium—money market funds with more than $50 million up to and including $1 billion in assets under management; and (iii) large—money market funds with more than $1 billion in assets under management.

[7] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs incurred by several funds and then relating this total cost to the average net assets of these funds during the year. With a total of $191.3 billion under management in small and medium funds, and $2,078 billion under management in large funds, the total amount was estimated as follows: ($0.0000052 × $191.3 billion) + ($0.0000024 × $2,078 billion) = $5 million.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Review

Upon written request, copies available from: Securities and Exchange Commission; Office of Filings and Information Services; Washington, DC 20549.

Extension:

Rule 12a–5, Sec File No. 270–85, OMB Control No. 3235–0079;
Rule 15c1–7, Sec File No. 270–146, OMB Control No. 3235–0134;
Rule 15Aj–1, Sec File No. 270–25, OMB Control No. 3235–0044.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

• Rule 12a–5—Temporary Exemption of Substituted or Additional Securities.

Rule 12a–5 of the Securities Exchange Act of 1934 (the "Act") generally makes it unlawful for any security to be traded on a national securities exchange unless such security is registered on the exchange in accordance with the provisions of the Act and the rules and regulations thereunder.

Rule 12a–5 and form 26 were adopted by the Commission in 1936 and 1955 pursuant to sections 3(a)(12), 10(b), and 23(a) of the Act. Subject to certain conditions, rule 12a–5 affords a temporary exemption (generally for up to 120 days) from the registration requirements of section 12(a) of the Act for a new security when the holders of a security admitted to trading on a national securities exchange obtain the right (by operation of law or otherwise) to acquire all or any part of a class of another or substitute security of the same or another issuer, or an additional amount of the original security. The purpose of the exemption is to avoid an

interruption of exchange trading to afford time for the issuer of the new security to list and register it, or for the exchange to apply for unlisted trading privileges.

Under paragraph (d) of rule 12a–5, after an exchange has taken action to admit any security to trading pursuant to the provisions of the rule, the exchange is required to file with the Commission a notification on form 26. Form 26 provides the Commission with certain information regarding a security admitted to trading on an exchange pursuant to rule 12a–5, including: (1) The name of the exchange, (2) the name of the issuer, (3) a description of the security, (4) the date(s) on which the security was or will be admitted to when-issued and/or regular trading, and (5) a brief description of the transaction pursuant to which the security was or will be issued.

The Commission generally oversees the national securities exchanges. This mission requires that, under section 12(a) of the Act specifically, the Commission receive notification of any securities that are permitted to trade on an exchange pursuant to the temporary exemption under rule 12a–5. Without rule 12a–5 and form 26, the Commission would be unable fully to implement these statutory responsibilities.

There are currently eight national securities exchanges subject to rule 12a–5. While approximately 40 form 26 notifications are filed annually, the reporting burdens are not typically spread evenly among the exchanges.[1] For purposes of this analysis of burden, however, the staff has assumed that each exchange files an equal number (five) of form 26 notifications. Each notification requires approximately 20 minutes to complete. Each respondent's compliance burden, then, in a given year would be approximately 100 minutes (20 minutes/report × 5 reports = 100 minutes), which translates to just over 13 hours in the aggregate for all respondents (8 respondents × 100 minutes/respondent = 800 minutes, or 13⅓ hours).

Based on the most recent available information, the Commission staff estimates that the cost to respondents of completing a notification on form 26 is, on average, $14.35 per response. The staff estimates that the total annual related reporting cost per respondent is $71.75 (5 responses/respondent × $14.35 cost/response), for a total annual related cost to all respondents of $574 ($71.75 cost/respondent × 8 respondents).

Compliance with rule 12a–5 is required to obtain the benefit of the temporary exemption from registration offered by the rule. Rule 12a–5 does not have a record retention requirement *per se*. However, responses made pursuant to rule 12a–5 are subject to the recordkeeping requirements of rules 17a–3 and 17a–4 of the Act. Information received in response to rule 12a–5 shall not be kept confidential; the information collected is public information.

• Rule 15c1–7—Discretionary Accounts.

Rule 15c1–7 provides that any act of a broker-dealer designed to effect securities transactions with or for a customer account over which the broker-dealer (directly or through an agent or employee) has discretion will be considered a fraudulent, manipulative, or deceptive practice under the federal securities laws, unless a record is made of the transaction immediately by the broker-dealer. The record must include (a) the name of the customer, (b) the name, amount, and price of the security, and (c) the date and time when such transaction took place.

The information required by the rule is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers. This is used by the Commission and the various self-regulatory organizations in compliance examinations to determine whether such trades have occurred.

The Commission estimates that 500 respondents collect information annually under rule 15c1–7 and that approximately 33,333 hours would be required annually for these collections.

Rule 15c1–7 does not have a record retention requirement per se. However, responses made pursuant to rule 15c1–7 are subject to the recordkeeping requirements of rules 17a–3 and 17a–4. Compliance with rule 15c1–7 is mandatory. Because the information is gathered by the Commission during compliance examinations, it is accorded confidential treatment pursuant to regulation 200.80(b)(7) under the Freedom of Information Act, 17 CFR 200.80(b)(7).

• Rule 15Aj–1—Amendments and Supplements to Registration Statements of Securities Associations.

Rule 15Aj–1 implements the requirements of sections 15A, 17, and 19 of the Act by requiring every association registered as, or applying for registration as, a national securities association or as an affiliated securities association to keep its registration statement up-to-date by making periodic filings with the Commission on form X–15AJ–1 and form X–15AJ–2.

Rule 15Aj–1 requires a securities association to promptly notify the Commission after the discovery of any inaccuracy in its registration statement or in any amendment or supplement thereto by filing an amendment to its registration statement on form X–15AJ–1 correcting such inaccuracy. The rule also requires an association to promptly notify the Commission of any change which renders no longer accurate any information contained or incorporated in its registration statement or in any amendment or supplement thereto by filing a current supplement on form X–15AJ–1. Rule 15Aj–1 further requires an association to file each year with the Commission an annual consolidated supplement on form X–15AJ–2.

The information required by rule 15Aj–1 and forms X–15AJ–1 and X–15AJ–2 is intended to enable the Commission to carry out its statutorily mandated oversight functions and to assure that registered securities associations are in compliance with the Act. This information is also made available to members of the public. Without the requirements imposed by the rule, the Commission would be unable to fulfill its regulatory responsibilities.

There is presently only one registered securities association, which registered in 1939, subject to the rule. The burdens associated with rule 15Aj–1 requirements have been borne by only one securities association since rule 15Aj–1 was adopted. Furthermore, the burdens associated with rule 15Aj–1 vary depending on whether amendments and current supplements are filed on form X–15AJ–1 in addition to an annual consolidated supplement filed on form X–15AJ–2. The Commission staff estimates the burden in hours necessary to comply with the rule by filing an amendment or a current supplement on form X–15AJ–1 to be approximately one-half hour, with a related cost of $12, per response. The Commission staff estimates the burden in hours necessary to comply with the rule by filing an annual consolidated supplement on form X–15AJ–2 to be approximately three hours, with a related cost of $96. Therefore, the Commission staff estimates that the total annual related reporting cost associated with the rule to be upwards of $96, assuming a minimum filing of an annual consolidated statement on form X–15AJ–2, with additional filings on form X–15AJ–1 correspondingly increasing such reporting cost.

[1] In fact, some exchanges do not file any notifications on form 26 with the Commission in a given year.

Compliance with rule 15Aj–1 is mandatory. Information received in response to rule 15Aj–1 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (b) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to Office of Management and Budget within 30 days of this notice.

Dated: January 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–790 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission; Office of Filings and Information Services; Washington, DC 20549.

Extension:

Rule 202(a)(11)–1, SEC File No. 270–471, OMB Control No. 3235–0532.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is "Certain Broker-Dealers Deemed Not To Be Investment Advisers." Proposed rule 202(a)(11)–1 under the Investment Advisers Act of 1940 ("Advisers Act") would allow broker-dealers registered with the Commission to manage non-discretionary brokerage accounts without being subject to the Advisers Act regardless of the form of compensation charged those accounts provided that certain conditions are met. The rule would require that all advertisements for brokerage accounts charging an asset-based fee and all agreements and contracts governing the operation of those accounts contain a prominent statement that the accounts are brokerage accounts. This collection of information is necessary so that customers are not confused with respect to the services that they are receiving, *i.e.*, to prevent customers and prospective customers from mistakenly believing that the account is an advisory account subject to the Advisers Act. The collection will assist customers in making informed decisions regarding whether to establish accounts.

The respondents to this collection of information are all broker-dealers that are registered with the Commission. The Commission has estimated that the average annual burden for ensuring compliance with the disclosure element of the rule is 5 minutes per broker-dealer taking advantage of the rule. If all of the approximately 8,100 broker-dealers registered with the Commission took advantage of the rule, the total estimated annual burden would be 673 hours (.083 hours × 8,100 brokers).

The proposed rule imposes no additional requirements regarding record retention. The collection of information requirements under the proposed rule is mandatory. Any information received by the Commission related to the proposed rule would be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 8, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–792 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47128; File No. SR–Amex–2002–100]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Renumber Footnotes in the Member Fee Schedule

January 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 4, 2002 the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to renumber footnotes in the Member Fees section of the Exchange's Member Fee Schedule.

The proposed fee schedule is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 26, 2002, the Exchange filed SR–Amex–2002–78 pursuant to Section 19(b)(3)(A) of the Act[3] to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

temporarily waive Associate Member and Electronic Access fees for broker/dealer firms that currently do not have electronic access to the Amex Order File.[4] The Exchange is proposing to renumber footnotes 4 and 5 to the Member Fee Schedule to accommodate footnote 3 which was inadvertently dropped in SR–Amex–2002–78 but approved by the Commission on April 16, 2002.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(4)[7] of the Act in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, and therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[4] Securities Exchange Act Release No. 46731 (October 28, 2002), 67 FR 67226 (November 11, 2002).

[5] Securities Exchange Act Release No. 45764 (April 16, 2002), 67 FR 19783 (April 23, 2002), approving SR–Amex 2002–10.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–100 and should be submitted by February 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–794 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47141; File No. SR–Amex–2002–115]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the Suspension of Exchange Transaction Charges for Certain Exchange-Traded Funds

January 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 2002, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until January 31, 2003 the suspension of Exchange transaction charges for specialist, Registered Trader and broker-dealer orders for the iShares Lehman 1–3 year Treasury Bond Fund; iShares Lehman 7–10 year Treasury Bond Fund; Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury 1 FITR ETF. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

AMEX Equity Fee Schedule

I. Transaction Charges

No change.

II. Regulatory Fee

No Change.

Notes: 1. and 2. No change.

3. Customer transaction charges for the following Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts have been suspended:

DIA—DIAMONDS®
QQQ—Nasdaq-100® Index Tracking Stock
SPY—SPDRs®
IVV—iShares S&P 500
MDY—MidCap SPDRs
XLY—Select Sector SPDR-Consumer Discretionary
XLP—Select Sector SPDR-Consumer Staples
XLE—Select Sector SPDR-Energy
XLF—Select Sector SPDR-Financial
XLV—Select Sector SPDR-Health Care
XLI—Select Sector SPDR-Industrial
XLB—Select Sector SPDR-Materials
XLK—Select Sector SPDR-Technology
XLU—Select Sector SPDR-Utilities
BHH–B2B Internet HOLDRs™
BBH—Biotech HOLDRs
BDH—Broadband HOLDRs
EKH—Europe 2001 HOLDRs
1AH—Internet Architecture HOLDRs
HHH—Internet HOLDRs
IIH—Internet Infrastructure HOLDRs
MKH—Market 2000+ HOLDRs
OIH—Oil Service HOLDRs
PPH—Pharmaceutical HOLDRs
RKH—Regional Bank HOLDRs
RTH—Retail HOLDRs
SMH—Semiconductor HOLDRs
SWH—Software HOLDRs
TTH—Telecom HOLDRs
UTH—Utilities HOLDRs
WMH—Wireless HOLDRs
SHY—iShares Lehman 1–3 Year Treasury Bond Fund
IEF—IShares Lehman 7–10 Year Treasury Bond Fund

TLT—iShares Lehman 20+ Year Treasury Bond Fund
LQD—iShares GS $ InvesTop Corporate Bond Fund
TFT—Treasury 1 FITR ETF
TOU—Treasury 2 FITR ETF
TFI—Treasury 5 FITR ETF
TTE—Treasury 10 FITR ETF

Until [December 31, 2002] *January 31, 2003*, transaction charges also have been suspended in SHY, IEF, TFT, TOU, TFI and TTE for specialist, Registered Trader and broker dealer orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is extending until January 31, 2003 the suspension of transaction charges in iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF); Treasury 10 FITR ETF (Symbol: TTE); Treasury 5 FITR ETF (TFI); Treasury 2 FITR ETF (TOU); and Treasury 1 FITR ETF (TFT) for specialist, Registered Trader and broker-dealer orders. The Exchange previously filed a suspension in such charges until November 30, 2002 [3] and December 13, 2002.[4]

The Exchange believes a suspension of fees for these securities is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to section 19(b)(3)(A) of the 1934 Act.

[3] *See* Securities Exchange Act Release No. 46765 (November 1, 2002), 67 FR 68893 (November 13, 2002) (SR-Amex-2002–91).

[4] *See* Securities Exchange Act Release No. 46996 (December 13, 2002), 67 FR 78264 (December 23, 2002) (SR-Amex-2002–98).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [5] in general, and furthers the objectives of section 6(b)(4) [6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) [8] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that fee suspensions for the exchange-trade funds that are the subject of this filing have been previously filed with the Commission.[9] Further, extension of the fee suspension for specialist, Registered Trader, and broker-dealer orders will permit the fee suspensions to continue uninterrupted. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[10]

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–115 and should be submitted by February 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–844 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

[9] *See supra* notes 3 and 4.

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47139; File No. SR–Amex–2002–109]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to Dow Jones & Company Liability Disclaimer

January 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rule 902 to include the Dow Jones & Company, Inc. in the disclaimer provisions of the Rule. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Dow Jones & Company, Inc. compiles, calculates and maintains stock indexes in which it owns "intellectual property" rights such as trademark, copyright, and proprietary rights. As a condition of a license agreement between the Exchange and Dow Jones & Company, Inc. in connection with the trading of options on certain exchange traded funds, the Amex is required to adopt, and maintain as part of its rules, a disclaimer, limiting the liability of Dow Jones with respect to the dissemination and calculation of its indexes. During the last couple of years, Dow Jones has entered into license agreements with State Street Bank and Trust Company ("SSGA"), and Barclays Global Investors, NA ("BGI") to use its intellectual property rights in various indexes in connection with the issuance, marketing and promotion of certain exchange-traded open-end funds (the "SSGA ETFs" and the "BGI ETFs"). The Exchange is now entering into a license agreement with Dow Jones to use the same indexes to trade Options Clearing Corporation issued options on the SSGA ETFs and the BGI ETFs.

The proposed disclaimer is similar in content to disclaimers currently in place for Standard & Poors Corporation and Morgan Stanley & Co., Incorporated in connection with other ETFs and index options. The proposed disclaimer states that Dow Jones does not guarantee the accuracy or completeness of its indexes, makes no express or implied warranties with respect to the indexes and shall have no liability for damages, claims, losses or expenses caused by errors in calculating or disseminating the indexes.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[3] in general and furthers the objectives of section 6(b)(5)[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–109 and should be submitted by February 5, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act.[6] The proposed liability disclaimer provision is similar to other liability disclaimers, including one related to portfolio depositary receipts in Amex Rule 1004 and others related to index options in Amex Rule 902C.

The Amex has requested that the proposed rule change be given accelerated approval pursuant to the section 19(b)(2) of the Act.[7] Since the proposed liability disclaimer is substantially similar to other liability disclaimers, the proposed disclaimer

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78s(b)(5).

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78s.

[7] 15 U.S.C. 78s(b)(2).

raises no new regulatory issues. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[8] to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–2002–109) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–845 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47132; File No. SR–NSCC–2002–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to New Clearing Fund Valuation of Deposited Securities

January 7, 2003.

On October 3, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File No. NSCC–2002–08). Notice of the proposal was published in the **Federal Register** on December 16, 2002.[2] On January 6, 2003, NSCC amended its proposed rule change.[3] No comment letters were received.[4] For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

The proposed rule change will modify Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of NSCC's Rules and Procedures to establish haircuts for securities posted by NSCC members as clearing fund collateral. Under Rule 4, NSCC members are required to make deposits to NSCC's clearing fund.[5] Rule 4 also states that NSCC, at its discretion, may permit part of a member's (with the exception of "mutual fund/insurance services members") clearing fund deposit to be evidenced by an open account indebtedness secured by (a) unmatured bearer bonds that are either direct obligations of or obligations guaranteed as to principal and interest by the United States or its agencies ("qualifying bonds") and/or (b) one or more irrevocable letters of credit under certain guidelines established within NSCC's rules.[6]

In its efforts to ensure that it has adequate collateral to cover its members' obligations, NSCC has decided to haircut the value of securities deposited to meet clearing fund requirements. The proposed haircut percentages will range from 2% to 5% and will be based on the type of security deposited, its market risk, and years to maturity.[7] The proposed haircuts are similar to those currently applied by The Depository Trust Company as a part of its risk management controls. These percentages may change from time to time. Should NSCC decide to change the haircut schedule, it will communicate such changes to its participants.

NSCC intends to implement this change no sooner than thirty days after the Commission's approval of this proposed rule filing provided, however, that NSCC would like to make this change effective concurrent with the changes made pursuant to proposed rule change File No. SR–NSCC–2002–05.[8]

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(A)[9] of the Act, which requires that the rules of a clearing agency be designed to safeguard securities and funds in its custody or control or for which it is responsible. The Commission finds that by providing a cushion to protect against downward fluctuations in the value of securities pledged as clearing fund collateral, the proposed rule change is consistent with this obligation because it will help to ensure that NSCC has adequate clearing fund assets in the event that NSCC must liquidate the collateral of an insolvent participant.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing so that it can give its participants thirty days after approval of this filing to become compliant with the changes being made and can implement the changes to the clearing fund requirements concurrently with the changes made by SR–NSCC–2002–05.[10] The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow NSCC to give its participants thirty days to implement the changes and to implement the changes concurrently with those made by SR–NSCC–2002–05.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2002–08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–846 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–M

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[8] *Id.*

[9] *Id.*

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46958 (Dec. 6, 2002), 67 FR 77123.

[3] The purpose of this amendment was to conform the language of this rule filing to an earlier NSCC proposed rule change that the Commission has approved. Securities Exchange Act Release No. 46931 (Nov. 27, 2002), 67 FR 72714 (Dec. 6, 2002) [File No. SR–NSCC–2002–05]. Because this amendment is technical in nature, republication of notice is not required.

[4] This proposed rule change had a fifteen-day comment period.

[5] The amount of each member's required deposit is determined by NSCC in accordance with one or more formulas.

[6] The Commission recently approved a NSCC proposed rule change (File No. SR–NSCC–2002–05) that increased the minimum amount of cash that must be deposited by members (with the exception of "mutual fund/insurance services members") to satisfy clearing fund requirements and that limited the amount of a deposit that may be collateralized with letters of credit. Securities Exchange Act Release Nos. 46931 (Nov. 27, 2002) and 46389 (Aug. 21, 2002), 67 FR 55053 (Aug. 27, 2002).

[7] NSCC's proposed haircut schedule for U.S. Treasury and agency securities is: Interest bearing with remaining terms to maturity of up to 10 years—2%; Interest bearing with remaining terms to maturity in excess of 10 years—5%; Zero coupon with remaining terms to maturity of up to 5 years—2%; Zero coupon with remaining terms to maturity in excess of 5 years—5%.

[8] *Supra* note 5.

[9] 15 U.S.C. 78q–1(b)(3)(A).

[10] *Supra* note 5.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47129; File No. SR–NYSE–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend a Pilot With Respect to Amendments to Rule 431 Relating to Margin Requirements for Security Futures Contracts

January 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2003, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposal is to extend until March 6, 2003, the effectiveness of amendments to Rule 431 relating to margin requirements for Security Futures Contracts ("SFCs"), which the Commission approved on a pilot basis for sixty days (the "Pilot") on November 7, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 23, 2002, the Exchange filed a proposed rule change with the Commission to amend Rule 431 with regard to SFCs. On November 6, 2002, the Exchange filed an amendment with the Commission to the proposed rule change.[6] This amendment was filed as a sixty-day pilot, and approved by the Commission on November 7, 2002,[7] effective through January 6, 2003.

The Exchange proposes to extend this Pilot for an additional sixty days (from January 6, 2003 until March 6, 2003) in order to allow the Pilot to continue in effect on an uninterrupted basis and to permit customers to continue trading SFCs in securities accounts while the Exchange considers the comments it has received on the Pilot.

2. Statutory Basis

The Exchange believes that the basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) of the Exchange Act[8] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change is designed to accomplish these goals by permitting customers to trade SFCs in securities accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has received written comments on the original proposed rule change that was filed with the Commission on October 23, 2002 and amended on November 6, 2002. The Exchange is currently considering such comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

A proposed rule change filed under Rule 19b–4(f)(6) normally must not become operative prior to 30 days after the date of the filing. In addition, a self-regulatory organization filing a proposed rule change under Rule 19b–4(f)(6)(iii) normally must give the Commission written notice of its intent to file the proposed rule change five days prior to the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive both the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to allow the Pilot to continue in effect on an uninterrupted basis and for the Exchange to consider comments it has received on the Pilot.

The Commission believes it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and designate the proposal

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NYSE asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 5, 2002 ("Amendment No. 1"). Amendment No. 1 replaced the original rule filing (SR–NYSE–2002–53 (October 23, 2002)) in its entirety. Amendment No. 1 also proposed that the changes be effective for a sixty-day pilot, and requested accelerated approval of the proposed rule change.

[7] *See* Securities Exchange Act Release No. 46782 (November 7, 2002), 67 FR 69052 (November 14, 2002) (SR–NYSE–2002–53).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

immediately operative.[11] Accelerating the operative date and waiving the pre-filing requirement should permit the Exchange to permit customers to continue to trade SFCs in securities accounts on an uninterrupted basis while the Exchange considers comments it has received on the Pilot. The Commission notes that the Exchange anticipates filing a new proposed rule change to adopt the Pilot on a permanent basis. Accordingly, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to SR–NYSE–2003–01 and should be submitted by February 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–793 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47131; File No. SR–PCX–2002–73]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

January 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its Schedule of Fees and Charges by making a technical change to its DEA Regulatory fees. In addition, the Exchange, through its wholly-owned subsidiary PCX Equities, Inc. is proposing to amend its Schedule of Fees and Charges to make a technical change to its DEA Regulatory fees. The text of the proposed rule change is below. New text is italicized; deleted text is in brackets.

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

PCX General membership fees:	
Regulatory fees:	
* * * * *	
DEA Fee [1]	$2,000 monthly fee per firm[1]. $250 annual fee per trader[1]. $75 one-time registration fee per trader[1]. $250 per quarter for firms engaging in non-public business.

[1] These fees will apply to member organizations for which the Exchange is the Designated Examining Authority. Member Organizations that can demonstrate that at least 25% of their income, as reflected on the most recently submitted FOCUS report, was derived from on-floor activities will be exempt from these charges.

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

Archipelago Exchange:	
Other Fees and Charges	
Regulatory Fees:	
* * * * *	
DEA Fee	$2,000 monthly fee per firm. $250 annual fee per trader. $75 one-time registration fee per trader. [$250 per quarter for firms engaging in non-public business].

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make the following technical changes to its Schedule of Fees and Charges in order to correct the fee schedule and accurately reflect the DEA fees that the Exchange intends to charge with respect to its options and equities businesses. With respect to the options DEA fees, the current fees schedule includes a footnote that provides an exemption of such fees for Member Organizations that demonstrate that at least 25% of their income was derived from on-floor activities. This footnote and the exemption were not, however, intended to apply to the $250 per quarter fee for firms engaging in non-public business. The Exchange proposes to move the footnote in order to have the fee schedule reflect the Exchange's intent as described herein. With respect to the equities DEA fee, the Exchange included a $250 per quarter fee for firms engaging in non-public business; however, as this fee is not applicable to the market structure of the Archipelago Exchange, the Exchange erred in including this fee in the schedule. The Exchange proposes to delete this reference.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(4),[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–2002–73 and should be submitted by February 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–795 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47143; File No. SR–PCX–2002–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to a Stay of a Committee Action

January 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19–4 thereunder,[2] notice is hereby given that on April 9, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On December 31, 2002, PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to adopt an interim stay provision in connection with its rules regarding review of committee actions.

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in [brackets].

Request for a Stay of a Committee Action

Rule 11.7(d). *(1) An aggrieved person seeking review of a committee decision may request a stay of the decision pending a hearing and review by the Board Appeals Committee. The request for a stay must include a $500 stay fee along with a concise statement of the basis for the stay which must be separate from, and in addition to, a statement of the basis for the review of the complained of action. Applicants*

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the PCX's original 19b–4 filing in its entirety.

seeking a stay must file the request with the Office of the Corporate Secretary by the earlier of ten (10) business days after the committee renders its decision or forty-eight (48) hours before the committee implements action. The Exchange will not be required to consider a request for a stay made within the 48 hours before a committee implements action.

(2) A stay of a committee action may be granted in only those cases where the aggrieved person has made a showing, based solely on the evidence and information presented in the application for a stay, that: (A) there is a likelihood the applicant will prevail on the merits on review; (B) without a stay, the applicant is likely to suffer irreparable injury; (C) it is likely that there will not be substantial harm to other parties if a stay is granted; and (D) the issuance of a stay is likely to serve the interests of the Exchange or an identified public interest.

(3) The Chair of the Board Appeals Committee will designate a single Board Appeals Committee member to rule on a request for a stay. The designated Board of Appeals Committee member may summarily render a decision on the request for a stay based solely on the documents submitted in support of, and in opposition to, the request for a stay. In evaluating the merits of a stay application, the Committee member will only consider matters relevant to the issuance of the stay, not the underlying complaint. The decision of the Committee member whether to grant a stay may not be appealed under Rule 10.

[Rule 11.7(d)–11.7(n)]*Rule 11.7(e)–11.7(o)*—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Board of Governors delegates certain powers and duties to committees that administer the provisions of the Constitution and the Rules of the Exchange.[4] The rules of the Exchange provide that persons aggrieved by committee decisions (other than disciplinary matters) may seek review of the decisions subject to the procedural prerequisite of PCX Rule 11.7 (Hearing and Review of Committee Action). PCX represents that, while the rule does not expressly provide a right to interim relief of committee decisions, applicants seeking such relief routinely request that the Exchange stay further action pending review. In the absence of an express policy or procedures relating to interim relief, the Exchange has evaluated the merits of stay applications on a case-by-case relying upon the guidelines that are used by the Commission in reviewing stay applications of self-regulatory organization actions.[5] As a consequence of the Exchange's *ad hoc* review, the Exchange believes that applicants are either not aware that they have a right to interim relief or they are not familiar with the criteria that they must satisfy in seeking a stay.

The Exchange therefore proposes to clearly set forth the criteria and procedures necessary to request a stay of committee action. The proposed new Exchange rule will set forth four factors that the Exchange will consider when evaluating the merits of a stay application: (1) Whether there is a likelihood that the applicant will prevail on the merits of the appeal; (2) that without a stay, the applicant is likely to suffer irreparable injury; (3) that it is likely there will not be substantial harm to other parties if the stay is granted; and (4) that the issuance of a stay is likely to serve in the interests of the Exchange or an identified public interest.[6] The Exchange represents that the applicant must prove each of these factors based solely on the evidence and information presented in the application for a stay.

The proposed new Exchange rule will also clarify the procedures that an applicant must satisfy in seeking a stay. The proposed rule specifies that an applicant must pay a $500 fee in order to request a stay. The fee will be used to cover a portion of Exchange expenses including the allocation of staff time in processing a request for a stay. The proposal also provides that applicants must request a stay by the earlier of ten business days after a committee renders its decision or forty-eight hours before the committee implements action. From time to time, the Exchange represents that it may be required to implement a particular committee decision immediately without leaving sufficient time for an aggrieved party to request a stay of action. According to the Exchange, this situation occurs, for example, when the Exchange must identify a particular Lead Market Maker to trade a new option on the following business day, or when the Options Floor Trading Committee makes *ad hoc* trading decisions on the trading floor regarding Auto-Ex decisions pursuant to PCX Rule 6.87. In those unique situations, the Exchange notes that the aggrieved party will not have an opportunity to stay the action, but will be able to appeal the committee decision pursuant to PCX Rule 11.7. The Exchange also represents that it will not be required to consider a request for a stay made within the forty-eight hours before a committee implements action.

The proposed new Exchange rule will also provide that the Exchange's Board Appeals Committee may render a decision summarily based solely on the documents submitted in support of, and opposition to, the request for stay. In the event that the Board Appeals Committee denies the request for a stay, the Board Appeals Committee will state the reasons for its denial and state facts that support its decision.[7] The Exchange believes that these procedures will guide applicants through the stay process and will provide the Exchange's Board Appeals Committee with a uniform standard by which to judge the merits of an application for interim relief. The proposed new Exchange rule will not apply to disciplinary matters and will not affect an aggrieved person's underlying right to appeal a committee decision.

2. Statutory Basis

The Exchange believes that this proposal, as amended, is consistent with Section 6(b)[8] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance

[4] *See* PCX Rule 11.4.

[5] *See* 17 CFR 201.401(d); *see also* Order Preliminarily Considering Whether to Issue Stay *Sua Sponte* and Establishing Guidelines for Seeking Stay Applications, Securities Exchange Act Release No. 33870 (April 7, 1994).

[6] The Exchange represents that it relies on the Commission's guidelines in proposing these factors.

[7] The Exchange represents that the Board Appeals Committee will notify the applicant of its denial of a request for a stay, as well as the reasons for its denial. Telephone conversation between Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on January 8, 2002.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

competition and to protect investors and the public interest by standardizing the method by which stays of committee decisions are made. The Exchange also believes that this proposal, as amended, is consistent with Section 6(b)(4) of the Act [10] because it provides for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment No. 1 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–20 and should be submitted by February 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–842 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b)(4).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47140; File No. SR–Phlx–2002–76]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Certain Rules Governing Participation in Crossing Transactions Effected on the Exchange

January 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend certain Phlx Rules governing participation in crossing transactions effected on the Exchange. Specifically, the Phlx proposes to amend Phlx Rule 126, adding Supplementary Material (h) instituting an alternative procedure for crossing certain orders of 10,000 shares or greater (the "Alternative Procedure"). In addition, the Phlx proposes to amend Phlx Rule 229B, to allow specialists and floor brokers on the Exchange's equity floor to take advantage of the Alternative Procedures electronically.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

Crossing" Orders

Rule 126. When a member has an order to buy and an order to sell the same security, he must offer such security at a price which is higher than his bid by the minimum variation permitted in such security before making a transaction with himself.

Supplementary Material

(a)–(g) No Change.

(h) If prior to presenting a cross transaction involving 10,000 shares or more, a member requests that the specialist post the current market for the security ("Updated Quotation"), the member may execute a cross transaction:

(i) at the Updated Quotation, if both sides of the cross transaction are agency orders and the Updated Quotation contains no agency orders; or

(ii) between the Updated Quotation, without interference by another member. In no event shall an agency order on the book having time priority, remain unexecuted after any other order at its price has been effected pursuant to this rule or otherwise.

* * * * *

[Order Entry Window] ***Alternative Electronic Order Entry***

Rule 229B. *(a) Floor Brokers and Specialists may elect to enter orders through an order entry window (the "Order Entry Window" or "OEW"), which will route orders to the appropriate specialist, in accordance with Rule 229A, with all OEW orders treated as Non-Directed Orders, as that term is defined in Rule 229A. Specialists may enter orders only in those stocks that they have been approved to trade as a specialist by the Equity Allocation, Evaluation and Securities Committee. Orders sent through the OEW will be displayed to the specialist for a period of time to be determined by the Exchange. During that time, the specialist can choose to interact with the OEW order. At the end of the time period, absent previous specialist action, the OEW order will be automatically executed or cancelled.*

(b) Specialists and Floor Brokers may enter cross transactions electronically in accordance with the Phlx Rule 126(h).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and

Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to better allow members to compete for new and retain existing order flow in large crossed orders on the Phlx equity floor through use of the Alternative Procedures.[3] The Alternative Procedures would allow a member with an order to buy and an order to sell the identical number of shares of the same security to cross those orders without interference by another member under certain circumstances.[4] In order to use the Alternative Procedures, the member attempting to cross without interference by another member must satisfy a number of preconditions. First, the potential cross must involve orders of greater than 10,000 shares. Second, prior to introducing the cross, the member attempting to cross must request that the specialist in the security post the current market for the security (the "Updated Quotation"). Upon receiving the Updated Quotation, the member may execute the cross transaction without interference by another member either (1) at the Updated Quotation, if both sides of the cross transaction are agency orders[5] and the Updated Quotation contains no agency orders or (2) between the Updated Quotation in any other case.[6] If either side of the cross would take place outside the Updated Quotation or at the Updated Quotation, for crosses where one or both sides of the cross transaction are non-agency orders or the Updated Quotation contains an agency order, then member may not cross utilizing the Alternative Procedures.[7]

In addition, the Exchange intends to permit members to enter crosses electronically subject to the Alternative Procedures. Upon electronic notification of the cross, the specialists in that security will be requested to submit an Updated Quotation.[8] The member's cross will be compared with the Updated Quotation, if any, and will either be executed pursuant to the Alternative Procedures or the member will be notified that the cross did not take place.

In contrast to this proposal, under current Phlx Rules pertaining to priority, if a member presents a crossing transaction, another member may participate, or "break up," the transaction, by offering (after presentation of the proposed crossing transaction) to improve one side of the transaction by the minimum price variation. The member presenting the cross is then effectively prevented from consummating the transaction as a "clean cross," which may be to the detriment of the member's customer.[9] The Exchange notes that the minimum price variation is one penny, making it relatively inexpensive for another Exchange member to break up the crossing transaction by simply improving one side or the other by one penny.

In a decimal pricing environment, the Exchange's Floor Procedure Committee is concerned that a portion of the crossing business and corresponding Exchange volume could evaporate unless members and their customers receive the protection offered by the Alternative Procedures. The Exchange believes that the Alternative Procedures strike a balance of interests of those members who are impacted by crossing transactions. Members attempting to execute crosses for their customers may be interested, on behalf of their customers, in obtaining a rapid execution of their order at a single price. Members submitting Updated Quotations may be interested in executing against with a portion of one side or the other of the cross because they see this as a favorable trade. This proposal allow both interests to be fulfilled by streamlining the crossing procedures while retaining the right of members to represent their best bid or offer through their response to the request for an Updated Quotation. It also protects the priority of agency orders by requiring that requiring that in no event shall an agency order in the book, having time priority, remain unexecuted after any other order at its price has been effected.

2. Statutory Basis

The Exchange believes that its proposal to amend certain Phlx Rules governing participation in crossing transactions effected on the Exchange is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[3] Crossed orders or crosses are two orders, one to buy and one to sell the identical number of shares of the same security, which a member is brokering for his or her customers. This proposed rule change effects crosses of 10,000 shares or larger.

[4] The proposed addition of Supplementary Material (h) to Phlx Rule 126 does not preclude Exchange members from choosing to cross such orders under another provision of Phlx Rule 126.

[5] Agency orders are orders that are not for the account of brokers or dealers.

[6] As with all other trading on the Exchange, members must adhere to the trading restrictions contained in Section 11(a) of the Act, 15 U.S.C. § 78k(a), and Rules 11a–1 *et. seq.*, 17 CFR 240.11a–1 *et. seq.*, pertaining to members trading on the Exchange floor for their own account.

[7] The unavailability of the Alternative Procedures does not restrict how a member may then continue to represent the orders that otherwise would have been crossed. For instance, a member may choose to execute part of one of the cross against the trading interest that caused the unavailability of the Alternative Procedures and then attempt to execute the remaining portion of the cross using the Alternative Procedures. A member could also decide to seek execution for the cross in another market.

[8] In a telephone conference between John Dayton, Assistant Secretary and Counsel, Phlx, and Alton Harvey, Chief, Office of Market Watch, and Mary N. Simpkins, Special Counsel, Division of Market Regulation, Commission, on January 7, 2003, the Phlx clarified that as with manual, in-person use of the Alternative Procedures, a member attempting to cross electronically using the Alternative Procedures will use the Exchange's trading systems to request that the specialists submit an Updated Quotation.

[9] Some institutional customers prefer executing large crossing transactions at a single price and are willing to forego the opportunity to achieve the piecemeal price improvement that might result from the break up of the cross transaction by another Exchange member. Of course, the member will still retain the ability to present both sides of the order at the post if the customers so desire.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR-Phlx-2002–76 and should be submitted by February 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–843 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S7 covers the Office of the Deputy Commissioner for Human Resources. Notice is hereby given that subchapter S7C, the Office of Labor-Management and Employee Relations is being amended to reflect the establishment of three centers. The new material and changes are as follows:

Section S7C.10 The Office of Labor Management and Employee Relations—(Organization):

Delete B.

Retitle:

A. The "Director, Office of Labor-Management and Employee Relations" to the "Associate Commissioner, Office of Labor-Management and Employee Relations (S7C).

Reletter C to B:

B. The Immediate Office of the Associate Commissioner, Office of Labor-Management and Employee Relations (S7C).

Establish:

C. The Center for Program Policy, Automation and Training (S7CC).

D. The Center for Operations (S7CE).

E. The Center for Negotiation (S7CG).

Section S7C.20 The Office of Labor Management and Employee Relations—(Functions):

Delete:

B.

C., Line 5, starting with "The functions of the office include the following:" and items 1 through 10.

Reletter:

C. to B.

Retitle:

A., Line 1 and B., Lines 1 and 2 from "The Director, Office of Labor-Management and Employee Relations" to "the Associate Commissioner, Office of Labor-Management and Employee Relations".

B., Line 3, from "the Director" to the "Associate Commissioner"

B., Line 4, from "the Human Resources Manager" to "the Deputy Associate Commissioner".

Establish:

C. The Center for Program Policy, Automation, and Training (S7CC).

1. Formulates SSA program policy, guidance, and direction in the development, administration and evaluation of a comprehensive national program in the areas of labor-management relations, performance-management, disciplinary and adverse actions, and SSA grievances.

2. Designs and implements processes to monitor and evaluate implementation of government-wide and SSA priorities relative to SSA's national labor and employee relations programs.

3. Develops and evaluates SSA policies and programs involving labor-management relations, disciplinary and adverse actions, performance-based actions, grievances, and appeals.

4. Researches, compiles, and analyzes information on the granting and usage of union official time, grievances, adverse and disciplinary actions, and third party proceedings. Establishes and maintains automated data bases for information management to monitor and analyze emerging trends and compliance with SSA policy, laws, rules and regulations relating to labor and employee relations.

5. Conducts statutory review of all Memoranda of Understanding negotiated Agency-wide. Administers and maintains arbitration panels.

D. The Center for Operations (S7CE).

1. Provides technical guidance in developing, implementing and administering cooperative labor-management and employee relations programs throughout SSA.

2. Administers SSA employee relations programs involving disciplinary and adverse actions, performance-based actions, SSA grievances, and appeals.

3. Provides technical and advisory services to management for exercising management rights and discharging SSA's obligations under labor and employee relations statutes, laws, executive orders, regulations and negotiated agreements.

4. Works with managers, labor organizations, and union officials throughout SSA to develop and maintain plans, programs, and procedures necessary to institutionalize sound labor-management relations and more effective and efficient dealings between the parties.

5. Provides training, advice, and direction to supervisors, managers, and other management personnel in SSA components on the proper interpretation and application of negotiated agreements, 5 U.S.C. 71, and employee relation's laws and regulations.

6. Coordinates activities of field and component labor relations staffs to ensure uniform implementation of national labor and employee relations policies.

E. The Center for Negotiation (S7CG).

1. Negotiates, administers, interprets and implements SSA national labor agreements which include pre-negotiation activities, team preparation, advisory services and problem resolution.

2. Negotiates national midterm contractual issues with the recognized bargaining unit(s).

3. Provides technical and advisory services and expertise to management in establishing management negotiating positions and for representation in third-party proceedings.

4. Maintains files of case law which effect contracts and researches bargaining history relevant to establishing management's position at

[12] 17 CFR 200.30–3(a)(12).

third-party proceedings and negotiations.

5. Represents or coordinates SSA representation in unfair labor practice complaints before the Federal Labor Relations Authority, bargaining matters before the Federal Mediation and Conciliation Service impasse proceedings before the Federal Services Impasses Panel, national-level grievances before arbitrators, management-initiated actions under appeal to the Merit Systems Protection Board and employee claims before unemployment compensation boards.

6. Provides technical advice and assistance to SSA management on non-bargaining unit SSA grievances.

7. Facilitates issues and generates guidance at the national, regional and local levels. Provides training and assists in resolving issues at all levels.

Dated: January 2, 2003.

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 03–764 Filed 1–14–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 20, 2002 [67 FR, page 59326]. No comments were received.

DATES: Comments must be submitted on or before February 14, 2003 to: Attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Competition and Policy Analysis Division, Office of Aviation Analysis; Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0002, Telephone (202) 366–5420.

SUPPLEMENTARY INFORMATION: Office of the Secretary (OST).

Title: Passenger Manifest Information.

OMB Control Number: 2105–0534.

Affected Public: U.S. and foreign direct air carriers.

Annual Estimated Burden: 1.05 million hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 9, 2003.

Michael A. Robinson,

Clearance Officer, Department of Transportation.

[FR Doc. 03–825 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension without change for a currently approved information collection.

DATES: Comments on this notice must be received by February 14, 2003: attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mrs. Roberta Fede, Committee Management Officer, Executive Secretariat, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone (202) 366–9764.

SUPPLEMENTARY INFORMATION:

Title: Advisory Committee Candidate Biographical Information Request, DOT F1120.1.

OMB Control Number: 2105–0009.

Affected Public: Individuals who have contacted DOT to indicate an interest in appointment to an advisory committee and individuals who have been recommended for membership on an advisory committee. Only one collection is expected per individual.

Annual Estimated Burden: 35 hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 9, 2003.

Michael A. Robinson,

Information Resource Management, Department of Transportation.

[FR Doc. 03–826 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Office of the Secretary, DOT.

ACTION: Notice to amend a system of records.

SUMMARY: DOT intends to establish a system of record under the Privacy Act of 1974.

EFFECTIVE DATE: February 24, 2003. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

FOR FURTHER INFORMATION CONTACT: Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax), *Yvonne.Coates@ost.dot.gov* (Internet address).

SUPPLEMENTARY INFORMATION: The Department of Transportation system of

records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the above mentioned address.

DOT/TSA 010

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM NAME:

Aviation Security Screening Records.

SYSTEM LOCATION:

Records are maintained at the Office of National Risk Assessment, Transportation Security Administration (TSA), 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals traveling to, from, or within the United States (U.S.) by passenger air transportation; individuals who are deemed to pose a possible risk to transportation or national security, a possible risk of air piracy or terrorism, or a potential threat to airline or passenger safety, aviation safety, civil aviation, or national security.

CATEGORIES OF RECORDS IN THE SYSTEM:

Passenger Name Records (PNRs) and associated data; reservation and manifest information of passenger carriers and, in the case of individuals who are deemed to pose a possible risk to transportation security, record categories may include: risk assessment reports; financial and transactional data; public source information; proprietary data; and information from law enforcement and intelligence sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114, 44901, and 44903.

PURPOSE(S):

The system will be used to facilitate the conduct of an aviation security-screening program, including risk assessments to ensure aviation security.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed from this system as follows:

(1) To appropriate Federal, State, territorial, tribal, local, international, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where TSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(2) To contractors, grantees, experts, consultants, agents and other non-Federal employees performing or working on a contract, service, grant, cooperative agreement, or other assignment from the Federal government for the purpose of providing consulting, data processing, clerical, or other functions to assist TSA in any function relevant to the purpose of the system.

(3) To Federal, State, territorial, tribal, and local law enforcement and regulatory agencies—foreign, international, and domestic—in response to queries regarding persons who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(4) To individuals and organizations, in the course of enforcement efforts, to the extent necessary to elicit information pertinent to the investigation, prosecution, or enforcement of civil or criminal statutes, rules, regulations or orders regarding persons who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(5) To a Federal, State, or local agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit.

(6) To the news media in accordance with the guidelines contained in 28 CFR 50.2, which relate to civil and criminal proceedings.

(7) To the Department of State, or other Federal agencies concerned with visas and immigration, and to agencies in the Intelligence Community, to further those agencies' efforts with respect to persons who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(8) To international and foreign governmental authorities in accordance with law and formal or informal international agreements.

(9) In proceedings before any court, administrative, adjudicative, or tribunal body before which TSA appears, when (a) TSA or (b) any employee of TSA in his/her official capacity, or (c) any employee of TSA in his/her individual capacity where TSA has agreed to represent the employee, or (d) the U.S. or any agency thereof, where TSA determines that the proceeding is likely to affect the U.S., is a party to the proceeding or has an interest in such proceeding, and TSA determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, TSA determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(10) To airports and aircraft operators, to the extent the disclosure is deemed required in the interests of transportation security.

(11) To the National Archives and Records Administration (NARA) in connection with records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer at the Office of National Risk Assessment in a secure facility. The records are stored on magnetic disc, tape, digital media, and CD-ROM, and may be retained in hard copy format in secure file folders. The computer system from which records could be accessed is policy and security based with real-time auditing.

RETRIEVABILITY:

Data are retrievable by the name or other identifying information of the individual, such as flight information.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable rules and policies, including the Department's automated systems security and access policies. The computer system from which records could be accessed is policy and security based, meaning the access is limited to those individuals who require it to perform their official duties. It also maintains real-time auditing of individuals who access the system. Classified information is appropriately stored in a secured facility, databases, and containers and in accordance with other applicable requirements, including those pertaining to classified documents.

RETENTION AND DISPOSAL:

A request is pending for NARA approval for the retention and disposal of records in this system. For individuals who are deemed to pose a possible risk to transportation security, TSA is requesting that those records may be maintained for up to 50 years. For all other individuals, those records

will be purged after completion of the individual's air travel to which the record relates.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of National Risk Assessment, TSA, 400 7th St., SW., Washington, DC 20590.

NOTIFICATION PROCEDURES:

None. Pursuant to 5 U.S.C. 552a(k), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

Although the system is exempt from record access procedures pursuant to 5 U.S.C. 552a(k), U.S. citizens and Permanent Resident aliens may request access to records containing information they provided by sending a written request to the System Manager. In the case of air passengers, this data is contained in the passenger name record (PNR). The request must identify the system from which the individual is seeking records, and include a general description of the records sought, the requester's full name, current address and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

CONTESTING RECORD PROCEDURES:

U.S. Citizens or Permanent Resident Aliens who wish to contest, or seek amendment of, records containing information they provided, which is maintained in the system, should direct their written requests to the system manager listed above. Requests should clearly and concisely state what information is being contested, the reason(s) for contesting it, and the proposed amendment to the record. The request must also contain the requester's full name, current address and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

RECORD SOURCE CATEGORIES:

This system contains investigative material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2).

Dated: January 8, 2003.

Yvonne L. Coates,

Privacy Act Coordinator.

[FR Doc. 03–827 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Standardization of the Requirements of Airworthiness Directives that Mandate Supplemental Structural Inspection Documents

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting which is being held by the Federal Aviation Administration (FAA) to present its views and hear comments from the public concerning issues regarding standardization of the requirements of airworthiness directives for certain transport category airplanes that mandate Supplemental Structural Inspection Documents (SSID) and that address the treatment of repairs, alterations, and modifications of those certain transport category airplanes.

DATES: The meeting will be held in Seattle, Washington, on February 27, 2003, beginning at 8:30 a.m.

REGISTRATION: Registration will begin at approximately 7:30 a.m. on Thursday, February 27, 2003. Persons planning to attend the meeting are encouraged to pre-register by contacting the person identified later in this notice as the contact for further information.

ADDRESSES: The meeting will be held at the Seattle Marriott Sea-Tac, 3201 South 176th Street, Seattle, WA 98188; telephone (206) 241–2000. A block of guest rooms has been reserved for the meeting at the Seattle Marriott at a group rate. This block of rooms will be held until February 6, 2003. Persons planning on attending the meeting should contact the hotel directly for reservations and identify themselves as participants in the FAA Public Technical Conference to ensure proper credit.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, FAA, Airframe Branch, ANM–120L, Transport Airplane Directorate, Aircraft Certification Service, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone (562) 627–5237; facsimile (562) 627–5210.

SUPPLEMENTARY INFORMATION: In October 1991, Congress enacted Title IV of Public Law 102–143, the Aging Aircraft Safety Act (AASA) of 1991, to address aging aircraft concerns. That Act instructed the FAA administrator to prescribe regulations that will ensure the continuing airworthiness of aging aircraft. As one of several responses to the AASA, the FAA issued the Aging Airplane Safety Rule (AASR) on December 6, 2002. The applicability of that rule addresses airplanes that are operated under part 121 of the Federal Aviation Regulations (14 CFR part 121), all U.S. registered multi-engine airplanes operated under part 129 of the Federal Aviation Regulations (14 CFR part 129), and all multi-engine airplanes used in scheduled operations under part 135 of the Federal Aviation Regulations (14 CFR part 135). The AASR requires the maintenance programs of those airplanes to include damage tolerance-based inspections and procedures that include all major structural repairs, alterations, and modifications (RAMs). These procedures must be established and incorporated within four years after December 8, 2003, the effective date of the AASR.

Independently of the AASR, the FAA issued AD 98–11–03 R1 (64 FR 989, January 7, 1999) for Boeing Model 727 series airplanes and AD–98–11–04 R1 (64 FR 987, January 7, 1999) for Boeing Model 737 series airplanes on December 30, 1998. Those ADs mandated later revisions of the Boeing Supplemental Structural Inspection Documents (SSID) and specifically address RAMs. Those ADs also require operators to develop damage tolerance inspection programs for all RAMs affecting principal structural elements, thereby fulfilling the intent of the AASR for those airplanes.

However, since the issuance of the SSID ADs for the Boeing Model 727 and 737 series airplanes, several problems have arisen. The FAA received many requests for alternative methods of compliance (AMOCs) to approve various inspection methods and intervals for RAMs. In the process of reviewing these requests, the FAA noted that operators were having difficulties in addressing RAMs in order to comply with those ADs. Additionally, operators were concerned that the McDonnell Douglas SSID ADs and the Boeing 727/737 SSID ADs were not standardized with regard to the treatment of RAMs. This became a concern because many of the airplane operators have a mixed fleet of Boeing and McDonnell Douglas airplanes and now had to essentially implement two different SSID programs with no apparent reason for the difference between the programs. Therefore, in April 2000 the Transport Airplane Directorate chartered a SSID Team to develop recommendations to standardize the SSID ADs regarding the treatment of RAMs. The report can be accessed at *http://www.faa.gov/certification/aircraft/transport.htm*.

Public Technical Meeting

The results from the SSID Team provided a good first step towards standardizing the FAA approach to RAMs. However, the FAA has determined that a public meeting should be held to discuss the SSID ADs and their relationship with the new AASR. The Transport Airplane Directorate is holding this public meeting to give operators the opportunity to present any concerns they may have with using the SSID ADs to address RAMs. The meeting will also give the FAA the opportunity to clarify terms in the standardized SSID ADs that may be confusing to operators. The following are some of the items that will be addressed at the upcoming public meeting:

- The relationship between the Aging Airplane Safety Rule and any future SSID ADs that address RAMs.
- The SSID Team conclusions and recommendations.
- The FAA's approach in issuing the SSID ADs for Boeing Model 727/737 series airplanes, and any of the difficulties that operators have had in addressing RAMs in accordance with the ADs. Such difficulties include the role of supplemental type certificate (STC) holders in assisting operators in developing programs for STC modifications; the effect of inspection program requirements on the routine use of structural repair manuals; and the relationship/overlap between the Repair Assessment Program and SSID ADs.
- Opinions from the public/industry on addressing RAMs in future SSID ADs.
- Opinions from the public/industry regarding alternative approaches (other than ADs) for defining specific methods of compliance to address RAMs as required by the AASR for various models of transport category airplanes.

Participation at the Public Meeting

If you wish to present any oral statements at the public meeting, you should submit your request to the FAA prior to February 14, 2003. Such requests should be submitted to the person listed under the heading **FOR FURTHER INFORMATION CONTACT** and should include a written summary of oral remarks to be presented, as well as an estimate of time needed for the presentation. Requests received after February 14, 2003, will be considered and may be scheduled, time permitting, during the meeting. The FAA will prepare an agenda of speakers who will be available at the meeting. Every effort will be made to accommodate as many speakers as possible in the time allotted.

Meeting Procedures

The following procedures are established to facilitate the meeting:

- Attendance is open to the public, but will be limited to the space available.
- There will be no admission fee or other charge to attend or participate in the meeting. The opportunity to speak will be available to all persons, subject to availability of time.
- The meeting is designed to provide information to, and hear comments from, the public concerning issues related to the Aging Airplane Safety Rule and any future SSID ADs that address RAMs. The meeting will be conducted in an informal and nonadversarial manner; however, the FAA may ask questions to clarify a statement and to ensure a complete and accurate record.
- Representatives of the FAA will preside over the meeting. A panel of FAA personnel involved in this issue will be present.
- Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues and, unless stated as such, should not necessarily be construed as a position of the FAA.
- An individual, whether speaking in person or in a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, additional time may be allotted.
- The FAA will try to accommodate all questions, time permitting. However, the FAA reserves the right to exclude some questions, if necessary, to present a balance of viewpoints and issues.
- The FAA will review and consider all material presented by participants at the meeting. Participants are requested to provide 10 copies of all presentation materials for distribution to the panel members. Other copies may be provided to the audience at the discretion of the participant.
- The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be made a part of the official record. Any person interested in purchasing a copy of the transcript should contact the court reporter directly at the meeting.

Issued in Renton, WA, on January 8, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–876 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Fayette County, KY

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed construction of an extension of Newtown Pike on a new alignment.

FOR FURTHER INFORMATION CONTACT: David Whitworth, Area Engineer, Federal Highway Administration, John C. Watts Federal Building and U.S. Courthouse, 330 W. Broadway, Frankfort, Kentucky 40601. Telephone 502–223–6754, Fax 502–223–6735.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Kentucky Transportation Cabinet (KYTC) and the Lexington-Fayette County Urban Government (LFCUG) will prepare an EIS for the construction of the Newtown Pike Extension from Main Street to Broadway, with a connector to Limestone at the University of Kentucky main entrance.

The EIS will be a complement to the "Newtown Pike Extension Corridor Plan", adopted as part of the LFCUG Comprehensive Plan and will detail environmental, social and economic impacts associated with the proposed action.

Four public meetings have been held in conjunction with the "Corridor Plan". All meetings have been advertised and no strong public opposition has been heard. These meetings have been used to identify significant transportation and environmental issues.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings and a public hearing will be held while preparing this EIS. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency reviews and comment prior to the public hearing.

The public meetings and hearing will also be a forum for public consultation and involvement on issues associated with the National Historic Preservation Act (Section 106) when appropriate. Interested persons, groups, or parties

who wish to be consulting parties under Section 106 for this project should submit a written request to the FHWA at the address provided above.

To ensure the full range of issues related to the proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should also be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Evan Wisniewski,

Program Management Engineer, Federal Highway Administration.

[FR Doc. 03–877 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waiver

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted Buy America waiver.

SUMMARY: This waiver allows ticket vending machine manufacturers to install the Asahi Seiko Compact Coin Dispensing Hopper and count it as domestic for purposes of Buy America compliance. It is predicated on the non-availability of the item domestically and was granted on December 9, 2002, for the period of two years, or until such time as a domestic source for this Compact Coin dispensing Hopper becomes available, whichever occurs first. This notice shall insure that the public, particularly potential manufacturers, is aware of this waiver. FTA requests that the public notify it of any relevant changes in the domestic market.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, FTA Office of Chief Counsel, Room 9316, (202) 366–1936 (telephone) or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION: *See* waiver below.

Dated: January 2, 2003.

Jennifer L. Dorn,

Administrator.

Mr. Roy Hollister, *General Manager, Asahi Seiko U.S.A., Inc., 6644 Paradise Road,* Las Vegas, Nevada 89119

Dear Mr. Hollister: This letter responds to your correspondence of October 4, 2002, in which you request a Buy America non-availability waiver for the Model SA–595 Compact Coin Dispensing Hopper manufactured for use in ticket vending machines. The coin dispenser at issue here is a low profile, bulk coin dispensing hopper module, a device able to hold a quantity of coins in a hopper and dispense them for "change" one by one in a secure and accurate manner upon electronic command. For the reasons below, I have determined that a waiver is appropriate here.

FTA's requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j). However, Section 5323(j)(2)(B) states that those requirements shall not apply if the item or items being procured are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality. The implementing regulation also provides that a waiver may be requested "for a specific item or material that is used in the production of a manufactured product." 49 CFR 661.7(g). The regulations allow a bidder or supplier to request a waiver only if it is being sought under this section. *See,* 49 CFR 661.7(g) and 49 CFR 661.9(d).

You state that there are no U.S. manufacturers of this component with the same operational and dimensional characteristics. This assertion is supported by a letter from GFI Genfare, a ticket vending machine manufacturer, a potential end user of this coin hopper. FTA also posted a request for comments on this matter on our website and we received no comments from domestic manufacturers of this product.

Based on the above-referenced information, I have determined that the grounds for a "non-availability" waiver exist. Therefore, pursuant to the provisions of 49 U.S.C. 5323(j)(2)(B), a waiver is hereby granted for manufacture of the Model SA–595 Compact Coin Dispensing Hopper for a period of two years, or until such time as a domestic source for this type of unit becomes available, whichever occurs first. In order to insure that the public is aware of this waiver, particularly potential manufacturers, it will be published in the **Federal Register**. If you have any questions, please contact Joseph Pixley at (202) 366–1936.

Very truly yours,

Gregory B. McBride,

Deputy Chief Counsel.

[FR Doc. 03–824 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waiver

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted Buy America waiver.

SUMMARY: This waiver allows ticket vending machine manufacturers to install the Mars Electronics Bill Handling Unit and count it as domestic for purpose of Buy America compliance. It is predicated on the non-availability of the item domestically and was granted on December 10, 2002, for the period of two years, or until such time as a domestic source for this Bill Handling Unit becomes available, whichever occurs first. This notice shall insure that the public, particularly potential manufacturers, is aware of this waiver. FTA requests that the public notify it of any relevant changes in the domestic market.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, FTA Office of Chief Counsel, Room 9316, (202) 366–1936 (telephone), or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION: See waiver below.

Issued: January 2, 2003.

Jennifer L. Dorn,

Administrator.

Cassius Jones, Industry Manager, Mars Electronics International, 1301 Wilson Drive, West Chester, Pennsylvania 19380–5963

Dear Mr. Jones: This letter responds to your correspondence of August 8, 2002, in which you request an extension of a Buy American non-availability waiver for the BNA57, BNA52/54, and BSN385/39 bill handling units manufactured for use in ticket vending machines. The bill handling unit at issue here is able to accept, validate, and place in mechanical escrow banknotes of various denominations. The device also transfers these banknotes from the escrow to a vault within the ticket vending machine or returns them if the transaction is not completed. On July 21, 2000, the Federal Transit Administration granted Mars Electronics a waiver for this unit. For the reasons below, I have determined that a waiver is appropriate here.

FTA's requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j). However, Section 5323(J)(2)(B) states that those requirements shall not apply if the item or items being procured are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality. The implementing regulation also provides that a waiver may be requested "for a specific item or material that is used in the production of a manufactured product." 49 CFR 661.7(g). The regulations allow a bidder or supplier to request a waiver only if it is being sought under this section. See, 49 CFR 6617(g) and 49 CFR 661.9(d).

You state that there are still no U.S. manufacturers of this component with a functionally equivalent product. This assertion is supported by a market survey furnished as part of your application and conducted by Scheidt & Bachlman, a ticket vending machine manufacturer and potential end user of this component. You have also supplied a letter supporting your contentions from Cubic Transportation Systems, another

potential end user. FTA posted a request for comments on this matter on our website and received no comments from domestic manufacturers of this product.

Based on the above-referenced information, I have determined that the grounds for a "non-availability" waiver exist. Therefore, pursuant to the provisions of 49 U.S.C. 5323(j)(2)(B), a waiver is hereby granted by manufacture of the BNA57, BNA52/54, processing unit for a period of two years, or until such time as a domestic source of this type of unit becomes available, whichever occurs first. In order to insure that the public is aware of this waiver, particularly potential manufacturers, it will be published in the **Federal Register**. If you have any questions, please contact Joseph Pixley at (202) 366–1936.

Very truly yours,

Gregory B. McBride,
Deputy Chief Counsel.

[FR Doc. 03–823 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waiver

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted Buy America waiver.

SUMMARY: This waiver allows ticket vending machine manufacturers to install the Toyocom Bill Processing Unit and count it as domestic for purposes of Buy America compliance. It is predicated on the non-availability of the item domestically and was granted on December 13, 2002, for the period of two years, or until such time as a domestic source for this Bill Processing Unit becomes available, whichever occurs first. This notice shall insure that the public, particularly potential manufacturers, is aware of this waiver. FTA requests that the public notify it of any relevant changes in the domestic market.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, FTA Office of Chief Counsel, Room 9316, (202) 366–1936 (telephone) or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION: See waiver below.

Dated: January 2, 2003.

Jennifer L. Dorn,

Administrator.

December 13, 2002.

Mr. Fumihiko Hagiwara,
Sales Supervisor, Toyocom U.S.A., Inc., 617 E. Golf Road, Suite 112, Arlington Heights, IL 60005

Dear Mr. Hagiwara: This letter responds to your correspondence of September 17 and October 10, 2002, in which you request a Buy America non-availability waiver for the Toyocom BV–6000 bill processing unit manufactured for use in ticket vending machines. The bill processing unit at issue here is able to accept, validate, and place in mechanical escrow up to 15 banknotes of various denominations. The device also transfers these banknotes from the escrow to a stack within a locked cashbox within the ticket vending machine. On October 4, 1996, the Federal Transit Administration granted Toyocom a waiver for the Model BV–5100 bill processing unit of which the BV–6000 is the successor. For the reasons below, I have determined that a waiver is appropriate here.

FTA's requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j). However, Section 5323(j)(2)(B) states that those requirements shall not apply if the item or items being procured are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality. The implementing regulation also provides that a waiver may be requested "for a specific item or material that is used in the production of a manufactured product." 49 CFR 661.7(g). The regulations allow a bidder or supplier to request a waiver only if it is being sought under this section. *See* 49 C.F.R. 661.7(g) and 49 CFR 661.9(d).

You state that there are no U.S. manufacturers of this component with the same operational and dimensional characteristics. This assertion is supported by a market survey furnished as part of your application and conducted for Toyocom by GFI Genfare, a ticket vending machine manufacturer and potential end user of this component. FTA also posted a request for comments on this matter on our website and received no comments from domestic manufacturers of this product.

Based on the above-referenced information, I have determined that the grounds for a "non-availability" waiver exist. Therefore, pursuant to the provisions of 49 U.S.C. § 5323(j)(2)(B), a waiver is hereby granted for manufacture of the Model BV–6000 bill and BSN385/39 bill handling units for a period of two years, or until such time as a domestic source for this type of unit becomes available, whichever occurs first. In order to insure that the public is aware of this waiver, particularly potential manufacturers, it will be published in the **Federal Register.** If you have any questions, please contact Joseph Pixley at (202) 366–1936.

Very Truly yours,
Gregory B. McBride,
Deputy Chief Counsel.

[FR Doc. 03–822 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participating in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: January 3, 2003.

Barbara Angus,

International Tax Counsel (Tax Policy).

[FR Doc. 03–786 Filed 1–14–03; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on February 3–4, 2003, at the Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC. The meeting on February 3 will convene in Room 830 at 8 a.m. and adjourn at 5:30 p.m. The meeting on February 4 will convene in Room 230 at 8 a.m. and adjourn at 4 p.m. Both meetings will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health

consequences of military service in the Southwest Asia theater of operations during the Persian Gulf War.

On February 3, the Committee will review current activities and receive an update on new research. The Committee will hearing presentations on and discuss antibiotic therapy and exercise behavior therapy, Phase III of the National Gulf War Veterans Survey and treatment research concepts. Throughout the day, there will be presentations by visiting experts including, Chief of VA Research and Development, Directors of the Washington, DC and New Jersey War-Related Illness and Injury Study Centers and Dr. Hermona Soreq, Hebrew University of Jerusalem. On February 4, the Committee will hear presentations on and discuss vaccine and mechanism research concepts. The Committee will also discuss and develop recommendations and next steps. Time will be available for public comment on both days.

Members of the public may submit written statements for the Committee's review to Ms. Laura O'Shea, Committee Manager, Department of Veterans Affairs (008A1), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing further information should contact Ms. Laura O'Shea at (202) 273–5031.

Dated: January 9, 2003.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 03–878 Filed 1–14–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 10

Wednesday, January 15, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1208

[FV–02–710]

Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order; Termination

Correction

In rule document 03–453 beginning on page 1364 in the issue of Friday, January 10, 2003 make the following correction:

On page 1364, in the third column, under **EFFECTIVE DATE** "February 10, 2002" should read, "February 10, 2003".

[FR Doc. C3–453 Filed 1–14–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

Correction

In notice document 02–32814 beginning on page 79573 in the issue of Monday, December 30, 2002, make the following corrections:

1. On page 79573, in the third column, in the **DATES** section, in the second line, "February 25, 2003" should read, "February 28, 2003".

2. On the same page, in the same column, under the **FOR FURTHER INFORMATION CONTACT** heading, in the *Titles* section, in the fourth line, "0702\0064" should read, "0702–0064".

[FR Doc. C2–32814 Filed 1–14–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 550

[No. 2002–57]

RIN 1550–AB49

Recordkeeping and Confirmation Requirements for Securities Transactions; Fiduciary Powers of Savings Associations

Correction

In rule document 02–31005 beginning on page 76293 in the issue of Thursday, December 12, 2002, make the following correction:

§ 550.70 [Corrected]

On page 76298, in the table, in § 550.70, in the column titled "Then", in the second line from the bottom, "...or file a that are notice with OTS" should read, "...or file a notice with OTS."

[FR Doc. C2–31005 Filed 1–14–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
January 15, 2003

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7418–3]

RIN 2060–AG96

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing national emission standards for hazardous air pollutants (NESHAP) for metal can surface coating operations pursuant to section 112(d) of the Clean Air Act (CAA). The EPA estimates that there are approximately 142 major source facilities in the metal can surface coating source category that emit hazardous air pollutants (HAP), such as xylene, hexane, methyl isobutyl ketone (MIBK), ethylene glycol monobutyl ether (EGBE) and other glycol ethers, isophorone, ethyl benzene, formaldehyde, napthalene, methyl ethyl ketone (MEK), cumene, and toluene. As proposed, the standards are estimated to reduce HAP emissions by 6,160 megagrams per year (Mg/yr) (6,800 tons per year (tpy)) or by 71 percent. The reduction in HAP emissions would be achieved by requiring all major sources of HAP emissions that have metal can surface coating operations to meet the HAP emission standards reflecting the application of the maximum achievable control technology (MACT).

DATES: *Comments.* Submit comments on or before February 14, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing, they should do so by January 27, 2003. If requested, a public hearing will be held approximately 15 days following publication of this notice in the **Federal Register**.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Office of Air & Radiation Docket & Information Center (6102T), Attention Docket Number A–98–41, U.S. EPA, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center, Attention Docket Number A–98–41, U.S. EPA, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, NC. You should contact Ms. Janet Eck, Coatings and Consumer Product Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–7946, to request to speak at the public hearing or to find out if a hearing will be held.

Docket. Docket No. A–98–41 contains supporting information used in developing the proposed standards. The docket is located at the Environmental Protection Agency, Office of Air & Radiation Docket & Information Center (6102T), 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almódovar, Coatings and Consumer Products Group, Emissions Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–0283; facsimile number (919) 541–5689; electronic mail (e-mail) address: *almodovar.paul@.epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–98–41. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Mr. Paul Almódovar, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–7946 at least 2 days in advance of the public hearing.

Persons interested in attending the public hearing should also contact Ms. Eck at least 2 days in advance of the public hearing to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of the proposed rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to the rulemaking are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature by the Administrator, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The proposed source category definition includes facilities that apply surface coatings to metal cans and ends (including decorative tins) or metal crowns and closures. In general, facilities that apply surface coatings to metal cans are

covered under the North American Industrial Classification System (NAICS) codes listed in Table 1. However, facilities classified under other NAICS codes may be subject to the proposed rule if they meet the applicability criteria.

The table is not intended to be exhaustive, but rather provides a guide for readers regarding subcategories and entities likely to be regulated by today's action. To determine whether your coating operation is regulated by this action, you should examine the applicability criteria in 40 CFR 63.3481 of the proposed rule. If you have any questions regarding the applicability of today's action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1.—SUBCATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE PROPOSED STANDARDS

Subcategory	NAICS	Examples of Potentially Regulated Entities
One- and two-piece draw and iron (D&I) can body coatings.	332431	Two-piece beverage can facility
Sheetcoatings	332431 332115 332116 332812 332999	Three-piece food can facility, two-piece D&I facility, one-piece aerosol can facility, etc.
Three-piece can assembly coatings	332431	Can assembly facility
End lining coatings	332431 332812	End manufacturing facilities

Background Information Document and Economic Impact Analysis. The Background Information Document (BID) and the Economic Impact Analysis (EIA) for the proposed rule may be obtained from the TTN WWW; the metal can manufacturing (surface coating) docket (A–98–41); the EPA Library (267–01), Research Triangle Park, NC 27711, telephone (919) 541–2777; or the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487–4650. Please refer to "Background Information Document—National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Metal Can Manufacturing (Surface Coating) Industry" (EPA–453/R–02–008) and the "Economic Impact Analysis of Metal Can MACT Standards" (EPA–452/R–02–005).

Outline. The information presented in this preamble is organized as follows:

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E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The metal can surface coating source category was listed on July 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. Major sources of HAP are those that emit or have the potential to emit equal to or greater than 9.1 Mg/yr (10 tpy) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP emissions from both new or reconstructed and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. That level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the

better-controlled and lower-emitting sources in each source category or subcategory. For new or reconstructed sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new or reconstructed sources, but they cannot be less stringent than the average emission limit achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Impacts Do Cure HAP Have on the NESHAP?

Chemical reactions occurring during many metal can surface coating and curing operations may create compounds that are then emitted into the atmosphere. Those types of compounds are normally referred to as "cure volatiles" or "cure HAP" and may include formaldehyde and methanol (listed as HAP under section 112(b) of the CAA). In determining the MACT, we did not quantify emissions of cure HAP because there is not an EPA-approved test method for measuring those compounds. Therefore, the proposed rule would not require affected sources to account for and control emissions of cure HAP.

D. What Are the Health Effects Associated With HAP Emissions From Metal Can Surface Coating Operations?

The primary HAP emitted from metal can surface coating operations include EGBE and other glycol ethers, xylenes, hexane, MEK, and MIBK. Those compounds account for 95 percent of the nationwide HAP emissions from that source category. Other HAP emitted include isophorone, ethyl benzene, toluene, trichloroethylene, formaldehyde, and napthalene. The HAP that would be controlled with the proposed rule are associated with a variety of adverse health effects. Those adverse health effects include chronic health disorders (*e.g.*, irritation of the lungs, eyes, and mucus membranes and effects on the central nervous system), acute health disorders (*e.g.*, lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the central nervous system), and possibly cancer.

We do not have the type of current detailed data on each of the facilities covered by the proposed emission standards for that category and on the people living around the facilities that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from those facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding those facilities. However, to the extent that adverse effects do occur, the proposed rule would reduce emissions and subsequent exposures.

II. Summary of the Proposed Rule

A. What Source Categories and Subcategories Are Affected by the Proposed Rule?

The proposed rule would apply to you if you own or operate a metal can surface coating operation that uses at least 5,700 liters (1,500 gallons (gal)) of coatings per year and is a major source, is located at a major source, or is part of a major source of HAP emissions, whether or not you manufacture the metal can substrate. The surface coating operations themselves are not required to be major sources of HAP emissions in order for the surface coating operations at a major source facility to be covered by the proposed rule. As long as some part of the total facility is considered a major source (*e.g.*, the metal can substrate manufacturing process), the surface coating operations would be subject to the standards.

A metal can surface coating facility is any facility that coats or prints metal cans or ends (including decorative tins) or metal crowns or closures for any type of can during any stage of the can manufacturing process. It includes the coating/printing of metal sheets for subsequent processing into cans or can parts, but not the coating of metal coils for cans or can parts. (Coil coating for cans and can parts is included in the metal coil surface coating source category.) Note that the coating/printing of pails and drums falls in the miscellaneous metal parts and products surface coating source category. As explained later, we have established four subcategories in the metal can surface coating industry, including: (1) One- and two-piece D&I can body coating, (2) sheetcoating, (3) three-piece can body assembly coating, and (4) end lining. Some metal can surface coating facilities include coating operations in more than one subcategory. In those cases, the facilities would be subject to more than one emission limit.

You would not be subject to the proposed rule if your coating operation is located at an area source. An area source of HAP is any facility that has the potential to emit HAP but is not a major source. You may establish area source status by limiting the source's potential to emit HAP through appropriate mechanisms available through the permitting authority.

B. What Is the Relationship to Other Rules?

Affected sources subject to the proposed rule may also be subject to other rules. We specifically request comments on how monitoring, recordkeeping, and reporting requirements can be consolidated for sources that are subject to more than one rule.

National Emission Standards for Metal Coil Surface Coating. Facilities engaged in surface coating performed on a continuous metal substrate greater than 0.006 inches thick would be subject to the metal coil surface coating NESHAP (67 FR 39794, June 10, 2002).

National Emission Standards for Miscellaneous Metal Parts and Products Surface Coating. Surface coating of any metal parts and products not covered in any other surface coating source category, such as metal can surface coating or metal coil surface coating, would be subject to the future miscellaneous metal parts and products surface coating NESHAP, as proposed August 13, 2002 (67 FR 52780).

C. What Are the Primary Sources of Emissions and What Are the Regulated Pollutants?

HAP Emission Sources. The primary HAP emission sources in metal can surface coating operations are coating application lines, drying/curing ovens, mixing and/or thinning areas, and cleaning equipment. Coating application lines and drying/curing ovens are the largest sources of HAP emissions. Recent reformulation efforts involving the primary coatings used in metal can surface coating operations are likely to continue as a result of the proposed rule and will serve to reduce HAP emissions from these sources. Mixing and/or thinning areas and cleaning equipment are smaller HAP emission sources and work practice standards would be used to limit the HAP emissions from these sources.

Organic HAP. Available emission data collected during the development of the proposed NESHAP show that the

primary organic HAP (including cure HAP) emitted from metal can surface coating operations include EGBE and other glycol ethers, xylenes, hexane, MEK, and MIBK. Other significant organic HAP identified include isophorone, ethyl benzene, toluene, trichloroethylene, napthalene, and formaldehyde. Organic HAP emissions would be regulated by the proposed metal can surface coating rule.

Inorganic HAP. Based on information reported during the development of the proposed NESHAP, inorganic HAP, including chromium and manganese compounds, are contained in some of the coatings used by that source category and may be emitted if they are spray-applied. Inorganic HAP emissions would not be regulated by the proposed metal can surface coating rule. (*See* section III.B of this preamble for further discussion of inorganic HAP emissions from surface coating operations.)

D. What Is the Affected Source?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which a specific emission standard applies. The proposed standards for metal can surface coating define the affected source for each subcategory as the collection of all operations within a facility associated with (1) one- and two-piece D&I can body coating, (2) sheetcoating, (3) three-piece can body assembly coating, or (4) end lining. Those operations include the following: Preparation of a coating for application (*e.g.*, mixing with thinners); process equipment involving storage, transfer, handling, and application of coatings; and associated curing, and drying equipment.

The affected source does not include research or laboratory equipment or janitorial, building, or facility maintenance operations.

E. What Are the Emission Limits, Operating Limits, and Work Practice Standards?

Emission Limits. We are proposing to limit organic HAP emissions from each new or reconstructed affected source using the emission limits in Table 2 of this preamble. The proposed emission limits for each existing affected source are given in Table 3 of this preamble. You can choose from several compliance options in the proposed rule to achieve the emission limit that applies to your affected source. You could comply by applying materials (coatings and thinners) that meet the emission limit, either individually or collectively. You could also use a capture system and add-on control equipment to meet the emission limit. You could also comply by using a combination of both approaches. If you use a capture system and add-on control equipment, there are alternative control efficiency or outlet concentration limits that you may use to simplify and reduce your recordkeeping and reporting requirements. The alternative emission limits for affected sources using the control efficiency/outlet concentration compliance option are provided in Table 4 of this preamble.

TABLE 2.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	for all coatings of this type . . .	then, you must meet the following organic HAP emission limit in kilograms HAP/liter solids (pound HAP/gal solids) [1]:
1. One- and two-piece D&I can body coating	a. two-piece beverage cans—all coatings	0.04 (0.31)
	b. two-piece food cans—all coatings	0.06 (0.50)
	c. one-piece aerosol cans—all coatings	0.08 (0.65)
2. Sheetcoating	sheetcoating	0.02 (0.17)
3. Three-piece can assembly	a. inside spray	0.12 (1.03)
	b. aseptic side seam stripes on food cans	1.48 (12.37)
	c. non-aseptic side seam stripes on food cans	0.72 (5.96)
	d. side seam stripes on general line non-food cans	1.18 (9.84)
	e. side seam stripes on aerosol cans	1.46 (12.14)
4. End lining	a. aseptic end seal compounds	0.06 (0.54)
	b. non-aseptic end seal compounds	0.00 (0.00)

[1] If you apply surface coatings of more than one type within any one subcategory, you may calculate an overall subcategory emission limit (OSEL) according to 40 CFR 63.3551(i).

TABLE 3.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	for all coatings of this type . . .	then, you must meet the following organic HAP emission limit in kilogram HAP/liter solids (pound HAP/gal solids) [1]:
1. One- and two- piece D&I can body coating	a. two-piece beverage cans—all coatings	0.07 (0.59)
	b. two-piece food cans—all coatings	0.06 (0.51)
	c. one-piece aerosol cans—all coatings	0.12 (0.99)
2. Sheetcoating	sheetcoating	0.03 (0.26)
3. Three-piece can assembly	a. inside spray	0.29 (2.43)
	b. aseptic side seam stripes on food cans	1.94 (16.16)
	c. non-aseptic side seam stripes on food cans	0.79 (6.57)
	d. side seam stripes on general line non-food cans	1.18 (9.84)
	e. side seam stripes on aerosol cans	1.46 (12.14)

TABLE 3.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES—Continued

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	for all coatings of this type . . .	then, you must meet the following organic HAP emission limit in kilogram HAP/liter solids (pound HAP/gal solids) [1]:
4. End lining	a. aseptic end seal compounds	0.06 (0.54)
	b. non-aseptic end seal compounds	0.00 (0.00)

[1] If you apply surface coatings of more than one type within any one subcategory you may calculate an OSEL according to 40 CFR 63.3551(i).

TABLE 4.—EMISSION LIMITS FOR AFFECTED SOURCES USING THE CONTROL EFFICIENCY/OUTLET CONCENTRATION COMPLIANCE OPTION

If you use the control efficiency/outlet concentration option to comply with the emission limitations for any coating operation(s)	Then you must comply with one of the following by using an emissions control system to
1. In a new or reconstructed affected source	a. reduce emissions of total HAP, measured as total hydrocarbons (THC) (as carbon),[1] by 97 percent; or b. limit emissions of total HAP, measured as THC (as carbon) [1] to 20 parts per million by volume, dry (ppmvd) at the control device outlet and use a permanent total enclosure.
2. In an existing affected source	a. reduce emissions of total HAP, measured as THC (as carbon),[1] by 95 percent; or b. limit emissions of total HAP, measured as THC (as carbon),[1] to 20 ppmvd at the control device outlet and use a PTE.

[1] You may choose to subtract methane from THC as carbon measurements.

Operating Limits. If you reduce emissions by using a capture system and add-on control device (other than a solvent recovery system for which you conduct a liquid-liquid material balance), the proposed operating limits would apply to you. Those limits are site-specific parameter limits you determine during the initial performance test of the system. For capture systems that are not permanent total enclosures (PTE), you would establish average volumetric flow rates or duct static pressure limits for each capture device (or enclosure) in each capture system. For capture systems that are PTE, you would establish limits on average facial velocity or pressure drop across openings in the enclosure.

For thermal oxidizers, you would monitor the combustion temperature. For catalytic oxidizers, you would monitor the temperature immediately before and after the catalyst bed or you would monitor the temperature before the catalyst bed and implement a site-specific inspection and maintenance plan for the catalytic oxidizer. For carbon adsorbers for which you do not conduct a liquid-liquid material balance, you would monitor the carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. For condensers, you would monitor the outlet gas temperature from the condenser. For concentrators, you would monitor the temperature of the desorption concentrate stream and the pressure drop of the dilute stream across the concentrator.

All site-specific parameter limits that you establish must reflect operation of the capture system and control devices during a performance test that demonstrates achievement of the emission limits during representative operating conditions.

Work Practice Standards. In lieu of emission standards, section 112(h) of the CAA allows work practice standards or other requirements to be established when a pollutant cannot be emitted through a conveyance or capture system, or when measurement is not practicable because of technological and economic limitations. Many metal can surface coating facilities use work practice measures to reduce HAP emissions from mixing, cleaning, storage, and waste handling areas as part of their standard operating procedures. They use those measures to decrease solvent usage and minimize exposure to workers. However, we do not have data to accurately quantify the emissions reductions achievable by the work practice measures, and it is not feasible to measure emissions or enforce a numerical standard for emissions from those operations.

Based on information received from that industry during the development of NESHAP and information available from several similar coating industries for which NESHAP have already been promulgated (aerospace manufacturing and rework, magnetic tape manufacturing, shipbuilding and ship repair, and wood furniture manufacturing), we identified a variety of work practice measures for cleaning, storage, mixing, and waste handling. If you reduce emissions by using a capture system and add-on control device, you would be required to develop and implement a work practice plan that would specify practices and procedures to ensure that, at a minimum, the elements specified below are implemented: (1) Storing all organic-HAP-containing liquids and waste materials in closed containers, (2) minimizing spills of all organic-HAP-containing materials, (3) using closed containers or pipes to transport all organic-HAP-containing materials, (4) keeping mixing vessels for organic-HAP-containing materials closed except when adding to, removing, or mixing the contents, and (5) minimizing organic HAP emissions during all cleaning operations.

If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan could be used to satisfy the requirement for a work practice plan.

Operations During Startup, Shutdown, or Malfunction. If you use a capture system and add-on control device for compliance, you would be required to develop and operate according to a startup, shutdown, and malfunction plan (SSMP) during

periods of startup, shutdown, or malfunction of the capture system and add-on control device.

General Provisions. The General Provisions (40 CFR part 63, subpart A) also would apply to you as indicated in the proposed standards. The General Provisions codify certain procedures and criteria for all 40 CFR part 63 NESHAP. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, recordkeeping and reporting, performance testing, and monitoring. The proposed standards refer to individual sections of the General Provisions to emphasize key sections that are relevant. However, unless specifically overridden in the proposed standards, all of the applicable General Provisions requirements would apply to you.

F. When Must I Comply With the Proposed Rule?

Existing affected sources must comply within 3 years of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. New or reconstructed affected sources must comply immediately upon initial startup or on [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], whichever is later. A metal can surface coating affected source is existing if its construction or reconstruction of the facility commenced on or before January 15, 2003. An affected source is new if construction commenced after January 15, 2003. A metal can surface coating affected source is reconstructed if it meets the definition of reconstruction in 40 CFR 63.2 and reconstruction is commenced after January 15, 2003. The effective date is [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

G. What Are the Testing and Initial Compliance Requirements?

Initial Compliance. Compliance with the emission limits is based on a 12-month rolling average. Therefore, for new or reconstructed affected sources using the compliant materials option or the emission rate without add-on controls option, the proposed initial compliance period begins on the first day of the first month following initial startup of the affected source or the effective date, whichever is later, and ends on the last day of the 12th month following initial startup or the effective date, whichever is later. For new or reconstructed affected sources that use a capture system and control device, the initial compliance period begins on the first day of the first month following the initial performance test and ends on the last day of the 12th month following the initial performance test. For all new or reconstructed affected sources, any partial month data between initial startup or initial performance test and initial compliance period must be added to the first month data. For existing affected sources, the proposed initial compliance period begins on the first day of the month in which the compliance date falls and ends on the last day of the 12th month following the compliance date.

Being in compliance means that the owner or operator of the affected source meets the requirements to achieve the proposed emission limitations by the end of the initial compliance period. At the end of the initial compliance period, the owner or operator would use the data and records generated to determine whether or not the affected source is in compliance with the 12-month rolling average for that period. If the affected source does not meet the applicable limits and other requirements, it is out of compliance for the entire initial compliance period. We welcome specific comments on the compliance dates and the data collection activities required for the initial compliance period.

Emission Limits. There are several proposed options for complying with the proposed emission limits, and the testing and initial compliance requirements vary accordingly.

Option 1: Compliance Based on the Compliant Material Option. If you demonstrate compliance based on the compliant material option, you would determine the mass of organic HAP in all coatings and thinners used each month during the initial compliance period and the volume fraction of coating solids in all coatings used each month during the initial compliance period. To determine the mass of organic HAP in coatings and thinners and the volume fraction of coating solids, you could use either manufacturer's data or test results using the test methods listed below. You may use alternative test methods provided you get EPA approval in accordance with 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results would prevail for compliance and enforcement purposes.

- For organic HAP content, use Method 311 of 40 CFR part 63, appendix A.
- The proposed rule allows you to use nonaqueous volatile matter as a surrogate for organic HAP. If you choose that option, then use Method 24 of 40 CFR part 60, appendix A, to determine nonaqueous volatile matter.
- For volume fraction of coating solids, use either information from the supplier or manufacturer of the material, ASTM Method D2697–86(1998), or ASTM Method D6093–97.

To demonstrate initial compliance based on the compliant materials option, you would be required to demonstrate that the organic HAP content of each coating meets the applicable emission limits and that you use no organic-HAP-containing thinners.

Option 2: Compliance Based on the Emission Rate Without Add-On Controls Option. If you demonstrate compliance based on the emission rate without add-on controls option, you would determine the mass of organic HAP in all coatings and thinners used in each coating type segment each month during the initial compliance period and the volume fraction of coating solids in all coatings in each coating type segment used each month during the initial compliance period.

To determine the mass of organic HAP in coatings and thinners and the volume fraction of coating solids, you could use either manufacturer's data or test results using the test methods listed below. You may use alternative test methods provided you get EPA approval in accordance with 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results would prevail for compliance and enforcement purposes.

- For organic HAP content, use Method 311.
- The proposed rule allows you to use nonaqueous volatile matter as a surrogate for organic HAP. If you choose that option, use Method 24 to determine nonaqueous volatile matter.
- For volume fraction of coating solids, use either information from the supplier or manufacturer of the material, ASTM Method D2697–86(1998), or ASTM Method D6093–97.

To demonstrate initial compliance based on the emission rate without add-on controls option, you would be required to demonstrate that the total mass of organic HAP in all coatings and thinners in each coating type segment divided by the total volume of coating solids in that coating type segment meets the applicable emission limit. For the emission rate without add-on

controls option, you would be required to perform the following.

- Determine the quantity of each coating and thinner used in each coating type segment.
- Determine the mass of organic HAP in each coating and thinner in each coating type segment.
- Determine the volume fraction of coating solids for each coating in each coating type segment.
- Calculate the total mass of organic HAP in all materials in each coating type segment and total volume of coating solids in each coating type segment for each month of the initial compliance period. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the ratio of the total mass of organic HAP for the materials used in each coating type segment to the total volume of coating solids used in the segment.
- Record the calculations and results and include them in your Notification of Compliance Status.

Alternatively, if you apply coatings in more than one coating type segment within a subcategory, you may calculate an overall HAP emission limit for the subcategory and demonstrate compliance by including all coatings and thinners in all coating type segments in the subcategory in calculating the ratio of total mass of organic HAP to total volume of coating solids. If you use that approach, you must use the subcategory limit throughout the 12-month initial compliance period and may not switch between compliance with limits for individual coating type segments and an overall limit. You may not include coatings in different subcategories in determining your overall HAP limit by that approach.

Option 3: Compliance Based on the Emission Rate With Add-On Controls Option. If you use a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, your testing and initial compliance requirements are as follows.

- Conduct an initial performance test to determine the capture and control efficiencies of the equipment and to establish operating limits to be achieved on a continuous basis.
- Determine the mass of organic HAP in each material and the volume fraction of coating solids for each coating used each month of the initial compliance period.
- Calculate the organic HAP emissions from the controlled coating operations using the capture and control efficiencies determined during the performance test and the total mass of organic HAP in materials used in controlled coating operations.
- Calculate the ratio of the total mass of organic HAP emissions to the total volume of coating solids used each month of the initial compliance period.
- Record the calculations and results and include them in the Notification of Compliance Status.

If you use a capture system and add-on control device, other than a solvent recovery system for which you conduct liquid-liquid material balances, you would determine both the efficiency of the capture system and the emissions reduction efficiency of the control device. To determine the capture efficiency, you would either verify the presence of a PTE using EPA Method 204 of 40 CFR part 51, appendix M, or use one of the protocols in 40 CFR 63.3565 to measure capture efficiency. If you have a PTE and all the materials are applied and dried within the enclosure and you route all exhaust gases from the enclosure to a control device, then you would assume 100 percent capture.

To determine the emissions reduction efficiency of the control device, you would conduct measurements of the inlet and outlet gas streams. The test would consist of three runs, each run lasting at least 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

- Method 1 or 1A for selection of the sampling sites;
- Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate;
- Method 3, 3A, or 3B for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981;
- Method 4 to determine stack moisture; and
- Method 25 or 25A to determine organic volatile matter concentration.

Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

If you use a solvent recovery system, you could determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you would be required to measure the amount of all materials used in the affected source during each month of the initial compliance period and determine the volatile matter contained in these materials. You would also measure the amount of volatile matter recovered by the solvent recovery system each month of the initial compliance period. Then you would compare the amount recovered to the amount used to determine the overall control efficiency and apply this efficiency to the ratio of organic HAP to coating solids for the materials used. You would record the calculations and results and include them in your Notification of Compliance Status.

Operating Limits. As mentioned above, you would establish operating limits as part of the initial performance test of an emission capture and control system. The operating limits are the values of certain parameters measured for capture systems and control devices during the most recent performance test that demonstrated compliance with the emission limits. The proposed rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry.

You would be required to install, calibrate, maintain, and continuously operate all monitoring equipment according to the manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in 40 CFR 63.3568 of the proposed rule. If you use control devices other than those identified in the proposed rule, you would submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal oxidizer, you would continuously monitor the appropriate temperature and record it at least every 15 minutes. The temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit would be the average temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or above that limit.

If you use a catalytic oxidizer you may choose from two methods to determine operating limits. In the first method, you would continuously monitor the temperature immediately before and after the catalyst bed and record it at least every 15 minutes. The operating limits would be the average temperature difference across the catalyst bed during the performance test, and for each 3-hour period the

average temperature and the average temperature difference would have to be at or above those limits. In the alternative method, you would continuously monitor the temperature immediately before the catalyst bed and record it at least every 15 minutes. The operating limit would be the average temperature just before the catalyst bed during the performance test, and for each 3-hour period the average temperature would have to be at or above that limit. As part of the alternative method, you must also develop and implement an inspection and maintenance plan for your catalytic oxidizer.

If you use a carbon adsorber and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser, you would monitor the outlet gas temperature to ensure that the air stream is being cooled to a low enough temperature. The operating limit would be the average condenser outlet gas temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or below this limit.

If you use a concentrator, you would monitor the desorption concentrate stream gas temperature and the pressure drop of the dilute stream across the concentrator. The operating limits would be the desorption concentrate gas stream temperature (to be met as a minimum) and the dilute stream pressure drop (not to be exceeded).

For each capture system that is not a PTE, you would establish operating limits for gas volumetric flow rate or duct static pressure for each enclosure or capture device. The operating limit would be the average volumetric flow rate or duct static pressure during the performance test to be met as a minimum. For each capture system that is a PTE, the operating limit would require the average facial velocity of air through all natural draft openings to be at least 200 feet per minute or the pressure drop across the enclosure to be at least 0.007 inch water.

Work Practice Standards. If you use a capture system and control device for compliance, you would be required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. That plan would include a description of all steps taken to minimize emissions from those sources (*e.g.*, using closed storage containers, practices to minimize emissions during filling and transfer of contents from containers, using spill minimization techniques, etc.). You would have to make the plan available for inspection if the Administrator requests to see it.

Operations During Startup, Shutdown, or Malfunction. If you use a capture system and control device for compliance, you would be required to develop and operate according to a SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

Option 4: Compliance Based on the Control Efficiency/Outlet Concentration Option. If you use a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, you may meet either of the applicable alternative limits summarized in Table 4 of this preamble instead of the organic HAP emission rate limits summarized in Tables 2 and 3 of this preamble. Prior to the initial performance test, you would be required to install control device parameter monitoring equipment to be used to demonstrate compliance with the capture and control efficiencies (or the capture efficiency of the capture system and the oxidizer outlet concentration) and to establish operating limits to be achieved on a continuous basis. During the initial compliance test, you would use the control device parameter monitoring equipment to establish parameter values that represent your operating requirements for the control systems. You would record the initial performance test results and include them in the Notification of Compliance Status.

If you use a capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, you would verify the efficiency of the capture system is 100 percent and determine the emissions reduction efficiency of the control device. To verify the capture efficiency, you would either verify the presence of a PTE using EPA Method 204 of 40 CFR part 51, appendix M, or use one of the protocols in § 63.3565 to measure capture efficiency. If you have a PTE and all the materials are applied and dried within the enclosure and you route all exhaust gases from the enclosure to a control device, then you would assume 100 percent capture.

To determine the emissions reduction efficiency of the control device, you would conduct measurements of the inlet and outlet gas streams. The test would consist of three runs, each run lasting at least 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

- Method 1 or 1A for selection of the sampling sites;
- Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate;
- Method 3, 3A, or 3B for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981;
- Method 4 to determine stack moisture; and
- Method 25 or 25A to determine organic volatile matter concentration.

Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

If you use a solvent recovery system, you could determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you would be required to measure the amount of all materials used in the affected source during each month of the initial compliance period and determine the volatile matter contained in these materials. You would also measure the amount of volatile matter recovered by the solvent recovery system each month of the initial compliance period. Then you would compare the amount recovered to the amount used to determine the overall control efficiency, and apply this efficiency to the ratio of organic HAP to coating solids for the materials used. You would record the calculations and results and include them in your Notification of Compliance Status.

Operating Limits. As mentioned above, you would establish operating limits as part of the initial performance test of an emission capture and control system. The operating limits are the values of certain parameters measured for capture systems and control devices during the most recent performance test that demonstrated compliance with the emission limits. The proposed rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry.

You would be required to install, calibrate, maintain, and continuously operate all monitoring equipment according to the manufacturer's specifications and ensure that the CPMS meet the requirements in 40 CFR 63.3568 of the proposed rule. If you use control devices other than those identified in the proposed rule, you would submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal oxidizer, you would continuously monitor the appropriate temperature and record it at least every 15 minutes. The temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit would be the average temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or above that limit.

If you use a catalytic oxidizer you may choose from two methods to determine operating limits. In the first method, you would continuously monitor the temperature immediately before and after the catalyst bed and record it at least every 15 minutes. The operating limits would be the average temperature difference across the catalyst bed during the performance test, and for each 3-hour period the average temperature and the average temperature difference would have to be at or above these limits. In the alternative method, you would continuously monitor the temperature immediately before the catalyst bed and record it at least every 15 minutes. The operating limit would be the average temperature just before the catalyst bed during the performance test, and for each 3-hour period the average temperature would have to be at or above this limit. As part of the alternative method, you must also develop and implement an inspection and maintenance plan for your catalytic oxidizer.

If you use a carbon adsorber and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser, you would monitor the outlet gas temperature to ensure that the air stream is being cooled to a low enough temperature. The operating limit would be the average condenser outlet gas temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or below that limit.

If you use a concentrator, you would monitor the desorption concentrate stream gas temperature and the pressure drop of the dilute stream across the concentrator. The operating limits would be the desorption concentrate gas stream temperature (to be met as a minimum) and the dilute stream pressure drop (not to be exceeded).

For each capture system that is not a PTE, you would establish operating limits for gas volumetric flow rate or duct static pressure for each enclosure or capture device. The operating limit would be the average volumetric flow rate or duct static pressure during the performance test, to be met as a minimum. For each capture system that is a PTE, the operating limit would require the average facial velocity of air through all natural draft openings to be at least 200 feet per minute or the pressure drop across the enclosure to be at least 0.007 inches water.

Work Practice Standards. If you use a capture system and control device for compliance, you would be required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. That plan would include a description of all steps taken to minimize emissions from those sources (*e.g.*, using closed storage containers, practices to minimize emissions during filling and transfer of contents from containers, using spill minimization techniques, *etc.*). You would have to make the plan available for inspection if the Administrator requests to see it.

Operations During Startup, Shutdown, or Malfunction. You would be required to develop and operate your capture system and control device according to a SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

H. What Are the Continuous Compliance Requirements?

Option 1: Compliance Based on the Compliant Material Option. If you demonstrate compliance with the proposed emission limits based on the compliant material option, you would demonstrate continuous compliance if, for each 12-month compliance period, the organic HAP content of each coating used does not exceed the applicable emission limit and you use no thinner that contains organic HAP.

Option 2: Compliance Based on the Emission Rate Without Add-On Controls Option. If you demonstrate compliance with the proposed emission limits based on the emission rate without add-on controls option, you would demonstrate continuous compliance if, for each rolling 12-month compliance period, the ratio of organic HAP in all coatings and thinners in each coating type segment to coating solids in that coating type segment is less than or equal to the applicable emission limit. You would follow the same procedures for calculating the organic HAP to coating solids ratio that you used for the initial compliance period. If you use an alternative calculated overall HAP emission limit for all coating type segments within a subcategory, you would use the same procedures that you used for the initial compliance period. Whichever approach you use must be used consistently throughout each 12-month compliance period.

Option 3: Compliance Based on the Emission Rate With Add-On Controls Option. For each coating operation on which you use a capture system and control device, other than a solvent recovery system for which you conduct a liquid-liquid material balance, you would use the continuous parameter monitoring results for the month in determining the mass of organic HAP emissions. If the monitoring results indicate no deviations from the operating limits and there were no bypasses of the control device, you would assume the capture system and control device are achieving the same percent emissions reduction efficiency as they did during the most recent performance test in which compliance was demonstrated. You would then apply that percent reduction to the total mass of organic HAP in materials used in controlled coating operations to determine the monthly emission rate from those operations. If there were any deviations from the operating limits during the month or any bypasses of the control device, you would account for them in the calculation of the monthly emission rate by assuming the capture system and control device were achieving zero emissions reduction during the periods of deviation. Then, you would determine the annual average emission rate by calculating the ratio for the most recent 12-month period.

For each coating operation on which you use a solvent recovery system and conduct a liquid-liquid material balance each month, you would use the liquid-

liquid material balance to determine control efficiency. To determine the overall control efficiency, you must measure the amount of all materials used during each month and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month, calculate the overall control efficiency, and apply it to the total mass of organic HAP in the materials used to determine total organic HAP emissions. Then, you would determine the annual average emission rate by taking the average of the monthly ratios for the most recent 12-month period.

Operating Limits. If you use a capture system and control device, the proposed rule would require you to achieve on a continuous basis the operating limits you establish during the performance test. If the continuous monitoring shows that the capture system and control device is operating outside the range of values established during the performance test, you have deviated from the established operating limits.

If you operate a capture system and control device that allow emissions to bypass the control device, you would have to demonstrate that organic HAP emissions from each emission point within the affected source are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four monitoring procedures:

- Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;
- Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;
- Valve closure continuous monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or
- Automatic shutdown system to stop the coating operation when flow is diverted from the control device.

If the bypass monitoring procedures indicate that emissions are not routed to the control device, you have deviated from the emission limits.

Work Practice Standards. If you use an emission capture system and control device for compliance, you would be required to implement on an ongoing basis the work practice plan you developed during the initial compliance period. If you did not develop a plan for reducing organic HAP emissions or you do not implement the plan, that would be a deviation from the work practice standards.

Operations During Startup, Shutdown, or Malfunction. If you use a capture system and control device for compliance, you would be required to develop and operate according to an SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

Option 4: Compliance Based on the Control Efficiency/Outlet Concentration Option. If you use a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, your testing and continuous compliance requirements are the same as those in Option 3. For add-on control systems, you would be required to install control device parameter monitoring equipment to be used to demonstrate compliance with the operating requirements for add-on control systems in today's proposed rule. If you operate a CPMS, it would have to collect data at least every 15 minutes and you would need to have at least three data points per hour to have a valid hour of data. You would have to operate the CPMS at all times the surface coating operation and control systems are operating. You would also have to conduct proper maintenance of the CPMS and maintain an inventory of necessary parts for routine repairs of the CPMS. Using the data collected with the CPMS, you would calculate and record the average values of each operating parameter according to the specified averaging times.

I. What Are the Notification, Recordkeeping, and Reporting Requirements?

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in the proposed rule. The General Provisions notification requirements include: Initial notifications, notification of performance test if you are complying using a capture system and control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports.

Initial Notification. If the proposed standards apply to you as a new or reconstructed affected source, you must send a notification to the EPA Regional Office in the region where your facility is located and to your State agency within 120 days after the date of initial startup or 120 days after publication of the final rule, whichever is later. Existing affected sources must send the initial notification within 1 year after publication of the final rule. The report notifies us and your State agency that you have constructed a new facility, reconstructed an existing facility, or you have an existing facility that is subject to the proposed rule. Thus, it allows you and the permitting authority to plan for compliance activities. You would also need to send a notification of planned construction or reconstruction of a source that would be subject to the proposed rule and apply for approval to construct or reconstruct.

Notification of Performance Test. If you demonstrate compliance by using a capture system and control device for which you do not conduct a liquid-liquid material balance, you would conduct a performance test. For a new or reconstructed affected source, the performance test would be required no later than 180 days after initial startup or 180 days after publication of the final rule, whichever is later. For an existing source, the performance test would be required no later than the compliance date. You must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin, as indicated in the General Provisions for the NESHAP.

Notification of Compliance Status. Your compliance procedures would depend on which compliance option you choose. For each compliance option, you would send us a Notification of Compliance Status within 30 days after the end of the initial compliance period. In the notification, you would certify whether the affected source has complied with the proposed standards, identify the option(s) you used to demonstrate initial compliance, summarize the data and calculations supporting the compliance demonstration, and describe how you will determine continuous compliance.

If you elect to comply by using a capture system and control device for which you conduct performance tests, you must provide the results of the tests. Your notification would also include the measured range of each monitored parameter and the operating limits established during the performance test, and information showing whether the affected source has complied with its operating limits during the initial compliance period.

Recordkeeping Requirements. You would be required to keep records of reported information and all other information necessary to document compliance with the proposed rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3

years' records may be kept off-site. Records pertaining to the design and operation of control and monitoring equipment must be kept for the life of the equipment.

Depending on the compliance option that you choose, you may need to keep records of the following:

- Organic HAP content, volatile matter content, coating solids content, and quantity of the coatings and other materials applied; and
- All documentation supporting initial notifications and notifications of compliance status.

If you demonstrate compliance by using a capture system and control device, you would also need to keep records of the following:

- The occurrence and duration of each startup, shutdown, or malfunction of the emission capture system and control device;
- All maintenance performed on the capture system and control device;
- Actions taken during startup, shutdown, and malfunction that are different from the procedures specified in the affected source's SSMP;
- All information necessary to demonstrate conformance with the affected source's SSMP when the plan procedures are followed;
- All information necessary to demonstrate conformance with the affected source's plan for minimizing emissions from mixing, storage, and waste handling operations;
- Each period during which a CPMS is malfunctioning or inoperative (including out of control periods);
- All required measurements needed to demonstrate compliance with the standards; and
- All results of performance tests.

The proposed rule would require you to collect and keep records according to your monitoring plan. Failure to collect and keep the specified minimum data would be a deviation that is separate from any emission limits, operating limits, or work practice standards.

Deviations, as determined from those records, would need to be recorded and also reported. A deviation is any instance when any requirement or obligation established by the proposed rule including, but not limited to, the emission limits, operating limits, and work practice standards, are not met.

If you use a capture system and control device to reduce organic HAP emissions, you would have to make your SSMP available for inspection if the Administrator requests to see it. The plan would stay in your records for the life of the affected source or until the affected source is no longer subject to the proposed standards. If you revise the plan, you would need to keep the previous superceded versions on record for 5 years following the revision.

Periodic Reports. Each year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you would submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you would need to include them in the report as follows:

- Report each deviation from the emission limit.
- Report each deviation from the work practice standards if you use an emission capture system and control device.
- If you use an emission capture system and control device, report each deviation from an operating limit and each time a bypass line diverts emissions from the control device to the atmosphere.
- Report other specific information on the periods of time and details of deviations that occurred.

You would also have to include an explanation in each semiannual report if a change occurs that might affect the compliance status of the affected source or you change to another option for meeting the applicable emission limit.

Other Reports. You would be required to submit reports for periods of startup, shutdown, and malfunction of the capture system and control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your plan, you would report those procedures with your semiannual reports in addition to immediate reports required by the General Provisions in section 63.10(d)(5)(ii).

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category and Subcategories?

Metal can surface coating operations is on the CAA list of source categories to be regulated because it contains major sources that emit or have the potential to emit at least 9.07 Mg (10 tons) of any one HAP or at least 22.7 Mg (25 tons) of any combination of HAP annually. The proposed rule would control HAP emissions from both new or reconstructed and existing major sources. Area sources are not being regulated under the proposed rule.

We intend the source category to include facilities for which the surface coating of metal cans is either their principal activity or is an integral part of a production process which is the principal activity. While some facilities are entirely dedicated to surface coating, most metal can surface coating operations are located at plant sites for which can manufacturing is the principal activity. Both stand-alone and co-located surface coating operations are included in the source category, and the definition of the source category is intended to reflect that inclusion. The project database was used to identify those "major source" or "synthetic minor source" facilities that reported using at least 5,700 liter/yr (1,500 gal/yr) of coatings in metal can surface coating operations.

The source category does not include research or laboratory facilities or janitorial, building, and facility maintenance operations.

Subcategory Selection. The statute gives us discretion to determine if and how to subcategorize. A subcategory is a group of similar sources within a given source category. As part of the regulatory development process, we evaluate the similarities and differences among industry segments or groups of facilities comprising a source category. In establishing subcategories, we consider factors such as process operations (type of process, raw materials, chemistry/formulation data, associated equipment, and final products), emission characteristics (amount and type of HAP), control device applicability, and opportunities for pollution prevention. We may also consider existing regulations or guidance from States and other regulatory agencies in determining subcategories.

After reviewing survey responses from the industry, facility site visit reports, and information received from stakeholder meetings we found that the metal can surface coating industry may be grouped into four product groups or subcategories with different coating processes and performance requirements. The four subcategories are (1) One- and two-piece D&I can body coating, (2) sheetcoating, (3) three-piece can body assembly coating, and (4) end lining. We also found significant differences in coating requirements for cans manufactured for different end uses within several of these subcategories that warranted further segmentation into coating types within the subcategories. Descriptions of each subcategory and coating type segment are given in the following paragraphs.

One- and Two-Piece Draw and Iron Can Body Coating. Aluminum or steel D&I cans are made from metal coil by stamping out shallow metal cups which are then placed on a cylinder and forced through a series of rings of decreasing annular space to further draw out the

wall of the can and iron out folds in the metal. Surface coatings, both interior and exterior, are then applied to the formed can.

There are several reasons why D&I can body coating is a separate subcategory. In both annual production and overall HAP emissions, cans made by the D&I process make up the largest component of the metal can manufacturing industry. The processes by which they are produced and surface-coated, and, to some extent, the coatings used, differ significantly from those used for other types of cans, and because of existing VOC rules and the coating processes and configuration of D&I facilities, emission control devices are commonly used.

While the general production and coating application processes are similar for all D&I cans, differences in coating types and relative amount of coating used for cans with different end uses warrant a further subdivision of that subcategory into three coating type segments: (1) Two-piece beverage can coatings, (2) two-piece food can coatings, and (3) one-piece aerosol can coatings. A different MACT standard is proposed for each of those segments.

Sheetcoating. The subcategory includes all of the flat metal sheet coating operations associated with the manufacture of three-piece cans, decorative tins, crowns and closures, and two-piece draw-redraw cans. The methods of coating application and the types of coatings used on flat sheets differ significantly from those used in the other subcategories. The coatings (interior and exterior base coatings, decorative inks, and overvarnishes) are most commonly applied by roller to the flat metal sheets, which then pass through a curing oven. While those emission points are sometimes uncontrolled, the best-performing sources typically control emissions through the use of ultraviolet cured coatings or partial or total enclosures routed to thermal or catalytic oxidizers that achieve destruction efficiencies of 95 percent or higher. Decorative inks, which make up a significant proportion of the coatings used in sheetcoating, have very low concentrations of HAP and are inherently low-emitting.

Three-Piece Can Body Assembly Coatings. Three-piece cans consist of an open-ended can body and two separate ends. Can body assembly is the step in the three-piece can manufacturing process in which flat body blanks are formed into a cylinder and the side seams are joined together. Coating operations associated with can body assembly are interior and exterior side seam stripe and inside spray applications.

Several characteristics of three-piece can body assembly coating place it in a separate subcategory. Can assembly facilities use only a limited number of coatings in relatively small total volumes. Side seam striping is unique in that the application process and coating formulations have higher solvency requirements than other can body and end coatings and end seal compounds. Side seam stripe emissions are typically uncontrolled because emission rates are low and capturing emissions is not economical due to high air flow rates and low solvent loading.

Three-piece cans made for different end uses and contents require coatings, particularly side seam stripes, with widely differing chemical characteristics and shelf life requirements. Some food cans must be sterilized before filling by subjecting them to high temperature steam, chemicals, or a combination of both, while other food cans do not require this kind of aseptic processing. Different kinds of foods vary in their acid contents. Coatings required on cans for these different end uses often have significantly different HAP contents. Inside spray coatings also differ from side seam stripes in quantity used and chemical composition. For those reasons, the three-piece can body assembly coating subcategory is divided into five distinct coating type segments with different emission limits for each. Those segments include: (1) Inside spray coatings, (2) aseptic side seam stripe coatings for food cans, (3) non-aseptic side seam stripe coatings for food cans, (4) side seam stripe coatings for non-food general line cans, and (5) side seam stripe coatings for non-food aerosol cans.

End Lining Coatings. End lining coating operations consisting of the application of end seal compounds to can ends are in a separate subcategory for several reasons. Unlike other coatings, end seal compounds are applied in a bead around the edges of can ends. Curing takes place under ambient conditions (not in a curing oven) over a longer period of time than other coatings. And the coating formulation (solids content, types of solvents used) of end seal compounds differs significantly from other coatings. Emissions from end lining operations are not controlled because the curing rate of end seal compounds is slow. Controlling such volatile HAP emissions is not cost effective, since it would result in a high volume, low concentration emission stream requiring significant auxiliary fuel usage to achieve a high destruction efficiency.

As with side seam stripes, some end seal compounds must withstand aseptic processing while others do not have to meet that requirement. There are significant differences in formulation and HAP content (and emissions) for end seal compounds for aseptic and non-aseptic applications. For that reason the end lining subcategory is divided into two coating type segments: aseptic and non-aseptic.

B. How Did We Select the Regulated Pollutants?

Organic HAP. Available emission data collected during the development of the proposed rule show that the primary organic HAP emitted from metal can surface coating operations include EGBE and other glycol ethers, xylenes, hexane, MEK, and MIBK. Those compounds account for 95 percent of that source category's nationwide organic HAP emissions. Other significant organic HAP emissions include isophorone, ethyl benzene, toluene, trichloroethylene, formaldehyde, and naphthalene. Because coatings used by metal can surface coating operations contain many combinations of those and other organic HAP, it is not practical to regulate them individually. Therefore, the proposed rule would regulate emissions of all organic HAP.

Inorganic HAP. Based on information reported during the development of the proposed rule, inorganic HAP contained in the coatings used by that source category include chromium, manganese, and antimony compounds. Because these inorganic compounds are in the coating solids, they are retained in the dry (film) coating on the substrate to which the coating is applied. The only opportunity for any quantifiable solids material to enter the ambient air is if they are spray-applied and emitted as overspray. Because of the atomization of the coating during spray application, inorganic compounds become airborne and are either deposited on the substrate, fall to the floor in the spray application area, or enter the air and become susceptible to transport to other areas in the building or outside into the ambient air. The data available to EPA indicate that the facilities in that source category that use spray application techniques in rare instances apply coatings that contain inorganic HAP compounds. However, because they do not have emission control systems for inorganic compounds, there is no demonstrated control technology on which to base a standard. Therefore, the proposed rule would not regulate emissions of inorganic HAP.

C. How Did We Select the Affected Source?

In selecting the affected source(s) for emission standards, our primary goal is to ensure that MACT is applied to HAP-emitting operations or activities within the source category or subcategory being regulated. The affected source also serves to determine where new source MACT applies under a particular standard. Specifically, the General Provisions in subpart A of 40 CFR part 63 define the terms "construction" and "reconstruction" with reference to the term "affected source" and provide that new source MACT applies when construction or reconstruction of an affected source occurs. The collection of equipment and activities evaluated in determining MACT (including the MACT floor) is used in defining the affected source.

When an emission standard is based on a collection of emission sources or total facility emissions, we select an affected source based on that same collection of emission sources, or the total facility, as well. That approach for defining the affected source broadly is particularly appropriate for industries where a plantwide emission standard provides the opportunity and incentive for owners and operators to utilize control strategies that are more cost-effective than if separate standards were established for each emission point within an affected source.

Selection of Affected Source. The affected source for the proposed standards is broadly defined for each subcategory. It includes all metal can surface coating operations and associated ancillary equipment within each of the four subcategories. Those operations include all coating application equipment, all coating and thinner storage containers and mixing vessels, all equipment and containers used for conveying coatings and thinners, and all storage containers and conveyance equipment for waste materials generated by a metal can surface coating operation.

Since a facility may have coating operations in more than one subcategory and, thus, be subject to separate emission limits for each subcategory, we have defined all the coating-related equipment in each subcategory as the affected source. In selecting the affected source, we considered, for each operation, the extent to which HAP-containing materials are used and the amount of HAP that are emitted. Coating application, flash-off, and curing/drying operations account for the majority of HAP emission and are included in the affected source.

We were not able to obtain data to adequately quantify HAP emissions from storage, mixing, cleaning, waste handling and wastewater treatment. However, solvents that are added to coatings as thinners, for example, may be emitted during mixing and storage. The level of emissions depends on the type of mixing and the type of storage container and the work practices used at the affected source. The magnitude of emissions from cleaning depends primarily on the type, amount, and HAP content of cleaning materials used. Emissions from waste handling operations depend on the type of system used to collect and transport organic-HAP-containing waste materials in the affected source. The HAP emissions from wastewater treatment depend on the quantity and types of HAP discharged to the wastewater treatment operation and the subsequent wastewater treatment processes, *e.g.*, treatment by aeration or by biodegradation. Mixing, storage, cleaning, waste handling, and wastewater treatment operations are included in the affected source.

A broad definition of the affected source was selected to provide maximum flexibility in complying with the proposed emission limits for organic HAP. In planning its total usage of HAP-containing materials, each affected source can select among available coating, printing, thinning, and cleaning materials, as well as use of emission capture systems and add-on controls for coating operations, to maximize emissions reductions in the most cost-effective manner.

Additional information on the metal can surface coating operations selected for regulation and other operations are included in the docket for the proposed standards.

D. How Did We Determine the Basis and Level of the Proposed Standards for New or Reconstructed Affected Sources and Existing Affected Sources?

The sections below present the rationale for determining the MACT floor, regulatory alternatives beyond the floor, and selection of the proposed standards for new or reconstructed and existing affected sources.

How did we determine the MACT floor? After we identify the specific source categories or subcategories of sources to regulate under section 112 of the CAA, we must develop emission standards for each category and subcategory. Section 112(d)(3) establishes a minimum baseline or floor for standards. For new or reconstructed affected sources in a category or subcategory, the standards cannot be less stringent than the emission control achieved in practice by the best-controlled similar source for which we have emission information. The standards for existing affected sources can be less stringent than standards for new or reconstructed sources, but they cannot be less stringent than the average emission control achieved by the best-performing 12 percent of existing sources (or the best-performing five existing sources for categories or subcategories with fewer than 30 sources) for which we have emission information.

In the metal can surface coating industry, organic HAP emission control for surface coating operations is accomplished through the use of low- or no-HAP coatings and thinners and add-on capture and control systems. While various emission control techniques have achieved broad use in the industry, different facilities use various combinations of low- or no-HAP materials and add-on control equipment for different types of surface coating operations. For example, the continuous linear configuration of sheetcoating operations make them more amenable to emissions reduction with add-on control equipment, while the nature of side seam stripe coating applications make add-on emission control impractical.

Thus, the most reasonable approach to establishing a MACT floor is the evaluation of a source's organic HAP emissions for each type of coating operation and each coating type segment it includes. To account for differences in coating volumes used in different types of operations and differences in production levels from one source to another, we normalized the organic HAP emission rate by the volume of coating solids used.

We used information obtained from industry survey responses to estimate the organic HAP emission rate for each subcategory and coating type segment included in each facility. We calculated total organic HAP emissions by assuming that 100 percent of the volatile components in all coatings and thinners are emitted. Sources used for determining the MACT floor emission limits included those facilities that listed major source or synthetic minor source as their title V status on their responses to questionnaires we sent to them and that used at least 5,700 liters/yr (1,500 gal/yr) of coatings in metal can surface coating operations. Other sources were included if their data indicated that they have the capacity to increase their organic HAP emissions to at least 9.1 Mg/yr (10 tpy), even though

they did not identify themselves as major or synthetic minor sources.

Using the organic HAP emissions and the total volume of coating solids used in each subcategory and coating type segment for each survey respondent, we calculated the normalized organic HAP emissions (emission rate) in units of kilograms (kg) organic HAP per liter of coating solids (pounds (lb) organic HAP per gal of coating solids) used. The sources were then ranked from the lowest to the highest emission rate in each of the four subcategories and coating type segments.

For subcategories and coating segments in which there were more than 30 sources, the existing source MACT floor was based on the top 12 percent of the sources. For subcategories and coating segments with fewer than 30 sources, the existing source MACT floor was based on the top five sources. The average emission rate for each subcategory was interpreted as the median value of the included sources. The median emission rate was selected rather than the mean or mode because it is associated with an actual emission rate being achieved by a real facility. The best performing source in each subcategory or coating segment in the database determined the MACT floor for new or reconstructed affected sources.

The MACT floor analysis for new affected sources resulted in the emission limits for each subcategory and coating segment given in Table 2 of this preamble. The analysis for existing affected sources resulted in emission limits given in Table 3 of this preamble. The alternative control efficiency and outlet concentration limits for those new and existing sources using capture and control systems are given in Table 4 of this preamble. The survey data showed no appreciable differences in substrates coated, coating technologies used, or the applicability of control measures between the floor sources and the remaining sources in each subcategory and coating segment.

After the floors have been determined for new or reconstructed and existing sources in a source category or subcategory, we must set emission standards that are technically achievable and no less stringent than the floors. Such standards must then be met by all affected sources within the source category or subcategory. We identify and consider any reasonable regulatory alternatives that are beyond-the-floor, taking into account emissions reductions, cost, non-air quality health and environmental impacts, and energy requirements. Different beyond-the-floor alternatives may be considered for new or reconstructed affected sources and existing affected sources.

The beyond-the-floor option considered for all the subcategories and for both new and existing sources was requiring the use of capture systems and add-on control devices for all metal can surface coating operations. The add-on control device chosen for the beyond-the-floor analysis was a regenerative thermal oxidizer (RTO). An RTO was chosen to reflect the highest emission reduction level possible.

In evaluating the beyond-the-floor option, we calculated the additional costs and emission reductions associated with the use of a capture system and RTO. We calculated the cost to reduce each ton of organic HAP emissions using the more stringent level of control. Requiring sources to meet the beyond-the-floor level would result in an estimated additional emissions reduction of 283 Mg/yr (312 tpy) at an estimated cost of $14.6 million per year or $51,600 per Mg HAP ($46,800 per ton HAP) reduced.

Without having information on the benefits that would be achieved by reducing emissions beyond-the-floor, we determined that the additional emission reductions that could be achieved do not warrant the costs that each affected source would incur by using add-on controls. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time. After implementation of those standards, we will evaluate the health and environmental risks that may be posed as a result of exposure to emissions from the metal can surface coating source category. At that time, we will determine whether additional control is warranted in light of the available risk information.

We note here that our assumption, used in the development of the MACT floors, that 100 percent of the organic HAP in the materials used are emitted by the affected source would not apply when the source sends organic HAP waste materials to a facility for treatment or disposal. We made that assumption because the industry survey responses provided little information as to the amount of organic HAP recovered and recycled or treated and disposed of as a hazardous waste. We, therefore, concluded that the practice may not be common within the metal can surface coating industry. We recognize, however, that some metal can surface coating facilities may conduct such activities and should be allowed to account for such activities in determining their emissions. Thus, the proposed rule allows you to reduce the organic HAP emissions by the amount of any organic HAP contained in waste treated or disposed of at a hazardous waste treatment, storage, and disposal facility that is regulated under 40 CFR part 262, 264, 265, or 266.

The alternative capture/control efficiency limit of 95 percent for existing sources and 97 percent for new or reconstructed sources, and the 20 parts per million by volume HAP outlet concentration limit are based on the documented emission reductions in test reports provided by metal can facilities and the EPA's study of available incinerator technology, cost, and energy use. We are requesting specific comment on the usefulness and likelihood of the proposed alternative limits and the level of control required by the alternative limits.

E. How Did We Select the Format of the Standards?

We selected the primary format of the standards to be mass of HAP per volume of coating solids. We selected volume of coating solids to normalize the rate of organic HAP emissions across all sizes and types of coating operations and facilities. Volume of coating solids used is directly related to the surface area coated and, therefore, provides an equitable basis of comparison for all coatings, regardless of differences in coating densities. A format based on the mass or weight of coating solids instead of volume could result in inequitable standards for higher-density coatings compared to coatings with lower densities per unit volume.

To provide compliance flexibility, we also provided an alternative compliance option based on percent reduction achieved by a capture system and control device or the HAP concentration exiting a control device. We selected those alternative formats because they would achieve equivalent or greater HAP emissions reduction at those facilities using capture/control systems while reducing the recordkeeping and reporting burden for those facilities. Those alternative limits are based on test report data provided by industry and reflect what we believe to be the achievable level of control available with control devices commonly used by the metal can surface coating industry.

Another choice for the format of the standards that we considered but rejected was a usage limit (mass of HAP per unit of production). As it is not our intent to limit a facility's production under those proposed standards, we rejected a usage limit.

F. How Did We Select the Testing and Initial Compliance Requirements?

The MACT levels of control can be achieved in several different ways. Many affected sources would be able to use low- or no-HAP coatings, although they may not be available to meet all needs. If an affected source also uses thinners containing organic HAP, it may be able to switch to widely available low- or no-HAP thinners to reduce organic HAP emissions to the MACT level of control. Other affected sources may use capture systems and add-on control devices, either alone or in combination with low- HAP coatings, to reduce emissions.

Reflecting those alternative approaches, the proposed standards would allow you to choose among several options to demonstrate compliance with the proposed standards for organic HAP, using coatings and thinners with low- or no-organic HAP, using a combination of low- or no-HAP coatings and emission capture and control devices, or using emission capture and control devices for all surface coating operations.

For the Compliant Material Option. You would be required to document the organic HAP content of all coatings and show that each is less than the applicable emission limit. You would also have to show that each thinner used contains no organic HAP. Method 311 is the method developed by EPA for determining the mass fraction of organic HAP in coatings and has been used in previous surface coating NESHAP. We have not identified any other methods that provide advantages over Method 311 for use in the proposed standards.

Method 24 is the method developed by EPA for determining the mass fraction of volatile matter for coatings and can optionally be used to determine the nonaqueous volatile matter content as a surrogate for organic HAP. In past standards, volatile organic compound (VOC) emission control measures have been implemented in coating industries with Method 24 as the compliance method. We have not identified any other methods that provide advantages over Method 24 for use in the proposed standards.

The proposed methods for determining volume fraction of coating solids are either ASTM Method D2697–86(1998) or ASTM Method D6093–97. Those are voluntary consensus standards (VCS) determined to be appropriate for the proposed rule; they represent the consensus of coating industry and other experts involved in their development.

For the Emission Rate Without Add-On Controls Option. To demonstrate initial compliance using that option, you would calculate the total organic HAP emission rate for all of your coating operation(s) in each subcategory and coating type segment. Total organic HAP emission rate is based on the total mass of organic HAP in all coatings and thinners and the total volume of coating solids used during the initial compliance period. You would be required to demonstrate that the organic HAP emission rate does not exceed the applicable emission limit using the methods discussed previously.

For the Emission Rate With Add-On Controls Option. If you use a capture system and control device, other than a solvent recovery device for which you conduct a monthly liquid-liquid material balance, you would be required to conduct an initial performance test of the system to determine its overall control efficiency. For a solvent recovery system for which you conduct a liquid-liquid material balance, you would determine the quantity of volatile matter applied and the quantity recovered during the initial compliance period to determine its overall control efficiency. The total monthly mass of organic HAP in all coatings and thinners used in each subcategory or coating segment with controls would be reduced by the overall control efficiency. That reduced value for total mass of organic HAP would then be used with the values from the preceding 11 months to calculate the 12-month rolling average organic HAP emission rate in kg HAP/liter of coating solids (lb HAP/gal of coating solids).

If you conduct a performance test, you would also determine parameter operating limits during the test. The test methods that the proposed standards would require for the performance test have been required under many standards of performance for industrial surface coating sources under 40 CFR part 60 and NESHAP under 40 CFR part 63. We have not identified any other methods that provide advantages over those methods.

For the Capture Efficiency/Outlet Concentration Option. If you use a capture system and control device other than a solvent recovery device for which you conduct a monthly liquid-liquid material balance, you would be required to conduct an initial performance test of the system to determine its overall control efficiency or the control device outlet concentration and meet the same initial compliance requirements described in Option 3.

G. How Did We Select the Continuous Compliance Requirements?

To demonstrate continuous compliance with the emission limits, you would need records of the quantity of coatings and thinners used and the data and calculations supporting your determination of their organic HAP content. If you conduct liquid-liquid material balances, you would need records of the quantity of volatile matter used and the quantity recovered by the solvent recovery systems each month.

To ensure continuous compliance with the proposed organic HAP emission limits and operating limits, the proposed standards would require continuous parameter monitoring of capture systems and control devices and recordkeeping. We selected the following requirements based on reasonable cost, ease of execution, and usefulness of the resulting data to both the owners or operators and EPA for ensuring continuous compliance with the emission limits and operating limits.

We are proposing that certain parameters be continuously monitored for the types of capture systems and control devices commonly used in the industry. Those monitoring parameters have been used in other standards for similar industries. The values of those parameters that correspond to compliance with the proposed emission limits are established during the initial or most recent performance test that demonstrates compliance. Those values are your operating limits for the capture system and control device.

You would be required to determine 3-hour average values for most monitored parameters for the affected source. We selected that averaging period to reflect operating conditions during the performance test to ensure the control system is continuously operating at the same or better control level as during a performance test demonstrating compliance with the emission limits.

H. How Did We Select the Test Methods for Determining Compliance With the Emission Limits Using Add-On Control Devices?

Today's proposed rule would require you to conduct performance tests to demonstrate compliance with the compliance options using add-on control devices. When determining compliance with options using add-on control devices, you also would be required to determine the capture efficiency of the associated enclosures if the enclosure does not qualify as a PTE. The test methods you would have to use to measure those pollutants and capture

efficiency for enclosures are discussed below.

We are proposing the use of EPA Method 25A, "Determination of Total Gaseous Organic Matter Concentration Using a Flame Ionization Analyzer," for measuring THC emissions because most of the metal can facilities that are already required to measure THC emissions use that method. Also, most of the available emissions data that we used to evaluate THC control efficiencies were measured using Method 25A and reported on an as carbon basis. Method 25A is better suited than EPA Method 25, "Measurement of Total Gaseous Nonmethane Organic Emissions as Carbon (TGNMO);" for measuring emission streams from metal can coating lines which typically have lower THC concentrations (less than 50 parts per million) and relatively high moisture contents. However, unlike Method 25, Method 25A does measure methane as a THC. Because many of the well-controlled metal can facilities are required by permit to reduce VOC emissions, those facilities generally are allowed to subtract methane emissions from the THC measurement when reporting VOC emissions because methane is not a VOC, according to EPA's definition of VOC. Therefore, we also would allow you to subtract methane emissions from measured THC values using EPA Method 18, "Measurement of Gaseous Organic Compound Emissions by Gas Chromotography." Method 18 is a self-validating method.

We are proposing the use of EPA Method 204, "Criteria for and Verification of Permanent or Temporary Total Enclosure," and Methods 204A through 204F for determining the capture efficiency of enclosures. Methods 204A through 204F include the following: Method 204A, "Volatile Organic Compounds Content In Liquids Input Stream," Method 204B, "Volatile Organic Compounds Emissions In Captured Stream," Method 204C, "Volatile Organic Compounds Emissions In Captured Stream (Dilution Technique)," Method 204D, "Volatile Organic Compounds Emissions In Uncaptured Stream From Temporary Total Enclosure," Method 204E, "Volatile Organic Compounds Emissions In Uncaptured Stream From Building Enclosure," and Method 204F, "Volatile Organic Compounds Content In Liquid Input Stream (Distillation Approach)." If the enclosure meets the criteria in EPA Method 204 for a PTE, then you may assume that its capture efficiency is 100 percent. If the enclosure is not a PTE, then you would have to build a temporary total enclosure (TTE) around it that meets the definition of a TTE in EPA Method 204, and you would be required to determine the capture efficiency of the TTE using Methods 204A through 204F (as appropriate). You would then have to measure emissions from both the control device and the TTE and use the combined emissions to determine compliance.

Industry representatives have expressed concern with using EPA Methods 204 and 204A through F for determining capture efficiency of coating line enclosures. The industry representatives have indicated that some facilities may have difficulty retrofitting a PTE or TTE that meets the EPA Method 204 criteria. Partial enclosures may be able to achieve high capture, but Methods 204 and 204A through F are the only available methods for testing the efficiency of partial enclosures. We recognize the need for flexibility in determination of capture efficiency for metal can coating line enclosures and welcome your comments on alternative approaches for determining capture efficiency. Today's proposed rule would allow facilities to petition the Administrator for use of alternative test methods.

I. How Did We Select Notification, Recordkeeping, and Reporting Requirements?

You would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 5 of the proposed subpart KKKK. We evaluated the General Provisions requirements and included those we determined to be the minimum notification, recordkeeping, and reporting necessary to ensure compliance with and effective enforcement of the proposed standards, modifying them as appropriate for the metal can surface coating category.

IV. Summary of Environmental, Energy, and Economic Impacts

The proposed standards would affect 142 major source metal can surface coating facilities. The impacts are presented relative to a baseline reflecting the level of control prior to the standards. Due to consolidation throughout the industry, there is not expected to be any net growth within the metal can surface coating industry within the next 5 years. Therefore, the estimate of the impacts is presented for existing facilities only. For a facility that is already in compliance with the standards, only monitoring, recordkeeping, and reporting cost impacts were estimated. For more information on how impacts were estimated, see the BID (EPA–453/R–02–008).

The outcome of two delisting petitions that have been submitted to EPA could significantly affect the estimated impacts of this rulemaking. These petitions are the petition to delist EGBE from the HAP list and the petition to delist the two-piece beverage can subcategory from the source category list. Both petitions are being reviewed by the EPA. If granted, the delisting of either EGBE or the two-piece beverage can subcategory could affect the proposed emission limits and the number of affected sources. Thus, the estimated impacts of this proposed rule could change. Once decisions on the petitions are finalized, we will evaluate whether any changes to the proposed rule are appropriate.

A. What Are the Air Impacts?

The proposed emission limits are expected to reduce nationwide organic HAP emissions from existing major affected sources by approximately 6,160 Mg/yr (6,800 tpy). That represents a reduction of 71 percent from the baseline organic HAP emissions of 8,700 Mg/yr (9,600 tpy). Table 5 of this preamble gives a summary of the primary air impacts for major coating segment groupings associated with implementation of the proposed rule.

TABLE 5.—SUMMARY OF PRIMARY AIR IMPACTS BY SUBCATEGORY OR COATING SEGMENT FOR EXISTING SOURCES

Subcategory or or coating segment	Emissions before NESHAP, Mg/yr (tpy)	Emissions after NESHAP, Mg/yr (tpy)	Emissions reduction, Mg/yr (tpy)	Percent reduction
Two-piece D&I beverage can body coatings	4,468 (4,922)	1,644 (1,811)	2,824 (3,111)	63

TABLE 5.—SUMMARY OF PRIMARY AIR IMPACTS BY SUBCATEGORY OR COATING SEGMENT FOR EXISTING SOURCES—Continued

Subcategory or or coating segment	Emissions before NESHAP, Mg/yr (tpy)	Emissions after NESHAP, Mg/yr (tpy)	Emissions reduction, Mg/yr (tpy)	Percent reduction
Two-piece D&I food can body coatings	765 (843)	139 (153)	626 (690)	82
One-piece D&I aerosol can body coatings	16 (18)	16 (18)	0 (0)	0
Sheetcoatings	2,289 (2,522)	404 (445)	1,885 (2,077)	82
Three-piece food can assembly coatings	370 (408)	285 (314)	85 (94)	23
Three-piece non-food can assembly coatings	45 (50)	38 (42)	6 (7)	14
End lining coatings	763 (841)	34 (38)	729 (803)	95
Total	8,718 (9,603)	2,560 (2,820)	6,158 (6,783)	71

B. What Are the Cost Impacts?

Cost impacts include the costs of recordkeeping and reporting, capital equipment costs, performance testing costs, and material costs as facilities comply with the proposed rule. Recordkeeping and reporting includes all labor hours related to the tracking of coating usage, the cost of purchasing computer equipment, the labor hours required to write and submit reports, and the labor hours required to train coating personnel. Capital equipment costs for the facilities that choose to use capture equipment and add-on control devices to comply with the proposed rule include the purchase, installation, and operation of the equipment. Performance testing costs for the facilities that choose to use add-on control devices to comply with the standards include the labor hours required for a contractor to conduct performance testing on each control device used and to develop the associated reports for recordkeeping and reporting purposes.

Material costs include the cost of switching to low- or no-HAP coatings. For facilities that choose to use low- or no-HAP coatings to comply with the standards, coatings with lower HAP content are considered more expensive than higher HAP content coatings.

The total annualized costs for the 142 existing major sources are estimated at $56.2 million. Those estimates are broken down as follows; monitoring, recordkeeping, and reporting costs would contribute $7.3 million to the overall cost of the NESHAP, material costs would contribute $4.1 million, and capital equipment costs would contribute $44.8 million annually.

C. What Are the Economic Impacts?

We performed an EIA to provide an estimate of the facility and market impacts of the proposed standards as well as the social costs. The goal of the EIA is to estimate the market response of the metal can coating and production facilities to the proposed regulation and to determine the economic effects that may result due to this NESHAP. The metal can source category contains 189 potentially affected facilities that may be affected by the proposed rule. The potentially affected companies are owned by 30 companies. The NAICS code that describes the metal can manufacturing industry is 332431, Metal Can Manufacturing.

Metal can production leads to potential HAP emissions during the can coating process when high concentrations of organic HAP solvents are used and dispersed. Emissions are generated during coating application, during transportation to the oven (evaporation), and during curing. The compliance costs are associated with chemical substitution during the coating process, the installation of pollution control equipment, and recordkeeping and reporting activities. The estimated total annualized costs for the NESHAP are $56.2 million per year divided across 142 major source facilities.

In terms of industry impacts, metal can producers experience a total projected decrease of $16 million in pre-tax earnings which reflects the compliance costs associated with the production of metal cans and the resulting reductions in revenues due to the increase in the prices of the directly affected product markets and reduced quantities purchased. Through the market impacts described above, the proposed rule will create both gainers and losers within the metal can industry. Approximately one-third of the modeled facilities experience an increase in pre-tax earnings as a result of increases in price that exceed their compliance costs per unit. In contrast, the remaining two-thirds of metal can facilities experience losses in pre-tax earnings. In addition, the EIA indicates that none of the facilities within the metal can market (not including small businesses) are at risk of closure because of the proposed standards. Overall employment is projected to decrease by 176 employees, which represents a decrease of $^{9}/_{10}$th of one percent as a result of the proposed rule.

Based on the market analysis, the total social cost of the proposed rule is projected to be $53.5 million. The estimated social costs differ slightly from the projected engineering costs because social costs account for producer and consumer behavior. Consumers are projected to lose $33.3 million or 60 percent of the total social costs of the proposed rule. Producers will lose $20.2 million, or 40 percent of the total social costs. For more information, consult the EIA report supporting the proposed rule, "Economic Impact Analysis of Metal Can MACT Standards" (EPA–452/R–02–005).

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

Based on information from the industry survey responses, we found no indication that the use of low or no-organic HAP content coatings and thinners at existing sources would result in any increase or decrease in non-air health, environmental, and energy

impacts. There would be no change in utility requirements associated with the use of these materials so there would be no change in the amount of energy consumed as a result of the material conversion. Also, there would be no significant change in the amount of materials used or the amount of waste produced.

Since many facilities in the D&I can body coating and sheetcoating subcategories currently use add-on emission control devices to meet existing requirements, we anticipate that facilities in those subcategories would use add-on controls to comply with the proposed standards. Secondary air and energy impacts would result from fuel combustion needed to operate these control devices which are expected to be RTO.

The RTO require electricity and the combustion of natural gas to operate and maintain operating temperatures. By-products of fuel combustion required to generate electricity and maintain RTO operating temperature include emission of carbon monoxide, nitrogen oxides, sulfur dioxide, and particulate matter less than 10 microns in diameter (PM_{10}). Assuming the electricity required for RTO operation is generated at coal-fired plants built since 1978 and using air pollution-42 emissions factors, generation of electricity required to operate RTO at all affected D&I can body coating and sheetcoating facilities would result in the following increases in the following air pollutants: carbon monoxide, 81 tpy; nitrogen oxides, 182 tpy; sulfur dioxide, 438 tpy; and PM_{10}, 86 tpy.

Energy impacts include the consumption of electricity and natural gas needed to operate RTO. The estimated increase in electricity consumption from the operation of RTO at all D&I can body coating and sheetcoating facilities is 36,730,000 kilowatt hours per year. Increased fuel energy consumption resulting from burning natural gas would be 1,197,000 megamillion British thermal units per year. No significant secondary water or solid waste impacts would result from the operation of emission control devices.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include rules that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the proposed rule. Although section 6 of Executive Order 13132 does not apply to the proposed rule, EPA did consult with State and local officials to enable them to provide timely input in the development of the proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule from State and local officials.

D. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The proposed rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate metal can surface coating operations. Thus, Executive Order 13175 does not apply to the proposed rule.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annualized cost of the proposed rule for any year has been estimated to be less than $56.2 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In accordance with the RFA, EPA conducted an assessment of the proposed standards on small businesses within the metal can industry. Based on SBA NAICS-based size definitions and reported sales and employment data, EPA identified 13 small business, or 43.3 percent of the metal can companies. Small businesses are expected to incur only 2 percent of the total industry annualized compliance costs of $56.2 million. The EPA estimates that 10 of the 13 small businesses will experience an impact less than 1 percent of total company sales, two small firms will experience impacts between 1 and 3 percent, and one firm will experience an impact of more than 3 percent of sales. Consequently, one of the 15 facilities owned by small businesses is likely to prematurely close as a result of the proposed rule. For more information, consult the EIA report entitled "Economic Impact Analysis for the Proposed Metal Can NESHAP" in Docket A–98–41.

After considering the economic impact of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Paperwork Reduction Act

The information collection requirements in the proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2079–01) and a copy may be obtained from Susan Auby by mail at the U.S. EPA, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A) which are mandatory for all operators subject to national emission standards. Those recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The proposed standards would require maintaining records of all coating and thinning materials data and calculations used to determine compliance. That information includes the amount (kg) used during each 12-month compliance period, mass fraction organic HAP, and, for coating materials only, mass fraction of solids.

If an add-on control device is used, records must be kept of the capture efficiency of the capture system, destruction or removal efficiency of the add-on control device, and the monitored operating parameters. In addition, records must be kept of each calculation of the affected sourcewide emissions for each monthly and rolling 12-month compliance period and all data, calculations, test results, and other supporting information used to determine this value. The recordkeeping requirements are only for the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to be approximately 1,815 labor hours per year at a total annual cost of $545,000. That estimate includes a one-time performance test and report (with repeat tests where needed); one-time submission of a SSMP with semiannual reports for any event when the procedures in the plan were not followed; semiannual compliance status reports; and recordkeeping. There are no

capital/startup costs associated with the monitoring requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's rules are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for the information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1301 Constitution Avenue, NW., Room 6143, Washington, DC 20460 ((202) 566–1700)), marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 15, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by February 14, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use VCS in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA cites the following standards in this rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A through F, and 311. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods/performance specifications. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A through 204F, and 311. The search and review results have been documented and are placed in the docket (A–98–41) for the proposed rule.

Three VCS described below were identified as acceptable alternatives to EPA test methods for the purposes of the proposed rule.

The VCS ASME PTC 19–10–1981–Part 10, "Flue and Exhaust Gas Analyses," is cited in the proposed rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. That part of ASME PTC 19–10–1981–Part 10 is an acceptable alternative to Method 3B.

The two VCS, ASTM D2697–86 (Reapproved 1998), "Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings" and ASTM D6093–97, "Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer," are cited in the proposed rule as acceptable alternatives to EPA Method 24 to determine the volume fraction of coating solids. Currently, EPA Method 24 does not have a procedure for determining the volume of solids in coatings. Those standards augment the procedures in Method 24, which currently states that volume solids content be calculated from the coating manufacturer's formulation.

Six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 91), and ASTM D5403–93 are already incorporated by reference (IBR) in EPA Method 24. *Five VCS:* ASTM D1979–91, ASTM D3432-89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are IBR in EPA Method 311.

In addition to the VCS EPA uses in the proposed rule, the search for emissions measurement procedures identified 14 other VCS. The EPA determined that 11 of those 14 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the proposed rule were impractical alternatives to EPA test methods for the purposes of the proposed rule. Therefore, EPA does not intend to adopt those standards for that purpose. The reasons for the determination for the 11 methods are discussed below.

The VCS ASTM D3154–00, "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," is impractical as an alternative to EPA Methods 1, 2, 2C, 3, 3B, and 4 for the purposes of the proposed rulemaking since the standard appears to lack in quality control and quality assurance requirements. Specifically, ASTM D3154–00 does not include the following: (1) Proof that openings of standard pitot tube have not plugged during the test, (2) if differential pressure gauges other than inclined manometers (*e.g.*, magnehelic gauges) are used, their calibration must be checked after each test series, and (3) the frequency and validity range for calibration of the temperature sensors.

The VCS ASTM D3464–96 (2001), "Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer," is impractical as an alternative to EPA Method 2 for the purposes of the proposed rulemaking primarily because applicability specifications are not clearly defined, *e.g.*, range of gas composition, temperature limits. Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard limit EPA's ability to make a definitive comparison of the method in those areas.

*The VCS ISO 10780:*1994, "Stationary Source Emissions-Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts," is impractical as an alternative to EPA Method 2 in the proposed rulemaking. The standard recommends the use of an L-shaped pitot which historically has not been recommended by EPA. The EPA specifies the S-type design which has large openings that are less likely to plug up with dust.

The VCS, CAN/CSA Z223.2–M86(1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," is unacceptable as a substitute for EPA Method 3A since it does not include quantitative specifications for measurement system performance, most notably the calibration procedures and instrument performance characteristics.

The instrument performance characteristics that are provided are nonmandatory and also do not provide the same level of quality assurance as the EPA methods. For example, the zero and span/calibration drift is only checked weekly, whereas the EPA methods require drift checks after each run.

Two very similar standards, ASTM D5835–95, "Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration," and ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," are impractical alternatives to EPA Method 3A for the purposes of the proposed rulemaking because they lack in detail and quality assurance/quality control requirements. Specifically, those two standards do not include the following: (1) Sensitivity of the method, (2) acceptable levels of analyzer calibration error, (3) acceptable levels of sampling system bias, (4) zero drift and calibration drift limits, time span, and required testing frequency, (5) a method to test the interference response of the analyzer, (6) procedures to determine the minimum sampling time per run and minimum measurement time, and (7) specifications for data recorders in terms of resolution (all types) and recording intervals (digital and analog recorders only).

*The VCS ISO 12039:*2001, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," is not acceptable as an alternative to EPA Method 3A. The ISO standard is similar to EPA Method 3A, but is missing some key features. In terms of sampling, the hardware required by ISO 12039:2001 does not include a three-way calibration valve assembly or equivalent to block the sample gas flow while calibration gases are introduced. In its calibration procedures, ISO 12039:2001 only specifies a two-point calibration while EPA Method 3A specifies a three-point calibration. Also, ISO 12039:2001 does not specify performance criteria for calibration error, calibration drift, or sampling system bias tests, as in the EPA method, although checks of those quality control features are required by the ISO standard.

The VCS ISO 11890–1 (2000) Part 1, "Paints and Varnishes—Determination of Volatile Organic Compound (VOC) Content—Difference Method," is impractical as an alternative to EPA Method 24 because measured nonvolatile matter content can vary with experimental factors such as temperature, length of heating period, size of weighing dish, and size of sample. The standard ISO 11890–1 allows for different dish weights and sample sizes than the one size (58 millimeters in diameter and sample size of 0.5 gram) of EPA Method 24. The standard ISO 11890–1 also allows for different oven temperatures and heating times depending on the type of coating, whereas EPA Method 24 requires 60 minutes heating at 110 degrees Celsius at all times. Because the EPA Method 24 test conditions and procedures define volatile matter, ISO 11890–1 is unacceptable as an alternative because of its different test conditions.

The VCS ISO 11890–2 (2000) Part 2, "Paints and Varnishes—Determination of Volatile Organic Compound (VOC) Content—Gas Chromatographic Method," is impractical as an alternative to EPA Method 24 because ISO 11890–2 only measures the VOC added to the coating and would not measure any VOC generated from the curing of the coating. The EPA Method 24 does measure cure VOC, which can be significant in some cases, and, therefore, ISO 11890–2 is not an acceptable alternative to this EPA method.

Two VCS, EN 12619:1999 "Stationary Source Emissions—Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method" and ISO 14965:2000(E) "Air Quality—Determination of Total Nonmethane Organic Compounds—Cryogenic Preconcentration and Direct Flame Ionization Method," are impractical alternatives to EPA Method 25 and 25A for the purposes of the proposed rulemaking because the standards do not apply to solvent process vapors in concentrations greater than 40 ppm (EN 12619) and 10 ppm carbon (ISO 14965). Methods whose upper limits are that low are too limited to be useful in measuring source emissions, which are expected to be much higher.

Three of the 14 VCS identified in the search were not available at the time the review was conducted for the purposes of the proposed rule because they are under development by a VCS body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; and ISO/CD 17895, "Paints and Varnishes—Determination of the Volatile Organic Compound Content of Water-based Emulsion Paints," for EPA Method 24.

Listed in 40 CFR 63.3541, 63.3551, 63.3561, 63.3564, 63.3565, 63.3566, 63.3571, 63.3574, 63.3575, and 63.3576 to subpart KKKK of the proposed standards are the EPA testing methods included in the regulation. Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart KKKK to read as follows:

Subpart KKKK—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

Sec.

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What This Subpart Covers

§ 63.3480 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for metal can surface coating facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.3481 Am I subject to this subpart?

(a) Except as provided in paragraph (c) of this section, the source category to which this subpart applies is surface coating of metal cans and ends (including decorative tins) and metal crowns and closures. It includes the subcategories listed in paragraphs (a)(1) through (4) of this section. Surface coating is the application of coatings to a substrate using, for example, spray guns or dip tanks.

(1) *One and two-piece draw and iron can body coating.* The one and two-piece draw and iron can body coating subcategory includes all coating processes involved in the manufacture of can bodies by the draw and iron process. This subcategory includes three distinct coating type segments reflecting the coatings appropriate for cans with different end uses. Those are two-piece beverage can body coatings, two-piece food can body coatings, and one-piece aerosol can body coatings.

(2) *Sheetcoating.* The sheetcoating subcategory includes all of the flat metal sheet coating operations associated with the manufacture of three-piece cans, decorative tins, crowns, and closures.

(3) *Three-piece can body assembly coating.* The three-piece can body assembly coating subcategory includes all of the coating processes involved in the assembly of three-piece metal can bodies. The subcategory includes five distinct coating type segments reflecting the coatings appropriate for cans with different end uses. Those are inside spray on food cans, aseptic side seam stripes on food cans, non-aseptic side seam stripes on food cans, side seam stripes on general line non-food cans, and side seam stripes on aerosol non-food cans.

(4) *End lining.* The end lining subcategory includes the application of end seal compounds to metal can ends. That subcategory includes two distinct coating type segments reflecting the end seal compounds appropriate for can ends with different end uses. Those are aseptic end seal compounds and non-aseptic end seal compounds.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3482, that uses 5,700 liters (1,500 gallons (gal)) per year or more of coatings in the surface coating of metal cans or ends (including decorative tins) or metal crowns or closures and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(c) This subpart does not apply to surface coating that meets the criteria of paragraphs (c)(1) through (5) of this section.

(1) Surface coating conducted at a source that uses only coatings, thinners, and cleaning materials that contain no organic HAP, as determined according to § 63.3541(a).

(2) Surface coating subject to any other NESHAP in this part as of [date of publication of the final rule in the **Federal Register**].

(3) Surface coating that occurs at research or laboratory facilities or that is part of janitorial, building, and facility maintenance operations.

(4) Surface coating of continuous metal coil that may subsequently be

used in manufacturing cans. Subpart SSSS of this part covers surface coating performed on a continuous metal coil substrate.

(5) Surface coating of metal pails, buckets, and drums. Subpart MMMM of this part covers surface coating of all metal parts and products not explicitly covered by another subpart.

§ 63.3482 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source.

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are used for surface coating of metal cans and ends (including decorative tins), or metal crowns or closures within each subcategory:

(1) All coating operations as defined in § 63.3581;

(2) All storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new affected source if it meets the criteria in paragraph (c)(1) of this section and the criteria in either paragraph (c)(2) or (3) of this section.

(1) You commenced construction of the source after January 15, 2003 by installing new coating equipment.

(2) The new coating equipment is used to perform metal can surface coating at a facility where no metal can surface coating was previously performed.

(3) The new coating equipment is used to perform metal can surface coating in a subcategory at a facility where no surface coating in that subcategory was previously performed.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.3483 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.3540, 63.3550, 63.3560, and 63.3570.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section.

(1) If the initial startup of your new or reconstructed affected source is before [date of publication of final rule in the **Federal Register**], the compliance date is [date of publication of final rule in the **Federal Register**].

(2) If the initial startup of your new or reconstructed affected source occurs after [date of publication of final rule in the **Federal Register**], the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is [date 3 years after date of publication of final rule in the **Federal Register**].

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source or [date of publication of final rule in the **Federal Register**], whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or [date 3 years after date of publication of final rule in the **Federal Register**], whichever is later.

(d) You must meet the notification requirements in § 63.3510 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.3490 What emission limits must I meet?

(a) For a new or reconstructed affected source, you must limit organic HAP emissions to the atmosphere to no more than the emission limit(s) in Table 1 to this subpart that apply to you during each 12-month compliance period, determined according to the requirements in §§ 63.3541, 63.3551, or 63.3561 or, if you control emissions with an emissions control system using the control efficiency/outlet concentration option as specified in § 63.3491(d), you must reduce organic HAP emissions to the atmosphere to no more than the limit(s) in Table 3 to this subpart determined according to the requirements of § 63.3571. If you perform surface coating in more than one subcategory or utilize more than one coating type within a subcategory, then you must meet the individual emission limit(s) for each subcategory and coating type included.

(b) For an existing affected source, you must limit organic HAP emissions to the atmosphere to no more than the emission limit(s) in Table 2 to this subpart that apply to you during each 12-month compliance period, determined according to the requirements in §§ 63.3541, 63.3551, or 63.3561 or, if you control emissions with an emissions control system using the control efficiency/outlet concentration option as specified in § 63.3491(d), you must reduce organic HAP emissions to the atmosphere to no more than the limit(s) in Table 3 to this subpart determined according to the requirements of § 63.3571. If you perform surface coating in more than one subcategory or utilize more than one coating type within a subcategory, then you must meet the individual emission limit(s) for each subcategory and coating type included.

(c) If you perform surface coating in different subcategories as described in § 63.3481(a)(1) through (4), then the coating operations in each subcategory constitute a separate affected source and you must conduct separate compliance demonstrations for each applicable subcategory and coating type emission limit in paragraphs (a) and (b) of this section and reflect those separate determinations in notifications, reports, and records required by §§ 63.3510, 63.3520, and 63.3530, respectively.

§ 63.3491 What are my options for meeting the emission limits?

You must include all coatings and thinners used in all surface coating operations within a subcategory or coating type segment when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in § 63.3490. To make that determination, you must use at least one of the four compliance options listed in paragraphs (a) through (d) of this section. You may apply any of the compliance options to an individual coating operation or to multiple coating operations within a subcategory or coating type segment as a group. You may use different compliance options for different coating operations or at different times on the same coating

operation. However, you may not use different compliance options at the same time on the same coating operation. If you switch between compliance options for any coating operation or group of coating operations, you must document that switch as required by § 63.3530(c) and you must report it in the next semiannual compliance report required in § 63.3520.

(a) *Compliant material option.* Demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit in § 63.3490 and that each thinner used contains no organic HAP. You must meet all the requirements of §§ 63.3540, 63.3541, and 63.3542 to demonstrate compliance with the emission limit using this option.

(b) *Emission rate without add-on controls option.* Demonstrate that, based on the coatings and thinners used in the coating operation(s), the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.3490, calculated as a rolling 12-month emission rate and determined on a monthly basis. You must meet all the requirements of §§ 63.3550, 63.3551, and 63.3552 to demonstrate compliance with the emission limit using this option.

(c) *Emission rate with add-on controls option.* Demonstrate that, based on the coatings and thinners used in the coating operation(s) and the emission reductions achieved by emission capture systems and add-on controls, the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.3490, calculated as a rolling 12-month emission rate and determined on a monthly basis. If you use that compliance option, you must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.3492, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3561(j), and that you meet the work practice standards required in § 63.3493. You must meet all the requirements of §§ 63.3560 through 63.3568 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

(d) *Control efficiency/outlet concentration option.* Demonstrate that, based on the emission reductions achieved by emission capture systems and add-on controls, total HAP emissions measured as total hydrocarbon (THC) are reduced by 95 percent or greater for existing sources or 97 percent or greater for new or reconstructed sources or that outlet THC emissions are less than or equal to 20 parts per million by volume, dry basis (ppmvd). If you use that compliance option, you must have a capture device that meets EPA Method 204 criteria for a permanent total enclosure (PTE). You must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.3492 and that you meet the work practice standards required in § 63.3493. You must meet all the requirements of §§ 63.3570 through 63.3578 to demonstrate compliance with the emission limits, operating limits, and work practice standards using that option.

§ 63.3492 What operating limits must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option or the control efficiency/outlet concentration option except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.3561(j), you must meet the operating limits specified in Table 4 to this subpart. Those operating limits apply to the emission capture and control systems on the coating operation(s) for which you use the options. You must establish the operating limits during the performance test according to the requirements in § 63.3567 or § 63.3577, and you must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in Table 4 to this subpart or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.3493 What work practice standards must I meet?

(a) For any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use the emission rate with add-on controls option or the control efficiency/outlet concentration option to comply with the emission limitations, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s) for which you use those options; or you must meet an alternative standard as provided in paragraph (c) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) As provided in § 63.6(g), we, the U.S. Environmental Protection Agency (EPA), may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.3500 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.3491(a) and (b), must be in compliance with the applicable emission limit in § 63.3490.

(2) Any coating operation(s) for which you use the emission rate with add-on controls option, as specified in § 63.3491(c), or the control efficiency/outlet concentration option, as specified in § 63.3491(d), must be in compliance with the emission limitations as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) The coating operation(s) must be in compliance with the applicable emission limit in § 63.3490 at all times.

(ii) The coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3492 at all times except for those for which you use a solvent recovery system and conduct liquid-liquid material balances according to § 63.3561(j).

(iii) The coating operation(s) must be in compliance with the work practice standards in § 63.3493 at all times.

(b) You must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device for purposes of complying with this subpart, you must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). The plan must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures.

§ 63.3501 What parts of the General Provisions apply to me?

Table 5 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.3510 What notifications must I submit?

(a) *General.* You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial notification.* You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after [date of publication of final rule in the **Federal Register**], whichever is later. For an existing affected source, you must submit the Initial Notification no later than [date 1 year after date of publication of final rule in the **Federal Register**].

(c) *Notification of compliance status.* You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in §§ 63.3540, 63.3550, 63.3560, or 63.3570 that applies to your affected source. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (9) of this section and in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in §§ 63.3540, 63.3550, 63.3560, or 63.3570 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.3491 that you used on each coating operation in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description of and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in § 63.3490, include all the calculations you used to determine the kilogram (kg) organic HAP emitted per liter of coating solids used. You do not need to submit information provided by the materials suppliers or manufacturers or test reports.

(7) For each of the data items listed in paragraphs (c)(7)(i) through (iv) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data can include a copy of the information provided by the supplier or manufacturer of the example coating or material or a summary of the results of testing conducted according to § 63.3541(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP for one coating and for one thinner.

(ii) Volume fraction of coating solids for one coating.

(iii) Density for one coating and one thinner, except that if you use the compliant material option, only the example coating density is required.

(iv) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.3551.

(8) The calculation of kg organic HAP emitted per liter of coating solids used for the compliance option(s) you used, as specified in paragraphs (c)(8)(i) through (iii) of this section.

(i) For the compliant material option, provide an example calculation of the organic HAP content for one coating, using Equation 1 of § 63.3541.

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions for each month, the calculation of the total volume of coating solids used each month, and the calculation of the 12-month organic HAP emission rate, using Equations 1, 1A through 1C, 2, and 3, respectively, of § 63.3551.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1 and 1A through 1C of § 63.3551; the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3551; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3561, and Equations 2, 3, and 3A through 3C of § 63.3561, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3561, as applicable; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.3561.

(9) For the emission rate with add-on controls option or the control efficiency/outlet concentration option, you must include the information specified in paragraphs (c)(9)(i) through (iv) of this section. The requirements in paragraphs (c)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3561(j).

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a PTE or a measurement of the emission capture system efficiency. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart

KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.3493.

§ 63.3520 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section. Note that the information reported for each of the months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.3540, § 63.3550, § 63.3560, or § 63.3570 that applies to your affected source and ends on June 30 or December 31, whichever occurs first following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of the date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a semiannual compliance report pursuant to this section along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all required information concerning deviations from any emission limitation in this subpart, its submission will be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (v) of this section and the information specified in paragraphs (a)(4) through (7) and (c)(1) of this section that is applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31. Note that the information reported for each of the 6 months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(iv) Identification of the compliance option or options specified in § 63.3491 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates you used each option.

(v) If you used the emission rate without add-on controls or the emission rate with add-on controls compliance option (§ 63.3491(b) or (c)), the calculation results for each rolling 12-month organic HAP emission rate during the 6-month reporting period.

(4) *No deviations.* If there were no deviations from the emission limitations, operating limits, or work practice standards in §§ 63.3490, 63.3492, and 63.3493 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option or the control efficiency/outlet concentration option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out of control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out of control during the reporting period.

(5) *Deviations: compliant material option.* If you used the compliant material option and there was a deviation from the applicable emission limit in § 63.3490, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) Identification of each coating used that deviated from the emission limit, each thinner used that contained organic HAP, and the dates and time periods each was used.

(ii) The calculation of the organic HAP content (using Equation 1 of § 63.3541) for each coating identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation, for example, information provided by coating suppliers or manufacturers, or test reports.

(iii) The determination of mass fraction of organic HAP for each coating and thinner identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation, for example, information provided by material suppliers or manufacturers, or test reports.

(iv) A statement of the cause of each deviation.

(6) *Deviations: emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.3490, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iii) of this section.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.3490.

(ii) The calculations used to determine the 12-month organic HAP emission rate for the compliance period in which the deviation occurred. You

must provide the calculations for Equations 1, 1A through 1C, 2, and 3 in § 63.3551; and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3551(e)(4). You do not need to submit background data supporting these calculations, for example, information provided by materials suppliers or manufacturers, or test reports.

(iii) A statement of the cause of each deviation.

(7) *Deviations: emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. That includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.3490.

(ii) The calculations used to determine the 12-month organic HAP emission rate for each compliance period in which a deviation occurred. You must provide the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1 and 1A through 1C of § 63.3551 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3551(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3551; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3561, and Equations 2, 3, and 3A through 3C of § 63.3561, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3561; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.3561. You do not need to submit the background data supporting these calculations (*e.g.*, information provided by materials suppliers or manufacturers, or test reports).

(iii) The date and time that each malfunction started and stopped.

(iv) A brief description of the CPMS.

(v) The date of the latest CPMS certification or audit.

(vi) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date, time, and duration that each CPMS was out of control, including the information in § 63.8(c)(8).

(viii) The date and time period of each deviation from an operating limit in Table 4 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(ix) A summary of the total duration of each deviation from an operating limit in Table 4 to this subpart and each bypass of the add-on control device during the semiannual reporting period and the total duration as a percent of the total source operating time during that semiannual reporting period.

(x) A breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xi) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(xii) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xiii) For each deviation from the work practice standards, a description of the deviation; the date and time period of the deviation; and the actions you took to correct the deviation.

(xiv) A statement of the cause of each deviation.

(8) *Deviations: control efficiency/outlet concentration option.* If you used the control efficiency/outlet concentration option, and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The date and time that each malfunction started and stopped.

(ii) A brief description of the CPMS.

(iii) The date of the latest certification or audit of the CPMS.

(iv) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(v) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(vi) The date and time period of each deviation from an operating limit in Table 4 of this subpart; date and time of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(vii) A summary of the total duration of each deviation from an operating limit in Table 4 of this subpart and each bypass of the add-on control device during the semiannual reporting period and the total duration as a percent of the total source operating time during that semiannual reporting period.

(viii) A breakdown of the total duration of the deviations from the operating limits in Table 4 of this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(ix) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(x) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xi) For each deviation from the work practice standards, a description of the deviation; the date and time period of the deviation; and the actions you took to correct the deviation.

(xii) A statement of the cause of each deviation.

(b) *Performance test reports.* If you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, malfunction reports.* If you used the emission rate with add-on controls option or the control efficiency/outlet concentration option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must

submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your SSMP, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your SSMP, you must submit an immediate startup, shutdown, and malfunction report as described in paragraphs (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.3530 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep the records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP and density for each coating and thinner and the volume fraction of coating solids for each coating. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, the records specified in paragraphs (c)(1) through (4) of this section.

(1) A record of the coating operations at which you used each compliance option and the time periods (beginning and ending dates and times) you used each option.

(2) For the compliant material option, a record of the calculation of the organic HAP content for each coating, using Equation 1 of § 63.3541.

(3) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1, 1A through 1C, and 2 of § 63.3551 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3551(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3551; and the calculation of each 12-month organic HAP emission rate, using Equation 3 of § 63.3551.

(4) For the emission rate with add-on controls option, records of the calculations specified in paragraphs (c)(4)(i) through (v) of this section.

(i) The calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1 and 1A through 1C of § 63.3551 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3551(e)(4).

(ii) The calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3551.

(iii) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3561, and Equations 2, 3, and 3A through 3C of § 63.3561, as applicable.

(iv) The calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3561.

(v) The calculation of each 12-month organic HAP emission rate, using Equation 5 of § 63.3561.

(5) For the control efficiency/outlet concentration option, records of the measurements made by the CPMS used to demonstrate compliance. For any coating operation(s) for which you use this option, you do not have to keep the records specified in paragraphs (d) through (g) of this section.

(d) A record of the name and volume of each coating and thinner used during each compliance period.

(e) A record of the mass fraction of organic HAP for each coating and thinner used during each compliance period.

(f) A record of the volume fraction of coating solids for each coating used during each compliance period.

(g) A record of the density for each coating used during each compliance period; and, if you use either the emission rate without add-on controls or the emission rate with add-on controls compliance option, the density for each thinner used during each compliance period.

(h) If you use an allowance in Equation 1 of § 63.3551 for organic HAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.3551(e)(4), you must keep records of the information specified in paragraphs (h)(1) through (3) of this section.

(1) The name and address of each TSDF to which you sent waste materials for which you use an allowance in Equation 1 of § 63.3551, a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility and the date of each shipment.

(2) Identification of the coating operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.3551.

(3) The methodology used in accordance with § 63.3551(e)(4) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month and the methodology to determine the mass of organic HAP contained in these waste materials. That must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(i) [Reserved]

(j) You must keep records of the date, time, and duration of each deviation.

(k) If you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, you must keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records required to show continuous compliance with each operating limit specified in Table 4 to this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture

efficiency of 100 percent, as specified in § 63.3565(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.3564 and 63.3565(b) through (e) including the records specified in paragraphs (k)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volàtile hydrocarbon (TVH) as measured by Method 204A or F of appendix M to 40 CFR part 51 for each material used in the coating operation and the total TVH for all materials used during each capture efficiency test run including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure (TTE) or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a TTE or a building enclosure.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the TTE or building enclosure during each capture efficiency test run as measured by Method 204D or E of appendix M to 40 CFR part 51 including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a TTE or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.3565(e) if applicable.

(6) The records specified in paragraphs (k)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.3566 or § 63.3576.

(i) Records of each add-on control device performance test conducted according to § 63.3564 or § 63.3574 and § 63.3566 or § 63.3576.

(ii) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(7) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.3567 or § 63.3577 and to document compliance with the operating limits as specified in Table 4 to this subpart.

(8) A record of the work practice plan required by § 63.3493 and documentation that you are implementing the plan on a continuous basis.

§ 63.3531 In what form and for how long must I keep my records?

(a) Your records must be kept in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.3540 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements in § 63.3541. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the calculations according to § 63.3541 and supporting documentation showing that, during the initial compliance period, you used no coating with an organic HAP content that exceeded the applicable emission limit in § 63.3490 and that you used no thinners that contained organic HAP.

§ 63.3541 How do I demonstrate initial compliance with the emission limitations?

You may use the compliant material option for any individual coating operation, for any group of coating operations within a subcategory or coating type segment, or for all the coating operations within a subcategory or coating type segment. You must use either the emission rate without add-on controls option, the emission rate with add-on controls option, or the control efficiency/outlet concentration option for any coating operation in the affected source for which you do not use that option. To demonstrate initial compliance using the compliant material option, the coating operation or group of coating operations must use no coating with an organic HAP content that exceeds the applicable emission limit in § 63.3490 and must use no thinner that contains organic HAP as determined according to this section. Any coating operation for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.3492 and 63.3493, respectively. You must conduct a separate initial compliance demonstration for each one and two-piece draw and iron can body coating, sheet coating, three-piece can body assembly coating, and end lining affected source. You must meet all the requirements of this section for the coating operation or group of coating operations using this option. Use the procedures in this section on each coating and thinner in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration (*e.g.*, mixing or thinning). Do not include any coatings or thinners used on coating operations for which you use the emission rate without add-on controls option, the emission rate with add-on controls option, or the control efficiency/outlet concentration option. You do not need to redetermine the HAP content of coatings or thinners that have been reclaimed onsite and reused in the coating operation(s) for which you use the compliant material option, provided these materials in their condition as received were demonstrated to comply with the compliant material option.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each coating and thinner used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of

organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (for example, 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (for example, 0.763).

(2) *Method 24 (Appendix A to 40 CFR Part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for the mass fraction of organic HAP in those solvent blends listed in Table 6 or 7 to this subpart. If you use the tables, you must use the values in Table 6 to this subpart for all solvent blends that match Table 6 entries, and you may only use Table 7 to this subpart if the solvent blends in the materials you use do not match any of the solvent blends in Table 6 and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 (40 CFR part 63, appendix A) test indicate higher values than those listed on Table 6 or 7 to this subpart, the Method 311 (40 CFR part 63, appendix A) results will take precedence.

(b) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liters of coating solids per liter of coating) for each coating used during the compliance period by a test or by information provided by the supplier or the manufacturer of the material as specified in paragraphs (b)(1) and (2) of this section. If test results obtained according to paragraph (b)(1) of this section do not agree with the information obtained under paragraph (b)(2) of this section, the test results will take precedence.

(1) *ASTM Method D2697–86 (Reapproved 1998) or D6093–97.* You may use ASTM Method D2697–86 (Reapproved 1998) or D6093–97 to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

(2) *Information from the supplier or manufacturer of the material.* You may obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–98 or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–98 test results and the supplier's or manufacturer's information, the test results will take precedence.

(d) *Calculate the organic HAP content of each coating.* Calculate the organic HAP content, kg organic HAP per liter coating solids, of each coating used during the compliance period, using Equation 1 of this section.

$$H_c = \frac{(D_c)(W_c)}{V_s} \qquad \text{(Eq. 1)}$$

Where:

H_c = organic HAP content of the coating, kg organic HAP per liter coating solids.

D_c = density of coating, kg coating per liter coating, determined according to paragraph (c) of this section.

W_c = mass fraction of organic HAP in the coating, kg organic HAP per kg coating, determined according to paragraph (a) of this section.

V_s = volume fraction of coating solids, liter coating solids per liter coating, determined according to paragraph (b) of this section.

(e) *Compliance demonstration.* The organic HAP content for each coating used during the initial compliance period, determined using Equation 1 of this section, must be less than or equal to the applicable emission limit in § 63.3490 and each thinner used during the initial compliance period must contain no organic HAP, determined according to paragraph (a) of this section. You must keep all records required by §§ 63.3530 and 63.3531. As part of the Notification of Compliance Status required in § 63.3510, you must identify the coating operation(s) for which you used the compliant material option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.3490 and you used no thinners that contained organic HAP, determined according to paragraph (a) of this section.

§ 63.3542 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period, to demonstrate continuous compliance, you must use no coating for which the organic HAP content, determined using Equation 1 of § 63.3541, exceeds the applicable emission limit in § 63.3490 and use no thinner that contains organic HAP, determined according to § 63.3541(a). A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3540 is the end of a compliance period consisting of that month and the preceding 11 months.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any coating or thinner that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(5).

(c) As part of each semiannual compliance report required by § 63.3520, you must identify the coating operation(s) for which you used the compliant material option. If there were no deviations from the emission limitations in § 63.3490, submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because you used no coating for which the organic HAP content exceeded the applicable emission limit in § 63.3490 and you used no thinner or cleaning material that contained organic HAP, determined according to § 63.3541(a).

(d) You must maintain records as specified in §§ 63.3530 and 63.3531.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.3550 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3551. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the calculations according to § 63.3551 and supporting documentation showing that, during the initial compliance period, the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.3490.

§ 63.3551 How do I demonstrate initial compliance with the emission limitations?

You may use the emission rate without add-on controls option for any coating operation, for any group of coating operations within a subcategory or coating type segment, or for all of the coating operations within a subcategory or coating type segment. You must use either the compliant material option, the emission rate with add-on controls option, or the control efficiency/outlet concentration option for any coating operation in the affected source for which you do not use this option. If you use the alternative overall emission limit for a subcategory according to paragraph (i) of this section to demonstrate compliance, however, you must include all coating operations in all coating type segments in the subcategory to determine compliance with the overall limit. To demonstrate initial compliance using the emission rate without add-on controls option, the coating operation or group of coating operations must meet the applicable emission limit in § 63.3490, but is not required to meet the operating limits or work practice standards in §§ 63.3492 and 63.3493, respectively. You must conduct a separate initial compliance demonstration for each one and two-piece draw and iron can body coating, sheet coating, three-piece can body assembly coating, and end lining affected source. You must meet all the requirements of this section to demonstrate initial compliance with the applicable emission limit in § 63.3490 for the coating operation(s). When calculating the organic HAP emission rate according to this section, do not include any coatings or thinners used on coating operations for which you use the compliant material option, the emission rate with add-on controls option, or the control efficiency/outlet concentration option or coating operations in a different affected source in a different subcategory. Use the procedures in this section on each coating and thinner in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration (*e.g.*, mixing or thinning). You do not need to redetermine the mass of organic HAP in coatings or thinners that have been reclaimed onsite and reused in the coating operation(s) for which you use the emission rate without add-on controls option.

(a) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each coating and thinner used during each month according to the requirements in § 63.3541(a).

(b) *Determine the volume fraction of coating solids for each coating.* Determine the volume fraction of coating solids for each coating used during each month according to the requirements in § 63.3541(b).

(c) *Determine the density of each material.* Determine the density of each coating and thinner used during each month from test results using ASTM Method D1475–98, information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and such other information sources, the test results will take precedence.

(d) *Determine the volume of each material used.* Determine the volume (liters) of each coating and thinner used during each month by measurement or usage records.

(e) *Calculate the mass of organic HAP emissions.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coatings and thinners used during each month minus the organic HAP in certain waste materials. Calculate it using Equation 1 of this section.

$$H_e = A + B - R_w \qquad \text{(Eq. 1)}$$

Where:

H_e = total mass of organic HAP emissions during the month, kg.

A = total mass of organic HAP in the coatings used during the month, kg, as calculated in Equation 1A of this section.

B = total mass of organic HAP in the thinners used during the month, kg, as calculated in Equation 1B of this section.

R_w = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the month, kg, determined according to paragraph (e)(4) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(1) Calculate the mass of organic HAP in the coatings used during the month, using Equation 1A of this section.

$$A = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A = total mass of organic HAP in the coatings used during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$D_{c,i}$ = density of coating, i, kg coating per liter coating.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg organic HAP per kg coating.

m = number of different coatings used during the month.

(2) Calculate the mass of organic HAP in the thinners used during the month using Equation 1B of this section.

$$B = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B = total mass of organic HAP in the thinners used during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.
$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.
n = number of different thinners used during the month.

(3) If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in Equation 1 of this section, then you must determine it according to paragraphs (e)(3)(i) through (iv) of this section.

(i) You may include in the determination only waste materials that are generated by coating operations for which you use Equation 1 of this section and that will be treated or disposed of by a facility regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include organic HAP contained in wastewater.

(ii) You must determine either the amount of the waste materials sent to a TSDF during the month or the amount collected and stored during the month and designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a month if you have already included them in the amount collected and stored during that month or a previous month.

(iii) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (e)(4)(ii) of this section.

(iv) You must document the methodology you used to determine the amount of waste materials and the total mass of organic HAP they contain as required in § 63.3530(h). To the extent that waste manifests include this information, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(f) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used which is the combined volume of coating solids for all the coatings used during each month, using Equation 2 of this section.

$$V_{st} = \sum_{i=1}^{m} (Vol_{c,i})(V_{s,i}) \qquad \text{(Eq. 2)}$$

Where:

V_{st} = total volume of coating solids used during the month, liters.
$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.
$V_{s,i}$ = volume fraction of coating solids for coating, i, liter solids per liter coating, determined according to § 63.3541(b).
m = number of coatings used during the month.

(g) *Calculate the organic HAP emission rate.* Calculate the organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids used, using Equation 3 of this section.

$$H_{yr} = \frac{\sum_{y=1}^{12} H_e}{\sum_{y=1}^{12} V_{st}} \qquad \text{(Eq. 3)}$$

Where:

H_{yr} = organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids.
H_e = total mass of organic HAP emissions, kg, from all materials used during month, y, as calculated by Equation 1 of this section.
V_{st} = total volume of coating solids, liters, used during month, y, as calculated by Equation 2 of this section.
y = identifier for months.

(h) *Compliance demonstration.* The organic HAP emission rate for the initial 12-month compliance period, H_{yr}, must be less than or equal to the applicable emission limit in § 63.3490. You must keep all records as required by §§ 63.3530 and 63.3531. As part of the Notification of Compliance Status required by § 63.3510, you must identify the coating operation(s) for which you used the emission rate without add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3490, determined according to this section.

(i) *Alternative calculation of overall subcategory emission limit (OSEL).* Alternatively, if your affected source applies coatings in more than one coating type segment within a subcategory, you may calculate an overall HAP emission limit for the subcategory using Equation 4 of this section. If you use this approach, you must limit organic HAP emissions to the atmosphere to the OSEL specified by Equation 4 of this section during each 12-month compliance period.

$$OSEL = \frac{\sum_{i=1}^{n} L_i(V_i)}{\sum_{i=1}^{n} V_i} \qquad \text{(Eq. 4)}$$

Where:

OSEL = total allowable organic HAP in kg HAP/liter coating solids (pound (lb) HAP/gal solids) that can be emitted to the atmosphere from all coating type segments in the subcategory.
L_i = HAP emission limit for coating type segment i from Table 1 for a new or reconstructed source or Table 2 for an existing source, kg HAP/liter coating solids (lb HAP/gal solids).
V_i = total volume of coating solids in liters (gal) for all coatings in coating type segment i used during the 12-month compliance period.
n = number of coating type segments within one subcategory being used at the affected source.

You must use the OSEL determined by Equation 4 throughout the 12-month compliance period and may not switch between compliance with individual coating type limits and an OSEL. You may not include coatings in different subcategories in determining your OSEL by this approach. You must keep all records as required by §§ 63.3530 and 63.3531. As part of the Notification of Compliance Status required by § 63.3510, you must identify the subcategory for which you used a calculated OSEL and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate for the subcategory was less than or equal to the OSEL determined according to this section.

§ 63.3552 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, determined according to § 63.3551(a) through (g), must be less than or equal to the applicable emission limit in § 63.3490. Alternatively, if you calculate an OSEL for all coating type segments within a subcategory according to § 63.3551(i), the organic HAP emission rate for the subcategory for each compliance period must be less than or equal to the calculated OSEL. You must use the calculated OSEL throughout each compliance period. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3550 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.4551(a) through (g) on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.3490 or the OSEL calculated according to § 63.3551(i), this is a deviation from the emission limitations for that compliance period and must be reported as specified in §§ 63.3510(c)(6) and 63.3520(a)(6).

(c) As part of each semiannual compliance report required by § 63.3520, you must identify the coating operation(s) for which you used the emission rate without add-on controls option. If there were no deviations from the emission limitations, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3490 determined according to § 63.3551(a) through (g), or using the OSEL calculated according to § 63.3551(i).

(d) You must maintain records as specified in §§ 63.3530 and 63.3531.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.3560 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) New and reconstructed affected sources. For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3561(j), you must conduct a performance test of each capture system and add-on control device according to §§ 63.3564, 63.3565, and 63.3566 and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3561(j), you must initiate the first material balance no later than the applicable compliance date specified in § 63.3483.

(2) You must develop and begin implementing the work practice plan required by § 63.3493 no later than the compliance date specified in § 63.3483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3561. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3564, 63.3565, and 63.3566, results of liquid-liquid material balances conducted according to § 63.3561(j), calculations according to § 63.3561 and supporting documentation showing that, during the initial compliance period, the organic HAP emission rate was equal to or less than the emission limit in § 63.3490(a), the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3568, and documentation of whether you developed and implemented the work practice plan required by § 63.3493.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3492 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section. The requirements in this paragraph do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.3561(j).

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3561(j), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.3564, 63.3565, and 63.3566 and establish the operating limits required by § 63.3492 no later than the compliance date specified in § 63.3483. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3561(j), you must initiate the first material balance no later than the compliance date specified in § 63.3483.

(2) You must develop and begin implementing the work practice plan required by § 63.3493 no later than the compliance date specified in § 63.3483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3561. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3564, 63.3565, and 63.3566, results of liquid-liquid material balances conducted according to § 63.3561(j), calculations according to § 63.3561 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the emission limit in § 63.3490(b), the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3568, and documentation of whether you developed and implemented the work practice plan required by § 63.3493.

§ 63.3561 How do I demonstrate initial compliance?

(a) You may use the emission rate with add-on controls option for any coating operation, for any group of coating operations within a subcategory or coating type segment, or for all of the coating operations within a subcategory or coating type segment. You may include both controlled and uncontrolled coating operations in a group for which you use this option. You must use either the compliant material option, the emission rate

without add-on controls option, or the control efficiency/outlet concentration option for any coating operation in the affected source for which you do not use the emission rate with add-on controls option. To demonstrate initial compliance, the coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable emission limitations in § 63.3490. You must conduct a separate initial compliance demonstration for each one and two-piece draw and iron can body coating, sheet coating, three-piece can body assembly coating, and end lining affected source. You must meet all the requirements of this section to demonstrate initial compliance with the emission limitations. When calculating the organic HAP emission rate according to this section, do not include any coatings or thinners used on coating operations for which you use the compliant material option, the emission rate without add-on controls option, or the control efficiency/outlet concentration option. You do not need to redetermine the mass of organic HAP in coatings or thinners that have been reclaimed on-site and reused in the coating operation(s) for which you use the emission rate with add-on controls option.

(b) *Compliance with operating limits.* Except as provided in § 63.3560(a)(4) and except for solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of § 63.3561(j), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3492 using the procedures specified in §§ 63.3567 and 63.3568.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.3493 during the initial compliance period, as specified in § 63.3530.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (n) of this section to demonstrate compliance with the applicable emission limit in § 63.3490.

(e) *Determine the mass fraction of organic HAP, density, volume used, and volume fraction of coating solids.* Follow the procedures specified in § 63.3551(a) through (d) to determine the mass fraction of organic HAP, density, and volume of each coating and thinner used during each month and the volume fraction of coating solids for each coating used during each month.

(f) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.3551, calculate the total mass of organic HAP emissions before add-on controls from all coatings and thinners used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option.

(g) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during each month. The emission reduction determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (h) of this section to calculate the mass of organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (j) of this section to calculate the organic HAP emission reduction.

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction, using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation served by the emission capture system and add-on control device during each month. Equation 1 of this section accounts for any period of time a deviation specified in § 63.3563(c) or (d) occurs in the controlled coating operation, including a deviation during a period of startup, shutdown, or malfunction during which you must assume zero efficiency for the emission capture system and add-on control device.

$$H_c = (A_c + B_c - R_w)\left(\frac{CE}{100} \times \frac{DRE}{100}\right)\left(\frac{T_{op} - T_{dev}}{T_{op}}\right) \quad \text{(Eq. 1)}$$

Where:

H_c = mass of organic HAP emission reduction for the controlled coating operation during the month, kg.

A_c = total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg, as calculated in Equation 1A of this section.

B_c = total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg, as calculated in Equation 1B of this section.

R_w = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the month, kg, determined according to § 63.3551(e)(4).

CE = capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.3564 and 63.3565 to measure and record capture efficiency.

DRE = organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.3564 and 63.3566 to measure and record the organic HAP destruction or removal efficiency.

T_{op} = total time period of operation of controlled coating operation during the month, hours.

T_{dev} = total time period of deviations for controlled coating operation during the month, hours.

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, kg, using Equation 1A of this section.

$$A_C = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \qquad \text{(Eq. 1A)}$$

Where:

A_C = total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners used in the controlled coating operation, kg, using Equation 1B of this section.

$$B_C = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \qquad \text{(Eq. 1B)}$$

Where:

B_C = total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = density of thinner, j, kg per liter thinner.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.

n = number of different thinners used.

(i) [Reserved]

(j) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each month as specified in paragraphs (j)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (j)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month. The device must be initially certified by the manufacturer to be accurate to within ± 2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, kg, based on measurement with the device required in paragraph (j)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(4) Determine the density of each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg per liter, according to § 63.3551(c).

(5) Measure the volume of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, liters.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 2 of this section.

$$R_V = 100\frac{M_{VR}}{\sum_{i=1}^{m}(Vol_i)(D_i)(WV_{c,i}) + \sum_{j=1}^{n}(Vol_j)(D_j)(WV_{t,j})} \qquad \text{(Eq. 2)}$$

Where:

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system during the month, percent.

M_{VR} = mass of volatile organic matter recovered by the solvent recovery system during the month, kg.

Vol_i = volume of coating, i, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_i = density of coating, i, kg per liter.

$WV_{c,i}$ = mass fraction of volatile organic matter for coating, i, kg volatile organic matter per kg coating.

Vol_j = volume of thinner, j, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_j = density of thinner, j, kg per liter.

$WV_{t,j}$ = mass fraction of volatile organic matter for thinner, j, kg volatile organic matter per kg thinner.

m = number of different coatings used in the coating operation controlled by the solvent recovery system during the month.

n = number of different thinners used in the coating operation controlled by the solvent recovery system during the month.

(7) Calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month, using Equation 3 of this section.

$$H_{CSR} = (A_{CSR} + B_{CSR})\left(\frac{R_v}{100}\right) \qquad \text{(Eq. 3)}$$

Where:

H_{CSR} = mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month, kg.

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3A of this section.

B_{CSR} = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3B of this section.

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(i) Calculate the mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, using Equation 3A of this section.

$$A_{CSR} = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \qquad \text{(Eq. 3A)}$$

Where:

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(ii) Calculate the mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, using Equation 3B of this section.

$$B_{CSR} = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \qquad \text{(Eq. 3B)}$$

Where:

B_{CSR} = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg per kg.

n = number of different thinners used.

(k) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used which is the combined volume of coating solids for all the coatings used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option, using Equation 2 of § 63.3551.

(l) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions during each month, using Equation 4 of this section.

$$H_{HAP} = H_e - \sum_{i=1}^{q} (H_{c,i}) - \sum_{j=1}^{r} (H_{CSR,j}) \qquad \text{(Eq. 4)}$$

Where:

H_{HAP} = total mass of organic HAP emissions for the month, kg.

H_e = total mass of organic HAP emissions before add-on controls from all the coatings and thinners used during the month, kg, determined according to paragraph (f) of this section.

$H_{C,i}$ = total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, during the month, kg, from Equation 1 of this section.

$H_{CSR,j}$ = total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the month, kg, from Equation 3 of this section.

q = number of controlled coating operations not using a liquid-liquid material balance.

r = number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

(m) *Calculate the organic HAP emission rate for the 12-month compliance period.* Determine the organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids used, using Equation 5 of this section.

$$H_{annual} = \frac{\sum_{y=1}^{12} H_{HAP,y}}{\sum_{y=1}^{12} V_{st,y}} \qquad \text{(Eq. 5)}$$

Where:

H_{annual} = organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids.

$H_{HAP,y}$ = organic HAP emission rate for month, y, determined according to Equation 4 of this section.

$V_{st,y}$ = total volume of coating solids used during month, y, liters, from Equation 2 of § 63.3551.

y = identifier for months.

(n) *Compliance demonstration.* To demonstrate initial compliance with the emission limit, the organic HAP emission rate, calculated using Equation 5 of this section, must be less than or equal to the applicable emission limit in § 63.3490. You must keep all records as required by §§ 63.3530 and 63.3531. As part of the Notification of Compliance Status required by § 63.3510, you must identify the coating operation(s) for which you used the emission rate with

add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3490 and you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493.

§ 63.3562 [Reserved]

§ 63.3563 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.3490, the organic HAP emission rate for each compliance period, determined according to the procedures in § 63.3561, must be equal to or less than the applicable emission limit in § 63.3490. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3560 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.3561 on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.3490, that is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.3492 that applies to you as specified in Table 4 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 4 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7).

(2) If an operating parameter deviates from the operating limit specified in Table 4 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. For the purposes of completing the compliance calculations specified in § 63.3561(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.3561.

(d) You must meet the requirements for bypass lines in § 63.3568(b) for controlled coating operations for which you do not conduct material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7). For the purposes of completing the compliance calculations specified in §§ 63.3561(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.3561.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.3493. If you did not develop a work practice plan or you did not implement the plan or you did not keep the records required by § 63.3530(k)(8), that is a deviation from the work practice standards that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7).

(f) As part of each semiannual compliance report required in § 63.3520, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limitations, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3490 and you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the SSMP required by § 63.3500(c).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.3530 and 63.3531.

§ 63.3564 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.3560 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.3565. You must conduct each performance test of an add-on control device according to the requirements in § 63.3566.

§ 63.3565 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.3560.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings and thinners used in the coating operation are applied within the capture system and coating solvent flash-off and coating, curing, and drying

occurs within the capture system. For example, the criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production, which includes surface preparation activities and drying or curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a TTE or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings and thinners are applied and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a TTE or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or 204F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating and thinner used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings and thinners used in the coating operation during each capture efficiency test run.

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \qquad \text{(Eq. 1)}$$

Where:

TVH_{used} = total mass of liquid TVH in materials used in the coating operation during the capture efficiency test run, kg.

TVH_i = mass fraction of TVH in coating or thinner, i, that is used in the coating operation during the capture efficiency test run, kg TVH per kg material

Vol_i = total volume of coating or thinner, i, used in the coating operation during the capture efficiency test run, liters.

D_i = density of coating or thinner, i, kg material per liter material.

n = number of different coatings and thinners used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the TTE or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D of appendix M to 40 CFR part 51 if the enclosure is a TTE.

(ii) Use Method 204E of appendix M to 40 CFR part 51 if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure other than the coating operation for which capture efficiency is being determined must be shut down but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section.

$$CE = \frac{(TVH_{used} - TVH_{uncaptured})}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = total mass of liquid TVH used in the coating operation during the capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the TTE or building enclosure during the capture efficiency test run, kg, determined according to paragraph (c)(4) of this section.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured. Use a TTE or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings and thinners are applied and all areas where emissions from these applied coatings and materials subsequently occur such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device such as the entrance and exit areas of an oven

or a spray booth must also be inside the enclosure. The enclosure must meet the applicable definition of a TTE or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or 204C of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or 204C of appendix M to 40 CFR part 51 measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or 204E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the TTE or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D of appendix M to 40 CFR part 51 if the enclosure is a TTE.

(ii) Use Method 204E of appendix M to 40 CFR part 51 if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section.

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg, determined according to paragraph (d)(2) of this section.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the TTE or building enclosure during the capture efficiency test run, kg, determined according to paragraph (d)(3) of this section.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.3566 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3560. You must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses."

(4) Use Method 4 of appendix A to 40 CFR part 60 to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously using either Method 25 or 25A of appendix A to 40 CFR part 60 as specified in paragraphs (b)(1) through (5) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use Method 25A of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A of appendix A to 40 CFR part 60 if the add-control device is not an oxidizer.

(4) You may use Method 18 of appendix A to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

(5) Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator may be used.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume dilute stream that has been treated by the concentrator and a second add-on control device is an oxidizer with an outlet for the low-volume concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c (12)(0.0416)\left(10^{-6}\right) \qquad \text{(Eq. 1)}$$

Where:

M_f = total gaseous organic emissions mass flow rate, kg per hour (kg/h).

C_c = concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, ppmvd.

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section.

$$DRE = 100 \times \frac{M_{fi} - M_{fo}}{M_{fi}} \qquad \text{(Eq. 2)}$$

Where:

DRE = organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.3567 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.3560 and described in §§ 63.3564, 63.3565, and 63.3566, you must establish the operating limits required by § 63.3492 according to this section unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3492.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. That average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. That is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e.*, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendations and conduct a new performance test to determine destruction efficiency according to § 63.3566.

(c) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle, and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record

the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture systems.* For each capture device that is not part of a PTE that meets the criteria of § 63.3565(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 4 to this subpart.

(1) During the capture efficiency determination required by § 63.3560 and described in §§ 63.3564 and 63.3565, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.3568 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out of control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (non-diverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.3520.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section.

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install a gas temperature monitor in the gas stream immediately before the catalyst bed, and if you establish operating limits according to § 63.3567(b)(1) and (2), also install a gas temperature monitor in the gas stream immediately after the catalyst bed.

(i) If you establish operating limits according to § 63.3567(b)(1) and (2), then you must install the gas temperature monitors both upstream and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the catalyst bed to measure the temperature difference across the bed.

(ii) If you establish operating limits according to § 63.3567(b)(3) and (4), then you must install a gas temperature monitor upstream of the catalyst bed. The temperature monitor must be in the gas stream immediately before the catalyst bed to measure the temperature.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrators.* If you are using a concentrator such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a) and (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks anytime the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (g)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that

provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Compliance Requirements for the Control Efficiency/Outlet Concentration Option

§ 63.3570 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. You must conduct a performance test of each capture system and add-on control device according to §§ 63.3574, 63.3575, and 63.3576 and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(2) You must develop and begin implementing the work practice plan required by § 63.3493 no later than the compliance date specified in § 63.3483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3571. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to § 63.3574, 63.3575, and 63.3576, the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3578, and documentation of whether you developed and implemented the work practice plan required by § 63.3493.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3492 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits on the date you complete the performance tests specified in paragraph (a)(1) of this section.

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483.

(2) You must develop and begin implementing the work practice plan required by § 63.3493 no later than the compliance date specified in § 63.3483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3571. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3574, 63.3575, and 63.3576, the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3578, and documentation of whether you developed and implemented the work practice plan required by § 63.3493.

§ 63.3571 How do I demonstrate initial compliance?

(a) You may use the control efficiency/outlet concentration option for any coating operation, for any group of coating operations within a subcategory or coating type segment, or for all of the coating operations within a subcategory or coating type segment. You must use the compliant material option, the emission rate without add-on controls option, or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use the control efficiency/outlet concentration option. To demonstrate initial compliance, the coating operation(s) for which you use the control efficiency/outlet concentration option must meet the applicable levels of emission reduction in § 63.3490. You must conduct a separate initial compliance demonstration for each one and two-piece draw and iron can body coating, sheet coating, three-piece can body assembly coating, and end lining affected source.

(b) *Compliance with operating limits.* You must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3492, using the procedures specified in §§ 63.3577 and 63.3578.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.3493 during the initial compliance period, as specified in § 63.3530.

(d) *Compliance demonstration.* To demonstrate initial compliance, you must keep all records applicable to the control efficiency/outlet concentration option as required by §§ 63.3530 and 63.3531. As part of the Notification of Compliance Status required by § 63.3510, you must identify the coating operation(s) for which you used the control efficiency/outlet concentration option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493.

§ 63.3572 [Reserved]

§ 63.3573 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the emission limitations using the control efficiency/outlet concentration option, the organic HAP emission rate for each compliance period must be equal to or less than 20 ppmvd or must be reduced by the amounts specified in § 63.3490. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3570 is the end of a compliance period consisting of that month and the preceding 11 months.

(b) You must demonstrate continuous compliance with each operating limit required by § 63.3492 that applies to you, as specified in Table 4 to this subpart. If an operating parameter is out of the allowed range specified in Table 4 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7).

(c) You must meet the requirements for bypass lines in § 63.3578(b) for controlled coating operations for which you do not conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating

operation is running, this is a deviation that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7).

(d) You must demonstrate continuous compliance with the work practice standards in § 63.3493. If you did not develop a work practice plan or you did not implement the plan or you did not keep the records required by § 63.3530(k)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7).

(e) As part of each semiannual compliance report required in § 63.3520, you must identify the coating operation(s) for which you used the control efficiency/outlet concentration option. If there were no deviations from the operating limits or work practice standards, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than 20 ppmvd or was reduced by the amount specified in § 63.3490 and you achieved the work practice standards required by § 63.3493 during each compliance period.

(f) During periods of startup, shutdown, or malfunctions of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the SSMP required by § 63.3500(c).

(g) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(h) You must maintain records applicable to the control efficiency/outlet concentration option as specified in §§ 63.3530 and 63.3531.

§ 63.3574 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.3570 according to the requirements of § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation(s). Operations during periods of startup, shutdown, or malfunction and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.3575. You must conduct each performance test of an add-on control device according to the requirements in § 63.3576.

§ 63.3575 How do I determine the emission capture system efficiency?

The capture efficiency of your emission capture system must be 100 percent to use the control efficiency/outlet concentration option. You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a) and (b) of this section are met.

(a) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(b) All coatings and thinners used in the coating operation are applied within the capture system, and coating solvent flash-off, curing, and drying occurs within the capture system. This criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

§ 63.3576 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3570. You must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2,2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses."

(4) Use Method 4 of appendix A to 40 CFR part 60 to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60 as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 ppm at the control device outlet.

(2) Use Method 25A of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A of appendix A to 40 CFR part 60 if the add-on control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume dilute stream that has been treated by the concentrator and a second add-on control device is an oxidizer with an outlet for the low-volume, concentrated stream that is treated with the oxidizer, you must

measure emissions at the outlet of the oxidizer and the high-volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c (12)(0.0416)\left(10^{-6}\right) \qquad \text{(Eq. 1)}$$

Where:

M_f = total gaseous organic emissions mass flow rate, kg/h.

C_c = the concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, ppmvd.

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m ^{3}) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section.

$$DRE = 100 \times \frac{M_{fi} - M_{fo}}{M_{fi}} \qquad \text{(Eq. 2)}$$

Where:

DRE = organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.3577 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.3570 and described in §§ 63.3574, 63.3575, and 63.3576, you must establish the operating limits required by § 63.3492 according to this section unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3492.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. That average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. Those are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e.*, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendations and conduct a new performance test to determine destruction efficiency according to § 63.3576.

(c) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at

least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture systems.* For each capture device that is part of a PTE that meets the criteria of § 63.3575, the operating limit for a PTE is specified in Table 4 to this subpart.

§ 63.3578 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out of control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (non-diverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.3520.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section.

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install a gas temperature monitor in the gas stream immediately before the catalyst bed and if you establish operating limits according to § 63.3577(b)(1) and (2), also install a gas temperature monitor in the gas stream immediately after the catalyst bed.

(i) If you establish operating limits according to § 63.3577(b)(1) and (2), then you must install the gas temperature monitors both upstream

and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the catalyst bed to measure the temperature difference across the bed.

(ii) If you establish operating limits according to § 63.3577(b)(3) and (4), then you must install a gas temperature monitor upstream of the catalyst bed. The temperature monitor must be in the gas stream immediately before the catalyst bed to measure the temperature.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrators.* If you are using a concentrator such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a) and (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (g)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Other Requirements and Information

§ 63.3580 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this

section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the work practice standards in § 63.3493.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.3581 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Add-on control means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Adhesive means any chemical substance that is applied for the purpose of bonding two surfaces together.

Aerosol can means any can into which a pressurized aerosol product is packaged.

Aseptic coating means any coating that must withstand high temperature steam, chemicals, or a combination of both used to sterilize food cans prior to filling.

Can body means a formed metal can, excluding the unattached end(s).

Can end means a can part manufactured from metal substrate equal to or thinner than 0.3785 millimeters (mm) (0.0149 inch) for the purpose of sealing the ends of can bodies including non-metal or composite can bodies.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

Capture efficiency or *capture system efficiency* means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings or cleaning materials, both at the point of application and at subsequent points where emissions from the coatings or cleaning materials occur, such as flashoff, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials such as dirt, grease, oil, and dried or wet coating (*e.g.*, depainting) from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coating operation means equipment used to apply coating to a metal can or end (including decorative tins), or metal crown or closure, and to dry or cure the coating after application. A coating operation always includes at least the point at which a coating is applied and all subsequent points in the affected source where organic HAP emissions from that coating occur. There may be multiple coating operations in an affected source. Coating application with hand-held nonrefillable aerosol containers, touchup markers, or marking pens is not a coating operation for the purposes of this subpart.

Coating solids means the nonvolatile portion of a coating that makes up the dry film.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of coating operation, capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

Crowns and closures means steel or aluminum coverings such as bottle caps and jar lids for containers other than can ends.

Decorative tin means a single-walled container, designed to be covered or uncovered that is manufactured from metal substrate equal to or thinner than 0.3785 mm (0.0149 inch) and is normally coated on the exterior surface with decorative coatings. Decorative tins may contain foods but are not hermetically sealed and are not subject to food processing steps such as retort or pasteurization. Interior coatings are not applied to protect the metal and contents from chemical interaction.

Deviation means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction regardless of whether or not such failure is permitted by this subpart.

Drum means a cylindrical metal container with walls of 29 gauge or thicker and a capacity greater than 45.4 liters (12 gal).

Emission limitation means an emission limit, operating limit, or work practice standard.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

End lining means the application of end seal compound on can ends during end manufacturing.

End seal compound means the coating applied onto ends of cans that functions to seal the end(s) of a can to the can body.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Food can means any can manufactured to contain edible products and designed to be hermetically sealed. Does not include decorative tins.

General line can means any can manufactured to contain inedible products. Does not include aerosol cans or decorative tins.

Inside spray means a coating sprayed on the interior of a can body to provide a protective film between the can and its contents.

Manufacturer's formulation data means data on a material (such as a coating) that are supplied by the

material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.3541. Manufacturer's formulation data may include but are not limited to information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as kg of organic HAP per kg of material.

Metal can means a single-walled container manufactured from metal substrate equal to or thinner than 0.3785 mm (0.0149 inch).

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Non-aseptic coating means any coating that is not subjected to high temperature steam, chemicals, or a combination of both to sterilize food cans prior to filling.

One and two-piece draw and iron can means a steel or aluminum can manufactured by the draw and iron process. Includes two-piece beverage cans, two-piece food cans, and one-piece aerosol cans.

One-piece aerosol can means an aerosol can formed by the draw and iron process to which no ends are attached and a valve is placed directly on top.

Organic HAP content means the mass of organic HAP per volume of coating solids for a coating, calculated using Equation 1 of § 63.3541. The organic HAP content is determined for the coating in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt.

Pail means a cylindrical or rectangular metal container with walls of 29 gauge or thicker and a capacity of 7.6 to 45.4 liters (2 to 12 gal) (*i.e.*, bucket).

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Protective oil means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Research or laboratory facility means a facility whose primary purpose is for research and development of new processes and products that is conducted under the close supervision of technically trained personnel and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Sheetcoating means a can manufacturing coating process that involves coating of flat metal sheets before they are formed into cans.

Side seam stripe means a coating applied to the interior and/or exterior of the welded or soldered seam of a three-piece can body to protect the exposed metal.

Startup, initial means the first time equipment is brought online in a facility.

Surface preparation means use of a cleaning material on a portion of or all of a substrate. That includes use of a cleaning material to remove dried coating which is sometimes called "depainting."

Temporary total enclosure (TTE) means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Three-piece aerosol can means a steel aerosol can formed by the three-piece can assembly process manufactured to contain food or non-food products.

Three-piece can assembly means the process of forming a flat metal sheet into a shaped can body which may include the processes of necking, flanging, beading, and seaming and application of a side seam stripe and/or an inside spray coating.

Three-piece food can means a steel can formed by the three-piece can assembly process manufactured to contain edible products and designed to be hermetically sealed.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through 204F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Two-piece beverage can means a two-piece draw and iron can manufactured to contain drinkable liquids such as beer, soft drinks, or fruit juices.

Two-piece food can means a steel or aluminum can manufactured by the draw and iron process and designed to contain edible products other than beverages and to be hermetically sealed.

Uncontrolled coating operation means a coating operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Volume fraction of coating solids means the ratio of the volume of coating solids (also known as volume of nonvolatiles) to the volume of coating; liters of coating solids per liter of coating.

Wastewater means water that is generated in a coating operation and is collected, stored, or treated prior to being discarded or discharged.

Tables to Subpart KKKK of Part 63

You must comply with the emission limits that apply to your affected source in the following table as required by § 63.3490(a) through (c).

TABLE 1 TO SUBPART KKKK OF PART 63—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	then for all coatings of this type . . .	you must meet the following organic HAP emission limit in kg/liter solids (lbs HAP/gal solids): [a]
1. One and two-piece draw and iron can body coating	a. Two-piece beverage cans—all coatings	0.04 (0.31)
	b. Two-piece food cans—all coatings	0.06 (0.50)
	c. One-piece aerosol cans—all coatings	0.08 (0.65)
2. Sheetcoating	Sheetcoating	0.02 (0.17)
3. Three-piece can assembly	a. Inside spray	0.12 (1.03)
	b. Aseptic side seam stripes on food cans	1.48 (12.37)
	c. Non-aseptic side seam stripes on food cans	0.72 (5.96)
	d. Side seam stripes on general line non-food cans	1.18 (9.84)
	e. Side seam stripes on aerosol cans	1.46 (12.14)
4. End lining	a. Aseptic end seal compounds	0.06 (0.54)
	b. Non-aseptic end seal compounds	0.00 (0.00)

[a] If you apply surface coatings of more than one type within any one subcategory you may calculate an OSEL according to § 63.3551(i).

You must comply with the emission limits that apply to your affected source in the following table as required by § 63.3490(a) through (c).

TABLE 2 TO SUBPART KKKK OF PART 63.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	then for all coatings of this type . . .	you must meet the following organic HAP emission limit in kg HAP/liter solids (lbs HAP/gal solids): [a]
1. One and two-piece draw and iron can body coating	a. Two-piece beverage cans—all coatings	0.07 (0.59)
	b. Two-piece food cans—all coatings	0.06 (0.51)
	c. One-piece aerosol cans—all coatings	0.12 (0.99)
2. Sheetcoating	Sheetcoating	0.03 (0.26)
3. Three-piece can assembly	a. Inside spray	0.29 (2.43)
	b. Aseptic side seam stripes on food cans	1.94 (16.16)
	c. Non-aseptic side seam stripes on food cans	0.79 (6.57)
	d. Side seam stripes on general line non-food cans	1.18 (9.84)
	e. Side seam stripes on aerosol cans	1.46 (12.14)
4. End lining	a. Aseptic end seal compounds	0.06 (0.54)
	b. Non-aseptic end seal compounds	0.00 (0.00)

[a] If you apply surface coatings of more than one type within any one subcategory you may calculate an OSEL according to § 63.3551(i).

You must comply with the emission limits that apply to your affected source in the following table as required by § 63.3490(d).

TABLE 3 TO SUBPART KKKK OF PART 63.—EMISSION LIMITS FOR AFFECTED SOURCES USING THE CONTROL EFFICIENCY/OUTLET CONCENTRATION COMPLIANCE OPTION

If you use the control efficiency/outlet concentration option to comply with the emission limitations for any coating operation(s) . . .	then you must comply with one of the following by using an emissions control system to . . .
1. In a new or reconstructed affected source	a. reduce emissions of total HAP, measured as THC (as carbon),[a] by 97 percent; or b. limit emissions of total HAP, measured as THC (as carbon)[a] to 20 ppmvd at the control device outlet and use a PTE.
2. In an existing affected source	a. reduce emissions of total HAP, measured as THC (as carbon),[a] by 95 percent; or b. limit emissions of total HAP, measured as THC (as carbon)[a] to 20 ppmvd at the control device outlet and use a PTE.

[a] You may choose to subtract methane from THC as carbon measurements.

If you are required to comply with operating limits by § 63.3492, you must comply with the applicable operating limits in the following table.

TABLE 4 TO SUBPART KKKK OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION OR THE CONTROL EFFICIENCY/OUTLET CONCENTRATION COMPLIANCE OPTION

For the following device . . .	You must meet the following operating limit . . .	and you must demonstrate continuous compliance with the operating limit by . . .
1. thermal oxidizer	a. the average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to §63.3567(a) or §63.3577(a).	i. collecting the combustion temperature data according to §63.3568(c) or §63.3578(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average combustion temperature at or above the temperature limit.
2. catalytic oxidizer	a. the average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to §63.3567(b) or §63.3577(b); and either.	i. collecting the temperature data according to §63.3568(c) or §6.3578(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit.
	b. ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to §63.3567(b)(2) or §63.3577(b)(2); or.	i. collecting the temperature data according to §63.3568(c) or §63.3578(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature difference at or above the temperature difference limit.
	c. develop and implement an inspection and maintenance plan according to §63.3567(b) (3) and (4) or §63.3577(b) (3) and (4).	maintaining an up-to-date inspection plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by §63.3567(b) (3) and (4) or §63.3577(b) (3) and (4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. carbon adsorber	a. the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to §63.3567(c) or §63.3577(c).	i. measuring the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle according to §63.3568(d) or §63.3578(d); and ii. maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. the temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to §63.3567(c) or §63.3577(c).	i. measuring the temperature of the carbon bed, after completing each regeneration and any cooling cycle, according to §63.3568(d) or §63.3578(d); and ii. operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
4. condenser	a. the average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to §63.3567(d) or §63.3577(d).	i. collecting the condenser outlet (product side) gas temperature according to §63.3568(e) or §63.3578(e); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas temperature at the outlet at or below the temperature limit.
5. concentrators, including zeolite wheels and rotary carbon adsorbers.	a. the average gas temperature of the desorption concentrate stream in any 3-hour period must not fall below the limit established according to §63.3567(e) or §63.3577(e).	i. collecting the temperature data according to §63.3568(f) or §63.3578(f); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average temperature at or above the temperature limit.
	b. the average pressure drop of the dilute stream across the concentrator in any 3-hour period must not fall below the limit established according to §63.3567(e) or §63.3577(e).	i. collecting the pressure drop data according to §63.3568(f) or §63.3578(f); ii. reducing the pressure drop data to 3-hour block averages; and iii. maintaining the 3-hour average pressure drop at or above the pressure drop limit.
6. emission capture system that is a PTE according to §63.3565(a) or §63.3575(a).	a. the direction of the air flow at all times must be into the enclosure; and either.	i. collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to §63.3568(g)(1) or §63.3578(g)(1) or the pressure drop across the enclosure according to §63.3568(g)(2) or §63.3578(g)(2); and ii. maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
	b. the average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or.	see items 6.a. i and ii.

TABLE 4 TO SUBPART KKKK OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION OR THE CONTROL EFFICIENCY/OUTLET CONCENTRATION COMPLIANCE OPTION—Continued

For the following device . . .	You must meet the following operating limit . . .	and you must demonstrate continuous compliance with the operating limit by . . .
	c. the pressure drop across the enclosure must be at least 0.007 inch H_2O, as established in Method 204 of appendix M to 40 CFR part 51.	see items 6.a. i and ii.
7. emission capture system that is not a PTE according to § 63.3565(a) or § 63.3575(a).	a. the average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.3567(f) § 63.3577(f).	i. collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.3568(g) or § 63.3578(g); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

You must comply with the applicable General Provisions requirements according to the following table.

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.1(a)(1)–(14)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart KKKK is also specified in § 63.3481.
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart KKKK.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.3581.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.3483 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources.	Yes	Section 63.3483 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	SSMP	Yes	Only sources using an add-on control device to comply with the standard must complete SSMP.
§ 63.6(f)(1)	Compliance Except During Start-up, Shutdown, and Malfunction.	Yes	Applies only to sources using an add-on control device to comply with the standards.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart KKKK does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

Citation	Subject	Applicable to subpart KKKK	Explanation
§63.6(j)	Presidential Compliance Exemption.	Yes.	
§63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§63.3564, 63.3565, 63.3566, , 63.3575, and 63.3576.
§63.7(a)(2)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Sections 63.3560 and 63.3570 specify the schedule for performance test requirements that are earlier than those specified in §63.7(a)(2).
§63.7(a)(3)	Performance Tests Required By the Administrator.		Yes
§63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§63.7(f)	Performance Test Requirementsk—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§63.8(a)(1)–(3)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in §§63.3568 and 63.3578.
§63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart KKKK does not have monitoring requirements for flares.
§63.8(b)	Conduct of Monitoring	Yes.	
§63.8(c)(1)–(3)	Continuous Monitoring System (CMS) Operataion and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in §§63.3568 and 63.3578.
§63.8(c)(4)	CMS	No	Sections 63.3568 and 63.3578 specify the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§63.8(c)(5)	COMS	No	Subpart KKKK does not have opacity or visible emission standards.
§63.8(c)(6)	CMS Requirements	No	Sections 63.3568 and 63.3578 specify the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§63.8(c)(7)	CMS Out-of-control Periods	Yes.	
§63.8(c)(8)	CMS Out-of-control Period Reporting.	No	Section 63.3520 requires reporting of CMS out of control periods.

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	Yes	Applies only to sources using the outlet concentration limit option to comply with the standards.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Yes	Applies only to sources using the outlet concentration limit option to comply with the standards.
§ 63.8(g)(1)–(5)	Data Reduction	No	§§ 63.3563, 63.3568, 63.3573 and 63.3578 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/ Opacity Test.	No	Subpart KKKK does not have opacity or visible emission standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS.	Yes	Applies only to sources using the outlet concentration limit option to comply with the standards.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.3510 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §§ 63.3530 and 63.3531.
§ 63.10(b)(2)(i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for Startup, Shutdown, and Malfunction records only apply to add-on control devices used to comply with the standards.
§ 63.10(b)(2)(vi)–(xi)		Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		Yes	Applies only to sources using the outlet concentration limit option to comply with the standards.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)		No	The same records are required in § 63.3520(a)(7).
§ 63.10(c)(9)–(15)		Yes.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.3520.
§ 63.10(d)(2)	Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.3520(b).
§ 63.10(d)(3)	Reporting Opacity Visible Emissions Observations.	No	Subpart KKKK does or not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to add-on control devices at sources using these to comply with the standards.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Yes	Applies only to sources using the outlet concentration limit option to comply with the standards.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.3520(b) specifies the contents of periodic compliance reports.

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

Citation	Subject	Applicable to subpart KKKK	Explanation
§63.10(e)(4)	COMS Data Reports	No	Subpart KKKK does not specify requirements for opacity or COMS.
§63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§63.11	Control Device Requirements/ Flares.	No	Subpart KKKK does not specify use of flares for compliance.
§63.12	State Authority and Delegations	Yes.	
§63.13	Addresses	Yes.	
§63.14	Incorporation by Reference	Yes.	
§63.15	Availability of Information/Confidentiality.	Yes.	

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.

TABLE 6 TO SUBPART KKKK OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene.
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene.
3. Hexane	110–54–3	0.5	n-hexane.
4. n-Hexane	110–54–3	1.0	n-hexane.
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene.
6. Aliphatic 140		0	None.
7. Aromatic 100		0.02	1% xylene, 1% cumene.
8. Aromatic 150		0.09	Naphthalene.
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene.
10. Aromatic solvent	64742–94–5	0.1	Naphthalene.
11. Exempt mineral spirits	8032–32–4	0	None.
12. Ligroines (VM & P)	8032–32–4	0	None.
13. Lactol spirits	64742–89–6	0.15	Toluene.
14. Low aromatic white spirit	64742–82–1	0	None.
15. Mineral spirits	64742–88–7	0.01	Xylenes.
16. Hydrotreated naphtha	64742–48–9	0	None.
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene.
18. Stoddard solvent	8052–41–3	0.01	Xylenes.
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes.
20. Varsol® solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene.
21. VM & P Naphtha	64742–89–8	0.06	3% toluene, 3% xylene.
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl.

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.

TABLE 7 TO SUBPART KKKK OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

Solvent type	Average organic HAP, mass fraction	Typical Organic HAP percent by mass
Aliphatic [b]	0.03	1% Xylene, 1% Toluene, and 1% Ethylbenzene
Aromatic [c]	0.06	4% Xylene, 1% Toluene, and 1% Ethylbenzene

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 6 to this subpart and you only know whether the blend is aliphatic or aromatic.

[b] *e.g.*, Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] *e.g.*, Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

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Federal Register

Wednesday,
January 15, 2003

Part III

Department of Education

Rehabilitation Training: Rehabilitation Long-Term Training Program—Vocational Rehabilitation Counseling; Notice

DEPARTMENT OF EDUCATION

Rehabilitation Training: Rehabilitation Long-Term Training Program—Vocational Rehabilitation Counseling

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces a priority under the Rehabilitation Training: Rehabilitation Long-Term Training program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and in later years. We take this action to focus on training in an area of national need. This priority is designed to increase the number of rehabilitation counseling programs that provide experiential activities for students, such as formal internships, practicum agreements, and other partnership activities with State vocational rehabilitation (VR) agencies. This priority supports a close relationship between the educational institution and the State VR agency by creating or increasing ongoing collaboration in order to increase the number of graduates who seek employment in State VR agencies.

EFFECTIVE DATES: This priority is effective February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Steburg, U.S. Department of Education, RSA, 61 Forsyth Street, SW., Suite 18T91, Atlanta, GA 30303. Telephone (404) 562–6336 or via Internet: *Beverly.Steburg@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8133.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: State VR agencies throughout the nation are experiencing a personnel shortage of qualified VR counselors. While currently only a small percentage of Rehabilitation Services Administration (RSA)-funded graduates seek employment with State VR agencies, a survey conducted by the Council of State Administrators of Vocational Rehabilitation indicates that individuals who are aware of the distinct role of the qualified VR counselor and benefits of employment within a State VR agency are more likely to seek employment with the State.

This priority increases the number of rehabilitation counseling projects that incorporate formal experiential activities for students with State VR agencies.

We published a notice of proposed priority for this program in the **Federal Register** on August 19, 2002 (67 FR 53870). The notice of proposed priority included a discussion of the significant issues and analysis used in the determination of this priority.

There are no differences between the notice of proposed priority and this notice of final priority.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priority, eight parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority. We may choose to address those changes if we received a significant number of comments on a particular issue.

Comments: Two commenters recommended that the priority not establish new counseling training programs but be earmarked to provide support to a greater number of existing rehabilitation counselor training programs.

Discussion: The program authority establishes eligible applicants for the program. We have no authority to further restrict applicant eligibility.

Changes: None.

Comments: Three commenters recommended that funds be used to provide existing programs with support to conduct recruitment programs to encourage more students to enter rehabilitation counseling programs.

Discussion: We agree that recruitment activities to encourage more individuals to enter rehabilitation counseling programs are important. Grantees may use non-scholarship project funds to support recruitment activities. RSA also supports recruitment activities through other avenues, including the Regional Rehabilitation Continuing Education Program (RRCEP).

Changes: None.

Comments: Four commenters recommended using scholarship funds to provide paid internships with State VR agencies.

Discussion: The Rehabilitation Long-Term Training program limits scholarship assistance to the individual's cost of attendance at the academic degree or certificate-granting institution. Scholarships include payback obligations upon completion of the course of study, and grantees may not require other work as a condition of scholarships.

Changes: None.

Comment: One commenter recommended limiting internships with experiential opportunities to specific need areas within rehabilitation counseling, including the use of innovative technologies, multicultural competency, and counseling of particular disability groups.

Discussion: While it is possible for RSA to limit the required internship activities to particular counseling areas, we choose not to do so in this priority. Programs may choose in their applications to develop internships with a particular focus, including those listed by the commenter. Peer reviews of all applications received will assess the value of proposed projects. We encourage programs and students to explore any experiential activities that enhance students' knowledge of the VR system.

Changes: None.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.** When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Partnership With the State VR Agency

This priority supports projects that will increase the knowledge of students of the role and responsibilities of the VR counselor and of the benefits of counseling in State VR agencies. This priority focuses attention on and intends to strengthen the unique role of rehabilitation educators and State VR agencies in the preparation of qualified VR counselors by increasing or creating ongoing collaboration between institutions of higher education and State VR agencies.

Projects funded under this priority must include within the degree program information about and experience in the State VR system. Projects must include partnering activities for students with the State VR agency including experiential activities, such as formal internships or practicum agreements. In addition, experiential activities for students with community-based rehabilitation service providers are encouraged.

Projects must include an evaluation of the impact of project activities.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 385 and 386.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.129B Rehabilitation Long-Term Training)

Program Authority: 29 U.S.C. 772.

Dated: January 10, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–868 Filed 1–15–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129B]

Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling

Notice inviting applications for new awards for fiscal year (FY) 2003.

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

For FY 2003, the competition for new awards focuses on projects designed to meet the priority we reference in the PRIORITY section of this application notice.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training program.

Applications Available: January 17, 2003.

Deadline for Transmittal of Applications: March 7, 2003.

Deadline for Intergovernmental Review: May 6, 2003.

Estimated Available Funds: $4,800,000.

The Administration has requested $4,800,000 for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $125,000 to $150,000.

Estimated Average Size of Awards: $150,000.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 32.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

- A page is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 386.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

This competition focuses on projects designed to meet the priority in the notice of final priority for this program,

published elsewhere in this issue of the **Federal Register**.

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet the priority.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Rehabilitation Training: Rehabilitation Long-Term Training program—Vocational Rehabilitation Counseling, CFDA No. 84.129B, is one of the programs included in the pilot project. If you are an applicant under the Rehabilitation Training: Rehabilitation Long-Term Training program—Vocational Rehabilitation Counseling, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within 3 working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Rehabilitation Training: Rehabilitation Long-Term Training program—Vocational Rehabilitation Counseling and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of 1 business day in order to transmit your application electronically, by mail, or by hand delivery.

For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension.

To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-Grants help desk at 1–888–336–8930.

You may access the electronic grant application for the Rehabilitation Training: Rehabilitation Long-Term Training program—Vocational Rehabilitation Counseling at: *http://e-grants.ed.gov*.

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*.

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from Ed Pubs, be sure to identify this competition as follows: CFDA number 84.129B.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Beverly Steburg, U.S. Department of Education, RSA, 61 Forsyth Street, SW., Suite 18T91, Atlanta, GA 30303. Telephone: (404) 562–6336 or via Internet: *Beverly.Steburg@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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Program Authority: 29 U.S.C. 772.

Dated: January 10, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–869 Filed 1–14–03; 8:45 am]

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Federal Register

Wednesday,
January 15, 2003

Part IV

The President

Proclamation 7638—The Centennial of Korean Immigration to the United States

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Presidential Documents

Title 3—

The President

Proclamation 7638 of January 13, 2003

The Centennial of Korean Immigration to the United States

By the President of the United States of America

A Proclamation

From every corner of the world, immigrants have come to America to discover the promise of our Nation. On January 13, 1903, the first Korean immigrants to the United States arrived in Honolulu, Hawaii, on the *SS Gaelic*. Today, Korean Americans live throughout the United States, representing one of our largest Asian-American populations. As we commemorate the centennial anniversary of Korean immigration to the United States, we recognize the invaluable contributions of Korean Americans to our Nation's rich cultural diversity, economic strength, and proud heritage.

For the past century, Korean immigrants and their descendants have helped build America's prosperity, strengthened America's communities, and defended America's freedoms. Through their service in World War I, World War II, the Korean Conflict, the Vietnam War, and other wars, Korean Americans have served our Nation with honor and courage, upholding the values that make our country strong.

The American and Korean people share a love of freedom and a dedication to peace. The United States was the first Western country to sign a treaty of commerce and amity with Korea in 1882, promising "perpetual peace and friendship" between our nations. Since that time, the United States has built a strong friendship with Korea—a friendship based on our common commitment to human dignity, prosperity, and democracy. In the coming months, more than 1 million Korean Americans throughout our Nation will celebrate the 100th anniversary of the arrival of the first Korean immigrants to the United States. During this time, we acknowledge and commend Korean Americans for their distinguished achievements in all sectors of life and for their important role in building, defending, and sustaining the United States of America.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 13, 2003, as the Centennial of Korean Immigration to the United States. I call upon all Americans to observe the anniversary with appropriate programs, ceremonies, and activities honoring Korean immigrants and their descendants for their countless contributions to America.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.

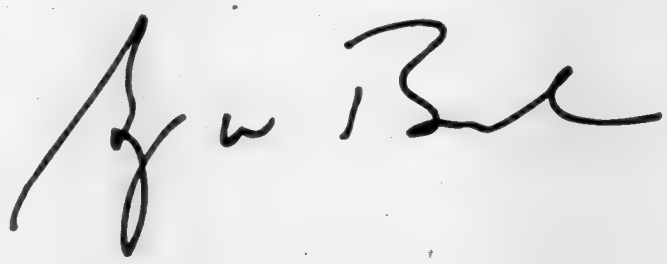

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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Federal Register

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Rules and Regulations

Federal Register
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Thursday, January 16, 2003

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 837, 842, 843, 844, and 847

RIN 3206–AJ72

Retirement Coverage and Service Credit Elections Available to Current and Former Nonappropriated Fund Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the civilian retirement provisions of the National Defense Authorization Act for Fiscal Year 2002. These regulations establish procedures whereby Federal employees may elect to use service they performed for a Nonappropriated Fund Instrumentality (NAFI) of the Department of Defense or Coast Guard to qualify for an immediate retirement under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). These regulations also establish the methodology for computing the CSRS or FERS annuity when employees elect to use NAFI service to qualify for immediate CSRS or FERS retirement.

DATES: Interim rules effective December 28, 2001, comments must be received on or before March 17, 2003.

ADDRESSES: Send or deliver comments to Mary Ellen Wilson, Chief, Retirement Policy Center; Retirement and Insurance Service; Office of Personnel Management; 1900 E Street NW., Washington DC 20415–3200, FAX (202) 606–0990, or e-mail them to *combox@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Jim Giuseppe, (202) 606–0299.

SUPPLEMENTARY INFORMATION:

1. Overview

The President signed into law the National Defense Authorization Act for Fiscal Year 2002, Public Law 107–107, on December 28, 2001. Sections 1131 and 1132 of that law amend existing provisions of the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) relating to service with a Department of Defense (DoD) or Coast Guard Nonappropriated Fund Instrumentality (NAFI). Section 1131 amends rules relating to portability of retirement coverage when employees move from NAFI positions to civil service positions and vice versa. Section 1132 amends rules relating to service credit for NAFI service under CSRS and FERS.

These interim regulations amend current regulations that define a qualifying move from DoD or Coast Guard NAFI positions to civil service positions and vice versa. In addition, these interim regulations add two subparts to 5 CFR part 847. Subpart H describes how employees may elect to credit NAFI service to qualify for immediate CSRS or FERS retirement. Subpart I describes how such an election will affect the computation of the CSRS or FERS annuity benefit.

A qualifying move from a DoD or Coast Guard NAFI position to a civil service position allows an employee to elect to continue NAFI retirement coverage in the civil service position. Similarly, a qualifying move from a civil service position to a DoD or Coast Guard NAFI position allows an employee to elect to continue civil service retirement coverage in the NAFI position. As originally defined, for a move to be considered qualifying, among other requirements, employees had to be vested in the retirement plan of the position they were leaving. Section 1131 of Public Law 107–107 eliminates that vesting requirement for moves that occur on or after December 28, 2001.

Section 1132 of Public Law 107–107 allows CSRS and FERS employees to use NAFI service to qualify for immediate retirement. However, crediting NAFI service under Public Law 107–107 will not result in higher annuity benefits. The annuities of employees electing to use NAFI service to qualify for immediate retirement must be reduced to ensure that there will be no long-term cost to the Retirement Fund. The annuities payable after this reduction will be actuarially equivalent to the present value of the deferred annuities employees would receive if they simply left Government service and didn't use the NAFI time to qualify for an immediate retirement.

Section 1132 has no effect on previous laws that allow credit for certain NAFI service. Public Law 104–106, approved February 10, 1996, allowed certain FERS employees to elect retirement credit for their NAFI service. Public Law 99–638, enacted on November 10, 1986, allowed CSRS employees to credit certain NAFI service performed between June 19, 1952, and December 31, 1965. NAFI service creditable under either of those laws remains creditable under the provisions of those laws.

2. Qualifying Moves

We have amended 5 CFR 847.202 to reflect the new definition of a qualifying move. An employment move on or after December 28, 2001, from a covered NAFI position to a covered civil service position is a qualifying move allowing the employee to elect to continue the NAFI retirement coverage if:

- The employee has not had a prior opportunity to elect to continue NAFI retirement coverage;
- The employee has moved from a covered NAFI position within DoD or the Coast Guard to any covered civil service position; and
- The employee has moved to the covered civil service position not more than 1 year after separating from the covered NAFI position.

Likewise, an employment move on or after December 28, 2001, from a covered civil service position to a covered NAFI position is a qualifying move allowing the employee to elect to continue CSRS, CSRS Offset, or FERS retirement coverage if:

- The employee has not had a prior opportunity to elect to continue CSRS, CSRS Offset, or FERS retirement;
- The employee has moved from any covered civil service position to a covered NAFI position within DoD or the Coast Guard; and
- The employee has moved to the covered NAFI position not more than 1 year after separating from the covered civil service position.

3. Electing NAFI Credit for Retirement Eligibility

A new subpart H in 5 CFR part 847 outlines the rules relating to electing NAFI credit to qualify for immediate CSRS or FERS retirement.

CSRS or FERS employees leaving Federal service on or after December 28, 2001, who have DoD or Coast Guard NAFI service not otherwise creditable under CSRS or FERS, may use that service to qualify for immediate retirement. To be able to use their NAFI service in this way, employees must already be eligible for CSRS or FERS deferred retirement benefits based on their non-NAFI service. Employees already eligible for immediate retirement benefits based on their non-NAFI service cannot make an election under 5 CFR part 847, subpart H, to credit their NAFI service for CSRS or FERS retirement purposes.

Employees may elect to credit any service they performed as an employee paid from nonappropriated funds of an instrumentality of DoD or Coast Guard. This includes NAFI service that was covered by an NAFI retirement plan as well as NAFI service that was not covered by an NAFI plan. FERS employees may even elect to credit NAFI service performed after 1988. Employees cannot pay CSRS or FERS deposits to cover the NAFI service, and NAFI retirement deductions withheld for any of the NAFI service cannot be transferred to the CSRS or FERS retirement fund.

There is one limitation affecting elections to credit NAFI service to qualify for immediate CSRS or FERS retirement. NAFI service used to qualify for CSRS or FERS immediate retirement cannot also be used under an NAFI retirement system for any purpose.

Employees must elect complete periods of service with an NAFI employer. For example, a CSRS employee who worked 6 years under a covered appointment for a DoD NAFI must elect to credit the entire 6 years even if the employee only needs 2 years of service to qualify for an immediate CSRS retirement.

A complete period of service with an NAFI employer is the period from the date of appointment to the date of separation. If an employee moves directly from an NAFI appointment excluded from NAFI retirement coverage to an appointment subject to NAFI retirement coverage with the same NAFI employer, the move from non-covered employment to covered employment is considered to be a separation. For example, a CSRS employee needs 2 years of service to qualify for an immediate CSRS retirement. The employee has 6 consecutive years of NAFI service—2 years under an appointment excluded from NAFI retirement coverage and 4 years under an appointment covered by an NAFI retirement plan. The 2 years of NAFI service not subject to NAFI retirement coverage is considered a complete period of service, and the employee may elect to credit only that 2 years of NAFI service for CSRS retirement purposes.

Employees wanting to elect to credit NAFI service to qualify for immediate CSRS or FERS retirement must do so when they retire. They need to submit their election, on a form specified by OPM, to their employing agency before their actual retirement date. They must also notify the appropriate NAFI retirement plan of their election and obtain verification of their NAFI employment from the NAFI retirement system.

4. Computing the Annuity When NAFI Service Is Used for Retirement Eligibility

A new subpart I in 5 CFR part 847 outlines the rules OPM will use to compute the annuity of employees who elect to use NAFI service to qualify for immediate CSRS or FERS retirement.

Electing to credit NAFI service to qualify for immediate CSRS or FERS retirement will not increase the amount of the annuity. The amount of annuity including NAFI service must be reduced by the amount necessary to ensure that the present value of the annuity payable to the employee is actuarially equivalent to the present value of the deferred annuity that would be payable to the employee assuming the employee:

- Separated from service on the actual date of retirement; and
- Elected not to credit the NAFI service to qualify for immediate retirement.

Present value is a financial term. As used in retirement, present value is the sum of money required at the present time to fund a future stream of payments. It is computed using an actuarial model that incorporates appropriate assumptions as to inflation and interest rates.

To ensure that the present value of the immediate annuity with credit for NAFI service equals the present value of the deferred annuity without credit for NAFI service, the gross monthly rate of the immediate annuity must be reduced by an amount derived using the following formula:

(the present value of the immediate annuity minus the present value of the deferred annuity) divided by the present value factor corresponding to the employee's age at retirement.

The present value of an immediate annuity is the sum of money required at the commencing date of the annuity to fund the annuity. It is calculated by multiplying the monthly rate of annuity by the present value factor corresponding to the employee's age as of the commencing date of the annuity. A present value factor is a factor calculated by OPM's actuary using generally accepted actuarial standards and on the basis of assumptions used by the Board of Actuaries of the Civil Service Retirement System.

The present value of a deferred annuity is the sum of money required at the commencing date of the immediate annuity to fund the future deferred annuity. It is calculated by multiplying the monthly rate of the deferred annuity by the present value factor corresponding to the employee's age as of the commencing date of the deferred annuity, and then multiplying the result by a discount factor. The discount factor is a factor derived from the assumed rate of investment return earned by the Civil Service Retirement and Disability Fund, and the amount of time between the commencing dates of the immediate and deferred annuities.

(Currently, the rate of investment return on the Civil Service Retirement and Disability Fund is 7 percent. However, on May 9, 2002, OPM published a notice in the **Federal Register** announcing a change in the FERS normal cost percentages. In that notice, OPM also announced that the rate of investment return on the Civil Service Retirement and Disability Fund will change to 6.75 percent beginning October 1, 2002.)

The gross monthly rates of annuity used in the present value calculations are computed under the appropriate annuity formula applying the proper reductions for age, survivor elections, unpaid deposits and redeposits, and alternative annuity elections. In computing the gross monthly rate of the deferred annuity, interest on any deposit or redeposit balances does not accrue beyond the commencing date of the immediate annuity. In addition, the present value factors used in the reductions for unpaid redeposit and alternative annuity election correspond to the employee's age as of the commencing date of the deferred annuity.

If a FERS employee has at least 10 years of creditable (non-NAFI) service, the gross monthly rate of the deferred annuity is computed as of the first day of the month after the employee reaches

the minimum retirement age. Using that commencing date for the deferred annuity maximizes the present value of the deferred annuity.

5. FERS Annuity Supplement

An FERS annuity supplement is not payable to FERS employees who elect to use NAFI service to qualify for an immediate FERS retirement.

6. Reemployment

If a retiree who elected to credit NAFI service to qualify for an immediate retirement returns to work for the Government, the following rules will apply to any benefit earned as the result of the reemployment.

- If the retiree qualifies for a supplemental annuity under 5 CFR part 837, the supplemental annuity will not be subject to the reduction outlined in 5 CFR part 847, subpart I.
- If the retiree qualifies for a redetermined annuity under 5 CFR part 837, the redetermined annuity will be computed with the reduction outlined in 5 CFR part 847, subpart I, if the retiree needs to credit NAFI service to qualify for the redetermined annuity. The reduction under 5 CFR part 847, subpart I, will be recomputed based on the retiree's age as of the commencing date of the redetermined annuity. The retiree does not need to make a new election to credit NAFI service under 5 CFR part 847, subpart H. The original election will remain in effect.
- If the retiree qualifies for a redetermined annuity under 5 CFR part 837, the redetermined annuity will not be subject to the reduction outlined in 5 CFR part 847, subpart I, if the retiree qualifies for the redetermined annuity without crediting the NAFI service. If the retiree elects the redetermined annuity, the election the retiree made to credit the NAFI service under 5 CFR part 847, subpart H, when the retiree originally retired will not remain in effect.
- If the retiree's annuity terminated upon reemployment, and if the retiree qualifies for a new immediate annuity when the reemployment ends, the new annuity will be computed with the reduction outlined in 5 CFR part 847, subpart I, if the retiree needs to credit NAFI service to qualify for the new annuity. The retiree must submit a new election to credit the NAFI service in accordance with 5 CFR part 847, subpart H.
- If the retiree's annuity terminated upon reemployment, and if the retiree qualifies for a new immediate annuity when the reemployment ends, the new annuity will not be subject to the reduction outlined in 5 CFR part 847, subpart I, if the retiree qualifies for the new annuity without crediting the NAFI service. The election the retiree made to credit the NAFI service under 5 CFR part 847, subpart H, when the retiree originally retired will not remain in effect.
- If the retiree's annuity terminated upon reemployment, and if the retiree qualifies for a deferred annuity, but not a new immediate annuity when the reemployment ends, the deferred annuity will not be subject to the reduction outlined in 5 CFR part 847, subpart I. The election the retiree made to credit the NAFI service under 5 CFR part 847, subpart H, when the retiree originally retired, will not remain in effect.
- If the retiree's annuity terminated upon reemployment, and if the retiree does not qualify for either a new immediate annuity or a deferred annuity when the reemployment ends, the old annuity will be reinstated. The retiree does not need to make a new election to credit NAFI service under 5 CFR part 847, subpart H. The original election will remain in effect.

7. Survivor Annuity Rate

The amount of the survivor annuity provided by a retiring employee who elects to credit NAFI service under 5 CFR part 847, subpart H, to qualify for immediate CSRS or FERS retirement is also subject to reduction. The reduction is computed in the same way that the reduction to the employee's annuity rate is computed. The present value of the initial survivor rate generated by the immediate annuity computation (with credit for NAFI service) equals the initial survivor rate multiplied by the present value factor corresponding to the employee's age as of the commencing date of the immediate annuity. The present value of the initial survivor rate generated by the deferred annuity computation (without credit for NAFI service) equals the initial survivor rate multiplied by the present value factor corresponding to the employee's age as of the deferred annuity date, multiplied by the discount factor corresponding to the amount of time between the immediate annuity commencing date and the deferred annuity date. The difference between the two present values is then divided by the present value factor corresponding to the employee's age as of the immediate annuity commencing date. The result, rounded up to the higher dollar, equals the reduction that applies to the initial survivor rate generated by the immediate annuity computation.

Waiver of Notice of Proposed Rulemaking

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and to make these rules effective in less than 30 days. The regulations are effective December 28, 2001, the date the President signed the statute. The statute requires OPM to establish by regulation the procedure for computing an annuity when NAFI service is used to qualify for an immediate retirement. Delaying implementation of these regulations would unnecessarily delay the availability of the benefits of the new law.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Lists of Subjects in 5 CFR Parts 831, 837, 842, 843, 844, and 847

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending 5 CFR parts 831, 837, 842, 843, 844 and 847 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2) and section 7001 of Pub. L. 105–174, 112 Stat. 58; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under sections 7(b) and 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under section 102(e) of Pub. L. 104–

8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under section 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.301 also issued under section 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and section 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under section 11004 (c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under section 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under section 636 of H.R. 5658, incorporated by reference in Pub. L. 106–554, 114 Stat. 2763, and published as Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–125; subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart C—Credit for Service

2. In § 831.305, paragraph (d) is added to read as follows:

§ 831.305 Service with a nonappropriated fund instrumentality after June 18, 1952, but before January 1, 1966.

* * * * * *

(d) *Crediting other service in a nonappropriated fund instrumentality.* Service not creditable under this section may become creditable for retirement eligibility purposes under the provisions outlined in 5 CFR part 847, subpart H.

Subpart G—Computation of Annuities

3. Section 831.704 is revised to read as follows:

§ 831.704 Annuities including credit for service with a nonappropriated fund instrumentality.

(a) An annuity that includes credit for service with a nonappropriated fund instrumentality performed after December 31, 1965, based on an election under 5 CFR part 847, subpart D, is computed under 5 CFR part 847, subpart F.

(b) An annuity that includes credit for service with a nonappropriated fund instrumentality based on an election under 5 CFR part 847, subpart H, is computed under 5 CFR part 847, subpart I.

PART 837—REEMPLOYMENT OF ANNUITANTS

4. The authority citation for part 837 continues to read as follows:

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468 and section 302 of Pub. L. 99–335, June 6, 1986, as amended.

Subpart E—Retirement Benefits on Separation

5. Section 837.506 is revised to read as follows:

§ 837.506 Computation of redetermined annuity for former employees of nonappropriated fund instrumentalities.

(a) The redetermined annuity of a former employee of a nonappropriated fund instrumentality who elected CSRS or FERS coverage under 5 CFR part 847, subpart D, is recomputed under 5 CFR part 847, subpart F.

(b) The redetermined annuity of a former employee of a nonappropriated fund instrumentality who elected CSRS or FERS retirement credit under 5 CFR part 847, subpart H, is recomputed under 5 CFR part 847, subpart I.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

6. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 842.107 also issued under section 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 7001 of Pub. L. 105–174, 112 Stat. 58, as amended by section 651 of Pub. L. 106–58, 113 Stat. 430; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101–239, 103 Stat. 2106 and section 7001 of Pub. L. 101–508, 104 Stat. 1388; subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under section 636 of H.R. 5658, incorporated by reference in Pub. L. 106–554, 114 Stat. 2763, and published as Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–125.

Subpart C—Credit for Service

7. In § 842.304, paragraph (d) is revised to read as follows:

§ 842.304 Civilian service.

* * * * *

(d) *Credit for service performed as an employee of a nonappropriated fund instrumentality.* (1) Credit for service with a nonappropriated fund instrumentality is allowed in accordance with an election under 5 CFR part 847, subpart D or H.

(2) Service under FERS for which the employee withdrew all deductions is creditable in accordance with an election made under 5 CFR part 847, subpart D.

(3) An annuity that includes credit for service with a nonappropriated fund instrumentality under 5 CFR part 847, subpart D, or refunded service under paragraph (d)(2) of this section is computed under 5 CFR part 847, subpart F.

(4) An annuity that includes credit for service with a nonappropriated fund instrumentality under 5 CFR part 847, subpart H, is computed under 5 CFR part 847, subpart I.

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

8. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

9. Section 843.314 is revised to read as follows:

§ 843.314 Amount of survivor annuity where service includes credit for service with a nonappropriated fund instrumentality.

(a) The survivor annuity based on service that includes service with a nonappropriated fund instrumentality made creditable by an election under 5 CFR part 847, subpart D, is computed under 5 CFR part 847, subpart F.

(b) The survivor annuity based on service that includes service with a nonappropriated fund instrumentality made creditable by an election under 5 CFR part 847, subpart H, is computed under 5 CFR part 847, subpart I.

PART 844—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DISABILITY RETIREMENT

10. The authority citation for part 844 continues to read as follows:

Authority: 5 U.S.C. 8461; § 844.201 also issued under 5 U.S.C. 1104.

Subpart A—General Provisions

11. Section 844.106 is revised to read as follows:

§ 844.106 Disability annuities which include credit for service with a nonappropriated fund instrumentality.

A disability annuity that includes credit for service with a nonappropriated fund instrumentality performed after December 31, 1965, based on an election under 5 CFR part 847, subpart D, is computed under 5 CFR part 847, subpart F.

PART 847—ELECTIONS OF RETIREMENT COVERAGE BY CURRENT AND FORMER EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

12. The authority citation for part 847 is revised to read as follows:

Authority: 5 U.S.C. 8332(b)(17) and 8411(b)(6) and sections 1131 and 1132 of Pub. L. 107–107, December 28, 2001, 115 Stat 1242; 5 U.S.C. 8347(a) and 8461(g) and section 1043(b) of Pub. L. 104–106, Div. A, Title X, Feb.10, 1996, 110 Stat. 434. Subpart B also issued under 5 U.S.C. 8347(q) and 8461(n).

Subpart A—General Provisions

13. In § 847.101, paragraph (a) is revised to read as follows:

§ 847.101 Purpose and scope.

(a) This part contains the regulations issued by the Office of Personnel Management (OPM) to implement the statutory election rights of certain current and former NAFI employees under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990, section 1043 of the National Defense Authorization Act for Fiscal Year 1996, and sections 1131 and 1132 of the National Defense Authorization Act for Fiscal Year 2002.

14.–15. In § 847.102, new paragraphs (a)(8) and (a)(9) are added and paragraph (c)(4) is revised to read as follows:

§ 847.102 Regulatory structure.

(a) * * *

(8) Subpart H of this part contains information about elections to credit NAFI service to qualify for immediate retirement under section 1132 of Public Law 107–107, the National Defense Authorization Act for Fiscal Year 2002.

(9) Subpart I of this part contains information about how benefits are computed when employees elect to credit NAFI service to qualify for immediate retirement under section 1132 of Public Law 107–107, the National Defense Authorization Act for Fiscal Year 2002.

* * * * *

(c) * * *

(4) Part 870 of this chapter contains information about the Federal Employees' Group Life Insurance Program.

* * * * *

16. In § 847.103, paragraph (b), the definition of *Deficiency* is revised to read as follows:

§ 847.103 Definitions.

* * * * *

(b) * * *

Deficiency means the remainder of the actuarial present value of crediting NAFI service, after subtracting the amount credited to the employee from a transfer to the Fund under subpart E of this part, and earnings under § 847.507 on the transferred amount.

* * * * *

17. In § 847.104, paragraph (c) is added to read as follows:

§ 847.104 OPM responsibilities.

* * * * *

(c) OPM will determine if an employee who wishes to make an election under 5 CFR part 847, subpart H, is eligible to make such an election, and OPM's determination is subject to reconsideration under 5 CFR part 831, subpart A, or 5 CFR part 841, subpart C.

18. Section 847.105 is revised to read as follows:

§ 847.105 Agency responsibilities.

(a) Each agency is responsible for notifying its employees of the opportunity to make an election under this part and for determining if an employee who wishes to make an election under subparts B and D of this part is qualified to do so, and for counseling employees in accordance with guidance issued by OPM.

(b) If an agency determines that an employee is not eligible to make an election under subparts B and D of this part, the agency shall issue a final decision to the employee that meets the requirements of § 847.106, including notice of the right to appeal under § 847.107.

19. In § 847.106, paragraph (a) is revised to read as follows:

§ 847.106 Agency decision concerning eligibility.

(a) If the agency determines that the employee is not eligible to make an election under subpart B or D of this part, it must issue a final decision to the employee.

* * * * *

20. In § 847.107, paragraph (b) is revised to read as follows:

§ 847.107 Appeals to MSPB.

* * * * *

(b) Paragraph (a) of this section is the exclusive remedy for review of agency decisions concerning eligibility to make an election under subparts B and D of this part. An agency decision must not allow review under any employee grievance procedures, including those established by 5 U.S.C. chapter 71, and 5 CFR part 771.

Subpart B—Election To Continue Retirement Coverage After a Qualifying Move

21. Section 847.202 is revised to read as follows:

§ 847.202 Definition of qualifying move.

(a) A qualifying move occurring on or after December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under CSRS and FERS must meet all of the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage.

(2) The employee must have moved from a position covered by CSRS or FERS to a retirement-covered position in an NAFI, and

(3) The employee must begin employment in a retirement-covered position in an NAFI no later than 1 year after separation from CSRS- or FERS-covered employment.

(b) A qualifying move occurring on or after December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under an NAFI retirement system must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue NAFI retirement system coverage;

(2) The employee must have moved from an NAFI to a civil service position subject to CSRS or FERS coverage; and

(3) The employee must be appointed to a CSRS- or FERS-covered position no later than 1 year after separation from retirement-covered NAFI employment.

(c) A qualifying move occurring on or after August 10, 1996, and before December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under CSRS and FERS must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage;

(2) The employee must have been vested in CSRS or FERS prior to the move to an NAFI;

(3) The employee must have moved from a position covered by CSRS or FERS to a retirement-covered position in an NAFI; and

(4) The employee must begin employment in a retirement-covered position in an NAFI no later than 1 year after separation from CSRS- or FERS-covered employment.

(d) A qualifying move occurring on or after August 10, 1996, and before December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under an NAFI retirement system must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue NAFI retirement system coverage;

(2) The employee must have been a vested participant in the NAFI retirement system (as the term "vested participant" is defined by that retirement system) prior to the move to a CSRS- or FERS-covered position;

(3) The employee must have moved from an NAFI to a civil service position subject to CSRS or FERS coverage; and

(4) The employee must be appointed to a CSRS- or FERS-covered position no later than 1 year after separation from retirement-covered NAFI employment.

(e) A qualifying move occurring between January 1, 1987, and August 9, 1996, that would allow an opportunity to elect to continue retirement coverage under CSRS or FERS must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage;

(2) The employee must have been vested in CSRS or FERS prior to the move to an NAFI;

(3) The employee must have moved from a CSRS- or FERS-covered position within the Department of Defense or the U.S. Coast Guard to a retirement-covered position with an NAFI; and

(4) The employee must begin employment in a retirement-covered position in an NAFI no later than 4 days after separation from CSRS- or FERS-covered employment.

(f) A qualifying move occurring between January 1, 1987, and August 9, 1996, that would allow an opportunity to elect to continue retirement coverage under an NAFI retirement system must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue NAFI retirement system coverage;

(2) The employee must have been a vested participant in the NAFI retirement system (as the term "vested participant" is defined by that retirement system) prior to the move to the civil service;

(3) The employee must have moved from an NAFI to a CSRS- or FERS-covered position within the Department of Defense or the U.S. Coast Guard; and

(4) The employee must be appointed to a CSRS- or FERS-covered position no later than 4 days after separation from retirement-covered NAFI employment.

(g) A qualifying move under paragraphs (a), (b), (c), and (d) of this section is considered to occur on the date the individual enters into the new position, not at the time of separation from the prior position.

(h) A retroactive election opportunity under subpart D of this part (pertaining to elections of CSRS, FERS, or NAFI retirement coverage) is not considered a prior opportunity to elect retirement coverage under this section.

22. In § 847.203, paragraph (a) is revised to read as follows:

§ 847.203 Election of CSRS coverage.

(a) An employee who completes a qualifying move (under § 847.202(a), (c), or (e)) from a CSRS-covered position to an NAFI may elect to continue CSRS coverage.

* * * * *

23. In § 847.204, paragraph (a) is revised to read as follows:

§ 847.204 Election of FERS coverage.

(a) An employee who completes a qualifying move under § 847.202(a), (c) or (e) from an FERS-covered position to an NAFI may elect to continue FERS coverage.

* * * * *

24. In § 847.205, paragraph (a) is revised to read as follows:

§ 847.205 Elections of NAFI retirement system coverage.

(a) An employee who completes a qualifying move under § 847.202(b), (d), or (f), from an NAFI position to a CSRS- or FERS-covered position may elect to continue coverage under the NAFI retirement system.

* * * * *

Subpart D—Elections of Coverage Under the Retroactive Provisions

25. In § 847.402, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 847.402 Definition of qualifying move.

(a) * * *

(1)(i) For moves occurring before February 10, 1996, the employee must not have had a prior opportunity to elect to continue CSRS, FERS, or NAFI retirement coverage under § 847.202(e) or (f);

(ii) For moves occurring on or after February 10, 1996, the employee must not have made an election under § 847.202(e) or (f);

* * * * *

(b) * * *

(1)(i) For moves occurring before February 10, 1996, the employee must not have had a prior opportunity to elect to continue CSRS, FERS, or NAFI retirement coverage under § 847.202(e) or (f);

(ii) For moves occurring on or after February 10, 1996, the employee must not have made an election under § 847.202(e) or (f);

* * * * *

26. In § 847.421, paragraph (a)(2) is revised to read as follows:

§ 847.421 Election requirements.

(a) * * *

(2) A FERS employee who has had a previous opportunity to elect retirement coverage under § 847.202(e) or (f) is not excluded from making this election.

* * * * *

27. In § 847.431, paragraph (a)(2) is revised to read as follows:

§ 847.431 Election requirements.

(a) * * *

(2) An NAFI employee who has had a previous opportunity to elect retirement coverage under § 847.202(e) or (f) is not excluded from making this election.

* * * * *

28. Add subpart H to read as follows:

Subpart H—Electing To Credit NAFI Service for CSRS and FERS Retirement Eligibility

Sec.

847.801 What information is in this subpart?
847.802 Who may elect to use NAFI service to qualify for immediate retirement under CSRS or FERS?
847.803 When do employees make the election to use their NAFI service to qualify for an immediate retirement under CSRS or FERS?
847.804 How do employees make an election to use their NAFI service to qualify for an immediate retirement under CSRS or FERS?
847.805 What NAFI service can employees elect to credit toward retirement eligibility under CSRS or FERS?
847.806 How much NAFI service must employees elect to use to qualify for an immediate CSRS or FERS retirement?
847.807 Do employees have to pay CSRS or FERS deposits for the NAFI service they use to qualify for immediate retirement under CSRS or FERS?
847.808 Is money in the NAFI retirement fund covering NAFI service that an employee elects to use for immediate retirement under CSRS or FERS, transferred to the Civil Service Retirement and Disability Fund?
847.809 What effect will NAFI service used to qualify for an immediate retirement have on the amount of the CSRS or FERS annuity?

Subpart H—Electing to Credit NAFI Service for CSRS and FERS Retirement Eligibility

§ 847.801 What information is in this subpart?

This subpart contains OPM's regulations on the procedures, eligibility requirements, and time limits for elections under 5 U.S.C. 8332(b)(17) and 5 U.S.C. 8411(b)(6).

§ 847.802 Who may elect to use NAFI service to qualify for immediate retirement under CSRS or FERS?

CSRS and FERS employees may elect to credit NAFI service for retirement purposes under this subpart if:

(a) They separate for retirement on or after December 28, 2001;

(b) They do not otherwise qualify for immediate retirement; and

(c) They have enough otherwise creditable civilian service to qualify for deferred retirement.

§ 847.803 When do employees make the election to use their NAFI service to qualify for an immediate retirement under CSRS or FERS?

Employees about to retire must make their election to credit NAFI service under this subpart no later than the date of separation on which their retirement is based.

§ 847.804 How do employees make an election to use their NAFI service to qualify for an immediate retirement under CSRS or FERS?

Employees electing to credit NAFI service under this subpart must:

(a) Inform the NAFI retirement plan that they are electing to credit NAFI service for CSRS or FERS retirement eligibility;

(b) Document the election on a form prescribed by OPM; and

(c) Submit the election with their application for immediate retirement.

§ 847.805 What NAFI service can employees elect to credit toward retirement eligibility under CSRS or FERS?

(a) Employees may elect to credit under this subpart any NAFI service that isn't already creditable under 5 U.S.C. 8332(b)(16), or under 5 CFR part 847, subpart D.

(b) NAFI service used to qualify for an immediate annuity based on an election in paragraph (a) of this section cannot be credited in a NAFI retirement plan for any purpose including eligibility and calculations of NAFI benefits.

§ 847.806 How much NAFI service must employees elect to use to qualify for an immediate CSRS or FERS retirement?

(a) Employees must elect complete periods of NAFI service under this subpart.

(b) A complete period of NAFI service in paragraph (a) of this section consists of the period from the date of appointment with an NAFI employer to the date of termination.

§ 847.807 Do employees have to pay CSRS or FERS deposits for the NAFI service they use to qualify for immediate retirement under CSRS or FERS?

Employees are not required to pay CSRS or FERS deposits for the NAFI service they use to qualify for immediate retirement under CSRS or FERS. In fact, deposits cannot be made for any NAFI service employees elect to credit for immediate retirement under this subpart.

§ 847.808 Is money in the NAFI retirement fund covering NAFI service that an employee elects to use for immediate retirement under CSRS or FERS, transferred to the Civil Service Retirement and Disability Fund?

Money in the NAFI retirement fund covering NAFI service that an employee elects to use for immediate retirement under CSRS or FERS under this subpart cannot be transferred to the Civil Service Retirement and Disability Fund.

§ 847.809 What effect will NAFI service used to qualify for an immediate retirement have on the amount of the CSRS or FERS annuity?

The annuity of a CSRS or FERS employee who elects to credit NAFI service under this subpart will be reduced under the provisions outlined in subpart I of this part.

29. Add subpart I to read as follows:

Subpart I—Computing the Retirement Annuity for Employees Who Elect To Use NAFI Service to Qualify for an Immediate CSRS or FERS Retirement

Sec.

847.901 What information is in this subpart?
847.902 How does an election to credit NAFI service for immediate CSRS or FERS retirement under subpart H of this part affect the computation of the CSRS or FERS retirement annuity?
847.903 How is the monthly reduction to the retirement annuity computed?
847.904 What are Present Value Factors?
847.905 How is the present value of an immediate annuity with credit for NAFI service computed?
847.906 How is the present value of a deferred annuity without credit for NAFI service computed?
847.907 How is the monthly annuity rate used to compute the present value of the deferred annuity without credit for NAFI service determined?
847.908 If a retiree who elected to credit NAFI service under subpart H of this part earns a supplemental annuity under 5 CFR part 837, how will that supplemental annuity be computed?
847.909 If a retiree who elected to credit NAFI service under subpart H of this part earns a right to a redetermined annuity under 5 CFR part 837, how will the redetermined annuity be computed?
847.910 If a retiree who elected to credit NAFI service for CSRS immediate retirement returns to work for the Government under conditions that terminate the annuity, how will the retirement annuity be computed when the employee's service with the Government ends?
847.911 Is an employee who elects to credit NAFI service to qualify for an immediate FERS retirement under subpart H of this part eligible for an FERS annuity supplement under 5 CFR 842 subpart E?
847.912 If an employee who elects to credit NAFI service under subpart H of this part elects a survivor annuity will the monthly survivor annuity rate be subject to reduction?

Subpart I—Computing the Retirement Annuity for Employees Who Elect To Use NAFI Service To Qualify for an Immediate CSRS or FERS Retirement

§ 847.901 What information is in this subpart?

This subpart contains OPM's regulations describing the computation of a CSRS or FERS retirement annuity when an employee elects to use NAFI service to qualify for immediate retirement under subpart H of this part.

§ 847.902 How does an election to credit NAFI service for immediate CSRS or FERS retirement under subpart H of this part affect the computation of the CSRS or FERS retirement annuity?

The retirement annuity of an employee who elects to use NAFI service to qualify for an immediate CSRS or FERS retirement benefit will be reduced to ensure the present value of the benefits payable will be actuarially equivalent to those that would have been payable if the employee had separated on the same date, but without credit for the NAFI service.

§ 847.903 How is the monthly reduction to the retirement annuity computed?

(a) The reduction equals:

(1) The difference in the present value of the immediate annuity with credit for NAFI service and the deferred annuity without credit for NAFI service, divided by

(2) The present value factor for the retiree's attained age (in full years) at the time of retirement.

(b) The reduction computed in paragraph (a) of this section is rounded to the next higher dollar.

§ 847.904 What are Present Value Factors

Present value factors have the same meaning in this subpart as they do in 5 CFR 847.602.

§ 847.905 How is the present value of an immediate annuity with credit for NAFI service computed?

(a) OPM will determine the present value of the immediate annuity including service credit for NAFI service by multiplying the monthly annuity rate as of the commencing date of the annuity by the present value factor for the retiree's age on that date.

(b) The monthly annuity rate under paragraph (a) of this section for CSRS and CSRS Offset retirees equals the monthly rate of annuity otherwise payable under 5 U.S.C. chapter 83, subchapter III, including all reductions provided under that subchapter.

(c) The monthly annuity rate under paragraph (a) of this section for FERS retirees equals the monthly rate of annuity otherwise payable under 5 U.S.C. chapter 84, subchapter II, including all reductions provided under that subchapter.

§ 847.906 How is the present value of a deferred annuity without credit for NAFI service computed?

(a) The present value of a deferred annuity equals the present value of the deferred annuity without credit for the NAFI service as of the deferred annuity date discounted for interest to that date.

(b) The present value of the deferred annuity without credit for the NAFI service as of the deferred annuity date equals the retiree's monthly annuity without credit for the NAFI service as of the deferred annuity date times the present value factor for the retiree's age on that date.

(c) The present value under paragraph (b) of this section is discounted for interest by dividing that amount by a factor equal to the value of the exponential function in which—

(1) The base is one plus the assumed interest rate under 5 CFR part 841, subpart D, on the commencing date of the retiree's immediate annuity, and

(2) The exponent is one-twelfth of the number of months between the commencing date of the retiree's immediate annuity and the deferred annuity date.

§ 847.907 How is the monthly annuity rate used to compute the present value of the deferred annuity without credit for NAFI service determined?

(a) The monthly annuity rate used to compute the present value of the deferred annuity under § 847.906 of this subpart for CSRS retirees equals the monthly annuity otherwise payable under 5 U.S.C. chapter 83, subchapter III, including all reductions provided under that subchapter.

(b) The monthly annuity rate used to compute the present value of the deferred annuity under § 847.906 of this subpart for CSRS Offset retirees is computed as described in paragraph (a) of this section, except that the reduction under section 5 U.S.C. 8349 does not apply.

(c) The monthly annuity rate used to compute the present value of the deferred annuity under § 847.906 of this subpart for FERS retirees equals the monthly rate of annuity otherwise payable under 5 U.S.C. chapter 84, subchapter II, including all reductions provided under that subchapter.

§ 847.908 If a retiree who elected to credit NAFI service under subpart H of this part earns a supplemental annuity under 5 CFR part 837, how will that supplemental annuity be computed?

This subpart does not affect supplemental annuities under 5 CFR part 837. Supplemental annuities will be computed in accordance with the provisions of that part.

§ 847.909 If a retiree who elected to credit NAFI service under subpart H of this part earns a right to a redetermined annuity under 5 CFR part 837, how will the redetermined annuity be computed?

(a) A redetermined annuity will not be subject to a reduction under this subpart if, on the date reemployment with the Government ends, the retiree qualifies for an immediate retirement without credit for the NAFI service.

(b) A redetermined annuity will be subject to a reduction under this subpart if, on the date reemployment with the Government ends, the retiree does not qualify for immediate retirement without credit for the NAFI service.

(c) The reduction in paragraph (b) of this section is computed as in accordance with § 847.903 of this subpart as if the individual was retiring for the first time.

§ 847.910 If a retiree who elected to credit NAFI service for CSRS immediate retirement returns to work for the Government under conditions that terminate the annuity, how will the retirement annuity be computed when the employee's service with the Government ends?

(a) If an individual whose annuity terminates upon reemployment with the Government elects to credit NAFI service under subpart B of this part to qualify for a new immediate retirement when the reemployment ends, the annuity will be subject to a reduction under this subpart.

(b) If an individual whose annuity terminates upon reemployment with the Government qualifies for a new immediate retirement when the reemployment ends without crediting NAFI service, the new annuity will not be subject to a reduction under this subpart.

(c) If an individual whose annuity terminates upon reemployment with the Government qualifies for a deferred annuity when the reemployment ends, the deferred annuity will not be subject to a reduction under this subpart.

(d) The reduction in paragraph (a) of this section is computed in accordance with § 847.903 of this subpart as if the individual was retiring for the first time.

§ 847.911 Is an employee who elects to credit NAFI service to qualify for an immediate FERS retirement under subpart H of this part eligible for an FERS annuity supplement under 5 CFR 842 subpart E?

An FERS Annuity Supplement is not payable to a retiree who elects to credit NAFI service under subpart H of this part.

§ 847.912 If an employee who elects to credit NAFI service under subpart H of this part elects a survivor annuity will the monthly survivor annuity rate be subject to reduction?

(a) The monthly survivor annuity benefit of an employee who elects to credit NAFI service under subpart H of this part will be subject to reduction.

(b) The reduction under paragraph (a) of this section equals:

(1) The difference in the present value of the initial survivor annuity generated from the immediate annuity computation with credit for NAFI service and the initial survivor annuity generated from the deferred annuity computation without credit for NAFI service, divided by

(2) The present value factor for the retiree's age (in full years) at the time of retirement.

(c) The present value of the survivor annuity generated from the immediate annuity with credit for NAFI service in paragraph (b)(1) of this section is computed under the provisions of § 847.905 of this subpart.

(d) The present value of the initial survivor annuity generated from the deferred annuity without credit for NAFI service in paragraph (b)(1) of this section is computed under the provisions of § 847.906 of this subpart.

(e) The ages of the employee as of the commencing date of the immediate retirement and the commencing date of the deferred retirement are used to compute the present value of the survivor benefits under paragraphs (c) and (d) of this section.

[FR Doc. 03–819 Filed 1–15–03; 8:45 am]
BILLING CODE 6325–50–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. SW012; Special Condition No. 29-012-SC]

Special Conditions: ST 2017RC-R, Installation of Pratt & Whitney Canada PT6-67D on Global Helicopter Technology, Inc. (GHTI), Restricted Category Model UH-1H, TC R00002RC, With Full Authority Digital Engine Control (FADEC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for Supplemental Type Certificate (STC), Project # ST2017RC-R, the installation of a Pratt and Whitney PT6-67D Turbine Engine on Global Helicopter Technology Inc. (GHTI), Restricted Category, U.S. Army military surplus helicopter, Model UH-1H, type certificated under TC R00002RC. The installation of the PT6-67D on the Restricted Category UH-1H will have a novel or unusual design feature associated with the installation of the Full Authority Digital Engine Control (FADEC). The applicable airworthiness regulations do not contain adequate or appropriate safety standards to protect systems that perform critical functions from the effects of a high-intensity radiated field (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained when exposed to HIRF.

DATES: The effective date of this special condition is January 8, 2003. Comments must be received on or before March 17, 2003.

ADDRESSES: Comments on this special condition may be mailed in duplicate to: Federal Aviation Administration (FAA), Office of the Regional Counsel, Attention: Rules Docket No. SW012, Fort Worth, Texas 76193-0007, or delivered in duplicate to the Office of the Regional Counsel at 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked: Docket No. SW012. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4 p.m. The Rules Docket for special conditions is maintained at the Federal Aviation Administration, Rotorcraft Directorate, 2601 Meacham Blvd., Room 448, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Bob McCallister, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110; telephone 817-222-5121, fax 817-222-5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of this special condition has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making this special condition effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, views, or data. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. We will consider all comments we receive on or before the closing date for comments. We may change this special condition in light of the comments we receive. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. If you want the FAA to acknowledge receipt of your mailed comments on this special condition, include a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 29, 2000, Global Helicopter Technology, Inc. (GHTI) applied for an STC for the installation of a Pratt & Whitney PT6-67D Turbine Engine on the GHTI, U.S. Army UH-1H, Restricted Category Helicopter, type certificated under Type Certificate R00002RC. The UH-1H Restricted Category helicopter is a utility/heavy lift helicopter with a two-bladed teetering main rotor system. It is to be powered by a single Pratt and Whitney PT6-67D engine that incorporates a full authority digital engine control (FADEC). The maximum gross weight of the aircraft is 9,500 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, GHTI must show that the Engine Installation meets the applicable provisions of the regulations as listed below:

- 14 CFR part 29 as amended through and including Amendment 29-1, effective August 12, 1965.
- 14 CFR 29.1529, Instructions for Continued Airworthiness, Amendment Number 20, effective September 11, 1980.

In accordance with 14 CFR 36.1(a)(4), compliance with the noise requirements was not shown for the aircraft. Therefore, the engine installations under this supplemental type certificate are only eligible for external load operations excepted by 14 CFR 36.1(a)(4) and defined under section 133.1(b). Any alteration to the aircraft for Special Purpose not identified above will require further FAA approval and in addition, may require noise and/or flight testing.

In addition, the certification basis includes certain equivalent safety findings that are not relevant to this special condition.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for this STC because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are defined in § 11.19 and issued in accordance with § 11.38 and become part of the STC certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model and/or modification for which they are issued. Should the type certificate or supplemental type certificate (STC) for that model or installation respectively, be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model or modification under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The GHTI UH-1H Restricted Category Helicopter with a Pratt & Whitney PT6-67D engine installed will incorporate the following novel or unusual design features: Electrical, electronic, or a combination of electrical electronic (electrical/electronic) systems such as FADEC that will be performing functions critical to the continued safe flight and landing of the helicopter. FADEC is an electronic device that performs the functions of engine control during flight operations.

Discussion

The GHTI installation of the PT–6–67D in the UH–1H helicopter, at the time of application, was identified as incorporating one and possibly more electrical/electronic systems, such as a FADEC. After the design is finalized, GHTI will provide the FAA with a preliminary hazard analysis that will identify any other critical functions that are performed by the electrical/electronic systems required for safe flight and landing.

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical/electronic systems that perform critical functions. These advanced systems respond to the transient effects of induced electrical current and voltage caused by HIRF incidents on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft or alteration certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) Increased use of sensitive electronics that perform critical functions; (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) adverse service experience of military aircraft using these technologies; and (4) an increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high priority program to (1) determine and define electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified a level of HIRF environment that a helicopter could be exposed to during visual flight rules (VFR) operations. While the HIRF rulemaking requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the engine installation's electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under VFR conditions.

These special conditions will require the systems that perform critical functions, as installed in the aircraft, meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF test environment. The FAA has determined that the test environment defined in Table 1 is acceptable for critical functions in helicopters.

The applicant may also demonstrate by a laboratory test that the electrical/electronic systems that perform critical functions can withstand a peak electromagnetic field strength in a frequency range of 10 KH_z to 18 GH_z. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 volts per meter (v/m) and other considerations, such as alternate or backup technology that is immune to HIRF, are appropriate for critical functions during instrument flight rules (IFR) operations. A level of 200 v/m is more appropriate for critical functions during VFR operations. Laboratory test levels are defined according to RTCA/DO–160D Section 20 Category W (100 v/m and 150 mA) and Category Y (200 v/m and 300 mA). As defined in DO–160D Section 20, the test levels are defined as the peak of the root means squared (rms) envelope. As a minimum, the modulations required for RTCA/DO–160D Section 20 Categories W and Y will be used. Other modulations should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 H_z square wave modulation while the video signals for electronic display systems may be susceptible to 400 H_z sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KH_z sine wave with 80 percent depth of modulation in the frequency range from 10 KH_z to 400 MH_z and 1 KH_z square wave with greater than 90 percent depth of modulation from 400 MH_z to 18 GH_z. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause an unsafe condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis models, similarity with existing systems, or a combination of these methods. The two basic options of either testing the rotorcraft to the defined environment or laboratory testing may not be combined. The laboratory test allows some frequency

areas to be under tested and requires other areas to have some safety margin when compared to the defined environment. The areas required to have some safety margin are those shown, by past testing, to exhibit greater susceptibility to adverse effects from HIRF; and laboratory tests, in general, do not accurately represent the aircraft installation. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

The modulation that represents the signal most likely to disrupt the operation of the system under test, based on its design characteristics should be selected. For example, flight control systems may be susceptible to 3 Hz square wave modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KHz sine wave with 80 percent depth of modulation in the frequency range from 10 KHz to 400 MHz, and 1 KHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	150	150
100–500	200	200
500–2000	200	200
2–30 MHz	200	200
30–100	200	200
100–200	200	200
200–400	200	200
400–700	730	200
700–1000	1400	240
1–2 GHz	5000	250
2–4	6000	490

TABLE 1.—FIELD STRENGTH VOLTS/METER—Continued

Frequency	Peak	Average
4–6	7200	400
6–8	1100	170
8–12	5000	330
12–18	2000	330
18–40	1000	420

Applicability

As discussed above, this special condition is applicable to Supplemental Type Certificate (STC) Project Number ST2017RC–R, for the installation of a Pratt & Whitney PT6–67D turbine engine in GHTI UH–1H military surplus helicopters type certificated under TC R00002RC. Should GHTI apply at a later date for a change to the STC to include another model incorporating the same novel or unusual design feature, the special condition would apply to that STC modification as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features associated with the STC project listed above. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopter.

The substance of this special condition has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason and because a delay would significantly affect the certification of the helicopter modification which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting this special condition upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for STC Project ST2017RC–R, installation of PT6–67D on Global Helicopter Technology, Inc (GHTI), Model UH–1H, Restricted Category Helicopters, type certificated under TC R00002RC.

Protection for Electrical and Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on January 8, 2003.

Eric Bries,

Acting Manager, Aircraft Certification Service, Rotorcraft Directorate.

[FR Doc. 03–1010 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13997; Airspace Docket No. 02–AEA–20]

Amendment of Class D Airspace; White Plains, NY

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at Westchester County Airport, White Plains, NY. this action is necessary to insure continuous altitude coverage for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 25, 2002 a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by providing additional Class D airspace extending two miles along the southeast and northwest localizer courses for Westchester County Airport up to but not including 3,000 feet mean sea level (MSL) was published in the **Federal Register** (67 FR 70564–70565). Interested parties were invited to participate in this rulemaking proceedings by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace document are based on North American Datum 83. Class D airspace area designations for airspace extending upward from the surface are published in paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002. The Class D airspace designation listed in this document will be published in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) extends Class D airspace from the surface of the earth up to but not including 3,000 feet MSL an additional two miles along the southeast and northwest localizer courses for Westchester County Airport, White Plains, NY. The extension of Class D airspace will provide coverage for aircraft conducting IFR operations to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.

* * * * *

AEA NY D White Plains, NY [Revised]

Westchester County airport, White Plains, NY
(lat. 41°04′01″ N., long. 73°42′27″ W.)
Westchester County ILS Localizer Northwest
(lat. 41°03′27″ N., long. 73°41′58″ W.)
Westchester County ILS Localizer Southeast
(lat. 41°04′37″ N., long. 73°42′52″ W.)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 4.1-mile radius of Westchester County Airport and within 1.5 miles each side of the Westchester County ILS northwest localizer course extending from the 4.1-mile radius to 6.1 miles northwest of the airport and within 1.5 miles each side of the Westchester County ILS southeast localizer course extending from the 4.1-mile radius to 6.1 miles southeast of the airport. This Class D airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the airport/Facility Director.

* * * * *

Dated: Issued in Jamaica, New York on January 8, 2003,

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–1011 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–11]

Amendment to Class E Airspace; Ulysses, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Ulysses, KS.

EFFECTIVE DATE: 0901 UTC, February 20, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 13, 2002 (67 FR 68757). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 20, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on December 23, 2002.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–921 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13996; Airspace Docket No. 02–AEA–21]

Establishment of Class E Airspace; Lock Haven, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Lock Haven, PA. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft operating into William T. Piper Memorial Airport, Lock Haven, PA under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 25, 2002, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet above the surface within a 9.6-mile radius of William T. Piper Memorial Airport, Lock Haven, PA was published in the **Federal Register** (67 FR 70566). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before December 26, 2002. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 9.6-mile radius of William T. Piper Memorial Airport, Lock Haven, PA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5, Lock Haven, PA [New]

William T. Piper Memorial Airport, PA
(Lat. 41°08′09″N., long. 77°25′24″W.)

That airspace extending upward from 700 feet above the surface within a 9.6-mile radius of William T. Piper Memorial Airport, Lock Haven, PA.

* * * * *

Issued in Jamaica, New York on January 8, 2003.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–1012 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13413; Airspace Docket No. 02–ACE–6]

Realignment of Federal Airways V–72 and V–289; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns Federal Airways 72 (V–72) and V–289 northeast of the Dogwood, MO, Very High Frequency Omnidirectional Range/ Tactical Air Navigation (VORTAC) so that aircraft may operate on the airways without encroaching on the newly modified Cannon A Military Operations Areas (MOA). The FAA is taking this action to enhance safety and the management of aircraft operations in the Dogwood, MO, area.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2002, the lateral boundaries of the Cannon A MOA were modified and the ceiling of the Cannon A MOA was raised from 5,000 feet above mean sea level up to but not including Flight Level 180. The MOA modification rendered portions of V–72 and V–289 unusable. Currently, V–289 passes through the lateral limits of the Cannon A MOA and V–72 is located immediately to the south of the Cannon A MOA at a distance that does not provide the air traffic control required separation from the MOA when the area is active. This action will allow the use of V–72 and V–289 when the Cannon A MOA is active and will enhance safety and the management of aircraft operations in the Dogwood, MO, area.

The Rule

This amendment to 14 CFR part 71 realigns a segment of V–72, northeast of the Dogwood, MO, VORTAC, clockwise by one degree and realigns V–289 to coincide with V–72 for 19 nautical miles (NM) northeast of the Dogwood, MO, VORTAC before proceeding directly to the Vichy, MO, VORTAC. This realignment will allow for the use of V–72 and V–289 when the Cannon A MOA is active and will enhance the safety and management of aircraft operations in the Dogwood, MO, area. Because this action is needed for safety reasons, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

This regulation is limited to an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February

26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since it has been determined that this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the Order.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–72 [Revised]

From Razorback, AR, Dogwood, MO; INT Dogwood 052° and Maples, MO, 230° radials; Maples; Farmington, MO; Centralia, IL; Bible Grove, IL; Mattoon, IL; to Bloomington, IL. From Rosewood, OH; Mansfield, OH; INT Mansfield 098° and Akron, OH, 233° radials; Akron; Youngstown, OH; Tidioute, PA; Bradford, PA; INT Bradford 078° and Elmira, NY, 252° radials; Elmira; Binghamton, NY; Rockdale, NY; Albany, NY; Cambridge, NY; INT Cambridge 063° and Lebanon, NH, 214° radials; to Lebanon.

* * * * *

V–289 [Revised]

From Beaumont, TX; INT Beaumont 323° and Lufkin, TX, 161° radials; Lufkin; Gregg County, TX; Texarkana, AR; Fort Smith, AR; Harrison, AR; Dogwood, MO; INT Dogwood 052° and Maples, MO, 230° radials; INT Maples 230° and Vichy, MO, 198° radials; to Vichy. The airspace within R–4501A, R–4501B, R–4501C and R–4501D is excluded during their time of activation.

* * * * *

Issued in Washington, DC, on January 6, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–919 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 020816198–2315–02; I.D. 071202A]

RIN 0648–AP41

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States; Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 5 to the Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States (FMP). This final rule establishes a limited access program for the rock shrimp fishery in the exclusive economic zone (EEZ) off Georgia and off the east coast of Florida (limited access area), establishes a minimum mesh size for a rock shrimp trawl net in the limited access area, requires the use of an approved vessel monitoring system (VMS) by vessels allowed to fish for rock shrimp in the limited access program, and requires an operator of a vessel in the rock shrimp fishery in the EEZ off the southern Atlantic states (North Carolina through the east coast of Florida) to have an operator permit. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The intended effects of this final rule are to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the bycatch of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat, including an area that contains the last 20 acres (8 hectares) of intact Oculina coral remaining in the world; and ensure the long-term economic viability of the rock shrimp industry.

DATES: This final rule is effective February 18, 2003.

ADDRESSES: Comments regarding the collection-of-information requirements contained in this final rule should be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Eldridge; phone: 727–570–5305; fax: 727–570–5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The shrimp fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS approved Amendment 5 on October 23, 2002. NMFS published a proposed rule to implement Amendment 5 and requested comments on the proposed rule through October 21, 2002 (67 FR 56516, September 4, 2002). The rationale for the measures in

Amendment 5 is provided in the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received seven comments, from three individuals and the Council, on the proposed rule (67 FR 56516, September 4, 2002). A summary of the comments received and NMFS' responses follows.

Comment 1: A vessel owner reported that she had fished for rock shrimp in the 1980's and helped to build the market for rock shrimp. She believes that she should be eligible for a permit even though she did not meet the eligibility requirements.

Response: The public was notified on April 4, 1994, that the South Atlantic Council was considering a limited access program for the rock shrimp fishery and that anyone entering the fishery after April 4, 1994, might not be assured of future participation in the fishery if a limited entry management regime were implemented. Since then, there is evidence that the fishery has become overcapitalized. For example, although the current estimate for optimum yield is 6.83 million lb (3.10 million kg), as many as 400 vessels have obtained a rock shrimp permit. The Advisory Panel of the Council believes that the fishery can support, at most, no more than 150 vessels, and it is evident that a much smaller number of vessels could take the annual harvest in most years. For these reasons, the Council limited access to the fishery to participants who could demonstrate that they had landed at least 15,000 lb (6,804 kg) of rock shrimp in any one calendar year between 1996 and 2000.

Comment 2: One fisherman and one vessel owner opposed the VMS requirement. They believe that the government should pay for the VMS system and that the VMS system was not needed. Also, they reported that they wanted to split trips between rock and penaeid shrimp without having to unload their rock shrimp catch before they could fish for penaeid "soft" shrimp.

Response: There is considerable evidence that illegal trawling by rock shrimp vessels has resulted in extensive damage to Oculina habitat. Further, national standard 9 of the Magnuson-Stevens Act requires that conservation and management measures shall, to the extent practicable, minimize bycatch. The use of an approved VMS will minimize inadvertent, as well as deliberate, trawling in protected Oculina habitat areas because vessel captains will know precisely the location of protected areas and will be informed that trawling in such areas is prohibited. It should be noted that vessels with an approved VMS system will be able to split trips between rock and penaeid shrimp trips without having to land either type of shrimp first. The VMS will enable vessel owners to monitor vessel operations which should result in safer and more efficient fishing operations that will benefit the crew as well as the vessel owner.

Comment 3: One fisherman and one vessel owner opposed the limited access program for the rock shrimp fishery. They believe that fishing is a right that all Americans should be able to exercise.

Response: The Magnuson-Stevens Act mandates that fishery resources should be managed on a sustainable basis so that an optimal yield can be obtained. As noted earlier, there is evidence that overcapitalization has occurred in the rock shrimp fishery and, at most, no more than 150 vessels should be allowed to participate in the fishery. It is clear that the rock shrimp resource is limited and that an optimum economic yield is unlikely if open access to the fishery continues. As such, a limited access program is appropriate because it is prudent and reasonable to limit fishing pressure to the level which the resource can support without overfishing and without allowing the cost of fishing to exceed the revenues obtained by selling the catch.

Comment 4: One vessel owner opposed the minimum mesh size requirement.

Response: There is empirical evidence that the use of minimum mesh sizes less than 1 7/8 inches (4.76 cm) will result in an excessive catch of smaller, less valuable shrimp. It is believed that allowing shrimp to grow larger will result in more income to fishermen as well as a more attractive product for consumers. Also, the use of larger mesh should result in less bycatch of juvenile fish and other invertebrates. For this reason, the Council proposed and NMFS approved the 1 7/8–inch (4.76–cm) minimum mesh size.

Comment 5: One vessel owner did not want individuals to have to take a test to obtain a rock shrimp operator permit.

Response: NMFS will not require any performance or competency test to obtain an operator permit.

Comment 6: The Council's Habitat and Environmental Protection and Coral, Coral Reef and Live/Hard Bottom Habitat Advisory Panels endorsed the management measures in Amendment 5, especially the VMS and operator permit requirements and urged that these measures be implemented as soon as possible.

Response: NMFS agrees.

Comment 7: The Council commented in support of the management measures proposed in Amendment 5.

Response: NMFS agrees.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 5 is necessary for the conservation and management of the South Atlantic rock shrimp fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) that describes the impact this proposed rule, if adopted, would have on small entities. The analysis is summarized as follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. The objective of the final rule is to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the bycatch of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat; and ensure the long-term economic viability of the rock shrimp fishery. The final rule will: establish a limited access program for the rock shrimp fishery in the EEZ off Georgia and off the east coast of Florida (limited access area); establish a minimum mesh size for a rock shrimp trawl net in the limited access area; require the use of an approved VMS by vessels allowed to fish for rock shrimp in the limited access program; and, require an operator of a vessel in the rock shrimp fishery in the EEZ off the southern Atlantic states to have an operator permit.

No duplicative, overlapping, or conflicting Federal rules have been identified.

No comments were received regarding the economic impact of this final rule.

The number of vessels with permits for the South Atlantic rock shrimp fishery varies from year to year but has not exceeded 431. Since permits were required in the fishery in 1996, at least 540 different vessels have been permitted in the fishery. Similarly, the number of vessels that have landed rock shrimp varies from year to year. In 1996, the number of active vessels reached an historical peak of 153. From 1996 through 2000, at least 279 different vessels have recorded landings of South Atlantic rock shrimp. All of these

vessels are commercial vessels; there is no recreational component of the fishery. All of the commercial vessels that have been permitted in the fishery will be affected by this final rule. Based on the Small Business Administration's current definition of a small entity in the fish harvesting sector (annual gross revenues not exceeding $3.5 million), the vast majority of these vessels are small entities. One company did own as many as 12 permitted vessels during the 1996–2000 time period. None of these vessels were active in the fishery during these years, and this company had zero landings and gross revenues from the fishery during these years. However, data on the company's operations in other fisheries have led to a determination that this company is a large entity. To maintain confidentiality, additional, detailed information regarding this company's operations cannot be provided.

At least 111 small entities (vessels) that have been active in the fishery are not expected to qualify for the limited access permit and could experience some short-term loss in revenue resulting from limiting access in the South Atlantic rock shrimp fishery off Georgia and Florida. The average loss in gross revenue per vessel would be expected to be no larger than $1,365 annually in the short term. Vessels that entered the fishery in 2001 could experience higher losses in average revenue, though data are not presently available to make such a determination. However, it is expected that some of these vessels may mitigate this loss by participating in other fisheries. Because information is not available on these vessels' economic dependence on the rock shrimp fishery, it is not possible to calculate the impact of limited access on their profitability. Since the single, large entity earned zero gross revenues from the fishery, no measurable economic impact would be imposed on this entity as a result of this action. Further, this entity would not be subject to other actions only applicable to limited access permit holders, and thus would not be affected by those actions.

For the 168 vessels expected to qualify for limited access permits, each would be required to pay a $50 fee per permit application. In addition, a time burden would be imposed as a result of having to apply for the limited access permit. The time burden for completing the application is estimated at 20 minutes. According to 2000 data from the Bureau of Labor Statistics, the average hourly wage for first-line supervisors/managers in the fishing, forestry, and farming industries is $16.72. Thus, the monetary value of this time burden is $5.58 per vessel. As a result, the total cost of this action per qualifying vessel is $55.58, or $9337 for all qualifying vessels. However, since these permits will be renewed, via application, biannually rather than annually, the total cost per year would be approximately $27.79. In cases where vessel owners have qualified as the result of a transfer in catch history, documentation would be needed to support a determination of eligibility. The time burden associated with compiling such documentation is estimated at 1 hour, for an additional one-time cost of $16.72 in the first year. Therefore, for these vessels, the monetary value of the time burden associated with this action is estimated at $19.51 per vessel. Thus, total annual costs would be $44.51 in the first year, and $27.79 in years thereafter.

For vessel owners that do not initially qualify for a limited access permit, two additional opportunities exist to obtain such a permit. Specifically, the vessel owner may submit a request to the RA for reconsideration of an initial determination of non-eligibility. The time burden associated with filing such a request is estimated to be 2 hours. In addition, these vessel owners may submit a request to be placed on a list of those desiring the re-issuance of a permit that was not renewed in a timely manner by an initial qualifier. The time burden associated with filing this request is estimated to be 5 minutes. Thus, the monetary value of these time burdens is $35 per vessel. Although it is not possible to perfectly predict how many non-qualifiers will submit such requests, those owners whose vessels were active in the fishery but did not qualify are most likely to submit one or both requests. Given that 111 active vessels are not expected to qualify, and since these vessels would have also submitted an application and therefore paid the requisite and non-refundable $50 fee, the total burden per vessel would be $85 for all such vessels, or $9435 in the aggregate.

The final rule is expected to result in lesser impacts than rejected option 2, which would limit eligibility to those who had met the criteria prior to December 31, 1999, rather than December 31, 2000. Rejected option 2 would exclude an additional 26 vessels, most of which were very active in the fishery in 2000, and the average annual short-term revenue loss per active vessel would increase from $1,365 to $4,153. Given the possibility of continued entry of new vessels into the fishery and an exacerbation of the current overcapacity problem, the no action option (rejected option 1) is not acceptable. Rejected option 3 would only enable those who entered the fishery after April 4, 1994, to obtain non-transferable permits. Relative to the final rule, this option is more restrictive on recent participants and was not supported by industry representatives. Also, it is likely that rejected option 3 would not reduce the initial level of overcapacity in the fishery. Based on the objectives of the FMP and the issues being addressed, the final rule is superior to the rejected alternatives.

The minimum mesh size requirement applicable to the limited access area could increase costs for those vessel owners whose gear does not meet the proposed minimum mesh size and who obtain limited access endorsements. The gear replacement cost is expected to be between $75 and $80 per net ($150 to $320 per vessel). During the 1996–2000 time period, active vessels expected to qualify for a limited access permit earned between $31,902 and $127,319 in gross revenues per year from the rock shrimp fishery. These vessels also typically earn revenues from other fisheries, such as the penaeid shrimp fisheries of the South Atlantic and Gulf of Mexico. Since the minimum mesh size is the predominant mesh size presently being used in the fishery, a majority of vessel owners likely will not incur these costs. However, for those owners not presently using the minimum mesh size or larger, the gear modification expense could represent between 0.1 percent and 1 percent of their annual gross revenues from this fishery in the first year.

The final rule will result in gear replacement costs for those vessels that utilize trawl nets with a smaller mesh size. Compared to the no action option, this measure would impose a higher cost on the industry. However, the Council's Rock Shrimp Advisory Panel was of the opinion that the replacement cost for the cod end would be recovered in the future as overall yields increase from allowing recruitment of small shrimp that escape to larger size classes. Also, the time saved from not having to cull many small, unmarketable shrimp in each haul could translate into more tows per trip. In comparison to rejected options 3 and 4, the Advisory Panel felt that the recommended mesh size would be more effective at allowing the escapement of small, unmarketable shrimp than the 1 and 3/4–inch (4.45–cm) mesh size. However, the 2–inch (5–cm) mesh size would allow escapement of a much higher proportion of marketable shrimp compared to this proposed mesh size. Under the assumption that the net replacement cost would be recouped from higher

returns, and the Advisory Panel's recommendation that 1 and 7/8 inches (4.76 cm) is the optimal mesh size for this fishery, the mesh size specified by the final rule is superior to the alternatives considered.

The requirement for an operating VMS would impose a one-time cost to owners who obtain limited access endorsements that would not exceed $1,200. This capital cost is expected to be amortized over the average life-span of the equipment, presently estimated at 7 years. Thus, the annual cost per vessel is approximately $171. In addition, there would be some level of recurring operating/repair/maintenance costs, and no more than $800 in annual communication costs. Therefore, the requirement for an operating VMS would decrease a vessel's annual profitability by approximately $971. Given the previously noted annual gross revenue estimates, the expected annual explicit cost of the VMS requirement alone could represent between 0.8 percent and 3 percent of these vessels' annual gross revenues from the rock shrimp fishery.

Additionally, time burdens would be imposed as a result of the VMS requirement. Specifically, the time to install the VMS is estimated to be 4 hours; the time to complete and submit a statement certifying compliance with the installation and activation checklist is estimated to be 15 minutes; annual maintenance is estimated to be 2 hours each year; and the time to transmit position reports is estimated to be 14 minutes per day at sea. Current information suggests that the average, annual number of days at sea is approximately 200 for qualifying vessels active in this fishery. As such, this particular time burden is estimated at 2800 minutes or 46.67 hours per vessel. Therefore, the total time burden associated with VMS is approximately 53 hours per vessel in the first year, the monetary value of which is approximately $883 per vessel. In the years thereafter, only the time burdens associated with annual maintenance and the time to transmit position reports would be incurred. Thus, the time burden per vessel in later years would be 48.67 hours, the monetary value of which is approximately $813 annually per vessel. By combining the explicit and implicit costs, the total annual cost of this action is $1854 per vessel in the first year, and $1784 per vessel in later years, or $311,472 and $299,712 annually for all qualifying vessels.

The final rule will likely result in higher costs than rejected option 3, under which only vessels with a past fishery violation would be required to use VMS, as opposed to all vessels. The use of an approved vessel monitoring system is necessary to protect essential fish habitat and essential fish habitat areas of particular concern. Illegal use of rock shrimp trawls within the Oculina Bank can result in damage to bottom habitat, as emphasized in a recent report presented to the Council on this topic. This latest report indicates that only 20 acres of Oculina coral remain intact, not only in this area, but in the world. Requiring rock shrimp vessels to carry an approved VMS unit will improve compliance and allow the rock shrimp fishermen to demonstrate that they are not fishing in any closed areas. Currently, the probability of detecting fishing in the Oculina Bank HAPC is low, given the distance from shore and the frequency of Coast Guard patrols in this area. VMS technology will significantly improve the detection of fishery violations in this closed area. Thus, the final rule is superior to the no action option and rejected option 3. Rejected option 3 would only provide coverage for some vessels in the industry and would not be as effective as the preferred alternative in improving compliance. In comparison to rejected option 2, the VMS system requirements should be specified in order to ensure that the utilized system will ensure sufficient surveillance of vessel activities. In this respect, the final rule is preferable to rejected option 2. Also, the final rule establishes a cap on the cost per vessel for purchase of the VMS unit and annual communications. Based on these facts, the final rule is superior to the alternatives considered.

The requirement for operator permits in the South Atlantic rock shrimp fishery will increase costs to owners who operate their own vessels and to individual non-owning operators. The cost of a permit is expected to be not more than $50 and would generally be incurred once every 3 years, for an approximate cost per year of $16.67. Thus, the total explicit cost imposed on all qualifiers combined in the first year would be approximately $8400. The time burden of applying for this permit is estimated to be 60 minutes. In monetary terms, this time burden equates to $8.36 per vessel operator, or $2.79 per year. As a result of this action, the annual total cost per qualifying vessel is $19.46, or $3270 for all qualifying vessels.

This burden would also be imposed on vessel operators in the open access component of the fishery (i.e., the Carolinas), which could consist of as many as 24 additional vessels. If the single, large entity eventually chose to participate in the open access component of the fishery, it would also have to incur these expenses. Since the cost is constant on a per-vessel basis, disproportional impacts would not occur. In any case, for participants in the open access component of the fishery, these costs are unlikely to substantially reduce profitability.

The final rule will result in higher costs than the no action option (rejected option 1) since it would require an operator's permit, estimated to cost $50 per operator, that would be valid for 3 years. The Council's Rock Shrimp Advisory Panel recommended operator permits to assist in reducing the cost of penalties to the industry from federal fishery management violations. It is expected that an operator's permit requirement will improve compliance with fisheries management regulations. Even though rejected option 2, which only requires an operator's permit for captains who do not own the vessel they operate, would result in a lower cost to the industry, it would not eliminate the possibility that a vessel owner who had a vessel permit sanction for a federal fishery violation could obtain an operator's permit and work onboard another rock shrimp vessel. Thus, the final rule is preferable to the rejected alternatives.

Overall, the total costs of these actions on active, non-qualifying vessels could be as high or higher than $1450 per vessel, or $160,950 in the aggregate, in the short-term. Depending on circumstances, these vessels may or may not mitigate these losses by participating in other fisheries.

For the vessel owners who qualify for a limited access permit, the total annual costs of these actions could be as high as $2238 per vessel in the first year, and $1831 thereafter. Given that active vessels expected to qualify for a limited access permit earned between $31,902 and $127,319 in gross revenues per year from the rock shrimp fishery, such costs could represent between 1.8 percent and 7.0 percent of these revenues in the first year, and between 1.4 percent and 5.7 percent in years thereafter. Depending on the profit margins associated with activity in this fishery, these losses could be considered substantial, at least for some of the affected small entities. However, it is expected that future gains in the fishery would offset the short-term costs to these small entities. The Council's industry representatives (Rock Shrimp Advisory Panel) recommended that the Council consider a limited access program to avoid a situation where the current overcapacity problem, the primary source of which is the large number of latent permits, is exacerbated and thus increases the risk that firms

dependent on rock shrimp could be forced out of the fishery or out of business. The Rock Shrimp Advisory Panel requested operator's permits to protect their interests since many owners do not operate their own vessels, and this measure would allow them to hire captains who are likely to be more compliant with fishery regulations. Vessel owners are also liable for any fishery violations even if they are not on board the vessel during the period when the infraction occurs; however, this is true regardless of operator permits. There have been a number of instances of illegal fishing in an important closed fishing area, the Oculina Bank HAPC, by vessels in the rock shrimp fishery. Given the dwindling law enforcement resources for patrolling these areas, which are several miles offshore, the Council recommended that vessels in this fishery be required to use an approved VMS since they regularly operate in close proximity to the Oculina Bank HAPC. There is a critical need to implement this measure for increased protection of the *Oculina* coral habitat. A recently completed research survey concluded that this area contains the last 20 acres (8 hectares) of intact *Oculina* coral remaining in the world. To the extent enforcement is increased and trawling in the Oculina Bank HAPC is eliminated, there will be corresponding benefits in terms of protecting Oculina coral, habitat, and juvenile rock shrimp.

Copies of the FRFA are available upon request (see **ADDRESSES**).

The Council prepared a final supplemental environmental impact statement (FEIS) for Amendment 5; a notice of availability was published on September 6, 2002 (67 FR 57007). The FEIS concludes that Amendment 5 will result in positive environmental impacts by reducing excess harvesting capacity in the fishery via the limited access program, reducing bycatch (including bycatch of undersized, unmarketable rock shrimp) via mesh size restrictions, and enhancing compliance with all management measures (including protection of the essential fish habitat and Oculina coral) via requirements for VMS and operator permits.

This final rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA)--namely, application for a limited access endorsement for the South Atlantic rock shrimp fishery, documentation of eligibility through a written agreement, transfer of a limited access endorsement, installation and operation of a VMS by a vessel that has been issued a limited access endorsement, and application for an operator permit for the South Atlantic rock shrimp fishery in the EEZ off the southern Atlantic states (North Carolina through the east coast of Florida). These collection-of-information requirements have been approved by OMB, OMB control number 0648–0205. The average public reporting burdens are estimated as follows: For the limited access endorsement, 20 minutes for each application for the endorsement or for the transfer of an endorsement, 1 hour for documentation of eligibility submitted with the application, 2 hours for each request for reconsideration of the RA's determination regarding initial endorsement eligibility, and 5 minutes for each request to be placed on the list of owners desiring consideration for reissue of an endorsement that had not been renewed; for the VMS, 4 hours per installation, 15 minutes for completion and submission of the statement certifying compliance with the installation and activation checklist, 14 minutes per day at sea for transmittal of position reports, and 2 hours for annual maintenance; and for the operator permit, 60 minutes for each application.

The estimates of public reporting burdens for these collections of information include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of the collections of information to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: January 10, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b), under 50 CFR, is amended by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR	
* * * * *	
622.9	–0205
* * * * *	
622.19	–0205
* * * * *	

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

3. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 622.4, paragraph (a)(2)(viii), (c), (f) through (j), and (l) are revised and paragraphs (a)(5) and (b)(4) are added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(viii) *South Atlantic rock shrimp.* (A) For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ or possess rock shrimp in or from the South Atlantic EEZ, a commercial vessel permit for rock shrimp must be issued to the vessel and must be on board. (See paragraph (a)(5) of this section for the requirements for operator permits for the South Atlantic rock shrimp fishery.)

(B) In addition, effective July 15, 2003, for a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or

from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board. See § 622.19 for limitations on the issuance, transfer, renewal, and reissuance of a limited access endorsement for South Atlantic rock shrimp.

* * * * *

(5) *Operator permits.* (i) Effective May 16, 2003, for a person to be an operator of a vessel fishing for rock shrimp in the South Atlantic EEZ or possessing rock shrimp in or from the South Atlantic EEZ, or to be an operator of a vessel that has a valid permit for South Atlantic rock shrimp issued under this section, such person must have and carry on board a valid operator permit and one other form of personal identification that includes a picture (driver's license, passport, etc.).

(ii) An owner of a vessel that fishes for rock shrimp in the South Atlantic EEZ or possesses rock shrimp in or from the South Atlantic EEZ, and an owner of a vessel that has a valid permit for rock shrimp issued under this section, must ensure that at least one person with a valid operator permit for the South Atlantic rock shrimp fishery is aboard while the vessel is at sea or offloading.

(b) * * *

(4) *Operator permits.* An applicant for an operator permit must provide the following:

(i) Name, address, telephone number, and other identifying information specified on the application.

(ii) Two recent (no more than 1–yr old), color, passport-size photographs.

(iii) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(c) *Change in application information.* The owner or operator of a vessel with a permit, a person with a coral permit, a person with an operator permit, or a dealer with a permit must notify the RA within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

* * * * *

(f) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or, in the case of a vessel or dealer permit, the vessel or dealership is sold.

(g) *Transfer*—(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a Gulf king mackerel gillnet endorsement, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a king mackerel permit, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(e) for a commercial vessel permit for South Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

(2) *Operator permits.* An operator permit is not transferable.

(h) *Renewal*—(1) *Vessel permits, licenses, and endorsements and dealer permits.* Although a vessel permit, license, or endorsement or a dealer permit required by this section is issued on an annual basis, an application for its renewal is required only every 2 years. In the interim years, renewal is automatic (without application) for a vessel owner or a dealer who has met the specific requirements for the requested permit, license, or endorsement; who has submitted all reports required under the Magnuson-Stevens Act; and who is not subject to a sanction or denial under paragraph (j) of this section. An owner or dealer whose permit, license, or endorsement is expiring will be mailed a notification by the RA approximately 2 months prior to its expiration. That notification will advise the status of the renewal. That is, the notification will advise that the renewal will be issued without further action by the owner or dealer (automatic renewal); that the permit, license, or endorsement is ineligible for automatic renewal; or that a new application is required.

(i) *If eligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is eligible for automatic renewal, the RA will mail the automatically renewed permit, license, or endorsement approximately 1 month prior to expiration of the old permit, license, or endorsement.

(ii) *If ineligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is ineligible for automatic renewal, the notification will specify the reasons and will provide an opportunity for correction of any deficiencies. If the owner or dealer does not correct such deficiencies within 60 days after the date of the RA's notification, the renewal will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(iii) *If new application is required.* If the RA's notification indicates that a new application is required, the notification will include a preprinted renewal application. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(iv) *If notification is not received.* A vessel owner or dealer must contact the RA if he/she does not receive a notification from the RA regarding status of renewal of a permit, license, or endorsement by 45 days prior to expiration of the current permit.

(2) *Operator permits.* An operator permit required by this section is issued for a period not longer than 3 years. A permit not renewed immediately upon its expiration would expire at the end of the operator's birth month that is between 2 and 3 years after issuance. For renewal, a new application must be submitted in accordance with paragraph (b)(4) of this section.

(i) *Display.* A vessel permit, license, or endorsement issued under this section must be carried on board the vessel. A dealer permit issued under this section, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. The operator of a vessel must present the vessel permit, license, or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer. An operator of a vessel in the South Atlantic rock shrimp fishery must present his/her operator

permit and one other form of personal identification that includes a picture (driver's license, passport, etc.) for inspection upon the request of an authorized officer.

(j) *Sanctions and denials.* (1) A permit, license, or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit, license, or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(2) A person whose operator permit is suspended, revoked, or modified may not be aboard any fishing vessel subject to Federal fishing regulations in any capacity, if so sanctioned by NOAA, while the vessel is at sea or offloading. The vessel's owner and operator are responsible for compliance with this measure. A list of operators whose permits are revoked or suspended may be obtained from the RA.

* * * * *

(l) *Replacement.* A replacement permit, license, or endorsement may be issued. An application for a replacement permit, license, or endorsement is not considered a new application. An application for a replacement operator permit must include two new photographs, as specified in paragraph (b)(4)(ii) of this section.

* * * * *

5. In § 622.7, paragraphs (b) and (c) are revised and paragraph (bb) through (ee) are added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in § 622.4(b), (g), (p), (q), or (r) or in §§ 622.18 or 622.19.

(c) Fail to display a permit, license, or endorsement, or other required identification, as specified in § 622.4(i).

* * * * *

(bb) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a vessel monitoring system (VMS) unit or communication service provider.

(cc) Operate or own a vessel that is required to have a permitted operator aboard when the vessel is at sea or offloading without such operator aboard, as specified in § 622.4(a)(5)(i) and (ii).

(dd) When a vessel that is subject to Federal fishing regulations is at sea or offloading, own or operate such vessel with a person aboard whose operator permit is revoked, suspended, or modified.

(ee) Fail to comply with any provision related to a vessel monitoring system as specified in § 622.9, including but not limited to, requirements for use, installation, activation, access to data, procedures related to interruption of VMS operation, and prohibitions on interference with the VMS.

6. In subpart A, § 622.9 is added to read as follows:

§ 622.9 Vessel monitoring systems (VMSs).

(a) *Requirement for use.* As of October 14, 2003 or 90 days after NMFS publishes in the **Federal Register**, the list of approved transmitting units and associated communications service providers, whichever is later, an owner or operator of a vessel that has been issued a limited access endorsement for South Atlantic rock shrimp must ensure that such vessel has a NMFS-approved, operating VMS on board when on a trip in the South Atlantic. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider.

(b) *Installing and activating the VMS.* Only a VMS that has been approved by NMFS for use in the South Atlantic rock shrimp fishery may be used. When installing and activating the NMFS-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must—

(1) Follow procedures indicated on an installation and activation checklist, which is available from NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL; phone: 727–570–5344; and

(2) Submit to NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, a statement certifying compliance with the checklist, as prescribed on the checklist.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, and follow instructions from that office. If notified by NMFS that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized fishing for or possession of South Atlantic rock shrimp in or from the South Atlantic EEZ, a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS.

7. In subpart B, § 622.19 is added to read as follows:

§ 622.19 South Atlantic rock shrimp limited access.

(a) *Applicability.* Effective July 15, 2003, for a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board.

(b) *Initial eligibility.* A vessel is eligible for an initial limited access endorsement for South Atlantic rock shrimp if the owner—

(1) Owned a vessel with a Federal permit for South Atlantic rock shrimp on or before December 31, 2000, and

(2) Landed at least 15,000 lbs (6,804 kg) of South Atlantic rock shrimp in any one of the calendar years 1996 through 2000 from a vessel that he/she owned.

(c) *Determinations of eligibility*—(1) *Permit history.* The sole basis for determining whether a vessel had a Federal permit for South Atlantic rock shrimp, and that vessel's owner during the time it was permitted, is the RA's permit records. A person who believes he/she meets the permit history criterion based on ownership of a vessel under a different name, as may have occurred when ownership changed from individual to corporate or vice versa, must document his/her ownership.

(2) *Landings.* (i) Landings of rock shrimp from the South Atlantic EEZ during the qualifying period are verified from landings data that were submitted on or before January 31, 2001 and are in state or Federal database systems; no additional landings data will be accepted.

(ii) Only landings when a vessel had a valid Federal permit for rock shrimp, that were harvested from the South Atlantic EEZ, and that were landed and sold in compliance with state and Federal regulations will be used to establish eligibility.

(iii) For the purpose of eligibility for an initial limited access endorsement

for South Atlantic rock shrimp, the owner of a vessel that had a permit for South Atlantic rock shrimp during the qualifying period retains the rock shrimp landings record of that vessel during the time of his/her ownership, unless, prior to January 16, 2003, a sale of the vessel includes a written agreement that credit for qualifying landings is transferred to the new owner. Qualifying landings are landings of at least 15,000 lb (6,804 kg) of rock shrimp harvested from the South Atlantic EEZ in any one of the calendar years 1996 through 2000. Such transfer of credit must be for the vessel's entire record of landings of rock shrimp from the South Atlantic during the time of the seller's ownership; no partial transfers are allowed.

(d) *Implementation procedures*—(1) *Notification of status.* On or about March 17, 2003, the RA will notify each owner of a vessel that had a permit for South Atlantic rock shrimp on or before December 31, 2000, and each owner of a vessel currently permitted for South Atlantic rock shrimp, of the RA's initial determination of eligibility for a limited access endorsement for South Atlantic rock shrimp. The notification will include a determination regarding the 15,000–lb (6,804–kg) threshold level for the endorsement. If the landings in the combined state and Federal databases do not meet the 15,000–lb (6,804–kg) threshold for any of the qualifying years, the landings in each of the qualifying years, as shown in those databases, will be included. Each notification will include an application for such endorsement. Addresses for notifications will be based on the RA's permit records. Each owner of a vessel that had a permit for South Atlantic rock shrimp on or before December 31, 2000, and each owner of a currently permitted vessel, who does not receive notification by April 1, 2003 must advise the RA of non-receipt within 15 days thereafter.

(2) *Applications.* (i) An owner of a vessel who desires a limited access endorsement for South Atlantic rock shrimp must submit an application for such endorsement postmarked or hand-delivered not later than May 16, 2003. Failure to apply in a timely manner will preclude issuance of an endorsement even if the vessel owner meets the eligibility criteria for the endorsement.

(ii) An applicant who agrees with the RA's initial determination of eligibility does not need to provide documentation of eligibility with his/her application.

(iii) An applicant who disagrees with the RA's initial determination of eligibility must provide documentation of eligibility with his/her application. Such documentation must include the name and official number of the vessel permitted for South Atlantic rock shrimp and the dates, quantities, trip tickets, and purchasing dealers for specific landings claimed for the vessel. In addition, if an owner's application for a limited access endorsement is based on qualifying landings that were transferred to him/her through a written agreement, as discussed in paragraph (c)(2)(iii) of this section, the application must be accompanied by a copy of that agreement and a statement of the cost associated with obtaining the catch history. Documentation and other information submitted on or with an application are subject to verification by comparison with state or Federal records and information. If such documentation and information cannot be verified from state or Federal records and information, the documentation and other information will be rejected. Submission of false documentation or information may disqualify an owner from obtaining an initial limited access endorsement for South Atlantic rock shrimp and is a violation of the regulations in this part.

(iv) If an application that is postmarked or hand delivered in a timely manner is incomplete, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 20 days of the date of the RA's notification, the application will be considered abandoned.

(3) *Issuance.* If a complete application is submitted in a timely manner and the eligibility requirements specified in paragraph (b) of this section are met, the RA will take action as follows:

(i) If a qualified applicant owns a vessel that has a valid permit for South Atlantic rock shrimp, the RA will issue an initial limited access endorsement for South Atlantic rock shrimp and mail it to the vessel owner prior to July 15, 2003.

(ii) If a qualified applicant does not currently own a vessel, the RA will inform him/her of qualification, but no endorsement will be issued. Such qualified applicant must apply for a permit and endorsement for a vessel that he/she owns, or transfer the rights to the endorsement to an owner of a vessel, prior to July 15, 2005. After that date, the rights to an initial limited access endorsement for South Atlantic rock shrimp that were based on the qualification will expire. A qualified applicant who desires to transfer the rights to an initial endorsement to the owner of a vessel must submit an application requesting such transfer to the RA. Such transfer of rights will include transfer of credit for the vessel's entire record of landings of rock shrimp from the South Atlantic during the time of the qualified applicant's ownership.

(4) *Reconsideration.* (i) If the eligibility requirements specified in paragraph (b) of this section are not met, the RA will notify the applicant, in writing, not later than July 16, 2003. The notification will include the reason for the determination that the eligibility requirements were not met. An applicant may request reconsideration of the RA's determination regarding initial endorsement eligibility by submitting a written request for reconsideration to the RA. Such request must be postmarked or hand-delivered not later than September 15, 2003 and must provide additional written documentation supporting eligibility for the endorsement.

(ii) Upon receipt of a request for reconsideration, the RA will forward the initial application, the RA's response to that application, the request for reconsideration, and pertinent records to an Application Oversight Board consisting of state directors (or their designees) from each state in the Council's area of jurisdiction. Upon request, a vessel owner may make a personal appearance before the Application Oversight Board.

(iii) If reconsideration by the Application Oversight Board is requested, such request constitutes the applicant's written authorization under section 402(b)(1)(F) of the Magnuson-Stevens Act for the RA to make available to the members of the Application Oversight Board such confidential catch and other records as are pertinent to the matter under reconsideration.

(iv) The Application Oversight Board may only deliberate whether the eligibility criteria specified in paragraph (b) of this section were applied correctly in the applicant's case, based solely on the available record, including documentation submitted by the applicant. The Application Oversight Board may not consider whether an applicant should have been eligible for a vessel permit because of hardship or other factors. The Application Oversight Board members will provide individual recommendations for each application for reconsideration to the RA.

(v) The RA will make a final decision based on the eligibility criteria specified in paragraph (b) of this section and the available record, including documentation submitted by the applicant, and the recommendations and comments from members of the Application Oversight Board. The RA may not consider whether an applicant

should have been eligible for a vessel permit because of hardship or other factors. The RA will notify the applicant of the decision and the reason for it, in writing, within 15 days of receiving the recommendations from the Application Oversight Board members. The RA's decision will constitute the final administrative action by NMFS.

(e) *Transfer of an endorsement.* A limited access endorsement for South Atlantic rock shrimp is valid only for the vessel and owner named on the permit/endorsement. To change either the vessel or the owner, an application for transfer must be submitted to the RA. An owner of a vessel with an endorsement may request that the RA transfer the endorsement to another vessel owned by the same entity, to the same vessel owned by another entity, or to another vessel with another owner. A transfer of an endorsement under this paragraph will include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to a new owner; no partial transfers are allowed.

(f) *Renewal.* The RA will not reissue a limited access endorsement for South Atlantic rock shrimp if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(g) *Non-renewal of inactive endorsements.* In addition to the sanctions and denials specified in § 622.4(j)(1), a limited access endorsement for South Atlantic rock shrimp that is inactive for a period of 4 consecutive calendar years will not be renewed. For the purpose of this paragraph, "inactive" means that the vessel with the endorsement has not landed at least 15,000 lb (6,804 kg) of rock shrimp from the South Atlantic EEZ in a calendar year.

(h) *Reissuance of non-renewed permits.* A permit that is not renewed under paragraph (g) of this section will be made available to a vessel owner randomly selected from a list of owners who had documented landings of rock shrimp from the South Atlantic EEZ prior to 1996 but who did not qualify for an initial limited access endorsement. To be placed on the list, an owner must submit a written request to the RA postmarked or hand-delivered not later than January 16, 2004. The written request must contain documentation of each specific landing claimed, i.e., date, quantity of rock shrimp, name and official number of the harvesting vessel, ownership of the vessel at the time of landing, and name and address of the purchasing dealer. Claimed landings that are not verified by comparison with state trip ticket or dealer records will not be recognized.

8. In § 622.41, the heading of paragraph (g)) is revised and paragraph (j) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) *Penaeid shrimp in the South Atlantic.* * * *

* * * * *

(j) *Rock shrimp in the South Atlantic off Georgia and Florida.* The minimum mesh size for the cod end of a rock shrimp trawl net in the South Atlantic EEZ off Georgia and Florida is 1 7/8 inches (4.8 cm), stretched mesh. This minimum mesh size is required in at least the last 40 meshes forward of the cod end drawstring (tie-off rings), and smaller-mesh bag liners are not allowed. A vessel that has a trawl net on board that does not meet these requirements may not possess a rock shrimp in or from the South Atlantic EEZ off Georgia and Florida.

[FR Doc. 03–1014 Filed 1–15–03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–234–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with one exception, a proposed amendment to the Kentucky regulatory program (the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed revisions to the Kentucky Revised Statutes (KRS) at 350.445 pertaining to the construction of a road above a highwall. Kentucky revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet address: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Proposed Amendment

By letter dated May 9, 2000 (administrative record no. KY–1473), Kentucky submitted a proposed amendment to its approved permanent regulatory program. Three house bills were included in the submission. House Bill (HB) 502 continues in effect the current administrative regulations on ownership and control. HB 599 creates a new section of KRS Chapter 350 and pertains to an easement of necessity. HB 792 amends KRS 350.445(3) and is the subject of this rule. We previously announced our decisions on HB 502 and 599 in the April 30, 2002 **Federal Register** (67 FR 21173), and the June 20, 2001 **Federal Register** (66 FR 33020), respectively.

We announced receipt of the proposed amendment in the May 31, 2000, **Federal Register** (65 FR 34625), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 30, 2000.

By letter dated July 10, 2002, (administrative record no. KY–1547), Kentucky submitted additional explanatory information in response to our letter dated February 13, 2002. Because the information merely clarified certain provisions of the proposed amendment, we did not reopen the comment period.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. For the reasons described below, we are approving the amendment, with an exception. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

House Bill 792, Subsection(3), amends KRS 350.445(3)—Steep Slopes. It allows disturbance of the land above the highwall for the construction of a permanent road only if the permittee affirmatively demonstrates, and the Natural Resources and Environmental Protection Cabinet (Cabinet) makes a detailed written determination, that the proposed disturbance facilitates compliance with KRS Chapter 350, and it requires that the land disturbed be limited to that amount necessary to facilitate compliance. The Cabinet determination must be made upon the permittee demonstration that certain, specific requirements will be met. These requirements are contained in KRS 350.445(3)(a) through (j). For example, the permittee must completely eliminate the production highwall and backfill the mined areas to approximate original contour with no road remaining on the bench. In addition to the specified requirements, the permittee must meet all other performance standards of this chapter.

Section 515(d)(3) of SMCRA allows disturbances above the highwall if the disturbances will facilitate compliance with the environmental protection (performance) standards of Section 515. In addition, the disturbances "shall be limited to that amount necessary to facilitate * * * compliance" with Section 515.30 U.S.C. 1265(d)(3).

Kentucky requires compliance with KRS Chapter 350. In its letter dated July 10, 2002, Kentucky clarified that KRS 350 includes both application requirements and performance standards. However, Kentucky stated that the demonstrations required of the permittee are directed towards, and would facilitate compliance with, performance standards. Kentucky further explained how constructing roads above highwalls would facilitate that compliance by stating, "permanent roads constructed above the highwall result in a more stable mine backfill configuration than the steeper backfill required with an on-bench road at the toe of the backfill. Further, the disturbance of the area above the highwall, in creating the road cut, results in smaller volumes of excess spoil than would placement of an on-bench road at the base of the backfill resulting in a reduction of spoil materials placed in off-bench hollow fills and associated stream loss."

Additionally, the backfilling and grading plan must incorporate a narrative, applicable specifications (plan, profile and section drawings), and volumetric calculations sufficient for the Cabinet to make an affirmative finding. The reclamation plan will be based on the construction requirements for a permanent road. No road embankments would exist. The roadbed would be surfaced with durable rock or cut to a solid rock surface. That section of the exposed road cut constructed in soils materials and the undisturbed natural barrier would be revegetated in accordance with the approved plan. The roadway width in the approved plan must be designed to be appropriate for the amount of traffic and for the equipment to manage the approved postmining land use. Evaluation of the postmining land use would be based on the level of management and road specifications (volume of traffic, size and weight of vehicles, and periodic/daily use required by the landowner). The roads will connect with other roads and must support the approved postmining land use. The Cabinet will make a written determination upon a demonstration by the permittee that the requirements of KRS 350.445 (3) (a–j) are met. Kentucky also affirmed that it retains discretion to ultimately approve or disapprove a permittee's request to construct a permanent road above a highwall.

Because the Kentucky amendment contains provisions that are substantively identical to those contained in section 515(d)(3) of SMCRA, and also imposes additional requirements for roads constructed above highwalls, we find that the proposed Kentucky amendment is no less stringent than section 515(d)(3) of SMCRA and can be approved, with one exception. Section (3)(g) requires that the road be constructed to a size and design appropriate to support coal mining activities and the proposed postmining land use. Allowing roads above highwalls "to support coal mining activities" is inconsistent with, and therefore less stringent than, section 515(d)(3) of SMCRA, which allows disturbances above highwalls only where the disturbances will facilitate compliance with environmental protection performance standards, and not where they will facilitate mining itself. For this reason, the phrase "to support coal mining activities and" cannot be approved.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (administrative record no. KY–1494), and received two pertaining to HB 792. Because no one requested an opportunity to speak at a public hearing, none was held. By letter dated June 14, 2000 (administrative record no. KY–1480), the Kentucky Coal Association expressed its full support of HB 792. By electronic mail on July 5, 2000 (administrative record no. KY–1484), the Kentucky Resources Council, Inc. (KRC) expressed concern that to the extent that HB 792 eliminates Kentucky's discretion to approve or disapprove a proposed above-highwall disturbance and to mandate that it accepts as "facilitating compliance" any mine plan which proposes a permanent road above the top of a highwall, the provision would be inconsistent with Federal law. The KRC acknowledged that under certain configurations where a road above the highwall is constructed in lieu of a permanent mine bench road, that less spoil disposal in valley fills is necessary. It contends, however, that widespread abuse has occurred and safeguards must therefore be instituted. Kentucky must also retain discretion to determine whether the road approval will facilitate environmental compliance and meet all other performance standards. The KRC emphasized that only under narrowly drawn circumstances, with Kentucky retaining discretion to approve or disapprove the roads, can the proposed amendment be considered consistent with Federal law.

We acknowledge the KRC's concerns. We refer to Kentucky's letter dated July 10, 2002, discussed in the finding above, in which Kentucky affirms that the land above a highwall may be disturbed for the construction of a permanent road only when the applicant affirmatively demonstrates, and Kentucky makes a written determination that the proposed disturbances facilitate compliance with both application requirements and performance standards. Kentucky further affirms that it will retain full discretion to approve or disapprove a

permittee's request and will monitor compliance with an approved backfilling and grading plan through routine inspections. We feel Kentucky has demonstrated that by retaining discretion and by instituting necessary safeguards, that the provisions of the proposed amendment can be implemented in a manner consistent with the provisions of SMCRA.

The KRC also commented that the roads above highwalls must be constructed to an appropriate size and design standard, and must be part of the approved postmining land uses. In response, we note that these specific demonstrations are required at KRS 350.445(3)(g). The KRC also commented that the proposed mine plan and road construction sequencing in relation to the mining activity must be designed to maximize permanent retention of mined spoil on the mine bench. In response, we note that KRS 350.445(3)(h) requires these demonstrations. Finally, the KRC commented that the proposed mine plan must include removal of the bench road and restoration of the approximate original contour of the mined area, with no permanent road left on the mine bench. In response, we note that KRS 350.445(3)(a) requires this demonstration.

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment submitted on May 9, 2000, from various Federal agencies with an actual or potential interest in the Kentucky program. None were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the provisions in this amendment pertain to clean water or clean air standards. Therefore, we did not ask EPA to concur on the amendment.

V. OSM's Decision

Based on the above findings, we approve the proposed amendment as submitted by Kentucky on May 9, 2000, with the exception noted in section III.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 917 which codify decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that Kentucky's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change to an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to State programs that are not approved by OSM. In the oversight of the Kentucky program, we will recognize only the statutes, rules, and other materials approved by the Secretary or us, together with any consistent implementing policies, directives, and other materials. We will require Kentucky to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM.

Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211, which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal,

which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 28, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.12 is amended by adding paragraph (d) to read as follows:

§ 917.12 State regulatory program and proposed program amendment provisions not approved.

* * * * * *

(d) The phrase "* * * coal mining activities and * * *" in KRS 350.445(3)(g) is not approved.

3. Section 917.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
May 9, 2000	January 16, 2003	House Bill 792, KRS 350.445(3) (except for a portion of (3)(g))

[FR Doc. 03–976 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–240–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; technical amendment.

SUMMARY: We are announcing the removal of two instructions to Kentucky pertaining to required amendments to the Kentucky regulatory program (the "Kentucky program"). The Kentucky program was established under the Surface Mining Control and Reclamation of 1977 (SMCRA or the Act) and authorizes Kentucky to regulate surface coal mining and reclamation operations in Kentucky. We are removing the instructions because the actions we required are no longer applicable and nothing further is required from the State.

EFFECTIVE DATE: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Field Office Director, Telephone: (859) 260–8400, Internet address: *bkovacic@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. OSM's Findings
III. Summary and Disposition of Comments
IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act* * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. OSM's Findings

During the course of implementing SMCRA, we occasionally issue new regulations. As a result, States may have to amend their approved programs in order to be consistent with the new Federal regulations. In addition, States may submit proposed amendments to their approved programs on their own initiative. In either event, we must determine whether the amendment submitted by the State meets the requirements of SMCRA. When it does, the amendment is approved and when it does not, it is not approved and the State may be instructed to further amend its program. These instructions are codified in our regulations at 30 CFR 917.16 for the Kentucky program. For the reasons that follow, we are removing two such instructions to the State of Kentucky.

At 30 CFR 917.16 (c)(2), Kentucky was required to submit proposed regulations to implement the program changes contained in Senate Bill (SB) 374. SB 374 added a new section to Kentucky's statutes pertaining to the issuance of special permits for the remining of previously affected mined areas. However, SB 374 specifically prohibits its own implementation until implementing regulations are promulgated by Kentucky and approved by OSM. In addition, 30 CFR 732.17(g) prohibits states from implementing proposed amendments to their programs until OSM approves the amendments. Because Kentucky has never submitted these implementing regulations, and because OSM determined that SB 374 could not be implemented without accompanying regulations, SB 374 is not a functioning part of the approved State program. *See* 51 FR 26002, 26005 (July 18, 1986). For these reasons, the requirement codified at 30 CFR 917.16(c)(2) is unnecessary and the instruction should be removed. Senate Bill 374 cannot take effect, of course, until Kentucky submits implementing regulations and we approve them.

At 30 CFR 917.16(o), Kentucky was required to submit a program change to the Kentucky Revised Statutes (KRS) at 350.060 to: (1) Clarify that a person may not continue to conduct surface coal mining operations under an expired permit unless the permittee filed a complete application for renewal at least 120 days before the permit expired and the regulatory authority had not yet approved or disapproved the application when the permit expired, and (2) require the issuance of an imminent harm cessation order to any person conducting surface coal mining operations under an expired permit unless the permittee filed a complete application for renewal at least 120 days before the permit expired and the regulatory authority had not yet approved or disapproved the application when the permit expired. On September 6, 2000, we announced the preemption and supersession of KRS 350.060(16) because it was inconsistent with the requirements of SMCRA (30 CFR 917.13(c); 65 FR 53909). Because both our disapproval and subsequent supersession of the quoted provisions of the statute prevent Kentucky from implementing those provisions, and because the Kentucky program otherwise requires issuance of imminent harm cessation orders to persons conducting surface coal mining operations under expired permits, we believe that the requirements codified at 30 CFR 917.16(o) are no longer necessary and the instruction should be removed.

III. Summary and Disposition of Comments

Public Comments

In the July 15, 2002, **Federal Register** (67 FR 46432), we asked for public comments on our proposal to remove the two instructions (administrative record no. KY 1562), but did not receive any.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Because the instructions proposed for removal did not pertain to these subjects, we did not request EPA concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the proposal from EPA (administrative record No. KY 1562). EPA did not respond to our request.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule is a technical amendment and does not have takings implications.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section.

Executive Order 13132—Federalism

This rule is a technical amendment and does not have Federalism implications.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule is a technical amendment that does not impose any additional requirements on small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons previously stated, this rule: (a) Does not have an annual effect

on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates

This rule is a technical amendment and will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 8, 2002.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 917.16 [Amended]

2. § 917.16 is amended by removing and reserving paragraphs (c)(2) and (o).

[FR Doc. 03–978 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–03–005]

Drawbridge Operation Regulations: Hobe Sound Bridge (SR 708), Atlantic Intracoastal Waterway, Mile 996.0, Hobe Sound, Martin County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Hobe Sound Bridge (SR 708) at Hobe Sound across the Atlantic Intracoastal Waterway, mile 996.0 in Hobe Sound, Martin County, Florida. This deviation allows the drawbridge to open only a single-leaf on the hour, 20 minutes after the hour, and 40 minutes after the hour from 7 a.m. to 6 p.m. for two days, with a double-leaf openings available with two-hour notice to the bridge tender. This temporary deviation is required to allow the bridge owner to safely complete repairs to the bridge.

DATES: This deviation is effective from 7 a.m. on January 15, 2003 until 6 p.m. on January 16, 2003.

ADDRESSES: Material received from the public, as well as comments indicated in this preamble as being available in the docket, are part of docket [CGD07–03–005] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The existing regulations of the Hobe Sound Bridge (SR 708), mile 996, at Hobe Sound, Martin County, Florida, published in the **Federal Register** [CGD07–02–104, 67 FR 55115], require the bridge to open on signal, except that from 7 a.m. to 6 p.m. the bridge will open on the hour, 20 minutes after the hour, and 40 minutes after the hour. On December 4, 2002, the Commissioners of Martin County, the drawbridge owner, requested a deviation from the current operating regulations by allowing the bridge to only open a single-leaf of the bridge to safety effect repairs. A double-leaf opening will be available with two-hour advance notice to the bridge tender.

The District Commander has granted a temporary deviation from the operating requirements listed in CGD07–02–104, 67 FR 55115 to complete repairs to the bridge. Under this deviation, the Hobe Sound Bridge (SR 708) need open only a single-leaf on the hour, 20 minutes after the hour, and 40 minutes after the hour from 7 a.m. to 6 p.m. on January 15, 2002 and January 16, 2002. A double-leaf opening will be provided with a two-hour advance notice to the bridge tender.

Dated: January 9, 2003.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 03–1007 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–02–103]

RIN 2115–AE84

Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Commander, Fifth Coast Guard District is adding vessel speed limits, for certain vessels operating in the vicinity of Naval Station Norfolk, to the existing regulated navigation area found at 33 CFR 165.501. This temporary rule is necessary to ensure the safety and security of naval vessels that are moored at Naval Station Norfolk. The temporary rule will require all vessels of 300 gross tons and greater to reduce speed to eight knots in the vicinity of Naval Station Norfolk, in order to improve security measures and reduce the potential threat to Naval Station Norfolk security that may be posed by these vessels.

DATES: This temporary final rule is effective from December 20, 2002 to June 15, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–103 and are available for inspection or copying at USCG Marine.Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia, 23510 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Monica Acosta, USCG, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3453.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Upon request by the Navy, immediate action is necessary to ensure the safety and security of naval vessels moored at Naval Station Norfolk during large merchant vessel transits of the Elizabeth River. Due to their large size and substantial momentum while underway, these merchant vessels pose

a potential threat to Naval Station Norfolk's security. Imposing this speed limit will improve security alongside Naval Station Norfolk as well as reduce the potential threat. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of the rule would be contrary to the public interest, as immediate action is necessary to ensure the safety and security of naval vessels during large merchant vessel transits of the Elizabeth River.

Background and Purpose

The Commander Naval Station Norfolk requested this rule to reduce the potential threat to national security that may be posed by vessels of 300 gross tons or greater as they pass the naval station. This temporary modification of the regulated navigation area (RNA) is necessary to ensure the safety and security of naval vessels in the vicinity of Naval Station Norfolk. The U.S. Navy or other federal agencies may assist the U.S. Coast Guard in the enforcement of this rule.

No vessel of 300 gross tons or greater may proceed at a speed over eight knots between Elizabeth River Channel Lighted Gong Buoy 5 (LL 9470) of Norfolk Harbor Reach and gated Elizabeth River Channel Lighted Buoys 17 (LL 9595) and 18 (LL 9600) of Craney Island Reach. All vessels less than 300 gross tons are exempt from this rule, as well as all Public vessels as defined in 33 U.S.C. 1321, which states that a public vessel means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This temporary final rule will be in effect for less than nine months. During this period, it is estimated to affect 3988 vessel transits. However, the speed limit restrictions are only in effect for less than four miles, and typical vessel speed is 10 knots. Therefore, any delay caused by the two knot reduction in speed will be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels 300 gross tons or greater intending to transit Norfolk Harbor Reach at speeds greater than eight knots. This regulated navigation area will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only affect a limited portion of a vessel's total transit, and for only a length of less than four miles. Deep-draft vessels typically transit this area at approximately 10 knots, and therefore the eight-knot speed limit will not cause significant delays. Further, the rule is only in effect for nine months.

If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian

tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this temporary rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lC, this temporary rule is categorically excluded from further environmental documentation. This temporary rule seeks to modify a well established Regulated Navigation Area, and will be in effect for less than nine months. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. From December 20, 2002 until June 15, 2003 add new paragraph (d)(14) to § 165.501 to read as follows:

§ 165.501 Chesapeake Bay entrance and Hampton Roads, Va. and adjacent waters—regulated navigation area.

* * * * *

(d) * * *

(14) Speed restrictions on Norfolk Harbor Reach. Vessels of 300 gross tons or more may not proceed at a speed over eight knots between the Elizabeth River Channel Lighted Gong Buoy 5 (LL 9470) of Norfolk Harbor Reach (northwest of Sewells Point) at approximately 36°58′00″ N, 76°20′00″ W and gated Elizabeth River Channel Lighted Buoys 17 (LL 9595) and 18 (LL 9600) of Craney Island Reach (southwest of Norfolk International Terminal) at approximately 36°54′17″ N, 76°20′11″ W. All vessels less than 300 gross tons are exempt from this rule. All coordinates reference Datum NAD 1983. This speed restriction does not apply to Public Vessels as defined in 33 U.S.C. 1321(a)(4). The U.S. Navy or other federal agencies may assist the U.S. Coast Guard in the enforcement of this rule.

* * * * *

Dated: December 20, 2002.

J.D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–1006 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[FRL–7439–7]

Change of Physical Location of EPA's Environmental Appeals Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Appeals Board (EAB) of the U.S. Environmental Protection Agency has relocated its office and today is amending the address as it is referenced in the regulation on Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.

DATES: This final rule is effective on January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Eurika Durr, Clerk of the Board. Telephone number: (202) 233–0122. Email: *Durr.Eurika@epa.gov*.

SUPPLEMENTARY INFORMATION: This action is directed to the public in general, and in particular to anyone who may need or want to visit or submit documents to the office of the EAB. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

I. Background

A. What Action Is the Agency Taking?

The EAB has relocated its office from one office building to another in downtown Washington, DC. The current physical location of the EAB is Suite 500, 607 14th Street, NW., Washington, DC. This address is referenced in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP), 40 CFR part 22, which provides, in pertinent part, that:

> Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board (Clerk of the Board, (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand deliveries may be made at Suite 500, 607 14th Street, NW.).

40 CFR 22.30(a). On December 9, 2002, the EAB relocated its office to Suite 600, 1341 G Street, NW. The purpose of this amendment is to delete the sentence in 40 CFR 22.30(a) which provides that "[h]and deliveries may be made at Suite 500, 607 14th Street, NW.," and to substitute a sentence which provides that "[h]and deliveries may be made at Suite 600, 1341 G Street, NW." The amendment will have no effect on any documents that are filed at the EAB's official mailing address, which is 1200 Pennsylvania Ave., NW.

B. How Can I Get Additional Information About This Action?

You may obtain additional information about this action on the EAB's Internet home page at *http://www.epa.gov/eab*.

C. What Is the Agency's Authority for Taking This Action?

EPA is issuing this document under its general rulemaking authority. Reorganization Plan No. 3 of 1970 (5 U.S.C. app.). In addition, section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice of public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that this amendment is technical and non-substantive, and therefore, that there is good cause under 5 U.S.C. 553(b)(B) for making this rule final without prior proposal and opportunity for comment.

II. Do Any of the Regulatory Assessment Requirements Apply to This Action?

No. This final rule implements a technical amendment to 40 CFR part 22 to reflect a change in the physical location of the office of the EAB, and does not otherwise impose or amend any requirements. This action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This rule does not contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, this action is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandate Reform Act of 1995 (UMRA) (Pub. L. 104–94). In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the UMRA of 1995. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999). Similarly, this rule will not have substantial direct effects on tribal governments, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). This rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

III. Will EPA Submit This Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, generally provides that, before a rule may take effect, the agency that promulgates the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. CRA section 808 provides that the issuing agency may make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. EPA has made such a good cause finding, including the reasons therefor, and has established the date of publication as the effective date. As stated previously, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States, prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 22

Environmental protection, Administrative practice and procedure.

Dated: January 9, 2003.

Christine Todd Whitman,

Administrator.

40 CFR Part 22 is amended as follows:

1. The authority citation for Part 22 continues to read as follows:

Authority: 7 U.S.C. 136(l); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g–3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

2. Section 22.30(a)(1) is amended by revising the second sentence to read as follows:

§ 22.30 Appeal from or review of initial decision.

(a) * * * (1) * * * Hand deliveries may be made at Suite 600, 1341 G Street, NW.).* * *

* * * * *

[FR Doc. 03–963 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–69–1–9940a; FRL –7439–2]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted on July 22, 1996, by the State of Florida through the Florida Department of Environmental Protection (FDEP). These revisions to rules 62–296.412 and 62–296.511, which update the applicable requirements for perchloroethylene dry cleaners and halogenated solvent degreasing facilities to achieve compliance with regulations are being made to keep the EPA approved SIP consistent with the Florida regulations.

DATES: This direct final rule is effective March 17, 2003, without further notice, unless EPA receives adverse comment by February 18, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Heidi LeSane at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane at 404/562–9035 (E-mail: *lesane.heidi@epa.gov*).

SUPPLEMENTARY INFORMATION: The State of Florida through the FDEP submitted revisions to Rules 62–296.412(1) and 62–296.511 of the Florida SIP on July 22, 1996. These rules were amended to update applicable requirements for perchloroethylene dry cleaners and halogenated solvent degreasing facilities. The amendments provide that dry cleaning facilities using

perchloroethylene which have not yet achieved compliance with the requirements of 40 CFR Part 63 Subpart M—*National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities*, would continue to be subject to the requirements of Rule 62–296.412 until compliance is achieved. Likewise, the amendments provide that degreasing facilities using halogenated solvents which have not yet achieved compliance with the requirements of 40 CFR Part 63, Subpart T,—*National Emission Standards for Halogenated Solvent Cleaning*, would continue to be subject to the requirements of Rule 62–296.511 until compliance is achieved. These revisions primarily affect 40 CFR Part 63—*National Emission Standards for Hazardous Air Pollutants for Source Categories*, however, the amendments also provide emissions reductions of volatile organic compounds (VOCs).

Final Action

EPA is approving the aforementioned revisions to the Florida SIP because they are consistent with the Clean Air Act (CAA) and EPA requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 17, 2003, without further notice unless the Agency receives adverse comments by February 18, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 17, 2003, and no further action will be taken on the proposed rule.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 3, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K—Florida

2. In § 52.520(c) the table is amended by revising the entry for "62–296.412" and "62–296.511" to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED FLORIDA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * *	* * * *	*	* * *	
62–296.412	Dry Cleaning Facilities	06/05/1996	01/16/2003 [Insert page citation of publication].	
* * * *	* * * *	*	* * *	
62–296.511	Solvent Metal Cleaning	06/05/1996	01/16/2003 [Insert page citation of publication].	
* * * *	* * * *	*	* * *	

* * * * *

[FR Doc. 03–858 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA185–4197; FRL–7437–5]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Control of Volatile Organic Compounds From Solvent Cleaning Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes revised volatile organic compound (VOC) control regulations for solvent cleaning operations and also adds new definitions and amends certain existing definitions for terms used in regulations pertaining to solvent cleaning operations.

EFFECTIVE DATE: This final rule is effective on February 18, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034 or by e-mail at *wentworth.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 15, 2002, (67 FR 34647), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of revised VOC control requirements for solvent cleaning operations, and the addition and amendment of definitions for terms used in the regulations for solvent cleaning operations. The formal SIP revision was submitted by the Commonwealth of Pennsylvania on February 13, 2002. Other specific requirements of Pennsylvania's SIP revision for solvent cleaning operations and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On June 13, 2002, EPA received adverse comments on the May 15, 2002, NPR. A summary of the comments submitted and EPA's responses are provided in section II of this document.

II. Public Comments and Responses

Carpenter Technology Corporation (Carpenter) submitted adverse comments on the proposed rule to approve revised VOC control regulations for solvent cleaning operations in the Commonwealth of Pennsylvania published by EPA in the **Federal Register** on May 15, 2002 (67 FR 34647). A summary of those comments and EPA's responses are provided below.

Comment: Carpenter comments that the State failed to provide an opportunity for public comment on the cost/benefit analysis used to justify the rule.

Response: EPA disagrees that the Commonwealth failed to meet the public participation requirements for this SIP revision. The Clean Air Act requires that a state provide for public comment and hearing on a proposed SIP revision. In this instance, the Commonwealth's proposed SIP revision consists of the addition of the Solvent Cleaning Operations rule. After publishing notices in nine newspapers across the entire state announcing their respective dates, times and venues, public hearings were held by the Pennsylvania Environmental Quality Board (EQB) on the proposed rulemaking for the Solvent Cleaning Operations rule at the Pennsylvania Department of Environmental Protection's (PADEP) Southwestern Regional Office in Pittsburgh on September 28, 1999, at its Southeastern Regional office in Conshohocken on October 1, 1999, and on October 5, 1999, at its South Central Regional Office in Harrisburg. The notices also provided information to the public for obtaining hard copies of the proposed rulemaking from PADEP and the electronic address on its website where the proposed rulemaking could also be reviewed for comment by the public. On August 28, 1999, the EQB published the proposed rulemaking in the *Pennsylvania Bulletin* (29 Pa. B. 4661). In addition to the proposed rule itself, the August 28, 1999 proposed rulemaking (29 Pa. B. 4661) also includes the information as to the start and close of the public comment period; the dates, times and venues of the public hearings; and the means by which the public may provide comments on the proposed rulemaking both in writing and electronically to the EQB.

Although not required by Federal law for meeting public participation requirements for SIP revisions, Executive Order 1996–1 of the

Commonwealth of Pennsylvania requires that PADEP perform a Regulatory Analysis as part of its rule adoption process. The Regulatory Analysis is to be submitted to the General Counsel, Secretary of Budget and the Governor's Policy Director. That regulatory analysis is to include a cost/benefit analysis. Executive Order 1996–1 does not require PADEP to publish the Regulatory Analysis for comment by the public. However, the August 28, 1999 *Pennsylvania Bulletin* proposed rulemaking states that a cost/benefit analysis was done for the proposed making and states that the Regulatory Analysis form is available to the public upon request (29 Pa. B. 4662). Moreover, as part of its SIP revision submittal, PADEP included a document entitled, "Solvent Cleaning Operations Comment and Response Document," dated May 1, 2001. That document includes Carpenter's comments on the cost/benefit analysis of the proposed rulemaking and provides PADEP's response.

The final rulemaking published in the *Pennsylvania Bulletin* on December 22, 2001 (31 Pa. B. 6921), announcing the adoption of the final version of the Solvent Cleaning Operations rule includes the following finding by the Environmental Quality Board of the Commonwealth of Pennsylvania at J. *Findings* (2): "A public comment period was provided as required by law and all comments were considered." (31 Pa. B. 6926, December 22, 2001).

Comment: Carpenter comments that no data analysis was presented to support the projected VOC emission reductions in the final rule.

Response: EPA is not approving a quantified amount of emission reductions from Pennsylvania's solvent cleaning rule. Nor does Pennsylvania's SIP revision submittal include a request that any amount of emission reductions be approved by EPA. Emission reductions achieved by this rule and any other rules credited by PADEP in SIP revisions submitted to satisfy any rate of progress plan or attainment demonstration plan requirements would be the subject of separate rulemakings on those plans.

Comment: Carpenter comments that the freeboard requirements for closed-top immersion cold cleaning machines will actually increase emissions, and has provided specific information as to the emission increases that would occur at its Reading, Pennsylvania facility. In its comment letter, Carpenter also provides information regarding modifications to its Reading facility which have reduced VOC emissions from 14 tons per year (tpy) to 2.5 tpy.

Response: EPA disagrees that a freeboard requirement for closed-top immersion cold cleaning machines will increase emissions. For purposes of clarification, in Pennsylvania's regulation, an immersion cold cleaning machine refers to a cold cleaning machine with an opening at the top (as opposed to the side or bottom) of the machine through which the parts to be immersed must pass in order to reach the solvent. An immersion cold cleaning machine may or may not be equipped with a cover or lid that would have to be raised or removed in order to pass the parts that are to be immersed through the top opening. Pennsylvania's regulation requires that all immersion cold cleaning machines, as defined above, that use two gallons or more of solvents containing greater than 5 percent VOC content by weight for the cleaning of metal parts, be equipped with a cover that shall be closed at all times except during the cleaning of parts or the addition or removal of solvent. The Pennsylvania rulemaking allows operators of affected cold cleaning machines the option of using low volatility solvents (1 mm Hg) in a machine with a freeboard ratio of 0.5 or greater. A freeboard ratio of 0.75 or greater is required only if the solvent volatility is greater than 1 mm Hg. Carpenter is correct in pointing out that an increase in freeboard ratio results in more space (volume) in which the solvent may evaporate.

However, because the solvent vapors are denser than the air in the cold cleaning machine, the solvent vapor concentration is greatest near the liquid solvent than near the opening of the cold cleaning machine. A higher freeboard ratio means that the more concentrated solvent vapor interface area will be less disturbed by air draft or air currents when the cleaner is opened or when it remains open during cleaning. When opening the cover on a cold cleaning machine, Carpenter states that solvent vapor will escape from the machine. This is true, but in machines with a higher freeboard ratio, the less concentrated solvent vapors nearest the opening are more likely to be affected by the opening and closing of the cover, than are the more concentrated solvent vapors near the liquid solvent.

In its emissions analysis, Carpenter is assuming that solvent evaporation is reaching equilibrium within the volume of the cold cleaning machine, and that this entire volume of solvent will be emitted when opening the cover on the cold cleaning machine. In actual practice, in properly operated cold cleaning machines, not all of the volume of solvent that has evaporated into the freeboard area will be emitted. An increased freeboard ratio also reduces working emission losses to the extent that it provides additional dwell space in order for the liquid solvent to drain back into the cold cleaning machine when parts are removed after having been cleaned. Therefore, EPA expects that PADEP's freeboard requirements for open-top immersion cold cleaning machines will reduce VOC emissions in the Commonwealth.

However, given the specific circumstances of Carpenter's Reading facility as described in its June 10, 2002 letter of comment to EPA, including the information regarding the switch to aqueous-based cleaning solutions, the replacement of equipment, and the costs associated with these changes which resulted in a reduction in VOC emissions from 14 tons per year (TPY) to 2.5 TPY (an 82 percent reduction), Carpenter may wish to apply to PADEP for a source-specific variance to the revised regulations. If Carpenter can provide documentation to PADEP of the information provided in its June 10, 2002 letter to EPA, and demonstrate to the Commonwealth's satisfaction that compliance with the revised regulations would indeed increase VOC emissions at its Reading facility, PADEP could issue a source-specific alternative to Carpenter and submit it to EPA for approval as a SIP revision.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP regarding VOC control requirements for solvent cleaning operations applicable throughout the Commonwealth.

IV. Regulatory Assessment Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic. impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements

under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving revisions to Pennsylvania's control of VOCs from solvent cleaning operations, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: December 31, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(195) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(195) Revisions to the Pennsylvania Regulations regarding VOC control requirements for solvent cleaning operations, submitted on February 13, 2002, by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of February 13, 2002, from the Pennsylvania Department of Environmental Protection transmitting the revisions to VOC control requirements for solvent cleaning operations.

(B) Revisions to 25 PA Code, chapter 121 and chapter 129, effective December 22, 2001.

(*1*) Additions and Revisions of definitions for terms in chapter 121, General Provisions, section 121.1, Definitions.

(*i*) Addition of the following terms: Airless cleaning system, Airtight cleaning system, Batch vapor cleaning machine, Carbon adsorber, Cold cleaning machine, Dwell, Dwell time, Extreme cleaning service, Freeboard refrigeration device, Idling mode, Immersion cold cleaning machine, In-line vapor cleaning machine, Reduced room draft, Remote reservoir cold cleaning machine, Solvent/air interface, Solvent cleaning machine, Solvent cleaning machine automated parts handling sytem, Solvent cleaning machine down time, Solvent vapor zone, Superheated vapor system, Vapor cleaning machine, Vapor cleaning machine primary condenser, Vapor pressure, Vapor up control switch, Working mode cover.

(*ii*) Revision of the term "freeboard ratio."

(*2*) Revisions to chapter 129, Standards for Sources, Sources of VOCs, section 129.63, VOC Cleaning Operations replacing the current section 129.63.

(ii) Additional Material. Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(195)(i) of this section.

[FR Doc. 03–851 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 137–3093a; FRL–7436–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Motor Vehicle Inspection and Maintenance Program—Request for Delay in the Incorporation of On-Board Diagnostics Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). Maryland has requested a six-month extension of the Federal deadline to incorporate electronic checks to of On-board Diagnostic (OBD) computer systems of 1996-and-newer vehicles into

Maryland's motor vehicle emissions inspection and maintenance (I/M) program. EPA's rules governing I/M programs required states to add OBD checks to their I/M programs by January 1, 2002. However, EPA's same rule provides states the option to submit a request for delay of this deadline by up to one additional year, provided each state making such a request for delay demonstrates to EPA that such a delay was necessary. Maryland has requested a six-month delay provided for by EPA's regulations (*i.e.*, until July 1, 2002) in commencing OBD checks as part of its I/M program. EPA has reviewed Maryland's request, and is proposing through this action to grant Maryland's request for a six-month extension of the OBD testing deadline in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on March 17, 2003 without further notice, unless EPA receives adverse written comment by February 18, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Robert Kramer, Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of these relevant documents are also available from the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Janet C. Kremer, (215) 814–2147, or by e-mail at *kremer.janet@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 5, 2001, EPA's revised I/M program requirements rule was published in the **Federal Register** (Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-board Diagnostics Check; Final Rule (66 FR 18156)). The revised I/M requirements rule requires that electronic checks of the On-board Diagnostics system of applicable 1996-and-newer motor vehicles be conducted as part of states' motor vehicle I/M programs. This revised I/M requirements rule applies only to those areas required to implement an I/M program under the Clean Air Act of 1990. This rule establishes a deadline of January 1, 2002 for states to begin performing OBD checks on 1996-and-newer model OBD-equipped vehicles, and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check. However, the revised I/M rule also provides several options to states to delay implementation of OBD testing, under certain circumstances, beyond the prescribed January 1, 2002 deadline. One such option provides for a one-time, 12-month extension of the deadline for states to begin conducting mandatory OBD checks (to as late as January 1, 2003) provided the state making the request can show just cause to EPA for a delay and that the revised implementation date represents "the best the state can reasonably do".

EPA's final rule identifies factors that may serve as a possible justification for states considering making a request to EPA to delay implementation of OBD I/M program checks beyond the January 2002 deadline. Potential factors justifying such a delay request that are listed in EPA's rule include: contractual impediments, hardware or software deficiencies, data management software deficiencies, the need for additional training for the testing and repair industries, and the need for public education or outreach.

Maryland has submitted a SIP revision to formally request an extension of the OBD I/M test deadline, per EPA's I/M requirement rule. Maryland's SIP revision lists many of the same factors that are listed in EPA's I/M rule in order to justify the State's request for extension of the OBD testing deadline.

Summary of SIP Revision

On July 9, 2002, Maryland submitted a formal revision to its SIP, which constitutes a request to delay the addition of on-board diagnostic system checks of 1996-and-newer vehicles to Maryland's adopted and SIP-approved I/M program.

Maryland's SIP revision to request delay in adding OBD testing to it I/M program list several factors that effect the State's ability to conduct OBD testing at this time. Maryland's justification for its request of a 6-month delay includes the following factors:

(1) Hardware and software issues pertaining to the transition to new hardware and testing equipment, installation of new communications network, and construction of a new data management system. Also, the time to develop a new formal acceptance testing procedures for equipment and develop quality assurance specifications and procedures for the OBD test equipment that will be incorporated into the State's ongoing assurance audit inspections of the Vehicle Emissions Inspection Program (VEIP) stations,

(2) evaluation of various programmatic options, and the design of an OBD program that will be compatible with the current VEIP program design,

(3) the need to train the contractor inspection, operational, and management personnel, so that all of these personnel have a thorough knowledge of all aspects of the final OBD program design and operation,

(4) the need for additional education and training of the vehicle repair community in the new OBD test procedures as well as the repair of OBD-failed vehicles,

(5) the need for additional outreach and public education in order to increase public acceptance of OBD testing.

II. Final Action

EPA is granting the state of Maryland's request for a six-month extension of the OBD testing deadline, per the guidelines established by EPA in its amended Vehicle Inspection and Maintenance Program Requirements Rule, published in the April 5, 2001 edition of the **Federal Register** (66 FR 18156). Maryland has adequately justified a six-month extension of the January 1, 2002 Federal OBD I/M testing deadline. EPA therefore proposes to grant a six-month extension of the deadline to commence OBD testing as part of the Maryland I/M program to July 1, 2002. EPA has determined that this delayed implementation schedule represents the timeliest implementation schedule that Maryland can perform, and is "the best the state can reasonably do".

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment as EPA's I/M program requirements regulations allow the Administrator to grant such an extension request if a state provides a justification that meets the factors set forth in EPA's I/M regulations (66 FR 18156).

However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 17, 2003 without further notice unless EPA receives adverse comment

by February 18, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to extend the deadline for incorporation of On-board Diagnostics checks to the Maryland I/M program by six-months must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 23, 2002.

Judith M. Katz,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(179) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(179) Revisions to the Code of Maryland Administrative Regulation (COMAR) 11.14.08 pertaining to the request for delay in the incorporation of On-board Diagnostics testing in the state's Vehicle Inspection and Maintenance Program submitted on July 9, 2002 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 9, 2002 from the Maryland Department of the Environment transmitting amendments to Regulations .03, .06, .09, .12, and .16 under COMAR 11.14.08, Vehicle Emissions Inspection Program.

(B) Additions and revisions to COMAR 11.14.08.03, .06, .09, .12, and .16, effective June 10, 2002:

(*1*) Added COMAR 11.14.08.03E.

(*2*) Revised COMAR 11.14.08.06A(3)(r), .09F, .12C(1) through (3) inclusive, and .16D.

(ii) Additional Material.—Remainder of the State submittal(s) pertaining to the revisions listed in paragraph (c)(179)(i) of this section.

3. Section 52.1078 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.1078 Extensions.

* * * * *

(b) The Administrator hereby extends by six-months the deadline by which Maryland must incorporate mandatory testing of second generation On-board Diagnostics (OBD–II) equipped motor vehicles as part of its inspection and maintenance (I/M) program. As a result of this deadline extension, Maryland must now incorporate mandatory OBD–II checks (for 1996-and-newer OBD–II equipped vehicles) as an element of the Commonwealth's I/M program in all enhanced I/M program areas by July 1, 2002.

[FR Doc. 03–855 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH155–1a; FRL–7425–8]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Oxides of Nitrogen Regulations

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: On July 11, 2002, Ohio submitted a plan which contained rules to control emissions of oxides of nitrogen (NO_X) from electric generating units (EGU), non-EGUs and Portland Cement Kilns. The plan and associated rules represent a strategy submitted by the Ohio Environmental Protection Agency (Ohio EPA) in response to USEPA's October 27, 1998, NO_X State Implementation Plan (SIP) Call and subsequent technical amendments. This direct final rule addresses the adequacy and acceptability of the Ohio plan, which we believe will have a major impact in reducing NO_X and ozone in Ohio and in areas downwind from major sources of NO_X emissions. USEPA believes the State's plan, which includes a NO_X trading program, an energy efficiency/renewable energy feature and accommodates innovative technology projects, adequately addresses the requirements of the NO_X SIP Call and meets the budget prescribed for Ohio. USEPA is taking final action today to approve the Ohio EPA plan.

DATES: This rule is effective on March 17, 2003, unless USEPA receives relevant adverse written comments by February 18, 2003. If USEPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air and Radiation Division (AR–18J) Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. You may obtain a copy of the State Implementation Plan revision request at the above address. Please telephone John Paskevicz at (312) 886–6084 if you intend to visit the Region 5 office.

You may inspect copies of Ohio's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Chicago, Illinois, 60604. E-Mail Address: *paskevicz.john@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "you" refer to the reader of this proposed rule and/or to sources subject to the State rule, and the terms "we", "us", or "our" refers to USEPA.

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I. Background

A. What Requirements Led to the State's Submittal of the NO_X Emission Control Plan?

On October 27, 1998, the USEPA promulgated a regulation known as the NO_X SIP Call for numerous States, including the State of Ohio. The NO_X SIP Call requires the subject States to develop NO_X emission control regulations sufficient to provide for a prescribed NO_X emission budget in 2007.

Preceding the promulgation of USEPA's NO_X SIP Call, there had been extensive discussions by Federal, State, and local environmental agencies, industry, and environmental groups regarding the transport of ozone in the eastern United States. The Environmental Council of States (ECOS) recommended the formation of a national workgroup to assess the problem and to develop a consensus approach to addressing the transport problem. As a result of ECOS' recommendation and in response to a March 2, 1995, USEPA memorandum, the Ozone Transport Assessment Group (OTAG) was formed to conduct regional ozone transport analyses and to develop a recommended ozone transport control strategy: OTAG was a partnership among USEPA, the 37 eastern States and the District of Columbia, and industrial, academic, and environmental groups. OTAG was given the responsibility of conducting the two years of analyses envisioned in the March 2, 1995, USEPA memorandum.

OTAG conducted a number of regional ozone data analyses and regional ozone modeling analyses using photochemical grid modeling. In July 1997, OTAG completed its work and made recommendations to the USEPA concerning the regional emissions reductions needed to reduce transported ozone as an obstacle to attainment in downwind areas. OTAG recommended a possible range of regional NO_X emission reductions to support the control of transported ozone. Based on OTAG's recommendations and other information, USEPA issued the NO_X SIP Call rule on October 27, 1998. 63 FR 57356.

In the NO_X SIP Call, USEPA determined that sources and emitting activities in 23 jurisdictions [1] emit NO_X in amounts that "significantly contribute" to ozone nonattainment or interfere with maintenance of the 1-hour ozone national ambient air quality standards (NAAQS) in one or more downwind areas in violation of Clean Air Act (CAA) section 110(a)(2)(D)(I)(I). USEPA identified NO_X emission reductions by source sector that could be achieved using cost-effective measures and set state-wide NO_X emission budgets for each affected jurisdiction for 2007 based on the

[1] Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

possible cost-effective NO_X emission reductions.

The source sectors include nonroad mobile, highway mobile, electricity generating units (EGUs), and major non-EGU stationary point sources. EGUs include stationary boilers and turbines that generate at least some electricity, even if they also generate steam for industrial processes. Non-EGUs include other large stationary boilers and turbines, typically for the purpose of generating steam for industrial processes.

USEPA established recommended NO_X emissions caps for large EGUs (potentially generating more than 25 megawatts) and for large non-EGUs (minimum design heat input of 250 mmBTU per hour). USEPA determined that significant NO_X reductions using cost-effective measures could be obtained as follows: Application of a 0.15 pounds NO_X/mmBtu heat input emission rate limit for large EGUs; a 60 percent reduction of NO_X emissions from large non-EGUs; a 30 percent reduction of NO_X emissions from large cement kilns; and a 90 percent reduction of NO_X emissions from large stationary internal combustion engines. The 2007 state-wide NO_X emission budgets established by jurisdiction were based, in part, by assuming these levels of NO_X emission controls coupled with NO_X emissions projected by source sector to 2007.

Although the state-wide NO_X emission budgets were based on the levels of reduction achievable through cost-effective emission control measures, the NO_X SIP Call allows each State to determine what measures it will choose to meet the state-wide NO_X emission budgets. It does not require the States to adopt the specific NO_X emission rates assumed by the USEPA in establishing the NO_X emission budgets. The NO_X SIP Call merely requires States to submit SIPs, which, when implemented, will require controls that meet the NO_X state-wide emission budget. The NO_X SIP Call encourages the States to adopt a NO_X cap and trade program for large EGUs and large non-EGUs as a cost-effective strategy and provides an interstate NO_X trading program that the USEPA will administer for the States. If States choose to participate in the national trading program, the States must submit SIPs that conform to the trading program requirements in the NO_X SIP Call.

B. What Requirements Must Ohio Meet?

The State of Ohio has the primary responsibility under the Clean Air Act for ensuring that Ohio meets the ozone air quality standards and is required to submit a SIP that specifies emission limitations, control measures, and other measures necessary for meeting the NO_X emissions budget. The SIP for ozone must meet the ozone transport SIP Call requirements, must be adopted pursuant to notice and comment rulemaking, and must be submitted to the USEPA for approval.

These NO_X emission reductions will address ozone transport in the area of the country primarily east of the Mississippi River. USEPA promulgated the NO_X SIP Call pursuant to the requirements of CAA section 110(a)(2)(D) and our authority under CAA section 110(k). Section 110(a)(2)(D) applies to all SIPs for each pollutant covered by a NAAQS and for all areas regardless of their attainment designation. It requires a SIP to contain adequate provisions that prohibit any source or type of source or other types of emissions within a State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in, or interfere with maintenance of attainment of a standard by any other State with respect to any NAAQS.

Pursuant to its authority under section 110(k)(5), USEPA concluded that the SIPs for Ohio and other states were substantially inadequate to prohibit NO_X emissions that significantly contribute to ozone nonattainment. As a result, Ohio was required to submit SIP revisions that addressed this inadequacy.

USEPA has published a model rule for control of NO_X emissions from boilers and turbines. This model rule, codified at title 40 of the Code of Federal Regulations part 96 (40 CFR part 96), reflects USEPA's recommendations for the general design of the necessary NO_X emission control programs as well as detailed recommendations for specific program features. Similarly, at 63 FR 56393 (October 21, 1998), USEPA has published a proposed Federal implementation plan including rules regulating cement kilns, which serve as sample rules for this source type. USEPA recommends the cost-effective levels of control noted above. The budget that USEPA established for states reflects these control levels. USEPA further recommends that states take the necessary steps to allow their sources to participate in a multi-state NO_X emissions trading program that USEPA will run. While USEPA offers flexibility to states on various elements of program design, particularly in the distribution of projected emission reductions, USEPA can offer more streamlined approval of programs that more closely follow USEPA's model rule. (*See* 63 FR 57365)

C. What Have Been the Court Rulings Regarding USEPA's NO_X Emission Control Rule?

When the USEPA published the NO_X SIP Call on October 27, 1998, a number of States and industry groups filed petitions challenging the rulemaking before the United States Court of Appeals for the District of Columbia. The court, on May 25, 1999, stayed the States' obligation to submit SIPs in response to the NO_X SIP Call rule. Subsequently, on March 3, 2000, the court upheld most of USEPA's NO_X SIP Call rule. The court, however, vacated the rule as it applied to Missouri and Georgia, and remanded for further consideration the inclusion of portions of Missouri and Georgia in the rule. The court also vacated the rule as it applied to Wisconsin because the court believed that USEPA had not made a showing that sources in Wisconsin significantly contributed to nonattainment or interfered with maintenance of the ozone NAAQS in any other State. Finally, the court remanded to USEPA two issues concerning a limited portion of the NO_X emission budgets. *See* Michigan *et al.* v. EPA, 213 F.3d 663 (D.C. Cir. 2000). On April 11, 2000, based on the remanded issues, USEPA initiated a two phase approach to implement the NO_X SIP Call. Phase I of this approach addressed the portion of the NO_X SIP Call upheld by the court. Phase I will achieve the majority of the reductions in the NO_X SIP Call. The Phase I plan was due from Ohio on October 30, 2000.

Phase II will address the few narrow issues that the DC Circuit court remanded to USEPA, including: Whether, and if so, how, a small subclass of facilities that generate electricity should be included in the rule; and what control levels should be assumed for large, stationary internal combustion engines. Phase II of the NO_X SIP Call will not require a submittal from the States until USEPA has proposed and finalized rules in response to the court's remand.

On June 22, 2000, the court removed the stay of the state's obligation to submit SIPs in response to the NO_X SIP Call and denied petitioner's motions for rehearing and rehearing *en banc*. In removing the stay, the court provided that USEPA should allow 128 days for States to submit SIPs to the USEPA, *i.e.*, by October 30, 2000. Shortly after removing the stay, petitioners requested that the court adjust the NO_X SIP Call compliance date. In an action related to *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir

2000) the court then determined that the compliance date for the SIP Call would be May 31, 2004. Although the court's action affected only the compliance deadline, other dates in the rule for related requirements (such as flow control) were also extended because they were established relative to the original compliance deadline.

II. Summary of the State Submittal

A. When Was the Ohio EPA NO_X Plan Submitted to the USEPA?

Ohio EPA submitted the NO_X plan on July 11, 2002. USEPA had an opportunity to review and comment on earlier draft versions of the rules during the stakeholder review process. USEPA made both formal and informal comments, and these comments are available in the Docket. The plan was submitted in sufficient time for the USEPA to make a finding of completeness, which terminated the imposition of sanctions which were scheduled to go into effect on July 25, 2002, due to Ohio's failure to submit a plan. The Region 5 Regional Administrator signed the completeness finding on July 24, 2002. (*See* 67 FR 50600)

B. What Are the Basic Components of the Ohio EPA NO_X Plan?

The Ohio EPA plan includes the following documents: (1) A letter from the Director of Ohio EPA requesting a revision to the Ohio EPA plan; (2) a copy of the rules containing the provisions and requirements to implement a NO_X budget trading program to control and reduce emissions of NO_X in Ohio; (3) a copy of the Ohio code indicating the authority of the Ohio EPA Director to develop and submit the revision; (4) a notice of the proposed rulemaking and public hearing; (5) a transcript of the public hearing on the rules containing comments and testimony; (6) the Ohio Director's Findings and Orders announcing the adoption of rules controlling NO_X from sources in Ohio; (7) a list of Ohio's "interested parties" or stakeholders to whom draft rules were distributed for comment; (8) summary of comments submitted into Ohio's formal hearing record regarding the proposed rules which establish a NO_X budget trading program in Ohio; and, (9) Ohio's budget demonstration including a list of units (operating or under construction) subject to the State's NO_X rules.

Ohio's NO_X plan and rules apply to, and establish, a trading program for EGUs, non-EGUs, and portland cement kilns. The rules contained in chapter 3745–14, establish the provisions and requirements to implement a NO_X budget trading program in Ohio. The net effect of the rules is to cap emissions from major emitters and provide allowances to units to operate within the State's budget during the control period. Allowance allocations are made for five year periods with the exception of the first period, which is for a four-year period.

The State's market-based program which follows the model NO_X budget trading rule is the method selected by Ohio to meet its NO_X emissions reduction obligations under the NO_X SIP Call. The trading program caps total emissions in order to ensure that emissions reductions are achieved and maintained. Also, the flexibility in the State's program allows sources to reduce emissions and where possible, and if desired, generate allowances for trading.

The Ohio EPA plan includes Ohio rule 3745–14. This trading rule contains eleven separate rule elements, listed in Table 1, which correspond with part 96 model rule of the NO_X SIP Call.

TABLE 1.—COMPARISON OF STATE RULE TO MODEL RULE

Ohio Rule 3745–14	Corresponds with USEPA rule . . .
01, General Provisions	Subpart A, sections 96.1, 96.2, and 96.3 Purpose, Definitions and Abbreviations. 96.4, Applicability. 96.5, Retired unit exemptions. 96.6, Standard requirements. 96.7, Computation of time.
02, NO_X authorized account representative.	Subpart B, section 96.10 . . . the NO_X authorized account representative. 96.11, Alternate NO_X authorized account representative. 96.12, Changing the account representative. 96.13, Account certificate of representation. 96.14, Objections re: NO_X account representative.
03, NO_X budget permit	Subpart C, section 96.20, NO_X budget permit requirements. 96.21, Submission of NO_X budget permit application. 96.22, Information requirements for NO_X budget permit applications. 96.23, content. 96.25, revisions.
04, Compliance certification	Subpart D, section 96.30, Compliance certification report. 96.31, State and USEPA's action on compliance certification.
05, NO_X allowance allocations	Subpart E, section 96.40, NO_X allowance allocations. 96.41, Timing requirements. 96.42 NO_X allowance allocations. 96.55 Banking (Early reduction credit portion of this section).
06, NO_X allowance tracking system.	Subpart F, section 96.50, NO_X allowance tracking system (ATS) accounts. 96.51, Establishment of accounts. 96.52, NO_X ATS responsibilities of NO_X authorized account rep. 96.53, Recordation of NO_X allowance allocations. 96.54, Compliance. 96.55, Banking. 96.56, Account error. 96.57, Closing of general accounts.
07, NO_X allowance transfers	Subpart G, section 96.60, Submission of NO_X allowance transfers transfers. 96.61, EPA recordation. 96.62, Notification.
08, Monitoring and reporting	Subpart H, Monitoring and Reporting. 96.70, General requirements. 96.71, Initial certification and recertification procedures. 96.72, Out of control periods. 96.73, Notifications. 96.74, Recordkeeping and reporting. 96.75, Petitions. 96.76, Additional requirements to provide heat input data for allocations.
09, NO_X budget opt-in units	Subpart I, Individual Unit Opt-ins. Section 96.80, Applicability. 96.81, General. 96.82, NO_X authorized account representative. 96.83, Applying for NO_X budget opt-in permit. 96.84, Opt-in process. 96.85, NO_X budget opt-in permit contents. 96.86, Withdrawal from NO_X budget trading program. 96.87, Change in regulatory status. 96.88, NO_X allowance allocations to opt-in units.
10, Alternative compliance plans	This rule allows a source to participate in alternate compliance multi-pollutant reduction schemes such as the President's Clear Skies proposal.
11, Portland cement kilns	Part 98, subpart B, Emissions from cement manufacturing, proposed rules, October 21, 1998.

Ohio's plan includes opportunities for sources to obtain, beginning in 2006, an allocation for energy efficiency/renewable energy projects. The Ohio rule contains a provision which sets aside one percent of the tons of NO_X emissions in the State trading budget. This set-aside is for units that during the control period reduce end-use demand for electricity or displace electrical energy utilization by use of wind power,

solar power, biomass or landfill methane gas generation.

Ohio's plan also sets aside one percent of the trading budget beginning in 2006 for innovative technology projects. This means that an industry can compete for a set-aside, using stationary or mobile source technology which has not yet been adequately demonstrated in practice but where there is a likelihood that the technology will reduce NO_X emissions and increase energy efficiency.

C. Does the Ohio EPA NO_X Plan Meet the Federal NO_X Statewide Emissions Budget?

Yes, on July 11, 2002, Ohio submitted a plan containing rules in OAC Chapter 3745–14 to respond to USEPA's NO_X SIP Call published in the **Federal Register** on October 27, 1998. We reviewed the plan and found it complete on July 23, 2002. (*See* 67 FR 50600, dated August 5, 2002)

USEPA's NO_X SIP Call affected sources of oxides of nitrogen (NO_X) in 22 states (including Ohio) and the District of Columbia. The NO_X SIP Call rulemaking established statewide budgets for NO_X emissions beginning in the 2003 ozone season (May 1 to September 30). Each state was required to submit a State Implementation Plan (SIP) containing rules necessary to reduce NO_X emissions to the NO_X budget levels.

On March 2, 2000, USEPA published a final rule amending state NO_X budgets (65 FR 11222). Ohio used the information from this final rule to develop its budget. Further, Ohio describes the process it used to develop the budget in the budget demonstration contained in its plan submittal. A summary of the base and budget NO_X emissions contained in this rule for Ohio are provided in table 2.

TABLE 2.—NO_X EMISSIONS BUDGET BY SOURCE CATEGORY

[In tons]

2007 final	Source Category					
	EGU	non-EGU	Area source	non-road mobile	Highway mobile	Total
Base	163,132	50,001	21,860	43,380	94,850	373,223
Budget	48,990	40,194	21,860	43,380	94,850	249,274
Reduction	114,142	9,807	0	0	0	123,949

On November 15, 2000, Ohio informally provided draft rules for preliminary review to stakeholders and USEPA to start the rulemaking process. Ohio received comments on these draft rules from USEPA and 22 other interested parties. Ohio's draft rules were revised to take into account the comments received, and the revised draft rules were distributed to interested parties on November 19, 2001. Ohio EPA, again, received comments on these draft rules from USEPA and 38 other interested parties. The rules, to be submitted to Ohio's Joint Committee for Administrative Rule Review (JCARR), were revised again taking into consideration the comments. Ohio believes that these rules will achieve the NO_X reductions required by USEPA's NO_X SIP Call, and has finalized them for inclusion in its submitted NO_X plan.

The budget projections used to prepare Ohio's submission are the same as the State budget established by USEPA in the final rule published in the **Federal Register** on March 2, 2000 (65 FR 11222). A minor change was made by Ohio EPA and is addressed in the State's submittal. This change corresponds with a technical correction to the Ohio inventory made by USEPA on October 31, 2001 (66 FR 54992).

Ohio's budgets for Area Sources, Mobile Sources and Non-Mobile sources reflect emissions during the ozone control period from May 1 through September 30 for each year. The original USEPA budgets that Ohio used in it's analysis can be found on the electronic file entitled "OH.zip" on USEPA's web site *ftp://ftp.epa.gov/EmisInventory/NOXSIPCall_Mar2_2000*. Ohio submitted similar budgets for area, mobile and non-mobile source categories on a compact disk (CD) along with the Budget Demonstration. The CD is available in the Region 5 Docket. Table 3 identifies the 2007 base budgets for these sources and the name of the attached file in which they are found. No NO_X reductions from these source categories (mobile, area, and non-mobile) are projected for Ohio's budget demonstration. Furthermore, Ohio does not expect to have to develop additional NO_X emission reduction measures to meet the statewide budget during the 5-month ozone season.

TABLE 3.—UNAFFECTED SOURCE CATEGORIES

[In tons]

Source category	2007 base budget	File name
Area Sources	21,860	OH_ar.wb3
Mobile Sources	94,850	OH_mb.wb3
Non-Road Mobile Sources	43,380	OH_nr.wb3

Table 4 contains the base and final NO_X budget for EGUs. Ohio obtained these data from USEPA Clean Air Markets Division. The file was not part of the technical amendment to the NO_X SIP Call of March 2, 2000 (*see* 65 FR 11222). The files for EGUs on USEPA's Web site "*ftp://ftp.epa.gov/EmisInventory/NOX SIPCall_Mar2_2000*" did not contain 2007 base or budget numbers. This file contains information which includes the base and final budgets for EGUs. Ohio submitted this file (along with other files referenced here) on a CD with the Budget Demonstration. The CD is available in the Region 5 Docket.

TABLE 4.—BASE AND FINAL BUDGETS
[In tons]

Source category	2007 base budget	2007 final budget	File name
EGU	163,132	48,990	UT_budget.wb3

Table 5 contains the original budget that USEPA calculated for large industrial boilers (non-EGUs) located in Ohio. The information in Table 5 can be found on USEPA's web-site at "*ftp://ftp.epa.gov/ EmisInventory/ NO_XSIPCall_Mar2_2000,*" in the file entitled "OH_pt.wb3." USEPA modified the original non-EGU budget because on October 31, 2001, we made a determination (66 FR 54992) that Marathon Ashland Petroleum LLC's Plant 1576000301, emissions unit B015 was not a NO_X budget unit. USEPA's original non-EGU budget was modified to remove 18 NO_X allowances initially designated for B015 and to add 36 tons of uncontrolled NO_X emissions from B015 to the total budget for this source category. The budget submitted by Ohio EPA reflects these changes and the electronic file reflecting these changes is located on the CD submitted by Ohio in the file entitled "NonEGU Adjusted.wb3."

TABLE 5.—SOURCES REGULATED BY STATE RULES

Source	2007 Base budget	2007 Final budget	File name
non-EGUs	50,001	40,194	OH_pt.wb3

The information in Table 6, presents the components of Ohio's NO_X budget for EGUs and non-EGUs.

TABLE 6.—OHIO NO_X BUDGET
[In tons]

	EGU		non-EGU
	2004,2005	2006 and after	2004 and after
Total for source categories	48,990	48,990	40,194
non-Regulated Units	3,558	3,558	36,127
Set-Asides	[1] 2,272	[2] 3,181	[1] 203
Allowances available for existing units	43,160	42,251	3,846

[1] In each year, 5% of the Regulated Units' budget will be set aside to be allocated to new units.
[2] After 2005, an additional 2% of the EGU Regulated Units' budget will be set aside to fund two set-asides: 1% for Energy Efficiency/Renewable Energy Projects and 1% for Innovative Technology Projects.

USEPA believes the Ohio NO_X sources addressed here, which includes a cap and an allowance trading program, will be adequately controlled to ensure the sources in the State will meet the statewide NO_X budget established by USEPA.

D. What Public Review Opportunities Were Provided?

The Director of the Ohio Environmental Protection Agency "* * * may conduct public hearings on any plans for the prevention, control, and abatement of air pollution that the director is required to submit to the federal government." (Ohio Revised Code chapter 3704.03, Powers of the director of environmental protections.) Ohio's Director held several meetings early on in the rule development process, shortly after the USEPA promulgated the Finding of Significant Contribution and Rulemaking for the Purpose of Reducing Regional Transportation of Ozone Rule (*see* 63 FR 57356, dated October 27, 1998). During the course of development, Ohio sent draft rules to stakeholders for review and comment. This process was repeated several times until the State was satisfied it had fulfilled the public process. Stakeholders included affected utilities, major heavy industry, environmental groups (both local and national), consultants, industry and manufacturing associations, planning commissions and councils of government, and one university.

Finally, a public hearing was held in Columbus, Ohio, on April 11, 2002, and Ohio accepted written comments until April 26, 2002. The transcript of the public hearing is included as part of the State's submittal and can be found in the Docket at Region 5.

E. What Guidance Did USEPA Use To Evaluate Ohio's NO_X Control Program?

USEPA used the final NO_X SIP Call rule at 40 CFR part 96 for review of portions of the Ohio submittal. We also used 40 CFR 51.121 and 51.122 to evaluate Ohio's rules and the plan. The Ohio rules also apply to portland cement kilns. For USEPA's current position on these types of sources the public can consult USEPA's proposed part 98, dated October 21, 1998 (*see* 63 FR 56394), which USEPA expects to finalize shortly.

F. Does the Ohio Plan Meet Federal NO_X SIP Call Requirements?

USEPA is satisfied that the Ohio plan meets the requirements of the NO_X SIP

Call. Ohio's rules are patterned directly from the USEPA model rule and Ohio EPA included in the rules all of the requirements needed for approval by USEPA. The plan includes a budget, trading program, and addresses all of the components of the emissions budget listed in the USEPA technical amendment. Ohio's analysis indicates that additional NO_X control strategies will not be necessary to meet the NO_X budget for the State. USEPA has previously determined, on August 5, 2002 (67 FR 50600), that Ohio had satisfied the requirements for submittal of a complete plan to address NO_X controls on major sources of emission.

G. What Deficiencies Were Noted in the Ohio EPA NO_X Plan?

USEPA found a small deficiency in Ohio's submittal regarding the trigger date for flow control. In reviewing Ohio's July 11, 2002, NO_X SIP Call submittal, USEPA found that the State's rule triggers flow control in 2006. (*See* OAC chapter 3745–14–06(E)(6)) The NO_X SIP Call model rule requires flow control to be triggered in the second year of the program. This means Ohio's rule should require flow control to be triggered in 2005. Flow control is a mechanism to limit the excessive use of banked allowances. It is more of an insurance policy, rather than a provision that is routinely expected to be carried out. Furthermore, we do not believe it is appropriate to delay implementation of flow control beyond 2005.

Ohio used the model rule (63 FR 57356, dated October 27, 1998) to develop its plan. The State also used language from elements of the section 126 rule (65 FR 2674, dated January 18, 2000) in place of some of the language from the model rule. An amendment to the section 126 rule dated April 30, 2002, (*see* 67 FR 21522) extended the flow control date to 2006. This one year extension corresponds to the extension of the compliance date noted earlier. While the extension by one year of flow control to 2006 is appropriate for section 126, it is not appropriate for Ohio's rule in the NO_X SIP Call. A detailed discussion regarding the difference in the trigger dates for flow control between section 126 program and the NO_X SIP Call can be found in 65 FR 2674, dated January 18, 2000. We do not expect there will be any States subject to section 126. All affected States are expected to implement an NO_X SIP Call plan by the compliance date of May 2004. In order for flow control to be universally applied to all sources in the NO_X SIP Call region, the flow control trigger date must be the same for all of the States in the ozone transport region.

USEPA believes the 2006 date in the Ohio rule is a deficiency which can be cured by Ohio via the submittal of a State rule to revise the flow control date at the soonest possible time before the NO_X compliance date.

USEPA also found a deficiency in OAC chapter 3745–14–09(G)(7) entitled NO_X Budget Opt-in Units. The Ohio rule states that opt-in units that have withdrawn from the program can reapply for a permit after 2 years. A previous version of the Ohio rule had this time period as 4 years, which is the time period found in both the NO_X SIP Call model rule and the section 126 rule. The purpose of the 4 year period in the model rule is to discourage these opt-in sources from coming in and out of the budget trading program at a frequency that would be disruptive to the operation of the trading program. USEPA recommends Ohio change this time period from 2 years to 4 years.

III. USEPA Action

We are approving, in this direct final rule, the Ohio NO_X SIP because it meets the requirements of the USEPA NO_X trading program by meeting Ohio's NO_X budget. Ohio's rule mirrors the USEPA model rule for the NO_X SIP Call and the State adequately responded to all of the concerns of stakeholders during the public process. Ohio's plan is approved with the understanding that it will take action to change the date (the flow control trigger date) in OAC 3745–14–06(E) (6) from 2006 to 2005. If this date is not changed from 2006 to 2005, and Ohio fails to submit the change as a revision to its plan by May 31, 2004, USEPA will remove the approval of Ohio's NO_X SIP and take subsequent rulemaking action, as necessary. USEPA is publishing this action without prior proposal because we view this as a noncontroversial revision and we anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve the State's NO_X plan should adverse written comments be filed. This action will be effective without further notice unless USEPA receives relevant adverse written comment by February 18, 2003. Should USEPA receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective on March 17, 2003.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, USEPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for USEPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise

satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, USEPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. USEPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective February 18, 2003.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: December 13, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(127) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(127) On July 11, 2002, the Ohio Environmental Protection Agency submitted revisions to Chapter 3745–14–(1 through 11 and Appendices A and B) of the Ohio Administrative Code (OAC), an oxides of nitrogen (NO_X) budget trading program in Ohio, with a request that the Ohio State Implementation Plan be revised to include these NO_X rules.

(i) Incorporation by reference.

(A) Ohio NO_X rules: 3745–14–01, 3745–14–02, 3745–14–03, 3745–14–04, 3745–14–05, 3745–14–06, 3745–14–07, 3745–14–08, 3745–14–09, 3745–14–10, 3745–14–11, Appendix A to Chapter 3745–14 Annual No_X allowance allocations to regulated electric generating units for each year from 2004 through 2007, Appendix B to Chapter 3745–14 Annual NO_X allowance allocation for the control period in years 2004 through 2007 for non-electrical generating units; in the OAC all with an effective date of July 18, 2002.

[FR Doc. 03–962 Filed 1–15–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[ID–02–002; FRL–7422–3]

Approval and Promulgation of Implementation Plans; Idaho; Designation of Areas for Air Quality Planning Purposes; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve numerous revisions to the State of Idaho Implementation Plan submitted to EPA by the Director of the Idaho Department of Environmental Quality (IDEQ) on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002. The revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act). EPA is taking no action in this rulemaking on a number of submitted rule provisions which are unrelated to the purposes of the implementation plan, including the Idaho provisions for implementing the title V operating permit program.

EPA is also taking final action to revoke the total suspended particulates (TSP) area designations for Idaho and to adjust the PM–10 area designations to conform to the requirements of EPA's prevention of significant deterioration (PSD) regulations.

DATES: Effective February 18, 2003.

ADDRESSES: Copies of the State's request and other supporting information used in developing this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Idaho, Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706–1255. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Senior Air Pollution Scientist, EPA, Office of Air Quality (OAQ–107), Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress amended the Clean Air Act to require, among other things, revisions to State implementation plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS) in areas which violate those standards (nonattainment areas), including revisions to title I, part D new source review (NSR). IDEQ amended its part D NSR rules on April 8, 1994, and submitted them to EPA on May 17, 1994, as a revision to the Idaho SIP.

Idaho also revised provisions of its SIP to facilitate and improve the relationship between the Idaho SIP and its regulations implementing the

operating permit program under title V of the Act. In addition, since EPA last approved the Idaho SIP in 1993, Idaho has revised nearly every section of its air quality rules to some degree. Many of these amendments have been editorial and are renumberings, changes to citations for cross-referenced rules or statutes, changes in terminology, or grammatical corrections. Finally, during the 2000 legislative session, the Idaho Division of Environmental Quality became a separate department rather than a division of the Idaho Department of Health and Welfare, which remained a separate department. *See* Idaho Code sections 39–102A and 39–104. At the same time, IDEQ was given the SIP authorities previously held by the Department of Health and Welfare. *See* Idaho Code sections 39–108 to 39–118D. As a result, Idaho has renumbered and recodified all of its air quality regulations in a new IDAPA Chapter 58. IDEQ submitted these various revisions to its rules for air pollution sources to EPA on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, as revisions to the Idaho SIP.

On August 13, 2002, EPA solicited public comment on a proposal to approve all of the revisions submitted by IDEQ, except identified provisions on which EPA proposed to take no action.[1] EPA also requested public comment on its proposal to delete the TSP area designations for Idaho in 40 CFR 81.313 and to adjust the PM–10 area designations in 40 CFR 81.313. *See* 67 FR 52666 (August 13, 2002).

II. Response to Comments

EPA received two comment letters in response to the proposal, one which was submitted by IDEQ. IDEQ expressed support for EPA's proposed action, but did identify some concerns. The other commenter, J.R. Simplot Company (Simplot), raised a concern with the provisions in the Idaho SIP for the control of sulfur oxides in the Eastern Idaho Interstate Air Quality Control Region. The following is a summary of the issues raised by the commenters, along with EPA's response to those issues.

Comment 1: IDEQ commented that, in the notice acknowledging consistency with the Clean Air Act, EPA proposed to conditionally approve IDAPA 58.01.01.213. The proposed condition was that IDEQ submit within 5 days of issuance all written approvals, draft permits, and final permits. IDEQ noted that draft and final permits are at this time submitted by IDEQ to EPA and that IDEQ will submit to EPA on issuance copies of any pre-permit construction approval letters issued under IDAPA 58.01.01.213. IDEQ further asserted that a conditional approval is inappropriate from an administrative and legal standpoint.

Response 1: IDEQ is mistaken as to the type of action EPA proposed. EPA did not propose conditional approval under section 110(k)(4) of the Act, which could result in the SIP approval converting to a disapproval if the conditions are not met. Rather, EPA proposed approval of IDAPA 58.01.01.213 under section 110(k)(3) of the Act, based on the understanding that Idaho will provide EPA with copies of approvals issued under that provision, as they do in the case of all new source review permits, so that EPA can carry out its obligations to oversee SIP implementation, provide the public with copies of the SIP requirements for any source when requested, and enforce the SIP requirements if a source begins actual construction without having received the necessary approval from IDEQ.

Comment 2: IDEQ commented that IDAPA 58.01.01.220.01.a.iii requires sources that are not specifically listed as categorically exempt under IDAPA 58.01.01.222.02 to demonstrate, with modeling, that the source will not cause or contribute to a violation of an ambient air quality standard. According to IDEQ, the modeling requirement was included in the Idaho rules as a means to ensure that sources that are not specifically identified as categorically exempt but are exempted based on emission levels do not cause or significantly contribute to a violation of an ambient air quality standard. As such, Idaho continued, the requirement is a necessary part of Idaho's program to "assure that national ambient air quality standards are achieved" as required by section 110(a)(2)(C) and (D) of the CAA. Therefore, IDEQ asserted, this provision is appropriately included as part of Idaho's SIP, and EPA should approve the provision into the SIP so that it may be enforced by EPA or by citizens in Federal court.

Response 2: EPA's approval of the list of categorically exempt sources and the "below regulatory concern" levels in sections IDAPA 58.01.01.221, –222.01, and –222.02 is based on EPA's determination that the emission levels and source categories in those sections are appropriately exempted from minor new source review. The requirement in IDAPA 58.01.01.220.01.a.iii that a source conduct modeling to show that its uncontrolled potential to emit will not cause or contribute to a NAAQS violation is a determination that is initially made by the source and is not submitted to IDEQ unless specifically requested. Because this modeling requirement is part of Idaho's requirements for the exemption of certain sources from minor new source review, EPA is approving it as an enforceable requirement of the Idaho SIP, but EPA did not base its approval of the minor new source review exemption provisions on this modeling requirement.

Comment 3: IDEQ disagreed with EPA's proposal not to approve IDAPA 58.01.01.222.03 based on EPA's determination that it conflicts with section 110(a)(2)(c) of the CAA and 40 CFR 51.160, which require that the SIP identify types and sizes of sources subject to review and enforcement. IDEQ stated that there are safeguards in the Idaho "director's discretion" exemption, in that the source's potential to emit cannot equal or exceed 100 tons per year of any regulated air pollutant, the emissions increase cannot constitute a major modification, and IDEQ must review and approve the ambient modeling to ensure the source's proposed emissions would not cause or significantly contribute to a violation of any ambient air quality standard. IDEQ pointed out that EPA acknowledges in the proposal that EPA regulations do not require the issuance of a permit for the construction or modification of minor sources, but only that the SIP include a procedure to prevent the construction of a source or modification that would violate the SIP control strategy or interfere with attainment or maintenance of the NAAQS. IDEQ concludes that the section 222.03 exemption should be approved because it does not violate any control strategy nor interfere with attainment of the NAAQS.

Response 3: As discussed in the proposal, IDAPA 58.01.01.222.03 authorizes IDEQ, without going through rulemaking or a SIP revision, to add individual sources to the list of sources that are exempt from minor NSR as categorically insignificant. *See* 67 FR at 52670. Although IDEQ states that there are safeguards on this exemption, IDEQ's determination that the source will not cause or contribute to a violation of an ambient air quality standard is at no point in the process

[1] Included in the docket for the proposal and this final action is a table showing all of the provisions of IDAPA chapter 16, now codified at IDAPA chapter 58; the type of change made to the provisions (*e.g.*, new section, amended, editorial change, unchanged, relocated, deleted); the provisions that were not submitted by IDEQ as part of a SIP revision; and those provisions that were submitted as part of a SIP revision but on which EPA is taking no action.

subject to public and EPA review. This is in marked contrast to the other types of sources that are exempt from minor NSR in Idaho, for which the public and EPA have had an opportunity to review and comment on the emission levels and source categories that set the boundaries for the minor NSR exemptions.

It is true that EPA regulations do not require the issuance of a permit for the construction or modification of minor sources provided the SIP includes a procedure to prevent the construction of a source or modification that would violate the SIP control strategy or interfere with attainment or maintenance of the NAAQS. EPA statutes and regulations do require, however, that SIP revisions be subject to public comment and EPA approval, CAA 110(l) and 40 CFR 51.104, and also that the public have an opportunity to review and comment on a State's proposed approval of a new source or modification, 40 CFR 51.161(a). At no point in the process is IDEQ's decision that a particular source does not need approval or a permit to construct because it should be exempt under IDAPA 58.01.01.222.03 subject to EPA or public review. Moreover, EPA regulations require that a State's new source review regulations specifically identify the types and sizes of sources subject to review. *See* 40 CFR 51.160(e). The Idaho rules do not meet this requirement because sources that are initially required by the rules to get a permit can subsequently be exempted from that requirement by the Director of IDEQ without EPA or public notice or approval.

In short, IDAPA 58.01.01.222.03 in effect authorizes IDEQ to revise the SIP without a SIP revision that is subject to public or EPA review. Sections 110(i) and (l) of the CAA specifically preclude States from changing the requirements of the SIP except through SIP revisions adopted by the State after reasonable notice and public hearing and approved by EPA. This "director's discretion" provision of IDAPA 58.01.01.222.03 is inconsistent with those requirements, as well as the requirements of CAA section 110(a)(2)(C), 40 CFR 51.104, 40 CFR 51.160, and 40 CFR 51.161. Therefore, EPA is taking no action on this provision. As noted in the proposal, if IDEQ determines to exempt a source from new source review under the authority of IDAPA 58.01.01.222.03, the source is not exempt from new source review as a matter of Federal law unless and until the exemption has been approved by EPA as a source-specific SIP revision. *See* 67 FR 52670.

Comment 4: IDEQ commented on EPA's proposal not to act on IDAPA 58.01.01.401.04, which authorizes IDEQ to issue a Tier II operating permit with a future compliance date and requires EPA approval prior to issuance of such a permit. Idaho agrees that operating permits sanctioning a requirement that conflicts with the SIP may require a SIP revision. IDEQ asserts, however, that just as IDEQ enters into consent orders and settlement agreements with compliance schedules, IDEQ issues Tier II operating permits containing compliance schedules. IDEQ notes that compliance orders in Tier II permits use language similar to that in Tier II (title V) operating permits, that is, that the terms and conditions of the compliance schedule are supplemental to, and do not sanction noncompliance with, the underlying applicable requirement. For this reason, IDEQ asserts, EPA should approve IDAPA 58.01.01.401.04 as part of the SIP.

Response 4: By its terms, a compliance schedule issued under the authority of IDAPA 58.01.01.401.04. allows a source a future compliance date of up to three years beyond the compliance date of any provisions in IDAPA chapter 58. In other words, a compliance schedule issued under the authority of this provision is intended to delay the time for required compliance, in essence, to change the requirement for the source.[2] As such, it is a SIP revision that must be approved by EPA. This is in contrast to the kinds of compliance schedules issued under IDEQ's Tier I (title V) operating permit program or under other authority of State law, under which the compliance schedule sets forth a series of milestones for bringing a source into compliance with an applicable requirement. As noted by IDEQ, a compliance schedule issued in a Tier I (title V) operating permit does not sanction noncompliance with the underlying applicable requirement and does not extend the compliance date for the source. In contrast, a compliance schedule issued under the authority of IDAPA 58.01.01.401.04 by its terms extends the applicable compliance date for the source. In any event, because Idaho regulations provide that compliance schedules issued under the authority of IDAPA 58.01.01.401.04 must be approved by EPA, it is not necessary to include this provision as part of the SIP. Moreover, its inclusion in the SIP could cause confusion. Therefore, EPA is taking no action on this provision.

It may be that IDEQ has authority elsewhere in its Tier II permit program or under other provisions of Idaho law to issue a compliance schedule as part of a Tier II permit that sets forth a series of milestones for bringing a source into compliance with certain requirements, but that does not delay the compliance date, as does a compliance schedule issued under the authority of IDAPA 58.01.01.401.04. EPA's decision to take no action on IDAPA 58.01.01.401.04 has no bearing on IDEQ's authority to issue other types of compliance schedules. EPA recommends, however, that IDEQ carefully identify in any Tier II permit that contains a compliance schedule the regulatory provision under which such a compliance schedule is issued so that the procedure for issuing such a compliance schedule and the legal effect of such a compliance schedule is readily apparent.

Comment 5: IDEQ commented that EPA improperly places the burden on Idaho to establish that it has jurisdiction within Indian country with respect to regulation of persons who are not members of the tribe. IDEQ asserts that, under settled Indian law principles, Idaho presumptively has jurisdiction over persons that reside on Indian Reservations in Idaho who are not members of Tribes, citing to *County of Yakima* v. *Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251, 257–58 (1992). Equally important, according to IDEQ, the CAA itself preserves State law from preemption in section 116 of the CAA, 42 U.S.C. 7416, with respect to air emission standards except in specified situations, and nothing in the statute itself expressly precludes the exercise of such authority in Indian country. IDEQ asserts that EPA therefore should expressly provide in the final rule that nothing in its approval is intended to preclude the exercise of State regulatory authority within Idaho Indian country independent of the CAA to the extent consistent with applicable Indian law principles.

Response 5: EPA reads this comment as a request that EPA clarify the status of State law as it applies within Indian reservations or other parts of Indian country.[3] EPA's proposed and final

[2] Such a mechanism would perhaps be better characterized as a compliance extension.

[3] "Indian country" is defined under 18 U.S.C 1151 as: "(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently

Continued

action are under the authority of the Federal Clean Air Act to approve revisions to the SIP so that those SIP provisions will be Federally enforceable under the CAA. Before EPA can approve a SIP or SIP revision as applying to a source, the State must demonstrate that it has adequate legal authority to implement and enforce the SIP under the Clean Air Act. *See* CAA sections 110(a)(2)(A), 110(a)(2)(E)(i) and 172(c)(6) of the Act. It is EPA's position that unless EPA has explicitly approved a program as applying in Indian country, State or local regulations are not effective within the boundaries of that Indian country land for purposes of complying with the CAA. *See* Federal Operating Permits Program Final Rule, 64 FR 8247, 8254 (February 19, 1999). EPA does not believe it would be appropriate for EPA to approve State CAA programs as applying in Indian country where there has not been an explicit demonstration of adequate jurisdiction. 64 FR 8253. Moreover, EPA interprets the Clean Air Act as favoring a territorial approach for implementing the CAA throughout Indian reservations either under tribal authority as delegated by Congress or by EPA implementation. 64 FR 8252. EPA believes it has the authority under the CAA to regulate all reservation sources in order to ensure an efficient and effective transition to Tribal administration of CAA programs and to avoid the administratively undesirable checkerboarding of reservations based on land ownership. *Id.* EPA notes that nowhere in the State's SIP submittal did IDEQ attempt to demonstrate that it has the authority to implement and enforce its State laws under the authority of the Clean Air Act in Indian country in Idaho, and EPA has not evaluated these State law authorities outside of the context of the CAA. EPA's proposed approval and this final action do not take a position on whether State laws regulating air resources have effect in Indian country outside of the context of the Clean Air Act.

Comment 6: IDEQ commented that disagreement exists over the continued existence of the Nez Perce Reservation as described in Article 2 of the 1863 Treaty with the Nez Perces, 14 Stat. 647 (1863). IDEQ believes that a cession agreement between the United States and the Tribe ratified by Congress in 1894, 28 Stat. 326 (1894), has diminished the Reservation's land base substantially and that the Reservation now encompasses only those lands retained presently in trust pursuant to the terms of the cession agreement, citing to *United States* v. *Webb*, 219 F.3d 1127 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). IDEQ asserted that EPA and IDEQ acknowledged this controversy in a December 2000 memorandum of understanding (MOU) concerning implementation of title V of the CAA. In view of the decision in *Michigan* v. *EPA*, 268 F.3d 1075 (D.C. Cir. 2001), IDEQ continued, EPA should make clear its rationale for excluding the entirety of the 1863 Reservation from the scope of the proposed action.

Response 6: As discussed above, unless EPA has explicitly approved a program as applying in Indian country, it is EPA's position that State or local regulation is not effective within the boundaries of that Indian country land for purposes of complying with the CAA. EPA is excluding from this SIP approval the Nez Perce Reservation, as described in the 1863 Nez Perce Treaty, because the Federal government has long maintained that the Nez Perce Reservation, as described in that treaty, constitutes Indian country, as defined in 18 U.S.C. 1151.

Michigan v. *EPA*, 268 F.3d 1075 (D.C. Cir. 2001) does not apply to this SIP action. That case dealt with the issue of whether EPA has authority to require a facility to apply to EPA for a Federal operating permit under title V of the Clean Air Act in cases where EPA had not determined whether the facility was in Indian country. This SIP approval is an action under title I of the CAA. Moreover, EPA's position, and that of the United States, is that the exterior boundary of the Nez Perce Reservation that exists today is described in the 1863 Nez Perce Treaty [4] and that the Nez Perce Reservation, as so described, is Indian country. In its comment, the State cites *U.S.* v. *Webb*, Case No. CR98–80–N–EJL (9th Cir., Jan. 12, 1999), as showing there is a controversy about the Reservation boundaries. However, the United States' position in that case, as well as other cases raising the issue, was that the Nez Perce Reservation is still as described in the 1863 Treaty. *Michigan* v. *EPA* is therefore not relevant to the issues in this SIP approval.

EPA remains fully committed to the spirit and intent of the December 2000 MOU referenced in the IDEQ comment. The purpose of the MOU, however, was to address the implementation of the operating permits program under title V of the CAA on the Nez Perce Reservation and it does not address the issue of whether IDEQ has established that it has authority under the Clean Air Act to implement and enforce its State regulations approved under title I of the Act against sources located within the boundaries of the Nez Perce Reservation as established by the 1863 Nez Perce Treaty. Moreover, nothing in the MOU constituted an admission by the United States that the Nez Perce Reservation has been diminished or is otherwise in question.

Comment 7: Simplot requested reconsideration of EPA's position that EPA approval of Idaho's "Rules for Control of Sulfur Oxide from Sulfuric Acid Plants" does not alter previous EPA disapproval of the Idaho SIP regarding the Eastern Idaho Intrastate Air Quality Control Strategy, nor the source-specific Federal regulations at 40 CFR 52.675. According to Simplot, EPA's position does not recognize relevant and significant history related to the Eastern Idaho Intrastate Air Quality Control Strategy, which has been in attainment for 20 years. Accordingly, Simplot requested that portions of the Federal regulations imposed upon Simplot to adequately prevent violations of the NAAQS for SO_2, which Simplot contends are obsolete, be revisited and deleted from this portion of the Idaho control strategy.

Response 7: This comment does not address aspects of the SIP request submitted by the State of Idaho and on which EPA proposed to take action. Thus, EPA views this comment as a request to conduct rulemaking to revise the existing Federal implementation plan as it pertains to Simplot.

As EPA has previously notified IDEQ and Simplot, EPA does not have the authority to repeal these FIP requirements in the absence of other Federally-enforceable limits on SO_2 emissions from the Simplot sulfuric acid plants approved as part of a SIP or promulgated as part of other Federal requirements and a demonstration that these limits do not interfere with attainment or maintenance of the NAAQS for SO_2, violate any prevention of significant deterioration (PSD) increment, or result in visibility impairment. To date, EPA has not received from IDEQ or Simplot a demonstration that the Federally-enforceable limits in place at the

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acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." Under this definition, EPA treats as reservation lands trust lands that have not been formally designated as a reservation.

[4] IDEQ recognized EPA's position in the MOU referenced in IDEQ's comment. The sixth "Whereas" clause of memorandum states: "Whereas, the United States position, both in judicial proceedings and in administrative, civil and criminal contexts is that the present boundaries of the Nez Perce Reservation are as described in the 1863 Nez Perce Treaty."

Simplot facility are sufficient to protect the SO_2 NAAQS, PSD increments, and visibility in the absence of the requirements Simplot requests be removed. Therefore, as noted in the proposal, EPA's action on this SIP does not modify EPA's previous disapproval of the Idaho SIP with respect to its adequacy to attain and maintain the NAAQS for sulfur dioxide in the Eastern Idaho Intrastate Air Quality Control Region. *See* 40 CFR 52.675(a)(1) and (2). Thus, the source-specific Federal regulations at 40 CFR 52.675(b) that EPA promulgated in response to that disapproval remain in place. *See* 67 FR 52672.

III. Final Action

EPA is taking final action to approve all of the amendments to the Rules for the Control of Air Pollution in Idaho as submitted by the Director of IDEQ on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, except that EPA is taking no action on section 008; subsections 107.03.h. through q[5]; section 222.03; sections 300 through 387; subsection 401.01.a. and section 401.04; sections 440 and 441; sections 525 through 538; section 577.06; section 586; sections 750 and 751; sections 775 and 776; section 818; section 819; section 820; section 824.01; and sections 835 through 839.[6] EPA approved section 204 on April 17, 2001 (66 FR 19722) and sections 563 through 574 and section 582 on April 12, 2001 (66 FR 18873). The entire text of the EPA-approved Idaho rules may be viewed on line at *http://www.epa.gov/r10earth/sips.htm*.

EPA is also deleting the total suspended particulates area designations for Idaho in 40 CFR 81.313 and adjusting the PM–10 area designations in 40 CFR 81.313.

Consistent with EPA's proposal, this SIP approval does not extend to Indian country in Idaho. *See* 67 FR 52673.

Note that, with respect to Idaho's rules relating to new source review, EPA has determined that Idaho's rules meet the requirements of 40 CFR part 51, subpart I, as currently in effect, and is taking no position on whether Idaho will need to make changes to its new source review rules to meet requirements that EPA has promulgated, but are not yet effective, as part of new source review reform.

Finally, while EPA is approving the Idaho permit to construct rules, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of the Idaho permit to construct rules does not divest EPA of the duty to continue appropriate oversight to insure that permits issued by Idaho are consistent with the requirements of the Act, EPA regulations, and the SIP. EPA's authority to oversee permit program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever EPA finds that a State "is not acting in compliance with" any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of title V of the Act and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by States. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is "not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan."

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or both, EPA cannot intervene unless the State decision fails to comply with applicable requirements. In determining whether a title V permit incorporating PSD provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining best available control technology, assessing air quality impacts, meeting Class I area requirements, and other PSD requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD permit were properly incorporated into the title V operating permit.

IV. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

[5] In the notice of proposed rulemaking, EPA incorrectly cited subsections 107.03.v. through aa.

[6] Sections 009, 010, 140 through 149, 161, 203.03, 210, 585, 587, 590, 591, and 855 through 858 were not submitted for inclusion in the Idaho SIP. In addition, section 710 Particulate Matter—Process Equipment Emission Limitations on or After July 1, 2000, and amendments to section 209 Procedures for Issuing Permits and section 700 Particulate Matter—Process Weight Limitations which were submitted to EPA on March 9, 2001, were returned to the State as incomplete, so they are not before EPA to act on at this time.

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Particulate matter, Reporting and recordkeeping requirements, Wilderness areas.

Dated: December 4, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

Part 52, subpart N, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart N—Idaho

2. Section 52.670 is amended by adding paragraph (c)(37) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(37) On May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, the Idaho Department of Environmental Quality submitted amendments to State of Idaho Rules for Control of Air Pollution in Idaho (IDAPA 58.01.01) as revisions to the Idaho State implementation plan.

(i) Incorporation by Reference.

(A) IDAPA 58.01.01 as in effect on March 30, 2001 except for the following provisions: section 000; section 002; section 003; section 008; section 009; section 010; subsections 107.03; section 128; sections 140 through 149; section 161; subsection 203.03; section 209; section 210; section 214; subsection 222.03; section 223; sections 300 through 387; subsection 401.01.a. and 401.04; sections 440 and 441; sections 525 through 538; sections 552, 553, 556, 558, and 561; subsection 577.06; sections 585, 586, 587, 590 and 591; section 700; section 710; sections 750 and 751; sections 775 and 776; section 818; section 819; section 820; subsection 824.01; sections 835 through 839; and sections 855 through 862.

(B) IDAPA 58.01.01 sections 209 and 700 as in effect on April 5, 2000.

(C) IDAPA 58.01.01 sections 552, 553, 556, 558, and 561 as in effect on March 15, 2002.

§ 52.674 [Removed and Reserved]

3. Section 52.674 Legal Authority is removed and reserved.

4. Section 52.679 is revised to read as follows:

§ 52.679 Contents of Idaho State Implementation Plan.

Implementation Plan for the Control of Air Pollution in the State of Idaho

Chapter I—Introduction (submitted 1–15–80)
Chapter II—Administration (submitted 1–15–80)
Chapter III—Emission Inventory (submitted 1–15–80)
Chapter IV—Air Quality Monitoring (submitted 1–15–80, and 2–14–80)
Chapter V—Source Surveillance (submitted 1–15–80)
Chapter VI—Emergency Episode Plan (submitted 1–15–80)
Chapter VIII—Nonattainment Area Plans
- VIII-a—Silver Valley TSP Nonattainment Area Plan (submitted 1–15–80): EPA effective 7–28–82.
- VIII-b—Lewiston TSP Nonattainment Plan (submitted 1–15–80, 12–4–80, and 2–5–81): EPA effective 7–28–82.
- VIII-c—Transportation Control Plan for carbon monoxide, Ada County (submitted 5–24–84, 1–3–85, 3–25–85, and 6–29–94): EPA effective 7–28–82, 8–5–85, and 1–30–95.
- VIII-d—Pocatello TSP Nonattainment Plan (submitted 3–7–80, and 2–5–81): EPA effective 7–28–82.
- VIII-e—Soda Springs TSP Nonattainment Plan (submitted 1–15–80): EPA effective 7–28–82.
- VIII-f—Pinehurst PM–10 Nonattainment Plan (4–14–92): EPA effective 10–24–94.
- VIII-g—North Ada County PM10 Nonattainment Area Plan (submitted 11–14–91, 12–30–94, and 7–13–95): EPA effective 7–29–96.
- VIII-h—Fort Hall PM–10 Nonattainment Area Plan (FIP): EPA effective 9–22–00.
- VIII-i—Sandpoint PM10 Nonattainment Area Plan (submitted 8–16–96): EPA effective 8–26–02.
- VIII-j—North Ada County CO Limited Maintenance Plan (submitted 1–17–02): EPA effective 11–27–02.

Chapter IX—Reserved
Chapter X—Plan for Maintenance of National Ambient Air Quality Standards for Lead (submitted 2–3–84): EPA effective 6–4–84.
Small Business Assistance Program (submitted 1–3–94): EPA effective 11–18–94.

Appendix A Legal Authority and other General Administrative Matters (submitted 1–15–80)
Appendix A.2 Idaho Environmental Protection and Health Act, Idaho Code Section 39–101 *et seq.* (submitted 3–15–01)
Appendix A.3 Idaho Administrative Procedures Act (IDAPA) Chapter 58, Rules for the Control of Air Pollution in Idaho, previously codified at IDAPA Chapter 39 (submitted 5–17–94, 5–11–95, 11–21–96, 2–28–97, 12–18–97, 4–9–98, 5–5–99, 12–5–00, and 5–30–02)

EPA-approved rules which are incorporated by reference are listed in the table below:

Citation	Title	State effective date
	IDAPA 58—Department of Environmental Quality	
	58.01.01—Rules for the Control of Air Pollution in Idaho	
001.	Title and Scope	5/1/94
004.	Catchlines	5/1/94
005.	Definitions	5/1/94
006.	General Definitions	4/5/00 3/20/97 5/1/95 5/1/94
007.	Definitions for the Purposes of Sections 200 Through 225 and 400 Through 461	4/5/00 6/30/95 5/1/95 5/1/94
106.	Abbreviations	5/1/94
107.	Incorporations by Reference (Except subsection 03.)	7/1/97 5/1/94
121.	Compliance Requirements by Department	5/1/94
122.	Information Orders by the Department	4/5/00 5/1/94
123.	Certification of Documents	5/1/94
124.	Truth, Accuracy and Completeness of Documents	5/1/94
125.	False Statements	3/23/98
126.	Tampering	3/23/98
127.	Format of Responses	5/1/94
130.	Startup, Shutdown, Scheduled Maintenance, Safety Measures, Upset and Breakdown	4/5/00
131.	Excess Emissions	4/5/00
132.	Correction of Condition	4/5/00
133.	Startup, Shutdown and Scheduled Maintenance Requirements	4/5/00 3/20/97
134.	Upset, Breakdown, and Safety Requirements	4/5/00 3/20/97
135.	Excess Emission Reports	4/5/00 3/20/97
136.	Excess Emission Records	4/5/00 3/23/98 3/20/97
155.	Circumvention	4/5/00
156.	Total Compliance	5/1/94
157.	Test Methods and Procedures	4/5/00
160.	Provisions Governing Specific Activities and Conditions	4/5/00
162.	Modifying Physical Conditions	5/1/94
163.	Source Density	5/1/94
164.	Polychlorinated Biphenyls (PCBs)	5/1/94
200.	Procedures and Requirements for Permits to Construct	4/5/00
201.	Permit to Construct Required	3/30/01
202.	Application Procedures	4/5/00 5/1/94
203.	Permit Requirements for New and Modified Stationary Sources (Except subsection 203.03)	5/1/94
204.	Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas	3/30/01 4/5/00 5/1/94
205.	Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas	4/5/00 5/1/94
206.	Optional Offsets for Permits to Construct	6/30/95
207.	Requirements for Emission Reduction Credit	5/1/94
208.	Demonstration of Net Air Quality Benefit	4/5/00 5/1/94
209.	Procedures for Issuing Permits	4/5/00 3/19/99 3/23/98 5/1/94
211.	Conditions for Permits to Construct	5/1/94
212.	Obligation to Comply	5/1/94

Citation	Title	State effective date
213.	Pre-permit Construction	4/5/00
		3/23/98
220.	General Exemption Criteria for Permit to Construct Exemptions	4/5/00
221.	Category I Exemption	4/5/00
222.	Category II Exemption (Except subsection 222.03.)	4/5/00
		7/1/97
		5/1/94
400.	Procedures and Requirements for Tier II Operating Permits	5/1/94
401.	Tier II Operating Permit (Except subsections 401.01.a and 401.04)	4/5/00
		3/19/99
		5/1/94
402.	Application Procedures	4/5/00
		5/1/94
403.	Permit Requirements for Tier II Sources	5/1/94
404.	Procedures for Issuing Permits	4/5/00
		5/1/94
405.	Conditions for Tier II Operating Permits	5/1/94
406.	Obligation to Comply	5/1/94
460.	Requirements for Emission Reduction Credit	4/5/00
		5/1/94
461.	Requirements for Banking Emission Reduction Credits (ERC's)	4/5/00
		5/1/94
470.	Permit Application Fees for Tier II Permits	3/7/95
500.	Registration Procedures and Requirements for Portable Equipment	5/1/94
510.	Stack Heights and Dispersion Techniques	5/1/94
511.	Applicability	4/5/00
512.	Definitions	4/5/00
		5/1/94
513.	Requirements	4/5/00
514.	Opportunity for Public Hearing	5/1/94
515.	Approval of Field Studies and Fluid Models	5/1/94
516.	No Restriction on Actual Stack Height	5/1/94
550.	Air Pollution Emergency Rule	5/1/94
551.	Episode Criteria	5/1/94
552.	Stages	3/15/02
		5/1/94
553.	Effect of Stages	3/15/02
556.	Criteria for Defining Levels Within Stages	3/15/02
		4/5/00
557.	Public Notification	5/1/94
558.	Information to Be Given	3/15/02
		5/1/94
559.	Manner and Frequency of Notification	5/1/94
560.	Notification to Sources	4/5/00
561.	General Rules	3/15/02
		4/5/00
		5/1/94
562.	Specific Emergency Episode Abatement Plans for Point Sources	5/1/94
563.	Transportation Conformity	3/30/01
564.	Incorporation by Reference	3/30/01
565.	Abbreviations	3/30/01
566.	Definitions for the Purpose of Sections 563 Through 574 and 582	3/30/01
567.	Agencies Affected by Consultation	3/30/01
568.	ICC Member Roles in Consultation	3/30/01
569.	ICC Member Responsibilities in Consultation	3/30/01
570.	General Consultation Process	3/30/01
571.	Consultation Procedures	3/30/01
572.	Final Conformity Determinations by USDOT	3/30/01
573.	Resolving Conflicts	3/30/01
574.	Public Consultation Procedures	3/30/01
575.	Air Quality Standards and Area Classification	4/5/00
576.	General Provisions for Ambient Air Quality Standards	5/1/94
577.	Ambient Air Quality Standards for Specific Air Pollutants (Except subsection 577.06)	5/1/94
578.	Designation of Attainment, Unclassifiable, and Nonattainment Areas	5/1/94
579.	Baselines for Prevention of Significant Deterioration	4/5/00
		5/1/94
580.	Classification of Prevention of Significant Deterioration Areas	4/5/00
		5/1/94
581.	Prevention of Significant Deterioration (PSD) Increments	4/5/00
		7/1/97
		5/1/94
582.	Interim Conformity Provisions for Northern Ada County Former Nonattainment Area for PM–10	3/30/01
600.	Rules for Control of Open Burning	3/19/99

Citation	Title	State effective date
601.	Fire Permits, Hazardous Materials and Liability	5/1/94
602.	Nonpreemption of Other Jurisdictions	5/1/94
603.	General Restrictions	5/1/94
604.	Alternatives to Open Burning	5/1/94
606.	Categories of Allowable Burning	5/1/94
607.	Recreational and Warming Fires	5/1/94
608.	Weed Control Fires	5/1/94
609.	Training Fires	5/1/94
610.	Industrial Flares	5/1/94
611.	Residential Solid Waste Disposal Fires	5/1/94
612.	Landfill Disposal Site Fires	3/19/99
613.	Orchard Fires	4/5/00
		5/1/94
614.	Prescribed Burning	5/1/94
615.	Dangerous Material Fires	5/1/94
616.	Infectious Waste Burning	5/1/94
625.	Visible Emissions	4/5/00
		5/1/94
626.	General Restrictions on Visible Emissions from Wigwam Burners	4/5/00
650.	Rules for Control of Fugitive Dust	5/1/94
651.	General Rules	5/1/94
675.	Fuel Burning Equipment—Particulate Matter	4/5/00
676.	Standards for New Sources	5/1/94
677.	Standards for Minor and Existing Sources	5/1/94
678.	Combinations of Fuels	5/1/94
679.	Averaging Period	4/5/00
		5/1/94
680.	Altitude Correction	5/1/94
681.	Test Methods and Procedures	4/5/00
700.	Particulate Matter—Process Weight Limitations	4/5/00
701.	Particulate Matter—New Equipment Process Weight Limitations	4/5/00
702.	Particulate Matter—Existing Equipment Process Weight Limitations	4/5/00
		5/1/94
703.	Particulate Matter—Other Processes	4/5/00
725.	Rules for Sulfur Content of Fuels	4/5/00
726.	Definitions as Used in Sections 727 Through 729	5/1/94
727.	Residual Fuel Oils	5/1/94
728.	Distillate Fuel Oil	5/1/94
729.	Coal	5/1/94
785.	Rules for Control of Incinerators	5/1/94
786.	Emission Limits	4/5/00
787.	Exceptions	3/23/98
805.	Rules for Control of Hot-mix Asphalt Plants	5/1/94
806.	Emission Limits	5/1/94
807.	Multiple Stacks	5/1/94
808.	Fugitive Dust Control	5/1/94
815.	Rules for Control of Kraft Pulping Mills	5/1/94
816.	Statement of Policy	5/1/94
817.	General Rules	5/1/94
821.	Recovery Furnace Particulate Standards	5/1/94
822.	Lime Kiln Standards	5/1/94
823.	Smelt Tank Standards	5/1/94
824.	Monitoring and Reporting (Except subsection 824.01)	4/5/00
		5/1/94
825.	Special Studies	5/1/94
826.	Exceptions	5/1/94
845.	Rules for Control of Sulfur Oxide Emissions from Sulfuric Acid Plants	5/1/94
846.	Emission Limits	4/5/00
847.	Monitoring and Testing	4/5/00
848.	Compliance Schedule	5/1/94

5. Section 52.681 is revised to read as follows:

§ 52.681 Permits to construct and tier II operating permits.

(a) Except as otherwise provided in pargraph (b) of this section, emission limitations and other provisions contained in Permits to Construct and Tier II Operating Permits issued by the Idaho Department of Environmental Quality in accordance with the Federally-approved State of Idaho Rules for Control of Air Pollution in Idaho, incorporated by reference in section 52.670 (IDAPA 58.01.01.200 through 222, IDAPA 58.01.01.400 through 406), shall be applicable requirements of the Federally-approved Idaho SIP (in addition to any other provisions) for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

(b) Operating Permits authorizing the use of alternative emission limits (bubbles) under IDAPA

58.01.01.401.01.a, 58.01.01.440, and 58.01.01.441 (including the use of banked emission reduction credits in a bubble pursuant to IDAPA 58.01.01.461), and Tier II Operating Permits authorizing compliance schedule extensions under IDAPA 58.01.01.401.04 must be submitted to EPA for approval as revisions to the Idaho SIP before they become applicable requirements of the Idaho SIP.

6. Section 52.683 is revised to read as follows:

§ 52.683 Significant deterioration of air quality.

(a) The State of Idaho Rules for Control of Air Pollution in Idaho, specifically, IDAPA 58.01.01.005 through 007 (definitions), IDAPA 58.01.01.200 through 222 (permit to construct rules), IDAPA 58.01.01.510 through 516 (stack height rules), and IDAPA 58.01.01.575 through 581 (standards, increments and area designations) are approved as meeting the requirements of title I, part C, subpart 1 of the Clean Air Act for preventing significant deterioration of air quality.

(b) The requirements of title I, part C, subpart 1 of the Clean Air Act are not met for Indian reservations because Idaho has not demonstrated authority to implement and enforce under the Clean Air Act Idaho State rules in Indian country. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated and made part of the applicable plan for Indian country in the State of Idaho.

(c) The requirements of section 165 of the Clean Air Act are not met for sources subject to prevention of significant deterioration requirements prior to August 22, 1986, the effective date of EPA's original approval of Idaho's prevention of significant deterioration regulations.

Therefore, the provisions of § 52.21(b), (c), (d), and (h) through (w) are hereby incorporated and made part of the applicable plan for sources subject to § 52.21 prior to August 22, 1986.

Part 81, subpart C, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.313, the table entitled "Idaho-TSP" is removed and the table entitled "Idaho PM–10" is revised to read as follows:

§ 81.313 Idaho.

* * * * *

IDAHO PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Eastern Idaho Intrastate AQCR 61:				
Power-Bannock Counties, part of: (Pocatello)	11/15/90	Nonattainment ...	11/15/90	Moderate
State Lands—Portneuf Valley Area:				
T.5S, R.34E Sections 25–36				
T.5S, R.35E Section 31				
T.6S, R.34E Sections 1–36				
T.6S, R.35E Sections 5–9, 16–21, 28–33, plus the West ½ of Sections 10, 15, 22, 27, 34				
T.7S, R.34E Sections 1–4, 10–14, and 24				
T.7S, R.35E Sections 4–9, 16–21, 28–33, plus the West ½ of Sections 3, 10, 15, 22, 27, 34				
T.8S, R.35E Section 4, plus the West ½ of Section 3				
Power-Bannock Counties, part of: (Pocatello)	11/15/90	Nonattainment ...	11/15/90	Moderate
Fort Hall Indian Reservation:				
T.5S, R.34E Sections 15–23				
T.5S, R.33E Sections 13–36				
T.6S, R.33E Sections 1–36				
T.7S, R.33E Sections 4, 5, 6				
T.7S, R.34E Section 8				
Pocatello: 336 square mile area from Schiller at the northwest to Inkom at southeast, excluding the Portneuf Valley and Fort Hall nonattainment areas.	11/15/90	Unclassifiable.		
Soda Springs: 96 square mile area encompassing Soda Springs, Conda and the industrial area in between.	11/15/90	Unclassifiable.		
Remainder of AQCR 61	11/15/90	Unclassifiable.		
Eastern Washington-Northern Idaho Interstate AQCR 62 (Idaho portion):				
Shoshone County: Pinehurst Expansion Area Northwest quarter of the Northwest quarter, Section 8, Township 48 North, Range 2 East; Southwest quarter of the Northwest quarter, Section 8, Township 48, North, Range 2 East; Northwest quarter of the Southwest quarter, Section 8, Township 48 North, Range 2 East; Southwest quarter, Section 8, Township 48 North, Range 2 East; Southwest quarter of the Southwest quarter, Section 48 North, Range 2 East, Boise Base (known as "Pinehurst expansion area").	11/20/94	Nonattainment ...	1/20/94	Moderate.
City of Pinehurst	11/15/90	Nonattainment ...	11/15/90	Moderate.
Silver Valley (Shoshone County), excluding the Pinehurst Expansion Area and City of Pinehurst PM–10 nonattainment areas.	11/15/90	Unclassifiable.		
Lewiston	11/15/90	Unclassifiable.		
Remainder of AQCR 62 (Idaho portion)	11/15/90	Unclassifiable.		
Idaho Intrastate AQCR 63:				
Bonner County: Sandpoint Area: Section 1–3, 9–12, 15, 16, 21, 22, 27, 28 of range 2 west and Township 57 north; and the western ¾ of Sections 14, 23 and 26 of the same Township and range coordinates.	11/15/90	Nonattainment ...	11/15/90	Moderate.

IDAHO PM–10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
Remainder of AQCR 63	11/15/90	Unclassifiable.		
Metropolitan Boise the Intrastate AQCR 64:				
Ada County: Boise	3/12/99	Pre-existing	3/12/99 PM–10 NAAQS NA	Pre-existing PM–10 NAAQS NA
Northern Boundary—Beginning at a point in the center of the channel of the Boise River, where the line between sections 15 and 16 in Township 3 north (T3N), range 4 east (R4E), crosses said Boise River; thence, west down the center of the channel of the Boise River to a point opposite the mouth of More's Creek; thence, in a straight line north 44 degrees and 38 minutes west until the said line intersects the north line T5N (12 Ter. Ses. 67); thence west to the northwest corner T5N, R1W. *Western Boundary*—Thence, south to the northwest corner of T3N, R1W; thence east to the northwest corner of section 4 of T3N, R1W; thence south to the southeast corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence, south to the southwest corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence south to the southwest corner of T1N, R1W. *Southern Boundary*—Thence, east to the southwest corner of section 33 of T1N, R4E. *Eastern Boundary*—Thence, north along the north and south center line of Townships T1N, R4E, T2N, R4E, and T3N, R4E, Boise Meridian to the beginning point in the center of the channel of the Boise River.				
Remainder of AQCR 64	11/15/90	Unclassifiable.		

* * * * *

[FR Doc. 03–856 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0047; FRL–7418–2]

RIN 2060–AH13

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for municipal solid waste (MSW) landfills. The final rule is applicable to both major and area sources and contains the same requirements as the Emission Guidelines and New Source Performance Standards (EG/NSPS). The final rule adds startup, shutdown, and malfunction (SSM) requirements, adds operating condition deviations for out-of-bounds monitoring parameters, requires timely control of bioreactor landfills, and changes the reporting frequency for one type of report.

The final rule fulfills the requirements of section 112(d) of the Clean Air Act (CAA), which requires the Administrator to regulate emissions of hazardous air pollutants (HAP) listed in section 112(b), and helps implement the Urban Air Toxics Strategy developed under section 112(k) of the CAA. The intent of the standards is to protect the public health by requiring new and existing sources to control emissions of HAP to the level reflecting the maximum achievable control technology (MACT).

The HAP emitted by MSW landfills include, but are not limited to, vinyl chloride, ethyl benzene, toluene, and benzene. Each of the HAP emitted from MSW landfills can cause adverse health effects provided sufficient exposure. For example, vinyl chloride can adversely affect the central nervous system and has been shown to increase the risk of liver cancer in humans, while benzene is known to cause leukemia in humans.

EFFECTIVE DATE: January 16, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning the development of the final rule, contact Ms. JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5671, facsimile number (919) 541–0246, electronic mail address *collins.jolynn@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry: Air and water resource and solid waste management.	924110	9511	Solid waste landfills.
Industry: Refuse systems—solid waste landfills	562212	4953	Solid waste landfills.

Category	NAICS code	SIC code	Examples of potentially regulated entities
State, local, and tribal government agencies	562212 924110	4953	Solid waste landfills; Air and water resource and solid waste management.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in sections 63.1935 and 63.1940 of subpart AAAA. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. We have established an official public docket for this action under Docket ID No. OAR–2002–0047. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled "Docket." Once in the system, select "search," then key in the appropriate docket identification number.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. The NESHAP for MSW landfills was proposed on November 7, 2000 (65 FR 66672). A supplemental proposal with additional bioreactor provisions was published on May 23, 2002 (67 FR 36460). The final rule announces the EPA's final decision. Under section 307(b)(1) of the CAA, judicial review of the final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 17, 2003. Only those objections to the final rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of the final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in the preamble is organized as follows:

I. Introduction and Background Information
A. What Is the Source of Authority for Development of NESHAP?
B. What Criteria Are Used in the Development of NESHAP?
C. What Are the Health Effects Associated With Municipal Solid Waste Landfills?
II. Summary of the NESHAP
A. What Source Categories Are Affected by the Final Rule?
B. What Is the Affected Source?
C. What Do the Standards Require?
D. When Must I Begin Complying With the Standards?
E. How Are New and Existing Sources Defined Differently For Purposes of the NESHAP and for the EG/NSPS?
F. How Must I Demonstrate Compliance?
G. What Are the Additional Requirements for Bioreactors?
III. Summary of Public Comments and Responses
A. Applicability of the NESHAP
B. Major Source Determination
C. Bioreactors
D. Mercury
E. Title V Operating Permits
IV. Summary of the Energy, Environmental, and Economic Impacts
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act (UMRA) of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 United States Code (U.S.C.) 601, *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Introduction and Background Information

A. What Is the Source of Authority for Development of NESHAP?

Under section 112(d) of the CAA, we are required to regulate major sources of 188 HAP listed in section 112(b) of the CAA. On July 16, 1992 (57 FR 31576), we published a list of industrial source categories, which included MSW landfills, that emit one or more of these HAP. We must promulgate standards for the control of emissions of HAP from both new and existing major source MSW landfills.

Under section 112(k) of the CAA, we developed a strategy to control emissions of HAP from area sources in urban areas, identifying 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. Municipal solid waste landfills were listed on July 19, 1999, as an area source category to be regulated pursuant to section 112(k) because 13 of the listed HAP are emitted from MSW landfills (64 FR 38706).

B. What Criteria Are Used in the Development of NESHAP?

The CAA requires NESHAP to reflect the maximum degree of reduction in

emissions of HAP that is achievable for new and existing major sources. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. The MACT floor ensures that all major HAP emissions sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each category. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also must consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost, non-air-quality health and environmental impacts, and energy requirements.

Finally, the CAA allows NESHAP to reflect an alternative standard for area sources. The alternative standard provides for the use of generally available control technologies (GACT) or management practices to reduce emissions of HAP.

C. What Are the Health Effects Associated With Municipal Solid Waste Landfills?

The final rule ensures reductions of emissions of nearly 30 HAP including, but not limited to, vinyl chloride, ethyl benzene, toluene, and benzene. Each of the HAP emitted from MSW landfills can cause adverse health effects provided sufficient exposure. For example, vinyl chloride can adversely affect the central nervous system and has been shown to increase the risk of liver cancer in humans, while benzene is known to cause leukemia in humans. Additional discussion of health effects is provided in the proposal (65 FR 66672) and Docket A–98–28. The degree of adverse effects to human health from exposure to these HAP can range from mild to severe. The extent and degree to which the human health effects may be experienced depend on the ambient concentration observed in the area (as influenced by emissions rates, meteorological conditions, and terrain); the frequency and duration of exposures; characteristics of exposed individuals (genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population; and pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence). We recognize that health risks are significantly reduced at landfills that collect and control landfill gas.

II. Summary of the NESHAP

The final rule contains the same requirements as the EG/NSPS (40 CFR part 60, subparts Cc and WWW), plus SSM definition and reporting of deviations for out-of-range monitoring parameters. Also, the final rule requires compliance reporting every 6 months while the EG/NSPS requires annual reporting. For bioreactors at large landfills, the NESHAP also require timely installation of controls, and allows timely removal of controls.

A. What Source Categories Are Affected by the Final Rule?

The final rule applies to all MSW landfills that are major sources or are collocated with a major source, and to some landfills that are area sources. We estimate that all MSW landfills that are major sources of HAP (*i.e.*, with a potential to emit at least 10 tons per year (tpy) of any individual HAP or 25 tpy total HAP) will also meet the EG/NSPS criteria for installing collection and control systems (*i.e.*, have a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) and have estimated uncontrolled emissions of 50 megagrams per year (Mg/yr) nonmethane organic compound (NMOC)). All major source landfills, including those operated partially or completely as bioreactors, are covered by the final rule and, in addition to EG/NSPS control requirements, are subject to the additional SSM, deviation, and compliance reporting requirements of the NESHAP. Landfills that do not themselves emit major source levels of HAP but that are collocated with major sources of HAP are also covered by the final rule. However, if these landfills are smaller than the EG/NSPS thresholds, they have fewer requirements under the NESHAP, as previously discussed in this preamble.

In addition, as previously discussed in this preamble, landfills have been listed as an area source category pursuant to section 112(k). The final rule applies to area source landfills if they have a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, and they have estimated uncontrolled emissions of 50 Mg/yr NMOC or more, or are operated as a bioreactor. The final rule does not apply to area source landfills (including bioreactors) with a design capacity less than 2.5 million Mg or 2.5 million m^3. It also does not apply to conventional area source landfills that have estimated uncontrolled emissions of less than 50 Mg/yr NMOC. (The EG/NSPS require landfills that meet the design capacity criteria to periodically calculate uncontrolled annual NMOC emissions. If an area source landfill that currently has estimated uncontrolled emissions less than 50 Mg/yr increases to 50 Mg/yr in the future, it will become subject to the NESHAP at that time.) For a complete description of applicability, see section III.A of this preamble and sections 63.1935 through 63.1945 of the final rule.

B. What Is the Affected Source?

The affected source is the entire MSW landfill in a contiguous geographical space where household waste is placed in or on the land and consists of one or more cells that are under common ownership or control. The facility may receive household waste as well as other types of Resource Conservation and Recovery Act (RCRA) Subtitle D waste. The affected source may be operated as a conventional landfill, or it may be operated completely or partially as a bioreactor. To be an affected source, the landfill must have accepted waste since November 8, 1987, or have additional capacity for waste deposition, and must be either: (1) A major source of HAP; (2) collocated with a major source of HAP; (3) an area source with a design capacity greater than or equal to 2.5 million Mg and 2.5 million m^3 and with estimated uncontrolled NMOC emissions equal to or greater than 50 Mg/yr; or (4) an active area source landfill with a design capacity greater than or equal to 2.5 million Mg and 2.5 million m^3 that operates an anaerobic bioreactor, as defined in the final rule. The bioreactor provisions do not apply to closed landfills.

C. What Do the Standards Require?

Major and area source landfills with a design capacity of greater than or equal to 2.5 million Mg and 2.5 million m^3, and with estimated uncontrolled NMOC emissions of at least 50 Mg/yr, would continue to be subject to the EG/NSPS as applicable, plus additional requirements imposed by the final rule. These requirements also apply to bioreactors within active landfills at both major and area sources if the landfill meets the design capacity criteria.

You are required to meet the SSM requirements that are listed in the general provisions to 40 CFR part 63.

You must develop and implement a written SSM plan that describes in detail the procedures for operating and maintaining the collection and control system and the continuous monitoring system (CMS) during periods of SSM (section 63.6(e)(3)). There are also recordkeeping and reporting requirements for SSM incidents.

The final rule also requires you to operate the control device within the operating parameter boundaries as described in 40 CFR 60.758(c)(1) and to continuously monitor control device operating parameters. Compliance with the operating conditions is demonstrated when monitoring data show that the gas control devices are operated within the established operating parameter range. Compliance also occurs when data quality is sufficient to constitute a valid hour of data in a 3-hour block period. Deviations occur when a source's 3-hour average falls outside the established boundaries. A deviation also occurs when more than 1 hour in a 3-hour average is considered invalid. To be considered a valid hour, measured values must be available for at least three 15-minute periods within the hour. If such a deviation occurs, then the source may be in violation of operating conditions (that is, in violation of proper operation and maintenance of a control device).

With one exception, the final rule also requires you to submit the reports that are specified in 40 CFR part 60, subpart WWW, or in the Federal plan, the EPA-approved State plan, or Tribal plan that implements 40 CFR part 60 subpart Cc, whichever is applicable. As an exception, the report required in section 60.757(f) must be submitted every 6 months rather than annually. The report pertains to the control device operating parameter value and the duration of time that control devices were operating in out-of-bounds conditions, the duration of periods when the landfill gas stream was diverted from the control device(s), the location of areas that exceed the 500 parts per million methane concentration limit, and the dates of installation and location of each added well or collection system expansion.

If a landfill is subject to the final rule because it is collocated with a major source and the landfill has a design capacity less than 2.5 million Mg or 2.5 million m^3, the landfill must comply with the applicable EG/NSPS requirements (i.e., it must submit a design capacity report). The landfill would not be subject to additional control and reporting requirements under the NESHAP.

Note that while area source landfills that have a design capacity less than 2.5 million Mg or 2.5 million m^3, or estimated uncontrolled NMOC emissions less than 50 Mg/yr (for landfills other than bioreactors) are not subject to the final rule, they must continue to comply with the provisions of the NSPS or State, tribal, or Federal plan that implements the EG, as applicable.

D. When Must I Begin Complying With the Standards?

If your landfill is a new affected source, you must comply with the final rule by January 16, 2003 or at the time you begin operating, whichever occurs last. The final rule requires you to comply with the NSPS at that time. For the requirements in the final rule that are over and above the NSPS, you must begin complying by the date your new major or area source landfill is required to install a collection and control system by the NSPS. If you own or operate a bioreactor at a landfill that is a new affected source, then you are required to install the gas collection and control system in the bioreactor prior to initiating liquids addition, regardless of whether the landfill emissions rate equals or exceeds the estimated uncontrolled emissions rate of 50 Mg/yr specified in the EG/NSPS. Startup of the collection and control system is required within 180 days after initiating liquids addition or within 180 days after reaching 40 percent moisture content within the bioreactor, whichever is later.

If your landfill is an existing affected source, then you must comply with the final rule by January 16, 2004. The final rule requires you to comply with the NSPS or Federal, State, or Tribal plan that implements the EG, whichever applies to your landfill, at that time. You must begin complying with the additional requirements of the final rule (that are over and above the EG/NSPS) by January 16, 2004, or the date your landfill is required to install a collection and control system by the NSPS or Federal, State, or Tribal plan that implements the EG, whichever is later. If your landfill has a bioreactor and the landfill is an existing affected source, then you must install and begin operating a collection and control system for the bioreactor within 3 years after publication of the final rule unless earlier control is already required by the EG/NSPS. You are required to conduct a performance test and report the results within 180 days after startup of the bioreactor collection and control system. If an existing source landfill installs and begins to operate a bioreactor at a date later than 3 years after the final rule is published, you must install a collection and control system for the bioreactor before the initiation of liquids addition. The control system is required to begin operation within 180 days after the first date of liquids addition or within 180 days after reaching 40 percent moisture content. See sections 63.1935 through 63.1947 for the complete requirements regarding compliance times.

E. How Are New and Existing Sources Defined Differently for Purposes of the NESHAP and for the EG/NSPS?

For the final rule, a new affected source is one that commenced construction or reconstruction (defined in 40 CFR part 63, subpart A) after November 7, 2000. An existing affected source is any affected source that is not a new source, that is, any source that commenced construction on or before November 7, 2000, and accepted waste any time since November 8, 1987, or has additional capacity for waste deposition.

For purposes of the NSPS, a new source is each MSW landfill for which construction, modification, or reconstruction commenced on or after May 30, 1991. For purposes of the EG, an existing source is any MSW landfill that is not a new source and has accepted waste since November 8, 1987, or has capacity for additional waste deposition.

Because regulatory impacts can vary based on these different definitions, it is important for sources to know how they are defined and the regulatory implications for each rule that applies to them. The regulatory implications of new versus existing source determination for sources affected by the EG/NSPS are well understood, unaffected by the final rule, and, thus, will not be discussed further here. The regulatory implications of new versus existing source determination for sources affected by the final rule are limited to compliance timing and are previously discussed in this preamble.

F. How Must I Demonstrate Compliance?

You must demonstrate compliance by meeting the applicable requirements in the EG/NSPS and, if you are required to install a collection and control system, by maintaining monitoring parameters within acceptable ranges. In addition, you must submit reports every 6 months which would include any notifications of deviations from the monitoring parameter values. You must develop and implement a written SSM plan according to the provisions in section

63.6(e)(3). If you take action during a SSM event, you must keep records for that SSM event which demonstrate that you followed the procedures specified in the SSM plan. You must submit a report every 6 months if the action is consistent with the SSM plan. However, if the action is not consistent with the SSM plan, you must notify EPA within 2 days of the SSM event and must follow up with a letter within 7 days of the event (section 63.10(d)(5)(ii)).

G. What Are the Additional Requirements for Bioreactors?

A bioreactor is defined as a MSW landfill or portion of a MSW landfill where any liquid other than leachate (leachate includes landfill gas condensate) is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the anaerobic (without oxygen) biodegradation of the waste. We consider landfill gas condensate to be a constituent of leachate. Addition of wastewater sludges to the waste mass is considered addition of liquids other than leachate. Bioreactors at active landfills that meet the design capacity criteria are required to install and begin operating gas collection and control systems in a timely manner as previously discussed in this preamble. The timing for extending the collection and control system into new cells or areas of the bioreactor is also different from conventional landfills. Once control of your bioreactor is required, you must install collection and control systems in new areas or cells of the bioreactor prior to initiating liquids addition to that area, cell, or group of cells. Controls may be removed from the bioreactor portion of the landfill either:

(1) When the criteria for control removal specified in the landfills EG/NSPS are met, or (2) When the bioreactor is permanently closed, liquids addition has ceased, and liquids have not been added to the bioreactor for at least 1 year.

At some landfills, a portion of the landfill is a bioreactor and the remainder is designed and operated as a conventional landfill. In these situations, the control requirements and the timing of control installation for the conventional portion of the landfill do not change. You must continue to use the equations and factors in the EG/NSPS to calculate the annual estimated uncontrolled NMOC emissions for your landfill as a whole (including the total waste placed in the bioreactor area and the conventional area). When your calculated uncontrolled NMOC emissions equal or exceed 50 Mg/yr, then you must install a collection and control system for the conventional portions of the landfill according to the schedule in the NSPS, or the applicable State, Tribal, or Federal plan that implements the EG. Only the bioreactor portion of the landfill must meet the control schedule for bioreactors.

Note that as a general rule, it is currently difficult for an owner/operator of a MSW landfill to operate a large bioreactor as defined in the final rule. This is because of the Federal criteria regulating MSW landfills, specifically 40 CFR part 258.28 which prohibits the addition of liquids other than leachate and gas condensate to a landfill and 40 CFR part 258.26 which limits the entry of rainwater into MSW landfills through specified run-on control systems. A few landfills have gained site specific variances under Project XL to operate landfill bioreactors.

However, on June 10, 2002, EPA proposed a revision to 40 CFR part 258 that would allow the Director of an approved State to issue a research, development, and demonstration (RD&D) permit for a MSW landfill (67 FR 39662). That proposed RD&D rule would allow the States to grant variances to certain parts of the MSW landfill criteria (40 CFR part 258) through the issuance of RD&D permits. As a result, once the RD&D rule becomes final and an approved State integrates the new Federal regulations, the Director of an approved State may issue permits which could potentially allow for the operation of a bioreactor landfill as long as there is no increased risk to human health and the environment (as compared to a MSW landfill permitted under the existing 40 CFR part 258 criteria). Therefore, once the proposed rule allowing RD&D permits for MSW landfills becomes final, we expect the number of bioreactor landfills to increase.

III. Summary of Public Comments and Responses

This section of the preamble is a brief summary of the major public comments received in response to the original proposal and the supplemental proposal for the MSW landfills NESHAP, and changes resulting from the comments. Additional comments are summarized in the document "Municipal Solid Waste Landfills: Background Information Document for National Emission Standards for Hazardous Air Pollutants—Public Comments and Responses." The document contains a full report of all comments received and our responses. The document may be found in Docket A–98–28.

A. Applicability of the NESHAP

Comment: Two commenters recommended that additional MACT requirements apply only to major sources and that EPA require no controls for area sources.

Response: We believe regulation of area sources is appropriate under section 112(k) of the CAA. Under Section 112(k), we developed a strategy to control emissions of HAP from area sources in urban areas, identifying 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. Municipal solid waste landfills were listed on July 19, 1999, as an area source category to be regulated pursuant to section 112(k) because 13 of the listed HAP are emitted from MSW landfills (64 FR 38706). Section 112(k) requires that sufficient categories of area sources be regulated to assure that sources accounting for at least 90 percent of the aggregate emissions of each of the HAP identified pursuant to 112(k) as being the greatest threat to health in urban areas are subject to standards. As we stated at proposal, we believe it is necessary to regulate some area MSW landfills to meet this requirement of section 112(k). Therefore, we have not changed this aspect of the final rule's applicability. (Note that the bioreactor provisions of the final rule apply to major and area sources that exceed the EG/NSPS design capacity criteria of 2.5 million Mg and 2.5 million m^3 and operate as a bioreactor regardless of whether they meet or exceed the EG/NSPS estimated uncontrolled NMOC emissions criteria of 50 Mg/yr. See sections II and III.C of this preamble for further information on bioreactor applicability and requirements.)

Comment: A commenter expressed concern that small landfills that are collocated with major source facilities become subject to EG/NSPS control under the final rule.

Response: Small landfills that are collocated with major source facilities are subject to the final rule. The final rule requires them to comply with the EG/NSPS. If the design capacity of the collocated landfills is less than 2.5 million Mg or 2.5 million m^3, the landfills comply by submitting a design capacity report as required by the EG/NSPS. The final rule language has been revised to clarify that the final rule applies to these landfills but does not extend the additional final rule requirements and EG/NSPS collection and control requirements to landfills

that do not meet the control device applicability thresholds of the EG/NSPS.

Comment: Several other comments included suggested changes to proposed rule applicability language.

Response: We have revised sections 63.1935, 63.1940, and 63.1945 to clarify the application of the final rule to major sources, area sources and smaller landfills collocated with major sources, as well as identify the affected source for the final rule and clarify the timing of the regulatory requirements. We also added language to section 63.1955 to further explain that landfills required to install a collection and control system under NSPS, Federal, State or tribal plans that implement the EG must also meet the requirements in sections 63.1960 through 63.1980 of the final rule.

Comment: Two commenters requested clarification of the timing of the final rule regulatory requirements. They pointed out that the proposal preamble indicated that the additional requirements of the final rule (compared to the NSPS) do not take effect until the landfill is required to install controls under the EG/NSPS, but the regulation language was not clear.

Response: In response to this comment, we revised section 63.1945 to be consistent with our intent at proposal. The wording of this section continues to require that new sources comply with the final rule on the date of publication of the final rule or at the time they begin operation, whichever is later; and that existing sources comply with the final rule by January 16, 2004. At that time, the source is required to comply with the NSPS or the Federal, State, or tribal plan that implements the EG. We have added language to this section to clarify when landfills must comply with certain requirements within the final rule. New affected sources must comply with the additional final rule requirements (such as the SSM plan and the semiannual reporting of deviations) on the date the landfill is required to install collection and control systems under the NSPS. Existing affected sources must comply with the additional final rule requirements on the date the landfill is required to install collection and control systems under the NSPS, Federal, State or tribal plan or 1 year after publication of the final rule, whichever is later.

B. Major Source Determination

Comment: Several commenters expressed concern that we overestimated the number of major source landfills. The commenters contend that AP–42 emissions factors are incorrect and provide overestimates of landfill gas emissions, that EG/NSPS controls should be taken into account when determining major source status of landfills, and that using NMOC as a HAP surrogate is too arbitrary.

Response: We respond that we used the best method for calculating emissions that is currently available and accepted, which is the current version of AP–42. The EPA program responsible for AP–42 factors is reviewing existing reports and technical data as well as undertaking a landfill testing program to collect additional HAP data. Currently, the data collection and analysis are not yet complete, and could not be completed prior to promulgation of the final rule. When we update the AP–42 chapter on landfill emissions, we will consider all relevant data. However, any update of AP–42 or adjustment of calculation procedures would not affect our regulatory decisions in developing the final rule. We find that the MACT floor is the EG/NSPS level of control. The floor is based on the current level of control at major and synthetic area sources and would not change if there were somewhat fewer or more major sources than previously estimated.

We agree that in determining whether a source is major, enforceable control requirements should be considered. The statement in the proposal preamble identifying 1,140 facilities as major sources may not have been clear. The intent was to say that based on estimates of maximum uncontrolled emissions, 1,140 landfills have potential emissions greater than 10 tpy individual HAP or 25 tpy of a combination of HAP. Some of the 1,140 landfills are major sources and others are "synthetic area" sources (sources that would otherwise be major if not for enforceable emissions controls). Both major and synthetic area sources were correctly included in the MACT floor determination. The CAA does not suggest we exclude a control technology from consideration in the MACT floor because it is so effective it reduces emissions from a source such that the source is no longer a major source of HAP.

To determine major source status for rule applicability, a landfill owner/operator would consider enforceable control requirements such as the NSPS. Since the landfills NESHAP requirements for area sources that meet the NSPS capacity criteria and have uncontrolled NMOC emissions of 50 Mg/yr or greater are the same as for major sources, this classification would not change the control or reporting requirements for the landfill. It should be noted that the final rule has not redefined major source. Major source status is determined according to the NESHAP general provisions definition. Nonmethane organic compounds are a surrogate for HAP control, not for whether a facility is a major source. Nonmethane organic compounds are an appropriate surrogate for HAP control because all HAP regulated by the final rule are contained in the NMOC portion of the landfill gas. Landfill owners/operators are already required to estimate NMOC under the EG/NSPS, and it is not necessary to increase the burden by requiring specific HAP measurements as well.

C. Bioreactors

Comment: We received several comments about the timing of startup of the gas collection and control system. Three commenters expressed concern that due to a wide range of possible development scenarios, commencing operation of the gas collection and control system within 90 days of liquids addition may not be appropriate in all cases. Two of the commenters stated that the generation rates of landfill gas during the initial development phases of bioreactors are a function of many factors and substantial quantities of recoverable landfill gas may not be available due to low waste acceptance rates, hybrid bioreactor operations, high inorganic waste fractions, or low liquids addition rates where gas generation is likely to be similar to that of conventional landfills. Under these circumstances, premature startup of the gas control system may result in significant volumes of air being introduced into the bioreactor, thus killing methane-producing bacteria. These commenters recommended extending the startup time frame to 180 days or establishing a process for waiving or delaying the startup date if local conditions warrant.

Response: In response to this comment, we have changed the final rule to allow 180 days instead of 90 days to begin operation of the collection and control system. We are aware that bioreactors may experience variable emissions rates upon initial liquids addition due to site-specific factors such as those described by the commenters. Furthermore, gas collection systems for bioreactors are site-specific and are likely to use newer designs, so operators may require time to gain experience and make operational adjustments to their systems. The 180 day period will allow time for landfill operators to adjust their collection systems such that they can achieve continuous, stable collection and control system operation.

Comment: Four commenters requested clarification as to whether the

rule was meant to require the operation of the gas collection and control system within 90 days after the initial liquids addition or within 90 days after the moisture content has reached 40 percent. Commenters stated that they believed the intent was to require operation of the gas collection and control system after the moisture content reached 40 percent. The commenters stated that it may take longer than 90 days of liquids addition to reach a moisture content of 40 percent.

Response: It was our intent that attaining 40 percent moisture triggers the operation of the control system, and not merely the introduction of liquids. If operation of the control system is based on the time of liquids addition and the landfill has not reached 40 percent moisture content within 90 days, then the rule (as proposed) would be requiring collection and control to be installed and operated prior to the landfill meeting the definition of a bioreactor. We have revised the final rule to clarify that the operation of the collection and control system is required within 180 days after the landfill starts liquids addition or within 180 days after the bioreactor has reached 40 percent moisture content (i.e. 180 days after the landfill has met the definition of bioreactor), whichever is later. Landfills must use the procedures in section 63.1980(g) and (h) to determine when 40 percent moisture content is reached. (No calculation is needed if you start operating the collection and control system within 180 days after the initial liquids addition.) Installation of the collection and control system is still required prior to liquids addition, as required in the supplemental proposal.

Comment: We received several comments pertaining to the exclusion of landfills that recirculate leachate and do not add any other liquids from the definition of a bioreactor landfill. Three commenters who supported the exclusion stated that liquids addition other than that provided by leachate recirculation is normally needed to achieve optimum moisture for bioreactors. Many landfills recirculate leachate as part of their leachate management system without creating bioreactor conditions. A commenter who opposed the exclusion contended that a landfill in a relatively moist climate could sustain an effective bioreactor operation on leachate recirculation alone. This commenter pointed out that there were odor problems at landfills in his State that began recirculating leachate without a collection and control system. The commenter stated that his State now requires collection and control for all landfills that recirculate leachate. The commenter also expressed concern that landfills recirculating leachate only may reach the 40 percent moisture level in the waste by recirculating leachate from the entire landfill into a single bioreactor cell. Another commenter who opposed the exclusion contended that minimal data from landfills recirculating leachate has been collected to allow for the exclusion.

Response: We have not changed the bioreactor definition. A very small percentage of bioreactors in moist climates would reach moisture content of 40 percent with leachate recirculation only. Due to variations in rainfall throughout the year, it would be difficult to consistently maintain a high moisture content in the waste to function as a fully operational bioreactor. We expect that landfill owners that decide to create bioreactors in the future will typically plan to operate a large area as a bioreactor to achieve potential benefits such as earlier stabilization of waste, extended use of current sites and reduced need for new sites. Liquids addition would be needed to maintain such bioreactors.

It would be a large and unnecessary burden to require potentially hundreds of landfills that recirculate leachate, but do not add any other liquids, to calculate their percent moisture content and determine if they are a bioreactor, when we expect that they will not meet the 40 percent moisture criteria in the definition of a bioreactor. These landfills would still be subject to the final rule and EG/NSPS control requirements for conventional landfills, which will require gas collection and control after their estimated uncontrolled NMOC emissions reach 50 Mg/yr. State, local, or tribal agencies may develop more stringent State or local regulations for landfills recirculating leachate in cases where odor or air emissions warrant active landfill gas collection and control.

Comment: One commenter pointed out that the potential exists for smaller bioreactor landfills that add liquids, to generate significant air emissions that warrant timely installation of gas collection and control systems. The commenter recommended requiring control of bioreactors at landfills with design capacities less than 2.5 million Mg or 2.5 million m^3.

Response: We have not changed our conclusion since proposal. In determining GACT for area sources, we decided not to require control at small area source conventional or bioreactor landfills. While bioreactors generate larger amounts of landfill gas early in their life, we expect that their lifetime total landfill gas generation potential would not be significantly greater than a conventional landfill accepting the same total amount of waste. Therefore, potential emissions reductions from control of bioreactors would be similar to potential long-term emissions reductions from control of small conventional landfills. Requiring bioreactors at small landfills (i.e., landfills with design capacities less than 2.5 million Mg or 2.5 million m^3) to install controls would result in additional control costs because they are not required to install controls by the EG/NSPS. The design capacity exemption excludes those landfills that can least afford the costs of collection and control systems including small businesses and, particularly, municipalities. Other reasons for exempting small landfills are described in the proposed landfills NESHAP (65 FR 66677, November 7, 2000) and also apply to bioreactors.

Comment: Four commenters encouraged us to include aerobic bioreactor operations by imposing the anaerobic bioreactor emissions requirements on aerobic bioreactor landfills. Two of these commenters provide references to available literature on MSW composting. They suggested that controls for aerobic bioreactor landfills may be warranted, although one of these commenters concluded that there is not enough scientifically valid data to develop a MACT standard for aerobic bioreactor landfills. Five other commenters agreed there is limited data, especially HAP emissions data, and believe it is important to exclude aerobic bioreactors at this time.

Response: The references provided for composting operations are not applicable because composting of MSW is not the same as operating an aerobic bioreactor within a MSW landfill. We know of no full scale aerobic bioreactors in operation in the United States, and an insufficient amount of aerobic landfill data are available to properly characterize HAP emissions from aerobic bioreactors. We expect a significant number of aerobic bioreactors will not be built in the next several years (in contrast to the trend for anaerobic bioreactors). For these reasons, we have determined that it is not appropriate to include aerobic bioreactors in the bioreactor definition or related timing requirements. Portions of a landfill that are operated as aerobic bioreactors would continue to be subject to the EG/NSPS and the final rule requirements for conventional landfills. Under section 112(f) of the CAA, we

will evaluate residual risks and promulgate standards to address residual risks within 8 years of promulgation of the final rule. In addition, section 112(d)(6) requires review of the final rule every 8 years. At that time, we will consider any new information on the prevalence and emissions of aerobic bioreactors to determine if additional requirements are necessary.

D. Mercury

Comment: Four commenters questioned the reliability of the available mercury data. Some commenters quoted mercury emissions tests that showed mercury emissions from MSW landfills to be insignificant.

Response: We considered data from a number of studies, including one specifically mentioned by the commenters, prior to proposal. We found insufficient data to adequately characterize the concentrations of mercury in landfill gas or determine their significance. Based on the available information, we concluded that the MACT floor for mercury is no emissions reductions and because there are no alternatives above that floor, the MACT standard is also no reduction in emissions.

Comment: Other commenters wrote in support of the cooperative efforts of EPA and the Environmental Research and Education Foundation to conduct tests for HAP metals such as mercury in landfill gas and emissions from gas combustion. The commenters suggested waiting until the test results are complete before making any decision on mercury controls. Another commenter also asked us to clarify the level of mercury emissions from MSW landfill gas and requested that we investigate beyond-the-floor control options.

Response: We find that the currently available data support the promulgation of the rulemaking without a mercury emissions limit. Because there are no control devices, pollution prevention practices or other techniques to reduce landfill mercury emissions, we could not identify any beyond-the-floor control options, and we consider the MACT for new and existing landfills to be no reduction in mercury emissions.

E. Title V Operating Permits

Comment: A commenter recommended that we delete the requirement mandating that area sources be required to obtain a title V permit and instead allow part 60 to address the permitting of area source landfills. The commenter further suggested that if we retain the requirement of permitting area source landfills, that we justify why area source landfills must be permitted.

Response: In response to that comment, title V requirements included in § 63.1935 at proposal have been deleted. We further respond that section 502(a) of the CAA requires any source, including an area source, subject to standards or regulations under section 111 or 112 of the CAA to operate in compliance with a title V permit after the effective date of any title V permits program. This section states that the Administrator may promulgate regulations to exempt one or more source categories, in whole or in part, from the requirements of the section if the Administrator finds that compliance with title V requirements is impracticable, infeasible, or unnecessarily burdensome on such categories. Thus, we do not need to justify requiring title V permits. The CAA mandates criteria that must be met to justify an exemption for any category of sources. According to section 502(a), however, the Administrator may not exempt any major source from the requirements of title V.

Although section 502(a) requires that area sources subject to regulations under section 111 or 112 be permitted unless the test in this section is met (i.e., the Administrator finds that compliance with title V permitting requirements is impracticable, infeasible, or unnecessarily burdensome), we are not applying this test to the landfills NESHAP.[1] Rather, consistent with what the commenter suggested, EPA is allowing the EG/NSPS for MSW landfills to address the permitting requirements for area source landfills. This approach is justified because the same universe of area source landfills would have been required to apply for a title V permit under the final rule (if the final rule were promulgated as proposed) as is currently subject to title V permitting requirements under the NSPS for landfills and whatever plan is used to implement 40 CFR part 60, subpart Cc in an area (i.e., an EPA approved and effective section 111(d) State or tribal plan for landfills or the landfills Federal plan (40 CFR part 62, subpart GGG)). Moreover, most area source landfills which have a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 have already been required to apply for a title V permit due to either the NSPS for landfills, an EPA approved and effective section 111(d) State or tribal plan for landfills, or the landfills Federal plan. See 40 CFR 60.752(c), 60.32c(c), and 62.14352(e). See also the "Clarification of Title V Permitting Requirements" section of the EG/NSPS direct final rule amendments for MSW Landfills (63 FR 32743, 32746, June 16, 1998). In fact, unless the owner/operator of a MSW landfill only recently commenced construction of the landfill and has not yet been required to file a design capacity report (which the NSPS requires within 90 days after the owner/operator commences construction), all area source landfills of the design capacity noted above and which meet the definition of new or existing under the EG/NSPS should have already applied for a title V permit. As a result, EPA believes that it is unnecessary for area sources to be required to apply for a title V permit as a result of the landfills NESHAP.

If a MSW landfill is a major source or is a part of a major source as defined under one or more of title V's three major source definitions (section 112, section 302, and part D of title I of the CAA),[2] a title V application from such a source may be due even earlier than the deadlines established by 40 CFR part 60, subpart WWW, any EPA approved and effective section 111(d) State or tribal plan, or the landfills Federal plan. When a source is subject to title V for more than one reason (e.g., meeting the title V applicability criteria in subpart WWW as well as having the potential to emit one or more pollutants at major source levels), the 12-month timeframe (or earlier if required by the title V permitting authority) for submitting a title V application is triggered by the requirement which first causes the source to become subject to title V. See CAA section 503(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1), 71.3(a) and (b), and 71.5(a)(1). See also the "Clarification of Title V Permitting Requirements" section of the EG/NSPS direct final rule for MSW Landfills (63 FR 32743, 32746, June 16, 1998).[3]

[1] It is important to note that the determination regarding the permitting of area sources under this NESHAP does not affect the permitting of area sources under other section 111 or 112 standards. Rather, to exempt area sources under either a section 111 or 112 standard, the test in section 502(a) must be met. If commenters choose to try and meet this test when commenting on a proposed section 111 or 112 standard, they must submit comments which document in detail the ways in which title V requirements are impracticable, infeasible, or unnecessarily burdensome for the source catergory in question.

[2] For information on aggregating emissions units to determine what is a source under title V, see the definition of *major source* in 40 CFR 70.2, 71.2, and 63.2. Nothing in this subpart revises how affected sources are aggregated for purposes of determining whether an affected source is a part of an area, nonmajor, or major source under any provisions of the CAA or EPA's regulations.

[3] Consistent with the above, it is important to note that an application deadline once established

Given that most area source landfills subject to the final rule are already subject to the requirements of title V, it is important to note the following. In cases where the owner/operator of a landfill has submitted a timely and complete title V application[4], but the draft title V permit has not yet been released by the permitting authority, the owner/operator must supplement his title V application [5] by incorporating the applicable requirements of the final landfills NESHAP in accordance with 40 CFR 70.5(b) or 71.5(b). Additionally, if a landfill is a major source, or is a part of a major source, and is covered by a title V permit with a remaining permit term of 3 or more years on the promulgation date of the landfills NESHAP, the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of the final rule within 18 months of the promulgation date of the final rule. See CAA section 502(b)(9) and 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).

Comment: Two commenters recommended that we clarify that deviations that are properly addressed in accordance with the SSM plan under the proposed rule will not become violations under any CAA program or permit, such as a title V permit, in which the standard, limitation, prohibition, or other Federally-enforceable requirement is contained. The commenters stated that the proposed rule suggested that any deviations that occur during SSM would not be violations under section 112 if the SSM plan were adequate and followed. The commenters are concerned that such a deviation might be considered a violation under title V and/or the EG/NSPS for MSW landfills.

Response: To the extent that a source is in compliance with the applicable SSM provisions of parts 60 and 63, the source is in compliance with its title V permit with respect to these specific applicable requirements. In terms of the EG/NSPS for landfills, deviations, and, therefore, potential violations, will be defined by the applicable requirements (i.e., 40 CFR part 60, subpart WWW, an EPA approved and effective State or tribal plan, or the landfills Federal plan.)

Furthermore, in response to this comment, section 63.1970 has been removed from the final rule to eliminate any confusion regarding the use of SSM plans. Given that the revisions to the General Provisions for part 63 (67 FR 16582, April 5, 2002) included revisions to 40 CFR 63.6(e), a subsection which addresses SSM plans, and given the other language in the General Provisions for parts 60 and 63, the NSPS for landfills, and the landfills Federal plan relevant to this topic, EPA does not believe a regulatory section regarding the use of SSM plans is needed in the final rule. See 40 CFR 60.11(c), 60.755(e), 63.6(e), 63.6(f)(1), and 62.14354(b).

Comment: Two commenters requested a more detailed discussion of which reporting requirements under the final rule would satisfy specific requirements under the title V program. The commenters cited a specific example: the proposed rule requires that the landfill owner/operator notify EPA within 2 days of a SSM event. The commenters questioned whether this requirement would satisfy the prompt reporting requirements of the title V program.

Response: As many owners/operators of landfills subject to this subpart will have the requirements of the final rule in their title V permits, any reports submitted for such sources will need to satisfy the reporting requirements of the landfills NESHAP and title V (e.g., type of report, content of report, and frequency of submission.) A permitting authority is not, however, precluded from consolidating required reports as long as all reporting requirements of the landfills NESHAP and title V are met.

We would like to emphasize that under 40 CFR part 70 or 71, any application form, report, compliance certification, or other document required by a permit to be submitted to a permitting authority must contain certification by a responsible official that the statements and information in the document are true, accurate, and complete. See 40 CFR 70.5(d), 70.6(c)(1), 71.5(d), and 71.6(c)(1). Thus, to the extent reports submitted under the final rule are also required by a title V permit to be submitted, they must meet the title V certification requirement to meet the reporting requirements of title V.

The commenters mentioned a specific requirement in 40 CFR 63.10(d)(5)(ii). This provision states that any time an owner/operator takes an action during a SSM event which is not consistent with the procedures specified in the affected source's SSM plan, the owner/operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan followed by a letter within 7 working days after the end of the event. The commenters questioned whether this requirement would satisfy the prompt reporting requirements of title V.

In terms of the prompt reporting of deviations, 40 CFR 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Therefore, it is the responsibility of the part 70 permitting authority to determine whether the timing of reports under 40 CFR 63.10(d)(5)(ii) is sufficient to meet the permitting authority's requirements for the prompt reporting of deviations. The permitting authority may decide for a particular source or source category, or as a general matter, to impose more stringent reporting requirements (e.g., type of report, content of report, and frequency of submission) than those specified in the applicable requirement.

IV. Summary of the Energy, Environmental, and Economic Impacts

We foresee minimal economic impacts to major sources since all of these landfills are currently required to comply with the EG/NSPS. For such sources, the final rule will only impose a requirement to prepare a SSM plan, recordkeeping and reporting requirements for SSM events, and semiannual reports instead of annual reports. The expected annual cost to affected major source landfills is only $1,700 (1998 dollars), which represents less than 0.001 percent of the tipping fees collected by an average sized landfill. For more information on the economic impacts of the standards, refer to the economic impact analysis in the docket.

We also foresee no environmental, energy, or economic impacts for collection and control of landfill gas to area source landfills. As with major source landfills, all area source landfills subject to the final rule are already required to implement the EG/NSPS. Area source landfills that are too small to trigger the EG/NSPS applicability are not subject to control under the

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for a source cannot be superseded by another later application deadline unless the title V program itself changes (e.g., a State program under 40 CFR part 70 becomes a Federal program under 40 CFR part 71).

[4] A title V application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the title V application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain an application shield. (An application shield allows a source to operate without being in violation of title V prior to being issued a final title V permit.) To maintain an application shield, a source must submit information as requested by the permitting authority and by the specified deadline. See section 503(d) of the CAA, 40 CFR 70.5(a)(2), 70.7(b), 71.5(a)(2), and 71.7(b).

[5] A title V application from a major source must address all emissions units at the title V source, not just the section 111 or 112 emissions unit. See 40 CFR 70.3(c)(1) and 71.3(c)(1).

standards and, therefore, will not incur impacts.

We expect a positive environmental impact and negligible economic impacts from the requirements for bioreactors. One reason for the small economic impact is that the final rule bioreactor provisions will require gas collection and control for only the same landfills that are already required to install collection and control systems under the EG/NSPS and the final rule. It will not change the number of landfills that must apply controls.

In the analysis described in the supplemental proposal (67 FR 36460, May 23, 2002), we found that greater emissions reductions are achieved by timely control of bioreactor landfills. The analysis also concludes that the bioreactor provisions will not increase the costs of control for most landfills compared to the previous EG/NSPS and final rule cost analyses, and some landfills with bioreactors will experience reduced control costs. We expect the number of bioreactors to increase over the next few years given their potential environmental and economic benefits, and pending regulatory clarifications. A regulation proposed under 40 CFR 258 (67 FR 39662) will provide approved States the ability to issue research, development, and demonstration permits to allow liquids other than leachate to be recirculated into bioreactor landfills. Promulgation of the regulation will lift a barrier for some landfills to become bioreactors and, therefore, is likely to result in an increase of bioreactor landfills. Overall, the bioreactor provisions of the final rule will have minimal economic impacts and may in fact have an overall beneficial economic impact. Additional information on this analysis, including example cases examined, HAP emissions reductions, and NMOC emissions reductions, are contained in Docket No. A–98–28 and in the supplemental proposal (67 FR 36460).

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final rule is not a "significant regulatory action" because the final rule will not have an annual effect on the economy of $100 million or more and does not impose any additional control requirements above the 1996 EG/NSPS. We considered the 1996 EG/NSPS to be "significant" because the 1996 EG/NSPS were expected to have an annual effect on the economy in excess of $100 million. We submitted the 1996 EG/NSPS to OMB for review (61 FR 9905, March 12, 1996). The rule promulgated today is projected to have no significant impact above the 1996 EG/NSPS. Consequently, the final rule was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. We have concluded the final rule may create a mandate on a number of city and county governments, and the Federal government would not provide the funds necessary to pay the direct costs incurred by the city and county governments in complying with the mandate. However, it will not impose substantial direct compliance costs on State or local governments, it will not preempt State law. Thus, Executive Order 13132 does not apply to the final rule.

Although section 6 of Executive Order 13132 does not apply to the final rule, EPA did consult with State and local governments in developing the 1996 EG/NSPS. The EPA consulted extensively with State and local governments early in the process of developing the proposed regulations to permit them to have meaningful and timely input into its development. Because the control requirements of the final rule are substantially the same as those developed in 1996, the previous consultations still apply. In addition, State and local government agencies participated in a conference call on the bioreactor provisions of the final rule, and provided comments on the proposal, which we considered. For a discussion of our consultations with State and local governments, the nature of the governments' concerns, and our position supporting the need for the specific control requirements included in both the EG/NSPS and the final rule, see the preamble to the 1996 EG/NSPS (60 FR 9918, March 12, 1996).

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, (65 FR 67249, November 9, 2000), requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175. Information received from the Regions during development of the Federal Plan showed no landfills on tribal land large enough to require control under the NSPS or the final rule. Thus, Executive Order 13175 does not apply to the final rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental

health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives we considered.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

The final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because it is based on technology performance and not on health and safety risks. Furthermore, as no alternative technologies exist that would provide greater stringency at a reasonable cost, the results of any children's health analysis would have no impact on the stringency decision.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211, (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act (UMRA) of 1995

Title II of the UMRA of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The average total annual cost of the final rule for any year has been estimated to be less than $2.2 million. Thus, the final rule is not subject to the requirements of section 202 and 205 of the UMRA. In addition, we have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small government. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 United States Code (U.S.C.). 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of the final rule on small entities, small entities are defined as: (1) A small business that is primarily engaged in the collection and disposal of refuse in a landfill operation as defined by North American Industrial Classification System (NAICS) codes 562212 and 924110 with annual receipts less than 10 million dollars; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that small entities will experience little impact since the final rule relies on the requirements specified in 40 CFR part 60, subparts Cc and WWW. Additional requirements for the final rule are limited to a slight increase in the reporting frequency of some reports and the development of a SSM plan. This increase in requirements leads to an increase in annual costs to each affected landfill of $1700 (1998 dollars), an increase of less than 0.001 percent of the tipping fees taken in by a landfill of average size nationally. Hence, the estimated impacts to small communities, organizations, and firms from the final rule should be insignificant. For more information on the economic impacts, refer to the economic analysis in the docket.

Although the final rule for MSW landfills will not have a significant economic impact on a substantial number of small entities, we nonetheless have tried to reduce the impact of the final rule on small entities. To that end, we have evaluated the operational practices, collection systems and control systems required by 40 CFR part 60, subparts Cc and WWW, for co-control environmental benefits. Since the requirements in 40 CFR part 60, subparts Cc and WWW, adequately address the emissions of HAP while controlling landfill gas, we are using these same requirements with a slight increase in reporting activity/frequency for the final rule. In addition to the reduction effort, we performed a number of outreach activities to interact with small entities during the development of the rule. We held formal stakeholder meetings. In addition, we presented rule related information at national conferences sponsored by the trade organizations for these entities, and we requested the establishment of an electronic link between the International City/County Management Association website and our rule development website. Through the efforts discussed above, small entities have been engaged in the rulemaking effort.

H. Paperwork Reduction Act

The information collection requirements in the final rule are being submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA,

and a (ICR No. 1938.02) copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at "*http://www.epa.gov/icr*".

The information would be used to ensure that the requirements for the rule are implemented properly and are complied with on a continuous basis. Records and reports are necessary to enable us to identify MSW landfills that may not be in compliance with this standard. Based on reported information, we would decide which landfills should be inspected and what records or processes should be inspected. The records that owners or operators of MSW landfills maintain would indicate to us whether personnel are operating and maintaining control equipment properly.

The final rule is projected to affect approximately 1,331 MSW landfills in the first year. The estimated average annual burden for industry for the first 3 years after promulgation of this NESHAP would be 39,360 person-hours annually. There will be $13,128 of operation and maintenance costs associated with monitoring or recordkeeping during the first 3 years. The estimated average annual burden, over the first 3 years, for the implementing agency would be 21,105 hours with a cost of $843,150 (including travel expenses) per year.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies such as EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable VCS.

The final rule references 40 CFR part 60, subpart WWW—Standards of Performance for Municipal Solid Waste Landfills. Since there are no new standard requirements in the final rule, and there are no new technical standard requirements resulting from specifying subpart WWW in the final rule, we are not adopting any VCS in the final rule. Landfills have been using the methods in 40 CFR part 60, subpart WWW since March 1996 and are familiar with these technical standards. In addition, no new VCS have been identified, although comments on applicable VCS were requested at the time of proposal. We received no comments on the subject. Also, landfills may request approval to use alternative testing or monitoring methods, as stated in the final rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Therefore, we will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2), and, therefore, will be effective January 16, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons cited in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding a new subpart AAAA to read as follows:

Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

Sec.

What This Subpart Covers

63.1930 What is the purpose of this subpart?
63.1935 Am I subject to this subpart?
63.1940 What is the affected source of this subpart?
63.1945 When do I have to comply with this subpart?
63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?
63.1950 When am I no longer required to comply with this subpart?
63.1952 When am I no longer required to comply with the requirements of this subpart if I own or operate a bioreactor?

Standards

63.1955 What requirements must I meet?

General and Continuing Compliance Requirements

63.1960 How is compliance determined?
63.1965 What is a deviation?
63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

Notifications, Reports and Records

63.1980 What records and reports must I keep and submit?

Other Requirements and Information

63.1985 Who enforces this subpart?
63.1990 What definitions apply to this subpart?

Tables to Subpart AAAA of Part 63

Table 1 of Subpart AAAA of Part 63—Applicability of NESHAP General Provisions to Subpart AAAA

What This Subpart Covers

§ 63.1930 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants for existing and new municipal solid waste (MSW) landfills. This subpart requires all landfills described in § 63.1935 to meet the requirements of 40 CFR part 60, subpart Cc or WWW and requires timely control of bioreactors. This subpart also requires such landfills to meet the startup, shutdown, and malfunction (SSM) requirements of the general provisions of this part and provides that compliance with the operating conditions shall be demonstrated by parameter monitoring results that are within the specified ranges. It also includes additional reporting requirements.

§ 63.1935 Am I subject to this subpart?

You are subject to this subpart if you meet the criteria in paragraph (a) or (b) of this section.

(a) You are subject to this subpart if you own or operate a MSW landfill that has accepted waste since November 8, 1987 or has additional capacity for waste deposition and meets any one of the three criteria in paragraphs (a)(1) through (3) of this section:

(1) Your MSW landfill is a major source as defined in 40 CFR 63.2 of subpart A.

(2) Your MSW landfill is collocated with a major source as defined in 40 CFR 63.2 of subpart A.

(3) Your MSW landfill is an area source landfill that has a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) and has estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) NMOC as calculated according to § 60.754(a) of the MSW landfills new source performance standards in 40 CFR part 60, subpart WWW, the Federal plan, or an EPA approved and effective State or tribal plan that applies to your landfill.

(b) You are subject to this subpart if you own or operate a MSW landfill that has accepted waste since November 8, 1987 or has additional capacity for waste deposition, that includes a bioreactor, as defined in § 63.1990, and that meets any one of the criteria in paragraphs (b)(1) through (3) of this section:

(1) Your MSW landfill is a major source as defined in 40 CFR 63.2 of subpart A.

(2) Your MSW landfill is collocated with a major source as defined in 40 CFR 63.2 of subpart A.

(3) Your MSW landfill is an area source landfill that has a design capacity equal to our greater than 2.5 million Mg and 2.5 million m^3 and that is not permanently closed as of January 16, 2003.

§ 63.1940 What is the affected source of this subpart?

(a) An affected source of this subpart is a MSW landfill, as defined in § 63.1990, that meets the criteria in § 63.1935(a) or (b). The affected source includes the entire disposal facility in a contiguous geographic space where household waste is placed in or on land, including any portion of the MSW landfill operated as a bioreactor.

(b) A new affected source of this subpart is an affected source that commenced construction or reconstruction after November 7, 2000. An affected source is reconstructed if it meets the definition of reconstruction in 40 CFR 63.2 of subpart A.

(c) An affected source of this subpart is existing if it is not new.

§ 63.1945 When do I have to comply with this subpart?

(a) If your landfill is a new affected source, you must comply with this subpart by January 16, 2003 or at the time you begin operating, whichever is last.

(b) If your landfill is an existing affected source, you must comply with this subpart by January 16, 2004.

(c) If your landfill is a new affected source and is a major source or is collocated with a major source, you must comply with the requirements in §§ 63.1955(b) and 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW.

(d) If your landfill is an existing affected source and is a major source or is collocated with a major source, you must comply with the requirements in §§ 63.1955(b) and 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW, the Federal plan, or EPA approved and effective State or tribal plan that applies to your landfill or by January 13, 2004, whichever occurs later.

(e) If your landfill is a new affected source and is an area source meeting the criteria in § 63.1935(a)(3), you must comply with the requirements of §§ 63.1955(b) and 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW.

(f) If your landfill is an existing affected source and is an area source meeting the criteria in § 63.1935(a)(3), you must comply with the requirements in §§ 63.1955(b) and 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW, the Federal plan, or EPA approved and effective State or tribal plan that applies to your landfill or by January 16, 2004, whichever occurs later.

§ 63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?

You must comply with this subpart by the dates specified in § 63.1945(a) or (b) of this subpart. If you own or operate a bioreactor located at a landfill that is not permanently closed as of January 16, 2003 and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, then you must install and operate a collection and control system that meets the criteria in 40 CFR 60.752(b)(2)(v) of part 60, subpart WWW, the Federal plan, or EPA approved and effective State plan according to the schedule specified in paragraph (a), (b), or (c) of this section.

(a) If your bioreactor is at a new affected source, then you must meet the requirements in paragraphs (a)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose to begin gas collection and control system operation 180 days after achieving a 40 percent moisture content instead of 180 days after liquids addition, use the procedures in § 63.1980(g) and (h) to determine when the bioreactor moisture content reaches 40 percent.

(b) If your bioreactor is at an existing affected source, then you must install and begin operating the gas collection and control system for the bioreactor by January 17, 2006 or by the date your bioreactor is required to install a gas collection and control system under 40 CFR part 60, subpart WWW, the Federal plan, or EPA approved and effective State plan or tribal plan that applies to your landfill, whichever is earlier.

(c) If your bioreactor is at an existing affected source and you do not initiate liquids addition to your bioreactor until later than January 17, 2006, then you

must meet the requirements in paragraphs (c)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose to begin gas collection and control system operation 180 days after achieving a 40 percent moisture content instead of 180 days after liquids addition, use the procedures in § 63.1980(g) and (h) to determine when the bioreactor moisture content reaches 40 percent.

§ 63.1950 When am I no longer required to comply with this subpart?

You are no longer required to comply with the requirements of this subpart when you are no longer required to apply controls as specified in 40 CFR 60.752(b)(2)(v) of subpart WWW, or the Federal plan or EPA approved and effective State plan or tribal plan that implements 40 CFR part 60, subpart Cc, whichever applies to your landfill.

§ 63.1952 When am I no longer required to comply with the requirements of this subpart if I own or operate a bioreactor?

If you own or operate a landfill that includes a bioreactor, you are no longer required to comply with the requirements of this subpart for the bioreactor provided you meet the conditions of either paragraphs (a) or (b).

(a) Your affected source meets the control system removal criteria in 40 CFR 60.752(b)(2)(v) of part 60, subpart WWW or the bioreactor meets the criteria for a nonproductive area of the landfill in 40 CFR 60.759(a)(3)(ii) of part 60, subpart WWW.

(b) The bioreactor portion of the landfill is a closed landfill as defined in 40 CFR 60.751, subpart WWW, you have permanently ceased adding liquids to the bioreactor, and you have not added liquids to the bioreactor for at least 1 year. A closure report for the bioreactor must be submitted to the Administrator as provided in 40 CFR 60.757(d) of subpart WWW.

(c) Compliance with the bioreactor control removal provisions in this section constitutes compliance with 40 CFR part 60, subpart WWW or the Federal plan, whichever applies to your bioreactor.

Standards

§ 63.1955 What requirements must I meet?

(a) You must fulfill one of the requirements in paragraph (a)(1) or (2) of this section, whichever is applicable:

(1) Comply with the requirements of 40 CFR part 60, subpart WWW.

(2) Comply with the requirements of the Federal plan or EPA approved and effective State plan or tribal plan that implements 40 CFR part 60, subpart Cc.

(b) If you are required by 40 CFR 60.752(b)(2) of subpart WWW, the Federal plan, or an EPA approved and effective State or tribal plan to install a collection and control system, you must comply with the requirements in §§ 63.1960 through 63.1985 and with the general provisions of this part specified in table 1 of this subpart.

(c) For approval of collection and control systems that include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions, you must follow the procedures in 40 CFR 60.752(b)(2). If alternatives have already been approved under 40 CFR part 60 subpart WWW or the Federal plan, or EPA approved and effective State or tribal plan, these alternatives can be used to comply with this subpart, except that all affected sources must comply with the SSM requirements in Subpart A of this part as specified in Table 1 of this subpart and all affected sources must submit compliance reports every 6 months as specified in § 63.1980(a) and (b), including information on all deviations that occurred during the 6-month reporting period. Deviations for continuous emission monitors or numerical continuous parameter monitors must be determined using a 3 hour monitoring block average.

(d) If you own or operate a bioreactor that is located at a MSW landfill that is not permanently closed and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, then you must meet the requirements of paragraph (a) and the additional requirements in paragraphs (d)(1) and (2) of this section.

(1) You must comply with the general provisions specified in Table 1 of this subpart and §§ 63.1960 through 63.1985 starting on the date you are required to install the gas collection and control system.

(2) You must extend the collection and control system into each new cell or area of the bioreactor prior to initiating liquids addition in that area, instead of the schedule in 40 CFR 60.752(b)(2)(ii)(A)(*2*).

General and Continuing Compliance Requirements

§ 63.1960 How is compliance determined?

Compliance is determined in the same way it is determined for 40 CFR part 60, subpart WWW, including performance testing, monitoring of the collection system, continuous parameter monitoring, and other credible evidence. In addition, continuous parameter monitoring data, collected under 40 CFR 60.756(b)(1), (c)(1), and (d) of subpart WWW, are used to demonstrate compliance with the operating conditions for control systems. If a deviation occurs, you have failed to meet the control device operating conditions described in this subpart and have deviated from the requirements of this subpart. Finally, you must develop and implement a written SSM plan according to the provisions in 40 CFR 63.6(e)(3). A copy of the SSM plan must be maintained on site. Failure to write, implement, or maintain a copy of the SSM plan is a deviation from the requirements of this subpart.

§ 63.1965 What is a deviation?

A deviation is defined in § 63.1990. For the purposes of the landfill monitoring and SSM plan requirements, deviations include the items in paragraphs (a) through (c) of this section.

(a) A deviation occurs when the control device operating parameter boundaries described in 40 CFR 60.758(c)(1) of subpart WWW are exceeded.

(b) A deviation occurs when 1 hour or more of the hours during the 3-hour block averaging period does not constitute a valid hour of data. A valid hour of data must have measured values for at least three 15-minute monitoring periods within the hour.

(c) A deviation occurs when a SSM plan is not developed, implemented, or maintained on site.

§ 63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

Averages are calculated in the same way as they are calculated in 40 CFR part 60, subpart WWW, except that the data collected during the events listed in paragraphs (a), (b), (c), and (d) of this section are not to be included in any average computed under this subpart:

(a) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments.

(b) Startups.

(c) Shutdowns.

(d) Malfunctions.

Notifications, Records, and Reports

§ 63.1980 What records and reports must I keep and submit?

(a) Keep records and reports as specified in 40 CFR part 60, subpart WWW, or in the Federal plan, EPA approved State plan or tribal plan that implements 40 CFR part 60, subpart Cc, whichever applies to your landfill, with one exception: You must submit the annual report described in 40 CFR 60.757(f) every 6 months.

(b) You must also keep records and reports as specified in the general provisions of 40 CFR part 60 and this part as shown in Table 1 of this subpart. Applicable records in the general provisions include items such as SSM plans and the SSM plan reports.

(c) For bioreactors at new affected sources you must submit the initial semiannual compliance report and performance test results described in 40 CFR 60.757(f) within 180 days after the date you are required to begin operating the gas collection and control system by § 63.1947(a)(2) of this subpart.

(d) For bioreactors at existing affected sources, you must submit the initial semiannual compliance report and performance test results described in 40 CFR 60.757(f) within 180 days after the compliance date specified in § 63.1947(b) of this subpart, unless you have previously submitted a compliance report for the bioreactor required by 40 CFR part 60, subpart WWW, the Federal plan, or an EPA approved and effective State plan or tribal plan.

(e) For bioreactors that are located at existing affected sources, but do not initiate liquids addition until later than the compliance date in § 63.1947(b) of this subpart, you must submit the initial semiannual compliance report and performance tests results described in 40 CFR 60.757(f) within 180 days after the date you are required to begin operating the gas collection and control system by § 63.1947(c) of this subpart.

(f) If you must submit a semiannual compliance report for a bioreactor as well as a semiannual compliance report for a conventional portion of the same landfill, you may delay submittal of a subsequent semiannual compliance report for the bioreactor according to paragraphs (f)(1) through (3) of this section so that the reports may be submitted on the same schedule.

(1) After submittal of your initial semiannual compliance report and performance test results for the bioreactor, you may delay submittal of the subsequent semiannual compliance report for the bioreactor until the date the initial or subsequent semiannual compliance report is due for the conventional portion of your landfill.

(2) You may delay submittal of your subsequent semiannual compliance report by no more than 12 months after the due date for submitting the initial semiannual compliance report and performance test results described in 40 CFR 60.757(f) for the bioreactor. The report shall cover the time period since the previous semiannual report for the bioreactor, which would be a period of at least 6 months and no more than 12 months.

(3) After the delayed semiannual report, all subsequent semiannual reports for the bioreactor must be submitted every 6 months on the same date the semiannual report for the conventional portion of the landfill is due.

(g) If you add any liquids other than leachate in a controlled fashion to the waste mass and do not comply with the bioreactor requirements in §§ 63.1947, 63.1955(c) and 63.1980(c) through (f) of this subpart, you must keep a record of calculations showing that the percent moisture by weight expected in the waste mass to which liquid is added is less than 40 percent. The calculation must consider the waste mass, moisture content of the incoming waste, mass of water added to the waste including leachate recirculation and other liquids addition and precipitation, and the mass of water removed through leachate or other water losses. Moisture level sampling or mass balances calculations can be used. You must document the calculations and the basis of any assumptions. Keep the record of the calculations until you cease liquids addition.

(h) If you calculate moisture content to establish the date your bioreactor is required to begin operating the collection and control system under § 63.1947(a)(2) or (c)(2), keep a record of the calculations including the information specified in paragraph (g) of this section for 5 years. Within 90 days after the bioreactor achieves 40 percent moisture content, report the results of the calculation, the date the bioreactor achieved 40 percent moisture content by weight, and the date you plan to begin collection and control system operation.

Other Requirements and Information

§ 63.1985 Who enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency as well as the U.S. EPA has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as follows. Approval of alternatives to the standards in § 63.1955. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

§ 63.1990 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, 40 CFR part 60, subparts A, Cc, and WWW; 40 CFR part 62, subpart GGG, and subpart A of this part, and this section that follows:

Bioreactor means a MSW landfill or portion of a MSW landfill where any liquid other than leachate (leachate includes landfill gas condensate) is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the anaerobic (without oxygen) biodegradation of the waste.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emissions limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation, (including any operating limit), or work practice standard in this subpart during SSM, regardless of whether or not such failure is permitted by this subpart.

Emissions limitation means any emission limit, opacity limit, operating limit, or visible emissions limit.

EPA approved State plan means a State plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cc. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Federal plan means the EPA plan to implement 40 CFR part 60, subpart Cc for existing MSW landfills located in States and Indian country where State plans or tribal plans are not currently in effect. On the effective date of an EPA approved State or tribal plan, the Federal plan no longer applies. The Federal plan is found at 40 CFR part 62, subpart GGG.

Municipal solid waste landfill or MSW landfill means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes (see § 257.2 of this chapter) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads. A municipal solid waste landfill may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion.

Tribal plan means a plan submitted by a tribal authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 to implement and enforce 40 CFR part 60, subpart Cc.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

As stated in §§ 63.1955 and 63.1980, you must meet each requirement in the following table that applies to you.

TABLE 1 OF SUBPART AAAA OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA

Part 63 Citation	Description	Explanation
63.1(a)	Applicability: general applicability of NESHAP in this part.	Affected sources are already subject to the provisions of paragraphs (a)(10)–(12) through the same provisions under 40 CFR, part 60 subpart A.
63.1(b)	Applicability determination for stationary sources.	
63.1(e)	Title V permitting.	
63.2	Definitions.	
63.4	Prohibited activities and circumvention	Affected sources are already subject to the provisions of paragraph (b) through the same provisions under 40 CFR, part 60 subpart A.
63.5(b)	Requirements for existing, newly constructed, and reconstructed sources.	
63.6(e)	Operation and maintenance requirements, startup, shutdown and malfunction plan provisions.	
63.6(f)	Compliance with nonopacity emission standards	Affected sources are already subject to the provisions of paragraphs (f)(1) and (2)(i) through the same provisions under 40 CFR, part 60 subpart A.
63.10(b)(2)(i)–(b)(2)(v)	General recordkeeping requirements.	
63.10(d)(5)	If actions taken during a startup, shutdown and malfunction plan are consistent with the procedures in the startup, shutdown and malfunction plan, this information shall be included in a semi-annual startup, shutdown and malfunction plan report. Any time an action taken during a startup, shutdown and malfunction plan is not consistent with the startup, shutdown and malfunction plan, the source shall report actions taken within 2 working days after commencing such actions, followed by a letter 7 days after the event.	
63.12(a)	These provisions do not preclude the State from adopting and enforcing any standard, limitation, etc., requiring permits, or requiring emissions reductions in excess of those specified.	
63.15	Availability of information and confidentiality.	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0336; FRL–7284–8]

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION.** These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for

pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective January 16, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0336, must be received by EPA on or before February 18, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

Pesticide/CFR cite	Contact person
Sodium chlorate; 180.1020 Zinc phosphide; 180.284	Libby Pemberton (703) 308–9364
Fenhexamid; 180.553 *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; 180.527	Barbara Madden (703) 305–6463
Bifenthrin; 180.442	Andrea Conrath (703) 308–9356
Tebufenozide; 180.482 Lambda-cyhalothrin; 180.438 Sulfentrazone; 180.498 Spinosad; 180.495 2,4-D; 180.142	Andrew Ertman (703) 308–9367
Mancozeb;180.176	Dan Rosenblatt (703) 308–9366

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs. Potentially affected entities may include, but are not limited to:

Federal or State Government Entity, (NAICS 9241), i.e., Department of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0336. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical/commodity listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6) of FFDCA. Therefore, the time-limited tolerances are extended until the date listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that

was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *2,4-D.* EPA has authorized under FIFRA section 18 the use of 2,4-D on wild rice for control of water plantain in Minnesota. This regulation extends time-limited tolerances for residues of the herbicide 2,4-dichlorophenoxyacetic acid and its metabolites in or on wild rice at 0.1 parts per million (ppm) for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2005. A time-limited tolerance was originally published in the **Federal Register** of September 5, 1997 (62 FR 46900) (FRL–5738–9).

2. *Bifenthrin.* EPA has authorized under FIFRA section 18 the use of bifenthrin on citrus for control of weevils in Texas and Florida. This regulation extends time-limited tolerances for residues of the insecticide bifenthrin in or on citrus, dried pulp and citrus, oil at 0.3 parts per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. A time-limited tolerance was originally published in the **Federal Register** of December 16, 1998 (63 FR 69200) (FRL–6048–1).

3. *N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide.* EPA has authorized under FIFRA section 18 the use of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on wheat and triticale for control of ryegrass in Idaho, Oregon, and Washington. This regulation extends a time-limited tolerance for combined residues of the herbicide *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol]-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on wheat grain at 1 ppm, wheat forage at 10 ppm, wheat hay at 2 ppm, wheat straw at 0.5 ppm, meat and fat of cattle, goats, horses, hogs, and sheep at 0.05 ppm, meat byproducts (other than kidney) of cattle, goats, horses, hogs, and sheep at 0.10 ppm and kidney of cattle, goats, horses, hogs, and sheep at 0.50 ppm for an additional 1–year, 11 months. These tolerances will expire and are revoked on June 30, 2005. Time-limited tolerances were originally published in the **Federal Register** of August 6, 1999 (64 FR 42839) (FRL–6091–9).

4. *Fenhexamid.* EPA has authorized under FIFRA section 18 the use of fenhexamid on pears for control of gray mold in California. This regulation extends a time-limited tolerance for residues of the fungicide fenhexamid, (*N*-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide in or on pears at 15 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. A time-limited tolerance was originally published in the **Federal Register** of November 21, 2000 (65 FR 69876) (FRL–6752–4)

EPA has received objections to tolerances it established for 2,4-D, and fenhexamid on different food commodities. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although these objections concern separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to extend the emergency exemption tolerances for 2,4-D, and fenhexamid while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support extending these tolerances at this time. First the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA initiated a 60–day public comment period on them in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7). That comment period was extended until October 16, 2002 (September 17, 2002, 67 FR 58536) (FRL–7275–3), and EPA is now examining the extensive comments received. Second the nature of the current actions are extremely time-sensitive as they address emergency situations. Third the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with extending the tolerances for 2,4-D, and fenhexamid.

5. *Lambda-Cyhalothrin.* EPA has authorized under FIFRA section 18 the use of lambda-cyhalothrin on barley for control of the Russian wheat aphid and cutworms in Idaho, Colrado, Wyoming, and Montana. This regulation extends a time-limited tolerance for combined residues of the pyrethroid lambda-cyhalothrin, 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate in or on barley grain at 0.05 ppm, barley bran at 0.2 ppm, and barley hay and straw at 2.0 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2005. Time-limited tolerances were originally published in the **Federal Register** of October 29, 1997 (62 FR 56095) (FRL–5745–5)

6. *Mancozeb.* EPA has authorized under FIFRA section 18 the use of mancozeb on ginseng for control of stem and leaf blight in Wisconsin. This regulation extends a time-limited tolerance for combined residues of the fungicide mancozeb, calculated as zinc ethylenebisdithiocarbamate, and its metabolite ethylenethiourea (ETU) in or on ginseng at 2.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. A time-limited tolerance was originally published in the **Federal Register** of October 9, 1998 (63 FR 54362) (FRL–6029–5)

7. *Sodium chlorate.* The state of Arkansas availed itself of the authority to declare the existence of a crisis situation, thereby authorizing use under FIFRA section 18 of sodium chlorate on wheat as a defoliant or desiccant to aid in the harvest of wheat. This regulation extends a time-limited exemption from the requirement of a tolerance for residues of the defoliant/desiccant sodium chlorate in or on wheat for an additional 2–year period. This exemption from the requirement of a tolerance will expire and is revoked on December 31, 2004. A time-limited exemption from the requirement of a tolerance was originally published in the **Federal Register** of December 3, 1997 (62 FR 63858) (FRL–5754–1)

8. *Spinosad.* EPA is authorizing under FIFRA section 18 the use of spinosad on all agricultural commodities when

applied in connection with quarantine eradication programs directed by state agricultural officials for control of quarantined fruit fly species, such as the Mediterranean fruit fly in California. This regulation extends a time-limited tolerance for residues of the insecticide spinosad, Factor A is 2-[(6-deoxy-2,3,4-tri-O-methyl-o-L-mannopyranosyl)oxy]-13-[[5-(dimethlamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]9-ethyl-2,3,3a,5a,6,9,10,11,12,13,14,16a,6b,tetradecahydro-14-methyl-1H-as-Indaceno[3,2d]oxacyclododecin-7,15-dione. Factor D is 2-[6-deoxy-2,3,4-tri-O-methyl-o-L-mannopyranosyl)oxy]13-[[5-(dimethylamino)-tetrahydri-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14,dimethyl-1H-as-Indaceno[3,2d]oxacyclododecin-7,15-dione, in or on all agricultural commodities where a separate higher tolerance is not already established at 0.02 ppm for an additional 4–year period. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of July 21, 1999 (62 FR 39053) (FRL–6086–7)

9. *Spinosad.* EPA has authorized under FIFRA section 18 the use of spinosad on alfalfa for control of armyworms in Texas and New Mexico and pastureland and rangeland for control of armyworms in Arkansas, Mississippi, Texas, Tennessee and Georgia. This regulation extends time-limited tolerances for combined residues of the herbicide spinosad, Factor A is 2-[(6-deoxy-2,3,4-tri-O-methyl-o-L-mannopyranosyl)oxy]-13-[[5-(dimethlamino)- tetrahydro-6-methyl-2H-pyran-2-yl]oxy]9-ethyl-2,3,3a,5a,6,9,10,11,12,13,14,16a,6b,tetradecahydro-14-methyl-1H-as-Indaceno[3,2d]oxacyclododecin-7,15-dione. Factor D is 2-[6-deoxy-2,3,4-tri-O-methyl-o-L-mannopyranosyl)oxy]13-[[5-(dimethylamino)-tetrahydri-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14,dimethyl-1H-as-Indaceno[3,2d]oxacyclododecin-7,15-dione in or on alfalfa forage at 4.0 ppm; alfalfa hay at 4.0 ppm; cattle fat at 15.0 ppm; cattle, meat byproducts at 3.50 ppm; cattle meat at 0.60 ppm; egg at 0.030 ppm; goat fat at 15.0 ppm; goat meat byproducts at 3.50 ppm; goat meat at 0.60 ppm; grass forage at 7.0 ppm; grass hay at 7.0 ppm; hog fat at 15.0 ppm; hog meat byproducts at 3.50 ppm; hog meat at 0.60 ppm; horse fat at 15.0 ppm; horse meat byproducts at 3.50 ppm; horse, meat at 0.60 ppm; sheep fat at 15.0 ppm; sheep meat byproducts at 3.50 ppm; and sheep meat at 0.60 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2005. A time-limited tolerance was originally published for sunflowers in the **Federal Register** of January 9, 2001 (66 FR 1592) (FRL–6760–2).

10. *Sulfentrazone.* EPA has authorized under FIFRA section 18 the use of sulfentrazone on horseradish for control of weeds in Wisconsin, Minnesota, and Illinois; sugarcane for control of weeds in Louisiana; and sunflowers for control of weeds in Montana, North Dakota, Minnesota, Wyoming, Texas, Nebraska, Oklahoma, Missouri, South Dakota, Kansas, and Colorado. This regulation extends a time-limited tolerance for combined residues of the herbicide sulfentrazone, *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide, and its metabolites 3-hydroxymethyl sulfentrazone (HMS) and 3-desmethyl sulfentrazone (DMS) in or on horseradish, roots at 0.1 ppm, sugarcane at 0.05 ppm, and sunflower at 0.1 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2005. A time-limited tolerance was originally published for sunflowers in the **Federal Register** of September 21, 1999 (64 FR 51060) (FRL–6097–8). Time-limited tolerances were originally published for horseradish and sugarcane in the **Federal Register** of November 9, 2000 (65 FR 67272) (FRL–6751–7).

11. *Tebufenozide.* EPA has authorized under FIFRA section 18 the use of tebufenozide on sweet potatoes for control of armyworms in Mississippi, Louisiana, and North Carolina. This regulation extends a time-limited tolerance for residues of the insecticide tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide in or on sweet potatoes at 0.25 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2005. A time-limited tolerance was originally published in the **Federal Register** of December 18, 1998 (63 FR 70030) (FRL–6049–4)

12. *Zinc phosphide.* EPA has authorized under FIFRA section 18 the use of zinc phosphide on timothy, alfalfa, and clover for control of vole complex in Washington. This regulation extends time-limited tolerances for residues of the rodenticide zinc phosphide in or on alfalfa (forage and hay); clover (forage and hay); and timothy (forage, hay and seed) at 1; 0.1; and 0.1 ppm, respectively, for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2005. Time-limited tolerances were originally published in the **Federal Register** of August 25, 1998 (63 FR 45176) (FRL–6021–6) and February 23, 2000 (65 FR 8872) (FRL–6489–8).

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0336 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 18, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the

public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0336, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established under section 408(l)(6) of the FFDCA in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal

Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 24, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.142 [Amended]

2. In § 180.142, in the table to paragraph (b), the entry for wild rice is amended by revising the expiration date to read "12/31/05."

§ 180.176 [Amended]

3. In § 180.176, in the table to paragraph (b), the entry for ginseng is amended by revising the expiration date to read "12/31/04."

§ 180.284 [Amended]

4. In § 180.284, in the table to paragraph (b), the entries for alfalfa, forage; alfalfa, hay; clover, forage, clover, hay; timothy, forage; timothy, hay; and timothy, seed are amended by revising the expiration dates to read "12/31/05."

§ 180.438 [Amended]

5. In § 180.438, in the table to paragraph (b),the entries for barley, bran; barley, grain; barley, hay; and barley, straw are amended by revising the expiration dates to read "12/31/05."

§ 180.442 [Amended]

6. In § 180.442, in the table to paragraph (b), the entries for citrus, dried pulp; and citrus, oil are amended by revising the expiration dates to read "12/31/04."

§ 180.482 [Amended]

7. In § 180.482, in the table to paragraph (b), the entry for sweet potato, roots is amended by revising the expiration date to read "12/31/05."

§ 180.495 [Amended]

8. In § 180.495, in the table to paragraph (b), the entries for alfalfa, forage; alfalfa, hay; cattle, fat; cattle, meat byproducts; cattle, meat; egg; goat, fat; goat, meat byproducts; goat, meat; grass, forage; grass, hay; hog, fat; hog, meat byproducts; hog, meat; horse, fat; horse, meat byproducts; horse, meat; peanut, hay; poultry, fat; sheep, fat; sheep, meat byproducts; and sheep, meat are amended by revising the expiration date to read "12/31/05" and the entry for "all commodities in connection with quarantine eradication programs against exotic, non-indigenous, fruit fly species, where a separate higher tolerance is not already established" is amended by revising the expiration date to read "12/31/06."

§ 180.498 [Amended]

9. In § 180.498, in the table to paragraph (b), the entries for horseradish, roots; sugarcane; and sunflower are amended by revising the expiration date to read "12/31/05."

§ 180.527 [Amended]

10. In § 180.527, in the table to paragraph (b), the entries for cattle, fat; cattle, kidney; cattle, meat; cattle, meat byproducts; goat, fat; goat, kidney; goat, meat; goat, meat byproducts; hog, fat; hog, kidney; hog, meat; hog, meat byproducts; horse, fat; horse, kidney; horse, meat; horse, meat byproducts; sheep, fat; sheep, kidney; sheep, meat; sheep, meat byproducts; wheat, forage; wheat, grain; wheat, hay; and wheat, straw are amended by revising the expiration date to read "6/30/05."

§ 180.553 [Amended]

12. In § 180.553, in the table to paragraph (b), the entry for pear is amended by revising the expiration date to read "12/31/04."

§ 180.1020 [Amended]

13. In § 180.1020, in the table to paragraph (b), the entry for wheat is amended by revising the expiration date to read "12/31/04."

[FR Doc. 03–969 Filed 1–15–03; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7438–8]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the ATSF Clovis, Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the ATSF Clovis, Superfund Site (Site), located in Clovis, New Mexico, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of New Mexico, through the New Mexico Environment Department because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final notice of deletion will be effective March 17, 2003 unless EPA receives significant adverse or critical comments by February 18, 2003. If adverse comments are received, EPA will publish timely withdrawal of the direct final deletion in the **Federal Register** informing the pubic that the deletion will not take effect.

ADDRESSES: Comments should be addressed to: Beverly Negri, Community Involvement Coordinator, U.S. EPA Region 6 (6SF–PO), 1445 Ross Avenue, Dallas, TX, 75202–2733, (214) 665–8157

or 1–800–533–3508 (*negri.beverly@epa.gov*).

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 12D13, Dallas, Texas, 75202–2733, (214) 665–6427, Monday through Friday, 7:30 a.m. to 4:30 p.m; New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, Monday through Friday, 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Oral comments will also be received through this date and should be directed to: Ms. Petra Sanchez, Remedial Project Manager, (6SF–LT), *sanchez.petra @epa.gov*, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6686 or 1–800–533–3508.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 6 is publishing this direct final notice of deletion of the ATSF Clovis, Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in the § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective March 17, 2003 unless EPA receives adverse comments by February 18, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the ATSF Clovis, Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the State of New Mexico on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The State of New Mexico concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location

The ATSF Clovis Superfund Site is locally known as the Santa Fe Lake. The affected site is a natural playa lake originally owned by Atchison, Topeka and Santa Fe Railway Company (AT&SF). As a result of a merger, Burlington Northern Santa Fe Railway Company (BNSF) now owns and operates the site and is the potentially responsible party (PRP). The ATSF Clovis site is approximately 140 acres in size and is located approximately one mile south of the BNSF railyard in Clovis, Curry County, New Mexico.

Site History

The playa lake is approximately 40 acres in size and is located near the center of the site. Surrounding land use is primarily agricultural in nature, with a small residential area located to the east of the site. Over the years, storm water run-off and wastewater discharge from the railyard was directed to the

lake. Wastewater generating sources at the railyard have included hopper car washing operations, boiler blow downs, sanitary sewers, and the oil/water separators at the diesel fueling racks. Although the railyard was constructed in the early 1900's, the majority of the discharge to the lake occurred between 1962 and 1982. Investigations of the lake water and underlying sediments were performed from 1979 to 1982 by EPA and AT&SF. In November 1981, the site was proposed for the National Priorities List (NPL). In September 1983, the site was listed on the NPL as "ATSF (Clovis)" with a Hazard Ranking System score of 33.62.

Remedial Investigation and Feasibility Study (RI/FS)

A Remedial Investigation (RI) of the site was conducted in 1987 and 1988 and included analyses of soil, sediment, lake water and ground water samples. Four wells were installed surrounding the lake for monitoring the ground water in the immediate vicinity of the lake. Additional samples were collected from water supply wells in the area for statistical comparison to the sample collected from the on-site wells.

Soil, sediment, lake water, and ground water samples were analyzed for the parameters listed in the Administrative Order on Consent (Consent Order) issued in 1983. The RI report was finalized in August 1988. The RI listed the parameters of potential concern (those compounds present above background values), as follows:

Soils: Barium; Boron; Chloride; Hydrocarbons; Phenolics; Sulfate;

Sediments: Boron; Chromium; Hydrocarbons; Lead; Phenolics; Total Organic Carbon;

Lake Water: Arsenic; Boron; Cadmium; Chromium; Fluoride; Lead; Phenolics; Total Dissolved Solids; Total Organic Carbon

Ground Water: Calcium; Chloride; Fluoride; Magnesium; Sodium; Sulfate; Total Dissolved Solids; Total Organic Carbon; Total Alkalinity; Bicarbonate; Conductivity.

Background values were determined through collection and analysis of ground water samples from area wells, lake water samples from area playa lakes and soil samples from unaffected areas at the site. A comparison of analytical results from the various samples collected at the site to the background analytical results was presented in the RI.

The range of concentrations of chromium and hydrocarbons in samples collected for the RI were as follows:

Media	Total chromium	Leachable chromium	Hydrocarbons
Soils, Sediments, Lake Water	5.1 to 15 mg/kg, 35 to 150 mg/kg, 0.012 to 0.059 mg/L.	<0.009 to 0.042 mg/L, 0.028 to 0.043 mg/L, not analyzed.	<5 to 3,300 mg/kg, 4,700 to 35,000 mg/kg, <0.2 mg/L.

Subsequent sampling of soils and sediments was performed to speciate the chromium and hydrocarbons. The analytical results of the subsequent sampling were used to refine the health risk assessment, which confirmed that the only potential health risk pathway was through inhalation of wind-blown dust. These results were presented in an addendum to the RI report dated September 1988.

Additional ground water sampling occurred following submittal of the RI report, at the request of the New Mexico Environmental Improvement Division (NMEID). The results of the additional sampling indicated that several monitored parameters were statistically higher in the on-site wells when compared to the background wells. However, none of the parameters were found to present a health risk. Therefore, it was determined that ground water remediation was not required. These results were presented in a second addendum to the RI report dated November 1988.

A Feasibility Study (FS) was conducted in conjunction with the RI in July 1988. The remedial alternatives focused on remediation of soils and sediments to remove the potential health risk through inhalation of wind-blown dust. Because any action involving the lake bottom sediments would require prior removal of water from the lake, management and remediation of the lake water was also a component of the remedial alternatives addressed in the FS. Since the addendums to the RI did not change any conclusions drawn in the RI and did not add any contaminants of concern to the remedial action required, no revision to the FS was required.

Characterization of Risk

An analysis of health and environmental effects was performed as part of the RI. This analysis evaluated each potential parameter of concern for health and environmental effects. It was determined that the following parameters had the potential to pose a health risk:

Soils: Barium; Hydrocarbons; Phenolics;

Sediments: Chromium; Hydrocarbons; Lead; Phenolics

Lake Water: Arsenic; Cadmium; Chromium; Lead; Phenolics;

None of the parameters detected in ground water were determined to pose a risk to human health and thus ground water was eliminated as a possible human exposure pathway. An evaluation of the risk to human health through the remaining exposure pathways was conducted for those parameters that had a potential to pose a health risk. The evaluation indicated that the only constituents found in the lake water, lake bottom sediments, and surrounding soils that had a potential health risk were chromium and hydrocarbons through inhalation of wind-blown dust.

Record of Decision Findings

On September 23, 1988, the Regional Administrator approved a Record of Decision (ROD), which summarized the findings of the RI and FS and stated what the selected remedial action included. The ROD identified the major concern for this site was the potential threat to the ground water. The ROD further stated that the results of the RI data were reviewed and EPA determined that the lake did not pose a current threat to the City water supply, but may pose a future threat if the source of contamination is not eliminated. An additional concern was stated about reduction in the water level in the lake, resulting in an increased risk from inhalation of dust produced from exposed sediments. Therefore, the following elements were selected for remedial action:

- Lake Water—Pumping, Evaporation and Disposal of Residue;
- Sediments—Dredge, On-site Biodegradation, Cap Land Treatment Area and Revegetation of Dredged Areas; and,
- Soil—In-situ Biodegradation and Revegetation.

The selected remedy resulted in the removal of the lake water (through evaporation), the removal or reduction of hydrocarbons (through biodegradation and landfarming), and isolation of metals (through placement in a capped treatment area). Thus, the selected remedy addressed both objectives (removal of future threat to

ground water and removal of exposure via inhalation of wind-blown dust). Criteria to evaluate the effectiveness of the selected remedy were developed subsequent to the ROD.

Response Actions

The selected remedy was implemented through use of a phased approach. The remedy included biodegradation of hydrocarbons through landfarming to treat the soil and sediments. A pilot study was conducted during the summer of 1991 to determine the parameters required to produce maximum degradation of contaminants. Because the primary contaminant of concern was petroleum hydrocarbons, biodegradation through landfarming was known to be effective. The focus of the pilot study was to determine the optimum mixture of water, air, nutrients, and microorganisms. The results of the pilot study indicated that there was no significant increase in biodegradation through the addition of commercially developed microorganisms and that the microorganisms present at the site were sufficient to produce effective removal of contaminants.

The biodegradation of soils and sediments began in June 1992 and continued until October 1999. The volume of lake bottom sediments treated was 57,245 cubic yards and the volume of soils treated was 125,235 cubic yards. All of the sediments were treated and placed in the On-site Storage Facility (OSF). Of the soil treated, 86,515 cubic yards met the cleanup criteria and remained in place while 38,720 cubic yards met the stabilization criteria (which is above the cleanup criteria) and was placed in the OSF for final storage. The design included the use of a dike and moat system to prevent surface water run-on into the lake basin area to allow for evaporation of the lake water and prevent surface water run-on to the treatment areas. The remedy design also incorporated the use of a spray evaporation system. The purpose of the system was to collect lake water and run-off from the treatment irrigation system and to route that water through fine mist spray nozzles to enhance evaporation.

The ROD stated that the lake water would be sprayed over the 26-acre beach area for evaporation. During the final remedial design, it was determined that evaporation would be more effective through a evaporation system that allow for continued management of storm water and irrigation water run-off throughout the bioremediation phase. Three treatment areas, divided into eleven treatment sections, were designated in order to optimize and track treatment of contaminated materials. Each beach treatment area was approximately 2.25 acres in size. To provide adequate moisture for treatment within each of the treatment sections, three separate irrigation systems were designed and installed. In addition, the irrigation system for bioremediation, also provided adequate moisture for purposes of dust control.

On-site Storage Facility—The OSF was designed to hold all treated sediments and any treated soils that stabilized prior to meeting the cleanup criteria. The Land Treatment Area described in the ROD was refined and referred to as the OSF. The primary differences between the OSF and the Land Treatment Area described in the ROD are:

- The impermeable layer of the cap was changed to high-density polyethylene (HDPE) rather than polyvinyl chloride (PVC) due to its better durability and applicability to the site conditions.
- The depth of the excavated floor of the OSF and the height of the containment dikes were expanded beyond those of the Land Treatment Area but did not significantly change the purpose or effectiveness of the OSF. The modification incorporated a refined estimate of the volume of sediments present in the lake bottom.

Additionally, the development of a cleanup standard for the site allowed in-situ treatment of some soils. Treated soils that met the cleanup standard remained in place within the former lake basin and beach areas.

The volume of the OSF was calculated to hold all of the treated sediments and any treated soils that did not meet the cleanup criteria. An area approximately 5 acres in size was excavated to 5 feet below grade at a slope of approximately 2 percent. Following treatment and placement of all materials to be held in the OSF, the design required the OSF to be capped. The cap was designed to consist of an HDPE liner to provide an impermeable layer, with an overlying geotextile to provide for drainage of infiltrated liquids away from the liner, followed by a 12-inch soil protective layer, covered by 6 inches of topsoil. The design required vegetation of the topsoil layer with native grasses. Construction of the OSF, with the exception of the cap, was completed in May 1993.

Sediments were treated within the OSF beginning in September 1993, following placement of a layer of treated soils to provide a "bioseed" of microbial organisms to enhance treatment. Treated sediments remained in place within the OSF, with subsequent layers of sediments applied for additional treatment. Throughout the treatment phase, treated soils that met the stabilization criteria were placed in the OSF. Treatment of all sediments and soils was completed in October 1999. As stated previously, a total of 57,245 cubic yards of treated sediment and 38,720 cubic yards of treated soil that met the stabilization criteria is stored in the OSF.

Closure of the OSF, as well as the rest of the site, began in June 2000. Any soils that met the stabilization criteria that had not already been placed in the OSF were moved to the OSF at this time. As per the design for site restoration, construction debris removed from the treatment areas was buried within the OSF. A layer of clean soil was placed on top of the treated material and buried debris to provide a stable base for the cap. The OSF was capped as described above and construction of the cap was completed in October 2000.

Cleanup Standards

- Definition of the cleanup level of 1,000 mg/kg total recoverable petroleum hydrocarbons (TRPH);
- Definition of a stabilization criteria (less than 10 percent degradation in any two of three consecutive confirmation sampling events);
- Contaminated soils were defined as materials that are firm and coarse-grained, containing TRPH above 1,000 mg/kg;
- Sediments were defined as materials that are soft and fine-grained, located within the 4212 elevation contour present at the start of treatment;
- Layout of treatment areas within the original beach area and, later, within the original lake basin;
- Definition of the active biodegradation season as March 1 through October 31 of each treatment year;
- Method of biodegradation (aeration of soil through weekly use of disc or till-oll, maintaining moisture content between 15 and 25 percent, maintaining pH near neutral, and maintaining proper nutrient levels);
- Construction of the OSF to store all treated sediments and soils that were treated, but contained TRPH above 1,000 mg/kg (the OSF was a refinement of the Land Treatment Area discussed in the ROD);
- Addition of the option to treat sediments on top of previously treated soils, or in the OSF, rather than only in the "treatment area" referenced in the ROD, with a requirement that confirmation sampling of the underlying previously treated soils be conducted

following treatment of the sediments; and

• Specific sampling procedures for tracking of biodegradation.

• The remedial action to address chromium (trivalent chromium) was to isolate the sediments within the OSF.

• Confirmatory sampling was performed throughout the remediation process.

Restoration of the Site—The design included removal of the upper portion of the run-on control dike, removal of the spray evaporation system, removal of the irrigation systems, and grading of the former lake basin area to drain. The ROD stated that the moat would be filled with the material from the run-on control dike. However, the U.S. Fish and Wildlife Service (USFWS) reviewed the design for restoration as the lead trustee for a Natural Resources Damages claim filed for this site. During the review process, the USFWS requested that the moat remain in place to intercept rainfall run-off from the surrounding watershed and minimize the volume of water ponding within the former lake basin. This request was incorporated into the final restoration design, along with covering the lowest portion of the basin with approximately 6 inches of clean soil. These alterations assured the USFWS that the potential for exposure of wildlife to low-level contaminants (below the cleanup standard) would be minimized.

BNSF and the trustees reached oral agreement on the basic terms of the Natural Resource Damages Claim, including cash settlement. The parties have exchanged drafts of the settlement documents and expect to agree upon the settlement documents, including a Consent Decree, during 2002. The Consent Decree must then be entered by the U.S. District Court for the District of New Mexico.

The restoration design included vegetation of disturbed areas with native grasses. A center-point irrigation system was originally designed to provide maximum coverage of the former lake basin, dike and moat areas during bioremediation treatment, but is currently being used for site restoration. The restoration design included a planting schedule and provisions to re-seed if the vegetation was not sufficiently established following the initial planting.

Monitoring Effectiveness and Compliance

The monitoring program for the bioremediation phase of the remedial action included treatment monitoring and compliance monitoring. The treatment monitoring portion of the program included:

• Analyzing soil or sediment samples from each treatment area for hydrocarbons to determine the progress of bioremediation within that area;

• Analyzing soil or sediment samples from each treatment area for nutrients to determine if nutrient amendments (addition of fertilizer) was required; and

• Measurements of soil moisture in each treatment area to determine if irrigation was required.

The compliance monitoring portion of the program included:

• Analyzing soil core samples collected from 5 feet below the beach and lake treatment areas for all contaminants of concern to determine if migration of contaminants was occurring as a result of treatment processes; and

• Analyzing ground water samples collected from on-site wells to determine if any impact on ground water occurred as a result of treatment processes.

The analysis of health and environmental effects performed as part of the RI showed that the only contaminants of concern were hydrocarbons and chromium. However, the compliance monitoring program included additional contaminants that might potentially pose a health risk. The contaminants included in the compliance monitoring program were: Arsenic; Barium; Cadmium; Chromium; Lead; Hydrocarbons; and Phenolics.

Chloride was included in the monitoring program at the request of the New Mexico Environment Department because it was present above the secondary drinking water standard. Other parameters listed in the Consent Order were boron, fluoride, sulfate, total dissolved solids, and total organic carbon. These parameters were demonstrated not to be of concern during the RI/FS phase and were not included in the monitoring program.

The ROD required that ground water monitoring would continue after the completion of treatment.

Operation and Maintenance

BNSF will perform O&M activities at the site, including routine inspections, maintenance of the site fence, maintenance of vegetation, maintenance of the OSF cap, and ground water monitoring with EPA oversight.

To fully assess the impermeability of the OSF cap, two additional monitoring wells will be installed this fall: one immediately up-gradient of the OSF and one immediately down-gradient of the OSF. These wells will be sampled on the same schedule as the other site wells for the same parameters.

BNSF will limit access to the OSF at all times. BNSF will institute a covenant to prevent installation of water supply wells or any construction activities within the limits of the OSF. The covenant is not a requirement of the ROD and is a voluntary agreement between BNSF and EPA as part of the Operation and Maintenance Plan for the site.

Five-Year Review

Consistent with section 121(c) of CERCLA and requirements of the OSWER Directive 9355.7–03B-P, ("Comprehensive Five-Year Review Guidance," June 2001), a five-year review will be conducted at this site. The directive requires EPA to conduct statutory five-year reviews at sites where, upon attainment of ROD cleanup levels, hazardous substances remaining within restricted areas onsite will not allow unlimited use of the entire site.

Since hazardous substances remain onsite, this Site is subject to five-year reviews to ensure the continued protectiveness of the remedy. Based on the five-year results, EPA will determine whether human health and the environment continues to be adequately protected by the implemented remedy. The first five-year review was completed on September 30, 1998. The next Five-Year Review will be completed no later than September 30, 2003.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of New Mexico, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective March 17, 2003 unless EPA receives adverse comments by February 18, 2003. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this

direct final notice of deletion before the effective date of the deletion and it will not take effect . The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 23, 2002.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended under New Mexico by removing the site name "AT&SF (Clovis)" and the city "Clovis."

[FR Doc. 03–733 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 02–3565]

Petition for Declaratory Ruling Regarding the Applicability of E911 Phase II Requirements for Wireless Handsets to In-Vehicle, Embedded Telematics Units, Comments Invited

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for declaratory ruling.

SUMMARY: The Commission seeks comment on a petition for ruling from OnStar Corporation, seeking clarification that embedded telematics units are not "handsets" as that term is used in the Commission's orders in this proceeding, and that such units are not included in calculating the wireless licensee's enhanced 911 Phase II handset activation compliance requirements. The action is taken to establish a record on which to base a response to OnStar Corporation's request.

DATES: Comments are due on or before January 24, 2003, and reply comments are due on or before February 7, 2003.

FOR FURTHER INFORMATION CONTACT: David Siehl, Attorney, (202) 418–1310.

SUPPLEMENTARY INFORMATION:

1. On December 3, 2002, the OnStar Corporations (OnStar) filed a Petition for Ruling (Declaratory Ruling Petition), seeking clarification that (1) embedded telematics units are not "handsets" as that term is used in the Commission's orders in CC Docket No. 94–102, and (2) such units are not included in calculating the wireless licensee's E911 Phase II handset activation compliance requirements.

2. In the Wireless E911 Third Report and Order, the Commission adopted rules that imposed requirements on wireless carriers who employ a Phase II location technology requiring new, modified or upgraded handsets (such as Global Positioning Systems (GPS)-based technologies). (64 FR 60126, November 4, 1999.) These requirements included deployment schedules, penetration rates, interoperability criteria, and standards for Phase II location accuracy and reliability. The Wireless E911 Third Report and Order also amended § 20.3 of the Commission's rules to define location-capable handsets as "portable or mobile phones that contain special location-determining hardware and/or software, which is used by a licensee to locate 911 calls."

3. OnStar asserts that embedded telematics devices should not be treated as handsets and, therefore, not be subject to the Commission's E911 Phase II requirements at this time. OnStar contends that the assumptions concerning conventional handset technology on which the Commission's E911 Phase II decisions are based are not applicable to embedded telematics devices. OnStar asserts that embedded telematics developed around the use of autonomous (stand-alone) GPS while handset based Phase II technology has developed around a network assisted Global Positioning System/Advanced Forward Link Trilateration (AGPS/AFLT) handset solution.

4. In addition, OnStar contends that embedded telematics units should not be treated as handsets in calculating compliance with the underlying wireless licensee's handset activation requirements. OnStar submits that although handsets have relatively short lifecycles and are independent units routinely exchanged, retrofitting existing embedded analog telematics units with digital units is much more costly given technology and accessibility factors. OnStar contends that wireless carriers serving large populations of telematics units will lose the benefit of the five percent margin for handset compliance for E911 Phase II by December 31, 2005, with respect to "true handsets," and may even exceed the five percent margin with telematics units alone.

5. We seek comment on the issues raised by the Declaratory Ruling Petition. Interested parties may file comments to the Petition on or before January 24, 2003. Reply comments are due February 7, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

6. This is a "permit but disclose" proceeding pursuant to § 1.1206 of the Commission's rules. Ex parte presentations that are made with respect to the issues involved with regard to the Petition will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's rules.

7. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filing parties should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, parties should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7

p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. In addition, a diskette copy should be sent to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail to *qualexint@aol.com*.

9. The full text of the Declaratory Ruling Petition, and responsive comments will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426 (voice) or (202) 418–7365 (TTY), or at *bmillin@fcc.gov*. This Public Notice can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cib/dro*. For further information concerning this proceeding, contact David Siehl or Patrick Forster, Policy Division, Wireless Telecommunications Bureau, at (202) 418–1310 (voice) or (202) 418–1169 (TTY).

Federal Communications Commission.

Kathleen O'Brien-Ham,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 03–947 Filed 1–15–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 11
Thursday, January 16, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators and Commodity Trading Advisors; Exemption From Requirement To Register for CPOs of Certain Pools and CTAs Advising Such Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: The Commodity Futures Trading Commission (Commission) is extending the comment period for the advance notice of proposed rulemaking (ANPR) with respect to providing additional exemptions from registration as a commodity pool operator (CPO) or commodity trading advisor (CTA). The new deadline for submitting public comments is January 23, 2003.

DATES: Written comments must be received on or before January 23, 2003.

ADDRESSES: Comments on the advance notice of proposed rulemaking should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov*. Reference should be made to "Advance Notice of Proposed Rulemaking on CPO and CTA Registration Exemptions."

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, or Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5450 or (202) 418–5445, respectively; facsimile number: (202) 418–5536, or (202) 418–5547, respectively; and electronic mail: *bgold@cftc.gov* or *ccummings@cftc.gov*, respectively.

SUPPLEMENTARY INFORMATION: On November 13, 2002, the Commission published the ANPR,[1] which sought comment on two specific proposals that the Commission had received to provide additional exemption from registration as a CPO, and on a proposal that would provide additional exemption from registration as a CTA. The ANPR also provided temporary CPO and CTA registration no-action relief, provided certain specified criteria were met. The ANPR established a 60-day period for submitting public comment, ending January 13, 2003.

By letter dated January 9, 2003, a membership organization for futures and securities investment professionals requested an extension of the ANPR's comment period until January 23, 2003, so that additional parties who could not meet the original January 13 deadline could submit comment letters. The request claims that granting the extension would provide the Commission with additional public comments with which to proceed with the contemplated rulemaking. This, in turn, would facilitate a comprehensive treatment of related issues.

In response to this request and in order to ensure that an adequate opportunity is provided for submission of meaningful comments, the Commission has determined to extend the comment period for the ANPR for an additional ten days to January 23, 2003.

Issued in Washington, DC, on January 10, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–894 Filed 1–15–03; 8:45 am]

BILLING CODE 6351–01–M

[1] 67 FR 68785.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 80N–0280]

RIN 0910–AA01

Over-the-Counter Vaginal Contraceptive Drug Products Containing Nonoxynol 9; Required Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing new labeling warning statements for all over-the-counter (OTC) vaginal contraceptive drug products containing nonoxynol 9. These warning statements will advise consumers that vaginal contraceptives containing nonoxynol 9 do not protect against infection from the human immunodeficiency virus (HIV), the virus that causes acquired immunodeficiency syndrome (AIDS), or against getting other sexually transmitted diseases (STDs). The warnings will also advise consumers that frequent use of vaginal contraceptives containing nonoxynol 9 can increase vaginal irritation. Increased vaginal irritation from use of nonoxynol 9 may increase the possibility of transmission of the AIDS virus (HIV) and STDs from infected partners. The agency is requesting public comment on the proposed labeling statements and how such information could best be presented in labeling. This proposal is part of FDA's ongoing review of OTC drug products.

DATES: Submit written or electronic comments by April 16, 2003. Submit written or electronic comments on the agency's economic impact determination by April 16, 2003. Please see section IX of this document for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Arlene Solbeck, Center for Drug

Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the advance notice of proposed rulemaking (ANPRM) for OTC vaginal contraceptive drug products (45 FR 82014, December 12, 1980), the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products (the Panel) placed nonoxynol 9 in category I (safe and effective). However, the Panel concluded that the contraceptive effectiveness of active ingredients cannot be considered separately from the vehicle and recommended that FDA require in vitro testing to determine the spermicidal effectiveness of each final formulation before marketing. In the preamble to the Panel's report (45 FR 82014), the agency stated that in vitro testing alone is an inadequate measure of a vaginal contraceptive product's effectiveness in humans. The agency explained that clinical trials of each product or final formulation may be the only certain predictor of its effectiveness in humans. The agency added that if clinical trials are necessary, manufacturers may be required to submit a new drug application (NDA) or supplement an existing NDA.

In the notice of proposed rulemaking (NPRM) for OTC vaginal contraceptive drug products (60 FR 6892, February 3, 1995), the agency proposed that manufacturers of OTC vaginal contraceptive drug products obtain approved NDAs for marketing of their products. The agency proposed this action because effectiveness of these products is dependent upon the final formulation. Therefore, the agency proposed that each product be tested in appropriate clinical trials under actual conditions of use.

In response to the NPRM, the agency is aware of ongoing clinical trials of vaginal contraceptives containing nonoxynol 9 (Refs. 1, 2, and 3). Pending the completion and analysis of these clinical trials, the agency is allowing the continued marketing of these products under the ongoing OTC drug review. These issues were discussed at the November 22, 1996, Nonprescription Drugs Advisory Committee (NDAC) meeting. NDAC concurred with the agency to allow interim marketing of nonoxynol 9 containing vaginal spermicides pending results from the proposed trials (Ref. 1). However, based on the studies discussed in section I of this document, the agency believes that vaginal contraceptive drug products containing nonoxynol 9 need to be labeled to inform users of these products that nonoxynol 9 does not prevent the transmission of the AIDS virus (HIV) and other STDs. Furthermore, users should be informed that frequent use of nonoxynol 9 can cause vaginal irritation and possibly increase the risk of becoming infected with the AIDS virus (HIV) and other STDs from infected partners. This rulemaking addresses certain safety concerns with the use of nonoxynol 9.

Nonoxynol 9 is a nonionic surfactant that works as a vaginal contraceptive by damaging the cell membrane of sperm. It has been shown in certain in vitro studies to damage the cell wall of certain STD pathogens and to have activity against certain bacterial and viral STD pathogens, including HIV. However, based on the in vivo data described in section I of this document, the agency believes that this same cell membrane damaging effect can damage the vaginal and cervical epithelium (cell lining). Thus, nonoxynol 9 can have a negative impact on the vaginal lining and may increase the user's risk of getting STD/HIV and other genital infections. Irritation includes the range of physical findings from mild inflammation to epithelial disruption (damage to cells lining the vagina or cervix). Vaginal irritation may be symptomatic (with symptoms such as itching and burning) to asymptomatic (no symptoms).

Because nonoxynol 9 kills the AIDS virus (HIV) and other STD pathogens in vitro, it has been suggested, over the years, that the drug might help prevent or reduce the risk of transmission of the AIDS virus and other STDs in humans. Information currently available to the general public creates the misperception that nonoxynol 9 might help decrease the risk of becoming infected with the AIDS virus and other STDs (Refs. 4 through 7). Thus, the agency believes that this proposed rule is necessary to provide a clear, consistent message that nonoxynol 9 is not only ineffective in preventing HIV transmission, but that it could facilitate transmission of the disease.

At the International AIDS Conference (July 9–14, 2000), researchers from the Joint United Nations Programme on AIDS (UNAIDS) presented the preliminary findings of a 4-year study conducted in a very high-risk population of 991 HIV negative female sex workers in Africa and Thailand to determine the effectiveness of a nonoxynol 9 gel (versus placebo) in preventing the transmission of HIV and STDs (Ref. 8). The test product contained 52.5 milligrams (mg) of nonoxynol 9 and a polymer with bioadhesive properties. The placebo contained only the polymer. Participants could be enrolled in the study if they did not use intravenous drugs or intravaginal spermicides other than the study drug. The participants reported an average of 3.6 partners per day and about 70 coital acts per month during the study. Condom use was encouraged. The preliminary study findings showed that women who used nonoxynol 9 gel had a higher incidence of new HIV infections (59) than those who used the placebo gel (41). Further, the more frequently women used only the nonoxynol 9 gel (without a condom to protect themselves), the higher their risk of becoming infected. Researchers also found that women who used nonoxynol 9 had more vaginal lesions, which might have facilitated the HIV transmission. Based on these preliminary study findings, on August 4, 2000, the Centers for Disease Control and Prevention (CDC) issued a letter (Ref. 9) stating "given that N-9 [nonoxynol 9] has now been proven ineffective against HIV transmission, the possibility of risk, with no benefit, indicates that N-9 should not be recommended as an effective means of HIV prevention." The final results of this study were recently published (Ref. 10) and substantiate the preliminary findings. The investigators stated that their data support the following conclusions: (1) Nonoxynol 9 increased the risk of HIV infection compared to placebo; (2) nonoxynol 9 had an adverse effect on vaginal epithelium when used frequently, thus increasing women's susceptibility to HIV; and (3) at low frequency use, nonoxynol 9 had no effect, either positive or negative, on HIV infection.

Earlier studies (Refs. 11 through 14) suggested that nonoxynol 9 vaginal spermicides may reduce gonococcal and chlamydial cervical infection and may even reduce the incidence of HIV infection. However, most of these studies did not assess the risk of acquiring HIV and the investigators stressed the need for more definitive randomized clinical trials. More recently, the International AIDS Conference report and the CDC letter (Refs. 8 and 9) have raised concerns that frequent use of nonoxynol 9 can increase vaginal and genital irritation and increase the risk of HIV transmission. Based on these safety concerns, the agency has reviewed studies on nonoxynol 9 conducted in Africa, Thailand, South America, Belgium, the Netherlands, and the United States that address the toxicity of

the vaginal use of nonoxynol 9 in relation to dose, frequency of use, and the risk of becoming infected with STD/HIV.

Amaral et al. (Ref. 15) studied nonoxynol 9 in 18 women who were randomly and blindly assigned to an acid-buffering bioadhesive gel containing either 0 percent, 2.5 percent (125 mg), or 5 percent (250 mg) nonoxynol 9. Exclusion factors included a history of STD in the last 12 months; using any vaginal product within 7 days before admission to the study, or a known allergy to nonoxynol 9. Subjects were asked to abstain from sexual intercourse 48 hours before admission and during the study and not to use any other intravaginal products during the study. One dose of the assigned gel was administered vaginally daily for 6 days. No irritation or symptoms were reported by users of the acid-buffering bioadhesive gel without nonoxynol 9. Erythema in the vulva, cervix, and vagina was noted in all subjects using the acid-buffering vehicle containing nonoxynol 9 (2.5 percent and 5 percent). No signs of de-epithelialization or ulcers were seen in any of the subjects. However, the authors concluded that the acid-buffering vehicle did not protect the cervix, vagina, and vulva from the irritation caused by nonoxynol 9.

Stafford et al. (Ref. 16) studied the effects of daily use for 7 days of a nonoxynol 9 (100 mg) containing gel versus placebo gel in 40 women who were not currently using any intravaginal products, did not have a current STD, had no history of genital ulcerative disease, and were not known to be HIV seropositive. The subjects were asked to avoid sexual intercourse during the treatment period. The nonoxynol 9 group had increased symptoms of irritation. Colposcopic (use of a magnifying instrument) and histologic (microscopic) examination of vaginal and cervical tissue showed evidence of inflammation in the genital tract. Also, a temporary reduction in the number of lactobacilli (bacteria found in the normal vaginal flora that appear to offer protective effects against the overgrowth of certain organisms that cause infection) was seen more frequently in the women using the nonoxynol 9 gel.

Rosenstein et al. (Ref. 17) studied the effect on normal vaginal flora of three intravaginal microbicides (dextrin sulfate, nonoxynol 9, or docusate sodium, in a gel dosage form) in three separate placebo-controlled studies. In these studies, women using dextrin sulfate gel were asked to insert 5 milliliters of the gel intravaginally for 4 consecutive nights and women using nonoxynol 9 gel and docusate sodium gel were asked to insert the respective gels for 7 consecutive nights. A reduction of lactobacilli occurred in 56 percent of women who used nonoxynol 9 and 63 percent of women who used docusate sodium. Women using nonoxynol 9 were also significantly more likely to become colonized abnormally than those using placebo. It appeared that women were more likely to have their vaginal flora return to normal after nonoxynol 9 treatment if the lactobacilli had not been depleted. The authors expressed concern that continuous use of nonoxynol 9 would cause the vaginal flora to be altered persistently and, together with an increased risk of vaginal mucosal inflammation, could induce susceptibility to urinary and gynecological infection. The authors noted that it was essential that potential microbicides be examined for activity against normal vaginal flora.

In a single-blind crossover study of 33 women, Poindexter et al. (Ref. 18) compared three OTC vaginal spermicide formulations containing nonoxynol 9: A polycarbophil-based gel with 50 mg of nonoxynol 9, a cellulose-based gel with 100 mg of nonoxynol 9, and a polyurethane sponge with 1,000 mg of nonoxynol 9. The subjects refrained from coitus for 3 days prior to and during the 7 consecutive days of the treatment period. There was a 21-day washout period between each treatment. New gynecological abnormalities occurred in all three groups using nonoxynol 9. Abnormalities observed included redness, white epithelium, ulceration, mosaic petechiae, and squamous metaplasia. Redness was the most common abnormality. Ulceration was noted in 2 of the 31 users of the nonoxynol 9 cellulose-based gel formulation. The authors noted that the abnormal effects of the vaginal spermicides were more profound on the cervical mucosa than the vulvo-vaginal mucosa.

Coggins et al. (Ref. 19) studied the safety of three vaginal spermicides containing nonoxynol 9: Film (70 mg), suppositories (150 mg), and gel (200 mg). Each woman used each product for a 4-week period and reported to the study center every 2 weeks. The authors did not indicate if there was a washout period between treatments. To avoid the potential for irritation from frequent use of nonoxynol 9 containing products, only women whose average coital frequency was one or fewer acts of intercourse per day were eligible to be enrolled. In this study, no ulcers or genital lesions were detected and clinical signs of irritation were fairly uncommon and not frequent when compared to baseline. The authors concluded that these products are safe for low frequency use.

Watts et al. (Ref. 20) evaluated the effects of nonoxynol 9 on the vaginal flora and epithelium of 48 women (16 in each group) after application of a single dose and in the absence of sexual intercourse. Quantitative vaginal cultures and colposcopy were done at baseline and at 0.5, 4, 24, 48, and 72 hours after insertion of one of three commercially available vaginal spermicides containing nonoxynol 9 (200-mg gel, 52.5-mg gel, or 70-mg film). Symptoms and colposcopic abnormalities were rare after use of nonoxynol 9. The proportion of women with *Escherichia coli* (*E. coli*) increased with the gel containing 200 mg of nonoxynol 9 per dose and the concentration of *E. coli* increased with all of the test products. The authors noted that the transient decreased concentration of lactobacilli and increased levels of *E. coli* seen with all three test products are of concern and likely are intensified and perpetuated with repeated use of nonoxynol 9 as a microbicide. The authors suggested that adverse effects may be enhanced with frequent or chronic use and that chronic use may cause changes in the vaginal flora that may lead to urinary tract infection and other resultant complications.

Niruthisard et al. (Ref. 21) conducted a double-blind, local toxicity study on the effects of frequent use of nonoxynol 9 in 20 women who were not considered to be at high risk for STDs. Fifteen women used 150-mg nonoxynol 9 containing suppositories and 5 women used placebos (lubricating suppositories) inserted vaginally hourly for 4 consecutive hours each day for 14 consecutive days. The study concluded that none of the women who used the placebo suppositories had abnormal physical findings. Six women who used the nonoxynol 9 suppositories had physical findings, including epithelial disruption and/or bleeding. In four women, the break in the cervical epithelium appeared to be the result of the sloughing of a thin layer of cells. One woman had bleeding and sloughing of her vaginal mucosa and another had a severe reaction on her cervix that was bleeding and edematous. All of these adverse events resolved within 1 week of stopping nonoxynol 9 use. The authors cautioned that this pilot study should be confirmed by other trials and that these findings may not be extrapolated to other situations of nonoxynol 9 use.

Roddy et al. (Ref. 22) followed up with a study in 175 women to evaluate effects of dosing on vaginal and cervical irritation using a vaginal suppository with 150 mg of nonoxynol 9 at various dosing frequencies for 2 weeks. The women agreed to refrain from sexual intercourse and douching during the study period. Clinical signs of genital irritation included erythema and epithelial disruption. Erythema in the vagina was the major clinical sign noted. Epithelial disruption was defined as a break in the epithelium lining of the vulva, vagina, or cervix. Women with vulvar irritation also had vaginal and cervical irritation. The symptoms that were attributed to genital irritation included dysuria, genital itching, and burning. The irritation from using nonoxynol 9 every other day was no different than using the placebo. Use of nonoxynol 9 once or twice a day increased the rate of epithelial disruption. Use of nonoxynol 9 four times a day increased the rate of epithelial disruption about five times that of the placebo. However, the authors noted that having symptoms was not predictive of clinical signs and women with obvious clinical signs did not always report symptoms. The authors stated that there is no conclusive evidence of a dose response, but the data suggest a stepwise increase in signs of irritation with an increasing number of doses per day.

Van Damme et al. (Ref. 23) conducted a multicenter, randomized, double-blind, controlled trial with three groups (52.5-mg nonoxynol 9 gel, placebo gel, and a no-treatment control), examining the use of a lower dose of nonoxynol 9 in 534 women at low risk of HIV infection. The subjects were healthy women with no evidence of STDs and no clinical or colposcopic abnormalities. The subjects were to apply the study products once daily at the same time each day for 14 days and were allowed to have sexual intercourse. Incidences of genital symptoms such as vaginal discharge, erythema, lesions, and petechial hemorrhage (the most frequent abnormality reported) were significantly greater in the group using the nonoxynol 9 gel than the other groups. Women in the group using the nonoxynol 9 gel were significantly more likely to develop a lesion than those in either the placebo or no-treatment group. The authors noted that the clinical significance is unclear with regard to the excess incidence of petechial hemorrhage in the nonoxynol 9 group and of other types of lesions that were not associated with epithelial disruption. The authors stated that, in theory, it is possible that any type of genital lesion may increase a woman's risk of becoming infected with HIV, especially if it serves as a focus for the recruitment of HIV-infectable inflammatory cells. However, they stated that whether this is of significance will need to be ascertained by large-scale intervention trials in populations at high risk of HIV infection.

The incidence of ulceration, abrasion, and STD or other genital infections was low for all three treatment groups. The authors suggested that these findings were the result of the once a day application of the nonoxynol 9 and that at this frequency of use the nonoxynol 9 gel can be considered safe. The authors also stated that having established the safety of a single application, it was important to evaluate the effects of multiple doses. They noted that a study, which was not cited, involving the application of the same nonoxynol 9 gel four times daily had recently been completed.

Kreiss et al. (Ref. 24) studied 138 HIV seronegative female sex workers at very high risk of HIV seroconversion who were randomly assigned to a nonoxynol 9 (1,000 mg) containing vaginal sponge or placebo (glycerin vaginal suppository containing mineral oil, subsequently a water-based vaginal cream was used). Subjects were instructed to insert a sponge before the first sex partner each day, replace the sponge after every two to three partners, and remove the sponge 6 hours after the last sex partner. All subjects were intensively counseled and urged to have each sexual partner use condoms. Women in the study used the sponge an average of 14 times per week. Women were asked to return for followup at monthly intervals or more frequently if needed. The duration range for followups was between 1 and 46 months. The mean (average) duration period of followup was 14 months for the nonoxynol 9 group and 17 months for the placebo group. Spermicide-attributed complaints, mostly vulvar irritation, burning, and ulceration, were reported in 47 percent of the nonoxynol 9 users and 7 percent of the placebo users. There was a higher seroconversion (i.e., testing showing conversion from HIV negative to HIV positive) in women using the nonoxynol 9 containing sponge than the placebo product. Because of concern regarding the adverse local effects of the nonoxynol 9 (1,000 mg) containing sponge, and its potential for increasing the risk of HIV transmission, rather than being protective, the study was prematurely terminated.

Martin et al. (Ref. 25) studied the use of a nonoxynol 9 gel (52.5 mg) in 52 HIV seronegative female sex workers. Subjects had to be free of STDs and any evidence of genital epithelial disruption, and had to report 100 percent compliance with condom use. Subjects were randomized to the nonoxynol 9 gel or to a placebo group and used one applicatorful per day. After a 14-day washout period, the subjects used the other treatment for 14 days. Subjects were evaluated by a questionnaire and physical examinations, including colposcopy. The authors concluded that daily application of the 52.5-mg nonoxynol 9 gel was safe, but they made no extrapolations to more frequent use. However, the authors acknowledged the shortness of the duration of use and that the power of this study to detect a small increase in epithelial toxicity might be limited.

Roddy et al. (Ref. 26) studied the use of a nonoxynol 9 containing film as a vaginal microbicide in 1,295 HIV-negative female sex workers. In a double-blind, placebo-controlled study, the subjects were instructed to have their male sexual partners use latex condoms and were randomly assigned to use either the nonoxynol 9 film or a placebo film. At monthly followup visits, the women were examined with a colposcope for genital lesions and were tested for gonorrhea, chlamydia, and HIV infection. Seventy-three percent of the women remained in the study for 12 months with a mean followup period of approximately 14 months. The authors concluded that the use of the nonoxynol 9 vaginal film did not reduce the rate of new HIV, gonorrhea, or chlamydia infection even in those that used latex condoms and who received treatment for STDs.

Van Damme et al. (Ref. 27) looked at more frequent use of the nonoxynol 9 (52.5 mg) gel among 320 HIV-seronegative female sex workers who did not have clinical STDs, genital ulcers, or abrasions, did not use illicit drugs, and participated in a 100 percent condom-use program. The study was designed as a randomized, placebo-controlled, triple-blind trial to assess the effect of nonoxynol 9 gel in the prevention of HIV/STD infection. Subjects were instructed to apply the test product or the placebo (gel vehicle without the nonoxynol 9) and to have their male sexual partners use a condom for every sex act. There were major differences in condom use between the study centers. The mean number of applicators of the daily gel use was 1.2 and 1.3, respectively, in the treatment and placebo groups. Colposcopy

examinations showed that vaginal irritation, such as ulcerations, abrasions (on the cervix and external genitalia), lesions, and erythema, was observed in both the treatment and the placebo groups. However, based on the number and incidences of colposcopic lesions per followup period of up to 12 weeks, the incidence of colposcopic lesions was low and there was no difference between the treatment groups. The authors reported that in both groups the chance of having a lesion increased with an increase in the mean daily use of the product. The authors concluded that multiple daily use of the nonoxynol 9 containing gel did not show an increase of local toxicity over the placebo gel.

Rustomjee et al. (Ref. 28) studied a vaginal contraceptive film containing 72 mg of nonoxynol 9 versus a glycerin placebo film in a randomized, double-blind, crossover trial. The 20 subjects were female sex workers, and HIV infection was not an exclusion criteria. Subjects used either the treatment film or placebo film for 1 month and, after a 1-month film-free washout period, used the other film for the last month. Condoms were provided. The differences in signs and symptoms of genital lesions from use of the nonoxynol 9 film and the placebo film did not reach statistical significance. However, the authors cautioned that the clinical findings of an increase in minor erythematous genital lesions in the nonoxynol 9 group, together with an increased HIV viral load associated with the presence of a minor genital lesion, is worrisome.

In summary, many of the studies (Refs. 8, 15 through 18, 20 through 24, and 28) suggest that nonoxynol 9 vaginal contraceptive formulations can increase the chances of vaginal and genital tract irritation, and cause disruption of the vaginal epithelium or the vaginal flora. Some studies (Refs. 8, 20, 22, and 23) suggest the risk of these adverse events can be increased by frequent and/or chronic use. One study (Ref. 25) concluded that once a day use was safe, but noted that the power to detect a small increase in epithelial toxicity may be limited by the short duration of use. Investigators in one study (Ref. 27) concluded that multiple daily use of nonoxynol 9 (52.5 mg) gel was safe, but in a previous study (Ref. 23) of nonoxynol 9 (52.5 mg) gel in women with low risk of HIV infection, the investigators concluded that women using nonoxynol 9 gel were significantly more likely to develop lesions than those in the placebo or no-treatment groups. The authors stated that large scale intervention trials were needed to determine if genital lesions increase the risk of acquiring HIV infection.

Several studies suggested a causal link between the frequency of use of nonoxynol 9, increased vaginal irritation, and the possibility that vaginal irritation (such as the disruption of the vaginal epithelium) may increase the risk of transmission of the AIDS virus (HIV) and other STDs. The preliminary findings of a study on nonoxynol 9 (52.5 mg) gel presented at the International AIDS Conference in July 2000 (Ref. 8) suggested that nonoxynol 9 does not prevent the transmission of HIV and other STDs and may facilitate the transmission of these pathogens. Another study (Ref. 26) concluded that the use of a nonoxynol 9 containing film did not reduce the rate of new HIV, gonorrhea, or chlamydia infection even when latex condoms were used. Other studies (Refs. 20, 24, and 28) also suggested that the adverse effects of nonoxynol 9 on the vaginal flora and epithelium may increase the risk of transmission of the AIDS virus (HIV), certain other STDs, and/or genital infections. The studies in high risk populations (sex workers) (Refs. 8, 24, 25, 27, and 28) suggested the possibility that the frequency of use of nonoxynol 9 can increase vaginal irritation and epithelium disruption. Such increased irritation may increase the risk of becoming infected with STDs, including the AIDS virus (HIV) from infected partners.

The CDC, on May 10, 2002, published a report containing a recommendation that women, particularly those at risk for HIV or STDs, be informed that nonoxynol 9 contraceptives do not protect against these infections (Ref. 29). The CDC report described the extent of nonoxynol 9 contraceptive use in women in 1999 and summarized recent publications on nonoxynol 9 and HIV/STDs. According to this report, most women in the United States with HIV become infected through sexual transmission. Thus, the report underscores the importance of alerting women about the safety concerns surrounding nonoxynol 9.

On June 28, 2002, the World Health Organization (WHO) issued revised public health guidelines for the use of nonoxynol 9 for HIV and STD prevention and for pregnancy prevention in populations at high risk for HIV (Ref. 30). The guidelines were based on a review of current clinical safety and effectiveness data on nonoxynol 9 (Ref. 31). The WHO guidelines advised that "Spermicides containing nonoxynol 9 do not protect against HIV infection and may even increase the risk of HIV infection in women using these products frequently." The guidelines also advised women at high risk of HIV infection against using nonoxynol 9 spermicides for contraception.

Based on safety concerns, the agency considers it important to alert users of OTC vaginal contraceptives containing nonoxynol 9 that these products do not prevent transmission of the AIDS virus (HIV) and other STDs, and that frequent use of these products can increase vaginal irritation, which may increase the risk of getting certain STDs, including the AIDS virus (HIV) from infected partners. The agency also believes that product labeling should include a statement to encourage the use of condoms as a method to help reduce the risk of becoming infected with the AIDS virus (HIV) and other STDs.

FDA's proposal to require these warnings and other information does not require a finding that any or all of the OTC drug products that contain nonoxynol 9 actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings and other information repudiate the OTC drug monographs under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that these additional warnings and other information are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the Federal Food, Drug, and Cosmetic Act. This judgment balances the benefits of these drug products against their potential risks, and reflects our conclusion that even a potential link between the use of nonoxynol 9 and serious adverse health consequences warrants this action (see CFR 330.10(a)).

FDA's decision to act in an instance such as this one need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F.3d 986, 991 (8th Cir. 2001). To mandate a warning, or take similar regulatory action, FDA need not show, nor do we allege, actual causation.

In the NPRM (60 FR 6892 at 6901), the agency stated that consumers should be warned about possible allergic reactions such as burning and itching of the vagina and penis that may occur when using vaginal contraceptive drug products. The agency recommended that the following warning be included in the labeling: "If you or your partner develops irritation, such as burning or itching in the genital area, stop using this product. If irritation continues,

contact your physician." At the November 22, 1996, NDAC meeting (Ref. 1), the committee also noted that penile irritation could occur. The agency is aware that the labeling of most OTC marketed vaginal spermicides containing nonoxynol 9 bears a warning to stop use and ask a doctor if irritation of the vagina or penis occurs or continues. In this document, the agency is proposing a similar warning. The agency is not aware of any data that suggest increased penile irritation from frequent use of nonoxynol 9 may increase the risk of getting STDs from infected female partners. However, the agency encourages more research and studies to evaluate this potential safety concern.

II. The Agency's Proposal

The agency is proposing to amend part 201 (21 CFR part 201) by adding § 201.325 entitled "Over-the-counter drugs for vaginal contraceptive use containing nonoxynol 9 as the active ingredient; required warnings." This section would require new warnings for all OTC vaginal contraceptive drug products containing nonoxynol 9 as the active ingredient, whether marketed under an NDA or the ongoing OTC drug review. The agency is proposing to require the following warnings be added to the labeling of all marketed OTC vaginal contraceptives containing nonoxynol 9: "Sexually transmitted diseases (STDs) alert [heading in bold type]: This product does not [this word highlighted in bold type] protect against the AIDS virus (HIV) or other sexually transmitted diseases (STDs)."

Based on the studies, the agency is also proposing a warning to inform users of OTC vaginal spermicides containing nonoxynol 9 that frequent use can increase vaginal irritation and may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. The statements would also quantify the definition of "frequent use" by adding "(more than once a day)". The proposed warning states:

Ask a doctor before use if you have [heading in bold type] a new sex partner, multiple sex partners, or unprotected sex. Frequent use (more than once a day) of this product can increase vaginal irritation, which may increase the risk of becoming infected with the AIDS virus (HIV) or other STDs from infected partners. Ask a doctor or other health professional for your best birth control method.

The agency is also proposing a warning to stop use and ask a doctor if irritation of the vagina or penis occurs. The agency recommended a similar warning in the NPRM (60 FR 6892 at 6901): "If you or your partner develops irritation, such as burning or itching in the genital area, stop using this product. If irritation continues, contact your physician." The agency is revising that warning in this document to state: "Stop use and ask a doctor if [heading in bold type] you or your partner get burning, itching, a rash, or other irritation of the vagina or penis." Further, the warning that reads "For vaginal use only" needs to be included in accordance with the requirements in § 201.66(c)(5)(i).

Because of the public health concerns regarding the transmission of STDs and the AIDS virus (HIV), the agency believes that manufacturers should inform consumers as soon as possible that nonoxynol 9 does not protect against the AIDS virus (HIV) and that frequent use of nonoxynol 9 can increase vaginal irritation. FDA encourages manufacturers of all OTC vaginal contraceptive drug products containing nonoxynol 9 to implement the agency's proposed labeling warnings voluntarily as soon as possible, subject to the possibility that FDA may change the wording of the statements, as a result of comments submitted in response to this proposal. The agency considers these warnings important to the safe use of OTC vaginal contraceptive drug products containing nonoxynol 9.

Because there is no final monograph for these products at present, manufacturers of OTC vaginal contraceptive drug products containing nonoxynol 9 are required to follow the labeling requirements in § 201.66 as of the first major labeling revision after May 16, 2002. The agency intends to consider the labeling revisions in this proposal, when finalized, to be the first major labeling revision after May 16, 2002, for products that have not already converted to the "Drug Facts" labeling format, and to require those products to conform to § 201.66 at that time. For products that have already converted to the "Drug Facts" format, the agency will require the labeling revisions in this proposal to be implemented by the effective date of the final rule.

In addition, the agency is proposing to require additional labeling information which would convey to consumers that studies have raised safety concerns that increased vaginal irritation (i.e., irritation or damage to the cell lining of the vagina that may or may not produce symptoms) caused by frequent use of nonoxynol 9 may make one more susceptible to the risk of getting the AIDS virus (HIV) or other STDs from infected partners and that consumers who use these products frequently should seek further advice from a doctor or other health professional for their best birth control method. In the interest of public health, the information would also include a statement to encourage the use of a latex condom with every sexual act to help to reduce the risk of getting the AIDS virus (HIV) and other STDs. The agency is proposing that this labeling be included either on the outside container or wrapper of the retail package under the "Other information" section of the "Drug Facts" labeling in accordance with § 201.66 or in a package insert. Many of the marketed OTC vaginal contraceptive drug products already have a package insert that contains information on how to use the product and this new information could readily be incorporated in that package insert. The agency is proposing the following labeling:

- Studies have raised safety concerns that frequent use (more than once a day) of products containing nonoxynol 9 can increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. Vaginal irritation may include symptoms such as burning, itching, or a rash, or you may not notice any symptoms at all. If you use these products frequently and/or have a new sex partner, multiple sex partners, or unprotected sex, see a doctor or other health professional for your best birth control and methods to prevent STDs.
- Correct use of a latex condom with every sexual act will help reduce the risk of getting the AIDS virus (HIV) and other STDs.

The studies suggest a possible correlation between increased vaginal irritation from frequent use and the risk of transmission of the AIDS virus (HIV) and other STDs. Because of this significant safety concern, the agency is asking for comments on how to best present this information in the product labeling.

III. Questions to be Addressed

The agency is concerned with how well consumers understand the language in the proposed warnings and whether the proposed warnings convey the safety concerns for nonoxynol 9 adequately. The agency invites public comments on the following questions:

1. Do the proposed warnings under the headings "Sexually transmitted diseases alert," "Ask a doctor before use if you have," and "Stop use and ask a doctor if" adequately convey the safety concerns to consumers? What revisions, if any, would be useful?

2. Are there other data to support, expand, or refute the proposed warnings?

3. Are there additional data to further clarify or specifically quantify the term "frequent use" in the proposed warning that states: "Frequent use (more than once a day) of this product can increase

vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners"?

4. Are the symptoms of vaginal irritation adequately defined? Are there other symptoms that should be included?

5. Are there additional data to correlate an increase in vaginal irritation with an increased risk of transmission of HIV and other STDs? If so, how should such information be conveyed in labeling?

6. Is a package insert the best way to provide additional information to consumers or should this information appear on the outer carton?

7. Are the proposed statements for the package insert appropriate? What revisions or additional information, if any, would be useful to make the package insert more informative and consumer friendly?

IV. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. FDA has determined that the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this proposed rule is to require additional labeling for OTC vaginal contraceptive drug products containing nonoxynol 9. The labeling includes new warnings and other important information about using these products. These products are currently packaged in an outer carton that should have sufficient space to accommodate this additional labeling. The agency is aware that most of the currently marketed products already include a consumer package insert. Therefore, to allow firms greater flexibility, the agency is allowing almost half of the new information to appear in the package insert. There are a limited number of products currently marketed that will be affected by this proposed rule and the incremental one-time costs are minimal. The one-time costs include designing the new carton, designing a new package insert, and the inventory loss of any unused current labeling. The agency assumes the same weighted average cost to relabel (i.e., $3,600 per stock keeping unit (SKU) (individual products, packages, and sizes)) that it estimated for the final rule requiring uniform label formats of OTC drug products (64 FR 13254 at 13279 to 13281, March 17, 1999). Inventory loss was estimated using data from a study supporting the fore mentioned rule. With a 6-month implementation period, inventory loss was estimated to be between $500 and $3,000 per SKU, depending on product sales, for an estimated weighted average inventory loss of $2,050 . The inventory loss and redesign costs for the package insert are estimated to be about $1,380 per SKU.

The agency's Drug Listing System identifies 15 manufacturers and distributors of OTC vaginal contraceptive drug products containing nonoxynol 9 that together produce approximately 40 SKUs. At a relabeling cost of $3,600 per SKU and an inventory loss of $2,050 per SKU, estimated total one-time costs of relabeling could be $266,000 (40 x ($3,600 + $2,050)). Even if all required wording is revised on the outer carton, manufacturers may revise their package inserts as well to conform to the revised language. This adds another $55,200 (40 x $1,380) to the one-time cost, for an estimated total of $321,200.

As the agency is providing the language of the labeling to be used, all firms should have the necessary skills and personnel to perform the required relabeling either in-house or by contractual arrangement. The proposed rule does not require any new reporting or recordkeeping activities. No additional professional skills are needed.

About 9 firms affected by this proposed rule meet the Small Business Administration's definition of a small entity (fewer than 750 employees). The actual impact on these firms will vary depending on the number and nature of the products they manufacture or distribute. All nine entities market additional types of products and have only one or two SKUs affected by this proposed rule. The average incremental cost per SKU to comply with this proposed rule is estimated to be $8,030 ($321,200/40 SKUs). Actual costs to the small entities will likely be lower because distributors of low sales volume OTC drug products usually market their products in packaging that costs less than the industry average.

While the costs to individual manufacturers to relabel their products are minimal, the potential benefits to consumers who use these products are substantial. The agency considers it essential that users be aware that these products do not protect against the AIDS virus (HIV) or other STDs. The monetary benefit of potentially preventing any cases of AIDS or STDs is significant compared to the minor cost of relabeling these products to provide the new required information.

The agency has tentatively considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. The agency considers it important that this information appear in product labeling as soon as possible, but acknowledges that implementation in a timeframe any less than 6 months would be very difficult for affected manufacturers. However, because of the importance of this new labeling information, the agency considers a period of 12 months too long to implement this new labeling. The agency rejected an exemption for small entities because the new labeling is also needed by consumers who purchase products marketed by those entities. Further, because of the importance of this information, the agency is not proposing a longer effective date for any products with annual sales less than $25,000.

The analysis shows that this proposed rule is not economically significant under Executive Order 12866 and that the agency has considered the burden to small entities. Based on this analysis, the agency does not believe manufacturers will incur a significant

economic impact. Therefore, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

The agency invites public comment regarding any substantial or significant economic impact that this proposed rule would have on companies marketing OTC vaginal contraceptive drug products containing nonoxynol 9. Types of impact may include, but are not limited to, costs associated with relabeling or repackaging. Comments regarding the impact of this proposed rule should be accompanied by appropriate documentation. The agency is providing a period of 90 days from the date of publication of this proposed rule in the **Federal Register** for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this proposed rule in the preamble to the final rule.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

VIII. Request for Comments

Interested persons may submit written or electronic comments on the proposed rule, the agency's specific questions in section III of this document, and the agency's economic impact determination to the Dockets Management Branch (see **ADDRESSES**) by April 16, 2003. Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. Proposed Effective Date

Because of the importance of the proposed warnings to the safe use of OTC vaginal contraceptive drug products containing nonoxynol 9, the agency is proposing that any final rule that may publish based on this proposal become effective 6 months after its date of publication in the **Federal Register**.

X. References

The following references are on display in the Dockets Management Branch (see **ADDRESSES**), under Docket No. 80N–0280, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, Transcript of Joint Meeting of the Nonprescription Drugs, Reproductive Health Drugs, Anti-Infective Drugs and Antiviral Drugs Advisory Committees, in OTC vol. 11ATFM3, November 22, 1996.
2. Letter from D. L. Bowen, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET 6.
3. Letter from D. L. Bowen, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET 7.
4. Jim Shelton's Pearls for July 2000, "Spermicides and Protection Against STDs," Johns Hopkins Center for Communication Programs, in OTC vol. 11ATFM3, 2000.
5. Jim Shelton's Pearls for September 2000, "Nonoxynol-9 and HIV Transmission," Johns Hopkins Center for Communication Programs, in OTC vol. 11ATFM3, 2000.
6. University of Florida, "HIV/AIDS Information/Resources."
7. Drugs.com (Drug Information Online), "Spermicides Vaginal," in OTC vol. 11ATFM3.
8. Van Damme, L., "Advances in Topical Microbicides," presented at the XIII International AIDS Conference, Durban, South Africa, July 9–14, 2000.
9. Letter from H. D. Gayle, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention, in OTC vol. 11ATFM3, August 4, 2000.
10. Van Damme, L. et al, "Effectiveness of COL–1492, a Nonoxynol-9 Vaginal Gel, on HIV–1 Transmission in Female Sex Workers: A Randomised Controlled Trial," *The Lancet*, 360:974–977, 2002.
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12. Rosenberg, M. J. et al., "Effect of the Contraceptive Sponge on Chlamydial Infection, Gonorrhea, and Candidiasis," *Journal of the American Medical Association*, 257:2308–2313, 1987.
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15. Amaral, E. et al., "Study of the Vaginal Tolerance to Acidform, an Acid Buffering Gel," *Contraception*, 60(6):361–366, 1999.
16. Stafford, M. K. et al., "Safety Study of Nonoxynol-9 as a Vaginal Microbicide; Evidence of Adverse Effects," *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology*, 17:327–331, 1998.
17. Rosenstein, I. J. et al., "Effect on Normal Vaginal Flora of Three Intravaginal Microbicidal Agents Potentially Active Against Human Immunodeficiency Virus Type 1," *The Journal of Infectious Diseases*, 177:1386–1390, 1998.
18. Poindexter III, A. N. et al., "Comparison of Spermicides on Vulvar, Vaginal, and Cervical Mucosa," *Contraception*, 53:147–153, 1996.
19. Coggins, C. et al., "Safety of Three Formulations of Nonoxynol-9 Containing Vaginal Spermicides," *International Journal of Gynecology and Obstetrics*, 68:267–268, 1999.
20. Watts, H. et al., " The Effects of Three Nonoxynol-9 Preparations on Vaginal Flora and Epithelium," *The Journal of Infectious Diseases*, 180:426–437, 1999.
21. Niruthisard, S., R. E. Roddy, and S. Chutivongse, "The Effects of Frequent Nonoxynol-9 Use on the Vaginal and Cervical Mucosa," *Journal of the American Venereal Disease Association*, 18:176–179, 1991.
22. Roddy, R. E. et al., "A Dosing Study of Nonoxynol-9 and Genital Irritation," *International Journal of STD and AIDS*, 4:165–170, 1993.
23. Van Damme, L. V. et al., "Safety Evaluation of Nonoxynol-9 Gel in Women at Low Risk of HIV Infection," *AIDS*, 12:433–437, 1998.
24. Kreiss, J. et al., "Efficacy of Nonoxynol 9 Contraceptive Sponge Use in Preventing Heterosexual Acquisition of HIV in Nairobi Prostitutes," *Journal of the American Medical Association*, 268:477–482, 1992.
25. Martin, H. L. et al., "Safety of a Nonoxynol-9 Vaginal Gel in Kenyan

Prostitutes," *Sexually Transmitted Diseases*, 24(5):279–283, 1997.

26. Roddy, R. E. et al., "A Controlled Trial of Nonoxynol 9 Film to Reduce Male-to-Female Transmission of Sexually Transmitted Diseases," *New England Journal of Medicine*, 339(8):504–510, 1998.

27. Van Damme, L. V. et al., "Safety of Multiple Daily Applications of COL–1492, A Nonoxynol-9 Vaginal Gel, Among Female Sex Workers," *AIDS 2000*, 14(1):85–88, 2000.

28. Rustomjee, R. et al., "Phase 1 Trial of Nonoxynol 9 Film Among Sex Workers in South Africa," *AIDS*, 13:1511–1515, 1999.

29. CDC, "Nonoxynol-9 Spermicide Contraception Use—United States, 1999," *Morbidity and Mortality Weekly Report*, 51(18): 389–392, 2002.

30. WHO, "Nonoxynol-9 Ineffective in Preventing HIV Infection," May 28, 2002.

31. WHO, "WHO/CONRAD Technical Consultation on Nonoxynol-9, Summary Report," 2001.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.66 is amended by adding paragraph (c)(5)(ii)(H) to read as follows:

§ 201.66 Format and content requirements for over-the-counter (OTC) drug product labeling.

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(H) Sexually transmitted diseases (STDs) warning for vaginal contraceptive drug products containing nonoxynol 9 set forth in § 201.325(b)(2). This warning shall follow the subheading "Sexually transmitted diseases (STDs) alert:"

3. Section 201.325 is added to subpart G to read as follows:

§ 201.325 Over-the-counter drugs for vaginal contraceptive use containing nonoxynol 9 as the active ingredient; required warnings.

(a) Studies indicate that use of vaginal contraceptives containing nonoxynol 9 does not protect against infection from the human immunodeficiency virus (HIV), the virus that causes acquired immunodeficiency syndrome (AIDS), or against the transmission of other sexually transmitted diseases (STDs). Studies also suggest that frequent use of vaginal contraceptives containing nonoxynol 9 can increase vaginal irritation, such as the disruption of the vaginal epithelium. These effects may increase the risk of transmission of the AIDS virus (HIV) and other STDs from an infected partner. Consumers should be warned that these products do not protect against the transmission of the AIDS virus (HIV) or other STDs. In addition, frequent use of these products can increase vaginal irritation, which may increase the risk of getting certain STDs, including the AIDS virus (HIV), from infected partners.

(b) The labeling of OTC vaginal contraceptive drug products containing nonoxynol 9 as the active ingredient, whether subject to the ongoing OTC drug review or an approved drug application, must contain the following warnings under the heading "Warnings," in accordance with § 201.66.

(1) "For vaginal use only" [this heading in bold type]

(2) "Sexually transmitted diseases (STDs) alert [this heading in bold type]: This product does not [this word in bold type] protect against the AIDS virus (HIV) or other STDs."

(3) "Ask a doctor before use if you have [heading in bold type] [optional, bullet] a new sex partner, multiple sex partners, or unprotected sex. Frequent use (more than once a day) of this product can increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. Ask a doctor or other health professional for your best birth control method."

(4) "Stop use and ask a doctor if [heading in bold type] [optional, bullet] you or your partner get burning, itching, a rash, or other irritation of the vagina or penis".

(c) The labeling of this product must include the following statements either on the outside container or wrapper of the retail package, under the "Other information" section of the Drug Facts labeling in accordance with § 201.66(c)(7), or in a package insert.

(1) "[Bullet] Studies have raised safety concerns that frequent use (more than once a day) of products containing nonoxynol 9 can increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. Vaginal irritation may include symptoms such as burning, itching, or a rash, or you may not notice any symptoms at all. If you use these products frequently and/or have a new sex partner, multiple sex partners, or unprotected sex, see a doctor or other health professional for your best birth control and methods to prevent STDs."

(2) "[Bullet] Correct use of a latex condom with every sexual act will help reduce the risk of getting the AIDS virus (HIV) and other STDs from infected partners."

(d) Any drug product subject to this section that is not labeled as required and that is initially introduced or initially delivered for introduction into interstate commerce after [date 6 months after date of publication of the final rule in the **Federal Register**], is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352), is a new drug under section 505 of the act (21 U.S.C. 355), and is subject to regulatory action.

Dated: December 19, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–902 Filed 1–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 966; re: Notice Nos. 960 and 961]

RIN 1512–AC76 and 1512–AC66

Red Hill (Oregon) Viticultural Area (2001R–88P); Red Hills (California) Viticultural Area (2001R–330P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notices of proposed rulemaking (NPRMs); reopening of comment periods.

SUMMARY: We are reopening the comment periods for NPRMs No. 960 and No. 961. Both NPRMs were published in the **Federal Register** on October 30, 2002. The proposed rules, if approved, would add Red Hill (Oregon) and Red Hills (California) as approved American viticultural areas and amend 27 CFR part 9. We are acting on a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received on or before March 17, 2003.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221

(Attn: Notice No. 960 or Attn: Notice No. 961);

- 202–927–8525 (facsimile);
- *nprm@atfhq.atf.treas.gov* (e-mail);
- *http://www.atf.treas.gov* (online). A comment form is available with each of the online copies of these notices. At this site, select "Regulations," then "Notices of proposed rulemaking (Alcohol)." Finally, select "Send comments via e-mail" under the appropriate notice number.

You may view copies of the NPRMs; the request for extension, and any comments received on the notices by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, or at *http://www.atf.treas.gov* with an online copy of Notice No. 960 and/or Notice No. 961.

FOR FURTHER INFORMATION CONTACT: Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco & Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210; e-mail *TPDevanney@atfhq.atf.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2002, ATF published two NPRMs (Notice No. 960, 67 FR 66079, and Notice No. 961, 67 FR 66083) to establish Red Hill (Oregon) and Red Hills (California), respectively, as American viticultural areas. The comment periods ended on December 30, 2002. Before the close of the comment periods, ATF received a request from Mr. Sean Carlton of Archery Summit, a winery in Dayton, Oregon, to extend the comment periods for an additional 60 days. Mr. Carlton requested the extension to allow more time to study the petitions and research the respective areas.

In consideration of the above, we find that a reopening of the comment periods is warranted.

Public Participation

See the Public Participation section of either Notice No. 960, or Notice No. 961 for detailed instructions on submitting and reviewing comments. Comments received on or before the new closing dates will be carefully considered.

We will not recognize any submitted material as confidential, and comments may be disclosed to the public. Any material that the commenter considers confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Drafting Information

Tim DeVanney of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

Both Notice No. 960 and Notice No. 961 were issued under the authority of 27 U.S.C. 205.

Signed: January 8, 2003.

Bradley A. Buckles,

Director.

[FR Doc. 03–847 Filed 1–15–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[AL–072–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposes revisions to its rules about forms and license applications. Alabama intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Alabama program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.s.t., February 18, 2003. If requested, we will hold a public hearing on the amendment on February 10, 2003. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on January 31, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Arthur W. Abbs, Director, Birmingham Field Office, at the address listed below.

You may review copies of the Alabama program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office.

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: *aabbs@osmre.gov*.

Alabama Surface Mining Commission, 1811 Second Avenue, P.O. Box 2390, Jasper, Alabama 35502–2390. Telephone: (205) 221–4130.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290–7282. Internet: *aabbs@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program on May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15, and 901.16.

II. Description of the Proposed Amendment

By letter dated October 17, 2002 (Administrative Record No. AL–0654),

Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Alabama sent the amendment at its own initiative. Below is a summary of the changes proposed by Alabama. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

A. 880–X–1B Forms

Subchapter 880–X–1B lists the forms used in the operations and organization of the Alabama Surface Mining Commission.

1. Alabama proposes to delete the following forms:

Form ASMC–3 Request for Inspection & Bond Release.

Form ASMC–17 Permit Application for Underground Mining.

Form ASMC–98 Application for Coal Exploration Permit to Remove More Than 250 Tons of Coal or Disturb More Than One-Half Acre.

Form ASMC–137 Permit Application for Coal Processing Plants.

2. Alabama proposes to change the existing descriptions of Forms ASMC–6, ASMC–16, ASMC–176, and ASMC–232 to the descriptions shown below:

Form ASMC–6 Application for Coal Mining License/Application for Annual Update of Coal Mining License/Notification of Change in Ownership or Control.

Form ASMC–16 Permit Application for a Surface Coal Mine/Permit Application for an Underground Coal Mine/Permit Application for a Preparation Facility.

Form ASMC–176 Renewal Application for a Surface Coal Mine/Renewal Application for an Underground Coal Mine/Renewal Application for a Preparation Facility.

Form ASMC–232 Transfer Application for a Surface Coal Mine/Transfer Application for an Underground Coal Mine/Transfer Application for a Preparation Facility.

3. Alabama proposes to add the following new forms to its list at 880–X–1B:

Form ASMC 254 Notice of the Filing of a Renewal Application for Surface Coal Mining Permit (To Agencies).

Form ASMC 255 Notice of the Filing of a Revision Application for Surface Coal Mining Permit (To Agencies).

Form ASMC 256 Notice of the Filing of a Revision Application for Surface Coal Mining Operations (Landowner Notice).

Form ASMC 257 Notice of Filing of a Renewal Application for Surface Coal Mining Operations (Landowner Notice).

Form ASMC 258 Statement as to Negotiability of Certificate of Deposit and Assignment (Subsidence Impacts).

Form ASMC 259 Surety Bond (Subsidence).

B. 880–X–6A–.06 License Application Requirements

Alabama is proposing to revise 880–X–6A–.06(g)2(ii) to allow public accountants to certify and sign current statements of the net worth of applicants for licenses to conduct surface coal mining operations. Currently Alabama only allows certified public accountants to certify and sign these statements. The revised provision reads as follows:

A current statement in letter form, certified by a certified public accountant or public accountant licensed to do business in the State of Alabama that the applicant has a net worth of not less than $100,000. The statement must not be ambiguous, qualified, or otherwise vague. It must state the Alabama certificate or registration number of, and be signed by the certified public accountant or public accountant.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Birmingham Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: [AL–072–FOR]" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Birmingham Field Office at (205) 290–7282.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on January 31, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

The revisions made at the initiative of the State have been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in 880–X–1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to 880–X–6A–.06.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in 880–X–1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to 880–X–6A–.06.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in 880–X–1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to 880–X–6A–.06.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in 880–X–1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to 880–X–6A–.06.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 03–975 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[KS–023–FOR]

Kansas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of an addition to a previously proposed amendment to the Kansas regulatory program and abandoned mine land reclamation (AMLR) plan (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The addition concerns

abandoned mine land (AML) agency procedures for reclamation projects receiving less than 50 percent government funding. Kansas intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments on this amendment until 4 p.m., c.s.t., January 31, 2003.

ADDRESSES: You should mail or hand deliver written comments to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Kansas program, the amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460. Internet: *jcoleman@osmre.gov.*

Kansas Department of Health and Environment, Surface Mining Section, 4033 Parkview Drive, Frontenac, Kansas 66763. Telephone: (316) 231–8540.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet: *jcoleman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kansas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kansas regulatory program on January 21, 1981. You can find background information on the Kansas regulatory program and program amendments, including the Secretary's findings, the disposition of comments, and conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5892). You can also find later actions concerning the Kansas regulatory program and program amendments at 30 CFR 916.10, 916.12, 916.15, and 916.16.

The AMLR Program was established by title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Kansas abandoned mine land reclamation plan (Kansas plan) on February 1, 1982. You can find background information on the Kansas plan, including the Secretary's findings, the disposition of comments, and the approval of the Kansas plan in the February 1, 1982, **Federal Register** (47 FR 4513). You can find later actions concerning the Kansas plan and amendments to the plan at 30 CFR 916.20 and 916.25.

II. Description of the Proposed Amendment

By e-mail dated July 24, 2002 (Administrative Record No. KS–623), Kansas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kansas sent the amendment in response to a letter dated August 23, 2000 (Administrative Record No. KS–618), that we sent to Kansas, in accordance with 30 CFR 732.17(c), concerning valid existing rights. At its own initiative, Kansas also proposed to revise other provisions in its regulations by adopting by reference portions of the Federal regulations at 30 CFR Part 700 to End that were revised as of July 1, 2001.

We announced receipt of the amendment in the September 23, 2002, **Federal Register** (67 FR 59484) and invited public comment on its adequacy. The public comment period closed October 23, 2002.

During our review of the amendment, we realized that we did not announce receipt of Kansas' proposed regulation at Kansas Administrative Regulations (K.A.R.) 47–16–12 in the proposed rule published on September 23, 2002. Therefore, we are reopening the comment period in this proposed rule. Kansas proposed to add the following new regulation concerning AML agency procedures for reclamation projects receiving less than 50 percent government funding.

K.A.R. 47–16–12. AML agency procedures for reclamation projects receiving less than 50 percent government funding. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) Consultation with the active coal mining portion of the regulatory authority. In consultation with the active mining portion of the regulatory authority, the surface mining section must make the following determinations:

(1) They must determine the likelihood of the coal being mined under an active coal mining permit. This determination must take into account available information such as:

(i) Coal reserves from existing mine maps or other sources;

(ii) Existing environmental conditions;

(iii) All prior mining activity on or adjacent to the site;

(iv) Current and historic coal production in the area; and

(v) Any known or anticipated interest in mining the site.

(2) They must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) They must determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(b) Concurrence with the active mining portion of the regulatory authority. If, after consulting with the active mining portion of the regulatory authority, it has been decided to proceed with the reclamation project, then the abandoned mine land and active mining portions of the regulatory authority must concur in the following determinations:

(1) They must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under K.A.R. 47–6–9.

(2) They must concur in the delineation of the boundaries of the AML project.

(c) Documentation. You must include in the AML case file:

(1) The determinations made under paragraphs (a) and (b) of this section;

(2) The information taken into account in making the determinations; and

(3) The names of the parties making the determinations.

(d) Special requirements. For each project, the surface mining section must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, hydrologic balance, and other aml hazards associated with the project;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of K.A.R 47–16–1 *et. seq.*;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with state procedures; and

(4) Require the contractor conducting the reclamation to provide, prior to the time reclamation begins, applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) Limitation. If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under 47–401 *et. seq.* and K.A.R. 47–1–1 *et. seq.* for such coal.

III. Public Comment Procedures

We are reopening the comment period on the Kansas program amendment to provide you an opportunity to reconsider the adequacy of the amendment. Under the provisions of 30 CFR 732.17(h) and 884.15(a), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR 732.15 and 884.14. If we approve the amendment, it will become part of the Kansas program.

Written Comments

If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (*see* **ADDRESSES**).

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: KS–023–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Mid-Continent Regional Coordinating Center at (618) 463–6460.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is proposing valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in part XXIX.E of the preamble to that rule. *See* 64 FR 70766, 70822–27, December 17, 1999. The provisions in the rule based on other counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met. These standards are also not applicable to the actual language of State and tribal abandoned mine land reclamation plans and plan amendments because each plan is drafted and promulgated by a specific State or tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or tribe are based solely on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA. Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C). Also agency decisions on proposed State and tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department

of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 15, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 03–974 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–049–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing the receipt of a proposed amendment to the Maryland regulatory program (the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Maryland proposes revisions to and additions of rules about the definition of "material damage," the definition of "replacement of water supply," survey of structures and renewable resources lands, subsidence control plans, the general requirements for hydrologic balance, the general requirements for subsidence control, surface owner protection related to subsidence control, and deep mine bonding requirements. Maryland intends to revise its program to be consistent with Federal rules promulgated by OSM as a result of the Energy Policy Act of 1992.

This document gives the times and locations that the Maryland program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. February 18, 2003. If requested, we will hold a public hearing on the amendment on February 10, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on January 31, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger at the address listed below.

You may review copies of the Maryland program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Oversight and Inspection Office.

Mr. George Rieger, Oversight and Inspection Office, Office of Surface Mining Reclamation and Enforcement, Three Parkway Center, Pittsburgh, PA 15220, 412–937–2153, *grieger@osmre.gov*.

C. Edmon Larrimore, Program Administrator, Mining Program, Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, MD 21230, 410–537–3573.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: 412–937–2153. Internet: *grieger@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Maryland Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on February 18, 1982. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Maryland program in the February 18, 1982 **Federal Register** (47 FR 7214). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15, 920.16, 920.20, and 920.25.

II. Description of the Proposed Amendment

By letter dated October 22, 2002, Maryland sent us a proposed

amendment to its program (Administrative Record No. MD–574–05) under SMCRA (30 U.S.C. 1201 *et seq.*). Maryland sent the amendment in response to Federal rules promulgated by OSM as a result of the Energy Policy Act of 1992. The proposed amendment is intended to make the Maryland program consistent with the Federal regulations. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Specifically, Maryland proposes to amend several sections of the Code of Maryland Regulations (COMAR) including sections 26.20.01.02, 26.20.02.15, 26.20.02.16, 26.20.13.05, 26.20.13.07, 26.20.13.09, and 26.20.14.13, as they relate to subsidence from underground coal mining. The proposed amendments to each section are outlined below.

26.20.01.02 Definitions

Maryland proposes to amend COMAR section 26.20.01.02(B) by adding the following definitions:

(51–1) "Material damage," in the context of COMAR 26.20.02.15 and .16 and 26.20.13.07, .09, and .10 means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

(81–1) "Replacement of water supply" means with respect to water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance cost in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If this approach is selected, written concurrence must be obtained from the water supply owner.

26.20.02.15 Survey of Structures and Renewable Resources Lands

The State proposes to amend COMAR section 26.20.02.15 by adding the following new subsection B:

B. The survey required by § A of this regulation shall contain:

(1) A map of the permit and adjacent areas at a scale of 1:12,000, or larger, if determined necessary by the Bureau, showing the location and type of:

(a) Structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and

(b) Water supplies that could be contaminated, diminished, or interrupted by subsidence;

(2) A narrative indicating whether subsidence, if it occurred could cause material damage to or diminish the value or reasonably foreseeable use of any structures or renewable resource lands or could contaminate, diminish, or interrupt any water supplies; and

(3) A survey of the quantity and quality of all water supplies in accordance with COMAR 26.20.13.07E.

Because a new subsection B is proposed, the State also proposes to change the current subsection B to subsection C and proposes additional amendments to the current subsection B. The current subsection B reads as follows:

B. If the survey shows that these structures or renewable resource lands do not exist, or material damage or diminution could not be caused in the event of mine subsidence, and if the Bureau agrees with the conclusion, further information need not be provided in the application under this regulation.

If we approve the proposed changes, the amended subsection would read:

C. If the survey under section A of this regulation shows that no structures, water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, or interruption of such water supplies would occur as a result of mine subsidence, and if the Bureau agrees with the conclusion, further information need not be provided in the application under this regulation.

Finally, the current subsection C would be changed to subsection D and amended. The current subsection C states:

C. If the survey shows these structures or renewable resource lands exist, and that subsidence could cause material damage or diminution of the value or foreseeable use of the land, or if the Bureau determines that the damage or diminution could occur, the application shall contain a subsidence control plan in accordance with Regulation .16 of this chapter.

If we approve the proposed changes, the amended language would read:

D. If the survey, under sections A and B of this regulation shows that structures or renewable resource lands, or water supplies exist, and that subsidence could cause material damage or diminution of the value or reasonably foreseeable use of such structures or lands, or contamination, diminution, or interruption of water supplies, or if the Bureau determines that the damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application shall contain a subsidence control plan in accordance with Regulation .16 of this chapter.

26.20.02.16 Subsidence Control Plan

Section 26.20.02.16 sets forth what shall be included in a subsidence control plan, if one is required. Maryland proposes to add an additional subsidence control plan requirement to this section:

E. A description of the measures to be taken in accordance with Environment Article, § 15–608(b), COMAR 26.20.13.05C, and COMAR 26.20.13.09 to replace adversely affected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures; and

If we approve the proposed amendment, the current subsection E would become subsection F, but otherwise would remain unchanged.

26.20.13.05 Hydrologic Balance: General Requirements

This section currently has two subsections, A and B. The State proposes to amend this section by adding new subsections A and D and by changing the current subsections A and B to B and C, respectively. Should we approve the proposed amendment, the current subsections A and B would otherwise remain unchanged. The proposed subsections A and D state:

A. As used in this regulation, an owner of interest in real property shall include a renter, tenant, or a lessee of real property.

D. The permittee shall promptly replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source that is contaminated, diminished, or interrupted by underground mining activities.

26.20.13.07 Subsidence Control: General Requirements

Maryland proposes to make several changes to COMAR section 26.20.13.07. First, two changes are proposed for subsection A. Subsection A currently reads as follows:

A. Underground mining activities shall be planned and conducted so as to prevent subsidence from causing material damage to the surface, to the extent technologically and economically feasible, and so as to maintain the value and reasonably foreseeable use of surface lands. This may be accomplished by leaving adequate coal in place, backfilling, or other measures to support the surface, or by conducting underground mining in a manner that provides for planned and controlled subsidence. This may not be construed to prohibit the standard method of room and pillar mining.

The State proposes to remove the phrase "to the surface" from the first sentence in the above quoted regulation and also to remove the final sentence, "[t]his may not be construed to prohibit the standard method of room and pillar mining," from the regulation.

Second, the State proposes to add new paragraphs B and C to COMAR 26.20.13.07. The proposed paragraphs are quoted below:

B. Underground mining activities that employ mining technology that provides for planned subsidence in a predictable and controlled manner must utilize necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to all structures, except that measures required to minimize material damage to such structures are not required if:

(1) The permittee has the written consent of the owners of the structures; or

(2) The cost of such measures exceeds the anticipated costs of repair, unless the anticipated damage would constitute a threat to health or safety.

C. Nothing in this regulation prohibits the standard method of room-and-pillar mining.

Third, Maryland proposes to change the existing subsection B to subsection D. The current subsection B states that "[t]he person engaged in underground mining activities shall comply with all provisions of the subsidence control plan prepared and approved by the Bureau." If we approve the proposed changes, the new subsection D would state, "[t]he person engaged in underground mining activities shall comply with all provisions of the approved subsidence control plan prepared and approved by the Bureau in accordance with COMAR 26.20.02.16."

Finally, a new subsection E is proposed. The language of the proposed subsection is quoted below:

E. Presubsidence Surveys of Water Supplies.

(1) Each application for a permit shall contain a survey of the condition of the quantity and quality of all water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence.

(2) The applicant or permittee shall pay for any survey technical assessment or engineering evaluation used to determine the quantity and quality of any water supplies. A copy of the survey and any technical assessment or engineering evaluation shall be provided to the property owner and the Bureau.

26.20.13.09 Subsidence Control: Surface Owner Protection

Maryland regulations at COMAR section 26.20.13.09 currently consist of subsections A, B, and C. No changes are proposed for subsections A, B, or C; however, the State proposes to add subsection D:

D. In determining whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the Bureau.

26.20.14.13 Deep Mine Bonding Requirements

COMAR section 26.20.14.13 currently contains subsections A, B, and C. No changes are proposed for these subsections; however, the State proposes to add a new subsection D:

D. When subsidence-related material damage to land, structures or facilities protected under COMAR 26.20.13.09 occurs, or when contamination, diminution, or interruption to a water supply protected under COMAR 26.20.13.05C occurs, the Bureau shall require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the water supply if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The Bureau may extend the requirement to post bond beyond 90 days, but not to exceed one year, if the permittee demonstrates and the Bureau finds, in writing, that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that it would be unreasonable to complete the repair of the subsidence-related material damage to land or protected structures, or the replacement of protected water supply within 90 days.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Oversight and Inspection Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. MD–049–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Oversight and Inspection Office at 412–937–2153.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on January 31, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under

FOR FURTHER INFORMATION CONTACT. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C)Of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act .

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 6, 2002.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–979 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–05–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003–3; Order No. 1358]

Periodic Reporting Rules

AGENCY: Postal Rate Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes updating periodic reporting rules affecting certain Postal Service data submissions. This update entails deleting certain outdated requirements and adding new requirements, including an electronic filing requirement. These changes should improve the ability of the Commission and others to analyze postal finances and operating results.

DATES: Initial comments are due by February 10, 2003; reply comments are due by February 25, 2003.

ADDRESSES: Submit comments electronically via the Comission's Filing Online system, which may be accessed at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTATY INFORMATION: The Commission's periodic reporting rules (39 CFR 3001.102) require the Postal Service to provide certain products of its standard data reporting systems to the Commission. Generally, the reports required are the basic reports that the Postal Service routinely compiles to provide management with the means to monitor the Postal Service's financial condition and operating results. The information provided under the periodic reporting rules helps the Commission evaluate the cost, volume, and revenue projections that form the basis for the Commission's rate and classification recommendations pursuant to 39 U.S.C. 3624. It also enables the Commission to anticipate future trends in these areas, and to maintain the forecasting models that it employs in rate cases.

Most of the periodic reporting rules date back at least to the mid-1980s. The Postal Service's standard data reports have changed in important ways since then. There is a need to update the periodic reporting rules to reflect these changes. There is also a need to make the information provided more complete, so that trends in operating results can be better analyzed and evaluated. Finally, there is a need to make the material provided easier to use, by obtaining it in an electronic format.

Proposed Deletions From List of Required Reports

The Commission proposes to eliminate certain reports from the list of those that the Postal Service must provide under the periodic reporting rules. The Commission proposes to eliminate investment income statements, which the Postal Service must provide under current rule 102(b)(3). With the advent of the Postal Service's cash management plan in FY 1995, investment income has become a minor component of total revenues. Once as high as $400 million per year, it had dwindled to $35 million by FY 2001. As a result, investment income reports are not routinely needed.

Current rule 102(c)(1) requires the Postal Service to provide the Commission with cash flow statements. Cash flow statements, however, are now provided in the Summary Financial and Operating Statements, which the Postal Service files each accounting period with the Commission. Consequently, the Commission proposes to remove cash flow statements from the list of reports that must be periodically provided.

Proposed Additions to List of Annual Reports

The Integrated Financial Plan is a document that is presented to the Governors, in public session, every year. It includes the financial operating plan (operating budget), the capital investment plan, and the capital financing plan for the coming fiscal year. The Commission proposes to add it to the list of annual reports required under proposed rule 102(a).

The Integrated Financial Plan was filed as a library reference in the most recent fully litigated rate proceeding. (LR–I–489 in Docket No. R2000–1.) As the fiscal year progresses, the Postal Service typically compares its actual operating results with the results that were projected in its Integrated Financial Plan. Making the Integrated Financial Plan available to the Commission annually will enable the Commission to better understand financial developments as they unfold during the year. It will inform the Commission of the assumptions on which the Postal Service's financial plan is based. Comparing and contrasting those assumptions with actual results would give the Commission an additional tool for evaluating the accuracy of the revenue requirement information on which rate recommendations are based.

Proposed Revisions to Annual Reports

Current rule 102(a)(1) requires the Postal Service to provide the Commission each year with the Cost and Revenue Analysis Report (CRA), the portion of the LIOCATT used to produce the CRA, and transportation workpapers 31 and 57. The objective of the rule is to provide the Commission with an annual update of the cost information upon which the most recent recommended rates were based. The current rule, however, reflects cost attribution methods in use prior to 1987. Since then, there have been major changes in the methods that the Postal Service and the Commission use to attribute costs. The CRA documentation required under the rule needs to be updated to reflect those changes.

Attributable mail processing costs, for example, are no longer distributed to subclasses using the LIOCATT. Their distribution is now based on MODS pools and a complex set of shape, item, and container-based proxy rules. The Commission needs workpapers that show how these rules have been applied to interim-year data, in order to evaluate developments in mail processing costs between rate proceedings.

To adequately track cost developments in interim years, to see where they differ from cost projections that underlie its rate recommendations, and to identify the sources of the difference, the Commission needs a comprehensive set of spreadsheet workpapers that show the calculation of attributable costs by cost component. The documentation required is the equivalent of the "B" workpapers that the Postal Service provides in a general rate proceeding. To evaluate developments in Segment 3 costs, for example, the Commission needs the equivalent of Library Reference J–55 that the Postal Service provided in Docket No. R2001–1. The Commission also needs the updated factors and data from the data systems on which the "B" workpapers are based, including the In-Office Cost System (IOCS), the Management Operating Data System (MODS), the City Carrier Cost System (CCCS), the Rural Carrier Cost System (RCCS), and the Rural Mail Count. To evaluate developments in Segment 3 costs, the Commission needs the equivalent of Library Reference J–10 that the Postal Service provided in Docket No. R2001–1. Similarly, to evaluate Segment 7 costs, the Commission needs the equivalent of

Library Reference J–12 that the Postal Service provided in Docket No. R2001–1 (specifically, the data contained in the "Z" file).

The Commission needs this level of documentation for both the CRA–PRC Version and the CRA–USPS Version. Since rule 102(a)(1) was last revised, significant differences have emerged in Cost Segments 3 and 7 between the attribution methods that the Postal Service advocates, and those that the Commission applies. In rate cases, in order to comply with the Commission's filing rules, the Postal Service typically provides a version of the CRA that is consistent with its preferred methods, and one that is consistent with the methods last approved by the Commission. In addition, as part of its reporting duties under rule 103, the Postal Service each March 15 provides a domestic CRA calculated according to the Commission's attribution methods. The CRA–PRC Version that the Postal Service provides contains detailed documentation for Cost Segments 3, 6, and 7 (the equivalent of the "B" workpapers for those segments).[1] Rule 103 requires the Postal Service to follow this up with an audited CRA–PRC Version when it becomes available. The Postal Service's current practice is to meet this obligation by providing an audited domestic CRA that is calculated according to its preferred attribution methods.

The Commission is primarily interested in obtaining a CRA–PRC Version, since it typically provides the cost basis for recommended rates. It should be audited in the sense that it is based on audited accrued costs, and should include any corrections to the various factors (such as equipment and maintenance facility factors) that are made to the audited CRA–USPS Version. The Commission's experience under rule 103, however, confirms the value of having a CRA–USPS Version to compare it with. The estimates produced by the two versions of the CRA have a predictable historical relationship that can be used to test their accuracy. Accordingly, proposed rule 102(a) requires that the Postal Service provide both versions of the CRA. The audited CRA–USPS Version should be provided within two weeks of its presentation for use by postal management. The final, corrected CRA–PRC Version should be filed within two weeks of the filing of the audited CRA–USPS Version. If the CRA is prepared and presented to postal management more frequently than annually, it should be provided under rule 102 with the same frequency.

Under current costing methods, documentation of the CRA should include, but not be limited to, the following:

(1) Spreadsheets supporting the CRA. (The "B" workpapers found in USPS–LR–J–57 in Docket No. R2001–1.)

(2) The CRA Model. (Filed as UPSP–LR–J–6 in Docket No. R2001–1.)

(3) Output data file and a description of the file structure for the In-Office Cost System (IOCS). (Found in USPS–LR–J–10 in Docket No. R2001–1.)

(4) The MODS-based costing spreadsheets, and SAS mail processing attribution and distribution programs needed to produce output for the "B" workpapers. (USPS–LR–J–55 in Docket No. R2001–1.)

(5) Spreadsheets that develop equipment and facility-related costs. (USPS–LR–J–54 in Docket No. R2001–1.)

(6) Output data file and a description of the file structure for the City Carrier Cost System (CCCS). (The "Z" file, found in USPS–LR–J–12 in Docket No. R2001–1.)

(7) Supporting material, including spreadsheets, programs, and documentation for load time variabilities.

(8) The underlying route-type data needed to produce the in-office worksheets in the "B" workpapers.

(9) Ouput data file and a description of the file structure for the Rural Carrier Cost System (RCCS), and the Rural Mail Count. (USPS–LR–J–71 in Docket No. R2001–1.)

(10) The fiscal-year reconciliation of statement of revenue and expenses to audited financial statements and reallocation of expenses by component. (USPS–LR–J–8 in Docket No. R2001–1.)

(11) Transportation workpapers 31 and 57.

The Postal Service typically prepares all of this documentation as support for its base-year costs in rate cases. It also produces most of it routinely each year, either in the preparation of the CRA–USPS Version, or in the preparation of the material required by rule 103. Therefore, the revisions that the Commission proposes to rule 102(a)(1) should not impose a significant additional burden on the Postal Service.

Format of Reports

The CRA and Cost Segments and Components report and the underlying data have been provided electronically in omnibus rate filings. *See* USPS–LR–I–6 in Docket No. R2001–1. The Postal Service, however, does not provide them in electronic form when submitting them as filings under rule 102. In order to better search, archive, and manipulate these submissions, the Commission undergoes a cumbersome and time consuming process of manually converting them from hard copy to electronic form. This burden is unnecessary, since all of these materials originate in electronic form. For this reason, the Commission's proposed revisions to rule 102 include a requirement that rule 102 reports be submitted as electronic files that can be read by publicly available PC software. Output files should be submitted in a form that can be read by a PC-based text editor, or that uses commercially available spreadsheet software. If a processing program was developed specifically to produce a workpaper that accompanies a report, that program must be provided in a form that can be executed by publicly available PC software.[2]

It appears that most, if not all, of the material required by rule 102 can be presented in this form without undue burden. Most of this material consists of output of data systems and programs that can be presented in an ASCII flat file with an accompanying description of the file format. This will satisfy the requirement. This is the format in which the Postal Service provides the cost matrix that it uses to develop its Base Year CRA and the cost matrices that it uses in its roll-forward model in omnibus rate cases. Many of these reports are prepared using the standard mainframe SAS statistical language. With minor additional effort, the Postal Service can convert them to a PC-readable format. Even though the Postal Service's accounting system uses a mainframe-based computing language, the Commission sees no current need to be able to manipulate the Postal Service's accounting information. These systems need not be affected by the proposed format requirement as long as the output of these systems is submitted in an ASCII flat file form. Under the proposed rule, it would not be necessary for the Postal Service to submit existing COBOL programs for the IOCS, the CRA Model, or for other reports that are COBOL based in a PC executable format. Nor would it be necessary to submit existing processing programs for the CCCS, the RCCS, or the RPW in that format. It would, however, be necessary

[1] The Postal Service does not annually provide a CRA–PRC Version that documents the remaining cost segments in as much detail, but its data and reporting systems are set up in a way that allows it to do so with minor additional effort.

[2] Requiring material submitted under rule 102 to be in electronic form will bring rule 102 into general conformity with the Commission's decision to make electronic filing the standard method of filing documents with the Commission. *See* Order No. 1349, issued October 21, 2002.

to submit in the required format the processing programs that calculate and distribute attributable mail processing costs.

If the Postal Service foresees substantial obstacles to complying with this proposed format requirement, it is urged to request a conference with the Commission's technical staff to explore the nature of these obstacles and ways to overcome them prior to the adoption of a final amended rule 102.

Billing Determinants

Current rule 102(a)(10) requires the Postal Service to provide the Commission with billing determinants within two weeks of providing them for use by postal management. Recently, the delay in the provision of billing determinants in response to the rule has been considerable. Since FY 1995, it has ranged from nine to 16 months after the close of the fiscal year. The current rule allows the Postal Service to delay the filing of billing determinant information for Express Mail, Priority Mail, and parcel post for up to one year from the time that it provides billing determinants for other categories of mail. Consequently, billing determinants for Express, Priority, and parcel post mail have been from 21 to 28 months out of date at the time they were provided. The Commission believes that it would be useful to reexamine the rationale for the current rule whose effect is to allow billing determinants for these three categories of mail to be well over two years out of date when submitted. As a starting point for that reexamination, the Commission proposes to revise rule 102(a)(10) to require the Postal Service to submit billing determinants for these three mail categories no later than 12 months after the close of the fiscal year.

Comments on the revisions to rule 102 proposed in this notice should be submitted on or before February 10, 2003, and any reply comments by February 25, 2003.

It is ordered:

1. Interested persons are invited to submit comments on the Commission's notice of proposed rulemaking on or before February 10, 2003. Any reply comments should be submitted by February 25, 2003.

2. The Secretary shall cause this notice of proposed rulemaking to be published in the **Federal Register**.

Issued January 8, 2003.

By the Commission.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons stated in the accompanying Order, the Commission proposes the following amendments to 39 CFR part 3001.

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24; 3661; 3662; 3663.

Subpart G—Rules Applicable to the Filing of Reports by the U.S. Postal Service

2. Revise § 3001.102 to read as follows:

§ 3001.102 Filing of reports.

Each report listed in this section shall be filed with the Secretary of the Commission within two weeks of its presentation for use by postal management, unless otherwise noted. Each report should be provided in a form that can be read by publicly available PC software. A processing program that was developed specifically to produce an accompanying workpaper must be provided in a form that can be executed by publicly available PC software. COBOL processing programs in use prior to FY 2003 are exempt from this requirement. The reports and information required to be provided by this subpart need not include matters that are exempt from disclosure by law. Whenever a specific source is cited in this section, that citation includes any successor or substituted source.

(a) *Annual reports.* The following information will be filed by the Postal Service annually. If it is presented for use by postal management at more frequent intervals, it shall be filed at those intervals:

(1) All input data, all processing programs that have changed since the most recently completed general rate proceeding, and all computer programs used to attribute mail processing costs to subclasses, if they are used to produce the Cost and Revenue Analysis Report (CRA). Each change in attribution principles or methods from the previous report will be identified. The Postal Service shall submit a CRA–USPS Version, followed within two weeks by a CRA–PRC Version. Documentation of the CRA shall include, but not be limited to, the following:

(i) Spreadsheet workpapers underlying the development of segment costs by cost component. These workpapers should include all of the updated factors and data from the supporting data systems used, including the In-Office Cost System (IOCS), the Management Operating Data System (MODS), the City Carrier Cost System (CCCS), the Rural Carrier Cost System (RCCS), and the Rural Mail Count.

(ii) Cost segments and components reconciliation to financial statements and account reallocations.

(2) Cost Segments and Components Report. Documentation shall include, but not be limited to, the following:

(i) The Manual Input Requirement, the "A" report, and the "B" report;

(ii) The control string commands for the "A" report, the "B" report (including the PESSA factor calculations), and the "C" report;

(iii) The master list of cost segment components, including the components used as distribution keys in the development of the "B" report and the "C" report.

(3) City delivery information, including the number of routes by type, the number of possible deliveries by type, the number of collection boxes, and the number of businesses served (120 days from the close of the fiscal year).

(4) Rural carrier information, including the number of routes by type and miles, stops, boxes served, and mail pieces by route type (120 days from the close of the fiscal year).

(5) Civil Service Retirement Fund Deficit Report (two weeks after release of the Annual Report of the Postmaster General).

(6) Worker's Compensation Report, including summary workpapers (two weeks after release of the Annual Report of the Postmaster General).

(7) Annual Report of the Postmaster General.

(8) Congressional Budget Submission, including workpapers. The Postal Service will also file concurrently Summary Tables SE 1, 2, and 6 (coinciding with their submission to Congress).

(9) Audit Adjustment Vouchers, if any.

(10) Billing Determinants, at the level of detail employed in the most recent formal request for a change in rates or fees. The provision of billing determinants for Express Mail, Priority Mail, and parcel post may be delayed up to 12 months from the close of the fiscal year to which they apply.

(11) USPS Integrated Financial Plan.

(b) *Quarterly reports.* The following information will be filed by the Postal Service quarterly:

(1) Revenue, Pieces, and Weight, by rate category and special service.

(2) Origin/Destination Information Report National Service Index.

(c) *Accounting period reports.* The following information will be filed by the Postal Service each accounting period:

(1) Summary Financial and Operating Report.

(2) National Consolidated Trial Balances and the Revenue and Expense Summary.

(3) National Payroll Hours Summary.

(4) On-Roll and Paid Employee Statistics (OPRES).

(5) Postal Service Active Employee Statistical Summary (HAT report).

(d) *Miscellaneous reports.* The following information will be filed by the Postal Service:

(1) Before/After Pay Increase Reports.

(2) Before/After COLA Cost Reports.

(3) A master list of publications and handbooks including those related to internal information procedures, when changed.

(4) Data collection forms and corresponding training handbooks, when changed.

(5) Notice of changes in data reporting systems, 90 days before those changes are implemented.

[FR Doc. 03–841 Filed 1–15–03; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–69–1–9940b; FRL –7439–1]

Approval and Promulgation of Implementation Plans Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revisions to the Florida State Implementation Plan (SIP) submitted on July 22, 1996, by the State of Florida through the Florida Department of Environmental Protection (FDEP). These revisions to rules 62–296.412 and 62–296.511, which update the applicable requirements for perchloroethylene dry cleaners and halogenated solvent degreasing facilities to achieve compliance with regulations, are being made to keep the EPA approved SIP consistent with the Florida regulations.

In the Final Rules Section of this **Federal Register**, the EPA is approving Florida's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before February 18, 2003.

ADDRESSES: All comments should be addressed to Heidi LeSane at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane at 404/562–9035 (E-mail: *lesean.heidi@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 3, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–857 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 137–3093b; FRL–7436–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Motor Vehicle Inspection and Maintenance Program—Request for Delay in the Incorporation of On-Board Diagnostics Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. The purpose of this SIP is to request a six-month extension of the Federal deadline for incorporating checks of On-board Diagnostic (OBD) systems on 1996-and-newer vehicles to Maryland's motor vehicle inspection and maintenance (I/M) program. EPA's I/M requirements regulations required states to add OBD checks to their I/M programs by January 1, 2002. However, states had the option to submit a request to EPA for a delay, of up to one additional year, of the deadline to add OBD system checks to the I/M program. Maryland's SIP revision contains a request for a six-month delay, or until July 1, 2002.

In the Final Rules section of this **Federal Register**, EPA is approving Maryland's SIP request as a direct final rule without prior proposal because the Agency views this as a noncontroversial request and anticipates no adverse comments. A more detailed description of Maryland's request and a detailed rationale for EPA's granting of the requested deadline extension is set forth in the direct final rule.

If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 18, 2003.

ADDRESSES: Written comments should be addressed to Robert Kramer, Acting Chief, Air Quality Planning and Information Services, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. These documents are also available from the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Janet C. Kremer, (215) 814–2147, or by e-mail at *kremer.janet@epa.gov*. Please note that while questions may be posed

via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 23, 2002.

Judith M. Katz,

Acting Regional Administrator, Region III.

[FR Doc. 03–854 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH155–1b; FRL–7425–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve, through direct final procedure, oxides of nitrogen (NO_X) rules including an allowance trading program submitted by the Ohio Environmental Protection Agency (Ohio EPA). The implementation plan affects electric generating units (EGUs), non-EGUs and portland cement plants, and was submitted in a letter from the Ohio EPA Director on July 11, 2002, following required public process. The intent of Ohio's action is to satisfy a Federal requirement to develop a plan to control emissions from these categories of sources in order to meet the emissions budget established by USEPA for Ohio during the summer-time ozone control period. USEPA is approving this plan with the understanding that Ohio will make the minor revision to the date in Ohio's rule by which flow control will be triggered. Flow control affects all States in the trading program, and the date by which it is triggered, 2005, must be consistent for all 19 States.

In the final rules section of this **Federal Register**, USEPA is approving the State Implementation Plan (SIP) for NO_X as a direct final rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comments. If no written adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives meaningful written adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. Any party interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by February 18, 2003.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Ohio EPA request for revision to the SIP is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" are used we mean the USEPA.

I. What Actions Are USEPA Taking Today?
II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

I. What Actions Are USEPA Taking Today?

The USEPA is proposing to approve a revision to the Ohio SIP submitted by the State which demonstrates the Ohio EPA plan will enable affected sources in the State to reduce emissions of NO_X in order for the State to meet the NO_X emissions budget. USEPA is making the approval with the understanding that Ohio will change the year that flow control will be triggered to 2005, from 2006 currently in Ohio's rule.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 4201–7601q.

Dated: December 13, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–961 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 258, 260, 261, 264, 265, 266, 270, 271, and 279

[FRL–7439–9]

RIN 2050—AE41

Waste Management System; Testing and Monitoring Activities; Reopening of Comment Period for the Proposed Methods Innovation Rule (MIR)

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending by an additional 60 days the comment period on its proposed rule (October 30, 2002 at 67 FR 66251) titled Methods Innovation Rule (MIR) and Notice of Data Availability that announced the availability of the new RCRA Waste Sampling Draft Technical Guidance. The original comment period announced in the proposal and notice was scheduled to end on December 30, 2002. Today's notice further extends the comment period on the proposed Methods Innovation Rule and RCRA Waste Draft Technical Guidance until February 28, 2003.

DATES: Written comments on the proposed MIR, or RCRA Waste Sampling Draft Technical Guidance must be submitted on or before February 28, 2003. Comments postmarked after the close of the comment period will be stamped "late" and may or may not be considered by the Agency.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number to: EPA Docket Center (EPA/DC), Office of Solid Waste (5305T), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may also be submitted electronically to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by the docket number Docket ID No. RCRA–2002–0025. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. You may view and download from the Internet the proposed rule and selected support materials at *http://www.epa.gov/epaoswer/hazwaste/test/sw846.htm*. Update IIIB of SW–846 can also be accessed on-line at *http://epa.gov/epaoswer/hazwaste/test/up3b.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically.

Once in the system, select "search," then key in the appropriate docket identification number. You may also view and download docket information from the Internet at: *http://www.epa.gov/SW–846*.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: Regina Magbie, RCRA CBI Document Control Officer, EPA Office of Solid Waste, 2800 Crystal Drive, 7th Floor , Cube 16, Washington, DC 22202. Public comments and supporting materials are available for viewing in the EPA Docket Center, located at 1301 Constitution Ave, NW Room B102, Washington, DC 20460. The RIC is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0270. The public may copy a maximum of 266 pages from any regulatory document at no cost. Additional copies over 266 pages will cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Kim Kirkland (5307W), Office of Solid Waste, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, SW., Washington, DC 20460, (703) 308–8885, *kirkland.kim@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 30, 2002 (67 FR 210), EPA proposed to amend a variety of testing and monitoring requirements throughout the Resource Conservation and Recovery Act (RCRA) regulations. As noted in the proposal, the Agency wants to allow more flexibility when conducting RCRA-related sampling and analysis, by removing unnecessary required uses of methods found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW–846," and only retaining the requirement to use SW–846 methods when the method is the only one capable of measuring a particular property (*i.e.*, it is used to measure a required method-defined parameter). This is an important step towards a performance-based measurement system (PBMS), as part of the Agency's efforts towards Innovating for Better Environmental Results. In addition, we proposed to: Withdraw the reactivity method guidelines from SW–846 Chapter Seven; amend the ignitability and corrosivity hazardous waste characteristic regulations by clarifying the use of certain methods; incorporate by reference Update IIIB to SW–846; add Method 25A for analyses conducted in support of certain RCRA air emission standards; and remove a confidence limit requirement for certain feedstream analyses conducted under the National Emission Standards for Hazardous Air Pollutants (NESHAP). Simultaneously, the Agency also announced the availability of a new guidance document for public comment entitled "RCRA Waste Sampling Draft Technical Guidance." The Agency believes the new guidance when used should make it easier and more cost effective to comply with affected regulations, without compromising human health or environmental protection. By extending the comment period to February 28, 2003, we are accommodating a request by several parties for additional time to prepare extensive relevant comments.

Dated: January 8, 2003.

Robert Springer,

Director of the Office of Solid Waste and Emergency Response.

[FR Doc. 03–957 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7438–7]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the ATSF Clovis Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the ATSF Clovis Superfund Site (Site), located in Curry County, Clovis New Mexico, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New Mexico, through the New Mexico Environment Department (NMED), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of deletion of the ATSF Clovis Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final

deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by February 18, 2003.

ADDRESSES: Written comments should be addressed to: Beverly Negri, Community Involvement Coordinator, U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8157 or 1–800–533–3508 (*negri.beverly@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Petra Sanchez, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LT), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6686 or 1–800–533–3508 (*sanchez.petra@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information, see the Direct final notice of deletion which is located in the Rules section of this **Federal Register**.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 12D13, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 a.m. to 4:30 p.m.; Clovis-Carver Public Library, 701 N. Main Street, Clovis, New Mexico, 88101 (505) 769–7840 Monday through Thursday 8 a.m. to 9 p.m. Friday and Saturday, 8:30 a.m. to 5 p.m.; New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, Monday through Friday, 8 a.m. to 5 p.m. Contact: Mr. George Schuman (505) 827–2911.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: December 23, 2002.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. 03–734 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[CS Docket No. 97–80; PP Docket No. 00–67; FCC 03–3]

Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: This document initiates a rulemaking seeking public comment on a memorandum of understanding reached among members of the cable television and consumer electronics manufacturing industries on a cable compatibility standard for an integrated, unidirectional digital cable television receiver.

DATES: Comments due March 28, 2003; reply comments are due April 28, 2003. Written comments on the proposed information collection(s) must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before March 17, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. For further filing instructions, *see* **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susan Mort, 202–418–1043 or *smort@fcc.gov*. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's further notice of proposed rulemaking ("FNPRM"), FCC 03–3, adopted January 7, 2003; released January 10, 2003. The full text of the Commission's FNPRM, including the memorandum of understanding referenced herein, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, Qualex International, (202) 863–2893, Portals II, Room CY–B402, 445 12th St., SW, Washington, DC 20554, or may be reviewed via Internet at *http://www.fcc.gov/mb.*

Initial Paperwork Reduction Act of 1995 Analysis

This FNPRM contains proposed information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this FNPRM, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB notification of action is due March 17, 2003. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1—C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov.*

OMB Control Number: 3060–[XXXX].

Title: Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment, FNPRM, CS Docket No. 97–80 and PP Docket No. 00–67.

Form Number: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 554.

Estimated Time per Response: 30 seconds.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 36,667 hours.

Total Annual Costs: None.

Needs and Uses: The FNPRM seeks comment on two proposed information collections. The first is a voluntary labeling regime for unidirectional digital cable television receivers and related digital cable products. The proposed regime would prevent consumer electronics manufacturers from labeling or marketing products as "digital cable compatible" (or an alternative term to be established) unless they meet certain specified technical standards ensuring their compatibility with digital cable systems. Pursuant to the second information collection, consumer electronics manufacturers would be required to provide consumers with appropriate post-sale material, such as an owner's guide, describing the features and functionality of the product. We estimate that the total labeling and consumer disclosure burden for collections of information under the proposed rules is 36,667 hours.

Synopsis of the Further Notice of Proposed Rulemaking

1. The Commission initiated its Commercial Availability of Navigation Devices proceeding by notice of proposed rulemaking in CS Docket No. 97–80 (FCC 97–53), 62 FR 10011, March 5, 1997, and later issued a further notice of proposed rulemaking and declaratory ruling (FCC 00–341), 65 FR 58255, September 28, 2000. In its Compatibility Between Cable Systems and Consumer Electronics Equipment proceeding, the Commission adopted a notice of proposed rulemaking in PP Docket No. 00–67 (FCC 00–137), 65 FR 24671, April 27, 2000. In connection with the ongoing digital television ("DTV") transition, certain commenters in these proceedings have expressed the need for adoption of a standard to ensure the compatibility of cable television systems with DTV receivers and related consumer electronics equipment. To this end, the consumer electronics and cable industries are engaged in ongoing inter-industry discussions seeking to establish a so-called "cable plug and play" standard. Such a standard would allow consumers to directly attach their DTV receivers to cable systems and receive cable television services without the need for an external navigation device.

2. On December 19, 2002, the members of this discussion group, headed by the Consumer Electronics Association ("CEA") and the National Cable and Telecommunications Association ("NCTA"), filed with the Commission a memorandum of understanding ("MOU") which details an agreement on a cable compatibility standard for an integrated, unidirectional digital cable television receiver, as well as other unidirectional digital cable products. NCTA and CEA assert that unidirectional digital cable television receivers manufactured pursuant to the MOU would be capable of receiving analog basic, digital basic and digital premium cable television programming by direct connection to a cable system providing digital programming. The receivers would have a Digital Visual Interface ("DVI") connector with High-Bandwidth Digital Content Protection ("HDCP") to connect with other consumer electronics devices. The MOU also calls for such receivers to contain a point of deployment ("POD") interface slot into which a POD module provided by the cable operator would be inserted in order to view encrypted programming. Due to the unidirectional nature of this receiver specification, an external navigation device will still be needed to receive advanced features such as cable operator-enhanced electronic programming guides ("EPGs"), impulse pay per view ("IPPV") or video on demand ("VOD"). The MOU indicates that the discussion group continues to work on a bidirectional receiver specification which would eliminate the need for an external navigation device to receive advanced services.

3. The compromise reached in the MOU, as detailed in the FNPRM, requires, *inter alia*, the consumer electronics and cable television industries to commit to certain voluntary acts and seeks the creation or revision of Commission rules in the following general areas:

(1) Requiring digital cable systems with an activated channel capacity of 750 MHz or greater to support operation of unidirectional digital cable products and to ensure that navigation devices utilized in connection with such systems have an IEEE 1394 interface and comply with specified technical standards;

(2) Establishing a labeling regime for unidirectional digital cable television receivers and related digital cable products that meet certain technical specifications that would be voluntarily used by consumer electronics manufacturers. This regime would include testing and self-certification standards, as well as consumer information disclosures to purchasers of such receivers and products;

(3) Prohibiting the use of selectable output controls by all multichannel video programming providers ("MVPDs"); and

(4) Adopting encoding rules for audiovisual content applicable to all MVPDs.

4. We hereby seek comment on the MOU and the proposed Commission rules contained therein. We also seek comment on the potential impact of the MOU and its proposed rules upon consumers, content providers, small cable operators and MVPDs other than cable operators, as well as the jurisdictional basis for Commission action in this area, including the creation of encoding rules for audiovisual content provided by MVPDs. As to issues not addressed by the MOU, such as the down-resolution of programming, we seek comment on whether Commission action is needed and authorized. We also seek comment on any other issues germane to the Commission's consideration of the MOU and these proposed rules.

5. *Authority.* This FNPRM is issued pursuant to authority contained in sections 1, 4(i), 4(j), 303, 403, 601, 624A and 629 of the Communications Act of 1934, as amended.

6. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. *See* generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

7. *Accessibility Information.* Accessible formats of this FNPRM (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov.*

8. *Comment Information.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 28, 2003, and reply comments on or before April 28, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this

proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

10. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this FNPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the FNPRM, and they should have a separate and distinct heading designating them as responses to the IRFA.

Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") the Commission has prepared this initial regulatory flexibility analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this further notice of proposed rulemaking ("FNPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided above in paragraph 8. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

12. *Need for, and Objectives of, the Proposed Rules.* The need for FCC regulation in this area derives from the lack of a so-called cable compatibility "plug and play" standard for a digital cable television receiver and related digital cable television consumer electronics equipment. The absence of such a standard has been identified as a key impediment to the anticipated rate and scope of the transition to digital television ("DTV"). Such a standard would allow consumers to directly attach their DTV receivers to cable systems and receive certain cable television services without the need for an external navigation device. Since more than 60 percent of television households subscribe to cable programming services, the availability of digital cable television receivers and products would encourage more consumers to convert to DTV, thereby furthering the transition. Private industry negotiations between cable operators and consumer electronics manufacturers have resulted in a Memorandum of Understanding ("MOU") on a cable compatibility standard for an integrated, unidirectional digital cable television receiver, as well as for other unidirectional digital cable products. The MOU requires the consumer electronics and cable television industries to each commit to certain voluntary acts and seeks the creation or revision of certain relevant Commission rules. The objective of the proposed rules, as embodied in the MOU, will be to facilitate the DTV transition.

13. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 303, 403, 601, 624A and 629 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 303, 403, 521, 544a and 549.

14. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity" under section 3 of the Small Business Act. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

15. *Television Broadcasting.* The proposed rules and policies could affect television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Television broadcasting consists of establishments primarily engaged in broadcasting images together with sound, including the production or transmission of visual programming which is broadcast to the public on a predetermined schedule. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce programming in their own studios. Separate establishments primarily engaged in producing programming are classified under other NAICS numbers.

16. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,686 operating television broadcasting stations in the nation as of September 2001. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, the new rules could affect approximately 1,686 television stations; approximately 77%, or 1,298 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate

revenues from non-television affiliated companies.

17. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

18. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Further Notice.

19. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

20. *Direct Broadcast Satellite ("DBS") Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

21. *Home Satellite Dish ("HSD") Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

22. Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") Instructional Television Fixed Service ("ITFS") and Local Multipoint Distribution Service ("LMDS"). MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

23. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

24. The SBA definition of small entities for cable and other program distribution services, which includes such companies generating $12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be

categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

25. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

26. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

27. *Satellite Master Antenna Television ("SMATV") Systems.* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities

28. *Open Video Systems ("OVS").* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

29. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

30. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

31. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* At this time, we do not expect that the proposed rules would impose any additional reporting or recordkeeping requirements. However, compliance with the rules, if they are adopted, may require the manufacture of digital cable television receivers and other digital cable television consumer electronics equipment. Consumer electronics manufacturers may be required to

establish a voluntary labeling regime for unidirectional digital cable television receivers and related digital cable products that meet certain technical specifications. This regime would include testing and self-certification standards, as well as consumer information disclosures to purchasers of such receivers and products. Compliance may also require multichannel video programming distributors to encode certain commercial audiovisual content to prevent or limit its copying and prohibit the use of selectable output controls. Cable operators with systems of 750 MHz or greater activated channel capacity may be required to support operation of unidirectional digital cable products on digital cable systems and to ensure that navigation devices utilized in connection with such systems have an IEEE 1394 interface and comply with specified technical standards. While these requirements could have an impact on consumer electronics manufacturers and multichannel video programming distributors, it remains unclear weather there would be a differential impact on small entities. We seek comment on whether the burden of these requirements would fall on large and small entities differently.

32. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

33. As indicated above, the FNPRM seeks comment on whether the Commission should adopt or revise rules relating to the creation of a cable "plug and play" standard for digital cable television receivers and other digital cable television consumer electronics equipment in order to facilitate the DTV transition. This regime may require may require the manufacture of digital cable television receivers and other digital cable television consumer electronics equipment. Consumer electronics manufacturers may be required to establish a labeling regime for unidirectional digital cable television receivers and related digital cable products that meet certain technical specifications. This regime would include testing and self-certification standards, as well as consumer information disclosures to purchasers of such receivers and products. Compliance may also require multichannel video programming distributors to encode certain commercial audiovisual content to prevent or limit its copying and prohibit the use of selectable output controls. Cable operators with systems of 750 MHz or greater activated channel capacity may be required to support operation of unidirectional digital cable products on digital cable systems and to ensure that navigation devices utilized in connection with such systems have an IEEE 1394 interface and comply with specified technical standards. However, we welcome comment on modifications of the proposals if based on evidence of potential differential impact on smaller entities. In addition, the Regulatory Flexibility Act requires agencies to seek comment on possible small entity-related alternatives, as noted above. We therefore seek comment on alternatives to the proposed rules that would assist small entities while maintaining the compromise reached in the Memorandum of Understanding.

34. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–948 Filed 1–15–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Sierra Nevada Distinct Population Segment of the Mountain Yellow-legged Frog (*Rana muscosa*).

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list the Sierra Nevada distinct population segment of the mountain yellow-legged frog (*Rana muscosa*) under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that the petitioned action is warranted, but precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, this species will be added to our candidate species list. We will develop a proposed rule to list this population pursuant to our Listing Priority System.

DATES: The finding announced in this document was made on January 10, 2003. Comments and information may be submitted until further notice.

ADDRESSES: You may send data, information, comments, or questions concerning this finding to the Field Supervisor (Attn: MYLF), Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825. You may inspect the petition, administrative finding, supporting information, and comments received, during normal business hours by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Peter Epanchin, Susan Moore, or Chris Nagano at the above address (telephone, (916) 414–6600; fax, (916) 414–6710).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is: (a) Not warranted, or (b) warranted, or (c) warranted but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Threatened and Endangered Species. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded shall be treated as though resubmitted on the date of such finding, *i.e.*, requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the **Federal Register**.

Taxonomy

Camp (1917) described the mountain yellow-legged frog as two subspecies of *Rana boylii: R. b. sierrae* in the Sierra Nevada, and *R. b. muscosa* in southern California. On the basis of the similar morphological (body structure) characteristics of the two subspecies, the small number of sites where both were found, and breeding experiments, *R. b. muscosa* and *R. b. sierrae* were split from the *R. boylii* group and combined under a single species, *R. muscosa* (Zweifel 1955). Genetic studies also have concluded that *R. muscosa* and *R. boylii* are distinct species (Case 1978; Davis 1986; Green 1986a, 1986b; Hillis and Davis 1986; Macey *et al.* 2001).

Description

The body length (snout to vent) of the mountain yellow-legged frog ranges from 40 to 80 millimeters (mm) (1.5 to 3.25 inches (in)) (Jennings and Hayes 1994). Females average slightly larger than males and males have a swollen, darkened thumb base (Wright and Wright 1949; Stebbins 1951; Zweifel 1955, 1968). Dorsal (upper) coloration in adults may be variable, exhibiting a mix of brown and yellow, but it also can be grey, red, or green-brown, and usually patterned with dark spots (Stebbins 1985; Jennings and Hayes 1994). These spots may be large (6 mm (0.25 in)) and few, smaller and more numerous, or a mixture of both (Zweifel 1955). Irregular lichen or moss-like patches (to which the name *muscosa* refers) also may be present on the dorsal surface (Zweifel 1955; Stebbins 1985). The belly and undersurfaces of the hind limbs are yellow or orange, and this pigmentation on the abdomen may extend forward to the forelimbs (Wright and Wright 1949; Stebbins 1985). This species may produce a distinctive mink or garlic-like odor when disturbed (Wright and Wright 1949; Stebbins 1985). Although the species lacks vocal sacks, it can make both terrestrial and underwater vocalizations, which have been described as a flat clicking sound (Zweifel 1955; Stebbins 1985; Ziesmer 1997). The mountain yellow-legged frog has smoother skin, generally heavier spotting and mottling dorsally, and darker toe tips than the foothill yellow-legged frog (*R. boylii*) (Zweifel 1955; Stebbins 1985).

Eggs of the mountain yellow-legged frog are laid in globular clumps, which are often somewhat flattened, roughly 2.5 to 5 cm (1 to 2 in) across (Stebbins 1985). When eggs are close to hatching, egg mass volume may average 198 cubic cm (78 cubic in) (Pope 1999a). Eggs have three firm jelly-like transparent envelopes surrounding a grey-tan or black vitelline (egg yolk) capsule (Wright and Wright 1949).

The larvae (tadpoles) of this species generally are mottled brown in dorsal coloration with a golden tint and a faintly-yellow venter (underside) (Zweifel 1955; Stebbins 1985). Total tadpole length reaches 72 mm (2.8 in), its body is flattened, and the tail musculature is wide, about 2.5 centimeters (cm) (1 in) or more, before tapering into a rounded tip (Wright and Wright 1949). The mouth has a maximum of 7 labial (lip) tooth rows (2–3 upper and 4 lower) (Stebbins 1985). Larvae often take 2 to 4 years or more to reach metamorphosis (transformation from larvae to frogs) (Wright and Wright 1949; Cory 1962b; Bradford 1983; Bradford *et al.* 1993; Knapp and Matthews 2000).

Range

The mountain yellow-legged frog is restricted to two disjunct areas in California and a portion of Nevada. One area is in the Sierra Nevada and the other area is in the San Gabriel, San Bernardino, and San Jacinto mountain ranges of southern California (Los Angeles, San Bernardino, Riverside, and San Diego counties) (Zweifel 1955; Jennings and Hayes 1994). The southern California population is isolated from the Sierra Nevada population by the Tehachapi mountain range, with a distance of about 225 kilometers (km) (140 miles (mi)) between the two populations.

In the Sierra Nevada, the historic distribution of the mountain yellow-legged frog was more or less continuous from the vicinity of La Porte in southern Plumas County southward to Taylor and French Joe Meadows in southern Tulare County (Jennings and Hayes 1994). Records for this species in the Sierra Nevada document its occurrence on the east and west sides of the crest in all major drainages from Plumas to Tulare counties, with a single record from Kern County (Zweifel 1955; Jennings and Hayes 1994; Knapp 1996). Except for historic populations in extreme western Nevada in Washoe and Douglas counties, on Mt. Rose near Lake Tahoe, possibly Edgewood Creek, and elsewhere around Lake Tahoe, the species is confined to California (Zweifel 1955). The elevational range for the mountain yellow-legged frog in the Sierra Nevada ranges from approximately 1,370 meters (m) (4,500 feet (ft)) at San Antonio Creek, near Dorrington in Calaveras County, to over 3,650 m (12,000 ft) at Desolation Lake in Fresno County, though populations typically are encountered in the upper half of that elevation range (Zweifel 1955; Mullally and Cunningham 1956; Stebbins 1985).

Habitat Requirements

Mountain yellow-legged frogs rarely are found more than 1 m (3.3 ft) from water (Stebbins 1951; Mullally and Cunningham 1956; Bradford *et al.* 1993). At the lower elevations in the Sierra Nevada, the species usually is associated with rocky stream beds and wet meadows surrounded by coniferous forest (Zweifel 1955; Zeiner *et al.* 1988). At higher elevations, the species occupies lakes, ponds, tarns, and streams (Zweifel 1955; Mullally and Cunningham 1956; Stebbins 1985). The borders of alpine (above treeline) lakes and montane (mountain) meadow streams used by mountain yellow-legged frogs are frequently grassy or muddy; this differs from the sandy or rocky shores that are inhabited by the amphibian in lower elevation streams (Zweifel 1955). Adults typically are found sitting on rocks along the shoreline, usually where there is little or no vegetation (Mullally and Cunningham 1956). Although the species may use a variety of shoreline habitats, both larvae and adults are less common at shorelines which drop abruptly to a depth of 60 cm (2 ft) than at open shorelines that gently slope up to shallow waters of only 5–8 cm (2–3 in) deep (Mullally and Cunningham 1956; Jennings and Hayes 1994). Mountain yellow-legged frogs also use stream habitats, especially in the northern part of their range. Streams utilized by adults vary from those having high gradients with numerous pools, rapids, and small waterfalls, to those with low gradients with slow flows, marshy edges, and sod banks (Zweifel 1955). Aquatic substrates vary from bedrock to fine sand, rubble (rock fragments), and boulders (Zweifel 1955). Mountain yellow-legged frogs seem to be absent from the smallest creeks, probably because these have insufficient depth for adequate refuge and overwintering habitat (Jennings and Hayes 1994).

Both adults and larvae overwinter for up to 9 months in the bottoms of lakes that are at least 1.7 m (5.6 ft) deep; however, overwinter survival may be greater in lakes that are at least 2.5 m (8.2 ft) deep, under ledges of stream or lake banks, or in rocky streams (Bradford 1983; V. Vredenburg *et al.* (in press)). In some instances, frogs have been found to overwinter in underwater bedrock crevices between 0.2 m (0.7 ft) and 1 m (3.3 ft) below the water surface (Matthews and Pope 1999) and the use

of such crevices appears to allow them to survive in shallower water bodies that freeze to the bottom in winter (Pope 1999a). In lakes and ponds that do not freeze to the bottom in winter, mountain yellow-legged frogs may overwinter in the shelter of bedrock crevices as a behavioral response to the presence of introduced fishes (V. Vredenburg *et al.* (in press)).

Adult mountain yellow-legged frogs breed in the shallows of ponds or in inlet streams and are often seen on wet substrates within 1 m (3 ft) of the water's edge (Zweifel 1955). Adults emerge from overwintering sites immediately following snowmelt and will move over ice to get to breeding sites (Pope 1999a; V. Vredenburg in litt. 2002). Mountain yellow-legged frogs in the Sierra Nevada deposit their eggs underwater in clusters, which they attach to rocks, gravel, vegetation, or under banks (Wright and Wright 1949; Stebbins 1951; Zweifel 1955; Pope 1999a). Clutch size varies from 15 to 350 eggs per egg mass (Livezey and Wright 1945; V. Vredenburg *et al.* (in press)). In laboratory breeding experiments, egg hatching times ranged from 18 to 21 days at temperatures ranging from 5 to 13.5 Celsius (°C) (41 to 56 Fahrenheit (°F)) (Zweifel 1955). Field observations are similar (Pope 1999a).

The time required to develop from fertilization to metamorphosis is believed to vary between 1 and 4 years (Storer 1925; Wright and Wright 1949; Zweifel 1955; Cory 1962b; V. Vredenburg *et al.* (in press)). Since larvae must overwinter at least two or three times before metamorphosis, successful breeding sites are located in, or connected to, lakes and ponds that do not dry in the summer, and that are sufficiently deep so as to not completely freeze through in winter (Bradford 1983). Larval survival to metamorphosis is possible in lakes that do not dry out during the summer. Knapp and Matthews (2000) found the number of larvae was larger in fishless water bodies deeper than 2 m (6.5 ft). Bradford (1983) found that mountain yellow-legged frog die-offs sometimes result from oxygen depletion during winter in lakes less than 4 m (13 ft) deep. However, larvae may survive for months in nearly anoxic (oxygen-deficient) conditions when shallow lakes are frozen to the bottom. Recent studies have reported populations of mountain yellow-legged frogs overwintering in lakes less than 1.5 m (5 ft) deep that were assumed to have frozen to the bottom, and yet healthy frogs were documented to emerge the following July (Matthews and Pope 1999; Pope 1999a). Radio telemetry indicated that the mountain yellow-legged frogs were utilizing rock crevices near shore, crevices, holes, and ledges where water depths ranged from 0.2 m (0.7 ft) to 1.5 m (5 ft) (Matthews and Pope 1999). The granite surrounding these overwintering habitats may insulate the mountain yellow-legged frogs from the extreme winter temperatures, providing that there is an adequate supply of oxygen either in the water or air (Matthews and Pope 1999).

Larvae maintain a relatively high body temperature by selecting warmer microhabitats (Bradford 1984). During winter, larvae remain in warmer water below the thermocline (thermally stratified water); after spring overturn (thaw and thermal mixing of the water), they continue to behaviorally modulate their body temperature by daily movements: during the day, larvae move to warm, shallow, nearshore water, and during the late afternoon and evening, they retreat to the warmer waters off shore (Bradford 1984).

The time required to reach reproductive maturity is thought to vary between 3 and 4 years after metamorphosis (Zweifel 1955). Longevity of adults is unknown, but adult survivorship from year to year is very high, so they are undoubtedly long-lived amphibians (Matthews and Pope 1999; Pope 1999a). Although data currently are limited, evidence exists that mountain yellow-legged frogs display strong site fidelity and return to the same overwintering and summer habitats from year to year (Pope 1999a).

In aquatic habitats, mountain yellow-legged frog adults typically move only a few hundred meters (few hundred yards) (Matthews and Pope 1999; Pope 1999a), but distances of up to 1 km (0.62 mi) have been recorded (V. Vredenburg *et al.* (in press)). Adults tend to move between selected breeding, feeding, and overwintering habitats during the course of the year. Though adults are typically found within 1 m (3.3 ft) of water, overland movements of over 65 m (215 ft) have been recorded (Pope 1999a); the furthest reported distance of a mountain yellow-legged frog from water is 400 m (1,300 ft) (V. Vredenburg *et al.* (in press). Almost no data exist on the dispersal of juvenile mountain yellow-legged frogs away from breeding sites (Bradford 1991). However, juveniles that may be dispersing to permanent water have been observed in small intermittent streams (Bradford 1991). Mountain yellow-legged frog population dynamics are thought to have a metapopulation structure (Bradford *et al.* 1993; Drost and Fellers 1996; Knapp and Matthews 2000). In describing the metapopulation concept, Hanski and Simberloff (1997) stated: "* * * the two key premises in this approach to population biology are that populations are spatially structured in assemblages of local breeding populations and that migration among the local populations has some effect on local dynamics, including the possibility of population reestablishment following extinction."

Adult mountain yellow-legged frogs are thought to feed preferentially upon terrestrial insects and adult stages of aquatic insects while on the shore and in shallow water (Bradford 1983). Feeding studies on Sierra Nevada mountain yellow-legged frogs are limited. Remains found inside the stomachs of mountain yellow-legged frogs in southern California include a wide variety of invertebrates, including beetles, ants, bees, wasps, flies, true-bugs, and dragonflies (Long 1970). Larger frogs take more aquatic true bugs (insects in the taxonomic order Hemiptera) probably because of their more aquatic behavior (Jennings and Hayes 1994). Adult mountain yellow-legged frogs have been observed eating Yosemite toad (*Bufo canorus*) and Pacific treefrog (*Pseudacris regilla*) larvae (Mullally 1953; Zeiner *et al.* 1988; Pope 1999b; Feldman and Wilkinson 2000) and can be cannibalistic (Heller 1960). Mountain yellow-legged frog larvae graze on benthic detritus, algae, and diatoms along rocky bottoms in streams, lakes, and ponds (Bradford 1983; Zeiner *et al.* 1988). Larvae have also been observed cannibalizing conspecific (of the same species) eggs (Vredenburg 2000). In addition, larvae have been seen feeding on the carcasses of dead metamorphosed frogs (V. Vredenburg *et al.* (in press)).

Status

The distribution of the Sierra Nevada mountain yellow-legged frog is restricted primarily to publicly managed lands at high elevations, including streams, lakes, ponds, and meadow wetlands located on national forests, including wilderness and non-wilderness on the forests, and national parks. Approximately 210 known mountain yellow-legged frog populations (or populations within metapopulations) exist on the national forests within the Sierra Nevada, though not all of these populations may be reproducing successfully. In the national parks of the Sierra Nevada, there are 758 known sites with mountain yellow legged-frogs, most of which occur within 59 different basins that have multiple breeding populations that are connected hydrologially, so that populations in each basin function as

metapopulations). Within these 758 sites, 330 populations exist for which we have evidence of successful reproduction. Overall, we estimate that 22 percent of the remaining mountain yellow-legged frog sites within the Sierra Nevada are found within the national forests (including those with and those without evidence of successful reproduction), while 78 percent are found within the national parks (including those with and those without evidence of successful reproduction). These percentages represent the number of sites within the national forests and the national parks of the Sierra Nevada; they do not represent the number of individuals present at each site. The methods for measuring the numbers of populations and metapopulations in the national forests and the national parks have not been standardized and, therefore we must use caution when we compare national forests numbers to national park numbers. However, the remaining populations of mountain yellow-legged frogs are more numerous and larger in size in the national parks than in the national forests.

National forests with extant populations of mountain yellow-legged frogs include the Plumas National Forest, Tahoe National Forest, Humboldt-Toiyabe National Forest, Lake Tahoe Basin Management Unit (managed by the U.S. Forest Service (USFS)), Eldorado National Forest, Stanislaus National Forest, Sierra National Forest, Sequoia National Forest, and Inyo National Forest. National parks with extant populations of mountain yellow-legged frogs include Yosemite National Park, Kings Canyon National Park, and Sequoia National Park.

Grinnell and Storer (1924) first observed declines of mountain yellow-legged frog populations. Since then, a number of researchers have reported that the mountain yellow-legged frog has disappeared from a significant portion of its historic range in the Sierra Nevada (Hayes and Jennings 1986; Bradford 1989; Jennings and Hayes 1994; Bradford *et al.* 1994a; Jennings 1995, 1996; Stebbins and Cohen 1995; Drost and Fellers 1996; Knapp and Matthews 2000). The observed declines of mountain yellow-legged frog populations in the 1970s were small relative to the declines observed during the 1980s and 1990s. Rangewide, it is estimated that mountain yellow-legged frog populations have undergone a 50 to 80 percent reduction in size (Bradford *et al.* 1994a; Jennings 1995; Stebbins and Cohen 1995; Drost and Fellers 1996; Jennings 1996; Knapp and Matthews 2000). The most pronounced declines have occurred north of Lake Tahoe in the northernmost 125 km (78 mi) portion of the range, and south of Sequoia and Kings Canyon National Parks in Tulare County in the southernmost 50 km (31 mi) portion, where only a few populations remain (Fellers 1994; Jennings and Hayes 1994). Based on available USFS survey and observation data, there appear to be very few or no known large populations north of the Plumas National Forest.

Mountain yellow-legged frogs historically occurred in Nevada on the slopes of Mount Rose in Washoe County and probably in the vicinity of Lake Tahoe in Douglas County (Linsdale 1940; Zweifel 1955; Jennings 1984). In 1994 and 1995, mountain yellow-legged frog surveys were conducted by Panik (1995) at 54 sites in the Carson Range of Nevada and California, including eight historic locations; no mountain yellow-legged frogs were observed. A few scattered and unconfirmed sightings were reported in Nevada in the late 1990s, but any populations remaining in this State are likely to be extremely small and the species is thought to be extirpated from Nevada (R. Panik, Western Nevada Community College, *in litt.*, 2002).

The number of extant populations of the mountain yellow-legged frogs in the Sierra Nevada is greatly reduced. Remaining populations are patchily scattered throughout nearly all their historic range (Jennings and Hayes 1994; Jennings 1995, 1996). At the northernmost portions of the range in Butte and Plumas counties, few populations have been seen or discovered since 1970 (Jennings and Hayes 1994). Declines have also been noted in the central and southern Sierra (Drost and Fellers 1996). In the southern Sierra Nevada (Sierra, Sequoia, and Inyo National Forests; and Sequoia, Kings Canyon, and Yosemite National Parks), there are relatively large populations (*e.g.*, breeding populations of over 20 adults) of mountain yellow-legged frogs; however, in recent years, some of the largest of these populations have been extirpated (Bradford 1991; Bradford *et al.* 1994a; R. Knapp, Sierra Nevada Aquatic Research Laboratory, *in litt.* 2002). Mountain yellow-legged frog populations are more numerous and larger in size in the national parks of the Sierra Nevada than in the surrounding USFS lands (Bradford *et al.* 1994a; Knapp and Matthews 2000).

Between 1988 and 1991, Bradford *et al.* (1994a) resurveyed sites known historically (between 1955 and 1979) to have contained mountain yellow-legged frogs. They resurveyed 27 historic sites on the Kaweah River, a western watershed within Sequoia National Park, and did not detect mountain yellow-legged frogs at any of these locations. They resurveyed 21 historic sites within the Kern, Kings, and San Joaquin River watersheds in Sequoia and Kings Canyon National Parks, and detected mountain yellow-legged frogs at 11 of these sites. Frogs were detected at three locations out of 24 historic sites outside of Sequoia and Kings Canyon National Parks. Rangewide, their resurvey effort detected mountain yellow-legged frogs at 14 of 72 historic sites, representing an 80 percent population decline. On the basis of these results, Bradford *et al.* (1994a) estimated a 50 percent population decline in Sequoia and Kings Canyon National Parks, with more pronounced declines elsewhere in the mountain yellow-legged frog's range.

Drost and Fellers (1996) surveyed for mountain yellow-legged frogs at sites documented by Grinnell and Storer (1924) in the early part of the 20th Century. The frog was reported to be the most common amphibian where they surveyed in the Yosemite area (Grinnell and Storer 1924). Drost and Fellers (1996) repeated Grinnell and Storer's 1924 survey and reported mountain yellow-legged frog presence at only 2 of the 14 sites where this animal had been previously detected. These two positive sightings consisted of a single larva at one site and a single adult female at another site. Drost and Fellers (1996) identified and surveyed 17 additional sites with suitable mountain yellow-legged frog habitat, and these surveys resulted in the detection of three additional populations.

For the 86 historically occupied mountain yellow-legged frog sites documented between 1915 and 1959 and resurveyed by Bradford *et al.* (1994a) and Drost and Fellers (1996), an 80 percent decline occurred in the number of historical frog populations. Of the 86 historic sites, only 16 remained occupied at the time of resurvey.

Knapp and Matthews (2000) surveyed more than 1,700 high elevation (averaging 3,400 m (11,150 ft)) lakes and ponds in the Sierra National Forest's John Muir Wilderness Area and in Kings Canyon National Park, encompassing a total of approximately 100,000 hectares (ha) (247,000 acres (ac)). They found a strong negative correlation between introduced trout and the distribution of mountain yellow-legged frogs. In the summer of 2002, Knapp (*in litt.* 2002) resurveyed 302 water bodies determined by 1995 to 1997 surveys to be occupied by mountain yellow-legged frogs, and

resurveyed 744 of over 1,400 sites where frogs were not previously detected. Knapp found no change in status at 59 percent of these sites, but found that 41 percent of the sites had gone extinct, while 8 percent of previously unoccupied sites were colonized. These data indicate an extinction rate that is 5 to 6 times higher than the colonization rate within this study area. This high rate of extinction over a 5- to-7-year time frame suggests the species may become extinct within a few decades (assuming that the rate of extinction and recolonization observed over this time period accurately reflects the long-term rates). The documented extinctions appeared to occur nonrandomly across the landscape, are spatially clumped typically, and involve the disappearance of all or nearly all mountain yellow-legged frog populations in a watershed (R. Knapp *in litt.* 2002). The colonization sites also appeared to be nonrandomly distributed, occurring primarily in watersheds with large mountain yellow-legged frog populations (R. Knapp *in litt.* 2002).

A recent review of the current status of 255 previously documented mountain yellow-legged frog locations (based on Jennings and Hayes (1994)) throughout its historic range concluded that 83 percent of these sites are no longer occupied by this species (Davidson *et al.* 2002). Each national forest and national park is discussed individually below.

Lassen National Forest: Historically, mountain yellow-legged frogs occurred on the Lassen National Forest within multiple watersheds, including Butte Creek, the West Branch Feather River, and the Middle Fork Feather River (M. McFarland, *in litt.* 2002). The last confirmed mountain yellow-legged frog sighting on the Lassen National Forest was made in 1966 in the area of Snag Lake in the West Branch Feather River watershed. Since 1993, the Lassen National Forest has conducted or funded informal and formal systematic amphibian surveys to assess the relative distribution and abundance of amphibian species, including the mountain yellow-legged frog. On the Lassen National Forest, mountain yellow-legged frogs have not been detected or confirmed during any of these surveys (M. McFarland *in litt.* 2002).

Plumas National Forest: Based on resurvey efforts, Jennings and Hayes (1994) noted that the mountain yellow-legged frog was extirpated at a number of locations in the Plumas National Forest. As survey efforts continue by the Plumas National Forest, more mountain yellow-legged frog populations are being documented. However, most of the estimated 55 populations are small, consisting of only a few individuals (T. Hopkins, USFS, pers. comm., 2002). The species appears to have disappeared from a significant number of historic locations, and the abundance of the species at known sites appears to be quite low.

Tahoe National Forest: Mountain yellow-legged frogs were present historically throughout the Tahoe National Forest and the surrounding areas of Sierra, Nevada, and Placer counties. Jennings and Hayes (1994) conclude that, based on their re-surveys of historic locations, 1992, the species had been extirpated in a number of locations by 1992.

The Tahoe National Forest has been conducting some amphibian surveys. Approximately four or five extant populations exist in which mountain yellow-legged frog breeding has been documented (A. Carlson, USFS, pers. comm. 2002). Extant mountain yellow-legged frog populations on the Tahoe National Forest have been observed in both stream and pond habitats. One extant breeding population inhabits an old mining tailing pond that has been restored naturally to a forested wetland condition with an abundance of bankside and emergent vegetation (A. Carlson, pers. comm. 2002). The largest Tahoe National Forest population observed in recent surveys consists of fewer than 10 individuals. The species appears to have disappeared from a significant number of historic locations within the Tahoe National Forest and is in low abundance where it still persists (A. Carlson, pers. comm. 2002).

Lake Tahoe Basin Management Unit: Historic sightings of the mountain yellow-legged frog in the Lake Tahoe Basin Management Unit are numerous, indicating that the species was abundant in the Lake Tahoe area (J. Reiner, USFS, pers. comm. 2002). Today, only one known population of mountain yellow-legged frogs remains on this national forest, although in 1997, the USFS saw evidence of limited breeding in the Desolation Wilderness (J. Reiner, pers. comm. 2002; J. Reiner and M. Schlesinger, USFS, *in litt.* 2000). The known population is small, as some adults were seen in 1999 but were not detected during 2002 surveys, though larvae were detected. The habitat at this site is a meadow and stream complex that is large (approximately 24 ha (60 ac)) and in good condition (J. Reiner, pers. comm. 2002).

Humboldt-Toiyabe National Forest: Only the westernmost portion of the Humboldt-Toiyabe National Forest is within the historic range of the mountain yellow-legged frog (Stebbins 1985). A distributional map of mountain yellow-legged frogs produced by Jennings and Hayes (1994) indicates historic collections of this species within the Humboldt-Toiyabe National Forest in California. Resurveys of locations where mountain yellow-legged frogs occurred indicate that the species had become extirpated by 1992 at a number of locations in Humboldt-Toiyabe National Forest (Jennings and Hayes 1994). Surveys in California are ongoing. Approximately four populations (all in California) exist on this national forest (C. Milliron, California Department of Fish and Game (CDFG), *in litt.* 2002; L. Murphy, USFS, pers. comm. 2002). Chytrid fungus (see Factor C, Disease, below) has been documented at one of these populations (C. Milliron, *in litt.* 2002).

Eldorado National Forest: The mountain yellow-legged frog is distributed across the Eldorado National Forest with populations or metapopulations (multiple breeding populations within the same basin that have hydrologic connectivity between them) within the headwaters and headwater tributaries of several watersheds, including the Rubicon River, the South Fork American River, the North Fork Cosumnes River, and the North Fork Mokelumne River (J. Williams, USFS, *in litt.* 2002).

Numerous surveys for mountain yellow-legged frogs have been conducted on this national forest by the USFS, the CDFG, and several contractors between 1990 and 2002. Reproducing populations have been found at a variety of locations in high elevation areas of this national forest. Surveys for amphibians within the Eldorado National Forest in 1992 resulted in no detections of mountain yellow-legged frogs, though this may be a function of the limited area and habitat type that was surveyed (Martin 1992). Jennings and Hayes (1994) indicate both extirpated populations and extant populations on the Eldorado National Forest. Intensive surveys by CDFG and USFS in 2001 and 2002 resulted in an estimated 18 extant populations or metapopulations of mountain yellow-legged frogs on the Eldorado National Forest, although both the mean number of populations and population size are generally low relative to historic reports (J. Williams, *in litt.* 2002). Currently, approximately four populations exist with between 25 and 50 mountain yellow-legged frogs; these are the largest populations on the Eldorado National Forest (J. Williams, *in litt.* 2002).

Stanislaus National Forest: A 1992 survey (Martin 1992) in the Stanislaus National Forest located mountain yellow-legged frogs at only 2 of 16 locations surveyed, and at these locations, the numbers of adults detected were small (under five). Jennings and Hayes (1994) indicate that the species has been extirpated from a number of historic locations. There are approximately 80 extant populations of mountain yellow-legged frogs on the Stanislaus National Forest; of these, only about 8 appear to have more than 10 adults, and only 2 populations are known to have 25 to 30 adults (L. Conway, USFS, pers. comm. 2002).

Yosemite National Park: From 1914 to 1920, Grinnell and Storer conducted a biological survey along a transect across the Sierra Nevada. They documented mountain yellow-legged frogs at 14 sites throughout Yosemite National Park and noted the species was abundant in this area. Numerous frogs were found in lakes and streams at high elevations (Grinell and Storer 1924). "Hundreds of frogs" were found at Young Lake and frogs were "very numerous" at Westfall Meadow (Camp1915, as cited in Drost and Fellers 1994). Large numbers of specimens were collected; for example, 25 were taken at Vogelsang Lake (Grinnell 1915, as cited in Drost and Fellers 1994).

The mountain yellow-legged frog was documented at several additional locations in Yosemite National Park from 1957 to 1960 (Heller 1960). At Johnson Lake, Mullally and Cunningham (1956) reported a mountain yellow-legged frog population decline between 1950 and 1955, though they did not quantify the decline. They attributed this decline to the unusually long and cold winter of 1951–1952. Some of Yosemite's "densest aggregations of frogs ever noted" by Mullally and Cunningham (1956) were in lakes near Ostrander Lake south of Glacier Point; they attributed the absence of frogs in Ostrander Lake to the presence of non-native trout.

Between 1988 and 1991, Bradford *et al.* (1994a) randomly selected and surveyed four mountain yellow-legged frog populations documented in Yosemite between 1955 to 1979. Although they did not resurvey all of the mountain yellow-legged frog populations previously reported from within the park, they reported that the four resurveyed populations were extirpated (Bradford *et al.*1994a). In 1992 and 1993, Drost and Fellers (1996) revisited 38 of the original 40 sites surveyed by Grinnell and Storer from 1914 to1920, and surveyed other sites with potential mountain yellow-legged frog habitat. The mountain yellow-legged frog had declined by approximately 80 percent from the locations documented by the 1924 study (Drost and Fellers 1996). A distribution map of mountain yellow-legged frogs produced by Jennings and Hayes (1994) also documents extinctions and indicates a population decline of this species from Yosemite National Park. Colwell and Beatty (2002) surveyed 35 lakes with appropriate mountain yellow-legged frog habitat within the Tuolumne and Merced River drainages of Yosemite National Park in 1992 and 1993; only 3 lakes were found to have mountain yellow-legged frogs.

Currently in Yosemite National Park, 251 mountain yellow-legged frog sites exist, most of which occur within 23 different basins that have multiple breeding populations with habitat that is connected hydrologically, so that the populations in each basin function as a metapopulation (R. Knapp *in litt.* 2002). Six sites have populations with over 100 adult mountain yellow-legged frogs each, 1 site has a population with between 51 and 100 adults, and 41 sites have populations between 10 and 50 adults each. In addition, 203 sites have fewer than 10 adults each. Of the 251 mountain-yellow legged frog sites in the park, evidence of breeding has been found in 71 populations.

Inyo National Forest: Jennings and Hayes (1994) document the extirpation of some mountain yellow-legged frog populations from the Inyo National Forest. In 1994, 15 known locations had mountain yellow-legged frog populations (Parker 1994). Currently, 7 basins within the Inyo National Forest have known extant mountain yellow-legged frog populations or populations that function as metapopulations (C. Milliron, *in litt.* 2002). Some of these populations are stable, consisting of several hundred individuals representing all age classes (L. Sims, USFS, *in litt.* 2002). Chytrid fungus (see Factor C, Disease, below) has been documented at an additional population location that is now extinct (C. Milliron, *in litt.* 2002).

Sierra National Forest: In 1955, Mullally and Cunningham (1956) reported encountering mountain yellow-legged frogs along Paiute Creek "very sparingly" at approximately 2,300 m (7,700 ft), with frogs becoming more abundant at higher elevations. The "densest populations" were found above 3,050 m (10,000 ft) in the Humphrey's Basin area, and a "great many, including tadpoles" were noted at and near Pine Creek Pass, with frogs also seen at Golden Trout and Desolation Lakes.

Jennings and Hayes (1994) indicated that the mountain yellow-legged frog has become extirpated at a number of historical locations in the Sierra National Forest. Knapp and Matthews (2000) report on mountain yellow-legged frog population declines associated with fish stocking within the John Muir Wilderness Area of the Sierra National Forest (see Factor C, Disease, below). In 1995 and 1996, Knapp and Matthews (2000) surveyed 669 lakes, ponds, and other water bodies in the John Muir Wilderness Area. Mountain yellow-legged frog adults were found in 4 percent of these water bodies, and frog larvae in 3 percent (Knapp and Mathews 2000). In 2002, Knapp conducted resurveys at the 28 water bodies that had been occupied by mountain yellow-legged frogs in 1997, and also at 118 of the 641 sites where frogs were not detected in 1997. Knapp found no change in mountain yellow-legged frog status at 39 percent of these 28 previously occupied water bodies, but found that the frogs at 61 percent of the 28 previously occupied sites had gone extinct, while colonization had occurred at 10 percent of 118 previously unoccupied sites (R. Knapp *in litt.* 2002).

Although not all potential mountain yellow-legged frog habitats have been surveyed within the Sierra National Forest, approximately six subwatersheds have extant metapopulations (H. Eddinger, USFS, *in litt.* 2002). These subwatersheds are in the upper headwaters of the South Fork Merced River, South Fork San Joaquin River, and North Fork Kings River. They include the Mono Creek Basin, the Bear Creek Basin, the Paiute Creek Basin, the Humphreys Creek Basin, the Big Creek Basin, and the Dinkey Creek Basin.

Sequoia and Kings Canyon National Parks: Relatively few records exist for mountain yellow-legged frog prior to 1955 in the Sequoia and Kings Canyon National Parks. From 1955 to 1979, the species is known to have occurred in at least 21 sites scattered throughout Sequoia and Kings Canyon National Parks, although historic abundance is not known (Bradford *et al.* 1994a). In 1978–1979, the headwaters of seven creek systems were surveyed for mountain yellow-legged frogs in the national parks. Frogs were found at 27 sites greater than 200 m (660 ft) apart (Bradford *et al.* 1994a). A distributional map of mountain yellow-legged frogs produced by Jennings and Hayes (1994) indicates numerous historic sightings and collections of the species within both national parks, as well as numerous extinctions. The species was already noted to have disappeared from

approximately half of previously occupied locations in Sequoia and Kings Canyon Parks by the late 1980s (Bradford *et al.* 1994a). On the basis of surveys, Bradford *et al.* (1994a) estimate that mountain yellow-legged frogs have been extirpated from half of their historic locations in Sequoia and Kings Canyon National Parks. For example, Fellers (1994) surveyed in Sequoia and Kings Canyon National Parks and did not detect the mountain yellow-legged frog in the Kaweah watershed where the species was located historically.

In 1997, Knapp and Matthews (2000) surveyed 1,059 lakes, ponds, and other water bodies in Kings Canyon National Park. Mountain yellow-legged frog adults were found in 31 percent of these water bodies, and frog larvae in 20 percent (Knapp and Mathews 2000). Some significant frog populations remain in Sequoia and Kings Canyon National Parks, but extensive declines have been described. In 2002, Knapp (*in litt.* 2002) resurveyed 274 water bodies occupied by mountain yellow-legged frogs in 1997, and he also resurveyed 626 of the 785 sites where frogs were not detected in 1997. Knapp found no change in status at 60 percent of the 274 previously occupied sites, but found that 39 percent of the 274 previously occupied sites had gone extinct, while colonization had occurred at 7 percent of 626 previously unoccupied sites.

Currently in Sequoia and Kings Canyon National Parks, 507 mountain yellow-legged frog sites are known, most of which occur within 36 different basins that have multiple breeding populations that are hydrologically connected, so that the populations within each basin function as a metapopulation. Fifty-four sites have populations of more than 100 adult mountain yellow-legged frogs, 25 sites have populations between 51 and 100 adults, 132 sites have populations between 10 and 50 adults, and 296 sites have fewer than 10 adults. Of the 507 mountain yellow-legged frog sites in Sequoia and Kings Canyon National Parks, breeding evidence has been found at 259 populations (R. Knapp *in litt.* 2002).

Sequoia National Forest: Jennings and Hayes (1994) indicate that the mountain yellow-legged frog has been extirpated from a number of historical locations in the Sequoia National Forest. Mountain yellow-legged frogs were collected on several historic locations of the Kern Plateau in Sequoia National Forest (Jennings and Hayes 1994). Today, two known extant populations exist on the Sequoia National Forest (S. Anderson, USFS, *in litt.* 2002).

All of the recent mountain yellow-legged frog sightings from the Sequoia National Forest have been of single frogs or very small populations. In 1992, mountain yellow-legged frogs were not detected during amphibian surveys conducted at 17 sites in Sequoia National Forest (Martin 1992). The species appears to be severely reduced in numbers and range in the Sequoia National Forest.

Distinct Vertebrate Population Segment

Under the Act, we must consider for listing any species, subspecies, or, for vertebrates, any distinct population segment (DPS) of these taxa if there is sufficient information to indicate that such action may be warranted. To implement the measures prescribed by the Act, we, along with the National Marine Fisheries Service (National Oceanic and Atmospheric Administration–Fisheries), developed a joint policy that addresses the recognition of DPSs for potential listing actions (61 FR 4722). The policy allows for a more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require the Act's protective measures.

Under our DPS Policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS. The elements are: (1) the population segment's discreteness from the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs. If we determine that a population segment being considered for listing is a DPS, then the level of threat to the population is evaluated based on the five listing factors established by the Act to determine if listing it as either threatened or endangered is warranted.

Discreteness. Under our DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation, status, or regulatory mechanisms exist. The proposed DPS, the Sierra Nevada mountain yellow-legged frog, is based on the first condition, the marked separation from other populations.

The range of the mountain yellow-legged frog is divided by a natural geographic barrier, the Tehachapi Mountains, which geographically isolates the populations in the southern Sierra Nevada from those in the mountains of southern California. The distance of the geographic separation is about 225 km (140 mi). The geographic separation of the Sierra Nevada and southern California mountain yellow-legged frogs was recognized in the earliest description of the species by Camp (1917), who treated specimens from the two areas as separate subspecies of *R. boylii.* Camp (1917) described the two subspecies based on differences in their biogeography and morphology.

Ziesmer (1997) analyzed vocalizations of mountain yellow-legged frogs from 86 locations in Alpine and Mariposa counties in the Sierra Nevada, and vocalizations of mountain yellow-legged frogs from 23 locations in the San Jacinto Mountains of Riverside County in southern California. The vocalizations of Sierra Nevada frogs differed from those of southern California frogs in pulse rate, harmonic structure, and dominant frequency. Ziesmer (1997) concluded that the differences in vocalization supported the hypothesis that mountain yellow-legged frogs from the Sierra Nevada and southern California may represent separate species.

Genetic analyses support the discreteness of the mountain yellow-legged frog populations in southern California from those in the Sierra Nevada. In an allozyme (genetic) study that compared mountain yellow-legged frogs from the central Sierra Nevada with those from southern California, a fairly significant genetic difference was found between the two populations (D. Green, McGill University, *in litt.* 1993). However, because there were no frog samples from the southern Sierra Nevada for comparison, it was not clear whether the difference reflected two ends of a cline (a character gradient), or distinctions between the Sierra Nevada and southern California populations. Thus, because the data set was incomplete, Green (*in litt.*, 1993) interpreted the results cautiously.

A phylogenetic analysis of mitochondrial deoxyribonucleic acid (DNA) sequences of the mountain yellow-legged frog was performed throughout its distribution (Macey *et al.* 2001). This study concluded that there are two major genetic lineages of the mountain yellow-legged frog (inclusive of the Sierra Nevada populations and

the southern California populations), with populations in the Sierra Nevada falling into three distinct groups and the fourth being the southern California population (Macey *et al.* 2001). Though three genetic lineages of mountain yellow-legged frogs have been identified in the Sierra Nevada, more genetic sampling is needed to delineate specific boundaries of the three genetic lineages before they are treated or managed as separate units (Macey *et al.* 2001). Therefore, this finding treats the three genetic lineages of the mountain yellow-legged frog in the Sierra Nevada as one DPS, discrete from the mountain yellow-legged frog DPS in southern California.

The biogeographic fragmentation within the Sierra Nevada population of mountain yellow-legged frogs occurs between Kings Canyon National Park and a region slightly north of Yosemite National Park, allowing for the central and northern Sierra Nevada populations to share more genetic similarities than the southern Sierra Nevada and southern California populations (Macey *et al.* 2001). In fact, this study indicates that the southern Sierran group (largely in Fresno County) may be more closely related to the southern California mountain yellow-legged frogs than with those in the central and northern Sierra Nevada (Macey *et al.* 2001). This research suggests that the initial divergence between the northern and southern populations of mountain yellow-legged frogs occurred 2.2 million years before present. Within each of these groups, Macey *et al.* (2001) have detected a similar pattern of divergence that suggests the northern Sierra Nevada and central Sierra Nevada mountain yellow-legged frog populations diverged 1.5 million years before present, and the southern Sierra Nevada and the southern California mountain yellow-legged frog populations diverged from each other approximately 1.4 million years before present. Today, these 4 groups are isolated by arid valleys; this isolation is most pronounced between southern California and the southern Sierra Nevada. The biogeographic pattern of genetic divergence as detected in the mountain yellow-legged frogs of the Sierra Nevada has also been observed in four other reptiles and amphibians, suggesting a common event that fragmented their ranges (Macey *et al.* 2001).

Sierran frogs and southern California mountain yellow-legged frogs also differ ecologically in the types of aquatic habitat they occupy. Mountain yellow-legged frogs in southern California are typically found in steep gradient streams, even though they may range into small meadow streams at higher elevations (Zweifel 1955; Mullally 1959). In contrast, Sierran frogs are most abundant in high-elevation lakes and slow-moving portions of streams (Zweifel 1955; Mullally and Cunningham 1956), habitat that is distinct from the canyons of southern California's arid mountain ranges, which are inhabited by the southern California DPS of the mountain yellow-legged frog.

Significance. Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

We have found substantial evidence that all but one (there are no introduced populations of mountain yellow-legged frogs outside of its historic range) of these significant factors are met by the population of mountain yellow-legged frogs in the Sierra Nevada. Furthermore, it is significant because a major reduction in abundance of the species as a whole would occur if the Sierra Nevada population were extirpated. The extinction of the Sierra Nevada population of the mountain yellow-legged frog would result in the loss of a genetic entity, a reduction in the geographic range of the species, a loss of the species persistence in a setting ecologically unique relative to the ecological setting of the southern California population, and a reduction in the number of breeding populations. As discussed above, the Sierra Nevada population appears to be genetically distinct from the southern California population of mountain yellow-legged frogs. The mountain yellow-legged frogs of the Sierra Nevada comprise the main distribution of the species at the northern and central limits of the species' range. Loss of the Sierra Nevada population would be significant as it would eliminate the species from the majority of its range and would reduce the species to fewer than 10 small isolated sites in southern California (50 FR 44382). The geographic isolation of the Sierra Nevada population from the mountain yellow-legged frogs in southern California prevents genetic interchange between these populations.

Conclusion. We evaluated the Sierra Nevada population of the mountain yellow-legged frog to determine whether it meets the definition of a DPS, addressing discreteness and significance as required by our policy. We conclude that the Sierra Nevada population of the mountain yellow-legged frog is discrete from the southern California population, on the basis of their geographic separation, differences in vocalization, differences between their habitats, and apparent genetic differences. We conclude that the Sierra Nevada population of the mountain yellow-legged frog is significant because the loss of the species from the Sierra Nevada would result in a significant reduction in the species' range and its population numbers, and would constitute the loss of a genetically discrete population that differs markedly from the southern California population of mountain yellow-legged frogs. Because the population segment meets both the discreteness and significance criteria of our DPS policy, the Sierra Nevada portion of the mountain yellow-legged frog's range qualifies for consideration for listing. An evaluation of the level of threat to the DPS based on the five listing factors established by the Act follows.

Previous Federal Action

On February 10, 2000, we received a petition, dated February 8, 2000, from the Center for Biological Diversity and Pacific Rivers Council to list the Sierra Nevada population of the mountain yellow-legged frog as endangered. The petitioners stated that the Sierra Nevada population of the mountain yellow-legged frog qualifies for listing under our DPS Policy. On October 12, 2000, we published a 90-day finding on that petition in the **Federal Register** (65 FR 60603) concluding that the petition presented substantial scientific or commercial information to indicate that the listing of the Sierra Nevada population of the mountain yellow-legged frog may be warranted; we also requested information and data regarding the species.

This 12-month finding is made in accordance with a court order which requires us to complete a finding by January 10, 2003 (*Center for Biological Diversity and Pacific Rivers Council* v. *Norton and Jones*) (No. C 01–2106 SC). This notice constitutes the 12-month finding for the February 10, 2000, petition.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act describe the procedures for adding species to the Federal lists. We may determine a species (which is defined in section 3 of the Act as including any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature) to be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. These factors, and their application to the Sierra Nevada DPS of the mountain yellow-legged frog (mountain yellow-legged frog), are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* A number of hypotheses, including habitat loss, have been proposed for recent global amphibian declines (Bradford *et al.* 1993; Corn 1994; Alford and Richards 1999). Habitat destruction, however, does not appear to be the primary factor leading to the decline of the mountain yellow-legged frog. The mountain yellow-legged frog occurs at high elevations in the Sierra Nevada, which have not had the types or extent of large-scale habitat conversion and disturbances which have occurred at lower elevations (Bradford *et al.* 1993; Knapp 1996; Knapp and Matthews 2000). Large scale habitat conversion has not been identified within the range of this species; thus, direct habitat destruction or modification associated with intensive human activities, as measured by urban or agricultural land use within the mountain yellow-legged frogs' range, has not been implicated in the decline of this species (Davidson *et al.* 2002). However, other human activities have played a role in the modification of mountain yellow-legged frog habitat. These include livestock grazing, non-native fish introductions (*see* Predation, Factor C, below), timber management, road construction and maintenance, recreation, water diversions, fire management activities, and introduction of environmental contaminants (*see* Other, Factor E, below). These activities have modified habitat in ways that have fragmented and isolated mountain yellow-legged frog populations, and thereby, may have caused or contributed to the decline of this DPS (Bradford *et al.* 1993).

Grazing

Grazing of livestock in Sierra Nevada meadows and riparian areas (aquatic ecosystems and adjacent upland areas that directly affect them) began in the mid-1700s with the European settlement of California (Menke *et al.* 1996). Following the gold rush of the mid-1800s, grazing rose to a level that exceeded the carrying capacity of the available range and caused significant impacts to meadow and riparian ecosystems (Meehan and Platts 1978; Menke *et al.* 1996). From 1870 to 1908, within the range of the mountain yellow-legged frog in the high Sierra Nevada, meadows were converted to summer rangelands for grazing cattle, sheep, horses, goats, and in some areas pigs; however, the alpine areas were mainly grazed by sheep (Beesley 1996; Menke *et al.* 1996). This practice resulted in the degradation of these extremely sensitive areas (Menke *et al.* 1996).

In general, livestock grazing within the range of the mountain yellow-legged frog was at a high but undocumented level until the establishment of national parks (beginning in 1890) and national forests (beginning in 1905). Within established national parks, grazing by cattle and sheep was replaced by that of packstock, such as horses and burros. Within established national forests, the amount of livestock grazing was gradually reduced and better documented, and the types of animals shifted, with reductions in sheep and increases in cattle and packstock. In general, livestock grazing within the national forests has continued with gradual reductions since the 1920s, except for an increase during World War II. Continuing decreases, motivated by concern towards resource protection, conflicts with other uses, and deteriorating range conditions, continued from the 1950s through the early 1970s but still exceeded sustainable grazing capacity in many areas (Menke *et al.* 1996; University of California (UC) 1996a). Grazing management that is more sensitive to riparian areas has been implemented and continues to increase since the 1970s (UC 1996a).

Packstock grazing is the only grazing currently permitted in the Sierra Nevada national parks. Packstock grazing also is permitted in national forests within the Sierra Nevada. However, there has been very little monitoring of the impacts of packstock use in this region (Menke *et al.* 1996). Use of packstock in the Sierra Nevada increased since World War II as a result of increased road access and increases in leisure time and disposable income (Menke *et al.* 1996). Demand for packstock use and recreational riding in the Sierra Nevada are projected to increase as California's human population increases (USFS 2001).

Observational data indicate livestock negatively impact mountain yellow-legged frog populations by altering frog habitat and trampling individuals (R. Knapp, *in litt.* 1993a, 1993b, 1994, 2002; Jennings 1996; A. Carlson, pers. comm. 2002; USFS 2002; V. Vrendenburg, *in litt.* 2002).

Livestock grazing causes changes in wetland systems, including meadows, streams, and ponds; modifies mountain yellow-legged frog habitat by removing overhanging banks that provide shelter; and contributes to the siltation of breeding ponds. Pond siltation may decrease the survivorship of overwintering larvae, subadults, and adult mountain yellow-legged frogs as the overwintering habitats need to be deep enough so that the entire water column does not freeze and underwater caves and crevices are available (Bradford 1983; Pope 1999a).

Grazing of livestock in riparian areas impacts vegetation in multiple ways, including: soil compaction, which increases runoff and decreases water availability to plants; herbage removal, which promotes increased soil temperatures and evaporation rates at the soil surface; and direct physical damage to the vegetation (Kauffman and Krueger 1984; Cole and Landres 1996; Knapp and Matthews 1996). Streamside vegetation protects and stabilizes streambanks by binding soils to resist erosion and to trap sediment (Chaney *et al.* 1990). A study by Kauffman *et al.* (1983) indicated that livestock grazing may have weakened the streambank structure through trampling and removal of vegetation, thereby promoting conditions for erosion. Removal of vegetative cover within mountain yellow-legged frog habitat decreases available habitat, exposes frogs to predation (R. Knapp, *in litt.* 1993b), and increases the threat of dessication (Jennings 1996). Grazing may result in changes to vegetation composition, resulting in an increased density of forested stands and the expansion of trees into areas that were formerly treeless (Cole and Landres 1996).

Livestock grazing can cause a nutrient loading problem due to urination and defecation in or near the water, and can elevate bacteria levels in areas where cattle are concentrated near water (Meehan and Platts 1978; Stephenson and Street 1978; Kauffman and Krueger 1984). The nutrient status of streams can markedly influence the growth of microflora and microfauna and directly and indirectly affect many other characteristics of the stream biota

(Lemly 1998). Growth of filamentous bacteria on the bodies and gills of aquatic insects has been documented in association with nutrient loading in livestock use pastures, along with significantly lower densities of insects at downstream sites. In laboratory and field studies, aquatic insects with this bacterial growth experienced extensive mortality. This indicates that elevated bacteria levels associated with livestock use can negatively influence stream insect populations (Lemley 1998). Adverse effects to aquatic insects within the range of the mountain yellow-legged frog could result in a lowered prey availability, possibly increasing intraspecific competition for limited resources.

Throughout the range of the mountain yellow-legged frog in the Sierra Nevada approximately 79 currently active grazing allotments exist on USFS-administered lands. Of these grazing allotments, at least 29 have extant mountain yellow-legged frog populations within them. An estimated 13 percent of the approximately 210 known mountain yellow-legged frog populations, or populations that function as metapopulations, on Sierra Nevada national forests occur within active grazing allotments. Many of the mountain yellow-legged frog populations in the Sierra Nevada that occur within active grazing allotments are small. These populations may be more vulnerable to extirpation as a result of grazing-induced habitat modification, and if extirpated they might not be recolonized in situations where they are isolated from other populations and lack habitat connectivity to potential source populations.

In the 60-Lakes Basin of Kings Canyon National Park, packstock use is regulated in wet meadows to protect mountain yellow-legged frog breeding habitat in bogs and lakeshores from trampling and associated degradation (V. Vredenburg, *in litt.* 2002; H. Werner, NPS, *in litt.* 2002).

Recreation

Recreation is the fastest growing use of national forests. As such, its impacts on the mountain yellow-legged frog are likely to continue and to increase (USDA 2001). Recreational activities take place throughout the Sierra Nevada and have significant negative impacts on several plant and animal species and their habitats (USDA 2001a). To further recreational opportunities and angling success, non-native trout stocking programs in the Sierra Nevada started in the late 19th Century (Bahls 1992; Pister 2001). Trout stocking throughout the range of the mountain yellow-legged frog has contributed to the decline of this species (see Predation, Factor C, below). The recreational impact of anglers at high mountain lakes has been severe in the Sierra Nevada, with most regions reporting a level of use greater than that which the fragile lakeshore environments can withstand (Bahls 1992).

Recreation may threaten all life stages of the mountain yellow-legged frog through direct disturbance resulting from trampling by humans, packstock, or vehicles, including off-highway vehicles; harassment by pets; and associated habitat degradation (Cole and Landres 1996; USFS 2001). Studies have not been conducted to determine whether recreational activities are contributing to the decline of the mountain yellow-legged frog, and recreation has not been implicated as a cause of major decline of the mountain yellow-legged frog.

Dams and Water Diversions

Dams and water diversions have altered aquatic habitats in the Sierra Nevada (Kondolf *et al.* 1996). Numerous reservoirs have been constructed within the range of the mountain yellow-legged frog. These include Huntington Lake, Florence Lake, Lake Thomas A. Edison, Saddlebag Lake, Convict Lake, Cherry Lake, and other reservoirs associated with Hetch Hetchy, Upper and Lower Blue Lakes, Lake Aloha, Silver Lake, Hell Hole Reservoir, French Meadow Reservoir, Lake Spaulding, and others. The extent of the impacts that these projects have had on the mountain yellow-legged frog is not known. The construction of dams probably has affected mountain yellow-legged frogs in the Sierra Nevada by altering their habitat and movements, and also by altering the distribution of predators (reservoirs are often stocked with non-native fish species that incidentally prey on mountain yellow-legged frogs (See Predation, Factor C, below)). Mountain yellow-legged frogs cannot live in or move through the exposed shorelines created by reservoirs, nor can they successfully reproduce in these environments with predatory fishes unless there are shallow side channels or disjunct pools that are free of predatory fishes (Jennings 1996).

Dams may alter the temperature and sediment load of the rivers they impound (Cole and Landres 1996). Dams, water diversions, and their associated structures can alter the natural flow regime with unseasonal and fluctuating releases of water, create habitat conditions unsuitable for native amphibians both upstream and downstream of dams, and act as barriers to movements by dispersing juvenile and migrating adult amphibians (Jennings 1996). Where dams act as barriers to mountain yellow-legged frog movement, they would effectively prevent genetic exchange between populations and the recolonization of sites. Water diversions that remove water from mountain yellow-legged frog habitat may adversely impact breeding success and adult survivorship if the diversion results in a lowering of the water level to the extent that the entire water column freezes in the winter, or to the extent that the habitat is rendered dry. These factors are likely to have contributed to the decline of mountain yellow-legged frogs and probably continue to pose a risk to the species.

Roads and Timber Harvest

Any activity that severely alters the terrestrial environment, including road construction and timber harvest, is likely to result in the reduction and extirpation of amphibian populations in the Sierra Nevada (Jennings 1996). Most of the mountain yellow-legged frog populations are in areas such as national parks or designated wilderness areas where timber is not harvested (Bradford *et al.* 1994a; Drost and Fellers 1996; Knapp and Matthews 2000). Some of these populations, and others outside of these areas, are located at too high an altitude for timber to be harvested, so this activity is not expected to affect the majority of extant mountain yellow-legged frog populations. There are some mountain yellow-legged frog populations in areas where timber harvests have occurred in the past and others where it may occur in the future. There are also roads within the range of the mountain yellow-legged frog; however, neither of these factors has been implicated as an important contributor to the decline of this species (Jennings 1996).

Fire Management Activities

Mountain yellow-legged frogs are generally found at high elevations in wilderness areas and national parks where vegetation is sparse and fire suppression activities are implemented infrequently. Potential impacts to the species resulting from fire management activities include: Water drafting (taking of water) from occupied ponds and lakes, resulting in direct mortality or rendering the habitat unsuitable for reproduction and survivorship; construction of fuel breaks either by hand or heavy equipment, potentially resulting in erosion and siltation of habitat; fire suppression with water applications or fire retardants; and

increased human activity in the area, potentially disrupting mountain yellow-legged frog behavior.

Fire retardant chemicals contain nitrogen compounds and/or surfactants (a subset of chemical additives usually used to facilitate application). Laboratory tests of these chemicals have shown that they can cause mortality in fishes and aquatic invertebrates by releasing surfactants and ammonia when they are added to water (Hamilton *et al.* 1996), and similar effects are likely on amphibians. Therefore, if fire retardant chemicals were dropped in or near mountain yellow-legged frog habitat, they could have negative effects on individuals.

In some areas within the range of the mountain yellow-legged frog, long-term fire suppression has changed forest structure and conditions where fire severity and intensity are higher (McKelvey *et al.* 1996). Prescribed fire has been used by land managers to achieve various silvicultural objectives, including the reduction of fuel loads. In some systems, fire is thought to be important in maintaining open aquatic and riparian habitats for amphibians (Russel *et al.* 1999). But severe and intense wild fires may reduce the ability of amphibians to survive such a fire. However, amphibians display adaptive behavior that may minimize mortality from fire, by taking cover in wet habitats or taking shelter in subterranean burrows, though the moist and permeable skin of amphibians increases their susceptibility to heat and dessication (Russel *et al.* 1999). Neither the direct nor indirect effects of prescribed fire or wildfire on the mountain yellow-legged frog have been studied, but because the species generally occupies high elevation habitat, fire is not a likely risk to this species in much of its range.

In summary, historic grazing activities likely modified the habitat of the mountain yellow-legged frog throughout its range. Although grazing pressure has been significantly reduced from historic levels, grazing may continue to contribute to localized degradation and loss of suitable habitat, negatively affecting mountain yellow-legged frog populations. The effects of recreation, dams, water diversions, roads, timber harvests, and fire management activities on the mountain yellow-legged frog are not well studied, and though they may have negatively affected mountain yellow-legged frogs and their habitat, they have not been implicated as primary factors in the decline of this species (Bradford *et al.* 1993; Bradford *et al.* 1994a; Jennings 1996; Knapp and Matthews 2000). However, recreation, dams, water diversions, roads, timber harvests, and fire management activities may be factors of secondary importance in the decline of the mountain yellow-legged frog and the modification of its habitat (Jennings 1996).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known commercial market for mountain yellow-legged frogs, nor are there documented recreational or educational use for mountain yellow-legged frogs, although it is likely that they have been handled by curious members of the public, used as bait by anglers, and collected as pets. The mountain yellow-legged frog does not appear to be particularly popular among amphibian and reptile collectors; however, Federal listing could raise the value of the animals within wildlife trade markets and increase the threat of unauthorized collection above current levels (K. McCloud, Service, pers. comm. 2002). Even limited interest in the species could pose a serious threat to this animal.

Scientific research may cause stress to mountain yellow-legged frogs through disturbance, including disruption of the species' behavior, handling individuals, and injuries associated with marking and tracking individuals. Scientific research has also resulted in the death of numerous individuals through the collection of museum specimens (Zweifel 1955; Jennings and Hays 1994). However, this is a relatively minor threat. Of greater concern are researchers contributing to the spread of pathogens via clothing and sampling equipment as they move between water bodies and populations (Bradford 1991; Bradford *et al.* 1994a; Fellers *et al.* 2001). Given the uncertainty surrounding the potential for researchers to contribute to the spread of pathogens, researchers have begun to implement equipment sterilization procedures between survey sites (H. Eddinger, *in litt.* 2002; R. Knapp, in litt. 2002; V. Vredenburg, in litt. 2002). For further discussion concerning the threat of disease, see Factor C below.

C. *Disease or predation.*

Predation

Native predators of mountain yellow-legged frogs include the mountain garter snake (*Thamnophis elegans elegans*), valley garter snake (*T. sirtalis fitchi*), Brewer's blackbird (*Euphagus cyanocephalus*), Clark's nutcrackers (*Nucifraga columbiana*), coyotes (*Canis latrans*), and black bear (*Ursus americanus*) (Camp 1917; Grinnell and Storer 1924; Mullally and Cunningham 1956; Bradford 1991; Jennings *et al.* 1992; Feldman and Wilkinson 2000; V. Vredenburg *et al.* (in press)).

Predation by introduced trout is the best-documented cause of the decline of the Sierra Nevada mountain yellow-legged frog, because it has been repeatedly observed that non-native fishes and mountain yellow-legged frogs rarely co-exist (Grinnell and Storer 1924; Needham and Vestal 1938; Mullally and Cunningham 1956; Cory 1962a, 1963; Bradford 1989; Bradford and Gordon 1992; Bradford *et al.* 1993, 1994a, 1998; Drost and Fellers 1996; Jennings 1996; Knapp 1996; Knapp and Matthews 2000; Knapp *et al.* 2001; V. Vredenburg *et al.*, (in press); USFS undated). The body of scientific research on the distributions of introduced trout and mountain yellow-legged frogs over time has conclusively demonstrated that introduced trout have negatively impacted mountain yellow-legged frogs over much of the Sierra Nevada (Bradford 1989; Bradford *et al.* 1993, 1994a, 1998; Knapp 1994, 1996; Drost and Fellers 1996; Knapp and Matthews 2000; Knapp *et al.* 2001). Mountain yellow-legged frogs and trout (native and non-native) do co-occur at some sites, but these co-occurrences probably are mountain yellow-legged frog populations that would have negative population growth rates in the absence of immigration (Bradford *et al.* 1998; Knapp and Matthews 2000). Non-native fish stocking programs have been recognized to have negative ecological implications because non-native fish eat native aquatic flora and fauna, including amphibians and invertebrates (Bahls 1992; Erman 1996; Matthews *et al.* 2001; Pilliod and Peterson 2001; Schindler *et al.* 2001; Moyle 2002).

Prior to extensive trout planting programs in the late 19th Century through the present, most streams and lakes in the Sierra Nevada at elevations above 1,800 m (6,000 ft) were without fishes. The distributions of several native fish species occur in lower-elevation aquatic habitats around the Sierra Nevada (Knapp 1996; Moyle *et al.* 1996; Moyle 2002). The only major exception to the 1,800 m (6,000 ft) elevational limit for fishes within the range of the mountain yellow-legged frog in the Sierra Nevada was the upper reaches of the Kern River where native fish such as the Little Kern golden trout (*Oncorhynchus mykiss whitei*) evolved (Moyle 2002). Natural barriers prevented fish from colonizing the higher elevation headwaters of the Sierra Nevada watershed (Moyle *et al.* 1996).

With the Gold Rush and its associated increase in human habitation, habitat alteration, fish distribution and species

composition began to change dramatically in high elevation lakes and streams (Moyle *et al.* 1996). Some of the first practitioners of trout stocking in the Sierra Nevada were the Sierra Club, local sportsmen's clubs, private citizens, and the U.S. military (Knapp 1996; Pister 2001). As more hatcheries were built and distribution of non-native fish became better organized under State agency leadership, trout continued to be planted for the purpose of increased angler opportunities and success (Pister 2001). After World War II, the method of transporting trout to be stocked in high elevation areas changed from packstock to aircraft, which allowed stocking in more remote lakes and in greater numbers. It was at this point that CDFG began managing the bulk of the program, as it does today (Knapp 1996; Pister 2001).

Brook trout (*Salvelinus fontinalis*), brown trout (*Salmo trutta*), rainbow trout (Oncorhynchus mykiss), and other trout species assemblages have been planted in most streams and lakes of the Sierra Nevada (Knapp 1996; Moyle 2002). National forests in the Sierra Nevada have a higher proportion of lakes with non-native fish occupancy than do national parks (Knapp 1996). This is primarily because the NPS adopted a policy that greatly reduced fish stocking within their jurisdictional boundaries in the late 1970s. Fish stocking was terminated altogether in Sierra Nevada national parks in 1991 (Bahls 1992; Knapp 1996).

Knapp's (1996) review of previous trout distribution estimates and other available data on trout distribution in the Sierra Nevada indicated that approximately 63 percent of lakes larger than 1 ha (2.5 ac) contain one or more non-native trout species, and as many as 85 percent of lakes larger than 1 ha (2.5 ac) within national forests currently contain fish. Lakes larger than 1 ha (2.5 ac) within Sierra Nevada national parks were estimated to have from 35 to 50 percent non-native fish occupancy, a 29 to 44 percent decrease since fish stocking was terminated (Knapp 1996). Though data on fish occupancy in streams is lacking throughout the Sierra Nevada, Knapp (1996) estimated 60 percent of the streams in Yosemite National Park were occupied by trout, despite the curtailment of stocking practices over 25 years ago. Grinnell and Storer (1924) observed that fish stocking in Yosemite National Park "nearly or quite eliminates the (mountain yellow-legged) frogs."

The most spatially comprehensive study of introduced fish and mountain yellow-legged frog distributions included an analysis of large landscapes affected by different fish stocking regimes, watersheds with differing trout distributions, and individual water bodies with varying fauna assemblages (Knapp and Matthews 2000). The Knapp and Matthews (2000) study on the effects of introduced fishes on the mountain yellow-legged frog in the Sierra and Inyo National Forests' John Muir Wilderness indicated 65 percent of water bodies 1 ha (2.5 ac) or larger were stocked with fishes on a regular basis up through the time of the study. Over 90 percent of the total water body surface area in the John Muir Wilderness in the Sierra and Inyo National Forests is occupied by non-native trout (Knapp and Matthews 2000). All fish stocking was terminated in 1977 in the adjacent Kings Canyon National Park. Knapp and Matthews (2000) surveyed all lakes and ponds, more than 1,700 water bodies, for fishes and mountain yellow-legged frogs. They concluded that a strong negative correlation exists between introduced trout and mountain yellow-legged frogs across the landscape, the watersheds, the individual water bodies of the study area, and possibly throughout the Sierra Nevada (Knapp and Matthews 2000). Consistent with this finding are the results of an analysis of the distribution of mountain yellow-legged frog larvae that indicates that the presence and abundance of larvae are reduced dramatically in lakes that have fish as compared with lakes that were never stocked with fish (Knapp *et al.* 2001).

Several aspects of the mountain yellow-legged frog's life history may exacerbate its vulnerability to predation and extirpation by non-native trout (Bradford 1989; Bradford *et al.* 1993; Knapp 1996; Knapp and Matthews 2000). Mountain yellow-legged frogs are aquatic and are found mainly in lakes. This increases the probability that they will encounter non-native fishes whose distribution has been greatly expanded throughout the Sierra Nevada as a result of fish stocking. The multiple-year larval stage of the mountain yellow-legged frog necessitaties their use of permanent water bodies that are deep enough so as not to freeze, and so that overwintering adults can avoid oxygen depletion when the water is covered by ice (Mullally and Cunningham 1956; Bradford 1983; Knapp and Matthews 2000). This further restricts larvae to water bodies suitable for and frequently inhabited by fishes (Knapp 1996) and isolates mountain yellow-legged frogs to fishless marginal habitats (Bradford *et al.* 1993; Knapp and Matthews 2000).

Mountain yellow-legged frog populations have also been extirpated at some fishless bodies of water (Bradford 1991; Drost and Fellers 1996). An explanation suggested for recent mountain yellow-legged frog population declines from fishless waters in the Sierra Nevada is the isolation and fragmentation of remaining populations by introduced fishes in the streams, which once provided the mountain yellow-legged frog with dispersal and recolonization routes (Bradford 1991; Bradford *et al.* 1993). Based on a survey of 95 basins within Sequoia and Kings Canyon National Parks, Bradford *et al.* (1993) calculated that the introduction of fishes into the study area resulted in approximately a ten-fold decrease in hydrologic connectivity between populations of mountain yellow-legged frogs. Knapp and Matthews (2000) believe that this has generally restricted mountain yellow-legged frogs to extremely isolated and marginal habitat. Trout influenced the isolation and fragmentation of mountain yellow-legged frog populations and metapopulations, making them more vulnerable to extirpation from random events (such as disease) than large, unfragmented metapopulations (Wilcox 1980; Hanski and Simberloff 1997; Bradford *et al.* 1993; Knapp and Matthews 2000). Given the metapopulation structure of the mountain yellow-legged frog, these isolated population locations may have higher extinction rates than colonization rates because trout prevent successful recolonization and dispersal to and from these sites (Bradford *et al.* 1993; Blaustein *et al.* 1994a; Knapp and Matthews 2000). In addition, amphibians may not recolonize unoccupied sites following local extinctions because of physiological constraints; the tendency for amphibians, including the mountain yellow-legged frog, to move only short distances; and high site fidelity (Blaustein *et al.* 1994a).

Knapp and Matthews (2000) suggest that the predation of mountain yellow-legged frogs by fishes as observed by Grinnell and Storer (1924), and the documented declines of the 1970s (Bradford 1991; Bradford *et al.* 1994a; Stebbins and Cohen 1995), are not the start of the mountain yellow-legged frog's decline, but rather the end of a long decline that started soon after fish introductions to the Sierra Nevada began in the mid-1800s. Knapp and Matthews (2000) note that metapopulation theory (Hanski 1997) predicts this type of time lag from habitat modification to population extinction.

Fish-induced declines of the mountain yellow-legged frog may be reversed in some locations with an

intensive and focused effort to restore fishless conditions (Knapp and Matthews 1998, 2000; Knapp *et al.* 2001). Removing fish from lakes with an adjacent source population of mountain yellow-legged frogs can result in the rapid recolonization of the lake by the species and, over time, may result in recovery to conditions similar to lakes that had never been stocked (Knapp *et al.* 2001; Briggs *et al.* 2002; R. Knapp, *in litt.* 2002). Trout removal from several lakes has been successfully accomplished in the Sierra National Forest's John Muir Wilderness. This has resulted in the natural recolonization and initial recovery of mountain yellow-legged frogs in one of the lakes where trout were removed (R. Knapp, *in litt.* 2002). In the other two lakes within this basin where trout were removed, mountain yellow-legged frogs were successfully reintroduced, and there is evidence of reproduction in these translocated populations (R. Knapp, *in litt.* 2002). Sequoia and Kings Canyon National Parks have initiated a mountain yellow-legged frog restoration project which employs gill nets and electrofishing to remove fish from select lakes and adjacent stream segments at sites with little to no human visitation (NPS 2001). However, because of the cumulative effect of past mountain yellow-legged frog population declines (upwards of 80 percent in the 20th century), and ongoing population declines caused by disease or other factors, the recolonization of lakes restored to fishless conditions will grow less likely as the number of viable source populations of mountain yellow-legged frogs dwindles (Knapp *et al.* 2001).

The best-documented cause of the decline of the mountain yellow-legged frog is the introduction of non-native fish (Bradford 1989; Bradford *et al.* 1993; Knapp and Matthews 2000). In summarizing the effects of non-native fish on the mountain yellow-legged frog, it is important to recognize that: (1) The vast majority of the range of the mountain yellow-legged frog did not evolve with any species of fish as this frog predominantly occurs in water bodies above natural fish barriers; (2) water bodies throughout the range of the mountain yellow-legged frog have been intensively stocked with non-native fish, and where stocking has terminated, self-sustaining fish populations continue to persist; (3) the multiple year larval stage of the mountain yellow-legged frog prevents successful recruitment to populations that co-occur with non-native fish because when water bodies ice over in winter, larvae are forced from shallow margins of lakes and ponds into deeper unfrozen water where they are vulnerable to predation by non-native fish; (4) adult mountain yellow-legged frogs that co-occur with non-native fish are vulnerable to predation when they are exposed to these fish, such as when adult mountain-yellow legged frogs overwinter at the bottom of deep water bodies; and (5) the introduction of non-native fish has fragmented mountain yellow-legged frog habitat, isolated populations from each other, and generally restricted remaining mountain yellow-legged frog populations to marginal habitats, thereby increasing the likelihood of localized extinctions without the possibility of recolonization.

Disease

There have been recent reports from around the globe of disease- and pathogen-related population declines and mass die offs of amphibians (Bradford 1991; Blaustein *et al.* 1994b; Alford and Richards 1999). Mountain yellow-legged frogs are susceptible to diseases such as red-leg disease, caused by the bacterial pathogen *Aeromonas hydrophila*. This pathogen can cause localized population crashes (Bradford 1991). Bradford (1991) suggested that one such outbreak was a result of overcrowding within the mountain yellow-legged frog population. Though it is opportunistic and successfully attacks the immunosuppressed individuals, this pathogen appears to be highly contagious, affecting the epidermis and digestive tract of otherwise healthy amphibians (Shotts 1984; Carey 1993; Carey and Bryant 1995). Grinnell and Storer (1924) reported red-legged disease had infected some mountain yellow-legged frog populations in Yosemite National Park.

In California, chytridiomycosis (*Batrachochytrium dendrobatidis*), more commonly known as chytrid fungus, has been detected in nine amphibian species, including the mountain yellow-legged frog (Fellers and Green, pers. comm., as cited in Briggs *et al.* 2002; R. Knapp, Sierra Nevada Aquatic Research Laboratory, University of California at Santa Barbara, pers. comm. 2002). Fellers *et al.* (2001) report the presence of several bacteria and chytrid fungus in larval and recently metamorphosed mountain yellow-legged frogs from sites within the Sierra Nevada. Chytrid fungus affects the keratinized (horny epidermal tissue) mouth parts and epidermal tissue of larvae and metamorphosed mountain yellow-legged frogs (Fellers *et al.* 2001). Though little is known about its life history in the Sierra Nevada, chytrid fungus has a simple asexual life cycle, and chytrids can generally withstand adverse conditions such as freezing or drought (Briggs *et al.* 2002). A research effort is underway to study the dynamics of this pathogen and the mountain yellow-legged frog within the Sierra Nevada (Briggs *et al.* 2002). Whether adult frogs acquire this fungus from tadpoles or whether the fungus is retained through metamorphosis is unknown. However, the mountain yellow-legged frog may be especially vulnerable to infections of chytrid fungus as all life stages of the mountain yellow-legged frog share the same habitat nearly year round, facilitating the transmission of this fungus to individuals at different life stages within a population (Fellers *et al.* 2001). Survey results from 2000 in Yosemite and Sequoia-Kings Canyon National Parks indicate 24 percent of the mountain yellow-legged frog populations show signs of chytrid infection (Briggs *et al.* 2002). In mountain yellow-legged frogs, chytrid fungus has been observed to result in overwinter mortality and mortality during metamorphosis (Briggs *et al.* 2002). Effects of chytrid fungus on host populations of the mountain yellow-legged frog are variable, ranging from extinction, persistence with a high level of infection, to persistence with low levels of infection (Briggs *et al.* 2002). Studies of the microscopic structure of tissue and other evidence suggests chytrid fungus caused many of the recent extinctions in the Sierra National Forest's John Muir Wilderness Area and in Kings Canyon National Park, where 41 percent of the populations went extinct between 1995 and 2002 (R. Knapp, *in litt.* 2002).

Chytrid fungus affecting wild frog populations was not documented until the late 1990s. Since then, it has been reported in amphibian populations worldwide (Fellers *et al.* 2001). We do not know how long the mountain yellow-legged frog populations have been exposed to chytrid fungus. Red-leg disease is typically a secondary infection following a chytrid infection. If this was also the case in the early 1900s, then it would suggest that what Grinnell and Storer (1924) actually were seeing was chytrid infections (R. Knapp, *in litt.* 2002). During a visual examination of mountain yellow-legged frog tadpoles preserved between 1993 and 1999, abnormalities attributed to the chytrid fungus were detected on 14 of 36 specimens and no abnormalities were detected on any of the 43 tadpole specimens collected between 1955 and 1976 (Fellers *et al.* 2001). This indicates

that chytrid fungus infections may be a recent pathogen to affect the mountain yellow-legged frog, although visual detections of chytrid-like abnormalities may be neither longlasting nor attributable to this fungus (Fellers *et al.* 2001; V. Vredenburg, *in litt.* 2002). Since at least 1976, chytrid fungus has affected adult Yosemite toads (Green and Kagarise Sherman 2001). The Yosemite toad is sympatric with the mountain yellow-legged frog (their ranges overlap). Therefore, it is possible that this pathogen has affected both of these amphibian species since at least the mid-1970s. Chytrid fungus is only a recently detected pathogen in amphibian populations; this may be an emerging infectious disease. How it has been transmitted to the mountain yellow-legged frog is unclear (Briggs *et al.* 2002).

Saprolegnia is a globally distributed fungus that commonly attacks all life stages of fishes (especially hatchery reared fishes), and has recently been documented to attack and kill egg masses of western toads (*Bufo boreas*) (Blaustein *et al.* 1994b). This pathogen may be introduced through fish stocking or it may already be established in the aquatic ecosystem. Fishes and/or migrating or dispersing amphibians may be a vector for this fungus (Blaustein *et al.* 1994b; Kiesecker *et al.* 2001). *Saprolegnia* has not been reported in the mountain yellow-legged frog; however, if hatchery fishes are vectors of this disease, it may have been introduced via fish stocking into historically occupied mountain yellow-legged frog habitat.

No viruses were detected in the specimens of mountain yellow-legged frogs that Fellers *et al.* (2001) analyzed for chytrid fungus. In Kings Canyon National Park, Knapp (pers. comm. 2002) found mountain yellow-legged frogs showing symptoms preliminarily attributed to a ranavirus. Mechanisms for disease transmission, including viruses, to the mountain yellow-legged frog remain unknown. However, Mao *et al.* (1999) isolated identical iridoviruses from wild co-occurring populations of the threespine stickleback (*Gasterostelus aculeatus*) and the red-legged frog (*Rana aurora*), indicating that infection by a given virus is not limited to a single species, and that iridoviruses can infect animals belonging to different taxonomic classes. This suggests that if virus-hosting trout are introduced into mountain yellow-legged frog habitat, they may be a vector of amphibian viruses.

Whether amphibian pathogens in the high Sierra Nevada have always coexisted with amphibian populations or if their presence is a recent phenomenon is uncertain (Fellers *et al.* 2001). The susceptibility of amphibians to pathogens may have recently increased in response to anthropogenic (human-caused) environmental disruption (Carey 1993; Blaustein *et al.* 1994b; Carey *et al.* 1999). This hypothesis suggests that environmental changes may be indirectly responsible for certain amphibian dieoffs by immune system suppression of larval or postmetamorphic amphibians to the extent that they are not resistant to diseases (Carey 1993; Blaustein *et al.* 1994b; Carey *et al.* 1999). Pathogens such as red-leg disease, which are present in fresh water and in healthy organisms, may erupt, potentially causing localized amphibian population dieoffs when the immune system of individuals within the host population are suppressed (Carey 1993; Carey and Bryant 1995). Wind-borne pesticides from upwind agriculture potentially contribute to contaminant concentrations that may be high enough to compromise amphibian immune systems (Carey 1993; Carey *et al.* 1999; Daszak *et al.* 1999). Recreationists may contribute to the spread of pathogens between water bodies and populations via clothing and fishing equipment. Given the uncertainty surrounding the potential for researchers to contribute to the spread of pathogens, they have begun to implement equipment sterilization procedures between survey sites (H. Eddinger, *in litt.* 2002; R. Knapp, *in litt.* 2002; V. Vredenburg, *in litt.* 2002).

A compounding effect of disease-caused extinctions of mountain yellow-legged frogs is that recolonization may never occur, because streams connecting extirpated sites to extant populations now contain introduced fishes, which act as barriers to frog movement within metapopulations. This isolates the remaining populations of mountain yellow-legged frogs from each other (Bradford 1991; Bradford *et al.* 1993).

In summary, mountain yellow-legged frogs are vulnerable to multiple pathogens, whose effects range from population persistence, with low levels of infection within populations, to extinction of entire populations. Little is understood about these pathogens, making disease difficult to manage without a better understanding of their life histories and modes of transmission. Red-leg disease and chytrid fungus have been identified as having potentially catastrophic effects (localized extinction) on mountain yellow-legged frog populations. Though chytrid fungus was only recently discovered to affect amphibians (including the mountain yellow-legged frog), chytrid currently appears to have the highest rate of infection relative to other pathogens in mountain yellow-legged frog populations. The negative consequences of chytrid infection to mountain yellow-legged frog populations may be exacerbated by the fragmentation and isolation of remaining mountain yellow-legged frog metapopulations and populations due to non-native fish introductions. This is because there may not be an adjacent mountain yellow-legged frog population with habitat connectivity that is able to recolonize an area following a pathogen-caused extinction event.

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could provide some protection for the mountain yellow-legged frog in the Sierra Nevada include: (1) Federal laws and regulations; (2) State laws and regulations; and (3) local land use processes and ordinances. However, these regulatory mechanisms have not prevented non-native fish introductions, pathogen outbreaks, and habitat modifications, all of which result in population declines of mountain yellow-legged frogs in the Sierra Nevada.

Federal

In response to the overgrazing by livestock of the available rangelands from the 1800s to the 1930s and the subsequent years of the Dust Bowl, Congress passed the Taylor Grazing Act in 1934. This was an effort to stop the damage to the remaining public lands from overgrazing and soil depletion, to provide for an order to grazing on public lands, and to attempt to stabilize the livestock industry using these lands (Meehan and Platts 1978; *Public Lands Council et al.* v. *Babbitt Secretary of the Interior et al.* (167 F. 3d 1287)). Although passage of the Taylor Grazing Act resulted in reduced grazing in some areas, it did not reduce grazing severity, as use remained high, and it did not allow regeneration of many meadow areas (Beesley 1996; Menke *et al.* 1996; *Public Lands Council et al.* v. *Babbitt Secretary of the Interior et al.* (167 F. 3d 1287)). The Taylor Grazing Act of 1934, as amended, did initiate some grazing reform, possibly lessening impacts of livestock grazing on many species and populations of wild plants and animals, including the mountain yellow-legged frog and its habitat. However, it does not have any provisions specific to the protection of either the mountain yellow-legged frog or its habitat.

The Multiple-Use Sustained-Yield Act of 1960 (MUSY), as amended, provided

direction that the national forests be managed using principles of multiple use and to produce a sustained yield of products and services. Specifically, MUSY gives policy that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, wildlife, and fish purposes. Land management for multiple uses has inherent conflicts. However, MUSY directs resource management not to impair the productivity of the land while giving consideration to the relative values of the various resources, though not necessarily in terms of the greatest financial return or unit output. This act provides direction to the USFS that wildlife (which includes the mountain yellow-legged frog), is a value that must be managed for, though discretion is given to each national forest when considering the value of the mountain yellow-legged frog relative to the other uses for which they must manage. MUSY does not have any provisions specific to the protection of either the mountain yellow-legged frog or its habitat.

The Federal Land Policy and Management Act of 1976 (FLPMA), as amended, gives management direction to the Bureau of Land Management; however, its application is to all Federal lands, including those managed by the USFS. FLPMA includes a provision requiring that 50 percent or $10,000,000 per year, whichever is greater, of all moneys received through grazing fees collected on Federal lands (including the USFS-administered lands within the range of the mountain yellow-legged frog) be spent for the purpose of on-the-ground range rehabilitation, protection, and improvement. This includes all forms of rangeland betterment such as fence construction, water development, and fish and wildlife enhancement. Half of the appropriated amount must be spent within the national forest where such moneys were derived. FLPMA provides for some rangeland improvements intended for the long-term betterment of forage conditions and resulting benefits to wildlife, watershed protection, and livestock production. Land improvements initiated pursuant to FLPMA may have benefitted the mountain yellow-legged frog and its habitat; however, some mountain yellow-legged frog habitat has continued to be destabilized and deteriorate due to livestock grazing on lands subject to FLPMA (R. Knapp, *in litt.* 1993a, 1993b, 1994, 2002; Jennings 1995, 1996). We are unaware of any USFS-initiated projects developed under FLPMA for the specific benefit of the mountain yellow-legged frog, and, if the USFS has conducted such projects, what effects they have had.

The Wilderness Act of 1964 established a National Wilderness Preservation System made up of federally owned areas designated by Congress as "wilderness" for the purpose of preserving and protecting designated areas in their natural condition. Commercial enterprise, road construction, use of motorized vehicles or other equipment, and structural developments are generally prohibited within designated wilderness. Livestock grazing is permitted within designated wilderness, subject to other applicable laws, if it was established prior to the passage of this act. The Wilderness Act does not specifically mention fish stocking although it does state that it shall not affect the jurisdiction or responsibilities of States with wildlife and fish responsibilities in the national forests. Whether fish stocking is permitted under the Wilderness Act is an issue that has been debated (Bahls 1992; Landres *et al.* 2001). However, it generally has not limited fish stocking in the Sierra Nevada (Knapp 1996). Passage of the Wilderness Act has not positively affected mountain yellow-legged frog populations in wilderness areas of the Sierra Nevada as it does not prevent fish stocking (Knapp and Matthews 2000). Potentially, the Wilderness Act has helped to protect mountain yellow-legged frog habitat from development or other types of habitat conversions and disturbances; however, mountain yellow-legged frog populations have continued to decline despite its passage.

The National Environmental Policy Act of 1969 (NEPA), as amended, requires all Federal agencies to formally document and publicly disclose the environmental impacts of all actions and management decisions. NEPA documentation is provided in either an environmental impact statement, an environmental assessment, or a categorical exclusion, and may be subject to administrative appeal or litigation. The Pacific Southwest Region (Region 5) of the USFS considers the mountain yellow-legged frog a Forest Service sensitive species. Therefore, as part of USFS policy, the analysis related to planning under the National Forest Management Act of 1976 (NFMA) and conducted by the USFS to evaluate potential management decisions under NEPA includes a biological evaluation which discloses potential impacts to sensitive species at both the forest planning level and on a project-by-project basis. Under USFS policy (FSM 2620 and 2670), projects must not result in contributing to a trend towards Federal listing of species. Despite the analyses pursuant to NEPA on all Federal actions potentially affecting the mountain yellow-legged frog in the Sierra Nevada, and analyses pursuant to both NFMA and NEPA on national forests, the species' populations have continued to decline (Bradford *et al.* 1993, 1994a; Drost and Fellers 1996; Jennings 1996; Knapp 1996).

The revised NMFA planning regulations recently proposed by the USFS (67 FR 72770) may affect the status of this policy requirement (FSM 2620 and 2670), as the underlying regulatory framework pertaining to providing for the diversity of plant and animal communities is proposed to be substantially altered from the existing regulatory requirement. The outcome of both the regulations and the related policies that tier to them is uncertain.

In the few cases where the Sierra Nevada mountain yellow-legged frog occurs in habitat occupied by species listed pursuant to the Act, the mountain yellow-legged frog may be afforded protection under this legislation. The native Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) and native Paiute cutthroat trout (*Oncorhynchus clarki seleneris*) are federally listed species, occurring predominantly in drainages on the east side of the Sierra Nevada. They co-occur with several small populations of mountain yellow-legged frogs at lower elevations on the edge of the species' range. The native Little Kern golden trout is a federally threatened species, co-occurring with the mountain yellow-legged frog in a few isolated locations in the southern Sierra Nevada (Knapp 1996; Moyle 2002). Recovery actions for these trout species, such as physical habitat protection, may benefit the mountain yellow-legged frog. For example, on the Tahoe National Forest, grazing, recreation, and other restrictions for the benefit of the Lahontan cutthroat trout and its habitat have been established. One of these measures that benefits the mountain yellow-legged frog is the establishment of a bank protection measure that allows for 10 percent bank disturbance (measured as bare ground accompanied by soil displacement and/or cutting of plant root crowns). Elsewhere the standard for bank disturbance is 20 percent (A. Carlson, *in litt.* 2002). However, the use of chemicals or electrofishing to remove non-native fish from threatened trout habitat may adversely affect mountain yellow-legged frogs present at the time of treatment. Additionally, listed native trout species

may prey on the mountain yellow-legged frog at sites where they co-occur.

The Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by NFMA, specifies that all national forests must have a land and resource management plan (LRMP). The purpose of the LRMP is to guide and set standards for all natural resource management activities for the life of the plan (10 to 15 years) on each national forest. NFMA requires the USFS to incorporate standards and guidelines into LRMPs. This has historically been done through a NEPA process, including provisions to manage plant and animal communities for diversity, based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives. The 1982 planning regulations for implementing NFMA, under which all existing forest plans were prepared and which still guide management, also required that fish and wildlife habitat on national forest system lands "* * * shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population is one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable population will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area."

In 2001, a record of decision (ROD) was signed by the USFS for the Sierra Nevada Forest Plan Amendment (SNFPA), based on the final environmental impact statement (FEIS) for the SNFPA effort and prepared under the 1982 NFMA planning regulations. The ROD amends the USFS Pacific Southwest Regional Guide, the Intermountain Regional Guide, and the LRMPs for national forests in the Sierra Nevada and Modoc Plateau. This document affects land management on all national forests throughout the range of the mountain yellow-legged frog. The SNFPA addresses and gives management direction on issues pertaining to old forest ecosystems; aquatic, riparian, and meadow ecosystems; fire and fuels; noxious weeds; and lower westside hardwood ecosystems of the Sierra Nevada.

Relevant to the mountain yellow-legged frog, the ROD for the SNFPA aims to protect and restore aquatic, riparian, and meadow ecosystems, and to provide for the viability of its associated native species via an aquatic management strategy. The aquatic management strategy is a general framework with broad policy direction. Implementation of this strategy is intended to take place at the landscape and project levels. There are nine goals associated with the aquatic management strategy. They include: (1) The maintenance and restoration of water quality to comply with the Clean Water Act (CWA) and the Safe Drinking Water Act; (2) the maintenance and restoration of habitat to support viable populations of native and desired non-native riparian-dependent species and to reduce negative impacts of non-native species on native populations; (3) the maintenance and restoration of species diversity in riparian areas, wetlands, and meadows to provide desired habitats and ecological functions; (4) the maintenance and restoration of the distribution and function of biotic communities and biological diversity in special aquatic habitats (such as springs, seeps, vernal pools, fens, bogs, and marshes); (5) the maintenance and restoration of spatial and temporal connectivity for aquatic and riparian species within and between watersheds to provide physically, chemically, and biologically unobstructed movement for their survival, migration, and reproduction; (6) the maintenance and restoration of hydrologic connectivity between floodplains, channels, and water tables to distribute flood flows and to sustain diverse habitats; (7) the maintenance and restoration of watershed conditions as measured by favorable infiltration characteristics of soils and diverse vegetation cover to absorb and filter precipitation, and to sustain favorable conditions of stream flows; (8) the maintenance and restoration of instream flows sufficient to sustain desired conditions of riparian, aquatic, wetland, and meadow habitats and to keep sediment regimes within the natural range of variability; and (9) the maintenance and restoration of the physical structure and condition of stream banks and shorelines to minimize erosion and sustain desired habitat diversity. If these goals are pursued and met, the mountain yellow-legged frog and its habitat could benefit. These goals, though broadly stated, include measures to reduce impacts of non-native trout predation on mountain yellow-legged frogs as well as the resulting isolation of populations. These goals, if met, would also restore mountain yellow-legged frog aquatic habitats, including meadows, fens, stream banks, and shorelines that have been degraded by a history of livestock use.

To help meet these goals, the aquatic management strategy proposes a broad initial action to address the mountain yellow-legged frog in a conservation plan developed by the *USFS* with other State and Federal agencies; an effort by the USFS to do this is underway. Where known locations of mountain yellow-legged frogs occur on the national forests, critical aquatic refuges will be designated. A primary management goal for the critical aquatic refuges is to contribute to the viability and recovery of sensitive species (including the mountain yellow-legged frog) through habitat preservation, enhancement, restoration, or connectivity. Within the aquatic management strategy, critical aquatic refuges are given highest priority for evaluating how existing and proposed activities are consistent with the goals of the strategy. The aquatic management strategy directs existing and proposed activities within critical aquatic refuges to be consistent with the goals of the critical aquatic refuges. This evaluation will be made using the riparian conservation objectives and associated standards and guidelines, as defined in the ROD for the SNFPA. One such standard and guideline specific to the mountain yellow-legged frog includes the avoidance of pesticide applications from within 152 m (500 ft) of sites known to be occupied by the species.

Management standards and guidelines in the SNFPA ROD for the Yosemite toad will also benefit the mountain yellow-legged frog in areas where these two species overlap. These standards and guidelines exclude livestock from standing water and saturated soils in wet meadows and associated streams and springs occupied by Yosemite toads, or identified as essential habitat for this species in the USFS's conservation assessment for this species.

The SNFPA includes requirements for monitoring to determine how well the aquatic management strategy goals and the riparian conservation objectives have been met, and how closely management standards and guidelines have been applied.

Our review of the SNFPA FEIS and ROD indicate that full implementation of the SNFPA would benefit the mountain yellow-legged frog and its habitat. National forests affected by the SNFPA are responsible for implementing it; however, implementation is subject to funding. Also, current direction from within the USFS is to internally review the entire record (including the FEIS, the existing

ROD, public and agency comments, and the appeals and responsive statements), to evaluate primarily the effects of its implementation on grazing, recreation, and impacts to local communities (J. Blackwell, USFS, *in litt.* 2001). This review and assessment may result in proposed changes to the SNFPA and its associated documents. Therefore, the extent to which it will continue to be implemented, and the extent to which it may benefit the mountain yellow-legged frog and its habitat, remain undetermined. There is additional uncertainty because the proposed changes to the NFMA planning regulations recently issued by Forest Service (67 FR 72770) contain two options for meeting the NFMA direction to provide for the diversity of plant and animal communities, and both options would change the current regulation pertaining to forest planning to provide habitat to support viable populations.

The statute establishing the National Park Service, commonly referred to as the National Park Service Organic Act (39 Stat. 535; 16 U.S.C. 1,2,3 and 4) states that the NPS will administer areas under their jurisdiction ". . .by such means and measures as conform to the fundamental purpose of said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." The 2001 edition of NPS Management Policies (NPS D1416) further elaborates on how impacts on park resources, including native organisms, will not be allowed to the level that they would constitute impairment: "To comply with this mandate, park managers must determine in writing whether proposed activities in parks would impair natural resources. Park managers must also take action to ensure that ongoing NPS activities do not cause impairment. In cases of doubt as to the impact of activities on park natural resource, the Service will decide in favor of protecting the natural resources." Sequoia, Kings Canyon, and Yosemite National Parks began phasing out fish stocking in 1969 and terminated this practice entirely in 1991 (Bahls 1992; Knapp 1996).

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, including wetlands. Section 404 regulations require applicants to obtain a permit for projects that involve the discharge of fill material into waters of the United States, including wetlands. Projects that are subject to regulation may qualify for authorization to place fill material into headwaters and isolated waters, including wetlands, under several nationwide permits. The use of nationwide permits by an applicant or project proponent is normally authorized with minimal environmental review by the Corps. An individual permit may be required by the Corps if a project otherwise qualifying under a nationwide permit would have greater than minimal adverse environmental impacts. However, few projects that include fill of wetlands are likely to occur within the range of the mountain yellow-legged frog.

State

The State of California considers the mountain yellow-legged frog a species of special concern, but it is not State listed as a threatened or endangered species and thus is not protected under the California Endangered Species Act.

California Sport Fishing Regulations include the mountain yellow-legged frog as a protected species that may not be taken or possessed at any time with a sport fishing license. Possession or take of the mountain yellow-legged frog is authorized under special permit from the CDFG. This gives the frog some legal protection from collecting, but does not protect it from other causes of mortality or alterations to its habitat.

The California Forest Practice rules set guidelines for the design of timber harvests on private land to reduce impacts on non-listed species. These rules have little application to the protection of the mountain yellow-legged frog because the vast majority of the species' range is on Federal land, and much of its range is too high in elevation to overlap with lands used for commercial timber harvest.

The California Department of Pesticide Regulation (CDPR) has authority to restrict the use of pesticides. The CDPR Toxic Air Contaminant (TAC) Program includes assessment of the risks posed by airborne pesticides; this assessment involves collection of air samples near sites of pesticide application and in communities near those sites. If air samples indicate that reductions in exposure are needed, mitigation measures are developed to bring about those reductions (CDPR 2001). However, the TAC program is intended primarily to protect human health, and air samples are not taken at far distant locations from application sites, like those inhabited by the mountain yellow-legged frog in the Sierra Nevada.

The California Environmental Quality Act (CEQA) pertains to projects on non-Federal lands and requires review of any project that is undertaken, funded, or permitted by a State or local governmental agency. If a project with potential impacts on the mountain yellow-legged frog in the Sierra Nevada is reviewed, CDFG personnel could determine that, although not state-listed, the frog is *de facto* an endangered, threatened, or rare species under section 15380 of CEQA. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA Sec. 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of state-listed endangered species or their habitat. Protection of listed species through CEQA is, therefore, dependent on the discretion of the agency involved. In addition, fish stocking is not subject to disclosure of its potential environmental impacts because it is exempt from CEQA under Article 19 section 15301(j). Therefore, the effects of fish stocking on the mountain yellow-legged frog are not analyzed pursuant to CEQA. Also, the vast majority of the species' range is on Federal land and is affected by Federal actions (other than the State-sponsored fish stocking) that are not subject to CEQA analysis.

Section 1603(a) of the California Fish and Game Code requires a permit from the CDFG for any activity that may alter the bed, channel, or bank of any river, stream, or lake. The permit may incorporate measures to minimize adverse impacts to fish and wildlife. Therefore, this regulation may offer some protection of mountain yellow-legged frog habitat. The extent to which this regulation has provided the mountain yellow-legged frog with protection is unknown because much of the range of this species is on federal lands where few habitat modifications subject to this permit are proposed.

The CDFG is practicing an informal policy on fish stocking in the range of the mountain yellow-legged frog in the Sierra Nevada. This policy directs that: (1) Fish will not be stocked in lakes with known populations of mountain yellow-legged frogs, nor in lakes which have not yet been surveyed for mountain yellow-legged frog presence; (2) waters will be stocked only with a fisheries management justification; and (3) the number of stocked lakes will be reduced over time. In 2001, the number of lakes stocked with fish within the range of the mountain yellow-legged

frog in the Sierra Nevada was reduced by 75 percent (C. Milliron, *in litt.* 2002; E. Pert, CDFG, pers. comm. 2002; E. Pert *et al.*, pers. comm. 2002). Water bodies within the same basin and 2 km (1.25 mi) from a known mountain yellow-legged frog population will not be stocked with fish unless stocking is justified through a management plan that considers all the aquatic resources in the basin, or unless there is heavy angler use and no opportunity to improve the mountain yellow-legged frog habitat (C. Milliron, *in litt.* 2002). This policy has not been finalized in writing (E. Pert *et al.*, pers. comm. 2002).

The CDFG is in the process of developing management plans for basins within the range of the mountain yellow-legged frog in the Sierra Nevada (CDFG 2001; C. Milliron, *in litt.* 2002; E. Pert, pers. comm. 2002; E. Pert *et al.*, pers. comm. 2002). For example, a plan has been developed, signed, and initiated for the Big Pine Creek wilderness basin in the Inyo National Forest's John Muir Wilderness (CDFG 2001), and a similar plan is proposed for the Gable Lakes basin, also in the John Muir Wilderness area of the Inyo National Forest (B. Miller, CDFG, *in litt.* 2001). The objectives of the Big Pine Creek wilderness basin plan specific to the mountain yellow-legged frog include management in a manner that maintains or restores native biodiversity and habitat quality, supports viable populations of native species, and provides for recreational opportunities that consider historic use patterns (CDFG 2001). Under this plan, some lakes are managed primarily for the mountain yellow-legged frog, with few or no angling opportunities, while lakes with high demand for recreational angling are managed primarily for that purpose (CDFG 2001). Preliminary results indicate that where the plans are being implemented, the management objective to restore mountain yellow-legged frog habitat is being achieved, and in some areas, mountain yellow-legged frog populations have responded positively (C. Milliron, pers. comm. 2002). We anticipate that the development and implementation of these basin management plans will be effective in reversing some of the negative impacts of introduced trout on mountain yellow-legged frog populations within a limited geographic area of the affected basins, providing that connectivity is restored between and within metapopulations.

Local

We are not aware of any specific county or city ordinances that provide protection for the Sierra Nevada population of mountain yellow-legged frogs.

E. *Other natural or manmade factors affecting its continued existence.* Several other natural or anthropogenically influenced factors, including contaminants, acid precipitation, climate change and drought, and ambient ultraviolet radiation, have been implicated as a cause of amphibian declines (Corn 1994; Alford and Richards 1999). These factors have been studied to varying degrees specific to the mountain yellow-legged frog. These factors are discussed below.

The following factors make the mountain yellow-legged frog, along with other amphibians, sensitive to environmental change or degradation: its aquatic and terrestrial phases; its highly permeable skin which is exposed to substances in the water, air, and terrestrial substrate; and the position at which it feeds on the food web, depending on its life stage (Blaustein and Wake 1990, 1995; Bradford and Gordon 1992; Stebbins and Cohen 1995). Environmental contaminants have been suggested, and in some cases documented, to negatively affect amphibians by causing the following: direct mortality (Hall and Henry 1992; Berrill *et al.* 1994, 1995; Carey and Bryant 1995; Relyea and Mills 2001); immune system suppression, which makes amphibians more vulnerable to disease (Carey 1993; Carey and Bryant 1995; Carey *et al.* 1999; Daszak *et al.* 1999; Taylor *et al.* 1999); disruption of breeding behavior and physiology (Berrill *et al.* 1994; Carey and Bryant 1995, Hayes *et al.* 2002); disruption of growth or development (Hall and Henry 1992; Berrill *et al.* 1993, 1994, 1995, 1998; Carey and Bryant 1995; Sparling *et al.* 2001); and disruption of the ability to avoid predation (Hall and Henry 1992; Berrill *et al.* 1993, 1994, 1995, 1998; Carey and Bryant 1995; Relyea and Mills 2001; Sparling *et al.* 2001).

Wind-borne pesticides and the compounds that carry pesticides from upwind agriculture that are deposited in the Sierra Nevada have been suggested as a cause of measured sublethal effects to amphibians (Cory *et al.* 1971; Davidson *et al.* 2001; Sparling *et al.* 2001). In 1998, more than 97 million kilograms (215 million pounds) of pesticides reported to be used in California (CDPR 1998). Originating from the agriculture in California's Central Valley, and mainly from the San Joaquin Valley where agricultural activity is greatest, pesticides are passively transported eastward to the high Sierra Nevada where they have been detected in precipitation (rain and snow), air, dry deposition, surface water, plants, fish, and amphibians, including Pacific tree frogs and mountain yellow-legged frogs (Cory *et al.* 1970; Zabik and Seiber 1993; Aston and Seiber 1997; Datta *et al.* 1998; McConnell *et al.* 1998; LeNoir *et al.*1999; Sparling *et al.* 2001; Angermann *et al.* 2002). Angermann *et al.* (2002) detected elevated contaminant (polychlorinated biphenyls and toxaphene) levels in Pacific tree frog larvae within the range of the mountain yellow-legged frog, and suggested that these contaminants originate in California's Central Valley and metropolitan areas. Spatial analysis of populations of the California red-legged frog (*Rana aurora draytonii*), foothill yellow-legged frog, Cascades frog (*R. cascadae*), and the mountain yellow-legged frog in the Sierra Nevada showed a strong, statistically significant pattern of population decline associated with greater amounts of upwind agriculture (Davidson *et al.* 2002).

Cholinesterase is an enzyme that functions in the nervous system and is disrupted by organophosphorus pesticides, including malathion, chlorpyrifos, and diazinon (Sparling *et al.* 2001). Reduced cholinesterase activity and pesticide residues have been found in Pacific treefrog larvae collected in the Sierra Nevada downwind of the Central Valley (Sparling *et al.* 2001). Cholinesterase activity was significantly lower in samples from the Sierra Nevada than in samples taken from coastal California, upwind of the Central Valley. No samples were taken above approximately 1,500 m (4,900 ft) elevation (Sparling *et al.* 2001), so in this study there is limited overlap with the 1,370 to 3,650 m (4,500 to 12,000 ft) elevational range (Stebbins 1985) of mountain yellow-legged frogs. Although pesticide detections decrease with altitudinal gain, they have been detected at elevations in excess of 3,200 m (10,500 ft) (Zabik and Seiber 1993; Aston and Seiber 1997; McConnell *et al.* 1998; LeNoir *et al.* 1999; Angermann *et al.* 2002). In addition to interfering with nerve function, contaminants such as industrial and agricultural chemicals may act as estrogen mimics (Jobling *et al.* 1996), causing abnormalities in amphibian reproduction and disrupting endocrine functions (Carey and Bryant 1995; Stebbins and Cohen 1995; Jobling *et al.* 1996; Hayes *et al.* 2002), thereby having a negative effect on amphibian populations, including the mountain yellow-legged frog.

In the late 1960s, dichlorodiphenyltrichloroethane (DDT)

and its residues were detected in significant quantities in mountain yellow-legged frogs and foothill yellow-legged frogs throughout the Sierra Nevada up to an elevation of 3,660 m (12,000 ft) (Cory *et al.* 1970). The origin of this DDT is primarily attributed to agriculture in the Central Valley (Cory *et al.* 1970). DDT residues likely from agriculture in the Central Valley still appeared in Pacific treefrog larvae collected in the Sierra Nevada in the late 1990s (Sparling *et al.* 2001), more than 25 years after the use of DDT was banned in the United States. Levels of this toxicant in the mountain yellow-legged frog and foothill yellow-legged frog were significantly higher in the central Sierra Nevada, from the Tuolumne Meadows area of Yosemite National Park, north to Sonora Pass in the Stanislaus National Forest. The origin of DDT at these locations is attributed to two massive applications administered directly to this national forest and national park for pest control (Cory *et al.* 1970, 1971).

Snow core samples from the Sierra Nevada contain a variety of contaminants from industrial and automotive sources, including hydrogen ions that are indicative of acidic precipitation, nitrogen and sulfur compounds (NH_4, NO_3, SO_2, and SO_4), and heavy metals (lead, iron, manganese, copper, and cadmium) (Laird *et al.* 1986). The pattern of recent frog extinctions in the southern Sierra Nevada corresponds with the pattern of highest concentration of air pollutants from automotive exhaust, possibly due to increases in nitrification (or other changes), caused by those pollutants (Jennings 1996). The effects of contaminants on amphibians need further research (Hall and Henry 1992; Briggs *et al.* 2002). However, the correlative evidence between areas of pesticide contamination in the Sierra Nevada and areas of amphibian decline, along with evidence of an adverse physiological effect from pesticides on amphibians in the Sierra Nevada, indicates that contaminants may present a risk to the mountain yellow-legged frog and may have contributed to the species' decline (Jennings 1996; Sparling *et al.* 2001; (Davidson *et al.*, 2002).

It has been suggested that contamination from wind-borne pesticides originating from upwind agriculture, and other contaminants originating from metropolitan areas, may compromise amphibian immune systems (Carey 1993; Carey *et al.* 1999; Daszak *et al.* 1999; Angermann *et al.* 2002). An effort to test the hypothesis that contaminants originating in the San Joaquin Valley are suppressing the mountain yellow-legged frog's immune system, thereby making it more vulnerable to disease, is underway (Briggs *et al.* 2002).

Laboratory studies have documented sublethal effects on mountain yellow-legged frog embryos at pH 5.25 (pH represents acidity on a negative scale, with 7 being neutral and lower numbers indicating increased acidity). Survivorship of mountain yellow-legged frog embryos and tadpoles was negatively affected as acidity increased (at approximately pH 4.5 or lower), with embryos being more sensitive to increased acidity than tadpoles (Bradford and Gordon 1992; Bradford *et al.* 1992). Acidic deposition has been suggested as contributing to amphibian declines in the western United States (Blaustein and Wake 1990; Carey 1993; Alford and Richards 1999). Other studies, however, do not support this hypothesis as a contributing factor to amphibian population declines in this area (Bradford and Gordon 1992; Bradford *et al.* 1992; Corn and Vertucci 1992; Bradford *et al.* 1994a, 1994b).

Acid precipitation has been postulated as a cause of amphibian declines at high elevations in the Sierra Nevada because waters there are low in acid neutralizing capacity, and, therefore, are susceptible to changes in water chemistry caused by acidic deposition (Byron *et al.* 1991; Bradford *et al.* 1994b). Near Lake Tahoe, at an elevation of approximately 2,100 m (6,900 ft), precipitation acidity has been documented to have increased significantly (Byron *et al.* 1991). In surface waters of the Sierra Nevada, acidity increases and acid neutralizing capacities decrease during snow melt and summer storms, though rarely does pH dip below 5.6 (Nikolaidis *et al.* 1991; Bradford and Gordon 1992; Bradford *et al.* 1998). The mountain yellow-legged frog breeds shortly after snow melt, thereby exposing its early life stages, which are most sensitive to acidification, to these conditions (Bradford and Gordon 1992). However, the hypothesis of acidic deposition as a cause of mountain yellow-legged frog declines has been rejected by field experiments that failed to show differences in water chemistry parameters between occupied and unoccupied mountain yellow-legged frog sites (Bradford *et al.* 1994b).

Extreme pH in surface waters of the Sierra Nevada is estimated at 5.0, with most high elevation lakes having a pH of greater than 6 (Bradford *et al.* 1992, 1998). Caused by oxidation of pyrite found in metamorphic and granitic rocks, a small number of lakes in the Sierra Nevada (approximately 10) are naturally acidic (Bradford *et al.* 1998). Bradford *et al.* (1998) found mountain yellow-legged frog tadpoles to be sensitive to naturally acidic conditions, and that their distribution was significantly related to lake acidity; they were not found in lakes with a pH less than 6. By contrast, the distribution of adult mountain yellow-legged frogs was not significantly related to natural lake acidity or other chemical or physical parameters. Though acidity may have an influence on mountain yellow-legged frog abundance or distribution, it is unlikely to have contributed to this species' decline, given the rarity of lakes acidified either by natural or anthropogenic sources (Bradford *et al.* 1998).

The last century has included some of the most variable climate reversals documented, at both the annual (extremes and high frequency of El Ni–o (associated with severe winters) and La Ni–a (associated with milder winters) events) and near-decadal scales (periods of 5 to 8 year drought and wet periods) (USDA 2001b). These events may have negative effects on Sierra Nevada mountain yellow-legged frogs. Severe winters (El Ni–o) would force longer hibernation times and could stress mountain yellow-legged frogs by reducing the time available for them to feed and breed. Alternately, during mild winters (La Ni–a), precipitation is reduced. This reduction in precipitation could reduce available breeding habitat and lead to stranding and death of frog eggs and tadpoles. It could also lead to increased exposure to predatory fish by forcing frogs into fish-containing waters if fishless waters dry out.

In California, prolonged droughts are a regular occurrence to which native amphibians have adapted; even severe droughts are not expected to result in widespread population declines (Drost and Fellers 1996). However, an increase in the frequency, magnitude, and duration of droughts caused by global warming may have compounding effects with respect to populations of mountain yellow-legged frogs already in decline. In situations where other factors have resulted in the isolation of mountain yellow-legged frogs to marginal habitats, localized mountain yellow-legged frog population crashes or extirpations due to droughts may exacerbate their isolation and preclude their recolonization or immigration from other populations (Bradford *et al.* 1993; Drost and Fellers 1996).

Changes in climate that occur faster than the ability of endangered species to adapt could cause local extinctions (U.S. Environmental Protection Agency

(EPA) 1989). Analysis of the Antarctic Vostok ice core has shown that over the past 160,000 years, temperatures have varied with fluctuations in the concentrations of greenhouse gasses such as carbon dioxide and methane. Since the pre-industrial era, atmospheric concentrations of carbon dioxide have increased nearly 30 percent, methane concentrations have more than doubled, and nitrous oxide (another greenhouse gas) levels have risen approximately 15 percent. The burning of fossil fuels is the primary source of these increases. Global mean surface temperatures have increased 0.3–0.7 °C (0.6–1.2 °F)) since the late 19th century (EPA 1997). Climate modeling indicates that the overall effects of global warming on California will include higher average temperatures in all seasons, higher total annual precipitation, and decreased spring and summer runoff due to decreases in snowpacks (EPA 1989, 1997). Decreases in spring and summer runoff could lead to the loss of breeding habitat for mountain yellow-legged frogs and increases in instances of stranding mortality of eggs and tadpoles.

Changes in temperature may also affect virulence of pathogens to a different degree than the amphibian immune systems are able to respond (Carey *et al.* 1999) and may make mountain yellow-legged frogs more susceptible to disease. Global warming could also affect the distribution of pathogens and their vectors, exposing mountain yellow-legged frogs (potentially with weakened immune systems as a result of other environmental stressors) to new pathogens (Blaustein *et al.* 2001). An experimental increase in stream water temperature was shown to decrease density and biomass in invertebrates (Hogg and Williams 1996); thus, global warming might have a negative impact on the mountain yellow-legged frog prey base.

Ambient ultraviolet-b (UV–B) radiation (280–320 nanometers (11.0–12.6 microinches)) has increased at north temperate latitudes in the past two decades (Adams *et al.* 2001). If UV–B radiation is contributing to amphibian population declines, the declines would likely be greater at higher elevations and at more southerly latitudes where UV–B exposure is greatest, where the thinner atmosphere allows greater penetration of UV–B (Davidson *et al.* 2001; Davidson *et al.*, 2002). In California, where there is a north-to-south gradient of increasing UV–B exposure, amphibian declines would also likely be more prevalent at southerly latitudes (Davidson *et al.* 2001; Davidson *et al.*, 2002). Melanic pigment on the upper surfaces of amphibian eggs and larvae protects these sensitive life stages against UV–B damage, an important protection for normal development of amphibians exposed to sunlight, especially at high elevations in clear and shallow waters (Stebbins and Cohen 1995). Blaustein *et al.* (1994c) observed decreased hatching success in several species of amphibian embryos (the mountain yellow-legged frog was not tested) exposed to increased UV–B radiation, indicating that this may be a cause of amphibian declines. Juveniles and adults may be exposed to increased UV–B levels as they heat themselves by basking in the sun (Stebbins and Cohen 1995). In a spatial test of the hypothesis that UV–B has contributed to decline of the mountain yellow-legged frog in the Sierra Nevada, Davidson *et al.* (2002) concluded that patterns of this species decline are inconsistent with the predictions of where UV–B related population declines would occur. Greater numbers of extant populations of this species were present at higher elevations than at lower elevations, and population decline was greater in the northern portion of the range of this species than it was in the southern portion. Though it does not appear that UV–B is a factor in the decline of the mountain yellow-legged frog, the absence of the predicted pattern for UV–B-caused decline should not be taken as proof that UV–B is not affecting the mountain yellow-legged frogs, given the potential for one or more factors that cause population declines to mask other factors (Davidson *et al.*, 2002).

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. We reviewed the petition, information available in our files, other published and unpublished information submitted to us during the public comment period following our 90-day petition finding, and consulted with recognized mountain yellow-legged frog experts and other Federal and State resource agencies. On the basis of the best scientific and commercial information available, we find that listing the Sierra Nevada DPS of the mountain yellow-legged frog is warranted, but is precluded by higher priority listing actions.

In making this finding, we recognize that there have been declines in the distribution and abundance of the Sierra Nevada DPS of the mountain yellow-legged frog, primarily attributed to the introduction and subsequent predation of non-native fishes, as documented in the body of scientific research on the distributions of introduced trout in relation to mountain yellow-legged frogs (Bradford 1989; Bradford *et al.* 1993, 1994a, 1998; Knapp 1994, 1996; Drost and Fellers 1996; Knapp and Matthews 2000; Knapp *et al.* 2001). Direct predation of non-native fishes on mountain yellow-legged frogs has resulted in range-wide population declines and local extirpations. Furthermore, the result of these extirpations is that the remaining populations are fragmented and isolated, making them vulnerable to further declines and local extirpations from other factors. Populations that go extinct following habitat fragmentation and populations isolation are unlikely to be recolonized due to both the isolation from, and lack of, habitat connectivity to potential source populations.

For example, in reviewing documented mountain yellow-legged frog declines over the last 5 years in Sequoia and Kings National Parks, we found a 39 percent extinction rate of the frog where fish have not been stocked since the late 1970s. In comparison, over the last 7 years in the Sierra National Forest's John Muir Wilderness Area, there has been a 61 percent extinction rate where fish stocking has continued. This high rate of extinction over a 5 to 7 year time frame suggests the species' extinction within a few decades (assuming that the rate of extinction and recolonization observed over this time period accurately reflects the long-term rates) (R. Knapp, *in litt.* 2002.).

The isolation of remaining mountain yellow-legged frog populations and habitat fragmentation as a result of non-native fish introductions has made remaining populations vulnerable to extinction from random events such as disease. Disease has only recently been recognized as an important factor in the decline of this species. It appears, however, that disease will continue to play an important role in the decline of this species. It is likely that disease, specifically chytrid fungus, has contributed to the recently observed declines in Sequoia and Kings Canyon National Parks and in the Sierra National Forests's John Muir Wilderness Area (R. Knapp, *in litt.* 2002). Although the life history and modes of transmission of chytrid fungus are not well understood, it appears that this pathogen is widespread throughout the range of the mountain yellow-legged frog within the Sierra Nevada, it is persistent in ecosystems, and it is

resilient to environmental conditions such as drought and freezing. Therefore, we conclude that all remaining yellow-legged frog populations within the Sierra Nevada are at risk to declines and extirpation as a result of infection by this pathogen.

Other factors include airborne contaminants, habitat degradation (mainly as a result of livestock grazing) and the inadequacy of existing regulatory mechanisms. Each of these factors may contribute to mountain yellow-legged frog population declines or extirpations. In addition, these factors are exacerbated by the effects that have been caused by non-native fishes, specifically the isolation of remaining mountain yellow-legged frog populations and habitat fragmentation. As noted previously, populations that go extinct following habitat fragmentation and population isolation are unlikely to be recolonzied due to both the isolation from, and lack of, connectivity to potential source populations.

We conclude that the overall magnitude of threats to the Sierra Nevada DPS of the mountain yellow-legged frog is high, and that the overall immediacy of these threats is imminent. Pursuant to our Listing Priority System (64 FR 7114), a DPS of a species for which threats are high and imminent is assigned a Listing Priority Number of 3. While we conclude that listing the Sierra Nevada DPS of the mountain yellow-legged frog is warranted, an immediate proposal to list is precluded by other higher priority listing actions. During Fiscal Year 2003 we must spend nearly all of our Listing Program funding to comply with court orders and judicially approved settlement agreements, which are now our highest priority actions. To the extent that we have discretionary funds, we will give priority to using them to address emergency listings and listing actions for other species with a higher priority. Due to litigation pertaining to various listing actions, our planned work with listing funds in Fiscal Year 2003 consists primarily of addressing court-ordered actions, court-approved settlement agreements, and listing actions that are in litigation. (Also, some litigation-related listing actions already are scheduled for Fiscal Year 2004.) We expect that our discretionary listing activity in Fiscal Year 2003 will focus on addressing our highest priority listing actions of finalizing expiring emergency listings.

The Sierra Nevada DPS of the mountain yellow-legged frog will be added to the list of candidate species upon publication of this notice of 12-month finding. We will continue to monitor the status of this species and other candidate species. Should an emergency situation develop with one or more of the species, we will act to provide immediate protection, if warranted.

We intend that any proposed listing action for the Sierra Nevada DPS of the mountain yellow-legged frog will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references cited is available on request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section, above).

Author

The primary author of this document is Peter Epanchin of the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 10, 2003.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 03–973 Filed 1–15–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030108004–3004–01; ID 010303B]

RIN 0648–AQ28

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 15

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework 15 to the Atlantic Sea Scallop Fishery Management Plan (FMP) developed by the New England Fishery Management Council (Council). This rule proposes to implement management measures for the 2003 fishing year, including a days-at-sea (DAS) adjustment, and continuation of a Sea Scallop Area Access Program (Area Access Program) for 2003. The intent of this action is to achieve the goals and objectives of the FMP under the Magnuson-Stevens Fishery Conservation and Management Act and to achieve optimum yield in the scallop fishery. In addition, this proposed rule includes regulatory text that would codify an additional gear stowage provision for scallop dredge gear that was established by the Administrator, Northeast Region, NMFS (Regional Administrator) in 2001.

DATES: Comments must be received on or before 5 p.m., local time, on January 31, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Framework 15 to the Scallop FMP." Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

Copies of Framework Adjustment 15, its Regulatory Impact Review (RIR) including the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at http://www.nefmc.org.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288; fax 978–281–9135; e-mail peter.christopher@noaa.gov.

SUPPLEMENTARY INFORMATION: On September 12, 2002, the Council adopted Framework 15 to the FMP, which proposes annual management measures for the 2003 fishing year (March 1, 2003, through February 29, 2004). Framework 15 would increase the annual DAS allocation, and extend the Area Access Program in the Hudson Canyon and Virginia Beach areas for 2003. The only modification to the measures that have been in effect for the 2002 fishing year would be an increase in the possession limit allowed to vessels participating in the Area Access Program. This increase is intended to be consistent with increasing catch rates in the area so that there is sufficient incentive for vessels to fish in these areas.

Regulations implementing Amendment 7 to the FMP (64 FR 14835,

March 29, 1999) redefined overfishing and revised the annual fishing mortality rate (F) reduction schedule through fishing year 2008. The FMP currently specifies that the DAS allocated for the 2003 fishing year will be 45, 18, and 4 DAS for full-time, part-time, and occasional scallop vessels, respectively. Amendment 7 included the annual DAS allocations projected to be necessary to rebuild the stock within 10 years. DAS for the 2003 fishery were intended to achieve an F target of F=0.22. The reductions in F and associated sea scallop DAS schedule were intended to rebuild the sea scallop stock within 10 years. Amendment 7 also established an annual monitoring and review process to adjust management measures to meet the stock rebuilding objectives as conditions in the resource change. Finally, Amendment 7 established two closed areas, the Hudson Canyon and Virginia Beach Closed Areas, in the Mid-Atlantic to protect large concentrations of small scallops. In May of 2001, the Hudson Canyon and Virginia Beach Closed Areas were re-opened to controlled scallop fishing under Framework 14 to the FMP (66 FR 21639, May 1, 2001; 66 FR 24052, May 11, 2001 (republication); and 66 FR 457784, August 30, 2001 (correction)) because the scallops in the areas had increased in size and the resource abundance had improved. Framework 14 established measures to control fishing in the areas through February, 2003.

Since the implementation of Amendment 7 in 1998, scallop biomass has increased by nearly five times, and the stock as a whole is at or near the biomass target. The most recent stock assessment was completed in April 2001 through the 32nd Northeast Regional Stock Assessment Workshop (SAW 32). SAW 32 found that neither stock area (Georges Bank and Mid-Atlantic) was overfished, with biomass in both areas above or near the biomass targets. SAW 32 found F on Georges Bank to be 0.14 in 1999, well below the overfishing threshold of F=0.24, so overfishing was not occurring. In the Mid-Atlantic, SAW 32 found that F was 0.43 in 1999, so overfishing was still occurring in that stock area. Although no formal updates of the status of the scallop resource have been completed, projections completed for Framework 15 indicate that the resource will continue to exceed biomass targets.

Under the existing regulations, the Area Access Program will expire on February 28, 2003. These areas were initially closed in 1998 to protect concentrations of juvenile scallops, which have since grown to harvestable size. For the past 2 fishing years, fishing has been allowed within those areas under the Area Access Program established by Framework 14. If the Area Access Program expires, there would be uncontrolled fishing within those areas. This rule proposes to maintain controls on effort and catch that would prevent scallops in the areas from being overfished while at the same time creating a sufficient incentive to fish in these areas in order to alleviate effort on other scallop areas.

Because of the increases in stock biomass, Framework 15 estimates that the number of DAS currently specified for fishing year 2003 (i.e., 45, 18, and 4 DAS for full-time, part-time, and occasional vessels, respectively) would result in an F of 0.091, which is significantly lower than the FMP's target F. Fishing at this level would not achieve optimum yield and would result in negative economic impacts on the industry. The proposed DAS allocation under Framework 15 is more consistent with the F target, and would prevent economic losses for some vessels that would result from lower DAS allocations. The F is projected to be approximately 0.155 for the resource overall under the proposed action. While projections indicate that the proposed DAS allocations would allow overexploitation of scallops in the open portions of the Mid-Atlantic and Georges Bank to continue (F=0.35 to 0.39), they also show that the fishery overall would not exceed its F target of F=0.22, due in part to continued large concentrations of scallops in the Georges Bank groundfish closed areas.

Proposed Measures

This action would implement an annual DAS allocation of 120, 48, and 10 DAS for full-time, part-time, and occasional vessels, respectively, for the 2003 fishing year. This would represent an increase over the DAS allocations that would otherwise become effective March 1, 2003 (i.e., 45 full-time, 18 part-time, and 4 occasional). The 120, 48, and 10 DAS allocations have been in place each year since 1999, due to better conditions in the scallop resource than were anticipated in Amendment 7.

Framework 15 would continue the Area Access Program that was implemented under Framework 14 while leaving in place extensive closures under the Northeast Multispecies FMP in other highly abundant scallop grounds. The continued Area Access Program would allow controlled scallop fishing in the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. Vessels would be prohibited from fishing for scallops in the Sea Scallop Access Areas unless they are fishing under the Area Access Program. The intent of the Area Access Program is to derive biological, social, and economic benefits from fishing in the areas.

Finally, this proposed rule includes regulatory text that would codify a scallop dredge gear stowage provision that was established by the Regional Administrator in 2001. The new provision would eliminate the need for vessel operators to disconnect towing wires and reel them fully onto the winch in order for the gear to be considered stowed properly. Reconnecting the wires at sea was determined to be dangerous, particularly in rough seas. The Regional Administrator has the authority to establish new gear stowage provisions through notification through a permit holder letter. Subsequent codification of the provision would ensure proper implementation of the requirement.

Interactions with Endangered and Threatened Species

NMFS is currently considering and evaluating the effects of the scallop fishery on threatened and endangered species, including sea turtles. The scallop fishery as a whole and the management measures proposed in Framework 15 are being considered in a formal consultation that is currently being conducted under Section 7 of the Endangered Species Act. Although the biological opinion (BO) has not been completed as of the publication of this proposed rule, the final rule or subsequent actions will address the findings of the BO, if appropriate.

Sea Scallop Area Access Program Measures

The 2003 Area Access Program would begin on March 1, 2003, unless the fishery is closed prior to February 28, 2003, in which case it would begin on April 1, 2003. The 2003 Area Access Program would end when the total allowable catch (TAC) allocated to the Area Access Program is caught, or when vessels have used up their allocated number of trips.

The Area Access Program would include a TAC of 17.06 million lb (7,740 mt) and 0.23 million lb (105 mt) for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively. These TACs include set-asides of 2 percent and 1 percent to defray the costs of observers and research, respectively. The TACs would achieve an F of 0.32 in each of the two areas. Although this F exceeds the target F of 0.22 for the scallop fishery, it is not expected to jeopardize the rebuilding potential for

the Mid-Atlantic stock. Rather, it is anticipated that the higher F for the Access Areas would allow greater levels of effort and catch within the Access Areas, thereby reducing effort and catch in other areas of the Mid-Atlantic. This anticipated effort distribution is expected to continue to provide for rebuilding of the Mid-Atlantic scallop stock and the scallop resource as a whole.

All limited access scallop vessels, including vessels that replace vessels that hold a scallop Confirmation of Permit History, would be eligible to fish for the sea scallop TAC under the Area Access Program. Full-time and part-time scallop vessels would be restricted to a total of three annual trips into the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. A trip into either of the Areas would count as one of the allowed trips. Vessels participating in the Area Access Program would be allowed to take only one of the three allocated trips before May 1, and only two of the three allocated trips before June 1. At least one trip would be required to be started before September 1 for that vessel to be eligible to fish any additional trips on or after October 1 that may be authorized by the Regional Administrator. This measure is meant to prevent a derby style fishery from occurring and may reduce the potential for bycatch by limiting trips in late spring when bycatch, particularly of summer flounder, could be problematic. Vessels in the occasional permit category would be allowed to conduct only one trip into the Area of their choice.

Participating scallop vessels would be allowed to possess and land from the Areas up to 21,000 lb (9,525.4 kg) of scallop meats per trip. Limits on both the amount of scallops possessed and landed, and the number of trips, are intended to help to control fishing mortality of scallops in the Areas while still creating an incentive to fish in the areas. The increase in the possession limit is a result of the higher F in the Areas. This higher F allows for more trips and a higher limit thereby creating more opportunity for vessels to fish in the Areas. The increased opportunity to fish in the areas should create an incentive for vessels to utilize the Area Access Program where the scallop resource can be harvested at higher rates, thereby removing fishing pressure from other areas that may be more sensitive to fishing pressure. These limits are also intended to increase social benefits by allowing all limited access vessels an opportunity to fish in the Areas without creating a derby fishery, and increase economic benefits by promoting an orderly fishery and reducing the possibility of market gluts that could be caused by high initial catches in these Areas.

After taking into account data on the number of eligible vessels participating, and on the total number of trips taken, the Regional Administrator could consider adjusting the sea scallop possession limit for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas any time during the season; and, on or after October 1, 2003, could consider allocating one or more additional trips for full-time and part-time vessels. In order for additional trips to be allocated, a sufficient amount of the sea scallop TAC must remain to warrant such an adjustment or allocation. In order for a vessel to participate in any additional Area Access Program trips that would be allocated on or after October 1, 2003, that vessel must have started at least one Area Access Program trip prior to September 1, 2003. Vessels with occasional permits would not be allocated any additional trips.

Any trip of 10 DAS or less by a vessel fishing in the Area Access Program would count as 10 DAS. Any trip of over 10 DAS would count as the actual DAS (e.g., if a vessel used 12 DAS, 12 DAS would be deducted from its annual DAS allocation). The intended effect of the minimum 10 DAS count is to reduce the number of days that are available to be fished in other areas, thereby reducing fishing mortality on the scallop resource overall by potentially reducing the number of scallops caught under DAS.

Vessels would be allowed to use dredges or trawls when fishing in the Area Access Program. Dredge gear would be required to be outfitted with a twine top with a minimum mesh size of 10 inches (25.40 cm). The purpose of increasing the minimum twine top mesh size measurement from 8 inches (20.32 cm) to 10 inches (25.40 cm) for the Area Access Program is to reduce bycatch of groundfish and other finfish. Recent research and experience from the Georges Bank and Southern New England Closed Area Sea Scallop Exemption Program demonstrate that the 10–inch (25.40–cm) mesh size may significantly reduce bycatch of certain species, especially flatfish species.

All scallop vessels fishing in the Area Access Program would be required to have installed on board an operational vessel monitoring system (VMS) unit that meets the minimum performance criteria as specified in the regulations at § 648.9(b). Vessels with occasional permits are the only limited access scallop vessels not currently required to have a VMS unit and would, therefore, be required to install an approved VMS unit in order to participate in the Area Access Program. Scallop vessels planning to fish in the Area Access Program would be required to so declare by notifying the Regional Administrator through the VMS as described below.

Each vessel operator would be required to inform NMFS of his/her intention to fish in the Sea Scallop Access Areas prior to the 25th day of the month preceding the month in question through the VMS e-mail system (e.g., if the vessel plans to fish in these areas in July, it would need to notify the Regional Administrator by June 25). This notification requirement would facilitate placement of observers and would provide for an estimate of the number of potential Area Access Program participating vessels in order to make preliminary projections of potential TAC harvest rates.

Vessel operators would be required to report the following information to the Regional Administrator prior to the 25th day of the month preceding the month in question: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, the area to be fished, and the anticipated number of trips to be taken in the area in question.

In addition, for the purpose of selecting vessels for observer deployment, a vessel's operator would be required to provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 5 working days prior to the beginning of any trip on which it declares into the Sea Scallop Area Access Program.

On the day the vessel leaves port to fish under the Area Access Program, the vessel owner or operator must declare into the Program through the VMS. Declaration into the fishery would allow for more accurate and timely monitoring of the catch in the fishery.

The operator of each vessel participating in the Area Access Program would be required to report specific information on a daily basis through the VMS. For each day of an Area Access Program trip, a vessel would be required to report the daily pounds (kg) of scallop meats kept, the area fished that day, and the Fishing Vessel Trip Report page numbers corresponding to the respective Sea Scallop Access Area trip. In addition, vessels on observed trips would be required to provide a separate report of the daily pounds (kg) of scallop meats kept on tows that were observed.

Vessels that have declared a trip into the Area Access Program would be

prohibited from possessing more than 50 U.S. bu (17.62 hl) (400 lb (181.4 kg) of meats) of shell stock (i.e., unshucked scallops) when outside the Sea Scallop Access Areas. This limit for shell stock would be considered part of the overall possession limit. A limit on the amount of sea scallops landed in the shell is necessary to monitor and enforce the overall meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock would help satisfy a market for large, whole scallops, without compromising the enforceability of the conservation intent of the possession limit.

General category permitted vessels and limited access scallop vessels fishing outside a scallop DAS would be allowed to fish in the Sea Scallop Access Areas throughout the year, provided that no more than 100 lb (45.36 kg) of scallop meats are possessed on board the vessel when the vessel is in the Sea Scallop Access Areas. These vessels would be prohibited from possessing in-shell scallops while inside the Sea Scallop Access Areas, except they would be allowed to possess an equivalent of in-shell scallops that are necessary to provide 100 lb (45.36 kg) of scallop meats. Vessels not fishing under the Area Access Program would be allowed to transit the Sea Scallop Access Areas with more than these possession limits on board, provided their gear is properly stowed according to the regulations at § 648.23(b). This measure is intended to allow an incidental catch of scallops for scallop vessels that fish for other species outside the areas and to allow for more direct transiting to and from other fishing areas.

To improve the enforceability of the Area Access Program, all limited access scallop vessels equipped with a VMS unit would be polled twice per hour, regardless of whether the vessel is enrolled in the Area Access Program or not. Also, vessels would be required to stow all dredge or trawl gear while transiting to and from the Sea Scallop Access Areas and must land their scallop catch at one location for each trip. The new stowage requirement included in this proposed rule would improve safety on board vessels transiting to and from the Access Areas.

Vessels would be required to carry observers when requested. The Council has recommended 10–percent observer coverage for the Hudson Canyon Sea Scallop Access Area and 20–percent observer coverage for the Virginia Beach Sea Scallop Access Area. Observers would obtain information on catch, catch rates, and bycatch and may obtain information on gear efficiency and selectivity and on other characteristics of the fishery. The vessel owner would be responsible for paying for the cost of the observer, regardless of whether any scallops are caught on the trip. At the discretion of the Regional Administrator, scallop vessels could be allocated an additional amount of sea scallops, not to exceed a cumulative total of 155 mt or 2 mt for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, for each trip on which an observer is taken, to help defray the cost of the observer. Additional scallops to fund observers could not exceed a value equal to two percent of the overall scallop TAC. One percent of the scallop TAC for both the Hudson Canyon and Virginia Beach Access Areas would be set aside to pay for observers. Similarly, a value equal to one percent of the overall TAC would be added on to the amount of observer TAC, also to help vessels pay for the cost of observers. The allocation of one percent set-aside and one percent additional observer TAC would be consistent with the Area Access Program in 2001 and 2002, as well as the Georges Bank Closed Area Exemption Program. A TAC set-aside of 1 percent to fund research would also be included as part of the Area Access Program. Amounts over the trip limits for sea scallop meats to be allocated for defraying research costs shall be limited, by area, up to 77 mt or 1 mt for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively. This research program for the Sea Scallop Access Areas would be modeled after the research program in the 2000 Georges Bank Sea Scallop Exemption Program. A Request for Proposals notice will be published in the **Federal Register** that will provide information on the submission process, eligibility criteria, proposal requirements and priorities, project evaluation, application deadlines and other requirements.

Abbreviated Rulemaking

NMFS proposes these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart D. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis and with an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. This action is being published as a proposed rule because the Council had sufficient time to prepare for proposed rulemaking and allow for additional public comment on the action.

Documents summarizing the Council's proposed action, the EA, and economic impacts analysis of the preferred and alternative actions, were available for public review 1 week prior to the final Council meeting on September 12, 2002, as is required under the framework adjustment process. Written and oral comments were accepted up to and during that meeting. Comments pertaining specifically to the EA, and framework measures are included and responded to in the EA.

Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows:

The proposed action and its alternatives could affect any commercial vessel holding an active Federal permit for sea scallops. Data from the 2001 Northeast permit database show that 310 commercial vessels were permitted with limited access scallop permits, and 2,293 commercial vessels were permitted with general category (open access) scallop permits. Information from the 2002 fishing year is incomplete. The majority, if not all, of the federally permitted vessels readily fall within the Small Business Administration's (SBA) definition of small business and the Regulatory Flexibility Act's definition of "small entity." Therefore, all alternatives and analyses associated with this proposed rule necessarily are alternatives and analyses applicable to impacts on small entities. A description of the significant alternatives to the proposed action are addressed in detail in the EA and are not repeated here.

The analyses in the Council's IRFA and the economic impacts section of the EA show that the increase in the DAS allocations of the preferred and non-preferred alternative and the access to the Hudson Canyon and Virginia Beach Access Areas will have positive

economic impacts on all vessels as compared to the no action alternative. The revenues per full-time vessel are expected to increase by 56 percent under the proposed action, and by 38 percent to 58 percent for the 100 and 140 full-time DAS alternatives, respectively, compared to the no action alternative. The profits are expected to more than double under all DAS alternatives, including the proposed alternative and access to the Area Access Program in the Mid-Atlantic, relative to the no action alternative. Although the analysis in the document is conducted for an average full-time vessel in the scallop fishery, relative to the no action alternative, the results are expected to be positive for all full-time, part-time, and occasional vessels, as well, since their DAS allocations will also be adjusted upward and they will be able to access the Hudson Canyon and Virginia Beach Access Areas.

No additional reporting requirements are included in this proposed rule. Likewise, no other Federal rules will duplicate, overlap or conflict with this proposed rule.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 13, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.23, paragraph (b)(2) is revised to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(b) * * *

(2) *Scallop dredges.* (i) The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured and the dredge or the winch is covered so that it is rendered unuseable for fishing; or

(ii) The towing wire is detached from the dredge and attached to a bright-colored poly ball no less than 24 inches (60.9 cm) in diameter, with the towing wire left in its normal operating position (through the various blocks) and either is wound back to the first block (in the gallows) or is suspended at the end of the lifting block where its retrieval does not present a hazard to the crew and where it is readily visible from above.

* * * * *

3. In § 648.53, the table in paragraph (b) is revised to read as follows:

§ 648.53 DAS allocations.

* * * * *

(b) * * *

DAS Category	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008
Full-time	120	120	120	120	120	34	35	38	36	60
Part-time	48	48	48	48	48	14	14	15	17	24
Occasional	10	10	10	10	10	3	3	3	4	5

* * * * *

4. In § 648.57, the introductory text of paragraphs (a) and (b) are revised to read as follows:

§ 648.57 Closed and regulated areas.

(a) *Hudson Canyon Sea Scallop Access Area.* Through February 29, 2004, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Hudson Canyon Sea Scallop Access Area, and no vessel may possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is only transiting the area with all fishing gear unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Hudson Canyon Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

(b) *Virginia Beach Sea Scallop Access Area.* Through February 29, 2004, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Virginia Beach Sea Scallop Access Area, and no vessel may possess scallops in the Virginia Beach Sea Scallop Access Area, unless such vessel is only transiting the areas with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Virginia Beach Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

5. In § 648.58, paragraphs (c)(1), (c)(4), (c)(6), (e)(2), (e)(3)(ii), (e)(4)(ii), and (f) are revised to read as follows:

§ 648.58 Sea Scallop Area Access Program.

* * * * *

(c) * * *

(1) *Season.* From March 1, 2003, through February 29, 2004, vessels participating in the Sea Scallop Area Access Program may fish for or possess sea scallop in or from the respective Sea Scallop Access Areas specified in § 648.57, unless access to these areas is terminated as specified in paragraph (f) of this section. Should the 2002 fishing year season be closed early (i.e., prior to February 28, 2003), as described in this paragraph (c)(1), the Sea Scallop Area Access Program season for fishing year 2003 will begin on April 1, 2003.

* * * * *

(4) *Number of trips*--(i) *Full and part-time vessels.* Full and part-time vessels are restricted to a total of three trips into the Sea Scallop Access Areas, unless otherwise authorized by the Regional Administrator as specified in paragraph (e)(2) of this section. A trip to either Area counts as one trip. Full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than one of their three allowed Area Access Program trips before May 1, 2003, and no more than two of their three allowed Area Access Program trips before June 1, 2003.

(ii) *Occasional scallop vessels.* Occasional vessels may fish only one trip under the Sea Scallop Area Access Program. The one allowed trip may be conducted in either the Hudson Canyon or Virginia Beach Sea Scallop Access Area specified in § 648.57 at any time during the season, as specified in paragraph (c)(1) of this section.

* * * * *

(6) Possession and landing limits--Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2003, a vessel owner or operator may fish for, possess, and land up to 21,000 lb (9,525.4 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (17.62 hl) of in-shell scallops.

* * * * *

(e) * * *

(2) Adjustment process for number of trips for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas. On or after October 1, 2003, if the scallop catch in the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas is less than the scallop TACs specified for fishing year 2003 in paragraph (f) of this section, the Regional Administrator may allocate one or more additional trips for the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas for full and part-time limited access sea scallop vessels that declared into and began a trip under the Sea Scallop Area Access Program prior to September 1, 2003. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the trip limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator. Vessels with occasional permits would not be allocated an additional trip.

(3) * * *

* * * * *

(ii) *Observer set-aside limits by area.* The cumulative amount of scallop authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of an observer shall not exceed 2 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 2 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area - 2003 area access program - 155 mt;

(B) Virginia Beach Sea Scallop Access Area - 2003 area access program - 2 mt.

* * * * *

(4) * * *

* * * * *

(ii) *Research set-aside limits and number of trips by area.* The cumulative amount of scallop authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of sea scallop research shall not exceed 1 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 1 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area - 2003 area access program - 77 mt;

(B) Virginia Beach Sea Scallop Access Area - 2003 area access program - 1 mt.

* * * * *

(f) *Termination of the Sea Scallop Area Access Program*--(1) *Hudson Canyon Sea Scallop Access Area.* The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2003 shall be terminated as of the date the Regional Administrator projects that 7,585 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(2) *Virginia Beach Sea Scallop Access Area.* The Virginia Beach Sea Scallop Access Area fishery for fishing year 2003 shall be terminated as of the date the Regional Administrator projects that 103 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

* * * * *

[FR Doc. 03–1025 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 11
Thursday, January 16, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Prather, California. The purpose of the meeting is to discuss and to receive project proposals regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held February 18, 2003, 6:30 p.m. to 9:30 p.m.

ADDRESSES: 29688 Auberry Road, Prather, California. The meeting will be held at the Sierra National Forest, High Sierra District Ranger office, 29688 Auberry Road, Prather, California 93651. Send written comments to Rick Larson, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *relarson@fx.fed.us.*

FOR FURTHER INFORMATION CONTACT: Rick Larson, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3319.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public sessions will be provided and individuals who made written requests by February 18, 2003 will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Review and approve the January 21, 2003 meeting notes; (2) Discuss new business of the RAC if applicable; (3) Vote on submitted projects for 2002 funds; (4) Confirm the date, location and agenda of the next meeting; (5) Public comment.

. Dated: January 9, 2003.

Ray Porter,

District Ranger.

[FR Doc. 03–944 Filed 1–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Modoc County RAC Meetings.

AGENCY: Forest Service, USDA.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393), the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday, February 10 and Monday March 10, 2003, in Alturas, California for each business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting February 10 begins at 4 p.m. at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of November 13 and January 8 minutes, reports from subcommittees, hear a status report on 2002 and 2003 projects, and discuss community outreach for projects for fiscal year 2004 that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, provide economic benefits and restore and improve health and water quality that meet the intent of Public Law 106–393. A roll call vote will be taken on three projects. Time will also be set aside for public comments at the beginning of the meeting.

The business meeting March 10 begins at 4 p.m. at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of February 10 minutes, reports from subcommittees, and discuss progress of community outreach for fiscal year 2004 projects. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor Stan Sylva, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Nancy Gardner,

Acting Forest Supervisor.

[FR Doc. 03–1018 Filed 1–15–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Office of the Secretary

RIN 0596–AB99

National Environmental Policy Act Documentation Needed for Fire Management Activities; Categorical Exclusions; Extension of Comment Period

AGENCY: Forest Service, USDA; Office of the Secretary, Interior.

SUMMARY: This notice extends the comment period for the proposed categorical exclusions described under **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be received on or before January 31, 2003.

ADDRESSES: Mail written comments to: Healthy Forests Initiative, USDA FS Content Analysis Team, P.O. Box 221150, Salt Lake City, Utah 84116.

Comments also may be submitted via facsimile to (801) 517–1015 or by e-mail to *healthyforests@fs.fed.us.* If comments are sent via facsimile or e-mail, the public is requested not to send duplicate written comments via regular mail.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection. Persons wishing to inspect the comments need to call (801) 517–1020 to facilitate an appointment.

FOR FURTHER INFORMATION CONTACT: Dave Sire, USDA Forest Service, Ecosystem Management Coordination, (202) 205–2935, or Willie Taylor, Department of the Interior, Office of

Environmental Policy and Compliance, (202) 208–3891. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 4 p.m., eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On Monday, December 16, 2002, the Department of Agriculture, Forest Service and the Department of the Interior published two proposed categorical exclusion under the National Environmental Policy Act, 67 FR 77038, concerning fire management activities. The deadline for receipt of comments was January 15, 2003. The comment period is extended for sixteen days to allow additional time for comment on the proposed categorical exclusions. Comments must be received on or before January 31, 2003.

For the Forest Service, U.S. Department of Agriculture.

Dated: January 13, 2003.

Sally D. Collins,

Associate Chief.

Dated: January 13, 2003.

Christopher B. Kearney,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 03–1060 Filed 1–14–03; 9:26 am]

BILLING CODE 3410–11 and 4310–70–M

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Local Government Finances (School Systems)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 17, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sharon J. Meade, U.S. Census Bureau, Governments Division, Washington, DC 20233–6800 (301–763–7316).

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau collects education finance data as part of its Annual Survey of State and Local Governments. This survey is the only comprehensive source of public fiscal data collected on a nationwide scale using uniform definitions, concepts and procedures. The collection covers the revenues, expenditures, debt, and assets of all public school systems. This data collection has been coordinated with the National Center for Education Statistics (NCES). The NCES uses this collection to satisfy its need for school system level finance data.

Information on the finance of our public schools is vital to assessing their effectiveness. This data collection makes it possible to access a single data base to obtain information on such things as per pupil expenditures and the percent of state, local, and federal funding for each school system. Recently, as exemplified by the reauthorization of the Elementary Secondary Education Act (ESEA) by the No Child Left Behind Act (NCLB), there has been increased interest in improving the Nation's public schools. One result of this intensified interest has been a significant increase in the demand for school finance data.

The four forms used in the school finance portion of the survey are:

Form F–33. This form contains item descriptions and definitions of the elementary-secondary education finance items collected jointly by the Census Bureau and NCES. It is used primarily as a worksheet by the state education agencies that provide school finance data centrally for all of the school systems in their respective states. Most states supply their data by electronic means.

Form F–33–1. This form is used at the beginning of each survey period to solicit the assistance of the state education agencies. It establishes the conditions by which the state education agencies provide their school finance data to the Census Bureau.

Form F–33–L1. This is a supplemental letter sent to the school systems in states where the state education agencies cannot provide information on the assets of individual school systems.

Form F–33–L2. This is a supplemental letter sent to the school systems in states where the state education agency cannot provide information on the indebtedness of individual school systems.

Form F–33–L3. This is a supplemental letter sent to the school systems in states where the state education agency cannot provide information on either indebtedness or assets. This letter combines the items requested on the forms F–33–L1 and F–33–L2.

The data collection is identical to the previous collections except that the section on revenue from federal sources through the state government is updated to accommodate the collection of data related to the reauthorization of the Elementary-Secondary Education Act (ESEA) by the No Child Left Behind Act.

II. Method of Collection

Through central collection arrangements with the state education agencies, the Census Bureau collects almost all of the finance data for local school systems from state education agency data bases. The states transfer most of this information in electronic format via e-mail and over the Internet via file transfer protocol (FTP). The Census Bureau has facilitated central collection of school finance data by accepting data in whatever formats the states elect to transmit.

III. Data

OMB Number: 0607–0700.
Form Number: F–33, F–33–1, F–33–L1, F–33–L2, F–33–L3.
Type of Review: Regular.
Affected Public: State and local governments.
Estimated Number of Respondents: 4180.
Estimated Time Per Response: .97 hours.
Estimated Total Annual Burden Hours: 4038.
Estimated Total Annual Cost: $73,492.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 U.S.C., sections 161 and 181.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 10, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–926 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2004 National Long-Term Care Survey (NLTCS) and Informal Caregivers Survey (ICS)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 17, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ronald Dopkowski, Census Bureau, FB 3, Room 3356, Mail Stop 8400, Washington, DC 20233–8400, (301) 763–3801.

SUPPLEMENTARY INFORMATION

I. Abstract

The primary purpose of the NLTCS and the ICS is to obtain information on the health and functional status of the elderly population in the United States and the people who take care of them in a home environment. A secondary purpose of the 2004 NLTCS is to identify impaired people and their relatives so the survey sponsor, Duke University, can obtain supplemental information from them via follow-up contacts not made by the Census Bureau. The Census Bureau conducted NLTC surveys in 1982, 1984, 1989, 1994, and 1999 and the IC surveys in 1989 and 1999. Beginning with the 1989 NLTCS and ICS, Duke University sponsored the surveys using grant funding received from the National Institute on Aging (NIA). Duke University and the NIA propose the continuation of these two surveys in the spring of 2004. The information obtained from the 2004 surveys will be added to the information from all previous surveys and then used to inform policy decisions relating to the elderly, their care, and the medicare program.

Sample Overview

The 2004 NLTCS sample has a longitudinal component and an aged-in component. The longitudinal portion consists of 13,267 people who responded to one or more of the previous five surveys. The aged-in component consists of 6,600 people: 5,600 who turned 65 years old since the 1999 survey and an additional 1,000 people who are 95 years of age or older. The total sample size is 19,867 and all are selected from the Centers for Medicare and Medicaid Services' (CMS) medicare beneficiary file. Approximately 1,800 people are in a part of the sample designated as the healthy segment.

The sample for the ICS is selected during the NLTCS interview and consists of approximately 3,275 people who are either not paid or members of the NLTCS sample person's family and help or assist the NLTCS sample person. We select one caregiver per NLTCS respondent.

Survey Process

The NLTCS survey consists of a screener interview to determine if a person is impaired or currently living in a nursing care facility. If the person is impaired and living at home, he/she is administered a community interview. If the person is in a nursing care facility, he/she is administered an institutional interview. If the person is part of the healthy segment, he/she is administered a portion of the community interview.

During the community interview, we collect information on people who provide help or assistance to the NLTCS respondents. For the ICS sample, we select the caregiver, if any, who has provided the most help to the NLTCS respondent during the week prior to the interview.

The Census Bureau stores the survey data on a microdata file and delivers a copy of the file to Duke University. The Duke University links the NLTCS and the ICS data with previous NLTCS and ICS data and appends to this data set the administrative medicare information and the data collected from the follow-up contacts with the NLTCS sample people. The Duke University analyzes the data and makes its findings known to the NIA. The Duke University makes two data sets available for research, none of which contain individual identifiers. One data set contains the linked NLTCS/ICS/medicare/follow-up survey data. This data set is sent to the CMS who controls its subsequent use. The second data set contains the linked NLTCS/ICS/follow-up survey data. This data set is kept by Duke University who controls its subsequent use.

Summary of Revisions

The 2004 NLTCS and ICS repeat the 1999 surveys with the following exceptions.

Proxy Respondent Requirements: The selection of eligible proxies will follow a hierarchical structure. This structure was not established in previous NLTC surveys.

Respondent Identification: For each section of the questionnaires, we will identify whether the sample person or a proxy respondent answered the questions. This is important in data assessment. For example, the level of help needed that is reported by an individual is usually less than the amount of help reported by a caregiver. This identification was not done in previous surveys.

Screener Questionnaire: The activities of daily living (ADL) and the instrumental activities of daily living (IADL) will be administered to all noninstitutional sample people. Previous NLTC surveys did not ask people in the longitudinal sample about disabilities during the screener. This created some problems with establishing disability at the time of the screener for weighting purposes.

The screener was expanded to include the new race and ancestry questions developed by the Census Bureau for its demographic surveys and several other demographic questions like educational attainment and marital status. This change consolidates many of the demographic variables in the screener and provides demographic statistics more consistently across the entire sample.

Control Card: The format of the control card will change to accommodate interviewing in an institutional setting. In addition, the control card will collect information on the number of hours worked by the sample persons' children and their spouses. These questions were asked in

the 1994 survey but were excluded from the 1999 survey. The caregiver research community uses this information to determine the potential caregiver universe.

Community Questionnaire: The length of the community interview will be shortened by replacing the lengthy cognitive assessment section used in 1999 with the shorter section used in the 1994 survey. In addition to this change, questions in other sections were modified or eliminated in order to reduce the overall length of the survey.

Institutional Questionnaire: The institutional interview will be changed to allow the sample person to have greater participation than in previous years. If the sample person is not capable of participating due to physical or mental impairment, the sample person's family will be asked to play a larger participatory role. In 1999, most of the information was obtained from the nursing home staff resulting in incomplete data for many of the cases. Also, the list of medical conditions asked in the community interview will be asked in the institutional interview.

ICS: The caregiver selection criteria will be modified. In previous caregiver surveys, caregivers were incorrectly excluded from selection based on conditions defined in the selection process.

Pretest

In preparation for the 2004 NLTCS and the ICS, Duke University requested the Census Bureau to conduct a complete test in the fall of 2003 to evaluate the changes made to the 1999 NLTCS and ICS.

II. Method of Collection

The Census Bureau's field representatives (FRs) conduct the screening interviews by telephone or by personal visit if the respondent cannot be reached by phone. The FRs conduct all the community and institutional interviews primarily through personal-visit interviewing. Telephone interviewing is allowed if requested by the respondent. The ICS can be conducted either by phone or personal visit following the community interview.

All data are collected using computer-assisted (laptop) interviewing. Advance letters are sent to respondents notifying them of the upcoming survey.

III. Data

OMB Number: 0607–0778.

Form Number: There are no forms. We conduct all interviewing on laptop computers.

Type of Review: Regular.

Affected Public: Individuals.

Estimated Number of Respondents:

Pretest
NLTCS: 465.
ICS: 35.
Survey
NLTCS: 18,850.
ICS: 2,970.
Total: 22,320.

Estimated Time Per Response (in minutes):

Pretest
NLTCS: 15.
ICS: 30.
Survey
NLTCS: 15.
ICS: 30.

Estimated Total Annual Burden Hours:

Pretest
NLTCS: 116.
ICS: 18.
Survey
NLTCS: 4,713.
ICS: 1,485.
Total: 6,332.

Estimated Total Annual Cost: We do not expect respondents to incur any cost other than that of their time to respond.

Respondent's Obligation: Voluntary.

Legal Authority: Title 42, United States Code, Section 285e–1 and Title 15, United States Code, Section 1525 authorize this survey.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection. They also will become a matter of public record.

Dated: January 10, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief information Officer.

[FR Doc. 03–927 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1265]

Grant of Authority for Subzone Statu;, Taiyo America, Inc. (Electronic Chemicals), Carson City, Nevada

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Economic Development Authority of Western Nevada, grantee of Foreign-Trade Zone 126, has made application to the Board for authority to establish a special-purpose subzone at the electronic chemicals manufacturing and warehousing facilities of Taiyo America, Inc., located in Carson City, Nevada (FTZ Docket 14–2001, filed 3/2/01);

Whereas, notice inviting public comment was given in the **Federal Register** 66 FR 14126, 3–09–01); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now therefore, the Board hereby grants authority for subzone status at the electronic chemicals manufacturing and warehousing facilities of Taiyo America, Inc., located in Carson City, Nevada (Subzone 126B), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 8th day of January 2003.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–983 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1264]

Grant of Authority for Subzone Status, Deepsea Flexibles, Inc. (Flexible Pipeline); Galveston, Texas

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Board of Trustees of the Galveston Wharves, grantee of Foreign-Trade Zone 36, has made application to the Board for authority to establish a special-purpose subzone at the flexible pipeline manufacturing and warehousing facilities of Deepsea Flexibles, Inc., located in Galveston, Texas (FTZ Docket 10–2002, filed 2/6/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 7133, February 15, 2002); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest if approval was subject to restriction;

Now, therefore, the Board hereby grants authority for subzone status at the flexible pipeline manufacturing and warehousing facilities of Deepsea Flexibles, Inc., located in Galveston, Texas (Subzone 36A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28, and further subject to a restriction requiring that all aramid fiber be admitted to the subzone in privileged foreign status.

Signed at Washington, DC, this 8th day of January, 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–982 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of New Shipper Review and Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On September 11, 2002, the Department of Commerce (the Department) published the preliminary results of its new shipper review and administrative review of the antidumping duty order on oil country tubular goods, other than drill pipe (OCTG) from Korea. *See Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Preliminary Results of New Shipper Review and Antidumping Duty Administrative Review, and Rescission, in Part, of the Antidumping Duty Administrative Review,* 67 FR 57570 (September 11, 2002) (*Preliminary Results*). The new shipper review covers Shinho Steel Co., Ltd. (Shinho Steel) for the period August 1, 2000 through February 28, 2001. The administrative review covers SeAH Steel Corporation (SeAH) for the period August 1, 2000 through July 31, 2001. We gave interested parties an opportunity to comment on our Preliminary Results. The final results are listed below in the sections entitled "Final Results of Administrative Review" and "Final Results of New Shipper Review."

EFFECTIVE DATE: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn at (202) 482–4236, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the Department published in the **Federal Register** an antidumping duty order on OCTG from Korea (60 FR 41058). The antidumping duty order on OCTG from Korea has an August anniversary date and a February semi-annual anniversary date: On February 28, 2001, Shinho Steel requested a new shipper review for the period August 1, 2000 through February 28, 2001. (At Shinho Steel's request, we extended the standard six month period seven months to cover the customs entry.) On August 31, 2001, Shinho Steel also requested an administrative review to cover the period March 1, 2001 through July 31, 2001. Shinho Steel withdrew its request for an administrative review for the period March 1, 2001 through July 31, 2001 on October 2, 2001. On January 22, 2002, Shinho Steel waived the time limits applicable to its new shipper review so that the Department might conduct its new shipper review concurrently with the 2000/2001 administrative review of OCTG from Korea.

On September 11, 2002, the Department published its preliminary results for the new shipper review of Shinho Steel and administrative review of SeAH and rescinded its administrative review of Shinho Steel for the period March 1, 2001 through July 31, 2001. The rescission was based on the fact that Shinho Steel had no sales other than those analyzed in the new shipper review. *See Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Preliminary Results of New Shipper Review and Antidumping Duty Administrative Review, and Rescission, in Part, of the Antidumping Duty Administrative Review,* 67 FR 57570 (September 11, 2002) (*Preliminary Results*).

In the *Preliminary Results,* the Department also stated that a changed circumstances review addressing Shinho Steel's decision to legally change its name to Husteel was being conducted under another antidumping duty order (*Certain Circular Welded Non-Alloy Steel Pipe from Korea* (A–580–809)). The Department has since completed that changed circumstances review and found that Husteel is the "successor-in-interest" to Shinho Steel for antidumping duty cash deposit purposes and that Husteel would be assigned the same cash deposit rate with

respect to the subject merchandise as the predecessor company, Shinho Steel. *See Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Changed Circumstances Review*, 67 FR 69716, (November 19, 2002). Therefore, Husteel will be assigned the same cash deposit rate with respect to the subject merchandise as Shinho Steel, the predecessor company. This cash deposit requirement will be effective upon publication of these final results.

Scope of the Antidumping Duty Order

The products covered by this order are oil country tubular goods ("OCTG"), hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Analysis of Comments Received

All issues raised in the briefs filed by parties to this administrative review are addressed in the Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III, to Faryar Shirzad, Assistant Secretary for Import Administration: *Issues and Decision Memorandum for the New Shipper Review and the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe, From Korea* dated January 9, 2003 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made one change in the margin calculation for SeAH. We have removed from our calculation of normal value a deduction for foreign inventory carrying costs (DINVCARU). For a discussion of this issue, please refer to the *Decision Memo* at Comment 2.

Final Results of Administrative Review

We determine that the following weighted-average margin exists for the period August 1, 2000, through July 31, 2001:

Manufacturer/Exporter	Margin (percent)
SeAH Steel Corporation	0.32

Final Results of New Shipper Review

We determine that the following weighted-average margin exists for the period August 1, 2000 through February 28, 2001:

Manufacturer and Exporter	Margin (percent)
Shinho Steel Corporation/ Husteel	0.00

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific *ad valorem* assessment rates for SeAH based on entered values. We will direct the Customs Service to assess the *ad valorem* assessment rate against the entered customs value for each entry of subject merchandise from SeAH during the review period. Since the dumping margin for Shinho Steel/Husteel is zero, no duties will be assessed on entries pursuant to the reviewed sales. The Department will issue appropriate appraisement instructions directly to the Customs Service within 15 days of publication of the final results of review. For customs purposes only, this case is identified using case number A–580–215.

Cash Deposit Requirements

The following deposit requirements shall be effective for all shipments of the subject merchandise from Korea that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review and the new shipper review, as provided for by section 751(a)(1) of the Act. Since the weighted-average margin for SeAH is less than 0.5 percent and therefore *de minimis*, the Department shall require no deposit of estimated antidumping duties for subject merchandise exported by SeAH. Since the weighted-average margin for Shinho Steel/Husteel is less than 0.5 percent and therefore *de minimis*, the Department shall require no deposit of estimated antidumping duties for subject merchandise produced and exported by Shinho Steel/Husteel. For subject merchandise exported by Shinho Steel/Husteel but not produced by Shinho Steel/Husteel, the cash deposit rate will be the "all others" rate. Bonding will no longer be permitted to fulfill security requirements for shipments from Shinho Steel/Husteel of subject merchandise from Korea entered, or withdrawn from warehouse. For previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period. If the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise. The cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 12.17 percent, the all others rate made effective by the less-than-fair-value investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility

under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review and new shipper review and notice are issued and published in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: January 9, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Issues

1. Freight Revenue and Constructed Export Price (CEP)
2. Indirect Selling Expenses in Korea
3. Cash Deposit Instructions for Husteel
4. Liquidation of Shinho Steel/Husteel's Entries

[FR Doc. 03–984 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid from the People's Republic of China: Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: In accordance with 19 CFR 351.216(b), Morflex, Inc., a U.S. importer of subject merchandise and an interested party in this proceeding, filed a request for a changed circumstances review of the antidumping duty order on sebacic acid from the People's Republic of China, as described below. In response to this request, the Department of Commerce is initiating a changed circumstances review of the antidumping duty order on sebacic acid from the People's Republic of China.

EFFECTIVE DATE: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Gregory E. Kalbaugh, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1994, the Department published in the **Federal Register** the antidumping duty order on sebacic acid from the People's Republic of China. *See Antidumping Duty Order: Sebacic Acid From the People's Republic of China*, 59 FR 35909 (July 14, 1994). On November 26, 2002, Morflex, Inc. (Morflex), a U.S. importer of subject merchandise and an interested party in this proceeding, requested that the Department revoke the antidumping duty order on sebacic acid from the People's Republic of China (PRC) through a changed circumstances review. According to Morflex, Arizona Chemical Corporation (Arizona Chemical) will cease production of subject merchandise in the United States at the end of November 2002. Arizona Chemical is the successor-in-interest to the original petitioner in this proceeding, Union Camp Corporation. In addition, on September 25, 2002, prior to Morflex's request, Arizona Chemical notified the Department that it intended to cease production of sebacic acid no later than December 31, 2002.

Scope of the Review

The products covered by this review are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH2)_8(COOH)_2$, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 782(h)(2) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. 19 CFR 351.222(g) provides that the Department will conduct a changed circumstances review under 19 CFR 351.216 and may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if changed circumstances exist sufficient to warrant revocation.

In this case, the Department finds that the information submitted provides sufficient evidence of changed circumstances to warrant a review. Given Moreflex's assertions, we will consider whether there is interest in continuing the order on the part of the U.S. industry.

Interested parties may submit comments for consideration in the Department's preliminary results not later than 20 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**.

While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: January 10, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–981 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Stainless Steel Sheet and Strip in Coils from Italy: Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of the final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits of the final results of the antidumping duty administrative review of stainless steel sheet and strip in coils ("SSSS") from Italy. This review covers the period July 1, 2000 through June 30, 2001.

EFFECTIVE DATE: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1102.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On July 2, 2001, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on SSSS from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 34910 (July 2, 2001). On July 31, 2001, domestic industry parties from the original investigation ("petitioners"), ThyssenKrupp Acciai Speciali Terni S.p.A. ("TKAST") [1], a producer and exporter of subject merchandise, and ThyssenKrupp AST USA, Inc. ("TKAST USA"), requested that the Department conduct an administrative review of the antidumping duty order. On August 20, 2001, the Department initiated an administrative review of the antidumping duty order on SSSS from Italy with regard to TKAST. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001). On March 5, 2002, the Department extended the time limit for the preliminary results of this administrative review by 90 days. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 9960 (March 5, 2002). On May 13, 2002, we again extended the preliminary results of administrative review, this time by 25 days. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 32015 (May 13, 2002). On July 26, 2002, the Department extended the time limit for the preliminary results in this administrative review another five days. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 50421 (August 2, 2002).

On August 7, 2002 we issued our preliminary results of administrative review. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 51224 (August 7, 2002). On December 10, 2002, the Department extended the time limit for the final results to January 14, 2003. *See Stainless Steel Sheet and Strip in Coils from Italy: Extension of Time Limit of Final Results of Antidumping Duty Administrative Review*, 67 FR 75846 (December 10, 2002). The final results of administrative review are currently due January 14, 2003.

Extension of Time Limit of Final Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by 60 days. Since the Department has already extended these final results 40 days, the Department is allowed to further extend the final results by an additional 20 days. Completion of the final results of this review within the 120-day period is not practicable for the following reasons:

- The review involves a large number of transactions and complex adjustments.
- The review includes complex sales and cost issues which require the Department to analyze a significant amount of information pertaining to sales practices, manufacturing costs and corporate relationships.
- The review requires the Department to issue for comment from interested parties a Department decision concerning the relationship between certain selling agents and their employer Ken-Mac Metals, Inc.

Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the final results of review by 20 days until February 3, 2003.

[1] On January 18, 2002 Acciai Speciali Terni S.p.A."s shareholders voted to change the company's name to ThyssenKrupp Acciai Speciali Terni S.p.A. On February 27, 2002, Acciai Speciali Terni USA, Inc. became ThyssenKrupp AST USA, Inc. Throughout most of the responses, the companies refer to themselves as TKAST and TKAST USA, respectively.

Dated: January 8, 2003.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–985 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Opportunity to Apply for Membership on the U.S. Automotive Parts Advisory Committee (APAC)

AGENCY: International Trade Administration, DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce is currently seeking applications for membership on the APAC. The purpose of the APAC is to advise Department of Commerce officials on issues related to U.S.-made automotive parts and accessories sales in Japanese and other Asian markets. The APAC's functions include: (1) Reporting to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviewing and considering data collected on sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (3) advising the Secretary of Commerce during consultations with other governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; (4) assisting in establishing priorities for the initiative to increase sales of U.S.-made automotive parts and accessories to Japanese markets, and to otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that initiative; and (5) assisting the Secretary in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to the Fair Trade in Automotive Parts Act of 1998, sections 3803 and 3804 of Pub. L. 105–261.

SUPPLEMENTARY INFORMATION: The APAC was originally established pursuant to the Fair Trade in Auto Parts Act of 1988, sections 2121 to 2125 of Public Law 100–418, to advise the Secretary of Commerce on issues related to sales of U.S.-made auto parts to Japanese markets. The Committee was reauthorized by the Fair Trade in Auto Parts Act of 1998, sections 3803 and 3804 of Pub. L. 105–261, to advise the Secretary of Commerce on issues related to sales of U.S.-made auto parts in Japanese and other Asian markets. The APAC functions as an advisory committee in accordance with the Federal Advisory Committee Act, 15 U.S.C. App. 2 and Department of Commerce policies on advisory committees.

The Office of Automotive Affairs is accepting applications for private sector members to begin serving after the Committee's charter is renewed, which is expected to be in late January 2003. An existing member may be reappointed only if he or she has reapplied and has been accepted through the normal recruitment and selection process. An existing member may reapply for membership by submitting a letter requesting that he or she be considered for a membership position, and any supplemental information necessary to update his or her previous application for membership. Private sector representatives will be appointed to serve until the new APAC charter expires on December 31, 2003. Members will be selected who will best carry out the objectives of the Fair Trade in Automotive Parts Act of 1998. Each APAC member must also serve as the representative of a "U.S. entity" engaged in the manufacture of automotive parts or the provision of a related service (including retailing and other distribution services), or an association of such entities. A U.S. entity is a firm incorporated in the United States (or an unincorporated U.S. firm with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities.

Secondary selection criteria will ensure that the committee has a balanced representation of the auto parts industry in terms of point of view, demographics, geography and company size. APAC members are selected on the basis of their experience and knowledge of conditions and problems in automotive parts markets. Members will serve at the discretion of the Secretary.

Private sector members will serve in a representative capacity presenting the views and interests of the particular automotive sector in which they operate. Private sector members are not special government employees, and will receive no compensation for their participation in APAC activities. Members participating in APAC meetings and events will be responsible for their travel, living and other personal expenses. Meetings are held approximately four times a year, usually in Washington, DC. The next APAC meeting date has not yet been determined.

To be considered for membership, please provide the following: name and title of the individual requesting consideration; a letter of recommendation containing a brief statement of why each candidate should be considered for membership on the APAC that includes the individual's export experience, along with a personal resume; a statement that the applicant is a not a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended; the company's product or service line and major markets; and the size and ownership of the company. All APAC members must obtain a U.S. Government security clearance.

ADDRESSES: Submit application information to Henry Misisco, Director, Office of Automotive Affairs, U.S. Department of Commerce, Room 4036, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Henry P. Misisco, (202) 482–0554.

Dated: January 7, 2003.

Henry Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 03–986 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, DOC.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 84–00022.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to Great Agassiz Basin Export Trading Company, Inc. on September 5, 1984. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Great Agassiz Basin Export Trading Company, Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1999). Pursuant to this authority, a certificate of review was issued on September 5, 1984 to Great Agassiz Basin Export Trading Company, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 325.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On August 26, 2002, the Department of Commerce sent to Great Agassiz Basin Export Trading Company, Inc. a letter containing annual report questions with a reminder that its annual report was due on October 20, 2002. An additional reminder was sent on November 7, 2002. The Department has received no written response from Great Agassiz Basin Export Trading Company, Inc. to any of these letters.

On November 25, 2002, and in accordance with Section 325.10(c)(2) of the Regulations, (15 CFR 325.10(c)(2)), the Department of Commerce sent a letter by certified mail to notify Great Agassiz Basin Export Trading Company, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Great Agassiz Basin Export Trading Company, Inc. thirty days to respond was published in the **Federal Register** on December 2; 2002 at 67 FR 71535. Pursuant to Section 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Great Agassiz Basin Export Trading Company, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Great Agassiz Basin Export Trading Company, Inc. for its failure to file an annual report. The Department has sent a letter, dated January 13, 2003, to notify Great Agassiz Basin Export Trading Company, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register**, Sections 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and Section 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11.

Dated: January 13, 2003.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–1043 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Rookery Bay National Estuarine Research Reserve Revised Management Plan Including a Boundary Expansion

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval and availability of the final revised management plan for the Rookery Bay National Estuarine Research Reserve.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce has approved the revised management plan, which includes an expansion of the boundary of the reserve, for the Rookery Bay National Estuarine Research Reserve.

The Rookery Bay Reserve was designated in 1978 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The reserve has been operating under a management plan approved in 1995. Pursuant to 15 CFR Section 921.33(c), a state must revise their management plan every five years. The submission of this plan fulfills this requirement and sets a course for successful implementation of the goals and objectives of the reserve.

The mission of the Rookery Bay Reserve is to provide a basis for informed coastal decisions by communities in Southwest Florida through site-based estuarine research, stewardship and education. The management plan identifies four priority resource issues that are addressed through active management. These priority issues are (1) changing land use in adjacent watersheds that impact freshwater inflows, (2) loss of native biodiversity due to invasive plants and animals, (3) increased public use of reserves resources, and (4) the need to monitor catastrophic storm events, red tides and global climate change. Rookery Bay's management plan addresses these issues with specific programs for resource management and protection, research and monitoring, education and training, public access and visitor use, program administration, and partnerships and regional coordination.

The plan identifies management goals, priority resource management issues or threats that these goals must address, and specific strategies to accomplish these goals. The plan incorporates a modification of an adaptive management approach to ecosystems proposed by Morrison et al. (1998), which seeks a science-based approach to environmental management.

The resource management and protection program addresses issues such as land acquisition, habitat and hydrological restoration, invasive species control and eradication, and listed species protection. The reserve manages important habitats and performs activities such as controlled burns to sustain native biodiversity.

The research and monitoring program includes studies on mangrove and oyster reef ecology, restoration ecology, estuarine fishes, nutrient cycling and the impacts of mosquito control aerial spraying. Staff and visiting researchers conduct monitoring and research within the watersheds and boundaries of the reserve and use GIS to map critical habitats and flow ways. The results of their work is critical for use in adaptive management of the reserve.

The education and training program at the reserve targets a wide variety of audiences including students, teachers, adults, resource users and environmental professionals. The reserve is building a 14,700 square foot environmental learning center to conduct training programs on environmental issues important to Southwest Florida.

The public access and visitor use program at Rookery Bay includes developing a network of aquatic and terrestrial trails and boardwalks to provide for increased access to reserve resources. Visitor use policies are designed to provide for compatible use

and protection of valuable natural resources.

The administration program ensures the staffing and budget necessary to carry out the goals and objectives of the plan; and, the partnerships and regional coordination program defines the range of partners that the reserve works with to achieve their goals. The reserve serves as the Southwest Florida region headquarters for the Florida Department of Environmental Protection Aquatic and Buffer Preserve field offices in Tampa Bay, Charlotte Harbor and Estero Bay. Rookery Bay also works with a plethora of organizations ranging from local governments, community groups, state and federal agencies, and international partners in China.

The boundary expansion incorporates adjacent state-owned coastal and submerged lands of the Rookery Bay Aquatic Preserve and the Cape Romano/Ten Thousand Islands Aquatic Preserve. Incorporating these lands increases the size of the reserve from 9,400 acres to 110,000 acres. The expansion will provide a contiguous estuarine ecosystem with a broader diversity of habitats not found within the old boundary of the reserve. Habitats within the new boundary of the reserve include abundant seagrass communities, tropical hardwood hammocks, coastal strand and barrier beach communities, cypress slough and prairies, and live bottom communities.

FOR FURTHER INFORMATION CONTACT: Erica H. Seiden at (301) 563–1172 or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 11th floor, Silver Spring, MD 20910.

Dated: December 23, 2002.

Jamison S. Hawkins,

Acting Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–939 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011003D]

Pacific Fishery Management Council; Coastal Pelagic Species Management Team Work Session Focused on Pacific Sardine Allocation.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) will hold a public work session.

DATES: The CPSMT will meet Thursday, January 30, 2003, from 8 a.m. to 5 p.m. and Friday, January 31, 2003, from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held in the large conference room (D–203) at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037; (858) 546–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council, (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the CPSMT meeting is to develop and review preliminary analyses of management alternatives for revising the CPS fishery management plan's (FMP) annual Pacific sardine allocation framework. Possible management alternatives include:

1. Status quo - 33 percent of the harvest guideline allotted to the northern subarea and 66 percent to the southern subarea, with reallocation nine months after the start of the fishery. (See the CPS FMP for a complete description of the current Pacific sardine allocation framework).

2. No allocation - institute a coastwide harvest guideline.

3. Move northern boundary of southern subarea from 35° 40' to 39° N latitude, change reallocation date from October 1 to September 1 (or August 1), and provide for a December 1 reallocation to a coastwide harvest guideline.

4. Change reallocation date from October 1 to September 1 (or August 1), and provide for a December 1 reallocation to a coastwide harvest guideline.

Alternatives 3 and 4 include allocation percentage sub- alternatives:

a. 33 percent to the north, 66 percent to the south.

b. 50 percent to the north, 50 percent to the south.

This is a public meeting, and time for public comment will be provided at the discretion of the CPSMT chair. Generally, a public comment period will be provided just prior to the end of each day. Please note, this is not a public hearing, it is a work session devoted to completing preliminary analyses for Council consideration at the March 2003 Council meeting.

Although nonemergency issues not contained in the CPSMT meeting agenda may come before the CPSMT for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 13, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1015 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–22–S

Commodity Futures Trading Commission

In the Matter of the New York Mercantile Exchange, Inc. and the Intercontinental Exchange, Inc., Petitions for Treatment of Floor Brokers and Floor Traders as Eligible Commercial Entities Pursuant to Section 1a(11)(C) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: In response to petitions from the New York Mercantile Exchange, Inc. (NYMEX) and the Intercontinental Exchange, Inc. (Intercontinental), the Commodity Futures Trading Commission (Commission or CFTC), pursuant to section 1a(11)(C) of the Commodity Exchange Act (Act), is issuing an order that deems, subject to certain conditions, floor brokers and floor traders who are registered with the Commission, when acting in a proprietary trading capacity, to be "eligible commercial entities " as that term is defined in section 1a(11) of the Act. Accordingly, subject to certain conditions as set forth in the Commission's order, registered floor brokers and floor traders, when acting

for their own accounts, are permitted to enter into transactions in exempt commodities on exempt commercial markets pursuant to section 2(h)(3) of the Act. In order to participate, the floor broker or floor trader must either be an eligible contract participant as that term is defined in section 1a(12) of the Act or have its trades on the exempt commercial market guaranteed by a clearing member that is both a member of a CFTC-registered derivatives clearing organization and is an eligible contract participant.

DATES: This order is effective January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202–418–5492. E-mail: *dandresen@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 1a(11) of the Act, as amended by the Commodity Futures Modernization Act of 2000 (CFMA), Pub. L. No. 106–554, which was signed into law on December 21, 2000, defines the term "eligible commercial entity" (ECE) by listing those eligible contract participants (ECP) [1] that are qualified to be ECEs.[2] Under section 2(h)(3) of the Act, transactions between ECEs in an "exempt commodity"[3] on an exempt commercial market (ECM) that meet the requirements of 2(h)(3)–(5) are exempt from all but certain limited requirements of the Act.[4] Floor brokers and floor traders, even if determined to fall within the definition of ECP, do not fall within the definition of ECE and, thus, cannot enter into transactions on ECMs. The Act, however, gives the Commission discretion to expand the ECE category. Specifically, section 1a(11)(C) provides that the list of entities defined as ECEs shall include "such other persons as the Commission shall determine appropriate and shall designate by rule, regulation, or order." A determination under this provision that registered floor brokers and floor traders are considered to be ECEs would permit these entities to enter into transactions in exempt commodities on ECMs pursuant to section 2(h)(3) of the Act.

II. The Petitions

A. NYMEX

By letter dated May 23, 2002, NYMEX submitted a petition for a Commission interpretation pursuant to section 1a(11)(C) of the Act.[5] Specifically, NYMEX, acting on behalf of its floor brokers, floor traders and clearing firms, requested that the Commission make a determination pursuant to Section 1a(11)(C) of the Act that floor brokers and floor traders, when acting in a proprietary capacity, may enter into certain specified transactions in exempt commodities on ECMs if such Commission registrants have obtained a financial guarantee for such transactions from an Exchange clearing member that is registered with the Commission as an FCM. NYMEX suggested that the permissible transactions be limited to trading in a commodity that either (1) is listed only for clearing on NYMEX,[6] or (2) is listed for trading and clearing on NYMEX and where NYMEX rules provide for the exchange of futures for swaps (EFS) in that contract.[7] NYMEX further proposed that permissible trading be limited to transactions that would subsequently be cleared at NYMEX and represented that NYMEX would have appropriate compliance systems in place to monitor such trading.[8]

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[1] Section 1a(12) defines the term ECP by listing those entities and individuals considered to be ECPs. Included generally as ECPs are financial institutions; insurance companies and investment companies subject to regulation; commodity pools and employee benefit plans subject to regulation and asset requirements; other entities subject to asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; governmental entities; brokers, dealers, and futures commission merchants (FCM) subject to regulation and organized as other than natural persons or proprietorships; brokers, dealers, and FCMs subject to regulation and organized as natural persons or proprietorships subject to total asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; floor brokers or floor traders subject to regulation in connection with transactions that take place on or through the facilities of a registered entity or an exempt board of trade; individuals subject to total asset requirements; an investment adviser or commodity trading advisor acting as an investment manager or fiduciary for another ECP, and any other person that the Commission deems eligible in light of the financial or other qualifications of the person.

[2] Section 1a(11) defines the term ECE by listing those entities and individuals considered to be ECEs. Generally, an ECE is an ECP that (1) in connection with its business, demonstrates the ability to make or take delivery of the underlying commodity; incurs risk, in addition to price risk related to the commodity; or is a dealer that regularly provides risk management or hedging services to, or engages in market-making activities with, the foregoing entities with respect to the commodity or derivatives transactions in the commodity; or (2) is other than a natural person or governmental entity and regularly enters into transactions with respect to the commodity or derivatives transactions in the commodity, subject to certain qualification or total asset requirements; or (3) such other persons as the Commission shall determine appropriate.

[3] Section 1a(14) of the Act defines the term "exempt commodity" to mean a commodity that is not an excluded commodity or an agricultural commodity. Section 1a(13) defines the term "excluded commodity" to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt instrument, measure of inflation, or other macroeconomic index or measure. Although the term "agricultural commodity" is not defined in the Act, section 1a(4) enumerates a non-exclusive list of several agricultural-based commodities and products. The broadest types of commodities that fall into the exempt category are energy and metals products.

[4] Under section 2(h)(3), ECMs are markets that meet the requirements of sections 2(h)(3)-(5) by notifying the Commission of their intention to operate a trading facility in reliance on the exemption and by limiting themselves to transactions: (1) In exempt commodities, (2) entered into on a principal-to-principal basis by ECEs, and (3) executed or traded on an electronic trading facility. An ECM is not a registered entity, but is required to notify the Commission of its intention to operate an electronic trading facility in reliance on the exemption set forth in section 2(h)(3). The notification of operation as an ECM must include several certifications and, pursuant to Commission regulation 36.3(c)(3), a representation that it will require each participant to comply with all applicable law and that it has a reasonable basis for believing that authorized participants are ECEs. Section 2(h)(4) reserves, with respect to transactions eligible for the 2(h)(3) exemption, certain provisions of the Act, including certain anti-fraud and anti-manipulation provisions.

[5] In its petition, NYMEX also requested that the Commission make a determination pursuant to section 1a(12)(C) of the Act that floor brokers and floor traders, when acting in a proprietary capacity, be considered to be ECPs when they enter into certain specified transactions. Such a determination would permit NYMEX floor brokers and floor traders to enter into over-the-counter (OTC) transactions in exempt commodities pursuant to section 2(h)(1) of the Act.

[6] By letter dated May 24, 2002, NYMEX filed rule changes that would implement an initiative to provide clearing services for specified energy contracts executed in the OTC markets. NYMEX certified that the rules comply with the Act and the Commission's regulations. Under the provision, NYMEX initially listed 25 contracts that are entered into OTC and accepted for clearing by NYMEX, but are not listed for trading on NYMEX. In connection with the NYMEX initiative, on May 30, 2002, the Commission issued an order pursuant to section 4d of the Act. The order provides that, subject to certain terms and conditions, the NYMEX Clearing House and FCMs clearing through the NYMEX Clearing House may commingle customer funds used to margin, secure, or guarantee transactions in futures contracts executed in the OTC markets and cleared by the NYMEX Clearing House with other funds held in segregated accounts maintained in accordance with section 4d of the Act and the Commission regulations thereunder.

[7] Commodities listed for trading and clearing on NYMEX where NYMEX rules provide for EFSs would include, for example, an OTC natural gas swap to be exchanged for a futures position in the Exchange's Natural Gas futures contract. EFS transactions are permitted at NYMEX pursuant to NYMEX rule 6.21A, Exchange of Futures for, or in Connection with, Swap Transactions. The swap component of the transaction must involve the commodity underlying a related NYMEX futures contract, or a derivative, by-product, or related product of such a commodity. In furtherance of its effort to permit OTC clearing at the Exchange, NYMEX amended the rule to include as eligible EFS transactions "any contract executed off the Exchange that the Exchange has designated as eligible for clearing at the Exchange."

[8] NYMEX also suggested a further limitation on floor members' permissible transactions by not permitting, initially, any transactions in electricity commodities.

In support of its request for a determination that floor members be able to trade as ECEs on ECMs, NYMEX stated, among other things, that floor brokers and floor traders, if determined to be ECPs, would meet the ECE definition requirements of section 1a(11)(A) of the Act in that the floor brokers and floor traders provide risk management and market-making activities in energy and metals derivatives products. NYMEX further stated that allowing floor brokers and floor traders with an FCM guarantee to execute transactions as ECEs on ECMs would simply be an extension of the services and expertise that such entities currently provide to users of NYMEX's markets.

B. Intercontinental

By letter dated June 3, 2002, Intercontinental [9] requested that the Commission issue an order pursuant to section 1a(11) of the Act that would expand the ECE category to include CFTC-registered floor brokers and floor traders, thus permitting them to trade on ECMs.[10] Intercontinental proposed that the floor broker or floor trader must be a member of a designated contract market (DCM) or otherwise have trading privileges on a DCM. The floor broker or floor trader must have as a part of its business the business of acting as a floor broker or floor trader, but need not have any connection or experience in the underlying products traded on the ECM. Finally, the floor broker or floor trader must be an ECP or, if the floor broker or floor trader is not an ECP, its trades on the ECM must be guaranteed by a clearing member of a U.S.-registered clearing organization.

Intercontinental stated that including floor brokers and floor traders as ECEs would be consistent with the CFMA and would recognize their value as both liquidity providers, and dealers and market makers. Intercontinental noted that the Commission has previously included floor brokers and floor traders in the definition of ECE as it relates to trading on a Derivatives Transaction Execution Facility (DTEF),[11] and contended that there is no meaningful distinction between allowing floor brokers and floor traders to trade as ECEs on a DTEF and allowing them to trade as ECEs on an ECM.[12]

C. Comments

The NYMEX and Intercontinental petitions were published in the **Federal Register** for a 15-day public comment period on June 19, 2002.[13] In addition, the **Federal Register** release included a series of questions posed by the Commission regarding the petitions. The Commission received comments from NYMEX and from Intercontinental.[14] In its comment letter of July 17, 2002, NYMEX generally reaffirmed its strong interest in the determination requested in the petition and its strong belief that such a determination would have numerous pro-competitive results. NYMEX also commented that Intercontinental's petition contained fewer conditions than NYMEX's petition for the recognition of registered floor brokers and floor traders as ECEs for trading on ECMs. Thus, NYMEX requested that if the Commission made a determination along the lines proposed in the Intercontinental petition for registered floor brokers and floor traders generally, NYMEX floor brokers and floor traders be permitted to trade on ECMs consistent with the scope of that determination.

In its comment letter of July 3, 2002, Intercontinental generally noted that under the Act, ECEs include: Certain types of ECPs who, in connection with their businesses, make or take delivery of the underlying commodity or provide hedging and risk management services in the commodity; ECPs other than natural persons or state or local governments that regularly enter into transactions in commodity derivatives; and certain types of investment funds. Intercontinental stated that the Commission, under section 1a(11)(C), has the authority to include within the ECE definition floor brokers and floor traders and, as previously noted, has already issued a rule pursuant to this authority with respect to DTEFs. Intercontinental suggested that any relief mandated by the Commission in response to the petition be broadly based and applicable to any floor brokers or floor traders that wish to be considered to be ECEs for purposes of trading on an ECM.

Intercontinental also responded to a series of questions posed by the Commission. The questions and responses are summarized below:

1. The Commission understands that at some ECMs traders have the capability of specifying the entities that are acceptable counterparties. In light of this capability, would it be reasonable and prudent to maintain a restriction on eligible counterparties, *i.e.*, limit trading by floor brokers and floor traders acting as ECEs such that the counterparties to their trades must not be floor brokers or floor traders, at least with respect to ECMs that provide for such a counterparty pre-approval mechanism.

Intercontinental responded that the Commission should not impose restrictions on eligible counterparties for ECMs, other than requiring that they qualify as ECEs. Intercontinental stated that it provides credit and risk management support capabilities, designed to provide market participants with maximum flexibility and control over their trades, as a service to its participants at no additional cost. ECEs can pre-approve trading counterparties and establish credit limits for trading with each counterparty. Use of this credit management system is voluntary, and Intercontinental is not required, by contract or applicable law or regulation, to maintain these capabilities. Intercontinental noted that because participation on its trading platform is limited to ECEs, all participants are

[9] Intercontinental operates an OTC commodities trading platform for energy and metals and is itself an ECM. Intercontinental submitted its notice of operation as an ECM to the Commission on December 27, 2001. Intercontinental also owns the International Petroleum Exchange (IPE), a U.K. FSA-regulated futures exchange for the trading of energy futures products.

[10] In its petition, Intercontinental also requested that the Commission expand the ECE category to include U.K. local member floor traders who are authorized by the U.K. Financial Services Authority. On November 1, 2001, Intercontinental advised Commission staff that it has decided not to seek relief at this time on behalf of non-U.S. floor brokers or floor traders. Accordingly, the Commission is not, at this time, making any determination with respect to non-U.S. floor brokers and floor traders.

[11] Specifically, Commission regulation 37.1(b) states that, for the purpose of DTEF trading, "the term 'eligible commercial entity' means, and shall include, in addition to a party or entity so defined in section 1a(11) of the Act, a registered floor trader or floor broker trading for its own account, whose trading obligations are guaranteed by a registered futures commission merchant."

[12] DTEFs are registered with the Commission and generally must meet various standards of operation set forth in section 5a of the Act and part 37 of the Commission's regulations and are subject to the Commission's regulatory oversight. By comparison, ECMs are exempt from Commission regulatory oversight. While ECMs must submit to the Commission a notice of operation that satisfies the filing requirements of section 2(h)(5) of the Act and Commission regulation 36.3, ECMs are not "registered with, or designated, recognized, licensed or approved by the Commission." See section 2(h)(5) of the Act.

[13] 67 FR 41698 (June 19, 2002). In that same **Federal Register** release, the Commission also requested comments with respect to NYMEX's request that the Commission make a determination pursuant to section 1a(12)(C) of the Act that NYMEX floor brokers and floor traders, when acting in a proprietary capacity, may also be considered to be ECPs when they enter into certain specified transactions. Such a determination would permit NYMEX floor brokers and floor traders to enter into over-the-counter (OTC) transactions in exempt commodities pursuant to section 2(h)(1) of the Act.

[14] The Commission also received a comment letter, dated September 27, 2002, from the Managing Member of Hudson Capital Group, L.L.C., an options trading group. The commenter strongly supported the petition to allow NYMEX members to trade over-the-counter energy products, but did not address particular Commission questions.

sufficiently sophisticated to make their own credit determinations with respect to other participants. In addition, requiring maintenance of a function that ECM and market participants might later decide is unnecessary would limit the flexibility of ECMs and is unwarranted. Intercontinental also noted that the Commission currently does not impose any counterparty restrictions on trades executed on its trading platform. Finally, Intercontinental noted that its proposal requires that floor brokers and floor traders must qualify as ECPs or have their trades be guaranteed by a clearing member of a registered clearing organization that is itself an ECP, and that the satisfaction of these requirements reduces any concern by potential counterparties with respect to the credit or collection risk posed by the execution of trades with floor brokers and floor traders.[15]

2. The Commission requested comments regarding whether the transactions that could be entered into by floor brokers and floor traders as ECEs on ECMs should be limited to any of the following: (a) Specifically identified contracts; (b) transactions that would be cleared; (c) commodities in which the floor broker or floor trader had trading expertise; (d) transactions for which the floor broker or floor trader was guaranteed by an Exchange clearing member; or (e) in some other way.

With respect to a limitation to specifically identified contracts, Intercontinental stated that floor brokers and floor traders should be permitted to execute transactions in all exempt commodities pursuant to section 2(h)(3) of the Act. Intercontinental noted that the Act, as amended by the CFMA, generally defines three categories of ECE: (a) Commercials who deal in the underlying physical commodity; (b) dealers and market makers; and (c) collective investment vehicles that generally are liquidity providers. Intercontinental contended that the second and third categories of ECE recognize that traders with no direct connection to the underlying physical market are eligible and valuable contributors to the efficiency of commercial markets.[16] Accordingly, Intercontinental further contended that including floor brokers and floor traders as ECEs would be consistent with the CFMA and would recognize the value of floor brokers and floor traders as both liquidity providers, and dealers and market makers. Intercontinental noted that floor brokers and floor traders understand trading markets, are sophisticated and capable as traders to the same extent as commercials, and would be valuable participants trading in all exempt commodities on Intercontinental's trading platform.

With respect to requiring that transactions be cleared, Intercontinental stated that floor broker and floor trader transactions on ECMs should not be required to be cleared in order for these entities to be included in the ECE definition. The reduction in credit risk that clearing provides would not be necessary in light of Intercontinental's proposed requirement that the floor broker or floor trader must be an ECP or that its trades must be guaranteed by a clearing member of a registered clearing organization that is itself an ECP.[17]

As to limiting floor brokers and floor traders to trading only those commodities in which they have trading expertise, Intercontinental argued that floor brokers and floor traders are desirable because of their expertise in trading, not their specific commodity expertise, and should not be limited to trading in particular commodities in which they have trading expertise. Intercontinental pointed out that its proposal would require floor brokers and floor traders to be registered and have as a part of their business the business of acting as a floor broker or floor trader on the DCM's open outcry market or performing an equivalent function on the DCM's electronic market[18] and that, accordingly, floor brokers and floor traders that satisfied these requirements would have sufficient qualifications and experience to trade in any commodity product on an ECM. Intercontinental contended that allowing floor brokers and floor traders to participate would expand the pool of potential counterparties for market participants, increase competition and efficiency, enhance price discovery and reduce liquidity risk.

With respect to a limitation to transactions for which the floor broker or floor trader was guaranteed by an Exchange clearing member, the Intercontinental proposal would require that the floor broker or floor trader must be an ECP or that its trades must be guaranteed by a clearing member of a registered clearing organization that is itself an ECP. Intercontinental stated that when a floor broker or floor trader qualifies as an ECP, that floor broker or floor trader has been deemed by the Act to be sufficiently responsible to execute trades and there is no need to require further mitigation of credit risk by having a clearing member guarantee the floor broker's or floor trader's payment obligations. Alternatively, when a floor broker or floor trader does not qualify as an ECP, it is appropriate to require that a clearing member of a registered clearing organization that is itself an ECP guarantee the trades in order to mitigate the credit and collection risk created by executing trades with a floor broker or floor trader.

3. The Commission requested comment on the assertion that there would be no meaningful distinction between allowing floor brokers and floor traders to trade as ECEs on a DTEF, as the Commission has already permitted, as compared to trading as ECEs on an ECM, and particularly on whether there should be any distinction in the treatment of floor brokers and floor traders as ECEs based upon the different regulatory regimes applicable to DTEFs and ECMs.

Intercontinental commented that the primary regulatory difference between ECMs and DTEFs is that DTEFs must comply with certain core principles, including monitoring trading and enforcing compliance with rules; making certain trade data publicly available if the Commission determines that the contract performs a price discovery function; recordkeeping; applying fitness requirements for board members, market participants and

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[15] The requirement that the clearing member guaranteeing the trades must itself be an ECP was not included as a criterion in the original petition but was added in Intercontinental's comment letter dated July 3, 2002.

[16] The Commission notes that, while it is not agreeing or disagreeing with this assertion at this time, the two general categories of ECE identified by Intercontinental require, by statute, a strong connection to either derivatives transactions in the particular commodity or the underlying physical market. Under paragraph 1a(11)(A), the ECP that can qualify as an ECE based upon dealing or engaging in market-making activities must be an entity (floor brokers, floor traders and individuals are ineligible) that, in connection with its business, regularly provides risk management or hedging services or engages in market-making activities with other ECEs involving transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity. Under paragraph 1a(11)(B), the ECP that can qualify as an ECE based upon its status as a collective investment vehicle cannot be a natural person and regularly enters into transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity.

[17] As previously noted, the requirement that the clearing member guaranteeing the trades must itself be an ECP was added in Intercontinental's comment.

[18] The provision concerning performing an equivalent function on the electronic market was not included as a criterion in the original petition, but was added in Intercontinental's November 1, 2002, submission. Intercontinental represents that the intent is to include those floor brokers and floor traders who, as part of their business, provide liquidity to the markets as dealers and market makers, either on the exchange's open outcry market or on the exchange's electronic market.

others; and addressing potential conflicts of interest. The regulatory concerns addressed by these core principles primarily relate to the protection of the integrity of DTEF markets rather than particular participants within those markets.

Intercontinental stated that the current ECM regulatory framework similarly provides the Commission with sufficient authority to protect the integrity of the market.[19] Intercontinental pointed out that the Commission has real-time access to Intercontinental's trading screens and can observe and evaluate prices and trading activity on a real-time basis. In the event that the Commission detected possible problems in the market, such as manipulation or attempted manipulation, it has the authority to take action against the appropriate market participants. Intercontinental further noted that the Commission also retains anti-fraud authority with respect to transactions on ECMs.

Intercontinental noted that since trading on its trading platform is entirely electronic, there are no trading rules to be enforced because buy and sell orders are electronically matched by the platform. Intercontinental represented that it applies rigorous standards to the selection of directors and all of its board members have significant experience in the commodity trading industry and many are executives of major corporations in the industry. Intercontinental concluded that the participation of floor brokers and floor traders would not require any additional regulation beyond that which already applies to ECMs under Sections 2(h)(3)–(5) and that this approach is consistent with the CFMA which was designed, in part, to provide a more flexible and less burdensome regulatory framework for futures and derivatives markets.[20]

III. Conclusion

After consideration of the NYMEX and Intercontinental petitions and review of the comments, the Commission has determined, consistent with the Intercontinental petition, that it is appropriate to issue an order, pursuant to section 1a(11)(C) of the Act, that includes CFTC-registered floor brokers and floor traders, subject to certain conditions, within the definition of ECEs who can trade on ECMs.[21] Although the Commission is neither agreeing nor disagreeing with Intercontinental's contention that two of the three general categories of ECE defined under the CFMA recognize that traders with no direct connection to the underlying commodity are eligible and valuable contributors to the efficiency of commercial markets,[22] the Commission does believe that its action is consistent with the purposes of the CFMA and that it will provide floor brokers and floor traders access to a wider range of products and expand the pool of potential counterparties for ECM participants. The Commission also believes that its action potentially could increase competition and efficiency and reduce liquidity risk on ECMs. As noted above, the Commission has previously determined, for purposes of trading on a DTEF, to include within the ECE definition registered floor brokers and floor traders trading for their own accounts, whose trading obligations are guaranteed by a registered FCM.[23]

In order to qualify as an ECE under the Commission's order, a CFTC-registered floor broker or floor trader must be a member of a DCM or otherwise have trading privileges on a DCM. The floor broker or floor trader must have as a part of its business the business of acting as a floor broker or floor trader, either on a DCM's open outcry market or performing an equivalent function on the DCM's electronic market, but need not have any connection to or experience in the underlying physical commodity. The Commission believes that the trading expertise that floor brokers and floor traders would bring to the ECM would be applicable to trading in any commodity product being traded. A floor broker's or floor trader's ability to, among other things, interpret market momentum and facilitate the adjustment of the market price to new information, is more a function of trading expertise than of experience in the underlying physical commodity.

The floor broker or floor trader must either be an ECP or have its trades on the ECM guaranteed by a clearing member that is both a member of a CFTC-registered derivatives clearing organization and an ECP. The Commission believes that the requirement that either the floor broker or floor trader or the guarantor of the trades must be an ECP provides sufficient financial backing for the floor broker or floor trader and mitigates any credit and collection risk that might otherwise arise in executing trades with a floor broker or floor trader.[24]

IV. Cost Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, section 15 does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, section 15 simply requires the Commission to "consider the costs and benefits" of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The order is intended to reduce regulatory barriers to permit CFTC-registered floor brokers and floor traders, when acting in a proprietary capacity, to enter into transactions in

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[19] Pursuant to paragraph 2(h)(5)(F) of the Act, an ECM shall not represent to any person that the facility is registered with, or designated, recognized, licensed or approved by the Commission.

[20] The Commission posed an additional question concerning ECE treatment for non-U.S. registrants. That question and response are not discussed here because, as previously noted, Intercontinental has decided not to seek relief at this time on behalf of non-U.S. floor brokers or floor traders. See note 10.

[21] The Commission notes that the Intercontinental petition is broader is scope than the NYMEX petition in that Intercontinental requested that, subject to the condition discussed above, all CFTC-registered floor brokers and floor traders be included in the definition of ECE. As previously stated, NYMEX requested that if the Commission made a determination along the lines proposed in the Intercontinental petition, NYMEX floor brokers and floor traders be permitted to trade on ECMs consistent with the scope of that determination. Accordingly, a single order addressing Intercontinental's petition eliminates the need for an order separately addressing the NYMEX petition.

[22] *See* note 16.

[23] Commission regulation 37.1(b).

[24] The Commission notes that although the guarantor for the trading on the ECM, if one is required, must be a clearing member of a CFTC-registered derivatives clearing organization, there is no requirement that the trades thus executed must be cleared. No liability resulting from a guarantor's guarantee of an uncleared ECM transaction would extend to any of the guarantor's fellow clearing members. The Commission also notes that the guarantor could restrict or otherwise condition the trading for which the guarantee is provided. The guarantor could, for instance, limit trading to certain commodities or ECMs, place financial limits on overall or daily positions, or restrict trading by number or size of acceptable transactions.

exempt commodities on exempt commercial markets pursuant to section 2(h)(3) of the Act if such entities are either eligible contract participants or have obtained a financial guarantee for such transactions from a clearing member that is both a member of a CFTC-registered derivatives clearing organization and an eligible contract participant. The Commission has considered the costs and benefits of the order in light of the specific provisions of section 15(a) of the Act.

A. Protection of Market Participants and the Public

The order would permit CFTC-registered floor brokers and floor traders who are eligible contract participants, or who have guarantees from clearing members that are members of CFTC-registered derivatives clearing organizations and are eligible contract participants, to enter into proprietary transactions in exempt commodities on exempt commercial markets. Under the Act, eligible commercial entities involve sophisticated investors who have the financial wherewithal or trading expertise to participate in these markets. Accordingly, there should be no effect on the Commission's ability to protect market participants and the public.

B. Efficiency and Competition

The order is expected to benefit efficiency and competition by, among other things, increasing the flow of trading information between contract markets and exempt commercial markets, increasing the pool of potential counterparties for participants trading on exempt commercial markets, and providing essential trading expertise to the market that enhances price discovery through both the speed and efficiency of market adjustment to new fundamentals.

C. Financial Integrity of Futures Markets and Price Discovery

The order should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of the futures and options markets. The order should enhance the price discovery function of such markets.

D. Sound Risk Management Practices

The order should have no effect, from the standpoint of imposing costs, on the risk management practices of the futures and options industry. Where the floor broker or floor trader is qualified as an eligible contract participant, the entity has been deemed to be sufficiently responsible to execute trades by the Act, and no further mitigation of credit risk is necessary. Where the floor broker or floor trader does not qualify as an eligible contract participant, the order requires that a clearing member of a registered derivatives clearing organization that is itself an eligible contract participant guarantee the trades in order to mitigate the credit and collection risk.

E. Other Public Interest Considerations

The order is consistent with one of the purposes of the Act as articulated in section 3 in that it would promote responsible innovation and fair competition among boards of trade, other markets and market participants.

V. Order

Upon due consideration, and pursuant to its authority under section 1a(11)(C) of the Act, the Commission hereby determines that floor brokers or floor traders who are registered with the Commission, when acting in a proprietary trading capacity, are appropriate persons as defined in section 1a(11)(C) and, thus, are deemed to be eligible commercial entities and may enter into contracts, agreements or transactions in an exempt commodity on an exempt commercial market under the following conditions:

1. Transactions must be executed on an exempt commercial market that meets the requirements of section 2(h)(3)–(5) of the Act.

2. The floor broker or floor trader must be a member of a designated contract market or otherwise have trading privileges on a designated contract market.

3. The floor broker or floor trader must have as a part of its business the business of acting as a floor broker or floor trader on a designated contract market's open outcry market or performing an equivalent function on a designated contract market's electronic market.

4. The floor broker or floor trader must either be an eligible contract participant or have its trades on the exempt commercial market guaranteed by a clearing member that is a member of a Commission-registered derivatives clearing organization and is an eligible contract participant.

Issued in Washington, DC, on January 9, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–893 Filed 1–15–03; 8:45 am]

BILLING CODE 6351–01–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission ("Commission") will hold an informal conference followed by a public hearing on Wednesday, January 29, 2003. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 9:30 a.m. Topics of discussion include: a progress report on development of the Commission's new comprehensive plan; a progress report on the Tri-State Water Management Plan; a status report on the PCB TMDL for the Delaware Estuary; an opportunity for stakeholder comment on the structure and mandate of the TMDL Implementation Advisory Committee; a report on the activities of the Flow Management Technical Advisory Committee; a discussion regarding the Commission's fee structure for project review under Section 3.8 of the Delaware River Basin Compact; and a presentation on stormwater management approaches in Chester County.

The subjects of the public hearing to be held during the 1 p.m. business meeting include, in addition to the dockets listed below, a resolution approving the Commission's budgets for the fiscal year ending June 30, 2004.

1. *Merrill Creek Owners Group D–77–110 CP (Amendment 15).* A resolution to amend Table A (Revised) of Docket D–77–110 CP (Amendment 14) to include the addition of the PPL Corporation, PPL Global, LLC and Lower Mount Bethel Energy, LLC facility in Lower Mount Bethel Township, Northampton County, Pennsylvania as a "Designated Unit." The power facility is a 600 megawatt independent power project approved via Docket D–99–54 on March 7, 2000. The project is subject to curtailment unless its consumptive water use during DRBC lower basin drought conditions can be made up by releases from storage. The Merrill Creek reservoir will provide the storage and is located in Harmony Township, Warren County, New Jersey.

2. *Covanta Warren Energy Resource Co., L.P. D–85–90 RENEWAL.* A renewal of a ground water withdrawal project to continue an allocation of 17 million

gallons (mg)/30 days for existing Wells Nos. 1 and 2 in the Leithsville Formation. The purpose of the withdrawal is provision of industrial cooling, process and potable/sanitary water to the applicant's solid waste disposal/power generation facility. The project is located in White Township, Warren County, New Jersey.

3. *Peronic Enterprises D–89–80 RENEWAL.* A ground water withdrawal project to supply up to 8 million gallons per day (mgd) of water to the applicant's Gambler Ridge Golf Club irrigation system from Wells Nos. 1 and 2 in the Mt. Laurel and Englishtown Formations, and Ponds Nos. 1 and 2 in the Red Bank Formation. The applicant requests that the total withdrawal from all wells remain limited to 8 mg/30 days. The project is located in Upper Freehold Township, Monmouth County, New Jersey.

4. *Berks-Montgomery Municipal Authority D–2001–10 CP.* A project to expand the applicant's existing Swamp Creek sewage treatment plant (STP) from 1.9 mgd to 2.3 mgd. The plant will continue to provide tertiary treatment to serve portions of Boyerstown and Bechtelsville Boroughs; and portions of Colebrookdale and Washington Townships, all in Berks County; plus a portion of Douglass Township in Montgomery County; all in Pennsylvania. Treated effluent will continue to discharge to Swamp Creek in the Perkiomen Creek Watershed in Douglass Township, Montgomery County, Pennsylvania.

5. *Lower Makefield Township D–2002–48 CP.* A ground water withdrawal project to supply up to 8.64 mg/30 days of water to the applicant's golf course irrigation system from new Wells Nos. PW–1 and PW–2 in the Stockton and Lockatong Formations. The project is located in the Delaware River Watershed in Lower Makefield Township, Bucks County, Pennsylvania.

In addition to the public hearing items, the Commission will address the following at its 1 p.m. business meeting: Minutes of the November 25, 2002 business meeting; announcements; a report on Basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; a resolution authorizing the executive director to receive and expend funds from the City and State of New York for the purpose of engaging a consultant to perform OASIS flow model analyses; and a resolution replacing a departing member of the expert panel that is advising the Commission on development of a hydrodynamic and water quality model for the Delaware Estuary.

Draft dockets scheduled for public hearing on January 29, 2003 are posted on the Commission's Web site, *http://www.drbc.net,* where they can be accessed through the Notice of Commission Meeting and Public Hearing. Documents relating to the dockets and other items may be examined at the Commission's offices. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions.

Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203. Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: January 10, 2003.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 03–940 Filed 1–15–03; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–093]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

January 10, 2003.

Take notice that on December 31, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective January 1, 2003:

Third Revised Sheet No. 638

CEGT states that the purpose of this filing is to reflect the amendment to an existing negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1036 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–074]

Columbia Gulf Transmission Company; Notice of Compliance Filing

January 10, 2003.

Take notice that on January 7, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2003:

Second Revised Sheet No. 20C
Second Revised Sheet No. 20E
Second Revised Sheet No. 20F
Second Revised Sheet No. 20G

Columbia Gulf states that it is filing these tariff sheets to comply with the Commission's orders approving negotiated rate agreements in Docket Nos. RP96–389–052, 055, 060 and 067. The instant filing contains revised tariff sheets reflecting the rate effective on January 1, 2003. Columbia Gulf states further that copies of the filing has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section

385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1037 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–06–000]

EPGT Texas Pipeline, L.P.; Notice of Petition for Rate Approval

January 10, 2003.

Take notice that on December 20, 2002, EPGT Texas Pipeline, L.P. (EPGT) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve market based rates for firm and interruptible storage services provided through its Wilson Storage Facility in the state of Texas. These services are performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA). EPGT proposes to offer several categories of interruptible services, in addition to firm storage service.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1032 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–396–002]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

January 10, 2003.

Take notice that on January 8, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff Second Revised Volume No. 1, Third Substitute Eighth Revised Sheet No. 41; and Second Substitute Sixth Revised Sheet No. 42 proposed to be effective October 1, 2002.

Great Lakes states that these tariff sheets are being filed to comply with the Commission's Letter Order of December 24, 2002 in Docket No. RP02–396–001, wherein Great Lakes' October 15, 2002 Order No. 587—O compliance filing was conditionally accepted pending filing of certain revised tariff sheets, and subject to the outcome of Great Lakes' Order No. 637 proceedings in Docket No. RP00–329–002. Order No. 587—O adopted Version 1.5 of the standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1035 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–377–003]

Northern Border Pipeline Company; Notice of Negotiated Rates

January 10, 2003.

Take notice that on January 8, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border's FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 99A, to become effective December 1, 2002.

Northern Border states that the purpose of this filing is to implement a negotiated rate agreement between

Northern Border Pipeline Company and Peoples Energy Resources Corp.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 21, 2003

Magalie R. Salas,

Secretary.

[FR Doc. 03–1034 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–325–000, et al.]

Central Illinois Company, et al.; Electric Rate and Corporate Filings

January 8, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Central Illinois Light Company

[Docket Nos. ER03–325–000 and EL03–39–000]

Take notice that on December 23, 2002, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a proposed delineation of transmission and local distribution facilities.

CILCO states that copies of the filing were served on the Illinois Commerce Commission.

Comment Date: January 22, 2003.

2. Midwest Independent Transmission System Operator, Inc. American Transmission Company LLC

[Docket No. ER03–362–001]

Take notice that on January 6, 2003, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) tendered for filing an errata to its December 31, 2002 filing, which proposed changes to its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, to revise its formula rate to reflect changes to certain rate calculations applicable to the American Transmission Company LLC (ATCLLC) rate zone (Zone 1). The errata replaces the redline version of the proposed tariff sheets.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all required parties. The Midwest ISO has posted this filing on its Internet site at *http://www.midwestiso.org*, and the Midwest ISO or ATCLLC will provide hard copies to any interested parties upon request.

Comment Date: January 27, 2003.

3. Southern Company Services, Inc.

[Docket No. ER03–379–000]

Take notice that on January 6, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), filed an unexecuted transmission service agreement under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). Specifically, Southern Companies filed an unexecuted rollover agreement for long-term firm point-to-point transmission service (First Revised Service Agreement No. 451 under the Tariff) with Williams Energy Marketing & Trading Company.

Comment Date: January 27, 2003.

4. Tampa Electric Company

[Docket No. ER03–380–000]

Take notice that on January 6, 2003, Tampa Electric Company (Tampa Electric) tendered for filing notices of cancellation of rate schedules for three agreements with Florida Power Corporation (FPC) concerning construction or operation and maintenance of interconnection facilities. Tampa Electric states that the agreements are outdated and that the parties have agreed to their termination and cancellation of the associated rate schedules.

Tampa Electric proposes that the cancellations be made effective on October 1, 2002. Tampa Electric states that copies of the filing have been served on FPC and the Florida Public Service Commission.

Comment Date: January 27, 2003.

5. Cleco Power LLC

[Docket No. ER03–381–000]

Take notice that on January 6, 2003, Cleco Power LLC, tendered for filing Fourth Revised Sheet Nos. 77 and 78, an Attachment E, from Cleco Power's open access transmission tariff, titled "Index of Point-to-Point Transmission Service Customers", to include Union Power Partners, L.P. as a short-term firm and non-firm transmission customer. Cleco Power LLC and Union Power Partners, L.P. have executed agreements under which Cleco Power will provide short-term firm point-to-point transmission service and non-firm point-to-point transmission service to Union Power Partners, L.P. under its Open Access Transmission Tariff.

Comment Date: January 27, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY,

contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1030 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–13–002, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Filings

January 9, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc.

[Docket No. ER03–13–002]

Take notice that on January 6, 2003, the New York Independent System Operator, Inc. (NYISO) filed a corrected version of the Unforced Capacity Deliverability compliance filing in accordance with the Commission's November 22, 2002 order in the above captioned hearing.

The NYISO has served a copy of this corrected filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 27, 2003.

2. Reliant Energy Electric Solutions, LLC

[Docket No. ER03–382–000]

Take notice that on January 7, 2003, Reliant Energy Electric Solutions, LLC (REES) petitioned the Federal Energy Regulatory Commission to grant certain blanket authorizations, to waive certain Commission's Regulations, and to issue an order accepting REES's FERC Electric Rate Schedule No. 1.

Comment Date: January 28, 2003.

3. Virginia Electric and Power Company

[Docket No. ER03–383–000]

Take notice that on January 7, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised Generator Interconnection and Operating Agreement (Revised Interconnection Agreement) with Old Dominion Electric Cooperative (ODEC) containing an executed final letter enabling the energization of ODEC's generating facility in parallel operation with Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission allow the Revised Interconnection Agreement to become effective January 8, 2003, the day after filing. Dominion Virginia Power also states that copies of the filing were served upon ODEC and the Virginia State Corporation Commission.

Comment Date: January 28, 2003.

4. Virginia Electric and Power Company

[Docket No. ER03–384–000]

Take notice that on January 7, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised Generator Interconnection and Operating Agreement (Revised Interconnection Agreement) with Old Dominion Electric Cooperative (ODEC) containing an executed final letter enabling the energization of ODEC's generating facility in parallel operation with Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission allow the Revised Interconnection Agreement to become effective January 8, 2003, the day after filing.

Dominion Virginia Power also states that copies of the filing were served upon ODEC and the Virginia State Corporation Commission.

Comment Date: January 28, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1029 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–74–002, et al.]

Western Electricity Coordinating Council, et al.; Electric Rate and Corporate Filings

January 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Western Electricity Coordinating Council

[Docket Nos. EL01–74–002 and ER01–2058–002]

Take notice that on December 20, 2002 Western Electricity Coordinating Council (WECC) tendered for filing an amendment to the WECC Bylaws adding Appendix B, the WECC Officers and Employee Standards of Conduct, to WECC Rate Schedule FERC No. 1. WECC was established as a result of the merger of Western Systems Coordinating Council, Western Regional Transmission Association, and Southwest Regional Transmission Association.

This filing is made in accordance with the Commission's September 27, 2001 Order Granting Request to Transfer Programs and Directing Additional Filings, 96 FERC § 61,348 (2001). WECC

states that copies of the filing were served upon all parties in the above-captioned proceedings.

Comment Date: January 24, 2003.

2. California Power Exchange Corporation

[Docket No. ER02–2234–007]

Take notice that on January 8, 2003, the California Power Exchange Corporation made a filing to amend its December 31, 2002 compliance filing in this proceeding. The amendment proposed only one change to clarify the heading in Column I of Rate Schedule Sheet No. 3.

Comment Date: January 29, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2595–003]

Take notice that on January 6, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order in Midwest Independent Transmission System Operator Inc., 101 FERC § 61,221. The Midwest ISO has requested an effective date of November 25, 2002, which is the original date of effectiveness as granted by the Commission in Docket No. ER02–2595–000.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: January 27, 2003.

4. California Power Exchange Corporation

[Docket No. ER03–139–002]

Take notice that on January 8, 2003, the California Power Exchange Corporation made a filing to comply with the Commission's December 31, 2002 Order in this proceeding (101 FERC § 61,403).

Comment Date: January 8, 2003.

5. FPL Energy New Mexico Wind, LLC

[Docket No. ER03–179–001]

Take notice that on January 7, 2003, FPL Energy New Mexico Wind, LLC tendered for filing an amended FERC Electric Tariff, Original Volume No. 1, to be included as Attachment B to FPL Energy New Mexico Wind's prior application for authorization to sell energy and capacity at market-based rates pursuant to Section 205 of the Federal Power Act filed with the Commission on November 12, 2002.

Comment Date: January 28, 2003.

6. Central Maine Power Company

[Docket No. ER03–385–000]

Please take notice that on January 8, 2003, Central Maine Power Company (CMP) tendered for filing an executed Local Network Operating Agreement (LNOA) and executed service agreement for Local Network Transmission Service (LNSA) entered into with Boralex Livermore Falls, Inc. These agreements supersede unexecuted agreements previously filed under Docket No. ER00–2242–000. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Fifth Revised Volume No. 3, under the following Service Agreement Numbers:

FERC Original Electric Tariff, Fifth Revised Volume No. 3, First Revised Service Agreement No. 86 (the LNSA agreement), and

FERC Original Electric Tariff, Fifth Revised Volume No. 3, First Revised Service Agreement No. 86, First Revised Supplement No. 1 (the LNOA agreement).

Comment Date: January 29, 2003.

7. Southern Company Services, Inc.

[Docket No. ER03–386–000]

Take notice that on January 6, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Georgia Power Company (GPC), filed with the Federal Energy Regulatory Commission (Commission) the Interconnection Agreement between Athens Development Company, L.L.C. and GPC (Service Agreement No. 461 under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5). An effective date of January 6, 2003 has been requested.

Comment Date: January 27, 2003.

8. Upper Peninsula Power Company

[Docket No. ER03–387–000]

Take notice that on January 8, 2003, Upper Peninsula Power Company (UPPCo) tendered for filing a cover sheet and rate sheets setting forth its "Rate WR–1—Wholesale Service to Electric Utility" (Rate Sheets) to supplement First Revised Rate Schedule FERC No. 26 (Revised Rate Schedule) between UPPCo and the City of Escanaba, Michigan (City). The Rate Sheets which incorporate a Capital Gain Refund Factor set forth the rates for the provision of service under the Revised Rate Schedule and were inadvertently omitted from UPPCo's original June 28, 2002 filing in Docket No. ER02–2200–000 that revised certain portions of the Revised Rate Schedule.

UPPCo respectfully requests that the cover sheet and Rate Sheets become effective as of June 1, 2002, the date the Commission made the Revised Rate Schedule effective in Docket No. ER02–2200–000. UPPCo also states that copies of the filing were served upon the City of Escanaba and the Michigan Public Service Commission.

Comment Date: January 29, 2003.

9. Consumers Energy Company

[Docket No. ER03–388–000]

Take notice that on January 8, 2003, Consumers Energy Company (Consumers) tendered for filing changes to its First Revised Rate Schedule No. 116. Consumers states that the changes are being made to reflect the October 1, 2002 Order in Docket No. ER02–2420–000 and are being filed subject to the ultimate resolution of that docket. The revised pages filed are the Second Revised Sheet Nos. 11 and 23

Copies of the filing were served upon the customer and the Michigan Public Service Commission.

Comment Date: January 29, 2003.

10. Entergy Services, Inc.

[Docket No. ER03–389–000]

Take notice that on January 8, 2003, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing a unilaterally executed, amended and restated Interconnection and Operating Agreement with Union Carbide Corporation (Union Carbide), and an updated Generator Imbalance Agreement with Union Carbide (the First Revised Interconnection Agreement).

Comment Date: January 29, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1027 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 10, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License for Minor Project.

b. *Project No.:* 719–007.

c. Date filed: October 31, 2000.

d. *Applicant:* Trinity Conservancy, Inc.

e. *Name of Project:* Trinity Power Project.

f. *Location:* On Phelps Creek and James Creek in the Columbia River Basin in Chelan County, near Leavenworth, Washington. The project occupies 47.9 acres of federal lands in Wenatchee National Forest.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Reid L. Brown, President, Trinity Conservancy, Inc., 3139 E. Lake Sammamish SE, Sammamish, WA 98075–9608, (425) 392–9214 or *rlbrown@legato.com.*

i. *FERC Contact:* Charles Hall, (202) 502–6853 or *Charles.Hall@ferc.gov.us.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance of this notice

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Documents may also be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The Trinity Project consists of: (1) A deteriorated wooden diversion dam, 70-foot-long flume and settling tank on James Creek, and a 3,350-foot-long, partially destroyed steel penstock, all of which is proposed for decommissioning with this license application; (2) a 45-foot-long, 10-foot-high timber crib diversion dam and screened intake on Phelps Creek; (3) a 24-inch-diameter, 6,000-foot-long, gravity-flow, steel pipe aqueduct; (4) a 20-foot-long, 14-foot-wide, 9-foot-deep, reinforced concrete settling tank; (5) a 42-inch-to 12-inch-diameter, 2,750-foot-long, riveted spiral-wound penstock; (6) a 145-foot-long, 34-foot-wide, wood-frame powerhouse building containing a single Pelton impulse turbine and 240-kilowatt synchronous generator; (7) a tailrace; and (8) appurtenant facilities. The generator supplies the electricity needs of four residences, a cabin and shed; the project is not connected to the electric transmission grid. The licensee proposes to decommission the inoperable James Creek diversion facilities and adjust the project boundary accordingly.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of the availability of the draft NEPA document, May 2003.

Notice of the availability of the final NEPA document October 2003

Ready for Commission decision on the application, February 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–1031 Filed 1–15–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000, RM02–1–000, and RM02–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design Standardization of Generator Interconnection Agreements and Procedures Standardization of Small Generator Interconnection Agreements and Procedures, Advance Notice of Proposed Rulemaking; Notice of Agenda for Technical Conference

January 10, 2003.

1. As announced in a Notice of Technical Conference issued December 3, 2002, Commission staff will convene a technical conference to discuss queuing of generator interconnection requests. The conference will be held January 21, 2003 starting at 10 am and ending at 4:30 pm (a change from the previously announced starting and ending times) in the Commission Meeting Room (Room 2C) at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC On December 17, 2002, a Notice of Possible Discussion Items for the queuing conference was issued.

2. The purpose of the conference is to explore the significant issues participants have raised during the course of the Large Generator Notice of Proposed Rulemaking (NOPR) and Small Generator Advance Notice of Proposed Rulemaking (ANOPR) proceedings (RM02–1–000 and RM02–12–000, respectively), as well as the Commission's Standard Market Design NOPR proceeding (SMD NOPR) (RM01–12–000) concerning queuing procedures for managing generator interconnections. The technical conference will allow the development of a more complete record in these proceedings but is not intended to revisit non-queuing issues that have already been raised and explored in the Large Generator NOPR and the Small Generator ANOPR proceeding.

3. The conference is open for the public to attend; to ensure sufficient seating, attendees are asked to register in advance a *http://www.ferc.gov/queuing-registration-012103.htm*. FERC Commissioners may attend and participate in the discussions.

4. There will be three panels. The conference Agenda is attached to this Notice. It has tentative and confirmed lists of the panelists and the content that is to be covered during each panel. Each panelist will have 5 minutes for opening remarks. Panelists are asked to limit the hard-copy of Powerpoint presentations they may use to four pages of major points and observations, including a cover page. The use of black-and-white graphics to summarize and aggregate observations is strongly encouraged. Electronic files of these 4-page presentations should be sent to *norma.mcomber@ferc.gov* by January 15, 2003 to allow copying of the material because there will be no slide projection at the conference. Panelists are also encouraged to file electronic copies of their proposals and/or other presentation materials as part of the referenced proceedings. Anyone may submit comments on issues addressed in this technical conference by February 4, 2003. The filing should not exceed 20 pages, including an executive summary. This conference will be transcribed and will broadcast over the Internet. For information on getting a copy of the transcript or viewing the broadcast please refer to the previous notices, which can be found at the following link: *http://www.ferc.gov/electric/gen_inter.htm*. Questions related to this conference can be directed to Norma McOmber at the email listed above or (202) 502–8022.

Magalie R. Salas,
Secretary.

Attachment: Agenda of Technical Conference.

Panel 1: The Current Status of Generator Interconnection Queues—10 am–11:30 am

Confirmed List of Panelists

David Cory, PacifiCorp
Steven R. Herling, PJM
Rich Kowalski, ISO New England
Paul D. Olivier, Entergy
Phil Pettingill, California ISO
Bruce Rew, Southwest Power Pool

Discussion Topics

A. Describe generally the current status of the interconnection queue, including: the total size of the queue (MW); the location, size, queue position, date of request and expected completion date of active projects; and the number, size, queue position and date of request of any inactive projects.

B. Explain existing interconnection queuing policies and practices: Summarize the rules that govern the queue of a specific transmission provider; how a generator's queue position is determined; what milestones must be met to retain queue position; what events trigger a change in queue position or removal from the queue; how inactive projects are treated; how queue position determines responsibility for costs of studies and upgrades; how queue position determines entitlements to financial transmission rights or other property rights; how a change in the queue position of one generator affects the cost responsibility of others; is there currently information available on queue status; whether interconnection requests are currently being processed on a first-come, first-served basis, on a clustered (time or geographically) basis, or both, and why.

C. Describe any differences in the way small and large generators are treated for queuing purposes.

D. Describe any differences in the way "energy resources" and "network (or capacity) resources" are treated for queuing purposes.

E. Discuss whether generator interconnection requests and transmission service requests are included in the same queue. If not, describe the relationship between the two queues. What is the relationship between the transmission planning process and the administration of the queue(s)?

F. Do all TOs and ISOs/RTOs conduct the same interconnection studies, grid impact studies or other analyses for new project interconnection?

Break, 11:30 am–11:45 am

Panel 2: Experience with the Administration of Generator Interconnection Queues—11:45 am–1:15 pm

Confirmed List of Panelists

James Caldwell, American Wind Energy Association
J. Jolly Hayden, Calpine
John Jimison, U.S. Combined Heat and Power Association
Donald Jones, Xcel
John Simpson, Reliant
Justin Thompson, Pinnacle West
Weston L. Williams, Southern California Edison

Discussion Topics

A. Provide examples of good and bad experiences with queues, being as specific as possible regarding the facts pertaining to your company's experiences. Of particular interest are examples of problems associated with

the following: undue discrimination on the part of transmission providers; inappropriate or unrealistic milestones; inequitable cost assignments; study procedures or other requirements that lead to unnecessary project delays or increased costs; and lack of flexibility in the queuing rules.

B. Identify any problems that are specific to small generators or to large generators within the queue process.

C. Describe the impact of letting the generator choose whether to interconnect as either an energy resource or a network (capacity) resource.

D. Describe any problems associated with the need to manage both interconnection requests and transmission service requests within the context of an overall transmission planning and expansion process.

E. Describe solutions to the problems identified by discussion of the items above.

Lunch, 1:15 pm–2 pm

Panel 3: Further Ideas for Improving Queue Management—2 pm–4:30 pm

Confirmed List of Panelists

John P. Buechler, New York ISO
Scott M. Helyer, Tenaska
Sam Jones, ERCOT
Pete Landrieu, Public Service Electric and Gas Company
Beth Soholt, Wind on the Wires
Lou Ann, Westerfield Idaho Public Utilities Commission
Kim Wissman, Ohio Public Utilities Commission

Discussion Topics

A. Are there particular queuing policies or practices that should change to make queue management more effective? Consider: common study/analytical techniques and tools; different or new analytical tools; procedures for ensuring that the projects of independent generators are treated comparably with those of the transmission provider; treatment of inactive projects; procedures for coordinating the upgrades needed for projects in the queue with the transmission planning process; rules for assigning cost responsibility and property rights to generators in the queue; whether there should be a link between siting requests and transmission service requests; use of milestones to maintain queue position; and a list of actions or events that can trigger a change in queue position.

B. What siting and grid operations information is needed to obtain a position in the queue, where is this information kept, and what are the rules for accessing this information? Would proposed restrictions on the Critical Energy Infrastructure Information Rulemaking proceeding (Docket Nos. RM02–4–000, PL02–1–000) affect parties' ability to site plants or interconnect cleanly?

C. Should small and large non gas-fired generators receive different treatment within a queue? If so, how should it be different?

D. Should the Commission standardize specific queue management practices or allow regional variations around a set of core principles?

E. Should queue position be treated as a property right which can be transferred?

Audience Comments

[FR Doc. 03–1033 Filed 1–15–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2233–001, EC03–14–000, ER03–242–000, ER03–257–000, ER03–262–000, ER03–263–000, RT01–2–000, RT01–98–000, RT01–87–000 and RT02–2–000]

Ameren Services Company, FirstEnergy Corporation, Northern Indiana Public Service Company, National Grid USA, Midwest Independent Transmission System Operator, Inc., American Electric Power Service Corporation Virginia Electric and Power Company, American Electric Power Service Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., The Dayton Power and Light Company, Virginia Electric and Power Company, and PJM Interconnection, L.L.C., Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., PJM Interconnection, L.L.C., PJM Interconnection, L.L.C., Midwest Independent System Operator, Inc., and State-Federal Regional RTO Panels; Notice of State-Federal Regional Panel Discussion

January 10, 2003.

1. At the request of the Indiana Utility Regulatory Commission (Indiana Commission), the Federal Energy Regulatory Commission will hold a discussion with the Commissioners and staff of the Indiana Commission to discuss dockets related to RTO formation that are currently pending before both the Commission and the Indiana Commission. These cases involve the transfer to PJM Interconnection, L.L.C. of functional control of transmission assets that American Electric Power Service Corporation requested on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company (collectively AEP); and Northern Indiana Public Service Company's request for transfer of functional control of its transmission facilities to GridAmerica and the Midwest ISO. The conference is established pursuant to the Order Announcing the Establishment of State-Federal Regional Panels to Address RTO Issues, Modifying the Application of Rule 2201 in the Captioned Dockets, and Clarifying Order No. 607, 97 FERC 61,182 (2001), reh'g denied 98 FERC 61,309 (2002). The conferences will not involve any discussion of the Indiana Commission's open dockets.

2. The Indiana Commission has indicated that the Commissioners and staff of the Indiana Utility Regulatory Commission, the Public Service Commission of Kentucky, the Michigan Public Service Commission, the Public Utilities Commission of Ohio, the Tennessee Regulatory Authority, the Virginia State Corporation Commission, and the Public Service Commission of West Virginia, who represent the states served by AEP, may wish to participate in this discussion; other affected state commissions also may have an interest in this matter and may wish to participate. Attendance at the meeting is limited to the Commission, state commissioners, and their respective staffs.

3. The discussion will take place at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, at 10 a.m. on Tuesday, January 14, 2003. A transcript of the discussion will be placed in the above-captioned dockets.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1028 Filed 1–15–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0047; FRL–7439–4]

Agency Information Collection Activities: Submission EPA ICR Number 1814.03 (OMB No. 2040–0189) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Health Protection Survey of Beaches (OMB Control Number 2040–0189, EPA ICR Number 1814.03). The ICR, which is abstracted below, describes the nature of the information collection and its expected burden and cost.

DATES: Additional comments may be submitted on or before February 18, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Rick Hoffmann, Standards and Health Protection Division (MC 4305T), Office of Science and Technology, Office of Water, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 566–0388; fax number: (202) 566–0409; e-mail address: *hoffmann.rick@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On 08/13/2002 (67 FR 52716), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment.

EPA has established a public docket for this ICR under Docket ID No. OW–2002–0047, which is available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: National Health Protection Survey of Beaches (OMB Control No. 2040–0189, EPA ICR Number 1814.03). This is a request to renew an existing approved collection that is scheduled to expire on 1/31/2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Bacterial and other microbiological contaminants continue to pose potentially serious human health problems for the Nation's recreational waters, including bathing beaches. These adverse effects have been one of EPA's long-standing concerns. They are directly related to such Clean Water Act responsibilities as water quality standards and surface water quality, and to the Agency's efforts to ensure that the waters of the United States are "fishable" and "swimmable." In 1986, EPA formally issued a revision to its bacteriological ambient water quality criteria recommendations to protect persons participating in body contact recreation. In addition, recent studies have confirmed the adverse health effects resulting from bathing in contaminated waters. Therefore, water quality in bathing beach areas is a critical concern to EPA.

EPA believes there is a need to improve the overall quality and availability of public information about health protection activities at beaches, which include, but are not limited to, water quality standards, monitoring and assessment activities, and beach closures. Many organizations share responsibility for these activities. Consequently, EPA's Office of Water will conduct an annual "beach" survey which will be sent to environmental health officials from State, tribal, county, and city agencies, as well as representatives from various interest groups. It will obtain and verify information on the location and condition of swimming beaches and the agencies and persons responsible for maintaining and issuing advisories or closings for those beaches at inland sites around the Nation. Responses to the questionnaire (either on paper or electronically via the Internet) will help to determine compliance with water quality standards, to assess public health risks, and to determine what steps EPA should take next, if any. Completion of the questionnaire and map marking will be voluntary.

EPA will assemble the information (maps and questionnaire responses) into electronic database and graphic formats that can be readily analyzed and shared with responsible parties (*e.g.*, EPA program and regional offices, other federal, state, tribal, county, and city agencies), as well as the public. The nationwide collection of information is being conducted in phases over three years, with an average estimated number of respondents of 130 per year. When the survey is fully implemented, it is estimated that 391 respondents per year will be involved. The estimated annual cost for the survey per respondent is anticipated to decrease each year, since respondents will only

be requested to provide information that has changed during the year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and county, public health, and environmental protection agencies.

Estimated Number of Respondents: 130.

Frequency of Response: annual.

Estimated Total Annual Hour Burden: 312.

Estimated Total Annualized Cost Burden (non-labor costs): $195.

Changes in the Estimates: There is a decrease of 968 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a reduction in the number of respondents for this ICR. This ICR will collect information only from inland beaches that are not required to report to EPA, or those states that do not apply for the BEACH Act Grants.

Dated: January 8, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–966 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7439–3]

EPA National Advisory Council for Environmental Policy and Technology Notification of Public Advisory Committee Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee teleconference meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the National Advisory Council for Environmental Policy and Technology (NACEPT) will meet in a public teleconference on Wednesday, January 29 from 10 a.m. to 12 p.m. Eastern Time. The meeting will be hosted out of the main conference room, U.S. EPA, 655 15th Street, NW., Suite 800, Washington, DC 20005. The meeting is open to the public, however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, or how to register and obtain the phone number, please contact the individuals listed below.

Background: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92–463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serves as a sounding board for new strategies that the Agency is developing. The Compliance Assistance Advisory Committee (CAAC) is one of the subcommittees under the auspices of NACEPT.

Purpose of Meeting: The NACEPT Council will review and discuss the Compliance Assistance Advisory Committee's comments on EPA's Draft 2003–2008 Strategic Plan Architecture. EPA is currently soliciting public comments on the draft goals and objectives that will provide the structure for the new Strategic Plan. This meeting will also provide the full NACEPT Council the opportunity to make recommendations on EPA's strategic planning architecture. If NACEPT approves the recommendations provided by the CAAC, then it will be submitted to EPA's Office of the Chief Financial Officer.

Availability of Review Materials: EPA's Draft FY 2003–2008 Strategic Plan Architecture is available electronically from EPA's Office of Chief Financial Officer, at *http://www.epa.gov/ocfopage/plan/plan.htm.*

FOR FURTHER INFORMATION CONTACT: Members of the public wishing to gain access to the conference room on the day of the meeting must contact Ms. Gwen Whitt, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency (1601E), Office of Cooperative Environmental Management, 655 15th Street, NW., Suite 800, Washington, DC 20005; telephone/voice mail at (202) 233–0079 or via e-mail at *whitt.gwen@epa.gov.* You may also contact Sonia Altieri at (202) 233–0061 if you have any questions. The agenda will be available to the public upon request. Written comments from the public are welcome any time before or during the meeting.

General Information: Additional information concerning the National Advisory Council for Environmental Policy and Technology (NACEPT) can be found on our Web site (*http://www.epa.gov/ocem*).

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Whitt at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 9, 2003.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 03–967 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7428–9]

Proposed Administrative Cashout Deminimis Settlement Under Section 122(g) of the Comprehensive Environmental Response Compensation and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment for the NL Industries (Taracorp) Site.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future

response costs concerning the NL Industries (Taracorp) Site, with the total of 74 settling parties listed in the **SUPPLEMENTARY INFORMATION** portion of this notice. The settlement requires the settling parties to pay $1,163,125.65 to the Hazardous Substance Superfund.

The total cost of the cleanup is approximately $63 million. This number is the sum of EPA's past costs of approximately $43 million, plus costs incurred by certain potentially responsible parties of approximately $ 20 million. For purposes of settlement, site costs have been allocated approximately 50% to generators and 50% to owner/operators. Since all *deminimis* parties are generators, the *deminimis* percentage share of site costs is based on fifty percent of total site costs, or $30 million. Total future site costs were assigned a premium of 20%. Payment amounts for each *deminimis* generator were calculated by multiplying the generator site cost by each *deminimis* generator's percentage share of volume contributed to the site.

Under the terms of the settlement, the *deminimis* generators who sign the Consent Order agree to pay their respective settlement amounts. In exchange for those payments, the United States covenants not to sue or take administrative action pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), relating to the Site. In addition, participating *deminimis* generators will be entitled to protection from contribution action or claims as provided by sections 113(f) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f) and 9622(g)(5), for all response costs incurred and to be incurred by any person at the Site.

For thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before February 18, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Larry L. Johnson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6609. Comments should reference the NL Industries (Taracorp) Site, and EPA Docket No. 91–00578–JLF, and should be addressed to Larry L. Johnson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Larry L. Johnson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone 312–886–6609.

SUPPLEMENTARY INFORMATION: The following is a list of the settling *de minimis* generators:

1. 3–H Industries (Now known as Mayfield Manufacturing Company).
2. A. Edelstein & Sons.
3. A.O Smith Corporation.
4. Ace Comb Company.
5. Acme Iron & Metal Co.
6. Acro Sale & Engineering.
7. Allied Metal Company.
8. Amax Inc./Amax Lead & Zinc.
9. American National Can Company.
10. Baker Iron & Metal.
11. Ball Metal & Chemical.
12. Barter Machinery & Supply Company.
13. Bill's Auto Parts.
14. C & D Battery dba/C&D Charter Power c/o Allied Signal , Inc.
15. C.L. Downey Company.
16. CNC Industries, Inc.
17. Cerro Copper Products Co.
18. Chrysler Corporation (Daimler-Chrysler Corporation).
19. Delhi Battery & Supply Co, Inc.
20. Douglas Battery Manufacturing Comp.
21. Dumes, Inc.
22. Elden R. Erikson & Sons, Inc.
23. Electro Battery Manufacturing Co.
24. Farmland Industries.
25. Fisher Steel & Supply Co.
26. G & M Scrap Metal.
27. GSA—General Services Administration.
28. Grossman Iron & Steel Company.
29. Herman Strauss, Inc.
30. Houston Salvage.
31. Industrial Electrical Equipment Co.
32. Intra-American Metals.
33. J. Trockman & Sons.
34. L. Kahn & Sons.
35. La Salle Steel Company.
36. M. Katch.
37. Mc Graw Edison Company.
38. Mallin Brothers Company.
39. Marco Steel Supply.
40. Martin Brothers Mill & Foundry Supply.
41. Miller Compressing Company.
42. Milwaukee Scrap Metal Co.
43. Modine Manufacturing.
44. Northbrook Sports Club.
45. Olin Corporation.
46. Parks Iron & Metal.
47. Peltz Brothers.
48. Pequena Battery Company.
49. Pet, Inc.
50. Plough, Inc.
51. Reeves Scrap Metal.
52. Sam Allen & Son, Inc.
53. School of the Ozarks (Now known as College of the Ozarks).
54. Schuster Metals, Inc.
55. Senser Metal Company.
56. Shapiro Sales Company.
57. Slesnick Iron & Metal.
58. Southwestern Bell Telephone Company.
59. Stewart-Warner Corp.
60. Stewart-Warner Corporation c/o Invensys.
61. Superior Companies, Inc.
62. University of Illinois of Urbana.
63. Vivo Iron & Metal.
64. Wallach Iron & Metal Company.
65. Willoughby Iron & Waste Material Co.
66. Young Radiator Company.
67. United Technologies Corporation.
68. Parkans International, Inc.
69. Sherwin-Williams.
70. Marchem Resources, Inc.
71. Rankin Technical Institute.
72. Crown Cork & Seal Corporation.
73. Centritech Corporation.
74. Milford Rivet & Machine Company.

Dated: January 7, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 03–968 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7438–5]

Public Water System Supervision Program Revision for the State of South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of South Carolina is revising its approved Public Water System Supervision Program. South Carolina has adopted drinking water regulations revising the public notification rule. EPA has determined that the public notification rule meets all minimum federal requirements, and is no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve the State program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by February 18, 2003 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by February 18, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on February 18, 2003. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

South Carolina Department of Health and Environmental Control, Bureau of Water, 2600 Bull Street, Columbia, South Carolina 29201.

Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Janine Morris, EPA Region 4, Drinking Water Section at the Atlanta address given above (telephone 404–562–9480).

Authority: (Section 1401 and section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142).

Dated: December 13, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 03–859 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7439–5]

Public Water System Supervision Program Revision for the State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Georgia is revising its approved Public Water System Supervision Program. Georgia has adopted drinking water regulations which incorporate the requirements of the Interim Enhanced Surface Water Treatment Rule and Stage 1 Disinfectants/Disinfection Byproducts Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by February 18, 2003, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by February 18, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on February 18, 2003. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Natural Resources, Environmental Protection Division, Water Resources Branch, 205 Bulter Street, SE., Atlanta, GA 30334 or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Lori Brown, EPA Region 4, Drinking Water Section at the Atlanta address given above or at telephone (404) 562–9482.

Authority: (Section 1401, 1412, and 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR parts 9, 141 and 142 of the National Primary Drinking Water Regulations).

Dated: December 30, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 03–965 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 03–61]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 13, 2003, the Commission released a public notice announcing the January 22, 2003 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATES: Wednesday, January 22, 2003 at 9 a.m.

ADDRESSES: Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue. Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov*. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 92–237, released on January 13, 2003. The North American Numbering Council (NANC) has scheduled a meeting to be held Wednesday, January 22, 2003, from 9 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the

general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Wednesday, January 22, 2003 9 a.m.

1. Announcements and Recent News
2. Approval of Minutes
   —Meeting of November 19, 2002
3. Report of the North American Numbering Plan Administrator (NANPA)
   —State of NANP resources
   —NANPA activity
4. Report of National Thousands Block Pooling Administrator
   —Activity report
   —Optional pooling implementation
   —Connecticut UNP trial
5. Report of Oversight Working Group
   —Review of Change Orders
   —PAS "workaround"
   —2002 Performance Survey
   —Performance Improvement Plan
6. Report of NANP Expansion/Optimization IMG
   —Transmittal of Final Report to FCC
   —Monitoring in future
7. Report of Intermediate Numbering/Soft Dial Tone IMG
8. Status of Industry Numbering Committee activities
9. Report of the Local Number Portability Administration (LNPA) Working Group
   —Wireless Number Portability Operations (WNPO) Subcommittee
10. Report from NBANC
11. Report of Cost Recovery Working Group
12. Report of E-Conferencing Working Group
13. Presentation by VoIP provider (Vonage) regarding use of numbers
14. Steering Committee
   —Table of NANC Projects
15. Report of Steering Committee
16. Summary of Action Items
17. Public Comments and Participation (5 minutes per speaker)
18. Other Business

Adjourn no later than 5 p.m.

Next Meeting: Wednesday, March 19, 2003.

Federal Communications Commission.

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 03–1095 Filed 1–15–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 10, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Liberty Financial Services, Inc., Sioux City, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Liberty National Bank, Sioux City, Iowa.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. First National Bancorp, Inc., Libby, Montana; to merge with Montana First National Bancorporation, Kalispell, Montana, and thereby indirectly acquire Montana First National Bank, Kalispell, Montana.

Board of Governors of the Federal Reserve System, January 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–925 Filed 1–15–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10067]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and possible public harm.

It is widely acknowledged that the elderly are going without critical

pharmaceutical therapy and that there are morbidity and mortality consequences. The Administration has developed a proposal for paying for prescriptions for low-income elderly Medicaid recipients. This proposal will allow States to run 1115 demonstration projects specifically for a drug benefit for the elderly.

CMS has recently completed work on an innovative, electronic approach for easing the burden of States in applying for participation in the Pharmacy Plus demonstration initiative. We are seeking approval of the forms that would be used to collect data from applicants under this initiative.

The initiative will greatly reduce the time period required for States to develop and apply for demonstration authority; in addition the initiative is intended to expedite the review and approval time required by CMS. The initiative specifies the requirements of States to participate in the initiative—if the criteria are met by the State then deliberation by CMS on the application should be minimal. The result will be an expeditious approval, implementation and operation of demonstration programs that will provide prescription coverage to lessen the morbidity and mortality that is occurring. Without approval of these forms on an emergency basis, millions of Seniors will continue to under-utilize pharmaceutical therapy for chronic and acute morbidity. The use of the forms will expedite prescription coverage and utilization of important medicines.

CMS is requesting OMB review and approval of this collection by January 28, 2003, with a 180-day approval period. Written comments and recommendation will be accepted from the public if received by the individuals designated below by January 27, 2003.

Type of Information Collection Request: New collection; *Title of Information Collection:* Pharmacy Plus Template for Low Income Seniors under Medicaid; Form No.: CMS–10067 (OMB# 0938–XXXX); *Use:* The template for the Pharmacy Plus program for low income seniors under Medicaid will enable states to apply, via a standard format, to provide a drug benefit to elderly recipients; use of this format will expedite the process of obtaining CMS review and approval of an application; *Frequency: Other:* 3 years after initial submission for the 1915 (c) waiver; 5 years after initial submission for the 1115 demonstration; *Affected Public:* State Government; *Number of Respondents:* 51; *Total Annual Responses:* 25; *Total Annual Hours:* 115.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by January 27, 2003:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262. Attn: Julie Brown, CMS–10067. And, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn.: Brenda Aguilar, CMS Desk Officer.

Dated: January 8, 2003.

Julie Brown,

Acting Paperwork Reduction Act Team Leader and, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–910 Filed 1–15–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0131]

Agency Information Collection Activities; Announcement of OMB Approval; FDA Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing that a proposed collection of information entitled "FDA Rapid Response Surveys" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 16, 2002 (67 FR 63928), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0500. The approval expires on June 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: January 9, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–903 Filed 1–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0284]

Agency Information Collection Activities; Announcement of OMB Approval; Food Labeling: Health Claims; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Labeling: Health Claims; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 16, 2002 (67 FR 63931), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0428. The approval expires on December 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: January 9, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–905 Filed 1–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1528]

Delfina Hernandez; Rescission of Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is rescinding an order issued under the Federal Food, Drug, and Cosmetic Act (the act) debarring Ms. Delfina Hernandez for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA is issuing this rescission because service of a notice proposing to debar Ms. Hernandez and offering her an opportunity for a hearing on the proposal was sent to the wrong person.

DATES: This notice is effective November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 6, 2002 (67 FR 67629), FDA issued an order debarring Ms. Delfina Hernandez for 5 years from providing services in any capacity to a person that has an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (see sections 306(c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd))).

The debarment order stated that FDA had served Ms. Hernandez by certified mail on May 13, 2002, a notice proposing to debar her and offering her an opportunity for a hearing on the proposal. The debarment order further stated that Ms. Hernandez had failed to request a hearing and thereby waived her opportunity for a hearing and waived any contentions concerning her debarment.

FDA has learned that the notice proposing to debar Ms. Hernandez and offering her an opportunity for a hearing was sent to an incorrect address and was apparently signed for by a person with the same name as Ms. Hernandez, but who was not the intended subject of the notice. Accordingly, FDA is rescinding the November 6, 2002, order.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 306 (21 U.S.C. 335a)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.34).

Dated: January 2, 2003.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–1020 Filed 1–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0361]

International Conference on Harmonisation; Guidance on Q1D Bracketing and Matrixing Designs for Stability Testing of New Drug Substances and Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Q1D Bracketing and Matrixing Designs for Stability Testing of New Drug Substances and Products." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This guidance is an annex to an ICH guidance entitled "Q1A(R) Stability Testing of New Drug Substances and Products" (66 FR 56332, November 7, 2001). It is intended to provide guidance on the application of reduced designs (i.e., bracketing and matrixing) for stability studies conducted in accordance with the principles outlined in ICH Q1A(R).

DATES: The guidance is effective January 16, 2003. Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Chi-wan Chen, Center for Drug Evaluation and Research (HFD–830), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2001, or Andrew Shrake, Center for Biologics Evaluation and Research (HFM–345), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–402–4635.

Regarding the ICH: Janet Showalter, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance

harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada's Health Products and Food Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency has changed its procedure for publishing ICH guidances. As of April 2000, we no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance is placed in the docket and can be obtained through regular agency sources (see **ADDRESSES**). Draft guidances are left in the original ICH format. The final guidance is reformatted to conform to the GGP style before publication.

In the **Federal Register** of September 25, 2001 (66 FR 49029), FDA published a draft tripartite guidance entitled "Q1D Bracketing and Matrixing Designs for Stability Testing of Drug Substances and Drug Products." The notice gave interested persons an opportunity to submit comments by November 26, 2001. After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three regulatory agencies on February 7, 2002.

This guidance is an annex to an ICH guidance entitled "Q1A(R) Stability Testing of New Drug Substances and Products" (66 FR 56332). It is intended to provide guidance on the application of bracketing and matrixing for stability studies conducted in accordance with the principles outlined in Q1A(R).

ICH Q1A(R) notes that, if justified, the use of two types of reduced stability study designs (i.e., bracketing and matrixing) can be applied to the testing of new drug substances and products, but IGH Q1A(R) provides no further guidance on the subject. This ICH Q1D guidance is intended to provide guidance on bracketing and matrixing designs. Specific principles are defined in this guidance for situations in which bracketing or matrixing can be applied and where bracketing or matrixing can be applied if additional justification is provided. Design factors and other considerations are presented, and potential risks of using reduced designs are discussed. Sample designs are also provided for illustrative purposes.

This guidance represents the agency's current thinking on reduced stability testing of new drug substances and products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statues and regulations.

II. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (see **ADDRESSES**) written comments on the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/publications.htm*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 8, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–904 Filed 1–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0492]

Draft Guidance for Industry and Reviewers on Estimating the Safe Starting Dose in Clinical Trials for Therapeutics in Adult Healthy Volunteers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and reviewers entitled "Estimating the Safe Starting Dose in Clinical Trials for Therapeutics in Adult Healthy Volunteers." This draft guidance outlines a common process (algorithm) and terminology for deriving a maximum recommended starting dose for "first in human" clinical trials of new molecular entities in adult healthy volunteers. Described in the guidance is a method for using nonclinical data to select a maximum starting dose in adult humans that is not expected to result in significant toxicity. The goal is to ensure the safety of adult human volunteers in initial clinical trials.

DATES: Submit written or electronic comments on the draft guidance by March 17, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Robert E. Osterberg, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, 301–594–5482 or M. David Green, Center for Biologics Evaluation and Research (HFM–579), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5349.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and reviewers entitled "Estimating the Safe Starting Dose in Clinical Trials for Therapeutics in Adult Healthy Volunteers." When selecting the starting dose in an initial clinical trial for a new molecular entity (NME), one can only rely on the safety data generated in nonclinical studies since, by definition, there are no human data. The draft guidance describes a method by which a starting dose may be selected for an initial clinical trial that is not expected to result in significant toxicity, but that will allow reasonably rapid attainment of phase I trial objectives (e.g., assessment of the NME's tolerability, pharmacodynamic and/or pharmacokinetic profile). The draft guidance establishes a consistent terminology for discussing the starting dose and a strategy for selecting a maximum recommended safe starting dose based on no-observed-adverse-effect levels in animals. Common conversion factors for deriving human equivalent doses from animal data are provided, and factors to be considered in determining reasonable safety margins are discussed in detail. The draft guidance also addresses the use of the nonclinical pharmacologically active dose and systemic exposure data in selection of a maximum recommended clinical starting dose. Comments on dose escalation are outside the scope of this draft document.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on estimating a maximum safe starting dose in initial clinical trials for therapeutics in adult healthy volunteers. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 8, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–906 Filed 1–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following advisory committee meeting. The meeting will be open to the public.

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry.

Date and Time: February 10, 2003; 8:30 a.m.–4:30 p.m., February 11, 2003; 8 a.m.–2 p.m.

Place: The Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105–392. This meeting will be devoted to drafting the third report of the Advisory Committee which will be submitted to Congress and the Secretary of the Department of Health and Human Services in November 2003. The third report will focus on disparities in health care and their implications for primary care medical education.

Agenda: The meeting on February 10 will begin with welcoming and opening comments from the Chair and Executive Secretary of the Advisory Committee. A plenary session will follow in which the Advisory Committee members will work to draft various sections of the third report. The Advisory Committee will also divide into two workgroups to further develop the report.

On February 11 the Advisory Committee will meet in plenary session to discuss performance measures for programs under section 747 of the Public Health Service Act and methods of disseminating Advisory Committee recommendations. The Advisory Committee will discuss its role and provide an opportunity for public comment.

FOR FURTHER INFORMATION CONTACT: Anyone interested in obtaining a roster of members or other relevant information should write or contact Stan Bastacky, D.M.D., M.H.S.A., Acting, Deputy Executive Secretary, Advisory Committee on Training in Primary Care Medicine and Dentistry, Parklawn Building, Room 9A–21, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326. The web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd*.

Dated: January 10, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–1021 Filed 1–15–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; the Ethical Problems Encountered by Nurses and Social Workers: Implications for Job Satisfaction and Retention

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Department of Clinical Bioethics, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The Ethical Problems Encountered by Nurses and Social Workers:

Implications for Job Satisfaction and Retention. Type of Information Collection Request: new. Need and Use of Information Collection: The purposes of the study are (1) to identify common ethical problems experienced by nurses and social workers in health care settings; (2) to identify the relationships between selected individual and organizational factors and perceptions of ethical stress, job satisfication and retention; and (3) to identify the availability of ethics support services. The findings will provide valuable information concerning: (1) The extent to which ethical problems and stress are contributing to a shortage of health care providers; (2) the importance of ethics related content in nurses' and social workers' education; and (3) the importance of ethics support services. Frequency of Response: Once. Affected Public: Individuals; academic institutions; business or other for-profit; not-for-profit organizations. Type of Respondents: Registered nurses and social workers. The annual reporting burden is as follows: Estimated Number of Respondents: 2,700; Estimated Number of Responses per Respondent: 1; Average Burden Hours Per Response: .33; and Estimated Total Annual Burden Hours Requested: 891. The annualized cost to respondents is estimated at: $59,400. There are no capital costs to report. There are no operating or maintenance costs to report.

Request for Comment: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Connie Ulrich, RN, PhD, Principal Investigator, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, Building 10, Room 1C118, Bethesda, MD 20892, or call non-toll-free number (301) 451–8338 or E-mail your request, including your address to: *culrich@cc.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 9, 2003.

David K. Henderson,

Deputy Director, Warren G. Magnuson Clinical Center, National Institutes of Health.

Ezekiel Emanuel,

Director, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 03–938 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Host-Tumor Cell Interactions in Myeloma.

Date: January 28, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate to review and evaluate grant applications.

Place: National Institutes of Health, 6116, Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8034, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–930 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), as amended. The grant applications and the discussions could disclose confidentiality trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board, Ad Hoc Subcommittee on Confidentiality of Patient Data.

Dates: February 10–12, 2003.

Open: February 10, 2003, 7:15 p.m. to 8:15 p.m.

Agenda: To discuss activities related to the Ad Hoc Subcommittee on Confidentiality of Patient Data.

Place: Bethesda Hyatt Hotel, 1 Metro Place, Bethesda, MD 20892.

Contact Person: Ms. Mary McCabe, Executive Secretary, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 3A44, Bethesda, MD 20892, (301) 496–6404.

Name of Committee: National Cancer Advisory Board.

Open: February 11, 2003, 8:30 a.m. to 12:05 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room, 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892-8327. (301) 496–5147.

Name of Committee: National Cancer Advisory Board, Subcommittee on Planning and Budget.

Open: February 11, 2003, 12:15 p.m. to 1:15 p.m.

Agenda: To discuss activities related to the Subcommittee on Planning and Budget.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Ms. Cherie Nichols, Executive Secretary, Subcommittee on Planning and Budget, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892. (301) 496–5515.

Name of Committee: National Cancer Advisory Board.

Open: February 11, 2003, 1:20 p.m. to 2:10 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board, Subcommittee on Clinical Investigations.

Open: February 11, 2003, 2:10 p.m. to 3:10 p.m.

Agenda: To discuss activities related to the Subcommittee on Clinical Investigations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Ellen Feigal, Executive Secretary, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 3A44, Bethesda, MD 20892, (301) 496–6711.

Name of Committee: National Cancer Advisory Board, Ad Hoc Subcommittee on Bioinformatics Vocabulary.

Open: February 11, 2003, 3:10 p.m. to 4:10 p.m.

Agenda: To discuss activities related to the Ad Hoc Subcommittee on Bioinformatics Vocabulary.

Contact Person: Dr. Frank Hartel, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Building 6116, Room 4019, Bethesda, MD 20892–8327, (301) 435–3869.

Name of Committee: National Cancer Advisory Board.

Closed: February 11, 2003, 4:10 p.m. to recess.

Agenda: Review of grant applications.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327. (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: February 12, 2003, 8:30 a.m. to adjournment.

Agenda: Program reports and presentations; business of the Board.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327. (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 9, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–937 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: February 10–11, 2003.

Open: February 10, 200, 8:30 am to 5 pm.

Agenda: Discussion of Program Policies and Issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Conference Rooms ABC, 111 Alexander Drive, Research Triangle Park, NC 27709.

Closed: February 11, 2003, 9 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Conference Rooms ABC, 111 Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P. Sassaman, PhD, Director, Division of Extramural Research and Training, National Institutes of Environmental Health, Sciences, National Institutes of Health, PO Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

Information is also available on the Institute's/Center's home page: *www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–929 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference (R13) Applications.

Date: February 6, 2003.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Nat. Institute of Environmental Health Sciences, East Campus, Building 4401, Room 122, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Rose M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 90.

Date: February 12, 2003.

Time: 9:30 am to 10:30 am.

Agenda: To review and evalute contract proposals.

Place: NIEHS, East Campus, Building 4401, Conference Room 3162, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnn M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233; MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 92.

Date: February 12, 2003.

Time: 10:30 am to 1 pm.

Agenda: To review and evalute contract proposals.

Place: NIEHS, East Campus, Building 4401, Conference Room 3162, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnn M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233; MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 93.

Date: February 19, 2003.

Time: 10 am to 1 pm.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 91.

Date: February 19, 2003.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–931 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee, Review of R03's Ts, and Fs.

Date: February 20–21, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402. 301–594–5006.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–933 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: February 3, 2003.

Open: 8:30 a.m. to 11:30 a.m.

Agenda: Director's report, NIH Director's comments, concept clearances.

Place: National Institutes of Health, Building 45 (Natcher), 45 Center Drive, Conference Room E1 & E2, Bethesda, MD 20892.

Closed: 12:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 45 (Natcher), 45 Center Drive, Conference Room E1 & E2, Bethesda, MD 20892.

Contact Person: J. Ricardo Martinez, MD, MPH, Associate Director for Program Development, Office of the Director, National Institute of Dental & Craniofacial Research, 31 Center Drive, Bldg. 31, Rm. 5B55, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: *www.nidcr.nih.gov/discover/nadrc/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–934 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–31, review of R13 grants.

Date: January 28, 2003.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grants applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: H. George Hausch, PhD., Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations posed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–35, Review of R13 grants.

Date: February 13, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grants applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: H. George Hausch, PhD., Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F,

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–25, Review of T32 grants.

Date: February 19, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grants applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lynn M. King, PhD., Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402. (301) 594–5006.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–935 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Library of Medicine Special Emphasis Panel, January 13, 2003, 9 a.m. to January 14, 2003, 5 p.m., which was published in the **Federal Register** on November 19, 2002, 67 FR 69754.

The meeting is canceled due to more time needed to process reviews and reports.

Dated: January 7, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–928 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.

Date: March 6–7, 2003.

Time: March 6, 2003, 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, Bethesda, MD 20894.

Time: March 7, 2003, 8:30 am too 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, Bethesda, MD 20894.

Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705

Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHD)

Dated: January 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–932 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director

Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the contact person below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee (RAC).

Date: January 17, 2003.

Time: 9:30 a.m. to 3 p.m.

Agenda: The Committee will review new data from a retroviral-mediated gene transfer clinical trial in Severe Combined Immunodeficiency (SCID) that could be important to the safety of participants in gene transfer clinical trials that use retroviral vectors. The discussion of this new information may lead to changes in the recommendations on the safety of the clinical gene transfer trials in SCID formulated by the RAC at its December 2002 meeting. In addition, the RAC may make recommendations pertaining to the safety and conduct of gene transfer clinical trials using retroviral vectors.

The RAC is meeting due to the potential significance of this new data and the need for expeditious deliberation and public discussion of its potential implications for the safety and conduct of clinical gene transfer trials using retroviral vectors.

Place: National Institutes of Health, 9000 Rockville Pike, Building 45, Conference Room F1/F2, Bethesda, Maryland 20892.

Contact: Stephen Rose, Ph.D., Executive Secretary, Recombinant DNA Advisory Committee, Office of Biotechnology Activities, Rockledge 1, Room 750, Bethesda, MD 20892. (301) 496–9839.

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/*, where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecules techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 10, 2003.

Anna P. Snouffer,

Director, Office of Federal Advisory Committee Policy.

This notice is being published less than 15 days before the meeting due to the emergency nature of the actions involved.

[FR Doc. 03–936 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Community Mental Health Services Performance Partnership

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice; correction.

SUMMARY: The Substance Abuse and Mental Health Services Administration published a document in the **Federal Register** of December 24, 2002, requesting comments from the general public on our proposal to change the Substance Abuse Prevention and Treatment Block Grant Program into the Substance Abuse Prevention and Treatment Performance Partnership Program. The document was mis-titled.

FOR FURTHER INFORMATION CONTACT: Joseph D. Faha, Director of Legislation, (301) 443–7017.

Correction

In the **Federal Register** of December 24, 2002 in FR DOC 02–32305 on page 78496, concerning a request for comments from the general public on our proposal to change the Substance Abuse Prevention and Treatment Block Grant Program into the Substance Abuse Prevention and Treatment Performance Partnership correct the title of the document to read:

Substance Abuse Prevention and Treatment Performance Partnership

Dated: January 9, 2003.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 03–885 Filed 1–15–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in February 2003.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and to make recommendations on improving the delivery of public and private mental health services for adults and children. The Commission meeting will receive reports from several of its subcommittees, including Medicaid, Evidence-Based Practice/Medication Issues, Consumer Issues, Cultural Competence, Housing and Homelessness, Employment and Income Support, and Children and Families.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained either by accessing the Commission

Web site, *http://www.mentalhealthcommission.gov*, or by communicating with the contact whose name and telephone number is listed below.

Committee Name: The President's New Freedom Commission on Mental Health.

Meeting Date/Time:

Open: February 4, 2003, 1 p.m. to 4 p.m.

Open: February 5, 2003, 8:30 a.m. to 4 p.m.

Open: February 6, 2003, 8:30 a.m. to 12 p.m.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857, Telephone: (301) 443–1545; Fax: (301) 480–1554, e-mail: *Cheffern@samhsa.gov*, Web site: *http://www.mentalhealthcommission.gov*.

Dated: January 13, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–1022 Filed 1–15–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of SAMHSA Special Emphasis Panels I in January and February 2003.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review Specialist, SAMHSA, Division of Extramural Policy Management, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date: January 29, 2003.

Place: Substance Abuse and Mental Health Services Administration, Division of Extramural Policy Management, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857.

Closed: January 29, 2003.

Panel: Evaluation Technical Assistance Center, SM 03–002.

Contact: Diane McMenamin, Division of Extramural Policy Management, Review Branch, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date: February 3–7, 2003.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 8:30 a.m. February 3, 2003 to adjournment February 7, 2003.

Panel: Targeted Capacity Expansion-Prevention and Early Intervention, SM 03–004—3 Committees.

Contact: Diane McMenamin, Division of Extramural Policy Management, Review Branch, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date: February 3–5, 2003.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 8:30 a.m. February 3, 2003 to adjournment February 5, 2003.

Panel: American Indian/Alaska Native—NRC SP 03–001, 1 Committee.

Contact: Diane McMenamin, Division of Extramural Policy Management, Review Branch, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Dated: January 3, 2003.

Diane McMenamin,

Division of Extramural Policy Management, Review Branch, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–907 Filed 1–15–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval; Application, Permit, and Reporting for Federal Subsistence Hunt, Designated Hunter, and Fish/Shellfish Harvest in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that we provide an opportunity for interested members of the public and affected agencies to comment on our information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We are notifying the public that we will submit a request to OMB to renew its approval of the collection of information for application, permit, and reporting for Federal Subsistence Hunt, Designated Hunter, and Fish/Shellfish Harvest in Alaska.

DATES: Comments must be submitted on or before March 17, 2003.

ADDRESSES: Send your comments to: Harvest Data Coordinator, Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503; and Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Dr., Arlington, VA 22203, or e-mail *anissa_craghead@fws.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the Information Collection request, explanatory information, and related forms, contact Anissa Craghead, Service Information Collection Clearance Officer, at 703/358–1730 or *anissa_craghead@fws.gov*; or Charles Miller, Office of Subsistence Management, at 907/786–3888.

SUPPLEMENTARY INFORMATION: We will submit a request to OMB to renew its approval of the collection of information associated with three forms used by the U.S. Fish and Wildlife Service. Those forms are discussed below.

Title: Federal Subsistence Hunt Application, Permit, and Report.

OMB Number: 1018–0075.

Service Form Number: 7FS–1.

Frequency: On occasion.

Description of Respondents: Federally defined rural residents.

Total Annual Burden Hours: The reporting burden is estimated to average .25 hours per response. The total annual burden is 1,225 hours.

Total Annual Responses: 4,900.

Abstract: The Alaska National Interest Lands Conservation Act (ANILCA) and Fish and Wildlife Service regulations at 50 CFR part 100, require that persons engaged in taking fish and wildlife in Alaska must report their take to the Federal Subsistence Board (the Board) and that rural residents who want to participate in special hunts must apply for and obtain a special permit to do so. The Board uses harvest information to

evaluate subsistence harvest success; the effectiveness of season lengths, harvest quotas, and harvest restrictions; hunting patterns and practices; and hunter use. Then the Board uses this information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence hunters without adversely impacting the health of existing wildlife populations.

The Federal Subsistence Hunt Application, Permit, and Report form allows Federal subsistence users to participate in special hunts that are not available to the general public but are provided for by Title VIII of ANILCA. The collection of information on this form is essential to the missions of the U.S. Fish and Wildlife Service and the Board. Without this information, the Service would be unable to set subsistence seasons and harvest limits to meet users' needs without adversely impacting the health of the animal population.

Title: Designated Hunter Permit Application, Permit, and Report.

OMB Number: 1018–0075.

Service Form Number(s): 7FS–2.

Frequency: On occasion.

Description of Respondents: Federally defined rural residents.

Total Annual Burden Hours: The reporting burden is estimated to average .25 hours per response. The total annual burden is 100 hours.

Total Annual Responses: 400.

Abstract: Under the authority of ANILCA and Fish and Wildlife Service regulations at 50 CFR part 100, the Board obtains harvest information from persons engaged in taking fish and wildlife in Alaska and uses that information to evaluate subsistence harvest success; the effectiveness of season lengths, harvest quotas, and harvest restrictions; hunting patterns and practices; and hunter use. Then the Board uses this information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence hunters without adversely impacting the health of existing wildlife populations.

The Designated Hunter Application, Permit, and Report form allows qualified subsistence users to harvest fish or wildlife for others and report the harvest of multiple animals by a single hunter who is acting for others. The collection of information on this form is essential to the missions of the U.S. Fish and Wildlife Service and the Board. Without this information, the Service would be unable to set subsistence seasons and harvest limits to meet users' needs without adversely impacting the health of the animal population.

Title: Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application, Permit, and Report.

OMB Number: 1018–0075.

Service Form Number(s): 7FS–3.

Frequency: On occasion.

Description of Respondents: Federally defined rural residents.

Total Annual Burden Hours: The reporting burden is estimated to average .5 hours per response. The total annual burden is 62.5 hours.

Total Annual Responses: 125.

Abstract: ANILCA allows the taking of fish and wildlife on public lands in Alaska for subsistence use, if users possess and comply with the provisions of any pertinent permit, harvest tickets, or tags required by the State or Federal government. All Alaskans who are residents of rural areas or communities are eligible to participate in subsistence taking of fish and shellfish under the regulations at 50 CFR part 100. The Board needs information on the fisherman, qualified subsistence users fished for (*i.e.*, users who have designated another person to harvest for them), the fish or shellfish harvested, and the location of harvest in order to make recommendations on subsistence use. Once the Board evaluates harvest information, the Board uses that information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence fisherman without adversely impacting the health of existing fish and shellfish populations.

The Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application, Permit, and Report form allows qualified subsistence users to harvest fish and shellfish for themselves or for others. This form also allows Federal subsistence users to participate in special fishing opportunities that are not available to the general public but are provided for by Title VIII of ANILCA. The collection of information on this form is essential to the missions of the U.S. Fish and Wildlife Service and the Board. Without this information, the Service would be unable to set subsistence seasons and harvest limits to meet users' needs without adversely impacting the health of the fish and shellfish populations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We are requesting a 3-year term of approval of this information collection. We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Dated: January 13, 2003.

Anissa Craghead, Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–943 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Federal Regional Council Application, Nomination, and Interview Forms

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: We will accept comments until February 18, 2003.

ADDRESSES: Send your comments on the requirement to Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of the Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503, and to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203, (705) 358–2445.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Anissa Craghead at (703) 358–2445, or electronically to *anissa_craghead@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB for approval of the collection of information related to the recruitment of Federal Subsistence Advisory Council members. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101) designates the Departments of the Interior and Agriculture as the key agencies responsible for implementing the subsistence priority on Federal public lands for rural Alaska residents. These responsibilities include the establishment of Regional Advisory Councils with members from each region who are knowledgeable about the region and subsistence uses of the public lands. In order for the Federal Board to make recommendations to the Secretaries for membership on these Regional Councils, it is necessary to recruit and screen applicants. These three associated forms allow the Federal Subsistence Board to recruit applicants and to review their credentials in order to make recommendations to the Secretaries for appointment of members to the Regional Councils. One-third of the seats on the Regional Councils become vacant each year. Additional vacancies may occur due to resignations or deaths of sitting members.

On October 29, 2002, we published in the **Federal Register** (67 FR 65993) a notice informing the public that we are submitting the three forms described below to OMB for approval under the Paperwork Reduction Act. We included the forms, in their entirety, in that notice. We requested public comment on the forms for 60 days, ending December 30, 2002. By that date, we received two comments. The comments raised several issues that are not relevant to the forms. The comments that are relevant to the forms suggest that we: (1) Elaborate on our "criteria for membership"; (2) ask applicants and nominees to identify all groups—instead of just the primary group—that they feel they would represent if they were selected to be Council members; (3) require a letter of recommendation for each applicant; and (4) ask applicants and nominees to identify potential conflicts of interest (such as a loyalty or interest that would supercede the needs of the entire region) if they were selected to sit on the Council. We are not making any changes to our submission to OMB based on these comments. We believe that, in the case of item (1), our criteria for membership list appropriate minimum qualifications for applicants and nominees to the Council. Further, in the case of items (2) through (4), we believe that requesting additional information from an applicant or nominee is an unnecessary burden. The detailed qualifications and interests of individuals applying or nominated for a position on the Council will be evident in their responses to questions on the application or nomination forms and during the candidate evaluation interviews.

Title: Federal Subsistence Regional Advisory Council Membership Application Form.

Form number: 7–FW 4.

Approval Number: 1018–XXXX.

Frequency of Collection: Annually.

Description of Respondents: Alaska residents.

Total Annual Burden Hours: We estimate the reporting burden to average 0.5 hours per respondent. With an estimated 120 applicants annually, the estimated total annual burden hours is 60 hours.

Total Annual Responses: We expect about 120 applications to be submitted annually.

Title: Federal Subsistence Regional Advisory Council Membership Nomination Form.

Form number: 7–FW 5.

Approval Number: 1018–XXXX.

Frequency of Collection: Annually.

Description of Respondents: Local governments, Tribal organizations, and special interest groups.

Total Annual Burden Hours: We estimate the reporting burden to average 0.5 hours per respondent. With an estimated 50 nominations annually, the estimated total annual burden hours is 25 hours.

Total Annual Responses: We expect about 50 nominations to be submitted annually.

Title: Regional Advisory Council Member Evaluation—Candidate Interview Form.

Form number: 7–FW 6.

Approval Number: 1018–XXXX.

Frequency of Collection: Annually.

Description of Respondents: Alaska residents.

Total Annual Burden Hours: We estimate the reporting burden to average 0.5 hours per interview. We will conduct 5 interviews per applicant or nominee. Therefore, with an estimated 170 applicants/nominees, the estimated total annual burden hours is 425 hours.

Total Annual Responses: We expect to conduct about 850 interviews annually.

Note: The total annual burden hours estimated in this notice differ from the total annual burden hours we provided in the notice published in the **Federal Register** on October 29, 2002. In the previous notice, we neglected to include the burden hours associated with interviewing nominees for Council positions. Therefore, our corrected estimate is 250 hours greater than our previous estimate.

We again invite comments concerning this proposed information collection on: (1) Whether the collection of information is necessary for the proper selection of Regional Council members, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: January 13, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–942 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the U.S. Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or

before February 18, 2003 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE., 11th Avenue, Portland, Oregon 97232–4181 (fax: (503) 231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: (503) 231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–006112

Applicant: Gretchen Padgett-Flohr, Fremont, California.

The permittee requests an amendment to take (harass by survey, capture, release, and collect voucher specimens) the Sonoma and Santa Barbara distinct population segments of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma and Santa Barbara Counties, California for the purpose of enhancing their survival.

Permit No. TE–065493

Applicant: Peter Trenham, Davis, California.

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool fairy shrimp (*Branchinecta lynchi*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with population demographic studies throughout the range of each species for the purpose of enhancing their survival.

Permit No. TE–065741

Applicant: John Lovio, San Diego, California.

The applicant requests a permit to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–065923

Applicant: Jon Winter, Santa Rosa, California.

The permittee requests an amendment to take (harass by survey, capture, and release) the Sonoma distinct population segment of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: December 13, 2002.

Rowan Gould,

Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 03–908 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Recovery Plan for the Zapata Bladderpod (*Lesquerella thamnophila*) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft Recovery Plan for the Zapata bladderpod (*Lesquerella thamnophila*). Six populations are still known to exist in varying numbers. The Service solicits review and comment from the public on this draft plan.

DATES: The comment period for this draft Recovery Plan closes on February 18, 2003. Comments on the draft Recovery Plan must be received by the closing date.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, c/o TAMUCC, Box 338, 6300 Ocean Drive, Corpus Christi, Texas, 78412. If you wish to comment, you may submit your comments and materials concerning this draft Recovery Plan to the Field Supervisor at the address above.

FOR FURTHER INFORMATION CONTACT: Loretta Pressly, Corpus Christi Ecological Services Field Office, at the above address; telephone (361) 994–9005, facsimile (361) 994–8262.

SUPPLEMENTARY INFORMATION:

Background

The Zapata bladderpod (*Lesquerella thamnophila*), a plant of the Brassicaceae Family, is listed as endangered with critical habitat. Historically, 10 populations of the plants have been located and described. Currently, six of those 10 populations remain; three of the populations are located in Starr County, and three in Zapata County. This species is threatened by increasing urban development, highway construction, increased oil and gas activities, alteration and conversion of native plant communities to improved pastures, overgrazing, and vulnerability from low population numbers. The plant in all likelihood has a more extensive range than what is currently known; access for surveying on private land has been limited. This draft Recovery Plan includes information about the species and provides objectives and actions needed to downlist, then delist the species. Recovery activities designed to achieve these objectives include protecting known populations, searching for additional populations, performing outreach activities to educate and obtain assistance from the general public to conserve the species and its habitat, and establishing additional populations through reintroduction in the known range of the plant.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in

1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The draft Recovery Plan is being submitted for technical and agency review. After consideration of comments received during the review period, the Recovery Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Recovery Plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 28, 2002.

Charlie Sanchez, Jr.,

Acting Regional Director, Region 2.

[FR Doc. 03–1019 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

National Park Service

Boundary Revision: Chesapeake and Ohio Canal National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision.

SUMMARY: Notice is hereby given that the National Park Service is revising the boundary of the Chesapeake and Ohio Canal National Historical Park to include one additional tract of land.

FOR FURTHER INFORMATION CONTACT: Judy L. Brumback, Chief, Acquisition Division, National Park Service, ATLAFO, PO Box 908, Martinsburg, WV 25402, (304) 263–4943.

SUPPLEMENTARY INFORMATION: Pub. L. 91–664, enacted January 8, 1971 authorizes the acquisition of certain lands for the Chesapeake and Ohio Canal National Historical Park. Section 7 (c) (ii) of the Land and Water Conservation Fund Act, as amended by Pub. L. 104–333, authorizes minor boundary revisions of areas within the National Park System. In accordance with the statutes, such boundary revisions may be made, when necessary, after advising the appropriate Congressional Committees and following publication in the **Federal Register**.

In order to properly interpret and preserve the historic character of the Chesapeake and Ohio Canal National Historical Park, it is necessary to revise the existing boundary to include one additional tract of land comprising approximately 2.91 acres.

Notice is hereby given that the exterior boundary of the Chesapeake and Ohio Canal National Historical Park is hereby revised to include the following tract of land:

Tract P76–1, Chesapeake and Ohio Canal National Historical Park, is all of the same land acquired by Barbara Ellen Embly from Barbara E. Roher by deed dated July 19, 2001, recorded in Deed Book 1677, Page 591, in the Land Records of Washington County, State of Maryland.

Tract 76–130, Chesapeake and Ohio Canal National Historical Park, is a part of the same land acquired by the United States of America (NPS) from Charles Harold Snyder, a.k.a. C. Harold Snyder by deed dated September 5, 1974, recorded in Liber 585, folio 802 in the Land Records of Washington County, State of Maryland.

Subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

This tracts of land is depicted on Segment Map 76 and are identified as Tracts P76–1 and 76–130. The map is on file and available for inspection in the office of the National Park Service, Appalachian Trail Land Acquisition Field Office, 1314 Edwin Miller Boulevard, PO Box 908, Martinsburg, West Virginia 25402–0908.

Dated: July 22, 2002.

Terry R. Carlstrom,

Regional Director.

[FR Doc. 03–992 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boundary Revision; Indiana Dunes National Lakeshore

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision, Indiana Dunes National Lakeshore, Indiana.

SUMMARY: This notice announces a revision of the boundaries of Indiana Dunes National Lakeshore, Indiana, to include two (2) parcels of land within the boundaries of the National Lakeshore. This action is taken under the authority of 16 U.S.C., Section 460u–19 (Pub. L. 94–549, enacted October 18, 1976).

FOR FURTHER INFORMATION CONTACT: Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304–1299, or by telephone at 219–926–7561, extension 410.

SUPPLEMENTARY INFORMATION: Notice is hereby provided that the boundaries of Indiana Dunes National Lakeshore are revised. This revision is to include certain parcels of real property situated in Lake County, Indiana, and is effective upon publication of this notice. These parcels will be donated to the United States of America and they are contiguous to the National Lakeshore boundaries. These parcels contain, in aggregate, 15.93 acres of land, more or less.

The parcels are identified as follows:

Tract 12–117 on Segment Map 12, Drawing No. 626/35,012.

Tract 13–163 on Segment Map 13, Drawing No. 626/35,013.

Both of the above-cited segment maps are dated October 16, 2002.

These maps are on file at the following locations:

U.S. Department of the Interior, National Park Service, Midwest Region, Land Resources, 1709 Jackson Street, Omaha, Nebraska 68102–2571.

Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304–1299.

Dated: October 17, 2002.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 03–995 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Impact Statement, Amistad National Recreation Area, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for a general management plan for Amistad National Recreation Area.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for a general management plan for Amistad National Recreation Area. This effort

will result in a comprehensive general management plan that provides a framework for making management decisions regarding the preservation of natural and cultural resources, visitor use and interpretation, and development of appropriate park facilities. In cooperation with the Texas State Historic Preservation Office, the Texas Game and Fish Department, and the Texas Department of Water Quality, attention will also be given to resources outside the boundaries that affect the integrity of Amistad National Recreation Area. Alternatives to be considered include no-action, the proposed action, and other reasonable alternatives.

Major issues at Amistad National Recreation Area include:

1. Declining water levels in the reservoir have exposed numerous significant archeological sites to erosion, vandalism, and damage from livestock;
2. Lower water levels have reduced the number of access points to the reservoir, affecting recreational uses at the park and leading to the creation of a network of social trails;
3. Increasing numbers of domestic livestock and exotic game species are grazing on park land, posing potential impacts on cultural sites and habitat for native species;
4. The need to consider establishing fees for hunting in the park;
5. The need to address the potential acquisition of additional private lands within the legislated boundaries of the park;
6. The need for a new administration facility and visitor center;
7. Trans-boundary issues and the need for increased cooperation between the NPS and its counterparts in the government of Mexico.

A public forum for comment on the full range of appropriate visitor experiences and areas in which these experiences may be in conflict will be provided throughout the course of the GMP process. Public involvement is essential for the development of creative solutions to guide future park management. A briefing statement has been prepared that summarizes the issues identified to date. Copies of that information may be obtained from: Superintendent, Amistad National Recreation Area.

DATES: The Park Service will accept comments from the public for 30 days from the date this notice is published in the **Federal Register**.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Alan Cox, Amistad National Recreation Area. The director, Intermountain Region, National Park Service will approve the environmental impact statement.

The National Park Service will conduct public scoping (public meetings and solicitation of comments from state, county and town agencies and organizations; park neighbors; state historic preservation officer; and associated American Indian tribes) for the Amistad General Management Plan/ Environmental Impact Statement from January, 2003 to August, 2005. Public involvement will play a critical role in the preparation of the environmental impact statement that will analyze the impacts of the management alternatives in the draft general management plan.

DATES: The National Park Service will conduct further public scoping for the draft alternatives and environmental impact statement for a period of 30-days beyond publication of this Notice of Intent.

ADDRESSES: You may mail comments to: Superintendent's Office, Amistad National Recreation Area, HCR 3 Box 5J, Hwy 90 West, Del Rio, TX 83012. You may also hand-deliver comments to the Superintendent's Office, Amistad National Recreation Area, Del Rio, TX. (Attn: General Management Plan).

FOR FURTHER INFORMATION CONTACT: Superintendent Alan Cox at 830.775.7491 x201 or Management Assistant M. Mark Morgan at 830.775.7491 x234 e-mail: *amis_superintendent@nps.gov.*

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish us to withhold your address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: November 5, 2002.

Michael Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 03–997 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for Managing Flight Obstructions to Preserve Safety at Andrews Air Force Base

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of environmental assessment.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations, U.S. Air Force (USAF) and National Park Service (NPS) guidance and requirements, the USAF Air Mobility Command and the NPS have prepared an environmental assessment (EA), and other environmental documentation evaluating environmental impacts potentially resulting from implementation of vegetation management plans for managing trees which are flight obstructions affecting the safety of flight operations at Andrews Air Force Base (AFB). USAF is the lead agency for this EA, and the NPS intends to adopt this EA. These trees are primarily located on Andrews Air Force Base and within the Suitland Parkway, a park area administered by the NPS—National Capital Region, National Capital Parks—East. The Parkway is located on the National Register of Historic Places. The proposed action occurs in Prince George's County, Maryland.

Copies of these documents are available for public review at the following locations, and by request to the NPS at (202) 690–5185:

The Prince George's County Public Library, 14741 Governor Oden Drive, Upper Marlboro, MD 20772, (301) 952–3904.

Andrews Air Force Base Library, 1642 Brookley & D Street, Andrews AFB, MD 20762.

There is a 30 day public review period for comment on the EA and associated documents. Comments should be received no later than 30 calendar days from the publication date of this notice. The NPS will consider all comments submitted to the address below. Comments should be sent to: Andrews Air Force Base, EA, HQ AMC/ CEV, 507 Symington Dr., Scott AFB, IL 62225–5022, Fax: (818) 229–0257, E-mail: *AMC.CEV@scott.af.mil.*

SUPPLEMENTARY INFORMATION: The USAF identified a need to manage trees which adversely affect safe flight operations at Andrews AFB in Prince George's County, Maryland. Andrews AFB is home to the 89th Airlift Wing and

provides worldwide airlift and logistical support of the President of the United States, the Vice President, cabinet members, and other high-ranking United States and foreign officials. Many of the trees requiring management are located on the NPS' Suitland Parkway which is listed on the National Register for Historic Places. Other trees requring management are located on Andrews AFB and on lands within an industrial park immediately north of Suitland Parkway and lands adjoining the southern base perimeter. This EA follows on a 2001 EA which analyzed emergency tree pruning to remove obstructions to the Andrews AFB West Runway.

The EA describes a no-action alternative (Alternative 1), a preferred alternative (Alternative 2) involving vegetation management to manage obstructions without reconfiguring the runways, and a third alternative (Alternative 3) involving reconfiguring the runways to reduce the severity of the required vegetation management. It also contains discussion of those alternatives which were considered but rejected. The USAF and NPS, in consultation with the Maryland Historic Trust, are in the process of complying with Section 106 of the National Historic Preservation Act. This EA, the USAF draft Finding of No Significant Impact/Finding of No Practicable Alternative (FONSI/FONPA), and the NPS draft Statement of Findings (SOF) are all available for review.

Edward F. Duffy, Jr.,

Acting Regional Director, National Capital Region.

[FR Doc. 03–988 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/Draft Environmental Impact Statement for Arkansas Post National Memorial

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the draft general management plan/draft environmental impact statement for the Arkansas Post National Memorial, Arkansas.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft environmental impact statement and general management plan (DEIS/DGMP) for Arkansas Post National Memorial (ARPO).

DATES: The DEIS/DGMP will remain available for public review on or after March 17, 2003. No public meetings are scheduled at this time.

ADDRESSES: Copies of the DGMP/DEIS are available by request by writing to Arkansas Post National Memorial, 1741 Old Post Road, Gillett, Arkansas 72055, by telephoning 870–548–2207, or by e-mail *arpo_superintendent@nps.gov.*

The document is also available to be picked-up in person at the visitor center, 1741 Old Post Road, Gillett, Arkansas. The document can be found on the Internet in the NPS Planning Web site at: *http://planning.den.nps.gov/plans.cfm.*

FOR FURTHER INFORMATION CONTACT: Edward E. Wood, Jr., Superintendent, Arkansas Post National Memorial, 1741 Old Post Road, Gillett, Arkansas 72055, telephone 870–548–2207, or John Paige, Job Captain, Denver Service Center, 12795 West Alameda Parkway, PO Box 25287, Denver, CO 80225–0287, telephone 303–969–2356.

SUPPLEMENTARY INFORMATION: ARPO consists of two units, the Memorial unit, and Osotouy unit. Together they commemorate the human settlement near the confluence of the Arkansas and Mississippi Rivers and the events associated with the first European settlement in the lower Mississippi River Valley. This is accomplished by interpreting and fostering an appreciation of the interaction of all cultural groups, their histories, and their significance to the region. The purpose of the general management plan is to set forth the basic management philosophy for ARPO and to provide strategies for addressing issues and achieving identified management objectives. The DGMP/DEIS describes and analyzes the environmental impacts of the proposed action and two action alternatives for the future management direction of ARPO. A no action alternative is also evaluated. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request we withhold their home address from the record, which we will honor to the extent allowable by law. There may also be circumstances where we would withhold from the record a respondent's identify, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

Dated: December 10, 2002.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 03–999 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for the Fort Davis National Historic Site; Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Record of Decision on the Final Environmental Impact Statement for the Fort Davis National Historic Site, Texas.

SUMMARY: Pursuant to § 102(2)(C)of the National Environmental Policy Act of 1969, Public Law 91–190, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Final General Management Plan and Environmental Impact Statement, Fort Davis National Historic Site, Texas. On November 5, 2002, the Director, Intermountain Region approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the FEIS issued on September 23, 2002. The following course of action will occur under the preferred alternative. The selected alternative provides an overall combination of actions to restore natural processes, preserve cultural resource values, reduce harmful environmental impacts and continue to provide opportunities for high quality visitor experiences based on resource values. With the exceptions described below, the current level of development and interpretation and the pattern of visitor use will be maintained. Alternative C quality will enhance visitor services and provide for the preservation and protection of cultural and natural resources. This alternative provides the balance and flexibility necessary to accomplish both of these objectives in a realistic manner. Change in the fort's outward appearance will be minimal. There will be no further major exterior restoration or modern development. Well-balanced preservation, resource protection, and interpretive programs would complement one another. Existing buildings, ruins, and foundations will undergo stabilization

and conservation measures so as to preserve their historical integrity, Broader interpretive themes highlighting the more complex role of Fort Davis in the history of the American West would complement existing interpretive programs. The interior of the post hospital will be partially restored and refurnished to more fully tell the story of Fort Davis and therefore provide the visitors with a more comprehensive learning experience. This restoration and refurnishing project would be dependent on partnerships resulting in private sector funding. The park will continue to encourage adjacent landowners to use their land in ways that complement park values, thereby promoting the natural and scenic character of the landscape.

This course of action and four alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decision-making process, and a Statement of Findings

FOR FURTHER INFORMATION CONTACT: Jerry Yarbrough, Fort Davis NHS, 1379, Lieutenant Flipper Dr., Fort Davis, TX 79734; 915–426–3225 (P), *Jerry_Yarbrough@nps.gov*.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://planning.nps.gov/parkweb/what.cfm?RecordID=56*.

Dated: November 5, 2002.

Michael Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 03–996 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Impact Statement, Great Sand Dunes National Monument and Preserve, Colorado

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the general management plan, Great Sand Dunes National Monument and Preserve.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an Environmental Impact Statement for the general management plan for Great Sand Dunes National Monument and Preserve. The Environmental Impact Statement will be approved by the Director, Intermountain Region.

Great Sand Dunes National Monument was established by President Herbert Hoover in 1932 "for the preservation of the great sand dunes and additional features of scenic, scientific, and educational interest." The Great Sand Dunes National Park and Preserve Act of 2000 enlarged Great Sand Dunes National Monument from 39,000 acres to almost 150,000 acres to protect the entire Great Sand Dunes natural system. The name will change to Great Sand Dunes National Park and Preserve when sufficient lands are acquired within the new boundary. The legislation expanding the park identifies a variety additional features for long term protection, including "geological, hydrological, paleontological, scenic, scientific, educational, wildlife, and recreational resources of the area." Land in and adjacent to the Great Sand Dunes is recognized for the "culturally diverse nature of the historic settlement of the area, offering natural ecological, wildlife, cultural, scenic, paleontological, wilderness, and recreational resources." The law further notes that the "preservation of this diversity of resources would ensure the perpetuation of the entire ecosystem for the enjoyment of future generations." The legislation directs establishment of the "Great Sand Dunes National Park Advisory Council" to "advise the Secretary of the Interior with respect to the preparation and implementation of a management plan for the national park and preserve."

The general management plan will prescribe the resource conditions and visitor experiences that are to be achieved and maintained in the monument over time. The clarification of what must be achieved according to law and policy will be based on review of the park's purpose, significance, special mandates, and the body of laws and policies directing park management. Management decisions to be made where law, policy, or regulations do not provide clear guidance or limits will be based on the purposes of the monument, the range of public expectations and concerns, resource analysis, an evaluation of the natural, cultural, and social impacts of alternative courses of action, and consideration of long-term economic costs. Based on determinations of desired conditions, the general management plan will outline the kinds of resource management activities, visitor activities, and development that would be appropriate in the monument in the future. Alternatives will be developed through this planning process and will include, at a minimum, no-action and the preferred alternative. Major issues include protection of natural and cultural resources; the adequacy of interpretive programs; wilderness suitability; potential partnerships with other agencies, organizations, and local interests; and land status within the new boundary.

DATES: The Park Service will accept comments from the public through April 16, 2003.

ADDRESSES: Information will be available for public review and comment in the office of the Superindent, Steve Chaney, Great Sand Dunes National Monument and Preserve, 11500 Hwy. 150, Mosca, CO 81146–9798; Tel: (719) 378–2312; (719) 378–2594; e-mail: *steve_chaney@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Steve Chaney, Great Sand Dunes National Monument and Preserve; Tel: (719) 378–2312; (719) 378–2594.

SUPPLEMENTARY INFORMATION: The National Park Service is planning to begin public scoping in January 2003 via a newsletter to state and federal agencies; associated American Indian tribes; neighboring communities; county commissioners; local organizations, researchers and institutions; the Congressional Delegation; and visitors who signed up to be on the mailing list. In addition, the National Park Service will hold public scoping meetings regarding the general management plan, beginning in January 2003. Specific dates, times, and locations will be announced in the local media and will also be available by contacting the Superintendent of Great Sand Dunes National Monument and Preserve. There will also be opportunities for input at Advisory Council meetings. There will be a web site for the general management plan. The purpose of the newsletter, public meetings, and web site is to explain the planning process and to obtain comments concerning appropriate resource management; desired visitor experience and use, and

facilities; as well as any other issues that need to be addressed. In addition to attending the scoping meetings, people wishing to provide input to this initial phase of developing the general management plan may address comments to the superintendent.

Dated: November 26, 2002.

Michael Snyder,

Deputy Director, Intermountain Region.

[FR Doc. 03–1004 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plans, and Final Environmental Impact Statements, Wupatki and Sunset Crater Volcano National Monuments, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement/ General Management Plans for Wupatki and Sunset Crater Volcano National Monuments.

SUMMARY: Pursuant to section 102(2)(C) the National Environmental Policy Act of 1969, the National Park Service announces the availability of Final Environmental Impact Statement/ General Management Plans (FEIS/GMP) for both Wupatki and Sunset Crater Volcano National Monuments, Arizona.

DATES: The FEIS/GMPs were on public review from November 6, 2001 through January 7, 2002. Responses to public comment are addressed in the documents. A 30-day no-action period will follow the Environmental Protection Agency's Notice of Availability of the FEIS/GMPs.

ADDRESSES: Copies of the FEIS/GMPs are available from Sam R. Henderson, Superintendent, Wupatki and Sunset Crater Volcano National Monuments, 6400 N. Highway 89, Flagstaff, Arizona, 86004. Public reading copies of the FEIS/GMPs will be available for review at the following locations:

Office of the Superintendent, 6400 N. Highway 89, Flagstaff, Arizona, 86004, Telephone: 928–526–1157.

Planning and Environmental Quality, Intermountain Support Office—Denver (room 20), National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 969–2377.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843.

FOR FURTHER INFORMATION CONTACT: Sam R. Henderson, Superintendent, Wupatki and Sunset Crater Volcano National Monuments, at the above address and telephone number.

Dated: December 12, 2002.

Michael Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 03–998 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Mountain Lake Fisheries Management Plan North Cascades National Park Service Complex Whatcom, Skagit and Chelan Counties, WA; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accord with § 102© of the National Environmental Policy Act of 1969 (42 U.S.C.4321, et seq.), the National Park Service is undertaking a conservation planning and environmental impact analysis process for mountain lake fisheries management in North Cascades National Park Service Complex, Washington. An Environmental Impact Statement will be prepared to provide a framework for a comprehensive Mountain Lake Fisheries Management Plan (MLFMP). The MLFMP will govern all future fisheries management actions, including stocking, for all natural lakes in North Cascades National Park, Lake Chelan National Recreation Area, and Ross Lake National Recreation Area.

Background: The National Park Service (NPS) manages North Cascades National Park, Lake Chelan National Recreation Area, and Ross Lake National Recreation Area collectively as the North Cascades National Park Service Complex (North Cascades). The rugged North Cascades landscape contains 240 natural mountain lakes, most of which were naturally fishless due to impassable topographic barriers. Far from barren, these lakes contained a rich array of native aquatic life including plankton, aquatic insects, frogs and salamanders.

Settlers began stocking Cascade lakes in the late 1800's with various species of exotic trout. By the 20th century, stocking was a routine management practice for the U.S. Forest Service and various counties. Upon its inception in 1933, the Washington Department of Game (WDG; now "WDFW") assumed responsibility for stocking mountain lakes throughout the state to create and maintain a recreational fishery. The State=s involvement grew largely out of the need to prevent haphazard stocking by individuals without biological expertise. With particular emphasis on systematic assessment of fish species and stocking rates, the WDG conducted the first high lakes fisheries research and developed many principles central to fisheries management today.

After North Cascades was established in 1968, a conflict over fish stocking gradually emerged between the NPS and WDFW. The conflict was driven by fundamental policy differences: NPS policies prohibited stocking to protect native ecosystems; WDFW policies encouraged stocking to enhance recreation. To reconcile the conflict and foster cooperative management, the NPS and WDFW entered into a Fisheries Management Agreement in 1988 with the purpose of Aestablishing a mutually agreed to list of lakes within the boundaries of North Cascades National Park which the department [would] stock with fish as part of its fish management program." The agreement defined 40 specific lakes for stocking and specified that Aresearch results [would] be considered in future decisions'.

Shortly thereafter, the NPS initiated a long-term research effort through Oregon State University to evaluate the effects of fish stocking on native biota in mountain lakes. An independent peer review panel of subject matter experts was established to evaluate research results and to ensure objectivity and scientific merit. The final phase of this research effort was completed in July, 2002. With respect to the subject proposal, key conclusions include: (1) Lakes with reproducing trout populations had significantly fewer salamanders and zooplankton than fishless lakes; (2) There was no significant difference in salamander or zooplankton abundance between fishless lakes and lakes with non reproducing (*i.e.* stocked) fish; (3) Native biota (*e.g.* salamanders, zooplankton) appeared to be at greatest risk in lakes with (a) relatively high nitrogen concentrations, (b) relatively warm water and 8 reproducing trout populations (indicative of relatively high fish densities). These criteria were found in six of the 83 lakes studied. A complete account of the research and results can be viewed on the EIS Web site *www.nps.gov/noca/highlakes.htm.*

Preliminary Information: As noted, the purpose of the EIS effort is to develop a new management plan for natural mountain lakes that conserves native biological integrity and provides a spectrum of recreational opportunities and visitor experiences, including sport

fishing. The EIS\MLFMP is needed because current management strategies and biological conditions are inconsistent with NPS policies. The EIS\MLFMP will also fulfill the adaptive management intent of the 1988 Fisheries Management Agreement, which committed that results of ecological research would be used to guide future management decisions.

Issues identified to date, which should be addressed, in preparing the EIS\MLFMP include:

Predation. Exotic trout have measurably changed the composition and abundance of native aquatic organisms through predation in some lakes.

Low quality-fishing experience. Lakes with reproducing populations are often overpopulated with small fish.

Hybridization. In certain lakes exotic trout are escaping downstream and interbreeding with native trout. This could potentially harm bull trout (federally threatened).

Trampling. Shorelines around lakes are sensitive to trampling, and anglers have been documented to cause up to three times more impacts to vegetation.

Restoration effects. Removing introduced fish using nets, chemicals, or predator controls could impact the environment and the visitor experience.

Impacts to Users. A major reduction in fish stocking could have a negative effect on many anglers; many wilderness advocates strongly oppose stocking in wilderness areas.

Unsanctioned Stocking. In the absence of biologically based stocking, unsanctioned stocking could again become a problem.

The preliminary options identified, so far, which should be considered in developing a reasonable range of alternatives to be addressed in the EIS\MLFMP include:

- No Action (continue existing management);
- Modify stocking cycles by applying the latest research results;
- Restore lakes using physical or chemical methods to eliminate fish;
- Regulate stocking methods (*e.g.* volunteer stocking, aerial stocking, stock sterile fish);
- Establish certain lakes where recreational fishing would be promoted over other uses;
- Allow lakes to become fishless on a cyclical basis to recover native biota.

Scoping and Comment Process: As a key step in this conservation planning and environmental impact analysis process, the NPS is seeking public comments and information to guide the initial preparation of the EIS\MLFMP. The objectives of this effort include: participation from individuals, federal, tribal, state, and local governments, and other interested groups or organizations; develop a reasonable range of management alternatives; identify environmental and socioeconomic issues which warrant detailed environmental impact analysis; and eliminate any issues or topics that do not require detailed analysis. All written comments must be postmarked or transmitted no later than March 1, 2003. Responses should be submitted to North Cascades National Park Service Complex, ATTN: Mountain Lake EIS, 810 State Route 20, Sedro-Woolley, WA 98284 (and copies may also be sent via e-mail to *NOCA_planning@nps.gov;* please include "Fisheries EIS" in the subject header). Current information will be maintained on the park's EIS Web site: *http://www.nps.gov/noca/highlakes.htm.* In addition, several public scoping meetings are anticipated to be held early in 2003. These meetings will be announced widely in local and regional news media, via direct park mailings, and posted on the park's website.

All interested parties are encouraged to submit written comments, all of which will become part of the public record. If respondents request that their name and/or address be withheld from public disclosure, the request will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: the NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and anonymous comments may not be considered.

Decision: The draft EIS is expected to be available for public review in summer 2003; the final EIS is anticipated to be issued in winter 2004. Formal announcements of availability will be published in the **Federal Register**, along via local and regional news media. The responsibility for approving the EIS has been delegated to the National Park Service, and the official responsible for the final decision is the Regional Director, Pacific West Region. Subsequently, the official responsible for implementing the MLFMP is the Superintendent, North Cascades National Park Service Complex.

Dated: November 1, 2002.

James R. Shevock,

Acting Regional Director, Pacific West Region.

[FR Doc. 03–1002 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Interagency Regional Trail Management Plan; Santa Monica Mountains National Recreation Area Los Angeles and Ventura Counties, CA; Notice of Intent To Prepare an Environmental Impact Statement

Summary: In accord with § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190), the National Park Service is initiating the conservation planning and environmental impact analysis process for an interagency regional trail management plan (TMP) for the Santa Monica Mountains National Recreation Area. The TMP will serve as a "blueprint" establishing the overall direction of future development and management of the trail network over the next ten to fifteen years. Based on desired conditions to be identified for park natural, cultural and recreational resources, the TMP will prescribe policies to streamline interagency management of the trail network throughout the national recreation area, and will also include a trail policy map depicting the planned trail network. The TMP could potentially result in a program modifying current trail policies, recreational use patterns, and future trail openings and closures.

The National Park Service has invited the California Department of Parks and Recreation and the Santa Monica Mountains Conservancy (SMMC) to be cooperators in the preparation of the TMP. Following publication of this notice to prepare an Environmental Impact Statement (EIS), the state of California will issue a notice of preparation initiating a complementary Environmental Impact Report (EIR). The official responsible for the EIR will be Ruth Coleman, Acting Director, California Department of Parks and Recreation (CDPR).

Background: The Santa Monica Mountains National Recreation Area (NRA) encompasses 150,050 acres, with approximately 71,300 acres of public parkland and the rest in private or other government ownership. Within the NRA there is a 320-mile public trail network made up of trails and dirt service roads. The greater Santa Monica Mountains trail network adjacent to the NRA

features over 80 additional miles of public trails, several of which are linked to the NRA network. Public lands and trails in the NRA are managed by federal, state and local agencies with varying management policies. Additionally, much of the trail network consists of utility and old ranch roads that were inherited with the land and are not necessarily constructed to public trail management standards. After almost 25 years of continuous land acquisition, the public trail network has grown significantly, and several trails now cross-parkland jurisdictional boundaries. There is the need to formulate an interagency regional trail plan to compile trail management policies to facilitate a seamless recreational experience for trail users and to prepare a vision for the final trail network and future development of trail-related facilities, ranging from trail network signs to backcountry trail camps.

Alternatives: In cooperating to prepare a regional trails plan, the NPS, CDPR and SMMC will jointly identify and analyze several alternative trail network designs, consistent with agency policies. At this time, it is anticipated that alternatives to be compared and analyzed will include "No Action" (maintaining existing conditions and management), a "Preferred" alternative, and several other options for contrasting recreational use patterns. The TMP EIS/EIR will evaluate the potential environmental impacts of the alternatives, and identify suitable mitigation strategies. An "environmentally preferred" alternative will be identified, and any potential impairments to national park values will also be disclosed. The alternatives will be based on input from the community, an environmental constraints analysis using current environmental condition information, trail network maintenance costs, and several visitor recreational use surveys conducted in the national recreation area.

Issues: The draft TMP EIS/EIR will address environmental and social impacts associated with the national recreation area's trail network. Environmental issues will include, but not be limited to, trail and/or trailhead adjacency to sensitive plant and animal species' habitats; adjacency to cultural and archaeological resource sites; trail erosion and impacts on water resources; soils and geology impacts from trail presence and new trail construction; back country camp impacts including fire hazard potential. Social impacts will include, but not be limited to, allowable uses and user conflicts on trails; trail network public access; trail network compliance with Americans with Disabilities Act requirements; proposed trail and trailhead construction; trail network management and operation guidelines; and trail network signs.

Public Involvement: The NPS will conduct a conservation planning and environmental impact analysis for the proposed interagency regional TMP. Written comments that identify concerns and issues, provide essential environmental information, and suggest reasonable design alternatives are desired in initiating the TMP EIS/EIR process. All respondents will later have an opportunity to review the draft TMP EIS/EIR and submit additional comments.

Public scoping for a interagency trail plan began with the Santa Monica Mountains Area Recreational Trails (SMMART) project that culminated in the 1997 SMMART Report. The SMMART Report is available for review at *http://www.nps.gov/samo/trails*. The SMMART Report contains the public's recommendations regarding missing links in the trail network, back country camps along the regional Backbone Trail, trail network sign guidelines, multiple use trail guidelines, and trail system design. The report also identified priority coordination issues, including interagency cooperation, volunteer commitment, and multi-agency trail crew and equipment sharing. In addition, all information on trail-related issues previously received during public comment regarding the Santa Monica Mountains National Recreation Area General Management Plan/EIS will also be considered in preparing the draft TMP EIS/EIR.

Any new issues or concerns, or information relevant to TMP process, are requested at this time. All such written comments must be postmarked or transmitted not later than 45 days following the publication of this Notice in the **Federal Register**. As soon as this date has been determined, it will be posted on the project Web site and included in direct mailings. Comments should be addressed to the Superintendent, Santa Monica Mountains National Recreation Area, Attn: *Interagency Regional Trail Management Plan*, 401 W. Hillcrest Drive, Thousand Oaks, CA 91360. Comments may be faxed to (805) 370–1850, or e-mailed to *SMMNRATrails@nps.gov*.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Future Information: Updated information about this conservation planning and environmental impact analysis process will be distributed via mailings, regional and local news media, and the park's webpage (*http://www.nps.gov/samo/trails*). Responses to this Notice will be used to update the mailing list of people interested in receiving future information as the environmental documents are developed. Please notify the National Park Service by mail, e-mail, or fax at the appropriate number to request placement on the mailing list. For all types of requests please be sure to include your mailing address.

Decision Process: Availability of the draft TMP EIS/EIR for review and written comment will be officially announced by Notice of Availability in the **Federal Register**, as well as through local and regional news media, the above listed Web site, and direct mailing. At this time the draft TMP EIS/EIR is anticipated to be distributed in fall, 2003. After due consideration of all comments on the draft TMP EIS/EIR, a final TMP EIS/EIR would be prepared which at this time is anticipated could be completed by July, 2004. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation would be the Superintendent, Santa Monica Mountains National Recreation Area.

Dated: December 2, 2002.

Holly Bundock,

Acting Regional Director, Pacific West Region.

[FR Doc. 03–1003 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Boston Harbor Islands Advisory Council will hold its annual meeting on Wednesday,

March 4, 2003. The meeting will convene at 6 p.m. at the Children's Museum, 300 Congress Street, 5th Floor, Boston, MA.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational/cultural, community and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operations of the Boston Harbor Islands national park area.

The Agenda for this meeting is as follows:

1. Call to Order, Introductions of Advisory Council members present
2. Review and Approval of Minutes from past meetings
3. Guest Speaker
4. Update on Outreach Program
5. Nomination for Advisory Council Seats
6. Election of Officers
7. Public Comment
8. Next Meeting
9. Adjourn

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Avenue, Boston, MA, 02110, telephone (617) 223–8667.

Dated: November 4, 2002.

George E. Price, Jr.,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. 03–1000 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission Two Hundred Fortieth Meeting; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, January 24, 2003.

The Commission was reestablished pursuant to Pub. L. 87–126 as amended by Pub. L. 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of minutes of previous meeting (November 22, 2002)
3. Reports of Officers
4. Reports of Subcommittees
   Dune Shack Subcommittee
   Nickerson Fellowship Subcommittee
5. Superintendent's Report
   Marconi Event
   Salt Pond Visitor Center
   News from Washington
6. Old Business
   Invasive Species
7. New Business
   Water Supply Issues
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Due to a delay in this notice being delivered to National Park Service staff during the holiday season, the notice could not be published at least 15 days prior to the meeting dates. The National Park Service regrets this error, but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling would require of committee members who have adjusted their schedules to accommodate the proposed meeting dates, and the high level of anticipation by all parties who will be affected by the outcome of the committee's actions. Since the proposed meeting dates have received widespread publicity in area news media and among the parties most affected, the National Park Service believes that the public interest will not be adversely affected by the less-than-15 days advance notice in the **Federal Register**.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: January 8, 2003.

A. Durand Jones,

Deputy Director, National Park Service.

[FR Doc. 03–994 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chalmette Battlefield Task Force Committee Meeting

AGENCY: National Park Service, Jean Lafitte National Historical Park and Preserve, Interior.

ACTION: Notice of task force meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. App.1, Section 10(a)(2), that a meeting of the Chalmette Battlefield Task Force Committee will be held at 4 p.m. at the following location and date:

DATES: Wednesday, January 29, 2003.

ADDRESSES: The Council Chambers Meeting Room at the St. Bernard Parish Government Complex, 8245 W. Judge Perez Drive in Chalmette, LA 70042.

FOR FURTHER INFORMATION CONTACT: Ms. Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 419 Decatur Street, New Orleans, LA 70130, (504) 589–3882, extension 137 or 108.

SUPPLEMENTARY INFORMATION: The purpose of the Chalmette Battlefield Task Force Committee is to advise the Secretary of the Interior on suggested improvements at the Chalmette Battlefield site within Jean Lafitte National Historical Park and Preserve. The members of the Task Force are as follows: Ms. Elizabeth McDougall, chairperson, Ms. Faith Moran, Mr. Anthony A. Fernandez, Jr., Mr. Drew Heaphy, Mr. Alvin W. Guillot, Mrs. George W. Davis, Mr. Eric Cager, Mr. Paul V. Perez, Captain Bonnie Pepper Cook, Mr. Michael L. Fraering, Colonel John F. Pugh, Jr., and Geraldine Smith.

The matters to be discussed at this meeting include the purpose of the committee, background and history of the area, appointment of a vice-chairperson and scheduling future meetings. This meeting will be open to the public, however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the committee a written statement concerning the matters to be discussed. Written statements may also be submitted to the

superintendent at the address above. Minutes of the meeting will be available at park headquarters for public inspection at 419 Decatur Street, New Orleans, Louisiana approximately 4 weeks after the meeting and on the park Web site at *http://www.nps.gov/jela.htm.*

Dated: December 11, 2002.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 03–993 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 10 a.m. on Friday, February 7, 2003, a park headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland.

The Commission was established by *Pub. L. 91–664* to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman
Mr. Charles J. Weir
Mr. Barry A. Passett
Mr. Terry W. Hepburn
Ms. Elise B. Heinz
Ms. JoAnn M. Spevacek
Mrs. Mary E. Woodward
Mrs. Donna Printz
Mr. Rockwood H. Foster
Mrs. Ferial S. Bishop
Ms. Nancy C. Long
Mrs. Jo Reynolds
Dr. James H. Gilford
Mrs. Sue Ann Sullivan
Brother James Kirkpatrick

Topics that will be presented during the meeting include:

1. Status of the draft Land Protection Plan
2. Major construction/development projects
3. Historic Leasing Program
4. Duke Power Company right-of-way easement application
5. Mecklenburg Warehouse planning project
6. Western Maryland Railroad right-of-way planning study
7. Business Plan

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Douglas D. Faris, Superintendent, C&O Canal National Historical Park, 1850 Dual Highway; Suite 100, Hagerstown, Maryland 21740.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at park headquarters, Hagerstown, Maryland.

Dated: November 26, 2002.

Douglas Faris,

Superintendent, C&O Canal National Historical Park.

[FR Doc. 03–1001 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 21, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 343–1836. Written or faxed comments should be submitted by January 31, 2003.

Beth Savage,

Acting Keeper of the National Register of Historic Places.

CONNECTICUT

Fairfield County

Downtown Stamford Historic District (Boundary Increase 2), Roughly along Bedford St., Stamford, 02001744.

GEORGIA

Appling County

Bank Surrency, 80 Hart St., Surrency, 02001742.

NORTH CAROLINA

Halifax County

Scotland Neck Historic District, Roughly bounded by Church, Bryan, Cherry, Roanoke, and Fifth and Eighteenth Sts., Scotland Neck, 02001743.

PENNSYLVANIA

Montgomery County

Globe Knitting Mills, 660 and 694 E. Main St., Norristown, 02001745.

Milmoral

1150 Church Rd., Wyncote, Cheltenham, 02001746.

A request for Removal has been made for the following resources:

ARKANSAS

Ashley County

Wiggins Cabin, City Park, Crossett, 82002093.

Jefferson County

Austin House, (Thompson, Charles L., Design Collection TR), 704 W. 5th Ave., Pine Bluff, 82000842.

Phillips County

Short-Deisch House, 409 Biscoe St., Helena, 74000490.

Pulaski County

Bechle House, 1004 E. 9th St., Little Rock, 79000449.

IOWA

Webster County

Illinois Central Passenger Depot-Fort Dodge, (Advent and Development of Railroads in Iowa MPS), Jct. Of Fourth St., and Fourth Ave., S., Fort Dodge, 90001307.

[FR Doc. 03–989 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 28, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 343–1836.

Written or faxed comments should be submitted by January 31, 2003.

Patrick Andrus,

Acting Keeper of the National Register of Historic Places.

CALIFORNIA

San Diego County

Canfield—Wright House, 420 Avenida Primavera, Del Mar, 02001747.

GEORGIA

Muscogee County

Hillcrest—Wildwood Circle Historic District, Roughly bounded by Wildwood Ave., 13th and 17th Sts., and Dixon Dr., Columbus, 02001748.

ILLINOIS

Adams County

Lewis Round Barn, 2007 E 1250th St., Mendon, 02001750.

Champaign County

Women's Gymnasium, University of Illinois at Urbana-Champaign, (University of Illinois Buildings designed by Charles A. Platt MPS), 906 S Goodwin Ave., Urbana, 02001751.

Women's Residence Hall—West Residence Hall, University of Illinois at Urbana-Champaign, (University of Illinois Buildings designed by Charles A. Platt MPS), 1111W Nevada St., Urbana, 02001752.

Clark County

First Congregational Church, 202 N 6th St., Marshall, 02001753.

Henry County

West Water Tower and Ground Storage Tank, 310 11th Ave., Orion, 02001754.

Lake County

Griffith, John, Store Building, 103–113 E Scranton Ave., Lake Bluff, 02001755.

Rock Island County

Deere, John, House, 1217 11th Ave., Moline, 02001756.

Schuyler County

White Oak Hall, SE corner Jct. of White Oak and Lower Beardstown Rds., Rushville, 02001757.

Union County

St. Anne's Episcopal Church, 507 S Main St., Anna, 02001758.

Union Lookout, 3/4 mi. S of Jct. Co. Rd. 13 and Trail of Tears State Forest Rd., Jonesboro, 02001759.

Will County

Scutt, Hiram B., Mansion, 206 N Broadway, Joliet, 02001760.

MASSACHUSETTS

Middlesex County

Middlesex Fells Reservation Parkways, (Metropolitan Park System of Greater Boston MPS), E Border Rd., Fellsway E, Fellsway W, Hillcrest Pky., South St., Pond St., S Border Rd., Ravine Rd., and Woodland Rd., Malden, 02001749.

SOUTH CAROLINA

Berkeley County

Cooper River Historic District, (Cooper River MPS), Along the E and W branches of the Cooper R., Moncks Corner, 02001761.

SOUTH DAKOTA

Charles Mix County

Jacobson School, (Schools in South Dakota MPS), 289th St., Armour, 02001762.

Jerauld County

Will, H.P., House, 214 Alene Ave. N, Wessington Springs, 02001763.

Lawrence County

St. Lawrence O'Toole Catholic Church, 618 Main, Central City, 02001764.

Lincoln County

Anderson, Dr. Andrew, House, 416 E 2nd St., Canton, 02001765.

Minnehaha County

Farley-Loetscher Company Building I, 322 and 324 E 8th St., Sioux Falls, 02001766.

McKennan Park Historic Increase (Boundary Increase), Roughly bounded by 1st Ave. S, Phillips Ave., 24th St. E, and 26th St., Sioux Falls, 02001767.

Pennington County

Burlington and Quincy High Line Hill City to Keystone Branch, Along RR right of way from 222 Railroad Ave to Keystone Depot, Hill City, 02001768.

[FR Doc. 03–990 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 04, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 343–1836.

Written or faxed comments should be submitted by January 31, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Los Angeles County

Middough Brothers—Insurance Exchange Building, 205 E. Broadway, Long Beach, 03000002.

COLORADO

Denver County

Robinson House, 3435 Albion St., Denver, 03000003.

FLORIDA

Hendry County

Caldwell Home Place, 160 Curry St., LaBelle, 03000009.

Jackson County

St. Luke Baptist Church, 4476 E. Jackson St., Marianna, 03000008.

Nassau County

Amelia Island Lighthouse, (Florida's Historic Lighthouses MPS), 215½ Lighthouse Circle, Fernandina Beach, 03000004.

Pinellas County

Jungle Prada Site, Address Restricted, St. Petersburg, 03000007.

Polk County

Oak Hill Cemetery, (Bartow MPS), West Parker St., Bartow, 03000006.

Volusia County

French, Seth, House, 319 E. French Ave., Orange City, 03000005.

MAINE

Aroostook County

St. John Catholic Church, St. John Rd., St. John Plantation, 03000017.

Hancock County

Agassiz Bedrock Outcrop, 406 State St., Ellsworth, 03000014.

East Blue Hill Post Office, 13 Curtis Cove Rd., East Blue Hill, 03000016.

Nazi Spy Landing Site, West shore of Crabtree Neck at Sunset Ledge Cove, Hancock Point, 03000015.

Waldo County

Frankfort Dam, S of jct. of ME 1A and North Branch of Marsh Stream, Frankfort, 03000018.

MISSOURI

Jackson County

Kansas City, Missouri Western Union Telegraph Building, 100–114 E. 7th St., Kansas City, 03000010.

NEW JERSEY

Cape May County

TBM–3E "Avenger" Torpedo Bomber Warplane, 500 Forrestal Rd., Cape May Airport, Lower Township, 03000019.

Whilldin—Miller House, 416 S. Broadway, Borough of West Cape May, 03000012.

Essex County

Weequahic Park Historic District, Roughly bounded by Meeker Ave., Dayton St., the Union County border and Maple Ave., Newark, 03000013.

Morris County

Pruddentown Historic District, Mount Kemble Ave., Morris Township, 03000011.

NEW YORK

Albany County

Mendelson, A., and Son Company Building, 40 Broadway, Albany, 03000021.

Columbia County

Blinn—Pulver Farmhouse, 219 Hudson Ave., Chatham, 03000025.

Dutchess County

Kimlin Cider Mill, Cedar Ave., Poughkeepsie, 03000020.

Greene County

Layman, Frank D., Memorial, Near Kaaterskill Falls, Hunter, 03000022.
Onteora Park Historic District, Onteora Club Property, Hunter, 03000023.

St. Lawrence County

Bayside Cemetery and Gatehouse Complex, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 115 Clarkson Ave., Potsdam, 03000026.
Brown, Luke, House, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 831 NY 72, Parishville, 03000030.
Clarkson Office Building, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 17 Maple St., Potsdam, 03000031.

St. Lawrence County

Parmeter, Nathaniel, House, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 498 NY 59, Potsdam, 03000027.
Trinity Episcopal Church, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 38 Maple St., Potsdam, 03000032.
Wallace, Jonathan, House, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 99 Market St., Potsdam, 03000028.
Zion Episcopal Church and Rectory, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 91 and 95 Main St., Colton, 03000029.

OREGON

Coos County

Marshfield's South Fifth Street Historic District, Roughly 900, 800, 700 blks of S. Fifth St., also portions of Hall, Ingersoll and Johnson Aves., Coos Bay, 03000034.

PENNSYLVANIA

Butler County

Saxonburg Historic District, Portions of E. and W. Main, N. and S. Rebecca, N. and S. Isabella, Pittsburgh, Butler, and State Sts., Saxonburg, 03000035.

Fayette County

Uniontown Downtown Historic District (Boundary Increase), 18 S. Beeson Blvd. and 9 E. Peter St., Uniontown, 03000036.

[FR Doc. 03–991 Filed 1–15–03; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–986 and 987 (Final)]

Ferrovanadium From China and South Africa

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China and South Africa for ferrovanadium, provided for in subheading 7202.92.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective November 26, 2001, following receipt of a petition filed with the Commission and Commerce by The Ferroalloys Association Vanadium Committee and its following members: Bear Metallurgical Co., Butler, PA; Shieldalloy Metallurgical Corp., Cambridge, OH; Gulf Chemical & Metallurgical Corp., Freeport, TX; U.S. Vanadium Corp., Danbury, CT; and CS Metals of Louisiana, Convent, LA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of ferrovanadium from China and South Africa were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673(b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 29, 2002 (67 FR 49035). The hearing was held in Washington, DC, on November 22, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 13, 2003. The views of the Commission are contained in USITC Publication 3570 (January 2003), entitled Ferrovanadium from China and South Africa: Investigations Nos. 731–TA–986 and 987 (Final).

By order of the Commission.

Issued: January 13, 2003.

Marilyn R. Abbott,

Secretary of the Commission.

[FR Doc. 03–946 Filed 1–15–03; 8:45 am]
BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Lead-Based Paint Hazard Act

Notice is hereby given that on December 30, 2002, a proposed consent decree in *United States* v. *Joseph DeLuca*, Civil Action No. CA02–546T, was lodged with the United States District Court for the District of Rhode Island.

The consent decree settles claims against Joseph DeLuca as owner of twelve residential apartment buildings in Providence, Rhode Island, which were brought on behalf of the Department of Housing and Urban Development and the Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in its complaint that the defendant failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

Under the consent decree, the defendant has agreed to provide the required notice and disclosures, to perform inspections at the buildings for the presence of lead-based paint, to perform lead-based paint abatement, and to pay the United States an administrative penalty in the amount of $13,090.00. The defendant owns 12 buildings with 32 residential units.

The Department of Justice will receive for a period of thirty (30) days from the

date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Joseph DeLuca*, D.J. # 90–5–1–1–07649.

The proposed consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard, Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza SW., Room 3206, Washington, DC 20410, (202) 755–1785; at the office of the United States Attorney for the District of Rhode Island, 50 Kennedy Plaza, 8th Floor, Providence, Rhode Island 02903; and at U.S. EPA Region 1, One Congress Street, Boston, MA 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the U.S. Treasury.

Karen Dworkin,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–899 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, notice is hereby given that on January 8, 2003, three proposed consent decrees in the case captioned *Dow Chemical Co., et al.* v. *Acme Wrecking Co., Inc., et al.*, Civil Action Nos. C–1–97–0307, C–1–97–0308, and C–1–01–439–(S.D. Ohio), were lodged with the United States District Court for the Southern District of Ohio. The proposed, *de minimis* consent decrees relate to the Skinner Landfill Superfund Site ("Site") in West Chester, Ohio. The proposed consent decrees would resolve civil claims of the United States for response actions and for the recovery of response costs at the Site under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9606, 9607(a), against Aeronca, Inc. ("Aeronca"), Martin E. Clarke, Clarke Sanitary Landfill, Clarke Container, Inc., Clarke's Incinerators, Inc. (the "Martin Clarke Entities"), Richard M. Clarke, Clarke's Complete Collection, Dick Clarke Co., Dick Clarke Trash Removal and Demolition, Clarke's Services, Inc., and Clarke, Inc. (the "Dick Clarke Entities") (collectively "Settling Defendants"). Under the proposed consent decree with Aeronca, Aeronca would pay the United States $232,500 and would pay the parties that are performing the work at the Site (the "Skinner Landfill Site Group") $232,500. Under the proposed consent decree with the Martin Clarke Entities, the Martin Clarke Entities would pay the United States $88,000 and would pay the Skinner Landfill Site Group $88,000. Under the proposed consent decree with the Dick Clarke Entities, the Dick Clarke Entities would pay the United States $100,500, and would pay the Skinner Landfill Site Group $25,500.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resource Division, Department of Justice, Washington, DC 20530, and should refer to *Dow Chemical Co. et al.* v. *Acme Wrecking Co., Inc. et al.*, Civil Action Nos. C–1–97–0307, C–1–97–0308, and C–1–01–439 (S.D. Ohio), and DOJ Reference No. 90–11–3–1620/2.

The proposed consent decrees may be examined at: (1) The Office of the United States Attorney for the Southern District of Ohio, 221 E. Fourth St., Suite 400, Cincinnati, Ohio 45202 and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Copies of the proposed consent decrees may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting copies, please refer to the above-referenced case and DOJ Reference Number and enclose a check for $9.50 (38 pages at 25 cents per page reproduction cost) for the Consent Decree with Aeronca, $9.00 (36 pages) for the Consent Decree with the Martin Clarke Entities, and/or $8.50 (34 pages) for the Consent Decree with the Dick Clarke Entities, made payable to the Consent Decree Library.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–897 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 20, 2002, a proposed Consent Decree ("Decree") in *United States* v. *Rhode Island Resource Recovery Corporation*, Civil Action No. 02–540ML was lodged with the United States District Court for the District of Rhode Island.

In this action the United States sought injunctive relief and a civil penalty from the defendant, Rhode Island Resource Recovery Corporation ("RIRRC"), for violations of the Clean Air Act at the Central Landfill in Johnston, Rhode Island. The Decree provides that RIRRC shall pay a civil penalty of $321,000. Moreover, the Decree requires the defendant to preform injunctive relief estimated to cost upwards of $3.5 million, and undertake a supplemental environmental project ("SEP") with a total SEP cost to RIRRC of at least $1.8 million. The SEP includes, *inter alia*, the termination of waste acceptance operations at Phases II and III of the landfill by July 2003, the capping of Phases I, II, and III by 2006, and the accelerated capping of portions of Phases II and III by the end of 2003.

The Department of Justice will receive for a period of 30 days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Rhode Island Resource Recovery Corporation*, D.J. Ref. 90–5–2–1–07164.

The Decree may be examined at the Office of the United States Attorney, District of Rhode Island, Fleet Center, 50 Kennedy Plaza, 8th Floor, Providence, Rhode Island 02903, (401) 528–5477 and at U.S. EPA Region I, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114, (617) 918–2001. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia

Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $65.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–895 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed consent decree in *United States* versus *Estate of Joseph Savage and Four Acres of Land, More or Less, Located at 10 Brewster Street, Bridgeport, Connecticut,* No. 302–CV–2256–CFD was lodged with the United States District Court for the District of Connecticut on December 19, 2002 (the "Consent Decree"). The Consent Decree will resolve the liability of the Estate of Joseph Savage ("the Estate") to the United States, on behalf of the United States Environmental Protection Agency, under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607, for the recovery of costs incurred by the United States in connection with the Black Rock Shipyard Superfund Site ("the Site"), located at 10 Brewster Street, Bridgeport, Connecticut. The Consent Decree requires the Estate to use its best efforts to sell the property comprising the Site, which is property of the Estate, and to pay the proceeds of such EPA-approved sale to reimburse the United States for its past costs incurred at the Site, which are secured by a statutory lien on the Site property pursuant to section 107(*l*) of CERCLA, 42 U.S.C. 9607(*l*).

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and/or, to ensure timely delivery, via overnight delivery to Chief, Environmental Enforcement Section, 1425 New York Av. NW, 13th Fl., Washington, DC 20005. Each communication should refer on its face to *United States* versus *Estate of Joseph Savage and Four Acres of Land, More or Less,* DOJ Ref. # 90–11–3–07373.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Connecticut, 157 Church St., 23rd Fl., New Haven, Connecticut 06510 (contact Assistant U.S. Attorney John Hughes), and the Region 1 Office of the Environmental Protection Agency, 1 Congress St., Suite 1100, Boston, Massachusetts 02114 (contact Senior Enforcement Counsel Lloyd Selbst). A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please refer to *United States* versus *Estate of Joseph Savage and Four Acres of Land, More or Less,* DOJ Ref. # 90–11–3–07373 and enclose a check in the amount of $3.75 (15 pages @ 25 cents per page reproduction costs) for the Consent Decree, payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–896 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* c. *Wilcox,* Civil Action No. 4:99CV00806 WRW (E.D. Ark.), was lodged with the United States District Court for the Eastern District of Arkansas on December 18, 2002.

The proposed consent decree would resolve the United States' allegations in the above-referenced enforcement action that Defendants violated sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, by unlawfully discharging pollutants into waters of the United States at four separate sites in Pulaski County, Arkansas.

The proposed consent decree would require Defendants to: (1) Pay a $100,000 civil penalty; (2) restore approximately 50 acres of wetlands; and (3) provide approximately 55 acres of mitigation.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and National Resources Division, U.S. Department of Justice, Attention: Wendy L. Blake, Environment Defense Section, PO Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *Wilcox,* DJ Reference No. 90–5–1–4–05291.

The proposed consent decree may be examined at the Clerk's Office of the United States District Court for the Eastern District of Arkansas, 600 W. Capitol Ave., Suite 402, Littl Rock Arkansas.

Mary F. Edgar

Assistant Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 03–898 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[AG Order No. 2643–2003]

Registration of Certain Nonimmigrant Aliens from Designated Countries

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This Notice requires certain nonimmigrant aliens to appear before, register with, and provide requested information to the Immigration and Naturalization Service on or before March 28, 2003. It applies to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain in the United States after March 28, 2003. The specific requirements are set forth in the Notice. This Notice is applicable to certain nationals and citizens of Bangladesh, Egypt, Indonesia, Jordan, or Kuwait who entered the United States on or before September 30, 2002, and who will remain in the United States after March 28, 2003. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service between February 24, 2003, and March 28, 2003, inclusive.

EFFECTIVE DATES: This Notice is effective on February 24, 2003. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service on or before March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION:

Section 265(b) of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1305(b), provides that

> [t]he Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

Additionally, section 263(a) of the Act, 8 U.S.C. 1303(a), provides that the Attorney General may "prescribe special regulations and forms for the registration and fingerprinting of * * * aliens of any other class not lawfully admitted to the United States for permanent residence."

The Attorney General has previously exercised his authority under these and other provisions of the Act to establish special registration procedures under 8 CFR 264.1(f). 67 FR 52584 (Aug. 12, 2002). These requirements are known as the National Security Entry—Exit Registration System ("NSEERS"). In accordance with the authority set forth in 8 CFR 264.1(f)(4), the Attorney General has determined that certain nonimmigrant aliens specified in this Notice shall be registered and required to provide specific information. The Attorney General has the sole discretion to make this determination. Under this Notice certain nationals or citizens of Bangladesh, Egypt, Indonesia, Jordan, or Kuwait are required to appear at an Immigration and Naturalization Service ("Service") office to register under NSEERS and provide additional information. Previous notices currently in effect have applied to certain nonimmigrant nationals or citizens of Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. See 67 FR 67766 (Nov. 6, 2002); 67 FR 70526 (Nov. 22, 2002); 67 FR 77642 (Dec. 18, 2002).

In light of recent events, and based on intelligence information available to the Attorney General, the Attorney General has determined that the aliens described in paragraph (a) of this Notice must appear before the Service and provide certain information. This Notice applies only to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain after March 28, 2003. Based on intelligence information available to the Attorney General, the Attorney General has determined that registering all nonimmigrant aliens from the covered countries would not enhance national security. Moreover, the Attorney General has determined that it would not be administratively feasible at the present time to register all of the nonimmigrants from the specific countries covered by this Notice, and that the delay occasioned by registering all nonimmigrants from the countries covered by this Notice would jeopardize the national security. Accordingly, the Attorney General has determined that only males aged 16 years or older need to be registered at this time. Furthermore, the Attorney General has determined that an alien who has an application for asylum pending on the date of publication of this Notice has already provided sufficient information in the application for asylum, along with fingerprints, to warrant exclusion from this Notice.

Although section 265(b) of the Act, 8 U.S.C. 1305(b), provides a minimum period of 10 days notice for covered aliens to provide their current address and other required information, this Notice allows an alien described by the Notice a period of more than 30 days to register. The Attorney General has determined that such additional time to register is in the best interests of the United States and has extended this time to register solely as a matter of discretion.

Finally, until further notice, once enrolled within NSEERS by registration under this Notice, an alien described in paragraph (a) of this Notice is required to register annually with the Service. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5) through (f)(9).

A willful failure to comply with the requirements of this Notice constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act, 8 U.S.C. 1227(a)(1)(C)(i). See 8 CFR 214.1(f). Pursuant to section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A), an alien who fails to comply with the provisions of this Notice is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful. Finally, if an alien subject to this Notice fails, without good cause, to comply with the requirement in 8 CFR 264.1(f)(8) that the alien must report to an inspecting officer of the Service when departing the United States, the alien shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. 1182(a)(3)(A)(ii). See 8 CFR 264.1(f)(8).

Notice of Requirements for Registration of Certain Nonimmigrant Aliens From Designated Countries

Pursuant to sections 261 through 266 of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1302 through 1306, and particularly sections 263(a) and 265(b) of the Act, 8 U.S.C. 1303(a) and 8 U.S.C. 1305(b), and 8 CFR 264.1(f), I hereby order as follows:

(a) *Scope.* Except as provided in paragraph (g), an alien is required to register pursuant to this Notice if the alien:

(1) Is a male who was born on or before February 24, 1987;

(2) Is a national or citizen of Bangladesh, Egypt, Indonesia, Jordan, or Kuwait who was inspected by the Immigration and Naturalization Service and was last admitted to the United States as a nonimmigrant on or before September 30, 2002; and

(3) Will remain in the United States after March 28, 2003.

(b) *Dual citizens.* This Notice is applicable to any alien who is a national or citizen of a designated country, notwithstanding any dual nationality or citizenship.

(c) *Requirement to appear before an immigration officer.* All aliens described in paragraph (a) shall, between February 24, 2003, and March 28, 2003, inclusive, appear before an immigration officer at any of the locations listed in the appendix to this Notice.

(d) *Information to be provided.* All aliens described in paragraph (a) shall:

(1) Answer questions under oath before an immigration officer, which answers shall be recorded by the immigration officer;

(2) Present to such immigration officer:

(i) The alien's travel documents, including passport and the Form I–94 issued upon admission, and any other forms of government-issued identification;

(ii) Proof of residence, such as, but not limited to, title to land or a lease or a rental agreement, and, if applicable, proof of matriculation at an educational institution, and, if applicable, proof of employment; and

(iii) Such other information as is requested by the immigration officer; and

(3) Shall be fingerprinted and photographed by the immigration officer.

(e) *Annual reporting obligations.* All aliens described in paragraph (a) shall

appear, within 10 days of each anniversary of the date on which they were registered under this Notice, before an immigration officer at any of the locations listed in the appendix to this Notice and answer questions under oath. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5)–(9).

(f) *Notice of Change of Address.* All aliens described in paragraph (a) shall advise the Immigration and Naturalization Service, through the filing of Form AR–11, of any change of address within 10 days of such change of address. If an alien fails to notify the Immigration and Naturalization Service in writing of a change of address and the new address, as required by section 265(a) of the Act, 8 U.S.C. 1305(a), the alien may be subject to prosecution under section 266(b) of the Act, 8 U.S.C. 1306(b), and may be deportable as provided in section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A). If it becomes necessary to place the alien in removal proceedings, the Immigration and Naturalization Service may use the most recent address provided by the alien for service of the Notice to Appear.

(g) *Inapplicability.* The requirements of this Notice do not apply to any alien who:

(1) Is presently in a nonimmigrant classification under section 101(a)(15)(A) or 101(a)(15)(G) of the Act, 8 U.S.C. 1101(a)(15)(A) or 8 U.S.C. 1101(a)(15)(G);

(2) Is lawfully admitted to the United States for permanent residence; or

(3) Has an application for asylum pending on January 16, 2003, or has been granted asylum, under section 208 of the Act, 8 U.S.C. 1158.

Dated: January 9, 2003.

John Ashcroft,

Attorney General.

Appendix

Immigration and Naturalization Service Offices for Registration of Certain Nonimmigrants Pursuant to Notice of January 16, 2003

Alaska—Anchorage, 620 East 10th Avenue, Anchorage, Alaska 99501
Arizona—Phoenix, 2035 North Central Avenue, Phoenix, Arizona 85004
Arizona—Tucson, 6431 South Country Club Road, Tucson, Arizona 85706–5907
Arkansas—Fort Smith, 4991 Old Greenwood Road, Fort Smith, Arkansas 72903
California—Fresno, 865 Fulton Mall, Fresno, California 93721
California—Los Angeles, 300 North Los Angeles Street, Room 2024, Los Angeles, California 90012
California—Sacramento, 650 Capitol Mall, Sacramento, CA 95814
California—San Bernardino, 655 West Rialto Avenue, San Bernardino, California 92410
California—San Diego, 880 Front Street, Suite 1209, San Diego, California 92101
California—San Francisco, 444 Washington Street, San Francisco, California 94111
California—San Jose, 1887 Monterey Road, San Jose, California 95112
California—Santa Ana, 34 Civic Center Plaza, Santa Ana, California 92701
Colorado—Denver, 4730 Paris Street, Denver, CO 80239
Connecticut—Hartford, 450 Main Street, 4th Floor, Hartford, Connecticut 06103
Florida—Jacksonville, 4121 Southpoint Boulevard, Jacksonville, Florida 32216
Florida—Miami, 7880 Biscayne Boulevard, Miami, Florida 33138
Florida—Orlando, 9403 Tradeport Drive, Orlando, Florida 32827
Florida—Tampa, 5524 West Cypress Street, Tampa, Florida 33607–1708
Florida—West Palm Beach, 326 Fern Street, Riviera Beach, Florida 33401
Georgia—Atlanta, 77 Forsyth Street, SW, Atlanta, Georgia 30303
Guam—Agana, Sirena Plaza, Suite 100, 108 Hernan Cortez Avenue, Hagatna, Guam 96910
Hawaii—Honolulu, 595 Ala Moana Boulevard, Honolulu, Hawaii 96813
Idaho—Boise, 1185 South Vinnell Way, Boise, Idaho 83709
Illinois—Chicago, 230 South Dearborn, 2nd Floor, Chicago, Illinois 60604
Indiana—Indianapolis, 950 N. Meridian Street, Room 400, Indianapolis, Indiana 46204
Iowa—Des Moines, 210 Walnut Street, Room 369, Des Moines, Iowa 50309
Kansas—Wichita, 271 West 3rd Street North, Suite 1050, Wichita, Kansas 67202–1212
Kentucky—Louisville, 601 West Broadway, Room 390, Louisville, Kentucky 40202
Louisiana—New Orleans, 701 Loyola Avenue, New Orleans, Louisiana 70113
Maine—Portland 176 Gannet Drive, South Portland, Maine 04106
Maryland—Baltimore, 31 Hopkins Place, Baltimore, Maryland 21201
Massachusetts—Boston, Government Center, JFK Federal Building, Boston, Massachusetts 02203
Michigan—Detroit, 333 Mount Elliot Street, Detroit, Michigan 48207–4381
Minnesota—Minneapolis, 2901 Metro Drive, Suite 100, Bloomington, Minnesota 55425
Missouri—Kansas City, 9747 Northwest Conant Avenue, Kansas City, Missouri 64153
Missouri—St. Louis, 1222 Spruce Street, St. Louis, Missouri 63103
Montana—Helena, 2800 Skyway Drive, Helena, Montana 59601
Nebraska—Omaha, 3736 South 132nd Street, Omaha, Nebraska 68144
Nevada—Las Vegas, 3373 Pepper Lane, Las Vegas, NV 89120–2739
Nevada—Reno, 1352 Corporate Boulevard, Reno, Nevada 85902
New Hampshire—Manchester, 803 Canal Street, Manchester, New Hampshire 03101
New Jersey—Cherry Hill, 1886 Greentree Road, Cherry Hill, New Jersey 08003
New Jersey—Newark, 970 Broad Street, Newark, New Jersey 07102
New Mexico—Albuquerque, 1720 Randolph Road SE, Albuquerque, New Mexico 87106
New York—Albany, 1086 Troy-Schenectady Road, Latham, New York 12110
New York—Buffalo, 130 Delaware Avenue, Buffalo, New York 14202
New York—New York City, 26 Federal Plaza, New York, New York 10278
North Carolina—Charlotte, 210 E. Woodlawn Road, Building 6, Suite 138, Charlotte, North Carolina 28217
Ohio—Cincinnati, 550 Main Street, Room 4001, Cincinnati, Ohio 45202
Ohio—Cleveland, 1240 East Ninth Street, Cleveland, Ohio 44199
Ohio—Columbus, 50 West Broad Street, Suite 304D, Columbus, Ohio 43215
Oklahoma—Oklahoma City, 4149 Highline Boulevard, Suite 300, Oklahoma City, Oklahoma 73108
Oregon—Portland, 511 Northwest Broadway, Portland, Oregon 97209
Pennsylvania—Philadelphia, 1600 Callowhill Street, Philadelphia, Pennsylvania 19130
Pennsylvania-Pittsburgh, 1000 Liberty Avenue, Room 214, Pittsburgh, Pennsylvania 15222
Puerto Rico, San Juan, 7 Tabonuco Street, Guaynabo, Puerto Rico 00968
Rhode Island—Providence, 200 Dyer Street, Providence, Rhode Island 02903
St. Croix—Christiansted, Sunny Isle Shopping Center, Christiansted, St. Croix, U. S. Virgin Islands 00820
St. Thomas—Charlotte Amalie, Nisky Center, Suite 1A, First Floor South, Charlotte Amalie, St. Thomas, U. S. Virgin Islands 00802
South Carolina—Charleston, 170 Meeting Street, Fifth Floor, Charleston, South Carolina 29401
South Carolina—Greer, 142–D West Philips Road, Greer, South Carolina 29650
Tennessee—Memphis, 1314 Sycamore View Road, Suite 100, Memphis, Tennessee 38134
Texas—Dallas, 8101 North Stemmons Freeway, Dallas, Texas 75247
Texas—El Paso, 1545 Hawkins Boulevard, El Paso, Texas 79925
Texas—Harlingen, 2102 Teege Avenue, Harlingen, Texas 78550–4667
Texas—Houston, 126 Northpoint Drive, Houston, Texas 77060
Texas—San Antonio, 8904 Fourwinds Drive, San Antonio, Texas 78239
Utah—Salt Lake City, 5272 South College Drive, #100, Murray, Utah 84123
Vermont—St. Albans, 64 Gricebrook Road, St. Albans, Vermont 05478
Virginia—Norfolk, 5280 Henneman Drive, Norfolk, Virginia 23513
Washington, DC, 4420 North Fairfax Drive, Arlington, Virginia 22203
Washington—Seattle, 815 Airport Way, South, Seattle, Washington 98134
Washington—Spokane, 920 W. Riverside Room 691, Spokane, Washington 99201
Washington—Yakima, 417 E. Chestnut, Yakima, Washington 98901
West Virginia—Charleston, 210 Kanawha Boulevard West, Charleston, West Virginia 25302
Wisconsin—Milwaukee, 310 East Knapp

Street, Milwaukee, Wisconsin 53202

For further information relating to this notice and information about local office hours and locations, the public may call the National Customer Service Center at 1–800–375–5283 or (TTY) 1–800–767–1833, or visit the INS Web site at *http://www.ins.gov/*.

[FR Doc. 03–879 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[AG Order No. 2645–2003]

Permission for Certain Nonimmigrant Aliens From Designated Countries To Register in a Timely Fashion

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This Notice reopens the registration periods noticed in the **Federal Register** on November 6, 2002, 67 FR 67766, and November 22, 2002, 67 FR 70526, to permit citizens or nationals of Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq Lebanon, Libya, Morocco, North Korea, Oman, Qatar, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, or Yemen who were required to register under those notices but did not do so, to appear before, register with, and provide requested information to the Immigration and Naturalization Service between January 27, 2003, and February 7, 2003. Registration during this period shall be considered timely under the original notices.

EFFECTIVE DATES: This notice is effective on January 27, 2003. Aliens described in this notice may register and provide additional information to the Immigration and Naturalization Service on or before February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: Section 265(b) of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1305(b), provides that

> [t]he Attorney General may in his discretion, upon 10 days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

Additionally, section 263(a) of the Act, 8 U.S.C. 1303(a), provides that the Attorney General may "prescribe special regulations and forms for the registration and fingerprinting of * * * aliens of any other class not lawfully admitted to the United States for permanent residence."

The Attorney General has previously exercised his authority under these and other provisions of the Act to establish special registration procedures under 8 CFR 264.1(f). 67 FR 52584 (Aug. 12, 2002). These requirements are known as the National Security Entry—Exit Registration System ("NSEERS"). In accordance with the authority set forth in 8 CFR 264.1(f)(4), the Attorney General required certain nonimmigrant aliens who are nationals or citizens of Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq Lebanon, Libya, Morocco, North Korea, Oman, Qatar, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, or Yemen to register and provide specific information to the Immigration and Naturalization Service. See 67 FR 67766 (Nov. 6, 2002); 67 FR 70526 (Nov. 22, 2002) (the "Groups I and II Notices").

Subsequent events have indicated that some number of individuals affected by the Groups I and II Notices remained unaware of the requirements of the notices, despite the publication of the notices in the **Federal Register** and the efforts of the Department to publicize the requirements. As an act of grace, and as an act that is entirely within the Attorney General's discretion, the Attorney General has decided to permit those individuals who were required to register under the Groups I and II Notices but who did not do so, an additional opportunity to register and provide information in a timely fashion. This exercise of discretion does not apply to an alien who was not covered by the Groups I and II Notices. Given the publication of multiple notices relating to other countries issued subsequent to the Groups I and II Notices, and the attendant publicity about NSEERS, aliens who are covered by other notices are not being, and should not expect to be, afforded an additional opportunity to comply with the requirements of the relevant notice.

Notice of Requirements for Registration of Certain Nonimmigrant Aliens From Designated Countries

Pursuant to sections 261 through 266 of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1302 through 1306, and particularly sections 263(a) and 265(b) of the Act, 8 U.S.C. 1303(a) and 8 U.S.C. 1305(b), and 8 CFR 264.1(f), and as a matter of discretion only, I hereby order that a national or citizen of Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq, Lebanon, Libya, Morocco, North Korea, Oman, Qatar, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, or Yemen, who was required to register and provide information to the Immigration and Naturalization Service pursuant to the notices published in the **Federal Register** at 67 FR 67766 on November 6, 2002, and at 67 FR 70526 on November 22, 2002, and who did not do so, may do so between January 27, 2003, and February 7, 2003, inclusive, and that such registration will be considered to have been made in a timely fashion.

Dated: January 14, 2003.

John Ashcroft,

Attorney General.

Appendix: Immigration and Naturalization Service, Offices for Registration of Certain Nonimmigrants Pursuant to Notice of January 16, 2003

Alaska—Anchorage, 620 East 10th Avenue, Anchorage, Alaska 99501.
Arizona—Phoenix, 2035 North Central Avenue, Phoenix, Arizona 85004.
Arizona—Tucson, 6431 South Country Club Road, Tucson, Arizona 85706–5907.
Arkansas—Fort Smith, 4991 Old Greenwood Road, Fort Smith, Arkansas 72903.
California—Fresno, 865 Fulton Mall, Fresno, California 93721.
California—Los Angeles, 300 North Los Angeles Street, Room 2024, Los Angeles, California 90012.
California—Sacramento, 650 Capitol Mall, Sacramento, CA 95814.
California—San Bernardino, 655 West Rialto Avenue, San Bernardino, California 92410.
California—San Diego, 880 Front Street, Suite 1209, San Diego, California 92101.
California—San Francisco, 444 Washington Street, San Francisco, California 94111.
California—San Jose, 1887 Monterey Road, San Jose, California 95112.
California—Santa Ana, 34 Civic Center Plaza, Santa Ana, California 92701.
Colorado—Denver, 4730 Paris Street, Denver, CO 80239.
Connecticut—Hartford, 450 Main Street, 4th Floor, Hartford, Connecticut 06103.
Florida—Jacksonville, 4121 Southpoint Boulevard, Jacksonville, Florida 32216.
Florida—Miami, 7880 Biscayne Boulevard, Miami, Florida 33138.
Florida—Orlando, 9403 Tradeport Drive, Orlando, Florida 32827.
Florida—Tampa, 5524 West Cypress Street, Tampa, Florida 33607–1708.
Florida—West Palm Beach, 326 Fern Street, Riviera Beach, Florida 33401.
Georgia—Atlanta, 77 Forsyth Street, SW., Atlanta, Georgia 30303.
Guam—Agana, Sirena Plaza, Suite 100, 108 Hernan Cortez Avenue, Hagatna, Guam 96910.
Hawaii—Honolulu, 595 Ala Moana Boulevard, Honolulu, Hawaii 96813.
Idaho—Boise, 1185 South Vinnell Way, Boise, Idaho 83709.
Illinois—Chicago, 230 South Dearborn, 2nd Floor, Chicago, Illinois 60604.

Indiana—Indianapolis, 950 N. Meridian Street, Room 400, Indianapolis, Indiana 46204.
Iowa—Des Moines, 210 Walnut Street, Room 369, Des Moines, Iowa 50309.
Kansas—Wichita, 271 West 3rd Street North, Suite 1050, Wichita, Kansas 67202–1212.
Kentucky—Louisville, 601 West Broadway, Room 390, Louisville, Kentucky 40202.
Louisiana—New Orleans, 701 Loyola Avenue, New Orleans, Louisiana 70113.
Maine—Portland, 176 Gannet Drive, South Portland, Maine 04106.
Maryland—Baltimore, 31 Hopkins Place, Baltimore, Maryland 21201.
Massachusetts—Boston, Government Center, JFK Federal Building, Boston, Massachusetts 02203.
Michigan—Detroit, 333 Mount Elliot Street, Detroit, Michigan 48207–4381.
Minnesota—Minneapolis, 2901 Metro Drive, Suite 100, Bloomington, Minnesota 55425.
Missouri—Kansas City, 9747 Northwest Conant Avenue, Kansas City, Missouri 64153.
Missouri—St. Louis, 1222 Spruce Street, St. Louis, Missouri 63103.
Montana—Helena, 2800 Skyway Drive, Helena, Montana 59601.
Nebraska—Omaha, 3736 South 132nd Street, Omaha, Nebraska 68144.
Nevada—Las Vegas, 3373 Pepper Lane, Las Vegas, NV 89120–2739.
Nevada—Reno, 1352 Corporate Boulevard, Reno, Nevada 85902.
New Hampshire—Manchester, 803 Canal Street, Manchester, New Hampshire 03101.
New Jersey—Cherry Hill, 1886 Greentree Road, Cherry Hill, New Jersey 08003.
New Jersey—Newark, 970 Broad Street, Newark, New Jersey 07102.
New Mexico—Albuquerque, 1720 Randolph Road, SE., Albuquerque, New Mexico 87106.
New York—Albany, 1086 Troy-Schenectady Road, Latham, New York 12110.
New York—Buffalo, 130 Delaware Avenue, Buffalo, New York 14202.
New York—New York City, 26 Federal Plaza, New York, New York 10278.
North Carolina—Charlotte, 210 E. Woodlawn Road, Building 6, Suite 138, Charlotte, North Carolina 28217.
Ohio—Cincinnati, 550 Main Street, Room 4001, Cincinnati, Ohio 45202.
Ohio—Cleveland, 1240 East Ninth Street, Cleveland, Ohio 44199.
Ohio—Columbus, 50 West Broad Street, Suite 304D, Columbus, Ohio 43215.
Oklahoma—Oklahoma City, 4149 Highline Boulevard, Suite 300, Oklahoma City, Oklahoma 73108.
Oregon—Portland, 511 Northwest Broadway, Portland, Oregon 97209.
Pennsylvania—Philadelphia, 1600 Callowhill Street, Philadelphia, Pennsylvania 19130.
Pennsylvania—Pittsburgh, 1000 Liberty Avenue, Room 214, Pittsburgh, Pennsylvania 15222.
Puerto Rico—San Juan, 7 Tabonuco Street, Guaynabo, Puerto Rico 00968.
Rhode Island—Providence, 200 Dyer Street, Providence, Rhode Island 02903.
St. Croix—Christiansted, Sunny Isle Shopping Center, Christiansted, St. Croix, U. S. Virgin Islands 00820.
St. Thomas—Charlotte, Amalie Nisky Center, Suite 1A, First Floor South, Charlotte Amalie, St. Thomas, U. S. Virgin Islands 00802.
South Carolina—Charleston, 170 Meeting Street, Fifth Floor, Charleston, South Carolina 29401.
South Carolina—Greer, 142–D West Philips Road, Greer, South Carolina 29650.
Tennessee—Memphis, 1314 Sycamore View Road, Suite 100, Memphis, Tennessee 38134.
Texas—Dallas, 8101 North Stemmons Freeway, Dallas, Texas 75247.
Texas—El Paso, 1545 Hawkins Boulevard, El Paso, Texas 79925.
Texas—Harlingen, 2102 Teege Avenue, Harlingen, Texas 78550–4667.
Texas—Houston, 126 Northpoint Drive, Houston, Texas 77060.
Texas—San Antonio, 8904 Fourwinds Drive, San Antonio, Texas 78239.
Utah—Salt Lake City, 5272 South College Drive, #100, Murray, Utah 84123.
Vermont—St. Albans, 64 Gricebrook Road, St. Albans, Vermont 05478.
Virginia—Norfolk, 5280 Henneman Drive, Norfolk, Virginia 23513.
Washington, DC, 4420 North Fairfax Drive, Arlington, Virginia 22203.
Washington—Seattle, 815 Airport Way, South, Seattle, Washington 98134.
Washington—Spokane, 920 W. Riverside Room 691, Spokane, Washington 99201.
Washington—Yakima, 417 E. Chestnut, Yakima, Washington 98901.
West Virginia—Charleston, 210 Kanawha Boulevard West, Charleston, West Virginia 25302.
Wisconsin—Milwaukee, 310 East Knapp Street, Milwaukee, Wisconsin 53202.

For further information relating to this notice and information about local office hours and locations, the public may call the National Customer Service Center at 1–800–375–5283 or (TTY) 1–800–767–1833, or visit the INS Web site at *http://www.ins.gov/*.

[FR Doc. 03–1163 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–10–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of two new information collections. The first information collection consists of two forms, NA 14123 and NA 14124, used to register records management conference and training class attendees and to collect and process credit card payments. The second information collection is another form, NA Form 14115, Professional Researcher Listing Application Form, used by professional researchers who are available to perform research in NARA's holdings for the public. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before March 17, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title*: Records Management Conference Electronic Registration Form and Records Management Training Class Registration Form.
OMB number: 3095–NEW.
Agency form number: NA Forms 14123 and 14124.
Type of review: Regular.
Affected public: Business or for-profit, nonprofit organizations and institutions, and federal, state and local government agencies.
Estimated number of respondents: 400.

Estimated time per response: 5 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 33 hours.

Abstract: Each year NARA conducts a records management conference and a variety of records management training classes. Federal Government employees and interested state and local government and private sector individuals such as contractors and vendors also attend the records management conference and training classes. Attendees are required to pre-register for both the records management conference and for the records management training classes and these forms provide for standardized collection of necessary registration and payment information.

2. *Title*: Professional Researcher Listing Application Form.

OMB number: 3095–NEW.

Agency form number: NA Form 14115.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

Estimated number of respondents: 100.

Estimated time per response: 9 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 15 hours.

Abstract: NARA is not authorized or funded to undertake, at our customer's requests, in-depth research into the records within our holdings. Some customers, however, are not able to undertake such research themselves, due to a variety of reasons, including geographic distance from our facilities, lack of time, and financial constraints. In the past, NARA has provided these individuals, on request, information about professional researchers who had advised us, on their own initiative, that they were interested in performing freelance research for hire at our facilities. Following a recent review of this process, however, NARA concluded that the information was neither collected, maintained, nor disseminated in the most efficient and effective manner. To better serve all customers, NARA created NA Form 14115, Professional Researcher Listing Application Form. The new form should help NARA to improve (1) program efficiency and effectiveness, as mandated by the Government Performance and Results Act, and (2) service to our customers.

Dated: January 7, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–886 Filed 1–15–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request an extension of an approved information collection used by participants in training courses and workshops that NARA conducts. NARA needs the information to assess customer satisfaction with course content and delivery and to ensure that the training meets the customer's needs. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before March 17, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301 837–3213; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301 837–1694, or fax number 301 837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Archives and Records Administration Class Evaluation Forms.

OMB number: 3095–0023.

Agency form number: NA Form 2019.

Type of review: Regular.

Affected public: Individuals or households, Business or other for-profit, Nonprofit organizations and institutions, Federal, state, local, or tribal government agencies.

Estimated number of respondents: 6,400.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent takes NARA sponsored training classes).

Estimated total annual burden hours: 533 hours.

Abstract: The information collection allows uniform measurement of customer satisfaction with NARA training courses and workshops. NARA distributes the approved form to the course coordinators on diskette for customization of selected elements, shown as shaded areas on the form submitted for clearance.

Dated: January 7, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–900 Filed 1–15–03; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the board. Notice of this meeting is required under the Sunshine in Government Act and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 9 a.m.–12 p.m. on Thursday, January 30, 2003.

STATUS: Open.

ADDRESSES: The JW Marriott Hotel, Salon J and K, 1331 Pennsylvania Avenue, NW., Washington, DC, (202) 393–2000.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting on Thursday, January 30, 2003 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 606–8536–TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda—86th meeting of the National Museum Services Board in Salon J & K of The JW Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington DC, on Thursday, January 30, 2003

9 am–12 pm

I. Chairperson's Welcome
II. Approval of Minutes from the 85th NMSB Meeting
III Director's Welcome and Remarks
IV. Overview of the President's Committee on the Arts and Humanities, Henry Moran, Executive Director
V. Staff Updates
VI. 21st Century Learner Dialogue
(a) Presentation, Beverly Sheppard, President of Old Sturbridge Village
(b) Service Organization Response, Ed Able, President and CEO, American Association of Museums, Janet Rice Elman, Executive Director, Association of Children's Museums
(c) Open Discussion
VII. OBE/IMLS Strategic Planning
VIII. Board Discussion
IX. Closing Remarks

Dated: January 13, 2003.

Teresa LaHaie,

Administrative Officer, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 03–1164 Filed 1–14–03; 2:37 pm]

BILLING CODE 7036–01–M

NATIONAL LABOR RELATIONS BOARD

Sunshine Act

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 3:30 p.m., Tuesday, January 15, 2003.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices); and (9)(B) disclosure would significantly frustrate implementation of a proposed Agency action * * *).

MATTERS TO BE CONSIDERED: Internal Administrative Matters.

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Acting Executive Secretary, Washington, DC 20570, Telephone: (202) 273–1067.

Dated in Washington, DC, on January 14, 2003.

By direction of the Board.

Lester A. Heltzer,

Acting Executive Secretary.

[FR Doc. 03–1186 Filed 1–14–03; 3:40 pm]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Nuclear Management Company, LLC; Notice of Withdrawal of Application for Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Nuclear Management Company, LLC (the licensee), to withdraw its January 14, 2002, application for proposed amendment to Facility Operating License No. DPR–43 for the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would have revised the Technical Specification 3.10.f, "Inoperable Rod Position Indicator [IRPI] Channels," to provide an allowed outage time for the IRPI system of 24 hours with more than one IRPI per group inoperable.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 19, 2002 (67 FR 7419). However, by letter dated January 8, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 14, 2002, and the licensee's letter dated January 8, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 10th day of January, 2003.

For the Nuclear Regulatory Commission.

John G. Lamb,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–987 Filed 1–15–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–06257]

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the American Stock Exchange LLC (KIT Manufacturing Company, Inc., Common Stock, no par value)

January 10, 2003.

KIT Manufacturing Company, a California corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in State of California, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on December 16, 2002 to withdraw the Issuer's Security from listing on the Amex. The Board took such action in order to maximize shareholder value with respect to the proposed asset sale transactions and in light of the significant costs associated with continued listing and registration on the Amex. In addition, the Issuer states that over the past several months there have been fewer than 300 shareholders of record in the Security. The Issuer represents that the Security is currently quoted on the Pink Sheets.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act [3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before February 3, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–955 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27637]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 10, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 4, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 4, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

TXU US Holdings Company (70–10046)

TXU US Holdings Company ("TXU Holdings"), located at Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201–3411, has filed an application under section 3(a)(1) of the Act, for an order exempting TXU Holdings and its subsidiary companies from regulation under all of the provisions of the Act, except section 9(a)(2).

TXU Holdings is a subsidiary of TXU Corp., an exempt holding company under section 3(a)(1) of the Act.[1] Prior to implementation of the restructuring plan that is described below ("Restructuring"), TXU Holdings (formerly, TXU Electric Company) ("TXU Electric"), was engaged in the generation, transmission, purchase and distribution of electric energy in the north-central, eastern and western parts of Texas. As of December 31, 2000, TXU Electric provided service to approximately 2.6 million customers in 92 counties and 370 incorporated municipalities, including the Dallas-Fort Worth area of Texas.

Prior to the Restructuring, TXU Corp. indirectly owned all of the issued and outstanding common stock of TXU SESCO Company ("TXU SESCO"), an electric utility company. As of December 31, 2000, TXU SESCO served approximately 43,000 customers in parts of ten counties in eastern and central Texas having a population estimated at 127,000. TXU Corp. also owns all of the issued and outstanding common stock of TXU Gas Company, a gas utility company that serves approximately 1,438,024 industrial, commercial, residential and agricultural customers in the north-central, eastern and western parts of Texas.

As part of the Restructuring, all of the electric transmission and distribution facilities previously owned by TXU Electric and TXU SESCO were transferred on January 1, 2002, to a new company, TXU Electric Delivery Company, which was subsequently renamed Oncor Electric Delivery Company ("Oncor").[2] Oncor is a direct wholly-owned subsidiary of TXU Holdings (formerly TXU Electric) and an indirect wholly-owned subsidiary of TXU Corp. On December 31, 2001, TXU Electric also transferred all of its generating plants to six indirect subsidiaries of TXU Electric, each of which has been determined by the Federal Energy Regulatory Commission to be an exempt wholesale generator ("EWG"). Also as part of the Restructuring, TXU Corp. transferred to TXU Holdings the merchant energy trading operations previously conducted by subsidiaries of TXU Gas Company and other subsidiaries engaged in providing energy services, mining operations, and fuel procurement.

As part of the Restructuring: (1) TXU Electric transferred its electric transmission and distribution assets to Oncor on January 1, 2001, as a capital contribution, and Oncor assumed certain associated liabilities of TXU Electric; (2) TXU Electric transferred its electric generation assets to six new indirect subsidiaries on December 31, 2001, which, as indicated, are EWGs; (3) the electric transmission and distribution assets of TXU SESCO were acquired by Oncor on January 1, 2001, through a statutory merger of a subsidiary of TXU SESCO, to which such assets had been transferred, into Oncor; and (4) TXU Electric transferred other non-utility assets to various new subsidiaries.

As a result of the Restructuring, the record indicates that TXU Holdings no longer conducts any business operations of its own, but is a holding company only, with one direct public-utility subsidiary (Oncor), whose operations are wholly within the State of Texas,

[1] *See TUC Holding Company, et al.* HCAR No. 26749 (Aug. 1, 1997).

[2] Oncor was incorporated (under the name TXU Electric Delivery Company) under Texas law on November 6, 2001 in order to facilitate the structural separation (unbundling) of TXU Electric's electric transmission and distribution assets from its electric generation assets in accordance with the requirements of electric utility restructuring legislation passed in Texas in 1999. *See* Texas Utilities Code, 39.051.

and numerous direct and indirect non-utility subsidiaries, including EWGs. TXU Holdings asserts that the requirements for an exemption under section 3(a)(1) of the Act are met because TXU Holdings and Oncor, its only public-utility subsidiary, are both incorporated in Texas, the state in which Oncor conducts all of its public-utility operations.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–912 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14127]

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the Chicago Stock Exchange, Inc. (United Financial Mortgage Corporation, Common Stock, no par value)

January 10, 2003.

United Financial Mortgage Corporation, an Illinois corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value ("Security"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX" or "Exchange").

The Issuer states in its application that it has met the complied with the requirements of the CHX Article XXVIII, Rule 4, by complying with Exchange's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On October 15, 2002, the Board of Directors of the Issuer approved a resolution to withdraw the Company's Security from listing on the CHX. The Board states that the following reasons factored into its decision to withdraw the Security from listing and registration on the CHX: (i) The Issuer's Security began trading on the American Stock Exchange LLC ("Amex") on September 9, 2002, and (ii) the Issuer believes that listing on the Amex will provide greater visibility for its Security. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the CHX and shall have no effect upon its continued listing and registration on the Amex under section 12(b) of the Act.[3]

Any interested person may, on or before February 3, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the CHX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–954 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–U

[1] 15 U.S.C. 781(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 781(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25886; 813–296]

Evergreen Ventures LLC, et al.; Notice of Application

January 10, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under the Act.

SUMMARY: Applicants request an order to exempt certain investment funds formed for the benefit of eligible current and former employees of Pillsbury Winthrop LLP and its affiliates from certain provisions of the Act. Each fund will be an "employees' securities company" as defined in section 2(a)(13) of the Act.

APPLICANTS: Evergreen Ventures LLC (the "Investment Fund") and Pillsbury Winthrop LLP (together with any entity that results from a reorganization of Pillsbury Winthrop LLP into a different type of business organization or into an entity organized under the laws of another jurisdiction, the "Firm").

DATES: The application was filed on September 1, 2000, and amended on January 22, 2001, and January 9, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 4, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, 50 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Firm is a law firm organized as a Delaware limited liability partnership. The Firm and its "affiliates," as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the "Exchange Act"), are referred to collectively as the "Pillsbury Group" and individually as a "Pillsbury Entity." The Firm's equity owners are partners ("Partners").

2. The Investment Fund is a Delaware limited liability company established pursuant to a limited liability company agreement. The applicants may in the future offer additional pooled investment vehicles identical in all material respects to the Investment Fund, other than investment objectives and strategies (the "Subsequent Funds," and together with the Investment Fund, the "Funds"). The applicants anticipate

that each Subsequent Fund will also be structured as a limited liability company, although a Subsequent Fund could be structured as a limited partnership, corporation, trust or other business organization formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act. The Funds will operate as non-diversified, closed-end management investment companies. The Funds will be established to enable the Partners and certain attorney and non-attorney employees of Pillsbury Group to participate in certain investment opportunities that come to the attention of Pillsbury Group. Participation as investors in the Funds will allow the Eligible Investors, as defined below, to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

3. The Firm will serve as the sole manager (the "Manager") of the Funds. The Funds will have one or more investment committees ("Investment Committees"), each member of which shall be a current Partner. The Manager will appoint the members of each Investment Committee. The Manager or any person involved in the operation of the Funds will register as investment advisers if required under the Investment Advisers Act of 1940 (the "Advisers Act"), or the rules under the Advisers Act.

4. Interests in the Funds ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act"), Regulation D under the Securities Act or rule 701 under the Securities Act, or any successor rule, and will be sold solely to Eligible Investors. Eligible Investors consist of "Eligible Employees," "Qualified Investment Vehicles," "Immediate Family Members," each as defined below, and Pillsbury Entities. The term "Fund Investors" refers to Eligible Investors who invest in the Funds. Prior to receiving a subscription agreement from an individual, the Manager must reasonably believe that the individual is a sophisticated investor capable of understanding and evaluating the risks of participating in the Fund without the benefit of regulatory safeguards. An "Eligible Employee" is a person who is, at the time of investment, a current or former Partner or an employee of Pillsbury Group who (a) meets the standards of an "accredited investor" set forth in rule 501(a)(5) or rule 501(a)(6) of Regulation D under the Securities Act, (b) is one of 35 or fewer Partners or employees of Pillsbury Group who meets certain salary and other requirements ("Category 2 investors"), or (c) is a lawyer employed by the Firm who purchases Interests pursuant to an offering under rule 701 under the Securities Act ("rule 701") ("Category 3 investors").

5. Each Category 2 investor will be a Partner or employee of Pillsbury Group who meets the sophistication requirements set forth in rule 506(b)(2)(ii) of Regulation D under the Securities Act [1] and who (a) has a graduate degree, has a minimum of 3 years of business and/or professional experience, has had compensation of at least $150,000 in the preceding 12 month period, and has a reasonable expectation of compensation of at least $150,000 in each of the 2 immediately succeeding 12 month periods, or (b) is a "knowledgeable employee," as defined in rule 3c–5 under the Act, of the Fund (with the Fund treated as though it were a "Covered Company" for purposes of the rule). In addition, a Category 2 investor qualifying under (a) above will not be permitted to invest in any calendar or fiscal year (as determined by the Firm) more than 10% of his or her income from all sources for the immediately preceding calendar or fiscal year in one or more Funds.

6. Each Category 3 investor will be a lawyer employed by the Firm who reasonably expects to have compensation of at least $120,000 in the next 12 months and who has a reasonable expectation of compensation of at least $150,000 in each of the 2 immediately succeeding 12 month periods. In addition, any Category 3 investor who is not a Partner will not be permitted to invest in any calendar or fiscal year (as determined by the Firm) more than 10% (or 5%, if he or she has been employed as a lawyer for less than 3 years) of his or her reasonably expected income from all sources for that year in one or more Funds. Category 3 investors will purchase Interests pursuant to an offering under rule 701. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, the Firm will make available at no charge to potential Fund Investors the services of an independent third party ("Financial Consultant") qualified to provide advice concerning the appropriateness of investing in a Fund.

7. A Qualified Investment Vehicle is a trust or other entity the sole beneficiaries of which are Eligible Employees or their Immediate Family Members or the settlors and trustees of which consist of Eligible Employees or Eligible Employees together with Immediate Family Members.[2] Immediate Family Members include any parent, child, spouse of a child, spouse, brother or sister, and includes any step and adoptive relationships. A Qualified Investment Vehicle must be either (a) an accredited investor as defined in rule 501(a) of Regulation D or (b) an entity for which an Eligible Employee is a settlor and principal investment decision-maker. An Immediate Family Member who purchases Interests must be an accredited investor as defined in rule 501(a)(5) or rule 501(a)(6) of Regulation D.

8. Each Fund may issue its Interests in series (each, a "Series" and collectively, the "Series") with new Series of Interests being offered from time to time. Each Series may be further divided into two or more separate classes (each, a "Class"), having such terms and conditions as the Manager may establish. Each Series will represent an interest in some or all of those Fund investments made by the Fund during a specified period of time (the "Investment Period"). Following the end of a Series' Investment Period, no new investment commitments will be made for that Series, although following a Series' Investment Period additional money may be contributed to an existing investment.

9. In order to comply with the requirements of rule 701, at the beginning of each Investment Period (and, if necessary, periodically thereafter), the Fund will accept capital contributions or irrevocable commitments for the relevant Series from those Eligible Investors investing pursuant to Regulation D (the "Regulation D Investors"), and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments for that Series from those Eligible Investors investing pursuant to rule 701 (the "rule 701 Investors"). The capital contributions and commitments of the rule 701 Investors, in the aggregate, will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors. No more than approximately 13% (*i.e.*, 15%

[1] Some or all Category 2 investors may purchase their Interests in an offering under rule 701 rather than under Regulation D.

[2] A Qualified Investment Vehicle is not permitted to participate in a rule 701 offering. The Firm or the Manager may, however, in their discretion and in compliance with rule 701, permit an Eligible Employee who purchases Interests in the Fund in a rule 701 offering to transfer some or all of those Interests to a Qualified Investment Vehicle.

of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors) of all Fund investments and other authorized expenditures for each Series will at any time be paid for out of money contributed to the Fund by rule 701 Investors.

10. The terms of a Fund will be fully disclosed in the private offering memorandum of the Fund, and each Eligible Investor will receive a private offering memorandum and the Fund's limited liability company agreement (or other organizational documents) prior to his or her investment in the Fund. Each Fund will send its Fund Investors annual reports, which will contain audited financial statements with respect to those Series in which the Fund Investor has Interests, as soon as practicable after the end of each fiscal year. In addition, as soon as practicable after the end of each fiscal year, the Funds will send a report to each Fund Investor setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state tax returns.

11. Fund Investors will be permitted to transfer their Interests only with the express consent of the Manager. Any such transfer must be to another Eligible Investor. No fee of any kind will be charged in connection with the sale of Interests.

12. If any Fund Investor leaves the Firm during the Investment Period for a Series, the Manager may, in its sole discretion, repurchase his or her Interests in that Series as follows:

a. If a Fund Investor leaves the Firm less than one year following the date that Fund Investor's investment is accepted, the Manager will have 90 days to repurchase such Fund Investor's Interests (or cancel indebtedness) at the paid-in investment amount (less distributions) and without interest.

b. If a Fund Investor leaves the Firm one year or more following the date that Fund Investor's investment is accepted, the Manager will repurchase the Fund Investor's Interests (or cancel indebtedness) at fair value determined either (1) as of the Fund Investor's last date of association or employment with the Firm, or (2) as of the next date of valuation of the Series. Payment will be made within 90 days of the date on which the fair value of the Fund Investor's Interests is determined.

13. The Manager may require a Fund Investor to withdraw from a Fund if: (a) A Fund Investor ceases to be an Eligible Investor; (b) a Fund Investor is no longer deemed to be able to bear the economic risk of investment in a Fund; (c) adverse tax consequences were to inure to the Fund were a particular Fund Investor to remain; (d) the continued membership of the Fund Investor would violate applicable law or regulations; or (e) the Manager, in its sole discretion, deems such withdrawal in the best interest of the Fund. These withdrawal policies apply (a) during the Investment Period, with respect to Fund Investors who have not left the Firm, and (b) after the Investment Period, with respect to any Fund Investor.

14. The Firm reserves the right to impose vesting provisions on a Fund Investor's investments in a Fund. In an investment program that provides for vesting provisions, all or a portion of a Fund Investor's Interests will be treated as unvested, and vesting will occur through the passage of a specified period of time or may be based on certain performance milestones (such as admission of an associate lawyer as a Partner of the Firm). During the Investment Period, vested and unvested Interests will be subject to the provisions discussed above governing Fund Investors who leave the Firm during the Investment Period. Thereafter, a Fund Investor's Interests that are or become vested will not be subject to repurchase except to the extent that the Manager determines to require the withdrawal of that Fund Investor as discussed above. It is anticipated that the Manager rarely will require such withdrawal. Following the Investment Period, any portion of a Fund Investor's Interests that are unvested at the time of termination of a Fund Investor's employment with the Firm (or at the time of that Fund Investor's failure to achieve the relevant performance milestone) are subject to repurchase or cancellation. The decision to repurchase a Fund Investor's Interests will be made on a case-by-case basis by the Manager.

15. Upon any repurchase or cancellation of all or a portion of a Fund Investor's Interests, a Fund will at a minimum pay to the Fund Investor the lesser of (a) the amount actually paid by the Fund Investor to acquire the Interests less the amount of any distributions received by that Fund Investor from the Fund (plus interest at or above the prime rate, as determined by the Manager) and (b) the fair value of the Interests determined at the time of repurchase or cancellation, as determined in good faith by the Manager. Any interest owed to a Fund Investor pursuant to (a) above will begin to accrue at the end of the Investment Period.

16. The Firm may be reimbursed by a Fund for reasonable and necessary out-of-pocket costs directly associated with the organization and operation of the Funds, including administrative and overhead expenses. There will be no allocation of any of the Firm's operating expenses to a Fund. In addition, the Firm may allocate to a Series any out-of-pocket expenses specifically attributable to the organization and operation of that Series. No separate management fee will be charged to a Fund by the Manager, and no compensation will be paid by a Fund or by Fund Investors currently employed by Pillsbury Group to the Manager for its services. The Manager may impose a fixed fee or a management fee, in either case not to exceed one percent of the value of the Interests held by any Fund Investor. Such a fee will be charged only to a person who becomes a former employee or Partner of Pillsbury Group and any Qualified Investment Vehicle associated with that Fund Investor.

17. The Funds may borrow from Pillsbury Group, a Partner, or a bank or other financial institution, provided that a Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short-term paper). Any borrowings by a Fund will be non-recourse other than to the Pillsbury Group. If a Pillsbury Entity or a Partner makes a loan to the Funds, the interest rate on the loan will be no less favorable to the Funds than the rate that could be obtained on an arm's length basis.

18. No Fund will acquire any security issued by a registered investment company if immediately after the acquisition the Fund would own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a)

by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e) and (h)), sections 36 through 53 of the Act, and the rules and regulations under the Act.

3. Section 17(a) generally prohibits any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such an affiliated person or principal underwriter, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit a Fund to: (a) Purchase, from the Firm or any affiliated person thereof, securities or interests in properties previously acquired for the account of the Firm or any affiliated person thereof; (b) sell, to the Firm or any affiliated person thereof, securities or interests in properties previously acquired by the Funds; (c) invest in companies, partnerships or other investment vehicles offered, sponsored or managed by the Firm or any affiliated person thereof; and (d) purchase interests in any company or other investment vehicle (i) in which the Firm owns 5% or more of the voting securities, or (ii) that otherwise is an affiliated person of the Fund (or an affiliated person of such a person) or an affiliated person of the Firm.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that the Eligible Investors will be informed in the Fund's private offering memorandum of the possible extent of the Fund's dealings with the Firm or any affiliated person thereof. Applicants also state that, as financially sophisticated professionals, Eligible Investors will be able to evaluate the attendant risks. Applicants assert that the community of interest among the Fund Investors and the Firm will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Fund, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Fund is a participant. Joint transactions in which a Fund may participate could include the following: (a) An investment by one or more Funds in a security in which the Firm or its affiliated person, or another Fund, is a participant, or with respect to which the Firm or an affiliated person of the Firm is entitled to receive fees (including, but not limited to, legal fees, consulting fees, or other economic benefits or interests); (b) an investment by one or more Funds in an investment vehicle sponsored, offered or managed by the Firm; and (c) an investment by one or more Funds in a security in which an affiliate is or may become a participant.

6. Applicants state that strict compliance with section 17(d) would cause the Funds to forego investment opportunities simply because a Fund Investor, the Firm or other affiliates of the Fund also had made or contemplated making a similar investment. In addition, because investment opportunities of the types considered by the Funds often require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, there may be certain attractive opportunities of which a Fund may be unable to take advantage except as a co-participant with other persons, including affiliates. Applicants note that, in light of the Firm's purpose of establishing the Funds so as to reward Eligible Investors and to attract highly qualified personnel to the Firm, the possibility is minimal that an affiliated party investor will enter into a transaction with a Fund with the intent of disadvantaging the Fund. Finally, applicants contend that the possibility that a Fund may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 4 below. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of the Firm or of a Partner; (b) for purposes of paragraph (d) of the rule, (i) employees of the Firm will be deemed employees of the Funds, (ii) officers of the Manager and the Manager will be deemed to be officers of the Fund, and (iii) the Manager will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Firm. Applicants assert that the securities held by the Funds are most suitably kept in the Firm's files, where they can be referred to as necessary.

8. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons ("disinterested directors") take certain actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g–1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g–1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g–1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act and the rules thereunder. Rule 17g–1(j)(3) requires that investment companies relying on this exemption have a majority of disinterested directors, that those disinterested directors select and nominate any other disinterested directors, and that any legal counsel for those disinterested directors be independent.

9. Applicants request an exemption from section 17(g) and rule 17g–1 to the

extent necessary to permit each Fund to comply with rule 17g–1 without the necessity of having a majority of the disinterested directors take such actions and make such approvals as are set forth in the rule. Specifically, each Fund will comply with rule 17g–1 by having the Manager take such actions and make such approvals as are set forth in rule 17g–1. Applicants state that, because the Manager will be an interested person of the Fund, a Fund could not comply with rule 17g–1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). Applicants believe the filing requirements are burdensome and unnecessary as applied to the Funds. The Manager will maintain the materials otherwise required to be filed with the Commission by rule 17g–1(g) and agrees that all such material will be subject to examination by the Commission and its staff. The Manager will designate a person to maintain the records otherwise required to be filed with the Commission under paragraph (g) of the rule. Applicants also state that the notices otherwise required to be given to the board of directors would be unnecessary as the Funds will not have boards of directors. The Funds will comply with all other requirements of rule 17g–1.

10. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds.

11. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Funds and would entail administrative and legal costs that outweigh any benefit to the Fund Investors. Applicants request exemptive relief to the extent necessary to permit each Fund to report annually to its Fund Investors. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the Manager of each Fund and any other persons who may be deemed members of an advisory board of a Fund from filing Forms 3, 4 and 5 under section 16 of the Exchange Act with respect to their ownership of Interests in the Fund. Applicants assert that, because there will be no trading market for Interests and transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

The applicants agree that any order granting the requested relief will be subject to the following conditions:

Fund Operations

1. Each proposed transaction to which a Fund is a party otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (each, a "section 17 Transaction") will be effected only if the Manager determines that: (a) The terms of the section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Fund Investors of the participating Fund and do not involve overreaching of the Fund or its Fund Investors on the part of any person concerned; and (b) the section 17 Transaction is consistent with the interests of the Fund Investors of the participating Fund, the Fund's organizational documents and the Fund's reports to its Fund Investors.

In addition, the Manager will record and preserve a description of such section 17 Transactions, its findings, the information or materials upon which its findings are based and the basis therefor. All such records will be maintained for the life of a Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. If purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a Partner or employee of the Pillsbury Group (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

3. The Manager will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of such a person, promoter, or principal underwriter.

4. The Manager will not make on behalf of a Fund any investment in which a Co-Investor, as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment: (a) gives the Manager sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with, the Co-Investor. The term "Co-Investor" with respect to any Fund means any person who is (a) an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Fund; (b) the Pillsbury Group; (c) a Partner, lawyer, or employee of the Pillsbury Group; (d) an investment vehicle offered, sponsored, or managed by the Firm or an affiliated person of the Firm; or (e) an entity in which a Pillsbury Entity acts as a general partner, or has a similar capacity to control the sale or other disposition of the entity's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly owned subsidiary, to any company (a "Parent") of which the Co-Investor is a direct or indirect wholly owned subsidiary, or to a direct or indirect wholly owned subsidiary of its Parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (e) when the investment

is comprised of securities (i) that meet the requirements of and are authorized as Nasdaq SmallCap Market securities by The Nasdaq Stock Market, Inc., (ii) that have an average daily trading volume value over the last 60 calendar days of at least $1 million, and (iii) are issued by an issuer whose common equity securities have a public float value of at least $150 million.

5. Each Fund will send to each person who was a Fund Investor in such Fund at any time during the fiscal year then ended audited financial statements with respect to those Series in which the Fund Investor held Interests. At the end of each fiscal year, the Manager will make a valuation or have a valuation made of all the assets of the Fund as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the Manager of the Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. The Manager of each Fund will maintain and preserve, for the life of each Series of that Fund and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of such Series to be provided to its Fund Investors, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

Compliance With Rule 701

7. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, the Firm will make available at no charge to potential Fund Investors the services of a Financial Consultant qualified to provide advice concerning the appropriateness of investing in a Fund. Specifically, the Financial Consultant will hold one or more group meetings with potential Fund Investors at which the Financial Consultant will discuss the risks and other considerations relevant to determining whether to invest in a Fund. The Financial Consultant also will be available to the group of potential Fund Investors to answer general questions regarding an investment in the Fund. In addition, potential Fund Investors will be given the opportunity to submit relevant questions and issues to the Financial Consultant in advance of the group meetings, so that the Financial Consultant can address those questions and issues at the meetings. The Firm, however, will not need to reveal the specific investments made by any Fund to the Financial Consultant, as long as the investment objectives, risk characteristics and other material information about the Fund of the type that would be disclosed in the offering documents for the Fund is made available to the Financial Consultant.

8. The Firm will at all times control each Fund, within the meaning of rule 405 under the Securities Act. In this regard, the Firm will be the sole manager of the Fund, own at least 95% of the voting Interests of the Fund, and make all investment and other operational decisions for the Fund.

9. The Firm will own not less than 5% of the economic Interests issued by each Series of the Fund, and (as discussed above) at least 95% of the voting Interests of the Fund. In addition, the Firm and its Partners (directly or through Qualified Investment Vehicles) together will own at least 80% of the economic Interests of each Series.

10. The Firm prepares its financial statements on a modified cash basis, and does not consolidate the Fund's financial statements with its own. If, however, the Firm prepared its financial statements in accordance with GAAP, it would consolidate the Fund's financial statements with its own.

11. The Firm, when offering Interests pursuant to rule 701 under the Securities Act, will issue Interests in each Series in compliance with rule 701(d)(2),[3] and will comply with all applicable requirements of rule 701(e).[4]

[3] If the Firm relies on rule 701(d)(2)(ii), it will not sell pursuant to rule 701, during any consecutive 12-month period, Interests in the Fund if the sales price of those Interests exceeds 15% of the total assets of the Fund.

[4] In order to comply with the requirements of rule 701, at the beginning of each Investment Period the Fund will accept capital contributions or irrevocable commitments from Regulation D Investors for the relevant Series, and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments, from rule 701 Investors for that Series, which in the aggregate will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from Regulation D Investors.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–911 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25887; 812–12917]

Robertson Stephens Inc., *et al.*; Notice of Application

January 10, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them and other entities of which Robertson Stephens, Inc. ("RS") is or becomes an affiliated person from section 9(a) of the Act, with respect to a securities-related injunction entered on January 10, 2003, until the Commission takes final action on an application for a permanent order. Applicants also have requested a permanent order.

Applicants: RS, Colonial Management Associates, Inc., Columbia Management Co., Crabbe Huson Group, Inc., Fleet Investment Advisors, Inc., Liberty Advisory Services Corp., Liberty Asset Management Company, Liberty Wanger Asset Management, L.P., Newport Fund Management, Inc., and Stein Roe & Farnham Incorporated (together, the "Adviser Applicants"), and Liberty Funds Distributor, Inc. and Columbia Financial Center, Inc. (together, the "Underwriter Applicants").[1]

Filing Date: The application was filed on January 10, 2003. In addition, a letter was submitted on January 10, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 4, 2003, and should be accompanied by proof of service on applicants, in the form of an

[1] Applicants request that any relief granted pursuant to the application also apply to any other entity of which RS is or hereafter becomes an affiliated person (together with the applicants, the "Covered Persons").

affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: c/o FleetBoston Financial Corporation, 100 Federal Street, Boston, MA 02210.

FOR FURTHER INFORMATION, CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. RS, a Delaware corporation, is a full service investment banking firm, and is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and as an investment adviser under the Investment Advisers Act of 1940. The ultimate parent company of RS is FleetBoston Financial Corporation, which is also the ultimate parent company of the Adviser Applicants, who serve as investment advisers to various registered investment companies (the "Funds"), and of the Underwriter Applicants, who serve as principal underwriters to Funds.

2. On January 10, 2003, the U.S. District Court for the District of Columbia entered a Final Judgment of Permanent Injunction and Other Relief ("Final Judgment") in a matter brought by the Commission.[2] The Commission alleged that RS allocated "hot" initial public offerings ("IPOs") to customers willing to pay a portion of their profits from those IPOs to RS and violated section 17(a) of the Exchange Act, and rule 17a–3 thereunder, and Conduct Rules 2110 and 2330 of the National Association of Securities Dealers, Inc. ("NASD"). The Final Judgment, among other things, enjoined RS, directly or through its officers, directors, agents and employees, from violating section 17(a) of the Exchange Act, and rule 17a–3 thereunder, and NASD Conduct Rules 2110 and 3220. Additionally, the Final Judgment ordered RS to pay disgorgement of $23 million and pay a civil penalty of $5 million.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control, with the other person. Because the applicants are all subsidiaries of the same ultimate parent company, applicants state that they are under common control, and as such are "affiliated persons" of RS within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Final Judgment, applicants may be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicants, are unduly or disproportionately severe or that the applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) of the Act seeking temporary and permanent orders exempting Covered Persons from the provisions of section 9(a) of the Act.

3. Applicants state that the prohibitions of section 9(a) as applied to Covered Persons would be unduly and disproportionately severe and that the conduct of applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicants state that the matters forming the basis of the Final Judgment did not involve any registered investment companies. Applicants state that no current or former officers or employees of any of the applicants who is or was involved in providing advisory or underwriting services to registered investment companies advised or underwritten by the applicants was involved in the conduct resulting in the Final Judgment. Applicants also state that no applicant has ever previously applied for an exemption pursuant to section 9(c) of the Act.

4. Applicants state that the inability of the Adviser Applicants to continue providing advisory services to Funds and the inability of the Underwriter Applicants to continue to serve as principal underwriter to Funds would result in potentially severe hardships for the Funds and their shareholders. Additionally, applicants assert that if they were barred from providing services to registered investment companies, the effect on their businesses and employees would be severe.

5. The Adviser Applicants and the Underwriter Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds that they serve regarding the Final Judgment and the reasons they believe relief pursuant to section 9(c) is appropriate. The Adviser Applicants and Underwriter Applicants will provide the Funds with all information concerning the Final Judgment and the exemptive application necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that applicants have made the necessary showing to justify granting of a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Covered

[2] *Securities and Exchange Commission* v. *Robertson Stephens, Inc.*, Final Judgment of Permanent Injunction and Other Relief Against Robertson Stephens, Inc., 03 Civ. 0027 (RL) (D.D.C., Jan. 10, 2003).

Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Final Judgment, subject to the condition in the application, until the Commission takes final action on an application for a permanent order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–956 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 1492, January 10, 2003].

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, January 15, 2003.

CHANGE IN THE MEETING: Deletion of Item.

The following item will not be considered during the Open Meeting scheduled for Wednesday, January 15, 2003, but will be considered at a later meeting to be announced: Regulation AC (Analyst Certification)

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 14, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–1105 Filed 1–14–03; 11:30 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Federal Register Citation of Previous Announcement: [68 FR 1492, January 10, 2003].

STATUS: Closed Meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, January 7, 2003 at 10 a.m., and Thursday, January 9, 2003 at 9 a.m.

CHANGE IN THE MEETING: Time Change.

The Closed Meeting scheduled for Tuesday, January 7, 2003 at 10 a.m. was changed to Tuesday, January 7, 2003 at 10:45 a.m., and the Closed Meeting scheduled for Thursday, January 9, 2003 at 9 a.m. was changed to Thursday, January 9, 2003 at 10 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 13, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1110 Filed 1–14–03; 11:30 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47153; File No. SR–Amex–2002–117]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

January 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in Item II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions, which was originally approved by the Commission in June 2000, was most recently extended on October 9, 2002, and is due to expire on January 7, 2003.[3]

Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.[4] The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented

[3] The pilot program, originally approved on June 2, 2000, was subsequently extended on two occasions, reinstated after a brief lapse in July 2001, extended again in October 2001, January, April, July and October 2002. *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000), 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001); 44538 (July 11, 2001), 66 FR 37507 (July 18, 2001); 44924 (October 11, 2001), 66 FR 53456 (October 22, 2001); 45241 (January 7, 2002), 67 FR 1524 (January 11, 2002); 45703 (April 8, 2002), 67 FR 18272 (April 15, 2002); 46176 (July 9, 2002), 67 FR 47007 (July 17, 2002); and 46630 (October 9, 2002), 67 FR 64425 (October 18, 2002).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any public customer orders, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the two and one-half years since the pilot program was first implemented, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with the Commission[6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

In order to allow the pilot program to be extended without significant interruption, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–117 and should be submitted by February 6, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will extend the pilot program without interruption while revisions are considered, and does not raise any new regulatory issues.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2002–117) be, and hereby is, approved on an accelerated basis as a pilot program through April 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–949 Filed 1–15–03; 8:45 am]

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[5] Amex trading floor practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000) (File No. SR–Amex–00–30, most recently amended on December 20, 2002).

[6] *See* File No. SR–Amex–00–49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See supra*, note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

[13] *See, e.g.*, Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47152; File No. SR–CHX–2001–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by The Chicago Stock Exchange, Inc., Relating to Cancellation of Orders Otherwise Eligible for Automatic Execution

January 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2001, The Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 15, 2002, the CHX amended the proposal.[3] On January 9, 2003, the CHX again amended the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XX, Rule 37, which governs, among other things, cancellation of market and marketable limit orders that otherwise are eligible for automatic execution. The text of the proposed rule change is below. Additions are in italics.

Article XX

Guaranteed Execution System and Midwest Automated Execution System Rule 37

* * * * *

(b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule (Article XX, Rule 37(a)) and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

(1)–(3) No change in text.

(4) Cancels. MAX will automatically cancel an unexecuted order in the file in the event an order sending firm inputs the proper cancellation instruction *(and not less than five (5) seconds has expired since receipt of the order),* except for an order on hold, a professional order or an oversized order. These orders must be canceled manually. For purposes of this subsection (4), oversized order means an order greater than the auto-execution threshold.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article XX, Rule 37 of the CHX Rules, which governs, among other things, automatic execution of market and marketable limit orders that otherwise would be eligible for automatic execution. The proposed rule change is intended to provide CHX specialists and order-sending firms with further clarity regarding cancellation of orders.[5]

Under the current rule, if an order-sending firm does not receive an immediate execution, the order-sending firm may cancel the order, even though the order is not erroneous in any respect. In the interim between receipt and cancellation, however, the specialist may be actively managing the order and seeking liquidity to fill the order. This can lead to unintended (and unfair) results, including the possibility that the CHX specialist has made an ITS commitment to procure liquidity, which the order-sending firm no longer wants.

By implementing the proposed rule change, which would require that an order reside at the CHX for 5 seconds before a cancellation request will become effective (unless the specialist manually intervenes to cancel the order sooner), CHX specialists would be protected from the foregoing scenario. Significantly, order-sending firms that have entered an order that is truly erroneous may still cancel and resend such orders, using the "cancel/error" function. Accordingly, order-sending firms remain protected from adverse consequences in the case of truly erroneous orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. In particular, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act.[6] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 13, 2002 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, and attachments ("Amendment No. 1"). In Amendment No. 1, the CHX reduced the proposed minimum order life from 15 seconds to five seconds. Amendment No. 1 completely replaces and supersedes the original filing.

[4] *See* January 8, 2003 letter from to Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, and attachments ("Amendment No. 2"). In Amendment No. 2, the CHX provided a new Exhibit A to the proposed rule change that properly underscores language that is being added.

[5] The CHX initially filed this proposed rule change on December 26, 2001. After discussions with Commission staff, the CHX submitted Amendment No. 1, which replaces the original submission in its entirety. The only change is a reduction of the proposed minimum order life from 15 seconds to five seconds. The submission also further details (a) the protections still afforded order-sending firms with legitimate cancellation needs, and (b) the initiatives by other exchanges to deter abuses of the order cancellation process, which have been approved by the Commission in recent months.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–33 and should be submitted by February 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–951 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–U

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47150; File No. SR–NFA–2002–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Concerning Delivery of the Risk Disclosure Statement for Security Futures Contracts by Commodity Trading Advisors

January 9, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on November 29, 2002, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

On November 27, 2002, NFA requested that the CFTC make a determination that review of the proposed rule change is not necessary. The CFTC made such a determination on December 9, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Act[3] makes NFA a national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.[4] Where security futures accounts are solicited by commodity trading advisors (CTAs), the proposed rule changes shift responsibility for providing the risk disclosure for those products from the CTA to the firms carrying the account, which could be a broker-dealer registered under Section 15(b)(11).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Managed Funds Association (MFA) recently raised an issue regarding the security futures risk disclosure statement. The Commodity Futures Modernization Act of 2000 provides that, with respect to security futures products, CTAs, as well as other registrants, must be subject to suitability rules comparable to those that apply to NASD members. The "Know Your Customer" requirements in NFA Compliance Rule 2–30 include the requirement to provide appropriate risk disclosure, so when that rule was amended to include suitability requirements for security futures products, CTAs were included in the provisions of that rule relating to the disclosure statement. As Compliance Rule 2–30 and the related Interpretive Notice currently read, a CTA is required to provide the disclosure statement to the customer in the relatively rare instance where the CTA is the Member soliciting the account.

MFA has questioned this requirement for CTAs, pointing out that investment advisers have no similar requirement. Although someone must provide the disclosure statement to the customer, the Board agrees that the CTA does not have to be the source of that document. In fact, if the account is carried by an NASD member that is itself required by NASD rules to provide the document, NFA's current rule could result in both the CTA and the Futures Commission Merchant (FCM) delivering the document. Therefore, the Board amended NFA Compliance Rule 2–30 and the related Interpretive Notice to remove CTAs from the special risk disclosure requirements for security futures products and to place the obligation to provide the statement on the Member carrying an account solicited by the CTA. The CTA must still, of course, consider how well a customer understands the risks when determining if it is appropriate for the customer to trade security futures products or to use the CTA's trading program for that purpose.

[1] 15 U.S.C. 78s(b)(7).
[2] 17 CFR 240.19b–7.
[3] 15 U.S.C. 78o–3(k).
[4] 15 U.S.C. 78o(b)(11).

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act. In fact, the rule change will level the playing field for CTAs and investment advisers with little, if any, competitive impact on carrying firms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NFA did not publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(7)(B) of the Act,[6] the proposed rule change became effective on December 9, 2002.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of NFA.

Electronically submitted comments will be posted on the Commission's Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–NFA–2002–06 and should be submitted by February 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–913 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78o–3(k).

[6] 15 U.S.C. 78s(b)(7)(B).

[7] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47158; File No. SR–NASD–2002–178]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Short Interest Reporting

January 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by NASD. NASD has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule" under paragraph (f)(1) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 3360 to clarify member firms' reporting requirements of short positions held on behalf of other broker/dealers. Below is the text of the proposed rule change. The proposed new language is in italics; the proposed deletions are in brackets.

* * * * *

3360. Short-Interest Reporting

(a) Each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in securities included in The Nasdaq Stock Market and in each other security listed on a registered national securities exchange and not otherwise reported to another self-regulatory organization and shall regularly report such information to [the Association] *NASD* in such a manner as may be prescribed by [the Association] *NASD. For the purposes of this rule, the term "customer" includes a broker/dealer.* Reports shall be made as of the close of the settlement date designated by [the Association] *NASD.* Reports shall be received by [the Association] *NASD* no later than the second business day after the reporting settlement date designated by [the Association] *NASD.*

(b) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify members' short interest reporting requirements for short positions held on behalf of other broker/dealers. NASD Rule 3360(a) requires members to maintain a record of total short positions in all customer and proprietary firm accounts in Nasdaq securities (and listed securities if not reported to another self-regulatory organization ("SRO")) and requires members to report such information to NASD on a monthly basis. Rule 3360(b) provides that short positions required to

[8] 17 CFR 200.30–3(a)(75).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(1).

be reported under the Rule are those resulting from short sales as the term is defined in Rule 3b–3 under the Act,[4] with limited exceptions.

NASD staff has received inquiries from members concerning the application of Rule 3360 in light of the definition of "customer" in NASD Rule 0120(g). Specifically, Rule 0120(g) provides that the term "customer" does not include a broker or dealer, unless the context otherwise provides. As a result, members have inquired whether short sale positions in accounts held for other broker/dealers are required to be reported under Rule 3360.

In response to such inquiries, the staff has advised members that short sale positions held for other broker/dealers that fall within the definition of short position provided in Rule 3360(b) must be reported under Rule 3360(a), unless these positions already are reported to an SRO. This long-standing position is consistent with that taken by other SROs with respect to their short interest reporting requirements.[5] Non-self-clearing broker/dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. In addition, because non-member broker/dealers are not subject to NASD rules and, therefore, are not required to comply with Rule 3360, it is particularly important that members understand that they must report such positions under the Rule, unless these positions are otherwise reported to an SRO. Accordingly, to eliminate all ambiguity, NASD proposes to amend Rule 3360(a) to clarify that short sale positions in accounts held for other broker/dealers must be reported, unless the position is otherwise reported to an SRO.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[6], which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is necessary to ensure that members' short interest reporting is accurate and complete.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NASD has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule" under Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(1) thereunder,[8] which renders the proposal effective upon receipt of this filing by the Commission.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to file number SR–NASD–2002–178 and should be submitted by February 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–950 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

[4] Rule 3b–3 under the Exchange Act provides, in part, the following: "The term 'short sale' means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller."

[5] *See* Securities Exchange Act Release No. 35287 (January 27, 1995), 60 FR 6743 (February 3, 1995), approving amendments to short interest reporting rules of NASD, New York Stock Exchange, Philadelphia Stock Exchange, Pacific Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, and Chicago Board Options Exchange, to ensure uniform short position reporting across each of the SROs.

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR § 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47147; File No. SR–NFA–2002–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Regarding the Interpretive Notice to NFA Compliance Rule 2–9 Concerning Enhanced Supervisory Procedures

January 9, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on December 2, 2002, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

On November 27, 2002, NFA requested that the CFTC make a determination that review of the proposed rule change is not necessary. The CFTC made such a determination on December 9, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Act[3] makes NFA a national securities association for the limited purpose of regulating the activities of Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 15 U.S.C. 78o–3(k).

Act.[4] Some of the firms that are affected by this rule change could be broker-dealers registered under Section 15(b)(11).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1993, NFA's Board adopted an Interpretive Notice to NFA Compliance Rule 2–9 that requires firms that employ a significant number of Associated Persons ("APs") who have previously worked at a Disciplined Firm to adopt enhanced supervisory procedures, including tape recording all conversations between APs and customers. Since 1993, the Interpretive Notice has defined a Disciplined Firm as one that meets the following three criteria:

1. The firm has been formally charged by either the CFTC or NFA with deceptive telemarketing practices or promotional material;

2. Those charges have been resolved; and

3. The firm has been closed down and permanently barred from the industry as a result of those charges.

Last month, the question was raised as to the proper interpretation of the phrase "closed down and permanently barred," as used in the third criterion. This issue arose in the context of a settlement of an NFA Business Conduct Committee ("BCC") sales practice complaint alleging telemarketing fraud against a south Florida firm.

The firm went out of business in February 2001 and withdrew its NFA membership and CFTC registration in April 2001. Although NFA had informed the firm that it was under investigation in the spring of 2001, the BCC issued the sales practice Complaint against the firm in October 2001 and the Complaint was settled in October 2002. Under the terms of the settlement, the firm agreed to be permanently barred from NFA membership.

The firm maintains that it should not be considered a "Disciplined Firm," under the Interpretive Notice, because it does not meet the third criterion listed above. Specifically, the firm argues that it was not "closed down" as a result of the charges in the recent BCC Complaint since it had already gone out of business and withdrawn its CFTC registration and NFA membership when the Complaint was issued.

NFA staff does not agree with the firm's position. NFA has always taken the view that "closed down" and "permanently barred" describe the same thing, namely, a *final* resolution in a sales practice case which results in a permanent bar and closure of a firm. Although it is true that, in this case, the firm ceased operations and withdrew its NFA membership prior to the issuance of the Complaint, there was nothing to prevent the firm from reapplying for NFA membership and resuming business. It was not until the firm agreed to be permanently barred from NFA membership in settlement of the BCC Complaint that the firm was finally and irreversibly "closed down and permanently barred" as contemplated by the Interpretive Notice.

If the firm's interpretation were to prevail, any firm that is the subject of a sales practice investigation could merely cease operations, prior to the issuance of a Complaint, reopen under a different name and, thereby, avoid being designated as a "Disciplined Firm." Such a result would neutralize the Interpretive Notice and render it useless. Therefore, NFA's Board determined to clarify the interpretive notice by deleting the phrase "closed down" from the third criterion.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act.[6]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(7)(B) of the Act,[7] the proposed rule change became effective on December 9, 2002.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–NFA–2002–07 and should be submitted by February 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–914 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78o(b)(11).

[5] 15 U.S.C. 78o–3(k).

[6] 7 U.S.C. 1.

[7] 15 U.S.C. 78s(b)(7)(B).

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47151; File No. SR–OC–2002–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Customer Risk Disclosure Statements

January 9, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on December 18, 2002, OneChicago, LLC ("OneChicago") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III, below, which Items have been prepared by OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. OneChicago also filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under section 5c(c) of the Commodity Exchange Act ("CEA"),[3] on December 18, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to amend its Rule 510 relating to customer risk disclosure statements to clarify that clearing members and, if applicable, exchange members or access persons, will provide customers with a written risk disclosure statement, in accordance with applicable requirements of the National Futures Association ("NFA") (in the case of any clearing member, exchange member or access person that is registered with the NFA) or the National Association of Securities Dealers, Inc. (the "NASD") (in the case of any clearing member, exchange member or access person that is registered with the NASD).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and statutory basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is designed to clarify that clearing members and, if applicable, exchange members or access persons will provide customers with a written risk disclosure statement in accordance with applicable requirements of the NFA (in the case of any clearing member, exchange member or access person that is registered with the NFA) or the NASD (in the case of any clearing member, exchange member or access person that is registered with the NASD). The revised language reflects accepted industry practice and takes account of the fact that the intermediaries referenced in OneChicago Rule 510 are already subject to the pertinent NFA and NASD requirements.

2. Statutory Basis

The proposed rule change is authorized by, and consistent with, section 6(b)(5) of the Act[4] because it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago believes that the proposed rule change will not impose or relieve any burden on, or promote, competition.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to section 19(b)(7)(B) of the Act,[5] the proposed rule change, as filed with the Commission on December 18, 2002, became effective on December 19, 2002. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings will also be available for inspection and copying at the principal office of OneChicago. Electronically submitted comments will be posted on the Commission's internet Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–OC–2002–05 and should be submitted by February 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–952 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47146; File No. SR–OCC–2002–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Money Market Funds as Margin Collateral

January 9, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 29, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

[1] 15 U.S.C. 78s(b)(7).
[2] 17 CFR 240.19b–7.
[3] 7 U.S.C. 7a–2(c).
[4] 15 U.S.C. 78f(g).
[5] 15 U.S.C. 78s(b)(7)(B).
[6] 15 U.S.C. 78s(b)(1).
[7] 17 CFR 200.30–3(a)(75).
[1] 15 U.S.C. 78s(b)(1).

III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would expand the acceptable forms of margin collateral to include shares of money market funds meeting specified criteria.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of the proposed rule change is to expand the permissible forms of margin collateral to include shares in money market funds. The proposed amendment to OCC's Rule 604 would also reorganize the rule and make certain nonsubstantive format changes.

Rule 604 specifies the forms of collateral that may be deposited as margin. Permitted forms include cash, government securities, letters of credit, and certain equity and debt securities.[3] OCC regularly reviews these forms of collateral for suitability with the intent of addressing clearing members' desire to use a diverse combination of readily available and cost-effective forms of collateral while ensuring that collateral is limited to instruments that are relatively stable in value and are easily converted to cash. OCC believes that shares in certain money market funds meet these criteria and that it is appropriate for OCC to expand its categories of acceptable collateral to include such instruments.

OCC believes that the professional asset management, liquidity, and stable principal value typically associated with money market funds make shares in such funds an attractive collateral alternative for all OCC clearing accounts. As a result of recent amendments to the regulations of the Commodity Futures Trading Commission ("CFTC"), clearing members that are registered as futures commission merchants are now permitted to invest customer funds of their futures customers in money market fund shares.[4] Accordingly, clearing members want to be able to hypothecate shares in such funds as margin for their "non-proprietary" cross-margining accounts. OCC believes that such deposits are appropriate collateral not only for cross-margining accounts but for all accounts.

Requirements for Eligibility of Funds

OCC proposes to define acceptable money market funds as those meeting the criteria of SEC Rule 2a–7,[5] "Money Market Funds," under the Investment Company Act of 1940 ("ICA"),[6] subject to certain additional criteria. The ICA sets the standards by which mutual funds and other investment vehicles operate, and Rule 2a–7 thereunder requires a qualifying money market fund to meet certain portfolio maturity, quality, and diversification criteria. Instruments which may qualify as permitted investments for money market funds typically include U.S. Treasury securities, repurchase agreements, Federal agency securities, commercial paper, certificates of deposit, time deposits, corporate notes, asset-backed securities, and municipal securities. To minimize credit risk, OCC will accept only money market funds that limit their investments to "first tier securities" as defined in Rule 2a-7 under the ICA.[7] Although certain types of instruments that qualify as first tier securities would not qualify to be pledged directly as margin collateral under Rule 604,[8] OCC believes that the rating requirements and maturity prerequisites combined with inherent diversification of the funds provides sufficient protection to warrant acceptance of shares of money market funds containing such instruments.

To ensure a diverse group of fund investors so that the actions of any one shareholder (*e.g.*, redeeming a large interest in a fund) do not materially disrupt the ability of the fund to redeem shares in an orderly manner, Rule 604(b)(3) would prohibit a clearing member from depositing as margin collateral any money market fund where a registered holder of the money market fund has an interest of 10% or more in the money market fund.

In order for a fund's shares to be acceptable as margin deposits, the fund (and/or its sponsor, transfer agent, or other agents as appropriate) will be required to represent to OCC that it meets the foregoing requirements and to agree that it will continue to do so. In addition, OCC will require the fund to make certain other agreements intended to further ensure OCC's ability to convert fund shares promptly to cash if necessary.

Redemption

While the ICA generally prohibits mutual funds from suspending the right of redemption, the ICA does allow funds to postpone the payment of redemption proceeds for up to seven days after tender of fund shares to the fund or its agent. The ICA also allows for the suspension or postponement of redemption in certain emergency situations. In addition, while the intent of a money market fund is to redeem shares in cash, most issuers retain the right to redeem their shares in kind where the redeeming shareholder would receive portfolio securities rather than cash. Any such action would introduce a liquidation risk as well as additional costs associated with the sale of such securities.

Rule 604(b)(3)(i)(H) would require each fund to waive its rights under the ICA to delay redemption or to redeem in kind. The fund will instead have to agree to redeem fund shares in cash no later than the business day following a redemption request by OCC with limited exceptions for unscheduled

[2] The Commission has modified parts of these statements.

[3] Pursuant to a rule filing recently approved by the Commission, OCC clearing members are allowed to deposit as margin debt securities issued by Congressionally chartered corporations that the OCC's membership/margin committee has approved. Securities Exchange Act Release No. 45745 (April 12, 2002), 67 FR 19467 [File No. SR–OCC–2001–04].

[4] In December 2000, the CFTC amended its Regulation 1.25 to expand the range of instruments in which FCMs and clearing organizations may invest customer segregated funds to include highly liquid instruments such as money market mutual funds. Rules Relating to Intermediaries of Commodity Interest Transactions, 65 FR 77993 (December 13, 2000).

[5] 17 CFR 270.17a–7.

[6] 15 U.S.C. 80a *et. seq.*

[7] In general, a first tier security is a security with a remaining maturity of 397 calendar days or less that: (i) Has received a short-term rating from at least two nationally recognized statistical rating organizations in the highest short-term rating category for debt obligations; (ii) is unrated but is deemed to be of comparable quality to securities identified in (i) as determined by the fund's board of directors; (iii) is issued by a registered investment company that is itself a money market fund; or (iv) is a government security. 17.CFR 270.2a–7(a)(12).

[8] For example, OCC does not currently accept commercial paper, certificates of deposit, time deposits, corporate notes, asset-backed securities, or municipal securities.

closings of Federal Reserve Banks or the New York Stock Exchange. These waivers of redemption restrictions along with the next day payment requirement have been established to maintain adequate liquidity of margin collateral and are also intended to be consistent with the redemption conditions contained in CFTC Rule 1.25.[9]

Valuation

OCC will require funds to perform a net asset value computation at least once per day with the dissemination of such computation to be made available to OCC no later than 9:00AM central time the following day. Given the diversified nature of eligible fund investments as well as the investment duration limitations, a daily computation of net asset value appears reasonable. OCC nevertheless proposes, under proposed Rule 604(b)(4), a 2% haircut on the current market value of fund shares. The 2% haircut was selected for consistency with the treatment of similar assets under the net capital rule.[10]

OCC's Security Interest

As in the case of other securities held as collateral, OCC will require that clearing members give OCC a first priority perfected security interest in deposited fund shares. Because shares in money market funds are typically not issued in certificated form, ownership is established by registration of the securities on the books of the fund or its transfer agent. OCC can ordinarily obtain a perfected security interest in fund shares registered in the name of a clearing member by execution of the fund's standard three-party agreement among OCC, the clearing member, and the fund or its transfer agent.

In addition, to preclude a situation whereby a clearing member secures its obligations to OCC with collateral managed and within the control of that clearing member or a related party, an association restriction is proposed in Rule 604(b)(3)(iii). This restriction is consistent with current OCC rules regarding the deposit of government securities, debt or equity issues, or letters of credit as margin collateral.[11] This standard may be waived if the issuing institution can demonstrate that an acceptable arrangement has been made for the control of underlying portfolio investments and for the processing of OCC redemption requests by a third party.

One additional point is worth noting even though it is not related specifically to money market fund shares. The provisions formerly in Rule 604(d)(2), which require compliance with the Commission's Rule 15c3–3 when applicable, have been moved so that they apply not only to equity and debt securities but to all securities deposited as margin under Rule 604(b). A sentence has been added to require compliance with the CFTC's customer protection regime when securities are deposited with respect to futures accounts.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because it enhances the efficiency of the clearing system while safeguarding funds and securities by permitting clearing members to collateralize their obligations to OCC with an additional form of highly liquid assets of stable value.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR-OCC–2002–04 and should be submitted by February 6, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–915 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

[9] CFTC Regulation 1.25(c)(5), 65 FR 77993, 78010, 78011 (Dec.13, 2000); see also, 65 FR 82270 (Dec. 28, 2000). CFTC Interpretive Letter No. 01–31 (April 2, 2001) (Funds will be deemed in compliance with Regulation 1.25(c)(5) even though they provide for delayed redemption in specified emergency situations).

[10] 17 CFR 240.15c3–1(c)(2)(vi)(D)(*1*).

[11] OCC Rule 604, Interpretation and Policies .07 and .10.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–00905]

Self-Regulatory Organizations; Notice of Application To Strike From Listing and Registration; The Philadelphia Stock Exchange, Inc. (PPL Electric Utilities, $3.35%, $4.40%, $4.50% and $4.60% Series Preferred Stock, no par value)

January 10, 2003.

PPL Electric Utilities, a Pennsylvania Corporation, ("Issuer") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 12d2–2(d) thereunder,[2] to withdraw the $3.35%, $4.40%, $4.50% and $4.60% Series Preferred Stock, no par value ("Securities"), from listing and registration on the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange").

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(c).

The Issuer stated in its application that it has complied with the rules of the PHLX that govern the removal of securities from listing and registration on the Exchange.

In making the decision to withdraw its Security from listing on the Exchange, the Issuer states that the Securities no longer meet the PHLX's minimum listing criteria of 250,000 shares. In addition, the Issuer states that its 4.50% and 4.40% Securities are currently listed on the New York Stock Exchange, Inc. ("NYSE").

The Issuer's application relates solely to the withdrawal of the Securities from listing and registration on the PHLX and shall have no effect upon its continued listing and registration on the NYSE under section 12(b).[3]

Any interested person may, on or before February 3, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PHLX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [4]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–953 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 03/73–0229]

Walker Investment Fund II SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Walker Investment Fund II SBIC, L.P., 3060 Washington Road, Glenwood, MD 21738, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2002)). Walker Investment Fund II SBIC, L.P. proposes to provide preferred equity security financing to Secure Methods, Inc., 224 West King Street, Martinsburg, WV 25443. The financing is contemplated to provide the company with the necessary working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Walker Investment Fund I, LLC and Steve Walker & Associates, all Associates of Walker Investment Fund II SBIC, L.P., have owned, within the last 6 months, a collective interest in Secure Methods, Inc., greater than 5 percent. Therefore, this financing is considered a financing with Associates requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: January 9, 2003.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 03–887 Filed 1–15–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Connecticut District Advisory Council; Public Meeting

The U.S. Small Business Administration Connecticut District Advisory Council, located in the geographical area of Hartford, Connecticut will hold a public meeting at 9 a.m., on Wednesday, February 5, 2003, Connecticut District Office, 330 Main Street, Hartford, Connecticut 06106, to discuss such matters as may be presented. For further information, write or call Marie Record, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut—(860) 240–4700.

Anyone wishing to attend and make an oral presentation to the Board must contact Marie A. Record, no later than Friday, January 31, 2003 via e-mail or fax. Marie A. Record, District Director, U.S. Small Business Administration, Connecticut District Office 330 Main Street, Hartford, CT 06106 (860) 240–4670 phone or (860) 240–4714 fax or e-mail *marie.record@sba.gov*.

Candace Stoltz,

Director of Advisory Councils.

[FR Doc. 03–891 Filed 1–15–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Minnesota District Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Minnesota District Advisory Council, located in the geographical area of Minneapolis, Minnesota, will be holding a public meeting at 11:30 a.m. central time on Wednesday, February 5, 2003, at the Business Information Center, 2324 University Avenue, Suite 112, St. Paul, MN 55114, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Edward A. Daum, District Director, in writing by letter or fax no later than January 29, 2003, in order to be put on the agenda. Edward A. Daum, District Director, U.S. Small Business Administration, 100 N. 6th Street, Suite 210–C, Minneapolis, MN 55403, (612) 370–2306 phone, (613) 370–2303 fax.

Candace Stoltz,

Director of Advisory Councils.

[FR Doc. 03–892 Filed 1–15–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4249]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Uzbekistan Educational Partnerships Program in Cultural and Comparative Religious Studies

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Uzbekistan Educational Partnerships Program in Cultural and Comparative Religious Studies. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to support mutually beneficial partnerships which contribute to the development of instruction in comparative religion, cultural studies/history, and English at specific eligible educational institutions in Uzbekistan. The means for achieving these objectives may include the exchange of university and college faculty and research scholars, administrators, and advanced students from Uzbekistan with appropriate U.S. counterpart colleges and universities.

In a separate solicitation, the Bureau anticipates announcing a program

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

focused on Religious and Cultural Pluralism in Uzbekistan and the United States. That program will support community exchanges between the United States and Uzbekistan and will support visits by U.S. specialists to Uzbekistan. The Uzbekistani institutions identified for participation in the Uzbekistan Educational Partnerships Program in Cultural and Comparative Religious Studies may be appropriate venues for experts sponsored by the program for Religious and Cultural Pluralism in Uzbekistan and the United States. Therefore the grantees in the two programs for Uzbekistan will be expected to coordinate activities closely with one another to make sure that the activities of the two programs are complementary.

Program Information

Overview: The Uzbekistan Educational Partnerships Program in Cultural and Comparative Religious Studies will fund a three-year project to permit U.S. institutions to work with specified counterpart universities and educational institutions in Uzbekistan. Applicants should propose a creative model for exchange that includes both a strategy for identifying U.S. instructors and scholars to visit the partner institutions in Uzbekistan and a strategy for identifying academic institutions to host exchange participants from Uzbekistan. Pending availability of funds, approximately $1,000,000 is expected to be available under the FREEDOM Support Act for the Uzbekistan Educational Partnerships Program in Cultural and Comparative Religious Studies in FY 2003.

Objectives: The most competitive proposal should benefit all participants and partner institutions although the benefits do not need to be identical for each partner. The proposal should outline a plan to cooperate with Uzbekistani institutions to: (1) Develop courses and curricula in eligible fields; (2) improve teaching methods; (3) develop educational materials which support new courses and curricula; (4) train teachers or other practitioners in the effective use of these materials; (5) engage in collaborative research and (6) foster self-sustaining relationships with U.S. academic institutions and educators.

The program should equip participating Uzbekistani institutions and educators to provide accurate and balanced information about religions, including Islam, and Uzbekistani cultural history framed within a contemporary understanding of human rights and the role of cultural and religious pluralism in a democratic society. At the conclusion of the program, teachers at the participating Uzbekistani institutions should be capable of teaching newly introduced or revised courses and should be able to participate more fully in international dialogue with U.S. and other educators. Students graduating from the participating Uzbekistani institutions should have a better understanding of the relationships between religion, politics, and society in modern democracies and should be better prepared to apply this understanding in public service, education, and the private sector, and to contribute to building a democratic society.

The Bureau anticipates that participating U.S. institutions and individuals will benefit by developing or strengthening regional expertise, or by gaining access to new opportunities for archival or library research. Participating U.S. faculty may utilize this experience to develop new courses or incorporate comparative content into existing courses. Students at participating U.S. institutions will gain a better understanding of Central Asia through interaction with visiting scholars and U.S. faculty who have incorporated international content into their courses.

Pending availability of funds, the grant should begin on or about June 15, 2003.

Applicants should propose a multi-institutional plan that includes all of the partners listed below as primary partners:

The Tashkent Islamic University;
The Al-Bukhari Islamic Institute;
The Institute of History of the Academy of Sciences;
The Al-Beruni Institute of Oriental Studies of the Academy of Sciences;
The Tashkent State University of Oriental Studies.

Additional institutions may be included as secondary partners. The U.S. Embassy in Tashkent must approve any additional partner institutions.

In order to successfully coordinate the multiple components of this project it will be necessary for the grantee organization to have a field office in Uzbekistan, or to establish one by the time grant activities begin. The grantee will be expected to closely coordinate activities with the U.S. Embassy in Tashkent.

Participant eligibility: All participants traveling to Uzbekistan funded under the grant must be U.S. citizens. Foreign participants must be both qualified to receive U.S. J–1 visas and willing to travel to the U.S. under the provisions of a J–1 visa during the exchange visits funded by this Program.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines: The Bureau anticipates awarding one grant not to exceed $1,000,000. Applicants may submit a budget not to exceed this amount. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/U–03–13.

FOR FURTHER INFORMATION CONTACT: To request a solicitation package, contact the Humphrey Fellowships and Institutional Linkages Branch; Office of Global Educational Programs; Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349; U.S. Department of State; SA–44, 301 Fourth Street, SW.; Washington, DC 20547; phone: (202) 619–5289, fax: (202) 401–1433. The Solicitation Package includes more detailed award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Applicants desiring more information may contact Program Officer Jonathan Cebra at 202–205–8379 or *jcebra@pd.state.gov*.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Tuesday, April 1, 2003. Faxed documents will not be accepted at any time. Documents

postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be sent to: Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–03–13, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

No later than one week after the competition deadline, applicants must also submit the Proposal Title Sheet, Executive Summary, and Proposal Narrative sections of the proposal as e-mail attachments in Microsoft Word (preferred), WordPerfect, or as ASCII text files to the following e-mail address: *partnerships@pd.state.gov*. In the e-mail message subject line, include the following: ECA/A/S/U–03–13. To reduce the time needed to obtain advisory comments from the Public Affairs Section of the U.S. Embassy in Tashkent, the Bureau will transmit these files electronically to this office.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other elements of the Department or the United States Government. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

(1) *Broad and Enduring Significance of Institutional Objectives:* Program objectives should have significant and ongoing benefits for the participating institutions and for their surrounding societies or communities.

(2) *Creativity and Feasibility of Strategy to Achieve Objectives:* Strategies to achieve program objectives should be feasible and realistic within the budget and timeframe. These strategies should utilize and reinforce exchange activities creatively to ensure an efficient use of program resources.

(3) *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

(4) *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in objectives for all institutional partners. Issues resulting from differences of race, ethnicity, gender, religion, geography, socio-economic status, or physical challenge should be addressed during program implementation. In addition, program participants and administrators should reflect the diversity within the societies which they represent (*see* the section of this document on "Diversity, Freedom, and Democracy Guidelines"). Proposals should also discuss how the various institutional partners approach diversity issues in their respective communities or societies.

(5) *Institution's Capacity and Record/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

(6) *Evaluation:* Proposals should outline a methodology for determining the degree to which the project meets its objectives, both while it is underway and at its conclusion. The final program evaluation should include an external component and should provide observations about the program's influence within the participating institutions as well as their surrounding communities or societies.

(7) *Cost-effectiveness:* Administrative and program costs should be reasonable and appropriate with cost-sharing provided by all participating institutions within the context of their respective capacities. Cost-sharing is viewed as a reflection of institutional commitment to the program.

(8) *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic bureau and overseas officers.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (FREEDOM Support Act).

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 9, 2003.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–980 Filed 1–15–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–14246]

Airport Privatization Pilot Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of receipt of application of New Orleans Lakefront Airport, New Orleans, Louisiana; commencement of 60 day public review and comment period.

SUMMARY: The Federal Aviation Administration (FAA) is seeking information and comments from interested parties on the final application by the Orleans Levee District for participation of New Orleans Lakefront Airport (NEW) in the airport privatization pilot program. The final application is accepted for review.

Title 49 U.S.C. 47134 establishes an airport privatization pilot program and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. The application procedures require the FAA to publish a notice of receipt of the final application in **Federal Register** and accept public comment on the final application for a period of 60 days.

DATES: Comments must be received by March 12, 2003. Comments that are received after that date will be considered only to the extent possible.

ADDRESSES: The final application is available for public review in the Dockets Office, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. The documents have been filed under FAA Docket Number FAA–2003–14246. The Dockets Office is open between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

The Orleans Levee District has also made a copy of the application available at the following locations:

Circulation Desk at the Earl K. Long Library, University of New Orleans, 2000 Lakeshore Drive, New Orleans, Louisiana 70148. The documents are available for review: Monday through Thursday, 7:45 a.m. and 11 p.m. Friday, 7:45 a.m. and 8 p.m. Saturday, 10:00 a.m. and 6 pm. Sundays, 12 noon and 8 p.m. The Library is closed on all legal holidays. Library personnel will require presentation of picture identification.

Administration Building, New Orleans Lakefront Airport, 6001 Stars and Stripes Boulevard, New Orleans, Louisiana 70126.

The Administration Building is open weekdays from 9 a.m. and 4 p.m. with the exception of legal holidays. The contact person is Max L. Hearn who may be reached at (504) 243–4000.

Comments on the final application must be delivered or mailed, in duplicate, to: the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number "FAA Docket FAA–2003–14246" at the beginning of your comments. Commentors wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2003–14246." The postcard will be date stamped and mailed to the commenter. You may also submit comments through the Internet to *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Compliance Specialist, Airport Compliance Division, AAS–400, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Ave SW., Washington, DC 20591. Telephone: 202–267–8741.

SUPPLEMENTARY INFORMATION: Title 49 of the U.S. Code 47134(b) authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes (upon approval of 65 percent of the air carriers serving the airport and have 65 percent of the landed weight), to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to

exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport. (No air carrier approval is necessary for the latter exemption.)

On September 16, 1997, the FAA issued a notice of procedures to be used in applications for exemption under Airport Privatization Pilot Program (62 FR 48693). The notice of procedures and its public comments are available for review in FAA Rules Docket No. 28895.

On March 2, 2000, the Orleans Levee District submitted a preliminary application for participation of the New Orleans Lakefront Airport in the Airport Privatization Pilot Program. On May 17, 2000, the FAA informed the Orleans Levee District that additional information was needed in order for the FAA to accept the application for further review. The Orleans Levee District submitted all information, previously requested by the FAA. The filing date of the Orleans Levee District preliminary application was January 19, 2001, the date the FAA received a completed preliminary application.

On March 8, 2001, the FAA informed the Orleans Levee District that it had accepted New Orleans Lakefront Airport's preliminary application for further review. This action permitted the Orleans Levee District to select a private operator, negotiate an agreement and submit a final application to the FAA for exemption. On April 23, 2002, the Orleans Levee District filed a final application.

In its final application, the Orleans Levee District requested an exemption under 49 U.S.C. 47134(b)(1) from 49 U.S.C. 47107(b) and 47133, to permit the Orleans Levee District to use revenue from the lease of airport property for non-airport purposes; under 49 U.S.C. 47134(b)(2) to forgo the repayment of Federal grants; 49 U.S.C. 47134(b)(1); and under 49 U.S.C. 47134(b)(3) and to allow American Airports Lakefront, LLC to earn compensation from the operation of the airport.

In accordance with the final application, American Airports Lakefront, LLC will operate the airport under a 50-year lease and pay the Orleans Levee District $300,000 in annual rental payments for the first three years. In the fourth year, American Airports Lakefront, LLC will pay $300,000 in annual rental payments or 11 percent of the airport's gross income not to exceed $3,000,000 plus 30 percent of the airport's gross income over $3,000,000.

On July 2, 2002, in an effort to clarify certain parts of the application, FAA staff requested responses to 26 questions. Three of the questions posed to the American Airports Lakefront, LLC required it to utilize confidential business or financial information in its response. In accordance with the airport privatization pilot program application procedures, 62 FR 48693, 48706 (September 16, 1997), the private operator has requested confidential treatment of this information. As a result, the responses to those three questions have been withheld and will not be available for public comment. Copies of the 26 questions and the 23 responses available for public view and comment are included in the sponsor's application for public review.

On November 7, 2002, the FAA requested responses to four additional questions. The questions and the responses are included in the docket for public review.

The FAA has determined that the application is substantially complete. As part of its review of the final application, the FAA will consider all comments and information submitted by interested parties during the 60-day comment period for this notice.

Issued in Washington, DC, on January 13, 2003.

David L. Bennett,

Director, Airport Safety and Standards.

[FR Doc. 03–1013 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–01]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 5, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–9080 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins (202 267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on January 9, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–9080.

Petitioner: BNJ Company LLC (BNJ), doing business as Boeing NetJets .

Section of 14 CFR Affected: 14 CFR 43.3(a) and (f), 43.7(a) and (e), and 121.379.

Description of Relief Sought: To allow BNJ to use qualified part 121 air carrier certificate holders to perform maintenance, inspections, and return-to-service approvals on all Boeing 737–700 IGW Boeing Business Jet aircraft included in the BNJ-managed fractional ownership program.

[FR Doc. 03–920 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than March 17, 2003.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130—New. Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Steward at *debra.steward@fra.dot.gov*. Please refer to the assigned OMB control number or collection title in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR §§ 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR § 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of proposed new information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Work Schedules and Sleep Patterns of Railroad Signalmen.

OMB Control Number: 2130-New.

Abstract: In a continuing effort to improve rail safety and to reduce the number of injuries and fatalities to rail workers, FRA and the rail industry have recently focused on the issue of fatigue among train and engine crew personnel. Because railroading is an around-the-clock, seven-days-a-week operation and because a wide array of workers are needed both to operate and to maintain the nation's railroads, other crafts—besides train and engine crews—can also be subject to fatigue. The non-operating crafts, including locomotive and car repair, track maintenance, signal system maintenance and telecommunications, fall into this second category. FRA is proposing a study which will focus on signalmen, one of the non-operating railroad crafts. FRA seeks to develop an understanding of the work schedule-related fatigue issues that affect signalmen. The proposed study has two primary purposes: (1) It aims to document and characterize the work/rest schedules and sleep patterns of the signalmen; and (2) It intends to examine the relationship between these schedules and level of alertness/fatigue for the individuals who work these schedules. Subjective ratings from participants of their alertness/sleepiness on both work and non-work days will be an integral part of this study. The data will be collected through the use of a daily diary or log, as well as a brief background questionnaire for each participant. Analysis of the diary data will allow FRA to assess whether or not there are any work-related fatigue issues for signalmen.

Form Number(s): FRA F 6180.107; FRA F 6180.108.

Affected Public: Rail Workers.

Respondent Universe: 329 Railroad Signalmen.

Frequency of Submission: On occasion.

Estimated Annual Burden: 850 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on January 10, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–1005 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–14088]

Notice of Receipt of Petition for Decision That Nonconforming European Market 1994 Jeep Grand Cherokee Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming European Market 1994 Jeep Grand Cherokee multipurpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that LHD 1994 Jeep Grand Cherokee MPVs manufactured for sale in Europe that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 18, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("WETL") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1994 Jeep Grand Cherokee MPVs originally manufactured for sale in Europe are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1994 Jeep Grand Cherokee MPVs that were manufactured for sale in the United States and certified by their manufacturer, Chrysler Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified European Market 1994 Jeep Grand Cherokee MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified European Market 1994 Jeep Grand Cherokee MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified European Market 1994 Jeep Grand Cherokee MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic and Electric Brake Systems*, 106 *Brake Hoses*, 113 *Hood Latch Systems*, 114 *Theft Protection* (noting that the vehicle has an audible anti-theft system that sounds when the key is left in the ignition lock and the driver's door is opened), 116 *Motor Vehicle Brake Fluids*, 118 *Power Window Systems* (noting that the window transport mechanism is inoperative when the ignition is switched off and the door is opened), 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection* (noting that the vehicle is equipped with a safety belt warning system that includes an audible gong and illuminated dash light, with Type II seat belts in the front and rear outboard designated seating positions, and with a U.S.-model air bag and knee bolster in the driver's seating position), 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity* (noting that a rollover valve is integrated into the fuel module assembly, and is identical to that equipped on the vehicle's U.S. certified counterpart) and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified LHD Japanese Market 1994 Jeep Grand Cherokee MPVs comply with the Bumper Standard found in 49 CFR part 581, and with the Vehicle Identification Number (VIN) plate requirement of 49 CFR part 565.

Petitioner further contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 101 Controls and Displays: addition of the brake symbol.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: replacement of the headlight assemblies, which include sidemarker lights, and taillamp assemblies with U.S. model components.

Standard No. 111 Rearview Mirrors: inscription of the required warning statement on the passenger side rearview mirror.

The petitioner states that all vehicles must be inspected prior to importation

for compliance with the Theft Prevention Standard found in 49 CFR part 541, and that U.S.-model anti-theft devices must be installed on all vehicles lacking that equipment.

The petitioner also states that a certification label must be affixed to the left front door jamb to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 10, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–916 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14211]

Decision that Certain Nonconforming Motor Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are either (1) substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards, or (2) they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: These decisions are effective as of the date of their publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is either (1) substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards or (2) has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 10, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

Annex A—Nonconforming Motor Vehicles Decided to Be Eligible for Importation

1. Docket No. NHTSA–2002–13533

Nonconforming Vehicle: 1995–2002 Harley Davidson Buell. Motorcycles (All Models).

Substantially similar U.S.-certified vehicle: 1995–2002 Harley Davidson Buell. Motorcycles (All Models).

Notice of Petition Published at: 67 FR 65833 (October 28, 2002).

Vehicle Eligibility Number: VSP–399.

2. Docket No. NHTSA–2002–13534

Nonconforming Vehicles: 1989–1993 Honda VFR 400 and RVF 400 Motorcycles.

Because there are no substantially similar U.S.-certified versions of the 1989–1993 Honda VFR 400 and RVF 400, the petition sought import

eligibility under 49 U.S.C. 30141(a)(1)(B).

Notice of Petition
Published at: 67 FR 65835 (October 28, 2002).
Vehicle Eligibility Number: VCP–24.

3. Docket No. NHTSA–2002–13539

Nonconforming Vehicle: 1989–1994 Honda CBR 250 Motorcycles.

Because there are no substantially similar U.S.-certified versions of the 1989–1994 Honda CBR 250, the petition sought import eligibility under 49 U.S.C. 30141(a)(1)(B).

Notice of Petition
Published at: 67 FR 65836 (October 28, 2002).
Vehicle Eligibility Number: VCP–22.

4. Docket No. NHTSA–2002–13538

Nonconforming Vehicles: 2002 Yamaha FJR 1300 Motorcycles.

Because there are no substantially similar U.S.-certified versions of the 2002 Yamaha FJR 1300 Motorcycles, the petition sought import eligibility under 49 U.S.C. 30141(a)(1)(B).

Notice of Petition
Published at: 67 FR 65834 (October 28, 2002).
Vehicle Eligibility Number: VCP–23.

[FR Doc. 03–917 Filed 1–15–03; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–14087]

Notice of Receipt of Petition for Decision that Nonconforming 2002 Moto Guzzi California EV Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, (DOT).

ACTION: Notice of receipt of petition for decision that nonconforming 2002 Moto Guzzi California EV motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 Moto Guzzi California EV motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 18, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9 am to 5 pm. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("WETL")(Registered Importer 90–005) has petitioned NHTSA to decide whether non-U.S. certified 2002 Moto Guzzi California EV motorcycles are eligible for importation into the United States. The vehicles that WETL believes are substantially similar are 2002 Moto Guzzi California EV motorcycles that were manufactured for importation into and sale in the United States and certified by their manufacturer, Moto Guzzi S.p.A., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002 Moto Guzzi California EV motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 2002 Moto Guzzi California EV motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002 Moto Guzzi California EV motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 123 *Motorcycle Controls and Displays*.

The petitioner also states that non-U.S. certified 2002 Moto Guzzi California EV motorcycles are identical to their U.S. certified counterparts with respect to compliance with the vehicle identification number requirements of 49 CFR Part 565.

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* replacement of the existing headlamp lens with a U.S.-model component and installation of front amber and rear red reflectors.

WETL submitted with the petition a letter from Moto Guzzi North America, Inc., the manufacturer's U.S. representative, which stated that the differences between the non-U.S. certified 2002 Moto Guzzi California EV motorcycle that is the subject of the petition and the U.S.-certified version of the vehicle "are minimal," and "include the headlight and side reflectors." The letter identified no other differences between the two vehicles.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 10, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–918 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34243]

N&T Railway Company LLC—Acquisition and Operation Exemption—Rail Lines in Stark County, OH

N&T Railway Company LLC (N&T), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31, to acquire and operate two nonconnecting rail lines located in Stark, County, OH.[1] One line, known as the Massillion line, consists of approximately 15 miles of track that is located in the Township of Perry, OH. The second line, known as the Canton line, consists of approximately 21 miles of track that is located between the Township of Canton and the City of Canton, OH.

The rail lines had been owned by Republic Technologies International, LLC (RTI), which is bankrupt, and had been operated by RTI's carrier subsidiary, the Nimishillen & Tuscarawas, LCC, which is not bankrupt. N&T's parent, Republic Engineered Products LLC (REP), acquired the lines from RTI, with the approval of RTI's bankruptcy court. REP then transferred ownership of the lines to N&T.

N&T certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and that such revenues would not exceed $5 million.

Operations under the transaction were scheduled to begin on or after December 25, 2002, the effective date of the exemption (7 days after the supplement was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34243, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on: Scott E. Ross, Akin Gump, Strauss, Hauer & Feld, L.L.P., 1333 New Hampshire Avenue NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: January 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–864 Filed 1–15–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 402X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in King County, WA

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon and discontinue service over a 0.17-mile line of railroad between Station 258 + 07 and Station 267 + 00, in Seattle, King County, WA. The line traverses United States Postal Service Zip Code 98119.[1]

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an OFA has been received, this exemption will be effective on February 15, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 27, 2003.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 5, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources.

[1] N&T's notice of exemption was filed on August 14, 2002, and supplemented on December 18, 2002.

[1] By petition for exemption filed December 26, 2002, the City of Seattle (City) is seeking an exemption from the requirements of 49 U.S.C. 10904 (offers of financial assistance) (OFAs). The merits of the petition will be addressed in a separate decision.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[4] On December 26, 2002, the City on behalf of the Seattle Department of Transportation filed a request for issuance of a notice of interim trail use (NITU) for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The City's trail use request, and any others that may be filed, will be addressed in a separate decision.

SEA will issue an environmental assessment (EA) by January 21, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by BNSF's filing of a notice of consummation by January 16, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 9, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–972 Filed 1–15–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network, Customs Service

Agency Information Collection Activities; Proposed Collection; Comment Request; Report of International Transportation of Currency or Monetary Instruments

AGENCY: Financial Crimes Enforcement Network (FinCEN) and Customs Service (Customs).

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN and Customs invite the general public and other Federal agencies to comment on an information collection requirement concerning the Report of International Transportation of Currency or Monetary Instruments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be received on or before March 17, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to:

FinCEN: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183–0039, Attention: PRA Comments—Report of International-Transportation of Currency or Monetary Instruments. Comments also may be submitted by electronic mail to the following Internet address: *"regcomments@fincen.treas.gov"* with the caption in the body of the text, *"Attention:* PRA Comments—Report of International Transportation of Currency or Monetary Instruments."

Customs: U.S. Customs Service, Attn.: Walter Wilkowski, Financial Investigations, 1300 Pennsylvania Ave., NW., Room 7.2C, Washington, DC 20229. Telephone (202) 927–1469.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the form should be directed to:

FinCEN: Russell Stephenson, Office of Regulatory Programs, FinCEN, at (202) 354–6400 (This is not a toll free number).

Customs: U.S. Customs Service, Attn.: Walter Wilkowski, 1300 Pennsylvania Ave., NW., Room 7.2C, Washington, DC 20229. Tel. (202) 927–1469.

SUPPLEMENTARY INFORMATION:

Title: Report of International Transportation of Currency or Monetary Instruments.

OMB Number: 1506–0014.

Form Number: Customs form 4790.

Abstract: The Bank Secrecy Act, titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Bank Secrecy Act specifically states that "a person or an agent or bailee of the person shall file a report * * * when the person, agent, or bailee knowingly—(1) transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time—(A) from a place in the United States to or through a place outside the United States; or (B) to a place in the United States from or through a place outside the United States; or (2) receives monetary instruments of more than $10,000 at one time transported into the United States from or through a place outside the United States." 31 U.S.C. 5316(a). The requirement of 31 U.S.C. 5316(a) has been implemented through regulations promulgated at 31 CFR 103.23 and through the instructions to the Report of International Transportation of Currency or Monetary Instruments (CMIR), U.S. Customs Service form 4790.

Information collected on the CMIR is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel in the official performance of their duties. The information collected is of use in investigations involving international and domestic money laundering, tax evasion, fraud, and other financial crimes.

Current Actions: The CMIR is being revised to increase the reliability of the data for investigative purposes and to clarify data fields on the form. Most data fields have been modified to include lines or boxes. A section has been designated for those transporting currency or monetary instruments (part II). The section required for mailing or shipping has been "shaded" and separated into its own section (part IV) to distinguish it from the rest of the form. The "Other monetary instruments" field has been expanded to include specific types of monetary instruments so that filers can easily select the appropriate type(s) they are transporting.

Type of Review: Revision of currently approved collection.

Affected Public: Individuals, business or other for-profit institutions, not-for-profit institutions.

Estimated Number of Respondents: 250,000.

Estimated Time Per Respondent: 11 minutes.

Estimated Total Annual Burden Hours: 45,834 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 6, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

BILLING CODE 4810–02–P

U.S. CUSTOMS ONLY
CONTROL NO.

REPORT OF INTERNATIONAL TRANSPORATION OF CURRENCY OR MONETARY INSTRUMENTS

31 U.S.C. 5316; 31 CFR 103.23 , 103.27

OMB NO. 1506-0014

➡ COMPLETED FORM IS TO BE FILED WITH THE U.S. CUSTOMS SERVICE
➡ SEE INSTRUCTIONS ON BACK OF FORM

DRAFT

PART I — PERSON DEPARTING FROM OR ENTERING INTO THE UNITED STATES

1. NAME			2. IDENTIFICATION NO. (SEE INSTRUCTIONS)	3. DATE OF BIRTH
LAST OR FAMILY	FIRST	MIDDLE		MONTH / DAY / YEAR

4. PERMANENT HOME ADDRESS IN UNITED STATES OR ABROAD						5. OCCUPATION
STREET	APT.	CITY	STATE	ZIP CODE	COUNTRY	
6. DESTINATION ADDRESS						7. COUNTRY(IES) OF CITIZENSHIP
STREET	APT.	CITY	STATE	ZIP CODE	COUNTRY	

8. PASSPORT NO. & COUNTRY	9. U.S. VISA ISSUANCE DATE			10. PLACE VISA ISSUED	11. IMMIGRATION ALIEN NO. (If applicable)
	MONTH	DAY	YEAR		

12. COMPLETE THIS ITEM IF CURRENCY OR MONETARY INSTRUMENT IS ACCOMPANIED BY A PERSON

☐ EXPORTED CURRENCY OR MONETARY INSTRUMENT FROM THE UNITED STATES

☐ IMPORTED CURRENCY OR MONETARY INSTRUMENT INTO THE UNITED STATES

TRAVELER ORIGINATED FROM:
CITY:
STATE: COUNTRY:

PART II — COMPLETE THIS SECTION ONLY IF YOU ARE TRANSPORTING CURRENCY ON BEHALF OF SOMEONE ELSE. PROVIDE INFORMATION ABOUT PERSON(S) OR BUSINESS ON WHOSE BEHALF IMPORTATION/EXPORTATION WAS CONDUCTED.

13. NAME: LAST OR FAMILY OR BUSINESS	FIRST	MIDDLE	14. PHONE NUMBER (INCLUDE AREA CODE)

15. TYPE OF BUSINESS ACTIVITY, OCCUPATION OR PROFESSION

IS THIS BUSINESS A BANKING INSTITUTION? ☐ YES ☐ NO

16. EMPLOYER IDENTIFICATION NO. (EIN)

17. PASSPORT NO. & COUNTRY

18. PERMANENT ADDRESS IN UNITED STATES OR ABROAD						19. PHONE NO. (INCLUDE AREA CODE)
STREET	APT.	CITY	STATE	ZIP CODE	COUNTRY	

PART III — CURRENCY AND MONETARY INSTRUMENTS (COMPLETION OF FIELDS BELOW IS MANDATORY)

20. TYPE AND AMOUNT OF CURRENCY/MONETARY INSTRUMENTS:

		IN U.S. DOLLARS
COINS	☐ YES ☐ NO	$
CURRENCY	☐ YES ☐ NO	$
OTHER MONETARY INSTRUMENTS (CHECK ALL THAT APPLY)		$

☐ TRAVELERS CHECKS ☐ BONDS
☐ CHECKS ☐ OTHER
☐ MONEY ORDERS (SPECIFY TYPE, ISSUING ENTITY AND DATE, AND SERIAL OR OTHER IDENTIFYING NUMBER.)
☐ BANK DRAFTS

TOTAL $

21. IF OTHER THAN U.S. CURRENCY IS INVOLVED, PLEASE COMPLETE BLOCKS BELOW:

A. CURRENCY NAME

B. COUNTRY

PART IV — COMPLETE THIS SECTION ONLY IF YOU ARE MAILING OR SHIPPING CURRENCY OR MONETARY INSTRUMENTS

22A. DATE SHIPPED:	22B. DATE RECEIVED	22C. METHOD OF SHIPMENT (U.S. MAIL, PUBLIC CARRIER, ETC.)	22D. NAME OF CARRIER

22E. NAME SHIPPED TO:	LAST OR FAMILY OR BUSINESS	FIRST	MIDDLE

22F. ADDRESS SHIPPED TO:	STREET			
	CITY	STATE	ZIP CODE	COUNTRY

22G. NAME RECEIVED FROM:	LAST OR FAMILY	FIRST	MIDDLE

22H. ADDRESS RECEIVED FROM:	CITY	STATE	ZIP CODE	COUNTRY

PART V — SIGNATURE OF PERSON COMPLETING THIS REPORT

Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief it is true, correct and complete.

23. NAME	TITLE
SIGNATURE X	DATE OF REPORT

U.S. CUSTOMS USE ONLY	☐ INBOUND ☐ OUTBOUND	COUNT VERIFIED ☐ YES ☐ NO	VOLUNTARY REPORT ☐ YES ☐ NO

DATE	AIRLINE/FLIGHT/VESSEL	LICENSE PLATE		INSPECTOR BADGE NO.
		STATE/COUNTRY	NUMBER	

Customs Form 4790 (03/03)

IERAL INSTRUCTIONS

sport is required by 31 U.S.C. 5316 and Treasury Department regulations (31 CFR 103).

Must File: (1) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped currency or other monetary instruments in an aggregate amount exceeding)0 at one time from the United States to any place outside the United States or into the United States from any place outside the United States, and (2) Each person who receives in the United States currency or monetary instruments in an aggregate amount exceeding $10,000 at one time which have been transported, mailed, or shipped to the person from any place outside the United States.

RANSFER OF FUNDS THROUGH NORMAL BANKING PROCEDURES, WHICH DOES NOT INVOLVE THE PHYSICAL TRANSPORTATION OF RENCY OR MONETARY INSTRUMENTS, IS NOT REQUIRED TO BE REPORTED.

ptions: Reports are not required to be filed by: (1) a Federal Reserve bank, (2) a bank, a foreign bank, or a broker or dealer in securities in respect to currency or other monetary instruments mailed or shipped h the postal service or by common carrier, (3) a commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary nents shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the nary conduct of the business, industry, or profession of the customer concerned, (4) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or d from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (5) a common carrier of passengers in respect to currency or other monetary instruments in the ession of its passengers, (6) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (7) a travelers' check issuer or its agent in respect to nsportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public, (8) a person with a restrictively endorsed traveler's check that is in the collection and reconciliation process he traveler's check has been negotiated, nor by (9) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of ncy or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

EN AND WHERE TO FILE:

eipients--Each person who receives currency or other monetary instruments in the United States shall file Form 4790, within 15 days after receipt of the currency or monetary uments, with the Customs officer in charge at any port of entry or departure or by mail with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington 0229.

ippers or Mailers--If the currency or other monetary instrument does not accompany the person entering or departing the United States, Form 4790 may be filed by mail on or e the date of entry, departure, mailing, or shipping with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington DC 20229.

avelers--Travelers carrying currency or other monetary instruments with them shall file Form 4790 at the time of entry into the United States or at the time of departure from the d States with the Customs officer in charge at any Customs port of entry or departure.

ditional report of a particular transportation, mailing, or shipping of currency or monetary instruments, is not required if a complete and truthful report has already been filed. However, no person otherwise ed to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed. Forms may be obtained from any United States Customs Service office.

ALTIES: Civil and criminal penalties, including under certain circumstances a fine of not more than $500,000 and imprisonment of not more than ten years, are provided allure to file a report, filing a report containing a material omission or misstatement, or filing a false or fraudulent report. In addition, the currency or monetary ument may be subject to seizure and forfeiture. See 31 U.S.C. 5321 and 31 CFR 103.57; 31 U.S.C. 5322 and 31 CFR 103.59; 31 U.S.C. 5317 and 31 CFR 103.58, and U.S.C.

INITIONS:

;--Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed: (1) a commercial bank or trust company ized under the laws of any State or of the United States; (2) a private bank; (3) a savings association, savings and loan association, and building and loan association organized r the laws of any State or of the United States; (4) an insured institution as defined in section 401 of the National Housing Act; (5) a savings bank, industrial bank or other thrift ution; (6) a credit union organized under the laws of any State or of the United States; and (7) any other organization chartered under the banking laws of any State and subject to the rvision of the bank supervisory authorities of a State other than a money service business; (8) a bank organized under foreign law; and (9) any national banking association or ciation acting under the provisions of section 25A of the Federal Reserve Act (12 U.S.C. Sections 611-632).

ign Bank--A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or within the United States of a bank organized under foreign law.

er or Dealer in Securities--A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act 34.

ification Number--**Individuals must enter their social security number, if any. However, aliens who do not have a social security number should enter passport or alien tration number. All others should enter their employer identification number.**

tary Instruments-- (1) Coin or currency of the United States or of any other country, (2) traveler's checks in any form, (3) negotiable instruments (including checks, promissory notes, and money orders) in bearer endorsed without restriction, made out to a fictitious payee or otherwise in such form that title thereto passes upon delivery, (4) incomplete instruments (including checks, promissory notes, and money orders) e signed but on which the name of the payee has been omitted, and (5) securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery. Monetary instruments do not include (i) s or money orders made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements, (ii) warehouse receipts, or (iii) bills of lading.

n--An individual, a corporation, a partnership, a trust or estate, a joint stock company, and association, a syndicate, joint venture or other unincorporated organization or group, an Indian Tribe (as that term is d in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

CIAL INSTRUCTIONS:

hould complete each line that applies to you. **PART II.** -Block 13; provide the complete name of the shipper or recipient on whose behalf the exportation or importation was conducted. **PART III** -- Specify type of ment, issuing entity, and date, serial or other identifying number, and payee (if any). **PART IV.** -- Block 22A and 22B; enter the exact date you shipped or received currency or monetary instrument(s). Block 21, if ncy or monetary instruments of more than one country is involved, attach a list showing each type, country or origin and amount.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE:

ant to the requirements of Public law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on Form 4790 in accordance with 5 U.S.C. 552a(e)(3) is Public law 91-508, 31 5316; 5 U.S.C. 301; Reorganization Plan No.1 of 1950; Treasury Department No. 165, revised, as amended; 31 CFR 103; and 44 U.S.C. 3501.

ncipal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or edings. The information collected may be provided to those officers and employees of the Customs Service and any other constituent unit of the Department of the Treasury who have a need for the records in the mance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency. The information collected may also vided to appropriate state, local, and foreign criminal law enforcement and regulatory personnel in the performance of their official duties.

sure of this information is mandatory pursuant to 31 U.S.C. 5316 and 31 CFR Part 103. Failure to provide all or any part of the requested information may subject the currency or monetary instruments to seizure rfeiture, as well as subject the individual to civil and criminal liabilities.

sure of the social security number is mandatory. The authority to collect this number is 31 U.S.C. 5316(b) and 31 CFR 103.27(d). The social security number will be used as a means to identify the individual who e record.

ency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The collection of this information is mandatory ant to 31 U.S.C. 5316, of Title II of the Bank Secrecy Act, which is administered by Treasury's Financial Crimes Enforcement Network (FINCEN).

nent required by 5 CFR 1320.8(b)(3)(iii): The estimated average burden associated with this collection of information is 11 minutes per respondent or record keeper depending on individual circumstances. ments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39 Vienna, a 22183. DO NOT send completed forms to this office--See When and Where To File above.

Customs 4790 (03/03)

[FR Doc. 03–909 Filed 1–15–03; 8:45 am]

BILLING CODE 4810–02–C

Corrections

Federal Register
Vol. 68, No. 11
Thursday, January 16, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 112]

RIN 3090–AH77

Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement

Correction

In rule document 03–136 beginning on page 493 in the issue of January 6, 2003, make the following correction:

§ 301–10.303 [Corrected]

On page 494, in §301–10.303, the table should read as follows:

For use of a	Your reimbursement is
Privately owned aircraft (*e.g.*, helicopter, except an airplane)	Actual cost of operation (*i.e.*, fuel, oil, plus the additional expenses listed in § 301–10.304).
Privately owned airplane	95.5.[1]
Privately owned automobile	36.0.[1]
Privately owned motorcycle	27.5.[1]

[1] Cents per mile.

[FR Doc. C3–136 Filed 1–15–03; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. FAA–2000–7587 Amdt No. 21–81, 36–24 & 91–275]

RIN 2120–AH03

Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

Correction

In the issue of Friday, January 10, 2003, appearing on page 1512, in the correction of rule document 02–15835, there was an additional error. The correction appears as follows:

§ 36.6 [Corrected]

On page 1512, in the third column, in correction 1., in the first and second lines, "On the same page, in the same column, in the same section" should read, "On page 45212, in the first column, in § 36.6".

[FR Doc. C2–15835 Filed 1–15–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
January 16, 2003

Part II

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Disability Rehabilitation Research Projects (DRRP) Program; Notice of Final Priority and Notice Inviting Applications for Fiscal Year (FY) 2003; Notices

DEPARTMENT OF EDUCATION

Disability and Rehabilitation Research Projects (DRRP) Program; Notice of Final Priority

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a final priority on Capacity Building, Coordination, and Collaboration projects under the Disability and Rehabilitation Research Projects (DRRP) Program of the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year 2003 (FY) and later years. We take this action to focus research attention on an identified national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations.

EFFECTIVE DATE: This priority is effective February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

Section 21

Section 21(b)(2)(A) of the Act authorizes NIDRR to make awards to minority entities and Indian tribes to carry out activities authorized under title II of the Act. A minority entity is defined as a historically black college or university (a Part B institution, as defined in section 322(2) of the Higher Education Act of 1965, as amended), a Hispanic-serving institution of higher education, an American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent. Consistent with section 21(b)(2)(A), eligibility is limited to minority entities and Indian tribes.

New Freedom Initiative and the NIDRR Long-Range Plan

This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html*.

The Plan can be accessed on the Internet at: *http://www.gov/offices/OSERS/NIDRR/Products*.

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Analysis of Comments and Changes

There are no differences between the notice of proposed priority (NPP) and this notice of final priority (NFP).

In response to our invitation in the NPP, three parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priorities since publication of the NPP follows.

Comment: One commenter suggested that issues of minority-focused capacity building and rehabilitation research should be a shared responsibility across all NIDRR funded projects and activities. The commenter communicated that a more equitable sharing of this responsibility will improve research outcomes and provide greater educational opportunities for qualified minority students. It was further suggested that a collaborative model proposed under the priority for addressing underserved populations might be more effective if research area four of the priority was made mandatory or the wording in the first bullet following the proposed priorities was revised to identify non-minority institutions specifically.

Discussion: NIDRR continues to encourage collaboration between minority and non-minority entities across the NIDRR research agenda. The suggested activities specified in the published priority emphasize the need for applicants to propose and establish collaborative efforts with minority and non-minority entities, especially partnerships among minority entities and Indian Tribes for the purpose of capacity building, and particularly with a focus on establishing partnerships with non-minority entities. An applicant is required to demonstrate in its application for funding how it will address the requirement to collaborate. The peer review process will evaluate the merits of the proposed approach in establishing such collaborative efforts.

Change: None.

Comment: One commenter welcomed approaches that would improve the public rehabilitation system by increasing its capacity to address the needs of all individuals with disabilities. The commenter suggested that the availability of such approaches could assist in identifying staff training needs and strategies for use in responding to these needs.

Discussion: NIDRR intends that the proposed priority recognizes the need for research focused on achieving improved understanding of the needs of all individuals with disabilities, including individuals from diverse racial and ethnic groups, cultures, and backgrounds. This DRRP is being established for the purpose of fostering activities that will improve service delivery, the availability of appropriate support systems, training and dissemination of research information, and facilitating collaborative partnerships that can ensure and enhance capacity to address the needs of all individuals with disabilities.

Changes: None.

Comment: One commenter noted that drug and alcohol abuse, as well as mental health issues, affect the Native American population disproportionately in comparison to the non-Native population. It was also suggested that when this factor is compounded with the special issues of disability and the unavailability of local services, the problem becomes severe. The commenter noted that increased assistance is needed by way of services, input from the individual and tribe, discussions by all parties involved, communication, and oversight.

Discussion: The published priority does not preclude applicants from investigating, evaluating, and demonstrating strategies that are consistent with the suggestions of the commenter. The peer review process will enable the merits of strategies proposed in an application to be evaluated.

Change: None.

The background for the priority was published in the NPP.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

This priority is intended to improve the quality and utility of research related to individuals with disabilities from traditionally underserved racial and ethnic populations and to enhance knowledge and awareness of issues related to these populations. The priority will achieve this goal by (1) building the capacity of researchers, especially individuals from traditionally underserved racial and ethnic populations, and (2) conducting disability research that examines the unique needs and factors that influence rehabilitation outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations.

Applicants must choose a minimum of three and up to a maximum of five research areas below. Due to the need to focus research and capacity-building activities on specific groups or topics, applicants may target those populations appropriate to the activities that they propose.

The DRRP research and capacity-building areas are:

(1) To investigate and evaluate disability and rehabilitation outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations in State vocational rehabilitation systems (VR), and assess between State and within State differences in outcomes.

(2) To investigate and evaluate access to and acceptance rates for VR services, types of services provided, and costs of rehabilitation services for individuals with disabilities from traditionally underserved racial and ethnic populations compared to non-minority individuals.

(3) To investigate, evaluate, and develop, as needed, indices and measures to assess the capacity of the disability and VR personnel workforce to provide quality services to individuals with disabilities from traditionally underserved racial and ethnic populations.

(4) To investigate, evaluate, and report activities that strengthen disability-related research collaboration between minority entities and non-minority entities, particularly collaboration to improve rehabilitation services and outcomes for traditionally underserved racial and ethnic populations.

(5) To investigate, develop as needed, and evaluate strategies for strengthening resources and research capacity of minority entities and Indian tribes, particularly the expertise and infrastructure requirements that are needed to ensure the optimal participation of minority entities and Indian tribes in disability and rehabilitation research.

(6) To investigate, develop, and evaluate strategies, such as cultural competency training, targeted recruitment efforts, and incentives, to include and enhance retention of students and investigators from traditionally underserved racial and ethnic populations as rehabilitation researchers, administrators, and educators.

(7) To investigate and evaluate the effect of persons from traditionally underserved racial and ethnic populations participating in disability and rehabilitation research activities, direct service delivery, and training programs, and determine to what extent participation assists to improve VR outcomes for underserved populations.

The DRRP project will provide information leading to better understanding of: (1) Factors that contribute to different VR outcomes for traditionally underserved racial and ethnic populations compared to non-minorities, (2) training needs and effective training strategies, (3) effective approaches for improving collaboration between minority entities and Indian tribes and other institutions, and (4) strategies that strengthen the research infrastructure and capacity-building for minority entities and Indian tribes.

In carrying out the purposes of the priority, the DRRP must:

- Through consultation with the NIDRR project officer, coordinate and establish partnerships, as appropriate, with other academic institutions and organizations that are relevant to the project's proposed activities, including minority entities and Indian tribes;
- Demonstrate use of culturally appropriate data collection, evaluation, dissemination, training, and research methodologies and significant knowledge of the needs of individuals with disabilities from traditionally underserved populations;
- Develop, implement, and evaluate dissemination strategies for research and capacity-building products developed by the project;
- Demonstrate appropriate multidisciplinary linkages;
- Develop and regularly update an online information dissemination system and make materials readily available in alternate formats;
- Conduct an annual evaluation of all activities undertaken in support of capacity-building using formal measures and indicators;
- Provide expertise, consultation, and technical assistance on capacity-building and cultural competence to individuals and organizations seeking information; and
- Ensure an interdisciplinary outreach effort in conducting research and capacity-building activities.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government

Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: January 13, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–1016 Filed 1–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A–17]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research-Disability Rehabilitation Research Projects (DRRP) Program; Notice Inviting Applications for Fiscal Year 2003

AGENCY: Department of Education.

ACTION: Notice inviting applications for fiscal year (FY) 2003.

Purpose of the Program: The purpose of the DRRP Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (the Act), as amended. For FY 2003 the competition for new awards focuses on projects designed to meet the priority we describe in the **Priority** section of this application notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations.

Eligible Applicants: Parties eligible to apply for grants under this program are limited to minority entities and Indian tribes.

Application Available: January 16, 2003.

Deadline for Transmittal of Applications: March 17, 2003.

Maximum Award Amount: $350,000.

Note: We will reject any application without consideration that proposes a budget exceeding the stated maximum award amount in any given year (34 CFR 75.104(b)).

Estimated Number of Awards: 3.

Project Period: Up to 60 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86 and 97, and (b) The program regulations 34 CFR part 350.

Priority

This competition focuses on a project designed to meet the priority in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Selection Criteria

The selection criteria to evaluate applications under this program are found in the application package.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Disability Rehabilitation Research Projects (DRRP) Program—CFDA #84.133A is one of the programs included in the pilot project. If you are an applicant under the DRRP, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the DRRP and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

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Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: January 13, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–1017 Filed 1–15–03; 8:45 am]

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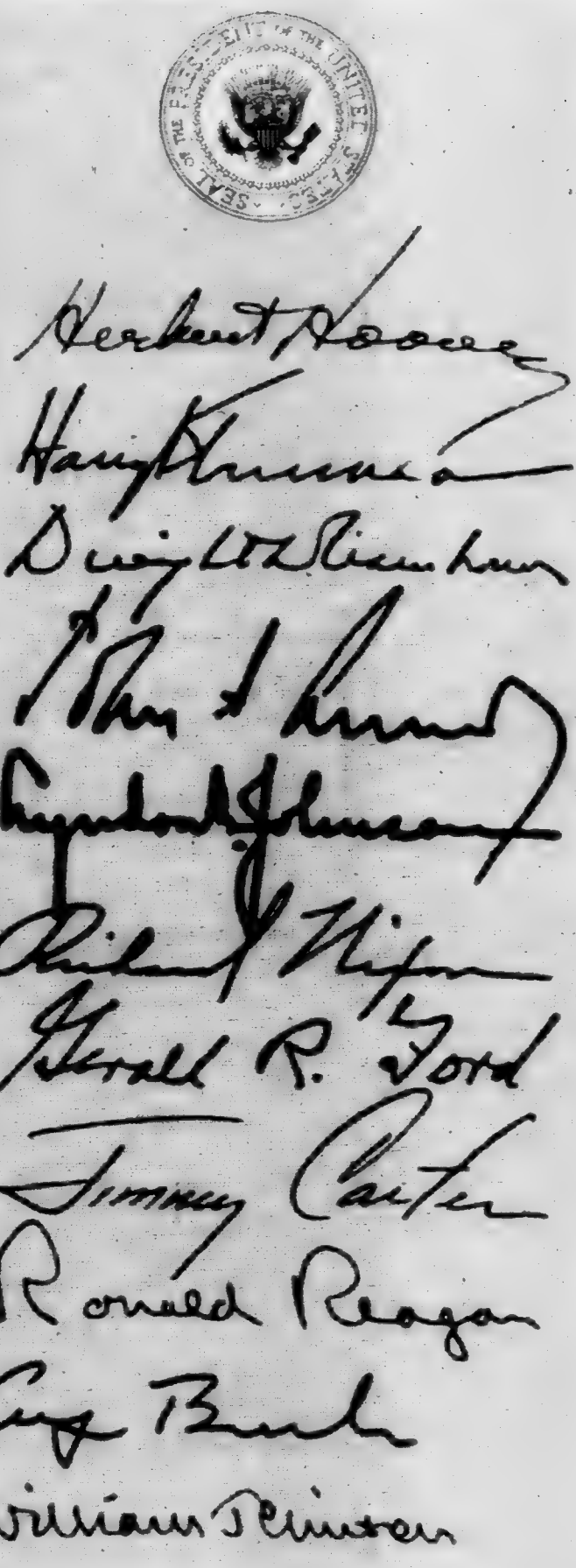

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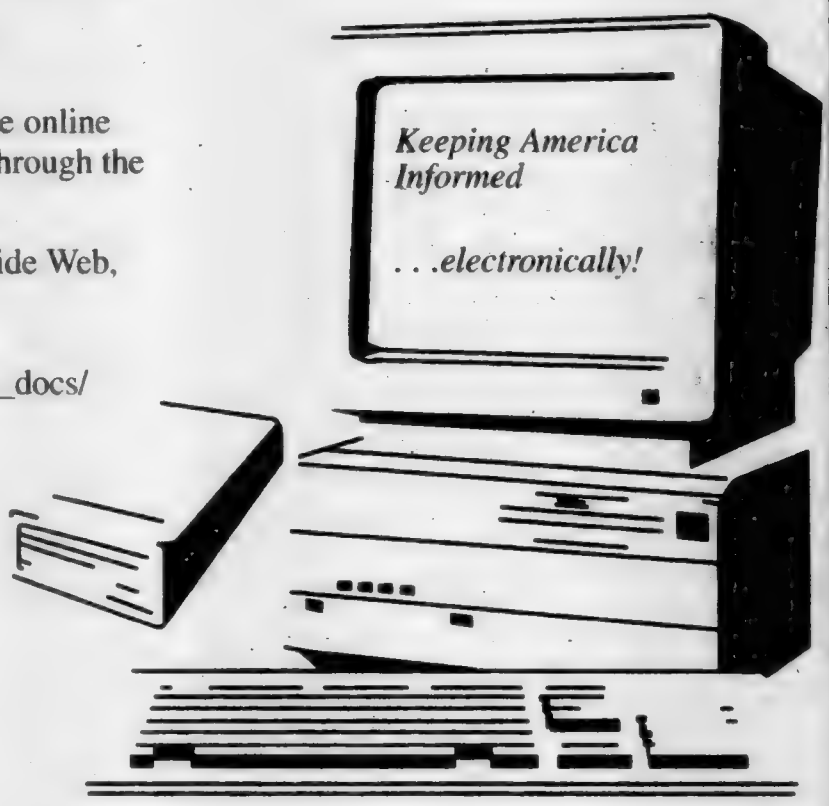

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Presidential Documents

Title 3—

The President

Proclamation 7639 of January 14, 2003

National Sanctity of Human Life Day, 2003

By the President of the United States of America

A Proclamation

Our Nation was built on a promise of life and liberty for all citizens. Guided by a deep respect for human dignity, our Founding Fathers worked to secure these rights for future generations, and today we continue to seek to fulfill their promise in our laws and our society. On National Sanctity of Human Life Day, we reaffirm the value of human life and renew our dedication to ensuring that every American has access to life, liberty, and the pursuit of happiness.

As we seek to improve quality of life, overcome illness, and promote vital medical research, my Administration will continue to honor our country's founding ideals of equal dignity and equal rights for every American. Every child is a priority and a blessing, and I believe that all should be welcomed in life and protected by law. My Administration has championed compassionate alternatives to abortion, such as helping women in crisis through maternity group homes, encouraging adoption, promoting abstinence education, and passing laws requiring parental notification and waiting periods for minors.

The Born-Alive Infants Protection Act, which I signed into law in August 2002, is an important contribution to our efforts to care for human life. This important legislation helps protect the most vulnerable members of our society by ensuring that every infant born alive, including one who survives abortion, is considered a person and receives protection under Federal law. It helps achieve the promises of the Declaration of Independence for all, including those without the voice and power to defend their own rights.

Through ethical policies and the compassion of Americans, we will continue to build a culture that respects life. Faith- based and community organizations and individual citizens play a critical role in strengthening our neighborhoods and bringing care and comfort to those in need. By helping fellow citizens, these groups recognize the dignity of every human being and the possibilities of every life; and their important efforts are helping to build a more just and generous Nation. By working together to protect the weak, the imperfect, and the unwanted, we affirm a culture of hope and help ensure a brighter future for all.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Sunday, January 19, 2003, as National Sanctity of Human Life Day. As we reflect upon the sanctity of human life, I call upon all Americans to recognize this day with appropriate ceremonies in our homes and places of worship, to rededicate ourselves to compassionate service, and to reaffirm our commitment to respecting the life and dignity of every human being.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.

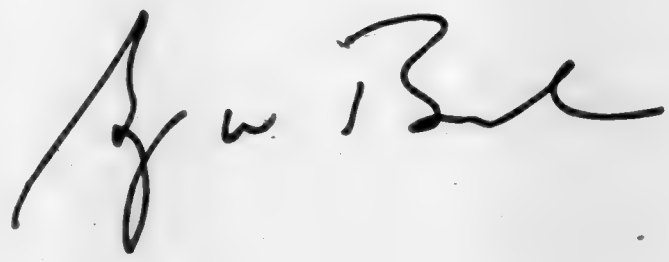

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Presidential Documents

Title 3—

The President

Presidential Determination No. 03–10 of January 10, 2003

Presidential Determination on Waiver of Conditions on Obligation and Expenditure of Funds for Planning, Design, and Construction of a Chemical Weapons Destruction Facility in Russia

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 8144 of the Department of Defense Appropriations Act for Fiscal Year 2003 (Public Law 107–248) (the "Act"), I hereby certify that waiving the conditions described in section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) is important to the national security interests of the United States, and include herein, for submission to the Congress, the statement, justification, and plan described in section 8144(a) of the Act. You are authorized and directed to transmit this certification, including the statement, justification, and plan to the Congress and to arrange for its publication in the **Federal Register**.

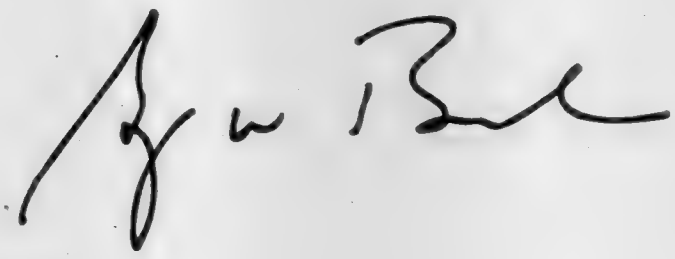

THE WHITE HOUSE,
Washington, January 10, 2003.

Billing code 4710–10–P

STATEMENT, JUSTIFICATION AND PLAN INCLUDED IN PRESIDENTIAL CERTIFICATION UNDER SECTION 8144 OF THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT FOR FY 2003 (P.L. 107-248)

Section 8144 of Public Law 107-248 provides that the conditions described in section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65) (FY2000 Act) shall not apply to the obligation and expenditure of funds for fiscal years 2000, 2001, 2002 and 2003 for the planning, design, or construction of a chemical weapons (CW) destruction facility in Russia if the President submits to Congress a written certification that includes:

(1) a statement as to why waiving the conditions is important to the national security interests of the Untied States;

(2) a full and complete justification for exercising this waiver; and

(3) a plan to promote a full and accurate disclosure by Russia regarding the size, content, status and location of its CW stockpile.

1. Waiving the conditions is important to the national security interests of the United States.

The Russian Federation inherited from the Soviet Union millions of modern nerve agent munitions that must be destroyed pursuant to the Chemical Weapons Convention (CWC). Many of these munitions are manportable, in excellent, ready-to-use condition, and are stored at five declared storage sites in Russia identified as having potential security vulnerabilities. For the most part, these munitions are small, easily transportable, and stored in wooden structures. They therefore present a significant proliferation risk.

A key United States national security objective is to keep the world's most dangerous technologies out of the hands of the world's most dangerous people. An important element in achieving this goal is to support efforts for prompt and irreversible destruction of Russia's CW in accordance with the verification provisions in the CWC. Because the Secretary of Defense cannot certify the elements specified in Section 1305 of the FY2000 Act, assistance cannot be provided for the construction of a facility at which these weapons would be destroyed unless the President exercises the authority provided

by Section 8144 of Public Law 107-248 to waive the conditions in the FY2000 Act. It is therefore important to the national security interests of the United States that the conditions in Section 1305 of the FY2000 Act be waived. Issuance of the waiver will permit assistance to Russia for construction of a nerve agent CW destruction facility at Shchuch'ye, at which Russia can destroy the munitions that pose the greatest proliferation threat.

2. **Full and complete justification for exercising this waiver.**

Section 1305 of the FY2000 Act prohibited the obligation or expenditure of funds appropriated for Cooperative Threat Reduction (CTR) programs for planning, design or construction of a CW destruction facility in Russia. This provision was amended by Section 1308 of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, to permit such obligation or expenditure upon certification by the Secretary of Defense that there has been:

(1) information provided by Russia, that the United States assess to be full and accurate, regarding the size of the CW stockpile of Russia;

(2) a demonstrated annual commitment by Russia to allocate at least $25 million to CW elimination;

(3) development by Russia of a practical plan for destroying its stockpile of nerve agents;

(4) enactment of a law by Russia that provides for the elimination of all nerve agents at a single site;

(5) an agreement by Russia to destroy or convert its chemical weapons production facilities (CWPF) at Volgograd and Novocheboksarsk; and

(6) a demonstrated commitment from the international community to fund and build infrastructure needed to support and operate the facility.

As detailed below, the actions that the Russian Federation has taken over the past two years, satisfy the second and fifth elements under Section 1305 of the FY2000 Act, and actions by other donor governments satisfy the sixth. With regard to the three remaining elements, our concerns have not yet been resolved. The Secretary of Defense is therefore unable to make

the certification required by Section 1305. The conditions in Section 1305 of the FY2000 Act on spending funds for a CW destruction facility in Russia must therefore be waived to make possible U.S. assistance for a facility for the destruction of millions of lethal nerve agent weapons that pose a significant proliferation risk as long as they exist.

Resolved Elements:

Element 2: A demonstrated annual commitment by Russia to allocate at least $25 million to CW elimination.

Since 2001, Russia has allocated at least $25 million per year to eliminate its CW at Shchuch'ye. Russia's 2001 budget allocated three billion rules ($107 million[1]) for CW destruction in Russia, including $25 million for Shchuch'ye. Russia's fiscal year 2002 budget for chemical weapons destruction is 5.436 billion rubles ($181 million), including $35 million to fund social and industrial infrastructure projects (e.g., housing, schools, power lines) at Shchuch'ye. In October 2002, Russia announced plans to spend at least $35 million for Shchuch'ye in 2003.

Russia plans to spend significantly more for CW elimination during each succeeding year. According to Russia's July 5, 2001 revised CW estruction program plan, over 90 billion rubles ($3 billion) will be expended through fiscal year 2011 for CW elimination.

Element 5: An agreement by Russia to destroy or convert its CWPF at Volgograd and Novocheboksarsk.

As a State Party to the CWC, Russia is legally obligated to destroy all of its declared CWPF, including those at Volgograd and Novocheboksarsk. In exceptional cases of compelling need, CWC States Parties may request permission to use a CWPF for purposes not prohibited under the CWC. The Organization for the Prohibition of Chemical Weapons (OPCW) Conference of the States Parties has approved Russia's request conversion requests for portions of the Volgograd and Novocheboksarsk facilities. Since 1999 the CTR program has, following OPCW approval, provided assistance to Russia to demilitarize nerve agent production facilities at both locations.

---

[1] The amounts stated in this paper in U.S. dollars for Russian funding and international assistance are approximate, because of the fluctuation of currency exchange rates.

Element 6: A demonstrated commitment from the international community to fund and build infrastructure needed to support and operate the CW destruction facility.

To date, the international community has committed or plans to commit about $50 million to fund and build the infrastructure needed to support and operate a nerve agent destruction facility at Shchuch'ye. G8 leaders have cited CW destruction in Russia as a priority for the G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction, agreed at the Kananaskis Summit in Jun 2002. It is expected, therefore, that international assistance to the Shchuch'ye facility will increase under the G8 Global Partnership.

Specific international commitments (alphabetized by donor country) for Shchuch'ye areas follows:

Canada: provided $250,000 for Shchuch'ye infrastructure in 2000-2001; signed an agreement with Russia in 2002 for an additional $3.4 million.

European Union: committed $1.8 million in 2001.

Germany: plans to provide $1.3 million in 2002.

Italy: ratified an agreement with Russia to provide $7.15 million over three years, beginning in 2001, for Shchuch'ye infrastructure.

The Netherlands: contributing $10 million to Russian chemical weapons destruction, including a possible contribution of $2 million to support Shchuch'ye.

Norway: committed $2.15 million for Shchuch'ye infrastructure.

Sweden: intends to commit $700,000.

Switzerland: earmarked $11.4 million in assistance to Russian CW destruction program over at least five years, beginning in 2003; seriously considering contributing a significant portion of that to Shchuch'ye.

United Kingdom: agreed with Russia in December 2001 to contribute $18 million for Shchuch'ye over three years.

In addition, Denmark, Czech Republic, France, Japan and Poland have indicated interest in providing assistance to Shchuch'ye. In March 2002, the Nuclear Threat Initiative (a non-governmental organization) announced a $1 million commitment to Shchuch'ye to match $2 million in funds from an international donor. The United States will continue to press Allies for commitments to fund and build infrastructure needed to support and operate the Shchuch'ye facility.

Unresolved Elements

Element 1: Information provided by Russia, that the United States assesses to be full and accurate, regarding the size of the CW stockpile of Russia.

The United States is engaged in ongoing bilateral consultations with Russia on the Russian CWC stockpile declaration and is seeking to resolve our concerns. Only limited progress has been made. Russia has provided some additional information on its stockpile declaration but that information does not resolve U.S. concerns. A U.S. team visited Moscow in early December to review documentation offered by Russia as relevant to resolving the question of an undeclared stockpile. Russia offered only documents already available to the United States through the OPCW. The Administration continues to stress with senior Russian officials the importance of resolving this element.

Element 3: Development by Russia of a practical plan for destroying its stockpile of nerve agents.

Russia continues to revise a practical plan for destroying its stockpile of nerve agents. On July 5, 2001, the Russian Government approved the revised CW destruction program plan (Resolution No. 510) that amends the initial Russian plan of March 21, 1996 (Resolution No. 305). Russia has provided the United States and the OPCW numerous details on the planned destruction of its nerve agent stocks. However, the United States continues to seek clarification and additional information as the Russian plan continues to evolve. In October 2002, Russia recognized the need to provide a single document that addresses all the necessary steps, including transportation and safety measures, to destroy its nerve agent stockpile at Shchuch'ye in accordance with the CWC.

Element 4: Enactment of a law by Russia that provides for the elimination of all nerve agents at a single site.

A May 2, 1997 Russian law had prohibited, *inter alia*, transportation of chemical weapons across Russian regions. As a result of an amendment signed by President Putin on November 29, 2001, Russian federal law now allows the transportation of nerve agents from one storage site to another storage site. Russia is seriously considering a recent U.S. proposal that it formally confirm the Russian commitment to eliminate all nerve agents at a single site (i.e., Shchuch'ye). The amendment of November 29, 2001, coupled with an anticipated official commitment by Russia to eliminate all nerve agents at Shchuch'ye, would satisfy this condition.

3. Plan to promote a full and accurate disclosure by Russia regarding the size, content, status, and location of its chemical weapons stockpile.

The United States continues to work closely with Russia in an attempt to resolve our concerns with the first element. The United States intends to address this concern through a combination of gathering corroborating information, encouraging Russian cooperation and transparency, conducting bilateral expert consultations, and seeking Russian agreement to a U.S. proposal that would allow short-notice visits, with unimpeded access, to undeclared suspect Russian CW sites. The Administration continues to stress with senior Russian officials the importance of resolving this element.

[FR Doc. 03–1237
Filed 1–16–03; 8:45 am]
Billing code 4710–10–C

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Presidential Documents

Presidential Determination No. 03–11 of January 10, 2003

Presidential Determination on Waiver of Restrictions on Assistance to Russia under the Cooperative Threat Reduction Act of 1993 and Title V of the FREEDOM Support Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 1306 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314), I hereby certify that waiving the restrictions contained in subsection (d) of section 1203 of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952), as amended, and the requirements contained in section 502 of the FREEDOM Support Act (22 U.S.C. 5852) during Fiscal Year 2003 with respect to the Russian Federation is important to the national security interests of the United States.

I have enclosed the unclassified report described in section 1306(b)(1) of the National Defense Authorization Act for Fiscal Year 2003, together with a classified annex.

You are authorized and directed to transmit this certification and report with its classified annex to the Congress and to arrange for the publication of this certification in the **Federal Register**.

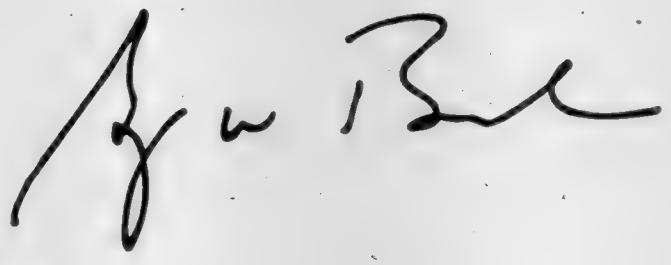

THE WHITE HOUSE,
Washington, January 10, 2003.

[FR Doc. 03–1238
Filed 1–16–03; 8:45 am]
Billing code 4710–10–P

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Rules and Regulations

Federal Register
Vol. 68, No. 12
Friday, January 17, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14046; Airspace Docket No. 02–AGL–15]

Establishment of Class D Airspace; Sparta, WI; Modification of Class E Airspace; Sparta, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Sparta, WI, and modifies Class E airspace at Sparta, WI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) have been developed for Sparta/Fort McCoy Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would establish a radius of Class D airspace, and increase the radius of the existing Class E airspace for Sparta/Fort McCoy Airport.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, September 19, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class D airspace and modify Class E airspace at Sparta, WI (67 FR 59029). The proposal was to establish Class D and modify Class E airspace, extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, and Class E airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class D airspace at Sparta, WI, and modifies Class E airspace at Sparta, WI, to accommodate aircraft executing instrument flight procedures into and out of Sparta/Fort McCoy Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace

* * * * *

AGL WI D Sparta, WI [New]

Sparta, Sparta/Fort McCoy Airport, WI
(Lat. 43° 57′30″ N., long. 90°44′16″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.0-mile radius of the Sparta/Fort McCoy Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Sparta, WI [Revised]

Sparta, Sparta/Fort McCoy Airport, WI
(Lat 43°57′30″ N., long. 90°44′16″ W.)
McCoy NDB
(Lat. 43°56′16″ N., long. 90°38′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Sparta/Fort McCoy Airport and within 3.8 miles each side of the 097° bearing from the McCoy NDB, extending from the 6.5-mile radius to 7 miles east of the NDB.

* * * * *

Issued in Des Plaines, Illinois on January 3, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–1125 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14179; Airspace Docket No. 02–AGL–08]

Modification of Class E Airspace; Circleville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Circleville, OH. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 23 has been developed for Ross County Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action increases the area of the existing controlled airspace at Pickaway County Memorial Airport, by adding a radius of controlled airspace around Ross County Airport.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, July 10, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Circleville, OH (67 FR 45682). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Circleville, OH, to accommodate aircraft executing instrument flight procedures into and out of Ross County Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, AND CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Circleville, OH [Revised]

Circleville, Pickaway County Memorial Airport, OH
(Lat. 39°30′58″N., long. 82°58′56″W.)
Cillicothe, Ross County Airport, OH
(Lat. 39°26′29″N., long. 83°01′41″W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Pickaway County Memorial Airport, and within a 9.1-mile radius of the Ross County Airport, excluding that airspace within the Waverly, OH Class E Airspace area.

* * * * *

Issued in Des Plaines, Illinois on January 3, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–1124 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14005; Airspace Docket No. 02–AGL–14]

Modification of Class E Airspace; Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Columbus, OH. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) have been developed for Darby Dan Airport, Columbus, OH. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of existing controlled airspace at Port Columbus International Airport, OH.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, September 19, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Columbus, OH (67 FR 59030). The proposal was to modify existing Class E airspace at Port Columbus International Airport, OH in order to protect for several new RNAV SIAPS.

Interested parties were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Columbus, OH, by increasing the radius of controlled airspace around the Port Columbus International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Columbus, OH [Revised]

Columbus, Port Columbus International Airport, MI
(Lat. 39°59′53″ N., long. 82°53′31″ W.)
Columbus, Rickenbaker International Airport, OH
(Lat. 39°48′50″ N., long. 82°55′40″ W.)
Columbus, Ohio State University Airport, OH
(Lat. 40°04′47″ N., long. 83°04′23″ W.)
Columbus, Bolton Field Airport, OH
(Lat. 39°54′04″ N., long. 83°08′13″ W.)
Columbus, Darby Dan Airport, OH
(Lat. 39°56′31″ N., long. 83°12′18″ W.)
Lancaster, Fairfield County Airport, OH
(Lat. 39°45′20″ N., long. 82°39′26″ W.)
Don Scott NDB
(Lat. 40°04′49″ N., long. 83°04′44″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Port Columbus International Airport, and within a 7-mile radius of Rickenbacker International Airport, and within a 6.5-mile radius of the Ohio State University Airport, and within 3 miles either side of the 091° bearing from the Don Scott NDB extending from the 6.5-mile radius area to 9.8 miles east of the NDB, and within a 7.4-mile radius of Bolton Field Airport, and within a 6.4-mile radius of Fairfield County Airport, and within a 6.5-mile radius of Darby Dan Airport, excluding that airspace within the London, OH Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on January 3, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–1126 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Docket No. FAA–2002–13817; Airspace Docket No. 02–AGL–09]

Modification of Class E Airspace; Indianapolis, IN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects several errors contained in a final rule that was published in the **Federal Register** on Monday, November 25, 2002 (67 FR 70535). The final rule modified Class E airspace at Indianapolis, IN.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 02–29899 published on Monday, November 25, 2002 (67 FR 70535), modified Class E Airspace at Indianapolis, IN. The Docket contained a duplicate airport location, left out an airport radius dimension, and showed an incorrect distance, all contained in the legal description. This action corrects these errors.

Accordingly, pursuant to the authority delegated to me, the errors for the Class E Airspace, Indianapolis, IN, as published in the **Federal Register** Monday, November 25, 2002 (67 FR 70535), (FR Doc. 02–29899), is corrected as follows:

§ 71.1 [Corrected]

1. On page 70535, Column 3, in the legal description:

a. Under "Indianapolis, Greenwood Municipal Airport, IN" and its associated lat. and long. Co-ordinates eliminates one of the: "Indianapolis, Eagle creek Airpark, IN" airport titles, and its associated lat. and long. Co-ordinates.

b. In the second (2nd) line of the airspace description, after "That airspace extending upward from 700 feet above the surface," insert: "within a 7.9-mile radius of the Indianapolis International Airport,"

c. In the eighth (8th) line of the airspace description, correct: "7.4" to read: "7.9".

Issued in Des Plaines, Illinois on January 3, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–1127 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14045; Airspace Docket No. 02–AGL–13]

Modification of Class E Airspace; Dayton, OH

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Dayton, OH. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) have been developed for James M Cox Dayton International Airport, Dayton, OH. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of existing controlled airspace for James M Cox Dayton International Airport, OH.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, September 19, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Dayton, OH (67 FR 59032). The proposal was to modify existing Class E airspace at James M Cox Dayton International Airport, OH, in order to protect for several new RNAV SIAPS.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Dayton, OH, by increasing the existing area of controlled airspace for James M Cox Dayton International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Dayton, OH [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 39°59′00″ N., long. 83°40′00″ W.; to lat 39°55′00″ N., long. 83°37′00″ W.; to lat. 39°45′00″ N., long. 83°43′00″ W.; to lat. 39°39′00″ N., long. 84°07′00″ W.; to lat. 39°45′00″ N., long. 84°24′00″ W.; to lat. 39°49′00″ N., long. 84°27′00″ W.; to lat. 40°04′06″ N., long. 84°17′45″ W.; to the point of beginning.

Issued in Des Plaines, Illinois on January 3, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–1128 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14221; Airspace Docket No. 03–ACE–2]

Modification of Class E Airspace; Sikeston, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Sikeston, MO. The Nondirectional Radio Beacon (NDB) Runway (RWY) 20, Amendment 8A Standard Instrument Approach Procedure (SIAP) that serves Sikeston Memorial Municipal Airport, Sikeston, MO is cancelled effective March 20, 2003. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) that accommodates this SIAP will no longer be needed.

The intended effect of this rule is to provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) at Sikeston, MO, delete the Sikeston NDB and coordinates, and comply with the criteria of FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, April 17, 2003.

Comments for inclusion in the Rules Docket must be received on or before February 28, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14221/ Airspace Docket No. 03–ACE–2, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the

public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Sikeston, MO. The NDB RWY 20, Amendment 8A SIAP that serves Sikeston Memorial Municipal Airport, Sikeston, MO is cancelled effective March 20, 2003. Controlled airspace extending upward from 700 feet AGL that accommodates this SIAP will no longer be needed. The amendment to Class E airspace at Sikeston, MO provides controlled airspace at and above 700 feet AGL to contain SIAPs, other than the NDB RWY 20 SIAP, at Sikeston Memorial Municipal Airport. The additional Class E airspace necessary for the NDB RWY 20 SIAP is revoked. The Sikeston NDB and coordinates, and reference to these, are deleted from the legal description of Sikeston, MO Class E5 airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14221/Airspace Docket No. 03–ACE–2" The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E Sikeston, MO

Sikeston Memorial Municipal Airport, MO
(Lat. 36°53'56" N., long. 89°33'42" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Sikeston Memorial Municipal Airport.

* * * * *

Issued in Kansas City, MO, on January 10, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–1132 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Parts 801 and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: The Federal Trade Commission is amending the premerger notification rules, which require the parties to certain mergers or acquisitions

to file reports with the Commission and with the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and to wait a specified period of time before consummating such transactions, pursuant to section 7A of the Clayton Act. The filing and waiting period requirements enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. The rule amendments are necessary to address public comments regarding the Interim Rules published February 1, 2001, and will increase the clarity and improve the effectiveness of the rules and the Notification and Report Form.

DATES: These final rules are effective January 17, 2003.

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, Karen E. Berg, Attorney, or B. Michael Verne, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION: On February 1, 2001, the Commission published Interim and Proposed Rules amending the Hart-Scott-Rodino rules ("HSR rules") contained in 16 CFR parts 801, 802 and 803. The Interim Rules took effect upon publication and implemented amendments to section 7A of the Clayton Act enacted on December 21, 2000 ("2000 Amendments"). The Proposed Rules set forth other changes improving and updating the HSR rules and were revised and made final effective April 17, 2002 (67 FR 11898). Interim Rule 802.21 was revised and made final in a separate rulemaking effective February 2, 2002 (67 FR 11904).

Both sets of rules invited public comments. The Commission received seventeen public comments addressing the Interim Rules (66 FR 8679) and the Proposed Rules (66 FR 8723). Some comments addressed both sets of rules, others addressed only one or the other. Eight of the public comments pertained to the Interim Rules and are listed below. In response to these eight comments, the Commission, with the concurrence of the Assistant Attorney General, is promulgating additional amendments and revisions to the Interim Rules and Form, as described below. The Commission also received a number of comments that were not relevant to the changes promulgated by either set of rules. These additional comments remain under consideration and may be addressed by future rulemaking.

The following provided public comments on the Interim Rules to the Commission:

1. Baker & McKenzie (Clanton, David A., *et al.*) (3/19/01)
3. Ford Motor Company (Bolerjack, Stephen D.) (3/19/01)
8. National Association of Manufacturers ("NAM") (3/29/01)
9. O'Melveny and Myers (Beddow, David T.) (3/19/01)
12. Gibson, Dunn & Crutcher (Pfunder, Malcolm R.) (3/19/01)
13. Section of Antitrust Law of the American Bar Association (3/19/01)
15. Skadden, Arps, Slate, Meagher & Flom, LLP (Stoll, Neal R. Esq., *et al.*) (3/19/01)
16. Kirkland & Ellis (Sonda, James and Jachino, Dani) (3/19/01)

Part 801—Coverage Rules

Section 801.1(h): Notification Threshold

The Commission is adopting the Interim Rule as final with an edit for clarification purposes, as described in the following discussion.

Background Information to § 801.1(h)

The Commission received six comments addressing the notification thresholds implemented by the Interim Rules. Comment 3 asserted that the dollar amount thresholds do not reflect levels of competitive significance of an acquisition and recommended their elimination. It also stated that the Statement of Basis and Purpose ("SBP") accompanying the Interim Rules offered no reason why these dollar amounts might reflect levels of acquisition that deserve agency review. Comments 3 and 8 recommended elimination of the $100 million and $500 million notification thresholds, with retention of the remaining three thresholds. Comments 13 and 15 advocated a return to the 1978 notification thresholds with only a change from $15 million to $50 million as the lowest threshold, citing as justification the same concerns indicated in Comments 3 and 8.

As explained in the SBP accompanying the Interim Rules and below, the Commission believes that these dollar thresholds are an effective solution to administrative problems relating to filing fees that parties and the agencies would otherwise face, and also that these thresholds impose little burden on parties. Thus, the Commission believes that these thresholds are appropriate and should be retained.

The HSR statute provides that an acquisition is reportable if, as a result of the acquisition, the acquirer will hold voting securities of the acquired person valued in excess of $50 million. Under the statute, once an acquirer holds voting securities valued at more than $50 million, any additional purchase of even one voting share is reportable. As the antitrust agencies recognized in the original rulemaking proceeding in 1978, this provision would result in far more filings than are needed for effective antitrust review. At the same time, as the acquirer's holdings in the company continue to increase in size through subsequent transactions, the agencies must have some opportunities to review the later transactions. That is, there must be some points (thresholds) where these additional acquisitions become reportable.

In 1978, the agencies adopted $15 million, 15 percent, 25 percent, and 50 percent as thresholds requiring reporting of acquisitions. The 50 percent threshold is self-evident: it is the point where the acquirer attains control, as defined in the Rules, and at least veto power. The $15 million threshold reflected the basic statutory threshold for filing. The other thresholds were chosen as intermediate points representing substantial additional ownership and, often, additional practical control. At the same time, the agencies also promulgated § 802.21 of the HSR rules to allow additional voting securities acquisitions between these thresholds to go unreported. Intermediate thresholds and § 802.21 thus serve the interests of both the agencies and the parties, enabling the agencies to allow small minority acquisitions to proceed even where the transfer of a more significant minority interest between the parties might be of concern.

In light of the 2000 Amendments, the Commission reconsidered the appropriate § 801.1(h) thresholds, recognizing that $50 million should be the lowest reporting threshold and 50 percent (if valued at greater than $50 million) the highest. The Commission then addressed what additional thresholds, if any, to implement. As with the 1978 Rules, it was readily apparent that intermediate thresholds are desirable. However, as outlined in the SBP that accompanied the Interim Rules, using only percentage notification thresholds would create administrative problems for both filers and the agencies. Section 802.21 allows an acquiring person in a voting securities acquisition—assuming it has crossed the notification threshold for which it filed within a year of the end

of its waiting period—five years to acquire up to the next notification threshold, without another filing obligation. Thus, under § 802.21, an acquiring person could file, indicate the 25 percent threshold, and as long as it crossed that threshold no more than a year after the end of its waiting period, take up to five years to acquire up to 49.9 percent [1] of the same issuer's voting stock without refiling, possibly crossing another post-February 1, 2001 filing fee threshold in the process.

The HSR Act, as amended, requires that an acquiring person pay a certain fee based on the value of the assets and voting securities it holds as a result of an acquisition. This means that, if the prior thresholds were retained, the acquiring person who filed to acquire 25 percent of an issuer's voting securities and paid the fee that corresponds to the value of 25 percent of those securities, could acquire the 25 percent, and acquire up to an additional 24.9 percent within five years, without filing or paying any additional fee. In this example, when acquiring person A plans to acquire 25 percent in year one, but may acquire up to 49 percent, what fee should it pay? Similarly, if, as several comments suggest, the notification thresholds were $50 million, 25 percent, and 50 percent, what fee should A pay if filing for the $50 million threshold where that filing would enable it to buy 24.9 percent, worth well over $500 million? Should the determination turn on A's intent? How would that intent be ascertained? What if its intent later changes?

The following scenario illustrates how retaining the percentage thresholds would lead to inequitable treatment for similarly situated filers. If a person filed notification at the 25 percent notification threshold to make open market purchases but did not know precisely how many shares above that threshold it intended to acquire, its fee would be based on the value of 25 percent of the issuer's voting stock. If that percentage were valued at $90 million, the fee paid would be $45,000, even if ultimately 30 percent, valued at $108 million, were acquired. On the other hand, if a person filed notification based on an agreement to acquire 30 percent of the same issuer's voting stock, valued at $108 million, a filing fee of $125,000 would be required. The substance of the acquisitions is exactly the same, but the structure penalizes the filer that is able to report with greater specificity the amount of voting securities it will hold.

The approach the Commission is adopting in these Final Rules retains § 802.21 and the concept of allowing subsequent acquisitions without repeated filings up to the next threshold. It adopts thresholds that provide for additional review from time to time as the acquirer obtains a substantially larger investment in the acquired company, while exempting smaller additional acquisitions. It assures that notification of all reportable acquisitions and the Congressionally-mandated fee are simultaneously received, without requiring the firms or the agency to examine fine or elusive distinctions in the intent of the acquiring person. A number of informal comments received from affected parties during preparation of the Interim Rules suggested that the approach adopted here would be the most practical and sensible means of providing for intermediate thresholds. While a number of formal comments criticized the dollar thresholds, it is of note that none of them suggested an alternative approach that would also solve the administrative/filing fee questions raised in the SBP to the Interim Rules.

Several of the comments noted that if voting securities already held increase in value to an amount greater than the next dollar notification threshold, even a very small (and presumably insignificant from an antitrust perspective) acquisition of additional shares would trigger a new filing. The Commission carefully considered these comments and it believes, based on its own experience with filings received over the last several fiscal years as well as extensive input from the private bar prior to implementing the new thresholds, that occurrence of such filing scenarios will be rare. Multiple filings would not be required for mergers and consolidations (where 100 percent of the issuer's voting securities are acquired at once), nor for asset acquisitions (where notification thresholds are inapplicable). The only situation in which multiple filings potentially may be required is where an acquiring person makes multiple acquisitions of voting stock of a large issuer and that acquiring person is unable accurately to estimate what the value of its holdings in that issuer ultimately will be. Some filers may prefer in such circumstances to indicate a higher threshold than that which will be exceeded with the initial acquisition and thereby avoid the trouble and expense of preparing another filing. For example, a party making an $80 million acquisition of a small percentage of an issuer's stock but contemplating a subsequent acquisition may opt to file for the $100 million or $500 million threshold and avoid multiple filings. Another party contemplating an $80 million acquisition of a small percentage of an issuer's stock but not expecting to make additional acquisitions would likely opt to file for the $50 million threshold and pay the lowest filing fee.

Comment 16 asserted in addition that the complexity of valuing a transaction to determine which threshold will be crossed creates a significant burden on the parties to the transactions. The acquiring person has always been confronted with accurately determining the value of assets and/or voting securities to be held as a result of an acquisition. This requirement has not changed, although its significance has increased with the creation of a tiered filing fee system based on size of transaction. The comment also noted that while some administrative problems have been solved by using the fee thresholds as filing thresholds, other problems have been created. However, the comment did not outline specific problems other than the multiple filing problem concerning an increase in value of voting securities followed by a small additional purchase—a situation that the agencies believe is both rare and avoidable.

As to the initial reportable transaction itself, where a transaction is determined to be reportable, the acquiring person can make a valuation at the time of filing, using the appropriate methodology specified in the rules, and "lock in" the value of assets or voting securities that will be held as a result of the acquisition. This value, as long as it has been determined in good faith, may be relied on for purposes of determining the appropriate filing fee and notification threshold for this acquisition, even if events such as a sharp increase in market price or post-closing adjustments subsequently cause the final acquisition price to exceed a threshold higher than that indicated in the filing. Accordingly, the retention of the multiple dollar thresholds should not impose a substantial additional burden on a significant number of persons filing notification.

Comment 9 asserted that multiple dollar thresholds for asset acquisitions are unnecessary. Notification thresholds are inapplicable to asset acquisitions, and, in order to make that clear, one change is being made to § 801.1(h) of the Interim Rules. The change removes the reference to assets in connection with notification thresholds. The § 801.1(h) notification thresholds, unlike the

[1] For simplicity, decimal percentages are expressed herein in tenths. In reality, by indicating the 25 percent notification threshold, any number of shares representing up to, but not meeting or exceeding 50 percent, could be acquired.

statutory filing fee thresholds, exist solely for the purpose of exempting subsequent acquisitions of voting securities that do not result in the acquiring person holding voting securities meeting or exceeding a higher notification threshold than that met or exceeded in a previous acquisition of voting securities, as provided in Rule 802.21.

The mention of "assets" in Interim Rule 801.1(h) could cause some confusion in the application of § 802.21 to acquisitions of voting securities when a previous acquisition of both assets and voting securities has been made and reported. Consider the following example: A acquires voting securities of B valued at $60 million and assets of B valued at $60 million. A would file indicating the $50 million notification threshold since it would hold less than $100 million in B voting securities, but would pay a $125,000 filing fee because it would hold in excess of $100 million in voting securities and assets of B as a result of the acquisition. A now wishes to make an additional acquisition of B voting securities. The § 802.21 exemption, which applies only to voting securities, exempts a subsequent acquisition of voting securities only when a prior notification threshold has been exceeded by an earlier acquisition of voting securities and the subsequent acquisition will not cause the acquiring person to meet or exceed a greater notification threshold. Thus, it is incorrect to conclude that A earlier crossed the $100 million notification threshold; rather, it only crossed the $50 million notification threshold, and whether it must file a new notification depends on whether the additional acquisition results in A holding $100 million or more of B's voting securities. The removal of the reference to assets in § 801.1(h) should clarify this point.

The Notification and Report Form is also being amended to note that Item 2(c), requiring the acquiring person to report the notification threshold which is being filed for, is applicable only to acquisitions of voting securities. Filing persons should be aware that the determination of the appropriate filing fee remains unchanged. The filing fee is still calculated based on the total aggregate value of voting securities and assets that will be held as a result of the acquisition. Additionally, the reference to § 801.1(h)(1) in § 801.21 (securities and cash not considered assets when acquired) is removed as it is no longer applicable.

After careful consideration of the options and of the comments regarding notification thresholds, the Commission has determined that the notification thresholds promulgated by the Interim Rules are appropriate and the Final Rule will be implemented with those thresholds.

Part 803—Transmittal Rules

Section 803.9 Filing Fee

The Commission received three comments concerning § 803.9. Comment 1 objected to the fact that the filing fee for an acquisition of voting securities of a foreign issuer is based on the entire value of the transaction and may reach $280,000, despite the fact that the U.S. portion of the transaction may be relatively small and the issuer's U.S. presence may measure only slightly over $50 million. The comment proposed an amendment to the rule that would limit filing fees for all acquisitions of foreign assets or voting securities to $45,000 unless more than 50 percent of the transaction's value is attributable to either assets located in the U.S. or to sales in or into the U.S.

Amending § 803.9 in this fashion would be in direct conflict with the language of the 2000 Amendments, which clearly specifies that the filing fee is based on the aggregate total value of voting securities and assets held as a result of the acquisition.

Comment 13 suggested that examples 4 and 5 to the rule would be more appropriately paired with other rules; however, the Commission believes that the examples explain how the appropriate filing fee is determined and sees no need to remove them from this rule.

Comment 8 claimed that the language of the rule is unclear. It contended that nowhere does the rule state that filing persons must pay a filing fee each time a threshold is crossed. It further stated that only by extremely careful reading and parsing of sentences can one conclude that the agencies apparently want the full fees for crossing each threshold. As the comment does not specify what language is confusing or unclear, it is difficult for the Commission to determine what portion of the rule might need clarification. The language of the rule in its current form unambiguously lays out the filing fee requirements, and since no other comment indicated that the rule is unclear, the Final Rule will be implemented without change except as noted in the following paragraph. Two additional examples are added to further illustrate the application of the rule.

Section 803.9 is amended in the following way: 803.9(c) provides that for a reportable transaction in which the acquiring entity has two ultimate parent entities, both ultimate parent entities are acquiring persons; however, if the responses for both ultimate parent entities would be the same for Items 5 through 8 of the Notification and Report Form, only one filing fee is required in connection with the transaction. The intent of this paragraph was to require only one filing fee for those transactions where the two acquiring persons would have no significant business activities outside of the jointly-controlled acquisition vehicle. Although no comments were received on this point, we have discovered that in some instances such persons may respond differently to Item 6, *i.e.*, the two ultimate parent entities may have different shareholders. To ensure that the intent of this section is implemented, § 803.9(c) is amended to require only that the response to Item 5 be the same for both acquiring persons in order for the transaction to qualify for one filing fee.

It should also be noted that the SBP accompanying the Interim Rules contained a typographical error which omitted the word "not" in the last sentence discussing § 803.9. The sentence should have read: "It is currently Commission practice to refund filing fees only in such instances, but paragraph (e) is added to codify that practice and give notice that acquiring persons will *not* receive partial reimbursement of their fee in the event they overvalue a transaction."

Section 803.20 Requests for Additional Information or Documentary Material

Comments 12 and 13 correctly pointed out a discrepancy between the SBP and the Interim Rule. The intent was to amend this section to reflect the fact that a second request to an acquired person in a bankruptcy transaction covered by 11 U.S.C. 363(b) does not extend the waiting period. That section of the Bankruptcy Code provides that subsection (e)(2) of Section 7A of the Clayton Act, which deals with how second requests affect the waiting period, shall apply to such bankruptcy transactions in the same manner as subsection (e)(2) applies to a cash tender offer. This was correctly described in the SBP; however, a drafting error in the Interim Rule effected a different result. The Final Rule has been revised to correspond to the intent stated in the SBP. In addition, the example has been revised to more clearly illustrate the application of the rule in the case of a tender offer.

Part 803—Appendix: Premerger Notification and Report Form

Transactions Subject to Foreign Antitrust Reporting Requirements

The Form was amended by the Interim Rules to include a space for reporting persons to indicate whether the filing is subject to foreign antitrust reporting requirements and requests the voluntary submission of the name(s) of any foreign antitrust or competition authority that, based upon the knowledge or belief of the filing person at the time of the filing, has been or will be notified of the proposed transaction and the date or anticipated date of such notification.

Three comments were received regarding this change. Comment 3 stated that the determination of the countries requiring a premerger report is a substantial burden, frequently completed after HSR filings are made. It further argued that the list would be unnecessary in the great majority of filings, which do not receive more substantive review. Comment 8 argued that the listing is unnecessary, and will likely be incomplete, since the exact identity of countries to be notified is not always known at the time of filing.

Comment 13 also indicated that the burden associated with responding to this item may outweigh the probative value to the agencies. It recommended that the voluntary nature of the item be disclosed on the Form so infrequent filers will know without reference to the Instructions that their response is not mandatory. The comment further remarked that despite the fact that a response to the item is voluntary, the risk is raised that the parties may inadvertently err in their reporting, and that the Commission has given no explanation of the steps that a party must undertake to ensure that the voluntary answer is accurate.

The Commission, as it stated in the SBP accompanying the Interim Rules, believes that early notice of multiple jurisdiction filings will allow the agencies to communicate with foreign counterparts only to the extent that statutorily protected information is not disclosed and, where appropriate, to seek consent of the parties to allow more extensive cooperation between or among antitrust authorities in conducting their investigations. This approach could in many instances reduce the burden that would be placed on the parties in providing duplicative responses to multiple jurisdictions.

The Commission recognizes that numerous foreign jurisdictions may be involved, some of which may not have been identified at the time the parties to a transaction are otherwise prepared to file their notification, and accordingly requests that the filing person voluntarily respond to this item based on its knowledge or belief "at the time of the filing." If a filing person chooses to respond, the obligation to provide accurate information is the same as that for any other item on the Form. If the parties answer to the best of their knowledge at the time of filing, it is highly unlikely that any penalty would result if the response later proves to be inaccurate.

Given the voluntary nature of the item, and the instruction that the person filing respond only based on its knowledge at the time of filing, the Commission believes that the potential benefit to the agencies outweighs what would be a very limited burden to the parties. This item will remain on the Form; however, the word "voluntary" in parentheses will be added to the item on the Form itself to ensure that the voluntary nature of the response to this item is clear without reference to the Instructions.

Explanation of Amount Paid/Name of Person Responsible for Fair Market Valuation

The Interim Rules introduced a new item on the Form in which the acquiring person indicates the amount of the fee paid. The acquiring person is further advised that should the fee be based on an amount that differs from the acquisition price, or if the acquisition price is undetermined and may fall within a range that straddles two filing fee thresholds, an explanation of the value reported is required to be submitted with the Form. The explanation should include discussion of adjustments to the acquisition price, a description of any exempt assets and their value, and the valuation method(s) used. In connection with the valuation of the transaction, Item 2(e) was also added, requiring that if the value of the transaction is based in whole or in part on a fair market valuation, the name of the person responsible for that valuation should be provided. The Commission received three comments regarding the attachment of the valuation explanation and the identification of the person responsible for any fair market valuation.

Comment 3 stated that the addition of these items adds additional burden for the parties and asserted that if the agencies have questions about the valuation method, they can always raise them with the reporting person. The comment suggested that there is no need to name the person performing the valuation since an officer of the filing party certifies the accuracy of all of the information in the filing. Comment 8 also noted that the information regarding the method of valuation can be obtained by calling the contact person listed in Item 1(g) of the Form.

Comment 13 asserted that although the agencies might reasonably request an explanation of the valuation to ensure that the proper filing fees are being paid, it is not clear when such disclosure must be provided and how its requirements can be satisfied. It also noted that it is unclear under what circumstances a transaction value might straddle two filing fee thresholds. For example, the comment noted that it is uncertain whether a person filing for a cash tender offer for a minimum condition (*i.e.*, 66⅔ percent) should be able to file based upon a valuation for the minimum condition being satisfied, or based on the assumption that 100 percent of the shares will be tendered (presumably valued at a higher filing fee threshold). The comment also observed that if the agencies are looking for a responsible person to hold accountable for any errors in the valuation, they can look to the officer who signed the certification and do not need an additional person to be identified as accountable on the Form itself.

The Commission recognizes that with the new fee schedule the valuation of transactions must be more precise than was required in the past. It does not, however, believe that the new items on the Form impose any significant burden beyond that already required to calculate the value of the transaction. When it is not apparent from the purchase agreement why a lower filing fee threshold is being indicated, the required explanation need not be lengthy or highly detailed, but merely a concise description of how the acquiring person arrived at the value it is reporting on the Form. In most cases, this explanation will quickly resolve any valuation issues staff may have identified and will eliminate the need to contact the parties for any further discussion.

The issues surrounding valuation are, and have always been, complex. How the rules governing valuation should be applied to determine the appropriate filing fee has been the subject of individual informal interpretations and widely attended public question and answer sessions. Additionally, several examples were included in § 803.9 to illustrate commonly encountered scenarios. More examples are added to the final version of this rule to address other situations which have been identified as problematic.

To address the specific questions raised by Comment 13, an example of when the value of a transaction may straddle two filing fee thresholds is when the agreed price for an acquisition of non-publicly traded voting securities is $99 million, subject to post-closing adjustments of up to plus or minus $2 million. In this situation, if the acquiring person has a reasonable basis for estimating that the adjustments will be minus $1 million, then the acquisition price is determined and the appropriate filing fee threshold is $50 million. However, since the potential acquisition price, subject to adjustments, could have exceeded the $100 million threshold, an explanation of why the lower threshold was indicated should be attached (*see* § 803.9, example 7).

In the case of tender offers, if the offer is for a minimum percentage of the issuer's voting securities, but there is no cap on the offer, the transaction must be valued at the maximum that could be tendered (*i.e.*, 100 percent). If, however, the offer is capped at a fixed amount (*i.e.*, 50 percent plus one share), after which no further shares can be tendered, the value will be that fixed amount, even if the tender offer will be followed by a merger, which will not be reportable under section 7A(c)(3) (*see* § 803.9, example 8).

The requirement to provide the name of an individual responsible for any fair market valuation is not intended to circumvent the contact person identified in Item 1(g) of the Form. It is intended, rather, to ensure that the contact person can quickly and easily locate the appropriate person in the event a question is raised by the agencies concerning the valuation. In the Commission staff's experience, the contact person often is not involved in the detailed compilation of the information on the Form, and may require an extended period of time to determine who within the acquiring person is knowledgeable about the information contained in any particular item. Providing the name of the person responsible for this item will ensure that review of the notification is not unduly delayed by valuation issues.

In summary, the Commission does not believe that any new significant burden has been introduced by the addition of these two items and they will remain on the Form submitted with the Final Rules. The agencies will continue to provide assistance in resolving the complex issues surrounding valuation through informal, and, if appropriate, formal interpretation.

Item 2(c) Notification Threshold

As noted in the SBP for § 801.1(h), the Notification and Report Form is also being amended to clarify that Item 2(c), requiring the acquiring person to report the notification threshold that is being filed for, is applicable only to acquisitions of voting securities.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

Because of the size of the transactions necessary to invoke a Hart-Scott-Rodino filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, the recent amendments to section 7A of the Clayton Act, which these rule amendments implement, were intended to reduce the burden of the premerger notification program by exempting all transactions valued at $50 million or less. Further, none of the rule amendments expands the coverage of the premerger notification rules in a way that would affect small business. Accordingly, the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501–3520, requires agencies to seek and obtain Office of Management and Budget ("OMB") approval before undertaking a "collection of information" directed to ten or more persons. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The HSR premerger notification rules and Form contain information collection requirements as defined by the PRA that have been reviewed and approved by OMB (preceding these latest HSR rule amendments) [2] under OMB Control No. 3084–0005. The Final Rules implement amendments to section 7A of the Clayton Act, which reduce the burden of the premerger reporting program by exempting all transactions valued at $50 million or less. Because the Final Rules do not affect the information collection requirements of the premerger notification program as implemented by the Interim Rules, they have not been resubmitted to OMB for review. The Supporting Statement that accompanied the Request for OMB Review states that the total burden imposed on the members of the public subject to the requirements of the Act, including the Final Rules, is estimated to be 192,089 hours per year (based on fiscal year 2000 filings). This constitutes an approximate 47 percent reduction from what the burden estimate would be absent the final rules and based on the number of fiscal year 2000 filings.

[2] OMB clearance was received on May 14, 2001 and extends through May 31, 2004.

List of Subjects in 16 CFR Parts 801 and 803

Antitrust, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR parts 801 and 803 as follows:

PART 801—COVERAGE RULES

1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

2. Amend § 801.1 by revising paragraph (h) to read as follows:

§ 801.1 Definitions.

* * * * *

(h) *Notification threshold.* The term "notification threshold" means:

(1) An aggregate total amount of voting securities of the acquired person valued at greater than $50 million but less than $100 million;

(2) An aggregate total amount of voting securities of the acquired person valued at $100 million or greater but less than $500 million;

(3) An aggregate total amount of voting securities of the acquired person valued at $500 million or greater;

(4) Twenty-five percent of the outstanding voting securities of an issuer if valued at greater than $1 billion; or

(5) Fifty percent of the outstanding voting securities of an issuer if valued at greater than $50 million.

* * * * *

3. Amend § 801.21 by revising the introductory text to read as follows:

§ 801.21 Securities and cash not considered assets when acquired.

For purposes of determining the aggregate total amount of assets under Section 7A(a)(2) and § 801.13(b):

* * * * *

PART 803—TRANSMITTAL RULES

4. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

5. Amend § 803.9 by adding examples 7 and 8 to paragraph (a) and by revising paragraph (c) to read as follows:

§ 803.9 Filing fee.

* * * * *

(a) * * *

Examples:

* * * * *

7. "A" intends to acquire 20 percent of the voting securities of B, a non-publicly traded issuer. The agreed upon acquisition price is $99 million subject to post-closing adjustments of up to plus or minus $2 million. "A" estimates that the adjustments will be minus $1 million. In this example, since "A" is able in good faith to reasonably estimate the adjustments to the agreed-on price, the acquisition price is deemed to be determined and the appropriate filing fee threshold is $50 million. Even if the post-closing adjustments cause the final price actually paid to exceed $100 million, "A" would be deemed to hold $98 million in B voting securities as a result of this acquisition. Note, however, since the potential acquisition price subject to adjustments could have exceeded the $100 million threshold (*e.g.*, "straddles two filing fee thresholds"), an explanation of why the lower threshold was indicated should be attached. Also note that any additional acquisition by "A" of B voting stock (if the value of the stock currently held by "A" is $100 million or more) will cause "A" to cross the $100 million threshold and another filing and the appropriate fee will be required.

8. "A" intends to make a cash tender offer for a minimum of 50 percent plus one share of the voting securities of B, a non-publicly traded issuer, but will accept up to 100 percent of the shares if they are tendered. There are 12 million shares of B voting stock outstanding and the tender offer price is $10 per share. In this instance, since there is no cap on the number of shares that can be tendered, the value of the transaction will be the value of 100 percent of B's voting securities, and "A" must pay the $125,000 fee for the $100 million filing fee threshold. Note that if the tender offer had been for a maximum of 50 percent plus one share the value of the transaction would be $60 million, and the appropriate fee would be $45,000, based on the $50 million filing fee threshold. This would be true even if the tender offer were to be followed by a merger which would be exempt under Section 7A(c)(3).

* * * * *

(c) For a reportable transaction in which the acquiring entity has two ultimate parent entities, both ultimate parent entities are acquiring persons; however, if the responses for both ultimate parent entities would be the same for item 5 of the Notification and Report Form, only one filing fee is required in connection with the transaction.

* * * * *

6. Amend § 803.20 by revising paragraph (c) and the example thereto, to read as follows:

§ 803.20 Requests for additional information or documentary material.

* * * * *

(c) *Waiting period extended.* (1) During the time period when a request for additional information or documentary material remains outstanding to any person other than either:

(i) In the case of a tender offer, the person whose voting securities are sought to be acquired by the tender offeror (or any officer, director, partner, agent or employee thereof), or

(ii) In the case of an acquisition covered by 11 U.S.C. 363(b), the acquired person, the waiting period shall remain in effect, even though the waiting period would have expired (see § 803.10(b)) if no such request had been made.

(2) A request for additional information or documentary material to any person other than either:

(i) In the case of a tender offer, the person whose voting securities are being acquired pursuant to the tender offer (or any officer, director, partner, agent or employee thereof), or

(ii) In the case of an acquisition covered by 11 U.S.C. 363(b), the acquired person, shall in every instance extend the waiting period for a period of 30 (or, in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), 10) calendar days from the date of receipt (as determined under § 803.10) of the additional information or documentary material requested.

Example: Acquiring person "A" makes a non-cash tender offer for voting securities of corporation "X", and files notification. Under § 801.30, the waiting period begins upon filing by "A," and "X" must file within 15 days thereafter (10 days if it were a cash tender offer). Assume that before the end of the waiting period, the Assistant Attorney General issues a request for additional information to "A" and "X." Since the transaction is a non-cash tender offer, the waiting period is extended for 30 days (10 days if it were a cash tender offer) beyond the date on which "A" responds. Note that under § 803.21, even though the waiting period is not affected by the second request to "X" or by "X" supplying the requested information, "X" is obliged to respond to the request within a reasonable time. Nevertheless, the Federal Trade Commission and Assistant Attorney General could, notwithstanding the pendency of the request for additional information, terminate the waiting period sua sponte pursuant to § 803.11(c).

* * * * *

7. Revise the Appendix to part 803 to read as follows:

BILLING CODE 6750-01-P

TRANSACTION NUMBER ASSIGNED ☐☐☐☐☐☐☐☐

16 C.F.R. Part 803 - Appendix
NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

Approved by OMB
3084-0005
Expires 08/31/02

THE INFORMATION REQUIRED TO BE SUPPLIED ON THESE ANSWER SHEETS IS SPECIFIED IN THE INSTRUCTIONS

•• Attach the Affidavit required by § 803.5 to this page.

FEE INFORMATION

AMOUNT PAID $_____

In cases where your filing fee would be higher if based on acquisition price or where the acquisition price is undetermined to the extent that it may straddle a filing fee threshold, attach an explanation of how you determined the appropriate fee *(acquiring persons only)*.

Attachment Number _____

TAXPAYER IDENTIFICATION NUMBER _____
or SOCIAL SECURITY NUMBER of payer _____
(acquiring person (and payer if different from acquiring person))

CHECK ATTACHED ☐ MONEY ORDER ATTACHED ☐

WIRE TRANSFER ☐ CONFIRMATION NO. _____

FROM: NAME OF INSTITUTION _____

NAME OF PAYER (if different from PERSON FILING) _____

IS THIS A CORRECTIVE FILING? ☐ YES ☐ NO

IS THIS ACQUISITION SUBJECT TO FOREIGN FILING REQUIREMENTS? ☐ YES ☐ NO
If YES, list jurisdictions: *(voluntary)* _____

IS THIS ACQUISITION A CASH TENDER OFFER? ☐ YES ☐ NO

BANKRUPTCY? ☐ YES ☐ NO

DO YOU REQUEST EARLY TERMINATION OF THE WAITING PERIOD? *(Grants of early termination are published in the Federal Register AND on the FTC web site www.ftc.gov)*
☐ YES ☐ NO

ITEM 1 – PERSON FILING

1(a) NAME and
HEADQUARTERS ADDRESS
of PERSON FILING

1(b) PERSON FILING NOTIFICATION IS
☐ an acquiring person ☐ an acquired person ☐ both

1(c) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE PERSON FILING NOTIFICATION
☐ Corporation ☐ Partnership ☐ Other *(Specify)*: _____

1(d) DATA FURNISHED BY
☐ calendar year ☐ fiscal year *(specify period)* _____ (month/year) to _____ (month/year)

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to §7A of the Clayton Act, 15 U.S.C. §18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the *Federal Register* at 43 FR 33450; the rules may also be found at 16 CFR Parts 801-03. Failure to file this Notification and Report Form, and to observe the required waiting period before consummating the acquisition in accordance with the applicable provisions of 15 U.S.C. §18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty of not more than $11,000 for each day during which such person is in violation of 15 U.S.C. §18a.

All information and documentary material filed in or with this Form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

Filing - Complete and return *two* copies (with one original affidavit and certification and one set of documentary attachments) of this Notification and Report Form to: Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. *Three* copies (with one set of documentary attachments) should be sent to: Director of Operations and Merger Enforcement, Antitrust Division, Department of Justice, Patrick Henry Building, 601 D Street, N.W., Room #10013, Washington, D.C. 20530. (For FEDEX airbills to the Department of Justice, do not use the 20530 zip code; use zip code 20004.)

DISCLOSURE NOTICE - Public reporting burden for this report is estimated to vary from 8 to 160 hours per response, with an average of 39 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to:

Premerger Notification Office,
H-303
Federal Trade Commission
Washington, DC 20580

Office of Information and
Regulatory Affairs,
Office of Management and Budget
Washington, DC 20503

Under the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number is 3084-0005, which also appears in the upper right-hand corner of the first page of this form.

NAME OF PERSON FILING NOTIFICATION	DATE

1(e) PUT AN X IN THE APPROPRIATE BOX AND GIVE THE NAME AND ADDRESS OF ENTITY FILING NOTIFICATION (if other than ultimate parent entity)

☐ NA ☐ This report is being filed on behalf of a foreign person pursuant to § 803.4. ☐ This report is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file pursuant to § 803.2(a).

NAME OF ENTITY FILING NOTIFICATION	ADDRESS

1(f) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION OR WHOSE ASSETS OR VOTING SECURITIES ARE BEING ACQUIRED IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

PERCENT OF VOTING SECURITIES HELD BY EACH ENTITY IDENTIFIED IN ITEM 1(a)

1(g) IDENTIFICATION OF PERSON TO CONTACT REGARDING THIS REPORT

NAME OF CONTACT PERSON TITLE FIRM NAME BUSINESS ADDRESS TELEPHONE NUMBER FAX NUMBER E-MAIL ADDRESS	

(h) IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS. (See § 803.20(b)(2)(iii))

NAME OF CONTACT PERSON TITLE FIRM NAME BUSINESS ADDRESS TELEPHONE NUMBER FAX NUMBER E-MAIL ADDRESS	

ITEM 2

2(a) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS	LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS

2(b) THIS ACQUISITION IS *(put an X in all the boxes that apply)*

- ☐ an acquisition of assets
- ☐ a merger (see § 801.2)
- ☐ an acquisition subject to § 801.2(e)
- ☐ a formation of a joint venture of other corporation (see § 801.40)
- ☐ an acquisition subject to § 801.30 (*specify type*)
- ☐ other (*specify*) _____
- ☐ a consolidation (see § 801.2)
- ☐ an acquisition of voting securities
- ☐ a secondary acquisition
- ☐ an acquisition subject to § 801.31

2(c) INDICATE THE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(h) FOR WHICH THIS FORM IS BEING FILED *(acquiring person only in an acquisition of voting securities)*

☐ $50 million ☐ $100 million ☐ $500 million ☐ 25% (see Instructions) ☐ 50%

2(d)(i) VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION	(ii) PERCENTAGE OF VOTING SECURITIES	(iii) VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITION	(iv) AGGREGATE TOTAL VALUE
$	%	$	$

NAME OF PERSON FILING NOTIFICATION	DATE

2(e) If aggregate total value in 2(d)(iv) is based in whole or in part on a fair market valuation pursuant to § 801.10(c)(3), identify the person or persons responsible for making the valuation *(acquiring persons only)*.

ITEM 3

3(a) DESCRIPTION OF ACQUISITION

NAME OF PERSON FILING NOTIFICATION	DATE

3(b)(i) ASSETS TO BE ACQUIRED (to be completed only for asset acquisitions)

3(b)(ii) ASSETS HELD BY ACQUIRING PERSON

3(c) VOTING SECURITIES TO BE ACQUIRED

3(c)(i) LIST AND DESCRIPTION OF VOTING SECURITIES AND LIST OF NON-VOTING SECURITIES:

3(c)(ii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY:

3(c)(iii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY BEING ACQUIRED:

NAME OF PERSON FILING NOTIFICATION	DATE

3(c)(iv) IDENTITY OF PERSONS ACQUIRING SECURITIES:

3(c)(v) DOLLAR VALUE OF SECURITIES IN EACH CLASS BEING ACQUIRED:

3(c)(vi) TOTAL NUMBER OF EACH CLASS OF SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION:

3(d) SUBMIT A COPY OF THE MOST RECENT VERSION OF CONTRACT OR AGREEMENT (or letter of intent to merge or acquire)

DO NOT ATTACH THIS DOCUMENT TO THIS PAGE ATTACHMENT OR REFERENCE NUMBER OF CONTRACT OR AGREEMENT _____

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 4 PERSONS FILING NOTIFICATION MAY PROVIDE BELOW AN OPTIONAL INDEX OF DOCUMENTS REQUIRED TO BE SUBMITTED BY ITEM 4 (See Item by Item instructions). THESE DOCUMENTS SHOULD NOT BE ATTACHED TO THIS PAGE.

4(a) DOCUMENTS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION	ATTACHMENT OR REFERENCE NUMBER

4(b) ANNUAL REPORTS, ANNUAL AUDIT REPORTS, AND REGULARLY PREPARED BALANCE SHEETS	ATTACHMENT OR REFERENCE NUMBER

4(c) STUDIES, SURVEYS, ANALYSES, AND REPORTS	ATTACHMENT OR REFERENCE NUMBER

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5 (See "References" listed in the General Instructions to the Form. Refer to the *North American Industry Classification System-United States, 1997* (*1997 NAICS Manual*) for the 6-digit (NAICS) industry codes. Refer to the *1997 Numerical List of Manufactured and Mineral Products* (EC97M31R-NL) for the 7-digit product class codes and the 10-digit product codes. Report revenues for the 7-digit product class codes and 10-digit product codes using the codes in the columns labeled "Product code." For further information on NAICS-based codes visit the www.census.gov web site.)

5(a) DOLLAR REVENUES BY INDUSTRY

6-DIGIT INDUSTRY CODE	DESCRIPTION	1997 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(i) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

10-DIGIT PRODUCT CODE	DESCRIPTION	1997 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(ii) PRODUCTS ADDED OR DELETED

DESCRIPTION (10-DIGIT PRODUCT CODE)	ADD	DELETE	YEAR OF CHANGE	TOTAL DOLLAR REVENUES

ITEM 5(b)(iii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS

7-DIGIT PRODUCT CLASS	DESCRIPTION	YEAR _____ TOTAL DOLLAR REVENUES

(Item 5(b)(iii) continued on page 10)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(ii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS - CONTINUED

7-DIGIT PRODUCT CLASS	DESCRIPTION	YEAR [____] TOTAL DOLLAR REVENUES

ITEM 5(c) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY

6-DIGIT INDUSTRY CODE	DESCRIPTION	YEAR [____] TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

5(d) COMPLETE ONLY IF ACQUISITION IS IN THE FORMATION OF A JOINT VENTURE OR OTHER CORPORATION

5(d)(i) NAME AND ADDRESS OF THE JOINT VENTURE OR OTHER CORPORATION

5(d)(ii)
(A) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE OR OTHER CORPORATION HAS AGREED TO MAKE

(B) DESCRIPTION OF ANY CONTRACTS OR AGREEMENTS

(C) DESCRIPTION OF ANY CREDIT GUARANTEES OR OBLIGATIONS

(D) DESCRIPTION OF CONSIDERATION WHICH EACH PERSON FORMING THE JOINT VENTURE OR OTHER CORPORATION WILL RECEIVE

5(d)(iii) DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE OR OTHER CORPORATION WILL ENGAGE

5(d)(iv) SOURCE OF DOLLAR REVENUES BY 6-DIGIT INDUSTRY CODE (non-manufacturing) AND BY 7-DIGIT PRODUCT CLASS (manufacturing)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 6

6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION

6(b) SHAREHOLDERS OF PERSON FILING NOTIFICATION

NAME OF PERSON FILING NOTIFICATION	DATE

6(c) HOLDINGS OF PERSON FILING NOTIFICATION

ITEM 7 DOLLAR REVENUES

7(a) 6-DIGIT NAICS CODE AND DESCRIPTION

7(b) NAME OF EACH PERSON WHICH ALSO DERIVED DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

7(c) GEOGRAPHIC MARKET INFORMATION

ITEM 8 PRIOR ACQUISITIONS (to be completed by acquiring person only)

NAME OF PERSON FILING NOTIFICATION	DATE

CERTIFICATION

This **NOTIFICATION AND REPORT FORM,** together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

NAME (Please print or type)	TITLE
SIGNATURE	DATE

Subscribed and sworn to before me at the
City of _____, State of _____

this _____ day of _____, the year _____

Signature _____

My Commission expires _____

[SEAL]

By direction of the Commission.
Donald S. Clark,
Secretary.
[FR Doc. 03–1078 Filed 1–16–03; 8:45 am]
BILLING CODE 6750–01–C

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[OK–028–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Oklahoma proposed revisions to its regulations concerning employment and financial interests of State employees and members of advisory boards and commissions and remining and reclamation of previously mined and certain inadequately reclaimed lands. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations and/or statutes. Oklahoma also intends to correct some cross references and typographical and grammatical errors.

EFFECTIVE DATE: January 17, 2003.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Oklahoma Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program in the January 19, 1981, **Federal Register** (46 FR 4902). You can also find later actions concerning Oklahoma's program and program amendments at 30 CFR 936.15 and 936.16.

II. Submission of the Amendment

By letter dated November 1, 2001 (Administrative Record No. OK–993), Oklahoma sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Oklahoma sent the amendment at its own initiative. Oklahoma proposed to amend the Oklahoma Administrative Code, Title 460, Chapter 20.

We announced receipt of the amendment in the December 11, 2001, **Federal Register** (66 FR 63968). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on January 10, 2002. We received comments from one Federal agency (Administrative Record No. OK–993.01).

During our review of the amendment, we identified concerns regarding the review of permit applications and employment and financial interests of members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests. We notified Oklahoma of these concerns by letter dated March 25, 2002 (Administrative Record No. OK–993.04).

Oklahoma responded in a letter dated July 3, 2002, by sending us a revised amendment (Administrative Record No. OK–993.05). Based upon Oklahoma's revisions to its amendment, we reopened the public comment period in the August 27, 2002, **Federal Register** (67 FR 54979). The public comment period ended on September 11, 2002. We received comments from one Federal agency (Administrative Record No. OK–993.10).

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

A. Revisions to Oklahoma's Regulations That Have the Same Meaning as the Corresponding Federal Provisions

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations and/or statutes.

Topic	State regulation	Federal counterpart regulation and/or statute
Definition of "Lands eligible for remining"	Section 460:20–3–5(A) through (D), (F), (G), and (I).	30 CFR 701.5; sections 402(g)(4)(A) and (B)(i) through (ii), and 404 of SMCRA.
Definition of "Unanticipated event or condition"	Section 460:20–3–5	30 CFR 701.5.
Financial interest of State employees—Authority.	Section 460:20–5–3	30 CFR 705.3(a).
Financial interest of State employees—Who shall file.	Section 460:20–5–7(b)	30 CFR 705.11(b)
Review of permit application	Section 460:20–15–6(b)(4) through (b)(5), and (c)(13).	30 CFR 773.13(a) and (b), and 773.15(m).
Lands eligible for remining	Section 460:20–33–12	30 CFR 785.25.
Responsibility period	Section 460:20–43–46(c)(2) and (c)(3)	30 CFR 816.116(c)(2) and (c)(3).
Responsibility time frame	Section 460:20–45–46(c)(2) and (c)(3)	30 CFR 817.116(c)(2) and (c)(3).

Because the above State regulations have the same meaning as the corresponding Federal provisions, we find that they are no less effective than the Federal regulations and/or no less stringent than the Federal statutes. Therefore, we are approving them.

B. Revisions to Oklahoma's Regulations That Are Not Inconsistent With the Corresponding Federal Provisions

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations except that Oklahoma expanded the persons to whom the provisions in the regulations apply to include one or more of the following: members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests.

Topic	State regulation	Federal counterpart regulation and/or statute
Financial interest of State employees—Purpose	Section 460:20–5–1	30 CFR 705.1.
Financial interest of State employees—Objectives.	Section 460:20–5–2	30 CFR 705.2.
Financial interest of State employees—Responsibility.	Section 460:20–5–4(a)(7), (a)(8), and (c)	30 CFR 705.4(a)(7), (a)(8) and (c).
Financial interest of State employees—Penalties.	Section 460:20–5–6(b)	30 CFR 705.6(b).
Financial interest of State employees—Who shall file.	Section 460:20–5–7(a)	30 CFR 705.11(a).
Financial interest of State employees—When to file.	Section 460:20–5–8	30 CFR 705.13.
Financial interest of State employees—Where to file.	Section 460:20–5–9(b)	30 CFR 705.15.
Financial interest of State employees—What to report.	Section 460:20–5–10	30 CFR 705.17.

Because the inclusion of the advisory board members, the Oklahoma Mining Commission, and commissions representing multiple interests in Oklahoma's above regulations are not inconsistent with the counterpart Federal provisions, we find that the proposed State regulations are no less effective than the corresponding Federal regulations and we are approving them.

C. Section 460:20–5–3. Definitions

Paragraph (E) of the definition of "lands eligible for remining," provides that the lands eligible for remining are those lands mined for coal or affected by such mining or other coal mining processes that have been left or abandoned in an inadequate reclamation status between August 4, 1977, and January 19, 1981. The counterpart Federal definition found at 30 CFR 701.5 states that lands eligible for remining means those lands that would otherwise be eligible for expenditures under section 402(g)(4) of the Federal Act. The Federal statute at section 402(g)(4)(B)(i) of SMCRA states that in order to be eligible for remining, the coal mining operation must have occurred during the period beginning on August 4, 1977, and ending on or before the date on which the Secretary approved the State program. The Secretary approved the Oklahoma program on January 19, 1981. Because the lands eligible for remining under the Oklahoma program would also be eligible under the Federal program, we find that the Oklahoma provision is no less effective than the Federal regulation at 30 CFR 701.5 and no less stringent than the Federal statute at section 402(g)(4)(B)(i) of SMCRA. Therefore, we are approving this provision.

Also, paragraph (H) of the definition of "lands eligible for remining," provides that the lands eligible for remining are those lands mined for coal or affected by such mining or other coal mining processes that have been left or abandoned in an inadequate reclamation status between August 4, 1977, and November 5, 1990. The counterpart Federal definition found at 30 CFR 701.5 states that lands eligible for remining means those lands that would otherwise be eligible for expenditures under section 402(g)(4) of the Federal Act. The Federal statute at section 402(g)(4)(B)(ii) of SMCRA states that in order to be eligible for remining, the coal mining operation must have occurred during the period beginning on August 4, 1977, and ending on or before November 5, 1990. Because the lands eligible for remining under the Oklahoma program would also be eligible under the Federal program, we find that the Oklahoma provision is no less effective than the Federal regulation at 30 CFR 701.5 and no less stringent than the Federal statute at section 402(g)(4)(B)(ii) of SMCRA. Therefore, we are also approving this provision.

D. Section 460:20–5–4. Responsibility

Currently at section 460:20–5–4(a), Oklahoma's program contains provisions that pertain to the filing of financial interest statements by employees. Oklahoma proposed to expand the list of persons who are required to file financial interest. Oklahoma proposed to accomplish this by adding new paragraph (b). This new paragraph sets forth the responsibility of the Oklahoma Governor's Office, Director of Appointments pertaining to the filing of financial interest statements by advisory board members, the Oklahoma Mining Commission, and commissions representing multiple interests. With the addition of this paragraph, the Oklahoma Governor's Office, Director of Appointments must (1) provide advice, assistance, and guidance to advisory board members and commissioners required to file the statement, (2) promptly review the statements to determine if prohibited financial interests exist, (3) resolve prohibited financial interest situations, (4) certify on each statement that the review has been made, and (5) report to the Director of OSM any advisory board member's or commissioner's failure to take remedial action to resolve any prohibited financial interest situations. The counterpart Federal regulations for these provisions are found at 30 CFR 705.4(a)(1) through (a)(4) and 705.19(a)(2)(ii) through (a)(3). Oklahoma's provisions have the same meaning as the Federal provisions except that Oklahoma's provisions also include members of advisory boards and commissions representing multiple interests, whereas, the Federal provisions pertain to employees. Because the provisions in Oklahoma's proposed new paragraph (b) are intended to expand the list of persons who must file financial interest statements and the inclusion of these persons is not inconsistent with the Federal provisions, we are approving this amendment.

E. Section 460:20–5–6. Penalties

Oklahoma proposed to revise section 460:20–5–6(a) by including advisory board members and commissioners on the list of persons subject to criminal penalties if they perform any function or duty under the State's program and have a direct or indirect financial interest in any underground or surface coal mining operation. The counterpart Federal regulation for this provision is found at 30 CFR 705.6(a). Oklahoma's proposed provision has the same meaning as the Federal provision except that Oklahoma's provision applies to employees, advisory board members, and commissioners and sets the fine at no more than $5,000 (the dollar amount that we previously approved), whereas, the Federal provision applies only to employees and sets the fine at no more than $2,500. Because the inclusion of the advisory board members and commissioners is not inconsistent with the Federal provision, we find that the above State regulation is no less effective than the corresponding Federal regulation and we are approving it.

F. Section 460:20–5–13. Appeals Procedures

Oklahoma proposed to add new paragraph (b) to provide that members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests should follow any appeals process provided for by the Oklahoma Governor's Office, Director of Appointments. The counterpart Federal regulation at 30 CFR 705.21(a) provides for employees to file their appeal, in writing, through established procedures within their particular State. Because Oklahoma's provision provides appeal rights to members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests, we find that this provision is not inconsistent with the counterpart Federal provision and we are approving it.

G. Section 460:20–15–4. Regulatory Coordination With Requirements Under Other Laws

In this section, Oklahoma proposed to add the phrase "along with all state, federal, and local permitting and licencing [sic] requirements." With the addition of this phrase, the revised paragraph reads as follows:

> Each regulatory program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a), along with all state, federal, and local permitting and licencing [sic] requirements; for Federal programs only, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*); and the Archeological Resources Protection Act of 1979 (16 U.S.C. 470a *et seq.*) where Federal and Indian lands covered by that Act are involved.

The counterpart Federal regulation at 30 CFR 773.5 contains all of the same provisions as Oklahoma's regulation except for the phrase that provides coordination of review and issuance of permits with applicable requirements of all State, Federal, and local permitting and licensing requirements. Because Oklahoma's regulation is substantively the same as the counterpart Federal regulation and the phrase added to this section is not inconsistent with the counterpart Federal regulation, we are approving the revision.

H. Section 460:20–43–46. and Section 460:20–45–46. Revegetation: Standards for Success

At the ends of paragraphs (b)(6), Oklahoma proposed to add the phrase "of approved vegetation species." With the addition of this phrase, the revised paragraphs read as follows:

> For areas previously disturbed by mining that were not reclaimed to the requirements of this Chapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion. In general this is considered to be at least 70% vegetative ground cover of approved vegetation species.

The counterpart Federal regulations at 30 CFR 816.116(b)(5) and 817.116(b)(5) require, at a minimum, that the vegetative ground cover be not less than the ground cover existing before redisturbance and that it be adequate to control erosion. Because Oklahoma's addition of the phrase "of approved vegetation species" only serves to clarify that the ground cover must consist of approved vegetation species and because the phrase is not inconsistent with the counterpart Federal regulations, we are approving this revision.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On November 19, 2001, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Oklahoma program (Administrative Record No. OK–993.03). The U.S. Department of Labor, Mine Safety and Health Administration responded on November 27, 2001 (Administrative Record No. OK–993.01), with a comment regarding the definition for "auger mining" found in Section 460:20–3–5. Oklahoma did not propose to amend its definition for "auger mining." We previously found that Oklahoma's definition for "auger mining" is no less effective than the counterpart Federal definition at 30 CFR 701.5.

Also, in a letter dated August 5, 2002 (Administrative Record No. OK–993.10), the U.S. Department of the Interior, Fish and Wildlife Service (FWS) commented that it believes that the proposed amendment regarding remining and reclamation of previously mined and certain inadequately reclaimed lands would be protective of the environment and federally threatened and endangered species. In addition, the agency recommended that all proposed remining and reclamation activities of previously mined and certain inadequately reclaimed lands be submitted to them "for review for the potential to adversely affect threatened and endangered species." The State regulation at 460:20–33–12, concerning lands eligible for remining, requires that any application for a remining permit must be made according to all the requirements applicable to surface coal mining and reclamation operations. This includes the State regulations at 460:20–15–5(a)(3)(B) and 460:20–27–9(a), (b), and (c). The State regulation at 460:20–15–5(a)(3)(B) requires the regulatory authority to send a notice of receipt of an application to State and Federal fish and wildlife agencies with an opportunity to comment. The State regulations at 460:20–27–9(a) and (b) require applications to include fish and wildlife resource information, including information on threatened and endangered species. Further, the State regulation at 460:20–27–9(c) requires the regulatory authority to send fish and wildlife application information to the FWS for review within 10 days if requested by the FWS. Because coal operators must have a valid permit before conducting surface coal mining and reclamation operations and these permits must include the above coordination of review with State and

Federal fish and wildlife agencies, the review that the FWS recommended should occur. Additionally, we forwarded the FWS's comments to the State for its consideration.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Oklahoma proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Nos. OK–993.03 and OK–993.11). The EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 19, 2001, and July 16, 2002, we requested comments on Oklahoma's amendment (Administrative Record Nos. OK–993.03 and OK–993.11, respectively), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Oklahoma sent to us on November 1, 2001, as revised on July 3, 2002. We approve the regulations proposed by Oklahoma with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 936, which codify decisions concerning the Oklahoma program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this final rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact

that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 936 is amended as follows:

PART 936—OKLAHOMA

1. The authority citation for part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
November 1, 2001	January 17, 2003	Sections 460:20–3–5; 20–5–1; 20–5–2; 20–5–3; 20–5–4(a)(7) through (d); 20–5–6; 20–5–7(a) and (b); 20–5–8; 20–5–9(b); 20–5–10(a), (a)(2), (b)(1) through (c)(4); 20–5–13; 20–15–4; 20–15–6(b)(4), (b)(5), and (c)(13); 20–33–12; 20–43–46(b)(6) and (c)(2) through (c)(3)(B); 20–45–46(b)(6) and (c)(2) through (c)(3)(B).

[FR Doc. 03–977 Filed 1–16–03; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP New Orleans–02–022]

RIN 2115—AA97

Safety Zone; Lower Mississippi River, Above Head of Passes, Mile Marker 88.1 to 90.4, New Orleans, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is amending the temporary final rule for the safety zone established for the transit of the cruise ship (C/S) CONQUEST beneath the Entergy Corporation power cable at mile marker 89.2 Lower Mississippi River (LMR), published November 22, 2002. These amendments reflect knowledge gained from several transits of the C/S CONQUEST through this area and generally reduce the size and length of time of the zone. We are also extending the effective period of this established rule to June 8, 2003. This temporary rule will continue to prohibit entry into this zone unless specifically authorized by the Captain of the Port, New Orleans or designated representative.

DATES: The amendments to § 165.T08–122 are effective on December 13, 2002. Section 165.T08–122, added at 67 FR 70315, November 22, 2002 effective from 4:30 a.m. November 12, 2002, through 8 p.m. March 2, 2003 is extended and will remain in effect through 11 p.m. on June 8, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP New Orleans-02–022] and are available for inspection or copying at Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, Louisiana, 70112 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Matthew Dooris, Marine Safety Office New Orleans, at (504) 589–4251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The original temporary final rule was immediately required to respond to safety concerns associated with the transit of the C/S CONQUEST beneath the power cables at mile marker 89.2 LMR. The Coast Guard has continued to assess the situation after each transit of the vessel and has determined that the size of the zone and length of time the zone is enforced can be reduced, lessening the burden on the public. In addition, the assessments have revealed the need to have a small portion of the New Orleans General Anchorage clear of all vessels while the vessel is transiting beneath the power cables. This practice was initiated by the local pilots, and the Captain of the Port has decided to incorporate it in this rule. Because it is already a customary practice, and it is only applicable one day a week for a short period of time, this change should not create any additional burden for the public. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to continue to protect vessels and mariners from the hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST under the power cable crossing.

Background and Purpose

On November 12, 2002 (67 FR 70313), the Captain of the Port, New Orleans established a temporary safety zone from mile 87.2 to 91.2 LMR extending the entire width of the river for the transit of the C/S CONQUEST beneath the Entergy Corporation power cable located at mile 89.2 LMR. The C/S CONQUEST is home ported in New Orleans at the Julia Street Wharf, mile

marker 95.3 LMR and has an air draft of 208 feet. The lowest cable at Entergy Corporation's Chalmette power cable crossing is 212.6 feet North American Vertical Datum (NAVD) at the center of the Lower Mississippi River and increases in height to a maximum of 366.4 feet NAVD on the East bank and a maximum of 361.1 feet NAVD on the West bank. As the C/S CONQUEST needs an air gap of 14 feet between it and the cable to prevent electrical arcing, the vessel must maneuver within about 400 to 600 feet of the East bank or within about 400 to 700 feet of the West bank to safely transit under Entergy Corporation's Chalmette power cable crossing. Vessels transiting this area may restrict the maneuverability of the C/S CONQUEST through those safe passage lanes and possibly result in harm to life or damage to the cruise ship, the power cable, or nearby vessels.

The Coast Guard has continued to assess the safety of the C/S CONQUEST's transit after each visit. The Captain of the Port, New Orleans has had several meetings with the owner of the vessel, Carnival Cruise Lines, as well as Entergy, pilot associations, owner's of facilities impacted by the safety zone, the New Orleans Port Commission, and other representatives of the local maritime industry to evaluate the safe transit of the vessel as well as the impact of the safety zone on other traffic. All interested parties have worked to find short-term solutions to the problems posed by the crossing including de-energizing the lowest cables just prior to the transit. A long-term solution is anticipated to be complete within 18 months.

Based on continued evaluation of the transits, the Captain of the Port, New Orleans is amending the zone to reduce the size from 4 miles in length to 2.3 miles. The safety zone will now begin at mile marker 88.1, which is the location of the lower end of the Algiers Lock fore bay, and end at mile marker 90.4, which is the location of the Chalmette Slip and 350 yards upriver of the Belle Chasse Launch Service's West Bank Dock. The amount of time the zone is enforced is also being reduced from 1 hour prior to the C/S CONQUEST reaching the cable crossing to 30 minutes prior. The safety zone will now be enforced from approximately 3:15 a.m. until 3:45 a.m., which is one half hour before the C/S CONQUEST is scheduled to arrive at the cable crossing on its upriver transit until it safely transits underneath the crossing, and from approximately 6 p.m. until 6:30 p.m., which is one half hour before the C/S CONQUEST is scheduled to arrive at the cable crossing on its down bound transit, until it safely transits underneath the crossing, every Sunday between December 15, 2002 and June 8, 2003. These periods of enforcement are based on the advance cruise schedule for the C/S CONQUEST and are subject to change. Mariners will be advised of changes to the cruise schedule and periods of safety zone enforcement via broadcast notice to mariners.

The rule is also being amended to prohibit vessels from anchoring in the New Orleans Emergency Anchorage or the New Orleans General Anchorage below mile marker 90.4, which is the location of Chalmette Slip and 350 yards upriver of the Belle Chase Launch Service's West Bank Dock. These vessels could restrict the maneuverability of the C/S CONQUEST through safe passage lanes and possibly result in harm to life or damage to the cruise ship, the power cable, or nearby vessels. Vessels anchored within the New Orleans Emergency Anchorage are already required by 33 CFR § 110.195 (a)(16) to obtain permission from the Captain of Port, New Orleans prior to anchoring. The New Orleans General Anchorage is from mile 90.1 to 90.9 LMR with only 0.3 miles of the anchorage affected by this amendment. This prohibition is effective two hours prior to the arrival and departure of the C/S CONQUEST until it safely passes under the crossing.

Except as described in this rule, all vessels are prohibited from entering, anchoring or transiting within the zone during the announced enforcement periods unless authorized by the Captain of the Port New Orleans or his designated representative, the Vessel Traffic Center (VTC). Vessels may request authorization to transit through the safety zone by contacting the VTC. Moored vessels are permitted to remain within the safety zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard has met with members of local maritime industry including Carnival Cruise Lines, Entergy, the New Orleans Port Commission, pilots association, owners of water front facilities located within or adjacent to the zone as well as agents and shipping companies to discuss safety concerns associated with the transit and measures to reduce the impact of the safety zone on the local maritime community. The original rule and these amendments limit the economic impact of the rule.

This rule will only affect maritime traffic for short periods of time. The impact on routine navigation is expected to be minimal as the zone will only be in effect for one half hour, twice each week. Limiting the zone to one half hour ensures that the zone is not enacted before the C/S CONQUEST departs on its downriver voyage. This will help to ensure that a delay in the CONQUEST's departure does not impact the maritime community. Furthermore, the VTC can permit movements within the zone that do not impact the passage of the C/S CONQUEST, further limiting the impact of the zone.

Prior to this amendment, the pilot associations were already limiting anchorage in the lower portion of the New Orleans General Anchorage to vessels that were expected to be underway prior to C/S CONQUEST's transit through this area. Therefore, this amendment should not have a negative impact on vessels desiring to use this anchorage. Vessels desiring to anchor or remain at anchor within this portion of the anchorage may still request permission from the Captain of the Port, New Orleans through the VTC to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or remain at anchor within the safety zone from mile marker 88.1, to mile marker 90.4 LMR, while the C/S CONQUEST is transiting this area inbound and outbound. This

safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only one half hour, twice each week. Limiting the zone to one half hour ensures that the zone is not enacted before the C/S CONQUEST departs on its downriver voyage. This will ensure that a delay in the CONQUEST's departure does not impact the maritime community. Furthermore, the VTC may permit movements within the zone that do not impact the passage of the C/S CONQUEST, further limiting the impact of the zone.

If you are a small business entity and are significantly affected by this regulation please contact LTJG Matthew Dooris, Marine Safety Office New Orleans, at (504) 589–4251.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do we discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise temporary § 165.T08–122 to read as follows:

§ 165.T08–122 Safety Zone; Lower Mississippi River, Mile Marker 88.1 to 90.4, Above Head of Passes, New Orleans, LA.

(a) *Location.* The following area is a safety zone: the entire width of the Lower Mississippi River (LMR), above Head of Passes, beginning at mile marker 88.1, which is the location of the lower end of the Algiers Lock fore bay, and ending at mile marker 90.4, which is the location of the Chalmette Slip and 350 yards upriver of the Belle Chasse Launch Service's West Bank Dock.

(b) *Effective date.* This section is effective from 4:30 a.m. on December 13, 2002 until 11 p.m. on June 8, 2003.

(c) *Periods of enforcement.* This rule will be enforced from 3:15 a.m. until 3:45 a.m. and 6 p.m. to 6:30 p.m. every Sunday between December 15, 2002 and June 8, 2003. These periods of enforcement are based on the predicted cruise schedule for the C/S CONQUEST and are subject to change. The Captain of the Port, New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, except as described in this rule, entry into this zone is prohibited unless authorized by the Captain of the Port, New Orleans or designated

representative, the Vessel Traffic Center (VTC).

(2) The Captain of the Port New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

(3) Vessels are prohibited from anchoring in the New Orleans Emergency Anchorage or the New Orleans General Anchorage below mile marker 90.4, which is the location of Chalmette Slip and 350 yards upriver of the Belle Chase Launch Service's West Bank Dock. This prohibition is effective two hours prior to the arrival and departure of the C/S CONQUEST until it safely passes under the crossing.

(4) Moored vessels are permitted to remain within the safety zone.

(5) Vessels requiring entry into or passage through the zone during the enforcement periods must request permission from the Captain of the Port, New Orleans or designated representative, the VTC. They may be contacted via VHF Channel 67 or by telephone at (504) 589–2780.

(6) All persons and vessels shall comply with the instruction of the Captain of the Port, New Orleans and designated representatives including the VTC and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: December 13, 2002.

R.W. Branch,

Captain, U.S. Coast Guard, Captain of the Port, New Orleans.

[FR Doc. 03–1009 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA037/072/184–4190a; FRL–7421–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Sulfur Dioxide Attainment Demonstration for the Warren County Nonattainment Area and Permit Emission Limitations for Two Individual Sources in Warren County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP). This revision contains enforceable operating permit emission limitations for the Reliant Warren Generating Station and the United Refining Company, and an air quality modeling demonstration that indicates that the allowable emission limits will provide for the attainment of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2) in the Conewango Township, Pleasant Township, Glade Township, and the City of Warren nonattainment area. The modeling demonstration assumes new SO_2 limits for the Reliant Warren Generating Station and the United Refining Company. This SIP revision replaces all previously submitted SIP revisions for the SO_2 nonattainment areas in Warren County, Pennsylvania. The implementation plan was submitted by Pennsylvania to satisfy the requirements of the Clean Air Act (CAA) pertaining to nonattainment areas.

DATES: This rule is effective on March 18, 2003 without further notice, unless EPA receives adverse written comment by February 18, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21; U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Denis Lohman, (215) 814–2192 , or Ellen Wentworth, (215) 814–2034 or by e-mail at *lohman.denny@epa.gov*, or *wentworth.ellen@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

A. Conewango Township

On March 3, 1978, (43 FR 8962) EPA designated Conewango Township, Warren County, Pennsylvania, as nonattainment for SO_2 as part of EPA Region III's initial SO_2 designations. EPA acted on the recommendation of the Commonwealth of Pennsylvania to designate this area as nonattainment for SO_2. Upon designation, part D of the CAA was triggered for Conewango Township. Part D required Pennsylvania to submit to EPA for approval, a plan revision for achieving the SO_2 NAAQS as expeditiously as practicable. The basis of the recommendation was air quality dispersion modeling conducted in 1976. This modeling analysis was later found suspect because EPA determined that the study did not meet modeling guidelines and that meteorological data may have been suspect. On December 27, 1982, the Pennsylvania Department of Environmental Resources (PADER) submitted a request to have Conewango Township reclassifed to "unclassifiable", but EPA rejected the request because the statutory attainment date (December 31, 1982) had passed by the time EPA received the request. A March 17, 1983, request to have the area redesignated to "attainment" was rejected by EPA because the request did not contain adequate modeling in support of the request.

After Penelec reported monitored exceedances of the SO_2 NAAQS, the EPA on February 24, 1984, notified PADER that it must submit a SIP revision for the area to address the NAAQS nonattainment. In accordance with EPA's request, PADER and Penelec entered into a Consent Order and Agreement (COA) on December 5, 1984. The COA required Penelec to conduct a new air quality and meteorological monitoring study to select a dispersion model to be used to set an allowable emission rate for the Warren plant. This COA was submitted to EPA as a SIP revision on December 28, 1984. EPA proposed approval of this revision on May 9, 1985 (50 FR 19548). Modeling activities and the air quality analyses conducted under the COA indicated that the data from the United Refining Company, located in adjacent Glade Township were necessary to complete the model evaluation study. United began to supply SO_2 emission data necessary to complete the model study. Because of the unforeseen contributions of the United Refining Company, this SIP revision, as proposed, was no longer adequate. In June 1992, EPA notified the Commonwealth that it had failed to

submit the required SIP revision for Conewango Township, Warren County, and that it had 18 months in which to submit a SIP revision or face one of the sanctions detailed under section 179(b). On December 9, 1993, the Commonwealth of Pennsylvania submitted a revision to its SIP for the Conewango Township SO_2 nonattainment area. This SIP revision consisted of a COA entered into by and between the Commonwealth of Pennsylvania and Penelec dated April 1, 1993. The COA established interim and final emission limits for the Warren Generating Station in Conewango Township which would protect the NAAQS for SO_2. On February 15, 1995, EPA published a final rule approving the SIP revision (60 FR 8566).

EPA received adverse comments on this rulemaking and subsequently published a notice in the **Federal Register** on April 13, 1995 formally withdrawing the final rulemaking (60 FR 18750). On September 26, 1995, Pennsylvania submitted a SIP revision to amend the revision submitted on December 9, 1993, pertaining to SO_2 nonattainment in Conewango Township. This SIP revision also addressed the SO_2 nonattainment issues related to Glade Township, Pleasant Township, and the City of Warren, Warren County, Pennsylvania. The EPA reviewed this SIP revision and requested additional modeling. Because of the interaction between the Conewango Township nonattainment area, and the Glade Township, Pleasant Township, and the City of Warren nonattainment area, PADEP has prepared a combined SIP revision addressing both areas.

B. Glade Township, Pleasant Township, City of Warren

On December 21, 1993 (58 FR 67334), EPA designated the Glade and Pleasant Townships, and the City of Warren, Pennsylvania as nonattainment for SO_2. The redesignation of these areas as nonattainment for SO_2 was based upon conservative modeling that showed modeled exceedances of the short-term SO_2 standards at the United Refining Company in Glade Township. This area is adjacent to the Conewango Township nonattainment area. PADEP granted permission to United Refining Company to model the area, which included certain high terrain "hotspots" in the immediate vicinity of the facility. The modeling was performed using the EPA Guideline model CTSCREEN and was completed in April 1993. The modeling showed that the high terrain "hotspots" were in attainment of the NAAQS for SO_2.

On September 26, 1995, Pennsylvania submitted a SIP revision to amend the revision submitted on December 9, 1993 pertaining to SO_2 nonattainment in Conewango Township. This SIP revision also addressed the SO_2 nonattainment issues related to Glade Township, Pleasant Township, and the City of Warren, Warren County, Pennsylvania. EPA reviewed this SIP revision and requested additional modeling. Because of the interaction between the Conewango Township nonattainment area, and the Glade Township, Pleasant Township, and the City of Warren nonattainment area, PADEP has prepared a combined SIP revision addressing both areas.

II. Summary of SIP Revision

On December 26, 2001, the Commonwealth of Pennsylvania submitted a formal comprehensive SIP revision for the SO_2 nonattainment area of Conewango Township, Pleasant Township, Glade Township, and the City of Warren, in Warren County, Pennsylvania, replacing all previously submitted SIP revisions for the SO_2 nonattainment areas in Warren County. This SIP revision contains enforceable operating permit emission limitations for the Reliant Warren Generating Station and the United Refining Company, and an air quality modeling demonstration indicating attainment of the NAAQS for SO_2 for Conewango Township, Pleasant Township, Glade Township, and the City of Warren, Warren County, in the Commonwealth of Pennsylvania. The essential compliance provisions of these permits are presented below.

1. Reliant Energy Mid Atlantic Power Holdings, Warren Generating Station Title V Operating Permit #62–00012

Reliant Energy Mid Atlantic Power Holdings LLC (Reliant), formerly GPU Generation Corporation, and formerly Penelec, owns and operates the Warren Generating Station in Warren County, Pennsylvania. The Station has been in operation since 1948 and consists of four boilers feeding two turbine generators, one gas/oil-fired combustion turbine unit, and one oil-fired emergency diesel. Sulfur dioxide emissions are controlled by fuel specification. Reliant Energy's permit for this SIP revision consists of relevant portions of a Title V operating permit pertaining to SO_2 only. The SO_2 limitations specified for Boilers No. 1, 2, 3, and 4 are: 4.000 lbs per million Btu over a 3-hour period; 3.530 lbs per million Btu over a 24-hour period, and 3.530 lbs per million Btu annual average. Compliance with these limits is determined by using a continuous emission monitor (CEM) required to be installed and operated in the single stack serving all four boilers. The SO_2 limitations for the combustion turbine and emergency diesel generator are 500 parts per million by volume (ppmv). The effective date of the permit is November 21, 2001.

Monitoring requirements stated in the permit require the permittee to install, operate, and maintain a continuous SO_2 monitoring system to monitor SO_2 emissions from the four boilers where all four boilers exhaust into a common stack containing a single CEMS in compliance with 25 PA Code Chapter 139 subchapter C (relating to requirements of continuous in-stack monitoring for stationary sources). Results of emission monitoring shall be submitted to the Department on a regular basis in compliance with 25 PA Code Chapter 139, subchapter C. The Department may use the data from the SO_2 monitoring devices to enforce the emission limitations for SO_2 defined in this permit. The Department may use data from the SO_2 monitoring systems to determine compliance with the applicable emission limitations for SO_2 established in this permit. Reporting requirements require the permittee to submit to the Department the sulfur content (% by weight) of the fuel oil and CEM data reports on a quarterly basis.

2. United Refining Company, SO_2 Permit #l 62–017E

United Refining Company owns and operates an oil refinery which processes fuels and asphalt from crude oil. This facility is located in the City of Warren, Warren County, that adjoins Conewango Township. Glade Township, Pleasant Township, and the City of Warren, PA were designated as nonattainment for SO_2 by EPA on December 21, 1993 (58 FR 67334). The United Refining Company operating permit is a Plan Approval permit and contains the SO_2 emission limitations specified in the following table:

EMISSION RATES FOR UNITED REFINING COMPANY SOURCES

Source	Emissions in pounds per hour	Emissions in tons per year
Boiler house (boiler #1, 2, and 3)	195.10	854.50
No. 4 Boiler	24.30	106.40
FCC Charge Heater	1.10	0.40
DHT1 Heater	0.10	0.40
Prefractionator Reboiler	18.00	78.80
Old Reformer Heater (East Reformer Heater)	91.30	399.90
Crude Heater (Wheco)	207.70	909.70
Vacuum Heater	0.80	3.50
Pretreater Heater	28.00	122.60
New Reformer Heater (West Reformer Heater)	2.20	9.60
Sat Gas Reboiler	0.40	1.80
Fluid Catalytic Cracking Unit (FCC Regenerator)	285.00	1248.30
Combo Flare	0.40	1.80
FCC Flare	0.10	0.40
No. 5 Boiler	1.20	5.30
Sat Gas KVG Compressor Engine	0.10	0.40
T–241 Heater (Volcanic Heater)	0.30	1.30
Distillate Hydrotreater Heater (DHT2)	33.40	146.30
Sulfur Recovery Unit 2 (SRU2) Incinerator	12.00	52.60
SRU2 Hot Oil Heater	0.10	0.40
Old FCC Unit (Only to be used when new FCC Charge Heater is not in use).		
West FCC KVG Compressor Engine (Standby basis only).		
Middle FCC KVG Compressor Engine	0.14	0.60
East FCC KVG Compressor	0.14	0.60
VCU Unit	0.81	0.76
Total Allowable	902.69	3946.36

Monitoring and reporting requirements require the sources listed in the table above (except the SRU2 incinerator, and the FCC Regenerator) to monitor the hydrogen sulfide (H_2S) concentration in the refinery fuel for the source. The H_2S monitors for these sources shall be installed, calibrated, maintained, and operated by the owner or operator of the facility in compliance with the requirements of the Department Continuous Emission Monitor (CEM) Manual.

The SRU2 Incinerator and the FCC Regenerator shall monitor SO_2 emissions from the Sulfur Recovery Unit (SRU2) and the Fluid Catalytic Cracking Unit respectively. The SO_2 emissions from the SRU2 shall not exceed 0.025% by volume of sulfur dioxide at 0% oxygen on a dry basis. A CEM system shall be installed and concentrations of SO_2 in the gases discharged into the atmosphere from the tail gas treating unit shall be recorded. The span of the CEM shall be set at 500 ppm. The SO_2 monitors for these sources shall be installed, calibrated, maintained, and operated by the owner or operator of the facility in compliance with the requirements of the Department CEM Manual.

This permit applies to the emissions of SO_2 only. Emissions of other pollutants, including criteria pollutants, shall be governed by the existing Plan Approvals, Operating Permits, and applicable requirements and other rules and regulations of the Department. This permit does not require testing and monitoring beyond what is already required under the facility's Plan Approvals, Operating Permits, and the rules and regulations of the Department.

3. Dispersion Modeling

A dispersion modeling analysis was performed to demonstrate compliance with the SO_2 NAAQS. A summary of the analysis is available in the technical support document (TSD) for this rulemaking. The final dispersion modeling, based upon the SO_2 emission limits of sources amended through operating permits in addition to a representative background, demonstrates that the maximum SO_2 impacts do not violate the SO_2 NAAQS. The modeled impacts, including background concentrations, are as follows:

PREDICTED SULFUR DIOXIDE IMPACTS

[Micrograms per cubic meter]

Period	LAPPES	NAAQS	Percent of NAAQS
3-Hour	1241.	1300	95.46
24-Hour	364.7	365	99.92
Annual	75.6	80	94.50

4. Air Quality

The modeling demonstration shows that the extreme (highest second-high 3-hour and 24-hour) concentrations approach but do not exceed the NAAQS. The maximum modeled annual concentration is about 95 percent of the NAAQS. All of these concentrations include an estimate of background SO_2. The monitored values

are summarized in the TSD for this rulemaking.

III. Evaluation of State Submittal

The CAA requires states to submit implementation plans that indicate how each state intends to attain and maintain the NAAQS. The 1977 Amendments established specific requirements for implementation plans in nonattainment areas in part D, section 171–178. With respect to SO_2, the 1990 Amendments did not change these requirements in any significant way and existing guidance remains valid. On April 16, 1992 (57 FR 13498), EPA issued "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," describing EPA's preliminary views on how it intends to interpret various provisions of Title I, primarily those concerning revisions required for nonattainment areas.

In order to approve the SIP revision, all of the part D requirements must be evaluated and they must ensure that: (1) The revised allowable emission limitation demonstrates attainment and maintenance of the NAAQS for SO_2 in the nonattainment area; (2) the emission limitation is clearly enforceable; and (3) that all applicable procedural and substantive requirements of 40 CFR part 51 are met. The following is an evaluation of the part D requirements as described in the "General Preamble."

1. Reasonably Available Control Measures (RACT)

Pennsylvania's SIP revision provides for reasonably available control technology (RACT). The SIP revision complies with the requirements to implement RACT by providing for immediate attainment of the SO_2 NAAQS through the emission limits and operating restrictions imposed on the culpable sources by their permits.

2. Reasonable Further Progress (RFP)

Reasonable further progress is achieved due to the immediate effect of the emission limits required by the plan.

3. Inventory

The modeling demonstration submitted with the SIP revision contained a detailed emissions inventory of the allowable emissions for all of the sources of SO_2 in the receptor grid. That inventory of the SO_2 emissions in the Conewango Township, Pleasant Township, Glade Township, and the City of Warren, Warren County, Pennsylvania nonattainment area was found to be acceptable.

4. Identification and Quantification

There are no new sources identified as being constructed in this area.

5. Permits for New and Modified Major Stationary Sources

Any new or modified sources constructed in the area must comply with a state submitted and federally approved New Source Review program. There are no new sources involved with this submittal. The existing Pennsylvania regulation 25 PA Code Chapter 127, " Construction, Modification, Reactivation and Operation of Sources," adequately provides for review and permitting of new sources. This regulation applies statewide.

6. Other Measures

The plan provides for immediate attainment of the SO_2 NAAQS through the emission limitations, operating requirements, and compliance schedules that are set forth within the permits.

7. Compliance with section 110(a)(2)

This submission complies with section 110(a)(2). All of the applicable provisions of section 110(a)(2) are already required by the statutory provisions discussed in this plan, or have already been met by Pennsylvania's original May 31, 1972 (37 FR 10842) SIP submission to EPA.

8. Equivalent Techniques

A dispersion modeling analysis was performed to demonstrate compliance with the sulfur dioxide NAAQS. The models used in the compliance analysis included the LAPPES model, the RTDM, and the Multiple Point with Terrain (MPTER) model. Regulatory approval to use the LAPPES model for the Warren Generating Station was obtained as the result of a model performance comparison study which showed that LAPPES is superior to RTDM for determining air quality impacts from the Warren Generating Station in terrain above stack top. At the time of the model performance study, RTDM was specified by EPA's Guideline on Air Quality Models (GAQM) as the preferred model for complex terrain. The MPTER model was, at the time, the screening model preferred by GAQM for simple terrain.

The final dispersion modeling consisted of a combination of modeling results with the model selected according to the source and the relative terrain. For the Warren Station, the LAPPES model was used for receptors in all terrain above stack top. The MPTER model was used for all receptors in terrain below stack top (simple terrain). For the sources at United Refining, the RTDM model was used for all receptors above the calculated plume height. The MPTER model was used for all simple terrain. For receptors above stack top but below plume height estimates were made with both RTDM and MPTER and the higher result, on a receptor-by-receptor basis, was selected as the estimate for that receptor.

9. Contingency Measures

Section 172(c)(9) of the CAA defines contingency measures as measures in a SIP which are to be implemented if an area fails to make RFP or fails to attain the NAAQS by the applicable attainment date, and shall consist of other control measures that are not included in the control strategy. However, the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, (57 FR 13498), states that SO_2 measures present special considerations because they are based upon what is necessary to attain the NAAQS. Because SO_2 control measures are well established and understood, they are far less prone to uncertainty. It would be unlikely for an area to implement the necessary emissions control yet fail to attain the SO_2 NAAQS. Therefore, for SO_2 programs, contingency measures mean that the state agency has the ability to identify sources of violations of the SO_2 NAAQS and to undertake an aggressive followup for compliance and enforcement. This SIP revision requires the collection of continuous emission monitoring (CEM) data at the Reliant Energy and United Refining facilities. Therefore, PADEP has the necessary enforcement and compliance programs, as well as the means to identify violators, thus satisfying the contingency measures requirement.

IV. Final Action

EPA is approving the Pennsylvania SIP revision for the Conewango Township, Pleasant Township, Glade Township, and the City of Warren, Warren County, Pennsylvania nonattainment area submitted on December 26, 2001. This revision contains enforceable operating permit emission limitations for the Reliant Warren Generating Station and the United Refining Company, and is supported by a modeling analysis which demonstrates the adequacy of emission limits in providing for the attainment and maintenance of the NAAQS for SO_2 in and around this nonattainment area. This SIP revision satisfies the procedural and substantive requirements of 40 CFR part 51, and

replaces all previously submitted SIP revisions for the SO_2 nonattainment areas in Warren County.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment given the fact that the affected sources have all agreed to the SIP revision's provisions. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 18, 2003 without further notice unless EPA receives adverse comment by February 18, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving a revision to the Commonwealth of Pennsylvania SIP for SO_2 for nonattainment areas in Warren County may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 4, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(190) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(190) Revision to the Pennsylvania Regulations to attain and maintain National Ambient Air Quality Standards (NAAQS) for sulfur dioxide in Warren County, Pennsylvania, submitted on December 26, 2001, by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of December 26, 2001 from the Pennsylvania Department of Environmental Protection transmitting a revision to the State Implementation Plan (SIP) for attainment and maintenance of sulfur dioxide NAAQS for Warren County.

(B) Letter of August 20, 2002, transmitting a revised Reliant Energy Mid-Atlantic Power Holdings LLC Warren Generating Station Title V permit.

(C) The following Companies' Plan Approval and Operating Permits:

(*1*) Reliant Energy Mid-Atlantic Power Holdings LLC (Reliant) Warren Generating Station, Title V Operating Permit TV 62–00012, effective November 21, 2001.

(*2*) United Refining Company, PA 62–017E, effective June 11, 2001, except for the expiration date.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revision listed in paragraph (c)(190)(i) of this section.

3. Section 52.2033 is amended by adding paragraph (b) to read as follows:

§ 52.2033 Control strategy: Sulfur oxides.

* * * * *

(b) EPA approves the attainment demonstration State Implementation Plan for the Conewango Township, Pleasant Township, Glade Township, and City of Warren area submitted by the Pennsylvania Department of Environmental Protection on December 26, 2001.

[FR Doc. 03–731 Filed 1–16–03; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 68, No. 12
Friday, January 17, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14044; Airspace Docket No. 02–AGL–22]

Proposed Establishment of Class E Airspace; Cavelier, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace at Cavelier, ND. A Standard Instrument Approach Procedure (SIAP) has been developed for Cavelier Municipal Airport, Cavelier, ND. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would establish a radius of controlled airspace for Cavelier Muncipal Airport.

DATES: Comments must be received on or before March 14, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2002–14044/ Airspace Docket No. 02–AGL–22, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate in the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–14044/Airspace Docket No. 02–AGL–22." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Cavelier, ND, for Cavelier Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2003, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Cavelier, ND [New]

Cavelier, Cavelier Municipal Airport, ND
(Lat. 48°47′02″ N., long. 97°37′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Cavelier Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on January 3, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–1129 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14047; Airspace Docket No. 02–AGL–20]

Proposed Establishment of Class E Airspace; Berrien Springs, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace at Berrien Springs, MI. A Standard Instrument Approach Procedure (SIAP) has been developed for Andrews University Airpark, Berrien Springs, MI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would establish a radius of controlled airspace for Andrews University Airpark.

DATES: Comments must be received on or before March 14, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2002–14047/ Airspace Docket No. 02–AGL–20, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–14047/Airspace Docket No. 02–AGL–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Berrien Springs, MI, for Andrews University Airpark. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective

September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002 and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Berien Springs, MI [New]

Berrien Springs, Andrews University Airpark, MI
(Lat. 41°57′06″ N., long. 86°22′04″ W.)

That airspace extending upward from 700 feet above the surface within a 8.1-mile radius of Andrews University Airpark, excluding that airspace within the South Bend, IN, Benton Harbor, MI, and Dowagiac, MI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on January 3, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–1130 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14129; Airspace Docket No. 02–ACE–14]

Proposed Establishment of Class E Surface Area Airspace and Modification of Class E Airspace; Jefferson City, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Jefferson City, MO for those times when the air traffic control tower (ATCT) is closed. It also proposes to make editorial changes to the descriptions of Class E airspace designated as an extension to the Class D surface area and to Class E airspace extending upward from 700 feet above the surface of the earth at Jefferson City, MO.

DATES: Comments for inclusion in the Rules Docket must be received on or before February 28, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–14129/ Airspace Docket No. 02–ACE–14, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–14129/Airspace Docket No. 02–ACE–14." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace designated as a surface area for an airport at Jefferson City, MO. Controlled airspace extending upward from the surface of the earth is

needed to contain aircraft executing instrument approach procedures. This airspace would be in effect during those times when the ATCT is closed. Weather observations would be provided by an Automated Surface Observing System (ASOS) and communications would be through the Columbia Automated Flight Service Station. The area would be depicted on appropriate aeronautical charts. The FAA is also considering changing the descriptions of Class E airspace designated as an extension to the Class D surface area and to Class E airspace extending upward from 700 feet above the surface of the earth at Jefferson City, MO. These changes would be editorial only, would not alter existing airspace dimensions and would more clearly define these airspace areas.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas designated as an extension to the Class D surface area and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 6004 and 6005, respectively, of the same FAA Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE MO E2 Jefferson City, MO

Jefferson City Memorial Airport, MO
(Lat. 38°35′28″ N., long. 92°09′22″ W.)
Jefferson City Memorial Airport ILS
(Lat. 38°35′47″ N., long. 92°09′55″ W.)

That airspace extending upward from the surface within a 4.1-mile radius of Jefferson City Memorial Airport and within 2.6 miles each side of the Jefferson City Memorial Airport localizer back course extending from the 4.1-mile radius of Jefferson City Memorial Airport to 5 miles northwest of the airport. This Class E airspace area is effective during the specific dates and time established in advance by a Notice of Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ACE MO E4 Jefferson City, MO

Jefferson City Memorial Airport, MO
(Lat. 38°35′28″ N., long. 92°09′22″ W.)
Jefferson City Memorial Airport ILS
(Lat. 38°35′47″ N., long. 92°09′55″ W.)

That airspace extending upward from the surface within 2.6 miles each side of the Jefferson City Memorial Airport localizer back course extending from the 4.1-mile radius of Jefferson City Memorial Airport to 5 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet Or More Above The Surface Of The Earth

* * * * *

ACE MO E5 Jefferson City, MO

Jefferson City Memorial Airport, MO
(Lat 38°38′28″ N., long. 92°09′22″W.)
NOAH NDB
(Lat. 38°38′14″ N., long 92°14′41″ W.)
Jefferson City Memorial Airport ILS
(Lat. 38°35′47″ N., long. 92°09′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Jefferson City Memorial Airport; and within 3.1 miles each side of the NOAH NDB 303° bearing extending from the 6.6-mile radius to 14.3 miles northwest of the airport; and within 4 miles each side of the Jefferson City Memorial Airport ILS localizer course extending from the 6.6-mile radius to 11.8 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on December 31, 2002.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–1133 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14180; Airspace Docket No. 02–AGL–17]

Proposed Modification of Class E Airspace; Saginaw, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Saginaw, MI, Standard Instrument Approach Procedures (SIAPS) have been developed for Jack Barstow Airport, Midland, MI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing controlled airspace for Jack Barstow Airport.

DATES: Comments must be received on or before March 14, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2002–14180/ Airspace Docket No. 02–AGL–17, at the beginning of your comments. You may also submit comments on the internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m.,

Monday through Friday, except Federal holidays. The Docket Office Telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–14180/Airspace Docket No. AGL–02–17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Documents' web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Saginaw, MI, for Jack Barstow Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS, AIRWAYS, ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended is follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Saginaw, MI [Revised]

MBS International Airport, MI
(Lat. 43°31′58″ N., long. 84°04′47″ W.
Saginaw County H.W. Browne Airport, MI
(Lat. 43°26′00″ N., long. 83°51′45″ W.)
Bay City, James Clements Municipal Airport, MI
(Lat. 43°32′49″ N., long. 83°53′44″ W.)
Midland, Jack Barstow Airport, MI
(Lat. 43°39′46″ N., long. 84°15′41″ W.)
Saint Mary's Hospital, MI
Point in Space Coordinates
(Lat. 43°24′54″ N., long. 83°56′27″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of MBS International Airport, within a 6.5-mile radius of Saginaw County H.W. Browne Airport, within a 6.4-mile radius of James Clements Municipal Airport, within a 6.4-mile radius of Jack Barstow Airport, and within a 6-mile radius of the Point in Space serving Saint Mary's Hospital.

* * * * *

Issued in Des Plaines, Illinois on January 3, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–1122 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Ch. I

Notice of Intent To Request Public Comments

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: As part of its ongoing systematic review of all Federal Trade Commission ("Commission") rules and guides, the Commission gives notice that it intends to request public comments on the rule, guides, and statements of policy listed below during 2003. The Commission will request comments on, among other things, the economic impact of, and the continuing need for, the rule, guides, and statements of policy; possible conflict between the rule, guides, and statements of policy and state, local, or other Federal laws or regulations; and the effect on the rule, guides, and statements of policy of any technological, economic, or other industry changes. No Commission determination on the need for or the substance of the rule, guides, and statements of policy should be inferred from the intent to publish requests for comments.

FOR FURTHER INFORMATION CONTACT: Further details may be obtained from the contact person listed for the particular item.

SUPPLEMENTARY INFORMATION: The Commission intends to initiate a review of and solicit public comments on the following rule, guides, and statements of policy during 2003:

(1) Rules and Regulations under the Hobby Protection Act, 16 CFR 304. Agency Contact: Neil Blickman, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3038.

(2) Tire Advertising and labeling Guides, 16 CFR 228. Agency Contact: David Plottner, Federal Trade Commission, East Central Region, Eaton Center, Suite 200, 1111 Superior Ave., Cleveland, OH 44114, (216) 263–3409.

(3) Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 CFR 255. Agency Contact: Michael Ostheimer, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2699.

(4) Statements of General Policy or Interpretations under the Fair Credit Reporting Act, 16 CFR part 600. Agency Contact: Clarke Brinckerhoff, Federal Trade Commission, Bureau of Consumer Protection, Division of Financial Practices, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3208.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–1076 Filed 1–16–03; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I, Subchapter E

Negotiated Rulemaking, No Child Left Behind Act of 2001, Public Law 107–110

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Extension of time for submitting nominations for tribal representatives for the No Child Left Behind Negotiated Rulemaking Committee.

SUMMARY: The Secretary of the Interior is extending the deadline from January 9, 2003, to January 24, 2003, for nominations for tribal representatives for the No Child Left Behind Negotiated Rulemaking Committee. This committee will work with the Department of the Interior to develop regulations to implement the No Child Left Behind Act.

DATES: Nominations for tribal committee members and comments on the establishment of this committee must be received by mail or fax by January 24, 2003.

ADDRESSES: Send nominations and comments to: No Child Left Behind Negotiated Rulemaking Committee Nominations, c/o Starr Penland, Office of Indian Education Programs, Bureau of Indian Affairs, U.S. Department of the Interior, MS 3512–MIB, 1849 C Street NW., Washington, DC 20240, or FAX to Starr Penland at 202–273–0030. Nominations and comments received will be available for inspection at the address listed above from 7:45 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Catherine Freels, Designated Federal Official, No Child Left Behind Negotiated Rulemaking, U.S. Department of the Interior, Office of the Regional Solicitor, Southwest Region, 505 Marquette Avenue NW., Albuquerque, New Mexico, 87102, FAX 505–248–5623.

SUPPLEMENTARY INFORMATION: On December 10, 2002, we published a notice requesting nominations for a negotiated rulemaking committee that will develop regulations to implement the No Child Left Behind Act. (The notice appeared at 67 FR 75828 and is available on our Web site at *http://www.OIEP.bia.edu* under "Negotiated Rulemaking.") In this notice we invited representatives of tribal schools (both contract and grant) and tribally operated schools to nominate representatives and alternates to serve on the committee. In order to have an adequate pool of nominations, we are extending the deadline for tribes and tribal organizations to submit nominations.

Because committee membership should reflect the diversity of tribal interests, tribal schools and tribally operated schools should nominate representatives who will:

1. Represent the interests of students, parents, teachers, school board members, and school administrators they are nominated to represent;

2. Reflect the spectrum of grant/tribally-controlled schools, off-reservation boarding schools, various size schools, and alternative schools in the geographic regions;

3. Communicate with the constituencies they represent; and

4. Participate fully in the committee's activities.

We will consider nominations for tribal committee representatives only if they are nominated through the process identified in this notice and in the notice that we published on December 10, 2002. We will not consider any nominations that we receive in any other manner. We will also not consider nominations for Federal representatives. Only the Secretary may nominate Federal employees to the committee.

Nominations must include the following information about each nominee for tribal committee member:

(1) The nominee's name, business address, telephone and fax number (and e-mail address, if applicable);

(2) The tribal interest(s) to be represented by the nominee (teacher, parent, school administrators, or school board member) and whether the nominee will represent the interest of grant/tribally-controlled school, off-reservation boarding school, small or large school or alternative school in a specific geographic region or other interest related to this rulemaking, as the tribe may designate; and

(3) The nominee's qualifications and experience in Indian education (including being a parent of a student attending a Bureau-funded school) to

adequately represent the interest(s) identified above.

To be considered, we must receive nominations by the close of business on January 24, 2003, at the location indicated in the **ADDRESSES** section.

Dated: January 10, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–1061 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209500–86 and REG–164464–02]

RIN 1545–BA10, 1545–BB79

Reductions of Accruals and Allocations Because of the Attainment of Any Age; Application of Nondiscrimination Cross-Testing Rules to Cash Balance Plans; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date and location for public hearing on proposed rulemaking.

SUMMARY: This document provides notice of a change of date and location for the public hearing on proposed regulations under sections 401 and 411 regarding the requirements that accruals or allocations under certain retirement plans not cease or be reduced because of the attainment of any age.

DATES: The public hearing is being held on Wednesday, April 9, 2003, at 10 a.m. Outlines of oral comment must be received by Thursday, March 13, 2003.

ADDRESSES: The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:PA:RU (REG–209500–86 and REG–164464–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–209500–86 and REG–164464–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit outlines of oral comment electronically directly to the IRS Internet site at *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION: Concerning the regulations, Linda Marshall (202) 622–6090; concerning submissions, Sonya M. Cruse (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking and notice of public hearing, appearing in the **Federal Register** on Wednesday, December 11, 2002 (67 FR 76123), announced that a public hearing on proposed regulations relating to the requirements that accruals or allocations under certain retirement plans not cease or be reduced because of the attainment of any age would be held on Thursday, April 10, 2003, in room 4718, Internal Revenue Building 1111 Constitution Avenue, NW., Washington, DC. Subsequently, the date and location of the public hearing has been changed to Wednesday, April 9, 2003 in the auditorium. Outlines of oral comment must be received by Thursday, March 13, 2003.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–1159 Filed 1–16–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC90

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service has proposed this rule to designate areas where personal watercraft (PWC) may be used in Glen Canyon National Recreation Area, Utah and Arizona. This rule implements the provisions of the National Park Service (NPS) general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. The NPS Management Policies 2001 require individual parks to determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, overall management objectives, and consistent with the criteria of the NPS for managing visitor use.

DATES: Comments must be received by March 18, 2003.

ADDRESSES: Comments should be sent to, Glen Canyon National Recreation Area, PWC Rule-Making, Box 1507, Page, Arizona 86040. Email: *glca_pwc@nps.gov*. FAX: (928) 608–6259.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW, Room 7248, Washington, DC 20240. Phone: (202) 208–4206. Email: *Kym_Hall@nps.gov*. Fax: (202) 219–8835.

SUPPLEMENTARY INFORMATION:

Additional Alternatives

The information contained in this proposed rule supports implementation of the preferred alternative in the Draft Environmental Impact Statement for Personal Watercraft Rule-Making published September 13, 2002. The public should be aware that two other alternatives were presented in the Draft EIS, including a no-PWC alternative, and those alternatives should also be reviewed and considered when making comments on this proposed rule.

Purposes of the Recreation Area

National Park System units are established by Congress, and the enabling legislation usually identifies specific purposes for the unit. A unit's purpose, as established by Congress, is the foundation on which management decisions are based. The purpose and significance of Glen Canyon National Recreation Area and its broad mission goals are derived from its enabling legislation and are summarized in the national recreation area's General Management Plan (NPS 1979) and Strategic Plan (NPS 2000–2005).

Glen Canyon National Recreation Area was established in 1972 (Public Law 92–593) "to provide for public outdoor recreation use and enjoyment of Lake Powell and lands adjacent thereto * * *, and to preserve scenic, scientific, and historic features contributing to public enjoyment of the area (16 U.S.C. 460dd)." The recreation area's primary management objective, as established in the General Management Plan (NPS 1979), is "to manage the recreation area so that it provides maximal recreational enjoyment to the American public and their guests."

The national recreation area's enabling legislation states "The Secretary shall administer, protect, and develop the recreation area in accordance with the provisions of [the Organic Act] * * * and with any other statutory authority available to him for the conservation and management of natural resources (16 U.S.C. 460dd–3). This act also specifies that "nothing * * * shall affect or interfere with the authority of the Secretary * * * to operate Glen Canyon dam and

reservoir" for the purposes of the Colorado River Storage Project Act, administered by the Bureau of Reclamation.

As stated in the General Management Plan and Strategic Plan, Glen Canyon National Recreation Area is significant because it offers a tremendous diversity of both water-based and land-based recreational opportunities. It contains Lake Powell, the second largest man-made lake in North America, which provides both a unique opportunity for recreation in a natural environment and a transportation corridor to remote backcountry areas of Glen Canyon National Recreation Area. It is in the heart of the Colorado Plateau region, which offers a unique combination of water and desert environments. It offers a natural diversity of rugged water and wind carved canyons, buttes, mesas, and other outstanding physiographic features. The climate and physical features have created local environments favorable to the preservation of scientifically important objects, sites, populations, habitats, or communities that are significant in and of themselves or provide opportunities to add to our understanding of past or ongoing events. It possesses evidence of 10,000 years of human occupation and use of resources, which provides a continuing story of the prehistoric, historic, and present-day affiliation of humans and their environments. It constitutes a significant part of the outstanding public lands of the Colorado Plateau.

The recreation area offers a tremendous diversity of land and water-based recreational opportunities. The area's major recreational resource is Lake Powell, a 186-mile-long reservoir at full pool that was created when the Colorado River was dammed. Boating is very popular on the lake, including the use of PWC, houseboats, powerboats, fishing boats, tour boats, canoes, kayaks, and sailboats. Other popular activities include fishing, camping, water skiing, hiking, photography, and driving for pleasure.

Description of the Recreation Area

Glen Canyon National Recreation Area encompasses 1,254,306 acres of land and water in northern Arizona and southeastern Utah. Its southern boundary is contiguous with the Navajo Nation. Other boundaries adjoin Grand Canyon National Park, Capitol Reef National Park, Canyonlands National Park, and Rainbow Bridge National Monument, all managed by the National Park Service. The recreation area also adjoins areas administered by the Bureau of Land Management that include Grand Staircase—Escalante National Monument, Vermillion Cliffs National Monument, and Paria Canyon Wilderness. Lake Powell is the predominant physical feature and at full pool (3700 feet elevation), occupies about 163,000 surface acres, storing approximately 27 million acre feet of water, and providing about 1,960 miles of shoreline. More than 2 million people visit Glen Canyon National Recreation Area each year.

Motorized Watercraft

Motorboats and other motorized watercraft such as houseboats, ski boats, fishing boats, and powerboats have been used in Glen Canyon National Recreation Area since its establishment in 1972. PWC use has emerged at the recreation area with the introduction of this type of vessel in the 1980s. Prior to 2000, PWC use was allowed throughout Glen Canyon National Recreation Area except in the waters of the Colorado River between the Glen Canyon Dam and the downstream river boundary of Glen Canyon National Recreation Area where it adjoins Grand Canyon National Park near Lees Ferry. The waters of the recreation area above the dam where PWC use could occur, as identified in the superintendent's compendium, are within the scope of this proposed rule.

The 15-mile corridor of the Colorado River below Glen Canyon Dam was closed to PWC use in the superintendent's compendium for the protection of environmental values and the avoidance of conflict among traditional visitor use activities. This stretch of river is a nationally significant resource known for its scenery and "blue-ribbon" trout fishery. The historical recreational uses include fly-fishing and rafting trips. In March 2000, provisions of the National Park Service PWC rule closed the waters below the dam to PWC use. These waters continue to be an inappropriate area for PWC use and are not considered within the environmental impact statement (NPS, September 2002) or this proposed rule.

Glen Canyon National Recreation Area is located within the states of Arizona and Utah. Both states enforce their laws on Lake Powell within their respective state jurisdictions. The National Park Service manages these regulations in concert with the federal boating regulations that are addressed within Title 36 of the Code of Federal Regulations, and the United States Coast Guard Regulations pursuant to Title 36.

Resource Impact Topics

The following summarizes the predominant natural resources, cultural resources, and public use concerns and issues associated with PWC use at Glen Canyon National Recreation Area. Each of these issues is discussed in greater detail in the environmental impact statement.

Wildlife and Wildlife Habitat

Shoreline areas that typically are exposed to PWC uses provide limited habitats for the large, highly mobile mammals of the recreation area. Although areas are typically unvegetated and steep, shoreline areas may occasionally be briefly occupied by several species of mammals while searching for food or water or while moving through the area. These species include desert bighorn sheep, mule deer, antelope, feral horse, bobcat, mountain lion, gray fox, badger, kit fox, and coyote. However, they spend most of the time in adjacent upland areas and are not affected by motorized watercraft, including PWC.

Vegetation and corresponding habitat conditions are different in the tributaries and upper river reaches of the recreation area where water level fluctuations generally follow normal seasonal patterns. Such reaches provide riparian vegetation complexes that support different wildlife species assemblages than those encountered along main lake shorelines. Therefore, management actions should be consistent with protecting these resources.

Shore birds, waterfowl, and other water-associated bird species frequently use Lake Powell and its surrounding shoreline during migration for resting, security, and foraging purposes. Groups commonly observed on the lake and near shoreline areas include several species of grebes, cormorants, herons, egrets, coots, and ducks. Waterfowl, shorebirds, wading birds, and other water-associated bird species tend to concentrate in highest number and greatest diversity at Lake Powell in the late fall, winter, and the early spring months during peak migration periods. PWC use is minimal or not existent during this time of year; therefore, there is not a significant impact upon bird species associated with PWC operation.

The recreation area currently supports an assemblage of fish species that includes those adapted to either lake (lacustrine) or flowing-water (riverine) environments. Most of the lake-adapted species have been introduced intentionally or unintentionally by man through past fish-stocking programs or bait release. These species are more abundant because of the larger abundance of suitable aquatic habitat.

The flowing-water or riverine fish species tend to be native species that are

restricted to the flowing portions of the main tributary streams and rivers that flow into the lake. These species are relatively less abundant and more restricted in distribution than the lake-associated fish species.

The creation of Lake Powell changed the riverine habitat formerly found on this stretch of the Colorado River to such an extent that native fish species have been virtually eliminated from the resulting lake environment. As a result of habitat modification and competition by introduced species, some native species are now classified as endangered or threatened.

The large seasonal and annual variations in water surface elevation resulting from reservoir operations and management impose substantial environmental constraints on the types of habitats that can develop and persist at near-shore locations. Wildlife species typically associated with the water fluctuation zone are highly adapted to using food, cover, and shelter conditions that may develop and disappear quickly. In many main lake locations, especially where the inundation frequency is high and prolonged, shoreline and near-shore areas consist primarily of unvegetated or sparsely vegetated rock, sand, cobbles, and boulders.

Wetlands and riparian areas are typically considered to be important wildlife concentration areas for several reasons. These include the availability of good foraging conditions resulting from the high degree of vegetation, water interfaces and interspersion (or edge), and structural diversity typically associated with vegetation conditions in such areas. General wildlife habitat values and uses generally increase as wetland and riparian area size increases. Because of the physical shoreline conditions and the operational characteristics of the reservoir, wetland sites are limited in number and small in size. Wetlands are typically associated with the upstream reaches of tributary or secondary side canyons where water levels fluctuate less.

Riparian areas are typically found along the shorelines of the four major rivers flowing into the reservoir. However, even in these locations, riparian corridors are generally scarce in number and small in size.

The perennial tributary rivers flowing into Lake Powell represent examples of the river systems and aquatic environments that existed prior to lake impoundment. These areas are of particular scientific and resource preservation values because of their general scarcity and because they preserve populations and community relationships of previous riverine ecosystem conditions. Relict native fish species still survive within the rivers in limited numbers. Major examples include reaches of the Colorado, San Juan, Escalante, and Dirty Devil Rivers. Therefore, management actions should be consistent with the protection of these wildlife habitats.

Threatened and Endangered Species

In accordance with threatened or endangered species consultation and coordination activities, the U.S. Fish and Wildlife Service identified 13 listed, 1 proposed, and 1 candidate species for portions of Coconino County, Arizona and Kane and San Juan Counties, Utah (U.S. Fish and Wildlife Service letter dated May 9, 2002). Of these species identified, Glen Canyon NRA resource specialists confirm that habitat for 12 federally listed endangered, threatened and candidate species may occur in the lake or near its shoreline. The area addressed for this resource characterization includes Lake Powell up to the 3700-foot water surface elevation, the shoreline zone, and uplands within 500 feet of Lake Powell's 3700-foot water surface elevation.

Razorback sucker (Xyrauchen texanus) is native to the Colorado River and once occupied the entire range of the river basin. San Juan, Dirty Devil and Colorado River inflow areas continue to produce some razorback suckers. Eleven adult razorbacks were caught at the San Juan Inflow (USGS *et al.* open file report). Adult razorback suckers are considered to be the products of native fish recovery programs conducted further upstream of Glen Canyon National Recreation Area. Fish tracking studies conducted in Lake Powell from 1995 to 1997 indicated this species primarily used vegetated habitats less than 1.5 feet deep in side canyons and backwaters covering sandy or cobble bottoms and open waters in upper portions of the river inlets. These areas represent less than 1 percent of the habitat in Lake Powell (Karp and Mueller, 2002).

Colorado pikeminnow (Ptychocheilus lucius) is a native migratory species of the Colorado River that once was present basin wide. It is no longer present in the lower basin and is considered rare in the upper basin. It is only found upstream of Glen Canyon Dam. Juvenile pikeminnow have been found in off-channel and backwater habitats adjacent to lower reaches of the river inflows into Lake Powell (UDWR, M. Gustaveson, pers. com. 2002). Some have been found in the San Juan River near Mexican Hat (National Park Service, 1986). The Colorado pikeminnow has not been reported captured in the lake since 1977. Limiting factors include loss of habitat.

Humpback chub (Gila cypha) is a native migratory species that was once more abundant throughout the Colorado River. The species has been found to exist near the confluence of the Colorado and Little Colorado Rivers within Grand Canyon National Park. The humpback chub has not been captured in Lake Powell since the early 1970s. It is assumed to no longer be present in the lake. Habitat preferences include river channels with deep fast-moving water and large boulders that are often conditions created in river channels bounded by steep cliffs. Adults typically live in eddy currents of whitewater canyons. Threats to this species include habitat modification and fluctuating water discharges that eliminate preferred conditions.

Bonytail (Gia elegans) is a native species that has a historic range that includes the Colorado River and its main tributaries. The bonytail is no longer present in the upper basin and is believed to be the most endangered of the four fish species. Prior to 1996 less than 10 bonytails were captured in Lake Powell. No individual fish have been observed during annual gill-net surveys in the last 20 years. Some populations may be present in Utah but their relative abundance is unknown. The species prefers pools and eddies of warm, often heavily silted, swift moving rivers.

Mexican Spotted Owl (Strix occidentalis lucidia) utilizes a variety of habitats including old growth forests, mixed conifer, Ponderosa pine, deciduous riparian, and steep canyons with rocky cliffs. Timber harvesting is the main threat to the Mexican spotted owl. Small populations roost in abandoned nests, tree cavities, or caves along canyon walls. Steep canyon habitats and drainages adjacent to Lake Powell and adjoining rivers may occasionally be utilized by this bird species. A juvenile was observed in Cataract Canyon several years ago but none have been sighted in Glen Canyon National Recreation Area since. There are no potential areas of concern located within the analysis area. Known occupied territories are located more than 4 miles from the Lake Powell shoreline (Glen Canyon NRA, Spence pers. com. 2002).

Southwestern Willow Flycatcher (Empidonax traillii extimus) is associated with low-elevation dense willow, cottonwood and saltcedar communities along streams and rivers. This species has been sighted about 30 miles from Lake Powell up the Escalante

River and the San Juan River near Clay Hills Crossing but there is no confirmed nesting or breeding habitat present in the national recreation area. (Glen Canyon NRA, Henderson and Spence pers. com. 2002). In Arizona more than 110 pairs occupy 160 territories including breeding territory along the Colorado River. Smaller populations are known to exist in Utah. Breeding habitat is present along the Colorado River and some lake shorelines at low elevations in areas of dense willow, cottonwood and saltcedar or other woodlands along streams and rivers. Destruction and loss of native riparian habitat combined with natural predation and brown-headed cowbird parasitism have reduced species populations.

California Condor (Gymnogyps californianus) was reintroduced into the wild by the U.S. Fish and Wildlife Service in Arizona in 1996. There is some evidence that the condor was present in Utah at one time and its range may extend into Utah. These birds were released on the Vermilion Cliffs in Coconino County near Page, Arizona approximately 20 miles from the Utah border. Roosting habitat includes cliffs, tall evergreens and snags. Their population decline is thought to be related to ingestion of lead or cyanide poisoning of dead carcasses. Possible shootings, removal from wild of eggs, young, and adults for captive breeding, and unknown causes may also be a contributor. This species is known to forage for food more than 100 miles from their home territory. No breeding or nesting habitat is present in the recreation area, but individual birds may infrequently move across the area. A few individuals have been observed at Lake Powell within the last five years (Glen Canyon NRA, Spence pers. com. 2002).

Bald Eagle (Haliaeetus leucocephalus) habitat is present along the larger rivers in the southern part of Utah. The bald eagle winters in small numbers throughout the Lake Powell area and is observed in areas of the San Juan River and around Bullfrog (Glen Canyon National Recreation Area, 1986). Of the three nesting sites located in southeastern Utah, two nests are located along the Colorado River corridor. No nest sites have been observed or recorded along Lake Powell's shorelines. Potentially favorable bald eagle roosting sites along the rivers and shorelines of reservoirs such as Lake Powell are monitored for winter and breeding season uses (Spence et al 2002). There are no known consistently used winter roosting locations in the recreation area. Bald eagles have been observed feeding at Antelope Island and other portions of Lake Powell during the winter months (National Park Service 2002).

Western Yellow-billed Cuckoo (Coccyzus americanus) populations have declined throughout its range in the western states due to habitat loss. It is a candidate species currently under study by the U.S. Fish and Wildlife. Habitat for this neo-tropical species consists of cottonwood-willow riparian forests. Its presence and breeding habitat is well documented in Arizona. The bird has been sighted in Utah but its presence is not well documented. Western yellow-billed cuckoo have been observed on the Colorado River near Lees Ferry below the Glen Canyon Dam and at Clay Hills Crossing on the San Juan River. This bird species has not been observed at Lake Powell (Spence 2002).

American Peregrine Falcon (Falco peregrinus anatum) was removed from the federal list of endangered and threatened species on August 25, 1999 (64 **Federal Register** 46542). It is still listed as an Arizona special status species. The peregrine falcon nests on cliffs next to riparian and wetland habitats. It is occasionally observed on cliff faces in the recreation area. Foraging activity does occur within close proximity to the lake shoreline. Threats to this species include loss of habitat and environmental contaminants. There are over 80 known peregrine falcon nesting sites in the recreation area. These nest sites are located along cliffs at higher elevations on the canyon walls far above the water surface of the lake (Glen Canyon NRA, Spence pers. com.2002).

Navajo Sedge (Carex specuicola), grows in small pockets of sandy to silty moist soil in cool and shady seeps or spring alcoves in the San Juan River Canyon at elevations ranging from 4301 to 6004 feet. No designated critical habitat for the Navajo sedge is located in Glen Canyon National Recreation Area (Glen Canyon NRA, Henderson, pers. com., 2002).

Ute Ladies-tresses (Spiranthes diluvialis) is a small native orchid that is associated with wet meadows that may occur along streams, at spring or seep discharges and rarely along lakeshores at elevations ranging from about 4300 to 7000 feet. It typically flowers between late July through August, which is the best time to determine its presence. This species is threatened by loss of habitat, agriculture, fluctuating water levels and urban stream channelization. This species is known to occur in Garfield County, and other counties in Utah (FWS letter June 14, 2001) but it has not been observed or identified on the shoreline or riparian areas along either Lake Powell or any of the river corridors joining the lake (Glen Canyon NRA, Spence, pers. com. 2002).

Under current use conditions, there have been no documented incident reports of known conflicts of federally endangered fish or other species with watercraft or PWC users (Glen Canyon NRA, Spence, pers. com. 2002). Current motorized watercraft use of any type is not considered to affect any endangered fish species in Lake Powell (UDWR, M. Gustaveson, pers. com. 2002).

Shoreline Vegetation

More than 730 species of plants have been identified in the recreation area. Shoreline vegetation is considered to include several types of vegetation communities, including submerged aquatic beds, wetlands, riparian areas or zones, beach dunes, and upland vegetation that grows near the shoreline. The EIS defines the shoreline zone as areas within 500 horizontal feet from the lake's waterline at full pool. The area physically included in this zone will change as reservoir water levels change. The waterline can fluctuate as much as 50 feet vertically and 1,000 feet horizontally during a calendar year.

Areas of submerged aquatic vegetation are generally scarce and poorly developed at the recreation area. Reasons for this condition include unstable water levels associated with reservoir operations for water supply, power generation, and flood storage; poor plant rooting conditions along the lake's shorelines; very steep shoreline slopes; limited availability of low-gradient shorelines; and lack of suitable bottom conditions. Shoreline vegetation includes upland, beach dune, wetland, hanging-garden, and riparian locations near the land-water interface. Shoreline vegetation occurs along the main reservoir shoreline and along the tributary streams and rivers that flow into the reservoir. The same water fluctuation and difficult rooting conditions combined with the desert climate severely restrict development of shoreline and riparian vegetation. Consequently, most shorelines are bare rock, unvegetated sand, gravel, or cobbles.

PWC use has limited impact upon the recreation area shoreline vegetation. The areas where disturbance could occur should be considered and consistent within the protection of these resources.

Water Quality

During the summer of 2001, the Glen Canyon National Recreation Area conducted a water quality testing to

determine the presence of hydrocarbons in Lake Powell. Samples were taken over a 4-day period from June 29th through July 2nd. This period was selected because it represents a high-use period by watercraft, including PWC.

The persistence of gasoline and oil in lake waters depends on the temperature of the water and the amount of mixing. Fuel components volatilize (evaporate) more quickly at warmer temperatures. High rates of mixing increase exposure to the air and accelerate volatilization. The greatest amount of boat use on Lake Powell generally occurs during the hot summer months. The lake's water temperature reaches up to 80 degrees Fahrenheit during the summer and high rates of mixing is proportional to the high rate of visitation on the lake. Therefore, gasoline volatilizes quickly on Lake Powell.

Emissions of gasoline and exhaust associated with PWC operation were compared to existing water quality conditions and to state water quality standards to determine their effects. The method used to evaluate the water quality used basic steps to determine the degree of impact a waterbody would experience based on the exceedence of water quality standards/toxicity benchmarks for PWC and outboard engine-related contaminants.

Analyses were performed by the State of Utah, The Woods Hole Group, Inc., and the U.S. Geologic Survey research laboratories. Samples were tested for benzene, toluene, ethyl benzene, and xylenes; five gasoline additives, including methyl tertiary butyl ether (MTBE), ethyl tertiary butyl ether (ETBE), tertiary amyl methyl ether (TAME), diisopropyl ether (DIPE), and tertiary butyl alcohol (TBA); and 24 polycyclic aromatic hydrocarbon (PAH) compounds. These test results are included within the environmental impact statement.

The maximum concentrations detected from the most heavily used test site, Bullfrog Marina, were below the treated drinking water standard or advisory level for all three compounds (benzene, benzo(a)pyrene, methyl teriary-butyl ether) for which a standard exists as determined by the U.S. Environmental Protection Agency. Based on this information the impacts associated with PWC on water quality were found to be not significant.

Based on the estimated Glen Canyon National Recreation Area boating hour statistics for 2001, PWC represented 17 percent of the total boating hours on Lake Powell. Of the PWC using Lake Powell; 87 percent were carbureted, 2-cycle engines, 6.5 percent were direct injection, 2-cycle engines, and 6.5 percent were 4-cycle engines.

The remaining 83 percent of boating hours on the lake for 2001 involved all other watercraft; house boats, powerboats, and fishing boats. Of the other vessels using Lake Powell, 78.6 percent were 4-cycle engines, 12.6 percent were carbureted, 2-cycle engines, 6.4 percent were fuel-injected 2-cycle engines, and 2.4 percent were diesel or sail powered vessels.

Of all the vessels using Lake Powell in 2001, 75 percent of the motorized vessels on Lake Powell were 4-cycle engines or fuel-injected, 2-cycle engines. It is estimated that these engines have emission rates that are 75 to 90 percent lower and thus emit about one-tenth the pollutants of carbureted, 2-cycle engines.

On October 4, 1996, the U.S. Environmental Protection Agency (EPA) issued a final rule to regulate emissions for new spark-ignition gasoline marine engines, including outboard engines, PWC engines, and jet boat engines. The rulemaking was conducted under Section 213 of the Clean Air Act. The EPA had determined that these engines contributed to ozone air pollution, and that the technology was available to manufacture cleaner operating engines. The rule stipulates that by the 2006 model year, the entire fleet of marine engines produced by each manufacturer, including those for PWC, must have a 75 percent reduction in hydrocarbon emissions compared to the average for the fleet produced by that manufacturer prior to the rule. It also established intermediate target dates for emission reductions.

In contrast to outboard engines that are used on boats, the average useful "life" of a 2-cycle PWC is 9 years (California Air Resources Board 1998b). As a result, by around 2015, most of the PWC used on Lake Powell will have low-emission engines. By 2005, the emissions from the fleet of watercraft using Lake Powell would be reduced by 25 percent compared to emissions in 1996; and in 2012, the emissions from the fleet of watercraft using the lake would be reduced by 50 percent compared to emissions in 1996. Therefore, water quality conditions associated with the use of PWC and other watercraft will improve, regardless of the management actions identified within this proposed rule.

Air Quality

Glen Canyon NRA is designated as a class II air quality area under the Prevention of Significant Deterioration provisions of the Clean Air Act and meets or exceeds all EPA standards for ambient air quality. The air quality of the Glen Canyon region is in attainment of the national ambient air quality standards. The sources of air pollutants come primarily from outside the park and can concentrate, especially during periods of atmospheric inversion, in the park, causing visible smog on occasion. There are sources of air pollutants that are generated within the park, including pollutants contained in the exhaust of motorized vessels. The combustion process of motorized vessels results in emissions of air pollutants such as volatile organic compounds (VOC), nitrogen oxides (NO_x), particulate matter (PM), and carbon monoxide (CO) (EPA).

Although there is existing data showing that carbureted 2-cycle engines emit pollutants into the air, there is little data that shows specifically what impacts PWC emissions have on air quality. On Lake Powell, the current impacts from carbureted 2-cycle engines, including PWC, occur intermittently in high-use areas such as marinas, primarily between May and October. These impacts include visible smoke and the smell of exhaust and gasoline fumes. These impacts are considered moderate and have not been shown to exceed the national ambient air quality standards under the Clean Air Act or the EPA air quality index. The PWC industry reports that the highest volume selling models today are the cleaner-burning PWC (PWIA 2002, www.pwia.org); therefore, there is expected to be some beneficial impacts through 2012 as older models are replaced by the newer models. Once the proposed 2006 requirement is in place, air quality is expected to improve in the high use areas where carbureted two-cycle engines are currently heavily used. The EPA expects a 50% reduction in hydrocarbon emissions from marine engines from present levels by 2020, and a 75% reduction by 2025 (EPA 1996).

Soundscapes

Most visitors to Lake Powell have expectations of some noise from motorized vessels. Noise is generally considered appropriate if it is generated from activities consistent with park purposes and at levels consistent with those purposes. Engines are a primary source of human-caused sound at the recreation area. These include engines on PWC and other vessels, cars and trucks, off-road vehicles, aircraft, generators, and other miscellaneous sounds from electronic devices and humans. However, the opportunity to experience the natural soundscape is an important part of a positive park

experience for some visitors. During the high use season, the sound of all boats can be continuous in the high use zones, marinas and main channel. Boat noise is noticeable in the Natural and Cultural zones during periods of high boating activity, but there are extended periods when boating noise is not noticeable.

Noise from watercraft operating in excess of the noise decibel requirements could negatively impact visitors. Noise abatement is regulated by the NPS within Glen Canyon NRA and other units of the National Park System (36 CFR, part 3.7). "Operating a vessel in or upon inland waters so as to exceed a noise level of 82 decibels measured at a distance of 82 feet (25 meters) from the vessel is prohibited." The NPS is proposing to amend 36 CFR 3.7 to a different SAE testing standard in order to make enforcement of our existing decibel level easier.

Boating noise is also regulated by the States of Utah and Arizona. The respective states have developed standards relative to boat noise and these standards are enforced by state law enforcement officers on Lake Powell. Glen Canyon is working with the States of Arizona and Utah to address inconsistencies in boating laws, including noise regulations.

The nature of the noise generated from PWC may be more disturbing than other watercraft operating at similar decibels due to rapid changes in acceleration and direction typical of the operation of PWC. Although within the federal and state noise standards described previously, the changes in pitch can be annoying to some visitors. Where legislation allows for specific noise-making activities, such as motorized boating in parks, the soundscape management goal is to reduce the noise to the level consistent with the best technology available and consistent with park purposes and operations in order to mitigate the noise impact.

Manufacturers of PWC are aware of the concerns of the public related to the noise of their operation and have taken steps to reduce the noise by using more rubber in construction and eliminating vibrations. It is anticipated the PWC manufacturers will continue to reduce the noise associated with PWC. As the existing fleet is converted to the newer engine technology by the year 2012, it is expected noise will also be significantly reduced. Noise levels generated by watercraft on Lake Powell, including PWC, is consistent with park purposes and within the standards established by NPS. No additional restrictions are proposed.

Visitor Use, Conflicts, and Safety

Boat days were used as a basic unit of analyzing the intensity and impact of watercraft use upon Lake Powell. A 'boating day' equals one watercraft on the lake sometime during a 24-hour period. Total annual boating days on Lake Powell were estimated by multiplying the total number of boats estimated to enter the recreation area by the average length of time boats spend on the lake during a visit. The average amount of time each watercraft spent on the lake was estimated by a University of Minnesota 2000 visitor survey, in which watercraft users were asked how many nights they spent on the lake during their stay (Visitor Use at Glen Canyon National Recreation Area, Comparison of Personal Watercraft Users and Nonusers, James 1999–2001).

The total number of boats was estimated using boat rental, boat slip, and boat buoy data obtained from ARAMARK (the national recreation area concession operator), and from the recreation area's monthly entry and trailer counts gathered at the Wahweap, Lone Rock, Antelope Point, Bullfrog, Halls Crossing, and Hite launch areas.

Total annual Glen Canyon National Recreation Area watercraft use in 2001 was 823,148 boating days. This was the only year that all factors necessary for calculating boating days were recorded and available for analysis. There are several important characteristics of this use. PWC use accounted for 27 percent of the boating days estimated in 2001.

The visitor survey identified that, typically, many watercraft are used by a large group of friends or family, and groups often include more than one boat type. Generally one boat type in the group is the primary watercraft. The most common primary watercraft are powerboats. The second most common primary watercraft are houseboats.

It is common for houseboat and powerboat groups on Lake Powell to bring PWC on their trips. Of all groups traveling on Lake Powell with houseboats, 39 percent also included at least one PWC. Twenty-five percent of all powerboat groups included at least one PWC.

Half of all respondents to the summer survey stated that they operated a PWC during their visit. Visitors have and use multiple types of watercraft, including PWC, during a recreation trip, and PWC use is not restricted to a specific user or age group.

Watercraft use peaks in the months of June through September. About 79.5 percent of the total boating days in 2001 occurred during this peak use period. PWC use accounted for 30 percent of the boating days. Because PWC sales have actually decreased over the last several years, based on information provided by the Personal Watercraft Industry Association, the NPS has assumed that PWC use levels will likely remain constant over the next several years. Should PWC sales increase in the near future, use numbers could increase as well.

Over the course of the year, PWC use will vary in proportion to other watercraft. Watercraft use of the lake originates primarily from the four marinas with launch ramps at Wahweap, Bullfrog, Halls Crossing and Hite. From marinas, watercraft users distribute themselves on the lake to popular destinations. Some visitors remain in the vicinity of the marina. Because of the distribution of marinas with fueling stations along the length of the lake, houseboats and powerboats have access to and may travel to any point on the lake.

PWC use correlates with other watercraft use in remote areas of the lake because of the association of PWC with houseboat and powerboat groups. However, PWC operators were more likely to recreate in the Wahweap, Bullfrog, and Halls Crossing portal areas than other areas based on the fuel holding capacity of these vessels.

Boating use originates from outside of Glen Canyon on the San Juan and Colorado Rivers. The Bureau of Land Management issues permits for trips that originate typically from BLM's Sand Island Recreation Site (river mile 0) or Mexican Hat (river mile 27) on the San Juan River and terminate at Clay Hills Crossing (river mile 84) within Glen Canyon (personal communications, Berkenfield, BLM). Canyonlands National Park issues permits for trips that originate within Canyonlands on the Colorado River and terminate within Glen Canyon at Hite (personal communications, Henderson, NPS). PWC are prohibited within Canyonlands.

PWC users and other watercraft users come to Glen Canyon with motives for and expectations about their visit. These reflect the visitor's desired experiences and indicate the basis for a satisfactory visit.

Respondents to the University of Minnesota summer 2000 watercraft survey (James, 2001) described their motives for visiting the recreation area. Little difference exists between the desired experiences of PWC and other watercraft users. Among the most important were "to enjoy the scenery of Lake Powell," "to do something with my family," "to get away from the usual demands of life," "to be with members

of my group," "to be with people who enjoy the same things I do," and "to experience nature."

Most desired experiences were reported by PWC and other watercraft users as being attained, indicating that, overall, visitors were very satisfied with their visit to Glen Canyon National Recreation Area. Among the experiences receiving only a moderate level of attainment were, "to experience solitude," "to be away from other people," and "to be on my own" indicating that overall use levels on the lake tends to be adequate for most visitors. There were no significant differences in experience attainment found between PWC operators and other watercraft operators.

Non-safety situations that were rated as most problematic included "litter on beaches and shoreline," "people being inconsiderate," "too many PWC on the lake," "finding a beach campsite," and "finding an unoccupied site." The study noted that although these were the most problematic, the mean rating on a scale of 1 (No problem) to 5 (very serious problem) was 2.1 or lower (slight to no problem). There was no difference between PWC and other watercraft users in their perception of "conflicts with PWC operators on the lake." The mean response was 1.7 (no problem to slight problem).

The relatively low perception of conflict with PWC was reflected in attitudes towards potential management actions. Respondents generally opposed management actions that would prohibit, limit, or zone watercraft uses. Respondents evaluated potential actions on a scale of 1 (strongly oppose) to 5 (strongly support) with a rating of 3 meaning neither support nor opposition. Both PWC and other vessel users expressed general opposition to "zoning the waters to provide specific uses at specific places," "limit number of PWC allowed on the lake at one time," and "prohibit PWC on the lake." To manage conditions on the lake, watercraft users were generally supportive of actions that would "provide more information about appropriate behavior," "aggressively enforce safety rules and regulations on the lake," and "use management control to prevent damage to the environment by visitors."

The overall conclusion was that the differences in perceptions of experience and conflict between PWC and other watercraft users were very small. There appears to be little conflict between groups and high satisfaction during the visit.

The number of overall boating accidents on the lake changed little from 1999 to 2001. There were 811 reported accidents over the three-year period from 1999–2001. Other vessels accounted for approximately 86 percent and PWC accounted for 14 percent of accidents respectively during this 3-year period. When PWC were involved in accidents there was a higher percentage involved in accidents with personal injury (14.7 percent; 3-year average) as compared to property damage only (4.5 percent-3-year average).

The results of the summer 2000 visitor survey addressed visitors' perceptions of safety and identification of safety problems. Overall, respondents did not experience many problematic situations during their visit.

Cultural Resources

The recreation area contains evidence of human occupation from over 10,000 years ago. Cultural resources within the recreation area include archeological resources, cultural landscapes, ethnographic resources and historic resources, including features listed on the National Register of Historic Places. No museum collections or National Historic Landmark properties exist within the project area or its general vicinity. PWC use was analyzed in terms of whether the use would impact the archeological resources, historic resources, cultural landscapes and ethnographic resources within 0.5 miles (horizontally) from the full pool line at 3700 feet above sea level. These categories of cultural resources are defined within the environmental impact statement, affected environment section.

Visitors access areas of the park in numerous different ways—they arrive in motor vehicles and airplanes, in boats of all types, by hiking, and by PWC. Given this diversity of modes of access, the impacts on archeological and historic cultural resources directly attributable to PWC users are very difficult to define. Most PWC users, like most recreation area visitors, are conscientious about protecting the cultural resources and do not engage in deliberate disturbance of the sites. Disturbance to sites occurs by the frequency of trampling, graffiti, vandalism, and illegal collection of objects. Access to side canyons to Lake Powell varies with lake levels. PWC may be able to access narrow, steep-walled canyons that are inaccessible to most visitors.

This proposed rule would, in effect, close the upper canyons of the Dirty Devil, Escalante, San Juan, and Colorado Rivers to use by all PWC. This action would make archeological sites, ethnographic sites, and cultural landscapes along approximately 113 miles of river less vulnerable to damage and vandalism and illegal collection. The rule will also include new flat wake zones along a total of about 17 miles of the Dirty Devil and Escalante Rivers. Restrictions on PWC use would provide long-term benefits for cultural resources in these areas. These benefits would be negligible to minor because impacts from other types of visitor use (hikers and other vessel use, etc.) would continue, and some isolated sites could be more vulnerable to damage due to the lack of contact with other visitors.

These restrictions on PWC use in selected canyon areas could help focus more of the PWC activity to developed areas containing fewer ethnographic resources. To help reduce impacts on cultural resources all across the recreation area, resources would continue to be monitored on a regular basis. Glen Canyon National Recreation Area staff would continue to educate visitors regarding archeological and ethnographic site etiquette to provide long-term protection for surface artifacts, architectural features, and traditional activities.

Authorizing PWC Use

Under the Preferred Alternative (Alternative B) of the "Draft Environmental Impact Statement" the National Park Service is issuing a proposed rule to specifically authorize the continued use of PWC in portions of Glen Canyon National Recreation Area.

This proposed rule will impose additional geographic restrictions on PWC use and define additional flat wake zones. It also includes management actions to enhance the protection of park resources, improve visitor safety, and reduce recreational use conflicts. The specific section descriptions are outlined as follows:

Section 7.70(g)(1) states that PWC may operate, transit and launch in park water or beach on park land except in the areas and conditions as described in the following subsections. Under the proposed rule, about 24 miles of the Colorado River upstream from Sheep Canyon would be closed to all PWC use. It would prohibit PWC use on the Dirty Devil River upstream from that point where measurable downstream current is encountered. (The exact location will change depending upon lake level). PWC would be prohibited on the Escalante River above the confluence of Coyote Creek and on the San Juan River upstream of the Clay Hills pullout. PWC would also be prohibited on the Colorado River between Glen Canyon Dam and the downstream river boundary of Glen Canyon NRA where it adjoins Grand Canyon National Park. All of these actions would increase the

protection of environmental values and reduce conflict among visitor use activities.

Section 7.70(g)(1)(i) addresses the Colorado River between Glen Canyon Dam and the downstream river boundary of Glen Canyon NRA where it adjoins Grand Canyon National Park. The restriction pertaining to PWC use contained in the current Superintendent's Compendium (36 CFR, Sections 1.7(b) and 1.5), would be added to this proposed rule. The compendium prohibits PWC use between the Glen Canyon Dam and the downstream river boundary of Glen Canyon NRA where it adjoins Grand Canyon National Park. This closure went into effect in 1998 to eliminate possible conflicts between the traditional fishing and scenic float trips and conflicting PWC use.

Section 7.70(g)(1)(ii) addresses the Colorado River upstream of Sheep Canyon. The proposed rule would prohibit PWC use on the Colorado River upstream from Sheep Canyon. This action would have two benefits. Cataract Canyon upstream of Sheep Canyon is a popular white-water rafting destination that provides a recreational experience that is not available in other parts of Glen Canyon National Recreation Area. Closure of the Colorado River upstream from Sheep Canyon would preserve this locally unique visitor experience for Colorado River white-water river runners.

Because of the transition from lake to river conditions, PWC operation upstream from Sheep Canyon is substantially different than operation below this point. Beginning in Cataract Canyon, conditions become increasingly hazardous because of conflicts between traditional rafting uses and use of PWC. The river's uncertain currents and shifting sandbars can force both groups to use a common river channel. The presence of standing waves also produces a high potential for collision. Closing this area to PWC use would help protect the safety of visitors. Implementing these closures to all PWC use would strengthen the NPS' intent to maintain areas of quiet and solitude on portions of the rivers and to reduce the potential for conflict between motorized and non-motorized users. Closing the areas in both directions of travel would provide for consistency within the regulations. This limitation will be applied to all motorized vessels in the Superintendent's Compendium, except for permitted activities.

Section 7.70(g)(1)(iii) addresses the San Juan River upstream of Clay Hills pullout. The intent of the PWC closure on the San Juan River would be to provide an opportunity for visitors to enjoy quiet and solitude. Establishing the closure at the Clay Hills pullout would allow continued opportunity to access the lake from this remote site when the lake level is above an elevation of 3675 feet. At the same time, it would protect a rare visitor experience for San Juan River travelers upstream from this point. This limitation will be applied to all motorized vessels in the Superintendent's Compendium.

Section 7.70(g)(1)(iv) addresses the Escalante River upstream of Coyote Gulch. The proposed rule would prohibit PWC use on Escalante River upstream of Coyote Gulch. Implementing this closure to all PWC use would strengthen the NPS's intent to maintain areas of quiet and solitude on portions of the rivers and to reduce the potential for conflict between motorized and non-motorized users, thus enhancing the traditional river experience. This limitation will be applied to all motorized vessels in the Superintendent's Compendium.

Section 7.70(g)(1)(v) addresses the Dirty Devil River at the point where measurable downstream current is encountered. The operation of PWC upstream from where noticeable current is encountered is significantly different than operation below this point. The Dirty Devil Canyon is very narrow with tight, blind bends, and becomes increasingly hazardous upstream because of shallow and murky water, floating debris, uncertain currents, and shifting sandbars because of the transition from lake to river conditions.

Section 7.70(g)(2) has two subsections that outline additional wake restrictions. To further reduce visitor conflict, enhance visitor safety and experience, and protect soundscapes, the proposed rule would prohibit operation of PWC above flat wake speed on portions of the Dirty Devil and Escalante Rivers. PWC are required to comply with existing wake restrictions in the current Superintendent's Compendium (36 CFR Sections 1.7(b) and 3.6) that apply to all motorized vessels. These include requirements that watercraft operators cannot operate at speeds in excess of 5 miles per hour or create a wake when operating within harbors, mooring areas, flat wake areas, and other "no wake" buoyed areas.

When PWC operate at flat wake speeds many of the impacts they cause are greatly reduced. Visitor conflicts are virtually eliminated due to their reduced speed and noise. Although at flat wake speed, access may still be obtained by PWC users. Flat wake areas were considered to be prime access areas that all types of visitors seek out, but also areas within a river corridor that supports traditional rafting and river experiences.

Section 7.70(g)(2)(i) addresses the Escalante River from Cow Canyon to Coyote Gulch. The 4.4-river-mile stretch of the Escalante River between Cow Canyon and the confluence of Coyote Creek would be designated as flat wake for PWC. This stretch of the Escalante River is a popular float stream and hiking area. In most years, travel upstream by PWC from Cow Canyon is precluded by low water levels and insufficient stream flow. However, when lake levels are sufficiently high, the natural quiet of this area is often disturbed by noise from PWC. Limiting PWC use to flat wake speeds upstream from Cow Canyon would help maintain a more natural sound quality in this portion of the Escalante River and Coyote Gulch area. This limitation will be applied to all motorized vessels in the Superintendent's Compendium.

Section 7.70(g)(2)(ii) addresses the Dirty Devil River upstream from the Utah Highway 95 bridge until measurable downstream current is encountered. PWC would have to operate at flat wake speed on the Dirty Devil River upstream from Utah Highway 95 bridge to the point where measurable downstream flow is encountered. Flat wake speed requirements would help protect the safety of visitors. The Dirty Devil River is a popular destination for fishing, including both trolling and fishing from stationary boats. High-speed maneuvering with PWC is inconsistent and disruptive to this traditional visitor activity. Visitor conflicts would be reduced with flat wake speed of PWC. This limitation will be applied to all motorized vessels in the Superintendent's Compendium.

Section 7.70(g)(3) addresses the temporary limits and restrictions on PWC use within areas of the recreation area. The recreation area may consider other location restrictions, which would be implemented as part of the lake management plan that is discussed in the DEIS in the description of Alternative B. To support the decision to implement other restrictions, a 3-year pilot study would be conducted. The study would examine the effectiveness of location restrictions and other management actions in reducing visitor conflicts associated with motorized vessels, including PWC, in the recreation area.

History of Public Involvement

Public meetings were initiated in August 2001 to solicit early input into

the scope and range of issues to be analyzed related to the management of PWC within Glen Canyon NRA. A notice of intent to prepare the Environmental Impact Statement was published in the **Federal Register** (66 FR 39789) on August 1, 2001. Scoping comments continued to be accepted and considered within the planning process. During this comment period, the NPS facilitated several hundred discussions and briefings to park staff, congressional delegations, elected officials, tribal representatives, public service organizations, educational institutions, and other interested members of the public.

Over 3500 letters and e-mail messages concerning PWC use on Lake Powell were received. A mailing list of interested parties was compiled from attendees at the meetings and from any written comments received at the recreation area.

During this first comment period, Glen Canyon NRA received 503 individual written letters of concern, 270 petition form letters originating from the American Watercraft Association requesting that PWC be regulated just as any other type of watercraft and access should not be denied, 325 petition postcards originating from the American Watercraft Association requesting that Glen Canyon NRA adopt reasonable regulations to support continued access by all boaters versus implementing discriminatory regulations, and 523 e-mail letters. *Lake Powell Magazine* obtained 533 signatures from boating shows supporting continued rights for PWC use on Lake Powell. Glen Canyon NRA received over 1100 electronic form letters: 152 titled 'Jet Skis at Glen Canyon!' supporting the elimination of PWC, 926 titled 'End Jet Ski Pollution at Glen Canyon' supporting the elimination of PWC on Lake Powell and 109 titled 'Free Glen Canyon National Recreation Area of Jet Skis' also supporting PWC elimination. During the public workshops, 146 written comments regarding issues, concerns, and alternatives for management were received. These comments ranged from the support of the continued use of PWC throughout the recreation area (over 80%), to a total ban on PWC use, to restrictions in selected areas of the recreation area. Issues generated during the comment period included visitor safety concerns related to illegal and reckless operation of PWC, conflicts among different user groups, educational requirements for all boaters, potential resource impacts, and questions concerning the impacts of PWC use related to other motorized vessels.

The Glen Canyon NRA "Draft Environmental Impact Statement" was made available for public review on September 13, 2002 (67 FR 58071). The document is available in hard copy, on computer disk, and on the park's Web site at *http://www.nps.gov/glca/plan.htm*. Public meetings were held with the release of the Draft Environmental Impact Statement. These meetings were held at various locations to discuss the components of the document and solicit public response related to all aspects of the statement. Public comments on the statement were accepted for 60 days from the Notice of Availability published in the **Federal Register**.

Compliance with Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This determination is based upon the findings in a report prepared by the National Park Service entitled "Economic Analyses of Personal Watercraft Regulations in Glen Canyon National Recreation Area" (Law Engineering and Environmental Services, Inc. 2002). The focus of this study was to document the potential impact of the alternatives listed within the environmental impact statement on a variety of small entities including PWC dealerships and repair shops, PWC rental business, and other local businesses that provide services to PWC users.

This rule would continue PWC use with restrictions in some narrow canyon areas and other management restrictions. Some localized ecosystem protection and noise reductions benefits are anticipated. However, because the vast majority of Lake Powell, including the most popular areas for PWC use, will remain open to PWCs under this rule, the NPS anticipates no significant effects on the visiting public or local businesses.

Should this proposed rule not be instituted, PWC use would be completely banned under this alternative, affecting the approximately 40 percent of visitors that use PWCs. The estimated reduction in producer surplus (a measure closely related to business profit) in the local community would be between $505,000 and $3,076,100 annually. The economic effect on the visiting public was not quantified due to limited data availability; however, the 40 percent of visitors that currently use PWCs would lose all the value they receive from PWC use. Beneficiaries of this rule would include the remaining portion of visitors that do not use PWCs. Additionally, "nonusers" may significantly benefit from knowing that resources in the National Recreation Area will be better protected into the future.

Over a ten-year horizon, an annual reduction in producer surplus of $505,000 has a present value of $4.3 million when discounted at 3 percent per year. A 3 percent discount rate is widely recognized in the economics literature and Federal rulemakings as an appropriate discount rate for valuing natural amenities and other non-market resources and services. When discounted at 7 percent per year (OMB Circular A–94), the present value of a $505,000 annual reduction in producer surplus over ten years is $3.5 million. The present value of an annual loss of $3,076,100 in producer is $26.2 million when discounted at 3 percent per year, or $21.6 million when discounted at 7 percent per year.

This analysis clearly indicates that this proposed rule is expected to avoid significant losses to local business. However, the net effect of this rule on the visiting public and nonusers has not been quantitatively determined. This rule would yield a positive net benefit if the benefits of not implementing this rule did not exceed the avoided business losses of implementing this rule.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule raises novel legal or policy issues. This rule is among the first of its kind for managing PWC use in National Park Units. The National

Park Service published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirements of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on a report entitled *Economic Analysis of Personal Watercraft Regulations in Glen Canyon National Recreation Area* (Law Engineering and Environmental Services, Inc. 2002). The focus of this study was to document the impact of this rule on two types of small entities, PWC dealerships and PWC rental outlets. This report found that there was no potential loss for these types of businesses as a result of this rule since PWC use would remain substantially the same as it has been over the last several years.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The National Park Service has completed an economic analysis to make this determination. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.This rule is an agency specific rule and imposes no other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared a Draft Environmental Impact Statement (EIS). The draft EIS was made available for public review and comment on September 13, 2002 (67 FR 58071). A copy of the Draft EIS is available by contacting the Superintendent, Glen Canyon National Recreation Area, or by downloading the document at *http://www.nps.gov/glca/plan.htm*.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2: We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

During May 2002, the NPS consulted with tribes in the surrounding area in writing and/or in person about the development of this proposed rule and the supporting Environmental Impact Statement. Those tribes include the Hopi, Navajo, San Juan Southern Paiute, and Kaibab Paiute Tribes as well as several tribal historic preservation programs and cultural and natural resources divisions of the tribes. None of the tribes have expressed concern or dissent with the planning process or development of the alternatives for the EIS or this proposed rule. The tribes will continue to be consulted as the rulemaking process continues.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example § 7.70 Glen Canyon National Recreation Area). (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also email the comments to this address: *Exsec@ios.doi.gov*.

Drafting Information: The primary authors of this regulation were Suzy Schulman, Environmental Specialist, and Brian Wright, Outdoor Recreation Planner, Glen Canyon National Recreation Area.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail written comments to: Glen Canyon National Recreation Area, PWC Rule-Making, Box 1507, Page, Arizona 86040. Fax: (928) 608–6259. You may also comment via the Internet to *glca_pwc@nps.gov*. Please also include "PWC Rule" in the subject line and your name and return address in the body of your Internet message. Finally, you may hand deliver comments to the Glen Canyon NRA Headquarters Building Receptionist at 691 Scenic View Drive, Page, Arizona.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

2. Section 7.70 is amended by adding paragraph (g) to read as follows:

§ 7.70 Glen Canyon National Recreation Area.

* * * * *

(g) *Personal watercraft* (1) Personal watercraft may operate, transit and launch in park water or beach on park land except in the areas and under the conditions described as follows:

(i) On the Colorado River between Glen Canyon Dam and the downstream river boundary of Glen Canyon NRA where it adjoins Grand Canyon National Park.

(ii) On the Colorado River upstream of Sheep Canyon.

(iii) On the San Juan River upstream of Clay Hills Pullout.

(iv) On the Escalante River upstream of Coyote Gulch.

(v) On the Dirty Devil River at the point where measurable downstream current is encountered.

(2) Personal Watercraft must travel at flat wake speed:

(i) On the Escalante River from Cow Canyon to Coyote Gulch.

(ii) On the Dirty Devil River upstream of the Utah Highway 95 bridge until measurable downstream current is encountered.

(3) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: January 10, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–1157 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK03, et al.

Withdrawal of Proposed Rules

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rules.

SUMMARY: This document withdraws five proposed rules that would have amended the adjudication regulations. The proposals were previously published in the **Federal Register** by the Plain Language Regulations Project. The five proposals that are being withdrawn are: (1) State Department as Agent of Department of Veterans Affairs (RIN 2900–AK03) which was published in the **Federal Register** on August 22, 2001 (66 FR 44095); (2) Finality of Decisions (RIN 2900–AK18) which was published in the **Federal Register** on October 23, 2001 (66 FR 53565); (3) Renouncement of Benefits (RIN 2900–AK23) which was published in the **Federal Register** on September 24, 2001 (66 FR 48845); (4) Independent Medical Opinions (RIN 2900–AK31) which was published in the **Federal Register** on December 7, 2001 (66 FR 64174); and (5) Evidence from Foreign Countries (RIN 2900–AK37) which was published in the **Federal Register** on October 19, 2001 (66 FR 53139).

A new organization is being created in the Department of Veterans Affairs to manage the regulatory process, and one of its top priorities is the restructuring and rewriting of the adjudication regulations in plain language. Since it is not clear where and how the above noted proposals will fit into the restructured regulations, they are being withdrawn at this time. When the new organization for regulatory management is established, these proposed rules will likely be republished for notice and comment.

FOR FURTHER INFORMATION CONTACT: Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7228. This is not a toll-free number.

Approved: January 6, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–1094 Filed 1–16–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA037/072/184–4190b; FRL–7421–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Sulfur Dioxide Attainment Demonstration for the Warren County Nonattainment Area, and Permit Emission Limitations for Two Individual Sources in Warren County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision contains enforceable operating permit emission limitations for the Reliant Warren Generating Station and the United Refining Company, and an air quality modeling demonstration that indicates that the allowable emission limits will provide for the attainment of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2) in the Conewango Township, Pleasant Township, Glade Township, and the City of Warren nonattainment area. The modeling demonstration assumes new SO_2 limits for the Reliant Warren Generating Station and the United Refining Company. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA

receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 18, 2003.

ADDRESSES: Written comments should be addressed to Walter Wilkie, Acting Branch Chief, Air Quality Planning and Information Services Branch, 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Denis Lohman, (215) 814–2192, or Ellen Wentworth, (215) 814–2034, or by e-mail at *lohman.denny@epa.gov* or *wentworth.ellen@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action pertaining to the SO_2 attainment demonstration for the Warren County nonattainment areas, and permit emission limitations for two individual sources in Warren County, Pennsylvania, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 4, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–732 Filed 1–16–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7552]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is 90 days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2878, or (email) *mike.grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
North Carolina Carteret County (Unincorporated Areas)				
Cedar Swamp Creek	At the confluence with Newport River	None	• 9	Town of Newport, Carteret County (Unincorporated Areas)
	Approximately 800 feet upstream of Forest Route #154	None	• 26	
Cypress Drain	At the conference with Newport River	None	• 17	Carteret County (Unincorporated Areas)
	Approximately 1,400 feet upstream of Lake Road	None	• 21	
Hadnot Creek	Approximately 350 feet upstream of Old Church Road	None	• 9	Carteret County (Unincorporated Areas)
	Approximately 2.0 miles upstream of Forest Route $176.	None	• 33	
Hadnot Creek Tributary	At the Confluence with Hadnot Creek	None	• 14	Carteret County (Unincorporated Areas)
	Approximately 1.3 miles upstream of confluence with Hadnot Creek.	None	• 30	
Hunters Creek	At the confluence with White Oak River	None	• 9	Carteret County (Unincorporated Areas)
	Approximately 750 feet upstream of confluence of Wolf Swamp.	None	• 24	
Juniper Branch	At the confluence with Southwest Prong Newport River	None	• 23	Carteret County (Unincorporated Areas)
	Approximately 0.4 mile upstream of Forest Route #177	None	• 30	
Main Prong	At the confluence with Black Creek	None	• 9	Carteret County (Unincorporated Areas)
	Approximately 2.0 miles upstream of confluence with Black Creek.	None	• 23	
Newport River	At upstream side of Highway 70	None	• 9	Town of Newport, Carteret County (Unincorporated Areas)
	Approximately 800 feet upstream of confluence of Cypress Drain.	None	• 18	
Pettiford Creek	At the confluence with Pettiford Creek Bay	None	• 7	Carteret County (Unincorporated Areas)
	Approximately 2.0 miles upstream of Millis Road	None	• 35	
Pettiford Creek Tributary 1	At the confluence with Pettiford	None	• 13	Carteret County (Unincorporated Areas)
	Creek Approximately 1.8 miles upstream of confluence with Pettiford Creek.	None	• 26	
Shoe Branch	At the confluence with Newport River	None	• 10	Town of Newport, Carteret County (Unincorporated Areas)
	Approximately 0.8 mile upstream of Tom Mann Road	None	• 27	
Southwest Prong of Newport River.	At the confluence with Newport River	None	• 11	Town of Newport, Carteret County (Unincorporated Areas)
	Approximately 1,050 feet upstream of confluence of Millis Swamp.	None	• 26	
Wolf Swamp	At the confluence with Hunters Creek	None	• 23	Carteret County (Unincorporated Areas)
	Approximately 430 feet upstream of Forest Route #174	None	• 34	

Town of Newport

Maps available for inspection at the Newport Town Hall, 200 Howard Boulevard, Newport, North Carolina.

Send comments to The Honorable Derryl Garner, Mayor of the Town of Newport, P.O. Box 1869, 200 Howard Boulevard, Newport, North Carolina 28570.

Carteret County (Unincorporated Areas)

Maps available for inspection at the Carteret County Planning and Inspection, Court House Square, Beaufort, North Carolina.

Send comments to Mr. Pete Allen, Carteret County Manager, County Manager's Office, Courthouse Square, Beaufort, North Carolina 28516.

Dated: January 10, 2003.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–1085 Filed 1–16–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7433]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is 90 days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mike M. Grimm, Acting, Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *mike.grimm@fema.gov*

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4.*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Lake Elsinore (City), Riverside County.	Lake Elsinore	At Lake Elsinore	*1,267	*1,263
		San Jacinto River	Approximately 1,400 feet downstream of Lakeshore Drive.	*1,275	*1,274
			Just above U.S. Route 15	*1,275	*1,274
			Approximately 1.6 miles upstream of Summerhill Drive.	*1,309	*1,309
		Tenescal Wash	Just downstream of Riverside Drive	*1,258	*1,258
			At Tenth Street	*1,258	*1,259
			Just downstream of Chaney Street	*1,265	*1,262
Depth in feet above ground					
Maps are available for inspection at City Hall, City Engineers Office, c/o Mr. Richard A. Hess, 130 South Main Street, Lake Elsinore, California 92530.					
Send comments to The Honorable Genie Kelly, Mayor, City of Lake Elsionore, 130 South Main Street, Lake Elsionore, California 92530.					
California	Riverside County ...	Lakeland Village Channel	Approximately 460 feet downstream of Grand Avenue.	*1,267	*1,265
			Just upstream of Ralley Avenue	*1,293	*1,293

State	City/town/county	Source of flooding	Location	Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			At Nelson Avenue	*1,351	*1,351
		Lake Elsinore	At Lake Elsinore	*1,267	*1,263

Depth in feet above ground

Maps are available for inspection at Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, California 92501.

Send comments to The Honorable Jim Venable, Chairman, Riverside County Board of Supervisors, 4080 Lemon Street, 14th Floor, Riverside, California 92501.

Oregon	Portland (City), Multnomah County.	Crystal Springs Creek	Just downstream of SE Sherret Street at confluence with Johnson Creek.	*51	*48
			Approximately 1,150 feet upstream of 28th Avenue.	None	*77
		Johnson Creek	Just upstream of SE Ochoco Street	*45	*44
			Just downstream of Circle Avenue	*254	*252

Depth in feet above ground

Maps are available for inspection at the Planning and Development Review, 1900 SW Fourth Avenue, Room 50, Portland, Oregon 97204.

Send comments to The Honorable Vera Katz, Mayor, City or Portland, 1221 SW Fourth Avenue, Room 340, Portland, Oregon 97204.

Wyoming	Lincoln County	Salt River	Approximately 2,500 feet downstream of McCox Road.	None	*5,623
			Just upstream of Secondary Highway 239	None	*5,775
			Approximately 9,000 feet upstream of U.S. Highway 89.	None	*5,987

Depth in feet above ground

Maps are available for inspection at the Emergency Management Office, 520 Topaz Street, Kemmerer, Wyoming 83101.

Send comments to The Honorable Kathleen Davison, Chairperson, Lincoln County, Board of Commissioners, County Courthouse, 925 Sage Avenue, Kemmerer, Wyoming 83101.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 7, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–1086 Filed 1–16–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 02–13954; Notice 1]

RIN 2127–AI36

Federal Motor Vehicle Safety Standards; Occupant Crash Protection, Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Termination of rulemaking; denial of petition for rulemaking.

SUMMARY: In April 2000, NHTSA received a petition for rulemaking requesting that the agency amend its safety standards to require that vehicle manufacturers either offer consumers the option of longer seat belts on new vehicles or make seat belt extenders available for purchase. The purpose of the petition was to accommodate individuals who, because of their size, cannot use the seat belts in the vehicle of their choice. The agency granted the petition on February 28, 2001 and began to gather data on the availability of longer belts and to estimate the underserved population. In August 2002, the agency received a second petition for rulemaking requesting the same amendments.

Based on its analysis of available data, NHTSA is terminating rulemaking on the April 2000 petition, and is denying the August 2002 petition for rulemaking.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Sanjay Patel, Office of Crashworthiness Standards. Telephone: (202) 366–4583, Facsimile: (202) 366–4329.

For legal issues, you may contact Otto Matheke, Office of the Chief Counsel. Telephone: (202) 366–5263, Facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

On April 18, 2000, Ms. Elizabeth Fisher petitioned the agency to amend Federal Motor Vehicle Standard (FMVSS) No. 209, *Seat belt assemblies,* to require vehicle manufacturers to provide seat belts that fit all passengers (Docket No. NHTSA–2000–7580–01). Ms. Fisher's petition stated that the existing provisions of FMVSS No. 209 only require belts to fit adult males weighing up to 97.5 kg (215 lbs.) and requested that NHTSA initiate a rulemaking action to require vehicle manufacturers to provide a means for any passenger who fits inside the vehicle to be able to fasten the seat belt. The petition suggested that this could be accomplished either by requiring manufacturers to make longer seat belts available as a vehicle option or by requiring that all vehicle manufacturers make seat belt extenders available to those who wish to purchase them.

FMVSS No. 208, *Occupant crash protection,* and FMVSS No. 209 require that seat belt assemblies shall be capable of adjustment to fit occupants up to the size of the 95th percentile male, as defined by these standards. These standards define the mass of the 95th percentile male as 97.5 kg (215 lbs.). However, Ms. Fisher, using Body Mass Index (BMI) data from the Third National Health and Nutrition Examination Survey (NHANES III) of the National Center for Health Statistics, argued that more than 22 percent of the U.S. adult population is larger than a

person who is 1.83 meter (6 ft) tall and weighs 97.5 kg (215 lbs.).[1] She believes that belts that just meet the requirements of FMVSS No. 209 would not accommodate these larger Americans.

The agency granted the petition on February 28, 2001, and began to gather data on the availability of longer belts and on the size of the population who cannot currently buckle up. The result of this effort is contained in a NHTSA Technical Report [2] that is available in the Docket for this notice. Another research report upon which we relied in making the decision to terminate rulemaking is "FMVSS 208 Belt Fit Evaluation, Possible Modification to Accommodate Larger People," Vehicle Research and Test Center (VRTC), 1988. It is also available in the Docket for this notice.

On August 19, 2002, the agency received a second petition for rulemaking on this issue from Mr. Jay Levy. Mr. Levy petitioned for the same amendments to FMVSS No. 209 as those cited in Ms. Fisher's petition. Mr. Levy's petition duplicated the exact arguments stated in Ms. Fisher's petition and did not provide any new information.

II. Reasons for Termination

Both Ms. Fisher's and Mr. Levy's petitions contend that if a person can physically "fit" in a vehicle, the person should also be able to fasten his or her seat belt. However, in establishing minimum performance requirements for seat belts, including the size of these belts, the agency cannot base the applicability of those requirements on such an imprecise guideline. It would be difficult for the agency or vehicle manufacturers to determine what size person can "fit" in each particular vehicle. It would also be difficult, near the outer limits of known dimensions for the vehicle using population, to determine how much longer seat belts would have to be. In order for the agency to develop an objective and reasonable regulation, we would have to know or estimate the dimensions of the largest vehicle users. Therefore, the agency went about determining what would be required to formulate requirements to serve the population that the petitioner believes is not currently served.

In determining the required seat belt length for a particular size person, the most critical measurement is seated hip circumference. The seated hip circumference of an occupant determines the length the belt must travel to come across the occupant to the latch. The seated hip circumference of the 95th percentile adult male referred to in FMVSS No. 209 is 1199 mm (47 in.). The estimated seated hip circumference of the 99th percentile adult person (including male and female) in the U.S. population is 1509 mm (59 in.).[3]

From this seated hip circumference, the agency estimated, using geometric approximation, the additional belt length needed to go around the hips of occupants larger than the 95th percentile male. We determined that a person with the 99th percentile hip circumference from the NHANES III data would need 254 mm (10.0 in.) additional belt length above that needed for a FMVSS No. 209 95th percentile male. Adding an assumption that the 99th percentile person would be wearing bulky winter clothing (which the standard does not require), the agency concluded that the additional belt length needed increases to 348 mm (13.7 in.).

Next, we estimated how many people cannot use their seat belts because the belts are too short to buckle. This involved examining three elements: (1) How many people have a hip circumference larger than the 95th percentile male, but not larger than that of the 99th percentile person from NHANES III, (2) how many vehicle make/models have standard belts that will not accommodate a person larger than the NHANES III 99th percentile male, and (3) how many of these vehicles do not have seat belt extenders or longer belts available.

We estimated from the NHANES III data that the total U.S. population older than 13 years with a hip circumference between that of the 95th percentile male and that of the NHANES III 99th percentile person is 38,191,527 persons or 19 percent. The agency also estimated that 1,980,744 persons, or 1 percent of the population 13 years and older, are larger than the NHANES III 99th percentile person.

Having determined the numbers of people likely to need additional belt length if all belts were no longer than the minimum length required by our standards, the agency then considered the question of how these larger people are currently being accommodated by vehicles now on the market. For many reasons, manufacturers provide additional belt length beyond the minimum required by NHTSA. In response to our inquiry, General Motors, Ford, DaimlerChrysler, and Honda provided extra belt length information about their respective model year 2003 vehicle make/models. The information provided by these four manufacturers covers 136 vehicle models.[4] These manufacturers each provide an average of 18 to 20 inches of extra belt length for the driver and right front passenger positions in their respective model year 2003 vehicles. This extra belt length is more than enough to accommodate our estimate of what is needed for a 99th percentile person, including any additional length to go around the torso of the person. A detailed summary of the additional belt length information by specific make/model from these manufacturers, and all others we contacted, is provided in the Docket for this notice. Based on the available data, it appears that most vehicles can fit all but the largest users with the original belts.

To determine the availability of extra measures beyond standard belts, NHTSA contacted major vehicle manufacturers, to determine if they provide seat belt extenders, optional longer seat belts, or have other means for accommodating large users. A summary of this information is provided in Table 1. From this information, NHTSA calculated that 87.5 percent of vehicle make/models available today offer consumers either seat belt extenders or longer belts as an option. The remaining 12.5 percent do not offer longer belts or extenders but may already offer belts longer than the minimum length required by FMVSS No. 209.

[1] As discussed below, NHTSA does not agree that BMI is the appropriate measure for determining dimensions for seat belt fit.

[2] "Accommodation of Larger Occupants in Current Seat Belt Assemblies," NHTSA Technical Report, July 2002.

[3] This dimension is estimated from the standing hip circumference measured in the NHANES III using a calculation described in the NHTSA Technical Report.

[4] NHTSA does not routinely collect information from manufacturers on belt length beyond what is required for the 95th percentile male, but beginning with model year 2003, the agency does collect information for consumers on whether or not longer belts are available with vehicle make/models in our "Buying a Safer Car" program. NHTSA intends to make this information available on our Web site at *http://www.nhtsa.dot.gov/cars/testing/ncap/* by selecting the vehicle of interest and clicking on "safety features."

TABLE 1.—AVAILABILITY OF SEAT BELT EXTENDER OR LONGER BELTS

Company	Extender available	Length of extender (in)	Linkable? (2 or more)	Optional longer seat belts?	Vehicle sales* (2000)
Hyundai	No				244,391
Jaguar	No				43,728
Kia	No			No	160,606
Porsche	No			No	22,410
Subaru	No			No	172,216
Honda, Acura	No			No	1,158,860
Volkswagen, Audi	No	No			435,851
Subtotal—NO					2,238,062
Land Rover	No			Yes	27,148
BMW	No			Yes	189,423
Mercedes Benz	No			Yes, case-by-case	205,614
Chrysler	Yes	6, 8	Yes		2,522,695
Mazda	Yes	8, 9, 12			255,526
Toyota, Lexus	Yes	6, 9, 12, 15, 18			1,619,206
Volvo	Yes				123,178
GM	Yes	9, 15	No	Cadillac Catera, 12″ only	4,883,040
Ford	Yes	8	Yes	No	4,010,148
Nissan, Infinity	Yes	8	Yes	No	752,088
Isuzu	Yes	6, 9, 12, 15, 18	Yes	No	98,066
Saab	Yes	8		No	39,479
Mitsubishi	Yes	6–7	Yes	No	314,417
Suzuki	Yes	9, 15	Yes	No	60,845
Subtotal of vehicles with oversize provisions					15,100,873
Total					17,338,935

*The vehicle manufacturers identified the models for which they offer belt extenders or extra webbing. The vehicle sales data from Automotive News were used to quantify the number of vehicles in the fleet.

Given that many vehicles have belts long enough to fit almost all users and that optional longer belts or seat belt extenders are available for 87.5 percent of the fleet, the agency believes that a requirement to increase the belt length in all vehicles is unnecessary. NHTSA's analysis indicates that for almost all of these large individuals, there are few practical obstacles to obtaining that benefit, although they may find it more difficult to do so in some vehicles when compared to others.

Another factor in our decision is a concern that requiring manufacturers to provide either longer belts or belt extenders may have negative safety consequences. In the case of longer belts, the previously mentioned 1988 VRTC report described sled tests conducted with up to 254 mm (10 in.) of extra webbing in the restraint system. All tests were run at a 48 km/h (30 mph) change in velocity using a 50th percentile Hybrid III dummy in the front passenger seating position of a 1982 Chevrolet Celebrity. The amount of belt webbing spool-out increased from 41 mm to 76 mm (1.6 to 3.0 in.) with the increased belt length. Peak head, chest, and pelvic accelerations showed very little change with increased belt length. However, Head Injury Criterion did show an increase of about 12 percent. The greatest change appeared to be an increase of 17 percent in the neck flexion moment. The results of the sled tests also indicated an increase in dummy excursion relative to the vehicle with increasing belt length. The maximum resultant excursion of the head varied from the baseline by 76 mm (3 in.). A linear regression through the data showed a 26 mm (1.02 in.) increase in resultant head excursion for each additional 100 mm (3.98 in.) of belt length. Thus, an addition of 254 mm (10 in.) in belt length translates to 65 mm (2.6 in.) greater head excursion than the baseline.

The results of the VRTC study were obtained from the front passenger seat of a single vehicle without an air bag or seat belt pretensioner. Since belt webbing properties have not changed substantively since the 1980s, these estimates would appear to be reasonable for current belt systems with added webbing on the retractor. Seat belt pretensioners may prevent extra belt spool-out associated with longer belts. However, where pretensioners are not used, increased excursion values due to longer belts may significantly increase the risk of injury due to contact with the vehicle interior.

Belts may also be made longer by the use of belt extenders. Belt extenders, which would only be used by persons needing additional webbing length, would avoid some of the risks of increased spool-out and excursion associated with longer belts. However, as described in the NHTSA Technical Report, proper fit is necessary when using belt extenders. If the location of the extender places the buckle a distance of no more than 152 mm (6 in.) from the occupant's vertical center-line, the shoulder belt will not provide proper torso restraint and may pull the lap belt up onto the abdomen during a frontal impact, possibly leading to greater excursion and/or internal injury. The risks of belt extenders would be accentuated where the extender is not properly sized for the user or where a person of more average size inadvertently used a belt with an extender attached.

III. Options for Larger Persons

NHTSA's decision to terminate this rulemaking does not foreclose opportunities for larger persons to use seat belts that fit. Both vehicles and vehicle occupants are found in a variety of shapes and sizes. A given vehicle may not be able to accommodate all persons. For reasons other than girth, a vehicle may be unsuitable for some users. For example, very tall persons

may need a vehicle with a high roof to afford sufficient visibility and comfort. Particularly short statured persons may need to avoid purchasing vehicles whose design places them in close proximity to the driver's air bag.

Vehicle buyers should take care to be sure that the vehicle they choose is suitable for their needs, including having belts that fit. If the original belts in a vehicle do not fit, it may be possible to obtain longer belts or belt extenders from the vehicle manufacturer. Vehicles with optional longer belts are available as listed in Table 1. Although dealers may not always be aware that longer optional belts or belt extenders are available, vehicle purchasers can and should insist that dealers check with the manufacturer. If available, the purchaser should make their inclusion in the vehicle a condition of the sale.

In those instances in which longer belts or belt extenders are needed and are not available from the vehicle manufacturer, there are means available for modifying the vehicle to accommodate the physical needs of a particular buyer. One option is to purchase belt extenders from an aftermarket supplier or to have belt extenders made. Also, some businesses that modify vehicles to accommodate people with disabilities will modify seat belts.

Another alternative is to have more extensive modifications made on the vehicle itself.[5] Seat positioning can also influence the seat belt fit. For vehicles with at least one end of the belt anchored to the vehicle and not to the seat, an additional 51 mm (2 in.) to 76 mm (3 in.) in belt length is gained for every 25 mm (inch) of rearward seat movement. If a seat position is found that allows the seat belt to fit, but causes the pedals to be out of reach, adjustable pedals may be available as optional equipment. Alternatively, pedal extenders can be obtained.

The agency believes that additional regulatory requirements are not needed to enable larger size persons to find a vehicle that will accommodate their needs and allow them to buckle up. Publication of information on the availability of longer belts as standard equipment[6] and longer belts or belt extenders as options, should allow larger persons to choose models from vehicle manufacturers who are responsive to their needs. Finally, if an individual cannot find a vehicle fitting their needs with a belt that fits, or an available OEM belt extender, a vehicle modifier may be able to fashion a suitable belt extender, produce and install a longer belt, or move the original seat to provide additional belt length.

[5] Vehicles are often modified for people with disabilities. NHTSA is not suggesting that large individuals are disabled. However, modifiers are experienced at fitting vehicles to the unique physical characteristics of certain users. The process is described in *Adapting Motor Vehicles for People with Disabilities*, DOT HS 809 014, and also available at *http://www.nhtsa.dot.gov/cars/rules/adaptive/brochure/index.html*.

[6] NHTSA currently provide information about the availability of seat belt extenders on our Web site at *http://www.nhtsa.dot.gov/cars/testing/ncap/*.

IV. Conclusion

In accordance with 49 CFR part 552, this completes the agency's review of the petitions for rulemaking. In view of the considerations discussed above, the agency has concluded that there is no reasonable possibility that the amendments requested by the petitioners would be issued at the conclusion of the rulemaking proceeding. Accordingly, rulemaking on the petition from Ms. Fisher is terminated, and the petition for rulemaking submitted by Mr. Levy is denied.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: January 13, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–1134 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 68, No. 12
Friday, January 17, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the Emerging Markets Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation is inviting private sector proposals for the 2003 Emerging Markets Program.

DATES: All proposals must be received by 5 p.m. Eastern Standard Time, March 10, 2003. Announcements of funding decisions for the EMP are anticipated in early July 2003.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932 South, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *emo@fas.usda.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

The Commodity Credit Corporation (CCC) announces that proposals are being accepted for participation in the 2003 Emerging Markets Program (EMP). The purpose of the EMP is to assist U.S. organizations, public and private, to improve market access and to develop and promote U.S. agricultural products and/or processes in low to middle income countries that offer promise of emerging market opportunities. This is to be accomplished by providing, or paying the costs of, approved technical assistance activities in those emerging markets. The EMP is administered by the Foreign Agricultural Service (FAS).

The Act defines an emerging market as any country that the Secretary of Agriculture determines:

(1) Is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(2) Has the potential to provide a viable and significant market for United States agricultural commodities or products of United States agricultural commodities.

Because funds are limited and the range of potential emerging market countries is worldwide, proposals for technical assistance activities will be considered which target those countries with: (1) Per capita income less than $9,265 (the current ceiling on upper middle income economies as determined by the World Bank [World Development Indicators]); and (2) population greater than 1 million. Proposals may address suitable regional groupings, *e.g.*, the islands of the Caribbean Basin.

Authority

The EMP is authorized by section 1542 of the Food, Agriculture, Conservation and Trade Act of 1990, as amended.

Eligible Applicants, Commodities, and Activities

Any United States agricultural or agribusiness organization, university, or state department of agriculture is eligible to participate in the EMP. Proposals from research and consulting organizations will be considered if they provide evidence of substantial participation by the U.S. industry. U.S. market development cooperators may seek funding to address priority, market specific issues and to undertake activities not suitable for funding under other FAS marketing programs, *e.g.*, the Foreign Market Development Cooperator (Cooperator) Program and the Market Access Program (MAP).

All agricultural products, except tobacco, are eligible for consideration. Proposals which include multiple commodities are also eligible.

Only technical assistance activities are eligible for reimbursement. Following are examples of the types of activities that may be funded:

—Projects designed specifically to improve market access in emerging foreign markets. Examples: activities intended to mitigate the impact of sudden political events or economic and currency crises in order to maintain U.S. market share; responses to time-sensitive market opportunities;

—Marketing and distribution of value-added products, including new products or uses. Examples: food service development; market research on potential for consumer-ready foods or new uses of a product;

—Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports; such studies should be specific in their focus and may include cross-commodity activities which address specific problems. Examples: grain storage handling and inventory systems development; distribution infrastructure development;

—Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers. Examples: seminars on U.S. food safety standards and regulations; assessing and addressing pest and disease problems that inhibit U.S. exports;

—Assessments and follow up activities designed to improve country-wide food and business systems, to reduce trade barriers, to increase prospects for U.S. trade and investment in emerging markets, and to determine the potential use for general export credit guarantees for commodities, facilities and services. Examples: product needs assessments and market analysis; assessments for using facilities credits to address infrastructural impediments;

—Projects that help foreign governments collect and use market information and develop free trade policies that benefit American exporters as well as the target country or countries. Examples: agricultural statistical analysis; development of market information systems; policy analysis; and,

—Short-term training in broad aspects of agriculture and agribusiness trade that will benefit U.S. exporters, including seminars and training at trade shows designed to expand the potential for U.S. agricultural exports by focusing on the trading system. Examples: retail training; marketing seminars; transportation seminars; training on opening new or expanding existing markets.

The program funds technical assistance activities on a project-by-project basis. EMP funds may not be

used to support normal operating costs of individual organizations, nor as a source by which to recover prior expenses from previous or ongoing projects. Ineligible activities include restaurant promotions; branded product promotions (including labeling and supplementing normal company sales activities intended to increase awareness and stimulate sales of branded products); advertising; administrative and operational expenses for trade shows; and the preparation and printing of brochures, flyers, posters, etc., except in connection with specific technical assistance activities such as training seminars. Other items excluded from funding are contained in the 2003 Program Guidelines.

Project Suitability and Qualification Requirements

The underlying premise of the EMP is that there are distinctive characteristics of emerging agricultural markets that necessitate or benefit significantly from U.S. governmental assistance before the private sector begins to develop these markets through normal corporate or trade promotional activities. The emphasis is on marketing opportunities where there are risks that the private sector would not normally undertake alone. The EMP is intended to supplement, not supplant, the efforts of the U.S. private sector, and it complements the efforts of other FAS marketing programs. Once a market access issue has been addressed by the EMP, further market development activities may be considered under other programs such as GSM–102 or GSM–103 Export Credit Guarantee programs, the Facility Guarantee Program, the Supplier Credit Guarantee Program, the MAP, or the Cooperator Program.

The following marketing criteria will be used to determine the suitability of projects for funding under the EMP:

1. Low U.S. market share and significant market potential.

- Is there a significant lag in U.S. market share of a specific commodity in a given country or countries?
- Is there an identifiable obstacle or competitive disadvantage facing U.S. exporters (*e.g.*, competitor financing, subsidy, competitor market development activity) or a systemic obstacle to imports of U.S. products (*e.g.*, inadequate distribution, infrastructure impediments, insufficient information, lack of financing options or resources)?
- What is the potential of a project to generate a significant increase in U.S. agricultural exports in the near- to medium-term? (Estimates or projections of trade benefits to commodity exports, and the basis for evaluating such, must be included in EMP proposals.)

2. Recent change in a market.

- Is there, for example, a change in a sanitary or phytosanitary trade barrier; a change in an import regime or the lifting of a trade embargo; or a shift in the political or financial situation in a country?

Application Requirements and Process

It is highly recommended that any organization considering applying to the program first obtain a copy of the 2003 Program Guidelines. These guidelines contain information on requirements that a proposal must include in order to be considered for funding under the program, along with other important information.

Requests for the 2003 Program Guidelines and additional information may be obtained from the Marketing Operations Staff at the address above. The guidelines are also available at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.html*. To assist FAS in making determinations regarding funding, applications should be no longer than ten (10) pages and include the following information: (a) Date of proposal; (b) name of organization submitting proposal; (c) organization address, telephone and fax numbers, and tax ID number; (d) primary contact person; (e) full title of proposal; (f) target market(s); (g) description of problem(s), *i.e.*, constraint(s), to be addressed by the project such as inadequate knowledge of the market; insufficient trade contacts; lack of awareness by foreign officials of U.S. products and business practices; infrastructure, financing, and regulatory impediments or other non-tariff barriers; (h) project objectives; (i) performance measures—benchmarks for quantifying progress in meeting the objectives; (j) rationale—explanation of the underlying reasons for the project proposal and its approach, the anticipated benefits, the current conditions in the target market(s) affecting the intended commodity or product, and any additional pertinent analysis; (k) clear demonstration that successful implementation will benefit a particular industry as a whole, not just the applicant(s); (l) explanation as to what specifically could not be accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance; (m) specific description of activity(ies) to be undertaken; (n) time line(s) for implementation of the project, including start and end dates (start dates should be after July 15, 2003); (o) information on whether similar activities are or have previously been funded with USDA sources in target country/countries (*e.g.*, under MAP and/or Cooperator Program); (p) detailed line item activity budget. Regarding the budget, cost items should be allocated separately to each participating organization. Expense items constituting a proposed activity's overall budget (*e.g.*, salaries, travel expenses, consultant fees, administrative costs, *etc.*), with a line item cost for each, should be listed, clearly indicating which items are to be covered by EMP funding, which by the participating U.S. organization(s), and which by third parties (if applicable). Cost items for individual consultant fees should show calculation of daily rate and number of days. Cost items for travel expenses should show number of trips, destinations, cost, and objective for each trip.

Qualifications of applicant(s) should be included as an attachment.

This notice is complemented by concurrent notices announcing other foreign market development programs administered by the FAS including the MAP, the Cooperator Program, the Section 108 Foreign Currency Program, and the Quality Samples Program. For 2003, EMP applicants have the opportunity to utilize the Unified Export Strategy (UES) application process, an online system which provides a means for interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of these programs. Applicants are not required to use the UES, but are strongly encouraged to do so because it reduces paperwork and expedites the FAS processing and review cycle.

Applicants planning to use the on-line system must contact the Marketing Operations Staff at (202) 720–4327 to obtain site access information. The Internet-based application, including step-by-step instructions for its use, is located at the following URL address: *http://www.fas.usda.gov/cooperators.html*. A "Help" file is available to assist applicants with the process. Applicants using the online system are strongly urged to provide a printed or diskette version of each proposal (using Word or compatible format) to one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–

South, 1400 Independence Avenue, SW., Washington, DC 20250–1042.

U.S. Postal Delivery: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

Allocation of Funds

In general, all qualified proposals received before the application deadline will compete for EMP funding. The limited funds and the range of emerging markets worldwide in which the funds may be used preclude CCC from approving large budgets for individual projects. While there is no minimum or maximum amount set for EMP-funded projects, most are funded at a level of less than $500,000 and for a duration of one year or less. Multi-year proposals may be considered in the context of a strategic detailed plan of implementation. Funding in such cases is normally provided one year at a time, with commitments beyond the first year subject to interim evaluations.

In general, priority consideration will be given to proposals that identify and seek to address specific problems or constraints in rural business systems or food and agribusiness systems in emerging markets through technical assistance activities to expand or maintain U.S. agricultural exports. Priority will also be given to those proposals that include the willingness of the applicant to commit its own funds, or those of the U.S. industry, to seek export opportunities in an emerging market. The percentage of private funding proposed for a project will, therefore, be a critical factor in determining which proposals are funded under the EMP. Proposals will also be judged on their ability to provide benefits to the organization receiving EMP funds and to the broader industry which that organization represents.

A performance report detailing the results of each project supported with EMP funds must be submitted to the Marketing Operations Staff at the address above. Because public funds are used to support EMP projects, these reports will be made available to the public. Complete final financial reports are to accompany performance reports.

Closing Date for Applications

The deadline for all applications to the EMP is 5 p.m. Eastern Standard Time, March 10, 2003. Announcements of funding decisions for the EMP are anticipated in early July 2003.

Signed at Washington, DC, on January 8, 2003.

Kenneth J. Roberts,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 03–1120 Filed 1–16–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the 2003/2004 Market Access Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation is inviting proposals for the 2003/2004 Market Access Program.

DATES: All applications must be received by 5 p.m. eastern standard time, March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–S, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Commodity Credit Corporation (CCC) announces that applications are being accepted for participation in the 2003/2004 Market Access Program (MAP). The MAP is designed to create, expand and maintain foreign markets for United States' agricultural commodities and products through cost-share assistance. Financial assistance under the MAP will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. The MAP is administered by the Foreign Agricultural Service (FAS).

Under the MAP, the CCC enters into agreements with eligible participants to share the costs of certain overseas marketing and promotion activities. MAP participants may receive assistance for either generic or brand promotion activities. The program generally operates on a reimbursement basis.

Authority

The MAP is authorized under section 203 of the Agricultural Trade Act of 1978, as amended. MAP regulations appear at 7 CFR part 1485.

Eligible Applicants

To participate in the MAP, an applicant must be: a nonprofit U.S. agricultural trade organization, a nonprofit state regional trade group (*i.e.*, an association of State Departments of Agriculture), a U.S. agricultural cooperative, a State agency, or a small-sized U.S. commercial entity (other than a cooperative or producer association).

Application Process

To be considered for the MAP, an applicant must submit to the FAS information required by the MAP regulations set forth in 7 CFR part 1485. Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs including the Foreign Market Development Cooperator (Cooperator) Program, Cochran Fellowships, the Emerging Markets Program (EMP), the Quality Samples Program (QSP), the Section 108 Foreign Currency Program, the Technical Assistance for Specialty Crops (TASC) program and several Export Credit Guarantee programs. Organizations which are interested in applying for MAP funds are encouraged to submit their requests using the Unified Export Strategy (UES) format. The UES allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade which they face, identify activities which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format.

Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to the FAS through the UES application Internet Web site. The FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to the FAS on diskette.

Applicants planning to use the Internet-based system must contact the

FAS Marketing Operations Staff at (202) 720–4327 to obtain site access information. The Internet-based application, including step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

Applicants who choose to submit applications on diskette can obtain an application format by contacting the Marketing Operations Staff at (202) 720–4327.

All MAP applicants, whether applying via the Internet or diskette, also must submit by March 10, 2003, via hand delivery or U.S. mail, an original signed certification statement as specified in 7 CFR 1485.13(a)(2)(i)(G).

Any organization that is not interested in applying for the MAP but would like to request assistance through one of the other programs mentioned should contact the Marketing Operations Staff on (202) 720–4327.

Review Process and Allocation Criteria

The FAS allocates funds in a manner which effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP.

Following is a description of the FAS process for reviewing applications and the criteria for allocating available MAP funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review

Applications received by the closing date will be reviewed by the FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at § 1485.12 and § 1485.13 of the MAP regulations. Applications which meet the requirements then will be further evaluated by the proper FAS Commodity Division. The Divisions will review each application against the criteria listed in § 1485.14 of the MAP regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor):

(a) Applicant's Contribution Level (40)

- The applicant's 4-year average share (2000–2003) of all contributions (cash and goods and services provided by U.S. entities in support of overseas marketing and promotion activities) compared to
- The applicant's 4-year average share (2000–2003) of the funding level for all MAP participants.

(b) Past Performance (30)

- The 3-year average share (2000–2002) of the value of exports promoted by the applicant compared to
- The applicant's 2-year average share (2001–2002) of the funding level for all MAP applicants plus, for those groups participating in the Cooperator program, the 2-year average share (2002–2003) of Cooperator marketing plan budgets, and the 2-year average share (2001–2002) of foreign overhead provided for co-location within a U.S. agricultural office;

(c) Projected Export Goals (15)

- The total dollar value of projected exports promoted by the applicant for 2003 compared to
- The applicant's requested funding level;

(d) Accuracy of Past Projections (15)

- Actual exports for 2001 as reported in the 2003 MAP application compared to
- Past projections of exports for 2001 as specified in the 2001 MAP application.

The Commodity Divisions' recommended funding levels for each applicant are converted to percentages of the total MAP funds available then multiplied by the total weight factor as described above to determine the amount of funds allocated to each applicant.

Closing Date for Applications

All Internet-based applications must be properly submitted by 5 p.m. eastern standard time, March 10, 2003. Signed certification statements also must be received by that time at one of the addresses listed below.

All applications on diskette (with two accompanying paper copies and a signed certification statement) and any other applications must be received by 5 p.m. eastern standard time, March 10, 2003, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, *etc.*): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, SW., Washington, DC 20250–1042.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

Signed in Washington, DC on January 8, 2003.

Kenneth J. Roberts,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 03–1116 Filed 1–16–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the Quality Samples Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Commodity Credit Corporation is inviting proposals for the Quality Samples Program.

DATES: All proposals must be received by 5 p.m. eastern standard time, March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–S, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Commodity Credit Corporation (CCC) announces that proposals may be submitted for participation in the Quality Samples Program (QSP). The QSP is designed to encourage the development and expansion of export markets for U.S. agricultural commodities by assisting U.S. entities in providing commodity samples to potential foreign importers to promote a better understanding and appreciation for the high quality of U.S. agricultural commodities. All proposals will be reviewed against the evaluation criteria

contained herein and funds will be awarded on a competitive basis. Financial assistance will be made available on a reimbursement basis. The QSP is administered by the Foreign Agricultural Service (FAS).

Under the QSP, CCC enters into agreements with those entities whose proposals have been accepted. The QSP agreement between CCC and the participant will include the maximum amount of CCC funds that may be used to reimburse certain activity costs that have been approved by CCC and paid by the QSP participant. QSP participants will be responsible for procuring (or arranging for the procurement of) commodity samples, exporting the samples, and providing the technical assistance necessary to facilitate successful use of the samples by importers. Participants that are funded under this announcement may seek reimbursement for the sample purchase price and the costs of transporting the samples domestically to the port of export and then to the foreign port of entry. Transportation costs from the foreign port, or point, of entry to the final destination will not be eligible for reimbursement. CCC will not reimburse the costs incidental to purchasing and transporting samples, for example, inspection or documentation fees. Although providing technical assistance is required for all projects, CCC will not reimburse the costs of providing technical assistance. A QSP participant will be reimbursed after CCC reviews its reimbursement claim and determines that the claim is complete.

QSP agreements are subject to review and verification by the FAS Compliance Review Staff. Upon request, a QSP participant shall provide to CCC the original documents which support the participant's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation. Cash advances will not be made available to any QSP participant.

This notice supercedes any prior notices concerning the QSP.

Authority

The QSP is authorized under section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

General Scope of QSP Projects

QSP projects are the activities undertaken by a QSP participant to provide an appropriate sample of a U.S. agricultural commodity to a foreign importer, or a group of foreign importers, in a given market. The purpose of the project is to provide information to an appropriate target audience regarding the attributes, characteristics, and proper use of the U.S. commodity. A QSP project addresses a single market/commodity combination. As a general matter, QSP projects should conform to the following guidelines:

- Projects should benefit the represented U.S. industry and not a specific company or brand;
- Projects should develop a new market for a U.S. product, promote a new U.S. product, or promote a new use for a U.S. product, rather than promote the substitution of one established U.S. product for another;
- Sample commodities provided under a QSP project must be in sufficient supply and available on a commercial basis;
- The QSP project must either subject the commodity sample to further processing or substantial transformation in the importing country, or the sample must be used in technical seminars designed to demonstrate to an appropriate target audience the proper preparation or use of the sample in the creation of an end product;
- Samples provided in a QSP project shall not be directly used as part of a retail promotion or supplied directly to consumers. However, the end product, that is, the product resulting from further processing, substantial transformation, or a technical seminar, may be provided to end use consumers to demonstrate to importers consumer preference for that end product; and
- Samples shall be in quantities less than a typical commercial sale and limited to the amount sufficient to achieve the project goal (*e.g.*, not more than a full commercial mill run in the destination country).

QSP projects shall target foreign importers and target audiences who:

- Have not previously purchased the U.S. commodity which will be transported under the QSP;
- Are unfamiliar with the variety, quality attribute, or end-use characteristic of the U.S. commodity which will be transported under the QSP;
- Have been unsuccessful in previous attempts to import, process, and market the U.S. commodity which will be transported under the QSP (*e.g.*, because of improper specification, blending, or formulation; or sanitary or phytosanitary (SPS) issues);
- Are interested in testing or demonstrating the benefits of the U.S. commodity which will be transported under the QSP; or
- Need technical assistance in processing or using the U.S. commodity that will be transported under the QSP.

Under this announcement, the number of projects per participant will not be limited. However, individual projects will be limited to $75,000 of QSP reimbursement. Projects comprised of technical preparation seminars, that is, projects that do not include further processing or substantial transformation, will be limited to $15,000 of QSP reimbursement as these projects require smaller samples.

Proposal Process

In order to be considered for participation in the QSP, interested parties should submit proposals to FAS as described in this notice. QSP proposals must contain complete information about the proposed projects. This notice is complemented by concurrent notices announcing four other foreign market development programs administered by FAS, including the Market Access Program (MAP), the Foreign Market Development Cooperator (Cooperator) Program, the Emerging Markets Program, the Technical Assistance for Specialty Crops Program, and the Section 108 Foreign Currency Program.

The MAP and Cooperator Program notices detail a Unified Export Strategy (UES) application process which provides a means for interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of these programs. Some applicants to the QSP, particularly those who also are applying for funding under the MAP or Cooperator Program, are encouraged to use the UES application process. The Internet-based UES application, including step-by-step instructions for its use, is located at the following URL address: http://www.fas.usda.gov/cooperators.html. Other applicants should follow the application procedures contained in this notice.

Entities interested in participating in the QSP are not required to submit proposals in any specific format; however, FAS recommends that proposals contain, at a minimum, the following:

(a) Organizational information, including:

- Organization's name, address, Chief Executive Officer (or designee), and Federal Tax Identification Number (TIN);
- Type of organization;
- Name, telephone number, fax number, and e-mail address of the primary contact person;
- A description of the organization and its membership;

• A description of the organization's prior export promotion experience; and

• A description of the organization's experience in implementing an appropriate trade/technical assistance component;

(b) Market information, including:

• An assessment of the market;

• A long-term strategy in the market; and

• U.S. export value/volume and market share (historic and goals) for 1999–2004;

(c) Project information, including:

• A brief project title;

• Amount of funding requested;

• A brief description of the specific market development trade constraint or opportunity to be addressed by the project, performance measures for the years 2003–2005 which will be used to measure the effectiveness of the project, a benchmark performance measure for 2002, the viability of long term sales to this market, the goals of the project, and the expected benefits to the represented industry;

• A description of the activities planned to address the constraint or opportunity, including how the sample will be used in the end-use performance trial, the attributes of the sample to be demonstrated and their end-use benefit, and details of the trade/technical servicing component (including who will provide and who will fund this component);

• A sample description (*i.e.*, commodity, quantity, quality, type, and grade), including a justification for selecting a sample with such characteristics (this justification should explain in detail why the project could not be effective with a smaller sample);

• An itemized list of all estimated costs associated with the project for which reimbursement will be sought; and

• The importer's role in the project regarding handling and processing the commodity sample;

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, CCC, FAS, or other Federal agencies. Contributed resources may include cash or goods and services.

Review Process

Proposals will be evaluated by the applicable FAS commodity division. The divisions will review each proposal against the factors described below. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Commodity and Marketing Programs.

FAS will use the following criteria in evaluating proposals:

• The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal;

• The extent to which the proposal is targeted to a market in which the United States is generally competitive;

• The potential for expanding commercial sales in the proposed market;

• The nature of the specific market constraint or opportunity involved and how well it is addressed by the proposal;

• The extent to which the importer's contribution in terms of handling and processing enhances the potential outcome of the project;

• The amount of reimbursement requested and the organization's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties; and

• How well the proposed technical assistance component assures that performance trials will effectively demonstrate the intended end-use benefit.

Highest priority for funding under this announcement will be given to meritorious proposals which target countries which meet either of the following criteria:

• Per capita income less than $9,265 (the ceiling on upper middle income economies as determined by the World Bank [World Development Indicators 2001]); and population greater than 1 million. Proposals may address suitable regional groupings, for example, the islands of the Caribbean Basin; or

• U.S. market share of imports of the commodity identified in the proposal of 10 percent or less.

Agreements

Following approval of a proposal, CCC will enter into an agreement with the organization that submitted the proposal. Agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant, including, but not limited to, procurement (or arranging for procurement) of the commodity sample at a fair market price, arranging for transportation of the commodity sample within the time limit specified in the agreement (organizations should endeavor to ship commodities within 6 months of effective date of agreement), compliance with cargo preference requirements (shipment on United States flag vessels, as required), compliance with the Fly America Act requirements (shipment on United States air carriers, as required), timely and effective implementation of technical assistance, and submission of a written evaluation report within 90 days of expiration of the agreement. Evaluation reports should address all performance measures which were presented in the proposal.

Closing Date for Proposals

All Internet-based applications must be properly submitted by 5 p.m. Eastern Standard Time, March 10, 2003. All paper copy proposals must be submitted in duplicate and received by 5 p.m. Eastern Standard Time, March 10, 2003, at one of the following addresses:

Hand Delivery (including FedEx, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, SW., Washington, DC 20250–1042.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

Signed at Washington, DC, on January 8, 2003.

Kenneth J. Roberts,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 03–1118 Filed 1–16–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Announcement of the Foreign Market Development Cooperator Program

AGENCY: Foreign Agricultural Service.

ACTION: Notice.

SUMMARY: The Foreign Agricultural Service is inviting proposals for the fiscal year 2004 Foreign Market Development Cooperator Program.

DATES: All applications must be received by 5 p.m. eastern standard time on March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–S, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Foreign Agricultural Service (FAS) announces that applications are being accepted for participation in the fiscal year 2004 Foreign Market Development Cooperator (Cooperator) Program. The program is designed to create, expand, and maintain foreign markets for U.S. agricultural commodities and products through cost-share assistance. Financial assistance under the Cooperator Program will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein.

Under the Cooperator Program, FAS enters into agreements with nonprofit U.S. trade organizations which have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations which are nationwide in membership and scope. Cooperators may receive assistance only for the promotion of generic activities which do not involve promotions targeted directly to consumers. The program generally operates on a reimbursement basis.

Authority

The Cooperator Program is authorized by title VII of the Agricultural Trade Act of 1978, as amended. Cooperator Program regulations appear at 7 CFR part 1484.

Eligible Applicants

To participate in the Cooperator Program an applicant must be a nonprofit U.S. agricultural trade organization.

Application Process

To be considered for the Cooperator Program, an applicant must submit to the FAS information required by the Cooperator Program regulations set forth in 7 CFR part 1484. Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs, including the Market Access Program (MAP), Cochran Fellowships, the Emerging Markets Program, the Quality Samples Program, section 108 Foreign Currency Program, Technical Assistance for Specialty Crops Program, and several Export Credit Guarantee programs. Organizations which are interested in applying for Cooperator Program funds are encouraged to submit their requests using the Unified Export Strategy (UES) format. The UES allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade which they face, identify activities which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format.

Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to the FAS through the UES application Internet site. The FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to the FAS on diskette.

Applicants planning to use the Internet-based system must contact the Marketing Operations Staff on (202) 720–4327 to obtain site access information. The Internet-based application, including step-by-step instructions for its use, is located at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

Applicants who choose to submit applications on diskette can obtain an application format by contacting the Marketing Operations Staff on (202) 720–4327.

All Cooperator Program applicants, whether applying via the Internet or diskette, also must submit by March 10, 2003, via hand delivery or U.S. mail, an original signed certification statement as specified in 7 CFR section 1484.20(a)(14).

Any organization which is not interested in applying for the Cooperator Program, but would like to request assistance through one of the other programs mentioned, should contact the Marketing Operations Staff on (202) 720–4327.

Review Process and Allocation Criteria

The FAS allocates funds in a manner which effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP.

Following is a description of the FAS process for reviewing applications and the criteria for allocating available Cooperator Program funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review

Applications received by the closing date will be reviewed by the FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at §§ 1484.14 and " 1484.20 of the Cooperator Program regulations. Applications which meet the application requirements then will be further evaluated by the proper FAS Commodity Division. The Divisions will review each application against the criteria listed in § 1484.21 and § 1484.22 of the Cooperator Program regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor):

(a) Contribution Level (40)

- The applicant's 6-year average share (1999–2004) of all contributions (contributions may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to
- The applicant's 6-year average share (1999–2004) of all Cooperator marketing plan expenditures.

(b) Past Export Performance (20)

The 6-year average share (1998–2003) of the value of exports promoted by the applicant compared to

• The applicant's 6-year average share (1998–2003) of all Cooperator marketing plan expenditures plus a 6-year average share (1997–2002) of MAP expenditures and a 6-year average share (1997–2002) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(c) Past Demand Expansion Performance (20)

• The 6-year average share (1998–2003) of the total value of world trade of the commodities promoted by the applicant compared to

• The applicant's 6-year average share (1998–2003) of all Cooperator marketing plan expenditures plus a 6-year average share (1997–2002) of MAP expenditures and a 6-year average share (1997–2002) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(d) Future Demand Expansion Goals (10)

• The projected total dollar value of world trade of the commodities being promoted by the applicant for the year 2009 compared to

• The applicant's requested funding level.

(e) Accuracy of Past Demand Expansion Projections (10)

• The actual dollar value share of world trade of the commodities being promoted by the applicant for the year 2002 compared to

• The applicant's past projected share of world trade of the commodities being promoted by the applicant for the year 2002, as specified in the 1999 Cooperator Program application.

The Commodity Divisions' recommended funding levels for each applicant are converted to percentages of the total Cooperator Program funds available then multiplied by the total weight factor to determine the amount of funds allocated to each applicant.

Closing Date for Applications

All Internet-based applications must be properly submitted by 5 p.m. eastern standard time, March 10, 2003. Signed certification statements also must be received by that time at one of the addresses listed below.

All applications on diskette (with two accompanying paper copies and a signed certification statement) and any other applications must be received by 5 p.m. eastern standard time, March 10, 2003, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, *etc.*): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 1400 Independence Avenue, SW., Washington, DC 20250–1042.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

Signed in Washington, DC on January 8, 2003.

Kenneth J. Roberts,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 03–1117 Filed 1–16–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Section 108 Foreign Currency Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: The Foreign Agricultural Service invites proposals from interested parties to use Tunisian dinars acquired by the United States for activities to expand markets for U.S. agricultural commodities and for technical assistance activities.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–S, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Foreign Agricultural Service (FAS) will make available Tunisian dinars to provide assistance in market development and agricultural technical assistance activities. These foreign currencies were acquired by USDA pursuant to agreements made under Title I of the Agricultural Trade Development and Assistance Act of 1954, (Pub. L. 480).

Title I, Pub. L. 480 authorizes the U.S. government to finance the sale and exportation of agricultural commodities to foreign governments on concessional terms. Between 1986 and 1991, the U.S. entered into various Title I, Pub. L. 480 agreements with foreign governments, on terms which allowed repayment to the United States in local currencies. Pub. L. 480 authorizes the U.S. government to use these foreign currencies to implement market development and agricultural technical assistance activities.

This announcement supersedes all previous announcements regarding this program. On January 8, 2002, FAS published a notice in the **Federal Register** (67 FR 862–864) inviting proposals to use currencies of the Dominican Republic, Jamaica, Sri Lanka, and Tunisia for market development projects and technical assistance activities. The currencies of the Dominican Republic, Jamaica, and Sri Lanka, which were available under the previous announcements, are no longer available.

FAS must disburse local currencies to program participants, usually through the disbursing officer in the U.S. embassy in the country of origin. That is, FAS may not convert the local currency to any other currency prior to disbursement. It is the responsibility of the recipient to arrange for receiving and using the foreign currencies made available, or converting the funds to other currencies. Applicants should note that Tunisian currency may not be readily convertible.

Proposal Process

This notice is complemented by concurrent notices announcing five other foreign market development programs administered by FAS, including the Market Access Program (MAP), the Foreign Market Development Cooperator (Cooperator) Program, the Emerging Markets Program, the Technical Assistance for Specialty Crops Program, and the Quality Samples Program. The MAP and Cooperator Program notices detail a Unified Export Strategy (UES) application process which provides a means for interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of these programs. Some applicants to the section 108 foreign currency program, particularly those who are applying for funding under more than one program, may wish to use the UES application process. The Internet-based UES application, including step-by-step instructions for its use, is located at the following URL address: *http://www.fas.usda.gov/cooperators.html*. Other applicants, particularly those who are applying for funding only under the section 108 foreign currency program, should follow the application procedures contained in this notice. Interested applicants that are unsure of how to apply are urged to contact the Marketing Operations Staff at the address or phone number above.

FAS recommends that proposals to participate in the section 108 foreign

currency program contain, at a minimum, the following:

(a) Organizational information, including:

- Organization's name, address, Chief Executive Officer (or designee), and Federal Tax Identification Number (TIN);
- Type of organization, *e.g.*, corporation, non-profit organization;
- Name, telephone number, fax number, and e-mail address of the primary contact person;
- If a trade organization, a description of the organization and its membership;
- A description of the organization's prior export promotion experience; and
- A description of the organization's experience in implementing a trade or technical assistance activity;

(b) Market information, including:

- An assessment of the targeted market;
- A long-term strategy in the market; and
- U.S. export value/volume and market share data and goals for 2000–2005;

(c) Project information, including:

- A brief project title;
- Request for funding in one of the available foreign currencies;
- A brief description of the specific market development trade constraint to be addressed by the project, performance measures for the years 2003–2005 which will be used to measure the effectiveness of the project, a benchmark performance measure for 2003, the viability of long term sales to this market, the goals of the project, and the expected benefits to the represented industry;
- A method for evaluating and reporting results;
- A description of the activities planned to address the constraint; and
- An itemized list of all estimated costs associated with each project activity for which reimbursement will be sought;

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, Commodity Credit Corporation, FAS, or other Federal agencies. Contributed resources may include cash or goods and services; and,

(e) A completed Standard Form 424 (SF–424). This form is available on the Internet via the section 108 fact sheet at the following URL address: *http://www.fas.usda.gov/info/factsheets/108fact.htm*, or by calling the contact listed above.

Review Process and Allocation Criteria

The FAS allocates funds in a manner which effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP. FAS will provide financial assistance under this program on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. Each proposal will be evaluated by the applicable FAS commodity division. The divisions will recommend funding levels for each applicant based on a review of the applications against the following factors:

- The ability of the organization to provide an experienced staff with the requisite technical and trade expertise to execute the proposal;
- The funding request and the organization's willingness to contribute resources, including cash, goods and services of the U.S. industry and foreign third parties;
- The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodities and products;
- The degree to which the proposed project is likely to contribute to the creation, expansion, or maintenance of the targeted foreign market; and
- The degree to which the organization's proposal is coordinated with other private or U.S. government-funded market development projects.

The purpose of this review is to identify meritorious proposals and to suggest an appropriate funding level for each application based upon these factors. Meritorious proposals will then be reviewed by representatives of each FAS program area for the purpose of allocating available funds among the applicants.

Preference is given to nonprofit U.S. agricultural trade organizations that represent an entire industry or are nationwide in membership and scope.

Note: FAS generally reviews section 108 proposals on a quarterly basis. However, FAS may also consider proposals on an accelerated basis if an urgent marketing opportunity becomes available. FAS will evaluate such proposals according to the criteria specified in this notice.

Agreements

Following approval of a proposal, FAS will enter into an agreement with the organization that submitted the proposal. Agreements will incorporate the project details as approved by FAS and specify any other terms and conditions applicable to project funding. Agreements include the maximum amount of funds, in local currencies rather than U.S. dollars, which may be made available for a participant's approved activities. All agreements with non-profit organizations under this program are administered under 7 CFR 3019—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations. These regulations can be found on the Internet at the following URL address: *http://www.access.gpo.gov/nara/cfr/waisidx_01/7cfr3019_01.html*.

Submission of Proposals

Applicants may submit proposals at any time. However, all Internet-based section 108 proposals (using the UES application) must be properly submitted by 5 p.m. Eastern Standard Time, March 10, 2003, because the UES entry Web site closes at that time. Signed SF–424 forms must be delivered to one of the addresses listed below.

All proposals on diskette (with two accompanying paper copies and a signed SF–424 form) and any other proposals must be delivered to one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, *etc.*): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Ave., SW., Washington, DC 20250–1042.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

Signed at Washington, DC, on January 8, 2003.

Kenneth J. Roberts,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 03–1119 Filed 1–16–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gallatin National Forest Invasive Plant Treatment EIS, Gallatin National Forest, Gallatin County, Madison County, Meagher County, Park County, Sweet Grass County, and Stillwater County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Invasive plants can alter ecosystem processes, including: productivity; hydrologic function; nutrient cycling, and natural disturbance patterns such as frequency and intensity of wildfires. Changing these processes can lead to displacement of native plant species, eventually impacting wildlife and plant habitat, recreational opportunities, livestock forage, and scenic values. The Forest Service has identified that at least 15,500 acres on the Gallatin National Forest that are in a downward trend due to the infestation of invasive plants. The Forest Service will evaluate these known infestations and high-risk areas or conditions that may cause infestations over the next ten to fifteen years and analyze various management activities to reduce the spread and density of invasive plants and allow desirable native vegetation to re-establish and regain vigor. Based on previous trend information, it is estimated that infestations could increase to approximately 155,000 acres over the next ten to fifteen years at historic funding levels. The purpose and need for this project is for the Forest Service to improve the trend of the ecological condition for the known infestations, prevent infestations in areas that have potential for invasion, and allow for adaptive management to treat anticipated new infestations across the Gallatin National Forest over the next ten to fifteen years. The proposed actions being considered to achieve the purpose and need include implementing an integrated pest management program aimed at controlling new starts, priority areas and areas of minor infestations; and implementing holding actions on areas of existing large infestations. The Gallatin National Forest is proposing to continue control of invasive plants through the integration of mechanical, biological, ground and aerial (helicopter) herbicide control methods.

DATES: Comments concerning the scope of the analysis should be received in writing on or before February 28, 2003.

ADDRESSES: Send written comments to Hebgen Lake Ranger District, Gallatin National Forest, PO Box 520, West Yellowstone, MT 59758.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Susan LaMont, Project Coordinator, PO Box 520, West Yellowstone, Montana 59758, phone (406) 823–6976.

SUPPLEMENTARY INFORMATION: These management activities would be administered by the Gallatin National Forest in Gallatin, Madison, Meagher, Park, Sweet Grass, and Stillwater Counties, Montana. The EIS will tier to the 1987 Gallatin National Forest and Grasslands Land and Resource Management Plan (Forest Plan), which provide the overall management direction for the area. The proposed action is consistent with the Forest Plan. The purpose of the Forest Service proposal is to further movement towards desired conditions outlined in the Forest Plan, by:

- Protecting the natural condition and biodiversity on the Gallatin National Forest by preventing or limiting the spread of aggressive, non-native plant species that displace native vegetation;
- Promptly eliminating new invaders (species not previously reported in the area) before they become established;
- Reducing known and potential invasive plant seed sources on trailheads and campsites, along main roads and trails, within powerline corridors, and in wildlife and livestock use areas;
- Preventing or limiting the spread of established invasive plants into areas containing little or no infestation;
- Protecting sensitive and unique habitats including the Absaroka-Beartooth Wilderness Area, LeeMetcalf Wilderness, municipal watersheds, critical winter ranges, research natural areas, riparian areas, and sensitive plant populations.

The proposed action will be consistent with the Forest Plan, which provides goals, objectives, standards and guidelines of the various activities and land allocations on the forest. The Forest Plan allocates the project area into twenty-six management areas (MAs), the invasive plants occur within most of these management areas. Private lands are also included within the project area boundary. Although excluded from Forest Service activities, project access and the condition of private lands will be considered during alternative development and when analyzing potential cumulative efforts.

The key issue topics identified to date include:

- The current and potential impacts of invasive plants on natural resources such as critical big game habitat, native plant communities, wilderness values, watersheds, and threatened, endangered, or sensitive species;
- Economics, effectiveness, and potential impacts of various control methods on natural resources;
- Potential effects on non-target native plants, wildlife and fish populations, and human health from the application of herbicides (both ground base and aerial applications).

The areas the Forest Service plan to analyze include:

Ranger district	Location (township range)	Maximum treatment acreage [1]	Estimated aerial treatment acreage
Big Timber	Between T5N—T5S; and Between R15E—R10E, Montana Principle Meridian.	900 Acres	0 Acres.
Livingston	Between T6N—T8S; and Between R12E—R5E, Montana Principle Meridian.	2,000 Acres	0 Acres.
Gardiner	Between TFS—T9S; and Between R17E—R5E, Montana Principle Meridian.	6,200 Acres	0 Acres.
Bozeman	Between T4N—T9S; and Between R8E—R1E, Montana Principle Meridian.	3,700 Acres	171 Acres.
Hebgen Lake	Between T8S—T15S; and Between R5E—R2E, Montana Principle Meridian.	2,700 Acres	172 Acres.

[1] These are the maximum projected treatment acres, actual treatment acres may be less.

A range of reasonable alternatives will be considered, including a no action alternative. Other alternatives will examine various combinations of invasive plant treatment. Based on the issues gathered through scoping, the

action alternatives will vary in the amount and location of acres considered for treatment and the number, type, and location of activity.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, tribes and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. Continued scoping and public participation efforts will be used by the interdisciplinary team to identify new issues, determine alternatives in response to the issues, and determine the level of analysis needed to disclose potential biological, physical, economic, and social impacts associated with this project.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by February 2003. The EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is important that those interested in this proposal on the Gallatin National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position contentions. Vermont *Yankee Nuclear Plant Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled for completion by February 2003. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. Rebecca Heath, Forest Supervisor of the Gallatin National Forest, is the responsible official for all except use of herbicides within designated Wilderness Areas. The responsible official for use of herbicides within designated Wilderness Areas is Brad Powell, Regional Forester of the Northern Region. They will decide which, if any, of the proposed project alternatives will be implemented.

Their decisions and reasons for the decisions will be documented in appropriate Records of Decision. Those decisions will be subject to Forest Service appeal regulations (36 CFR part 215).

Dated: December 18, 2002.

Rebecca Heath,

Forest Supervisor.

[FR Doc. 03–1044 Filed 1–16–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fortine Timber Sales and Associated Activities; Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of timber harvest, prescribed fire, road management, and watershed rehabilitation in the Fortine Analysis Area on the Fortine Ranger District of the Kootenai National Forest. The Fortine Analysis Area is located approximately 30 air miles northeast of Libby, Montana, near the communities of Trego and Fortine, Montana.

Scoping Comment Date: Written comments and suggestions should be postmarked or received by February 24, 2003.

ADDRESSES: The Responsible Official is Edward C. Monnig, District Ranger, Fortine Ranger District, P.O. Box 116, Fortine, Montana, 59918. Written comments and suggestions concerning the scope of the analysis may be sent to him at that address.

FOR FURTHER INFORMATION CONTACT: Joleen Dunham, Project Leader, Fortine Ranger District. Phone: (406) 882–4451.

SUPPLEMENTARY INFORMATION: The Fortine Decision Area contains approximately 25,110 acres of land within the Kootenai National Forest in Lincoln County, Montana. The legal location of the Fortine Decision Area is as follows: all or portions of T33N, R26W; T32N, R26W; T32N, R27W; and T31N, R26W; PMM, Lincoln County, Montana. All of the proposed projects would occur on National Forest lands in the Upper Fortine drainage seven miles south of the town of Trego, Montana. All proposed activities are outside the boundaries of any roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposals.

The purpose and need for this project is to: (1) Manage forest ecosystems to improve forest health and provide habitat for plant and animal populations; (2) manage for stable stream channels, productive habitats for aquatic species, and water quality that meet or exceeds State of Montana water quality goals; (3) reduce existing and expected future fuel accumulations and the potential risk of high intensity wildland fire and subsequent risk to private property; (4) provide timber to support local, regional, and national needs; and (5) maintain and manage a cost effective, long-term road system that meets present and future resource management needs, increases security for wildlife, and insures safe access.

The Forest Service proposes to harvest timber through application of a variety of harvest methods on approximately 2358 acres of forestland within the Fortine Decision Area. Use of existing, temporary and permanent roads would be needed to access timber harvest areas. An estimated 0.75 miles of existing roads would be reconstructed in addition to 1.1 miles of new road construction to facilitate timber removal and improve access for resource management. The temporary road would be obliterated following completion of sale related activities. An

additional 17 miles of road no longer needed for resource management, at this time, would be decommissioned by various methods, such as removal of culverts, recontouring, ripping and seeding, and installing barriers. The method of decommissioning would be selected for each road or portions of road on a site-specific basis. An estimated 2 miles of existing road would be restricted seasonally with 12 miles of existing road restricted year-round to reduce the potential loss of snags in old growth habitat, improve habit security for wildlife, and reduce sediment delivery to live streams. An estimated 11 miles of existing road would be restricted to reduce open road densities within and adjacent to designated old growth stands. More specifically management activities in this proposal include:

Regeneration Harvest: This harvest would leave approximately 20 large trees per acre, where feasible, to provide future snags and down woody material for wildlife habitat. A total of approximately 734 acres would be harvested through this method.

Intermediate Harvest: The following types of intermediate harvest are proposed: (1) Commercial thinning of condominate and subdominate trees while retaining a stocked stand of overstory trees on approximately 1522 acres; (2) harvest of post and pole sized lodgepole pine from approximately 71 acres; (3) salvage harvest on 31 acres would remove merchantable dead lodgepole pine while protecting desirable live trees in the stand.

Underburning: Underburning is proposed on approximately 179 acres outside harvest units to reduce fuel loads and reduce fire risk.

Roadside Fuel Reduction: Fuel reduction through slashing, hand piling and burning while maintaining the integrity of the stand is proposed within the first 100 feet of timber adjacent to open roads, on approximately 65 acres.

Burning of Natural Fuels and Slash: Burning of natural fuels and slash resulting from timber harvest is proposed on approximately 2358 acres.

Watershed/Fish Habitat Improvement: Watershed improvement projects include controlling cattle access to creeks, removing failed culverts, and applying best management practices on approximately 104 miles of existing road.

Range of Alternatives: The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Public Involvement and Scoping: In July 1999 preliminary efforts were made to involve the public in considering management opportunities within the Fortine Decision Area. Comments received prior to this notice will be included in the documentation for the EIS. This proposal includes openings greater than 40 acres, ranging from 46 to 60 acres. A 60 day public review period, and approval by the Regional Forester for exceeding the 40 acre limitation for regeneration harvest will occur prior to the signing of the Record of Decision. This 60 day period is initiated with this notice of intent.

Estimated Dates for Filing: The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by September 2003. At that time, EPA will publish a notice of availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be a minimum of 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The Final EIS is scheduled to be complete by December 2003. In the Final EIS, the Forest Service will respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations: The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft EIS stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the Draft EIS 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final EIS.

To be most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Edward C. Monnig, District Ranger, Fortine Ranger District, Kootenai National Forest, P.O. Box 116, Fortine, Montana 59918, is the Responsible Official. As the Responsible Official, he will decide if the proposed project will be implemented and will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: January 9, 2003.

Greg Kujawa,

Acting Forest Supervisor, Kootenai National Forest.

[FR Doc. 03–1139 Filed 1–16–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on February 4, 2003 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on February 4, 2003 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington Boulevard, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone (707) 441–3549. E-mail: *1chapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The committee will discuss and prioritize

project proposals submitted by the public and Six Rivers National Forest. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: January 13, 2003.

S.E. Woltering,

Forest Supervisor.

[FR Doc. 03–1074 Filed 1–16–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request an extension of a currently approved information collection, the Floriculture and Nursery Survey.

DATES: Comments on this notice must be received by March 24, 2003, to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION: *Title:* Floriculture and Nursery Survey.

OMB Control Number: 0535–0093.

Expiration Date of Approval: April 30, 2003.

Type of Request: Intent to seek approval to extend an information collection.

Abstract: The objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Floriculture and Nursery Survey is conducted in 36 States and obtains basic agricultural statistics on production and value of floriculture and nursery products. The retail and wholesale quantity and value of sales are collected for fresh cut flowers, potted flowering plants, foliage plants, annual bedding/garden plants, herbaceous perennials, cut-cultivated florist greens, propagative floriculture material, and unfinished plants. Additional detail on area in production, operation value of sales, and agricultural workers is included. These statistics are used by the U.S. Department of Agriculture to help administer programs and by growers and marketers in making production and marketing decisions.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 14,000.

Estimated Total Annual Burden on Respondents: 7,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed in Washington, DC, November 19, 2002.

Rich Allen,

Associate Administrator.

[FR Doc. 03–1039 Filed 1–16–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request a revision to and extension of a currently approved information collection, the Vegetable Surveys Program.

DATES: Comments on this notice must be received by March 24, 2003 to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Vegetable Surveys Program.

OMB Number: 0535–0037.

Expiration Date of Approval: March 31, 2003.

Type of Request: Intent to revise and extend a currently approved information collection.

Abstract: The objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Vegetable Surveys Program obtains basic agricultural statistics for fresh market and processing vegetables in major producing States. Vegetable statistics are used by the U.S. Department of Agriculture to help administer programs and by growers, processors, and marketers in making

production and marketing decisions. The fresh market estimating program now consists of 24 selected crops and the processing program consists of 8 principal crops. To accommodate a reduction in allocated funds, a cut of approximately 20 percent was made in number of commodities, number of States surveyed, and sample sizes.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 8,800.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, November 19, 2002.

Rich Allen,

Associate Administrator.

[FR Doc. 03–1040 Filed 1–16–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision to and extension of a currently approved information collection, the Aquiculture Surveys.

DATES: Comments on this notice must be received by March 24, 2003, to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Aquiculture Surveys.

OMB Control Number: 0535–0150.

Expiration Date of Approval: March 31, 2003.

Type of Request: Intent to revise and extend a currently approved information collection.

Abstract: The objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production and prices. The Aquiculture Surveys collect information on trout and catfish inventory, acreage, and sales and catfish processed. Survey results are used by government agencies in planning farm programs.

Twenty states are in the trout growers survey. In January, previous year trout sales data are collected from farmers and distributed fish data are collected from state and federal hatcheries.

Thirteen states are in the catfish growers survey. Data are collected from farmers in January for January inventory, water area, and previous year sales. In addition, farmers in the four major catfish producing states are surveyed in July for mid-year inventory numbers.

All 26 catfish processing plants across the nation are in the catfish processing survey. Plants are surveyed monthly for amount purchased, prices paid, amount sold, and prices received.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 2,100.

Estimated Total Annual Burden on Respondents: 900 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed in Washington, DC, November 19, 2002.

Rich Allen,

Associate Administrator.

[FR Doc. 03–1041 Filed 1–16–03; 8:45 am]

BILLING CODE 3410–20–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product and a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 16, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center U.S. Coast Guard Integrated Support Command, Kodiak, Alaska.
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina.
Contract Activity: U.S. Coast Guard Integrated Support Command, Kodiak, Alaska.

Service Type/Location: Custodial Service, U.S. Customs Service, 457 Aviation Hanger, San Antonio, Texas, U.S. Customs Service, Bldg #2, 447 Sandau Road, San Antonio, Texas.
NPA: Mavagi Enterprises, Inc., San Antonio, Texas.
Contract Activity: U.S. Customs Service, Indianapolis, Indiana.

Service Type/Location: Hospital Housekeeping Services, Darnall Army Community Hospital, Fort Hood, Texas.
NPA: Professional Contract Services, Inc., Austin, Texas.
Contract Activity: Headquarters, III Corps, Fort Hood, Texas.

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Duluth, Minnesota.
NPA: Goodwill Industries Vocational Enterprises, Inc., Duluth, Minnesota.
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.

Service Type/Location: Mess Attendant, Willow Grove Naval Air Station Joint Reserve Base; Liberty Dining Hall, Horsham, Pennsylvania.
NPA: Occupational Training Center of Burlington County, Mt. Holly, New Jersey.
Contract Activity: Fleet Industrial Supply Center, Norfolk Det Philadelphia, Pennsylvania.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act(41 U.S.C. 46–48c) in connection with the products and services proposed for deletion from the Procurement List.

The following product and service are proposed for deletion from the Procurement List:

Products

Product/NSN: Brush, Tooth Brush Style, 7920–00–900–3577.
NPA: None currently authorized.
Contract Activity: GSA, General Product Center.

Services

Service Type/Location: Janitorial/Custodial, U.S. Courthouse and Customhouse, Toledo, Ohio.
NPA: ContracTech, Inc., Toledo, Ohio.
Contract Activity: GSA, Public Buildings Service.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. 03–1143 Filed 1–16–03; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 39–2002, 40–2002, 41–2002, 42–2002, 43–2002, 44–2002, 45–2002, 46–2002, 47–2002, and 48–2002]

Flint Ink North America Corporation—Applications for Foreign-Trade Subzone Status; Extension of Comment Period

The comment periods for the cases referenced above (67 FR 64088–64096, 10/17/2002) are being extended again, to April 15, 2003, at the request of the applicant, which will allow interested parties additional time in which to comment on the proposals. These ten related cases involve pending subzone applications from the following Foreign-Trade Zones:

—Foreign-Trade Zone 143—Sacramento, California
—Foreign-Trade Zone 170—Indianapolis, Indiana
—Foreign-Trade Zone 182—Fort Wayne, Indiana
—Foreign-Trade Zone 29—Louisville, Kentucky
—Foreign-Trade Zone 47—Boone County, Kentucky
—Foreign-Trade Zone 189—Kent-Ottawa-Muskegon Counties, Michigan
—Foreign-Trade Zone 46—Cincinnati, Ohio
—Foreign-Trade Zone 105—Providence, Rhode Island

—Foreign-Trade Zone 21—Charleston, South Carolina
—Foreign-Trade Zone 185—Culpeper, Virginia

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005.

Dated: January 10, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–1151 Filed 1–16–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on February 5 & 6, 2003, 9 a.m., in the Cloud Room, Building 33, 53560 Hull Street, SPAWAR Systems Center (Topside), San Diego, California 92152. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

February 5

Public Session

1. Comments or presentations by the public.
2. Discussion on deemed export issues.
3. Discussion on cryptography controls and digital rights management.
4. Discussion on semiconductor etch technology.
5. Discussion on semiconductor manufacturing equipment controls.
6. Discussion on external connections of microprocessors.

February 5 & 6

Closed Session

7. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 7, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meeting of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meeting or portions thereof will be open to the public.

For more information, contact Lee Ann Carpenter on 202–482–2583.

Dated: January 13, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–1098 Filed 1–16–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on February 11, 2003, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the public.
3. Committee objectives for 2003.
4. Follow-up on action items from previous meeting.
5. Update on Bureau of Industry and Security initiatives.

Closed Session

6. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 29, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: January 13, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–1099 Filed 1–16–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–841]

Structural Steel Beams From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review

of structural steel beams from the Republic of Korea.

SUMMARY: On September 11, 2002, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on structural steel beams from the Republic of Korea (67 FR 57574). This review covers imports of subject merchandise from INI Steel Company ("INI"). The period of review ("POR") is February 11, 2000 through July 31, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results of review. The final weighted-average dumping margin for INI is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: January 17, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1102 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2002, the Department published its preliminary results of *Structural Steel Beams From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review for Structural Steel Beams From the Republic of Korea*, 67 FR 57574 (September 11, 2002) ("*Preliminary Results*"). In the *Preliminary Results*, we stated that we would seek additional information related to INI and its affiliation with Hyundai U.S.A. in order to, inter alia, understand M. K. Jung's control over INI and that we would allow interested parties to comment on this new information before making a final determination. On September 20, 2002, the Department issued a supplemental questionnaire requesting additional information on corporate structure and affiliation. On October 9, 2002, INI filed its supplemental questionnaire response. On October 18, 2002, petitioners (Nucor Corp., Nucor-Yamato Steel Co., TXI-Chaparral Steel Co.) filed comments and factual information on INI's October 9, 2002, response.

We invited parties to comment on these preliminary results. We received written comments on October 30, 2002, from petitioners and INI. On November 6, 2002, we received rebuttal comments from petitioners and INI. We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this investigation are doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated or clad. These products include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("*Decision Memorandum*") from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 9, 2003, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Sales Below Cost

We disregarded sales below cost for INI during the course of the review. *See Preliminary Results.*

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for INI. The changes to the margin calculations are listed below:

INI

- We revised INI's imputed credit expenses for its U.S. sales upward by the percentage difference between INI's U.S. dollar short-term interest rate and Hyundai U.S.A.'s U.S. dollar short-term interest rate. *See Comment 3.*
- We revised the adjustment to the imputed credit offset used to determine a portion of indirect selling expenses based on our determination to adjust INI's imputed credit expenses upward by the percentage difference between INI's and Hyundai U.S.A.'s U.S. dollar short-term interest rate. *See Comment 3.*
- We reversed our decision in the *Preliminary Results* and now determine that the verification report incorrectly stated that the entered value for a particular transaction was wrong. Therefore, for the final results, we modified our margin program and we did not reduce the entered value for this particular transaction. *See Comment 4.*
- We revised INI's gross unit price to include interest revenue instead of as an offset to direct expenses. *See Comment 6.*

Final Results of Review

We determine that the following percentage margin exists for the period February 11, 2000 through July 31, 2001:

Structural Steel Beams from Korea	
Manufacturer/exporter/re-seller	Margin (percent)
INI	1.87

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appraisement instructions directly to the Customs Service within 15 days

of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of structural steel beams from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular product is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company) see 19 CFR 351.106(c)(1); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 37.21 percent, which is the all others rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: January 9, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix 1– Issues In The Decsision Memorandum

Comment 1: Affiliation between INI and Hyundai U.S.A./Hyundai Corporation
Comment 2: Reimbursement Provisions when INI is both Exporter and Importer
Comment 3: Recalculation of U.S. Imputed Credit Expenses (for field CREDIT2U) Using Hyundai U.S.A.'s Interest Rate
Comment 4: Entered Value for Certain Observations
Comment 5: INI's Cost of Production
Comment 6: Interest Revenue on Home Market Sales
Comment 7: Payment Date Cap For Certain Sales After the Sale Date
Comment 8: Ministerial Error in the Draft Liquidation Instructions
Comment 9: Issuance of Automatic Liquidation Instructions for Non-reviewed Companies

[FR Doc. 03–1150 Filed 1–16–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by phone at (202) 482–5131, (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 88–6A012."

The National Tooling and Machining Association's ("NTMA") original Certificate was issued on October 18, 1988 (53 FR 43140, October 25, 1988) and last amended on March 7, 2002 (67 FR 11981, March 18, 2002). A summary of the application for an amendment follows.

Summary of the Application:

Applicant: National Tooling and Machining Association, 9300 Livingston Road, Ft. Washington, Maryland 20744.

Contact: Thomas H. Garcia, Manager, Marketing Programs, Telephone: (301) 248–6200.

Application No.: 88–6A012.

Date Deemed Submitted: January 6, 2003.

Proposed Amendment: NTMA seeks to amend its Certificate so that the attached list will constitute the "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)).

Dated: January 9, 2003.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

Attachment

b & b Tool Company, Inc., Rockford, IL
bmc Industries, Bakersfield, CA
A & A Industries, Inc., Peabody, MA
A & A Machine Company, Inc., Southampton, PA
A & A Machine Shop, Inc., La Marque, TX
A & B Aerospace, Inc., Azusa, CA
A & B Machine Shop, Rockford, IL
A & B Tool & Manufacturing Corp., Toledo, OH
A & D Precision, Fremont, CA
A & E Custom Manufacturing Technologies, Inc., Kansas City, KS
A & E Machine Shop, Inc., Lone Star, TX
A & G Machine, Inc., Auburn, WA
A & S Tool & Die Company, Inc., Kernersville, NC
A A Precisioneering, Inc., Meadville, PA
A B A Division, A B A—P G T, Inc., Manchester, CT
A B C O Tool & Engineering, Phoenix, AZ
A B Heller, Inc., Milford, MI
A B R Enterprises Inc., Temple City, CA
A C Machine, Inc., Akron, OH
A E Cole Die & Engraving, Columbus, OH
A E Machine Works, Inc., Houston, TX
A F C Tool Company, Inc., Subsidiary of F C Industries, Dayton, OH
A I M Tool & Die, Grand Haven, MI
A J L Manufacturing Company, Inc., Rochester, NY
A M C Precision, Inc., N. Tonawanda, NY
A M Machine Company, Inc., Baltimore, MD
A S C Corporation, Owings Mills, MD
A. C. Cut-Off, Inc., Azusa, CA
A-G Tool & Die, Div. of Seilkop Industries, Inc., Miamitown, OH
A-Line Tool & Die, Inc., Louisville, KY
A-RanD, Inc., Phoenix, AZ
Abbott Machine & Tool, Inc., Toledo, OH
Abbott Tool, Inc., Toledo, OH
Ability Tool Company, Rockford, IL
Able Wire EDM, Inc., Brea, CA
Abrams Airborne Manufacturing, Inc., Tucson, AZ
Absolute Grinding Co., Inc., Mentor, OH
Absolute Turning & Machine, Tucson, AZ
Acadiana Hydraulic Works, Inc., New Iberia, LA
Accu Die & Mold Inc., Stevensville, MI
Accu-Met Laser, Inc., Cranston, RI
Accu-Roll, Inc., Rochester, NY
Accudynamics, Inc., Middleboro, MA
Accura Industries, Inc., Rochester, NY
Accurate Grinding & Mfg. Corp. & Accurate Fishing Products, Corona, CA
Accurate Machine Co. Inc., Indianapolis, IN
Accurate Manufacturing Company, Glendale, CA
Accurate Products Co., Tucson, AZ
Accurite Machine & Mfg. Inc., Louisville, KY
Accutronics, Inc., Littleton, CO
Ace Manufacturing Company, Cincinnati, OH
Ace Specialty Company, Inc., Tonawanda, NY
Ackley Machine Corporation, Moorestown, NJ
Acme Metal Works, Gilbert, AZ
Acraloc Corporation, Oak Ridge, TN
Acro Industries, Inc., Rochester, NY
Acro Tool & Die Company, Inc., Akron, OH
Actco Tool & Mfg. Co., Meadville, PA
Action Die & Tool Inc., Wyoming, MI
Action Machine L.L.C., Glendale, AZ
Action Mold & Machining, Inc., Grand Rapids, MI
Action Precision Grinding Inc., North Tonawanda, NY
Action SuperAbrasive Products, Brimfield, OH
Action Tool and Manufacturing, Inc., Rockford, IL
Acucut, Inc., Southington, CT
Acutec Precision Machining Inc., Saegertown, PA
Adams Engineering, Division of Manufacturing Technology, Inc., South Bend, IN
Adaptive Technologies Inc., Springboro, OH
Addison Precision Mfg. Corp., Rochester, NY
Adena Tool Corporation, Dayton, OH
Admill Machine Company, Newington, CT
Adron Tool Corporation, Menomonee Falls, WI
Advance Manufacturing Corp., Cleveland, OH
Advanced Composite Products & Technology, Inc. (ACPT Inc.), Huntington Beach, CA
Advanced Machine Inc., Rochester, NY
Advanced Machine Programming, Morgan Hill, CA
Advanced Machining Corporation, Salisbury, NC
Advanced Measurement Labs, Inc., Sun Valley, CA
Advanced Mold & Tooling Inc., Rochester, NY
Advanced Precision Engineering, Ipswich, MA
Advanced Tooling Specialists Inc., Menasha, WI
Advanced Tooling Systems, Inc., Comstock Park, MI
Advantage Mold & Design, Meadville, PA
Aero Comm Machining, Wichita, KS
Aero Engineering & Mfg. Company, Valencia, CA
Aero Gear, Inc., Windsor, CT
Aerostar Aerospace Inc., Phoenix, AZ
Aetna Machine Company, Cochranton, PA
Aggressive Tool & Die, Inc., Buckner, KY
Aggressive Tool & Die, Inc., Coopersville, MI
Ahaus Tool & Engineering, Inc., Richmond, IN
Aimco Precision, Inc., Phoenix, AZ
Ajax Tool, Inc., Fort Wayne, IN
Akro Tool Co., Inc., Cincinnati, OH
Akron Steel Fabricators Company, Akron, OH
Akron Tool & Die Company, Inc., Akron, OH
Albert Seisler Machine Corp., Mohnton, PA
Albertson & Hein, Inc., Wichita, KS
Albion Machine & Tool Company, Albion, MI
Alco Manufacturing, Inc., Santa Ana, CA
Alfred Manufacturing Company, Denver, CO
Alger Machine Company, Inc., Rochester, NY
All Five Tool Company, Inc., Bristol, CT
All Tool Company, Union, NJ
All Tools Company, Oklahoma City, OK
All Tools Texas, Inc., Houston, TX
All Weld Machine, Milpitas, CA
All-Tech Machine & Eng., Inc., Fremont, CA
All-Tech Machining, Inc., Wilmer, AL
Allen Aircraft Products, Inc., Ravenna, OH
Allen Precision Industries, Inc., Asheboro, NC
Allen Precision Machining Co., Angleton, TX
Allen Randall Enterprises, Inc., Akron, OH
Alliance Machine Tool Co., Inc., Louisville, KY
Allied Mechanical, Ontario, CA
Allied Screw Products, Inc., Mishawaka, IN
Allied Tool & Die Company, LLC, Phoenix, AZ
Allied Tool & Die, Inc., Cleveland, OH
Allied Tool & Machine Company, Kernersville, NC
Allied Tool & Machine, Inc., Saginaw, MI
Allied Tools Of Texas, Houston, TX
Alloy Metal Products, Livermore, CA
Allstate Tool & Die, Inc., Rochester, NY
Alpha Mold West Inc., Broomfield, CO
Alpha Mold, LLC, Huber Heights, OH
Alpha Precision Machining Inc., Kent, WA
Alpha Tooling, Inc., Santa Fe Springs, CA
Alro Specialty Metals, St. Louis, MO
Alt's Tool & Machine, Inc., Santee, CA
Alton Products, Inc., Maumee, OH
Alves Precision Engineered Products Inc., Watertown, CT
Amatrol, Inc., Jeffersonville, IN
Ambel Precision Mfg. Corp., Bethel, CT
American Machine & Gundrilling Co., Inc., Maple Grove, MN
American Mfg. & Machining, Inc., Racine, WI
American Precision Machining, Inc., Phoenix, AZ
American Precision Technologies, Inc., San Fernando, CA
American Tool & Die, Inc., Toledo, OH
American Wire EDM, Inc., Placentia, CA
Amerimold, Inc., Mogadore, OH
Amity Mold Company, Tipp City, OH
Anchor Lamina Inc., Madison Heights, MI
Anders Machine and Engraving, Div. of Ad-Tech Machine & Tool, Rochester, NY
Andrew Tool Company, Inc., Plymouth, MN
Anglo-American Mold, Inc., Louisville, KY
Anmar Precision Components Inc., North Hollywood, CA
Anmark Machine, Tempe, AZ
Anoplate Corporation, Syracuse, NY
Apex Machine Company, Ft. Lauderdale, FL
Apex Machine Tool Company, Farmington, CT
Apex Precision Technologies, Inc., Camby, IN
Apex Tool & Manufacturing, Inc., Evansville, IN
Apollo E.D.M. Company, Fraser, MI
Apollo Precision, Inc., Plymouth, MN
Apollo Products Inc., Willoughby, OH
Applegate EDM, Inc., Dallas, TX

Applied Engineering, Inc., Yankton, SD
Arc Drilling Inc., Garfield Heights, OH
Arco Industries, Inc., Dayton, OH
Arco Metals Corporation, Baltimore, MD
Ardekin Machine Company, Rockford, IL
Area Tool & Manufacturing, Inc., Meadville, PA
Argo Tool Corporation, Twinsburg, OH
Arkansas Tool & Die, Inc., No. Little Rock, AR
Arlington Machine & Tool Company, Fairfield, NJ
Armin Tool & Manufacturing Co., Inc., South Elgin, IL
Armstrong Machine Works, Inc., Rogersville, TN
Armstrong Mold, Machining Div., East Syracuse, NY
Armstrong-Blum Mfg. Co., Mt. Prospect, IL
Arnett Tool, Inc., New Paris, OH
Arro Tool & Die, Inc., Lakewood, NY
Arrow Diversified Tooling, Inc., Ellington, CT
Arrow Grinding, Inc., Tonawanda, NY
Arrow Sheet Metal Products Co., Denver, CO
Artisan Machining, Inc., Bohemia, NY
Ascension Industries, North Tonawanda, NY
Ash Machine Corporation, Pataskala, OH
Associated Electro-Mechanics, Inc., Springfield, MA
Associated Technologies, Brea, CA
Associated Toolmakers, Inc., Keokuk, IA
Astley Precision Machine Co., Irwin, PA
Astro Automation, Inc., Irwin, PA
Astro Machine Works Inc., Ephrata, PA
Atec Engineering, Phoenix, AZ
Athens Industries, Southington, CT
Atkins Tool Company, Riverton, NJ
Atlantic Precision Products Inc., Sanford, ME
Atlantic Tool & Die Company, Strongsville, OH
Atlas Machine & Supply, Inc., Louisville, KY
Atlas Tool, Inc., Roseville, MI
August Machine, Inc., Phoenix, AZ
Austin Machine Company Inc., O'Fallon, MO
Autocam Corporation, Kentwood, MI
Automated Cells & Equipment, Inc., Painted Post, NY
Automated EDM Incorporated, Ramsey, MN
Automation Tool & Die, Inc., Brunswick, OH
Automation Tool Company, Cookeville, TN
Axian Technology, Phoenix, AZ
Ay Machine Company, Ephrata, PA
Ay-Mac Precision, Inc., Yorba Linda, CA
ACMT, Inc. dba A C Tool & Machine, Co., Louisville, KY
ALKAB Contract Manufacturing, Inc., New Kensington, PA
B & B Machine & Grinding Service, Denver, CO
B & B Manufacturing Company, Largo, FL
B & B Precision Mfg., Inc., Avon, NY
B & G Quality Machine & Tool, Company, Inc., Baltimore, MD
B & H Fabricators, Inc., Wilmington, CA
B & H Tool Co. Inc., San Marcos, CA
B & H Tool Works, Inc., of Rockcastle Co., Richmond, KY
B & L Tool and Machine Company, Plainville, CT
B & M Machine Corporation of Racine, Racine, WI
B C D Metal Products Inc., Malden, MA
B. Radtke & Sons, Inc., Round Lake Park, IL
B-W Grinding Service, Inc., Houston, TX
Bachman Machine Company, Inc., St. Louis, MO
Bachmann Precision Machine, Products Corp., South El Monte, CA
Badge Machine Products, Inc., Canandaigua, NY
Bahrs Die & Stamping Company, Inc., Cincinnati, OH
Baker Hill Industries, Inc., Coral Springs, FL
Banner Machine Inc., Phoenix, AZ
Barberie Mold, Gardena, CA
Barnes Aerospace-Apex Mfg., Phoenix, AZ
Baumann Engineering, Claremont, CA
Bawden Industries, Inc., Romulus, MI
Baxter Machine Products, Inc., Huntingdon, PA
Beach Mold & Tool, Inc., New Albany, IN
Beacon Tool Company, Inc., Whittier, CA
Beaver Tool & Machine Company, Inc., Feasterville, PA
Bechler Cams, Inc., Anaheim, CA
Becker, Inc., Kenosha, WI
Becksted Machine, Inc., Tucson, AZ
Bedard Machine, Inc., Brea, CA
Bel-Kur, Inc., Temperance, MI
Belgian Screw Machine Products, Inc., Concord, MI
Bell Engineering, Inc., Saginaw, MI
Bellco Precision Manufacturing, Inc., Melissa, TX
Beloit Precision Die Co. Inc., Beloit, WI
Benda Tool & Model Works, Hercules, CA
Bendon Gear Machine, Rockland, MA
Bennett Tool & Die Company, Nashville, TN
Bennett Tool & Machine, Fremont, CA
Benning Inc., Blaine, MN
Bent River Machine Inc., Clarkdale, AZ
Berman Tool & Die, Waldorf, MD
Bermar Associates, Inc., Troy, MI
Bertram Tool & Machine Co., Inc., Farrell, PA
Bertrand Products, Inc., South Bend, IN
Best Tool & Manufacturing Co., Inc., Kansas City, MO
Bestway Industries, Inc., Cleveland, OH
Beta Machine Co. Inc., Cleveland, OH
Bilar Tool & Die Corporation, Warren, MI
Billet Industries, Inc., York, PA
Bishop Steering Technology, Inc., Indianapolis, IN
Black Creek Mold & Tool, Rainbow City, AL
Blackwood Grinding Inc., Hurst, TX
Blandford Machine & Tool Co., Inc., Louisville, KY
Blue Chip Mold, Inc., Rochester, NY
Bluegrass Forging, Tool & Die, Shelbyville, KY
Bob's Tool & Cutter Grinding, Inc., Indianapolis, IN
Bohler Uddeholm North America, Santa Fe Springs, CA
Boice Industrial Corporation, Ruffsdale, PA
Bolt Industries, LLC, Phoenix, AZ
Bosma Machine & Tool, Corporation, Tipp City, OH
Boston Centerless Inc., Woburn, MA
Bourdelais Grinding Co., Inc., Chatsworth, CA
Bowden Manufacturing Corp., Willoughby, OH
Boyce Machine, Inc., Cuyahoga Falls, OH
Boyle, Inc., Freeport, PA
Bra-Vor Tool & Die Company, Inc., Meadville, PA
Bradford Machine Company Inc., Brattleboro, VT
Bradhart Products, Inc., Brighton, MI
Bramko Tool & Engineering, Inc., O'Fallon, MO
Bratt Machine Company Inc., No. Andover, MA
Brij Systems, Wichita, KS
Brinkman Tool & Die, Inc., Dayton, OH
Brittain Machine, Inc., Wichita, KS
Broadway Companies, Inc., Englewood, OH
Brogdon Tool & Die, Inc., Blue Springs, MO
Brookfield Machine, Inc., West Brookfield, MA
Brooklyn Machine & Mfg. Co., Inc., Cuyahoga Heights, OH
Brooklyn Scraping & Re-Machining, Inc., W. Lafayette, IN
Brooks Machine Tool Corporation dba, Time Machine & Stamping, Phoenix, AZ
Brown-Covey, Inc., Kansas City, MO
Brownstown Quality Tool & Design, Brownstown, IN
Budney Overhaul & Repair, LTD., Berlin, CT
Buerk Tool LLC, Buffalo, NY
Buiter Tool & Die, Inc., Grand Rapids, MI
Bundy Manufacturing Inc., El Segundo, CA
Burckhardt America, Inc., Greensboro, NC
Burger & Brown Engineering, Inc., Olathe, KS
Burgess Brothers, Inc., Canton, MA
BMCO Industries Inc., Cranston, RI
BPS Industries Inc., Baltimore, MD
BSB Products Corporation, Buffalo, NY
BT Laser, Inc., Santa Clara, CA
C & C Machine Company, Akron, OH
C & C Precision Machining Inc., Mesa, AZ
C & G Machine & Tool Co., Inc., Granby, MA
C & J Industries Inc., Meadville, PA
C & R Manufacturing, Inc., Shawnee, KS
C & S Machine & Manufacturing, Corporation, Louisville, KY
C A R Engineering & Mfg., Victor, NY
C B Kaupp & Sons, Inc., Maplewood, NJ
C B S Manufacturing Company, Inc., Windsor, CT
C D M Tool & Mfg. Co., Inc., Hartford, WI
C J Winter Machine Technologies, Inc., Rochester, NY
C M Gordon Industries Inc., Santa Fe Springs, CA
C M Industries, Inc., d/b/a Custom Marine, Inc., Old Saybrook, CT
C N C Precision Machining, Inc., Comstock Park, MI
C T D Machines, Inc., Los Angeles, CA
C V Tool Company, Inc., Southington, CT
C. G. Tech, Inc., Phoenix, AZ
C-Axis Inc., Hamel, MN
C–P Mfg. Corp., Van Nuys, CA
Caco Pacific Corporation, Covina, CA
Cadco Program & Machine, St. Charles, MO
Cal-Weld, Fremont, CA
Calder Machine Co. (CMC), Florence, SC
California Wire EDM, Santa Ana, CA
Calmax Technology, Inc., Santa Clara, CA
Cambridge Specialty Company, Inc., Kensington, CT
Cambridge Tool & Die Corp., Cambridge, OH
Cameron Machine Shop, Inc., Richardson, TX
Campbell Grinding & Machine, Inc., Lewisville, TX
Campro Manufacturing, Inc., Phoenix, AZ
Camtec, Inc., Traverse City, MI
Canto Tool Corporation, Meadville, PA
Capitol Technologies, Inc., South Bend, IN
Capitol Tool & Die, L. P., Madison, TN
Carboloy Inc., Warren, MI
Cardinal Machine Company, Inc., Strongsville, OH
Carius Tool Co., Inc., Cleveland, OH

Carlson Capital Manufacturing Co., Rockford, IL
Carlson Tool & Manufacturing, Corp., Cedarburg, WI
Cass Screw Machine Products, Company, Brooklyn Center, MN
Catalina Tool & Mold, Inc., Tucson, AZ
Cates Machine Shop, Inc., Tyler, TX
Cee-San Machine & Fabrication, Co., Inc., Houston, TX
Centaur Tool & Die, Inc., Bowling Green, OH
Centennial Technologies, Inc., Saginaw, MI
Center Line Industries, Inc., West Springfield, MA
Center Line Machine Company, Lafayette, CO
Center Line Tool, Freeport, PA
Central Mass. Machine, Inc., Holyoke, MA
Central States Machine Service, Elkhart, IN
Central Tools, Inc., Cranston, RI
Century Mold Company, Inc., Rochester, NY
Century Tool & Engr., Inc., Indianapolis, IN
Cer-Mac Inc., Horsham, PA
CertainTeed, Auburn, WA
Certified Grinding & Machine, Inc., Rochester, NY
Certified Industries, II, LLC, Phoenix, AZ
Chadakoin Interactive, Thompsons Station, TN
Chance Tool & Die Co., Inc., Cincinnati, OH
Chandler Tool & Design Inc., Rockford, IL
Chapman Engineering, Inc., Santa Ana, CA
Charmilles Technologies Corporation, Lincolnshire, IL
Chase Machine & Mfg. Co., Rochester, NY
Chelar Tool & Die, Inc., Belleville, IL
Cherokee Industries, Hampshire, IL
Chicago Grinding & Machine Co., Melrose Park, IL
Chicago Mold Engineering Co., Inc., St. Charles, IL
Chickasha Manufacturing Company, Inc., Chickasha, OK
Chippewa Tool & Manufacturing Co., Woodville, OH
Chopper Guys Biker Products, Inc., Vallejo, CA
Christopher Tool & Manufacturing, Solon, OH
Cindex Industries Inc., Ludlow, MA
Circle-K-Industries, K-Form Inc., Sterling, VA
Clark Automation Manufacturing Company, Inc., Pleasanton, CA
Clark-Reliance Corporation, Strongsville, OH
Clarke Engineering, Inc., Clarke Gear Co., North Hollywood, CA
Class Machine & Welding, Inc., Akron, OH
Classic Tool, Inc., Saegertown, PA
Clay & Bailey Mfg. Co., Kansas City, MO
Cleveland Electric Laboratories, Company, Inc., Twinsburg, OH
Clifton Automatic Screw, Machine Products, Inc., Lake City, PA
Cloud Company, San Luis Obispo, CA
Coast Cutters Company, Inc., South El Monte, CA
Cobak Tool & Manufacturing Co., St. Louis, MO
Coffey Associates, Washington, DC
Coil Pro Machinery, Southington, CT
Colbrit Manufacturing Co., Inc., Chatsworth, CA
Collins Instrument Company, Angleton, TX
Collins Machine & Tool Co., Inc., Madison, TN
Colonial Machine & Tool Co., Inc., Coventry, RI
Colonial Machine Company, Kent, OH
Colorado Surface Grinding, Inc., Denver, CO
Comet Tool, Inc., Hopkins, MN
Command Tooling Systems, Ramsey, MN
Commerce Grinding, Inc., Dallas, TX
Commercial Grinding Services, Inc., Cleveland, OH
Commonwealth Machine Co., Inc., Danville, VA
Competition Tooling, Inc., High Point, NC
Competitive Engineering Inc., Tucson, AZ
Complete Tool & Die, Inc., St. James, MO
Composidie, Inc., Apollo, PA
Compu Die, Inc., Wyoming, MI
Compumachine Incorporated, Wilmington, MA
Computech Manufacturing Co., Inc., No. Kansas City, MO
Computerized Machining Service, Inc., Englewood, CO
Conco Systems, Inc., Verona, PA
Condor Engineering, Inc., Colorado Springs, CO
Coney Tool Inc., Independence, MO
Connecticut Jig Grinding, Inc., New Britain, CT
Connolly Tool & Machine Co., Dallas, TX
Conroy & Knowlton, Inc., Los Angeles, CA
Consolidated Mold & Mfg. Inc., Kent, OH
Conti Tool & Die Company, Akron, OH
Continental Precision, Inc., Phoenix, AZ
Continental Tool & Machine, Strongsville, OH
Continental Tool & Manufacturing, Inc., Lenexa, KS
Cook Machine and Engineering Corporation, Gardena, CA
Coosa Machine Company, LLC, Rainbow City, AL
Corbitt Mfg. Company, St. Charles, MO
Cornerstone Design, LTD., Franksville, WI
Cornerstone Screw Machine Products, Burbank, CA
Corning Gilbert Inc., Glendale, AZ
Corry Custom Machine, Corry, PA
Cosar Mold, Inc., Brimfield, OH
Costa Machine, Inc., Akron, OH
Covert Manufacturing, Inc., Galion, OH
Cox Mfg. Co. Inc., San Antonio, TX
Cox Tool Company, Inc., Excelsior Spring, MO
Craig Machinery & Design, Inc., Louisville, KY
Creative Machining & Mfg., Inc., St. Petersburg, FL
Creative Precision, West, Phoenix, AZ
Creb Engineering, Inc., Pascoag, RI
Crenshaw Die & Manufacturing, Corp., Irvine, CA
Crest Manufacturing Company, Lincoln, RI
Criterion Tool & Die, Inc., Brook Park, OH
Critical Operations, Inc., Santa Ana, CA
Cross Tool & Manufacturing, Inc., Flagstaff, AZ
Crossland Machinery, Kansas City, MO
CrossRidge Precision, Oak Ridge, TN
Crown Mold & Machine, Streetsboro, OH
Crucible Materials Corporation, Camillus, NY
Crush Master Grinding Corp., Walnut, CA
Custom Engineering, Inc., Evansville, IN
Custom Gear & Machine, Inc., Rockford, IL
Custom Machine, Inc., Woburn, MA
Custom Machine, Inc., Cleveland, OH
Custom Tool & Design, Inc., Erie, PA
Custom Tool & Grinding Inc., Washington, PA
Custom Tool & Model Corp., Frankfort, NY
Cut-Right Tools Corporation, Willoughby, OH
Czech Tool, Saegertown, PA
CB Quality Machining & Engineering Inc., Buffalo, MN
CDL Manufacturing, Inc., Rochester, NY
CHIPSCO, Inc., Meadville, PA
CNC Corp., Colorado Springs, CO
CNC Precision Manufacturing, Inc., Farmers Branch, TX
CPC Tooling Technologies, Columbus, OH
D & H Manufacturing Company, Fremont, CA
D & N Precision, Inc., San Jose, CA
D & S Manufacturing Corporation, Southwick, MA
D M E Company, Madison Heights, MI
D M Machine & Tool, Kennerdell, PA
D M Machine Company, Inc., Willoughby, OH
D P I, Inc., Huntingdon Vly, PA
D P Tool & Machine Inc., Avon, NY
D S A Precision Machining, Inc., Livonia, NY
D S Greene Company, Inc., Wakefield, MA
D. F. O'Brien Precision Machining & Tooling, Santa Fe Springs, CA
D-K Manufacturing Corporation, Fulton, NY
D-Velco Manufacturing, Phoenix, AZ
Daca Machine & Tool, Inc., Dutzow, MO
Dadeks Machine Works Corporation, Houston, TX
Daily Industrial Tools, Costa Mesa, CA
Dan McEachern Company, Alameda, CA
Danco Precision, Inc., Phoenixville, PA
Dane Systems, Inc., Stevensville, MI
Danly IEM, Div. of Connell Ltd. Partnership, Cleveland, OH
Data Machine, Inc., Adamsburg, PA
Data Mold & Tool, Inc., Walbridge, OH
Datum Industries, Kentwood, MI
David Engineering & Mfg., Corona, CA
Davis Machine & Manufacturing Company, Arlington, TX
Davis Tool & Die Company Inc., Fenton, MO
Dayton Progress Corporation, West Carrollton, OH
Dayton Reliable Tool & Mfg. Co., Dayton, OH
DaCo Precision Manufacturers, Sandy, UT
Dearborn Precision Tubular, Products, Inc., Fryeburg, ME
Deck Brothers, Inc., Buffalo, NY
Deep Holdings, Inc., dba Deephole Machine, Houston, TX
Deeter's Tool & Mfg., Inc., Erie, PA
Dekalb Tool & Die, Inc., Tucker, GA
Delco Corporation, Akron, OH
Dell Tool, Penfield, NY
Delltronics, Inc., Englewood, CO
Deltron Engineering, Burbank, CA
Demaich Industries, Inc., Johnston, RI
Dependable Machine Company, Inc., Indianapolis, IN
Desert Precision Mfg., Inc., Tucson, AZ
Designs For Tomorrow, Inc., Maryland Heights, MO
Detroit Tool & Engineering Co., Lebanon, MO
Deutsch ECD, Hemet, CA
DeKing Screw Products Inc., Chatsworth, CA
Di-Matrix, Phoenix, AZ
Dial Machine Company, Andalusia, PA
Diamond Lake Tool, Inc., Anoka, MN
Diamond Tool & Engineering, Inc., Bertha, MN
Diamond Tool, Inc., Euclid, OH
Die Cast Die and Mold, Inc., Perrysburg, OH
Die Products Company, Minneapolis, MN

Die Quip Corp., Bethel Park, PA
Die Solutions, Inc., Washington, MO
Die Tech Industries, Ltd., Providence, RI
Die-Matic Corporation, Brooklyn Heights, OH
Die-Matic Tool and Die, Inc., Grand Rapids, MI
Die-Mension Corporation, Brunswick, OH
Die-Namic Inc., Taylor, MI
Diemaster Tool & Mold, Inc., Macedonia, OH
Dietooling, Div. of Diemolding, Wampsville, NY
Digital Tool & Die, Inc., Grandville, MI
Distefano Tool & Mfg. Company, Omaha, NE
Distinctive Machine Corporation, Grand Rapids, MI
Diversified Engraving Stamp, & Machine Company, Akron, OH
Diversified Manufacturing, Incorporated, Lockport, NY
Diversified Tool & Die, Vista, CA
Diversified Tool, Inc., Mukwonago, WI
Dixie Tool & Die Co., Inc., Gadsden, AL
Double D Machine & Tool Company, Fremont, OH
Doyle Manufacturing, Inc., Holland, OH
Drabik Tool and Die Inc., Brook Park, OH
Drewco Corporation, Franksville, WI
Drill Masters Inc., Hamden, CT
Dugan Tool & Die Company, Toledo, OH
Dun-Rite Industries, Inc., Temperance, MI
Dunn & Bybee Tool Company, Inc., Sparta, TN
Dura-Metal Products Corporation, Irwin, PA
Durivage Pattern & Mfg. Co. Inc., Williston, OH
DuWest Tool & Die, Inc., Cleveland, OH
Dynamic Engineering, Inc., Minneapolis, MN
Dynamic Fabrication, Inc., Santa Ana, CA
Dynamic Machine & Fabricating, Phoenix, AZ
Dynamic Tool & Design, Inc., Menomonee Falls, WI
DynaGrind Precision, Inc., New Kensington, PA
Dysinger Incorporated, Dayton, OH
Dytran Instruments, Inc., Chatsworth, CA
E & S Precision Machine, LLC, Modesto, CA
E B & Sons Machine Inc., Aliquippa, PA
E G M of Florida, Jupiter, FL
E J Codd Co. of Baltimore City &, Codd Fabricators & Boiler Co., Inc., Baltimore, MD
E K L Machine Company, Inc., Andalusia, PA
E R C Concepts Company, Inc., Sunnyvale, CA
E W Johnson Company, Inc., Lewisville, TX
E.T. Precision Optics Inc., Rochester, NY
E-Fab, Inc., Santa Clara, CA
Eagle Mold Company, Inc., Carlisle, OH
Eagle Precision Tooling Inc., Erie, PA
Eagle Technologies Group, St. Joseph, MI
Eagle Tool & Machine Company, Inc., Springfield, OH
East Side Machine, Inc., Webster, NY
East Texas Machine Works, Inc., Longview, TX
Ebway Corporation, Fort Lauderdale, FL
Eckert Enterprises Ltd., Tempe, AZ
Eckert Machining, Inc., San Jose, CA
Eclipse Mold, Inc., Clinton Township, MI
Eclipse Tool & Die, Inc., Wayland, MI
Edco, Inc., Toledo, OH
Edge-Tech, Inc., Redmond, WA
Edwardsville Machine & Welding, Company, Inc., Edwardsville, IL
Egli Machine Company, Inc., Sidney, NY
Ehlert Tool Co., Inc., New Berlin, WI
Ehrhardt Tool & Machine Company, Granite City, IL
Eicom Corporation, Moraine, OH
Ejay's Machine Co., Inc., Fullerton, CA
Elcam Tool & Die, Inc., Wilcox, PA
Electra Form Industries Inc., Vandalia, OH
Electric Enterprise Inc., Stratford, CT
Electro-Freeto Manufacturing Co., Inc., Wayland, MA
Electro-Mechanical Products, Inc., Denver, CO
Electro-Tech Machining, Long Beach, CA
Electroform Co. Inc., Machesney Park, IL
Elite Tool & Machinery Systems, Inc, O'Fallon, MO
Elizabeth Carbide Die Co., Inc., McKeesport, PA
Elliot Tool & Manufacturing Co., St. Louis, MO
Elliott's Precision, Inc., Peoria, AZ
Ellis Machine and Fabrication Inc., Buffalo, NY
Ellis Tool & Machine, Inc., Tom Bean, TX
Elrae Industries, Alden, NY
Emmert Welding & Manufacturing, Inc., Independence, MO
Empire Die Casting Co., Inc., Macedonia, OH
Empire Manufacturing Corporation, Bridgeport, CT
Engineered Pump Services, Inc., Pasadena, TX
Entek Corporation, Norman, OK
Enterprise Tool & Die, Brooklyn Heights, OH
Ephrata Precision Parts, Inc., Denver, PA
Epicor Software Corporation, Minneapolis, MN
Erickson Tool & Machine Company, Rockford, IL
Erie Shore Machine Co., Inc., Cleveland, OH
Erie Specialty Products, Inc., Erie, PA
Estee Mold & Die, Inc., Dayton, OH
Esterle Mold & Machine Co., Stow, OH
Estul Tool & Manufacturing Co., Inc., Matthews, NC
Evans Tool & Die, Inc., Conyers, GA
Ever Fab, Inc., East Aurora, NY
Ever-Ready Tool, Inc., Largo, FL
Everett Pattern and Mfg., Inc., Middleton, MA
Ewart-Ohlson Machine Company, Cuyahoga Falls, OH
Ex-Cel Machine & Tool, Inc., Louisville, KY
Exact Cutting Service, Inc., Brecksville, OH
Exact Tool & Die, Inc., Brook Park, OH
Exacta Machine, Inc., Wichita, KS
Exacta Tech Inc., Livermore, CA
Exacto, Inc. of South Bend, South Bend, IN
Excaliber Precision Machining, Peoria, AZ
Excel Manufacturing Inc., Seymour, IN
Excel Manufacturing, Inc., Valencia, CA
Excel Precision, Inc., Tempe, AZ
Excel Stamping & Manufacturing, Inc., Houston, TX
Executive Mold Corporation, Huber Heights, OH
Ezell Precision Tool Company, Clearwater, FL
EDM Supplies, Inc., Downey, CA
EROWA Technology Inc., Arlington Hts., IL
EWT, Inc., Rockford, IL
F & F Machine Specialties, Mishawaka, IN
F & G Tool & Die Company, Dayton, OH
F & S Tool, Inc., Erie, PA
F D T Precision Machine Co., Inc., Taunton, MA
F G A Inc., Baton Rouge, LA
F H Peterson Machine Corporation, Stoughton, MA
F K Instrument Co., Inc., Clearwater, FL
F M Machine Company, Akron, OH
F N Smith Corporation, Oregon, IL
F P Pla Tool & Manufacturing Co., Buffalo, NY
F-S G Inc, Mishawaka, IN
F T T Manufacturing Inc., Geneseo, NY
F Tinker & Sons Company, Pittsburgh, PA
F W Gartner Thermal Spraying Co., Houston, TX
F-Squared, Inc., Tarentum, PA
Fabricast, Inc., So. El Monte, CA
Fabritek Company, Inc., Winchester, VA
Fairbanks Machine & Tool, Raytown, MO
Fairview Machine Company, Inc., Topsfield, MA
Fairway Molds, Inc., Walnut, CA
Falls City Machine Technology, Louisville, KY
Falls Mold & Die, Inc., Stow, OH
Fame Tool & Manufacturing Co., Cincinnati, OH
FamPEC Technology LLC, Murfreesboro, TN
Fargo Machine Company, Inc., Ashtabula, OH
Farrar Corporation, Norwich, KS
Farzati Manufacturing Corp., Greensburg, PA
Faustson Tool Corp., Arvada, CO
Fay & Quartermaine Machining Corp., El Monte, CA
Fay Tool & Die, Inc., Orlando, FL
Feedall, Inc., Willoughby, OH
Feilhauer's Machine Shop Inc., Cincinnati, OH
Fenton Manufacturing, Inc., Ashtabula, OH
Fenwick Machine & Tool, Piedmont, SC
Feral Productions LLC., Newark, CA
Ferriot Inc., Akron, OH
First International Bank, Hartford, CT
Fischer Precision Spindles, Inc., Berlin, CT
Fischer Tool & Die Corporation, Temperance, MI
Five Star Tool Company, Inc., Rochester, NY
Fleck Machine Company, Inc., Hanover, MD
Foresight Technologies, Tempe, AZ
Forster Tool & Mfg. Inc., Bensenville, IL
Fortner & Gifford, Inc., Prescott, AZ
Fostermation Inc., Meadville, PA
Fox Valley Tool & Die, Inc., Kaukauna, WI
Franchino Mold & Engineering, Lansing, MI
Frasal Tool Co., Inc., Newington, CT
Frazier Aviation, Inc., San Fernando, CA
Fre-Mar Industries, Inc., Brunswick, OH
Fredon Corporation, Mentor, OH
Free-MaDie Company, Kittanning, PA
Freeport Welding & Fabricating, Inc., Freeport, TX
Fries Machine & Tool, Inc., Dayton, OH
Frost & Company, Charlestown, RI
Fulton Industries, Inc., Rochester, IN
Furno Co. Inc., Pomona, CA
Future Fabricators, Phoenix, AZ
Future Tool & Die, Inc., Grandville, MI
Fyco Tool & Die, Inc., Houston, TX
FCMP, Inc., Buffalo, NY
FRB Machine Inc., Emlenton, PA
G & G Tool Company, Inc., Sidney, OH
G & K Machine Company, Denver, CO
G & L Tool Corp., Agawam, MA
G B F Enterprises, Inc., Santa Ana, CA
G B Tool Company, Warwick, RI
G H Tool & Mold, Inc., Washington, MO
G M T Corporation, Waverly, IA

G R McCormick, Inc., Burbank, CA
G S Precision, Inc., Brattleboro, VT
Gadsden Tool, Inc., Gadsden, AL
Gales Manufacturing Corporation, Racine, WI
Gambar Products Company, Inc., Warwick, RI
Garcia Associates, Arlington, VA
Gatco, Inc., Plymouth, MI
Gateway Metals Inc., Crestwood, MO
Gauer Mold & Machine Company, Tallmadge, OH
Gaum, Inc., Robbinsville, NJ
Gear Manufacturing, Inc., Anaheim, CA
Geiger Manufacturing, Inc., Stockton, CA
Gene's Gundrilling Inc., Alahambra, CA
General Aluminium Forgings, Colorado Springs, CO
General Engineering Company, Toledo, OH
General Grinding, Inc., Oakland, CA
General Machine Shop, Inc., Cheverly, MD
General Machine-Diecron, Inc., Griffin, GA
General Tool & Die Company, Inc., Racine, WI
General Tool Company, Cincinnati, OH
Genesee Manufacturing Company, Inc., Rochester, NY
Genesee Metal Stampings, Inc., West Henrietta, NY
Genesee Precision Mfg., Inc., Avon, NY
Gentec Manufacturing Inc., San Jose, CA
Geometric Tool & Machine Co., Inc., Piedmont, SC
George Welsch & Son Company, Cleveland, OH
German Machine, Inc., Rochester, NY
Germantown Tool & Machine, Works, Inc., Huntingdon Valle, PA
Gibbs Die Casting Corporation, Henderson, KY
Gibbs Machine Company, Inc., Greensboro, NC
Gilbert Machine & Tool Company, Greene, NY
Gill Tool & Die, Inc., Grand Rapids, MI
Gillette Machine & Tool Co Inc., Rochester, NY
Girard Tool & Die/Jackburn Mfg., Inc., Girard, PA
Gischel Machine Company Inc., Baltimore, MD
Givmar Precision Machining, Mountain View, CA
Glaze Tool & Engineering, Inc., New Haven, IN
Glendale Machine Company, Inc., Solon, OH
Glendo Corporation, Emporia, KS
Glidden Machine & Tool, Inc., North Tonawanda, NY
Global Precision, Inc., Davie, FL
Global Shop Solutions, The Woodlands, TX
Godwin—SBO, L.P., Houston, TX
Golis Machine, Inc., Montrose, PA
Graham Tech Inc., Cochranton, PA
Grand Valley Manufacturing, Company, Titusville, PA
Graybill's Tool & Die, Inc., Manheim, PA
Great Lakes E.D.M. Inc., Clinton Twp., MI
Great Lakes Metal Treating, Inc., Tonawanda, NY
Great Lakes Tooling Inc., Cleveland, OH
Great Western Grinding & Eng., Inc., Huntington Beach, CA
Grind-All Precision Tool Co., Inc., Clinton Township, MI
Grind-All, Inc., Cleveland, OH
Grindworks Inc., Glendale, AZ
Grosmann Precision, Ballwin, MO
Grover Gundrilling, Inc., Norway, ME
Guill Tool & Engineering Co., Inc., West Warwick, RI
Gulf South Machine/Drilex Corp., Houston, TX
Gurney Precision Machining, Saint Petersburg, FL
Gustav's Tool & Die, Inc., Seguin, TX
H & H Machine Company, Whittier, CA
H & H Machine Shop of Akron, Inc., Akron, OH
H & H Machined Products, Inc., Erie, PA
H & K Machine Service Co. Inc., O'Fallon, MO
H & M Machining Inc., Machesney Park, IL
H & M Precision Machining, Santa Clara, CA
H & W Machine Company, Broomfield, CO
H & W Tool Company, Inc., Dover, NJ
H B Machine, Inc., Phoenix, AZ
H Brauning Company, Inc., Manassas, VA
H D & K Mold Company, Inc., Hilton, NY
H H Mercer, Inc., Mesquite, TX
H R M Machine, Inc., Costa Mesa, CA
Haberman Machine, Inc., St. Paul, MN
Haig Precision Mfg. Corp., Campbell, CA
Hal-West Technologies, Inc., Kent, WA
Hamblen Gage Corporation, Indianapolis, IN
Hamill Manufacturing Company, Trafford, PA
Hamilton Mold & Machine, Inc., Cleveland, OH
Hamilton Tool Company, Inc., Meadville, PA
Hammill Manufacturing Company, Toledo, OH
Hammon Precision Technologies, Hayward, CA
Hanover Machine Company, Ashland, VA
Hans Rudolph, Inc., Kansas City, MO
Hansen Engineering, Harbor City, CA
Hanson Mold, St. Joseph, MI
Hardy Machine Inc., Hatfield, PA
Hardy-Reed Tool & Die Co., Manitou Beach, MI
Haumiller Engineering Company, Elgin, IL
Hawkeye Precision, Inc., Gilbert, AZ
Hawkins Machine Company, Inc., Coventry, RI
Hawkinson Mold Engineering Co., Alhambra, CA
Hayden Corporation, West Springfield, MA
Heatherington Machine Corp., Orlando, FL
Heinhold Engineering & Machine, Co., Inc., Salt Lake City, UT
Heitz Machine & Manufacturing, Co., Maryland Heights, MO
Hellebusch Tool & Die, Inc., Washington, MO
Helm Precision, Ltd., Phoenix, AZ
Henman Engineering & Machine, Muncie, IN
Hercules Machine Tool & Die, Warren, MI
Herman Machine, Inc., Tallmadge, OH
Herrick & Cowell Company, Hamden, CT
Hetrick Mfg., Inc., Lower Burrell, PA
Heyden Mold & Bench Company, Tallmadge, OH
Hi Tech Manufacturing, LLC, Greensboro, NC
Hi-Tech Machining & Engineering LLC, Tucson, AZ
Hi-Tech Tool Industries, Inc., Sterling Heights, MI
Hiatt Metal Products Company, Muncie, IN
Hickory Machine Company, Inc., Newark, NY
High-Tech Industries, Holland, MI
Highland Mfg. Inc., Manchester, CT
Hill Engineering, Inc., A Mestek Co., Villa Park, IL
Hillcrest Precision Tool Co. Inc., Haverhill, MA
Hillcrest Tool & Die, Inc., Titusville, PA
Hilton Tool & Die Corporation, Rochester, NY
Hittle Machine & Tool Company, Indianapolis, IN
Hobson & Motzer, Inc., Durham, CT
Hodon Manufacturing Inc., Willoughby, OH
Hoffman Custom Tool & Die, Newport Beach, CA
Hoffstetter Tool & Die, Clearwater, FL
Holland USA, Muskegon, MI
Hollis Line Machine Co., Inc., Hollis, NH
Holmes Manufacturing Corporation, Cleveland, OH
Homeyer Tool and Die Co., Marthasville, MO
Hoppe Tool, Inc., Chicopee, MA
Horizon Industries, Columbia, PA
Howard Tool Co. Inc., Bangor, ME
Hubbell Machine Company, Inc., Cleveland, OH
Humboldt Instrument Company, San Leandro, CA
Hunt Machine & Manufacturing Co., Tallmadge, OH
Hyde Special Tools, Saegertown, PA
Hydrodyne Division of FPI, Inc., Burbank, CA
Hydromat, Inc., St. Louis, MO
Hygrade Precision Technologies, Inc., Plainville, CT
Hytron Manufacturing Company, Inc., Huntington Beach, CA
Ideal Grinding Technologies, Inc, Chatsworth, CA
Ideal Tool Co. Inc., Meadville, PA
Imperial Die & Manufacturing Co., Strongsville, OH
Imperial Machine & Tool Company, Wadsworth, OH
Imperial Mfg., Santa Fe Springs, CA
Imperial Newbould, Meadville, PA
Imperial Tool & Manufacturing Co., Inc., Lexington, KY
Indiana Tool & Die Company, Die Sets Inc., Indiana, PA
Industrial Babbitt Bearing, Services, Inc., Gonzales, LA
Industrial Custom Automatic Machine (ICAM), Dayton, OH
Industrial Grinding, Inc., Dayton, OH
Industrial Machine & Tool Co., Inc., Nashville, TN
Industrial Machine Company, Oklahoma City, OK
Industrial Maintenance, & Electrical Corporation, Lavergne, TN
Industrial Mold + Machine, Twinsburg, OH
Industrial Molds, Inc., Rockford, IL
Industrial Precision Products, Inc., Oswego, NY
Industrial Tool & Machine Co., Cuyahoga Falls, OH
Industrial Tool, Die &, Engineering, Inc., Tucson, AZ
Industrial Tooling Technologies, Inc., Muskegon, MI
Ingersoll Contract Manufacturing, Company, Rockford, IL
Injection Mold & Machine Company, Akron, OH
Inland Tool & Manufacturing Co., Kansas City, KS
Inline Inc., Phoenix, AZ
Innex Industries, Inc., Rochester, NY
Integrated Aerospace, Santa Ana, CA

Integrated Fabrication and Machine, Sharpsville, PA
Integrated Machine Systems, Bethel, CT
Integrity Mfg. L.L.C., Farmington, CT
International Stamping Inc., Warwick, RI
Intrex Corporation, Louisville, CO
Iverson Industries, Inc., Wyandotte, MI
IDRAPRINCE, Holland, MI
ILM Tool, Inc., Hayward, CA
IMS, Inc., Decatur, AL
ISO Machining, Inc., Pleasanton, CA
ISYS Manufacturing, Inc., Concord, CA
ITM, Schertz, TX
J & A Tool Company, Inc., Franklin, PA
J & F Machine Inc., Cypress, CA
J & G Machine & Tool Co., Inc., Walworth, NY
J & J Tool Co., Inc., Louisville, KY
J & M Machine, Inc., Fairport Harbor, OH
J & M Unlimited, Ashland City, TN
J B Tool Die & Engineering, Inc., Fort Wayne, IN
J B Tool, Inc., Placentia, CA
J C B Precision Tool & Mold, Inc., Commerce City, CO
J D Kauffman Machine Shop, Inc., Christiana, PA
J F Fredericks Tool Company, Inc., Farmington, CT
J I Machine Company, Inc., San Diego, CA
J K Tool & Die, Inc., Apollo, PA
J M Mold South, Easley, SC
J M Mold, Inc., Piqua, OH
J M P Industries, Inc., Cleveland, OH
J M S Mold & Engineering Co., Inc., South Bend, IN
J S Die & Mold, Inc., Byron Center, MI
J W Harwood Company, Cleveland, OH
J.B.A.T. t/a Cherry Hill, Precision, Cherry Hill, NJ
Jacksonville Machine Inc., Jacksonville, IL
Jaco Engineering, Anaheim, CA
Jaquith Carbide Corporation, Ipswich, MA
Jasco Tools Inc., Cutting Tools Division, Rochester, NY
Jatco Machine & Tool Company, Inc., Pittsburgh, PA
Jena Tool Corporation, Dayton, OH
Jenkins Machine, Inc., Bethlehem, PA
Jennison Corporation, Carnegie, PA
Jergens Tool and Mold, Englewood, OH
Jergens, Inc., Cleveland, OH
Jesse Industries, Inc., Sparks, NV
Jet Products Co., Inc., Phoenix, AZ
Jet Products, Inc., East Bridgewater, MA
Jewett Machine Mfg. Co., Inc., Richmond, VA
Jig Grinding Service Company, Cleveland, OH
Jirgens Modern Tool Corporation, Kalamazoo, MI
JobBOSS Software/Exact, Edina, MN
Johnson Engineering Company, Indianapolis, IN
Johnson Precision, Inc., Buffalo, NY
Johnson Tool, Inc., Fairview, PA
Joint Production Technology, Inc., Macomb, MI
Joint Venture Acquisition Co., LLC, Saegertown, PA
Jonco Tool Company, Racine, WI
Juell Machine Company, Inc., Pomona, CA
JBK Manufacturing & Development, Co., Dayton, OH
J2 Precision CNC, Inc., Phoenix, AZ
K & E Mfg. Company, Lee's Summit, MO
K & H Mold & Machine Division, Akron, OH
K & H Precision Products, Inc., Honeoye Falls, NY
K & M Machine-Fabricating, Inc., Cassopolis, MI
K & S Tool & Die, Inc., Meadville, PA
K & S Tool & Mfg. Company, Inc., Jamestown, NC
K L H Industries, Inc., Germantown, WI
K M S Machine Works, Inc., Taunton, MA
K Mold & Engineering, Inc., Granger, IN
K V, Inc., Huntingdon Valle, PA
K.C.K. Tool & Die Co., Inc., Ferndale, MI
K-Form, Inc., Tustin, CA
Ka-Wood Gear & Machine Company, Madison Heights, MI
Kahre Brothers, Inc., Evansville, IN
Kalman Manufacturing, Morgan Hill, CA
Kansas City Screw Products Inc., Kansas City, MO
Karlee, Garland, TX
Karsten Precision, Phoenix, AZ
Kaskaskia Tool & Machine, Inc., New Athens, IL
Kaufhold Machine Shop, Inc., Lancaster, PA
Kearflex Engineering Company, Warwick, RI
Keck-Schmidt Tool & Die, South El Monte, CA
Kell-Strom Tool Company, Inc., Wethersfield, CT
Kellems & Coe Tool Corporation, Jeffersonville, IN
Keller Technology Corporation, Tonawanda, NY
Kelley Industries, Inc., Eighty Four, PA
Kelly & Thome, Pomona, CA
Kelm Acubar Company, Benton Harbor, MI
Kem-Mil-Co, Hayward, CA
Kemco Tool & Machine Company, Kirkwood, MO
Kenlee Precision Corporation; Baltimore, MD
Kennametal Inc., Latrobe, PA
Kennebec Tool & Die Co., Inc., Augusta, ME
Kennedy & Bowden Machine Company, La Vergne, TN
Kennick Mold & Die, Inc., Cleveland, OH
Kentucky Machine & Tool Company, Louisville, KY
Kern Special Tools Company, Inc., New Britain, CT
Keyes Machine Works, Inc., Gates, NY
Keystone Machine, Inc., Littlestown, PA
Kimberly Gear & Spline, Inc., Phoenix, AZ
King Machine & Engineering Co., Inc., Indianapolis, IN
King Systems Corporation, Plastics Technology Division, Noblesville, IN
Klein Steel Service, Inc., Rochester, NY
Knight Industries Precision Machining, Inc., Corona, CA
Knowlton Manufacturing Company, Norwood, OH
Knust—S B O, Houston, TX
Kordenbrock Tool & Die Company, Cincinnati, OH
Kovacs Machine & Tool Company, Inc., Wallingford, CT
Krause Tool, Inc., A–Z Corp. Div. of Krause Tool, Golden, CO
Kuhn Tool & Die Co., Meadville, PA
Kurt J. Lesker Company, Clairton, PA
L & L Machine, Inc., Ludlow, MA
L & L Tool & Die, Gardena, CA
L & P Machine, Inc., Santa Clara, CA
L A I Southwest, Inc., Phoenix, AZ
L H Carbide Corporation, Fort Wayne, IN
L P I Corporation, Hollywood, FL
L R G Corporation, Jeannette, PA
L R W Cutting Tools, Inc., Phoenix, AZ
L T L Company, Inc., Rockford, IL
L. P. Engineering Co., Carson, CA
Lake Manufacturing Co., Inc., Newburyport, MA
Lakeside Manufacturing Company, Stevensville, MI
Lamb Machine & Tool Company, Indianapolis, IN
Lamina, Inc., Farmington Hills, MI
Lampin Corporation, Uxbridge, MA
Lancaster Machine Shop, Lancaster, TX
Lancaster Metal Products Company, Lancaster, OH
Lancaster Mold, Inc., Lancaster, PA
Land Specialties Manufacturing Co., Inc., Raytown, MO
Lane Enterprise, Rochester, NY
Lane Punch Corporation, Salisbury, NC
Laneko Engineering Company, Ft. Washington, PA
Laneko Roll Form, Inc., Hatfield, PA
Lange Precision, Inc., Fullerton, CA
Langenau Manufacturing Company, Cleveland, OH
Laron Incorporated, Kingman, AZ
Las Cruces Machine Manufacturing &, Engineering, Las Cruces, NM
Laser Automation, Inc., Chagrin Falls, OH
Laser Fabrication & Machine Co., Inc., Alexandria, AL
Laser Tool, Inc., Saegertown, PA
Latva Machine, Inc., Newport, NH
Lavigne Manufacturing, Inc., Cranston, RI
Layke Incorporated, Phoenix, AZ
Layke Tool & Manufacturing, Inc., Meadville, PA
Ledford Engineering Company, Inc., Cedar Rapids, IA
Lee's Grinding, Inc., Cleveland, OH
Leech Industries, Inc., Meadville, PA
Lees Enterprise, Chatsworth, CA
Leese & Co., Inc., Greensburg, PA
Leggett & Platt, Inc., Whittier, CA
Leicester Die & Tool, Inc., Leicester, MA
Lenz Technology Inc., Mountain View, CA
Leonardi Manufacturing Co., Inc., Weedsport, NY
Lewis Aviation, Phoenix, AZ
Lewis Machine & Tool Co. Inc., Cuba, MO
Lewis Machine and Tool Company, Milan, IL
Liberty Precision Industries, Ltd., Rochester, NY
Libra Precision Machining, Tecumseh, MI
Ligi Tool & Engineering, Inc., Deerfield Beach, FL
Lilly Software Associates, Inc., Hampton, NH
Limmco, Inc., New Albany, IN
Linmark Machine Products, Inc., Union, MO
Little Rhody Machine Repair, Inc., Coventry, RI
Littlecrest Machine Shop, Inc., Houston, TX
Lloyd Company, Houston, TX
Lloyd Tool & Manufacturing Corp., Burton, MI
Lobart Company, Pacoima, CA
Loecy Precision Mfg., Mentor, OH
Lordon Engineering, Gardena, CA
Loud Engineering and Manufacturing, Inc., Ontario, CA
Loyal Machine Company, Inc., Chelsea, MA
Luick Quality Gage & Tool, Inc., Muncie, IN
Lunar Tool & Machinery Company, St. Louis, MO
Lunar Tool & Mold, Inc., North Royalton, OH

Lunquist Manufacturing Corp., Rockford, IL
Lux Manufacturing, Inc., Sunnyvale, CA
Lynn Welding Co. Inc., Newington, CT
Lyons Tool & Die Company, Meriden, CT
LOMA Automation Technologies, Inc., Louisville, KY
M & D Loe Manufacturing, Inc., Benicia, CA
M & H Engineering Company, Inc., Danvers, MA
M & H Tool & Die, Inc., Gadsden, AL
M & J Grinding & Tool Co., Holland, OH
M & J Valve Services, Inc., Lafayette, LA
M C Mold & Machine, Inc., Tallmadge, OH
M D F Tool Corporation, North Royalton, OH
M F Engineering Co. Inc., Bristol, RI
M H S Automation, Round Lake Beach, IL
M P E Machine Tool Inc., Corry, PA
M P Technologies, Inc., Brecksville, OH
M S Willett, Inc., Cockeysville, MD
M. R. Mold & Engineering Corp., Brea, CA
M-Ron Corporation, Glendale, AZ
M-Tron Manufacturing Company, Inc., San Fernando, CA
Mac Machine and Metal Works, Inc, Connersville, IN
Mac-Mold Base, Inc., Romeo, MI
Machine Incorporated, Stoughton, MA
Machine Specialties, Inc., Greensboro, NC
Machine Tooling, Inc., Cleveland, OH
Machine Works, Inc., Phoenix, AZ
Machinist Cooperative, Gilroy, CA
MacKay Manufacturing, Spokane, WA
Maddox Metal Works, Inc.; Dallas, TX
Magdic Precision Tooling, Inc., East McKeesport, PA
Maghielse Tool Corporation, Grand Rapids, MI
Magna Machine & Tool Company, New Castle, IN
Magnum Manufacturing Center, Inc., Colorado Springs, CO
Magnus Precision Manufacturing, Inc., Phelps, NY
Mahuta Tool Corp., Germantown, WI
Main Tool & Mfg. Co., Inc., Minneapolis, MN
Maine Machine Products, South Paris, ME
Mainline Machine, Inc., Broussard, LA
Majer Precision Engineering, Inc., Tempe, AZ
Major Tool & Machine, Inc., Indianapolis, IN
Makino, Mason, OH
Malmberg Engineering, Inc., Livermore, CA
Manda Machine Company, Inc., Dallas, TX
Manetek, Inc., Broussard, LA
Manheim Special Machine Shop, Manheim, PA
Mann Tool Company, Inc., Pacific, MO
Manufacturing Machine Corp., Pawtucket, RI
Manufacturing Service Corp., West Hartford, CT
Marberry Machine, Inc., Houston, TX
Marco Manufacturing Company, Akron, OH
Mardon Tool & Die Company, Inc., Rochester, NY
Marini Tool & Die Company, Inc., Racine, WI
Marion Tool and Die, Inc., Terre Haute, IN
Maris Systems Design, Inc., Spencerport, NY
Markham Machine Co. Inc., Akron, OH
Marlin Tool, Inc., Cuyahoga Falls, OH
Marox Corporation, Holyoke, MA
Marquette Tool & Die Company, St. Louis, MO
Marshall Manufacturing Company, Minneapolis, MN
Martinelli Machine, San Leandro, CA
Masco Machine, Inc., Cleveland, OH
Massachusetts Machine Works Inc., Westwood, MA
Master Cutting & Engineering, Inc., Santa Fe Springs, CA
Master Industries Inc., Piqua, OH
Master Research & Manufacturing, Inc., Norwalk, CA
Master Tool & Mold, Inc., Grafton, WI
Mastercraft Mold, Inc., Phoenix, AZ
Mastercraft Tool & Machine Co., Inc., Southington, CT
Mastercraft Tool Co., St. Louis, MO
Matthews Gauge, Inc., Santa Ana, CA
Maudlin & Son Manufacturing Co., Inc., Kemah, TX
May Technology & Mfg., Inc., Kansas City, MO
May Tool & Die, Inc., North Royalton, OH
MaTech Machining Technologies, Inc., Hebron, MD
McAfee Tool & Die, Inc., Uniontown, OH
McCurdy Tool & Machine Inc., Caledonia, IL
McGill Manufacturing Company, Flint, MI
McKee Carbide Tool Division, Olanta, PA
McKenzie Automation Systems, Inc., Rochester, NY
McNeal Enterprises, Inc., San Jose, CA
McNeil Industries, Inc., Willoughby, OH
McNeill Manufacturing Company, Oakland, CA
McSwain Manufacturing Corp., Cincinnati, OH
Meadville Plating Company, Inc., Meadville, PA
Meadville Tool Grinding, Meadville, PA
Mechanical Drive Components, Inc., Chicopee, MA
Mechanical Manufacturing Corp., Sunrise, FL
Mechanical Metal Finishing Co., Gardena, CA
Mechanized Enterprises, Inc., Anaheim, CA
Medved Tool & Die Company, Elm Grove, WI
Menegay Machine & Tool Company, Canton, OH
Mercer Machine Company, Inc., Indianapolis, IN
Merit Gage, Inc., St. Louis Park, MN
Merritt Tool Company, Inc., Kilgore, TX
Metal Form Engineering, Redlands, CA
Metal Processors Inc., Stevensville, MI
Metal-Tek Machining Inc., Phoenix, AZ
Metalcraft, Inc., Tempe, AZ
Metallon, Inc., Thomaston, CT
Metalsa—Perfek, Novi, MI
Metco Manufacturing Company, Inc., Warrington, PA
Metplas, Inc., Natrona Heights, PA
Metric Machining, Monrovia, CA
Metro Manufacturing, Inc., Phoenix, AZ
Metz Tool & Die Works, Rockford, IL
Miami Tool & Die, Inc., Huntington, IN
Micro Facture LLC, Mountville, PA
Micro Instrument Corporation, Boulder City, NV
Micro Manufacturing, Caledonia, MI
Micro Matic Tool, Inc., Youngstown, OH
Micro Precision Company, Houston, TX
Micro Punch & Die Company, Rockford, IL
Micro Surface Engineering, Inc., Bal-tec Division, Los Angeles, CA
Micro Tool & Manufacturing, Inc., Meadville, PA
Micro-Tronics, Inc., Tempe, AZ
Mid-Central Manufacturing, Inc., Wichita, KS
Mid-Conn Precision Manufacturing LLC, Bristol, CT
Mid-Continent Engineering, Inc., Minneapolis, MN
Mid-State Manufacturing, Inc., Milldale, CT
Mid-States Forging Die & Tool, Co., Inc., Rockford, IL
Midland Precision Machining, Inc., Tempe, AZ
Midway Mfg. Inc., Elyria, OH
Midwest Tool & Die Corporation, Fort Wayne, IN
Midwest Tool & Engineering Co., Dayton, OH
Mikron Machine, Inc., Cranesville, PA
Milco Wire EDM, Inc., & Milco Waterjet, Huntington Beach, CA
Millat Industries Corp., Dayton, OH
Miller Equipment Corporation, Richmond, VA
Miller Mold Company, Saginaw, MI
Milrose Industries, Cleveland, OH
Milwaukee Precision Corporation, Milwaukee, WI
Milwaukee Punch Corporation, Greendale, WI
Minco Tool & Mold Inc., Dayton, OH
Mission Tool & Manufacturing Co., Inc., Hayward, CA
Mitchell Machine, Inc., Springfield, MA
Mitchum Schaefer, Inc., Indianapolis, IN
Mittler Brothers Machine & Tool, Division-Mittler Corporation, Foristell, MO
Mod Tech Industries, Inc., Shawano, WI
Model Machine Company, Inc., Baltimore, MD
Modern Industries Inc., Phoenix, AZ
Modern Machine Company, San Jose, CA
Modern Machine Company, Bay City, MI
Modern Technologies Corp., Xenia, OH
Mold Threads Inc., Branford, CT
Moldcraft, Inc., Depew, NY
Moldesign, Inc., Knoxville, TN
Monks Manufacturing Co., Iné., Wilmington, MA
Monroe Tool & Die Co., Rochester, NY
Monsees Tool & Die, Inc., Rochester, NY
Montgomery Machine Company, Houston, TX
Moon Tool & Die Inc., Conneaut Lake, PA
Moore Gear Mfg. Co., Inc., Hermann, MO
Moore Quality Tooling, Inc., Dayton, OH
Moore's Ideal Products, Covina, CA
Morlin Incorporated, Erie, PA
Morris Machine Co., Inc., Indianapolis, IN
Morton & Company, Inc., Wilmington, MA
Moseys' Production Machinists Inc., Anaheim, CA
Mound Laser and Photonics Center, Miamisburg, OH
Mountain States Automation, Inc., Englewood, CO
Mueller Machine & Tool Company, Berkeley, MO
Muller Tool Inc., Cheektowaga, NY
Multi-Tool, Inc., Saegertown, PA
Mutual Precision, Inc., West Springfield, MA
Mutual Tool & Die, Inc., Dayton, OH
Myers Industries, Akro-Mils Division, Akron, OH
Myers Precision Grinding Company Inc., Warrensville Hts, OH
Myles Tool Co., Inc., Sanborn, NY
MCD Plastics & Manufacturing Inc., Piqua, OH
MCTD, Inc., Michigan City, IN
MKR Fabricators, Saginaw, MI
MPC Industries, Inc., Irvine, CA
MRC Technologies, Buffalo, NY
N C Dynamics, Inc., Long Beach, CA
N E T & Die Company, Inc., Fulton, NY

Nashville Machine Company, Inc., Nashville, TN
National Carbide Die, McKeesport, PA
National Jet Company, Inc., LaVale, MD
National Tool & Machine Co. Inc., East St. Louis, IL
Nationwide Precision Products, Corp., Rochester, NY
Nelson Bros. & Strom Co., Inc., Racine, WI
Nelson Engineering, Garden Grove, CA
Nelson Grinding, Inc., Fullerton, CA
Nelson Precision Drilling Co., Glastonbury, CT
Nerjan Development Company, Stamford, CT
Neutronics, Inc., Phoenix, AZ
New Century Fabricators, Inc., New Iberia, LA
New England Die Co., Inc., Waterbury, CT
New England Precision Grinding, Inc., Holliston, MA
New Standard Corporation, York, PA
Newman Machine Company, Inc., Greensboro, NC
Niagara Punch & Die Corporation, Buffalo, NY
Nifty Bar, Inc., Penfield, NY
Niles Machine & Tool Works, Inc., Livermore, CA
Nixon Tool Co., Inc., Richmond, IN
Noble Tool Corporation, Dayton, OH
Norbert Industries, Inc., Sterling Heights, MI
Nordon Tool & Mold, Inc., Rochester, NY
Noremac Manufacturing Corp., Westboro, MA
Norman Noble, Inc., Cleveland, OH
North Canton Tool Company, Inc., Canton, OH
North Central Tool & Die, Inc., Houston, TX
North Coast Tool & Mold Corp., Cleveland, OH
North Easton Machine Co., Inc., North Easton, MA
Northeast E D M, Newburyport, MA
Northeast Manufacturing Co., Inc., Stoneham, MA
Northeast Tool & Manufacturing, Co., Indian Trail, NC
Northern Machine Tool Company, Muskegon, MI
Northern Tool & Gage, Inc., North Royalton, OH
Northwest Machine Works, Inc., Grand Junction, CO
Northwest Tool & Die Company, Inc., Grand Rapids, MI
Northwest Tool & Die, Inc., Meadville, PA
Northwood Industries, Inc., Perrysburg, OH
Norwood Tool Company, Dayton, OH
Now-Tech Industries Inc., Lackawanna, NY
Nu-Tech Industries, Grandview, MO
Nu-Tool Industries, Inc., North Royalton, OH
Numeric Machine, Fremont, CA
Numeric Machining Co., Inc., West Springfield, MA
Numerical Concepts, Inc., Terre Haute, IN
Numerical Precision, Inc., Wheeling, IL
Numerical Productions, Inc., Indianapolis, IN
Numet Machine, Stratford, CT
NuTec Tooling Systems, Inc., Meadville, PA
O & S Machine Company, Inc., Latrobe, PA
O–A, Inc., Agawam, MA
O E M Industries, Inc., Dallas, TX
O E M, Inc., Corvallis, OR
O–D Tool & Cutter Inc., Mansfield, MA
O'Keefe Ceramics, Woodland Park, CO
Oakley Die & Mold Company, Inc., Mason, OH
Obars Machine & Tool Company, Toledo, OH
Oberg Industries Inc., Freeport, PA
Oconee Machine & Tool Company, Inc., Westminster, SC
Oconnor Engineering Laboratories, Costa Mesa, CA
Ohio Gasket & Shim Company, Akron, OH
Ohio Transitional Machine & Tool, Inc., Toledo, OH
Oilfield Die Manufacturing Co., Lafayette, LA
Omax Corporation, Kent, WA
Omega One, Inc., Maple Heights, OH
Omega Tool, Inc., Menomonee Falls, WI
Omni Machine Works, Inc., Covington, GA
Omni Tool, Inc., Winston Salem, NC
Optimized EDM, Santa Clara, CA
Osborn Products, Inc., Phoenix, AZ
Overland Bolling, Dallas, TX
Overton & Sons Tool & Die Co. Inc., Mooresville, IN
Overton Corporation, Willoughby, OH
P & A Tool & Die, Inc., Rochester, NY
P & N Machine Company, Inc., Houston, TX
P & P Mold & Die, Inc., Tallmadge, OH
P & R Industries, Inc., Rochester, NY
P I A Group, Inc., Cincinnati, OH
P. Tool & Die Company, Inc., N. Chili, NY
P–K Tool & Manufacturing Company, Chicago, IL
Pacific Bearing Company, Rockford, IL
Pacific Tool & Die, Inc., Brunswick, OH
Pahl Tool Services, Cleveland, OH
Palma Tool & Die Company, Inc., Lancaster, NY
Palmer Machine Company Inc., Conway, NH
Palmer Manufacturing Company, Malden, MA
Pankl Aerospace Systems, Cerritos, CA
Parallax, Inc., Largo, FL
Paramount Machine & Tool Corp., Fairfield, NJ
Parker Plastics Corporation, Pittsburgh, PA
Parr-Green Mold and Machine Co., North Canton, OH
Parris Tool & Die Company, Goodlettsville, TN
Parrish Machine, Inc., South Bend, IN
Pasco Tool & Die, Inc., Meadville, PA
Patco Machine & Fab, Inc., Houston, TX
Path Technologies, Inc., Mentor, OH
Patkus Machine Company, Rockford, IL
Patriot Machine, Inc., St. Charles, MO
Patten Tool & Engineering, Inc., Kittery, ME
Paul E. Seymour Tool & Die Co., North East, PA
Peerless Precision, Inc., Westfield, MA
Pegasus/Triumph Manufacturing, Inc., East Berlin, CT
Peko Precision Products, Rochester, NY
Pell Engineering & Manufacturing, Inc., Pelham, NH
Penco Precision, Fontana, CA
Pendarvis Manufacturing, Anaheim, CA
Pendleton Tool Company, Inc., Erie, PA
Peninsula Screw Machine Products, Inc., Belmont, CA
Penn State Tool & Die Corp., North Huntingdon, PA
Penn United Tech, Inc., Saxonburg, PA
Pennoyer-Dodge Company, Glendale, CA
Pennsylvania Crusher, Cuyahoga Falls, OH
Pennsylvania Tool & Gages, Inc., Meadville, PA
Pequot Tool & Mfg., Inc., Pequot Lakes, MN
Perfection Tool & Mold Corp., Dayton, OH
Perfecto Tool & Engineering Co., Anderson, IN
Perfekta, Inc., Wichita, KS
Performance Grinding & Manufacturing, Inc., Tempe, AZ
Performance Machining Inc., Irwin, PA
Perry Tool & Research Inc., Hayward, CA
Petersen Precision Engineering, LLC, Redwood City, CA
Peterson Jig & Fixture, Inc., Rockford, MI
Phil-Coin Machine & Tool Co., Inc., Hudson, MA
Philips Machining Company, Inc., Coopersville, MI
Phoenix Grinding, Div. of Cal-Disc Grinding Co., Phoenix, AZ
Phoenix Metallics, Phoenix, AZ
Phoenix Tool & Gage, Inc., Phoenix, AZ
Piece-Maker Company, Troy, MI
Pinnacle Manufacturing Co., Inc., Chandler, AZ
Pinnacle Precision Co., Glassport, PA
Pioneer Industries, Seattle, WA
Pioneer Precision Grinding, Inc., West Springfield, MA
Pioneer Tool & Die Company, Akron, OH
Pioneer Tool & Die, Inc., Meadville, PA
Piper Plastics, Inc., Chandler, AZ
Pitt-Tex, Latrobe, PA
Plano Machine & Instrument Inc., Gainesville, TX
Plastic Mold Technology Inc., Grand Rapids, MI
Plastipak Packaging, Inc., Package Development Plant 67, Medina, OH
Pleasanton Tool and Manufacturing, Inc., Pleasanton, CA
Plesh Industries, Inc., Buffalo, NY
Pol-Tek Industries, Ltd., Cheektowaga, NY
Polytec Products Corporation, Menlo Park, CA
Ponderosa Industries, Inc., Denver, CO
Popp Machine & Tool, Inc., Louisville, KY
Port City Machine & Tool Company, Muskegon Heights, MI
Portage Knife Company, Inc., Mogadore, OH
Post Products, Inc., Kent, OH
Powers Bros. Machine, Inc., Montebello, CA
Powill Manufacturing & Engineering, Inc., Phoenix, AZ
Practical Machine Company, Barberton, OH
Precise Products Corporation, Minneapolis, MN
Precision Aircraft Components, Inc., Dayton, OH
Precision Aircraft Machining, Co., Inc. dba PAMCO, Sun Valley, CA
Precision Automation Co., Inc., Clarksville, IN
Precision Balancing & Analyzing Co., Mentor, OH
Precision Boring Company, Detroit, MI
Precision Components Group, Inc., Fremont, CA
Precision Die & Stamping Inc., Tempe, AZ
Precision Engineering & Mfg. Co., PEMCO, Haymarket, VA
Precision Engineering, Inc., Uxbridge, MA
Precision Gage & Tool Company, Dayton, OH
Precision Gage, Inc., Tempe, AZ
Precision Grinding & Mfg. Corp., Rochester, NY
Precision Grinding Inc., Phoenix, AZ
Precision Grinding, Inc., Birmingham, AL
Precision Identity Corporation, Campbell, CA
Precision Machine & Instrument, Co., Houston, TX
Precision Machine & Tool Co., Longview, TX

Precision Machine Company, Lancaster, PA
Precision Machine Rebuilding, Inc., Rogers, MN
Precision Machine Works, Aiken, SC
Precision Manufacturing, Technologies, Inc., Grand Junction, CO
Precision Metal Crafters, Ltd., Greensburg, PA
Precision Metal Fabrication, Dayton, OH
Precision Metal Tooling, Inc., Oakland, CA
Precision Mold & Engineering, Inc., Warren, MI
Precision Mold Base Corporation, Tempe, AZ
Precision Mold Welding, Inc., Little Rock, AR
Precision Products Inc., Greenwood, IN
Precision Resource, California Division, Huntington Beach, CA
Precision Resource Tool & Machine, Division, Shelton, CT
Precision Resources, Hawthorne, CA
Precision Specialists, Inc., West Berlin, NJ
Precision Specialties, San Jose, CA
Precision Stamping & Tool, Inc., Irvine, CA
Precision Stamping, Inc., Farmers Branch, TX
Precision Technology, Inc., Chandler, AZ
Precision Tool & Mold, Inc., Clearwater, FL
Precision Tool Work, Inc., New Iberia, LA
Precision Wire EDM Service Inc., Grand Rapids, MI
Preferred Tool Company, Inc., Seymour, IN
Prescott Aerospace, Inc., Prescott Valley, AZ
Pressco Products, Kent, WA
Prestige Mold Incorporated, Rancho Cucamonga, CA
Price Products, Inc., Escondido, CA
Pride, dba Pride Industries, Brooklyn Park, MN
Prima Die Castings, Inc., Clearwater, FL
Prime-Co Tool Inc., East Rochester, NY
Primeway Tool & Engineering Co., Div. of Cleary Developments, Inc., Madison Heights, MI
Pro-Mold, Inc., Rochester, NY
Pro-Tech Machine, Inc., Burton, MI
Process Equipment Company, Tipp City, OH
Product Engineering Company, Columbus, IN
Production Machining & Mfg., Dallas, TX
Production Saw Works, Inc., North Hollywood, CA
Production Tool & Mfg. Co., Portland, OR
Producto Machine Company, Bridgeport, CT
Professional Instruments Co., Inc., Hopkins, MN
Professional Machine & Tool Co., Gallatin, TN
Proficient Machining Co., Inc., Mentor, OH
Profile Grinding, Inc., Cleveland, OH
Proformance Manufacturing, Inc., Corona, CA
Progressive Concepts Machining, Pleasanton, CA
Progressive Machine & Design, LLC, Victor, NY
Progressive Metallizing &, Machine Company, Inc., Akron, OH
Progressive Tool & Die, Inc., Meadville, PA
Progressive Tool & Die, Inc., Gardena, CA
Progressive Tool Company, Waterloo, IA
Promax Tool Co., Rancho Cordova, CA
Prompt Machine Products, Inc., Chatsworth, CA
Proper Cutter, Inc., Guys Mills, PA
Proper Mold & Engineering, Inc., Center Line, MI
Proto-Design, Inc., Redmond, WA
Protonics Engineering Corp., Cerritos, CA
ProMold, Inc., Cuyahoga Falls, OH
Puehler Tool Company, Valley View, OH
Pullbrite, Inc., Fremont, CA
PDQ Machine, Inc., Machesney Park, IL
PMR, Inc., Avon, OH
PQ Enterprise, L.L.C., Grand Rapids, MI
PR Machine Works, Inc., Mansfield, OH
Quality Centerless Grinding Corp., Middlefield, CT
Quality Grinding and Machine, Rainbow City, AL
Quality Machine Engineering, Inc., Santa Rosa, CA
Quality Machining Technology, Inc., Oakdale, CA
Quality Machining, Inc., Waunakee, WI
Quality Mold & Engineering, QME Inc., Baroda, MI
Quality Tool & Die Inc., Meadville, PA
Quality Tool Company, Toledo, OH
Quick-Way Stampings, Euless, TX
R & D Machine Shop, Dallas, TX
R & D Specialty/Manco, Phoenix, AZ
R & D Tool & Engineering, Lee's Summit, MO
R & G Precision Tool Inc., Thomaston, CT
R & H Manufacturing Inc., Edwardsville, PA
R & J Tool, Inc., Brookville, OH
R & M Machine Tool, Freeland, MI
R & M Manufacturing Company, Niles, MI
R & M Mold Manufacturing Co., Inc., Bloomsbury, NJ
R & S EDM, Inc., W. Springfield, MA
R & S Redco, Inc., Rockland, MA
R D C Machine, Inc., Santa Clara, CA
R Davis EDM, Anaheim, CA
R E F Machine Company, Inc., Middlefield, CT
R F Cook Manufacturing Co., Stow, OH
R G F Machining Technologies, Canon City, CO
R J S Corporation, Akron, OH
R M I, Van Nuys, CA
R S Precision Industries, Inc., Farmingdale, NY
R T R Slotting & Machine Inc., Cuyahoga Falls, OH
R. W. Machine, Inc., Houston, TX
R. W. Smith Company, Inc., Dallas, TX
Rainbow Tool & Machine Co., Inc., Gadsden, AL
Raloid Corporation, Reisterstown, MD
Ralph Stockton Valve Products, Inc., Houston, TX
Ram Tool, Inc., Grafton, WI
Rapid-Line Inc., Grand Rapids, MI
Rapidac Machine Corporation, Rochester, NY
Ratnik Industries, Inc., Victor, NY
Rawlings Engineering, Macon, GA
Re-Del Engineering, Campbell, CA
Realco Diversified, Inc., Meadville, PA
Reardon Machine Co., Inc., St. Joseph, MO
Reata Engineering & Machine, Works, Inc., Englewood, CO
Reber Machine & Tool Company, Muncie, IN
Reed Instrument Company, Houston, TX
Reese Machine Company, Inc., Ashtabula, OH
Reg-Ellen Machine Tool Corp., Rockford, IL
Reichert Stamping Company, Toledo, OH
Reitz Tool, Inc., Cochranton, PA
Reko International Sales, Inc., Troy, MI
Reliable EDM, Inc., Houston, TX
Remarc Manufacturing Inc., Hayward, CA
Remmele Engineering, Inc., New Brighton, MN
Reny & Company Inc., El Monte, CA
Repairtech International, Inc., Van Nuys, CA
Republic Industries, Louisville, KY
Republic-Lagun, Carson, CA
Research Tool Inc., East Haven, CT
Reuther Mold & Manufacturing Co., Attn: Accounts Payable, Cuyahoga Falls, OH
Reynolds Manufacturing Co., Inc., Rock Island, IL
Rheaco Inc., Grand Prairie, TX
Rhode Island Centerless, Inc., Johnston, RI
Rich Tool & Die Company, Scarborough, ME
Richard Manufacturing Company, Inc., Milford, CT
Richard Tool & Die Corporation, New Hudson, MI
Richard's Grinding, Inc., Cleveland, OH
Richards Machine Tool Company, Inc., Lancaster, NY
Richsal Corporation, Elyria, OH
Rick Sanford Machine Company, San Leandro, CA
Rickman Machine Company, Wichita, KS
Rid-Lom Precision Tool Corp., Rochester, NY
Ridge Machine & Welding Company, Toronto, OH
Riggins Engineering, Inc., Van Nuys, CA
Right Tool & Die, Inc., Toledo, OH
Rite-Way Industries Inc., Louisville, KY
Riverview Machine Company, Inc., Holyoke, MA
Riviera Tool Company, Grand Rapids, MI
Robert C. Reetz Company, Inc., Pawtucket, RI
Robert C. Weisheit Co., Franklin Park, IL
Roberts Tool & Die Company, Chillicothe, MO
Roberts Tool Company, Inc., Chatsworth, CA
Robrad Tool & Engineering, Mesa, AZ
Rochester Automated Systems, Inc., Rochester, NY
Rochester Gear, Inc., Rochester, NY
Rochester Manufacturing, Wellington, OH
Rochester Precision Machine, Inc., Rochester, MN
Rockburl Industries Inc., Rochester, NY
Rockford Process Control, Inc., Rockford, IL
Rockford Tool & Manufacturing Co., Rockford, IL
Rockford Toolcraft, Inc., Rockford, IL
Rockhill Machining Industries Inc., Barberton, OH
Rockstedt Tool & Die, Brunswick, OH
Rocon Manufacturing Corporation, Rochester, NY
Rogers Enterprises, Rochester, NY
Roll Kraft, Mentor, OH
Romold Inc., Rochester, NY
Ron Grob Company, Loveland, CO
Ronart Industries, Inc., Detroit, MI
Ronlen Industries, Inc., Brunswick, OH
Rons Racing Products, Inc., Tucson, AZ
Royalton Manufacturing, Inc., Cleveland, OH
Royster's Machine Shop, LLC, Henderson, KY
Rozal Industries, Inc., Farmingdale, NY
Ruoff & Sons, Inc., Runnemede, NJ
Ryan Industries Inc., York, PA
RRR Development Co., Inc., North Canton, OH
RTS Wright Industries, Nashville, TN
RTS Wright Industries, LLC, Gilbert, AZ
S & B Tool & Die Co., Inc., Lancaster, PA
S & R Tool Inc., Lakeville, NY
S C Manufacturing, Akron, OH
S G S Tool Company, Munroe Falls, OH
S L P Machine, Inc., Ham Lake, MN
S. C. Machine, Chatsworth, CA
Sabre Machining Center, Inc., Dayton, OH

Saeilo Manufacturing Industries, Blauvelt, NY
Sage Machine & Fabricating, Houston, TX
Sagehill Engineering, Inc., Menlo Park, CA
Saliba Industries, Inc., Lake Forest, IL
Sanders Tool & Mould Company, Hendersonville, TN
Sandor Tool & Manufacturing Co., Lawrence, MA
Satran Technical Enterprises, Mayer, AZ
Sattler Machine Products, Inc., Sharon Center, OH
Sawing Services Co., Chatsworth, CA
Sawtech, Lawrence, MA
Schaffer Grinding Company, Inc., Montebello, CA
Scheu & Kniss, The Elizabeth Companies, Louisville, KY
Schill Corp., Toledo, OH
Schmald Tool & Die Inc., Burton, MI
Schmiede Corporation, Tullahoma, TN
Schmitt Machine, Inc., Ventura, CA
Schneider & Marquard, Inc., Newton, NJ
Schuetz Tool & Die, Inc., Hiawatha, KS
Schulze Tool Company, Independence, MO
Schwab Machine, Inc., Sandusky, OH
Schwartz Industries, Inc., Warren, MI
Scientiam Machine Co., Harbor City, CA
Seaway Industrial Products, Inc., Erie, PA
Sebewaing Tool & Engineering Co., Sebewaing, MI
Select Manufacturing Company, Rainbow City, AL
Select Tool & Die—Tool Div., Dayton, OH
Select Tool & Eng., Inc., Elkhart, IN
Select Tool and Die, Toledo, OH
SelfLube, Coopersville, MI
Selzer Tool & Die, Inc., Elyria, OH
Sematool Mold & Die Co., Santa Clara, CA
Serrano Industries Inc., Santa Fe Springs, CA
Service Manufacturing and, Engineering, Norwalk, CA
Service Tool & Die, Inc., Henderson, KY
Setters Tools, Inc., Piedmont, SC
Sharon Center Mold & Die, Sharon Center, OH
Shaw Industries, Inc., Franklin, PA
Shear Tool, Inc., Saginaw, MI
Sheets Tool & Manufacturing, Inc., Saegertown, PA
Shelby Engineering Company, Inc., Indianapolis, IN
Sherer Manufacturing Incorporated, Clearwater, FL
Sherman Tool & Gage, Erie, PA
Shookus Special Tools, Inc., Raymond, NH
ShopTech Industrial Software Corp., Cincinnati, OH
Sibley Machine & Foundry Corp., South Bend, IN
Signal Machine Company, New Holland, PA
Silicon Valley Mfg., Fremont, CA
Sipco Molding Technologies, Meadville, PA
Sirois Tool Co. Inc., Berlin, CT
Six Sigma, Louisville, KY
Ski-Way Machine Products Company, 24460 Lakeland Blvd., Euclid, OH
Skillcraft Machine Tool Company, West Hartford, CT
Skulsky, Inc., Gardena, CA
Skyline Manufacturing Corp., Nashville, TN
Skylon Mold & Machining, Sugar Grove, PA
Smith-Renaud, Inc., Cheshire, CT
Smith's Machine, Cottondale, AL
Smithfield Manufacturing, Inc., Clarksville, TN
Snyder Systems, Benicia, CA
Solar Tool & Die, Inc., Kansas City, MO
Sonic Machine & Tool, Inc., Tempe, AZ
Sonoma Precision Mfg. Co., Santa Rosa, CA
Sonora Precision Molds, Inc., Mi Wuk Village, CA
South Bend Form Tool Company, South Bend, IN
South Eastern Machining, Inc., Pelzer, SC
Southampton Manufacturing, Inc., Feasterville, PA
Southeastern Technology, Inc., Murfreesboro, TN
Southern Manufacturing Technologies Inc., Tampa, FL
Southwest Mold, Inc., Tempe, AZ
Space City Machine & Tool Co., Houston, TX
Spalding & Day Tool & Die Co., Louisville, KY
Spark Technologies, Inc., Schenley, PA
Spartak Products Inc., Houston, TX
Specialty Machine & Hydraulics, Pleasantville, PA
Speed Precision Machining, Phoenix, AZ
Spenco Machine & Manufacturing, Temecula, CA
Spex Precision Machine Technologies, Rochester, NY
Spike Industries, North Lima, OH
Spiral Grinding Company, Culver City, CA
Springfield Manufacturing, LLC, Clover, SC
Springfield Tool & Die, Inc., Greenville, SC
Spun Metals, Inc., A Deakins Co., Brazil, IN
Standard Die Supply of Indiana, Inc., Indianapolis, IN
Standard Jig Boring Service, Inc., Akron, OH
Standard Machine Inc., Cleveland, OH
Standard Welding & Steel, Products, Inc., Medina, OH
Stanek Tool Corporation, New Berlin, WI
Stanley Machining & Tool Corp., Carpentersville, IL
Star Precision Products, Mentor, OH
Star Tool & Die, Inc., Elkhart, IN
Starn Tool & Manufacturing Co., Meadville, PA
State Industrial Products, Inc., Phoenix, AZ
Stauble Machine & Tool Company, Louisville, KY
Stelted Manufacturing, Inc., Tempe, AZ
Sterling Engineering Corporation, Winsted, CT
Sterling Tool Company, Racine, WI
Stevens Manufacturing Co., Inc., Milford, CT
Stewart Manufacturing Company, Phoenix, AZ
Stillion Industries, Ann Arbor, MI
Stillwater Technologies, Inc., Troy, OH
Stonewall Jackson Mold Inc., Annville, KY
Stoney Crest Regrind Service, Inc., Bridgeport, MI
Streamline Tooling Systems, Muskegon, MI
Strobel Machine, Inc., Worthington, PA
Stuart Tool & Die, Falconer, NY
Studwell Engineering, Inc., Sun Valley, CA
Subsea Ventures Inc., Houston, TX
Suburban Manufacturing Company, Eastlake, OH
Summit Machine Company, Scottdale, PA
Summit Precision, Inc., Phoenix, AZ
Sun EDM Inc., Gilbert, AZ
Sunbelt Plastics, Inc., Frisco, TX
Sunrise Tool & Die, Inc., Henderson, KY
Sunset Tool Inc., Saint Joseph, MI
Super Finishers II, Phoenix, AZ
Superbolt, Inc., Carnegie, PA
Superior Die Set Corporation, Oak Creek, WI
Superior Die Tool Machine Co., Columbus, OH
Superior Gear Box Company, Stockton, MO
Superior Jig, Inc., Anaheim, CA
Superior Mold Company, Ontario, CA
Superior Thread Rolling Company Inc, Arleta, CA
Superior Tool & Die Company, Bensalem, PA
Superior Tool & Die Company, Inc., Elkhart, IN
Superior Tool, Inc., Willow Street, PA
Supreme Tool and Die Company, Fenton, MO
Surface Manufacturing, Auburn, CA
Swiss Wire E D M, Costa Mesa, CA
Swissco, Inc., Bell Gardens, CA
Synergis Technologies Group, Grand Rapids, MI
Syst-A-Matic Tool & Design, Meadville, PA
Systems 3, Inc., Tempe, AZ
STADCO, Los Angeles, CA
STM Manufacturing, Holland, MI
T & S Industrial Machining Corp., Woburn, MA
T J Tool and Mold, Guys Mills, PA
T M Machine & Tool, Inc., Toledo, OH
T M S Inc., Technical Machining Services, Inc., Lincoln, RI
T R Jones Machine Company, Inc., Crystal Lake, IL
T. J. Karg Company, Inc., Akron, OH
T–K & Associates, Inc., La Porte, IN
T–M Manufacturing Corporation, Sunnyvale, CA
Talbar, Inc., Meadville, PA
Talent Tool & Die, Inc., Berea, OH
Tana Corporation, Toledo, OH
Tanner Oil Tools Inc., Houston, TX
Target Precision, Meadville, PA
Taurus Tool & Engineering, Inc., Muncie, IN
Team Tooling and Design, Incorporated, Shawnee, OK
Tech Industries, Inc., Cleveland, OH
Tech Manufacturing Company, Wright City, MO
Tech Mold, Inc., Tempe, AZ
Tech Tool & Mold, Inc., Meadville, PA
Tech-Etch, Inc., Plymouth, MA
Tech-Machine, Inc., Colorado Springs, CO
Techmetals, Inc., Dayton, OH
Techni-Cast Corporation, South Gate, CA
Techni-Products, Inc., East Longmeadow, MA
Technics 2000 Inc., Olathe, KS
Technodic, Inc., Providence, RI
Tecno Troqueles Industries, Laredo, TX
TecoMetrix, LLC, Tempe, AZ
Tedco, Inc., Cranston, RI
Teke Machine Corp., Rochester, NY
Tell Tool, Inc., Westfield, MA
Tenk Machine & Tool Company, Cleveland, OH
Tennessee Metal Works, Inc., Nashville, TN
Tennessee Tool Corporation, Charlotte, TN
Terrell Manufacturing Inc., Strongsville, OH
Testand Corporation, Pawtucket, RI
Tetco, Inc., Plainville, CT
Teter Tool & Die, Inc., La Porte, IN
Thaler Machine Company, Dayton, OH
The Baughman Group, Louisville, KY
The Bechdon Company, Inc., Upper Marlboro, MD
The Foster Group, Rochester, NY
The Goforth Corp., dba The Machine Shop, Fremont, CA

The Metalworking Group, Inc., Cincinnati, OH
The POM Group, Inc., Auburn Hills, MI
The Ryan Group, Franklin, NJ
The Sullivan Corporation, Hartland, WI
The Timken Company, Specialty Tooling & Rebuilding, Canton, OH
The Will-Burt Company, Orrville, OH
Therm, Inc., Ithaca, NY
Thiel Tool & Engineering Co.,Inc., St. Louis, MO
Thomas Machine Works, Inc., Newburyport, MA
Thornhurst Manufacturing, Inc., Zephyrhills, FL
Three-Way Pattern, Inc., Wichita, KS
ThyssenKrupp Budd Company, Shelbyville, KY
Tipco Punch, Inc., Hamilton, OH
Tipp Machine & Tool, Inc., Tipp City, OH
Titan, Inc., Sturtevant, WI
Toledo Blank, Inc., Toledo, OH
Toledo Molding & Die, Toledo, OH
Tolerance Masters, Inc., Circle Pines, MN
Tomak Precision, Lebanon, OH
Tomco Tool & Die, Inc., Belding, MI
TomKen Tool & Engineering, Inc., Muncie, IN
Tool Gauge & Machine Works, Inc., Tacoma, WA
Tool Mate Corporation, Cincinnati, OH
Tool Specialties Company, Hazelwood, MO
Tool Specialty Company, Los Angeles, CA
Tool Tech Corporation, San Jose, CA
Tool Tech, Inc., Springfield, OH
Tool-Matic Company, Inc., City Of Commerce, CA
Toolcomp Tooling & Components Co., Toledo, OH
Toolcraft of Phoenix, Inc., Glendale, AZ
Toolcraft Products, Inc., Dayton, OH
Toolex, Inc., Houston, TX
Tools Renewal Company, Birmingham, AL
Tools, Inc., Sussex, WI
Top Tool & Die, Inc., Cleveland, OH
Toth Industries, Inc., Toledo, OH
Toth Technologies, Pennsauken, NJ
Tower Tool & Engineering, Inc., Machesney Park, IL
Trace-A-Matic Corporation, Brookfield, WI
Tracer Tool & Die Company Inc., Grand Rapids, MI
Trademark Die & Engineering, Belmont, MI
Tram Tek Inc., Phoenix, AZ
Transmatic Manufacturing, Mesa, AZ
Treblig, Inc., Greenville, SC
Trec Industries, Inc., Brooklyn Heights, OH
Tree City Mold & Machine Co., Inc., Kent, OH
Treffers Precision, Inc., Phoenix, AZ
Tresco Tool, Inc., Guys Mills, PA
Tri Craft, Inc., Middleberg Heigh, OH
Tri-City Machine Products, Inc., Peoria, IL
Tri-City Tool & Die, Inc., Bay City, MI
Tri-Core Mold & Die, Machesney Park, IL
Tri-M-Mold, Inc., Stevensville, MI
Triad Plastic Technologies, Reno, NV
Triangle Tool Company, Erie, PA
Tribond Industries, Inc., Phoenix, AZ
Tricon Machine LLC, Rochester, NY
Tridecs Corporation, Hayward, CA
Trident Precision Manufacturing, Webster, NY
Trimac Manufacturing, Inc., Santa Clara, CA
Trimble Navigation Ltd. Engineering & Construction Division, Huber Heights, OH
Trimetric Specialties, Inc., Newark, CA
Trimline Tool, Inc., Grandville, MI
Trinity Tools, Inc., North Tonawanda, NY
Trio Manufacturing, Inc., Kent, WA
Trio Tool & Die, Inc., Hawthorne, CA
Triple-T Cutting Tools Inc., West Berlin, NJ
Triplett Machine, Inc., Phelps, NY
Trojan Mfg. Co. Inc., Piqua, OH
Trotwood Corporation, Trotwood, OH
Tru Form Manufacturing Corp., Rochester, NY
Tru Tool, Inc., Sturtevant, WI
Tru-Cut, Inc., Sebring, OH
True Cut EDM Inc., Garland, TX
True-Tech Corporation, Fremont, CA
Trust Technologies, Willoughby, OH
Trutron Corporation, Troy, MI
Tschida Engineering, Inc., Napa, CA
Tucker Engineering Inc., Peabody, MA
Turn-Tech, Inc., Pinehurst, TX
Twin City Plating Company, Minneapolis, MN
Two-M Precision Co., Inc., Willoughby, OH
TAE Corporation, d/b/a T & E Manufacturing, Kent, WA
TCI Precision Metals, Gardena, CA
TMI Industries, Inc., Temperance, MI
TMK Manufacturing Inc., Santa Clara, CA
TMX Engineering & Manufacturing, Santa Ana, CA
U F E Incorporated, Stillwater, MN
U M C, Inc., Hamel, MN
U S Machine & Tool, Inc., Murfreesboro, TN
Ugm, Inc., Salida, CA
Ultra Precision, Inc., Freeport, PA
Ultra Stamping & Assembly, Inc., Rockford, IL
Ultra Tool & Manufacturing, Inc., Menomonee Falls, WI
Ultra-Tech, Inc., Kansas City, KS
Ultramation, Inc., Waco, TX
Ultron, Long Beach, CA
Unique Machine Company, Montgomeryville, PA
Unique Tool & Manufacturing, Randleman, NC
Unitech, Inc., Kansas City, MO
United Centerless Grinding, East Hartford, CT
United Machine Co., Inc., Wichita, KS
United Plastics Group, Anaheim, CA
United Stars Aerospace, Inc., Kent, WA
United States Fittings, Inc., Warrensville Hgt, OH
United Tool & Engineering Co., South Beloit, IL
United Tool & Engineering, Inc., Mishawaka, IN
Universal Brixius, Milwaukee, WI
Universal Custom Process, Inc., Streetsboro, OH
Universal Precision Products Inc., Akron, OH
Upland Fab, Inc., Ontario, CA
UAB Manufacturing Co., Inc., Southampton, PA
USAeroteam, Dayton, OH
V & M Tool Company, Inc., Perkasie, PA
V & S Die & Mold, Inc., Lakewood, OH
V A Machine & Tools, Inc., Broussard, LA
V Ash Machine Company, Cleveland, OH
V I Mfg., Inc., Webster, NY
V R C, Inc., Berea, OH
V.A.W. of America, Inc., Phoenix, AZ
Valley Machine Works, Inc., Phoenix, AZ
Valley Tool & Die, Inc., North Royalton, OH
Valv-Trol Company, Stow, OH
Van Engineering, R Vandewalle, Inc., Cincinnati, OH
Van Os Machine Works, Inc., St. Louis, MO
Van Reenen Tool & Die Inc., Rochester, NY
Van-Am Tool & Engineering, Inc., St. Joseph, MO
Vanderveer Industrial Plastics, Inc., Placentia, CA
Vanpro, Inc., Cambridge, MN
Varco Systems, Orange, CA
Vaughn Manufacturing Company, Inc., Nashville, TN
Venango Machine Products, Inc., Reno, PA
Versacut Ind. Inc., Morenci, MI
Versa Tool & Die Machining, and Engineering Inc., Beloit, WI
Vico Louisville, Louisville, KY
Viking Tool & Engineering, Whitehall, MI
Viking Tool & Gage, Inc., Conneaut Lake, PA
Vistek Precision Machine Company, Ivyland, PA
Vitron Manufacturing, Inc., Phoenix, AZ
Vitullo & Associates, Inc., Warren, MI
Vobeda Machine & Tool Company, Racine, WI
Vulcan Tool Corporation, Dayton, OH
W & H Stampings & Fineblanking, Inc, Hauppauge, NY
W D & J Machine & Engineering Inc., Fullerton, CA
W G Strohwig Tool & Die, Inc., Richfield, WI
W W G, Inc., Indianapolis, IN
W. C. Kirby & Son, Inc., Noblesville, IN
W.A.C. Consulting/Coss Systems Inc., Northboro, MA
Wagner Engineering, Inc., Gilbert, AZ
Wagner Engraving Co., Kirkwood, MO
Waiteco Machine, Inc., Devens, MA
Waltco Engineering, Inc., Gardena, CA
Walter Tool & Mfg. Inc., Elgin, IL
Warmelin Precision Products, Hawthorne, CA
Waukesha Tool & Stamping Inc., Sussex, WI
Wayne Manufacturing, Inc., Boulder, CO
Weco Metal Products, Ontario, NY
Wemco Precision Tool, Inc., Meadville, PA
Wentworth Company, Glastonbury, CT
Werkema Machine Company, Inc., Grand Rapids, MI
Wes Products, Madison Heights, MI
West Hartford Tool & Die Company, Newington, CT
West Pharmaceutical Services, Erie, PA
West Valley Milling, Inc., Chatsworth, CA
West Valley Precision Inc., San Jose, CA
Western Air Products, Tucson, AZ
Western Mass. MechTech, Inc., Ware, MA
Western Tap Manufacturing Co., Inc., Buena Park, CA
Westfield Manufacturing Corp., Westfield, IN
Westfield Tool & Die, Inc., Westfield, MA
Westlake Tool & Die Mfg., Avon, OH
Westool Corporation, Temperance, MI
White Machine, Inc., North Royalton, OH
Whitehead Tool & Design, Inc., Guys Mills, PA
Wiegel Tool Works, Inc., Wood Dale, IL
Wiesen EDM, Inc., Belding, MI
Wightman Engineering Services, Inc., Santa Clara, CA
Wilco Die Tool Machine Company, Maryland Heights, MO
Wilkinson Mfg., Inc., Santa Clara, CA
Willer Tool Corporation, Jackson, WI
William Sopko & Sons Co., Inc., Cleveland, OH

Williams Engineering & Manufacturing, Inc., Chatsworth, CA
Williams Machine, Inc., Lake Elsinore, CA
Williams Machining Co., Edinboro, PA
Windsor Tool & Die, Inc., Cleveland, OH
Wintech Industries Inc., Tempe, AZ
Wire Cut Company, Inc., Buena Park, CA
Wire Tech E D M, Inc., Los Alamitos, CA
Wire-Tech, Inc., Tempe, AZ
Wirecut Technologies Inc., Indianapolis, IN
WireCut E D M, Inc., Dallas, TX
Wisconsin Engraving Company/Unitex, New Berlin, WI
Wise Machine Co., Inc., Butler, PA
Wolverine Bronze Company, Roseville, MI
Wolverine Tool & Engineering, Belmont, MI
Wolverine Tool Company, St. Clair Shores, MI
Woodruff Corporation, Torrance, CA
Wright Brothers Welding &, Sheet Metal, Inc., Hollister, CA
WADKO Precision, Inc., Eagle Lake, TX
WGI Inc., Southwick, MA
WSI Industries, Inc., Osseo, MN
X–L Machine Company, Inc., Three Rivers, MI
XLI Corporation, Rochester, NY
Yarde Metals, Inc., Bristol, CT
Yates Tool, Inc., Medina, OH
Yoder Die Casting Corporation, Dayton, OH
Youngberg Industries, Inc., Belvidere, IL
Youngers and Sons Manufacturing, Company, Inc., Viola, KS
Youngstown Plastic Tooling & Machinery, Inc., Youngstown, OH
Z & Z Machine Products Inc., Racine, WI
Z M D Mold & Die Inc., Mentor, OH
Zircon Precision Products, Inc., Tempe, AZ
Zuelzke Tool & Engineering, Milwaukee, WI
4 Axis Machining, Inc., Denver, CO

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BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Ocean Service

[Docket No. 021226332–2332–01; I.D. 121202C]

Coral Reef Conservation Grant Program Fiscal Year 2003 Funding Guidance

AGENCY: National Marine Fisheries Service (NMFS), National Ocean Service (NOS), Commerce.

ACTION: Notice of Availability of Federal assistance for coral reef conservation activities.

SUMMARY: This document advises the public that the National Oceanic and Atmospheric Administration (NOAA) is soliciting proposals for the NOAA Coral Reef Conservation Grant Program (Program), pursuant to the Coral Reef Conservation Act of 2000 (Act). The Act authorizes the Secretary of Commerce (Secretary), through the NOAA Administrator (Administrator), and subject to the availability of funds, to provide matching grants of financial assistance for coral reef conservation projects under the Program. This document provides the specific Fiscal Year (FY) 2003 Funding Guidance (Guidance) necessary to award $5,590,000 in Federal assistance, of which NOAA is providing $5,240,000 and the Department of the Interior (DOI)is providing $350,000, consistent with the NOAA Coral Reef Conservation Grant Program Implementation Guidelines (Guidelines) published in the **Federal Register** on Friday, April 19, 2002. The Guidelines can be found at *http://www.coralreef.noaa.gov/*. The information published in this Guidance includes: specific program eligibility criteria, Funding Availability, proposal submittal and selection dates, and detailed application requirements and Application Evaluation criteria. All applications submitted pursuant to this notice must be consistent with the requirements stated herein, the Guidelines, and with "A National Coral Reef Action Strategy" (Strategy), completed in September 2002. The Strategy can also be found at: *http://www.coralreef.noaa.gov/*. Applicants may also request copies of the Strategy from the contacts listed below. Funding will be subject to the availability of federal appropriations.

DATES: Applications must be received by NOAA before 5 P.M. Eastern Time on the dates specified below. Initial applications can be submitted by either electronic mail (e-mail) or surface mail; however, one original and two signed copies of the final application must be submitted by surface mail. Applicants should consider the delivery time when submitting their applications from international or remote areas. NOAA intends to provide funding to selected applicants no later than September 30, 2003. The following review and selection timetable applies to all applications under the Program, except the Coral Reef Research Ecosystem Program (see section IV):

Initial Applications due to NOAA–March 14, 2003

NOAA returns proposal comments to applicants–May 9, 2003

Final Applications due to NOAA–June 6, 2003

The NOAA Grants Officer will provide written notice to each successful applicant with written notice of the final funding selection on or before September 30, 2003. It is the goal of the NOAA Program Officer to also provide notice to each unsuccessful applicant before September 30, 2003.

ADDRESSES: Initial applications may be submitted by surface mail or e-mail. Submissions by e-mail are preferred. If submitting by surface mail, applicants are encouraged to include a copy of the initial application in electronic format on disk or cd and mail both to: David Kennedy, NOAA Coral Reef Conservation Program Coordinator, Office of Response and Restoration, N/ORR, Room 10102, NOAA National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910. Applications submitted by e-mail must be sent to *coral.grants@noaa.gov*. Fax submittals will not be accepted except for the International Coral Reef Conservation proposals, Section VII (Fax: 301–713–4389).

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to Bill Millhouser, 301–713–3155, extension 189 or e-mail at *bill.millhouser@noaa.gov*.

Technical point of contact for State and Territory Coral Reef Management is Bill Millhouser, 301–713–3155, extension 189 or e-mail at *bill.millhouser@noaa.gov*.

Technical point of contact for State and Territory Coral Reef Ecosystem Monitoring is John Christensen, 301–713–3028, extension 153 or e-mail at *john.christensen@noaa.gov*.

Technical point of contact for Coral Reef Ecosystem Research is Kimberly Puglise, 301–713–2427, extension 199 or e-mail at *kimberly.puglise@noaa.gov*.

Technical point of contact for General Coral Reef Conservation is Tom Hourigan, 301–713–3459, extension 122 or e-mail at *tom.hourigan@noaa.gov*.

Technical point of contact for Projects to Improve or Amend Coral Reef Fishery Management Plans is Tom Hourigan, 301–713–3459, extension 122 or e-mail at *tom.hourigan@noaa.gov*.

Technical point of contact for International Coral Reef Conservation is Arthur Paterson, 301–713–3078, extension 217 or e-mail at *arthur.e.paterson@noaa.gov*.

For general information on NOAA's Coral Reef Conservation Program, contact Roger Griffis, 301–713–3989, extension 115 or e-mail at *roger.b.griffis@noaa.gov*.

SUPPLEMENTARY INFORMATION: NOAA announces the availability of $5,590,000 of Federal assistance in FY 2003 for Coral Conservation Activities. NOAA is providing $5,240,000 and DOI is providing $350,000. These funds will be used to support grants of financial assistance under the following six program categories: State and Territory Coral Reef Management; State and Territory Coral Reef Ecosystem

Monitoring; Coral Reef Ecosystem Research; Coral Reef Conservation; Projects to Improve or Amend Coral Reef Fishery Management Plans; and International Coral Reef Conservation.

Please Note: The Coral Reef Ecosystem Research Program mentioned here will solicit proposals through NOAA's Undersea Research Program (NURP) on a different schedule than described in this Guidance. Applicants interested in submitting applications for coral research should consult section IV. Coral Reef Ecosystem Research.

The amount of funds available and the application requirements for each program category are established in Sections II - VII of this notice. In addition to this specific program information, all applicants should carefully read section VIII. General Information for All Applicants.

For applications submitted in electronic format, the preferred format is Adobe Acrobat (.PDF); however, WordPerfect or Microsoft Word files are acceptable. All applications must meet the information and formatting requirements specified in this Guidance. Federal financial assistance forms are not required to be submitted with the initial application; however, one original and two signed copies must be submitted with the final application.

Each application must include a cover sheet with the following information:

(a) Project title;

(b) Applicant organization;

(c) Principal investigator or contact;

(d) Contact information including address, phone and fax numbers, and e-mail address;

(e) Program category (see **SUPPLEMENTARY INFORMATION**, below);

(f) Geographic location of the project;

(g) Amount of grant funds requested;

(h) Amount of matching funds provided; and,

(i) Concise paragraph project summary.

NOAA will select projects based on a review of applications pursuant to criteria contained in the Guidelines, the Strategy, and this Guidance. In addition, each program office will ensure where appropriate in their evaluation criteria, commitment to effective education and outreach consistent with NOAA's mission to protect coral reef resources. Selected recipients will enter into either a cooperative agreement with the NOAA Office responsible for the program or receive a grant depending upon the amount of NOAA's involvement in the project. Substantial involvement means a cooperative agreement, while independent work requires a grant. Examples of substantial involvement include:

(1) Requirements that the appropriate DOC official collaborate with the recipient by working jointly with a recipient scientist or technician in carrying out the scope of work;

(2) Specify direction or redirection of the scope of work due to the relationships with other projects; and,

(3) Review scope of work and closely monitor the program operations during the performance period.

Applicants whose initial applications are preliminarily selected must then submit a final Federal financial assistance award application package, including proposed projects and supporting documentation, and all required Federal financial assistance forms as described in the relevant program section below. The required Federal financial assistance forms SF–424, SF–424A, SF–424B, CD–511, CD–512, and if applicable, CD–346 and/or SF-LLL, can be obtained from the NOAA grants Website at *http://www.rdc.noaa.gov/~grants/pdf.* Applicants are required to include one original and two signed hard/paper copies for each final application package submitted.

The number of awards made under this funding Guidance may vary. See each program description in sections II - VII for more information. Successful applicants may be asked to revise award objectives, work plans, or budgets prior to submittal of the final application. The exact amount of funds to be awarded, the final scope of activities, the project duration, and specific NOAA cooperative involvement with the activities of each project will be determined in pre-award negotiations among the applicant, NOAA Grants Management Division (GMD), and relevant NOAA staff. Projects should not be initiated in expectation of Federal funding until a notice of award document is received from NOAA GMD. Publication of this document does not obligate NOAA to award any specific project or obligate all or any part of the available funds.

I. Authority

Statutory authority is provided under Section 6403 (Coral Reef Conservation Program) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq.*). Each program's Catalog of Federal Domestic Assistance (CFDA) number can be found in the specific program information included in sections II - VII below.

II. State and Territory Coral Reef Management

A. Program Description

This description provides requirements for applying for funding appropriated by Congress to NOAA and DOI in FY 2003 to support comprehensive programs for the conservation and management of coral reefs and associated fisheries in the jurisdictions of Puerto Rico, the U.S. Virgin Islands (USVI), Florida, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and American Samoa.

NOAA's National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM) and National Marine Fisheries Service (NMFS) Office of Habitat Conservation (OHC), and DOI Office of Insular Affairs (OIA) are jointly providing approximately $2,100,000 in funding for cooperative agreements to support state and territorial coral reef and coral reef fishery management and conservation activities as listed in E(2) below.

Each jurisdiction need only develop and submit one comprehensive coral reef management application for the funds available under this section. The Federal agencies will coordinate their reviews of each application to ensure comparability and continuity. It is anticipated that OCRM will make awards to four of the seven jurisdictions and that DOI/OIA will make awards to the remaining three jurisdictions.

B. Eligibility Criteria

The eligible applicants are the governor-appointed point of contact agencies for coral reef activities in each of the jurisdictions of American Samoa, Florida, CNMI, Guam, Hawaii, Puerto Rico, and USVI.

C. Funding Availability and Mechanism

1. Funding Availability

Approximately $2,100,000 in FY 2003 funding is available for Coral Reef and Coral Reef Fishery Management cooperative agreements. Funding will be subject to the availability of federal appropriations. Support in out years after FY 2003 is contingent upon the availability of funds and the requirements of the Federal agency supporting the project. Each eligible jurisdiction can apply for a maximum $400,000.

2. Funding Mechanism

Cooperative agreements will be awarded to each eligible jurisdiction. Applicants may submit applications covering a 12- to 18–month period with

an anticipated start date of October 1, 2003.

D. Matching Funds

The requirements for matching funds under Section VIII(3) of the Guidance are applicable to Funding Availability under this program. Specific information to be submitted in regard to matching funds can be found in the Application Content and Format Section below.

E. Application Content and Format

1. Application Content

Applications should reflect the *National Coral Reef Action Strategy*, the U.S. Coral Reef Task Force *National Action Plan to Conserve Coral Reefs*, and local strategies for coral reef management, such as the 1999, *U.S. All Islands Coral Reef Initiative Strategy*, as modified by the events and activities of the last 3 years. In addition, proposed activities should be coordinated, where appropriate, with ongoing and proposed NOAA coral reef mapping, monitoring, coastal zone and fishery management initiatives, and DOI Fish and Wildlife Service and National Park Service coral reef activities.

In light of the October 2002 U.S. Coral Reef Task Force resolution to implement a regional process to address six key focus areas, jurisdictions are encouraged to propose funding under this program for local projects and participation in support of this effort. A copy of the Task Force Resolution is available at *http://coralreef.gov/res1cfm/*.

In developing the application, applicants must consult with all relevant State and/or Territory governmental and non-governmental entities involved in coral reef activities in their respective jurisdictions. Those agencies consulted must include coastal zone management, water quality, and wildlife and/or marine resource agencies.

Funding under this award is also intended to support jurisdictional participation in national coral reef planning activities, such as U.S. Coral Reef Task Force meetings. As such, applicants should include in their proposal, anticipated travel costs associated with attendance and participation at U.S. Coral Reef Task Force and other relevant meetings and conferences.

Applicants may submit applications covering up to an 18–month period and must meet all applicable Department of Commerce (DOC) or DOI grant requirements. Initial and final applications must be submitted to NOAA by the due dates established in the DATES section above. Federal financial assistance forms are not required to be submitted with the initial application; however, all applicable Federal forms must be submitted with the final application. One original and two signed hard/paper copies of the final application, including forms, are required.

Large equipment and/or infrastructure acquisitions are not a priority for funding under this program. Such purchases proposed herein will be reviewed on a case by case basis with respect to the specific management objectives of this and the local coral reef program.

2. Application Format

In developing the proposal, applicants must organize proposed tasks into the following nine key threat management categories (a - i; below), which are based on those found in the threat and management action matrices developed by the All Islands Group:

a. *Climate Change, Coral Bleaching, Diseases and Extreme Biotic and Storm Events*, e.g., applied research, monitoring, or planning to better understand and manage impacts;

b. *Overfishing, Destructive Fishing, and the Harvest and Collection of Marine Ornamentals (Including Coral)*, in FY 2003, NMFS OHC has provided $350,000 of the total $2,100,000 to fund priority state and territorial coral reef fishery management activities. Proposed funding for coral reef fishery management tasks should not exceed $60,000 per jurisdiction, and should be budgeted within the jurisdiction's comprehensive proposal.

The mandate of NMFS is to build sustainable fisheries, recover protected species, and sustain healthy habitats for these species. These tasks should be developed in the same format as the other coral reef management tasks and included and submitted in the comprehensive application. Examples of eligible projects include:

(i) Assessment and monitoring of fish and fishery resources, collection of fishery information;

(ii) Analysis of fishery impacts on reefs and support for the implementation of fishery gear restrictions or other priority regulations;

(iii) Development of fishery reserves;

(iv) Activities to improve management of ornamental reef species for the aquarium industry;

(v) Hiring or training of enforcement officers; and,

(vi) Outreach and education on fishery and endangered species issues.

c. *Increasing Development Pressure, Unmanaged Land Use, and Population Growth*, e.g., tasks to forward the conservation and management of coral reefs through planning, designation, implementation and evaluation of land use and marine protected areas; including personnel training, equipment procurement, management plan development, signage, monitoring and enforcement, etc.;

d. *Tourism and Recreational Overuse, and Vessel Groundings and Anchorings*, e.g., coastal zone management activities, marine and land zoning, vessel grounding prevention and management, mooring buoy installation, recreational signage, etc.;

e. *Alien and Invasive Species*, e.g., policy development, mitigation projects, etc.;

f. *Marine Pollution, Sedimentation, Runoff, Nonpoint Source Pollution, and Marine Debris*, e.g., tasks focused on: (1) Oil-spill prevention and response, e.g., developing response plans, personnel training, interagency coordination, etc.; (2) Marine debris prevention and removal, e.g., developing prevention policies, collection and disposal of debris, etc.; and (3) Reducing impacts from land-based/watershed pollution source, e.g., Best Management Practices (BMP) planning and implementation, watershed restoration projects, etc.;

g. *Lack of General Public Awareness*, e.g., tasks to increase general coral reef awareness including brochures and other informational materials, public meetings and workshops, etc.;

h. *National Security Activities*, e.g., tasks intended to support coordination toward the management of impacts from national security activities; and,

i. *Other*, e.g., activities that address other threats.

The first page of the application should consist of the cover page described in the **SUPPLEMENTARY INFORMATION** section at the beginning of this document.

For each category in which one or more task is proposed, the applicant must include the following information:

a. A brief introduction that describes the status of the issue in the jurisdiction as addressed by the proposed task; recent actions undertaken to address the issues, with a focus on the status of previous federally funded tasks; the jurisdiction's strategy to address critical needs over the medium term; and, a justification for the proposed task.

b. A description of each proposed task that must include:

(i) The category of management action from the All Islands Group management action matrix under which the proposed activity falls;

(ii) Clear identification of the work to be completed, who will perform the

work, relationship to ongoing projects and how the project fits into the jurisdiction's strategy for addressing the issue;

(iii) How the project coordinates with relevant local governmental and non-governmental agencies and, if applicable, NOAA or DOI regional activities;

(iv) Task timetable with interim benchmarks and clearly-defined work products;

(v) Project priority as compared to all other proposed projects; and,

(vi) A Summary Budget that includes a detailed breakdown of costs by category and information regarding the amount of matching funds available to the applicant, as described in Section VIII(3) of this Guidance. Intended sources of matching funds must be identified in the application, and applicants whose proposals are selected for funding will be required to submit with the final application, letter(s) of commitment to fund from the organization(s) providing matching funds.

c. Each application must also include, on the last page, a summary budget table of all projects, which lists the name of each project proposed and the corresponding total cost and matching funds information.

F. Application Evaluation and Selection Criteria

1. Evaluation Criteria

Applications will be peer-reviewed by individuals with coral reef and fisheries management experience on the following equally weighted evaluation criteria, as evidenced by information in the application:

a. Documented need for the proposed coral reef management activity to fill gaps in the jurisdiction's management capacity;

b. Demonstrated coordination with applicable ongoing local, state, territorial, and Federal coral reef management activities;

c. Technical merit of the proposed management activity; and,

d. Ability of the work to be completed for the funding and timing proposed.

Subsequently, a Federal agency team of representatives from NMFS, OCRM, and OIA will review the applications, pursuant to equally weighted criteria described in Section X(3) of the Guidelines and comments received from peer reviewers. Based on this review, the team will make a preliminary funding recommendation for each jurisdiction.

2. Selection Criteria

OCRM and DOI will then provide the preliminary funding recommendation and application comments to each selected jurisdiction. These comments will include input from peer reviewers and the Federal agency team and are intended for use in the applicant's development of the final application.

Upon receipt of the final application, complete with the requisite Federal financial assistance forms, the Federal agency team will review the complete package and make final funding recommendations based on the response to comments that were returned to the applicant. The team will submit these funding recommendations to the NOAA review panel for final review, pursuant to Section X(4) of the Guidelines.

If all available funds are not awarded, NOAA and DOI will consult with the eligible applicants on the use of any residual funds. NOAA and DOI will work with each jurisdiction to ensure the greatest degree of success in meeting local, state, territorial, and national coral reef management needs.

G. Program Authority

Specific authority for the NOAA program is found in 16 U.S.C. 6403. NOAA proposals will be reviewed and awarded by OCRM under title, *Coastal Zone Management Program*, CFDA Number: 11.419.

III. State and Territory Coral Reef Ecosystem Monitoring

A. Program Description

This description provides requirements for applying for funding appropriated by Congress to the NOAA in FY 2003 to support state and territorial coral reef ecosystem monitoring. This program will be administered by the NOS National Centers for Coastal and Ocean Science (NCCOS).

NOAA and its partners are implementing a nationally coordinated, comprehensive, long-term monitoring program to assess the condition of U.S. coral reef ecosystems and evaluate the effectiveness of coral reef ecosystem management decisions. This program was requested by the U.S. Coral Reef Task Force, which, along with the nation's coral reef program managers and the public, endorsed and called for implementation of "A National Program to Assess, Inventory, and Monitor U.S. Coral Reef Ecosystems."

NOAA began implementing the Program in 2000 and continues to administer it with Congressional appropriations for coral reef conservation. The Program includes the collection, analysis, and reporting of long-term coral reef ecosystem monitoring data pursuant to scientifically valid methodologies and protocols and is a key priority of the *National Coral Reef Action Strategy*.

The implementation plan calls for integration of now-disparate monitoring sites into a coordinated national network, sharing of monitoring information among U.S. coral reef resource managers and scientists, and filling gaps in monitoring coverage nationwide. Through this Program, U.S. Federal, state, commonwealth, and territory, and Freely Associated State agencies support a variety of local and regional assessments, inventories, and monitoring of U.S. and U.S. affiliated coral reef resources. Additionally, there are several regional volunteer and community monitoring programs regularly assessing reef resources. A nationally coordinated coral monitoring infrastructure will enable the preparation of a biennial science-based report on the condition or "health" of U.S. coral reef ecosystems and support local coral reef management efforts.

The nation's coral reef resource managers have recommended key biotic and abiotic parameters that should be monitored at all local sites in the National monitoring network:

1. Benthic habitat characterization (e.g., depth, habitat delineation, and/or percent live/dead cover of corals, submerged aquatic vegetation, macroalgae, sponges, rugosity, diversity, etc.);

2. Associated biological community structure including fish condition (e.g., abundance, density, size, diversity, disease, harvest trends) and large motile and sessile invertebrates condition (abundance, density, size, diversity, disease, harvest trends); and,

3. Water/substrate quality (e.g., temperature, nutrient enrichment, toxic chemicals, turbidity).

Proposed work should include multi-organizational partnerships (local, regional, Federal, and possibly international) that build local capacity for maintaining long-term monitoring sites as part of a National Coral Reef Monitoring Network. NOAA will be an active partner in the development and implementation of the award; thus, proposals should be structured as cooperative agreements between NOAA and the principal investigators. For these proposals, it is appropriate to include the equipment necessary to build capacity to archive biotic transects (e.g., one or more digital videography cameras with underwater housing, museum maintenance of reference specimen collections, etc.).

B. Eligibility Criteria

Eligible applicants are limited to the natural resource management agency in each U.S. State or Territory, or Freely Associated State, with jurisdiction over coral reefs, as designated by the respective governors or other applicable senior jurisdictional official. NOAA is requesting proposals from Puerto Rico, Florida, U.S. Virgin Islands, Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Republic of Palau, and the Republic of the Marshall Islands. Federal agencies are not eligible for funding under this Program.

Furthermore, to be eligible for FY 2003 funding, applicants previously receiving funds under this Program must have made significant progress implementing those tasks and met data submission deadlines, including all performance and fiscal reporting requirements and data transfers.

C. Funding Availability and Mechanisms

1. Funding Availability

Approximately $840,000 will be available in FY 2003 for coral reef ecosystem monitoring activities under this program. FY 2003 awards to Puerto Rico, Florida, U.S. Virgin Islands, Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are expected to range from $50,000 to $100,000. FY 2003 awards to the Federated States of Micronesia, Republic of Palau, and the Republic of the Marshall Islands are expected to be approximately $10,000 to $20,000 per year. Funding will be subject to the availability of federal appropriations.

2. Funding Mechanism

Funds will be administered though cooperative agreements between eligible organizations and NCCOS. FY 2003 awards to Puerto Rico, Florida, U.S. Virgin Islands, Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands may submit proposals up to 3 years in duration, at funding levels between $50,000 to $100,000 per year (e.g., up to $300,000 for 3–year continuation proposal). FY 2003 awards to the Federated States of Micronesia, Republic of Palau, and the Republic of the Marshall Islands may submit proposals up to three years in duration, at funding levels between $10,000 - $20,000 per year (i.e., $60,000 for three year continuation proposal). FY 2003 awards, however, will only provide funding for the monitoring activities proposed for FY 2003, and funding for out years is contingent on subsequent years' appropriations. Multiple-year proposals must specify the budget and activities for each year. Annual projects should follow the Federal fiscal year, beginning on October 1 and ending September 30.

D. Matching Funds

The requirements for matching funds under Section VIII(3) of the Guidance are applicable to Funding Availability under this program. Specific information to be submitted in regard to matching funds can be found in the Application Content and Format section below.

E. Application Content and Format

1. Content

Application Content should be developed and submitted according to the following guidelines:

a. *First time applicants for monitoring awards*: Eligible activities for the first year of proposed funding (i.e., FY 2003) include an initial characterization of baseline ecosystem condition, an inventory/mapping of biotic resources, and an assessment of anthropogenic stressors (e.g., contaminants in lagoon sediments, sedimentation conditions, eutrophication, etc.) if these studies are prerequisite to establishing new long-term monitoring sites. Activities can also include database development and training of field crew. Proposed second and third year work should follow the guidelines for previous recipients below.

b. *Previous recipients of NCCOS monitoring awards*: Proposals from previous recipients should detail the monitoring design, sampling parameters and protocols, data management, and the need/context for establishing new long-term monitoring sites. Proposals should describe how the proposed monitoring meets local coral conservation needs and fits into ongoing long-term assessments, inventories, and monitoring within the jurisdiction and/or region. Each proposal must provide enough specificity on the parameters to be monitored, the design and frequency of sampling, methods used, data management and quality assurance, and other information for peer-reviewers to judge the quality of proposed work. Of particular importance to creating a National Coral Reef Monitoring Network, each proposal should also address (1) how compatible the proposed data (e.g., data confidence limits, standardized protocols) will be with other jurisdictional and regional databases, and (2) when and in what format the data will be available to NOAA. The information produced through these awards is intended to fill gaps in knowledge of coral reef ecosystems nationwide, track and predict changes in coral reef ecosystems nationwide, and serve as the foundation for biennial reporting in the *Report of the Health of U.S. Coral Reef Ecosystems.*

In addition, each jurisdiction's proposal for FY 2003 must include the preparation of a comprehensive assessment of coral reef ecosystem health. This will be each jurisdiction's contribution to the *Report on the Health of U.S. Coral Reef Ecosystems: 2004.* Toward this end, FY 2003 proposals may budget for travel to at least one national workshop, costs for preparing and printing a jurisdictional report on the condition of coral reef ecosystems, and related expenses.

In light of the October 2002 U.S. Coral Reef Task Force resolution to implement a regional process to address six key focus areas, jurisdictions are encouraged to propose funding under this program for local projects and participation in support of this effort.

2. Application Format

Applicants must submit initial applications, inclusive of elements a-e below, by the date established in the DATES section above. Applications are limited to 15 standard letter size pages, including attachments, and font should be Times New Roman, 12 point or larger.

a. *A Cover Page* as described in the SUPPLEMENTAL INFORMATION section at the beginning of this Guidance;

b. *A Project Description* (i.e., narrative description) for each proposed task that includes: the specific priority management questions that are driving the effort, how data collected will be translated and transferred to the local management community, project objectives, and a timetable with project milestones;

c. *A Summary Budget* that includes a detailed breakdown of costs by category and a description of the amount of matching funds available to the applicant, as described in Section VIII of the Guidelines. Each subcontract or subgrant should be listed as a separate item. Describe the products or services to be obtained and indicate the applicability or necessity of each to the project. Provide separate budgets for each subcontract or subgrant and indicate the basis for the cost estimates. More detailed budget instructions are available at http://biogeo.nos.noaa.gov/~jchristensen/mon__web/. Intended

sources of matching funds must be identified in the application. Applicants whose proposals are selected for funding will be required to submit letter(s) of commitment to fund from the organization(s) providing matching funds with the final application. Multiple-year proposals must specify the budget and activities for each year;

d. *Curriculum Vitae* for principal investigators;

e. *Summary Project Abstract*; and,

f. *All required NOAA Federal financial assistance awards* - forms (see below). One original and two copies of the jurisdiction's application must be submitted to NOAA by the date established in the DATES section at the beginning of this Guidance.

Final applications must include all elements of the initial application, any responses to comments and edits, all required NOAA Federal financial assistance forms (element f above), and must be received by NOAA on or before the date established in the DATES section above. One original and two signed hard copies of the final applications are required.

The NOAA Grants Management Division program web site, *http://www.rdc.noaa.gov/~grants/index.html*, provides detailed application instructions and electronic versions of Federal financial assistance forms. The two most relevant sections at this web site are, "C. Instructions and Guidelines," and, "D. Application Forms for Initial Proposal Submission." Applicants should review their application package prior to submission and be sure that all blocks on forms SF–424, SF–424A, SF–424B, CD–511, CD–512, and if applicable, CD–346 and/or SF-LLL have been filled in completely. Monitoring program Applicants should reference http://biogeo.nos.noaa.gov?~jchristensen/mon__web/ for instructions on filling out forms SF–424 and SF–424A.

F. Application Evaluation and Selection Criteria

1. Evaluation Criteria

Applications will be peer-reviewed by a small panel of representatives from relevant U.S. State, Territory, and Federal, and Freely Associated State agencies, as well as the jurisdictional coral reef Points of Contact (POCs). Each POC will be asked to review one or more proposals from other jurisdictions, but never their own. Proposals will be peer-reviewed on the following criteria:

a. The jurisdiction's need for such work to fill gaps in monitoring coverage and build local capacity for long-term monitoring of coral reef ecosystems;

b. The quality of the proposed science and potential for the resulting data to be incorporated into a National Monitoring Network;

c. The ability of the principal investigators to conduct such work; and,

d. Support for the All Islands Coral Reef Initiative, in applicable jurisdictions.

Reviewer results will be shared with applicants, and applicants will be given the opportunity to revise their application and/or respond to reviewer comments.

Taking into consideration comments received from peer reviewers, NCCOS will evaluate each proposal and develop funding recommendations based on the criteria in Section X(3) of the Guidelines. In evaluating the technical merit and adequacy of the implementation plan, NCCOS will apply the following 3 equally weighted criteria:

a. *Relevance to establishing a national monitoring network*. The principal objective of the proposals should be to fill priority gaps or needs in coral reef monitoring and assessment programs, such that they contribute to the creation of a comprehensive and coordinated network of monitoring sites for U.S. coral reef ecosystems. In subsequent years, the project should be monitoring the "minimum suite of key biotic and abiotic parameters," (as listed in the program description) at least once a year, at one or more sites;

b. *Quality assurance and error estimates for parameter measurements*. Flexibility of methodologies for acquiring measurements is allowable, as long as they are done *in situ* and are quantitatively reliable within a jurisdiction and across a region. Where possible, NOAA favors a stratified random sampling design for site selection (i.e., ideally based on reliable habitat maps), multi-methodological monitoring of the ecosystem (i.e., line transects for cryptic species, point-count surveys for large pelagic species), and sample archiving (i.e., species reference collections, transect/survey videographic records); and

c. *Potential to meet data reporting requirements and the ability of transferring the data to the local or regional management community*. Data from proposals must be useful in preparing the biennial report on the *Health of U.S. Coral Reef Ecosystems*. Grant recipients will provide raw or synthesized data to NCCOS no later than 3 months after data collection. The data generated in the National Coral Reef Ecosystem Monitoring Program will by used by NOAA and its partners to develop regional and national state of the reef reports and disseminated to the public via NOAA's Coral Reef Information (CoRIS) Web site development (*http://www.coris.noaa.gov*). Biotic data integrity is critical for sharing of information and detection of national/regional trends and hotspots. Each jurisdiction will need to have basic data management quality controls and quality assurances for its data. Funding eligibility for future funding years will be contingent on meeting data submission deadlines including all performance and financial reporting requirements and data transfers.

2. Proposal Selection

Based on these reviews, NCCOS will provide a preliminary funding recommendation and proposal comments to each selected applicant. These comments will include input from peer reviewers and the Federal agency team and are intended for use in the applicant's development of the final application.

Upon receipt of the final application, complete with the requisite Federal forms, the Federal agency team will review the complete package and make final funding recommendations based on the incorporation and/or response to comments that were returned to the applicant. NCCOS will submit these funding recommendations to the NOAA review panel for final review, pursuant to Section X(4) of the Guidelines.

G. Program Authority

Specific authority for this program is found in 16 U.S.C. 6403. Proposals will be reviewed and awarded by NCCOS under title, *Financial Assistance for National Centers of Coastal Ocean Science*, CFDA 11.426.

IV. Coral Reef Ecosystem Research

A. Program Description

In FY 2003, the Program is providing $600,000 to NOAA's Undersea Research Program (NURP) to cooperatively administer NURP coral reef grant programs for the Caribbean, Florida, Hawaii, and the Western Pacific. Three separate requests for proposals will be announced. The Hawaii Undersea Research Laboratory will administer and announce the program for Hawaii and the Western Pacific; the Caribbean Marine Research Center will address research needs in the U.S. Caribbean; and the Southeastern U.S. and Gulf of Mexico Center will announce a joint program in partnership with the U.S. Environmental Protection Agency and the Sanctuary Friends of the Florida Keys, which will support research in the

Florida Keys National Marine Sanctuary. All three requests for proposals and program descriptions are available at *http://www.nurp.noaa.gov/noaacoral.html* or by contacting the appropriate regional contact persons identified in the contact information section (C) below. The grant eligibility and matching requirements and review process will be consistent with the NOAA Coral Reef Conservation Grant Program Guidelines.

Please Note: Proposals are not being solicited for Coral Reef Research at this time. Separate solicitations will be made at a later date. For more information see "C. Contact Information" below. Funding will be subject to the availability of federal appropriations.

B. Research Priorities

Research supported through this program will address priority information needs identified by coral reef ecosystem managers and scientists. FY 2003 priorities include research on coral disease and bleaching, fisheries population dynamics and ecology, effects of anthropogenic stressors on benthic invertebrates, impacts and spread of invasive species, and evaluation of management actions and strategies. Specific priorities within these broad areas, and geographic preferences, will be indicated in each NURP Center's request for proposals.

C. Contact Information

For overall information regarding the NURP Coral Reef Grants Program contact: Kimberly Puglise, 301–713–2427, extension 199 or e-mail at *kimberly.puglise@noaa.gov*, or see: *http://www.nurp.noaa.gov/noaacoral.html*.

For information regarding the NURP Center for the Caribbean contact: Craig Dahlgren, 561–741–0192, extension 231 or e-mail at *cdahlgren@cmrc.org*.

For information regarding the NURP Center for the Southeastern United States and the Gulf of Mexico contact: Andrew Shepard, 910–962–2446 or e-mail at *sheparda@uncw.edu*.

For information regarding the NURP Center for Hawaii and the Western Pacific contact: Keith Crook, 808–956–9429 or e-mail at *Crook@soest.hawaii.edu*.

V. General Coral Reef Conservation

A. Program Description

This description provides guidance for applying for funding appropriated by Congress to NOAA in FY 2003 to support efforts by educational and non-governmental institutions to conserve the coral reef ecosystems of the United States and the Freely Associated States in the Pacific (Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia). This program will be administered by the National Marine Fisheries Service (NMFS) Office of Habitat Conservation (OHC).

The objective of this program is to support educational and non-governmental institution led programs and projects in U.S. States and Territories and the Freely Associated States to:

1. Help preserve, sustain and restore the condition of coral reef ecosystems;

2. Promote the wise management and sustainable use of coral reef resources; and,

3. Increase public knowledge and awareness of coral reef ecosystems and issues regarding their conservation.

B. Criteria Changes in FY 2003

Please note the following criteria changes in the FY 2003 General Coral Reef Conservation program:

1. Applicant Eligibility: Government agencies of U.S. States, Territories, and Commonwealths, and Freely Associated States are not eligible under this category in FY 2003. U.S. State and Territory government agencies are eligible under section II and III, and government agencies of the Freely Associated States are eligible under section III and VII.

2. Project Eligibility: Applications for research activities will not be eligible under this category in FY 2003. Applicants interested in submitting coral research proposals should consult section IV. Coral Reef Ecosystem Research.

3. Award size: It is expected that most awards will range from a minimum of $15,000 to a maximum of $50,000. This is less than the maximum in FY 2002.

C. Eligibility Criteria

Eligible applicants include institutions of higher education, non-profit organizations, commercial organizations, and local and Indian tribal governments. U.S. State, Territory, and Commonwealth, and Freely Associated State Government Agencies are not eligible under this category in FY 2003. Federal agencies are eligible under this program; however, pursuant to Section IV of the Guidelines, such applications will be a low priority unless they are an essential part of a cooperative project with other eligible educational or non-governmental institutions. In order for a Federal agency to receive an award under this program, it must provide the requisite statutory authority to receive funds from a Federal agency for these purposes. Please note that the Economy Act, 31 U.S.C. 1535, is not sufficient legal authority because NOAA is not procuring goods or services from the federal agency. Regional Fishery Management Councils are not eligible under this program.

D. Funding Availability and Mechanisms

1. Funding Availability

Approximately $400,000 in funding is available in FY 2003 for awards under this program. It is expected that most awards will range from a minimum of $15,000 to a maximum of $50,000. Funding will be subject to the availability of federal appropriations.

2. Funding Mechanism

Applications selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this document. Applications selected for funding from Federal agencies will be funded through an interagency agreement. Generally, NMFS will make awards only to those projects where requested funding will be used to complete proposed activities within a 18–month period from the approved start date of the project.

E. Matching Funds

The requirements for matching funds under Section VIII(3) of the Guidance are applicable to Funding Availability under this program. Specific information to be submitted in regard to matching funds can be found in the Application Content and Format section here.

F. Application Content and Format

1. Application Content

Applications should support the *National Coral Reef Action Strategy* and the following goals of the U.S. Coral Reef Task Force *National Action Plan to Conserve Coral Reefs*: A.II. Assess and Monitor Reef Health; A.IV. Understand Social and Economic Factors; B.I. Improve Use of Marine Protected Areas (MPAs); B.II. Reduce Impacts of Fishing; B.IV. Reduce Pollution; B.V. Restore Damaged Reefs; and B.VI. Improve Education. In addition, proposed activities should be coordinated, where appropriate, with ongoing and proposed NOAA mapping, monitoring, and coral reef or fishery management initiatives, and DOI Fish and Wildlife Service and National Park Service coral reef activities.

Applicants must consult with all relevant state, territory, and local

governmental and non-governmental entities involved in coral reef activities in developing the application. Local government agencies that must be consulted include coastal zone management, water quality, and wildlife and/or marine resource agencies.

Applicants may submit applications covering a 12–to 18–month period, and must meet all applicable DOC grant requirements. One copy of the initial application, submitted electronically or by surface mail, must be received by NOAA by the date established in the DATES section above.

One original and two signed copies of the final application, complete with all required Federal financial assistance forms (SF–424, SF–424A, SF–424B,, CD–511, CD–512, and, if applicable, CD–346 and/or SF-LLL) must be received by NOAA by the date established in the DATES section above. In addition, applicants may choose to submit an electronic copy (in Word Perfect, Microsoft Word, or PDF) with the required original and hard copies of the final application.

2. Application Format

In developing the application, the applicant must catagorize proposed tasks into the following 7 categories, which are based on a subset of those found in the *National Action Plan*:

a. *Monitoring and assessment of coral reefs or reef resources*; e.g., community or non-governmental organization monitoring or assessment programs that complement State or Territorial coral reef monitoring programs funded out of the NCCOS Coral Reef Monitoring Award,

b. *Socio-economic and resource valuation*, e.g., community assessments, economic valuations, alternative income generation workshops, etc.,

c. *Marine Protected Areas and associated management activities*, especially assessment of the gaps in protection of existing marine protected area systems, and outreach and education efforts,

d. *Coral reef fisheries management*, e.g., resource assessments, collection of fishery information, outreach to fishers, co-management of coral reef fisheries by fishing communities, etc.,

e. *Reducing pollution*, e.g., marine debris prevention and removal, reducing impacts from land-based/ watershed pollution sources, etc.,

f. *Coral reef restoration*, e.g., restoration of coral reef habitats resulting from physical and biological disturbances such as orphan vessel groundings, storm events, coral disease and coral predator outbreaks, and anthropogenic disturbances, particularly projects utilizing innovative coral restoration technologies and/or comprehensive evaluation of restoration sites, and

g. *Public education and outreach activities*, e.g., brochures and other informational materials, public meetings and workshops, etc., particularly those which address the needs of local user groups.

Please Note: Coral reef research activities are not eligible for funding under this General Coral Reef Conservation program. Applicants interested in submitting coral reef research proposals should consult section IV. Coral Reef Ecosystem Research of this Guidance.

In addition, the following projects will not be eligible for funding:

(1) Activities that constitute legally required mitigation for the adverse effects of an activity regulated or otherwise governed by state or Federal law;

(2) Activities that constitute mitigation for natural resource damages under Federal or state law; and,

(3) Activities that are required by a separate consent decree, court order, statute or regulation.

Applications for the coral reef conservation activities beyond the scope of those legally required by mitigation or restoration activities as described above, are eligible under this program. For each project proposed, the applicant should not exceed 20 pages, including descriptions of qualification, letters of support and no more than five pages of other attachments, and should use 12–point font on letter size paper. Each application must include the following:

1. The cover page described in the **SUPPLEMENTARY INFORMATION** section at the beginning of this Guidance.

2. An introduction, not to exceed one page, that describes:

a. The status and magnitude of the issues in the jurisdiction where the project will take place;

b. Recent actions undertaken to address the issues, with a focus on federally funded tasks; and

c. How the project fits into the jurisdiction's strategy to addressing critical coral reef conservation needs the next 2–to 3–years.;

3. A description of each proposed task that includes:

a. Clear identification of the work to be completed and who will perform the work;

b. How the project coordinates with relevant state, territorial, or local governmental and non-governmental agencies, and if applicable, NOAA regional activities;

c. A narrative Budget Summary that includes a detailed breakdown of costs by category and information regarding the amount of matching funds available to the applicant, pursuant to Section VIII(3) of this Guidance. Intended sources of matching funds must be identified in the application. Applicants whose proposals are selected for funding will be required to submit with the final application, letter(s) of commitment to fund from the organization(s) providing matching funds; and

d. Task timetable with interim benchmarks and clearly defined work products.

G. Application Evaluation and Selection Criteria

1. Evaluation Criteria

Applications will be peer-reviewed on the following equally weighted evaluation criteria by individuals with coral reef conservation experience:

a. Documented need for the proposed coral reef activity in the jurisdiction;

b. Demonstrated coordination with applicable ongoing local, state, territorial, and Federal coral reef management activities;

c. Technical merit of the proposed activity;

d. Ability of the work to be completed for the funding and timing proposed (projects that can be completed within 18- months of the start date will receive a higher score for this criterion); and,

e. Evidence presented of the capacity of the applicant to conduct the proposed work, including past performance on similar projects or programs involving coral reef ecosystems. NOAA will request and consider written comments on proposed projects from each agency with jurisdiction over coral reef ecosystems in the area where the project is to be conducted, pursuant to Section X(1) of the Guidelines.

NMFS will then review the applications, consistent with the equally weighted criteria listed in Section X(3) of the Guidelines and comments received from peer reviewers and jurisdictions.

2. Selection Criteria

In addition to these peer review criteria and comments from jurisdictions, NMFS will strive for a balanced selection of projects among jurisdictions and subject areas. Based on these cumulative reviews, NMFS will make preliminary funding recommendations which may not be the highest scoring proposals. NMFS will provide a summary of review comments to each selected applicant. These summary comments will include input from peer reviewers, the solicited

jurisdictions, and the NMFS review, and are intended to be used in the applicant's development of the final application.

Upon receipt of the final application, complete with the requisite Federal forms, NMFS will review the complete package and make final funding recommendations based on the incorporation of, and/or response to, comments that were returned to the applicant. NMFS will submit these funding recommendations to the NOAA review panel for final review, pursuant to Section X(4) of the Guidelines. The review panel will ensure that funding decisions are consistent with the geographic distribution requirements of 16 U.S.C. 6403(d). As a result, awards may not necessarily be made to the highest scoring applications.

If insufficient eligible projects are received, NOAA may reallocate residual funds from this program area to a different funding category under the Program.

H. Program Authority

Specific authority for this program is found in 16 U.S.C. 6403. Proposals will be reviewed and awarded by the National Marine Fisheries Service Office of Habitat Conservation under title, *Habitat Conservation*, CFDA 11.463.

VI. Projects to Improve or Amend Coral Reef Fishery Management Plans

A. Program Description

This description provides guidance for applying for funding appropriated by Congress to NOAA in FY 2003 to support conservation and management of coral reef fisheries by Regional Fishery Management Councils with responsibilities for Fishery Management Plans (FMP) that include coral reefs or fishery resources that depend on these reef ecosystems, as established under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). This program will be administered by the NMFS Office of Habitat Conservation (OHC).

The objective of this program is to support value-added studies or projects by the Councils that will enhance the conservation of coral reef fishery resources. It is not intended to support normal Council activities or responsibilities.

B. Eligibility Criteria

Applicants are limited to the Western Pacific Regional Fishery Management Council, South Atlantic Fishery Management Council, Gulf of Mexico Fishery Management Council, and Caribbean Fishery Management Council.

C. Funding Availability and Mechanisms

1. Funding Availability

NMFS OHC will provide approximately $1,350,000 in FY 2003 funding for cooperative agreements to support coral reef conservation activities under this program. In order to ensure the regional balance called for by the Coral Reef Conservation Act of 2000, a maximum of $750,000 will be available for activities in the Western Pacific, and a maximum of $600,000 will be available for activities in the South Atlantic, Gulf of Mexico, and Caribbean. Funding will be subject to the availability of federal appropriations.

2. Funding Mechanism

Cooperative agreements will be awarded to successful applicants from each eligible Regional Fishery Management Council for eligible activities. Activities approved by NOAA will be awarded either as new cooperative agreements or amendments to existing cooperative agreements by either the Southeast Region or the Pacific Islands Area Office. Proposals should cover a project period of 12–to 18–month period with an anticipated start date of October 1, 2003.

D. Matching Funds

The Administrator has waived the matching requirement of Section X of the Guidance for the Fishery Management Councils. This waiver is based on the fact that the Councils are funded solely by awards from the U.S. Federal Government, and, therefore, do not have the ability to generate matching funds.

E. Application Content and Format

1. Application Content

Applications should support the *National Coral Reef Action Strategy* and the U.S. Coral Reef Task Force *National Action Plan to Conserve Coral Reefs*. In addition, proposed activities should be coordinated, where appropriate, with ongoing and proposed NOAA mapping, monitoring, and fishery management initiatives, and State and Territorial coral reef conservation initiatives in their own waters contiguous to the Federal Exclusive Economic Zone.

Fishery Management Councils must consult with state and territorial agencies and all other relevant local governmental and non-governmental entities involved in coral reef activities in developing applications. Councils are strongly encouraged to coordinate project proposal development with NMFS Regions and Science Centers to ensure mutually supportive coral reef conservation programs.

Councils may submit applications covering a 12–to 18–month period, and must meet all applicable DOC grant requirements. One copy of the initial application, submitted electronically or by surface mail, must be received by NOAA on or before the date established in the DATES section above.

One original and two signed copies of the final application, complete with all required Federal financial assistance forms(SF–424, SF–424A, SF–424B,, CD–511, CD–512, and, if applicable, CD–346 and/or SF-LLL) must be received by NOAA on or before the date established in the DATES section above.

a. Eligible activities: Eligible activities are those that support the Strategy's goal of Reducing the Adverse Impacts of Fishing and other Extractive Uses on Coral Reefs and incorporating these objectives into existing or new Federal fishery management plans. While first priority will be given to proposals for coral reef activities in the Council's jurisdiction, proposals for complementary activities of high conservation value within state waters that are fully coordinated with appropriate state, territory or commonwealth management authorities will also be accepted. Proposed activities should be in addition to those currently supported by NMFS and should not replace support for existing Council staff. The following represent priority activities for funding:

(1) Studies that identify, map and characterize important essential fish habitat, habitat areas of particular concern, and spawning populations in U.S. coral reef ecosystems. Special priority will be given to studies associated with coral reef areas that are currently, permanently, or seasonally closed to fishing or that may merit inclusion in an expanded network of no-take ecological reserves. Eligible activities would include multi-beam or sidescan sonar mapping and characterization of such areas on deeper coral reefs, banks and beds;

(2) Monitoring reef fish stocks in existing no-take marine reserves and reference sites on coral reefs in the Council's jurisdiction to evaluate the effectiveness of reserves;

(3) Studies needed to develop proposals to reduce over-fishing of coral reef resources, including compilation of existing background information on currently unassessed coral reef fishery stocks, or targeted assessments of such coral reef fishery stocks for which overfishing is strongly suspected;

(4) Studies needed to identify adverse effects of fishing and fishing gear on

essential fish habitat and implementing actions to reduce these effects;

(5) Studies, workshops, or consultations with fishers needed to eliminate destructive and habitat-damaging fishing practices;

(6) Studies, workshops, or consultations with fishers needed to assess the adequacy of current fishing regulations and the need for additional gear and anchoring restrictions to reduce habitat damage on coral reefs within the Council's jurisdiction;

(7) Enhanced education and outreach to recreational and commercial fishers specifically targeted to reduce the adverse impacts of fishing on coral reef ecosystems;

(8) Studies needed to understand ecosystem-scale considerations into coral reef fishery management plans;

(9) Studies needed to understand ecosystem effects of fishing, including: the development of models and studies to improve our understanding of larval pathways, trophic interactions and their ecosystem impacts associated with fishing, and habitat impacts associated with certain types of fishing gear and practices; and

(10) Studies needed to reduce the overexploitation of reef organisms for the aquarium trade.

b. Ineligible Activities: The following categories of activities or expenses are not eligible for funding:

(1) Meetings and travel necessary to conduct normal Council business including regular Advisory Panel, Stock Assessment Panel or Scientific and Statistical Committee meetings, Environmental Impact Statement hearings; other public hearings; Fishery Management Council meetings; etc.

(2) Regular Council reports and information dissemination, including annual FMP reports, FMP amendments, public notices, advertisements, etc.

(3) Council staff aside from a maximum of one full-time equivalent working exclusively on Council coral reef conservation activities.

(4) Activities related to FMPs that do not directly include shallow coral reef resources.

2. Application Format

Cooperative Agreement proposals must include:

a. A cover page as described in the **SUPPLEMENTARY INFORMATION** section at the beginning of this Guidance.

b. An introduction, not exceeding one page, that describes:

(1) The status and magnitude of the coral reef fisheries conservation issues in the Council's jurisdiction; and

(2) The Council's strategy to address critical coral reef fisheries conservation needs over the medium term (the next 2- to 3–years) and how the proposed activities support this strategy.

c. A summary, not exceeding three pages, of the status and accomplishments of activities by the Council funded under the Coral Reef Conservation Grant Program in FY 2002.

d. A description of each proposed task that should include:

(1) Objective of the task of study;

(2) Clear identification of the work to be completed, who will perform the work, brief description of the methods to be used, specific study sites (for field projects), expected deliverables, and how the project fits into the Council's strategy for addressing the larger coral reef fisheries conservation issue;

(3) How the project coordinates with relevant local governmental and non-governmental agencies and, if applicable, NOAA regional activities;

(4) Summary budget for each discrete task item including personnel costs (contract and Council staff), other contract costs, travel, supplies or equipment;

(5) Task timetable with interim benchmarks and clearly defined work products; and,

(6) Project priority as compared to all other proposed projects.

F. Application Evaluation and Selection Criteria

1. Evaluation Criteria

Applications will be peer-reviewed on the following equally weighted evaluation criteria by individuals with coral reef conservation experience:

a. Documented need for the proposed coral reef activity in the jurisdiction of the Council;

b. Demonstrated coordination with applicable ongoing local, state, territorial, and Federal coral reef management activities;

c. Technical merit of the proposed activity;

d. Ability of the work to be completed for the funding and timing proposed and cost effectiveness of proposed activity; and,

e. Evidence presented of the capacity of the applicant to conduct the proposed work, including past performance on similar projects or programs involving coral reef ecosystems, and progress on Coral Reef Conservation Grant activities funded in FY 2002.

NOAA will also request and consider written comments on proposed projects from each agency with jurisdiction over coral reef ecosystems in the area where the project is to be conducted, pursuant to Section X(1) of the Guidelines.

A NMFS team of representatives from the OHC, the Southeast Region, the Southeast Fishery Science Center, the Pacific Islands Area Office and the Honolulu Laboratory will review the applications, consistent with the equally weighted criteria listed in Section X(3) of the Guidelines and consider comments received from peer reviewers and appropriate management authorities.

Based on this review, the team will make preliminary funding recommendations. These preliminary funding recommendations will be submitted to the NOAA review team, pursuant to Section X(4) of the Guidelines.

2. Selection Criteria

Based on these cumulative reviews, NMFS will provide comments to each selected applicant. These comments will include input from peer reviewers, solicited jurisdictions, and the NMFS review team, and are intended to be used in the applicant's development of the final proposal.

Upon receipt of the final application, complete with the requisite Federal financial assistance forms, the NMFS team will review the complete package and make final funding recommendations based on the incorporation of and/or response to comments that were returned to the applicant. The team will submit these funding recommendations to the NOAA review panel for final review, pursuant to Section X(4) of the Guidelines.

If proposals from one or more Councils are ineligible to receive funding, NOAA may award those residual funds for eligible activities proposed by another Council or move the residual funds to a different funding category under the Program. NOAA will work with each Council to ensure the greatest degree of success in meeting the goals of the Strategy.

G. Program Authority

Specific authority for this program is found in 16 U.S.C. 6403. These cooperative agreements will be reviewed and awarded by the NMFS under title, *Regional Fishery Management Councils*, CFDA Number: 11.441.

VII. International Coral Reef Conservation

A. Program Description

This description provides guidance for applying for funding appropriated by Congress to NOAA in FY 2003 to support the international conservation and management of coral reef ecosystems. These funds will be administered by NOS International Program Office (IPO).

The Coral Reef Conservation Act of 2000 authorizes cooperative conservation and management of coral reefs and coral reef ecosystems with local, regional or international programs and partners. The *National Action Plan to Conserve Coral Reefs* (National Action Plan) calls on the United States to, "exercise global leadership in the international arena in shaping and developing environmentally sound and comprehensive coral reef policy, strengthen international conventions and foster strategic partnerships with other countries, international organizations and institutions, the public and private sectors, and non-governmental organizations to address international threats to coral reef ecosystems."

In FY 2003, the International program consists of the following four project categories:

1. *Promote Watershed Management in Wider Caribbean Island Nations*: The National Action Plan encourages the U.S. to "provide assistance in managing and conserving reef ecosystems and their watersheds." Further, the U.S. and its partners are launching the White Water to Blue Water Initiative presented at the World Summit on Sustainable Development. This Partnership emphasizes a cross-sectoral approach to marine resources management beginning with the upstream watershed and extending to the adjacent marine environment, including coral ecosystems. It is intended to help implement international agreements and programs, for example, the Barbados Programme of Action for the Sustainable Development of Small Island Developing States, The Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (the Cartagena Convention) and its three protocols (including The Protocol concerning Pollution from Land-based Sources and Activities), and the International Coral Reef Initiative. Therefore, IPO will fund activities that implement best management practices that reduce or control runoff to near shore coral reef ecosystems in the Wider Caribbean; assess effectiveness of these management practices; engage stakeholders and government agencies in collaborative partnerships to implement these practices; and recommend a set of best management practices that can be applied to small island Caribbean systems.

2. *Enhance Management Effectiveness of Marine Protected Areas (MPAs)*: The *National Action Plan* calls for strengthening the protection of resources within existing MPAs. NOAA has launched a strategic partnership with the World Conservation Union's (IUCN) World Commission on Protected Areas (WCPA) and World Wildlife Fund (WWF)International to improve the management of MPAs by providing managers, planners and other decision makers with methods for assessing the effectiveness of MPA sites. Therefore, IPO will fund activities at coral MPA sites that are building an adaptive management and evaluation program and will conduct an assessment of management effectiveness in order to strengthen and achieve the site goals and objectives.

3. *Encourage Regional Approaches to Further No-Take Marine Reserves in the Wider Caribbean and Southeast Asia*: The *National Action Plan* highlights the role that highly protected areas play in creating a network of coral marine protected areas for biodiversity, conservation and sustainable fisheries management. Through this program, IPO will fund regional level activities that benefit existing marine reserves in the Wider Caribbean and Southeast Asia. Southeast Asia shall be defined by Brunei, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam. Furthermore, proposed regional level activities must involve sites in two or more countries and address the needs of no-take marine reserves in the regions as identified in the WCPA - Marine Caribbean Regional Coordination Plan and the WCPA-Marine Southeast Asia Regional Action Plan. The plans with the priority themes can be found at *http://ipo.nos.noaa.gov/coralgrants.html*.

4. *Promote Socio-Economic Monitoring in Coral Reef Management*: The *National Action Plan* highlights that the human dimension is often overlooked in developing coral reef management strategies and calls for measures to enhance understanding of stakeholder benefits and resolve important user conflicts. Recognizing the importance of the human dimension, the GCRMN published *The Socioeconomic Manual for Coral Reef Management*, in partnership with NOAA, WCPA, and the Australian Institute of Marine Science (AIMS), a guide to conducting socioeconomic assessments of reef user groups.

As follow-up, the GCRMN, WCPA-Marine and NOAA are working with ICLARM, the University of West Indies and other partners in the regions to develop socioeconomic monitoring programs specific to Southeast Asia and the Wider Caribbean. These regional programs include three key phases: (1) development of SocMon, i.e., standardized, simple socioeconomic monitoring guidelines for each region; (2) socioeconomic training workshops for reef managers to learn how to conduct SocMon, specifically how to establish socioeconomic monitoring programs at their sites; and, (3) establishment of socioeconomic monitoring programs at participants' coral reef management programs.

Under this project category, IPO will fund phase three - the establishment of socioeconomic monitoring programs at coral reef sites in Southeast Asia and the Wider Caribbean. Proposals for such work in the Wider Caribbean must utilize the SocMon-Wider Caribbean Guidelines; and similarly, proposals for work in Southeast Asia must utilize the SocMon-Southeast Asia Guidelines. For the purpose of this project category, Southeast Asia shall be defined as Brunei, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam. Both sets of Guidelines can be found at *http://ipo.nos.noaa.gov/coralgrants.html*.

B. Eligibility Criteria

Eligible applicants include all international, governmental, and non-governmental organizations, including the Federated States of Micronesia, Republic of Palau, and the Republic of the Marshall Islands. Eligibility is also contingent upon whether activities undertaken with respect to the application would be consistent with any applicable conditions or restrictions imposed by the U.S. governments. Specific guidance for each International program project category is noted below:

1. Projects proposed under "Promote Watershed Management in Wider Caribbean Island Nations" must include:

a. Activities that support the implementation of the annexes of The Protocol concerning Pollution from Land Based Sources and Activities to the Cartagena Convention (for details, refer to *http://ipo.nos.noaa.gov/coralgrants.html*);

b. A letter of support from the government agency responsible for planning and development;

c. A project site which includes near shore fringing reef system (with description of project site uniqueness) that is impacted by agricultural runoff or intensive land-based development associated with tourism sector activities;

d. Evidence of local stakeholder support, for example, agricultural businesses, NGOs, tourism sector, and port facilities;

e. Demonstration of local or national potential for developing enforceable policies and mechanisms for long term watershed management; and,

f. Evidence of potential organizational capacity to promote coordination of governmental agencies and stakeholder involvement.

2. Projects proposed under "Enhance Management Effectiveness of Marine Protected Areas" must:

a. Incorporate the approach being developed by the WCPA-Marine/WWF International MPA Management Effectiveness Initiative. The approach can be found in the working draft of *How is Your MPA Doing? Guidebook for Evaluating Effectiveness of MPA's* posted at *http://ipo.nos.noaa.gov/mgmteffect/guidebook.html.*

In order to be selected, project sites must:

b. Have a management program in place, including a management plan, on-site staff, and infrastructure to carry out effectiveness assessments;

c. Be able to implement the guidebook to conduct a comprehensive assessment including use of indicators from each of the biophysical, socioeconomic and governance categories;

d. Demonstrate the intent to incorporate the assessment of indicators into management planning and review process; and,

e. Include a letter of support from the MPA managing authority or site supervisor, that also demonstrates the involvement of the authority/supervisor in the project if the agency is not proposing the work.

3. Projects proposed under "Encourage Regional Approaches to Further Marine Reserves in the Wider Caribbean and Southeast Asia" must:

a. Follow the themes of the Caribbean Regional Coordination Plan and the Southeast Asia Regional Action Plan posted at *http://ipo.nos.noaa.gov/coralgrants.html*;

b. Benefit sites in two or more countries in the region;

c. Involve managers from the reserves; and,

d. Include letters of support from the marine reserve management authorities from all sites that are involved in the project.

4. Projects proposed under "Promote Socio-Economic Monitoring in Coral Reef Management" must:

a. Demonstrate a link with an existing or planned marine resource management program (e.g., MPA, fisheries management, or coastal management program) with clearly defined socioeconomic goals as suggested in the SocMon Guidelines (e.g., improve livelihood, increase environmental awareness);

b. Include a letter of support from the marine resource management authority;

c. Describe the plan for socioeconomic monitoring, including preparatory activities, data collection and analysis and long-term monitoring after the first assessment. For Southeast Asia sites, the plan should reflect the variables and methods in the SocMon-Southeast Asia Guidelines. For the Wider Caribbean sites, the plan should reflect the variables and methods in SocMon-Caribbean Guidelines. Both SocMon-Caribbean and Southeast Asia Guidelines can be found at *http://ipo.nos.noaa.gov/coralgrants.html.*;

d. Include a social scientist that will be actively engaged in the socioeconomic monitoring, planning, data collection, and analysis either from staff or elsewhere (e.g., local university);

e. Demonstrate involvement of coral management staff in the proposed monitoring even if personnel not engaged in site-management are overseeing the monitoring; and,

f. Explain how the assessment team will translate the socioeconomic data into useful information for coral reef managers and decision makers (e.g., making written management recommendations to policy makers or managers, and presenting results and recommendations to management staff and other stakeholders).

C. Funding Availability and Mechanisms

1. Funding Availability

Approximately $300,000 will be available in FY 2003 to support grants and cooperative agreements under this program. Approximately $75,000 will be allocated to each of the four project categories listed below, with the following award ranges:

a. Watershed Management: Up to $75,000

b. Management Effectiveness: $20,000 - $40,000

c. Marine Reserves: $25,000 - $40,000

d. Socio-economic Monitoring: $15,000 - $25,000

Applications with requests of over $40,000 will not be accepted, except for the Watershed Management category. Funding will be subject to the availability of federal appropriations. Support in out-years after FY 2003 is contingent upon the availability of funds and any new guidance published in the **Federal Register**.

2. Funding Mechanism

Grants and cooperative agreements will be reviewed by the NOS International Program Office. Applicants may submit applications covering a 12–to 18–month period with an anticipated start date of October 1, 2003.

D. Matching Funds

The requirements for matching funds under section VIII(3) of the Guidance are applicable to Funding Availability under this program. Specific information to be submitted in regard to matching funds can be found in the Application Content and Format Section below.

E. Application Content and Format

1. Application Content

The four International program categories are priorities of the *National Action Plan.* Applicants may submit applications covering a 12–to 18–month period and must meet all applicable DOC grant requirements. Initial applications may be submitted by email, fax (301–713–4389), or express air courier and must be received by NOAA on or before the date established in the DATES section above. Federal financial assistance forms SF–424, SF–424A, SF–424B, CD–511, CD–512, and if applicable CD–346 and/or SF-LLL are not required until the applicant is notified and invited to submit a final application. One original and two signed complete hard copies of the jurisdiction's final application, including federal forms, must be received by NOAA on or before the due date established in the DATES section above.

2. Application Format

Each application must clearly describe the proposed work in 20 pages or less, including letters of support and attachments. Font size should be 12 point. Applications should not be bound or stapled, but can be bundled, for example, by rubber bands or binder clips. All applications, letters of support and attachments must be written in the English Language. Each application must include the following elements (a-d):

a. A cover sheet with the following information:

(1) Project Title;

(2) Applicant organization: nonprofit, university, government, etc.;

(3) Principal investigator or contact responsible for conducting the project;

(4) Contact information including address, phone number, fax and email;

(5) Program Category (i.e., International Coral Reef Conservation) and the appropriate International grant program project category from the following choices: Watershed Management, Management Effectiveness, Marine Reserves, or Socioeconomic Monitoring;

(6) Geographic location of project (countries and sites);

(7) Grant Request and matching funds; and,

(8) One paragraph project summary.

b. A description of the qualifications of the individual(s) who will conduct the project

c. Project Description which must address the specific project category eligibility criteria described in Part B. Eligibility Criteria above and also include:

(1) Project need;

(2) Objectives;

(3) Implementation strategy;

(4) Identification of how project fits into applicant (and site) strategy for management;

(5) Project products and outcomes;

(6) Partner justification and roles;

(7) A methodology to evaluate the success of the project;

(8) A Summary Budget that includes a detailed breakdown of costs by category and a description of the amount of matching funds available to the applicant, as described in section VIII(3) of this Guidance. Intended sources of matching funds and whether they have been secured must be stated in the application. The application must also state whether the project has been submitted for funding consideration elsewhere. Applicants whose applications are recommended for funding will be required to submit with the final application, letter(s) of commitment to fund from the organization(s) providing matching funds; and,

(9) Task timetable with interim benchmarks linked to clearly defined work projects.

d. Evidence of support for the project from the local management authority where the work is conducted at specific sites must indicate that the project supports local management objectives. In those cases where training is proposed, indication that participants will apply these techniques at their local sites is requested. Please include evidence of coordination with relevant national and regional project partners, including a list of agencies consulted in developing the proposal and assurances that any necessary permits will be secured prior to the use of U.S. Federal funds.

F. Application Evaluation and Selection Criteria

1. Evaluation Criteria

IPO will provide for a merit-based peer review and standardized documentation of that review for proposals that meet the eligibility requirements. Each application will be reviewed by a minimum of three individuals with knowledge of the subject of the proposal. Each reviewer will submit a separate and individual review and reviewers will not provide a consensus opinion. The identities of the peer reviewers will be kept anonymous to the degree permitted by law. Peer reviewers will apply the following equally weighted evaluation criteria:

a. Documented need for the proposed coral reef activity in the jurisdiction;

b. Demonstrated coordination with applicable ongoing national and regional reef management activities;

c. Technical merit of the proposed activity;

d. Ability of the work to be completed for the funding and timing proposed; and,

e. Evidence presented of the capacity of the applicant to conduct the proposed work, including past performance on similar projects or programs involving coral reef ecosystems.

NOAA may also request and consider written comments on proposed projects from agencies with jurisdiction over coral reef ecosystems in the area where the project is to be conducted, as described in Section X(1) of the Guidelines. Under the international grant program, NOAA will request and consider written comments on the proposal from relevant U.S. government agencies such as the Agency for International Development and Department of the Interior; foreign governments and their coral management agencies; and other international entities as necessary. Each entity will be provided 21 days to review and comment on subject proposals. Comments submitted will be part of the public record.

2. Selection Criteria

IPO will then review the applications, consistent with the equally weighted criteria listed in Section X(3) of the Guidelines, taking into consideration comments received from peer, agency, and jurisdiction reviewers. Based on these reviews, IPO will rank order the applications, and provide preliminary funding recommendations, and summary comments on each selected proposal to each applicant. These comments will include input from peer reviewers, agencies, jurisdictions, and IPO, and are intended to be used in the applicant's development of the final proposal.

Upon receipt of the final application, complete with the requisite Federal forms, IPO will review the complete package and make final funding recommendations based on the incorporation of, and response to, comments that were returned to the applicant. IPO will submit these funding recommendations to the NOAA review panel for final review, pursuant to Section X(4) of the Guidelines to ensure that the Coral Reef Conservation Act requirements for geographic funding distribution and consistency with the overall program goals outlined in the Strategy.

G. Program Authority

Specific authority for this program is found in 16 U.S.C. 6403. Grants and cooperative agreements will be reviewed and awarded by the NOS International Program Office under title, *Habitat Conservation*, CFDA: 11.463.

VIII. General Information for All Applicants

A. Indirect Costs

The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Indirect costs are essentially overhead costs for basic operational functions (e.g., lights, rent, water, insurance) that are incurred for common or joint objectives and, therefore, cannot be identified specifically within a particular project. For this solicitation, the Federal share of the indirect costs awarded will not exceed the lesser of either the indirect costs the applicant would be entitled to if the negotiated Federal indirect cost rate were used or 25 percent of the Federal direct costs proposed. For those situations in which the use of the applicant's indirect cost rate would result in indirect costs greater than 25 percent of the Federal direct costs proposed, the difference may be counted as part of the non-Federal share. A copy of the current, approved negotiated indirect cost agreement with the Federal Government should be included with the application. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

B. Performance and Financial Reports

Recipients receiving funding will be required to submit semiannual performance reports and copies of all products that are developed under the award. The specific information, products, or data contained in the performance report can be determined by the NOAA office responsible for the program and applicant in pre-award negotiations or, the recipient will submit performance reports according to the Department of Commerce, Financial

Assistance Standard Terms and Conditions. Performance report will be submitted to the NOAA office responsible for the program.

Unless otherwise authorized, semi-annual financial reports will be submitted in accordance with the Department of Commerce, Financial Assistance Standard Terms and Conditions t the Grants Officer at NOAA GMD.

C. Matching Funds

For ease of reference, the matching funds requirements described in section VIII of the Guidelines have been included here. With the exception of section VI. Projects to Improve or Amend Coral Reef Fishery Management Plans, all other program areas are subject to the matching fund requirements stated here, pursuant to section VIII of the Guidelines.

As per section 6403(b)(1) of the Coral Reef Conservation Act of 2000, Federal funds for any coral conservation project funded under this Program may not exceed 50 percent of the total cost of the projects. The matching funds may comprise a variety of public and provide sources and can include in-kind contributions and other non-cash support. NOAA strongly encourages applicants to leverage as much investment as possible. Federal funds may not be considered as matching funds.

As per section 6403(b)(2) of the Conservation Act, the NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements;

1. No reasonable means are available through which an applicant can meet the matching requirement, and

2. The probable benefit of such project outweighs the public interest in such matching requirement.

Applicants must specify in their proposal the source and may be asked to provide letters of commitment to confirm stated contributions. In the case of a waiver request, the applicant must provide a detailed justification explaining the need for the waiver including attempts to obtain sources of matching funds, how the benefit of the project outweighs the public interest in providing match and any other extenuating circumstances preventing the availability of match.

Notwithstanding any other provisions herein, and in accordance with 48 U.S.C. 1469a(d), the Program shall waive any requirement for local matching funds for any project under $200,000 (including in-kind contribution) to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marina Islands.

D. General Information

If an application is selected for funding, NOAA has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Any subsequent proposal to continue work on an existing project must be submitted to the competitive process for consideration and will not receive preferential treatment. Renewal of an award to increase funding or to extend the period of performance is at the total discretion of NOAA.

Unsuccessful applications will be destroyed and not returned to the applicant.

The recipients must comply with Executive Order 12906 regarding any and all geospatial data collected or produced under grants or cooperative agreements. This includes documenting all geospatial data in accordance with the Federal Geographic Data Committee Content Standard for digital geospatial data.

Classification

This Program will be added to the Catalog of Federal Domestic Assistance under the Coastal Zone Management Act (11.419), Financial Assistance for National Centers for Coastal Ocean Science (11.426), and Habitat Conservation (11.463). The Program uses only the existing NOAA Federal financial assistance awards package requirements per 15 CFR parts 14 and 24.

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to solicitation. The program will determine National Environmental Policy Act (NEPA) compliance on a project by project basis.

Executive Order 12866

This action has been determined to be "not significant" for purposes of Executive Order 12866, Regulatory Planning and Review."

Executive Order 12372

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid OMB control number. Forms SF–424, SF–424A, SF–424B, and SF-LLL and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046 and 0605–0001, respectively.

This notice also contains a collection-of-information requirement subject the Paperwork Reduction Act and which has been approved by OMB under control number 0648–0448. The public reporting burden is estimated to average one hour per response for comments on a proposed project from each agency with jurisdiction over coral reef ecosystems in the area where the project is to be conducted and one hour per response for a request for a waiver of matching funds. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of these data collections, including suggestions for reducing the burden, to the NOAA Office of Response and Restoration, N/ORR, National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910.

Notice and Comment are not required under 5 U.S.C. 553(a)(2), or any other law, for rules relating to public property, loans, grants, benefits or contract. Because notice and comment are not required, a regulatory flexibility analysis is not required and has not been prepared for this notice 5 U.S.C. 601 *et seq.*

Dated: January 13, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for National Ocean Service.

[FR Doc. 03–1153 Filed 1–16–03; 8:45 am]

BILLING CODES 3510–JE–S and 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030109007–3007–01; I.D. 111802D]

RIN 0648–AQ62

New England Fishery Management Council; Notice and Request for Sea Scallop Research Proposals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: NMFS issues this document to describe how you, the researcher, may submit a proposal for and be selected to perform sea scallop research projects during the 2003 fishing year (March 1, 2003, through February 29, 2004), and how NOAA and the New England Fishery Management Council (Council) will determine whether to select your proposal. Because of the time required to complete the grants process, the document explains that it is likely that project activities will not be authorized until 1–2 months after the start of the fishing year on March 1, 2003. Research projects would be funded by a 1–percent set-aside of the scallop total allowable catch (TAC) that is proposed under Framework Adjustment 15 to the Council's Atlantic Sea Scallop Fishery Management Plan (FMP). Funding of projects under the TAC set-aside is contingent upon approval of Framework 15 by NMFS.

DATES: To be considered under this solicitation, all research proposals that would utilize the fishing year 2003 TAC set-aside must be received between January 17, 2003 and 5 p.m., EDT, on February 7, 2003. Postmarks indicating the proposals were mailed on this date will not be sufficient. Facsimile applications will not be accepted. For further information related to the timeframe and procedures for submission, review, and selection of proposals to be conducted with TAC set-aside funds from the Hudson Canyon and Virginia Beach Areas, see Section A, Background, under **SUPPLEMENTARY INFORMATION** of this document.

ADDRESSES: Proposals must be submitted to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark proposals "Attention--Sea Scallop Research Proposals."

Copies of the Standard Forms for submission of research proposals may be found on the Internet in a PDF (Portable Document Format) version at *http://www.ofa.noaa.gov/~grants/index.html* under the title "Grant Application Forms and Budget Guidelines," or by contacting the NMFS office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Patricia M. Fiorelli, New England Fishery Management Council, (978) 465–0492, or Peter Christopher, NMFS, (978) 281–9288.

SUPPLEMENTARY INFORMATION:

A. Background

On September 29, 2002, the Council approved Framework 15 and voted to submit the action to the Secretary of Commerce for approval. A proposed rule for Framework 15 will be published in the **Federal Register** following review by NMFS. Framework 15 would continue a Scallop Area Access Program for the Hudson Canyon and Virginia Beach Areas. Under the proposed area access program, limited access sea scallop vessels would be allowed to land scallops in excess of the proposed possession limit, or to take additional trips above those proposed in the program, and use the proceeds of the excess catch or additional trips to offset the costs of the research proposals submitted in response to this notice. The proposed areas would remain open until one of three events triggered a closure: (a) The fishing year ends (February 29, 2004); (b) the scallop landings from an area exceed the TAC and it is closed by the Regional Administrator, Northeast Region, NMFS (Regional Administrator); or (c) the vessels use all authorized trips to fish for scallops within one or both of the areas. Framework 15 would authorize three trips per vessel for each area unless modified by action taken by the Regional Administrator. NOAA, in cooperation with the Council, is soliciting proposals for sea scallop research for the 2003 fishing year utilizing proposed TAC set-aside from the Hudson Canyon and Virginia Beach Areas. Contingent upon approval of Framework 15 by NMFS, vessels participating in an approved project and fishing in the Sea Scallop Access Areas would be authorized by the Regional Administrator to take additional trips into the areas and/or to land scallops in excess of the proposed 21,000–lb (9,525.4–kg) possession limit.

All research proposals to be conducted with TAC set-aside funds from the Hudson Canyon and Virginia Beach Areas must be received during the submission period identified in the DATES section of this document. Applicants must submit one signed original and two signed copies of the completed application (including supporting information). Once the applications are received, NOAA will either seek comments from the Council through the Council's public review process, or convene a Review Team, which will include representatives from the Council and may include independent technical experts, for the purpose of reviewing proposals in closed meetings under the direction of NOAA.

The total set-aside available for research is 172,953 lb (78.05 mt), an amount of scallops that has an approximate value of $579,392 (based on a projected scallop value of $3.35 per pound, with prices varying according to season and availability). The TAC set-aside for sea scallop research would be as follows: 170,638 lb (77 mt) for the Hudson Canyon Area; and 2,315 lb (1.05 mt) for the Virginia Beach Area.

B. Authority

Issuing grants is consistent with sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881c(c), respectively.

C. Catalog of Federal Domestic Assistance

11.454, Unallied Management Projects.

D. Funding Instrument and Project Period

NOAA will award a grant to applicants with approved proposals through its grant award process. The project period for sea scallop research can not predate the beginning of the Atlantic sea scallop fishing year, March 1, 2003. The project period may not extend beyond February 29, 2004. Any portion of the 2003 fishing year TAC awarded must be caught for compensation by February 29, 2004. Proposals to fund research started on or after the project period are eligible for consideration. However, if the project is not approved, any research or expenditures related to this project will be the sole responsibility of the researcher without any further compensation from the TAC set-aside funds. Because of the time required to complete the grants process, it is likely that project activities will not be authorized until 1–2 months after the start of the fishing year on March 1, 2003.

E. Funding Availability

No Federal funds are provided for sea scallop research under this notice. The Federal Government's contribution to the project will be a Letter of Authorization (LOA) that will provide special fishing privileges in response to sea scallop research proposals selected to participate in this program. The Federal Government shall not be liable for any costs incurred in the conduct of the project. The funds generated from the additional landings authorized in the LOA shall be used to cover the cost of the sea scallop research, including vessel costs, and to compensate vessel owners for expenses incurred. Therefore, the owner of each fishing vessel selected to land scallops in excess of the trip limit or from additional authorized trips must use the proceeds of the sale of the excess catch to compensate the researcher for costs associated with the research activities and use of the vessel. Any additional funds above the cost of the research activities (or excess program income) shall be retained by the vessel owner as compensation for the use of his/her vessel.

F. Scope of Sea Scallop Research

Projects funded under the proposed sea scallop TAC set-aside program should enhance understanding of the scallop resource or contribute to the body of information on which management decisions are made. Sea scallop research may be conducted in or outside of the Hudson Canyon and Virginia Beach Areas, within or outside of the Sea Scallop Area Access Program timeframe, and on board a fishing or other type of vessel. Sea scallop research conducted with these TAC set-aside funds also may or may not involve the harvest of scallops. Funds generated from the set-aside landings shall be used to cover the cost of the research activities, including vessel costs, and to compensate boats for expenses incurred during the collection of set-aside scallops. For example, these funds could be used to pay for gear modifications, monitoring equipment, additional provisions (e.g., fuel, ice, food for scientists) or the salaries of research personnel. The Federal Government is not liable for any costs incurred by the researcher or vessel owner, should the sale of the excess catch not fully reimburse the researcher or vessel owner for their expenses.

G. Eligibility Criteria

All commercial organizations; non-profit organizations; state, local or tribal governments; institutions of higher education; and individuals are eligible to apply, provided that all proposal requirements are satisfied and the proposal is received by the date specified in this document.

Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission and goals are to achieve full participation by Minority Serving Institutions (MSIs) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

H. Proposal Requirements

Proposals must be submitted to NOAA and must identify the sea scallop research to be conducted and the Sea Scallop Access Area within which the research and/or compensation trip is to be conducted, and the total amount of scallops requested for the project, including, using a scallop meat value of $3.35 per pound, their average estimated monetary value based on Framework 15 analyses. Additionally, each proposal must identify the requirements for the participating vessel(s) that would make a Sea Scallop Access Area trip to collect the scallop set-aside. The vessel selected by the applicant should be listed in the proposal, if possible, or specifically identified prior to final approval by NOAA. The proposal must also include the agreement between the vessel owner and researcher that shows exactly how the research activity is to be paid for, if possible, or such agreement must be provided prior to final approval by NOAA. Proposals may request that the scallop set-aside be collected separately from the sea scallop research trip or other related research trip. The separate sea scallop research compensation trips do not necessarily have to be conducted by the same vessel. The Council or NMFS contact person may provide assistance to researchers who are seeking vessels to participate in the collection of set-aside scallops or directly in research projects. The Council or NMFS may publish a list of those vessel owners willing to participate through their respective homepages.

I. Confidentiality of Information

In the event that an application contains information or data that the applicant does not want disclosed prior to award for purposes other than the evaluation of the application, the applicant should mark each page containing such information or data with the words "Privileged, Confidential, Commercial, or Financial Information - Limited Use" at the top of the page to assist NOAA in making disclosure determinations. DOC regulations implementing the Freedom of Information Act (FOIA) are found at 15 CFR part 4, "Public Information," which sets forth rules for DOC to make requested materials, information, and records publicly available under FOIA. To the extent permitted under FOIA, the contents of applications and proposals submitted by successful applicants may be released in response to FOIA requests. Based on the confidential information identified by the applicant, the confidentiality of the information provided will be protected to the degree possible.

J. Project Funding Priorities

Sea scallop research projects that identify and evaluate gear to reduce groundfish bycatch and habitat impacts and that provide improved information concerning scallop abundance estimates are considered high priority by the Council. Sea scallop research that involves evaluating the distribution, size composition, and density of scallops also will be considered high priority. Other research needs (not listed in order of priority) that also will be considered by the Council and NOAA follow:

1. Evaluation of ways to control predation on scallops; research to actively manage spat collection and seeding of sea scallops;
2. Social and economic impacts and consequences of closing areas to enhance productivity and improve yield of sea scallops and other species;
3. High resolution surveys that include distribution, recruitment, mortality and growth rate information;
4. Estimation of factors affecting fishing power for each limited access vessel;
5. Demonstration projects to identify ways to reduce discard mortality, increase efficiency without increasing fishing power (e.g., decreasing processing time with sorters) and improve safety;
6. Research to identify scallop habitat and ecological relationships that affect

reproduction, recruitment mortality and growth, including those enhanced/impeded by area closures;

7. Quantification of fishing costs related to fishing for sea scallops in specific areas (e.g., fishing gear modification, steaming time, and opportunity cost);

8. Experimental designs with control areas using alternative management strategies, such as area licensing and rotational closures (projects should include an analysis of yield improvement, habitat impacts and social impacts, including conflict resolution across fisheries);

9. Identification of fishermen's perceptions about area-based management and alternative strategies;

10. Processing and analyzing of data that will be collected or that have already been collected;

11. Broader investigations of variability in dredging efficiency across habitats (substrates, current velocities, etc.) times, areas, and gear designs; and

12. Research that provides more detailed sea scallop life history information (especially on age-and area-specific natural mortality and growth) and to identify stock-recruitment relationships.

K. Evaluation Criteria

The Council or the Review Team convened by NOAA will evaluate proposals based on the assigned score for each of the following criteria:

1. A clear definition of the problem, need, issue or hypothesis to be addressed (10 points);

2. A clear definition of the approach to be used, including theoretical studies, laboratory analyses, and/or field work (15 points);

3. Adequate justification as to how the project is likely to achieve its stated objectives (20 points);

4. Identification of anticipated benefits, potential users and methods of disseminating results (10 points);

5. Relevance of the project to the research needs identified by the Council (20 points);

6. Demonstration of support, cooperation and/or collaboration with the fishing industry (15 points); and

7. Cost-effectiveness of the project (10 points).

L. Selection Procedures

Applications may be reviewed and evaluated by either the Council, at the request of NOAA, or by the Review Team convened by NOAA. Both the Council review and the NOAA review are included to allow the Council to retain its responsibility to consider research in fishery management plans and to allow NOAA to conduct the reviews if the overall Council process prohibits their review in a timely manner. If the Council is requested to review the proposals, the proposals will be reviewed in a public meeting process by representatives of the Council, based on the criteria contained in Section K of this notice. The Council's representatives would then make recommendations to the Council. The Council would consider recommendations of its representatives, the Evaluation Criteria identified in Section K of this notice, and may also consider the time of year the research activities are to be conducted, ability to meet requirements under Section O of this notice, and logistic concerns. The Council would then make its recommendations to the Regional Administrator through a formal vote or by consensus recommendations, as determined appropriate by the Council. Recommendations from the Council would be given to the Regional Administrator in rank order based on average scores of the projects, taking into consideration numerical scores based on Section K of this notice and considerations of other factors listed above. In deciding the projects to select, the Regional Administrator will take into account the recommendations of the Council, the time of year the research activities are to be conducted, ability to meet requirements under Section O of this notice, including evaluations of proposals through the Experimental Fishery Procedures contained in 50 CFR 600.745 and 648.12, and logistic concerns. As a result, projects may not be selected in the order recommended by the Council. NOAA will authorize selected vessel(s) to exceed the possession limit, take additional trips, or be exempt from the regulations specified in the FMP through written notification to the applicant.

If the Council does not participate in the evaluation of the proposals, NOAA will solicit written technical evaluations based on the evaluation criteria contained in Section K of this notice from three or more private and/or public sector experts to determine the technical merit of the proposal and to provide a rank score of the project based on the evaluation criteria specified in Section K of this notice. Following completion of the technical evaluation, NOAA will convene a Review Team to review and individually critique the scored proposals to enhance NOAA's understanding of the proposals. No consensus recommendations will be made. Based on the results of the technical review, rank order based on averages scores, comments provided by the review panel, and the following program policy factors, NOAA will select the successful proposals and inform the Council of its recommendations. The program policy factors are: (1) The time of year the research activities are to be conducted; (2) the ability of the proposal to meet the experimental fishery requirements discussed under Section O of this notice; and (3) redundancy of research projects. Therefore the highest scoring projects may not necessarily be selected for an award. The Regional Administrator will provide final approval of the projects to allow NMFS to exempt selected vessel(s) from regulations of the Scallop FMP. All sea scallop research must be conducted in accordance with provisions approved by NOAA and provided in an LOA or EFP issued by NMFS.

Approval of proposals submitted in response to the subject RFP would be contingent upon approval of Framework 15 by NMFS. Framework 15 will be reviewed by NMFS and published as a proposed and final rule in the **Federal Register**. Should Framework 15 be disapproved by NMFS, projects would not be funded and notification would be sent to applicants. In addition, unsuccessful applications will be returned to the submitter. Successful applications will be incorporated into the award document.

M. Proposal Format

Proposals should be limited to 6 pages, excluding item 5 under this Section M. The format may vary, but must include:

1. A project summary;

2. A narrative project description to include: (a) Project goals and objectives; (b) the relationship of the proposed project to management needs or priorities identified by the Council; (c) a statement of work (project design and management--who is responsible, expected products, participants other than applicant); and (d) a summary of the existing state of knowledge related to project and contribution and relevance of the proposed work;

3. A description of all funding sources (including revenues derived from the sale of scallops harvested under the research TAC set-aside) and funding needs. This element of the proposal must include: (a) the amount of scallop TAC set-aside requested; (b) state which scallop closed area the research and/or compensation trip is to be conducted in, and the expected funds to be generated by the sale of those scallops; and (c) state the expected percentage of funds to

be allocated to the researcher and any involved fishing vessel;

4. A budget that includes a breakdown of costs (vessel expenses, permit costs, equipment, supplies, overhead, as applicable); applicants must submit a Standard Form 424 "Application for Federal Assistance" including a detailed budget using Standard Form 424A, "Budget Information--Non-Construction Programs," Standard Form 424B, "Assurances--Non-Construction Programs," and Commerce Department Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters: Drug Free Workplace Requirements and Lobbying." Copies of these Standard Forms may be found on the Internet in a PDF version at *http://www.ofa.noaa.gov/~grants/index.html* under the title "Grant Application Forms and Budget Guidelines," or by contacting the NMFS office (see **FOR FURTHER INFORMATION CONTACT**); and

5. Supporting documents (resumes, cooperative research agreements, contracts, etc.).

N. Final Reports

NOAA and the Council will require project researchers to submit semi-annual progress reports and a completion report describing their research project results and other acceptable deliverable(s), in a timeframe that is specific to the type of research conducted. The format of the final report may vary, but must contain:

1. A brief abstract or summary of the project;

2. A description of the issue/problem that was addressed;

3. A detailed description of methods of data collection and analyses;

4. A discussion of results and any relevant conclusions, presented in a format that is understandable to a non-technical audience; this should include benefits and/or contributions to management decision-making;

5. A list of entities, firms or organizations that actually performed the work, and a description of how that was accomplished; and

6. A detailed final accounting of all funds used to conduct sea scallop research, including those provided through the research set-aside. The financial information must be submitted on Office of Management and Budget Standard Form–269. Copies of this Standard Form may be found on the Internet in a PDF version at *http://www.ofa.noaa.gov/~grants/index.html* under the title "Grants Management Forms", or by contacting the NMFS office (see **FOR FURTHER INFORMATION CONTACT**).

7. Projects designed to collect new data for inclusion in NMFS' or ACCSP's databases must submit the data in electronic format with appropriate documentation. Certain databases will have highly specific requirements as to required fields and content. Applicants must agree to provide newly collected data in a format acceptable to the administrators of the receiving databases.

O. Other Requirements

Evaluations of the impacts of sea scallop research, which involve exemptions to the current fishing regulations, other than those stated in the FMP, will be made by NMFS. Vessels conducting certain types of sea scallop research requiring relief from fishery regulations may be required to obtain an Exempted Fishing Permit (EFP). To apply for an EFP, interested parties must submit an application to NMFS at least 60 days before the effective date of the EFP. Additional time could be necessary for NMFS to make determinations regarding requirements under the National Environmental Policy Act (NEPA) and other applicable laws.

P. Other Requirements of Recipients

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

Q. Future Awards

If we select your application to perform sea scallop research to be conducted with the scallop TAC set-aside, we have no obligation to provide any additional TAC set-aside obligations in connection with that award.

Classification

Prior notice and opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)).

Because a general notice of proposed rulemaking as specified in 5 U.S.C. 553, or any other law, was not required for this action, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 269, 424, 424A, 424B, and SF-LLL have been approved by OMB under the respective control numbers 0348–0039, 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

This action has been determined to be not significant for purposes of Executive Order 12866.

Dated: January 13, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–1152 Filed 1–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011303C]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting to plan the annual management cycle and strategize 2003 Council initiatives. This meeting is open to the public.

DATES: The GMT working meeting will convene on Monday, February 3, 2003 at 1 p.m. and may go into the evening until business for the day is completed. The GMT meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, February 4 through Friday, February 7 until business for the day is completed.

ADDRESSES: The GMT working meeting will be held at the Pacific Fishery Management Council office, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220; 503–820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Pacific Fishery Management Council Staff Officer for Groundfish; 503–820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT working meeting is to plan the GMT's annual schedule and strategies to effectively aid the Council in managing 2003 West Coast groundfish fisheries and Council initiatives expected to arise in 2003. Additionally, the GMT will discuss groundfish management measures in place for the winter and spring months, respond to assignments relating to implementation of the Council's groundfish strategic plan, consider technical aspects of draft stock rebuilding plans and analyses, and address other assignments relating to groundfish management.

Although nonemergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice requiring emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: January 13, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1154 Filed 1–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011303B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) and Scientific and Statistical Committee (SSC) Salmon Subcommittee will hold a joint work session, which is open to the public, to review proposed salmon methodology changes.

DATES: The work session will be held Wednesday, February 5, 2003, from 8:30 a.m. to 5 p.m.

ADDRESSES: The work session will be held at the Holiday Inn Portland Airport Hotel, 8439 NE Columbia Boulevard, Portland, OR 97220; (503) 256–5000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Staff Officer for Salmon and Pacific Halibut, Pacific Fishery Management Council; (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to brief the STT and SSC on changes made to or proposed for the chinook and coho Fishery Regulation Assessment Models (FRAM), review the scientific bases for those changes, and compare results from the updated model with those from the previous version.

Although nonemergency issues not contained in the meeting agendas may come before the STT and the SSC subcommittee for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 13, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1155 Filed 1–16–03; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Flammability Standards for Children's Sleepwear

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of October 29, 2002 (67 FR 65958), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) to announce the agency's intention to seek extension of approval of collections of information in the flammability standards for children's sleepwear and implementing regulations. No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of those collections of information without change for three years from the date of approval.

The standards and regulations are codified as the Flammability Standard for Children's Sleepwear: Sizes 0 Through 6X, 16 CFR part 1615; and the Flammability Standard for Children's Sleepwear: Sizes 7 Through 14, 16 CFR part 1616. The flammability standards and implementing regulations prescribe requirements for testing and recordkeeping by manufacturers and importers of children's sleepwear subject to the standards. The information in the records required by the regulations allows the Commission to determine if items of children's sleepwear comply with the applicable standard. This information also enables the Commission to obtain corrective actions if items of children's sleepwear fail to comply with the applicable standard in a manner which creates a substantial risk of injury.

Additional Information About the Request for Reinstatement of Approval of Collections of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X, 16 CFR Part 1615; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14, 16 CFR Part 1616.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of children's sleepwear in sizes 0 through 14.

Estimated number of respondents: 53.

Estimated average number of hours per respondent: 6,000 per year.

Estimated number of hours for all respondents: 318,000 per year.

Estimated cost of collection for all respondents: $9,550,000 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by February 18, 2003, to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, ext. 2226.

Dated: January 13, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–1024 Filed 1–16–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of partially-closed meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, announcement is made of the following meeting:

Name of Committee: Armed Forces Epidemiological Board (AFEB).

Dates: February 18, 2003. February 19, 2003 (Partially-closed meeting).

Times: 7:30 a.m.—16:30 p.m. (February 18, 2003); 7:30 a.m.—17:30 p.m. (February 19, 2003).

Location: The Phillips Space Conference Center, Building 201, 1750 Kirtland Drive, Kirtland Air Force Base, Albuquerque, New Mexico 87117.

Agenda: The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and conduct an executive working session.

FOR FURTHER INFORMATION CONTACT: Colonel James R. Riddle, Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: This meeting will be partially-closed to the public. Open sessions of the meeting will be limited by space accommodations. The meeting will be open to the public in accordance with Section 522b(c) of Title 5, U.S.C., specifically subparagraph 91) thereof and Title 5, U.S.C., appendix 1, subsection 10(d). Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–1113 Filed 1–16–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Mid-Chesapeake Bay Island, MD, Environmental Restoration Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Baltimore District, U.S. Army Corps of Engineers (Corps) in partnership with the State of Maryland Department of Transportation, Maryland Port Administration has initiated an environmental restoration feasibility study for the restoration of island habitat in the Mid-Chesapeake Bay region. The study focuses on restoring hundreds of acres of aquatic and wildlife island habitat in the Mid-Chesapeake Bay region through the beneficial use of dredged materials from the Port of Baltimore channel system. As part of this study and in accordance with the National Environmental Policy Act (NEPA) of 1969, an Environmental Impact Statement (EIS) will be prepared to document the plan formulation process and recommendations of this study.

FOR FURTHER INFORMATION CONTACT: Questions or information about the proposed action and draft EIS can be addressed to Ms. Michele (Mimi) Bistany, U.S. Army Corps of Engineers, ATTN: CENAB–PL, 10 South Howard Street, P.O. Box 1715, Baltimore, MD 21203–1715, telephone 410–962–4934; e-mail address: *michele.a.bistany@usace.army.mil*.

SUPPLEMENTARY INFORMATION: The Mid-Chesapeake Bay study area is defined by the confluence of the Chester River south to the confluence of the Potomac River with the Chesapeake Bay, Maryland.

Land subsidence, rising sea level, and wave action have caused valuable island habitats to be lost through erosion throughout the Chesapeake Bay. Through the beneficial use of dredged material, a restored island can be constructed to replace hundreds of acres of wetland and upland habitat. Therefore, the goal for this feasibility study is to restore valuable aquatic and terrestrial resting, foraging, and nursery habitat that has been lost in the Chesapeake Bay for many migratory birds, fish, and wildlife species through the beneficial use of dredged material. This habitat will afford improved productivity to the surrounding area, while providing an environmentally sound method for the use of dredged material removed from Bay channels.

Corps feasibility studies are conducted using a six-stage planning approach that incorporates the NEPA process: (1) Identify problems, opportunities, goals, and objectives; (2) Inventory baseline conditions; (3) Formulate alternatives; (4) Evaluate effects of the alternatives; (5) Compare alternatives; and (6) Select a recommended plan or set of alternative plans that are environmentally, economically, and engineering sound.

The project delivery team is actively seeking public opinion, participation, and advice to be incorporated into the planning process and the selection of an island for restoration. At this time, the islands that are under consideration within the Mid-Chesapeake Bay region include Barren, Bloodsworth, James, Holland, Lower Eastern Neck, Parson's and Sharp's islands. The team is open to any additional islands for consideration in the Mid-Bay region. As part of the initial phase of the study, an objective screening criteria will be developed based on information obtained for the State of Maryland's Dredged Material Management Program, public and agency input, available data, and best professional judgment. Following the Corps and NEPA processes, once the island is selected for restoration, a detailed analysis of the current existing conditions will be undertaken; alternative restoration plans will be developed, analyzed and compared; the impacts of those plans

will be analyzed; and a recommended plan will be selected.

To solicit public input into the study and into the island selection, up to three public scoping meetings are planned for the late January/early February 2003 timeframe. A newsletter broadcasting the dates, times, and locations will be sent to agencies, groups and individuals on the study's mailing list once the meetings have been scheduled. To verify your inclusion, or to be added in the mailing list, please contact the study team leader, Ms. Michele Bistany (*see* **FOR FURTHER INFORMATION CONTACT**).

The study will be conducted in compliance with Section 404 and Section 401 of the Clean Water Act, Section 7 of the Endangered Species Act, the Clean Air Act, the U.S. Fish and Wildlife Coordination Act, Section 106 of the National Historic Preservation Act, Prime and Unique Farmlands, the Magnuson-Stevens Fishery Conservation and Management Act, and National Pollutant Discharge Elimination System Act. All appropriate documentation (*i.e.*, Section 7, Section 106 coordination letters, and public and agency comments) will be obtained and included as part of the EIS.

As part of the EIS process, recommendations will be based on an evaluation of the probable impact of the proposed activity on the public interest. The decision will reflect the national concern for the protection and utilization of important resources. The benefit, which may reasonably be expected to accrue from the proposal, will be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, among these are wetlands; fish and wildlife resources; cultural resources; land use; water and air quality; hazardous, toxic, and radioactive substances; threatened and endangered species; regional geology; aesthetics; environmental justice; cumulative impacts; and the general needs and welfare of the public.

The draft EIS for the Mid-Chesapeake Bay Island environmental restoration study is expected for public release in July 2005.

Robert W. Lindner,

Chief, Planning Division.

[FR Doc. 03–1112 Filed 1–16–03; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 18, 2003.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW.; Room 10235, New Executive Office Building, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: January 13, 2003.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New Collection.

Title: EZ-Audit: Electronic Submission of Financial Statements and Compliance Audits.

Abstract: EZ-Audit will support the conversion and electronic submission of financial statements and existing compliance audits as required by 34 CFR 668.23 for all institutions participating in the Title IV, FSA programs.

Additional Information: Schools receiving Title IV funding must submit an audit in order to prove that they are financially solvent. Emergency clearance is requested for this collection because if submission is not done in a timely manner, Title IV institutions will be in jeopardy of noncompliance and will also lose funding.

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary), State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4000.

Burden Hours: 4000.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–1058 Filed 1–16–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 18, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 13, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension of a currently approved collection.

Title: Annual Protection & Advocacy of Individual Rights (PAIR) Program Performance Report (SC).

Frequency: Annually .

Affected Public: Not-for-profit institutions (primary). State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 342.

Abstract: Form RSA–509 will be used to analyze and evaluate the Protection & Advocacy of Individual Rights (PAIR) Program administered by eligible systems in states. These systems provide services to eligible individuals with disabilities to protect their legal and human rights.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–1026 Filed 1–16–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.038, 84.033, and 84.007]

Federal Student Aid; Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to file an Application for Approval to Participate in Federal Student Financial Aid Programs for the 2003–2004 award year; to participate in the Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs (known collectively as the campus-based programs).

SUMMARY: We invite currently non-participating institutions of higher education who filed a Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646–1), to submit to the U.S. Department of Education (Department) an Application for Approval to participate in Federal Student Financial Aid Programs. In order to participate in one or more of the campus-based programs for the 2003–2004 award year, non-participating institutions must submit an Application for Approval to Participate in Federal Student Financial Aid Programs and all required supporting documents for an eligibility and certification determination by the Department.

The campus-based programs are authorized by title IV of the Higher Education Act of 1965, as amended (HEA). The 2003–2004 award year is July 1, 2003, through June 30, 2004.

CLOSING DATE: To participate in the campus-based programs in the 2003–2004 award year, a currently non-participating institution must electronically submit its Application for Approval to Participate in Federal Student Financial Aid Programs on or before February 17, 2003. (ED Form E40–34P, OMB# 1845–0012).

ADDRESSES: Applications. The Department no longer accepts paper applications in these programs. An eligible institution must submit an electronic application to Case Management and Oversight through the ED website: *www.eligcert.ed.gov.*

Required Supporting Documents. The applicant must submit required supporting documents by mail, addressed to the U.S. Department of Education, Case Management and Oversight, Data Management and Analysis, Document Receipt and Control Center, 830 First Street, NE., Room 71I1, Washington, DC 20002–5402.

In the case of required supporting documents, the applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to us.

If documents are sent through the U.S. Postal Service, we do not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

The applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. An applicant is encouraged to use

certified or at least first class mail. An institution that submits an Application for Approval to participate in Federal Student Financial Aid Programs and required supporting documents after the closing date of February 17, 2003, will not be considered for funding under the campus-based programs for award year 2003–2004.

Required Supporting Documents Delivered by Hand. An applicant may deliver supporting documents by hand to the U.S. Department of Education, Case Management and Oversight, Data Management and Analysis, Document Receipt and Control Center, 830 First Street, NE., Room 71I1, Washington, DC 20002–5402. We will accept hand-delivered documents between 8 a.m. and 4:30 p.m. (eastern time) daily, except Saturdays, Sundays, and Federal holidays. A hand-delivered application will not be accepted after 4:30 p.m. on February 17, 2003.

SUPPLEMENTARY INFORMATION: We allocate funds to eligible higher education institutions in each of the campus-based programs. We will not allocate funds under the campus-based programs for award year 2003–2004 to any currently non-participating institution unless the institution files its Application for Approval to Participate in Federal Student Financial Aid Programs and required supporting documents by the closing date. If the institution submits its Application for Approval to Participate in Federal Student Financial Aid Programs or other required supporting documents after the February 17, 2003, closing date, we will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 2004–2005 award year. For purposes of this notice, ineligible institutions include only: (1) An institution that has not been designated as an eligible institution by the Department, but has previously filed a FISAP; or (2) An additional location of an eligible institution that is currently not included in the Department's eligibility certification for that eligible institution, but has been included in the institution's 2003–2004 FISAP.

Applicable Regulations: The following regulations apply to the campus-based programs: (1) Student Assistance General Provisions, 34 CFR part 668. (2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673. (3) Federal Perkins Loan Program, 34 CFR part 674. (4) Federal Work-Study Program, 34 CFR part 675. (5) Federal Supplemental Opportunity Grant Program, 34 CFR part 676. (6) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600. (7) New Restrictions on Lobbying, 34 CFR part 82. (8) Government wide Debarment and Suspension (Nonprocurement) and Government wide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85. (9) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: For information concerning designation of eligibility, contact the appropriate ED Case Management and Oversight (CMO) case management team by telephone, fax, or the Internet. The case management teams are listed with telephone and fax numbers and Internet addresses in the Application for Approval to Participate in Federal Student Financial Aid Programs on pages 5, 6, and 7 of the Introduction. For technical assistance concerning the FISAP or other operational procedures of the campus-based programs, contact: Campus-Based Operations, Call Center, Telephone: (877) 801–7168, fax: (703) 761–0220.

If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on Request by contacting Center at (202) 260–9895 between 8:30 a,m. and 4:30 p.m., eastern time, Monday through Friday.

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To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: January 14, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 03–1162 Filed 1–16–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41731 entitled "Development of Novel Sensors for Ultra High Temperature Fossil Fuel Applications." The specific objective of this solicitation is to seek out new fundamental approaches to sensor concepts, materials, design, and fabrication that have potential application in the harsh environment of the advanced fossil fuel-based energy production systems. The types of projects sought through this solicitation include laboratory and bench-scale testing as well as fundamental research that addresses the barriers associated with ultra-high temperature operation.

DATES: The solicitation will be available on the "Industry Interactive Procurement System" (IIPS) webpage located at *http://e-center.doe.gov* on or about January 24, 2003. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Kelly A. McDonald, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880, E-mail Address: *kelly.mcdonald@netl.doe.gov,* Telephone Number: (304) 285–4113.

SUPPLEMENTARY INFORMATION: NETL's Advanced Research Program is leading the effort in innovative sensor development for fossil fuel applications including the power systems conceived under the Vision 21 Program, such as oxygen blown gasification and combustion systems. Real time monitoring, diagnostics and control are critical for the safe and efficient operation of the energy conversion systems. However, due to the harsh conditions, current instrumentation and sensor technology is inadequate for the

systems. The lack of suitable on-line measurement technology represents the primary motivation for seeking out new developments in sensor technology. The specific objective of this solicitation is to seek out new fundamental approaches to sensor concepts, materials, design, and fabrication that have potential application in the harsh environment of the advanced fossil fuel-based energy production systems. The types of projects sought through this solicitation include laboratory and bench-scale testing as well as fundamental research that addresses the barriers associated with ultra-high temperature operation.

The research objectives are to:

(1) Develop an understanding of the sensor mechanisms acquired by nano-scale design,

(2) Develop technology for fusion of high temperature materials and advanced sensors,

(3) Develop long term high temperature data for life prediction and reliability,

(4) Devise life assessment models and experimental verification,

(5) Obtain a quantitative description of the evolutionary processes that lead to failure and predict response of sensor materials in complex environments,

(6) Miniaturize sensors, and

(7) Explore self-contained sensor intelligence based on smart materials.[1]

While the solicitation seeks out fundamental developments, the ultimate goal of the sensor program is to develop devices that can used for the measurement of temperature, pressure, and detection of various gases (O_2, H_2, N_2, H_2S, CH_4, etc.) under conditions of high temperature (1000°C) and elevated pressures (up to 500 psi). Low cost, in situ or embedded sensors that survive approximately one year of service in the presence corrosive and erosive conditions are ideal. The incorporation of self diagnostics/smart sensor functions is desired to verify performance and accuracy.

It is anticipated that this program solicitation will result in three (3) to six (6) awards. The period of performance for each award will range from one to three years with budget periods to be established independently based on the logical technical phases of each individual project. Cost sharing is encouraged, but not required under the subject program solicitation.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation. However, all questions relating to the solicitation must be submitted electronically through IIPS. All responses to questions, as well as all amendments to the solicitation, will be released on the IIPS homepage.

Issued in Pittsburgh, Pennsylvania, on January 9, 2003.

Dale A. Siciliano,

Acting Director, Acquisition and Assistance Division.

[FR Doc. 03–1096 Filed 1–16–03; 8:45 am]

BILLING CODE 6450–01–P

[1] Smart materials may be defined as the materials that respond to environmental changes at optimal conditions and manifest their functions according to the changes. The generic term "smart materials" includes the materials and probes that can provide information on a coating or process material while in service. The information can be used via a suitable process control mechanism to assess remaining life as well as to regulate the operating conditions. Examples of smart materials are shape memory alloys, optical fiber hybrid composites, and piezoelectric hybrid composites.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–232–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

January 13, 2003.

Take notice that on January 9, 2003, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of February 1, 2003:

Forty-Second Revised Sheet No. 7
Forty-Second Revised Sheet No. 8

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedule FSS. The costs of the above referenced storage service comprises the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. .

Comment Date: January 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1173 Filed 1–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–6564]

Jane A. Horning; Notice of Site Visit

January 13, 2003.

Jane A. Horning, exemptee, for the Brunswick Creek Hydroelectric Project (project), in Washington County, North Plains, Oregon, requests to surrender her exemption. On January 30, 2003, the

staff of the Office of Energy Projects (OEP) will conduct a site visit of the project. Representatives of the project will accompany the OEP staff. All interested parties may meet at 9 a.m. at the project powerhouse located near the Brunswick Creek dam. Attendees must provide their own transportation.

For further information, please contact Blake Condo at (202) 502–8914 or the Commission's Office of External Affairs at (866) 208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1171 Filed 1–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–210–001]

New England Power Pool; Notice of Filing

January 13, 2003.

Take notice that on January 10, 2002, the New England Power Pool (NEPOOL) Participants Committee amended its November 22, 2002, filing in Docket No. ER03–210–000 by filing for acceptance Original Tariff Sheet No. 288A to the NEPOOL Tariff, which was inadvertently omitted from the revised tariff sheets included with the November 22 filing.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: January 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1169 Filed 1–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–10359]

Snoqualmie River Hydro Inc.; Notice of Site Visit

January 13, 2003.

Snoqualmie River Hydro Inc., licensee, for the Youngs Creek Hydroelectric Project (Project), Snonomish County, Washington State, requests to surrender its license. On January 27, 2003, the staff of the Office of Energy Projects (OEP) will conduct a site visit of the Project. Representatives of the licensee will accompany the OEP staff. All interested parties may meet at 2 p.m. at the dam site. Attendees must provide their own transportation.

For further information, please contact Blake Condo at (202) 502–8914 or the Commission's Office of External Affairs at (866) 208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1170 Filed 1–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–162–000]

Trailblazer Pipeline Company; Notice of Technical Conference

January 13, 2003.

In the Commission's order issued on December 31, 2002,[1] the Commission directed that a technical conference be held to address certain issues, as set forth in the Commission's order.

Take notice that the technical conference will be held on Thursday, February 6, 2003, at 10:30 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1172 Filed 1–16–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Trailblazer Pipeline Company, 101 FERC ¶ 61,405 (2002).

ENVIRONMENTAL PROTECTION AGENCY

[IN 150–1; FRL–7440–3]

Notice of Final Determination for Nucor Steel in Crawfordsville, IN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that on October 11, 2002, the Environmental Appeals Board (EAB) of the EPA dismissed a petition for review of a permit issued for Nucor Steel (Nucor) by the Indiana Department of Environmental Management (IDEM) pursuant to the regulations under the Federal prevention of significant deterioration (PSD) program. The EAB dismissed the petition for failure to file a petition within 30 days of permit issuance.

DATES: The effective date for the EAB's decision is October 11, 2002. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of January 17, 2003.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Sam Portanova at (312) 886–3189.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, EPA, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Anyone who wishes to review the EAB decision can obtain it at *http://www.epa.gov/eab/orders/nucor.pdf*.

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Action Is EPA Taking?
B. What is the Background Information?
C. What did EPA Determine?

A. What Action Is EPA Taking?

We are notifying the public of a final decision by EPA's EAB on a permit issued by IDEM pursuant to the Federal PSD program.

B. What Is the Background Information?

On June 6, 2002, IDEM issued a PSD permit (permit number 107–14297–00038) to Nucor for existing unpermitted burners in the preheat section of its galvanizing line. In addition, the PSD permit provided for the modification of 36 natural gas-fired main burners, 3 auxiliary natural gas-fired burners in the preheat furnace section of its galvanizing line, and 44 burners in the radiant tube section. The permit also contains a condition that requires Nucor to install continuous emissions monitors to verify compliance with nitrogen oxides (NO_X) emission standards. On the same date, IDEM also issued to Nucor an administrative amendment to a minor source modification of a part 70 permit (administrative amendment permit). The cover letter to the PSD permit provided instructions for filing an appeal with the EAB and the cover letter to the administrative amendment permit provided instructions for filing an appeal with Indiana's Office of Environmental Adjudication (OEA).

On June 24, 2002, Nucor filed a petition for review of the PSD permit with the OEA following the instructions for filing the administrative amendment permit appeal. Nucor subsequently filed its petition for review of the PSD permit with the EAB on September 10, 2002. Nucor raised the following issues. First, that a continuous emissions monitoring system should not be required. Second, that the use of a 24-hour NO_X average is unreasonable and unsupported by Federal or Indiana law. Third, that the selective catalytic reduction/selective non-catalytic reduction systems are incorrectly identified as best available control technology. Finally, that the PSD permit's optimum temperature requirements are unnecessary and duplicative.

Interested parties may petition the EAB for review of a PSD permit condition within 30 days after issuance of the final permit decision (40 CFR 124.19(a)). In accordance with this regulation, petitions filed more than 30 days after permit issuance are untimely. In this case, Nucor's deadline for filing a petition for review with the EAB was July 12, 2002 (30 days after the June 6, 2002, permit issuance plus 5 additional days since service was by mail). However, Nucor did not file its appeal with the EAB until September 10, 2002.

C. What Did the EAB Determine?

On October 11, 2002, the EAB dismissed the petition for review as untimely because Nucor was properly notified of the filing requirements and there is no good cause for Nucor's failure to file its petition within the 30 days of permit issuance allowed by regulation.

Dated: January 2, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–1146 Filed 1–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6636–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements.

Filed January 06, 2003 Through January 10, 2003.

Pursuant to 40 CFR 1506.9.

EIS No. 030006, Draft EIS, IBR, WA, Banks Lake Drawdown Project, Proposal to Lower the Water Surface Elevation from 1565 feet to 1560 feet in August of Each Year, Columbia River, Douglas and Grant Counties, WA, Comment Period Ends: March 03, 2003, *Contact:* Jim Blanchard (509) 754–0226.

EIS No. 030007, Draft Supplement COE, NY, Irondequoit Creek at Panorama Valley Flood Damage Reduction Project, New Information concerning Resumption and Evaluation of a Flood Damage Reduction Project, Town of Penfield, Monroe County, NY, Comment Period Ends: March 03, 2003, *Contact:* Tod Smith (716) 879–4175.

EIS No. 030008, Final EIS, AFS, WV, VA, Appalachian Power Company (APCo), Construction, Proposal from Wyoming Station to Cloverdale Station, Right-of-Way, Special-Use-Permit, Federal and Non Federal Land, George Washington and Jefferson National Forests, Several County WV and VA, Wait Period Ends: February 18, 2003, *Contact:* Kenneth Landgraf (540) 265–5170.

EIS No. 030009, Final EIS, FHW, AL, Industrial Parkway Connector Project, Transportation Improvement, from Lott Road (AL–217) to US 45, Funding, COE Section 404 Permit and NPDES Permit, Mobile County, AL, Wait Period Ends: February 18, 2003, *Contact:* Joe D. Wilkerson (334) 223–7370.

EIS No. 030010, Final EIS, COE, KS, KS–10 Highway (commonly known as South Lawrence Trafficway) Relocation, Issuance or Denial of U.S. Army COE section 404 Permit Request, Lawrence City, Douglas County, KS, *Wait Period Ends:* February 18, 2003, *Contact:* Robert J. Smith (816) 983–3656.

EIS No. 030011, Draft EIS, AFS, CA, North Fork Fire Salvage Project, To Salvage Harvest and Sell Merchantable Timber Volume and to Implement the Sierra National Forest Land and Resource Management Plan, Bass Lake Ranger District, Madera County, CA, *Comment Period Ends:* March 03, 2003, *Contact:* Michael Price (559) 877–2218.

EIS No. 030012, Draft EIS, BIA, CA, Jamul Indian Village (Tribe) 101 Acre Fee-to-Trust Transfer and Casino Project, Implementation, San Diego County, CA, *Comment Period Ends:* March 03, 2003, *Contact:* William Allan (916) 978–6043.

EIS No. 030013, Final EIS, NPS, NV, AZ, Lake Mead National Recreation Area, Long-Term Management of Lake Mead and Mohave and Associated Shoreline and Development Area, Lake Management Plan, Clark County. NV and Mohave County, AZ, *Wait Period Ends:* February 18, 2003, *Contact:* Jim Holland (702) 293–8986.

EIS No. 030014, Draft EIS, AFS, MT, Canyon Lake Dam and Wyant Lake Dam Project, Proposal to Authorize Access to their Facilities with Prescribe Terms and Conditions, Canyon Creek Irrigation District (CCID), Bitterroot National Forest, Selway Bitterroot Wilderness, Ravalli County, MT, *Comment Period Ends:* March 03, 2003, *Contact:* Pete Zimmerman (406) 363–7100.

This document is available on the Internet at: *http://www.fs.fed.us/r1/bitterroot/planning/decisiondocs/decisiondocs.htm1.*

EIS No. 030015, Draft EIS, BLM, AK, Northwest National Petroleum Reserve–Alaska (NPR–A) Integrated Plan, Multiple-Use Management of 8.8 million Acres, Lands within the North Slope Borough, AK, *Comment Period Ends:* March 03, 2003, *Contact:* Curtis Wilson (907) 271–5546.

This document is available on the Internet at: *http://www.ak.blm.gov/nwnpra*

EIS No. 030016, Draft EIS, NRC, NB, Generic EIS—Fort Calhoun Station, Unit 1, Renewal of the Operating Licenses (OLs) for an Additional 20 Years, Supplement 12 (NUREG–1437) Omaha Public Power District, Washington County, NB, *Comment Period Ends:* March 03, 2003, *Contact:* Jack Cushing (301) 415–1424.

EIS No. 030017, Final EIS, BLM, WY, Powder River Basin Oil and Gas Project, Extraction, Transportation and Oil and Natural Gas Resources Sale, Application for a Permit to Drill (APD), Special Use Permit and Right-of-Way Grants, Campbell, Converse, Johnson and Sheridan Counties, WY, *Wait Period Ends:* February 18, 2003, *Contact:* Paul Beels (307) 684–1168.

This document is available on the Internet at: *http://www.wy.blm.gov/nepa/prb-feis* or *http://www.prb-eis.org.*

EIS No. 030018, Final EIS, JUS, CA, Juvenile Justice Campus (JJC) Construction and Operation of a 1,400 Bed and Related Functions Facility, Conditional Use Permit, Fresno County, CA, *Wait Period Ends:* February 18, 2003, *Contact:* Paul V. Dehameter (202) 514–7903.

This document is available on the Internet at: *http://www.fresno.ca.gov/4360/index.htm.*

EIS No. 030019, Draft Supplement, FTA, VA, Norfolk Light Rail Transit Project, To Provide an 8-mile Light Rail Transit System from the West Terminus near Eastern Virginia Medical Center through Eastern Terminus on Kempsville Road, Hampton Roads Transit, City of Norfolk, VA, *Comment Period Ends:* March 3, 2003, *Contact:* Patricia Kampf (215) 656–7100.

EIS No. 030020, Final EIS, BLM, MT, Montana Statewide Conventional Oil and Gas and Coal Bed Methane Gas Exploration and Development Management Plan within the Bureau of Land Powder River and Billings Resources Management Plan Areas and the State of Montana, Implementation, MT , *Wait Period Ends:* February 18, 2003, *Contact:* Brenda William (202) 452–5045.

This document is available on the Internet at: *http://www.mt.blm.gov/mcfo.*

EIS No. 030021, Final EIS, NOA, WA, CA, OR, 2003 Pacific Coast Groundfish Fishery, Proposed Groundfish Acceptable Biological Catch and Optimum Yield Specifications and Management Measures, Implementation, WA, OR and CA, *Wait Period Ends:* February 18, 2003, *Contact:* Roberta Lohn (206) 526–6150.

EIS No. 030022, Final EIS, FAA, MD, VA, DC, Potomac Consolidated Terminal (PCT) Radar Approach Control Facility (TRACON) Airspace Redesign in the Baltimore-Washington Metropolitan Area. Newly Consolidated TRACON, Aircraft Performance Improvements and Emerging PCT Technologies, PA, MD, DE, VA, WV and DC, *Wait Period Ends:* February 18, 2003, *Contact:* William Carver (800) 762–9531.

Amended Notices

EIS No. 020474, DRAFT EIS, FHW, AK, South Extension of the Coastal Trail Project, To Extend the Existing Tony Knowles Coastal Trail from Kincaid Park through the Project Area to the Potter Weigh Station, COE Section 10 and 404 Permit, Municipality of Anchorage, Anchorage, Alaska, *Comment Period Ends:* March 07, 2003, *Contact:* Tim A. Haugh (907) 586–7418. Revision of FR Notice Published on 11/11/2002: CEQ Comment Period Ending 1/8/2003 has been Extended to 3/7/2003.

Dated: January 13, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–1047 Filed 1–16–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6636–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–L65405–AK Rating NS, Shoreline Outfitter/Guide Plan, Commercial Permits Issuance for Shoreline-Based Activities on National Forest System Lands, Admiralty Island National Monument, Hoonah, Sitka and Juneau Ranger Districts, Tongass National Forest, AK.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based on the screen, EPA does not foresee having major environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D–APH–A99222–00 Rating LO, Importation of Solid Wood Packing Material to Exclude, Eradicate and/or Control Invasive Alien Agricultural Pest, Implementation, United States.

Summary: EPA expressed no objection to the draft EIS and the Animal and Plant Health Inspection Service's (APHIS) proposal to adopt the International Plant Protection Convention (IPPC) "Guidelines for Regulating Wood Packaging Material in International Trade".

ERP No. D–BLM–G65084–00 Rating LO, El Camino Real De Tierra Adentro National Historic Trail, Comprehensive Management Plan, Implementation, TX and NM.

Summary: EPA has no objection to the selection of the preferred alternative.

ERP No. D–BLM–L65402–OR Rating EC2, Cascade—Siskiyou National Monument (CSNM) Resource Management Plan, Implementation, Klamath and Rouge River Basins, Jackson County, OR.

Summary: EPA expressed environmental concerns that the draft EIS lacked sufficient information related to: the Purpose and Need Statement, Tribal consultation and coordination efforts, livestock grazing impacts, habitat connectivity, CWA section 303(d) Protocols, and indirect or cumulative effects and should be addressed in the final EIS.

ERP No. D–DOE–K08024–CA Rating EC2, Sacramento Area Voltage Support Project, System Reliability and Voltage Support Improvements, Sierra Nevada Region, Alameda, Contra Costa, Placer, Sacramento, San Joaquin and Sutter Counties, CA.

Summary: EPA has environmental concerns about impacts to air quality, water resources and with the scope of the cumulative impacts analysis. EPA urged Western Area Power Administration to commit to follow-up environmental analysis, a discription and evaluation of the funding process, and how funding and project cost will be integrated with the environmental analysis.

ERP No. D–FHW–B40092–NH Rating EO2, I–93 Highway Improvements, Salem to Manchester, Funding, NPDES and U.S. Army COE Section 404 Permits

Issuance, Hillsborough and Rockingham Counties, NH.

Summary: EPA expressed environmental objections to impacts to the aquatic environment which should be addressed through additional analysis, mitigation and other commitments in the FEIS. Specifically, EPA recommends that risks to surface and ground waters from road salt and air quality impacts be addressed in greater detail. Mitigation plans should also be enhanced in addition to the inclusion of more information regarding commuter bus and high occupancy vehicle services in the project plans.

ERP No. DS–FHW–F40118–MI Rating EC2, US–31 Freeway Connection, Napier Road to I–94, Updated Information concerning Transportation Improvements, Berrien County, MI.

Summary: EPA expressed environmental concerns regarding project impacts to wetlands and wildlife connectivity.

Additional information regarding wetlands minimization and mitigation measures should be included in the final EIS.

ERP No. DS–FTA–E40777–FL Rating EC2, Miami-Miami Beach (Bay Link) Transportation Corridor Study, Transportation Improvements Connecting Government Center and Downtown Miami Beach Convention Center, Dade County, FL.

Summary: EPA expressed environmental concerns regarding social impacts, noise exposure, and aquatic resource impacts and recommends minimization or mitigation of these impacts.

Final EISs

ERP No. F–AFS–L65400–ID, The West Gold Creek Project, Forest Management Activities Plan, Implementation, Idaho Panhandle National Forests, Sandpoints Ranger District, Bonner County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–L03012–AK, Renewal of Federal Grant for the Trans-Alaska Pipeline System, Right-of-Way Grant and Approvals, AK.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–L60107–OR, Coos County Natural Gas Transmission Pipeline Construction, Operation and Maintenance, Roseburg to Coos Bay, Right-of-Way Grant, Coos Bay District, Coos County, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–C40151–NY, County Road (Mill Hill Road and Glen Road) Improvements, Howard Drive to NY–9N including a New Bridge over the East Branch of the Ausable River, Funding and U.S. Army COE Section 404 Permit Issuance, Essex County, NY.

Summary: EPA continued to express environmental concerns with the project's cumulative impacts and impacts to wetlands.

ERP No. F–FTA–K59002–AZ, Central Phoenix/East Valley Light Rail Transit Corridor Construction, Operation and Maintenance, Funding, Cities of Phoenix, Tempe and Mesa, Maricopa County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–SFW–K70008–AZ, Roosevelt Habitat Conservation Plan, Issuance of an Incidental Take Permit to Allow Continued Operation of Roosevelt Dam and Lake, Implementation, Gila and Maricopa Counties, AZ.

Summary: No formal comment letter was sent to the preparing agency.

Dated: January 13, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–1048 Filed 1–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7440–4]

Extension of Public Comment Period on the General National Pollutant Discharge Elimination System Permits for Log Transfer Facilities in Alaska: AK–G70–0000 and AK–G70–1000

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period on two general National Pollutant Discharge Elimination System (NPDES) permits for log transfer facilities in Alaska.

SUMMARY: The Director, Office of Water, EPA Region 10, is extending the public comment period on the proposed modifications of the two general National Pollutant Discharge Elimination System (NPDES) permits for Alaskan log transfer facilities (LTFs) and the project area zone of deposit to January 27, 2003.

DATES: Interested persons may submit written comments on the proposed modifications to general NPDES permits AK–G70–0000 and AK–G70–1000 and on the project area zone of deposit on or before January 27, 2003.

ADDRESSES: Comments must be sent to the attention of Alaskan LTF Public Comments, EPA Region 10 (OW–130), 1200 Sixth Avenue, Seattle, WA 98101. All comments should include the name of the commenter, a concise statement of the comment, and the relevant facts upon which the comment is based.

FOR FURTHER INFORMATION CONTACT: The NPDES Permits Unit, EPA Region 10 Office of Water, Seattle, Washington, at (206) 553–0775.

SUPPLEMENTARY INFORMATION: On October 22, 2002, the EPA published the public notice of its request for comment on proposed modifications to two general permits for Alaskan log transfer facilities and a project area zone of deposit (67 FR 64885). On November 13, 2002, the EPA provided supplemental information and extended the public comment period for 60 days (67 FR 68869). That comment period ends January 13, 2003. On January 8, 2003, Sealaska submitted a request to extend the public comment period to January 27, 2003. This notice grants that request.

Administrative Record: The two draft general NPDES permit nos. AK–G70–0000 and AK–G70–1000, the October 22, 2002, **Federal Register** notice, the November 13, 2002, **Federal Register** notice, and this **Federal Register** notice are available for inspection and copying at six locations: (a) EPA–Juneau, 709 West 9th Street, room 223A; (b) ADEC–Juneau, 410 Willoughby Avenue, suite 200; (c) EPA–Anchorage, 222 West 7th Avenue, room 19; (d) ADEC–Anchorage, 555 Cordova Street; (e) ADEC–Ketchikan, 540 Water Street; and (f) EPA–Seattle, 1200 Sixth Avenue, 10th floor library. These documents are also available on EPA Region 10's internet site at *http://www.epa.gov/r10earth/*. The administrative record for the proposed modifications reflected in the draft general NPDES permits AK–G70–0000 and AK–G70–1000 and the project area zone of deposit can be reviewed in the EPA's Seattle Office, 1200 Sixth Avenue, 13th Floor.

Dated: January 9, 2003.

Randall F. Smith,

Director, Office of Water, Region 10.

[FR Doc. 03–1147 Filed 1–16–03; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

RIN 3052–AC13

Loan Policies and Operations; Loan Syndication Transactions

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: The Farm Credit Administration (FCA) is seeking public

comment on the regulatory treatment of Farm Credit System (FCS or System) loan syndication transactions. The FCA has received requests to provide guidance about the scope of System institutions' authorities to engage in syndications that non-System lenders originate, and the FCA seeks input from the public before it responds.

DATES: Please send your comments to the FCA by February 18, 2003.

ADDRESSES: You may send comments by electronic mail to *reg-comm@fca.gov* or through the Pending Regulations section of FCA's Web site, *http://www.fca.gov*. You may also send comments to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Dennis K. Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Background

System institutions have asked the FCA to provide guidance on the regulatory treatment of loan syndications that they enter into with non-System lenders. The FCA Board recognizes the importance of funding to agriculture and rural America through multilender transactions, including loan syndications and participations.

The Board acknowledges that System institutions may desire to engage in loan syndications for many different reasons, some of which would include:

- Diversification of an institution's portfolio, which is often concentrated in certain industries or geographic regions;
- Diversification of an institution's portfolio relative to loan size and risk exposure limits;
- Increased revenue and in many cases, cooperative patronage arising from lower cost of credit delivery;
- Networking—strengthening cooperation and relationships between FCS institutions and non-System lenders;
- Increased knowledge of specific industries;
- Support for existing and potential customer bases; and
- Expanded opportunities to provide complementary services such as appraisal services, industry expertise, loan origination and payment collection expertise, and administrative capacity.

Several System institutions have suggested that loan syndications should be treated as part of their participation authority. However, we have previously indicated that loan syndication transactions come within the System's direct loan authorities. If loan syndications were treated as within the System's direct loan authority, the System's share of a loan syndication would be subject to the stock purchase, borrower rights, and territorial concurrence requirements of the Farm Credit Act of 1971, as amended (Act) and applicable regulations. In addition, Farm Credit banks operating under title I of the Act that have transferred their direct lending authority to their affiliated associations would not be authorized to enter into loan syndications. Finally, System institutions would not be authorized to purchase assignments of loan syndications from outside the System.

II. Questions

We recognize that the financial markets and the funding needs of agriculture continue to evolve. We support the need of the System to evolve with agriculture and the financial markets. Therefore, we seek your comments on the following:

1. What is the proper regulatory treatment of loan syndications?

2. Assuming syndication transactions are within the System's loan-making authority, should the FCA consider regulatory changes that allow: (a) Borrowers to waive borrower rights in syndication transactions; and (b) associations to take part in syndications to eligible borrowers who are located in the chartered territories of other associations without consent?

3. If the FCA would choose to recommend legislative changes to Congress regarding the System's authority to engage in various types of multilender transactions with non-System lenders, what specifically should the FCA include in its recommendation?

Dated: January 14, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–1136 Filed 1–16–03; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:35 a.m. on Tuesday, January 14, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Vice Chairman John M. Reich, concurred in by Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: January 15, 2003.

Federal Deposit Insurance Corporation:

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 03–1233 Filed 1–15–03; 1:06 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1450–DR]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1450–DR), dated January 6, 2003, and related determinations.

EFFECTIVE DATE: January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 6, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from a severe ice storm on December 3–4, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under section 408 of the Stafford Act is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alexander S. Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Baxter, Clay, Cleburne, Craighead, Fulton, Greene, Independence, Izard, Jackson, Lawrence, Newton, Poinsett, Randolph, Searcy, Sharp, Stone, Van Buren, and White Counties for Public Assistance.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 03–1088 Filed 1–16–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1449–DR]

Federated States of Micronesia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Federated States of Micronesia (FEMA–1449–DR), dated January 6, 2003, and related determinations.

EFFECTIVE DATE: January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 6, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Federated States of Micronesia, resulting from Typhoon Pongsona on December 5–7, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the Federated States of Micronesia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under Public Assistance in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under section 408 of the Stafford Act and Hazard Mitigation are later warranted, Federal funding under these programs will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Fukutomi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Federated States of Micronesia to have been affected adversely by this declared major disaster:

Chuuk State for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, including direct Federal assistance at 75 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–1089 Filed 1–16–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1448–DR]

North Carolina; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina, (FEMA–1448–DR), dated December 12, 2002, and related determinations.

EFFECTIVE DATE: January 8, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 12, 2002:

Richmond County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–1090 Filed 1–16–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1451–DR]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–1451–DR), dated January 8, 2003, and related determinations.

EFFECTIVE DATE: January 8, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 8, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of South Carolina, resulting from a severe ice storm on December 4–6, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

I, therefore, declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance limited to debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under section 408 of the Stafford Act is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Charles M. Butler of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Carolina to have been affected adversely by this declared major disaster:

Cherokee, Greenville, Laurens, Spartanburg, Union, and York Counties for debris removal (Category A), emergency protective measures (Category B), and public utilities (Category F) under the Public Assistance program.

All counties within the State of South Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–1087 Filed 1–16–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

[No. 2003–N–2]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2002–03 fourth quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 2002–03 fourth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before March 3, 2003.

ADDRESSES: Bank members selected for the 2002–03 fourth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Supervision, Community Investment & Affordable Housing, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at *FITZGERALDE@FHFB.GOV.*

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Supervision, Community Investment & Affordable Housing, by telephone at (202) 408–2874, by electronic mail at *FITZGERALDE@FHFB.GOV*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the

Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the March 3, 2003 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before January 31, 2003, each Bank will notify the members in its district that have been selected for the 2002–03 fourth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's Web site: *WWW.FHFB.GOV*. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2002–03 fourth quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

Union Savings Bank, Danbury, Connecticut
Jewett City Savings Bank, Jewett City, Connecticut
The First National Bank of Litchfield, Litchfield, Connecticut
Naugatuck Valley Savings and Loan Association, Inc., Naugatuck, Connecticut
New Haven Savings Bank, New Haven, Connecticut
Newtown Savings Bank, Newtown, Connecticut
Fairfield County Savings Bank, Norwalk, Connecticut
Ridgefield Bank, Ridgefield, Connecticut
Cornerstone Bank, Stamford, Connecticut
First County Bank, Stamford, Connecticut
Patriot National Bank, Stamford, Connecticut
Dutch Point Credit Union, Wethersfield, Connecticut
Windsor Locks Federal Credit Union, Windsor Locks, Connecticut
Bangor Federal Credit Union, Bangor, Maine
Bangor Savings Bank, Bangor, Maine
Bar Harbor Savings and Loan Association, Bar Harbor, Maine
Northeast Bank FSB, Lewiston, Maine
First Citizens Bank, N.A., Presque Isle, Maine
York County Federal Credit Union, Sanford, Maine
South Adams Savings Bank, Adams, Massachusetts
Athol Credit Union, Athol, Massachusetts
Barre Savings Bank, Barre, Massachusetts
Taupa Lithuanian Federal Credit Union, Boston, Massachusetts
Horizon Bank and Trust Company, Braintree, Massachusetts
Cambridgeport Bank, Brighton, Massachusetts
Crescent Credit Union, Brockton, Massachusetts
Brookline Savings Bank, FSB, Brookline, Massachusetts
Boston Federal Savings Bank, Burlington, Massachusetts
Cambridge Trust Company, Cambridge, Massachusetts
North Cambridge Co-operative Bank, Cambridge, Massachusetts
Canton Cooperative Bank, Canton, Massachusetts
Meetinghouse Co-operative Bank, Dorchester, Massachusetts
The Edgartown National Bank, Edgartown, Massachusetts
Fidelity Cooperative Bank, Fitchburg, Massachusetts
Fitchburg Savings Bank, FSB, Fitchburg, Massachusetts
Greenfield Co-operative Bank, Greenfield, Massachusetts
Haverhill Co-operative Bank, Haverhill, Massachusetts
Hyde Park Cooperative Bank, Hyde Park, Massachusetts
Ipswich Co-operative Bank, Ipswich, Massachusetts
Leominster Credit Union, Leominster, Massachusetts
Lowell Co-operative Bank, Lowell, Massachusetts
Marlborough Savings Bank, Marlborough, Massachusetts
The Milford National Bank and Trust Company, Milford, Massachusetts
Natick Federal Savings Bank, Natick, Massachusetts
Institution for Savings, Newburyport, Massachusetts
North Abington Co-operative Bank, North Abington, Massachusetts
Rockland Federal Credit Union, Rockland, Massachusetts
South Coastal Bank, Rockland, Massachusetts
Heritage Co-operative Bank, Salem, Massachusetts
Salem Five Cents Savings Bank, Salem, Massachusetts
Southbridge Credit Union, Southbridge, Massachusetts
Stoneham Savings Bank, Stoneham, Massachusetts
First Federal Savings Bank of America, Swansea, Massachusetts
Country Bank for Savings, Ware, Massachusetts
Wellesley Co-operative Bank, Wellesley, Massachusetts
South Shore Co-operative Bank, Weymouth, Massachusetts
Winchester Co-operative Bank, Winchester, Massachusetts
Bay State Savings Bank, Worcester, Massachusetts
Cape Cod Cooperative Bank, Yarmouth Port, Massachusetts
Centrix Bank and Trust, Bedford, New Hampshire
The Berlin City Bank, Berlin, New Hampshire
Village Bank & Trust Company, Gilford, New Hampshire
Granite Bank, Keene, New Hampshire
Lancaster National Bank, Lancaster, New Hampshire
Holy Rosary Regional Credit Union, Rochester, New Hampshire
Profile Bank, FSB, Rochester, New Hampshire
Bank of Newport, Newport, Rhode Island

Citizens Bank of Rhode Island, Providence, Rhode Island
Greenwood Credit Union, Warwick, Rhode Island
Westerly Savings Bank, Westerly, Rhode Island
Brattleboro Savings & Loan Association, FA, Brattleboro, Vermont
Lyndonville Savings Bank & Trust Company, Lyndonville, Vermont
First Community Bank, Woodstock, Vermont

Federal Home Loan Bank of New York—District 2

Cape Savings Bank, Cape May Court House, New Jersey
United Roosevelt Savings Bank, Carteret, New Jersey
Commerce Bank, N.A., Cherry Hill, New Jersey
Unity Bank, Clinton, New Jersey
1st Constitution Bank, Cranbury, New Jersey
Delanco Federal Savings Bank, Delanco, New Jersey
Pinnacle Federal Credit Union, Edison, New Jersey
Columbia Bank, Fair Lawn, New Jersey
Haven Savings Bank, Hoboken, New Jersey
National Union Bank of Kinderhook, Kinderhook, New Jersey
Manasquan Savings Bank, Manasquan, New Jersey
Equity Bank NA, Marlton, New Jersey
West Essex Bank, Pinebrook, New Jersey
1st Bank of Sea Isle City, Sea Isle City, New Jersey
Somerset Valley Bank, Somerville, New Jersey
Union Center National Bank, Union, New Jersey
Wawel Savings Bank, SLA. Wallington, New Jersey
Crest Savings Bank, Wildwood, New Jersey
Bridgehampton National Bank, Bridgehampton, New York
Atlas Savings and Loan Association, Brooklyn, New York
Visions Federal Credit Union, Endicott, New York
Tompkins Trust Company, Ithaca, New York
Mid-Hudson Valley Federal Credit Union, Kingston, New York
Medina Savings & Loan Association, Medina, New York
Emigrant Savings Bank, New York, New York
Greenpoint Bank, New York, New York
Isreal Discount Bank of New York, New York, New York
NBT Bank, N.A., Norwich, New York
The Oneida Savings Bank, Oneida, New York
The Suffolk County National Bank, Riverhead, New York
Adirondack Bank, N.A., Saranac Lake, New York
Sawyer Savings Bank, Saugerties, New York
Bank of Smithtown, Smithtown, New York
Walden Federal Savings and Loan Association, Walden, New York
Fourth Federal Savings Bank, White Plains, New York
First Central Savings Bank, Whitestone, New York
City & Suburban Federal Savings Bank, Yonkers, New York
Westernbank Puerto Rico, Mayaguez, Puerto Rico
Banco Bilbao Vizcaya Argentaria Puerto Rico, San Juan, Puerto Rico

Federal Home Loan Bank of Pittsburgh—District 3

Christiana Bank & Trust Company, Greenville, Delaware
ING Bank, F.S.B., Wilmington, Delaware
First National Bank of Wyoming, Wyoming, Delaware
American Bank, Allentown, Pennsylvania
Iron Workers Savings Bank, Aston, Pennsylvania
Brentwood Bank, Bethel Park, Pennsylvania
Madison Bank, Blue Bell, Pennsylvania
National Penn Bank, Boyertown, Pennsylvania
Union Building and Loan Savings Bank, Bridgewater, Pennsylvania
Community Bank and Trust Company, Clarks Summit, Pennsylvania
Clearfield Bank & Trust Company, Clearfield, Pennsylvania
First Financial Savings Bank, Downingtown, Pennsylvania
Suburban Community Bank, Feasterville, Pennsylvania
Vartan National Bank, Harrisburg, Pennsylvania
The Dime Bank, Honesdale, Pennsylvania
Indiana First Savings Bank, Indiana, Pennsylvania
Jim Thorpe National Bank, Jim Thorpe, Pennsylvania
FirstService Bank, Lansdale, Pennsylvania
Manor National Bank, Manor, Pennsylvania
Province Bank, FSB, Marietta, Pennsylvania
First National Bank of Marysville, Marysville, Pennsylvania
Standard Bank, PaSB, Monroeville, Pennsylvania
Commonwealth Bank, Norristown, Pennsylvania
American Heritage Federal Credit Union, Philadelphia, Pennsylvania
Commerce Bank Pennsylvania NA, Philadelphia, Pennsylvania
Philadelphia Trust Company, Philadelphia, Pennsylvania
Roxborough Manayunk Bank, Philadelphia, Pennsylvania
SB1 Federal Credit Union, Philadelphia, Pennsylvania
New Century Bank, Phoenixville, Pennsylvania
Allegheny Valley Bank of Pittsburgh, Pittsburgh, Pennsylvania
Mt. Troy Savings Bank, FSB, Pittsburgh, Pennsylvania
PNC Bank, NA, Pittsburgh, Pennsylvania
Schuylkill Savings & Loan Association, Schuylkill Haven, Pennsylvania
Somerset Trust Company, Somerset, Pennsylvania
Omega Bank, N.A., State College, Pennsylvania
Mechanics Savings Bank, Steelton, Pennsylvania
First County Bank, Warrington, Pennsylvania
Guard Security Bank, Wilkes-Barre, Pennsylvania
Compass Federal Savings Bank, Wilmerding, Pennsylvania
Sovereign Bank, FSB, Wyomissing, Pennsylvania
Capital State Bank, Charleston, West Virginia
Hancock County Savings Bank FSB, Chester, West Virginia
Citizens National Bank of Elkins, Elkins, West Virginia
Monongahela Valley Bank, Inc., Fairmont, West Virginia
Fayette County National Bank, Fayetteville, West Virginia
Rock Branch Community Bank, Nitro, West Virginia
The Bank of Romney, Romney, West Virginia
Traders Bank, Spencer, West Virginia
Progressive Bank, Wheeling, West Virginia

Federal Home Loan Bank of Atlanta—District 4

Alabama Central Credit Union, Birmingham, Alabama
America's First Federal Credit Union, Birmingham, Alabama
Citizens Federal Savings Bank, Birmingham, Alabama
First Educators Credit Union, Birmingham, Alabama
Sloss Federal Credit Union, Birmingham, Alabama
SouthTrust Bank, Birmingham, Alabama
First Bank of Boaz, Boaz, Alabama
Town-Country National Bank, Camden, Alabama
Coosa Pines Federal Credit Union, Childersburg, Alabama
Heritage Bank, Decatur, Alabama
Escambia County Bank, Flomaton, Alabama

First Federal Bank, Fort Payne, Alabama
Traders and Farmers Bank, Haleyville, Alabama
City Bank of Hartford, Hartford, Alabama
First National Bank of Jasper, Jasper, Alabama
Pinnacle Bank, Jasper, Alabama
Marion Bank and Trust Company, Marion, Alabama
Merchants & Farmers Bank, Millport, Alabama
Farmers and Merchants Bank, Piedmont, Alabama
Bank of Pine Hill, Pine Hill, Alabama
Alabama Credit Union, Tuscaloosa, Alabama
First Federal Bank, A Federal Savings Bank, Tuscaloosa, Alabama
Alabama Exchange Bank, Tuskegee, Alabama
AmeriFirst Bank, Union Springs, Alabama
Small Town Bank, Wedowee, Alabama
Bank of York, York, Alabama
Department of Veterans Affairs FCU, Washington, D.C.
Independence Federal Savings Bank, Washington, D.C.
Community National Bank of Bartow, Bartow, Florida
First Southern Bank, Boca Raton, Florida
Platinum Bank, Brandon, Florida
Citizens and Peoples Bank, N.A., Cantonment, Florida
Crown Bank, A Federal Savings Bank, Casselberry, Florida
First National Bank of Nassau County, Fernandian Beach, Florida
Harbor Federal Savings Bank, Fort Pierce, Florida
Citizens Bank of Frostproof, Frostproof, Florida
Millennium Bank, Gainesville, Florida
Homosassa Springs Bank, Homosassa Springs, Florida
The Jacksonville Bank, Jacksonville, Florida
Columbia County Bank, Lake City, Florida
Premier Community Bank of Florida, Largo, Florida
City National Bank of Florida, Miami, Florida
Intercredit Bank, N.A, Miami, Florida
Interamerican Bank, a Federal Savings Bank, Miami, Florida
Metro Bank of Dade County, Miami, Florida
Northern Trust Bank of Florida, N.A., Miami, Florida
Pacific National Bank, Miami, Florida
Farmers and Merchants Bank, Monticello, Florida
The First National Bank of Mount Dora, Mount Dora, Florida
Citizens National Bank of S.W. Florida, Naples, Florida
Fairwinds Credit Union, Orlando, Florida
First Commercial Bank of Florida, Orlando, Florida
Southern Community Bank, Orlando, Florida
Lydian Private Bank, Palm Beach Gardens, Florida
Union Bank of Florida, Plantation, Florida
GulfStream Community Bank, Port Richey, Florida
First Peoples Bank, Port St. Lucie, Florida
Community Educators Credit Union of Brevard, Rockledge, Florida
Suncoast National Bank, Sarasota, Florida
Public Bank, St. Cloud, Florida
Cornerstone Community Bank, St. Petersburg, Florida
First Community Bank of America, St. Petersburg, Florida
GTE Federal Credit Union, Tampa, Florida
The Terrace Bank of Florida, Tampa, Florida
Valrico State Bank, Valrico Florida
Premier Community Bank, Venice Florida
Fidelity Federal Bank & Trust, West Palm Beach, Florida
Grand Bank & Trust of Florida, West Palm Beach, Florida
The Perkins State Bank, Williston, Florida
Albany Bank and Trust, Albany, Georgia
Bank of North Georgia, Alpharetta, Georgia
North Atlanta National, Bank, Alpharetta, Georgia
Sun Trust Bank, Atlanta, Atlanta, Georgia
United Americas Bank, NA, Atlanta, Georgia
First Port City Bank, Bainbridge, Georgia
Peoples State Bank and Trust, Baxley, Georgia
The Coastal Bank of Georgia, Brunswick, Georgia
Peoples Bank of West Georgia, Carrollton, Georgia
West Georgia National, Bank Carrollton,Georgia
Unity National, Bank, Cartersville, Georgia
Tippins Bank and Trust Company, Claxton, Georgia
Liberty National Bank, Conyers, Georgia
The Citizens Bank of Forsyth County, Cumming, Georgia
Alliance National Bank, Dalton, Georgia
Dalton Whitfield Bank, Dalton, Georgia
First Bank of Dalton, Dalton, Georgia
Decatur First Bank, Decatur, Georgia
Farmers and Merchants Bank, Dublin, Georgia
The Peachtree Bank, Duluth, Georgia
The Bank of Edison, Edison, Georgia
Colony Bank of Fitzgerald, Fitzgerald, Georgia
Community Banking Co. of Fitzgerald, Fitzgerald, Georgia
Farmers State Bank, Lumpkin, Georgia
F&M Bank and Trust Company, Manchester, Georgia
Riverside Bank, Marietta, Georgia
Southern National Bank, Marietta, Georgia
The Security State Bank, McRae, Georgia
First Bank of Coastal Georgia, Pembroke, Georgia
First Peoples Bank, Pine Mountain, Georgia
Colony Bank Quitman, FSB, Quitman, Georgia
Citizens Bank of Washington County, Sandersville, Georgia
Bank of Hancock County, Sparta, Georgia
Eagle National Bank, Stockbridge, Georgia
First National Bank of Johns Creek, Suwancee, Georgia
Colony Bank Worth, Sylvester, Georgia
Thomas County FS&LA, Thomasville, Georgia
Stephens Federal Bank, Toccoa, Georgia
Bank of Dade, Trenton, Georgia
Mountain National Bank, Tucker, Georgia
Altamaha Bank and Trust Company, Uvalda, Georgia
Commercial Banking Company, Valdosta, Georgia
Darby Bank and Trust Company, Vidalia, Georgia
Vidalia Federal Savings and LA, Vidalia, Georgia
Bank of Dooly, Vienna, Georgia
The Peoples Bank of Willacoochee, Willacoochee, Georgia
The Peoples Bank, Winder, Georgia
Talbot State Bank, Woodland, Georgia
Hartford National Bank, Aberdeen, Maryland
Arundel Federal Savings Bank, Baltimore, Maryland
Chesapeake Bank of Maryland, Baltimore, Maryland
Fairmount Federal Savings Bank, Baltimore, Maryland
Golden Prague Federal FS&LA, Baltimore, Maryland
Hopkins Federal Savings Bank, Baltimore, Maryland
Madison Square Federal Savings Bank, Baltimore, Maryland
Municipal Employees CU of Baltimore, Baltimore, Maryland
Parkville Federal Savings Bank, Baltimore, Maryland
Rosedale Federal Savings & LA, Baltimore, Maryland
Westview Savings Bank, Baltimore, Maryland
Bay Net, A Community Bank, Bel Air, Maryland

Chevy Chase Bank, Bethesda, Maryland
Marriott Employees FCU, Bethesda, Maryland
The Washington Savings Bank, F.S.B., Bowie, Maryland
The National Bank of Cambridge, Cambridge, Maryland
U.S. Postal Service Credit Union, Clinton, Maryland
The Bank of Delmarva, N.A., Delmar, Maryland
The Patapsco Bank, Dundalk, Maryland
Farmers and Mechanics National Bank, Frederick, Maryland
Montgomery County Teachers FCU, Gaithersburg, Maryland
OBA Federal Savings Bank, Gaithersburg, Maryland
Suburban Federal Savings Bank, Crofton, Maryland
Library of Congress FCU, Lanham, Maryland
Maryland Permanent Bank and Trust, Owings Mills, Maryland
National Institute of Health FCU, Rockville, Maryland
Senator Savings Bank, FSB, Towson, Maryland
Community Bank of Tri-County, Waldorf, Maryland
Woodsboro Bank, Woodsboro, Maryland
Asheville Savings Bank, Asheville, North Carolina
The Bank of Asheville, Asheville, North Carolina
First State Bank, Burlington, North Carolina
Crescent State Bank, Cary, North Carolina
Charlotte Metro Credit Union, Charlotte, North Carolina
First Trust Bank, Charlotte, North Carolina
Sharonview Federal Credit Union, Charlotte, North Carolina
Cherryville Federal S&L Association, Cherryville, North Carolina
First Federal Savings Bank, Dunn, North Carolina
Mutual Community SB, SSB, Durham, North Carolina
Seymour Johnson Federal Credit Union, Goldsboro, North Carolina
First Federal Savings Bank, Lincolnton, North Carolina
Progressive Savings Bank, Lumberton, North Carolina
Mooresville Savings Bank, SSB, Mooresville, North Carolina
Lumbee Guaranty Bank, Pembroke, North Carolina
North Carolina Local Government Employees, Raleigh, North Carolina
Paragon Commercial Bank, Raleigh, North Carolina
Roanoke Valley Savings Bank, SSB, Roanoke Rapids, North Carolina
Roxboro Savings Bank, SSB, Roxboro, North Carolina
First South Bank, Washington, North Carolina
WNC Community Credit Union, Waynesville, North Carolina
Truliant Federal Credit Union, Winston-Salem, North Carolina
Abbeville Savings and LA, Abbeville, South Carolina
The Bank of Abbeville, Abbeville, South Carolina
South Carolina Federal Credit Union, North Charleston, South Carolina
First Federal Savings and LA, Cheraw, South Carolina
The Conway National Bank, Conway, South Carolina
First Piedmont FS&LA, Gaffney, South Carolina
First Savers Bank, Greenville, South Carolina
S.C. Telco Federal Credit Union, Greenville, South Carolina
Citizens Building and Loan Association, Greer, South Carolina
Mutual Savings Bank, Hartsville, South Carolina
Atlantic Savings Bank, FSB, Hilton Head Island, South Carolina
The Commercial Bank, Honea Path, South Carolina
Founders Federal Credit Union, Lancaster, South Carolina
First Community Bank, N.A., Lexington, South Carolina
Pee Dee Federal Savings Bank, Marion, South Carolina
Coastal Federal Bank, Myrtle Beach, South Carolina
Family Trust Federal Credit Union, Rock Hill, South Carolina
Oconee Federal S&LA, Seneca, South Carolina
Seneca National Bank, Seneca, South Carolina
New Commerce Bank, NA, Greenville, South Carolina
Community First Bank, Walhalla, South Carolina
Bank of Walterboro, Walterboro, South Carolina
First Federal of South Carolina, FSB, Walterboro, South Carolina
James Monroe Bank, Arlington,Virginia
Citizens Bank and Trust Company, Blackstone, Virginia
First Community Bank, N.A., Bluefield, Virginia
Albemarle First Bank, Charlottesville, Virginia
Monarch Bank, Chesapeake, Virginia
Alliance Bank Corporation, Fairfax, Virginia
Cardinal Bank, N.A., Fairfax, Virginia
Acacia Federal Savings Bank, Falls Church, Virginia
First Virginia Bank, Falls Church, Virginia
Virginia Savings Bank, F.S.B., Front Royal, Virginia
Virginia Community Bank, Louisa, Virginia
Community First Bank, Lynchburg, Virginia
First Federal S&LA, Martinsville, Virginia
Community Bankers' Bank, Midlothian, Virginia
Harbor Bank, Newport News, Virginia
Newport News Shipbuilding Employees Credit Union, Inc., Newport News, Virginia
1st Advantage FCU, Newport News, Virginia
Essex Savings Bank, F.S.B., Norfolk, Virginia
TowneBank, Portsmouth, Virginia
Community National Bank, Pulaski, Virginia
Millennium Bank, N.A. Reston, Virginia
Richmond Federal Credit Union, Richmond, Virginia
First-Citizens Bank, a Virginia Corp., Roanoke, Virginia
Shenandoah Life Insurance Company, Roanoke, Virginia
Bank of Tazewell County, Tazewell, Virginia
Approved Federal Savings Bank, Virginia Beach, Virginia
Shenandoah Valley National Bank, Winchester, Virginia
Fort Belvoir Federal Credit Union, Woodbridge, Virginia

Federal Home Loan Bank, of Cincinnati—District 5

Home Federal Savings and Loan Association of Ashland, Ashland, Kentucky
Bank of Buffalo, Buffalo, Kentucky
The First National Bank of Columbia, Columbia, Kentucky
Kentucky Federal Savings and Loan Association, Covington, Kentucky
Fort Campbell Federal Credit Union, Fort Campbell, Kentucky
First National Bank of Northern Kentucky, Ft. Mitchell, Kentucky
South Central Bank of Barre, Glasgow, Kentucky
Greensburg Deposit Bank and Trust Company, Greensburg, Kentucky
First Security Bank of Lexington, Lexington, Kentucky
The Casey County Bank, Liberty, Kentucky
Independence Bank, Livermore, Kentucky
Laurel National Bank, London, Kentucky
Commonwealth Bank and Trust Company, Louisville, Kentucky
Louisville Community Development Bank, Louisville, Kentucky
PRP National Bank, Louisville, Kentucky
Home Savings Bank, fsb, Ludlow, Kentucky

Community First Bank, Madisonville, Kentucky
First Guaranty Bank, Martin, Kentucky
Bank of Maysville, Maysville, Kentucky
Hart County Bank and Trust Company, Munfordville, Kentucky
The Farmers Bank, Nicholasville, Kentucky
First Security Bank of Owensboro, Owensboro, Kentucky
Owingsville Banking Company, Owingsville, Kentucky
Family Bank, FSB, Paintsville, Kentucky
Community Trust Bank, National Association, Pikeville, Kentucky
Madison Bank, Richmond, Kentucky
Cumberland Security Bank, Somerset, Kentucky
Citizens National Bank, Somerset, Kentucky
Commercial Bank, West Liberty, Kentucky
The Antwerp Exchange Bank Company, Antwerp, Ohio
Hocking Valley Bank, Athens, Ohio
Rockhold Brown and Company Bank, Bainbridge, Ohio
Citizens Federal Savings and Loan Association of Bellefontaine, Bellefontaine, Ohio
The Citizens Bank Company, Beverly, Ohio
Castalia Banking Company, Castalia, Ohio
Mercer Savings Bank, Celina, Ohio
The Cheviot Building and Loan Company, Cheviot, Ohio
Cincinnati Federal Savings and Loan Association, Cincinnati, Ohio
Cincinnati Police Federal Credit Union, Cincinnati, Ohio
Kemba Cincinnati Credit Union, Cincinnati, Ohio
The North Side Bank and Trust Company, Cincinnati, Ohio
National City Bank, Cleveland, Ohio
Ohio Savings Bank, Cleveland, Ohio
The Home Loan Savings Bank, Coshocton, Ohio
The Covington Savings and Loan Association, Covington, Ohio
The Citizens Bank of De Graff, De Graff, Ohio
Employees Own Federal Credit Union, Defiance, Ohio
The Delaware County Bank & Trust Company, Delaware, Ohio
The Northern Savings and Loan Company, Elyria, Ohio
The Genoa Savings and Loan Company, Genoa, Ohio
The First National Bank, Germantown, Ohio
Indian Village Community Bank, Gnadenhütten, Ohio
Chaco Credit Union, Hamilton, Ohio
The Hicksville Bank, Hicksville, Ohio
The Citizens Bank of Higginsport, Higginsport, Ohio
Salt Creek Valley Bank, Laurelville, Ohio
The Home Builders Association, Lynchburg, Ohio
The Bank of Magnolia Company, Magnolia, Ohio
The Citizens Savings Bank, Martins Ferry, Ohio
Peoples Building, Loan and Savings Company, Mason, Ohio
Western Reserve Bank, Medina, Ohio
Bramble Federal Savings & Loan Association of Cincinnati, Milford, Ohio
First Clermont Bank, Milford, Ohio
The Commercial & Savings Bank of Millersburg, Millersburg, Ohio
The Nelsonville Home and Savings Association, Nelsonville, Ohio
Peoples National Bank, New Lexington, Ohio
Geauga Savings Bank, Newbury, Ohio
The First National Bank of Pandora, Pandora, Ohio
Century Bank, F.S.B., Parma, Ohio
Farmers Bank and Savings Company, Pomeroy, Ohio
The St. Henry Bank, St. Henry, Ohio
The Arlington Bank, Upper Arlington, Ohio
The Commercial Savings Bank, Upper Sandusky, Ohio
The First Citizens NB of Upper Sandusky, Upper Sandusky, Ohio
The Versailles Savings and Loan Company, Versailles, Ohio
First National Bank of Waverly, Waverly, Ohio
Commerce National Bank, Worthington, Ohio
Spring Valley Bank, Wyoming, Ohio
The Home Savings and Loan Company, Youngstown, Ohio
Century National Bank, Zanesville, Ohio
Athens Federal Community Bank, Athens, Tennessee
Bells Banking Company, Bells, Tennessee
Benton Banking Company, Benton, Tennessee
Bank of Bolivar, Bolivar, Tennessee
Premier Bank of Brentwood, Brentwood, Tennessee
People's Bank and Trust Company of Picket County, Byrdstown, Tennessee
Bank of Camden, Camden, Tennessee
Tennessee Valley Federal Credit Union, Chattanooga, Tennessee
Legends Bank, Clarksville, Tennessee
BankTennessee, Collierville, Tennessee
Greenfield Banking Company, Greenfield, Tennessee
First Peoples Bank of Tennessee, Jefferson City, Tennessee
Lawrenceburg FS&LA, Lawrenceburg, Tennessee
First Central Bank, Lenoir City, Tennessee
Community National Bank, Lexington, Tennessee
Union Bank & Trust Company, Livingston, Tennessee
City of Memphis Credit Union, Memphis, Tennessee
EFS National Bank, Memphis, Tennessee
Farmers State Bank, Mountain City, Tennessee
Citizens Savings Bank & Trust Company, Nashville, Tennessee
Community Bank, Nashville, Tennessee
Tennessee Teachers Credit Union, Nashville, Tennessee
First Trust & Savings Bank, Oneida, Tennessee
The FNB of Oneida, Tennessee, Oneida, Tennessee
Citizens Bank and Trust Company of Grainger County, Rutledge, Tennessee
The Bank of Waynesboro, Waynesboro, Tennessee

Federal Home Loan Bank of Indianapolis—District 6

Knisley National Bank of Butler, Butler, Indiana
Heritage Bank & Trust Company, Darlington, Indiana
Elberfeld State Bank, Elberfeld, Indiana
Dana Federal Credit Union, Fort Wayne, Indiana
Mutual Savings Bank, Franklin, Indiana
First State Bank, Greenwood, Indiana
Bank Calumet National Association, Hammond, Indiana
First Federal S&L, Hammond, Indiana
Citizens First State Bank, Hartford City, Indiana
Central Indiana School Educators Credit Union, Indianapolis, Indiana
First Indiana Bank, a FSB, Indianapolis, Indiana
FORUM Credit Union, Indianapolis, Indiana
Meridian Security Insurance Company, Indianapolis, Indiana
The Lafayette Life Insurance Company, Lafayette, Indiana
Farmers State Bank, LaGrange, Indiana
Linden State Bank, Linden, Indiana
MFB Financial, Mishawaka, Indiana
St. Joseph Capital Bank, Mishawaka, Indiana
Hometown National Bank, New Albany, Indiana
West End Savings Bank, Richmond, Indiana
Scott County State Bank, Scottsburg, Indiana
Communitywide Federal Credit Union, South Bend, Indiana
Indiana State University Federal Credit Union, Terre Haute, Indiana
Steel Parts Federal Credit Union, Tipton, Indiana
Home Building Savings Bank, FSB, Washington, Indiana
Purdue Employees Federal Credit Union, West Lafayette, Indiana

The Randolph County Bank, Winchester, Indiana
TLC Community Credit Union, Adrian, Michigan
School Employees Credit Union, Bay City, Michigan
Brighton Commerce Bank, Brighton, Michigan
Macomb Community, Clinton Township, Michigan
Community Bank of Dearborn, Dearborn, Michigan
Dearborn Federal Credit Union, Dearborn, Michigan
Communicating Arts Credit Union, Detroit, Michigan
First Independence, Detroit, Michigan
Michigan State University FCU, East Lansing, Michigan
Northern Michigan, Escanaba, Michigan
MetroBank, Farmington Hills, Michigan
Citizens Bank, Flint, Michigan
Grand Haven Bank, Grand Haven, Michigan
Grand Rapids Teachers Credit Union, Grand Rapids, Michigan
Mercantile Bank, of West Michigan, Grand Rapids, Michigan
Northpointe Bank, Grand Rapids, Michigan
Old Kent Bank, Grand Rapids, Michigan
Greenville Community Bank, Greenville, Michigan
Mainstreet Savings Bank, FSB, Hastings, Michigan
The Bank of Holland, Holland, Michigan
Honor State Bank, Honor, Michigan
Ionia County National Bank, Ionia, Michigan
First National Bank of Iron Mountain, Iron Mountain, Michigan
Capital National Bank, Lansing, Michigan
E&A Credit Union, Marysville, Michigan
Mayville State Bank, Mayville, Michigan
Dow Chemical Employee Credit Union, Midland, Michigan
Wolverine Bank, FSB, Midland, Michigan
First General Credit Union, Muskegon, Michigan
Northland Area Federal Credit Union, Oscoda, Michigan
Port Austin State Bank, Port Austin, Michigan
Portage Commerce Bank, Portage, Michigan
Central Savings Bank, Sault Ste. Marie, Michigan
Sturgis Bank and Trust Company, Sturgis, Michigan
First Savings Bank, a Federal Savings Bank, Three Rivers, Michigan
Howmet Credit Union, Whitehall, Michigan
Macatawa Bank, Zeeland, Michigan

Federal Home Loan Bank of Chicago—District 7

Citizens National Bank of Albion, Albion, Illinois
GreatBank, Algonquin, Illinois
Farmers State Bank of Western Illinois, Alpha, Illinois
Anna National Bank, Anna, Illinois
Apple River State Bank, Apple River, Illinois
Arcola Homestead Savings Bank, Arcola, Illinois
The First National Bank of Arcola, Arcola, Illinois
First National Bank of Arenzville, Arenzville, Illinois
Ben Franklin Bank of Illinois, Arlington Heights, Illinois
First Northwest Bank, Arlington Heights, Illinois
State Bank of Ashland, Ashland, Illinois
Farmers State Bank Astoria, Astoria, Illinois
The Atlanta National Bank, Atlanta, Illinois
First State Bank, Atwood, Illinois
Bartonville Bank, Bartonville, Illinois
Scott State Bank, Bethany, Illinois
First State Bank of Bloomington, Bloomington, Illinois
Midland Federal Savings and Loan Association, Bridgeview, Illinois
First National Bank of Brookfield, Brookfield, Illinois
Farmers and Merchants State Bank of Bushnell, Bushnell, Illinois
Byron Bank, Byron, Illinois
First State Bank of Campbell Hill, Campbell Hill, Illinois
The Egyptian State Bank, Carrier Mills, Illinois
Carrollton Bank, Carrollton, Illinois
BankIllinois, Champaign, Illinois
University of Illinois Employees Credit Union, Champaign, Illinois
State Bank of Cherry, Cherry, Illinois
Bank of Chestnut, Chestnut, Illinois
American Metro Bank, Chicago, Illinois
Associated Bank, Chicago, Illinois
Chesterfield Federal Savings and Loan Association, Chicago, Illinois
Chicago Patrolmens Federal Credit Union, Chicago, Illinois
Hoyne Savings Bank, Chicago, Illinois
Loomis Federal Savings & Loan Association, Chicago, Illinois
Mid-City National Bank of Chicago, Chicago, Illinois
North Side FS&LA of Chicago, Chicago, Illinois
Seaway National Bank, Chicago, Illinois
Second Federal Savings and Loan Association of Chicago, Chicago, Illinois
Royal Savings Bank, Chicago, Illinois
United Airlines Employees' Credit Union, Chicago, Illinois
Heritage Bank, Chicago Heights, Illinois
Central Federal Savings and Loan Association, Cicero, Illinois
Mid America Bank, FSB, Clarendon Hills, Illinois
DeWitt Savings Bank, Clinton, Illinois
First Federal Bank, Colchester, Illinois
First Collinsville Bank, Collinsville, Illinois
Crystal Lake Bank & Trust Company, N.A., Crystal Lake, Illinois
Soy Capital Bank & Trust Company, Decatur, Illinois
Baxter Credit Union, Deerfield, Illinois
Castle Bank, N.A., DeKalb, Illinois
Delafield State Bank, Delafield, Illinois
Downers Grove National Bank, Downers Grove, Illinois
Dunlap State Bank, Dunlap, Illinois
Erie State Bank, Erie, Illinois
Community First Bank, Fairview Heights, Illinois
Bank of Farmington, Farmington, Illinois
First United Bank, Frankfort, Illinois
Galena State Bank & Trust Company, Galena, Illinois
Community State Bank, Galva, Illinois
Gifford State Bank, Gifford, Illinois
Howard Savings Bank, Glenview, Illinois
The Bank of Godfrey, Godfrey, Illinois
Guardian Savings Bank FSB, Granite City, Illinois
Hamel State Bank, Hamel, Illinois
Security State Bank of Hamilton, Hamilton, Illinois
Harvard Savings Bank, Harvard, Illinois
Mutual Bank, Harvey, Illinois
WestBank, Hillside, Illinois
Community Bank of Hopedale, Hopedale, Illinois
Joy State Bank, Joy, Illinois
First Trust Bank of Illinois, Kankakee, Illinois
First National Bank of LaGrange, LaGrange, Illinois
Cambridge Bank, Lake Zurich, Illinois
Exchange State Bank, Lanark, Illinois
The Lemont National Bank & Trust Company, Lemont, Illinois
State Bank of Lincoln, Lincoln, Illinois
Bank & Trust Company, Litchfield, Illinois
Union Bank/West, Macomb, Illinois
Malden State Bank, Malden, Illinois
Prairie State Bank, Marengo, Illinois
First National Bank of Marshall, Marshall, Illinois
Continental Community Bank, Maywood, Illinois
A.J. Smith Federal Savings Bank, Midlothian, Illinois
Southeast National Bank, Moline, Illinois
Marquette Bank Monmouth, Monmouth, Illinois
Security Savings Bank, Monmouth, Illinois
Farmers State Bank Chadwick & Mt. Carroll, Mt. Carroll, Illinois

Farmers State Bank and Trust Company, Mt. Sterling, Illinois
The First National Bank, Mulberry Grove, Illinois
Hawthorn Bank, Mundelein, Illinois
First County Bank, New Baden, Illinois
Warren-Boynton State Bank, New Berlin, Illinois
The Peoples State Bank of Newton, Newton, Illinois
The Old Exchange National Bank of Okawville, Okawville, Illinois
First Personal Bank, Orland Park, Illinois
Ottawa Savings Bank, Ottawa, Illinois
Peoples Bank & Trust, Pana, Illinois
State Bank of Paw Paw, Paw Paw, Illinois
Farmers-Merchants National Bank of Paxton, Paxton, Illinois
First Capital Bank, Peoria, Illinois
The Heights Bank, Peoria Heights, Illinois
Central State Bank, Pleasant Hill, Illinois
Pleasant Plains State Bank, Pleasant Plains, Illinois
Northwest Community Bank, Prospect Heights, Illinois
Town & Country Bank of Quincy, Quincy, Illinois
Western Catholic Union, Quincy, Illinois
Rantoul First Bank, S.B., Rantoul, Illinois
First National Bank of Raymond, Raymond, Illinois
First Ridge Farm State Bank, Ridge Farm, Illinois
Lincoln State Bank, S.B., Rochelle, Illinois
Community State Bank of Rock Falls, Rock Falls, Illinois
Associated Bank Illinois, Rockford, Illinois
Rushville State Bank, Rushville, Illinois
American Chartered Bank, Schaumburg, Illinois
AmericaUnited Bank & Trust Company USAS chaumburg, Illinois
First FS&LA of Shelbyville, IL, Shelbyville, Illinois
State Bank of Speer, Speer, Illinois
Illini Bank, Springfield, Illinois
Union Bank of Illinois, Swansea, Illinois
Tuscola National Bank, Tuscola, Illinois
Petefish, Skiles and Company Bank, Virginia, Illinois
Bank of Warrensburg, Warrensburg, Illinois
Western Springs National Bank and Trust, Western Springs, Illinois
First DuPage Bank, Westmont, Illinois
First National Bank of Winnebago, Winnebago, Illinois
State Bank Winslow-Warren, Winslow, Illinois
Wyoming Bank and Trust, Wyoming, Illinois
State Bank, Wonder Lake, Illinois
Keystone Community Bank, Kalamazoo, Michigan
The Portage County Bank, Almond, Wisconsin
Bay Bank, Ashwaubenon, Wisconsin
Pioneer Bank, Auburndale, Wisconsin
The First National Bank of Baldwin, Baldwin, Wisconsin
The First National Bank and Trust Co. of Baraboo, Baraboo, Wisconsin
Black River Country Bank, Black River Falls, Wisconsin
Bonduel State Bank, Bonduel, Wisconsin
Red Cedar Bank, National Association, Boyceville, Wisconsin
Bank of Cashton, Cashton, Wisconsin
Chetek State Bank, Chetek, Wisconsin
Dairyman's State Bank, Clintonville, Wisconsin
Farmers & Merchants Union Bank, Columbus, Wisconsin
Wisconsin Community Bank, Cottage Grove, Wisconsin
Cumberland Federal Bank, FSB, Cumberland, Wisconsin
Community Bank of Grafton, Grafton, Wisconsin
Highland State Bank, Highland, Wisconsin
Park Bank, Holmen, Wisconsin
Security State Bank, Iron River, Wisconsin
East Wisconsin Savings Bank, S.A., Kaukauna, Wisconsin
Greenwood's State Bank, Lake Mills, Wisconsin
Heartland Credit Union, Madison, Wisconsin
State Capitol Credit Union, Madison, Wisconsin
First National Bank—Fox Valley, Menasha, Wisconsin
First Bank & Trust, Menomonie, Wisconsin
Associated Bank South Central, Middleton, Wisconsin
Bank of Milton, Milton, Wisconsin
Milwaukee Western Bank, Milwaukee, Wisconsin
Mutual Savings Bank, Milwaukee, Wisconsin
St. Francis Bank, FSB, Milwaukee, Wisconsin
Universal Savings Bank, Milwaukee, Wisconsin
Associated Bank, N.A., Neenah, Wisconsin
Clare Bank, N.A., Platteville, Wisconsin
First National Bank of Platteville, Platteville, Wisconsin
Mound City Bank, Platteville, Wisconsin
The FNB of River Falls, River Falls, Wisconsin
Intercity State Bank, Schofield, Wisconsin
Community Bank & Trust, Sheboygan, Wisconsin
Bank of Sun Prairie, Sun Prairie, Wisconsin
Superior National Bank, Superior, Wisconsin
Shoreline Credit Union, Two Rivers, Wisconsin
The State Bank of Viroqua, Viroqua, Wisconsin
Walworth State Bank, Walworth, Wisconsin
First Federal Savings Bank of Wisconsin, Waukesha, Wisconsin
Sunset Bank and Savings, Waukesha, Wisconsin
KeySavings Bank, Wisconsin Rapids, Wisconsin
River Cities Bank, Wisconsin Rapids, Wisconsin
Wood County National Bank, Wisconsin Rapids, Wisconsin

Federal Home Loan Bank of Des Moines—District 8

Gateway Savings Bank, Ankeny, Iowa
Landmands National Bank, Audubon, Iowa
Community Bank of Boone, Boone, Iowa
Commercial Savings Bank, Carroll, Iowa
Iowa Savings Bank, Carroll, Iowa
Page County State Bank, Clarinda, Iowa
Linn County State Bank, Coggon, Iowa
Farmers Savings Bank, Colesburg, Iowa
Columbus Junction State Bank, Columbus Junction, Iowa
Okey Vernon First National Bank, Corning, Iowa
Corydon State Bank, Corydon, Iowa
Fortress Bank of Cresco, Cresco, Iowa
Alliant Credit Union, Dubuque, Iowa
Valley Bank, Eldridge, Iowa
First National Bank in Fairfield, Fairfield, Iowa
Farmers Savings Bank, Fostoria, Iowa
Grinnell Mutual Reinsurance Company, Grinnell, Iowa
Security State Bank, Hubbard, Iowa
Farmers State Bank, Jesup, Iowa
American Interstate Bank, Manning, Iowa
First State Bank of Mapleton, Mapleton, Iowa
Maxwell State Bank, Maxwell, Iowa
Bridge Community Bank, Mechanicsville, Iowa
State Bank and Trust Company, Nevada, Iowa
New Vienna Savings Bank, New Vienna, Iowa
First Newton National Bank, Newton, Iowa
First State Bank, Nora Springs, Iowa
Farmers State Bank, Northwood, Iowa
First National Bank of Oelwein, Oelwein, Iowa
City State Bank, Ogden, Iowa
American State Bank, Osceola, Iowa
Panora State Bank, Panora, Iowa
Marion County State Bank, Pella, Iowa
Perry State Bank, Perry, Iowa

Savings Bank, Primghar, Iowa
Readlyn Savings Bank, Readlyn, Iowa
Community Savings Bank, Robins, Iowa
Premier Bank, Rock Valley, Iowa
Home State Bank, Royal, Iowa
Iowa State Bank, Sac City, Iowa
Sanborn Savings Bank, Sanborn, Iowa
Community State Bank, Spencer, Iowa
The State Bank, Spirit Lake, Iowa
Union Bank & Trust Company, Strawberry Point, Iowa
State Bank of Toledo, Toledo, Iowa
Farmers Savings Bank, Walford, Iowa
Iowa State Bank, Wapello, Iowa
Washington Federal Savings Bank, Washington, Iowa
Security State Bank, Waverly, Iowa
State Bank of Waverly, Waverly, Iowa
First State Bank, Webster City, Iowa
Freedom Financial Bank, West Des Moines, Iowa
Westside State Savings Bank, Westside, Iowa
Farmers & Merchants State Bank, Winterset, Iowa
Union State Bank, Winterset, Iowa
First State Bank of Alexandria, Alexandria, Minnesota
Altura State Bank, Altura, Minnesota
Lakewood Bank, N.A., Baxter, Minnesota
First State Bank of Bayport, Bayport, Minnesota
First National Bank Bemidji, Bemidji, Minnesota
American National Bank of Minnesota, Brainerd, Minnesota
State Bank of Bricelyn, Bricelyn, Minnesota
State Bank of Chanhassen, Chanhassen, Minnesota
Farmers and Merchants State Bank of Clarkfield, Clarkfield, Minnesota
The First National Bank of Coleraine, Coleraine, Minnesota
Farmers State Bank of Dent, Dent, Minnesota
Northwestern Bank, N.A., Dilworth, Minnesota
Western National Bank, Duluth, Minnesota
Fidelity Bank, Edina, Minnesota
State Bank of Fairmont, Fairmont, Minnesota
Franklin State Bank, Franklin, Minnesota
Commerce Bank, Geneva, Minnesota
First National Bank of Gilbert, Gilbert, Minnesota
Eagle Bank, Glenwood, Minnesota
Yellow Medicine County Bank, Granite Falls, Minnesota
Northwestern State Bank of Hallock, Hallock, Minnesota
1st American State Bank of Minnesota, Hancock, Minnesota
First Southeast Bank, Harmony, Minnesota
Farmers State Bank of Hartland, Hartland, Minnesota
Merchants Bank, N.A., Hastings, Minnesota
Exchange State Bank of Hills, Hills, Minnesota
First Federal fsb, Hutchinson, Minnesota
United Prairie Bank—Jackson, Jackson, Minnesota
Community Bank Minnesota Valley, Jordan, Minnesota
CornerStone State Bank, Le Sueur, Minnesota
First Community Bank Lester Prairie, Lester Prairie, Minnesota
Center National Bank, Litchfield, Minnesota
State Bank of Loretto, Loretto, Minnesota
First National Bank of Luverne, Luverne, Minnesota
Northern Star Bank, Mankato, Minnesota
First National Bank of Montgomery, Montgomery, Minnesota
United Farmers & Merchants State Bank, Morris, Minnesota
St. Paul Postal Employees Credit Union, North St. Paul, Minnesota
Northland Community Bank, Northome, Minnesota
Citizens State Bank Norwood Young, Norwood Young America, Minnesota
Washington County Bank, N.A., Oakdale, Minnesota
Odin State Bank, Odin, Minnesota
Prinsburg State Bank, Prinsburg, Minnesota
Randall State Bank, Randall, Minnesota
Woodland Bank, Remer, Minnesota
Home Federal Savings Bank, Rochester, Minnesota
North Star Bank, Roseville, Minnesota
First State Bank of Rush City, Rush City, Minnesota
First Community Bank, Savage, Minnesota
Security State Bank of Sebeka, Sebeka, Minnesota
First Community Bank Silver Lake, Silver Lake, Minnesota
St. Anthony Park State Bank, St. Paul, Minnesota
Heartland State Bank, Storden, Minnesota
Peoples State Bank of Truman, Inc., Truman, Minnesota
Victoria State Bank, Victoria, Minnesota
Integrity Plus Bank, Wabasso, Minnesota
Centennial National Bank, Walker, Minnesota
The First National Bank of Walker, Walker, Minnesota
Citizens State Bank of Waverly, Waverly, Minnesota
Wells Federal Bank, fsb, Wells, Minnesota
First State Bank of Southwest, Worthington, Minnesota
Worthington Federal Savings Bank, F.S.B., Worthington, Minnesota
First Missouri National Bank, Brookfield, Missouri
Community First Bank, Butler, Missouri
BC National Banks, Butler, Missouri
Carroll County Trust Company, Carrollton, Missouri
Chillicothe State Bank, Chillicothe, Missouri
Investors National Bank, Chillicothe, Missouri
Boone National Savings & Loan Association, F.A., Columbia, Missouri
Concordia Bank of Concordia, Concordia, Missouri
The Citizens Bank of Edina, Edina, Missouri
First State Community Bank, Farmington, Missouri
Ozarks Federal Savings and Loan, Farmington, Missouri
The Callaway Bank, Fulton, Missouri
Northland National Bank, Gladstone, Missouri
Bank Northwest, Hamilton, Missouri
Hannibal National Bank, Hannibal, Missouri
Bank of Hayti, Hayti, Missouri
Eagle Bank & Trust Company of Missouri, Hillsboro, Missouri
The Bank of Houston, Houston, Missouri
Bank of Iberia, Iberia, Missouri
Jefferson City Highway Credit Union, Jefferson City, Missouri
Business Men's Assurance Company of America, Kansas City, Missouri
Generations Bank, Kansas City, Missouri
Kansas City Life Insurance Company, Kansas City, Missouri
Kennett National Bank, Kennett, Missouri
Bank of Kimberling City, Kimberling City, Missouri
Lamar Bank & Trust Company, Lamar, Missouri
The First National Bank, Lamar, Missouri
Central Bank, Lebanon, Missouri
Midwest Bank Centre, Lemay, Missouri
Linn State Bank, Linn, Missouri
Mercantile Bank of Louisiana, Louisiana, Missouri
First National Bank, Malden, Missouri
Community Bank of Marshall, Marshall, Missouri
Wood & Huston Bank, Marshall, Missouri
First National Bank of Audrain County, Mexico, Missouri
Peoples Bank of the Ozarks, Nixa, Missouri
First Midwest Bank of Piedmont, Piedmont, Missouri
Peoples Savings Bank of Rhineland, Rhineland, Missouri
The State Bank, Richmond, Missouri
Town & Country Bank, Salem, Missouri

Farmers State Bank, S/B, Schell City, Missouri
Third National Bank of Sedalia, Sedalia, Missouri
Senath State Bank, Senath, Missouri
The Community Bank of Shell Knob, Shell Knob, Missouri
Citizens National Bank of Springfield, Springfield, Missouri
Old Missouri National Bank, Springfield, Missouri
First State Bank of St. Charles, St. Charles, Missouri
Lindell Bank & Trust Company, St. Louis, Missouri
Pioneer Bank & Trust Company, St. Louis, Missouri
The PrivateBank, St. Louis, Missouri
Bank of Thayer, Thayer, Missouri
Quarry City Savings and Loan Association, Warrensburg, Missouri
First State Bank of Cando, Cando, North Dakota
Citizens State Bank—Midwest, Cavalier, North Dakota
Farmers State Bank, Elgin, North Dakota
State Bank of Fargo, Fargo, North Dakota
Union State Bank of Fargo, Fargo, North Dakota
U.S. Bank N.A., Fargo, North Dakota
Wells Fargo Bank, North Dakota, N.A., Fargo, North Dakota
State Bank and Trust of Kenmare, Kenmare, North Dakota
Farmers and Merchants State Bank, Langdon, North Dakota
United Community Bank of North Dakota, Leeds, North Dakota
First Western Bank & Trust, Minot, North Dakota
Lakeside State Bank, New Town, North Dakota
McKenzie County Bank, Watford City, North Dakota
First State Bank of Claremont, Claremont, South Dakota
BankStar Financial, Elkton, South Dakota
Farmers State Bank, Flandreau, South Dakota
Dakotaland Federal Credit Union, Huron, South Dakota
BankFirst, Sioux Falls, South Dakota
Home Federal Bank, Sioux Falls, South Dakota
F&M Bank, Watertown, South Dakota
Wilmot State Bank, Wilmot, South Dakota
First National Bank South Dakota, Yankton, South Dakota

Federal Home Loan Bank of Dallas—District 9

River Valley Bank, Russellville, Alabama
First Community Bank of Batesville, Batesville, Arkansas
Farmers Bank and Trust Company, Blytheville, Arkansas
First State Bank, Conway, Arkansas
Bank of Dardanelle, Dardanelle, Arkansas
First Financial Bank, El Dorado, Arkansas
Fordyce Bank & Trust Company, Fordyce, Arkansas
Forrest City Bank, N.A., Forrest City, Arkansas
Benefit Bank, Ft. Smith, Arkansas
First State Bank, Huntsville, Arkansas
Simmons First Bank of South Arkansas, Lake Village, Arkansas
Bank of Lockesburg, Lockesburg, Arkansas
Southern State Bank, Malvern, Arkansas
Bank of Mulberry, Mulberry, Arkansas
First National Bank at Paris, Paris, Arkansas
Delta Trust & Bank, Parkdale, Arkansas
Pine Bluff National Bank, Pine Bluff, Arkansas
Simmons First Bank of Northwest Arkansas, Rogers, Arkansas
The First National Bank of Springdale, Springdale, Arkansas
Red River Bank, Alexandria, Louisiana
East Federal Credit Union, Baton Rouge, Louisiana
Bank of Coushatta, Coushatta, Louisiana
St. Tammany Homestead Savings & Loan Association, Covington, Louisiana
City Savings Bank & Trust Company, DeRidder, Louisiana
Teche Federal Savings Bank, Franklin, Louisiana
Florida Parishes Bank, Hammond, Louisiana
Coastal Commerce Bank, Houma, Louisiana
Synergy Bank, Houma, Louisiana
LBA Savings Bank, Lafayette, Louisiana
Guaranty Savings and Homestead Association, Metairie, Louisiana
Mutual Savings and Loan Association, Metairie, Louisiana
Eureka Homestead, New Orleans, Louisiana
Hibernia Homestead & Savings Association, New Orleans, Louisiana
Peoples Bank & Trust Company of Pointe Coupee Parish, Inc., New Roads, Louisiana
Homestead Bank, Ponchatoula, Louisiana
Bank of West Baton Rouge, Port Allen, Louisiana
Richland State Bank, Rayville, Louisiana
Bank, of Ringgold, Ringgold, Louisiana
Ruston Building & Loan Association, Ruston, Louisiana
First Louisiana Bank, Shreveport, Louisiana
Bank of St. Francisville, St. Francisville, Louisiana
American Bank, Welsh, Louisiana
The Bank of Commerce, White Castle, Louisiana
Amory Federal Savings & Loan Association, Amory, Mississippi
Spirit Bank, Belmont, Mississippi
The Peoples Bank, Biloxi, Mississippi
Bank of Brookhaven, Brookhaven, Mississippi
The Cleveland State Bank, Cleveland, Mississippi
Commerce National Bank, Corinth, Mississippi
Bank of Holly Springs, Holly Springs, Mississippi
First National Bank of Pine Belt, Laurel, Mississippi
Community Bank, Meridian, Mississippi
Britton & Koontz First National Bank, Natchez, Mississippi
Senatobia Bank, Senatobia, Mississippi
Mechanics Bank, Water Valley, Mississippi
Wells Fargo Bank New Mexico, N.A., Albuquerque, New Mexico
International Bank, Raton, New Mexico
First National Bank of Ruidoso, Ruidoso, New Mexico
Tucumcari Federal Savings & Loan Association, Tucumcari, New Mexico
First State Bank, Athens, Texas
The First National Bank of Athens, Athens, Texas
Southwest Resource Credit Union, Baytown, Texas
First National Bank of Bridgeport, Bridgeport, Texas
Citizens State Bank, Chandler, Texas
Citizens State Bank, Cross Plains, Texas
Zavala County Bank, Crystal City, Texas
Dallas National Bank, Dallas, Texas
Dallas Teachers Credit Union, Dallas, Texas
Mercantile Bank & Trust, FSB, Dallas, Texas
Landmark Bank N.A., Denison, Texas
First United Bank, Dimmitt, Texas
First National Bank, Dublin, Texas
Union State Bank, Florence, Texas
Fort Worth National Bank, Fort Worth, Texas
Omni American Federal Credit Union, Fort Worth, Texas
First State Bank, Frankston, Texas
Security Bank, N.A., Garland, Texas
Community Bank, Granbury, Texas
First State Bank, Grapeland, Texas
Hebbronville State Bank, Hebbronville, Texas
Community National Bank, Hondo, Texas
Central Bank, Houston, Texas
MetroBank, N.A., Houston, Texas
Paradigm Bank Texas, Houston, Texas
Reliance Standard Life Insurance Company of Texas, Houston, Texas
Southwestern National Bank, Houston, Texas
Woodforest National Bank, Houston, Texas
Austin Bank, Texas N.A., Jacksonville, Texas

Texas State Bank, Joaquin, Texas
First State Bank, Keene, Texas
First-Nichols National Bank, Kenedy, Texas
First National Bank of Lake Jackson, Lake Jackson, Texas
First Federal Savings & Loan Association, Littlefield, Texas
PNB Financial, Lubbock, Texas
Mason National Bank, Mason, Texas
Inter National Bank, McAllen, Texas
Security State Bank, McCamey, Texas
Mineola Community Bank, S.S.B., Mineola, Texas
City National Bank, Mineral Wells, Texas
American National Bank of Mt. Pleasant, Mt. Pleasant, Texas
Commercial Bank of Texas, N.A., Nacogdoches, Texas
Western National Bank, Odessa, Texas
Orange Savings Bank, Orange, Texas
Lone Star National Bank, Pharr, Texas
Beal Bank, SSB, Plano, Texas
Security National Bank, Quanah, Texas
South Padre Bank, N.A., South Padre Island, Texas
Town and Country Bank, Stephenville, Texas
Extraco Banks, N.A., Temple, Texas
Heritage Savings Bank, SSB, Terrell, Texas
First National Bank of Bosque County, Valley Mills, Texas
FirstCapital Bank, ssb, Victoria, Texas
Community Bank & Trust, Waco, Texas
First National Bank of Central Texas, Waco, Texas
Fannin Bank, Windom, Texas

Federal Home Loan Bank of Topeka—District 10

Citywide Bank of Denver, Aurora, Colorado
Commerce Bank, Aurora, Colorado
Premier Members Federal Credit Union, Boulder, Colorado
First Charter Federal Credit Union, Colorado Springs, Colorado
First National Bank, Cortez, Colorado
Del Norte Federal Savings & Loan Association, Del Norte, Colorado
Colorado United Credit Union, Denver, Colorado
Denver Police Federal Credit Union, Denver, Colorado
Premier Bank, Denver, Colorado
Bank of the San Juans, Durango, Colorado
FirstBank of Evergreen, Evergreen, Colorado
Fort Morgan State Bank, Fort Morgan, Colorado
Bank of Grand Junction, Grand Junction, Colorado
FirstBank of Greeley, Greeley, Colorado
First National Bank, Julesberg, Colorado
Kit Carson State Bank, Kit Carson, Colorado
The State Bank—La Junta, La Junta, Colorado
First National Bank of Lake City & Creede, Lake City, Colorado
Home State Bank, Loveland, Colorado
First National Bank of Paonia, Paonia, Colorado
FirstBank of Parker, Parker, Colorado
The First National Bank of Stratton, Stratton, Colorado
First National Bank in Belleville, Belleville, Kansas
Bank of Commerce, Chanute, Kansas
Home Savings Bank, Chanute, Kansas
Farmers and Merchants Bank, Colby, Kansas
Legacy Bank, Colwich, Kansas
The State Bank of Conway Springs, Conway Springs, Kansas
Farmers and Drovers Bank, Council Grove, Kansas
Citizens State Bank & Trust Company, Ellsworth, Kansas
State Bank of Fredonia, Fredonia, Kansas
Gardner National Bank, Gardner, Kansas
Community Bank of the Midwest, Great Bend, Kansas
Halstead Bank, Halstead, Kansas
Emprise Bank, NA, Hays, Kansas
First National Bank of Hoxie, Hoxie, Kansas
Security Bank of Kansas City, Kansas City, Kansas
Douglas County Bank, Lawrence, Kansas
First National Bank and Trust of Leavenworth, Leavenworth, Kansas
Horizon National Bank, Leawood, Kansas
Western National Bank, Lenexa, Kansas
Farmers National Bank of Lincoln, Lincoln, Kansas
The Lyons State Bank, Lyons, Kansas
Farmers State Bank, McPherson, Kansas
Mission Bank, Mission, Kansas
The Mulvane State Bank, Mulvane, Kansas
Farmers State Bank, Oakley, Kansas
First National Bank of Olathe, Olathe, Kansas
First Kansas Federal Savings Bank, Osawatomie, Kansas
Valley View State Bank, Overland Park, Kansas
Citizens State Bank, Paola, Kansas
University National Bank, Pittsburg, Kansas
Sedgwick State Bank, Sedgwick, Kansas
TriCentury Bank, Simpson, Kansas
The First National Bank and Trust, St. John, Kansas
First Bank, Sterling, Kansas
Valley State Bank, Syracuse, Kansas
The Tampa State Bank, Tampa, Kansas
Community National Bank, Topeka, Kansas
Kaw Valley State Bank and Trust Company, Topeka, Kansas
Chisholm Trail State Bank, Wichita, Kansas
INTRUST Bank, National Association, Wichita, Kansas
The State Bank, Winfield, Kansas
Bank of Wyandotte, Wyandotte, Kansas
Bank of the Valley, Bellwood, Nebraska
Bank of Bennington, Bennington, Nebraska
Washington County Bank, Blair, Nebraska
Custer Federal Savings & Loan Association, Broken Bow, Nebraska
First Central Bank, Cambridge, Nebraska
Citizens State Bank, Carleton, Nebraska
Deeuel County State Bank, Chappell, Nebraska
First Bank and Trust Company, Cozad, Nebraska
Jefferson County Bank, Daykin, Nebraska
First National Bank in Exeter, Exeter, Nebraska
Farnam Bank, Farnam, Nebraska
American National Bank of Fremont, Fremont, Nebraska
First State Bank, Fremont, Nebraska
Gothenburg State Bank and Trust Company, Gothenburg, Nebraska
Henderson State Bank, Henderson, Nebraska
First State Bank of Enders/Imperial, Imperial, Nebraska
Kearney State Bank and Trust Company, Kearney, Nebraska
Farmers State Bank, Maywood, Nebraska
First Central Bank McCook, National Association, McCook, Nebraska
Farmers and Merchants Bank, Milligan, Nebraska
Centennial Bank, Omaha, Nebraska
First National Bank of Omaha, Omaha, Nebraska
Nebraska State Bank of Omaha, Omaha, Nebraska
Potter State Bank of Potter, Potter, Nebraska
Peoples Webster City Bank, Red Cloud, Nebraska
First State Bank, Shelton, Nebraska
Hometown Bank, Sumner, Nebraska
Sutton State Bank, Sutton, Nebraska
First National Bank of Syracuse, Syracuse, Nebraska
CerescoBank, Wahoo, Nebraska
Citizens Bank of Ada, Ada, Oklahoma
First National Bank in Altus, Altus, Oklahoma
Stockmans Bank, Altus, Oklahoma
The First National Bank and Trust Company of Broken Arrow, Broken Arrow, Oklahoma
Bank of Commerce, Chelsea, Oklahoma
Farmers Exchange Bank, Cherokee, Oklahoma
First National Bank and Trust Company, Chickasha, Oklahoma
1st Bank Oklahoma, Claremore, Oklahoma
The First National Bank in Durant, Durant, Oklahoma

American Bank & Trust, Edmond, Oklahoma
Bank Elgin, N.A., Elgin, Oklahoma
Bank of Western Oklahoma, Elk City, Oklahoma
Liberty Federal Savings Bank, Enid, Oklahoma
Fairview Savings and Loan Association, Fairview, Oklahoma
Oklahoma State Bank, Guthrie, Oklahoma
City National Bank & Trust Company, Guymon, Oklahoma
The Bank of Kremlin, Kremlin, Oklahoma
Exchange National Bank of Moore, Moore, Oklahoma
The Morris State Bank, Morris, Oklahoma
Bank of Nichols Hills, Oklahoma City, Oklahoma
First Security Bank and Trust Company, Oklahoma City, Oklahoma
Oklahoma Educators Credit Union, Oklahoma City, Oklahoma
NBC Bank, Pawhuska, Oklahoma
Osage Federal Savings and Loan Association, Pawhuska, Oklahoma
Security Bank, , NA, Pawnee, Oklahoma
Exchange Bank and Trust Company, Perry, Oklahoma
Central Bank of Poteau, Poteau, Oklahoma
First Pryority Bank, Pryor, Oklahoma
Peoples Bank & Trust Company, Ryan, Oklahoma
InterBank, N.A., Sayre, Oklahoma
Southwest State Bank, Sentinel, Oklahoma
Advantage Bank, Spencer, Oklahoma
Bank of Commerce, Stilwell, Oklahoma
American Bank and Trust, Tulsa, Oklahoma
Bank South, NA, Tulsa, Oklahoma
Sooner State Bank, Tuttle, Oklahoma
Bank of Union, Union City, Oklahoma
First State Bank, Valliant, Oklahoma
Citizens' Bank, Velma, Oklahoma
First State Bank, Watonga, Oklahoma
Peoples Bank, Westville, Oklahoma
Yukon National Bank, Yukon, Oklahoma

Federal Home Loan Bank of San Francisco—District 11

Century Bank, Scottsdale, Arizona
Placer Sierra Bank, Auburn, California
Los Angeles National Bank, Buena Park, California
Burbank City Employees Federal Credit Union, Burbank, California
Western Security Bank, N.A., Burbank, California
Pan American Bank, FSB, Burlingame, California
Pacific Trust Bank, FSB, Chula Vista, California
Pacific Trust Federal Credit Union, Chula Vista, California
Clovis Community Bank, Clovis, California
Mt. Diablo National Bank, Danville, California
Rockwell Federal Credit Union, Downey, California
Hawthorne Savings, FSB, El Segundo, California
Centennial Bank, Fountain Valley, California
Murphy Bank, Fresno, California
Kerman State Bank, Kerman, California
Eldorado Bank, Laguna Hills, California
Marathon National Bank, Los Angeles, California
USC Federal Credit Union, Los Angeles, California
Yosemite Bank, Mariposa, California
Trust Bank, Monterey Park, California
Downey Savings and Loan Association, F.A., Newport Beach, California
American Commercial Bank, Oxnard, California
Kaiser Permanante Federal Credit Union, Pasadena, California
Heritage Oaks Bank, Paso Robles, California
Rancho Santa Fe National Bank, Rancho Santa Fe, California
Tehama Bank, Red Bluff, California
Redlands Centenial Bank, Redlands, California
Provident Central Credit Union, Redwood City, California
Provident Bank, Riverside, California
The Bank of Hemet, Riverside, California
First Federal Credit Union, Sacramento, California
River City Bank, Sacramento, California
Business Bank of California, San Bernardino, California
Neighborhood National Bank, San Diego, California
San Diego National Bank, San Diego, California
Bank of the Orient, San Francisco, California
Five Star Bank, San Francisco, California
Pacific Coast Bankers' Bank, San Francisco, California
Pacific IBM Employees Credit Union, San Jose, California
Tamalpais Bank, San Rafael, California
First National Bank of Central California, Santa Barbara, California
Santa Cruz Community Credit Union, Santa Cruz, California
Los Padres Bank, Solvang, California
Sonoma Valley Bank, Sonoma, California
Bank of Stockton, Stockton, California
South Bay Bank, Torrance, California
Sierra West Bank, Truckee, California
First Security Bank of California, NA, West Covina, California
Universal Bank, West Covina, California
Quaker City Bank, Whittier, California
Feather River State Bank, Yuba City, California
Business Bank of Nevada, Las Vegas, Nevada

Federal Home Loan Bank of Seattle—District 12

Credit Union 1, Anchorage, Alaska
Citizens Security Bank (Guam), Inc., Agana, Guam
FirstBank Northwest, Lewiston, Idaho
Idaho Central Credit Union, Pocatello, Idaho
Panhandle State Bank, Sandpoint, Idaho
First Citizens Bank of Billings, Billings, Montana
First Citizens Bank of Butte, Butte, Montana
Dutton State Bank, Dutton, Montana
Heritage Bank, Fort Benton, Montana
Valley Bank of Glasgow, Glasgow, Montana
1st Liberty Federal Credit Union, Great Falls, Montana
Independence Bank, Havre, Montana
First National Bank of Lewistown, Lewistown, Montana
Empire Bank, Livingston, Montana
Community Bank-Missoula, Inc., Missoula, Montana
First Security Bank of Missoula, Missoula, Montana
Ronan State Bank, Ronan, Montana
Basin State Bank, Stanford, Montana
Pioneer Bank, A F.S.B., Baker City, Oregon
Evergreen FS & LA, Grants Pass, Oregon
Bank of Eastern Oregon, Heppner, Oregon
Klamath First FS & LA, Klamath Falls, Oregon
South Valley Bank and Trust, Klamath Falls, Oregon
American Pacific Bank, Portland, Oregon
Bank of America Oregon, N.A., Portland, Oregon
USU Community Credit Union, Logan, Utah
BMW Bank of North America, Salt Lake City, Utah
Franklin Templeton Bank & Trust, F.S.B., Salt Lake City, Utah
Washington Mutual Bank, Salt Lake City, Utah
Valley Bank, Auburn, Washington
American Marine Bank, Bainbridge Island, Washington
Charter Bank, Bellevue, Washington
Fife Commercial Bank, Fife, Washington
The Bank of Washington, Lynnwood, Washington
Whidbey Island Bank, Oak Harbor, Washington
Olympia Federal Savings & Loan Association, Olympia, Washington
Twin County Credit Union, Olympia, Washington
First FS & LA of Port Angeles, Port Angeles, Washington

Riverview Community Bank, Riverview, Washington
Asia Europe Americas Bank, Seattle, Washington
Key Bank, N.A., Seattle, Washington
Northwest International Bank, Seattle, Washington
Seattle Savings Bank, Seattle, Washington
Washington Mutual Bank, Seattle, Washington
Western United Life Assurance Company, Seattle, Washington
Simpson Community Federal Credit Union, Shelton, Washington
Farmers & Merchants Bank of Rockford, Spokane, Washington
Old Standard Life Insurance Company, Spokane, Washington
Yakima Federal Savings and Loan Association, Yakima, Washington
American National Bank of Rock Springs, Rock Springs, Wyoming
The Rock Springs National Bank, Rock Springs, Wyoming
Tri-County Bank, Torrington, Wyoming

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before January 31, 2003, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2002–03 fourth quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2002–03 fourth quarter review cycle must be delivered to the Finance Board on or before the March 3, 2003 deadline for submission of Community Support Statements. By the Federal Housing Finance Board.

Dated: January 9, 2003.

Arnold Intrater,

General Counsel.

[FR Doc. 03–785 Filed 1–16–03; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaciton No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination, 12/09/2002			
20030026	National Fuel Gas Company	Duke Energy Corporation	Empire State Pipeline Company, Inc. St. Clair Pipeline Company, Inc.
Transactions Granted Early Termination, 12/10/2002			
20030134	Groupe Danone	Sparkling Spring Water Holdings Limited.	Sparking Spring Water Holdings Limited.
20030155	SHPS, Inc.	eBenX, Inc.	eBenX, Inc.
20030156	Visa U.S.A. Inc.	Visa International Service Association.	Inovant, Inc.
20030169	BC Gas Inc.	EnCana Corporation	EnCana Pipelines (USA) Inc. Express Holdings (USA) Inc.
20030178	O'Charley's Inc.	99 Boston Inc.	99 Boston Inc.
20030179	O'Charley's Inc.	Doe Family II, LLC	Doe Familym II, LLC.
Transactions Granted Early Termination, 12/11/2002			
20030141	The Charles A. Sammons 1987 Charitable Remainder Trust #2	Sun Life Financial Services of Canada Inc.	Clarica U.S. Inc.
Transactions Granted Early Termination, 12/12/2002			
20030112	3M Company	Corning Incorporated	Corning Precision Lens Incorporated.
Transactions Granted Early Termination, 12/13/2002			
20030124	Bertarelli & Cie	Amgen Inc.	Immunex Corporation
20030157	Behrman Capital III, L.P	Elan Corporation, plc	Athena Diagnostics, Inc.
20030174	Sherritt International Corporation	Fording Inc	Fording Inc.
20030176	Highfields Capital Ltd. c/o Goldman Sachs.	Stilwell Financial, Inc	Stilwell Financial, Inc.
20030185	Mohamed Bin Issa Al Jaber	Philipp Holzmann AG II	J.A. Jones Inc.
20030195	The Williams Companies, Inc	The Williams Companies, Inc	Gulf Liquids Holdings LLC
20030199	H.I.G. Capital Partners III, L.P	J.W. Child Equity Partners, L.P	DESA Holdings Corporation DESA International, Inc.

Transaciton No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination, 12/16/2002			
20030163	Plug Power Inc.	H Power Corp	H Power Corp.
20030165	Cypress Merchant Banking Partners II.	RNC Acquisition Corp	RNC Acquisition Corp.
20030166	Cypress Merchant Banking Partners II L.P.	Republic National Cabinet Corporation.	Republic National Cabinet Corporation.
20030167	HSB Holding plc	Household International, Inc	Household International, Inc.
20030172	The Coca-Cola Company	Pokka Corporation	Pokka USA, Inc.
20030175	The Clorox Company	The Procter & Gramble Company	The Procter & Gamble Company
20030192	Earl E. Payton	Vigilant Holdings LLC	Trend Holdings, Inc.
20030193	Bank of America Corporation	Vector Capital Management LLC	Vector Partners Limited Partnership. Vector TradePipe, LLC. Vector Trading, LLC.
20030197	Welsh, Carson, Anderson & Stowe IX, L.P.	US Investigations Services, Inc. ESOT.	U.S. Investigations Services, Inc.
Transactions Granted Early Termination, 12/17/2002			
20030177	Farm Bureau Mutual Insurance Company.	The Kansas Farm Bureau	The Kansas Farm Bureau.
Transactions Granted Early Termination, 12/18/2002			
20030140	Glaxo SmithKline plc	Theravance, Inc.	Theravance, Inc.
20030198	Fritz Gerber	ANTISOMA plc	Antisoma Research Ltd.
Transactions Granted Early Termination, 12/19/2002			
20030180	Hormel Foods Corporation	Imperial Sugar Company	Diamond Crystal Brands, Inc. Diamond Crystal Holdings, Inc.
20030183	J.P. Morgan Chase & Co	Allianz Aktiengesellschaft	DrKW Finance Inc.
20030186	HCA Inc.	Health Midwest	Health Midwest.
20030194	Wolseley plc	JELD-WEN HOLDINGS, Inc	JELD-WEN, Inc. Walker Lumber Company.
Transactions Granted Early Termination, 12/20/2002			
20030203	Cadence Design Systems, Inc	Celestry Design Technologies, Inc.	Celestry Design Technologies, Inc.
Transactions Granted Early Termination, 12/23/2002			
20020934	Baxter International Inc	Wyeth	Wyeth Pharmaceuticals Inc.
20030173	Tecumseh Products Company	Invensys plc	Eaton Technologies, Inc. Fasco Australia Pty Limited, Fasco Industries, Inc., Fasco Motors (Thailand) Limited Fasco Motors Limited,
20030202	General Electric Company	Osmonics, Inc.	Osmonics, Inc.
20030208	Quadrangle (GT) Capital Partners LP.	GT Merchandising & Licensing Corp.	GT Merchandising & Licensing Corp.
20030209	Quadrangle (GT) Capital Partners LP.	Good Times Entertainment Limited.	Good Times Entertainment Limited.
20030211	The Pepsi Bottling Group, Inc	Pepsi Cola Buffalo Bottling Corporation.	Pepsi Cola Buffalo Bottling Corporation.
Transactions Granted Early Termination, 12/24/2002			
20030149	Herbst Gaming, Inc.	International Game Technology	Anchor Coin, Inc.
20030182	King Pharmaceuticals, Inc	Aventis Pharmaceuticals, Inc	Fisons Limited.
Transactions Granted Early Termination, 12/27/2002			
20030216	Deseret Management Corporation.	Simmons Media Group, LLC	Simmons Media Group, LLC.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–1077 Filed 1–16–03; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Workgroup on the National Health Information Infrastructure.

Time and Date: 9 a.m.–5 p.m., January 27, 2003; 9 a.m.–4 p.m., January 28, 2003.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The hearing will focus on two broad issues. First, the national information infrastructure (NII)—advanced computing and communications technologies—and how the health sector's needs can be served by the NII. Speakers representing advanced R&D activities will be joined by health experts. Second, the personal health dimension of the National Health Information Infrastructure is outlined in the NCVHS report, "Information for Health." Speakers will address such issues as how a personal health record (PHR) can help support individual health and health care needs, and the technical issues related to a PHR.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Mary Jo Deering, Lead Staff Person for the NCVHS Workgroup on the National Health Information Infrastructure, Office of the Assistant Secretary for Public Health and Science, DHHS, Room 738G, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 260–2652, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where an agenda for the meeting will be posted when available.

Dated: January 7, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–1080 Filed 1–16–03; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality; Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Health care Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for AHRQ National Research Service Award Institutional Research Training Grant (T32) Awards are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: AHRQ National Research Service Awards Institutional Research Training Grant (T32) Awards.

Date: February 23–25, 2003 (Open on February 23 from 7 p.m. to 7:15 p.m. and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: January 8, 2003.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 03–1059 Filed 1–16–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee conference call meeting.

Name: Advisory Committee on Immunization Practices (ACIP).

Time and Date: 2–4 p.m., January 14, 2003.

Place: The conference call will originate at the National Immunization Program (NIP), in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The Advisory Committee on Immunization Practices will convene by conference call to discuss the draft Supplemental Recommendations of the Advisory Committee on Immunization Practices (ACIP) and the Healthcare Infection Control Practices Advisory Committee (HICPAC) for Use of Smallpox Vaccine in a Pre-Event Smallpox Vaccination Program.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 2 p.m., Eastern Standard Time. To participate in the conference call, please dial 1–800–713–1971 and enter conference code 270461. You will then be automatically connected to the call.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register**.

CONTACT PERSON FOR MORE INFORMATION: Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, (E–61), Atlanta, Georgia 30333, telephone 404/639–8096, fax 404/639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: January 13, 2003.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–1072 Filed 1–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., February 4, 2003. 8:30 a.m.–12 p.m., February 5, 2003.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333, telephone 404/639–8008.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include issues pertaining to latent TB Infection, United States Agency for International Development Initiatives in Tuberculosis, and other TB related topics.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paulette Ford-Knights, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 13, 2003.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–1069 Filed 1–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–R–72, CMS–10042, CMS–10081]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements in 42 CFR 478.18, 478.34, 478.36, and 478.42, QIO Reconsiderations and Appeals; *Form No.:* CMS–R–72 (OMB# 0938–0443); *Use:* These regulations contain procedures for QIOs (formerly known as PROs) to use in reconsideration of initial determinations. The information requirements contained in these regulations are on QIOs to provide information to parties requesting a reconsideration. These parties will use the information as guidelines for appeal rights in instances where issues are still in dispute.; *Frequency:* On occasion; *Affected Public:* Individuals or Households and Business or other for-profit; *Number of Respondents:* 2,509; *Total Annual Responses:* 5,228; *Total Annual Hours:* 2,882.

(2) *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Part A Provider and Durable Medical Equipment Supplier Satisfaction Survey; *Form No.:* CMS–10042 (OMB# 0938–NEW); *Use:* This is a request for clearance of a survey questionnaire to conduct a standardized random sample of Part A providers' and DME suppliers' satisfaction of their experience with their Medicare contractor's performance in its administration of the Medicare-fee-for-service program. The purpose of this study is to develop a baseline measure of providers' and suppliers' satisfaction with Medicare contractors by administering a survey to 15,000 providers and suppliers, 5,000 serviced by each of the following contractors: Connecticut General Life Insurance Company (CIGNA)–D, Palmetto Government Business Administrators (PBGA)–D, and United Government Services, LLC (UGS)-Part A. The data collected will be interpreted to produce indicators of the contractor's quality of performance.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 4,500; *Total Annual Responses:* 4,500; *Total Annual Hours:* 1,125.

(3) *Type of Information Request:* New Collection; *Title of Information Collection:* Data Collection for Administering the Survey for the Evaluation of the Demonstration to Maintain Independence and

Employment (DMIE); *Form No.:* CMS–10081 (OMB# 0938–NEW); *Use:* The DMIE Programs, funded by CMS under Title II of the Federal Ticket to Work Legislation, provide Medicaid coverage to low-income working populations. The Survey Evaluation is designed to assess the impact of the Mississippi DMIE program on access to care, health status and quality of life, workforce participation, etc.; *Frequency:* Annually; *Affected Public:* Individuals or Households, and State, Local, or Tribal Gov.; *Number of Respondents:* 928; *Total Annual Responses:* 928; *Total Annual Hours:* 253.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 9, 2003.

John P. Burke, III,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–1054 Filed 1–16–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–R–284]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Medicaid Statistical Information System (MMIS); *Form No.:* HCFA–R–0284 (OMB# 0938–0345); *Use:* State data are reported by a Federally mandated process known as MSIS. These data are the basis for Medicaid actuarial forecasts for service utilization and costs; Medicaid legislative analysis and cost savings estimates; and for responding to requests for information from CMS components, the Department, Congress, and other customers. The national MSIS database will contain details that will allow constructive or predictive analysis of today's Medicaid issues (*e.g.*, pregnant women, and infants); *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 53; *Total Annual Responses:* 212; *Total Annual Hours:* 7,420.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office at (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, *Attention:* Dawn Willinghan, *Room:* C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 9, 2003.

John P. Burke, III

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–1057 Filed 1–16–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–276, CMS–1500, CMS–1490U, CMS–1490S, CMS–1450, and CMS–R–285, CMS–R–290, and CMS–2744]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection; *Title of Information Collection:* Prepaid Health Plan Cost Report; *Form No.:* CMS–276 (OMB #0938–0165; *Use:* These forms are needed to establish the reasonable cost of providing covered services to the enrolled Medicare population of an HMO in accordance with Section 1876 of the Social Security Act.; *Frequency:* Recordkeeping and Reporting on occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 45; *Total Annual Responses:* 225; *Total Annual Hours:* 7,860.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare/Medicaid Health Insurance Common Claim Form, Instructions, and Supporting Regulations: 42 CFR 424.32, 424.44; *Form No.:* CMS–1500, CMS–1490U, CMS–1490S (OMB #0938–0008); *Use:* This form is a standardized claim form for use in the Medicare/Medicaid programs to apply for reimbursement for covered services. Many private insurers also use this form. Use of this form reduces cost and administrative burdens associated with professional claims because only one format needs to be used and maintained. CMS does not require exclusive use of this form for Medicaid.; *Frequency:* On occasion; *Affected Public:* State, Local or Tribal Government, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 1,216,702; *Total Annual Responses:* 740,215,135; *Total Annual Hours:* 42,941,276.

(3) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill and Supporting Regulations; *Form No.:* CMS–1450 (OMB #0938–0279); *Use:* This standardized form is used in the Medicare/Medicaid program to apply for reimbursement of covered services by all providers that accept Medicare/Medicaid assigned claims.; *Frequency:* On occasion; *Affected Public:* Not for profit institutions and Business or other for profit; *Number of Respondents:* 46,708; *Total Annual Responses:* 158,603,290; *Total Annual Hours:* 1,666,208.

(4) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Retirement Benefit Information; *Form No.:* CMS–R–285 (OMB #0938–0769); *Use:* This information is needed to determine whether a beneficiary meets the requirements for reduction of Part A premium to zero.; *Frequency:* On occasion; *Affected Public:*, State and Local or Tribal Government; *Number of Respondents:* 1500; *Total Annual Responses:* 1500; *Total Annual Hours:* 208.

(5) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Procedures for Making National Coverage Decisions; *Form No.:* CMS–R–0290 (OMB #0938–0776); *Use:* These information collection requirements provide the process CMS will use to make a national coverage decision for a specific item or service under sections 1862 and 1871 of the Social Security Act. This will streamline our decision making process and will increase the opportunities for public participation in making national coverage decisions; *Frequency:* Other (as needed); *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 8,000.

(6) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Medical Information System ESRD Facility Survey; *Form No.:* CMS–2744 (OMB #0938–0447); *Use:* The ESRD Facility Survey form (CMS–2744) is completed annually by Medicare-approved providers of dialysis and transplant services. The CMS–2744 is designed to collect information concerning treatment trends, utilization of services and patterns of practice in treating ESRD patients.; *Frequency:* Annually; *Affected Public:*, Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 4,225; *Total Annual Responses:* 4,225; *Total Annual Hours:* 33,800.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 9, 2003.

John P. Burke, III,

CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–1055 Filed 1–16–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–377/378/CMS–R–55]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Comprehensive Outpatient Rehabilitation Facility (CORF) Eligibility and Survey Forms and Information Collection Requirements in 42 CFR 485.56, 485.58, 485.60, 485.64, 485.66, 410.105; *Form No.:* CMS–0359/0360/R–0055 (OMB# 0938–0267); *Use:* In order to participate in the Medicare program as a CORF, providers must meet federal conditions of participation. The certification form is needed to determine if providers meet at least preliminary requirements. The survey form is used to record provider compliance with the individual conditions and report findings to CMS; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; Number of Respondents: 556; *Total Annual Responses:* 556; *Total Annual Hours:* 264,877.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site

address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 9, 2003.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–1056 Filed 1–16–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0354]

Agency Information Collection Activities; Proposed Collection; Comment Request; the Evaluation of Long-Term Antibiotic Drug Therapy for Persons Involved in Anthrax Remediation Activities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Adminsitration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the evaluation of long-term antibiotic drug therapy for persons involved in anthrax remediation activities. In the **Federal Register** of October 8, 2002 (67 FR 62727), FDA published a notice announcing the Office of Management and Budget's (OMB's) approval of this collection of information (OMB control number 0910–0494). Because this was an emergency approval that will expire on March 31, 2003, FDA in this notice is following the normal PRA clearance procedures by issuing this notice.

DATES: Submit written or electronic comments on the collection of information by March 18, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Officer of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CRF 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to the OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

The Evaluation of Long-Term Antibiotic Drug Therapy for Persons Involved in Anthrax Remediation Activities (OMB Control Number 0910–0494)—Extension

Due to a terrorist event during the fall of 2001, approximately 1,200 decontamination workers were placed on long-term antibiotic therapy to protect them from environmental anthrax spores. Through the services of a contractor, the FDA is currently administering a survey to all 1,200 decontamination workers to collect important health information pertaining to long-term use of antibiotics. This information is critical to the agency's mission in protecting the public health, and failure of the FDA to adequately follow up on these workers will reduce the agency's ability to apply lessons learned from the current situation to provide guidance during future public health emergencies should they occur. This could result, not only, in the loss of time and dollars but also in the loss of life if patients stop taking their medicines because they think the drug therapy is responsible for a health problem when in fact it is not. This type of population is likely to never be available for assessment again until a future terrorist event occurs. It would be unacceptable for the FDA not to obtain drug experience information from this group to assist in any future public health response to a terrorist attack.

FDA is requesting an extension of the OMB approval of a survey to help FDA's Center for Drug Evaluation and Research evaluate the long-term antibiotic drug therapy in persons involved in anthrax remediation activities. The reason for the extension is to allow for more time to complete the survey, which has been delayed for two reasons. The first reason relates to the delays in cleaning up some of the contaminated sites. Primarily, the cleanup of the Brentwood Post Office in Washington, DC was delayed; this post office accounts for approximately 400 of the decontamination workers. The cleanup at Brentwood is almost complete, and it is anticipated that final medical examinations of the Brentwood cleanup workers can begin in earnest in the February/March 2003 timeframe. Once the final medical examination is completed, then Market Facts, the contractor hired to conduct the survey, can begin to administer the questionnaire to these workers. The second reason is the result of having to obtain authorization from approximately 35 subcontractor firms (who employed the decontamination workers) to release contact information on the remediation workers. To date, only contact information for

approximately 300 workers has been released, and further efforts are on going to obtain permission to release the remaining information. The medical service subcontractor is working diligently to obtain the necessary authorizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Survey	No. of Respondents	Annual Frequency /Response	Total Annual Responses	Hours per Response	Total Hours
Telephone	1,200	1	1,200	.25	300
Total					300

[1]There is no capital costs or operating and maintenance costs associated with this collection of information.

The estimated annual reporting burden is based on the Centers for Disease Control's administration, in 2001 and 2002, of a similar questionnaire to individuals who were exposed to anthrax spores dispersed during a terrorist event.

Dated: January 15, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1254 Filed 1–16–03; 3:44 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the CMHS/CSAT Collaborative Program on Homeless Families: Women with Psychiatric, Substance Use, Or Co-Occurring Disorders and Their Dependent Children, Phase II—(OMB No. 0930–0223, Revision)—SAMHSA's Center for Mental Health Services and Center for Substance Abuse Treatment, through a set of cooperative agreements, are conducting a longitudinal, multi-site evaluation study assessing mental health, substance abuse, and trauma interventions received by homeless mothers with psychiatric, substance use, or co-occurring disorders and their dependent children. The study will advance knowledge on appropriate and effective approaches to improving families' residential stability, overall functioning, and decreased risk for violence.

SAMHSA currently has OMB approval for data collection from approximately 1,600 participants recruited from eight sites. At each site, a documented treatment intervention is tested in comparison to an alternative treatment condition. Participants are interviewed at baseline (within two weeks of entering a program) as well as three additional times (3 months after program entry, 9 months after program entry, and 15 months after program entry). Trained interviewers administer the interviews to participating mothers. Information on the children is obtained from the mother.

Key outcomes for the mothers are increased residential stability, decreased substance use, decreased psychological distress, improved mental health functioning, increased trauma recovery, improved health, improved functioning as a parent, and decreased personal violence. Outcomes for the children are reduced emotional/behavioral problems and improved school attendance.

A coordinated set of interviews assessing the key ingredients of each program will supplement the participant data collection during the baseline timeframe. The purpose of the program ingredients interviews, administered in a one-time case study protocol format, is to systematically describe each treatment and comparison intervention with the same set of variables at comparable points in treatment. This case study protocol will examine the intervention and comparison program models, staffing, structure, goals, and services, and will include vignettes describing actual families referred to the programs. In-person interviews of program directors, program line staff, and consumers will be administered in either focus group format or through one-on-one sessions. The case study protocol will be geared towards obtaining a standard set of information from each site. If some of these data are available from other sources or does not apply at a particular site, the protocol will be shortened. The estimated response burden is as follows:

Instrument	Number of respondents	Responses per respondent	Burden response (hrs)	Total burden hours
Currently—Approved Client Instrument (3-yr. annual average)	2,280			3,032
Program Director	35	1	1.0	35
Focus Group: Line Staff	140	1	1.0	140
Interview: Line Staff	140	1	1.0	140
Focus Group: Consumers	350	1	1.5	525

Instrument	Number of respondents	Responses per respondent	Burden response (hrs)	Total burden hours
Program Ingredients Sub-total	2,945			3,872
Total				

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 13, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–1063 Filed 1–16–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–03]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *DOT:* Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; *Energy:* Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–4548; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC, 20405; (202) 501–0052; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: January 9, 2003.

Mark R. Johnston,

Deputy Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 1/17/03

Suitable/Available Properties

Buildings (by State)

Ohio

USCG Old ANT Huron, 110 Wall Street

Huron Co: OH
Landholding Agency: GSA
Property Number: 54200310004,
Status: Excess
Comment: 2780 sq. ft., licensed to City, activities may be restricted, most recent use—admin/office/storage,
GSA Number: 1–U–OH–686B.

West Virginia

SSA Trust Fund Bldg., 275 Virginia Ave.
Welch Co: McDowell, WV 24801
Landholding Agency: GSA
Property Number: 54200310005
Status: Excess
Comment: needs rehab, presence of asbestos, most recent use-office space,
GSA Number: 4–G–WV–546.

Suitable/Unavailable Properties

Land (by State)

West Virginia

Kennedy Park & Marina, 523 Harrison Street
Newell Co: Hancock WV
Landholding Agency: GSA
Property Number: 54200310006,
Status: Excess
Comment: 13.02 acres, subject to lease,
GSA Number: 4–G–PA–0545.

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. B01, Coast Guard Cutter Sycamore
Cordova Co: AK 99574
Landholding Agency: DOT
Property Number: 87200310001,
Status: Unutilized
Reason: Extensive deterioration.

California

U.S. Customs House, 300 South Ferry St.
Terminal Island Co: Los Angeles CA 90731–
Landholding Agency: GSA
Property Number: 54200310001
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–G–CA–1569.

Hawaii

Bldg. 621, Naval Station, Pearl Harbor
Honolulu Co: HI 96860–
Landholding Agency: Navy
Property Number: 77200310001
Status: Excess
Reason: Extensive deterioration.

Unsuitable Properties

Buildings (by State)

Idaho

Federal Bldg./Post Office, 222 S. Seventh Street
St. Maries Co: ID 83861–
Landholding Agency: GSA
Property Number: 54200310002
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–G–ID–550

Federal Bldg./Post Office, 304 N. Eighth Street
Boise Co: ID 83724–
Landholding Agency: GSA
Property Number: 54200310003
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–G–ID–549

New Jersey

Bldg. 263, Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77200310002
Status: Unutilized
Reason: Extensive deterioration

New Mexico

Bldg. 2, TA–33, Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200310001
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldgs. 228, 286, TA–21, Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200310002
Status: Unutilized
Reason: Secured Area

Bldgs. 116, TA–21, Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200310003
Status: Unutilized
Reason: Secured Area

Bldgs. 1, 2, 3, 4, 5, TA–28, Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200310004
Status: Unutilized
Reason: Secured Area

[FR Doc. 03–922 Filed 1–16–03; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF INTERIOR

Office of the Secretary

John H. Chafee Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with section 552b of title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, February 6, 2003.

The Commission was established pursuant to Pub. L. 99–647. The purpose of the Commission is to assist Federal, State and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the corridor.

The meeting will convene at 4 p.m. at the Carol Cable Building, Second Floor Conference Room located at 249 Roosevelt Avenue in Pawtucket, RI for the following reasons:

1. Approval of Minutes
2. Chairman's Report
3. Executive Director's Report
4. Financial Budget
5. Public Input

It is anticipated that about 25 people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895. Tel.: (401) 762-0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,
Executive Director BRVNHCC.
[FR Doc. 03–1138 Filed 1–16–03; 8:45 am]
BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Bon Secour National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Bon Secour National Wildlife Refuge, located in Baldwin County, Alabama.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a Comprehensive Conservation Plan and Environmental Assessment for Bon Secour National Wildlife Refuge, pursuant to the National Environmental Policy Act and its implementing

regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: Public scoping meetings will be held in February 2003, with special mailings, newspaper articles, and other media announcements being used to inform people of the opportunities to participate in the meetings and provide input throughout the planning process.

ADDRESSES: Address comments, questions, and requests for more information to the following: Allyne Askins, Project Leader, Bon Secour National Wildlife Refuge, 12295 State Highway 180, Gulf Shores, Alabama 36542; Telephone 251/540–7720; Fax 251/540–7301; e-mail *allyne_askins@fws.gov*. Additional information concerning the refuge may be found at the refuge's Internet site *http://bonsecour.fws.gov/*.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input into the planning process is essential.

Bon Secour National Wildlife Refuge was established by Congress in June 1980, and encompasses some of Alabama's last remaining undisturbed coastal barrier habitat. Located 50 miles due west of Pensacola, Florida, and 50 miles southeast of Mobile, Alabama, Bon Secour refuge comprises about 6,700 acres of coastal lands ranging from dynamic beach dunes to pine flatwood and oak hammocks. Management of the refuge is aimed at protecting and preserving these unique habitats and associated wildlife.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: December 10, 2002.

Judy L. Pulliam,

Acting Regional Director.

[FR Doc. 03–1071 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare Comprehensive Conservation Plans and Associated Environmental Documents for Des Lacs, Upper Souris, and J. Clark Salyer National Wildlife Refuges in Northern North Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service intends to gather information necessary to prepare Comprehensive Conservation Plans and associated environmental documents for Des Lacs, Upper Souris, and J. Clark Salyer National Wildlife Refuges near Minot, North Dakota. The Service is issuing this notice in compliance with its policy to advise other organizations and the public of its intentions and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Written comments should be received by April 30, 2003.

ADDRESSES: Comments and requests for more information should be sent to: Bridget McCann, Planning Team Leader, PO Box 25486, Denver Federal Center, Denver, CO 80225–0486; Fax (303) 236–4792; E-mail *bridget_mccann@fws.gov* or, Toni Griffin, Planning Team Leader, PO Box 25486, Denver Federal Center, Denver, CO 80225–0486; Fax (303) 236–4792; E-mail *toni_griffin@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Bridget McCann, Planning Team Leader, PO Box 25486, Denver Federal Center, Denver, CO 80225–0486; Fax (303) 236–4792; E-mail *bridget_mccann@fws.gov*.

SUPPLEMENTARY INFORMATION: The Service has initiated comprehensive conservation planning for Des Lacs, Upper Souris, and J. Clark Salyer National Wildlife Refuges for the conservation and enhancement of their natural resources. These Refuges are located in the Souris River watershed of northern North Dakota. Des Lacs National Wildlife Refuge (NWR) encompasses more than 19,500 acres on the Des Lacs River, a tributary to the Souris River, in Ward and Burke Counties, and borders Saskatchewan Province. Upper Souris NWR encompasses 32,000 acres along the Souris River in Renville and Ward Counties. J. Clark Salyer NWR encompasses 58,700 acres along the Souris River in Bottineau and McHenry Counties, and borders Manitoba Province.

All three Refuges were established in 1935 by Executive Order as "* * * refuge[s] and breeding ground[s] for migratory birds and other wildlife * * *" under the Migratory Bird Conservation Act. During the comprehensive planning process, management goals, objectives, and strategies will be developed to carry out the purposes of the Refuges and to comply with laws and policies governing refuge management and public use of refuges. The three Refuges discussed here are open to public uses.

The Service requests input as to which issues affecting management or public use should be addressed during the planning process. The Service is especially interested in receiving public input in the following areas:

—What do you value most about these Refuges?

—What problems or issues do you see affecting management or public use of these Refuges?

—What changes, if any, would you like to see in the management of these Refuges?

The Service has provided the above questions for your optional use. The Service has no requirement that you provide information. The Planning Team developed these questions to facilitate gathering information about individual issues and ideas. Comments received by the Planning Team will be used as part of the planning process.

Opportunities for public input will also be provided at public meetings during the week of March 24, 2003. Exact dates and times for these public meetings are yet to be determined, but will be announced via local media.

All information provided voluntarily by mail, phone, or at public meetings (*e.g.*, names, addresses, letters of comment, input recorded during meetings) becomes part of the official public record. If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

Dated: December 4, 2002.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 03–1068 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sabine, Cameron Prairie, and Lacassine National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare comprehensive conservation plans and environmental assessments for Sabine, Cameron Prairie, and Lacassine National Wildlife Refuges in Louisiana.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare comprehensive conservation plans and environmental assessments pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental documents.

Special mailings, newspaper articles, and other media announcements will inform people of the opportunities for written input throughout the planning process.

DATES: The Service has already begun the planning process by hosting a series of local meetings in Cameron and Calcasieu Parishes during October 2002, to solicit comments. An open house to involve the public will be held on January 16, 2003, at Best Suites of America (Downtown Exit off Interstate 10), 401 Lakeshore Drive, Lake Charles, Louisiana. The public may attend formal presentations at 2 p.m., 4 p.m., or 6 p.m., or may visit any time during the open house to view maps and other displays, consider each refuge purpose and mission statement, visit one-on-one with Service representatives, and give personal suggestions for future management of each refuge. Special mailings, newspaper articles, and announcements will inform the public of times and locations of additional meetings and opportunities for input.

ADDRESSES: Address comments, questions, and requests for more information to the following: Judy McClendon, Natural Resource Planner, Southwest Louisiana Refuges, 1428 Highway 27, Bell City, Louisiana 70630; Telephone 337/598–2216; Fax 337/598–2492; E-Mail *judy_mcclendon@fws.gov.* Additional information concerning these refuges may be found at the Service's Internet site *http://www.fws.gov/.*

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input into the planning process is essential.

Sabine National Wildlife Refuge, located in Cameron Parish, Louisiana, encompasses 124,511 acres of fresh/intermediate/brackish marsh and is managed for the protection of wintering waterfowl. Cameron Prairie National Wildlife Refuge, located in Cameron Parish, Louisiana, encompasses 9,621 acres of fresh marsh, prairie, and manipulated moist-soil units and provides for nesting, migrating, and wintering waterfowl and their critical habitats. Lacassine National Wildlife Refuge, located in Cameron and Evangeline Parishes, Louisiana, encompasses 34,886 acres and was established to preserve marshlands and to provide habitat for migrating and wintering waterfowl. Lacassine refuge also manages a 3,345-acre wilderness area, a 20,000-acre private lands mini-refuge program for migrating waterfowl in six refuges, and oversees wetland easements in Jefferson Davis Parish.

Review of the draft plans, expected in 2003, will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: December 3, 2002

J. Mitch King,

Acting Regional Director.

[FR Doc. 03–1070 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by February 18, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to *victoria_davis@fws.gov.* Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed above (*see* **FURTHER INFORMATION**). Finally, you may hand deliver comments to the Service office listed below (*see* **ADDRESSES**). Our practice is to make comments, including

names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Edwards-Pitman Environmental, Inc., Atlanta, Georgia, Florida, TE063179–0.

The applicant requests authorization to take (survey, capture, translocate, and release) the following mussels and fishes: Fat three-ridge mussel (*Amblema neislerii*), Chipola slabshell (*Elliptio chipolaensis*), purple bankclimber (*Elliptoideus sloatianus*), upland combshell (*Epioblasma metastriata*), southern acornshell (*Epioblasma othcaloogensis*), fine-lined pocketbook (*Lampsilis altilis*), shiny-rayed pocketbook (*Lampsilis subangulata*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medinidus acutissimus*), Gulf moccasinshell (*Medinidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), Southern clubshell (*Pleurobema decisum*), Southern pigtoe (*Pleurobema georgianum*), Ovate clubshell (*Pleurobema perovatum*), oval pigtoe (*Pleurobema pyriforme*), triangular kidneyshell (*Ptychobranchus greeni*), short nose sturgeon (*Acipenser brevirostrum*), blue shiner (*Cyprinella caerulea*), Cherokee darter (*Etheostoma scotti*), Etowah darter (*Ethostoma etowahae*), Amber darter (*Percina antesella*), goldline darter (*Percina aurolineata*), Conasauga logperch (*Percina jenkinsi*), and snail darter (*Percina tanasi*). The proposed activities will take place throughout the state of Georgia.

Applicant: South Carolina Parks, Recreation and Tourism, Cheraw, South Carolina, Gary P. Haught, TE063183–0.

The applicant requests authorization to harass red-cockaded woodpeckers (*Picoides borealis*) while installing squirrel and snake excluder devices on active and non-active cluster trees with cavities. The proposed activities will take place in the Cheraw State Park, South Carolina.

Applicant: Trent Alan Farris, Foley, Alabama, TE064856–0.

The applicant requests authorization to take (survey, capture, mark, tag, and release) the following species: Alabama beach mouse (*Peromyscus polionotus ammobates*), Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*), Choctawhatchee beach mouse (*Peromyscus polionotus allophrys*), and Saint Andrew beach mouse (*Peromyscus polionotus peninsularis*). Take will occur while conducting presence and absence population surveys, studying population status and distributions, translocating individuals to augment populations, and radio tagging for scientific purposes. The proposed activities will take place in Alabama and Florida.

Applicant: Samuel Paul Atkinson; Shaw, McLeod, Belser, and Hurlbutt; Sumter, South Carolina, TE064882–0.

The applicant requests authorization to take (capture, band, release, monitor nests, and install artificial cavity inserts) red-cockaded woodpeckers (*Picoides borealis*) while conducting presence and absence surveys. The surveys will be conducted throughout the species historical range.

Dated: December 19, 2002.

J. Mitch King,

Acting Regional Director.

[FR Doc. 03–1064 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application (Reid) for Incidental Take of the Houston Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Roger Reid and Marie Waneck (Applicants) have applied for an incidental take permit (TE–066089–0) pursuant to section 10(a) of the Endangered Species Act (Act). The requested permit would authorize the incidental take of the endangered Houston toad. The proposed take would occur as a result from the construction and operation of commercial storage units on a 2.625 acre property on Highway 21, Bastrop County, Texas.

DATES: Written comments on the application should be received on or before February 18, 2003.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, PO Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–066089–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicant: Roger Reid and Marie Waneck plan to construct commercial storage units within 5 years, on approximately 0.3 acres of a 2.625-acre property on Highway 21, Bastrop County, Texas. This action will eliminate 0.3 acres or less of Houston toad habitat and result in indirect impacts within the lot. The Applicant proposes to compensate for this incidental take of the Houston toad by providing $660.00 to the Houston Toad Conservation Fund at the National Fish and Wildlife Foundation for the specific purpose of land acquisition and

management within Houston toad habitat.

Geoffrey L. Haskett,

Regional Director, Region 2.

[FR Doc. 03–1062 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species for the Lefever Property, El Paso County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for incidental take of endangered species.

SUMMARY: On July 8, 2002, a notice was published in the **Federal Register** (Vol. 67 No. 130 FR 45142), that an application had been filed with the U.S. Fish and Wildlife Service (Service) by Thomas Lefever, El Paso County, Colorado, for a permit to incidentally take Preble's meadow jumping mouse (*Zapus hudsonius preblei*), pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973 (16 U.S.C. 1539), as amended. The "Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Section 10(a)(1)(B) Permit for the Incidental Take of the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) for the Construction of a Single Family Residence at the Lefever Property in El Paso County, Colorado," accompanied the permit application.

Notice is hereby given that on December 19, 2002, as authorized by the provisions of the Act, the Service issued a permit (TE–059261) to the above-named party subject to certain conditions set forth therein. The permit was granted only after the Service determined that it was applied for in good faith, that granting the permit will not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policy set forth in the Act, as amended.

Additional information on this permit action may be requested by contacting the Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, telephone (303) 275–2370, between the hours of 7 a.m. and 4:30 p.m. weekdays.

Dated: December 19, 2002.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 03–1067 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1310–DP–NPRA]

Notice of Availability and Announcement of Public Subsistence-Related Hearing Schedule; Northwest National Petroleum Reserve-Alaska Draft Integrated Activity Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Northwest National Petroleum Reserve-Alaska Draft Integrated Activity Plan/Environmental Impact Statement (IAP/EIS). The planning area is roughly bounded by the Ikpikpuk River to the east. The southern boundary extends along a portion of the Colville River and then proceeds along township and sections lines generally in a north and west direction to the west to the boundary of the NPR–A. It then proceeds due north to Icy Cape on the Arctic Ocean and proceeds east along the Arctic coastline encompassing the bays, lagoons, inlets, and tidal waters between the NPR–A's outlying islands and the mainland.

The IAP/EIS contains four alternatives for a land management plan within the 8.8 million-acre planning area and assessments of each plan's impacts on the surface resources present there. These alternatives provide varying answers to three primary questions. First, will the BLM conduct oil and gas lease sales in the planning area and, if so, what lands will be made available for leasing? Second, what measures should we develop to protect important surface resources during oil and gas activities? Third, what non-oil and gas land allocations should we consider for this portion of the NPR–A?

The no action alternative calls for no change from the status quo, and under it no leasing would occur. Alternatives A through C make progressively less land, especially environmentally sensitive land, available to possible leasing. Alternative A makes 100 percent available, Alternative B makes 96 percent available, Alternative C makes 47 percent available. Stipulations would provide protection for natural and cultural resources under all alternatives, but their nature, number and scope would vary between alternatives.

Alternative A contains the fewest stipulations and many of them are performance based and reliant on subsequent NEPA analysis. Alternative B's stipulations are similar to those in Alternative A, but some surface occupancy protections are tied to areas of sensitive resources. Alternative C has more prescriptive stipulations, many of which are tied to areas associated with sensitive resources.

The Secretary of the Interior is authorized to identify specific lands in the NPR–A as "Special Areas," and there are small parts of two previously designated Special Areas within the planning area. Alternative B recommends that the Kasegaluk Lagoon, an area that is rich in wildlife and that features marine tidal flats which are rare on the North Slope, as an additional Special Area.

Alternative C recommends that Congress designate three wilderness areas within the planning area. The first is the Kasagaluk Lagoon. The second and third areas are located in the hills and mountains in the southern part of the planning area and have special values, are particularly remote, and feature good hiking and scenic vistas in high terrain. Alternative C also recommends Congressional designation of the part of the Colville River in the planning area as a Wild river and that 21 other rivers in the unit be designated as Scenic.

Section 810 of the Alaska National Lands Conservation Act requires BLM to evaluate the effects of the alternative plans presented in this IAP/EIS on subsistence activities in the planning area, and to hold public hearings if it finds that any alternative might significantly restrict subsistence activities. Appendix 5 of the document indicates that alternatives A and B may significantly restrict subsistence activities. In addition, all alternatives may significantly restrict subsistence in the cumulative case. Therefore, the BLM is holding public hearings on subsistence in conjunction with the public meetings discussed below.

ADDRESSES: Written comments should be sent to the NPR–A Planning Team, Bureau of Land Management, Alaska State Office (931), 222 West 7th Avenue, Anchorage, Alaska 99513–7599. Comments can also be submitted at the project Web site at *www.ak.blm.gov/nwnpra* or sent via e-mail to *nwnpr-acomment@ak.blm.gov*. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by

law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. The draft IAP/EIS will be available in either hard copy or on compact disk at the Alaska State Office, Public Information Center at 222 West 7th Avenue, Anchorage, Alaska 99513–7599. Copies of the draft IAP/EIS will also be available for pubic review at the following locations: Tuzzy Public Library, Barrow, Alaska; City of Nuiqsut, Nuiqsut, Alaska; City of Atqasuk, Atqasuk, Alaska; City of Anaktuvuk Pass, Anaktuvuk Pass, Alaska; City of Wainwright, Wainwright, Alaska; and City of Point Lay, Point Lay, Alaska. The entire document can also be reviewed at the project Web site at *http://www.ak.blm.gov/nwnpra*.

DATES: Written comments on the draft IAP/EIS will be accepted for 60 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, and/or mailings. The BLM currently plans to hold meetings and hearings in Nuiqsit, Atqasuk, Barrow, Wainwright, Point Lay, Fairbanks, and Anchorage.

FOR FURTHER INFORMATION CONTACT: Curt Wilson, BLM Alaska State Office, 907–271–5546 or Mike Kleven, BLM Northern Field Office, 907–474–2317.

SUPPLEMENTARY INFORMATION: Authority for developing this document is derived from the Federal Land Policy and Management Act, the Naval Petroleum Reserves Production Act of 1976, as amended, and the National Environmental Policy Act (NEPA). In recent years, oil and gas development has gradually moved east from the original find at Prudhoe Bay. By the late 1990's, there was a developable field at Alpine just to the east of the of NPR–A. In 1998, responding to interest from industry, the State of Alaska and the North Slope Borough, the BLM developed the Northeast NPR–A IAP/EIS which authorized a leasing program within the northeastern part of the Reserve.

The document determined where and under what conditions a leasing program could occur. Since that time, two lease sales have been conducted. The first was held in May 1999 and 867,721 acres were leased bringing in $104.6 million. A second lease sale was held in June 2002 and 579,269 acres were leased for a total of $63.8 million. This level of interest, and the fact that industry has announced the discovery of oil in three test wells within the leased area, has stimulated interest in expanding exploration to the area covered by this draft IAP/EIA. President Bush responded to this interest by identifying the area as having a high priority in his energy plan. Should the BLM undertake leasing in the Northwest NPR–A, this IAP/EIS will form the basic NEPA documentation to authorize this leasing, and it will determine those lands that are available and those that are unavailable for leasing.

Public participation has occurred throughout the period since the Notice of Intent to Prepare an EIS was published in November 2001. Scoping meetings were held in Nuiqsit, Atqasuk, Barrow, Wainwright, Point Lay, Fairbanks, and Anchorage. The planning area provides particularly important habitat for caribou, waterfowl, and other species. Many of the local residents of the area rely on harvesting these resources for subsistence purposes. Ensuring adequate protection of these resources has been one of the main focuses of public discussion in scoping meetings. The BLM has worked very closely with the North Slope Borough and the State of Alaska in developing this draft IAP/EIS. The Mineral Management Service of the Department of the Interior has also assisted the BLM in developing the document.

Dated: November 22, 2002.

Henri R. Bisson,

State Director, Alaska.

[FR Doc. 03–680 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–029–03–1310–DT CBMP]

Notice of Availability of the Montana Statewide Oil and Gas Final Environmental Impact Statement and Proposed Amendment to the Powder River and Billings Resource Management Plans (RMPs); Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the Federal Land Policy and Management Act, the National Environmental Policy Act, and the Montana Environmental Policy Act, the Bureau of Land Management (BLM) has jointly prepared a Final Environmental Impact Statement (EIS) and proposed Resource Management Plan (RMP) Amendment with the State of Montana (State). The planning area includes oil and gas estate administered by BLM in the Powder River and Billings RMP areas. The Powder River RMP area encompasses the southeastern portion of Montana consisting of Treasure and Powder River Counties, and portions of Rosebud, Big Horn, Carter, and Custer Counties. There are approximately 2,522,950 BLM-administered oil and gas acres in the Powder River RMP area. The Billings RMP area encompasses the south-central portion of Montana consisting of Wheatland, Golden Valley, Musselshell, Sweet Grass, Stillwater, Yellowstone, and Carbon Counties, and the remaining portion of Big Horn County. There are approximately 662,066 BLM-administered oil and gas acres in the Billings RMP area. The BLM-administered oil and gas acreage in Blaine, Park, and Gallatin Counties is not part of the BLM planning effort. The State's planning area is statewide.

DATES: The FEIS and Proposed Plan Amendment will be available for review for 30 calendar days from the Date the Environmental Protection Agency (EPA) publishes its NOA in the **Federal Register**. In addition, the 30-day protest period on the Final EIS and proposed Amendment will begin at that time. To be considered, the protest must be postmarked no later than the last day of the 30-day protest period and sent according to the instructions provided in the **ADDRESSES** section of this notice. Although not a requirement, sending a protest by certified mail, return receipt requested, is recommended.

The State of Montana Board of Oil and Gas Conservation (Board) will hold a public hearing on the Final EIS. Future meetings or hearings and any other public involvement activities will be announced in 15 days in advance through public notices, media news releases, mailings, and/or through the Board Web site at *http://www.bogc.dnrc.state.mt.us*. Following the public hearing, the Board will issue its Record of Decision.

Public Participation: The draft EIS and proposed RMP Amendment were available for public review from February 15, 2002, to May 15, 2002. Written comments were received from agencies, organizations, and individuals. All comments were considered during the preparation of the Final EIS and proposed RMP amendment. Reading copies will be available at local public libraries. Public

reading copies will also be available at the following Bureau of Land Management locations: Office of External Affairs, Main Interior Building, Room 6214, 18th and C Streets NW, Washington, DC 20240; External Affairs Office; Montana State Office, 5001 Southgate Drive, Billings, MT 59107; Miles City Field Office, 111 Garryowen Road, Miles City, MT 59301.

The BLM RMP process includes an opportunity for review of BLM's proposed decisions by filing a plan protest with the BLM's Director. Any person or organization that participated in the planning process and has an interest which is, or may be, adversely affected by approval of this proposed Plan Amendment may protest the plan. Careful adherence to the following guidelines will assist in preparing a protest:

Only those persons or organizations that participated in the planning process may protest. A protesting party may raise only those issues that were commented on during the planning process. However, additional issues may be raised at any time and should be directed to the Miles City Field Office for consideration in plan implementation as potential plan amendments or as otherwise appropriate. In order to be considered complete, a protest must contain at a minimum, the following information:

- Name, mailing address, telephone number, and interest of the person filing the protest
- Statement of the issue being protested
- Statement of the portion of the plan being protested

To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, and maps in the Final EIS and proposed Amendment. A copy of all documents addressing the issue submitted during the planning process or a reference to the date the issue was discussed for the record. A concise statement explaining why the BLM State Director's decision is believed to be incorrect is a critical part of the protest. It is important to take care to document all relevant facts and reference or cite the planning documents, environmental analysis documents, and available planning records (meeting minutes, summaries, correspondence). A protest without any supporting data will not provide the BLM with sufficient information to assess the protest, and therefore, the Director's review will be based on existing analysis and supporting data.

ADDRESSES: All protests on BLM's proposed decisions must be filed in writing to: (Regular Mail) Director, Bureau of Land Management, Attention: Ms. Brenda Williams, Protest Coordinator, PO Box 66538, Washington DC 20035; or (Overnight Mail) Director, Bureau of Land Management, Attention: Ms. Brenda Williams, Protest Coordinator, 1620 L Street, NW., Room 1075, Washington, DC 20036.

SUPPLEMENTARY INFORMATION: The Final EIS and proposed plan amendments are a joint effort between the BLM and the State of Montana. They are being prepared to analyze impacts to lands and resources as a result of proposed oil and gas development, primarily coal bed methane. The current Powder River and Billings RMPs, as amended by BLM's 1994 Oil and Gas Amendment of the Billings, Powder River, and South Dakota RMPs, support limited conventional oil and gas development and limited coal bed methane exploration and production. About 9,500 conventional oil and gas wells (all ownership categories) are located in the planning area. The Final EIS indicates that the 20-year expansion in development could result in the drilling of up to 26,000 coalbed methane wells (8,500 to 16,400 of which are expected to be producing wells) and 450 to 1,775 conventional oil and gas wells within the Billings and Powder River RMP areas.

The Final EIS and proposed amendments are being prepared to analyze this increased interest in oil and gas activity. The five alternatives developed by BLM and the State present a range of management scenarios to address the issues: Alternative A—existing management (No Action); Alternative B—emphasize soil, water, air, vegetation, wildlife, and cultural resources protection; Alternative C—emphasize coal bed methane development; Alternative D—encourage coal bed methane exploration and development while maintaining existing land uses; and Alternative E—the BLM and State Preferred Alternative, which combines features of Alternatives B through D and manages development of CBM in an environmentally sound manner. The Final EIS discloses the environmental consequences of each alternative.

A copy of the Final EIS and proposed Amendment has been sent to all individuals, agencies, and groups who have expressed interest or as required by regulation or policy. Copies are also available upon request from the BLM at the address listed above.

Four designated cooperating agencies helped BLM and the State prepare the EIS: the Bureau of Indian Affairs, the United States Department of Energy, the Crow Tribe, and the United States Environmental Protection Agency. Consultation with both the Crow and Northern Cheyenne tribes has taken place throughout the process to gather their input and concerns. Consultation with FWS has occurred, and the BLM has also met with individuals from the general public, special interest groups, industry, and local governments upon their request. The Northern Cheyenne Tribe has declined to become a cooperating agency, but was invited by BLM to participate in all cooperating agency activities.

The BLM and the State conducted public hearings across Montana on the Draft EIS and Amendment. The time and locations of the hearings were announced in local news releases.

FOR FURTHER INFORMATION CONTACT: Mary Bloom, Coal Bed Methane Program Manager, Bureau of Land Management, 111 Garryowen Road, Miles City, MT 59301, (406) 233–3649.

Dated: December 17, 2002.

Thomas P. Lonnie,

Acting State Director.

[FR Doc. 03–1081 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–090–03–1610–DQ]

Notice of Availability of the Final Environmental Impact Statement for the Powder River Basin Oil and Gas Project and Proposed Resource Management Plan Amendments; Johnson, Sheridan, Campbell, and Converse Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA) of Final Environmental Impact Statement (FEIS), and Proposed Resource Management Plan (RMP) Amendments.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the FEIS for the Powder River Basin Oil and Gas Project and Proposed Plan Amendments to the Buffalo RMP (1985), Platte River RMP (1985) and Thunder Basin National Land and Resource Management Plan (LRMP) (Forest Service 2002). The FEIS documents the direct, indirect, and cumulative environmental impacts from the development of oil and gas resources within the project area in Sheridan, Campbell, Johnson, and Converse Counties, Wyoming. The FEIS

describes and analyzes options for developing oil and gas resources while providing protection to other land uses and resource values. The Forest Service and the State of Wyoming (Wyoming Department of Environmental Quality) are cooperating agencies.

DATES: The Powder River Basin Oil and Gas Project FEIS and Proposed Plan Amendments will be available for review for 30 calendar days from the date the Environmental Protection Agency (EPA) publishes its NOA in the **Federal Register**. Comments on the Powder River Basin Oil and Gas Project FEIS (PRB EIS) must be filed within the 30-day review period. Under the provisions of 43 Code of Federal Regulations (CFR) § 1610.5 protests of proposed BLM RMP amendments must be filed with the Director in accordance with the instructions described in the FEIS and included in the Supplemental Information section of this notice. Protest of the proposed amendments to the Buffalo and Platte River RMPs will be accepted no later than 30 calendar days from the date the EPA publishes its NOA in the **Federal Register**. The Forest Service would amend the Thunder Basin National LRMP under its land and resources management planning processes and authorities.

ADDRESSES: A copy of the FEIS has been sent to affected Federal, State, and local government agencies and to interested parties. The document will be available electronically on the following Web site: *http://www.prb-eis.org*. Copies of the FEIS are available for public inspection at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82003
- Bureau of Land Management, Buffalo Field Office, 1425 Fort Street, Buffalo, Wyoming 82834
- Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82604–2968

FOR FURTHER INFORMATION: Contact Mr. Paul Beels, Project Manager, 1425 Fort Street, Buffalo, WY 82834, or *paul_beels@blm.gov*. Mr. Beels may also be reached at 307–684–1168.

SUPPLEMENTARY INFORMATION: The FEIS analyzes a proposal by companies to drill and develop additional oil and gas resources, including coalbed methane (CBM), in Wyoming's Powder River Basin. Oil and gas development activities would include drilling, operating, and reclaiming almost 39,400 new CBM wells and 3,000 oil and gas wells; and constructing, operating, and reclaiming various ancillary facilities needed to support the new wells. Drilling would begin in 2003 and continue for 10 years.

The project area includes almost 8,000,000 acres in northeastern Wyoming, encompassing all of Johnson and Sheridan Counties except the Bighorn National Forest System lands, all of Campbell County and the northern portion of Converse County. The public lands and Federal mineral resources analyzed include all of those administered by the BLM Buffalo Field Office (FO) and a small portion that is administered by the Casper FO. The mineral resources analyzed also include the Federal oil and gas underlying the National Forest System lands and surface resources (Thunder Basin National Grassland) administered by the USDA Forest Service.

The FEIS describes the physical, biological, cultural, historic, and socioeconomic resources in and surrounding the project area. The focus for impact analysis was based upon resource issues and concerns identified during the public scoping process. Potential impacts of concern from development (not in priority order), are: economic, social, health and safety effects on the communities of Buffalo, Sheridan, and Gillette, Wyoming, and other surrounding communities; crucial elk winter range; sage grouse and raptor breeding and nesting; soil erosion; air quality effects; groundwater draw down and contamination; surface water quality; historic Bozeman Trail condition and its viewshed; and cumulative effects. The primary issues driving alternative development are water quality and quantity and air quality.

Three alternatives were analyzed in detail: (1) Proposed Action, (2) Proposed Action with Reduced Emission Levels and Expanded Produced Water Handling Scenarios, and (3) No Action. Alternative 1 consisted of a combination of the CBM development proposal submitted by the oil and gas companies and non-CBM oil and gas development possibilities described in BLM's Reasonable Foreseeable Development (RFD) scenario. Alternative 2 was developed in response to issues raised during the public and agency scoping process. This alternative, which consists of Alternatives "2A" and "2B", would replace some of the proposed gas-fired compressors with electrical compressors and would involve a more limited amount of water that would be discharged directly to the watersheds. As required by National Environmental Policy Act (NEPA), the No Action alternative is a basis for comparison with other alternatives analyzed in the EIS. For this project, the No Action Alternative would not authorize additional development of oil and gas on Federal leases within the Project Area. Drilling would continue on State and private leases, irrespective of the decisions resulting from this document.

Agency-Preferred Alternative: BLM's preferred alternative is a combination of Alternative 2A and Alternative 1. The Preferred Alternative includes the use of natural gas powered compressors but does not preclude the use of electric powered compressor stations, as outlined in Alternative 1. All other parts of the Preferred Alternative are as outlined in Alternative 2A. The Preferred Alternative allows the Wyoming DEQ maximum flexibility to comply with applicable national and state air and water quality standards.

Proposed Land Use Plan Amendments: The BLM RMPs would be amended to allow oil and gas exploration and development at the level analyzed in the FEIS and to adopt new conditions of use. In addition, the FEIS updates the NEPA analysis for the RMPs for management of oil and gas exploration and development on federal leases.

For the U.S. Forest Service, the FEIS will be used to allow oil and gas exploration and development at the level analyzed in the FEIS, update the NEPA analysis for the LRMP and adopt the 2002 LRMP stipulations for the area west of the coal outcrop line.

The Proposed Plan Amendments do not include changes to the leasing allocation decisions, as the FEIS does not address leasing.

RMP amendments would provide complete and concise descriptions of applicable management practices for oil and gas development.

The DEIS was available for public review and comment from January 18, 2002, through May 15, 2002. The distribution list included the agencies, companies, organizations, and individuals that had expressed an interest in the project during scoping. The list included several Federal and State agencies and elected officials to whom BLM commonly sends EISs. During this period, the BLM encouraged reviewers to submit written comments on the DEIS. In addition, the BLM held public meetings on the DEIS on March 18–21, 2002, to provide the public with the opportunity to submit oral and written comments. All comments presented throughout the process have been considered.

Ultimately, the BLM State Director's decision whether to adopt the proposed RMP amendment will be documented in a Record of Decision and issued under the authority of the Federal Land Policy

and Management Act as codified at 43 CFR part 1610. If adopted, these proposed RMP amendments do not constitute authorization to the oil and gas companies to implement projects nor engage in any ground-disturbing activities. Decisions regarding these site-specific implementation activities are subject to further NEPA analysis and appeal, as provided by applicable regulations.

Protest Instructions: Publication of this EIS prepared for a RMP amendment affords the public the opportunity to protest. Instructions for filing a protest with the Director of the BLM regarding the State Director's proposed amendments to the Buffalo and Platte River RMPs may be found at 43 CFR 1610.5. Any person who participated in the planning process and has an interest or may be adversely affected by the approval of the proposed Plan Amendment, may protest such approval. A protest may raise only those issues that were submitted for the record during the planning process. The protest must be in writing and must be filed with the Director. The protest must be filed within 30 days from the date the Environmental Protection Agency publishes the NOA in the **Federal Register**. The protest must contain:

i. The name, mailing address, telephone number, and interest of the person filing the protest;
ii. A statement of the issue or issues being protested;
iii. A statement of the part, or parts, of the plan or amendment being protested;
iv. A copy of all documents addressing the issue, or issues, that were submitted during the planning process by the protesting party or an indication of the date the issue, or issues, were discussed for the record; and
v. A concise statement explaining why the State Director's decision is believed to be wrong.

The Director must promptly render a decision on the protest. The decision must be in writing and must set forth the reasons for the decision. The decision must be sent to the protesting party by certified mail, return receipt requested. The decision of the Director must be the final decision for the Department of the Interior.

Protest Filing Addresses: Protests submitted electronically will not be accepted. File written protests by: Surface mail: U.S. Department of the Interior, Bureau of Land Management, Director (210), Attn: Ms. Brenda Williams, Protest Coordinator, P.O. Box 66538, Washington DC 20035 or Overnight mail: U.S. Department of the Interior, Bureau of Land Management, Director, Protest Coordinator (WO–210), 1620 L Street, NW., Room 1075, Washington, DC 20036.

Dated: December 18, 2002.

Robert P. Henry,

Acting State Director.

[FR Doc. 03–1082 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–42–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–03–1120–PG–24–1A]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) Meeting.

SUMMARY: The purpose of this notice is to announce a Resource Advisory Council Meeting scheduled for February 12, 2003, Salt Lake City, Utah.

The Bureau of Land Management's (BLM) Utah Statewide Resource Advisory Council (RAC) will be meeting on February 12, 2003, at the Best Western Salt Lake Plaza Hotel, Salt Lake Conference Room (main level of hotel), 122 West South Temple, (801) 521–0130, Salt Lake City, Utah. The meeting will begin at 8:30 a.m. and conclude at 4 p.m.

Agenda topics include an update on the San Rafael Swell, a report from the Raptor Subgroup, status report on the RMP planning process, an overview of the drought situation, feedback and discussion on the November RAC satellite broadcast, and RAC work plans for the future.

A public comment period is scheduled from 3:30 p.m.–4 p.m. where members of the public may address the Council. Written comments may be mailed to the Bureau of Land Management at the address listed below.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

FOR FURTHER INFORMATION: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111; phone (801) 539–4195.

Dated: Janaury 6, 2003.

Sally Wisely,

State Director.

[FR Doc. 03–1083 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[60% to CO–956–1420–BJ–0000–241A; 11% to CO–956–1910–BJ–4497–241A; 29% to CO–956–9820–BJ–CO01–241A]

Colorado: Filing of Plats of Survey

January 6, 2003.

SUMMARY: The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., January 6, 2003. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey and survey in Township 34 North, Range 2 West, New Mexico Principal Meridian, Group 1315, Colorado, was accepted December 10, 2002.

This survey and plat were requested by the Bureau of Indian Affairs for administrative and management purposes.

The plat representing the dependent resurvey and survey in Township 49 North, Range 7 West, New Mexico Principal Meridian, Group 1247, Colorado, was accepted October 31, 2002.

This survey and plat were requested by the National Park Service for administrative and management purposes.

The plat representing the limited corrective dependent resurvey in Township 7 North, Range 70 West, Sixth Principal Meridian, Group 761, Colorado, was accepted October 30, 2002.

The plat representing the dependent resurvey of certain mineral surveys in Township 42 North, Range 7 West, New Mexico Principal Meridian, Group 1333, Colorado, was accepted November 22, 2002.

The plat representing the corrective dependent resurvey in section 21, Township 6 North, Range 70 West, Sixth Principal Meridian, Group 632, Colorado, was accepted December 12, 2002.

The amended field notes, correcting the 1978 descriptions, for the East 1/16 section corner of sections 17 and 20, and the Center West 1/16 section corner of section 19, in T. 6 North, Range 70 West, Sixth Principal Meridian, Group 632, Colorado, was accepted November 21, 2002.

The amended field notes, correcting the 1977 description, for the Center South 1/16 section corner of section 28,

in T. 6 North, Range 71 West, Sixth Principal Meridian, Group 632, Colorado, was accepted November 21, 2002.

These plats, surveys and amended field notes, were requested by the Forest Service for administrative and management purposes.

The plat representing the dependent resurvey and survey in section 26, Township 1 South, Range 83 West, Sixth Principal Meridian, Group 1319, Colorado, was accepted October 7, 2002.

The plat representing the dependent resurvey and survey, in Township 13 South, Range 98 West, Sixth principal Meridian, Group 1271, was accepted October 8, 2002.

The plat representing the dependent resurvey and survey in Township 50 North, Range 20 West, New Mexico Principal Meridian, Group 1360, Colorado, was accepted October 8, 2002.

The plat representing the dependent resurvey and survey in Township 3 South, Range 84 West, Sixth Principal Meridian, Group 1327, was accepted October 24, 2002.

The plat representing the dependent resurvey and survey in Township 3 South, Range 85 West, Sixth Principal Meridian, Group 1327, was accepted October 24, 2002.

The plat representing the dependent resurvey and survey in Township 3 North, Range 80 West, Sixth Principal Meridian, Group 1348, was accepted November 14, 2002.

The plat representing the dependent resurvey and survey in Township 14 South, Range, 103 West, Sixth Principal Meridian, Group 1291, Colorado, was accepted December 10, 2002.

The plat representing the entire record of the remonumentation of certain original corners, in Township 17 South, Range 68 West, Sixth Principal Meridian, Group 750, Colorado, was accepted December 18, 2002.

The plat representing the entire record of the remonumentation of certain original corners, in Township 16 South, Range 72 West, Sixth Principal Meridian, Group 750, Colorado, was accepted December 18, 2002.

The plat representing the entire record of the remonumentation of certain original corners, in Township 16 South, Range 73 West, Sixth Principal Meridian, Group 750, Colorado, was accepted December 18, 2002.

The amended field notes, correcting the description of ties, to local bearing trees, at the closing corner of Townships 50 and 51 North, Range 20 West, New Mexico Principal Meridian, Group 1360, Colorado, was accepted November 20, 2002.

These plats, surveys and amended field notes, were requested by the Bureau of Land Management for administrative and management purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 03–1046 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Folsom Lake State Recreation Area General Plan/Resource Management Plan, California

AGENCY: Bureau of Reclamation, Interior (Reclamation).

ACTION: Notice of Intent to prepare an environmental impact report /environmental impact statement (EIS/EIR).

SUMMARY: The U.S. Bureau of Reclamation (Reclamation) in partnership with the California Department of Parks and Recreation (CDPR) intend to prepare a General Plan/Resource Management Plan (GP/RMP) for the Folsom Lake State Recreation Area (including Lake Natoma and the Folsom Powerhouse State Historic Park). This planning activity encompasses approximately 18,000 acres of publicly accessible land/water owned by Reclamation and managed by the CDPR's Gold Fields District. The GP/RMP will be the primary management document for the park unit, providing a defined purpose, vision, long term-goals, and management guidelines. It will be used by CDPR as a framework for guiding decision-making related to the future development potential, ongoing management, resource conservation, and public use of the Folsom Lake State Recreation Area (Folsom Lake SRA). CDPR and Reclamation will prepare a joint EIR/EIS on the management actions and elements included in the GP/RMP.

DATES: A total of three regional workshops will be conducted to solicit public input at each phase of the planning process. The first public workshop was held on November 20, 2002 from 7 p.m. to 9:30 p.m. in Folsom, California.

This workshop, and other upcoming ones, will be used to solicit community input on local issues, concerns and aspirations as they relate to the Folsom Lake SRA. The information will be used to help form the definition of the goals/objectives of the GP/RMP, analysis of opportunities and constraints, and scope of subsequent planning and design efforts. The workshops will also serve as the public scoping meetings for preparation of the EIR/EIS, identifying the range and scope of issues to be addressed in the environmental assessment documents.

A second public workshop is planned for March/April 2003. At this time, the public will have the opportunity to further define their issues, concerns and aspirations, as well as consider and comment on developed alternative park unit improvement and conservation scenarios. At a third public workshop, tentatively scheduled for January 2004, plan proposals for land use, resource management, circulation and facilities will be presented for review and evaluation.

These public meetings will be announced through the local news media, newsletters, and the CDPR Web site (*http://www.parks.ca.gov*) at least 15 days prior to the event. Comments on issues and planning criteria may be submitted in writing to the address listed below.

ADDRESSES: The first meeting was held at Folsom Middle School, 500 Blue Ravine Road, Folsom, CA 95630. Locations for the other two meetings are not yet determined.

Written comments should be sent to Folsom Lake Plan Update c/o Wallace Roberts & Todd, LLC, 1328 Mission Street, Fourth Floor, San Francisco, CA 94103 or email: *folsomlakeplanupdate @sf.wrtdesign.com.*

FOR FURTHER INFORMATION CONTACT: Jim Micheaels, Associate Park and Recreation Specialist, Gold Fields District, 7806 Folsom-Auburn Road, Folsom, California 95630, phone (916) 988–0513; or Mike Petrinovich, Resource Manager, U.S. Bureau of Reclamation, Central California Area Office, Folsom, CA 95639, phone (916) 989–7276.

SUPPLEMENTARY INFORMATION: CDPR first entered into an agreement with Reclamation in 1956 to manage recreation facilities at Folsom Lake and Lake Natoma. The area was later designated as Folsom Lake SRA. Most of the lands around both lakes are owned by Reclamation and managed by CDPR. With approximately 2.5 million visitors annually, Folsom Lake SRA is one of the most popular and heavily visited units within the California State Park System. Lake Natoma and portions of the popular 32-mile American River Bike Trail are a part of the unit.

The current GP for Folsom Lake SRA was completed in 1979. The plan currently being developed will also

serve as Reclamation's RMP for the area. The GP/RMP for Folsom Lake SRA will be a 2-year process. The GP/RMP will guide the long-term management of the SRA including protecting natural and cultural resources, providing for and management of public use and recreation opportunities, and outlining the development of future facilities. The plan update will include direction for the Folsom Powerhouse State Historic Park, a separate park unit that is administered in conjunction with Folsom Lake SRA.

The GP/RMP will guide management decisions and activities by establishing long-term management direction, area-wide goals and objectives, actions necessary to achieve desired future conditions, identification of lands suitable or not suitable for resource use and production, and monitoring and evaluation requirements. The GP/RMP planning process will be an interdisciplinary effort between CDPR, Reclamation, other relevant agencies, stakeholders and the public. The CDPR and Reclamation will work collaboratively with interested parties to identify the management decisions that address local, regional, and national needs and concerns. The public participation process as outlined above will identify planning issues, develop planning criteria, and will include an evaluation of existing CDPR and Reclamation management plans in the context of the needs and interest of the public and the conservation of natural and cultural resources.

Preliminary issues and management concerns have been identified by CDPR and Reclamation personnel and other agencies. The preliminary issues identified thus far represent the CDPR's and Reclamation's knowledge to date on the existing issues and concerns with current management, but are not limited to these. The major issue themes that will be addressed in the plan effort include: assessment of impacts to the unit's resources from adjacent development and recent road-widening projects; access to and transportation within the park including trails and boat ramp access; recreation/visitor use and safety; management and protection of public land resources; and potential future action including acquisition, and construction of new facilities. The public is encouraged to help identify additional management questions and concerns to be addressed in the plan.

As part of the GP/RMP process, an EIR/EIS will be prepared in compliance with the National Environmental Protection Act (NEPA) and the California Environmental Quality Act (CEQA). The EIR/EIS will evaluate the environmental impacts of the management actions and projects contained in the GP/RMP, as a whole, in a programmatic manner. As the GP/RMP is implemented over time, specific project proposals can tier from the EIR/EIS by further evaluating the details of the specific project through subsequent environmental review. The Draft EIR/EIS is projected to be available for public review for a 45-day early in 2004. Toward the end of the review period, a public hearing will be held in the vicinity of the Folsom Lake SRA to receive public comment on both the GP/RMP and Draft EIR/EIS.

Our practice is to make comments, including names and home addresses of respondents available for public review. Individual respondents may request that we withhold their home addresses from public disclosure, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: December 20, 2002.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–1075 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR parts 779 and 870 and the OSM–1 Form.

DATES: Comments on the proposed information collection must be received by March 18, 2003 to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 120–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@0smre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease at the address listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8 (d)]. This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR part 779, Surface Mining Permit Applications—Minimum Requirements for Environmental Resources; and part 870, Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting and the form it implements, the OSM–1, Coal Reclamation Fee Report.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden and respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activities:

Title: Surface Mining Permit Applications—Minimum Requirements for Environmental Resources, 30 CFR 779.

OMB Control Number: 1029–0035.

Summary: Applicants for surface coal mining permits are required to provide adequate descriptions of the

environmental resources that may be affected by proposed surface mining activities. The information will be used by the regulatory authority to determine if the applicant can comply with environmental protection performance standards.

Bureau Eorm Number: None.

Frequency of Collection: Once upon submittal of mining application.

Description of Respondents: Coal mining companies and state regulatory authorities.

Total Annual Responses: 337.

Total Annual Burden Hours: 52,813 hours.

Title: Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, 30 CFR 870.

OMB Control Number: 1029–0063.

Summary: The information is used to maintain a record of coal produced for sale, transfer, or use nationwide each calendar quarter, the method of coal removal and the type of coal, and the basis for coal tonnage reporting in compliance with 30 CFR 870 and section 401 of Pub. L. 95–87. Individual reclamation fee payment liability is based on this information. Without the collection of information OSM could not implement its regulatory responsibilities and collect the fee.

Bureau Form Number: OSM–1.

Frequency of Collection: Quarterly.

Description of Respondents: Coal mine permittees.

Total Annual Responses: 12,364.

Total Annual Burden Hours: 2,605.

Dated: January 13, 2003.

Richard G. Bryson,

Acting Assistant Director, Program Support.

[FR Doc. 03–1092 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by February 18, 2003, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information found 30 CFR part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources. OSM is requesting a 3-year term of approval for this information collection activity.

As an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR [part 783, which is 1029–0038.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on October 7, 2002 (67 FR 62495). No comments were received. This notice provides the public with an additional 30 days in which to comment.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information. Where appropriate, OSM has revised burden estimates to reflect current reporting levels and adjustments based on reestimates of the burden or number of respondents.

Title: Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, 30 CFR part 783.

OMB Control Number: 1029–0038.

Summary: Applicants for underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

Bureau Form Number: None.

Frequency of Collection: Once at time of application submission.

Description of Respondents: Underground coal mining applicants, and State regulatory authorities.

Total Annual Responses: 59.

Total Annual Burden Hours: 25,088 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240.

Dated: December 17, 2002.

Richard G. Bryson,

Acting Assistant Director, Program Support.

[FR Doc. 03–1091 Filed 1–16–03; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Department of Labor's Fleet Alternative Fuel Vehicle Acquisition

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of availability of the Department of Labor's annual report on its alternative fuel vehicle acquisitions for fiscal years 1999, 2000 and 2001.

SUMMARY: In compliance with the Energy Policy Act of 1992 and Executive Order 13149, this notice announces the availability of the 1999, 2000 and 2001 reports which summarize the U.S. Department of Labor's (DOL)

compliance with the annual alternative fuel vehicle acquisition requirement for its fleet. Additionally, the reports include data relative to the agency's effort in reducing petroleum consumption.

ADDRESSES: U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Business Operations Center, Office of Administrative Services, 200 Constitution Avenue NW., Room S1521, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Al Stewart, Director of Business Operations Center at (202) 693–4021 or email *Stewart-Milton@dol.gov*.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992 (42 U.S.C. 13211–13219) as amended by the Energy Conservation and Reauthorization Act of 1998 (Pub. L. 105–388, Section 310(b) (3) and Executive Order 13149 (April 2000) were intended to decrease the country's dependence on petroleum for transportation purposes. The Energy Policy Act of 1992 requires Federal fleets to acquire 75 percent of their new covered vehicle acquisitions as alternative fuel vehicles. In Fiscal Year (FY) 1999, DOL acquired 85 vehicles covered as alternative fuel vehicles. In FY 2000 and 2001, the number of covered vehicles was 77 and 116 respectively. The Department is not currently in compliance, however, expects to achieve compliance by FY 2005.

Pursuant to 42 U.S.C. 13218 of the Energy Policy Act, DOL and other covered agencies are required annually to submit to Congress reports on their Energy Policy Act's alternative fuel vehicle acquisition requirements. These reports must also be placed on an available Web site and their availability, including the Web site address, must be published in the **Federal Register**.

DOL reports for 1999, 2000, and 2001 may be accessed at the DOL Fleet Information and Regulations Web site at *http://www.dol.gov/oasam/programs/boc/epact.htm*.

Issued in Washington, DC, this 10th day of January 2003.

Patrick Pizzella,

Assistant Secretary for Administration and Management.

[FR Doc. 03–1093 Filed 1–16–03; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Decisions as listed below:

MD020017—*See* MD020016
PA020033—*See* PA020013
PA020043—*See* PA020013
KY020042—*See* KY020005

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

CT020001 (Mar. 1, 2002)

CT020003 (Mar. 1, 2002)
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Maine
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ME020008 (Mar. 1, 2002)
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MD020026 (Mar. 1, 2002)
MD020037 (Mar. 1, 2002)
MD020039 (Mar. 1, 2002)
MD020058 (Mar. 1, 2002)
Pennsylvania
PA020001 (Mar. 1, 2002)
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PA020004 (Mar. 1, 2002)
PA020005 (Mar. 1, 2002)
PA020006 (Mar. 1, 2002)
PA020007 (Mar. 1, 2002)
PA020008 (Mar. 1, 2002)
PA020009 (Mar. 1, 2002)
PA020010 (Mar. 1, 2002)
PA020011 (Mar. 1, 2002)
PA020012 (Mar. 1, 2002)
PA020013 (Mar. 1, 2002)
PA020014 (Mar. 1, 2002)
PA020015 (Mar. 1, 2002)
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PA020024 (Mar. 1, 2002)
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PA020026 (Mar. 1, 2002)
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PA020041 (Mar. 1, 2002)
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PA020060 (Mar. 1, 2002)
PA020061 (Mar. 1, 2002)
PA020065 (Mar. 1, 2002)
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VA020019 (Mar. 1, 2002)
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VA020033 (Mar. 1, 2002)
VA020036 (Mar. 1, 2002)
VA020067 (Mar. 1, 2002)
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KY020029 (Mar. 1, 2002)

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IN020004 (Mar. 1, 2002)
IN020005 (Mar. 1, 2002)
IN020006 (Mar. 1, 2002)
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MO020001 (Mar. 1, 2002)
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MO020042 (Mar. 1, 2002)
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MO020058 (Mar. 1, 2002)
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Colorado
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CO020005 (Mar. 1, 2002)
CO020006 (Mar. 1, 2002)
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CO020008 (Mar. 1, 2002)
CO020009 (Mar. 1, 2002)
CO020010 (Mar. 1, 2002)
CO020011 (Mar. 1, 2002)
CO020015 (Mar. 1, 2002)
Oregon
OR020001 (Mar. 1, 2002)
OR020017 (Mar. 1, 2002)
South Dakota
SD020002 (Mar. 1, 2002)
SD020005 (Mar. 1, 2002)
SD020006 (Mar. 1, 2002)
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Utah
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UT020008 (Mar. 1, 2002)
UT020013 (Mar. 1, 2002)
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UT020029 (Mar. 1, 2002)
UT020030 (Mar. 1, 2002)
UT020031 (Mar. 1, 2002)
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Washington
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CA020023 (Mar. 1, 2002)
CA020025 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
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CA020030 (Mar. 1, 2002)
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CA020032 (Mar. 1, 2002)
CA020033 (Mar. 1, 2002)
CA020035 (Mar. 1, 2002)
CA020036 (Mar. 1, 2002)
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Nevada
NV020001 (Mar. 1, 2002)
NV020002 (Mar. 1, 2002)
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NV020009 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the

National Technical Information Service (NTIS) of the U.S. Department of Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specific the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Dated: January 9, 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–803 Filed 01–16–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Numbers D–11137, 11138, and 11139]

Notice of Proposed Individual Exemption Involving the Northwest Airlines Pension Plan for Salaried Employees, the Northwest Airlines Pension Plan for Pilot Employees, and the Northwest Airlines Pension Plan for Contract Employees (Collectively, the Plans) Located in Eagan, MN

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed individual exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit: (1) The in-kind contribution(s) of the common stock of either Pinnacle Airlines, Inc. or Pinnacle Airlines Corp. (Pinnacle Stock) to the Plans by Northwest Airlines, Inc. (Northwest), a party in interest with respect to such Plans; (2) the holding of the Pinnacle Stock by the Plans; (3) the sale of the Pinnacle Stock by the Plans to Northwest; and (4) the acquisition, holding, and exercise by the Plans of a put option (the Put Option) granted to the Plans by Northwest (the Exemption Transactions). If granted, the proposed exemption would affect participants and beneficiaries of, and fiduciaries with respect to, the Plans.

DATES: Written comments and requests for a public hearing should be received by the Department on or before March 3, 2003.

EFFECTIVE DATE: This exemption, if granted, will be effective as of January 15, 2003.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attention: Exemption Application Numbers D–11137–39).

Interested persons are also invited to submit comments and/or hearing request to the Department by the end of the scheduled comment period either by facsimile to (202) 219–0204 or by electronic mail to *moffittb@pwba.dol.gov*. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed individual exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and from the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code.

FOR FURTHER INFORMATION CONTACT: Wendy M. McColough or Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

Summary of Facts and Representations

1. Northwest. Northwest (hereinafter, Northwest or the Applicant) is a Minnesota corporation with its principal headquarters in Eagan, Minnesota. Northwest is the principal operating company of the Northwest Airlines Corporation's controlled group and is the fourth largest airline in the world. Northwest Airlines Corporation (NWAC), the ultimate parent corporation, which indirectly owns 100 percent (100%) of the stock of Northwest, is publicly traded (NASDAQ symbol NWAC) and is a Delaware corporation. Northwest represents that all significant members of NWAC's controlled group are airline-related. The airline began service on October 1, 1926. Known primarily as an international airline prior to the era of deregulation, Northwest strengthened its domestic presence when the industry was deregulated. To achieve this, Northwest acquired Republic Airlines in 1986. Today, the Applicant states that Northwest has a 10 percent (10%) domestic market share. In 1989, Northwest created the first international airline alliance with KLM Royal Dutch Airlines (KLM), giving Northwest an international presence between the U.S. and Europe and points beyond. Northwest expanded its alliance strategy again in 1998 with Continental Airlines (Continental) by creating the first domestic, major airline alliance. This alliance was solidified with a new 25-year alliance agreement in 2001. In August 2002, Northwest and Continental announced that a ten-year cooperative marketing agreement had been reached with Delta Air Lines. This agreement is subject to U.S. government review and approval. NWAC was taken private in 1989. In March 1994, NWAC completed an initial public offering and again became a public company.

2. Northwest is the sponsor of the Northwest Airlines Pension Plan for Salaried Employees (Salaried Plan), the Northwest Airlines Pension Plan for Pilot Employees (Pilots Plan), and the Northwest Airlines Pension Plan for Contract Employees (Contract Plan) with the authority, directly or through a committee of officers designated by it (The Northwest Airlines Pension Investment Committee), to appoint and remove trustees and investment managers. Northwest also retains the authority, subject to collective bargaining limitations, to amend and terminate the Plans and to transfer assets and liabilities to and from the Plans. Northwest is the plan administrator under the Plans and a

named fiduciary for purposes of section 402(a) of ERISA for the Plans.

In addition to Northwest, other fiduciaries include State Street Global Advisors, The Northwest Airlines Pension Investment Committee, investment managers hired by the Pension Investment Committee, Aon Fiduciary Counselors, Inc. as it relates to the transactions described in this proposal, certain employees of the Plan Sponsor, and the Retirement Board as it relates to the Pilots Plan. Northwest, as sponsor of the Plans, by and through the Pension Investment Committee appointed by it as named fiduciary, generally has discretion with respect to the investment of the Plans' assets. However, the discretion to value, acquire, hold and dispose of the Pinnacle Stock as described below, will be exercised by an independent fiduciary.

3. The Plans. The Applicant provides the following description of the Plans:

Contract Plan. The plan year for the Contract Plan is the calendar year. The Contract Plan was established effective January 1, 1970, pursuant to a series of collective bargaining agreements with several unions at various times during 1970. Nearly all the participants in this Plan are employees represented for collective bargaining purposes by several Northwest unions that have negotiated for participation in the Contract Plan. At this time, these unions include the Aircraft Technical Support Association (ATSA), Aircraft Mechanics Fraternal Association (AMFA), the International Association of Machinists and Aerospace Workers (IAM), International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Airline Division (IBT), Northwest Airlines Meteorologists Association (NAMA), and Transport Workers Union of America (TWUA). The number of employees participating in the Contract Plan as of January 1, 2002, was 53,911. The Applicant states that as of January 1, 2002, the Contract Plan had assets with a fair market value of $1.279 billion, and was underfunded by $741 million.

Salaried Plan. The plan year for the Salaried Plan is the calendar year. The Salaried Plan was established in October 1946. All participants in this Plan currently accruing benefits are "salaried" or "management" employees. None of the employee participants in this Plan who are currently accruing benefits are represented for collective bargaining purposes by any union. The Salaried Plan is a cash balance plan. The number of employees participating in the Salaried Plan as of January 1, 2002, was 10,517. The Applicant states that as of January 1, 2002, the Salaried Plan had assets with a fair market value of $349 million, and was underfunded by $67 million.

Pilots Plan. The plan year for the Pilots Plan is the calendar year. The Pilots Plan was established effective October 29, 1956. All participants in the Pilots Plan are employees represented for collective bargaining purposes by the Airline Pilots Association (ALPA). The number of employees participating in the Pilots Plan as of January 1, 2002, was 8,326. The Applicant states that as of January 1, 2002, the Pilots Plan had assets with a fair market value of $2.753 billion, and was underfunded by $248 million. Pursuant to collective bargaining agreements negotiated between the Pilot's union and Northwest, the Pilots Plan is currently prohibited from investing in employer stock; however, the Applicant anticipates that an agreement with ALPA will be reached to permit the contributions. Northwest represents that no contributions to the Pilots Plan will be made unless such an agreement is reached. The Applicant proposes that in the event that no agreement is reached to permit contributions of Pinnacle Stock to the Pilots Plan, the Master Trust will be modified to permit the holding of Pinnacle Stock for the benefit of the Contract Plan and Salaried Plan

4. Contributions. The Applicant represents that Northwest has remitted the full amount of all quarterly contributions when due, including the full amount of quarterly contributions due to the Contract Plan on April 15, July 15 and October 15, 2002. The last quarterly contribution to the Contract Plan for the 2002 plan year is due January 15, 2003.[1] The "catch-up" contribution due in September 2003 relates to the 2002 plan years of the Contract Plan and the Salaried Plan. The Applicant represents that the minimum funding rules require (and permit) such a make-up contribution when the quarterly contributions for a plan year as determined under Code section 412(m), if any, total less than the full minimum funding amount determined to be owed with respect to the plan year.[2]

The Applicant represents that the contributions required to satisfy the Contract Plan's funding requirements for the 2002 plan year total approximately $314 million, of which $111 million already has been paid in three required quarterly contributions. For plan year 2002, an additional quarterly contribution of $41 million is due January 15, 2003 and a final contribution of $162 million is due in September 2003. Additionally, a plan year 2002 contribution of $20 million is due to the Salaried Plan in September 2003 (the "catch-up" contributions). There are no 2002 plan year contributions due to the Pilots Plan. The Applicant states that contribution requirements for plan years 2003 and 2004 cannot be forecast with certainty because Northwest does not yet have final numbers regarding its funding requirements for those plan years. Northwest's minimum funding obligations for plan year 2003 will not be finally determined until its actuary completes it actuarial valuation as of January 1, 2003, which will be completed in April or May of 2003. In addition, all of the asset returns for the Plans are not yet known. Northwest will provide the plan year 2003 information when they are finalized and publicly available. The Applicant represents, however, it is likely that all Plans will require contributions for the 2003 and 2004 plan years.

5. The Master Trust. Contributions required to fund the Contract Plan, the Salaried Plan, and the Pilots Plan are made to and held under a single master trust, the Northwest Airlines, Inc. Master Trust for Defined Benefit Plans (the Master Trust). The Master Trust is structured so that each Plan has an undivided commingled interest in all of the trust fund assets. The Trustee of the Master Trust is State Street Bank and Trust Company. In addition to the Northwest Contract Plan, Pilots Plan and Salaried Plan, the Master Trust holds assets attributable to the Northwest Pension Plan for German Employees that currently has assets of approximately $300,000.00. No assets are held on behalf of any other plans in the Master Trust.

6. Pinnacle Airlines, Inc. Pinnacle Airlines, Inc. (Pinnacle Airlines) is an indirect, wholly owned subsidiary of NWAC, and is a sister corporation of Northwest. Pinnacle Airlines recently changed its name from Express Airlines I, Inc., which was incorporated in 1985 in Georgia. It is a regional airline with principal hubs in Detroit, Michigan; Minneapolis, Minnesota; and Memphis, Tennessee. Pinnacle Airlines Corporation was incorporated in Delaware on January 10, 2002, to become a holding company of Pinnacle Airlines.

Northwest requests exemptive relief for the in-kind contribution of Pinnacle

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[1] According to the Applicant, under Code section 412(m)(4), Northwest owed no quarterly contributions during calendar year 2002 to the Pilots Plan or Salaried Plan for the 2002 plan year. However, see below concerning a September 2003 "catch-up" contribution due to the Salaried Plan.

[2] See Code subsections 412(a) and (c)(10).

Stock. Shares of Pinnacle Stock are not registered or publicly traded as of the time of filing of this Application. Northwest currently anticipates that an initial public offering (IPO) of Pinnacle Airlines would occur sometime in 2003 or 2004. According to the Applicant, the IPO is expected to generate a premium price for shareholders as a result of efforts currently taking place under the joint direction and control of Northwest and Pinnacle Airlines' management to position Pinnacle Airlines as a premier regional air carrier in the United States.

The Pinnacle Stock held by the Plans would be subject to registration rights under shareholder agreements or such other contracts as necessary to permit the Plans to participate in any future IPO of the Pinnacle Stock. It is expected that there will be certain restrictions on the Pinnacle Stock contributed to the Plans, including voting restrictions and limits on the ability of the Plans to dispose of the Pinnacle Stock, except pursuant to an IPO initiated by Northwest or by exercise of the Put Option. Any such restrictions will be negotiated with the Independent Fiduciary. At the time of an IPO, the Plans will participate pro rata on the same basis with other holders of Pinnacle Stock.

Subject to negotiation of final terms with the Independent Fiduciary, Northwest proposes that the Plans be granted a Put Option with respect to the Pinnacle Stock, on the following terms:

- The Put Option, with respect to each share of Pinnacle Stock, shall be exercisable at any time until the date after an IPO during which such share of Pinnacle Stock can be sold during any 90-day period under SEC Rule 144.[3]
- Northwest will provide quarterly notice to the Independent Fiduciary of its liquidity so that the Independent Fiduciary can take Northwest's liquidity into account in deciding whether to exercise the put.
- In the event the Put Option is exercised, the price paid by Northwest (or its affiliate) to the Plans shall be determined as follows:

(i) If the Put Option is exercised prior to the IPO date, the greater of the value of the stock at the time of the contribution or the fair market value determined by the Independent Fiduciary as of the exercise date, consistent with a valuation report prepared by a qualified independent appraiser;

(ii) If the Put Option is exercised on the IPO date, the greater of the value of the stock at the time of contribution or the IPO price per share of Pinnacle Stock; or

(iii) If the Put Option is exercised after the IPO date, the greater of the value of the stock at the time of the contribution or the average of the closing price for the Pinnacle Stock on the public market for the 10 trading days (or such other number if fewer than 10) preceding the exercise date.

- The price of the Pinnacle Stock shall be determined as of the exercise date and shall be paid by Northwest (or its affiliate) to the Plans in full in cash on such terms and conditions as shall be negotiated with the Independent Fiduciary.

7. Pinnacle Airlines Analysis. As a result of Northwest's request to contribute Pinnacle Stock to the Plans in lieu of cash, the Pension Benefit Guaranty Corporation (PBGC) recently contracted with Eclat Consulting, an independent firm with experience in the airline industry (Eclat), for an analysis of Pinnacle Airlines. The November 27, 2002 Eclat analysis (Eclat Report) includes competitive, operational and financial elements essential to validating Pinnacle Airlines' current market viability as a Northwest regional partner and as a stand-alone airline as well as current U.S. market conditions relative to the marketability of a successful Pinnacle Airlines IPO. The Department has summarized the Eclat Report below. The Eclat Report is presented in sections that examine the regional airline industry, Pinnacle Airlines, and a brief financial review of Pinnacle Airlines and the stability of Northwest.

Eclat Report Industry Analysis—According to the report, as of September 2002, the "Big 6" U.S. majors (the Majors) have lost over $7 billion and now face the year's weakest quarter. They are facing dramatic increases in low-fare competition, overcapacity and a weakening business travel market. In contrast, the regional airline industry is flourishing as a result of being in "the right place at the right time" as the Majors are turning to their regional airline partners to operate regional jets to bring high yield passengers from small communities to their network systems. During the first eight months of 2002 the regional industry has grown only 3 percent (3%) in passenger enplanements, however, the group's Revenue Passenger Miles (RPM)(production) has realized growth of nearly 25 percent (25%), the Available Seat Miles (ASM)(output) growth of 20 percent (20%) and Regional Jet (RJ) usage has increased almost 6 percentage points of market share in the U.S. over the past year. The majority of regional partner airlines now operate on a "fee-per-departure" or "block hour" basis with a fixed operating margin, thus limiting risk during market downturns and guaranteeing operating profit.

Eclat Report Pinnacle Airlines Analysis—According to the report, Pinnacle Airlines operates only as Northwest Airlink, a wholly owned subsidiary of NWAC and provides regional service on a fixed fee basis utilizing Saab 340 turboprops and Bombardier CRJ regional jets. The arrangement provides that 65 percent (65%) of the operational costs (fuel, maintenance, rentals, facilities, etc.) are passed through to Northwest for 100 percent (100%) reimbursement and 35 percent (35%) of costs are paid based on historical performance with a target operating margin of 13.0 percent (13.0%). Northwest has committed 95 regional jet aircraft financed by Bombardier, and the RJs currently on hand have doubled Pinnacle Airlines' size, seeing ASMs increase 68 percent (68%) in 2001 (vs. 2000) making it the second fastest growing regional airline. They operate 310 departures per day (12.4 percent (12.4%) of the Northwest system) and 15,000 seats per day (5.9 percent (5.9%) of the Northwest system).

Pinnacle Airlines generates revenue in two distinct manners for Northwest. The first and smaller revenue generation comes from transporting passengers to and from spoke markets to one of Northwest's three hubs. This local, one-segment flying generates approximately $1.6 million in weekly revenue for Northwest, or 2 percent (2%) of Northwest's domestic total. More importantly, the carrier brings connecting passengers from the spoke markets to the hub to connect onto the Northwest route network creating over $8 million in weekly revenue (8 percent (8%) of Northwest's domestic total) for Northwest. Combined, the regional carriers' value to the Northwest Domestic System is between $520 million and $540 million annually as the carrier exists today (Eclat Appendix 7).

The Eclat Report states that the current and immediate value of Pinnacle Airlines is virtually removed if Northwest Airlines ceased to exist, as there are limited opportunities for other major carrier relationships. Without Northwest, Pinnacle Airlines has physical and cash assets of $121.6 million, $5.2 million in cash, $62.4 million in receivables and $54 million in aircraft spares and other property and equipment. Pinnacle Airlines'

[3] Provision is made for the Put Option to extend after the IPO date in the event that less than 100 percent (100%) of Pinnacle Stock is offered in connection with the IPO.

remaining intangible value would be dependent upon the other major network carriers' desire to add another hub to their network systems at Detroit, Memphis or Minneapolis. Currently, there are limited options for Pinnacle Airlines as all of the major networks have very strong ties with other regional operators.

Eclat Report Financial Review of Pinnacle Airlines and Stability of Northwest—According to the report, Pinnacle Airlines is currently in sound financial shape with a current operating margin of 13.2 percent (13.2%), a profit margin of 8.9 percent (8.9%) and a return on equity (ROE) of 29.1 percent (29.1%). The revenue growth for Pinnacle Airlines has been strong over the period of 1998–2001 at a compound average annual rate of 28.0 percent (28.0%). In the first 9 months of 2002, this growth actually accelerated to 61.4 percent (61.4%) in a year-over-year comparison.

The Eclat Report concludes that through 2005 (the amendable date for the contract with Northwest), there is no reason to suspect that the company will not continue such strong revenue growth. "Salaries, wages, and benefits" only accounted for 21.5 percent (21.5%) of costs (the average is mid-thirties). As the company currently is constructed (prior to the expected IPO), their long-term debt load is virtually non-existent and their liquidity is superb. Current financial conditions clearly indicate an ability to cover any short-term obligations. However, if the company were to go public, the balance sheet will be fundamentally altered by the assumption of a $200 million note payable to Northwest. Such a note would raise the debt/equity ratio to 277 percent (277%) and would significantly limit Pinnacle Airlines' ability to borrow in the future and radically raise the cost of capital. Due to the guaranteed operating margin, however, even a note of this magnitude would not be difficult for the company to cover.

In order to estimate the value of a Pinnacle Airlines IPO, Eclat created a model based on the Three-Stage Free Cash Flow to Equity (FCFE) valuation technique.[4] The result of the FCFE model is that the estimated value of a Pinnacle Airlines IPO is approximately $221.6 million if Eclat assumes that the growth in the first phase is approximately 14 percent (14%) and lasts for five years (Eclat Appendix 9–1).[5] Eclat believes this growth assumption is conservative when compared to Pinnacle Airlines' recent growth, but is based on only the "guaranteed" portion (95 total RJs) of their agreement with Northwest. The five-year term assumption was a result of the fact that Northwest is able to renegotiate in 2008. This Eclat model was adjusted by Eclat based on differing high growth revenue assumptions and the impact of such adjustments dramatically lowered the value of the IPO. The value of equity for Pinnacle Airlines, assuming a high growth period revenue growth rate of 11 percent (11%), would be $147.7 million (Eclat Appendix 9–2). Assuming a high growth period revenue growth rate of 8 percent (8%), the value of equity for Pinnacle drops to $81 million (Eclat Appendix 9–3).

According to Eclat, Northwest has emerged as, perhaps, the most stable airline in the industry with minimal low fare carrier exposure and with the smallest losses of any carrier. Northwest reported a net loss of $46 million, with operating income of $8 million in the third quarter of 2002. Northwest ended the quarter with over $2.5 billion in cash and short-term receivables. Northwest is a global carrier with an alliance with KLM and its Amsterdam hub and a Northwest Tokyo Hub. The labor situation is stable with all of its unions currently under contract.

8. Reasons for Entering into the Exemption Transactions. The Applicant represents that, for several years leading up to 2001, Northwest had been among the most profitable of the nation's major airlines. The Applicant notes Northwest's financial performance in 1998 and 1999 was adversely affected by labor disruptions; however, Northwest's performance quickly recovered in 2000. However, the airline industry began to suffer a significant financial downturn in early 2001 that was substantially worsened by the events of September 11, 2001, which in combination, have disproportionately affected the airline industry. Northwest states that industry losses in 2001 totaled $10 billion, of which Northwest's share was $700 million.[6] Northwest asserts that, because of the potential of a war with Iraq, which has dramatically increased fuel prices, as well as ongoing terrorism threats, the timing of an economic recovery for the airline industry is uncertain. Northwest concludes that to weather the current economic uncertainty, Northwest and other major airlines must maintain a high level of liquidity. The Applicant notes that Northwest is, by many measures, the best prepared among the industry to withstand this difficult period and expects to return to

[4] This model is designed to value firms, like Pinnacle Airlines, that are expected to go through three phases of growth—an initial phase of high growth, a transitional period where the growth rate declines, and a steady-state period where growth is stable. Once these growth assumptions are made, the present value of expected free cash flow is calculated.

[5] During the second stage, the growth assumption is 10 percent (10%) and a term of three years. The 10 percent (10%) is consistent with the industry's long-term revenue average, and the three-year term is based on the belief that such strong growth will last for a total of 8 years from 2003. In the third and final stage, the model assumes that growth will continue to commence at a constant rate of 5 percent (5%). This assumption brings the growth rate back in line with Pinnacle Airlines' growth in the years prior to their arrangement with Northwest. Other assumptions made in the model include Beta and Net Capital Expenditure growth. Pinnacle Airlines' Beta was based on a calculation off of industry average and is assumed to be .66 in the high growth period. According to Eclat, while this appears at first glance to be a very low figure, it is very much related to the terms of the fixed fee relationship with Northwest. According to the terms of the agreement, growth is virtually assured and therefore the company's stock is unlikely to fluctuate as wildly as the market in general. In the other two phases, the firm Beta is linked to the current industry average. The assumptions about net capital expenditure growth in all three phases are standard figures based on historical norms. When estimating the cost of equity for Pinnacle Airlines, a market risk premium of 5.3 percent (5.3%) was assumed. This number is based on the historical risk premium found between stocks and treasury bonds published by the Federal Reserve Bank (in the United States from 1962–2000).

[6] These numbers are exclusive of federal funds received by the airlines as a result of the Air Transportation Safety and System Stabilization Act, Pub. L. No. 107–42 (September 21, 2001) (Airline Stabilization Act). In 2001, Northwest recognized $461 million of grant income from the United States Government that was recorded as non-operating income. The events of September 11, 2001 had an immediate and severe impact on the U.S. airline industry's passenger traffic and yields. Immediately following these events, the Federal Aviation Administration (FAA) ordered all aircraft operating in the U.S. to be grounded, an order that remained in place for over 48 hours. Northwest Airlines was only able to operate a limited portion of its scheduled flights for several days after the grounding order was lifted as it repositioned displaced aircraft and crews. Passenger traffic and yields on both domestic and international flights declined significantly when flights were permitted to resume, and the number of tickets refunded was substantially above normal. Northwest has continued to experience significantly lower revenue and has incurred additional costs (*e.g.*, higher security costs and insurance premiums) as compared to periods prior to September 11, 2001. In addition to increased rates, aviation insurers have also significantly reduced the maximum amount of insurance coverage available to commercial air carriers for liability to persons other than employees or passengers for claims resulting from acts of terrorism, war or similar events.

Under the Airline Stabilization Act, each air carrier is entitled to receive a maximum amount of compensation payments equal to the lesser of (i) its direct and incremental pretax losses attributed to the terrorist attacks for the period of September 11, 2001, to December 31, 2001, or (ii) its available seat mile and/or revenue ton mile allocation of the $5 billion compensation available under the Airline Stabilization Act. Northwest Airlines received a total of $410 million as of December 31, 2001, and was expected to receive a final $51 million of additional funds under the Airline Stabilization Act in early 2002.

profitability when the economy recovers. The Applicant represents that preservation of liquidity is one of the keys to maintaining a strong financial position in light of the current economic uncertainty, and Northwest has maintained one of the strongest liquidity positions in the industry. Northwest already has taken many aggressive, proactive actions to reduce costs and preserve liquidity.

While the current environment creates significant challenges for Northwest and the other major airlines, the Applicant believes that these circumstances create opportunities for efficient regional carriers, including Pinnacle Airlines. Northwest represents that, although current market conditions are not favorable to an IPO of the Pinnacle Stock because valuations of commuter airlines have declined from their historical levels during the past six to eight months, Northwest anticipates that the Pinnacle Stock proposed to be contributed to the Plans will be sold through an IPO at a favorable price. The Applicant notes that market conditions are expected to improve within the next 30 months and that significant efforts have been undertaken by Northwest to prepare Pinnacle Airlines for public sale.

9. Northwest asserts that the relief requested in this Application offers significant potential benefits both to the Plans and to Northwest. The Plans will benefit by receiving the full value of the minimum funding contribution of Northwest, through the opportunity to invest in a strong regional airline, and through sharing in the anticipated premium that would attach to such stock in the event of an IPO. Furthermore, the Plans' investment in Pinnacle Stock will be subject to the protections of an independent fiduciary. The Plans will also benefit from Northwest's preservation of liquidity, ensuring that it remains in a strong financial position and maximizing its ability to contribute to the Plans in the future. Northwest represents that its decision to seek an exemption to contribute Pinnacle Stock creates no more risk to the Plans, and perhaps even less risk, than investing in publicly-traded NWAC stock, which constitutes qualifying employer securities within the meaning of ERISA section 407(d)(5) and would be exempt from the prohibitions of ERISA sections 406 and 407 by reason of the statutory exemption set forth in ERISA section 408(e). The Applicant concludes by noting that the exemption sought by Northwest is one part of Northwest's overall strategy to manage its financial liquidity during a time of extraordinary financial challenges, while still meeting its long-term pension plan commitments. In this regard, Northwest notes that it is applying to the Internal Revenue Service for a waiver of its minimum funding contributions with respect to both the Contract Plan and the Salaried Plan for plan year 2003.

10. Northwest requests exemptive relief from certain of the prohibited transaction restrictions of sections 406 and 407 of the Act and section 4975 of the Code for the periodic contributions of Pinnacle Stock to the Plans in order to satisfy all or any portion of Northwest's minimum funding requirements for plan years 2002, 2003, or 2004 that are due in calendar years 2003 or 2004.

Northwest requests exemptive relief because of its belief that the contributions of Pinnacle Stock would not meet the requirements for the acquisition of "employer securities" under section 408(e) of the Act. In this regard, section 408(e) provides, in part, that sections 406 and 407 of the Act shall not apply to the acquisition or sale by a plan of "qualifying employer securities," as defined in section 407(d)(5) of the Act, if such acquisition or sale is for adequate consideration, no commission is charged, and, in the case of a plan other than an eligible individual account plan, such as a defined benefit plan, such acquisition does not exceed 10 percent (10%) of the fair market value of the assets of such plan. Under section 407(d)(5), stock is a "qualifying employer security," if such stock is issued by an employer of employees covered by the plan or by an affiliate of such employer. Section 407(d)(5) further provides that in the case of a plan other than an eligible individual account plan, such as a defined benefit plan, an employer security shall be considered a "qualifying employer security," only if such employer security satisfies the requirements of section 407(f)(1). Section 407(f)(1) provides that stock satisfies the requirements of this paragraph if no more than 25 percent (25%) of the aggregate issued and outstanding shares of stock of the same class is held by the plan and at least 50 percent (50%) of the aggregate amount of such shares is held by persons independent of the issuer.

In this regard, Northwest anticipates that, after all of the proposed in-kind contributions of Pinnacle Stock to the Plans, substantially more than 25 percent (25%) of all issued and outstanding shares of Pinnacle Stock would be held by the Plans. The Applicant expects that nearly 100 percent (100%) of the Pinnacle Stock may ultimately be held by the Plans, with any remainder being held by Northwest. Thus, the requirement that 50 percent (50%) of the shares of Pinnacle Stock be held by persons independent of the issuer would not be met. Accordingly, the shares of Pinnacle Stock to be contributed to the Plans would not satisfy the requirements of sections 407(f)(1) of the Act and thus would not constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act. If the shares of Pinnacle Stock do not constitute "qualifying employer securities," the exemptive relief under section 408(e) of the Act would not be available. For the same reasons, it is anticipated that section 408(e) would not exempt the Plans' acquisition and holding of the Put Option.

11. The Independent Fiduciary.[7] Aon Fiduciary Counselors, Inc. (Fiduciary Counselors or Independent Fiduciary) has been retained as the Independent Fiduciary to represent the Plans' interests with respect to the proposed transactions. Fiduciary Counselors represents that it is qualified to serve as Independent Fiduciary on behalf of the Plans with respect to the proposed Exemption Transactions. Fiduciary Counselors acts primarily as an independent fiduciary for large pension plans. Prior to December 1999, Fiduciary Counselors operated as a business unit within Actuarial Sciences Associates, now Aon Consulting of New Jersey, Inc., a subsidiary of Aon Consulting, Inc. (Aon Consulting). In the past five years, Fiduciary Counselors has acted as independent fiduciary in transactions involving plan assets totaling more than $4 billion.

In evaluating the proposed Exemption Transactions, Fiduciary Counselors notes that it will use the services of investment professionals at Aon

[7] The Department notes that the Act's general standards of fiduciary conduct would apply to the transactions permitted by this proposed exemption, if granted. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, an independent plan fiduciary must act prudently with respect to: (1) The decision to enter into the transactions described herein; and (2) the negotiation of the terms of such a transaction, including, among other things, the specific terms by which the Plans will (A) acquire, hold, and sell the Pinnacle Stock and (B) acquire, hold and exercise the Put Option. The Department further emphasizes that it expects the independent plan fiduciary, prior to authorizing each acquisition of the Pinnacle Stock and any sale of such Stock, and prior to exercising the Put Option, to fully understand the benefits and risks associated with such transactions. In addition, the Department notes that such plan fiduciary must periodically monitor, and have the ability to so monitor, the Pinnacle Stock and the Put Option.

Investment Consulting, Inc. (AIC), an affiliated registered investment adviser under the Investment Advisers Act of 1940, to provide certain investment and financial advice in support of Fiduciary Counselors' determinations. AIC is the full service investment-consulting subsidiary of Aon Consulting, providing investment management consulting services to institutional tax-exempt funds. Aon Consulting has investment consulting operations in the United States, United Kingdom, Canada, Continental Europe, Australia and New Zealand. Worldwide, Aon Consulting has about 125 people in its investment consulting practice. AIC has offices in seven U.S. cities and a U.S. staff of about forty.

Neither Fiduciary Counselors nor AIC provides any other services to Northwest or its affiliates other than the independent fiduciary and related services they provide in connection with the proposed contribution of Pinnacle Stock to the Plans. An affiliate, Aon Risk Services of Minnesota, does provide insurance brokerage services to Northwest. However, the fees paid to Aon Risk Services of Minnesota and the fees paid to Fiduciary Counselors represent less than 1 percent (1%) of the revenue of Aon Corporation, one of the nation's largest risk management and benefits consulting companies, which is the ultimate parent company of Fiduciary Counselors, AIC, Aon Consulting and Aon Risk Services of Minnesota.

In connection with the November 5, 2002 Independent Fiduciary Agreement between Fiduciary Counselors and Northwest (the Agreement), Northwest has agreed to pay Fiduciary Counselors an annual fee that would cover both the independent fiduciary and investment management services to be provided by Fiduciary Counselors and the investment advisory services to be provided by AIC. The initial fee was remitted directly to Aon Consulting, a parent company of both Fiduciary Counselors and AIC. Aon Consulting internally allocated 25 percent (25%) of the fee to Fiduciary Counselors, which comprised less than 5 percent (5%) of Fiduciary Counselors' annual revenue, and 75 percent (75%) to AIC, which comprised less than 5 percent (5%) of AIC's revenue. So long as there is no change in control of Fiduciary Counselors or AIC, future payments will be allocated in a similar manner.

12. At the request of Northwest's management, Morgan Stanley & Co. Incorporated (Morgan Stanley) prepared a preliminary valuation study of Pinnacle Airlines, dated September 24, 2002, which Fiduciary Counselors may take into account in determining the valuation of the Pinnacle Stock to be contributed to the Plans.[8] Morgan Stanley, as part of its investment banking and advisory business, is continuously engaged in the valuation of businesses and securities in connection with mergers and acquisitions, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for corporate, estate and other purposes. In connection with its investment banking and advisory business, Morgan Stanley has represented a number of companies in the airlines industry. The Applicant represents that the Independent Fiduciary has unfettered discretion to choose the methodologies and the ultimate values of the Pinnacle Stock contributed to the plans and the related Put Option. The Independent Fiduciary is not required to use only the Morgan Stanley valuation.

13. Under the terms of the Agreement, Fiduciary Counselors makes all the decisions on behalf of the Master Trust and the Plans regarding the acceptance of the proposed in-kind contribution of Pinnacle Stock, determines (with the assistance of the qualified independent appraiser engaged by the Independent Fiduciary) the value of the Pinnacle Stock held by the Master Trust from time to time, and make such other decisions with regard to the Pinnacle Stock as are contemplated by the Exemption Application as it may be ultimately approved. In this regard, Fiduciary Counselors has retained Eclat Consulting to prepare a valuation of the Pinnacle Stock that will serve as the basis for Fiduciary Counselors' determination.

In making this determination to accept the securities, the Independent Fiduciary shall have discretion to negotiate the final terms and conditions of the contribution, including the registration, shareholder and put rights. The contributed Pinnacle Stock would be held as an "Investment Fund" within the Master Trust, under the management and control of the Independent Fiduciary as investment manager thereof, until such time as the Independent Fiduciary determines it is in the best interests of the Plans' participants and beneficiaries to dispose of such Pinnacle Stock.

The Independent Fiduciary shall thereafter, until all transactions contemplated by the Exemption Application are concluded or it has been replaced by another independent fiduciary as hereinafter provided, continue to serve as Independent Fiduciary and continue to discharge the functions assigned to it as such in accordance with the provisions of the Exemption Application.

The Independent Fiduciary confirms that it is (and shall continue to be during the term of its engagement hereunder) an "investment adviser" within the meaning of the Investment Advisers Act of 1940, and further acknowledges that, with respect to its duties pursuant to the Agreement, it is a fiduciary as defined in section 3(21) of ERISA. The Independent Fiduciary shall act for the exclusive benefit and in the sole interest of the Plans and their participants and beneficiaries and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

The Independent Fiduciary represents that, in evaluating the proposed Exemption Transactions, it has reviewed those documents that it deems relevant to the transactions including, but not limited to: (i) Copies of the current documents for the Plans and the Master Trust including all amendments thereto, as well as current summary plan descriptions and all other disclosures provided to participants and beneficiaries in the Plans regarding the Master Trust; (ii) copies of the Plans' most recent Form 5500 filings and all other financial and other information regarding the Plans reasonably requested by the Independent Fiduciary; (iii) copies of (or electronic access to) Northwest's most recent filings made with the Securities and Exchange Commission (SEC) as requested in order for the Independent Fiduciary to perform its obligations hereunder, including reasonable access to internal staff and outside professionals engaged by Northwest or the Plans regarding the Master Trust; and (iv) copies of (or electronic access to) Pinnacle Airlines' most recent filings made with the SEC as requested in order for the Independent Fiduciary to perform its obligations hereunder, including reasonable access to internal staff and outside professionals engaged by Pinnacle Airlines.

The Agreement states that, as compensation for the services to be rendered by the Independent Fiduciary and its affiliates in connection with the Agreement, Northwest shall pay to the

[8] Morgan Stanley is listed in the Securities and Exchange Commission Form S–1 registration statement for the Pinnacle Stock IPO as one of the underwriters for the IPO of the Pinnacle Stock.

Independent Fiduciary an annual fee of $250,000 for as long as Pinnacle Stock is owned by the Master Trust.

The Independent Fiduciary has engaged the law firm of Jones, Day, Reavis & Pogue to advise it and to serve as legal counsel. As previously noted, the Independent Fiduciary has engaged the services of Eclat to assist it in determining the value of the Pinnacle Stock at the time of the initial acquisition by the Plans.

The Agreement contemplates that either party may terminate such Agreement for any reason upon 60 days notice and that the Agreement may be terminated immediately for cause. In the event that a successor Independent Fiduciary is appointed, or there is a change in control of Fiduciary Counselors, the rights exercised by Fiduciary Counselors on behalf of the Plans in connection with the Term Sheet and the proposed Omnibus Agreement (see below) shall be exercised by the successor Independent Fiduciary (with the approval of the Department). The parties to the Agreement shall notify the Department within thirty (30) calendar days of any decision regarding the resignation, termination or change in control of the Independent Fiduciary.

14. The Term Sheet and the Proposed Omnibus Agreement. The Term Sheet (as provided to the Department on January 10, 2003) provides that Northwest and Fiduciary Counselors will enter into an Omnibus Agreement that governs the terms upon which Northwest may make periodic contributions of Pinnacle Stock to the Plans in order to satisfy all or any portion of Northwest's minimum funding requirements that are due in calendar years 2003 or 2004. Contributions may also be made during calendar years 2003 or 2004 with respect to a plan year for which there is no required minimum funding contribution, thus creating a credit balance with respect to the relevant plan. No contribution of Pinnacle Stock shall be made that would cause the total combined value of all employer securities or employer real property held by any plan, immediately after the contribution, to exceed 10 percent (10%) of the total assets of such plan.

The SEC Form S–1 registration statement for the IPO involving Pinnacle Airlines, Inc. describes a proposed share exchange. The Applicant represents that prior to the initial contribution, the following transactions will take place in the order indicated:

(a) Pinnacle Airlines, Inc. will distribute, as a dividend, a $200 million promissory note to NWA Inc., the sole shareholder of Pinnacle Airlines, Inc.

(b) NWA Inc. will transfer to Pinnacle Airlines Corp. all of the outstanding shares of Pinnacle Airlines, Inc. and in consideration thereof, Pinnacle Airlines Corp. will issue to NWA Inc. 15 million shares of common stock of Pinnacle Airlines Corp. and one share of Series A Preferred Stock of Pinnacle Airlines Corp.

(c) NWA Inc. will transfer the common stock of Pinnacle Airlines Corp. and the Series A Preferred Stock to Northwest as a contribution to the capital of Northwest.

As a result of these transactions, Pinnacle Airlines, Inc. will become a wholly owned subsidiary of Pinnacle Airlines Corp. and Pinnacle Airlines Corp. will be a wholly owned subsidiary of Northwest. The terms of the Series A Preferred Stock and the terms of the $200 million note are set forth in exhibits to the SEC Form S–1 registration statement.

The Applicant represents that the holder of the Series A Preferred Stock has certain other voting rights in addition to the right to elect two members to the board of directors. An affirmative vote of NWA Inc. (the affiliate of Northwest which currently holds all of the shares of Pinnacle Airlines, Inc., including the Series A Preferred Stock) will be required in order for Pinnacle to:

- Enter into business combinations and change of control transactions with a third party;
- Sell or dispose of any capital stock of Pinnacle Airlines, Inc. or substantially all of the assets of Pinnacle Airlines Corp. or Pinnacle Airlines, Inc.;
- Effect reorganizations and restructuring transactions;
- Acquire airline assets that generate annual revenues of $500 million or more;
- Increase the size of the board of directors;
- Agree to allow a major airline other than Northwest to appoint more than one director to Pinnacle Airlines' board;
- Amend Pinnacle Airlines' certificate of incorporation in a manner that would adversely affect the rights of the Series A preferred shareholder; or
- Enter into any definitive agreements relating to the foregoing matters.

The effect of this voting right will be to enable NWA Inc. to preclude Pinnacle Airlines from carrying out any of the foregoing proposals if NWA Inc. does not vote in favor of the proposal. Under the Term Sheet, Northwest has agreed not to exercise its rights under the Series A Preferred Stock to block an IPO or sale of Pinnacle Airlines if the Independent Fiduciary, on behalf of the Plans, initiates such an IPO or a sale after an "Early Termination Event" (defined below). The Term Sheet material terms that will be reflected in the Omnibus Agreement between the Independent Fiduciary and Northwest are set forth below.

Request To Contribute Pinnacle Shares

Except with respect to the first such contribution, as to which Northwest and the Independent Fiduciary will agree on a shorter notice period, no later than 60 days before any date in calendar year 2003 or 2004 on which Northwest proposes to make a contribution of Pinnacle Stock to the Plans, Northwest shall provide written notice to the Independent Fiduciary of its proposal to make such contribution and shall indicate the dollar value of the Pinnacle Stock that it intends to contribute.

Valuation of Pinnacle Shares

The Term Sheet states that no later than 30 days prior to each date on which Northwest proposes to contribute Pinnacle Stock (or, with respect to the first such contribution, such earlier date as may be agreed), the Independent Fiduciary shall notify Northwest in writing (accompanied by a written valuation report) of the per share value that the Independent Fiduciary then preliminarily ascribes to the shares of Pinnacle Stock. In addition to determining the value of Pinnacle Stock at the time of a proposed contribution, the Independent Fiduciary shall provide to Northwest on an annual basis a written valuation of the per share value of all Pinnacle Stock held by the Plans as of each December 31 and at any time the Independent Fiduciary exercises the Put Option.

On the relevant contribution date, subject to the Independent Fiduciary's review and approval, Northwest may contribute to one or more Plans shares of Pinnacle Stock based on the per share value ascribed to such shares by the Independent Fiduciary. The Independent Fiduciary and the Plans will have the rights associated with such shares as described below. As a condition to any such contribution by Northwest, the Independent Fiduciary must determine on behalf of the Plans that the acceptance of the contributed shares is prudent and in the interests of the Plans' participants and beneficiaries and otherwise consistent with the fiduciary standards of ERISA. In addition, the Independent Fiduciary shall monitor on an ongoing basis the prudence of the Plans' continued holding of Pinnacle Stock consistent with the fiduciary standards of ERISA,

subject to the determination from time to time by the appropriate fiduciary of the Plans (other than the Independent Fiduciary) that such investment will not impair the liquidity of the Plans such that the Plans would not be able to pay benefits and expenses when due. If such appropriate Plan fiduciary determines the liquidity of the Plans is impaired, such fiduciary shall direct the Independent Fiduciary to dispose of all or a portion of the Pinnacle Stock consistent with the terms of this agreement to the extent commercially reasonable.

All transactions involving the Plans in connection with the contribution of Pinnacle shares will be no less favorable to the Plans than arms' length transactions involving unrelated parties. No commissions, fees, costs, charges or other expenses will be borne by the Independent Fiduciary or the Plans in connection with any acquisition, holding or disposition of Pinnacle shares to or from the Plans, other than the underwriters' discount or other broker-dealer fees or commissions charged in any sale of such shares.

The Applicant represents that the valuation approach that the Independent Fiduciary takes into account when determining the value of Pinnacle Stock with respect to any specific transaction will be the method that the Independent Fiduciary determines to be in the best interests of the Plans' participants and beneficiaries.

The Independent Fiduciary's valuations will be used by the Master Trust Trustee for such Pinnacle Stock and by Northwest as plan administrator as the initial value of the Pinnacle Stock for Plan and Master Trust reporting purposes, and as the initial value to be used by each Plan's actuaries for valuation purposes. In addition to determining the fair market value of the Pinnacle Stock at the time it is contributed to the Plans, the Independent Fiduciary will thereafter determine the fair market value as of each March 31, June 30, September 30, and December 31; at any time the Pinnacle Stock is sold or exchanged by the Plans (*e.g.*, for purposes of exercising its Put Option, as described below); and at such other times as the Independent Fiduciary determines to be in the interests of participants and beneficiaries in any of the Plans.

Northwest proposes that the contribution of Pinnacle Stock to the Master Trust be subject to a Put Option held by the Plans with respect to all of the Pinnacle Stock held by the Plans. The Put Option may be exercised on behalf of the Plans by the Independent Fiduciary, obligating Northwest (or an affiliate) to purchase the Pinnacle Stock from the Plans at a price not less than the greater of its fair market value as of the exercise date (as determined by the Independent Fiduciary) or the value placed on the stock at the time of its contribution.

Voting Provisions

The Term Sheet provides that the shares of Pinnacle Stock contributed to the Plans will be identical to the shares retained by Northwest. With respect to the voting of such shares and related matters, the Omnibus Agreement will also provide as follows:

- The initial board of directors of Pinnacle Airlines will be comprised of six individuals, four of whom will be individuals previously identified by Northwest in the S–1 registration statement, one of whom shall designated by Northwest and one of whom will be an individual designated by the Plans and reasonably acceptable to Northwest.
- For so long as the Plans hold at least 5 percent (5%) of such shares, the Plans will have the right to designate one nominee to Pinnacle Airlines' board of directors, and Northwest will vote the shares of Pinnacle Stock held by it in favor of such designee.
- The director designated by the Plans will have the right to serve on Pinnacle Airlines' audit committee to the extent permitted under applicable SEC and stock exchange requirements.
- At such time as the Plans hold more than 50 percent (50%) of such shares, and until the earlier of either (i) the Plans hold less than 25 percent (25%) of such shares or (ii) the Put Option has terminated as to all shares held by the Plans, the affirmative vote of the director designated by the Plans shall be required to approve the appointment of any new Chief Executive Officer of Pinnacle and compensation of any Chief Executive Officer. In addition, the appointment and compensation of any Chief Executive Officer shall be approved by a majority of the directors, excluding the director designated by Northwest.
- The Independent Fiduciary will direct the trustee of the Plans to vote shares of Pinnacle Stock held by the Plans in favor of the slate of director nominees proposed by Pinnacle's board of directors, except as the Plans and Northwest may otherwise agree.
- The Independent Fiduciary will direct the trustee of the Plans to vote shares of Pinnacle Stock held by the Plans in favor of any merger or other matter requiring stockholder approval as recommended by Pinnacle Airlines' board of directors, provided such transaction or other action does not otherwise treat the shares held in the Plans differently than other shares of Pinnacle Stock.

Affiliate Transactions

The Term Sheet provides that any change to the Airline Services Agreement (ASA) between Pinnacle and Northwest as in effect at the time of the initial contribution, including any early termination of the ASA by Pinnacle Airlines, must be approved by a majority of Pinnacle Airlines' independent directors, which majority must include the director designated by the Plans. Any other transaction between Pinnacle Airlines and Northwest or one of its affiliates (other than immaterial transactions in the ordinary course of business) that is not pursuant to and in accordance with the ASA is subject to the following requirements:

- Each such transaction must be approved by a majority of the independent directors;
- If the transaction is outside the ordinary course of business and involves more than $2 million, or if the transaction is in the ordinary course of business and involves more than $5 million, it must be approved by a majority of the independent directors and, at the request of the director designated by the Plans, a nationally recognized investment banking firm (which may include a "boutique" firm that specializes in airline related matters) must deliver a fairness opinion with respect to such transaction; and
- If the transaction involves more than $10 million, it must be approved by a majority of the independent directors, which majority must include the director designated by the Plans.

Transfer Restrictions and Early Termination Events

The Term Sheet provides that until July 1, 2006, or such earlier date on which Northwest (1) does not, by the latest date to which Northwest may before the closing, purchase, sell to the public in a registered public offering or sell to a third party the Pinnacle Stock held by the Plans as to which the Independent Fiduciary has exercised the Put Option (as described below) or (2) breaches the Omnibus Agreement (and such breach is not cured within 30 days thereafter) (collectively, an "Early Termination Event"), shares of Pinnacle Stock contributed to the Plans may not be transferred other than to Northwest or one of its designated affiliates in accordance with the Put Option described below. Such shares may, however, be transferred in the IPO, as

described below, or in a bona fide public offering in accordance with the registration rights described below. In no event may shares be transferred directly or indirectly in any manner that would result in Northwest being in violation of the "scope clause" under Northwest's collective bargaining agreement with its pilots.[9]

The July 1, 2006 sunset date, together with the inclusion of an Early Termination Event, are the product of negotiation between Northwest and Fiduciary Counselors and balance Northwest's interest in having a reasonable period of time during which to determine the most advantageous timing of an IPO and the Plans' interest in enhancing the liquidity of Pinnacle Stock.

In the event of a transfer of shares of Pinnacle Stock by the Plans, the Plans will exercise commercially reasonable efforts to maximize the amount realized for such shares, and to that end will follow customary procedures (including the retention, at Northwest's expense, of a nationally recognized investment banking firm) applicable to a transaction such as the sale of such shares.

In the event of a proposed transfer of shares of Pinnacle Stock by the Plans after July 1, 2006, absent an Early Termination Event, Northwest will have a right of first refusal. This means that, if the Plans receive a bona fide offer from a third party to purchase such shares, the Plans must first offer such shares to Northwest at the offered price. If after 30 days from such offer Northwest declines to purchase such shares at the offered price, the Plans will be free for 90 days to sell such shares to the third party who made the initial offer to purchase such shares at a price not less than the offered price. The Pinnacle Stock may not be sold at a price less than such offered price without re-offering such shares to Northwest and having these provisions apply again.

Initial Public Offering

According to the Term Sheet, it is contemplated that Pinnacle Airlines will undertake an IPO. Until July 1, 2006, or the earlier occurrence of an Early Termination Event, the IPO will be undertaken at the sole discretion of Northwest. After such date or the earlier occurrence of an Early Termination Event, either the Plans or Northwest may trigger the IPO. In the event of an IPO, the Plans will be required to sell shares of Pinnacle Stock held by the Plans in accordance with the following requirements:

- If at the time of the IPO the Plans own less than 50 percent (50%) of the outstanding Pinnacle Stock, the Plans will sell shares ratably with Northwest's sale of shares in the IPO. If the aggregate number of shares sought to be sold by Northwest and the Plans collectively exceeds the number of shares that the managing underwriter advises can be sold without having an adverse effect on the IPO, Northwest and the Plans will be cutback *pro rata*.
- If at the time of the IPO the Plans own 50 percent (50%) or more of the outstanding Pinnacle Stock, the Plans will sell, ratably with Northwest's sale of shares in the IPO, not less than such number of shares as is requested by the managing underwriter in the IPO in order to have an offering of optimal size (taking into account all the shares being sold). Beyond that, the Plans may sell additional shares at their discretion. However, if the aggregate number of shares sought to be sold by Northwest and the Plans collectively exceeds the number of shares that the managing underwriter advises can be sold without having an adverse effect on the IPO, Northwest and the Plans will be cutback *pro rata*.
- Any shares as to which the Put Option shall have already been exercised (but shall not yet have been purchased) must be included in the IPO if requested by Northwest.

The Independent Fiduciary may, on behalf of the Plans, engage an investment bank reasonably acceptable to Northwest to provide advice to the Plans in connection with any proposed IPO and subsequent disposition of Pinnacle Stock by the Plans, and Northwest will pay the reasonable fees and expenses in this regard. Northwest will consult with the Independent Fiduciary regarding any changes in the managing underwriter currently contemplated for the IPO.

Any sale of shares in a registered public offering will be subject to the requirements described below:

Northwest and the Plans will enter into a customary registration rights agreement covering the registration of all of the shares previously contributed to the Plans that are to be sold in the IPO or that are to be sold through a shelf registration or as otherwise contemplated by the Term Sheet. Such registration rights agreement will provide that, in the case of an underwritten offering, the Plans will enter into a customary underwriting agreement as may be negotiated by Northwest with the managing underwriter(s), and the Plans will sell in accordance with such underwriting agreement the shares of Pinnacle Stock that are to be sold by the Plans, on the same economic terms that shares of Pinnacle Stock held by Northwest are sold. The Plans will receive the net proceeds from the sale of their shares in the IPO. If Pinnacle Airlines has not consummated the IPO by the earlier of July 1, 2006, or the date of the occurrence of an Early Termination Event, the Plans may exercise demand registration rights for an IPO.

The Plans will be entitled to retain all of the net proceeds from the sale, even if such net proceeds are in excess of the initial contribution value ascribed to the Pinnacle Stock being sold in the IPO. If such net proceeds are less than such initial contribution value, however, Northwest will be obligated, no later than the closing date of the IPO, to remit to the Plans immediately available funds representing the amount by which, with respect to the shares actually sold, such net proceeds are less than the initial contribution value.

If less than all of the shares of Pinnacle Stock held by the Plans are sold in the IPO, the Plans will have continuing registration rights to sell all or any portion of its remaining shares (subject to the same lock-up provisions that are imposed on Pinnacle Airlines). If there is an Early Termination Event or if at the time of the IPO such remaining shares are valued (based on the IPO price) at $50 million or more, the Plans will have one demand registration right.

In the underwriting agreement, the indemnification obligation of the Plans will be limited to what a selling stockholder normally provides, namely, an obligation to indemnify in respect of information relating to itself and its holdings that is provided by the Plans to the underwriters expressly for inclusion in the registration statement. The Independent Fiduciary will cause the Plans to provide such information to the underwriters and otherwise to provide reasonable cooperation in order to facilitate the offering. Northwest will provide the Plans with the same indemnification and contribution it provides to the underwriters in the offering. In no event will the Plans be obligated to provide in such underwriting agreement representations and warranties beyond due authorization, good title, no conflicts and the like.

[9] The Applicant notes that in general terms, as relevant to Pinnacle Airlines, the pilot scope clause requires that all "revenue flying" performed by or for Northwest be performed by Northwest's pilots and generally prohibits Northwest from codesharing with another air carrier that operates aircraft with 60 or more seats or with another air carrier whose parent or subsidiary operates aircraft with 60 or more seats. The scope clause also requires that any regional jets operated by Pinnacle Airlines be operated at all times with the Northwest designator code.

The Plans will also have unlimited "piggyback" registration rights in the event Pinnacle Airlines files a registration statement (other than on Form S–4 or S–8) covering shares of its common stock. Upon the request of Northwest or the Plans, Pinnacle Airlines will file a shelf registration statement (subject to customary lock-up provisions) covering all of the Pinnacle shares owned by the Plans, provided that Pinnacle Airlines is eligible to use Form S–3 at the time of such request.

Liquidity and Financial Information

The Term Sheet provides that beginning March 31, 2003, Northwest will provide as promptly as practicable after the end of each calendar quarter a notice to the Independent Fiduciary of its cash liquidity as of the end of such quarter. However, if the aggregate initial contribution value of Pinnacle Stock held by the Plans is equal to or less than $225 million and if Northwest's liquidity at the end of any month is less than $1.75 billion, it will provide such notice monthly until such time as its liquidity exceeds $1.75 billion. If liquidity at any week end is less than $1.5 billion, Northwest will provide the Independent Fiduciary with such reports on a weekly basis until liquidity increases to $1.5 billion or more. If the aggregate initial contribution value of Pinnacle Stock held by the Plans is greater than $225 million and if Northwest's liquidity at the end of any month is less than $1.75 billion, it will provide such notice monthly until such time as its liquidity exceeds $1.75 billion. If liquidity at any week end is less than $1.6 billion, Northwest will provide the Independent Fiduciary with such reports on a weekly basis until liquidity increases to $1.6 billion or more. Notwithstanding the above, the weekly reporting requirement described above shall not apply until the aggregate initial contribution value of Pinnacle Stock is greater than or equal to $50 million.

Northwest shall provide to the Independent Fiduciary the information referred to in sections 6.1, 6.2, 6.7 and 6.11 of the $1.125 billion Credit and Guarantee Agreement dated as of October 24, 2000, under which Northwest is the borrower (the Credit Agreement), and any other information required to be provided to the lenders, at the same time the information is provided to the lenders under the Credit Agreement, as the same may be amended from time to time (or similar information required to be provided to the lenders under any successor credit agreement). In addition, Northwest shall provide to the Independent Fiduciary copies of any amendments to the Credit Agreement.

Put Option

According to the Term Sheet, the Plans will be granted a "Put Option" with respect to each share of Pinnacle Stock, which may be exercised by the Independent Fiduciary at any time and from time to time. To exercise the Put Option, the Independent Fiduciary must provide written notice to Northwest of its election to put to Northwest any or all of the shares of Pinnacle Stock then held by the Plans. The date of the notice of the election shall be the "exercise date." The closing date of the purchase and sale of shares with respect to which the Put Option has been exercised will be the 30th calendar day after such notice is given. However, if Pinnacle has not yet consummated the IPO by the date that would otherwise be the closing date, Northwest will have the right to defer such closing date as follows:

In the event the aggregate initial contribution value of Pinnacle Stock held by the Plans is equal to or less than $225 million:

- If Northwest's liquidity is equal to or greater than $1.75 billion, Northwest may defer the closing date for up to an additional 150 days;
- If Northwest's liquidity is equal to or greater than $1.5 billion and less than $1.75 billion, Northwest may defer the closing date for up to an additional 90 days;
- If Northwest's liquidity is equal to or greater than $1.25 billion and less than $1.5 billion, Northwest may defer the closing date for up to an additional 60 days.

In the event the aggregate initial contribution value of Pinnacle Stock held by the Plans is greater than $225 million and equal to or less than $325 million:

- If Northwest's liquidity is equal to or greater than $1.75 billion, Northwest may defer the closing date for up to an additional 150 days;
- If Northwest's liquidity is equal to or greater than $1.6 billion and less than $1.75 billion, Northwest may defer the closing date for up to an additional 90 days;
- If Northwest's liquidity is equal to or greater than $1.5 billion and less than $1.6 billion, Northwest may defer the closing date for up to an additional 60 days.

In the event the aggregate initial contribution value of Pinnacle Stock held by the Plans is greater than $325 million:

- If Northwest's liquidity is equal to or greater than $1.75 billion, Northwest may defer the closing date for up to an additional 120 days;
- If Northwest's liquidity is equal to or greater than $1.6 billion and less than $1.75 billion, Northwest may defer the closing date for up to an additional 60 days;
- If Northwest's liquidity is equal to or greater than $1.5 billion and less than $1.6 billion, Northwest may defer the closing date for up to an additional 30 days.

If during the period of any such deferral, Northwest's liquidity falls below the threshold for the applicable deferral period, such period shall be shortened to the lesser of (i) the remaining time in the original deferral period, or (ii) the applicable deferral period based on such lower level of liquidity. However, if before the end of such period Northwest's liquidity increases to a higher level, the longer deferral period will apply (subject to reduction if liquidity falls below the relevant threshold).

If at the time of such exercise shares of Pinnacle Stock are publicly traded and remain so traded, Northwest may defer the closing date, but the deferral periods based on the liquidity levels described above will be 120 days, 60 days and 30 days, respectively.

The closing date may be further deferred and deferred payments may be made by Northwest as agreed to by the Independent Fiduciary beyond these prescribed periods, through the posting (within 30 days following the exercise date) of collateral by Northwest in an amount and on terms satisfactory to the Independent Fiduciary.

Notwithstanding the foregoing, the closing date shall accelerate to the date on which Northwest's obligations under its revolving credit facility shall have accelerated.

Prior to the applicable closing date (which shall not be subject to further extension without the Independent Fiduciary's consent), Northwest may in its discretion arrange for the Pinnacle Stock as to which the Put Option has been exercised, instead of being sold to Northwest, to be sold to the public in an underwritten offering or to a third party selected by Northwest. The Plans will be entitled to retain all of the net proceeds from such underwritten offering or sale of the Pinnacle Stock belonging to the Plans to a third party, even if such net proceeds are in excess of the applicable "Put Price" (as defined below). If the net proceeds received by the Plans in such underwritten offering or sale to a third party are less than such Put Price, Northwest will be obligated, no later than the closing date of such offering or sale, to remit to the Plans

immediately available funds representing the amount by which such net proceeds are less than the Put Price. The Plans will at the request of Northwest enter into a customary agreement with respect to such sale. In no event will the Plans be obligated to provide representations and warranties beyond due authorization, good title, no conflicts and the like.

In an IPO that is not triggered by the exercise of the Put Option, if the Plans voluntarily choose to sell less than all of the shares of Pinnacle Stock held by the Plans, and if the net proceeds per share in such offering are equal to or greater than the "Floor Price" (as defined below), the Put Option will expire with respect to the shares retained in the Plans. In addition, if in such offering the net proceeds per share are less than the Floor Price, and the Plans voluntarily choose to sell less than all of the shares of Pinnacle Stock held by the Plans, Northwest's maximum put obligation with respect to the retained shares will be equal to the excess of the Floor Price over the net proceeds per share in such offering.

The Put Option will be suspended if all of the remaining shares of Pinnacle Stock held by the Plans have a "Market Value" (as defined below) not less than 110 percent (110%) of the Floor Price and such shares are "Freely Tradeable." Shares are Freely Tradeable while they are (i) eligible to be sold under Rule 144(k) or (ii) covered during such period by an effective shelf registration statement on Form S–3.

The Put Option will terminate when (i) the Pinnacle Stock held by the Plans is Freely Tradeable, (ii) more than 50 percent (50%) of the outstanding Pinnacle Stock is held by the public and (iii) one of the following applies: (A) If the Plans own less than 10 percent (10%) of the outstanding shares of Pinnacle Stock, the weighted average daily trading price of Pinnacle Stock is 110 percent (110%) of the Floor Price for any 30 trading days within a 60 consecutive trading day period; (B) if the Plans own equal to or greater than 10 percent (10%) and less than 25 percent (25%) of the outstanding shares of Pinnacle Stock, the weighted average daily trading price of Pinnacle Stock is 110 percent (110%) of the Floor Price for any 60 trading days within a 90 consecutive trading day period or (C) if the Plans own equal to or greater than 25 percent (25%) and less than 50 percent (50%) of the outstanding shares of Pinnacle Stock, the weighted average daily trading price of Pinnacle Stock is 110 percent (110%) of the Floor Price for any 90 trading days within a 120 consecutive trading day period. The time periods are tolled for any black-out or lock-up period.

The "Put Price" as of a particular date will be the greater of (i) the "Floor Price," which is the initial contribution value ascribed to the Pinnacle Stock with respect to which the determination is being made or (ii) the "Market Value" (as described below) of such Pinnacle Stock as of the applicable exercise, closing or other relevant date, unless Northwest has arranged for a sale to the public in an underwritten offering in which case the Put Price will be the initial contribution value ascribed to the Pinnacle Stock as to which the Put Option has been exercised.

In any event, at a time prior to Pinnacle Stock being publicly traded, in connection with a sale to a third party by Northwest in response to the Independent Fiduciary's exercise of the Put Option, the Plans will receive the greater of (i) the initial contribution value, (ii) the fair market value as determined by the Independent Fiduciary at the time of the exercise of the Put Option, or (iii) the proceeds from the sale of Pinnacle Stock held by the Plans sold by Northwest to a third party.

The "Market Value" of the Pinnacle Stock will be (i) if the Pinnacle shares are not then traded on the NYSE or NASDAQ, the greater of the fair market value determined by the Independent Fiduciary on (I) the exercise date or (II) the closing date, (ii) if the Pinnacle shares are then traded on the NYSE or NASDAQ, the greater of (I) the average of the closing price for the Pinnacle shares over the ten trading days prior to the exercise date or (II) the closing price for the Pinnacle shares on the closing date.

Amount Credited to Funding Standard Account

Northwest will cause to be credited to the funding standard account of each Plan an amount equal to the value of the shares of Pinnacle Stock contributed to each Plan as determined by the Independent Fiduciary on the date of the contribution, regardless of the amount of Northwest's deduction for such contribution for federal income tax or any other purpose.

Modification of Draft of ASA

The draft of the ASA should be revised to provide that the acquisition or disposition of shares of Pinnacle Stock pursuant to the terms of the Omnibus Agreement does not constitute a Change of Control (as defined in the ASA).

The draft should also be revised to eliminate the unilateral right of Northwest to terminate the ASA in the event of the bankruptcy of Northwest. The Applicant also notes that in a Chapter 11 proceeding, a debtor in possession can reject an executory contract (like the ASA). In such an event, the other party to the rejected contract (Pinnacle) would have an unsecured claim for contract damages arising from the rejection of the contract. The Applicant represents that the more likely result in the case of the ASA would be a renegotiation of the contract.

15. In summary, the Applicant represents that the proposed transactions meet the requirements set forth in section 408(a) of the Act since, among other things:

(a) An Independent Fiduciary will represent the Plans' interests for all purposes with respect to the Pinnacle Stock, and will determine, prior to entering into any of the transactions described herein, that each such transaction, including the contribution of the Pinnacle Stock, is in the interests of the Plans;

(c) The Independent Fiduciary will negotiate and approve the terms of any of the transactions between the Plans and Northwest that relate to the Pinnacle Stock;

(d) The Independent Fiduciary will manage the holding and disposition of the Pinnacle Stock and take whatever actions it deems necessary to protect the rights of the Plans with respect to the Pinnacle Stock;

(e) The terms of any transactions between the Plans and Northwest will be no less favorable to the Plans than terms negotiated at arm's-length under similar circumstances between unrelated third parties;

(f) An independent qualified appraiser selected by the Independent Fiduciary will determine the fair market value of the Pinnacle Stock contributed to each Plan as of the date of each such contribution;

(g) The terms of (1) the Put Option granted by Northwest; (2) any exercise of the Put Option by the Plans; and (3) any sale of the Pinnacle Stock by the Plans to Northwest other than through the exercise of the Put Option will be in accordance with the terms set forth in the Term Sheet and the proposed Omnibus Agreement;

(h) Immediately after each contribution, employer securities and employer real property, including the Pinnacle Stock, will represent no more than 10 percent (10%) of the value of each Plan's assets; and

(i) The Plans will not incur any fees, costs or other charges as a result of their

participation in any of the transactions described herein.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in this notice accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to such exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the Federal Register. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Notice to Interested Persons

Within fifteen (15) calendar days of publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register**, Northwest shall provide notice to all participants of the Plans (including active employees, separated vested participants and retirees) by mailing first class a photocopy of the Notice, plus a copy of the supplemental statement (Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2). Northwest shall also provide the same notice by first class mailing to the representatives of the unions that represent employees of Northwest who currently participate in the Plans.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(1) The transfer of the common shares of either Pinnacle Airlines, Inc. or Pinnacle Airlines Corp. (Pinnacle Stock) to the Northwest Airlines Pension Plan for Salaried Employees, the Northwest Airlines Pension Plan for Pilot Employees, and the Northwest Airlines Pension Plan for Contract Employees (the Plans) through the in-kind contribution(s) of such shares by Northwest Airlines, Inc. (Northwest), a party in interest with respect to such Plans;

(2) The holding of the Pinnacle Stock by the Plans;

(3) The sale of the Pinnacle Stock by the Plans to Northwest; and

(4) The acquisition, holding, and exercise by the Plans of a put option (the Put Option) granted by Northwest which permits the Plans to sell the Pinnacle Stock to Northwest.

Section II. Conditions

This exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a) The Plans acquire the Pinnacle Stock through one or more contributions by Northwest during the calendar years 2003 and 2004;

(b) An independent qualified fiduciary (the Independent Fiduciary), acting on behalf of the Plans, represents the Plans' interests for all purposes with respect to the Pinnacle Stock, and determines, prior to entering into any of the transactions described herein, that each such transaction, including the contribution of the Pinnacle Stock, is in the interests of the Plans;

(c) The Independent Fiduciary negotiates and approves the terms of any of the transactions between the Plans and Northwest that relate to the Pinnacle Stock;

(d) The Independent Fiduciary manages the holding and disposition of the Pinnacle Stock and takes whatever actions it deems necessary to protect the rights of the Plans with respect to the Pinnacle Stock;

(e) The terms of any transactions between the Plans and Northwest are no less favorable to the Plans than terms negotiated at arm's-length under similar circumstances between unrelated third parties;

(f) An independent qualified appraiser selected by the Independent Fiduciary determines the fair market value of the Pinnacle Stock contributed to each Plan as of the date of each such contribution;

(g) The terms of (1) the Put Option granted by Northwest; (2) any exercise of the Put Option by the Plans; and (3) any sale of the Pinnacle Stock by the Plans to Northwest other than through the exercise of the Put Option will be in accordance with the terms set forth in the Term Sheet and the proposed Omnibus Agreement;

(h) Immediately after each contribution, employer securities and employer real property, including the Pinnacle Stock, will represent no more than 10 percent (10%) of the value of each Plan's assets. For purposes of this requirement, the term "employer real property" means real property leased to, and the term "employer securities" means securities issued by, an employer any of whose employees are covered by the Plans or by an affiliate of such employer; and

(i) The Plans incur no fees, costs or other charges as a result of their participation in any of the transactions described herein.

Section IV. Definitions

(a) The term "independent fiduciary" means a fiduciary who is: (1) Independent of and unrelated to Northwest and its affiliates, and (2) appointed to act on behalf of the Plans for all purposes related to, but not limited to, (A) the in-kind contribution of the Pinnacle Stock by Northwest to the Plans, (B) the holding of the Pinnacle Stock by the Plans; (C) the acquisition, holding, and exercise by the Plans of the Put Option, and (D) any sale of the Pinnacle Stock by the Plans. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Northwest if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Northwest, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that an independent fiduciary may receive compensation for acting as an independent fiduciary from Northwest in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, and (3) more than 5 percent (5%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by Northwest and its affiliates in the fiduciary's current tax year.

(b) The term "affiliate" means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) any officer, director, employee, relative, or partner in any such person; and

(3) any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed at Washington, DC, this 14th day of January 2003.

Ivan L. Strasfeld,

Director, Office of Exemption, Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 03–1187 Filed 1–16–03; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL TELECOMMUNICATIONS SYSTEM

Office of Priority Telecommunications Customer Satisfaction Survey

AGENCY: National Communications System (NCS).

ACTION: Proposed collection notice; comment request.

In compliance with section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Priority Telecommunications announces a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 18, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the National Communications System, Office of Priority Telecommunications, 701 South Courthouse Road, ATTN: Deborah Bea, Arlington, VA 22204–2198.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Deborah Bea (703) 607–4933.

Title: Office of Priority Telecommunications Customer Satisfaction Survey.

OMB Number: 0704–TBD.

Needs and Uses: The information collection requirement is necessary to understand customer needs and requirements.

Affected Public: Business or other for-profit, and Federal government.

Annual Burden Hours: 25.

Number of Respondents: 100.

Average Burden per Response: 15 minutes.

Frequency: Annually.

Peter M. Fonash,

Certifying Officer, National Communications System.

[FR Doc. 03–1140 Filed 1–16–03; 8:45 am]

BILLING CODE 5001–08–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences

Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Committee of Visitors for the Division of Physics, Subcommittee of the Advisory Committee for Mathematical and Physical Sciences (66).

Date and Time: February 26–28, 2003; 8:30 a.m.—5 p.m.

Place: Room 375, NSF, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Part-open—(see Agenda, below).

Contact Person: Dr. Joseph L. Dehmer, Director, Division of the Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1015.37. Telephone: (703) 292–7370.

Purpose of Meeting: To carry out Committee of Visitor (COV) review, including program evaluation, GPRA assessments and access to privileged materials.

Agenda: Closed: February 26–28, 2003, from 8:30—5 each day—To review the merit processes covering funding decisions made during the immediately preceding three fiscal years of the Division of Physics programs.

Open: February 27 from 10:30–11:30 to assess the results of NSF programs investments in the Division of Physics. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the COV will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. Such deliberations are exempt under 5 U.S.C. 552(b)(c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 8, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–1038 Filed 1–16–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 62—"Criteria and Procedures for Emergency Access to non-Federal and Regional Low-level Waste Disposal Facilities."

2. *Current OMB approval number:* 3150–0143.

3. *How often the collection is required:* Requests are made only when access to a non-Federal low-level waste disposal facility is denied, which results in a threat to public health and safety and/or common defense and security.

4. *Who is required or asked to report:* Generators of low-level waste who are denied access to a non-Federal low-level waste facility.

5. *The number of annual respondents:* No requests for emergency access have been received to date. It is estimated that up to one request would be made every three years. An estimate of the number of responses: It is estimated that up to one response would be received every three years.

6. *The number of hours needed annually to complete the requirement or request:* It is estimated that 680 hours would be required to prepare the request, or approximately 227 hours per year.

7. *Abstract:* Part 62 sets out the information which will have to be provided to the NRC by any low-level waste generator seeking emergency access to an operating low-level waste disposal facility. The information is required to allow NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security.

Submit, by March 18, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD. 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 13th day of January, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–1160 Filed 1–16–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Reclearance of a Revised Information Collection; SF 3106 and SF 3106A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. SF 3106, Application for Refund of Retirement Deductions/Federal Employees Retirement System (FERS), is used by former Federal employees under FERS, to apply for a refund of retirement deductions withheld during Federal employment, plus any interest provided by law. SF 3106A, Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS, is used by refund applicants to notify their current/former spouse(s) that they are applying for a refund of retirement deductions, which is required by law.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 17,000 SF 3106 will be processed annually. The SF 3106 takes approximately 30 minutes to complete for a total of 8,500 hours annually. Approximately 13,600 of SF 3106A will be processed annually. The SF 3106A takes approximately 5 minutes to complete for a total of 1,133 hours. The total annual burden is 9,633 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 18, 2003.

ADDRESSES: Send or deliver comments to Lawrence P. Holman, Acting Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3313, Washington, DC 20415–3520.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION, CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–924 Filed 1–16–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a New Information Collection: RI 20–120

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a new information collection. RI 20–120, Request for Change to Unreduced Annuity, is a new form designed to collect information OPM needs to comply with the wishes of the retired Federal employee whose marriage has ended. We have always needed this information. In the past, we have considered the information originally provided in the correspondence from the retirees and have made further inquiries as needed. This new form will provide an organized way for the retiree to give us everything at one time.

We estimate we will process 5,000 RI 20–120's annually. This form takes an average of 30 minutes per response to complete. The annual burden is estimated to be 2,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received on or before February 18, 2003.

ADDRESSES: Send or deliver comments to:

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540, and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–923 Filed 1–16–03; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47177; File No. SR–Amex–2002–102]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Create a New Percentage Order Type To Be Called "Immediate Execution or Cancel Election"

January 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex rule 131 to provide that if a percentage order is marked "Immediate Execution or Cancel Election," the elected portion of a percentage order with this designation is to be executed immediately, in whole or in part, at the price of the electing transaction. If the elected portion cannot be so executed, the election shall be deemed cancelled, and shall revert back to the percentage order and be subject to subsequent election or conversion.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, The Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Amex rule 131 provides for three types of percentage orders: straight limit, last sale, and "buy minus/sell plus." The election provisions of each type of percentage order operate as follows:

- *Straight Limit:* When a trade takes place, an amount of shares equal to the size of that trade is "elected" as a limit order, and becomes a "held" order executable at a price within the overall limit on the order. Typically, the limit price is above the market when the order is entered (in the case of an order to buy), or below the market (in the case of an order to sell).
- *Last Sale:* When a trade takes place, an amount of shares equal to the size of that trade is "elected" as a limit order, and becomes a "held" order executable at the price of that trade, or at a better price, as long as such price is within the overall limit of the order. Typically, the limit price is above the market when the order is entered (in the case of a buy order) or below the market (in the case of a sell order).
- *"Buy Minus/Sell Plus":* When a trade takes place, an amount of shares equal to the size of the trade is elected, and becomes a "held" order executable only on stabilizing ticks within the overall limit of the order. An order of this type must be qualified by placing an overall limit price on the order.

As described below, the Exchange believes that the application of the election provisions does not meet the interests of some investors placing percentage orders, particularly last sale percentage orders:

- *Last Sale:* The Exchange believes that investors entering last sale percentage orders seek to trade along with the trend of the market, without initiating price changes or otherwise influencing the equilibrium of buying and selling interest. When a last sale percentage order is elected, it will typically receive an execution in one of two ways:

(1) There is sufficient additional liquidity at the price of the electing transaction for the elected portion to receive an immediate execution at the price of the electing transaction; or

(2) If the order cannot receive an immediate execution at the price of the electing transaction, it is sequenced with other limit orders at that price, and will receive an execution if and when there is sufficient contra side interest for trades to be effected at that price.

Executions pursuant to (2) above may not always be able to be effected, as the market trend may continue to move away from the price at which the order may be executed. Elected portions of the last sale percentage order may lag behind movement of the market, which defeats the investor's purpose in entering the order.

In response, the Exchange proposes to adopt a percentage order type called "Immediate Execution or Cancel Election." The Exchange believes that, consistent with the underlying philosophy of the percentage order rules, any proposed approach to accommodating investors should limit the specialist's discretion in representing such orders, while still allowing a degree of flexibility to meet the needs of those entering the orders. The Exchange notes that "Immediate or Cancel" is a recognized order type under Exchange rule 131(k). By placing this designation on the percentage order, the investor would require the specialist to treat an election as cancelled unless the elected portion can be executed immediately (in whole or in part) at the price of the electing transaction. If the order cannot be so executed, the election would be cancelled, and the unexecuted elected portion would revert to the percentage order, subject to subsequent election (and execution/cancellation as above) or conversion (if that instruction also is specified on the order).

For example, where an "Immediate Execution or Cancel Election" buy percentage order for 1,000 shares at 30.50 is placed with the specialist and the next transaction consists of 500 shares at 30.25, the specialist would elect 500 shares and must immediately execute the order at the price of the electing transaction, 30.25, or better. If there is liquidity sufficient to execute only 300 shares at the price of the electing transaction, 30.25, or better, the specialist would execute 300 shares at that price, and the election of the remaining 200 shares would be canceled, and the 200 shares would revert back to an unelected percentage order. If, instead, there is no further market interest to sell at 30.25, and the market moves away from the price of the electing transaction to, for instance, 30.30, the entire election would be canceled,[3] and the unexecuted elected portion would revert back to a percentage order.

The Amex believes that this approach sets forth objective criteria to guide the specialist's representation of the order, while ensuring that the elected portion does not lead the market by initiating any significant price change, thereby defeating the investor's objectives. The investor's instructions, not the specialist's discretion, would dictate how the order is handled. The Exchange notes that an investor seeking to have a percentage order executed under current rules would be free to continue to do so by simply designating the order as one of the three currently existing order types.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[4] in general and furthers the objectives of section 6(b)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–102 and should be submitted by February 7, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret McFarland,

Deputy Secretary.

[FR Doc. 03–1104 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

[3] The specialist would not execute the order at 30.30, even though such an execution is within the maximum limit of the percentage order (30.50). In this regard, an Immediate Execution or Cancel Election percentage order is treated similar to a last sale percentage order. Telephone conversation between David Fisch, Managing Director, Amex, and Sapna Patel, Attorney, Division of Market Regulation, Commission on January 10, 2003.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47164; File No. SR–BSE–2002–04]

Self-Regulatory Organizations; the Boston Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change To Amend the Exchange's Minor Rule Violation Plan

January 10, 2003.

On May 17, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change to amend its Minor Rule Violation Plan ("Plan"). The BSE amended the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

on August 23, 2002.[2] The BSE again amended the proposal on October 9, 2002.[3] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on October 29, 2002.[4] The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6) of the Act[7] in that it will provide a procedure whereby member organizations can be disciplined appropriately in those instances when a rule violation is minor in nature, but a sanction more serious than an admonition letter is appropriate. Additionally, the Commission finds the proposed rule change is consistent with the requirements of sections 6(b)(7)[8] and 6(d)(1)[9] of the Act. Section 6(b)(7) requires the rules of an exchange to be in accordance with the provisions of Section 6(d) of the Act, and, in general, to provide a fair procedure for the disciplining of members and persons associated with members. Section 6(d)(1) requires an exchange to bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record, in any proceeding to determine whether a member or person associated with a member should be disciplined. Finally, the Commission finds the proposal is consistent with Rule 19d–1(c)(2) under the Act,[10] which governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the BSE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–BSE–2002–04), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1052 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

[2] *See* August 21, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposed rule change.

[3] *See* October 8, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division, Commission ("Amendment No. 2"). In Amendment No. 2, the BSE added language to set a standard by which violations of certain provisions of the Plan will be determined.

[4] *See* Securities Exchange Act Release No. 46705 (October 22, 2002), 67 FR 66029. The notice contained the text of the proposed rule change, as well as an explanation of the purpose for the proposed rule change.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7).

[9] 15 U.S.C. 78f(d)(1).

[10] 17 CFR 240.19d–1(c)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47171; File No. SR–CBOE–2002–71]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Reducing Certain Telecommunication Fees

January 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II and III below, which items have been prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make a change to its fee schedule to reduce certain of its telecommunications fees.[4] The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to reduce certain of its telecommunications fees effective January 1, 2003, due to its decision to defer a previously planned purchase of a new trading floor telephone system, for which these telecommunications rates had been raised by approximately 50% at the start of calendar year 2002 (this increase had previously been reduced by approximately 60% in May 2002). The new rates reduce the fees to a level approximately 10% higher than they were at the end of calendar year 2001, which will help offset increasing Exchange costs in this area. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] All telecommunications fees referred to herein are applicable only to members of the Exchange. Telephone conversation between Chris Hill, Attorney II, CBOE, and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission and Ian Patel, Attorney, Division of Market Regulation, Commission (January 9, 2003).

Exchange has informed the Commission that it also intends to file a separate proposed rule filing that will rebate the increased telecommunications fees that were collected during 2002 to the members and member organizations that paid them.[5]

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(4) of the Act[7] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (f) of rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR–CBOE–2002–71 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1106 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

[5] Telephone conversation between Chris Hill, Attorney II, CBOE, and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission and Ian Patel, Attorney, Division of Market Regulation, Commission (January 9, 2003).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47170; File No. SR–CBOE–2002–72]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Fees for options on the Russell 2000® Index

January 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II and III below, which items have been prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make a change to its fee schedule related to options on the Russell 2000® Index ("RUT"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to impose a new per contract fee on the Designated Primary Market-Maker ("DPM") for RUT options. Specifically, the Exchange proposes to impose an additional fee of $0.16 per contract to be charged to the DPM for options on the RUT for all RUT option transactions in which the DPM trades for its proprietary account. Currently, all DPMs are charged $0.19 per contract for transactions for their proprietary accounts. The charge to the DPM for the options on the RUT, therefore, now will be $0.35 per contract when the new $0.16 fee is combined with the $0.19 fee which is currently in effect for all DPMs. This fee will be used to assist the Exchange in offsetting a new per contract license fee that is being paid to Russell by CBOE.

The Exchange believes this fee is reasonable and justified because the DPM for the RUT has been awarded special status for the product (*i.e.* the DPM status) and thus, stands to gain the most from continued CBOE listing of the product, which is dependent upon payment of the per contract license fee. In addition, the current DPM for the RUT applied for the DPM status with full knowledge that the Exchange intended to impose a per contract license fee on the DPM to recoup some,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

but not all, of the per contract license fees that the Exchange pays in order to receive permission to trade the RUT at the CBOE. The DPM has indicated its willingness to pay this fee. In addition, the Exchange represents that the total amounts collected through this per contract fee shall not exceed the total per contract license fees paid to Russell. Finally, the Exchange believes that this proposed rule change is substantially identical to a previous CBOE rule filing, SR–CBOE–00–33, which the Exchange filed with the Commission on July 31, 2000.[4]

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(4) of the Act[6] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (f) of rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR–CBOE–2002–72 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1107 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

[4] Securities Exchange Act Release No. 43226 (August 29, 2000), 65 FR 54332 (September 7, 2000).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47169; File No. SR–CBOE–2002–73]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Pass-Through of Periodic License or Royalty Fees

January 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make a change to its fee schedule related to the pass-through of periodic license or royalty fees for DPM-traded products. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the trading of certain option classes and other securities on the Exchange, the Exchange is beginning to be confronted with a new cost, namely, a requirement to pay a periodic (*e.g.*, annual) license or royalty fees to third parties as a condition to listing and trading certain securities. These periodic license or royalty fees may be imposed on the Exchange in addition to any per contract license or royalty fees, and they differ from such per contract fees in that the required cost to the Exchange is fixed and does not vary based upon the trading volume in the applicable security. One example is the fee for listing and trading the Russell 2000®, which is an annual fee payable on a quarterly basis.[4] It is therefore not workable for the Exchange to assess per contract fees on variable trading volume in the products in order to recoup such fixed periodic costs.

[4] Telephone conversation between Chris Hill, Attorney II, CBOE, and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission and Ian Patel, Attorney, Division of Market Regulation, Commission (January 9, 2003).

The Exchange therefore proposes to establish a policy whereby it will pass any periodic license or royalty fees through the DPM allocated to a security for which the Exchange pays such fees. This policy, which would be memorialized in the Exchange fee schedule under "Miscellaneous Fees," would apply to any securities traded on the Exchange, whether a listed security or a security traded pursuant to unlisted trading privileges, that are allocated to a DPM and for which the Exchange pays a periodic license or royalty fee to authorize trading at the Exchange, including options, structured products, exchange-traded funds ("ETFs") based on a stock index,[5] and Trust Issued Receipts ("TIRs") (as described in Interpretation .04 to CBOE Rule 1.1). At the present time, the Exchange does not foresee any periodic license or royalty fees being imposed upon products that are not allocated to a DPM. If and when that occurs, however, the Exchange would address it by submitting to the Commission a separate proposed rule change that, like this one, would treat all such similarly situated products in the same manner.

The Exchange represents that any fee passed through to the DPM pursuant to this filing will reflect only the actual costs incurred by the Exchange for a periodic license or royalty fee in connection with Exchange trading of the security allocated to the DPM, and which are not otherwise offset by any other fees imposed by the Exchange. The Exchange also represents that it will inform any applicants for the DPM position in such products that they will have the periodic license or royalty fee passed through to them if they are awarded the DPM position for that product, and that this periodic pass through may be separate from any additional per contract license or royalty fee that may also be charged to the DPM and/or other market participants in connection with the trading of such product.

The Exchange believes this fee is reasonable and justified because DPMs for products with a periodic license or royalty fee have been awarded special status for the product (*i.e.* the DPM status) and thus, stand to gain the most from continued CBOE listing of the product, which will be dependent upon the payment of the periodic license or royalty fee. It also is more logistically workable to pass a periodic fee through to the single DPM entity, which consistently participates in a substantial percentage of the trading in such products, rather than attempting to identify and assess all the other market participants in such trading, which can vary in identity and the extent of their participation in such trading over time.

[5] For ease of reference, this rule filing uses the term ETF to describe both Index Portfolio Receipts ("IPRs"), as described in Interpretation .02 to CBOE Rule 1.1, and Index Portfolio Shares ("IPSs") as described in Interpretation .03 to CBOE Rule 1.1.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(4) of the Act[7] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (f) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR–CBOE–2002–73 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1108 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47163; File No. SR–CHX–2002–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

January 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on December 30, 2002, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the CHX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule effective through December 31, 2003, to provide for continued assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria, described below. The text of the proposed rule change is available at the CHX and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The proposed change to the CHX fee schedule would provide for continued assessment of a marketing fee, in an amount equal to $.01 per share, applicable to transactions occurring on or before December 31, 2003. The marketing fee would apply only to "Subject Transactions" [3] in "Subject Issues" [4] and would not be assessed if the specialist trading the Subject Issue elected to forego collection of the marketing fee.

The CHX currently assesses a marketing fee under a provision of the CHX fee schedule that, by its terms, expires on December 31, 2002.[5] Under the system currently in place, the CHX calculates, bills, and collects the marketing fee and remits the proceeds to the specialist firm trading the Subject Issue. The specialist firm then distributes the funds to order-sending firms in accordance with its payment-for-order flow arrangements relating to the Subject Issue (and possibly also to market makers who contribute to market share growth in certain instances).[6] The remaining undistributed funds in excess of $1000 are refunded, on a quarterly basis, to the paying parties pro rata, in proportion to the fees they have paid.

The CHX notes that the proposed marketing fee provision does not differ from the previous versions, except that it would extend application of the marketing fee through December 31, 2003. The CHX intends that the continued imposition of the marketing fee will allocate equitably the financial burden of seeking order flow for Subject Issues. According to the CHX, in the absence of the marketing fee the CHX specialist trading a Subject Issue is the sole bearer of the often substantial costs associated with attracting order flow to the CHX, as well as the licensing fees that the licensor of the product imposes.[7] CHX market makers participating in transactions in Subject Issues, conversely, do not currently share any of these costs. The proposed rule change would allow a specialist trading a Subject Issue to elect or decline imposition of the marketing fee depending on whether the specialist believes it is appropriate for a part of the financial burden of trading the Subject Issue to be allocated among those trading the Subject Issue. The CHX anticipates that the proposed rule change will continue to provide specialists trading Subject Issues with sufficient incentive to continue their efforts to attract additional order flow and increase market share.

Statutory Basis

The CHX believes that the proposed rule change is consistent with section 6(b)(4) of the Act [8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CHX believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The CHX has not received any written comments with respect to the proposed extension of the marketing fee program.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other CHX charge and therefore has become effective pursuant to section 19(b)(3)(A) of the Act [9] and Rule 19b-4(f)(2) thereunder.[10] At any time within 60 days after the filing of the rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No.

[3] "Subject Transaction" means (a) any trade with a customer, whether the contra party is a specialist or a market maker, where the order is delivered to the CHX via the MAX system or where compensation is paid to induce the routing of the order to the CHX; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules.

[4] "Subject Issue" means any issue which constitutes an exchange-traded fund and meets the following two criteria: (a) average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period; and (b) market maker share participation in the same issue exceeds 5% for each month during the same two-month period.

[5] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (SR–CHX–2001–10) (announcing immediate effectiveness of the new marketing fee provision to the CHX fee schedule through December 31, 2001); Securities Exchange Act Release No. 45282 (January 15, 2002), 67 FR 3517 (January 24, 2002) (SR–CHX–2001–30) (extending program through June 30, 2002); Securities Exchange Act Release No. 46233 (July 19, 2002), 67 FR 48960 (July 26, 2002) (SR–CHX–2002–19) (extending program through July 31, 2002); and Securities Exchange Act Release No. 46297 (August 1, 2002) 67 FR 51612 (August 8, 2002) (SR–CHX–2002–25) (extending program through December 31, 2002).

[6] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (SR–CHX–2001–10) (describing potential arrangements between specialists and market makers). According to the CHX, no such arrangements are currently in place. Conversation between Kathleen M. Boege, Associate General Counsel, CHX, and Gail Fortson, Paralegal Specialist, Division of Market Regulation, Commission, on January 10, 2003.

[7] The CHX's marketing fee program applies only to exchange-traded fund products, which virtually always have an associated licensing fee. Currently, the marketing fee is assessed only against the Nasdaq-100 Index exchange-traded fund, commonly known as "QQQ."

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 19b–4(f)(2).

SR–CHX–2002–39 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1053 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47175; File No. SR–CHX–2002–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

January 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on December 23, 2002, the Chicago Stock Exchange, Inc. ("Exchange" or "CHX") submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the SEC.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule (the "Schedule"), effective January 1, 2003, to: (1) Increase membership dues from $5,000 to $6,000 per year; (2) eliminate the fee relating to member firm branch offices; (3) extend the OTC Fixed Fee Charge, Listed Specialist Credit Reduction Charge and Floor Broker Credit Reduction Charge; (4) increase the monthly caps on transaction fees on orders sent through the Exchange's MAX® system; (5) add a new processing fee for certain transactions in OTC securities; and (6) revise references to certain Nasdaq charges and make other clarifying changes.

The text of the proposed rule change is below. Proposed additions are in *italics* and proposed deletions are in [brackets].

Membership Dues and Fees

* * * * *

A. Membership Dues and Transfer Fees

All members: Effective [April 1, 2000] *January 1, 2003*, [$5,000] *$6,000* per year, payable monthly in equal installments.

Transfer of memberships: No change to text.

B. Self-Regulatory Organization Fee

No change to text.

C. Registration Fees

Firm or Corporation: No change to text.

[Office (other than principal)]:

[$25 per year (up to a maximum of 1,500 offices each year) and $26 for each additional registration during the year.]

Off-Floor Traders: No change to text.

Clerks: No change to text:

Registration Processing Fees: No change to text.

D. Specialist Assignment Fees

No change to text.

E. Specialist Fixed Fees

Except in the case of Exemption Eligible Securities (as defined above in Section D), which shall be exempt from assessment of fixed fees, specialists will be assigned a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

Fixed Fee Per Dual Trading System Security = No change to text.

Fixed Fee For Specialist Firms Trading Nasdaq/NMS Securities =

The lowest monthly fixed fee charged each member firm for the period from January through June 2002, less the market data rebate earned by the firm in June, 2002. [(Effective July 2002)].

[For each month from September 2002 through December 2002,] *E*[e]ach specialist firm shall be charged a Fixed Fee Charge equal to that specialist firm's pro rata share of an additional $10,000 monthly fee. A specialist firm's pro rata share shall be based on the firm's percentage participation in the total market data rebates paid to specialist firms trading Nasdaq/NMS Securities in June 2002.

* * * * *

F. Transactions and Order Processing Fees

1. SEC Transaction Fees: No change to text.

2. NASD Fees on Cleared Transactions: No change to text.

3. Order Processing Fees: No change to text.

4. Transaction Fees:

a. to g: No change to text.

h. Effective January 1, [2001] *2003*, monthly maximums for fees:

(1) Maximum monthly transaction fees [$7,000] *$10,000* for orders sent via MAX

(2) Maximum monthly transaction fee $110,000 for transactions in NASDAQ/NMS Securities (*other than transactions included in (1) above*)

(3) Maximum monthly transaction fee $110,000 for transactions in Dual Trading System Securities (*other than transactions included in (1) above*

(4) Maximum monthly transaction fees shall not exceed the lesser of that specified in (1), (2) or (3) above, or $.40 per 100 average monthly gross round lot shares.

* * * * *

H. Equipment, Information Services and Technology Charges

* * * * *

Telephone Charges: No change to text.

[Tools of the Trade Access]

[Each specialist firm shall be billed on a monthly basis, based on usage by each of the firm's OTC/UTP co-specialists, for actual Tools of the Trade access charges that become due in accordance with the Exchange's license agreement with Financial Systemware, Inc.]

[Tools of the Trade Connection Charges]

[All Tools of the Trade Connection Charges (*i.e.*, the costs of providing access to and use of the Exchange's Tools of the Trade server to facilitate OTC/UTP trading) shall be allocated pro rata on a monthly basis among all specialist firms that use Tools of the Trade in OTC/UTP trading, based on the number of OTC/UTP co-specialists at each firm using Tools of the Trade software.]

Server and Network Infrastructure: All Server and Network Infrastructure.

Charges; Nasdaq Connection Charges: Charges and all Nasdaq Connection Charges (*i.e.*, the costs of providing access to and use of the Exchange's Nasdaq servers to facilitate OTC/UTP

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] The proposal affects only fees and charges assessed to members. Telephone conversation between Ellen Neely, General Counsel, CHX and Tim Fox, Attorney, Division of Market Regulation, Commission, January 9, 2003.

trading) shall be allocated pro rata on a monthly basis among all specialist firms engaged in OTC/UTP trading, based on the number of OTC/UTP co-specialists at each firm.

Time clocks: No change to text.

Cable TV: No change to text.

[ACT/Select Net access]: No change to text.

Nasdaq/Nasdaq Tools Fees and Charges

* * * * *

MAX Connection Charges: No change to text.

MAX Access Charge

$1,000 per access point, allocated pro rata among the firms that gain access to the Exchange's MAX system through that access point.

I. Clearing Support Fees

(Minimum clearing support fee is $600 per month)

1. Account Fees: No change to text.
2. CUSIP Fees: No change to text.

3. Processing Fees

Transactions in OTC securities that are executed by floor brokers in securities that are not assessed a Specialist OTC CUSIP Fee but are processed by the Exchange's clearing systems
$.0015/share, up to $100 per side

J. Listing Fees

No change to text.

K. Market Regulation and Market Surveillance Fees

No change to text.

L. Supplies and Reports

No change to text.

M. Credits

1. Specialist Credits

Total monthly fees owed by a specialist to the Exchange will be reduced (and specialists will be paid each month for any unused credits) by the application of the following credits:

a. [Effective July 1, 2002] [f]*For* transactions in Tape A Securities:

CHX monthly CTA trade volume by stock	Transaction credit
<7%	18%
7%—12%	45%
>12%	70%

"Tape A Securities" are securities reported on Tape A of the Consolidated Tape Association.

"Transaction Credit" when used in connection with Tape A Securities means the applicable percentage of monthly CHX tape revenue from the Consolidated Tape Association generated by a particular stock. To the extent that CHX tape revenue is subject to a year end adjustment, specialist credits may be adjusted accordingly.

[For each month from September 2002 through December 2002,] [t]*T*he Transaction Credit calculated above for each specialist firm shall be decreased by an amount equal to that specialist firm's "Credit Reduction Charge," which shall be calculated as follows:

(Total CHX Monthly Tape A Transaction Credits ÷ Total CHX Monthly Tape A & B Transaction Credits) × $40,000 = Tape A Pro Rata Share

(Specialist's Monthly Tape A Transaction Credits ÷ Total CHX Monthly Tape A Transaction Credits) × Tape A Pro Rata Share = Specialist's Credit Reduction Charge

b. [Effective July 1, 2002] [f]*For* transactions in Tape B Securities:

CHX monthly CTA trade volume by stock	Transaction credit
≤5.75%	18%
>5.75%	50%

"Transaction Credit" when used in connection with Tape B Securities means the applicable percentage of monthly CHX tape revenue from the Consolidated Tape Association generated by a particular stock. To the extent that CHX tape revenue is subject to a year end adjustment, specialist credits may be adjusted accordingly.

"Tape B Securities" are securities reported on Tape B of the Consolidated Tape Association.

[For each month from September 2002 through December 2002,] [t]*T*he Transaction Credit calculated above for each specialist firm shall be decreased by an amount equal to that specialist firm's "Credit Reduction Charge," which shall be calculated as follows:

(Total CHX Monthly Tape B Transaction Credits Total CHX Monthly Tape A & B Transaction Credits) x $40,000 = Tape B Pro Rata Share

(Specialist's Monthly Tape B Transaction Credits ÷ Total CHX Monthly Tape B Transaction Credits) x Tape B Pro Rata Share = Specialist's Credit Reduction Charge

2. Floor Broker Credits

a. Earned Credits. [Effective January 1, 2001,] [t]*T*otal monthly fees owed by a floor broker to the Exchange will be reduced by the application of the following Earned Credit (and floor brokers will be paid each month for any unused credits):

* * * * *

[For each month from September 2002 through December 2002,] [t]*T*he Earned Credit calculated above for each floor broker shall be decreased by an amount equal to that floor broker's "Credit Reduction Charge," which shall be calculated as follows:

(Floor Broker's Monthly Earned Credit ÷ Total CHX Monthly Earned Credits) x $50,000 = Floor Broker's Credit Reduction Charge

* * * * *

3. Credits for Qualified Market Makers Registered in Cabinet Securities

No change to text.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the Schedule in several ways. First, the proposal increases membership dues, for all members, from $5,000 to $6,000 per year and eliminates the fee relating to member firm branch offices. The Exchange believes that it is appropriate to eliminate the branch office fees given, among other things, its limited involvement in branch office examinations.

Next, the proposal extends, for an indefinite term, the OTC Specialist Fixed Fee Charge, Listed Specialist Credit Reduction Charge and Floor Broker Credit Reduction Charge. These charges were put in place late last year [5] and have the impact of increasing the OTC Specialist Fixed Fee and reducing the amount of tape credits available to

[5] *See* Securities Exchange Act Release No. 46592 (October 2, 2002), 67 FR 62999 (October 9, 2002) (SR–CHX–2002–28).

floor brokers and specialists trading listed securities.

The proposal also increases the monthly caps on transaction fees on orders sent through the Exchange's MAX® system, adds a new access charge for firms that send orders through the Exchange's MAX system and adds a new processing fee for certain transactions in OTC securities. The new access charge will apply to firms that send orders from outside the Exchange to the Exchange's MAX system and is designed to help defray the costs of maintaining system access. The new processing fee will apply to transactions by CHX floor brokers in OTC securities, when those securities are not traded by a CHX specialist, but where the floor broker transactions are processed by the Exchange's clearing systems.

Finally, this proposal revises references to certain Nasdaq charges and makes other clarifying changes. Specifically, the proposal updates references to Nasdaq's Tools of the Trade product to confirm that this product is now offered directly through Nasdaq and confirms that each of the Exchange's monthly transaction fee caps apply separately to different types of transaction charges.

The Exchange has proposed these fee changes in connection with the development of its 2003 operating budget and believes that these changes appropriately and equitably allocate among Exchange members the costs associated with providing various Exchange services and the overall costs associated with operating the Exchange. All of these changes to the Exchange's Schedule of Membership Dues and Fees are effective as of January 1, 2003.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

[6] 15 U.S.C. 78(f)(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a member due, fee or other charge, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–38 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1102 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47176; File No. SR–NASD–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Refunds of Member Surcharges in Arbitration

January 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend rule 10333(a) of the NASD Code of Arbitration Procedure to provide that, in certain circumstances, NASD will refund the member surcharge paid by a member firm named as a party to an arbitration proceeding (or where its employee/former employee has been named as a party). Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Code of Arbitration Procedure

* * * * *

10333. Member Surcharge and Process Fees

(a) Member Surcharge

(1) Each member that is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Cross-Claim or Third-Party Claim, shall be assessed a [non-refundable] surcharge pursuant to the schedule below when the Director of Arbitration perfects service of the claim naming the member on any party to the proceeding.

(2) For each associated person who is named, the surcharge shall be assessed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

against the member or members that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding.

(3) The surcharge shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code. *The Director will refund the surcharge paid by a member in an arbitration filed by a customer if the arbitration panel: (A) denies all of the customer's claims against the member or associated person; and (B) allocates all forum fees assessed pursuant to Rule 10332(c) against the customer. The Director may also refund or cancel the member surcharge in extraordinary circumstances.*

(Remainder of rule unchanged.)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 10332(c) of the Code requires that the arbitrators, in their awards, shall determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Generally such fees are divided among the parties, but the arbitrators may, in their discretion, allocate all forum fees against the claimant or the respondent.

Rule 10333(a) of the Code requires that each member that is named as a party in an arbitration, or that employed an associated person who is named as a party at the time of the events that gave rise to the dispute, must pay a surcharge. The amount of the surcharge is based on the amount asserted by the claimant to be in dispute. The member surcharge is non-refundable and, unlike forum fees, may not be allocated among the other parties, regardless of the outcome of the arbitration. As a result, member firms must pay the surcharge, which is typically higher than filing fees or forum fees, even when the arbitrators deny a customer's claim and allocate all forum fees against the customer.

To mitigate the impact of arbitration fees on member firms in such cases, NASD is amending rule 10333(a) to provide that it will refund the member surcharge paid by each member firm named as a party (or where its employee/former employee has been named as a party) in an arbitration filed by a customer in which the arbitration panel: (1) Denies all of the customer's claims; *and* (2) allocates all of the forum fees against the customer. In cases with more than one customer claimant, NASD will not refund the surcharge unless the arbitration panel denies all of the customers' claims and allocates all of the forum fees against one or more of the customer claimants.

In addition, from time to time, the NASD states that a refund of the member surcharge may be warranted in extraordinary circumstances that do not meet the criteria described above. As an example, the NASD states that occasionally a customer mistakenly names a member firm as a respondent, and later withdraws the claim as to that particular member firm. The Code as currently written would prohibit any refund or cancellation of the surcharge in such a case. To give NASD more flexibility in addressing such cases, NASD is further amending rule 10333(a) to provide that the Director of Dispute Resolution, in his or her discretion, may cancel or refund member surcharges in extraordinary circumstances when he or she determines that retention of the surcharge would be inappropriate.[3]

This rule change applies only to member surcharges under rule 10333(a) and does not affect any other fee required under the Code. The rule change will apply to all claims filed on or after January 13, 2003.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[4] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the rule change will enhance the fairness of the NASD arbitration forum for member firms, particularly small member firms.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by NASD as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization. Consequently, it has become effective pursuant to section 19(b)(3)(A) of the Act[5] and paragraph (f)(2) of rule 19b–4 thereunder.[6] At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be

[3] NASD has represented to Commission staff that they will monitor the effect of the refund of the member surcharge on NASD Dispute Resolution's operating budget. Also, if NASD raises customer arbitration fees in the future, NASD will reinstate this member surcharge. Telephone conversation between Laura Gansler, Counsel, NASD Dispute Resolution, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, January 10, 2003.

[4] 15 U.S.C. 78o–3(b)(6).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(6).

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–01 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1111 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47161; File No. SR–NYSE–2001–46]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Amending Section 804 to the NYSE Listed Company Manual and NYSE Rule 499

January 10, 2003.

On October 29, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the Exchange's procedures for issuer appeals of delisting determinations, and to institute a non-refundable appeal fee. On October 30, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On November 7, 2002, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published in the **Federal Register** on November 19, 2002.[5] No comments were received on the proposed rule change. This order approves the proposed rule change, as amended.

I. Description of the Proposal

The Exchange proposes to amend Section 804 of the NYSE Listed Company Manual and NYSE Rule 499 to make the procedures for appealing delisting determinations, in its view, more efficient and effective, and to charge issuers a non-refundable appeal fee in the amount of $20,000.

Under the current procedures, both the issuer and the Exchange staff are required to file their appeal briefs at the same time. The Exchange believes that having the appellant submit its brief first would more effectively utilize the resources of both the Committee and the Exchange staff. Accordingly, the Exchange proposes to amend the procedures to specify that the issuer must submit its written brief first, including any accompanying materials. The Exchange will be permitted to respond to the issuer's brief. The proposal further states that the issuer and the Exchange will be given substantially equal periods for the submission of their briefs. In addition, the Exchange proposes to clarify that the briefing schedule will be set to provide the Committee with adequate time to review the materials submitted to it in advance of the review date.[6]

To assist in the Committee's evaluation, an issuer will be required to specify in its written request for review the grounds on which it intends to challenge the Exchange staff's determination, and whether it is requesting to make an oral presentation to the Committee.[7] The Exchange will state that document discovery and depositions are not permitted. The Exchange's proposed rules also provide the scope of the Committee's review of appeals, including the guidelines pursuant to which the Committee may decide to hear new issues or evidence not identified in an issuer's original request for review.[8]

In addition, the Exchange proposes to institute a non-refundable appeal fee in the amount of $20,000. The Exchange has not previously considered it necessary to charge a separate fee to companies appealing an Exchange delisting decision. However, in its filing, the Exchange noted that changes in policies and procedures adopted or formalized by the Exchange in recent years have resulted in a significant increase of issuers that are delisted.[9] During the 12 months ending December 31, 2001, the Exchange represented that it paid slightly in excess of $300,000 in legal fees to cover 11 delisting appeals completed during that time,[10] giving an average out of pocket cost of slightly less than $30,000 for each appeal. This does not include the resources of the Exchange's own Financial Compliance and Office of the General Counsel personnel consumed in servicing these appeals. According to the Exchange, it is only fair and appropriate that the

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 29, 2002 ("Amendment No. 1"). Amendment No. 1 replaces the original proposed rule change in its entirety, and clarifies: (1) The scope of the NYSE Committee for Review's review on appeal; (2) that neither document discovery nor depositions are available; and (3) the rationale for requiring payment of a non-refundable fee in connection with a request for review.

[4] Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated November 7, 2002 ("Amendment No. 2"). Amendment No. 2 makes a minor technical correction to the proposed rule change.

[5] Securities Exchange Act Release No. 46802 (November 8, 2002), 67 FR 69789.

[6] The Exchange's Office of the General Counsel, which oversees the appeals process on behalf of the Committee, will schedule reviews on the first review day that is at least 25 business days from the date an issuer files the request for review, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule, and can establish a briefing schedule that takes account of both the Committee's caseload and the complexities of the specific case. The Exchange represents that the Committee For Review typically meets every two months.

[7] The Exchange represented that the Committee's review shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties. Typically, accompanying materials include materials the issuer or NYSE staff relies on in support of its position and are supplied as exhibits to the brief submitted by the party.

[8] In this regard, the Commission specifically notes that the NYSE's proposal would not permit the issuer to argue grounds for reversing the NYSE staff's decision that are not identified in its request for review. However, the issuer would be permitted to ask the Committee for leave to adduce additional evidence or raise arguments not identified in its request for review, if it can demonstrate that the proposed additional evidence or new arguments are material to its request for review and that there was reasonable ground for not adducing such evidence or identifying such issues earlier. The proposed rule language would not, however, (i) authorize an issuer to seek to file a reply brief in support of its request for review or (ii) be deemed to limit the NYSE staff's response to a request for review to the issues raised in the request for review. Upon review of a properly supported request, the Committee may in its sole discretion permit new arguments or additional evidence to be raised before the Committee. Following such event, the Committee may, as it deems appropriate, (i) itself decide the matter, or (ii) remand the matter to the NYSE staff for further review. Should the Committee remand the matter to the staff, the proposed rules provide that the Committee will instruct the staff to (i) give prompt consideration to the matter, and, (ii) complete its review and inform the Committee of its conclusions no later than seven (7) days before the first Review Day which is at least 25 business days from the date the matter is remanded to the staff.

[9] The Exchange believes this increase is a result of changes in appeal procedures whereby a company that has appealed a delisting likely will be permitted to trade on the NYSE while the appeal is pending. *See* Securities Exchange Act Release No. 42863 (May 30, 2000), 65 FR 36488 (June 8, 2000). As an example, the Exchange noted that there were an average of 22 financial delistings per year during the three years from 1996 through 1998, but an average of 61 per year during the period 1999 through 2001. Regarding appeals, in a 21-month period since new appeal procedures were in effect in 2000, there were 18 appeals out of 114 delisting determinations. In contrast, during a previous 21-month period, there were only 6 appeals out of 104 delisting determinations.

[10] The Exchange has elected to use outside counsel to represent the Exchange's Financial Compliance staff in delisting appeals.

companies incurring these added out of pocket costs defray these costs by paying the proposed $20,000 appeal fee.[11]

II. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposal, as amended, is consistent with sections 6(b)(4), 6(b)(5) and 6(b)(7) of the Act.[13] Section 6(b)(4) of the Act [14] requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act [15] requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Section 6(b)(7) of the Act [16] requires, among other things, that the Exchange's rules provide fair procedures for prohibiting or limiting any person with respect to access to services offered by the exchange or member thereof.

The Commission believes that the proposal is consistent with sections 6(b)(5) and 6(b)(7) of the Act because the new procedures set forth specific time frames for scheduling and conducting a review of an appeal to ensure that the appeal is done in a timely manner. In particular, the review will be scheduled at the next review date, which will be at least 25 business days from the date the request for review is filed with the NYSE unless the next subsequent review date must be selected to accommodate the Committee's schedule.[17] This change should help to ensure that the review process will not continue indefinitely and will provide clarity to the parties involved, especially since the existing rules were silent as to the timing of the Committee review date.

The new procedures also define the scope of the Committee's review on appeal and the guidelines pursuant to which the Committee may decide to hear new issues or evidence not identified in an issuer's original request for review. The procedures specify that document discovery and depositions will not be permitted. However, the Commission notes that the issuer may ask the Committee for leave to adduce additional evidence or raise arguments not identified in its request for review, if it can demonstrate that the proposed additional evidence or new arguments are material to its request for review and that there was reasonable ground for not adducing such evidence or identifying such issues earlier. If the case is remanded back to Exchange staff, the rules would require specific time frames for the Committee to hear the staff's conclusions. The Commission believes that these time frames should help to ensure that appeals are considered in a timely manner and resolved promptly. The Commission believes that this is particularly important since, as noted above, the NYSE may permit an issuer to continue to trade during the appeal process. In summary, the Commission believes that the procedures as proposed will provide issuers and Exchange staff a fair and reasonable process, and clarifies the procedures used, to present their arguments on appeal. The procedures also may contribute to a more proficient appeals process, by reducing unnecessary delay between the issuer's request for appeal, the hearing before the Committee, and its final determination. Therefore, the Commission finds the procedures are consistent with sections 6(b)(5) and 6(b)(7) of the Act.

The Exchange also proposes to institute a non-refundable appeal fee in the amount of $20,000. The Commission believes that the proposed fee is consistent with section 6(b)(4) of the Act [18] because it is designed to recoup the costs of processing requests for appeal and holding the subsequent proceedings, and thus is an equitable allocation of dues and fees among issuers. As noted above, the NYSE has indicated that there has been a significant increase in appeals recently due to changes whereby a company that has appealed a delisting would likely be permitted to trade on the Exchange during the appeal process. This has substantially increased the Exchange's overall legal costs in handling appeals. In addition to legal fees, the Exchange represents that it incurs additional administrative and personnel costs in servicing issuers. Although, the proposed appeal fee is greater than the amount currently charged at other listing markets, the Commission believes that the appeals fee is not overly excessive or burdensome to the extent that an issuer would be deterred from employing its due process right to appeal an Exchange staff determination and therefore is consistent with section 6(b)(7) of the Act.[19]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NYSE–2001–46), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1050 Filed 1–16–03; 8:45 am]

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[11] The Exchange does not believe that the appeal fee will deter companies from taking reasonable appeals. According to the Exchange, most companies that do appeal Exchange staff determinations are represented in that appeal by their own outside counsel, suggesting that they are able to invest a significant sum in the prosecution of their appeal. While the proposed Exchange appeal fee is greater than the amount charged at other listing markets, the Exchange notes that its original and continuing annual listing fees are also higher than those at other markets, and that its listed company population in general represents larger capitalization companies than on the other markets. The Exchange also notes that, particularly in the case of companies that have been delisted after attempting to utilize the financial plan process outlined in Section 802 of the NYSE *Listed Company Manual*, companies delisted by the Exchange typically have received a significant quantum of service and attention from the Exchange's Financial Compliance staff.

[12] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(4); 15 U.S.C. 78f(b)(5); 15 U.S.C. 78f(b)(7).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(7).

[17] NYSE stated in its filing that the Committee For Review typically meets every two months.

[18] 15 U.S.C. 78f(b)(4).

[19] The Commission notes, however, that if the appeals fee was higher, it would have to determine whether the fee is consistent with section 6(b)(7) of the Act and acts as a deterrent to issuers exercising their due process rights.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47160; File No. SR–NYSE–2002–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rules 98, 104A.50, 105, and 900 to Permit Single Stock Futures Hedging by Specialists

January 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission")

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposal is to amend NYSE Rules 98, 104A.50, 105, and 900 to permit specialists to use exchange-traded single stock futures to hedge existing specialty stock positions in a manner comparable to stock options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to permit specialists to use exchange-traded "security futures" [3] overlying single securities (hereinafter referred to as "single stock futures") to hedge specialty stock positions in a manner comparable to stock options. Single stock futures are contracts of sale, traded on a national exchange, such as OneChicago, LLC or Nasdaq Liffe, for the future delivery of a single security.

Rules 105, 98, 104A.50, and 900(d)(v) are proposed to be amended to make reference to "single stock futures" wherever stock options are referenced.

Background

Currently, Rule 105 permits the use by NYSE specialists of options on their specialty stocks subject to certain limitations and restrictions. The rule allows a specialist to acquire and hold, in his specialist trading account, a position in listed options on any of his specialty stocks "where appropriate . . . to offset the risk of making a market in the underlying stock." Under the rule, a specialist may not establish and maintain an options position which is excessive either in terms of his or her existing position in the underlying specialty stock or in terms of a reasonable estimate of potential losses that may be incurred in relation to any such equity position.

In approving previous amendments to Rule 105, the Commission balanced the regulatory concerns regarding possible stock/option manipulation and the specialists' perceived information advantages against the benefits to the market to be derived from the Rule, namely enhanced market depth and liquidity. The Commission determined that the use of options by NYSE specialists resulted in substantial benefits to the markets for these stocks as well as the options markets.[4] By analogy, the Commission should determine that the use of single stock futures by specialists would result in similar substantial benefits to the markets for these stocks; this additional hedging mechanism would enable specialists to add to overall stock market liquidity and depth by taking specialty stock positions they might not otherwise assume or by reducing risks on positions they are required to assume.

Proposed Amendments to Rule 105

The Exchange is proposing to amend Rule 105(b) to define a "single stock future" as a contract of sale, traded on a national commodities exchange, for the future delivery of a single security. Appropriate cross-references to "single stock futures" have been added to Rule 105(a)-(d) to reflect that single stock futures can be used wherever options transactions are made.

In addition, paragraph (d) of the Guidelines to Rule 105 (the "Guidelines") would be added to explain the conditions for single stock futures transactions to hedge an existing specialty stock position with a net futures position. As with options, no anticipatory hedging would be allowed; only existing specialty stock positions may be hedged.

The proposed rule (paragraph (d)) states three conditions (similar to options conditions) that single stock futures transactions must meet:

(i) The transaction must result in a net futures position on the *opposite* side of the market from the underlying specialty stock position;

(ii) the transaction must be effected solely to offset the risk of making a market in the underlying specialty stock; and

(iii) the resulting net futures position must not exceed the number of shares of the specialty stock position that the specialist is offsetting.

Any single stock futures transaction that does not meet *all three* of the above conditions would be deemed to be in violation of Rule 105.

One single stock futures contract would be able to be used to hedge each 100 shares of the existing specialty stock position. (*See* proposed Rule 105(d), Example 5).

As with options contracts, a hedge that subsequently exceeds the specialty stock position being hedged as a result of 25% or more in the specialist's stock position or which becomes on the same side of the market as the specialty stock position, must be liquidated, unless the uivalent share position is 5000 shares or less. (*See* proposed paragraph (e) to the Guidelines, Examples 9 and 11).

Similarly, as with options contracts, Rule 105 has been amended to specify that as with options contracts, specialists may also not front-run blocks (paragraph (h) to the Guidelines) and must record futures positions in a separate "memo" account (paragraph (i) to the Guidelines). Additionally, specialists must report to the Exchange: (i) accounts in which single stock futures positions are held (paragraph (j)) and (ii) their positions in single stock futures (paragraph (k)).

Currently, paragraph (l) of the Guidelines to Exchange Rule 105 ("Rule 105(l)") permits an approved person of a specialist to act as a primary market maker or specialist with respect to an option on a specialty stock, provided all the requirements of the Rule 98 exemptive program are met.[5] This paragraph has been re-lettered as paragraph (m) and incorporates references to market makers in single stock futures contracts. Thus, it is proposed that an approved person of an equity specialist may act as a primary market maker or specialist with respect to a stock futures contract, provided all the requirements of the Rule 98 exemptive program are met.

Paragraph (l) currently prohibits an approved person of an equity specialist acting as a market maker in any equity security in which the associated specialist is registered as such and which underlies an option as to which the approved person acts as an options market maker. Paragraph (l) has been re-

[3] The term "security future" is defined in Section 3(a)(55) of the Act. 15 U.S.C. 78c(a)(55).

[4] *See* Securities Exchange Act Release No. 28971 (March 13, 1991), 56 FR 11808 (March 20, 1991)(SR–NYSE–90–31).

[5] *See* Securities Exchange Act Release No. 45454 (Feb. 15, 2002), 67 FR 8567 (Feb. 25, 2002), approving SR–NYSE–2001–43 and amendments thereto.

lettered as (m) and provides the same prohibition with respect to market makers in single stock futures contracts.

Paragraph (n) is proposed to be added to explain the use of both options and single stock futures to hedge specialty stock positions. If a specialist chooses to hedge a specialty stock position with positions in both options and futures contracts, the resulting total market position, when established, may not exceed the size of the existing specialty stock position being hedged. Any excess or same side of the market equivalent position must be liquidated in accordance with the provisions of Rule 105.

Other Rule Amendments

Rules 98, 104A.50, and 900(d)(v) are proposed to be amended to incorporate references to single stock futures, where they currently refer to options.

Rule 98 would be amended to add single stock futures to the Rule's reference to Rule 105.

Rule 104A.50 would be amended to add a reference to single stock futures as an aspect of specialists' reporting requirements. Thus, every specialist must keep a record of all single stock futures purchases and sales (as they do with options currently) to hedge his specialty stock positions as permitted by Rule 105. Such transactions would be reported in such format and with such frequency as prescribed by the Exchange.

Rule 900(d)(v) currently prohibits a specialist against entering an order in the Exchange's Off-Hours Trading Facility if a resulting execution would result in the specialist having to take liquidating action pursuant to Rule 105. The rule would be amended to add a reference to single stock futures to the above prohibition against taking liquidating action.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[6] of the Act, in general, and furthers the objectives of section 6(b)(5),[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number SR–NYSE–2002–63 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1051 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47174; File No. SR–NYSE–2002–66]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Fee Increases and New Fees Applicable to Members and Member Organizations

January 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). On January 10, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change is described in items I, II and III below, which items have been prepared by the Exchange. The NYSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes changes to certain fees applicable to members and member organizations. The Exchange will (1) increase the existing cap on transaction charges; (2) increase existing fees for branch offices; (3) impose a new transaction charge for principal transactions; (4) impose new fees for Exchange technology services provided to brokers and specialists; and (5) change the fees charged to subscribers to

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces in their entirety Form 19b–4 and Exhibit 1 of the original filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

the Exchange's Automated Bond System.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

NYSE 200[2]*3* Price List

TRANSACTION FEES

Regular Session Trading [1]

Equity Public Agency *and Principal* Transactions: [1]

* * * * * * *

System orders under 2100 Shares [4] ..... No charge

* * * * * * *

Fee Limitations:

Equity Commissions	2%
Monthly Fee Per Firm	$[500,000] *$600,000*

* * * * * *

Notes:

[1] Does not apply to [principal] transactions by members *acting as specialist* for own account. *Also does not apply to pridcipal transactions by a member in conjunction with "facilitating" a customer order of at least 10,000 shares. For this purpose "facilitating" refers to taking the other side of a customer's order, or acquiring/liquidating inventory to buy from/sell to a customer at an agreed-upon price.*

* * * * *

[4] Not inclusive of orders of a member of member organization *trading for its own account as a competing market marker, or* trading as an agent for the account of a non-member competing market maker. Competing Market Maker: a specialist or market-maker bidding and offering over-the-counter, in a New York Stock Exchange traded security.

*

REGULATORY FEES

Registration Fees

Branch Office Fee—per branch (annual and new):

Number of Branches:

[First 250 branches	$250.00
Next 250 branches	150.00
Over 500 branches	125.00]
First 1000 branches	*$350.00*
Next 2000 branches	*250.00*
Over 3,000 branches	*225.00*

* * * * * * *

FACILITY AND EQUIPMENT FEES

* * * * * * *

[Broker Booth Support System

On-Floor Terminal, Printer and Keyboard Location.[1]	No charge for 1st Terminal per
Additional Terminals	$3,600.00[2]
Off-Floor Terminal, Printer and Keyboard	$3,600.00 per Terminal[2]

Special Equipment:

Standard Panel Equipment	No Charge

Incremental Equipment	Per Panel Charges[2]	
	14″ Flat Panel	10.5″ Flat Panel
Quantity:		
1	$1,850.00	$1,200.00
2–3	1,670.00	1,080.00
4–9	1,480.00	960.00
10+	1,300.00	840.00
Brackets		Variable[3]

Notes:

[1] Location defined as contiguous booths occupied by one firm or single booth shared by multiple firms.

[2] Plus sales tax.

[3] Depending on bracket required.

	Annual Fee		
	2003	*2004*	*2005*
Broker Services:			

	Annual Fee		
	2003	2004	2005
Terminal/Connection Fee (per terminal)	*$2,400.00*	*$4,800.00*	*$7,200.00*
Broker Booth Support System (BBSS) (per application entitlement)	*2,600.00*	*5,200.00*	*$7,800.00*
BBSS Printers (per printer)	*1,000.00*	*2,000.00*	*$3,000.00*
Broker Overview Support System (BOSS) (per application entitlement)	*1,200.00*	*2,400.00*	*$3,600.00*
Activity Logs (per subscription)	*1,000.00*	*2,000.00*	*$3,000.00*
OCS Direct Connect (connection fee)	*3,200.00*	*6,400.00*	*$9,600.00*
Wireless Connection (per antenna)	*2,000.00*	*4,000.00*	*$6,000.00*
e-Broker Application & Hardware (per handheld device)	*1,000.00*	*2,000.00*	*$3,000.00*
Maintenance Fee (% of the Subscribed Service)	*15%*	*15%*	*15%*
Specialist Technology:			
Display book—per book	*$32,666.63*	*$65,333.37*	*$98,000.00*

System Processing Fees

Automated Bond System: [1]

For subscribers accessing through dedicated terminals:	
Annual Subscription [2]	$13,000.00
Additional equipment—annual rate per each	
Terminals:	
2–5	8,000.00
6 and above	3,000.00
Controllers	2,000.00
Printers	2,500.00
Phone lines [3]	See Note [4]
Port charges [5]	3,000.00
Service calls—per terminal	250.00
Computer to Computer Service	
Report fee	5,000.00
Usage fee—per order entered: [6]	
1–25,000	0.30
25,001–50,000	0.20
50,001–100,000	0.10
100,001 and above	0.05

Notes:
[1] Automated Bond System and ABS are registered service marks of the New York Stock Exchange.
[2] Subscription includes one terminal, one controller and one printer.
[3] Installation presumes cabling to trading desk location is performed by customer.
[4] Line fee paid directly to telephone company.
[5] Fee applicable to ABS firms using their own equipment.
[6] Fee ranges are cumulative on a yearly basis and do not include orders entered through ABS terminals.

For subscribers accessing through web browser:	
Subscription (first access entitlement):	*$15,000*
Additional screen entitlements (each)	*$5,000*
Computer-to-computer interface:	
Report Fee	*$5,000*
Usage Fee—per order entered:*	
1 to 25,000	*0.30*
25,001 to 50,000	*0.20*
50,001 to 100,000	*0.10*
100,001 and above	*0.05*

**Fee ranges are cumulative on a yearly basis and do not include orders entered through ABS terminals. Maximum annual computer-to-computer fees are $20,000.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NYSE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE is proposing changes to certain fees applicable to members and member organizations, all of which will become effective as of January 1, 2003. The Exchange has determined that these

fee increases are necessary to ensure that revenue is adequate to satisfy increasing costs for operations, technology, regulation and infrastructure.

The Exchange has long prided itself on having system capacity sufficient to handle a far greater volume of trading than is normally experienced in the market. As trading volume has increased exponentially in recent years the Exchange has similarly expanded capacity to keep pace. Particularly in the last several decades, the Exchange has also focused on supplying trading technology to the Floor of the Exchange to increase the speed and efficiency of trading and to enhance the reliability and efficiency of Exchange oversight and surveillance as well.

Traditionally, the Exchange has funded these efforts largely from its general revenues. At the same time, the Exchange has recognized in recent years that it is appropriate to cap the transaction charge exposure of the member organizations with a public business, for the benefit not only of those firms but also their investor customers. As noted herein transaction charges will remain capped although at a higher level, and transactions charges will be assessed on principal trades as well. However, the Exchange has also determined that it is appropriate to better align Exchange revenues with the value provided by the Exchange, particularly with respect to the technology provided by the Exchange for operations on its trading floor. Accordingly, the Exchange is proposing specific fees for certain of the Floor-related technology that is provided by the Exchange. In this way greater revenue can be obtained from the members and member organizations that directly use this technology in their business.

The NYSE is also proposing changes to the fees applicable to members and member organizations subscribing to the Exchange's Automated Bond System (ABS). These changes will be applied as subscribers switch from dedicated terminals to a web-based browser, as more fully explained below.

While all the fee changes proposed herein will impact members and member organizations, it should be noted that the Exchange is also increasing fees applicable to listed companies. Such listed company fee increases have been filed in a separate rule proposal. [5]

[5] See Securities Exchange Act Release No. 46960 (December 6, 2002), 67 FR 77124 (December 16, 2002).

What follows is a brief discussion of the proposed fees:

Increased Fees

Transaction Charges

In 1996, the Exchange established a cap on transaction charges of $400,000 per month per member organization. At that time, the intent was to increase the cap each year in proportion to increased trading volume. Had the Exchange invoked the indexing provision each year since 1996, the cap for 2002 would have been approximately $1.4 million. For competitive reasons, the Exchange elected not to implement any increase until 2001, when the cap was increased to $500,000, the current fee. No increase was made for 2002, even though volume increased over 20% from 2001. The Exchange proposes to increase this cap to $600,000 per month per member organization.

Branch Offices

The Exchange is proposing to increase initial fees and annual maintenance fees applicable to branch offices. Presently, member organizations are charged an initial fee at the time that they open a new branch office, as well as an annual maintenance fee that is charged for each of their open branch offices. A three-tiered fee structure is used to assess these fees. As a member organization's branch network grows, they move up through the tiers of the fee structure, paying a stepped-down rate based on their applicable level. This structure provides an incremental reduction in fees for those branch offices that exceed the level of each breakpoint. The current three-tier structure is outlined below:

Number of branch offices	Initial branch opening fee (charged per office)	Annual maintenance fee (charged per office)
First 250 branch offices	$250	$250
Next 250 branch offices	150	150
Over 500 branch offices	125	125

The Exchange proposes amending the existing fee structure as follows:

Number of branch offices	Initial branch opening fee (charged per office)	Annual maintenance fee (charged per office)
First 1,000 branch offices	$350	$350
Next 2,000 branch offices	250	250
Over 3,000 branch offices	225	225

New Fees

Principal Transactions

The Exchange's current transaction fee schedule is applied only to trades executed by members and member organizations on an agency basis. The Exchange is proposing to subject principal transactions, by members and member organizations other than those acting as specialists, to transaction fees using the same schedule as is applied to agency transactions. The transaction charges for principal transactions will also be included within the proposed overall transaction fee cap of $600,000 per month per member organization. The Exchange will not apply this new transaction fee to member principal trading that is effected in conjunction with facilitating a customer's order of at least 10,000 shares. "Facilitating" refers to taking the other side of a customer's order, or acquiring/liquidating inventory to buy from/sell to a customer at an agreed-upon price.

Trading Floor Technology

The Exchange proposes to introduce new fees for trading floor technology.

Brokers

In 1993, the Exchange commenced a program of providing technology services to its floor broker members as part of its Integrated Technology Plan package. Since that time, the Exchange has invested over $150 million in broker-related technology services, including the Broker Booth Support System (BBSS), the Wireless Data System (WDS) and companion applications, used on the floor of the NYSE by brokers at a nominal fee or free of charge.

The Exchange is establishing a fee structure for the broker-related services based on a flexible menu of services to which users can subscribe. These broker services are provided not only by the Exchange, but are also available from competing order management vendors and, in some cases, by member firms' own technology groups. In establishing a menu of fees and applicable services, brokers are free to choose which services they want to subscribe to from the Exchange. The fees will be phased in over a three-year period. The fees noted below are the full fees that will be

applicable once the phase-in is completed.

Terminal/Connection Fee (per Terminal): $600 per Month

This is the fee for flat panel terminals and the wired network known as Integrated Technology Plan Network (ITPN) for brokers. Any broker subscribing to a NYSE terminal, whether for market data display, their own application display or BBSS, is subject to this fee.

Broker Booth Support System (BBSS) (per Application Entitlement): $650 per Month

The BBSS service is a sophisticated order management system that allows floor brokers to log, track, route and report on orders. In addition, it has connections to the NYSE's DOT service and includes an e-mail service. Subscribers with over 25 BBSS applications receive a 25% discount for every application thereafter.

BBSS Printers (per Printer): $250 per Month

Two years ago the entire inventory of BBSS printers on the floor of the Exchange was replaced with new thermal printers. Users can alternately route traffic from several terminals to one printer if they choose.

Broker Overview Support System (BOSS) (per Application Entitlement): $300 per Month

The BOSS system allows managers to review online message traffic through all BBSS terminals on one screen.

Activity Logs (per Subscription): $250 per Month

Logs are available in several different formats and are used for billing, tracking, and record retention purposes.

OCS Direct Connect (Connection Fee): $800 per Month

Links e-Broker and BBSS to the NYSE's On-Line Comparison (OCS) service for real time delivery of reports of execution into the comparison process.

Wireless Connection (per Antenna): $500 per Month

The system provides service to the NYSE's e-Broker devices and to proprietary and vendor hand held data devices on the trading floor. This fee applies to all users of the Wireless Data Network, and is based upon the number of wireless antennae cards issued to the firm and configured in the Exchange systems as eligible for active transmission on the trading floor.

e-Broker Application & Hardware (per Handheld Device): $250 per Month

In 1997, the NYSE introduced the first generation of broker hand held devices on any equity trading floor. Since that time the NYSE has upgraded the service through five generations of hardware and software. Today the NYSE offers two devices, which have essentially the same function in different forms. This fee is additive to the connection fee above and is based upon the number of hand held devices subscribed to by the member or member firm.

Maintenance Fee: 15 Percent of the Subscribed Services

The NYSE provides real time Operations and Technical support on the trading floor before, during and after trading hours. Inventories of all equipment are maintained and are available for swap out in real time. In addition, the NYSE introduces into production new and upgraded equipment from time to time.

Specialists

The NYSE began developing technology for specialists with the implementation of the Designated Order Turnaround, or DOT, system, in the 1970's, which provided a delivery system for electronic orders to a specialist. In 1983, the electronic Display Book was developed and introduced on a pilot basis. In the 1990's, the Display Book was significantly re-developed and enhanced. Most recently, Network NYSE components such as NYSE Direct+, OpenBook, and Institutional Express have all been implemented through the Display Book. Specialists handle approximately 97% of the Exchange's message traffic—approximately 6 million orders, 3.5 million quotes, and over 3 million reports—electronically with the assistance of the Display Book. The NYSE develops and operates the Display Book, as well as its companion application, Specialist Portfolio. No fees are currently paid by specialists for these services.

The proposed fee per Display Book is $98,000 per year, to be phased in over a three-year period.

Automated Bond System (ABS)

The Automated Bond System, or ABS, provides screen-based trading for NYSE-traded bonds, primarily corporate and convertible debt. The system, which commenced operations in 1977, allows subscribing members and member organizations to enter limited priced orders in ABS directly through terminals in their offices as well as through a computer-to-computer order-entry and trade reporting link. ABS displays and matches limited price orders on a strict price and time priority basis and reports bond quotations and trades to market data vendors on a real-time basis. ABS screen displays allow subscribers to view the "book" of orders in each bond. The Exchange is in the process of migrating ABS service from dedicated terminals to a web-based browser.

ABS pricing was last revised in 1987. The current annual price schedule involves an initial subscription fee entitling the subscriber to one terminal access and the supporting equipment for such access—a controller and a printer (phone lines between the controllers and the system's mainframe are paid directly by the subscriber firm to the carrier). The current ABS price schedule has two rates for additional terminal access. One rate is for terminals provided by the Exchange, the other rate is for terminals provided by the subscribing firm itself. With the new browser distribution this distinction disappears and, therefore, the same rate would apply for all additional "screen entitlements." The browser also eliminates the need for controllers and the associated line charges incurred by ABS firms. Firms will also be responsible for their own printers and, thus, printer charges are being removed. The charges for computer-to-computer order entry and reports will be modified by the application of a $20,000 annual ceiling on this fee.

The new price schedule will be applied to each subscriber as it completes its migration to browser access.

The Exchange proposes amending the existing fee structure as follows:

Current ABS fee structure (annual)	
Subscription: (one terminal, access to mainframe)	$13,000
Additional two—five (each)	8,000
Additional six and above (each)	3,000
Subscriber terminals "Port" charge (each)	3,000
Additional links to mainframe	2,000
Computer-to-computer interface:	
Report Fee	$5,000
Usage Fee*—per order entered:	
1 to 25,000	0.30
25,001 to 50,000	0.20
50,001 to 100,000	0.10
100,001 and above	0.05

*Fee ranges are cumulative on a yearly basis and do not include orders entered through ABS terminals.

Proposed ABS fees (annual)	
Subscription (first access entitlement)	$15,000
Additional screen entitlements (each)	$5,000
Computer-to-computer interface:	
Report Fee	$5,000
Usage Fee:—per order entered:	
1 to 25,000	0.30
25,001 to 50,000	0.20
50,001 to 100,000	0.10
100,001 and above	0.05

[1] Fee ranges are cumulative on a yearly basis and do not include orders entered through ABS terminals. Maximum annual computer-to-computer fees are $20,000.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(4)[6] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The only written comment received by the Exchange related to the proposed increase to the fees for opening and maintaining a branch office. The commenting member organization stated that it recognized the need to generally increase the fee revenue of the Exchange, and its responsibility to bear its fair share of such increase. The organization was concerned, however, that the fee increase affects it disparately, given its business model. The organization has a large branch network, but generally only one registered representative per branch. It states that it has three times the number of branches than the second place firm in this category, but without a high rank in terms of revenues, net capital or total numbers of registered representatives.

The Exchange has carefully considered the affect of all its fees across its membership, and is sensitive to how its members are affected by the various fees charged by the Exchange. The Exchange notes that the branch office fees have been and continue to be tiered to ameliorate the impact on those organizations with large numbers of branches. The Exchange is also mindful of the overall benefit afforded each member and member organization by the Exchange's maintenance of a strong and well-regarded program of regulation, and its regulatory charges, including the branch office fees, are a part of the Exchange's efforts to align revenue with the value provided by the Exchange to its members and to their customers. After careful evaluation, the Exchange concluded that branch office fees did not create an inappropriate burden on a member organization such as the one which presented the above comment.[7]

[6] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of rule 19b–4 thereunder,[9] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on January 10, 2003, when Amendment No. 1 was filed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, including the comment letter filed by Edward Jones, dated December 27, 2002, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2002–66 and should be submitted by February 7, 2003.

[7] The Commission notes that it also received a comment letter regarding this filing from Edward Jones, dated December 27, 2002. The Commission will carefully consider the points raised by Edward Jones regarding the fee increases relating to branch offices.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–1109 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47165; File No. SR–PCX–2002–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Transfer Responsibility for Certain Auto–Ex Determinations From the Options Floor Trading Committee to Two Floor Officials

January 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in items I, II and III below, which the PCX has prepared. On December 31, 2002, the PCX filed Amendment No. 1 to the proposed rule change, which replaced the original filing in its entirety. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend PCX Rule 6.87 in order to give two PCX floor officials, rather than the PCX's Options Floor Trading Committee ("OFTC"), the authority to make day-to-day determinations with respect to the PCX's Automatic Execution System ("Auto–Ex"). The text of the proposed rule change is below. New text is italicized and deleted text is in brackets.

Automatic Execution System

Rule 6.87(a)—No Change.

(b) Eligible Orders.

(1) Only non-broker/dealer customer orders are eligible for execution on the Exchange's Auto–Ex System, except that [the Options Floor Trading Committee ("OFTC")] *two Floor Officials* may determine, on an issue-by-issue basis, to allow the following types of orders to be executed on Auto–Ex:

(A) Broker-dealer orders; or

(B) Broker-dealer orders that are not for the accounts of Market Makers or Specialists on an exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to section 7(c)(2) of the Securities Exchange Act of 1934.

Broker-dealer orders entered through the Exchange's Member Firm Interface (MFI) will not be automatically executed against orders in the limit order book. Broker-dealer orders may interact with orders in the limit order book only after being re-routed to a floor broker for representation in the trading crowd. Broker-dealer orders are not eligible to be placed in the limit order book pursuant to rule 6.52.

(2) If [the OFTC] *two Floor Officials* permit[s] broker-dealer orders to be automatically executed in an issue pursuant to this rule, then [it] *they* may also permit the following with respect to such orders:

(A) The maximum order size eligibility for broker-dealer orders may be less than the applicable order size eligibility for non-broker-dealer customer orders.

(B) Non-broker-dealer customer orders may be eligible for automatic execution at the NBBO pursuant to rule 6.87(i) while broker-dealer orders are not so eligible.

(C) Broker-dealer orders may be re-routed for manual representation when the NBBO is crossed or locked pursuant to rule 6.87(j) while non-broker-dealer customer orders would not be re-routed for manual handling in such circumstances.

(3)—(4)—No change.

(5) The Options Floor Trading Committee ("OFTC") *or its delegate consisting of two Floor Officials* shall determine the size of orders that are eligible to be executed on Auto–Ex. *The OFTC or its delegate, two Floor Officials, may approve requests of the Lead Market Makers to execute orders on Auto–Ex in sizes greater than 20 contracts.* Although the order size parameter may be changed on an issue-by-issue basis by the OFTC *or its delegate, two Floor Officials,* the maximum order size for execution through Auto–Ex is as follows:

(A) Equity Options: the maximum order size for execution through Auto–Ex for equity options is one hundred (100) contracts;

(B) Index Options: the maximum order size for execution through Auto–Ex is one hundred (100) contracts for:

(i)—(iii)—No change.

(6) The OFTC *or its delegate consisting of two Floor Officials* may increase the size of Auto–Ex eligible orders in one or more classes of multiply traded equity options to the extent that other options exchanges permit such larger-size orders in multiply traded equity options of the same class or classes to be entered into their own automated execution systems. If the OFTC *or its delegate, two Floor Officials* intend[s] to increase the Auto–Ex order size eligibility pursuant to this subsection, the Exchange will notify the Securities and Exchange Commission pursuant to section 19(b)(3)(A) of the Exchange Act.

(c)—(d)—No change.

(e) Market Maker Requirements and Eligibility. Any Exchange Member who is registered as a Market Maker and who has obtained written authorization from a clearing member is eligible to participate on the Auto–Ex system, subject to the following conditions and requirements:

(1)—No Change.

(2) All Auto–Ex trades to which a Market Maker is a party will be assigned to and clear into that Market Maker's designated account. Market Makers may designate that their Auto–Ex trades be assigned to and clear into either an individual account or a joint account in which that Market Maker is a participant. Unless exempted by [the Options Floor Trading Committee] *two Floor Officials,* only one participant in a joint account may use the account for trading in a particular option issue at one time.

(3)—(7)—No change.

(f)—(h)—No change.

(i) Auto–Ex NBBO. The Options Floor Trading Committee ("OFTC") *or its delegate, two Floor Officials* may *approve an LMM's request to* designate electronic orders in an option issue to receive automatic executions at prices reflecting the national best bid or offer ("NBBO"), provided that the OFTC *or its delegate, two Floor Officials* may *also* designate, for an option issue, that an order will default for manual representation in the trading crowd [of] *if* the order would be executed at a price that is more than one trading increment away from the PCX market price. *LMMs may determine the maximum size of orders that are eligible to receive executions at the national bid or offering price, provided that this determination is subject to the approval of the OFTC or its delegate, two Floor Officials.*

(j) Crossed or locked Markets. [The OFTC] *Two Floor Officials* may *approve an LMM's request to* designate, for an option issue, that an order will default for manual representation in the trading crowd [is] *if* the NBBO is crossed or locked.

(k)–(p)—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

purpose of and basis for the proposed rule change and discussed any comments it had received. The text of the statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The OFTC conducts general supervision of the PCX options floor and recommends to the PCX's Board of Governors the rules that it believes are necessary for members to conduct fair and orderly transactions on the trading floor.[3] Individual members of the OFTC serve as floor officials and routinely make certain *ad hoc* decisions on the trading floor pursuant to PCX rules.[4] Under PCX rules, the OFTC maintains supervision over various issues that arise with respect to Auto-Ex and exercises its discretion in resolving those issues. Currently, PCX rules assign the responsibility over some Auto-Ex determinations to the entire OFTC and the responsibility for other Auto-Ex determinations to two floor officials. Consequently, the responsibility of making day-to-day determinations with respect to Auto-Ex is sometimes exercised by the full OFTC and at other times by two floor officials. The PCX believes that this split of responsibility is inconsistent and not clearly defined in current PCX rule 6.87.

The PCX now proposes to amend PCX rule 6.87 in order to transfer the responsibility for making *ad hoc* decisions on more routine Auto-Ex matters from the OFTC to two floor officials. The OFTC currently meets semi-monthly to address system-wide Auto-Ex issues, and the PCX believes that it is impractical for the OFTC to convene on the trading floor to make *ad hoc* decisions or to grant exemptive relief on a case-by-case basis. The PCX believes that referring the case-by-case decisions to two floor officials will prove to be efficient and effective, and more in line with the practical operations of the trading floor. Specifically, the PCX proposes to assign the responsibility from the OFTC to two floor officials with respect to the following matters:

Rule 6.87(b)—Eligible orders: Under the proposed rule, two floor officials would be permitted to grant exemptions, on an issue-by-issue basis, allowing certain broker-dealer orders to be executed on Auto-Ex under specific circumstances.[5] The proposed rule further permits the OFTC to delegate to two floor officials the power to approve case-by-case requests of Lead Market Makers ("LMMs") to execute Auto-Ex orders in sizes greater than the market maker's Auto-Ex size commitment and to increase the size of eligible orders in one or more classes of multiply traded options.[6]

Rule 6.87(e)—Market Maker Requirements and Eligibility: Under the proposed rule, two floor officials may grant an exemption to the rule that only one participant in a joint account may use the account for trading in a particular option issue at one time.

Rule 6.87(i) " Auto-Ex NBBO: Under the proposed rule, the OFTC may delegate to two floor officials the power to approve an LMM's request to designate electronic orders in an option issue to receive automatic executions at prices reflecting the national best bid or offer ("NBBO") under certain circumstances. The proposed rule further provides that LMMs may determine the maximum size of orders that are eligible to receive executions at the national bid or offering price, provided that this determination is subject to the approval of the OFTC or its delegate, two floor officials.

Rule 6.87(j)—Crossed or Locked Markets: Under the proposed rules, two floor officials may approve an LMM's request to designate that an order will default for manual representation in the trading crowd if the NBBO is crossed or locked.

The proposed rule continues to grant to the OFTC the responsibility to make broad-based decisions.[7]

2. Statutory Basis

The PCX believes that the proposed rule change is consistent with section 6(b) of the Act[8] and furthers the objectives of section 6(b)(5) of the Act[9] in that it has been designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the PCX consents, the Commission will—

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–09 and should be submitted by February 7, 2003.

[3] *See* PCX Constitution article IV, section 8(a).

[4] *Id* at section 8(e); *see, e.g.*, PCX rule 6.87(h) (two Floor Officials may declare a floor-wide "fast market" under certain circumstances).

[5] *See* PCX rule 6.87(b)(1) and (2).

[6] See PCX rule 6.87(b)(5) and (6).

[7] *See, e.g.*, PCX rule 6.87(k) (assigning to the OFTC the responsibility to determine the manner in which orders entered through the Auto-Ex system will be assigned).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1103 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47148; File No. SR–Phlx–2002–79]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Application Fee and the ETP Application Fee

January 9, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to increase its current Application Fee from $200 to $350, and to delete the reference to the separate ETP Application Fee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of dues, fees and charges to increase its current Application Fee to $350 in order to generate additional revenue. The Exchange currently charges a $200 Application Fee for applications handled by the Exchange's Membership Services Department, including applications for Exchange membership and foreign currency options ("FCO") participation and for other applications including for approval as a seat lessor or as an inactive nominee.[3] The Application Fee is charged only upon the first such approval and is non-recurring; however, a lapse for six months or more necessitates the payment of an Application Fee for reapplication. For example, if a member ceases to be a member on January 1st and applies on or after July 1st of that year to once again become a member, an Application Fee will be charged. Application Fees are used to help offset Exchange clerical and administrative expenditures related to application processing including, but not limited to, regulatory background checks, registration and fingerprint card processing.[4]

Similarly, a $200 ETP Application Fee is charged to applicants for equity trading permits ("ETPs") who, at the time application is made, are not Exchange members or FCO participants.[5] The Exchange proposes to delete the $200 ETP Application Fee from the fee schedule and to simply apply the Application Fee discussed in the previous paragraph to ETP applications to the same extent the Application Fee applies to membership applications. This proposal is intended to remove unnecessary complexity and duplication from the Exchange's fee schedule in order to avoid confusion.

[3] Under Exchange rules a lessor need not be an Exchange member. *See* Phlx Rule 931, Approved Lessor.

[4] The Exchange has not designated the Application Fee as eligible for the Monthly Member Credit. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (approving SR–Phlx–2001–49). The Monthly Member Credit allows Exchange members to receive a monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other such amounts.

[5] *See* Securities Exchange Act Release No. 45523 (March 8, 2002), 67 FR 11738 (March 15, 2002).

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities, in particular, in that it fairly allocates costs associated with application processing to those individuals and firms making such applications. The proposal also simplifies the fee schedule by eliminating the reference to the separate ETP Application Fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. Phlx–2002–79 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1049 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment.

The specific amendments proposed in this notice are as follows: (1) A proposed amendment to repromulgate the temporary, emergency amendment implementing the Sarbanes-Oxley Act, Public Law. 107–204, as a permanent, non-emergency amendment, and issues for comment; (2) a proposed amendment to repromulgate the temporary, emergency amendment implementing the Bipartisan Campaign Reform Act of 2002, Public Law. 107–155, as a permanent, non-emergency amendment; (3) a proposed amendment implementing section 11009 of the 21st Century Department of Justice Appropriations Authorization Act, Public Law. 107–273, which directs the Commission to review and amend the sentencing guidelines, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence or drug trafficking crime in which the defendant used body armor; (4) a proposed amendment to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) that provides increased penalties for offenses involving oxycodone; (5) issues for comment addressing section 11008 of the 21st Century Department of Justice Appropriations Authorization Act, Public Law. 107–273, regarding an appropriate enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a federal judge, magistrate judge, or any other official described in section 111 or section 115 of title 18, United States Code; and (6) an issue for comment regarding section 225 of the Homeland Security Act of 2002 (the Cyber Security Enhancement Act of 2002), Public Law. 107–296, which directs the Commission to review and amend, if appropriate, the sentencing guidelines and policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code. Additional issues for comment regarding the 21st Century Department of Justice Appropriations Authorization Act and the Cyber Security Enhancement Act of 2002 were published in the **Federal Register** on December 18, 2002 (*see* 67 FR 77532).

DATES: Written public comment regarding the proposed amendments set forth in this notice, including public comment regarding retroactive application of any of these proposed amendments, should be received by the Commission not later than March 17, 2003.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. 994(p). The Commission also may promulgate emergency amendments if required to do so by specific congressional legislation.

The Commission seeks comment on the proposed amendments, issues for comment, and any other aspect of the sentencing guidelines, policy statements, and commentary.

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of (2) levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

The Commission also requests public comment regarding whether the Commission should specify for retroactive application to previously sentenced defendants any of the proposed amendments published in this notice. The Commission requests comment regarding which, if any, of the proposed amendments that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range).

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's website at *http://www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure, Rule 4.4.

Diana E. Murphy,

Chair.

1. Corporate Fraud

Synopsis of Proposed Amendment

This proposed amendment implements directives to the

[8] 17 CFR 200.30–3(a)(12).

Commission contained in sections 805, 905, and 1104 of the Sarbanes-Oxley Act of 2002 (the "Act"), Public Law 107–204. The directives pertain to fraud and obstruction of justice offenses and require the Commission to promulgate amendments addressing, among other things, officers and directors of publicly traded companies who commit fraud and related offenses, offenses that endanger the solvency or financial security of a substantial number of victims, fraud offenses that involve significantly greater than 50 victims, and obstruction of justice offenses that involve the destruction of evidence. Under emergency amendment authority, the Commission promulgated guideline amendments, effective January 25, 2003, to implement these directives and now seeks comment on the following proposed permanent amendment.

First, the proposed amendment addresses the directive contained in section 1104 of the Act regarding fraud offenses involving significantly greater than 50 victims by expanding the victims table in § 2B1.1(b)(2). Currently, subsection (b)(2) provides a two level enhancement if the offense involved more than 10 but less than 50 victims, or was committed through mass-marketing, or a four level enhancement if the offense involved 50 or more victims. The proposed amendment provides an additional two levels, for a total of six levels, if the offense involved 250 or more victims.

Second, the proposed amendment modifies § 2B1.1(b)(12)(B) to address directives contained in sections 805 and 1104 of the Act pertaining to securities and accounting fraud offenses and fraud offenses that endanger the solvency or financial security of a substantial number of victims. Subsection (b)(12)(B) currently provides a four level enhancement and a minimum offense level of 24 if the offense substantially jeopardized the safety and soundness of a financial institution. The proposed amendment expands the scope of this enhancement by providing two additional prongs in response to the directive. The first prong applies to offenses that substantially endanger the solvency or financial security of an organization that, at any time during the offense, was a publicly traded company or had 1,000 or more employees. This prong of the enhancement is based on a presumption that if the offense endangered the solvency or financial security of an organization that was a publicly traded company or had 1,000 or more employees, the offense similarly affected a substantial number of individual victims. As a result, the court is not required to determine whether the offense endangered the solvency or financial security of each individual victim. The second prong applies to offenses that substantially endangered the solvency or financial security of 100 or more victims, regardless of whether a publicly traded company or other organization was affected by the offense. The court could apply this prong as an alternative to the first prong in cases in which there is sufficient evidence to determine that the amount of loss suffered by individual victims of the offense substantially endangered the solvency or financial security of the victims.

The corresponding application note to the new enhancement sets forth a non-exhaustive list of factors that the court shall consider in determining whether the offense endangered the solvency or financial security of a publicly traded company or an organization with 1,000 or more employees. The note includes references to insolvency, filing for bankruptcy, substantially reducing the value of the company's stock, and substantially reducing the company's workforce among the list of factors that the court shall consider when applying the new enhancement.

The proposed amendment also modifies application of the other prong of subsection (b)(12), the financial institutions enhancement, to be consistent structurally with the new enhancement. Currently, the presence of any one of the enumerated factors automatically triggers application of the financial institutions enhancement. Under the proposed amendment, the application note to the financial institutions enhancement sets forth a non-exhaustive list of factors that the court shall consider in determining whether the offense substantially jeopardized the safety and soundness of a financial institution. The note includes references to insolvency, substantially reducing benefits to pensioners and insureds, and inability on demand to refund fully any deposit, payment, or investment, among the factors that the court shall consider when applying this enhancement.

Third, the proposed amendment addresses the directive contained in section 1104 of the Act pertaining to fraud offenses committed by officers or directors of publicly traded corporations by providing a new four level enhancement at § 2B1.1(b)(13). The enhancement applies if the offense involved a violation of securities law and, at the time of the offense, the defendant was an officer or director of a publicly traded company. The enhancement would apply regardless of whether the defendant was convicted under a specific securities fraud statute (*e.g.*, 18 U.S.C. 1348, a new offense created by the Act specifically prohibiting securities fraud) or under a general fraud statute (*e.g.*, 18 U.S.C. 1341 prohibiting wire fraud), provided that the offense involved a violation of securities law. The corresponding application note provides that in cases in which the new enhancement applies, the current enhancement for abuse of position of trust at § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) does not apply.

Pursuant to the corresponding application note, "securities law" (1) means 18 U.S.C. 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)); and (2) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in section 3(a)(47).

Fourth, the proposed amendment expands the loss table at subsection (b)(1). Currently, the loss table provides sentencing enhancements in two level increments up to a maximum of 26 levels for offenses in which the loss exceeded $100,000,000. The proposed amendment provides two additional levels to the table; an increase of 28 levels for offenses in which the loss exceeded $200,000,000, and an increase of 30 levels for offenses in which the loss exceeded $400,000,000. These proposed additions to the loss table would address congressional concern expressed in the Act regarding particularly extensive and serious fraud offenses, and would more fully effectuate increases in statutory maximum penalties, for example, the increase in the statutory maximum penalties for wire fraud and mail fraud offenses from five to 20 years (section 903 of the Act). The proposed amendment also amends the tax table in § 2T4.1 to conform to the proposed changes made to the loss table in § 2B1.1.

Also with respect to loss, the proposed amendment includes the reduction that resulted from the offense in the value of equity securities or other corporate assets among the factors the court may consider in estimating loss under subsection (b)(1).

Fifth, the proposed amendment implements the directives pertaining to obstruction of justice offenses contained in sections 805 and 1104 of the Act. First, the proposed amendment increases the base offense level in § 2J1.2 (Obstruction of Justice) from level 12 to level 14. Second, the proposed amendment adds a new two

level enhancement to § 2J1.2 that applies if the offense (1) involved the destruction, alteration, or fabrication of a substantial number of records, documents, or tangible objects; (2) involved the selection of any essential or especially probative record, document, or tangible object to destroy or alter; or (3) was otherwise extensive in scope, planning, or preparation.

Sixth, the proposed amendment addresses new offenses created by the Act. Section 1520 of title 18, United States Code, is referenced to § 2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act). This offense provides a statutory maximum of 10 years' imprisonment if the defendant certifies the publicly traded company's periodic financial report knowing that the statement does not comply with all requirements of the Securities and Exchange Commission (and 20 years' imprisonment if that certification is done willfully). The proposed amendment also expands the current cross reference in § 2E5.3(a)(2) specifically to cover fraud and obstruction of justice offenses. Accordingly, if a defendant who is convicted under 18 U.S.C. 1520 certified the financial report of a publicly traded company in order to facilitate a fraud, the proposed change to the cross reference provision would require the court to apply § 2B1.1 instead of § 2E5.3. Other new offenses are proposed to be included in Appendix A (Statutory Index) as well as the statutory provisions of the relevant guidelines.

Proposed Amendment

Section 2B1.1(b)(1) is amended by striking the period; and by adding at the end the following:

"(O) More than $200,000,000 add 28

(P) More than $400,000,000 add 30.".

Section 2B1.1(b)(2) is amended to read as follows:

"(2) (Apply the greatest) If the offense—

(A) (i) involved 10 or more victims; or (ii) was committed through mass-marketing, increase by 2 levels;

(B) involved 50 or more victims, increase by 4 levels; or

(C) involved 250 or more victims, increase by 6 levels.".

Section 2B1.1(b)(12)(B) is amended to read as follows:

"(B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; (ii) substantially endangered the solvency or financial security of an organization that, at any time during the offense, (I) was a publicly traded company; or (II) had 1,000 or more employees; or (iii) substantially endangered the solvency or financial security of 100 or more victims, increase by 4 levels.".

Section 2B1.1(b) is amended by adding at the end the following:

"(13) If the offense involved a violation of securities law and, at the time of the offense, the defendant was an officer or a director of a publicly traded company, increase by 4 levels.".

The Commentary to § 2B1.1 captioned "Statutory Provisions" is amended by inserting "1348, 1350," after "1341–1344,".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by adding after "Resources)." the following new paragraph:

" 'Equity securities' has the meaning given that term in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(11)).";

by inserting after "Secretary of the Interior." the following new paragraph:

" 'Publicly traded company' means an issuer (A) with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or (B) that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)). 'Issuer' has the meaning given that term in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).";

and by adding at the end the following:

" 'Victim' means (A) any person who sustained any part of the actual loss determined under subsection (b)(1); or (B) any individual who sustained bodily injury as a result of the offense. 'Person' includes individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 2(C) by redesignating subdivision (iv) as (v); and by adding after subdivision (iii) the following new subdivision:

"(iv) The reduction that resulted from the offense in the value of equity securities or other corporate assets.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 3 by striking "Victim and Mass-Marketing Enhancement under" in the heading and inserting "Application of"; by striking subdivision (A) and inserting the following:

"(A) Definition.—For purposes of subsection (b)(2), 'mass-marketing' means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (i) purchase goods or services; (ii) participate in a contest or sweepstakes; or (iii) invest for financial profit. 'Mass-marketing' includes, for example, a telemarketing campaign that solicits a large number of individuals to purchase fraudulent life insurance policies.";

In subdivision (B)(i)(I) by striking "described in subdivision (A)(ii) of this note;" and inserting "any victim as defined in Application Note 1;";

In subdivision (B)(ii)(IV) by inserting "at least" after "to have involved"; and in subdivision (C) by inserting "or (C)" after "(B)".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by redesignating Notes 11 through 15 as Notes 12 through 16, respectively.

The Commentary to § 2B1.1 captioned "Application Notes" is amended by striking Note 10 and inserting the following:

"10. Application of Subsection (b)(12)(B).—

(A) Application of Subsection (b)(12)(B)(i).—The following is a non-exhaustive list of factors that the court shall consider in determining whether, as a result of the offense, the safety and soundness of a financial institution was substantially jeopardized:

(i) The financial institution became insolvent.

(ii) The financial institution substantially reduced benefits to pensioners or insureds.

(iii) The financial institution was unable on demand to refund fully any deposit, payment, or investment.

(iv) The financial institution was so depleted of its assets as to be forced to merge with another institution in order to continue active operations.

(B) Application of Subsection (b)(12)(B)(ii).—

(i) Definition.—For purposes of this subsection, 'organization' has the meaning given that term in Application Note 1 of § 8A1.1 (Applicability of Chapter Eight).

(ii) In General.—The following is a non-exhaustive list of factors that the court shall consider in determining whether, as a result of the offense, the solvency or financial security of an organization that was a publicly traded company or that had more than 1000 employees was substantially endangered:

(I) The organization became insolvent or suffered a substantial reduction in the value of its assets.

(II) The organization filed for bankruptcy under Chapters 7, 11, or 13 of the Bankruptcy Code (title 11, United States Code).

(III) The organization suffered a substantial reduction in the value of its equity securities or the value of its employee retirement accounts.

(IV) The organization substantially reduced its workforce.

(V) The organization substantially reduced its employee pension benefits.

(VI) The liquidity of the equity securities of a publicly traded company was substantially endangered. For example, the company was delisted from its primary listing exchange, or trading of the company's securities was halted for more than one full trading day.

11. Application of Subsection (b)(13).—

(A) Definition.—For purposes of this subsection, 'securities law' (i) means 18 U.S.C. 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in such section.

(B) In General.—A conviction under a securities law is not required in order for subsection (b)(13) to apply. This subsection would apply in the case of a defendant convicted under a general fraud statute if the defendant's conduct violated a securities law. For example, this subsection would apply if an officer of a publicly traded company violated regulations issued by the Securities and Exchange Commission by fraudulently influencing an independent audit of the company's financial statements for the purposes of rendering such financial statements materially misleading, even if the officer is convicted only of wire fraud.

(C) Nonapplicability of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).—If subsection (b)(13) applies, do not apply § 3B1.3.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 16, as redesignated by this amendment, by striking subdivision (v); and by redesignating subdivisions (vi) and (vii) as subdivisions (v) and (vi), respectively.

The Commentary to § 2B1.1 captioned "Background" is amended in the last paragraph by inserting "(i)" after "(B)".

Section 2E5.3 is amended in the heading by adding at the end; "Destruction and Failure to Maintain Corporate Audit Records".

Section 2E5.3(a)(2) is amended to read as follows:

"(2) If the offense was committed to facilitate or conceal (A) an offense involving a theft, a fraud, or an embezzlement; (B) an offense involving a bribe or a gratuity; or (C) an obstruction of justice offense, apply § 2B1.1 (Theft, Property Destruction, and Fraud), § 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations), or § 2J1.2 (Obstruction of Justice), as applicable.".

The Commentary to § 2E5.3 captioned "Statutory Provisions" is amended by inserting "§" before "1027"; and by inserting ", 1520" after "1027".

Section 2J1.2(a) is amended by striking "12" and inserting "14".

Section 2J1.2(b) is amended by adding at the end the following:

"(3) If the offense (A) involved the destruction, alteration, or fabrication of a substantial number of records, documents, or tangible objects; (B) involved the selection of any essential or especially probative record, document, or tangible object, to destroy or alter; or (C) was otherwise extensive in scope, planning, or preparation, increase by 2 levels.".

The Commentary to § 2J1.2 captioned "Statutory Provisions" is amended by inserting ", 1519" after "1516".

Section 2T4.1 is amended in the table by striking the period and adding at the end the following:

"(O) More than $200,000,000 34

"(P) More than $400,000,000 36.".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1347 the following new lines:

"18 U.S.C. 1348 2B1.1

18 U.S.C. 1349 2X1.1

18 U.S.C. 1350 2B1.1"."

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 1512(c) by striking "(c)" and inserting "(d)".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1512(b) the following new line:

"18 U.S.C. 1512(c) 2J1.2".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1518 the following new lines:

"18 U.S.C. 1519 2J1.2

18 U.S.C. 1520 2E5.3".

Issues for Comment: Corporate Fraud

1. On January 8, 2003, the Commission promulgated a temporary, emergency amendment in response to directives contained in the Sarbanes-Oxley Act of 2002. The Commission specified an effective date of January 25, 2003, for the amendment. The amendment will remain in effect until the Commission repromulgates the emergency amendment as a permanent amendment under the Commission's general promulgation authority at 28 U.S.C. 994(p).

(A) As part of that emergency amendment, the Commission expanded the loss table in § 2B1.1(b)(1). The amendment provided two additional levels to the table; an increase of 28 levels for offenses in which the loss exceeded $200,000,000 and an increase of 30 levels for offenses in which the loss exceeded $400,000,000. The Commission requests comment regarding whether, when it repromulgates the emergency amendment as a permanent amendment, the loss table should be modified more extensively to provide increased offenses levels for offenses involving lower loss amounts. The Commission requests comment specifically on the following three options and invites public comment on any other alternative loss table:

Section § 2B1.1(b)(1) is amended to read as follows:

Option A:

"(1) If the loss exceeded $5,000, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) $5,000 or less	no increase
(B) More than $5,000	add 2
(C) More than $10,000	add 4
(D) More than $25,000	add 6
(E) More than $60,000	add 8
(F) More than $100,000	add 10
(G) More than $200,000	add 12
(H) More than $400,000	add 14
(I) More than $700,000	add 16
(J) More than $1,000,000	add 18
(K) More than $2,500,000	add 20
(L) More than $7,000,000	add 22
(M) More than $20,000,000	add 24
(N) More than $50,000,000	add 26
(O) More than $100,000,000	add 28
(P) More than $200,000,000	add 30.".

Option B:

"(1) If the loss exceeded $5,000, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) $5,000 or less	no increase
(B) More than $5,000	add 2
(C) More than $10,000	add 4

Loss (apply the greatest)	Increase in level
(D) More than $25,000	add 6
(E) More than $50,000	add 8
(F) More than $100,000	add 10
(G) More than $200,000	add 12
(H) More than $400,000	add 14
(I) More than $800,000	add 16
(J) More than $1,600,000	add 18
(K) More than $3,200,000	add 20
(L) More than $7,000,000	add 22
(M) More than $20,000,000	add 24
(N) More than $50,000,000	add 26
(O) More than $100,000,000	add 28
(P) More than $200,000,000	add 30.".

Option C:

"(1) If the loss exceeded $5,000, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) $5,000 or less	no increase
(B) More than $5,000	add 2
(C) More than $10,000	add 4
(D) More than $30,000	add 6
(E) More than $70,000	add 8
(F) More than $100,000	add 10
(G) More than $200,000	add 12
(H) More than $400,000	add 14
(I) More than $600,000	add 16
(J) More than $800,000	add 18
(K) More than $1,000,000	add 20
(L) More than $2,500,000	add 22
(M) More than $7,000,000	add 24
(N) More than $20,000,000	add 26
(O) More than $50,000,000	add 28
(P) More than $100,000,000	add 30
(Q) More than $200,000,000	add 32
(R) More than $400,000,000	add 34.".

Additionally, the Commission requests comment regarding whether, when it repromulgates the emergency amendment as a permanent amendment, it should amend § 2B1.1(a) to provide an alternative base offense level, either in conjunction with, or in lieu of, an amendment to the loss table, that would apply based on the statutory maximum term of imprisonment applicable to the offense of conviction. Specifically, the Commission requests comment on amending § 2B1.1(a) to read as follows:

"(a) Base Offense Level:

(1) 7, if the defendant was convicted of an offense referenced to this guideline for which the maximum term of imprisonment prescribed by law is [5][10][15][20] years or more; or

(2) 6, otherwise.".

(B) As part of the emergency amendment, the Commission promulgated a new enhancement at § 2B1.1(b)(13) that provides a four level enhancement if the offense involved a violation of securities law and, at the time of the offense, the defendant was an officer or director of a publicly traded company. The Commission requests comment regarding whether, when it repromulgates the emergency amendment as a permanent amendment, it should expand the scope of § 2B1.1(b)(13) to include other individuals or entities who may have a fiduciary or similar statutory duty of trust and confidence to the investor. For example, should the Commission include in § 2B1.1(b)(13) a registered broker or dealer (*see* 15 U.S.C. 78c(a)(47)), an associated person of a registered broker or dealer (*see* 15 U.S.C. 78c(18)), an investment adviser (*see* 15 U.S.C. 80b-2(a)(11)), or a person associated with an investment adviser (*see* 15 U.S.C. 80b-2(a)(17))? Additionally, should the Commission expand the scope of the enhancement to apply to entities or individuals that offer and manage securities, commodities, and futures but who are not regulated under securities law (as defined by the Commission in Application Note 11 of § 2B1.1, effective January 25, 2003)? For example, should the enhancement apply in cases involving violations of the Commodities Exchange Act (7 U.S.C. 1 *et seq.*) or other federal laws that govern the regulation of securities, commodities, and futures?

The Commission additionally requests comment regarding whether, when it repromulgates the emergency amendment as a permanent amendment, it should maintain the magnitude of the enhancement in § 2B1.1(b)(13) at four levels. If not, what should be the magnitude of the enhancement?

2. The Commission requests comment regarding whether it should provide separate guidelines for theft, property destruction, and fraud offenses that currently are referenced to § 2B1.1. If the Commission provided separate guidelines for these offenses, what components of current § 2B1.1 would be appropriate for each of the separate guidelines? Would the definition of "loss" need to be modified in any fashion as a result of providing separate guidelines? Should the Commission, in conjunction with, or in lieu of, separate guidelines, amend § 2B1.1 to provide separate loss tables for theft and fraud offenses? If so, how should the Commission determine which table would be applicable to the offenses referenced to § 2B1.1? For example, should the Commission use the pre-consolidation Appendix A references to determine which table would be applicable to an offense?

3. The Commission has received information suggesting that in certain cases involving fraud-related contempt, courts have not applied the appropriate guideline. The relevant guideline, § 2J1.1 (Contempt), directs the court to apply § 2X5.1 (Other Offenses), which in turn instructs the court to apply the "most analogous guideline." Specifically, in certain cases in which the misconduct constituting contempt is a violation of a court order enjoining fraudulent behavior, courts inappropriately may have applied the obstruction of justice guideline, § 2J1.2, instead of the guideline relating to fraud, § 2B1.1 (Theft, Property Destruction, and Fraud). The Commission requests comment regarding whether this issue should be addressed and, if so, in what manner. For example, should the Commission add an application note to § 2J1.1 that clarifies that for offenses in which the misconduct constituting contempt is a violation of a judicial order enjoining fraudulent behavior, the most analogous guideline is § 2B1.1? Should the application note more generally state that for offenses in which the misconduct constituting contempt is fraud, the most analogous guideline is § 2B1.1? In addition, the Commission has received information suggesting that the enhancement in § 2B1.1(b)(7)(C) is not always applied as appropriate in cases involving fraud-related contempt. Should the Commission clarify, possibly in the same application note discussed above, that in contempt cases involving violations of court orders enjoining fraudulent behavior, the enhancement in § 2B1.1(b)(7)(C) should apply?

4. The emergency amendment effective January 25, 2003, increased the base offense level in § 2J1.2 (Obstruction of Justice) from level 12 to level 14 and provided a new enhancement in § 2J1.2 addressing the directive relating to the destruction of evidence and offenses that are otherwise extensive in scope, planning, or preparation. The Commission requests comment regarding whether, in light of these changes to § 2J1.2, modifications also should be made to § 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness) in order to maintain proportionate sentencing between these two guidelines. For example, should the Commission increase the base offense level in § 2J1.3 or increase the magnitude of the enhancement of the current specific offense characteristics?

2. Campaign Finance

Synopsis of Proposed Amendment

This proposed amendment responds to the Bipartisan Campaign Reform Act of 2002 (the "Act"), Public Law 107–155. Under emergency amendment authority, the Commission promulgated a temporary amendment, effective January 25, 2003, to implement the Act.

The Commission now seeks comment on a proposed permanent amendment to implement the Act. The most pertinent provision for the Commission is section 314, which states:

"(a) IN GENERAL.—The United States Sentencing Commission shall—

(1) promulgate a guideline, or amend an existing guideline under section 994 of title 28, United States Code, in accordance with paragraph (2), for penalties for violations of the Federal Campaign Act of 1971 and related election laws; and

(2) submit to Congress an explanation of any guidelines promulgated under paragraph (1) and any legislative or administrative recommendations regarding enforcement of the Federal Campaign Act of 1971 and related election laws.

(b) CONSIDERATIONS.—The Commission shall provide guidelines under subsection (a) taking into account the following considerations:

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of such violations and the need for aggressive and appropriate law enforcement action to prevent such violations.

(2) Provide a sentencing enhancement for any person convicted of such violation if such violation involves—

(A) a contribution, donation, or expenditure from a foreign source;

(B) a large number of illegal transactions;

(C) a large aggregate amount of illegal contributions, donations, or expenditures;

(D) the receipt or disbursement of governmental funds; and

(E) an intent to achieve a benefit from the Federal Government.

(3) Assure reasonable consistency with other relevant directives and guidelines of the Commission.

(4) Account for aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

(5) Assure the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.".

Since section 314 directed the Commission to provide a guideline for violations of the Federal Election Campaign Act of 1971 (the "FECA") and related elections laws, examination of the FECA's criminal penalty provisions (and related criminal penalty provisions) is necessary. Section 309(d)(1) of the FECA sets forth the Act's criminal penalty provisions as follows:

(1) Violations of the FECA as Penalized Under Section 309(d)(1)(A)

Section 309(d)(1)(A) is the main penalty provision of the FECA (2 U.S.C. 437g(d)(1)(A)). As amended by section 312 of the Act, it states that "[a]ny person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure (i) aggregating $25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; or (ii) aggregating $2,000 or more (but less than $25,000) during a calendar year shall be fined under such title, imprisoned for not more than 1 year, or both.". (Before amendment by the Act, section 309(d)(1)(A) of the FECA provided for a maximum term of imprisonment of one year, or a fine, or both.)

The major violations of the FECA to which section 309(d)(1)(A) applies are:

(A) The Ban on Soft Money

Section 323 of the FECA (2 U.S.C. 441i) prohibits national political party committees (including senatorial and congressional campaign committees) from accepting soft money from any person (including an individual) after November 6, 2002.

(B) Restrictions on Hard Money Contributions

The FECA limits the amount of hard money that may be contributed to a Federal campaign. The FECA limits the amount of hard money that persons other than multicandidate political committees may contribute as follows:

(i) The contribution to a candidate for Federal office may not exceed $2,000 per election. (The limit used to be $1,000; *see* section 315(a)(1)(A) of the FECA, as amended by section 307(a)(1) of the Act.)

(ii) The contribution to a national party committee may not exceed $25,000 per calendar year. (The limit used to be $20,000; *see* section 315(a)(1)(B) of the FECA, as amended by section 307(a)(2) of the Act.)

(iii) The contribution to any other political committee, including a political action committee (PAC), may not exceed $5,000 per calendar year. (No change in the former law; *see* section 315(a)(1)(C) of the FECA.)

(iv) The contribution to a State or local political party may not exceed $10,000 per calendar year. (The limit used to be $5,000; *see* section 315(a)(1)(D) of the FECA, as amended by section 102(3) of the Act.)

The FECA limits the amount of hard money that multicandidate political committees may contribute as follows:

(i) The contribution to a candidate for Federal office may not exceed $5,000 per election. (*See* section 315(a)(2)(A) of the FECA.)

(ii) The contribution to a national party committee may not exceed $15,000 per calendar year. (*See* section 315(a)(2)(B) of the FECA.)

(iii)The contribution to any other political committee, including a political action committee (PAC), may not exceed $5,000 per calendar year. (No change in the former law; *see* section 315(a)(2)(C) of the FECA.)

(iv) The contribution to a State or local political party may not exceed $5,000 per calendar year. (*See* section 315(a)(2)(C) of the FECA.)

(C) The Ban on Contributions and Donations by Foreign Nationals

Section 319 of the FECA (2 U.S.C. 441e) makes it "unlawful for (1) a foreign national, directly or indirectly, to make (A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election; (B) a contribution or donation to a committee of a political party; or (C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)); or (2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.".

"Foreign national" is broadly defined to mean (1) a foreign principal, as defined in the Foreign Agent Registration Act of 1938 (22 U.S.C. 611(b)); or (2) an individual who is not a citizen or national of the United States or who is not lawfully admitted for permanent residence. The term "foreign prinicipal" includes foreign governments and corporations.

(D) Restrictions on Electioneering Communications

Section 304(f) of the FECA, as added by section 201 of the Act, requires any person who makes a disbursement for the direct costs of producing and airing electioneering communications exceeding $10,000 in a calendar year to file a disclosure statement to the Federal Election Commission.

Section 316 of the FECA (2 U.S.C. 441b) makes it unlawful for any national bank, a corporation organized by authority of any Federal law, or any labor union to make a contribution or

expenditure in connection with any federal election to any federal political office, or a disbursement, using non-PAC money, for an "electioneering communication".

An electioneering communication is any broadcast, cable, or satellite communication which (A) refers to a clearly identified candidate for Federal office; (B) is made within 60 days before a general election or 30 days before a primary election. The communication must be targeted to the pertinent electorate. *See* 2 U.S.C. 434(f)(3)(C).

(2) Violations of Section 316(b)

Section 309(d)(1)(B) of the FECA states that "[i]n the case of a knowing and willful violation of section 316(b)(3), the penalties set forth in this subsection shall apply to a violation involving an amount aggregating $250 or more during a calendar year." Such violation of section 316(b)(3) may incorporate a violation of section 317(b), 320, or 321.

Section 316(b)(3) of the FECA (2 U.S.C. 441b(b)(3)) makes it unlawful for a national bank, any corporation organized by authority of any law of Congress, or any labor union (A) to use a political fund to make a political contribution or expenditure from money or anything of value that was secured by physical force, job discrimination, financial reprisals (or the threat thereof), or from dues, fees, or other money required as a condition of membership in the labor organization or as a condition of employment; (B) who solicits an employee for contribution to a political fund to fail to inform the employee of the purposes of the fund at the time of the solicitation; and (C) who solicits an employee for contribution to a political fund to fail to inform the employee of his right to refuse to contribute without reprisal.

The sections which may incorporate violations of section 316(b)(3) of the FECA are section 317(b), which prohibits government contractors from making contributions of currency in excess of $100 for any candidate for Federal office, section 320 which prohibits a person from making a contribution in the name of another or accepting a contribution so made, and section 321, which prohibits any person from making contributions of currency in excess of $100 for any candidate for Federal office.

(3) Fraudulent Misrepresentations Under Section 322

Section 309(d)(1)(C) of the FECA states that "[i]n the case of a knowing and willful violation of section 322, the penalties set forth in this subsection shall apply without regard to whether the making, receiving, or reporting of a contribution or expenditure of $1,000 or more is involved.".

Section 322(a) of the FECA (2 U.S.C. 441h) states that "[n]o person who is a candidate for Federal office or an employee or agent of such a candidate shall (1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).".

Section 322(b) states that "[n]o person shall (1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).".

(4) Conduit Contributions under Section 320

Section 309(d)(1)(D) of the FECA states that "[a]ny person who knowingly and willfully commits a violation of section 320 involving an amount aggregating more than $10,000 during a calendar year shall be (i) imprisoned for not more than 2 years if the amount is less than $25,000 (and subject to imprisonment under subparagraph (A) if the amount is $25,000 or more); (ii) fined not less than 300 percent of the amount of the violation and not more than the greater of (I) $50,000; or (II) 1,000 percent of the amount involved in the violation; or (iii) both imprisoned under clause (i) and fined under clause (ii).".

Section 320 of the FECA (2 U.S.C. 441f) states that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.".

In addition to changes made to the FECA, section 302 of the Act amended section 607 of title 18, United States Code, to make it "unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person.". The penalty is a fine of not more than $5,000, not more than 3 years or imprisonment, or both.

In order to implement the directive in the Act, this proposed amendment expands the scope of Chapter Two, Part C (Offenses Involving Public Officials) by providing within that Part a new guideline for offenses under the FECA and related offenses. A new guideline, rather than amendment of an existing guideline, seems more appropriate to implement the directive. Currently there exists no guideline which already incorporates the elements of the FECA and related offenses, although the fraud guideline in particular (§ 2B1.1) and the public corruption guidelines to a lesser degree (Chapter Two, Part C) provide some overlap in the elements of the offense and aggravating conduct. In addition, the enhancements required to be added by the directive in the Act would fit nicely into a guideline devoted solely to campaign finance offenses but would prove unwieldy if added to the fraud or public corruption guidelines, which cover so many other non-campaign finance offenses.

The proposed amendment provides for a base offense level of level 8. The statutorily authorized maximum term of imprisonment for the conduct covered by the proposed guideline was raised by the Act from one year for all such offenses to two years for some offenses and five years for others. The base offense level is set at level 8 in recognition of the relative similarity of these offenses to fraud offenses covered by § 2B1.1 and public corruption offenses covered by Chapter Two, Part C. A base offense level of level 8 both insures proportionality with relatively similar offenses and permits various sentencing enhancements directed by the Act to operate as well.

The proposed amendment also creates a number of specific offense characteristics in response to the directive in section 314(b) of the Act. First, the directive requires the Commission to provide an enhancement if the offense involved a large aggregate amount of illegal contributions, donations, or expenditures. To address

this consideration, the proposed amendment provides a specific offense characteristic, at subsection (b)(1), that uses the fraud loss table in § 2B1.1 to incrementally increase the offense level according to the dollar amount of the illegal transactions. This approach would foster proportionality with related guidelines, notably the fraud guideline and the public corruption guidelines (which also reference the fraud loss table) and would provide incremental, rather than a flat, punishment according to the dollar amount involved in the offense.

The proposed amendment provides commentary to explain that "illegal transactions" include any conduct prohibited by the FECA and related election laws and, with respect to dollar amounts limited by the FECA, only those amounts that exceed the amount a person may legitimately contribute, solicit, or expend. The proposed amendment also provides references in the definition to the FECA's definitions of "contribution" and "expenditure".

Second, the proposed amendment provides a two part enhancement at subsection (b)(2), providing for the greater of a two level enhancement if the offense involved a contribution, donation, or expenditure from a foreign national and a four level enhancement if the offense involved a contribution, donation, or expenditure from a foreign government or organization.

Third, the proposed amendment provides an alternative pronged enhancement at subsection (b)(3) if (1) the offense involved a donation, contribution, or expenditure, disbursement, or receipt of government funds, or (2) the defendant committed the offense for the purpose of achieving a specific, identifiable nonmonetary Federal benefit. The proposed amendment defines "governmental funds" to mean any Federal, State, or local funds. It is anticipated that this enhancement will apply in situations such as using governmental funds awarded in a contract to make a donation or contribution. The FECA itself addresses this type of situation but in very few places. For example, section 317 of the FECA, 2 U.S.C. 441c, prohibits any person who enters into a contract with the United States for the rendition of services, the provision of materials, supplies, or equipment, or the selling of any land or property to the United States, if the payment from the United States is to be made in whole or in part from funds appropriated from Congress and before completion of or negotiation for the contract, to make or solicit a contribution of money or anything of value to a political party, committee, or candidate for public office or to any person for a political purpose. (This provision does not prohibit, however, the establishment of a segregated account to be used for political purposes.) The concern behind this provision of the FECA, therefore, is to prevent the use of federal funds for political purposes. The same concern pertains to State and local funds as well. It is also anticipated that this enhancement will apply in situations in which a State or local elected official uses State or local resources to finance his or her campaign for Federal office.

Commentary is provided for the alternative prong in subsection (b)(3)(B) on the intent to achieve a specific, identifiable nonmonetary Federal benefit to make clear that the intent of this prong is not to enhance the sentence for seeking heightened access to public officials generally; rather, the enhancement provides greater punishment for defendants who are seeking some specific benefit such as a Presidential pardon or information proprietary to the government.

Fourth, the amendment proposes to add an enhancement at subsection (b)(4) if the defendant engaged in thirty or more illegal transactions during the course of the offense, whether or not the defendant was convicted of the conduct. This enhancement is added in response to the directive to provide an enhancement if the offense involved a large number of illegal transactions.

Fifth, the amendment proposes to add an enhancement at subsection (b)(5) if the contribution, donation, or expenditure was obtained through, or a solicitation was made by, intimidation, threat of harm, including pecuniary harm, or coercion.

Sixth, the proposed amendment provides a cross reference in the new guideline to either the bribery guideline or the gratuity guideline, if the offense involved such conduct and the resulting offense level is greater than that determined under the new guideline.

The proposed amendment also amends the guideline on fines for individual defendants, § 5E1.2, to set forth the fine provisions unique to FECA. This part of the amendment also provides that the defendant's participation in a conciliation agreement with the Federal Election Commission pursuant to section 309 of the FECA may be a potentially legitimate factor for the court to consider in evaluating where to sentence an offender within the presumptive fine guideline range.

The proposed amendment also includes counts under this proposed guideline under the grouping provision under § 3D1.2(d). Finally, the Statutory Index is amended to incorporate these offenses.

Proposed Amendment

Chapter Two, Part C is amended in the heading by adding at the end "AND VIOLATIONS OF FEDERAL ELECTION CAMPAIGN LAWS".

Chapter Two, Part C is amended by striking the introductory commentary in its entirety.

Chapter Two, Part C is amended by adding at the end the following new guideline and accompanying commentary:

"§ 2C1.8. Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property

(a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) If the value of the illegal transactions exceeded $5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) (Apply the greater) If the offense involved, directly or indirectly, an illegal transaction made by or received from—

(A) a foreign national, increase by 2 levels; or

(B) a government of a foreign country, increase by 4 levels.

(3) If (A) the offense involved the contribution, donation, solicitation, expenditure, disbursement, or receipt of governmental funds; or (B) the defendant committed the offense for the purpose of obtaining a specific, identifiable non-monetary Federal benefit, increase by 2 levels.

(4) If the defendant engaged in 30 or more illegal transactions, increase by 2 levels.

(5) If the offense involved a contribution, donation, solicitation, or expenditure made or obtained through intimidation, threat of pecuniary or other harm, or coercion, increase by 4 levels.

(c) Cross Reference

(1) If the offense involved a bribe or gratuity, apply § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) or § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate, if the resulting offense level is greater than the offense level determined above.

Commentary

Statutory Provisions: 2 U.S.C. 437g(d)(1), 439a, 441a, 441a-1, 441b, 441c, 441d, 441e, 441f, 441g, 441h(a), 441i, 441k; 18 U.S.C. 607. For additional provision(s), *see* Statutory Index (Appendix A).

Application Notes

1. Definitions.—For purposes of this guideline:

'Foreign national' has the meaning given that term in section 319(b) of the Federal Election Campaign Act of 1971, 2 U.S.C. 441e(b).

'Government of a foreign country' has the meaning given that term in section 1(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(e)).

'Governmental funds' means money, assets, or property, of the United States government, of a State government, or of a local government, including any branch, subdivision, department, agency, or other component of any such government. 'State' means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa. 'Local government' means the government of a political subdivision of a State.

'Illegal transaction' means (A) any contribution, donation, solicitation, or expenditure of money or anything of value, or any other conduct, prohibited by the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq;* (B) any contribution, donation, solicitation, or expenditure of money or anything of value made in excess of the amount of such contribution, donation, solicitation, or expenditure that may be made under such Act; and (C) in the case of a violation of 18 U.S.C. 607, any solicitation or receipt of money or anything of value under that section. The terms 'contribution' and 'expenditure' have the meaning given those terms in section 301(8) and (9) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8) and (9)), respectively.

2. Application of Subsection (b)(3)(B).—Subsection (b)(3)(B) provides an enhancement for a defendant who commits the offense for the purpose of achieving a specific, identifiable non-monetary Federal benefit that does not rise to the level of a bribe or a gratuity.

Subsection (b)(3)(B) is not intended to apply to offenses under this guideline in which the defendant's only motivation for commission of the offense is generally to achieve increased visibility with, or heightened access to, public officials. Rather, subsection (b)(3)(B) is intended to apply to defendants who commit the offense to obtain a specific, identifiable non-monetary Federal benefit, such as a Presidential pardon or information proprietary to the government.

3. Application of Subsection (b)(4).—Subsection (b)(4) shall apply if the defendant engaged in any combination of 30 or more illegal transactions during the course of the offense, whether or not the illegal transactions resulted in a conviction for such conduct.

4. Departure Provision.—In a case in which the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted.".

Section 3D1.2(d) is amended by inserting ", 2C1.8" after "2C1.7".

The Commentary to § 5E1.2 captioned "Application Notes" is amended in the second sentence of Note 5 by striking "and" after "Control Act;" and by inserting before the period at the end the following:

"; and 2 U.S.C. 437g(d)(1)(D), which authorizes, for violations of the Federal Election Campaign Act under 2 U.S.C. 441f, a fine up to the greater of $50,000 or 1,000 percent of the amount of the violation, and which requires, in the case of such a violation, a minimum fine of not less than 300 percent of the amount of the violation.

There may be cases in which the defendant has entered into a conciliation agreement with the Federal Election Commission under section 309 of the Federal Election Campaign Act of 1971 in order to correct or prevent a violation of such Act by the defendant. The existence of a conciliation agreement between the defendant and Federal Election Commission, and the extent of compliance with that conciliation agreement, may be appropriate factors in determining at what point within the applicable fine guideline range to sentence the defendant, unless the defendant began negotiations toward a conciliation agreement after becoming aware of a criminal investigation".

Appendix A (Statutory Index) is amended by inserting before the line referenced to 7 U.S.C. 6 the following new lines:

"2 U.S.C. 437g(d) 2C1.8
2 U.S.C. 439a 2C1.8
2 U.S.C. 441a 2C1.8
2 U.S.C. 441a-1 2C1.8
2 U.S.C. 441b 2C1.8
2 U.S.C. 441c 2C1.8
2 U.S.C. 441d 2C1.8
2 U.S.C. 441e 2C1.8
2 U.S.C. 441f 2C1.8
2 U.S.C. 441g 2C1.8
2 U.S.C. 441h(a) 2C1.8
2 U.S.C. 441i 2C1.8
2 U.S.C. 441k 2C1.8".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 597 the following new line:

"18 U.S.C. 607 2C1.8".

3. Use of Body Armor in a Crime of Violence or Drug Trafficking Crime

Synopsis of Proposed Amendment

In December 2002, the Commission published general issues for comment (*see* 67 FR 77532) regarding how to implement the directive in section 11009 of the 21st Century Department of Justice Appropriations Authorization Act (the "Act"), Public Law 107–273. The directive requires the Sentencing Commission to "review and amend the Federal sentencing guidelines and the policy statements of the Commission, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence (as defined in section 16 of title 18, United States Code) or drug trafficking crime (as defined in section 924(c) of title 18, United States Code) (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) in which the defendant used body armor." The Act further states that it is the sense of Congress that any such enhancement should be at least two levels.

In response to the directive, the proposed amendment provides for a new adjustment at § 3A1.5 (Use of Body Armor) for the use of body armor in an offense involving a crime of violence or drug trafficking crime. A proposed application note provides definitions of "crime of violence", "drug trafficking crime", and "body armor".

The definitions of "crime of violence" and "drug trafficking crime" are those required by the directive. Consequently, the definition of "drug trafficking crime" (taken from 18 U.S.C. 924(c)(2)) includes any felony punishable under the Controlled Substances Act, and the definition of "crime of violence" (taken from 18 U.S.C. 16) includes offenses that involve the use or attempted use of physical force against property as well as persons. Both of these definitions are somewhat broader than the definitions of "crime of violence" and drug trafficking offense" used in a number of other guidelines. The definition of "body armor" is borrowed from the statutory definition provided in 18 U.S.C. 921(a)(35).

Background commentary is proposed to provide a cite for the directive

underpinning the new guideline. A conforming amendment is proposed for the heading of Part A of Chapter Three to accommodate the expanding scope of that part.

An issue for comment follows the proposed amendment requesting comment regarding whether the adjustment for use of body armor should be defendant based or relevant conduct based.

Proposed Amendment

Chapter Three, Part A, is amended in the heading by striking "VICTIM-RELATED" and inserting "GENERAL".

Chapter Three, Part A, is amended by adding at the end the following new guideline:

"§ 3A1.5. Use of Body Armor in Drug Trafficking Offenses and Crimes of Violence

If the offense (1) was a drug trafficking crime or a crime of violence; and (2) involved the use of body armor, increase by [2][4][6] levels.

Commentary

Application Note:

1. Definitions.—For purposes of this guideline:

'Body armor' means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment. *See* 18 U.S.C. 921(a)(35).

'Crime of violence' has the meaning given that term in 18 U.S.C. 16.

'Drug trafficking crime' has the meaning given that term in 18 U.S.C. 924(c)(2).

Background: This section implements the directive in the James Guelff and Chris McCurley Body Armor Act of 2002 (section 11009(d) of the 21st Century Department of Justice Appropriations Authorization Act, Public Law. 107–273).".

Issue for Comment

The proposed amendment provides an increase if the offense was a drug trafficking crime or a crime of violence and involved the use of body armor. The Commission requests comment regarding whether the adjustment for body armor should be based on all conduct within the scope of relevant conduct, as proposed, or based on the actions of only the defendant; *i.e.*, should the enhancement apply only if the defendant used or directed the use of body armor, rather than if the offense generally involved the use of body armor? Alternatively, should the enhancement provide a two level increase if the offense generally involved the use of body armor and a heightened increase (*e.g.*, 4 or 6 levels) if the defendant used or directed the use of body armor? If so, what should be the extent of the increase?

4. Oxycodone

Synopsis of Proposed Amendment

This proposed amendment responds to proportionality issues in the sentencing of oxycodone trafficking. Oxycodone is an opium alkaloid found in certain prescription pain relievers such as Percocet and Oxycontin. This prescription drug is generally sold in pill form, and the sentencing guidelines currently establish penalties for oxycodone trafficking based on the entire weight of the pill. The proportionality issues arise because of the formulations of the different medicines and because different amounts of oxycodone are found in pills of identical weight.

As an example of the first issue, the drug Percocet contains the non-prescription pain reliever acetaminophen in addition to oxycodone. The weight of the oxycodone component accounts for a very small proportion of the total weight of the pill. This is in contrast to Oxycontin in which the weight of the oxycodone accounts for a substantially greater proportion of the weight of the pill. For example, a Percocet pill containing five milligrams of oxycodone weighs approximately 550 milligrams (oxycodone accounting for 0.9 percent of the total weight of the pill) while the weight of an Oxycontin pill containing 10 milligrams of oxycodone is approximately 135 milligrams (oxycodone accounting for 7.4 percent of the total weight). Consequently, at sentencing, the same five year sentence results from the trafficking of 364 Percocet pills or 1,481 Oxycontin pills. Additionally, the total amount of the narcotic oxycodone involved in this example is vastly different depending on the drug. The 364 Percocets produce 1.6 grams of actual oxycodone while the 1,481 Oxycontin pills produce 14.8 grams of oxycodone.

The second issue results from differences in the formulation of Oxycontin. Three different amounts of oxycodone (10, 20, and 40 milligrams) are contained in pills of identical weight (135 milligrams). As a result, an individual trafficking in a particular number of Oxycontin pills would receive the same sentence regardless of the amount of oxycodone contained in the pills.

To remedy these proportionality issues it is proposed that sentences for oxycodone offenses be calculated using the weight of the actual oxycodone instead of the current mechanism of calculating the weight of the entire pill. Currently, the Drug Equivalency Tables in § 2D1.1 equate 1 gram of oxycodone mixture to 500 grams of marihuana. The proposal would equate 1 gram of actual oxycodone to 6,700 grams of marihuana. This equivalency would keep penalties for offenses involving 10 milligrams of Oxycontin identical to current levels but would increase penalties for all other doses of Oxycontin. At the same time, penalties for Percocet would be substantially reduced.

Proposed Amendment

Section 2D1.1 is amended in subdivision (B) of the "*Notes to Drug Quantity Table" by adding at the end the following new paragraph:

"The term 'Oxycodone (actual)' refers to the weight of the controlled substance, itself, contained in the pill or capsule.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 9 by striking "or methamphetamine" and inserting "methamphetamine, or oxycodone".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the Drug Equivalency Tables in the subdivision captioned "Schedule I or II Opiates*" by striking "1 gm of Oxycodone = 500 gm of marihuana" and inserting "1 gm of Oxycodone (actual) = 6700 gm of marihuana".

5. The 21st Century Department of Justice Appropriations Authorization Act

Issue for Comment

In December 2002, the Commission published general issues for comment (*see* 67 FR 77532) on implementation of directives in the 21st Century Department of Justice Appropriations Authorization Act (the "Act"), Pub. L. 107–273. The Commission seeks additional public comment on the issues pertaining to section 11008(e) of the Act, as set forth herein. Section 11008(e) directs the Commission as follows:

"(1) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the commission, if appropriate, to provide an appropriate sentencing

enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in section 111 or 115 of title 18, United States Code.

(2) FACTORS FOR CONSIDERATION.—In carrying out this section, the United States Sentencing Commission shall consider, with respect to each offense described in paragraph (1)—

(A) any expression of congressional intent regarding the appropriate penalties for the offense;

(B) the range of conduct covered by the offense;

(C) the existing sentences for the offense;

(D) the extent to which sentencing enhancements within the Federal guidelines and the authority of the court to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense;

(E) the extent to which the Federal sentencing guideline sentences for the offense have been constrained by statutory maximum penalties;

(F) the extent to which the Federal sentencing guidelines for the offense adequately achieve the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(G) the relationship of the Federal sentencing guidelines for the offense to the Federal sentencing guidelines for other offenses of comparable seriousness;

(H) any other factors that the Commission considers to be appropriate.".

Section 111 of title 18, United States Code, makes it unlawful to forcibly assault, resist, oppose, impede, intimidate, or interfere with (A) any person designated in section 1114 of title 18 (*i.e.*, any officer or employee of the United States, including any member of the uniformed services in the performance of that person's official duties, or any person assisting that person in the performance of those official duties); or (B) any person who formerly served as a person designated in section 1114 on account of that person's performance of official duties during the term of service.

The Act increased the statutory maximum term of imprisonment for offenses under 18 U.S.C. 111 from three years to eight years; and for the use of a dangerous weapon or inflicting bodily injury in the commission of an offense under 18 U.S.C. 111, from ten to 20 years.

Section 115 of title 18, United States Code, makes it unlawful to (A) assault, kidnap, or murder, attempt or conspire to kidnap or murder, or threaten to assault, kidnap, or murder, a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114; or (B) threaten to assault, kidnap, or murder a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114; in order to impede, intimidate, or interfere with the performance of the official's official duties.

Section 115 of title 18, United States Code, also makes it unlawful to assault, kidnap, or murder, attempt or conspire to kidnap or murder, or threaten to assault, kidnap, or murder, a former United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114, or a member of the former official's immediate family, in retaliation for the performance of the official's duties during the official's term of service.

The Act increased the maximum terms of imprisonment for threatened assaults under 18 U.S.C. 115 from three to six years, and for all other threats under 18 U.S.C. 115, from five to ten years.

In addition, the Act also increased the maximum term of imprisonment under 18 U.S.C. 876 from five years to 10 years for mailing a communication to a United States judge, a Federal law enforcement officer, or an official covered by 18 U.S.C. 1114 containing a threat to kidnap or injure any person (the penalty remained five years for mailing such a communication to any other person).

The Act also increased the maximum term of imprisonment under 18 U.S.C. 876 from two years to 10 years for mailing, with the intent to extort anything of value, a communication to a United States judge, a Federal law enforcement officer, or an official covered by 18 U.S.C. 1114 containing a threat to injury another's property or reputation or a threat to accuse another of a crime (the penalty remained two years for mailing such a communication to any other person). The other statutory maximum terms of imprisonment for offenses under 18 U.S.C. 876 were not changed by the Act. Mailing threatening communications containing a ransom demand for the release of a kidnapped person or containing a threat to kidnap with the intent to extort something of value remain punishable by up to 20 years' imprisonment.

The Act contained a number of other miscellaneous provisions directly or indirectly affecting the guidelines, as described below.

The Commission requests comment on the following:

1. Should the Commission provide an enhancement in the assault guidelines for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in 18 U.S.C. 111 or 115? If so, what would be an appropriate increase for such enhancement? Are there additional, related enhancements that the Commission should provide in the assault guidelines, particularly given the directive to consider providing sentences at or near the statutory maximum for the most egregious cases? Would such an enhancement be appropriate for other Chapter Two guidelines that cover these offenses, such as the guidelines covering attempted murder (§ 2A2.1), kidnapping (§ 2A4.1), and threatening communications (§ 2A6.1)? Should the Commission increase the three level adjustment in § 3A1.2 (Official Victims), and if so, what should be the extent of the adjustment (*e.g.*, should the adjustment at § 3A1.2 be [4][5][6] levels)?

2. Do the current base offense levels in each of the assault and threatening communications guidelines provide adequate punishment for the covered conduct? If not, what would be appropriate base offense levels for §§ 2A2.2, 2A2.3, 2A2.4, and 2A6.1? For example, should the base offense level for offenses involving obstructing or impeding officers under § 2A2.4 be level 15, the same as for aggravated assault, and contain the same enhancements as the aggravated assault guideline, so that an assault of an official unaccompanied by serious bodily injury would nevertheless be severely punished?

3. Should the Commission consider more comprehensive amendments to the assault guidelines as part of, or in addition to, its response to the directives? For example, should the Commission consolidate §§ 2A2.3 and 2A2.4? Should the Commission amend § 2A2.3(b)(1) to provide a two level enhancement for bodily injury? Some commentators have argued that such an amendment would bring the minor and aggravated assault guidelines more in line with one another because there may be cases in which an assault that does not qualify as an aggravated assault

under § 2A2.2 nevertheless involves bodily injury. Are there any other application issues pertaining to the assault guidelines that the Commission should address?

4. Section 3001 of the Act amends 18 U.S.C. 1512 (relating to tampering with a witness, victim, or an informant) in a number of ways. Section 3001 expands the scope of section 1512 to cover the use of physical force or threat of physical force with the intent to influence, delay, or prevent the testimony of any person in an official proceeding, or induce any person to withhold testimony or alter, destroy, mutilate, or conceal an object with the intent to impair the integrity or availability of the object for use in an official proceeding.

Section 3001 also increases the statutory maximum penalties for violations of section 1512 that involve the use or attempted use of physical force from 10 years' to 20 years' imprisonment (statutory maximum term of imprisonment under section 1512 is 20 years for attempted murder and 10 years for the threatened use of physical force). Additionally, conspiracy to commit an offense under section 1512 or under 18 U.S.C. 1513 (relating to retaliating against a witness, victim, or an informant) are now subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

The Commission, as part of the emergency amendment implementing the Sarbanes-Oxley Act, increased the base offense level in § 2J1.2 (Obstruction of Justice) from level 12 to level 14 (*see* Proposed Amendment 1, proposing to repromulgate the temporary, emergency amendment as a permanent amendment). The Commission requests comment regarding whether the offense levels in § 2J1.2 further should be increased in response to the maximum statutory penalties provided for these offenses, and if so, what should be the extent of the increase? For example, should the Commission increase further the base offense level in § 2J1.2 and, if so, to what offense level? Should the Commission increase the magnitude of the eight level enhancement at subsection (b)(1) for offenses that involve causing or threatening to cause physical injury to a person, or property damage, in order to obstruct the administration of justice? Alternatively, should the Commission increase the magnitude of the enhancement at subsection (b)(1) only for offenses which involve actual physical injury to a person? In addition, are higher offense levels needed specifically for cases under section 1513 involving particularly severe retaliation against government witnesses, or is the availability of departures for such cases sufficient? *See, e.g., United States* v. *Levy*, 250 F.3d 1015 (6th Cir. 2001). Should an enhancement be added to § 3C1.1 (Obstructing or Impeding the Administration of Justice) for threatening, intimidating, tampering with, or retaliating against, a witness, and if so, what should be the extent of the enhancement?

5. The Act contains a number of miscellaneous provisions that may make amendments to the guidelines appropriate as follows:

(A) Section 14102 amends section 3 of the Sherman Act (15 U.S.C. 3) by providing a maximum fine of $10,000,000 for any corporation, and a maximum fine of $350,000 and three years' imprisonment for any person who monopolizes, or attempts to monopolize, or combines or conspires with any other person or persons, to monopolize any part of the trade or commerce in or between any of the States, the District of Columbia, the territories of the United States, and foreign states. Should the Commission provide a Statutory Index reference to § 2R1.1 (Bid-Rigging, Price-Fixing or Market Allocation Agreements Among Competitors) for this offense? In addition, an amendment to Application Note 5 of § 5E1.2 (Fines for Individual Defendants) may be appropriate to incorporate the special fine provision.

(B) Section 3005 of the Act amends 21 U.S.C. 841 (relating to drug penalties) and 960 (relating to drug import and export penalties) to clarify that supervised release requirements for violations of those sections apply notwithstanding 18 U.S.C. 3583. An amendment to § 5D1.2 (Term of Supervised Release) may be appropriate to incorporate this provision.

(C) Section 2103 of the Act amends 18 U.S.C. 3565(b) and 3583(g) to require mandatory revocation of probation and supervised release, respectively, for testing positive, as part of drug testing, of illegal controlled substances more than three times over the course of one year. Amendments to § 7B1.3 (Revocation of Probation or Supervised Release) may be appropriate to incorporate this provision. In addition, the Commission requests comment regarding whether § 7B1.3 should be amended to address more comprehensively other provisions requiring mandatory revocation of probation of supervised release for certain violations.

(D) Section 3007 of the Act made a technical amendment to 18 U.S.C. 3583(d) to clarify that restitution is an appropriate condition of supervised release. An amendment to § 5D1.3 (Conditions of Supervised Release) may be appropriate to incorporate this provision.

6. Cybercrime

Issue for Comment

On December 18, 2002, the Commission published a general issue for comment regarding section 225 of the Homeland Security Act of 2002 (the Cyber Security Enhancement Act of 2002), Public Law 107–296. *See* 67 FR 77532. The Commission seeks additional public comment on more detailed questions pertaining to section 225 as set forth herein.

Section 225 directs the Commission to review and amend, if appropriate, the sentencing guidelines and policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code, to ensure that the sentencing guidelines and policy statements reflect the serious nature of such offenses, the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses.

The directive also includes a number of factors for the Commission to consider, including the potential and actual loss resulting from the offense, the level of sophistication and planning involved in the offense, whether the offense was committed for purposes of commercial advantage or private financial benefit, whether the defendant acted with malicious intent to cause harm in committing the offense, the extent to which the offense violated the privacy rights of individuals harmed, whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice, whether the violation was intended to, or had the effect of, significantly interfering with or disrupting a critical infrastructure, and whether the violation was intended to, or had the effect of, creating a threat to public health or safety, or injury to any person.

Section 1030 of title 18, United States Code, proscribes a variety of conduct relating to the misuse of computers, including conduct relating to the obtaining and communicating of restricted information (*see* 18 U.S.C. 1030(a)(1)), the unauthorized accessing of information from financial institutions, the United States government and "protected computers" (*see* 18 U.S.C. 1030(a)(2)), the unauthorized accessing of a government computer (*see* 18 U.S.C. 1030(a)(3)),

fraud (*see* 18 U.S.C. 1030(a)(4)), the damaging of a protected computer resulting in certain types of specified harms (*see* 18 U.S.C. 1030(a)(5)), trafficking in passwords (*see* 18 U.S.C. 1030(a)(6)), and extortionate threats to cause damage to a "protected computer" (*see* 18 U.S.C. 1030(a)(7)). The statutory maximums for violations of section 1030 range from one year to life, depending upon the subsection violated and, in certain cases, whether certain aggravating factors are present. For example, although a violation of subsection (a)(2) generally carries a statutory maximum term of imprisonment of one year, if the offense was committed for purposes of commercial advantage or private financial gain (or one of the other aggravating conditions is met) the statutory maximum term of imprisonment is five years (*see* 18 U.S.C. 1030(c)(2)(B)). Section 1030 also provides heightened penalties for subsequent offenses. Currently Appendix A (Statutory Index) references convictions of section 1030 to §§ 2B1.1 (Theft, Fraud, and Property Destruction), 2B2.3 (Trespass), 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), and 2M3.2 (Gathering National Defense Information) depending on the conduct involved in the offense.

In response to the directive, the Commission is required to consider the eight identified factors and "the extent to which the guidelines may or may not account for them." Certain factors that the Commission must consider relate to, and in some instances mirror, either aggravating factors that result in higher statutory penalties under 18 U.S.C. 1030, or elements of certain offenses under 18 U.S.C. 1030. For example, the Commission has been directed to consider "whether the offense was committed for purposes of commercial advantage or private financial benefit." As noted above, this factor is specifically referenced in the statute as an aggravating factor with respect to violations of section 1030(a)(2). The current guidelines, however, do not provide for enhanced punishment for violations of section 1030(a)(2) that involve this aggravated purpose. Similarly, the Commission has been directed to consider "whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice." Violations of section 1030(a)(5) require proof of one of five specified harms, one of which is "damage affecting a computer system used by or for a government entity in furtherance of the administration of justice, national defense, or national security." (*see* 18 U.S.C. 1030(a)(5)(A) and (B)). The guidelines currently do not provide for an enhanced punishment when this type of harm results from a violation of section 1030(a)(5). Certain other factors that the Commission must consider already may be taken into account, in part or in whole, by the existing guidelines. For example, one factor that the Commission must consider is "the level of sophistication and planning involved in the offense." Currently, § 2B1.1(b)(8)(C) provides a two level increase and a minimum offense level of 12 for offenses that involve sophisticated means. This factor, therefore, may be at least partially accounted for by the existing guidelines.

The Commission requests comment regarding how it should address the directive and the extent to which the eight factors have or have not been accounted for by the guidelines. In addition, the Commission requests comment regarding whether it should provide enhancements in any of the guidelines that pertain to violations of 18 U.S.C. 1030 (*e.g.*, §§ 2B1.1, 2B2.3, 2B3.2, and 2M3.2) based on any of the factors listed in the directive? If so, which factors should be the bases for enhancements? What level enhancements (*e.g.*, [2] or [4] levels) would be appropriate and should the Commission provide a minimum offense level for any enhancement? Should any of the factors listed in the directive be identified in the guidelines as encouraged bases for upward departure? If so, for which violations of section 1030 and under which guidelines? Should any such enhancements or departure provisions be limited so as to apply only to specific violations of 18 U.S.C. 1030, and if so, which ones?

Alternatively, should the Commission structure an enhancement in any of the relevant guidelines to apply to convictions under 18 U.S.C. 1030, in general, or under certain subsections of section 1030 that the Commission may identify as warranting increased punishment? If any such enhancement is limited to certain subsections, what subsections should trigger that enhancement? Should the Commission provide an enhancement in the relevant guidelines that applies based on a combination of a conviction under section 1030 and certain serious conduct (*e.g.*, conduct relating to one of the eight factors contained in the directive, an aggravating factor resulting in an increased statutory maximum under the statute, or a particular element of an offense under section 1030) that may be pertinent to the particular guideline under which the defendant is being sentenced? For any enhancement that the Commission may promulgate in response to this directive, what level enhancement would be appropriate (*e.g.*, [2] [4] levels)?

The Cyber Security Enhancement Act of 2002 also increased the statutory maximum term of imprisonment for convictions under 18 U.S.C. 1030(a)(5)(A)(i) (intentional damage to a protected computer) when certain aggravating conduct is present. The statute now provides a maximum term of imprisonment of twenty years' imprisonment if the offender knowingly or recklessly caused or attempted to cause serious bodily injury and provides a statutory maximum of life imprisonment if the offender knowingly or recklessly caused or attempted to cause death. The Commission requests comment regarding whether the current enhancement for an offense involving a conscious or reckless risk of death or serious bodily injury in § 2B1.1(b)(11), which provides a two level enhancement and a minimum offense level of 14, is sufficient in light of the increased statutory maximum terms of imprisonment for convictions with aggravating conduct under 18 U.S.C. 1030(a)(5)(A)(i). Alternatively, should the Commission provide an upward departure for such convictions? Should the Commission provide a cross reference in § 2B1.1 to the appropriate Chapter Two, Part A, Subpart 1 (Homicide) guideline in order to account for 18 U.S.C. 1030(a)(5)(A)(i) offenses that result in death?

Application Note 2(A)(v)(III) of § 2B1.1 provides a special rule of construction regarding offenses involving unlawful access to a protected computer. That rule states that for such offenses, actual loss includes the pecuniary harm of reasonable costs to the victim of conducting a damage assessment and restoring the system and data to their condition prior to the offense, and any lost revenue due to interruption of service. This rule differs slightly from the statutory definition of loss provided in 18 U.S.C. 1030(e)(11), which was amended by the USA PATRIOT Act, Public Law 107–56, to include, in addition to the factors already included in the guidelines, the cost of responding to an offense, the cost of restoring the program or information to its condition prior to the offense, and any cost incurred or other consequential damages incurred because of interruption of service. Should the Commission modify the guidelines' rule to mirror the statutory definition of loss?

Should the Commission provide any additional clarification of the definition of loss for cybercrime offenses in any of the relevant guidelines, including § 2B3.2 (Extortion)?

Additionally, the Act increased the statutory maximum term of imprisonment for offenses under 18 U.S.C. 2701 (unlawful access to stored communications). In particular, the Act increased the maximum penalty for a first offense committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain from one year to five years' imprisonment, and for subsequent offenses from two years' to ten years' imprisonment. The scope of these heightened penalties (as set forth in 18 U.S.C. 2701(b)(1)) also was expanded to apply to offenses committed "in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State." The penalties for all other offenses under 18 U.S.C. 2701 were increased from a statutory maximum of six months' imprisonment to a maximum of one year imprisonment for a first offense, and a maximum of five years' imprisonment for subsequent offenses. Currently, the guidelines do not reference 18 U.S.C. 2701 offenses. The Commission requests comment regarding whether it should amend Appendix A (Statutory Index) to include a reference to 18 U.S.C. 2701, and if so, to which guideline or guidelines should the statute be referenced? Additionally, if the Commission does reference the statute in Appendix A, are there any enhancements that the Commission should provide in any relevant guideline in light of, or relating to, the heightened penalties set forth in 18 U.S.C. 2701(b)?

[FR Doc. 03–1123 Filed 1–16–03; 8:45 am]

BILLING CODE 2210–01–U

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meeting.

DATES: February 10, 2003, 10 a.m.—3 p.m.*; February 11, 2003, 5 a.m.—5 p.m.; February 12, 2003, 9 a.m.—1 p.m.

*The full deliberative panel meeting ends at 3 p.m. The standing committees of the Panel will meet from 3:15 p.m. until 6:15 p.m.

ADDRESSES: Ritz-Carlton Hotel (Pentagon City), 1250 South Hayes Street, Arlington, VA 22202, Phone: (703) 415–5000.

SUPPLEMENTARY INFORMATION:

Type of meeting: This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA and receive public testimony. The topics for the meeting will include discussion of the Panel's Third Annual Interim Report to Congress, SSA's early intervention demonstration project and agency updates from SSA and HHS.

The Panel will meet in person commencing on Monday, February 10, 2003 from 10 a.m. to 3 p.m. (standing committee meetings from 3:15 p.m. to 6:15 p.m.); Tuesday, February 11, 2003 from 9 a.m. to 5 p.m.; and Wednesday, February 12, 2003 from 9 a.m. to 1 p.m.

Agenda: The Panel will hold a quarterly meeting. Briefings, presentations, full Panel deliberations and other Panel business will be held Monday, Tuesday and Wednesday, February 10, 11, and 12, 2003. Public testimony will be heard in person Monday, February 10, 2003 from 2:30 p.m. to 3 p.m. and on Wednesday, February 12, 2002 from 9 a.m. to 9:30 a.m. Members of the public must schedule a timeslot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Kristen M. Breland, at *kristen.m.breland@ssa.gov* or calling (202) 358–6423.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW, Suite 700, Washington, DC, 20024.
- Telephone contact with Kristen Breland at (202) 358–6423.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: January 10, 2003.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 03–1084 Filed 1–16–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Luray Caverns Airport, Luray, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of approximately eight (8) acres of land at the Luray Caverns Airport, Luray, Virginia to the

Virginia Department of Transportation for the relocation of Virginia State Route 652. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. The road is being relocated to provide more space for airport related development and the existing Route 652 right-of-way will be exchanged for the relocated road right-of-way.

DATES: Comments must be received on or before February 18, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Edwin P. Markowitz, Secretary-Treasurer Luray-Page County Airport Commission, at the following address: Mr. Edwin P. Markowitz, Secretary-Treasurer, Luray-Page County Airport Commission, 270 Circle View Road, Luray, Virginia 22835.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, email *Terry.Page@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia on January 6, 2003.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 03–1121 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Arcata/Eureka Airport, Eureka, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Arcata/Eureka Airport under the provisions of the 49 United States Code (U.S.C.) section 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 18, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Allen Campbell, Public Works Director, County of Humboldt, at the following address: 1106 Second Street, Eureka, CA 95501. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Humboldt under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Arcata/Eureka Airport under the provisions of the 49 United States Code (U.S.C.) section 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158). On December 20, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Humboldt was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 22, 2003.

The following is a brief overview of the impose and use application number 03–05–C–00–ACV:

Level of proposed PFC: $4.50.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: July 1, 2003.

Total estimated PFC revenue approved in this application: $93,000.

Brief description of the proposed project: Install Security/Perimeter Fence.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Humboldt, Department of Public Works.

Issued in Hawthorne, California, on January 3, 2003.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 03–1131 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2002–12844]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 35 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs).

DATES: January 17, 2003.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, you may contact Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

On November 12, 2002, the FMCSA published a Notice of its receipt of

applications from 35 individuals, and requested comments from the public (67 FR 68719). The 35 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are: Doris V. Adams, Thomas E. Adams, Rodger B. Anders, Thomas J. Boss, Jack W. Boulware, Mark L. Braun, Howard F. Breitkreutz, Ryan J. Christensen, Kenneth E. Coplan, William T. Cummins, John E. Evenson, Leon Frieri, Wayne H. Holt, Steven C. Humke, Leon E. Jackson, Neil W. Jennings, Jimmy C. Killian, Craig M. Landry, Earl E. Louk, William R. Mayfield, Thomas E. Mobley, Richard E. Nordhausen, James P. Oliver, Jesse R. Parker, Tony E. Parks, Andrew H. Rusk, Henry A. Shelton, Richard L. Sheppard, Jayland R. Siebers, Deborah A. Sigle, David A. Stafford, Ronald A. Stevens, Kenneth E. Vigue, Jr., David G. Williams, and Richard A. Winslow.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 35 petitions on their merits and made a determination to grant the exemptions to all of them. The comment period closed on December 12, 2002. One comment was received, and its contents were carefully considered by the FMCSA in reaching the final decision to grant the petitions.

Vision And Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Beginning in 1992, the Federal Highway Administration (FHWA) has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (*See* Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FHWA–98–4334.) The panel's conclusion supported the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 35 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal and macular scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but 13 of the applicants were either born with their vision impairments or have had them since childhood. The 13 individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 60 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, *i.e.* the FMCSRs, however, require more.

While possessing a valid CDL or non-CDL, these 35 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 40 years. In the past 3 years, two of the drivers have had convictions for traffic violations. One of these convictions was for speeding, and one was for "failure to secure load." One driver was involved in an accident but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the November 12, 2002, Notice. Since there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published at 67 FR 68719.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket. (FHWA–98–3637)

We believe we can properly apply the principle to monocular drivers, because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (*See* 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the

same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (*See* Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (*See* Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 35 applicants receiving an exemption, we note that the applicants have had only one accident and two traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 35 applicants listed in the November Notice.

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 35 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received one comment in this proceeding. The comment was considered and is discussed below.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

After considering the comment to the docket and based upon its evaluation of the 35 exemption applications, the FMCSA exempts Doris V. Adams, Thomas E. Adams, Rodger B. Anders, Thomas J. Boss, Jack W. Boulware, Mark L. Braun, Howard F. Breitkreutz, Ryan J. Christensen, Kenneth E. Coplan, William T. Cummins, John E. Evenson, Leon Frieri, Wayne H. Holt, Steven C. Humke, Leon E. Jackson, Neil W. Jennings, Jimmy C. Killian, Craig M. Landry, Earl E. Louk, William R. Mayfield, Thomas E. Mobley, Richard E. Nordhausen, James P. Oliver, Jesse R. Parker, Tony E. Parks, Andrew H. Rusk, Henry A. Shelton, Richard L. Sheppard, Jayland R. Siebers, Deborah A. Sigle, David A. Stafford, Ronald A. Stevens, Kenneth E. Vigue, Jr., David G. Williams, and Richard A. Winslow from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving,

so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: January 13, 2003.

Brian M. McLaughlin,

Associate Administratior for Policy and Program Development.

[FR Doc. 03–1135 Filed 1–16–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34285]

Wisconsin & Southern Railroad Co.—Acquisition Exemption—Soo Line Railroad Company d/b/a Canadian Pacific Railway

Wisconsin & Southern Railroad Co. (WSOR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Soo Line Railroad Company d/b/a Canadian Pacific Railway approximately 32.5 miles of rail line known as the Waterloo Spur, extending between milepost 132.11 at Watertown, WI, and milepost 164.61 in Madison, WI. WSOR states that it has been leasing and operating the line since 1998,[1] and that the sole purpose of this transaction will merely be to convert its leasehold interest into an ownership interest, with no adverse effects on railroad employees.

WSOR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

WSOR states that it expects to consummate the transaction shortly after January 1, 2003.[2]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34285, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 555 12th Street, NW., Suite 950N, Washington, DC 20004.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: January 13, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1137 Filed 1–16–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34294]

State of Vermont—Acquisition Exemption—Certain Assets of Newport and Richford Railroad Company, Northern Vermont Railroad Company Incorporated and Canadian American Railroad Company

The State of Vermont (Vermont) has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from the Estates of Newport and Richford Railroad Company, Northern Vermont Railroad Company Incorporated and Canadian American Railroad Company (collectively, the Sellers),[1] the Sellers' rights, title and ownership interest in the right-of-way, trackage and other physical assets of a 61.58-mile rail line, extending between milepost 63.58 in Newbury (Wells River) and milepost 2.0 in Newport, in Orange, Caledonia and Orleans Counties, VT (the Subject Line).[2] The Sellers will retain the rights and obligations to provide common carrier service on the line. In a separate transaction, the Sellers will convey the retained common carrier obligation and right to provide service to the Washington County Railroad Company (WCRC) through an exclusive operating easement.[3]

Consummation of the transaction was expected to occur on December 26, 2002 (7 days after the exemption was filed), but not before Montreal, Maine & Atlantic Railway, Ltd. has consummated its acquisition of certain other rail assets belonging to the BAR rail system in Vermont and Maine.[4]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34294, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Ave., NW., Washington, DC 20036–1221.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: January 13, 2003.

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[1] *See Wisconsin & Southern Railroad Co.—Lease and Operation Exemption—Soo Line Railroad Company d/b/a Canadian Pacific Railway*, STB Finance Docket No. 33571 (STB served May 27, 1998).

[2] Because WSOR's annual revenues exceed $5 million, it filed a petition on November 26, 2002, requesting waiver of the Board's notice requirements at 49 CFR 1150.42(e). WSOR indicated there that it needed to consummate the acquisition no later than December 31, 2002, because the institution funding the acquisition had to close the transaction by the end of the 2002 calendar year. WSOR's request was granted by decision served December 20, 2002. However, by facsimile filed on January 8, 2003, WSOR now indicates that, due to a financing-related delay, it does not anticipate closing the transaction until some time in January or early February 2003.

[1] The Sellers are railroads in the Bangor and Aroostook Railroad Company (BAR) rail system. On August 15, 2001, an involuntary petition for bankruptcy under chapter 11 of the Bankruptcy Act was filed against BAR before the United States Bankruptcy Court for the District of Maine (Court). On May 14, 2002, the Sellers, filed voluntary petitions for relief under chapter 11 before the Court.

[2] Vermont simultaneously filed a motion to dismiss this notice of exemption. The motion will be handled in a separate decision.

[3] WCRC has contemporaneously filed a notice of exemption in *Washington County Railroad Company—Acquisition and Operation—Certain Rights of Newport and Richford Railroad Company, Northern Vermont Railroad Company Incorporated and Canadian American Railroad Company*, STB Finance Docket No. 34302, to acquire an exclusive operating easement on the Subject Line.

[4] In *Montreal, Maine & Atlantic Railway LLC—Acquisition and Operation Exemption—Bangor & Aroostook Railroad Company, Canadian American Railroad Company, the Northern Vermont Railroad Company Incorporated, Newport & Richford Railroad Company and Van Buren Bridge Company*, STB Finance Docket No. 34110 (STB served Sept. 19, 2002), Montreal, Maine & Atlantic Railway, LLC (MM&A—LLC) was authorized to acquire and operate, among other things, some 518 miles of BAR's rail lines and other assets in Maine and Vermont. These assets do not include the Subject Line. In a subsequent decision served on December 18, 2002, the Board granted a motion to substitute Montreal, Maine & Atlantic Railway, Ltd. as the party that may acquire and operate these assets in lieu of MM&A—LLC.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1148 Filed 1–16–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34302]

Washington County Railroad Company—Acquisition and Operation Exemption—Certain Rights of Newport and Richford Railroad Company, Northern Vermont Railroad Company Incorporated and Canadian American Railroad Company

The Washington County Railroad Company (WCRC) has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from the Estates of Newport and Richford Railroad Company (N&R), Northern Vermont Railroad Company Incorporated (NVT) and Canadian American Railroad Company (CDAC) (collectively, the Sellers),[1] an exclusive operating easement on a 61.58-mile rail line, extending between milepost 63.58 in Newbury (Wells River) and milepost 2.0 in Newport, in Orange, Caledonia and Orleans Counties, VT (the Wells River-Newport Line).[2] WCRC also seeks to acquire from CDAC, by assignment, an exclusive operating easement over a connecting 40-mile line of railroad extending between approximately milepost 123 in Hartford (White River Junction) and milepost 163 in Newbury (Wells River), VT (the White River Junction-Wells River Line).[3] As a result of these transactions, WCRC will have the right and obligation to provide common carrier service on a combined 101.58-mile rail line between Hartford and Newport, VT pursuant to the exclusive operating easements.

Consummation of the transaction was expected to occur on December 26, 2002 (7 days after the exemption was filed), but not before Montreal, Maine & Atlantic Railway, Ltd. has consummated its acquisition of certain other rail assets belonging to the BAR rail system in Vermont and Maine.[4]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34302, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David W. Wulfson, Washington County Railroad Company, One Railway Lane, Burlington, VT 05401–5290.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: January 13, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1149 Filed 1–16–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Sellers are railroads in the Bangor and Aroostook Railroad Company (BAR) rail system. On August 15, 2001, an involuntary petition for bankruptcy under chapter 11 of the Bankruptcy Act was filed against BAR before the United States Bankruptcy Court for the District of Maine (Court). On May 14, 2002, the Sellers, filed voluntary petitions for relief under chapter 11 before the Court.

[2] In a related matter, the State of Vermont (Vermont) has contemporaneously filed a notice of exemption in *State of Vermont—Acquisition—Certain Assets of Newport and Richford Railroad Company, Northern Vermont Railroad Company Incorporated and Canadian American Railroad Company*, STB Finance Docket No. 34294, to acquire the Sellers' rights, title and ownership interest in the right-of-way, trackage and other physical assets on the Wells River-Newport Line. Vermont simultaneously filed a motion to dismiss that notice of exemption. The motion will be handled in a separate decision.

[3] The Wells River-Newport Line connects with the White River Junction-Wells River Line at Wells River (despite the difference in milepost designations, which is the result of different milepost systems). Vermont already owns the White River Junction-Wells River Line. *See State of Vermont—Acquisition Exemption—Certain Assets of Boston and Maine Corporation*, STB Finance Docket No. 33830 (STB served Dec. 20, 1999).

[4] In *Montreal, Maine & Atlantic Railway LLC—Acquisition and Operation Exemption—Bangor & Aroostook Railroad Company, Canadian American Railroad Company, the Northern Vermont Railroad Company Incorporated, Newport & Richford Railroad Company and Van Buren Bridge Company*, STB Finance Docket No. 34110 (STB served Sept. 19, 2002), Montreal, Maine & Atlantic Railway LLC (MM&A) was authorized to acquire and operate, among other things, certain rail lines and other assets of the Seller in Maine and Vermont not including the Subject Line. In a subsequent decision served on December 18, 2002, the Board granted a motion to substitute Montreal, Maine & Atlantic Railway, Ltd. as the party that may acquire and operate the BAR system assets in lieu of Montreal Maine & Atlantic Railway LLC.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34300]

Jeffrey L. Sutch and Leonard J. Smolsky-Intracorporate Family Transaction Exemption

Jeffrey L. Sutch and Lenorad J. Smolsky (Applicants), have filed a verified notice of exemption to merge Penn-Jersey Lines, Inc. (PJRL) into SMS Rail Service, Inc. (SLRS) with SLRS as the surviving entity.[1]

The transaction was scheduled to be consummated on or after December 27, 2002, the effective date of the exemption (7 days after the notice was filed).

The proposed merger transaction will eliminate the administrative expense of maintaining two separate organizations, thus reducing the operating costs of each. The merger will permit the consolidation of the railroads' equipment, their locomotives and cars, thus resulting in improved service to the shippers served by the two railroads.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The Applicants state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c) however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under that statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] *See Penn-Jersey Rail Lines Inc.—Acquisition and Operations Exemption—WMI Properties, Inc.*, STB Finance Docket No. 33414 (STB served June 24, 1997); *SMS Rail Service, Inc.—Lease and Operate Exemption—Pureland Association, Inc.*, STB Finance Docket No. 32494 (STB served May 26, 1994); and Jeffrey L. Sutch and Leonard J. *Smolsky—Continuance in Control Exemption—Penn-Jersey Rail Lines, Inc.*, STB Finance Docket No. 33415 (STB served June 24, 1997).

Both PJRL and SLRS are Class III carriers. PJRL's lines are in Pennsylvania. SLRS's lines are in New Jersey.

An original and ten copies of all pleadings referring to STB Finance Docket No. 34300, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 10, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–971 Filed 1–16–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Intercity Bus Security Grant Program; Application Notice Describing the Program Priorities and Establishing the Closing Date for Receipt of Applications Under the Intercity Bus Security Grant Program.

AGENCY: Transportation Security Administration, Department of Transportation.

ACTION: Notice inviting applications for the Intercity Bus Security Grant Program.

SUMMARY: The Intercity Bus Security Grant Program will improve security for operators and passengers by providing financial assistance to eligible applicants for intercity bus security enhancements and training.

The Intercity Bus Security Grant Program priorities are as follows: The order of listing does not indicate the level of priority. (1) Protecting or isolating the driver, (2) Monitoring, tracking, and communication technologies for over-the-road buses, (3) Implementing and operating passenger and baggage screening programs at terminals and over-the-road buses, (4) Developing an effective security assessment/security plan that identifies critical security needs and vulnerabilities; and (5) Training driver, dispatchers, ticket agents, and other personnel in recognizing and responding to criminal attacks and terrorists threats, evacuation procedures, passenger screening procedures, and baggage inspection.

Proposals that address other than these five programs priorities will be considered but preference will be given to proposals that address program priorities. Applications may be submitted by private and public operators of over-the-road buses, bus associations and other associations related to the intercity bus industry. The Transportation Security Administration is coordinating with the Federal Motor Carrier Safety Administration and Federal Transit Administration in this effort. Authority for this program is contained in the fiscal year 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Pub. L. 107–206, 116 Stat. 820.

DATES: The program announcement and application forms for the Intercity Bus Security Grant Program are expected to be available on or about January 17, 2003. Applications must be received on or before 4 p.m. EST, February 28, 2003.

ADDRESSES: Program Announcement #02MLPA0002 for the Intercity Bus Security Grant Program will be available through the TSA Internet at *http://www.tsa.dot.gov* under Business Opportunities.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Heying, Transportation Security Administration, Office of Maritime and Land Security, 400 7th Street, SW., TSA–8, Washington, DC 20590, (202) 772–1118, e-mail: *Mary.Heying@tsa.dot.gov*.

SUPPLEMENTARY INFORMATION: Total anticipated funding available for Intercity Bus Security Grant Program is $14,850,000. Awards under this program are subject to availability of funds.

Dated: January 8, 2003.

J.M. Loy, ADM,

Under Secretary of Transportation for Secrity.

[FR Doc. 03–1142 Filed 1–16–03; 8:45 am]

BILLING CODE 4110–62–M

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on February 4, 2003, of the following debt management advisory committee: The Bond Market Association Treasury Borrowing Advisory Committee.

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Pub. L. 103–202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with discussions of the issues presented to the Committee by the Secretary and recommendations of the Committee to the Secretary, pursuant to Pub. L. 103–102, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. § 552b(c)(3)(B). In addition, the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. § 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. § 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. § 552b. The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Paul Malvey, Director, Office of Market Finance at 202–622–2630.

Dated: January 13, 2003.

Brian C. Roseboro,

Assistant Secretary, Financial Markets.

[FR Doc. 03–1115 Filed 1–16–03; 8:45 am]

BILLING CODE 4810–25–M

Corrections

Federal Register

Vol. 68, No. 12

Friday, January 17, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 020718172–2303–02; I.D. 051402C]

RIN 0648–AQ08

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska

Correction

In rule document 02–32844 beginning on page 204 in the issue of January 2, 2003, make the following corrections:

1. On page 204, in the first column, the GFR part listings should read as set forth above.

§679.23 [Corrected]

2. On page 214, in the third column, in §679.23, starting ten lines from the bottom, the following text should appear following §679.23(d)(2)(iv):

(3) *Directed fishing for Pacific cod* (i) *Hook-and-line, pot, or jig gear.* Subject to other provisions of this part, directed fishing for Pacific cod with hook-and-line, pot, or jig gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

[FR Doc. C2–32844 Filed 1–16–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
January 17, 2003

Part II

Securities and Exchange Commission

17 CFR Parts 228, et al.
Standards Relating to Listed Company Audit Committees; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240, 249 and 274

[Release Nos. 33–8173; 34–47137; IC–25885; File No. S7–02–03]

RIN 3235–AI75

Standards Relating to Listed Company Audit Committees

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: As directed by the Sarbanes-Oxley Act of 2002, we are proposing a new rule to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements established by the Sarbanes-Oxley Act of 2002. These requirements relate to: the independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee. The new rule must become effective by April 26, 2003, and under our proposals, the new requirements would need to be operative by the national securities exchanges and national securities associations no later than the first anniversary of the publication of our final rule in the **Federal Register**. The proposals would implement the requirements of Section 10A(m)(1) of the Securities Exchange Act of 1934, as added by Section 301 of the Sarbanes-Oxley Act of 2002.

DATES: Comments should be received on or before February 18, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–02–03. This file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Minton, Special Counsel, or Elizabeth M. Murphy, Chief, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, or, with respect to investment companies, Christopher P. Kaiser, Senior Counsel, Office of Disclosure Regulation, Division of Investment Management, at (202) 942–0724, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing to add new Rule 10A–3[2] under the Securities Exchange Act of 1934 (the "Exchange Act"),[3] to amend Forms 10–K,[4] 10–KSB,[5] 20–F[6] and 40–F[7] and Items 7 and 22 of Schedule 14A[8] under the Exchange Act, to amend Item 401[9] of Regulation S–B[10] and Items 401[11] and 601[12] of Regulation S–K[13] under the Securities Act of 1933 (the "Securities Act")[14] and to amend proposed Form N–CSR[15] under the Exchange Act and the Investment CompanyAct of 1940 (the "Investment Company Act").[16]

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I. Background and Overview of the Proposals

Accurate and reliable financial reporting lies at the heart of our disclosure-based system for securities regulation, and is critical to the integrity of the U.S. securities markets. Investors need accurate and reliable financial information to make informed investment decisions. Investor confidence in the reliability of corporate financial information is fundamental to the liquidity and vibrancy of our markets.

Effective oversight of the financial reporting process is fundamental to preserving the integrity of our markets. The board of directors, elected by and accountable to shareholders, is the focal point of the corporate governance system. The audit committee, composed of members of the board of directors, plays a critical role in serving as a check and balance on a company's financial reporting system. The audit committee provides independent review and oversight of a company's financial reporting processes, internal controls and independent auditors. It provides a forum separate from management in which auditors and other interested parties can candidly discuss concerns. By effectively carrying out its functions and responsibilities, the audit committee helps to ensure that management properly develops and adheres to a sound system of internal controls, that procedures are in place to objectively assess management's practices and internal controls, and that the outside auditors, through their own review, objectively assess the company's financial reporting practices.

Since the early 1940s, the Commission, along with the auditing

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[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] 17 CFR 240.10A–3.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 249.310.

[5] 17 CFR 249.310b.

[6] 17 CFR 249.220f.

[7] 17 CFR 249.240f.

[8] 17 CFR 240.14a–101.

[9] 17 CFR 228.401.

[10] 17 CFR 228.10 *et seq.*

[11] 17 CFR 229.401.

[12] 17 CFR 229.601.

[13] 17 CFR 229.10 *et seq.*

[14] 15 U.S.C. 77a *et seq.*

[15] 17 CFR 249.331 and 17 CFR 274.128.

[16] 15 U.S.C. 80a–1 *et seq.*

and corporate communities, has had a continuing interest in promoting effective and independent audit committees.[17] It was largely with the Commission's encouragement, for instance, that the self-regulatory organizations, or SROs, first adopted audit committee requirements in the 1970s.[18] Over the years, others have expressed support for strong, independent audit committees,[19] including the National Commission on Fraudulent Financial Reporting, also known as the Treadway Commission,[20] and the General Accounting Office.[21]

In 1998, the New York Stock Exchange (the "NYSE") and the National Association of Securities Dealers, Inc. (the "NASD") sponsored a committee to study the effectiveness of audit committees. This committee became known as the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the "Blue Ribbon Committee"). In its 1999 report, the Blue Ribbon Committee recognized the importance of audit committees and issued ten recommendations to improve their effectiveness.[22] In response to these recommendations, the NYSE and the NASD, among others, revised their listing standards relating to audit committees,[23] and we adopted new rules requiring disclosure relating to the functioning, governance and independence of corporate audit committees.[24] Earlier this year, at the Commission's request,[25] the NYSE and the NASD again reviewed their corporate governance standards, including their audit committee rules, in light of several high-profile corporate failures, and have proposed changes to their rules to provide more demanding standards for audit committees.[26]

Recent events involving alleged misdeeds by corporate executives and independent auditors have damaged investor confidence in the financial markets.[27] They have highlighted the need for strong, competent and vigilant audit committees with real authority.[28] In response to the threat to the U.S. financial markets posed by these events, Congress passed, and the President signed into law on July 30, 2002, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act").[29] The Sarbanes-Oxley Act mandates sweeping corporate disclosure and financial reporting reform to improve the responsibility of public companies for their financial disclosures. This release is one of several that we are issuing to implement provisions of the Sarbanes-Oxley Act.[30]

In this release, we propose to implement Section 10A(m)(1) of the Exchange Act,[31] as added by Section 301 of the Sarbanes-Oxley Act, which requires us to direct, by rule, the national securities exchanges[32] and national securities associations[33] to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards regarding issuer audit committees. The new rule must become effective by April 26, 2003, which is 270 days after the date of enactment of the Sarbanes-Oxley Act and Section 10A(m) of the Exchange Act.[34] Under our proposals, the new requirements would need to be operative by the SROs no later than the first anniversary of the publication of our final rule in the **Federal Register**. In addition, our proposals would make

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[17] In 1940, the Commission investigated the auditing practices of McKesson & Robbins, Inc., and the Commission's ensuing report prompted action on auditing procedures by the auditing community. *In the Matter of McKesson & Robbins*, Accounting Series Release (ASR) No. 19, Exchange Act Release No. 2707 (Dec. 5, 1940).

[18] For example, in 1972, the Commission recommended that companies establish audit committees composed of outside directors. See ASR 123 (Mar. 23, 1972). In 1974 and 1978, the Commission adopted rules requiring disclosures about audit committees. See Release No. 34–11147 (Dec. 20, 1974) and Release No. 34–15384 (Dec. 6, 1978).

[19] See, *e.g.*, Preliminary Report of the American Bar Association Task Force on Corporate Responsibility (July 16, 2002). The report is available on the American Bar Association's website at www.abanet.org/buslaw/.

[20] The Treadway Commission was sponsored by the American Institute of Certified Public Accountants, the American Accounting Association, the Financial Executives Institute (now Financial Executives International), the Institute of Internal Auditors and the National Association of Accountants. Collectively, these groups were known as the Committee of Sponsoring Organizations, or COSO. The Treadway Commission's report, the Report of the National Commission on Fraudulent Financial Reporting (October 1987), is available at www.coso.org.

[21] GAO, "CPA Audit Quality: Status of Actions Taken to Improve Auditing and Financial Reporting of Public Companies," at 5 (GAO/AFMD–89–38, March 1989).

[22] *See* Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (February 1999). The Blue Ribbon Committee Report is available at www.nyse.com.

[23] *See*, for example, Exchange Act Release No. 42231 (Dec. 14, 1999) [64 FR 71523] (Nasdaq rules) and Exchange Act Release No. 42233 (Dec. 14, 1999) (NYSE rules) [64 FR 71529]. See also Exchange Act Release No. 42232 (Dec. 14, 1999) [64 FR 71518] (American Stock Exchange rules) and Release No. 34–43941 (Feb. 7, 2001) [66 FR 10545] (Pacific Exchange rules).

[24] *See* Exchange Act Release No. 42266 (Dec. 22, 1999) [64 FR 73389].

[25] *See* Press Release No. 2002–23 (Feb. 13, 2002).

[26] See File Nos. SR–NASD–2002–141 and SR–NYSE–2002–33 (pending before the Commission).

[27] See, for example, John Waggoner and Thomas A. Fogarty, "Scandals Shred Investors' Faith: Because of Enron, Andersen and Rising Gas Prices, the Public is More Wary Than Ever of Corporate America," USA Today, May 5, 2002; and Louis Aguilar, "Scandals Jolting Faith of Investors;" Denver Post, June 27, 2002.

[28] See, for example, John Good, "After Enron, Beef Up Those Audit Committees," The Commercial Appeal, Apr. 26, 2002; and "FT Comment After Enron: Giving Meaning to the Codes of Best Practice: Corporate Governance: Companies Need Truly Independent Directors, Strong Audit Committees, an Outlet for Whistleblowers and Tight Controls on Share Options," The Financial Times, Feb. 19, 2002.

[29] Pub. L. 107–204, 116 Stat. 745 (2002).

[30] For example, see Release No. 34–46421 (Aug. 27, 2002) [67 FR 56462] (Ownership reports and trading by officers, directors and principal security holders); Release No. 33–8124 (Aug. 28, 2002) [67 FR 57276] (Certification of disclosure in companies' quarterly and annual reports); Release No. 33–46685 (Oct. 18, 2002) [67 FR 65325] (Improper influence on conduct of audits); Release No. 33–8138 (Oct. 22, 2002) [67 FR 66208] (Disclosure regarding internal control reports, audit committee financial experts and company codes of ethics); Release No. 33–8144 (Nov. 4, 2002) [67 FR 68054] (Disclosure about off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments); Release No. 33–8145 (Nov. 4, 2002) [67 FR 68790] (Conditions for use of non-GAAP financial information); Release No. 34–46778 (Nov. 6, 2002) [67 FR 69430] (Insider trades during pension plan blackout periods); Release No. 33–8150 (Nov. 21, 2002) [67 FR 71670] (Implementation of standards of conduct for attorneys); Release No. 33–8151 (Nov. 21, 2002) [67 FR 71018] (Retention of records relevant to audits and reviews); Release No. 33–8154 (Dec. 2, 2002) [67 FR 76780] (Strengthening the Commission's requirements regarding auditor independence); and Release No. 33–8170 (Dec. 20, 2002) [67 FR 79466] (Mandated electronic filing and website posting for Forms 3, 4 and 5).

[31] 15 U.S.C. 78j–1(m)(1).

[32] A "national securities exchange" is an exchange registered as such under Section 6 of the Exchange Act (15 U.S.C. 78f). There are currently nine national securities exchanges registered under Section 6(a) of the Exchange Act: American Stock Exchange (AMEX), Boston Stock Exchange, Chicago Board Options Exchange (CBOE), Chicago Stock Exchange, Cincinnati Stock Exchange, International Securities Exchange, New York Stock Exchange (NYSE), Philadelphia Stock Exchange and Pacific Exchange. In addition, an exchange that lists or trades security futures products (as defined in Exchange Act Section 3(a)(56) (15 U.S.C. 78c(56))) may register as a national securities exchange under Section 6(g) of the Exchange Act solely for the purpose of trading security futures products. Regarding security futures products, see Section II.F.2.b.

[33] A "national securities association" is an association of brokers and dealers registered as such under Section 15A of the Exchange Act (15 U.S.C. 78o–3). The National Association of Securities Dealers (NASD) is the only national securities association registered with the Commission under Section 15A(a) of the Exchange Act. The NASD partially owns and operates The Nasdaq Stock Market (Nasdaq). Nasdaq has filed an application with the Commission to register as a national securities exchange. In addition, Section 15A(k) of the Exchange Act (15 U.S.C. 78o–3(k)) provides that a futures association registered under Section 17 of the Commodity Exchange Act (7 U.S.C. 21) shall be registered as a national securities association for the limited purpose of regulating the activities of members who are registered as broker-dealers in security futures products pursuant to Section 15(b)(11) of the Exchange Act (15 U.S.C. 78o(b)(11)). Regarding security futures products, see Section II.F.2.b.

[34] See Exchange Act Section 10A(m)(1)(A).

several changes to our current disclosure requirements regarding audit committees.

Under proposed Exchange Act Rule 10A–3,[35] SROs would be prohibited from listing any security of an issuer that is not in compliance with the following standards, as discussed in more detail below:

- Each member of the audit committee of the issuer must be independent according to specified criteria;
- The audit committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm [36] engaged for the purpose of preparing or issuing an audit report or related work or performing other audit, review or attest services for the issuer, and each such registered public accounting firm must report directly to the audit committee;
- Each audit committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters;
- Each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties; and
- Each issuer must provide appropriate funding for the audit committee.

The standards articulated in Section 10A(m) of the Exchange Act will provide a framework in which audit committees can be more effective in protecting shareholder interests and in addressing the risk that management self-interest may diverge from shareholder interest. The audit committee is more likely to be effective in performing its oversight role when it has adequate resources and is empowered to accomplish its responsibilities independently of management, especially when potential conflicts of interests with management may be apparent. Independent audit committee members also are more likely to be objective when evaluating financial disclosure and internal controls. There must also be frank, open and clear channels of communication so that information can reach the audit committee.

II. Proposed Changes

Under Section 3(a)(58) of the Exchange Act,[37] as added by Section 205 of the Sarbanes-Oxley Act, the term audit committee is defined as:

- A committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and
- If no such committee exists with respect to an issuer, the entire board of directors of the issuer.

Accordingly, an issuer either may have a separately designated audit committee composed of members of its board or, if it chooses to do so or if it fails to form a separate committee, the entire board of directors would constitute the audit committee. If the entire board constituted the audit committee, our proposals for the new SRO rules, including the independence requirements, would apply to the issuer's board as a whole.

In addition, because proposed Exchange Act Rule 10A–3 would impose requirements that only would apply to issuers listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association,[38] the requirements of proposed Exchange Act Rule 10A–3 only would apply to issuers that are so listed. None of the requirements of Section 10A(m) of the Exchange Act or proposed Exchange Act Rule 10A–3 apply to other reporting companies under Section 13(a) [39] or 15(d) [40] of the Exchange Act.

A. Audit Committee Member Independence

As early as 1940, the Commission encouraged the use of audit committees composed of independent directors.[41] An audit committee comprised of independent directors is better situated to assess objectively the quality of the issuer's financial disclosure and the adequacy of internal controls than a committee that is affiliated with management. Management may face market pressures for short-term performance and corresponding pressures to satisfy market expectations. These pressures could be exacerbated by the use of compensation or other incentives focused on short-term stock appreciation, which can promote self-interest rather than the promotion of long-term shareholder interest. An independent audit committee with adequate resources helps to overcome this problem and to align corporate interests with those of shareholders. An independent audit committee also would likely be better equipped to satisfy several other new requirements mandated by the Sarbanes-Oxley Act and the Exchange Act, such as overseeing a sound system of internal controls, approving any non-audit services by the outside auditor and enhancing the independence of the audit function.

The proposed requirements would enhance audit committee independence by implementing the two basic criteria for determining independence enumerated in Section 10A(m) of the Exchange Act. First, audit committee members would be barred from accepting any consulting, advisory or other compensatory fee from the issuer or an affiliate of the issuer, other than in the member's capacity as a member of the board of directors and any board committee.[42] This prohibition would preclude payments to a member as an officer or employee, as well as other compensatory payments. To prevent evasion of this requirement, disallowed payments to an audit committee member would include payments made either directly or indirectly. We believe that barring indirect as well as direct compensatory payments is necessary to implement the intended purposes of Section 10A(m) of the Exchange Act. For example, payments to spouses of members raise questions regarding independence comparable to those raised by payments to members themselves. In addition, we believe that payments for services to law firms, accounting firms, consulting firms, investment banks or similar entities in which audit committee members are partners or hold similar positions are the kinds of compensatory payments that were intended to be precluded by Exchange Act Section 10A(m). We therefore propose that indirect

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[35] Exchange Act Rule 10A–2 (17 CFR 240.10A–2) was proposed in Release No. 33–8154 (Dec. 2, 2002).

[36] The term "registered public accounting firm" is defined in Section 2(a)(12) of the Sarbanes-Oxley Act. See 15 U.S.C. 78c(b)(59). Until the Public Company Accounting Oversight Board that is contemplated under the Sarbanes-Oxley Act has established the registration of public accounting firms, the proposed requirement relating to the audit committee's oversight would refer to the public accounting firm employed by the issuer for the purposes indicated.

[37] 15 U.S.C. 78c(a)(58).

[38] In this release, we refer to issuers that are listed on one or more of these markets as "listed issuers."

[39] 15 U.S.C. 78m(a).

[40] 15 U.S.C. 78o(d).

[41] See note 17 above.

[42] See Section 10A(m)(3)(B)(i) of the Exchange Act and proposed Exchange Act Rule 10A–3(b)(1)(ii)(A) and (iii)(A). If the committee member is also a shareholder of the issuer, payments made to all shareholders generally, such as dividends, would not be prohibited by this provision.

acceptance of compensatory payments includes payments to spouses, minor children or stepchildren or children or stepchildren sharing a home with the member, as well as payments accepted by an entity in which an audit committee member is a partner, member or principal or occupies a similar position and which provides accounting, consulting, legal, investment banking, financial or other advisory services or any similar services to the issuer.[43]

In seeking to ensure appropriate levels of independence, we recognize that some SROs currently restrict additional business or personal relationships,[44] and that some SROs are seeking to add to these requirements, in particular in the additional listing standards that are currently under consideration.[45] We support the goals the SROs are trying to achieve through these ongoing efforts, and we are committed to working with the SROs to ensure the success of these proposals. We believe that our mandate under Section 10A(m) of the Exchange Act, where independence is evaluated by reference to payments of compensatory fees, is best fulfilled by our current proposal. Our proposal would not, for example, preclude independence on the basis of ordinary course commercial business relationships between an issuer and an entity with which a director had a relationship. Our proposal also would not extend to the broad categories of family members that may be reached by SRO listing standards. Instead, our proposals build and rely on the SROs standards of independence that cover additional relationships not specified in Exchange Act Section 10A(m). Our proposal would allow the SROs to adopt further requirements of these sorts, but they would do so within the more flexible environment of listing standards. We encourage SROs that do not currently have separate independence requirements to adopt appropriate requirements in connection with their implementation of the standards in Exchange Act Section 10A(m).

As the second basic criterion for determining independence, a member of the audit committee of an issuer that is not an investment company may not be an affiliated person of the issuer or any subsidiary of the issuer apart from his or her capacity as a member of the board and any board committee. We would clarify that a director, executive officer, partner, member, principal or designee of an affiliate would be deemed to be an affiliate. For purposes of the proposed rule, we propose to define the terms "affiliate" and "affiliated person" consistent with our other definitions of these terms under the securities laws, such as in Exchange Act Rule 12b–2[46] and Securities Act Rule 144,[47] with an additional safe harbor.[48] We propose to define "affiliate" of, or a person "affiliated" with, a specified person, to mean "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified."[49] We propose to define the term "control" consistent with our other definitions of this term under the Exchange Act[50] as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."[51]

Similarly, a member of the audit committee of an issuer that is an investment company could not be an "interested person" of the investment company as defined in Section 2(a)(19)[52] of the Investment Company Act.[53] We have substituted the Section 2(a)(19) test for the affiliation test applied to operating companies because the Section 2(a)(19) test is tailored to capture the broad range of affiliations with investment advisers, principal underwriters, and others that are relevant to "independence" in the case of investment companies.

Our proposed definition of "affiliated person" for non-investment companies, like our existing definitions of this term for these issuers, would require a factual determination based on a consideration of all relevant facts and circumstances. However, because we recognize that it can be difficult to determine whether someone controls an issuer, we are proposing to create a safe harbor from this aspect of the proposed definition of "affiliated person."[54] Under the proposed safe harbor, a person who is not an executive officer, director or 10% shareholder of the issuer would be deemed not to control the issuer. This test is similar to the test used for determining insider status under Section 16 of the Exchange Act.[55]

This safe harbor should cover most non-affiliates without including people who control an issuer. Moreover, our proposal would create only a safe harbor position. Therefore, an audit committee member that would not be eligible to rely on the safe harbor would not be deemed an affiliated person by virtue of those facts. Those who would be ineligible to rely on the safe harbor, but believe that they do not control an issuer, still could rely on a facts and circumstances analysis.

Under Exchange Act Section 10A(m)(3)(C), we have the authority to exempt from the independence requirements particular relationships with respect to audit committee members, if appropriate in light of the circumstances. Companies coming to market for the first time may face particular difficulty in recruiting members that meet the proposed independence requirements. Before a company's initial public offering, the board of directors often will consist primarily, if not exclusively, of representatives of venture capital investors and insiders. Such representation is entirely consistent with the desire of these parties to have representation in their private venture. The difficulty of recruiting independent directors before an initial public offering, coupled with the uncertainty of whether the initial public offering will be completed, may discourage companies from accessing the public markets to grow their business and provide liquidity, as well as from achieving the other benefits of being a public company, if all of their audit committee members must be independent at the time of the initial public offering. Further, the audit committee of some new public companies may function more

[43] See proposed Exchange Act Rule 10A–3(e)(6).

[44] See note 23 above.

[45] See note 26 above.

[46] 17 CFR 240.12b–2.

[47] 17 CFR 230.144.

[48] Exchange Act Section 3(a)(19), in defining several terms in relation to investment companies, includes a definition of "affiliated person" by reference to the Investment Company Act. Because that definition is tailored to investment companies, our proposed definition would use a definition for non-investment companies consistent with our other definitions of "affiliate" for non-investment companies.

[49] See proposed Exchange Act Rule 10A–3(e)(1).

[50] See, *e.g.*, Exchange Act Rule 12b–2.

[51] See proposed Exchange Act Rule 10A–3(e)(3).

[52] 15 U.S.C. 80a–2(a)(19).

[53] See proposed Exchange Act Rule 10A–3(b)(1)(iii)(B). The "interested person" test would apply to business development companies, as well as registered investment companies. See note 95.

[54] See proposed Exchange Act Rule 10A–3(e)(1). Note that this safe harbor does not address the question of whether a person "is controlled by, or is under common control with" the issuer. We proposed a similar safe harbor from the definition of "affiliate" for Securities Act Rule 144 in 1997. See Release No. 33–7391 (Feb. 20, 1997) [62 FR 9246].

[55] 17 U.S.C. 78p. However, unlike our rules under Section 16, for purposes of determining who is an executive officer and calculating beneficial ownership, we propose to refer to Exchange Act Rule 3b–7 [17 CFR 240.3b–7] for the definition of "executive officer" and Exchange Act Rule 13d–3(d)(1) [17 CFR 240.13d–3(d)(1)] for calculating beneficial ownership.

effectively if one director has historical knowledge and experience with the company. Accordingly, we propose to exempt one member of a non-investment company issuer's audit committee from the independence requirements for 90 days from the effective date of an issuer's initial registration statement under Section 12 of the Exchange Act or a registration statement under the Securities Act covering an initial public offering of securities of the issuer.[56]

Further, many companies, particularly financial institutions and other entities with a holding company structure, operate through subsidiaries. For these companies, the composition of the boards of the parent company and the subsidiary are sometimes similar given the control structure between the parent and the subsidiary. If an audit committee member of the parent is otherwise independent, merely serving also on the board of a controlled subsidiary should not adversely affect the board member's independence, assuming that the board member also would be considered independent of the subsidiary except for the member's seat on the parent's board. Accordingly, we propose to exempt from the "affiliated person" requirement a committee member that sits on the board of directors of both a parent and a direct or indirect consolidated majority-owned subsidiary. if the committee member otherwise meets the independence requirements for both the parent and the subsidiary, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the parent or subsidiary.[57]

As discussed in Section II.G.1 below, any issuer availing itself of any of these exceptions would have to disclose that fact. Apart from the two limited exemptions discussed above, and the exemptions for controlling shareholders, foreign governmental board representatives and non-management employee members of foreign private issuers discussed in Section II.F.3.a below, we do not propose to exempt any other particular relationships from the independence requirements at this time. In this regard, we note that Section 10A(m) of the Exchange Act does not, and therefore our proposed rule does not, contain any exemptions based on exceptional and limited circumstances similar to those that exist currently under several SRO rules.[58] Also, given the policy and purposes behind the Sarbanes-Oxley Act, as well as to maintain consistency and to ease administration of the requirements by the SROs, we do not currently propose to entertain exemptions or waivers for particular relationships on a case-by-case basis.[59]

Questions regarding the proposed independence requirements:

- Is additional clarification necessary regarding the consulting, advisory or other compensatory fee prohibition? For example, should we clarify whether "compensatory fees" would include compensation under a retirement or similar plan in which a former officer or employee of the issuer participates? Should there be an exception for a *de minimis* amount of payments? If so, what amount would be appropriate? How would such an exception be consistent with the purposes of the prohibition?
- Is the proposed extension of the compensatory prohibition to spouses, minor children or stepchildren or children or stepchildren sharing a home with the member appropriate? Should it be expanded or narrowed? For example, should there be an exception for non-executive family members employed by the issuer? Is the extension to payments accepted by an entity in which an audit committee member is a partner, member or principal or occupies a similar position and which provides accounting, consulting, legal, investment banking, financial or other advisory services or any similar services to the issuer appropriate? Should we extend the prohibition further, such as to ordinary course business relationships?
- Is the proposed definition of "affiliated person" for non-investment companies appropriate? Is the proposed safe harbor from the definition of affiliated person appropriate? Should it include fewer or more persons? In responding to these questions, please keep in mind that, by its very nature, it would be difficult to create a safe harbor covering all individuals who are non-affiliates without inadvertently covering affiliates as well. The safe harbor would not create a presumption that those outside the safe harbor are affiliates. Rather, the safe harbor is designed to cover only those individuals whom we reasonably believe would not be affiliates. Is this assumption accurate? Can we reliably assume that people who own less than 10% of a company and are not officers or directors are not in control of the company? Should this threshold be higher (*e.g.*, 20%) or lower (*e.g.*, 5%)? Should the exclusion from the definition of affiliate include an express presumption that those persons not so excluded are affiliates, unless rebutted by a majority of independent directors?
- Should we rely exclusively on retaining a subjective test for determining affiliate status, given the varied contractual arrangements with a control feature entered into by issuers, particularly smaller companies? A person might employ specified thresholds to conceal a control relationship. Should a facts and circumstances test be retained in order to reflect the different ways a control relationship can be established with an issuer?
- Should the board of directors be required to determine whether an audit committee member is independent?[60] Should the board be required to disclose this determination? If so, when? If the board should not make the determination, who should?
- The proposed independence requirements relate to current relationships with the audit committee member and related persons. Should the prohibition also extend to a "look back" period before the appointment of the member to the audit committee? If so, what period (*e.g.*, three years or five years) would be appropriate? Should there be different look-back periods for different relationships or different parties? If so, which ones?
- Should there be additional criteria for independence apart from the two proposed criteria? For example, in addition to the proposed prohibitions, should there be a prohibition on any transactions or relationships with the audit committee member or an affiliate of the audit committee member apart from the committee member's capacity as a member of the board and any board committee?
- Should additional relationships be exempted from the independence requirements at this time? If so, which relationships should be exempted, why should they be exempted, and how would such an exemption be consistent with maintaining the independence of the audit committee?
- Is the proposed exemption for new public companies appropriate? Should

[56] See proposed Exchange Act Rule 10A-3(b)(1)(iv)(A).

[57] See proposed Exchange Act Rule 10A-3(b)(1)(iv)(B).

[58] See, for example, Section 303.01 of the NYSE's listing standards; Rule 4350(d) of the NASD's listing standards and Section 121B of the AMEX's listing standards. The rules of the NYSE, NASD and AMEX are available on their Web sites at *www.nyse.com*, *www.nasd.com* and *www.amex.com*, respectively.

[59] Similarly, Commission staff would not entertain no-action letter or exemption requests in this area.

[60] See, *e.g.*, note 26 above.

more than one audit committee member be exempted from the requirements? Should a specific percentage of audit committee members be exempted? Should the exemption be conditioned on there being at least a majority of independent directors on the audit committee? Should the exemption period be longer (*e.g.*, 1 year) or shorter (*e.g.*, 30 days)? We are not proposing to apply this exemption to investment companies. Should this exemption apply to investment companies?

- Is the proposed exemption for independent board members that sit on both a parent's and consolidated majority-owned subsidiary's board of directors appropriate? Is the requirement that the board member also is otherwise independent of the subsidiary necessary? Should the exemption be limited only to wholly owned subsidiaries or other specified level of ownership? Should the exemption be denied if the subsidiary maintains a listing for its own securities? Is there any need for a similar exemption from the "interested person" test for investment companies?
- Should there be an exception to the independence requirements based upon exceptional and limited circumstances, if the board determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders? If so, should the board be required to disclose the nature of the relationship and the reasons for that determination? Should there be a time limit for these appointments?
- Should companies be allowed to request exemptive relief on a case-by-case basis? If so, what procedures should be used for submitting and evaluating applications for exemptive relief? What factors should the Commission consider in considering such requests? How would such a case-by-case process be consistent with the policy and purposes of Section 10A(m)? How would such a process be coordinated between the Commission and the SROs? Should companies be required to disclose publicly any exemption they receive? Should SROs be permitted to grant exemptions within defined parameters? What should those parameters be?
- Are any modifications required to the consulting, advisory or other compensatory fee prohibition for investment companies? Is it appropriate to use the definition of "interested person" as set forth in Section 2(a)(19) of the Investment Company Act to test the independence of members of investment company audit committees, as proposed? If not, should the rule apply the affiliation test, which we propose to apply to operating companies, or a different test?

B. Responsibilities Relating to Registered Public Accounting Firms

One of the audit committee's primary functions is to enhance the independence of the audit function, thereby furthering the objectivity of financial reporting. The Commission has long recognized the importance of an auditor's independence in the audit process.[61] The auditing process may be compromised when a company's outside auditors view their main responsibility as serving the company's management rather than its full board of directors or its audit committee. This may occur if the auditor views management as its employer with hiring, firing and compensatory powers. Under these conditions, the auditor may not have the appropriate incentive to raise concerns and conduct an objective review. Further, if the auditor does not appear independent to the public, then investor confidence is undermined and one purpose of the audit is frustrated. One way to help ensure that the auditor is truly independent, then, is for the auditor to be hired, evaluated and, if necessary, terminated by the audit committee. This would help to align the auditor's interests with those of shareholders.

Accordingly, under the proposed rule, an audit committee would have to be directly responsible for the appointment, compensation, retention and oversight of the work of the independent auditor engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work or performing other audit, review or attest services for the issuer,[62] and the independent auditor would have to report directly to the audit committee. We propose to clarify that these oversight responsibilities include the authority to retain the outside auditor, which would include the power not to retain (or to terminate) the outside auditor. In addition, in connection with these oversight responsibilities, the audit committee would need to have ultimate authority to approve all audit engagement fees and terms, as well as all significant non-audit engagements of the independent auditor. In this regard, the proposed requirement would reinforce the new requirement in section 10A(i) of the Exchange Act, as added by section 202 of the Sarbanes-Oxley Act, that auditing and non-auditing services be pre-approved by the audit committee. The proposed requirement, like the other proposed requirements, also would promote compliance with an issuer's internal control requirements.

The proposed requirement does not conflict with, and would not be affected by, any requirement under a company's governing law or documents or other home country requirements that requires shareholders to elect, approve or ratify the selection of the issuer's auditor. The proposed requirement instead relates to the assignment of responsibility to oversee the auditor's work as between the audit committee and management. We propose to add an instruction to the new rule to reflect this intention. In such an instance, however, if the issuer provides a recommendation or nomination of an auditor to its shareholders, the audit committee of the issuer would need to be responsible for making the recommendation or nomination.[63]

In addition, we are proposing to exempt investment companies from the requirement that the audit committee be responsible for the selection of the independent auditor. Section 32(a) of the Investment Company Act,[64] which requires that independent auditors of registered investment companies be selected by majority vote of the disinterested directors, already addresses the concerns behind this requirement. Investment companies

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[61] The federal securities laws recognize the importance of independent auditors. See, *e.g.*, Items 25 and 26 of Schedule A of the Securities Act and Sections 12(b)(1)(J) and 13(a)(2) of the Exchange Act [15 U.S.C. 78*l*(b)(1)(J) and 78m(a)(2)]. *See also* Title II of the Sarbanes-Oxley Act.

[62] For a further discussion of the scope of audit, review and attest services, which are broader than those services required to perform an audit pursuant to generally accepted auditing standards, *see* Release No. 33–8154 (Dec. 2, 2002). For example, Section 10A(i)(1)(A) of the Exchange Act [15 U.S.C. 78j–1(i)(1)(A)] identifies services related to the issuance of comfort letters and services related to statutory audits required for insurance companies for purposes of state law as audit services.

[63] Similarly, the proposed requirement does not conflict with any requirement in a company's home jurisdiction that prohibits the full board of directors from delegating the responsibility to select the company's auditor. In that case, the audit committee would need to be granted advisory and other powers with respect to such matters to the extent permitted by law, including submitting nominations to the full board.

[64] 15 U.S.C. 80a–31(a). The exemption would apply to business development companies because they are subject to the requirements of Section 32(a) of the Investment Company Act pursuant to Section 59 of the Investment Company Act [15 U.S.C. 80a–58]. Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act, but are subject to certain provisions of that Act. *See* Sections 2(a)(48) and 54–65 of the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53–64].

generally would remain subject to the proposed requirements regarding audit committee responsibility in all other areas, including compensation and oversight of the auditors.[65]

Questions regarding the proposed auditor responsibility requirement:

- We request comment on implementation of this proposed requirement. Is additional specificity needed?
- Should the audit committee also be directly responsible for the appointment, compensation, retention and oversight of an issuer's internal auditor? Should other responsibilities be under the supervision of the audit committee?
- Does the proposed instruction that the requirement does not conflict with, and is not affected by, any requirement that requires shareholders to ultimately elect, approve or ratify the selection of the issuer's auditor adequately address the concerns of issuers whose governing law or documents requires shareholder selection of the auditor? Are additional accommodations necessary? Please explain how any accommodation would be consistent with the Sarbanes-Oxley Act.
- Should the requirements relating to independent auditor selection of Section 32(a) of the Investment Company Act be retained with respect to registered investment companies falling within the scope of the proposed rule? If so, why? Should the Commission instead exempt registered investment companies from the requirements relating to independent auditor selection in Section 32(a) of the Investment Company Act, when such investment companies fall within the scope of the proposed rule, and require that their independent auditors be selected by the audit committee? If so, why?
- Should the Commission require registered investment companies to comply with the requirements of both Section 32(a) of the Investment Company Act and the proposed rule with respect to the selection of independent auditors? If so, should we interpret these provisions to require that the audit committee nominate the independent auditor and the majority of disinterested directors approve the independent auditor?
- We note that our recent release regarding auditor independence proposes that the audit committee of a registered investment company separately approve the independent auditor.[66] How should the Commission reconcile proposed Rule 10A–3, the auditor independence proposal, and Section 32(a) of the Investment Company Act?

C. Procedures for Handling Complaints

The audit committee must place some reliance on management for information about the company's financial reporting process. Since the audit committee is dependent to a degree on the information provided to it by management and internal and outside auditors, it is imperative for the committee to cultivate open and effective channels of information. Management may not have the appropriate incentives to self-report all questionable practices. A company employee or other individual may be reticent to report concerns regarding questionable accounting or other matters for fear of management reprisal.[67] The establishment of formal procedures for receiving and handling complaints could serve to facilitate disclosures, encourage proper individual conduct and alert the audit committee to potential problems before they have serious consequences.

Accordingly, under the standards contemplated by the proposals, each audit committee would need to establish procedures for:[68]

- The receipt, retention and treatment of complaints received by the issuer regarding accounting, internal accounting controls or auditing matters, and
- The confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

We do not propose to mandate specific procedures that the audit committee must establish. Given the variety of listed issuers in the U.S. capital markets, we believe companies should be provided with flexibility to develop and utilize procedures appropriate for their circumstances. We expect each audit committee to develop procedures that work best consistent with its company's individual circumstances.

Questions regarding the proposed complaint procedures requirement:

- Do most listed issuers have procedures for the receipt, retention and treatment of complaints or for the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters? If so, how do these procedures work? Are they effective in their purpose?
- Should the proposed rule require a company to disclose the procedures that have been established or any changes to those procedures? If so, where and how often should the disclosure appear and what should it look like?
- Should specified procedures be prescribed or encouraged? For example, should we specify how long complaints must be retained? Should we specify who could or could not be designated by the audit committee for the receipt and treatment of complaints?

D. Authority To Engage Advisors

To be effective, an audit committee must have the necessary resources and authority to fulfill its function. The audit committee likely is not equipped to self-advise on all accounting, financial reporting or legal matters. To perform its role effectively, therefore, an audit committee may need the authority to engage its own outside advisors, including experts in particular areas of accounting, as it determines necessary apart from counsel or advisors hired by management, especially when potential conflicts of interest with management may be apparent.

The advice of outside advisors may be necessary to identify potential conflicts of interest and assess the company's disclosure and other compliance obligations with an independent and critical eye. Often, outside advisors can draw on their experience and knowledge to identify best practices of other companies that might be appropriate for the issuer. The assistance of outside advisors also may be needed to independently investigate

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[65] Section 32(a) applies to management investment companies and face-amount certificate companies. It does not apply to unit investment trusts, which do not have boards of directors and which we propose to exclude entirely from the requirements that we are proposing. *See* Section II.F.3.d. concerning unit investment trusts. There are three types of investment companies: face-amount certificate companies, unit investment trusts and management companies. *See* Section 4 of the Investment Company Act [15 U.S.C. 80a–4]. The Investment Company Act divides management companies into two sub-categories, defining an open-end company as a management company that offers for sale or has outstanding any redeemable securities of which it is the issuer and a closed-end company as any management company other than an open-end company. *See* Section 5(a) of the Investment Company Act [15 U.S.C. 80a–5(a)]. A unit investment trust is an investment company that is organized under a trust indenture, contract of custodianship or agency, or similar instrument; does not have a board of directors; and issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust. See Section 4(2) of the Investment Company Act of 1940 [15 U.S.C. 80a–4(2)].

[66] *See* Exchange Act Release No. 46934 (Dec. 2, 2002).

[67] The Sarbanes-Oxley Act provides additional protections for employees who provide evidence of fraud. *See*, for example, Section 806 of the Sarbanes-Oxley Act.

[68] The Commission's proposals are not intended to preempt or supersede any other Federal or State requirements relating to receipt and retention of records.

questions that may arise regarding financial reporting and compliance with the securities laws. Accordingly, the proposed rule would specifically require an issuer's audit committee to have the authority to engage outside advisors, including counsel, as it determines necessary to carry out its duties.[69]

Questions regarding the proposed authority to engage advisors requirement:

- Is any additional specificity needed for this requirement? For example, should we define what constitutes an "independent advisor?"

E. Funding

An audit committee's effectiveness may be compromised if it is dependent on management's discretion to compensate the independent auditor or the advisors employed by the committee, especially when potential conflicts of interest with management may be apparent. Accordingly, the proposed rule would require the issuer to provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation:

- To any registered public accounting firm engaged for the purpose of rendering or issuing an audit report or related work or performing other audit, review or attest services for the listed issuer; and
- To any advisors employed by the audit committee.

This proposed requirement would further the proposed standard relating to the audit committee's responsibility to appoint, compensate, retain and oversee the outside auditor. It also would add meaning to the proposed standard relating to the audit committee's authority to engage independent advisors. Not only could an audit committee be hindered in its ability to perform objectively its duties by not having control over the ability to compensate these advisors, but the role of the advisors also could be compromised if they are required to rely on management for compensation. Thus, absent such a provision, both the audit committee and the advisors could be less willing to address disagreements or other issues with management.

Questions regarding the proposed funding requirement:

- Is any additional specificity needed for this requirement? For example, should a specific agreement or arrangement be required to provide for the appropriate funding?
- Should there be any limit on the amount of compensation that could be requested by the audit committee? If so, who should set these limits (*e.g.*, the full board)? Should the audit committee's request be limited to "reasonable" compensation? Who would determine what is "reasonable"? How would such limits be consistent with the policy and purposes of the Sarbanes-Oxley Act? Is the fact that the audit committee members ultimately are elected by, and answerable to, shareholders sufficient to address any concern over compensation limits?

F. Application and Implementation of the Proposed Standards

1. SROs Affected

Section 10A(m) of the Exchange Act by its terms applies to all national securities exchanges and national securities associations. These entities, to the extent that their listing standards do not already comply with the proposals, will be required to issue or modify their rules, subject to Commission review, to conform their listing standards.[70] Under our proposals, the new requirements would need to be operative by the SROs no later than the first anniversary of the publication of our final rule in the **Federal Register**. The SROs are not precluded from adopting additional listing standards regarding audit committees, as long as they are consistent with the proposed rule.

To facilitate timely implementation of the proposals, we propose that each SRO must provide to the Commission, no later than 60 days after publication of our final rule in the **Federal Register**, proposed rules or rule amendments that comply with our final rule. Further, each SRO would need to have final rule or rule amendments that comply with our final rule approved by the Commission no later than 270 days after publication of our final rule in the **Federal Register**. We request comment below on the appropriateness of these periods.

The OTC Bulletin Board (OTCBB), the Pink Sheets and the Yellow Sheets would not be affected by the proposed requirements, and therefore issuers whose securities are quoted on these interdealer quotation systems similarly would not be affected, unless their securities also are listed on an exchange or Nasdaq.[71] Each of these quotation systems does not provide issuers with the ability to list their securities, but is a quotation medium for the over-the-counter securities market that collects and distributes market maker quotes to subscribers. These interdealer quotation systems do not maintain or impose listing standards, nor do they have a listing agreement or arrangement with the issuers whose securities are quoted through them. Although market makers may be required to review and maintain specified information about the issuer and to furnish that information to the interdealer quotation system,[72] the issuers whose securities are quoted on such systems do not have any filing or reporting requirements with the system.[73]

Questions regarding the proposed application to SROs

- Do the proposed implementation dates provide sufficient time for SROs to propose and obtain Commission approval for new or amended rules to meet the requirements of the proposals? Is the date by when the standards would need to be operative appropriate? If not, what other dates would be appropriate? What factors should the Commission consider in determining these dates?

2. Securities Affected

In enacting Section 10A(m) of the Exchange Act, Congress made no distinction regarding the type of securities to be covered. Section 10A(m)(1)(A) of the Exchange Act prohibits the listing of "any security" of an issuer that does not meet the new standards for audit committees. Accordingly, the proposed rule would apply not just to voting equity securities, but to any listed security, regardless of its type, including debt securities, derivative securities and other types of listed securities. We believe investors in all securities of an issuer, whether common equity or fixed income, would benefit from the increased financial oversight of an issuer that would result from a strong and effective audit committee.

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[69] The proposed requirement would not preclude access to or advice from the company's internal counsel or regular outside counsel. It also would not require an audit committee to retain independent counsel.

[70] An SRO that wished to do so could satisfy the requirements of the rule by requiring that a listed issuer must comply with Exchange Act Rule 10A–3.

[71] The OTCBB is operated by The Nasdaq Stock Market, Inc., which is owned by the NASD. Information about the OTCBB can be found at *www.otcbb.com*. The Pink Sheets and the Yellow Sheets (as well as the corresponding Electronic Quotation Service) are operated by Pink Sheets LLC. Information about the Pink Sheets, the Yellow Sheets and the Electronic Quotation Service can be found at *www.pinksheets.com*.

[72] *See* 17 CFR 240.15c2–11.

[73] However, under OTCBB rules, issuers of securities quoted on the OTCBB must be subject to periodic filing requirements with the Commission or other regulatory authority. *See* NASD Rule 6530.

a. Multiple Listings

Many companies today issue multiple classes of securities through various ownership structures on various markets. For example, a company may have a class of common equity securities listed on one market, several classes of debt listed on one or more other markets, and derivative securities listed on yet another market. If a company already was subject to the proposed standards as a result of one listing, there would be little or no additional benefit from having the requirements imposed on the company due to an additional listing. Further, once one national securities exchange or national securities association is responsible for monitoring the compliance of a company with the standards, there would be little or no additional benefit, and much overlap and duplicative effort, from requiring more than one of these SROs to monitor compliance.

In addition, issuers often issue non-equity securities through a wholly owned or majority-owned subsidiary for various reasons. Requiring these subsidiaries, which often have no purpose other than to issue or guarantee the securities, to be subject to the proposed audit committee requirements would add little additional benefit if the subsidiary is closely controlled by a parent issuer that is subject to the proposed requirements. Instead, imposing the requirement on these subsidiaries could create an onerous burden on the parent to recruit and maintain an audit committee meeting the requirements for each specific subsidiary.

Accordingly, we propose an exemption from the proposed requirements for additional listings of securities by a company at any time the company is subject to the proposed requirements as a result of the listing of a class of common equity or similar securities. The additional listings could be on the same market or on different markets. We condition this exemption on the listing of a class of common equity or similar securities because these securities would most likely represent the primary public listing of the company. Companies that do not have a class of common equity or similar securities listed would be subject to the proposed requirements in each affected market where its securities were listed.

We also propose to extend this exemption to listings of non-equity securities by a direct or indirect consolidated majority-owned subsidiary of a parent company, if the parent company is subject to the proposed requirements as a result of the listing of a class of its equity securities. However, if the subsidiary were to list its own equity securities (other than non-convertible, non-participating preferred securities [74]) the subsidiary would be required to meet the proposed requirements to protect its own public shareholders.

b. Security Futures Products and Standardized Options

The enactment of the Commodity Futures Modernization Act of 2000, or CFMA,[75] addressed the regulation of security futures products.[76] It permits national securities exchanges registered under Section 6 of the Exchange Act [77] and national securities associations registered under Section 15A(a) of the Exchange Act [78] to trade futures on individual securities and on narrow-based security indices ("security futures") without being subject to the issuer registration requirements of the Securities Act and Exchange Act as long as they are cleared by a clearing agency that is registered under Section 17A of the Exchange Act [79] or that is exempt from registration under Section 17A(b)(7)(A) of the Exchange Act. In December 2002, we adopted rules to provide comparable regulatory treatment for standardized options.[80]

The role of the clearing agency for security futures products and standardized options is fundamentally different from a conventional issuer of securities. For example, the purchaser of these products does not, except in the most formal sense, make an investment decision regarding the clearing agency. As a result, information about the clearing agency's business, its officers and directors and its financial statements is less relevant to investors in these products than to investors in the underlying security. Similarly, the investment risk in these products is determined by the market performance of the underlying security rather than the performance of the clearing agency. Moreover, the clearing agencies are self-regulatory organizations subject to regulatory oversight. Furthermore, unlike a conventional issuer, the clearing agency does not receive the proceeds from sales of security futures products or standardized options.[81]

Recognizing these fundamental differences, we propose to exempt from our proposed rule the listing of a security futures product cleared by a clearing agency that is registered under Section 17A of the Exchange Act or exempt from registration under Section 17A(b)(7) of the Exchange Act. We propose a similar exemption for the listing of standardized options issued by a clearing agency registered under Section 17A of the Exchange Act.

Questions regarding proposed application to listed securities:

- Is the proposed exemption for the listings of other classes of securities of an issuer appropriate? Would the benefit of having multiple SROs monitoring compliance outweigh the potential duplicative and administrative burdens that would be imposed on issuers and SROs if there was not such an exemption? Should the exemption be conditioned on having a class of common equity or similar securities listed, or should any class of securities be sufficient?
- Similarly, is the proposed exemption of listings of non-equity securities by consolidated majority-owned subsidiaries appropriate? Instead, should all issuers of securities be required to maintain an audit committee meeting the proposed standards? What would be the burden on companies from mandating such a requirement? Should the exemption be limited to wholly owned subsidiaries or some other specified level of ownership? Is limiting the exemption to non-equity securities (other than non-convertible, non-participating preferred securities) of the subsidiary appropriate?
- Is the exclusion for securities futures products and standardized options appropriate? If not, how should these securities be handled?
- Although we do not propose to exempt other types of securities from

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[74] Trust-preferred and similar securities also would fall within this category.

[75] Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[76] Securities Act Section 2(a)(16) [15 U.S.C. 77b(a)(16)], Exchange Act Section 3(a)(56) [15 U.S.C. 78c(a)(56)], and Commodities Exchange Act Section 1a(32) [7 U.S.C. 1a(32)] define "security futures product" as a security future or an option on a security future.

[77] 15 U.S.C. 78f.

[78] 15 U.S.C. 78o–3(A).

[79] 15 U.S.C. 78q–1.

[80] *See* Release No. 33–8171 (Dec. 23, 2002) [68 FR 188]. In that release, we exempted standardized options issued by registered clearing agencies and traded on a registered national securities exchange or on a registered national securities association from all provisions of the Securities Act, other than the Section 17 antifraud provision of the Securities Act, as well as the Exchange Act registration requirements. Standardized options are defined in Exchange Act Rule 9b–1(a)(4) [17 CFR 240.9b–1(a)(4)] as option contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relate to option classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.

[81] However, the clearing agency may receive a clearing fee from its members.

coverage of the proposed rule, we request comment on the propriety of either a complete or partial exemption from the requirements for other types of securities? For example, should the rule apply only to classes of voting common equity of an issuer? What would be the basis for such an exclusion, and how would it be consistent with the purposes of the Sarbanes-Oxley Act? In responding to this request, commenters should specifically address how such an exemption would be consistent with investor protection.

3. Issuers Affected

a. Foreign Issuers

For many years, U.S. investors increasingly have been seeking opportunities to invest in a wide range of securities, including the securities of foreign issuers, and foreign issuers have been seeking opportunities to raise capital and effect equity-based acquisitions in the U.S. using securities as the "acquisition currency." The Commission has responded to these trends by seeking to facilitate the ability of foreign issuers to access U.S. investors through listings and offerings in the U.S. capital markets. We have long recognized the importance of the globalization of the securities markets both for investors who desire increased diversification and international companies that seek capital in new markets.

Section 10A(m) of the Exchange Act makes no distinction between domestic and foreign issuers. With the growing globalization of the capital markets, the importance of maintaining effective oversight over the financial reporting process is relevant for listed securities of any issuer, regardless of its domicile. Many foreign private issuers [82] already maintain audit committees, and the global trend appears to be toward establishing audit committees.[83] The proposed rule, therefore, would apply to foreign private issuers as well as domestic issuers.

However, we are aware that the proposed requirements may conflict with legal requirements, corporate governance standards and the methods for providing auditor oversight in the home jurisdictions of some foreign issuers. Several foreign issuers and their representatives have expressed concerns about the possible application of Exchange Act Section 10A(m).[84] In our proposal, we attempt to address these concerns in specific areas in which foreign corporate governance arrangements differ significantly from general practices among U.S. corporations.

For example, we understand that some countries, such as Germany, require that non-management employees, who would not be viewed as "independent" under the proposed requirements, serve on the supervisory board or audit committee.[85] Having such employees serve on the board or audit committee can provide an independent check on management, which itself is one of the purposes of the independence requirements under the Sarbanes-Oxley Act. Accordingly, we are proposing a limited exemption from the independence requirements to address this concern. We would provide that non-management employees could sit on the audit committee of a foreign private issuer if the employee is elected or named to the board of directors or audit committee of the foreign private issuer pursuant to home country legal or listing requirements.

We also note that certain foreign private issuers have a two-tier board, with one tier designated as the management board and the other tier designated as the supervisory or non-management board. In this circumstance, we believe that the supervisory or non-management board would be the body within the company best equipped to comply with the proposed requirements. We propose to clarify that in the case of foreign private issuers with two-tier boards of directors, the term "board of directors" means the supervisory or non-management board. As such, the supervisory or non-management board could either form a separate audit committee or, if the entire supervisory or non-management board was independent within the provisions and exceptions of the proposed rule, the entire board could be designated as the audit committee.[86]

Controlling shareholders or shareholder groups are more prevalent among foreign issuers than in the United States, and those controlling shareholders have traditionally played a more prominent role in corporate governance. In jurisdictions providing for audit committees, representation of controlling shareholders on these committees is common. We believe that a limited exception from the independence requirements can accommodate this practice without undercutting the fundamental purposes of the proposed rule. In particular, we would propose that one member of the audit committee could be a shareholder, or representative of a shareholder or group, owning more than 50% of the voting securities of a foreign private issuer, if the "no compensation" prong of the independence requirements is satisfied, the member in question has only observer status on, and is not a voting member or the chair of, the audit committee, and the member in question is not an executive officer of the issuer.[87] This limited exception is designed to accommodate foreign practices, would assure independent membership and an independent chair of the audit committee and would still exclude management from the committee.

Similarly, foreign governments may have significant shareholdings in some foreign private issuers or may own special shares that entitle the government to exercise certain rights relating to these issuers. However, due to their shareholdings or other rights, these representatives may not be considered independent under our proposals. To accommodate foreign practices, we believe that foreign governmental representatives should be permitted to sit on audit committees of foreign private issuers. As a result, we propose a limited exception that one member of the audit committee could be a representative of a foreign government or foreign governmental entity, if the "no compensation" prong of the independence requirement is satisfied and the member in question is not an executive officer of the issuer. As with

[82] The term "foreign private issuer" is defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer is a non-government foreign issuer, except for a company that (1) has more than 50% of its outstanding voting securities owned by U.S. investors and (2) has either a majority of its officers and directors residing in or being citizens of the U.S., a majority of its assets located in the U.S., or its business principally administered in the U.S.

[83] See, for example, "Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence," Statement of the IOSCO Technical Committee (Oct., 2002) (available at www.iosco.org); Egon Zehnder International, Board of Directors Global Study (2000) (available at www.zehnder.com); and KPMG LLP, Corporate Governance in Europe: KPMG Survey 2001/2002 (2002) (available at www.kpmg.com).

[84] See, *e.g.*, Petition for Rulemaking submitted by the Organization for International Investment, File No. 4–462 (Aug. 19, 2002).

[85] See, *e.g.*, Co-Determination Act of 1976 (Mitbestimmungsgesetz).

[86] *See* note 37 above and the accompanying text.

[87] Exchange Act Rule 3b–7 defines the term "executive officer" as an issuer's president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy-making functions for the issuer.

the proposed exemption for controlling shareholder representatives, this limited exception is designed to accommodate foreign practices and still exclude management from the committee.

Finally, while as noted above there is a trend toward having audit committees in foreign jurisdictions, several foreign jurisdictions require or provide for auditor oversight through a board of auditors or similar body, or groups of statutory auditors, that are separate from the board of directors.[88] We believe that these boards of auditors or statutory auditors are intended to be independent of management, although their members may not in all cases meet all of the independence requirements set forth in Section 10A(m) of the Exchange Act. In addition, while these bodies provide independent oversight of outside auditors, they may not have all of the responsibilities set forth in our proposals.

The establishment of an audit committee in addition to these bodies, with duplicative functions, might not only be costly and inefficient, but it also could generate possible conflicts of powers and duties. Accordingly, we propose an exemption from certain of the requirements for audit committees for boards of auditors or statutory auditors of foreign private issuers that fulfill the remaining requirements of the rule, if those boards operate under legal or listing provisions that are intended to provide oversight of outside auditors that is independent of management, membership on the board excludes executive officers of the issuer and certain other requirements are met. Specifically, foreign private issuers with boards of auditors or similar bodies or statutory auditors meeting these requirements would be exempt from the requirements regarding the independence of audit committee members and the audit committee's responsibility to oversee the work of the outside auditor. The remaining proposed requirements regarding procedures for handling complaints, access to advisors and funding for advisors would apply to these issuers, with the requirements being applicable to the board of auditors or statutory auditors instead of an audit committee. Also, such board or body would need to be, to the extent permitted by law, responsible for the appointment and retention of any registered public accounting firm engaged by the listed issuer.[89]

A foreign private issuer availing itself of any of these exemptions would be subject to specific disclosure requirements discussed in Section II.G.1 below. In proposing these exemptions, we recognize that some foreign jurisdictions continue to have historical structures that may conflict with maintaining audit committees meeting the requirements of Section 10A(m) of the Exchange Act. We encourage foreign issuers that access the U.S. capital markets to continue to move toward internationally accepted best practices in corporate governance.[90]

As mentioned below, we request comment on whether there are other areas, in either one country or in many countries, in which the rules we are proposing are inconsistent or inappropriate in a significant way with foreign corporate governance arrangements. If there are other areas, do those arrangements adequately address the problems to be addressed under Exchange Act Section 10A(m)? As proposed, there would be no other ability for an SRO to exempt or waive foreign issuers from the proposed requirements.

b. Small Businesses

Section 10A(m) of the Exchange Act makes no distinction based on an issuer's size. We think that improvements in the financial reporting process for companies of all sizes are important for promoting investor confidence in our markets. In this regard, because we have seen instances of financial fraud at small companies as well as at large companies, we think that improving the effectiveness of audit committees of small and large companies is important.[91] The proposed rule, therefore, would apply to listed issuers of all sizes.

We recognize that because the proposals apply only to listed issuers, quantitative listing standards applicable to listed securities, such as minimum revenue, market capitalization and shareholder equity requirements, will limit the size of issuers that will be affected by the requirements.[92] However, we are sensitive to the possible implication for smaller issuers and for SROs that would like to specialize in securities of these issuers. We request comment below on these topics.

c. Issuers of Asset-Backed Securities

In several of our releases implementing provisions of the Sarbanes-Oxley Act,[93] we have noted the special nature of asset-backed issuers.[94] Because of the nature of these entities, such issuers are subject to substantially different reporting requirements. Most significantly, asset-backed issuers are generally not required to file the financial statements that other companies must file. Also, such entities typically are passive pools of assets, without an audit committee or board of directors or persons acting in a similar capacity. Accordingly, we propose to exclude asset-backed issuers from the proposed requirements.

d. Investment Companies

There are essentially two categories of investment companies that have shares listed for trading on exchanges: closed-end investment companies and so-called "exchange-traded funds" ("ETFs"). Closed-end investment companies are actively managed investment companies, which do not issue redeemable securities. ETFs are investment companies that are registered under the Investment Company Act as open-end investment companies or unit investment trusts ("UITs"). Unlike typical open-end funds or UITs, ETFs do not sell or redeem their individual shares ("ETF shares") at net asset value ("NAV"). Instead, ETFs sell and redeem ETF shares at NAV only in large blocks (such as 50,000 ETF shares). In addition, national securities exchanges list ETF shares for trading, which allows investors to purchase and sell individual ETF shares among themselves at market prices throughout the day. Unlike open-end ETFs or closed-end investment companies, UITs, including those that operate as ETFs, are

[88] For example, under current Japanese law, we understand that large Japanese corporations must maintain a board of corporate statutory auditors, a legally separate and independent body from the corporation's board of directors that is elected by shareholders. See, *e.g.*, Law for Special Exceptions to the Commercial Code Concerning Audits, etc. of Corporations (Law No. 22, 1974, as amended). Further, we understand that effective April 1, 2003, Japanese corporations will have the option to elect either a governance system with a separate board of directors and board of corporate auditors or a system based on nominating, audit and compensation committees under the board of directors.

[89] Such responsibility could be vested in such board or body, or statutory auditors, in any manner, including without limitation by law or listing requirement or delegation.

[90] *See, e.g.*, IOSCO Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence (2002); OECD Principles of Corporate Governance (1999).

[91] See Beasley, Carcello and Hermanson, Fraudulent Financial Reporting: 1987–1997, An Analysis of U.S. Public Companies (Mar. 1999) (study commissioned by the Committee of Sponsoring Organizations of the Treadway Commission).

[92] Examples of the types of quantitative standards necessary for initial and continued listings on the NYSE, Nasdaq and AMEX are available on their respective websites.

[93] *See* note 30 above.

[94] The term "Asset-Backed Issuer" is defined in 17 CFR 240.13a–14(g) and 240.15d–14(g).

not actively managed and do not have boards of directors from which audit committee members could be drawn. Accordingly, our proposed rules would cover closed-end investment companies and exchange-traded open-end investment companies, but we are proposing to exclude exchange-traded UITs from the proposed requirements.[95]

Questions regarding the proposed application to issuers:

- Although we do not propose a complete exemption for foreign issuers from coverage of the proposed rule, and question whether such an exemption would be consistent with the policies underlying the Sarbanes-Oxley Act, we solicit comment on the propriety of either a complete or broader exemption from the requirements for foreign issuers. Given the exemptions that are proposed, would the proposals conflict with local law or local stock exchange requirements? If so, how? Are the problems that the proposals are intended to address dealt with in alternative ways in other jurisdictions? Would any foreign issuers not consider a listing solely because of these requirements? Would any foreign issuers that currently maintain a U.S. listing seek to delist their securities because of these requirements?
- Is the proposed special accommodation to the independence requirements adequate for issuers in countries with a dual board structure where employee representatives sit on the supervisory board or are required to be on the audit committee? If not, how should we accommodate these issuers, if at all?
- Are the proposed special accommodations for foreign issuers with controlling shareholder or shareholder groups or foreign government representation appropriate? Do the proposed exemptions provide appropriate accommodations for foreign private issuer practices, consistent with the purposes of Section 10A(m) of the Exchange Act and the protection of investors? Are there alternative approaches that would be preferable to address the issue? Should any of the conditions of the proposed exemption be changed? For example, for controlling shareholders, should the level of shareholder ownership proposed be higher (*e.g.*, 80%) or lower (*e.g.*, 10%)? Is the limitation for controlling shareholders to observer status and not being a voting member or chair of the audit committee appropriate?
- Is the proposed special accommodation for issuers from jurisdictions that operate with boards of auditors or similar bodies appropriate? Does the proposed exemption provide appropriate accommodation for these issuers, consistent with the purposes of Section 10A(m) of the Exchange Act and the protection of investors? Are there alternative approaches that would be preferable to address the issue? Should we provide a "sunset" date for this provision to allow the Commission to reconsider its effectiveness and to reexamine the trend towards audit committees in other jurisdictions? If so, what date should we use (*e.g.*, December 31, 2005)?
- Is the compliance burden for companies under a certain size disproportionate to the benefits to be obtained from the proposed requirements? Would any smaller issuers not consider a listing solely because of these requirements? Would any smaller issuers that currently maintain a listing seek to delist their securities because of these requirements? How can we minimize the burden consistent with the purposes of the Sarbanes-Oxley Act?
- Should the scope of one or more of the proposed requirements be narrowed to exclude or apply differently to companies under a certain size? If so, which requirements should be changed? How would such accommodations be consistent with the purposes of Section 10A(m) and the protection of investors? Should there be special accommodations for companies considered under our rules to be "small business issuers" (companies that have revenues and public float of less than $25 million)?[96] Should there be a higher cutoff, such as $100 million or $200 million public float and/or revenues? If there should be a different standard for determining the level of issuer affected, should it be based on additional or alternative criteria, such as total assets, shareholder equity or reporting history? What alternate means exist that would provide the same protections to shareholders?
- Is the exclusion of asset-backed issuers appropriate? If not, how should these issuers be handled? Are there other types of issuers that should be handled differently?
- Is the exclusion for ETFs that are structured as unit investment trusts appropriate? If not, how should these ETF UITs be handled? Exchange-traded UITs typically provide audited financial information in shareholder reports although these reports are not required by Commission rules. How should this affect whether exchange-traded UITs are covered by the proposed requirements? Should the sponsor, depositor, or trustee of the UIT be required to comply with the proposed rule? Are there other types of investment companies that should be excluded from the proposed rule? If so, why?
- We propose to make the general exemptions of Exchange Act Rule 10A–3(c) available for use by investment companies. Would investment companies ever fall within any of these exemptions? Should some exemptions be available to investment companies and others unavailable? If so, which ones should be available and why?

4. Determining Compliance With Proposed Standards

Apart from the general requirement to prohibit the listing of a security not in compliance with the enumerated standards, Section 10A(m) of the Exchange Act does not establish specific mechanisms for a national securities exchange or a national securities association to ensure that issuers comply with the proposed standards on an ongoing basis. SROs are required to comply with Commission rules pertaining to SROs and to enforce their own rules, including rules that govern listing requirements and affect their listed issuers. To further the purposes of Section 10A(m), we propose to direct the SROs to require a listed issuer to notify the applicable SRO promptly after an executive officer of an issuer becomes aware of any material noncompliance by the listed issuer with the proposed requirements.[97]

Questions regarding determining compliance with the proposed standards:

- Should a listed issuer be required to notify the SRO if it has failed to comply with our proposed requirements? Is it sufficient for the notification to be made "promptly?" Should the direction to the SROs on this point be more specific

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[95] Business development companies would be covered by the proposed rules.

Investment companies may avail themselves of the general exemptions in proposed Exchange Act Rule 10A–3(c) [17 CFR 240.10A–3(c)], if applicable, and, except in the case of reliance on the exemption for UITs contained in paragraph (c)(5)(ii) or the exemption contained in paragraph (c)(1), would have to disclose such use of a general exemption on proposed Form N–CSR and in proxy statements. The independence exemptions of proposed Exchange Act Rule 10A–3(b)(1)(iv)(A)–(E) [17 CFR 240.10A–3(b)(1)(iv)(A)–(E)] would not apply to investment companies.

[96] The term "small business issuer" is defined in Exchange Act Rule 12b–2.

[97] We encourage the SROs to impose a similar requirement for noncompliance with other SRO listing standards that pertain to corporate governance standards apart from the audit committee requirements in proposed Exchange Act Rule 10A–3, to the extent SROs do not already provide for such a notice requirement.

(*e.g.*, notification must occur no later than two business days after an executive officer of the issuer becomes aware of any material noncompliance)?

- Is the proposed triggering event for notification (*i.e.*, that an executive officer of the issuer has become aware of any material noncompliance) appropriate? For example, should the standard also include any audit committee member becoming aware of any material noncompliance?
- In addition to, or in lieu of, notification in the event of noncompliance, should a listed issuer be required to disclose periodically to the SROs whether they have been in compliance with the standards? If so, how often?
- Should a listed issuer be required to notify the SRO if it has failed to comply with listing standards apart from our proposed requirements for audit committees? Should this requirement apply only to particular listing standards?

5. Opportunity To Cure Defects

Section 10A(m)(1)(B) of the Exchange Act specifies that our rules must provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition of the issuer's securities as a result of its failure to meet the proposed audit committee standards, before imposition of such a prohibition. To effectuate this mandate, our proposals would require the SROs to establish such procedures before they prohibit the listing of or delist any security of an issuer.[98] Preliminarily, we believe that existing continued listing or maintenance standards and delisting procedures of the SROs would suffice as procedures for an issuer to have an opportunity to cure any defects on an ongoing basis. These procedures already provide issuers with notice and opportunity for a hearing, an opportunity for an appeal and an opportunity to cure any defects before their securities are delisted.[99] However, we do expect that the rules of each SRO will provide for definite procedures and time periods for compliance with the proposed requirements to the extent they do not already do so.

We also expect that our final rule will have a delayed implementation date before companies would initially be subject to the standards to provide affected companies with time to conform to the new standards. We recognize that companies may need to conduct shareholder elections to elect independent directors for their audit committees. We envision that the standards contemplated by our proposals would need to be operative by the SROs no later than the first anniversary of the publication of our final rule in the **Federal Register**. This should give listed issuers enough time to go through an annual meeting election cycle to elect any new directors that would be necessary to meet the new requirements.

Questions regarding the opportunity to cure defects:

- Should the SROs be required to establish specific procedures for curing defects apart from those proposed? If so, what would these procedures look like? Should there be a specific course for redress other than the delisting process?
- Should our final rule include specific provisions that set maximum time limits for an opportunity to cure defects? If so, what time limits would be appropriate?
- Beyond the limited exemption we propose for the independence requirements, should companies that have just completed their initial public offering be given additional time to comply with the requirements?
- Is the proposed date for when the SROs rules must be operative appropriate for companies that must comply with the new standards? If not, what date would be appropriate and what factors should we consider in setting any such date? Would a period beyond the proposed date be necessary or appropriate for compliance by smaller companies? Are there special considerations that we should take into account for foreign private issuers?

G. Disclosure Changes Regarding Audit Committees

1. Disclosure Regarding Exemptions

Our proposals provide for certain exemptions. Because these exemptions would distinguish certain issuers from most other listed issuers, we believe that it is important for investors to know if an issuer is availing itself of one of these exemptions. Accordingly, we propose that these issuers would need to disclose their reliance on the exemption and their assessment of whether, and if so, how, such reliance would materially adversely affect the ability of their audit committee to act independently and to satisfy the other requirements of proposed Exchange Act Rule 10A–3. Such disclosure would need to appear in, or be incorporated by reference into, annual reports filed with the Commission.[100] The disclosure also would need to appear in proxy statements or information statements for shareholders' meetings at which elections for directors are held.

Because of the nature of the exemption for boards of auditors or similar structures of foreign private issuers discussed in Section II.F.3.a., we also are proposing that foreign private issuers availing themselves of that exemption be required to file an exhibit to their annual reports stating that they are doing so.[101] Because the presence of exhibits can be easily identified in electronic filings, we believe this requirement will facilitate monitoring of the use of this exemption by investors.

As discussed in Section II.F.3.d., we are proposing a general exemption for unit investment trusts from the requirements of the proposed rule. In addition, we are proposing that UITs be excluded from the disclosure requirements relating to their use of the exemption.[102] As a passive investment vehicle, a UIT has no board of directors, and there is little reason why investors would expect a UIT to have an audit committee. In addition, there is no appropriate disclosure document required by Commission rules where a UIT could include this disclosure.[103]

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[98] These procedures, of course, could not include an extended exemption or waiver of the requirements apart from those proposed.

[99] *See, e.g.*, NASD Rule 4800 Series and NYSE Listed Company Manual Section 804.

[100] This disclosure is proposed to be included in Part III of annual reports on Form 10–K and 10–KSB (through an addition to Item 401 of Regulations S–K and S–B). Consequently, companies subject to the proxy rules would be able to incorporate the required disclosure from a proxy or information statement that involves the election of directors into the annual report, if the issuer filed such proxy or information statement within 120 days after the end of the fiscal year covered by the report. *See* General Instruction G.(3) of Form 10–K and General Instruction E.3. of Form 10–KSB.

For foreign private issuers that file their annual reports on Form 20–F, the disclosure requirement would appear in new paragraph (f) to Item 15. The additions of paragraphs (c)–(e) to Item 15 of Form 20–F were proposed in Release No. 33–8138 (Oct. 22, 2002), Release No. 33–8154 (Dec. 2, 2002), and Release No. 33–8160 (Dec. 10, 2002) [67 FR 77594] (Rule 10b–18 and purchases of certain equity securities by the issuer and others), respectively.

For foreign private issuers that file their annual reports on Form 40–F, the disclosure requirement would appear in paragraph (11) to General Instruction B. The additions of paragraphs (9) and (10) to General Instruction B. of Form 40–F were proposed in Release No. 33–8138 (Oct. 22, 2002) and Release No. 33–8154 (Dec. 2, 2002), respectively.

For registered investment companies, the disclosure would appear in Item 8 of proposed Form N–CSR and Item 22(b)(14) of Schedule 14A.

[101] The exhibit requirement would appear in new paragraph 11 to the Instructions as to Exhibits of Form 20–F. The addition of paragraph 10 to the Instructions as to Exhibits of Form 20–F was proposed in Release No. 33–8138 (Oct. 22, 2002).

[102] See proposed Exchange Act Rule 10A–3(d).

[103] UITs file annual reports with the Commission on Form N–SAR [17 CFR 249.330 and 274.101] under Investment Company Act Rule 30a–1 [17 CFR 270.30a–1]. However, these N–SAR reports are

We also are proposing to exclude issuers availing themselves of the multiple listing exemption from the disclosure requirements relating to their use of that exemption. These issuers, or their controlling parents, would be required to comply with the proposed audit committee requirements as a result of a separate listing. Accordingly, disclosure of the use of that exemption would not serve the purpose of highlighting for investors those issuers that are different from most other listed issuers. However, if such an issuer also was availing itself of another exemption from the proposed requirements (*i.e.*, the temporary exemption from the independence requirements for new listed issuers), disclosure of the use of that exemption would be required.

2. Identification of the Audit Committee in Annual Reports

An issuer subject to the proxy rules of Section 14 of the Exchange Act [104] is currently required to disclose in its proxy statement or information statement, if action is to be taken with respect to the election of directors, whether the issuer has a standing audit committee, the names of each committee member, the number of committee meetings held by the audit committee during the last fiscal year and the functions performed by the committee.[105] We believe it is important for investors to be able to readily determine basic information about the composition of a listed issuer's audit committee. To foster greater availability of this basic information, we are proposing to require disclosure of the members of the audit committee to be included or incorporated by reference in the listed issuer's annual report.[106] Also, because the Exchange Act now provides that in the absence of an audit committee the entire board of directors will be considered to be the audit committee, we propose to require a listed issuer that has not separately designated or has chosen not to separately designate an audit committee to disclose that the entire board of directors is acting as the issuer's audit committee.

We propose similar changes for foreign private issuers that file their annual reports on Form 40–F. Foreign private issuers that file their annual reports on Form 20–F already are required to identify the members of their audit committee in their annual reports. For these listed issuers, however, we do propose that they disclose if the entire board of directors is acting as the audit committee. We also propose similar changes for registered management investment companies.[107]

3. Updates to Existing Audit Committee Disclosure

An issuer subject to the proxy rules is currently required to disclose additional information about its audit committee in its proxy statement or information statement, if action is to be taken with respect to the election of directors.[108] First, the audit committee must provide a report disclosing whether the audit committee has reviewed and discussed the audited financial statements with management and discussed certain matters with the independent auditors.[109] Second, issuers must disclose whether the audit committee is governed by a charter, and if so, include a copy of the charter as an appendix to the proxy statement at least once every three years.[110] Finally, the issuer must disclose whether the members of the audit committee are independent. Under the existing requirements, issuers whose securities are listed on the NYSE or AMEX or quoted on Nasdaq must disclose whether the audit committee members are independent, as defined in the applicable listing standards.[111] These issuers also must disclose if its board of directors has determined to appoint one director to its audit committee due to an exceptional and limited circumstances exception in the applicable listing standards.[112] Issuers whose securities are not listed on the NYSE or AMEX or quoted on Nasdaq also are required to disclose whether its audit committee members are independent. These issuers may choose which definition of independence to use from any of the NYSE, AMEX or Nasdaq listing standards.[113]

Regarding the independence disclosure, all national securities exchanges and national securities associations under our proposals would need to have independence standards for audit committee members, not just the NYSE, AMEX and Nasdaq. The specification in the existing requirements to listings on these three markets would therefore no longer be necessary. Further, our proposals would not allow for an exception to the independence requirements due to exceptional and limited circumstances. As a result, disclosure regarding use of this exception would be unnecessary.

Accordingly, we propose to update the disclosure requirements regarding the independence of audit committee members to reflect the new SROs rules to be adopted under Exchange Act Rule 10A–3. If the registrant was a listed issuer, it would still be required to disclose whether the members of its audit committee were independent. The listed issuer would need to use the definition of independence for audit committee members included in the listing standards applicable to the listed issuer. Further, because the Exchange Act now provides that in the absence of an audit committee the entire board of directors will be considered to be the audit committee, we propose to clarify that if the registrant does not have a separately designated audit committee, or committee performing similar functions, the registrant must provide the disclosure with respect to all members of its board of directors.

Non-listed issuers that have separately designated audit committees would still be required to disclose whether their audit committee members were independent. In determining whether a member was independent,

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regulatory reports to the Commission and are not intended primarily as disclosure documents for investors.

[104] 15 U.S.C. 78n.

[105] See Item 7(d)(1) of Schedule 14A. Identical information is required with respect to nominating and compensation committees of the board of directors.

[106] Because this information is proposed to be included in Part III of annual reports on Forms 10–K and 10–KSB, companies subject to the proxy rules would be able to incorporate the required disclosure from a proxy or information statement that involves the election of directors, where it is already required to appear, into their annual reports. Information regarding the number of meetings of the audit committee and the basic functions performed by the audit committee, as well as the information regarding nominating and compensation committees, would continue to be required only in proxy or information statements that involve the election of directors.

[107] Item 22(b)(14) of Schedule 14A and proposed Item 8 of proposed Form N–CSR. Proposed Form N–CSR would be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act. See Investment Company Act Release No. 25723 (Aug. 30, 2002) [67 FR 57298]. The Commission proposed amendments to Form N–CSR in Investment Company Act Release No. 25739 (Sep. 20, 2002) [67 FR 60828]; Investment Company Act Release No. 25775 (Oct. 22, 2002) [67 FR 66208]; Investment Company Act Release No. 25838 (Dec. 2, 2002); Investment Company Act Release No. 25845 (Dec. 10, 2002); and Investment Company Act Release No. 25870 (Dec. 18, 2002).

[108] See Item 7(d)(3) of Schedule 14A. These disclosure requirements were adopted in Release No. 34–42266 (Dec. 22, 1999).

[109] See Item 7(d)(3)(i) of Schedule 14A. The requirements for the audit committee report are specified in Items 306 of Regulations S–B [17 CFR 228.306] and S–K [17 CFR 229.306]. Under the existing requirements, if the company does not have an audit committee, the board committee tasked with similar responsibilities, or the full board of directors, is responsible for the disclosure.

[110] See Items 7(d)(3)(ii) and (iii) of Schedule 14A.

[111] See Item 7(d)(3)(iv)(A)(*1*) of Schedule 14A.

[112] See Item 7(d)(3)(iv)(A)(*2*) of Schedule 14A.

[113] See Item 7(d)(3)(iv)(B) of Schedule 14A. Whichever definition is chosen must be applied consistently to all members of the audit committee.

these registrants would be allowed to choose any definition for audit committee member independence of a national securities exchange or national securities association that has been approved by the Commission.[114]

Questions regarding the proposed disclosure changes:

- Should companies be required to disclose publicly if they are taking advantage of an exemption to the proposed SRO requirements? If so, are the proposed locations of this disclosure appropriate? Should we permit incorporation by reference into the company's annual report? Should the disclosure be required as an exhibit to the company's filing? Is the disclosure of the company's assessment of whether and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other proposed requirements appropriate?
- Should foreign private issuers that avail themselves of the exemption for boards of auditors or similar structures be required to file an exhibit to their annual reports stating that they are doing so?
- Should a UIT be required to disclose that it is availing itself of the exemption from the audit committee requirements? If so, where should such disclosure be made? Exchange-traded UITs typically provide audited financial information in shareholder reports although these reports are not required by Commission rules.[115] Should disclosure of the exemption from audit committee requirements be required in these reports?
- Should an issuer relying on the multiple listing exemption be required to disclose that it is availing itself of that exemption? Should the disclosure only be required for subsidiaries relying on the exemption for their own listed securities?
- Should we require disclosure of basic information about an issuer's audit committee in its annual report, or is the current location of this disclosure for issuers subject to the proxy rules sufficient? Would disclosure of whether the entire board is acting as the audit committee be helpful?
- Given the new definition of audit committee in the Exchange Act, is it appropriate to clarify in the current disclosure requirements for audit committees that if the issuer does not have a separately designated audit committee, or committee performing similar functions, the issuer must provide the disclosure with respect to all members of its board of directors? How many issuers will this change affect?
- Are our proposed changes to the disclosure requirements regarding the independence of audit committee members appropriate? Is there a reason to continue to require non-listed issuers to choose from one of the NYSE's, AMEX's or Nasdaq's definitions for audit committee members?
- Listed issuers that are foreign private issuers are generally not subject to the proxy rules. Should we require disclosure regarding the independence of audit committee members for these issuers? If so, where should this disclosure appear?
- Is there any additional disclosure concerning audit committees that would be beneficial to investors? With the new requirements we propose for audit committees, is any existing disclosure we require regarding audit committees no longer needed?

H. General Request for Comment

We request and encourage any interested person to submit comments on the proposals, on any additional or different changes, and on any other matters that might have an impact on the proposals. We request comment from the point of view of national securities exchanges and national securities associations that would be required to comply with the proposals. We also request comment from the point of view of companies that would be subject to the listing requirements that would result from the proposals. We also request comment from the point of view of investors in the securities of these companies on their views of the proposals and any possible changes to the proposals. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Paperwork Reduction Act

A. Background

Our proposals contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[116] We are submitting our proposals to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[117] The titles for the collection of information are:

(1) "Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15 and Schedule 14A)" (OMB Control No. 3235–0059);

(2) "Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)" (OMB Control No. 3235–0057);

(3) "Form 10–K" (OMB Control No. 3235–0063);

(4) "Form 10–KSB" (OMB Control No. 3235–0420);

(5) "Form 20–F" (OMB Control No. 3235–0288);

(6) "Form 40–F" (OMB Control No. 3235–0381);

(7) "Regulation S–K" (OMB Control No. 3235–0071);

(8) "Regulation S–B" (OMB Control No. 3235–0417); and

(9) "Form N–CSR" (OMB Control No. 3235–0570).

These regulations and forms were adopted pursuant to the Securities Act, the Exchange Act and the Investment Company Act and set forth the disclosure requirements for periodic reports, registration statements and proxy and information statements filed by companies to ensure that investors are informed. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Under our proposals, we would direct SROs to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards relating to the issuer's audit committee. We are making these proposals pursuant to the legislative mandate in Section 10A(m) of the Exchange Act, as added by Section 301 of the Sarbanes-Oxley Act. As part of our proposals, we are proposing several limited exemptions from the requirements to address the special circumstances of particular issuers. If an issuer was to avail itself of one of these exemptions, we propose that it would need to disclose this fact and its assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of

[114] Such definition would include the requirements of proposed Exchange Act Section 10A–3. These issuers would still be required to state which definition was used. Further, the requirement that the same definition must be applied consistently to all members of the audit committee would be retained.

[115] See, *e.g.*, SPDR Trust, Series 1, Investment Company Act Release Nos. 18959 (Sept. 17, 1992) (notice) and 19055 (Oct. 26, 1992) (order) and Fourth Amended and Restated Application, filed Aug. 7, 1992, File No. 812–7545, at 35.

[116] 44 U.S.C. 3501 *et seq.*

[117] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

proposed requirements. Such disclosure would need to appear in its proxy or information statement for shareholders' meetings at which elections for directors are held. The disclosure also would need to appear in, or be incorporated by reference into, the annual reports of these companies filed with the Commission. In addition, a foreign private issuer that availed itself of the board of auditors exception would need to file a brief exhibit. We have proposed an exemption from these proposed disclosure requirements for exchange-traded UITs and issuers relying on the multiple listing exemption. We call these proposed changes the "Exemption Disclosure."

Under our proposals, listed issuers also would be required to disclose the members of their audit committee, or that their entire board of directors is acting as their audit committee, in their annual reports. We call these proposed changes the "Identification Disclosure."

Finally, we are proposing several updates to existing disclosure requirements regarding audit committees to reflect our proposals and changes made by the Sarbanes-Oxley Act. We call these proposed changes the "Disclosure Updates."

These disclosure changes are designed to alert investors of basic information about an issuer's audit committee, including the identity of the issuer's audit committee, whether the issuer is availing itself of an exemption and whether the members of the audit committee are independent. Compliance with the revised disclosure requirements would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential. We do not believe that the imposition of these proposed disclosure changes would alter significantly the number of respondents that file on the affected forms.

In addition to the above, we propose to direct the SROs to require a listed issuer to notify the applicable SRO promptly after an executive officer of an issuer becomes aware of any material noncompliance by the listed issuer with the proposed requirements. We believe that any burden imposed by this collection of information would be minimal. For the most part, we believe that listed issuers are already required to make the type of disclosure contemplated by the proposal, either pursuant to existing SRO rules or as a requirement of existing listing agreements. We therefore believe that any reporting and recordkeeping requirements imposed by this aspect of the proposals are "usual and customary" activities for listed issuers.[118]

B. Revisions to PRA Reporting and Cost Burden Estimates

For purposes of the PRA, we estimate that the annual incremental paperwork burden for all companies to prepare the disclosure that would be required under our proposals would be approximately 685 hours of personnel time and a cost of approximately $99,600 for the services of outside professionals. We derived these estimates first by estimating the total amount of time it would take for a company to prepare the proposed disclosure. The Disclosure Updates simply update the disclosure requirements to reflect our proposals and changes to terminology made by the Sarbanes-Oxley Act. We do not believe these changes would change the burden required by this disclosure. The Exemption Disclosure would require only a minimal additional statement by issuers that avail themselves of one of our proposed exemptions. In addition, foreign private issuers availing themselves of the board of auditors exception would need to file a brief exhibit. We estimate that the Exemption Disclosure would add 0.25 hours per affected filing. The Identification Disclosure would require a company to disclose either the members of its audit committee, or a brief statement that the board of directors of the issuer is acting as the audit committee. We estimate that the Identification Disclosure would add 0.25 hours per affected filing.

The Exemption Disclosure and Identification Disclosure apply only to listed issuers. Accordingly, not all issuers would be required to make the proposed disclosure. We estimate that there are approximately 7,250 issuers that are listed on a national securities exchange or traded on the Nasdaq National Market or the Nasdaq Smallcap Market.[119] Each of these listed companies, except exchange-traded UITs, would be required to at least provide the basic Identification Disclosure in their annual report. Some of these listed issuers also would need to make the Exemption Disclosure.[120]

Further, since the disclosure in the annual report may be incorporated by reference from an issuer's proxy or information statement, we assume that the disclosure would appear in a maximum of one report per affected issuer. As the information would appear in Part III of an issuer's Form 10–K or 10–KSB (which can be incorporated by reference from the issuer's proxy statement if where directors are to be elected), or in Item 8 of Form N–CSR, which may also be incorporated by reference, we assume that affected issuers will follow the general practice of most issuers of including the disclosure in their proxy or information statement where directors are elected and incorporating by reference the disclosure into their annual report. Accordingly, we are reducing the number of affected reports on Forms 10–K, 10–KSB and N–CSR to account for this assumption.[121] Further, we assume that the Identification Disclosure is already required in these proxy or information statements,[122] and the burden hours for this disclosure by these filers therefore has already been assigned to Schedules 14A and 14C. Accordingly, we estimate that the Identification Disclosure will not affect the burden for Schedules 14A and 14C.

The tables below illustrate the incremental annual compliance burdens of the collections of information in hours and in cost for annual reports and proxy and information statements under the Exchange Act. The burden was calculated by multiplying the estimated number of affected responses by the estimated average number of hours each entity spends preparing the proposed disclosure. We have based our estimates on the number of affected responses on the actual number of filers during the 2002 fiscal year and our estimates of the number of listed issuers that may be affected by the disclosure changes.[123] For Exchange Act annual reports and proxy and information statements, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company

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[118] See 5 CFR 1320.3(b)(2).

[119] We derived this estimate from the Standard & Poors Research Insight Compustat Database and the Commission's annual report.

[120] With respect to investment companies, the independence exemptions would not be available. A general exemption would be applicable to UITs, but UITs would be excluded from Exemption Disclosure requirements. We anticipate that only a negligible number of investment companies would fall under the other general exemptions. Accordingly, we anticipate that the reporting burden imposed by the Exemption Disclosure requirements on listed investment companies would be negligible.

[121] Foreign private issuers are exempt from the requirements to provide proxy materials, so we assume no adjustment to the number of affected annual reports on Forms 20–F and 40–F.

[122] See Item 7(d)(1) of Schedule 14A.

[123] We estimate that 5% of listed issuers would be required to provide disclosure regarding the new issuer exemption in proposed Exchange Act Rule 10A–3(b)(iv)(A) and 20% of listed issuers would be required to provide disclosure regarding use of the holding company exemption in proposed Exchange Act Rule 10A–3(b)(iv)(B).

at an average cost of $300 per hour.[124] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

CALCULATION OF THE INCREMENTAL BURDEN OF THE EXEMPTION DISCLOSURE[125]

	Affected responses	Incremental hours/form	Total incremental burden	75% Company	25% Professional	$300 professional cost ($)
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.75	(E)=(C)*0.25	(F)=(E)*300
20–F	[126] 438	0.25	110	28	83	24,900.00
40–F	[127] 35	0.25	9	2	7	2,100.00
10–K	[128] 269	0.25	67	50	17	5,100.00
10–KSB	[129] 108	0.25	27	20	7	2,100.00
14A	[130] 1,356	0.25	339	254	85	25,000.00
14C	[131] 86	0.25	22	17	6	1,800.00
Total			574	371	205	61,500.00

CALCULATION OF THE INCREMENTAL BURDEN OF THE IDENTIFICATION DISCLOSURE

	Affected responses	Incremental hours/form	Total incremental burden	75% Company	25% Professional	$300 Professional cost ($)
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.75	(E)=(C)*0.25	(F)=(E)*300
20–F	[132] 0	0.25	0	0	0	0.00
40–F	[133] 134	0.25	34	9	26	7,800.00
10–K	[134] 1,073	0.25	268	201	67	20,100.00
10–KSB	[135] 430	0.25	108	81	27	8,100.00
N–CSR	[136] 113	0.25	28	21	7	2,100.00
14A	[137] 0	0.25	0	0	0	0.00
14C	[138] 0	0.25	0	0	0	0.00
Total			438	312	127	38,100.00

Regulation S–K includes the requirements that a registrant must provide in filings under both the Securities Act and the Exchange Act. Regulation S–B includes the requirements that a small business issuer must provide in the Securities Act and the Exchange Act. The proposed disclosure changes would include changes to items under Regulation S–K and Regulation S–B. However, the filing requirements themselves are included in Form 10–K, Form 10–KSB, Form 20–F, Form 40–F, Schedule 14A and Schedule 14C. We have reflected the burden for the new requirements in the burden estimates for those firms. The items in Regulation S–K and Regulation S–B do not impose any separate burden. We previously have assigned one burden hour each to Regulations S–B and S–K for administrative convenience to reflect the fact that these regulations do not impose any direct burden on companies.

C. Request for Comment

We request comment in order to (a) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) evaluate the accuracy of our estimates of the burden

[124] This allocation of the burden is consistent with our recent PRA submissions for Exchange Act periodic reports and proxy and information statements. See, *e.g.*, Release No. 33–8144 (Nov. 4, 2002). Traditionally, we have estimated that the company carried 25% of the burden internally and 75% of the burden of preparation was carried by outside professionals retained by the company. We believe that the new allocation more accurately reflects current practice for annual reports and proxy and information statements. We estimate, however, that the traditional 25% company and 75% outside professional allocation remains applicable for Forms 20–F and 40–F because those forms are prepared by foreign private issuers who rely more heavily on outside counsel for their preparation.

[125] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number, and the estimated PRA cost burdens have been rounded to the nearest $100. As a result of rounding, the sum of the entries in columns (D) and (E) of the tables may not exactly equal the corresponding entry in column (C).

[126] This figure is based on our estimate of the total number of affected responses by listed issuers.

[127] This figure is based on our estimate of the total number of affected responses by listed issuers.

[128] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Part III information would be incorporated by reference from a proxy or information statement.

[129] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Part III information would be incorporated by reference from a proxy or information statement.

[130] This figure is based on our estimate of the total number of affected responses by listed issuers.

[131] This figure is based on our estimate of the total number of affected responses by listed issuers.

[132] Issuers that file their annual report on Form 20-F are already required to identify the members of their audit committee.

[133] This figure is based on our estimate of the total number of affected responses by listed issuers.

[134] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Part III information would be incorporated by reference from a proxy or information statement.

[135] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Part III information would be incorporated by reference from a proxy or information statement.

[136] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Item 8 information would be incorporated by reference from a proxy or information statement.

[137] We estimate that proxy statements on Schedule 14A are already required to identify the members of their audit committee.

[138] We estimate that information statements on Schedule 14C are already required to identify the members of their audit committee.

of the proposed collections of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (e) evaluate whether the proposals will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–02–03. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–02–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Cost-Benefit Analysis

The proposals represent the implementation of a Congressional mandate. We recognize that implementation of the Sarbanes-Oxley Act will likely create costs and benefits to the economy. We are sensitive to the costs and benefits imposed by our rules, and we have identified certain costs and benefits of these proposals.

A. Background

Section 10A(m)(1) of the Exchange Act, as added by Section 301 of the Sarbanes-Oxley Act, requires us to direct, by rule, the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards regarding issuer audit committees. The new rule must become effective by April 26, 2003, which is 270 days after the date of enactment of the Sarbanes-Oxley Act and Section 10A(m) of the Exchange Act.

In general, according to the standards listed in Section 10A(m) of the Exchange Act, SROs would be prohibited from listing any security of an issuer that is not in compliance with the following standards:

- Each member of the audit committee of the issuer must be independent according to specified criteria;
- The audit committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or related work or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee;
- Each audit committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters;
- Each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties; and
- Each issuer must provide appropriate funding for the audit committee.

Our proposals would respond directly to the requirements in Section 10A(m) of the Exchange Act. In addition, our proposals would include several additional provisions, such as:

- Our proposals would revise existing disclosure requirements regarding the composition of audit committees by also requiring this disclosure in annual reports of listed issuers filed with the Commission;
- Our proposals would require a company availing itself of one of our proposed exemptions from the requirements to disclose publicly that it is doing so; and
- Our proposals would update existing disclosure requirements regarding audit committees to reflect changes made by the proposals and the Sarbanes-Oxley Act.

B. Potential Benefits

One of the main goals of the Sarbanes-Oxley Act is to improve investor confidence in the financial markets. The proposals in this release are among many required by the Sarbanes-Oxley Act.[139] They seek to help achieve the Act's goals by promoting strong, effective audit committees to perform their oversight role. By increasing the competence of audit committees, the proposals are designed to further greater accountability and quality of financial disclosure and oversight of the process by qualified and independent audit committees. Vigilant and informed oversight by a strong, effective and independent audit committee could help to counterbalance pressures to misreport results and impose increased discipline on the process of preparing financial information. Improved oversight may help detect fraudulent financial reporting earlier and perhaps thus deter it or minimize its effects. All of these benefits imply increased market efficiency due to improved information and investor confidence in the reliability of a company's financial disclosure and system of internal controls. These benefits are not readily quantifiable. However, as the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees summarized regarding its own recommendations for audit committees:

> Improving oversight of the financial reporting process necessarily involves the imposition of certain burdens and costs on public companies. Despite these costs, the Committee believes that a more transparent and reliable financial reporting process ultimately results in a more efficient allocation of and lower cost of capital. To the extent that instances of outright fraud, as well as other practices that result in lower quality financial reporting, are reduced with improved oversight, the benefits clearly justify these expenditures of resources.[140]

In addition, we are proposing to require basic information about the composition of an issuer's audit committee in a listed issuer's annual report. The disclosure is currently only required in proxy or information statements where directors are being elected, and not all listed issuers are subject to the proxy rules or elect directors each year. Also, because the Exchange Act now provides that in the absence of an audit committee the entire board of directors will be considered to be the audit committee, we propose to require a listed issuer that has not or has chosen not to separately designate an

[139] See note 30 above.

[140] See note 22 above.

audit committee to disclose that the entire board of directors is acting as the issuer's audit committee. Also, if a company relied on one of the exemptions we propose to the requirements, some minimal additional disclosure would be required in its proxy or information statements where directors are elected and in their annual report (unless incorporated by reference). We also propose several updates to existing disclosure requirements regarding audit committees to reflect the proposals and changes made by the Sarbanes-Oxley Act.

As a result of these disclosure changes, investors would receive more detailed information on a consistent basis about the basic composition of an issuer's audit committee. These disclosures will afford investors greater visibility about the issuer's audit committee. Providing this information on a more widespread basis also may allow investors to ask more direct and useful questions of management and directors regarding the composition and role of the audit committee.

C. Potential Costs

SROs not in compliance with the standards would need to spend additional time and incur additional costs in modifying their rules to comply. There also may be ongoing costs in monitoring compliance with the standards and taking appropriate remedial steps. We request comment on the type, amount and duration of these costs. If the proposed standards had the effect of causing companies to delist or forego listing of their securities, SROs would lose trading volume. The proposed standards could have the effect of discouraging the formation of trading markets that specialize in particular types of issuers (*i.e.*, small issuers or foreign issuers), if those issuers found the proposed requirements too burdensome to seek a listing on those markets. The possibility of these effects and their magnitude if they were to occur are difficult to quantify.

Issuers would need to comply with the proposed audit committee standards if they wished to have their securities listed on a national securities exchange or national securities association. This may require companies to spend additional time and incur additional costs in establishing and modifying their audit committees (or full boards if they do not have a separate audit committee) to comply with the standards. There may be search costs involved in locating independent directors willing to serve on a company's audit committee, including the costs of preparing proxy statements and holding shareholder meetings to elect those directors. If the requirements reduce the pool of candidates that would be willing to serve on an issuer's audit committee, these search costs may increase. Convincing directors to serve on an audit committee may require additional compensation or increased liability insurance coverage due to the new requirements imposed on audit commi tees. Companies may decide to increase the size of their boards to accommodate new directors meeting the proposed requirements. If additional independent directors are added to the board, or if existing non-independent directors are replaced, this may increase the percentage of the board that is independent from management. If a company had previously received services from an audit committee member of the type that would be prohibited under the proposals, the company may incur costs in locating an alternative provider for these services.

There also may be ongoing costs in monitoring compliance with the standards or maintaining any additional procedures established by the standards, such as the procedures for handling complaints. To the extent the audit committee engages independent counsel or other advisors where it could not do so previously, there would be additional costs for the payment of compensation to these advisors. Companies also may incur additional ongoing expenses if they decide to increase the size of their boards in response to the requirements.

We believe that as a result of many current SRO listing standards;[141] the Commission's audit committee disclosure requirements adopted in 1999,[142] the prior disclosures related to the involvement of the audit committee in recommending or approving changes in auditors and the resolution of disagreements between management and the auditors,[143] and professional standards that require communications between the auditor and audit committees on auditor independence issues,[144] many companies currently have audit committees. However, these audit committees may not meet all of our proposed requirements. Smaller companies may constitute a larger representative share of issuers that do not meet the proposed requirements, particularly the independence requirements. However, we recognize that because the proposals apply only to listed issuers, the quantitative listing standards applicable to listed securities, such as minimum revenue, market capitalization and shareholder equity requirements, will limit the size of issuers that will be affected by the requirements. Companies that do not currently meet our proposed requirements would face all of the costs described above. However, these entities, because they currently lack the protections provided by the standards, may bear a disproportionately greater risk of fraudulent financial reporting, and thus may reap proportionately greater benefits.

We also have proposed limited exemptions to the requirements, such as an exemption for multiple listings, a limited exemption for new public companies and exemptions for certain foreign issuers, to alleviate some of the burdens companies may face where consistent with investor protection. Companies that perceived the proposals as too onerous could be dissuaded from seeking or maintaining a listing for their securities, which could impact capital formation and negatively impact the liquidity for its securities. We have no reliable basis for estimating the number of companies that would face increased costs as a result of the proposals or the amount of such costs.

Regarding the disclosure changes we propose regarding audit committees, issuers subject to the proxy rules are already required to compile most of this information for proxy or information statements where directors are being elected. Foreign private issuers that file their annual reports on Form 20–F also are already required to identify the members of their audit committee. The disclosure regarding if a listed issuer is availing itself of an exemption to the requirements should result in minimal additional disclosure. Using estimates derived from our Paperwork Reduction Act analysis, we estimate that the incremental impact of our proposed disclosure changes will result in a total cost of $185,225 for all affected companies.[145]

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[141] See note 23 above.

[142] See note 24 above.

[143] See, *e.g.*, Item 4 of Form 8–K [17 CFR 249.308] and Item 304 of Regulation S–K [17 CFR 229.304].

[144] See, *e.g.*, American Institute of Certified Public Accountants ("AICPA") "Communications with Audit Committees," Statements of Auditing Standards ("SAS") 61, as amended by SAS 89 and 90; AICPA, Codification of Statements on Auditing Standards ("AU") § 380; Independence Standards Board, "Independence Discussion with Audit Committees," Independence Standard No. 1 (Jan. 1999).

[145] The estimate is based on the burden hour estimates calculated under the Paperwork Reduction Act. For purposes of the Paperwork Reduction Act, we estimate that the additional disclosure will result in 685 internal burden hours and $99,600 in external costs. Assuming a cost of $125/hour for in-house professional staff, the total cost for the internal burden hours would be

In formulating our proposals, we considered several regulatory alternatives that would be consistent with the specific mandate required by Section 10A(m) of the Exchange Act. We considered the propriety of excluding all foreign issuers or issuers of a particular size, but such an exclusion may not be appropriate or consistent with the policies underlying the Sarbanes-Oxley Act. We think that improvements in the financial reporting process for all listed issuers are important for promoting investor confidence in our markets. We also considered whether we should provide objective guidance for determining who is an "affiliated person" for purposes of the proposed independence requirement. In considering the uncertainty that may arise in determining whether a person is an "affiliated person," we have proposed a safe harbor from the definition of affiliate for non-investment companies. We have also proposed other limited exemptions to alleviate some of the burdens companies may face where consistent with investor protection.

D. Request for Comments

We request that commenters provide views and supporting information as to the benefits and costs associated with the proposals. We seek estimates of these costs and benefits, as well as any costs and benefits not already identified. We also request comment regarding the relative costs and benefits of pursuing alternative regulatory approaches that are consistent with the Sarbanes-Oxley Act's statutory mandate.

V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA," [146] we solicit data to determine whether the proposals constitute a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposals on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 23(a)(2) of the Exchange Act [147] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposals represent the implementation of a Congressional mandate. They are intended to increase the independence and effectiveness of listed company audit committees. We anticipate these proposals would enhance the proper functioning of the capital markets by increasing the quality and accountability of financial reporting and restoring investor confidence. This increases the competitiveness of companies participating in the U.S. capital markets. However, our specific proposals relate only to companies listed on a national securities exchange or national securities association. Competitors not subject to the standards specified in Section 10A(m) of the Exchange Act may be subject to less corporate governance burdens. Similarly, to the extent foreign exchanges or other markets do not impose these standards, competitors could, all things being equal, migrate to those markets to avoid compliance. This could cause U.S. exchanges and securities associations to lose trading volume. Competitors and markets not subject to the standard, however, also may suffer from decreased investor confidence compared to those that do comply with the new standards.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) of the Securities Act, [148] Section 3(f) of the Exchange Act [149] and Section 2(c) of the Investment Company Act [150] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The proposals would enhance the quality and accountability of the financial reporting process and may help increase investor confidence, which implies increased efficiency and competitiveness of the U.S. capital markets. Increased market efficiency and investor confidence also may encourage more efficient capital formation. As noted above, however, the proposals could have certain indirect negative effects, such as inconsistent application across all competitors. In addition, the proposed standards, while providing great flexibility for implementation, do remove a certain amount of individual control over the corporate governance process, which could have the possible effect of stifling more efficient approaches from being implemented if they were to develop.

If a company found the proposed requirements too onerous, it could be dissuaded from accessing the public capital markets, which could impact capital formation. The possibility of these effects and their magnitude if they were to occur are difficult to quantify. We have proposed several limited exemptions from the requirements to alleviate some of the burdens companies may face where consistent with investor protection. For example, the proposed limited exemption for new public companies is intended to counteract any disincentive the proposed requirements may have on a company's willingness to access the public capital markets.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis, or IRFA, has been prepared in accordance with the Regulatory Flexibility Act. [151] This IRFA involves proposals to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards relating to the issuer's audit committee.

A. Reasons for, and Objectives of, Proposed Amendments

We are proposing new Exchange Act Rule 10A–3 to comply with the mandate

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$85,625. Hence the aggregate cost estimate is $185,225 ($99,600 + 85,625). The $125/hour cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (Oct. 2001).

[146] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[147] 15 U.S.C. 78w(a)(2).

[148] 17 U.S.C. 77b(b).

[149] 15 U.S.C. 78c(f).

[150] 15 U.S.C. 80a–2(c).

[151] 5 U.S.C. 603.

of the Sarbanes-Oxley Act and new Section 10A(m)(1) of the Exchange Act. The proposals are intended to enhance investor confidence in the fairness and integrity of the securities markets by increasing the competence and independence, and hence effectiveness, of listed company audit committees. In addition, our proposals would make several changes to our current disclosure requirements regarding audit committees to increase the transparency of these committees. We believe that these proposals will help to improve the quality and accountability of financial disclosure and oversight of the process by qualified and independent audit committees.

B. Legal Basis

We are proposing the new rule and amendments under the authority set forth in Sections 2,[152] 6,[153] 7,[154] 8,[155] 10,[156]17 [157] and 19 [158] of the Securities Act, Sections 3(b), 10A, 12, 13, 14, 15, 23 and 36 [159] of the Exchange Act, Sections 8,[160] 20,[161] 24(a),[162] 30 [163] and 38[164] of the Investment Company Act of 1940 and Sections 3 and 301 of the Sarbanes-Oxley Act.

C. Small Entities Subject to the Proposed Amendments

The proposals will directly affect the national securities exchanges that trade listed securities, none of which is a small entity as defined by Commission rules. Exchange Act Rule 0–10(e) [165] states that the term "small business," when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Exchange Act Rule 11Aa3–1.[166] The proposals also will directly affect national securities associations. No national securities association is a small entity, as defined by 13 CFR 121.201.

The proposals may have an indirect effect on some small entities. We also have defined the term "small business" in Exchange Act Rule 0–10(a) to be an issuer, other than an investment company, that, on the last day of its most recent fiscal year, had total assets of $5 million or less and when used with reference to an investment company, an investment company together with other investment companies in the same group of related investment companies with net assets of $50 million or less as of the end of its most recent fiscal year.[167] Under these limits, depending on other restrictions imposed by the various SROs, such as quantitative listing standards, a small entity may be listed on a national securities exchange or a national securities association. We estimate that 7,250 issuers are listed on a national securities exchange or traded on Nasdaq, and we estimate that 6,640 of these issuers are not investment companies.[168] We estimate that less than 225, or approximately 3%, of the issuers that are not investment companies,[169] and less than 25, or approximately 4% of the issuers that are investment companies,[170] are "small entities" for purposes of the Regulatory Flexibility Act that possibly could be restricted by the proposals.

We request comment on the number of small entities that would be impacted by our proposals, including any available empirical data.

D. Reporting, Recordkeeping, and Other Compliance Requirements

Under the proposals, national securities exchanges and national securities associations are directed to prohibit the listing of any security of an issuer, both large and small, that is not in compliance with certain enumerated standards regarding the issuer's audit committee. These standards relate to: the independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee.

Small entities would need to comply with these standards if they wished to have their securities listed on a national securities exchange or a national securities association. The rules would not require an entity to maintain an audit committee. However, the Exchange Act now provides that in the absence of an audit committee the entire board of directors will be considered to be the audit committee. There are reasons to believe that many small entities currently have separately-designated audit committees.[171] However, not all of the audit committees of these small entities may comply with the requirements of the proposed rule. A small entity whose board or audit committee did not comply with the proposed rules would need to spend additional time and incur additional costs in modifying their audit committees or board to comply with the standards. Small entities may face particular difficulties in recruiting directors that meet the independence requirements of the proposed rules.

There also may be ongoing costs in monitoring compliance with the standards or maintaining any additional procedures established by the standards, such as the procedures for handling complaints. To the extent the audit committee engages independent counsel or other advisors where it could not do so previously, there would be additional costs for the payment of compensation to these advisors. Due to the small size of these small entities, these additional costs may have a larger proportional impact on these entities than larger listed issuers.

In addition, the small entity may need to make additional disclosure about its audit committee in its annual report as well as its proxy or information statement if directors are being elected. This may require additional costs in order to collect, record and report the information to be disclosed under the proposed rules. Small entities subject to the proxy rules are already required to disclose most of the information affected by our proposals in proxy or information statements where directors are being elected. This information should be readily available to small entities. Further, the disclosure regarding any exemption from the listing standards should entail only a minimal additional statement.

We have little data to determine how many small entities do not already comply with the proposals or how much it would cost to comply. We recognize that because the proposals apply only to listed issuers, the quantitative listing standards applicable to listed securities, such as minimum revenue, market capitalization and shareholder equity requirements, will limit the size of issuers that will be affected by the requirements. We request comment on the ability of affected small entities to meet the proposals. How many small entities already comply with the

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[152] 15 U.S.C. 77b.
[153] 15 U.S.C. 77f.
[154] 15 U.S.C. 77g.
[155] 15 U.S.C. 77h.
[156] 15 U.S.C. 77j.
[157] 15 U.S.C. 77q.
[158] 15 U.S.C. 77s.
[159] 17 U.S.C. 78mm.
[160] 15 U.S.C. 80a–8.
[161] 15 U.S.C. 80a–20.
[162] 15 U.S.C. 80a–24(a).
[163] 15 U.S.C. 80a–29.
[164] 15 U.S.C. 80a–37.
[165] 17 CFR 240.0–10(e).
[166] 17 CFR 240.11Aa3–1.
[167] *See* Exchange Act Rule 0–10(a).
[168] *See* note 119 above.
[169] We derived this estimate from the Standard & Poors Research Insight Compustat Database.
[170] We derived this estimate from information compiled by Commission staff.
[171] See, *e.g.*, NACD, *2001–2002 Public Company Governance Survey* (Nov. 2001).

proposals? What are the burdens and costs that small entities would face? Would the proposal disproportionately impact small entities? Would the proposals have any effect on the willingness or ability of small entities to seek or maintain a listing for their securities?

E. Duplicative, Overlapping or Conflicting Federal Rules

The rules of several existing SROs contain minimum standards relating to audit committees.[172] To the extent any of these standards are in conflict with our proposals, our proposals would supercede these requirements. SROs would not be precluded from adopting additional listing standards regarding audit committees, as long as they were consistent with the proposed rule. We believe that there are no other rules that duplicate, overlap or conflict with the proposals, except for the inconsistency between proposed Rule 10A–3 and Section 32(a) of the Investment Company Act regarding the selection of auditors. That inconsistency would be resolved if the rule is adopted as proposed.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with our proposals, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

The coverage of Section 10A(m) of the Exchange Act, as added by Congress in Section 301 of the Sarbanes-Oxley Act, makes no distinction based on an issuer's size. We think that improvements in the financial reporting process for listed issuers of all sizes are important for promoting investor confidence in our markets. For example, a 1999 report commissioned by the organizations that sponsored the Treadway Commission found that the incidence of financial fraud was greater in small companies.[173] However, we are sensitive to the costs and burdens that would be faced by small entities.

Although we preliminarily believe that an exemption for small entities from coverage of the proposals is not appropriate and inconsistent with the policies underlying the Sarbanes-Oxley Act, we solicit comment on the propriety of a complete or partial exemption from the requirements for small entities. We preliminarily believe that different compliance requirements or timetables for small entities also would interfere with achieving the primary goal of the proposals of increasing the competency and effectiveness of audit committees for all companies with listed securities. In addition, we are not aware of how to further clarify, consolidate or simplify these proposals for small entities. We recognize that because the proposals apply only to listed issuers, the quantitative listing standards applicable to listed securities, such as minimum revenue, market capitalization and shareholder equity requirements, already serve somewhat as a limit on the size of issuers that will be affected by the requirements. We do, however, solicit comment on these views and whether different compliance requirements or timetables for small entities would be appropriate, consistent with the mandate and purposes of Section 10A(m) of the Exchange Act.

The proposals use performance standards in a number of respects. We do not propose to specify the procedures or arrangements an issuer or audit committee must develop to comply with the standards. For example, we do not propose to specify the procedures that an audit committee must establish for handling complaints, as we believe companies should have the flexibility to develop procedures most efficient for their individual circumstances. We do provide design standards regarding audit committee member independence, as these are the standards we are directed to implement by Congress. Accordingly, we believe that design standards are necessary to achieve the objectives of the proposals. We do have the authority under Section 10A(m)(3)(C) to exempt particular relationships with respect to audit committee members, although, for the reasons discussed above, we do not propose to use that authority at this time for small entities. We request comment on these views.

G. Request for Comments

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comment on the number of small entities that would be affected by the proposals, the nature of the impact, how to quantify the number of small entities that would be affected, and how to quantify the impact of, the proposals. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views if possible. These comments will be considered in preparing the Final Regulatory Flexibility Analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposals.

VII. Statutory Authority and Text of Rule Amendments

The proposals contained in this document are being proposed under the authority set forth in Sections 2, 6, 7, 8, 10, 17 and 19 of the Securities Act, Sections 3(b), 10A, 12, 13, 14, 15, 23 and 36 of the Exchange Act, Sections 8, 20, 24(a), 30 and 38 of the Investment Company Act of 1940 and Sections 3 and 301 of the Sarbanes-Oxley Act.

Text of Proposed Amendments

List of Subjects in 17 CFR Parts 228, 229, 240, 249 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 is amended by adding the following citation in numerical order to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

* * * * *

Section 228.401 is also issued under secs. 3(a) and 301, Pub. L. No. 107–204, 116 Stat. 745.

2. Amend § 228.401 by adding paragraph (e) to read as follows:

§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.

* * * * *

(e) *Identification of the audit committee.* If you are a listed issuer, as defined in § 240.10A–3 of this chapter, filing an annual report on Form 10–KSB (17 CFR 249.310b) or a proxy statement or information statement pursuant to the

[172] See note 23 above.

[173] See note 91 above.

Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors:

(1) State whether or not the small business issuer has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the small business issuer has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the small business issuer's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(2) If applicable, provide the disclosure required by § 240.10A–3(d) of this chapter regarding an exemption from the listing standards for audit committees.

3. Amend § 228.601 by removing the last sentence of paragraph (a)(1).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

4. The authority citation for Part 229 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), and 80b–11, unless otherwise noted.

* * * * *

Section 229.401 is also issued under secs. 3(a) and 301, Pub. L. No. 107–204, 116 Stat. 745.

Section 229.601 is also issued under secs. 3(a) and 301, Pub. L. No. 107–204, 116 Stat. 745.

5. Amend § 229.401 by adding paragraph (h) to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(h) *Identification of the audit committee.* If you are a listed issuer, as defined in § 240.10A–3 of this chapter, filing an annual report on Form 10–K or 10–KSB (17 CFR 249.310 or 17 CFR 249.310b) or a proxy statement or information statement pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors:

(1) State whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(2) If applicable, provide the disclosure required by § 240.10A–3(d) of this chapter regarding an exemption from the listing standards for audit committees.

6. Amend § 229.601 by:

a. Removing the second sentence of paragraph (a);

b. Revising the phrase "Notwithstanding the provisions of paragraphs (b)(27) and (c) of this Item, registered investment companies" at the beginning of the third sentence of paragraph (a) to read "Registered investment companies";

c. In the Exhibit Table, adding a designation for exhibit (27) entitled "Statement re audit committees for registrants with boards of auditors or similar bodies";

d. In the Exhibit Table, adding an "X" corresponding to exhibit (27) under the caption "Exchange Act Forms", "10–K";

e. In the Exhibit Table, reserving exhibits (28) through (98);

f. Adding the text of paragraph (b)(27); and

g. Reserving paragraphs (b)(28) through (b)(98).

The addition of paragraph (b)(27) reads as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) *Description of exhibits.* * * *

(27) *Statement re audit committees for registrants with boards of auditors or similar bodies.* If you are availing yourself of the exemption in § 240.10A–3(c)(2) of this chapter from the listing standards for audit committees because you have a board of auditors or similar body, a statement that you are availing yourself of that exemption and a reference to the section of the report to which the exhibit relates disclosing information regarding your use of that exemption.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 240 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.10A–3 is also issued under secs. 3(a) and 301, Pub. L. No. 107–204, 116 Stat. 745.

Section 240.14a–101 is also issued under secs. 3(a) and 301, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

8. Add § 240.10A–3 to read as follows:

§ 240.10A–3 Listing standards relating to audit committees.

(a) Pursuant to section 10A(m) of the Act (15 U.S.C. 78j–1(m)) and section 3 of the Sarbanes-Oxley Act of 2002 (Pub. L. No. 107–204, sec. 3, 116 Stat. 745):

(1) *National securities exchanges.* The rules of each national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) must prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(2) *National securities associations.* The rules of each national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3) must prohibit the initial or continued listing in an automated inter-dealer quotation system of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(3) *Opportunity to cure defects.* The rules required by paragraphs (a)(1) and (a)(2) of this section must provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (a) of this section, before the imposition of such prohibition.

(4) *Notification of noncompliance.* The rules required by paragraphs (a)(1) and (a)(2) of this section must include a requirement that a listed issuer must notify the applicable national securities exchange or national securities association promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of this section.

(5) *Implementation.* (i) The rules of each national securities exchange or national securities association meeting the requirements of this section must be operative no later than the first

anniversary of the publication of this section in the **Federal Register**.

(ii) Each national securities exchange and national securities association must provide to the Commission, no later than 60 days after publication of this section in the **Federal Register**, proposed rules or rule amendments that comply with this section.

(iii) Each national securities exchange and national securities association must have final rule or rule amendments that comply with this section approved by the Commission no later than 270 days after publication of this section in the **Federal Register**.

(b) *Required standards.*

(1) *Independence.* (i) Each member of the audit committee must be a member of the board of directors of the listed issuer, and must otherwise be independent.

(ii) *Independence requirements for non-investment company issuers.* In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is not an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer; or

(B) Be an affiliated person of the issuer or any subsidiary thereof.

(iii) *Independence requirements for investment company issuers.* In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer; or

(B) Be an "interested person" of the investment company as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

(iv) *Exemptions from the independence requirements.*

(A) One member of a listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for 90 days from the date of effectiveness of a registration statement under section 12 of the Act (15 U.S.C. 78*l*), or a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) covering an initial public offering of securities of the issuer, if the issuer was not immediately prior to such effective date required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(B) An audit committee member that sits on the board of directors of both a listed issuer and its direct or indirect consolidated majority-owned subsidiary (or that sits on the board of both a listed issuer and its parent, if the listed issuer is a direct or indirect consolidated majority-owned subsidiary of the parent) is exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if the member, except for sitting on both boards, otherwise meets the independence requirements of paragraph (b)(1)(ii) of this section for both the parent and the subsidiary, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the parent or subsidiary.

(C) An employee of a foreign private issuer who is not an executive officer of the foreign private issuer is exempt from the requirements of paragraph (b)(1)(ii) of this section if the employee is elected or named to the board of directors or audit committee of the foreign private issuer pursuant to home country legal or listing requirements.

(D) One member of the audit committee of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:

(*1*) The member is a beneficial owner of more than 50% of the voting common equity of the foreign private issuer or is a representative or designee of such an owner or a group of owners that collectively are the beneficial owner of more than 50% of the voting common equity of the foreign private issuer;

(*2*) The member has only observer status on, and is not a voting member or the chair of, the audit committee; and

(*3*) The member is not an executive officer of the foreign private issuer.

(E) One member of the audit committee of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:

(*1*) The member is a representative or designee of a foreign government or foreign governmental entity that is an affiliate of the foreign private issuer; and

(*2*) The member is not an executive officer of the foreign private issuer.

(F) In addition to paragraphs (b)(1)(iv)(A) through (E) of this section, the Commission may exempt from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of this section a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

(2) *Responsibilities relating to registered public accounting firms.*

(i) Except as provided in paragraph (b)(2)(ii) of this section, the audit committee of each listed issuer, in its capacity as a committee of the board of directors, must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee.

(ii) Paragraph (b)(2)(i) of this section does not apply in the case of the selection of a registered public accounting firm engaged by a listed issuer that is an investment company.

(3) *Complaints.* Each audit committee must establish procedures for:

(i) The receipt, retention, and treatment of complaints received by the listed issuer regarding accounting, internal accounting controls, or auditing matters; and

(ii) The confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.

(4) *Authority to engage advisers.* Each audit committee must have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

(5) *Funding.* Each listed issuer must provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation:

(i) To any registered public accounting firm engaged for the purpose of rendering or issuing an audit report or related work or performing other audit, review or attest services for the listed issuer; and

(ii) To any advisers employed by the audit committee under paragraph (b)(4) of this section.

(c) *General exemptions.*

(1) At any time when an issuer has a class of common equity securities (or similar securities) that is listed on a national securities exchange or national securities association subject to the requirements of this section, listing of

other classes of securities of the issuer, and other classes of securities of a direct or indirect consolidated majority-owned subsidiary of the issuer (except classes of equity securities, other than non-convertible, non-participating preferred securities, of the majority-owned subsidiary), is not subject to the requirements of this section.

(2)(i)The listing of securities of a foreign private issuer will not be subject to the requirements of paragraphs (b)(1) or (b)(2) of this section if the foreign private issuer meets the following requirements:

(A) The securities of the foreign private issuer are also listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;

(B) The foreign private issuer has a board of auditors (or similar body), or has statutory auditors, separate from the board of directors that are established and selected pursuant to home country legal or listing provisions requiring or permitting such a board or similar body;

(C) The board or body, or statutory auditors, are not elected by management of such issuer and no executive officer of the foreign private issuer is a member of such board or body, or statutory auditors;

(D) Home country legal or listing provisions set forth standards for the independence of such board or body, or statutory auditors, from the foreign private issuer or the management of such issuer;

(E) Such board or body, or statutory auditors, are directly responsible, in accordance with standards prescribed by home country legal or listing provisions, for the oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work or performing other audit, review or attest services for the issuer; and

(F) Such board or body, or statutory auditors, are responsible, to the extent permitted by law, for the appointment and retention of any registered public accounting firm engaged by the issuer. Such responsibility may be vested in such board or body, or statutory auditors, in any manner, including without limitation by law or listing provision or delegation.

(ii) For purposes of foreign private issuers relying on the exemption in this paragraph (c)(2), the term *audit committee* in paragraphs (b)(3), (b)(4) and (b)(5) of this section refers to the foreign private issuer's board of auditors or similar body, or its statutory auditors.

(3) The listing of a security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or that is exempt from the registration requirements of section 17A pursuant to paragraph (b)(7)(A) of such section is not subject to the requirements of this section.

(4) The listing of a standardized option, as defined in § 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) is not subject to the requirements of this section.

(5) The securities of the following listed issuers are exempt from the requirements of this section:

(i) Asset-Backed Issuers (as defined in § 240.13a–14(g) and § 240.15d–14(g)); and

(ii) Unit investment trusts (as defined in 15 U.S.C. 80a–4(2)).

(d) *Disclosure.* Any listed issuer availing itself of any exemption from the independence standards contained in paragraph (b)(1)(iv) of this section, or any general exemption contained in paragraph (c) of this section, other than the exemptions contained in paragraphs (c)(1) and (c)(5)(ii) of this section, must:

(1) Disclose its reliance on the exemption and its assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of this section in any proxy or information statement for a meeting of shareholders at which directors are elected that is filed with the Commission pursuant to the requirements of section 14 of the Act (15 U.S.C. 78n); and

(2) Disclose the information specified in paragraph (d)(1) of this section in, or incorporate such information by reference from such proxy or information statement filed with the Commission into, its annual report filed with the Commission pursuant to the requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(e) *Definitions.* Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions apply:

(1)(i) The term *affiliate* of, or a person *affiliated* with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer. A person will be deemed not to be in control of the issuer for purposes of this section if the person:

(A) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of equity securities of the issuer;

(B) Is not an executive officer of the issuer; and

(C) Is not a director of the issuer.

(ii) A director, executive officer, partner, member, principal or designee of an affiliate will be deemed to be an affiliate.

(2) In the case of foreign private issuers with two-tier boards of directors, the term *board of directors* means the supervisory or non-management board.

(3) The term *control* (including the terms *controlling, controlled by* and under *common control with*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(4) The term *executive officer* has the meaning set forth in § 240.3b–7.

(5) The term *foreign private issuer* has the meaning set forth in § 240.3b–4(c).

(6) The term *indirect* acceptance by a member of an audit committee of any consulting, advisory or other compensatory fee includes acceptance of such a fee by a spouse, a minor child or stepchild or a child or stepchild sharing a home with the member or by an entity in which such member is a partner, member or principal or occupies a similar position and which provides accounting, consulting, legal, investment banking, financial or other advisory services or any similar services to the issuer.

(7) The terms *listed* and *listing* refer to securities listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association or to issuers of such securities.

(8) Until the Public Company Accounting Oversight Board has established the registration of independent public accountants, the term *registered public accounting firm* means an independent public accountant engaged for the purposes indicated in this section.

Instructions to § 240.10A–3

1. The requirement in paragraph (b)(2) or (c)(2)(i)(F) of this section does not conflict with, and does not affect the application of, any requirement under an issuer's governing law or documents or other home country requirements that requires shareholders to ultimately elect, approve or ratify the selection of the issuer's auditor. The requirement instead relates to the assignment of responsibility to oversee the auditor's

work as between the audit committee and management. In such an instance, however, if the issuer provides a recommendation or nomination of an auditor to its shareholders, the audit committee of the issuer, or body performing similar functions, must be responsible for making the recommendation or nomination. Also, the requirement in paragraph (b)(2) or (c)(2)(i)(F) of this section does not conflict with any requirement in a company's home jurisdiction that prohibits the full board of directors from delegating the responsibility to select the company's auditor. In that case, the audit committee, or body performing similar functions, must be granted advisory and other powers with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board.

2. For the purposes of paragraph (e)(1) of this section, the determination of a person's beneficial ownership must be made in accordance with § 240.13d–3(d)(1).

9. Amend § 240.14a–101 by:

a. Adding a sentence to the end of paragraph (d)(1) of Item 7;

b. Revising paragraph (d)(3)(iv) of Item 7; and

c. Revising the introductory text of paragraph (b)(14) of Item 22.

The additions and revisions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

* * * * *

Item 7. Directors and executive officers. * * *

(d)(1) * * * Such disclosure need not be provided to the extent it is duplicative of disclosure provided in accordance with Item 401(h) of Regulation S–K (§ 229.401(h) of this chapter).

* * * * *

(3) * * *

(iv)(A) If the registrant is a listed issuer, as defined in § 240.10A–3, disclose whether the members of the audit committee are independent, as independence for audit committee members is defined in the listing standards applicable to the listed issuer. If the registrant does not have a separately designated audit committee, or committee performing similar functions, the registrant must provide the disclosure with respect to all members of its board of directors.

(B) If the registrant, including a small business issuer, is not a listed issuer, disclose whether the registrant has an audit committee established in accordance with section 3(a)(58)(A) of the Act (15 U.S.C. 78c(a)(58)(A)) and, if so, whether the members of the committee are independent. In determining whether a member is independent, the registrant must use a definition for audit committee member independence of a national securities exchange or national securities association that has been approved by the Commission (as such definition may be modified or supplemented), and state which definition was used. Whichever definition is chosen must be applied consistently to all members of the audit committee.

* * * * *

Item 22. Information required in investment company proxy statement.

* * *

(b)(14) State whether or not the Fund has a separately designated audit committee established in accordance with section 3(a)(58)(A) of the Act (15 U.S.C. 78c(a)(58)(A)). If the entire board of directors is acting as the Fund's audit committee as specified in section 3(a)(58)(B) of the Act (15 U.S.C. 78c(a)(58)(B)), so state. If applicable, provide the disclosure required by § 240.10A–3(d) regarding an exemption from the listing standards for audit committees. Identify the other standing committees of the Fund's board of directors, and provide the following information about each committee, including any separately designated audit committee:

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for Part 249 is amended by revising the following citations in to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

Section 249.220f is also issued under secs. 3(a), 301, and 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 301, and 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.331 is also issued under secs. 3(a) and 301, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

11. Amend Form 20–F (referenced in § 249.220f) by:

a. Revising the Instruction to Item 6.C;

b. Adding paragraph (f) to Item 15;

c. Redesignating paragraph 11 of "Instructions as to Exhibits" as paragraph 12; and

d. Adding new paragraph 11 to "Instructions as to Exhibits".

The additions and revisions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 6. Directors, Senior Management and Employees

* * * * *

Instructions to Item 6.C:

1. The term "plan" is used very broadly and includes any type of arrangement for compensation, even if the terms of the plan are not contained in a formal document.

2. If the company is a listed issuer as defined in Exchange Act Rule 10A–3 (17 CFR 240.10A–3) and its entire board of directors is acting as the company's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

* * * * *

Item 15. Certain Disclosures

* * * * *

(f) Exemptions from the Listing Standards for Audit Committees.

If applicable, provide the disclosure required by Exchange Act Rule 10A–3(d) (17 CFR 240.10A–3(d)) regarding an exemption from the listing standards for audit committees. You do not need to provide the information called for by this Item 15(f) unless you are using this form as an annual report.

* * * * *

Instructions as to Exhibits

* * * * *

11. If you are availing yourself of the exemption in Exchange Act Rule 10A–3(c)(2) (17 CFR 240.10A–3(c)(2)) from the listing standards for audit committees because you have a board of auditors or similar body, a statement that you are availing yourself of that exemption and a reference to the section of the report to which the exhibit relates disclosing information regarding your use of that exemption. You do not need to provide the information called for by this paragraph 11 unless you are using this form as an annual report.

* * * * *

12. Amend Form 40–F (referenced in § 249.240f) by adding paragraph (11) to General Instruction B to read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form.

* * * * *

(11) Identification of the Audit Committee. If you are a listed issuer subject to Exchange Act Rule 10A–3 (17 CFR 240.10A–3) that is using this form as an annual report:

(a) State whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(b) If applicable, provide the disclosure required by Exchange Act Rule 10A–3(d) (17 CFR 240.10A–3d)) regarding an exemption from the listing standards for audit committees.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

13. The authority citation for Part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

14. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by:

a. Redesignating Items 8 and 9 as Items 9 and 10;

b. Removing the phrase "and 7(b)" from General Instruction D and in its place adding "8, and 10(b)";

c. Removing the phrase "The information required by Item 5" from General Instruction D and in its place adding "The information required by Items 5 and 8"; and

d. Adding new Item 8 to read as follows.

Note: The text of Form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 8. Audit Committee of Listed Registrants

(1) If the registrant is a listed issuer subject to Rule 10A–3 under the Exchange Act (17 CFR 240.10A–3), state whether or not the registrant has a separately-designated standing audit committee established in accordance with Section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)). If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in Section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(2) If applicable, provide the disclosure required by Rule 10A–3(d) under the Exchange Act (17 CFR 240.10A–3(d)) regarding an exemption from the listing standards for audit committees.

Instruction. The information required by this Item 8 is only required in a report on this Form N–CSR that is required by Item 10(a) to include a copy of an annual report transmitted to stockholders.

Dated: January 8, 2003.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–690 Filed 1–16–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday,
January 17, 2003

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 321 et al.
United States Savings Bonds; Extension of Holding Period; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 321, 351, 352, 353, 359, and 360

United States Savings Bonds; Extension of Holding Period

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend regulations offering and governing United States Savings Bonds to require that owners hold their bonds 12 months before they are eligible for redemption instead of 6 months. This change affects Series EE and I United States Savings Bonds issued January 2003 or later. This change is being made to discourage investing in savings bonds for short terms, and to better align the effective return on savings bonds with short-term marketable Treasury security yields.

EFFECTIVE DATE: Effective February 1, 2003.

ADDRESSES: You can download this final rule and correction at the following Internet address: *http://www.publicdebt.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Elisha Whipkey, Director, Division of Program Administration, Office of Securities Operations, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*
Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *susan.klimas@bpd.treas.gov.*
Dean Adams, Assistant Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *dean.adams@bpd.treas.gov.*
Edward Gronseth, Deputy Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *edward.gronseth@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: Currently, investors must hold their Series EE and I United States Savings Bonds for 6 months before they can be redeemed. This Final Rule increases the holding period for U.S. Savings Bonds from 6 months to 12 months. This change affects Series EE and I United States Savings Bonds issued January 2003 or later. When EE and I bonds were introduced and first offered in January 1980 and September 1998, respectively, offering and governing regulations prohibited owners from redeeming these bonds before they were 6 months old. While owners have always been able to cash their savings bonds prior to original maturity at the option of the owner or other person entitled to redemption, regulations have always prohibited redemption during an initial holding period to encourage retention and discourage the use of savings bonds as a short-term investment. The change will also address the anomaly that has resulted in yields for EE and I bonds redeemed six months after issue being greater than prevailing six-month Treasury security yields.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements and delayed effective date requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects

31 CFR Part 321

Banks, Banking, Bonds.

31 CFR Part 351

Bonds, Government securities.

31 CFR Part 352

Bonds, Government securities.

31 CFR Part 353

Bonds, Electronic funds transfers, Government securities.

31 CFR Part 359

Bonds, Federal Reserve system, Government securities, Securities.

31 CFR Part 360

Bonds, Federal Reserve system, Government securities, Securities.

Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

PART 321—PAYMENTS BY BANKS AND OTHER FINANCIAL INSTITUTIONS OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

1. The authority citation for part 321 continues to read as follows:

Authority: 2 U.S.C. 901; 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3126.

2. Section 321.8 is amended by redesignating paragraphs (a)(2) as paragraph (a)(3), revising paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§ 321.8 Redemption-exchange of Series E and EE savings bonds and savings notes.

(a) * * *

(1) Series EE bonds bearing issue dates of December 1, 2002, or earlier, presented no earlier than six months from their issue dates;

(2) Series EE bonds bearing issue dates of February 1, 2003, or thereafter, presented no earlier than 12 months from their issue dates; and

* * * * *

3. Revise § 321.9(a) to read as follows:

§ 321.9 Specific limitations on payment authority.

* * * * *

(a)(1) If it is a Series EE bond or a Series I bond issued on December 1, 2002, or earlier, presented for payment prior to six months from its issue date; or

(2) If it is a Series EE bond or a Series I bond issued on February 1, 2003, or thereafter, presented for payment prior to 12 months from its issue date.

* * * * *

Appendix to Part 321 [Amended]

4. Amend the Appendix to part 321 section (8)(a), by revising the second sentence to read as follows:

* * * * *

8. Redemption-exchange of Series E and EE savings bonds and savings notes.

(a) *General.* * * * Securities eligible for exchange are: (1) Series EE bonds issued December 1, 2002, or earlier, presented no earlier than six months from their issue dates; (2) Series EE bonds issued February 1, 2003, or thereafter, presented no earlier than 12 months from their issue dates; and (3) Series E bonds and savings notes presented no later than one year from the month in which they reached final maturity. * * *

* * * * *

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

5. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

6. Amend § 351.2(d) by revising the first sentence and adding a new sentence after the first sentence to read as follows:

§ 351.2 Description of bonds.

* * * * *

(d) *Redemption.* A Series EE bond issued on December 1, 2002, or earlier, may be redeemed after 6 months from its issue date. A Series EE bond issued on February 1, 2003, or thereafter, may be redeemed after 12 months from its issue date. * * *

PART 352—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES HH

7. The authority citation for part 353 continues to read as follows:

Authority: 31 U.S.C. 3105; 5 U.S.C. 301.

8. Amend § 352.7(a) by revising the last sentence and adding a new sentence to read as follows:

§ 352.7 Issues on exchange.

(a) * * * Series EE bonds issued on December 1, 2002, or earlier, become eligible for exchange six months after their issue dates. Series EE bonds issued on February 1, 2003, or thereafter, become eligible for exchange 12 months after their issue dates.

* * * * *

PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

9. The authority citation for part 353 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

10. Revise § 353.35(b) to read as follows:

§ 353.35 Payment (redemption).

* * * * *

(b) A Series EE bond issued on December 1, 2002, or earlier, will be paid at any time after 6 months from its issue date. A Series EE bond issued on February 1, 2003, or thereafter, will be paid at any time after 12 months from its issue date. Bonds will be paid at the current redemption value shown in Department of the Treasury Circular, Public Debt Series No. 1–80 (31 CFR part 351).

* * * * *

PART 359—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES I

11. The authority citation for part 359 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

12. Revise § 359.6 to read as follows:

§ 359.6 When may I redeem my Series I bond?

(a) *Bonds issued on December 1, 2002, or earlier.* You may redeem your Series I savings bond issued on December 1, 2002, or earlier, at any time after six months from its issue date.

(b) Bonds issued on February 1, 2003, or thereafter. You may redeem your Series I savings bond issued on February 1, 2003, or thereafter, at any time after 12 months from its issue date.

PART 360—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES I

13. The authority citation for part 360 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3105 and 3125.

14. Revise § 360.35(b) to read as follows:

§ 360.35 Payment (redemption).

* * * * *

(b) *Mandatory initial holding period.* A Series I bond issued on December 1, 2002, or earlier, will be paid at any time after six months from issue date. A Series I bond issued on February 1, 2003, or thereafter, will be paid at any time after 12 months from issue date. Bonds will be paid at the current redemption value determined in the manner described in Department of the Treasury Circular, Public Debt Series No. 1–98 (31 CFR part 359).

Dated: December 19, 2003.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 03–1114 Filed 1–15–03; 8:45 am]

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Federal Register

Friday,
January 17, 2003

Part IV

Department of Veterans Affairs

38 CFR Part 17

Enrollment—Provision of Hospital and Outpatient Care to Veterans Subpriorities of Priority Categories 7 and 8 and Annual Enrollment Level Decision; Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL51

Enrollment—Provision of Hospital and Outpatient Care to Veterans Subpriorities of Priority Categories 7 and 8 and Annual Enrollment Level Decision

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: As required by Pub. L. 104–262, the Veterans' Health Care Eligibility Reform Act of 1996, the Secretary of Veterans Affairs must make an annual decision concerning enrollment in VA's health-care system in order to ensure that medical services provided are both timely and acceptable in quality. An enrollment system is necessary because the provision of VA health care is discretionary and can be provided only to the extent that appropriated resources are available for that purpose. In recognition of that fact, Congress has prioritized eligibility to enroll in the VA system by creating eight priority categories, with priority category 8 veterans (those who do not have compensable service-connected disabilities, and whose incomes exceed geographic-means tests) having the lowest priority for enrollment. The law recognizes the higher obligation owed to veterans requiring care for their service-connected disabilities, and to lower-income veterans. Since the implementation of the enrollment requirement in 1998, all veterans seeking VA care have been permitted to enroll. However, due to a tremendous growth in the number of veterans seeking VA health-care benefits in recent months, VA has been unable to provide all enrolled veterans with appointments within a reasonable time. Many VA facilities have either placed new enrollees on waiting lists or have scheduled appointments so far in the future that the services cannot be considered timely. This document announces the enrollment decision required by law. VA will continue to treat all veterans currently enrolled in any category, and will treat new enrollees in categories 1 through 7. However, to protect the quality and improve the timeliness of care provided to veterans in higher enrollment-priority categories, VA will suspend the enrollment of additional veterans who are in the lowest statutory enrollment category (priority category 8). It is emphasized that this decision will not affect veterans already enrolled in the VA system, nor affect eligibility for treatment of service-connected disabilities which exists independently of enrollment requirements. This enrollment decision is effective January 17, 2003. To facilitate this decision, this document also amends existing regulations to establish additional subpriorities within priority category 8. Although the document takes no action that will affect the enrollment of veterans in priority category 7, the document will nevertheless also amend the existing regulations to establish the same additional subpriorities within priority category 7.

DATES: *Effective Date:* This interim final rule is effective January 17, 2003. Comments must be received by VA on or before March 18, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL51." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Amy Hertz, Office of Policy and Planning (105D), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–8934.

SUPPLEMENTARY INFORMATION: Public Law 104–262, the Veterans' Health Care Eligibility Reform Act of 1996, required VA to establish a national enrollment system to manage the delivery of inpatient hospital care and outpatient medical care, within available appropriated resources. It directed that the enrollment system be managed in such a way as "to ensure that the provision of care to enrollees is timely and acceptable in quality," and authorized such subprioritization of the seven statutory enrollment categories "as the Secretary determines necessary." The law also provided that starting October 1, 1998, most veterans had to enroll in the VA health-care system as a condition for receiving VA hospital and outpatient care. Since that time, VA has enrolled all eligible veterans who sought enrollment in the VA system.

Subsequently on January 23, 2002, Congress enacted the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, further amending the law governing enrollment. It altered the enrollment system by establishing, effective October 1, 2002, an additional priority category 8.

This document amends 38 CFR 17.36 to add two new subpriorities to both enrollment priority categories 7 and 8, for a total of four subpriorities in each category. It also announces that VA will suspend enrollments of additional veterans in priority category 8. Veterans who VA would not enroll would be those who have no compensable service-connected disability or other status making them eligible for placement in a higher priority category. All of these veterans have annual incomes above a statutory income threshold (geographic means test threshold) applicable to the location in which they reside. The suspension of new enrollments is necessary to prevent further erosion of VA's capacity to provide needed health-care services of high quality to veterans in a timely and medically appropriate manner.

Projections for Increased Placement of Veterans on Wait Lists

An existing regulation (38 CFR 17.36(c)) requires that the Secretary determine which categories of veterans are eligible to be enrolled and that the Secretary notify eligible enrollees of the determination by announcing it in the **Federal Register**. In making that determination, the Secretary must consider an array of factors including economic information such as available resources, projections of demand for enrollment, and the length of waiting times for appointments for care.

There has been an unprecedented surge in enrollments in the VA health-care system. Between October 1, 2001 and September 2002, VA enrolled an additional 830,237 veterans. Of these new enrollees, 425,000 had annual income and net worth above the statutory "means test" income threshold that required VA to place them in enrollment priority category 7. The majority of those enrollees now fall within the new priority category 8. As a result of this growth in enrollment, many VA facilities have been unable to provide timely access to needed care. Many VA facilities have informed enrolled veterans that they are being placed on a wait list for care and that they will be notified when an appointment for care is possible. Other facilities have scheduled appointments for enrollees far into the future.

As of December 2002, VA estimates that there were almost 236,000 veterans who have been unable to schedule an

appointment or have an appointment scheduled more than 6 months from the desired date. Moreover, VA estimates that the number of veterans waiting for appointments more than 6 months from the desired date would increase in FY 2003. VA also estimates that between January and September 2003, as many as 164,367 priority category 8 veterans would seek to enroll for VA health care services. Without action to suspend new enrollment, this would adversely affect quality, patient safety, and access.

VHA's total FY 2003 medical care appropriation is estimated to be $23.892 billion. This is supplemented by an additional $1.881 billion from collections for copayments, third-party reimbursements for services, other revenue, and carry-over funds. The sum of these resources is $25.773 billion. These resources include $4.224 billion for services provided that are not included in the medical benefits package, including long-term care, domiciliary care, dental care, emergency care, CHAMPVA, readjustment counseling, certain prosthetic services, and counseling treatment for sexual trauma. This leaves $21.549 billion available for the medical benefits package.

The following table shows the projected average enrollment for FY 2003 together with the projected expenditures that would be needed to provide the medical benefits package to all enrollees.

TABLE—FISCAL YEAR 2003 PROJECTIONS

Priority category	Average enrollment	Medical benefits package expenditures	Cumulative medical benefits package expenditures
1	564,556	$4,170,231,000	$4,170,231,000
2	419,580	1,341,312,000	5,511,543,000
3	876,839	2,225,614,000	7,737,157,000
4	174,887	2,815,995,000	10,553,152,000
5	2,509,805	9,595,156,000	20,148,308,000
6	142,835	159,128,000	20,307,436,000
7	785,243	1,113,375,000	21,420,811,000
8	1,517,660	2,034,405,000	23,455,216,000
Total	6,991,405	23,455,216,000	

As can be seen from the expected appropriation and the table above, VA projects that available resources will be considerably less than needed to meet the strains that new enrollees would place on the system. Without VA's actually limiting enrollment, demand will overwhelm the system's ability to provide timely care of the quality veterans expect and deserve.

Past enrollment growth has exhausted VA's marginal capacity, and the projected growth for FY 2003 and beyond exceeds both VA's primary and specialty care capacity. By suspending enrollment of additional priority category 8 veterans, VA would avoid very significant additional medical benefits costs and begin to bring demand in line with capacity, which will reduce the number of veterans on wait lists. In FY 2003, 164,367 veterans who were expected to enroll in priority category 8 would not be enrolled. Further, this number is expected to grow to over 520,000 by FY 2005.

CUMULATIVE APPLICANTS FOR ENROLLMENT FROM JANUARY 17, 2003

Priority category 8	FY 2003 applicants from 1/17/03 to 9/30/03	FY 2004 cumulative applicants from 1/17/03	FY 2005 cumulative applicants from 1/17/03
0% SC	5,192	11,500	16,500
NSC	159,175	348,500	505,500
Total	164,367	360,000	522,000

Moreover, VA projects that enrollment in priority categories 1 through 7, which totaled 5,089,542 in FY 2002, will continue to grow significantly, as shown by the following table.

PROJECTED PRIORITY CATEGORY 1–7 ENROLLMENT

Fiscal year:	
2003	5,473,745
2004	5,754,701
2005	5,966,957

Immediate action is needed to limit enrollment to ensure VA's ability to provide already-enrolled veterans and new higher-priority veterans timely, medically appropriate access to high-quality health-care services. By suspending additional enrollments of priority category 8 veterans, VA will be better able to provide care to veterans in higher priority groups. Accordingly, effective January 17, 2003 additional priority category 8 veterans will not be enrolled. For this purpose, veterans who have completed the enrollment forms and submitted them to VA (or had them postmarked) prior to January 17, 2003 will be considered to have enrolled before the cutoff date.

Subpriorities

Existing regulations currently provide for two subpriorities within both priority categories 7 and 8. The first subpriority includes those veterans with noncompensable zero percent service-connected disabilities. The second subpriority includes all other veterans in priority category 7 or 8.

This document amends the existing regulation, 38 CFR 17.36, to establish a

total of four subpriorities within both categories 7 and 8. They would be the following:

(i) Noncompensable zero percent service-connected veterans who are in an enrolled status on a specified date announced in a **Federal Register** document and who subsequently do not request disenrollment;

(ii) Nonservice-connected veterans who are in an enrolled status on a specified date announced in a **Federal Register** document and who subsequently do not request disenrollment;

(iii) Noncompensable zero percent service-connected veterans not included in paragraph (i); and

(iv) Nonservice-connected veterans not included in paragraph (ii).

This rule change reflects VA's view that veterans who are enrolled in the VA system should have a higher priority than those who have not sought enrollment and that those veterans with a service-connected disability should have a higher priority than those without a service-connected disability. This change also is necessary in order to carry out the announcement in this document that VA will cease enrolling additional veterans that VA would be required to place in the third and fourth subpriority in priority category 8.

Administrative Procedure Act and Congressional Review Act

We have found good cause to dispense with the notice-and-comment and delayed effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) and the notice and public procedure provisions of the Congressional Review Act (5 U.S.C. 801–808) because compliance with such provisions would be impracticable and contrary to the public interest.

Changes made by this rule reflect a VA enrollment decision based on available funding. Delaying implementation would exacerbate problems with providing enrolled veterans with timely access to needed care.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This rule is economically significant under Executive Order 12866 and major under the Congressional Review Act. The Office of Management and Budget have reviewed this rule.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64,009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: January 8, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. In § 17.36 paragraphs (b)(7), (b)(8) and (c)(2) are revised to read as follows:

§ 17.36 Enrollment—provision of hospital and outpatient care to veterans.

* * * * *

(b) * * *

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g) if their income for the previous year constitutes "low income" under the geographical income limits established by the U.S. Department of Housing and Urban Development for the fiscal year that ended on September 30 of the previous calendar year. For purposes of this paragraph, VA will determine the income of veterans (to include the income of their spouses and dependents) using the rules in §§ 3.271, 3.272, 3.273, and 3.276. After determining the veterans' income and the number of persons in the veterans' family (including only the spouse and dependent children), VA will compare their income with the current applicable "low-income" income limit for the public housing and section 8 programs in their area that the U.S. Department of Housing and Urban Development publishes pursuant to 42 U.S.C. 1437a(b)(2). If the veteran's income is below the applicable "low-income" income limits for the area in which the veteran resides, the veteran will be considered to have "low income" for purposes of this paragraph. To avoid a hardship to a veteran, VA may use the projected income for the current year of the veteran, spouse, and dependent children if the projected income is below the "low income" income limit referenced above. This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans who are in an enrolled status on a specified date announced in a **Federal Register** document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;

(ii) Nonservice-connected veterans who are in an enrolled status on a specified date announced in a **Federal Register** document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;

(iii) Noncompensable zero percent service-connected veterans not included in paragraph (b)(7)(i) of this section; and

(iv) Nonservice-connected veterans not included in paragraph (b)(7)(ii) of this section.

(8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further

prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans who are in an enrolled status on a specified date announced in a **Federal Register** document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;

(ii) Nonservice-connected veterans who are in an enrolled status on a specified date announced in a **Federal Register** document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;

(iii) Noncompensable zero percent service-connected veterans not included in paragraph (b)(8)(i) of this section; and

(iv) Nonservice-connected veterans not included in paragraph (b)(8)(ii) of this section.

(c) * * *

(2) Unless changed by a rulemaking document in accordance with paragraph (c)(1) of this section, VA will enroll all priority categories of veterans set forth in § 17.36(b) beginning January 17, 2003 except that those veterans in priority category 8 who were not in an enrolled status on January 17, 2003 or who requested disenrollment after that date, are not eligible to be enrolled.

* * * * *

[FR Doc. 03–1201 Filed 1–16–03; 8:45 am]

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Federal Register

Friday,
January 17, 2003

Part V

The President

Notice of January 16, 2003—Continuation of the National Emergency With Respect to Sierra Leone and Liberia

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Federal Register
Vol. 68, No. 12
Friday, January 17, 2003

Presidential Documents

Title 3—

The President

Notice of January 16, 2003

Continuation of the National Emergency With Respect To Sierra Leone and Liberia

On January 18, 2001, by Executive Order 13194, the President declared a national emergency with respect to Sierra Leone pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of the insurgent Revolutionary United Front (RUF) in Sierra Leone and pursuant to which the United States imposed a general ban on the direct and indirect importation of all rough diamonds from Sierra Leone into the United States, except those imports controlled through the Certificate of Origin regime of the Government of Sierra Leone. On May 22, 2001, I issued Executive Order 13213, which expanded the scope of the national emergency to include actions of the Government of Liberia in support of the RUF and prohibited the importation of all rough diamonds from Liberia.

Because the actions and policies of the RUF continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on January 18, 2001, as expanded on May 22, 2001, and the measures adopted on those dates to deal with that emergency must continue in effect beyond January 18, 2003. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Sierra Leone and Liberia.

This Notice shall be published in the **Federal Register** and transmitted to the Congress.

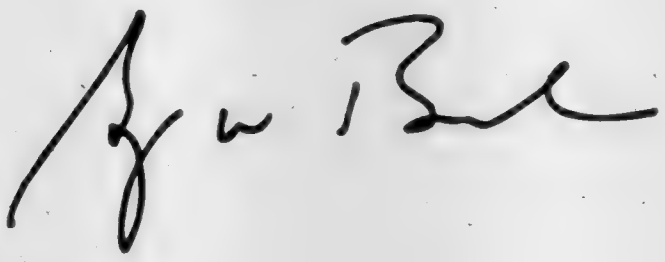

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[FR Doc. 03–1324
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H.R. 11/P.L. 108–3

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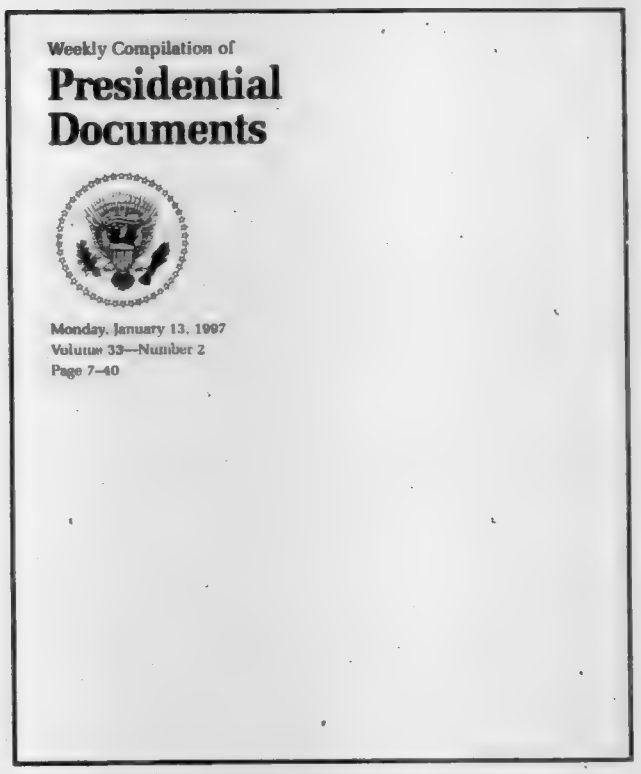

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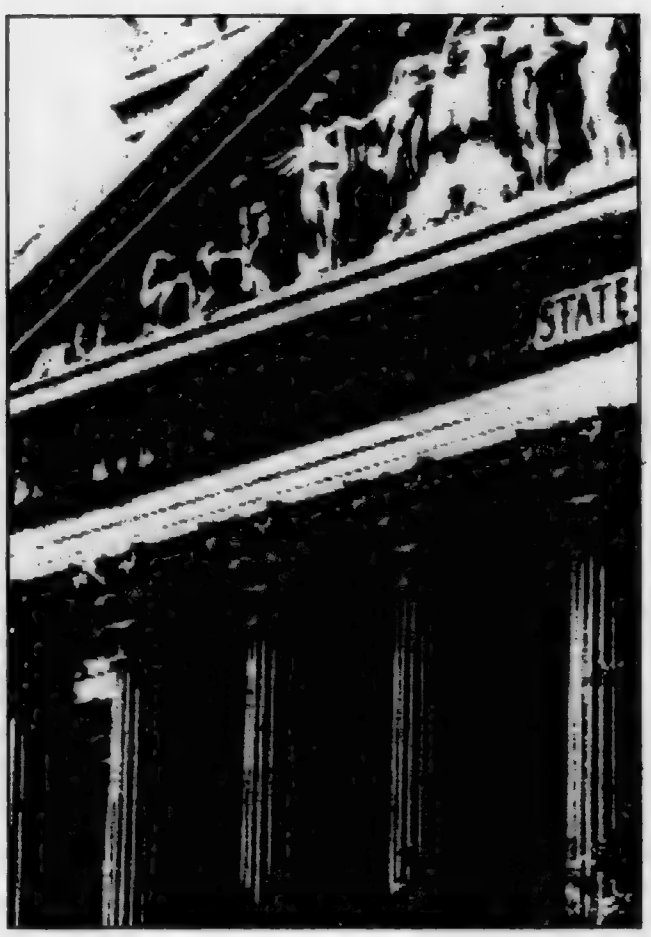

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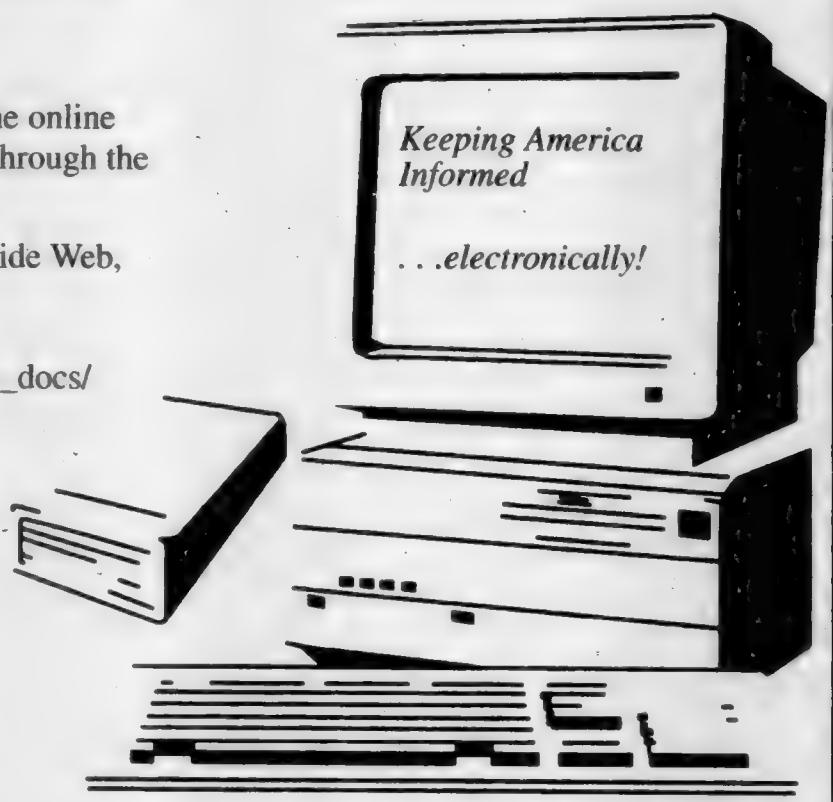

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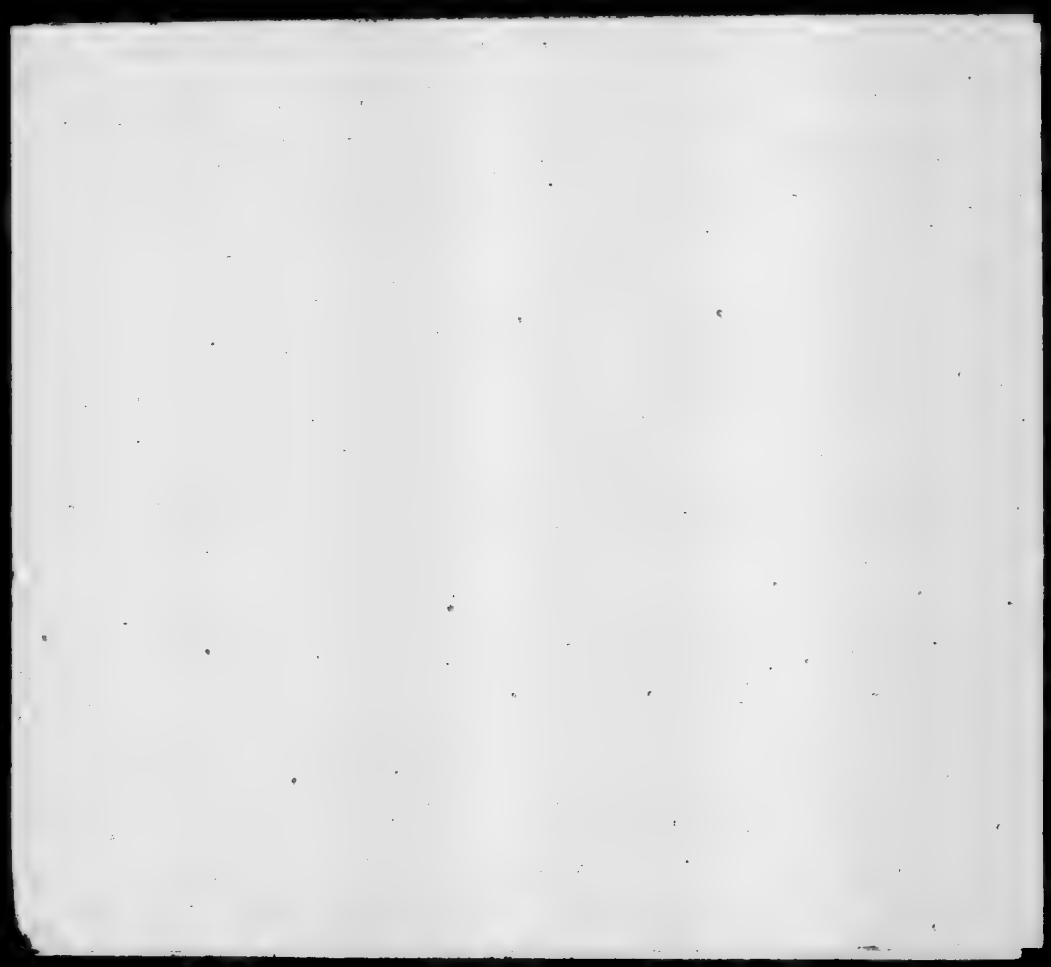

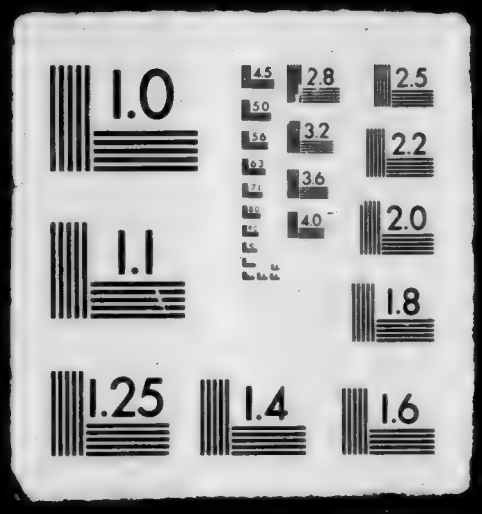
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Tuesday, January 21, 2003

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–129–1]

Mexican Fruit Fly; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by designating a portion of San Diego County, CA, as a regulated area and restricting the interstate movement of regulated articles from that area. This action is necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective January 15, 2003. We will consider all comments that we receive on or before March 24, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–129–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–129–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–129–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly *(Anastrepha ludens)* is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas.

Section 301.64–3 provides that the Deputy Administrator for Plant Protection and Quarantine, Animal and Plant Health Inspection Service (APHIS), shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs.

Less than an entire quarantined State is designated as a regulated area only if the Deputy Administrator determines that the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles and the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by APHIS inspectors reveal that a portion of San Diego County, CA, is infested with the Mexican fruit fly.

Accordingly, to prevent the spread of the Mexican fruit fly to noninfested areas of the United States, we are amending the regulations in § 301.64–3 by designating that portion of San Diego County, CA, as a regulated area for the Mexican fruit fly. The regulated area is described in detail in the rule portion of this document. The Deputy Administrator has determined that it is not necessary to designate the entire State of California as a regulated area.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Mexican fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the Mexican fruit fly regulations by designating a portion of San Diego County, CA, as a regulated area and restricting the interstate movement of regulated articles from that area. This action is necessary to prevent

the spread of the Mexican fruit fly into noninfested areas of the United States.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Mexican fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document). In addition, copies may be obtained from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.64–3, paragraph (c) is amended by adding, in alphabetical order, under the heading "California," an entry for San Diego County to read as follows:

§ 301.64–3 Regulated areas.

* * * * *

(c) * * *

California

* * * * *

San Diego County: That portion of San Diego County in the Valley Center area bounded by a line as follows: Beginning at the intersection of State Highway 76 and Rice Canyon Road; then north on Rice Canyon Road to Huntley Road; then northeast on Huntley Road to Alex Road; then northeast on Alex Road to Rainbow Crest Road; then north, northwest, and north on Rainbow Crest Road to Rainbow Heights Road; then north on Rainbow Heights Road to Arouba Road; then southeast on Arouba Road to Aruba Road; then northeast on Aruba Road to Pala Temecula Road; then north on Pala Temecula Road to the San Diego County boundary line; then east along the San Diego County boundary line to the Cleveland National Forest boundary line; then south, east, south, east, south, east, northeast, and southeast along the Cleveland National Forest boundary line to Nate Harrison Grade Road; then southwest, northwest, southeast, west, southeast, and southwest on Nate Harrison Grade Road to Mesa Drive North; then southeast, northeast, southwest, northeast, and southwest on Mesa Drive North to State Highway 76; then northwest on State Highway 76 to Lazy H Drive; then west and south on Lazy H Drive to its southernmost point; then southwest along an imaginary line from the southernmost point of Lazy H Drive to the northernmost point of The Yellow Brick Road; then south on The Yellow Brick Road to Fruitvale Road; then west on Fruitvale Road to Mac Tan Road; then south on Mac Tan Road to Valley Center Road; then west, northwest, west, and south on Valley Center Road to Mirar De Valle Road; then west on Mirar De Valle Road to Alps Way; then west on Alps Way to Cougar Pass Road; then northwest on Cougar Pass Road to Meadow Glen Way East; then west, north, west, and southwest on Meadow Glen Way East to Mountain Meadow Road; then north on Mountain Meadow Road to Glenmeade Way; then west and southwest on Glenmeade Way to Sage Hill Way; then west on Sage Hill Way to Meadow Glen Way West; then north, west, and northwest on Meadow Glen Way West to Welk Highland Drive; then northwest on Welk Highland Drive to Welk View Drive; then west, north, southwest, north, southwest, and west on Welk View Drive to Champagne Boulevard; then north on Champagne Boulevard to Old Highway 395; then north on Old Highway 395 to Dulin Road; then northeast on Dulin Road to Shearer Crossing; then north on Shearer Crossing to Pankey Road; then north on Pankey Road to State Highway 76; then northeast on State Highway 76 to the point of beginning.

* * * * *

Done in Washington, DC, this 15th day of January 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–1214 Filed 1–17–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 318 and 319

[Docket No. 00–059–1]

Movement and Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations that govern the movement of fruits and vegetables from Puerto Rico and the U.S. Virgin Islands to require the treatment of pigeon peas (fresh shelled or in the pod) from Puerto Rico for movement into any other area of the United States. In addition, we are amending the regulations to require the treatment of pigeon peas (fresh shelled or in the pod) from the Dominican Republic for importation into any area of the United States except Puerto Rico, and to prohibit the importation of mangoes from the British Virgin Islands into the U.S. Virgin Islands. These actions are necessary to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

DATES: This interim rule is effective January 21, 2003. We will consider all comments that we receive on or before March 24, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–059–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–059–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00–059–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Hesham A. Abuelnaga, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5334.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands" (7 CFR 318.58 through 318.58–16) are designed to prevent the dissemination of plant pests, including diseases, from Puerto Rico and the U.S. Virgin Islands into other parts of the United States. The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

In this document, we are amending the regulations in "Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands" to require the treatment of pigeon peas (fresh shelled or in the pod) from Puerto Rico for movement into any other area of the United States. In addition, we are amending the regulations in "Subpart—Fruits and Vegetables" to require the treatment of pigeon peas (fresh shelled or in the pod) from the Dominican Republic for importation into any area of the United States, except Puerto Rico, and to prohibit the importation of mangoes from the British Virgin Islands into the U.S. Virgin Islands. We believe that these actions are necessary to protect the United States from the introduction or spread of injurious plant pests.

Pigeon Peas From Puerto Rico

In "Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands," § 318.58–2, among other things, lists the fruits and vegetables that are considered regulated articles and that must be moved in accordance with the requirements of that section because they present a pest risk to other parts of the United States.

Pigeon peas in the pod are among the fruits and vegetables listed in § 318.58–2(b)(1) that may be moved interstate from Puerto Rico or the U.S. Virgin Islands when they are free from plant litter, meet the container marking requirements of § 318.58–6, and have either been inspected and certified by an inspector of the Animal and Plant Health Inspection Service (APHIS) as being free from injurious insect infestation or have been subjected to a prescribed treatment. Further, § 318.58–2(b)(1) provides that pigeon peas in the pod from Puerto Rico and the U.S. Virgin Islands may be moved to Baltimore, MD, and Atlantic Coast ports north of Baltimore, MD, without treatment, but must undergo a prescribed treatment under supervision of an inspector if moved to Pacific Coast ports or to Atlantic Coast ports south of Baltimore, MD. The Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at 7 CFR 300.1, lists methyl bromide fumigation as the prescribed treatment for pigeon peas (fresh shelled or in the pod). The pest of concern has been *Maruca testulalis* (the bean pod borer).

Similarly, fresh shelled pigeon peas from Puerto Rico and the U.S. Virgin Islands are among the fruits and vegetables listed in § 318.58–2(b)(2) that may be moved interstate from Puerto Rico and the U.S. Virgin Islands without meeting the certification, marking, treatment, or other requirements of the subpart as long as they are free from plant litter and soil. The fruits and vegetables listed in § 318.58–2(b)(2) are, however, subject to inspection, either in the field or when presented for shipment, as an inspector may require; if injurious insects are detected in the course of an inspection, the movement of the fruit or vegetable may be prohibited or certification and treatment measures may be required.

Individuals leaving Puerto Rico and the U.S. Virgin Islands by aircraft sometimes take pigeon peas (fresh shelled or in the pod) to other parts of the United States. In accordance with § 318.58–10(a), all air passengers must offer their carry-on and check-in baggage and other personal effects for inspection by APHIS inspectors prior to boarding flights from Puerto Rico or the U.S. Virgin Islands to other parts of the United States, except Guam. The purpose of the inspections is to ensure that the baggage does not contain any agricultural articles that could carry plant pests to other parts of the United States.

During these required inspections, inspectors have detected *Melanagromyza obtusa* (pigeon pea pod fly) in untreated pigeon peas (fresh shelled and in the pod) from Puerto Rico. In fact, since February 2000,

inspectors have intercepted the pigeon pea pod fly over 300 times during domestic terminal predeparture inspections of baggage from passengers destined for the United States from Puerto Rico. The pigeon pea pod fly is currently widely distributed in Asia and Australasia, and surveys are ongoing to determine the extent of its distribution in the Caribbean basin. The pigeon pea pod fly is a serious pest of pigeon pea in its natural range and could be of economic concern if it becomes established in North America outside the Caribbean basin.

The natural range for the pigeon pea pod fly is in the warmest climatic zones—equatorial and tropical, so areas of the United States other than Puerto Rico and the U.S. Virgin Islands most at risk for the introduction and establishment of this pest are the warmer southwestern States, southern Florida, and Hawaii. Recent studies have shown that eggs, larvae, and pupae can develop in temperatures ranging from 52 to 56 degrees Fahrenheit, however, and the pigeon pea pod fly has also been found in high concentrations in northern India and Nepal, both of which experience cold winters where the temperatures range from 20 to 50 degrees Fahrenheit. This wide geographic distribution outside its natural range demonstrates some adaptability to adverse climatic conditions, so there exists a moderate risk for the introduction and establishment of the pigeon pea pod fly in the more temperate, northern States as well.

Although the pigeon pea pod fly's primary host is the pigeon pea, it has been reported on alternate host plants in other countries when pigeon pea is unavailable. Since pigeon pea is grown to a limited extent only in southern Florida, the potential impact of this pest on the continental United States would depend upon its ability to find a suitable, alternate host. Studies into potential alternate hosts for the pigeon pea pod fly present in the continental United States, including kidney bean, chick pea, and black-eyed pea, are ongoing but no findings have been confirmed.

Considering that the pigeon pea pod fly is now established in the Caribbean even though its natural range is Asia and Australasia, this pest has demonstrated an ability to disperse and to establish itself readily if suitable hosts and climate are present. The pest's apparent climatic adaptability, as discussed above, combined with its ability to survive on secondary hosts, could lead to its establishment in the continental United States despite the fact that pigeon pea is not commercially grown here. The potential impact of the establishment of this pest is difficult to predict, but it has a devastating effect on its primary host in its natural range.

To prevent the spread of the pigeon pea pod fly into additional areas of the United States, this interim rule requires all pigeon peas (fresh shelled or in the pod) from Puerto Rico to be treated with methyl bromide, which is known to be effective against the pigeon pea pod fly, for movement into any other part of the United States. This rule places the mandatory treatment requirement for pigeon peas from Puerto Rico in a new paragraph (b)(4) in § 318.58–2. In conjunction with this change, we have amended § 318.58–2(b)(1) and (b)(2) so that the requirements for pigeon peas in those paragraphs now apply only to pigeon peas from the U.S. Virgin Islands.

Prior to this interim rule, § 318.58(c) allowed unrestricted movement of all fruits or vegetables in either direction between Puerto Rico and the U.S. Virgin Islands. At this time, the pigeon pea pod fly has not been detected in the U.S. Virgin Islands; therefore, we are amending § 318.58(c) to specify that the movement of pigeon peas (fresh shelled or in the pod) from Puerto Rico to the U.S. Virgin Islands is restricted, in accordance with § 318.58–2(b)(4).

Pigeon Peas From the Dominican Republic

In "Subpart—Fruits and Vegetables," paragraph (e) of § 319.56–2 provides conditions under which fruits or vegetables that are not otherwise restricted by quarantines or other orders may be imported. Under § 319.56–2(e), such fruits and vegetables may be imported under a permit if, among other things, the fruits or vegetables are not attacked in the country of origin by injurious insects, including fruit and melon flies (*Tephritidae*).

Until recently, untreated pigeon peas (fresh shelled or in the pod) from the Dominican Republic were allowed to be imported into the United States under permit in accordance with § 319.56–2(e). Although no commercial shipments of pigeon peas have been exported to the United States from the Dominican Republic in over a decade, individuals arriving in the United States from the Dominican Republic sometimes bring pigeon peas in their baggage, which is subject to inspection by USDA inspectors in accordance with § 319.56–7. During these inspections, USDA inspectors have detected the pigeon pea pod fly in pigeon peas (fresh shelled and in the pod) from the Dominican Republic.

To prevent the introduction of the pigeon pea pod fly from the Dominican Republic into noninfested areas of the United States, this interim rule requires that pigeon peas (fresh shelled or in the pod) from the Dominican Republic be treated with methyl bromide for importation into the United States. We are adding this requirement to § 319.56–2x(a), which lists fruits and vegetables that may be imported only if treated in accordance with the PPQ Treatment Manual. However, because pigeon pea pod fly exists in Puerto Rico, we will not require pigeon peas (fresh shelled or in the pod) from the Dominican Republic to be treated for importation into Puerto Rico.

Mangoes From the British Virgin Islands

In accordance with § 319.56–2(d), fruits and vegetables from the British Virgin Islands may be imported into the U.S. Virgin Islands without a permit, or other restriction, subject to the requirements in § 319.56–6. Under § 319.56–6, all imported fruits and vegetables, as a condition of entry, are subject to inspection, disinfection, or both, at the port of first arrival, as may be required by a USDA inspector to detect and eliminate plant pests.

The mango seed weevil (*Sternochetus mangiferae*) is a pest of mangoes that is undetectable until the larvae tunnel their way out of the seed, which can make visual detection difficult. However, USDA inspectors in the U.S. Virgin Islands have detected the mango seed weevil on a regular basis in shipments of mangoes from the British Virgin Islands.

In order to ensure that the mango seed weevil is not introduced into the U.S. Virgin Islands, we are amending § 319.56–2(d) to prohibit the importation of mangoes from the British Virgin Islands into the U.S. Virgin Islands. Although we recently approved an irradiation treatment for mangoes, which has been shown to eliminate the mango seed weevil, we chose prohibition in this case because there does not appear to be commercial shipment of mangoes or other fruits and vegetables from the British Virgin Islands to the U.S. Virgin Islands that would support an irradiation facility in the British Virgin Islands. If, at a later date, an approved irradiation facility is built and operated under a compliance agreement in accordance with the regulations in § 305.2, we will reconsider this prohibition.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of the pigeon pea pod fly

and the mango seed weevil into noninfested areas of the United States where those pests could become established. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule requires the treatment of pigeon peas (fresh shelled and in the pod) from Puerto Rico for movement into any other area of the United States. In addition, this rule requires the treatment of pigeon peas (fresh shelled and in the pod) from the Dominican Republic for importation into the United States, except Puerto Rico. This rule also prohibits the importation of mangoes from the British Virgin Islands into the U.S. Virgin Islands. We believe that these actions are necessary to protect the United States from the spread of injurious plant pests.

Pigeon Peas From Puerto Rico

Prior to this interim rule, pigeon peas (in the pod) from Puerto Rico were required to be treated only if they were moved to Pacific Coast ports or to Atlantic Coast ports south of Baltimore, MD, and pigeon peas (fresh shelled) from Puerto Rico were required to be treated only if found to be infested with injurious insects. This rule requires the treatment of pigeon peas (fresh shelled or in the pod) from Puerto Rico for movement into any other area of the United States to prevent the spread of the pigeon pea pod fly.

We do not believe that this change will have a significant economic effect on small entities in the United States. In Puerto Rico, pigeon peas are a backyard product and are consumed domestically. During the last 9 years of reported data, the production of pigeon peas in Puerto Rico fluctuated from 2,119 metric tons in 1993, to 454 metric tons in 1996, to 1,062 metric tons in 1998 and 1999, and then remained steady at 1,060 metric tons in 2000 and 2001. In 1993, there were 1,166 farms in Puerto Rico planted with pigeon peas; however, the 1998 U.S. Census of Agriculture reported that there were 660 farms in Puerto Rico planted with pigeon peas, a 43 percent decline in 5 years in the number of farms planted with pigeon peas. During this time, there were no reported commercial shipments from Puerto Rico into other areas of the United States or to foreign destinations.

Pigeon Peas From the Dominican Republic

Prior to this interim rule, untreated pigeon peas (fresh shelled or in the pod) from the Dominican Republic could be imported into the United States subject to inspection and disinfection at the port of first arrival. This rule requires the treatment of pigeon peas (fresh shelled or in the pod) from the Dominican Republic for importation into any area of the United States except Puerto Rico, to prevent the introduction of the pigeon pea pod fly into noninfested areas of the United States.

We do not believe that this change will have a significant economic effect on small entities in the United States. In 1986, 734 metric tons of pigeon peas from the Dominican Republic were imported into the United States, and in 1991, 12 metric tons of pigeon peas from the Dominican Republic were imported into the United States. Since 1991, there have been no reported commercial imports of pigeon peas from the Dominican Republic into the United States.

Mangoes From the British Virgin Islands

Until recently, mangoes from the British Virgin Islands were allowed to be imported into the U.S. Virgin Islands without treatment. However, due to the detection of the mango seed weevil in mangoes from the British Virgin Islands, we are prohibiting the importation of mangoes from the British Virgin Islands into the U.S. Virgin Islands. Although we recently approved an irradiation treatment that is effective for mango seed weevil, there is currently no irradiation treatment facility in the British Virgin Islands capable of treating the mangoes in accordance with the phytosanitary regulations in § 305.2.

We do not believe that this change will have a significant economic effect on small entities in the United States because there is apparently no commercial movement of mangoes from the British Virgin Islands to the U.S. Virgin Islands.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR parts 318 and 319 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7754, and 7756; 7 CFR 2.22, 2.80, and 371.3.

2. In § 318.58, paragraph (c) is revised to read as follows:

§ 318.58 Notice of quarantine.

* * * * *

(c) Except for pigeon peas (fresh shelled or in the pod) moved from Puerto Rico to the U.S. Virgin Islands, which must meet the requirements of § 318.58–2(b)(4), no restrictions are placed on the movement of fruits or vegetables in either direction between Puerto Rico and the U.S. Virgin Islands.

* * * * *

3. Section 318.58–2 is amended as follows:

a. By revising paragraph (b)(1) to read as set forth below.

b. In paragraph (b)(2), by removing from the list the words "Pigeonpea

(fresh shelled)" and adding the words "Pigeon peas (fresh shelled) from the U.S. Virgin Islands" in their place.

c. By adding a new paragraph (b)(4) to read as set forth below.

§ 318.58–2 Regulated articles.

* * * * *

(b) * * *

(1) Subject to the conditions provided in this section, and to any treatment prescribed by the Administrator, the following fruits and vegetables may be moved when they are free from plant litter, are marked in compliance with § 318.58–6, and have been inspected by an inspector and certified by the inspector to be free from injurious insect infestation (including the West Indian fruit fly and the bean pod borer) or to have been given prescribed treatment:

Citrus fruits (orange, grapefruit, lemon, citron, and lime);

Corn (sweet corn on cob);

Mangoes (*Mangifera* spp.), no larger than size 8 (no more than 700 g each), when treated as prescribed in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter;

Peppers;

Pigeon peas (in the pod) from the U.S. Virgin Islands and string beans, lima beans, faba beans, and fresh okra from Puerto Rico or the U.S. Virgin Islands.[1]

* * * * *

(4) Pigeon peas (fresh shelled or in the pod) from Puerto Rico may be moved to any other area of the United States only if treated in accordance with the Plant Protection and Quarantine Treatment Manual.

§ 318.58–4a [Amended]

4. Section 318.58–4a is amended by redesignating footnote 1 and its reference in the text as footnote 2.

§ 318.58–12 [Amended]

5. Section 318.58–12 is amended by redesignating footnotes 2 and 3 and their references in the text as footnotes 3 and 4, respectively.

PART 319—FOREIGN QUARANTINE NOTICES

6. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

7. In § 319.56–2, paragraph (d) is revised to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(d) Fruits and vegetables grown in the British Virgin Islands may be imported into the U.S. Virgin Islands without further permit other than the authorization contained in this paragraph but subject to the requirements of paragraph (a) of this section, and of §§ 319.56–5, 319.56–6, and 319.56–7, except that:

(1) Such fruits and vegetables are exempted from the notice of arrival requirements of § 319.56–5 when an inspector finds that equivalent information is obtainable from the U.S. Customs Service; and

(2) Mangoes grown in the British Virgin Islands are prohibited entry into the U.S. Virgin Islands.

* * * * *

8. In § 319.56–2x, paragraph (a), the table is amended by adding, in alphabetical order, an entry for pigeon peas from the Dominican Republic to read as follows:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
Dominican Republic	Pigeon peas	*Cajanus cajan*	Pod of shelled (Treatment not required for pigeon peas (in the pod or fresh shelled) imported into Puerto Rico.)

* * * * *

Done in Washington, DC, this 14th day of January 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–1211 Filed 1–17–03; 8:45 am]

BILLING CODE 3410–34–P

[1] These products will be certified for movement to Pacific Coast ports or to Atlantic Coast ports south of Baltimore, MD, only when they have been treated as prescribed in the Plant Protection and Quarantine Treatment Manual. Such products may be certified for movement to Baltimore, MD, and Atlantic Coast ports north of Baltimore without such treatment, but untreated fresh okra may be so certified only for immediate processing or consumption in these northern areas.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 00–068–3]

Cold Treatment for Fresh Fruits; Port of Corpus Christi, TX

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow, under certain conditions, the cold treatment of imported fruit upon arrival at the maritime port of Corpus Christi, TX. We have determined that there are biological barriers at this port that, along with certain safeguards, would prevent the introduction of fruit flies and other insect pests into the United States in the unlikely event that they escape from shipments of fruit before the fruit undergoes cold treatment. This action will facilitate the importation of fruit requiring cold treatment while continuing to provide protection against fruit flies and other insect pests into the United States.

EFFECTIVE DATE: January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The fruits and vegetables regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations), prohibit or restrict the importation of fruits and vegetables to prevent the introduction or dissemination of quarantine pests, including fruit flies, that are new or not widely distributed in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture administers these regulations.

Under the regulations, APHIS allows certain fruits to be imported into the United States if they undergo sustained refrigeration (cold treatment) sufficient to kill certain insect pests. Cold treatment temperatures and the duration of treatment vary according to the type of fruit and the pests involved. Detailed cold treatment procedures may be found in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the regulations at 7 CFR 300.1.

Most imported fruit that requires cold treatment undergoes cold treatment while in transit to the United States. However, APHIS also allows imported fruit to undergo cold treatment at an approved cold treatment facility in either the country of origin or after arrival in the United States at certain ports designated by APHIS in § 319.56–2d(b)(1) of the regulations.

On June 1, 2001, we published in the **Federal Register** (66 FR 29735–29739, Docket No. 00–068–1), a proposal to amend the regulations to allow, under certain conditions, the cold treatment of imported fruit upon arrival at the port of Corpus Christi, TX. The proposal was based on our determination that there are biological barriers at this port that, along with certain safeguards, would prevent the introduction of fruit flies and other insect pests into the United States in the unlikely event that they escape from shipments of fruit before the fruit undergoes cold treatment. In that proposed rule, we also proposed to correct several outdated references in the regulations to the "Bureau of Customs" and "Collector of Customs" and to correct the locations provided for Baltimore-Washington International and Dulles International Airports.

We solicited comments concerning our proposal for 60 days ending July 31, 2001. We received three comments by that date. They were from the director of the Port of Corpus Christi, TX, an importer, and a representative of State government. Two commenters were in favor of our proposal and agreed with the rationale we presented in the proposed rule.

The third commenter suggested that the treatment of imported fruit should be forbidden anywhere in the southern United States because this region is especially vulnerable to fruit fly infestation. Also, this commenter noted that many U.S. trading partners require, as a condition of entry, that treatment of all commodity imports be completed in the country of origin or en route, and do not permit treatment at the port of entry.

We have carefully considered the potential risks associated with allowing the cold treatment of imported fruits and vegetables at the Port of Corpus Christi, TX, and have determined that the biological barriers present in the area of this port, along with the safeguards described in the proposed rule, would prevent the introduction of fruit flies and other insect pests in the unlikely event that they escape from a shipment of imported fruit before the fruit undergoes cold treatment. As noted in the proposed rule, this determination is based on a 1994 document prepared by APHIS assessing the pest risks associated with allowing cold treatment of tropical fruit fly host materials at certain U.S. ports, as well as on a specific analysis of conditions at the Port of Corpus Christi. The 1994 document established risk groups for many ports in the United States, including Corpus Christi, TX. Assignment of a port to a particular risk group was based on a number of criteria, including the individual port's latitude, microclimate, immediate host availability, and past fruit fly introductions. The proposed risk mitigation measures for the Port of Corpus Christi were tailored to the level of risk assigned by that 1994 document. (Copies of this risk assessment document may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.) Although other countries may have different requirements regarding where and when treatments are to be conducted, APHIS' regulations have provided for cold treatment after arrival for more than 30 years. We acknowledge that conducting cold treatment of imported fruit at a port in the southern United States such as Corpus Christi, TX, presents different risks than at ports in the northern United States, but we have found through experience that those risks can be successfully managed.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule allows, under certain conditions, the cold treatment of imported fruit upon arrival at the Port of Corpus Christi, TX. Making this action effective immediately will facilitate the importation of imported fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other quarantine pests into the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This final rule amends the regulations governing the importation of fruits and vegetables to allow, under certain conditions, the cold treatment of imported fruit at the Port of Corpus Christi, TX, where a new cold treatment facility has been constructed. This action will facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other quarantine pests into the United States.

In accordance with 5 U.S.C. 603, we have performed a final regulatory flexibility analysis, which is set out below, regarding the effects of this rule on small entities. The initial regulatory flexibility analysis in our proposed rule stated that we did not have all the data necessary for a comprehensive analysis of the potential effects of this rule on small entities. Therefore, we invited comments concerning potential economic effects, particularly the number and kind of small entities that might incur benefits or costs. We did not receive any comments providing the data we requested.

The port of Corpus Christi, located along the Texas coast on the Gulf of Mexico, is connected to both U.S. and Mexican markets through several State and interstate highways as well as by rail service from three rail carriers, which all have access to the docks. The facility at the port of Corpus Christi that would be used for cold treatment has 295,500 square feet of covered dockside storage and a state-of-the-art refrigerated

warehouse with a 100,000 square-foot capacity. This cold storage and treatment facility, completed in August 2000, includes three rooms with freezing and chilling capacities, and temperature-controlled rail and truck docks. A study conducted by the port authority of Corpus Christi predicts that by the year 2010, national container traffic will top 2.75 million transit and exit units (TEU's) and that the port of Corpus Christi could capture a throughput of 820,000 TEU's.

The port authority expects that it would receive commodity imports from several countries throughout Central and South America in addition to New Zealand and South Africa. The annual collective estimated value of commodities expected to be cold treated at the facility is nearly $131.7 million.

Effect on Small Entities

According to the Small Business Administration, a small entity involved in the wholesale trade of fresh fruits is one that employs no more than 100 people. While small entities will likely benefit from being able to cold treat commodities at the port of Corpus Christi, the number of these entities and the extent to which they might benefit are unknown. Additionally, import and transport companies in the region can be expected to handle increased traffic in fruits and vegetables, as indicated by the projected figures provided by exporters in Latin America and South Africa; consequently, we expect local employment opportunities to increase. Given these considerations, we expect that the overall economic effect of this rule will be positive.

This rule contains no information collection or recordkeeping requirements (see "Paperwork Reduction Act" below).

Executive Order 12988

This final rule allows fresh fruit to be imported into the United States for cold treatment at the maritime port of Corpus Christi, TX. State and local laws and regulations regarding fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruit is generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery Stock, Plant Diseases and pest, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56–2d is amended as follows:

a. In paragraph (b)(1), the words "Corpus Christi, TX," are added immediately before the words "and Gulfport, MS"; the words "Airport, Baltimore, MD," are added after the words "Baltimore-Washington International"; and the words "airports, Washington, DC" are removed and the words "Airport, Chantilly, VA" added in their place.

b. In paragraph (b)(5)(iii), the words "Collector of Customs" is removed and the words "Customs Service" added in their place.

c. In paragraphs (b)(5)(iv)(B), (b)(5)(v)(B), and (b)(5)(vi)(B), the words "Bureau of Customs" are removed each time they occur and the words "U.S. Customs Service" added in their place.

d. The introductory text of paragraph (b)(5)(vii) is revised.

e. In paragraph (b)(5)(vii)(A), the words "at the port of Gulfport, MS" are removed.

f. In paragraph (b)(5)(vii)(C), the words "Bureau of Customs" are removed and the words "U.S. Customs Service" added in their place.

g. Paragraph (b)(5)(vii)(H) is revised.

The amended text reads as follows:

§ 319.56–2d Administrative instructions for cold treatment of certain imported fruits.

* * * * *

(b) * * *

(5) * * *

(vii) *Special requirements for the maritime ports of Gulfport, MS, and Corpus Christi, TX.* Shipments of fruit arriving at the ports of Gulfport, MS, and Corpus Christi, TX, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

* * * * *

(H) Blacklights or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility at the maritime port of Gulfport, MS, and within the 5 square miles surrounding the cold treatment facility at the maritime port of Corpus Christi, TX.

* * * * *

Done in Washington, DC, this 14th day of January 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–1212 Filed 1–17–03; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH05

List of Approved Spent Fuel Storage Casks: VSC–24 Revision; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of February 3, 2003, for the direct final rule that appeared in the **Federal Register** of November 20, 2002 (67 FR 69987). This direct final rule amended the NRC's regulations by revising the Pacific Sierra Nuclear Associates VSC–24 system listing within the "List of approved spent fuel storage casks" to include Amendment No. 4 to Certificate of Compliance No. 1007. This document confirms the effective date.

DATES: The effective date of February 3, 2003, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (http://ruleforum.llnl.gov). For information about the interactive rulemaking Web

site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219 (email: *jmm2@nrc.gov*).

SUPPLEMENTARY INFORMATION: On November 20, 2002 (67 FR 69987), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR Part 72 to revise the Pacific Sierra Nuclear Associates VSC–24 system listing within the "List of approved spent fuel storage casks" to include Amendment No. 4 to Certificate of Compliance No. 1007. Amendment No. 4 modifies the present cask system design to permit the storage of different specific fuel control elements as integral components to fuel assemblies under a general license. In addition, Amendment No. 4 amends Technical Specification (TS) 1.1.1 to change the flood condition velocity from 7.62 meters per second (m/s) [25 feet per second (ft/s)] to 5.39 m/s (17.7 ft/s); TS 1.2.1, 1.2.4, and 1.2.6 to address the additional fuel control elements approved for storage, and deletes TS 1.2.10 to eliminate redundant requirements for controlling moderator density.

In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 15th day of January, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 03–1219 Filed 1–17–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–40–AD; Amendment 39–13022; AD 2002–13–05 R1]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model 369D, 369E, 369F, and 369FF Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an airworthiness directive (AD) for the specified MD Helicopters, Inc. (MDHI) helicopters that currently requires identifying the part number (P/N) of the bolts that attach the tail rotor gearbox to the tailboom and replacing any bolt of inadequate grip length with an airworthy bolt. That AD also requires adding an additional washer if more than four threads protrude from the nutplate. This amendment requires the same actions as the existing AD but reduces the applicability to only certain tailboom serial numbers and parts modified in accordance with either Supplemental Type Certificate (STC) SH5055NM or SH4801NM. This amendment also corrects a typographical error and clarifies that a slippage mark needs to be reapplied to each bolt regardless of the outcome of the required torque test. This amendment is prompted by the need to correct and clarify the applicability and other portions of the existing AD. The actions specified by this AD are intended to prevent loss of a tail rotor gearbox due to bolts of inadequate grip length and subsequent loss of control of the helicopter.

DATES: Effective February 25, 2003.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5228, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by revising AD 2002–13–05, Amendment 39–12793 (67 FR 43227, June 27, 2002), for the specified MDHI model helicopters with a tailboom modified according to either Aerometals STC SH5055NM or SH4801NM, was published in the **Federal Register** on September 24, 2002 (67 FR 185).

Before issuing AD 2002–13–05, the FAA solicited comments by a Notice of Proposed Rulemaking, published in the **Federal Register** on December 27, 2001 (66 FR 66821). A commenter stated that the applicability of the AD should be limited to certain part-numbered tailbooms with serial number (S/N) 5001–5032 specified in the FAA-approved Aerometals service bulletin. We did not agree with the commenter and, except for minor editorial changes, issued the AD as proposed (67 FR 43227, June 27, 2002). Since issuing AD 2002–13–05, we have determined that we inappropriately responded to the comment and that the commenter's concern was valid. We are now reducing the applicability of AD 2002–13–05 to include only certain tailboom S/N's and parts that are modified in accordance with either STC SH5055NM or SH4801NM. We are also correcting the P/N for the washer to P/N AN960D416 in Figure 1 of this AD and clarifying that a slippage mark needs to be reapplied to each bolt regardless of the outcome of the required torque test.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 500 helicopters of U.S. registry. Also, the FAA estimates this AD will require ½ work hour per helicopter to determine whether a helicopter has been modified by either STC and 1 work hour to inspect and replace the bolts for each of approximately 40 helicopters modified by the STC's. The average labor rate is $60 per work hour. Required parts will cost approximately $40 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $19,000.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12793 (67 FR 43227, June 27, 2002), and by adding a new airworthiness directive to read as follows:

2002–13–05 R1 MD Helicopters, Inc.: Amendment 39–13022, Docket No. 2001–SW–40–AD. Revises AD 2002–13–05, Amendment 39–12793.

Applicability: The following MD Helicopters, Inc. helicopter models, certificated in any category:

Helicopter model	With	Modified In accordance with
(1) 369D, 369E, 369F, 369FF	Tailboom, serial number (S/N) 5001–5032	Aerometals Supplemental Type Certificate (STC) SH5055NM
(2) 369D and 369E	Tail Rotor Gearbox Attach Bolts	Aerometals STC SH4801NM

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the tail rotor gearbox due to attaching bolts of inadequate grip length and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS):

(1) For each tail rotor gearbox attaching bolt (bolt):

(i) Determine the part number (P/N).

(ii) If the P/N cannot be determined or if the bolt is not P/N NAS1304–26, before further flight, replace the bolt with bolt, P/N NAS1304–26.

(iii) Torque the bolt to 100–110 in-lbs and apply a slippage mark.

(2) Remove the tailboom control rod and determine the number of bolt threads protruding from each nutplate on the internal surface of the aft tailboom frame casting, P/N 369D23503, as shown in Figure 1 of this AD. At least one thread must protrude. If more than four threads protrude, add an additional washer, P/N AN960D416, under the bolt head. Torque the bolt to 100–110 in-lbs, and reapply a slippage mark. *See Figure 1:*

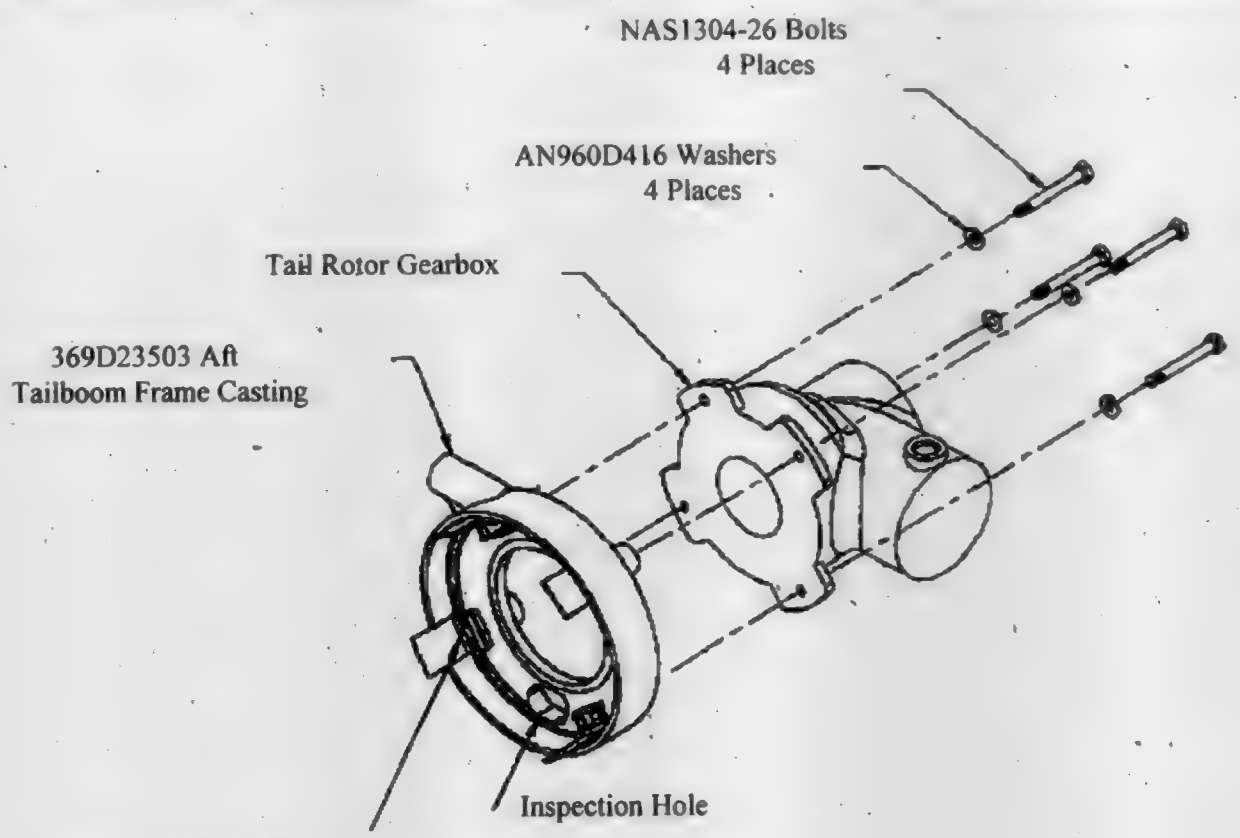

Figure 1 - Inspection Location

(b) Between 2 and 10 hours TIS after accomplishing the requirements of paragraph (a) of this AD, inspect the torque on each bolt by applying 100 in-lbs. If any bolt movement occurs, retorque the bolt to 100–110 in-lbs. Reapply a slippage mark to the bolt regardless of the outcome of the torque test. Reinspect the torque between 2 and 10 hours TIS thereafter until no bolt movement occurs.

Note 2: Aerometals Service Bulletin SB–001, dated August 3, 2000, pertains to the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(d) Special flight permits will not be issued.

(e) This amendment becomes effective on February 25, 2003.

Issued in Fort Worth, Texas, on January 11, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–1189 Filed 1–17–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. 97N–484R]

Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishment Registration and Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is further delaying, until January 21, 2004, the effective date for requiring establishments that engage in the recovery, screening, testing, processing, storage, or distribution of all human cells, tissues, and cellular and tissue-

based products (HCT/Ps) not currently regulated under section 361 of the Public Health Service Act (PHS Act) and part 1270 (21 CFR part 1270) to register with FDA and list their HCT/Ps. FDA is taking this action to help ensure that the effective date for this rule is closer to the effective date of the anticipated finalization of the remaining proposed rules involving HCT/Ps.

DATES: The effective date for 21 CFR 207.20(f), 807.20(d), and 1271.3(d)(2) that published in the **Federal Register** on January 19, 2001 (66 FR 5447) is delayed from January 21, 2003, to a new effective date of January 21, 2004.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

We, FDA, are putting in place a new comprehensive approach to the regulation of HCT/Ps. The goal of the new approach is to improve protection of the public health without imposing unnecessary restrictions on research, development, or the availability of new products. The new comprehensive approach to the regulation of different types of HCT/Ps is intended to be commensurate with the public health risks presented, enabling us to use our resources more effectively, increase consistency, and improve efficiency.

Since 1997, when we announced our comprehensive regulatory approach for HCT/Ps, we have published three proposed rules and finalized one of them:

- *The registration proposed rule*: "Establishment Registration and Listing for Manufacturers of Human Cellular and Tissue-Based Products (63 FR 26744, May 14, 1998);
- *The registration final rule*: "Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishment Registration and Listing" (66 FR 5447, January 19, 2001);
- *The donor-suitability proposed rule*: "Suitability Determination for Donors of Human Cellular and Tissue-Based Products" (64 FR 52696, September 30, 1999); and
- *The GTP (good tissue practices) proposed rule*: "Current Good Tissue Practice for Manufacturers of Human Cellular and Tissue-Based Products; Inspection and Enforcement" (66 FR 1508, January 8, 2000).

When the donor-suitability and the GTP proposed rules are finalized, the implementation of the comprehensive regulatory approach for HCT/Ps will be complete.

In all three proposed rules, we used the term "human cellular and tissue-based products." In the registration final rule, we changed this term to "human cells, tissues, and cellular and tissue-based products" (HCT/Ps) in response to public comment. This change in terminology is a clarification and does not affect the scope of the definition in 21 CFR 1271.3(d), which continues to encompass an array of articles containing or consisting of human cells or tissues, and intended for implantation, transplantation, infusion, or transfer into human recipients, including investigational products. In the final rule, HCT/P is defined to include HCT/Ps at all stages of manufacture, from recovery through distribution.

Initially, we had intended to finalize and implement the registration proposed rule at the same time we finalized and implemented the two other HCT/P rules that would make up part 1271 (21 CFR part 1271) in its entirety. However, we issued the registration final rule, before finalizing the two remaining portions of part 1271 because of concerns raised about the safety of human tissue, which led us to believe that accelerating the collection of basic information about the rapidly growing tissue industry was vital. Because the registration final rule was published before the other two final rules, we decided to implement staggered effective dates so that certain HCT/Ps would fall within the scope of the new rule later when GTP requirements and enforcement provisions are finalized. This would ensure that certain products, such as heart valves and dura mater that are currently regulated as devices, would not be unintentionally and prematurely shifted into an incomplete regulatory scheme. Therefore, in the final registration rule, we required registration and listing first by those establishments that engage in the recovery, screening, testing, processing, storage, or distribution of human tissue intended for transplantation currently regulated under section 361 of the PHS Act (42 U.S.C. 264) and the regulations in part 1270. Establishments that manufactured HCT/Ps described in § 1271.3(d)(1) were required to register within 30 days after the effective date of the registration final rule, i.e., May 4, 2001. Establishments that manufacture all other HCT/Ps, as described in § 1271.3(d)(2), were required to register 2 years after publication of the registration final rule, by January 21, 2003.

The registration final rule also established §§ 207.20(f) and 807.20(d) (21 CFR 207.20(f) and 807.20(d)), which required establishments that manufacture HCT/Ps regulated as drugs, biological products, and devices to register and list their products following the procedures in part 1271 instead of the procedures in 21 CFR parts 207 and 807. The effective date of §§ 207.20(f) and 807.20(d) is also staggered until January 21, 2003, because §§ 207.20(f) and 807.20(d) is not applicable until § 1271.3(d)(2) becomes effective. We expected to have finalized the donor suitability and the GTP proposed rules by this date. However, we will not complete the rulemaking process for the proposed donor suitability and GTP rules by January 21, 2003.

II. Reason for Staggered Effective Dates

Staggering the effective dates of this regulation permitted us to begin collecting important registration and listing information from those establishments currently regulated under part 1270, while continuing to proceed through rulemaking to develop the remainder of part 1271. We believed that this action would prevent an unintentional gap in the regulation of certain currently regulated HCT/Ps, permit an orderly implementation process, and avoid duplicative information collection. If we instead implemented the registration final rule for all HCT/Ps at the same time, certain HCT/Ps, such as heart valves and dura mater that are currently regulated as devices, would no longer be regulated as devices but rather would shift into the regulatory scheme under part 1271. By implementing a staggered effective date for such products, we avoided a premature shift that essentially would have left these products unregulated until the donor suitability and GTP rulemaking process is completed. FDA also staggered the effective dates of the registration final rule to ensure the orderly implementation of the HCT/P regulations.

III. Need for Further Delay of Effective Date

In the registration final rule, we stated that unanticipated delays in completing the rulemaking for the remainder of part 1271 could occur, and if so, we would consider whether to extend the staggered effective date for some or all of the affected HCT/Ps. Due to the numerous comments submitted to FDA regarding the proposed donor suitability and GTP rules, we will not be able to finalize these rules by January 21, 2003. We have concluded that implementing the registration final rule under the

staggered effective date for the remaining HCT/Ps would be contrary to the public interest in that certain products would become unregulated unless and until the GTP and donor suitability rules are finalized. For HCT/Ps subject to the staggered effective date, requiring registration without adequate enforcement provisions, such as those proposed in the GTP rule, would be premature and possibly ineffective. Establishments that manufacture HCT/Ps covered by the staggered effective date have been registering voluntarily, and FDA is willing to continue accepting such voluntary registrations.

FDA, for good cause based on the reasons stated previously, finds that notice and public procedure to delay the effective date are unnecessary and contrary to the public interest (5 U.S.C. 553(b)(3)(B)). Therefore, we are delaying the effective date of §§ 207.20(f), 807.20(d), and 1271.3(d)(2) for 1 year. The new effective date is January 21, 2004.

Dated: January 8, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1207 Filed 1–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9037]

RIN 1545–AY52

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains regulations relating to the list of items of tax information disclosed to the Bureau of the Census. These regulations reflect an agreement between the IRS and the Bureau of the Census as to items of tax information needed to more effectively meet the Bureau of the Census' program objectives as authorized under chapter 5 of title 13, United States Code (U.S.C.), including the Longitudinal Employer-Household Dynamics (LEHD) project and the Survey of Income and Program Participation (SIPP) project.

DATES: *Effective Date:* These regulations are effective January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Christine Irwin, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 301 under section 6103(j) of the Internal Revenue Code (Code). On February 13, 2001, the **Federal Register** published temporary regulations (TD 8943) regarding tax information disclosed to the Bureau of the Census for use in the LEHD and SIPP projects (66 FR 9957), and a notice of proposed rulemaking (REG–121109–00) cross-referencing the temporary regulations (66 FR 9991). A correction to the notice of proposed rulemaking by cross-reference to the temporary regulations was published on March 23, 2001 (66 FR 16161). Three comments on these temporary regulations were received and considered, but no public hearing was requested or held. After consideration of the comments, the Treasury decision adopts the regulations as proposed with certain changes and removes the corresponding temporary regulations.

The changes include corrections to punctuation and clarification of certain terms used in the regulations, *e.g.*, references to Form SS–4 as a "form" as opposed to a tax "return." Additional changes include adopting the generic term "location code" to refer to locations of IRS offices from which tax information is retrieved. Changes also include using the terms "area/district office" and "campus/service" center as examples of location codes. The tax information disclosed to the Bureau of the Census is retrieved from older files, as well as current files. The older information is retrieved from files which contain the terms "district offices" and "service centers" as the location codes, while the more recent information is retrieved from files that use the terms "area offices" and "campuses" (in addition to other location codes). Although the terms "district offices" and "service centers" are no longer used by the IRS, having been replaced by the terms "area offices" and "campuses" respectively, as a result of the IRS reorganization mandated by section 1001 of the IRS Restructuring and Reform Act of 1998, the regulations' reference to "location code" will encompass all of these terms to ensure that tax information may be retrieved from both older and more current files.

Also, the final regulations narrow the tax information to be disclosed to the Bureau of the Census under § 301.6103(j)(1)–1(b)(3)(xxviii) pertaining to "Gross Distributions from Form 1099–R." Although the temporary regulations authorized the disclosure of all gross distributions from Form 1099–R under § 301.6103(j)(1)–1T(b)(3)(xxviii), the Bureau of the Census needs only tax information related to distributions from employer-sponsored and individual retirement plans, according to a letter sent to the IRS from the Secretary of Commerce dated October 4, 2002. Therefore, the final regulations authorize the disclosure only of distributions from employer-sponsored and individual retirement plans from the Forms 1099–R under § 301.6103(j)(1)–1(b)(3)(xxviii).

The final regulations also clarify the phrase "return information reflected on returns"—language that was incorporated into § 301.6103(j)(1)–1 when the regulations were first promulgated in 1980 (*see* 45 FR 65561). The phrase "return information reflected on returns" is used in the regulations to describe the type of return information that may be disclosed to agencies under sections 6103(j)(1)(A) and (B) of the Code. (The phrase "return information reflected on returns" encompasses the phrases used in the statute under section 6103(j)(1)(A) and (B) of the Code that refer to "return information reflected thereon" and "return information reflected on returns of corporations.") The legislative history of section 6103(j)(1)(A) of the Code, authorizing the disclosure of "returns" and "return information reflected thereon" to officers and employees of the Bureau of the Census, does not specifically define the phrase "return information reflected thereon." Nor does the legislative history of section 6103(j)(1)(B) of the Code, authorizing the disclosure of "return information reflected on returns of corporations" to officers and employees of the Bureau of Economic Analysis, define the phrase "return information reflected on returns of corporations." These final regulations clarify the concept of "return information reflected on returns." Although the legislative history does not explicitly define the concept of "return information reflected on returns," it does use the term "information from tax returns" and expresses Congress' intent that only "limited information" for statistical purposes should be provided to the Bureau of the Census and the Bureau of Economic Analysis. The legislative history does describe the type of information that the IRS provided to agencies when section 6103(j)(1) and (2) of the Code was enacted in the Tax Reform Act of 1976. This information included IRS transcript cards that

summarized information from 500 to 1,000 returns of the largest corporations, taxpayer names, addresses, employer identification numbers, gross receipts, accounting periods, industry codes, and sample codes. (*See* Staff of Joint Committee on Internal Revenue Taxation, 94th Cong., 2d Sess., Tax Revision Issues—1976 (H.R. 10612), No. 6: Administrative Matters, at 40–41 (Comm. Print, April 14, 1976) (Joint Committee Report)). According to the legislative history, the "sample code" provided the "sampling process used by the IRS with respect to its Statistics of Income (not with respect to audit, etc.). * * * " *See* Joint Committee Report at 41. These sample codes were not information submitted by taxpayers on tax returns filed with the IRS. Rather, these codes were information generated by the IRS in conjunction with returns and disclosed by the IRS to at least one agency for statistical purposes. Therefore, when Congress enacted section 6103(j)(1)(A) and (B) of the Code in 1976, adopting the language "return information reflected thereon" and "such return information reflected on returns of corporations" to describe the type of information that could be disclosed to agencies for statistical purposes, the information described includes not only information on returns, but also information derived from the processing of such returns, and/or information related to the establishment and maintenance of taxpayer information in IRS data bases, such as sample codes. Therefore, these final regulations clarify the phrase "return information reflected on returns" by stating that it includes, but is not limited to, information on returns, information derived from processing such returns, and information derived from the Social Security Administration (SSA) and other sources for the purposes of establishing and maintaining taxpayer information relating to returns. This includes information derived from returns and Forms SS–4 "Application for Employer Identification Number," monthly corrections of, and additions to, taxpayer information contained in IRS and SSA databases (*e.g.*, taxpayer address and name changes) that are obtained from SSA and other sources, and computer codes compiled by the IRS and the SSA derived from returns and/or tax forms and integrated within taxpayer data bases.

Further, these final regulations clarify a restriction that was imposed by the temporary regulations with respect to the disclosure of tax information to the Bureau of the Census. Specifically, the explanation of provisions section to the temporary regulations stated that information will be furnished under the temporary regulations only for the purposes of conducting the LEHD project and/or SIPP/SSA project as specified in the request letters and with the understanding that the information will be used strictly in accordance with the provisions of the Code pertaining to confidentiality (*see* 66 FR 9958 under "Explanation of Provisions" of the preamble). These tax disclosure restrictions to the LEHD and SIPP projects were included during the inception of an agreement entered into between the IRS and the Bureau of the Census that provides detailed criteria for the review and approval by the IRS of Census Bureau projects that use Federal tax information. This inter-agency agreement between the IRS and the Bureau of the Census dated September 15, 2000, is entitled "Criteria for the Review and Approval of Census Projects that Use Federal Tax Information" (inter-agency agreement) and provides detailed procedures for implementing the requirements set forth in § 301.6103(j)(1)–1(d) of the regulations. According to § 301.6103(j)(1)–1(d) of the regulations and the inter-agency agreement, the IRS must approve the proposed uses for tax information disclosed on a project-by-project basis. The implementation of this inter-agency agreement has strengthened the IRS' review process for approving proposed uses for tax information disclosed to the Bureau of the Census. It has also improved the ability of the IRS and the Bureau of the Census to ensure that appropriate procedures, especially relating to safeguards and approved usage documentation, are employed for access to, and use of, Federal tax information.

Although the explanation of provisions section to the temporary regulations stated that the additional tax information authorized for disclosure under the temporary regulations under § 301.6103(j)(1)–1T(b)(2), (3), and (5) would be disclosed only for purposes of conducting the LEHD and/or SIPP projects, the actual language of the temporary regulations under § 301.6103(j)(1)–1T(b)(2), (3), and (5) did not contain such a limitation. Rather, the temporary regulations adopted the same language describing the authorized use of the tax information by the Bureau of the Census that appeared in § 301.6103(j)(1)–1(b)(2), (3), and (5) of the previous regulations (prior to the implementation of the temporary regulations). This language authorizes a broader use of the disclosed tax information by the Bureau of the Census for demographic and economic statistics programs, censuses, and surveys authorized by chapter 5 of title 13, U.S.C. These final regulations do not change this language pertaining to the authorized uses of the tax information by the Bureau of the Census in § 301.6103(j)(1)–1 (b)(2), (3), and (5). Accordingly, these final regulations permit the disclosure of tax information to the Bureau of the Census, not only for the LEHD and SIPP projects, but also to the extent necessary in conducting and preparing demographic and economic statistics programs, censuses, and surveys, as authorized by chapter 5 of title 13, U.S.C., and as approved for these purposes by the IRS according to procedures reflected in the September 15, 2000 inter-agency agreement described above and § 301.6103(j)(1)–1(d) of the regulations.

Summary of Comments

With respect to the three comments received in response to the temporary regulations, two strongly supported, and one objected to, the additional disclosure of tax information to the Bureau of the Census. Specifically, two of the comments supported the additions to the list of items of tax information disclosed to the Bureau of the Census for use in the SIPP project. One comment stated that these additional disclosures to the Census Bureau will make it possible to provide an accurate measure of prospective pension benefits that is critically important in providing estimates of the future economic well-being of an increasingly large segment of the population and will provide legislators, policy analysts, and researchers with a much more useful measure of the net government transfers to different households than that provided by the current SIPP. These additional disclosures will also provide a crucial source of information for assessing potential reforms of the Social Security System, according to the comment.

The third comment expressed opposition to the compiling of data by the Bureau of Census beyond that necessary to determine population distribution for the purpose of legislative redistricting. This objection does not recognize that the Bureau of the Census is authorized under chapter 5 of title 13, U.S.C., to conduct various demographic, economic, and agricultural statistics programs and censuses and related program evaluation that includes the LEHD and SIPP projects. Therefore, the comment was not adopted.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Christine Irwin, Office of the Associate Chief Counsel, Procedure & Administration (Disclosure & Privacy Law Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and record keeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by removing the entry for "Section 301.6103(j)(1)–1T" and continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6103(j)(1)–1 is revised to read as follows:

§ 301.6103(j)(1)–1 Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

(a) *General rule.* Pursuant to the provisions of section 6103(j)(1) of the Internal Revenue Code and subject to the requirements of paragraph (d) of this section, officers or employees of the Internal Revenue Service will disclose return information (as defined by section 6103(b)(2) but not including return information described in section 6103(o)(2)) reflected on returns to officers and employees of the Department of Commerce to the extent, and for such purposes as may be, provided by paragraphs (b) and (c) of this section. Further, in the case of any disclosure of return information reflected on returns so provided by paragraphs (b) and (c) of this section, the tax period or accounting period to which such information relates will also be disclosed. "Return information reflected on returns" includes, but is not limited to, information on returns, information derived from processing such returns, and information derived from the Social Security Administration and other sources for the purposes of establishing and maintaining taxpayer information relating to returns.

(b) *Disclosure of return information reflected on returns to officers and employees of the Bureau of the Census.*

(1) Officers or employees of the Internal Revenue Service will disclose the following return information reflected on returns of individual taxpayers to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, intercensal estimates of population and income for all geographic areas included in the population estimates program and demographic statistics programs, censuses, and related program evaluation:

(i) Taxpayer identity information (as defined in section 6103(b)(6) of the Internal Revenue Code), validity code with respect to the taxpayer identifying number (as described in section 6109), and taxpayer identity information of spouse and dependents, if reported.

(ii) Location codes (including area/district office and campus/service center codes).

(iii) Marital status.

(iv) Number and classification of reported exemptions.

(v) Wage and salary income.

(vi) Dividend income.

(vii) Interest income.

(viii) Gross rent and royalty income.

(ix) Total of—

(A) Wages, salaries, tips, etc.;

(B) Interest income;

(C) Dividend income;

(D) Alimony received;

(E) Business income;

(F) Pensions and annuities;

(G) Income from rents, royalties, partnerships, estates, trusts, etc.;

(H) Farm income;

(I) Unemployment compensation; and

(J) Total Social Security benefits.

(x) Adjusted gross income.

(xi) Type of tax return filed.

(xii) Entity code.

(xiii) Code indicators for Form 1040, Form 1040 (Schedules A, C, D, E, F, and SE), and Form 8814.

(xiv) Posting cycle date relative to filing.

(xv) Social Security benefits.

(2) Officers or employees of the Internal Revenue Service will disclose to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting, as authorized by chapter 5 of title 13, United States Code, demographic, economic, and agricultural statistics programs and censuses and related program evaluation—

(i) From the business master files of the Internal Revenue Service—the taxpayer name directory and entity records consisting of taxpayer identity information (as defined in section 6103(b)(6)) with respect to taxpayers engaged in a trade or business, the principal industrial activity code, the filing requirement code, the employment code, the physical location, the location codes (including area/district office and campus/service center codes), and monthly corrections of, and additions to, such entity records;

(ii) From Form SS–4—all information reflected on such form;

(iii) From an employment tax return—

(A) Taxpayer identifying number (as described in section 6109) of the employer;

(B) Total compensation reported;

(C) Master file tax account code (MFT);

(D) Taxable period covered by such return;

(E) Employer code;

(F) Document locator number;

(G) Record code;

(H) Total number of individuals employed in the taxable period covered by the return;

(I) Total taxable wages paid for purposes of chapter 21; and

(J) Total taxable tip income reported for purposes of chapter 21;

(iv) From Form 1040 (Schedule SE)—

(A) Taxpayer identifying number of self-employed individual;

(B) Business activities subject to the tax imposed by chapter 21;

(C) Net earnings from farming;

(D) Net earnings from nonfarming activities;

(E) Total net earnings from self-employment; and

(F) Taxable self-employment income for purposes of chapter 2;

(v) Total Social Security taxable earnings; and

(vi) Quarters of Social Security coverage.

(3) Officers or employees of the Internal Revenue Service will disclose the following business related return information reflected on returns of taxpayers to officers and employees of

the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, demographic and economic statistics programs, censuses, and surveys. (The "returns of taxpayers" include, but are not limited to: Form 941; Form 990 series; Form 1040 series and Schedules C and SE; Form 1065 and all attending schedules and Form 8825; Form 1120 series and all attending schedules and Form 8825; Form 851; Form 1096; and other business returns, schedules and forms that the Internal Revenue Service may issue.):

(i) Taxpayer identity information (as defined in section 6103(b)(6)) including parent corporation, shareholder, partner, and employer identity information.

(ii) Gross income, profits, or receipts.

(iii) Returns and allowances.

(iv) Cost of labor, salaries, and wages.

(v) Total expenses or deductions.

(vi) Total assets.

(vii) Beginning- and end-of-year inventory.

(viii) Royalty income.

(ix) Interest income, including portfolio interest.

(x) Rental income, including gross rents.

(xi) Tax-exempt interest income.

(xii) Net gain from sales of business property.

(xiii) Other income.

(xiv) Total income.

(xv) Percentage of stock owned by each shareholder.

(xvi) Percentage of capital ownership of each partner.

(xvii) End-of-year code.

(xviii) Months actively operated.

(xix) Principal industrial activity code, including the business description.

(xx) Total number of documents and the total amount reported on the Form 1096 transmitting Forms 1099–MISC.

(xxi) Form 941 indicator and business address on Form 1040 (Schedule C).

(xxii) Consolidated return indicator.

(xxiii) Wages, tips, and other compensation.

(xxiv) Social Security wages.

(xxv) Deferred wages.

(xxvi) Social Security tip income.

(xxvii) Total Social Security taxable earnings.

(xxviii) Gross distributions from employer-sponsored and individual retirement plans from Form 1099–R.

(4) Officers or employees of the Internal Revenue Service will disclose return information reflected on returns of taxpayers contained in the exempt organization master files of the Internal Revenue Service to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, economic censuses. This return information reflected on returns of taxpayers consists of taxpayer identity information (as defined in section 6103(b)(6)), activity codes, and filing requirement code, and monthly corrections of, and additions to, such information.

(5) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom the following return information reflected on returns has been disclosed as provided by section 6103(l)(1)(A) or (l)(5) may disclose such information to officers and employees of the Bureau of the Census for necessary purposes described in paragraph (b)(2) or (3) of this section:

(i) From Form SS–4—all information reflected on such form.

(ii) From Form 1040 (Schedule SE)—

(A) Taxpayer identifying number of self-employed individual;

(B) Business activities subject to the tax imposed by chapter 21;

(C) Net earnings from farming;

(D) Net earnings from nonfarming activities;

(E) Total net earnings from self-employment; and

(F) Taxable self-employment income for purposes of chapter 2.

(iii) From Form W–2, and related forms and schedules—

(A) Social Security number;

(B) Employer identification number;

(C) Wages, tips, and other compensation;

(D) Social Security wages; and

(E) Deferred wages.

(iv) Total Social Security taxable earnings.

(v) Quarters of Social Security coverage.

(6)(i) Officers or employees of the Internal Revenue Service will disclose the following return information (but not including return information described in section 6103(o)(2)) reflected on returns of corporations with respect to the tax imposed by chapter 1 to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, developing and preparing, as authorized by law, the Quarterly Financial Report:

(A) From the business master files of the Internal Revenue Service—

(*1*) Taxpayer identity information (as defined in section 6103(b)(6)), including parent corporation identity information;

(*2*) Document code;

(*3*) Location codes (including area/district office and campus/service center codes);

(*4*) Consolidated return and final return indicators;

(*5*) Principal industrial activity code;

(*6*) Partial year indicator;

(*7*) Annual accounting period;

(*8*) Gross receipts less returns and allowances; and

(*9*) Total assets.

(B) From Form SS–4—

(*1*) Month and year in which such form was executed;

(*2*) Taxpayer identity information; and

(*3*) Principal industrial activity, geographic, firm size, and reason for application codes.

(ii) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom return information reflected on returns of corporations described in paragraph (b)(6)(i)(B) of this section has been disclosed as provided by section 6103(l)(1)(A) or (l)(5) may disclose such information to officers and employees of the Bureau of the Census for a purpose described in this paragraph (b)(6). (iii) Return information reflected on employment tax returns disclosed pursuant to paragraphs (b)(2)(iii) (A), (B), (D), (I) and (J) of this section may be used by officers and employees of the Bureau of the Census for the purpose described in and subject to the limitations of this paragraph (b)(6).

(c) *Disclosure of return information reflected on returns of corporations to officers and employees of the Bureau of Economic Analysis.* (1) Officers or employees of the Internal Revenue Service will disclose to officers and employees of the Bureau of Economic Analysis for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by law, statistical analyses return information consisting of Statistics of Income transcript-edit sheets containing return information reflected on returns of designated classes or categories of corporations with respect to the tax imposed by chapter 1 of the Internal Revenue Code and microfilmed records of return information reflected on such returns where needed for further use in connection with such conduct or preparation.

(2) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)–1, officers and employees of the Social Security Administration to whom the following return information reflected on returns of designated classes or categories of corporations has been disclosed as

provided by section 6103(l)(1)(A) or (l)(5) may disclose such information to officers and employees of the Bureau of Economic Analysis for necessary purposes described in paragraph (c)(1) of this section:

(i) From Form SS–4—Principal industrial activity and geographic codes.

(ii) From an employment tax return—

(A) Total compensation reported; and

(B) Taxable wages paid for purposes of chapter 21 to each employee.

(d) *Procedures and restrictions.* Disclosure of return information reflected on returns by officers or employees of the Internal Revenue Service or the Social Security Administration as provided by paragraphs (b) and (c) of this section will be made only upon written request to the Commissioner of Internal Revenue by the Secretary of Commerce describing—

(1) The particular return information reflected on returns to be disclosed;

(2) The taxable period or date to which such return information reflected on returns relates; and

(3)(i) The particular purpose for which the return information reflected on returns is to be used, and designating by name and title the officers and employees of the Bureau of the Census or the Bureau of Economic Analysis to whom such disclosure is authorized.

(ii) No such officer or employee to whom return information reflected on returns is disclosed pursuant to the provisions of paragraph (b) or (c) of this section shall disclose such information to any person, other than the taxpayer to whom such return information reflected on returns relates or other officers or employees of such bureau whose duties or responsibilities require such disclosure for a purpose described in paragraph (b) or (c) of this section, except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. If the Internal Revenue Service determines that the Bureau of the Census or the Bureau of Economic Analysis, or any officer or employee thereof, has failed to, or does not, satisfy the requirements of section 6103(p)(4) of the Internal Revenue Code or regulations or published procedures thereunder (see § 601.601(d)(2) of this chapter), the Internal Revenue Service may take such actions as are deemed necessary to ensure that such requirements are or will be satisfied, including suspension of disclosures of return information reflected on returns otherwise authorized by section 6103 (j)(1) and paragraph (b) or (c) of this section, until the Internal Revenue Service determines that such requirements have been or will be satisfied.

(e) *Effective date.* This section is applicable to the Bureau of the Census on January 21, 2003.

§ 301.6103(j)(1)–1T [Removed]

Par. 3. Section 301.6103(j)(1)–1T is removed.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: December 20, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–871 Filed 1–17–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 9036]

RIN 1545–AY77

Disclosure of Returns and Return Information by Other Agencies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains a final regulation relating to the disclosure of returns and return information by Federal, state and local agencies other than the IRS. The final regulation permits the IRS to authorize agencies with access to returns and return information under section 6103 of the Internal Revenue Code (Code) to redisclose returns and return information, with the approval of the Commissioner of Internal Revenue (Commissioner), to any authorized recipient set forth in section 6103, subject to the same conditions and restrictions, and for the same purposes, as if the recipient had received the information from the IRS directly.

DATES: This regulation is effective January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Julie C. Schwartz, 202–622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 4507(d)) under control number 1545–1757. The collection of information in this regulation is in § 301.6103(p)(2)(B)–1. This information is required for the Commissioner to authorize the disclosure of returns and return information from agencies with access to returns and return information under section 6103 to other authorized recipients of returns and return information in accordance with section 6103.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The estimated annual burden per respondent varies from one half-hour to two hours, depending on individual circumstances, with an estimated average of one hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR parts 301 and 602. On December 13, 2001, a notice of proposed rulemaking (REG–105344–01) was published in the **Federal Register** (66 FR 64386). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted by this Treasury decision.

Explanation of Provisions

The final regulation expands the number of agencies that may redisclose returns and return information if authorized by the Commissioner to any Federal, state or local agency that receives such information under section 6103. Similarly, it expands the universe of authorized recipients of returns and return information pursuant to this redisclosure authority to any recipient authorized to receive returns and return information in accordance with section

6103. All redisclosures by agencies pursuant to this regulation will be made subject to the same conditions, restrictions, safeguards, recordkeeping requirements, and civil and criminal penalties that would apply if the disclosure were made by the IRS. Federal, state and local agencies making disclosures of return information under the final regulation will continue to provide to the IRS certain information regarding disclosures made pursuant to this authority, in order for the IRS to fulfill its reporting requirements under section 6103(p).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The disclosure authorized by the rule is voluntary on the part of small governmental jurisdictions and, as discussed earlier in this preamble, the burden associated with requesting authorization from the Commissioner to disclose returns and return information, and to maintain the necessary records concerning the disclosure of return information, is minimal. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Julie C. Schwartz, Office of the Associate Chief Counsel (Procedure and Administration), Disclosure and Privacy Law Division.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6103(p)(2)(B)-1 also issued under 26 U.S.C. 6103(p)(2); * * *

Par. 2. Section 301.6103(p)(2)(B)–1 is added to read as follows:

§ 301.6103(p)(2)(B)–1 Disclosure of Returns and Return Information by Other Agencies.

(a) *General rule.* Subject to the requirements of paragraphs (b), (c), and (d) of this section, returns or return information that have been obtained by a Federal, state or local agency, or its agents or contractors, in accordance with section 6103 (the first recipient) may be disclosed by the first recipient to another recipient authorized to receive such returns or return information under section 6103 (the second recipient).

(b) *Approval by Commissioner.* A disclosure described in paragraph (a) of this section may be made if the Commissioner of Internal Revenue (the Commissioner) determines, after receiving a written request under this section, that such returns or return information are more readily available from the first recipient than from the Internal Revenue Service (IRS). The disclosure authorization by the Commissioner shall be directed to the head of the first recipient and may contain such conditions or restrictions as the Commissioner may prescribe. The disclosure authorization may be revoked by the Commissioner at any time.

(c) *Requirements and restrictions.* The second recipient may receive only returns or return information as authorized by the provision of section 6103 applicable to such second recipient. Any returns or return information disclosed may be used by the second recipient only for a purpose authorized by and subject to any conditions imposed by section 6103 and the regulations thereunder, including, if applicable, safeguards imposed by section 6103(p)(4).

(d) *Records and reports of disclosure.* The first recipient shall maintain to the satisfaction of the IRS a permanent system of standardized records regarding such disclosure authorization described in paragraph (a) of this section and any disclosure of returns and return information made pursuant to such authorization, and shall provide such information as prescribed by the Commissioner in order to enable the IRS to comply with its obligations under section 6103(p)(3) to keep accountings for disclosures and to make annual reports of disclosures to the Joint Committee on Taxation. The information required for reports to the Joint Committee on Taxation must be provided within 30 days after the close of each calendar year. The requirements of this paragraph do not apply to the disclosure of returns and return information as provided by paragraph (a) of this section which, had such disclosures been made directly by the IRS, would not have been subject to the recordkeeping requirements imposed by section 6103(p)(3)(A).

(e) *Effective date.* This section is applicable on January 21, 2003.

§ 301.6103(p)(2)(B)–1T [Removed]

Par. 3. Section 301.6103(p)(2)(B)–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (b) is amended by removing the entry "301.6103(p)(2)(B)–1T" from the table and adding the entry "301.6103(p)(2)(B)–1" in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6103(p)(2)(B)–1	1545–1757
* * * * *	

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: December 20, 2002.

Pamela F. Olson,

Assistant Secretary (Tax Policy), Department of the Treasury.

[FR Doc. 03–1158 Filed 1–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 700

RIN 0703–AA71

United States Navy Regulations

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending the Navy Regulations, incorporating new subparts, and modifying some existing subparts. This revision will allow the published Navy Regulations to comport with the 1990 Navy Regulations currently in use.

DATES: Effective January 21, 2003.

FOR FURTHER INFORMATION CONTACT: LCDR Jason Baltimore, Legislation and Regulations Branch, Administrative Law Division (Code 13), Office of the Judge Advocate General, 1322 Patterson Avenue SE., Suite 3000, Washington Navy Yard, DC 20374–5066, (703) 604–8208.

SUPPLEMENTARY INFORMATION: On 14 September 1990, the Secretary of the Navy (SECNAV) issued, revised, and amended Navy Regulations (NAVREGS) in accordance with 10 U.S.C Section 6011. These regulations superseded the NAVREGS that were amended in 1978. Since that time, one revision, which reflected changes to the NAVREGS, was published in the **Federal Register**, 64 FR 56061, Oct. 15, 1999. Since the 1999 revision, no additional changes have been published to reflect the current NAVREGS. In accordance with 5 U.S.C. Section 552, the Department of the Navy seeks to publish additional changes to these regulations. It has been determined that invitation of public comment on these changes to the NAVREGS prior to adoption would be impractical and unnecessary, and is therefore not required under the public rule—making provisions of 32 CFR parts 336 and 701. However, interested persons are invited to comment in writing. Written comments received will be considered in making amendments or revisions to 32 CFR 700 or the NAVREGS upon which it is derived. It has been determined that this final rule is not a major rule within the criteria specified in Executive Order 12291 and does not have substantial impact on the public. This submission is a statement of policy and as such can be effective upon publication in the **Federal Register**.

Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

This rule does not meet the definition of "significant regulatory action" for purposes of E.O. 12866.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR part 1320).

List of Subjects in 32 CFR Part 700

Armed Forces.

For the reasons set forth in the preamble, the Department of the Navy revises 32 CFR part 700 to read as follows:

PART 700—[AMENDED]

1. Section 700.405, paragraph (c)(9) is amended by removing the "." and adding a ";" at the end of the paragraph; by adding paragraph (c)(10); and by revising paragraph (d)(3) to read as follows:

§ 700.405 Delegated authority and responsibility.

* * * * *

(c) * * *

(10) To exercise authority for intelligence within the Navy.

(d) * * *

(3) Matters essential to naval military administration, such as:

(i) Security;

(ii) Discipline;

(iii) Communications; and

(iv) Matters related to the customs and traditions of the naval service.

* * * * *

2. Section 700.505 is amended by redesignating paragraph (b)(5) as paragraph (b)(6); and adding a new (b)(5) to read as follows:

§ 700.505 Delegated authority and responsibility.

* * * * *

(b)* * *

(5) To exercise authority for intelligence within the Marine Corps.

* * * * *

3. Section 700.701 is amended by revising paragraph (a) to read as follows:

§ 700.701 Titles of Commanders.

(a) The commander of a principal organization of the operating forces of the Navy, as determined by the Chief of Naval Operations, or the officer who has succeeded to such command as provided elsewhere in these regulations, shall have the title "Commander." The name of the organization under the command of such an officer shall be added to form his or her official title, *e.g.*, "Commander, U.S. Atlantic Fleet." Commander, U.S. Atlantic Fleet, Commander, U.S. Pacific Fleet, and Commander, U.S. Naval Forces Europe, may also be referred to as a "Geographic Fleet Commander."

* * * * *

4. Section 700.1053 is amended by revising paragraph (a) to read as follows:

§ 700.1053 Commander of a task force.

(a) A geographic fleet commander, and any other naval commander, may detail in command of a task force, or other task command, any eligible officer within his or her command whom he or she desires. All other officers ordered to the task force or the task command shall be considered subordinate to the designated commander.

* * * * *

Dated: January 7, 2003.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 03–1045 Filed 1–17–03; 8:45 am]

BILLING CODE 3810–FF–P

POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for postage meter inventory control and for the protection and control of security-related processes and components. A desire to enhance the security of Postal Service revenues motivates these changes. The rule will improve the secure handling of postage meters and their security components by the approved postage meter manufacturers, and will extend the regulations to third-party agents and representatives of the manufacturers.

DATES: The rule is effective January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, manager of Postage Technology Management, at 703–292–3691, or by fax at 703–292–4050.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the **Federal Register** on April 24, 2002 (67 FR 20077), with a request for submission of comments by May 24, 2002. We received three submissions in response to the solicitation of public comments. The Postal Service gave thorough consideration to the comments it received, modified the proposed rule as appropriate in response to the comments, and now announces adoption of the final rule. We will amend the remaining sections of title 39 CFR part 501 in the near future so that they reflect the changes in the postage meter population and recent changes to regulations published in the *Domestic Mail Manual* regarding postage meters and other postage evidencing systems.

Discussion of Comments

1. One commenter noted that since the Postal Service has control over all distributors of postage meters through the manufacturers, the amendments to the existing regulations make sense only if the manufacturer is allowed to transfer ownership of meters to distributors. The commenter suggested that revising the proposed regulation to allow transfer of ownership would increase competition in the marketplace and put an end to regulations that the commenter perceived as favoring manufacturers who operate a vertically integrated operation over those who use third parties to distribute meters. The commenter suggested that this change would make the regulation by the Postal Service of the security of postage meters in the custody of distributors and other third parties the same whether or not the third party owns, repairs, or distributes the meters.

Any control the Postal Service exercises over a person or concern that controls, distributes, maintains, replaces, repairs, or disposes of meters is currently exercised through the manufacturer. The Postal Service is seeking to standardize and strengthen the level of manufacturer control. The Postal Service does not now allow the transfer of ownership of meters to a third party. Any entity wanting to own meters now must qualify under 39 CFR part 501 to become an approved manufacturer. The entity must be capable of performing all functions required by part 501, including performance of inspections and identifying meters that are defective or tampered. The entity must also be capable of protecting and controlling internal and security components within the scope of § 501.28, as amended by this rule. No substantive change is made to the proposed rule in response to this comment.

2. One commenter requested that the Postal Service provide standard written terms and conditions for manufacturers to include in all future third-party distributor agreements.

Given the variety of relationships that could exist between a manufacturer and a third party that controls, distributes, maintains, replaces, repairs, or disposes of meters, the Postal Service does not believe it is feasible to provide standard written terms and conditions for manufacturers to include in a third-party agreement. All third parties must adhere to applicable regulations, just as the manufacturer does. The applicable regulations include title 39, *Code of Federal Regulations*, part 501, Authorization to Manufacture and Distribute Postage Meters, and *Domestic Mail Manual*, Issue 57, especially section P030, Postage Meters (Postage Evidencing Systems). Manufacturers could consider requiring adherence to these regulations, and any others that may be applicable, in any third-party agreement. No change is made to the proposed rule in response to this comment.

3. One manufacturer with existing third-party relationships to distribute, replace, and dispose of meters suggested in its comment that such existing relationships should be grandfathered and exempt from the new regulations.

The manufacturer is responsible for controlling any third party in accordance with all applicable regulations. Postage Technology Management has the authority to review all existing relationships and the manufacturer's internal controls to ensure compliance. In this final rule, the Postal Service is clarifying the proposed rule in response to this comment.

4. One commenter asked that changes in field distribution relationships not require preapproval by the Postal Service. The time required to obtain such approval would unfairly burden the company and hinder its competitiveness. The commenter suggested that new third-party relationships, with the exception of new field sales relationships, should be presented for approval.

The Postal Service will review and approve third-party relationships only when the relationship has the potential to affect meter security or the security of Postal Service revenue. The Postal Service will not review those relationships commonly known as field sales or dealer relationships unless there is a particular security concern with the dealer or its operations. However, manufacturers must exercise control over their dealers in accordance with Postal Service regulations. In this final rule, the Postal Service is clarifying the proposed rule with respect to relationships with dealers and field sales representatives.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

The Amendment

For the reasons set out in this document, the Postal Service is amending 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

2. Revise § 501.22 to read as follows:

§ 501.22 Inventory control.

(a) An authorized manufacturer must maintain sufficient facilities for and records of the distribution, control, storage, maintenance, repair, replacement, and destruction or disposal of all meters and their components to enable accurate accounting thereof throughout the entire meter life cycle. Recordkeeping is required for all meters including newly produced meters, active leased meters, inactive meters, unleased meters, and lost or stolen meters. All such facilities and records are subject to inspection by Postal Service representatives.

(b) If the manufacturer uses a third party to perform functions that may affect meter security, including, but not limited to meter repair, maintenance, and disposal, the manager of Postage Technology Management, Postal Service Headquarters, must review in advance all aspects of the relationship, as they relate to the custody and control of meters, and must specifically authorize in writing the arrangement between the parties.

(1) Postal Service authorization of a third-party relationship for a given function does not extend to any other function. Extension of the third-party relationship to another function must be implemented and approved as if it were a new relationship.

(2) No third-party relationship shall compromise the security of the meter, or of any of its components, including, but not limited to, the hardware, software, communications, and security components, or of any system with

which it interfaces, including, but not limited to, the resetting system, reporting systems, and Postal Service support systems. The functions of the third party with respect to a meter, its components, and the systems with which it interfaces are subject to the same scrutiny as the equivalent functions of the manufacturer.

(3) Any authorized third party must keep adequate facilities for and records of meters and their components in accordance with paragraph (a) of this section. All such facilities and records are subject to inspection by Postal Service representatives, insofar as they are used to distribute, control, store, maintain, repair, replace, destroy, or dispose of meters.

(4) The manufacturer must ensure that any party acting in its behalf in any of the functions described in paragraph (a) of this section maintains adequate facilities, records, and procedures for the security of the meters. Deficiencies in the operations of a third party relating to the custody and control of postage meters, unless corrected in a timely manner, can place at risk a manufacturer's approval to manufacture and/or distribute postage meters.

(5) The Postal Service reserves the right to review all aspects of any third-party relationship when it becomes aware that the relationship poses a threat to meter security under paragraph (b)(2) of this section, whether or not that relationship required authorization under paragraph (b) of this section.

3. Revise § 501.28 to read as follows:

§ 501.28 Protection and control of internal and security components.

Any physical or electronic access to the internal components of a meter, as well as any access to software or security parameters, must be conducted within an approved factory or meter repair facility under the manufacturer's direct control and active supervision. The Postal Service must have checked a meter out of service before any component, software, or security parameter is accessed or modified in any way, or internal repairs are undertaken. This does not apply to Postal Service-approved user, field, or Postal Service access to a specific internal component or software. To prevent unauthorized use, the manufacturer or any third party acting on its behalf must keep secure any equipment or other component that can be used to open or access the internal, electronic, or secure components of a meter.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–1156 Filed 1–17–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7435–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announces the deletion of the Western Tier Parcel of the Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), have determined that the Western Tier Parcel of the RMA/NPL Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate. This partial deletion pertains only to the Western Tier Parcel of the RMA/NPL Site and does not include the other portions of the Site, which will remain on the NPL.

EFFECTIVE DATE: January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6660. Information on the RMA/NPL Site as well as the Deletion Docket and the Responsiveness Summary for this partial deletion are available at EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8 a.m. to 4 p.m., Monday through Friday excluding holidays by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site, which includes the Deletion Docket and Responsiveness Summary for the partial deletion of the Western Tier Parcel, is maintained at the Joint Administrative Records Document Facility, Rocky Mountain Arsenal, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12 p.m. to 4 p.m., Monday through Friday or by appointment.

SUPPLEMENTARY INFORMATION: The RMA/NPL Site is located approximately ten miles northeast of downtown Denver, Colorado and is comprised of two operable units (OU), the On-Post and Off-Post. The On-Post OU is encompassed by the boundaries of the Rocky Mountain Arsenal proper and occupies 27 square miles. The Off-Post OU addresses contamination north and northwest of the RMA proper boundaries. The Western Tier Parcel consists of 940 acres on the western perimeter of the On-Post OU of the RMA/NPL Site along Quebec Street in Commerce City, Colorado. The NPL partial deletion pertains only to the Western Tier Parcel which is a small portion of the On-Post OU. The Off-Post OU and the rest of the On-Post OU will remain on the NPL.

On October 2, 1998, EPA published a Notice of Intent for Partial Deletion (NOIDp) in the **Federal Register** (63 FR 53005) and local newspapers which proposed to delete the Western Tier Parcel from the RMA/NPL Site. Comments received during the public comment period primarily focused on the potential future placement of a child daycare facility at the Parcel and reiterated previous concerns that RMA, and hence the Western Tier Parcel, might be contaminated with dioxins. Based upon consideration of these concerns, EPA postponed action on the partial deletion until additional soil sampling and analysis of the Western Tier Parcel could be conducted.

The additional soil studies have been completed and, taken together with previous site-wide risk studies, address the community concerns regarding any future child daycare facility and potential dioxin contamination. These studies include the (1) Confirmation Soil Sampling Risk Report (EPA 2002a), (2) Denver Front Range Soil Dioxin Study, which consists of four separate studies including one specific to the Parcel (EPA 2001), (3) Section 9 Borrow Area Report (PMRMA 2000), and (4) Site Reconnaissance Report (EPA 2002b). Additional studies and reports developed include (1) Surface Flux Chamber Testing (CDPHE 1998), (2)

Geophysical Survey on Section 9 (PMRMA 2000), (3) Vapor Pathway Analysis (EPA 1998), (4) Assessment of Residual Ecological Risk Report (PMRMA 2002), and (5) Potential Ordnance/Explosives and Recovered Chemical Warfare Materiel (OE/RCWM) Hazards Report (PMRMA 2002).

EPA proposed the partial deletion of the Western Tier Parcel on September 23, 2002, by publishing a second NOIDp in the **Federal Register** (67 FR 59487). Comments received during the public comment period, which ended November 22, 2002, were primarily focused on how potential contamination or munitions would be addressed if found during development of the Parcel. EPA also received nine letters of support for proceeding with the partial deletion.

In our Responsiveness Summary, EPA explained that the Tri-County Health Department (TCHD) is coordinating with Commerce City, the most likely purchaser of the Parcel, to provide personnel who will be available to brief contractors about the RMA/NPL Site history before any activity begins on the Parcel. As the local regulatory agency overseeing remediation of the RMA/NPL Site, TCHD has direct knowledge of the possible construction hazards associated with RMA lands. If any unusual material, stained soil, unusual objects, or odors are discovered, TCHD may call upon local Emergency Response resources (including Fire, Law Enforcement, and the bomb squad) or Army technicians to assist in identifying the nature of the anomaly.

The nine entities who support the partial deletion cite the thoroughness of investigations conducted by EPA, the U.S. Army, and CDPHE to ensure the Parcel is fully protective of public health and the environment. EPA agrees that the numerous studies conducted for the Parcel demonstrate that the Parcel does not present a threat to the environment or human health and it is appropriate to delete the Western Tier Parcel from the RMA/NPL Site.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300 Lists of Subjects

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 8, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3CFR1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 2 of appendix B to part 300 is amended by revising the entry for "Rocky Mountain Arsenal (USARMY)" by adding a note "P" so that it reads as follows:

Appendix B to Part 300—National Priorities List

TABLE 2.—FEDERAL FACILITIES SECTION

State	Site name	City/County	Notes (a)
*	*	*	*
CO	Rocky Mountain Arsenal (USARMY)	Adams County	P
*	*	*	*

(a) * * *

* * * * * * *

P=Sites with partial deletion(s).

[FR Doc. 03–958 Filed 1–17–03; 8:45 am]

BILLING CODE 6561–07–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–86, MM Docket No. 00–139, RM–9915]

Digital Television Broadcast Service; Little Rock, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of River City Broadcasting, Inc. (formerly Channel 42 of Little Rock, Inc.), substitutes DTV channel 44 for DTV channel 43c. *See* 65 FR 51277, August 23, 2000. DTV channel 44 can be allotted to Little Rock, Arkansas, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 34–47–56 N. and 92–29–44 W. with a power of 1000, HAAT of 334 meters and with a DTV service population of 866 thousand. With this action, this proceeding is terminated.

DATES: Effective March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–139, adopted January 13, 2003, and released January 17, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority : 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Arkansas, is amended by removing DTV channel 43c and adding DTV channel 44 at Little Rock.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–1198 Filed 1–17–03; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–85, MB Docket No. 02–281, RM–10563]

Digital Television Broadcast Service; Macon, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Macon Urban Ministries, Inc. d/b/a Good News Television, substitutes DTV channel 45 for DTV channel 50 at Macon, Georgia. *See* 67 FR 61572, October 1, 2002. DTV channel 45 can be allotted to Macon, Georgia, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 32–45–51 N. and 83–33–32 W. with a power of 1000, HAAT of 223 meters and with a DTV service population of 608 thousand. With this action, this proceeding is terminated.

DATES: Effective March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–281, adopted January 13, 2003, and released January 17, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority : 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV channel 50 and adding DTV channel 45 at Macon.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–1197 Filed 1–17–03; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–79, MB Docket No. 02–129, RM–10437]

Digital Television Broadcast Service; Wilmington, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Raycom America, Inc., licensee of station WECT(TV), substitutes DTV channel 44 for DTV channel 54 at Wilmington, North Carolina. *See* 67 FR 39933, June 11, 2002. DTV channel 44 can be allotted to Wilmington in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 34–19–16 N. and 78–13–43 W. with a power of 33, HAAT of 290 meters and with a DTV service population of 328 thousand. With this action, this proceeding is terminated.

DATES: Effective March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–129, adopted January 10, 2003, and released January 16, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under North Carolina, is amended by removing DTV channel 54 and adding DTV channel 44 at Wilmington.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–1196 Filed 1–10–03; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3419]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to Permit FM*

Channel and Class Modifications [Upgrades] by Applications, 8 FCC Rcd 4735 (1993).

DATES: Effective January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted December 13, 2002, and released December 16, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 279A and adding Channel 279C3 at Andalusia.

3. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 264A and adding Channel 264C1 at Duncan.

4. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 222A and adding Channel 222C1 at Holyoke and by removing Channel 243A and adding Channel 243C1 at Julesburg.

5. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 253C and adding Channel 253C0 at Panama City and by removing Channel 254C2 and adding Channel 254C1 at Pensacola.

6. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 241C and adding Channel 241C1 at Lake Charles.

7. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 223C1 and adding Channel 223C0 at Joplin.

8. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 244A and adding Channel 244C3 at Cayce and by removing Channel 221C2 and adding Channel 221C1 at Myrtle Beach.

9. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 295A and adding Channel 295C3 at Kerens.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–1202 Filed 1–17–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 13
Tuesday, January 21, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Ch. I

[Docket No. 01–068–1]

RIN 0579–AB43

Risk Reduction Strategies for Potential BSE Pathways Involving Downer Cattle and Dead Stock of Cattle and Other Species

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are soliciting public comment to help us develop approaches to control the risk that dead stock and nonambulatory animals could serve as potential pathways for the spread of bovine spongiform encephalopathy, if that disease should ever be introduced into the United States.

DATES: We will consider all comments that we receive on or before March 24, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–068–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1231. Please state that your comment refers to Docket No. 01–068–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–068–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Lisa Ferguson, Emergency Programs, VS, APHIS, 4700 River Road, Unit 41, Riverdale, MD 20737–1237; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

We are soliciting comments to help us develop an approach to control risks associated with disposal of nonambulatory and dead livestock. These animals could serve as potential pathways for the spread of bovine spongiform encephalopathy (BSE), if that disease should ever be introduced into the United States.

It is well established that domestic and wild animals may contract diseases—especially viral and bacterial diseases—from animals that die on the farm and do not receive proper disposal. Direct exposure to improperly buried dead stock [1] and consumption of feed or grass contaminated by run-off that passed over such animals are some of the routes of potential exposure for these diseases.

Bovine spongiform encephalopathy (BSE) is a disease of cattle and is a member of a class called transmissible spongiform encephalopathies (TSE's). Other TSE's also cause various diseases in animals and humans. BSE was first documented in the United Kingdom in 1986 and has since spread to approximately 21 other countries in Europe, and to Israel and Japan. There has never been a case of BSE identified in the United States. However, other types of TSE diseases have affected U.S. livestock and wildlife, including scrapie in sheep and goats and chronic wasting disease (CWD) in both captive and free-ranging elk and deer.

In many ways, TSE diseases present a more difficult problem than other animal diseases with regard to controlling the spread of disease through dead stock. This is due to the nature of TSE diseases, the general lack of live-animal tests for them, and the extreme hardiness of TSE agents. These issues are discussed in some detail below.

Surveillance programs in European countries where BSE exist have found that BSE is present in a higher percentage of nonambulatory and dead livestock than in the general cattle populations. An animal at the point of death from BSE is also generally in its most infectious state, with a high concentration of the BSE agent in certain tissues. Studies by the U.S. Department of Agriculture (USDA), independent researchers, and the Harvard Center for Risk Analysis (discussed below) concur that if BSE were introduced into the United States, dead stock that were rendered and allowed into the animal feed chain would pose a risk of spreading the disease. In January 2001, the Food and Agriculture Organization of the United Nations issued a press release urging countries to take steps to reduce BSE risks; one of the recommended practices was correct disposal of dead stock. Diseases other than BSE are also an issue in the disposal of dead stock.

The BSE agent is remarkably hardy and resistant to destruction by standard cooking practices, sterilization procedures, and rendering processes. Generally, the rendering processes used in the United States will reduce the infectivity of a TSE agent in the rendered material by a factor of 1 to 3 logs.[2] The continuous rendering processes most widely used in the United States reduce infectivity by 2 logs or less; batch processing, used for less than 5 percent of rendered animals, can reduce infectivity by 3 logs. Since some BSE agent survives rendering, if BSE were to be present in a rendered product that is used in cattle feed (in deliberate or accidental violation of the feed ban imposed by the U.S. Food and Drug Administration (FDA)) it could lead to the amplification and spread of

[1] Dead stock are livestock that die or are killed before being sent to slaughter; they are sometimes referred to as "on-farm deads." When used in this notice in reference to cattle, this term refers to adult cattle over 24 months of age, since cattle that die at a younger age present a greatly reduced likelihood of harboring BSE infectivity.

[2] A 1-log reduction is reduction by a factor of 10. 2 logs = 100, 3 logs = 1000, etc.

BSE among cattle consuming that feed. There is also a possibility that animal feed containing a TSE agent from the rendered protein of one species (*e.g.*, scrapie in sheep) could cause development of disease in animals of another species consuming that feed (*e.g.*, cause BSE in cattle). This is, in fact, the leading theory for how BSE originated in the United Kingdom.

Given this situation, the Animal and Plant Health Inspection Service (APHIS) wants to take steps to limit the potential pathways through which BSE could spread in U.S. animal populations, in case it is introduced despite efforts to keep it out of the United States.

TSE Disease Surveillance

Data from APHIS animal disease surveillance programs can be used to detect occurrences of disease, provide information for better policy decisions, and better understand the diseases. Most surveillance programs are based on data from live-animal tests; however, since such tests are generally unavailable for TSE's, in this area APHIS generally relies on observation of animals exhibiting signs of TSE's and tissue samples from dead animals. Since 1990, animals targeted for BSE surveillance by APHIS include cattle exhibiting signs of neurological disease in the field (*i.e.*, prior to being brought to slaughter), cattle condemned at slaughter for neurologic reasons, rabies-negative cattle submitted to public health laboratories,[3] neurologic cases submitted to veterinary diagnostic laboratories and teaching hospitals, nonambulatory cattle ("downer cattle") over 24 months of age at slaughter, and adult cattle dying from unknown causes on farms. The primary reason we target downer animals is that surveillance data from European countries in which BSE has been detected indicate that downer cattle have a greater incidence of BSE.[4] If BSE enters the United States, downer cattle testing programs are likely to first reveal it.

APHIS' current approach to BSE surveillance takes into account regional differences in the movement of animals, *i.e.*, surveillance is scaled to take into account where most cattle are raised and where they are slaughtered. On this basis the United States is divided into eight regions[5] for BSE surveillance. For years, APHIS has calculated regional surveillance goals for BSE to exceed international standards recommended by the Office International des Epizooties, the world organization for animal health. APHIS continues to increase postmortem testing for BSE, with more than 19,990 cattle samples tested in fiscal year 2002 up from 5,200 during fiscal year 2001. Overall, our surveillance program targets the segment of the cattle population where BSE would most likely be found if it were to occur, *i.e.*, downer animals and dead stock.

Limiting Possible Pathways for Spread of BSE

By their nature, downer animals and dead stock include many animals dead or dying from communicable diseases. They therefore represent a significant pathway for spread of disease if they are not handled or disposed of with appropriate safeguards. Over time, USDA and industry have developed methods to mitigate, if imperfectly, the risks presented by dead stock and downer animals affected by the older, better-known animal diseases.

With regard to limiting the potential pathways through which BSE could spread in U.S. animal populations if it were introduced, we believe that dead stock and downer animals represent the most significant potential pathway that has not been addressed in previous efforts to reduce BSE risks. The remainder of this advance notice of proposed rulemaking discusses why we think this is so and identifies topic areas where we are seeking more information in order to develop rulemaking on the subject of dead stock.

The Harvard Risk Analysis

In April 1998, in order to better characterize the potential for BSE to be introduced and spread in the United States, and the potential threat to human health should this happen, USDA commissioned the Harvard Center for Risk Analysis to conduct a risk analysis (referred to below as the Harvard study). The Harvard study was completed and released on November 30, 2001.[6] The summary of the Harvard study stated its findings that the United States is highly resistant to any introduction of BSE or a similar disease. It also found that BSE is extremely unlikely to become established in the United States, and if introduced, it is likely to be quickly eliminated following its introduction.

The Harvard study investigated potential pathways by which BSE or other TSE's could enter U.S. cattle populations, using a quantitative simulation model to characterize how the introduction of BSE would spread over time, and the extent to which it could result in human exposure to contaminated food products. The study's model quantified some aspects of BSE's potential progress if introduced into the United States—*e.g.*, the number of animals that would be infected over time, and the resulting quantity of the BSE agent in food that would potentially be available for human consumption—but it did not quantify the probability that BSE will be introduced, nor did it estimate how many people would contract vCJD if BSE were introduced. The study omitted quantitative treatment of both of these issues because the available information is inadequate.

The Harvard study has helped APHIS identify those risk management control options that most influence the introduction and spread of disease, and to identify those sources of uncertainty that have the greatest impact on our programs to control BSE risks. This information can be used to help identify the most important control measures and to prioritize data collection and research efforts.

The Harvard study finds that the United States is highly resistant to the introduction of BSE. In addition, should BSE occur in this country, measures taken by government and industry make

[3] We test rabies-negative cattle because these animals often have clinical signs that could be consistent with BSE. If the public health tests show the animal does not have rabies, the samples may be forwarded to APHIS for BSE testing.

[4] For instance, surveillance in Germany in 2001 showed that animals subjected to normal slaughter had a BSE incidence of 0.002 percent, while fallen animals (in the United States, these would be called dead stock, or animals not presented for slaughter for human consumption) had an incidence of 0.02 percent, and emergency slaughters (in the United States, animals presented for slaughter for human consumption and found to show signs of neurological illness) had an incidence of 0.48 percent. "Final Report of a Mission Carried Out in Germany from 28/05/2001 to 01/06/2001 in Order to Evaluate the Implementation of Protective Measures Against Bovine Spongiform Encephalopathy," available at *http://europa.eu.int/comm/food/fs/inspections/vi/reports/germany/vi_rep_germ_3302-2001_en.pdf.*

[5] These divisions were established essentially for epidemiological surveillance reasons and are not intended for the purposes of Chapter 1.3.4 of the International Animal Health Code, *i.e.*, "defining geographical areas of different animal health status within its territory for the purpose of international trade." The regions were established because State-by-State reporting did not provide very useful data, and caused underestimation and overestimation of States' cattle populations, due to the common practice of moving cattle interstate for feeding and slaughter. Often an animal actually comes from one state (*e.g.*, New Jersey) but is slaughtered in another state (*e.g.*, Pennsylvania), so therefore slaughter surveillance on a State-by-State basis would report the animal as originating from Pennsylvania. To make our estimations and calculations as scientifically sound as possible, we changed to a regional system, with States grouped into regions based on typical animal populations and their movement to regional slaughterhouses.

[6] Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States; Harvard University and Tuskegee University, November 26, 2001. Available at http://www.aphis.usda.gov/oa/bse/.

the United States robust against the spread of BSE to animals or humans.

The report identified three pathways or practices that could contribute most either to increased human exposure to the BSE agent or to the spread of BSE if it should be introduced into the United States. The three pathways are:

- Noncompliance with the FDA feed ban, including misfeeding on the farm and the mislabeling of prohibited feed and feed products;
- Inclusion of high risk material, such as brain and spinal cord, in edible products;
- Rendering of animals that die on the farm and use (through illegal diversion or cross-contamination) of the rendered product in ruminant feed.

FDA and FSIS are taking action to address the first two pathways. FDA is enhancing its enforcement of the feed ban and is evaluating whether further rulemaking is needed. FSIS published a notice in the **Federal Register** on January 17, 2002 (67 FR 2399, Docket No. 01–027N) announcing the availability of a BSE Current Thinking Paper that discusses measures that it is considering implementing to minimize human exposure to bovine materials that could potentially contain the BSE agent. Measures under consideration by FSIS include prohibiting certain high risk materials, such as brain and spinal cord, from specified cattle for use as human food and prohibiting the incorporation of CNS tissue in boneless beef products, including meat from advance meat recovery (AMR) systems. Commenters on this advance notice of proposed rulemaking may wish to explore whether there are cross-cutting issues between safe disposal of these specified risk materials and safe disposal options for downer and on-farm dead animals.

Because APHIS has primary authority[7] for animal disease risks posed by both live and dead animals on the farm, including matters where carcass disposal may pose animal health risks, APHIS is publishing this advance notice of proposed rulemaking to open discussion concerning the third pathway, rendered material from animals that die on the farm and its possible inclusion in ruminant feed. We are publishing this notice to fulfill the Secretary's statement, upon release of the Harvard study, that "USDA will publish an advance notice of proposed rulemaking to consider disposal options for dead and downer animals, because such cattle are considered an important potential pathway for the spread of BSE in the animal chain."

The Harvard study considers dead stock to be an especially significant potential pathway for BSE. The base case for the Harvard study's model examined what would happen if 10 animals infected with BSE were imported into the United States, assuming current Government regulations and controls are in place. In this scenario, it could be likely that one or more of these animals will succumb to the disease on the farm, or become sick enough to be killed rather than sent to slaughter. The worst possible outcome at this point in the scenario would be for an animal with BSE to be rendered, and for the rendered product to be mixed into ruminant feed (in violation of the FDA feed ban). Rendering an animal that has reached the clinical stage of BSE introduces the maximum amount of infectivity into rendering and potentially into feed. This could result in many more cattle contracting BSE through consuming that contaminated feed, or consuming feed that was cross-contaminated during production or storage, if the feed ban was violated.

The Harvard study's model estimates that keeping this from occurring, by prohibiting the rendering of animals that die on the farm or by ensuring that no rendered product from such animals is ever mixed with ruminant feed, would greatly reduce the potential for contamination in the animal feed chain and reduce the average predicted new cases of BSE following introduction of 10 infected cattle from 2.9 new cases to 0.68 new cases. The Harvard study found that safely disposing of on-farm dead livestock is predicted to greatly reduce BSE spread due to the high levels of BSE agent expected in animals that die from BSE on the farm. It is important to keep such animals from directly entering animal feed chains (*e.g.*, through using rendered products derived from them in feed), and it is important to dispose of their carcasses in ways that keep other livestock and wildlife from contacting them.

Note that the Harvard study by design considered risk factors for BSE one at a time, not in combination. In other words, the prediction that keeping rendered dead stock out of ruminant feed would lower new cases of BSE following introduction of 10 infected cattle from 2.9 to 0.68 new cases does not take into account the marginal and cumulative effects of other BSE risk reduction activities. Other actions by Federal agencies and industry—*e.g.*, more effective enforcement of the feed ban and import restrictions applied to countries with BSE—will also be acting to mitigate BSE risks, to a cumulative degree not calculated by the Harvard study.

The Harvard study suggests prohibiting rendering of dead stock as one way to mitigate this risk, but it does not go on to evaluate the associated negative effects such a policy could have on preventing the spread of BSE and other diseases. Eliminating rendering as a disposal option for dead stock would mean owners would have to find other disposal options, many of which pose their own risks of spreading disease. These risks are discussed later in this document.

Issues in Disposal of Downer Cattle and Dead Stock

Downer Cattle

Downer cattle—animals that cannot rise from a recumbent position due to injury or illness—may be sent for slaughter at plants inspected by FSIS.[8] Sometimes the FSIS antemortem inspection reveals that the downer animal clearly is affected by a particular disease, but more often diseases are revealed only when characteristic lesions (*e.g.*, of tuberculosis, swine erysipelas, or infectious anemia) are seen within the carcass after slaughter. However, TSE diseases do not cause grossly observable lesions, so FSIS inspectors instead observe the live downer animals for signs of a CNS disorder. FSIS has the lead role in ensuring that downer cattle presented for slaughter that exhibit clinical signs of BSE are diverted from slaughter. Cattle with clinical signs of a CNS disorder and cattle that died otherwise than by slaughter are already prohibited from use as human food. All downer cattle presented for slaughter are

[7] Generally, APHIS does not directly regulate businesses engaged in animal disposal through rendering, incineration, burial, or other methods. However, such businesses could be affected if APHIS regulates how the owners of animals may move or dispose of dead stock; *e.g.*, disposal businesses could choose to alter their practices to provide the types of disposal APHIS requires the owners of animals to employ. See the Animal Health Protection Act of 2002 (Subtitle E of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171). Section 10406 states that the Secretary of Agriculture may prohibit or restrict "the movement in interstate commerce of any animal, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of any pest or disease of livestock." Section 10409 states that the Secretary "may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock * * * including animals at a slaughterhouse, stockyard, or other point of concentration."

[8] Any FSIS-inspected facility may slaughter downer cattle if the animal passes ante mortem inspection. Although some slaughter facilities will not accept downers for slaughter, FSIS does not restrict or approve where downers may be slaughtered.

automatically suspected of being affected with a disease or condition that may require condemnation of the animal, in whole or in part, and are identified as "U.S. Suspects." Such cattle must be examined by an FSIS veterinarian, and a record of the veterinarian's clinical findings must accompany the carcass to postmortem inspection if the animal is not condemned. Post mortem inspection on the carcasses of all cattle classified as "US Suspects," including downer cattle, must be performed by a veterinarian rather than a food inspector, and the results of this inspection must be recorded as well.

Downer cattle presented for slaughter that pass antemortem inspection may be slaughtered and, if passed on postmortem inspection, the meat and meat products from such cattle can be used for human food. However, surveillance for BSE in Europe has shown that downer cattle infected with BSE often cannot be found by looking for the typical clinical signs associated with BSE, because the signs of BSE often cannot be differentiated from the signs of the many other diseases and conditions affecting downer cattle. Thus, if BSE were present in the United States, downer cattle infected with BSE could potentially be offered for slaughter and, if the clinical signs of the disease were not detected, pass antemortem inspection. These cattle could then be slaughtered for human or animal food. Although the muscle tissue from BSE-infected downer cattle has not been found to contain the BSE agent, other tissues could contain the BSE agent and the muscle tissue could be cross-contaminated during slaughter and processing.

As noted above, FSIS is considering placing restrictions on specified risk materials from certain categories of slaughtered cattle, including downer cattle, to address this scenario. We are seeking suggestions on actions APHIS could take to prevent downer animals potentially affected by BSE (should it be introduced) from spreading the disease; *i.e.*, actions that could be taken on the farm or at other stages prior to slaughter. We are looking for actions we could take now, rather than actions to be taken if and when BSE is ever introduced. Commenters may wish to describe how risk factors should be considered when sending downer cattle to slaughter, *e.g.*, age, physical condition, source and type of cattle, etc.

Commenters should bear in mind that we currently rely on collecting samples from downer animals, at slaughter and other locations, as a key part of BSE surveillance. We would like commenters to address how APHIS could continue to obtain samples for testing from downer cattle, since such cattle are an important part of our surveillance program for BSE.

Dead Stock

In addition to comments regarding downer animals, we seek comments regarding dead stock. Disposal methods for dead stock is the most important issue addressed by this advance notice of proposed rulemaking. Dead stock are a potential source of infection for many animal diseases, including BSE. Past experience with disease outbreaks in livestock has demonstrated the need for carcass disposal methods that are cost-effective, safe, fast, complete, and environmentally acceptable.

If an animal dies on the farm, or becomes so sick or injured that it must be destroyed on the farm, it immediately loses most or all of its economic value. It is prohibited from being sold for human food. It might be sold to be rendered, or to be processed as pet food, but in most cases the fee for picking up and transporting a dead animal exceeds the salvage value (*i.e.*, the payment for its value as rendered product or pet food). Thus, producers have a strong business reason for finding ways to dispose of dead stock as cheaply as possible.

This incentive to find cheap means of disposal for dead stock is directly in conflict with certain public interest needs. We will note, but not directly address in this advance notice of proposed rulemaking, that dead stock disposal can have significant impacts on environmental quality and on the capacity of existing solid waste management disposal systems (landfills, incinerators, etc.). We are also aware that there are varying costs associated with different methods of dead stock disposal, but we have not analyzed these costs because we have insufficient data, and we request commenters to submit data on these costs. The focus of this advance notice of proposed rulemaking is on how dead stock disposal relates to the public interest in controlling animal disease risks.

Many animal health programs depend on collecting good data about how livestock become sick and die. This data collection would obviously become even more important if BSE were introduced into the United States. When dead stock is treated as an economic burden and disposed of as cheaply as possible, this data collection suffers. The cheapest methods for dead stock disposal include ignoring the carcass (possible in some cattle range situations) or burying it on-site. Both of these means are legal in some States, and in other States that have specific disposal requirements, the requirements are often loosely enforced. Some producers have disposed of dead stock creatively and illegally by abandoning it on public or private land in ravines, rivers, culverts, dumpsters, and other locations. In all of these situations, information about the animal and its possible cause of death is unlikely to make its way to State or Federal animal health authorities.

In addition to making it harder to collect animal health data, inappropriate disposal of dead stock increases the possibility that humans, livestock, or wildlife will come into contact with pathogens associated with the dead stock. Human and animal health concerns, along with environmental quality concerns, are the major reasons existing State laws on carcass disposal were enacted.

While State laws regarding dead stock disposal vary widely, most have the following features in common. They establish a time limit within which disposal must take place—usually 24 or 48 hours after death. They limit disposal methods to those authorized by law, and sometimes rank the methods in the order the State prefers they be used. Typically, this is the preferred order:

Rendering at a licensed and approved rendering facility. This method maximizes the government's ability to monitor and regulate dead stock disposal, by working with relatively few companies that pick up and render the dead stock. However, as discussed below, dead stock pickup by renderers has become less available in many areas and has become more expensive. (In the past renderers would pick up dead cattle for free, or pay the producer for the dead animals; now there is typically a fee of $20 or more for this service, when it is available at all.) There are also TSE risk issues associated with rendering, and with the renderers' ability to segregate higher-risk materials and divert them to products that are not for use in humans or animals.

However, the existence of markets for use of rendered products for industrial purposes that present no risk of contact with animal or human products does provide a possible avenue for disposal of rendered products from animals that may be infected with a TSE. Such products may be diverted into production of paints, adhesives, or other products. Rendered fat products and meat and bone meal (MBM) may also be used as either a primary fuel or a fuel supplement for heat and power production (especially co-combustion in coal-fired plants), or as an ingredient in cement (MBM is currently used in

cement production in Belgium, France, Germany, Japan, and possibly other countries.) Naturally, diversion of large quantities of rendered products into new uses raises significant economic issues, and many diversion uses may not currently make sense in purely economic terms, as other nations that practice such diversion have found.[9] For example, MBM, when burned, generates only about half the energy obtained from burning coal, yet MBM sells for about 12 times the price of coal.

Although many industrial products are produced mainly from rendered fats and oils, rather than rendered protein, some products utilize rendered protein. In other cases, a percentage of rendered protein can be included as a harmless additive with the rendered fat or oil product. If such diversion into non-food uses is effectively accomplished, it could provide a safe means of dead stock disposal for animals that might spread TSE's if disposed of in other ways.

Composting of dead stock in a properly designed and sized dead animal composter. Composting of dead stock allows the end product to be recycled back to the land as a fertilizer. Poultry and swine industries use this technology effectively. Composting is used to dispose of some cattle and other large species, but large-scale cost-effective approaches are still under development. Composting requires careful planning and monitoring to be successful. Issues include moisture and temperature control and proper admixture of plant matter (often straw or old feedstuffs) to raise the carbon-nitrogen level to a point where proper composting can occur. Composting also takes time; decomposition of a mature cattle carcass takes about 6 to 8 months. The remaining bony matter is soft and easily broken for land application or other final disposal. One successful composting approach uses a three-bin system, which is best located downwind from nearby residences and away from waterways and ponds. Permanent composting facilities have significant start-up costs of $5,000 or more. Composting operations must also take steps to control the potential risk of disease spread by wild and feral animals.

Composting is problematic with regard to BSE infectivity; it may be effective, or it may reduce but not destroy infectivity. Composting does not usually raise material temperatures over 160 °F, a temperature the BSE agent is known to survive for long periods. Further research is needed to characterize the effectiveness of composting with regard to BSE. The United Kingdom's Department for Environment, Food, and Rural Affairs is currently preparing a risk assessment, to be completed in the near future, that may help resolve this question.

Dead stock disposal in an approved sanitary landfill. Most municipal landfills are permitted to accept dead animals but may limit their numbers. To minimize pathogen contamination of groundwater, modern sanitary landfills are designed and operated to prevent leaching into groundwater or surface waters. Drawbacks include limited capacity and expense—many landfills charge over $100 a head to dispose of cattle. However, properly operated landfills will keep infectious material away from livestock.

Incinerating dead stock. Incineration is very effective but is costly and energy intensive, and it may pollute the environment if the incinerator is not operated and maintained properly. Incinerators generally must be licensed by a State government. Open burning of dead animals is not allowed in most States without a permit.

A subset of incineration technology that is gaining popularity is on-site disposal using either complete mobile incinerators or air curtain trench burners. There are cost and air quality issues associated with both of these technologies, and they are usually considered most suitable for short-term disposal projects (such as depopulating a herd) rather than long-term use. However, air curtain trench burners in particular have been gaining use in recent years for on-site disposal of diseased animals. They have been used in Great Britain for disposal of animals during the recent foot-and-mouth disease outbreak, and they have been used in Montana and Colorado to dispose of elk implicated in CWD outbreaks. When properly used, this technology produces ash that presents no disease risk when disposed of properly.

Air curtain trench burners are essentially giant blowers that direct powerful airstreams onto trenches in which carcasses are burned on firewood fuel. This superheats the fire to temperatures steadily above 1,000 °C., resulting in total carcass incineration in approximately 20 minutes. (Cadaver incineration times will vary with factors such as fat content, moisture content, firebox or pit temperature, type of wood waste used, etc.) Site selection is important for air curtain trench burners, and soil type, underground water table, and prevailing wind direction should be carefully considered. High water table areas and sandy soil types should be avoided. Stable vertical trench walls with minimum entry of underground water into the burn area are needed for steady high incineration temperatures.

Burial on premises. Many States specify requirements for owners who bury their dead stock on their own premises. Typically, State laws limit the number of animals that may be buried, require adequate topsoil covering the animals (usually 2 or 3 feet), and attempt to restrict burials in areas where runoff passing over the animals would contaminate groundwater or aquifers.

Tissue digestion. Because this is a new and relatively expensive technology, most State laws do not yet recognize or recommend it as a means of dead stock disposal. Tissue digesters are essentially large "pressure cooker" devices that use boiling sodium hydroxide solutions to degrade proteins and fats and result in a sterile liquid suitable for municipal sewage systems, and a sterile, crumbling calcium phosphate residue from the bones and teeth of the animals. Research has shown this method to very effectively reduce levels of TSE infectivity. A typical digester costs several hundred thousand dollars, could process several cattle cadavers simultaneously, and takes several hours to complete a processing cycle. Currently, most digesters in the United States are located at major veterinary research centers or veterinary teaching hospitals.

Preferred Methods for Dead Stock Disposal

APHIS is seeking comments on which approaches for safe disposal of dead stock should be encouraged or required. The primary issue we would like commenters to address is how to develop a combination of regulatory requirements, incentives, and cooperative relationships with production and disposal industries that

[9] "In Germany all fallen animals and all animals unfit for human consumption must be disposed of at rendering plants. The renderers collect the animals. All fallen and sick bovines over 24 months are BSE tested * * * If the results of the test have not come through then the whole carcass must be processed into MBM under the standard procedure at 133°C and 3 bar. Since the introduction of the MBM feed ban all MBM must be burnt either in waste incinerators, power stations, or as fuel for cement producers * * * Since the introduction of the MBM feed ban rendering operations run at a loss, Federal and Land Governments are still discussing the coverage of the extra costs brought about by the BSE crisis. The Federal Government has so far resisted the wish of the Land Governments that the Federal Government should pay all BSE follow-up costs including the disposal costs of MBM."—British Embassy Bonn Office Agriculture Note: September 2001, available at *http://www.britischebotschaft.de/en/embassy/agriculture/Agni-Note-Fallen%20Stock.htm.*

will result in sustainable procedures for the safe disposal of dead stock.

Commenters are also asked to consider the costs associated with any such solutions, and any trade-offs that might result by requiring particularly stringent disposal methods to protect against BSE, when easier disposal methods might be adequate protection against other animal diseases. Such comments could also address whether moving to a disposal system designed with BSE in mind might reduce the availability of other types of disposal services which might be needed in situations where it is necessary to dispose of large quantities of carcasses that do not present a BSE risk (*e.g.*, an FMD or pseudorabies outbreak).

Commenters should bear in mind that our current BSE surveillance includes collecting samples from cattle that die on-farm. We would like commenters to address how APHIS could continue to obtain and increase our samples for testing from dead stock.

When dead stock are disposed of unsafely, it is because safe disposal is unavailable, expensive, or inconvenient. One approach to dead stock disposal could be to require certain methods of disposal (*e.g.*, incineration, landfill burial, digestion, or composting, at licensed facilities) under Federal or State laws. But requiring certain disposal methods does not automatically make them available, inexpensive, or convenient. Also, some disposal methods have been very useful for disposing of small numbers of animal carcasses, but their use for the disposal of large numbers of carcasses may result in an increased disease risk to other livestock producers in an area. The short term savings from these methods can easily result in an increased cost later on, which could have been reduced or eliminated if the right techniques had been used initially.

As discussed above, different disposal methods result in different levels and types of risk that cattle could contract BSE from a disposed animal. There are very effective and usually expensive disposal methods that reliably inactivate any infectious agent, including BSE, in a destroyed cadaver. These methods include incineration (on-farm or at a remote incinerator) and tissue digestion. Other disposal methods are known to be partially effective in deactivating the BSE agent, thus reducing but not eliminating risk. These methods include rendering (known to reduce BSE infectivity, with the extent of reduction related to the process used) and composting (apparently reduces infectivity, but to what degree is not well characterized). In both of these methods, an important element may be diversion of the end-product to uses that will not bring it into contact with animal feed. Other methods such as open burning, burial, and landfill disposal have great variations in their effectiveness due to the great variations in how they are implemented at different times and places.

An important aspect of disposal methods is that they can achieve the desired end either by deactivating the BSE agent or by isolating it. The BSE agent in dead stock need not be inactivated if it is reliably kept from contact with animals that it might infect. Another aspect to consider regarding disposal methods is the extent to which they create further disposal problems downstream. Incineration reduces animals to a small volume of ash, but the ash must be spread somewhere. Tissue digesters produce innocuous liquid waste and some calcium phosphate. Burial and landfill disposal do not immediately reduce the volume of the animal and create enduring concerns about scavengers and leaching into the water table. Rendering greatly reduces the volume of the processed product by removing water content and places the end-product in containers, but it has labeling and use concerns because the product may still be infectious.

We are seeking comments to help us balance these considerations in developing good dead stock disposal practices. We have better information on the issues associated with rendering, compared to other disposal methods, because rendering businesses are few in number and uniform in operation compared to the great variety of businesses operating landfills, incinerators, and composting services. While the following discussion directly addresses some issues associated with rendering, we hope commenters will help us develop similar data regarding other disposal methods.

Here are some of the questions regarding whether rendering is a useful disposal method for dead stock that could harbor TSE's: Since rendering does not completely destroy TSE agents, can we be sure rendered products from possibly-infected dead stock would all be used in ways that would not spread TSE's? Given the capacity and distribution of rendering plants, is rendering of dead stock a viable option nationwide, or are there areas where it is practically unavailable? If rendering is a desirable disposal method, what sorts of requirements, partnerships, or incentives could increase its use?

There are approximately 100 million cattle in the United States, including beef, dairy, and other categories. Over a million post-weaning calves and adult cattle die or are killed each year before being sent to slaughter. The National Renderers Association estimates that about 44 percent of these carcasses were sent for rendering last year but notes that this percentage is declining, as the profitability of rendering dead stock declines. North American renderers process more than 50 billion pounds of animal and poultry material each year, including dead stock, offal, and waste from slaughter and packing plants, and animal waste from food processing, supermarket, and restaurant industries. Rendering reduces the volume of this material by 64 percent, mostly by reducing the water content, which makes the resultant products much easier to package and transport—whether for sale, or for disposal. The value of rendered products in the United States in 1998 was approximately $3.2 billion, and consisted of 9 billion pounds of protein concentrate (largely meat and bone meal, or MBM) and 9 billion pounds of animal fat such as tallow.

Historically, the bulk of rendered products has been used by the feed industry, which adds MBM and high-energy fats to feed mixes for cattle, swine, poultry, and pets. MBM is an attractive feed supplement because it is high in protein, calcium, and phosphorus. The chief supplements that compete with MBM are soybean meal and corn gluten meal. Neither of these plant-based supplements has significant levels of calcium or phosphorus, although corn gluten meal has a higher crude protein content than MBM (60 percent compared to 50 percent). Wholesale prices for MBM and soybean meal have traditionally tracked each other closely, but with MBM commanding a slight premium presumably due to its better mineral content. From January 1988 through February 1996, ruminant MBM sold for an average of $16.05 per ton above the price of soybean meal, but since March 1996, the average price of ruminant MBM has been $1.20 below the price of soybean meal. This price reduction probably results largely from the FDA feed ban, although greater production of soy and corn may also be a factor.

Steady decreases in the price brought by MBM, coupled with increases in transportation and processing costs, act to reduce renderers' traditional role as the primary means for producers to dispose of dead stock. In the past, renderers paid farmers for their dead stock, but recovered that cost by selling the byproducts at a profit. Farmers got rid of their dead animals without cost or

difficulty. Now, however, the rendered product derived from a dead stock cow is worth perhaps $20; to cover collection and processing costs and profit, renderers charge the owner a pickup fee of from $15 to $35 for each animal. This causes producers to seek cheaper means of disposal. It has also caused some renderers to stop offering dead stock pickup when they do not find it cost effective; renderer pickup is very difficult to arrange in Ohio and Michigan, among other places.

We have not yet been able to obtain accurate national figures to indicate the fall-off in renderer pickup of dead stock, but we do have illustrative data from one State, California. The California Department of Food and Agriculture recently required renderers to submit annual reports on how much of their raw material came from dead stock. These reports show that between fiscal years 1999–2000 and 2000–2001, the number of dead stock (poultry excluded) that was collected by renderers declined by 20 percent—from 686,434 head to 553,974 head.

To help commenters focus their comments on the role of rendering in dead stock disposal, we are providing certain basic information about how rendering industries are regulated, their business situation, and certain rendering industry initiatives relevant to dead stock disposal. Persons interested in obtaining more information on rendering industries may wish to visit the National Renderers Association website at *http://www.renderers.org*.

Renderers generally must be licensed by each State in which they do business. Licensing and operating requirements for renderers vary from State to State. With regard to Federal regulations, renderers, like any business, must comply with numerous regulations regarding employment, worker safety, environmental quality, and so on. Renderers of livestock species subject to the FMIA are required to register their businesses with the FSIS, in accordance with 21 U.S.C. 643 and 9 CFR 320.5. (Renderers who do business solely at official slaughter, packing, or other establishments inspected by FSIS are exempt from this registration requirement.) Renderers are also subject to FDA regulations at 21 CFR 589.2000—the "feed ban" regulations—that impose requirements on renderers that produce products for use in animal feed. The FDA regulations include requirements for labeling, recordkeeping, separation of raw materials based on species type, and related matters to ensure mammalian protein (with certain exceptions) does not go into ruminant feed.

The rendering industry and individual renderers have taken several actions affecting dead stock disposal and TSE issues. Starting in 1991, most renderers elected not to pick up dead sheep, due to the possible scrapie/BSE link, as a means of keeping sheep dead stock protein out of ruminant feed. That industry-elected action became irrelevant in 1997 with the FDA ruminant feed ban, but dead sheep pickup is still not happening because: (1) Many contracts from product end-users specify that no adult ovine protein is allowed in the product, and (2) the same economic conditions that make it marginal for renderers to pick up any dead stock (cattle, swine, etc.) make it a low priority for renderers to resume picking up sheep. However, renderers have stated that they could reinstitute sheep pickup if it becomes economically viable to do so.

Rendering industry representatives cooperated with FDA in developing the feed ban regulations and have monitored compliance with the ban within the rendering industry. Beginning in April 2001, the Animal Protein Producers Industry (the biosecurity arm of the rendering industry) started an inspection audit of all animal protein producers to ascertain compliance with the FDA feed ban. This was a third-party audit performed by an independent auditing firm, Cook & Thurber of Madison, WI.

Currently, a major concern of renderers is identifying markets for MBM and other rendered protein products that contain ruminant protein. Year 2000 production of MBM was nearly 6.7 billion pounds, of which 5 billion pounds, or 75 percent, contained ruminant protein. All of the ruminant protein MBM production has been diverted from use in ruminant feed, with most going to swine, poultry, and pet feed. Export markets for MBM have also increased more than four-fold in the past 10 years, to 979 million pounds in the year 2000. However, oversupply of MBM compared to the demand for its allowed uses continues to drive MBM prices down. The industry believes it would be physically possible for independent rendering plants to install separate processing lines that would allow them to reduce the amount of MBM containing ruminant protein, and increase the amount of ruminant-free MBM, by roughly 1.5 billion pounds a year. However, the capital expenditure and operating costs to do this would mean that renderers would lose money with each year additional separate processing lines are operated, given prevailing prices for MBM.

Renderers continue to seek new, non-feed markets for their rendered product. However, the market opportunities seem to be much greater for rendered fat and oil product lines than for rendered protein product lines. For example, there is a growing market for biodiesel fuels that can be produced from animal (as well as plant) fats and oils. The USDA's Foreign Agricultural Service has reported that, to address MBM disposal in Europe, "New uses are being pursued, such as burning MBM in power plants to produce electricity or burning it in kilns to produce construction materials such as cement."[10]

We are interested in receiving comments that discuss whether rendering can be an effective means for safely disposing of dead stock in a manner that minimizes risks of spreading BSE and other animal diseases. We hope that commenters will address the full range of technical, economic, regional, environmental, and practical business issues associated with this question. At this time, APHIS believes that the key issues associated with using rendering as a safe means of disposal for dead stock are:

- Should dead stock ruminants be segregated at rendering from material being rendered for animal feed use?
- If so, can the rendering industry successfully implement this degree of raw material and product segregation and labeling? What would the cost implications be?
- If the cost of rendering dead stock exceeds the value of the rendered product, who should pay the excess cost? The producer, State or local government, Federal Government, or someone else?
- What could be done through cooperation between industry and government to decrease the cost of picking up dead stock for rendering (*e.g.*, harmonization of licensing and regulations, creation of regional pickup centers, etc.)?

Compliance, Enforcement, and Incentive Issues

We are also interested in receiving comments on ways to ensure compliance with any dead stock disposal requirements that may eventually be established through rulemaking. Vigorous enforcement, with civil and criminal penalties for violators, is one means to encourage compliance. However, there are obvious limits to APHIS' ability to directly monitor and enforce dead stock disposal

[10] "International Agricultural Trade," February 5, 2002, p.3. Foreign Agricultural Service, USDA.

requirements. Our inspectors cannot directly observe, or even be aware of, all the thousands of animal disposal incidents that occur each day. In addition to enforcement and penalties, there may be a role for incentives to help achieve compliance in dead stock disposal practices.

One possible incentive may be a program to help owners pay for the cost of dead stock disposal under certain circumstances. In a January 2002 report [11] about strengthening regulatory efforts to prevent BSE in the United States, the Government Accounting Office (GAO) noted that USDA sometimes subsidizes animal disposal costs in order to obtain sufficient tissue samples for its BSE surveillance program. The report notes that "In 1998 USDA implemented a cooperative program with the rendering industry to ensure that carcasses of animals condemned at slaughter for signs of neurological disease are held until test results are completed. Under this program, USDA may share the expenses to store or dispose of carcasses during the testing period."

Similar programs haves used State, Federal, and industry subsidies to obtain surveillance samples and to encourage responsible dead stock disposal. For example, when cattle with neurological signs of illness are identified at ante mortem inspection in several States, the costs of sample collection and carcass disposal are shared between State government, Federal agencies, and renderers. We are seeking more data on the rationale and operations of these and similar programs, especially including any studies of their overall costs and benefits. We hope to assemble enough data to evaluate the costs and benefits associated with possible dead stock disposal programs that could be designed to maximize benefits to the general public, cattle producers, disposal industries, and others. One possible design for a voucher-subsidized "multi-benefit" dead stock disposal program is discussed below.

Consider a program where the Federal or State Government issues qualifying producers a certain number of "stock disposal vouchers" each year. If one of the producer's animals dies on-farm, or becomes so ill or injured the producer decides to euthanize it, the producer could use a voucher to cover some or all of the costs of disposing of the animal. The government that issued the vouchers may make arrangements with incinerator operators or other disposal businesses that will honor the vouchers. Dead stock transporters may also be involved in the voucher system. In all cases, businesses may benefit from increased formal disposal of dead stock that, without the voucher system, might be buried on-farm. Solid waste disposal systems may benefit as fewer animals are taken to limited landfill spaces and more animals are incinerated. Public health and environmental values may benefit from fewer casual or illegal animal disposals that pollute groundwater and spread disease.

Such a voucher system could also benefit USDA disease surveillance programs if it includes a requirement to allow USDA to examine and collect samples from the animals for which vouchers are used. USDA staff or accredited veterinarians could be used to examine animals prior to euthanasia and to collect samples from dead animals prior to their disposal.

As an alternative to a predefined voucher system for dead stock disposal, Federal or State agencies could concentrate on identifying, and paying disposal costs for, downer animals that would be euthanized on the farm. This approach might offer a bounty or reward payment for owners who report certain types of animals in their herds—*e.g.*, adult cattle showing certain signs indicative of CNS conditions. The Federal or State agency could then examine the animal, euthanize it, take samples if the examination showed a reason to do so, and arrange to dispose of the cadaver. The owner would receive a small bounty payment and would avoid any disposal costs he might otherwise have faced if he euthanized the animal without government assistance.

The above are just two examples of a design for a "multi-benefit" dead stock disposal program; we encourage commenters to suggest others. If your comment suggests a system for dead stock disposal, please include your thoughts on what businesses, levels of government, or other parties should be involved. We are particularly interested in hearing comments on whether such programs should be organized on the county or State level, a regional level, or a national level, and what role the Federal Government should play.

Dead Stock Disposal for Species Other Than Cattle

While this notice primarily addresses disposal of cattle, there are obviously related issues for other species. In particular, commenters may wish to address disposal of sheep and goats with regard to scrapie, disposal of captive elk and deer with regard to CWD, and disposal of all types of livestock with regard to communicable non-TSE diseases. We hope commenters will help us to understand what dead stock disposal issues are common to all of these species, what issues are of particular importance to different types of producers, and the possible costs to involved parties (including producers and taxpayers) of addressing these issues.

Summary of Issues Open for Comment

- What is the preferred approach and associated costs to affected parties for controlling risks associated with disposal of nonambulatory and dead livestock?
- Are there any cross-cutting issues between safe disposal of specified risk materials such as brain and spinal cord and safe disposal options for downer and on-farm dead animals?
- Are there practical ways to cull higher-risk downer cattle, *e.g.* cattle that may have a non-obvious CNS condition, before they are sent to slaughter? How should risk factors such as age, physical condition, and the source and type of cattle be considered when sending downer cattle to slaughter? What would such culling cost affected parties?
- Since APHIS currently relies on collecting samples from downer animals, at slaughter and other locations, as a key part of BSE surveillance, how could we continue to obtain samples for testing from downer cattle if they are not sent to slaughter?
- What carcass disposal methods are safe, fast, complete, and environmentally acceptable? What combination of regulatory requirements, incentives, and cooperative relationships with production and disposal industries would result in sustainable procedures for the safe disposal of dead stock, and what are the costs associated with such solutions?
- Can rendering be an effective means for safely disposing of dead stock in a manner that minimizes risks of spreading BSE and other animal diseases? Under what conditions? What are the associated technical, economic, regional, environmental, and practical business issues?
- What are equitable ways to share the costs of dead stock disposal, to concentrate and increase economic opportunities and social benefits that can be associated with responsible dead stock disposal?
- What businesses, levels of government, or other parties should be involved in dead stock disposal? Should such programs be organized on the

[11] "MAD COW DISEASE: Improvements in the Animal Feed Ban and Other Regulatory Areas Would Strengthen U.S. Prevention Efforts," GAO–02–183, Government Accounting Office, January 2002.

county or State level, a regional level, or a national level, and what role should the Federal Government play?

• Is there a need to particularly address disposal of sheep and goats with regard to scrapie, and disposal of captive elk and deer with regard to CWD? What dead stock disposal issues are common to all species, and what issues are of particular importance to different types of producers?

Done in Washington, DC, this 15th day of January 2003.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 03–1210 Filed 1–17–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–003–1]

Importation of Pork-Filled Pasta

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the importation of pork and pork products from regions affected with swine vesicular disease by establishing procedures for the importation of pork-filled pasta into the United States. The proposed procedures would require that the product contain only cooked or dry-cured pork otherwise eligible to enter the United States under the current regulations; that the product not be commingled, directly or indirectly, with products ineligible to enter the United States; and that the product be accompanied by an official veterinary certificate confirming that the product has been prepared in accordance with the regulations. This action would provide for the importation of pork-filled pasta under conditions designed to prevent the introduction of swine vesicular disease into the United States.

DATES: We will consider all comments that we receive on or before March 24, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–003–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–003–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–003–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Masoud Malik, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products into the United States to prevent the introduction into the U.S. livestock population of certain contagious animal diseases, including swine vesicular disease (SVD). Section 94.12 of the regulations provides requirements for the importation into the United States of pork and pork products from regions where SVD is known to exist. Section 94.17 of the regulations provides requirements for the importation into the United States for dry-cured pork products from regions where SVD, hog cholera (also known as classical swine fever), foot-and-mouth disease (FMD), rinderpest, and African swine fever exist.

SVD is a highly contagious disease caused by an enterovirus that shows extraordinary resistance to both environmental factors and common disinfectants. SVD rarely results in mortality in infected swine and does not cause severe production losses. Still, the disease can have a major economic impact because eradication is costly and because SVD-free regions often prohibit imports of swine, pork, and pork products from affected regions.

Italy is considered to be affected with SVD and thus is not among those regions designated in § 94.12 as free of the disease. Similarly, Italy is not included among the regions designated in §§ 94.9 and 94.10 as free of hog cholera. Therefore, cooked and dry-cured pork and pork products imported from Italy are subject to the requirements set forth in §§ 94.12 and 94.17.

The Italian Government has requested that facilities in Italy be allowed to export to the United States tortellini (pasta) that is filled with pork. In order to allow this product to enter the United States without increasing the risk of the introduction of SVD, we are proposing to amend § 94.12 to establish procedures that processing facilities in SVD-affected regions would have to follow to ensure that this particular product would be safe to import into the United States. While a specific request from Italy provided the impetus for this proposed rule, the requirements we are proposing would apply to pork-filled pasta products imported into the United States from any region affected by SVD.

Specifically, we are proposing to add a new paragraph (c) to § 94.12 that would delineate processing, recordkeeping, and certification requirements for pork-filled pasta products exported to the United States from SVD-affected regions. Paragraph (c)(1) would stipulate that pork-filled pasta products processed for export to the United States would have to contain only pork or pork products that are otherwise eligible for importation into the United States, *i.e.*, that meet all requirements that apply to cooked pork products under § 94.12 (b)(1)(i), (ii), or (v)[1] or to dry-cured pork products under § 94.17.

The provisions of proposed paragraphs (c)(2), (c)(3), and (c)(4) are intended to prevent contamination via the commingling of ineligible pork or other meat products with pork or pork products eligible for use in pork-filled pasta products for export to the United States. Paragraph (c)(2) would stipulate that pork intended to be used for pork-filled pasta products for export to the

[1] While pork and pork products that meet the requirement of § 94.12(b)(1)(iii) and (iv) are also eligible for importation into the United States, proposed paragraph (c)(1) would not provide for their use in pork-filled pasta products. As neither paragraph requires the pork or pork products to be fully processed in the region of origin, such pork and pork products are not suitable for inclusion in a completed product such as pork-filled pasta.

United States must be stored in a separate room or facility from any meat or meat products not eligible for export to the United States. Paragraph (c)(3) would state that all equipment and machinery that will come in contact with the pork or other ingredients of pork-filled pasta products intended for export to the United States must be cleaned and disinfected before each use. Paragraph (c)(4) would state that processing lines working with pork-filled pasta products for export to the United States must process only pasta containing pork eligible for such exports and that when such lines are working with these pasta products, the remaining lines may work only on pasta products that do not contain meat.

Paragraph (c)(5) would set out cooking and other requirements for pork-filled pasta being exported to the United States to ensure that the product would be shelf stable without refrigeration. Specifically, we would require that during processing, the pork-filled pasta would have to be steam-heated to a minimum internal temperature of 90 °C, then dried, cooled, and packed to make the product shelf stable without refrigeration.

Paragraph (c)(6) would give the Animal and Plant Health Inspection Service the right to conduct periodic inspections of establishments that manufacture pork-filled pasta products for export to the United States in order to verify compliance by these establishments with the regulations in this section.

Paragraph (c)(7) would set out recordkeeping requirements for pork or pork products used in pork-filled pasta products being exported to the United States. A processing facility would have to maintain under lock and key, for a minimum of 2 years, an original record of each lot of pork or pork products used for meat-filled pasta products for U.S. export. Each record would have to include the date that the cooked or dry-cured pork product was received in the processing facility; information on the number of packages, the number of hams or cooked pork products per package, and the weight of each package; a lot number or other identification marks; the health certificate that accompanied the cooked or dry-cured pork product from the slaughter/processing facility to the meat-filled pasta product processing facility; and the date that the product started dry curing (if the product used is a dry-cured ham) or the date that the product was cooked (if the product used is a cooked pork product). These recordkeeping requirements would be consistent with those set out in § 94.17 for exports of dry-cured pork products to the United States.

Finally, paragraph (c)(8) would require that pork-filled pasta arriving in the United States be accompanied by a certificate issued by an official veterinarian of the National Government of the region in which the pasta product is processed stating that the product has been processed in accordance with the requirements discussed in the preceding paragraphs. This certificate would provide further assurance that the processing facilities are complying with our regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the regulations in § 94.12 that deal with the importation of pork and pork products from regions affected with SVD by establishing procedures for the safe importation of pork-filled pasta into the United States from Italy and other affected regions. These proposed procedures would allow the importation of this product into the United States while ensuring that the health of the U.S. swine population and the economic viability of the U.S. swine and pork and pork products industries would not be threatened by an incursion of SVD.

These industries play an important role in the U.S. economy. There was a total inventory of 58.698 million swine in the United States as of March 1, 2002.[2] Cash receipts from swine farming in 2001 were about $12.1 billion.[3] The industry marketed 26.7 billion pounds of pork in 2001. Additionally, the United States earned a substantial amount of money from exports of swine and swine products. The United States exported 1.075 billion pounds of pork, valued at $1.283 billion, in 2001. Also 64,912 live swine were exported, which were valued at about $12 million. The United States also imported 717 million pounds of pork in 2001, valued at $771 million, and imported 5,337,088 live swine, all from Canada, valued at $349 million. Domestically, other related agricultural and non-agricultural sectors are dependent on the swine and the swine-product industries for their economic activity. These activities provide employment and income to many households. Maintaining the stability of these industries depends in part on continued efforts to prevent any introduction of SVD into the United States.

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. The domestic entities most likely to be affected by allowing importation of pork-filled pasta products from Italy are durum wheat producers and pasta manufacturing companies.

In 1997, 6,887 farms, over 99 percent of which were considered small,[4] produced about 5.160 billion pounds of durum wheat.[5] In 2001 durum wheat production was estimated at about 5.013 billion pounds on 2.789 million harvested acres.[6] In 2001, the United States exported 3 billion pounds of durum wheat, valued at $215 million. The major destinations were Italy (39 percent), Tunisia (10 percent), Algeria (9 percent), and Mexico (7 percent).[7]

As a new product, dry, shelf-stable, pork-filled tortellini is expected to have a small market. The impact, if any, on durum wheat producers of importation of this product into the United States is also likely to be small. Producers of durum wheat could benefit in the future from any expansion of product range that results from these imports.

There were 141 pasta manufacturing plants in the United States in 2000. Of these, five companies accounted for 55 percent of the sales. The total domestic capacity is estimated to be about 3.4 billion pounds of pasta.[8] Pasta producers are considered small businesses if they employ 500 workers or fewer.[9] Most U.S. pasta manufacturers can be considered small.

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[2] USDA/NASS, Quarterly Hogs and Pigs, Agricultural Statistics Board, March 2002.

[3] USDA/ERS, U.S. farm sector cash receipts from sales of agricultural commodities, 1998–2002, February 2002.

[4] North American Industry Classification System (NAICS) code 111140, Wheat Farming. The Small Business Administration has established guidelines for determining which types of firms are to be considered small under the Regulatory Flexibility Act. A wheat farm is considered small if it has annual receipts of $750,000 or less.

[5] USDA/NASS, 1997 Census of Agriculture (for AZ, CA, MN, MT, ND, and SD). These are durum wheat-producing States.

[6] USDA/NASS, Crop Production 2001 Summary, Agricultural Statistics Board, January 2002.

[7] Global Trade Information Services, Inc., World Trade Atlas, United States Edition, December 2001.

[8] Michael Boland and David Barton, "How Dakota Growers Pasta co-op found success in a highly competitive market," July 2001 (*www.rurdev.usda.gov/rbs/pub/jul01/niche.htm*). About 80 million bushels of durum wheat were allocated for food use in 2001. Assuming a bushel of wheat yields 42 pounds of pasta, the amount of wheat in food use equals 3,360 million pounds of pasta.

[9] NAICS code 311823, dry pasta manufacturers.

Compared to total imports of pasta, valued at $324 million in 2001, imports of stuffed pasta make up a relatively small proportion.[10] Additionally, tortellini is just one of the many varieties of stuffed pasta. Other varieties include agnolotti, calazoncelli, cappelletti, fazzoletti, ravioli, and tordelli. Each of these has variations, depending on whether the filling ingredients are fish-based, ground meat, vegetables, cheese, mushrooms, or herbs and spices. Although information on the exact amount of each type imported is not available, the share of each is likely to be small.

As a new variant of these products, dry, shelf-stable, pork-filled tortellini is also likely to have a small market. Imports of this product are likely to be too small to have any price effect at the industry level. No direct price competition would be expected if imports were to be initiated because there are no known domestic producers of pork-filled tortellini. Price competition with other filled pasta products is also considered unlikely because, as a new product with a small market, pork-filled tortellini is unlikely to have a major impact on consumer demand for those other products. Allowing imports of pork-filled tortellini may eventually stimulate new competition by encouraging domestic pasta manufacturers to develop a similar product. Consumers could also benefit from having their choices of pasta products expanded.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–003–1. Please send a copy of your comments to: (1) Docket No. 02–003–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Under this proposed rule, a processing facility that produces pork-filled pasta products for export to the United States would have to keep an original record of each lot of pork or pork products used in such pasta products. In addition, the pork-filled pasta would have to be accompanied by a certificate issued by an official of the National Government of the region in which the pasta product is processed who is authorized to issue the foreign meat inspection certificate required under 9 CFR 327.4, stating that the pork-filled pasta product has been processed in accordance with the requirements of paragraphs (c)(1) through (c)(5) of § 94.12.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.25 hours per response.

Respondents: Officials of the National Government of the region in which the meat-filled pasta product is processed.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 20.

Estimated annual number of responses: 100.

Estimated total annual burden on respondents: 125 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

2. In § 94.12, a new paragraph (c) would be added to read as follows:

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

* * * * *

(c) *Requirements for pork-filled pasta products from regions affected with*

[10] Global Trade Information Services, Inc., World Trade Atlas, United States Edition, December 2001.

swine vesicular disease. (1) Pork-filled pasta products processed for export to the United States may only be filled with pork or pork products that are otherwise eligible to be exported to the United States and that meet the requirements of paragraph (b)(1)(i), (ii), or (v) of this section or of § 94.17.

(2) At the pasta processing establishment, pork intended to be used for pork-filled pasta products for export to the United States must be stored in a separate room or facility from any meat or meat products not eligible for export to the United States.

(3) All equipment and machinery that will come in contact with the pork or other ingredients of pork-filled pasta products intended for export to the United States must be cleaned and disinfected before each use.

(4) Processing lines working with pork-filled pasta products for export to the United States must process only pasta containing pork eligible for export to the United States. When such processing lines are working with pasta products containing pork for export to the United States, other lines may work only on pasta products that do not contain meat.

(5) During processing, the pork-filled pasta must be steam-heated to a minimum internal temperature of 90 °C, then dried, cooled, and packed to make the product shelf stable without refrigeration.

(6) The processing facility must allow periodic inspections by inspectors from the Animal and Plant Health Inspection Service of its facilities, records, and operations.

(7) The processing facility must maintain under lock and key, for a minimum of 2 years, an original record of each lot of pork or pork products used for pork-filled pasta products for export to the United States. Each record must include the following:

(i) The date that the cooked or dry-cured pork product was received in the processing facility;

(ii) The number of packages, the number of hams or cooked pork products per package, and the weight of each package;

(iii) A lot number or other identification marks;

(iv) The health certificate that accompanied the cooked or dry-cured pork product from the slaughter/processing facility to the meat-filled pasta product processing facility; and

(v) The date that the pork or pork product used in the pasta started dry curing (if the product used is a dry-cured ham) or the date that the product was cooked (if the product used is a cooked pork product).

(8) The pork-filled pasta must be accompanied by a certificate issued by an official of the National Government of the region in which the pasta product is processed who is authorized to issue the foreign meat inspection certificate required under § 327.4 of this title, stating that the pork-filled pasta product has been processed in accordance with the requirements of paragraphs (c)(1) through (c)(5) of this section. Upon arrival of the pork-filled pasta in the United States, the certificate must be presented to an inspector at the port of arrival.

Done in Washington, DC, this 14th day of January 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–1213 Filed 1–17–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–05–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS350B3 helicopters. This proposal would require inspecting the ASU No. 2 printed circuit board (PCB) to determine if the resistor R8 is installed, and if it is not installed, replacing the PCB with an airworthy PCB with that resistor installed. This proposal is prompted by the discovery of a PCB without a critical resistor that polarizes the voltage regulator that regulates electrical power to a critical warning light, a critical caution light, and the main rotor revolutions per minute (RPM) signal to the vehicle engine management display (VEMD). The actions specified by the proposed AD are intended to prevent the malfunction of the two critical lights and the rotor RPM signal to the VEMD, failure of these components to timely alert the pilot to the associated malfunctions, further helicopter damage because of these malfunctions, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before March 24, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–05–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–05–AD." The postcard will be date stamped and returned to the commenter.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS350B3 helicopters.

The DGAC advises that the absence of a resistor R8 on the ASU No. 2 boards can lead to a malfunction of the electric circuits supplying the "BATT. TEMP." red warning light, the "ENGINE CHIP" amber caution light, and the rotor RPM signal output to the VEMD.

This proposal is prompted by an anomaly discovered by the manufacturer. The actions specified by this proposed AD are intended to prevent failure of the "BATT. TEMP." warning light, which, if combined with a battery overheat, can result in a battery thermal runaway without the pilot's knowledge. An uncontrolled battery thermal runaway can result in an explosion that could cause loss of the control of the helicopter.

Eurocopter has issued Service Bulletin No. 77.00.07, dated March 27, 2000, which specifies checking to determine if the resistor R8 is installed on the PCB within 25 hours time-in-service (TIS) and, if a resistor R8 is not installed, replacing the PCB with one that has a resitor R8 installed within 50 hours TIS. The DGAC classified this service bulletin as mandatory and issued AD No. 2001–319–083(A), dated July 25, 2001, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require, within 15 hours time-in-service (TIS), inspecting the ASU No. 2 PCB on helicopters with serial numbers 3062 and earlier to determine if the resistor R8 is installed, and if it is not installed, replacing the PCB with an airworthy PCB with resistor R8 installed within 50 hours TIS.

The FAA estimates that 30 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost $1,200. The manufacturer states in its service bulletin that PCB's will be replaced free of charge. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $37,800, if a PCB is replaced in the entire fleet and there is no free replacement by the manufacturer.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2002–SW–05–AD.

Applicability: Model AS350B3 helicopters, serial numbers (S/N) 3062 and earlier, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the electrical circuits controlling the "BATT. TEMP." red warning light, the "ENGINE CHIP" amber caution and the rotor revolutions-per-minute (RPM) signal output to the vehicle engine management display (VEMD), accomplish the following:

(a) Within 15 hours time-in-service (TIS), inspect the ASU No. 2 printed circuit board (PCB), part number SE 03022, to determine if resistor R8 is installed.

(b) If the resistor R8 is not installed, within 50 hours TIS, replace the PCB with an airworthy PCB that has resistor R8 installed.

Note 2: Eurocopter Service Bulletin No. 77.00.07, dated March 27, 2000, pertains to the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2001–319–083(A), dated July 25, 2001.

Issued in Fort Worth, Texas, on January 11, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–1191 Filed 1–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA37

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Mutual Funds Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains an amendment to the regulations implementing the statute generally known as the Bank Secrecy Act. The amendment would require mutual funds to report suspicious transactions to the Department of the Treasury. The amendment constitutes a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury.

DATES: Written comments on all aspects of the notice of proposed rulemaking are welcome and must be received on or before March 24, 2003.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC, area may be delayed. Comments submitted by electronic mail may be sent to *regcomments@fincen.treas.gov*, with the caption, in the body of the text, "ATTN: NPRM—Suspicious Transaction Reporting—Mutual Funds." Comments also may be submitted by paper mail to FinCEN, P.O. Box 39, Vienna, Virginia 22183–0039, ATTN: NPRM—Suspicious Transaction Reporting—Mutual Funds. Comments should be sent by one method only. For additional instructions on the submission of comments, *see* **SUPPLEMENTARY INFORMATION** under the heading "Submission of Comments."

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Programs, FinCEN, (202) 354–6400; and Office of Chief Counsel, FinCEN, at (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

The Bank Secrecy Act [1] authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[2] Regulations implementing title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

With the enactment of 31 U.S.C. 5318(g) in 1992,[3] Congress authorized the Secretary of the Treasury to require financial institutions to report suspicious transactions. As amended by the USA Patriot Act, subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further:

> If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—
>
> (i) The financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
>
> (ii) No officer or employee of the Federal government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution—

> That makes a voluntary disclosure of any possible violation of law or regulation to a government agency or a makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States or any constitution, law or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, "to the extent practicable and appropriate," to designate "a single officer or agency of the United States to whom such reports shall be made."[4] The designated agency is in turn responsible for referring any report of a suspicious transaction to "any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism."[5]

B. Overview of Mutual Funds

The application of the proposed rule would be limited to investment companies that are "mutual funds," which are open-end management investment companies as described in the Investment Company Act. Mutual funds are by far the predominant type of investment company. In 2001, approximately $7 trillion was invested in U.S. mutual funds, representing more than 95 percent of the assets held by investment companies regulated by the Securities and Exchange Commission ("SEC").[6] Currently, more than 3000 active mutual funds are registered with the SEC.[7]

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[1] Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5331.

[2] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (the "USA Patriot Act"), Public Law 107–56.

[3] 31 U.S.C. 5318(g) was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (the "Annunzio-Wylie Anti-Money Laundering Act"), title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[4] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency "pursuant to any applicable provision of law." 31 U.S.C. 5318(g)(4)(C).

[5] 31 U.S.C. 5318(g)(4)(B).

[6] The staff of the SEC estimates, based on filings with the SEC, that as of December 2001, approximately $6.97 trillion was invested in U.S. mutual funds (including $741 billion invested in open-end management companies that fund variable life insurance and variable annuity contracts, and $23 billion invested in open-end management companies that are exchange-traded funds).

[7] Approximately 1400 of these funds are "series companies" with an aggregate 7200 portfolios. A "series company" is a registered investment company that issues two or more classes or series of preferred or special stock, each of which is

A mutual fund is typically governed by a board of directors or trustees, which is responsible for overseeing the management of the fund's business affairs. Mutual funds are typically organized and operated by an investment adviser responsible for the day-to-day operations of the fund. In most cases, the investment adviser is a separate and distinct legal entity from the investment company. The investment adviser is primarily responsible for selecting portfolio investments consistent with the objectives and policies stated in the investment company's prospectus. The investment adviser or a third party may provide administrative services to the fund. Mutual funds also employ transfer agents to conduct recordkeeping and related functions.[8]

A mutual fund offers its shares continuously and is required to provide its shareholders the right to redeem at net asset value on a daily basis.[9] Most mutual funds sell their shares to investors through broker-dealers, banks, and other financial intermediaries.[10] Some funds are sold directly through affiliates of the fund itself. If fund shares are sold through an intermediary, the intermediary may maintain an omnibus account with the fund, in which case neither the fund nor its transfer agent has direct contact with the shareholders. The intermediary receives and processes individual investment and redemption requests from its customers, and has access to individuals' trading activity. Although neither the mutual fund nor its transfer agent necessarily knows the identity of individual investors that hold fund shares through a financial intermediary's omnibus account, the intermediary does have access to that information, and may itself have anti-money laundering responsibilities.[11] A foreign broker-dealer without independent anti-money laundering requirements may also maintain omnibus accounts with the fund. This kind of omnibus account falls within the definition of "correspondent account" under section 312 of the Act and as such is subject to due diligence and possibly enhanced due diligence requirements under that section of the Act and implementing regulations.[12]

C. Money Laundering Risks Associated with Mutual Funds

Mutual funds present real opportunities for money laundering. They are widely held, easy to access, and can be redeemed quickly.[13] Indeed, money market funds, which typically offer check writing privileges, function much like bank checking accounts.[14] But because mutual funds rarely receive from or disburse to shareholders significant amounts of currency, they are not as likely as other types of financial institutions (*e.g.*, banks) to be used during the initial (or "placement") stage of the money laundering process.[15] Money laundering is more likely to occur through mutual funds at the later stages of the money laundering process (the "layering" and "integration" stages).[16]

The proposed rule contained in this document is just one of several steps taken by the Department of the Treasury to address comprehensively the risk of money laundering through mutual funds. In April 2002, FinCEN issued an interim final rule requiring mutual funds to develop and implement an anti-money laundering program to prevent them from being used to launder money or finance terrorist activities, which includes achieving and monitoring compliance with the applicable requirements of the Bank Secrecy Act and the Department of the Treasury's implementing regulations.[17] In July 2002, the Department of the Treasury and the SEC jointly issued a proposed regulation to require mutual funds to implement reasonable procedures to (1) verify the identity of any person seeking to open an account, to the extent reasonable and practicable, (2) maintain records of the information used to verify the person's identity, and (3) determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to investment companies by any government agency.[18]

This notice of proposed rulemaking follows other recent actions that expand the application of requirements that financial institutions report suspicious transactions. For example, since April 1996, rules issued by FinCEN under the authority contained in 31 U.S.C. 5318(g) have required banks, thrifts, and other banking organizations to report suspicious transactions.[19] In collaboration with FinCEN, the federal bank supervisors concurrently issued suspicious transaction reporting rules

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preferred over all other classes or series with respect to assets specifically allocated to that class or series. 17 CFR 270.18f–2. The assets allocated to such a class or series are commonly known as a "portfolio." The series or portfolios of a series company operate, for many purposes, as separate investment companies.

[8] Transfer agents maintain records of shareholder accounts, calculate and disburse dividends, and prepare and mail shareholder account statements, federal income tax information, and other shareholder notices. Some transfer agents prepare and mail statements confirming shareholder transactions and account balances, and maintain customer service departments to respond to shareholder inquiries.

[9] Section 5(a) of the Investment Company Act defines an open-end investment company as a management investment company that issues or has outstanding any "redeemable security." 15 U.S.C. 80a–5(a). A redeemable security entitles the holder to receive, upon presentation to the issuer, the holder's approximate proportionate share of the issuer's current net assets, or the cash such share represents. 15 U.S.C. 80a–2(a)(32).

[10] Mutual funds usually offer their shares to the public through a principal underwriter, which is in most cases regulated as a broker-dealer and is subject to rules promulgated by the National Association of Securities Dealers, Inc. With respect to transactions occurring after December 30, 2002, brokers and dealers in securities are required to report suspicious transactions to the Treasury under 31 U.S.C. 5318(g). *See* 31 CFR 103.19 (suspicious transaction reports by securities brokers or dealers).

[11] Broker-dealers in securities and futures commission merchants are subject to the anti-money laundering compliance requirements of the Bank Secrecy Act.

[12] Pursuant to section 312, regulations have been proposed that would require U.S. financial institutions offering correspondent accounts to perform due diligence and, in appropriate circumstances, enhanced due diligence on their correspondents. *See* 67 FR 37736 (May 30, 2002) and 67 FR 48348 (July 23, 2002).

[13] Section 22(e) of the Investment Company Act requires a mutual fund to redeem the value of shares within seven days of receiving a redemption request. 15 U.S.C. 80a–22(e).

[14] *See* Investment Company Act Release No. 17589 (July 17, 1990) (55 FR 30240 (July 25, 1990)).

[15] It is possible that some structuring schemes used in the placement stage will involve monetary instruments such as money orders, and that money launderers could attempt to use mutual funds that accept this form of payment. Although the known experience of depository institutions with significant money laundering is greater than the known experience of mutual funds, this difference may reflect the fact that criminal funds enter mutual funds at a later stage in the laundering process, when those funds are less immediately identifiable than at the placement stage. Past investigative attention, however, has focused more intensively on the "placement" stage of money laundering (especially the suspicious placement into the financial system of large amounts of currency) than on transfers or conversions of illicit funds once they are already in the financial system.

[16] "Layering" involves the distancing of illegal proceeds from their criminal source through the creation of complex layers of financial transactions. Money launderers could use mutual fund accounts to layer their funds by, for example, sending and receiving money and wiring it quickly through several accounts and multiple institutions, or by redeeming fund shares purchased with illegal proceeds and then reinvesting the proceeds received in anther fund. Layering could also involve purchasing funds in the name of a fictitious corporation or an entity designed to conceal the true owners. Mutual funds could also be used to integrate illicit income into legitimate assets. "Integration" occurs when illegal proceeds appear to have been derived from a legitimate source.

[17] *See* 76 FR 21117 (April 29, 2002).

[18] *See* 67 FR 48318 (July 23, 2002). Under the proposed rule, a mutual fund may contractually delegate the implementation and operation of its customer identification program to a service provider such as a transfer agent although the mutual fund would continue to be responsible for its compliance with applicable requirements.

[19] *See* 31 CFR 103.18 (requiring banks, thrifts, and other banking organizations to report suspicious transactions).

under their own authority.[20] The bank supervisory agency rules apply to banks, bank holding companies, and non-depository institution affiliates and subsidiaries of banks and bank holding companies. Money services businesses have been required to report suspicious transactions to the Department of the Treasury since the beginning of 2002. In July 2002, FinCEN took a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, by requiring brokers and dealers in securities to report suspicious transactions.[21] In October 2002, FinCEN issued a final rule requiring casinos to report suspicious transactions. The proposed rule contained in this document would extend this requirement to mutual funds. Suspicious transaction reporting by mutual funds can provide highly useful information in law enforcement and regulatory investigations and proceedings, and in the conduct of intelligence activities to protect against international terrorism.[22]

II. Specific Provisions

A. 103.15(a)—Reports by Mutual Funds of Suspicious Transactions

Section 103.15(a) contains the rules setting forth the obligation of mutual funds to report suspicious transactions that are conducted or attempted by, at, or through a mutual fund and involve or aggregate at least $5,000 in funds or other assets. It is important to recognize that the obligation to report a transaction under this rule and 31 U.S.C. 5318(g) would apply whether or not the transaction involves currency.[23] Treasury is aware that the use of currency by mutual funds is rare.

The obligation extends to transactions conducted or attempted by, at, or through, the mutual fund. However, paragraph (a) also contains language designed to encourage the reporting of transactions that appear relevant to violations of law or regulation, even in cases in which the rule does not explicitly so require (for example, in the case of a transaction falling below the $5,000 threshold in the rule).

Section 103.15(a) contains the general statement of the obligation to file reports. To clarify that the proposed rule creates a reporting requirement that is uniform with that for other financial institutions, the language of the reporting obligation incorporates language from the suspicious activity reporting rules applicable to other financial institutions, such as banks, casinos, and money services businesses, requiring the reporting of "any suspicious transaction relevant to a possible violation of law or regulation." Furthermore, a mutual fund may also report "any suspicious transaction that it believes is relevant to a possible violation of any law or regulation but whose reporting is not required" by the proposed rule. For example, a mutual fund may report a suspected violation of law that involves less than $5,000. Such voluntary reporting would be subject to the same protection from liability as mandatory reporting, pursuant to 31 U.S.C. 5318(g)(3).

The proposed rule requires reporting by mutual funds, but not by affiliated persons of mutual funds. Some affiliates, such as broker-dealers, are subject to their own reporting rule. Others may be subject to future rules.

Mutual funds typically conduct many operations through separate entities, which may or may not be affiliated persons of the mutual fund. Personnel of these separate entities may be in the best position to perform the reporting obligation. It is permissible for a mutual fund to contractually delegate performance of the reporting obligation to another affiliated or unaffiliated service provider, such as a transfer agent. The mutual fund, however, remains responsible for assuring compliance with the rule, and must actively monitor the procedures for reporting suspicious transactions.

Section 103.15 (a)(2) specifies that the proposed rule requires the reporting of suspicious transactions that involve or aggregate at least $5,000 in funds or other assets. The suspicious transaction reporting rules, however, are not intended to operate (and indeed cannot properly operate) in a mechanical fashion. Rather, the suspicious transaction reporting requirements are intended to function in such a way as to have financial institutions evaluate customer activity and relationships for money laundering risks.[24]

Section 103.15(a)(2) specifies four categories of transactions that require reporting if the mutual fund knows, suspects, or has reason to suspect that any such category applies to a transaction, or a pattern of transactions of which the transaction is a part. The "knows, suspects, or has reason to suspect" standard incorporates a concept of due diligence in the reporting requirement.

The first category, described in proposed section 103.15(a)(2)(i), includes transactions involving funds derived from illegal activity, or intended or conducted in order to hide or disguise funds derived from such illegal activity as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation. The second category, described in section 103.15(a)(2)(ii), includes transactions designed, whether through structuring or other means, to evade the requirements of the Bank Secrecy Act. The third category, described in section 103.15(a)(2)(iii), includes transactions that appear to serve no business or apparent lawful purposes, and for which the mutual fund knows of no reasonable explanation after examining the available facts relating to the transaction and the parties. The fourth category, described in section 103.15(a)(2)(iv), includes any other transactions that involve the use of the mutual fund to facilitate criminal activity.[25]

A mutual fund must base its determination as to whether a report is required on all the facts and circumstances relating to the transaction and the customer of the mutual fund in question.[26] Different fact patterns will

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[20] *See* 12 CFR 21.11 (issued by the Office of the Comptroller of the Currency); 12 CFR 208.62 (issued by the Board of Governors of the Federal Reserve System); 12 CFR 353.3 (issued by the Federal Deposit Insurance Corporation); 12 CFR 563.180 (issued by the Office of Thrift Supervision); 12 CFR 748.1 (issued by the National Credit Union Administration).

[21] *See* 67 FR 44048 (July 1, 2002).

[22] *See* 31 U.S.C. 5311 (stating purpose of the reporting authority under the Bank Secrecy Act).

[23] Many currency transactions are *not* indicative of money laundering or other violations of law, a fact recognized both by Congress, in authorizing reform of the currency transaction reporting system, and by FinCEN, in issuing rules to implement that system (*see* 31 U.S.C. 5313(d) and 31 CFR 103.22(d), 63 FR 50147 (September 21, 1998)). Many non-currency transactions, (for example, fund transfers) *can* indicate illicit activity, especially in light of the breadth of the statutes that make money laundering a crime. *See* 18 U.S.C. 1956 and 1957.

[24] Thus, for example, transactions involving investments by the pension fund of a publicly traded corporation, even though involving a large dollar amount, would likely require a more limited scrutiny than less typical transactions such as those involving customers who wish to use currency or money orders to purchase mutual fund shares, even though the dollar amounts in those latter cases may be relatively small.

[25] The fourth reporting category has been added to the suspicious activity reporting rules promulgated since the passage of the USA Patriot Act to make it clear that the requirement to report suspicious activity encompasses the reporting of transactions in which legally derived funds are used for criminal activity, such as the financing of terrorism.

[26] In the case of a transaction conducted through an omnibus account maintained by an intermediary, a mutual fund may not know, suspect, or have reason to suspect that the transaction is one for which reporting would be required, because a fund typically has little or no information about individual customers represented in an omnibus account. Omnibus accounts are,

require different types of judgments. In some cases, the facts of the transaction may indicate the need to report. For example, the fact that a customer refuses to provide information necessary for the mutual fund to make reports or keep records required by this part or other regulations, provides information that the mutual fund determines to be false, or seeks to change or cancel a transaction after such person is informed of information verification or recordkeeping requirements relevant to the transactions, would indicate that a Suspicious Activity Report ("SAR–SF") [27] should be filed.[28] In other situations, determining whether a transaction is suspicious within the meaning of the rule may require a more involved judgment. Transactions that raise the need for such judgment may include, for example, (i) transmission or receipt of funds transfers without normal identifying information, or in a manner that indicates an attempt to disguise or hide the country of origin or destination, or the identity of the customer sending the funds, or the beneficiary to which the funds are sent; or (ii) repeated use of a mutual fund as a temporary resting place for funds from multiple sources without a clear business purpose. The judgments involved will also extend to whether the facts and circumstances and the institution's knowledge of its customer provide a reasonable explanation for the transaction that removes it from the suspicious category.

The means of commerce and the techniques of money launderers are continually evolving, and there is no way to provide an exhaustive list of suspicious transactions. FinCEN intends to continue its dialogue with mutual funds about the manner in which a combination of government guidance, training programs, and government-industry information exchange can smooth the way for operation of the new suspicious activity reporting system in as flexible and cost-efficient a way as possible.

Individual mutual funds are frequently part of a complex of related funds, and it is possible that more than one mutual fund would be obligated to report the same transaction. Section 103.15(a)(3) of the proposed rule would permit all of the mutual funds involved in a particular transaction to file a single report as long as the report contains all relevant facts. Moreover, a person such as a broker-dealer that is a service provider to the fund may have a separate suspicious activity reporting obligation with regard to the same transaction. The proposed rule would permit the mutual fund's report to satisfy that person's reporting obligation as well. Thus, a service provider to which multiple mutual funds have contractually delegated their reporting obligation may file a single report on behalf of itself and all of the funds involved in the same transaction or series of transactions.

B. 103.15(b)—Filing Procedures

Section 103.15(b) sets forth the filing procedures to be followed by mutual funds making reports of suspicious transactions. Within 30 days after a mutual fund becomes aware of a suspicious transaction, the fund must report the transaction by completing a SAR–SF, collecting and maintaining supporting documentation, and filing the SAR–SF in a central location, to be determined by FinCEN. The SAR–SF will resemble the SAR used by banks to report suspicious transactions, and a draft form will be made available for comment by publication in the **Federal Register**.

If the mutual fund does not identify a suspect on the date of the initial detection, the mutual fund may delay filing a SAR–SF for an additional 30 days, but may not delay filing more than 60 days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the mutual fund should telephone the appropriate law enforcement authority and the SEC in addition to filing a SAR–SF.

C. 103.15(c)—Retention of Records

Section 103.15(c) provides that filing mutual funds must maintain copies of SAR–SFs and the original related documentation for a period of five years from the date of filing. As indicated above, supporting documentation is to be made available to FinCEN, the SEC, and other appropriate law enforcement and regulatory authorities on request.

D. 103.15(d)—Confidentiality of Reports

Section 103.15(d) reflects the statutory bar against the disclosure of information filed in, or the fact of filing, a suspicious activity report (whether the report is required by the proposed rule or is filed voluntarily). *See* 31 U.S.C. 5318(g)(2). Thus, the paragraph specifically prohibits persons filing SAR–SFs from making any disclosure, except to law enforcement and regulatory agencies, about either the reports themselves or supporting documentation.

This paragraph does not prohibit mutual funds from discussing with each other (or with service providers that are involved in the transaction, such as their investment advisers, transfer agents, principal underwriters, and broker-dealers) for purposes of section 103.15(a)(3), suspicious activity involving a transaction with which the mutual funds have been involved, or the determination of which mutual fund will file a SAR–SF in such a case.

E. 103.15(e)—Limitation of Liability

Section 5318(g) of title 31, as amended by the USA Patriot Act, provides protection from liability for making reports of suspicious transactions, and for failures to disclose the fact of such reporting to persons involved in such transactions. The safe harbor provision of 31 U.S.C. 5318(g) clearly protects any financial institution from civil liability for reporting suspicious activity.[29] Section 351 of the USA Patriot Act clarifies that the safe harbor applies also to the voluntary reporting of suspicious transactions, and section 103.15(e) of the proposed rule reflects this clarification.

It must be noted that, while the proposed rule reiterates and clarifies the broad protection from liability for making reports and for failures to disclose the fact of such reporting that is contained in the statutory safe harbor provision, the regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection. Inclusion of safe harbor language in the proposal is in no way intended to suggest that the safe harbor can override the non-disclosure provisions of the law and regulations. The prohibition on disclosure (other than as required by the proposed rule) applies regardless of any protection from liability.

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however, usually maintained by a person, such as a broker-dealer, that has a reporting obligation. The omnibus account holder (*i.e.*, the financial intermediary) is itself a customer of the mutual fund for purposes of the proposed rule.

[27] The term "SF" is an abbreviation for "Securities and Futures Industry," the form that will be used for reporting by members of the securities and futures industry. *See* 67 FR 50751 (August 5, 2002).

[28] As section 103.15(d) of the proposed rule makes clear, the mutual fund must not notify the customer that it intends to file or has filed a suspicious transaction report with respect to the customer's activity.

[29] *See Lee* v. *Bankers Trust Co.*, 166 F.3d 540, 544 (2nd Cir. 1999) (stating that in enacting 31 U.S.C. 5318(g), Congress "broadly and unambiguously provide[d] * * * immunity from any law (except the federal Constitution) for any statement made in a SAR by anyone connected to a financial institution").

F. 103.15(f)—Examinations and Enforcement

Section 103.15(f) notes that the Department of the Treasury or its delegate will examine compliance with the obligation to report suspicious transactions, and provides that failure to comply with the rule may constitute a violation of the Bank Secrecy Act and the Bank Secrecy Act regulations. In examining any particular failure to report a transaction as required by this section, FinCEN and the SEC may take into account the relationship between the particular failure to report and the adequacy of the implementation and operation of a mutual fund's compliance procedures.

G. 103.15(g)—Effective Date

Finally, section 103.15(g) provides that compliance with the new suspicious activity reporting rule would be required by a date 180 days after the date on which the final regulations discussed in this notice of proposed rulemaking are published in the **Federal Register**.

III. Submission of Comments

FinCEN invites comment on all aspects of the proposed regulation. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

IV. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities. Investment companies, regardless of their size, are currently subject to the Bank Secrecy Act. Procedures currently in place at mutual funds to comply with existing Bank Secrecy Act rules should help mutual funds to identify suspicious transactions. In addition, the limited use of currency to purchase mutual fund shares will likely reduce the number of suspicious activity reports required to be filed. Finally, certain small mutual funds may have an established and limited customer base whose transactions are well known to the fund.

V. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

VI. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

VII. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified. Comments on the collection of information should be received by March 24, 2003. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if adopted as proposed, would result in the annual filing of a total of 3,000 suspicious activity reports by mutual funds. This result is an estimate based on the estimated number of respondents under the rule.

Description of Respondents: Mutual funds as defined in 31 CFR 103.15(a).

Estimated Number of Respondents: 3,000.

Frequency: As required.

Estimate of Burden: The reporting burden of 31 CFR 103.15 will be reflected in the burden of the form used by mutual funds to report suspicious transactions. The recordkeeping burden of 31 CFR 103.15 is estimated as an average of 3 hours per form, which includes internal review of records to determine whether the activity requires reporting.

Estimated Total Annual Recordkeeping Burden: 9,000 hours.

FinCEN specifically invites comments on: (a) Whether the proposed recordkeeping requirement is necessary for the proper performance of the mission of FinCEN, and whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the recordkeeping requirement, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

In addition the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In connection with this, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Securities, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 352, Pub. L. 107–56, 115 Stat. 307.

§ 103.15 [Redesignated as § 103.12]

2. In subpart B, redesignating § 103.15 as § 103.12.

3. In subpart B, add new § 103.15 to read as follows:

§ 103.15 Reports by mutual funds of suspicious transactions.

(a) *General.* (1) Every investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–2) ("Investment Company Act") that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to that Act (for purposes of this section, a "mutual fund"), shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A mutual fund may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a mutual fund from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a mutual fund, it involves or aggregates funds or other assets of at least $5,000, and the mutual fund knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the mutual fund knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the mutual fund to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each mutual fund involved in the transaction, provided that no more than one report is required to be filed by the mutual funds involved in a particular transaction or any other person obligated to report the transaction, so long as the report filed contains all relevant facts.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report—Investment Companies ("SAR–SF"), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SAR–SF shall be filed with FinCEN in a central location, to be determined by FinCEN as indicated in the instructions to the SAR–SF.

(3) *When to file.* A SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting mutual fund of facts that may constitute a basis for filing a SAR–SF under this section. If no suspect is identified on the date of such initial detection, a mutual fund may delay filing a SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, mutual funds are encouraged to immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–SF. Mutual funds wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–SF if required by this section. The mutual fund may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) *Retention of records.* A mutual fund shall maintain a copy of any SAR–SF filed and the original (or business record equivalent) of any supporting documentation for a period of five years from the date of filing the SAR–SF. Supporting documentation shall be identified as such and maintained by the mutual fund, and shall be deemed to have been filed with the SAR–SF. The mutual fund shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies, or federal or state securities regulators upon request.

(d) *Confidentiality of reports.* No mutual fund, and no director, officer, employee, or agent of any mutual fund, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any person subpoenaed or otherwise required to disclose a SAR–SF or the information contained in a SAR–SF, except where such disclosure is requested by FinCEN, the Securities and Exchange Commission, or another appropriate law enforcement or regulatory agency, shall decline to produce the SAR–SF or to provide any information that would disclose that a SAR–SF has been prepared or filed, citing this paragraph (d) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(e) *Limitation of liability.* A mutual fund, and any director, trustee, officer, employee, or agent of any mutual fund, who makes a report of any possible violation of law or regulation pursuant to this section or any other authority (whether such report is required or is made voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the extent also provided in 31 U.S.C. 5318(g)(3)) for any disclosure contained in, or for failure to disclose the fact of, such report.

(f) *Examinations and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(g) *Effective date.* This section applies to transactions occurring 180 days after the date on which the final regulations discussed in this notice of proposed rulemaking are published in the **Federal Register**.

Dated: January 14, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–1174 Filed 1–17–03; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–068–7225b; A–1–FRL–7440–9]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; New Source Review/ Prevention of Significant Deterioration Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Connecticut Department of Environmental Protection (DEP). The revisions include new provisions that implement the core requirements of 1990 Clean Air Act Amendments (CAAA) regarding nonattainment New Source Review (NSR) in areas that have not attained the National Ambient Air Quality Standards (NAAQS). In addition, the changes amend the applicability requirements and certain other requirements of the Prevention of Significant Protection (PSD) program and NSR rules. Finally, the changes provide a definition for "Practicably Enforceable" that would allow sources a streamlined approach to limit potential to emit for PSD/NSR applicability purposes. In aggregate, these revisions will substantially strengthen the DEP's air permitting rules.

This action proposes to approve the revisions to section 22a–174–1, "Definitions," section 22a–174–2a, "Procedural Requirements for New Source Review and Title V Permitting," and section 22a–174–3a, "Permit to Construct and Operate Stationary Sources." This action is being taken in accordance with the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before February 11, 2003.

ADDRESSES: Comments may be mailed to Steven A. Rapp, Manager, Air Permits, Toxics and Indoor Programs, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, 1 Congress Street—Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 West, 1301 Constitution Avenue, NW., Washington DC and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Brendan McCahill, (617) 918–1652; email at *McCahill.Brendan@EPA.GOV*.

SUPPLEMENTARY INFORMATION: On May 23, 1994, the DEP formally submitted revisions to its SIP for the purposes of meeting the 1990 CAAA requirements for nonattainment NSR. Due to various issues with these revisions and the pre-existing state rules, EPA did not take action on this SIP submittal. On June 14, 2002, after completing a top to bottom review of its entire state permitting program, the DEP formally withdrew the May 23, 1994 submittal and submitted new revisions to its SIP.

EPA has recently promulgated revisions to certain portions of the federal PSD and nonattainment NSR regulations (67 FR 80244 (Dec. 31, 2002). These rules have an effective date of March 3, 2003. With respect to Connecticut's rules relating to new source review, EPA has determined that Connecticut's rules meet the requirements of 40 CFR part 51, subpart I, as currently in effect, and is taking no position on whether Connecticut will need to make changes to its new source review rules to meet requirements that EPA has promulgated, but are not yet effective, as part of new source review reform.

The rule revisions proposed for approval today are the product of a comprehensive, multi-year, stakeholder process intended to increase the effectiveness of Connecticut's program. The rules proposed for approval include important flexibility provisions discussed below, including provisions that provide a framework for establishing "practicably enforceable" limits on "potential to emit" and provisions allow sources to consider decreases in emissions as well as increases in determining applicability. Not only do the rules proposed for approval increase flexibility, but they also enhance the enforceability of the state program. Therefore, EPA believes it is appropriate to propose approval of these rules under the rules that are currently in effect in order to significantly strengthen the state program.

I. Revisions to the Nonattainment NSR Rules

A. What Is Nonattainment NSR?

The CAA requires new major sources and major modifications to existing major sources to obtain an air pollution permit before commencing construction. The nonattainment NSR rules are the set of regulations specifying the minimum permit requirements for new major sources or major modifications in areas that are in nonattainment of the NAAQS. The nonattainment NSR rules include two major elements: (1) Requirements that subjected sources obtain emission reductions ("offsets") from existing sources to ensure a progression toward achieving the NAAQS and; (2) requirements that sources apply controls that achieve Lowest Achievable Emission Rate (LAER) to ensure emissions are controlled to the greatest degree possible.

B. Why Does Connecticut Need To Revise Its Rules?

In 1990, Congress revised the CAA to include new general requirements that apply to all nonattainment areas and additional requirements that apply to ozone nonattainment areas. In particular, the amended provisions for NSR in ozone nonattainment areas require substantially more stringent applicability and offset requirements over the pre-1990 NSR requirements. All portions of Connecticut are currently designated as nonattainment areas for ozone.

C. Where Can One Locate Additional Information on the General Requirements for Nonattainment NSR?

The air quality planning requirements for nonattainment NSR are set out in part D of subchapter I of the CAA The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those state submittals containing nonattainment area NSR SIP requirements (*see* 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because this notice describes EPA's interpretations only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in today's proposal and the supporting rationale.

D. How Did Connecticut Satisfy the General NSR Requirements?

The general nonattainment NSR requirements are found in sections 172 and 173 of part D of subchapter I of the

Act and must be met by all nonattainment areas. The following paragraphs reference the nonattainment NSR requirements required to be submitted to EPA by November 15, 1992 and explain how Connecticut's rules meet those requirements. Connecticut's existing SIP already contained some of these provisions while others are being proposed for approval today.

1. Section 22a–174–3a(l)(5)(D), establishes provisions in accordance with section 173(a)(1)(A) of the CAA to assure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of Reasonable Further Progress (RFP).

2. Section 22a–174–3a(l)(4)(B)(viii) establishes provisions in accordance with section 173(c)(1) of the CAA to allow offsets to be obtained in another nonattainment area if: (i) The area has an equal or higher nonattainment classification and, (ii) emissions from the other nonattainment area contribute to an NAAQS violation in the area in which the source would construct.

3. Section 22a–174–3a(l)(4)(B)(i)&(iii), establishes provisions in accordance with sections 173(a) and 173 (c)(1) of the CAA that any emissions offsets obtained in conjunction with the issuance of a license to a new or modified source shall be federally enforceable before permit issuance and must be in effect and enforceable by the time the new or modified source commences operation.

4. Sections 22a–174–1(26), "CERC," 22a–174–3a(l)(4)(B)(ii) &, 22a–174–3a(l)(5), establish provisions in accordance with section 173(c)(1) of the CAA to assure that emission increases from new or modified sources are offset by real reductions in actual emissions.

5. Sections 22a–174–1(26), "CERC," 22a–174–3a(l)(4)(B)(ii) &, 22a–174–3a(l)(5) establishes provisions in accordance with section 173(c)(2) of the CAA to prevent emissions reductions otherwise required by the Act from being credited for purposes of satisfying part D offset requirements.

6. The 1990 CAAA modified the Act's provisions on growth allowances in nonattainment areas by (1) Eliminating existing growth allowances in the nonattainment area that received a notice prior or subsequent to the Amendments that the SIP was substantially inadequate; and (2) restricting growth allowances to only those portions of nonattainment areas formally targeted as special zones for economic growth (Sections 173(b) and 173(a)(1)(B) of the CAA). Connecticut's regulations do not contain provisions for growth allowances and are consequently consistent with the Act.

7. Connecticut has a practice of supplying information from nonattainment NSR licenses to EPA's RACT/BACT/LAER clearinghouse in accordance with section 173(d) of the CAA.

8. Section 22a–174–3a(l)(6) establishes provisions, in accordance with section 173(a)(3) of the CAA, to ensure that owners or operators of each proposed new or modified major stationary source demonstrate, as a condition of license issuance, that all other major stationary sources under the same ownership in the State are in compliance with the CAA.

9. Section 22a–174–3a(l)(2) establishes provisions in accordance with section 173(a)(5) of the CAA that, as a prerequisite to issuing any Part D permit, require an analysis of alternative sites, sizes, production processes and environmental control techniques for proposed sources that demonstrate that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, and modification.

10. Section 22a–174–3a(l)(8)(A) establishes provisions in accordance with section 173(a)(4) of the CAA that, as a prerequisite to issuing any Part D permit, the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the proposed nonattainment area in which the proposed source is to construct or be modified.

E. What Are the Requirements for NSR in Ozone Nonattainment Areas?

As mentioned, the general nonattainment NSR requirements found in sections 172 and 173 of part D of subchapter I of the Act must be met by all nonattainment areas. The requirements for ozone nonattainment areas that supplement or supersede these requirements are found in subpart 2 of part D. In addition to requirements for ozone nonattainment areas, subpart 2 includes section 182(f), which states that requirements for major stationary sources of VOC shall apply to major stationary sources of oxides of nitrogen (NO_X) unless the Administrator makes certain determinations related to the benefits or contribution of NO_X control to air quality, ozone attainment, or ozone air quality. States were required under section 182(a)(2)(C) to adopt new NSR rules for ozone nonattainment areas by November 15, 1992.

F. How Did Connecticut Comply With the Subpqrt 2 Requirements?

Pursuant to section 172(c)(5) of the CAA, State implementation plans must require permits for the construction and operation of new or modified major stationary sources in nonattainment areas. The federal statutory permit requirements for ozone nonattainment areas are generally contained in revised section 173, and in subpart 2 of subchapter I, part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For all classifications of ozone nonattainment areas, States must adopt the appropriate major source thresholds and offset ratios, and must adopt provisions to ensure that any new or modified major stationary source of NO_X satisfies the requirements applicable to any major source of VOC, unless a special NO_X exemption is granted by the Administrator under the provision of section 182(f).

Connecticut was required to meet the subpart 2 requirements because all portions of the state are designated as in nonattainment for ozone. Most of Connecticut is designated as in "serious" nonattainment, except for southwest Connecticut, which is designated as in "severe" nonattainment. The following paragraphs reference the serious and severe ozone nonattainment requirements that Connecticut was required to submit to EPA by November 15, 1992 and how Connecticut has met those requirements.

1. Section 22a–174–1(57) "Major Stationary Source," establishes provisions in accordance with the serious nonattainment area requirements provided in sections 182(c) and 182(f) of the CAA, by setting a major source threshold level of 50 TPY for VOC and for NO_X.

2. Section 22a–174–1(57) "Major Stationary Source," establishes provisions in accordance with the severe nonattainment area requirements provided in sections 182(d) and 182(f) of the CAA, by setting a major source threshold level of 25 TPY for VOC and for NO_X.

3. Section 22a–174–1 (55) "Major Modification," establishes provisions in accordance with the serious and severe nonattainment area requirements provided in sections 182(c)(6) and 182(d) of the CAA, by setting a major modification threshold level of 25 TPY for VOC and for NO_X.

4. Section 22a–174–3a(l)(4)(B)(x) establishes provisions in accordance with the serious nonattainment areas

provided in sections 183(c)(10) and 182(f) of the CAA, by setting an offset ratio of 1.2 to 1 for major sources or major modifications of VOC or NO_X.

5. Section 22a–174–3a(l)(4)(B)(x) establishes provisions in accordance with the severe nonattainment areas provided in sections 183(d)(2) and 182(f) of the CAA, by setting an offset ratio of 1.3 to 1 for major sources or major modifications of VOC or NO_X.

6. Connecticut's regulations do not include provisions that apply EPA's special rules for modifications as defined in sections 182(c)(7) and (8) of the CAA. The special rules for modifications are optional, less stringent applicability/permitting requirements that apply to a small number of modifications in serious and severe nonattainment areas. By not including provisions for section 182(c)(7) and (8), DEP's rules are more stringent than the CAA. Since the DEP rules only allows the most stringent applicability/permitting option, its SIP meets the federal requirements.

G. What Provisions of the 1990 CAAA Has Connecticut Not Properly Addressed?

For serious and severe ozone nonattainment areas, State plans must implement section 182(c)(6) with regard to modifications of major sources. Commonly referred to as the *de minimis* rule, the provision requires state permitting authorities to submit rules that require sources to consider all contemporaneous emission changes occurring within the last five calender years of a physical change when determining if the change is major modification.

As noted above, Connecticut contains serious and severe nonattainment areas and therefore must implement the de-minimis rule. However, the DEP's SIP submittal is not clear regarding implementation of this rule. The rule only requires sources to keep records of de-minimis emission increases but does not explain how these emissions will be used to define a major modification. As a result, the DEP's NSR rules do not completely satisfy the requirements of the CAA. Since this submittal includes the remaining NSR requirements of the CAA and substantially strengthens the DEP's SIP, EPA is proposing to approve as a SIP strengthening measure all portions of the submittal except for the provisions for the de-minimis rule. EPA intends to work with DEP to develop an approvable de-minimis provision in the future.

II. Revisions to the Major Modification Applicability Requirements for the PSD Program and Nonattainment NSR Rules

A. How Does EPA Define a Major Modification Under Its Rules That Are in Effect?

EPA defines a major modification as a physical change or a change in the method of operation of a major stationary source that results in a significant net emissions increase. EPA's definition for net emission increase consists of two additive components: (a) Any increase in actual emissions from a particular physical change or change in method of operation and; (b) any other increase or decrease in actual emissions at the source that are contemporaneous with the particular change and are creditable. If the resultant net emissions increase is greater than the significance level for any Title I regulated pollutant, the physical change is a major modification and subject to PSD/NSR requirements.

The first component of net emission increase narrowly includes only the emission increase associated with a particular change at the source. When calculating the emission increase, EPA's rules in effect generally employ what is commonly called the actual-to-potential test (special provisions in effect for electric utility steam generating units are discussed below). The maximum potential emissions from a modified emission unit after the modification is compared to the actual emissions from the emission unit before the modification. The difference between the unit's potential emissions and its current actual emissions is the actual emission increase from the modification.

The second component allows sources to broadly include changes in actual emissions that have occurred anywhere at the source within the contemporaneous period, typically defined by state rules as five years from the time of the modification under review. It provides sources the opportunity to avoid major PSD/NSR applicability by giving a source credit for reducing emissions at other emission units located anywhere at its facility. If the actual emission increase from the modification under review combined with emission decreases source-wide are below significance level for any given regulated pollutant, the modification is not major and not subject to PSD/NSR. When employing component two, federal rules also require sources to include any creditable emission increases occurring source-wide when calculating the net emission increase.

B. Why Is Connecticut Changing Its Rules?

The DEP's existing SIP-approved rules use a different approach for calculating the emission increase from a modification. Instead of the actual-to-potential test, the DEP uses the potential-to-potential test. This method compares the emission units potential before the modification with its potential after the modification. The DEP also does not allow sources the option to take credit for emission changes occurring source-wide. Adopting provisions that reflect the EPA rules that are currently in effect significantly improves Connecticut's program.

C. How Does Connecticut's Submittal Meet the Federal Requirements?

EPA's "actual to potential" applicability test and "net emissions increase" requirements for PSD/NSR applicability are established in the federal definitions for "Actual emissions," "Potential emissions," "Net emission increase," and "Significant emissions." In section 22a–174–1, the DEP is adopting with minor revisions the definitions for "Actual emissions," "Net emission increase," and "Significant emissions" located in 40 CFR 51.165 and 51.166. In addition, the DEP is adopting a definition of "Potential emissions" that requires sources to effectively limit PTE using either federally or practicably enforceable limits. With these definitions, the DEP's PSD/NSR applicability requirements are consistent with existing federal requirements.

EPA notes that federal applicability requirements also provide a separate applicability method for sources defined as electric steam utility generators. For this source category, EPA regulation applies an actual-to-representative actual emissions test. A sources current actual emissions are compared to the source's predicted future actual emissions to determine the emission increase from a modification.

The provisions for this applicability test, referred to as the WEPCO applicability test, were added to the federal NSR regulations following the Seventh Circuit Court of Appeals decision in 1990 ((*Wisconsin Electric Power Company (WEPCO)* v. *Reilly*)). These provisions include definitions for "electric steam utility generator" and "representitive actual annual emissions." While these definitions are referred to in the DEP's new definition of actual emissions, the DEP did not explicitly define these two terms.

However, the DEP's interpretation of state law provides it the authority to implement all provisions of the federal "actual emissions" definition that is incorporated by reference into its rules. This authority extends to the definitions for "Electric steam utility generator" and "Representative actual annual emissions" that are referenced in the federal definition but not explicitly defined in the state rule. Consequently, the DEP's rules comply with all provisions of the federal definition for "actual emissions" including the provisions for the WEPCO applicability test.

III. Revisions That Make Various Definitions Used in the State's Nonattainment NSR Rules and PSD Program Consistent With Federal Definitions

A. What Definitions Is the DEP Adding or Revising?

The DEP is adding or revising definitions to clarify general requirements of its permitting rules and to make the rules consistent with the federal permitting requirements. The list of new or revised definitions includes: Allowable Emissions; Baseline concentration; Begin Actual Construction; Commence construction; Construction; Emission limitation and emission standard; Emissions Unit; Excessive concentration; Federally enforceable; Good engineering practice; Innovative control technology, Malfunction; Secondary emissions; and Volatile organic compound.

Several definitions and other terms in Connecticut's rules reference EPA's NSR and PSD rules in the Code of Federal Regulations (CFR). Under Connecticut law, when the reference is to a CFR section "as amended from time to time," the reference is intended to incorporate amendments to the CFR made subsequent to state publicly noticing its proposal to adopt these rules. When the reference is simply to the CFR, it is to the EPA rules in effect as of July 17, 2001, which is the date DEP publicly noticed the proposed rule amendments.

B. How Will These Definitions Affect Permitting in Connecticut?

The DEP's decision to incorporate the federal permitting program definitions under 40 CFR 51.100–166 will ensure the DEP's permit procedures and permit decisions will be consistent with federal requirements. In addition, EPA policies and guidance will be directly applicable to the DEP's rules ensuring more consistent program implementation and improved program compliance.

For further details concerning the revisions to Connecticut's SIP and EPA's analysis, please refer to the memorandum from Brendan McCahill, Environmental Engineer, to Steven Rapp, Manager, Air Permits Program entitled, "Technical Support Document—Connecticut New Source Review/Prevention of Significant Deterioration Program Revisions," dated January 10, 2003, available upon request from the EPA regional office noted in the **ADDRESSES** section of this document.

IV. Proposal To Approve Revisions To Allow Sources To Limit Potential To Emit (PTE) Through Practicably Enforceable Limitations

A. Why Is PTE Important?

As explained in section II, the emissions increase from a modification is the difference between an emission unit's PTE after the modification and its actual emissions before the modification. Therefore, the rules governing how PTE limits are created and enforced is critically important in any PSD/NSR applicability determination. EPA defines "potential to emit" as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Absent an inherent physical or operational restriction, EPA calculates PTE assuming the source operating full time (*i.e.*, 8760 hours/year) at its maximum emission rate. Federal rules allow sources to overcome this assumption by accepting physical or operation restrictions that limit PTE. Typically, sources accept PTE limits to reduce the net emission increase from a modification and avoid NSR applicability. For example, a source may accept a restriction on hours of operation (*e.g.*, 4000 hours/year) if the restriction results in a PTE that reduces the net emission increase calculation to below the NSR/PSD applicability, threshold levels.

Up to 1995, EPA's NSR and PSD rules required limits on PTE to be federally enforceable. The term "federally enforceable" incorporates two fundamental elements. First, EPA must have direct right to enforce restrictions and limitations. Second, limits must be enforceable as a practicable manner or "practicably enforceable." EPA has issued several guidance documents explaining the requirements of practicably enforceable. In brief, EPA has interpreted "practicably enforceable" to mean that sufficient monitoring, recordkeeping and reporting exists such that the source and/or permitting authority can show continual compliance with the emission limitation.

EPA's requirement that a PTE limitation that keeps a source out of a CAA requirement must be federally enforceable was legally challenged by industry. In *Chemical Manufacturer's Association* V. *EPA*, No. 89–1514 (D.C. Cir. Sept. 15 1995), the court vacated the EPA's requirements that physical or operational restrictions on a source's PTE be federally enforceable. As a result, states may develop and submit for EPA approval NSR/PSD programs under 40 CFR 51.165/51.166 that include provisions for state-enforceable PTE limits provided that the provisions are practicably enforceable and effectively limit the source's emissions.

B. What Are Connecticut's Provisions Regarding PTE?

The DEP's new definition of "practicably enforceable" will allow sources the option of taking either federally enforceable or practicably enforceable PTE limits. In developing this definition, the DEP closely followed EPA's guidance on practicably enforceable limitations in a January 25, 1995 memorandum from John Sietz, director of the Office of Air Quality Planning and Standards entitled "Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and title V of the Clean Air Act." The policy specifies the following minimum elements required for a practicably enforceable limitation: (1) A technically accurate limitation and identifying the portions of the source subject to the limitation; (2) the time period for the limitation and; (3) the method to determine compliance including appropriate monitoring, recordkeeping and reporting. The DEP worked closely with EPA to ensure its definition followed EPA guidance on practicably enforceable limits and included these three minimum requirements. As a result, in the absence of any federal rules reimposing mandated federally enforceable PTE limits, EPA proposes to approve the DEP's "practicably enforceable" definition.

V. Proposed Action

EPA is proposing to approve the SIP revision submitted by Connecticut on June 14, 2002.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New

England Regional Office listed in the **ADDRESSES** section of this action. Comments must be received on or before February 11, 2003. Comments received after this date will be considered late. EPA is not required to consider late comments.

VI. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 10, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–1239 Filed 1–17–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7440–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete a portion of the Former Nansemond Ordnance Depot Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region III announces its intent to delete soil in the Impregnation Kit Area of the Former Nansemond Ordnance Depot site (Nansemond) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). EPA and the Commonwealth of Virginia (Commonwealth), acting through the Department of Environmental Quality, have determined that all appropriate CERCLA response actions have been implemented for the soil and that no further action for soil is appropriate. This partial deletion pertains only to the soil in the Impregnation Kit Area and does not include the ground water beneath the Impregnation Kit Area, nor any other portion of Nansemond.

DATES: EPA will accept comments concerning its proposal for partial deletion until February 20, 2003, and publication of a notice of availability of this document in a newspaper of record.

ADDRESSES: Comments may be submitted to Mr. Robert Thomson, PE, Remedial Project Manager, U.S. EPA, Region III (3HS13), 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, Telephone: (215) 814–3357, e-mail *thomson.bob@epa.gov.*

Information Repositories: Comprehensive information on the Nansemond site, information specific to this proposed partial deletion, the Administrative Record and the Deletion Docket for this partial deletion are available for review at the following Nansemond document/information repositories:

Tidewater Community College (Frederick Campus) Library, Information Desk, 7000 College Drive, Portsmouth, Virginia 23703, (757) 822–2130, Hours of Operation: Monday through Thursday 8 a.m. to 9 p.m., Friday 8 a.m. to 4:30 p.m. and Saturday 9 a.m. to 1 p.m.

U.S. EPA Region III Library, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5254, Hours of Operation: Monday through Friday 8 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Thomson, PE, Remedial Project Manager, U.S. EPA Region III (3HS13), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3357, e-mail *thomson.bob@epa.gov.*

SUPPLEMENTARY INFORMATION:

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II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

I. Introduction

The United States Environmental Protection Agency (EPA) Region III announces its intent to delete a portion of the Former Nansemond Ordnance Depot site (Nansemond) located in

Suffolk, Virginia from the National Priorities List (NPL) and requests comments on this proposal. The NPL constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. This proposal for partial deletion pertains to the soil in the Impregnation Kit Area of Nansemond.

Nansemond is located in Suffolk, Virginia, near the northwestern end of State Route 135. It was once a U.S. military facility. It is situated at the mouth of and to the east of the Nansemond River, on the south side of Hampton Roads, and contains approximately 975 acres. It is bordered to the west by the Nansemond River, to the north by the James River (Hampton Roads) and to the east by Streeter Creek.

The Impregnation Kit Area (also known as the "Impregnite Kit" or "XXCC3" area) is an approximately 300,000 square foot, rectangular area in the southwestern portion of Nansemond, about 1000 feet from the Nansemond River. Only soil in this area is proposed for deletion from the NPL; ground water beneath the Impregnation Kit Area is not proposed for deletion.

The U.S. Department of the Army apparently disposed of "impregnation" or "impregnite" kits in this area. Impregnation kits consist of two substances: (a) XXCC3, which is a fine, white, granular, crystal powder consisting of 90–92% octachlor carbonilide ($C_{13}H_4Cl_8N_2O$) and 8–10% zinc oxide, and (b) a "honey-like syrup" or "black waxy material." XXCC3 was used to neutralize chemical agents, and the impregnation kits disposed of in the Impregnation Kit Area were probably used as a protective coating on an under garment for older military issue chemical suits. EPA found several hazardous substances in the soil of the Impregnation Kit Area at concentrations greater than background concentrations, including zinc (11,100 milligrams per kilogram), carbon tetrachloride (20,700 micrograms per kilogram (ug/kg)), chloroform (20,600 ug/kg), and TNT (279 ug/kg).

A contractor for the United States Army Corps of Engineers (the Corps) removed the buried kits and surrounding contaminated soil in December 1998 and January 1999. In all, the contractor removed 857 tons of impregnation kits and associated soil. Confirmation sampling shows that the contractor successfully removed the impregnation kits and associated contaminated soil. In the process, the Corps and EPA found that disposal activities and associated soil contamination were limited to a circle approximately 270 feet in diameter, covering 57,255 square feet, rather than 300,000 square feet, as originally estimated in EPA's Final Hazard Ranking System ("HRS") Package. No further response action is appropriate to protect human health, welfare, and the environment in relation to the soil in the Impregnation Kit Area (all 300,000 square feet) and, therefore, EPA proposes to delete the soil in this area from the NPL.

Ground water beneath the Impregnation Kit Area has not been fully characterized and is not proposed for deletion from the NPL. Although some sampling and evaluation has been completed, more study is needed to better understand whether the ground water is contaminated and, if so, to what extent. Hazardous substances, including explosives, have been detected in ground water at other locations within Nansemond. It has not been clearly demonstrated that hazardous substances, pollutants or contaminants have been, or continue to be, released into the ground water beneath the Impregnation Kit Area at levels of concern to human health or the environment. Data gathered so far do not appear to indicate unacceptable human health threats from ground water beneath the Impregnation Kit Area, except perhaps if used for drinking water. Accordingly, the present owner of the property has agreed to prohibit drinking of ground water beneath the Impregnation Kit Area through a restrictive covenant, or similar legal device, in a deed. In addition, a City of Suffolk ordinance, section 90–126, requires all new premises, buildings or dwellings abutting a city water main to connect to the water main. This means that, under current law, any new buildings on the Impregnation Kit Area would connect to the city water main, reducing the likelihood that people would choose to drill wells and use ground water beneath the Impregnation Kit Area. The EPA and Corps plan future investigations to determine whether the ground water beneath the Impregnation Kit Area, and other areas within Nansemond, poses a risk to human health or the environment.

II. NPL Deletion Criteria

This partial deletion is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (November 1, 1995). The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to § 300.425(e), EPA will consider, in consultation with the Commonwealth, whether any of the following criteria have been met:

- Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or
- Section 300.425(e)(1)(ii). All appropriate responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or
- Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent CERCLA actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that CERCLA actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke a person's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. The following procedures were used for the proposed deletion of the soil in the Impregnation Kit Area at Nansemond:

1. In December 1998 and January 1999, a contractor for the U.S. Army Corps of Engineers removed impregnation kits and associated contaminated soil from the Impregnation Kit Area. Subsequent soil sampling confirmed that the kits and contaminated soil had been successfully removed. Residual concentrations of hazardous substances, pollutants and contaminants in the soil are less than EPA Region III's Risk-Based Concentrations for soil in residential use and less than concentrations that might contaminate ground water, with the exception of arsenic. The arsenic concentrations, however, are within the range of concentrations that occurs naturally in the soil in this region of Virginia. A geophysical investigation of the Impregnation Kit Area and 20

adjacent acres found no ordnance, no explosives and only one piece of ordnance-related scrap. Based on this, EPA and the Corps believe that no further response action is appropriate for soil in the Impregnation Kit Area.

2. EPA has recommended the partial deletion and the Corps and EPA have prepared the relevant documents. These documents have been compiled into a Deletion Docket.

3. The Commonwealth of Virginia, through the Virginia Department of Environmental Quality, concurs with this partial deletion.

4. Concurrent with this national notice of intent for partial deletion, a notice has been published in a local newspaper of record and has been distributed to appropriate Federal, State, and local officials, and other interested parties. These notices announce a 30 day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and publication of a notice of availability of this notice in a newspaper of record.

5. EPA and the Corps have made all relevant documents available at the information repositories listed previously.

This **Federal Register** document, and a concurrent notice in a newspaper of record, announce the initiation of a 30 day public comment period and the availability of the notice of intent for partial deletion. The public is asked to comment on EPA's proposal to delete the soil in the Impregnation Kit Area of Nansemond from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the information repositories.

Upon completion of the 30 day comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously. Members of the public are encouraged to contact EPA Region III to obtain a copy of the Responsiveness Summary. If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the area does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of the soil in the Impregnation Kit Area from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

Background

The Former Nansemond Ordnance Depot site (Nansemond) is located in Suffolk, Virginia, near the northwestern end of State Route 135. It was once a U.S. military facility. It is situated at the mouth of and to the east of the Nansemond River, on the south side of Hampton Roads, and contains approximately 975 acres. It is bordered to the west by the Nansemond River, to the north by the James River (Hampton Roads) and to the east by Streeter Creek.

From its establishment in 1917 until 1950, Nansemond was occupied by the U.S. Army for ammunition supply, maintenance, and disposal functions. In 1950, the site was transferred to the Department of the Navy, and was subsequently named the Marine Corps Supply Forwarding Annex. Following Navy operation, Nansemond was deactivated in 1960, and ownership of the property was transferred to the Beazley Foundation. The land of the former depot is now principally occupied by Tidewater Community College; the General Electric Company Jet Engine Division (GE); and the Hampton Roads Sanitation District (HRSD). Smaller parcels of land are owned by the Virginia Department of Transportation, Interstate 664; Dominion Lands, Inc.; Continental Properties; and SYSCO Food Services.

Soil and ground water at Nansemond have been contaminated by past operations, including the storage, handling, reconditioning and disposal of ordnance. Types of contamination at Nansemond include, but are not limited to, semi-volatile organic compounds, heavy metals and compounds used in explosives (*e.g.*, TNT) in soil; and compounds used in explosives (*e.g.*, hexahydro-1,3,5-trinitro-1,3,5-triazine ("RDX")) in ground water.

Nansemond is classified as a "Formerly Used Defense Site" or "FUDS." Pursuant to Public Law 98–212 and the Defense Environmental Restoration Program (chapter 160 of the Superfund Amendments and Reauthorization Act of 1986), the Department of Defense (DOD) is responsible for investigating and remedying releases of hazardous substances at FUDS that resulted from DOD activities. DOD has assigned those responsibilities to the United States Army Corps of Engineers (the Corps).

Environmental contamination from past military operations at Nansemond came to the attention of the Corps and EPA at least as early as 1987, when a boy found a piece of crystalline TNT near the entrance to Tidewater Community College. Beginning in 1987 and continuing to the present, the Corps and EPA have cooperated to remove TNT, buried ordnance and other contamination from soil at Nansemond. In addition, the Corps and EPA have cooperated in investigating soil and ground water contamination at Nansemond.

Impregnation Kit Area

The Impregnation Kit Area (also known as the Impregnite Kit or XXCC3 area) is an approximately 300,000 square foot, rectangular area in the southwestern portion of Nansemond, about 1000 feet from the Nansemond River, It was apparently used for the disposal of impregnation kits containing XXCC3. Impregnation kits consist of two substances: (a) XXCC3, which is a fine, white, granular, crystal powder, and (b) a "honey-like syrup" or "black waxy material." XXCC3 was used to neutralize chemical agents, and the impregnation kits disposed of in this area were probably used as a protective coating on an under garment for older military issue chemical suits.

As of 1948, the U.S. Army's recommended methods for disposal of surplus XXCC3 included scattering on the ground, burial (at least three feet below ground), and burning. Aerial photographs indicate that activities such as excavating and grading took place at the Impregnation Kit Area during the 1950s. A 1995 excavation by a contractor for Dominion Lands, Inc. uncovered wooden crates containing the white powder; small metal cans containing the black waxy material; and fiber drums. In 1996, the Corps conducted a chemical screening and ordnance survey in the Impregnation Kit Area, took soil samples and dug test pits. The test pits revealed a thick seam of the white powder in a mounded area, and remnants of the kits were visible.

EPA took a soil sample from the Impregnation Kit Area in 1997. The hazardous substances detected at the highest concentrations in this sample were zinc (11,100 milligrams per kilogram), carbon tetrachloride (20,700 micrograms per kilogram (µg/kg)), chloroform (20,600 µg/kg), and TNT (279 µg/kg).

In December 1998 and January 1999, a contractor for the Corps excavated the area containing the impregnation kits.

Two parallel disposal trenches were discovered. A total of 857 tons of impregnation kit materials and associated soils were removed and placed in a landfill in Hampton, Virginia. Earlier analytical testing indicated that the soils and materials removed from the Impregnation Kit Area were not a RCRA hazardous waste according to 40 CFR part 261.3 and the Material Safety Data Sheet for XXCC3. All waste was disposed of in a non-hazardous waste landfill in Hampton, Virginia.

Following the removal, in January 1999, EPA proposed to add releases of hazardous substances, pollutants and contaminants at Nansemond to the National Priorities List (NPL). 64 FR 2950 (January 19, 1999). EPA added the releases to the NPL in July 1999. 64 FR 39878 (July 22, 1999). One of the supporting documents, the Hazard Ranking System (HRS) Documentation Record, described the Impregnation Kit Area as one of seven sources of contamination at Nansemond, based on the soil sample taken in 1997. EPA also noted, however, that "The rectangular parcel, identified as Source Area 3 [the Impregnation Kit Area] in the HRS Documentation Record, has undergone extensive removal activities and EPA anticipates that confirmation sampling will indicate that this area also is not of concern to EPA." At the time it drafted the HRS Documentation Record, EPA estimated the Impregnation Kit Area covered approximately 300,000 square feet.

In the summer of 1999, a contractor for the Corps took samples of the soil in the Impregnation Kit Area to confirm that the excavation had successfully removed contaminated soil and to check for hazardous substances, pollutants and contaminants in 20 acres surrounding the excavation. The contractor also performed a geophysical investigation to identify geophysical anomalies that might indicate ordnance buried in the Impregnation Kit Area.

The Confirmation Sampling Report shows that the excavation successfully removed the impregnation kits and associated contaminated soil. Residual concentrations of hazardous substances, pollutants and contaminants in soil samples were less than EPA Region III's Risk-Based Concentrations for residential use, and less than concentrations that might contaminate ground water, except that all the soil samples contained arsenic, at levels up to 4.6 mg/kg. These arsenic concentrations, however, are within the range of naturally occurring background concentrations for soils in this region of Virginia. Under CERCLA, the Corps and EPA generally do not clean up naturally occurring substances in their unaltered form (or altered solely through naturally occurring processes) from locations where they are naturally found.

The geophysical investigation found 16 geophysical anomalies. However, after excavating each location, the anomalies were shown to be caused by innocuous metal items, such as wire and pipes. A single piece of ordnance-related scrap was found at Anomaly 1, shown as square 1 on Figure 2 of the Corps' Post Removal Action Confirmation Sampling Report (2002) (the "Confirmation Sampling Report"). The scrap did not contain explosives, nor were any other ordnance or explosives found.

The Confirmation Sampling Report concludes that "based on the results of the confirmation sampling investigation, no further action is recommended for the site [the Impregnation Kit Area]." Furthermore, the report states that the Corps, EPA and VDEQ have agreed to redefine the boundaries of the Impregnation Kit Area to reflect the actual size of the removal area. The removal occurred within a 270 foot diameter circle, with an area of about 57,255 square feet. EPA has no data at this time that show releases of hazardous substances, pollutants or contaminants in the rest of the approximately 300,000 square foot rectangle described in EPA's 1999 HRS Documentation Record. EPA bases its proposal to delete the soil in the Impregnation Kit Area (all 300,000 square feet) on the results of the Corps' Post Removal Action Confirmation Sampling Report and the other documents in the Deletion Docket. Based on these documents, EPA, with the concurrence of the Commonwealth of Virginia, has determined that the Corps has implemented all appropriate response actions for the soil in the Impregnation Kit Area and no further response action is appropriate for the soil in this area.

Ground water beneath the Impregnation Kit Area has not been fully characterized and is not proposed for deletion from the NPL. Although some sampling and evaluation has been completed, more study is needed to better understand whether the ground water is contaminated and, if so, to what extent. Hazardous substances, including explosives, have been detected in ground water at other locations within Nansemond. It has not been clearly demonstrated that hazardous substances, pollutants or contaminants have been, or continue to be, released into the ground water beneath the Impregnation Kit Area at levels of concern to human health or the environment. Data gathered so far do not appear to indicate unacceptable human health threats from ground water beneath the Impregnation Kit Area, except perhaps if used for drinking water. Accordingly, the present owner of the property has agreed to prohibit drinking of ground water beneath the Impregnation Kit Area through a restrictive covenant, or similar legal device, in a deed. In addition, a City of Suffolk ordinance, section 90–126, requires all new premises, buildings or dwellings abutting a city water main to connect to the water main. This means that, under current law, any new buildings on the Impregnation Kit Area would connect to the city water main, reducing the likelihood that people would choose to drill wells and use ground water beneath the Impregnation Kit Area. The EPA and Corps plan future investigations to determine whether the ground water beneath the Impregnation Kit Area, and other areas within Nansemond, poses a risk to human health or the environment.

Community Involvement

The Corps and EPA have had a comprehensive public involvement program for several years at Nansemond. The Corps prepared its first community relations plan for Nansemond in 1996 and in 1997 organized a Restoration Advisory Board (RAB) to solicit the views of local citizens and other interested parties on the environmental restoration at Nansemond. RAB members include representatives of the Corps, EPA, VDEQ and community members. RAB members meet every second month to review and comment on technical documents and plans relating to the ongoing environmental restoration activities at Nansemond. Meetings are open to all members of the public. The 1998 removal, the post confirmation sampling and plans to partially delete the Impregnation Kit Area have been discussed at RAB meetings.

The Corps and EPA have also established document repositories, described above, to make available to the public information about the investigation and cleanup at Nansemond.

Current Status

Removal of impregnation kits and associated contaminated soil in the Impregnation Kit Area has been successfully completed. No further response action is planned or scheduled for the soil in this area. Ground water, however, may be the subject of future response actions under CERCLA. In the

future, five-year reviews may be required at Nansemond if other remedies are selected that leave waste on site above levels that allow for unlimited use and unrestricted exposure.

While EPA does not believe that any future response actions will be needed for the soil in the Impregnation Kit Area, if future conditions warrant such action, the proposed deletion area remains eligible for future response actions. Furthermore, this partial deletion does not alter the status of any other areas at Nansemond that are not proposed for deletion and remain on the NPL, including, but not limited to, the ground water beneath the Impregnation Kit Area.

EPA, together with Corps and with concurrence from the Commonwealth of Virginia, has determined that all appropriate CERCLA response actions have been completed for the soil in the Impregnation Kit Area and protection of human health and the environment has been achieved in these areas. Therefore, EPA makes this proposal to delete the soil in the Impregnation Kit Area of Nansemond site from the NPL.

Dated: January 9, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–1144 Filed 1–17–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 02–380; FCC 02–328]

Spectrum for Unlicensed Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: This document requests comments from the public on the possibility of permitting unlicensed devices to operate in additional frequency bands. Specifically, the Commission seeks comments on the feasibility of allowing unlicensed devices to operate in TV broadcast spectrum at locations and times when spectrum is not being used, and on the technical requirements that would be necessary to ensure that such devices do not cause interference to authorized services operating within the TV broadcast bands. The Commission also seeks comment on the feasibility of permitting unlicensed devices to operate in other bands, such as the 3650–3700 MHz band at power levels significantly higher than the maximum permitted for unlicensed devices in other frequency bands, with only the minimal technical requirements necessary to avoid interference to licensed and incumbent services. The Commission believes that these actions could have significant benefits to the economy, businesses and consumers by allowing the development of new and innovative types of unlicensed devices.

DATES: Written comments are due April 7, 2003, and reply comments are due May 6, 2003.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418–7506, TTY (202) 418–2989, e-mail: *hvantuyl@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry*, ET Docket 02–380, FCC 02–328, adopted December 11, 2002, and released December 20, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 7, 2003, and reply comments on or before May 6, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts-Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of Notice of Inquiry

1. The Commission initiated this *Notice of Inquiry* ("NOI") to obtain comments from the public on the possibility of permitting unlicensed devices to operate in additional frequency bands. Specifically, we seek comments on the feasibility of allowing unlicensed devices to operate in TV broadcast spectrum at locations and times when spectrum is not being used, and on the technical requirements that would be necessary to ensure that such devices do not cause interference to authorized services operating within the TV broadcast bands. The Commission also seeks comment on the feasibility of permitting unlicensed devices to operate in other bands, such as the 3650–3700 MHz band at power levels significantly higher than the maximum permitted for unlicensed devices in other frequency bands, with only the

minimal technical requirements necessary to avoid interference to licensed and incumbent services. We believe that these actions could have significant benefits to the economy, businesses and consumers by allowing the development of new and innovative types of unlicensed devices.

2. Unlicensed transmitters may be operated under the provisions of part 15 of the Commission's rules. Part 15 transmitters generally operate on frequencies shared with authorized services and at relatively low power. Operation of a part 15 transmitter is subject to the conditions that the device not cause interference to authorized services, and that the device must accept any interference received. The Commission made two significant changes to part 15 in the 1980's that enabled the development of new types of unlicensed devices and led to increased use of these devices.

3. The first significant change, in 1985, was to permit spread spectrum transmitters to operate on an unlicensed basis in certain bands allocated for Industrial, Scientific and Medical (ISM) equipment. Specifically, such transmitters are permitted to operate in the 902–928 MHz, 2400–2483.5 MHz and 5725–5850 MHz bands. Spread spectrum transmitters spread their energy over a wide bandwidth, which increases resistance to interference and can allow multiple transmitters to share the same spectrum. Such transmitters are permitted to operate with a power of up to one watt, which is considerably higher than the maximum power permitted for other part 15 devices. This allows for significantly greater transmission range than other part 15 devices. In addition, the relatively wide bandwidth permitted for spread spectrum transmitters makes them useful for applications such as high speed data transmission. There are no limitations in the rules on the types of applications for which spread spectrum devices can be used, provided they comply with the technical requirements. The adoption of the spread spectrum rules was a major step in providing increased flexibility for unlicensed transmitters. Subsequent changes to these rules permit increased data speeds and higher gain antennas to allow greater transmission range, and apply to a broader range of spread spectrum transmitters.

4. The second significant change to part 15 was a major revision in 1989. Under this revision, unlicensed transmitters are permitted to operate on almost any frequency, provided they meet relatively tight emission limits. They are not permitted to operate in certain designated "restricted bands," and are generally prohibited from operating in the TV broadcast bands, except for remote control devices and medical telemetry transmitters. Specific types of unlicensed transmitters can operate in certain frequency bands. In addition to spread spectrum transmitters in the ISM bands, non-spread spectrum transmitters can operate in the ISM bands for any type of application at lower power levels than spread spectrum transmitters. The 1985 and 1989 revisions of part 15 have provided substantially increased flexibility in the types of unlicensed devices that can be developed, and led to the large numbers of unlicensed devices currently available today.

5. The Commission's Spectrum Policy Task Force conducted a comprehensive review of spectrum policy which included a public notice seeking comment on, among other issues, whether additional spectrum should be made available for unlicensed use. In addition, the Task Force held a public workshop on unlicensed spectrum use. In response to the public notice, a significant number of parties stated that additional spectrum should be made available for unlicensed use. Further, these parties indicated a general perception that the creation of unlicensed bands has been very successful in allowing the introduction of new technology and that additional unlicensed bands would create more such opportunities.

6. We believe that we should consider permitting additional flexibility to help enable the development of new and innovative types of unlicensed devices, such as power levels greater than the one watt maximum currently permitted for Part 15 devices and/or high gain antennas to enable greater transmission range. We have identified two possible candidate bands for such expanded unlicensed operation: the television broadcast bands and the 3650–3700 MHz band.

TV Broadcast Bands

7. The unused portions of the TV spectrum appear to be a suitable choice for expanded unlicensed operation for several reasons. There is significant bandwidth available because each TV channel is 6 MHz wide, and multiple vacant channels are generally available in an area to provide greater bandwidth. Allowing unlicensed devices to operate on TV channels that are not being used in a particular area would be a more efficient use of the spectrum. Unlicensed use of this spectrum as opposed to licensed use appears to be appropriate because the operating power levels of unlicensed devices are generally lower than the power levels used in commercial mobile radio services, making it easier for unlicensed devices to identify and operate on unused frequencies without causing interference to authorized services. Further, the frequencies and amount of unused TV spectrum vary from location to location and could change over time as TV stations or other authorized services are added or change frequency, potentially complicating the licensing of commercial services in unused TV spectrum. We note also that the unlicensed uses we identify in this *NOI* are not intended to limit future licensed use or to guarantee spectrum access rights for this band. We seek comment on the following questions concerning the use of the TV broadcast bands by unlicensed devices.

- Should new unlicensed devices be permitted to operate within any portions of the TV bands, and if so, which portions? Are there any other bands where new unlicensed devices could be permitted to operate?
- Should the use of certain channels by unlicensed device not be permitted? For example, channel 37 is allocated for radio astronomy operations and the Wireless Medical Telemetry Service, and unlicensed operations on this channel may not be appropriate because of special interference concerns associated with the sensitive nature of radio astronomy reception and the critical safety function of medical telemetry equipment. In addition, there are concerns about possible interference to channels 2, 3 and 4 because they are used for, or are adjacent to, the output channels of VCRs and other set-top boxes. Further, spectrum currently allocated to channels 52–69 (698–806 MHz) has been reallocated and has been or will be licensed for new services. Should unlicensed operations be permitted in the reclaimed spectrum?
- Should there be geographic restrictions on where unlicensed operation in the TV bands is permitted, such as in areas where co-channel or adjacent channel television, Private Land Mobile Radio Service (PLMRS) or Commercial Mobile Radio Service (CMRS) is present, or in the border areas near Canada and Mexico?
- What restrictions, if any, should be placed on the applications or numbers of unlicensed devices that would be permitted in the TV broadcast bands, and why would such restrictions be needed? For example, should applications be limited to fixed uses?
- Are any special, temporary restrictions needed to ensure that unlicensed devices do not impact the

transition of television from analog to digital service? For example, as part of the transition process, television stations may be switching channels and modifying their service area. How can we ensure that unlicensed operation does not cause interference when stations make such changes or when new DTV stations commence operation?

• How would new unlicensed devices affect the ability of broadcasters to provide ancillary services such as data after the digital transition?

8. The part 15 rules require unlicensed transmitters to meet technical requirements to ensure that they will not cause interference to authorized users. The types of requirements that must be met typically include in-band and out-of-band power or field strength limits, and may include other requirements such as bandwidth, power spectral density, frequency stability, and antenna gain. As noted above, there are several authorized users of the TV bands that must be protected from interference from unlicensed devices. Analog and digital TV stations must be protected from interference. Low power TV and TV translator stations have defined protected service contours. Low power auxiliary stations such as wireless microphones and wireless assist video devices on TV channels do not have defined protected contours, but unlicensed devices are not permitted to cause interference to them. PLMRS and CMRS base stations are assigned within 50 miles of the center of the cities where they are permitted to operate in the 470–512 MHz band, and mobile units must be operated within 30 miles of their associated base station or stations. In addition to these authorized users, unlicensed medical telemetry transmitters are permitted to operate on channels 7–46, although the Commission has allocated bands where such transmitters can operate with protection from interference. The Commission seek comment on the following questions concerning the necessary technical requirements for unlicensed transmitters to prevent interference to TV reception and other authorized services within the TV bands.

• What power and/or field strength limits are necessary for unlicensed transmitters within the TV bands to prevent interference to TV reception? Could unlicensed devices operate in TV bands with a power greater than the 1 watt maximum permitted for part 15 devices in the ISM bands or power greater than the general part 15 limit?

• What separation distances or D/U ratios should be established between unlicensed devices and the service of analog, digital, Class A and low power TV and TV translator stations? What assumptions should be used to determine these protection criteria? Should TV stations be protected only within their grade B or noise limited service contours, or should unlicensed devices be required to protect TV reception from interference regardless of the received TV signal strength? Is protection necessary only for co-channel and adjacent channel stations? What special requirements, if any, are necessary to protect TV reception in areas where a station's signal is weak? Would minimum performance standards for receivers facilitate the sharing of TV spectrum with unlicensed devices?

• What technical requirements are necessary to protect other operations in the TV bands, including the PLMRS and CMRS in the areas where they operate on TV channels and low power auxiliary stations such as wireless microphones and wireless assist video devices? Could technical requirements be developed that would allow unlicensed devices to co-exist with new licensed services on former TV channels 52–69? Should unlicensed transmitters be required to protect unlicensed medical telemetry transmitters operating on TV channels 7–46 from interference?

• What requirements, if any, are necessary to prevent interference to coaxial cable or other multi-channel video service providers using the TV bands or to prevent interference to TVs, VCRs and set-top boxes caused by direct pickup of signals from unlicensed devices?

• Should any antenna requirements be imposed? Can technologies such as "smart antennas", which automatically change their directivity as necessary, assist unlicensed devices in sharing the TV bands? Should unlicensed devices be required to use an integrated transmitting antenna and be prevented from using external amplifiers and antennas?

9. In addition to meeting power and/or field strength limits, we believe that an unlicensed device operating in the TV band should have certain capabilities to avoid causing interference to licensed services. Specifically, an unlicensed device should be able identify unused frequency bands before it can transmit. One possible approach would be for a device to monitor portions of the spectrum where it could operate, identify a frequency band that is not being used, and then transmit in the frequency band identified. A device should also have to be able to avoid tying up a frequency in the event a licensed user wishes to commence transmissions. We seek comment on the following questions concerning the capabilities that unlicensed devices operating in the TV broadcast bands should have.

• What are the specific capabilities that an unlicensed transmitter should have to successfully share spectrum with licensed operations in the TV broadcast band without interference? Are there transmission protocols that could enable efficient sharing of spectrum?

• Could GPS or other location techniques be incorporated into an unlicensed device so it could determine its precise location and identify licensed users in its vicinity by accessing a database? Would such an approach be reliable, and could it be combined with other methods to prevent interference to licensed services? What specific methods could be used to protect low power auxiliary stations such as wireless microphones that are not listed in a database?

• Once an unlicensed device commences transmissions on an open frequency, how can it ensure that interference will not be caused to a licensed user of that frequency who wishes to commence transmissions? Is there a mechanism that can avoid such "collisions" or mitigate their effect? For example, should these devices have limited "duty cycles" in a given frequency band?

• Is frequency agile equipment, as well as the protocols to enable efficient frequency sharing, feasible in the near-term?

• How could the Commission enforce any rules that may be adopted for unlicensed devices to ensure that such devices do not cause interference to authorized users of the TV bands?

• Is it necessary to establish any standards to allow sharing between unlicensed users of the TV bands? If so, how do we arrive at standards and what process should be put in place to make certain that the standards remain current and support innovation?

Unlicensed Operation in the 3650–3700 MHz Band

10. Another possible candidate band we have identified for expanded unlicensed operation is the 3650–3700 MHz band ("3650 MHz band"). The 3600–3700 MHz band was previously allocated for use by the Federal Government on a primary basis for radiolocation services, and for non-government use in the Fixed Satellite Service (FSS), limited to space-to-Earth transmissions in international inter-continental systems." Pursuant to the

Omnibus Budget Reconciliation Act of 1993 ("OBRA–93"), the National Telecommunications and Information Administration ("NTIA") identified the 3650–3700 MHz portion of this band for transfer, effective January 1999, from a Government/non-Government shared use status to a mixed-use status. A condition of the transfer allows Government radiolocation stations to continue to operate indefinitely in the 3650 MHz band at three locations with a "radius of operation" of 80 kilometers (49.7 miles).

11. Unlicensed operation in the 3650 MHz band, which is part of the 3600–4400 MHz band used for Federal Government and satellite operations, has been prohibited. However, the change in allocation status of the 3650 MHz band from Government/non-Government shared use to mixed use provides an opportunity for us to revisit this prohibition. The 3650 MHz band appears to be well suited for unlicensed operations for a number of reasons. First, it is a contiguous 50 MHz block of spectrum, so there is sufficient spectrum available to permit wide bandwidth applications such as high speed data transmissions. Also, it is not heavily used in most parts of the country because it is recently vacated government spectrum, and no licenses have been issued for new non-government services in the band. The only operations in this band that need to be protected from interference at this time are the FSS sites and three grandfathered government sites, and these are fixed operations at known geographic coordinates, making it easier to avoid interference to them. Given that the proposed terrestrial uses of this band involve operations from fixed sites, it would appear that unlicensed operations could be compatible with future licensed uses. For these reasons, it may be possible to permit unlicensed devices to operate in this band with minimal restrictions except those necessary to avoid interference to licensed users in the band. For example, it may be possible to permit wideband operation with high gain antennas at power levels greater than the 1 watt maximum permitted for other unlicensed devices. If unlicensed devices are permitted to operate in this band, they may have to have capabilities such as frequency agility to avoid causing interference to any fixed service operations licensed in the band.

12. Allowing unlicensed operation with very minimal technical requirements could potentially permit the development of new and innovative types of unlicensed devices that could not be operated under the current rules. Higher power limits and high gain antennas would substantially increase the operational range of devices and could permit the development of new types of wireless data networks. We seek comment on the following questions concerning permitting unlicensed operation in the 3650 MHz band with minimal requirements.

- What are the potential benefits and drawbacks of permitting unlicensed operation in this band subject to only the minimum rules necessary to avoid interference to licensed users?
- Is it viable to license fixed operations in this spectrum as proposed and permit operation of part 15 devices in unused portions on a non-interference basis?
- Could power levels greater than 1 watt be permitted for such operations without causing interference to authorized users within the band? If so, what is the maximum power level that could be permitted? Would any restrictions on antenna gain or directivity be necessary?
- What other requirements are necessary to protect FSS and Federal Government operations in the 3650 MHz band from interference? Are geographic restrictions on where an unlicensed device could operate necessary, and how could these be enforced? Could GPS be incorporated into a device so it could determine its precise location and distance from licensed users? Would such an approach be necessary or reliable?
- What other requirements would be necessary to prevent interference to other authorized services, such as out-of-band emission limits? What types of licensed services could share the 3650 MHz band with unlicensed devices?
- Is it necessary to establish any standards to allow sharing between unlicensed users of the 3650 MHz band? If so, how do we arrive at standards?
- Are there any other bands where unlicensed operation with minimal rules could be permitted without causing interference to authorized services? What other bands should we consider? What are the advantages of each?

Ordering Clause

13. Pursuant to Sections 4(i), 302, 303(e), 303(f), 303(r) and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), 303(f), 303(r) and 307, this Notice of Inquiry *is hereby adopted.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1206 Filed 1–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3568; MB Docket No. 02–387; RM–10623]

Radio Broadcasting Services; Lahaina and Waianae, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Pacific Radio Group, licensee of Station KLHI(FM), Channel 266C, Lahaina, Hawaii The petition proposes to change Station KLHI(FM)'s community of license from Lahaina to Waianae, Hawaii and provide Waianae with its first local aural transmission service. The coordinates for requested Channel 266C at Waianae, Hawaii are 21–23–51 NL and 158–06–01 WL, with a site restriction of 10.7 kilometers (6.6 miles) southeast of Waianae.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 266C at Waianae, Hawaii or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before February 14, 2003, and reply comments on or before March 3, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Mark N. Lipp, Esq. and J. Thomas Nolan, Esq., Shook, Hardy & Bacon, LLP.; 600 14th Street, NW., Suite 800; Washington, DC 20005–2004.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–387, adopted December 20, 2002, and released December 24, 2002. The full text of this Commission decision is available for inspection and copying

during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202-863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Waianae, Channel 266C, and removing Channel 266C1 at Lahaina.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. 03–1200 Filed 1–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3065; MB Docket No. 02–349, RM–10599; MB Docket No. 02–350, RM–10600]

Radio Broadcasting Services; Encinal and Sheffield, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes two allotments in Encinal and Sheffield, TX. The Commission requests comment on a petition filed by Katherine Pyeatt proposing the allotment of Channel 286A at Encinal, Texas, as potentially the community's third local aural broadcast service. Channel 286A can be allotted to Encinal in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.3 km (3.9 miles) north of Encinal. The coordinates for Channel 286A at Encinal are 28–05–37 North Latitude and 99–20–25 West Longitude. The proposed allotment will require concurrence by Mexico because it is located within 320 kilometers (199 miles) of the Mexican border. *See* **SUPPLEMENTARY INFORMATION** *infra*.

DATES: Comments must be filed on or before February 24, 2003, and reply comments on or before March 11, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos 02–349 and 02–350; adopted November 6, 2002 and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202)863–2893.

The Commission further requests comment on a petition filed by Katherine Pyeatt proposing the allotment of Channel 224C2 at Sheffield, Texas, as the community's first local FM transmission service. Channel 224C2 can be allotted to Sheffield in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.7 km (9.8 miles) south of Sheffield. The coordinates for Channel 224C2 at Sheffield are 30–33–15 North Latitude and 101–52–09 West Longitude. The proposed allotment will require concurrence by Mexico because it is located within 320 kilometers (199 miles) of the Mexican border.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1.The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 286A at Encinal and by adding Sheffield, Channel 224C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–1199 Filed 1–17–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 177, 178,179 and 180

[Docket No. RSPA–02–13773 (HM–218B)]

RIN 2137–AD73

Hazardous Materials; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to make miscellaneous amendments to the Hazardous Materials Regulations based on petitions for rulemaking and RSPA

initiatives. These proposed amendments are intended to update, clarify or provide relief from certain regulatory requirements.

DATES: Comments must be received by March 17, 2003.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket number, RSPA–02–13773 (HM–218B) at the beginning of your comments and submit two copies. If you wish to receive confirmation of receipt of your comments, include a self-addressed stamped postcard. You may also submit comments by e-mail by accessing the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically.

The Docket Management System is located on the Plaza Level of the Nassif Building at the above address. You can view public dockets between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also view comments on-line at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Gigi Corbin, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

This NPRM is designed primarily to reduce regulatory burdens on industry by incorporating changes into the Hazardous Materials Regulations (HMR) based on RSPA's own initiatives and petitions for rulemaking submitted in accordance with 49 CFR 106.95. In a continuing effort to review the HMR for necessary revisions, RSPA ("we" and "us") is also proposing to eliminate, revise, clarify and relax certain other regulatory requirements.

The following is a section-by-section summary of the proposed changes.

Section-by-Section Review

Part 171

Section 171.7

The American Pyrotechnics Association (APA) petitioned us to update the incorporation by reference of APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, from the 1998 edition to the 2001 edition (P–1412). We agree with APA's request and, in this notice, are proposing to incorporate the 2001 edition of APA Standard 87–1. APA is a trade association of the fireworks industry that promotes safety standards for all aspects of fireworks. Its members include regulated and licensed manufacturers, distributors, wholesalers, retailers, importers and suppliers of firework and professional public display firms.

The Hazardous Material Regulations allow fireworks that are manufactured in accordance with APA Standard 87–1 to be classed, approved and assigned an EX-number by the Associate Administrator without prior laboratory examination. Because the 2001 edition of APA Standard 87–1 establishes a ten-inch limit on aerial shells for fireworks that may be classed as Division 1.3 explosives, our incorporating the 2001 APA standard would result in prohibiting shells greater than ten inches from being classed as Division 1.3 explosives. However, shells ten inches or greater could be classed and approved as Division 1.1 explosives without prior examination. We are proposing this change, but we invite comments on regulatory impacts, including any cost impact, of incorporating the 2001 APA Standard 87–1.

The Compressed Gas Association (CGA) petitioned us and we are proposing to update the incorporation by reference of the following:

—CGA Pamphlet C–6.2, Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, from the 1988 edition to the 1996 edition (P–1383);

—CGA Pamphlet C–11, Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, from the 1993 edition to the 2001 edition (P–1419);

—CGA Pamphlet C–13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, from the 1992 edition to the 2000 edition (P–1413); and

—CGA Pamphlet S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, from the 1994 edition to the 2001 edition (with the exception of paragraph 9.1.1.1) (P–1401).

The National Propane Gas Association (NPGA) petitioned us and we are proposing to update the incorporation by reference of the National Fire Protection Association (NFPA) Pamphlet—Standard for the Storage and Handling of Liquefied Compressed Gases, 1979 edition, to the NFPA 58—Liquefied Petroleum Gas Code, 2001 edition (P–1120).

Based on our own initiative, we are proposing to authorize the American Society for Testing and Materials (ASTM) E 114–95 test method for straight beam examination of the tubular surface of cylinders and tubes. ASTM E 114, in conjunction with ASTM E 213–98, is used to measure the wall thickness of a cylinder and to detect general corrosion and defects located in the path of the ultrasonic straight beam direction. ASTM E 213 is used to detect sidewall defects such as cracks, voids and pits in cylinders. We adopted ASTM E 213 for use in a final rule published in the **Federal Register** on August 8, 2002 (Docket HM–220D, 67 FR 51626), but inadvertently did not authorize the use of ASTM E 114.

We are also proposing to incorporate by reference the Chlorine Institute instruction booklets entitled "Chlorine Institute Emergency Kit 'A' for 100-lb. & 150-lb. Chlorine Cylinders" and "Chlorine Institute Emergency Kit 'B' for Chlorine Ton Containers". (*See* § 173.3 preamble discussion.)

We are proposing to update the incorporation by reference of the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Section C—Part III, Specification for Tank Cars, Specification M–1002, from the January 1996 edition to the December 2000 edition. We are also proposing to remove the entry for the 1992 edition of this manual since Appendix Y was revised in the 2000 edition, thus making the 1992 edition obsolete.

Section 171.15

Currently the HMR require a shipper to notify the Bureau of Explosives (BOE) whenever a rail car containing a time-sensitive product is not received by the consignee within 20 days from shipment (*see* §§ 173.314(g)(1) and 173.319(a)(3)). We are proposing to move these requirements to § 171.15 by adding a new paragraph (d) and requiring notification to the Federal Railroad Administration instead of BOE.

Part 172

Section 172.101

In response to a petition from the NPGA [P–1265], we are proposing to amend the entry for "Butylene" by adding a limited quantity exception for compressed gases (*see* § 173.306) in column (8A) of the Hazardous Materials Table (HMT). This amendment would be consistent with the entries for "Petroleum gases, liquefied" and other hydrocarbons.

We are proposing to add a new domestic entry for "Cartridges power devices, ORM–D" to the HMT for consistency with the packaging exceptions authorized in § 173.63(b). This entry is limited to those cartridges, small arms and cartridges power devices which are authorized to be reclassed and shipped as ORM–D in § 173.63(b)(1).

For Zone B Toxic Inhalation Hazard entries with ID numbers UN3303, UN3304, UN3305, UN3306, UN3307, UN3308, UN3309, and UN3310, we would revise the entry in the HMT by adding Special Provisions B9 and B14; and for Zone C Toxic Inhalation Hazard entries with the same ID numbers, we would revise the entry in the HMT by adding Special Provision B14. The Special Provisions were inadvertently omitted in previous rulemakings.

For compressed gas entries with ID numbers UN 3304, UN 3305, and UN 3306 and liquefied gas entries with ID numbers UN 3308, UN 3309 and UN 3310, we propose to remove the letter "I" in column 1 of the HMT. The affected proper shipping names may be used in both domestic and in international transportation.

For the entry "Liquefied gas, toxic, oxidizing, corrosive, n.o.s." Hazard Zones B, C and D, we are proposing to correct a typographical error in the subsidiary labeling requirements by removing the Division 2.1 label and adding the Division 5.1 label in its place.

We are proposing to revise the entry for "Gas sample, non-pressurized, toxic, n.o.s." by adding Special Provision 6 in column (7) of the HMT. The entry is classed as a Division 2.3 (gas poisonous by inhalation) material and must be described as an inhalation hazard under the provisions of the HMR.

Section 172.504

Currently, paragraph (d) excepts non-bulk packagings that contain only the residue of a hazardous material covered by table 2 from being included when determining placarding requirements. We are proposing to revise paragraph (d) to clarify that the exception does not apply to poison inhalation hazard materials subject to the subsidiary placarding requirements in § 172.505.

Part 173

Section 173.3

We are proposing that a DOT 3A480 or 3AA480 specification cylinder containing Chlorine or Sulphur dioxide (both materials poisonous by inhalation) that has developed a leak in the valve or fusible plug may be temporarily repaired using a Chlorine Institute "A" kit and be transported by private or contract carrier one time, one way from the point of discovery to the appropriate facilities for discharge and examination. Repairs must be performed only by personnel who have been trained in the use of the devices and tools in the Chlorine Institute "A" kit and are knowledgeable concerning the properties of chlorine and sulphur dioxide. Similarly, we are proposing to permit a DOT 106A500 specification multi-unit tank car tank containing Chlorine or Sulphur dioxide that has developed a leak in the valve or fusible plug to be temporarily repaired using a Chlorine Institute "B" kit. We have authorized the use of the kits under the exemption program for several years with satisfactory shipping experience. Incorporating the exemption provisions into the regulations will facilitate the movement of affected containers to appropriate facilities.

Section 173.12

Currently, § 173.12(c) authorizes the reuse of packagings for shipments of "hazardous waste" to designated facilities. In response to a petition from North American Transportation Consultants, Inc. (NATC) (P–1407), we are proposing to extend the exception in § 173.12(c) to shipments of all waste materials and not just to materials that meet the definition of "hazardous waste" and are subject to the Uniform Hazardous Waste Manifest requirements of the U.S. Environmental Protection Agency.

Section 173.29

Currently, paragraph (c) excepts non-bulk packagings that contain only the residue of a hazardous material covered by Table 2 of § 172.504(e) from being included when determining placarding requirements and from shipping paper requirements. We are proposing to revise paragraph (c) to clarify that the exceptions do not apply to poison inhalation hazard materials subject to the subsidiary placarding requirements in § 172.505.

Section 173.31

We are proposing to add a new paragraph authorizing the continued use of DOT 103 and 104 tank cars that may no longer be constructed. We are also proposing to revise paragraph (b)(2)(ii) for clarity by removing the reference to "Chloroprene, inhibited" since Special Provision B57 addresses the requirements for chloroprene in DOT 115A tank cars, and to remove the last sentence since "breather holes" are not authorized in the regulations. In addition, we are proposing to revise paragraph (b)(5) to reflect changes to Appendix Y of the AAR Specifications for Tank cars. This change would recognize the 2000 edition of Appendix Y in the AAR Tank Car Manual.

Section 173.35

In paragraph (b), we are proposing to add, for purposes of clarification, a parenthetical cross-reference to § 180.352 that contains detailed requirements for retest and inspection of IBCs.

Section 173.50

The definition of "explosive" in § 173.50 currently does not specifically include pyrotechnics. We are proposing to add a statement indicating that pyrotechnic substances and articles are considered explosives unless otherwise classed.

Section 173.54

Section 173.54 currently forbids offering a leaking or damaged package of explosives for transportation. We propose to clarify that leaking or damaged articles, even if not in a package, are also prohibited.

Section 173.62

We are proposing to revise paragraph (c), in the table of Packing Methods, to clarify that Packing Instruction 132(a) applies to articles with closed casings and Packing Instruction 132(b) applies to articles without closed casings.

Section 173.314

We are proposing to remove the wording "safety relief" and add the wording "reclosing pressure relief" in paragraphs (k) and (m) for consistency. Also, we are proposing to move the reporting requirements in paragraph (g)(1) to § 171.15(d) and, therefore, are proposing to remove and reserve paragraph (g)(1).

Section 173.315

On May 24, 1999, we published a final rule (Docket HM–225A; 64 FR 28030) to require cargo tank motor vehicles (CTMVs) used to transport

liquefied compressed gases to be equipped with emergency discharge control equipment, including passive systems that will shut down the unloading operation without human intervention and remote control devices that enable an attendant to stop the unloading process at a distance from the vehicle. These requirements are keyed to the degree of risk associated with the transportation of specific liquefied compressed gases. Among other requirements, the regulation requires a CTMV in metered delivery service transporting a Division 2.2 material with a subsidiary hazard, a Division 2.1 material, or anhydrous ammonia in a cargo tank with a capacity of 3,500 gallons or less to be equipped with an off-truck remote means to close the internal self-closing stop valve and shut off all motive and auxiliary power equipment. Metered delivery service means a cargo tank unloading operation conducted at a metered flow rate of 100 gallons per minute or less through an attached delivery hose with an inside diameter of 1¾ inches or less. A CTMV transporting a Division 2.2 material with a subsidiary hazard, a Division 2.1 material, or anhydrous ammonia in other than metered delivery service must be equipped with a passive emergency discharge control system that will shut down the unloading operation within 20 seconds of a complete separation or rupture of the delivery hose.

Since our adoption of the above requirements in 1999, it has come to our attention that there are CTMVs that transport Division 2.2 materials with a subsidiary hazard, Division 2.1 materials, and anhydrous ammonia in both metered and other than metered delivery service. A strict reading of the current regulatory requirements applicable to emergency discharge control equipment in § 173.315(n) would appear to require these CTMVs to be equipped with both a passive and an off-truck remote means of emergency discharge control. It was never our intention to require a CTMV to meet both requirements. If a CTMV operating in both metered and non-metered delivery service is equipped with a passive means of shut-down that meets the requirements in § 173.315(n)(2) and functions for both metered and non-metered deliveries, then it need not also be equipped with an off-truck remote means of shut down. In this NPRM, we propose to clarify the emergency discharge control requirements by adding a specific entry in the chart in § 173.315(n)(1) to address CTMVs that operate in both metered and other than metered delivery service. Proposed § 173.315(n)(1)(vi) would permit CTMVs in both metered and other than metered delivery service, with capacities of more than 3,500 water gallons, used to transport Division 2.2 materials with a subsidiary hazard, Division 2.1 materials, and anhydrous ammonia to be equipped with a passive means of emergency discharge control, provided that the system functions for both metered and non-metered deliveries. If the system functions only for non-metered deliveries, then the CTMV also would have to be equipped with an off-truck remote emergency discharge control system.

Section 173.319

We are proposing to move the reporting requirements in paragraph (a)(3) to § 171.15(d) and, therefore, are proposing to remove and reserve paragraph (a)(3). (*See* § 171.15 preamble discussion.)

Section 173.320

Currently, cryogenic liquids are not subject to the requirements of the HMR when transported by motor vehicle or railcar if they meet certain conditions such as complying with the requirements in Subparts A, B, C and D of part 172. We are proposing to amend paragraph (a)(2) by adding the requirements in subparts G (Emergency Response Information) and H (Training) of part 172 for transportation by rail or highway. We never intended to except shipments of cryogenic liquids from these requirements.

Part 177

Section 177.834

Currently, § 177.834(a) requires packagings not permanently attached to the motor vehicle and containing Classes 2, 3, 7, and 8 and Division 6.1 and 6.2 materials to be secured against movement within the vehicle. Section 177.834(g) currently requires packages of Class 1, 2, 3, 4, 5, 8 and Division 6.1 and 6.2 materials to be braced to prevent relative motion between themselves. In response to a petition for rulemaking from the Georgia Public Service Commission [P–1100], we are proposing to amend § 177.834(a) to require that any packaging containing a hazardous material, regardless of class or division, be secured against movement if the packaging is not permanently attached to a motor vehicle. Additionally, we are proposing to incorporate into paragraph (a) the closely related requirements in § 177.834(g), to prevent relative motion between the hazardous material packages themselves and the vehicle and to ensure that packages that have valves or other fittings be loaded in a manner that minimizes the likelihood that the valves or other fittings will be damaged during transportation. Subsequently, paragraph (g) will be reserved. RSPA agrees with the petitioner that securement of packages containing hazardous materials to prevent movement in transit will reduce damage to packages and thus, enhance driver and public safety.

Based on our own initiative and to be consistent with a similar requirement in Parts 174, 175, and 176, we are proposing to add a new paragraph (b) requiring packages bearing orientation markings to be loaded in such a way that they remain in the correct position indicated by the markings.

Section 177.835

Section 177.835 prohibits carrying a Division 1.1 or Division 1.2 explosive material in a combination of vehicles if the other vehicle is transporting a Division 2.3 or Division 6.1 material. This requirement is more restrictive than the "Segregation Table for Hazardous Materials" in § 177.848(d), which restricts loading and transporting of Division 1.1 or 1.2 explosives with materials in Division 2.3, Hazard Zone A or B, and in Division 6.1, PG I, Hazard Zone A. For consistency with the provisions in § 177.848(d), we are proposing to revise § 177.835(c)(4)(iii) to limit the segregation restriction to Division 2.3 materials in Hazard Zone A or B and to Division 6.1, PG I materials in Hazard Zone A.

Section 177.837

Currently, § 177.837 does not permit the engine of a cargo tank motor vehicle to be running during loading and unloading of Class 3 materials. In response to a petition from Monsanto [P–1276], we are proposing to amend paragraph (a) to permit the diesel engine of a cargo tank motor vehicle to be running during loading and unloading of Class 3 materials if the ambient temperature is at or below −12 °C (10 °F). The petitioner states that a motor vehicle's diesel engine is very difficult to restart if the engine is turned off in extremely cold weather for loading or unloading of product. The petitioner believes that the operating benefits of leaving a motor vehicle engine running in ambient temperatures of below −12 °C (10 °F) outweigh the flammability risks. We concur and are proposing to amend § 177.837 accordingly.

Section 177.841

We are proposing to revise paragraph (e) to expand the prohibition of

transporting packagings bearing or required to bear a POISON or POISON INHALATION HAZARD label to include packagings that are placarded or required to be placarded POISON or POISON INHALATION HAZARD. Section 172.514(c) permits placarding in lieu of labeling for certain bulk packagings.

Part 178

Section 178.45

We are proposing to revise paragraph (h) to authorize use of the ASTM E 114 test method for straight beam examinations on the tubular surface of cylinders and tubes as we stated earlier in this preamble in the discussion to § 171.7.

Part 179

New construction of specification DOT103 and 104 tank cars is no longer authorized; therefore, we propose to remove the specifications and all references to DOT 103 and 104 tanks cars from this part. (Continued use of DOT 103 and 104 tank cars is authorized in §§ 173.31 and 180.507.)

Section 179.1

Paragraph (a) implies that only tanks transporting hazardous materials are subject to the jurisdiction of DOT. We are proposing to revise paragraph (a) to clarify that DOT specification tanks, even when they are transporting non-regulated commodities, are subject to the jurisdiction of DOT, at least as to the tank itself.

Section 179.3

We are proposing to revise § 179.3 for clarity.

Section 179.5

We are proposing to revise this section by removing an obsolete requirement to furnish a Certificate of Construction to the Department.

Section 179.7

We are proposing to revise paragraph (f) by removing an outdated compliance date.

Section 179.100–13

In paragraphs (b) and (c), we are proposing to add, for purposes of clarification, a reference to § 173.314(j), which contains excess flow valve requirements for flammable gases.

Part 179 Subpart D

We are proposing to revise the heading for Subpart D by removing the reference to DOT–103 and DOT–104 tank cars.

Section 179.200

We are proposing to revise the section heading by removing the reference to DOT–103 and DOT–104 tank cars.

Section 179.200–14

We are proposing to revise paragraph (a) by removing the reference to DOT–103 and DOT–104 tank cars.

Section 179.200–23

We are proposing to revise the section heading by removing the words "safety relief" and adding "pressure relief" in their place.

Section 179.200–24

We are proposing to revise the table by removing the reference to a DOT–103–W tank car and adding a reference to DOT–111A tank car in its place.

Section 179.201–1

We are proposing to revise the table by removing the entries for spec DOT–103 and DOT–104 tank cars because new construction of specification DOT103 and 104 tank cars is no longer authorized. (Continued use of DOT 103 and 104 tank cars is authorized in §§ 173.31 and 180.507.)

Section 179.201–2

Section 179.201–2 addresses minimum plate thickness for DOT specification tank cars that may no longer be constructed. Therefore, we are proposing to remove and reserve § 179.201–2.

Section 179.201–3

We are proposing to revise paragraph (b) by removing the reference to DOT–103 tank cars.

Part 180

Section 180.507

We are proposing to add a new paragraph authorizing the continued use of DOT 103 and 104 tank cars, which may no longer be constructed.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, it was not reviewed by the Office of Management and Budget (OMB), and a regulatory assessment was not required for OMB. This proposed rule is not considered to be significant under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034) and therefore a Regulatory Analysis under the DOT order is not required.

In this notice, we propose to amend miscellaneous provisions in the HMR to clarify the provisions and to relax overly burdensome requirements. We are also responding to requests from industry associations to update references to standards that are incorporated in the HMR. For example, the American Pyrotechnics Association petitioned us to incorporate the 2001 edition of APA Standard 87–1. (See § 171.7 preamble discussion.) These clarifications and updates of the HMR will enhance safety.

Because the proposed changes clarify the requirements and respond to requests from industry, we believe the impact of these proposed changes to be so minimal that the proposal does not warrant a regulatory evaluation. However, we invite public comments on any impacts of proposed changes and may revise this determination as a result of comments.

B. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements, applicable to the transportation of hazardous materials, that cover certain subjects and are not substantively the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, content, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous materials.

This proposed rule concerns the classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects.

If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA requests comments on what the effective date of Federal preemption should be for the requirements in this proposed rule that concern covered subjects.

C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule would amend miscellaneous provisions in the HMR to clarify provisions based on our own initiative and also on petitions for rulemaking. While maintaining safety, it would relax certain requirements that are overly burdensome and would update references to consensus standards that are incorporated in the HMR.

These proposed changes are generally intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities. In addition, we propose to update references to standards that are incorporated in the HMR; industry associations, representing large and small entities, requested this change.

One proposed change may have a cost impact. The APA, a trade association of the fireworks industry, filed a petition requesting that we update a reference to incorporate the 2001 edition of APA Standard 87–1. Because the 2001 edition of the APA Standard establishes a limit of ten inches on aerial shells for fireworks that may be classed as Division 1.3 explosives, our incorporating the 2001 APA standard would result in prohibiting shells greater than ten inches from being classed as Division 1.3 explosives. However, shells greater than ten inches could be classed and approved by RSPA as Division 1.1 explosives without prior examination. Therefore, it may be more expensive to transport shells larger than ten inches; those shells, however, are used only in very large shows. The entities that may be affected by this change are five manufacturers of shells over ten inches and approximately fifty importers of shells over ten inches. Some of these fifty importers are small businesses.

The changes proposed in this Notice will enhance safety, and I certify that this proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This NPRM does not propose any new information collection burdens.

F. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

G. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to consider the effects of these revisions on the environment and determine whether a more comprehensive environmental impact statement may be required. We have tentatively concluded that there are no significant environmental impacts associated with this proposed rule. Interested parties, however, are invited to review the Environmental Assessment available in the docket and to comment on what environmental impact, if any, the proposed regulatory changes would have.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in the paragraph (a)(3) table:

a. Under the entry "American Pyrotechnics Association (APA)," the entry would be revised;

b. Under the entry "American Society for Testing and Materials," a new entry would be added in appropriate alphabetical order;

c. Under the entry "Association of American Railroads," the first entry would be removed and the second entry would be revised;

d. Under the entry "Chlorine Institute, Inc.," two new entries would be added in appropriate alphabetical order;

e. Under the entry "Compressed Gas Association, Inc.," the address and four entries would be revised;

f. Under the entry "National Fire Protection Association," the entry would be revised.

The revisions and additions would read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Pyrotechnics Association (APA)	
* * * * * * *	
APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version.	173.56
* * * * * * *	
American Society for Testing and Materials	
* * * * * * *	
ASTM E 114–95 Standard Practice for Ultrasonic Pulse-Echo Straight-Beam Examination by the Contact Method.	178.45
* * * * * * *	
Association of American Railroads	
* * * * * * *	
AAR Manual of Standards and Recommended Practices, Section C–Part III, Specification for Tank Cars, Specification M–1002, December 2000.	173.31, 174.63, 179.6, 179.7, 179.12, 179.15, 179.16, 179.20, 179.22, 179.100, 179.101, 179.102, 179.103, 179.200, 179.201, 179.220, 179.300, 179.400, 180.509, 180.513, 180.515, 180.517.
* * * * * * *	
Chlorine Institute, Inc.	
* * * * * * *	
Chlorine Institute Emergency Kit "A" for 100-lb. & 150-lb. Chlorine Cylinders (with the exception of repair method using Device 8 for side leaks).	173.3
Chlorine Institute Emergency Kit "B" for Chlorine Ton Containers (with the exception of repair method using Device 9 for side leaks).	173.3
* * * * * * *	
Compressed Gas Association, Inc., 4221 Walney Road, Chantilly, VA 20151–2923	
* * * * * * *	
CGA Pamphlet C–6.2, Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, 1996.	173.34
* * * * * * *	
CGA Pamphlet C–11, Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, 2001.	178.35
* * * * * * *	
CGA Pamphlet C–13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, 2000.	173.34, 173.303.
* * * * * * *	
CGA Pamphlet S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 2001 (with the exception of paragraph 9.1.1.1).	173.34
* * * * * * *	
National Fire Protection Association	
* * * * * * *	
NFPA 58-Liquefied Petroleum Gas Code, 2001—	173.315
* * * * * * *	

3. In § 171.15, a new paragraph (d) would be added to read as follows:

§ 171.15 Immediate notification of certain hazardous materials incidents.

* * * * *

(d) *Special reporting requirements for railroad transportation.* Whenever a tank car containing hydrogen chloride refrigerated liquid or flammable cryogenic liquid is not received by the consignee within 20 days from the date of shipment, the person with knowledge (shipper or carrier) shall notify the Federal Railroad Administration, Hazardous Materials Division, U.S. Department of Transportation, Washington, DC 20590–0001, 202–493–6247 or 202–493–6244 (day); 202–267–2100 (night).

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

4. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 172.101, the Hazardous Materials Table would be amended by adding and revising, in the appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Nos.	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	•	•	•	•	•	•	•	•	•				
	[ADD:]												
D	Cartridges power devices (*used to project fastening devices*).	ORM–D			None		63	None	None	30 kg gross	30 kg gross	A	
	•	•	•	•	•	•	•	•	•				
	[REVISE:]												
	•	•	•	•	•	•	•	•	•				
	Butylene *see also* Petroleum gases, liquefied	2.1	UN1012		2.1	19, T50	306	304	314, 315	Forbidden	150 kg	E	40
	•	•	•	•	•	•	•	•	•				
G	Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3304		2.3, 8	1	None	192	245	Forbidden	Forbidden	D	40
G	Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3304		2.3, 8	2, B9, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
G	Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3304		2.3, 8	3, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
G	Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3304		2.3, 8	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40
G	Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3305		2.3, 2.1, 8	1	None	192	245	Forbidden	Forbidden	D	17, 40
G	Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3305		2.3, 2.1, 8	2, B9, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	17, 40
G	Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3305		2.3, 2.1, 8	3, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	17, 40
G	Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3305		2.3, 2.1, 8	4	None	302, 305	314, 315	Forbidden	Forbidden	D	17, 40
G	Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3306		2.3, 5.1, 8	1	None	192	244	Forbidden	Forbidden	D	40, 89, 90
G	Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3306		2.3, 5.1, 8	2, B9, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40, 89, 90
G	Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3306		2.3, 5.1, 8	3, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40, 89, 90
G	Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3306		2.3, 5.1, 8	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40, 89, 90
G	Compressed gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3303		2.3, 5.1	2, B9, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
G	Compressed gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3303		2.3, 5.1	3, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	•	•	•	•	•	•	•	•	•				
	Gas sample, non-pressurized, toxic, n.o.s., *not refrigerated liquid.*	2.3	UN3169		2.3	6	306	302, 304	None	Forbidden	1 L	D	
	•	•	•	•	•	•	•	•	•				
G	Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3308		2.3, 8	1	None	192	245	Forbidden	Forbidden	D	40
G	Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3308		2.3, 8	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40
G	Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3308		2.3, 8	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40
G	Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3308		2.3, 8	4	None	304	314, 315	Forbidden	Forbidden	D	40
G	Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3309		2.3, 2.1, 8	1	None	192	245	Forbidden	Forbidden	D	17, 40
G	Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3309		2.3, 2.1, 8	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	17, 40
G	Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3309		2.3, 2.1, 8	3, B14	None	304	314, 315	Forbidden	Forbidden	D	17, 40
G	Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3309		2.3, 2.1, 8	4	None	304	314, 315	Forbidden	Forbidden	D	17, 40
G	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3310		2.3, 5.1, 8	1	None	192	245	Forbidden	Forbidden	D	40, 89, 90
G	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3310		2.3, 5.1, 8	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40, 89, 90

G	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3310		2.3, 5.1, 8	1	None	192	245	Forbidden	Forbidden	D	40, 89, 90
G	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3310		2.3, 5.1, 8	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40, 89, 90
G	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3310		2.3, 5.1, 8	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40, 89, 90
G	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3310		2.3, 5.1, 8	4	None	304	314, 315	Forbidden	Forbidden	D	40, 89, 90
G	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3307		2.3, 5.1	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40
G	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3307		2.3, 5.1	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40
G	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3											

6. In § 172.504, paragraph (d) would be revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(d) *Exception for empty non-bulk packages.* Except for hazardous materials subject to § 172.505, a non-bulk packaging that contains only the residue of a hazardous material covered by Table 2 of paragraph (e) of this section need not be included in determining placarding requirements.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

7. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 44701; 49 CFR 1.45, 1.53.

8. In § 173.3, a new paragraph (d) would be added to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(d) *Emergency transportation of DOT 3A480 or 3AA480 specification cylinders and DOT 105A500 multi-unit tank car tanks.* (1) A DOT 3A480 or DOT 3AA480 specification cylinder containing Chlorine or Sulphur dioxide that has developed a leak in a valve or fusible plug may be repaired temporarily by trained personnel using a Chlorine Institute Kit "A" and be transported by private or contract carrier one time, one way from the point of discovery to a proper facility for discharge and examination.

(2) A DOT 106A500 specification multi-unit tank car tank containing Chlorine or Sulphur dioxide that has developed a leak in the valve or fusible plug may be temporarily repaired by trained personnel using a Chlorine Institute Kit "B" and be transported by private or contract carrier one time, one way from the point of discovery to a proper facility for discharge and examination.

(3) Training for personnel making the repairs in paragraphs (d)(1) and (d)(2) of this section must include:

(i) Proper use of the devices and tools in the applicable kits;

(ii) Use of respiratory equipment and all other safety equipment; and

(iii) Knowledge of the properties of chlorine and sulphur dioxide.

9. In § 173.12, paragraph (c) introductory text would be revised to read as follows:

§ 173.12 Exceptions for shipments of waste materials.

* * * * *

(c) *Reuse of packagings.* A previously used packaging may be reused for the shipment of waste material transported for disposal or recovery, not subject to the reconditioning and reuse provisions contained in § 173.28 and part 178 of this subchapter, under the following conditions:

* * * * *

10. In § 173.29, paragraph (c) introductory text would be revised to read as follows:

§ 173.29 Empty packagings.

* * * * *

(c) Except for hazardous materials subject to § 172.505, a non-bulk packaging containing only the residue of a hazardous material covered by table 2 of § 172.504 of this subchapter—

* * * * *

11. In § 173.31, a new paragraph (a)(7) would be added and paragraph (b)(2)(ii) and the last sentence of paragraph (b)(5) would be revised to read as follows:

§ 173.31 Use of tank cars.

(a) * * *

(7) A DOT 103 or DOT 104 tank car may continue to be used for the transportation of a hazardous material if it meets the requirements of this subchapter; however, no new construction is authorized.

(b) * * *

(2) * * *

(ii) A single-unit tank car transporting a Division 6.1 PG I or II, or Class 2, 3, or 4 material must have a reclosing pressure relief device. However, a single-unit tank car built before January 1, 1991, and equipped with a non-reclosing pressure relief device may be used to transport a Division 6.1 PG I or II material or a Class 4 liquid provided such materials do not meet the definition of a material poisonous by inhalation.

* * * * *

(b) * * *

(5) * * * Tank cars modified before July 1, 1996, may conform to the bottom-discontinuity protection requirements of Appendix Y, instead of paragraphs E9.00 or E10.00 of the AAR Specifications for Tank Cars.

* * * * *

§ 173.35 [Amended]

12. In § 173.35, in paragraph (b), the wording "Initial use and reuse of IBCs." would be removed and the wording "*Initial use and reuse of IBCs.* (Also see § 180.352 of this subchapter.)" would be added in its place.

13. In § 173.50, paragraph (a) would be revised to read as follows:

§ 173.50 Class 1—Definitions.

(a) *Explosive.* For the purposes of this subchapter, an explosive means any substance or article, including a device, which is designed to function by explosion (*i.e.*, an extremely rapid release of gas and heat) or which, by chemical reaction within itself, is able to function in a similar manner even if not designed to function by explosion, unless the substance or article is otherwise classed under the provisions of this subchapter. The term includes a pyrotechnic substance or article, unless the substance or article is otherwise classed under the provisions of this subchapter.

14. In § 173.54, paragraph (c) would be revised to read as follows:

§ 173.54 Forbidden explosives.

* * * * *

(c) A leaking or damaged package or article containing an explosive.

* * * * *

15. In § 173.62, paragraph (c) introductory text and in the Table of Packing Methods, in column 1, Packing Instructions 132(a) and 132(b) would be revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) Explosives must be packaged in accordance with the following table:

* * * * *

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
* * *	* * *	* * *	* * *
132(a) For articles consisting of closed metal, plastics or fiberboard casings that contain detonating explosives, or consisting of plastics-bonded detonating explosives..	Not necessary	Not necessary	Boxes—steel (4A); aluminum (4B); wood, natural, ordinary (4C1); wood, natural, sift proof walls (4C2); plywood (4D); reconstituted wood (4F); fiberboard (4G); plastics, solid (4H2).
132(b) For articles without closed casings	Receptacles fiberboard metal plastics Sheets paper plastics.	Not necessary	Boxes steel (4A); aluminum (4B); wood, natural, ordinary (4C1); wood, natural, sift proof walls (4C2); plywood (4D); reconstituted wood (4F); fiberboard (4G); plastics, solid (4H2).
* * *	* * *	* * *	* * *

§ 173.314 [Amended]

16. In § 173.314, the following changes would be made: *a. Paragraph (g)(1) would be removed and reserved;*

b. In paragraph (k), the wording "safety relief" would be removed and the wording "reclosing pressure relief" added in its place;

c. In paragraph (m), the wording "safety relief" would be removed and the wording "reclosing pressure relief" added each place it appears, and in the last sentence, the wording "Safety relief" would be removed and the wording "Reclosing pressure relief" added in its place.

17. In § 173.315, paragraphs (j)(2) and (k)(4) would be revised and in the paragraph (n)(1) table, paragraph (vi) would be added to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(j) * * *

(2) Each container must be equipped with safety devices in compliance with the requirements for safety devices on containers as specified in NFPA 58.

* * * * *

(k) * * *

(4) It must conform to the applicable provisions of NFPA 58, except to the extent that provisions in NFPA 58 are inconsistent with requirements in parts 178 and 180 of this subchapter.

* * * * *

(n) *Emergency discharge control for cargo tank motor vehicles in liquefied compressed gas service.*—(1) * * *

§ 173.315(n)(1)(*)	Material	Delivery service	Required emergency discharge control capability
* * *	* * *	* * *	* * *
(vi)	Division 2.2 materials with a subsidiary hazard, Division 2.1 materials, and anhydrous ammonia in a cargo tank with a capacity of greater than 13,247.5L (3,500 water gallons).	Both metered delivery and other than metered delivery service.	Paragraph (n)(2) of this section, provided the system operates for both metered and other than metered deliveries; otherwise, paragraphs (n)(2) and (n)(3) of this section.

* * * * *

§ 173.319 [Amended]

18. In § 173.319, paragraph (a)(3) would be removed and reserved.

19. In § 173.320, paragraph (a)(2) would be revised to read as follows:

§ 173.320 Cryogenic liquids, exceptions.

(a) * * *

(2) Subparts A, B, C, D, G and H of part 172, (§§ 174.24 for rail and 177.817 for highway) and in addition, part 172 in its entirety for oxygen.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

20. The authority citation for part 177 would continue to read as follows:

Authority :49 U.S.C. 5101–5127; 49 CFR 1.53.

21. In § 177.834, paragraph (a) would be revised, a new paragraph (b) would be added, and paragraph (g) would be reserved, to read as follows:

§ 177.834 General requirements.

(a) *Packages secured in a motor vehicle.* Any package containing any hazardous material, not permanently attached to a motor vehicle, must be secured against movement, including relative motion between packages, within the vehicle on which it is being transported, under conditions normally incident to transportation. Packages having valves or other fittings must be loaded in a manner to minimize the likelihood of their damage during transportation.

(b) Each package containing a hazardous material bearing package orientation markings prescribed in § 172.312 of this subchapter must be loaded on a transport vehicle or within a freight container in accordance with such markings and must remain in the correct position indicated by the markings during transportation.

* * * * *

(g) [Reserved]

* * * * *

22. In § 177.835, the section heading and paragraph (c)(4)(iii) would be revised to read as follows:

§ 177.835 Class 1 materials.

* * * * *

(c) * * *

(4) * * *

(iii) Division 2.3, Hazard Zone A or Hazard Zone B materials or Division 6.1, PG I, Hazard Zone A materials, or

* * * * *

23. In § 177.837, the section heading and paragraph (a) would be revised to read as follows:

§ 177.837 Class 3 materials.

* * * * *

(a) *Engine stopped.* Unless the engine of a cargo tank motor vehicle is to be used for the operation of a pump, Class 3 material may not be loaded into, or on, or unloaded from any cargo tank motor vehicle while the engine is running. The diesel engine of a cargo tank motor vehicle may be left running during the loading and unloading of a Class 3 material if the ambient temperature is at or below −12 °C (10 °F).

* * * * *

24. In § 177.841, the section heading and paragraph (e)(1) would be revised to read as follows:

§ 177.841 Division 6.1 and Division 2.3 materials.

* * * * *

(e) * * *

(1) Except as provided in paragraph (e)(3) of this section, bearing or required to bear a POISON or POISON INHALATION HAZARD label or placard in the same motor vehicle with material that is marked as or known to be foodstuffs, feed or edible material intended for consumption by humans or animals unless the poisonous material is packaged in accordance with this subchapter and is:

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

25. The authority citation for part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

26. In § 178.45, in paragraph (h) introductory text, the first sentence would be revised to read as follows:

§ 178.45 Specification 3T seamless steel cylinder.

* * * * *

(h) *Ultrasonic examination.* After the hydrostatic test, the cylindrical section of each vessel must be examined in accordance with ASTM Standard E 213 for shear wave and E 114 for straight beam (see § 171.7of this subchapter.)

* * *

* * * * *

PART 179—SPECIFICATION FOR TANK CARS

27. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

28. In § 179.1, paragraph (a) would be revised to read as follows:

§ 179.1 General.

(a) This part prescribes the specifications for tanks that are to be mounted on or form part of a tank car and which are to be marked with a DOT specification.

* * * * *

29. In 179.3, paragraphs (b) and (c) would be revised to read as follows:

§ 179.3 Procedure for securing approval.

* * * * *

(b) When, in the opinion of the Committee, such tanks or equipment are in compliance with the requirements of this subchapter, the application will be approved.

(c) When such tanks or equipment are not in compliance with the requirements of this subchapter, the Committee may recommend service trials to determine the merits of a change in specifications. Such service trials may be conducted only if the builder or shipper applies for and obtains an exemption.

30. § 179.5 would be amended as follows:

a. In paragraph (a), the wording "owner, the Department, and" would be removed and the wording "owner and" added in its place;

b. In paragraph (b), the last sentence would be removed;

c. In paragraph (d), in the first sentence, the word "Secretary" would be removed and the wording "Executive Director—Tank Car Safety, AAR" added in its place and in the second sentence, the wording "Bureau of Explosives" would be removed and the wording "Executive Director—Tank Car Safety, AAR" added in its place; and

d. Paragraph (c) would be revised to read as follows:

§ 179.5 Certificate of construction.

* * * * *

(c) If the owner elects to furnish service equipment, the owner shall furnish the Executive Director—Tank Car Safety, AAR, a report in prescribed form, certifying that the service equipment complies with all the requirements of the specifications.

* * * * *

31. In § 179.7, paragraph (f) would be revised to read as follows:

§ 179.7 Quality assurance programs.

* * * * *

(f) No tank car facility may manufacture, repair, inspect, test, qualify or maintain tank cars subject to requirements of this subchapter, unless it is operating in conformance with a quality assurance program and written procedures required by paragraphs (a) and (b) of this section.

§ 179.100–13 [Amended]

32. In § 179.100–13, in paragraphs (b) and (c), the wording "except as prescribed in § 179.102 or § 179.130" would be removed and the wording "except as prescribed in §§ 173.314(j), 179.102 or 179.103" added in its place.

33. In Subpart D, the heading for Subpart D would be revised to read as follows:

Subpart D—Specifications for Non-pressure Tank Car Tanks (Classes DOT–111AW and 115AW)

* * * * *

34. In § 179.200, the section heading would be revised to read as follows:

§ 179.200 General specifications applicable to non-pressure tank car tanks (Class DOT–111).

* * * * *

§ 179.200–14 [Amended]

35. In § 179.200–14, in paragraph (a), the wording ", or in a dome for Class DOT–103 and 104 type cars" would be removed and paragraph (f) would be removed.

§ 179.200–23 [Amended]

36. In § 179.200–23, the section heading would be amended by removing the word "safety" and adding the word "pressure" in its place.

§ 179.200–24 [Amended]

37. In § 179.200–24, in the table, column 2 would be amended by removing the wording "DOT–103–W" and adding the wording "DOT 111A" in its place.

§ 179.201–1 [Amended]

38. In § 179.201–1, the table would be amended by removing the entries for DOT specification 103A–ALW, 103AW, 103ALW, 103ANW, 103BW, 103CW, 103DW, 103EW, 103W, and 104W tank cars.

§ 179.201–2 [Removed and Reserved]

39. Section 179.201–2 would be removed and reserved.

§ 179.201–3 [Amended]

40. In § 179.201–3, in paragraph (b), the wording "DOT–103B, 103BW, 111A60W5" would be removed and the wording "DOT–111A60W5" added in its place.

41. In § 179.201–6, the following changes would be made:

a. In paragraph (a), the wording "103ALW, 103DW, 103W," would be removed;

b. In paragraph (b), the wording "103BW," would be removed;

c. In paragraph (c), the wording "DOT–103CW, 103DW, 103EW," would

be removed and the word "DOT" added in its place; and

d. Paragraph (d) would be removed.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

42. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5151–5127; 49 CFR 1.53.

43. In § 180.507, a new paragraph (b)(5) would be added to read as follows:

§ 180.507 Qualification of tank cars.

* * * * *

(b) * * *

(5) Specification DOT 103A–ALW, 103AW, 103ALW, 103ANW, 103BW, 103CW, 103DW, 103EW, and 104W tank cars may continue in use, but new construction is not authorized.

Issued in Washington, DC on January 7, 2003, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–580 Filed 1–17–03; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 68, No. 13
Tuesday, January 21, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Substitution of Donated Beef and Pork With Commercial Beef and Pork

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Food and Nutrition Service's (FNS) intent to continue to provide processors with an opportunity to participate in a demonstration project to test program changes in the State processing program. In the demonstration project, selected processors will be allowed to substitute donated beef and pork supplied by the Department of Agriculture (the Department, or USDA) with commercial beef and pork. Commercial beef and pork used in the demonstration project must meet the same specifications required of USDA donated beef and pork. Currently, there are no processors in the demonstration project substituting donated beef and pork with commercial beef and pork. The demonstration project will continue through June 30, 2005; proposals for approval to participate must be submitted to FNS by April 30, 2004. Through the demonstration project, the Department hopes to determine if allowing this type of substitution will result in increased participation of processors, and provide a greater variety of processed end products to recipient agencies in a more timely manner and/or at lower costs.

DATES: The proposals described in this notice may be submitted to FNS through April 30, 2004. The demonstration project runs until June 30, 2005.

ADDRESSES: Proposals should be sent to Director, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Park Office Center, Room 504, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.

FOR FURTHER INFORMATION CONTACT: David Brothers, Schools and Institutions Branch, at (703) 305–2668.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice has been determined to be not significant and therefore was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22675, May 31, 1984).

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and is thus exempt from the provisions of that Act.

Background

Food Distribution Program regulations under 7 CFR 250.30 establish the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for the processing of USDA donated foods under the State processing program, and prescribe the minimum requirements to be included in such contracts. Section 250.30(f)(1) allows for the full or limited substitution of certain donated food items with commercial foods, with the exception of beef and pork. Processors have stated that the regulations prohibiting the substitution of donated beef and pork reduce the quantity of donated beef and pork they are able to accept and process during a given period. Processors tend to schedule production around deliveries of the donated beef and pork, which decreases their flexibility in providing end products to recipients. Some processors must schedule production around deliveries of donated beef and pork for up to 30 States. Vendors do not always deliver donated beef and pork to the processors as scheduled, causing delays in production. These delays may be alleviated if processors can replace donated beef and pork with their commercial beef and pork.

Demonstration Project

7 CFR 250.30(t) authorizes FNS to waive any of the requirements contained in food distribution regulations under 7 CFR part 250 for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods. In accordance with this regulatory authority, the Department waived the regulatory restriction under 7 CFR 250.30(f)(1) to conduct a demonstration project from June 30, 2001 to June 30, 2003, that provided the opportunity for selected processors to substitute donated beef and pork with commercial beef and pork in the State processing program. Through the demonstration project, announced on May 30, 2001, at 66 FR 29282, FNS hoped to determine if the waiver of the regulations would increase the number of processors participating in the State processing program, and whether it would increase the quantity of donated beef and pork that each processor accepts for processing. Additionally, FNS sought to determine if the expected increases in competition, and in the quantities of donated beef and pork accepted for processing, would enable processors to function more efficiently, resulting in the production of a greater variety of processed end products more quickly and/or at lower costs. To date, no processors have taken the opportunity to substitute donated beef and pork with commercial beef and pork in the demonstration project.

Continuation of Demonstration Project

The Department has decided to continue to provide processors with the opportunity to participate in the demonstration project through June 30, 2005. Processors approved to participate would be allowed to substitute donated beef and pork with commercial beef and pork. With the exception of the waiver of the prohibition on substitution of donated beef and pork in Section 250.30(f)(1), all regulatory and contract requirements continue to apply, and must be met by processors participating in the demonstration project. Program

regulations relating to the processing of donated meat products apply to the substituted beef and pork in the demonstration project. Section 250.30(g) requires that when donated meat or poultry products are processed, or when any commercial meat or poultry product is incorporated into an end product containing one or more donated foods, all of the processing must be performed in plants under continuous Federal meat or poultry inspection, or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to Food Safety Inspection Service (FSIS) inspection, all donated meat and poultry processing must be performed under Agricultural Marketing Service (AMS) acceptance service grading. The following basic requirements will apply to the demonstration project:

- As with the processing of donated beef and pork into end products, AMS graders must monitor the process of substituting commercial beef and pork to ensure program integrity is maintained.
- Only bulk beef and pork delivered by USDA vendors to the processor will be eligible for substitution. No backhauled product will be eligible. (Backhauled product is typically frozen beef and pork in 10 pound chubs delivered to schools which may be sent to processors for further processing at a later time.)
- Commercial beef and pork substituted for donated beef and pork must be certified by an AMS grader as complying with the same product specifications as the donated beef and pork. USDA specifications relative to acceptable tolerance levels for specific microorganisms must be met. The age of any commercial product that is used in substitution for donated food may not exceed six months.
- Substitution of commercial beef and pork may occur in advance of the actual receipt of the donated beef and pork by the processor. Should a processor choose to use the substitution option prior to the purchase of the product by USDA, the processor must assume all risks. Any variation between the amount of commercial beef and pork substituted and the amount of donated beef and pork received by the processor will be adjusted according to guidelines furnished by USDA.
- Any donated beef and pork not used in end products because of substitution must only be used by the processor in other commercial processed products and cannot be sold as an intact unit. However, it may be used to fulfill other USDA contracts, provided all terms of the other contract are met.
- The only regulatory provision or State processing contract term affected by the demonstration project is the prohibition on substitution of beef and pork (Section 250.30(f)(1) of the regulations). All other regulatory and contract requirements remain unchanged and must still be met by processors participating in the demonstration project.

Processors must submit proposals to obtain approval for participation in the demonstration project by April 30, 2004. The written proposals must describe how processors plan to carry out the substitution while complying with the above conditions. Proposals must include:

(1) A step-by-step description of how production will be monitored; and,

(2) A complete description of the records that will be maintained for (a) the commercial beef and pork substituted for the donated beef and pork and (b) the disposition of the donated beef and pork delivered by USDA.

All proposals will be reviewed by representatives of FNS' Food Distribution Division, and of the AMS Livestock Division's Commodity Procurement Branch and Grading Branch. Companies approved for participation in the demonstration project will be required to enter into an agreement with FNS and AMS that authorizes the processor to substitute donated beef and pork with commercial bulk beef and pork in fulfilling any current or future State processing contracts during the demonstration project period. However, participation in the demonstration project will not ensure that processors will be awarded any State processing contracts.

Dated: January 13, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–1253 Filed 1–17–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

West Fork Kickapoo River Watershed, Vernon County, Wisconsin

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the West Fork Kickapoo River Watershed, Vernon County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Tom Krapf, Water Resources Staff Leader, Natural Resources Conservation Service, 6515 Watts Road, Suite 200, Madison, Wisconsin, 53719. Telephone (608) 276–8732, extension 232.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Patricia S. Leavenworth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The project purpose is flood prevention. The planned work of improvement includes the upgrade of the dam to meet class (c) high hazard criteria.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Tom Krapf.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: January 4, 2003.

Patricia S. Leavenworth,

State Conservationist.

Finding of No Significant Impact for West Fork Kickapoo River Watershed-Supplement, Vernon County, Wisconsin

Introduction

The West Fork Kickapoo River Watershed is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan-supplement. This assessment was conducted in consultation with local, state, and federal agencies as well as

with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), 6515 Watts Road, Suite 200, Madison, WI 53719.

Recommended Action

The size of Klinkner Dam will be increased to meet NRCS class (c) criteria. This will consist of raising the height of the dam, widening the auxiliary spillway, increasing the size of the principal spillway, adding a riser to provide sediment storage, treatment of the abutments if geologic exploration indicates this is needed, and installing a flood warning system.

Effect of Recommended Action

The recommended action will extend the life of Klinkner Dam for an additional 50 years. It will provide increased protection for homes and a school in the hydraulic shadow of the dam and will meet state requirements for a high hazard dam.

The proposed action will have no effect on wetlands.

An initial survey for any cultural resources that may be impacted by the project was conducted. The survey concludes that no significant adverse impacts will occur to cultural resources in the watershed should the plan be implemented. The NRCS has consulted with the State Historic Preservation Office (SHPO) on the effects that planned measures will have on significant cultural resources. Significant cultural resources identified during implementation will be avoided or otherwise preserved in place to the fullest practical extent. If significant cultural resources cannot be avoided or preserved, pertinent information will be recovered before construction. If there is a significant cultural resource discovery during construction, appropriate notice will be made by NRCS to the State Historic Preservation Officer and the National Park Service. Consultation and coordination have been and will continue to be used to ensure the provisions of Section 106 of Public Law 89–665 have been met and to include provisions of Public Law 89–523, as amended by Public Law 93–291. NRCS will take action as prescribed in the NRCS General Manual (GM) 420, Part 401, to protect or recover any significant cultural resources discovered during construction.

No threatened or endangered species in the watershed will be affected by the project.

No wilderness areas are within the watershed.

Little impact will be made on scenic values. Project Sponsors will be required to enact a floodplain-zoning ordinance, which restricts development in the hydraulic shadow of Klinkner Dam prior to any federal reimbursement for relocation expenses.

No significant adverse environmental impacts will result from installations.

Alternatives

The planned action is the most practical means of protecting the watershed, minimizing the threat to loss of life, and complying with the Wisconsin Department of Natural Resources requirements. The Sponsors considered the following alternatives:

(1) No Action

The No Action alternative was not a viable option, since the dam does not meet the Wisconsin Department of Natural Resources dam hazard classification criteria.

(2) Structural and Non-Structural Rehabilitation

This alternative would relocate the four homes and a school located in the hydraulic shadow of the dam. The dam would also need to be upgraded to meet current class "a" requirements.

(3) Structural Rehabilitation

This is the recommended action.

(4) Dam Removal (Decommissioning)

This alternative does not meet the project purpose because it does not reduce the risk of loss of life and it does not maintain flood control or watershed protection, and therefore it was not considered further.

(5) Non-Structural

This alternative consists of removal of the homes and school from the hydraulic shadow but no repairs would be made to the dam. Under this alternative the dam would fail and all flood control and watershed protection afforded by the dam would be lost. Therefore it was not considered further.

Consultation and Public Participation

Copies of the Plan Supplement have been sent out to the single point of contact for the State of Wisconsin, Wisconsin Department of Natural Resources, Wisconsin Department of Agriculture, Trade, and Consumer Protection, Wisconsin Department of Emergency Government, U.S. Fish and Wildlife Service, U.S. Forest Service, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, the Wisconsin State Clearinghouse, and the West Central Regional Planning Commission. The document was distributed to American Indian Tribes that have expressed interest in consulting with federal agencies in projects in Vernon County. The project sponsor, Vernon County, has met with the Amish community leaders to discuss the project. The Amish have a school located in the hydraulic shadow of the dam.

A scoping meeting was advertised and held on December 10, 2001 and interdisciplinary efforts were used in the planning process. In addition to the general public, one federal agency (NRCS), two state agencies (DNR, SHPO), and three county agencies (Land Conservation Department, County Zoning Office, County Administration Department), and local conservation organizations were invited to participate in the scoping and planning process.

Specific consultation was conducted with the State Historic Preservation Officer and the county historical society concerning cultural resources in the watershed.

The environmental assessment was transmitted to all participating and interested agencies, groups, and individuals for review and comment on September 15, 2002. Public meetings were held as needed to keep all interested parties informed of the study progress and to obtain public input to the plan and environmental evaluation.

Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the West Fork Kickapoo River Watershed Plan Supplement is not required.

Dated: January 4, 2003.

Patricia S. Leavenworth,

State Conservationist.

[FR Doc. 03–1185 Filed 1–17–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Portion of Guarantee Authority Available for Fiscal Year 2003 From Carryover and Recovered Funds

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR part 4279, subpart B, each fiscal year the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent or guaranteed loans with a guarantee percentage exceeding 80 percent. This notice covers only fiscal year (FY) 2002 carryover and recovered funds. Once FY 2003 appropriated funds are apportioned, a second notice will be published for those funds.

Allowing the guarantee fee to be reduced to 1 percent or exceeding the 80 percent guarantee on certain guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects which the Agency has found particularly meritorious, such as projects in rural communities that remain persistently poor, experience long-term population decline and job deterioration, are experiencing trauma as a result of natural disaster, or are experiencing fundamental structural changes in the economic base.

Not all of the available Business and Industry (B&I) Guaranteed Loan program funding authority for FY 2002 was used; consequently, this and recovered funding authority for approved B&I Guaranteed Loans which did come to fruition are now apportioned and available for use. Not more than 12 percent of the Agency's quarterly apportioned carryover and recovered guarantee authority will be reserved for loan requests with a guarantee fee of 1 percent and not more than 15 percent of the Agency quarterly apportioned carryover and recovered guarantee authority will be reserved for guaranteed loan requests with a guaranteed percentage exceeding 80 percent. Once the above quarterly limits have been reached, all additional loans guaranteed with carryover and recovered funds during the remainder of that quarter will require a 2 percent guarantee fee and not exceed an 80 percent guarantee limit. As an exception to this paragraph and for the purposes of this notice, loans developed by the North American Development Bank Community Adjustment and Investment Program (CAIP) will not count against the 15 percent limit. Up to 50 percent of CAIP funds may be used for loan requests with a guaranteed percentage exceeding 80 percent.

Written requests by the Rural Development State Office for approval of a guaranteed loan with a 1 percent guarantee fee or a guaranteed loan exceeding 80 percent must be forwarded to the National Office, Attn: Director, Business and Industry Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Office confirming approval or disapproval of the request.

EFFECTIVE DATE: January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Fred Kieferle, Processing Branch Chief, Business and Industry Division, Rural Business-Cooperative Service, USDA, Stop 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224, telephone (202) 720–7818.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866.

Dated: January 13, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 03–1226 Filed 1–17–03; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

Date: February 21, 2003.

Time: 9 a.m. to 12 p.m and 2:30 p.m to 3:30 p.m.

Place: U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Room 4830 (Room 3407 has also been reserved as a backup).

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a plenary meeting on February 21, 2003 at the U.S. Department of Commerce.

The ETTAC will discuss administrative and trade issues including the status of trade negotiations in regards to environmental technologies trade liberalization and recent management changes within the U.S.-Asia Environmental Partnership Program (USAEP). Time will be permitted for public comment. The meeting is open to the public.

Written comments concerning ETTAC affairs are welcome anytime before or after the meeting. Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the interagency Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2004.

For further information phone Corey Wright, Office of Environmental Technologies Industries (ETI), International Trade Administration, U.S. Department of Commerce at (202) 482–5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI.

Dated: January 13, 2003.

Carlos F. Montoulieu?

Director, Office of Environmental Technologies Industries.

[FR Doc. 03–1227 Filed 1–17–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010203C]

Marine Mammals; File Nos. 473–1700, 545–1488, 662–1661 and 1039–1699

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for new permits and permit amendments.

SUMMARY: Notice is hereby given that the following individuals/organizations have applied in due form for a permit or permit amendment to take humpback whales (*Megaptera novaeangliae*), killer whales (*Orcinus orca*), sperm whales (*Physeter macrocephalus*), fin whales (*Balaenoptera physalis*), minke whales (*Balaenoptera acutorostrata*), gray

whales (*Eschrichtius robustus*), Baird's beaked whales (*Berardius bairdii*), Cuvier's beaked whales (*Ziphius cavirostris*), Stejneger's beaked whales (*Mesoplodon stejnergeri*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), harbor seals (*Phoca vitulina*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), Northern fur seals (*Callorhinus ursinus*), Steller sea lions (*Eumetopias jubatus*), false killer whales (*Pseudorca crassidens*), pygmy killer whales (*Feresa attenuate*), pilot whales (*Globicephala macrorhynchus*), melon-headed whales (*Peponocephala electra*), bottlenose dolphins (*Tursiops truncatus*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanenis*), and/or spotted dolphins (*Stenella attenuata*) for the purposes of scientific research: Janice Straley, Assistant Professor of Marine Biology, University of Southeast Alaska, 1332 Seward Avenue, Sitka, AK 99835–9498, (PI: Jan Straley); North Gulf Oceanic Society, 60920 Mary Allen Avenue, Homer, AK 99603, (PI: Craig Matkin); Ms. Dena Matkin, Box 22, Gustavus, AK 99826, (PI: Dena Matkin); and Ms. Ann Zoidis, Marine Mammal Biologist, Allied Whale, 11 Des Isle Ave., PO Box 885, Bar Harbor, ME 04609, (PI: Ann Zoidis).

ADDRESSES: The permit applications, amendment requests and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910, (301)713–2289, (all applications);

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941, (file no. 1039–1699 only); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, (907)586–7221 (file nos. 473–1700, 545–1488 and 662–1661 only).

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Lynne Barre, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permits and amendments are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Janice Straley (file no. 473–1700) requests a five-year scientific research permit to collect long term population data on humpback whales, predation data on killer whales and longline fishing gear depredation by sperm whales. The permit applicant requests takes by close approach for: (1) photo-identification, behavioral observation, biopsy sampling, suction cup tagging for CRITTERCAM and incidental harassment of sperm whales; (2) photo-identification, behavioral observation, biopsy sampling, collection of dead parts following killer whale predation events and incidental harassment of humpback whales, gray whales, minke whales and fin whales; (3) photo-identification, behavioral observation, biopsy sampling and incidental harassment of killer whales; and (4) collection of dead parts following killer whale predation events of additional species of harbor porpoise, Dall's porpoise, Pacific white-sided dolphin, Northern fur seal, Steller sea lion and harbor seal. All research will take place in Alaska waters. This is a continuation of studies authorized under Permit No. 473–1433–04.

The North Gulf Oceanic Society (PI: Craig Matkin) is requesting an amendment to Permit No. 545–1488–01 which authorizes the take by close approach for photo-identification, behavioral observation and incidental harassment of killer whales for the purposes of population analyses and predation studies. This permit also authorizes the collection of dead parts available after killer whale predation events from the following species: Steller sea lion, humpback whale, minke whale, gray whale, harbor porpoise, Dall's porpoise, harbor seal, Pacific white-sided dolphin and Northern fur seal. Research activities take place in Alaska waters, and the permit expires on March 31, 2004.

The permit amendment request (file no. 545–1488) would add the deployment by close approach of short-term radio, satellite, acoustic recording, and underwater video tags and biopsy sampling on the following species: killer whale, gray whale, harbor porpoise, Dall's porpoise, Pacific white-sided dolphin, Baird's beaked whale, Cuvier's beaked whale and Stejneger's beaked whales. The purpose of the amendment, as noted in the application, is to examine diving behavior, feeding, and movements of whales and to obtain information on elusive and rarely studied species.

Dena Matkin (file no. 662–1661) requests a five-year scientific research permit to continue long-term population and predation studies of killer whales and opportunistic population studies of humpback whales in Alaska waters by close approach for photo-identification and behavioral observation. The applicant also requests authorization to continue collecting dead parts following killer whale predation events from the following species: Steller sea lion, humpback whale, minke whale, gray whale, harbor porpoise, Dall's porpoise, harbor seal, Pacific white-sided dolphin and Northern fur seal. This research has been previously authorized under Permit No. 662–1345 which expires on May 31, 2003.

Ann Zoidis (file no. 1039–1700) requests a five-year scientific research permit to study social sound production in humpback whales in the waters of Kauai, Maui and the Big Island, Hawaii. The applicant requests takes of humpback whales by close approach for photo-identification and behavioral observation (above and below water), underwater passive acoustic recordings and incidental harassment. During these humpback whale studies, the applicant also requests take authorizations for underwater passive acoustic recordings and incidental harassment of the following species: false killer whale, pygmy killer whale, pilot whale, melon-headed whale, bottlenose dolphin, spinner dolphin, rough-toothed dolphin, and spotted dolphin.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this

application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 13, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–1251 Filed 1–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors to the Superintendent, Naval Postgraduate School

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The purpose of the meeting is to elicit the advice of the board on the Naval Service's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end, the board will inquire into the curricula, instruction, physical equipment, administration, state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent. In order to further the collaborative exchange and partnership between the Naval Postgraduate School and the Air Force Institute of Technology (AFIT), AFIT and the Air University's Board of Visitors will attend a joint session on January 30, 2003. This meeting will be open to the public.

DATES: The meetings will be held on Wednesday, January 29, 2003, from 8 a.m. to 4 p.m. and on Thursday, January 30, 2003, from 8 a.m. to 2 p.m. All written comments regarding this meeting should be received by January 24, 2003, and be directed to Superintendent, Naval Postgraduate School (Attn: Jaye Panza), 1 University Circle, Monterey, CA 92943 or by fax (831) 656–3145.

ADDRESSES: The meetings will be held at the Naval Postgraduate School, Herrmann Hall, 1 University Circle, Monterey, CA.

FOR FURTHER INFORMATION CONTACT: Mrs. Jaye Panza, Naval Postgraduate School, 1 University Circle, Monterey, CA, 93943–5000, telephone number (831) 656–2514.

Dated: January 14, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corp, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–1300 Filed 1–17–03; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

State Flexibility Program

AGENDA: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice amending eligibility requirements and extending application deadline.

SUMMARY: Under the State Flexibility ("State-Flex") Program, the Secretary will competitively grant State-Flex authority to up to seven State educational agencies (SEAs), permitting them to (1) consolidate certain Federal education funds that are provided for State-level activities and State administration and use those funds for any educational purpose authorized under the Elementary and Secondary Education Act (ESEA) in order to meet the State's definition of adequate yearly progress (AYP) and advance the education priorities of the State and its local educational agencies (LEAs); and (2) specify how LEAs in the State will use funds allocated under section 5112(a) (State Grants for Innovative Programs) of the ESEA. In addition, an SEA with State-Flex authority must enter into performance agreements with at least four, but no more than ten, LEAs (at least half of which must be high-poverty LEAs), giving those LEAs the flexibility to consolidate certain Federal education funds and to use those funds for any educational purpose permitted under the ESEA in order to meet the State's definition of AYP and specific, measurable goals for improving student achievement and narrowing achievement gaps.

In this notice, we are (1) amending the State-Flex eligibility requirements consistent with the recently announced requirements for submission of accountability plans under Title I of the ESEA and (2) extending the deadline for eligible SEAs to apply to participate in the State-Flex program.

Application Deadline: February 28, 2003.

Eligible Applicants: To be eligible to participate in this State-Flex competition, an SEA must have submitted, by January 31, 2003, its accountability workbook under Title I of the ESEA.

SUPPLEMENTARY INFORMATION: On October 11, 2002, we published in the **Federal Register** a notice inviting applications for State flexibility authority (67 FR 63,394–63,395) and a notice of final application requirements, selection criteria, and competition schedule (67 FR 63,390–63,394). At that time, we established a State-Flex application deadline of January 17, 2003 and indicated that to be eligible to apply, an SEA had to either have its AYP definition approved by the Department or submit an assurance that it would provide the Department with a State AYP definition that meets the requirements of section 1111(b)(2) of the ESEA by the AYP deadline established by the Department.

Subsequent to announcing the initial State-Flex competition, the Department published final accountability regulations under Title I and sent to all States an accountability workbook to assist them in submitting their accountability plans for peer review and approval. Because the primary purpose of the State-Flex program is to assist States and affected LEAs in meeting the State's definition of AYP under Title I, in this notice, the Department is amending the State-Flex eligibility requirements to reflect the recently announced steps that States must take to comply with Title I accountability requirements.

Under Title I, States must submit their completed accountability workbook to the Department by January 31, 2003. The workbook will document how respective elements that are required for approval are met by existing State policy, or will be met through a proposed State policy. For each proposed policy that a State lists in its workbook, the State must include a dateline demonstrating the steps that it will take to adopt the policy prior to the May 1, 2003 deadline for final submission of State accountability plans.

Thus, to be eligible to participate in the State-Flex program, a State must have submitted the completed workbook by the deadline established by the Department under Title I.

The Secretary intends to select up to four SEAs for participation in State-Flex in this initial competition. In conducting the competition, the Department will review the quality of State-Flex plans, including the quality of the local performance agreements that are submitted as part of those plans, on the basis of the selection criteria announced in the October 11, 2002 **Federal Register** notice (67 FR 63,390–63,394). If an SEA selected for State-Flex authority has not yet received final

approval of its accountability system as required under Title I, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department fully approves the SEA's accountability system by the deadline established under Title I.

The Department will select the additional State-Flex SEAs in a subsequent competition.

FOR FURTHER INFORMATION CONTACT: Ms. Milagros Lanauze. Telephone: (202) 401–0039 or via Internet: *StateFlex@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

APPLICATIONS: You may obtain a copy of the application on the Department's Web site at: *http://www.ed.gov/GrantApps/#stateflex*.

You may also obtain a copy of the application from the contact person identified under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as other Department of Education documents published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: Sections 6141 through 6144 of the ESEA, as amended by the No Child Left Behind Act of 2001 (P.L. 107–110).

Dated: January 16, 2003.

Eugene W. Hickok,

Under Secretary.

[FR Doc. 03–1373 Filed 1–16–03; 2:22 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–275]

Application to Export Electric Energy; NorthPoint Energy Solutions Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: NorthPoint Energy Solutions Inc. ("NorthPoint") has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 20, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On December 3, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from NorthPoint to transmit electric energy from the United States to Canada. NorthPoint is a corporation organized and existing under the Business Corporation Act of Saskatchewan, having its principal place of business in Regina, Saskatchewan, Canada. The sole shareholder of Northpoint is Saskatchewan Power Corporation ("SaskPower"), a Provincial Crown Corporation of the Government of Saskatchewan. NorthPoint does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area in the United States.

NorthPoint will purchase the power to be exported from electric utilities and federal power marketing agencies within the United States. The exported electricity will be delivered to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities Co., International Transmission Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by NorthPoint, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the NorthPoint application to export electric energy to Canada should be clearly marked with Docket EA–275. Additional copies are to be filed directly with Debra L. McAllister, Senior Legal Counsel, NorthPoint Energy Solutions Inc., 2025 Victoria Avenue, Regina, Saskatchewan, Canada S4P 0SI *AND* Stan Berman and Todd Glass, Heller Ehrman White & McAuliffe LLP, 701 Fifth Avenue, Seattle, WA 98104..

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on January 13, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–1216 Filed 1–17–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–445–005]

Alliance Pipeline L.P.; Notice of Compliance Filing

January 14, 2003.

Take notice that on January 8, 2003, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Substitute Second Revised Sheet No. 12, proposed to be effective January 1, 2003.

Alliance states that it provides firm service under Rate Schedule FT–1 for its existing shippers, all of whom have agreed to pay negotiated rates. The shippers' negotiated rate agreements provide that changes in Alliance's costs will be reflected in its negotiated rates from time to time. Sheet Nos. 11–14 of Alliance's FERC Gas Tariff set forth the essential elements of its Rate Schedule FT–1 negotiated rate transactions. On November 27, 2002, Alliance filed proposed revised tariff sheets to reflect changes made to the rates charged under its negotiated rate agreements, as the results of changes in its costs.

Subsequently, Alliance states that it discovered it inadvertently had omitted a negotiated rate transaction with GCRL Marketing Ltd. (GCRL), on Second Revised Sheet No. 12. Accordingly, on December 17, 2002, Alliance filed Substitute Second Revised Sheet No. 12 to reflect the essential elements of the GCRL transaction. By letter order dated December 20, 2002, the Commission accepted the foregoing tariff sheets to be effective January 1, 2003, except for Second Revised Sheet No. 12 which was rejected as moot.

Alliance states while Substitute Second Revised Sheet No. 12 added the essential elements of the previously omitted GCRL transaction, it neglected to reflect the change made to the rate for GCRL pursuant to the negotiated rate agreement. Accordingly, Alliance states that it is filing Second Substitute Second Revised Sheet No. 12 to state the correct rate for the GCRL transaction.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Dated: January 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1265 Filed 1–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–384–003]

Columbia Gulf Transmission Company; Notice of Compliance Filing

January 14, 2003.

Take notice that on January 8, 2003, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing as part of its FERC Gas Tariff, Second Revised

Volume No. 1, the following revised tariff sheets with a proposed effective date of August 1, 2002:

Second Substitute Fourth Revised Sheet No. 147,
Substitute Original Sheet No. 147A

Columbia Gulf states that it made a filing with the Commission on July 2, 2002 to include a new Section 4.2(i) to Section 4.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit it, under certain limited circumstances, to reserve capacity that is available for firm service under the provisions of GTC Section 4.2 for future expansion projects. The Commission approved the filing on July 31, 2002 (100 FERC ¶ 61,133 (2002)), subject to modifications. Columbia Gulf filed its first compliance filing in this docket on August 15, 2002, which modified tariff language consistent with the July 31 Order. The Commission issued an order on the compliance filing and rehearing on December 24, 2002 (101 FERC ¶ 61,355). In this order, the Commission accepted the August 15 filing, subject to further modification. The instant filing incorporates the required modifications.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Dated: January 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1267 Filed 1–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–382–003]

Crossroads Pipeline Company; Notice of Compliance Filing

January 14, 2003.

Take notice that on January 3, 2003, Crossroads Pipeline Company (Crossroads), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of August 1, 2002:

Second Substitute First Revised Sheet No. 85
Substitute Original Sheet No. 85A

Crossroads states that it made a filing with the Commission on July 2, 2002 to include a new Section 4.2(i) to Section 4.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit it, under certain limited circumstances, to reserve capacity that is available for firm service under the provisions of GTC Section 4.2 for future expansion projects. The Commission approved the filing on July 31, 2002 (100 FERC ¶ 61,131 (2002)), subject to modifications. Columbia filed its first compliance filing in this docket on August 15, 2002, which modified tariff language consistent with the July 31 Order. The Commission issued an order on the compliance filing and rehearing on December 19, 2002 (101 FERC ¶ 61,307). In this order, the Commission accepted the August 15 filing, subject to further modification. The instant filing incorporates the required modifications.

Crossroads states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2166 Filed 1–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–409–002]

MIGC, Inc.; Notice of Compliance Filing

January 14, 2003.

Take notice that on January 9, 2003, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, Sub 1st Rev Second Revised Sheet No. 83, to become effective October 1, 2002.

MIGC asserts that the purpose of this filing is to correct an inadvertent omission in its tariff of a North American Energy Standards Board (NAESB) standard. MIGC proposes to revise its tariff to add language to the capacity release procedures for biddable releases of one year or more which requires transporter to issue a contract within one hour of award posting and provides for nomination beginning at the next available nomination cycle. This revision is consistent with Standard 5.3.2 of Version 5.1 of the NAESB.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. *Protest Date:* January 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1268 Filed 1–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–229–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

January 14, 2003.

Take notice that on January 7, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of March 1, 2003:

Fourth Revised Sheet No. 366.
Second Revised Sheet No. 366A.
Second Revised Sheet No. 366B.

Tennessee's filing requests that the Commission approve certain revisions to Tennessee's FERC Gas Tariff that would result in the subsidization of Tap Facilities construction costs being treated in a manner similar to the current subsidization of Connecting Facilities construction costs pursuant to Tennessee's tariff. Tennessee also proposes revisions intended to simplify the requirements for posting notice of such subsidies on Tennessee's PASSKEY system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://*

www.ferc.gov using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1269 Filed 1–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–230–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

January 14, 2003.

Take notice that on January 8, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1), Seventh Revised Sheet No. 374, to become effective January 8, 2003.

Williston Basin states that it has revised the above-referenced tariff sheet found in Section 48 of the General Terms and Conditions of its Tariff, to rename an existing associated receipt point (Point ID No. 00965). The receipt point is being renamed from (Many Islands Pipe Line-Portal) to (Many Islands-Portal) to be consistent with Williston Basin's internal naming convention of points.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Dated: January 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1270 Filed 1–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–42–000, *et al.*]

Calpine Energy Services, L.P., *et al.*; Electric Rate and Corporate Filings

January 13, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Calpine Energy Services, L.P. CES Marketing, LLC

[Docket No. EC03–42–000]

Take notice that on January 7, 2003, Calpine Energy Services, L.P. (CESLP) and CES Marketing, LLC (CESM) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application under section 203 of the Federal Power Act for approval of the assignment by CESLP to CESM of a wholesale power sales agreement between CESLP and the State of California Department of Water Resources.

Comment Date: January 28, 2003.

2. AES Londonderry, LLC New England Power Company

[Docket No. EC03–43–000]

Take notice that on January 7, 2003, AES Londonderry, LLC (AESL) and New England Power Company (NEP) filed with the Federal Energy Regulatory Commission (Commission) a joint application pursuant to Section 203 of the Federal Power Act for approval of the transfer by AESL to NEP of certain transmission facilities located at a switchyard constructed by AESL in North Litchfield, New Hampshire in connection with the interconnection of a generation facility constructed by AESL in Londonderry, New Hampshire.

AESL and NEP have also requested that the Commission consider and approve the application on an expedited basis and grant waivers of the Commission's regulations so that the transaction may be completed at the earliest possible time on or before January 31, 2003.

AESL and NEP state that a copy of the application has been served on the New Hampshire Public Utilities Commission.

Comment Date: January 28, 2003.

3. ESI Energy, LLC, ESI Multitrade LP, Inc. and Algonquin Power Acquisition Inc.

[Docket No. EC03–44–000]

Take notice that on January 6, 2003, ESI Energy, LLC, ESI Multitrade LP; Inc. and Algonquin Power Acquisition, Inc. filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby ESI Energy, LLC will divest, and Algonquin Power Acquisition Inc. will acquire, a 100% interest in ESI Pittsylvania, Inc. which owns a 1% general partner interest in Multitrade of Pittsylvania County, L.P., which owns and operates a 79.5 megawatt wood-burning qualifying small power production facility located in Pittsylvania County, Virginia; and ESI Multitrade LP, Inc. will divest, and Algonquin Power Acquisition Inc. will acquire, a 39% limited partner interest in Multitrade of Pittsylvania County, L.P. Federal Energy Regulatory Commission approval is required for the transaction pursuant to Section 203 of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978 requirements applicable to certain qualifying facilities with a total capacity between 30 MW and 80 MW.

Comment Date: January 27, 2003.

4. California Independent System Operator Corporation Pacific Gas and Electric Company, San Diego Gas & Electric Company

[Docket No. ER98–3760–008, EC96–19–059, and ER96–1663–062]

Take notice that on January 7, 2003, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing with the

Commission's November 22, 2002 Order on Outstanding Issues Relating to the California Independent System Operator Corporation, 101 FERC ¶ 61,219. The compliance filing revises a number of sections of the ISO's Tariff, Protocols and Transmission Control Agreement, and in accordance with the November 22 Order.

The ISO states that this filing has been served on all entities that are on the official service list for this docket.

Comment Date: January 28, 2003.

5. Progress Energy, Inc. Effingham County Power, LLC MPC Generating, LLC ER96–1618–017, Progress Power Marketing, Inc. Progress Ventures, Inc. Rowan County Power, LLC Walton County Power, LLC

[Docket Nos. ER01–1418–001, ER02–1238–001, ER01–2928–003, ER01–1419–001 and ER01–1310–002]

Take notice that Progress Energy, Inc., on behalf of its subsidiaries, Effingham County Power, LLC, MPC Generating, LLC, Progress Power Marketing, Inc., Progress Ventures, Inc., Rowan County Power, LLC and Walton County Power, LLC, tendered for filing, on January 9, 2003, three-year updates to the subsidiaries market-based rate authority and notices of change in status.

Progress Energy, Inc. states that copies of the filing were served on the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

Comment Date: January 30, 2003.

6. Southern Company Services, Inc.

[Docket No. ER03–390–000]

Take notice that on January 9, 2003, Southern Company Services, Inc., acting on behalf of Georgia Power Company (GPC), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of the Interconnection Agreement between Duke Energy Glynn, LLC and GPC (Service Agreement No. 378 under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5). An effective date of June 1, 2002 has been requested.

Comment Date: January 30, 2003.

7. Southern Company Services, Inc.

[Docket No. ER03–391–000]

Take notice that on January 9, 2003, Southern Company Services, Inc., acting on behalf of Alabama Power Company (APC), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of the Interconnection Agreement between Duke Energy Autauga, LLC and APC (Service Agreement No. 383 under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5). An effective date of November 27, 2001 has been requested.

Comment Date: January 30, 2003.

8. Southern Company Services, Inc.

[Docket No. ER03–392–000]

Take notice that on January 9, 2003, Southern Company Services, Inc., acting on behalf of Mississippi Power Company (MPC), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of the Interconnection Agreement between International Paper Company and MPC (Service Agreement No. 253 under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5). An effective date of June 30, 2002 has been requested.

Comment Date: January 30, 2003.

9. Florida Power Corporation

[Docket No. ER03–393–000]

Take notice that on January 9, 2003, Florida Power Corporation (Florida Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation for its Electric Rate Schedule FERC No. 133, originally filed in Docket No. ER92–451–000. Florida Power also filed First Revised Rate Schedule FERC No. 185, consistent with the Commission's Order No. 614, to reflect the fact that provisions relating to a construction agreement for the Cabbage Hill point of interconnection have been terminated in accordance with the terms of the construction agreement. In addition, Florida Power states that the terms of an O&M Agreement for a temporary Cabbage Swamp tie have terminated by their terms and have been superseded in previous filings. Florida Power requests an effective date of October 1, 2002.

Florida Power states that a copy of this filing has been served on Tampa Electric, the counter party to the agreements and the relevant state commission. This filing does not represent a change in the terms of service between the parties.

Comment Date: January 30, 2003.

10. Elk Hills Power, LLC

[Docket No. ER03–394–000]

Take notice that on January 9, 2003, Elk Hills Power, LLC (Elk Hills) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1.

Elk Hills states that it intends to sell electric power and ancillary services at wholesale at rates, terms, and conditions to be mutually agreed to with the purchasing party. The Elk Hills tariff provides for the sale of electric energy, capacity and ancillary services at agreed prices.

Comment Date: January 30, 2003.

11. California Independent System Operator Corporation

[Docket No. ER03–395–000]

Take notice that ON January 9, 2003, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and Termoeléctrica de Mexicali S. de R.L. de C.V (TDM) for acceptance by the Commission.

The ISO states that this filing has been served on TDM and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective December 31, 2002.

Comment Date: January 30, 2003.

12. Florida Power Corporation

[Docket No. ER03–396–000]

Take notice that on January 9, 2003, Florida Power Corporation tendered for filing a Second Revised Electric Rate Schedule FERC No. 65, originally filed with the FPC on July 21, 1965 and most recently refiled in conformance with Order No. 614 in Docket No. ER02–1655–000, to reflect a change in the rate paid for power under its interchange contract with Southeastern Power Administration.

Florida Power Corporation states that a copy of this filing has been served on Southeastern Power Administration, the counter party to the agreements. This filing does not represent a change in any rate charged by Florida Power Corporation.

Comment Date: January 30, 2003.

13. PJM Interconnection, L.L.C.

[Docket No. ER03–397–000]

Take notice that on January 9, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing a revised interconnection service agreement between PJM and PSEG Power, L.L.C. (PSEG Power). The original agreement is revised to add a development milestone and to include some other minor amendments.

PJM requests an effective date of December 12, 2002 for the revised agreement.

PJM states that copies of this filing were served upon PSEG Power and the state regulatory commissions within the PJM region.

Comment Date: January 30, 2003.

14. Washington County Power, LLC

[Docket No. ER03–398–000]

Take notice that on January 9, 2003, Washington County Power, LLC (Washington) hereby tendered for filing with the Federal Energy Regulatory Commission (Commission) its request for market-based rate (MBR) authority. Washington requests that the Commission make its MBR tariff effective on March 11, 2003, sixty days after the date of this filing.

Comment Date: January 30, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1259 Filed 1–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions to Intervene

January 14, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12359–000.

c. *Date filed:* September 3, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Barren River Lake Dam Hydroelectric Project would be located on the Barren River in Barren County, Kentucky. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12359–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Barren River Lake Dam and Reservoir, would consist of: (1) Two proposed 50-foot-long, 4-foot-diameter steel penstocks, (2) a proposed powerhouse containing two generating units with a combined installed capacity of 3.9 megawatts, (3) a proposed 500-foot-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 24 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3678 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of

application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1260 Filed 1–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

January 14, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12373–000.

c. *Date filed:* September 20, 2002.

d. *Applicant:* MIG Utilities Group, Inc.

e. *Name of Project:* Sand Hollow Hydro Power Project.

f. *Location:* On the Sand Hollow waterway, approximately 2 miles east of the Columbia River, in Grant County, Washington.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)

h. *Applicant Contact:* Kevin Whitener, MIG Utilities Group, Inc., 23 S. Wenatchee Ave., Suite 203, Wenatchee, WA 98801, (509) 662–7197.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12373–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed concrete dam, approximately eight feet high by approximately thirty-two feet wide, and an inlet structure; (2) a proposed 48-inch-diameter steel penstock approximately 6,500 feet long that will bifurcate into two separate smaller steel penstocks, (3) a proposed powerhouse containing two turbine/generator units having a total installed capacity of 1 MW, (4) a proposed 1-mile-long, 13.2 kV transmission line, and (5) appurtenant facilities. The project would have an annual generation of 7.2 million kW.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1261 Filed 1–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Soliciting Motions to Intervene, Protests, and Comments

January 14, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands.

b. *Project No.:* P–2197–058.

c. *Date filed:* October 30, 2002.

d. *Applicant:* Alcoa Power Generating Inc.

e. *Name and Location of Project:* The Yadkin Hydroelectric Project is on the Yadkin/Pee Dee River in Montgomery, Stanley, Davidson, Rowan, and Davie Counties, North Carolina. The Yadkin project contains the following reservoirs: High Rock, Tuckertown, Narrows, and Falls. The project does not occupy any federal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

g. *Applicant Contact:* Mr. David R. Poe, LeBoeuf, Lamb, Greene & MacRae, LLP, Suite 1200, 1875 Connecticut Ave., NW., Washington, DC, 20009–5728, (202) 986–8039.

h. *FERC Contact:* Elizabeth Jones (202) 502–8246.

i. Deadline for filing comments, protests, and motions to intervene: February 14, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–2197–058) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Application: Alcoa Power Generating, Inc. (Alcoa), licensee for the Yadkin Hydroelectric Project, filed a non-project use of project lands application. In its application, Alcoa proposes to grant a permit to Thomason Development, L.L.C, for the construction of a marina to accommodate 16 watercraft, with 16 additional personal watercraft and for the modification of one preexisting boat launch ramp and one preexisting bulkhead (together, the "Marina Facilities") within the Project boundary on High Rock Reservoir. Alcoa proposes to grant a second permit to the River's Edge Homeowners Association for the use and operation of the Marina Facilities.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659.

l. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

m. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION",

"COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

n. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1262 Filed 1–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–449 & 450]

Notice of Applications for Non-Project Use of Project Lands and Soliciting Comments, Motions to Intervene, and Protests

January 14, 2003.

Take notice that the two following applications have been filed with the Commission and are available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2232–449 & 2232–450.

c. *Date Filed:* November 25, 2002.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Catawba-Wateree.

f. *Location:* The project is located in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg Counties, North Carolina and Chester, Fairfield, Kershaw, Lancaster, and York Counties, South Carolina. This project does not occupy any federal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Power, a division of Duke Energy Corp., P.O. Box 1006, Charlotte, North Carolina 28201–1006, (704) 382–8576.

i. FERC Contacts: Any questions on this notice regarding Sunset Bay, P–2232–449, should be addressed to: Mrs. Jean Potvin at (202) 502–8928, or e-mail address: jean.potvin@ferc.gov. Any questions on this notice regarding The Highlands, P–2232–450, should be addressed to Ms. Shana High at (202) 502–8674, or e-mail address: shana.high@ferc.gov.

j. Deadline for filing comments and or motions: February 14, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2232–449 or 450) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Requests:*

In the first application, P–2232–449, the licensee proposes to grant a lease for a Commercial Residential Marina to Sunset Bay at Lake Norman, LLC, Inc. for the Sunset Bay Subdivision. The proposal includes one parcel of project land containing a total of 0.535 acre for a proposed commercial residential marina facility. The leased area will provide 14 boat slips for access to the reservoir for residents of the Sunset Bay Subdivision, located in Iredell County, North Carolina.

In the second application, P–2232–450, the licensee proposes to grant a lease for a Commercial Residential Marina to the Highlands at Lake Norman, LLC, Inc. for the Highlands Subdivision. The proposal includes one parcel of project land containing a total of 0.503 acre for a proposed commercial residential marina facility. The leased area will provide 20 boat slips for access to the reservoir for residents of the Highlands Subdivision, located in Iredell County, North Carolina.

l. Location of the Applications: The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCONLINESUPPORT@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1263 Filed 1–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

January 14, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* P–3267–013.

c. *Date Filed:* August 5, 2002.

d. *Applicants:* Bellows-Tower Hydro, Inc. (Transferor) and North Country Community College Foundation, Inc. (Transferee).

e. *Name of Project:* Ballard Mill.

f. *Location:* On the Salmon River in Franklin County, New York. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants Contact:* Frank Christie, Bellows-Tower Hydro, Inc., 359 River Street, Suite 202, Manistee, MI 49660, (231) 398–0625 (Transferor); Ted Morgan, North Country Community College Foundation, Inc., 20 Winona Ave., P.O. Box 89, Saranac Lake, NY 12983.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. Deadline for filing comments and or motions: February 14, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–3267–013) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Transfer: The applicants seek Commission approval to transfer the license for the Ballard Mill Project from Bellows-Tower Hydro, Inc. to the North Country Community College Foundation, Inc.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail ferconlinesupport@ferc.gov. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1264 Filed 1–17–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket Nos. II–2000–08, –09, II–2001–01, –03, –04; FRL–7439–6]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for Columbia University; Starrett City Power Plant; Elmhurst Hospital; Maimonides Medical Center; and the Bergen Point Sewage Treatment Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final orders on petitions to object to five State operating permits.

SUMMARY: This document announces that the EPA Administrator has responded to five citizen petitions asking EPA to object to operating permits issued to five facilities by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has partially granted and partially denied each of the petitions submitted by the New York Public Interest Research Group (NYPIRG) to object to each of the State operating permits issued to the following facilities: Columbia University in New York, NY; Starrett City Power Plant in Brooklyn, NY; Elmhurst Hospital in Elmhurst, NY; Maimonides Medical Center in Brooklyn, NY; and Bergen Point Sewage Treatment Plant in West Babylon, NY.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner may seek judicial review of those portions of the petitions which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final orders, the petitions, and other supporting information at the EPA, Region 2, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final orders for Columbia University, Starrett City and Elmhurst Hospital are available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2000.htm*, and the final orders for Maimonides Medical Center and Bergen Point Sewage Treatment Plant are available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2001.htm*.

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

I. Columbia University

On October 2, 2000, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit to Columbia University. The petition raises issues regarding the permit application, the permit issuance process, and the permit itself. NYPIRG asserts that (1) NYSDEC violated the public participation requirements of 40 CFR 70.7(h) by inappropriately denying NYPIRG's request for a public hearing; (2) the permit is based on an incomplete permit application in violation of 40 CFR 70.5(c); (3) the permit lacks an adequate statement of basis as required by 40 CFR 70.7(a)(5); (4) the permit distorts the annual compliance certification requirement of CAA section 114(a)(3) and 40 CFR 70.6(c)(5); (5) the permit does not assure compliance with all applicable requirements as mandated by 40 CFR 70.1(b) and 70.6(a)(1) because it illegally sanctions the systematic violation of applicable requirements during startup/shutdown, malfunction, maintenance, and upset conditions; (6) the permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR 70.6(a)(3)(iii)(B); and (7) the permit does not assure compliance with all applicable requirements as mandated by 40 CFR 70.1(b) and 70.6(a)(1) because many individual permit conditions lack adequate monitoring and are not practically enforceable.

On December 16, 2002, the Administrator issued an order partially granting and partially denying the petition on Columbia University. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Enforceably prohibit operation of all four boilers simultaneously, (2) specify that continuous opacity monitors are used, (3) incorporate monitoring for fuel sulfur content, (4) incorporate sulfur requirements of the New Source Performance Standards, (5) include monitoring to support the annual and hourly NO_X limits, and (6) incorporate operational restrictions to limit the annual SO_2 emissions and include monitoring to support the hourly SO_2 limits. The order also explains the reasons for denying NYPIRG's remaining claims.

NYPIRG raises each of the above seven issues in the petitions on Starrett City Power Plant and Elmhurst Hospital, as well. NYPIRG raises each of the above issues except the public hearing issue in the petitions on Maimonides Medical Center and Bergen Point Sewage Treatment Plant. Further, in the Starrett City and Maimonides petitions, NYPIRG raises an additional issue: the permit fails to include the applicable particulate matter limitation that is part of New York's State Implementation Plan. Finally, in the petition on Bergen Point, NYPIRG raises a new issue: the permit lacks federally enforceable conditions that govern the procedures for permit renewal. In each of these petitions, the issue on monitoring is subdivided into several detailed points, some of which are permit-specific and some of which are shared among the other permits.

II. Starrett City Power Plant

On January 3, 2001, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit to Starrett City, on the grounds listed above. On December 16, 2002, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Revise the permit's sulfur-in-fuel provisions to incorporate the applicable SIP citation; (2) add the requirement for annual tune-ups for the facility's four boilers; (3) add operational restrictions for the facility's three reciprocating engines; (4) add recordkeeping and operational limits based on the most recent stack test for the facility's three reciprocating engines; (5) add the requirement for annual tune-ups for the facility's three reciprocating engines; and (6) add the applicable SIP particulate matter limit and appropriate monitoring for the facility's four boilers and three reciprocating engines. The order also explains the reasons for denying NYPIRG's remaining claims.

III. Elmhurst Hospital

On October 10, 2000, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit to Elmhurst Hospital on the grounds listed above. On December 16, 2002, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to add requirements for prompt reporting of temperature excursions at the ethylene oxide abatement system. The order also explains the reasons for denying NYPIRG's remaining claims.

IV. Maimonides Medical Center

On October 29, 2001, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit to the Maimonides Medical Center on the grounds listed above. On December 16, 2002, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Add the requirements for annual tune-ups for the facility's five boilers; (2) add the applicable SIP particulate matter limit and appropriate monitoring and recordkeeping; (3) move compliance requirements relating to the ethylene oxide control device from the State side to the federally enforceable side of the permit; (4) revise monitoring compliance requirements to express permissible emission rates in terms of those same units that are expressed in the SIP; (5) specify which of two proposed emission control scenarios, stated in the permit, is being retained for implementation regarding the ethylene oxide operation; (6) upgrade the existing monitoring relating to the ethylene oxide operation; and (7) add opacity monitoring requirements to the ethylene oxide operation. The order also explains the reasons for denying NYPIRG's remaining claims.

V. Bergen Point Sewage Treatment Plant

On October 15, 2001, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit to Bergen Point on the grounds listed above. On December 16, 2002, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons

behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Upgrade existing monitoring relating to stack testing and stack emissions; (2) include both particulate matter emission limits (State and Federal) as applicable requirements of the incinerators; (3) require permittee to keep a log of the incinerators' operating hours; (4) incorporate calibration methods and frequencies for monitoring devices; (5) specify a test method and appropriate recordkeeping for the sludge sampling activity; (6) incorporate the average scrubber pressure drop from the most recent performance test; and (7) specify QA/QC requirements with respect to the continuous opacity monitors. The order also explains the reasons for denying NYPIRG's remaining claims.

Dated: January 7, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–964 Filed 1–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7440–8]

EPA Science Advisory Board, Notification of Public Advisory, Committee Teleconference Meeting; Human Health Strategy Review Panel

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is hereby given that the Human Health Strategy Review Panel (HHRS Review Panel) of the U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) will meet via teleconference on February 7, 2003 from 1 p.m. to 3 p.m. eastern time. This teleconference meeting will be hosted out of Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, but, due to limited space, seating will be on a first-come basis. The public may also attend via telephone, however, lines may be limited. Information on how to participate is given below.

Background—The background for this review and the charge to the HHRS Review Panel was published in 67 FR 41718 on June 19, 2002. The notice also included a draft charge to the HHRS Review Panel; a call for nominations for members of the HHRS Review Panel in certain technical expertise areas needed to address the charge and described the process to be used in forming the HHRS Review Panel. Subsequently, notice was published October 11, 2002 (67 FR 63422) detailing meetings that have since been convened: a teleconference on October 23, 2002, and a face to face meeting in RTP, North Carolina on November 20–22, 2002.

Purpose of this Meeting—The purpose of this public teleconference meeting is for the HHRS Review Panel to: (a) Review and revise the panel's draft report as necessary; and (b) approve the report as revised for delivery to the SAB Executive Committee.

FOR FURTHER INFORMATION: To inquire about public participation in the meeting identified above please contact Dr. Suhair Shallal, Designated Federal Officer, HHRS Review Panel, USEPA Science Advisory Board (1400A), Suite 6450P, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4566; fax at (202) 501–0582; or via e-mail at *shallal.suhair@epa.gov*. Members of the public desiring additional information about the meeting locations or the call-in number for the teleconference must contact Dr. Shallal at the addresses and numbers identified above.

Submitting Public Comments—The SAB will have a brief period (no more than 10 minutes) available during the Teleconference meeting for applicable public comment. For the Teleconference, the oral public comment period will be divided among the speakers who register. Registration is on a first come basis. Speakers who have been granted time on the agenda may not yield their time to other speakers. Those wishing to speak but who are unable to register in time may provide their comments in writing. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Dr. Shallal at the address above no later than noon eastern time on January 31, 2003.

Availability of Review Material—. There is one primary EPA document that is the subject of this review. This review document (Human Health Research Strategy, USEPA ORD, May 2002) is available electronically at the following site *http://www.epa.gov/sab/pdf/hhrs.pdf*

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than 15 minutes total (unless otherwise indicated above). Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 20 copies of their comments for public distribution.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Shallal at least five business days prior to the meeting so that appropriate arrangements can be made.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in the Science Advisory Board FY2001 Annual Staff Report, which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: January 9, 2003.

A. Robert Flaak,

Acting Staff Office Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–1240 Filed 1–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7440–6]

Jack Goins Waste Oil Superfund Site; Notice of proposed De minimis settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis Settlement.

SUMMARY: Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered a de minimis settlement at the Jack Goins Waste Oil Superfund Site (Site) under an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. Approximately 593 parties have returned signature pages accepting EPA's settlement offer. For thirty (30) days following the publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: January 3, 2003.

James Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–1241 Filed 1–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7440–7]

Jack Goins Waste Oil Superfund Site/ Cleveland, TN; Notice of proposed settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the Jack Goins Waste Oil Superfund Site (Site) located in Cleveland, Tennessee, with Alstom Power, BFI (Chattanooga), Bowater Newsprint Operations, Emerson Electric, Johnston Coca-Cola Bottling Company, Maytag Cleveland Cooking Products, Smith & Green Construction Co., Inc., and Texaco, Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: January 3, 2003.

James Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–1242 Filed 1–17–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 13, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 24, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0066.

Title: Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License.

Form No.: FCC Form 330–R.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 75.

Estimated Time Per Response: 3 hours.

Frequency of Response: Reporting requirement every 10 years (upon expiration).

Total Annual Burden: 225 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 330–R is used by licensees of Instructional Television Fixed (ITFS), Response, and Low Power Relay Stations to file for renewal of their licenses. The data are used by FCC staff to ensure that ITFS licensees continue to meet basic Commission policies and rules, as well as statutory requirements to remain a licensee. The form is being revised to include the FCC Registration Number (FRN) and to clarify existing instructions for the general public.

OMB Control No.: 3060–0093.

Title: Applications for Renewal of Radio Station License in Specified Services.

Form No.: FCC Form 405.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 2,500.
Estimated Time Per Response: 2.25 hours.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 5,625 hours.
Total Annual Cost: $338,000.
Needs and Uses: The FCC Form 405 is used by common carriers and Multipoint Distribution Service (MDS) non-common carriers to apply for renewal of radio station licenses. Section 307(c) of the Communications Act limits the term of common carrier radio licenses to ten years and requires that written applications be submitted for renewal. It is proposed that the FCC Form 405 be revised to add the FCC Registration Number (FRN) in order to have a unique identifier for each applicant and to facilitate the applicants' electronic payments of licensing fees.

OMB Control No.: 3060–0589.
Title: FCC Remittance Advice and Continuation Sheet.
Form No.: FCC Form 159 and 159–C.
Type of Review: Revision of a currently approved collection.
Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.
Number of Respondents: 635,738.
Estimated Time Per Response: .50 hours.
Frequency of Response: On occasion reporting requirement and third party disclosure requirement.
Total Annual Burden: 317,869 hours.
Total Annual Cost: N/A.
Needs and Uses: The FCC Forms 159 and 159–C are required for payment of regulatory fees, and for use when paying for multiple filings with a single payment instrument, or when paying by credit card. The forms require specific information to track payment history, and to facilitate the efficient and expeditious processing of collections by a lockbox bank. The forms are being revised to eliminate the Taxpayer Information Number (TIN), add Discover and American Express to the credit cards allowable, and eliminate redundant data fields asking for information already available in the CORES system.

OMB Control No.: 3060–0809
Title: Communications Assistance for Law Enforcement Act (CALEA).
Form No.: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 5,000.
Estimated Time Per Response: 7 hours.
Frequency of Response: On occasion and one time reporting requirements and recordkeeping requirement.
Total Annual Burden: 51,000 hours.
Total Annual Cost: N/A.
Needs and Uses: The information filed with the Commission will be used to verify telecommunications carriers' conformance with the CALEA requirements, and the information made available to law enforcement officials will be used to determine the accountability and accuracy of telecommunications carriers' compliance with lawful electronic surveillance orders.

OMB Control No.: 3060–0901.
Title: Reports of Common Carriers and Affiliates.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit, not-for-profit institutions.
Number of Respondents: 20 respondents; 1,200 responses.
Estimated Time Per Response: 5 hours.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 6,000 hours.
Total Annual Cost: N/A.
Needs and Uses: This information will be used by FCC staff to monitor the operating agreements of U.S. carriers and their foreign correspondents that possess market power, and, in particular, to monitor the international accounting rates of such carriers to ensure consistency with Commission policies and the by-pass and safeguard its international settlements policy.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 03–1203 Filed 1–17–03; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

January 13, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments March 24, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at (202) 418–0214 or via the internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:
OMB Control No.: 3060–0454.
Title: Regulation of International Accounting Rates.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for profit.
Number of Respondents: 20 respondents; 760 responses.
Estimated Time Per Response: 1 hour.
Frequency of Response: On occasion reporting requirement, third party disclosure requirement.
Total Annual Burden: 760 hours.
Annual Reporting and Recordkeeping Cost Burden: $6,000.
Needs and Uses: The information will be used by the FCC staff to monitor the international accounting rates of such

carriers to ensure consistency with Commission policies and the public interest. The information also enables the Commission to preclude one-way bypass and to safeguard its international settlements policy. Carriers also use the information to monitor accounting and settlement rates for international telecommunications.

OMB Control No.: 3060–0751.

Title: Reports Concerning International Private Lines Interconnected to the U.S. Public Switched Network.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10.

Estimated Time Per Response: 8 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 80 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The filings will be used by the Commission in reviewing the impact, if any, that end-user private line interconnections have on U.S. international settlements policy. The data will also enhance the ability of both the Commission and interested parties to monitor for unauthorized resale of international private lines that are interconnected to the U.S. public switched network.

OMB Control No.: 3060–0768.

Title: 28 GHz Band Segmentation Plan Amending the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, and to Establish Rules and Policies for Local Multipoint Distribution Services and for the Fixed Satellite Service.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 15 respondents; 60 responses.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 90 hours.

Annual Reporting and Recordkeeping Cost Burden: $18,000.

Needs and Uses: The various collections of information referenced in this OMB control number are contained in 47 CFR Parts 25 and 101 of the Commission's rules. The Commission uses the information in carrying out its duties as set forth in Sections 308 and 309 of the Communications Act of 1934, as amended. Specifically, the Commission and other applicants and/or licensees in the 28 GHz band use the information to determine the technical coordination of systems that are designed to share the same band segment in the 28 GHz frequency band.

OMB Control No.: 3060–0769.

Title: Aeronautical Services Transition Plan.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 6.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 24 hours.

Annual Reporting and Recordkeeping Cost Burden: $5,000.

Needs and Uses: Providers of interim domestic aeronautical mobile satellite services via Inmarsat are required to submit a transition plan outlining the transition from Inmarsat to the U.S. domestic licensee of these services. The transition plan is used to ensure continuity of service to domestic customers during the transition plan.

OMB Control No.: 3060–0916.

Title: 406 MHz Personal Locator Beacons (PLB).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, state, local or tribal government.

Number of Respondents: 1,050.

Estimated Time Per Response: .5 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 525 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The information collection is necessary to register data with the National Oceanic and Atmospheric Administration (NOAA) and will be used by search and rescue personnel to identify the person(s) in distress and to select the proper rescue units and search methods.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1204 Filed 1–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 9, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 20, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0806.

Title: Universal Service—Schools and Libraries Universal Service Program.

Form Nos: FCC Forms 470 and 471.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local and tribal government.

Number of Respondents: 60,000.
Estimated Time Per Response: 4.5 hours.
Frequency of Response: On occasion reporting requirements, third party disclosure requirement and recordkeeping requirement.
Total Annual Burden: 440,000 hours.
Total Annual Cost: N/A.
Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit a description of the services desired to the Administrator via FCC Form 470. The FCC Form 471 is submitted by schools and libraries that have ordered telecommunications services, Internet access and internal connections. The date is used to determine eligibility. The Commission revised the FCC Form 471 and instructions to make it possible to read with electronic readers, to update references to current deadlines and relevant statutes, and to clarify explanations to make the form generally easier to understand. The information collection requirements remain unchanged.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 03–1205 Filed 1–17–03; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 96–45, 97–21; FCC 02–315]

Application for Review by Henrico County School District, Richmond, Virginia; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.
ACTION: Notice.

SUMMARY: In this document, the Commission denies the application for review seeking review of an Order issued by the Common Carrier Bureau (Bureau) on delegated authority and affirm the decision of the Bureau. In the Order, the Bureau upheld the decision of the Schools and Libraries Division of the Universal Service Administrative Company, which denied Henrico County School District's Funding Year 1999 application for discounts under the schools and libraries universal service mechanism.

FOR FURTHER INFORMATION CONTACT: Narda Jones, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket Nos. 96–45 and 97–21 released on November 20, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

1. Before the Commission is an application for review filed by Henrico County Public Schools (Henrico), Richmond, Virginia, seeking review of an Order issued by the Common Carrier Bureau (Bureau) on delegated authority. In the Order, the Bureau upheld the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company, which denied Henrico's Funding Year 1999 application for discounts under the schools and libraries universal service mechanism. For the reasons set forth below, we deny the application for review and affirm the decision of the Bureau.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections. In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts. Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services. Approval of the application is contingent upon the filing of FCC form 471, and funding commitment decisions are based on information provided by the school or library in this form.

3. On March 29, 2000, Henrico filed an FCC form 471 for Funding Year 1999 including 10 funding requests, each seeking discounted internal connections. It did not file an FCC form 470 in Funding Year 1999. Henrico's FCC form 471 referenced FCC form 470 App. No. 952970000283996, a Funding Year 2000 form 470 that was posted to SLD's website on December 20, 1999 (Year 2000 form 470). Henrico also relied on this Year 2000 form 470 in support of its Funding Year 2000 applications for discounts, which were filed on January 19, 2000. On July 17, 2000, SLD rejected Henrico's Funding Year 1999 application for discounts because Henrico had not specified a Funding Year 1999 FCC form 470 in connection with its Funding Year 1999 funding requests. Henrico then sought review of this SLD decision.

4. Before the Bureau, Henrico argued that reliance on a Funding Year 2000 FCC form 470 in support of a Funding Year 1999 service request was permissible because "[n]owhere in your correspondence, procedures or instructions does it stipulate that the [Funding Year 1999] application must be based on a [Funding Year 1999] 470 form." The Bureau found, however, that, with one exception inapplicable to Henrico, an FCC form 470 seeking services in one year could not be used to satisfy the requirement of competitive bidding for service requests in another Funding Year.

5. In its application for review before the Commission, Henrico argues that it should be permitted to rely on the Funding Year 2000 form 470 because, at the time it electronically posted its FCC form 470 for Funding Year 1999, SLD had switched to an on-line application system for Funding Year 2000 that only permitted the posting of Funding Year 2000 FCC form 470s. Henrico asserts that it was therefore "impossible to post a Year [1999] form 470 to the SLD website," and argues that its Funding Year 1999 application should therefore not be denied for its failure to do so.

6. Section 1.115(c) of the Commission's Rules provides that "[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass." We find that Henrico did not raise its present argument in the request for review to the Bureau. In that pleading, Henrico merely asserted that, under program procedures, it was not required to use a Funding Year 1999 FCC form 470 to post a Funding Year 1999 service request. Now it argues that using a Funding Year 1999 FCC form 470 was impossible at the specific time during which it sought to post a request. The former argument asserts a general right to use a Funding Year 2000 form to post Funding Year 1999 requests, while the latter argument suggests such use should be deemed permissible under the limited circumstances present at the

end of Funding Year 1999. Similarly, the factual bases for the current argument, including the limited circumstances just mentioned, and the assertion that these circumstances made posting a Funding Year 1999 request "impossible," were also not presented below. Accordingly, because Henrico did not raise these factual and legal questions in its request for review before the Bureau, consideration of these arguments by the Commission is precluded by § 1.115(c).

7. Further, even if we were to consider the merits of this argument, we would still deny the application for review. First, the record demonstrates that Henrico's Funding Year 2000 FCC form 470 was clearly intended to support its Funding Year 2000 applications for funding. Henrico submitted two Funding Year 2000 FCC forms 471 applications seeking Funding Year 2000 discounts. Each application referenced FCC form 470 App. No. 952970000283996 as the supporting form 470. On September 29, 2000, SLD approved Henrico's Funding Year 2000 App. No. 188486. SLD denied Henrico's Funding Year 2000 App. No 165166 because this application sought support for internal connections and the funding cap could not accommodate applicants, such as Henrico, that were entitled to less than an 81 percent discount in Funding Year 2000.

8. Further, it would appear that Henrico's requested relief would work at cross purposes to its already secured funding for Funding Year 2000. Were we to construe the FCC form 470 App. No. 952970000283996 as a Funding Year 1999 FCC form 470, thus supporting funding of Henrico's Funding Year 1999 FCC form 471, it would also establish that Henrico's successful Funding Year 2000 application violated our competitive bidding regulations. This application sought new services in Funding Year 2000, which needed to be posted for bidding by a Funding Year 2000 FCC form 470 to comply with our competitive bidding rules.

9. Moreover, it is true that, after October 25, 1999, because SLD switched its on-line application system from one designed to process Funding Year 1999 applications to one designed for Funding Year 2000, applicants seeking to file FCC form 470 posting requests for services in Funding Year 1999 were forced to use the on-line system for Funding Year 2000 to do so. However, at the same time that USAC gave applicants official notice of the availability of additional funds on March 1, 2000, it also instructed applicants how to apply for Funding Year 1999 funds with the Funding Year 2000 form 470s. Specifically USAC directed applicants to indicate on their Year 2000 forms 470 that they were seeking services for Funding Year 1999. Forms 470 so designated were included in a list posted on the website separate from the Funding Year 2000 FCC forms 470, and SLD took special steps to ensure that providers were made aware that there were FCC form 470s seeking Funding Year 1999 services that were not included among the FCC form 470s posted in the on-line Funding Year 1999 location.

10. Thus, contrary to Henrico's assertion, it was not "impossible" to post a request for services in Funding Year 1999. Henrico, having already posted a Funding Year 2000 FCC form 470 on December 19, 1999, that did not specify its intention to seek Funding Year 1999 funds, had ample opportunity, after March 1, 2000, to resubmit its Year 2000 form 470 with a notation that the form was seeking Funding Year 1999 funds as USAC instructed. In fact, numerous applicants successfully posted their Funding Year 1999 requests for services using the Funding Year 2000 on-line application system. Therefore, while the absence of a Funding Year 1999 on-line system certainly justified applicants using the Funding Year 2000 system to post their Funding Year 1999 requests for bidding, it does not excuse applicants who made no attempt to post Funding Year 1999 requests at all. Here, Henrico made no such attempt to post Funding Year 1999 services. Henrico seeks to rely on an FCC form 470 that it concedes actually requested services in Funding Year 2000 and on which Henrico in fact relied on to support its subsequent successful Funding Year 2000 FCC form 471 application. Consequently, we conclude that the circumstances to which Henrico refers would not support relief in this case.

11. It is ordered, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, and § 1.115 of the Commission's rules, that the application for review filed by Henrico County Public Schools, Richmond, Virginia, on March 5, 2002 is denied.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1175 Filed 1–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 96–45, 97–21; FCC 02–306]

Application for Review by Lunenburg County Public Schools, Victoria, Virginia; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants the application for review seeking review of an Order issued by the Accounting Policy Division of the Common Carrier Bureau (Bureau) on delegated authority. In the Order, the Bureau upheld the decision of the Schools and Libraries Division of the Universal Service Administrative Company, which denied Lunenburg County Public Schools' Funding Year 1999 application for discounts under the schools and libraries universal service mechanism. This document also remands to SLD to fund the request as set forth.

DATES: Effective November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Narda Jones, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket Nos. 96–45 and 97–21 released on November 20, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

1. Before the Commission is an Application for Review filed by Lunenburg County Schools . (Lunenburg), Victoria, Virginia, seeking review of an Order issued by the Accounting Policy Division of the Common Carrier Bureau (Bureau) on delegated authority. In the Order, the Bureau upheld the decision of the Schools and Libraries Division (Division) of the Universal Service Administrative Company, which denied one of Lunenburg's Funding Year 1999 application for discounts under the schools and libraries universal service mechanism. For the reasons set forth below, we grant the application for review and remand to SLD to fund the request as set forth in this Order.

2. Under the schools and libraries universal service support mechanism,

eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections. The Commission's rules require that the applicant make a *bona fide* request for services by filing with the Administration an FCC form 470, which is posted to the Administrator's website for all potential competing service providers to review. After the FCC form 470 is posted, the applicant must wait at least 28 days before entering into an agreement for services and submitting an FCC form 471, which requests support for eligible services. SLD reviews the FCC forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Applicants may only seek support for eligible services. The instructions for the FCC form 471 clearly state: "You may not seek support on this form for ineligible services." The instructions further clarify that "[w]hile you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services." Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute 30 percent or more of the total. An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

4. At issue is Funding Request Number (FRN) 481380, which sought discounted internal connections at a pre-discount cost of $62,850.00. Documentation provided with the application indicated that this cost included $14,750 for 11 PC Cards, $29,900 for a wireless LAN, and $18,200 for installation. During its review process, SLD contacted Lunenburg for more information on the PC Cards, and based on this information, determined that they were ineligible for discounts. On April 27, 2001, SLD issued a funding commitment decision letter denying FRN 481380 on the grounds that "30% or more of this FRN includes a request for Aironet 4800 pc cards which is an ineligible product based on program rules." Lunenburg then filed a request for review with the Commission.

5. In its Request for Review, Lunenburg argued that the purchase cost of the PC Cards was $14,750.00 of the total funding request amount of $62,850.00, and thus only 23.47%. However, the Bureau noted that, in addition to the purchase of equipment, the funding request also sought discounts on installation costs. The Bureau found that, in the absence of evidence in the record indicating to the contrary, the cost of the ineligible components included a proportional amount of the overall installation costs associated with the funding request. With a proportional amount of the installation costs included, the Bureau found that the cost of ineligible services was 33% of the total. Thus, the Bureau held that the funding request was properly denied in its entirety under SLD's 30% policy.

6. To support its application for review before the Commission, Lunenburg offers three arguments. First, it asserts that wireless antennas that are a small component of the PC Cards (which Lunenberg now refers to as Network Interface Cards (NI Cards)) are in fact eligible for discounts. Lunenburg asserts that when the cost for the antenna on each NI Card is subtracted from the overall NI Card cost, the total ineligible cost is less than 30% of the funding request. Second, Lunenburg asserts that there was no installation cost associated with the NI Card, because these components would be installed and configured by school staff. Third, it asserts that it has a high poverty rate and that funding is critical in order for it to bring telecommunications and Internet access to its students.

7. Lunenburg did not present any of these arguments to the Bureau in its request for review. Section 1.115(c) of the Commission's rules provides that "[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass." The note to § 1.115(c) states that "new questions of fact or law may be presented to the designated authority in a petition for reconsideration."

8. In other circumstances, we have held that consideration of newly raised arguments in conjunction with an application for review is precluded by § 1.115(c) of our rules. We recognize, however, that Lunenburg could not reasonably have known, when it submitted its request for review, that it needed to address the installation costs, because the Funding Commitment decision letter did not indicate that a portion of the installation costs were being found ineligible. Lunenburg was not apprised of the presumed ineligibility of a portion of the installation costs until the release of the Bureau Order. We therefore find that there is good cause to waive § 1.115(c) of our rules given these circumstances and that the facts are not in dispute. In the future, however, we urge applicants to present these types of arguments to the Bureau in a petition for reconsideration in the first instance. We caution that similar situations may not rise to the level of good cause justifying waiver of our rules.

9. In light of Lunenburg's explanation that the installation costs are entirely attributable to the wireless LAN, which is eligible for discounts under the program, we find that the ineligible portion of the request consisting of the $14,750 cost of the NI Cards is less than 30% of the $62,850 cost of the request. Because the ineligible portion is less than 30% of the request, under SLD's procedure, the eligible portion should be funded. Therefore, we grant the application for review and remand this application to SLD to fund the eligible portion of the request.

10. It is ordered, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, that the application for review filed by Lunenburg County Public Schools, Victoria, Virginia, on April 3, 2002 is granted, and this application is remanded to SLD for further action consistent with this Order.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1176 Filed 1–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting Wednesday, January 15, 2003

January 8, 2003.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on, which is scheduled to commence at in Room TW–C305, at 445 12th Street, SW., Washington, DC. The Meeting will focus on presentations by senior agency officials regarding implementations of the agency's strategic plan and a comprehensive review of FCC policies and procedures.

Presentations will be made in four panels:

Panel One consisting of the Managing Director.

Panel Two consisting of the Chiefs of the Enforcement Bureau and the Consumer and Governmental Affairs Bureau.

Panel Three consisting of the Chiefs of the Office of Engineering and Technology, the Wireless Telecommunications Bureau, and the International Bureau.

Panel Four consisting of the Chiefs of the Wireline Competition Bureau and the Media Bureau.

Additional information concerning this meeting may be obtained from David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322. Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com*.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <*http://www.fcc.gov/realaudio/*>. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–1470, Ext. 10; fax number (703) 834–0111.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–1408 Filed 1–16–03; 3:16 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice; altered Privacy Act system of records; revision of one routine use; addition of one new routine use; and cancellation of one system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), the FCC proposes to alter a system of records, FCC/Central-6, "Personnel Investigation Records." The altered system of records will incorporate the provisions of FCC/OMD–4, "Security Office Control Files," including the addition of two routine uses from FCC/OMD–4; revision of one routine use; and addition of one new routine use incorporating the data elements and uses for the Workplace Violence Form; and make other edits and revisions as necessary. The FCC will cancel FCC/OMB–4.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (e)(11), any interested person may submit written comments concerning the proposed altered system of records on or before February 20, 2003. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system may submit comments on or before March 3, 2003. The proposed system shall become effective without further notice March 3, 2003 unless the FCC receives comments that would require a contrary determination. As required by 5 U.S.C. 552a(r) of the *Privacy Act of 1974*, as amended, the FCC has submitted reports on this proposed altered system to OMB and both Houses of Congress.

ADDRESSES: Comments should be sent to Les Smith, Privacy Act Clerk, Performance Evaluation and Records Management (PERM), Room 1–A804, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *lesmith@fcc.gov*.

FOR FURTHER INFORMATION: Contact Les Smith, Performance Evaluation and Records Management (PERM), Room 1–A804, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–0217 or via the Internet at *lesmith@fcc.gov;* or Eric Botker, Security Office, Associate Managing Director—Administrative Operations (AMD–AO), Security Operations Center, Federal Communications Commission (FCC), 445 12th Street, SW., Room 1–B458, Washington, DC 20554, (202) 418–7884 or via the Internet at *ebotker@fcc.gov*.

SUPPLEMENTARY INFORMATION: As required by the *Privacy Act of 1974*, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed altered system of records maintained by the FCC; addition of two routine uses to FCC/Central-6 that were formerly in FCC/OMD–4; revision of one routine use in FCC/Central-6 to incorporate elements formerly in FCC/OMD–4; addition of one new routine use to incorporate uses in the Workplace Violence Form; and cancellation of one system of records, FCC/OMD–4. This agency previously gave complete notice of the two systems of records covered under this Notice by publication in the **Federal Register** on October 23, 2000, 65 FR 63468. This notice is a summary of more detailed information, which may be viewed at the location given in the **ADDRESSES** section above. The purposes for altering FCC/Central-6, "Personnel Investigation Records" are to merge FCC/OMD–4, "Security Office Control Files" into this system of records to eliminate possible duplications of functions and records; to add new data elements, new purposes, and one new routine use; to update the statutory authority to maintain the information that the Commission may collect when the Workplace Violence Form is introduced; and otherwise to alter, update, and revise this system of records as necessary.

The FCC proposes to achieve these purposes by altering this system of records, FCC/Central-6, "Personnel Investigation Records" with these changes:

The incorporation of the data elements of another system of records, FCC/OMD–4, "Security Office Control Files," into FCC/Central-6;

The elimination of FCC/OMD–4;

The transfer of two routine uses formerly in FCC/OMD–4 to address new and/or revised uses:

Routine use (7) allows disclosure to the security officers of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to their request(s) for verification of security clearances of FCC employees to have access to classified data or areas where their official duties require such access.

Routine use (8) allows disclosure to request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant or pertinent enforcement information or records, such as licenses, if necessary to obtain information relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a grant or other benefit.

The revision of one routine use to incorporate uses formerly in FCC/OMD–4:

Routine use (5) allows disclosure to designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, in response to their request, when such agency, office, or establishment conducts an investigation of the individual for the purpose of hiring, firing, or retention, granting a security clearance, making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or classifying jobs, letting of a

contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's purpose.

The addition of one new routine use to include the data elements, information, and purposes for the Workplace Violence Form:

Routine use (9) allows disclosure to the Merit System Protection Board (MSPB) during the course of the MSPB's investigation of the individual's appeal, following the Commission's adverse action against the individual.

The alteration, revision, or modification of various data elements in FCC/Central-6, including editorial changes to update, simplify, or clarify, as necessary, this system of records.

The FCC Security Officer and the Personnel Security Specialist in the Security Office will use the records in FCC/Central-6 to provide investigative information to determine compliance with Federal regulations and/or an individual's suitability and fitness for Federal employment, access to classified information or restricted areas, position sensitivity, security clearances, evaluations of qualifications, and loyalty to the U.S.; to evaluate qualifications and suitability to perform contractual services for the U.S. Government; to document such determinations; to respond to an inquiry conducted under the President's Program to Eliminate Waste and Fraud in the Government; to take action on, or respond to a complaint about a threat, harassment, intimidation, violence, or other inappropriate behavior involving one or more FCC employees and/or contract employees; and to counsel employees.

Records in this system will be available for public inspection at the location given above. The functions in this system of records will be performed by the FCC Security Officer and the Personnel Security Specialist in the Security Office.

This notice meets the requirement documenting the change in the Commission's system of records, and provides the public, Congress, and the Office of Management and Budget (OMB) an opportunity to comment.

FCC/CENTRAL–6

SYSTEM NAME:

Personal Investigation Records.

SECURITY CLASSIFICATION:

There is no specific security classification for this system; however, data or records within the system may have national defense/foreign policy classifications up through secret.

SYSTEM LOCATION:

Security Operations Center, Assistant Managing Director-Administrative Offices (AMD–AO), Office of Managing Director, Federal Communications Commission (FCC), 445 12th Street, SW., Room 1–B458, Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current and former FCC employees, applicants for employment in the Federal service, and contractors.

2. Individuals considered for access to classified information or restricted areas and/or security determinations such as contractors, experts, instructors, and consultants to Federal programs.

3. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in Federal programs under a co-operative agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Data needed to identify an individual and his/her security clearance for both FCC and contract employees: Individual's last, first, and middle names (filed alphabetically by last name); Social Security Number; date of birth; place of birth; Bureau/Office/Contractor Company; position title; security classification; types and dates of investigations; agency conducting investigation, investigation dates, clearance level granted, and position sensitivity level; and remarks.

2. Data needed to investigate an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for violations against the law; reports of interviews with present and former supervisors, co-workers, associates, educators, etc; reports about the individual's qualifications for a position; reports of inquiries with law enforcement agencies, employers, and educational institutions attended; reports of action after OPM or FBI Section 8(d) Full Field Investigation; Notices of Security Investigation and other information developed from the above described Certificates of Clearance; and in some instances, a photograph of the subject.

3. Data to needed to investigate allegations of misconduct by an FCC employee;

4. Data needed to investigate miscellaneous complaints not covered by the FCC's formal or informal grievance procedure; and

5. Data needed to conduct inquiries under the "President's Program to Eliminate Waste and Fraud in Government."

6. Data needed to investigate violence, threats, harassment, intimidation, or other inappropriate behavior that causes an FCC employee or contractor to fear for his/her personal safety in the FCC workplace: case number; victim's name; office telephone number; room number; organization bureau/office/division/branch; duty station; position; supervisor; supervisor's telephone number; location of incident; activity at time of incident; circumstances surrounding the incident; perpetrator; name(s) and telephone number(s) of witness(es); injured party(s); medical treatment(s); medical report; property damages; report(s) to police and/or Federal Protective Services; and other miscellaneous information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 5; 29 CFR part 1960; 47 CFR 19.735–107; 5 U.S.C. 1303, 1304, 3301, 7902; and Executive Orders 10450, 11222, 12065, and 12196.

PURPOSE(S):

FCC Security Officer and the Personnel Security Specialist of the Security Office use the records in this system to provide investigative information to determine compliance with Federal regulations and/or to make a determination about an individual's suitability and fitness for Federal employment, access to classified information or restricted areas, position sensitivity, security clearances, evaluations of qualifications, and loyalty to the U.S.; to evaluate qualifications and suitability to perform contractual services for the U.S. Government; to document such determinations; to respond to an inquiry conducted under the President's Program to Eliminate Waste and Fraud in the Government; to take action on, or to respond to a complaint about a threat, harassment, intimidation, violence, or other inappropriate behavior involving one or more FCC employees and/or contract employees; and to counsel employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation, or order where there is an indication of a violation or potential violation of a statute, regulation, rule, or order.

2. A record on an individual in this system of records may be disclosed to a

Congressional office in response to an inquiry an individual has made to the Congressional office.

3. A record for this system of records maybe disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

4. A record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body.

5. A record from this system may be disclosed to designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, in response to their request, when such agency, office, or establishment conducts an investigation of the individual for the purpose of hiring, firing, or retention, granting a security clearance, making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or classifying jobs, letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's purpose.

6. A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicatory body when:

(a) The United States, the Commission, a component of the Commission, or when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation.

7. A record from this system may be disclosed to the security officers of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to their request(s) for verification of security clearances of FCC employees to have access to classified data or areas where their official duties require such access.

8. A record in this system may be disclosed to request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant or pertinent enforcement information or records, such as licenses, if necessary to obtain information relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a grant or other benefit.

9. A record from this system may be disclosed to the Merit System Protection Board (MSPB) during the course of the MSPB's investigation of the individual's appeal, following the Commission's adverse action against the individual.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system of records include both paper and electronic records. Paper records are stored in file folders in security containers. The electronic records are maintained in a computer database.

RETRIEVABILITY:

Records are retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Paper records are maintained in file folders and stored in approved security containers, within a secure, access-controlled area with an intrusion alarm. Access is limited to approved security office and administrative personnel.

The electronic records are maintained in a "stand-alone" computer database, which is secured through controlled access and passwords restricted to security and administrative personnel on a "need to know" basis. The computers are located in a room with a simplex lock and intrusive alarm systems. The computer databases are maintained on a computer that is not connected to the FCC computer network. The databases are backed-up on a daily basis to floppy disk(s), which are then stored in a secured area.

RETENTION AND DISPOSAL:

Both paper and electronic records are retained during employment or while an individual is actively involved in federal programs. As appropriate, records are returned to investigating agencies after employment terminates; otherwise, the records are retained for five years from the date that the employee leaves the Commission.

Investigative files and the computer database, which show the completion of an investigation, are retained for 15 years, except for investigations involving potential actionable issue(s), which will be maintained for 25 years plus the current year from the date of the most recent investigative activity.

Paper records are destroyed by shredding. Electronic records are destroyed by electronic erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Security Office, Associate Managing Director—Administrative Operations (AMD–AO), Security Operations Center, Federal Communications Commission (FCC), 445 12th Street, SW., Room 1–B458, Washington, DC 20554.

NOTIFICATION, RECORD ACCESS AND CONTESTING RECORD PROCEDURES:

This system is exempt from the requirement that the agency publish the procedures for notifying an individual, at his or her request, if the system contains a record pertaining to him/her, for gaining access to such record, and for contesting the contents of the record.

RECORD SOURCE CATEGORIES:

This system is exempt from the requirement that the agency publish the categories of sources of records in this system.

EXEMPTION FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from sections (c)(3), (d), (e)(4)(G), (H), and (I), and (f) of the *Privacy Act of 1974*, 5 U.S.C. 552a, and from 47 CFR 0.554–0.557 of the Commission's rules. These provisions concern the notification, record access, and contesting procedures described above, and also the publication of record sources. The system is exempt from these provisions because it contains the following types of information:

1. Investigative material compiled for law enforcement purposes as defined in Section (k)(2) of the Privacy Act.

2. Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy, as stated in Section (k)(1) of the Privacy Act.

3. Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, as described in Section (k)(5) of the Privacy Act, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1195 Filed 1–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. L. Michael Ashbrook, Monroe, Louisiana and Charles Bruce, Cut Off, Louisiana; to acquire the outstanding shares of FBT Bancorp, Inc., Baton Rouge, Louisiana, and thereby indirectly acquire Fidelity Bank and Trust Company, Baton Rouge, Louisiana.

Board of Governors of the Federal Reserve System, January 14, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–1167 Filed 1–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 14, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. United Community Banks, Inc., Blairsville, Georgia; to merge with First Central Bancshares, Inc., Lenoir City, Tennessee, and thereby indirectly acquire First Central Bank, Lenoir City, Tennessee.

Board of Governors of the Federal Reserve System, January 14, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–1168 Filed 1–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[Docket No. 9304]

Quicken Loans Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 29, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov.*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Bradley Blower or Thomas Kane, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 3.25(f) of the Commission's Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 30, 2002), on the World Wide Web, at "http://www.ftc.gov/os/2002/12/index.htm." A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Quicken Loans Inc. The proposed order would settle charges that Quicken

Loans violated Section 615(a) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681m(a), and Section 5 of the Federal Trade Commission Act. Section 615(a) requires that a credit grantor who takes adverse action with respect to a consumer, based in whole or in part on information contained in a credit report ("consumer report"), notify the consumer of the adverse action as well as the identity of the credit bureau ("consumer reporting agency") that produced the report, so the consumer can identify and correct any inaccuracies in the report.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

According to the Commission's Complaint, for a period of approximately one year, Quicken Loans offered loans to consumers through its website. Quicken Loans invited consumers to submit information, such as their income and assets, and the loan amount, down payment and type of loan sought. Consumers then were invited to request that Quicken Loans either "prequalify" the consumer for a loan based solely on information the consumer had entered, or "preapprove" the consumer for a loan based on the consumer's consumer report, as well as the consumer-supplied information. To select the preapproval option, consumers were required to click a radio button next to the statement "Order my credit report and use it to preapprove me for a loan." According to the Complaint, by selecting this option, consumers were filing applications for preapproval of a loan.

For those consumers who requested preapproval, Quicken Loans obtained consumer report from consumer reporting agencies and used the reports, along with consumer-supplied information, to evaluate the consumers' creditworthiness for any of its online loan products. For those consumers whom Quicken Loans preapproved for one of its online loan products, respondent provided an online preapproval letter containing the specific terms (e.g., loan amount, interest rate, points, and APR) of the loans for which the consumers were preapproved.

Those consumers whom respondent did not preapprove for one of its online loan products received an online advisory informing them that, "[b]ased on the information you have provided, it appears that you have unique borrowing needs." Quicken Loans invited these consumers to click a button reading "NEXT STEP" to permit a Quicken Loans loan consultant to contact them about other possible Quicken Loans loan options. The Commission's Complaint alleges that the message communicated through the advisory was that consumers' online applications for preapproval had been denied. As a result, many consumers who received this advisory left the website without submitting contact information. Consumers who received the "unique borrowing needs" advisory but did not then submit contact information online received no further contact from respondent. The Complaint alleges that, through the actions described above, Quicken Loans took adverse action with respect to consumers in some instances, based in whole or in part on information contained in consumer reports, but failed to provide the notice required by Section 615.

Part I of the proposed order requires that whenever Quicken Loans takes adverse action with respect to a consumer's application for credit, based either wholly or partly on information in a consumer report, Quicken Loans must provide the consumer with a notice that complies with Section 615(a). Part I also provides that the Commission would not view Quicken Loans' failure to grant an online request for preapproval as an adverse action if the company meets certain specific requirements, which include that (1) Quicken Loans provides a clear and conspicuous disclosure in close proximity to the preapproval offer that preapproval may be granted online or offline; and (2) if Quicken Loans determines it cannot grant preapproval online because it needs additional information, it will notify the consumer that (a) the request for preapproval has not been denied, but rather that Quicken Loans needs additional information from the consumers, and (b) if the consumer submits the additional information, Quicken Loans will determine whether to grant the request and communicate the decision to the consumer.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires that Quicken Loans maintain and make available for Federal Trade Commission inspection and copying documents demonstrating compliance with Part I of the order. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates compliance reports within sixty (60) days after service of the order and at such other times as the FTC may require. Part VI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

This proposed order, if issued in final form, will resolve the claims alleged in the complaint against the named respondent. It is not the Commission's intent that acceptance of this consent agreement and issuance of a final decision and order will release any claims against any unnamed persons or entities associated with the conduct described in the complaint.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–1215 Filed 1–17–03; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2003–B1]

Federal Management Regulation; Locating Federal Facilities in Rural Areas

AGENCY: Office of Governmentwide Policy (MPR), GSA.

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin is intended to assist Federal agencies, having their own statutory authority to acquire real property, in complying with the Rural Development Act of 1972.

EFFECTIVE DATE: This bulletin is effective January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, General Services Administration, Office of Governmentwide Policy (MPR), Washington, DC 20405; e-mail, *stanley.langfeld@gsa.gov*, telephone (202) 501–1737.

SUPPLEMENTARY INFORMATION: In July 2001, GAO issued GAO Final Report GAO–01–805, entitled "Facilities Location: Agencies Should Pay More Attention to Costs and Rural Development Act," which examined the Federal laws and policies governing

facility location and the extent that agencies were implementing these laws and policies. In addition, the GAO report identified recommendations to be implemented by GSA. In October 2001, in response to a recommendation contained in the GAO Report, GSA agreed to issue a **Federal Register** bulletin that defines the term "rural area" and recommends that Federal agencies, having their own statutory authority to acquire real property, include a written statement in their files affirming that they have given first priority to locating in a rural area.

Dated: January 13, 2003.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2003–B1]

Real Property

TO: Heads of Federal Agencies
SUBJECT: Locating Federal Facilities in Rural Areas

1. *What is the purpose of this bulletin?* This bulletin is intended to assist Federal agencies, having their own statutory authority to acquire real property, in complying with the Rural Development Act of 1972.

2. *What is the effective date of this bulletin?* This bulletin is effective January 21, 2003.

3. *When does this bulletin expire?* This bulletin will remain in effect indefinitely until specifically cancelled.

4. *What is the background?*

a. In 1972, the Rural Development Act was enacted which directed Federal agencies to develop policies and procedures to give first priority to the location of new offices and other Federal facilities in rural areas. The intent of the Act is to revitalize and develop rural areas and help foster a balance between rural and urban America.

b. In 1996, Pub. L. 104–127 eliminated the "private business enterprise" language in 7 U.S.C. 1926(a)(7) which had served to define the term "rural area" for the purpose of locating Federal facilities.

c. In July 2001, GAO issued GAO Final Report GAO–01–805, entitled "Facilities Location: Agencies Should Pay More Attention to Costs and Rural Development Act," which examined the federal laws and policies governing facility location and the extent that agencies were implementing these laws and policies. In addition, the GAO report identified recommendations to be implemented by GSA.

d. In October 2001, in response to a recommendation contained in the GAO Report, GSA agreed to issue a **Federal Register** bulletin that defines the term "rural area" and recommends that Federal agencies, having their own statutory authority to acquire real property, include a written statement in their files affirming that they have given first priority to locating in a rural area.

5. *What "rural area" definition does GSA recommend for Federal agencies having their own statutory authority to acquire real property?*

GSA recommends that Federal agencies, having their own statutory authority to acquire real property, use the following "rural area" definition:

"Rural area means a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants, as specified in 7 U.S.C. 2009."

6. *How does GSA recommend that Federal agencies, having their own real property authority, demonstrate compliance with the Rural Development Act?*

GSA recommends that Federal agencies, having their own statutory authority to acquire real property, demonstrate compliance with the Rural Development Act by including a written statement in their files affirming that they have given first priority to the location of new offices and other Federal facilities in rural areas.

7. *Who should we contact for further information regarding locating Federal facilities in rural areas?*

General Services Administration, Office of Governmentwide Policy, Real Property Policy Division, *Attn:* Stanley C. Langfeld, 1800 F Street, NW., Washington, DC 20405, *Telephone Number:* (202) 501–1737, *E-mail Address:* stanley.langfeld@gsa.gov.

[FR Doc. 03–1183 Filed 1–17–03; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–36]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Epidemiologic Study Of Gastrointestinal Health Effects And Exposure To Disinfection By-products Associated With Consumption Of Conventionally Treated Groundwater—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

The primary goal of drinking water treatment is the removal of microorganisms responsible for waterborne disease. The addition of disinfectants such as chlorine is one of the most important steps in pathogen inactivation and may in some cases (such as in many groundwater systems) be the only treatment employed. However, chlorine also reacts with organic compounds in the water to produce halogenated organic by-products (disinfection by-products [DBPs]). One of the most commonly measured groups of DBPs is the trihalomethanes (THMs). Human exposure to THMs has been associated with bladder and colorectal cancer. Public water providers must constantly balance the acute risks of gastrointestinal (GI) illness associated with exposure to microbial pathogens against the long-term risks associated with exposure to DBPs.

This study will estimate the risks for endemic GI illness associated with

drinking conventionally treated groundwater and evaluate exposure to THMs in the same people. We plan to recruit 900 households who report that they drink unfiltered tap water from a specific public water system that treats and distributes water from a groundwater source. This utility has agreed to collaborate on the study. The study households will be randomized into one of three groups: (1) Households drinking highly treated bottled water purchased from a bottled water company, (2) households drinking groundwater that has been conventionally treated by the collaborating utility and collected and bottled at the water treatment plant (bottled plant water), or (3) households drinking municipal tap water from the distribution system of the collaborating utility (tap water). We will administer a questionnaire at the beginning of the study to collect data about water use habits and possible exposures to microbial pathogens and THMs. Each study household also will be called weekly for 52 weeks for a short telephone interview to document whether anyone in the household had any gastrointestinal symptoms during the past week. Blood and serum samples will be collected from a subset (50%) of adult household members at the beginning and end of the study. All household members will be asked to provide a saliva specimen each month for the duration of the one-year study. Stool specimens will be collected during episodes of GI symptoms. Blood samples will be analyzed for THMs, and serum, saliva, and stool samples will be stored for later analysis for enteric pathogens. Water samples will be collected from each participating household at the beginning and a subset (50%) of the households at the end of the study and analyzed for THMs. Water samples for microbial analysis will be taken routinely from the source, the finished water, and designated locations in the distribution system.

The specific aims of the study are to (1) determine the risk for GI illness associated with source water quality and treatment efficacy by comparing GI illness rates in people drinking highly treated bottled water with GI illness rates in people drinking bottled plant water; (2) determine the risk for GI illness associated with the distribution system by comparing GI illness rates in people drinking bottled plant water with GI illness rates in people drinking tap water; (3) determine water concentrations and associated blood concentrations of THMs in the study population; and (4) validate and refine existing models of THM exposure using the THM data collected at the participating households and hydraulic and water quality data collected in the distribution system at the time of household recruitment. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Telephone contact	2,500	1	10/60	417
Household survey	900	1	30/60	450
Blood and serum sample collection	900	2	15/60	450
Initial tap water sample collection	900	1	10/60	150
Final tap water sample collection	450	1	10/60	75
Weekly telephone interview	900	52	15/60	780
Saliva specimen collection	900	12	5/60	900
Stool specimen collection	900	2	5/60	150
Total				3,372

Dated: January 10, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–1180 Filed 1–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–18–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Youth Media Campaign Tracking Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). CDC plans to conduct ongoing monitoring of the awareness and reaction to the brand and messages of the Youth Media Campaign. In FY 2001, Congress established the Youth Media Campaign at the Centers for Disease Control and Prevention (CDC). Specifically, the House Appropriations Language said: The Committee believes that, if we are to have a positive impact on the future health of the American population, we must change the behaviors of our children and young adults by reaching them with important health messages. CDC, working in collaboration with federal partners, is coordinating an effort to plan, implement, and evaluate a campaign designed to clearly communicate messages that will help kids develop habits that foster good health over a lifetime.

The Campaign will be based on principles that have been shown to enhance success, including: Designing messages based on research; testing messages with the intended audiences; involving young people in all aspects of Campaign planning and implementation; enlisting the involvement and support of parents and other influencers; tracking the Campaign's effectiveness and revising Campaign messages and strategies as needed.

For the Campaign to be successful, ongoing monitoring of the campaign's penetration with the target audiences is essential. Campaign planners must have mechanisms to determine the targets' awareness of, and reaction to, the campaign brand and messages as the campaign evolves. Campaign planners also need to identify which messages

are likely to have the greatest impact on attitudes and desired behaviors. The purpose of this monitoring strategy is to continually assess and improve the effectiveness of the targeted communication and other marketing variables throughout the evolution of the campaign. Another important objective is to determine which media channels are most effective to optimize communication variables such as weight levels, frequency and reach components, programming formats, etc. that will have the greatest effect upon communicating the desired message to the target audiences. As the marketing efforts are implemented in selected cities, the Campaign planners also want to evaluate which strategies are most effective in which locales.

The Youth Media Campaign will use a tracking methodology using age-targeted samples. Tracking methods may include, but are not limited to telephone surveys, telephone or in-person focus groups, web-based surveys, or intercept interviews with tweens, parents, other teen influencers and adult influencers nationally and in cities with YMC-hosted events. Continuous tracking of awareness of the brand and the advertising messages are standard tools in advertising and marketing. The commitment of resources to YMC's marketing efforts mandates that campaign planners be able to respond quickly to changes needed in message execution or delivery as is standard practice in the advertising industry. The total burden for this data collection is 2,285 hours.

Survey	Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Media Benchmarking Survey	Screener	7,170	1	2/60
	Parent	650	1	3/60
	Child	650	1	12/60
Continuous Tracking Survey (national & community).	Screener	29,076	1	1/60
	Parent	7,200	1	3/60
	Child	7,200	1	12/60

Dated: January 10, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–1177 Filed 1–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–19–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Evaluation of the ACT (Adults and Children Together) Against Violence Community Training Program—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC). The goal of the ACT Against Violence Community Training Program is to make early violence prevention a central and ongoing part of a community's violence prevention efforts. The program involves a training curriculum developed by child development and violence prevention experts. The curriculum is designed to help communities: (1) Disseminate information and skills on violence prevention to adults who raise, care for, and teach young children; (2) identify and select early violence prevention programs, materials, and resources; (3) work in collaborative efforts established among community-based organizations; and (4) develop early childhood violence prevention action plans.

The purpose of the evaluation is to assess pilot implementations of the ACT Community Training Program in three communities: Monterey, CA; Randolph, NJ; and Kansas City, MO. The objectives of the evaluation are to (1) assess whether the Community Training Program is being successfully disseminated and implemented; (2) examine factors that affect successful dissemination, adoption, and implementation of the training program; (3) compare findings across the three sites; and (4) assess the involvement of the public health sector in each of the three sites.

Data collected for the evaluation will provide much-needed information on the dissemination and implementation of one of the successful strategies summarized in the Best Practices of Youth Violence Prevention. The results of the evaluation will assist the Division of Violence Prevention and the National Center for Injury Prevention and Control in carrying out CDC's mission of protecting the health of the United States public by providing leadership in preventing and controlling injuries through research, surveillance, implementation of programs, and communication. The evaluation will include semi-structured interviews with local and national program stakeholders (forms 1 and 2), focus groups with a subset of ACT trainees ("facilitators") during a site visit (form 3), and a half-hour telephone survey with the universe of ACT trainees at 6 months with e-mail follow-ups at 2 months and 12 months (form 4). In addition, we will follow-up with a small subset of "adult community members" reached by ACT trainees with a half-hour telephone survey (form 5). Presented below is the estimated respondent burden for the telephone surveys, semi-structured interviews, and focus groups, respectively. There are no costs to respondents.

Form and type of respondent	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Local-level program stakeholders—interview (form 1)	10	1	1	10
Facilities—screening (as part of consent procedures for both survey and focus groups)	75	1	1/60	1.25
Facilitators—Survey (form 2)	60	1	30/60	30
Facilitators—focus groups (form 3)	60	1	90/60	90
Adult Community members—screening (as part of consent procedure for survey)	250	1	1/60	4.17
Adult community members—survey (form 4)	200	1	15/60	50
Total				185.42

Dated: January 10, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–1178 Filed 1–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–20–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National Public Health Performance Standards Program Local Public Health Governance Performance Assessment Instrument—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

Since 1998, the CDC National Public Health Performance Standards Program has convened workgroups with the National Association of County and City Health Officials (NACCHO), the Association of State and Territorial Health Officials (ASTHO), the National Association of Local Boards of Health (NALBOH), the American Public Health Association (APHA), and the Public Health Foundation (PHF) to develop performance standards for public health systems based on the ten Essential Services of Public Health. In the spring of 2001, CDC conducted field tests with the local public health governance instruments in the state of Massachusetts.

CDC is now proposing to implement a voluntary data collection to assess the capacity of local boards of health to deliver the Essential Public Health Services. This data collection will provide a framework for local boards of health to evaluate their effectiveness. Electronic data submission will be the method of choice. If computer technology in local jurisdictions does not support electronic submission, hard copy survey instruments will be available. Local jurisdictions using hard copy survey instruments will receive assistance from State or local level field coordinators for web-based data entry.

Local boards of health will respond to the survey. An estimated 33 percent of approximately 3,200 United States local boards are expected to participate in the National Performance Standards Program per year. The annual burden hours are estimated to be 6402.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Local Boards of Health Year 1	1,066	1	6
Local Boards of Health Year 2	1,067	1	6
Local Boards of Health Year 3	1,067	1	6

Dated: January 10, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–1179 Filed 1–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02060–FY03]

National Cancer Prevention and Control Program; Open Season; Notice of Availability Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for an Open Season for the National Cancer Prevention and Control Program (NCPCP) cooperative agreement program previously announced in Program Announcement 02060, National Cancer Prevention and Control Program (Henceforth referred to as PA 02060.) This program addresses the "Healthy People 2010" focus areas related to cancer.

PA 02060 was published in the **Federal Register** on April 23, 2002, Volume 67, Number 78, pages 19932–19950. Amendment 1 was published May 23, 2002, and Amendment 2 was published January 2, 2003. Applicants may access the amended version of PA

02060, along with this Open Season announcement, on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on "Funding," then "Grants and Cooperative Agreements." sections A.–F. of the original PA 02060 are superceded by sections A.–F. published in this Open Season announcement. If you do not have access to the Internet, or if you have difficulty accessing the announcements on-line, you may call the CDC Procurement and Grants Office, Technical Information Management Section at 770–488–2700 for assistance.

The NCPCP will assist States/District of Columbia/Tribes/Territories in developing, implementing, maintaining, enhancing, integrating, and evaluating a cancer program inclusive of cancer surveillance, prevention, and early detection programs, with a focus on eliminating health disparities. The purpose of each of the three programmatic components within the NCPCP is as follows:

A.1. National Comprehensive Cancer Control Programs (NCCCP)

The NCCCP component supports the planning and implementation of comprehensive cancer control activities. CDC defines comprehensive cancer control as an integrated and coordinated approach to reduce the incidence, morbidity and mortality of cancer through prevention, early detection, treatment, rehabilitation, and palliation.

A.2. National Breast and Cervical Cancer Early Detection Program (NBCCEDP)

The NBCCEDP component supports the development of systems to assure breast and cervical cancer screening for low income, underserved, and uninsured women with special emphasis on reaching those who are geographically or culturally isolated, older, or members of racial/ethnic minorities. Components of the NBCCEDP include surveillance, partnership development, screening, referral and follow-up, quality assurance, public and provider education, and evaluation. These components are carried out at the local, State and national levels through collaborative partnerships with State health agencies, community-based organizations, tribal governments, universities, a variety of medical care providers and related agencies and institutions, and the business and voluntary sectors. These partners work together to develop, implement and evaluate strategies to promote breast and cervical cancer prevention and early detection, to increase access to related services and to improve the quality and timeliness of the services.

A.3. National Program of Cancer Registries (NPCR)

The NPCR component supports efforts to establish population-based cancer registries where they do not exist and to improve existing cancer registries.

The amended PA 02060 contains information that is specific to the three individual components. Section G "Specific Guidance for NCCCP" addresses the National Comprehensive Cancer Control Program; section H "Specific Guidance for NBCCEDP" addresses the National Breast and Cervical Cancer Early Detection Program; and section I "Specific Guidance for NPCR" addresses the National Program of Cancer Registries. These component sections include specific guidance regarding:

- Eligibility
- Program Requirements
- Application Content
- Other Requirements
- Evaluation Criteria

Please refer to these specific component sections in the amended PA 02060 for additional information.

Special Guidelines for Technical Assistance

Conference Call

Technical assistance will be available for potential applicants on a conference call. The call will take place on Tuesday, January 28, 2003, from 3 p.m. eastern standard time until 5 p.m. eastern standard time.

Potential applicants are requested to call in using only one telephone line. The conference can be accessed by calling 1–800–713–1971, or 404–639–4100, and entering access code 553768. The purpose of the conference call is to help potential applicants to:

1. Understand the process for the Open Season Announcement for PA 02060 for the National Cancer Prevention and Control Program.

2. Understand the scope and intent of PA 02060 for the National Cancer Prevention and Control Program.

3. Be familiar with the Public Health Services funding policies and application and review procedures.

Participation in this conference call is not mandatory. At the time of the call, if you have problems accessing the conference call, please call 404–639–7550.

B. Eligible Applicants

Applicants may apply for any or all of the components within this Open Season announcement for which they are eligible. Eligibility Criteria for each component are as follows:

B.1. Eligible for NCCCP

Potential applicants that are eligible for components of NCCCP are the health departments of States or their *bona fide* agents, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and Federally recognized Indian tribal governments and tribal organizations, urban Indian organizations and inter-tribal consortia (hereafter referred to as tribes) whose primary purpose is to improve American Indian/Alaska Native health and which represent the Native population in their catchment area, that are not currently funded for NCCCP under PA 02060.

B.2. Eligible for NBCCEDP

Potential applicants that are eligible for NBCCEDP are the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and Federally recognized Indian tribal governments and tribal organizations, urban Indian organizations and inter-tribal consortia (hereafter referred to as tribes) whose primary purpose is to improve American Indian/Alaska Native health and which represent the Native population in their catchment area, that are not currently funded for NBCCEDP under PA 02060.

B.3. Eligible for NPCR

Potential applicants that are eligible for components of NPCR are the health departments of States or their bona fide agents, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and academic or nonprofit organizations designated by the State to operate the State's cancer registry, that are not currently funded under PA 02060.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Funds

Availability of Funds

Pending availability of FY 2003 funds, approximately $6,250,000 is available in FY 2003 to fund new programs under the Open Season for PA 02060–FY03.

Awards under PA 02060 were made for a Project Period of September 30, 2002, through June 29, 2007. The first budget period was September 30, 2002, through June 29, 2003. Awards under this Open Season announcement will be for a Project Period of June 30, 2003, through June 29, 2007, with a budget period of June 30, 2003, through June 29, 2004. Future budget periods will be 12-month periods, and will begin on June 30 of every year and run through June 29 of each following year. These budget periods will occur until the expiration of the project period for PA 02060, which is June 29, 2007.

Component Funding

NCCCP—$1,000,000
NBCCEDP—$2,000,000
NPCR—$250,000

NCCCP—Optional Funding available for recipients of NCCCP Implementation Programs as follows:

- Colorectal cancer activities—$1,000,000
- Ovarian cancer activities—$1,000,000
- Prostate cancer activities—$1,000,000

Funding Preference

In accordance with the "Funding Preference" section of the amended PA 02060, funding preference may be given to applicants from previous year's applications who were considered Approved but Unfunded (ABU). Criteria for determining which programs would be eligible for this consideration were based on an acceptable score from the previous (fiscal year 2002) objective review. Funding preference will be given to NCCCP Planning applicants, including: California, Delaware, Fon du Lac Reservation, Indiana, Kansas, Missouri, Nevada, New Hampshire, Oklahoma, Oregon, South Carolina, South Puget Intertribal Planning Agency, Tennessee, and Washington, DC. Funding preference will be given to NCCCP Implementation applicants, including: Massachusetts, Northwest Portland Area Indian Health Board, Rhode Island, and Texas. Applicants listed above need not submit a new application to be considered for funding. Programs who previously applied and are not on this list, but are interested in being funded, must reapply. In addition, applicants who previously submitted a Planning application that was approved but unfunded, and now wish to be considered for Implementation, must submit a new application.

For component specific funding preference information, please refer to sections G, H, and I of the amended PA 02060.

Requested Budget Information

Applicants should submit separate budgets for each component (as well as separate budgets if applying for the Optional Funding under NCCCP) in response to this Open Season announcement. Each detailed budget and narrative justification should support the activities for the funding period specified in this Program Announcement for FY 2003 support.

Applications should follow the guidance provided under each program component in the amended PA 02060, with respect to the development and submission of an itemized budget and justification.

Use of Funds

For specific use of funds information, refer to sections G, H, and I of the amended PA 02060.

Cooperative agreement funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities and consistent with the scope of the cooperative agreement.

Funds provided under this program announcement may not be used to:

- Conduct research projects. Guidance regarding CDC's definition of "research" should be reviewed at: *http://www.cdc.gov/od/ads/opspoll1.htm*.
- Supplant State or local funds, provide inpatient care or treatment, or support the construction or renovation of facilities.

Applicants are encouraged to identify and leverage mutually beneficial opportunities to interact and integrate with other State health department programs that address related chronic diseases or risk factors. This may include cost sharing to support a shared position such as a Chronic Disease Epidemiologist, Health Communication Specialist, Program Evaluator, or Policy Analyst to work on relevant activities across units/departments within the State health department. Such activities may include, but are not limited to, joint planning, joint funding of complementary activities, public health education, collaborative development and implementation of environmental, policy, systems, or community interventions and other cost sharing activities.

Recipient Financial Participation

For specific recipient financial participation information, please refer to sections G, H, and I of the amended PA 02060.

Direct Assistance

For specific Direct Assistance information, please refer to sections G, H, and I of the amended PA 02060.

Funding Consideration

For specific component funding consideration information, please refer to sections G, H, and I of the amended PA 02060.

D. Content

Letter of Intent

One Letter of Intent (LOI) is requested from each applicant applying for any component(s) of this program. The narrative should be no more than one single-spaced page, printed on one side, with one-inch margins, and unreduced font. Your LOI will not be evaluated, but will be used to assist CDC in planning for the objective review for this program and should include the announcement number, the specific component(s) and parts of the component, if applicable, for which funds are being applied, and the name of the principal investigator.

Application Development

Please refer to sections G, H, and I of the amended PA 02060 to use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated using the criteria listed, so it is important to follow them in laying out your application.

Applications should follow the guidance below with respect to page limitations for each component. All applications should be printed on one side, with one-inch margins, using unreduced font. All materials must be provided in an unbound, one-sided, 8 ½ by 11 inch print format, suitable for photocopying (*i.e.*, no audiovisual materials, posters, tapes, *etc.*)

Page Limitations

For specific page limitations information, please see sections G, H, and I of the amended PA 02060.

Application Outline

Applicants may apply for any or all of the components within this program announcement for which they are eligible. Please provide specific application outline information for each component as outlined in specific

sections G, H, and I of the amended PA 02060.

E. Submission and Deadline

Letter of Intent

On or before February 5, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the signed original and two copies of CDC Form 0.1246. Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at: 770–488–2700. Application forms can be mailed to you.

The application must be received by 4 p.m. eastern time March 7, 2003. Submit the application to: Technical Information Management-PA02060–FY03, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

Please reference Program Announcement Number 02060–FY03 National Cancer Prevention and Control Program on the mailing envelope and on the application Standard Form 424, block 11. Please also make sure that block 16 on Standard Form 424 regarding Executive Order 12372 has been completed correctly.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

F. Evaluation Criteria

Each application will be evaluated individually, through an objective review process.

For specific evaluation criteria information, please see sections G, H, and I of the amended PA 02060.

Where To Obtain Additional Information

This, and other CDC announcements can be found on the CDC home page, Internet address: *http://www.cdc.gov*.

Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone: 770–488–2441.

For business management and budget assistance, contact: Annie Camacho or Glynnis Taylor, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Telephone: Annie Camacho: 770–488–2735. Glynnis Taylor: 70–488–2752.

E-mail address: Annie Camacho: *atc4@cdc.gov*. Glynnis Taylor; *gld1@cdc.gov*.

For business management and budget assistance in the territories, contact: Charlotte Flitcraft, Grants Management Officer, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone: 770–488–2632. E-mail address: *caf5@cdc.gov*.

For program technical assistance contact:

NCCCP:

Leslie S. Given, M.P.A., Public Health Advisor, NCCCP, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention. 4770 Buford Hwy., NE. (MS K–57), Atlanta, GA 30341–3717. Telephone number: 770–488–3099. E-mail address: *llg5@cdc.gov*.

NBCCEDP:

Susan True, M.Ed., Branch Chief, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE. (MS K–57), Atlanta, GA 30341–3717. Telephone number: 770–488–4880. E-mail address: *smt7@cdc.gov*.

NPCR:

Leah Simpson, M.B.A., Program Analyst, Cancer Surveillance Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE. (MS K–53), Atlanta, GA 30341–3717. Telephone number: 770–488–4158. E-mail address: *lds0@cdc.gov*.

Dated: January 13, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–1192 Filed 1–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0309]

Agency Information Collection Activities; Announcement of OMB Approval; Reclassification Petitions for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Reclassification Petitions for Medical Devices" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 16, 2002 (67 FR 63932), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0138. The approval expires on January 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: January 14, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1256 Filed 1–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1526]

Robert A. Fiddes; Debarment Order; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 6, 2002 (67 FR 67628). The document announced the issuance of an order under the Federal Food, Drug, and Cosmetic Act debarring Dr. Robert A. Fiddes for 20 years from providing services in any capacity to a person that has an approved or pending drug product application. The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–28256, appearing on page 67628 in the **Federal Register** of Wednesday, November 6, 2002, the following correction is made:

1. On page 67628, in the second column, under "II. Findings and Order", in the fourth and fifth lines, "(21 CFR 5.99)" is corrected to read "(21 CFR 5.34)".

Dated: January 14, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1255 Filed 1–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 20, 2003, from 8:30 a.m. to 4:30 p.m.

Location: Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Jody G. Sachs or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss the selection of strains to be included in the influenza virus vaccine for the 2003–2004 season and the intramural research program of the Laboratory of Bacterial Polysaccharides, Office of Vaccines Research and Review.

Procedure: On February 20, 2003, from 8:30 a.m. to 3:20 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 4, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. and 2:50 p.m. and 3:20 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 4, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On February 20, 2003, from 3:20 p.m. to 4:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jody G. Sachs or Denise H. Royster at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–1208 Filed 1–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General; Program Exclusions: December 2002

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of December 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ALY, WAEL ..... CLIFTON, NJ	01/20/2003
BACO-CUEBAS, GERMAN A .. MAYAGUEZ, PR	01/20/2003
BERG, SHANNON GRIFFIN .... FLORENCE, SC	01/20/2003
BRIDGER, BARBARA LYNN ... PIERRE, SD	01/20/2003
CHRISTOPHERSON, PAUL K	01/20/2003

Subject city, state	Effective date
GREEN BAY, WI	
DAVIS, CHRISTOPHER ..... PHILADELPHIA, PA	01/20/2003
DIAZ, MIGUEL ..... NAPLES, FL	01/20/2003
DRAKE-LASSIE, MINERVA ..... GROVE CITY, OH	01/20/2003
EIDMAN, STEVEN E ..... ENGLEWOOD, NJ	01/20/2003
FARRAR, STACEY J ..... BUFFALO, OH	01/20/2003
FIELDS, SANDRA KAYE ..... SHREVEPORT, LA	01/20/2003
FROH, JOHN ROBERT ..... EDEN PRAIRIE, MN	01/20/2003
GARCIA, LUISA F ..... FT LAUDERDALE, FL	01/20/2003
GASTON, SHAUNDRA LANELL ..... DALLAS, TX	01/20/2003
GLASSES MADE EAZY, INC .. PHILADELPHIA, PA	01/20/2003
GOLDEN OPTICAL, INC ..... PHILADELPHIA, PA	01/20/2003
HAMMOND, HELEN ..... HAWKINSVILLE, GA	01/20/2003
HERAVI, BEHROOZ ..... BEVERLY HILLS, CA	01/20/2003
HERAVI, BEHZAD ..... RESEDA, CA	01/20/2003
JIMENEZ, JOAQUIN JOSE ..... LOS ANGELES, CA	01/20/2003
KEMPTON, JAMES E ..... MEDIA, PA	01/20/2003
KNEPLER, JEFFREY ..... BUTLER, WI	01/20/2003
LIPPTON, HOWARD ..... YAZOO CITY, MS	01/20/2003
LIPSEY, PHILLIP C ..... TERRE HAUTE, IN	01/20/2003
MARK GERRY PLUCER, D O, P C ..... FLINT, MI	01/20/2003
MARTIN, SUSAN E ..... NEWBERRY, SC	01/20/2003
PAGE, EVA H ..... WOODBURY, MN	01/20/2003
PETERMAN, LANCE JEFFREY COLORADO SPRINGS, CO	01/20/2003
PETERSON, KAREN R ..... PEORIA, AZ	01/20/2003
RAITHATHA, PRABJUDAS G .. LEXINGTON, KY	01/20/2003
RILES, CRAIG ..... RAIFORD, FL	01/20/2003
RODRIGUEZ, LUIS J ..... MIAMI, FL	01/20/2003
SANDLER, SCOTT ..... CHICAGO, IL	10/31/2002
SANTA, FREDERICK J ..... NORTHFORD, CT	01/20/2003
SELIM, HANAN ..... CLIFTON, NJ	01/20/2003
SHAW, K GLENN ..... MORRISON, CO	01/20/2003
STOLPEN, RODGER H ..... SOMERS, CT	01/20/2003
STRACHAN, JOYCE ..... ATLANTA, GA	01/20/2003
TAYLOR, JAMES E ..... HARTLY, DE	01/20/2003
THURSTON, WILLIAM H ..... S JORDAN, UT	01/20/2003
VEGA-DELGADO, MARISOL ... SAN JUAN, PR	01/20/2003
WEEKS, ROBIN RAE ..... DAYTON, OH	01/20/2003
WESTBAY, CHAD LEE ..... BOONVILLE, MO	01/20/2003
WILSON, BRENDA LOUISE .... TERRE HAUTE, IN	01/20/2003
YAMINI, ANWAR SR ..... S HOLLAND, IL	01/20/2003
ZAPATERO, ADALBERTO ..... TAFT, CA	01/20/2003

FELONY CONVICTION FOR HEALTH CARE FRAUD

ANKROM, BRUCE EDWARD .. CALIPATRIA, CA	01/20/2003
HATFIELD, WILLIAM G ..... CHARLOTTESVILLE, VA	01/20/2003
MASORTI, JONATHAN M ..... STATE COLLEGE, PA	01/20/2003
MITCHELL, GREGORY WAYNE ..... LAS VEGAS, NV	01/20/2003
PSAILA, BART R ..... PITTSFORD, NY	01/20/2003
STACK, SOPHIA DAO ..... ANAHEIM, CA	01/20/2003

FELONY CONTROL SUBSTANCE CONVICTION

BEACH, JEFFREY A ..... MOUNTAIN TOP, PA	01/20/2003
BLAND, BRENDA S ..... CENTERVILLE, OH	01/20/2003
BRADY, RYAN KEITH ..... W VALLEY CITY, UT	01/20/2003
DEBUS, LAURIE MARIE ..... ALLIANCE, NE	01/20/2003
EULO, JANMARIE ..... MORRISONVILLE, NY	01/20/2003
MILESKI, MARK KEVIN ..... CARROLLTON, TX	01/20/2003
OSTROSKIE, JOAN ..... NEW MILFORD, NJ	01/20/2003
ROMO, JOEY RUSSELL ..... LITCHFIELD, AZ	01/20/2003
SLUSHER, STEPHEN LARKIN ESCANABA, MI	01/20/2003
VAUGHN, DALE RAY ..... WARREN, OH	01/20/2003

PATIENT ABUSE/NEGLECT CONVICTIONS

BEECHUM, JANICE ANN ..... TACOMA, WA	01/20/2003
BERMISA, RAQUEL ..... KAILULA, HI	01/20/2003
CARLSON, JACALYN GALE ... SAUK CENTRE, MN	01/20/2003
DEVEREAUX, NYLA L ..... AURORA, CO	01/20/2003
FEUCHT, ROBERT CHARLES SAUK CENTRE, MN	01/20/2003
FREEMAN, JOHN ..... MEMPHIS, TN	01/20/2003
FRENCH PRIEUR, REBA ANN LITTLE ROCK, AR	01/20/2003
GUICE, CARLA RENEE ..... TALLULAH, LA	01/20/2003
HAYES, JANET ..... GREEN BAY, WI	01/20/2003
JONES, DEKESHA MARIE ..... OKLAHOMA CITY, OK	01/20/2003
LAMBERTH, ANGELA M ..... MICHIE, TN	01/20/2003
LATCHFORD, DOROTHEA R LEWISTOWN, PA	01/20/2003
LATCHFORD, LLOYD E ..... CAMP HILL, PA	01/20/2003
MCANALLY, BRYAN M ..... FINKSBURG, MD	01/20/2003
MELCHOR, EDGAR ..... LOS ANGELES, CA	01/20/2003
MOORE, MILDRED ..... COLUMBUS, OH	01/20/2003
NEEDLES, JOHN DAVID ..... CEDAR CITY, UT	01/20/2003
PLATNER, DONALD J ..... FOX POINT, WI	01/20/2003
PRINCE, TIMOTHY D ..... LAVERGNE, TN	01/20/2003
ROBERTS, ALYSSA ..... BEMIDJI, MN	01/20/2003
SMITH, SANDRA J ..... FT ATKINSON, WI	01/20/2003
TANYI, ANTONIA S ..... LEONARD, MI	01/20/2003
TAYLOR, BEVERLY JEAN ..... ST PAUL, MN	01/20/2003
WEST, TERRY D ..... LUMBER CITY, GA	01/20/2003
WILLIAMS, MARGARET ..... BRIDGEPORT, OH	01/20/2003

CONTROLLED SUBSTANCE CONVICTIONS

HOBBS, REBECCA E ..... RICHMOND, IN	01/20/2003
MAXON, MONICA ANN ..... VESTABURG, PA	01/20/2003

LICENSE REVOCATION/SUSPENSION/ SURRENDERED

ADAMS, EARL LEONARD ..... MIRAMAR, FL	01/20/2003
ALI, SHIFFE HAAMID ..... HIGHLAND PARK, IL	01/20/2003
ALLEN, ANGELA MARIE ..... MATTAWAN, MI	01/20/2003
ANDERSON, MICHAEL ..... COSTA MESA, CA	01/20/2003
ARMOR, ROSILYN C ..... RIALTO, CA	01/20/2003
BEEBE, LINDA KAY ..... MESQUITE, TX	01/20/2003
BELL, MARLO THOMAS ..... TUSCALOOSA, AL	01/20/2003
BENKIN, RICHARD ..... MOUNT PROSPECT, IL	01/20/2003
BLACKBURN, PETER M ..... SPRINGFIELD, IL	01/20/2002
BLEDSOE, MARY D ..... CHILLICOTHE, MO	01/20/2003
BOLLING, BEVERLY ANN ..... CINCINNATI, OH	01/20/2003
BOURQUE, ANGELA ..... W MONROE, LA	01/20/2003
BRACKEN, SUSAN A ..... SANFORD, NC	01/20/2002
BREEDEN, CONNIE ..... CRIMORA, VA	01/20/2003
BROWN, JAMES WAYNE ..... SANGER, TX Page 6	01/20/2003
BROWN, JOYCE PEARL	01/20/2003

Subject city, state	Effective date
CHICAGO, IL	
BROWN, MARTHA	01/20/2003
PASCAGOULA, MS	
BURNS, LOIS ELAINE	01/20/2003
MINDEN, NV	
BUSTAMONTE, DARIO JR	01/20/2003
SANGER, CA	
CARBERRY, F JAMES	01/20/2003
QUEENSBURY, NY	
CARTER, KIM MICHELLE	01/20/2003
HIGHLAND, CA	
CARTRIGHT, JENNIFER A	01/20/2003
CARTHAGE, MO	
CHALFANT, JEAN P	01/20/2003
VALDESE, NC	
CHATMON, MAURICE	01/20/2003
MONROE, LA	
CHUPREVICH, EILEEN DOROTHY	01/20/2003
BUTLER, NJ	
COBBS, JOSEPH E	01/20/2003
SAN DIEGO, CA	
COLEMAN, SEAN DYLAN	01/20/2003
SAN JOSE, CA	
COLSON, BRIAN P	01/20/2003
PARKER, CO	
CREEKMORE, JAYNE	01/20/2003
TOPOCK, AZ	
CROCKER, CAROL J	01/20/2003
FARMINGTON, MO	
DE FRIEZ, CURTIS B	01/20/2003
CARSON CITY, NV	
DEROSIS, EDWARD LOUIS	01/20/2003
SAN RAFAEL, CA	
DRAKE, RANDALL SCOTT	01/20/2003
MT STERLING, KY	
DRESSEL, TAMMY A	01/20/2003
BALTIMORE, MD	
DRUMM, RANDY ELLIS	01/20/2003
LAPEER, MI	
EBERLING, KAREN STOBER	01/20/2003
JEFFERSONTOWN, KY	
ELLINGTON, JOSHUA THOMAS DANIE	01/20/2003
UKIAH, CA	
FAHEY, SANDRA L	01/20/2003
WOODBRIDGE, VA	
FERGUSON, DANIEL STEPHEN	01/20/2003
YUCAIPA, CA	
FERNANDES, PATRICIA A	01/20/2003
N ATTLEBORO, MA	
FLEMING, LINDA JEAN	01/20/2003
BATAVIA, IL	
FOREST, ANNIE MARGARETT	01/20/2003
DALLAS, TX	
GABION, CELIA ESTANO	01/20/2003
BREA, CA	
GALLEA, MICHELLE ANN	01/20/2003
HEMET, CA	
GANSON, NORMA R	01/20/2003
HAVANA, IL	
GARZA, MARGARET S	01/20/2003
CORPUS CHRISTI, TX	
GENDRON, SUSAN	01/20/2003
HURON, CA	
GILMORE, BARBARA A	01/20/2003
KANSAS CITY, MO	
GLATTER, DEBRA DEE	01/20/2003
SHELBY, NE	
GOSS, BARBARA CRAIG	01/20/2003
BIRMINGHAM, AL	
GRAY, SAMUEL H	01/20/2003
GLENDALE, AZ	
HACKER, DEBORAH JEAN	01/20/2003
AUSTIN, TX	
HALL, KAREN	01/20/2003
BAY ST LOUIS, MS	
HAMILTON, FRANK WAYNE	01/20/2003
TULSA, OK	
HARDMAN, CHARLENE RAE	01/20/2003
TOOELE, UT	
HARTMAN, JAMES ROBERT	01/20/2003
LAGUNA NIGUEL, CA	
HAWKINS, KIMBERLY	01/20/2003
AUSTIN, TX	
HEULER, WALTER KENNETH	01/20/2003
ORANGE, CA	
HIBLER, SLADE EVERETT	01/20/2003
SALADO, TX	
HILL, RONNETTA EUGENIA	01/20/2003
FONTANA, CA	
HODGE, KAREN LEE	01/20/2003
PLAINWELL, MI	
HOLLIS, VINCENT W III	01/20/2003
CARSON, CA	
HOOKER, NELEY ELEANOR	01/20/2003
LOS ANGELES, CA	
HUFFMAN, ROMMIE	01/20/2003
GREENSBORO, NC	
HUGHES, GAIL MARIE	01/20/2003
PASEDENA, TX	
JACKSON, GLORIA ANN	01/20/2003
ALEXANDER CITY, AL	
JAMES, TAMMIE LYNN	01/20/2003
BATON ROUGE, LA	
JAZAYERI, ROBERT	01/20/2003
IRVINE, CA	
JOHNSON, SUSAN GAIL	01/20/2003
WILLIAMSBURG, OH	
JOHNSON, BRENDA CAROLINE	01/20/2003
WILLIAMSTOWN, NJ	
JOHNSON, TERESA A	01/20/2003
BELLEVILLE, IL	
JOHNSON, JODY C	01/20/2003
VERNAL, UT	
JONES, AMY JO	01/20/2003
WINAMAC, IN	
JONES, CATHERINE	01/20/2003
LAUREL, MS	
KAMINSKY, TAMARA FRANCINE	01/20/2003
LAKE FORREST, CA	
KEETON, KELLY	01/20/2003
BOONEVILLE, MS	
KONOPA, TERRI L	01/20/2003
WINCHESTER, VA	
KUNKEL, PATRICIA ELOIS	01/20/2003
AMARILLO, TX	
LAIR, MATTHEW BYRON	01/20/2003
WHITNEY, TX	
LANDREMAN, JAMES R	01/20/2003
ROSENDALE, WI	
LAYNE, HERMETTA PAUL	01/20/2003
KILLEEN, TX	
LEE, JEONG PYO	01/20/2003
CORONA, CA	
LIEBERMAN, FRED L	01/20/2003
LOS ANGELES, CA	
LUTHER, WANDA SUE	01/20/2003
ELIZABETH, IN	
MACK, TIMOTHY W	01/20/2003
CLINTON, MA	
MADDOX, PATRICIA E GRIMES	01/20/2003
FLORALA, AL	
MASSEY, MELISSA A	01/20/2003
PHOENIX, AZ	
MAYNARD, JERRY O	01/20/2003
WOODBURY, TN	
MAYS, GAIL A	01/20/2003
MIDLOTHIAN, VA	
MCCARLEY, DOUGLAS SCOTT	01/20/2003
GRAND PRAIRIE, TX	
MCCONNELL, SHERRY	01/20/2003
ASHVILLE, NC	
MCCONNELL, DOUGLAS D	01/20/2003
NOGALES, AZ	
MCGEE, MICHAEL KEVIN	01/20/2003
SAN DIEGO, CA	
MCINTYRE, MARLENE MARY	01/20/2003
MILAN, IL	
MCMAHON, DARREL JAMES	01/20/2003
TWIN FALLS, ID	
MCMURTREY, ALICE ELIZABETH	01/20/2003
N PLATTE, NE	
MENDELL, PHYLLIS MALKA	01/20/2003
HUNTINGTON, NY	
METLER, JAMES R	01/20/2003
SHELBYVILLE, TN	
METZ, JAN E	01/20/2003
NAPERVILLE, IL	
MILLER, ANTHONY LAWRENCE	01/20/2003
TUCSON, AZ	
MOREAU, BLAKE ALLEN	01/20/2003
NEDERLAND, TX	
MORLAND, JULIE ANN	01/20/2003
GALVA, IL	
MURRY-STUBER, KATHRYN L	01/20/2003
AURORA, CO	
NASS, MARK D	01/20/2003
ROCKFORD, IL	
NICHOLAS, HUNTER ADRIAN	01/20/2003
BISMARCK, ND	
NICHOLSON, YVONNE ANNETTE	01/20/2003
PEORIA, AZ	
NIEMAN, KIMBERLEY L	01/20/2003
LAKEWOOD, CO	
O'HAIR, RICHARD KARL	01/20/2003
HERRIN, IL	
O'SHEA, SUSAN GALE	01/20/2003
SAN DIEGO, CA	
OHLENFROST, JAMES W	01/20/2003
INDIAN TRAIL, NC	
OLIVE, OZIE L	01/20/2003
SAN BERNADINO, CA	
OLIVER, JOANETTA JOHNSON	01/20/2003
ENSLEY, AL	
OWENS, RONALD	01/20/2003
MEBANE, NC	
PADRON, CARMEN	01/20/2003
EMPORIA, KS	
PALACIO, DOROTHY ELIZABETH	01/20/2003
YUCAIPA, CA	
PEARSON, JULIE ANN	01/20/2003
GREENCASLTE, IN	
PENNINGTON, BECKY A	01/20/2003
TERRELL, TX	
PETERJOHN, BRIAN D	01/20/2003
CHARLOTTE, NC	
PETERSON, DEBORAH D	01/20/2003

Subject city, state	Effective date
STURGIS, SD	
PLYMALE, ROBERT DARWIN	01/20/2003
SALT LAKE CITY, UT	
POCKNETT, DWAYNE ANTHONY	01/20/2003
LOS ANGELES, CA	
RAMIREZ, MARIA HALLEX	01/20/2003
LAKE ARROWHEAD, CA	
RAY, SUZANNA CAROL	01/20/2002
BERKELEY, CA	
REID, DONITA K ROBINSON	01/20/2003
SEVIERVILLE, TN	
REYES, ROMONA	01/20/2003
RICHNOND HILL, GA	
RICHARDS, TERRI ROXIANNE	01/20/2003
MOSS POINT, MS	
RIVERS, DAWN M	01/20/2003
MARION, IL	
ROBERTSON, YVONNE N	01/20/2003
KNOXVILLE, TN	
ROHS, ELIZABETH HAWKINS	01/20/2003
NORRISTOWN, PA	
RUGGIERO, ROSHELL L	01/20/2003
CONCORD, MA	
RUSS, STEVEN D	01/20/2003
NEVADA, MO	
SABOURIN, PETER J	01/20/2003
E PROVIDENCE, RI	
SCHMELTER, LYNN A	01/20/2003
VERNON, CT	
SCHRADER, ANGELA	01/20/2003
STAFFORDSVILLE, VA	
SEBURA, MICHAEL S	01/20/2003
LARGO, FL	
SHERMAN, SUSAN ANNE	01/20/2003
TROY, NY	
SHOUP, MARGARET	01/20/2003
BRANDON, MS	
SHUDICK, MARY D	01/20/2003
CHESTERTON, IN	
SLATER, ROBIN ALANE	01/20/2003
GRAYSLAKE, IL	
SMALL, DULCIE CLIFFORD	01/20/2003
HOUSTON, TX	
SMITH, MARY MARGARET	01/20/2003
ALEXANDER, IL	
SMITH, YUBIRY ANN	01/20/2003
W PALM BEACH, FL	
SMITH, SUSAN MARGARET	01/20/2003
PHOENIX, AZ	
SMOOT, JOHN MEDLEY	01/20/2003
BATESVILLE, MS	
SPROULE, TERESA LYNN	01/20/2003
TOOELE, UT	
STANLEY, PATRICIA ANN	01/20/2003
MANSFIELD, TX	
STANLEY, JUANITA L	01/20/2003
MESA, AZ	
STILPHEN-CAREY, RAINE R	01/20/2003
BELCHERTOWN, MA	
STONE, COREY GEORGE	01/20/2003
SALT LAKE CITY, UT	
SUNDQUIST, MARSHA ANN	01/20/2003
CHANDLER, AZ	
TANNER, LUANN	01/20/2003
OMAHA, NE	
TAYLOR, JANICE LYNN	01/20/2003
CASE GRANDE, AZ	
TAYLOR, LANNY	01/20/2003
CORINTH, MS	
THOMPSON, DENNIS RAY	01/20/2002
ALEXANDRIA, IN	
THRASHER, RENEE COLLEEN	01/20/2003
DECATUR, TX	
TRIPP, KENNETH R	01/20/2003
KNIGHTDALE, NC	
VALDEZ, LINDA NAVARRO	01/20/2003
SAN ANTONIO, TX	
VANDAL, LEO P JR	01/20/2003
MATTAPOISETT, MA	
VISKOCIL, SUSAN KATHLEEN	01/20/2003
MODESTO, CA	
WALLACE, JENELLEN L	01/20/2003
PHOENIX, AZ	
WEBB, ROBERTA	01/20/2003
SHOW LOW, AZ	
WHITT, PATSY	01/20/2003
WESSON, MS	
WILLIAMS, DEBRA MARIE	01/20/2003
MARIETTA, OH	
WOOD, DONNA L	01/20/2003
FOREST, MS	
YOUNG, BRIAN WESLEY	01/20/2003
CINCINNATI, OH	
YOUSSEF,OMAR A	01/20/2003
HYDEN, KY	

FEDERAL/STATE EXCLUSION/ SUSPENSION

HAMRICK-BURWELL, LIANE	01/20/2003
ELLSWORTH, ME	
WALKER, BARBARA	01/20/2003
E ORANGE, NJ	

OWNED/CONTROLLED BY CONVICTED ENTITIES

AMERICAN INSTITUTE OF PLASTIC	01/20/2003
FT LAUDERDALE, FL	
GUADALUPE MULTI SPECIALTY FAMI	01/20/2003
LOS ANGELES, CA	
INSTITUTE FOR COSMETIC SURGERY	01/20/2003
FT LAUDERDALE, FL	
NORTHTOWN CHIROPRACTIC CLINIC	01/20/2003
SPOKANE, WA	
STOCKTON CHIROPRACTIC CTR	01/20/2003
STOCKTON, CA	

DEFAULT ON HEAL LOAN

CHEEK, DAVID L	01/20/2003
DALLAS, TX	
CLARK, GARY C R	01/20/2003
TRAVELERS REST, SC	
CLEMENTS, DAVID DALE	11/07/2002
DALLAS, TX	
GREENE, SILAS R	11/07/2002
MEXICO BEACH, FL	
RICO, DAVID	11/07/2002
MAKAWAO, HI	
WEISSE, CARL E	12/10/2002
PHILADELPHIA, PA	

Dated: January 3, 2003.

Katherine B. Petrowski,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 03–1141 Filed 1–17–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Centers for Excellence in Cancer Communications Research.

Date: February 26–28, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administration, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1245 Filed 1–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial properly such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Human Factors in Breast Cancer Detection and Diagnosis.

Date: February 10, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: to review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8034, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1243 Filed 1–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Fundamental Technologies for the Development of Biomolecular Sensors.

Date: February 3, 2003.

Time: 9 a.m. to 7 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1244 Filed 1–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: February 12–13, 2003.

Closed: February 12, 2003, 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: February 13, 2003, 9 a.m. to 4 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health (NIH), Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 20892–9547, (301) 443–2755.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1246 Filed 1–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Development of Science Education Materials Related to the Use of Animals."

Date: January 29, 2003.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1247 Filed 1–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: February 19–20, 2003.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Melissa J. Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1248 Filed 1–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Stroke Prevention/Intervention Research Program.

Date: January 20–21, 2003.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Buckhead Hotel, 3405 Lenox Road, NE., Atlanta, GA 30326.

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1249 Filed 1–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

List of Drugs for Which Pediatric Studies Are Needed

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) is providing notice of a "List of Drugs for Which Pediatric Studies Are Needed." The NIH developed the list in consultation with the Food and Drug Administration (FDA) and pediatric experts, as mandated by the Best Pharmaceuticals for Children Act (BPCA). This list prioritizes certain drugs most in need of study for use by children to ensure their safety and efficacy. The NIH will update the list annually until the Act expires on October 1, 2007.

DATES: The list is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Dr. Donald Mattison, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 4B–100, Rockville, MD 20892, e-mail <*BestPharmaceuticals@mail.nih.gov*>, telephone 301–496–5097 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The NIH is providing notice of a "List of Drugs for Which Pediatric Studies Are Needed", as authorized under Section 3, Pub. L. 107–109 (42 U.S.C. 409I). On January 4, 2002, President Bush signed into law the Best Pharmaceuticals for Children Act (BPCA). The BPCA mandates that not later than one year after the date of enactment, the NIH in

consultation with the FDA and experts in pediatric research shall develop prioritize, and publish an annual list of certain approved drugs for which pediatric studies are needed. For inclusion on the list, an approved drug must meet the following criteria: (1) There is an approved application under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)); (2) there is a submitted application that could be approved under the criteria of section 505(j) of the Federal Food, Drug, and Cosmetic Act; (3) there is no patent protection or market exclusivity protection under the Federal Food, Drug, and Cosmetic Act; or (4) there is a referral for inclusion on the list under section 505A(d)(4)(c); and additional studies are needed to assess the safety and effectiveness of the use of the drug in the pediatric population.

The BPCA further stipulates that in developing and prioritizing the list, the NIH shall consider, for each drug on the list: (1) The availability of information concerning the safe and effective use of the drug in the pediatric population; (2) whether additional information is needed; (3) whether new pediatric studies concerning the drug may produce health benefits in the pediatric population; and (4) whether reformulation of the drug is necessary.

In developing this initial list, the NIH consulted with the FDA, the American Academy of Pediatrics, the United States Pharmacopoeia and other experts in pediatric research. A preliminary list of off-patent drugs was drafted and categorized as a function of indication and use. The drugs were than prioritized based on frequency of use in the pediatric population, severity of the condition being treated, and potential for providing a health benefit in the pediatric population.

Following is the list of drugs for which pediatric studies are most urgently needed:

Azithromycin
Baclofen
Bumetanide
Dobutamine
Dopamine
Furosemide
Heparin
Lithium
Lorazepam
Rifampin
Sodium Nitroprusside
Spironolactone

Dated: January 9, 2003.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 03–1250 Filed 1–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–02]

Notice of Proposed Information Collection: Comment Request; Builder's Certification of Plans, Specifications, and Site

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 24, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also list the following information:

Title of Proposal: Builder's Certification of Plans, Specifications, and Site.

OMB Control Number, if applicable: 2502–0496.

Description of the need for the information and proposed use: HUD requires the builder to complete the certification (form HUD–92541) noting adverse site/location factor(s) of the property, including Floodplains. This certification is necessary so that HUD does not insure a mortgage on property that poses a risk to health or safety of the occupant.

Agency form numbers, if applicable: HUD–92541.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 16,400; the number of respondents is approximately 800 generating approximately 65,600 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 5 minutes to 10 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: January 13, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–1223 Filed 1–17–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4728–N–02]

Notice of Certain Operating Cost Adjustment Factors for Fiscal Year 2003

AGENCY: Office of the Secretary, HUD.

ACTION: Publication of the 2003 Operating Cost Adjustment Factors (OCAFs) for Section 8 rent adjustments at contract renewal under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under the Low-Income Housing Preservation and

Resident Homeownership Act of 1990 (LIHPRHA) Projects assisted with Section 8 Housing Assistance Payments.

SUMMARY: This notice establishes annual factors used in calculating rent adjustments under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA).

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Regina Aleksiewicz, Housing Project Manager, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Multifamily Housing, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000; extension 2600 (This is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Operating Cost Adjustment Factors (OCAFs)

Section 514(e)(2) of the FY 1998 HUD Appropriations Act, requires HUD to establish guidelines for rent adjustments based on OCAF. The legislation requiring HUD to establish OCAFs for LIHPRHA projects and projects with contract renewals under section 524 of MAHRA is similar in wording and intent. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted.

Additionally, section 524 of the Act gives HUD broad discretion in setting OCAFs—referring simply to "operating cost factors established by the Secretary." The sole exception to this grant of authority is a specific requirement that application of an OCAF shall not result in a negative rent adjustment. OCAFs are to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted upon expiration of the term of the contract. OCAFs are applied to project contract rent less debt service.

An analysis of cost data for FHA-insured projects showed that their operating expenses could be grouped into nine categories: wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water and sewer. Based on an analysis of these data, HUD derived estimates of the percentage of routine operating costs that were attributable to each of these nine expense categories. Data for projects with unusually high or low expenses due to unusual circumstances were deleted from analysis.

States are the lowest level of geographical aggregation at which there are enough projects to permit statistical analysis. Additionally, no data were available for the Western Pacific Islands. Data for Hawaii was therefore used to generate OCAFs for these areas.

The best current measures of cost changes for the nine cost categories were selected. The only categories for which current data are available at the state level are for fuel oil, electricity, and natural gas. Current price change indices for the other six categories are only available at the national level. The Department had the choice of using dated state-level data or relatively current national data. It opted to use national data rather than data that would be two or more years older (*e.g.*, the most current local wage data are for 1996). The data sources for the nine cost indicators selected were as follows:

Labor Costs—6/01 to 6/02 Bureau of Labor Statistics (BLS), "Employment Cost Index, Private Sector Wages and Salaries Component at the National Level."

Employment Benefit Costs—6/01 to 6/02 Bureau of Labor Statistics (BLS) Employment Cost Index, Employee Benefits at the National Level.

Property Taxes—6/01 to 6/02 BLS Consumer Price Index, All Items Index.

Goods, Supplies, Equipment—6/01 to 6/02 BLS Producer Price Index, Finished Goods Less Food and Energy.

Insurance—6/01 to 6/02 BLS Consumer Price Index, Tenant and Household Residential Insurance Index.

Fuel Oil—Energy Information Agency, 2000 to 2001 annual average state prices for #2 distillate residential fuel oil (U.S. average change was used for states with too little fuel oil consumption to have values).

Electricity—Energy Information Agency, 2000 to 2001 annual average residential electric prices per Kilowatt-hour.

Natural Gas—Energy Information Agency, 2000 to 2001 annual average Natural Gas prices.

Water and Sewer—6/01 to 6/02 BLS Consumer Price Index Detailed Report.

The sum of the nine cost components equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, the selected inflation factors are multiplied by the relevant state-level operating cost percentages derived from the previously referenced analysis of FHA insured projects. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and wages increased by 4 percent from June 2001 to June 2002, the wage increase component of the Virginia OCAF for 2003 would be 2.0 percent (4% × 50%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the 2002 OCAF for Virginia. These types of calculations were made for each state for each of the nine cost components, and are included as the Appendix to this Notice.

II. MAHRA and LIHPRHA OCAF Procedures

The Multifamily Assisted Housing Reform and Affordability Act of 1997 (title V of Pub. L. 105–65, approved October 7, 1997; 42 U.S.C. 1437f note (MAHRA)) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, created the Mark-to-Market Program to reduce the cost of federal housing assistance, enhance HUD's administration of such assistance, and to ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without Restructuring Plans under the Mark-to-Market Program, including renewals that are not eligible for Plans and those for which the owner does not request Plans. Renewals must be at rents not exceeding comparable market rents except for certain projects. For Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the Stewart B. McKinney Homeless Assistance Act (McKinney Act, 42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities; or (3) comparable market rents for the market area.

The Low-Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA") (*see*, in particular, section 222(a)(2)(G)(i) of LIHPRHA, 12 U.S. 4112(a)(2)(G) and the regulations at 24 CFR 248.145(a)(9)) requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor to be determined by the Secretary to the portion of project rent attributable to

operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs.

III. Findings and Certifications

Environmental Impact

This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of Executive Order 13132 (entitled "Federalism").

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Dated: January 14, 2003.

Mel Martinez,

Secretary.

OPERATING COST ADJUSTMENT FACTORS FOR 2003

State	2003 OCAFS
Alabama	2.5%
Alaska	2.9%
Arizona	1.8%
Arkansas	3.0%
California	2.9%
Colorado	3.7%
Connecticut	3.3%
Delaware	1.5%
Dist. of Columbia	3.7%
Florida	3.0%
Georgia	2.6%
Hawaii	2.0%
Idaho	2.5%
Illinois	2.9%
Indiana	2.7%
Iowa	2.8%
Kansas	3.4%
Kentucky	3.2%
Louisiana	2.8%
Maine	1.2%
Maryland	2.6%
Massachusetts	4.7%
Michigan	2.3%
Minnesota	3.0%
Mississippi	2.8%
Missouri	3.1%
Montana	3.9%
Nebraska	3.2%
Nevada	3.4%
New Hampshire	3.0%
New Jersey	1.9%
New Mexico	3.9%
New York	2.4%
N. Carolina	2.2%
N. Dakota	2.7%
Ohio	3.0%
Oklahoma	3.2%
Oregon	2.0%
Pennsylvania	4.2%
Rhode Island	3.9%
S. Carolina	2.3%
S. Dakota	3.5%
Tennessee	2.3%
Texas	3.5%
Utah	3.4%
Vermont	2.3%
Virginia	2.9%
Washington	2.8%
W. Virginia	1.9%
Wisconsin	2.6%
Wyoming	3.9%
Pacific Islands	3.3%
Puerto Rico	2.5%
Virgin Islands	2.0%
U.S. Average	3.0%

[FR Doc. 03–1224 Filed 1–17–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Public Comment Period and Notice of Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Briargate Development, El Paso County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application; extension of public comment period.

SUMMARY: This notice advises the public that La Plata Investments, LLC (Applicant) has applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue a 30-year permit to the Applicant that would authorize the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's), federally listed as threatened, and loss and modification of its habitat associated with construction of a residential and commercial development in El Paso County, Colorado. The permit application includes a combined Environmental Assessment/Habitat Conservation Plan (Plan), which is available for public review and comment. We previously published a notice requesting comment on this proposal on November 22, 2002 (67 FR 70453). We received a request to extend the comment period and are hereby granting that request for an additional 30 days. Comments previously submitted need not be resubmitted as they have already been incorporated into the public record and will be fully considered in our final decision on the Plan. Comments submitted during this comment period also will be incorporated into the public record and will be fully considered. All comments on the Plan and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application and plan should be received on or before February 20, 2003.

ADDRESSES: Comments regarding the permit application or the Plan should be addressed to LeRoy Carlson, Field Supervisor, Colorado Ecological Services Field Office, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, or by facsimile to 303–275–2371. Comments and materials received, as well as supporting documentation used in preparation of this proposed rule, may be viewed, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Colorado Field Office.

FOR FURTHER INFORMATION CONTACT: Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, at the above address or telephone 303–275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the Plan and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibits the "take" of a species listed as endangered or threatened. However, the Service may issue permits to authorize "incidental take" (defined by the Act as take that is

incidental to, and not the purpose of, the carrying out of an otherwise lawful activity) of listed species under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

The proposed action is the issuance of a permit under section 10(a)(1)(B) of the Act to allow the incidental take of Preble's during the construction of a residential and commercial development at the site. The project will directly affect approximately 33.97 hectares (83.93 acres), of which 10.68 hectares (26.38 acres) are temporary impacts and the remaining 23.29 hectares (57.55 acres) are permanent impacts to potential habitat for Preble's. A Plan has been developed as part of the preferred alternative.

The Preble's is the only federally-listed species that occurs on site and has the potential to be directly affected by the proposed project. The Applicant has agreed to implement the following measures to minimize and mitigate the impacts that may result from project construction:

1. Enhance 4.41 hectares (10.90 acres) of Preble's habitat along the North Fork of Pine Creek. Enhancement will include transplanting native shrubs from areas of impact to protected habitat, over-seeding of native grasses, and noxious weed control.

2. Restoration of 10.68 hectares (26.38 acres) along the main branch of Pine Creek, and the North and South forks of Pine Creek. Restoration will include the immediate revegetation of the site with native grass seed and clumps of native shrubs.

3. Preservation of 64.13 hectares (158.48 acres) of Preble's habitat by the placement of deed restrictions over the property. This is the result of protecting all remaining Preble's habitat within the project area. An additional 7.75 hectares (19.14 acres) of natural open space adjacent to Preble's habitat also will be protected.

4. Off-site enhancement and restoration of approximately 75 hectares (186 acres) along Kettle Creek, an area known to have a healthy population of Preble's. Enhancement will include transplanting native shrubs from areas of impact to protected habitat, over-seeding of native grasses, and noxious weed control. Existing horse trails along the creek bottom will be restored by stabilizing the immediate area, then seeding with native grass species.

5. Off-site preservation of the 75-hectare (186-acre) Kettle Creek Preserve. Initially the property will be protected by deed restrictions. After that, the deed to the entire property will be turned over to the Trust for Public Lands, who is in the process of forming a new not-for-profit organization to take control of these types of properties and manage them for the sole purpose of endangered species habitat.

We previously published a notice requesting comment on this proposal on November 22, 2002 (67 FR 70453). On December 12, 2002, we received a request from Earthjustice Legal Defense Fund to extend the comment period an additional 60 days. Because the Plan and permit application have already been available for 30 days and the request did not contain sufficient rationale for unduly delaying a decision on the permit, we have determined that an additional 60 days is not warranted. However, we are hereby granting an extension for an additional 30 days.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, the Plan, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of Preble's. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: December 20, 2002.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 03–1066 Filed 1–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–933–1430–ET; AA–26417]

Notice of Proposed Extension of Withdrawal and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Geological Survey proposes to extend Public Land Order No. 6458 for a 20-year period. This order withdrew public land from settlement, sale, location, or entry under the general land laws, including the mining laws to protect the Sitka Magnetic Observatory Site. This Notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by April 21, 2003.

ADDRESSES: Comments and requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599. You can access information about sending comments electronically at: *http://www.anchorage.ak.blm.gov/sitkamos.html.*

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, BLM Alaska State Office, 907–271–5477.

SUPPLEMENTARY INFORMATION: On July 25, 2002, the U.S. Geological Survey requested that Public Land Order No. 6458 be extended for an additional 20-year period. Public Land Order No. 6458, which expires on September 6, 2003, withdrew 117.13 acres from settlement, sale, location or entry under the general land laws, including the mining laws to protect the Sitka Magnetic Observatory Site, as it affects the following described land:

Copper River Meridian
T. 55 S., R. 63 E., U.S. Survey No. 2545, Lot 4.
The area described contains 117.13 acres.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the Alaska State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the Alaska State Director within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Dated: November 25, 2002.

Linda J. Resseguie,

Acting Chief, Branch of Lands, Division of Lands, Minerals, and Resources.

[FR Doc. 03–1252 Filed 1–17–03; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1010 (Final)]

Lawn and Garden Steel Fence Posts from China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1010 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of lawn and garden steel fence posts, provided for in subheading 7326.90.85 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov)*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Background—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of lawn and garden steel fence posts from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on May 1, 2002, by Steel City Corp. of Youngstown, OH.

Participation in the investigation and public service list—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on April 8, 2003, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on April 22, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 14, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 16, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 15, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 29, 2003; witness testimony must be filed no later than three business days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 13, 2003. On May 13, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 15, 2003, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means except to the extent provided by section 201.8 of the Commission's rules, as amended (67 FR 68036, November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 15, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–1232 Filed 1–17–03; 8:45 am]

BILLING CODE 7020–02–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Finance Committee of the Board of Directors

Time and Date: The Finance Committee of the Board of Directors of the Legal Services Corporation will meet on January 23, 2003 via conference call. The meeting will begin at 3:00 p.m., E.S.T. and continue until the conclusion of the Committee's agenda.

Location: 750 First Street, NE, 11th Floor, Washington, DC 20002, in Room 11026.

Status of Meeting: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Committee on litigation to which the Corporation is or may become a party, and the Committee may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters to be Considered:

Open Session

1. Approval of agenda.

Closed Session

2. Consider and act on the General Counsel's report on potential and pending litigation involving LSC.

Open Session

3. Consider and act on other business.
4. Public Comment.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth Cushing, at (202) 336–8800.

Dated: January 16, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–1420 Filed 1–16–03; 3:59 pm]

BILLING CODE 7050–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–003)]

NASA Advisory Council, Biological and Physical Research Advisory Committee, Commercial Advisory Subcommittee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee (BPRAC), Commercial Advisory Subcommittee (CAS).

DATES: Wednesday, February 12, 2003, 8 a.m. to 5 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Room MIC–6, Washington, DC. Attendees must check in at the Security Desk and be escorted to the conference room.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Livingston, Code US, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0697.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested.

The agenda for the meeting will include the following topics:

—Status of Subcommittee and BPRAC Meetings
—Status of the proposal for the International Space Station Management Approach
—Status of the Organization
—Feedback from Office of Biological and Physical Research Program Review
—Discussion of Strategic Program Issues
—Recommendation and Wrap-Up

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register. Due to the increased security at NASA facilities, any members of the public who wish to attend this meeting of the Commercial Advisory Subcommittee must provide their name, date and place of birth, citizenship, social security number, or passport and visa information (number, country of issuance and expiration), business address and phone number, if any. This information is to be provided at least 72 hours (5 p.m. EDT on February 7, 2003) prior to the date of the public meeting. Identification information is to be provided to Addie Robinson, (202) 358–4566, *arobinso@hq.nasa.gov*. Failure to timely provide such information may result in denial of attendance. Photo identification may be requested for entry into the building. Persons with disabilities who require assistance should indicated this in their message. Due to limited availability of seating, members of the public will be admitted on a first-come, first-serve basis. News media wishing to attend the meeting should follow standard accreditation procedures. Members of the press who have questions about these procedures should contact the NASA Headquarters newsroom (202) 358–1600.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–1217 Filed 1–17–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–004]

U.S. Centennial of Flight Commission

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the U.S. Centennial of Flight Commission.

DATES: Wednesday, January 29, 2003, 1 p.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 5H46 (MIC 5), Washington, DC. Attendees must check in at the Security Desk and be escorted to the conference room.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Farmarco, Code IC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening Remarks
—Highlights from Centennial Kick-Off Events
—Web Site Demo
—Aerospace Industries Association (AIA) National Model Rocket Competition
—North Carolina Status
—Next Quarterly Report
—Licensed Products Update
—Aviation Foundation of America's National Air Tours
—Closing Comments

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register. Due to the increased security at NASA facilities, any members of the public who wish to attend this meeting of the Centennial of Flight Commission must provide their name, date and place of birth, citizenship, social security number, or passport and visa information (number, country of issuance and expiration), business address and phone number, if any. This information is to be provided at least 72 hours (5 p.m. e.d.t. on January 24, 2003) prior to the date of the public meeting. Identification information is to be provided to Beverly Farmarco, (202) 358–1903, *bfarmarc@hq.nasa.gov*. Failure to timely provide such information may result in denial of attendance. Photo identification may be required for entry into the building. Persons with disabilities who require assistance should indicate this in their message. Due to limited availability of seating, members of the public will be admitted on a first-come, first-serve basis. News media wishing to attend the meeting should follow standard accreditation procedures. Members of the press who have questions about these procedures should contact the NASA Headquarters newsroom (202/358–1600).

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–1218 Filed 1–17–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, January 23, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1755 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Texas Member Business Loan Rule Proposed Change.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–1380 Filed 1–16–03; 2:30 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses

Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, December 27, 2002 through January 9, 2003. The last biweekly notice was published on January 7, 2003 (68 FR 798).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 20, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request

for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: November 27, 2002.

Description of amendment request: The proposed amendment deletes requirements from the technical specifications (TS) and other elements of the licensing bases to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, "Elimination of Requirements for a Post Accident Sampling System (PASS)." The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated November 27, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Deputy General Counsel Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: November 27, 2002.

Description of amendment request: The proposed amendment would delete requirements from the Technical Specifications (TSs) and other elements of the licensing bases to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. However, lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means, or is of little use in the assessment and mitigation of accident conditions.

The changes are based on Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, "Elimination of Requirements for a

Post Accident Sampling System (PASS)." The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated November 27, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post-accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the proposed amendment, the NRC staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Richard J. Laufer.

AmerGen Energy Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New York

Date of amendment request: December 16, 2002.

Description of amendment request: The licensee proposed to amend the Oyster Creek Nuclear Generating Station (OCNGS) Technical Specifications (TSs) regarding the safety limit minimum critical power ratio (SLMCPR) to reflect the results of cycle-specific calculations performed for the current fuel cycle (*i.e.*, Cycle 19), using Nuclear Regulatory Commission (NRC)-approved methodology for determining SLMCPR values. Specifically, the licensee proposed to revise TS 2.1.A, changing the SLMCPR from 1.12 to 1.10 for three-recirculation-loop operation, and from 1.11 to 1.09 for four-or five-recirculation-loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Before commencement of Cycle 19, the licensee used NRC-approved methods and procedures in Topical Report NEDE–24011–P–A–14, "General Electric Standard Application for Reactor Fuel" (GESTAR II) and U.S. Supplement, NEDE–24011–P–A–14–US, dated June 2000, to derive the SLMCPR values for OCNGS, Cycle 19. The revised values were approved by the NRC staff via Amendment No. 233, dated September 26, 2002. Subsequently, the licensee recalculated these SLMCPR values using the methodology in Topical Report NEDC–32694–P–A, "Power Distribution Uncertainties for Safety Limit MCPR Evaluation," and requested to revise these values further by the December 16, 2002, application.

The analysis methodology incorporates cycle-specific parameters. These calculations do not change the operating procedures of OCNGS and have no effect on the probability of an accident initiating event or transient. The basis of the SLMCPR is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPR values preserve the existing margin to transition boiling and

the probability of fuel damage is not increased (*i.e.*, in the event of an accident or transient, the amount of fuel damaged would not be increased as a result of the new SLMCPR values). Furthermore, the proposed new SLMCPR values do not lead to, nor do they arise as a result of, plant design or procedural changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The new SLMCPR values for OCNGS Cycle 19 core have been calculated in accordance with the methods and procedures described in NRC-approved topical reports. The proposed new SLMCPR values do not lead to, nor do they arise as a result of, plant design or procedural changes. The changes do not involve any new method for operating the facility and do not involve any facility modifications. As a result, no new initiating events or transients could develop from the proposed changes. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The margin of safety as defined in OCNGS's licensing basis will remain the same. The new, cycle-specific SLMCPR values are calculated using NRC-approved methods and procedures that are in accordance with the current fuel design and licensing criteria. The SLMCPR values will remain high enough to ensure that greater than 99.9% of all fuel rods in the core are expected to avoid transition boiling if the limits are not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

Based on the above review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Richard J. Laufer.

Consumers Energy Company, Docket No. 50–155, Big Rock Point Nuclear Plant, Charlevoix County, Michigan

Date of amendment request: November 20, 2002.

Description of amendment request: The amendment request reflects organizational changes due to the transfer of the Palisades Plant from Consumers Energy to Nuclear Management Company. The revision reduces redundancy between the Defueled Technical Specifications (DTS) and the Big Rock Point Quality Program Description for Nuclear Power Plants. Other changes are being proposed to correct minor typographical, grammatical, and spelling errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Because this proposed change involves only a change in reporting relationships, and no accidents previously evaluated consider administrative controls, the change does not involve a significant increase in the probability or consequences of an accident previously considered.

2. Will the proposed change create the possibility of a new or different kind of accident [from any other accident] previously evaluated?

The proposed change would result in moving requirements for certain reporting relationships from the Defueled Technical Specifications to the Consumers Energy Quality Program Description for Nuclear Power Plants, Part 1—Big Rock Point Plant (CPC–2A). Because the Topical Report, CPC–2A, requires prior NRC [U.S. Nuclear Regulatory Commission] approval for any changes which would reduce the level of commitment in that document, an equivalent level of NRC oversight is applied to changes to CPC–2A as are applied to changes to Chapter 6 (Administrative Controls) of the Defueled Technical Specifications. Therefore, no changes in administrative controls defined in CPC–2A that might create the possibility of a new or different kind of accident previously evaluated would be permitted by the proposed change.

3. Will the proposed change involve a significant reduction in a margin of safety?

The proposed change stipulates that individuals who perform audits, surveillances and independent safety reviews will report as indicated in CPC–2A, which states that independent safety reviews are performed by the Restoration Safety Review Committee (RSRC). The proposed change involves no significant change in a margin of safety because margins of safety (in the Defueled Technical Specifications) are directly controlled by system design and operation in accordance with Limiting Conditions of Operation, Surveillances and Design Features specified in the Defueled Technical Specifications are affected by this proposed change.

To the extent that design and operation of systems having safety margins might be affected by independent oversight, the following is offered as evidence that no significant reduction in margin of safety will result from the proposed change:

- The Manager, Nuclear Performance Assessment Department (NPAD) and the RSRC both report their findings directly to the Senior Nuclear Officer; therefore there will be no change in the ultimate reporting relationship.
- The membership of NPAD and RSRC consists of individuals who are independent of the plant organization.
- Changes to the Topical Report, CPC–2A that would result in a reduction in level of commitment in the Quality Program Description require a review and approval process equivalent to proposed changes to the administrative controls specified in the Defueled Technical Specifications.
- The requirements for performing onsite and offsite reviews and audits are specified in CPC–2A; the proposed change to the DTS to place the reporting relationship for individuals performing these audits and reviews eliminates redundancy between the Defueled Technical Specifications and CPC–2A.

The NRC staff has reviewed the licensee's significant hazards analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Mikelonis, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Robert A. Gramm.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: December 11, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) related to N–1 loop operation. Specifically, the proposed changes would eliminate N–1 loop operation from particular sections of the TS and would make other changes that are clarifying and/or administrative in nature. In addition, the TS Bases would be revised to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not alter the way any structure, system, or component functions and would not alter the way [in] which the plant is operated. The proposed changes do not involve any physical plant modifications. The proposed changes incorporate existing plant operational restrictions into the facility Technical Specifications and provide for the removal of information which is not applicable to plant operation.

The proposed allowed outage times (*i.e.* the required action times for Specification 3.4.1.5) are reasonable and consistent with the existing technical specification outage times and consistent with industry guidelines, thereby ensuring affected components are restored in a timely manner. The proposed changes to surveillance requirements are also consistent with existing surveillance frequencies and focus the Technical Specifications on verifying normal plant configurations are maintained. The design basis accidents, including the uncontrolled rod withdrawal from subcritical and boron dilution events, will remain the same postulated events described in the Millstone Unit No. 3 Final Safety Analysis Report (FSAR), and the consequences of these events will not be affected.

Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The proposed changes do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will not reduce the margin of safety since they have no impact on any accident analysis assumption. The proposed changes do not decrease the scope of equipment currently required to be OPERABLE or subject to surveillance testing, nor do the proposed changes affect any instrument setpoints or equipment safety functions. The effectiveness of Technical Specifications will be maintained since the changes will not alter the operation of any component or system, nor will the proposed changes affect any safety limits or safety system settings which are credited in a facility accident analysis. Therefore, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 4, 2002.

Description of amendment request: The amendments revise Technical Specification 3.7.6 by changing the minimum combined inventory for Emergency Feedwater from 72,000 gallons to 155,000 gallons and eliminating the condensate storage tank as a source of this inventory.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, Duke Power Company (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC regulations in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

No. This revision to Technical Specification (TS) 3.7.6 changes the inventory requirements for the Upper Surge Tank (UST) and hotwell. These components provide a suction source to the Emergency Feedwater System (EFW). This increase in inventory from 72,000 gallons to 155,000 gallons increases the required available inventory. This increase in inventory does not affect the probability or consequences of any previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

No. This revision to the combined UST and hotwell inventory increases the required amount of water available to the EFW system. No new or different kind of accident is created by this change as only the required inventory is revised.

(3) Involve a significant reduction in a margin of safety:

No. The increase in required UST and hotwell inventory does not reduce the margin of safety. The increase provides the required inventory to ensure that the EFW can provide a Reactor Coolant System cooldown at a rate of 50° F/hour to decay heat removal entry conditions following a reactor trip.

Duke has concluded, based on the above, that there is no significant hazards considerations involved in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: May 1, 2002, as supplemented December 4, 2002.

Description of amendment request: The proposed amendment would extend the applicability of the current Pilgrim Nuclear Power Station (Pilgrim) reactor pressure vessel pressure-temperature (P–T) curves through the end of Operating Cycle (OC) 16. The current P–T curves were approved for use in License Amendment 190, dated April 13, 2001, and are limited to use through the end of OC 14. The proposed change would delete the 20 and 32 Effective Full Power Year (EFPY) curves and replace the wording of the title blocks to allow use through the end of OC 16. The proposed amendment would change Pilgrim Technical Specification Figures 3.6.1, 3.6.2 and 3.6.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves a request to extend the use of the current reactor pressure vessel P–T curves for two additional OCs. The P–T curves were generated in accordance with the fracture toughness requirements of 10 CFR Part 50, Appendix G, and American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI, Appendix G and Regulatory Guide 1.99, Revision 2, Radiation Embrittlement of Reactor Vessel Materials, and were established in

compliance with the methodology used to calculate and predict effects of radiation on embrittlement of reactor pressure vessel beltline materials. There are no physical changes to the plant or new modes of operation being introduced by the proposed change. Further, the proposed change does not involve a change to any activities or equipment and is not assumed in the safety analysis to initiate any accident sequence. The proposed change does not adversely affect the integrity of the reactor coolant pressure boundary such that its function in the containment of radioactive materials is affected. Additionally, the proposed change will not create any failure mode not bounded by previously evaluated accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The current P–T curves were generated in accordance with the fracture toughness requirements of 10 CFR Part 50, Appendix G, and ASME Code, Section XI, Appendix G, and were approved by the U.S. Nuclear Regulatory Commission for use through OC 14. The proposed change would extend use of the P–T curves for two additional OCs. No new modes of operation are introduced by the proposed change. Plant operation in compliance with the current P–T curves ensures conditions in which brittle fracture of primary coolant pressure boundary materials is avoided. Accidents involving a breach of the primary coolant pressure boundary have previously been evaluated and no other types of accidents associated with the proposed change have been identified. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed curves were established in compliance with the methodology used to calculate and predict effects of radiation on embrittlement of reactor pressure vessel beltline materials and are estimated for 48 effective full-power years. The current curves are approved for use through the end of OC 14 (~19 EFPYs) which provides a conservatism factor of 1.7 between the actual EFPYs at the end of OC 14 and the end-of-life curve (32 EFPY). The change would extend the use of the proposed curves to the end of OC 16 (~23 EFPYs) which provides a conservatism factor of approximately 2.0. The actual EFPYs at the end of OC 16 is bounded by the 48 EFPYs estimated for the current curves. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

NRC Section Chief: James W. Clifford.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 10, 2002

Description of amendment request: The proposed Technical Specification (TS) amendment request changes the diesel fuel specification to a more current revision in TS 4.10.C. The change would also makes administrative revisions to reflect generic position titles in TS 6.0, correct page numbers and titles in the Table on Contents, and delete the General Table of Contents. Bases pages were also revised to reflect the fuel specification revision as well as to make administrative changes to provide clarity and correct a misspelling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of the Vermont Yankee Nuclear Power Station [VY] in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

VY has determined that the probability of occurrence of a previously evaluated accident is not increased because the proposed changes do not impact any accident initiating conditions. The proposed changes will have no significant impact on any safety related structures, systems or components. Additionally, the administrative changes do not affect any system operation or function.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

VY has determined that the proposed changes do not involve any physical alteration of plant equipment and do not change the method by which any safety-related system performs its function. No new or different types of equipment will be installed. The proposed changes do not create any new accident initiators or involve an activity that could be an initiator of an accident of a different type.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

VY has determined that the proposed changes do not alter the basic operation of process variables, systems, or components as described in the safety analysis. No new equipment is introduced.

The proposed changes do not impact design margins of any system to perform its intended safety functions. There is no physical or operational change being made which would alter the sequence of events, plant response, or margins in existing safety analyses. The proposed changes result in no impact on analyzed accident event precursors or effects. These proposed changes do not alter the physical design of the plant. There is no change in methods of operation.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2 Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania; Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 27, 2002.

Description of amendment request: The proposed amendments delete requirements from the technical specifications (TS) and other elements of the licensing bases to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, "Elimination of Requirements for a Post Accident Sampling System (PASS)." The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated November 27, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorneys for licensees: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chiefs: Anthony J. Mendiola, James W. Clifford.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: October 30, 2002.

Description of amendment request: The proposed amendment deletes requirements from the technical specifications (TS) and other elements of the licensing bases to maintain a Post Accident Sampling System (PASS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations, and were put into place as a result of the Three Mile Island (TMI) 2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in

aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents, and its elimination would not affect the probability of accidents previously evaluated. In the 23 years since the TMI 2 accident, and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident. The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI 2 accident guidance through the use of the SAMGs, the Emergency Plan, the Emergency Operating Procedures (at PNPP, these procedures are titled the Plant Emergency Instructions), and site survey monitoring that support modification of Emergency Plan Protective Action Recommendations (PARs). Therefore, the elimination of PASS requirements from Technical Specifications does not involve a significant increase in the consequences of any accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that do not rely on PASS are designed to provide rapid assessment of current reactor core conditions and the trending of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI 2 accident can be adequately met without reliance on a PASS. Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 22, 2002, as supplemented May 13, June 24, July 29, and December 20, 2002.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation (LCO), following a missed surveillance. The delay period would be extended from the current limit of "* * * up to 24 hours to permit the completion of the surveillance when the allowable outage time limits of the ACTION requirements are less than 24 hours" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 4.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated March 22, 2002, as supplemented May 13, June 24, July 29, and December 20, 2002.

The proposed amendment would also add a requirement for a TS Bases Control Program to the administrative controls section of TSs. This change is necessary to be consistent with the CLIIP and is also consistent with the TS Bases Control Program presented in Section 5.5 of NUREG–1431, Revision 2, "Standard Technical Specifications Westinghouse Plants." The licensee provided its analysis of the issue of NSHC for this proposed change in its application.

The proposed amendment would also modify SR 4.0.1, and its associated Bases, to link it with SR 4.0.3. The modification to SR 4.0.1 is consistent with NUREG–1431, Revision 2, "Standard Technical Specifications Westinghouse Plants." The licensee provided its analysis of the issue of NSHC for this proposed change in its application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

[CLIIP Change]

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or

consequences of an accident previously evaluated.

[Addition of TS Bases Control Program and Changes to SR 4.0.1] The proposed changes to adopt the ITS [Improved Standard Technical Specifications] wording for Specification 4.0.1 and formally adopt a [TS] Bases Control Program are administrative in nature and do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility or the manner in which it is operated. The proposed changes do not alter or prevent the ability or structures, systems, or components to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Seabrook Station Updated Final Safety Analysis Report (UFSAR).

Future changes to the TS Bases will continue to be administratively controlled pursuant to the provisions of 10 CFR 50.59. The TS Bases is a licensee-controlled document that contains bases information for the [TS]. Future changes to the information contained in the TS Bases will be reviewed and approved in accordance with the FPLE Seabrook Regulatory Compliance Manual and TS Section 6.7.6j (TS Bases Control Program) of the Seabrook Station [TS]. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

[CLIIP Change]

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[Addition of TS Bases Control Program and Changes to SR 4.0.1]

The proposed changes do not alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated. There are no changes to the source term or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. The proposed changes have no adverse impact on component or system interactions. The proposed changes will not adversely degrade the ability of systems, structures and components important to safety to perform their safety function nor change the response of any system, structure or component important to safety as described in the UFSAR. The proposed changes are administrative in nature and do not change the level of programmatic and procedural details of assuring operation of the facility in a safe manner. Since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

[CLIIP Change]

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

[Addition of TS Bases Control Program and Changes to SR 4.0.1]

There is no adverse impact on equipment design or operation and there are no changes being made to the [TS] required safety limits or safety system settings that would adversely affect plant safety. The proposed changes are administrative in nature and do not reduce the level of programmatic or procedural controls associated with the activities presently performed via the aforementioned surveillance requirements.

Future changes to the TS Bases information will be reviewed and approved in accordance with Seabrook Station [TS], Section 6.7, and as outlined in [FPLE Seabrook's] Regulatory Compliance programs. Specifically, changes to the Seabrook Station [TS] Bases require an evaluation pursuant to the provisions of 10 CFR 50.59 and review and approval by the Station Operation Review Committee (SORC) prior to implementation.

Therefore, formal adoption of a TS-required TS Bases Control Program and adoption of ITS wording for Specification 4.0.1 do not involve a significant reduction in the margin of safety provided in the existing specifications.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief: James W. Clifford.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of amendment request: November 15, 2002.

Description of amendment request: The proposed amendment would revise the Donald C. Cook Nuclear Plant, Unit 2, operating license and Technical Specifications to increase the licensed power level to 3468 Mega Watts Thermal (MWt), or 1.66 percent greater than the current level of 3411 MWt.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated—In support of this Measurement Uncertainty Recapture (MUR) power uprate, a comprehensive evaluation was performed for nuclear steam supply system (NSSS) and balance of plant systems and components and analyses that could be affected by this change. A power calorimetric uncertainty calculation was performed, and the effect of increasing plant power by 1.66 percent on the plant's design and licensing basis was evaluated. The result of these evaluations is that all plant components will continue to be capable of performing their design function at an uprated core power of 3468 MWt. In addition, an evaluation of the accident analyses demonstrates that applicable analysis acceptance criteria continue to be met. No accident initiators are affected by this uprate and no challenges to any plant safety barriers are created by this change.

Consequences of an Accident Previously Evaluated—This change does not affect the release paths, the frequency of release, or the source term for release for any accidents previously evaluated in the Updated Final Safety Analysis Report. Structures, systems, and components (SSC) required to mitigate transients remain capable of performing their design functions, and thus were found acceptable. The reduced uncertainty in the feedwater flow input to the power

calorimetric measurement ensures that applicable accident analyses acceptance criteria continue to be met, to support operation at a core power of 3468 MWt. Analyses performed to assess the effects of mass and energy remain valid. The source terms used to assess radiological consequences have been reviewed and determined to bound operation at the uprated condition.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed changes. The installation of the Caldon Leading Edge Flow Meter CheckPlus™ system has been analyzed, and failures of this system will have no adverse effect on any safety-related system or any SSCs required for transient mitigation. SSCs previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system.

This change does not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. Operating at a core power level of 3468 MWt does not create any new accident initiators or precursors. The reduced uncertainty in the feedwater flow input to the power calorimetric measurement ensures that applicable accident analyses acceptance criteria continue to be met, to support operation at a core power of 3468 MWt. Credible malfunctions continue to be bounded by the current accident analysis of record or evaluations that demonstrate that applicable acceptance criteria continue to be met.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margins of safety associated with this MUR Uprate Program are those pertaining to core power. This includes those associated with the fuel cladding, Reactor Coolant System pressure boundary, and containment barriers. A comprehensive engineering review was performed to evaluate the 1.66 percent increase in the licensed core power from 3411 MWt to 3468 MWt. The 1.66 percent increase required that revised NSSS design thermal and hydraulic parameters be established, which then served as the basis for all of the NSSS analyses and evaluations. This engineering review concluded that no design transient modifications are required to accommodate the revised NSSS design conditions. NSSS systems and components were evaluated and it was concluded that the NSSS equipment has sufficient margin to accommodate the 1.66 percent power uprate. NSSS accident analyses were evaluated for the 1.66 percent power uprate. In all cases, the evaluations demonstrate that the applicable analyses acceptance criteria continue to be met. As such, the margins of safety continue to be bounded by the current analyses of record for this change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

In summary, based upon the above evaluation, [Indiana Michigan Power Company] has concluded that the proposed amendment involves no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Nine Mile Point Nuclear Station, LLC (NMPNS), Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: December 19, 2002.

Description of amendment request: The proposed amendment would update and clarify the Technical Specifications (TSs) requirements for demonstrating shutdown margin (SDM). The proposed changes incorporate new, more restrictive, SDM limits; add the required limiting condition for operation (LCO) actions if the SDM is not met; and also add the surveillance requirements for verifying the SDM. These LCO actions and surveillance requirements are not currently specified in the TSs. The revised SDM limits account for the uncertainty in the demonstration of adequate SDM analytically or by measurement. The proposed changes also eliminate the unnecessary restriction requiring SDM demonstration in the cold shutdown condition. The option for SDM demonstration in the cold shutdown condition is retained consistent with the existing special test exception.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Adequate SDM provides assurance that inadvertent criticalit[y] and potential control rod drop accidents (CRDAs) involving high worth control rods will not cause significant fuel damage. The SDM is not an accident initiator and, as such, will have no effect on the probability of an accident. The proposed changes incorporate more restrictive SDM limits and provide the necessary actions and verifications to assure that there will be no adverse effect on the initial conditions and assumptions of the accidents previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The proposed changes do not involve physical changes to the plant or introduce any new modes of operation. Accordingly, continued assurance is provided that the process variables, structures, systems, and components are maintained such that there will be no degradation of any fission product barrier which could increase the radiological consequences of an accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the SDM limits and requirements will have no adverse effect on the design or assumed accident performance of any structure, system, or component, or introduce any new modes of system operation or failure modes. Moreover, the proposed changes will have no impact on conformance to 10 CFR [Code of Federal Regulations] 50, Appendix A, General Design Criterion 26 (GDC 26), in that the control rods will continue to satisfy the SDM requirements and provide assurance that the reactor can be made subcritical from all applicable operating conditions, transients, and design basis events. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes provide separate SDM limits for testing consistent with the Improved Standard Technical Specifications (NUREG–1433 and NUREG–1434) where the highest worth control rod is determined analytically (0.38% Dk/k) or by measurement (0.28% Dk/k). The proposed SDM limits are more restrictive than the current limit (0.25% Dk/k) and account for the uncertainty in the demonstration of SDM by testing. The SDM will continue to account for changes in core reactivity during the fuel cycle. Therefore, the margin of safety is increased relative to the SDM assumptions for the control rod withdrawal error transient and CRDA analyses.

Accordingly, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: December 19, 2002.

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) reporting requirements for the discovery of defective or degraded steam generator tubes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not have any effect on structures, systems, and components (SSCs) of the Kewaunee Nuclear Power Plant. The changes do not affect plant operations, any design function or an analysis that verifies the capability of an SSC to perform a design function. The changes do not change any previously evaluated accidents in the updated safety analysis report (UFSAR). As these changes are administrative, there is no increase in the probability and consequences of analyzed accidents.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are administrative and do not change the design function or operation of any plant SSCs. The proposed changes do not create the possibility of a new or different kind of accident due to credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes modify NRC reporting requirements only. The changes do not exceed or alter a design basis or safety limit or significantly reduce the margin of safety.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Esq., Shaw Pittman, Potts & Trowbridge, 2300 N. Street, NW, Washington, DC 20037–1128.

NRC Section Chief: L. Raghavan.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of amendment request: December 4, 2002.

Description of amendment request: The proposed amendment changes the Hatch Unit 2 turbine building high temperature primary containment isolation value specified in Technical Specification Table 3.3.6.1–1, Item 1f.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [Does] the [* * *] proposed [* * *] change involve a significant increase in the probability or consequences of an accident previously evaluated[?]

This TS [Technical Specification] revision request changes the allowable value for the turbine building high temperature primary containment isolation. The setpoint at which the isolation occurs has nothing to do with preventing a system break; therefore, this proposed change will not change the probability of occurrence of a small primary coolant system break.

For the turbine building high temperature primary containment isolation, the analytical limit has been calculated at 207°F with the allowable value at 200°F. The calculation supporting these values accounts for instrument uncertainties thus confirming that adequate margin exists between the allowable value and the analytical limit. Accordingly, the consequences of a small primary system break are not significantly increased.

2. [Does] the [* * *] proposed [* * *] change create the possibility of a new or different kind of accident from any previously evaluated[?]

Changing an allowable value does not introduce any new operating modes for any plant system or piece of equipment. All plant systems will continue to be operated, tested and maintained as before, and within their licensing and design basis. As a result, no new failure modes are introduced and the possibility of a new or different type of accident is not created.

3. [Does] the [* * *] proposed [* * *] change involve a significant decrease in the margin of safety[?]

Increasing the allowable value by 6°F does not result in a significant reduction in a margin of safety. A formal calculation was performed which justified an analytical limit of 207°F. This calculation determined the analytical limit based on a primary leak into the turbine building and confirmed that the allowable value adequately protects the analytical limit. As a result, the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: John A. Nakoski.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these

amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dominion Nuclear Connecticut, Inc. Docket Nos. 50–336 and 50–423, Millstone Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendment: February 14, 2002, as supplemented on September 9, 2002.

Brief description of amendment: The amendments revised the Millstone Power Station, Unit No. 2 (MP2) and 3 (MP3) Technical Specifications (TSs) by relocating selected MP2 and MP3 TSs related to the Reactor Coolant System and Plant Systems to the respective unit's Technical Requirements Manual.

The amendment does not address changes to MP2 TS 3/4.7.10, "Snubbers," and MP3 TSs 3/4.7.10, "Snubbers," and 3/4.7.14, "Area Temperature Monitoring," as described by the application dated February 14, 2002, because these proposed TSs changes were withdrawn by the supplement dated September 9, 2002.

Date of issuance: January 2, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 272 and 214.

Facility Operating License Nos. DPR–65 and NPF–49: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** April 16, 2002 (67 FR18645). The September 9, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 2, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 12, 2002, as supplemented by letter dated December 30, 2002.

Brief description of amendments: The amendments temporarily revised Technical Specifications (TS) 3.5.2, "Emergency Core Cooling System;" TS 3.6.6, "Containment Spray System;" TS 3.7.5, "Auxiliary Feedwater System;" TS 3.7.7, "Component Cooling Water System;" TS 3.7.8, "Nuclear Service Water System;" and TS 3.8.1, "AC Sources."

Date of issuance: January 7, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 203 & 196.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63692). The supplement dated December 30, 2002, provided clarifying information that did not change the scope of the September 12, 2002, application, nor the initial no significant hazard consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 7, 2003.

No significant hazards consideration comments received: No

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: August 29, 2002. *Brief description of amendments:* The amendments revise Technical Specification (TS) 3.8.4.7, to modify the note to eliminate the "once per 60 months" restriction on replacing the battery service test by the battery modified performance discharge test.

Date of issuance: January 9, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 204 & 197.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68733). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 9, 2003.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: October 22, 2002.

Brief description of amendment: The amendment deletes a reference to Section 2.E in Section 2.F of Facility Operating License No. NPF–21. Section 2.E requires the licensee to fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans. Section 2.E is redundant because the reporting requirements and criteria for the physical security programs are specified in 10 CFR 73.71 and Appendix G of 10 CFR Part 73.

Date of issuance: January 9, 2003.

Effective date: January 9, 2003 to be implemented within 60 days from the date of issuance.

Amendment No.: 183.

Facility Operating License No. NPF–21: The amendment revised the operating license.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75871). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 2003.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 21, 2002.

Brief description of amendment: The amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency,

whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: January 2, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 127.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 1, 2002 (67 FR 61679). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 2, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request October 15, 2001, as supplemented by letter dated August 27, 2002.

Brief description of amendment: The amendment provides additional information to support a modification to Technical Specification 3.4.7 and limits Reactor Coolant System activity permitted by the ACTION statement to 60 microcuries per gram at all power levels. The letdown line break accident analysis in the Final Safety Analysis Report was also changed.

Date of issuance: January 8, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 184.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications and Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** October 28, 2002 (67 FR 66009). The August 27, 2002, supplemental letter provided additional information and revised the no significant hazards consideration determination. The original **Federal Register** notice was published on November 28, 2001 (66 FR 56504), but was superceded by the October 28, 2002 publication.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: June 26, 2002, as supplemented September 12, 2002.

Brief description of amendments: Extend the use of the pressure-temperature limits in Technical Specification Figure 3.4.6.1–1 to 32 effective full power years.

Date of issuance: As of date of issuance and shall be implemented within 30 days.

Effective date: January 2, 2003.

Amendment Nos. 163 and 125.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50953). The supplement dated September 12, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 2, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–171, Peach Bottom Atomic Power Station, Unit 1, York County, Pennsylvania

Date of application for amendment: May 21, 2002.

Brief description of amendment: This proposed amendment will revise the Peach Bottom Atomic Power Station, Unit 1, License and Technical Specifications (TS) to: (1) Delete License Condition C(4) to reflect satisfaction of the minimum decommissioning trust fund amount at the time of transfer of the Facility Operating License; (2) revise License Condition C(5)(d) to reflect 30 days prior written notification to the Director of Nuclear Material Safety and Safeguards before modification of the decommissioning trust agreement in any material respect; (3) delete TS 2.1(B)3 and TS 2.4(b) to eliminate inconsistencies with reporting requirements in 10 CFR 20.2202, 50.73, and 73.71; (4) revise TS 2.2 to refer to the Facility Operating License; and (5) revise TS 2.3 to refer to the radiological hazards associated with the facility.

Date of Issuance: December 26, 2002.

Effective Date: On the date of issuance of this amendment and must be fully implemented no later than 30 days from the date of issuance.

Amendment No.: 11.

Facility Operating License No. DPR–12: Amendment revised the License and TS with respect to administrative procedures or requirements.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61682). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 26, 2002.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: June 1, 2001, as supplemented by letters dated June 13, 2001, May 20, 2002, and June 28, 2002.

Brief description of amendments: These amendments revised TS 3.7.1, "Residual Heat Removal Service Water (RHRSW) System and Ultimate Heat Sink (UHS)," to add operability requirements and surveillance requirements for the UHS spray bypass and large array valves, and reduce the allowed Completion Times for the conditions applicable to the RHRSW system.

Date of issuance: December 30, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 206 and 180.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 5, 2001 (66 FR 46481). The June 13, 2001, May 20, 2002, and June 28, 2002, letters provided additional information that clarified the application, but did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 30, 2002.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 3, 2001, as supplemented by letter dated August 29, 2002.

Brief description of amendments: The amendments revise TS 3.7.1.2,

"Auxiliary Feedwater System," to better reflect the four train auxiliary feedwater (AFW) system design at STP. Specifically, the changes specify the same allowed outage time (AOT) for any one inoperable motor-driven pump, regardless of train. The amendments also extend the AOT for one inoperable motor-driven pump from 72 hours to 28 days. A sentence has also been added to Action d. stating that Limiting Condition for Operation (LCO) 3.0.3 and all other LCO actions requiring Mode changes are suspended until one of the four inoperable AFW pumps is restored to operable status. There is also an administrative change in the wording of the LCO to clarify that there are only four AFW pumps in each STP unit.

Date of issuance: December 31, 2002.

Effective date: December 31, 2002.

Amendment Nos.: Unit 1—146; Unit 2—134.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2930). The supplement provided additional information that clarified the application, did not expand the scope as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 31, 2002.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: April 8, 2002.

Brief description of amendments: The amendments revise Technical Specification (TS) 3.4.16, "RCS [Reactor Coolant System] Specific Activity," to lower the Limiting Condition For Operation and associated Surveillance Requirements for Dose Equivalent Iodine-131 in the RCS from a specific activity of 1.0 μCi/gm to 0.45 μCi/gm.

Date of issuance: January 6, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 102 and 102.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 11, 2002 (67 FR 40026). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 6, 2003.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket No. 50–338, North Anna Power Station, Unit 1, Louisa County, Virginia

Date of application for amendment: December 7, 2001, as supplemented by letters dated June 28 and July 25, 2002.

Brief description of amendment: This amendment permits a one-time extension of the current 10-year Title 10 of the Code of Federal Regulations Part 50, Appendix J, Option B, Type A test interval from April 3, 2003, to April 2, 2008.

Date of issuance: December 31, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 234.

Facility Operating License No. NPF–4: Amendment changes the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21295). The supplemental letters dated June 28 and July 25, 2002, contained clarifying information only and did not change the proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 31, 2002.

No significant hazards consideration comments received: No.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 13th day of January 2003.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1161 Filed 1–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 5, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, February 5, 2003—1 p.m. until the conclusion of business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: January 13, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–1221 Filed 1–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy will hold a meeting on February 5, 2003, Room T–

2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 5, 2003—8:30 a.m. until the conclusion of business

The Subcommittee will meet with representatives of the NRC staff and discuss the risk metric and criteria that can be used for reevaluating the technical basis of the pressurized thermal shock (PTS) rule and the NRC staff's pilot plant studies. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Dr. Richard P. Savio (telephone 301–415–7363) between 7:30 a.m. and 5 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: January 14, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–1222 Filed 1–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Peer Review Committee for Source Term Modeling; Notice of Meeting

The Peer Review Committee For Source Term Modeling will hold a closed meeting on January 28–29, 2003 at Sandia National Laboratories (SNL), Albuquerque, NM.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1) and as proprietary pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, January 28 and Thursday, January 29, 2003—8:30 a.m. until the conclusion of business

The Committee will review SNL activities and aid SNL in development of guidance documents on source terms that will assist the NRC in evaluations of the impact of specific terrorist activities targeted at a range of spent fuel storage casks and radioactive material transport packages including those for spent fuel.

Further information contact: Dr. Andrew L. Bates (telephone 301–415–1963) or Dr. Charles G. Interrante (telephone 301–415–3967) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: January 14, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–1220 Filed 1–17–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 20, 2003. An Open Meeting will be held on Wednesday, January 22, 2003, at 10 a.m., in Room 1C30, the William O. Douglas Room, and a Closed Meeting will be held on Thursday, January 23, 2003, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Open Meeting scheduled for Wednesday, January 22, 2003 will be:

1. The Commission will consider whether to adopt new rules 30a-3 and 30d-1 and amendments to rules 8b-15, 30a-1, 30a-2, 30b1–1, 30b1–3, and 30b2–1 under the Investment Company Act of 1940, amendments to rules 12b-25, 13a-15, and 15d-15 and Form 12b-25 under the Securities Exchange Act of 1934, amendments to Form N–SAR under the Exchange Act and the Investment Company Act, and new Form N–CSR under the Exchange Act and Investment Company Act. These new rules and form, and rule and form amendments, would require registered management investment companies to file certified shareholder reports on new Form N–CSR with the Commission, and would designate these certified shareholder reports as reports that are required under sections 13(a) and 15(d) of the Exchange Act and Section 30 of the Investment Company Act. A registered management investment company's principal executive and financial officers would be required to certify the information contained in its reports on Form N–CSR in the manner specified by Section 302 of the Sarbanes-Oxley Act of 2002. The amendments would also remove the requirement that Form N–SAR be certified by a registered investment company's principal executive and financial officers, and would provide that, for registered management investment companies, Form N–SAR would be filed under the Investment Company Act only. In addition, the amendments would implement Sections 406 and 407 of the Sarbanes-Oxley Act by requiring a registered management investment company to provide disclosure on Form N–CSR or Form N–SAR, as applicable, regarding whether the investment company has adopted a code of ethics for the company's principal executive officer and senior financial officers, and whether the investment company has at least one "audit committee expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management.

2. The Commission will consider adopting rules to establish standards of professional conduct for attorneys who appear and practice before the Commission in any way in the representation of issuers. As proposed, the rules would require an attorney to report evidence of a material violation of securities laws, a material breach of fiduciary duty, or similar material violation by the issuer or by any officer, director, employee, or agent of the issuer to the issuer's chief legal officer or the chief executive officer of the company (or the equivalents); if they do not respond appropriately to the evidence, the rule would require the attorney to report the evidence to the issuer's audit committee, another committee of independent directors, or the full board of directors; if the directors do not respond appropriately, the rule would

require or permit the attorney to withdraw and notify the Commission of the withdrawal.

3. The Commission will consider whether to adopt amendments mandated by Section 401(a) of the Sarbanes-Oxley Act of 2002. The rules would require a public company to provide in its "Management's Discussion and Analysis" section of Commission filings: (1) A discussion of off-balance sheet arrangements; and (2) a table of payments under specified contractual obligations due in short- and long-term periods.

4. The Commission will consider adopting amendments to its existing requirements regarding auditor independence to enhance the independence of accountants that audit and review financial statements and prepare attestation reports filed with the Commission. As directed by Section 208(a) of the Sarbanes-Oxley Act of 2002, the Commission is considering adopting rules to:

- Revise its regulations related to the non-audit services that, if provided to an audit client, would impair an accounting firm's independence;
- Require that an issuer's audit committee pre-approve all audit and non-audit services provided to the issuer by the auditor of an issuer's financial statements;
- Prohibit certain audit partners on the audit engagement team from providing audit services to the issuer for more than five or seven consecutive years, depending on the partner's role in the audit engagement;
- Prohibit an accounting firm from auditing an issuer's financial statements if certain members of management of that issuer had been members of the accounting firm's audit engagement team within the one-year period preceding the commencement of audit procedures;
- Require that the auditor of an issuer's financial statement report certain matters to the issuer's audit committee, including "critical" accounting policies used by the issuer; and
- Require disclosures to investors of information related to the audit and non-audit services provided by, and fees paid by the issuer to, the auditor of the issuer's financial statements.

In addition, under the rules to be considered by the Commission, an accountant would not be independent from an audit client if certain audit partners of the accounting firm, who are members of the engagement team, received compensation based on their selling any service to that client other than audit, review and attest services.

5. The Commission will consider whether to adopt amendments to implement section 802 of the Sarbanes-Oxley Act of 2002. The rule, if adopted, would specify that auditors should retain records relevant to the audits and reviews of financial statements filed with the Commission, including workpapers and other documents that form the basis of the audit or review and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review and contain conclusions, opinions, analyses, or financial data related to the audit or review.

6. The Commission will consider whether to adopt amendments to its registration and reporting forms for registered management investment companies, as well as new rule 30b1–4 and new Form N–PX under the Investment Company Act of 1940. These rules would require mutual funds and other registered management investment companies to disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. They would also require registered management investment companies to file with the Commission on an annual basis, and make available to shareholders, their proxy voting records.

7. The Commission will consider whether to adopt a new rule and amendments to its recordkeeping rules for registered investment advisers under the Investment Advisers Act. The new rule would require investment advisers to adopt proxy voting policies and procedures, describe the policies and procedures to clients and provide clients with copies on request, and disclose how clients can obtain information about how the adviser voted their proxies. The recordkeeping amendments would require advisers to keep certain records regarding client proxies.

The subject matter of the Closed Meeting scheduled for Thursday, January 23, 2003 will be:

Formal orders of investigation;
Institution and settlement of administrative proceedings of an enforcement nature; and
Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 15, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–1282 Filed 1–15–03; 4:09 pm]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P004]

State of South Carolina

As a result of the President's major disaster declaration for Public Assistance on January 8, 2003 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit businesses that provide essential services of a governmental nature. I find that Cherokee, Greenville, Laurens, Spartanburg, Union, and York Counties in the State of South Carolina constitute a disaster area due to damages caused by a severe ice storm occurring from December 4, 2002, and continuing through December 6, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 10, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations Without Credit Available Elsewhere	3.324
Non-Profit Organizations With Credit Available Elsewhere	5.500

The number assigned to this disaster for physical damage is P00411.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: January 13, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–1231 Filed 1–17–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart B (formerly subpart Q) during the Week Ending January 10, 2003.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–14213.

Date Filed: January 7, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 28, 2003.

Description: Application of Delaware Skyways, LLC, pursuant to 49 U.S.C.

41102 and subpart B, requesting a certificate of public convenience and necessity, authorizing interstate charter air transportation of persons, property, and cargo.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–1165 Filed 1–17–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Random Drug and Alcohol Testing Percentage Rates of Covered Aviation Employees for the Period of January 1, 2003 Through December 31, 2003

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum random drug and alcohol testing percentage rates for the period January 1, 2003 through December 31, 2003, will remain at 25 percent of covered aviation employees for random drug testing and 10 percent of covered aviation employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold N. Schwartz, Office of Aerospace Medicine, Drug Abatement Division, Program Analysis Branch (AAM–810), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–5970.

Discussion: The FAA Administrator set the minimum random drug testing rate for 2003 at 25 percent because the data received under the Management Information System (MIS) reporting requirements for two consecutive calendar years indicate that the positive rate is less than 1.0 percent. The FAA Administrator set the minimum alcohol testing rate for 2003 at 10 percent because the data received under the MIS reporting requirements for two consecutive calendar years indicate that the positive rate is less than 0.5 percent.

SUPPLEMENTARY INFORMATION: If you have questions about how the annual random drug and alcohol percentage testing rates are determined please refer to the Code of Federal Regulations title 14: part 121, Appendices I and J.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 03–1166 Filed 1–17–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Mills County, IA; Sarpy County, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge and roadway improvement project in Sarpy County, Nebraska, and in Mills County, Iowa.

FOR FURTHER INFORMATION CONTACT: Lisa Rold, Transportation Engineer, FHWA Iowa Division Office, 105 Sixth Street, Ames, IA 50010, Ph. 515–233–7307; or James P. Rost, Director, Office of Location and Environment, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, Ph. 515–239–1798.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document is available for free download from the Federal Bulletin Board (FBB). The FBB is a free electronic bulletin board service of the Superintendent of Documents, U.S. Government Printing Office (GPO).

The FBB may be accessed in four ways: (1) Via telephone in dial-up mode or via the Internet through (2) telnet, (3) FTP, and (4) the World Wide Web.

For dial-in mode a user needs a personal computer, modem, telecommunications software package and telephone line. A hard disk is recommended for file transfers.

For Internet access a user needs Internet connectivity. Users can telnet or FTP to: fedbbs.access.gpo.gov. Users can access the FBB via the World Wide Web at *http://fedbbs.access.gpo.gov.*

User assistance for the FBB is available from 7 a.m. until 5 p.m., Eastern Time, Monday through Friday (except federal holidays) by calling the GPO Office of Electronic Information Dissemination Services at 202–512–1530, toll-free at 888–293–6498; sending an e-mail to *gpoaccess@gpo.gov;* or sending a fax to 202–512–1262.

Access to this notice is also available to Internet users through the **Federal Register's** home page at *http://www.nara.gov/fedreg.*

Background

The FHWA, in cooperation with the Iowa Department of Transportation (Iowa DOT) and Nebraska Department of Roads (NDOR), will prepare an EIS for the proposed Bellevue Bridge Study. In addition to a new bridge over the Missouri River, the proposed project would also include roadway improvements to provide a high-speed connection from US 75 in Sarpy County, Nebraska to Interstate 29 in Mills County, Iowa.

The existing two-lane toll bridge over the Missouri River at Bellevue on Nebraska Highway 370 is both functionally and structurally obsolete. The bridge has a narrow 20-foot wide driving surface and is in poor structural condition. The proposed bridge and roadway improvements will improve safety, traffic flow, and commerce between western Iowa and eastern Nebraska.

Alternatives under consideration include: (1) Taking no action; (2) rehabilitating and widening the existing two-lane bridge; and (3) constructing a roadway on a new location (including near the existing bridge). The build alternative will include consideration of various alignments and grades.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in 2003 and 2004. In addition, a public hearing will be held upon completion of the draft EIS. Public notice will be given of the time and place of the public meetings and public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

A scoping meeting (the initial public meeting) will be held for identifying significant issues to be addressed in the environmental impact statement. The date and location of the scoping meeting have not yet been determined but will be advertised in various local media.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or Iowa Department of Transportation at the address provided in the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Dated: January 13, 2003.
Bobby W. Blackmon,
Division Administrator, FHWA, Iowa Division.
[FR Doc. 03–1193 Filed 1–17–03; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind Notice of Intent To Prepare an Environmental Impact Statement (EIS): Mills County, IA; Cass County, NE; and Sarpy County, NE

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Rescind notice of intent to prepare an EIS.

SUMMARY: The FHWA is issuing this notice to advise the public that we are rescinding the notice of intent (NOI) to prepare an EIS for improvements proposed to U.S. 34, from Interstate 29 in Mills County, IA, to U.S. 75 in Cass or Sarpy county in Nebraska.

FOR FURTHER INFORMATION CONTACT: Lisa Rold, Transportation Engineer, FHWA Iowa Division Office, 105 Sixth Street, Ames, IA 50010, Ph. 515–233–7307; or James P. Rost, Director, Office of Location and Environment, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, Ph. 515–239–1798.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document is available for free download from the Federal Bulletin Board (FBB). The FBB is a free electronic bulletin board service of the Superintendent of Documents, U.S. Government Printing Office (GPO).

The FBB may be accessed in four ways: (1) Via telephone in dial-up mode or via the Internet through (2) telnet, (3) FTP, and (4) the World Wide Web.

For dial-in mode a user needs a personal computer, modem, telecommunications software package and telephone line. A hard disk is recommended for file transfers.

For Internet access a user needs Internet connectivity. Users can telnet or FTP to: *fedbbs.access.gpo.gov*. Users can access the FBB via the World Wide Web at *http://fedbbs.access.gpo.gov*.

User assistance for the FBB is available from 7 a.m. until 5 p.m., Eastern Time, Monday through Friday (except federal holidays) by calling the GPO Office of Electronic Information Dissemination Services at 202–512–1530, toll-free at 888–293–6498; sending an e-mail to *gpoaccess@gpo.gov;* or sending a fax to 202–512–1262.

Access to this notice is also available to Internet users through the **Federal Register**'s home page at *http://www.nara.gov/fedreg.*

Background

The FHWA, in cooperation with the Iowa Department of Transportation (Iowa DOT) and Nebraska Department of Roads (NDOR), are rescinding the notice of intent to prepare an EIS for improvements proposed to U.S. 34, from Interstate 29 in Mills County, IA, to U.S. 75 in Cass or Sarpy county in Nebraska.

On Sept. 12, 1994, FHWA issued a NOI to prepare an EIS as part of the development process for the replacement of the U.S. 34 bridge over the Missouri River.

In January 1996, a draft EIS was released evaluating the replacement of the U.S. 34 bridge over the Missouri River at the city of Plattsmouth in Cass County, NE.

A multi-step screening process, which included public information meetings and a public hearing, was used to develop and evaluate two alignment alternatives. One alignment was located near the city of Bellevue in Sarpy County, NE, and the other near the city of Plattsmouth in Cass County, NE.

Comments received during and subsequent to the public hearing on the draft EIS determined that consensus could not be reached for identifying a preferred alignment for the final EIS. Consequently, no final EIS will be prepared.

Recently, the Iowa DOT and NDOR agreed to jointly pursue the development of two bridges across the Missouri River, one near Bellevue, NE, and a second near Plattsmouth, NE. As part of this agreement, two environmental impact statements will be prepared, one for each bridge.

The Bellevue bridge replacement study and Plattsmouth bridge replacement study will be the subjects of two separate notices of intent, published subsequent to this notice. Comments or questions concerning the decision to not prepare a Final EIS should be directed to the Iowa Department of Transportation or FHWA at the address provided in the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Dated: January 13, 2003.
Bobby W. Blackmon,
Division Administrator, FHWA Iowa Division.
[FR Doc. 03–1194 Filed 1–17–03; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.
ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 11, 2002. No comments were received.

DATES: Comments must be submitted on or before February 20, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas W. Harrelson, Maritime Administration, MAR–590, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–4610; FAX: 202–366–5522; or e-mail: *thomas.harrelson@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Monthly Report of Ocean Shipments Moving under Export-Import Bank Financing.

OMB Control Number: 2133–0013.

Type of Request: Extension of currently approved collection.

Affected Public: Shippers subject to Export/Import Bank financing.

Form (s): MA–518.

Abstract: Public Resolution 17 (PR 17) requires MARAD to monitor and enforce the U.S.-flag shipping requirements relative to the loans/guarantees extended by the Export-Import Bank (EXIMBANK) to foreign borrowers. PR 17 requires that all shipments financed by EXIMBANK and that move by sea, must be transported exclusively on U.S.-flag registered vessels unless a waiver is obtained from MARAD.

Annual Estimated Burden Hours: 168 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 14, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–1188 Filed 1–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

District of Columbia's Retired Superior Court and Court of Appeals Justices; New Payroll Office

SUMMARY: The Department of Treasury's Office of DC Pensions (ODCP) is issuing this notice to advise the public of a new payroll office to serve the District of Columbia's retired Superior Court and Court of Appeals justices. The payroll services provided for these justices will change from the District of Columbia's Office of Pay and Retirement Services (OPRS) to the Department of the Treasury's Bureau of Public Debt (BPD), effective December 1, 2002.

ADDRESSES: Pensions Operations Analyst, Office of DC Pensions, P.O. Box 14307, Washington DC 20044–4307, E-Mail: *STAR@do.treas.gov;* or *DCPension Payroll@bpd.treas.gov* at the Bureau of the Public Dept, Parkersburg, WV.

FOR FURTHER INFORMATION CONTACT: Emily Moltz, 202–622–2316.

SUPPLEMENTARY INFORMATION: In compliance with the Balanced Budget Act of 1997, Pub. L. 105–33, the Department of the Treasury's Bureau of Public Debt (BPD) located in Parkersburg, WV, will begin using a new retirement system called STAR (System to Administer Retirement) to pay the retirements for the District of Columbia's retired Superior Court and Court of Appeals justices.

The current system run by OPRS will produce its last payment to the justices on December 2, 2002 and BPD will produce the first payment to the justices using STAR on January 2, 2003. The STAR Payroll Office Number is 99004863. Any outstanding garnishments in place today, such as tax levies, child support, alimony, or bankruptcy, will also be deducted from the annuitant's payment in the new system. Requests to perform garnishments should be directed to STAR DC Pension Payroll Office, Bureau of Public Debt PO Box 1328 Parkersburg, WV 26101–1328 and marked time sensitive.

If you have any questions or concerns regarding this transition, please contact the Pension Operations Analyst, at *STAR@do.treas.gov.*

Kay Clarey,

Director, Information System, Office of DC Pensions.

[FR Doc. 03–1042 Filed 1–17–03; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Release of Non-Public Information—12 CFR 4." The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by February 20, 2003.

ADDRESSES: You should direct comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0200, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Joseph F. Lackey, Jr., OMB Desk Officer for the OCC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Release of Non-Public Information—12 CFR 4.

OMB Number: 1557–0200.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements contained in 12 CFR part 4 are as follows:

Section 4.33 requires a person seeking non-public OCC information to submit a request in writing to the OCC.

Section 4.35(b)(3) requires a third party to submit to the OCC a separate request for information beyond the scope of a previous request for testimony.

Section 4.37(a)(2) requires current and former OCC employees subpoenaed or otherwise requested to provide information to notify the OCC.

Section 4.37(b)(1)(i) requires any person, national bank, or other entity to seek OCC approval before disclosing non-public OCC information.

Section 4.37(b)(3) requires any person, national bank, or other entity served with a request, subpoena, order, motion to compel, or other judicial or administrative process to provide non-

public OCC information to notify the OCC.

Section 4.38(a) and (b) requires may a condition a decision to release non-public OCC information on a written agreement of confidentiality or agreement of the parties to appropriate limitations.

Section 4.39 requires requesters who require authenticated records or certificates to request certifications from the OCC.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 170.

Estimated Total Annual Responses: 170.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 467 hours.

Dated: January 10, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 03–1182 Filed 1–17–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Office; Government Owned Invention Available for Licensing

AGENCY: Research and Development Office, Veterans Affairs.

ACTION: Notice of Government Owned Invention Available for Licensing.

SUMMARY: The invention listed below is owned by the U.S. government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C.. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Mindy Aisen, MD, Department of Veterans Affairs, Director Technology Transfer Program, Research and Development Office, 810 Vermont Avenue NW., Washington, DC 20420; fax 202–275–7228; e-mail at *mindy.aisen@mail.va.gov*. Any request for information should include the Number and title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: 6,211,194 "Solution containing Nicotine".

Dated: January 9, 2003.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 03–1209 Filed 1–17–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 13
Tuesday, January 21, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7431–9]

Federal Agency Hazardous Waste Compliance Docket

Correction

In notice document 02–32908 beginning on page 107 in the issue of Thursday, January 2, 2003, make the following corrections:

1. On page 111, in the table titled **FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—ADDITIONS**, under the column "Facility name", in the fifth entry, "Gllenns" should read "Glenns".

2. On the same page, in the table titled **FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—DELETIONS**, under the column "Facility name", in the fourth entry, "Clairborne" should read "Claiborne".

3. On page 112, in the table titled **FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS**, under the column "Code", in the fourth entry, "12" should read "23".

4. On the same page, in the same table, under the column "Address", in the 13th entry, "R8AE" should read "R8E".

5. On the same page, in the same table, under the same column, in the 14th entry, "R8AE" should read "R8E".

6. On the same page, in the same table, under the same column, in the 17th entry, "36E" should read "37E".

7. On the same page, in the same table, under the same column, in the 18th entry, "36E" should read "37E".

8. On the same page, in the same table, under the same column, in the last entry, in the third line, "of Tulelake" should be removed.

9. On page 113, in the table, under the column, "Address", in the third entry, "Woodlsey" should read "Woolsey".

10. On page 114, in the table, under the column, "City", in the 11th entry, "Natick 0" should read "Natick".

11. On the same page, in the same table, under the column, "Facility Name", in the 15th entry, "Doi" should read "DOI".

12. On page 115, in the table, under the column, "Facility Name", in the third entry, "U.S. Defense Fuel Support Point" should read "U.S. Defense Fuel Support Point".

13. On page 116, in the table, under the column, "Facility name", in the second through 14th entries, "Bia" should read "BIA".

14. On the same page, in the same table, under the same column, in the 23rd entry, "BLM–Glass Buttes" should read "BLM–Glass Buttes Retorts".

15. On page 118, in the table, under the column, "Address", in the eighth entry, "Capital" should read "Capitol".

16. On the same page, in the same table, under the same column, in the 21st entry, "O='.'" should be removed.

[FR Doc. C2–32908 Filed 1–17–03; 8:45 am]

BILLING CODE ~~7505~~ 1505–01–D

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

Correction

In notice document 03–601 appearing on page 1511 in the issue of Friday, January 10, 2003 make the following correction:

In the third column, the agency heading should read as set forth above.

[FR Doc. C3–601 Filed 1–17–03; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Tuesday,
January 21, 2003

Part II

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone: Allowance System for Controlling HCFC Production, Import and Export; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7428–6]

RIN 2060–AH67

Protection of Stratospheric Ozone: Allowance System for Controlling HCFC Production, Import and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing an allowance system to control the U.S. consumption and production of ozone-depleting substances (ODSs)known as hydrochlorofluorocarbons (HCFCs). While much less destructive to the stratospheric ozone layer than chlorofluorocarbons (CFCs), HCFCs do contribute to ozone depletion and alternatives are generally available. The HCFC allowance system is part of EPA's program to reduce the emissions of ODSs to protect the stratospheric ozone layer. Protection of the stratospheric ozone layer helps reduce rates of skin cancer and cataracts. The U.S. is obligated under the Montreal Protocol on Substances that Deplete the Ozone Layer to limit HCFC consumption to a specific level and to reduce it in a step-wise fashion beginning January 1, 2004. The U.S. has also agreed to limit production to a specific level beginning January 1, 2004. This action also includes a petition process for exemptions to the January 1, 2003, phaseout of HCFC–141b.

EFFECTIVE DATE: January 21, 2003.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–98–33 at the Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW, Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202)566–1742, Fax: (202)566–1741.

FOR FURTHER INFORMATION CONTACT: Vera Au, EPA, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 564–2216.

SUPPLEMENTARY INFORMATION: Under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol), the U.S. and other industrialized countries that are Parties to the Protocol have agreed to limit production and consumption of hydrochlorofluorocarbons (HCFCs) and to phase out consumption in a step-wise fashion over time, culminating in a complete phaseout in 2030. Title VI of the Clean Air Act (CAA) authorizes the U.S. EPA to promulgate regulations to manage the consumption and production of HCFCs until the total phaseout in 2030. In 1992, a graduated consumption phaseout was established under the Protocol for industrialized countries and in 1993 the EPA established a chemical-by-chemical phaseout to implement the graduated consumption phaseout (58 FR 65018, December 10, 1993). The consumption cap became effective in 1996 and consumption in the U.S. was about 15% percent below the cap for many years. In 1998 and 1999, consumption rose to levels that approached the cap so options for an allowance system were offered for comment with the publication of the Advance Notice of Proposed Rulemaking on April 5, 1999 (64 FR 16373). The Notice of Proposed Rulemaking was published on July 20, 2001, (66 FR 38064) and a public hearing was held on August 27, 2001, for comments on the proposed rule.

Abbreviations and Acronyms Used in This Document

Act—Clean Air Act Amendments of 1990
ANPRM—Advance Notice of Proposed Rulemaking
Article 2 countries—industrialized countries
Article 5 countries—developing countries
CAA—Clean Air Act Amendments of 1990
cap—limitation in level of production or consumption
CFC—chlorofluorocarbon
CFR—Code of Federal Regulations
EPA—Environmental Protection Agency
FDA—Food and Drug Administration
FR—Federal Register
HCFC—hydrochlorofluorocarbon
NASA—National Aeronautics and Space Administration
NODA—Notice of Data Availability
NPRM—Notice of Proposed Rulemaking
ODP—ozone depletion potential (40 CFR part 82)
ODS—ozone-depleting substance
Party—Signatory country to the *Montreal Protocol on Substances that Deplete the Ozone Layer*
Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*
SBREFA—Small Business Regulatory Enforcement Fairness Act
SNAP—Significant New Alternatives Policy
UNEP—United Nations Environment Programme
U.S.—United States

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I. Regulated Entities

The HCFC allowance allocation system will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers
Chlorofluorocarbon gas importers	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters
Polystyrene foam product manufacturing	326140	3086	Plastics foam Products (Polystyrene Foam Products)
Urethane and other foam product (except polystyrene) manufacturing.	326150	3086	Insulation and cushioning, foam plastics (except polystyrene) manufacturing

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. How Do the Montreal Protocol on Substances That Deplete the Ozone Layer and the U.S. Phase Out HCFCs?

In 1990, the Parties to the Protocol identified HCFCs as transitional substitutes for CFCs and other more destructive ODSs (ozone-depleting substances). In 1992, the Parties created a detailed phaseout schedule for HCFCs, with a cap on consumption for Article 2 (industrialized) countries like the U.S. The Protocol defines consumption as production plus imports minus exports. The consumption cap is derived from the formula of 2.8 percent of the Party's CFC consumption in 1989, plus the Party's consumption of HCFCs in 1989. Based on this formula, the consumption cap for the U.S. is 15,240 ODP-weighted metric tonnes, effective January 1, 1996.

The Parties created a schedule with graduated reductions and the eventual phaseout of the consumption of HCFCs. The schedule calls for a 35 percent reduction of the cap in 2004, followed by a 65 percent reduction in 2010, a 90 percent reduction in 2015, a 99.5 percent reduction in 2020, and a total phaseout in 2030. The U.S. must comply with this phaseout schedule under the Protocol.

In 1992, EPA was petitioned by environmental groups and industry to implement the required phaseout by eliminating the most ozone-depleting HCFCs first. Based on the available data at the time, EPA believed that the U.S. could meet, and possibly exceed, the required Protocol reductions through the chemical-by-chemical phaseout. In 1993, as authorized by Section 606 of the Clean Air Act Amendments of 1990 (CAA), the U.S. established a phaseout schedule that will eliminate HCFC–141b, HCFC–22, and HCFC–142b first (58 FR 65018, December 10, 1993; 58 FR 15014, March 18, 1993).

In 1999, the Parties agreed to a cap on HCFC production for industrialized countries, effective January 1, 2004. This cap was derived from the average of the Party's consumption cap (2.8 percent of the Party's CFC consumption in 1989, plus the Party's HCFC consumption in 1989) and the result of the same formula for production (2.8 percent of the Party's CFC production in 1989, plus the Party's HCFC production in 1989). This formula results in a U.S. production cap of 15,537 ODP-weighted metric tonnes. As authorized by Section 606 of the CAA, EPA is adopting provisions in today's rule that are consistent with that production cap.

B. What Sections of the Clean Air Act Apply to This Rulemaking?

Five sections of the CAA apply to this rulemaking. Section 602 requires that EPA publish a list of class II controlled substances. This list appears in 40 CFR part 82, subpart A, Appendix B. Since publication of the initial list, no new substances have been added to the list. Section 602 also requires that EPA assign ozone-depleting potentials (ODPs) to all class II controlled substances. Appendix B to part 82, subpart A in the regulatory text of this document lists class II controlled substances and their corresponding ODPs as currently specified by the Protocol.

HCFC reporting requirements mandated in Section 603 were in 40 CFR 82.13(n) and (o) but have been removed. Recordkeeping requirements and amended reporting requirements have been placed instead in 40 CFR 82.24.

Section 605 of the CAA requires EPA to promulgate regulations to phase out the production and consumption and restrict the use of HCFCs in accordance with the schedule set forth in that

section and subject to any acceleration as authorized by Section 606.

Section 606 allows for acceleration of the phaseout of ODSs based on a decision by EPA or to conform to any acceleration under the Protocol.

Section 607 of the Act requires EPA to permit the transfer of any class II allowances on an ODP-weighted basis with an offset. The transfer plus the offset must result in greater total reduction in production in that year than would otherwise occur, to provide an environmental benefit.

Section 616 allows the U.S. to transfer allowances to another Party under certain conditions. Although the language in paragraph 5 bis of Article 2 of the Protocol restricts the U.S. from trading away HCFC consumption allowances to another Party because of the U.S. per capita consumption of CFCs in 1989, it is possible for the U.S. to trade production allowances.

III. Discussion of Comments on the July 20, 2001, Notice of Proposed Rulemaking (NPRM)

EPA published an NPRM on July 20, 2001, proposing an allowance allocation system and a petition process for HCFC–141b (66 FR 38064). Thirty-three comments were filed in Docket A–98–33 and fourteen of the forty attendees spoke at the public hearing held on August 27, 2001, in Washington, DC. The comments that arrived after the close of the comment periods were filed in the docket. Five producers and three importers were among the commenters; at times the producers who are also importers commented as members of the second group. Sixteen of the commenters were either distributors or users of HCFCs and four commenters were trade associations representing producers, importers, users, or a combination of the three. Four of the companies had more than one representative send in comments.

For a more detailed discussion of the options for an allowance allocation system that led to the proposal, refer to the ANPRM (Advance Notice of Proposed Rulemaking) published April 5, 1999 (64 FR 16373).

A. Will Production and Consumption Allowances Be Available?

EPA created a unit of measure called an allowance to control production and consumption of class I substances and made it equal to one kilogram of the ODS. An allowance represented the marketable rights and privileges granted to a company to produce or import a specific quantity of the specific substance. There were two types of allowances: production allowances and consumption allowances.

In the allowance system for class I ODSs, a company was required to expend both production and consumption allowances to be able to produce. A company was required to expend consumption allowances to be able to import. Consumption allowances were refunded or returned to the exporting company for future use in the same calendar year after EPA received proper documentation reflecting an export.

EPA proposed to use both production and consumption allowances in the HCFC allowance system. EPA proposed requiring a company to expend both consumption and production allowances to be able to produce HCFCs. To be able to import, EPA proposed requiring a company to expend consumption allowances. EPA proposed that after submitting the proper documentation verifying an export, the company would be refunded consumption allowances. Besides seeking comment on the inclusion of production and consumption allowances in an HCFC allowance system, EPA also requested comment on the potential value of an allowance. The proposal asked for comment on the potential value of an allowance and whether it would take into account the differing ozone depletion potentials of each HCFC and each HCFC's impending phaseout date.

Only two commenters chose to mention production and/or consumption allowances. One commenter generally supported having production and consumption allowances in the HCFC allowance system. The other commenter was only concerned about production allowances for HCFC–141b.

With today's action, EPA is including consumption and production allowances in the HCFC allowance system for several reasons. The consumption cap that is already in place and the production cap that will be effective in 2004 necessitate the allocation of both types of allowances. Because many companies receiving allowances are familiar with the class I system of allowances, EPA believes their experience with the class I system will simplify the management of the class II allowance system. EPA is also requiring a company to expend both consumption and production allowances to be able to produce. To be able to import, EPA is requiring a company to expend consumption allowances. EPA is requiring a company to submit the proper documentation to EPA to verify an export for the refund of the consumption allowances associated with the quantity of HCFC exported.

B. Will Allowances Be Tracked Chemical-by-Chemical?

As in the class I allowance system, EPA is assigning each allowance a value of one kilogram of a class II controlled substance. To produce or import, companies will expend allowances by kilograms.

EPA proposed instituting a chemical-by-chemical absolute kilogram system for allocating and transferring allowances rather than an ODP-weighted approach. Of the ten commenters who commented on this issue, five were in favor of the ODP-weighted approach and five in favor of the chemical-by-chemical approach. One of the commenters favoring the chemical-by-chemical approach believed that it was the simplest for accounting purposes and would provide EPA with the least amount of recordkeeping. This commenter also believed that it provided less chance of error from a company using the wrong formula to convert ODP weighting between chemicals. Flexibility in trading allowances was an important concern for all the commenters. Three of the commenters supporting the ODP-weighted system felt the chemical-by-chemical system would be acceptable as long as maximum flexibility in trading was retained.

Since the U.S. is implementing the phaseout on a chemical-by-chemical basis as discussed in the proposal, EPA will need to monitor production and consumption of each chemical. As one commenter pointed out, a "chemical-by-chemical allowance system will promote chemical-by-chemical recordkeeping and reporting." A more detailed discussion of the need for a chemical-by-chemical approach is contained in the proposal.

EPA is establishing the chemical-by-chemical absolute kilogram system to allocate and transfer allowances in the HCFC allowance system. The production of one kilogram of HCFC would require the expenditure of one production allowance and one consumption allowance. The import of one kilogram of HCFC would require the expenditure of one consumption allowance.

Part of the flexibility included in the HCFC allowance system in response to the commenters' concern about ease of transferring allowances is EPA's decision not to group HCFCs (Section III.G.1). Class I substances were grouped and transfers were only permitted among class I substances in the same

group. With today's action, allowance holders may trade allowances among HCFCs. The offset EPA has selected to impose on transfers should not be a burden or hinder the flexibility of the system (Section III.G.8).

C. Will Allowances Be Distributed on a One-Time Basis?

EPA proposed allocating HCFC allowances on a one-time basis. This would mean the allocations would remain the same from control period to control period (one calendar year to the next) until each chemical is phased out or until the percentage of baseline allowances is reduced to ensure compliance with the Protocol cap. Only through permanent transfers of allowances would a company's baseline allocation be changed.

Of the eight commenters on this issue, seven were in favor of a one-time allocation. One commenter believed that a one-time distribution of allowances is the simplest allocation method from both the EPA's and the company's perspective. Many of those that favored a one-time allocation expressed a concern that the long-term use of one-time allocations would not adequately reflect future market needs.

One commenter proposed that EPA allocate on a year-by-year or period-by-period basis, with each period covering 2–3 years. EPA believes that both of these methods would create much uncertainty in the industry and require constant readjustment of baselines by EPA and industry. EPA believes that a year-by-year allocation would hamper allowance holders' long-term planning for production or import. EPA also believes that allocating every two or three years would only be a minor improvement over the year-by-year method and create administrative burden for both the Agency and industry. Therefore, EPA is not adopting either of these methods.

One producer noted the critical need for reallocation prior to 2010 for on-going service needs for equipment manufactured prior to December 31, 2009. This commenter favored a one-time allocation of the full 10 percent permitted at least one year prior to the 2010 phaseout date. EPA recognizes the need to determine the allocation level for the 2010 reduction step in HCFC–22 and HCFC–142b allowances and will monitor the market to determine the quantity needed for servicing equipment manufactured before December 31, 2009. EPA intends to achieve this reduction step through notice and comment prior to 2010 and will likely implement the reduction by simply listing a percent of baseline allowances to be granted in Section 82.16 for years after 2009.

EPA proposed distributing baseline allowances for all HCFCs but believes that the continuously developing HCFC market would be hampered by such a distribution. Many commenters favored changing the baseline allocations at some future date to reflect shifts in the market. EPA is therefore distributing baseline HCFC allowances only for HCFC–141b, HCFC–22 and HCFC–142b on a one-time basis. The reductions and phaseout of these three HCFCs are earlier than for the other HCFCs because they are more damaging to the ozone layer. EPA believes that the HCFC market may continue to evolve and that some sectors may switch from the higher ozone-depleting HCFCs, such as HCFC–141b, HCFC–22, and HCFC–142b to the lower ozone-depleting HCFCs, such as HCFC–123, HCFC–124, and HCFC–225ca and HCFC–225cb. EPA believes that the current market proportions of these lower-ODP HCFCs do not reflect the needs of a rapidly expanding market and that distributing allowances for these HCFCs at this time would unnecessarily restrict their supply and impede transitions to less ozone-depleting substances. EPA intends to continue to monitor the market trends as more users transition to less ozone-depleting HCFCs and as more non-ozone-depleting alternatives become available.

D. Will 100 Percent of the U.S. Cap Be Allocated?

EPA proposed allocating 100 percent of historical HCFC activity in the U.S. after determining that the aggregate of each individual company's highest consumption and production would be below the caps.

Thirteen commenters agreed that EPA should allocate at least 99 or 100 percent of the consumption and production caps to maximize the available material to meet the needs of the marketplace. Producers, importers, and users were unanimous in this respect. They believed that allocating less could result in artificial shortages or increase the price of HCFCs. Three of the commenters had no objection to allocating allowances to new entrants or narrow post-phaseout uses of HCFC–141b but felt that the remaining allowances under the cap should be reallocated. They argued that not allocating those allowances would leave a shortfall in the marketplace and place unnecessary pressure on users.

One importer believed that EPA should determine a fair allocation to eligible late entrants and then determine if this method provided an equitable allocation before allocating 100 percent of baseline consumption. This commenter believed that small and disadvantaged businesses did not have the economic resources of the larger multinational companies, especially the producers. According to the commenter, such small businesses would have the ability to continue their business and meet their business plan if they receive an equitable allocation.

1. Consumption Allowances

EPA proposed allocating 100 percent of each company's historical consumption as the baselines for all class II controlled substances and reserving the remaining amount above these aggregate baselines and below the cap for eligible late entrants into the HCFC market and as credits for reductions of substitutes regulated under Title VI that are created as by-product(s) in the manufacture of HCFCs (Section III.M). EPA proposed that new entrants would be small businesses that began importing after the end of 1997 and before April 5, 1999, the date of publication of the ANPRM. EPA believes that such small businesses might not have been aware of the impending rulemaking that would affect their ability to continue in the HCFC market.

Although all commenters indicated a preference for allocating 100 percent of the allowances under the consumption cap, some were willing to grant allowances to late entrants and narrow post-phaseout uses of HCFC–141b. A commenter from the user community of HCFCs had no objection to allocating to new entrants but felt that the remaining allowances after that allocation is completed should be distributed to avoid unnecessary pressure on users. Another commenter from the same community suggested a formula for distributing remaining allowances under the cap after the need for narrow post-phaseout uses of HCFC–141b was satisfied. That same commenter also felt that the amount for narrow post-phaseout uses of HCFC–141b should not exceed 2 to 5 percent. None commented on credits for reductions of substitutes regulated under Title VI that are created as by-product(s) in producing HCFCs. There were also no commenters on the possibility of auctioning off the remaining allowances. Most commenters were in favor of re-allocating the remaining allowances to listed allowance-holders.

With today's action, EPA is allocating up to 100 percent of the U.S. consumption cap by allocating consumption allowances to listed individual companies only for HCFC–

141b, HCFC–22, and HCFC–142b. Included in today's allocation are allowances for a new entrant to the HCFC market in accordance with the proposal. EPA is allocating the full amount of the U.S. consumption cap by distributing allowances on a pro-rata basis to the listed allowance-holders above their highest historical consumption and after the needs of new entrants have been addressed. EPA will not reserve any allowances as credits for reductions of substitutes regulated under Title VI that are created as by-product(s) in producing HCFCs.

EPA will continue to monitor HCFC market trends and consider whether to adjust the allowance allocations through notice and comment rulemaking to ensure the U.S. meets its obligations under the Protocol.

2. Production Allowances

Using the formula agreed to by the Parties in 1999 for calculating the production cap, U.S. production would be frozen at 15,537 metric tonnes through the various phaseout years beginning with 2004. The United States' formal obligation to comply with the cap would begin following Senate ratification of this change to the Protocol and the deposit of the U.S. instrument of ratification with the United Nations. Today's rule avoids any actions that would be inconsistent with this obligation. If the Parties change the current provisions associated with the production cap, EPA will amend its regulations to reflect any changes in U.S. obligations under the Protocol.

Since the aggregate of each company's historical production is below the production cap, EPA proposed allocating 100 percent of each company's historical production level as the baseline for production allowances. One producer who noted that the aggregate of production baselines was well below the production cap proposed using the difference between the aggregate and the cap solely for HCFC–141b because the commenter felt the HCFC–141b sector is clearly under-served versus current market demand. Since EPA anticipates the need to allocate allowances for narrow post-phaseout uses of HCFC–141b, EPA is establishing a petition process for HCFC–141b exemption allowances, as discussed below in Section E. The quantity of HCFC–141b exemption allowances that will be allocated for narrow post-phaseout uses will be determined after review of the petitions.

Nine commenters were concerned about what would happen if a producer chose not to use all of its allowances or decided to permanently discontinue production of an HCFC. Three were in favor of retiring unused allowances. Some of these commenters believed a company that restricted production in order to create a larger market share for an alternative would receive a financial windfall. By discontinuing production, a company could create a larger market share for a higher-priced alternative it preferred to promote. They also felt that granting allowances to a company that had ceased production meant rewarding the company with marketable assets it did not deserve. These commenters were concerned that allowing a company to hold back its allowances could create HCFC shortages and price increases. Six were in favor of reallocating the unused allowances to the remaining allowance holders of that specific HCFC to prevent market shortages or price increases. One commenter also suggested that any unused HCFC–141b production allowances should be reallocated on a pro-rata basis among HCFC–141b allowance-holders rather than among all HCFC allowance-holders.

Since baselines were determined on the basis of the highest historical production for each company in the years 1994 through 1997, EPA believes that allocating to all the companies active in those years will provide a potential supply of HCFCs that exceeds the historical demand but that most accurately reflects the true HCFC market in the United States during that period. Although the Agency proposed allocating each company its highest production during the particular years, resulting in an aggregate U.S. production less than the U.S. cap, with today's action EPA is allocating each company an additional pro-rata amount above their highest historical production which brings the U.S. aggregate allocation up to and equal to the cap. Because allocating allowances up to the cap should ensure a more than adequate supply of HCFCs, EPA is not including provisions in today's action that would require reallocation of production allowances that have not been used. Finally, today's action makes allowances easily tradable with minimal regulatory interference and oversight, thereby encouraging companies to make business decision as they would in an unregulated industry.

Because production will be frozen at a constant level throughout the various phaseout years, EPA is granting export production allowances so that U.S. producers can manufacture and export the phased-out HCFCs following the respective production phaseouts. Beginning January 1, 2004, export production allowances can only be used to produce for export either to: (1) Parties listed in Appendix L who are also listed in Appendix C as having ratified the Beijing Amendments or (2) Parties not listed in Appendix L that are listed in Appendix C as having ratified the Copenhagen Amendments. Prior to January 1, 2004, there is no HCFC trade restriction under the Montreal Protocol. A more detailed discussion concerning the allocation and expending of export production allowances can be found in Section III.H. below.

E. Will There Be HCFC–141b Exemption Allowances for Continuing Needs?

1. Who May Submit a Petition for HCFC–141b Exemption Allowances Beyond January 1, 2003

On July 20, 2001, EPA proposed to provide space vehicle/defense allowances for HCFC–141b to a U.S. agency, department or instrumentality, or related entities involved in space vehicle endeavors. EPA proposed allocating these exemption allowances for extremely narrow needs after a demonstration by petition to EPA that no viable alternative exists for HCFC–141b and that space vehicle or national security viability is at issue if HCFC–141b cannot be used for the specified purpose (66 FR 38064). EPA also proposed to provide allowances to U.S. military departments for extremely narrow needs after a demonstration by petition to EPA that no viable alternative exists for HCFC–141b in narrow defense uses such as cleaning of oxygen equipment and aircraft parts. Based on information provided to the Agency prior to the proposal, through comments on the ANPRM published in the **Federal Register** on April 5, 1999 (64 FR 16373), EPA believed that the National Aeronautics and Space Administration (NASA), the U.S. Air Force, and the U.S. Navy were the only entities with continuing needs for HCFC–141b beyond January 1, 2003.

Because no other sectors submitted comments to the ANPRM identifying technical constraints of transitioning from HCFC–141b to alternatives, the Agency believed that technically feasible alternatives would be available for other uses and did not propose post-phaseout allowances for any other uses of HCFC–141b. However, through comments on the NPRM on July 20, 2001 (66 FR 38064) and as part of a separate action under the Agency's Significant New Alternatives Policy (SNAP) program (65 FR 42653), EPA received information to suggest that certain polyurethane foam applications, such as spray foam used for roof and wall insulation, have technical

constraints that may impede their transition away from HCFC–141b by January 1, 2003. To address these concerns and any unforeseen need for HCFC–141b, two commenters recommended that EPA allow any entity to petition the Agency for HCFC–141b allowances beyond January 1, 2003. EPA could then, on a case-by-case basis, evaluate the petitioner's assertions that no viable alternatives are available to meet the needs of that specific petitioner. With today's action, EPA agrees with comments indicating there may be legitimate needs for limited HCFC–141b production and import beyond January 1, 2003 for non-space/defense applications. Therefore, EPA is expanding the petition process to also include any HCFC–141b formulator who can identify technical constraints in transitioning from HCFC–141b to alternatives. In § 82.3, EPA is defining formulator as an entity that distributes a class II chemical(s) or blends of a class II chemical(s) to persons who use the chemical(s) for a specific application identified in a petition for HCFC 141-b exemption allowances. Further, in order to reflect the expansion of the petition process, EPA is using the term "HCFC–141b exemption allowance" in the final rule in lieu of "space vehicle/defense allowance." EPA is adding a definition of "HCFC–141b exemption allowance" to § 82.3.

Although EPA is creating a process to allow any HCFC–141b formulator to petition for production or import allowances for HCFC–141b beyond January 1, 2003, the Agency believes that there will be a small number of petitioners with legitimate claims that there are no technically viable and commercially available alternatives to HCFC–141b beyond January 1, 2003. EPA believes that some petitioners in the following categories are most likely to meet the criteria established in today's rulemaking:

- A U.S. agency, department or instrumentality, or related entities involved in space vehicle endeavors;
- U.S. military departments for defense uses such as cleaning of oxygen equipment and aircraft parts; and
- Some formulators that produce polyurethane foam systems for use in insulating spray and pour foam applications.

Each individual petitioner must provide a clear and specific justification for needing access to HCFC–141b production or import beyond January 1, 2003. The Agency will accept and review annual submissions of petitions which will provide up-to-date information on HCFC–141b needs. As described in more detail below, the petitioner must provide adequate documentation to prove that alternatives are not technically viable, and that stockpiled HCFC–141b is not technically or commercially available (for example, taking into consideration undue costs for storage and transportation) to meet their transitional needs.

2. Definition of "Space Vehicle"

Several commenters asked EPA to define "space vehicle" in order to clearly establish what is covered under "space vehicle endeavors". These commenters asked the Agency to adopt an existing definition established at 40 CFR 63.742 for the National Emissions Standards for Hazardous Air Pollutants (NESHAP) program. That definition, which was established specifically for the NESHAP for Aerospace Manufacturing and Rework Facilities, is:

> Space vehicle means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with tests, transport, and storage, which through contamination can compromise the space vehicle performance.

To establish a consistent definition, EPA agrees with the proposed language and has included it with other definitions in § 82.3 of this final rule. However, because this definition encompasses a broad spectrum of equipment and/or applications, EPA would like to emphasize that HCFC–141b exemption allowances will only be granted for particular uses where HCFC–141b alternatives have not been developed to meet the technical demands of the specific space vehicle application (*e.g.*, foam blowing agent for thermal protection system needs of space vehicles designed to travel beyond the limit of the earth's atmosphere). As discussed in more detail below, the technical constraints of the specific application must be described in detail in the petition.

3. Definition of "Formulator"

In § 82.3, EPA has also defined "formulator" so that it is clear who may petition the Agency for HCFC–141b exemption allowances beyond January 1, 2003. A "formulator" is an entity that distributes a class II controlled substance(s) or blends of a class II controlled substance(s) to persons who use the controlled substance(s) for a specific application identified in the formulator's petition for HCFC–141b exemption allowances. In all the HCFC–141b uses EPA is aware of, the formulator is responsible for meeting the testing and code requirements as opposed to the end user. Therefore, in order to reduce the burden of petitioning, EPA designed the process so the end user does not apply for the exemption allowance. The petitioners should either be the intermediary who blends the HCFC–141b and sells it to an end user or in cases where the end use application employs just the HCFC–141b directly, the petitioner should be the chemical manufacturer. Formulators include system houses who produce polyurethane foam systems for use in spray and pour foam applications. A foam system typically consists of two transfer pumps that deliver the ingredients (polyisocyanate from one side and a mixture including the blowing agent and stabilizers from the other side) to a metering/mixing device which allows the components to be delivered in the appropriate proportions. The components are then sent to a mixing gun and dispensed as foam directly to a surface such as a roof or tank. Spray foam is a polyurethane or polyisocyanurate cellular plastic which is applied as an atomized liquid or froth directly onto a substrate using commercial spray foam equipment specifically designed for this purpose. This liquid or froth begins to react, rise, and form its cellular structure in place on the substrate in typically less than 1–2 seconds after it is applied. Spray foam is generally used as a thermal insulation, floatation aid or air infiltration barrier.

Spray and pour foam applications account for approximately 20% of the HCFC–141b used in 2001. The spray foam sector of the polyurethane industry is a diverse sector that involves an array of applications including: Roofing, building envelope insulation, agriculture tanks, pipes and vessels, marine and original equipment manufacture (OEM). The pour foam sector of the polyurethane industry is also a diverse sector that involves an array of applications including: Commercial refrigeration (such as walk-in coolers but not consumer refrigeration), doors (such as entry doors or garage doors), refrigerated transport, picnic coolers, vending machines, commercial and residential architectural panels, tank and pipe insulation, marine flotation foams, floral foam, and taxidermy foams.

Because formulators produce polyurethane systems for a wide array of applications, EPA would like to emphasize that HCFC–141b exemption allowances will only be granted where a petitioner can demonstrate that stockpiled quantities of HCFC–141b

produced prior to January 1, 2003 are not or will not be available in sufficient quantities and the HCFC–141b alternatives have not yet been developed to meet specific technical constraints within a particular application (*e.g.*, spray foam for roofing applications).

The definition of "formulator" will also cover manufacturers that blend and package pressurized aerosol solvents. Although HCFC–141b is illegal in most non-aerosol solvent applications, it is an acceptable substitute as an aerosol solvent in certain cleaning applications and as a mold release agent. One commenter expressed concern with the timing of the HCFC–141b phaseout and the ability of aerosol solvent packaging companies to transition. EPA believes that sufficient alternatives are available for these applications in general and that it is unlikely that a petitioner would be able to demonstrate that they meet the criteria established under § 82.18 for additional HCFC–141b production/import beyond January 1, 2003. However, EPA believes it is appropriate to keep the petition process open to users of HCFC–141b as an aerosol solvent so that the Agency can address any need that may arise in the aerosol solvent end use. Furthermore, given the definition of formulator, EPA recognizes there might be other niche applications not specifically covered by SNAP that could legitimately petition and qualify for the HCFC–141b exemption. Thus, the petition process is open to other formulators of products containing HCFC–141b, enabling EPA to evaluate and address the various needs across multiple sectors in the most effective manner.

4. Petition Process To Include All HCFC–141b Formulators

EPA believes it is appropriate to open the petition process for all formulators of HCFC–141b. This will provide all HCFC–141b users an equal opportunity to demonstrate their need for an "HCFC–141b exemption allowance." At this time and based on the information the commenters provided, the Agency believes that entities involved in space vehicle endeavors, U.S. military departments that use HCFC–141b for defense-related applications, and formulators within the spray polyurethane foam sector are likely to have the clearest need for "HCFC–141b exemption allowances."

In response to the HCFC allowance allocation proposal published on July 20, 2001 (66 FR 38081), EPA received requests for an extension to the HCFC–141b phaseout for the spray and pour polyurethane foam sector. EPA received seven comments on the continued need for HCFC–141b in this sector past the production and import ban effective January 1, 2003. Reasons given for such an extension were: (1) Lack of commercially viable alternatives; (2) minimal environmental impact; (3) the same consideration as the space vehicle/defense entities that requested an exemption; (4) availability of production and consumption allowances under the cap; (5) inability of small businesses to stockpile; and (6) the results of the Caleb Management Services report (discussed below).

EPA also received comments from spray and pour foam manufacturers as part of a separate action under the Agency's Significant New Alternatives Policy (SNAP) program (65 FR 42653). In that action, EPA proposed a variety of restrictions on the use of HCFCs in foam end-uses.

A final rule was published on July 22, 2002, under the SNAP program (67 FR 47703). In response to comments on the proposal, the Agency gathered additional information on certain sectors. The Agency published a Notice of Data Availability (NODA) on May 23, 2001, making the new information pertaining to the foam industry available for public comment (66 FR 28408). The NODA included a review of the challenges facing the polyurethane spray foam industry and other systems house based applications (Air Docket A–2000–18, IV-D–78). This review was conducted by an EPA consultant who was hired to assess HCFC foam sector usage in the U.S. and determine the technical viability of alternatives in those applications (Caleb Management Service report). The Caleb report identified some technical hurdles faced by some current HCFC–141b users in spray and pour foam applications.

As with other insulation, spray foam products must meet product-specific standards which in turn are cross-referenced into the various building codes operated across the country. Technical considerations for final products in the spray and pour foam sectors include thermal performance, durability, density, cell structure (open vs. closed), finish, surface adhesion, and dimensional stability of the foam along with its ability to meet fire codes. Technical challenges that are unique to this sector are a function of the ambient conditions under which spray (and sometimes pour) foam are applied. These ambient conditions result in the potential need for special equipment and a wide array of formulations to meet different ambient conditions and the variety of end-use applications. Extensive field trials are also needed to ensure that foam can be applied properly and that it will maintain its structure and thermal insulation value over time. Re-formulating and testing is typically done by each systems house. Systems houses are relied upon for much of the technical expertise and support provided to on-site contractors and others in the sector.

There are approximately 15–20 U.S. systems houses that formulate spray foam systems for roofing contractors and other customers that number in the thousands. Several systems house companies are large businesses, but many are small businesses. Although EPA believes that alternatives to HCFC–141b are currently or potentially available for spray foam applications, some smaller systems houses may need more time to develop and fully test these next-generation spray foam alternatives, especially for roofing applications where durability over multiple seasons has to be evaluated. Therefore, by opening the petition process up to formulators of HCFC–141b, the Agency is providing the smaller systems houses with flexibility so that diligent efforts can be taken, where needed, to test the next generation products, meet building codes and fire tests, and to have commercially available products. However, the Agency is committed to facilitating the transition away from ozone-depleting compounds as quickly as possible. Timing is discussed in more detail below.

Pour foam systems are also developed by systems houses. Some pour foam applications have thermal performance requirements similar to spray foam. Also, like spray foam systems, pour foam products tend to be sold in drums or other containers where the isocyanate is kept separate from the blowing agent and other ingredients (systems). However, there are some significant distinctions between the two end-uses. For example, some applications in these sub-segments are factory-controlled (e.g., commercial refrigeration) which means greater potential for making a liquid to gaseous transition or implementing hydrocarbon alternatives. Additionally, many pour foam applications do not have rigorous product requirements such as thermal insulation value, or extended field tests under ambient conditions.

Given the broadening of the petition process and development of the HCFC–141b exemption allowances, EPA recognizes that some formulators may petition the Agency for additional HCFC–141b in pour foam applications because their ability to use the same equipment in mixing spray and pour

formulas is central to their operations. However, EPA does not believe that the technical constraints that arise from product requirements and field application of spray foam also necessarily apply to pour foam applications. For example, although buoyancy foam may demonstrate very similar application constraints and concerns as spray foam, there is no thermal requirement associated with buoyancy foam, and field trials of new formulations over several seasons are not required. Many companies with pour foam applications have already made transitions from HCFC–141b to gaseous blowing agents such as HFC–134a, HCFC–22 and HCFC–22/142b blends, and liquid blowing agents such as hydrocarbons and water. Nonetheless, EPA will consider petitions for pour foam and other HCFC–141b applications because, within the wide range of end-uses, there may be HCFC–141b users who currently have technical constraints in transitioning from HCFC–141b to non-ozone-depleting alternatives. EPA believes that it is appropriate to allow these formulators to demonstrate their needs. If formulators within these or other applications can demonstrate that they have not had access to and/or have been unable to fully implement ozone-friendly alternatives to meet their thermal or dimensional performance, flammability control or other product requirements, and they meet the criteria established in § 82.18, EPA will grant a limited quantity of HCFC–141b exemption allowances for a limited time.

5. Information Supporting Decision to Expand the Petition Process

All of the information can be obtained through EPA's Air Docket (see Addresses section above for docket contact info). Please refer to Air Docket A–98–33 when seeking supporting documents.

Allocation Rule: Comments on the space vehicle/defense petition process and other HCFC–141b users' needs for HCFC–141b beyond January 1, 2003. *Air Docket:* A–98–33: IV–D–07, IV–D–09, IV–D–14, IV–D–18, IV–D–26, IV–D–27, IV–D–30, IV–D–32, IV–F–03, IV–F–05, IV–G–01, IV–G–02, IV–G–03, IV–G–04.

SNAP Rule: Pre-proposal letters, Comments to the July 11, 2000 SNAP proposal (65 FR 42653), Notice of Data Availability (NODA) published on May 23, 2001 (66 FR 28408) and comments to the NODA. Air Docket: A–98–33, IV–D–66.

Other Correspondence: The Agency received a variety of additional correspondence commenting on the issue of the HCFC–141b phaseout on January 1, 2003, and a possible extension and/or exemption. A specific request for an extension to the HCFC–141b phaseout was submitted to the Agency by Polythane Systems, Inc. As part of this request, the commenter asserted that a combination of factors would prevent their company, as well as others in the pour and spray foam industry, from being able to transition from HCFC–141b by January 1, 2003. These factors include safety and flammability concerns and unavailability of sufficient test quantities of alternative blowing agents, the need for several years of field testing of new roof technologies to ensure adequate performance, and economic and logistical constraints in accessing stockpiled quantities of HCFC–141b. Many letters in support of the Polythane Systems, Inc. request were sent to EPA by individual companies and Congressional representatives. *Air Docket:* A–98–33: IV–D–35 to IV–D–64 and IV–G–06, IV–G–07, IV–G–08, IV–G–09.

6. Reason for Petition Process

Of the seven commenters to the proposal who addressed continued use of HCFC–141b, five favored a broad extension of the phaseout date for HCFC–141b until proven cost-effective alternatives are available. Some commenters suggested that HCFC–141b be phased out later than 2003 and suggested that 2004, 2005, 2020, or 2029 be the new phaseout date. Others suggested no phaseout date at all. Two commenters indicated a preference for granting an exemption to the spray and foam polyurethane sector after January 1, 2003, by providing allowances modeled after the space vehicle/defense allowances proposed in the July 20, 2001, rule.

In light of these comments, EPA considered whether it was appropriate to extend the phaseout, grant an industry-wide exemption or provide an exemption modeled after the space vehicle/defense petition process proposed. After considering these options, EPA maintains that it is inappropriate to change the January 1, 2003 phaseout date established in 1993 or grant an industry-wide exemption for the spray/pour foam industry. Within the spray and pour foam industry there are disparities between those who have had access to alternatives and resources to implement alternatives in a timely fashion and those who have faced legitimate technical hurdles because they have not had access to alternatives. Additionally, there are numerous end-use applications within this industry and HCFC–141b may be needed in some applications and not in others. EPA does not believe it is appropriate to provide an industry-wide exemption to accommodate those specific companies and/or end-uses that may need a limited amount of HCFC–141b, for a limited time. Further, EPA does not believe an industry-wide exemption would guarantee that small users with technical constraints would have access to the HCFC–141b produced after January 1, 2003, because they would be forced to compete with other companies for a limited amount of HCFC–141b. Also, EPA believes that an industry-wide exemption limited to the spray and pour foam industry would not provide for unforeseen needs for HCFC–141b in other sectors. Finally, hundreds if not thousands of companies have been relying on the phaseout date for HCFC–141b for nearly 10 years and have made investments accordingly. EPA believes that changing that date would be unfair to those companies who have invested in the transition from HCFC–141b.

EPA believes that expanding the petition process in today's rule provides access to additional HCFC–141b beyond January 1, 2003 for legitimate needs.

7. Total Quantity for Exemption

EPA proposed (July 20, 2001) to limit the total quantity of the HCFC–141b exemption per year for space vehicle or narrow defense needs to one (1) percent of the aggregate of the U.S. HCFC–141b baselines. This reflected the expected small number of requests for small quantities from space vehicle/defense uses. Several commenters requested that EPA state the exact amount in order to clarify that their specific space vehicle/defense needs could be met. Because EPA is expanding the petition process in today's final rule, the Agency is not adopting its proposed limit on the amount of HCFC–141b that would be available for the space vehicle/defense needs. The quantity provided will be based on the needs of each petitioner as demonstrated through their petition (*see* § 82.18). The U.S. obligation under the Protocol is to control consumption [production + import − export], with a 35 percent reduction in the HCFC consumption cap beginning January 1, 2004. EPA will not authorize quantities of HCFCs under the exemption process that would cause the U.S. to exceed the HCFC consumption cap as agreed under the Montreal Protocol. If HCFC–141b requested in petitions exceeds the amount available under the cap, preference will be given to petitioners who can demonstrate the most vital

needs and the available amount may be allocated on a pro-rata basis.

8. How Long EPA Will Continue To Receive/Review Petitions

EPA proposed to create an exemption process for the continued production or import of HCFC–141b up to January 1, 2010 for applications related to critical space vehicle needs or narrow defense needs in cases where alternatives and stockpiled, recovered or recycled quantities are deemed to be technically infeasible for use. EPA believed that this was appropriate because the 65 percent reduction in consumption required by 2010 to meet U.S. obligations under the Montreal Protocol may preclude continued availability of the space vehicle/defense exemption beyond 2010. In the proposal, EPA stated that the availability of the exemption would be revisited in the rulemaking implementing the January 1, 2010 phaseout.

Space vehicle/defense commenters agreed that the 2010 time frame was reasonable as long as EPA adhered to the stated intention to revisit the possibility of providing exemptions beyond 2010 for space/vehicle and defense needs. Because these commenters indicated that they may need HCFC–141b beyond 2010, EPA has decided to withdraw this proposed end-date for the petition process for space/vehicle defense needs. Instead, the quantity that might be granted for space vehicle/defense needs will be analyzed during periodic petition reviews in light of available amounts under the U.S. Protocol cap. Although the 65 percent reduction in consumption required in 2010 may preclude continued availability of the space vehicle/defense exemption, EPA will consider the consumption figures when conducting case-by-case reviews of HCFC–141b petitions. Annual renewals of petitions will provide up-to-date information on HCFC–141b needs and EPA can compare continuing needs with the current consumption figures to determine whether it is appropriate to renew exemptions. This will provide sufficient assurance that HCFC–141b exemptions will not jeopardize U.S. compliance with Montreal Protocol requirements.

Although there may be additional need for HCFC–141b in space vehicle and defense applications up to and possibly beyond January 1, 2010, it is unlikely that other petitioners will be able to meet the criteria established under § 82.18 for more than 1 year beyond January 1, 2003. The only industries which have indicated need for HCFC–141b beyond January 1, 2003, are the spray and pour sectors of the foam industry, in particular small systems houses that develop spray and pour foam formulations. EPA believes that the large part of the spray and pour foam sector will be well into alternative development by January 1, 2003. Although there may be continuing research into new alternatives, much of the work is expected to be completed over the next year in developing potential systems for in-house trials, conducting preliminary fire testing and field testing, conducting additional fire testing to certify building code requirements, and finally observing field trials. Field trials could take 6 to 12 months or more.

In anticipation of the HCFC–141b phaseout, systems houses have been aggressively formulating foam systems and testing new foam products containing alternatives to HCFC–141b. Spray and pour foam products that meet all relevant thermal, flammability and other product requirements using HCFC–141b alternatives are commercially available today, such as foam for garage and entry doors, picnic coolers, refrigerated trucks, marine flotation foam, and water heaters. EPA recognizes that many (or all) of those products were developed on a proprietary basis and their existence does not imply that the industry as a whole has overcome all technical hurdles. However, EPA believes that the current availability of foam systems using several HCFC–141b alternatives supports the viability of those alternatives and that technical constraints will be a function of the timing of commercial availability of the alternatives rather than technical feasibility of the alternatives. With the exception of HFC–245fa, all of the SNAP approved alternatives to HCFC–141b have been commercially available in sufficient quantities for research and development for more than 5 years. Although HFC–245fa is only now becoming fully available on a commercial scale from a recently completed plant, EPA believes the spray and pour foam industries have had access to sufficient quantities of HFC–245fa for research, development, and testing purposes since early 2001 and in many cases before. Therefore, by 2004, EPA believes that most, if not all, formulators in this sector will have had sufficient time to test and implement alternatives.

EPA believes all or almost all formulators can have fully-approved commercially available foam systems using alternatives by the end of 2004. Because EPA cannot anticipate the specific constraints of every spray and pour foam formulator, EPA is not at this time establishing an end-date to the petition process for HCFC–141b exemption allowances. Instead, EPA will review petition renewals annually to determine whether it is appropriate to continue granting HCFC–141b exemptions based on technical need. As stated above, petition requests will be compared to current consumption figures to ensure that HCFC–141b exemptions will not jeopardize U.S. compliance with Montreal Protocol requirements.

9. Information To Be Submitted in a Petition

As proposed, EPA requires that the following information be submitted by petitioners: (a) Name and address of entity; (b) Name of contact person and phone and FAX number(s), and e-mail address; (c) quantity (in kilograms) of HCFC–141b needed for each relevant control period, supported by documentation about past use for at least the previous three years; (d) quantities of HCFC–141b, if any, contained in systems that were sold to other systems houses for at least the previous three years; (e) description of markets and applications being served by use of HCFC–141b; (f) technical description of processes in which HCFC–141b is being used; (g) technical description of the specific condition(s) under which the product will be applied; (h) technical descriptions of why alternatives and substitutes are not sufficient to eliminate the use of HCFC–141b; (i) amount of stockpiled HCFC–141b (on-hand, taken title to, or available from a supplier) along with an analysis showing why stockpiled, recovered or recycled quantities are deemed to be infeasible for use; (j) an estimate of the number of control periods over which such an exemption would be necessary; (k) description of continuing investigations into and progress on possible alternatives and substitutes. Petitioners should indicate what information they are claiming as Confidential Business Information. Information claimed as confidential will be treated in accordance with EPA's regulations on confidential business information at 40 CFR part 2 subpart B. EPA will notify petitioners of deficiencies and give them an opportunity to provide information needed to fully complete the petition. However, if petitioners do not respond to EPA's requests for additional information within 15 days of the request and the petition remains incomplete, HCFC–141b exemption allowances will not be granted. Petitioners should also be aware that

EPA will consider other available information such as the availability and technical and economic feasibility of stockpiles and the industry-wide progress on implementing alternatives when deciding whether to grant exemptions.

Although EPA is expanding the petition process beyond space vehicle/defense petitioners, the Agency believes that the items listed above will provide the information EPA needs to make individual decisions on granting additional HCFC–141b to petitioners taking into account their specific application. To avoid an overly burdensome process, EPA is not requiring this information to be submitted in any specific format nor does EPA expect petitioners to generate new information. The Agency published the rule establishing the January 1, 2003, phaseout date in 1993. Thus, HCFC–141b users should be able to demonstrate that they have been engaged for some time in the process of sourcing, testing and implementing alternatives in anticipation of the phaseout. Because of the many years that have elapsed since the phaseout date was established, the information needed to address the items above should be readily available.

In order to support the quantity of HCFC–141b requested, petitioners should submit information on historical purchasing. EPA is not establishing a strict method of determining historical use. EPA will accept documentation demonstrating the petitioner's HCFC–141b use covering 3 years or more. For example, petitioners may submit existing copies of purchasing receipts or company records to support their petition request. This information will allow EPA to determine whether the total amount of HCFC–141b requested after 2003 is reasonable. If the amount requested differs significantly from the amount historically purchased, petitioners should provide a detailed explanation for the discrepancy.

A description of the markets and applications being served by use of HCFC–141b should include a description of where the chemical is used (*i.e.*, foam blowing agent, solvent) and why it provides benefits in the specific application. Petitioners will also have to provide technical descriptions of processes in which HCFC–141b is being used. For example, if a petitioner is requesting HCFC–141b for a polyurethane foam system, the petitioner must identify whether it is a spray or pour foam process and the application (*e.g.*, roofing, tank and pipe insulation). If a petitioner is requesting HCFC–141b for multiple processes and applications, the petitioner must identify the amount of HCFC–141b that is being requested for each process and application. EPA believes this information is necessary to assess the technical needs and demands of specific processes and applications. For example, EPA may approve a petitioner's request for HCFC–141b to be used in spray roofing applications, but deny the same petitioner's request for HCFC–141b in a non-insulating pour foam application.

In order for EPA to assess the merits of each petition, petitioners will need a technical description of why alternatives and substitutes are not sufficient to eliminate the use of HCFC–141b. Petitioners should indicate what technical constraints have prevented them from obtaining or implementing their preferred alternative. For example, if building or fire codes have not yet been met with existing products petitioners should provide evidence of tests demonstrating that these standards can not be met using alternatives. Petitioners must also explain why stockpiled, recovered or recycled quantities are not feasible (*e.g.*, technical or economic constraints) or are unavailable. Petitioners should provide evidence supporting this explanation. For example, technical constraints could include unavailability of HCFC–141b stockpiles that meet quality specifications because of contamination. Economic constraints could include unavailability of HCFC–141b stockpiles at prices that would not put an undue financial hardship on the petitioner. Evidence that stockpiled HCFC–141b is simply unavailable could consist of letters from suppliers indicating that stockpiled HCFC–141b is unavailable or phone logs of inquiries made on the availability of stockpiled HCFC–141b (including the person contacted and the date of the conversation).

In order for EPA to project potential future needs and assess the progress of each company in implementing alternatives, petitioners must estimate the number of control periods over which they will continue to need HCFC–141b. The estimate must be based on a detailed description of past investigations into possible alternatives and substitutes and a timeline of future efforts and activities to research and test alternatives. The detailed description of the efforts made by each petitioner to acquire, test, and implement alternatives is a critical item required in each petition. Petitioners must submit a list of alternatives considered, purchased or sampled along with the dates purchased and copies of receipts verifying that information. The petitioner must also submit a summary of their in-house development program, including summaries of all relevant test results and their significance to the petitioner's subsequent decision-making and selection of a preferred alternative(s). Full supporting test data and relevant certificates must be made available on request. This includes in-house tests (*e.g.* preliminary burn tests for foam applications) and final product tests conducted by accredited organizations such as Underwriter's Laboratory or Factory Mutual in order to determine whether products meet applicable codes. If a petitioner has made good faith efforts to test and implement their preferred alternatives and they can demonstrate that they are not yet in a position to transition away from HCFC–141b for legitimate reasons (*e.g.*, no access to stockpiles), EPA will likely approve their request for additional HCFC–141b. If a petitioner cannot demonstrate that past efforts have been made to pursue and implement alternatives, EPA will likely deny the petition.

10. Deadline for Submitting Petitions

A person seeking an exemption for the production and import of HCFC–141b under § 82.15 would need to submit a petition for the exemption under § 82.18. Although EPA proposed that petitions would be due on July 1, 2002, this date is no longer appropriate due to the timing of publication of this final rule. Although several space vehicle/defense commenters suggested that EPA allow petitioners to submit petitions up to six months after the date of final publication of this rule, that would no longer provide sufficient time for EPA to receive and review petitions and grant exemptions in light of the January 1, 2003, phaseout date for HCFC–141b. Therefore, EPA has decided to accept petitions for the 2003 control period for up to 90 days after the date of publication of this rule although petitions received within the first 30 days will be given primary consideration for an exemption. EPA believes it is important to establish a fixed date for submission of petitions in order to process petitions in a timely manner while giving the petitions due consideration and ensuring that EPA meets requirements established under the Montreal Protocol. Those who submit after 30 days, but before 90 days, are more at risk of denial on the grounds that additional allocations would jeopardize compliance with the limits established under the Montreal Protocol. Because most of the information needed to support a

petition should be readily available, EPA believes 30 days allows sufficient time for petitioners to provide the information requested and collect and compile supporting documentation. In subsequent years, the Agency will accept petition renewals on or before October 31st of the control period for an exemption for the next control period. This is explained in more detail below. Although EPA may request additional information from petitioners after these deadlines, the Agency will not consider petitions filed after these dates or entertain requests for more HCFC–141b than was requested in original petitions and/or subsequent renewals.

11. Length of Review Process

EPA proposed a 90-day review period for the space vehicle/defense petitions. In this final rule, EPA is adopting a maximum 21 business day review period for all HCFC–141b exemption petitions in order to expedite the review process and award the HCFC–141b exemption allowances to the petitioners in a reasonable amount of time. Within 21 business days, EPA will review each petition and determine the amount of HCFC–141b that will be granted to each petitioner for the specified control period. If more information is needed, EPA will contact the applicant and specify the necessary information. EPA will consider the merits of each individual petition and industry-wide data on the availability and viability of alternatives. EPA retains the right to disallow HCFC–141b exemption allowances based on information received regarding, *inter alia*, fraud, misrepresentation, inconsistency with Articles and Decisions under the Montreal Protocol, inconsistency with the CAA Amendments of 1990, or other reasons related to human health and the environment.

12. Notification of Petitioners

To allocate HCFC–141b exemption allowances, EPA will send an e-mail or letter to the petitioner identifying the total amount of newly produced or imported HCFC–141b that may be acquired within the control period by allocating HCFC–141b exemption allowances in this amount. This same letter will be placed in EPA's Air Docket A–98–33 with the total amount of the allowance redacted in order to protect the business interests of the petitioner. If EPA decides not to grant the request for any of the reasons stated in § 82.18, EPA will issue an objection letter disallowing the request which will include the reasons for the decision. Within ten working days after receipt of the objection letter, the requestor may file a one-time appeal, with supporting reasons. EPA may affirm the objection or grant allowances, as she/he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after receipt of the objection letter, the disallowance will be final on that day.

13. How HCFC–141b Exemption Allowances Will Be Expended

Once HCFC–141b exemption allowances have been granted, the petitioner must find a supplier of HCFC–141b. Holding HCFC–141b exemption allowances for production or import does not imply or mandate production or import; each user must locate a willing supplier and negotiate supply. The petitioner must locate a supplier and send a letter to the producer/importer indicating: (1) Total quantity of allowances held; (2) quantity of allowances expended to date; (3) quantity of allowances requested; and (4) a written verification that the HCFC–141b to be manufactured is for the express purpose of meeting the HCFC–141b exemption needs. In addition, the petitioner must attach a copy of the EPA letter indicating total HCFC–141b exemption allowances allocated to them. If the quantity requested does not exceed remaining allowances (total quantity of allowances held minus quantity of allowances expended to date), the producer/importer may fill the request.

14. Transfer of HCFC–141b Exemption Allowances or Carryover into Subsequent Control Periods

HCFC–141b exemption allowances are not transferable between petitioners or in a chemical-to-chemical trade with other HCFCs. Unexpended HCFC–141b exemption allowances cannot be carried over into subsequent control periods. Unexpended HCFC–141b allowances expire at the end of the control period for which they were allocated. If there are needs beyond the control period for which the HCFC–141b was allocated, petitioners may renew their request for HCFC–141b exemption allowances for the next control period as described below.

15. Transfer of HCFC–141b Exemption Allowances in an Acquisition

EPA does not want to attach value to the allowances and provide an economic incentive for companies to petition the Agency for HCFC–141b exemption allowances. Allowances are issued on the basis of need. Therefore, if a company (the acquirer) acquires another company (the acquiree) that holds HCFC–141b exemption allowances, the acquirer must submit a renewal petition to EPA. The HCFC–141b exemption allowances held by the acquiree disappear with the purchase of the acquiree. The petition must justify why the acquirer does not possess the technical capability or does not have access to adequate stockpiles to meet the needs of the newly acquired customers and in turn requires the HCFC–141b exemption allowances. Lack of technical capability means the company has not already developed and tested alternative formulations for the same markets to meet same or similar technical requirements. The acquirer should submit the petition at the time of the acquisition of the other company holding the HCFC–141b exemption allowances, provide the necessary documentation confirming the acquisition, and follow the requirements listed for a renewal petition pursuant to § 82.18. EPA will review the petition within 21 business days and inform the acquirer of the decision in a letter.

16. Reporting and Recordkeeping Requirements

To facilitate accurate tracking of exempted HCFC–141b production and use, EPA proposed three levels of reporting. First, EPA proposed that the petitioner would report quarterly to EPA on: The type of product made with or containing HCFC–141b; the specific application of the product; the quantity of HCFC–141b used or contained in the product; and the identity of the manufacturer of the product. Second, EPA proposed that the formulator of the foam or cleaning product submit information quarterly to EPA delineating the quantity of HCFC–141b received; the quantity of HCFC–141b used or contained in the product; the identity of the producer or importer supplying the HCFC–141b; the identity of the recipient of the product made with or containing HCFC–141b; and the quantity of HCFC–141b used or contained in the product sent to the recipient. Finally, EPA proposed that the HCFC–141b manufacturer or importer would report to EPA, on a quarterly basis, the total amount of HCFC–141b produced to provide for exemptions. EPA believed that it was appropriate to require reporting from the point of origin to the final end use of HCFC–141b in order to ensure that newly produced/imported HCFC–141b was used for specific exempted purposes to meet the needs identified by petitioners and that quarterly reporting at all three levels would facilitate EPA's tracking of consumption figures and compliance with the HCFC cap.

Several commenters believed that the proposed reporting requirements as outlined above would be overly burdensome. These commenters suggested that EPA should establish annual reporting requirements and allow 45 days to prepare information consistent with the class I reporting system. One commenter suggested EPA should grant broad exemptions without imposing any reporting or ongoing petitioning obligations. The Agency maintains that reporting is necessary in order for the Agency to track HCFC–141b production and use. EPA modified the proposed requirements to reduce the number of entities reporting, the amount of information reported, and the frequency of reporting for petitioners. EPA is also increasing the number of days provided to prepare reports.

In today's final action, EPA is only requiring petitioners and chemical manufacturers/importers to report HCFC–141b acquisition and production/import. Petitioners are required to provide semi-annual reports of total quantities of HCFC–141b received to date within the same control period and the name of the supplier of HCFC–141b. Reports are due 30 days after the second quarter (July 31st) and 30 days after the fourth quarter (January 31st of the subsequent year). Commenters suggested that reporting be conducted on an annual basis consistent with class I reporting. EPA notes that this is an inaccurate description of class I reporting requirements. In the class I system, reports must be filed quarterly. Consistent with the class I reporting system, EPA is finalizing the proposed quarterly reporting scheme for chemical manufacturers/importers. Chemical manufacturers/importers must report the amount of HCFC–141b produced or imported for exemptions and submit copies of HCFC–141b requests with their quarterly class II reports within 30 days of the end of each quarter.

Petitioners must maintain records for three years. Records include: petitions with supporting documentation; EPA letter allocating HCFC–141b exemption allowances; requests for production/importation of HCFC–141b; written verification that the HCFC–141b purchased is for the express purpose of meeting the HCFC–141b exemption needs; HCFC–141b purchasing receipts; and sales receipts for HCFC–141b products sold.

17. Renewal of Requests for HCFC–141b Exemption Allowances Beyond the First Control Period

Although EPA proposed that HCFC–141b exemptions for space vehicle/defense be updated every three years via submission of an updated report, the Agency has decided to allocate HCFC–141b exemption allowances for one-year intervals. If a petitioner seeks additional HCFC–141b and believes they still meet the criteria established under § 82.18 of this final rule, EPA will evaluate renewal petitions on an annual basis. To apply for renewal of HCFC–141b exemption allowances, petitioners must submit a petition by October 31st of the year preceding the year for which the HCFC–141b is requested. The petition need only include updated information. Petitioners will not be required to submit information previously submitted to the Agency. The update should indicate the following: whether the entity has found no viable substitute and will need to extend their exemption for the next control period; why the entity believes no alternatives are viable for their application; and a detailed description of continuing investigations into and progress on possible alternatives and substitutes. Although the EPA believed the 3-year period was appropriate for space vehicle/defense needs, today's expanded petition process allows for users who may not meet the criteria established under § 82.18 for more than one year. Therefore, EPA will consider petitions and renewals on an annual basis in order to determine continued need for HCFC–141b. Although this process is more burdensome, the Agency believes annual reviews will more accurately reflect current technical needs of all petitioners including space vehicle/defense petitioners. EPA will continue to evaluate this periodic review cycle and the associated burden to assess whether it might be changed.

EPA will conduct no more than a 21-day review of the renewal request. If the petitioner meets the criteria established under § 82.18 and providing the HCFC–141b exemption allowances do not jeopardize U.S. compliance with Montreal Protocol and CAA requirements, EPA will allocate HCFC–141b exemption allowances for the next control period. Furthermore, a petitioner who does not apply for the HCFC–141b exemption in 2003 can submit a petition by October 31st for an exemption in 2004. In that case, the petition would be a full petition following the information requirements spelled out in § 82.18.

18. Penalties for Exceeding HCFC–141b Exemption Allowances

Any petitioner and/or chemical manufacturer/importer who knowingly orders production or import, or produces or imports, in excess of the quantity of unexpended HCFC–141b exemption allowances held by the petitioner may be fined up to $27,500 per kilogram of HCFC–141b produced/imported above total quantity of HCFC–141b exemption allowances held. EPA may inspect facilities to verify that information provided in a petition is accurate and to review records to ensure compliance. The fine for not complying with recordkeeping requirements is up to $27,500 per day, per violation.

19. Criteria for Approval/Disapproval

EPA may grant HCFC–141b exemption allowances if the Agency determines the allowances are necessary to maintain either safety, operational or technical viability.

EPA may decide not to grant HCFC–141b exemption allowances if the Agency determines:

(A) The needs can be met by the use of a substance other than HCFC–141b;

(B) It is technically and economically feasible to use existing supplies of HCFC–141b;

(C) There is evidence of fraud or misrepresentation;

(D) Approval of the allowances would be inconsistent with the Montreal Protocol or Decisions of the Parties;

(E) Approval of the allowances would be inconsistent with the Clean Air Act Amendments of 1990;

(F) There is an inadequate demonstration of efforts undertaken to research and implement alternatives; or

(G) Approval of the allowances may reasonably be expected to endanger human health or the environment.

20. Other Limitations to Approval of Petitions

In addition to constraints due to overall HCFC consumption limits, petitioners should be aware of other requirements that will limit EPA's ability to continue granting exemptions beyond 2010. Section 605 of the CAA contains certain constraints on use, production, and consumption of HCFCs beginning in 2015. In addition, CAA section 605(b)(2) prohibits production of class II controlled substances on or after January 1, 2030. These constraints are discussed in more detail in the proposal (66 FR 38082).

F. How Were the Baselines Established?

Section 601(2) of the CAA states that EPA may select "a representative calendar year" to serve as the baseline for allowance allocations for HCFCs. EPA believes that because it is allocating to entities that have very different production and import histories, no one year was representative for all companies. EPA believes that selecting only one year would

disadvantage many. EPA believes that by not selecting a year after 1997 it will avoid creating an uneven playing field that skews allocations to those companies with ample resources and good access to information. As a result, EPA proposed allocating allowances to every company based on their individual highest ODP-weighted consumption among the years 1989, and 1994 through 1997. More information on why EPA selected these particular years is contained in the proposal (66 FR 38071). EPA believes that selecting the year of highest activity for individual companies over a range of years creates less of a disadvantage to the industry and the HCFC market as a whole than selecting a single year.

Many of the sixteen commenters were either concerned about adequate future supplies for their industries or maximum market share for HCFCs with later phaseoût dates. Two commenters generally supported the years selected by EPA but felt these years might not adequately serve future demand. The remainder objected to the inclusion of 1989, believed that only 1997 would be the most representative of the market, or felt that none of those years were representative and only the "most recent" year would serve. Two commenters agreed with EPA that selecting any year from 1998 on would create a windfall for those who increased their activity after a series of stakeholder meeting discussing the impending allowance allocation system. Three commenters requested that EPA ensure the accuracy of the allocation figures before finalizing the proposed rule. Two producers proposed allowing companies to select another year besides their highest consumption year. They stated that it would allow the company a better mix of HCFCs for their market and perhaps benefit the environment or the rest of the market if the difference in allowances were reallocated.

EPA agrees with commenters that the future evolution of the HCFC market requires an allocation different than proposed and for that reason is only apportioning allowances at this time for the most ozone-depleting HCFCs (HCFC–141b, HCFC–22 and HCFC–142b). In addition, EPA is committed to monitoring future HCFC market demand and may consider future changes to allowance allocations through future notice and comment rulemaking.

EPA tried to ensure the accuracy of the consumption figures, especially those for small businesses, by verifying database records against the paper records submitted by the pertinent company. In many cases this involved painstakingly correlating revisions to reporting forms sent in a year later than the original report.

EPA understands the concern of those who believed that a fixed allocation will not fully address future market demands. EPA believes that incorporating a high degree of flexibility in the transfers of allowances, especially its decision not to group HCFCs and restrict transfers to those within the same group, will assist in responding to market decisions and trends. The ability to import used HCFCs and to use stockpiled material after the phaseout dates are other factors that will likely avoid significant disruption of use. Finally, today's action apportions each company a quantity of allowances that exceeds its historical activity because of the pro-rating up to the U.S. cap, thereby further addressing concerns about a shortage in supply. As discussed above, EPA intends to continue to monitor the market trends as more users transition to less ozone-depleting HCFCs and more non-ozone-depleting alternatives become available.

With today's action, EPA is assigning individual consumption baseline years to each company by selecting its highest ODP-weighted consumption year from among the years 1994, 1995, 1996, and 1997. EPA is also assigning individual production baseline years to each company by selecting its highest ODP-weighted production year from among the years 1994, 1995, 1996, and 1997. EPA's decision to remove 1989 from the range of years for the selection of consumption and production baselines was based on reassessments after numerous commenters indicated the marked difference between the HCFC market in 1989 versus the more recent evolving HCFC market. The mix of HCFCs being produced in 1989 would markedly constrain the market and its participants compared to the more recent mix of HCFCs needed to support current uses. Allowance holders to which EPA proposed to grant allowances for their 1989 activity as their best consumption year will receive their best consumption year from among 1994, 1995, 1996, and 1997. By not establishing baselines in this action for the HCFCs with relatively low ozone depleting potential, EPA is preserving more flexibility for companies whose mix of HCFCs is currently in flux. In addition, companies that wish to obtain allowances for different HCFCs may take advantage of the transfer provisions. EPA proposed an exception to its policy to not use 1998 or later years as part of a company's baseline in an effort to assist small businesses in the HCFC market who might not have been familiar with EPA's plans to develop an allowance system for HCFCs. EPA proposed granting available HCFC consumption allowances to late entrants into the import market that met certain conditions: (1) The HCFC market is their primary source of business income; (2) they began importing HCFCs after the end of 1997 but before the publication of the ANPRM on April 5, 1999, and (3) they accurately reported all relevant required quarterly import information to EPA prior to the publication date of the NPRM, July 20, 2001.

EPA received eight comments on granting available HCFC allowances to late entrants. Two producers and one importer opposed the proposal. They believed that companies that failed to take the trouble to know and comply with the rules to report HCFCs should not be rewarded with allowances and that the proposal was an attempt to artificially create a basis for allocation. The third criterion listed above is intended to ensure that companies are not rewarded for a failure to file required reports. In addition, EPA believes that compliance with reporting requirements does not automatically deliver information about additional regulations under consideration. EPA also believes that small businesses may have been disadvantaged regarding the changeable nature of regulations and the need for monitoring the **Federal Register** for notices of proposed regulations.

One commenter stated that opening up 1998 as a baseline year for new entrants justified including that year for all companies receiving baseline allowances. EPA does not equate late entrants with companies that were notified about and/or attended the stakeholder meetings. The companies that were notified of or attended stakeholder meetings in early 1998 were given information about how EPA would establish HCFC baselines. Immediately following these meetings, several companies significantly increased their production/imports. Because late entrants were not actively participating in the HCFC market in the early and mid-1990s they were therefore presumably unaware of the baseline-setting procedures being considered by EPA. As a result of their late entrance into the HCFC market there are fewer years from which EPA can make a baseline determination than for companies with an established history in the HCFC market.

The remaining five commenters, made up of users of HCFCs and trade associations, were mainly concerned that after late entrants received their allocations, any allowances left be reallocated to the rest of the field to

avoid a shortfall in the supply of HCFCs. With today's action, EPA is in fact pro-rating historical levels and allocating additional allowances up to the U.S. cap after the late entrants receive their allocations to address concerns about a shortfall in supply.

One commenter requested a definition of "primary source" regarding the source of income from HCFCs for late entrants. EPA believes that if a company is obtaining 80 percent or more of its business income from the HCFC market, then the HCFC market is that business' "primary source" of income. EPA is granting available allowances to late entrants subject to the conditions discussed above. One late entrant submitted the required documentation demonstrating that: (1) They began importation of HCFCs in March 1999 after formation in February 1999; (2) they accurately reported all relevant required quarterly import information to EPA prior to the publication date of the NPRM, July 20, 2001; and (3) their refrigerant imports represented 96 percent of their gross refrigerant volume. In addition to meeting the criteria stated above, this company also demonstrated that they are a woman-owned, small and disadvantaged business enterprise; and although aware of regulatory requirements regarding the importing of refrigerant, they were unaware of the impending ANPRM, April 5, 1999. The allowances allocated to this late entrant are included in the list of consumption allowance holders in this document.

The list of consumption allowance-holders in this document includes an importer that did not appear in the NPRM. This importer was in the market during the years 1994, 1995, 1996, and 1997 but EPA requested additional information in order to verify the import records prior to publication of the NPRM. EPA did not receive this company's documentation in time to verify the data and assign them a baseline in the NPRM. Subsequent to publication of the NPRM the requisite information was submitted and verified by EPA. Based on this information, EPA is establishing baseline allowances for this company with today's action.

G. Will I Be Able to Transfer Allowances?

EPA proposed processing all transfers of allowances within three working days from when EPA receives an e-mail or fax or a written request for an inter-pollutant or inter-company transfer. EPA will send a reply showing the new balance of unexpended allowances. EPA's decision to propose such a fast processing time was intended to ensure that transfers are easy and EPA's role is not disruptive to market transactions. EPA believes that it will have sufficient time to ensure that the company making the transfer has the requisite number of unexpended allowances. Two commenters supported this proposed procedure. One commenter felt this was a reasonable turnaround time, as long as EPA can tolerate the work load and that the three days should not put undue burden on requesting companies. EPA will process all transfers in the time period discussed above.

Of the nine addressing transfers, seven commenters advocated maximum flexibility in transferring allowances. This flexibility was considered imperative if tracking were done on the proposed chemical-by-chemical basis instead of the ODP-weighted option. The commenters also said that an offset ratio no higher than the proposed 0.1 percent would also contribute to flexibility in the system. Three commenters favored allowing transfers of Article 5 allowances to increase the flexibility of the transfer system. One of the three commenters felt this is an appropriate policy that will encourage Article 5 countries to transition within their economic means to less ozone-depleting chemicals without undue social burden and still achieve the goal of reducing ozone-depleting chemicals worldwide. EPA agrees with the commenters and is establishing procedures for transfers with maximum flexibility within the constraints of the allowance system.

1. Transfers Within Groups of HCFCs

EPA is permitted to establish groups of HCFCs under Section 607(b)(3) of the Act. Within such a framework, inter-pollutant transfers of allowances would be limited to chemicals within an assigned group. The Act does not require any such grouping for HCFCs and EPA did not propose to group. EPA believed that limiting transfers by grouping HCFCs would decrease the flexibility many commenters requested. Therefore, HCFCs will not be grouped and allowance holders will be able to transfer among all HCFCs as long as the resulting HCFC has not been phased out.

2. Inter-Pollutant Transfers

Section 607(b) of the Act permits inter-pollutant transfers of ODSs. An inter-pollutant transfer is the transfer of an allowance of one substance to an allowance of another substance on an ODP-weighted basis. In addition, Section 607 requires that any transfer result in a benefit to the environment. The offset contained in today's action is intended to fulfill this mandate.

Inter-pollutant transfers are sometimes called intra-company transfers because a company might shift allowances internally from one ODS to another to react to shifts in demand. For example, a company might wish to transfer 10,000 kilograms of HCFC–142b allowances for HCFC–22 allowances, which would result in 11,818 kilograms of HCFC–22 because of the adjustment for the ODPs of the two chemicals. The calculation would proceed like this: the 10,000 kilograms of HCFC–142b allowances are multiplied by the ODP of HCFC–142b (0.065) and then divided by the ODP of HCFC–22 (0.055), yielding 11,818 kilograms of HCFC–22 allowances. The 0.1 percent offset is then subtracted from 11,818 kilograms.

EPA proposed allowing inter-pollutant transfers (or intra-company transfers) in conjunction with the chemical-by-chemical tracking system. One commenter felt this reasonable proposal will easily enable companies to take advantage of the capability for transfers without undue burden. Only one commenter preferred no inter-pollutant transfers because of the belief that allowing such transfers would reduce the sense of urgency in researching alternatives to HCFCs. Inter-pollutant transfers allow companies to respond to market forces and achieve economies of scale in production and import, but as the phaseouts and reductions in consumption proceed, the opportunities for inter-pollutant transfers will decrease over time. This tightening of the ability to transfer allowances parallels the tightening of the overall quantity of allowances, leading to greater incentives for research into and development of alternatives. In addition, companies that wish to continue to supply their customers will have incentives to research and develop alternatives over the long term while conducting inter-pollutant transfers during the short term.

Because the consumption and production allowances for a specific HCFC disappear after its phaseout date, inter-pollutant transfers of those allowances will no longer be possible after the phaseout date. For example, after HCFC–141b is phased out on January 1, 2003, a company cannot transfer ODP-weighted HCFC–141b production or consumption allowances for HCFC–22 allowances. No production or consumption allowances for HCFC–141b will exist after December 31, 2002.

EPA will process inter-pollutant transfers within three working days from when EPA receives a fax or a request for the transfer. EPA will send

a reply showing the new balance of unexpended allowances, taking into account the 0.1 percent offset.

3. Inter-Company Transfers

Section 607(c) of the Act permits inter-company transfers of allowances. Inter-company transfers are transfers of allowances, for the same ODS under a chemical-by-chemical system, from one company to another company. For example, Company A would transfer its allowances to Company B who wished to have more allowances. Both companies would need to record and report the chemical(s) associated with that transfer. The requisite offset would be deducted by EPA from the transferor's allowance balance when processing the transfer.

EPA proposed to allow inter-company transfers, with an environmental offset and to process all transfer requests within three working days from when EPA receives the request.

Because the consumption and production allowances for a specific HCFC disappear after its phaseout date, EPA proposed that inter-company transfers of those allowances will no longer be possible after its phaseout date. For example, after HCFC–141b is phased out on January 1, 2003, a company cannot transfer its HCFC–141b production or consumption allowances to another company. No production or consumption allowances for HCFC–141b will exist after December 31, 2002.

EPA also proposed allowing inter-company transfers of Article 5 allowances to allow for shifts in production that would permit market efficiencies.

One commenter expressed support for inter-company transfers and the remaining commenters were silent on this issue. EPA will allow inter-company transfers of production allowances and consumption allowances until the phaseout date of each HCFC and will allow inter-company transfers of Article 5 allowances. After the phaseout date for a specific HCFC, EPA will allow inter-company transfers of export production allowances. EPA will process inter-company transfers within three working days from when EPA receives a fax or a request for the transfer. EPA will send replies showing the new balances of unexpended allowances for each company. The transferor's new balance will reflect the 0.1 percent offset.

4. Inter-pollutant Transfers Combined With Inter-Company Transfers

Section 607(c) of the CAA authorizes inter-company combined with inter-pollutant transfers, subject to certain requirements. EPA proposed allowing inter-pollutant transfers combined with inter-company transfers for HCFCs, with a 0.1 percent offset. These transfers will be treated as a single transaction and therefore require only a 0.1 percent offset. Three of the ten commenters on transfers specifically favored inter-pollutant transfers combined with inter-company transfers. One commenter felt this capability is flexible and will enable companies to meet their production/import needs. Seven commenters generally supported maximum flexibility in transfers. EPA will allow inter-pollutant transfers combined with inter-company transfers of production allowances and consumption allowances up to the phaseout date of each HCFC. A 0.1 percent offset will be required to provide the environmental benefit called for in the CAA.

The chemical-by-chemical phaseout will affect the availability of these transfers and the types of allowances over time. For example, after the 2003 phaseout of HCFC–141b and before 2010, a company receiving export production allowances and Article 5 allowances for HCFC–141b could engage in inter-company transfers of those allowances, but not in inter-pollutant transfers. In 2010, when export production allowances and Article 5 allowances for HCFC–22 and HCFC–142b become available, these allowances will be transferable with the ones for HCFC–141b.

5. International Trades of Current-Year Allowances

For purposes of industrial rationalization, international trades of production and consumption allowances are permitted in some circumstances but require more review than inter-pollutant and inter-company transfers. The Protocol defines industrial rationalization in Article 1 as "the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures."

(a) Consumption Allowances

In Article 2, the Protocol restricts the international trade of HCFC consumption by linking it with CFC consumption. A more detailed discussion may be found in II.I.5 of the NPRM (66 FR 38076). Under the Protocol, the U.S. cannot trade HCFC consumption to another Party because the U.S. per capita CFC consumption in 1989 was 1.28 kilograms, well above the 0.25 kilogram per capita limit required of a Party trading consumption to another Party.

However, the Protocol allows the U.S. to potentially receive a trade of HCFC consumption from another Party. Only two Article 2 countries, Norway and Poland, had a per capita CFC consumption in 1989 below 0.25 kilograms. These are the only Parties from which the U.S. could potentially receive a trade of HCFC consumption.

Only two of the ten commenters on transfers singled out international consumption trades for special mention. One commenter felt that such trades would be difficult to engage in and would therefore likely not be a part of their import business. A commenter who was interested in the trade of consumption rights from Norway and Poland requested that the provisions be included in the final rule. Today's action creates provisions and requirements for EPA's processing of a request to trade consumption from one of the two eligible countries to the U.S. To trade consumption from a Party, EPA must receive a letter from that country's diplomatic embassy stating that their consumption level is being reduced by the amount being traded, in accordance with 82.18(d).

(b) Production Allowances

During the eleventh Meeting of the Parties in 1999, the adoption of a production cap provided the potential for trades of production between Parties. Because of the minimal restrictions placed on the trade of HCFC production compared to trade of HCFC consumption, EPA proposed provisions for the international trade of production allowances and the subsequent calculations necessary to revise the production limits for all traders trading production in the same control period.

Only three commenters out of ten commenting on transfers discussed international trades of production and two were in favor while one was not. EPA did not receive any comments suggesting alternative methods of calculating the revised production limits. If EPA approves the proposed trade, the Administrator is required to establish revised production limits for the trader so that the aggregate domestic production permitted after the trade reflects the effect of the trade of production allowances. Such trades cannot result in an increase in production over what would have occurred in the absence of the trade. EPA will notify each trader of the revised production limit after approving the trade of production allowances to a Party rather than waiting to the end of the control period; traders will then be able to make timely market decisions

with the remaining production allowances. EPA received one comment on the proposed method of determining the trader's balance of production allowances, pointing out that the provided formula could result in a negative number. EPA tested the formula and is adjusting it accordingly to prevent any negative result. In today's rule EPA is finalizing the method of calculating the trader's balance as follows: the Administrator would issue a notice revising the trader's balance of production allowances to equal the lesser of: (a) The unexpended production allowances held by the trader minus the quantity of production allowances traded; or (b) the unexpended production allowances held by the trader minus the amount by which the U.S. average annual production of the HCFC being traded for the three years prior to the trade is less than the total allowable production of the controlled substance under this subpart minus the amount traded. For those more comfortable with formulas, the method can be expressed in this manner:

$f = (a - d)$, if $c \leq b$

or

$f = a - [(c - b) - d]$, if $c > b$

where a=the person's unexpended production allowances, b=the U.S. 3-year average production for that HCFC, c=the total allowable U.S. production for that HCFC, and d=the actual quantity being traded, and f=the person's revised production allowance level. This formula is based on the language of Section 616 of the CAA.

The single dissenting commenter encouraged prohibiting trades of production because of the economic hardship that such trades can produce for American workers, users of HCFCs and suppliers to plants that produce HCFCs. This commenter felt that trades of production away from the U.S. can reduce the total amount of allowable production, thereby distorting markets and the availability of a substance. The legal framework in which EPA proposed the system for international trades of HCFC production is governed by the Protocol and the CAA. The Parties to the Protocol met in 1999 and decided to allow for trades of production rights between Parties because they recognized the need for industrial rationalization. The Parties acknowledged that companies would likely want to consolidate HCFC production in different countries so that a company could achieve economies of scale. In addition, Section 616 of the CAA indicates that Congress contemplated trades of production rights between the U.S. and other Parties to the Protocol. There have been international trades of class I production allowances since the establishment of the allowance system for class I ozone-depleting substances. EPA received many comments on the NPRM supporting flexible trade mechanisms because they reduce regulatory interference in the global HCFC market. In following the model established for class I ozone-depleting substance, the Agency will consider (1) possible creation of economic hardship; (2) possible effects on trade; (3) potential environmental implications, and (4) the total amount of unexpended production allowances held by United States entities, by asking for concurrence on international trades from the Department of Commerce, the United States Trade Representative, and the Department of State.

The commenter also considered approvals of international trades a significant administrative action and believed that publishing the proposed trade in the **Federal Register** would allow users and other affected persons an opportunity to comment on the economic impact of the proposed international trade. EPA did not adopt such procedures for international trades under the class I system and believes that they would cause excessive delays in acting on requests for international trades which is contrary to the desire of almost all commenters for a flexible, unburdensome system.

Beginning January 1, 2004, EPA will only allow international trades of production allowances to and from Parties that are either: (1) Listed in Appendix L and have ratified the Beijing Amendments as listed in Appendix C, or (2) not listed in Appendix L but are listed in Appendix C as having ratified the Copenhagen Amendments. EPA will revise the production limits for all traders trading production allowances in the same control period following the calculations discussed above.

6. Transfers of Current-Year Allowances

A transfer of current-year allowances means the allowances being traded can only be expended for production or import in that specific control year. Transfers of current-year allowances do not permanently change the quantity of baseline allowances assigned to a company. A transfer of current-year allowances is a temporary transfer and is reflected in a company's balance of allowances for the control period in which the transfer occurred. EPA proposed allowing transfers of current-year allowances and of the ten commenters on transfers, two explicitly favored current-year transfers of allowances. One of the two favorable commenters stated that the transfer should be subject to the minimum possible offset. The rest of the commenters generally supported all kinds of transfers that might confer the maximum degree of flexibility in the transfer system.

EPA will allow trades of current year allowances so companies will have flexibility to respond to market forces and achieve economies of scale in production and import.

7. Permanent Transfers of Baseline Allowances

The permanent transfer of baseline allowances is a lasting shift of some quantity of a company's allowances to another company. The permanent nature of the transfer makes it different from the transfer of current-year allowances. In all relevant subsequent years, the transferor's quantity of baseline allowances would be permanently reduced, while the transferee's quantity of baseline allowances would be permanently increased. For example, if a person transfers baseline allowances of HCFC–22, their baseline would be decreased permanently by the transfer amount, and the recipient would gain HCFC–22 baseline allowances, minus the offset, on a permanent basis. Subsequent inter-pollutant transfers of these baseline allowances would also be permitted. However, at the time of a reduction step or a phaseout of the substance, the current holder of baseline allowances that were received in a permanent transfer would be the person who would have them deducted.

EPA proposed allowing such permanent transfers of allowances for HCFCs. Only two of the ten commenters on transfers singled out permanent transfers for favorable comment. One commenter felt that they should be subject to the minimum possible offset. The other commenter believed that as the industry evolves and the companies with it, allowing permanent transfers may enable better production techniques and/or streamlining of facilities. The rest of the commenters generally supported all kinds of transfers that might confer the maximum degree of flexibility in the transfer system. EPA will allow permanent transfers of baseline allowances with those allowances disappearing at the phaseout date for the specific HCFC, regardless of what inter-pollutant transfers had taken place.

8. Offset for a Transfer of Allowances

Section 607(c) of the CAA requires that transfers result in a greater environmental benefit than would occur in the absence of such a transfer. This can be achieved by an offset for inter-pollutant and inter-company transfers. However, inter-pollutant transfers combined with inter-company transfers would only require one offset. Since international transfers are governed by Section 616 of the CAA and that section does not contain similar requirements for an environmental benefit, no offset was proposed for such transfers.

EPA proposed a 0.1 percent offset be applied to inter-pollutant and inter-company transfers to afford an environmental benefit associated with domestic transfers. Of the ten commenters on transfers, three commenters supported the proposed 0.1 percent offset while one commenter proposed a 0.05 percent offset. EPA believes that the 0.1 percent offset reflects the lower ODP of class II controlled substances compared to class I substances; allows for simplicity in calculation; and still provides an environmental benefit associated with domestic transfers. EPA believes that a lower offset, such as the 0.05 percent proposed by a commenter would reflect the lower ODP of class II controlled substances but provide such a small environmental benefit as to be valueless. The remaining commenters did not mention the offset. One of the supporters of the 0.1 percent offset suggested no offset at all for intra-company transfers, a one-time offset for inter-company transfers, and only a one-time offset over the lifetime of a permanent transfer. This suggestion could not meet the requirement of Section 607(a) of the CAA. That section requires EPA's regulations to ensure that "transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II controlled substances that would occur in that year in the absence of such transactions." Intra-company transfers are transactions "under the authority of" Section 607 of the Act. They are specifically provided for in Section 607(b). Thus, it is not possible to waive the offset requirement entirely for intra-company transfers. In addition, a one-time offset for other types of transfers would not ensure "greater total reductions" in subsequent years and thus would not meet the requirements of Sections 607(a) and (c).

EPA is requiring a 0.1 percent offset for inter-pollutant and inter-company transfers. Inter-pollutant transfers combined with inter-company transfers would be treated as a single transaction and therefore require only a 0.1 percent offset. International transfers will require no offset.

H. Will Production for Export Be Allowed After Each Phaseout?

Because the U.S. is phasing out HCFCs chemical-by-chemical rather than by percentage, it is possible to produce an HCFC for export even after it is phased out domestically. To differentiate pre-phaseout allowances from post-phaseout allowances, a new type of allowance was necessary for the phased-out HCFCs and EPA proposed creation of an "export production allowance." The first HCFC scheduled for phaseout in the U.S. is HCFC–141b. EPA believes that foreign demand for HCFC–141b will continue in years beyond the U.S. 2003 phaseout.

1. Exports to Parties

Since production and consumption allowances for HCFC–141b will no longer exist as of January 1, 2003, but the potential for overseas markets for HCFC–141b will still exist, EPA proposed allowing production for export only to Parties that had ratified the Copenhagen Amendments. EPA proposed allocating "export production allowances" equal to 100 percent of baseline production allowances for HCFC–141b with the requirement that HCFC–141b produced in the U.S. under these allowances be exported to Parties listed in Appendix C as having ratified the Copenhagen Amendments.

Two commenters were concerned that EPA would cease allocating export production allowances for HCFC–141b as early as December 31, 2009, and requested that allowances be available until December 31, 2029. One commenter suggested that since exports from the European Union are allowed through 2025, the U.S. should follow suit and not unfairly prejudice U.S. business. In the NPRM, EPA proposed that these allowances would remain available at least until December 31, 2009, and that EPA expected to re-evaluate the availability of export production allowances for HCFC–141b, HCFC–22, and HCFC–142b. EPA had planned to issue a rule prior to 2010 which would allocate export production allowances for subsequent control periods, taking into account any relevant modifications to the Protocol or the CAA. With today's action, EPA is allocating export production allowances until 2030 for HCFC–141b, HCFC–22 and HCFC–142b. If the Protocol modifies the formula for the production cap, EPA will modify the allocation of export production allowances through notice and comment rulemaking accordingly. One commenter agreed with the proposal to provide for export production allowances as long as the exports were exported to Parties that have ratified the Beijing Amendments. EPA proposed to limit exports to Parties that have ratified the Copenhagen Amendments. The issue of limiting exports to certain Parties arises because at the eleventh meeting in 1999, the Parties agreed to an amendment to the Protocol requiring that, beginning January 1, 2004, each Party shall ban HCFC imports from and exports to countries that have not ratified the amendments that contain control measures for HCFCs. This ban reflects a strategy by the Parties to encourage ratification of the Protocol and each successive package of amendments. The majority of the control measures for HCFCs are contained in the Copenhagen Amendments. However, the control measures to cap HCFC production were included with the trade ban provisions in the Beijing Amendments. After further review, EPA has decided that the proposed interpretation of the trade ban was incorrect. However, EPA is not adopting the commenter's interpretation. EPA has concluded that the trade ban should be interpreted such that countries need only have ratified the amendments that contain controls measures relevant to that country. EPA believes the HCFC production control measures are only relevant to countries that produce HCFCs and therefore believes the trade ban should differentiate between countries that produce HCFCs, and those that do not produce HCFCs. Today's action lists countries that produce HCFCs in Appendix L, according to the UNEP Ozone Secretariat's compilation of information submitted in accordance with Article 7 of the Montreal Protocol. With today's action, starting January 1, 2004, trade in HCFCs with producing countries will be restricted to only those that have ratified the Beijing Amendments. If a country is not an HCFC producer, then trade in HCFCs will be restricted to only those that have ratified the Copenhagen Amendments. Article 4, paragraph 8 of the Protocol recognizes that countries may actually be complying with relevant control measures without having officially ratified the Protocol or its relevant Amendments and permits the Parties to meet and determine that imports from and exports to these countries is permitted. With today's action, EPA is also including the potential for a country to be determined by the Parties to be complying with the relevant

control measures, in which case they would be listed in Appendix C, Annex 2 of the Protocol, and HCFC trade with that country would be allowed. In summary, beginning January 1, 2004, the HCFC trade ban provisions limit production for export to Parties that are either: (1) Listed in Appendix L of this subpart and have ratified the Beijing Amendments as listed in Appendix C, Annex 1 of the Protocol, or (2) not listed in Appendix L of this subpart but listed in Appendix C, Annex 1 of the Protocol, as having ratified the Copenhagen Amendments, or (3) listed in Appendix C, Annex 2 of the Protocol, as being a foreign state complying with the Beijing Amendments if the foreign state is listed in Appendix L of this subpart, or as being a foreign state complying with the Copenhagen Amendments if the foreign state is not listed in Appendix L of this subpart.

Because production will be frozen at a constant level throughout the various phaseout years, unless there are further changes to the Protocol, EPA is granting export production allowances to produce the phased-out HCFCs at that level after the respective phaseouts. Export production allowances may only be used to produce for export to Parties that are either: (1) Listed in Appendix L and have ratified the Beijing Amendments as listed in Appendix C, or (2) not listed Appendix L but are listed in Appendix C as having ratified the Copenhagen Amendments. The production allowances for the phased-out HCFC before the phaseout date are equivalent to the export production allowances after the phaseout date.

2. Exports to Article 5 Countries

The Protocol allows for production of HCFCs at a level of 15 percent of production baseline explicitly for export to Article 5 countries to meet their basic domestic needs (Article 5 countries are listed in Appendix E to Subpart A of Part 82). But Section 605(d)(2)(B) of the CAA requires that between 2015 and 2030 the production for Article 5 countries be limited to 10 percent of baseline. Between 2030 and 2040, Section 605(d)(2)(B)allows production of 15 percent of baseline for Article 5 countries. In order to reconcile the percentages allowed by the Protocol and by the CAA, the schedule for Article 5 allowances will be: 15 percent of production baseline from January 1, 2003 (HCFC–141b) or January 1, 2010 (HCFC–22 and HCFC–142b) through December 31, 2014; 10 percent of production baseline from January 1, 2015 through December 31, 2029; and 15 percent of production baseline from January 1, 2030 through December 31, 2039.

EPA proposed allocating 15 percent of production baseline of the phased-out chemical for export to Article 5 countries after the U.S. phaseout date. Article 5 allowances could be expended without accompanying consumption allowances. Most commenters on Article 5 allowances were primarily interested in the ability to transfer these among themselves to respond to market demands. As explained above in Section III.G, EPA is permitting transfers of Article 5 allowances.

One commenter noted that the proposal indicated Article 5 allowances would be available only until 2030 while the Act would allow them until 2040. In verifying the authority to grant Article 5 allowances, EPA noted the Act authorizes Article 5 allowances up to 10 percent between 2015 and 2030 and up to 15 percent between 2030 and 2040 while the Protocol authorizes 15 percent throughout. Section 614 of the CAA states "In the case of conflict between any provision this title [Title VI of the CAA] and any provision of the Montreal Protocol, the more stringent provision shall govern." Consistent with Section 614, EPA has written today's final rule to reflect the most stringent percentages.

I. Will There Be a Petition System for Importing Used HCFCs?

The Parties to the Protocol allow the import of used ODSs outside of the consumption cap because they believe this will reduce the burden of the transition to alternatives. The Parties to the Protocol also believe that allowing trade in already existing used material will offset the need for new global production.

Because illegal imports of virgin CFCs occurred in the absence of a petition process for importing used CFCs, EPA believes that a petition process for importing used HCFCs is needed. EPA anticipates that attempts to illegally import virgin HCFCs will occur as HCFCs are phased out and the supply of HCFCs diminishes in the face of continuing demand. EPA proposed a petition process for the import of used HCFCs similar to the process for class I substances, such as CFCs, to ensure that relevant class II imports are legitimately used previous to import. In finalizing the proposed petition process for used class II controlled substances, EPA has also taken into consideration comments on proposed changes to the petition process for used class I substances (64 FR 41627).

1. Petition for Each Individual Shipment

EPA proposed that a petition to import used HCFCs be submitted on a shipment-by-shipment basis. The information in a petition and the quantity a person wishes to import into the U.S. must be limited to a specific shipment and a single U.S. Customs entry. Since there were no comments concerning this provision, EPA will establish the shipment-by-shipment petition process as proposed.

2. Threshold Quantity Requiring a Petition

EPA proposed a threshold quantity of five (5) pounds or more of used HCFCs for an individual shipment that requires a petition to import. The five (5) pound threshold allows a company to take three samples from a large ISO-tank for laboratory analysis and send the samples to a test facility in the U.S. without being subject to the petition requirements. Since there were no comments concerning this provision, EPA will retain the proposed threshold quantity.

3. Information Requirements

EPA proposed that petitions contain the type of information needed to independently verify the previous use of the HCFC. For example, EPA proposed that the importer supply contact information for the entire chain of custody of the used HCFC in the petition. EPA also proposed requiring a copy of the contract for the purchase of the used HCFC and information on the intended use. In light of efforts by the Parties to the Protocol to implement a licensing system for exports as well as imports, EPA proposed that the petitioner obtain an export license from the appropriate government agency in the country of export. EPA requested comment on the utility and burden of supplying information about the name, make and model number of the equipment from which the HCFC was removed as a means of verifying that the material had been truly used in the operation of equipment.

In today's final rule, EPA is including a requirement that the petition contain "a list of the name, make and model number of the equipment from which the material was recovered at each source facility." EPA believes that the submission of this information is vital to the Agency's ability to verify that the controlled substance was, in fact, previously used and is not simply a quantity of falsely labeled controlled substance that was newly produced. In the class I petition process, EPA uses information about the specific

equipment to verify that the quantity a petitioner wants to import could have been recovered from that equipment during the normal course of its operation. In general, the Agency has access to technical specifications for most equipment, including their typical ODS "charge" or amount of ODS they can hold. Over the years, the Agency has received many petitions to import tens of metric tonnes of an ODS claimed to have been recovered from specific equipment when the equipment's specifications indicated that the amount specified in the petition would not typically have been held in, or recovered from, the specific equipment (even in leaky, malfunctioning situations) over a 10-year period. Based on these kind of analyses, and contact with the source facility, EPA has been able to object to petitions. The Agency also wants to note that most petitions received to date have included this information. Finally, EPA believes that the petitioner must take some responsibility for ensuring that the ODS was previously used before submitting a petition, and to do this the petitioner should follow the chain of custody of the material back to the source facility and equipment from which it was recovered. This diligence in tracing ODS back to the source facility would allow a petitioner to include the specific information about the equipment from which it was recovered. Because U.S. obligations under the Protocol limit imports to zero after the phaseout, the Agency's ability to independently verify that a quantity of ODS was, in fact, recovered at a source facility from specific equipment is the most critical step in ensuring the U.S. compliance under the international treaty.

Several commenters on proposed changes to the petition process for used class I substances took issue with the proposed requirement that the importer submit "* * * a copy of the contract for the purchase of the controlled substance that includes the name, address, contact person, phone number and fax number of the purchaser." The commenters requested that EPA clarify this information requirement, which appeared both in the proposed changes to the class I petition process and in the proposed class II petition process. EPA intended that the petitioner provide a copy of the contract for the purchase of the controlled substance by the ultimate user in the United States. The commenters argued that in many cases the petitioner does not know the ultimate purchaser of the material at the time the petition is being submitted. EPA believes that in some instances the importer of a used controlled substance will already know the purchaser, but this will not always be the case. Therefore, EPA is revising the proposed language so that the final requirement reads: "A description of the intended use of the used control substance, and when possible, the name, address, contact person, phone number and fax number of the ultimate purchaser in the United States."

One commenter on the proposed petition process for class II controlled substances noted that equipment is commonly "top charged," meaning a little material is added to the equipment. This was in response to the requirement that the importer supply the date the material was put into equipment at each source facility and that the material must have remained in the equipment for at least 24 months prior to recovery. The commenter requested that EPA clarify whether a refrigeration system that is top charged within 24 months of the material's proposed import date may be imported as used material. In § 82.24(c)(3)(iv), EPA proposed the 24 month period for an HCFC to be considered "used" in order to make certain that imported HCFCs were actually employed in a working system (*e.g.*, as a refrigerant). Several commenters on the identical proposed change to the petition process for used class I substances pointed out that the phrase "dated documents," as used in this proposed requirement, is ambiguous. The proposed information requirement in (iv) was, "A detailed description of the previous use of the controlled substance at each source facility and dated documents indicating the date the material was put into the equipment at each source facility (material must have remained in the equipment at least 24 months prior to recovery to be considered previously used)". The commenters suggested that the phrase "dated documents" needs clarification as to whether the Agency is seeking documents dated at the time the ODS was put into the equipment or documents dated at the time a person submits a petition certifying, to the best of their knowledge, when the ODS was put into the equipment. In addition, several commenters expressed concern that finding documents that are dated from the time the ODS was put into the equipment may be virtually impossible because enterprises only keep documents for a limited number of years and the equipment could have been filled with the ozone-depleting substance many years ago. Commenters on the proposed changes to the petition process for class I substances also pointed out a number of practical objections to the proposed requirement that the ODS must have remained in the equipment for at least 24 months. Two commenters on those proposed changes suggested that instead of requiring documents regarding the date when the controlled substance was put into equipment EPA could request such documents be submitted, when possible, but at a minimum require the petitioner to certify a "best estimate" of the length of time that the ODS was in the equipment. EPA believes that these are useful suggestions. In addition, EPA believes that the practical realities cited by commenters regarding a minimum residence time for the ODS in equipment makes such a requirement unworkable. Thus, instead of retaining the language from the proposal, EPA is adopting the following language in today's final action: "A detailed description of the previous use of the controlled substance at each source facility and a best estimate of when the specific controlled substance was put into the equipment at each source facility, and, when possible documents indicating the date the material was put into the equipment."

4. Timing for Review of a Petition

Based on its experiences with the 15 working-day time limit for processing petitions to import used CFCs, EPA proposed forty (40) working days to allow more time for the review of petitions to import used HCFCs. The period for review would begin on the working day after EPA's Global Programs Division receives the petition, with no automatic approval. The proposed 40 working-day period is an effort to balance responsiveness and thoroughness in review of the petition. While EPA will make every effort to respond to the petitioner within the 40 working-day period, a lack of response does not constitute a grant of authority to import. A commenter stated that given the large amount of data requiring verification, it may be difficult for EPA to verify the information within two months. EPA believes that 40 working days will be adequate to review each petition in all but exceptional cases, based on EPA's experience processing petitions to import used CFCs. The provisions are finalized as proposed.

5. Reasons for Issuing an Objection Notice

Since 1994, EPA has worked with the Department of Justice, the Internal Revenue Service, the Customs Service, the State Department, and the Department of Defense to confirm the information in petitions to import used

CFCs. Based on this experience, EPA proposed a list of reasons for issuing an objection notice to a petition to import used HCFCs.

EPA proposed five reasons for issuing an objection notice that are included in today's action. Reason (A) is a lack of sufficient information. Reason (B) is the submission of false or misleading information. If the transaction appears to be contrary to the provisions of the *Vienna Convention on Substances that Deplete the Ozone Layer*, the Montreal Protocol and Decisions by the Parties, or the Protocol's non-compliance procedures, EPA may issue an objection notice pursuant to reason (C).

Under reason (D), EPA may issue an objection notice if the exporting country has not granted an export license for the shipment. Finally, under reason (E), EPA may disallow a petition to import used HCFCs from an Article 5 country that has reclamation facilities subsidized by the Multilateral Fund (MLF).

In the proposed rule, reason (B) for issuing an objection notice read as follows: "If the Administrator determines that any portion of the petition contains false or misleading information or has reason to believe that the petition contains false or misleading information." One of the commenters on the proposed changes to the petition process for class I substances stated that an EPA objection under reason (B) might be "based on unsubstantiated allegations or unfounded belief." EPA agrees that the phrase "has reason to believe" may be too vague. Thus, in today's action, EPA is modifying reason (B) for issuing an objection notice to read: "If the Administrator determines that any portion of the petition contains false or misleading information, or the Administrator has information from other U.S. or foreign government agencies indicating that the petition contains false or misleading information."

EPA received one comment on its proposal to issue an objection notice for any petition to import used HCFCs from an Article 5 country that has reclamation facilities subsidized by the MLF. The intent of the MLF was to allow Article 5 countries to reclaim used HCFCs for their domestic needs. The commenter stated that there were technically valid reasons for allowing imports of used HCFCs from Article 5 countries that had MLF reclamation facilities. That commenter believed that most of those facilities were simple and not capable of technically complex reclamation. However, the complexity of HCFC reclamation from Article V countries' equipment and appliances has no bearing on the proposed petitioning process, because the process only applies to the import of used HCFCs and not the import of equipment containing HCFCs; therefore, EPA is finalizing this proposed basis for issuing an objection notice. EPA would not want to circumvent the efforts of Article 5 countries in establishing their own HCFC management plans. EPA believes that if it allowed the import of used HCFCs from such Article 5 countries that this action might jeopardize the countries' efforts to properly handle used HCFCs and reduce their domestic demand for newly produced material. In today's final action, this reason for objection appears as reason (E).

EPA proposed two reasons for issuing an objection notice that are not included in today's final action. In the proposed rule, reason (F) was: "If the Administrator has received information indicating that a person listed in the petition has produced at any time false information regarding trade in class II controlled substances as defined in this subpart, including information required by EPA or required by the appropriate government agency in the exporting country." Reason (G) was: If the Administrator has received information indicating that a person listed in the petition is in violation of a requirement in any regulation under Title VI of the Clean Air Act." Commenters on the proposed changes to the petition process for class I substances objected to the likely use of "hearsay" and information "incorrectly or maliciously" provided to EPA during its petition review. EPA agrees that the potential for abuse of these reasons by competitors or disgruntled employees is too great. Thus, reasons (F) and (G) are not being included in today's action.

In addition, in this final action EPA has combined two reasons relating to the exporting country's desire not to allow the export. Reason (D) is sufficiently broad to cover both a refusal to grant an export license in a particular instance and a general policy of not allowing exports.

Finally, EPA is modifying the proposed language for § 82.13(g)(3)(iv) to clarify that it is retaining the discretion not to object to a petition. The new language states: "In cases where the Administrator does not object to the petition based on the criteria listed in paragraph (c)(4)(i) of this section, the Administrator will issue a non-objection notice."

6. Petition and Non-Objection Letter To Accompany the Shipment

EPA proposed requiring that the petition and the non-objection notice from EPA accompany each shipment through U.S. Customs in the belief that this would facilitate clearance through customs. One commenter believed that in most circumstances no documentation other than labeling accompanies the shipment. This commenter also believed that the paperwork and the shipment are not processed simultaneously and suggested that EPA should require that the documentation be sent to the freight forwarder and accompany the bill of lading. In saying that the non-objection notice must accompany the shipment, EPA intends to require that the non-objection notice be submitted and reviewed by U.S. Customs with all documentation associated with a shipment, *i.e*, the bill of lading and Customs entry form. EPA respectfully disagrees with the commenter's belief that the paperwork does not accompany the shipment as it passes U.S. Customs. EPA frequently receives calls from U.S. Customs port inspectors asking questions about individual shipments of CFCs that are at the port, when the associated bill of lading and Customs entry form are not accompanied by the EPA non-objection notice. When there is no EPA non-objection notice issued for such a shipment, it is seized by U.S. Customs as an illegal import in violation of regulations under authority of the CAA. However, when U.S. Customs inspectors call EPA and the non-objection notice accompanies the bill of lading and the Customs entry form, it is an easier process to "clear" the shipment. The Agency wants to note that the commenter did not provide a rationale for why the non-objection notice should not accompany the shipment through U.S. Customs. Because the petitioner must receive the non-objection notice *before* the shipment leaves the foreign country of export, timing cannot be the reason for not including a non-objection notice with a shipment's entry through U.S. Customs. EPA believes requiring that the non-objection notice accompany the shipment's entry will expedite HCFC imports through U.S. Customs.

J. Will There be New Restrictions on Imports To and Exports From Specific Parties?

At the eleventh meeting in 1999, the Parties agreed to an amendment to the Protocol requiring that, beginning January 1, 2004, each Party shall ban HCFC imports from and exports to countries that have not ratified the amendments with control measures for HCFCs relevant to that country. This ban reflects a strategy by the Parties to encourage ratification of the Protocol

and each successive package of amendments. EPA proposed to make its HCFC regulations consistent with this provision by including a ban on import or export of any quantity of HCFCs from or to any state that was not a Party to the Copenhagen Amendments, unless that state was complying with the Copenhagen Amendments.

Only one commenter requested clarification concerning allocation rights of an importer of record that previously imported from a non-Party. EPA agrees with the commenter's assumption that all consumption allowances allocated to importers are valid upon promulgation of the rule. However, beginning January 1, 2004, EPA notes that these allowances may only be expended to produce for export to, or to import from, Parties that are either: (1) Listed in Appendix L and have ratified the Beijing Amendments as listed in Appendix C, or (2) not listed in Appendix L but are listed in Appendix C as having ratified the Copenhagen Amendments.

EPA will allow trade with all Parties upon promulgation of this rule, but on January 1, 2004, trade will be restricted to Parties that are either: (1) Listed in Appendix L and have ratified the Beijing Amendments as listed in Appendix C, or (2) not listed in Appendix L but are listed in Appendix C as having ratified the Copenhagen Amendments, or (3) listed in Appendix C, Annex 2 of the Protocol, as complying with the Beijing Amendments if the foreign state is listed in Appendix L, or as complying with the Copenhagen Amendments if the foreign state is not listed in Appendix L. The UNEP Web site maintains a real-time list of current Parties to the Protocol and all its amendments for those wishing to ensure they are viewing the most current list. The Internet address is: *http://www.unep.org/ozone/ratif.shtml*.

K. Will There Be Changes in Definitions?

Because some of the definitions referred only to class I substances and new definitions were necessary to explain provisions for HCFCs, EPA proposed modifications to the existing definitions and the addition of new definitions to § 82.3.

1. Modifications

EPA proposed modifying the definitions for the following terms to include HCFCs: "baseline consumption allowances"; "baseline production allowances"; "consumption allowances"; "production allowances"; and "Article 5 allowances." There were no comments on these modifications.

Since the following terms do not apply to HCFCs, EPA proposed modifying them to make them explicitly apply to class I substances only: "destruction credits"; and "transformation credits." There were no comments and the Agency notes that the statutory time period in which a person could obtain these credits for class I controlled substances has passed, so is removing them from the rule.

EPA proposed modifying the definition for "Party" to include an example relating to the HCFC trade ban that the Parties agreed to in the 1999 Beijing Amendments. One commenter stated that the example implied that the term "Party" as used in provisions based on the Beijing Amendments includes foreign states that have not ratified the Beijing Amendments and requested that EPA clarify the example. This commenter believed that trade in HCFCs should only be permitted among foreign states that have ratified the 1999 Beijing Amendments. EPA agrees that the example in the proposed definition was confusing. In fact, EPA interprets the HCFC trade ban provisions agreed to in the 1999 Beijing Amendments as limiting imports from and exports to Parties that are either: (1) Listed in Appendix L and have ratified the Beijing Amendments as listed in Appendix C, or (2) not listed Appendix L but are listed in Appendix C as having ratified the Copenhagen Amendments. Therefore, with today's action the example is being removed from the definition of Party.

2. Additions

EPA proposed adding the following new definitions: "export production allowances"; "unexpended export production allowances"; "individual shipment"; "non-objection notice"; "source facility." With today's action, EPA is replacing the concept of "space vehicle/defense allowances" with the broader concept of "HCFC–141b exemption allowances." Accordingly, EPA is adopting definitions for "HCFC–141b exemption allowances" and "unexpended HCFC–141b exemption allowances" in lieu of "space vehicle/defense allowances" and "unexpended space vehicle/defense allowances."

EPA also proposed to adopt definitions for "individual shipment," "non-objection notice," and "source facility" as part of a separate rulemaking involving changes to the petition process for used class I substances (63 FR 41627). EPA has taken into consideration comments received in the course of that rulemaking prior to adopting these definitions in final form. In the class I rulemaking, EPA received one comment on the definition of "individual shipment." The comment asked for a clarification of the phrase "not to be dis-aggregated," which appeared in the definition as initially proposed. The comment also pointed out an inconsistency between this phrase and the phrase "not to be aggregated," which appeared in the initial paragraph under § 82.13(g)(2) and the proposed § 82.24(c)(3). With this action, EPA is adding a definition of "individual shipment" to § 82.3 that does not employ the phrase "not to be dis-aggregated", and is removing the phrase "not to be aggregated" from the proposed language for § 82.24(c)(3). The intent of the definition continues to be the same as explained in the rule published in the **Federal Register** on August 4, 1998 (63 FR 41627); that an importer shall submit a petition to import a specific quantity of used class I controlled substance as a single U.S. Customs entry. If an importer cannot arrange for the entire quantity to be shipped as one entry through U.S. Customs, the importer is required to submit to EPA a separate petition for the quantity of each individual U.S. Customs entry of a used controlled substance.

One commenter on the proposed petition process for used class II controlled substances believed EPA should clarify whether the definition of "individual shipment" may include a shipment that is the aggregate of many other shipments of used HCFCs. The commenter requested that EPA detail the documentation required for such an aggregated shipment. "Individual shipment" as it pertains to the threshold quantity requiring a petition means the total weight in kilograms of the HCFC that the petitioner wishes to import into the United States at one specific instance and that can be imported as a single U.S. Customs entry. Petitioners who wish to aggregate HCFCs from different sources into one "individual shipment," must make certain that their petition has the required multiple source information that makes up the individual shipment. For example, an importer that petitions the Agency to import an individual shipment of used HCFCs from more than one source must itemize the petition requirements applicable to each source. This itemization will be done based on the weight contribution of each source to the individual shipment. If the individual shipment consists of different HCFCs from multiple sources, EPA will respond in writing regarding each quantity of each specific HCFC. For example, if an individual shipment

consists of HCFC–22 and HCFC–123, EPA will cite the quantity for each substance in one notice.

In the rulemaking to change the petition process for used class I substances, EPA received one comment on the proposed definition of "source facility." As proposed, that definition reads as follows: "the exact location at which a used controlled substance was recovered from a piece of equipment, including the name of the company responsible for, or owning the location, a contact person at the location, the mailing address for that specific location, and a phone number and a fax number for the contact person at the location." The commenter stated that the phrase "exact location" is too specific, believing that it could refer to the valve or fitting on the piece of equipment from which the used controlled substance is recovered. The commenter pointed out that the valve or fitting will not have a mailing address. The commenter suggests replacing the phrase "exact location" with the word "site." EPA believes there may be some merit to the commenter's concern about the specificity of the proposed phrase. EPA's intent was to refer to the postal address of the owner of the equipment from which the ozone-depleting substance was recovered, not the exact location of the specific piece of equipment. However, to maintain the consistency of the wording within the definition, EPA is replacing the phrase "exact location" with the word "location" rather than site.

L. Will Other Regulatory Options Be Used To Control HCFCs?

Other authorities under Title VI are available to ensure that the U.S. complies with its phaseout schedule for HCFCs. These programs include the SNAP program, labeling of products made with ODSs, and the ban on non-essential products containing ODSs. These programs affect the sale and/or use of HCFCs rather than their production, import, and export. The allowance system directly affects the production, import, and export of HCFCs.

Eight commenters were unanimous in their belief that implementing these provisions to maintain compliance with the Protocol cap was unnecessary.

1. Labeling

Under Section 611 of the Act, EPA could require labels on products containing or made with HCFCs before January 1, 2015. Beginning on that date, all products containing or manufactured with HCFCs must bear a label indicating the association with a substance that harms public health and the environment by destroying ozone in the upper atmosphere.

EPA did not propose to use labeling to discourage HCFC usage and to ensure compliance with the Protocol. Nine commenters agreed with the EPA position. At this time, EPA will not use labeling to further control HCFCs but will continue to evaluate the potential benefit of labeling requirements. Future action, if pursued, would be done through notice and comment rulemaking.

2. SNAP Approval and Restrictions

The Significant New Alternatives Policy program as authorized by Section 612 of the Act publishes lists of acceptable and unacceptable substitutes for HCFCs. In some SNAP sector end-uses, HCFCs have been listed as acceptable substitutes, but the availability of zero-ODP alternatives has increased in some of these uses. It is therefore possible that SNAP determinations regarding existing HCFC acceptable uses could be revised.

EPA did not propose to include any SNAP-related provisions in this rule. Seven of the eight commenters on regulatory options agreed with the EPA decision not to include SNAP-related provisions in this rule. The eighth commenter was silent on this issue. Although EPA is not including any SNAP provisions with the allowance system, it is possible that future independent SNAP approvals and restrictions might affect HCFC production and consumption.

3. Non-Essential Products Ban

Section 610(d) of the Act prohibits the sale, distribution, or offer for sale or distribution in interstate commerce, of certain non-essential products that contain or are made with HCFCs. EPA is authorized to grant exceptions to the ban under certain conditions.

EPA did not propose any provisions that would use the non-essential products ban to ensure compliance with the HCFC caps under the Protocol. Five of the eight commenters on regulatory options agreed with this decision; the other three were silent on the issue of a Section 610(d) ban. Although EPA is not including provisions in this rule relating to the non-essential products ban, it is possible that future independent evaluations of whether certain products containing or manufactured with HCFCs qualify as non-essential products might affect HCFC consumption.

M. Will There Be Consumption Allowance Credits for Reductions of HCFC Production By-Products Regulated by Title VI?

EPA realizes that there is at least one case where the production of an HCFC creates a by-product that is also regulated under Title VI of the Act. In an effort to encourage emissions reductions of such by-products, EPA has explored incentives for voluntary reductions. EPA sought comment on a proposal to provide one production allowance and one consumption allowance to producers of HCFCs for each kilogram of by-product that is reduced. Allowances could be granted only to the extent available under the cap. Only one commenter was in favor but stated that EPA would have to be certain that adequate allowances were available after the new entrant allocations are calculated. This commenter felt that such an incentive approach would be difficult to monitor and verify. Because there was not widespread support for the proposal and the Agency agrees that adequate monitoring will be difficult, EPA is not reserving any remaining allowances under the cap as an incentive to reduce by-products regulated under Title VI in the production of HCFCs.

N. What Will the Reporting and Recordkeeping Requirements Be?

EPA proposed reporting and recordkeeping requirements similar to those used for class I substances. The requirements include quarterly reports listing each chemical and the quantities (in kilograms) produced, imported, exported, transformed, and destroyed. In order to allow EPA to gather more accurate and timely HCFC market information and fulfill its reporting obligations under the Protocol, EPA proposed to expand the basic reporting and recordkeeping requirements for HCFC transactions that have been in place since 1996.

Five commenters felt the proposed reporting and recordkeeping requirements were excessive or overly burdensome and unnecessary. Three commenters stated that the proposal to require reporting within 15 days after each quarter failed to provide companies sufficient time to gather the information required and to ensure the accuracy of the data. The current regulations require reporting within 45 days after each quarter. EPA has requested that companies report within 15 days after each quarter during 2001 instead of the required 45 days so it could better monitor quarterly consumption figures. Most companies

were able to comply with this request, allowing EPA to track whether domestic consumption was close to the U.S. consumption cap. However, EPA wishes be responsive to the commenters' concern that 15 days is insufficient time. Therefore, with today's action, EPA is requiring reporting within 30 days after each quarter. EPA believes that this is a sufficient period of time to allow companies to gather the information and ensure its accuracy before submission to EPA. EPA has decided not to retain the current 45-day reporting requirement because of the continuing need to monitor compliance with the U.S. consumption cap as closely as possible.

Three commenters were concerned that certain proposed reporting requirements may involve the provision of highly confidential business information. EPA will treat all business information submitted under the HCFC reporting requirements in accordance with the confidential business information provisions at 40 CFR Part 2, Subpart B.

One commenter suggested that supplying hard copies of the records EPA requires, such as the quarterly reports, may demand more human resources than anticipated since these documents are not readily available through normal business electronic systems. EPA has doubled the reporting period from the proposed 15 days to 30 days to allow more time for filing quarterly reports. This commenter suggested that allowance holders with computer records be allowed to supply a minimal number of hard copies and allow the computerized records to provide the first level of recourse to resolve discrepancies. EPA is making the forms available electronically, as a first step. In addition, EPA is working to make it possible for people to complete the forms electronically with special guidance on a "file naming protocol." EPA wants to create this "file naming protocol" so forms completed electronically by producers and importers can be saved with similar nomenclature for transmission to EPA by email. For example, the company, Acme Ltd., might complete the third-quarter importer's report electronically and save the document with the name 3Q_ImpR_Acme and send it, by email, to EPA. The Agency believes guidance on a "file naming protocol" will ease the process for electronically filing, searching and identifying forms for both the Agency and companies, and be especially helpful if a question arises about information in a specific form. EPA will strive to have forms available that can be completed electronically by the regulatory deadline for submission of the first-quarter reports (30 days after the end of the quarter in 2003), and will make every effort to have them available no later than for submission of second-quarter reports. Concurrent with the process for making it possible to electronically complete forms for submission by email, EPA is pursuing technical and logistical questions about creating a secure Web-based system for direct electronic reporting of data. If EPA deems that it is feasible and efficient to create a secure Web-based database for direct electronic reporting, then EPA will work to bring such a system online by 2004. This commenter also suggested that records should be maintained for two years rather than the three years proposed by EPA. However, 3 years is the standard retention period for records concerning both class I and class II controlled substances. (40 CFR 82.13(d)). EPA is not changing this pre-existing requirement in this final rule.

In order to ensure that EPA reports accurate information to the Montreal Protocol on behalf of the U.S., the Agency requires that companies send revisions to reports no more than 180 days after the due date for the specific report. EPA reports data on U.S. national production and consumption of controlled substances in accordance with obligations under Article 7 of the Montreal Protocol. This information is used by the Parties to assess compliance with phaseout obligations under Article 2 of the Protocol. To ensure accuracy in U.S. data reported under Article 7 of the Protocol, EPA requests that companies limit revisions to their reporting to no longer than 180 days after the required submission date under § 82.24.

1. Producers

For determining violations, EPA proposed to assume a company had produced at full capacity during a control period if the producer failed to keep records of production or failed to submit reports on production for that control period. One commenter suggested that EPA consider notifying the company and allow the company 30 days in which to comply before assuming the company had produced at full capacity. The commenter believed that such a grace period would alleviate a potentially harsh sanction for inadvertent non-compliance or difficulty in obtaining the required information in a timely manner. If a producer determines that it is unable to report in 30 days because of difficulty in obtaining information, it should immediately notify EPA and give EPA an estimate of when it can comply with the reporting requirements. U.S. producers have been required to report to EPA since 1996 but inadvertent non-compliance after many years of experience may still occur. EPA currently contacts producers after the end of the reporting period if a report has not been filed. Under the new 30-day reporting period, companies will be notified if a report has not been received after 30 days due to inadvertent non-compliance. The producer will be allowed an additional 15 days in which to file a report, after which the determination of violations will begin.

One commenter wondered whether a bill of lading would be sufficient verification of an export to an affiliate in an Article 5 country for expending Article 5 allowances since EPA proposed requiring written verification. For recordkeeping purposes, EPA will accept a bill of lading as proof of export to an affiliate in an Article 5 country.

Two commenters believed that the 100-pound recordkeeping threshold for spills or releases of HCFCs should not include Toxic Release Inventory quantities for fugitive emissions. EPA agrees that producers need not include Toxic Release Inventory quantities for fugitive emissions. In addition, EPA is clarifying that this recordkeeping requirement applies only to spills or releases that occur while the producer has title to the chemical.

With respect to the proposed reporting requirement at § 82.24(b)(1)(vi), a producer pointed out that it sometimes sells to wholesalers who may export a portion of the shipment intended for transformation or destruction and the producer may not be aware of it. The commenter believed that producers should not be accountable for reporting these sales and that their responsibility should be limited to those shipments where the "Ship to" destination is to a foreign entity. EPA agrees that the producer need only report the names and quantities of HCFCs exported by that producer and has removed the phrase "or by other U.S. persons" from the reporting requirement.

2. Exporters

A producer that manufactures for the export market questioned whether it needed to supply the source of the HCFC and the date it was purchased if it was shipping directly to its own affiliate in another country. EPA believes interactions between a U.S. producer and an overseas affiliate probably generate some form of paperwork to document the manufacture of an HCFC that is subsequently exported to the affiliate. The producer/exporter may substitute

this paperwork that is already generated to document an "order" for an HCFC to be exported to an overseas affiliate in lieu of an invoice.

3. Transformation and Destruction

Three commenters requested that EPA clearly state that HCFCs used as feedstocks; HCFC heels in tank trailers, cylinders, and drums; and used HCFCs are exempted from the rule. Two of the three commenters suggested eliminating the proposed recordkeeping and reporting requirements associated with these exemptions. Section 82.15 (prohibitions for class II control substances) in the rule exempts the production and import of HCFCs for transformation or destruction purposes. That same section exempts the import of transhipments, heels, and used HCFCs from the prohibitions. EPA believes no further clarification of these exemptions is necessary. Although there are no allowances associated with feedstock, heels, and used HCFCs, the Protocol requires reporting of these quantities by each of the Parties. Therefore, EPA needs to obtain basic information regarding such activities. Accordingly, EPA is adopting the reporting and recordkeeping requirements as proposed.

Another commenter on the proposed requirement that producers maintain dated records for HCFCs used as feedstock proposed that production records be enough to satisfy this requirement. Under the Protocol and CAA, quantities of HCFCs used for feedstock are exempt from calculations of production and consumption. However, in accordance with obligations under the Protocol EPA must report the total amount of HCFCs produced, imported and exported for use as a feedstock during a calendar year to the Parties. The intent of monitoring feedstock quantities is to ensure there is no abuse of the exemption. Because feedstock quantities can be produced, imported and exported in one year and may not actually be transformed during that same calendar year EPA is retaining the requirement that producers, importers and exporters submit a transformation verification for class II controlled substance as proposed.

A commenter on reporting requirements for those purchasing HCFCs for transformation felt a change in timing for transformation should not require a revised verification since inventory fluctuations might influence the decision to transform. The proposed requirement calls for a "period of time over which the person intends to transform" the HCFCs rather than a specific date. The person reporting may estimate the period of time during which the transformation might take place rather than report a specific date, however, the Agency is not requiring a re-submission of the verification as proposed if the timing happens to change.

A commenter on the reporting of transformation or destruction believed that submitting invoices or sales agreements 15 days after the end of the quarter might be difficult and suggested that this be changed to a recordkeeping requirement. EPA has expanded the reporting period from 15 days to 30 days to allow the exporter more time to submit the required paperwork. This is especially important at the end of the fourth quarter, when the annual figures are compiled and any discrepancies might occur. EPA is retaining this as a reporting, rather than a recordkeeping, requirement in order to meet U.S. reporting obligations under the Protocol.

4. Heels

One producer suggested that heel weights be excluded from the reporting requirements in § 82.24(f) since the company does not normally record these quantities in rail car shipments or tank trucks. The commenter adds that it is possible to record the heels remaining in rail cars because tare weights are assigned. The commenter feels that heels in tank trucks are irrelevant because customers are only billed for the net amount of HCFCs delivered. The commenter believes that reporting of heels that are not normally recorded will result in additional cost and provide little environmental benefit.

EPA believes that the supplier and the customer both possess information regarding the total mass (weight) for the container, whether it be a tank truck or a rail car. As suggested by the commenter, the residual quantity (heel) in a rail car is the difference between the empty weight of the rail car and the tare weight after a delivery. Suppliers very typically determine the weight of a rail car or tank truck after a delivery to be able to know the how much to bill the customer (weight before the delivery minus weight after the delivery = amount delivered). The residual quantity (heel) in a tank truck would be calculated in the same manner; the difference between the empty weight of the tank truck and the tare weight after the delivery. EPA believes that determining the residual quantity (heel) in this manner will not result in additional cost to the supplier.

The industry rule of thumb is that a heel is up to ten percent of the volume of the container. If the residual quantity entering the United States is ten percent or less of the total volume, the residual quantity may be considered a heel. The supplier may certify that the heel will remain in the container and be included in a future shipment; be recovered and transformed; be recovered and destroyed, or be recovered for a non-emissive use. If the residual quantity entering the United States is greater than ten percent, then it may not be considered a heel and the importer will be required to expend consumption allowances. Non-reporting of residual quantities greater than ten percent of the total volume provides the supplier with additional consumption allowances it has not been granted and compromises the environmental benefits of the phaseout.

The commenter requests that EPA clarify that "heels" do not apply to small containers but only to bulk shipments because cylinders and small containers are by definition returned empty and are not weighed. In most cases, they are presumed empty; in some cases, they are vented to a thermal oxidizer before being refilled. No residual quantity, whether in small containers or large ISO tanks, can qualify as a heel unless it represents ten percent or less of the volume of the container.

The same commenter requested that the notice the Department of Transportation mandates in 49 CFR 172.203(e)(1&2) for bulk shipments precede the heel weight on the bill of lading. EPA agrees with the commenter that the heel weight may follow the notice "RESIDUE: Last Contained * * *" on the bill of lading.

The commenter noted that an invoice seldom accompanies a heel and that U.S.-mandated labeling of a shipping container from an Article 5 country may be a particular problem. EPA requests the heel weight be indicated on the bill of lading or the invoice to allow the importer more than one place on which to record the heel weight in case one or the other document is not available. EPA will monitor the ability of Parties, especially Article 5 countries, to include U.S.-mandated information on the documents accompanying heels to determine if further refinements are necessary.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the

requirements of the Executive Order. The Executive Order defines "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB that this action is a "significant regulatory action" under the terms of Executive Order 12866 and is therefore subject to OMB review under the Executive Order even though the annual effect on the economy is expected to be less than $100 million. This document was reviewed by OMB and changes recommended by OMB have been made and documented for the public record.

B. Executive Order 13045: Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it implements specific phaseout schedules established under the CAA and the Montreal Protocol.

C. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements in this document are directed to economic entities that either produce, import, export, transform, destroy or use HCFCs in very narrow applications, and not to State or local governments. Thus, Executive Order 13132 does not apply to this rule.

D. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This final rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

The requirements in this final rule are directed to economic entities that either produce, import, export, transform, destroy, or use HCFCs in very narrow applications, and not to Indian tribal governments or their communities.

E. Executive Order 13211: Energy Effects

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects because the phaseout timetable for HCFCs, originally established in 1993, occurs over many decades giving industries long planning horizons for changing to alternative substances and for adjusting new technologies. Over this long time horizon, industries are re-tooling and maximizing energy efficiencies. Switches from HCFCs to alternative substances and new technologies that have already taken place, or are in process, are resulting in energy savings for the manufacturer and the consumer.

F. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective upon publication.

G. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. 104–113, Section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Paperwork Reduction Act

The information collection requirements in this rule [have been (or will be)] submitted for approval to the

Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2014.01) and a copy may be obtained from Sandy Farmer, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

The recordkeeping and reporting requirements in this rule are similar to those used in the class I allowance system that has been in place for several years. The information collected will be utilized to monitor business compliance with the class II allowance system. The information will also be used to comply with the reporting requirements agreed to by the Parties to the *Montreal Protocol on Substances that Deplete the Ozone Layer*. The information is intended to ensure that the U.S. meets its obligations to control and administer the phaseouts of HCFCs under the Protocol and the CAA Amendments of 1990.

Reporting requirements mandated in Section 603 of the CAA relative to HCFCs are currently in place in 40 CFR 82.13(n) and (o). This rule contains new recordkeeping requirements and expanded reporting requirements to ensure accurate expenditures of allowances and trades of allowances. Responses to the collection of information are mandatory pursuant to Section 114 of the CAA.

Information collected from businesses may be claimed as confidential by clearly identifying the material as confidential. Such information will be treated in accordance with EPA's procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B and will only be disclosed by the means set forth in that subpart.

It is estimated that the annual reporting burden for producers is 1,132 hours and for importers it is 1,800 hours. This includes maintaining records, preparing and submitting quarterly reports on production, import, exports, and claims for transfers of allowances and offsets. The average burden hours per response is estimated to be between 283 and 450 hours. The proposed frequency of response is four times per year and the likely number of respondents will be 7 producers and 14 importers, although some of the producers and some of the importers also function as exporters. The only industry requirements for the start-up phase are an evaluation of the impact of the allowance system and the development of a plan of action. The start-up burden is estimated to be 910 hours for producers and 1,820 hours for importers.

Start-up costs are estimated to amount to $219,108, after which annual industry cost is estimated to be $253,089 to maintain records of production, import, and export; submit quarterly reports to EPA on production, import and export; provide additional information requested by EPA; prepare transfer claims; and submit petitions to import used HCFCs. The latter two functions are not periodical tasks but are initiated by the person based on business decisions.

In order to receive the benefit of HCFC–141b exemption allowances, HCFC–141b formulators and U.S. agencies, departments or instrumentalities, or related entities involved in space vehicle endeavors are being asked to petition the Agency annually for exemption to produce or import HCFC–141b beyond the January 1, 2003 phaseout date. The approximate number of petitioners is likely to be 15–20 entities. EPA is requiring that the entities supply technical descriptions of the processes in which HCFC–141b is being used, the areas where the product will be applied, and why alternatives and substitutes are not sufficient to eliminate the use of HCFC–141b. EPA is also requiring that entities supply a detailed analysis showing why stockpiled, recovered, or recycled quantities are not technically feasible for use and a detailed description of continuing investigations into and progress on possible alternatives and substitutes by the applicants.

Entities granted HCFC–141b exemption allowances for the production of HCFC–141b products will be required to report semiannually to EPA on the total quantity of HCFC–141b received to date and the name of the supplier. The supplier of HCFC–141b (the "producer" or "importer" under the regulations) will report quarterly along with their other quarterly reporting to EPA the amount of HCFC–141b supplied to a petitioner granted HCFC–141b exemption allowances and submit copies of the requests. It is estimated that the annual reporting burden for the recipient of the allowances is about 20 hours at a cost of about $864 and the burden for the manufacturer is about 20 hours at a cost of about $1,538.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

I. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that is identified by the North American Industry Classification System code (NAICS) in the Table below.

Type of Enterprise	NAICS Code	Size Standard (number of employees)
Organic Chemical Wholesaling	422690	100

(2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

We have determined that approximately 13 small businesses that are eligible for allowances under this rule, would receive allowances, for which recordkeeping and reporting to

EPA is required. The administrative recordkeeping and reporting these small businesses will experience will amount to an impact of between 0.01 and 0.02 percent of their HCFC revenues alone. When considering that the vast majority deal in numerous chemicals and/or also obtain revenues from services provided, this percentage for the majority would be significantly lower.

Additionally, in this final rule EPA is adopting a petition process for HCFC–141b that is open to all entities. We expect that approximately 15 formulators of HCFC–141b, some which are small businesses, will petition the Agency for HCFC–141b exemption allowances. Those qualifying entities will be granted a benefit in the form of HCFC–141b exemption allowances which allow limited continued production of HCFC–141b beyond the long-established phaseout date. We estimate that each petitioner will experience an impact of .002 percent of revenues.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

With respect to the petition process for HCFC–141b exemption allowances, the economic impact on all affected entities, and especially the economic impact on small entities, has been reduced to every extent possible. For example, EPA has minimized the economic impact by only requesting information that is readily available to all expected to petition. In addition, in all the HCFC–141b uses EPA is aware of, the formulator is responsible for meeting the testing and code requirements as opposed to the end user. Therefore, in order to reduce the burden of petitioning, EPA designed the process so the end user does not need to apply for the exemption allowance.

With respect to the allowance allocation system as a whole, EPA has taken a number of steps to reduce burden and provide flexibility. Although small entities receiving allowance allocations will be subject to the same recordkeeping and reporting requirements as the larger entities, for purposes of tracking allowance trades and expenditures, the small entities will be on the same footing as the larger entities; they will be receiving their best year of activity in the range of years discussed above as a baseline year for determining allowance allocations, and will be able to conduct their business with a degree of certainty in a competitive market. Like the large entities, the small entities will receive allowances for the entire phaseout period, with the necessary adjustments each calendar year to accommodate the required reductions in consumption agreed to by the Parties to the Protocol and the phaseouts of HCFC–22 and HCFC–142b.

EPA believes that the ability to transfer allowances among HCFCs provides the greatest flexibility for small entities to manage their allocation. Unlike the class I system for transfers, there is no restriction to limit inter-pollutant transfers to groups of substances. Inter-pollutant transfers, also known as intra-company transfers or trades, allow a company to shift allowances internally from one HCFC to another to respond to market forces, *e.g.* HCFC–142b allowances for HCFC–22 allowances. Inter-company transfers of allowances are also possible, either on a current-year basis or on a permanent basis. Current-year trades are temporary trades and are reflected in a company's balance of allowances in the control period in which the trade occurs.

By using the phaseout schedules and the option for current-year or permanent trades, a small entity can opt for short-term decisions or long-term decisions concerning the allowances it holds after evaluating its place in the market. In addition, although the CAA requires an offset, EPA is requiring an offset of only 0.1 percent, 0.9 percent less than that required under the class I allowance trading system; such an offset will still provide the environmental benefit required by Congress without penalizing small entities should they wish to avail themselves of transfers. EPA estimates that the burden will be negligible on small businesses, while those same small businesses will gain a marketable asset in their allocated allowances. The actual burden will consist of quarterly reports on production, imports, exports, and allowance trades, as well as paperwork describing any trades in which the business decides to engage. The estimated recordkeeping and quarterly reporting burden on the affected small businesses will be about 40 hours per year per business, at an estimated cost of $3,070. Each trade made at the discretion of the small business will add a burden of 4 hours at a cost of $307, basing the calculation on a cost of $76.88 per hour.

In the proposal EPA notified the industry that late entrants to the HCFC market could still be allocated allowances if they provided proper documentation. One small entity provided sufficient information and is allocated allowances in today's action. EPA also carefully reviewed the quarterly reports submitted by other small entities for the baseline years under consideration to ensure that the correct quantities have been ascribed to each entity for each year. EPA consulted with the small entities in order to reconcile any disparities encountered during the record review.

J. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of $100 million or more in any one year. Entities in the private sector that either produce, import, export, transform, destroy or use HCFCs in very narrow applications will be

operating under an allowance allocation system very similar to the system selected for CFCs (53 FR 30566, August 12, 1988). The CFC allowance allocation system was determined to be the most economically efficient; market-based, and simple to administer in meeting the requirements of the Protocol. Recordkeeping for HCFCs will be similar to that for CFCs but will be somewhat simplified due to the absence of essential use allowances, destruction credits, and transformation credits. The experience gained by those entities familiar with the CFC allowance allocation system will carry over in the class II allowance allocation system.

In addition, the UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations. As a Party to the Protocol, the U.S. must comply with the phaseout schedule for HCFCs created in 1992 the consumption cap for HCFCs established in 1996. This final rule contains provisions to implement these obligations.

Thus, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Reporting and recordkeeping requirements.

Dated: December 18, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Amend § 82.3 as follows:

a. Revise the section heading.

b. Revise the definitions for "Article 5 allowances", "Baseline consumption allowances", "Baseline production allowances", "Confer", "Consumption allowances", "Party", "Production allowances."

c. Remove the definitions for "Destruction credits", and "Transformation credits."

d. Add new definitions in alphabetical order for the terms "Export production allowances", "Formulator", "HCFC–141b exemption allowances", "Individual shipment", "Non-objection notice", "Source facility", "Space vehicle", "Unexpended export production allowances", and "Unexpended HCFC–141b exemption allowances".

The revisions and additions read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Article 5 allowances means the allowances apportioned under § 82.9(a) and § 82.18(a).

Baseline consumption allowances means the consumption allowances apportioned under § 82.6 and § 82.19.

Baseline production allowances means the production allowances apportioned under § 82.5 and § 82.17.

* * * * *

Confer means to shift the essential-use allowances obtained under § 82.4(t) from the holder of the unexpended essential-use allowances to a person for the production of a specified controlled substance, or to shift the HCFC–141b exemption allowances granted under § 82.16(h) from the holder of the unexpended HCFC–141b exemption allowances to a person for the production or import of the controlled substance.

* * * * *

Consumption allowances means the privileges granted by this subpart to produce and import controlled substances; however, consumption allowances may be used to produce controlled substances only in conjunction with production allowances. A person's consumption allowances for class I substances are the total of the allowances obtained under §§ 82.6 and 82.7 and 82.10, as may be modified under § 82.12 (transfer of allowances). A person's consumption allowances for class II controlled substances are the total of the allowances obtained under §§ 82.19 and 82.20, as may be modified under § 82.23.

* * * * *

Export production allowances means the privileges granted by § 82.18(b) to produce HCFC–141b for export following the phaseout of HCFC–141b on January 1, 2003.

* * * * *

Formulator means an entity that distributes a class II controlled substance(s) or blends of a class II controlled substance(s) to persons who use the controlled substance(s) for a specific application identified in the formulator's petition for HCFC–141b exemption allowances.

* * * * *

HCFC–141b exemption allowances means the privileges granted to a HCFC–141b formulator; an agency, department, or instrumentality of the U.S.; or a non-governmental space vehicle entity by this subpart to order production of or to import HCFC–141b, as determined in accordance with § 82.16(h).

* * * * *

Individual shipment means the kilograms of a used controlled substance for which a person may make one (1) U.S. Customs entry, as identified in the non-objection letter from the Administrator under §§ 82.13(g) and 82.24(c)(4).

* * * * *

Non-objection notice means the privilege granted by the Administrator to import a specific individual shipment of used controlled substance in accordance with §§ 82.13(g) and 82.24(c)(3) and (4).

Party means any foreign state that is listed in Appendix C to this subpart (pursuant to instruments of ratification, acceptance, or approval deposited with the Depositary of the United Nations Secretariat), as having ratified the specified control measure in effect under the Montreal Protocol. Thus, for purposes of the trade bans specified in § 82.4(l)(2) pursuant to the London Amendments, only those foreign states that are listed in Appendix C to this subpart as having ratified both the 1987 Montreal Protocol and the London Amendments shall be deemed to be Parties.

* * * * *

Production allowances means the privileges granted by this subpart to produce controlled substances; however, production allowances may be used to produce controlled substances only in conjunction with consumption allowances. A person's production allowances for class I substances are the total of the allowances obtained under §§ 82.5, 82.7 and 82.9, and as may be modified under § 82.12 (transfer of allowances). A person's production allowances for class II controlled substances are the total of the allowances obtained under § 82.17 and as may be modified under §§ 82.18 and 82.23.

* * * * *

Source facility means the location at which a used controlled substance was recovered from a piece of equipment, including the name of the company responsible for, or owning the piece of

equipment, a contact person at the location, the mailing address for that specific location, and a phone number and a fax number for the contact person at the location.

* * * * *

Space vehicle means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with tests, transport, and storage, which through contamination can compromise the space vehicle performance.

* * * * *

Unexpended export production allowances means export production allowances that have not been used. A person's unexpended export production allowances are the total of the quantity of the export production allowances the person has authorization under § 82.18(h) to hold for that control period, minus the quantity of class II controlled substances that the person has produced at that time during the same control period.

* * * * *

Unexpended HCFC–141b exemption allowances means HCFC–141b exemption allowances that have not been used. A person's unexpended HCFC–141b exemption allowances are the total of the quantity of the HCFC–141b exemption allowances the person has authorization under § 82.16(h) to hold for that control period, minus the quantity of HCFC–141b that the person has had produced or has had imported at that time during the same control period.

* * * * *

3. Amend § 82.4 as follows:

a. Revise the section heading.

b. Remove paragraphs (n) through (s) and paragraph (u).

c. Redesignate paragraphs (t) through (w) as (n) through (q).

The revision reads as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

4. Amend § 82.5 as follows:

a. Revise the section heading.

b. Remove paragraph (h).

The revision reads as follows:

§ 82.5 Apportionment of baseline production allowances for class I controlled substances.

* * * * *

5. Amend § 82.6 as follows:

a. Revise the section heading.

b. Remove paragraph (h).

The revision reads as follows:

§ 82.6 Apportionment of baseline consumption allowances for class I controlled substances.

* * * * *

6. Section 82.8 is removed and reserved.

7. Section 82.9 is amended by revising the section heading as follows:

§ 82.9 Availability of production allowances in addition to baseline production allowances for class I controlled substances.

* * * * *

8. Section 82.10 is amended by revising the section heading as follows:

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances for class I controlled substances.

* * * * *

9. Section 82.11 is amended by revising the section heading as follows:

§ 82.11 Exports of class I controlled substances to Article 5 Parties.

* * * * *

10. Section 82.12 is amended by revising the section heading as follows:

§ 82.12 Transfers of allowances for class I controlled substances.

* * * * *

11. Amend § 82.13 as follows:

a. Revise the section heading;

b. Remove paragraphs (n) and (o).

c. Redesignate paragraphs (p) through (cc) as (n) through (aa).

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

12. Add §§ 82.15 through 82.24 to subpart A to read as follows:

§ 82.15 Prohibitions for class II controlled substances.

(a) *Production.* (1) Effective January 21, 2003, no person may produce class II controlled substances in excess of the quantity of unexpended production allowances, unexpended Article 5 allowances, unexpended export production allowances, or conferred unexpended HCFC–141b exemption allowances held by that person for that substance under the authority of this subpart at that time in that control period, unless the substances are transformed or destroyed domestically or by a person of another Party, or unless they are produced using an exemption granted in paragraph (f) of this section. Every kilogram of excess production constitutes a separate violation of this subpart.

(2) Effective January 21, 2003, no person may use production allowances to produce a quantity of class II controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class II controlled substances. No person may use consumption allowances to produce a quantity of class II controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class II controlled substances.

(b) *Import.* (1) Effective January 21, 2003, no person may import class II controlled substances (other than transhipments, heels or used class II controlled substances), in excess of the quantity of unexpended consumption allowances, or conferred unexpended HCFC–141b exemption allowances held by that person under the authority of this subpart at that time in that control period, unless the substances are for use in a process resulting in their transformation or their destruction, or unless they are produced using an exemption granted in paragraph (f) of this section. Every kilogram of excess import constitutes a separate violation of this subpart.

(2) Effective January 21, 2003, no person may import, at any time in any control period, a used class II controlled substance, without having submitted a petition to the Administrator and received a non-objection notice in accordance with § 82.24(c)(3) and (4). A person issued a non-objection notice for the import of an individual shipment of used class II controlled substances may not transfer or confer the right to import, and may not import any more than the exact quantity (in kilograms) of the used class II controlled substance stated in the non-objection notice. Every kilogram of import of used class II controlled substance in excess of the quantity stated in the non-objection notice issued by the Administrator in accordance with § 82.24(c)(3) and (4) constitutes a separate violation of this subpart.

(c) Production with Article 5 allowances. No person may introduce into U.S. interstate commerce any class II controlled substance produced with Article 5 allowances. Every kilogram of a class II controlled substance that was produced with Article 5 allowances that is introduced into U.S. interstate commerce constitutes a separate violation under this subpart. No person may export any class II controlled substance produced with Article 5 allowances to a non-Article 5 Party to the Protocol as listed in Appendix E to this subpart. Every kilogram of a class II controlled substance that was

produced with Article 5 allowances that is exported to a non-Article 5 Party to the Protocol as listed in Appendix E of this subpart constitutes a separate violation under this subpart.

(d) Production with export production allowances. No person may introduce into U.S. interstate commerce any class II controlled substance produced with export production allowances. Every kilogram of a class II controlled substance that was produced with export production allowances that is introduced into U.S. interstate commerce constitutes a separate violation under this subpart.

(e) Trade with Parties. Effective January 1, 2004, no person may import or export any quantity of a class II controlled substance listed in Appendix A to this subpart, from or to any foreign state that is not listed as a Party either:

(1) In Appendix L of this subpart and also listed in Appendix C, Annex 1 of the Protocol as having ratified the Beijing Amendments, or

(2) In Appendix C, Annex 1 of the Protocol as having ratified the Copenhagen Amendments but not listed in Appendix L of this subpart, or

(3) In Appendix C, Annex 2 of the Protocol, as being a foreign state complying with the Beijing Amendments if the foreign state is listed in Appendix L of this subpart, or as being a foreign state complying with the Copenhagen Amendments if the foreign state is not listed in Appendix L of this subpart.

(f) Exemptions. (1) Medical Devices [Reserved]

§ 82.16 Phaseout schedule of class II controlled substances.

(a) In each control period as indicated in the following table, each person is granted the specified percentage of baseline production allowances and baseline consumption allowances for the specified class II controlled substances apportioned under §§ 82.17 and 82.19:

Control period	Percent of HCFC–141b	Percent of HCFC–22 & HCFC–142b
2003	0	100
2004	0	100
2005	0	100
2006	0	100
2007	0	100
2008	0	100
2009	0	100

(b) Effective January 1, 2003, no person may produce HCFC–141b except for use in a process resulting in its transformation or its destruction, for export under § 82.18(a) using unexpended Article 5 allowances, for export under § 82.18(b) using unexpended export production allowances, for HCFC–141b exemption needs using unexpended HCFC–141b exemption allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2003, no person may import HCFC–141b (other than transhipments, heels or used class II controlled substances) in excess of the quantity of unexpended HCFC–141b exemption allowances held by that person except for use in a process resulting in its transformation or its destruction, or for exemptions permitted in § 82.15(f).

(c) Effective January 1, 2010, no person may produce HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, for use in equipment manufactured before January 1, 2010, for export under § 82.18(a) using unexpended Article 5 allowances, or for export under § 82.18(b) using unexpended export production allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2010, no person may import HCFC–22 or HCFC–142b (other than transhipments, heels or used class II controlled substances) for any purpose other than for use in a process resulting in their transformation or their destruction, for exemptions permitted in § 82.15(f), or for use in equipment manufactured prior to January 1, 2010.

(d) Effective January 1, 2015, no person may produce class II controlled substances not previously controlled, for any purpose other than for use in a process resulting in their transformation or their destruction, for use as a refrigerant in equipment manufactured before January 1, 2020, for export under § 82.18(a) using unexpended Article 5 allowances, or for export under § 82.18(b) using unexpended export production allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2015, no person may import class II controlled substances not subject to the requirements of paragraph (b) or (c) of this section (other than transhipments, heels or used class II controlled substances) for any purpose other than for use in a process resulting in their transformation or their destruction, for exemptions permitted in § 82.15(f), or for use as a refrigerant in equipment manufactured prior to January 1, 2020.

(e) Effective January 1, 2020, no person may produce HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, for export under § 82.18(a) using unexpended Article 5 allowances, or for export under § 82.18(b) using unexpended export production allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2020, no person may import HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction, or for exemptions permitted in § 82.15(f).

(f) Effective January 1, 2030, no person may produce class II controlled substances, for any purpose other than for use in a process resulting in their transformation or their destruction, for export under § 82.18(a) using unexpended Article 5 allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2030, no person may import class II controlled substances for any purpose other than for use in a process resulting in their transformation or their destruction, or for exemptions permitted in § 82.15(f).

(g) Effective January 1, 2040, no person may produce class II controlled substances for any purpose other than for use in a process resulting in their transformation or their destruction, or for exemptions permitted in § 82.15(f).

(h) Petition for HCFC–141b exemption allowances.

(1) Effective January 21, 2003, a formulator of HCFC–141b, an agency, department, or instrumentality of the U.S., or a non-governmental space vehicle entity, may petition EPA for HCFC–141b exemption allowances for the production or import of HCFC–141b after the phaseout date, in accordance with this section. The petitioner must submit the following information to the Director of EPA's Office of Atmospheric Programs no later than April 21, 2003, for the 2003 control period; and, for any subsequent control period, no later than October 31st of the year preceding the control period for which the HCFC–141b exemption allowances are requested:

(i) Name and address of the HCFC–141b formulator, U.S. government entity or non-governmental space vehicle entity;

(ii) Name of contact person, phone number, fax number and e-mail address;

(iii) Quantity (in kilograms) of HCFC–141b needed for each relevant calendar year, supported by documentation about past use for at least the previous three years;

(iv) Quantities of HCFC–141b, if any, contained in systems that were sold to other systems houses for at least the previous three years;

(v) Description of the markets and applications served by the use of HCFC–141b or systems based on HCFC–141b;

(vi) Technical description of processes in which HCFC–141b is being used;

(vii) Technical description of the specific conditions under which the product will be applied;

(viii) Technical description of why alternatives and substitutes are not sufficient to eliminate the use of HCFC–141b;

(ix) Amount of stockpiled HCFC–141b (on-hand, taken title to, or available from a supplier) along with a detailed analysis showing why stockpiled, recovered or recycled quantities are deemed to be unavailable, or technically or commercially infeasible for use (for example, taking into consideration undue costs for storage and transportation);

(x) An estimate of the number of control periods over which such an exemption would be necessary;

(xi) A detailed description of continuing investigations into and progress on possible alternatives and substitutes;

(xii) A list of alternatives considered, purchased or sampled, including dates and copies of receipts for verification;

(xiii) A summary of the petitioner's in-house development program including summaries of all relevant test results and their significance to subsequent decision-making and technology selection. Full supporting test data must be available on request including alternative tested and date on which it was tested;

(xiv) A clear statement of the preferred technical option(s) being pursued at the time of the petition and the reasoning for this selection;

(xv) A summary of product test results conducted on the preferred technical option(s) by accredited organizations in order to determine whether products meet applicable codes. Relevant test reports and certifications must be made available on request; and

(xvi) A description of the further development testing to be carried out over the number of control periods identified under paragraph (h)(1)(x) of this section.

(2) Within 21 business days of receipt of the petition, the Director of EPA's Office of Atmospheric Programs will issue to a HCFC–141b formulator, agency, department, or instrumentality of the U.S., or non-governmental space vehicle entity that has petitioned for HCFC–141b exemption allowances, based on information received in accordance with paragraph (h)(1) of this section, a notice indicating one of the following:

(i) A determination by the Director of EPA's Office of Atmospheric Programs to grant a specific quantity of HCFC–141b exemption allowances (in kilograms) for the production or import of HCFC–141b in a specified control period based on an assessment that HCFC–141b is necessary to maintain either safety, or operational or technical viability;

(ii) A determination by the Director of EPA's Office of Atmospheric Programs to request additional information because the information received in accordance with paragraph (h)(1) of this section is not sufficient to decide whether to grant or deny HCFC–141b exemption allowances. The Director of EPA's Office of Atmospheric Programs will decide whether to grant or deny HCFC–141b exemption allowances within 30 days of receipt of the additional information. However, if the petitioner fails to submit the additional information within 20 days of the request, such failure constitutes a basis for denying the petition for HCFC–141b exemption allowances.

(iii) A determination by the Director of EPA's Office of Atmospheric Programs to deny a grant of HCFC–141b exemption allowances due to one or more of the following reasons:

(A) The needs can be met by the use of a substance other than HCFC–141b;

(B) The needs can be met by the use of existing supplies of HCFC–141b;

(C) There is evidence of fraud or misrepresentation;

(D) Approval of the HCFC–141b exemption allowances would be inconsistent with U.S. obligations under the provisions of the Montreal Protocol (including Decisions agreed by the Parties);

(E) Approval of the HCFC–141b exemption allowances would be inconsistent with the Clean Air Act;

(F) There is an inadequate demonstration of efforts undertaken to research and implement alternatives; or

(G) Granting the HCFC–141b exemption allowances may reasonably be expected to endanger human health or the environment.

(3) Within ten working days after receipt of a notice outlining a determination by the Director of EPA's Office of Atmospheric Programs to deny a grant of HCFC–141b exemption allowances due to one or more of the reasons in paragraph (h)(2)(iii) of this section, the petitioner may file with the Director of EPA's Office of Atmospheric Programs a one-time appeal with elaborated information. The Director of EPA's Office of Atmospheric Programs may affirm the determination to deny a grant of HCFC–141b exemption allowances or make a determination to grant HCFC–141b exemption allowance, in light of the available evidence submitted with the appeal. If no appeal is submitted by the tenth day after receipt of the notice outlining a determination by the Director of EPA's Office of Atmospheric Programs to deny a grant of HCFC–141b exemption allowances, the denial will be final on that day.

(4) Any entity that has previously petitioned for HCFC–141b exemption allowances under paragraph (h)(1) of this section may file a petition for renewal for a subsequent control period by October 31st of the year preceding that control period. The petition for renewal must contain the following information:

(i) Name and address of the HCFC–141b formulator, U.S. government entity or non-governmental space vehicle entity;

(ii) Name of contact person, phone number, fax number and e-mail address;

(iii) Quantity (in kilograms) of HCFC–141b needed for the control period;

(iv) Description of markets and applications being served by the use of HCFC–141b;

(v) A technical description of the process in which HCFC–141b is still being used;

(vi) A technical description of the specific conditions under which the product is still being applied;

(vii) Technical description of why alternatives and substitutes are still not sufficient to eliminate the use of HCFC–141b;

(viii) Amount of stockpiled HCFC–141b (on-hand, taken title to, or available from a supplier) along with a detailed analysis showing why stockpiled, recovered or recycled quantities are deemed to be technically or economically infeasible for use; and

(ix) A detailed description of continuing investigations into and progress on possible alternatives and substitutes and how this activity differs from information given in the previous request.

(5) A person granted HCFC–141b exemption allowances by the Director of EPA's Office of Atmospheric Programs under paragraph (h)(2)(i) or (h)(3) of this section may request a quantity of HCFC–141b be produced or imported in the specified control period listed in the notice by conferring the rights to produce or import to a producer or importer.

(6) The HCFC–141b exemption allowances held by one entity do not automatically transfer to an acquiring

entity. Any entity acquiring another company holding HCFC–141b exemption allowances must submit a renewal application in accordance with paragraph (h)(4) of this section at the time of the acquisition in order to qualify for the HCFC–141b exemption allowances.

§ 82.17 Apportionment of baseline production allowances for class II controlled substances.

Effective January 1, 2003, the following persons are apportioned baseline production allowances for HCFC–141b, HCFC–22, or HCFC–142b as set forth in the following table:

Person	Controlled substance	Allowances(kg.)
AlliedSignal (Honeywell)	HCFC–22	37,378,252
	HCFC–141b	28,705,200
	HCFC–142b	2,417,534
Ausimont USA	HCFC–142b	6,541,764
DuPont Company	HCFC–22	42,638,049
Elf Atochem (ATOFINA)	HCFC–22	28,219,223
	HCFC–141b	24,647,925
	HCFC–142b	16,131,096
LaRoche Industries	HCFC–141b	17,756,508
MDA Manufacturing	HCFC–22	2,383,835

§ 82.18 Availability of production in addition to baseline production allowances for class II controlled substances.

(a) *Article 5 allowances.* (1) Effective January 1, 2003, a person apportioned baseline production allowances under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances for the specified HCFC for each control period up until December 31, 2014, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(2) Effective January 1, 2015, for all HCFCs, a person apportioned baseline production allowances under § 82.17 is also apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances for the specified HCFC for each control period up until December 31, 2029, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(3) Effective January 1, 2030, for all HCFCs, a person apportioned baseline production allowances under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances for the specified HCFC for each control period up until December 31, 2039, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(b) *Export production allowances.* (1) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC–141b under § 82.17 is also apportioned export production allowances equal to 100 percent of their baseline production allowances for HCFC–141b for each control period up until December 31, 2029, to be used for the production of HCFC–141b for export only, in accordance with this section.

(2) [Reserved]

(c) *International trades of production allowances, export production allowances and Article 5 allowances.* (1) A person may increase or decrease its production allowances, export production allowances, or Article 5 allowances, for a specified control period through trades with another Party to the Protocol as set forth in this paragraph (c). Effective January 1, 2004, a nation listed either: in Appendix L of this subpart that is also listed in Appendix C, Annex 1 of the Protocol as having ratified the Beijing Amendments, or in Appendix C, Annex 1 of the Protocol as having ratified the Copenhagen Amendments but not listed in Appendix L of this subpart, or in Appendix C, Annex 2 of the Protocol, as being a foreign state complying with the Beijing Amendments if the foreign state is listed in Appendix L of this subpart, or as being a foreign state complying with the Copenhagen Amendments if the foreign state is not listed in Appendix L of this subpart must agree either to trade to the person for the current control period some quantity of production that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some quantity of production that the person is permitted under this subpart. The person must expend its consumption allowances allocated under § 82.19, or obtained under § 82.20 in order to produce with the additional production allowances.

(2) *Trade from a Party—Information requirements.* (i) A person requesting a trade from a Party must submit to the Administrator a signed document from the principal diplomatic representative in that nation's embassy in the U.S. stating that the appropriate authority within that nation will establish or revise production limits for the nation to equal the lowest of the following three production quantities:

(A) The maximum production that the nation is allowed under the Protocol minus the quantity (in kilograms) to be traded;

(B) The maximum production that is allowed under the nation's applicable domestic law minus the quantity (in kilograms) to be traded; or

(C) The average of the nation's actual national production level for the three years prior to the trade minus the production to be traded.

(ii) A person requesting a trade from a Party must also submit to the Administrator a true copy of the document that sets forth the following:

(A) The identity and address of the person;

(B) The identity of the Party;

(C) The names and telephone numbers of contact persons for the person and for the Party;

(D) The chemical type and quantity (in kilograms) of production being traded;

(E) Documentation that the Party possesses the necessary quantity of unexpended production rights;

(F) The control period(s) to which the trade applies; and

(G) For increased production intended for export to the Party from whom the allowances would be received, a signed statement of intent to export to the Party.

(3) *Trade to a Party—Information requirements.* A person requesting a trade to a Party must submit a request that sets forth the following information to the Administrator:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and quantity (in kilograms) of allowable production being traded; and

(v) The control period(s) to which the trade applies.

(4) *Review of international trade request to a Party.* After receiving a trade request that meets the requirements of paragraph (c)(3) of this section, the Administrator may, at his/her discretion, consider the following factors by seeking concurrence from the Department of Commerce, the United States Trade Representative, and the Department of State, where appropriate, in deciding whether to approve such a trade:

(i) Possible creation of domestic economic hardship;

(ii) Possible effects on trade;

(iii) Potential environmental implications; and

(iv) The total quantity of unexpended production allowances held by U.S. entities.

(5) *Notice of trade.* If the request meets the requirement of paragraph (c)(2) of this section for trades from Parties and paragraphs (c)(3) and (4) of this section for trades to Parties, the Administrator will issue the person a notice. The notice will either grant or deduct production allowances or export production allowances or Article 5 allowances and specify the control period to which the trade applies. The Administrator may disapprove the trade request contingent on the consideration of factors listed in paragraph (c)(4) of this section for trades to Parties.

(i) For trades from a Party, the Administrator will issue a notice revising the allowances held by the recipient of the trade to equal the unexpended production allowances, unexpended export production allowances, or unexpended Article 5 allowances held by the recipient of the trade under this subpart plus the quantity of allowable production traded from the Party.

(ii) For trades to a Party, the Administrator will issue a notice revising the production limit for the trader to equal the lesser of:

(A) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the trade or minus the quantity traded; or

(B) The unexpended production allowances held by the trader minus the amount by which the U.S. average annual production of the class II controlled substance being traded for the three years prior to the trade is less than the total allowable production of that class II controlled substance under this subpart minus the amount traded; or

(C) The total U.S. allowable production of the class II controlled substance being traded minus the three-year average of the actual annual U.S. production of the class II controlled substance prior to the control period of the trade.

(6) Revised notices of production limits for subsequent traders. If after one person obtains approval of a trade of allowable production of a class II controlled substance to a Party and other persons obtain approval for trades of the same class II controlled substance during the same control period, the Administrator will issue revised notices. The notices will revise the production limits for each of the other persons trading to equal the lesser of:

(i) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the trader under this subpart minus the quantity traded; or

(ii) The result of the following set of calculations:

(A) The total U.S. allowable production of the class II controlled substance minus the three-year average of the actual annual U.S. production of the class II controlled substance prior to the control period of the trade;

(B) The quantity traded divided by the total quantity traded by all the other persons trading the same class II controlled substance in the same control period;

(C) The result of paragraph (c)(6)(ii)(A) of this section multiplied by the result of paragraph (c)(6)(ii)(B) of this section;

(D) The quantity derived in paragraph (c)(6)(i) of this section, minus the result of paragraph (c)(6)(ii)(C) of this section;

(7) Production limit for previous traders. The Administrator will also issue a notice revising the production limit for each trader who previously obtained approval of a trade of the class II controlled substance to a Party in the same control period to equal the result of the following set of calculations:

(i) The total U.S. allowable production of the class II controlled substance minus the three-year average of the actual annual U.S. production of the class II controlled substance prior to the control period of the trade;

(ii) The quantity traded by the person divided by the quantity traded by all the persons who have traded that class II controlled substance in that control period;

(iii) The result of paragraph (c)(7)(i) of this section multiplied by the result of paragraph (c)(7)(ii) of this section.

(iv) The unexpended production allowances, unexpended export production allowances or unexpended Article 5 allowances held by the person plus the result of paragraph (c)(7)(iii) of this section;

(8) Effective date of revised production limits. The change in production allowances, export production allowances or Article 5 allowances will be effective on the date that the notice is issued.

§ 82.19 Apportionment of baseline consumption allowances for class II controlled substances.

(a) Effective January 1, 2003, the following persons are apportioned baseline consumption allowances for HCFC–141b, HCFC–22, or HCFC–142b as set forth in the following table:

Person	Controlled substance	Allowances (kg)
ABCO Refrigeration Supply	HCFC–22	279,366
Air Systems	HCFC–22	13,514
Allied (Honeywell)	HCFC–22	35,392,492
	HCFC–141b	20,749,489
	HCFC–142b	1,315,819
Altair Industries	HCFC–22	279,935
Ausimont USA	HCFC–22	99,643
	HCFC–142b	3,047,386
Automatic Equipment Sales of VA	HCFC–22	54,088
Condor Products	HCFC–22	666,171
Continental	HCFC–141b	20,315

Person	Controlled substance	Allowances (kg)
Discount Refrigerants	HCFC–22	375,328
	HCFC–141b	994
DuPont Company	HCFC–22	38,814,862
	HCFC–141b	9,049
	HCFC–142b	52,797
Elf Atochem (ATOFINA)	HCFC–22	29,524,481
	HCFC–141b	25,405,570
	HCFC–142b	16,672,675
Full Circle	HCFC–22	14,865
HG Refrigeration Supply	HCFC–22	40,068
ICC Chemical Corp.	HCFC–141b	81,225
ICI Americas (INEOS)	HCFC–22	2,546,305
Kivlan & Co. (Dynatemp)	HCFC–22	2,028,980
Klomar Ship Supply	HCFC–22	8,585
LaRoche Industries	HCFC–141b	16,097,869
MDA Manufacturing	HCFC–22	2,541,545
Mondy-Global	HCFC–22	281,824
National Refrigerants	HCFC–22	5,480,315
Refricenter of Miami	HCFC–22	381,293
Refricentro	HCFC–22	45,979
Rhone-Poulenc	HCFC–22	52,090
R-Lines	HCFC–22	63,172
Saez	HCFC–22	37,936
Solvay Fluorides	HCFC–22	313,966
	HCFC–141b	3,940,115
TESCO Distributors	HCFC–22	48,049
Tulstar Products	HCFC–141b	89,913

§ 82.20 Availability of consumption allowances in addition to baseline consumption allowances for class II controlled substances.

(a) A person may obtain at any time during the control period, in accordance with the provisions of this section, consumption allowances equivalent to the quantity of class II controlled substances that the person exported from the U.S. and its territories to a foreign state, in accordance with this section, when that quantity of class II controlled substance was produced in the U.S. with expended consumption allowances.

(1) The exporter must submit to the Administrator a request for consumption allowances setting forth the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity (in kilograms) and type of class II controlled substances reported;

(v) The source of the class II controlled substances and the date purchased;

(vi) The date on which, and the port from which, the class II controlled substances were exported from the U.S. or its territories;

(vii) The country to which the class II controlled substances were exported;

(viii) A copy of the bill of lading and the invoice indicating the net quantity (in kilograms) of class II controlled substances shipped and documenting the sale of the class II controlled substances to the purchaser;

(ix) The commodity codes of the class II controlled substances reported; and

(x) A written statement from the producer that the class II controlled substances were produced with expended allowances.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section and will issue a notice.

(i) The Administrator will determine the quantity of class II controlled substances that the documentation verifies was exported and issue consumption allowances equivalent to the quantity of class II controlled substances that were exported.

(A) The grant of the consumption allowances will be effective on the date the notice is issued.

(B) The consumption allowances will be granted to the person the exporter indicates, whether it is the producer or the exporter.

(ii) The Administrator will issue a notice that the consumption allowances are not granted if the Administrator determines that the information and documentation do not satisfactorily substantiate the exporter's claims.

(b) *International trades of consumption allowances.* (1) A person may increase its consumption allowances for a specified control period through trades with another Party to the Protocol as set forth in this paragraph (b). A person may only receive consumption from Poland or Norway, or both, and only if the nation agrees to trade to the person for the current control period some quantity of consumption that the nation is permitted under the Montreal Protocol.

(2) Trade from a Party—Information requirements. A person must submit the following information to the Administrator:

(i) A signed document from the principal diplomatic representative in the Polish or Norwegian embassy in the U.S. stating that the appropriate authority within that nation will establish or revise consumption limits for the nation to equal the lowest of the following three consumption quantities:

(A) The maximum consumption that the nation is allowed under the Protocol minus the quantity (in kilograms) traded;

(B) The maximum consumption that is allowed under the nation's applicable domestic law minus the quantity (in kilograms) traded; or

(C) The average of the nation's actual consumption level for the three years prior to the trade minus the consumption traded.

(ii) A person requesting a consumption trade from Poland or Norway must also submit to the Administrator a true copy of the document that sets forth the following:

(A) The identity and address of the person;

(B) The identity of the Party;

(C) The names and telephone numbers of contact persons for the person and for the Party;

(D) The chemical type and quantity (in kilograms) of consumption being traded;

(E) Documentation that the Party possesses the necessary quantity of unexpended consumption rights;

(F) The control period(s) to which the trade applies; and

(3) *Notice of trade.* If the request meets the requirement of paragraph (b)(2) of this section for trades from Parties, the Administrator will issue the person a notice. The notice will grant consumption allowances and specify the control period to which the trade applies. The Administrator may disapprove the trade request if it does not meet the requirements of paragraph (b)(2) of this section.

(4) *Trade from a Party.* The Administrator will issue a notice revising the allowances held by the recipient of the trade to equal the unexpended consumption allowances held by the recipient of the trade under this subpart plus the quantity of allowable consumption traded from the Party.

(5) *Effective date of revised consumption limits.* The change in consumption allowances will be effective on the date that the notice is issued.

§ 82.21 [Reserved].

§ 82.22 [Reserved].

§ 82.23 Transfers of allowances of class II controlled substances.

(a) *Inter-company transfers.* Effective January 1, 2003, a person ("transferor") may transfer to any other person ("transferee") any quantity of the transferor's class II consumption allowances, production allowances, export production allowances, or Article 5 allowances for the same type of allowance as follows:

(i) The transferor must submit to the Administrator a transfer claim setting forth the following:

(A) The identities and addresses of the transferor and the transferee;

(B) The name and telephone numbers of contact persons for the transferor and the transferee;

(C) The type of allowances being transferred, including the names of the class II controlled substances for which allowances are to be transferred;

(D) The quantity (in kilograms) of allowances being transferred;

(E) The control period(s) for which the allowances are being transferred;

(F) The quantity of unexpended allowances of the type and for the control period being transferred that the transferor holds under authority of this subpart on the date the claim is submitted to EPA; and

(G) For trades of consumption allowances, production allowances, export production allowances, or Article 5 allowances, the quantity of the 0.1 percent offset applied to the unweighted quantity traded that will be deducted from the transferor's allowance balance.

(ii) The Administrator will determine whether the records maintained by EPA indicate that the transferor possesses unexpended allowances sufficient to cover the transfer claim on the date the transfer claim is processed. The transfer claim is the quantity (in kilograms) to be transferred plus, in the case of transfers of production or consumption allowances, 0.1 percent of that quantity. The Administrator will take into account any previous transfers, any production, and allowable imports and exports of class II controlled substances reported by the transferor. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) The Administrator will issue a notice indicating that EPA does not object to the transfer if EPA's records show that the transferor has sufficient unexpended allowances to cover the transfer claim. In the case of transfers of production or consumption allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. In the case of transfers of export production or Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances, respectively, by the quantity to be transferred. The transferor and the transferee may proceed with the transfer when EPA issues a no objection notice. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee, where applicable, will be held liable for any knowing violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(B) The Administrator will issue a notice disallowing the transfer if EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination. Either party may file a notice of appeal, with supporting reasons, with the Administrator within 10 working days after receipt of notification. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) The transferor and transferee may proceed with the transfer if the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(1)(ii) of this section. In the case of transfers of production or consumption allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. In the case of transfers of export production allowances or Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. If EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and/or the transferee, where applicable, will be held liable for any knowing violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(b) *Inter-pollutant transfers.* (1) Effective January 1, 2003, a person (transferor) may convert consumption allowances or production allowances for one class II controlled substance to the same type of allowance for another class II controlled substance listed in Appendix B of this subpart, following the procedures described in paragraph (b)(3) of this section.

(2) Inter-pollutant transfers will be permitted at any time during the control period and during the 30 days after the end of a control period.

(3) The transferor must submit to the Administrator a transfer claim that includes the following:

(i) The identity and address of the transferor;

(ii) The name and telephone number of a contact person for the transferor;

(iii) The type of allowances being converted, including the names of the class II controlled substances for which allowances are to be converted;

(iv) The quantity (in kilograms) and type of allowances to be converted;

(v) The quantity (in kilograms) of allowances to be subtracted from the transferor's unexpended allowances for the first class II controlled substance, to be equal to 100.1 percent of the quantity of allowances converted;

(vi) The quantity (in kilograms) of allowances to be added to the transferee's unexpended allowances for the second class II controlled substance,

to be equal to the quantity (in kilograms) of allowances for the first class II controlled substance being converted multiplied by the quotient of the ozone depletion potential of the first class II controlled substance divided by the ozone depletion potential of the second class II controlled substance, as listed in Appendix B to this subpart;

(vii) The control period(s) for which the allowances are being converted; and

(viii) The quantity (in kilograms) of unexpended allowances of the type and for the control period being converted that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA.

(4) The Administrator will determine whether the records maintained by EPA indicate that the convertor possesses unexpended allowances sufficient to cover the transfer claim on the date the transfer claim is processed (*i.e.*, the quantity (in kilograms) to be converted plus 0.1 percent of that quantity (in kilograms)). EPA will take into account any previous transfers, and any production, imports (not including transshipments or used class II controlled substances), or exports (not including transhipments or used class II controlled substances) of class II controlled substances reported by the convertor. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the convertor as follows:

(i) The Administrator will issue a notice indicating that EPA does not object to the transfer if EPA's records show that the convertor has sufficient unexpended allowances to cover the transfer claim. EPA will reduce the transferor's balance of unexpended allowances by the quantity to be converted plus 0.1 percent of that quantity (in kilograms). When EPA issues a no objection notice, the transferor may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(ii) The Administrator will issue a notice disallowing the transfer if EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination. The transferor may file a notice of appeal, with supporting reasons, with the Administrator within 10 working days after receipt of notification. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) The transferor may proceed with the transfer if the Administrator does not respond to a transfer claim within the three working days specified in paragraph (b)(4) of this section. EPA will reduce the transferor's balance of unexpended allowances by the quantity (in kilograms) to be converted plus 0.1 percent of that quantity (in kilograms). The transferor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or credits to cover the claim.

(c) *Inter-company transfers and Inter-pollutant transfers.* If a person requests an inter-company transfer and an inter-pollutant transfer simultaneously, the quantity (in kilograms) subtracted from the transferor's unexpended production or consumption allowances for the first class II controlled substance will be equal to 100.1 percent of the quantity (in kilograms) of allowances that are being converted and transferred.

(d) A person receiving a permanent transfer of baseline production allowances or baseline consumption allowances (the transferee) for a specific class II controlled substance will be the person who has their baseline allowances adjusted in accordance with phaseout schedules in this section.

§ 82.24 Recordkeeping and reporting requirements for class II controlled substances.

(a) *Recordkeeping and reporting.* Any person who produces, imports, exports, transforms, or destroys class II controlled substances must comply with the following recordkeeping and reporting requirements:

(1) Reports required by this section must be mailed to the Administrator within 30 days of the end of the applicable reporting period, unless otherwise specified.

(2) Revisions of reports that are required by this section must be mailed to the Administrator within 180 days of the end of the applicable reporting period, unless otherwise specified.

(3) Records and copies of reports required by this section must be retained for three years.

(4) Quantities of class II controlled substances must be stated in terms of kilograms in reports required by this section.

(5) Reports and records required by this section may be used for purposes of compliance determinations. These requirements are not intended as a limitation on the use of other evidence admissible under the Federal Rules of Evidence. Failure to provide the reports, petitions and records required by this section and to certify the accuracy of the information in the reports, petitions and records required by this section, will be considered a violation of this subpart. False statements made in reports, petitions and records will be considered violations of Section 113 of the Clean Air Act and under 18 U.S.C. 1001.

(b) *Producers.* Persons ("producers") who produce class II controlled substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) *Reporting—Producers.* For each quarter, each producer of a class II controlled substance must provide the Administrator with a report containing the following information:

(i) The quantity (in kilograms) of production of each class II controlled substance used in processes resulting in their transformation by the producer and the quantity (in kilograms) intended for transformation by a second party;

(ii) The quantity (in kilograms) of production of each class II controlled substance used in processes resulting in their destruction by the producer and the quantity (in kilograms) intended for destruction by a second party;

(iii) The expended allowances for each class II controlled substance;

(iv) The producer's total of expended and unexpended production allowances, consumption allowances, export production allowances, and Article 5 allowances at the end of that quarter;

(v) The quantity (in kilograms) of class II controlled substances sold or transferred during the quarter to a person other than the producer for use in processes resulting in their transformation or eventual destruction;

(vi) A list of the quantities and names of class II controlled substances, exported by the producer to a Party to the Protocol, that will be transformed or destroyed and therefore were not produced expending production or consumption allowances;

(vii) For transformation in the U.S. or by a person of another Party, one copy of a transformation verification from the transformer for a specific class II controlled substance and a list of additional quantities shipped to that same transformer for the quarter;

(viii) For destruction in the U.S. or by a person of another Party, one copy of

a destruction verification as required in paragraph (e) of this section for a particular destroyer, destroying the same class II controlled substance, and a list of additional quantities shipped to that same destroyer for the quarter;

(ix) In cases where the producer produced class II controlled substances using export production allowances, a list of U.S. entities that purchased those class II controlled substances and exported them to a Party to the Protocol;

(x) In cases where the producer produced class II controlled substances using Article 5 allowances, a list of U.S. entities that purchased those class II controlled substances and exported them to Article 5 countries; and

(xi) A list of the HCFC 141b-exemption allowance holders from whom orders were received and the quantity (in kilograms) of HCFC–141b requested and produced.

(2) *Recordkeeping—Producers.* Every producer of a class II controlled substance during a control period must maintain the following records:

(i) Dated records of the quantity (in kilograms) of each class II controlled substance produced at each facility;

(ii) Dated records of the quantity (in kilograms) of class II controlled substances produced for use in processes that result in their transformation or for use in processes that result in their destruction;

(iii) Dated records of the quantity (in kilograms) of class II controlled substances sold for use in processes that result in their transformation or for use in processes that result in their destruction;

(iv) Dated records of the quantity (in kilograms) of class II controlled substances produced with export production allowances or Article 5 allowances;

(v) Copies of invoices or receipts documenting sale of class II controlled substances for use in processes that result in their transformation or for use in processes that result in their destruction;

(vi) Dated records of the quantity (in kilograms) of each class II controlled substance used at each facility as feedstocks or destroyed in the manufacture of a class II controlled substance or in the manufacture of any other substance, and any class II controlled substance introduced into the production process of the same class II controlled substance at each facility;

(vii) Dated records of the quantity (in kilograms) of raw materials and feedstock chemicals used at each facility for the production of class II controlled substances;

(viii) Dated records of the shipments of each class II controlled substance produced at each plant;

(ix) The quantity (in kilograms) of class II controlled substances, the date received, and names and addresses of the source of used materials containing class II controlled substances which are recycled or reclaimed at each plant;

(x) Records of the date, the class II controlled substance, and the estimated quantity of any spill or release of a class II controlled substance that equals or exceeds 100 pounds;

(xi) Transformation verification in the case of transformation, or the destruction verification in the case of destruction as required in paragraph (e) of this section showing that the purchaser or recipient of a class II controlled substance, in the U.S. or in another country that is a Party, certifies the intent to either transform or destroy the class II controlled substance, or sell the class II controlled substance for transformation or destruction in cases when allowances were not expended;

(xii) Written verifications from a U.S. purchaser that the class II controlled substance was exported to a Party in accordance with the requirements in this section, in cases where export production allowances were expended to produce the class II controlled substance;

(xiii) Written verifications from a U.S. purchaser that the class II controlled substance was exported to an Article 5 country in cases where Article 5 allowances were expended to produce the class II controlled substance;

(xiv) Written verifications from a U.S. purchaser that HCFC–141b was manufactured for the express purpose of meeting HCFC–141b exemption needs in accordance with information submitted under § 82.16(h), in cases where HCFC–141b exemption allowances were expended to produce the HCFC–141b.

(3) For any person who fails to maintain the records required by this paragraph, or to submit the report required by this paragraph, the Administrator may assume that the person has produced at full capacity during the period for which records were not kept, for purposes of determining whether the person has violated the prohibitions at § 82.15.

(c) *Importers.* Persons ("importers") who import class II controlled substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) *Reporting—Importers.* For each quarter, an importer of a class II controlled substance (including importers of used class II controlled substances) must submit to the Administrator a report containing the following information:

(i) Summaries of the records required in paragraphs (c)(2)(i) through (xvi) of this section for the previous quarter;

(ii) The total quantity (in kilograms) imported of each class II controlled substance for that quarter;

(iii) The commodity code for the class II controlled substances imported, which must be one of those listed in Appendix K to this subpart;

(iv) The quantity (in kilograms) of those class II controlled substances imported that are used class II controlled substances;

(v) The quantity (in kilograms) of class II controlled substances imported for that quarter and totaled by chemical for the control period to date;

(vi) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter;

(vii) The quantity (in kilograms) of class II controlled substances imported for use in processes resulting in their transformation or destruction;

(viii) The quantity (in kilograms) of class II controlled substances sold or transferred during that quarter to each person for use in processes resulting in their transformation or eventual destruction; and

(ix) Transformation verifications showing that the purchaser or recipient of imported class II controlled substances intends to transform those substances or destruction verifications showing that the purchaser or recipient intends to destroy the class II controlled substances (as provided in paragraph (e) of this section).

(xi) A list of the HCFC 141b-exemption allowance holders from whom orders were received and the quantity (in kilograms) of HCFC–141b requested and imported.

(2) *Recordkeeping—Importers.* An importer of a class II controlled substance (including used class II controlled substances) must maintain the following records:

(i) The quantity (in kilograms) of each class II controlled substance imported, either alone or in mixtures, including the percentage of each mixture which consists of a class II controlled substance;

(ii) The quantity (in kilograms) of those class II controlled substances imported that are used and the information provided with the petition as required under paragraph (c)(3) of this section;

(iii) The quantity (in kilograms) of class II controlled substances other than

transhipments or used substances imported for use in processes resulting in their transformation or destruction;

(iv) The quantity (in kilograms) of class II controlled substances other than transhipments or used substances imported and sold for use in processes that result in their destruction or transformation;

(v) The date on which the class II controlled substances were imported;

(vi) The port of entry through which the class II controlled substances passed;

(vii) The country from which the imported class II controlled substances were imported;

(viii) The commodity code for the class II controlled substances shipped, which must be one of those listed in Appendix K to this subpart;

(ix) The importer number for the shipment;

(x) A copy of the bill of lading for the import;

(xi) The invoice for the import;

(xii) The quantity (in kilograms) of imports of used class II controlled substances;

(xiii) The U.S. Customs entry form;

(xiv) Dated records documenting the sale or transfer of class II controlled substances for use in processes resulting in their transformation or destruction;

(xv) Copies of transformation verifications or destruction verifications indicating that the class II controlled substances will be transformed or destroyed (as provided in paragraph (e) of this section).

(xvi) Written verifications from a U.S. purchaser that HCFC–141b was imported for the express purpose of meeting HCFC–141b exemption needs in accordance with information submitted under § 82.16(h), and that the quantity will not be resold, in cases where HCFC–141b exemption allowances were expended to import the HCFC–141b.

(3) *Petition to import used class II controlled substances and transhipments—Importers.* For each individual shipment over 5 pounds of a used class II controlled substance as defined in § 82.3, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition:

(i) The name and quantity (in kilograms) of the used class II controlled substance to be imported;

(ii) The name and address of the importer, the importer ID number, the contact person, and the phone and fax numbers;

(iii) Name, address, contact person, phone number and fax number of all previous source facilities from which the used class II controlled substance was recovered;

(iv) A detailed description of the previous use of the class II controlled substance at each source facility and a best estimate of when the specific controlled substance was put into the equipment at each source facility, and, when possible, documents indicating the date the material was put into the equipment;

(v) A list of the name, make and model number of the equipment from which the material was recovered at each source facility;

(vi) Name, address, contact person, phone number and fax number of the exporter and of all persons to whom the material was transferred or sold after it was recovered from the source facility;

(vii) The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical. If at the time of submitting a petition the importer does not know the U.S. port of entry, the expected date of shipment and the vessel transporting the chemical, and the importer receives a non-objection notice for the individual shipment in the petition, the importer is required to notify the Administrator of this information prior to the actual U.S. Customs entry of the individual shipment;

(viii) A description of the intended use of the used class II controlled substance, and, when possible, the name, address, contact person, phone number and fax number of the ultimate purchaser in the United States;

(ix) The name, address, contact person, phone number and fax number of the U.S. reclamation facility, where applicable;

(x) If someone at the source facility recovered the class II controlled substance from the equipment, the name and phone and fax numbers of that person;

(xi) If the imported class II controlled substance was reclaimed in a foreign Party, the name, address, contact person, phone number and fax number of any or all foreign reclamation facility(ies) responsible for reclaiming the cited shipment;

(xii) An export license from the appropriate government agency in the country of export and, if recovered in another country, the export license from the appropriate government agency in that country;

(xiii) If the imported used class II controlled substance is intended to be sold as a refrigerant in the U.S., the name and address of the U.S. reclaimer who will bring the material to the standard required under subpart F of this part, if not already reclaimed to those specifications; and

(xiv) A certification of accuracy of the information submitted in the petition.

(4) *Review of petition to import used class II controlled substances and transhipments—Importers.* Starting on the first working day following receipt by the Administrator of a petition to import a used class II controlled substance, the Administrator will initiate a review of the information submitted under paragraph(c)(3) of this section and take action within 40 working days to issue either an objection-notice or a non-objection notice for the individual shipment to the person who submitted the petition to import the used class II controlled substance.

(i) The Administrator may issue an objection notice to a petition for the following reasons:

(A) If the Administrator determines that the information is insufficient, that is, if the petition lacks or appears to lack any of the information required under paragraph (c)(3) of this section;

(B) If the Administrator determines that any portion of the petition contains false or misleading information, or the Administrator has information from other U.S. or foreign government agencies indicating that the petition contains false or misleading information;

(C) If the transaction appears to be contrary to provisions of the Vienna Convention on Substances that Deplete the Ozone Layer, the Montreal Protocol and Decisions by the Parties, or the non-compliance procedures outlined and instituted by the Implementation Committee of the Montreal Protocol;

(D) If the appropriate government agency in the exporting country has not agreed to issue an export license for the cited individual shipment of used class II controlled substance;

(E) If reclamation capacity is installed or is being installed for that specific class II controlled substance in the country of recovery or country of export and the capacity is funded in full or in part through the Multilateral Fund.

(ii) Within ten (10) working days after receipt of the objection notice, the importer may re-petition the Administrator, only if the Administrator indicated "insufficient information" as the basis for the objection notice. If no appeal is taken by the tenth working day after the date on the objection notice, the objection shall become final. Only one re-petition will be accepted for any original petition received by EPA.

(iii) Any information contained in the re-petition which is inconsistent with the original petition must be identified

and a description of the reason for the inconsistency must accompany the re-petition.

(iv) In cases where the Administrator does not object to the petition based on the criteria listed in paragraph (c)(4)(i) of this section, the Administrator will issue a non-objection notice.

(v) To pass the approved used class II controlled substances through U.S. Customs, the petition and the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

(vi) If for some reason, following EPA's issuance of a non-objection notice, new information is brought to EPA's attention which shows that the non-objection notice was issued based on false information, then EPA has the right to:

(A) Revoke the non-objection notice;

(B) Pursue all means to ensure that the class II controlled substance is not imported into the U.S.; and

(C) Take appropriate enforcement actions.

(vii) Once the Administrator issues a non-objection notice, the person receiving the non-objection notice is permitted to import the individual shipment of used class II controlled substance only within the same control period as the date stamped on the non-objection notice.

(viii) A person receiving a non-objection notice from the Administrator for a petition to import used class II controlled substances must maintain the following records:

(A) A copy of the petition;

(B) The EPA non-objection notice;

(C) The bill of lading for the import; and

(D) U.S. Customs entry documents for the import that must include one of the commodity codes from Appendix K to this subpart.

(5) Recordkeeping for transhipments—Importers. Any person who tranships a class II controlled substance must maintain records that indicate:

(i) That the class II controlled substance shipment originated in a foreign country;

(ii) That the class II controlled substance shipment is destined for another foreign country; and

(iii) That the class II controlled substance shipment will not enter interstate commerce within the U.S.

(d) *Exporters.* Persons ("exporters") who export class II controlled substances during a control period must comply with the following reporting requirements:

(1) *Reporting—Exporters.* For any exports of class II controlled substances not reported under § 82.20 (additional consumption allowances), or under paragraph (b)(2) of this section (reporting for producers of class II controlled substances), each exporter who exported a class II controlled substance must submit to the Administrator the following information within 30 days after the end of each quarter in which the unreported exports left the U.S.:

(i) The names and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The type and quantity (in kilograms) of each class II controlled substance exported and what percentage, if any of the class II controlled substance is used;

(iv) The date on which, and the port from which, the class II controlled substances were exported from the U.S. or its territories;

(v) The country to which the class II controlled substances were exported;

(vi) The quantity (in kilograms) exported to each Article 5 country;

(vii) The commodity code for the class II controlled substances shipped, which must be one of those listed in Appendix K to this subpart;

(viii) For persons reporting transformation or destruction, the invoice or sales agreement containing language similar to the transformation verifications that the purchaser or recipient of imported class II controlled substances intends to transform those substances, or destruction verifications showing that the purchaser or recipient intends to destroy the class II controlled substances (as provided in paragraph (e) of this section).

(2) *Reporting export production allowances—Exporters.* In addition to the information required in paragraph (d)(1) of this section, any exporter using export production allowances must also provide the following to the Administrator:

(i) The Employer Identification Number on the Shipper's Export Declaration Form or Employer Identification Number of the shipping agent shown on the U.S. Customs Form 7525;

(ii) The exporting vessel on which the class II controlled substances were shipped; and

(iii) The quantity (in kilograms) exported to each Party.

(3) *Reporting Article 5 allowances—Exporters.* In addition to the information required in paragraph (d)(1) of this section, any exporter using Article 5 allowances must also provide the following to the Administrator:

(i) The Employer Identification Number on the Shipper's Export Declaration Form or Employer Identification Number of the shipping agent shown on the U.S. Customs Form 7525; and

(ii) The exporting vessel on which the class II controlled substances were shipped.

(4) *Reporting used class II controlled substances—Exporters.* Any exporter of used class II controlled substances must indicate on the bill of lading or invoice that the class II controlled substance is used, as defined in § 82.3.

(e) *Transformation and destruction.* Any person who transforms or destroys class II controlled substances must comply with the following recordkeeping and reporting requirements:

(1) *Recordkeeping—Transformation and destruction.* Any person who transforms or destroys class II controlled substances produced or imported by another person must maintain the following:

(i) Copies of the invoices or receipts documenting the sale or transfer of the class II controlled substances to the person;

(ii) Records identifying the producer or importer of the class II controlled substances received by the person;

(iii) Dated records of inventories of class II controlled substances at each plant on the first day of each quarter;

(iv) Dated records of the quantity (in kilograms) of each class II controlled substance transformed or destroyed;

(v) In the case where class II controlled substances were purchased or transferred for transformation purposes, a copy of the person's transformation verification as provided under paragraph (e)(3)of this section.

(vi) Dated records of the names, commercial use, and quantities (in kilograms) of the resulting chemical(s) when the class II controlled substances are transformed; and

(vii) Dated records of shipments to purchasers of the resulting chemical(s) when the class II controlled substances are transformed.

(viii) In the case where class II controlled substances were purchased or transferred for destruction purposes, a copy of the person's destruction verification, as provided under paragraph (e)(5) of this section.

(2) *Reporting—Transformation and destruction.* Any person who transforms or destroys class II controlled substances and who has submitted a transformation verification ((paragraph (e)(3) of this section) or a destruction verification (paragraph (e)(5) of this section) to the producer or importer of

the class II controlled substances, must report the following:

(i) The names and quantities (in kilograms) of the class II controlled substances transformed for each control period within 45 days of the end of such control period; and

(ii) The names and quantities (in kilograms) of the class II controlled substances destroyed for each control period within 45 days of the end of such control period.

(3) *Reporting—Transformation.* Any person who purchases class II controlled substances for purposes of transformation must provide the producer or importer with a transformation verification that the class II controlled substances are to be used in processes that result in their transformation.

(i) The transformation verification shall include the following:

(A) Identity and address of the person intending to transform the class II controlled substances;

(B) The quantity (in kilograms) of class II controlled substances intended for transformation;

(C) Identity of shipments by purchase order number(s), purchaser account number(s), by location(s), or other means of identification;

(D) Period of time over which the person intends to transform the class II controlled substances; and

(E) Signature of the verifying person.

(ii) [Reserved]

(4) *Reporting—Destruction.* Any person who destroys class II controlled substances shall provide EPA with a one-time report containing the following information:

(i) The destruction unit's destruction efficiency;

(ii) The methods used to record the volume destroyed;

(iii) The methods used to determine destruction efficiency;

(iv) The name of other relevant federal or state regulations that may apply to the destruction process;

(v) Any changes to the information in paragraphs (e)(4)(i), (ii), and (iii) of this section must be reflected in a revision to be submitted to EPA within 60 days of the change(s).

(5) *Reporting—Destruction.* Any person who purchases or receives and subsequently destroys class II controlled substances that were originally produced without expending allowances shall provide the producer or importer from whom it purchased or received the class II controlled substances with a verification that the class II controlled substances will be used in processes that result in their destruction.

(i) The destruction verification shall include the following:

(A) Identity and address of the person intending to destroy class II controlled substances;

(B) Indication of whether those class II controlled substances will be completely destroyed, as defined in § 82.3, or less than completely destroyed, in which case the destruction efficiency at which such substances will be destroyed must be included;

(C) Period of time over which the person intends to destroy class II controlled substances; and

(D) Signature of the verifying person.

(ii) [Reserved]

(f) *Heels—Recordkeeping and reporting.* Any person who brings into the U.S. a container with a heel, as defined in § 82.3, of class II controlled substances, must comply with the following requirements:

(1) Any person who brings a container with a heel must indicate on its bill of lading or invoice that the class II controlled substance in the container is a heel.

(2) Any person who brings a container with a heel must report quarterly the quantity (in kilograms) brought into the U.S. and certify:

(i) That the residual quantity (in kilograms) in each shipment is no more than 10 percent of the volume of the container;

(ii) That the residual quantity (in kilograms) in each shipment will either:

(A) Remain in the container and be included in a future shipment;

(B) Be recovered and transformed;

(C) Be recovered and destroyed; or

(D) Be recovered for a non-emissive use.

(3) Any person who brings a container with a heel into the U.S. must report on the final disposition of each shipment within 45 days of the end of the control period.

(g) *HCFC 141b exemption allowances—Reporting and recordkeeping.*

(1) Any person allocated HCFC–141b exemption allowances who confers a quantity of the HCFC–141b exemption allowances to a producer or import and places an order for the production or import of HCFC–141b with a verification that the HCFC–141b will only be used for the exempted purpose and not be resold must submit semi-annual reports, due 30 days after the end of the second and fourth respectively, to the Administrator containing the following information:

(i) Total quantity (in kilograms) HCFC–141b received during the 6 month period; and

(ii) The identity of the supplier of HCFC–141b on a shipment-by-shipment basis during the 6 month period.

(2) Any person allocated HCFC–141b exemption allowances must keep records of letters to producers and importers conferring unexpended HCFC–141b exemption allowances for the specified control period in the notice, orders for the production or import of HCFC–141b under those letters and written verifications that the HCFC–141b was produced or imported for the express purpose of meeting HCFC–141b exemption needs in accordance with information submitted under § 82.16(h), and that the quantity will not be resold.

13. Revise Appendix B to Subpart A to read as follows:

APPENDIX B TO PART 82 SUBPART A.—CLASS II CONTROLLED SUBSTANCES [a]

Controlled Substance	ODP
1. Dichlorofluoromethane (HCFC–21)	0.04
2. Monochlorodifluoromethane (HCFC–22)	0.055
3. Monochlorofluoromethane (HCFC–31)	0.02
4. Tetrachlorofluoroethane (HCFC–121)	0.01–0.04
5. Trichlorodifluoroethane (HCFC–122)	0.02–0.08
6. Dichlorotrifluoroethane (HCFC–123)	0.02
7. Monochlorotetrafluoroethane (HCFC–124)	0.022
8. Trichlorofluoroethane (HCFC–131)	0.007–0.05
9. Dichlorodifluoroethane (HCFC–132)	0.008–0.05
10. Monochlorotrifluoroethane (HCFC–133)	0.02–0.06
11. Dichlorofluoroethane (HCFC–141b)	0.11
12. Monochlorodifluoroethane (HCFC–142b)	0.065

APPENDIX B TO PART 82 SUBPART A.—CLASS II CONTROLLED SUBSTANCES[a]—Continued

Controlled Substance	ODP
13. Chlorofluoroethane (HCFC–151)	0.003–0.005
14. Hexachlorofluoropropane (HCFC–221)	0.015–0.07
15. Pentachlorodifluoropropane (HCFC–222)	0.01–0.09
16. Tetrachlorotrifluoropropane (HCFC–223)	0.01–0.08
17. Trichlorotetrafluoropropane (HCFC–224)	0.01–0.09
18. Dichloropentafluoropropane (HCFC–225ca)	0.025
19. Dichloropentafluoropropane (HCFC–225cb)	0.033
20. Monochlorohexafluoropropane (HCFC–226)	0.02–0.10
21. Pentachlorofluoropropane (HCFC–231)	0.05–0.09
22. Tetrachlorodifluoropropane (HCFC–232)	0.008–0.10
23. Trichlorotrifluoropropane (HCFC–233)	0.007–0.23
24. Dichlorotetrafluoropropane (HCFC–234)	0.01–0.28
25. Monochloropentafluoropropane (HCFC–235)	0.03–0.52
26. Tetrachlorofluoropropane (HCFC–241)	0.004–0.09
27. Trichlorodifluoropropane (HCFC–242)	0.005–0.13
28. Dichlorotrifluoropropane (HCFC–243)	0.007–0.12
29. Monochlorotetrafluoropropane (HCFC–244)	0.009–0.14
30. Trichlorofluoropropane (HCFC–251)	0.001–0.01
31. Dichlorodifluoropropane (HCFC–252)	0.005–0.04
32. Monochlorotrifluoropropane (HCFC–253)	0.003–0.03
33. Dichlorofluoropropane (HCFC–261)	0.002–0.02
34. Monochlorodifluoropropane (HCFC–262)	0.002–0.02
35. Monochlorofluoropropane (HCFC–271)	0.001–0.03

[a] According to Annex C of the Montreal Protocol, "Where a range of ODPs is indicated, the highest value in that range shall be used for the purposes of the Protocol. The ODPs listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the estimate of the ODP of the isomer with the highest ODP, and the lower value is the estimate of the ODP of the isomer with the lowest ODP."

14. Appendix C to Subpart A is revised to read as follows:

APPENDIX C TO PART 82 SUBPART A.—PARTIES TO THE MONTREAL PROTOCOL (AS OF JUNE 14, 2002).

[Updated lists of Parties to the Protocol and the Amendments can be located at the website for UNEP's Ozone Secretariat. A check mark indicates ratification/accession/acceptance/approval of the agreement.]

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Albania	√				
Algeria	√	√	√		
Angola	√				
Antigua and Barbuda	√	√	√	√	
Argentina	√	√	√	√	
Armenia	√				
Australia	√	√	√	√	
Austria	√	√	√	√	
Azerbaijan	√	√	√	√	
Bahamas	√	√	√		
Bahrain	√	√	√	√	
Bangladesh	√	√	√	√	
Barbados	√	√	√		
Belarus	√	√			
Belgium	√	√	√		
Belize	√	√	√		
Benin	√	√	√		
Bolivia	√	√	√	√	
Bosnia & Herzegovina	√				
Botswana	√	√	√		
Brazil	√	√	√		
Brunei Darussalam	√				
Bulgaria	√	√	√	√	√
Burkina Faso	√	√	√		
Burundi	√	√	√	√	√
Cambodia	√				
Cameroon	√	√	√		
Canada	√	√	√	√	√
Cape Verde	√	√	√	√	
Central African Republic	√				
Chad	√	√	√	√	
Chile	√	√	√	√	√
China	√	√			
Colombia	√	√	√		
Comoros	√	√			

APPENDIX C TO PART 82 SUBPART A.—PARTIES TO THE MONTREAL PROTOCOL (AS OF JUNE 14, 2002).—Continued

[Updated lists of Parties to the Protocol and the Amendments can be located at the website for UNEP's Ozone Secretariat. A check mark indicates ratification/accession/acceptance/approval of the agreement.]

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Congo	√	√	√	√	√
Congo, Democratic Republic of	√	√	√		
Costa Rica	√	√	√		
Cote d'Ivoire	√	√			
Croatia	√	√	√	√	√
Cuba	√	√	√		
Cyprus	√	√			
Czech Republic	√	√	√	√	√
Denmark	√	√	√		
Djibouti	√	√	√	√	
Dominica	√	√			
Dominican Republic	√	√	√		
Ecuador	√	√	√		
Egypt	√	√	√	√	
El Salvador	√	√	√	√	
Equatorial Guinea.					
Estonia	√	√	√		
Ethiopia	√				
European Community	√	√	√	√	√
Federated States of Micronesia	√	√	√	√	√
Fiji	√	√	√		
Finland	√	√	√	√	√
France	√	√	√		
Gabon	√	√	√	√	√
Gambia	√	√			
Georgia	√	√	√	√	
Germany	√	√	√	√	
Ghana	√	√	√		
Greece	√	√	√		
Grenada	√	√	√	√	
Guatemala	√	√	√	√	√
Guinea	√	√			
Guyana	√	√	√	√	
Haiti	√	√	√	√	
Honduras	√	√	√		
Hungary	√	√	√	√	√
Iceland	√	√	√	√	
India	√	√			
Indonesia	√	√	√		
Iran, Islamic Republic of	√	√	√	√	
Ireland	√	√	√		
Israel	√	√	√		
Italy	√	√	√	√	
Jamaica	√	√	√		
Japan	√	√	√		
Jordan	√	√	√	√	√
Kazakhstan	√	√			
Kenya	√	√	√	√	
Kiribati	√				
Korea, Democratic People's Republic of	√	√	√	√	√
Korea, Republic of	√	√	√	√	
Kuwait	√	√	√		
Kyrgyzstan	√				
Lao, People's Democratic Republic	√				
Latvia	√	√	√	√	
Lebanon	√	√	√	√	
Lesotho	√				
Liberia	√	√	√		
Libyan Arab Jamahiriya	√	√			
Liechtenstein	√	√	√		
Lithuania	√	√	√		
Luxembourg	√	√	√	√	√
Macedonia, The Former Yugoslav Republic of	√	√	√	√	√
Madagascar	√	√	√	√	√
Malawi	√	√	√		
Malaysia	√	√	√	√	√
Maldives	√	√	√	√	
Mali	√	√			
Malta	√	√			

APPENDIX C TO PART 82 SUBPART A.—PARTIES TO THE MONTREAL PROTOCOL (AS OF JUNE 14, 2002).—Continued

[Updated lists of Parties to the Protocol and the Amendments can be located at the website for UNEP's Ozone Secretariat. A check mark indicates ratification/accession/acceptance/approval of the agreement.]

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Marshall Islands	√	√	√		
Mauritania	√				
Mauritius	√	√	√		
Mexico	√	√	√		
Moldova	√	√	√		
Monaco	√	√	√	√	
Mongolia	√	√	√	√	
Morocco	√	√	√		
Mozambique	√	√	√		
Myanmar	√	√			
Namibia	√	√			
Nauru	√				
Nepal	√	√			
Netherlands	√	√	√	√	√
New Zealand	√	√	√	√	√
Nicaragua	√	√	√		
Niger	√	√	√	√	
Nigeria	√	√	√	√	
Norway	√	√	√	√	√
Oman	√	√	√		
Pakistan	√	√	√		
Palau	√	√	√	√	√
Panama	√	√	√	√	√
Papua New Guinea	√	√			
Paraguay	√	√	√	√	
Peru	√	√	√		
Philippines	√	√	√		
Poland	√	√	√	√	
Portugal	√	√	√		
Qatar	√	√	√		
Romania	√	√	√	√	
Russian Federation	√	√			
Rwanda	√				
Saint Kitts & Nevis	√	√	√	√	√
Saint Lucia	√	√	√	√	√
Saint Vincent and the Grenadines	√	√	√		
Samoa	√	√	√	√	√
Sao Tome and Principe	√	√	√	√	√
Saudi Arabia	√	√	√		
Senegal	√	√	√	√	
Seychelles	√	√	√		
Sierra Leone	√	√	√	√	√
Singapore	√	√	√	√	
Slovakia	√	√	√	√	√
Slovenia	√	√	√	√	
Solomon Islands	√	√	√	√	
Somalia	√	√	√	√	√
South Africa	√	√	√		
Spain	√	√	√	√	√
Sri Lanka	√	√	√	√	
Sudan	√	√	√		
Suriname	√				
Swaziland	√				
Sweden	√	√	√	√	√
Switzerland	√	√	√		
Syrian Arab Republic	√	√	√	√	
Tajikistan	√	√			
Tanzania, United Republic of	√	√			
Thailand	√	√	√		
Togo	√	√	√	√	√
Tonga	√				
Trinidad and Tobago	√	√	√	√	
Tunisia	√	√	√	√	
Turkey	√	√	√		
Turkmenistan	√	√			
Tuvalu	√	√	√	√	
Uganda	√	√	√	√	
Ukraine	√	√	√	√	
United Arab Emirates	√				

APPENDIX C TO PART 82 SUBPART A.—PARTIES TO THE MONTREAL PROTOCOL (AS OF JUNE 14, 2002).—Continued

[Updated lists of Parties to the Protocol and the Amendments can be located at the website for UNEP's Ozone Secretariat. A check mark indicates ratification/accession/acceptance/approval of the agreement.]

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
United Kingdom	√	√	√	√	√
United States of America	√	√	√		
Uruguay	√	√	√	√	
Uzbekistan	√	√	√		
Vanuatu	√	√	√		
Venezuela	√	√	√	√	
Viet Nam	√	√	√		
Yemen	√	√	√	√	
Yugoslavia	√				
Zambia	√	√			
Zimbabwe	√	√	√		

15. Add Appendix L to read as follows:

Appendix L to Part 82 Subpart A—Parties to the Montreal Protocol That Have Reported Production of HCFCs Since 1996 in Accordance With Article 7, paragraph 3, of the Montreal Protocol

Argentina
Australia
Brazil
Canada
China
France
Germany
Greece
India
Italy
Japan
Korea, Republic of
Mexico
Netherlands
Russian Federation
South Africa
Spain
United Kingdom
Venezuela

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January 21, 2003

Part III

Department of Housing and Urban Development

Funding for Fiscal Year 2002: Capacity Building for Community Development and Affordable Housing; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4784–N–01]

Funding for Fiscal Year 2002: Capacity Building for Community Development and Affordable Housing

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding for Fiscal Year (FY) 2002.

SUMMARY: The Fiscal Year 2002 HUD Appropriations Act provided $31,000,000 in Fiscal Year 2002 funds for activities authorized in section 4 of the HUD Demonstration Act of 1993. Section 4 authorizes the Secretary to establish by notice such requirements as may be necessary to carry out its provisions. This notice takes effect upon issuance.

FOR FURTHER INFORMATION CONTACT: Karen Daly, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7216, Washington, DC 20410. Telephone Number (202) 708–3176 Ext. 5552. Persons with hearing- or speech-impediments may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339, or they may call: (202) 708–2565. Except for the "800" number, these are not toll-free telephone numbers.

SUPPLEMENTARY INFORMATION:

1. Authority

The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 107–73, 115 Stat. 651, approved November 26, 2001) (VA/HUD FY 2002 Appropriations Act) makes $31,000,000 available from the Community Development Grants program for capacity building for community development and affordable housing as authorized by section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 107 Stat. 1148, approved October 27, 1993) (42 U.S.C. 9816 *note*). HUD will provide this assistance through the Enterprise Foundation (Enterprise), the Local Initiatives Support Corporation (LISC), Habitat for Humanity, and Youthbuild USA "to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs."

2. Background

In Fiscal Year 1994, HUD provided $20 million to Enterprise and LISC through the National Community Development Initiative (NCDI), as authorized by section 4 of the HUD Demonstration Act of 1993. In FY 1996, $10 million for NCDI was authorized by section 12(b)(3) of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 110 Stat. 845, approved March 28, 1996). HUD divided appropriations equally between Enterprise and LISC. HUD published a notice in the **Federal Register** of March 30, 1994 (59 FR 14988), which set forth the requirements for receipt of these funds.

Today's notice contains requirements for the newly appropriated $31,000,000. These funds may be used for new activities or, in the case of Enterprise and LISC, to continue NCDI activities that received funding under the notice dated March 30, 1994 (59 FR 14988). New grant agreements will be executed to govern these NCDI activities.

3. Allocation and Form of Awards

The VA/HUD FY 2002 Appropriations Act provides $31,000,000 for activities authorized by section 4. Twenty-five million dollars of these funds is appropriated to Enterprise and LISC for activities authorized by section 4, as in effect immediately before June 12, 1997. HUD will equally divide $25,000,000 of the appropriated funds between Enterprise and LISC. The funds are to be used for capacity building for community development and affordable housing—provided that at least $5,000,000 of the funding is used in rural areas, including tribal areas. In addition, $4,000,000 is appropriated to Habitat for Humanity and $2,000,000 to Youthbuild USA for section 4 activities. Each organization will match the HUD assistance provided with resources from private sources in an amount equal to three times its share, as required by section 4. Enterprise and LISC each will use at least $2,500,000 of their $12,500,000 share for activities in rural areas, including tribal areas.

This notice, which takes effect upon issuance, also provides details regarding administrative and other requirements that shall apply to this program.

4. Eligible Activities

Eligible activities under this award include:

(a) Training, education, support, and advice to enhance the technical and administrative capabilities of community development corporations (CDCs) and community housing development organizations (CHDOs), including the capacity to participate in consolidated planning as well as in fair housing planning, continuum of care homeless assistance efforts, and HUD's Colonias Initiatives that help ensure community-wide participation in assessing area needs; consulting broadly within the community; cooperatively planning for the use of available resources in a comprehensive and holistic manner; and assisting in evaluating performance under these community efforts and in linking plans with neighboring communities in order to foster regional planning;

(b) Loans, grants, development assistance, predevelopment assistance, or other financial assistance to CDCs/CHDOs to carry out community development and affordable housing activities that benefit low-income families and persons, including the acquisition, construction, or rehabilitation of housing for low-income families and persons, and community and economic development activities which create jobs for low-income persons; and

(c) Such other activities as may be determined by Enterprise, LISC, Habitat for Humanity or Youthbuild USA in consultation with the Secretary or his designee.

5. Matching Requirements

As required by section 4 of the Demonstration Act of 1993, the $31,000,000 appropriation is subject to each award dollar being matched by three dollars in cash or in-kind contributions to be obtained from private sources. Each of the organizations receiving these funds will document its proportionate share of matching resources, including resources committed directly or by a third party to a grantee or subgrantee after November 26, 2001, to conduct activities.

In-kind contributions shall conform to the requirements of 24 CFR 84.23.

6. Administrative and Other Requirements

The award will be governed by 24 CFR part 84 (Uniform Administrative Requirements), OMB Circular A–122 (Cost Principles for Nonprofit Organizations), and OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations).

Other requirements will be detailed in the terms and conditions of the grant agreement provided to grantees, including the following:

(a) Each grantee will submit to HUD a specific work and funding plan for

each community showing when and how the federal funds will be used. The work plan must be sufficiently detailed for monitoring purposes and must identify the performance goals and objectives to be achieved. Within 30 days after submission of a specific work plan, HUD will approve the work plan or notify the grantee of matters that need to be addressed prior to approval, or the work plan shall be construed to be approved. Work plans may be developed for less than the full dollar amount and term of the award, but no HUD-funded costs may be incurred for any activity until the work plan is approved by HUD. All activities also are subject to the environmental requirements in paragraph 6(f) of this notice.

(b) Each grantee shall submit to HUD an annual performance report due 90 days after the end of each calendar year, with the first report due on March 31, 2003. Performance reports shall include reports on both performance and financial progress under work plans and shall include reports on the commitment and expenditure of private matching resources utilized through the end of the reporting period. Reports shall conform to the reporting requirements of 24 CFR part 84. Additional information or increased frequency of reporting, not to exceed twice a year, may be required by HUD any time during the grant agreement if HUD finds such reporting to be necessary for monitoring purposes.

To further the consultation process and share the results of progress to date, the Secretary may require grantees to present and discuss their performance reports at annual meetings in Washington, DC during the life of the award.

(c) The performance reports must contain the information required under 24 CFR part 84, including a comparison of actual accomplishments with the objectives and performance goals of the work plans. In the work plans each grantee will identify performance goals and objectives established for each community in which it proposes to work and appropriate measurements under the work plan such as: the number of housing units and facilities each CDC/CHDO produces annually during the grant period and the average cost of these units. However, when the activity described in a work plan is not to be undertaken in a single community, a report indicating the areas in which the activity will be undertaken, along with appropriate goals and objectives, will be provided when that information is available. The performance reports also will include a discussion of the reasonableness of the unit costs; the reasons for slippage if established objectives and goals are not met; and additional pertinent information.

(d) A final performance report, in the form described in paragraph (c) above, shall be provided to HUD by each grantee within 90 days after the completion date of the award.

(e) Financial status reports (SF–269A) shall be submitted semiannually.

(f) Environmental review. Individual projects to be funded by these grants may not be known at the time the overall grants are awarded and also may not be known when some of the individual subgrants are made. Therefore, in accordance with 24 CFR 50.3(h), the application and the grant agreement must provide that no commitment or expenditure of HUD or local funds to a HUD-assisted project may be made until HUD has completed an environmental review to the extent required under applicable regulations and has given notification of its approval in accordance with 24 CFR 50.3(h).

7. Application Content

Grantees will be required to file an application containing the following:

(a) Application for Federal Assistance (OMB Standard Form 424), Non-construction Assurances (SF–424B), Certification Regarding Drug-Free Workplace Requirements, Certification Regarding Lobbying, and the Fair Housing and Equal Opportunity certification described in section 8(f) of this notice;

(b) A Summary Budget for the amount of funds being requested and a similar summary budget for any amounts to be committed to NCDI activities. The Budget Summary identifying costs for implementing the plan of suggested Technical Assistance (TA) activities by cost category, in accordance with the following:

(1) Direct Labor by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(2) Fringe Benefits by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(3) Material Costs indicating the item, quantity, unit cost per item, estimated cost per item, and the total estimated material costs;

(4) Transportation Costs, as applicable;

(5) Equipment charges, if any. Equipment charges should identify the type of equipment, quantity, unit costs, and total estimated equipment costs;

(6) Consultant Costs, if applicable. Indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant, and total estimated costs for all consultants;

(7) Subcontract Costs, if applicable, Indicate each individual subcontract and amount;

(8) Other Direct Costs listed by item, quantity, unit cost, total for each item listed, and total other direct costs for the award; and

(9) Indirect Costs which should identify the type, approved indirect cost rate, base to which the rate applies, and total indirect costs.

These line items should total the amount requested for each Community Development (CD)–TA program area. The grand total of all CD–TA program funds requested should reflect the grand total of all funds for which application is made.

8. Findings and Certifications

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(b) *Wage Rates.* Unless triggered by other federal funds for a project under this grant, the requirements of the Davis-Bacon Act do not apply.

(c) *Relocation.* The Uniform Relocation Act applies to anyone who is displaced as a result of acquisition, rehabilitation, or demolition for a HUD-assisted activity.

(d) *Federalism.* Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on state and local governments and are not required by statute, or that preempt state law, unless the agency meets the relevant requirements of section 6 of the Executive Order. This notice does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

(e) *Prohibition Against Lobbying Activities.* Applicants for funding under this notice are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65, approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for federal contracts and grants from using appropriated funds to attempt to influence federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this notice. Therefore, applicants must file with their application a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes has been made, a form SF–LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65, approved December 19, 1995), which repealed section 112 of the HUD Reform Act and resulted in the elimination of the regulations at 24 CFR part 86, requires all persons and entities who lobby covered Executive or Legislative Branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(f) *Fair Housing and Equal Opportunity.* (1) *Threshold Requirements.* (i) *Compliance with Fair Housing and Civil Rights Laws.* Each organization receiving a grant under this notice and its subgrantees must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with the nondiscrimination provisions enumerated at 24 CFR 1003.601.

If an entity that receives funding under this notice: (a) Has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) Is a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) Has received a letter of noncompliance findings under Title VI, Section 504, or Section 109, HUD will determine whether the charge, lawsuit, or letter of findings has been resolved to the satisfaction of the Department and, if not, will take appropriate action. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(ii) *Nondiscrimination Requirements.* Each organization receiving a grant under this notice and its subgrantees must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*), and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*).

(iii) *Affirmatively Furthering Fair Housing.* Each organization receiving a grant under this notice and its subgrantees have a duty to affirmatively further fair housing. Each organization and subgrantee should include in their application or work plan the specific steps that they will take to remedy discrimination in housing and to promote fair housing rights and fair housing choice.

(g) *Lead-based Paint Provisions.* Each organization receiving a grant under this notice and its subgrantees must comply with the applicable lead-based paint provisions of 24 CFR part 35, including subparts J and K.

(h) *Certification.* Applications must contain a certification that the organization receiving a grant under this notice and all subgrantees will comply with (1) all the requirements and authorities identified in section (f) of this notice; (2) section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u); and (3) HUD's implementing regulations at 24 CFR part 135, which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for the metropolitan area (or nonmetropolitan county) in which the project is located.

Authority: Section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 42 U.S.C. 9816 *note*), as amended, Pub. L. 107–73, 115 Stat. 651.

Dated: January 9, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–1225 Filed 1–17–03; 8:45 am]

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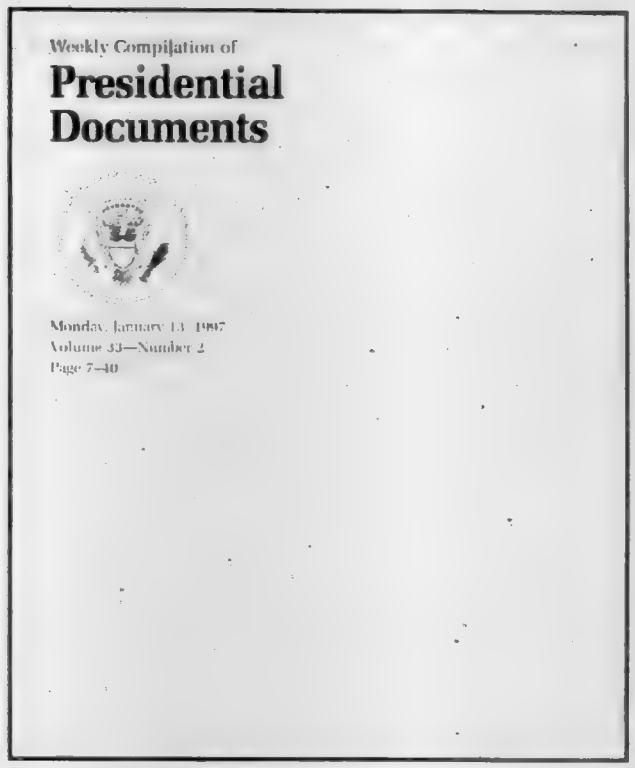

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Presidential Documents

Title 3—

The President

Proclamation 7640 of January 15, 2003

Religious Freedom Day, 2003

By the President of the United States of America

A Proclamation

Each year on January 16, we celebrate Religious Freedom Day in commemoration of the passage of the Virginia Statute for Religious Freedom by the Virginia General Assembly, which occurred on this day in 1786. Drafted by Thomas Jefferson, this historic law provided the inspiration and the framework for the religious freedom clauses in the First Amendment to the United States Constitution.

The religious freedom provisions of our Constitution—the Establishment Clause and the Free Exercise Clause—open the first of the ten amendments that make up the Bill of Rights. Because the Framers placed the guarantee of religious freedom before other cherished rights, religious liberty in America is often called the first freedom. The right to have religious beliefs and to freely practice such beliefs are among the most fundamental freedoms we possess. James Madison once said that "the Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right."

Our Founding Fathers recognized that religious freedom is a right we must protect with great vigilance. We must continue our efforts to uphold justice and tolerance and to oppose prejudice; and we must be resolved to countering any means that infringe on religious freedom.

Religious faith has inspired many of our fellow citizens to help build a better Nation. In America today, people of faith continue to wage a determined campaign to meet needs and fight suffering. Through the efforts of the White House Office of Faith-Based and Community Initiatives, my Administration has been working to ensure that faith-inspired organizations do not face discrimination simply because of their religious orientation. I recently signed an Executive Order to ensure equal treatment for faith-based charities that are offering hope to those in need.

As we celebrate the freedom of faith in America, we also recognize that there are many people around the world who do not enjoy such freedoms. The right to believe and express one's beliefs in words and practice is a right that should belong to all people. Through the Department of State's Office of International Religious Freedom, my Administration has been working to call attention to religious persecution and to encourage our allies, friends, and trading partners to provide and protect this fundamental human right for all people around the world. By working together to secure religious freedom around the world, we can create a better future for people of all faiths.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 16, 2003, as Religious Freedom Day. I encourage all Americans to reflect on the great blessing of religious freedom and to endeavor to preserve this freedom for future generations, and to commemorate this day through appropriate events and activities in homes, schools, and places of worship.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.

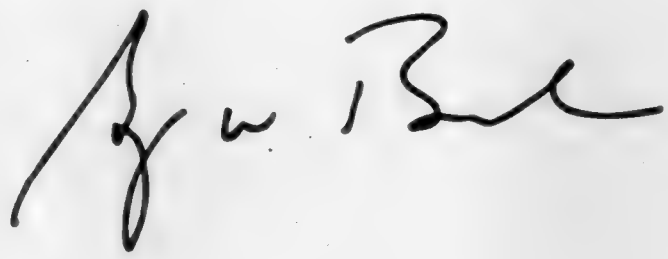

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Federal Register
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FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 110

[Notice 2003–2]

BCRA Technical Corrections

AGENCY: Federal Election Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Commission published technical amendments to its regulations on December 26, 2002, entitled "BCRA Technical Amendments." These amendments became effective upon publication. However, some of the amendments changed regulations that were promulgated but had not become effective as of December 26, 2002, and therefore could not take effect. Thus, the Commission is re-promulgating the technical amendments that did not take effect with the original BRCA technical amendments. Further information is provided in the supplementary information that follows.

EFFECTIVE DATES: The effective date for the revisions to 11 CFR 104.3(d)(1), introductory text, is December 31, 2002. The effective date for revisions to 11 CFR 110.19(e) is January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mai T. Dinh, Acting Assistant General Counsel, 999 E Street, NW., Washington DC, 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission promulgated a series of regulations to implement the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Public Law 107–155, 116 Stat. 81 (March 27, 2002).[1] As part of that effort, the Commission recently published technical amendments to its regulations to correct obsolete citations and typographical errors. *See* BCRA Technical Amendments Final Rule, 67 FR 78679 (Dec. 26, 2002). While these technical amendments became effective on December 26, 2002, the final rule amended sections that had been promulgated but had not yet been made effective as of that date. The affected sections are 11 CFR 104.3(d)(1) and 110.19(e). Additionally, the changes to the amendments to 11 CFR 113.1(g)(5) and (6), and 114.10(e) that were part of the BCRA Technical Amendments Final Rule will not be made because they are no longer necessary.[2] Therefore, the Commission is publishing and establishing the correct effective dates for the revisions to 11 CFR 104.3(d)(1) and 110.19(e) in this final rule.

Because the amendments published herein are merely technical and nonsubstantive, they are not a substantive rule requiring notice and comment under Administrative Procedure Act, 5 U.S.C. 553. Under the "good cause" exception in 5 U.S.C. 553(b)(B) and 553(d)(3), these technical amendments do not need to wait the 30 days after publication in the **Federal Register** to become effective. Rather, the effective date for the revisions to 11 CFR 104.3(d)(1) is December 31, 2002; and the effective date for 11 CFR 110.19(e) is January 1, 2003.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

This final rule does not have a significant economic impact on a substantial number of small entities. The amendments in this final rule are all technical and nonsubstantive in nature and do not have any economic impact on any entity subject to the underlying regulations.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, subchapters A of chapter 1 of title 11 of the *Code of Federal Regulations* are amended as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), and 439a.

§ 104.3 [Amended]

2. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
104.3(d)(1), introductory text	100.7(b)(11)	100.82(a) through (d).
104.3(d)(1), introductory text	100.8(b)(12)	100.142(a) through (d).

[1] *See* the following rulemakings: Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft, 67 FR 49064 (July 29, 2002); Final Rules on Reorganization of Regulations on Contributions and Expenditures, 67 FR 50582 (Aug. 5, 2002); Final Rules on Corrdinated and Independent expenditures, 67 FR (Jan. 3, 2003); Final Rules on Electioneering Communications, 67 FR 65212 (October 23, 2002); Final Rules on Contribution Limitations and Prohibitions, 67 FR 69928 (Nov. 19, 2002).

[2] The appropriate changes to 11 CFR 113.1(g)(5) and (6), and 114.10(e)(2) have already been made as part of the Final Rules on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76962, 76979 (Dec. 13, 2002), and Final Rules on Electioneering Communications, 67 FR at 65212, respectively.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441k.

§ 110.19 [Amended]

4. In the table below, for each section indicated in the left column, remove the citation or phrase indicated in the middle column, and replace it with the citation or phrase indicated in the right column:

Section	Remove	Add
110.19(e) paragraph heading	maintain, finance	finance, maintain.
110.19(e)	maintain, finance	finance, maintain.

Dated: January 14, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–1184 Filed 1–21–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–80–AD; Amendment 39–13019; AD 2003–02–03]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 65, 90, 99, 100, 200, and 300 Series, and Model 2000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) 65, 90, 99, 100, 200, and 300 series, and Model 2000 airplanes. This AD requires you to install new exterior operating instruction placards for the airstair door and emergency exits. This AD is the result of Raytheon improving the visibility and understandability of the door operating instruction placards. This was done as a result of difficulty opening the emergency exits of a similar type design airplane. The actions specified by this AD are intended to assure that clear and complete operating instructions are visible for opening the airstair door and emergency exits. If the operating instructions are not visible or understandable, this could result in the inability to open the airstair door or emergency exits during an emergency situation.

DATES: This AD becomes effective on March 7, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 7, 2003.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–80–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? FAA believes that the instructions for opening the airstair door and emergency exits are either not visible or not easy to understand on Raytheon 65, 90, 99, 100, 200, and 300 series, and Model 2000 airplanes. This is based on an accident that resulted in the issuance of AD 97–04–02. AD 97–04–02 was later superseded by AD 98–21–20 to incorporate more visible and understandable instructions.

What is the potential impact if FAA took no action? If the exterior door operating instruction placards are not visible or understandable, this could result in the inability to open the airstair door or emergency exits during an emergency situation.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon 65, 90, 99, 100, 200, and 300 series, and Model 2000 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 9, 2002 (67 FR 51791). The NPRM proposed to require you to install new exterior operating instruction placards for the airstair door and emergency exits.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: AD Is Unjustified

What is the commenter's concern? The commenter believes that in the accident that resulted in the earlier ADs, the damage to the airplane prevented the doors from opening. Therefore, the commenter believes that if the new placards had been present in this situation, they still would not have prevented injuries or loss of life. We infer that the commenter wants the NPRM withdrawn based on no compelling evidence that the presence of the placards addresses the unsafe condition.

What Is FAA's response to the concern? We do not concur. In an emergency situation, exiting the airplane is of the utmost importance, especially if the postcrash scenario includes a cabin fire. The cabin crew and/or passengers may become incapacitated. Therefore, the exterior emergency exit door operating instructions must be extremely clear and complete so that any person will be able to open the exit door.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 2: Placards Are Not Durable

What is the commenter's concern? The commenter states that the placards supplied by Raytheon do not adhere to the airplane surface properly. The placards often begin to peel-off either in flight or while washing the airplane. We infer that the commenter wants the NPRM withdrawn because the placards will eventually come off on their own.

What is FAA's response to the concern? We are aware that durability and adherence of the placards to the airplane surface may be a problem. However, it is not a valid reason for withdrawing the NPRM. The owners/

operators of the affected airplanes may choose to apply one or two coats of clear coating to seal the edges of the placard.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 3: Placards Degrade the Airplane's Appearance

What is the commenter's concern? The commenter states that the affected airplanes are chiefly used in private, charter, and corporate service where appearance is especially important to the owners/operators. The commenter states that the placards are out of proportion to the size of the airplanes, look very ugly, and the contrasting colors of the placards cause a problem because of stripe locations on the airplane's paint job. We infer that the commenter wants the NPRM withdrawn because the placards degrade the airplane's appearance.

What is FAA's response to the concern? We understand that appearance of the aircraft is a key element for owners/operators. However, cosmetic issues cannot be given higher priority than addressing the unsafe condition and exiting the airplane in an emergency situation.

We are not changing the final rule AD action based on this comment.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 3,587 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	Approximately $190 per airplane	$120 + $190 = $310	$310 × 3,587 = $1,111,970.

The manufacturer will provide warranty credit for labor and parts to the extent noted under MANPOWER and MATERIAL in Raytheon Mandatory Service Bulletin SB 52–3096, Rev. 1, Revised: June, 2002.

Compliance Time of This AD

What is the compliance time of this AD? The compliance time of this AD is "within the next 200 hours time-in-service (TIS) after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first."

Why is the compliance time of this AD presented in both hours TIS and calendar time? The unsafe condition on these airplanes is not a result of the number of times the airplane is operated. Airplane operation varies among operators. For example, one operator may operate the airplane 50 hours TIS in 3 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of this AD should be specified in both hours time-in-service (TIS) and calendar time in order to assure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–02–03 Raytheon Aircraft Company: Amendment 39–13019; Docket No. 2000–CE–80–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) 65–90, 65–A90, B90, C90, and C90A	LJ–1 through LJ–1530.
(2) 65–A90–1 (U–21A)	LM–1 through LM–125.
(3) 65–A90–1 (U–21G)	LM–126 through LM–141.
(4) 65–A90–2 (RU–21B)	LS–1 through LS–3.
(5) 65–A90–3 (RU–21C)	LT–1 and LT–2.
(6) 65–A90–4 (RU–21E)	LU–1 through LU–16.
(7) E90	LW–1 through LW–347.
(8) F90	LA–2 through LA–236.

Model	Serial Nos.
(9) H90 (T–44A)	LL–1 through LL–61.
(10) 99, 99A, A99A, B99, and C99	U–1 through U–239.
(11) 100 and A100	B–1 through B–94 and B–100 through B–247.
(12) A100 (U–21F)	B–95 through B–99.
(13) A100–1 (U–21J)	BB–3 through BB–5.
(14) A200 (C–12A) and (C–12C)	BC–1 through BC–75 and BD–1 through BD–30.
(15) A200C (UC–12B)	BJ–1 through BJ–66.
(16) A200CT (C–12D)	BP–1, BP–22, and BP–24 through BP–51.
(17) A200CT (C–12F)	BP–52 through BP–63.
(18) A200CT (FWC–12D)	BP–7 through BP–11.
(19) A200CT (RC–12D)	GR–1 through GR–12.
(20) A200CT (RC–12G)	FC–1 through FC–3.
(21) A200CT (RC–12H)	GR–14 through GR–19.
(22) A200CT (RC–12K)	FE–1 through FE–9.
(23) A200CT (RC–12P)	FE–25 through FE–31, FE–33, and FE–35.
(24) A200CT (RC–12Q)	FE–32, FE–34, and FE–36.
(25) B100	BE–1 through BE–137.
(26) 200 and B200	BB–2, BB–6 through BB–1313, BB–1315 through BB–1384, and BB–1389 through BB–1662.
(27) 200C and B200C	BL–1 through BL–72, and BL–124 through BL–140.
(28) B200C (C–12F)	BL–73 through BL–112, BL–118 through BL–123, and BP–64 through BP–71.
(29) B200C (C–12R)	BW–1 through BW–29.
(30) B200C (UC–12F)	BU–1 through BU–10.
(31) B200C (UC–12M)	BV–1 through BV–10.
(32) 200CT and B200CT	BN–1 through BN–4.
(33) 200T and B200T	BT–1 through BT–38, and BB–1314.
(34) 300	FA–1 through FA–230, and FF–1 through FF–19.
(35) B300	FL–1 through FL–252.
(36) B300C	FM–1 through FM–9, and FN–1.
(37) 2000	NC–4 through NC–53.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to assure that clear and complete operating instructions are visible for opening the airstair door and emergency exits. If the operating instructions are not visible or understandable, this could result in the inability to open the airstair door or emergency exits during an emergency situation.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Modify the exterior door operating procedures by incorporating the applicable kit as specified in the service bulletin.	Within the next 200 hours time-in-service (TIS) after March 7, 2003 (the effective date of this AD) or within the next 12 calendar months after the effective date of this AD, whichever occurs first.	In accordance with the applicable kit instructions as specified in the Accomplishment Instructions section in Raytheon Mandatory Service Bulletin SB 52–3096, Rev. 1, Revised: June, 2002. Use Paragraph (7) of the Accomplishment Instructions section in Raytheon Mandatory Service Bulletin SB 52–3096, Rev. 1, Revised: June, 2002, to accomplish this action on the Model 2000 airplanes.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 52–3096, Rev. 1, Revised: June, 2002, including Accomplishment Kit Nos. 101–4080–1, 101–4310–1, 101–4310–3, 90–4119–1, and 99–4032–1. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the *Office of the Federal*

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on March 7, 2003.

Issued in Kansas City, Missouri, on January 8, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–676 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–27]

Establishment of Class D Airspace; Shaw AFB, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Shaw AFB, SC. Shaw Radar Approach Control (RAPCON) is closed daily from 0330 UTC to 1100 UTC. Shaw AFB Airport Traffic Control Tower (ATCT) is open continuously. Therefore, when the RAPCON is closed Class D airspace must be established for the ATCT. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,700 feet MSL within a 4.4-mile radius of the airport.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On December 2, 2002, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class D airspace at Shaw AFB, SC, (67 FR 71507). Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Shaw AFB, SC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO SC D Shaw AFB, SC [New]

Shaw AFB, SC

(Lat. 33°58′23″ N, long. 80°28′22″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.4-mile radius of the Shaw AFB, excluding that airspace contained within Restricted Area R–6002 when it is in use. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, GA, on January 7, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–1315 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2575

RIN 1210–AA95

Final Rule Relating to Adjustment of Civil Monetary Penalties

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule that adjusts the civil monetary penalties under title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), pursuant to the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), as amended by the Debt Collection Improvement Act of 1996 (Act). The Act amended the 1990 Act to require generally the adjustment of civil monetary penalties for inflation no later than 180 days after the enactment of the Act, and at least once every four years thereafter, in accordance with the guidelines specified in the 1990 Act, as amended. The final rule affects employee benefit plans, plan administrators, plan sponsors, fiduciaries of employee benefit plans, plan participants and beneficiaries, and other persons subject to the civil monetary penalties under title I of ERISA.

DATES: This final rule is effective on March 24, 2003, and applies only to violations occurring after March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Regulations and

Interpretations, Pension and Welfare Benefits Administration, (202) 219–8515. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Section 31001(s) of the Debt Collection Improvement Act of 1996 (Act), Pub. L. 104–134, 110 Stat. 1321–373, amended section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Pub. L. 101–410, 104 Stat. 890, to require, with certain exceptions, by a regulation published in the **Federal Register**, that each civil monetary penalty (CMP) be adjusted once every four years in accordance with guidelines specified in the amendment. The Act specifies that any such increase in a CMP shall apply only to violations that occur after the date the increase takes effect. The term "civil monetary penalty" is defined in the 1990 Act to mean any penalty, fine or other sanction that is for a specific monetary amount as provided by Federal law; or has a maximum amount provided for by Federal law; and is assessed or enforced by an agency pursuant to Federal law; and is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

Only CMPs that are specified by statute or regulation in dollar amounts are adjusted under the 1990 Act, as amended. CMPs that are specified as percentages are not adjusted. The first adjustment to the CMPs under title I of ERISA was published in the **Federal Register** on July 29, 1997 (62 FR 40696), for incorporation into subpart E of part 2570 of chapter XXV of title 29 of the Code of Federal Regulations (CFR). These regulatory provisions were redesignated and transferred to subpart A of part 2575 of chapter XXV of title 29 of the CFR on August 3, 1999. *See* 64 FR 42246.

The table set forth below, entitled "Inflation Adjustment of Civil Monetary Penalties Under Title I of ERISA—2003" (table) contains a list of civil penalties under title I of ERISA for which a determination must be made as to whether an inflation adjustment is mandated by the 1990 Act, as amended. The statutory citations for each of the CMPs under title I of ERISA that are subject to adjustment are set forth in columns (A) and (B) of the table.[1] Column (C) briefly describes the nature of the violations associated with these citations. Column (D) of the table indicates the dollar amount of each CMP to be adjusted, and column (E) sets forth the year that each penalty was established by law or last adjusted. Columns (F), (G), (H), (I), and (J) contain the intermediate results of applying the series of steps mandated by the 1990 Act, as amended. Reference should be made to column (K) of the table to determine the effect of the dollar amounts of the final penalty adjustments by the rule contained in this document pursuant to the requirements of the 1990 Act, as amended.

INFLATION ADJUSTMENT OF CIVIL MONETARY PENALTIES UNDER TITLE I OF ERISA—2003

(A) U.S. Code Citation	(B) ERISA Title I Section	(C) Nature of Violation	(D) Penalty Amount to be Adjusted	(E) Year Penalty Last Set or Adjusted	(F) CPI–U for Col. E year	(G) Penalty After Raw Adjustment = Col. D × (538.9*/Col F)	(H) Unrounded Penalty Increase	(I) Round to the Nearest	(J) Rounded Penalty Increase	(K) New Penalty Amount = Col. (D) + Col. (J)
29 U.S.C. 1059(b)	209(b)	Failure to furnish or maintain records.	$11 per employee.	1997	480.2	12.34	1.34	$10	$0	$11 per employee.
29 U.S.C. 1132(c)(1)(A).	502(c)(1)(A)	Failure to notify plan participants of group health plan benefits under COBRA.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.
		Failure to notify participants and beneficiaries of asset transfer.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.
29 U.S.C. 1132(c)(1)(B).	502(c)(1)(B)	Refusal to provide required information in a timely manner.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.
29 U.S.C. 1132(c)(2).	502(c)(2)	Failure or refusal to file an annual report.	Up to $1,100 a day.	1997	480.2	1,234.46	134.46	1,000	0	Up to $1,100 a day.
29 U.S.C. 1132(c)(3).	502(c)(3)	Failure to notify certain participants and beneficiaries of a failure to meet minimum funding requirements.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.
		Failure to notify certain persons of a transfer of excess pension assets to health account.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.

[1] The section 502(c)(7) civil penalty, that was added to title I of ERISA by the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745), is not included in the Table. Under this provision, the Secretary may assess a civil penalty of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to a participant or beneficiary in accordance with ERISA section 101(i). The methodology of the 1990 Act, as amended, could not result in a cost-of-living adjustment for CMPs enacted in 2002, for purposes of this final rule, by virtue of how the adjustment is calculated. *See* the discussion following the table, including footnote 2.

INFLATION ADJUSTMENT OF CIVIL MONETARY PENALTIES UNDER TITLE I OF ERISA—2003—Continued

(A) U.S. Code Citation	(B) ERISA Title I Section	(C) Nature of Violation	(D) Penalty Amount to be Adjusted	(E) Year Penalty Last Set or Adjusted	(F) CPI–U for Col. E year	(G) Penalty After Raw Adjustment = Col. D × (538.9*/Col F)	(H) Unrounded Penalty Increase	(I) Round to the Nearest	(J) Rounded Penalty Increase	(K) New Penalty Amount = Col. (D) + Col. (J)
29 U.S.C. 1132(c)(5).	502(c)(5)	Failure or refusal to file information required under section 101(g).	Up to $1,000 a day.	1996	469.5	1,147.82	147.82	100	100	Up to $1,100 a day.
29 U.S.C. 1132(c)(6).	502(c)(6)	Failure to furnish documents under section 104(a)(6) upon request.	Up to $100 a day.	1997	480.2	112.22	12.22	10	10	Up to $110 a day.
			But not >$1,000 per request.	1997	480.2	1,122.24	122.24	100	100	But not >$1,100 per request.

*The value of the CPI–U average for all U.S. cities in June 2002 using 1967 as the base year was 538.9.

Specifically, the 1990 Act, as amended, provides that the required inflation adjustment shall be determined by increasing the maximum CMP amount or the range of maximum and minimum CMP amounts, as applicable, for each CMP by a cost-of-living adjustment (COLA). The term "cost-of-living adjustment" is defined in the Act as the percentage for each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted by law. The term "Consumer Price Index" is defined in the 1990 Act, as amended, to mean the Consumer Price Index for All-Urban Consumers published by the U.S. Department of Labor.

Accordingly, to calculate the COLA it is necessary to divide the CPI for June of the calendar year preceding the adjustment [2] by the CPI for June of the calendar year in which the CMP was last set by law or adjusted for inflation. In order to calculate the raw inflation adjustment, it is necessary to multiply the penalty amount to be adjusted by the relevant COLA. *See* column (G) of the table. The subtraction of the penalty amount to be adjusted from this product yields the unrounded penalty increase. *See* column (H) of the table.

Section 5 of the 1990 Act, as amended, sets forth the manner in which inflation adjustments must be rounded. Specifically, any increase in the maximum CMP or the range of maximum and minimum CMPs, as applicable, must be rounded to the nearest:

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiple of $25,000 in the case of penalties greater than $200,000.

These amounts are determined for each penalty according to these rules and appear in column (I) of the table.

Once the penalty increase has been rounded in accordance with the procedures set forth in the 1990 Act, as amended (*see* column (J) of the table) the rounded increase must be added to the penalty to be adjusted to determine the revised penalty amounts. *See* column (K) of the table.

Upon application of the COLA rules previously described, and as reflected in the table set forth above, the following CMPs under title I of ERISA are affected:

(1) The CMP of up to $1,000 a day set by ERISA section 502(c)(5) for the failure or refusal on the part of a person to file the information required to be filed pursuant to ERISA section 101(g) is adjusted to $1,100 a day; and

(2) The CMP of up to $100 a day but in no event in excess of $1,000 per request set by ERISA section 502(c)(6) for the failure on the part of the plan administrator to furnish the material requested by the Secretary under ERISA section 104(a)(6) is adjusted to $110 a day but in no event in excess of $1,100 per request.[3]

In view of the foregoing, the final rule contained in this document amends subpart A of part 2575 ("Adjustment of Civil Penalties under ERISA Title I") of title 29 of the Code of Federal Regulations (CFR) by adding the two new regulations on the adjustment for inflation of the civil monetary penalties discussed above.

Notice and Public Comment

As a general matter, the Administrative Procedure Act (APA) requires rulemakings to be published in the **Federal Register** and also mandates that an opportunity for comments be provided when an agency promulgates regulations. Section 553(b)(3)(B) of the APA exempts certain rules or agency procedures from the notice and comment requirements when an agency finds for good cause that notice and public comment are impracticable, unnecessary, or contrary to the public interest. The Department finds for good cause that notice and comment on the two CMP adjustments is unnecessary pursuant to section 553(b)(3)(B) of the APA. The Department, in this final rule is merely implementing the specific statutory methodology, prescribed by

[2] The Pension and Welfare Benefits Administration has determined for purposes of title I of ERISA that the year of adjustment is the year during which the applicability date of the final rule first applies. Because the applicability date applies to violations occurring after March 24, 2003, the year of adjustment is 2003. Accordingly, the CPI for June 2002 (*i.e.*, the CPI for the year prior to the adjustment) is used for this calculation and its value is 538.9 using the 1967-year as the base year.

[3] The first adjustment under the Act, as amended, to any CMP may not exceed 10 percent of the penalty being adjusted. This is the first COLA adjustment to the section 502(c)(5) and 502(c)(6) CMPs and the adjustment to each CMP does not exceed the statutory cap. Section 502(c)(5) was added to title I of ERISA by the Health Insurance Portability and Accountability Act of 1996, and section 502(c)(6) was added to title I of ERISA by the Taxpayer Relief Act of 1997.

the 1990 Act, as amended, to determine whether the CMPs under title I of ERISA must be adjusted for inflation. The Department did not exercise discretion as to the calculation of the CMP adjustments and the final rule involves minor technical amendments to part 2575 of title 29 of the CFR for only two CMPs. Accordingly, the regulation is being published as a final rule.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not "significant" and therefore is not subject to review by OMB.

As required by the Act for each civil monetary penalty, the Department has applied the relevant COLA to the penalty amount to be adjusted, rounded the penalty increase as prescribed under the 1990 Act, and added the increase to the unadjusted penalty to determine changes, if any, in the penalty amounts. The recalculation resulted in a small penalty increase of 10 percent to the penalty amounts contained in sections 502(c)(5) and 502(c)(6) of ERISA. No other adjustments are required for civil penalties under ERISA as a result of the recalculation. The amendments implement the statutory adjustment required by the 1990 Act, as amended, and having no impact that is separate from that of the statutory provisions, are not "significant" under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires each Federal agency to perform a regulatory flexibility analysis for all rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Because this rule is being issued as a final rule without notice and comment under the provision of section 553(b)(3)(B) of the APA, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small entities or conduct a regulatory flexibility analysis. The Department does not anticipate that this final rule will impose a significant impact on a substantial number of small entities because it is expected to have no impact that is separate from the statutory adjustment required by the 1990 Act, as amended.

Paperwork Reduction Act

This rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3).

Congressional Review Act

The final rule is subject to the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Controller General for review. The final rule is not a "major rule" as that term is defined in 5 U.S.C. 804 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not impose an annual burden exceeding $100 million on the private sector.

Executive Order 13132

The Department has reviewed this regulation in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain specifically enumerated exceptions not applicable here, that the provisions of titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA.

Statutory Authority

This regulation is adopted pursuant to the authority contained in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, title III, section 31001(s), 110 Stat. 1321–373), and the authority contained in sections 502(c) and 505 of ERISA, 29 U.S.C. 1132(c) and 1135.

List of Subjects in 29 CFR Part 2575

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Penalties, Pensions, Pension and Welfare Benefits Administration.

Final Rule

In view of the foregoing, subpart A of part 2575 of chapter XXV of title 29 of the Code of Federal Regulations is amended as follows:

PART 2575—[AMENDED]

1. The authority citation for part 2575 is revised to read as follows:

Authority: Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by section 31001(s) of Pub. L. 104–134, 110 Stat. 1321–373; 29 U.S.C. 1059(b), 1132(c) and 1135; Secretary of Labor Order No. 1–87.

2. Amend part 2575 by revising § 2575.100 and adding in the appropriate place §§ 2575.502c–5 and 2575.502c–6 to read as follows:

§ 2575.100 In general.

Section 31001(s) of the Debt Collection Improvement Act of 1996 (the Act, Public Law 104–134, 110 Stat. 1321–373) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act, Public Law 101–

410, 104 Stat. 890) to require generally that the head of each Federal agency adjust the civil monetary penalties subject to its jurisdiction for inflation within 180 days after enactment of the Act and at least once every four years thereafter.

§ 2575.502c–5 Adjusted civil penalty under section 502(c)(5).

In accordance with the requirements of the 1990 Act, as amended, the maximum amount of the civil monetary penalty established by section 502(c)(5) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is hereby increased from $1,000 a day to $1,100 a day. This adjusted penalty applies only to violations occurring after March 24, 2003.

§ 2575.502c–6 Adjusted civil penalty under section 502(c)(6).

In accordance with the requirements of the 1990 Act, as amended, the maximum amount of the civil monetary penalty established by section 502(c)(6) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is hereby increased from $100 a day but in no event in excess of $1,000 per request to $110 a day but in no event in excess of $1,100 per request. This adjusted penalty applies only to violations occurring after March 24, 2003.

Signed in Washington, DC, this 15th day of January, 2003.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 03–1271 Filed 1–21–03; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 18

RIN 1219–AA98 (Phase 10)

Alternate Locking Devices for Plug and Receptacle-Type Connectors on Mobile Battery-Powered Machines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Direct final rule; request for comments.

SUMMARY: MSHA is revising and updating the existing regulation by allowing the optional use of alternative locking devices for plugs and receptacles to secure battery plugs to receptacles. The rule eliminates the need to file petitions for modification to use this alternative means of securing battery plugs to receptacles.

MSHA is using direct final rulemaking for this action because the Agency expects that there will be no significant adverse comments on the rule. Elsewhere in this issue of the **Federal Register**, MSHA is publishing a companion proposed rule under MSHA's usual procedure for notice and comment rulemaking to provide a procedural framework to finalize the rule in the event the Agency receives significant adverse comments and withdraws this direct final rule. The companion proposed rule and this direct final rule are substantively identical.

DATES: This direct final rule is effective March 10, 2003, unless we receive significant adverse comments by February 21, 2003. If we receive such comments, we will publish a timely withdrawal of this direct final rule and proceed with notice and comment rulemaking.

ADDRESSES: Comments must be clearly identified as such and transmitted either electronically to *comments@msha.gov*, by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You may contact MSHA with any format questions. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm*.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693–9442; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov*. You can view comments filed on this rulemaking at *http://www.msha.gov/currentcomments.htm*.

SUPPLEMENTARY INFORMATION:

I. Direct Final Rules

Concurrent with this direct final rule, we also are publishing a separate, identical proposed rule in the Proposed Rule section of this **Federal Register**. This duplicate proposed rule will speed notice and comment rulemaking under § 553 of the Administrative Procedure Act should we have to withdraw this direct final rule. All interested parties should comment at this time because we will not initiate an additional comment period.

MSHA has determined that the subject of this rulemaking is suitable for a direct final rule. The Agency believes the actions taken are noncontroversial and therefore does not anticipate receiving any significant adverse comments. If MSHA does not receive significant adverse comments on or before February 21, 2003, the Agency will publish a notice in the **Federal Register** no later than March 10, 2003, confirming the effective date of the direct final rule.

For purposes of this direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, MSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice and comment process. A comment recommending an addition to the rule will not be considered a significant adverse comment unless the comment states why this rule would be ineffective without the addition. If significant adverse comments are received, the Agency will publish a notice of significant adverse comments in the **Federal Register** withdrawing this direct final rule no later than March 10, 2003.

In the event the direct final rule is withdrawn because of significant adverse comments, the Agency can proceed with the rulemaking by addressing the comments received and publishing a final rule. The comment period for the proposed rule runs concurrently with that of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule. The Agency will consider such comments in developing a subsequent final rule.

II. Background Information

Currently, under § 18.41 of Title 30, Code of Federal Regulations, MSHA sets forth design and construction requirements for plug and receptacle-type connectors used with permissible electric equipment approved under part 18. These technical requirements were last revised in March of 1968, which represented the latest advances in battery connector technology considered appropriate for use on mining equipment at that time.

Over the past thirty years, there have been technological improvements to the methods used for securing battery plugs

to receptacles. Since the provisions of existing section 18.41(f) do not reflect the latest state-of-the-art technology, mine operators file petitions for modification under Section 101(c) of the Mine Act to take advantage of the technological advancements. Since 1980, there have been approximately 300 petitions filed and granted under Section 101(c) requesting modification to 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 18.41(f) (Plug and receptacle-type connectors) to allow the use of alternate locking devices. The means of securing battery connectors permitted under this direct final rule allows for the use of padlocks and other equally effective mechanical devices that preclude the inadvertent separation of the battery plug from the receptacle.

In some operations, mine operators encountered difficulties with padlocks in both normal and emergency situations. The use of padlocks requires the maintenance of keys by authorized personnel. Due to the nature of mining operations, padlocks may be filled with mining debris, rendering them difficult or impossible to open with a key. Padlock keys can be misplaced, broken, or bent and may become unusable. This can go unnoticed by the operator until an emergency occurs, when the key may be unavailable or unusable. The removal of a padlock to permit the disconnection of a battery plug in an emergency situation, such as a battery fire, requires a longer period of time and greater effort than the removal of any of the other locking devices permitted in this direct final rule. However, where keys are accessible and padlocks are relatively free from accumulation of dust, padlocks have proven to be effective.

In 1987, to address the problems encountered with the use of padlocks, MSHA issued a policy allowing use of an alternative to padlocks. This policy permits the use of a device that is captive and requires a special tool to disengage and allow separation of the connector. A device is captive when a mechanical connection is made permanent by a locking device that is confined in its mounting location in a manner where, once installed, it cannot be inadvertently removed. The mechanical connection can only be made non-permanent by direct and intervening action using a special tool. A special tool is one that is not normally carried by miners and is used to ensure that constant pressure is maintained to prevent inadvertent separation of the plug from the receptacle.

Since 1980, mine operators have also been granted permission, through the petition for modification process, to use a spring-loaded locking device. MSHA determined that spring-loaded locking devices provide at least the same measure of protection as padlocks and captive locking devices. These devices maintain constant pressure on the threaded ring or equivalent mechanical fastening to prevent the plug from accidentally disengaging from the receptacle.

For both alternate locking devices, the captive locking device and the spring loaded locking device, a warning tag is also required to alert the user that the connector must not be disengaged under load. Withdrawal of a battery plug from the receptacle while the machine is energized (*i.e.*, under load) can create incendive arcing and sparking that could result in a personal injury, explosion, or fire. The requirement for the warning tag, along with part 48 new task training requirements, provide for appropriate hazard recognition when using alternative locking devices. MSHA is unaware of any adverse incidents involving alternate locking devices.

By issuing this direct final rule, MSHA is responding to the requirements of the Regulatory Flexibility Act and Executive Order 12866 that agencies review their regulations to determine their effectiveness and to implement any changes indicated by the review that will make the regulation more flexible and efficient for stakeholders and small businesses while maintaining needed protections for workers. This rule maintains the protection afforded by the existing standard.

III. Discussion of Alternative Locking Devices on Mobile Battery-Powered Machines

A. Paragraph 18.41

Section 18.41 addresses connectors used on battery and non battery-powered machines. Section 18.41(f) specifies requirements for plug and receptacle-type connectors used on mobile battery-powered machines employed in underground gassy mines. This direct final rule modifies paragraph (f) of 30 CFR 18.41 by adding two new provisions allowing the use of devices that provide at least the same measure of protection as that afforded by the existing standards. The Agency recognizes that battery-powered machine designs differ from conventional machine designs employing trailing cables. The energy to battery-powered equipment is carried on-board the machine with rechargeable battery assemblies, rather than being transmitted via a trailing cable from a section power center. Because of the inherent design limitations of battery-powered machines, there is no practical way to automatically remove all electrical power from battery-powered machines. Machines powered by trailing cables have circuit-interrupting devices that can be used to de-energize them, whereas most battery-powered machines rely on a plug and receptacle for de-energization. The proper procedure for removing power from a battery-powered machine is to first open the main machine disconnect device and then to disengage the plug from the receptacle. This effectively isolates the battery power from the machine.

B. Subparagraph 18.41(f)(1)

Subparagraph 30 CFR 18.41(f)(1) retains the existing provision that a plug padlocked to the receptacle will be acceptable in lieu of an interlock provided the plug is held in place by a threaded ring or equivalent mechanical fastening in addition to the padlock. This paragraph also retains the provision that a connector within a padlocked enclosure will be acceptable.

A padlock used on a battery plug and receptacle-type connector serves a dual purpose. It secures the threaded ring or equivalent mechanical fastening in place. A padlock is also used as a means to prevent the removal of the plug from the receptacle by unauthorized personnel. In this respect, only those persons having keys are considered authorized to remove the plug from the receptacle.

C. Subparagraph 18.41(f)(2)

Subparagraph 30 CFR 18.41(f)(2) is a new provision which provides for an alternate method for securing the battery plug to the receptacle. The rule provides that a plug which is held in place by a threaded ring or equivalent mechanical fastening will be acceptable provided that the threaded ring is secured in place with a device that is captive. It also requires a special tool to disengage the device and allow for the separation of the connector. It further requires a warning tag that states: "DO NOT DISENGAGE UNDER LOAD."

D. Subparagraph 18.41(f)(3)

Subparagraph 30 CFR 18.41(f)(3) is a new provision which provides for another alternate method for securing the battery plug to the receptacle. The rule states that a plug held in place by a spring-loaded or other locking device that maintains constant pressure against a threaded ring or equivalent mechanical fastening will be acceptable provided that it secures the plug from accidental separation. It further requires

a warning tag that states: "DO NOT DISENGAGE UNDER LOAD."

This subparagraph allows for the use of other locking devices that may become available in the future. The Agency has included this language to allow for acceptance of equally effective devices. Devices not explicitly defined in this rulemaking must be equally effective and provide at least the same measure of protection as those incorporated under this section.

Neither of the alternatives in subparagraphs 18.41(f)(2) or (f)(3) imposes additional requirements to the 1987 MSHA policy or the granted petitions for modification.

IV. Executive Order 12866 (Regulatory Planning and Review and Regulatory Flexibility Act)

Introduction

MSHA is issuing a direct final rule amending 30 CFR 18.41(f), concerning plug and receptacle-type connectors for mobile battery-powered equipment. This direct final rule revises and updates the existing regulation by allowing the use of alternate locking devices to secure battery plugs to receptacles. Two alternate locking devices are addressed in this direct final rule.

(1) Captive locking devices requiring use of a special tool. These devices have been accepted since 1987 under an MSHA policy allowing their usage.

(2) Spring loaded or other locking devices. Spring-loaded locking devices have been accepted by MSHA under the 101(c) Petition for Modification process.

The direct final rule eliminates the need to file petitions for modification (PFM) to use spring-loaded locking devices to secure battery plugs to receptacles. It also codifies the 1987 MSHA policy of allowing acceptance of captive locking devices.

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has fulfilled this requirement for the direct final rule, and based upon its economic analysis, has determined that the direct final rule will not have an annual effect of $100 million or more on the economy. Therefore, it is not an economically significant regulatory action pursuant to § 3(f)(1) of E.O. 12866.

The direct final rule will eliminate the need for mine operators of underground gassy mines, who choose to use plug and receptacle-type connectors for mobile battery-powered equipment, to file PFMs, and thereby generate cost savings.

From 1999 to 2001, 66 petitions were filed and granted to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors). Through November 20, 2002, 23 petitions have been filed, for a total of 89 petitions filed from 1999 to 2002. On average, 22 petitions were filed during each of the past 4 years.

Mining Sectors Affected

This direct final rule applies to all underground gassy mines. All underground coal mines are considered gassy mines and are affected by this rule. Gassy metal and nonmetal (M/NM) mines can also be affected by this direct final rule. Currently there are no battery-powered machines of the type covered by this rule in any of the gassy M/NM mines. Since these devices have not been used in M/NM mines, for purposes of this economic analysis, MSHA assumes that M/NM mines will not be affected by this rule. MSHA estimates that, on average, 22 underground coal mines per year will be affected by this rule.

Benefits

MSHA has qualitatively determined that the direct final rule, which permits use of alternate locking devices on mobile battery-powered equipment instead of using padlocks, will yield safety benefits relative to the existing rule, which does not permit use of alternate locking devices on mobile battery-powered equipment. The use of alternate locking devices in lieu of padlocks on mobile battery-powered equipment eliminates the problems associated with difficult removal of padlocks.

Compliance Costs

Cost savings from the direct final rule will accrue to underground coal mines that choose to use spring-loaded locking devices on mobile battery-powered equipment since they will no longer have to file a PFM. Cost savings from this rule are estimated at $9,747 per year. The cost savings are based upon the elimination of the filing of an average of 22 petitions per year. It is projected that of the 22 mines, 19 would employ 20 to 500 workers, and 3 would employ fewer than 20 workers. For 3 mines that employ fewer than 20 workers these cost savings will be $1,329. For the remaining 19 mines that employ 20 to 500 workers the cost savings will be $8,418.

Mines Employing Fewer Than 20 Workers

The cost savings of $1,329 for mines employing fewer than 20 workers are derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare a petition (3 petitions × 8 hours × $54.92 per hour = $1,318). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hours to copy and mail a petition (3 petitions × 0.1 hours x $19.58 per hour = $6). Furthermore, MSHA estimates that, on average, each petition is 5 pages long, photocopying costs are $0.15 per page, and postage is $1 [3 petitions × ((5 pages × $0.15 per page) + $1) = $5].

Mines Employing 20 to 500 Workers

The cost savings of $8,418 for mines that employ 20 to 500 workers are derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare a petition (19 petitions × 8 hours × $54.92 per hour = $8,348). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hours to copy and mail a petition (19 petitions × 0.1 hours × $19.58 per hour = $37). Furthermore, MSHA estimates that, on average, each petition is 5 pages long, photocopying costs are $0.15 per page, and postage is $1 [19 petitions × ((5 pages × $0.15 per page) + $1) = $33].

There are no substantive changes in the direct final rule that apply to any mine that chooses not to use alternate locking devices on mobile battery-powered equipment. Thus, these mines would not incur costs nor generate cost savings as a result of the direct final rule. Accordingly, we are publishing the factual basis for our regulatory flexibility certification statement in the **Federal Register**, as a part of this preamble, and are providing a copy to the Small Business Administration, Office of Advocacy. We also will mail a copy of the direct final rule, including the preamble and certification statement, to mine operators and miners' representatives and post it on our Internet Home page at *http://www.msha.gov*.

V. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the direct final rule on small businesses. Further, MSHA has made a determination with respect to whether or not the Agency can certify that the direct final rule will not have a significant economic impact on a substantial number of small entities that are covered by these rulemakings. Under the SBREFA amendments to the RFA, MSHA must include in the rule a

factual basis for this certification. If the direct final rule has a significant economic impact on a substantial number of small entities, then the Agency must develop a regulatory flexibility analysis.

Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action, and hence is required to use the SBA definition.

The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees (13 CFR 121.201). All of the mines affected by this rulemaking fall into this category and hence can be viewed as sharing the special regulatory concerns which the RFA was designed to address.

Traditionally, the Agency has also looked at the impacts of its rules on a subset of mines with 500 or fewer employees—those with fewer than 20 employees, which the mining community refers to as "small mines." These small mines differ from larger mines not only in the number of employees, but also, among other things, in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA rules and the impact of MSHA rules on them would also tend to be different. It is for this reason that "small mines," as traditionally defined by the mining community, are of special concern to MSHA.

This analysis complies with the legal requirements of the RFA for an analysis of the impacts on "small entities" while continuing MSHA's traditional look at "small mines." MSHA concludes that it can certify that the direct final rule will not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. The Agency has determined that this is the case both for mines affected by this rulemaking with fewer than 20 employees and for mines affected by this rulemaking with 500 or fewer employees.

Factual Basis for Certification

The Agency's analysis of impacts on "small entities" begins with a "screening" analysis. The screening compares the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for those small entities. When estimated compliance costs are less than one percent of the estimated revenues, or they are negative (that is, they provide a cost savings), the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, it tends to indicate that further analysis may be warranted. Using either MSHA's or SBA's definition of a small mine, the direct final rule results only in cost savings to affected mines. Therefore, this direct final rule does not have a significant economic impact on a substantial number of small entities using either MSHA's or SBA's definition of a small mine.

V. Paperwork Reduction Act of 1995

The amendments to 30 CFR 18.41(f) do not introduce any new paperwork requirements that are subject to OMB approval under the Paperwork Reduction Act. In addition, the third-party disclosure requirements proposed for 30 CFR 18.41(f)(2) and (3) are not considered a "collection of information" because the standard provides the exact language for warning tags [*see* 5 CFR 1320.3(c)(2)].

As a result of this direct final rule, the number of petitions for modification filed annually related to battery plugs will be reduced. Therefore, this will result in reducing burden hours and costs in the ICR 1219–0065 paperwork package, which concerns the filing of petitions for modification.

This direct final rule will result in 178.2 burden hour savings annually and associated annual burden cost savings of $9,709 related to the elimination of 22 petitions annually for alternate locking devices to secure battery plugs to receptacles. Of this total, for the 3 mines that employ fewer than 20 workers, there will be 24.3 burden hours savings annually and associated annual burden cost savings of $1,324. For the 19 mines that employ 20 to 500 workers, there will be 153.9 burden hours savings annually and associated annual burden cost savings of $8,385.

Mines Employing Fewer Than 20 Workers

The annual reduction of 24.3 burden hours and the $1,324 cost savings for the 3 mines that employ fewer than 20 workers are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare a petition (3 petitions × 8 hours = 24 hours). In addition, on average, a clerical worker takes 0.1 hours, 6 minutes, to copy and mail a petition (3 petitions × 0.1 hours = 0.3 hours). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 24 burden hours = $1,318.10). The hourly wage rate for a clerical worker is $19.58 ($19.58 × 0.3 burden hours = $5.90).

Mines Employing 20 to 500 Workers

The annual reduction of 153.9 burden hours and the $8,385 cost savings for the 19 mines that employ 20 to 500 workers are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare a petition (19 petitions × 8 hours = 152 hours). In addition, on average, a clerical worker takes 0.1 hours, 6 minutes, to copy and mail a petition (19 petitions × 0.1 hours = 1.9 hours). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 152 burden hours = $8,347.84). The hourly wage rate for a clerical worker is $19.58 ($19.58 × 1.9 burden hours = $37.20).

The amendment to 30 CFR 18.41(f) eliminates a need for mine operators to file petitions for modification. Resulting from the decreased number of petitions, MSHA will not conduct investigations related to the determination the merits of the petition. The paperwork containing the information necessary to permit investigation of the petition for modification will not be needed. The petition for modification paperwork requirements are contained in 30 CFR 44.9, 44.10 and 44.11. They are approved under OMB control number 1219–0065. We are not amending §§ 44.9, 44.10, or 44.11. We are only amending a regulation that is frequently petitioned. Consequently, MSHA will not submit a paperwork package with this direct final rule. Although it is not necessary to update the Information Collection Requirement document at this time, we will submit the necessary paperwork to record the decrease in burden when appropriate. Our estimate of the number of petitions submitted each year will be reduced by the average number of petitions for modification currently submitted to modify the current regulation.

VI. Other Regulatory Considerations

A. Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this direct final rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private

sector of more than $100 million. MSHA is not aware of any State, local, or tribal government that either owns or operates underground coal mines.

B. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This direct final rule is not subject to Executive Order 12630 because it does not involve implementation of a policy with takings implications.

C. Executive Order 12988 (Civil Justice Reform)

MSHA has reviewed Executive Order 12988 and determined that this direct final rule will not unduly burden the Federal court system. The Agency wrote the direct final rule to provide a clear legal standard for affected conduct and has reviewed it carefully to eliminate drafting errors and ambiguities.

D. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effects of this direct final rule on children and has determined that it will have no adverse effects on children.

E. Executive Order 13132 (Federalism)

MSHA has reviewed this direct final rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have federalism implications.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

MSHA certifies that the direct final rule does not impose substantial direct compliance costs on Indian tribal governments.

G. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, MSHA has reviewed this direct final rule and has determined that it has no adverse effect on the production or price of coal. Consequently, it has no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action are necessary.

H. Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the direct final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in section V in this preamble, MSHA has determined that this direct final rule will not have a significant economic impact on a substantial number of small entities.

VII. Petitions for Modification

On the effective date of this direct final rule, all existing petitions for modification for alternate locking devices for plug and receptacle-type connectors on mobile battery-powered machines will be superseded. Mine operators who have a previously granted petition modifying 30 CFR 75.503 and 18.41(f) will thereafter be considered in compliance with this rule, as long as the equipment is maintained in compliance with the specifications stated in the original petition for modification. All battery-powered equipment approved with locking devices prior to the effective date of this rule will be considered compliant, as long as the equipment is maintained in accordance with the originally approved specifications.

List of Subjects in 30 CFR Part 18

Mine safety and health, Reporting and recordkeeping requirements, Underground mining.

Dated: January 13, 2003.

Dave D. Lauriski,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, we are amending chapter I, subpart B, part 18 of title 30 of the Code of Federal Regulations as follows:

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

1. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

Subpart B—[Amended]

2. Paragraph (f) of § 18.41 is revised to read as follows:

§ 18.41 Plug and receptacle-type connectors.

* * * * *

(f) For a mobile battery-powered machine, a plug and receptacle-type connector will be acceptable in lieu of an interlock provided:

(1) The plug is padlocked to the receptacle and is held in place by a threaded ring or equivalent mechanical fastening in addition to a padlock. A connector within a padlocked enclosure will be acceptable; or,

(2) The plug is held in place by a threaded ring or equivalent mechanical fastening, in addition to the use of a device that is captive and requires a special tool to disengage and allow for the separation of the connector. All connectors using this means of compliance shall have a clearly visible warning tag that states: "DO NOT DISENGAGE UNDER LOAD"; or,

(3) The plug is held in place by a spring-loaded or other locking device, that maintains constant pressure against a threaded ring or equivalent mechanical fastening, to secure the plug from accidental separation. All connectors using this means of compliance shall have a clearly visible warning tag that states: "DO NOT DISENGAGE UNDER LOAD."

[FR Doc. 03–1305 Filed 1–21–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–03–001]

RIN 2115–AE47

Drawbridge Operating Regulations; Bayou Lafourche, Cutoff, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 1 (Galliano Lift) bridge across Bayou Lafourche, mile 30.6, near Cutoff, Lafourche Parish, Louisiana. This deviation allows the bridge to remain closed to navigation for two four-hour periods daily from February 3, through February 12, 2003. The deviation is necessary to allow for the replacement of the grid decking on the bridge.

DATES: This deviation is effective from 7 a.m. on Monday, February 3, 2003 until 4 p.m. on Wednesday, February 12, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through

Friday, except Federal holidays. The telephone number is 504–589–2965. The Bridge Administration Branch, Eighth District, maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation in order to replace the grid decking of the bridge. These repairs are necessary for the continued operation of the bridge. This deviation allows the draw of the SR 1 bridge to remain closed to navigation from 7 a.m. until 11 a.m. and from noon until 4 p.m. daily from Monday, February 3, 2003 through Wednesday, February 12, 2003.

The vertical lift bridge has a vertical clearance of 3 feet above high water in the closed-to-navigation position. The bridge normally opens to pass navigation an average of 472 times a month. In accordance with 33 CFR 117.465(a), the draw of the bridge opens on signal; except that, from 2:30 p.m. to 3:30 p.m. and from 4:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels. The bridge will not be able to open for emergencies during the closure period as the weight disparity during the repairs will not allow for the safe operation of the bridge. Navigation on the waterway consists mainly of fishing vessels and some tugs with tows. An alternate route is available to these vessels by entering Bayou Lafourche from the Gulf Intracoastal Waterway.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 9, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–1287 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–043]

RIN 2115–AE47

Drawbridge Operation Regulation; Mississippi River, Burlington, IA

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published a final rule on December 27, 2002, temporarily changing the regulation governing the Burlington Railroad Drawbridge, Mile 403.1, Upper Mississippi River. The section number for the temporary change was incorrect. This document corrects the section number for the temporary change.

DATES: This correction is effective January 22, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Eighth Coast Guard District Bridge Branch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard published a temporary rule in the **Federal Register** on December 27, (67 FR 78977), adding section 117.T408.

Need for Correction

As published, the section number used in the regulatory text was incorrect.

Correction of Publication

In rule FR Doc. 02–32723 published on December 27, 2002 (67 FR 78977) make the following correction. On page 78978, in the third column, in amendatory instruction 2 and the subsequent section heading, change "117.T408" to read "117.T409"

Dated: January 13, 2003.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–1351 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–02–102]

RIN 2115–AE84

Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Commander, Fifth Coast Guard District is temporarily expanding the geographic definition of the Hampton Roads Regulated Navigation Area to include the waters of the 12 nautical mile territorial sea off the Coast of Virginia and by adding new port security measures, in order to improve the safety and security of vessel traffic at the entrance to Chesapeake Bay and Hampton Roads, Virginia. The effect of this temporary rule will be to ensure the safety and security of the boating public, local military commands, and commercial shipping interests in the area.

DATES: This temporary final rule is effective from December 20, 2002 to June 15, 2003.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia 23510 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Monica Acosta, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3453.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation and the rule takes effect immediately. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Immediate action is necessary to ensure the safety and security of the public, naval vessels moored at Naval Station Norfolk, and the commercial shipping industry in Hampton Roads, VA. There have been recent reports, all a matter of public record, that indicate a continuing high risk of terrorist activity in the United States. Based on these reports, the Fifth Coast Guard District Commander has determined a heightened security condition in the Port of Hampton Roads is required. Delay in implementing these changes, therefore, would be contrary to the public interest.

For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

This temporary rule is necessary for the District Commander to reduce the potential threat to the Port of Hampton Roads, VA and surrounding waterways. The Coast Guard, as lead federal agency for maritime homeland security, must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression,

and attacks by terrorists on the American homeland while at the same time maintaining our freedoms and sustaining the flow of commerce. The Coast Guard implements Limited Access Areas, listed in 33 CFR part 165, in order to control vessel movements within Captain of the Port Zones. A Regulated Navigation Area is a type of Limited Access Area that may be used to control vessel traffic by specifying times of vessel entry, movement, or departure to, from, within, or through ports, harbors or other waters. The temporary rule the District Commander has established by this rulemaking allows for differentiation between lawful and unlawful maritime activities without unreasonably disrupting the free flow of commerce.

The District Commander has created a series of validation procedures to identify legitimate users of the Port of Hampton Roads. Validation procedures for vessels in excess of 300 GT, including tug and barge combinations in excess of 300 gross tons combined, include the following:

1. Vessels must check in with the Captain of the Port or his representative at least thirty minutes prior to entry to obtain permission to transit the Regulated Navigation Area.

2. Upon authorization and approval by the Captain of the Port or his representative, the vessel may enter the Regulated Navigation Area.

3. All vessels that receive permission to enter the Regulated Navigation Area remain subject to a Coast Guard port security boarding.

4. Thirty minutes prior to getting underway, vessels departing or moving within the Regulated Navigation Area must contact the Captain of the Port or his representative via VHF–FM channel 13 or 16, call (757) 444–5209/5210, or call (757) 441–3298 for the Captain of the Port Command Duty Officer.

The Captain of the Port will notify the public of changes in the status of the port security requirements by marine information broadcast on VHF–FM marine band radio, channel 22A (157.1 MHz)

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This temporary final rule will affect only those vessels in excess of 300 GT that enter and depart the Port of Hampton Roads and it is implemented for a limited duration. Therefore, we expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this temporary rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. section 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities. This temporary rule will affect only the following entities, some of which may be small entities: owners and operators of commercial vessels larger than 300 gross tons intending to transit or anchor in the Regulated Navigation Area. Because the number of small entities owning/operating commercial vessels of this size is not substantial, the rule is for a limited duration, and there is little anticipation of delay when requesting entry into the Area, the economic impact of this temporary rule should be minimal.

If, however, you believe that your business or organization qualifies as a small entity and that this temporary rule will have a significant economic impact on your business or organization, please submit a comment (*see* **ADDRESSES**) explaining why you believe it qualifies and in what way and to what degree this temporary rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on state or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this temporary rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this temporary rule will not result in such expenditure, we do discuss the effects of this temporary rule elsewhere in this preamble.

Taking of Private Property

This temporary rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This temporary rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This temporary rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this temporary rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lC, this temporary final rule is categorically excluded from further environmental documentation. This temporary rule seeks to modify a well-established Regulated Navigation Area, and will be in effect for 6 months. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

Part 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. From December 20, 2002, until June 15, 2003, in § 165.501, temporarily suspend paragraph (a)(1) and add new paragraphs (a)(13), (d)(15) and (d)(16) to read as follows:

165.501 Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters-regulated navigation area.

(a) * * *

(1) A line drawn due east from the mean low water mark at the North Carolina/Virginia border at latitiude 36°33′03″ N, longitude 75°52′00″ W, to the Territorial Seas boundary line at latitiude 36°33′05″ N, longitude 75°36′51″ W, thence generally northeastward along the Territorial Seas boundary line to latitiude 38°01′39″ N, longitude 74°57′18″ W, thence due west to the mean low water mark at the Maryland/Virginia border at latitiude 38°01′39″ N, longitude 75°14′30″ W.

* * * * *

(d) * * *

(15) *Port Security Requirements.* No vessel in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons (combined), shall enter the Regulated Navigation Area, move within the Area, or be present within the Area unless it complies with the following requirements.

(i) Obtain authorization to enter the Regulated Navigation Area from the Captain of the Port or his representative at least thirty minutes prior to entering the Regulated Navigation Area. All vessels entering or remaining in the Area may be subject to a Coast Guard boarding.

(ii) Follow all instructions issued by the Captain of the Port or his representative.

(iii) Ensure that no person who is not a permanent member of the vessel's crew, or a member of a Coast Guard boarding team, boards the vessel without presenting valid photo identification.

(iv) Report any departure from or movement within the Regulated Navigation Area to the Captain of the Port or his representative at least 30 minutes prior to getting underway.

(v) Contact the Captain of the Port or his representative on VHF–FM channel 13 or 16, or by calling (757) 444–5209, (757) 444–5210, or (757) 441–3298

(vi) In addition to the authorities listed in this part, this paragraph is promulgated under the authority under 33 U.S.C. 1226.

(16) For purposes of the port security requirements in paragraph (d)(15) of this section, the *Captain of the Port or his representative* means any official designated by the Captain of the Port including, but not limited to, any Coast Guard patrol vessel. All patrol vessels shall display the Coast Guard Ensign at all times when underway.

* * * * *

Dated: December 20, 2002.

J. D. Hull,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–1008 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–132]

RIN 2115–AA97

Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent safety and security zones around the Indian Point Nuclear Power Station (IPNPS), all commercial waterfront facilities, Liquefied Hazardous Gas (LHG) Facilities on the Arthur Kill; moored or anchored U.S. Coast Guard vessels; Coast Guard Stations New York, Sandy Hook, and Kings Point and Aids to Navigation Team New York; Ellis and Liberty Islands; all bridge piers and abutments, and overhead power cable towers, piers and abutments; tunnel ventilators; the New York City Passenger Ship Terminal; a moving safety and security zone around "Designated Vessels" (DVs) deemed by the Captain of the Port to require special protection on account of their hazardous cargo or passenger carrying capacity; and revising the current regulations that establish moving safety zones around Liquefied Petroleum Gas vessels. This action is necessary to safeguard facilities, vessels, public, and the surrounding areas from sabotage, subversive acts, or other threats. The zones will prohibit entry into or movement within these areas without authorization from the Captain of the Port New York.

DATES: This rule is effective January 1, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–132) and are available for inspection or copying at room 204, Coast Guard Activities New

York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 27, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone" in the **Federal Register** (67 FR 70892). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard promulgated a temporary final rule (66 FR 51558) establishing safety and security zones in the New York Marine Inspection and Captain of the Port Zones New York immediately following the terrorist attacks of September 11, 2001. The measure was taken to safeguard human life, vessels and waterfront facilities from terrorist attack or sabotage. That temporary final rule was subsequently revised (67 FR 16016; 67 FR 53310) to extend its effective period through December 31, 2002. The temporary final rule has not been burdensome on the maritime public as evidenced by the absence of any response to previous invitations of comments regarding the temporary rule's terms or establishment. This final rule is essentially equivalent to the temporary rule in scope and effect and is necessary for the continued safety and security of the port. Our notice of proposed rulemaking for this final rule notified the public that we anticipated a January 1, 2003 effective date. No public comments or objections to the anticipated effective date were received. Any delay in the effective date of this regulation is unnecessary and contrary to the public interest.

Background and Purpose

On September 11, 2001 three commercial aircraft were hijacked and flown into the World Trade Center in New York City, and the Pentagon, inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. *See, Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, 67 FR 58317 (September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, 67 FR 59447 (September 20, 2002). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is endangered by disturbances in international relations of United States that have existed since the terrorist attacks on the United States and such disturbances continue to endanger such relations. *Executive Order 13273 of August 21, 2002, Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States*, 67 FR 56215 (September 3, 2002).

Immediately following the September 11th attacks, we published a temporary final rule (66 FR 51558) that established a temporary regulated navigation area, and safety and security zones in the New York Marine Inspection and Captain of the Port New York Zones. These measures were taken to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. That temporary final rule was subsequently revised (67 FR 16016; 67 FR 53310) to extend its effective period through December 31, 2002.

The Coast Guard is establishing permanent safety and security zones throughout the New York Marine Inspection and Captain of the Port Zones as part of a comprehensive, port security regime designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. Due to continued heightened security concerns, the permanent safety and security zones are necessary to provide for the safety of the port and ensure that vessels, facilities, bridges, overhead power cables, or tunnel ventilators, are not used as targets of, or platforms for terrorist attacks. These zones would restrict entry into or movement within portions of the New York Marine Inspection and Captain of the Port Zones.

Discussion of Proposed Rule

This rule establishes the following safety and security zones:

Indian Point Nuclear Power Station (IPNPS)

The Coast Guard is establishing a permanent safety and security zone in all waters of the Hudson River within a 300-yard radius of the IPNPS pier in approximate position 41°16′12.4″ N, 073°57′16.2″ W. The zone is necessary to protect the IPNPS, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the facility that could potentially cause serious negative impact to vessels, the port, or the environment. Commercial vessels will still be able to transit through the 540 yards between the western boundary of the safety and security zone and Hudson River Lighted Buoy 27 (LLNR 37930), and recreational vessels will still be able to transit through the western 1,115 yards of the 1,415-yard wide Hudson River. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Liquefied Hazardous Gas Vessels (LHG), LHG Facilities, and Designated Vessel (DV) Transits

The Coast Guard is revising the Liquid Petroleum Gas (LPG) vessel safety zone at 33 CFR 165.160. That regulation establishes a 100-yard moving safety zone around any LPG vessel while it transits between Scotland Lighted Horn Buoy S (LLNR 35085) and the Arthur Kill. This revision will establish a safety and security zone to include all waters within the New York Marine Inspection and Captain of the Port Zones within a 200-yard radius of any Liquefied Hazardous Gas (LHG) vessel or LHG facility. We will also establish a moving safety and security zone to include all waters within a 100-yard radius of any "Designated Vessel" (DVs) transiting the New York Marine Inspection and Captain of the Port Zones. DVs include: Vessels certificated to carry 500 or more passengers; vessels carrying government officials or dignitaries requiring protection by the U.S. Secret Service, or other Federal, State, or local law enforcement agency; and barges or ships carrying petroleum products, chemicals, or other hazardous cargo.

These safety and security zones are necessary to protect the LHG vessels, LHG facilities, DVs, their crews and/or passengers, others in the maritime community, and the surrounding communities from subversive or terrorist attack against a vessel or a facility that could potentially cause serious negative impact to human life, the vessels, facilities, the port, or the environment. Safety and security zones are necessary to protect passenger vessels due to their potential as a target of subversive or terrorist attack, which could result in significant casualties.

Vessels may transit through any portion of the LHG facility safety and security zones that extend into the navigable channel for the sole purpose of transiting through the safety and security zones so long as they remain within the navigable channel, maintain the maximum safe distance from the waterfront facility and do not stop or loiter within the safety and security zones.

The Captain of the Port will notify the maritime community of the periods during which the safety and security zones will be enforced by the methods identified in 33 CFR 165.7 including electronic mail broadcasts identifying "Designated Vessel" transit.

U.S. Coast Guard Cutters and Shore Facilities

The Coast Guard is establishing permanent safety and security zones within 100 yards of each moored, or anchored, Coast Guard Cutter operating within the New York Marine Inspection and Captain of the Port Zones. We also propose to establish a safety and security zone within 100 yards of Coast Guard Station New York, Staten Island, NY, Coast Guard Station Sandy Hook, NJ, Coast Guard Station Kings Point, NY, and Coast Guard Aids to Navigation Team New York, Bayonne, NJ.

The safety and security zones will protect Coast Guard assets, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the Coast Guard that could cause serious damage to vessels, the port or the environment or adversely impact the Coast Guard's ability to conduct its assigned missions. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to any cutter or shoreside facility. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Commercial Waterfront Facilities

The Coast Guard is establishing a permanent safety and security zone within 25 yards of each commercial waterfront facility located within the New York Marine Inspection and Captain of the Port Zones that is capable of accepting barge, ship, or ferry vessels. A "commercial waterfront facility" means all piers, wharves, docks and similar structures to which commercial vessels may be secured; areas of land or water under and in immediate proximity to them; buildings on such structures or contiguous to them; and equipment and materials on such structures and in such buildings. During transfer operations at a commercial waterfront facility, the 25-yard zone would be measured from the outboard side of the commercial vessel instead of the pierhead. These zones prohibit the entry of vessels that are not actively engaged in legitimate, scheduled transfer operations at the individual facilities. Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the waterfront facility and do not stop or loiter within the zone.

The safety and security zones are necessary to protect each facility, commercial vessels moored at the facility, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the facility that could potentially cause serious negative impact to commercial vessels, the port, or the environment. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each facility. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Liberty and Ellis Islands

The Coast Guard is establishing a permanent safety and security zone encompassing all waters within 150 yards of Liberty Island, Ellis Island, and the bridge between Liberty State Park and Ellis Island.

The safety and security zones are necessary to protect each Island, the bridge between Liberty State Park and Ellis Island, authorized sight-seeing vessels operating at each island, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the islands that could potentially cause serious negative impact to vessels, the port, or the environment. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each Island. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Bridge Piers and Abutments, Overhead Power Cable Towers, Piers, and Tunnel Ventilators

The Coast Guard is establishing a permanent safety and security zone within 25 yards of each bridge pier and abutment, overhead power cable tower, pier, and tunnel ventilator, located within the waters of the New York Marine Inspection and Captain of the Port New York Zones, south of the Troy, NY Locks.

The safety and security zones are necessary to protect each bridge, overhead power cable, pier, abutment, tunnel ventilator, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the protected structures that could potentially cause serious negative impact to commercial ground shipments by vehicle or railroad, private vehicle traffic, vessels, the port, or the environment. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each bridge, overhead power cable, and tunnel ventilator. Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the protected structure and do not stop or loiter within the zone. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

New York City Passenger Ship Terminal, Hudson River, NY

The Coast Guard is establishing a permanent safety and security zone that will be enforced whenever passenger vessels are pierside at Pier 88, 90, or 92, or whenever the passenger ship terminal or the adjacent Intrepid Sea, Air and Space Museum, Manhattan is being used as an Emergency Operations Center. The Coast Guard will provide notification and termination of enforcement of a particular safety or security zone by way of methods identified in 33 CFR 165.7.

This safety and security zone includes all waters of the Hudson River bound by the following points: From the northeast corner of Pier 96 where it intersects the seawall, thence west to approximate position 40°46′23.1″ N, 073°59′59.0″ W, thence south to approximate position 40°45′55.3″ N, 074°00′20.2″ W (NAD 1983), thence east to the southeast corner of Pier 84 where it intersects the

seawall, thence north along the shoreline to the point of origin. Marine traffic will still be able to transit through the western 660 yards of the 900-yard wide Hudson River during the activation of the zone. Vessels moored at piers within the safety and security zone, however, will not be allowed to transit from their moorings without permission from the Captain of the Port, New York, during the effective periods of the safety and security zone. The only vessels that will be affected by the safety or security zones will be other passenger vessels at the Passenger Terminal or visiting vessels at the Intrepid Sea, Air and Space Museum. The Captain of the Port may authorize these vessels to transit through these zones. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety and security zone.

The safety and security zones are necessary to protect the passenger vessels, their crews and passengers, others in the maritime community, and the surrounding communities from subversive or terrorist attack that could cause serious negative impact to vessels, the port, or the environment, and result in numerous casualties.

The Captain of the Port will notify the maritime community of periods during which this safety and security zone will be enforced in accordance with methods identified in 33 CFR 165.7.

Any violation of any safety or security zone herein, is punishable by, among others, civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), *in rem* liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the Captain of the Port, New York. Each person or vessel in a safety or security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that vessels will be able to transit around the safety and security zones at the Indian Point Nuclear Power Station, the Coast Guard Stations and Cutters, Commercial Waterfront Facilities, Liberty Island, Ellis Island, Bridge Piers and Abutments, Overhead Power Cable Towers and Abutments, Tunnel Ventilators, the New York City Passenger Ship Terminal, and the DVs, vessels can still transit through the harbor before, during, or after these vessels' transits, the expected short duration of these zones' activation, the expected infrequency of the activation of the safety and security zones around LHG vessels and LHG facilities, and advance notifications will be made by methods in accordance with 33 CFR 165.7.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the New York Marine Inspection and Captain of the Port Zones in which entry will be prohibited by safety or security zones.

These safety and security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessels will be able to transit around the safety and security zones at the Indian Point Nuclear Power Station, the Coast Guard Stations and Cutters, Commercial Waterfront Facilities, Liberty Island, Ellis Island, Bridge Piers and Abutments, Overhead Power Cable Towers and Abutments, Tunnel Ventilators, the New York City Passenger Ship Terminal, and the DVs, vessels can still transit through the harbor before, during, or after these vessels' transits, the expected short duration of these zones' activation, the expected infrequency of the activation of the safety and security zones around LHG vessels and LHG facilities, and the advance notifications that will be provided by the methods described above.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from any small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes safety and security zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise § 165.160 to read as follows:

§ 165.160 Safety and Security Zones: Liquefied Hazardous Gas Vessel, Liquefied Hazardous Gas Facility and Designated Vessel Transits, New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Location.* The following areas are safety and security zones:

(1) All waters of the New York Marine Inspection Zone and Captain of the Port Zone within a 200-yard radius of any Liquefied Hazardous Gas (LHG) vessel or LHG facility.

(2) All waters of the New York Marine Inspection Zone and Captain of the Port Zone within a 100-yard radius of any Designated Vessels.

(b) *Designated Vessels (DVs).* For the purposes of this section, DVs are: Vessels certificated to carry 500 or more passengers; vessels carrying government officials or dignitaries requiring protection by the U.S. Secret Service, or other Federal, State or local law enforcement agency; and barges or ships carrying petroleum products, chemicals, or other hazardous cargo.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(3) The Captain of the Port will notify the maritime community of periods during which these zones will be enforced by methods in accordance with 33 CFR 165.7 and will identify DV vessel transits by way of electronic mail broadcast.

3. Add § 165.169 to read as follows:

§ 165.169 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Safety and security zones.* The following waters within the New York Marine Inspection Zone and Captain of the Port Zone are safety and security zones:

(1) *Indian Point Nuclear Power Station (IPNPS).* All waters of the Hudson River within a 300-yard radius of the IPNPS pier in approximate position 41°16′12.4″ N, 073°57′16.2″ W (NAD 83).

(2) *U.S. Coast Guard Cutters and Shore Facilities.* All waters within 100 yards of: Each moored, or anchored, Coast Guard Cutter; Coast Guard Station New York, Staten Island, NY; Coast Guard Station Sandy Hook, NJ; Coast Guard Station Kings Point, NY; and Coast Guard Aids to Navigation Team New York, Bayonne, NJ.

(3) *Commercial Waterfront Facilities.* All waters within 25 yards of each commercial waterfront facility that is capable of accepting barge, ferry or other commercial vessels. For purposes of this section, "commercial waterfront facility" means all piers, wharves, docks and similar structures to which barge, ferry or other commercial vessels may be secured; areas of land or water under and in immediate proximity to them; buildings on such structures or contiguous to them; and equipment and materials on such structures and in such buildings.

(i) When a barge, ferry or other commercial vessel is conducting transfer operations at a commercial waterfront facility, the 25-yard zone is measured from the outboard side of the commercial vessel.

(ii) Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the commercial waterfront facility and do not stop or loiter within the zone.

(4) *Liberty and Ellis Islands.* All waters within 150 yards of Liberty Island, Ellis Island, and the bridge between Liberty State Park and Ellis Island.

(5) *Bridge Piers and Abutments, Overhead Power Cable Towers, Piers and Tunnel Ventilators.* All waters within 25 yards of any bridge pier or

abutment, overhead power cable tower, pier or tunnel ventilators south of the Troy, NY Locks. Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the waterfront facility and do not stop or loiter within the zone.

(6) *New York City Passenger Ship Terminal, Hudson River, NY.* (i) *Location.* All waters of the Hudson River bound by the following points: From the northeast corner of Pier 96 where it intersects the seawall, thence west to approximate position 40°46′23.1″ N, 073°59′59.0″ W, thence south to approximate position 40°45′55.3″ N, 074°00′20.2″ W (NAD 1983), thence east to the southeast corner of Pier 84 where it intersects the seawall, thence north along the shoreline to the point of origin.

(ii) *Enforcement period.* This zone will be enforced whenever passenger vessels are pierside at Pier 88, 90 or 92 or whenever the passenger ship terminal or the adjacent Intrepid Sea, Air and Space Museum, Manhattan is being used as an Emergency Operations Center. The activation and termination of a particular zone will be announced in accordance with 33 CFR 165.7.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

(2) Vessels not actively engaged in legitimate transfer operations shall not stop or loiter within that part of a commercial waterfront facility safety and security zone extending into the navigable channel, described in paragraph (a)(3) of this section, without the express permission of the Coast Guard Captain of the Port or the designated on-scene patrol personnel.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: December 30, 2002.

N.E. Merkle,

Captain, Coast Guard, Acting Captain of the Port, New York.

[FR Doc. 03–1285 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–01–003; FRL–7429–5]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves numerous revisions to the State of Oregon Implementation Plan submitted to EPA by the Director of the Oregon Department of Environmental Quality (ODEQ) on November 5, 1999, March 7, 2000, June 26, 2001, and November 4, 2002. The revisions were submitted in accordance with the requirements of section 110 and parts C and D of title I of the Clean Air Act (hereinafter CAA or Act).

DATES: This direct final rule will be effective March 24, 2003, unless EPA receives adverse comment by February 21, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Oregon, Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Senior Air Pollution Scientist, EPA, Office of Air Quality (OAQ–107), Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION: Please note that if EPA receives adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

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I. Rule Recodification

A. Description of Submittal

On November 5, 1999, ODEQ submitted a complete rule renumbering to EPA for approval into the SIP. The rules are renumbered and re-labeled to more accurately describe their content, and non-applicable and duplicative rules are repealed to eliminate conflicts and purge outdated requirements. These rule changes are non-substantive. The following Divisions were submitted as part of the rule renumbering, with an effective date under State law of October 14, 1999: 200 (General Air Pollution Procedures and Definitions), 202 (Ambient Air Quality Standards and PSD Increments), 204 (Designation of Air Quality Areas), 206 (Air Pollution Emergencies), 208 (Visible Emissions and Nuisance Requirements), 210 (Stationary Source Notification Requirements), 212 (Stationary Source Testing and Monitoring), 214

(Stationary Source Reporting Requirements), 216 (Air Contaminant Discharge Permits), 218 (Oregon Title V Operating Permits), 222 (Stationary Source Plant Site Emission Limits), 224 (Major New Source Review), 225 (Air Quality Analysis Requirements), 226 (General Emission Standards), 228 (Requirements for Fuel Burning Equipment and Fuel Sulfur Content), 232 (Emission Standards for VOC Point Sources), 234 (Emission Standards for Wood Products Industries), 236 (Emission Standards for Specific Industries), 240 (Rules for Areas with Unique Air Quality Needs), 242 (Rules Applicable to the Portland Area), 250 (General Conformity), 252 (Transportation Conformity), 256 (Motor Vehicles), 258 (Motor Vehicle Fuel Specifications), 262 (Residential Woodheating), 264 (Rules for Open Burning), 266 (Field Burning Rules (Willamette Valley)), and 268 (Emission Reduction Credits). Cross-reference tables for the old and new division numbers are available in the docket for this action.

B. Summary of Action

We are approving the recodified version of Oregon's rules to replace the old divisions in the current SIP. ODEQ submitted revised versions of Divisions 200, 202, 204, 210, 212, 214, 216, 222, 224, 226, 240, and 268 on June 26, 2001. The approval of these sections is discussed in section III below. In addition, in the process of reviewing the recodification submittal against the current SIP, some past errors were discovered. We are correcting these errors in this action, and they are described below, along with the exceptions to our approval of the recodification submittal.

Division 208, Visible Emissions and Nuisance Requirements; Division 256, Motor Vehicles; and Division 264, Rules for Open Burning (New Division Numbers)

We are not acting on Division 208 (Visible Emissions and Nuisance Requirements), Division 256 (Motor Vehicles), and Division 264 (Rules for Open Burning) in this action. These divisions have been subsequently revised by ODEQ and were submitted to EPA for approval on March 13, 2001 (Division 208), September 21, 2000 (Division 256), December 1, 2000 (Division 256), and June 26, 2000 (Division 264). We will be acting on Divisions 208, 256, and 264 in a separate rulemaking.

Division 218, Oregon Title V Operating Permits

We are taking no action on Division 218, Oregon title V Operating Permits, because Federal Operating Permit (title V) programs and rules are reviewed and approved by EPA through the title V approval process, which is independent of the SIP approval process.

Division 21, General Emission Standards for Particulate Matter (Old Division Number)

On May 13, 1998 (63 FR 26460), EPA approved the removal of section 21–025, Refuse Burning Equipment Limitations, which had been repealed by ODEQ in 1996. In 1999, this section was mistakenly re-approved back into the SIP. We are removing section 21–025 from the SIP in this action. Sections 21–015, 21–050, 21–055, and 21–060, Visible Air Contaminant Limitations and Fugitive Emissions, will not be removed from the SIP. These sections were renumbered to Division 208, which, as discussed above, will be acted on in a separate rulemaking. Sections 21–200 through 21–245, Industrial Contingency Requirements for PM–10 Nonattainment Areas, will also remain in the SIP at this time. These sections were repealed by ODEQ in 1998 and ODEQ submitted a PM–10 revocation package requesting the removal of these sections from the SIP. These sections will be acted on in a separate rulemaking.

Division 22, General Gaseous Emissions (Old Division Number)

In 1997, EPA approved section 22–108, Applicability of Alternative Control Systems, into the SIP. This approval was done in error as ODEQ repealed this rule in 1983. Therefore, we are removing section 22–108 from the SIP in this action.

Division 31, Ambient Air Quality Standards (Old Division Number)

We are removing section 31–035, Hydrocarbons, from the SIP. ODEQ repealed this outdated section in 1998. In 1978, EPA revoked the hydrocarbons standard from 40 CFR 50 and changed the precursor for ozone from hydrocarbons to volatile organic compounds (VOC). Therefore, a hydrocarbons standard is no longer necessary.

Division 232, Emission Standards for VOC Point Sources

40 CFR 52.1985 describes the conditions of our past approvals of ODEQ's VOC regulations. We are removing 40 CFR 52.1985 because the version of Division 232 that we are approving in this action satisfies these conditions.

Division 234, Emission Standards for Wood Products Industries (New Division Number)

We are not acting on references to total reduced sulfur (TRS) in this division because control of TRS is not appropriate for inclusion in the SIP because it is not a criteria pollutant.

Division 236, Emission Standards for Specific Industries (New Division Number)

We are approving this division, with the exception of references to Fluorides because control of Fluorides is not appropriate for inclusion in the SIP because it is not a criteria pollutant.

Division 250, General Conformity (New Division Number)

On September 27, 1995, ODEQ submitted a complete package of General Conformity rules (Division 20) to EPA for approval into the SIP. On October 8, 1998, ODEQ submitted further revisions to their General Conformity rules. This 1998 submittal only contained the sections that were revised. The 1998 submittal was approved in a **Federal Register** document on March 22, 2000 (65 FR 15244). The sections that were not revised in 1998 (20–1500, 20–1540, 20–1550, and 20–1560), however, were never approved as part of the SIP. The entire package of General Conformity rules was submitted in the recodification package in 1999, where Division 20 was renumbered to Division 250. The previously unapproved sections comply with the Federal rules under 40 CFR part 51, subpart W, so therefore we are now approving all sections of ODEQ's General Conformity rules, under the new Division 250. However, we are taking no action on section 250–0110, Savings Provision, which describes how the Federal and State rules work together, because it is not needed in the SIP.

Division 252, Transportation Conformity (New Division Number)

On March 22, 2000 (65 FR 15244), EPA approved ODEQ's Transportation Conformity rules into the SIP. We are approving the new rule numbers for the Transportation Conformity rules with the same exceptions as the original approval in 2000. In the March 22, 2000, **Federal Register** document there was a typographical error regarding an exception in the Incorporation by Reference (IBR). The exception should refer to section 750(5)(b) rather than

750(4)(b). We are correcting this error in this action.

II. Emission Standards for VOC Point Sources—Marine Vapor Loading

A. Description of Submittal

EPA redesignated the Portland area as attainment for ozone and approved a maintenance plan for the area on May 19, 1997 (62 FR 27204). The plan relied on reductions from a cross-Cascades pipeline that would have provided a cost effective alternative to barging gasoline to fuel terminals east of the mountains. In July 1999, planning for the pipeline was halted following an explosion from a pipeline rupture in Bellingham. The maintenance plan states that if the pipeline is not constructed, ODEQ will propose alternate control measures. In fulfilment of that commitment, ODEQ submitted a revision to the SIP on March 13, 2000, which included a Marine Vapor Loading rule, OAR 340–232–0110, and changes to definitions in OAR 340–232–0030. These revisions were adopted by Oregon's Environmental Quality Commission (EQC) on February 11, 2000, and became effective as a matter of State law on June 1, 2001.

OAR 340–232–0110 requires all bulk gas terminals in the Portland ozone air quality maintenance area to use pollution control equipment when loading gasoline onto river barges. If the previous load in the barge was gasoline, then vapor control is required when loading any subsequent petroleum product. Ship-to-ship transfers, known as "lightering," are now required to be conducted with vapor control if either vessel is berthed at a terminal dock. Mid-river lightering transfers do not require vapor control but are prohibited on "Clean Air Action Days". The "Clean Air Action Days" program is outlined and described within ODEQ's Air Quality Public Education and Incentive Program that was reviewed previously by EPA as part of Oregon's SIP. The revisions to OAR 340–232–0030 include adding definitions for gas freed, lightering, loading event, marine tank vessel, marine terminal, marine vessel, and vapor tight.

B. Summary of Action

ODEQ submitted information showing that the emission reductions that will be achieved by its newly adopted marine vapor loading provisions are equivalent to those that would have resulted from the cross-Cascades pipeline. Section 183(f) of the 1990 Clean Air Act Amendments authorizes States to adopt standards that regulate emissions from marine vessels. Accordingly, we are approving this submittal (OAR 340–232–0030 and OAR 340–232–0110).

III. Permitting Rules

A. Description of Submittals

On June 26, 2001, the Director of the ODEQ submitted 17 Divisions of the Oregon Administrative Rules as revisions to the Oregon SIP. The submittal includes amendments to the following Divisions, effective July 1, 2001: 12 (Enforcement Procedure and Civil Penalties), 200 (General Air Pollution Procedures and Definitions), 202 (Ambient Air Quality Standards and PSD Increments), 204 (Designation of Air Quality Areas), 210 (Stationary Source Notification Requirements), 212 (Stationary Source Testing and Monitoring), 214 (Stationary Source Reporting Requirements), 216 (Air Contaminant Discharge Permits), 222 (Stationary Source Plant Site Emission Limits), 224 (Major New Source Review), 226 (General Emission Standards), 240 (Rules for Areas with Unique Air Quality Needs), and 268 (Emission Reduction Credits); new Divisions 209 (Public Participation) and 225 (Air Quality Analysis Requirements); and the revocation of Division 14 (Procedures for Issuance, Denial, Modification, and Revocation of Permits). A comprehensive summary of the rule changes, including rule-by-rule descriptions, is included in the SIP submittal (Attachment 3.3).

On November 4, 2002, the Director of the ODEQ submitted the PM–10 maintenance plans for the Grants Pass and Klamath Falls nonattainment areas. This submittal included revisions to Divisions 204–0030 (Designation of Nonattainment Areas), 204–0040 (Designation of Maintenance Areas), 222–041 (Source Specific Annual PSEL), 224–0060 (Requirements for Sources in Maintenance Areas), 224–0070 (Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas), 225–0020 (Definitions), 225–0050 (Requirements for Analysis in PSD Class II and Class III Areas), 225–0060 (Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas), and 225–0090 (Requirements for Demonstrating a Net Air Quality Benefit) and a new section 225–0045 (Requirements for Analysis in Maintenance Areas), effective October 8, 2002. These Divisions were revised as part of the maintenance plan efforts, and sections 225–0020(10) and 225–0090 (1)(c) were further revised as part of a temporary rulemaking to change the applicability date for the new ozone precursor significant impact distance from January 1, 2003, to January 1, 2004. This temporary rulemaking is effective from October 8, 2002, through April 6, 2003. EPA will be acting on the maintenance plans and redesignation requests (including sections 204–0030 and 204–0040) in a separate rulemaking.

B. Background

The current ODEQ new source review (NSR) program and Federally-enforceable state operating permit (FESOP) program were developed in 1981 and approved by EPA on August 13, 1982 (47 FR 35191). Although there have been a number of minor revisions to Oregon's permitting rules over the years, there had been no comprehensive review or revision of the rules. Over the years, ODEQ, EPA, industry, and others identified a number of concerns with the rules that were usually addressed through ODEQ internal implementation guidance rather than through rulemaking. However in 1998, ODEQ decided to undertake a comprehensive review of its existing permitting rules.

A workgroup of representatives from ODEQ and the Lane Regional Air Pollution Authority, with input from EPA, identified permitting rule problems and recommended solutions, building on recommendations of the Oregon Industrial Source Advisory Committee in 1994–1995 and an air quality process improvement team in 1998. An extensive list of rule changes was suggested by the workgroup and then reviewed and critiqued by ODEQ permit writers, inspectors, and management to develop final recommendations.ODEQ's final recommendations were discussed in detail with industrial source and environmental representatives during a variety of workgroup and roundtable meetings. In addition, the recommendations were presented and discussed with permitted sources, source representatives, and the public at several locations in Oregon prior to publication of the proposed rules for public comment.

The rulemaking package finally adopted by ODEQ and submitted to EPA as a SIP revision includes numerous changes to several different permitting programs—minor NSR, PSD, part D (nonattainment area) NSR, visibility permitting, state operating permits, emissions trading, and other permit-related rules. The changes were intended to clarify and update Oregon's existing permitting rules and to provide additional tools to streamline the permitting and planning process, while obtaining the same air quality benefits

as the existing rules. The changes include:

(1) Simpler permitting procedures;
(2) Greater use of general permits;
(3) Less need for permit revisions;
(4) Simpler emission trading options;
(5) Improved construction approval procedures;
(6) Better targeted public involvement;
(7) Simpler fees and billing; and
(8) Clearer applications and other requirements.

EPA has reviewed the amendments to the ODEQ rules and has determined that they meet EPA's requirements under sections 110, part C and part D of title 1 of the Clean Air Act. EPA is therefore approving them as revisions to the Oregon SIP.

C. Key Changes to Oregon's SIP

The docket includes a technical support document which describes in more detail the substantive changes to the Oregon rules that have been submitted by Oregon as revisions to the SIP, EPA's evaluation of the changes, and the basis for EPA's action. A summary of the key changes to Oregon's rules and EPA's proposed action follows:

1. Division 200 General Air Pollution Procedures and Definitions

This Division contains ODEQ's general air quality definitions (section 0020), a list of abbreviations and acronyms (section 0025), general exceptions (section 0030), provisions for adopting and submitting the Oregon SIP (section 0040), provisions for compliance schedules (section 0050), and rules for conflicts of interest and makeup of boards (sections 0100 to 0120).

EPA is taking no action on section 0040 State of Oregon Clean Air Act Implementation Plan because this section describes the State's procedures for adopting its SIP and incorporates by reference all of the revisions adopted by the EQC for approval into the Oregon SIP (as a matter of state law). This is not what is actually approved by EPA as the Federally-enforceable SIP for Oregon, so we are therefore taking no action on it. Previously, section 0040 had been approved by EPA into the SIP in error, and we are correcting that error in this action. EPA is taking no action on section 0050 Compliance Schedules because any compliance schedule established by Oregon under this provision must be submitted to, and approved by, EPA before it will be Federally enforceable or change the requirements of the EPA-approved SIP (*see* 40 CFR 51.260 and 40 CFR 51.102(a)(2) and (c)). We reviewed sections 200–0100, 200–0110, and 200-0120 which cover conflicts of interest and found them to meet the requirements of section 128 of the CAA. These provisions will not be incorporated by reference, however.

A few new or revised definitions merit discussion:

Adjacent—This definition was added to clarify that facilities that are located near each other and which are interdependent will be considered to be adjacent for purposes of the definition of the term "source."

Federal major source—This new definition defines the size of major stationary sources (as that term is defined in the ODEQ rules) that will be subject to certain provisions of the ODEQ permit rules. The size thresholds used to define this term are the same as those in EPA's PSD rules (40 CFR 51.166(a)(1), specifically, the 100 ton per year and 250 ton per year thresholds.

Generic PSEL—This new definition establishes the annual (12-month rolling average) emission limits that will be included in general ACDP's and other permits for pollutants that are emitted in less than significant emission rates. Generic PSEL's will limit the potential to emit of any pollutant to less than the Oregon major source thresholds.

Major modification—This definition was revised to better implement the ODEQ accumulation approach to determining when a major modification will occur. It also clarifies when increases in emissions that do not result from physical or operational changes are not considered to be modifications and are regulated under the PSEL rule.

Modification—This new definition was added to define the term modification for the minor source construction permitting program. The definition is essentially the same as EPA's definition of the term "modification" in 40 CFR part 60 (*i.e.*, the NSPS definition).

Netting basis—This new definition was added to better implement the ODEQ definition of "major modification." It defines both the baseline emissions from which increases are measured to determine if changes are subject to review, as well as the process for re-establishing the baseline after changes have been through the major source permitting process.

Significant emission rate—This definition was revised to delete the hazardous air pollutants from table 2; to clarify that for pollutants not listed in table 2, the significant emission rate is zero unless ODEQ has established a rate for that pollutant; and to revise table 3 so that the lower significant emission rates apply only to the Medford-Ashland AirQuality Maintenance Area and not to the Klamath Falls Urban Growth Area and the Lakeview PM–10 Nonattainment Area.

Unassigned emissions—This new definition defines how the quantity of unassigned emissions is to be determined for purposes of the Plant Site Emission Limit rule.

2. Division 204 Designation of Air Quality Areas

This Division identifies the carbon monoxide, particulate matter (PM–10) and ozone nonattainment areas in the State of Oregon. The Division was amended to reinstate the nonattainment designation for the Salem Nonattainment Area for Ozone as a result of the reinstatement of EPA's one-hour ozone standard.

3. Division 209 Public Participation

This is a new Division that contains all of the public participation procedures and requirements for issuing permits that used to be contained in Divisions 14, 216, 218, and 224. It establishes public participation procedures for four categories of permit actions. The permitting program rules assign permit actions to the appropriate public participation procedures established in this Division. The four categories of permit actions and associated procedures are:

Category I—changes that are not environmentally significant and do not involve choices made by ODEQ (*e.g.*, facility name change). These actions require no prior public notice, but a list of permit actions will periodically be made available for public review after the changes have been made.

Category II—changes that have the potential for low to medium environmental and public health significance (*e.g.*, renewing a simple permit). These actions will require a 30-day public notice period, but not a public hearing.

Category III—changes that have the potential for medium to high environmental and public health significance (*e.g.*, increasing the plant site emission limit). These actions will require a 35-day public notice period and a hearing if requested. A hearing can also be pre-scheduled by ODEQ.

Category IV—changes that have the potential for high environmental and public health significance (*e.g.*, siting a new major facility). These actions will require a public notice when the application is submitted and an informational meeting prior to drafting

a proposed permit. Once the proposed permit is drafted, a 40-day public notice period and a public hearing will be required.

If a permitting action is not specifically assigned to a category, then it will be processed under Category III.

EPA has reviewed these public participation procedures, and the assignment of permit actions in each of the separate permitting rules, and finds them to be consistent with the EPA requirements for public participation set forth in 40 CFR 51.161 for minor source permits to construct and nonattainment area (part D) NSR, 40 CFR 51.166(q) for PSD permits, the June 28, 1989, **Federal Register** (54 FR 27274) for Federally-enforceable State operating permits, and the December 4, 1986, Federal Register (51 FR 43814) for generic bubble rules.

4. Division 210 Stationary Source Notification Requirements

This Division contains a registration program for sources not subject to one of the Oregon operating permit programs (air contaminant discharge permit or title V operating permit programs) and also contains ODEQ's "minor source" preconstruction permitting program, titled "Notice of Construction and Approval of Plans." The existing notice of construction and approval of plans provisions have been repealed and replaced with provisions intended to improve the effectiveness of the program. The new provisions also include the "Notice of Approval" provisions originally located within Oregon's title V operating permit rules.

The notice of construction requirements apply to all stationary sources and air pollution control equipment except those that are specifically exempted in the rules. These exemptions include:

(1) Equipment used in agricultural operations and the growing or harvesting of crops or the raising of fowls and animals;

(2) Agricultural land clearing operations or land grading;

(3) Residential heating for dwellings for four families or less;

(4) Other residential activities at dwellings for four families or less; and

(5) Categorically insignificant activities.

The rules require that no person can construct a new stationary source, modify an existing stationary source, or construct or modify air pollution control equipment without first notifying the ODEQ. It is important to note that the definitions of "stationary source" and "modification" that apply in this program are essentially the same as EPA's definitions of these terms in 40 CFR part 60 (New Source Performance Standards).

The rules classify construction and modification into four types—Type 1 which are changes that are truly *de minimis*; Type 2 which are changes that are more than *de minimis*, but less than significant; Type 3 which are changes that are significant, but not new major sources or major modifications; and Type 4 which are changes that are significant and may be new major sources or major modifications.

The rules require Type 1 and 2 changes to provide a notice to ODEQ before constructing or modifying a stationary source or air pollution control equipment. Type 3 or 4 changes must submit an application for either a construction ACDP, new ACDP, or modified ACDP as appropriate. It is important to note that the rules include a provision that waives the notice and application requirements for changes that are pre-approved (*i.e.*, changes that have already been approved in accordance with the provisions of this Division and/or Division 224 New Source Review) in an ACDP or title V operating permit.

Type 1 changes may begin construction or modification 10 days after the ODEQ receives the notice unless the ODEQ notifies the owner or operator that the change is not a Type 1 change. Type 2 changes may begin construction or modification 60 days after the ODEQ receives the notice or the date that ODEQ approves the change in writing, whichever is sooner. Type 3 changes must obtain either a construction ACDP or a new or modified standard ACDP before proceeding with construction or modification. Type 4 changes must obtain a new or modified standard ACDP before proceeding with construction or modification. Type 4 changes may also be subject to the major source "New Source Review" rules (OAR 340 Division 224).

The rules include a requirement for the owner or operator to notify ODEQ that construction or modification has been completed within 30 days and on a form furnished by ODEQ. This requirement can be changed, however, in the construction permit or approval to allow for a different time period or reporting format. ODEQ can also issue an order prohibiting the construction or modification if it finds that it is not in accordance with applicable requirements.

Finally, the rules state that the approval to construct does not provide approval to operate unless otherwise allowed by either the ACDP or title V operating permit rules. Depending upon the type of change and the permit status of the source, a new or modified ACDP or a modified title V permit may be needed before the change can be operated. Changes at title V operating permit sources are governed by Oregon's title V operating permit program rules (OAR 340–218–0190(2)).

Although this new rule is structured quite differently from Oregon's previous program, with one exception, it requires approval prior to construction or modification for the same universe of stationary sources as does the current SIP-approved program. The new rule now exempts categorically insignificant activities from the minor source construction program. Oregon's list of categorically insignificant activities was adopted initially as part of its title V operating permits program and was approved by EPA as meeting the requirements of 40 CFR part 70. Oregon's list of categorically insignificant activities is limited to activities that have only trivial emissions or activities that are not appropriate for regulating under a construction permit program (*e.g.*, accidental fires, motor vehicles). EPA has determined that the Oregon rules for "Notice of Construction and Approval of Plans" comply with EPA's requirements for minor new source review programs at 40 CFR 51.160 through 51.164.

5. Division 212, Stationary Source Testing and Monitoring

This Division contains ODEQ's provisions for emission testing and monitoring, including Oregon's rules for "Compliance Assurance Monitoring." The division also contains ODEQ's provisions regulating the use of stack heights and dispersion techniques to comply with ambient standards. The Division was amended by relocating section 0160 Records; Maintaining and Reporting to Division 214. Numerous editorial changes and corrections to citations were made throughout. Oregon has adopted it's own rules for implementing EPA's Compliance Assurance Monitoring regulations and has submitted them for inclusion in the SIP. Because EPA's regulations are nationally applicable, both Oregon's rules (OAR 340–212–0200 through 0280) and EPA's rules (40 CFR part 64) apply to title V sources in Oregon. As such, EPA is approving the Oregon Compliance Assurance Monitoring rules as SIP strengthening provisions.

EPA is approving ODEQ's rules for emission testing. As provided in 40 CFR 51.212(c) and consistent with EPA guidance for alternative test methods for New Source Performance Standards and

National Emission Standards for Hazardous Air Pollutants, however, major changes to test methods for SIP-approved emission limits must be approved by EPA. *See also* "How To Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants," February 1999.

6. Division 214, Stationary Source Reporting Requirements

This Division contains ODEQ's provisions for reporting and recordkeeping, information requests (CAA section 114 authority), credible evidence, business confidentiality, emission statements, and excess emissions. Numerous editorial changes were made throughout. The provisions for Records; Maintaining and Reporting were amended and relocated to section 0114 from Division 212.

On October 17, 2002, Oregon withdrew the provisions for excess emissions (OAR 340–214–0300 through 0360) because ODEQ was beginning the process of revising those rules. As a result, the current excess emissions provisions in OAR 340 Division 28 will remain the SIP-approved version of these provisions.

7. Division 216, Air Contaminant Discharge Permits

This Division is the ODEQ Federally-enforceable State operating permit (FESOP) program, and is also the administrative permit mechanism used to implement the notice of construction and major new source review programs. This Division has been revised to clarify the different types of ACDP's, the requirements for applying for ACDP's and the processes for issuing and modifying ACDP's. The rule has also been revised to clarify when the ODEQ or the Lane Regional Air Pollution Authority has permitting responsibility for portable sources.

The rules now establish 6 types of ACDP's:

(1) Construction ACDP, which is used for approving Type 3 changes;

(2) General ACDP, which is for categories of sources for which individual permits are unnecessary to protect the environment;

(3) Short Term Activity ACDP, which is a letter permit for unexpected or emergency activities, operations or emissions;

(4) Basic ACDP, which is a letter permit for sources and activities listed in Table 1 part A;

(5) Simple ACDP, which is a permit that contains all relevant applicable requirements, generic PSEL's, and appropriate testing, monitoring, recordkeeping, and reporting requirements.

(6) Standard ACDP, which is a permit that contains all applicable requirements, source-specific PSEL's or generic PSEL's as appropriate, and appropriate testing, monitoring, recordkeeping, and reporting requirements. Sources listed in table 1 part C must obtain a Standard ACDP.

Basic ACDP's are available only for sources whose emissions are less than *de minimis*. Sources and activities listed in table 1 part B which do not qualify for a General or Simple ACDP must obtain a Standard ACDP. Any source not required to obtain a Standard ACDP may choose to obtain a Standard ACDP. The primary difference between a Simple ACDP and a Standard ACDP is that Simple ACDP's can only include generic PSEL's (the significant emission rate less one ton per year), not source-specific PSEL's, and have a netting basis of zero (see discussion in section III.C.9 below).

The rules have been revised to clarify the general application requirements for new permits, permit renewals, and permit modifications, along with the process for determining the completeness of applications and for obtaining additional information during permit application review. The rules also include specific provisions for the application, content, and issuance of each type of ACDP, including the public comment process that will be followed for permit issuance and permit modifications. The provisions for General ACDP's include both the process for ODEQ issuance of a General ACDP as well as the procedures for sources to be assigned to the General ACDP.

The rules were also revised to clarify the requirements for permitting multiple sources at a single adjacent or contiguous site, delete obsolete provisions for sources to obtain limits on potential to emit prior to the date for initial title V permit applications, add provisions for terminating or revoking an ACDP, add provisions for ODEQ initiated permit modifications, simplify fee requirements, clarify how fees may be reduced for sources that are temporarily suspending activities, and deleting obsolete provisions regarding ACDP's issued by the Lane Regional Air Pollution Authority.

Finally, table 1, which previously contained the list of source types required to have ACDP's along with the associated fees, has been revised and restructured into two tables—table 1 which lists the source types required to have ACDP's and table 2 which establishes initial permitting application fees, annual fees, specific activity fees, and late fees. While the fee structure has been substantially revised, the ODEQ has striven to make sure the revisions are revenue neutral.

Although the Oregon ACDP program has been significantly revised to clarify applicability, establish several different types of permits, and to streamline the permitting process, it continues to comply with EPA's requirements for FESOP programs as set forth in the June 28, 1989, **Federal Register** (54 FR 27274).

8. Division 222, Stationary Source Plant Site Emission Limits

This Division contains the ODEQ program for managing airshed capacity by regulating increases and decreases in air emissions of permitted sources through a Plant Site Emission Limit (PSEL). PSEL's are used to protect ambient air quality standards, prevent significant deterioration of air quality, and to ensure protection of visibility. It is important to note that PSEL's are not plantwide applicability limits (PAL's) for purposes of major new source review (*see* discussion in section III.C.9. below).

The Division has been extensively revised to clarify that PSEL's are not required for pollutants that are emitted at less than *de minimis* levels, for Short Term Activity and Basic ACDP's, or for hazardous air pollutants, establish the concept of a generic PSEL and the criteria for establishing such, clarify the process for establishing and revising PSEL's, change the requirements for short-term PSEL's, add provisions for addressing "unassigned" emissions (the difference between a source's netting basis and it's current potential to emit (PTE) when the netting basis exceeds the current PTE), and add provisions for addressing how PSEL's are treated when sources combine or split.

Generic PSEL's are used for sources with a capacity less than the Significant Emission Rate (SER) unless the source has a netting basis and requests a source specific PSEL. Generic PSEL's may be used for any category of ACDP or title V permit. Generic PSEL's are set by rule at 1 ton less than the SER (except for lead, municipal waste combustor organics, and PM–10 in Medford which are set slightly below the SER). Importantly, a source with a generic PSEL for a pollutant will have a netting basis of zero and will not have any emissions that can be used for netting (*see* discussion of netting basis in section III.C.9 below). Accumulated emission increases from physical or

operational changes that exceed the SER will be subject to NSR.

Short-term PSEL's were previously required to be included in all permits for pollutants with short-term ambient air quality standards. The rules have been revised to require short-term PSEL's only for pollutants for which a short-term SER has been established (ODEQ establishes short-term SER's on an area specific basis as needed to ensure attainment and maintenance of a short-term NAAQS). The rules also have been revised to include procedures and criteria to be used when revising a short-term PSEL (previously, the rules only included criteria applicable to the annual PSEL's). Although this change will allow most ACDP's and title V operating permits to be issued in the future without including short-term PSEL's, ACDP's and title V operating permits will still need to include short-term PSEL's for areas where ODEQ has previously relied upon them to demonstrate attainment and maintenance of the NAAQS.

The general requirements for all PSEL's have been revised to clarify that annual PSEL's will be established on a rolling 12-month basis and to require sources to maintain either a Standard ACDP or a title V operating permit in order to have a netting basis (and a source-specific PSEL). It is ODEQ's intention that the PSEL function as a limit on a source's PTE.

EPA has reviewed the provisions of the PSEL rule and finds that it establishes limits on a source's PTE that are Federally enforceable and enforceable as a practical matter (with adequate requirements for monitoring, recordkeeping, and reporting in section 0080) in accordance with EPA's guidance for limiting PTE. Therefore, EPA is approving this rule such that PSEL's in ACDP's and title V operating permits that comply with the requirements of this rule will be considered to be limits on a source's PTE.

New provisions for addressing unassigned emissions have been added. The purpose of this section is to track and manage the difference between the netting basis and what a source could emit based on its current physical and operational design. This section essentially limits unassigned emissions to no more than the SER, and establishes the process for reducing unassigned emissions and the netting basis when permits are renewed, modified, or reopened. Unassigned emissions may only be used for netting purposes, and cannot be sold or banked. Emissions that are removed from the netting basis cannot be used in future netting actions. The provision for temporary PSD increment allocation has been repealed. The effect of this repeal is that all requested increases in PSEL's will be evaluated for compliance with applicable PSD increments using the same criteria.

The provisions for voluntary PSEL's for hazardous air pollutants (OAR 340–222–0060) has been revised to reflect the change to a rolling 12-month average and to accommodate generic PSEL's. Because this provision does not directly relate to the SIP, EPA is taking no action on this portion of the PSEL rule. The effect of this is that HAP PSEL's established in ACDP's will not be Federally-enforceable limits on a source's PTE. However, for purposes of the Federal hazardous air pollutant program under section 112 of the CAA and for purposes of title V of the CAA, limits on PTE need not be Federally enforceable at this time.

It is important to note that the rule explains how insignificant activities are addressed in plant-site emission limits. Categorically insignificant activities are generally not considered when establishing PSEL's and demonstrating compliance with PSEL's. However, emissions from aggregate insignificant activities are considered. Importantly, the rules state that all emissions from insignificant activities must be included when determining whether a source or modification is major for purposes of NSR or PSD. This means that a source which requests a PSEL below the major source thresholds to avoid NSR or PSD must include emissions from all insignificant activities in the PSEL.

The rule includes a new section with specific requirements for ensuring compliance with PSEL's. It requires sources to monitor emissions or other parameters on a frequency and with averaging periods sufficient to demonstrate compliance with the annual PSEL on a monthly basis and with short-term PSEL's. Sources are required to maintain adequate records and to submit annual reports as required in ACDP's or title V operating permits. Specific requirements for monitoring, recordkeeping, and reporting will be included in all permits with PSEL's.

Finally, the rule includes a new section which specifies how PSEL's and netting bases will be treated when two or more sources combine into one (*e.g.*, when one source buys a neighboring plant), or when one source splits into two or more sources (*e.g.*, when one source sells a portion of its plant to another company).

Overall, the revisions to ODEQ's rules for Plant Site Emission Limits have clarified and strengthened the rules. Although the new provisions for generic PSEL's may allow insignificant increases at some existing non-major sources, the Oregon PSEL's still establish a more rigorous mechanism for regulating non-construction emissions increases at existing sources than do most other State programs. Furthermore, the new provisions for unassigned emissions will reduce PSEL's for major sources now and into the future. EPA is therefore approving the revisions to the PSEL rules.

9. Division 224, Major New Source Review

This Division contains the ODEQ major source permit to construct programs as required by title I, parts C and D of the CAA. It requires an ACDP prior to beginning construction on a new major source or major modification. This Division applies to new major sources and major modifications and requires that no owner or operator begin actual construction without first having received an ACDP and having satisfied the requirements of this Division.

Revisions to this Division must be evaluated in the context of the currently-approved ODEQ NSR rule. ODEQ's NSR rule differs from EPA's regulations in a number of fundamental ways. EPA evaluated and initially approved the ODEQ NSR program on August 13, 1982 (47 FR 35191), as being equivalent or more stringent than EPA's regulations on a program basis. The ODEQ NSR program, which is closely linked to the ODEQ PSEL program, does not subject the same sources and modifications to major NSR as would EPA's rules. The ODEQ program has lower major source thresholds, so smaller new sources and changes to smaller existing sources are subject to review. However, the ODEQ program utilizes a plant-wide cap approach to defining major modification rather than a contemporaneous net emissions increase approach as does EPA's rules. The effect of this plant-wide cap approach is that some changes which would be subject to review under EPA's rules are not subject under ODEQ's rules. However, some changes which would not be subject to review under EPA's rules are subject under ODEQ's rules. In addition, changes which would result in increased emissions, but would not be considered modifications under EPA's rules, are reviewed for compliance with standards and increments under ODEQ's PSEL program. Overall, EPA when it initially approved Oregon's program in 1982 determined that the Oregon program would review and control emissions from new and modified sources equal to

or better than EPA's program regardless of the fact that some specific changes might not be subject to NSR in Oregon that would be under EPA's program.

EPA has evaluated the changes to the ODEQ program and determined they would improve the implementation and enforcement of the current ODEQ approach and that they would not result in any relaxation that could impair the ability of the program to protect NAAQS, PSD increments, and visibility in Class I areas. EPA is therefore approving the changes. Note that, with respect to Oregon's rules relating to new source review, EPA is taking no position on whether Oregon will need to make changes to its new source review rules to meet requirements that EPA promulgates as part of new source review reform.

a. Nonattainment Area (Part D) NSR

Under ODEQ's rules, all new major sources or major modifications in nonattainment areas must comply with the Lowest Achievable Emission Rate (LAER). Because the ODEQ definition of major modification accumulates emission increases and decreases since the baseline date or last NSR permit, emission units that were constructed or modified in the past as minor changes are subject to major NSR when the accumulated increases exceed the SER. As such, the ODEQ rule includes special provisions for applying LAER retroactively to these new or modified emission units, including the consideration of whether the retrofit controls are technically feasible. Because EPA's regulations would not require LAER to be required retroactively for minor changes that were not part of the current permitting action, the additional ODEQ criteria for applying LAER to these changes does not conflict with the CAA or EPA's requirements.

Under ODEQ's rules, all new major sources and major modifications in nonattainment areas must also provide emissions offsets and demonstrate that a net air quality benefit will be achieved. Under ODEQ's rules, however, only Federal major sources in nonattainment areas must evaluate alternative sites, sizes, production process and environmental control techniques and demonstrate that the benefits of the proposed source or modification will significantly outweigh the environmental and social costs (*see* section 173(a)(5) of the Act). Similarly, only Federal major sources must demonstrate that all major sources owned or operated with Oregon are in compliance or on a compliance schedule (*see* section 173(a)(3) of the Act). Finally, only Federal major sources must comply with the requirements for visibility protection (see 40 CFR 51.307(b)(2) and (c)).

The rule also includes a special exemption for the Salem ozone nonattainment area which exempts new major sources and major modifications from the offset requirement. The Salem ozone nonattainment area is considered to be a rural ozone nonattainment area under EPA's policy in effect in 1978 when the area was designated nonattainment.

Finally, the revisions to the definition of significant emission rate changed the size threshold for major sources in the Klamath Falls Urban Growth Area and the Lakeview PM–10 Nonattainment Area. EPA is approving these revisions because they only affect future permitting and the revised major source size thresholds are still lower than the Federal major source size thresholds.

b. Maintenance Area NSR

The ODEQ rules also include provisions for new major sources and major modifications in maintenance areas (areas that were designated nonattainment for particulate matter, carbon monoxide, or ozone, but have been redesignated to attainment). This provision essentially merges several of the concepts of PSD and nonattainment area NSR for use in maintenance areas. All new major sources and major modifications must apply the Best Available Control Technology (BACT) for the maintenance pollutant. The scheme for the application of BACT is similar to the scheme for the application of LAER in nonattainment areas with respect to retroactive application of BACT to emission units that have already been constructed or modified.

All new major sources and major modifications must either obtain emission offsets and provide for a net air quality benefit, or must obtain an allocation of the growth allowance (for carbon monoxide or ozone areas only) established in the approved maintenance plan (if one was established). However, a carbon monoxide major source which demonstrates that it would have an insignificant impact at all locations is exempt from the requirement to obtain offsets or a growth allowance allocation. Similarly, a PM–10 major source is exempt from the requirement to obtain offsets if it demonstrates that it would not cause or contribute to a cumulative air quality impact greater than certain ambient ceilings specified in the rules. Importantly, the rules require all Federal major sources to comply with the PSD requirements in addition to the maintenance area provisions.

The maintenance area provisions also include a contingency plan component. If the contingency plan in an applicable maintenance plan is implemented due to a violation of an ambient air quality standard, the requirements of the maintenance area NSR program become more stringent until a revised maintenance plan is approved by EPA. Instead of BACT, new major sources and major modifications are required to apply LAER; growth allowances may no longer be used to meet the offset requirement; and the exemption for carbon monoxide sources would no longer apply. Finally, the rule clarifies that the nonattainment area provisions continue to apply in areas with pending redesignation requests until the area is formally redesignated to attainment by EPA.

c. Attainment Area PSD/NSR

The ODEQ rules include provisions for new major sources and major modifications in attainment and unclassifiable areas. However, these provisions are applicable only to "Federal major sources" as that term is defined in the ODEQ rules. The definition of "Federal major sources" is essentially the same as the EPA definition of major stationary source in 40 CFR 51.166(a)(1) (the PSD definition) with one significant difference. Because the ODEQ rules specifically require that fugitive emissions be counted in determining major source status for all sources, the ODEQ PSD rules will potentially require more sources to be subject to PSD than required by EPA's rules.

Note that the provisions applicable to new major sources and major modifications that are not Federal major sources are found in the provisions for standard ACDP's and PSEL's. All new major stationary sources and major modifications need to obtain an ACDP and comply with the applicable requirements of those Divisions. For ODEQ major sources located in attainment or unclassifiable areas, the ACDP and PSEL rules require that the owner or operator demonstrate that the new source or modification would not cause or contribute to a violation of the ambient standards and applicable PSD increments.

New major sources and major modifications must apply BACT for each pollutant emitted in significant amounts. The scheme for the application of BACT is similar to the scheme for the application of LAER in nonattainment areas with respect to retroactive application of BACT to

emission units that have already been constructed or modified. New major sources and major modifications must also provide an analysis of air quality impacts, including ambient air quality monitoring, in accordance with the requirements of Division 225 (*see* section III.C.10 below). New major sources and major modifications that significantly impact a PM–10 maintenance area must also meet the requirements of OAR 340–224–0060(2) Air Quality Protection. Finally, the rules include provisions for temporary and portable major sources, and for temporary construction related emissions. The rules also clarify how fugitive emissions and secondary emissions are counted for applicability purposes and for inclusion in ambient impact analyses.

The current SIP-approved rules exempt new major sources and major modifications that are not Federal major sources from the requirements of BACT, pre-application and post-construction air quality monitoring, and the additional impacts analysis. This exemption was only available if the source demonstrated that it did not cause or contribute to any violation of a NAAQS or PSD increment. The current SIP-approved rules did not exempt any new major source or major modification from the Class I area provisions of the rules. The revised rules exempt new major sources and major modifications that are not Federal major sources from all of the PSD requirements, including the Class I area provisions. Furthermore, the revised rules do not include the eligibility criteria regarding violations of the NAAQS and PSD increments. Although these changes will have the effect of relaxing the ODEQ major source NSR rule, EPA believes that they are approvable. First, a State is not required to apply PSD requirements to sources which are not Federal major sources. Second, ODEQ's permit to construct program for non-Federal major sources still complies with EPA's requirements in 40 CFR 51.160 through 51.164 and ensures that new and modified major sources will not cause or contribute to violations of any NAAQS.

d. State-Federal Relationship in New Source Review

In approving the Oregon new source review rules, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of the Oregon new source review rules does not divest EPA of the duty to continue appropriate oversight to insure that permits issued by Oregon are consistent with the requirements of the Act, EPA regulations, and the SIP. EPA's authority to oversee permit program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever EPA finds that a State "is not acting in compliance with" any requirement or prohibition of the CAA regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of title V of the CAA and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by States. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is "not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan."

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or both, EPA cannot intervene unless the State decision fails to comply with applicable requirements. In determining whether a title V permit incorporating PSD or part D NSR provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining BACT or LAER, assessing air quality impacts, meeting Class I area requirements, and other PSD or Part D requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD or Part D NSR permit were properly incorporated into the title V operating permit.

10. Division 225, Air Quality Analysis Requirements

This new Division contains all of the modeling, monitoring, impact analysis, and net air quality benefit requirements that are necessary to ensure ambient air quality requirements are met in the permitting process. These requirements were previously located in Division 224. The Division also includes new provisions which specify the technical information and processes to be used in air quality impact analyses.

The Division includes sections that: (1) Specify the information required to be submitted in permit applications; (2) require compliance with EPA's Guidelines on Air Quality Models (40 CFR part 51, appendix W); (3) establish requirements for demonstrating compliance with the ambient air quality ceilings, standards and increments in maintenance areas; (4) establish the requirements for demonstrating compliance with standards and increments in Class II and Class III areas, including the requirements for pre-application and post-construction monitoring; (5) establish requirements for demonstrating compliance with standards and increments in Class I areas; (6) establish requirements for demonstration compliance with air quality related values (including visibility) protection; and (7) establish the requirements for demonstrating that offsets provide for a net air quality benefit.

The provisions for air quality impact analyses for Class I, Class II, and Class III areas comply with EPA's requirements for SIP PSD programs (40 CFR 51.166) for air quality impact analyses and with EPA's requirements for visibility protection (40 CFR 51.307). The provisions for Class I areas and the provisions for protection of air quality related values (including visibility) also conform to the Federal Land Manager recommendations in the FLAG Report. Importantly, the provisions for Class I areas include PSD Class I Significant Impact levels that are the same as those EPA has proposed for 40 CFR 51.166 and 52.21 (61 FR 38250, July 23, 1996). EPA is therefore approving these provisions, including the Class I area significant impact levels, as a revision to the Oregon permitting program.

The provisions for demonstrating net air quality benefit comply with the CAA and EPA's requirements for emission

offsets (section 173 of the Act, 40 CFR 51.165(a) and 40 CFR part 51; appendix S (Emission Offset Interpretative Ruling)). EPA is therefore approving these provisions as complying with part D of title 1 of the Act.

Note that EPA is approving both the permanent versions of sections 225–0020(10) and 225–0090(1)(c) and the temporary versions of these provisions for the time period they are in effect.

11. Division 226, General Emission Standards

This Division contains emission standards and requirements of general applicability, including requirements for highest and best practicable treatment and control (section 0100), pollution prevention (section 0110), operating and maintenance (section 0120), and typically achievable control technology (section 0130). This Division also includes authority for ODEQ to impose additional requirements on a permit-by-permit basis (section 0140) and to approve alternative emission controls (bubbles) (section 0400). Finally, this Division includes the statewide particulate emission limits for process equipment and other sources (except for fuel or refuse burning equipment).

The Division was amended by revising the provisions for alternative emission controls (bubbles) to comply with EPA's Final Emissions Trading Policy Statement for generic bubble rules (51 FR 43814, December 4, 1986). Oregon's previous rules had been approved as meeting EPA's requirements for generic bubble rules under the April 7, 1982, Emission Trading Policy Statement (47 FR 15076). In order to address the requirement for replicable procedures, the rule has been revised to exclude trades involving pollutants other than ozone precursors from the generic bubble approach. As such, bubbles involving ozone precursors (VOC and NO_X) can still be done without case-by-case SIP revisions, but bubbles for all other pollutants will need to be submitted to, and approved by, EPA before they become the applicable requirements of the Oregon SIP.

Note that EPA is approving section 0140 (authority to impose additional requirements on a permit-by-permit basis) because any requirement established under this provision would be in addition to existing requirements and could not change any existing requirement. However, ODEQ would still need to submit requirements established under this provision for inclusion in the SIP if such requirements are necessary to comply with any specific provision of the CAA or EPA regulations.

12. Division 268, Emission Reduction Credits

This Division contains ODEQ's procedures for generating, banking, and using emission reduction credits (ERC's). The Division was revised to simplify the program, make it consistent with changes to ODEQ's Plant Site Emission Limit rule (specifically the treatment of unassigned emissions), and to ensure emission reduction credits conform to the requirements of the CAA and EPA regulations. The authority to issue an ERC permit to sources which are not otherwise required to have an Air Contaminant Discharge Permit or title V operating permit was also established. Finally, the provisions for "Baseline for Determining Credit for Offsets" (section 0040) were repealed and replaced by provisions in section 0030.

The provisions for creating emission reduction credits are also used for establishing creditable emission reductions in netting and offset transactions. As such, these rules must conform with the requirements of the CAA and EPA regulations for part D NSR and PSD for creditable emission reductions (including 40 CFR 51.165(a)(1)(vi), 51.165(a)(3), 51.166(b)(3) of EPA's regulations and sections 173(a)(1) and 173(c) of the Act). The rules require that any emission reduction credit be created through permanent reductions in current actual emissions, be enforceable by ODEQ, and be surplus. Emission reductions necessary to comply with any applicable emission limits are not creditable. Note that the requirement for offsets to be Federally enforceable at the time of permit issuance is included in Division 225.

The rules establish the process for banking emission reduction credits and using banked emission reduction credits. The rules also establish the requirements for unused banked credits, returning them to the source as unassigned PSEL and then reducing them through the process set forth in the PSEL rules. These banking provisions comply with EPA's requirements for SIP emission reduction credit banking programs as set forth in the Final Emissions Trading Policy Statement (51 FR 43814, December 4, 1986).

IV. Letter Notice Approval—Repeal of Rule for Parking Offsets in the Portland Central Business District

Pursuant to procedures described in the January 19, 1989, **Federal Register** that describes changes being implemented in the way State implementation plans are processed at EPA, we approved a minor SIP revision submitted by ODEQ on December 15, 1998, in a letter approval dated October 21, 1999. The SIP submittal repealed provisions relating to parking offsets in the Portland Central Business District, specifically, OAR 340–020–0400, 340–020–0405, 340–020–0410, 340–020–0420, and 340–020–0430. Due to the minor nature of this revision, we concluded that conducting notice-and-comment rulemaking prior to approving this revision would have been "unnecessary and contrary to the public interest", and therefore, was not required by the Administrative Procedure Act, 5 U.S.C. 553(b). In accordance with EPA guidance on letter approvals, EPA is publishing notice of the letter approval in this action. A copy of the letter approval is in the docket. Approval of this SIP action became final and effective on October 21, 1999, the date of the EPA letter approval.

V. Statutory Authority

Oregon Revised Statutes (ORS) 468 and 468A provide ODEQ the basic legal authority to carry out the provisions of the State Implementation Plan. EPA has reviewed the 2001 edition of the Oregon statutes and believes the Oregon statutes continue to provide ODEQ with adequate legal authority to carry out the Oregon SIP as set forth in sections 110 and 114 of the CAA and its implementing regulations, in particular 40 CFR 51.230. EPA is not incorporating ORS 468 and 468A by reference as part of the Oregon SIP, however, to avoid potential conflict with EPA's independent authorities.

Several provisions of these Oregon statutes merit further discussion. First, during the 2001 Legislative Session, the Oregon Legislature passed House Bill 3536, which amended Oregon's Audit Privilege Act, ORS 468.963, to ensure that the Audit Privilege Law does not apply to criminal investigations or proceedings. This change resolved concerns previously identified by EPA. Second, during the 1997 Legislative Session, the Oregon Legislature enacted a "Green Permits" program. The program is designed to use regulatory incentives to achieve better environmental results than otherwise required by law. Although the law states that any requirement under environmental laws that is contrary to the provisions of a Green Permit shall not apply to a facility operating under a Green Permit, this provision does not apply in the case of Federal environmental requirements. EPA, ODEQ and Lane Regional Air Pollution

Authority entered into a memorandum of Agreement dated June 1, 2000, to guide the implementation of Oregon's Green Permits program. The MOA states that implementation of the MOA will be conducted in a manner consistent with ODEQ's responsibilities under its approved, authorized or delegated programs. Therefore, Green Permits cannot be used to change SIP requirements unless the change is submitted as a SIP revision.

Third, ORS 468.126, which remains unchanged since EPA last approved Oregon's SIP, prohibits ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

Fourth, ORS 468A.330, which also is unchanged since EPA last approved the Oregon SIP, sets up a technical assistance program for compliance with air regulations and states that technical assistance visits cannot result in inspections or enforcement actions. EPA has previously determined that this statute did not pose a bar to approval of Oregon's air programs based on EPA's August 12, 1994, guidance document entitled "Enforcement Response Policy for Treatment of Information Obtained Through the Clean Air Act Section 507 Small Business Assistance Program" because Oregon operates its air technical assistance program completely separate from its air enforcement program. *See* 60 FR 50106, 50107 (September 28, 1995).

Finally, ORS 468A.075, which is also unchanged since EPA last approved Oregon's SIP, authorizes the Oregon Environmental Quality Commission to grant variances from air contamination rules and standards. Section 110(i) of the CAA specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the CAA and the implementing regulations at 40 CFR part 51. *See* CAA section 110(l); 40 CFR 51.104. Moreover, 40 CFR 51.104(d) specifically states that in order for a variance to be considered for approval as a SIP revision, the State must submit it in accordance with the requirements of 40 CFR 51.104. Therefore, if Oregon grants a source-specific variance to a State air regulation, which regulation has been approved as part of the Oregon SIP, EPA is not precluded from enforcing the Federally-approved SIP limit against the source. The granting of a variance by Oregon to a SIP requirement does not change the Federally-enforceable SIP requirement for that source unless and until the variance has been approved by EPA as a source-specific SIP revision.

VI. Scope of EPA Approval

Oregon has not demonstrated authority to implement and enforce the Oregon Administrative Rules within "Indian Country" as defined in 18 U.S.C. 1151.[1] Therefore, this SIP approval does not extend to "Indian Country" in Oregon. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Oregon's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Oregon because the State had not shown it had authority to regulate such sources. *See* 40 CFR 52.1987(c). It is also consistent with EPA's approval of Oregon's title V operating permits program. *See* 59 FR 61820, 61827 (December 2, 1994) (interim approval does not extend to Indian Country); 60 FR 50106, 50106 (September 28, 1995) (full approval does not extend to Indian Country).

VII. Summary of Action

A. EPA Is IBRing the Following New Divisions Into the SIP

200 (General Air Pollution Procedures and Definitions), except sections 0020(58), 0040, 0050, 100, 110, and 120
202 (Ambient Air Quality Standards and PSD Increments), except section 0110
204 (Designation of Air Quality Areas)
206 (Air Pollution Emergencies)
209 (Public Participation)
210 (Stationary Source Notification Requirements)
212 (Stationary Source Testing and Monitoring)
214 (Stationary Source Reporting Requirements), except sections 0300, 0310, 0320, 0330, 0340, 0350, and 0360
216 (Air Contaminant Discharge Permits)
222 (Stationary Source Plant Site Emission Limits), except section 0060
224 (Major New Source Review)
225 (Air Quality Analysis Requirements)
226 (General Emission Standards)
228 (Requirements for Fuel Burning Equipment and Fuel Sulfur Content)
232 (Emission Standards for VOC Point Sources)
234 (Emission Standards for Wood Products Industries), excluding references to TRS—subsections 0010(25), 0010(28)(a), 0010(46), 0210(1), 0240(2), 0250(1), 250(2), 260(3)(a)(A), 260(3)(b)(A), 310(1), 320(2), 340(2), 350(1), and 360(3)(a)(A).
236 (Emission Standards for Specific Industries), excluding references to Fluorides—subsections 0120(1)(a), 0120(3)(a), 0120(3)(e), 0140(1) (the words "gaseous and particulate fluorides and"), 0140(1)(b), 0140(1)(c) (the sentence "A schedule for measurement of fluoride levels in forage for new plants and ambient air for new and existing plants shall be submitted."), 0140(3) (the words "and Method 13A or 13B and Method 14 or Method 14A for fluorides or other alternative method in 40 CFR 63.849), 0150(1)(d) and 0150(1)(e).
240 (Rules for Areas with Unique Air Quality Needs)
242 (Rules Applicable to the Portland Area)
250 (General Conformity), except section 0110
252 (Transportation Conformity), except subsections 0020(3), 0050(4), 0050(5)(b), 0100(3), 0100(4), 0100(5), 0100(6), 0190(5), 0200(6)(c), 0210(1)(b), 0220(1)(a), 0220(2), and 0250(2).
258 (Motor Vehicle Fuel Specifications)
262 (Residential Woodheating), except section 0050
266 (Field Burning Rules (Willamette Valley))
268 (Emission Reduction Credits)

B: EPA Is Approving, but Not IBRing, the Following New Divisions Into the SIP

12 (Enforcement Procedure and Civil Penalties)
200–0100, 0110, and 0120 (Conflicts of Interest)
262–0050 (Residential Woodheating—Civil Penalties)

C: EPA Is Taking No Action on the Following Divisions

14 (Procedures for Issuance, Denial, Modification, and Revocation of Green Permits)
200–0020(58) (Definition of Immediately)
200–0040 (State of Oregon Clean Air Act Implementation Plan)
200–0050 (Compliance Schedules)
202–0110 (Particle Fallout)

[1] "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

208 (Visible Emissions and Nuisance Requirements)
214–0300 through 0360 (Excess Emissions and Emergency Provision)
218 (Oregon Title V Operating Permits)
222–0060 (Plant Site Emission Limits for Sources of Hazardous Air Pollutants)
234 (Emission Standards for Wood Products Industries), references to TRS—subsections 0010(25), 0010(28)(a), 0010(46), 0210(1), 0240(2), 0250(1), 250(2), 260(3)(a)(A), 260(3)(b)(A), 310(1), 320(2), 340(2), 350(1), and 360(3)(a)(A).
236 (Emission Standards for Specific Industries), references to Fluorides and Part 63—subsections 0120(1)(a), 0120(3)(a), 0120(3)(e), 0140(1) (the words "gaseous and particulate fluorides and"), 0140(1)(b), 0140(1)(c) (the sentence "A schedule for measurement of fluoride levels in forage for new plants and ambient air for new and existing plants shall be submitted."), 0140(3) (the words "and Method 13A or 13B and Method 14 or Method 14A for fluorides or other alternative method in 40 CFR 63.849), 0150(1)(d) and 0150(1)(e).
250–0110 (General Conformity Savings Provision)
252 (Transportation Conformity), subsections 0020(3), 0050(4), 0050(5)(b), 0100(3), 0100(4), 0100(5), 0100(6), 0190(5), 0200(6)(c), 0210(1)(b), 0220(1)(a), 0220(2), and 0250(2).
256 (Motor Vehicles)
264 (Rules for Open Burning)

D: EPA Is Removing the Following Old Divisions From the Current IBR'd SIP Because They Are Replaced by the Rules in Section A Above

12 14 (Procedures for Issuance, Denial, Modification, and Revocation of Permits)
20 (Air Pollution Control)
21 (General Emission Standards for Particulate Matter), except for 21–015 Visible Air Contaminant Limitations), 21–050, 21–055, and 21–060 (Fugitive Emissions), and 21–200, 21–205, 21–210, 21–215, 21–220, 21–225, 21–230, 21–235, 21–240, and 21–245 (Industrial Contingency Requirements for PM–10 Nonattainment Areas)
22 (General Gaseous Emissions)
25 (Specific Industrial Standards Construction and Operation of Wigwam Waste Burners)
26 (Rules for Open Field Burning (Willamette Valley))
27 (Air Pollution Emergencies)
28 (Stationary Source Air Pollution Control and Permitting Procedures), except for 28–1400, 28–1410, 28–1420, 28–1430, 28–1440, and 28–1450 (Excess Emissions and Emergency Provision)
30 (Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area)
31 (Ambient Air Quality Standards)
34 (Residential Wood Heating)

EPA is publishing this rule without prior proposal because the Agency believes this is a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 24, 2003, without further notice unless the Agency receives adverse comments by February 21, 2003.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. There will not be a second comment period; therefore, any party interested in commenting should do so at this time. If no such comments are received, this rule will be effective on March 24, 2003, and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VIII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

States Court of Appeals for the appropriate circuit by March 24, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 17, 2002.

L. John Iani,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraphs (c) (138) and (c)(139) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(138) On December 15, 1998, the Director of the Oregon Department of Environmental Quality submitted a SIP revision to repeal the rule for parking offsets in the Portland Central Business District, as state effective September 23, 1998.

(i) Incorporation by reference.

(A) Remove the following provisions from the current incorporation by reference: OAR 340–020–0400, 340–020–0405, 340–020–0410, 340–020–0420, and 340–020–0430. (139) On November 5, 1999, March 7, 2000, June 26, 2001, and November 4, 2002, the Oregon Department of Environmental Quality submitted numerous amendments to the Oregon Administrative Rules as revisions to the Oregon State implementation plan. The revisions included a rule recodification, a marine vapor loading rule, and permitting rules.

(i) Incorporation by reference.

(A) The following sections of Oregon Administrative Rule 340: 200–0030, 202–0200, 204–0010, 204–0020, 204–0050, 204–0060, 204–0070, 204–0080, 206-0010, 206–0020, 206–0030, 206–0040, 206–0050, 206–0060, 206–0070, 210–0010, 210–0020, 212–0010, 212–0110, 214–0100, 214–0120, 222–0030, 224–0020, 226-0200, 228–0010, 228–0020, 228–0100, 228–0110, 228–0120, 228–0130, 228–0200, 228–0210, 232–0010, 232–0020, 232–0040, 232–0050, 232–0060, 232–0070, 232-0080, 232–0085, 232–0090, 232–0100, 232–0120, 232–0130, 232–0140, 232–0150, 232–0160, 232–0170, 232–0180, 232–0190, 232–0200, 232–0210, 232–0220, 232-0230, 232–0240, 234–0010 (except paragraphs (25), (28)(a) & (46)), 234-0100, 234–0110, 234–0120, 234–0130, 234–0140, 234–0200, 234–0210 (except paragraph (1)), 234–0220, 234–0230, 234–0240 (except paragraph (2)), 234-0250 (except pargraphs (1) & (2)), 234–0260 (except paragraphs (3)(a)(A) & (3)(b)(A)), 234–0270, 234–0300, 234–0310 (except paragraph (1)), 234–0320 (except paragraph (2)), 234–0330, 234–0340 (except paragraph (2)), 234–0350 (except paragraph (1)), 234–0360 (except paragraph (3)(a)(A)), 234–0400, 234–0410, 234–0420, 234–0430, 234–0500, 234–0510, 234–0520, 234–0530, 236–0010, 236–0100, 236–0110, 236–0120 (except paragraphs (1)(a), (3)(a), & (3)(e)), 236–0130, 236–0140 (except the words "gaseous and particulate fluorides and" in paragraph (1), paragraph (1)(b), the sentence "A schedule for measurement of fluoride levels in forage for new plants and ambient air for new and existing plants shall be submitted." in paragraph (1)(c), the words "and Method 13A or 13B and Method 14 or Method 14A for fluorides or other alternative method in 40 CFR 63.849" in paragraph (3)), 236–0150 (except paragraphs (1)(d) and (1)(e)), 236–0200, 236–0210, 236–0220, 236–0230, 236–0400, 236–0410, 236–0420, 236–0430, 236–0440, 240–0010, 240–0100, 240–0300, 242–0010, 242–0020, 242–0030, 242–0040, 242–0050, 242–0060, 242–0070, 242–0080, 242–0090, 242–0100, 242–0110, 242–0120, 242–0130, 242–0140, 242–0150, 242–0160, 242–0170, 242–0180, 242–0190, 242–0200, 242–0210, 242–0220, 242–0230, 242–0240, 242–0250, 242–0260, 242–0270, 242–0280, 242–0290, 242–0300, 242–0310, 242–0320, 242–0330, 242–0340, 242–0350, 242–0360, 242–0370, 242–0380, 242–0390, 242–0400, 242–0410, 242–0420, 242–0430, 242–0440, 242–0500, 242–0510, 242–0520, 242–0600, 242–0610, 242–0620, 242–0630, 242–0700, 242–0710, 242–0720, 242–0730, 242–0740, 242–0750, 242–0760, 242–0770, 242–0780, 242–0790, 250–0010, 250–0020, 250–0030, 250–0040, 250–0050, 250–0060, 250–0070, 250–0080, 250–0090, 250–0100, 252–0010, 252–0020 (except paragraph (3)), 252–0030, 252–0040, 252–0050 (except paragraphs (4) & (5)(b)), 252–0060, 252–0070, 252–0080, 252–0090, 252–0100 (except paragraphs (3) through (6)), 252–0110, 252–0120, 252–0130, 252–0140, 252-0150, 252–0160, 252–0170, 252-0180, 252–0190 (except paragraph (5)), 252-0200 (except paragraph (6)(c)), 252–0210 (except paragraph (1)(b)), 252-0220 (except paragraphs (1)(a) & (2)), 252–0230, 252–0240, 252–0250 (except paragraph (2)), 252–0260, 252–0270, 252–0280, 252–0290, 258–0010, 258–0100, 258–0110, 258–0120, 258–0130, 258–0140, 258–0150, 258–0160, 258–0170, 258–0180, 258–0190, 258–0200, 258–0210, 258–0220, 258–0230, 258–0240, 258–0250, 258–0260, 258–0270, 258–0280, 258–0290, 258–0300, 258–0310, 258–0400, 262-0010, 262–0020, 262–0030, 262–0040, 262–0100, 262–0110, 262–0120, 262–0130, 262–0200, 262–0210, 262–0220, 262–0230, 262–0240, 262–0250, 262–0300, 262–0310, 262–0320, 262–0330, 266–0010, 266–0020, 266–0030, 266–0040, 266–0050, 266–0060, 266–0070, 266–0080, 266–0090, 266–0100, 266–0110, 266–0120, 266–0130, and 268–0020, as effective October 14, 1999; 204–0040, as effective October 25, 2000; 204–0090, as effective March 27, 2001; 232–0030 and 232-0110 as effective June 1, 2001; 200–0010, 200–0020 (except paragraph(58)), 200–0025, 202–0010, 202–0050, 202–0060, 202–0070, 202–0080, 202–0090, 202–0100, 202–0130, 202–0210, 202–0220, 204–0030, 209–0010, 209–0020, 209–0030, 209–0040, 209–0050, 209–0060, 209–0070, 209–0080, 210–0100, 210–0110, 210-0120, 210–0205, 210–0215, 210–0225, 210–0230, 210–0240, 210–0250, 212–0120, 212–0130, 212–0140, 212–0150, 212–0200, 212–0210, 212–0220, 212–0230, 212-0240, 212–0250, 212–0260, 212–0270, 212–0280, 214–0010, 214–0110, 214–0114, 214–0130, 214–0200, 214–0210, 214–0220, 216–0010, 216–0020, 216–0025, 216–0030, 216–0040, 216–0052, 216–0054, 216–0056, 216–0060, 216–0064, 216–0066, 216–0070, 216–0082, 216–0084, 216–0090, 216–0094, 222–0010, 222–0020, 222–0040, 222–0042, 222–0043, 222–0045, 222–0070, 222–0080, 222–0090, 224–0010, 224–0030, 224–0040, 224–0050, 224–0080, 224–0100, 225–0010, 225–0020(10), 225–0030, 225–0040, 225–0070, 225–0090(1)(c), 226–0010, 226–0100, 226–0110, 226–0120, 226–0130, 226–0140, 226–0210, 226–0300, 226–0310, 226–0320, 226–0400, 240–0020, 240–0030, 240–0110, 240–0120,

240–0130, 240–0140, 240–0150, 240–0160, 240–0170, 240–0180, 240–0190, 240–0200, 240–0210, 240–0220, 240–0230, 240–0240, 240–0250, 240–0270, 240–0310, 240–0320, 240–0330, 240–0340, 240–0350, 240–0360, 240–0400, 240–0410, 240–0420, 240–0430, 240–0440, 268–0010, and 268–0030, as effective July 1, 2001; 222–0041, 224–0060, 224–0070, 225–0020 (except paragraph (10)), 225–0045, 225–0050, 225–0060, and 225–0090 (except paragraph (1)(c)), as effective October 8, 2002; 225–0020(10) and 225–0090(1)(c), as effective October 8, 2002, through April 6, 2003.

(B) Remove the following old divisions of Oregon Administrative Rule 340 from the current incorporation by reference: 12, 14, 20, 21 (except for sections 21–015, 21–050, 21–055, 21–060, 21–200, 21–205, 21–210, 21–215, 21–220, 21–225, 21–230, 21–235, 21–240, and 21–245), 22, 25, 26, 27, 28 (except for 28–1400, 28–1410, 28–1420, 28–1430, 28–1440, and 28–1450), 30, 31, and 34.

(ii) Additional Material:

(A) The following sections of Oregon Administrative Rule 340: Division 12, 200–0100, 200–0110, 200–0120, as effective July 1, 2001; and 262–0050, as effective October 14, 1999.

3. Section 52.1977 is amended by revising section 3.1 to read as follows:

§52.1977 Content of approved State submitted implementation plan.

* * * * *

3.1 Oregon Administrative Rules—Chapter 340 Incorporation by Reference (March 24, 2003)

Division 21—General Emission Standards for Particulate Matter

21–015 Visible Air Contaminant Limitations (1/29/96)

Fugitive Emissions

21–050 Definitions (1/29/96)
21–055 Applicability (3/10/93)
21–060 Requirements (3/10/93)

Industrial Contingency Requirements for PM–10 Nonattainment Areas

21–200 Purpose (5/1/95)
21–205 Relation to other Rules (3/10/93)
21–210 Applicability (3/10/93)
21–215 Definitions (3/10/93)
21–220 Compliance Schedule for Existing Sources (3/10/93)
21–225 Wood-Waste Boilers (3/10/93)
21–230 Wood Particulate Dryers at Particleboard Plants (3/10/93)
21–235 Hardboard Manufacturing Plants (1/29/96)
21–240 Air Conveying Systems (3/10/93)
21–245 Fugitive Emissions (3/10/93)

Division 23—Rules for Open Burning

23–022 How to Use these Open Burning Rules (3/10/93)
23–025 Policy (3/10/93)
23–030 Definitions (6/16/84, except for paragraph (15) is 3/10/93)
23–035 Exemptions, Statewide (3/10/93)
23–040 General Requirements Statewide (3/10/93)
23–042 General Prohibitions Statewide (3/10/93)
23–043 Open Burning Schedule (3/10/93)
23–045 County Listing of Specific Open Burning Rules (3/10/93)

Open Burning Prohibitions

23–055 Baker, Clatsop, Crook, Curry, Deshutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties (3/10/93)
23–060 Benton, Linn, Marion, Polk, and Yamhill Counties (3/10/93)
23–065 Clackamas County (3/10/93)
23–070 Multnomah County (3/10/93)
23–075 Washington County (3/10/93)
23–080 Columbia County (3/10/93)
23–085 Lane County (3/10/93)
23–090 Coos, Douglas, Jackson and Josephine Counties (3/10/93)
23–100 Letter Permits (3/10/93)
23–105 Forced Air Pit Incinerators (3/10/93)
23–110 Records and Reports (3/10/93)
23–115 Open Burning Control Areas (3/10/93)

Division 24—Motor Vehicles

Pertaining to Motor Vehicles Inspection

24–100 County Designations (11/26/96)

Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards

24–300 Scope (11/26/96)
24–301 Boundary Designations (3/10/93)
24–305 Definitions (11/26/96)
24–306 Government-Owned Vehicle, Permanent Fleet Vehicle and U.S. Government Vehicle Testing Requirements (11/26/96)
24–307 Motor Vehicle Inspection Program Fee Schedule (11/26/96)
24–308 Department of Defense Personnel Participating in the Privately Owned Vehicle Import Control Program (11/26/96)
24–309 Light Duty Motor Vehicle and Heavy Duty Gasoline Motor Vehicle Emission Control Test Method for Basic Program (11/26/96)
24–312 Light Duty Motor Vehicle Emission Control Test Method for Enhanced Program (11/26/96)
24–314 Motorcycle Noise Emission Control Test Method, except all language in (4)(a) referring to a "sixth hill extrapolation" (11/26/96)
24–318 Renew Registration for Light Duty Motor Vehicles and Heavy Duty Gasoline Motor Vehicles Temporarily Operating Outside of Oregon (11/26/96)
24–320 Light Duty Motor Vehicle Emission Control Test Criteria for Basic Program (11/26/96)
24–325 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria (11/26/96)
24–330 Light Duty Motor Vehicle Emission Control Standards for Basic Program (11/26/96)
24–332 Light Duty Motor Vehicle Emission Control Standards for Enhanced Program (11/26/96)
24–335 Heavy-Duty Gasoline Motor Vehicle Emission Control Emission Standards (11/26/96)
24–337 Motor Vehicle Propulsion Noise Standards (11/26/96)
24–340 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates (11/26/96)
24–355 Gas Analytical System Licensing Criteria for Basic Program (11/26/96)
24–357 Gas Analytical System Testing for Enhanced Program (11/26/96)
24–360 Agreement with Independent Contractor; Qualifications of Contractor; Agreement Provisions (11/26/96)

Division 28—Stationary Source Air Pollution Control and Permitting Procedures

Excess Emissions and Emergency Provision

28–1400 Purpose and Applicability (9/24/93)
28–1410 Planned Startup and Shutdown (9/24/96)
28–1420 Scheduled Maintenance (11/4/93)
28–1430 Upsets and Breakdowns (9/24/96)
28–1440 Reporting Requirements (11/4/93)
28–1450 Enforcement Action Criteria (9/24/93)

Division 200—General Air Pollution Procedures and Definitions

200–0010 Purpose and Application (7/1/01)
200–0020 General Air Quality Definitions, except (58) (7/1/01)

200–0025 Abbreviations and Acronyms (7/1/01)
200–0030 Exceptions (10/14/99)

Division 202—Ambient Air Quality Standards and PSD Increments

202–0010 Definitions (7/1/01)

Ambient Air Quality Standards

202–0050 Purpose and Scope of Ambient Air Quality Standards (7/1/01)
202–0060 Suspended Particulate Matter (7/1/01)
202–0070 Sulfur Dioxide (7/1/01)
202–0080 Carbon Monoxide (7/1/01)
202–0090 Ozone (7/1/01)
202–0100 Nitrogen Dioxide (7/1/01)
202–0130 Ambient Air Quality Standard for Lead (7/1/01)

Prevention of Significant Deterioration Increments

202–0200 General (10/14/99)
202–0210 Ambient Air Increments (7/1/01)
202–0220 Ambient Air Ceilings (7/1/01)

Division 204—Designation of Air Quality Areas

204–0010 Definitions (10/14/99)
204–0020 Designation of Air Quality Control Regions (10/14/99)
204–0030 Designation of Nonattainment Areas (7/1/01)
204–0040 Designation of Maintenance Areas (10/25/00)
204–0050 Designation of Prevention of Significant Deterioration Areas (10/14/99)
204–0060 Redesignation of Prevention of Significant Deterioration Areas (10/14/99)
204–0070 Special Control Areas (10/14/99)
204–0080 Motor Vehicle Inspection Boundary Designations (10/14/99)
204–0090 Oxygenated Gasoline Control Areas (3/27/01)

Division 206—Air Pollution Emergencies

206–0010 Introduction (10/14/99)
206–0020 Definitions (10/14/99)
206–0030 Episode Stage Criteria for Air Pollution Emergencies (10/14/99)
206–0040 Special Conditions (10/14/99)
206–0050 Source Emission Reduction Plans (10/14/99)
206–0060 Regional Air Pollution Authorities (10/14/99)
206–0070 Operations Manual (10/14/99)

Division 209—Public Participation

209–0010 Purpose (7/1/01)
209–0020 Applicability (7/1/01)
209–0030 Public Notice Categories and Timing (7/1/01)
209–0040 Public Notice Information (7/1/01)
209–0050 Public Notice Procedures (7/1/01)
209–0060 Persons Required to Be Notified (7/1/01)
209–0070 Hearing and Meeting Procedures (7/1/01)
209–0080 Issuance or Denial of a Permit (7/1/01)

Division 210—Stationary Source Notification Requirements

210–0010 Applicability (10/14/99)
210–0020 Definitions (10/14/99)

Registration

210–0100 Registration in General (7/1/01)
210–0110 Registration Requirements (7/1/01)
210–0120 Re-Registration (7/1/01)

Notice of Construction and Approval of Plans

210–0205 Applicability (7/1/01)
210–0215 Requirement (7/1/01)
210–0225 Types of Construction/Modification Changes (7/1/01)
210–0230 Notice to Construct (7/1/01)
210–0240 Construction Approval (7/1/01)
210–0250 Approval to Operate (7/1/01)

Division 212—Stationary Source Testing and Monitoring

212–0010 Definitions (10/14/99)

Sampling, Testing and Measurement

212–0110 Applicability (10/14/99)
212–0120 Program (7/1/01)
212–0130 Stack Heights and Dispersion Techniques (7/1/01)
212–0140 Methods (7/1/01)
212–0150 Department Testing (7/1/01)

Compliance Assurance Monitoring

212–0200 Purpose and Applicability (7/1/01)
212–0210 Monitoring Design Criteria (7/1/01)
212–0220 Submittal Requirements (7/1/01)
212–0230 Deadlines for Submittals (7/1/01)
212–0240 Approval of Monitoring Plans (7/1/01)
212–0250 Operation of Approved Monitoring (7/1/01)
212–0260 Quality Improvement Plan (QIP) Requirements (7/1/01)
212–0270 Reporting and Recordkeeping Requirements (7/1/01)
212–0280 Savings Provisions (7/1/01)

Division 214—Stationary Source Reporting Requirements

214–0010 Definitions (7/1/01)

Reporting

214–0100 Applicability (10/14/99)
214–0110 Request for Information (7/1/01)
214–0114 Records; Maintaining and Reporting (7/1/01)
214–0120 Enforcement (10/14/99)
214–0130 Information Exempt from Disclosure (7/1/01)

Emission Statements for VOC and NO_x Sources

214–0200 Purpose and Applicability (7/1/01)
214–0210 Requirements (7/1/01)
214–0220 Submission of Emission Statement (7/1/01)

Division 216—Air Contaminant Discharge Permits

216–0010 Purpose (7/1/01)
216–0020 Applicability (7/1/01)
216–0025 Types of Permits (7/1/01)
216–0030 Definitions (7/1/01)
216–0040 Application Requirements (7/1/01)
216–0052 Construction ACDP (7/1/01)
216–0054 Short Term Activity ACDPs (7/1/01)
216–0056 Basic ACDPs (7/1/01)
216–0060 General Air Contaminant Discharge Permits (7/1/01)
216–0064 Simple ACDP (7/1/01)
216–0066 Standard ACDPs (7/1/01)
216–0070 Permitting Multiple Sources at a Single Adjacent or Contiguous Site (7/1/01)
216–0082 Termination or Revocation of an ACDP (7/1/01)
216–0084 Department Initiated Modification (7/1/01)
216–0090 Sources Subject to ACDPs and Fees (7/1/01)
216–0094 Temporary Closure (7/1/01)

Division 222—Stationary Source Plant Site Emission Limits

222–0010 Policy (7/1/01)
222–0020 Applicability (7/1/01)
222–0030 Definitions (10/14/99)

Criteria for Establishing Plant Site Emission Limits

222–0040 Generic Annual PSEL (7/1/01)
222–0041 Source Specific Annual PSEL (10/8/02)
222–0042 Short Term PSEL (7/1/01)
222–0043 General Requirements for All PSEL (7/1/01)
222–0045 Unassigned Emissions (7/1/01)
222–0070 Plant Site Emission Limits for Insignificant Activities (7/1/01)
222–0080 Plant Site Emission Limit Compliance (7/1/01)
222–0090 Combining and Splitting Sources (7/1/01)

Division 224—Major New Source Review

224–0010 Applicability and General Prohibitions (7/1/01)
224–0020 Definitions (10/14/99)
224–0030 Procedural Requirements (7/1/01)
224–0040 Review of New Sources and Modifications for Compliance with Regulations (7/1/01)
224–0050 Requirements for Sources in Nonattainment Areas (7/1/01)
224–0060 Requirements for Sources in Maintenance Areas (10/8/02)
224–0070 Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas (10/8/02)
224–0080 Exemptions (7/1/01)
224–0100 Fugitive and Secondary Emissions (7/1/01)

Division 225—Air Quality Analysis Requirements

225–0010 Purpose (7/1/01)
225–0020 Definitions (10/8/02 and 10/8/02 thru 4/6/03)
225–0030 Procedural Requirements (7/1/01)
225–0040 Air Quality Models (7/1/01)
225–0045 Requirements for Analysis in Maintenance Areas (10/8/02)
225–0050 Requirements for Analysis in PSD Class II and Class III Areas (10/8/02)
225–0060 Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas (10/8/02)
225–0070 Requirements for Demonstrating Compliance with AQRV Protection (7/1/01)
225–0090 Requirements for Demonstrating a Net Air Quality Benefit (10/8/02 and 10/8/02 thru 4/6/03)

Division 226—General Emission Standards

226–0010 Definitions (7/1/01)

Highest and Best Practicable Treatment and Control

226–0100 Policy and Application (7/1/01)
226–0110 Pollution Prevention (7/1/01)
226–0120 Operating and Maintenance Requirements (7/1/01)
226–0130 Typically Achievable Control Technology (7/1/01)
226–0140 Additional Control Requirements for Stationary Sources of Air Contaminants (7/1/01)

Grain Loading Standards

226–0200 Applicability (10/14/99)
226–0210 Particulate Emission Limitations for Sources Other Than Fuel Burning and Refuse Burning Equipment (7/1/01)

Particulate Emissions From Process Equipment

226–0300 Applicability (7/1/01)
226–0310 Emission Standard (7/1/01)
226–0320 Determination of Process Weight (7/1/01)

Alternative Emission Controls

226–0400 Alternative Emission Controls (Bubble) (7/1/01)

Division 228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content

228–0010 Applicability (10/14/99)
228–0020 Definitions (10/14/99)

Sulfur Content of Fuels

228–0100 Residual Fuel Oils (10/14/99)
228–0110 Distillate Fuel Oils (10/14/99)
228–0120 Coal (10/14/99)
228–0130 Exemptions (10/14/99)

General Emission Standards for Fuel Burning Equipment

228–0200 Sulfur Dioxide Standards (10/14/99)
228–0210 Grain Loading Standards (10/14/99)

Division 232—Emission Standards for VOC Point Sources

232–0010 Introduction (10/14/99)
232–0020 Applicability (10/14/99)
232–0030 Definitions (6/1/01)
232–0040 General Non-categorical Requirements (10/14/99)
232–0050 Exemptions (10/14/99)
232–0060 Compliance Determination (10/14/99)
232–0070 Gasoline Dispensing Facilities (10/14/99)
232–0080 Bulk Gasoline Plants (10/14/99)
232–0085 Gasoline Delivery Vessel(s) (10/14/99)
232–0090 Bulk Gasoline Terminals (10/14/99)
232–0100 Testing Vapor Transfer and Collection Systems (10/14/99)
232–0110 Loading Gasoline onto Marine Tank Vessels (6/1/01)
232–0120 Cutback and Emulsified Asphalt (10/14/99)
232–0130 Petroleum Refineries (10/14/99)
232–0140 Petroleum Refinery Leaks (10/14/99)
232–0150 Liquid Storage (10/14/99)
232–0160 Surface Coating in Manufacturing (10/14/99)
232–0170 Aerospace Component Coating Operations (10/14/99)
232–0180 Degreasers (10/14/99)
232–0190 Open Top Vapor Degreasers (10/14/99)
232–0200 Conveyorized Degreasers (10/14/99)
232–0210 Asphaltic and Coal Tar Pitch Used for Roofing Coating (10/14/99)
232–0220 Flat Wood Coating (10/14/99)
232–0230 Rotogravure and Flexographic Printing (10/14/99)
232–0240 Perchloroethylene Dry Cleaning (10/14/99)

Division 234—Emission Standards for Wood Products Industries

234–0010 Definitions, excluding (25), (28)(a) & (46) (10/14/99)

Wigwam Waste Burners

234–0100 Statement of Policy and Applicability (10/14/99)
234–0110 Authorization to Operate a Wigwam Burner (10/14/99)
234–0120 Emission and Operation Standards for Wigwam Waste Burners (10/14/99)
234–0130 Monitoring and Reporting (10/14/99)
234–0140 Existing Administrative Agency Orders (10/14/99)

Kraft Pulp Mills

234–0200 Statement of Policy and Applicability (10/14/99)
234–0210 Emission Limitations, excluding (1) (10/14/99)
234–0220 More Restrictive Emission Limits (10/14/99)
234–0230 Plans and Specifications (10/14/99)
234–0240 Monitoring, excluding (2) (10/14/99)
234–0250 Reporting, excluding (1) & (2) (10/14/99)
234–0260 Upset Conditions, excluding (3)(a)(A) & (3)(b)(A) (10/14/99)
234–0270 Chronic Upset Conditions (10/14/99)

Neutral Sulfite Semi-Chemical (NSSC) Pulp Mills

234–0300 Applicability (10/14/99)
234–0310 Emission Limitations, excluding (1) (10/14/99)
234–0320 More Restrictive Emission Limits, excluding (2) (10/14/99)
234–0330 Plans and Specifications (10/14/99)
234–0340 Monitoring, excluding (2) (10/14/99)
234–0350 Reporting, excluding (1) (10/14/99)
234–0360 Upset Conditions, excluding (3)(a)(A) (10/14/99)

Sulfite Pulp Mills

234–0400 Statement of Policy and Applicability (10/14/99)

234–0410 Minimum Emission Standards (10/14/99)
234–0420 Monitoring and Reporting (10/14/99).
234–0430 Exceptions (10/14/99)

Board Products Industries (Veneer, Plywood, Particleboard, Hardboard)

234–0500 Applicability and General Provisions (10/14/99)
234–0510 Veneer and Plywood Manufacturing Operations (10/14/99)
234–0520 Particleboard Manufacturing Operations (10/14/99)
234–0530 Hardboard Manufacturing Operations (10/14/99)

Division 236—Emission Standards for Specific Industries

236–0010 Definitions (10/14/99)

Primary Aluminum Standards

236–0100 Statement of Purpose (10/14/99)
236–0110 Applicability (10/14/99)
236–0120 Emission Standards, excluding (1)(a), (3)(a), & (3)(e) (10/14/99)
236–0130 Special Problem Areas (10/14/99)
236–0140 Monitoring, excluding references to fluorides (10/14/99)
236–0150 Reporting, excluding (1)(d) and (1)(e) (10/14/99)

Laterite Ore Production of Ferronickel

236–0200 Statement of Purpose (10/14/99)
236–0210 Applicability (10/14/99)
236–0220 Emission Standards (10/14/99)
236–0230 Monitoring and Reporting (10/14/99)

Hot Mix Asphalt Plants

236–0400 Applicability (10/14/99)
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* * * * *

4. Paragraph (a)(1)(ii) of § 52.1982 is revised to read as follows:

§ 52.1982 Control Strategy: Ozone.

(a) * * * (1) * * *

(ii) The phrase "in most cases" in rule OAR 340–232–0060(1) applies to approximately 1,200 gasoline service stations where compliance is determined by observing whether specific emission control equipment, selected from a specific list on file at DEQ, is in place and operating properly.

§ 52.1985 [Reserved]

5. Remove and reserve § 52.1985.

6. Paragraphs (a) and (c) of § 52.1987 are revised to read as follows:

§ 52.1987 Significant deterioration of air quality.

(a) The Oregon Department of Environmental Quality rules for the prevention of significant deterioration of air quality (provisions of OAR chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225, and 268), as in effect on October 8, 2002, are approved as meeting the requirements of title I, part C, subpart 1 of the Clean Air Act, as in effect on July 1, 2002, for preventing significant deterioration of air quality.

* * * * *

(c) The requirements of title I, part C, subpart 1 of the Clean Air Act are not met for Indian country in Oregon because Oregon has not demonstrated authority to implement and enforce under the Clean Air Act Oregon State rules in Indian country. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated and made part of the applicable plan for Indian country in the State of Oregon.

7. Paragraph (a) of § 52.1988 is revised to read as follows:

§ 52.1988 Air contaminant discharge permits.

(a) Except for compliance schedules under OAR 340–200–0050, emission limitations and other provisions contained in Air Contaminant Discharge Permits issued by the State in accordance with the provisions of the Federally-approved rules for Air Contaminant Discharge Permits (OAR chapter 340, Division 216), Plant Site Emission Limit (OAR chapter 340, Division 222), Alternative Emission Controls (OAR 340–226–0040) and Public Participation (OAR chapter 340, Division 209), shall be applicable requirements of the Federally-approved Oregon SIP (in addition to any other provisions) for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP. Plant site emission limits and alternative emission limits (bubbles) established in Federal Operating Permits issued by the State in accordance with the Federally-approved rules for Plant Site Emission Limit (OAR chapter 340, Division 222) and Alternative Emission Controls (OAR 340–226–0040), shall be applicable requirements of the Federally-approved Oregon SIP (in addition to any other provisions) for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH118–1a; FRL–7428–5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the remaining portions of the Ohio Environmental Protection Agency's (OEPA) SIP for Prevention of Significant Deterioration (PSD) provisions for attainment areas. EPA had previously

conditionally approved Ohio's prior SIP submission on October 10, 2001. Today's final approval is of OEPA's rule revisions submitted in response to EPA's July 18, 2002, conditional approval. In its July 2002 submittal, Ohio also made additional revisions to the OAC that were not addressed in EPA's October 10, 2001 conditional approval.

Recently, EPA announced new regulations regarding changes to the preconstruction permit program under EPA's efforts regarding "New Source Review Reform." Today's approval of Ohio's SIP submission does not address EPA's new rules but is limited to portions of Ohio's preconstruction permit program under the existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any requirements that EPA may promulgate as part of New Source Review Reform.

DATES: This rule is effective on March 10, 2003, unless EPA receives comments by February 21, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Genevieve Damico at (312) 353–4761 before visiting the Region 5 office.

Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4761.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

A. What Is the Purpose of This Document?
B. Who Is Affected by This Action?
C. What Is the History of Ohio's PSD Program?
D. How Are OEPA's PSD Rules Structured?
E. Why Are We Granting Approval?
F. How Is This Action Related to EPA's Current Review of Ohio's programs?
G. How Is This Action Related to EPA's New Preconstruction Permit Program?
H. How Does This Rulemaking Affect EPA's Preconstruction Permit Program?

A. What Is the Purpose of This Document?

We are approving the remaining portions of Ohio's SIP for PSD provisions for attainment areas which was conditionally approved by EPA on October 10, 2001 (66 FR 51570).

B. Who Is Affected by This Action?

The PSD program applies to facilities constructing major sources of air pollution. Since the PSD program that we are approving today is similar to the conditionally approved PSD program that OEPA currently operates, these facilities will generally not be affected by EPA's approval of these changes to Ohio's PSD SIP.

C. What Is the History of Ohio's PSD Program?

OEPA submitted its first permitting SIP to EPA on January 31, 1972, and submitted replacement regulations on June 6, 1973. These regulations provided requirements, such as best available technology, that were meant to be uniformly applied throughout the State.

The Clean Air Act Amendments of 1977 (Amendments) required states to go further than uniformly applied regulations. The Amendments provided for the designation of areas within a state as "attainment" or "nonattainment." An "attainment" area meets the national ambient air quality standards (NAAQS). A "nonattainment" area does not meet the NAAQS.

OEPA requested delegation of the federal PSD attainment preconstruction permitting program on February 8, 1980, and received delegation on January 29, 1981.

OEPA submitted a request for approval of Ohio Administrative code (OAC) sections 3745–31–01 to 3745–31–20 into the SIP on March 1, 1996 as its construction permit program. Ohio subsequently submitted revisions dated March 1, 1996, April 16, 1997, September 5, 1997, December 4, 1997, and April 21, 1998. OEPA's PSD program was conditionally approved on October 10, 2001 (66 FR 51570). On July 18, 2002, OEPA submitted revisions to OAC 3754–31. Today we are acting on those revisions by approving them.

D. How Are OEPA's PSD Rules Structured?

Part C of Title I of the Clean Air Act (CAA) requires a SIP for PSD rules for attainment areas. 40 CFR 51.165 and 51.166 contain the requirements for a PSD permitting program. OEPA submitted this SIP in the form of OAC sections 3745–31–11 to 3745–31–20. OEPA also submitted general provisions applying to both attainment and nonattainment areas in the form of OAC sections 3745–31–01 to 3745–31–10.

E. Why Are We Granting Approval?

The October 10, 2001, conditional approval required OAC section 3745–31–01(OOO) to include a 25 tons per year significance level for particulate matter, and a 50 ton per year significance level for municipal solid waste landfill emissions, as required by 40 CFR 51.166(b)(23)(i). Furthermore, total reduced sulfur and reduced sulfur compounds must be defined to include hydrogen sulfide. The OAC now reflects these requirements.

Ohio also made additional revisions to OAC 3745–31–01, –02, –03, –05, and –07 that were not reflected in the October 10, 2001 conditional approval. The July 18, 2002 SIP submittal from Ohio incorporated definitions for municipal solid waste landfill, non-methane organic compound, non-road engine, reduced sulfur compound, soil-liquid extraction remediation activities, soil-vapor extraction remediation activities and total reduced sulfur in OAC 3745–31–01. We find the additional definitions to be acceptable in the context of Ohio's permit to install program.

Ohio added regulatory language in OAC 3745–31–02(A)(1) that requires the transferee of any permit to install to assume the responsibilities of the original permit. The permittee must also notify OEPA of the transfer. EPA finds these changes to the rule acceptable.

The SIP submittal adds permanent exemptions in OAC 3745–31–03 for non-road engines, crushing and screening plants that are exempt from 40 CFR part 60, subpart OOO, soil-vapor and soil-liquid extraction remediation activities. The exemption for a permit to install for non-road engines that has been added to the rule builds upon the exemption from the previously approved definition of stationary source in 3745–31–01. This exemption is consistent with section 216 of the Clean Air Act. The rule further clarifies that these units are not exempt from the permit to install program if the opacity is greater than twenty percent. The exemption for a permit to install that has been added for crushing and screening plants is consistent with the 40 CFR part 60, subpart OOO exemptions. The exemption for a permit to install for soil-vapor and soil-liquid remediation activities is limited to

activities that have total combined emission rates less than 15 pounds of organic compounds per day and last no longer than 18 months. EPA finds that the sources exempted by this rule will not have a significant impact on air quality. EPA therefore finds this rule acceptable.

OAC 3745–31–07 has been amended to allow the Director of OEPA to revoke a permit to install if the permittee requests revocation for cause and the Director determines that the revocation will not result in the violation of any applicable laws. EPA finds this rule acceptable.

The rule also makes non-substantive administrative changes to 3745–31–01, 3745–31–03(A)(1)(p) and (ee), 3745–31–03(A)(4) and (4)(a), 3745–31–05(A)(2)(d) and (A)(3), and 3745–31–05(E)(3). EPA finds these changes to the rule acceptable.

F. How Is This Action Related to EPA's Current Review of Ohio's Programs?

EPA is currently reviewing OEPA's implementation of the delegated PSD program in response to a petition submitted by D. David Altman on behalf of Ohio Citizen Action, the Ohio Environmental Council, Rivers Unlimited, and the Ohio Sierra Club. Any concerns that EPA finds as a result of this review will be addressed through the process of responding to the petition. Today's approval only addresses whether or not specific provisions of Ohio's Administrative Code meet the Federal criteria for a PSD program, as set forth in 40 CFR part 51, and does not address any issues regarding how the code is being applied or enforced by Ohio. We believe the OAC revisions meet the criteria for approval. No particular findings or conclusions in or from the EPA petition review should be inferred from today's approval.

G. How Is This Action Related to EPA's New Preconstruction Permit Program?

Recently, EPA announced new regulations regarding changes to the preconstruction permit program under EPA's efforts regarding "New Source Review Reform." *See http://www.epa.gov/nsr/.* Today's approval of Ohio's SIP submission does not address EPA's new rules but is limited to portions of Ohio's preconstruction permit program under the existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any requirements that EPA may promulgate as part of New Source Review Reform.

H. How Does This Rulemaking Affect EPA's Preconstruction Permit Program?

In addition, while EPA is approving Ohio's PSD SIP, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of Ohio's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Ohio are consistent with the requirements of the CAA, EPA regulations, and the SIP.

EPA's authority to oversee PSD program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that a State "is not acting in compliance with" any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of Title V of the CAA and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by states. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to Title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is "not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan."

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or both, EPA cannot intervene unless the state decision fails to comply with applicable requirements. Thus, EPA may not intrude upon the significant discretion granted to states under new source review programs, and will not "second guess" state decisions. Rather, in determining whether a Title V permit incorporating PSD provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining best available control technology, assessing air quality impacts, meeting Class I area requirements, and other PSD requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD permit were properly incorporated into the operating permit.

EPA Action

In this rulemaking action, we are approving the sections addressed above as a revision to the Ohio SIP for PSD. The sections discussed in this notice were conditionally approved on October 10, 2001, and EPA is approving them based on the State's July 18, 2002 submittal.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the State Plan should adverse written comments be filed. This rule will be effective without further notice unless the Agency receives relevant adverse written comment by February 21, 2003. Should the Agency receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 10, 2003.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state regulation as meeting federal requirements and imposes no additional requirements beyond those imposed by the State. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial

number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 13, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.1870 is amended by adding paragraph (c)(127) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(127) On July 18, 2002, Ohio submitted revisions to its Permit to Install rules as a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rules 3745–31–01, 3745–31–02, 3745–31–03, 3745–31–05, and 3745–31–07 effective November 30, 2001.

[FR Doc. 03–1235 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 106–0064; FRL–7418–8]

Approval and Promulgation of Implementation Plans; Arizona; Motor Vehicle Inspection and Maintenance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving two State Implementation Plan (SIP) revisions submitted by the Arizona Department of Environmental Quality (ADEQ). These revisions consist of several changes that have been made to Arizona's Basic and Enhanced Vehicle Emissions Inspection and Maintenance Programs after the programs were approved by EPA in 1995. Arizona's Basic Vehicle Emissions Inspection (VEI) Program is implemented in the Tucson Air Planning Area carbon monoxide (CO) nonattainment area (Area B). The Enhanced VEI Program is implemented in the Maricopa County ozone and CO nonattainment area (the Phoenix area or Area A).

EFFECTIVE DATE: February 21, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA's Region 9 office at 75 Hawthorne Street, San Francisco, California 94105.

This document and the Technical Support Document (TSD) for this rulemaking are also available as electronic files on EPA's Region 9 Web page at *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Sylvia Dugré, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Phone: (415) 947–4149; e-mail: dugre.sylvia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 12, 2002 (67 FR 52433), EPA published a notice of proposed rulemaking for the State of Arizona. The notice proposed approval of revisions to the SIP for Arizona's Basic and Enhanced VEI programs.

ADEQ submitted the changes to its Basic and Enhanced VEI Programs as a revision to its SIP on July 6, 2001. The July 6, 2001 SIP revision package includes, among various other program changes, ADEQ's revised rule which extends the exemption for newer model year vehicles from the current model year to the first five model year vehicles and the revised rules incorporating legislative changes to the provisions for issuing a waiver. Also included in the SIP revision is State legislation that discontinues the remote sensing program that had been implemented in Area A and authorizes a study to determine the most effective on-road testing program for Arizona.

A SIP revision supplementing the July 6, 2001 SIP revision was submitted by ADEQ on April 10, 2002. This submittal contains the ADEQ rule revisions incorporating on-board diagnostics (OBD) testing and, in accordance with the State legislation, deleting the previously approved remote sensing program from the ADEQ regulations. It also contains a modeling demonstration, with adjustments for the IM147

transient loaded-mode emissions test, showing the I/M program implemented in Area A meets EPA's high enhanced performance standard.

A more complete description of Arizona's submittals and the rationale for EPA's approval were presented in the proposal and will not be restated here.

II. Public Comments on the Proposed Action

No comments were submitted to the docket during the comment period for the proposed rulemaking published in the August 12, 2002 **Federal Register**.

III. Final Action

Clean Air Act (CAA) sections 182(c)(3) and 187(a)(6) require serious ozone and carbon monoxide areas, such as the Phoenix area, to implement enhanced I/M programs. EPA's requirements for these I/M programs are contained in 40 CFR part 51, subpart S. In order for EPA to approve the SIP revisions submitted by ADEQ, they must be consistent with EPA's I/M requirements and they must meet CAA section 110(a) requirements for enforceability as well as CAA section 110(1) requirements regarding plan revisions.

In today's action, EPA is finding that the Arizona enhanced I/M program implemented in Area A (Phoenix) meets CAA and EPA requirements for a high enhanced program. We are also finding that the VEI program implemented in Area B (Tucson) continues to meet EPA's I/M requirements for basic programs.[1] The basis for these findings are discussed in the proposal for today's action. *See* 67 FR 52433.

In addition, under CAA section 110(1), EPA is finding that these SIP revisions submitted by ADEQ do not interfere with the applicable requirements concerning CO maintenance in the Tucson area or any other requirements of the CAA applicable to Tucson. We are also finding that these SIP revisions will not interfere with any applicable requirements for CO and ozone attainment and reasonable further progress (RFP) or any other requirements of the CAA applicable to the Phoenix area. The basis for these findings are discussed in the proposal for today's action. *See* 67 FR 52433.

Finally, EPA is approving various Arizona statutes amending the VEI programs and the latest revisions to the basic and enhanced VEI program regulations. Specifically, we are approving the following Arizona statutes:

Amendments to Arizona Revised Statutes (ARS) 49–541, 49–542.05, 49–544, 49–545, 49–551 and the repeal of 49–542.01 submitted to EPA as a SIP revision on July 6, 2001.

Amendments to ARS 49–542, 49–543, and the repeal of 49–541.01 submitted to EPA as a SIP revision on April 10, 2002.

We are also approving the following Arizona regulations:

Arizona Administrative Code (AAC), Title 18, Chapter 2, Article 10 (except for AAC R 18–2–1020) "Motor Vehicles; Inspection and Maintenance" as of December 31, 2000, submitted to EPA as a SIP revision on July 6, 2001.

Amendments to AAC R 18–2–1006 and 18–2–1019, and the repeal of AAC R 18–2–1014 and R 18–2–1015 submitted to EPA as a SIP revision on April 10, 2002.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 2003. Filing a petition for reconsideration by the Administrator of this final rule does

[1] As an unclassified CO nonattainment area that has been redesignated to attainment, the Tucson area does not have a statutory requirement to implement a basic I/M program. The area, however, has relied on the program to both attain and maintain the CO standard.

not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements.

Dated: October 31, 2002.

Alexis Strauss,

Acting Regional Administrator, Region 9.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c)(108) and (c)(109) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(108) Revisions to the Arizona State Implementation Plan for the Motor Vehicle Inspection and Maintenance Programs, submitted on July 6, 2001.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) Section 49–551 as amended in Section 27 of Arizona Senate Bill 1427, 43rd Legislature, 2nd Regular Session (1998), approved by the Governor on May 29, 1998.

(*2*) Section 49–544 as amended in Section 15 of Arizona Senate Bill 1007, 43rd Legislature, 4th Special Session (1998), approved by the Governor on May 20, 1998.

(*3*) Section 49–541 as amended in Section 44 of Arizona House Bill 2189, 44th Legislature, 1st Regular Session (1999), approved by the Governor on May 18, 1999.

(*4*) Section 49–542.01 repealed in Section 3 and Section 49–545 as amended in Section 5 of Arizona House Bill 2104, 44th Legislature, 2nd Regular session (2000), approved by the Governor on April 28, 2000.

(*5*) Section 49–542.05 as added in Section 23 of Arizona Senate Bill 1004, 44th Legislature, 7th Special Session (2000), approved by the Governor on December 14, 2000.

(B) Arizona Administrative Code.

(*1*) Title 18, Chapter 2, Article 10 (except for AAC R 18–2–1020) "Motor Vehicles; Inspection and Maintenance" as adopted on December 31, 2000.

(109) Revisions to the Arizona State Implementation Plan for the Motor Vehicle Inspection and Maintenance Programs, submitted on April 10, 2002 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) Section 49–542 as amended in Section 9, Section 49–543 as amended in Section 11, and Section 49–541.01 repealed in Section 29 of Arizona House Bill 2538, 45th Legislature, 1st Regular Session (2001), approved by the Governor on May 7, 2001.

(B) Arizona Administrative Code.

(*1*) Amendments to AAC R 18–2–1006 and 18–2–1019, and the repeal of AAC R 18–2–1014 and R 18–2–1015 effective January 1, 2002.

3. Section 52.123 is amended by adding paragraph (k) to read as follows:

§ 52.123 Approval status.

* * * * *

(k) The Administrator approves the revised Enhanced Vehicle Inspection and Maintenance Program for the Maricopa County carbon monoxide and ozone nonattainment area submitted by the Arizona Department of Environmental Quality on July 6, 2001 and April 10, 2002 as meeting the requirements of Clean Air Act sections 182(c)(3) and 187(a)(6) and the requirements for high enhanced inspection and maintenance programs contained in 40 CFR part 51, subpart S.

[FR Doc. 03–1234 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 02–318]

Compatibility With Enhanced 911 Emergency Calling Systems; PSAP E911 Service Readiness

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of the Commission's October 2001 decision which addressed a petition from the city of Richardson, Texas by adopting rules that clarify what constitutes a valid Public Safety Anwering Point (PSAP) to trigger a wireless carrier's obligation to provide E911 service to the PSAP within six months. The document modifies the Commission's rules to provide additional clarification regarding PSAP readiness. The action is taken to respond to the petitions for reconsideration and to promote rapid E911 implementation.

DATES: Effective February 21, 2003, except for §§ 20.18(j)(4) and (5), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission is seeking emergency approval from the Office of Management and Budget for these collections. Public comment on the information collections on these PRA burdens are due March 24, 2003. The Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Attorney, 202–418–1310. For further information concerning the information collection contained in this Fourth Memorandum Opinion and Order, contact Judith Boley Herman, Federal Communications Commission, 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration (Recon) in CC Docket No. 94–102; FCC 02–318, adopted November 21, 2002, and released November 26, 2002. The complete text of the Recon and the Supplemental Final Regulatory Flexibility Analysis is available on the Commission's Internet site, at *http://www.fcc.gov.*, and is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC. The text may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B4202, Washington, DC 20554 (telephone 202–863–2893).

Synopsis of the Order on Reconsideration

1. The Recon responds to two petitions for reconsideration of the Commission's Order (60 FR 55618, November 2, 2001) in this proceeding. The Order, in further response to a petition filed by the city of Richardson, Texas, adopted rules clarifying what constitutes a valid PSAP request to trigger a wireless carrier's obligation to provide E911 service to that PSAP within six months. The Recon modifies

the Commission's rules to provide additional clarification as to PSAP readiness.

2. The Recon first adopts procedural guidelines for requesting documentation predictive of a PSAP's readiness to receive and utilize the E911 service it has requested. Specifically, the Recon provides that, where a wireless carrier requests such documentation from a PSAP within 15 days of receiving the PSAP's request for E911 service, the PSAP must respond within 15 days or the carrier's six-month implementation period will be tolled until such documentation is provided. (*See* paragraphs 9 through 12 of the full text of the Recon.)

3. Second, the Recon clarifies that the readiness showing is for the purpose of commencing the wireless carrier's six-month implementation obligation. The Recon also establishes a procedure whereby wireless carriers that have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness may have their compliance obligation temporarily tolled, if the PSAP is not ready to receive the information at the end of the six-month period and the carrier files a certification to that effect with the Commission. (*See* paragraphs 14 through 21 of the full text of the Recon.)

7. Finally, the Recon clarifies that nothing in the Commission's rules precludes wireless carriers and PSAPs from mutually agreeing to an implementation schedule different from that prescribed in the Commission's rules. (*See* paragraph 29 of the full text of the Recon.)

Paperwork Reduction Act of 1995 Analysis

8. This Recon has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain new reporting and information collections. Implementation of these new reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act. The Commission is seeking this approval on an emergency basis and will publish a notice of effective date in the **Federal Register** when OMB approval for these PRA burdens is received. The Commission is seeking public comment on these PRA burdens. Public and agency comments are due March 24, 2003. Comments should address:

- Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility.
- The accuracy of the Commission's burden estimates.
- Ways to enhance the quality, utility, and clarity of the information collected.
- Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

9. A copy of any comments on the information collections contained in this Recon should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 Twelfth Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Kim A. Johnson, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Docket Library, Room 10236, New Executive Office Building (NEOB), 725 17th Street, NW., Washington, DC 20503 or via the Internet at *Kim_A._Johnson@omb.eop.gov*.

OMB Approval Number: XXXX.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: City of Richardson, Texas, Recon Order.

Form No. N.A.

Type of Review: New information collection.

Respondents: Business or other for profit.

Number of Respondents: 1,358.

Estimated Time Per Response: 2–40 hours.

Total Annual Burden: 13,960 hours.

Cost to Respondents: 0.

Needs and Uses: The information and coordination burdens are needed to ensure the fairness of the Commission's E911 rules and to facilitate speedy E911 implementation.

Supplemental Final Regulatory Flexibility Analysis (SFRFA)

10. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared a Supplemental Regulatory Flexibility Analysis (SFRFA) of the estimated significant economic impact on small entities of the policies and rules adopted in the Recon. The analysis may be found in Appendix C of the full text of the Recon. This is a summary of the full SFRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Recon, including the SFRFA to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for, and Objectives of, the Recon Order

11. In response to petitions for reconsideration, the Commission amends its rules to clarify what constitutes a valid Public Safety Answering Point (PSAP) request to trigger a wireless carrier's obligation to provide enhanced 911 (E911) service to the PSAP within six months. Specifically, the Recon adopts procedural guidelines for requesting documentation predictive of a PSAP's readiness to receive and utilize the E911 service it has requested, by specifying that where a wireless carrier requests such documentation from a PSAP within 15 days of receiving the PSAP's request for E911 service, the PSAP must respond within 15 days or the carrier's six-month implementation period will be tolled until such documentation is provided. The Recon also clarifies that the PSAP readiness showing is for the purpose of commencing the wireless carrier's six-month implementation obligation, and establishes a procedure whereby wireless carriers that have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness may have their compliance obligation temporarily tolled, if the PSAP is not ready to receive the information at the end of the six-month period and the carrier files a certification to that effect with the Commission. Finally, the Recon clarifies that nothing in the Commission's rules precludes wireless carriers and PSAPs from mutually agreeing to an implementation schedule different from that prescribed by the Commission's rules.

12. The actions adopted in the Recon are intended to promote communication between wireless carriers, local exchange carriers (LECs) and PSAPs and to provide further clarity regarding their respective obligations in implementing wireless E911. Wireless E911 implementation is very situation-specific and can vary significantly from jurisdiction to jurisdiction and from carrier to carrier, depending on a number of factors. The clarifications adopted in the Recon are also intended to facilitate the implementation process by encouraging parties to communicate with each other early in the E911 implementation process, and to maintain a constructive, on-going dialog throughout the implementation process.

B. Summary of Significant Issues Raised by the Public in Response to the FRFA

13. The Commission received two petitions for reconsideration of its decision in the Order. One petitioner, Cingular Wireless LLC (Cingular) raises several procedural arguments against the validity of the decision adopted in the Order, based on the requirements of the Administrative Procedure Act. In

support, several small carriers filed comments also challenging the decision on a procedural basis, arguing that the decision contravenes the provisions of the RFA because it does not take account of, and attempt to reduce, the disproportionate burdens placed on small and rural carriers. These smaller carriers maintain that, in order to minimize the danger of unnecessary economic outlay on small carriers, the Commission should impose an actual-readiness requirement on PSAPs operating in areas where rural, small and mid-sized carriers do not have a large customer base to absorb their E911 implementation costs and are thus more vulnerable to delays in implementation caused by a PSAP's inability to receive and utilize the E911 data supplied by the carrier. The Commission is aware of the concerns of small and mid-sized rural carriers and discussed these concerns in the FRFA. However, as the Commission has iterated throughout this proceeding, any failure in E911 communications, regardless of whether the carrier is small or large, or whether the carrier has a large customer base or small, can result in tragedy. Nonetheless, the Commission has tried wherever possible to ease the regulatory burden in this proceeding on small entities. The Commission's phased-in approach to E911 implementation is an example of this desire to accommodate the needs of small entities where it does not compromise our commitment to the goals of this proceeding.

14. The FRFA addresses the issue of whether to adopt an actual-readiness requirement on PSAPs and finds that the readiness showing adopted in the Order "will in fact reduce the vulnerability of the smaller carriers, as they will be working along with the PSAPs to ensure implementation of E911 service on a timely basis, and will better be able to plan their progression and allocation of resources during the implementation process * * *." The FRFA concludes that, "Considering the potential burdens placed on all small entities, we find that the institution of objective criteria by rule amendment will benefit all PSAPs and carriers, including small entities, by more clearly defining E911 readiness, thus reducing the potential for misunderstanding between parties, and by reducing instances of delay in E911 implementation. In turn, this will reduce the likelihood that any PSAP or carrier, including all small entities, will have to expend its limited capital resources prematurely and/or improvidently."

15. The Recon takes several steps to mitigate the economic risk to smaller carriers. First, as discussed in paragraphs 9 through 12 of the full text, the Recon responds to carrier comment that indicates the present rule does not specify time limits for responding to a carrier's request for PSAP readiness documentation, by establishing that where a wireless carrier requests readiness documentation in writing within 15 days of receiving the PSAP's request for E911 service, the PSAP will have 15 days to provide such documentation. The Commission believes that these 15-day timeframes will both reduce a carrier's ability to use a documentation request as a delaying tactic, and minimize unnecessary carrier expenditures in those situations where the PSAP is unable to demonstrate that it will be ready to receive and utilize the requested E911 information by the end of the six-month period allotted for carrier compliance. The Recon also acknowledges, as discussed in paragraph 14, that the current rules do not provide for situations where a PSAP has made the upfront readiness showing necessary to trigger Phase II implementation, but turns out to be incapable of receiving Phase II information at the end of the six-month implementation period. To address such situations, the Recon Order modified the Commission's rules in several respects. These modifications are set out in detail in paragraphs 15 through 21 of the Recon Order.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

16. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Nationwide, there are 4.44 million small business firms, according to SBA reporting data.

17. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.

18. The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. There are approximately 85,006 governmental jurisdictions in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

19. Neither the Commission nor the SBA has developed definitions for small providers of the specific industries affected. Therefore, throughout our analysis, the Commission uses the closest applicable definition under the SBA rules, the North American Industry Classification System (NAICS) standards for "Cellular and Other Wireless Telecommunications" and "Wired Telecommunications Carriers." According to this standard, a small entity is one with no more than 1,500 employees. To determine which of the affected entities in the affected services fit into the SBA definition of small business, the Commission will refer to Table 5.3 in *Trends in Telephone Service (Trends)* a report published annually by the Commission's Wireline Competition Bureau.

20. We have included small incumbent local exchange carriers in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

Local Exchange Carriers. According to the most recent *Trends* data, 1,329 incumbent carriers reported that they were engaged in the provision of local exchange services. *Trends* indicates that of these entities, 1,024 local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees, and would thus be considered small businesses as defined by NAICS.

Competitive Access Providers and Competitive Local Exchange Carriers (CAPs and CLECs). Trends indicates that 532 CAPs and CLECs, 134 local resellers, and 55 other local exchange carriers reported that they were engaged in the provision of competitive local exchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated. However, *Trends* states that a total of 595 of these entities employ 1,500 individuals, thus qualifying as small entities.

Wireless Telephone Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers. There are 858 entities in this category as estimated in *Trends*, and 291 such licensees in combination with their affiliates have 1,500 or fewer employees, and thus qualify as small businesses using the NAICS guide as small businesses.

Special Mobile Radio (SMR) Dispatch. Trends estimates 289 entities in this category and all 289 licensees, in combination with their affiliates, have 1,500 or fewer employees, and thus qualify as small entities using the NAICS guide.

Other Mobile Service Providers. Trends estimates that there are 32 providers of other mobile services, and again using the NAICS standard, all 32 providers of other mobile services utilize with their affiliates 1,500 or fewer employees, and thus may be considered small entities.

Toll Service Providers. Trends calculates that there are 932 toll service providers, and that 832 toll service providers with their affiliates have 1,500 or fewer employees and thus qualify as small entities as defined by NAICS.

Offshore Radiotelephone Service. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this SFRFA, that all of the 55 licensees are small entities, as that term is defined by NAICS.

Public Safety Answering Points. Neither the Commission nor the SBA has developed a definition of small entities applicable to PSAPs. In order to give a numerical quantification of the number of PSAPs that are small entities affected by the rule modifications; it appears there are approximately 5,000 primary PSAPs nationwide. For purposes of this SFRFA, we assume that all of the PSAPs are small entities, and may be affected by the rule amendments.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

21. As indicated in paragraphs 15 through 21 of the Recon, in order to toll the six-month implementation period, a wireless carrier must file a certification with the Commission that it has completed all necessary steps towards E911 implementation that are not dependent on PSAP readiness and that the PSAP is not ready to receive the information at the end of the six month period. Additionally, the Commission clarifies that nothing in our rules precludes wireless carriers and PSAPs from mutually agreeing to an implementation schedule different from that prescribed by the Commission's rules.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. The Commission is limited in this proceeding as to minimizing the burden on small entities. The proceeding is intended to provide all Americans with the most reliable, responsive emergency services that are technologically possible. The critical nature of this goal demands that all entities involved, regardless of size, bear the same responsibility for complying with requirements adopted to expedite reaching this goal. A delay in response caused by a small entity could result in the same fatal consequences as a delay caused by a large entity.

23. The Commission, upon review of the petitions for reconsideration of the Order, could have elected to simply deny the petitions and leave the rules as is, or it could have modified the rules to intensify the demonstration requirements on PSAPs. Instead the Commission makes certain clarifications to the rules to dispel some of the existing confusion as to PSAP readiness and the decision adopted in the Order, and modifies the rules to accommodate certain of the carrier's continuing concerns, while refraining from imposing additional burdens on PSAPs, most of whom are either small or mid-sized entities.

24. First, the Recon, in paragraphs 9 through 12 clarifies the rules along the lines suggested by two wireless carriers by establishing the parallel 15-day timeframe for carrier requests and PSAP responses in certain instances where the PSAP does not provide readiness documentation simultaneous with its request for E911 service. The Commission takes this action to promote early communication between wireless carriers and PSAPs, to expedite the E911 implementation process, to reduce a carrier's ability to use a documentation request as a delaying tactic, while minimizing unnecessary carrier expenditures where the PSAP is unable to demonstrate that it will be E911 capable by the end of the six-month period allotted for carrier compliance. This modification thus benefits both small and mid-sized wireless carriers and PSAPs and strengthens the Commission's efforts to encourage necessary cooperation between carriers and PSAPs in achieving truly responsive E911 implementation.

25. Second, to address situations in which a PSAP has made the upfront readiness showing but turns out to be incapable of receiving E911 Phase II information at the end of the six-month implementation period, the Recon amends 47 CFR 20.18(j) in several ways. (*See* paragraphs 14 through 21 of the Recon.) The Recon clarifies that the readiness showing is for the purpose of commencing the wireless carrier's six-month implementation obligation. The Recon also establishes a certification procedure whereby wireless carriers that have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness may have their six-month compliance obligation temporarily tolled. These procedures, set out in paragraphs 15 through 21 of the Recon, minimize the financial risk to wireless carriers while providing PSAPs with an opportunity to respond and set up several other restrictions in the certification procedure to avoid abuse of the process by all parties involved.

26. Several wireless carrier commenters recommend that the Commission amend its rules to require that the PSAP obtain the local exchange carrier's (LEC's) written commitment to complete the required Automated Location Information (ALI) database upgrades within the six-month period. As discussed in paragraph 23 of the Recon, the Commission does not adopt such a regulation. In paragraph 24, the Commission also declines to adopt a

second, alternative proposal that would require PSAPs to acquire copies of an LEC's schedule of ALI database upgrade, because PSAPs are not in the best position to furnish such documentation. In paragraph 25 of the Recon, the Commission directs the Wireless Telecommunications Bureau to collect additional information periodically from LECs regarding the status of their efforts in connection with wireless E911 deployment to PSAPs and to consumers.

27. *Report to Congress:* The Commission will send a copy of this Recon, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of this Recon, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

28. The Petition for Reconsideration filed by Sprint is granted to the extent provided in the full text of the Recon and that the Petition is otherwise denied.

29. The Petition for Reconsideration filed by Cingular is denied.

30. Part 20 of the Commission's rules is amended as indicated in the rule changes section of this summary, effective February 21, 2003, except for §§ 20.18(j)(4) and (5), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission is seeking emergency approval from the Office of Management and Budget for these collections. Public comment on the information collections on these PRA burdens are due March 24, 2003. The Commission will publish a document in the **Federal Register** announcing the effective date for these sections.

31. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the Recon, including the Supplemental Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.18(j) is revised to read as follows:

§ 20.18 911 Service.

* * * * *

(j) *Conditions for enhanced 911 services.* (1) *Generally.* The requirements set forth in paragraphs (d) through (h) of this section shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and the Public Safety Answering Point is capable of receiving and utilizing the data elements associated with the service and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place.

(2) *Commencement of six-month period.* (i) Except as provided in paragraph (ii) of this section, for purposes of commencing the six-month period for carrier implementation specified in paragraphs (d), (f) and (g) of this section, a PSAP will be deemed capable of receiving and utilizing the data elements associated with the service requested, if it can demonstrate that it has:

(A) Ordered the necessary equipment and has commitments from suppliers to have it installed and operational within such six-month period; and

(B) Made a timely request to the appropriate local exchange carrier for the necessary trunking, upgrades, and other facilities.

(ii) For purposes of commencing the six-month period for carrier implementation specified in paragraphs (f) and (g) of this section, a PSAP that is Phase I-capable using a Non-Call Path Associated Signaling (NCAS) technology will be deemed capable of receiving and utilizing the data elements associated with Phase II service if it can demonstrate that it has made a timely request to the appropriate local exchange carrier for the ALI database upgrade necessary to receive the Phase II information.

(3) *Tolling of six-month period.* Where a wireless carrier has served a written request for documentation on the PSAP within 15 days of receiving the PSAP's request for Phase I or Phase II enhanced 911 service, and the PSAP fails to respond to such request within 15 days of such service, the six-month period for carrier implementation specified in paragraphs (d), (f), and (g) of this section will be tolled until the PSAP provides the carrier with such documentation.

(4) *Carrier certification regarding PSAP readiness issues.* At the end of the six-month period for carrier implementation specified in paragraphs (d), (f) and (g) of this section, a wireless carrier that believes that the PSAP is not capable of receiving and utilizing the data elements associated with the service requested may file a certification with the Commission. Upon filing and service of such certification, the carrier may suspend further implementation efforts, except as provided in paragraph (j)(4)(x) of this section.

(i) As a prerequisite to filing such certification, no later than 21 days prior to such filing, the wireless carrier must notify the affected PSAP, in writing, of its intent to file such certification. Any response that the carrier receives from the PSAP must be included with the carrier's certification filing.

(ii) The certification process shall be subject to the procedural requirements set forth in sections 1.45 and 1.47 of this chapter.

(iii) The certification must be in the form of an affidavit signed by a director or officer of the carrier, documenting:

(A) The basis for the carrier's determination that the PSAP will not be ready;

(B) Each of the specific steps the carrier has taken to provide the E911 service requested;

(C) The reasons why further implementation efforts cannot be made until the PSAP becomes capable of receiving and utilizing the data elements associated with the E911 service requested; and

(D) The specific steps that remain to be completed by the wireless carrier and, to the extent known, the PSAP or other parties before the carrier can provide the E911 service requested.

(iv) All affidavits must be correct. The carrier must ensure that its affidavit is correct, and the certifying director or officer has the duty to personally determine that the affidavit is correct.

(v) A carrier may not engage in a practice of filing inadequate or incomplete certifications for the purpose of delaying its responsibilities.

(vi) To be eligible to make a certification, the wireless carrier must have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness.

(vii) A copy of the certification must be served on the PSAP in accordance with § 1.47 of this chapter. The PSAP

may challenge in writing the accuracy of the carrier's certification and shall serve a copy of such challenge on the carrier. *See* §§ 1.45 and 1.47 and §§ 1.720 through 1.736 of this chapter.

(viii) If a wireless carrier's certification is facially inadequate, the six-month implementation period specified in paragraphs (d), (f) and (g) of this section will not be suspended as provided for in paragraph (j)(4) of this section.

(ix) If a wireless carrier's certification is inaccurate, the wireless carrier will be liable for noncompliance as if the certification had not been filed.

(x) A carrier that files a certification under paragraph (j)(4) of this section shall have 90 days from receipt of the PSAP's written notice that it is capable of receiving and utilizing the data elements associated with the service requested to provide such service in accordance with the requirements of paragraphs (d) through (h) of this section.

(5) *Modification of deadlines by agreement.* Nothing in this section shall prevent Public Safety Answering Points and carriers from establishing, by mutual consent, deadlines different from those imposed for carrier and PSAP compliance in paragraphs (d), (f), and (g)(2) of this section.

* * * * *

[FR Doc. 03–1326 Filed 1–21–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Address Change for Submission of Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We are updating the address for the submission of reports on specimens of endangered species taken in defense of self or others, or in the course of official duty by employees of Federal or State land management or conservation agencies.

DATES: This rule is effective on January 22, 2003.

FOR FURTHER INFORMATION CONTACT: Richard McDonald, Chief, Branch of Investigations, Office of Law Enforcement, U.S. Fish and Wildlife Service, telephone (703) 358–1949, fax (703) 358–1947.

SUPPLEMENTARY INFORMATION:

Background

Regulations contained in title 50 of the Code of Federal Regulations, Part 17.21, provide for the take of endangered species in defense of self or others, or in the course of official duty, by employees of Federal or State land management or conservation agencies (40 FR 44412). These regulations state that when take of endangered species occurs under any of the above circumstances, a report must be submitted to our Office of Law Enforcement within five days. The address for the submission of these reports has changed since the publication of these regulations on September 26, 1975. This rule provides the current address for the submission of these reports.

Required Determinations

We have reviewed this rule under the following statutes and Executive Orders that govern the rulemaking process: Executive Order 12866 (Regulatory Planning and Review); Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*); Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2); Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*); Executive Order 12630 (Takings); Executive Order 13132 (Federalism); Executive Order 12988 (Civil Justice Reform); Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*); National Environmental Policy Act; Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes); and Executive Order 13211 (Energy Supply, Distribution, or Use). We have determined that this rule does not trigger any of the procedural requirements of these Executive Orders or statutes since this rule modifies only the address for the submission of reports on the take of endangered species under certain circumstances.

We have determined that the public notice and comment provisions of the Administrative Procedure Act (APA) do not apply to this rule because the rule is only dealing with matters of agency organization, procedure, or practice (5 U.S.C. 553(b)(3)(A).

Under the APA, our normal practice is to publish rules with a 30-day delay in effective date. But in this case, we are using the "good cause" exemption under 5 U.S.C. 553 (d)(3) to make this rule effective upon publication because it modifies only the address for the submission of reports on the take of endangered species under certain circumstances.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.21, revise paragraph (c)(4) to read as follows:

§ 17.21 Prohibitions.

* * * * *

(c) * * *

(4) Any taking under paragraphs (c)(2) and (3) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Office of Law Enforcement, 4401 North Fairfax Drive, LE–3000, Arlington, VA 22203, within five days. The specimen may only be retained, disposed of, or salvaged under directions from the Office of Law Enforcement.

* * * * *

Dated: December 16, 2002.

Craig Manson,

Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 03–1414 Filed 1–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080–2174–05; I.D. 011003B]

RIN 0648–AP78

Fisheries of the Northeastern United States; Magnuson-Stevens Fishery Conservation and Management Act Provisions; Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of continuation of regulations.

SUMMARY: The regulations contained in the interim rule published on August 1, 2002, in order to reduce overfishing, are continued for an additional 180 days, after which subsequent Secretarial action may be taken to ensure that sufficient measures to reduce overfishing stay in effect until implementation of Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). Amendment 13 will implement rebuilding plans for several groundfish stocks and address capacity issues in the fishery. This action is necessary to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) regarding the continuation of interim final regulations.

DATES: The interim final rule published August 1, 2002, at 67 FR 50292, which became effective August 1, 2002, continues in effect until superseded by a future rule action to be published in the **Federal Register**.

ADDRESSES: Copies of the small entity compliance guide prepared for the August 1, 2002, interim final rule are available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The letter is also accessible via the Internet at *http://www.nero.noaa.gov*. Copies of the August 1, 2002, interim final rule, including the Environmental Assessment/Regulatory Impact Review/ Final Regulatory Flexibility Analysis (EA/RIR/FRFA), and public comments and responses are available upon request from the Regional Administrator. The EA/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135, e-mail *Thomas.Warren@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2002, NMFS published an interim final rule (67 FR 50292), which implemented the Settlement Agreement Among Certain Parties in Conservation Law Foundation, et al. v. Evans, et al,., intended to reduce overfishing of species managed under the Northeast Multispecies FMP while the New England Fishery Management Council developed Amendment 13, which is intended to bring the FMP into compliance with the Sustainable Fisheries Act. The August 1, 2002, interim final rule was consistent with a Remedial Order issued on May 23, 2002, by the U.S. District Court for the District of Columbia (Court). The interim rule implemented restrictions consistent with the Settlement Agreement, approved by the Court. The management measures implemented by the August 1, 2002, interim rule are intended to remain in effect until implementation of Amendment 13 to the FMP, which, based on the May 23, 2002, Court Order, was required to be in effect no later than August 22, 2003.

Due to the need for additional time to address concerns related to the Northeast Fisheries Science Center's trawl survey and the new biological reference points that have been developed for multispecies stocks, NMFS and two of the plaintiffs filed a motion with the Court requesting an extension of the August 22, 2003, implementation schedule until May 1, 2004. On December 4, 2002, the Court granted an extension of the Court-ordered timeline for Amendment 13 implementation until May 1, 2004.

Pursuant to section 305(c) of the Magnuson-Stevens Act, the August 1, 2002, interim rule may remain in effect for 180 days and may be extended through publication in the **Federal Register**, for one additional period of 180 days, provided the public has had an opportunity to comment on the interim rule. The public was given such opportunity to comment in the form of a proposed rule before the final interim rule was published. NMFS has determined that it is necessary to continue this interim rule to reduce overfishing. Because the management measures implemented by the August 1, 2002, interim final rule were written in such a way as to be effective indefinitely, no formal regulatory action is necessary. Instead, to comply with section 305(c) of the Magnuson-Stevens Act, it is necessary only to publish in the **Federal Register** a Notice of Continuation of Regulations to inform the public that NMFS has decided to continue these regulations. The impacts of implementing the Settlement Agreement measures for a period of 1 year were analyzed in the Environmental Assessment completed for the August 1, 2002, interim final rule.

Because the schedule for implementation of Amendment 13 was extended until May 1, 2004, additional Secretarial action may be necessary to continue sufficient management measures to reduce overfishing beyond July 27, 2003, until the implementation of Amendment 13 (May 1, 2004). Any such action would be accomplished through additional rulemaking. Should NMFS determine that such action is unnecessary, a rule may need to be published to restore certain regulations that existed prior to publication of the August 1, 2002, interim rule.

The August 1, 2002 interim final rule was determined to be significant for purposes of Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 16, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–1374 Filed 1–16–03; 4:05 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 011303D]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closures and openings.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the interim 2003 total allowable catch (TAC) of Atka mackerel in these areas. NMFS is also announcing the opening and closing dates of the first and second directed fisheries within the harvest limit area (HLA) in Statistical Areas (areas) 542 and 543. These actions are necessary to prevent exceeding the HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the interim 2003 Atka mackerel TAC.

DATES: Prohibition of directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea: Effective 1200 hrs, Alaska local time (A.l.t.), January 22, 2003, until superseded by the notice of Final 2003 Harvest Specifications for Groundfish, which will be published in the **Federal Register**. The first directed fisheries in the HLA in area 542 and area 543 are open effective 1200 hrs, A.l.t., January 24, 2003. The first HLA

fishery in area 542 will remain open until 1200 hrs, A.l.t., January 29, 2003. The first HLA fishery in area 543 will remain open until 1200 hrs, A.l.t., January 28, 2003. The second directed fisheries in the HLA in area 542 and area 543 open effective 1200 hrs, A.l.t., January 31, 2003. The second HLA fishery in area 542 will remain open until 1200 hrs, A.l.t., February 5, 2003. The second HLA fishery in area 543 will remain open until 1200 hrs, A.l.t., February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim TAC for other gear in the Eastern Aleutian District and the Bering Sea subarea is 2,815 metric tons (mt) as established by the Interim 2003 Harvest Specifications for Groundfish (67 FR 78739, December 26, 2002). See §§ 679.20(c)(2)(ii) and 679.20(a)(8)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim other gear TAC for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,215 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543 at 48 hours after the closure of the area 541 Atka mackerel directed fishery. The Regional Administrator has established the opening date for the second HLA directed fisheries as 48 hours after the last closure of the first HLA fisheries in either 542 or 543. Consequently, NMFS is opening and closing directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the DATES section of this notice.

In accordance with § 679.20(a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS.

In accordance with § 679.20(a)(8)(ii)(C)(*1*), the HLA portion of the interim TAC in areas 542 and 543 are 7,382 mt and 6,110 mt respectively. Based on those apportionments and the proportion of the number of vessels in each fishery compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543, the harvest limit for each HLA directed fishery in areas 542 and 543 are as follows: For the first directed fishery in area 542, 3,691 mt, for the first directed fishery in area 543, 3,055 mt, for the second directed fishery in area 542, 3,691 mt, for the second directed fishery in area 543, 3,055 mt. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the dates and times listed under the **DATES** section of this notice.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fisheries, lead to exceeding the interim TACs, and therefore reduce the public's ability to use and enjoy the fishery resource.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 15, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1376 Filed 1–16–03; 3:13 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 011402B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the first seasonal allowance of the pollock interim total allowable catch (TAC) for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish of the GOA, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The first seasonal allowance of the pollock interim TAC in Statistical Area 630 of the GOA is 1,222 metric tons (mt) as established by the interim 2003 harvest specifications for groundfish of the GOA (67 FR 78733, December 26, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal allowance of the pollock interim TAC in

Statistical Area 630 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 622 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 15, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1375 Filed 1–16–03; 3:13 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 011403C]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Lottery in Areas 542 and 543

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification.

SUMMARY: NMFS is notifying registered vessels of their assignments for the A season Atka mackerel fishery in harvest limit area (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the A season HLA limits established for area 542 and area 543 pursuant to the interim 2003 harvest specifications for groundfish.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 22, 2003, until 1200 hrs, A.l.t., April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(8)(iii)(A), all vessels using trawl gear for directed fishing for Atka mackerel in the HLA are required to register with NMFS. In accordance with § 679.20(a)(8)(iii)(A)(1), all vessels using trawl gear for directed fishing for Atka mackerel in the HLA that wish to participate in the A season HLA fishery must register with NMFS by 4:30 pm, A.l.t. on the first working day following January 1. Eight vessels have registered with NMFS to fish in the A season HLA fisheries in areas 542 and/or 543. In order to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over time and in accordance with § 679.20(a)(8)(iii)(B), the Administrator, Alaska Region, NMFS, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment.

Vessels that will participate in the first HLA directed fishery in area 542 and/or the second HLA directed fishery in area 543 in accordance with § 679.20(a)(8)(iii) are as follows: Federal Fishery Permit number (FFP) 3423 Alaska Warrior, FFP 2733 Seafreeze Alaska, FFP 2134 Ocean Peace, and FFP 3819 Alaska Spirit.

Vessels that will participate in the first HLA directed fishery in area 543 and/or the second HLA directed fishery in area 542 in accordance with § 679.20(a)(8)(iii) are as follows: FFP 4093 Alaska Victory, FFP 2443 Alaska Juris, FFP 3400 Alaska Ranger, and FFP 3835 Seafisher.

Classification

This action responds to the best available information. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately notify each vessel of its assignment to allow the harvest of the A season HLA fisheries in area 542 and area 543 constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(a)(8)(iii), as such procedures would be unnecessary and contrary to the public interest. This notice merely advises the owners of these vessels of the results of a random assignment required by regulation. Similarly, the need to implement these measures in a timely fashion and to notify each vessel of their assignment to allow the harvest of the A season HLA limits established for area 542 and area 543 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by §§ 679.20 and 679.22 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 15, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1379 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 14
Wednesday, January 22, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2606

RIN 3209–AA18

Privacy Act Rules

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics is issuing a proposed rule that would establish procedures relating to access, maintenance, disclosure, and amendment of records which are in OGE systems of records under the Privacy Act of 1974, and that would establish rules of conduct for OGE personnel who have responsibilities under that Act.

DATES: Public comments are invited and must be received by March 24, 2003.

ADDRESSES: Comments should be sent to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Ms. Newton. Electronic comments may also be sent to OGE's Internet E-mail address at *usoge@oge.gov* (such comments should include the caption "Proposed Privacy Act Rules").

FOR FURTHER INFORMATION CONTACT: Elaine Newton, Attorney-Advisor, Office of Government Ethics, telephone: 202–208–8000, extension 1137; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, at 5 U.S.C. 552a(f), requires every agency that maintains a system of records covered by the Privacy Act to promulgate regulations that: (1) Establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him; (2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual; (3) establish procedures for the disclosure to the data subject upon his request of his record or information pertaining to him, including special procedures if deemed necessary, for the disclosure to the data subject of medical records, including psychological records, pertaining to him; (4) establish procedures for reviewing a request from the data subject concerning the amendment of any record or information pertaining to the data subject, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each data subject to be able to exercise fully his rights under the Privacy Act; and (5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of the first copy of the record provided as well as the cost of any search for and review of the record. In addition, section 552a(e)(9) of the Privacy Act requires an agency to establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of the Act, including any other rules and procedures adopted pursuant to the Act and the penalties for noncompliance.

The Privacy Act, at 5 U.S.C. 552a(e)(4), also requires each agency that maintains a system of records to publish in the **Federal Register** upon establishment or revision a notice of the existence and character of the system of records. In a separate notice published in the **Federal Register** today, OGE is proposing to revise and rename two existing Government-wide systems of records under the Privacy Act covering Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records (OGE/GOVT–1) and Executive Branch Confidential Financial Disclosure Reports (OGE/GOVT–2). In addition, OGE is issuing, for the first time, five internal systems of records to cover current and former OGE employees: Pay, Leave and Travel Records (OGE/INTERNAL–1), Telephone Call Detail Records (OGE/INTERNAL–2), Grievance Records (OGE/INTERNAL–3), Computer Systems Activity and Access Records (OGE/INTERNAL–4), and Employee Locator and Emergency Notification Records (OGE/INTERNAL–5).

I. General Provisions

As proposed, subpart A of the rule would contain general provisions setting forth the purpose of the regulation (§ 2606.101), definitions that apply throughout the part (§ 2606.102), and a description of OGE's executive branch Governmentwide and internal systems of records (§ 2606.103). As proposed, subpart A of the rule would also specify OGE and agency responsibilities for the records systems (§ 2606.104), and would establish procedures whereby an individual can be notified in response to his request if any OGE system of records named by the individual contains a record pertaining to him (§ 2606.105).

In addition, subpart A would set forth Privacy Act rules of conduct and responsibilities for OGE employees who design, develop, operate, or maintain a system of records (§ 2606.106). These conduct and responsibilities rules would not apply to employees of other agencies concerned; they would be subject to their own agency's Privacy Act conduct and responsibilities rules. These conduct and responsibilities rules are authorized by subsection (e)(9) of the Privacy Act, and therefore are separate from the Standards of Ethical Conduct in 5 CFR part 2635. Various provisions in the Standards of Ethical Conduct (*e.g.*, 5 CFR 2635.703 regarding use of nonpublic information) would also apply to an employee's conduct as to records covered by the Privacy Act.

Overall, these proposed OGE Privacy Act rules would apply both to records in the new OGE internal systems of records as maintained by OGE itself, as well as the newly updated and revised OGE executive branch Governmentwide systems of records which are maintained both by OGE and departments and agencies throughout the executive branch. With respect to those other departments and agencies, these proposed regulations would set forth the overall procedures for the Governmentwide systems, while recognizing that most agencies have their own Privacy Act regulations specifying appropriate appeals officials for access and amendment denials as well as schedules of fees. The details of these agency variations are set forth in

the relevant proposed sections of the regulatory text, rather than here.

II. Access to Records and Accounting of Disclosures

Subpart B of the rule, as proposed, describes the access process, and the accounting of disclosures process. Section 2606.201 would detail what a requester would have to submit to obtain access to a record pertaining to him in a system of records. Section 2606.202 would set forth the procedures when a request for access is received. Section 2606.203 would set forth the procedures for granting access, including the forms of identification necessary to gain access to requested records. Section 2606.203 would also state how a record in a system of records may be accessed on behalf of a minor, by a legal guardian, when the requester is accompanied by another individual, or when the request is for certain medical records. Section 2606.204 would describe the procedure for appealing a denial of an initial request for access to a record or a no record response. Section 2606.205 would describe what should be included in the official decision on an appeal from an initial denial of access. Section 2606.206 would set the fees that may be charged by the Office (or another agency not having its own Privacy Act fee schedule) for making copies of a record. Section 2606.207 would describe the accounting of disclosures that are kept with respect to OGE's systems of records.

III. Amendment of Records

As proposed, subpart C of the rule explains how a data subject may seek to amend his record. Section 2606.301 would set forth the procedures for requesting a record be amended, including the information that must be contained in the request, and would state that the requester has the burden of proof to justify an amendment request. Section 2606.302 would set forth the procedures to be followed when an amendment request is received.

If a request to amend a record is denied, the requester would be able to appeal the denial by following the procedures that would be set forth in § 2606.303. Section 2606.304 would set forth the procedures for responding to an appeal from an initial denial of a request to amend a record. Section 2606.304 also would set forth the information that should be included in the official appeal determination. Finally, § 2606.304(d) would provide procedures for a data subject to file a concise statement setting forth the reasons for his disagreement with the refusal to amend his records.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

This proposed rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 60-day comment period. Interested persons are invited to submit written comments to the Office of Government Ethics on this proposed regulation, to be received on or before March 24, 2003. The Office of Government Ethics will review all comments received and consider making any modifications to this proposed rule that appear warranted in issuing its final rule.

Executive Order 12866

In promulgating this proposed rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has also been approved by the Office of Management and Budget under the Executive Order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this proposed rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it will primarily affect current and former executive branch Federal employees.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subpart II), the proposed rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects in 5 CFR Part 2606

Administrative practice and procedure, Archives and records, Conflict of interests, Government employees, Privacy Act.

Approved: January 10, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is proposing to amend subchapter A of chapter XVI of title 5 of the Code of Federal Regulations by adding part 2606 to read as follows:

PART 2606—PRIVACY ACT RULES

Subpart A—General Provisions

Sec.
2606.101 Purpose.
2606.102 Definitions.
2606.103 Systems of records.
2606.104 OGE and agency responsibilities.
2606.105 Rules for individuals seeking to ascertain if they are the subject of a record.
2606.106 OGE employee Privacy Act rules of conduct and responsibilities.

Subpart B—Access to Records and Accounting of Disclosures

2606.201 Requests for access.
2606.202 OGE or other agency action on requests.
2606.203 Granting access.
2606.204 Request for review of an initial denial of access.
2606.205 Response to a request for review of an initial denial of access.
2606.206 Fees.
2606.207 Accounting of disclosures.

Subpart C—Amendment of Records

2606.301 Requests to amend records.
2606.302 OGE or other agency action on requests.
2606.303 Request for review of an initial refusal to amend a record.
2606.304 Response to a request for review of a refusal to amend; disagreement statements.

Authority: 5 U.S.C. 552a, 5 U.S.C. App. (Ethics in Government Act of 1978).

Subpart A—General Provisions

§ 2606.101 Purpose.

This part sets forth the regulations of the Office of Government Ethics (OGE) implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a). It governs access, maintenance, disclosure, and amendment of records contained in OGE's executive branch Governmentwide and internal systems of records, and establishes rules of conduct for OGE employees who have responsibilities under the Act.

§ 2606.102 Definitions.

For the purpose of this part, the terms listed below are defined as follows:

Access means providing a copy of a record to, or allowing review of the original record by, the data subject or the requester's authorized representative, parent or legal guardian;

Act means the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

Amendment means the correction, addition, deletion, or destruction of a record or specific portions of a record;

Data subject means the individual to whom the information pertains and by whose name or other individual identifier the information is maintained or retrieved;

He, his, and *him* include she, hers and her.

Office or *OGE* means the U.S. Office of Government Ethics;

System manager means the Office or other agency official who has the authority to decide Privacy Act matters relative to a system of records;

System of records means a group of any records containing personal information controlled and managed by OGE from which information is retrieved by the name of an individual or by some personal identifier assigned to that individual;

Working day as used in calculating the date when a response is due means calendar days, excepting Saturdays, Sundays, and legal public holidays.

§ 2606.103 Systems of records.

(a) *Governmentwide systems of records.* The Office of Government Ethics maintains two executive branch Governmentwide systems of records: the OGE/GOVT–1 system of records, comprised of Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records; and the OGE/GOVT–2 system of records, comprised of Executive Branch Confidential Financial Disclosure Reports. These Governmentwide systems of records are maintained by OGE, and through Office delegations of authority, by Federal executive branch departments and agencies with regard to their own employees, applicants for employment, individuals nominated to a position requiring Senate confirmation, candidates for a position, and former employees.

(b) *OGE Internal systems of records.* The Office of Government Ethics internal systems of records are under OGE's physical custody and control and are established and maintained by the Office on current and former OGE employees regarding matters relating to the internal management of the Office. These systems of records consist of the OGE/INTERNAL–1 system, comprised of Pay, Leave and Travel Records; the OGE/INTERNAL–2 system, comprised of Telephone Call Detail Records; the OGE/INTERNAL–3 system, comprised of Grievance Records; the OGE/INTERNAL–4 system, comprised of Computer Systems Activity and Access Records; and the OGE/INTERNAL–5 system, comprised of Employee Locator and Emergency Notification Records.

§ 2606.104 OGE and agency responsibilities.

(a) The procedures in this part apply to:

(1) All initial Privacy Act access and amendment requests regarding records contained in an OGE system of records.

(2) Administrative appeals from an Office or agency denial of an initial request for access to, or to amend, records contained in an OGE system of records.

(b) For records contained in an OGE Governmentwide system of records, each agency is responsible (unless specifically excepted by the Office) for responding to initial requests for access or amendment of records in its custody and administrative appeals of denials thereof.

(c) For records and material of another agency that are in the custody of OGE, but not under its control or ownership, OGE may refer a request for the records to that other agency, consult with the other agency prior to responding, or notify the requester that the other agency is the proper agency to contact.

§ 2606.105 Rules for individuals seeking to ascertain if they are the subject of a record.

An individual seeking to ascertain if any OGE system of records contains a record pertaining to him must follow the access procedures set forth at § 2606.201(a) and (b).

§ 2606.106 OGE employee Privacy Act rules of conduct and responsibilities.

Each OGE employee involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record covered by the Privacy Act, shall comply with the pertinent provisions of the Act relating to the treatment of such information. Particular attention is directed to the following provisions of the Privacy Act:

(a) 5 U.S.C. 552a(e)(7)—The requirement to maintain in a system of records no record describing how any individual exercises rights guaranteed by the First Amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(b) 5 U.S.C. 552a(b)—The requirement that no agency shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, except under certain limited conditions specified in subsections (b)(1) through (b)(12) of the Privacy Act.

(c) 5 U.S.C. 552a(e)(1)—The requirement for an agency to maintain in its systems of records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by Executive order.

(d) 5 U.S.C. 552a(e)(2)—The requirement to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.

(e) 5 U.S.C. 552a(e)(3)—The requirement to inform each individual asked to supply information to be maintained in a system of records the authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purpose or purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effects on the individual, if any, of not providing all or any part of the requested information.

(f) 5 U.S.C. 552a(b) and (e)(10)—The requirement to comply with established safeguards and procedures to ensure the security and confidentiality of records and to protect personal data from any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual on whom information is maintained in a system of records.

(g) 5 U.S.C. 552a(c)(1), (c)(2) and (c)(3)—The requirement to maintain an accounting of specified disclosures of personal information from systems of records in accordance with established Office procedures.

(h) 5 U.S.C. 552a(e)(5) and (e)(6)—The requirements to maintain all records in a system of records which are used by the agency in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination; and to make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes, prior to disseminating any record about an individual to any person other than an agency (unless the dissemination is required by the Freedom of Information Act, 5 U.S.C. 552).

(i) 5 U.S.C. 552a(d)(1), (d)(2) and (d)(3)—The requirement to permit individuals to have access to records pertaining to themselves in accordance with established Office procedures and to have an opportunity to request that such records be amended.

(j) 5 U.S.C. 552a(c)(4) and (d)(4)—The requirement to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act of any record that has been disclosed to the person or agency if an accounting of the disclosure was made; and, in any disclosure of information about which an individual has filed a statement of disagreement, to note clearly any portion of the record which is disputed and to provide copies of the statement (and if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested) to persons or other agencies to whom the disputed record has been disclosed.

(k) 5 U.S.C. 552a(n)—The requirement for an agency not to sell or rent an individual's name or address, unless such action is specifically authorized by law.

(l) 5 U.S.C. 552a(i)—The criminal penalties to which an employee may be subject for failing to comply with certain provisions of the Privacy Act.

Subpart B—Access to Records and Accounting of Disclosures

§ 2606.201 Requests for access.

(a) *Records in an OGE Governmentwide system of records.* An individual requesting access to records pertaining to him in an OGE Governmentwide system of records should submit a written request, which includes the words "Privacy Act Request" on both the envelope and at the top of the request letter, to the appropriate system manager as follows:

(1) *Records filed directly with OGE by non-OGE employees:* The Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

(2) *Records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency:* The DAEO at the department or agency concerned; or

(3) *Records filed with the Federal Election Commission by candidates for President or Vice President:* The General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(b) *Records in an OGE Internal System of Records.* An individual requesting access to records pertaining to him in an OGE internal system of records should submit a written request, which includes the words "Privacy Act Request" on both the envelope and at the top of the request letter, to the Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(c) *Content of request.* (1) A request should contain a specific reference to the OGE system of records from which access to the records is sought. Notices of OGE systems of records subject to the Privacy Act are published in the **Federal Register**, and copies of the notices are available on OGE's Web site at *http://www.usoge.gov*, or upon request from OGE's Office of General Counsel and Legal Policy. A biennial compilation of such notices also is made available online and published by the Office of Federal Register at the GPO Access Web site (*http://www.access.gpo.gov/su_docs/aces/PrivacyAct.shtml*) in accordance with 5 U.S.C. 552a(f) of the Act.

(2) If the written inquiry does not refer to a specific system of records, it should include other information that will assist in the identification of the records for which access is being requested. Such information may include, for example, the individual's full name (including her maiden name, if pertinent), dates of employment, social security number (if any records in the system include this identifier), current or last place and date of Federal employment. If the request for access follows a prior request to determine if an individual is the subject of a record, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence, or a copy of the response to that request is attached.

(3) The request should state whether the requester wants a copy of the record, or wants to examine the record in person.

§ 2606.202 OGE or other agency action on requests.

A response to a request for access should include the following:

(a) A statement that there is a record or records as requested or a statement that there is not a record in the system of records;

(b) The method of access (if a copy of all the records requested is not provided with the response);

(c) The amount of any fees to be charged for copies of records under § 2606.206 of this part or other agencies' Privacy Act regulations as referenced in that section;

(d) The name, title, and telephone number of the official having operational control over the record; and

(e) If the request is denied in whole or in part, or no record is found in the system, a statement of the reasons for the denial, or a statement that no record has been found, and notice of the procedures for appealing the denial or no record finding.

§ 2606.203 Granting access.

(a) The methods for allowing access to records, when such access has been granted by OGE or the other agency concerned are:

(1) Examination in person in a designated office during the hours specified by OGE or the other agency;

(2) Providing photocopies of the records; or

(3) Transfer of records at the option of OGE or the other agency to another more convenient Federal facility.

(b) When a requester has not indicated whether he wants a copy of the record, or wants to examine the record in person, the appropriate system manager may choose the means of granting access. However, the means chosen should not unduly impede the data subject's right of access. A data subject may elect to receive a copy of the records after having examined them.

(c) Generally, OGE or the other agency concerned will not furnish certified copies of records. When copies are to be furnished, they may be provided as determined by OGE or the other agency and may require payment of any fee levied in accordance with an established fee schedule.

(d) When the data subject seeks to obtain original documentation, the

Office and the other agencies concerned reserve the right to limit the request to copies of the original records. Original records should be made available for review only in the presence of the appropriate system manager or his designee.

Note to paragraph (d) of § 2606.203: Section 2071(a) of title 18 of the United States Code makes it a crime to conceal, remove, mutilate, obliterate, or destroy any record filed in a public office, or to attempt to do so.

(e) *Identification requirements*—(1) *Access granted in person*—(i) *Current or former employees.* Current or former employees requesting access to records pertaining to them in a system of records may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have their identity verified by visual observation. If the current or former employee cannot be so identified by the official having operational control over the records, adequate identification documentation will be required, *e.g.*, an employee identification card, driver's license, passport, or other officially issued document with a picture of the person requesting access.

(ii) *Other than current or former employees.* Individuals other than current or former employees requesting access to records pertaining to them in a system of records must produce adequate identification documentation prior to being granted access. The extent of the identification documentation required will depend on the type of records to be accessed. In most cases, identification verification will be accomplished by the presentation of two forms of identification with a picture of the person requesting access (such as a driver's license and passport). Any additional requirements are specified in the system notices published pursuant to subsection (e)(4) of the Act.

(2) *Access granted by mail.* For records to be accessed by mail, the appropriate system manager shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to the data subject of information required to be made available to the public by 5 U.S.C. 552, the Freedom of Information Act. When, in the opinion of the system manager, the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity may be required.

(3) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation, the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a criminal fine of up to $5,000 under subsection (i)(3) of the Act. In addition, depending upon the sensitivity of the records sought to be accessed, the appropriate system manager or official having operational control over the records may require such further reasonable assurances as may be considered appropriate, *e.g.*, statements of other individuals who can attest to the identity of the data subject. No verification of identity will be required of data subjects seeking access to records which are otherwise available to any person under 5 U.S.C. 552.

(4) *Inadequate identification.* If the official having operational control over the records in a system of records determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the appropriate system manager prior to denying the individual access. Whenever the system manager determines, in accordance with the procedures herein, that access will not be granted, the response will also include a statement of the procedures to obtain a review of the decision to deny access in accordance with § 2606.205.

(f) *Access by the parent of a minor, or legal guardian.* A parent of a minor, upon presenting suitable personal identification as otherwise provided under this section, may access on behalf of the minor any record pertaining to the minor in a system of records. A legal guardian, upon presentation of documentation establishing guardianship and suitable personal identification as otherwise provided under this section, may similarly act on behalf of a data subject declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction. Minors are not precluded from exercising on their own behalf rights given to them by the Privacy Act.

(g) *Accompanying individual.* A data subject requesting access to his records in a system of records may be accompanied by another individual of the data subject's choice during the course of the examination of the record. The official having operational control of the record may require the data subject making the request to submit a signed statement authorizing the accompanying individual's access to the record.

(h) *Access to medical records.* When a request for access involves medical or psychological records that the appropriate system manager believes requires special handling, the data subject should be advised that the material will be provided only to a physician designated by the data subject. Upon receipt of the designation and upon verification of the physician's identity as otherwise provided under this section, the records will be made available to the physician, who will disclose those records to the data subject.

(i) *Exclusion.* Nothing in these regulations permits a data subject's access to any information compiled in reasonable anticipation of a civil action or proceeding (see subsection (d)(5) of the Act).

(j) *Maximum access.* This regulation is not intended to preclude access by a data subject to records that are available to that individual under other processes, such as the Freedom of Information Act (5 U.S.C. 552) or the rules of civil or criminal procedure, provided that the appropriate procedures for requesting access thereunder are followed.

§ 2606.204 Request for review of an initial denial of access.

(a)(1) A data subject may submit a written appeal of the decision by OGE or the other agency to deny an initial request for access to records or a no record response.

(i) For records filed directly with OGE, the appeal must be submitted to the Director, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(ii) For records in OGE's executive branch Governmentwide systems of records that are filed directly with an agency (including the Federal Election Commission) other than OGE, the appeal must be submitted to the Privacy Act access appeals official as specified in the agency's own Privacy Act regulations or the respective head of the agency concerned if it does not have any Privacy Act regulations.

(2) The words "Privacy Act Appeal" should be included on the envelope and at the top of the letter of appeal.

(b) The appeal should contain a brief description of the records involved or copies of the correspondence from OGE

or the agency in which the initial request for access was denied. The appeal should attempt to refute the reasons given by OGE or the other agency concerned in its decision to deny the initial request for access or the no record finding.

§ 2606.205 Response to a request for review of an initial denial of access.

(a) If the OGE Director or agency reviewing official determines that access to the records should be granted, the response will state how access will be provided if the records are not included with the response.

(b) Any decision that either partially or fully affirms the initial decision to deny access shall inform the requester of the right to seek judicial review of the decision in accordance with 5 U.S.C. 552a(g) of the Privacy Act.

§ 2606.206 Fees.

(a) *Fees for records filed with OGE—*(1) *Services for which fees will not be charged:*

(i) The search and review time expended by OGE to produce a record;

(ii) The first copy of the records provided; or

(iii) The Office of Government Ethics making the records available to be personally reviewed by the data subject.

(2) *Additional copies of records.* When additional copies of records are requested, an individual may be charged $.15 per page.

(i) *Notice of anticipated fees in excess of $25.00.* If the charge for these additional copies amounts to more than $25.00, the requester will be notified and payment of fees may be required before the additional copies are provided, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

(ii) *Advance payments.* An advance payment before additional copies of the records are made will be required if:

(A) The Office estimates or determines that the total fee to be assessed under this section is likely to exceed $250.00. When a determination is made that the allowable charges are likely to exceed $250.00, the requester will be notified of the likely cost and will be required to provide satisfactory assurance of full payment where the requester has a history of prompt payment of Privacy Act fees, or will be required to submit an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(B) The requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing). In such cases, the requester may be required to pay the full amount owed plus any applicable interest as provided by paragraph (a)(2)(iii) of this section, and to make an advance payment of the full amount of the estimated fee before the Office begins to process a new request.

(iii) *Interest charges.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of billing. To collect unpaid bills, the Office will follow the provisions of the Debt Collection Act of 1982, as amended (96 Stat. 1749 *et seq.*) and the Debt Collection Improvement Act of 1996 (110 Stat. 1321–358 *et seq.*), including the use of consumer reporting agencies, collection agencies, and offset.

(iv) *Remittance.* Remittance should be made by either a personal check, bank draft or a money order that is payable to the Department of the Treasury of the United States.

(b) *Fees for records filed with agencies other than OGE.* An agency shall apply its own Privacy Act fee schedule for records in OGE's executive branch Governmentwide systems that are filed directly with the agency. An agency that does not have a Privacy Act fee schedule may apply the fee schedule in this section.

§ 2605.207 Accounting of disclosures.

(a) The Office of Government Ethics or the other agency concerned will maintain an accounting of disclosures in cases where records about the data subject are disclosed from OGE's system of records except—

(1) When the disclosure is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552); or

(2) When the disclosure is made to those officers and employees of OGE or the other agency which maintains the records who have a need for the records in the performance of their duties.

(b) This accounting of disclosures will be retained for at least five years or for the life of the record, whichever is longer, and will contain the following information:

(1) A brief description of the record disclosed;

(2) The date, nature, and purpose for the disclosure; and

(3) The name and address of the individual, agency, or other entity to whom the disclosure is made.

(c) Under sections 102 and 105 of the Ethics in Government Act, 18 U.S.C. 208(d) and 5 CFR parts 2634 and 2640 of OGE's executive branch regulations, a requester other than the data subject must submit a signed, written application on the OGE Form 201 or agency equivalent form to inspect or receive copies of certain records, such as SF 278 Public Financial Disclosure Reports, Certificates of Divestiture, 18 U.S.C. 208(b)(1) and (b)(3) waivers, and OGE certified qualified blind and diversified trust instruments and other publicly available qualified trust materials. The written application requests the name, occupation and address of the requester as well as lists the prohibitions on obtaining or using the records. These applications are used as the accounting of disclosures for these records.

(d) Except for the accounting of a disclosure made under subsection (b)(7) of the Privacy Act for a civil or criminal law enforcement activity that is authorized by law, the accounting of disclosures will be made available to the data subject upon request in accordance with the access procedures of this part.

Subpart C—Amendment of Records

§ 2606.301 Requests to amend records.

(a) *Amendment request.* A data subject seeking to amend a record or records that pertain to him in a system of records must submit his request in writing in accordance with the following procedures, unless this requirement is waived by the appropriate system manager. Records not subject to the Privacy Act will not be amended in accordance with these provisions.

(b) *Addresses*—(1) *Records in an OGE Governmentwide system of records.* A request to amend a record in an OGE Governmentwide system of records should be sent to the appropriate system manager as follows:

(i) *Records filed directly with OGE by non-OGE employees:* The Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

(ii) *Records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency:* The DAEO at the department or agency concerned; or

(iii) *Records filed with the Federal Election Commission by candidates for President or Vice President:* The General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(2) *Records in an OGE internal system of records.* A request to amend a record in an OGE Internal system of records should include the words "Privacy Act Amendment Request" on both the envelope and at the top of the request letter, and should be sent to the Deputy

Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(c) *Contents of request.* (1) A request to amend a record in an OGE Governmentwide system of records or an OGE internal system of records should include the words "Privacy Act Amendment Request" on both the envelope and at the top of the request letter.

(2) The name of the system of records and a brief description of the record(s) proposed for amendment must be included in any request for amendment. In the event the request to amend the record(s) is the result of the data subject's having gained access to the record(s) in accordance with the provisions concerning access to records as set in subpart B, copies of previous correspondence between the requester and OGE or the agency will serve in lieu of a separate description of the record.

(3) The exact portion of the record(s) the data subject seeks to have amended should be indicated clearly. If possible, proposed alternative language should be set forth, or, at a minimum, the reasons why the data subject believes his record is not accurate, relevant, timely, or complete should be set forth with enough particularity to permit OGE or the other agency concerned not only to understand the data subject's basis for the request, but also to make an appropriate amendment to the record.

(d) *Burden of proof.* The data subject has the burden of proof when seeking the amendment of a record. The data subject must furnish sufficient facts to persuade the appropriate system manager of the inaccuracy, irrelevance, untimeliness, or incompleteness of the record.

(e) *Identification requirement.* When the data subject's identity has been previously verified pursuant to § 2606.203, further verification of identity is not required as long as the communication does not suggest a need for verification. If the data subject's identity has not been previously verified, the appropriate system manager may require identification validation as described in § 2606.203.

§ 2606.302 OGE or other agency action on requests.

(a) *Time limit for acknowledging a request for amendment.* To the extent possible, OGE or the other agency concerned will acknowledge receipt of a request to amend a record or records within 10 working days.

(b) *Initial determination on an amendment request.* The decision of OGE or the other agency in response to a request for amendment of a record in a system of records may grant in whole, or deny any part of the request to amend the record(s).

(1) If OGE or the other agency concerned grants the request, the appropriate system manager will amend the record(s) and provide a copy of the amended record(s) to the data subject. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record that an amendment has been made and give the substance of the amendment. Where practicable, the system manager shall send a copy of the amended record to previous recipients.

(2) If OGE or the other agency concerned denies the request in whole or in part, the reasons for the denial will be stated in the response letter. In addition, the response letter will state:

(i) The name and address of the official with whom an appeal of the denial may be lodged; and

(ii) A description of any other procedures which may be required of the data subject in order to process the appeal.

§ 2606.303 Request for review of an initial refusal to amend a record.

(a)(1) A data subject may submit a written appeal of the initial decision by OGE or an agency denying a request to amend a record in an OGE system of records.

(i) For records which are filed directly with OGE, the appeal must be submitted to the Director, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(ii) For records which are filed directly with an agency (including the Federal Election Commission) other than OGE, the appeal must be submitted to the Privacy Act amendments appeals official as specified in the agency's own Privacy Act regulations, or to the respective head of the agency concerned if it does not have Privacy Act regulations.

(2) The words "Privacy Act Appeal" should be included on the envelope and at the top of the letter of the appeal.

(b) The request for review should contain a brief description of the record(s) involved or copies of the correspondence from OGE or the agency in which the request to amend was denied, and the reasons why the data subject believes that the disputed information should be amended.

§ 2606.304 Response to a request for review of an initial refusal to amend; disagreement statements.

(a) The OGE Director or agency reviewing official should make a final determination in writing not later than 30 days from the date the appeal was received. The 30-day period may be extended for good cause. Notice of the extension and the reasons therefor will be sent to the data subject within the 30-day period.

(b) If the OGE Director or agency reviewing official determines that the record(s) should be amended in accordance with the data subject's request, the OGE Director or agency reviewing official will take the necessary steps to advise the data subject, and to direct the appropriate system manager:

(1) to amend the record(s), and

(2) to notify previous recipients of the record(s) for which there is an accounting of disclosure that the record(s) have been amended.

(c) If the appeal decision does not grant in full the request for amendment, the decision letter will notify the data subject that he may:

(1) Obtain judicial review of the decision in accordance with the terms of the Privacy Act at 5 U.S.C. 552a(g); and

(2) File a statement setting forth his reasons for disagreeing with the decision.

(d)(1) A data subject's disagreement statement must be concise. The appropriate system manager has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues.

(2) In any disclosure of information about which an individual has filed a statement of disagreement, the appropriate system manager will clearly note any disputed portion(s) of the record(s) and will provide a copy of the statement to persons or other agencies to whom the disputed record or records has been disclosed and for whom an accounting of disclosure has been maintained. A concise statement of the reasons for not making the amendments requested may also be provided.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103580–02]

RIN 1545–BA53

Noncompensatory Partnership Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the tax treatment of noncompensatory options and convertible instruments issued by a partnership. The proposed regulations generally provide that the exercise of a noncompensatory option does not cause the recognition of immediate income or loss by either the issuing partnership or the option holder. The proposed regulations also modify the regulations under section 704(b) regarding the maintenance of the partners' capital accounts and the determination of the partners' distributive shares of partnership items. Additionally, the proposed regulations contain a characterization rule providing that the holder of a noncompensatory option is treated as a partner under certain circumstances. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by April 29, 2003. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for May 20, 2003, at 10 a.m. must be received by April 29, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–103580–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:ITA:RU (REG–103580–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS internet site at *http://www.irs.gov/regs*. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Audrey W. Ellis, (202) 622–3060; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

In a variety of situations, partnerships issue options or convertible instruments that allow the holder to acquire by purchase or conversion an equity interest in the partnership. On June 5, 2000, Treasury and the IRS issued Notice 2000–29 (2000–1 C.B. 1241) inviting public comment on the Federal income tax treatment of the exercise of an option to acquire a partnership interest, the exchange of convertible debt for a partnership interest, and the exchange of a preferred interest in a partnership for a common interest in that partnership.

In response to Notice 2000–29, Treasury and the IRS received a number of comments. Many commentators requested guidance on the treatment of options and other instruments that are issued by partnerships in connection with the performance of services (compensatory options).

These proposed regulations apply to certain call options, warrants, convertible debt, and convertible preferred equity that are not issued in connection with the performance of services (noncompensatory options). To expedite the issuance of guidance, these regulations do not address compensatory options. Nothing in the proposed regulations should be construed as creating any inference regarding the proper Federal income tax treatment of compensatory options. However, Treasury and the IRS are working on future guidance that will address the Federal income tax consequences of compensatory options and invite comments. In particular, Treasury and the IRS request comments on the proposed amendment to § 1.721–1(b)(1) that was published in the **Federal Register** on June 3, 1971 (36 FR 10787), and, more particularly, on the application of section 83 to the issuance of compensatory options and partnership capital interests in connection with the performance of services. In addition, Treasury and the IRS request comments on how to coordinate the tax treatment of partnership profits interests issued in connection with the performance of services (see Rev. Proc. 93–27 (1993–2 C.B. 343), as clarified in Rev. Proc. 2001–43 (2001–34 I.R.B. 191)) with the tax treatment of options to acquire partnership capital interests issued in connection with the performance of services.

Explanation of Provisions

1. Scope of Proposed Regulations

The proposed regulations describe certain of the income tax consequences of issuing, transferring, and exercising noncompensatory options. These proposed regulations apply only if the call option, warrant, or conversion right entitles the holder to the right to acquire an interest in the issuer (or to cash or property having a value equal to the value of such an interest).

The proposed regulations generally provide that the exercise of a noncompensatory option does not cause recognition of gain or loss to either the issuing partnership or the option holder. In addition, the proposed regulations modify the regulations under section 704(b) regarding the maintenance of the partners' capital accounts and the determination of the partners' distributive shares of partnership items. Finally, the proposed regulations contain a characterization rule providing that the holder of a call option, warrant, convertible debt, or convertible preferred equity issued by a partnership (or an eligible entity, as defined in § 301.7701–3(a), that would become a partnership if the option holder were treated as a partner) is treated as a partner under certain circumstances.

The rule providing for nonrecognition of gain or loss on the exercise of a noncompensatory option does not apply to any call option, warrant, or convertible debt issued by an eligible entity, as defined in § 301.7701–3(a), that would become a partnership under § 301.7701–3(f)(2) if the option, warrant, or conversion right were exercised. Treasury and the IRS request comments on whether the nonrecognition rule should be extended to such instruments.

2. Issuance, Exercise, and Lapse of Noncompensatory Options

Section 721(a) and § 1.721–1 provide that, with certain exceptions, no gain or loss is recognized to a partnership or any of its partners on the contribution of property to a partnership in exchange for an interest in the partnership. However, § 1.721–1 does not provide clear guidance as to the tax consequences to the holder of a noncompensatory option and the partnership upon the issuance, lapse, and exercise of a noncompensatory option to acquire a partnership interest. Many taxpayers have requested guidance clarifying the tax consequences of these transactions.

Generally, the proposed regulations do not treat the issuance of a noncompensatory option as a

transaction described in section 721. Therefore, the issuance of a noncompensatory option is taxed under general tax principles. Under these principles, the issuance of a noncompensatory call option or warrant (stand-alone option) is generally an open transaction for the issuer. The issuer's income or loss from the noncompensatory stand-alone option does not become fixed and determinable until the lapse, exercise, repurchase, or other termination of the option. For the holder of the noncompensatory stand-alone option, the purchase of the option is merely an investment in the option—a capital expenditure that is neither taxable to nor deductible by the holder. See Rev. Rul 78–182 (1978–1 C.B. 265). However, if the holder uses appreciated or depreciated property (property with a value greater or less than the holder's basis in the property) to acquire the noncompensatory stand-alone option, then the holder recognizes gain or loss in accordance with the provisions of section 1001, subject to the generally applicable rules governing the allowance of losses, such as section 707(b).

The proposed regulations do not change the rules relating to the issuance of convertible debt or convertible equity. Under general tax principles, the conversion right embedded in convertible debt or convertible equity typically is taken into account for tax purposes as part of the underlying instrument.

The proposed regulations also provide guidance on the tax consequences resulting from the exercise of a noncompensatory option. Section 1.721–1(b) provides that, to the extent that a partner gives up his right to be repaid all or a portion of his capital contribution in favor of another partner "as compensation for services (or in satisfaction of an obligation)," section 721 does not apply. Some commentators have expressed a concern that this regulation could be read to exclude from the application of section 721 a shift in partnership capital from the historic partners to the holder of the noncompensatory option in satisfaction of the partnership's option obligation upon exercise of the option. If this were the case, the partnership could be deemed to have sold a portion of each of its assets to the holder in a taxable exchange. Alternatively, the partnership could be deemed to have sold a partnership interest with a $0 basis to the option holder in a taxable exchange.

Despite these concerns, most commentators believe that § 1.721–1(b)(1) should not cause the issuance of a partnership interest upon exercise of a noncompensatory option to be taxable. They assert that the exercise of such an option should be nontaxable to the holder and the partnership, both under general tax principles applicable to noncompensatory options and under the policy of section 721 to facilitate business combinations through the pooling of capital.

Treasury and the IRS agree that, in general, the issuance of a partnership interest to the holder of a noncompensatory option should not be taxable to the holder or the partnership. Upon exercise, the option holder may be viewed as contributing property in the form of the premium, the exercise price, and the option privilege to the partnership in exchange for the partnership interest. Generally, this is a transaction to which section 721 should apply—a transaction through which persons join together in order to conduct a business or make investments. Accordingly, the proposed regulations generally provide that section 721 applies to the holder and the partnership upon the exercise of a noncompensatory option issued by the partnership.

The proposed regulations do not describe the tax consequences (to the partnership or the holder) of a right to convert partnership debt into an interest in the issuing partnership to the extent of any accrued but unpaid interest on the debt (including accrued original issue discount). On the one hand, based on *Carman* v. *Commissioner*, 189 F.2d 363 (2d Cir. 1951), it might be argued that the interest obligation is inseparable from the debt and that both are property for purposes of section 721. On the other hand, it may be appropriate to require a partnership to recognize gain to the extent of the accrued but unpaid interest, because the issuance of the partnership interest satisfies a deductible (or capital) expense of the partnership. As this issue is closely related to the tax treatment of the exercise of compensatory options, Treasury and the IRS have decided to consider this issue in the course of preparing guidance on compensatory options. Treasury and the IRS request comments on the proper treatment of the exercise of convertible debt to the extent of accrued, but unpaid, interest (including original issue discount) on the debt.

The proposed regulations also clarify that section 721 does not apply to the lapse of a noncompensatory option. If a noncompensatory option lapses, the former option holder does not contribute property to the partnership in exchange for an interest in the partnership. Accordingly, consistent with general tax principles, the lapse of a noncompensatory option generally results in the recognition of income by the partnership and the recognition of loss by the former option holder.

3. Accounting for Noncompensatory Options

The proposed regulations also contain rules to assist partnerships in properly accounting for any shifts in capital that may result from the exercise of noncompensatory options.

Generally, upon the exercise of a noncompensatory option, the option holder receives a partnership interest with a value that is greater or less than the aggregate value of the premium and exercise price that the option holder contributes to the partnership. In other words, the option privilege represents an asset with built-in gain or loss, *i.e.*, an asset to which section 704(c) would apply. However, because the option privilege terminates upon its contribution to the partnership, the partnership cannot allocate gain or loss from the option privilege to the option holder under section 704(c)(1)(A). To address this problem, the proposed regulations generally allow partnerships to substitute built-in gain or loss in the partnership's assets for the built-in gain or loss in the option.

The proposed regulations achieve this result by providing that a noncompensatory option holder's initial capital account is equal to the consideration paid to the partnership to acquire the noncompensatory option and the fair market value of any property (other than the option) contributed to the partnership on the exercise of the noncompensatory option. The proposed regulations then require the partnership to revalue its property immediately following the exercise of the noncompensatory option, when the holder has become a partner. Under the proposed regulations, the partnership must allocate the unrealized income, gain, loss, and deduction from this revaluation, first, to the noncompensatory option holder, to the extent necessary to reflect the holder's right to share in partnership capital under the partnership agreement, and, then, to the historic partners, to reflect the manner in which the unrealized income, gain, loss, or deduction in partnership property would be allocated among those partners if there were a taxable disposition of such property for its fair market value on that date. To the extent that unrealized appreciation or depreciation in the partnership's assets has been allocated to the capital account of the noncompensatory option holder, the holder will, under section 704(c)

principles, recognize any income or loss attributable to that appreciation or depreciation as the underlying assets are sold, depreciated, or amortized.

In some cases, the built-in gain or loss in the option will exceed the unrealized appreciation or depreciation in the partnership's assets (that has not been reflected in the partners' capital accounts previously). In those cases, even after all of the unrealized appreciation or depreciation in the partnership's assets has been allocated to the option holder, a disparity may remain between the noncompensatory option holder's right to share in partnership capital and the value of money and other property contributed by the partner. Most commentators have recommended and Treasury and the IRS agree that the partnership nevertheless should be allowed to shift capital between the historic partners an the noncompensatory option holder on the exercise of the noncompensatory option.

Some commentators also have suggested that the historic partners and the noncompensatory option holder should be allocated notional tax items over the recovery period for partnership assets similar to the remedial allocations that are permitted, but not required, under the regulations issued under section 704(c)(1)(A). Although the use of section 704(c) notional tax items would ensure that the noncompensatory option holder and the historic partners receive the proper amount of income and loss over time, Treasury and the IRS believe that implementing such a system would be unduly complex where the built-in gain or loss to be allocated to the noncompensatory option holder exceeds the built-in gain or loss in the partnership's assets.

Instead, the proposed regulations require that the partnership make corrective allocations of gross income or loss to the partners in the year in which the option is exercised so as to take into account any shift in the partners' capital accounts that occurs as a result of the exercise of a noncompensatory option. These corrective allocations are allocations of tax items that differ from the partnership's allocations of book items. If there are not sufficient actual partnership items in the year of exercise to conform the partnership's tax allocations to the capital shift, additional corrective allocations are required in succeeding taxable years until the capital shift has been fully taken into account.

The proposed regulations also provide rules for revaluing the partners' capital accounts while a noncompensatory option is outstanding. Section 1.704–1(b)(2)(iv) contains rules for maintaining a partnership's capital accounts. Section 1.704–1(b)(2)(iv)(*f*) provides that a partnership may, upon the occurrence of certain events (including the contribution of money to the partnership by a new or existing partner), increase or decrease the partners' capital accounts to reflect a revaluation of partnership property. If one or more options are outstanding when a revaluation occurs, and the revaluation does not account for the value associated with the outstanding options, the partners' capital accounts will not reflect the true economic value of their interests. For example, in partnerships with appreciated property, the historic partners' capital accounts often would overstate the distributions that would be made to the partners if the partnership were liquidated, because a portion of the partnership's assets may ultimately be paid to the option holder. Therefore, the proposed regulations modify § 1.704–1(b)(2)(iv)(*f*) and (h) to provide that any revaluation during the period in which there are outstanding noncompensatory options generally must take into account the fair market value, if any, of outstanding options.

4. Characterization Rule

Under section 704(b), a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined under the partnership agreement if the allocation under the agreement has substantial economic effect. If the allocation does not have substantial economic effect, or the partnership agreement does not provide for the allocation, then the allocation must be made in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances). Section 1.704–1(b)(2)(ii)(*h*) provides in part that, for this purpose, the partnership agreement includes all agreements among the partners, or between one or more partners and the partnership, concerning affairs of the partnership and responsibilities of partners, whether oral or written, and whether or not embodied in a document referred to by the partners as the partnership agreement, including puts, options, and buy-sell agreements. Currently, there is some uncertainty about the extent to which these rules require a partnership to take into account a noncompensatory option to acquire an interest in a partnership when making its annual allocations.

Treasury and the IRS believe that it is appropriate to clarify these rules with respect to noncompensatory options addressed in this project. As these proposed regulations are limited to noncompensatory options, nothing in these proposed regulations provides any inference as to the operation of this rule for compensatory options or other types of agreements.

Given the uncertainty of the exercise of most noncompensatory options, Treasury and the IRS believe that noncompensatory options generally should not be treated as entitling the holder to a fixed right to share in partnership income until the option is exercised. However, if a noncompensatory option provides the holder with rights that are substantially similar to the rights afforded to a partner, then the holder should be treated as a partner and the option should be taken into account in allocating partnership income. At the same time, Treasury and the IRS recognize that treating a noncompensatory option holder as a partner may, in some circumstances, frustrate the intent of the parties without substantially altering their aggregate tax liabilities.

For these reasons, the proposed regulations generally respect noncompensatory options as such and do not characterize them as partnership equity. However, the proposed regulations contain a rule that characterizes the holder of a noncompensatory option as a partner if the option holder's rights are substantially similar to the rights afforded to a partner. This rule applies only if, as of the date that the noncompensatory option is issued, transferred, or modified, there is a strong likelihood that the failure to treat the option holder as a partner would result in a substantial reduction in the present value of the partners' and the option holder's aggregate tax liabilities.

The proposed regulations use a facts and circumstances test to determine whether a noncompensatory option holder's rights are substantially similar to the rights afforded to a partner, including whether the option is reasonably certain to be exercised and whether the option holder has partner attributes. The proposed regulations list a number of factors that are used to determine whether a noncompensatory option is reasonably certain to be exercised, including the premium paid for the option, the exercise price of the option, the term of the option, the predictability and stability of the value of the underlying partnership interest, and whether the partnership is expected to make distributions during the term of the option. If a noncompensatory option is reasonably certain to be exercised, then the holder of the option ordinarily

has rights that are substantially similar to the rights afforded to a partner. Partner attributes include the extent to which the option holder shares in the economic benefit and detriment of partnership income and loss and the extent to which the option holder has the right to participate in the management of the partnership.

If the holder of a noncompensatory option is treated as a partner under the proposed regulations, then the holder's distributive share of the partnership's income, gain, loss, deduction, or credit (or items thereof) generally must be determined in accordance with such partner's interest in the partnership (taking into account all facts and circumstances) as determined under § 1.704–1(b)(3). For this purpose, the partner's interest in the partnership generally must reflect the economic differences between holding an option to acquire a partnership interest and holding the partnership interest itself. For example, unlike a partner, a noncompensatory option holder is not required initially to contribute to the partnership the full amount of the purchase price for the partnership interest. Instead, the noncompensatory option holder generally pays an option premium that is considerably smaller than the purchase price and may wait until the option is about to expire to decide whether to exercise the option and pay the exercise price. The computation of the noncompensatory option holder's share of partnership items should reflect this lesser amount of capital investment to the extent appropriate in a particular case. In addition, a noncompensatory option holder's cumulative distributive share of partnership losses and deductions may be limited under sections 704(b) and (d) to the amount paid by the holder to the partnership for the option.

5. Original Issue Discount Provisions

The final regulations under the original issue discount (OID) provisions provide special rules for debt instruments convertible into the stock of the issuer. See §§ 1.1272–1(e), 1.1273–2(j), and 1.1275–4(a)(4). In response to Notice 2000–29, commentators requested that these special rules be extended to apply to debt instruments convertible into partnership interests. Treasury and the IRS agree with the commentators. Treating convertible debt issued by partnerships and corporations differently for purposes of these special rules could create unjustified distinctions between the taxation of instruments that are economically equivalent. Accordingly, the proposed regulations amend the OID provisions to treat partnership interests as stock for purposes of the special rules for convertible debt instruments.

Proposed Effective Date

These regulations are proposed to apply to noncompensatory options that are issued on or after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 20, 2003, beginning at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by April 29, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Audrey W. Ellis of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 1.704–1 is amended as follows:

1. Paragraph (b)(0) is amended by adding entries for 1.704–1(b)(2)(iv)(*d*)(*4*), 1.704–1(b)(2)(iv)(*h*)(*1*), 1.704–1(b)(2)(iv)(*h*)(*2*), 1.704–1(b)(2)(iv)(*s*), 1.704–1(b)(4)(*ix*), and 1.704–1(b)(4)(x).

2. Paragraph (b)(1)(ii) is amended by adding a sentence at the end of the paragraph.

3. Paragraph (b)(2)(iv)(*d*)(*4*) is added.

4. Paragraph (b)(2)(iv)(*f*)(*1*) is revised.

5. Paragraphs (b)(2)(iv)(*h*)(*1*), and (*2*) are redesignated as paragraphs (b)(2)(iv)(*h*)(*1*)(*i*) and (*ii*), respectively; the text of paragraph (b)(2)(iv)(*h*) is redesignated paragraph (b)(2)(iv)(*h*)(*1*); a heading is added to new paragraph (b)(2)(iv)(*h*)(*1*); and paragraph (b)(2)(iv)(*h*)(*2*) is added.

6. Paragraph (b)(2)(iv)(*s*) is added immediately after the undesignated paragraph that follows paragraph (b)(2)(iv)(*r*)(*2*).

7. Paragraphs (b)(r)(ix) and (b)(4)(x) are added.

8. Paragraph (b)(5) is amended by adding *Example 20, Example 21, Example 22, Example 23, and Example 24*.

The additions and revisions read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

Exercise of noncompensatory options	1.704–1(b)(2)(iv)(*d*)(*4*)
* * * * *	* *
In general	1.704–1(b)(2)(iv)(*h*)(*1*)
Adjustments for noncompensatory options	1.704–(b)(2)(iv)(*h*)(*2*)
* * * * *	* *
Adjustments on the exercise of a noncompensatory option	1.704–1(b)(2)(iv)(*s*)
* * * * *	* *
Allocations with respect to noncompensatory options	1.704–1(b)(4)(ix)
Corrective allocations	1.704–1(b)(4)(x)
* * * * *	* *

(b) (0) * * *

(1) * * *

(ii) * * * In addition, paragraph (b)(2)(iv)(*d*)(*4*), paragraph (b)(2)(iv)(*h*)(*2*), paragraph (b)(2)(iv)(*s*), paragraph (b)(4)(ix), paragraph (b)(4)(x), and *Examples 20* through *24* in paragraph (b)(5) of this section apply to noncompensatory options (as defined in § 1.721–2(d)) that are issued on or after the date final regulations are published in the **Federal Register**.

* * * * *

(2) * * *

(iv) * * *

(*d*) * * *

(*4*) *Exercise of noncompensatory options.* For purposes of paragraph (b)(2)(iv)(*b*)(*2*) of this section, the fair market value of the property contributed on the exercise of a noncompensatory option (as defined in § 1.721–2(d)) does not include the fair market value of the option privilege, but does include the consideration paid to the partnership to acquire the option and the fair market value of any property (other than the option) contributed to the partnership on the exercise of the option. With respect to convertible equity, the fair market value of the property contributed to the partnership on the exercise of the option includes the converting partner's capital account immediately before the conversion. See *Examples 20* through *24* of paragraph (b)(5) of this section.

* * * * *

(*f*) * * *

(*1*) The adjustments are based on the fair market value of partnership property (taking section 7701(g) into account) on the date of adjustment, as determined under paragraph (b)(2)(iv)(*h*) of this section, reduced by the consideration paid to the partnership acquire any outstanding noncompensatory options (as defined in § 1.721–2(d)) that are issued on or after the date final regulations are published in the **Federal Register**. See *Example 22* of paragraph (b)(5) of this section.

* * * * *

(*h*) *Determinations of fair market value*—(1) *In general.* * * *

(2) *Adjustments for noncompensatory options.* The fair market value partnership property must be adjusted to account for any outstanding noncompensatory options (as defined in § 1.721–2(d)) at the time of a revaluation of partnership property under paragraph (b)(2)(iv(*f*) or (*s*) of this section. If the fair market value of outstanding noncompensatory options (as defined in § 1.721–2(d)) as of the date of the adjustment exceeds the consideration paid by the option holders to acquire the options, then the fair market value of partnership property must be reduced by that excess to the extent of the unrealized income or gain in partnership property (that has not been reflected in the capital accounts previously). This reduction is allocated only to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation. If the price paid by the option holders to acquire the outstanding noncompensatory options (as defined in § 1.721–2(d)) exceeds the fair market value of such options as of the date of the adjustment, then the value of partnership property must be increased by that excess to the extent of the unrealized deductions or loss in partnership property (that has not been reflected in the capital accounts previously). This increase is allocated only to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation.

* * * * *

(*s*) *Adjustments on the exercise of a noncompensatory option.* A partnership agreement may grant a partner, on the exercise of a noncompensatory option (as defined in § 1.721–2(d)), a right to share in partnership capital that exceeds (or is less than) the sum of the consideration paid by the partner to acquire and exercise such option. Where such an agreement exists, capital accounts will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless—

(*1*) In lieu of revaluing partnership property under paragraph (b)(2)(iv)(*f*) of this section immediately before the exercise of the option, the partnership revalues partnership property in accordance with the provisions of paragraphs (b)(2)(iv)(*f*)(*1*) through (*4*) of this section immediately after the exercise of the option;

(*2*) In determining the capital accounts of the partners (including the exercising partner) under paragraph (b)(2)(iv)(*s*)(*1*) of this section, the partnership first allocates any unrealized income, gain, loss, or deduction in partnership assets (that has not been reflected in the capital accounts previously) to the exercising partner to the extent necessary to reflect that partner's right to share in partnership capital under the partnership agreement, and then allocates any remaining unrealized income gain, loss, or deduction (that has not been reflected in the capital accounts previously) to the existing partners, to reflect the manner in which the unrealized income, gain, loss, or deduction in partnership property would be allocated among those partners if there were a taxable disposition of such property for its fair market value on that date;

(*3*) If, after making the allocations described in paragraph (b)(2)(iv)(*s*)(*2*) of this section, the exercising partner's capital account still does not reflect that partner's right to share in partnership capital under the partnership agreement, then the partnership reallocates partnership capital between the existing partners and the exercising partner so that the exercising partner's capital account does reflect the exercising partner's right to share in partnership capital under the partnership agreement (a capital account reallocation). Any increase or reduction in the capital accounts of existing partners that occurs as a result of a capital account reallocation under this paragraph (b)(2)(iv)(*s*)(*3*) must be allocated among the existing partners in accordance with the principles of this section; and

(*4*) The partnership agreement requires corrective allocations so as to take into account all capital account reallocations made under paragraph (b)(2)(iv)(s)(3) of this section (see paragraph (b)(4)(x) of this section). See *Examples 20* through *24* of paragraph (b)(5) of this section.

* * * * *

(4) * * *

(ix) *Allocations with respect to noncompensatory options.* A partnership agreement may grant to a partner that exercises a noncompensatory option a right to share in partnership capital that exceeds (or is less than) the sum of the amounts paid by the partner to acquire and exercise such option. In such a case, allocations of income, gain, loss, and deduction to the partners while the noncompensatory option is outstanding cannot have economic effect, because, if the noncompensatory option is exercised, the exercising partner, rather than the existing partners, may receive the economic benefit or bear the economic detriment associated with that income, gain, loss, or deduction. Allocations of partnership income, gain, loss, and deduction to the partners while the noncompensatory option is outstanding will be deemed to be in accordance with the partners' interests in the partnership only if—

(*a*) The holder of the noncompensatory option is not treated as a partner under § 1.761–3;

(*b*) The partnership agreement requires that, on the exercise of the noncompensatory option, the partnership comply with the rules of paragraph (b)(2)(iv)(*s*) of this section; and

(*c*) All material allocations and capital account adjustments under the partnership agreement not pertaining to noncompensatory options are recognized under section 704(b). See *Examples 20* through *24* of paragraph (b)(5) of this section.

(x) *Corrective allocations.* If partnership capital is reallocated between existing partners and a partner exercising a noncompensatory option under paragraph (b)(2)(iv)(*s*)(*3*) of this section (a capital account reallocation), the partnership must, beginning with the taxable year of the exercise and in all succeeding taxable years until the allocations required are fully taken into account, make corrective allocations so as to take into account the capital account reallocation. A corrective allocation is an allocation (consisting of a pro rata portion of each item) for tax purposes of gross income and gain, or gross loss and deduction, that differs from the partnership's allocation of the corresponding book item. See *Example 21* of paragraph (b)(5) of this section.

* * * * *

(5) * * *

Example 20. (i) In Year 1, TM and PK each contribute cash of $10,000 to LLC, a newly formed limited liability company, classified as a partnership for Federal tax purposes, in exchange for 100 units in LLC. Under the LLC agreement, each unit is entitled to participate equally in the profits and losses of LLC. LLC uses the cash contributions to purchase a non-depreciable property, Property A, for $20,000. Also in Year 1, at a time when Property A is still valued at $20,000, LLC issues an option to DH. The option allows DH to buy 100 units in LLC for an exercise price of $15,000 in Year 2. DH pays $1,000 to the LLC for the issuance of the option. Assume that the LLC agreement requires that, on the exercise of a noncompensatory option, LLC comply with the rules of paragraph (b)(2)(iv)(*s*) of this section, and that all material allocations and capital account adjustments under the LLC agreement not pertaining to noncompensatory options are recognized under section 704(b). Also assume that DH's option is a noncompensatory option under § 1.721–2(d), and that DH is not treated as a partner with respect to the option. In Year 2, DH exercises the option, contributing the $15,000 exercise price to the partnership. At the time the option is exercised, the value of Property A is $35,000.

	Basis	Value
Assets:		
Property A	$20,000	$35,000
Cash Premium	1,000	1,000
Exercise Price	15,000	15,000
Total	36,000	51,000
Liabilities and Capital:		
TM	10,000	17,000
PK	10,000	17,000
DH	16,000	17,000
Total	36,000	51,000

(ii) Under paragraphs (b)(2)(iv)(*b*)(*2*) and (b)(2)(iv)(*d*)(*4*) of this section, DH's capital account is credited with the amount paid for the option ($1,000) and the exercise price of the option ($15,000). Under the LLC agreement, however, DH is entitled to LLC capital corresponding to 100 units of LLC (⅓ of LLC's capital). Immediately after the exercise of the option, LLC's assets are cash of $16,000 ($1,000 premium and $15,000 exercise price contributed by DH) and Property A, which has a value of $35,000. Thus, the total value of LLC's assets is $51,000. DH is entitled to LLC capital equal to ⅓ of this value, or $17,000. As DH is entitled to $1,000 more LLC capital than DH's capital contributions to LLC, the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

(iii) Under paragraph (b)(2)(iv)(*s*) of this section, LLC must increase DH's capital account from $16,000 to $17,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section and allocating the first $1,000 of book gain to DH. The net gain in LLC's assets (Property A) is $15,000 ($35,000 value less $20,000 basis). The first $1,000 of this gain must be allocated to DH, and the remaining $14,000 of this gain is allocated equally to TM and PK in accordance with the LLC agreement. Because the revaluation of LLC assets under paragraph (b)(2)(iv)(*s*)(*2*) of this section increases DH's capital account to the amount agreed on by the members, LLC is not required to make a capital account reallocation under paragraph (b)(2)(iv)(*s*)(*3*) of this section. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from the revalued property must be allocated in accordance with section 704(c) principles.

	TM		PK		DH	
	Tax	Book	Tax	Book	Tax	Book
Capital account after exercise	$10,000	$10,000	$10,000	$10,000	$16,000	$16,000
Revaluation amount	.....	7,000	.....	7,000	.....	1,000
Capital account after revaluation	10,000	17,000	10,000	17,000	16,000	17,000

Example 21. (i) Assume the same facts as in *Example 20*, except that, in Year 1, LLC sells Property A for $40,000, recognizing gain of $20,000. LLC does not distribute the sale proceeds to its partners and it has no other earnings in Year 1. With the proceeds ($40,000), LLC purchases Property B, a nondepreciable property. Also assume that DH exercises the noncompensatory option at the beginning of Year 2 and that, at the time DH exercises the option, the value of Property B is $41,000. In Year 2, LLC has gross income of $3,000 and deductions of $1,500.

	Basis	Value
Assets:		
Property B	$40,000	$41,000
Cash	16,000	16,000
Total	56,000	57,000
Liabilities and Capital:		
TM	20,000	19,000
PK	20,000	19,000
DH	16,000	19,000

	Basis	Value
Total	56,000	57,000

(ii) Under paragraphs (b)(2)(iv)(*b*)(*2*) and (b)(2)(iv)(*d*)(*4*) of this section, DH's capital account is credited with the amount paid for the option ($1,000) and the exercise price of the option ($15,000). Under the LLC agreement, however, DH is entitled to LLC capital corresponding to 100 units of LLC (⅓ of LLC's capital). Immediately after the exercise of the option, LLC's assets are $16,000 cash ($1,000 option premium and $15,000 exercise price contributed by DH) and Property B, which has a value of $41,000. Thus, the total value of LLC's assets is $57,000. DH is entitled to LLC capital equal to ⅓ of this amount, or $19,000. As DH is entitled to $3,000 more LLC capital than DH's capital contributions to LLC, the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

(iii) Under paragraph (b)(2)(iv)(*s*) of this section, LLC must increase DH's capital account from $16,000 to $19,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section, and allocating the $1,000 of book gain from the revaluation to DH. This brings DH's capital account to $17,000. Second, under paragraph (b)(2)(iv)(*s*)(*3*) of this section, LLC must reallocate $2,000 of capital from the existing partners (TM and PK) to DH to bring DH's capital account to $19,000 (the capital account reallocation). As TM and PK share equally in all items of income, gain, loss, and deduction of LLC, each member's capital account is reduced by ½ of the $2,000 reduction ($1,000).

(iv) Under paragraph (b)(2)(iv)(*s*)(*4*) of this section, beginning in the year in which the option is exercised, LLC must make corrective allocations so as to take into account the capital account reallocation. In Year 2, LLC has gross income of $3,000 and deductions of $1,500. The book gross income of $3,000 is shared equally by TM, PK, and DH. For tax purposes, however, LLC must allocate all of its gross income ($3,000) to DH. LLC's deductions ($1,500) must be allocated equally among TM, PK, and DH. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from Property B must be allocated in accordance with section 704(c) principles.

	TM		PK		DH	
	Tax	Book	Tax	Book	Tax	Book
Capital account after exercise	$20,000	$20,000	$20,000	$20,000	$16,000	$16,000
Revaluation						1,000
Capital account after revaluation	20,000	20,000	20,000	20,000	16,000	17,000
Capital account reallocation		(1,000)		(1,000)		2,000
Capital account after capital account reallocation	20,000	19,000	20,000	19,000	16,000	19,000
Income allocation (Yr. 2)		1,000		1,000	3,000	1,000
Deduction allocation (Yr. 2)	(500)	(500)	(500)	(500)	(500)	(500)
Capital account at end of year 2	19,500	19,500	19,500	19,500	18,500	19,500

Example 22. (i) In Year 1, AC and NE each contribute cash of $10,000 to LLC, a newly formed limited liability company classified as a partnership for Federal tax purposes, in exchange for 100 units in LLC. Under the LLC agreement, each unit is entitled to participate equally in the profits and losses of LLC. LLC uses the cash contributions to purchase two non-depreciable properties, Property A and Property B, for $10,000 each. Also in Year 1, at a time when Property A and Property B are still valued at $10,000 each, LLC issues an option to DR. The option allows DR to buy 100 units in LLC for an exercise price of $15,000 in Year 2. DR pays $1,000 to LLC for the issuance of the option. Assume that the LLC agreement requires that, on the exercise of a noncompensatory option, LLC comply with the rules of paragraph (b)(2)(iv)(*s*) of this section, and that all material allocations and capital account adjustments under the LLC agreement not pertaining to noncompensatory options are recognized under section 704(b). Also assume that DR's option is a noncompensatory option under § 1.721–2(d), and that DR is not treated as a partner with respect to the option.

(ii) Prior to the exercise of DR's option, ML contributes $17,000 to LLC for 100 units in LLC. At the time of ML's contribution, Property A has a value of $30,000 and a basis of $10,000, Property B has a value of $5,000 and a basis of $10,000, and the fair market value of DR's option is $2,000.

(iii) Upon ML's admission to the partnership, the capital accounts of AC and NE (which were $10,000 each prior to ML's admission) are, in accordance with paragraph (b)(2)(iv)(*f*) of this section, adjusted upward to reflect their shares of the unrealized appreciation in the partnership's assets. Under paragraph (b)(2)(iv)(*f*)(*1*) of this section, those adjustments must be based on the fair market value of LLC property (taking section 7701(g) into account) on the date of the adjustment. The fair market value of partnership property ($36,000) must be reduced by the consideration paid by DR to the partnership to acquire the option ($1,000) (under paragraph (b)(2)(iv)(*f*)(*1*) of this section), and the excess of the fair market value of the option as of the date of the adjustment over the consideration paid by DR to acquire the option ($1,000) (under paragraph (b)(2)(iv)(*h*)(*2*) of this section), but only to the extent of the unrealized appreciation in LLC property ($15,000). Therefore, the revaluation adjustments must be based on a value of $34,000. Accordingly, AC and NE's capital accounts must be increased to $17,000. This $1,000 reduction is allocated entirely to Property A, the only asset having unrealized appreciation. Therefore, the book value of Property A is $29,000. The $19,000 of built-in gain in Property A and the $5,000 of built-in loss in Property B must be allocated equally between AC and NE in accordance with section 704(c) principles.

	Assets basis	Value	Option adjustment	1704(c) book
Property A	$10,000	$30,000	($1,000)	$29,000
Property B	10,000	5,000	0	5,000

	Assets basis	Value	Option adjustment	1704(c) book
Cash	1,000	1,000	0	1,000
Subtotal	21,000	36,000	(1,000)	35,000
Cash contributed by ML	17,000	17,000	0	17,000
Total	38,000	53,000	(1,000)	52,000

	Liabilities and Capital	
	Tax	Value
AC	$10,000	$17,000
NE	10,000	17,000
ML	17,000	17,000
Option	1,000	2,000
Total	38,000	53,000

(iv) After the admission of ML, when Property A still has a value of $30,000 and a basis of $10,000 and Property B still has a value of $5,000 and a basis of $10,000, DR exercises the option. On the exercise of the option, DR's capital account is credited with the amount paid for the option ($1,000) and the exercise price of the option ($15,000). Under the LLC agreement, however, DR is entitled to LLC capital corresponding to 100 units of LLC (¼ of LLC's capital). Immediately after the exercise of the option, LLC's assets are worth $68,000 ($15,000 contributed by DR, plus the value of LLC assets prior to the exercise of the option, $53,000). DR is entitled to LLC capital equal to ¼ of this value, or $17,000. As DR is entitled to $1,000 more LLC capital than DR's capital contributions to LLC, the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

(v) Under paragraph (b)(2)(iv)(*s*) of this section, the LLC must increase DR's capital account from $16,000 to $17,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section and allocating the first $1,000 of book gain to DR. The net increase in the value of LLC properties since the previous revaluation is $1,000 (the difference between the actual value of Property A, $30,000, and the book value of Property A, $29,000). The entire $1,000 of book gain is allocated to DR. Because the revaluation of LLC assets under paragraph (b)(2)(iv)(*s*)(*2*) of this section increases DR's capital account to the amount agreed on by the members, the LLC is not required to make a capital account reallocation under paragraph (b)(2)(iv)(*s*)(*3*) of this section. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from Properties A and B must be allocated in accordance with section 704(c) principles.

	AC		NE		ML		DR	
	Book	Tax	Tax	Book	Tax	Book	Tax	Book
Capital account after admission of ML	$10,000	$17,000	$10,000	$17,000	$17,000	$17,000	.....	.....
Capital account after exercise of DH's option	10,000	17,000	10,000	17,000	17,000	17,000	$16,000	$16,000
Revaluation	.....	.....	.....	.....	.....	.....	.....	1,000
Capital account after revaluation	10,000	17,000	10,000	17,000	17,000	17,000	16,000	17,000

Example 23. (i) On the first day of Year 1, MS, VH, and SR form LLC, a limited liability company classified as a partnership for Federal tax purposes. MS and VH each contribute $10,000 cash to LLC for 100 units of common interest in LLC. SR contributes $10,000 cash for a convertible preferred interest in LLC. SR's convertible preferred interest entitles SR to receive an annual allocation and distribution of cumulative LLC net profits in an amount equal to 10 percent of SR's unreturned capital. SR's convertible preferred interest also entitles SR to convert, in year 3, SR's preferred interest into 100 units of common interest. If SR converts, SR has the right to the same share of LLC capital as SR would have had if SR had held the 100 units of common interest since the formation of LLC. Under the LLC agreement, each unit of common interest has an equal right to share in any LLC net profits that remains after payment of the preferred return. Assume that the LLC agreement requires that, on the exercise of a noncompensatory option, LLC comply with the rules of paragraph (b)(2)(iv)(*s*) of this section, and that all material allocations and capital account adjustments under the LLC agreement not pertaining to noncompensatory options are recognized under section 704(b). Also assume that SR's right to convert the preferred interest into a common interest qualifies as a noncompensatory option under § 1.721–2(d), and that, prior to the exercise of the conversion right, SR is not treated as a partner with respect to the conversion right.

(ii) LLC uses the $30,000 to purchase Property Z, a property that is depreciable on a straight-line basis over 15 years. In each of Years 1 and 2, LLC has net income of $2,500, comprised of $4,500 of gross receipts and $2,000 of depreciation. It allocates and distributes $1,000 of this net income to SR in each year. LLC allocates, but does not distribute, the remaining $1,500 of net income equally to MS and VH in each year.

	MS		VH		SR	
	Tax	Book	Tax	Book	Tax	Book
Capital account upon formation	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000
Allocation of income Years 1 and 2	1,500	1,500	1,500	1,500	2,000	2,000
Distributions Years 1 and 2	.....	.....	.....	.....	(2,000)	(2,000)
Capital account end of Year 2	11,500	11,500	11,500	11,500	10,000	10,000

(iii) At the beginning of Year 3, when Property Z has a value of $38,000 and a basis of $26,000 ($30,000 original basis less $4,000 of depreciation) and LLC has accumulated undistributed cash of $7,000 ($9,000 gross receipts less $2,000 distributions), SR converts SR's preferred interest into a common interest. Under paragraphs (b)(2)(iv)(*b*)(*2*) and (b)(2)(iv)(*d*)(*4*) of this section, SR's capital account after the conversion equals SR's capital account before the conversion, $10,000. On the conversion of the preferred interest, however, SR is entitled to LLC capital corresponding to 100 units of common interest in LLC (⅓ of LLC's capital). At the time of the conversion, the total value of LLC assets is $45,000. SR is entitled to LLC capital equal to ⅓ of this

value, or $15,000. As SR is entitled to $5,000 more LLC capital than SR's capital account immediately after the conversion, the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

	Basis	Value
Assets:		
Property Z Undistributed Income	$26,000	$38,000
	7,000	7,000
Total	33,000	45,000

	Basis	Value
Liabilities and Capital:		
MS	11,500	15,000
VH	11,500	15,000
SR	10,000	15,000
Total	33,000	45,000

(iv) Under paragraph (b)(2)(iv)(*s*) of this section, LLC must increase SR's capital account from $10,000 to $15,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section, and allocating the first $5,000 of book gain from that revaluation to SR. The net unrealized gain in LLC's assets (Property Z) is $12,000 ($38,000 value less $26,000 basis). The first $5,000 of this gain must be allocated to SR. The remaining $7,000 of that gain must be allocated equally to MS and VH in accordance with the LLC agreement. Because the revaluation of LLC assets under paragraph (b)(2)(iv)(*s*)(*2*) of this section increases SR's capital account to the amount agreed on by the members, LLC is not required to make a capital account reallocation under paragraph (b)(2)(iv)(*s*)(*3*) of this section. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from the revalued property must be allocated in accordance with section 704(c) principles.

	MS		VH		SR	
	Tax	Book	Tax	Book	Tax	Book
Capital account prior to conversion	$11,500	$11,500	$11,500	$11,500	$10,000	$10,000
Revaluation on conversion	.....	3,500	.....	3,500	.....	5,000
Capital account after conversion	11,500	15,000	11,500	15,000	10,000	15,000

Example 24. (i) On the first day of Year 1, AK and JP each contribute cash of $10,000 to LLC, a newly formed limited liability company classified as a partnership for Federal tax purposes, in exchange for 100 units in LLC. Immediately after its formation, LLC borrows $10,000 from JS. Under the terms of the debt instrument, interest of $1,000 is payable annually and principal is repayable in five years. Throughout the term of the indebtedness, JS has the right to convert the debt instrument into 100 units in LLC. If JS converts, JS has the right to the same share of LLC capital as JS would have had if JS had held 100 units in LLC since the formation of LLC. Under the LLC agreement, each unit participates equally in the profits and losses of LLC and has an equal right to share in LLC capital. Assume that the LLC agreement requires that, on the exercise of a noncompensatory option, LLC comply with the rules of paragraph (b)(2)(iv)(*s*) of this section, and that all material allocations and capital account adjustments not pertaining to noncompensatory options are recognized under section 704(b). Also assume that JS's right to convert the debt into an interest in LLC qualifies as a noncompensatory option under § 1.721–2(d), and that, prior to the exercise of the conversion right, JS is not treated as a partner with respect to the convertible debt.

(ii) LLC uses the $30,000 to purchase Property D, property that is depreciable on a straight-line basis over 15 years. In each of Years 1, 2, and 3, LLC has net income of $2,000, comprised of $5,000 of gross receipts, $2,000 of depreciation, and interest expense (representing payments of interest on the loan from JS) of $1,000. LLC allocates, but does not distribute, this income equally to AK and JP.

	AK		JP		JS	
	Tax	Book	Tax	Book	Tax	Book
Initial capital account	$10,000	10,000	$10,000	10,000	.....	.....
Year 1 net income	$1,000	1,000	$1,000	1,000	.....	.....
Years 2 net income	$1,000	1,000	$1,000	1,000	.....	.....
Years 3 net income	$1,000	1,000	$1,000	1,000	.....	.....
Year 4 initial capital account	$13,000	13,000	$13,000	13,000	0	0

(iii) At the beginning of year 4, at a time when Property D, the LLC's only asset, has a value of $33,000 and basis of $24,000 ($30,000 original basis less $6,000 depreciation in Years 1 through 3), and LLC has accumulated undistributed cash of $12,000 ($15,000 gross receipts less $3,000 of interest payments) in LLC, JS converts the debt into a 1/3 interest in LLC. Under paragraphs (b)(2)(iv)(*b*)(*2*) and (b)(2)(iv)(*d*)(*4*) of this section, JS's capital account after the conversion is the adjusted basis of the debt immediately before JS's conversion of the debt, $10,000, plus any accrued but unpaid qualified stated interest on the debt, $0. On the conversion of the debt, however, JS is entitled to receive LLC capital corresponding to 100 units of LLC (1/3 of LLC's capital). At the time of the conversion, the total value of LLC's assets is $45,000. JS is entitled to LLC capital equal to 1/3 of this value, or $15,000. As JS is entitled to $5,000 more LLC capital than JS's capital contribution to LLC ($10,000), the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

	Basis	Value
Assets:		
Property D	$24,000	$33,000
Cash	12,000	12,000
Total	36,000	45,000
Liabilities and Capital:		
AK	13,000	15,000
JP	13,000	15,000
JS	10,000	15,000
Total	36,000	45,000

(iv) Under paragraph (b)(2)(iv)(*s*) of this section, LLC must increase JS's capital account from $10,000 to $15,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section, and allocating the first $5,000 of book gain from that revaluation to JS. The net unrealized gain in LLC's assets (Property D) is $9,000 ($33,000 value less $24,000 basis). The first $5,000 of this gain must be allocated to JS, and the remaining $4,000 of that gain must be allocated equally to AK and JP in accordance with the LLC agreement. Because the revaluation of LLC assets under paragraph (b)(2)(iv)(*s*)(*2*) of this section increases JS's capital account to the amount agreed upon by the members, LLC is not required to make a capital account reallocation under paragraph (b)(2)(iv)(*s*)(*3*) of this section. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from the revalued property must be allocated in accordance with section 704(c) principles.

	AK		JP		JS	
	Tax	Book	Tax	Book	Tax	Book
Year 4 capital account prior to exercise	$13,000	$13,000	$13,000	$13,000	0	0
Capital account after exercise	13,000	13,000	13,000	13,000	10,000	10,000
Revaluation	.....	2,000	.....	2,000	.....	5,000
Capital account after revaluation	13,000	15,000	13,000	15,000	10,000	15,000

3. Section 1.704–3 is amended by revising the first sentence of paragraph (a)(6)(i) to read as follows:

§ 1.704–3 Contributed property.

(a) * * *

(6) *Other applications of section 704(c) principles—(i) Revaluations under section 704(b).* The principles of this section apply to allocations with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues partnership property pursuant to § 1.704–1(b)(2)(iv)(*f*) or 1.704–1(b)(2)(iv)(*s*) (reverse section 704(c) allocations).

* * *

* * * * *

4. Section 1.721–2 is added to read as follows:

§ 1.721–2 Noncompensatory options.

(a) *Exercise of a noncompensatory option.* Notwithstanding § 1.721–1(b)(1), section 721 applies to the exercise (as defined in paragraph (e)(4) of this section) of a noncompensatory option (as defined in paragraph (d) of this section). However, if the exercise price (as defined in paragraph (e)(5) of this section) of a noncompensatory option exceeds the capital account received by the option holder on the exercise of the noncompensatory option, the transaction will be given tax effect in accordance with its true nature.

(b) *Transfer of property in exchange for a noncompensatory option.* Section 721 does not apply to a transfer of property to a partnership in exchange for a noncompensatory option. For example, if a person purchases a noncompensatory option with appreciated property, the person recognizes income or gain to the extent that the fair market value of the noncompensatory option exceeds the person's basis in the surrendered property.

(c) *Lapse of a noncompensatory option.* Section 721 does not apply to the lapse of a noncompensatory option.

(d) *Scope.* The provisions of this section apply only to noncompensatory options and do not apply to any interest on convertible debt that has been accrued by the partnership (including accrued original issue discount). For purposes of this section, the term noncompensatory option means an option (as defined in paragraph (e)(1) of this section) issued by a partnership (the issuing partnership), other than an option issued in connection with the performance of services.

(e) *Definitions.* The following definitions apply for the purposes of this section.

(1) *Option* means a call option or warrant to acquire an interest in the issuing partnership, the conversion feature of convertible debt (as defined in paragraph (e)(2) of this section), or the conversion feature of convertible equity (as defined in paragraph (e)(3) of this section). A contract that otherwise constitutes an option shall not fail to be treated as such for purposes of this section merely because it may or must be settled in cash or property other than a partnership interest.

(2) *Convertible debt* is any indebtedness of a partnership that is convertible into an interest in that partnership.

(3) *Convertible equity* is preferred equity in a partnership that is convertible into common equity in that partnership. For this purpose, preferred equity is any interest in the issuing partnership that entitles the partner to a preferential return on capital and common equity is any interest in the issuing partnership that is not preferred equity.

(4) *Exercise* means the exercise of an option or warrant or the conversion of convertible debt or convertible equity.

(5) *Exercise price* means, in the case of a call option or warrant, the exercise price of the call option or warrant; in the case of convertible equity, the converting partner's capital account with respect to that convertible equity, increased by the fair market value of cash or other property contributed to the partnership in connection with the conversion; and, in the case of convertible debt, the adjusted issue price (within the meaning of § 1.1275–1(b)) of the debt converted, increased by accrued but unpaid qualified stated interest and by the fair market value of cash or other property contributed to the partnership in connection with the conversion.

(f) *Example.* The following example illustrates the provisions of this section:

Example. In Year 1, L and M form general partnership LM with cash contributions of $5,000 each, which are used to purchase land, Property D, for $10,000. In that same year, the partnership issues an option to N to buy a one-third interest in the partnership at any time before the end of Year 3. The exercise price of the option is $5,000, payable in either cash or property. N transfers Property E with a basis of $600 and a value of $1,000 to the partnership in exchange for the option. N provides no other consideration for the option. Assume that N's option is a noncompensatory option under paragraph (d) of this section and that N is not treated as a partner with respect to the option. Under paragraph (b) of this section, section 721(a) does not apply to N's transfer of Property E to LM in exchange for the option. In accordance with § 1.1001–2, upon N's transfer of Property E to the partnership in exchange for the option, N recognizes $400 of gain. Under open transaction principles applicable to noncompensatory options, the partnership does not recognize any gain upon receipt of appreciated property in exchange for the option. The partnership has a basis of $1,000 in Property E. In Year 3, when the partnership property is valued at $16,000, N exercises the option, contributing Property F with a basis of $3,000 and a fair market value of $5,000 to the partnership. Under paragraph (a) of this section, neither the partnership nor N recognizes gain upon N's contribution of property to the partnership upon the exercise of the option. Under section 723, the partnership has a basis of $3,000 in Property F. See § 1.704–1(b)(2)(iv)(*d*)(*4*) and (*s*) for special rules applicable to capital account adjustments on the exercise of a noncompensatory option.

(g) *Effective Date.* This section applies to noncompensatory options that are issued on or after the date final regulations are published in the **Federal Register**.

5. Section 1.761–3 is added to read as follows.

§ 1.761–3 Certain option holders treated as partners.

(a) *In general.* A noncompensatory option (as defined in paragraph (b) of this section) is treated as a partnership interest if the option (and any rights associated with it) provides the holder with rights that are substantially similar to the rights afforded to a partner. This paragraph applies only if, as of the date that the noncompensatory option is

issued, transferred, or modified, there is a strong likelihood that the failure to treat the holder of the noncompensatory option as a partner would result in a substantial reduction in the present value of the partners' and the holder's aggregate tax liabilities. If the holder of a noncompensatory option is treated as a partner under this section, such partner's distributive share of the partnership's income, gain, loss, deduction or credit (or items thereof) is determined in accordance with that partner's interest in the partnership (taking into account all facts and circumstances) in accordance with § 1.704–1(b)(3).

(b) *Definitions*—(1) *Noncompensatory option.* For purposes of this section, a noncompensatory option means an option (as defined in paragraph (b)(2) of this section) issued by a partnership, other than an option issued in connection with the performance of services. A noncompensatory option issued by an eligible entity (as defined in § 301.7701–3(a)) that would become a partnership under § 301.7701–3(f)(2) of this chapter if the option holder were treated as a partner under this section is also a noncompensatory option for purposes of this section. If a noncompensatory option is issued by such an eligible entity, then the eligible entity is treated as a partnership for purposes of applying this section.

(2) *Option.* For purposes of this section, a call option or warrant to acquire an interest in the issuing partnership is an option. In addition, convertible debt (as defined in § 1.721–2(e)(2)) and convertible equity (as defined in § 1.721–2(e)(3)) are options for purposes of this section. A contract that otherwise constitutes an option shall not fail to be treated as such for purposes of this section merely because it may or must be settled in cash or property other than a partnership interest.

(c) *Rights taken into account.* (1) In determining whether a noncompensatory option provides the holder with rights that are substantially similar to the rights afforded to a partner, all facts and circumstances are considered, including whether the option is reasonably certain to be exercised (as of the time that the option is issued, transferred or modified) and whether the option holder possesses partner attributes. For purposes of this section, if a noncompensatory option is reasonably certain to be exercised, then the holder of the option ordinarily has rights that are substantially similar to the rights afforded to a partner.

(2) *Reasonable certainty of exercise.* The following factors are relevant in determining whether a noncompensatory option is reasonably certain to be exercised (as of the time that the noncompensatory option is issued, transferred, or modified)—

(i) The fair market value of the partnership interest that is the subject of the option;

(ii) The exercise price of the option;

(iii) The term of the option;

(iv) The volatility, or riskiness, of the partnership interest that is the subject of the option;

(v) The fact that the option premium and, if the option is exercised, the option exercise price, will become assets of the partnership;

(vi) Anticipated distributions by the partnership during the term of the option;

(vii) Any other special option features, such as an exercise price that declines over time or declines contingent on the happening of specific events;

(viii) The existence of related options, including reciprocal options; and

(ix) Any other arrangements (express or implied) affecting the likelihood that the option will be exercised.

(3) *Partner attributes.* Partner attributes include the extent to which the holder of the option will share in the economic benefit of partnership profits (including distributed profits) and in the economic detriment associated with partnership losses. Partner attributes also include the existence of any arrangement (either within the option agreement or in a related agreement) that, directly or indirectly, allows the holder of a noncompensatory option to control or restrict the activities of the partnership. For this purpose, rights in the partnership possessed by the option holder solely by virtue of owning a partnership interest and not by virtue of holding a noncompensatory option are not taken into account, provided that those rights are no greater than rights granted to other partners owning similar interests in the partnership.

(d) *Examples.* The following examples illustrate the provisions of this section. For the following examples, assume that:

(1) Each option agreement provides that the partnership cannot make distributions to its partners while the option remains outstanding; and

(2) The option holders do not have any significant rights to control or restrict the activities of the partnership (other than restricting distributions and dilutive issuances of partnership equity).

Example 1. Active trade or business. PRS is a partnership engaged in a telecommunications business. In exchange for a premium of $8x, PRS issues a noncompensatory option to A to acquire a 10 percent interest in PRS for $17x at any time during a 7-year period commencing on the date on which the option is issued. At the time of the issuance of the option, a 10 percent interest in PRS has a fair market value of $16x. Due to the riskiness of PRS's business, the value of a 10 percent PRS interest in 7 years is not reasonably predictable as of the time the option is issued. Therefore, it is not reasonably certain that A's option will be exercised. Furthermore, although the option provides A with substantially the same economic benefit of partnership profits as would a direct investment in PRS, A does not share in substantially the same economic detriment of partnership losses as would a partner in PRS. Given these facts, the option to acquire a PRS interest does not provide A with rights that are substantially similar to the rights afforded to a partner. Therefore, A is not treated as a partner under this section.

Example 2. Option issued by partnership with reasonably predictable earnings. PRS owns rental real property. The property is 95 percent rented to corporate tenants with a mid-investment grade bond rating or better and is expected to remain so for the next 20 years. The tenants of the building are responsible for paying all real estate taxes, insurance, and maintenance expenses relating to the property. Occupancy rates in properties of a similar character are high in the geographic area in which the property is located, and it is reasonably predictable that properties in that area will retain their value during the next 10 years. In exchange for a premium of $6.5x, PRS issues a noncompensatory option to B to acquire a 10 percent interest in PRS for $17x at the end of a 7-year period commencing on the date of the issuance of the option. At the time the option is issued, a 10 percent interest in PRS has a fair market value of $16.5x. Given the stability of PRS's rental property, PRS can reasonably predict that its net cash flow for each of the 7 years during which the option is outstanding will be $10x ($70x over the 7 years), and that there will be no decline in the value of the property during that time. In light of the reasonably predictable earnings of PRS and the fact that PRS will make no distributions to its partners during the 7 years that the option is outstanding, it is reasonably certain that the value of a 10 percent interest in PRS at the end of the option's 7-year term will significantly exceed the exercise price of the option. Therefore, the option is reasonably certain to be exercised. Because the option is reasonably certain to be exercised, under these facts, B has rights that are substantially similar to the rights afforded to a partner. Therefore, if there is a strong likelihood that failure to treat B as a partner would result in a substantial reduction in the partners' and B's aggregate tax liabilities, B will be treated as a partner. In such a case, B's distributive share of PRS's income, gain, loss, deduction, or credit (or items thereof) is determined in accordance with B's interest in the partnership (taking into account all facts and circumstances) in accordance with § 1.704–1(b)(3).

Example 3. Deep in the money options. (i) LP is a limited partnership engaged in an internet start-up venture. In exchange for a premium of $14x, LP issues a noncompensatory option to C to acquire a 5 percent interest in LP for $6x at any time during a 10-year period commencing on the date on which the option is issued. At the time of the issuance of the option, a 5 percent interest in LP has a fair market value of $15x. Because of the riskiness of LP's business, the option is not reasonably certain to be exercised. Nevertheless, because C has paid a $14x premium for a partnership interest that has a fair market value of $15x, C has substantially the same economic benefits and detriments as a result of purchasing the option as C would have had if C had purchased a partnership interest. Therefore, the option provides C with rights that are substantially similar to the rights afforded to a partner (partner attributes). See paragraph (c)(3) of this section. If there is a strong likelihood that failure to treat C as a partner would result in a substantial reduction in the partners' and C's aggregate tax liabilities, C will be treated as a partner. In such a case, C's distributive share of LP's income, gain, loss, deduction, or credit (or items thereof) is determined in accordance with C's interest in the partnership (taking into account all facts and circumstances) in accordance with § 1.704–1(b)(3).

(ii) The facts are the same as in paragraph (i) of this Example 3, except that C transfers $150x to LP in exchange for a note from LP that matures 10 years from the date of issuance and a warrant to acquire a 5 percent interest in LP for an exercise price of $6x. The warrant issued with the debt is exercisable at any time during the 10-year term of the debt. The debt instrument and the warrant comprise an investment unit with the meaning of section 1273(c)(2). Under § 1.1273–2(h), the issue price of the investment unit, $150x, is allocated $136x to the debt instrument and $14x to the warrant. As in paragraph (i), C has substantially the same economic benefits and detriments as a result of purchasing the warrant as C would have had if C had purchased a partnership interest. Therefore, the warrant provides C with rights that are substantially similar to the rights afforded to a partner. If there is a strong likelihood that failure to treat C as a partner would result in a substantial reduction in the partners' and C's aggregate tax liabilities, then C will be treated as a partner. In such a case, C's distributive share of LP's income, gain, loss, deduction, or credit (or items thereof) is determined in accordance with C's interest in the partnership (taking into account all facts and circumstances) in accordance with § 1.704–1(b)(3).

(e) *Effective Date.* This section applies to noncompensatory options that are issued on or after the date final regulations are published in the **Federal Register**.

6. Section 1.1272–1 is amended by adding a sentence at the end of paragraph (e) to read as follows:

§ 1.1272–1 Current inclusion of OID in income.

* * * * *

(e) * * * For debt instruments issued on or after the date final regulations are published in the **Federal Register**, the term *stock* in the preceding sentence means an equity interest in any entity that is classified, for Federal tax purposes, as either a partnership or a corporation.

* * * * *

7. Section 1.1273–2 is amended by adding a sentence at the end of paragraph (j) to read as follows:

§ 1.1273–2 Determination of issue price and issue date.

* * * * *

(j) * * * For debt instruments issued on or after the date final regulations are published in the **Federal Register**, the term *stock* in the preceding sentence means an equity interest in any entity that is classified, for Federal tax purposes, as either a partnership or a corporation.

* * * * *

8. Section 1.1275–4 is amended by adding a sentence at the end of paragraph (a)(4) to read as follows:

§ 1.1275–4 Contingent payment debt instruments.

(a) * * *

(4) * * * For debt instruments issued on or after the date final regulations are published in the **Federal Register**, the term stock in the preceding sentence means an equity interest in any entity that is classified, for Federal tax purposes, as either a partnership or a corporation.

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–872 Filed 1–21–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 18

RIN 1219–AA98 (Phase 10)

Alternate Locking Devices for Plug and Receptacle-Type Connectors on Mobile Battery-Powered Machines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: MSHA is proposing to amend the existing regulation by allowing the optional use of alternative locking devices for plugs and receptacles to secure battery plugs to receptacles. The proposed rule would eliminate the need to file petitions for modification to use this alternative means of securing battery plugs to receptacles.

MSHA is using direct final rulemaking for this action because the Agency expects that there will be no significant adverse comments on the rule. If no significant adverse comments are received, MSHA will confirm the effective date of the direct final rule. If significant adverse comments are received, MSHA will withdraw the direct final rule and proceed with rulemaking on this proposed rule. A subsequent **Federal Register** document will be published to announce MSHA's action.

DATES: Comments must be received on or before February 21, 2003. Submit written comments on the information collection requirements by February 21, 2003. The direct final rule will become effective March 10, 2003, unless we receive significant adverse comments by February 21, 2003. If we receive such comments, we will publish a timely withdrawal of the direct final rule and proceed with notice and comment rulemaking.

ADDRESSES: Comments must be clearly identified as such and transmitted either electronically to *comments@msha.gov*, by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You may contact MSHA with any format questions. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm*.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693–9442; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov*. You can view comments filed on this rulemaking at *http://www.msha.gov/currentcomments.htm*.

SUPPLEMENTARY INFORMATION:

I. Direct Final Rules

Concurrent with this proposed rule, we also are publishing a separate, substantively identical direct final rule in the Final Rule section of this **Federal Register**. The simultaneous publication of these documents will speed notice and comment rulemaking under § 553 of the Administrative Procedure Act should we have to withdraw the direct final rule. All interested parties should

comment at this time because we will not initiate an additional comment period.

MSHA has determined that the subject of this rulemaking is suitable for a direct final rule. The Agency believes the actions taken are noncontroversial and therefore does not anticipate receiving any significant adverse comments. If MSHA does not receive significant adverse comments on or before February 21, 2003, the Agency will publish a notice in the **Federal Register** no later than March 10, 2003, confirming the effective date of the direct final rule.

For purposes of the direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the direct final rule, MSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice and comment process. A comment recommending an addition to the rule will not be considered a significant adverse comment unless the comment states why this rule would be ineffective without the addition. If significant adverse comments are received, the Agency will publish a notice of significant adverse comments in the **Federal Register** withdrawing the direct final rule no later than March 10, 2003.

In the event the direct final rule is withdrawn because of significant adverse comments, the Agency can proceed with the rulemaking by addressing the comments received and publishing a final rule. The comment period for the proposed rule runs concurrently with that of the direct final rule. Any comments received under the companion direct final rule will be treated as comments regarding the proposed rule. Likewise, significant adverse comments submitted to the proposed rule will be considered as comments to the companion rule. The Agency will consider such comments in developing a subsequent final rule.

II. Background Information

Currently, under § 18.41 of Title 30, Code of Federal Regulations, MSHA sets forth design and construction requirements for plug and receptacle-type connectors used with permissible electric equipment approved under part 18. These technical requirements were last revised in March of 1968, which represented the latest advances in battery connector technology considered appropriate for use on mining equipment at that time.

Over the past thirty years, there have been technological improvements to the methods used for securing battery plugs to receptacles. Since the provisions of existing section 18.41(f) do not reflect the latest state-of-the-art technology, mine operators file petitions for modification under Section 101(c) of the Mine Act to take advantage of the technological advancements. Since 1980, there have been approximately 300 petitions filed and granted under Section 101(c) requesting modification to 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 18.41(f) (Plug and receptacle-type connectors) to allow the use of alternate locking devices. The means of securing battery connectors permitted under this proposed rule would allow for the use of padlocks and other equally effective mechanical devices that preclude the inadvertent separation of the battery plug from the receptacle.

In some operations, mine operators encountered difficulties with padlocks in both normal and emergency situations. The use of padlocks requires the maintenance of keys by authorized personnel. Due to the nature of mining operations, padlocks may be filled with mining debris, rendering them difficult or impossible to open with a key. Padlock keys can be misplaced, broken, or bent and may become unusable. This can go unnoticed by the operator until an emergency occurs, when the key may be unavailable or unusable. The removal of a padlock to permit the disconnection of a battery plug in an emergency situation, such as a battery fire, requires a longer period of time and greater effort than the removal of any of the other locking devices permitted in this proposed rule. However, where keys are accessible and padlocks are relatively free from accumulation of dust, padlocks have proven to be effective.

In 1987, to address the problems encountered with the use of padlocks, MSHA issued a policy allowing use of an alternative to padlocks. This policy permits the use of a device that is captive and requires a special tool to disengage and allow separation of the connector. A device is captive when a mechanical connection is made permanent by a locking device that is confined in its mounting location in a manner where, once installed, it cannot be inadvertently removed. The mechanical connection can only be made non-permanent by direct and intervening action using a special tool. A special tool is one that is not normally carried by miners and is used to ensure that constant pressure is maintained to prevent inadvertent separation of the plug from the receptacle.

Since 1980, mine operators have also been granted permission, through the petition for modification process, to use a spring-loaded locking device. MSHA determined that spring-loaded locking devices provide at least the same measure of protection as padlocks and captive locking devices. These devices maintain constant pressure on the threaded ring or equivalent mechanical fastening to prevent the plug from accidentally disengaging from the receptacle.

For both alternate locking devices, the captive locking device and the spring loaded locking device, a warning tag is also required to alert the user that the connector must not be disengaged under load. Withdrawal of a battery plug from the receptacle while the machine is energized (*i.e.*, under load) can create incendive arcing and sparking that could result in a personal injury, explosion, or fire. The requirement for the warning tag, along with part 48 new task training requirements, provide for appropriate hazard recognition when using alternative locking devices. MSHA is unaware of any adverse incidents involving alternate locking devices.

By issuing this proposed rule, MSHA is responding to the requirements of the Regulatory Flexibility Act and Executive Order 12866 that agencies review their regulations to determine their effectiveness and to implement any changes indicated by the review that will make the regulation more flexible and efficient for stakeholders and small businesses while maintaining needed protections for workers. The amended rule would maintain the protection afforded by the existing standard.

III. Discussion of Alternative Locking Devices on Mobile Battery-Powered Machines

A. Paragraph 18.41

Section 18.41 addresses connectors used on battery and non battery-powered machines. Section 18.41(f) specifies requirements for plug and receptacle-type connectors used on mobile battery-powered machines employed in underground gassy mines. This rulemaking proposes to modify paragraph (f) of 30 CFR 18.41 by adding two new provisions allowing the use of devices that provide at least the same measure of protection as that afforded by the existing standards. The Agency recognizes that battery-powered machine designs differ from conventional machine designs

employing trailing cables. The energy to battery-powered equipment is carried on-board the machine with rechargeable battery assemblies, rather than being transmitted via a trailing cable from a section power center. Because of the inherent design limitations of battery-powered machines, there is no practical way to automatically remove all electrical power from battery-powered machines. Machines powered by trailing cables have circuit-interrupting devices that can be used to de-energize them, whereas most battery-powered machines rely on a plug and receptacle for de-energization. The proper procedure for removing power from a battery-powered machine is to first open the main machine disconnect device and then to disengage the plug from the receptacle. This effectively isolates the battery power from the machine.

B. Subparagraph 18.41(f)(1)

Subparagraph 30 CFR 18.41(f)(1) would retain the existing provision that a plug padlocked to the receptacle would be acceptable in lieu of an interlock provided the plug is held in place by a threaded ring or equivalent mechanical fastening in addition to the padlock. This paragraph also would retain the provision that a connector within a padlocked enclosure would be acceptable.

A padlock used on a battery plug and receptacle-type connector serves a dual purpose. It secures the threaded ring or equivalent mechanical fastening in place. A padlock is also used as a means to prevent the removal of the plug from the receptacle by unauthorized personnel. In this respect, only those persons having keys are considered authorized to remove the plug from the receptacle.

C. Subparagraph 18.41(f)(2)

Subparagraph 30 CFR 18.41(f)(2) would be a new provision which provides for an alternate method for securing the battery plug to the receptacle. The rule would provide that a plug which is held in place by a threaded ring or equivalent mechanical fastening will be acceptable provided that the threaded ring is secured in place with a device that is captive. It would also require a special tool to disengage the device and allow for the separation of the connector. It would further require a warning tag that states: "DO NOT DISENGAGE UNDER LOAD."

D. Subparagraph 18.41(f)(3)

Subparagraph 30 CFR 18.41(f)(3) would be a new provision which provides for another alternate method for securing the battery plug to the receptacle. The rule states that a plug held in place by a spring-loaded or other locking device that maintains constant pressure against a threaded ring or equivalent mechanical fastening would be acceptable provided that it would secure the plug from accidental separation. It would further require a warning tag that states: "DO NOT DISENGAGE UNDER LOAD."

This subparagraph would allow for the use of other locking devices that may become available in the future. The Agency has included this language to allow for acceptance of equally effective devices. Devices not explicitly defined in this rulemaking must be equally effective and provide at least the same measure of protection as those incorporated under this section.

Neither of the alternatives in subparagraphs 18.41(f)(2) or (f)(3) would impose additional requirements to the 1987 MSHA policy or the granted petitions for modification.

IV. Executive Order 12866 (Regulatory Planning and Review and Regulatory Flexibility Act)

Introduction

MSHA is proposing to amend 30 CFR 18.41(f), concerning plug and receptacle-type connectors for mobile battery-powered equipment. The proposed rule would revise and update the existing regulation by allowing the use of alternate locking devices to secure battery plugs to receptacles. Two alternate locking devices are addressed in this proposed rule.

(1) Captive locking devices requiring use of a special tool. These devices have been accepted since 1987 under an MSHA policy allowing their usage.

(2) Spring loaded or other locking devices. Spring-loaded locking devices have been accepted by MSHA under the 101(c) Petition for Modification process.

The proposed rule, once promulgated, would eliminate the need to file petitions for modification (PFM) to use spring-loaded locking devices to secure battery plugs to receptacles. It would also codify the 1987 MSHA policy of allowing acceptance of captive locking devices.

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has fulfilled this requirement for this proposed rule, and based upon its economic analysis, has determined that the proposed rule would not have an annual effect of $100 million or more on the economy. Therefore, it would not be an economically significant regulatory action pursuant to § 3(f)(1) of E.O. 12866.

The proposed rule would eliminate the need for mine operators of underground gassy mines, who choose to use plug and receptacle-type connectors for mobile battery-powered equipment, to file PFMs, and thereby would generate cost savings.

From 1999 to 2001, 66 petitions were filed and granted to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors). Through November 20, 2002, 23 petitions have been filed, for a total of 89 filed petitions from 1999 to 2002. On average, 22 petitions were filed during each of the past 4 years.

Mining Sectors Affected

The proposed rule would apply to all underground gassy mines. All underground coal mines are considered gassy mines and are affected by this proposed rule. Gassy metal and nonmetal (M/NM) mines would also be affected by the proposed rule. Currently there are no battery-powered machines of the type covered by the proposed rule in any of the gassy M/NM mines. Since these devices have not been used in M/NM mines, for purposes of this economic analysis, MSHA assumes that M/NM mines would not be affected by this rule. MSHA estimates that, on average, 22 underground coal mines per year would be affected by this rule.

Benefits

MSHA has qualitatively determined that the proposed rule, which would permit use of alternate locking devices on mobile battery-powered equipment instead of using padlocks, would yield safety benefits relative to the existing rule, which does not permit use of alternate locking devices on mobile battery-powered equipment. The use of alternate locking devices in lieu of padlocks on mobile battery-powered equipment would eliminate the problems associated with difficult removal of padlocks.

Compliance Costs

Cost savings from the proposed rule would accrue to underground coal mines that choose to use spring-loaded locking devices on mobile battery-powered equipment since they would no longer have to file a PFM. Cost savings from the proposed rule are estimated to be $9,747 per year. The cost savings are based upon the elimination of the filing of an average of 22 petitions per year. It is projected that of the 22 mines, 19 would employ 20 to

500 workers, and 3 would employ fewer than 20 workers. For 3 mines that employ fewer than 20 workers these cost savings would be $1,329. For the remaining 19 mines that employ 20 to 500 workers the cost savings would be $8,418.

Mines Employing Fewer Than 20 Workers

The cost savings of $1,329 for mines employing fewer than 20 workers are derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare a petition (3 petitions x 8 hours x $54.92 per hour = $1,318). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hours to copy and mail a petition (3 petitions x 0.1 hours x $19.58 per hour = $6). Furthermore, MSHA estimates that, on average, each petition is 5 pages long, photocopying costs are $0.15 per page, and postage is $1 [3 petitions x ((5 pages x $0.15 per page) + $1) = $5].

Mines Employing 20 to 500 Workers

The cost savings of $8,418 for mines that employ 20 to 500 workers are derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare a petition (19 petitions x 8 hours x $54.92 per hour = $8,348). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hours to copy and mail a petition (19 petitions x 0.1 hours x $19.58 per hour = $37). Furthermore, MSHA estimates that, on average, each petition is 5 pages long, photocopying costs are $0.15 per page, and postage is $1 [19 petitions x ((5 pages x $0.15 per page) + $1) = $33].

There are no substantive changes proposed that apply to any mine that chooses not to use alternate locking devices on mobile battery-powered equipment. Thus, these mines would not incur costs nor generate cost savings as a result of the proposed rule.

V. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the proposed rule on small businesses. Further, MSHA has made a determination with respect to whether or not the Agency can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by these rulemakings. Under SBREFA amendments to the RFA, MSHA must include in the rule a factual basis for this certification. If the proposed rule would have a significant economic impact on a substantial number of small entities, then the Agency must develop an initial regulatory flexibility analysis.

Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action, and hence is required to use the SBA definition.

The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees (13 CFR 121.201). All of the mines affected by this rulemaking fall into this category and hence can be viewed as sharing the special regulatory concerns which the RFA was designed to address.

Traditionally, the Agency has also looked at the impacts of its rules on a subset of mines with 500 or fewer employees"those with fewer than 20 employees, which the mining community refers to as "small mines." These small mines differ from larger mines not only in the number of employees, but also, among other things, in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA rules and the impact of MSHA rules on them would also tend to be different. It is for this reason that "small mines," as traditionally defined by the mining community, are of special concern to MSHA.

This analysis complies with the legal requirements of the RFA for an analysis of the impacts on "small entities" while continuing MSHA's traditional look at "small mines." MSHA concludes that it can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. The Agency has determined that this is the case both for mines affected by this rulemaking with fewer than 20 employees and for mines affected by this rulemaking with 500 or fewer employees.

Factual Basis for Certification

The Agency's analysis of impacts on "small entities" begins with a "screening" analysis. The screening compares the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for those small entities. When estimated compliance costs are less than one percent of the estimated revenues, or they are negative (that is, they provide a cost savings), the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, it tends to indicate that further analysis may be warranted. Using either MSHA's or SBA's definition of a small mine, the proposed rule would result only in cost savings to affected mines. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities using either MSHA's or SBA's definition of a small mine. Accordingly, we are publishing the factual basis for our regulatory flexibility certification statement in the **Federal Register**, as a part of this preamble, and are providing a copy to the Small Business Administration, Office of Advocacy. We also will mail a copy of the direct final rule, including the preamble and certification statement, to mine operators and miners' representatives and post it on our Internet Home page at *http://www.msha.gov*.

VI. Paperwork Reduction Act of 1995

The proposed amendments to 30 CFR 18.41(f) would not introduce any new paperwork requirements that are subject to OMB approval under the Paperwork Reduction Act. In addition, the third-party disclosure requirements proposed for 30 CFR 18.41(f)(2) and (3) are not considered a "collection of information" because the standard provides the exact language for warning tags [*see* 5 CFR 1320.3(c)(2)].

As a result of the proposed rule, the number of petitions for modification filed annually related to battery plugs would be reduced. Therefore, the proposed rule would result in reducing burden hours and costs in the ICR 1219–0065 paperwork package, which concerns the filing of petitions for modification.

The proposed rule would result in 178.2 burden hour savings annually and associated annual burden cost savings of $9,709 related to the elimination of 22 petitions annually for alternate locking devices to secure battery plugs to receptacles. Of this total, for the 3 mines that employ fewer than 20 workers, there would be 24.3 burden hours savings annually and associated annual burden cost savings of $1,324. For the 19 mines that employ 20 to 500 workers, there would be 153.9 burden hours

savings annually and associated annual burden cost savings of $8,385.

Mines Employing Fewer Than 20 Workers

The annual reduction of 24.3 burden hours and the $1,324 cost savings that would occur for the 3 mines that employ fewer than 20 workers are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare a petition (3 petitions × 8 hours = 24 hours). In addition, on average, a clerical worker takes 0.1 hours, 6 minutes, to copy and mail a petition (3 petitions × 0.1 hours = 0.3 hours). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 24 burden hours = $1,318.10). The hourly wage rate for a clerical worker is $19.58 ($19.58 0.3 burden hours = $5.90).

Mines Employing 20 to 500 Workers

The annual reduction of 153.9 burden hours and the $8,385 cost savings that would occur for the 19 mines that employ 20 to 500 workers are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare a petition (19 petitions × 8 hours = 152 hours). In addition, on average, a clerical worker takes 0.1 hours, 6 minutes, to copy and mail a petition (19 petitions × 0.1 hours = 1.9 hours). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 152 burden hours = $8,347.84). The hourly wage rate for a clerical worker is $19.58 ($19.58 × 1.9 burden hours = $37.20).

The amendment to 30 CFR 18.41(f) would eliminate a need for mine operators to file petitions for modification. Resulting from the decreased number of petitions, MSHA would not conduct investigations related to the determination the merits of the petition. The paperwork containing the information necessary to permit investigation of the petition for modification would not be needed. The petition for modification paperwork requirements are contained in 30 CFR 44.9, 44.10 and 44.11. They are approved under OMB control number 1219–0065. We are not proposing to amend §§ 44.9, 44.10, or 44.11. We are only proposing to amend a regulation that is frequently petitioned. Consequently, MSHA would not submit a paperwork package with this direct final rule. Although it is not necessary to update the Information Collection Requirement document at this time, we will submit the necessary paperwork to record the decrease in burden when appropriate. Our estimate of the number of petitions submitted each year would be reduced by the average number of petitions for modification currently submitted to modify the current regulation.

VII. Other Regulatory Considerations

A. Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, the proposed rule would not include any Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million. MSHA is not aware of any State, local, or tribal government that either owns or operates underground coal mines.

B. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

The proposed rule would not be subject to Executive Order 12630 because it does not involve implementation of a policy with takings implications.

C. Executive Order 12988 (Civil Justice Reform)

MSHA has reviewed Executive Order 12988 and determined that the proposed rule would not unduly burden the Federal court system. The Agency wrote the proposed rule to provide a clear legal standard for affected conduct and has reviewed it carefully to eliminate drafting errors and ambiguities.

D. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effects of the proposed rule on children and has determined that it would have no adverse effects on children.

E. Executive Order 13132 (Federalism)

MSHA has reviewed the proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that it would not have federalism implications.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

MSHA certifies that the proposed rule would not impose substantial direct compliance costs on Indian tribal governments.

G. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, MSHA has reviewed the proposed rule and has determined that it would have no adverse effect on the production or price of coal. Consequently, it would have no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action are necessary.

H. Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in section V in this preamble, MSHA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VIII. Petitions for Modification

On the effective date of the direct final rule, all existing petitions for modification for alternate locking devices for plug and receptacle-type connectors on mobile battery-powered machines would be superseded. Mine operators who have a previously granted petition modifying 30 CFR 75.503 and 18.41(f) would thereafter be considered in compliance with this rule, as long as the equipment is maintained in compliance with the specifications stated in the original petition for modification. All battery-powered equipment approved with locking devices prior to the effective date of this rule would be considered compliant, as long as the equipment is maintained in accordance with the originally approved specifications.

List of Subjects in 30 CFR Part 18

Mine safety and health, Reporting and recordkeeping requirements, Underground mining.

Dated: January 13, 2003.

Dave D. Lauriski,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, we are proposing to amend chapter I, subpart B, part 18 of title 30 of the Code of Federal Regulations as follows:

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

1. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

Subpart B—[Proposed Amendment]

2. Paragraph (f) of § 18.41 is revised to read as follows:

§ 18.41 Plug and receptacle-type connectors.

* * * * *

(f) For a mobile battery-powered machine, a plug and receptacle-type connector will be acceptable in lieu of an interlock provided:

(1) The plug is padlocked to the receptacle and is held in place by a threaded ring or equivalent mechanical fastening in addition to a padlock. A connector within a padlocked enclosure will be acceptable; or,

(2) The plug is held in place by a threaded ring or equivalent mechanical fastening, in addition to the use of a device that is captive and requires a special tool to disengage and allow for the separation of the connector. All connectors using this means of compliance shall have a clearly visible warning tag that states: "DO NOT DISENGAGE UNDER LOAD"; or,

(3) The plug is held in place by a spring-loaded or other locking device, that maintains constant pressure against a threaded ring or equivalent mechanical fastening, to secure the plug from accidental separation. All connectors using this means of compliance shall have a clearly visible warning tag that states: "DO NOT DISENGAGE UNDER LOAD."

[FR Doc. 03–1306 Filed 1–21–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–020]

RIN 2115–AA97

Security Zone; Portland, OR, Rose Festival on Willamette River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a security zone surrounding the City of Portland's Waterfront Park to include all waters of the Willamette River, from surface to bottom, encompassed by the Hawthorne and Steel Bridges during the annual Rose Festival. Terrorist acts against the United States necessitate this action to properly safeguard all vessels participating in the 2003 Portland Rose Festival from terrorism, sabotage, or other subversive acts. Anticipate the security zone will have limited effects on commercial traffic and significant effects on recreational boaters; ensuring timely escorts through this security zone is a high priority of the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard no later than 60 days after date of publication in the **Federal Register**.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office / Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Portland between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski, c/o Captain of the Port, Portland, Oregon at (503) 240–2584.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–02–020), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Marine Safety Office/Group Portland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

This security zone is necessary to provide for the safety and security of vessels participating in the 2003 Portland Rose Festival in the navigable waters of the United States.

Discussion of Proposed Rule

This rule, for safety and security concerns, would control vessel movements in a regulated area surrounding vessels participating in the 2003 Portland Rose Festival. U.S. Naval Vessels are covered under 33 CFR 165 subpart G—Protection of Naval Vessels; however, the Portland Rose Festival is a major maritime event that draws many different vessels including Navy, Coast Guard, Army Corps of Engineers, and Canadian. It is crucial that the same level of security be provided to all participating vessels. Entry into this zone would be prohibited unless authorized by the Captain of the Port, Portland or his designated representatives. Commercial vessels that typically transit this section of the Willamette River will be pre-designated and will suffer only minor inconveniences. Recreational vessels may suffer from extended delays and can anticipate a vessel inspection. Recreational vessels are encouraged to avoid this area. Recreational vessels will be allowed into the zone on a case-by-case basis following extensive security measures, and as operations permit. Coast Guard personnel will enforce this security zone and the Captain of the Port may be assisted by other federal, state, or local agencies.

Good cause exists to shorten the notice and comment period of this notice of proposed rulemaking. The normal 90 day comment period has been shortened to 60 days to allow the Coast Guard to evaluate all comments received, make appropriate modifications to the proposed rule, and publish the final rule at least 30 days prior to the implementation of the security zone.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the

Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This expectation is based on adequate resources allowing vessel approvals from the Captain of the Port or his designated representatives to transit through the regulated area. For the above reasons, the Coast Guard only anticipates minor economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this portion of the Willamette River. The likely impacts to small entities would include minor time delays, potential inspections, and possibly non-entrance if the Captain of the Port or his designated representatives sense the vessels participating in the Rose Festival are threatened. The security zone will not have a significant economic impact because adequate resources will allow vessels timely approval from the Captain of the Port or his designated representatives to transit through the regulated area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because the temporary security zone would not last longer than one week in duration. The temporary security zone would be established on Wednesday, June 4th with the arrival of the first vessel to the City of Portland's Waterfront Park and extend until the last vessel departs the Waterfront Park on Monday, June 9th. A "Categorical Exclusion Determination" and corresponding checklist is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.1312 to read as follows:

§ 165.1312 Security Zone; Portland, OR Rose Festival on Willamette River.

(a) *Location.* The following area is a security zone: All waters of the Willamette River, from surface to bottom, encompassed by the Hawthorne and Steel Bridges.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Portland or his designated representatives. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port on VHF channel 16 (156.8 MHz) or VHF channel 22A (157.1 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective period.* This section will be effective generally from the first full Wednesday of June to the next Monday in June. A notice of implementation of regulation will be published in the **Federal Register** 30 days prior to the beginning of the event.

Dated: December 24, 2002.

P.D. Jewell,

Captain, Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–1286 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251, 261, and 295

RIN 0596–AB74

Land Uses; Special Uses Requiring Authorization

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Forest Service proposes to amend the regulations at part 251 that govern special uses of National Forest System lands to address management issues related to the special uses program and to clarify categories of activities for which a special use authorization is required. The proposed rule would promote consistent treatment of special uses requiring an authorization; improve the agency's ability to resolve management issues by requiring permits; and reduce the agency's administrative cost by eliminating the need for issuing an order to require a special use permit and not requiring special use authorizations where they serve no management purpose. The proposed rule clarifies requirements regarding authorizations for special uses involving National Forest System roads and trails. The proposed rule also would add definitions to part 251, would revise definitions in part 261, and would revise a term in the heading of part 295, to ensure use of consistent terminology in these parts. Public comment is invited and will be considered in development of the final rule.

DATES: Comments must be received in writing by March 24, 2003.

ADDRESSES: Send written comments to Forest Service, USDA, Attn: Director, Recreation, Heritage and Wilderness Resources (RHWR) Staff, (2720), Mail Stop 1125, Washington, DC 20250–1125 or to *rhwr_rule@fs.fed.us.*

All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule in the Office of the Director, RHWR Staff, 4th Floor Central, Sidney R. Yates Federal Building, 14th and Independence Avenue, SW., Washington, DC, on business days between the hours of 8:30 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead at (202) 205–1706 or (202) 205–1399 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Carolyn Holbrook, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–1399, or Randy Karstaedt, Lands Staff, (202) 205–1256.

SUPPLEMENTARY INFORMATION:

Background and Need for Rule

Forest Service regulations at 36 CFR part 251, subpart B, govern authorizations for occupancy and use of National Forest System lands. Section 251.50 of this subpart characterizes as "special uses" all uses of National Forest System lands, improvements, and resources, except those authorized by the regulations governing the disposal of timber (part 223) and minerals (part 228) and the grazing of livestock (part 222). The regulation requires an authorization for all "special uses," with certain exceptions.

Approximately 72,000 special use authorizations are in effect on National Forest System lands. These uses cover a variety of activities ranging from individual private uses to large-scale commercial facilities and public services. Examples of authorized land uses include road rights-of-way accessing private residences, apiaries, domestic water supplies and water conveyance systems, telephone and electric service rights-of-way, ski areas, resorts, marinas, outfitter and guide services, and public parks and campgrounds. About 6,000 special use proposals are submitted annually by various entities wanting to use and occupy National Forest System lands. This proposed rule would clarify which activities require a special use authorization. The rule also would revise the term "National Forest System road" (formerly, "forest development road") to conform to changes in the road management rule at part 212.

In addition, the proposed rule would make the following technical amendments: (1) Revising the definitions for "National Forest System road" and "National Forest System trail" in section 261.2 to make them consistent with 23 U.S.C. 101; (2) in section 261.55, changing the term "forest development trail" to "National Forest System trail," in conformance with the terminology used in part 212 and this proposed rule; and (3) changing the term "Forest Service Roads" to "National Forest System Roads" in the title of the heading for part 295.

Clarification of Special Uses Requiring an Authorization

Revision of sections 251.50 and 251.51 is needed to address management issues related to the special uses program and to special use authorizations involving National Forest System roads and trails.

The current regulation at 36 CFR 251.50(d) provides that a special use authorization is not required for use of National Forest System roads and trails, unless required by an order issued pursuant to section 261.50 or a regulation issued pursuant to section 261.70. Courts have construed this provision as not requiring an authorization for special uses that occur on National Forest System roads and trails and have invalidated orders issued pursuant to section 261.50 that required a permit for special uses occurring on National Forest System roads. These

rulings have created a gap in regulatory coverage in the special uses program.

The requirement for a special use authorization should be triggered whenever a special use is conducted on National Forest System lands, including on a road or trail. Therefore, the Forest Service proposes to clarify that activities requiring a special use authorization on National Forest System lands are also subject to the requirement for a special use authorization when they are conducted on National Forest System roads and trails (formerly known as forest development roads and trails). The Forest Service has identified four types of special uses that occur on National Forest System roads and trails: noncommercial group uses, outfitting and guiding, recreation events, and commercial filming. The agency is proposing to narrow the exemption for the authorization requirement in section 251.50(d) to exclude special uses occurring on National Forest System roads, and to eliminate the exemption for the authorization requirement for special uses occurring on National Forest System trails. The Forest Service is proposing to eliminate the exemption for special uses conducted on National Forest System trails because there is great potential for resource damage on trails that may not be designed or constructed for the level or type of use that occurs. Furthermore, it is unlikely that there is commercial use of National Forest System trails that should be exempted from the special use authorization requirement.

Under these proposed revisions to the rule, the Forest Service would require special use authorizations and the fees for those authorizations under statutes governing use and occupancy of National Forest System lands. Specifically, for occupancy and use of National Forest System lands, the Forest Service would require commercial filming and still photography permits and permit fees under Public Law 106–206; outfitting and guiding permits and recreation event permits, and permit fees under the Land and Water Conservation Fund Act, 16 U.S.C. 460*l*–6a(c); and noncommercial group use permits (no fee is charged for noncommercial group use permits) under the agency's Organic Act, 16 U.S.C. 551. Further authority for these permit fees is found in the Independent Offices Appropriations Act, 31 U.S.C. 9701, Office of Management and Budget Circular No. A–25, and 36 CFR 251.57(a). These fees would be charged annually for commercial special uses of National Forest System lands, and would be based on the fair market value of the authorized uses of those lands.

The agency has several reasons for proposing that these types of activities set out at section 251.50 require a special use authorization when conducted on National Forest System roads and trails.

First, a growing number of parties engaged in commercial recreation events and outfitting and guiding use this regulatory gap in the current rule to conduct these activities without a special use authorization. They do so by confining their use and occupancy of National Forest System lands only to National Forest System roads and trails. While the organizers or commercial operators of these types of uses may assert that their activities are confined only to a road or trail, sometimes their activities include the use and occupancy of National Forest System lands adjacent to the road or trail. Determining whether a use is confined to a road or trail requires intensive, case-specific monitoring. The proposed rule would eliminate the need for this monitoring by requiring an authorization for all types of special uses that involve the use of National Forest System lands, regardless of whether they occur on or off National Forest System roads and trails.

Second, some commercial operators design their services to fit the regulatory gap, potentially compromising the quality of the recreation experience, public safety, and the interests of the United States. For example, some operators may stop on a road to unload people and equipment to avoid getting off the road. Requiring a special use authorization would eliminate this practice when a safer alternative is available and would require that necessary safety procedures be followed when no such alternative is available. In addition, conducting a special use without an authorization exposes the United States to potential liability. Special use authorizations contain indemnification, insurance, and other provisions that protect the United States from liability arising in connection with the holder's use and occupancy.

Third, the regulatory gap creates an uneven playing field among businesses, some of which operate under a special use authorization and pay a land use fee, while others do not. The Forest Service is required to obtain fair market value for the commercial use of National Forest System lands. The value of these uses of National Forest System roads and trails is directly attributable to the presence of National Forest System lands and resources located outside the confines of the roads and trails. The public should realize a fair market value return for these commercial uses of Federal lands and resources, which can be achieved only by requiring a special use authorization for these uses and charging a land use fee for the authorization.

Fourth, the agency needs to regulate these uses of National Forest System roads and trails to accomplish management objectives and reduce impacts to National Forest System lands and resources. The demand for uses of National Forest System lands and resources has increased in recent years. Along with the growth in demand, there are more conflicts among users and increased pressure on limited land and resources. In some cases, the demand is so great that it is necessary to limit use. When an area becomes popular, uncontrolled use can result in land and resource impacts, user conflicts, or increased vehicular and pedestrian traffic with associated traffic safety concerns on National Forest System roads and trails. The agency attempts to balance the needs of individuals, private groups, and commercial operators when managing uses. The agency proposes to address these concerns and conflicts through special use authorizations for special uses that occur on National Forest System roads and trails.

Additionally, this rule would replace the term "forest development roads" with "National Forest System roads" to conform to recent regulatory changes made to 36 CFR part 212.

The authority in the proposed rule to regulate special uses occurring on National Forest System roads would not supplant Forest Service authority to regulate road use within the National Forest System under applicable law, including the National Forest Roads and Trails Act. Rather, these authorities would be complementary. For example, a separate road use permit could be issued under Forest Service Manual 7731.16 and Forest Service Handbook 7709.59, section 24, in conjunction with a special use authorization issued under the proposed rule, or road use issues could be addressed within the context of a special use authorization issued under the proposed rule.

Clarification of Special Uses Not Requiring an Authorization

The agency prefers not to regulate uses when it is unnecessary to establish terms and conditions to protect National Forest System lands and resources or to avoid conflict with agency programs or operations. In April 1997, the Forest Service completed a reengineering study of its special uses program that recommended managing special uses in a more businesslike and customer service-oriented manner. The study

found that many special use authorizations are issued for (1) minor uses of National Forest System lands that have nominal effects on National Forest System lands, resources, and programs, (2) uses that are regulated by other agencies in a manner that is adequate to protect National Forest System lands and resources and to avoid conflict with Forest Service programs and operations, and (3) routine operation or maintenance within the scope of a valid reserved or outstanding property right. The reengineering study recommended that the agency not require a special use authorization in these cases, as it is unnecessary for purposes of National Forest System land and resource management.

Accordingly, under the proposed rule, for uses other than a noncommercial group use, a special use authorization would not be required if the authorized officer determines that the proposed use has one or more of the following characteristics: (1) the proposed use will have such nominal effects on National Forest System lands, resources, or programs that it is not necessary to establish terms and conditions in a special use authorization to protect National Forest System lands and resources or to avoid conflict with National Forest System programs or operations; (2) the proposed use is regulated by a State or another Federal agency in a manner that is adequate to protect National Forest System lands and resources and to avoid conflict with National Forest System programs or operations; or (3) the proposed use is a routine operation or maintenance activity within the scope of a valid reserved or outstanding property right, such as a right-of-way, easement, or reservation.

Proposed Rule Changes

Section 251.50

Current paragraph (a) of section 251.50 requires an authorization for all special uses, unless that requirement is waived as provided in paragraph (c). Proposed paragraph (a) would be revised to identify two additional exceptions, which would be enumerated in proposed paragraphs (d) and (e).

Furthermore, the reference in paragraph (a) concerning the disposal of timber would be expanded to include special forest products, such as greens, mushrooms, medicinal plants, and other plant material collected or gathered for commercial or noncommercial use. Proposed paragraph (a) would state that the disposal of these materials is regulated by part 223. Many forest managers have mistakenly administered these activities as special uses. Adding a reference to special forest products would distinguish the disposal of forest products as an activity authorized by other than a special use authorization.

Current paragraph (b) of section 251.50 provides for the temporary occupancy of National Forest System lands in an emergency for the protection of life and property, as long as a special use authorization is obtained at the earliest opportunity, unless the requirement for a special use authorization is waived. Proposed paragraph (b) would be expanded to clarify that those temporarily occupying National Forest System lands without a special use authorization assume liability, and must indemnify the United States, for all injury, loss, or damage arising in connection with the temporary occupancy. This added provision is necessary to protect the public interest should injury, loss, or damage occur as a result of the temporary occupancy prompted by an emergency.

With limited exceptions, current paragraph (c) states that noncommercial recreational activities, other than noncommercial group use, do not require a special use authorization, and gives examples of these activities. The agency is proposing no change to this list. Paragraphs (c)(1) and (c)(2) would be combined and redesignated as proposed paragraph (c)(2). Paragraph (c)(3) would be redesignated as proposed paragraph (c)(1).

Paragraph (d) would be revised. The existing paragraph provides that, unless otherwise required by order issued pursuant to section 261.50 or by regulation issued pursuant to section 261.70, any use of existing forest development roads or trails does not require a special use authorization. The agency proposes to revise paragraph (d) by changing "forest development road" to "National Forest System road" to conform to changes made to parts 212, 261, and 295 regarding roads, and by removing the word "trail." In addition the agency proposes to change "use of" to "travel on" a road or trail.

Proposed paragraphs (d) and (d)(1) also would clarify that noncommercial group uses, outfitting and guiding, recreation events, and commercial filming conducted on National Forest System roads require a special use authorization. For example, a special use authorization would be required for an outfitter who charges a customer for the delivery of livestock or recreation equipment on a National Forest System road for the customers to use on adjacent National Forest System lands. A second example is a guide who conducts commercial, vehicular tours on National Forest System roads, regardless of whether the guide's customers are confined to the vehicle. A third example is the use of motion picture equipment on a National Forest System road that involves the advertisement of a product or service. A final example is an endurance ride involving hundreds of participants, for which no entry fee is charged, conducted on a National Forest System road.

The proposed paragraph (d)(2) would include the authority currently in paragraph (d) for Regional Foresters and Forest Supervisors to issue orders (section 261.50) and regulations (section 261.70) to prohibit or regulate other uses of National Forest System roads, on a case-specific basis.

Proposed paragraph (e) would be added to specify instances where the requirement to obtain a special use authorization may be waived for certain uses other than a noncommercial group use. Under this proposed paragraph, the special use authorization requirement would be waived only after a proposal for a special use is submitted and the authorized officer determines that the proposed use meets the criteria for waiver.

Proposed paragraph (e)(1) would be added to allow the authorized officer to waive the special use authorization requirement for minor, incidental uses that will have such nominal effects on National Forest System lands, resources, or programs that it is not necessary to establish terms and conditions in a special use authorization to protect National Forest System lands and resources or to avoid conflict with National Forest System programs or operations. Examples of minor, incidental uses could include mailboxes on approved mounts or small identification signs for property. This proposed rule would not relieve a party from requesting advance approval from an authorized officer for such uses or occupancies. Rather, the proposed rule would provide the authorized officer with the ability to waive the requirement for a special use authorization when, based upon professional judgment and experience with comparable uses, the authorized officer determines that no forest management objectives would be achieved through issuance of an authorization. Generally, experience has demonstrated that the cost to the agency to issue and administer authorizations for these types of minor, incidental uses far exceeds any public benefit in terms of land and resource protection.

Paragraph (e)(2) would be added to exempt proposed uses that are regulated by another agency in a manner that is adequate to protect National Forest System lands and resources and to avoid conflict with National Forest System programs or operations. An example would be the taking of game or other animals, which is regulated by States. Another example is the delegation of authority by the Forest Service to a different agency to serve as lead agency for regulating certain uses, such as in connection with administration of an oil or gas pipeline special use authorization under the Mineral Leasing Act. This provision would serve to reduce the dual regulation of uses by the Forest Service and other agencies, where another agency's regulatory jurisdiction is satisfactory to meet Forest Service management objectives.

Paragraph (e)(3) would be added to clarify that no special use authorization is required for activities already authorized within the scope of a valid reserved, granted, or outstanding property right, such as a right-of-way, easement, or reservation. Paragraph (e)(3) also would provide that no special use authorization is required for conducting routine operation and maintenance activities within the scope of an outstanding statutory right for certain highways, ditches, or canals. Conversely, under this proposed provision, any activities (including operation, maintenance, construction, or reconstruction) that are outside the scope of an outstanding statutory right would require a special use authorization. In addition, any activities other than routine operation or maintenance, such as construction or reconstruction, that are within the scope of an outstanding statutory right would require a special use authorization. The proposed regulation would require holders of any of these rights to propose on-the-ground activities to the authorized officer before conducting them. The authorized officer would then have the opportunity to determine whether all or some of the proposed activities qualify for the waiver provided under proposed paragraph (e)(3) and can be conducted without a special use authorization.

Waiving the requirement for a special use authorization under the circumstances identified in proposed paragraphs (e)(1) through (e)(3) would improve management efficiency and allow the agency to focus its limited appropriations on management of special uses that have a greater potential impact on National Forest System lands, resources, or programs.

Section 251.51

Section 251.51 of the current regulations defines the more significant and commonly used terms and phrases in part 251, subpart B. The proposed section 251.51 would add definitions for the following terms: "Commercial filming," "forest road or trail," "guiding," "National Forest System road," "outfitting," "recreation event," and "still photography." Providing a definition for these terms would improve public and agency understanding and interpretation of the proposed revisions to section 251.50 provided in this notice.

Section 261.2

The definitions of "National Forest System road" and "National Forest System trail" in proposed section 261.2 would be revised and a new definition for "forest road or trail" would be added for consistency with 23 U.S.C. 101 and this part.

Section 261.55

The term "forest development trails" would be changed to "National Forest System trails" in the heading and introductory text of proposed section 261.55.

Part 295

The term "forest Service road" in the current title of the part 295 heading would be changed to "National Forest System road" in the proposed title of this part for consistency with the terminology in parts 251 and 261.

Regulatory Certifications

Environmental Impact

The proposed changes to the rule at 36 CFR 251.50 and 251.51 would provide more consistent procedures for processing special use proposals and applications and administering special use authorizations for use and occupancy of National Forest System lands. The proposed rule also would make terminology consistent in parts 251, 261, and 295. The changes are intended to improve administrative efficiencies and would have no environmental effects. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. The agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist as currently defined that would require preparation of an environmental assessment or environmental impact statement. A final determination will be made for the final rule.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant rule. This proposed rule would not have an annual effect of $100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This proposed rule would not interfere with an action taken or planned by another agency, nor would it raise new legal or policy issues. Finally, this proposed rule would not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this proposed rule is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). It has been determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the act because the proposed rule would not impose record-keeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market. To the contrary, the efficiencies and consistency to be achieved by this rule should benefit small businesses that seek to use and occupy National Forest System lands by ensuring consistency in procedures across forests and regions and by eliminating costly, time-consuming, and unnecessary processing of certain special use applications and administration of certain special use authorizations. The benefits, most of which cannot be quantified, are not likely substantially to alter costs to small businesses.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed rule would not pose the risk of a taking of private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988 on civil justice reform. If this proposed rule were adopted, (1) all State and local laws and regulations that are in conflict with this proposed rule or that would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered this proposed rule under the requirements of Executive Order 13132 on federalism, and has made an assessment that the proposed rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, this proposed rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with tribes is not required.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

The forms for special use applications and authorizations have been approved for use by the Office of Management and Budget (OMB) and assigned OMB control number 0596–0082. Therefore, this proposed rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Moreover, the proposed rule will reduce the number of applicants for special use authorizations by clarifying those circumstances when special use authorizations are not required. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands-rights-of-way, Reporting and recordkeeping requirements, Water resources.

36 CFR Part 261

Law Enforcement, National forests.

36 CFR Part 295

National forests, Traffic regulations.

Therefore, for the reasons set out in the preamble, the Forest Service proposes to amend subpart B of part 251, subpart A of part 261, and part 295 of Title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart B—Special Uses

1. The authority citation for subpart B continues to read as follows:

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. Revise § 251.50 to read as follows:

§ 251.50 Scope.

(a) All uses of National Forest System lands, improvements, and resources, except those authorized by the regulations governing disposal of timber and special forest products, such as greens, mushrooms, and medicinal plants (part 223), minerals (part 228), and grazing of livestock (part 222), are designated "special uses." Before conducting a special use, individuals or entities must submit a proposal to the authorized officer and must obtain a special use authorization from the authorized officer, unless that requirement is waived by paragraphs (c) through (e) of this section.

(b) Nothing in this section prohibits the temporary occupancy of National Forest System lands without a special use authorization for the protection of life and property in emergencies, if a special use authorization for that occupancy is obtained at the earliest opportunity, unless waived pursuant to paragraphs (c) through (e) of this section. Those temporarily occupying National Forest System lands without a special use authorization assume liability and must indemnify the United States for all injury, loss, or damage arising in connection with the temporary occupancy.

(c) A special use authorization is not required for noncommercial recreational activities, such as camping, picnicking, hiking, fishing, boating, hunting, and horseback riding, or for noncommercial activities involving the expression of views, such as assemblies, meetings, demonstrations, and parades, unless:

(1) The proposed use is a noncommercial group use as defined in § 251.51; or

(2) Authorization of that use is required by an order issued pursuant to § 261.50 or by a regulation issued pursuant to § 261.70 of this chapter.

(d) Travel on any National Forest System road must comply with all Federal and State law governing the road to be used. Travel on any National Forest System road does not require a special use authorization, unless:

(1) The travel is for the purpose of engaging in a noncommercial group use, outfitting or guiding, a recreation event, commercial filming, or still photography, as defined in § 251.51; or

(2) Authorization of that use is required by an order issued under § 261.50 of this chapter or by a regulation issued under § 261.70 of this chapter.

(e) For proposed uses other than a noncommercial group use, a special use authorization is not required if the authorized officer determines that the proposed use has one or more of the following characteristits:

(1) The proposed use will have such nominal effects on National Forest System lands, resources, or programs that it is not necessary to establish terms and conditions in a special use authorization to protect National Forest System lands and resources or to avoid conflict with National Forest System programs or operations;

(2) The proposed use is regulated by a State agency or another Federal agency in a manner that is adequate to protect

National Forest System lands and resources and to avoid conflict with National Forest System programs or operations; or

(3) The proposed use is an activity within the scope of a valid reserved, granted, or outstanding property right, such as a right-of-way, easement, or reservation, or is a routine operation or maintenance activity within the scope of an outstanding statutory right for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976) or for ditches and canals pursuant to R.S. 2339 (43 U.S.C. 661, as amended).

3. Add the following definitions in alphabetical order to § 251.51:

§ 251.51 Definitions.

* * * * *

Commercial filming—use of motion picture, videotaping, sound recording, or any other moving image or audio recording equipment on National Forest System lands that involves the advertisement of a product or service, the creation of a product for sale, or the use of models, actors, sets, or props, but not including activities associated with broadcasting breaking news.

* * * * *

Forest road or trail—a road or trail wholly or partly within or adjacent to and serving the National Forest System, and which is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

* * * * *

Guiding—providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, transporting people, or interpretation) for pecuniary remuneration or other gain to individuals or groups in pursuit of a natural resource-based outdoor activity on National Forest System lands.

* * * * *

National Forest System road—a forest road under the jurisdiction of the Forest Service.

* * * * *

Outfitting—renting on or delivering to National Forest System lands for pecuniary remuneration or other gain any saddle or pack animal, vehicle, boat, camping gear, or similar supplies or equipment for the pursuit of a natural resource-based outdoor activity.

* * * * *

Recreation event—a recreational activity conducted on National Forest System lands for which an entry or participation fee is charged, such as animal, vehicle, or boat races; dog trials; fishing contests; rodeos; adventure games; and fairs.

* * * * *

Still photography—use of still photographic equipment on National Forest System lands that (1) takes place at a location where members of the public are generally not allowed or where additional administrative costs are likely, or (2) uses models or props that are not a part of the site's natural or cultural resources or administrative facilities.

* * * * *

PART 261—PROHIBITIONS

Subpart A—General Prohibitions

4. The authority citation for subpart A continues to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C.1133(C)–(d)(1); 16 U.S.C. 620(f).

5. Revise § 261.2 to add a definition for "Forest road or trail" in alphabetical order and to revise the definitions for "National Forest System road" and "National Forest System trail" to read as follows:

§ 261.2 Definitions.

* * * * *

Forest road or trail—a road or trail wholly or partly within or adjacent to and serving the National Forest System, and which is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

* * * * *

National Forest System road—a forest road under the jurisdiction of the Forest Service.

National Forest System trail—a forest trail under the jurisdiction of the Forest Service.

* * * * *

6. Revise the heading and introductory text of § 261.55, to read as follows:

§ 261.55 National Forest System trails.

When pursuant to an order issued in accordance with § 261.50 of this subpart, the following are prohibited on a National Forest System trail: * * *

* * * * *

7. Revise the heading for part 295 to read as follows:

PART 295—USE OF MOTOR VEHICLES OFF NATIONAL FOREST SYSTEM ROADS

8. The authority citation for part 295 continues to read as follows:

Authority: 30 Stat. 35, as amended (16 U.S.C. 551); 50 Stat. 525, as amended (7 U.S.C. 1011); E.O. 11644, 11989 (42 FR 26959).

Dated: January 8, 2003.

Dale N. Bosworth,

Chief.

[FR Doc. 03–1291 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–01–003; FRL–7429–6]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) approves numerous revisions to the State of Oregon Implementation Plan submitted to EPA by the Director of the Oregon Department of Environmental Quality (ODEQ) on November 5, 1999, March 7, 2000, June 26, 2001, and November 4, 2002. The revisions were submitted in accordance with the requirements of section 110 and parts C and D of title I of the Clean Air Act (hereinafter CAA or Act).

DATES: Written comments must be received on or before February 21, 2003.

ADDRESSES: Written comments should be addressed to: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Oregon, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Senior Air Pollution Scientist, EPA, Office of Air Quality (OAQ–107), Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: December 17, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 03–853 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV–040–0067; FRL–7440–5]

Approval and Promulgation of Implementation Plans; Nevada—Las Vegas Valley PM–10 Nonattainment Area; Serious Area Plan for Attainment of the Annual and 24-Hour PM–10 Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve provisions of the *PM–10 State Implementation Plan for Clark County,* June 2001, (Clark County plan) that address attainment of the annual and 24-hour PM–10 national ambient air quality standards. We also propose to grant Nevada's request to extend the Clean Air Act deadline for attaining the 24-hour PM–10 standard in the Las Vegas area from 2001 to 2006.

DATES: Comments on this proposal must be received in writing by February 21, 2003. Comments should be addressed to the contact listed below.

ADDRESSES: Comments should be mailed to: Karen Irwin, Office of Air Planning (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

A copy of docket No. NV–01–03, containing the EPA technical support document (TSD) and other material relevant to this proposed action, is available for public inspection at EPA's Region 9 office during normal business hours. We may charge you a reasonable fee for copying parts of the docket. Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below: Clark County Department of Air Quality Management, 500 S. Grand Central Pky, Las Vegas, Nevada 89155. Nevada Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada 89710.

Electronic Availability

This document and the TSD are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 947–4116, email: *irwin.karen@epa.gov.*

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I. Summary of Today's Proposal

First, we propose to approve the provisions in the *PM–10 State Implementation Plan for Clark County,* submitted on July 25, 2001,[1] ("the Clark County serious area plan" or "Plan") that address attainment of the annual and 24-hour PM–10 standards.[2] Our proposed actions are based on our initial determination that the Clark County serious area plan complies with the Clean Air Act's (CAA or "the Act") requirements for serious PM–10 nonattainment area plans.

First, we propose to approve the following specific elements of the plan as they pertain to the standards:

- Demonstration that the plan provides for implementation of best available control measures (BACM);
- Emissions inventory;
- Demonstration of attainment of the annual standard by the CAA deadline of December 31, 2001 and demonstration that attainment of the 24-hour standard by December 31, 2001 is impracticable;
- Demonstration that attainment of the 24-hour standard will occur by the most expeditious alternative date practicable, in this case, December 31, 2006;
- Clark County fugitive dust rules (Sections 90 through 94 and portions of Section 0);
- Demonstration that the plan provides for reasonable further progress and quantitative milestones;
- Transportation conformity budget; and
- Contingency measures.

Second, we are proposing to grant Nevada's request to extend the attainment date for the 24-hour PM–10 standard from December 31, 2001 to December 31, 2006. We make this proposal based on our determination that the State has met the CAA's criteria for granting such extensions.

This preamble describes our proposed actions on the Clark County serious area

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[1] On October 24, 2002, the Nevada Division of Environmental Protection submitted to EPA revised versions of Clark County sections 90 through 93, dated November 20, 2001, which supersede earlier versions submitted with the Plan. Also, on November 19, 2002, the Nevada Division of Environmental Protection submitted to EPA an amendment to the Clark County PM–10 Plan adopted by the Clark County Board of Commissioners on November 19, 2002.

[2] There are two separate national ambient air quality standards for PM–10, an annual standard of 50 μg/m^3 and a 24-hour standard of 150 μg/m^3.

plan and provides a summary of our evaluation of the plan. Our detailed evaluation of the Plan can be found in the TSD that accompanies this proposal. See "Technical Support Document Proposing Approval of the PM–10 State Implementation Plan for the Clark County Serious PM–10 Nonattainment Area Annual and 24-Hour PM–10 Standards," December 19, 2002. A copy of EPA's TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

II. Background to Today's Proposals

A. PM–10 Air Quality in the Las Vegas Area

The Las Vegas Valley Nonattainment Area, which coincides with Hydrographic Basin 212, is roughly 1,500 square miles in size and encompasses the City of Las Vegas, the City of North Las Vegas, the City of Henderson and the unincorporated areas of Clark County. The population of the area is approximately 1.15 million people and is expected to grow to 1.59 million by 2006.

The area violates both the annual [3] and 24-hour PM–10 standards. In 1990, the area was designated nonattainment for PM–10 and classified as moderate. In 1993, because of continuing violations of both PM–10 standards, the area was reclassified to serious and required to provide for the implementation of BACM by February 8, 1997. 58 FR 3334 (January 8, 1993).

The principal contributors to elevated PM–10 levels in the Las Vegas area are fugitive dust sources such as disturbed vacant lots, construction sites, unpaved roads and paved road dust. Fugitive dust is particulate matter suspended in the air either by mechanical disturbance of the surface material or by wind action blowing across surfaces.

B. Previous Actions on Clark County PM–10 Plans

Clark County prepared and submitted a serious area PM–10 plan in 1997 that EPA proposed to disapprove, along with previously submitted plans. 65 FR 37324, June 14, 2000. On December 5, 2000, prior to EPA taking final action on its proposed disapproval, the State of Nevada withdrew the moderate and serious area plans for Clark County. On January 5, 2001, EPA proceeded with a finding of nonsubmittal, effective as of December 20, 2000, which began the 18-month time clock for mandatory application of sanctions and 2-year time clock for promulgation of a federal implementation plan (FIP). 66 FR 1046. On June 19, 2001, the Clark County Board of Commissioners adopted a new serious area PM–10 plan titled "PM–10 State Implementation Plan for Clark County" ("Plan"), which was submitted to EPA on July 25, 2001. On January 31, 2002, EPA made a completeness finding on the Plan. We have also determined that the conformity budgets in the plan are adequate. 67 FR 1461, January 11, 2002. Our adequacy determination was effective on January 28, 2002.

III. The CAA's Planning Requirements for Serious PM–10 Nonattainment Areas

The Las Vegas area is a PM–10 nonattainment area that has been reclassified to serious because it failed to attain by the moderate area attainment date of December 31, 1994. Such an area must submit, within 18 months of the reclassification, revisions to its implementation plan that address the CAA requirements for serious PM–10 nonattainment areas. CAA section 189(b)(2). These requirements are:

(a) Assurances that the BACM, including best available control technology (BACT) for stationary sources, for the control of PM–10 shall be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B)); [4]

(b) Assurances that BACT on major stationary sources of PM–10 precursors shall be implemented no later than 4 years after the area is reclassified except where EPA has determined that such sources do not contribute significantly to exceedences of the PM–10 standards (CAA section 189(e));

(c) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 2001 or where the State is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2001 is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA sections 188(c)(2) and 189(b)(1)(A));

(d) Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by the applicable attainment date (CAA sections 172(c)(2) and 189(c)); and

(e) A comprehensive, accurate, and current inventory of actual emissions from all sources of PM–10 (CAA section 172(c)(3)).

Serious area PM–10 plans must also include contingency measures to be implemented if the area fails to make RFP or attain by its attainment deadline. These contingency measures are to take effect without further action by the State or the Administrator. CAA section 172(c)(9).

Furthermore, serious area PM–10 plans must meet the general requirements applicable to all SIPs including reasonable notice and public hearing under section 110(l), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280, and a description of enforcement methods as required by 40 CFR 51.111.

We have issued a General Preamble [5] and Addendum to the General Preamble [6] describing our preliminary views on how the Agency intends to review SIPs submitted to meet the CAA's requirements for PM–10 plans. The General Preamble mainly addresses the requirements for moderate areas and the Addendum, the requirements for serious areas.

BACM Requirement

The CAA does not define what level of control constitutes a BACM-level of control. In guidance, we have defined it to be, among other things, the maximum degree of emission reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts. Addendum at 42010. This level of control is

[3] However, in a June 2002 letter, the Clark County Department of Air Quality Management (DAQM) provides an analysis of PM–10 microscale sites that demonstrates attainment of the annual standard as forecasted in the Clark County Plan as of December 31, 2001. While EPA is proposing to approve the Plan's attainment demonstration for the annual standard under CAA section 189, our action does not include an official finding of attainment of the annual standard per CAA section 188.

[4] When a moderate area is reclassified to serious, the requirement to implement RACM in section 189(a)(1)(C) remains and is augmented by the requirement to implement BACM. Thus, a serious area PM–10 plan must, in addition to BACM, provide for the implementation of RACM as expeditiously as practicable to the extent that the RACM requirement has not been satisfied in the area's moderate area plan. However, to the extent that a serious nonattainment area plan provides for BACM, we interpret the BACM requirement as generally subsuming the RACM requirement (*i.e.* if we determine that the measures are indeed the "best available," we have necessarily concluded that they are "reasonably available").

[5] "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

[6] "State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994)

dependent on the deadline by which BACM must be implemented.[7]

We also considered a BACM-level control as going beyond existing RACM-level controls, such as expanding use of RACM (e.g, paving more miles of unpaved roads). Addendum at 42013. The word "best" implies that there should be a greater emphasis on the merits of the measure or technology alone and less flexibility in considering other factors. Additionally, we believe that BACM should emphasize prevention rather than remediation (e.g., preventing track out at construction sites rather than simply requiring clean up of tracked-out dirt). Addendum at 42013.

The stringency of a control measure is a function of both the measure's applicability and its control requirement (i.e., what sources in the category are subject to the measure and what does the measure require the sources to do to reduce emissions).[8] Both these elements must be specified before the measure's level of control can be determined. Thus in setting a BACM, a state must specify both the measure's control requirement and its applicability. The control requirement alone is not sufficient.

BACM must be applied to each significant (i.e., non-de minimis) source category. Addendum at 42011. In guidance, we have established a presumption that a "significant" source category is one that contributes 5 μg/m3 or more of PM–10 to a location of 24-hour violation and 1 μg/m3 or more for the annual standard. Addendum at 42011. However, whether the threshold should be lower than this in any particular area depends upon the specific facts of that area's nonattainment problem. Specifically, it depends on whether requiring the application of BACM on source categories below a proposed de minimis level would meaningfully expedite attainment.

We have outlined in our guidance a multi-step process for identifying BACM. Addendum at 42010–42014. The steps are:

1. develop a detailed emissions inventory of PM–10 sources and source categories,
2. model to evaluate the impact on PM–10 concentrations over the standards of the various sources and source categories to determine which are significant,
3. identify potential BACM for significant source categories and evaluate their reasonableness, considering technological feasibility, costs, and energy and environmental impacts and
4. provide for the implementation of the BACM or provide a reasoned justification for rejecting any potential BACM.

When the process is complete, the individual measures[9] should then be converted into a legally enforceable vehicle (e.g., a regulation or permit process). CAA sections 172(6) and 110(a)(2)(A). Also, the regulations or other measures should meet EPA's criteria regarding the enforceability of SIPs and SIP revisions. General Preamble at 13541.

RACM Requirement

When a moderate area is reclassified to serious, the requirement to implement RACM in section 189(a)(1)(C) remains. Thus, a serious area PM–10 plan must also provide for the implementation of RACM as expeditiously as practicable to the extent that the RACM requirement has not been satisfied in the area's moderate area plan.

However, we do not normally conduct a separate evaluation to determine if a serious area plan's measures also meet the RACM requirements as interpreted by us in the General Preamble at 13540. This is because in our serious area guidance (Addendum at 42010), we interpret the BACM requirement, as generally subsuming the RACM requirement. Therefore, a separate analysis to determine if the measures represent a RACM level of control is generally not necessary. Our proposed approval of the Clark County Plan's provisions relating to the implementation of BACM is also a finding that the plan provides for the implementation of RACM.

The Clean Air Act Requirements for Attainment Date Extensions

Section 188(e) of the Act allows us to extend the attainment date for a serious area for up to five years beyond 2001 if attainment by 2001 is impracticable. However, before we may grant an extension of the attainment date, the State must first:

1. Apply to us for an extension of the PM–10 attainment date beyond 2001,
2. Demonstrate that attainment by 2001 is impracticable,
3. Have complied with all requirements and commitments applying to the area in its implementation plan,
4. Demonstrate to our satisfaction that its serious area plan includes the most stringent measures that are included in the implementation plan of any state and/or are achieved in practice in any state and are feasible for the area, and
5. Submit a demonstration of attainment by the most expeditious alternative date practicable.

In determining whether to grant an extension and the appropriate length of the attainment date extension, we may consider:

1. The nature and extent of the nonattainment problem,
2. The types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and international transport),
3. The population exposed to concentrations in excess of the standard,
4. The presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and
5. The technological and economic feasibility of various control measures.

Under the Act, we may grant only one extension for an area and the extension cannot be for more than 5 years after 2001; that is, the extended attainment date can be no later than December 31, 2006.

IV. The Clark County Plan's Compliance With the CAA's Requirements for Serious PM–10 Nonattainment Areas

The following sections present a condensed discussion of our evaluation of the Clark County Plan's compliance with the applicable CAA requirements for attaining the annual and 24-hour PM–10 standards. Our complete evaluation is found in the TSD for this proposal. A copy of the TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

A. Completeness of the SIP Submittal

CAA section 110(k)(1)(B) requires us to determine if a SIP submittal is complete within 60 days of its receipt. This completeness review allows us to quickly determine if the submittal

[7] We have long held that an otherwise available measure is not reasonable if it cannot be implemented on a schedule that will advance the attainment date. See, *e.g.*, 57 FR 13498, 15560 (April 16, 1992). See also *Delaney* v. *EPA*, 898 F.2d 695 (9th Cir. 1990) which required the adoption of "all available control measures" to attain "as soon as possible" and not simply all available control measures. The most clear example of this is a measure that cannot be implemented until after the applicable attainment date.

[8] An example: A measure requires all unpaved roads with average daily trips (ADT) over 150 be stabilized by either paving, graveling, or treating with chemical stabilizers. The control requirement here is "stabilize using one of these three methods: paving, graveling, or chemical stabilization" and the applicability is "all unpaved roads with ADT over 150."

[9] Here our guidance refers to RACM, however, since BACM builds upon RACM, the same principles apply.

includes all the necessary items and information we need to take action on it. We make completeness determinations using criteria we have established in 40 CFR part 51, appendix V.

On January 5, 2001, we took final action to find that the State of Nevada had failed to make PM–10 nonattainment area SIP submittals required for the Las Vegas Valley Planning Area under the CAA. See 66 FR 1046 (January 5, 2001). That final action, which was effective as of December 20, 2000, triggered an 18-month clock for mandatory application of sanctions under section 179(a) of the Act and the implementing regulations set forth at 40 CFR 52.31. In our final action, we indicated that the State may "turn off" the sanctions clock through the submission of a complete SIP submittal.

Under section 110(k)(1)(B), if we do not make a completeness determination within six months of receipt of a SIP submittal, then the submittal shall be deemed complete by operation of law. We had not made this determination by January 25, 2002 (*i.e.*, six months from receipt); thus, the State's SIP submittal dated July 23, 2001 was deemed complete by operation of law effective January 25, 2002.

However, a SIP submittal that is deemed complete by operation of law does not stop a sanctions clock started by a finding by us under section 179(a) of the Act. To stop the sanctions clock, we must make an affirmative determination that the deficiency forming the basis of the finding (in this case, our finding of failure to submit required PM–10 plan elements) has been corrected. See 40 CFR 52.31(d)(1).

Therefore, we have reviewed the July 23, 2001 PM–10 submittal from the State of Nevada and affirmatively determined that it satisfies our completeness criteria set forth for such determinations in appendix V of 40 CFR part 51 and that it is thereby complete for the purposes of section 110(k)(1) of the Act. Furthermore, the State's submission of this complete plan corrects the deficiency forming the basis for our finding published in the **Federal Register** on January 5, 2001. We notified the State of our completeness determination by letter to NDEP on January 31, 2002, and our letter to NDEP permanently stops the sanctions clock as of that date.

B. Adequacy of the Transportation Conformity Budgets

CAA Section 176(c) requires that federally-funded or approved transportation plans, programs, and projects in nonattainment areas "conform" to the area's air quality implementation plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards. We have issued a conformity rule that establishes the criteria and procedures for determining whether or not transportation plans, programs, and projects conform to a SIP. *See* 40 CFR part 93, subpart A.

One of the primary tests for conformity is to show transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and meet the air quality standards. The motor vehicle emissions levels needed to make progress toward and meet the air quality standards are set in an area's attainment and/or RFP plans and are known as the "emissions budget for motor vehicles." Emissions budgets are established for specific years and specific pollutants. *See* 40 CFR 93.118(a).

Before an emissions budget in a submitted SIP revision can be used in a conformity determination, we must first determine that it is adequate. The criteria by which we determine adequacy of submitted emission budgets are outlined in our conformity rule in 40 CFR 93.118(e)(4). A finding of adequacy does not approve an emissions budget, it simply allows States to begin to use the budget in conformity determinations pending our action on the overall SIP.

The Clark County Plan establishes a mobile source emissions budget of 201.75 tons per day (tpd) for 2001 and an emissions budget of 141.41 tpd for 2006. This regional budget is applicable to both the annual and 24-hour PM–10 standards.

On November 9, 2001, we notified the State that we find adequate for transportation conformity purposes this motor vehicle emissions budget. Our adequacy determination was effective on January 28, 2002 and is documented in section C of the TSD. As a result of our adequacy finding, the Regional Transportation Commission (RTC) and the Federal Highway Administration (FHWA) are now required to use this budget in all conformity analyses.

As discussed later in this preamble, we are proposing to approve both the attainment and reasonable further progress demonstrations for the 24-hour standard in the Clark County Plan. An emissions budget was set at 155.77 tpd for the 2003 interim year, which is consistent with these demonstrations. We, therefore, propose to approve the motor vehicle emissions budget for the annual and 24-hour PM–10 standards under CAA section 176(c).

C. Adequate Monitoring Network

We discuss the adequacy of the monitoring network in this preamble solely to support our finding that the plan appropriately evaluates the PM–10 problem in the Las Vegas area. Reliable ambient data is necessary to validate the base year air quality modeling which in turn is necessary to assure sound attainment demonstrations.

The CAA requires states to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. CAA section 110(a)(2)(B)(i). Our regulations in 40 CFR part 58 establish specific regulatory requirements for operating air quality surveillance networks to measure ambient concentrations of PM–10, including measurement method requirements, network design, quality assurance procedures, and in the case of large urban areas, the minimum number of monitoring sites designated as National Air Monitoring Stations (NAMS).

Ambient networks, however, do not need to meet all our regulations to be found adequate to support air quality modeling. A good spatial distribution of sites, correct siting, and quality-assured and quality-controlled data are the most important factors for air quality modeling. Nonattainment area plans developed under title I, part D of the Clean Air Act are not, in general, required to address how the area's air quality network meets our monitoring regulations. These plans are submitted too infrequently to serve as the vehicle for assuring that monitoring networks remain current.

The DAQM operates 17 monitoring sites collecting PM–10 data in the Las Vegas area, about half of which are designated as special purpose monitors (SPMs) with the remaining monitors designated as NAMS or state/local monitoring stations. Table MON–2 in the TSD lists the names of the sites and their locations in the Las Vegas area as of July 2000. Many of the SPM sites operated by the DAQM are in fact long term sites that have been in operation longer than three years. EPA performed a technical system audit of the DAQM's ambient air monitoring program in August 2001. In this audit, EPA identified some concerns with how DAQM characterizes its monitoring networks in terms of site objectives, that at least two more NAMS sites are needed, and that the quality assurance program needs to be better defined and integrated into the daily functions of the air monitoring program. However, we

do not believe these deficiencies adversely affect our ability to determine the air quality status of the area.

The Las Vegas PM–10 network employs a large number of monitoring sites that are spread out over the Las Vegas valley. Given the nature of the emission sources, which are mostly local fugitive dust sources, and since PM–10 is a localized yet widespread pollutant, we believe a dense network such as DAQM operates is appropriate.

The 24-hour attainment demonstration in the Clark County plan relies, in part, on showing attainment at five specific monitoring sites. These sites were chosen based on the fact that they represent the worst case environments for a mix of PM–10 emission sources: East Flamingo site for its high traffic volume; Green Valley for its nearby highway construction and race tracks; J.D. Smith for its mixture of roadways, small point sources and construction sites; Craig Road for its light industrial facility and vacant land influences; and Pittman for its larger stationary sources, unpaved parking lots and unpaved roads. In 1997–1999 these sites cumulatively recorded 43 exceedences of the 24-hour PM–10 standard. They are also representative of similar areas in the Las Vegas area that may not have monitoring sites.

In conclusion, we believe the monitoring network operated by the DAQM in 1998 was adequate to support the technical evaluation of the PM–10 nonattainment problem for the Clark County Plan. The network utilizes EPA reference or equivalent method monitors and the DAQM performs routine precision and accuracy checks of the monitoring equipment and performs necessary maintenance when warranted.

D. Emissions Inventory

CAA section 172(c)(3) requires that nonattainment area plans include a comprehensive, accurate, and current inventory of actual emissions from all sources in the nonattainment area in the designated base year and a future attainment year. To meet this requirement, Clark County prepared a 1998 base year annual emissions inventory for the entire nonattainment area. See Clark County Plan, Chapter 3, Table 3–1. Emissions inventories for the baseline and future years for both the annual and 24-hour standards are necessary prerequisites to meet requirements for BACM and demonstration of attainment per CAA section 189(b). In the Las Vegas Valley, both regional and microscale modeling inventories are needed to accurately reflect the sources that are contributing to ambient levels of the 24-hour PM–10 standard. By design and need, the microscale inventory includes only sources within a small area around a monitor rather than all sources within the entire nonattainment area.

For the attainment demonstration, the Clark County Plan relies upon regional annual and 24-hour emissions inventories associated with a portion of the entire PM–10 nonattainment area titled the "BLM Disposal Area". See Clark County Plan, Chapter 3, section 3.3 and Appendix E. All lands controlled by the federal government outside the BLM disposal area are to remain in their native state and the boundary can only be changed by an act of the United States Congress. Approximately 99 percent of the nonattainment area resides within the BLM Disposal Area and nearly all anthropogenic sources within the nonattainment area occur within the BLM Disposal Area; making it the appropriate focus for the attainment demonstration. We address the modeling used in the attainment demonstration later in this notice. The rules adopted by Clark County to address sources within the BLM Disposal Area equally apply to the entire PM–10 nonattainment area.

The Plan contains two 1998 BLM Disposal Area emissions inventories for the annual standard: a valley-wide inventory and a microscale inventory for the area surrounding the J.D. Smith monitoring station, which was the only site that measured a violation of the annual NAAQS. For the 24-hour standard, the Plan contains a base year emissions inventory for the design day (December 21, 1998), which is scaled from the annual valley-wide inventory with additional wind erosion emissions factored in due to specific meteorological conditions.

Clark County also prepared future year PM–10 inventories comparing an "uncontrolled" scenario to a scenario assuming application of control measures adopted by Clark County as BACM. The Plan contains uncontrolled 2001 and 2006 annual valley-wide emissions inventories and a 2006 uncontrolled valley-wide 24-hour inventory. Emissions inventories were also developed for each of the five microscale sites. These microscale inventories are specialized modeling inventories and are not intended to satisfy the CAA section 172(c)(3) requirement.[10]

[10] The microscale inventories include only sources within a small area surrounding each monitor rather than all sources within the entire nonattainment area, the requirement in CAA section 172(c)(3).

The following fugitive dust source categories make up 97 percent and 99 percent of PM–10 emissions in the base year annual valley-wide and 24-hour BLM Disposal Area inventories for the Las Vegas Valley, respectively: vacant land, construction, paved roads and unpaved roads. The inventory includes only primary PM–10 as chemical mass balance receptor modeling showed that secondary and condensable particulate formation contribute less than significant amounts to ambient PM–10 concentrations. Clark County Plan, Chapter 4, section 4.2.1.

In our review of the Plan, we found that the emissions estimates for all of the source categories are based on emissions factors and methodologies recommended by EPA, or are derived from a specific study or data collected from a source category in the area (*e.g.*, vacant lots). We propose to find that the inventory projections methodologies and calculations rely upon reasonable assumptions and provide a sufficient basis upon which to assess control measure impacts on future PM–10 air quality in the Las Vegas area. Clark County has also included commitments in the Plan to improve and update the emissions inventories in future years.

E. Contribution of PM–10 Exceedences of Major Sources of PM–10 Precursors

CAA section 189(e) requires BACT to be applied to major stationary sources of PM–10 precursors if these sources contribute significantly to PM–10 exceedences in the area. Clark County determined that stationary sources, including sand and gravel operations, natural gas-fired utility power plants, asphalt concrete plants, industrial processes, and other sources cumulatively contribute less than 1 μg/m^3 of the design day concentration, placing them below the 5 μg/m^3 significance threshold for the 24-hour standard. Design day micro-inventory concentrations from stationary source emissions were higher in some cases (3.74 μg/m^3 and 3.53 μg/m^3 at the Pittman and Craig Road monitoring sites, respectively), but were still below the threshold of presumed significance for this source category. Therefore, BACT is not required to be applied to stationary sources per CAA section 189(e).

F. Implementation of Best Available Control Measures

CAA section 189(b)(1)(B) requires that a serious area PM–10 plan provide for the implementation of BACM within four years of reclassification to serious. Under our applicable guidance, BACM must be applied to each significant area-

wide source category. Addendum at 42011. As discussed in section III of this preamble, we have established a four-step process for evaluating BACM in serious area PM–10 plans.

Steps 1 and 2: Determination of Significant Sources

The first step in the BACM analysis is to develop a detailed emissions inventory of PM–10 sources and source categories that can be used in modeling to determine their impact on ambient air quality. Addendum at 42012. The second step is to use this inventory in air quality modeling to evaluate the impact on PM–10 concentrations over the standards of the various sources and source categories to determine which are significant.

The development of the detailed emissions inventory is discussed in the preceding section and in the TSD. We propose to find that the baseline emissions inventory contains a sufficient level of detail to enable appropriate evaluation of the Plan's control measures for BACM purposes. The determination of source significance is based primarily on the J.D. Smith annual inventory and the 24-hour micro-inventories at the five representative sites, supplemented by reviews of the 1998 valley-wide 24-hour emissions inventory, the 1998 valley-wide annual emissions inventory, and Chemical Mass Balance modeling. Clark County Plan, Chapter 4, pg. 4–1.

From these evaluations, the Clark County Plan identifies the following sources as significant with respect to the annual standard:

1. Disturbed vacant land/unpaved parking lots
2. Construction (including highway construction)
3. Paved roads
4. Unpaved roads

The same source categories are deemed significant for the 24-hour standard, with the additional category of:

5. Race tracks

Clark County determined that the following source categories are not significant for both standards:

1. Stationary point sources (sand and gravel operations, utilities—natural gas, asphalt concrete manufacture, industrial processes, other)
2. Some stationary area sources (small point sources, fuel combustion sources, residential wood combustion, open burning, farming operations)
3. Nonroad mobile sources (airport support equipment, commercial equipment, construction and mining equipment, lawn and garden equipment, railroad equipment, airport emissions)
4. Onroad mobile vehicle exhaust and other emissions
5. Secondary aerosol particulate

Emissions from the proposed *de minimis* categories are a small percentage (3% collectively) of the total 1998 BLM Disposal Area annual and 24-hour PM–10 emissions inventories. The minimal contribution of the proposed *de minimis* source categories to the inventory supports that, both individually and collectively, they have a minor impact on elevated annual and 24-hour PM–10 levels in the Clark County nonattainment area.

For the 24-hour standard, the Clark County Plan demonstrates that its selection of significant source categories is appropriate by showing that controls on the *de minimis* source categories would not result in attainment of the 24-hour standard by 2001. See Clark County Plan, Chapter 7, section 7.4.

We propose to find that the Clark County Plan has not excluded any source categories that should be considered significant from its list of significant source categories. The Plan presents acceptable modeling to evaluate the impact of various PM–10 sources and source categories on PM–10 levels and to derive a comprehensive list of significant source categories.

Step 3: Identification of Potential BACM

In preparing the list of candidate BACM, Clark County reviewed our guidance documents on BACM, other EPA documents on PM–10 control, as well as PM–10 plans from other serious PM–10 areas in the United States. Clark County also evaluated controls proposed during public comment.

The Clark County plan appropriately screened the list of candidate BACM to eliminate measures that did not apply to significant source categories in the area, or were technologically infeasible for the area because they would not reduce PM–10 emissions. The Clark County Plan also provides cost-effectiveness estimates for each of the candidate BACM.

We propose to find that the Clark County Plan identified and evaluated potential BACM for the Las Vegas area consistent with our guidance. As we will discuss below in our evaluations of the implementation of BACM for each significant source category, we do not believe that the Clark County plan left out any candidate BACM.

Step 4: Implementation of RACM [11] and BACM and Inclusion of MSM for Each Significant Source Category

In the following sections, we review the results of the Clark County Plan's BACM analysis and adopted measures. The same control measures apply to BACM determinations for both the annual and 24-hour PM–10 standards. We also present our evaluation of the Plan's provisions for including MSM alongside our evaluation of BACM implementation for each significant source category.

Clark County adopted sections 90 through 94 and section 0 on November 16, 2000. Sections 90 through 93 were subsequently revised by the DAQM on November 20, 2001. Clark County submitted these revised rules to EPA on October 24, 2002 for our action in place of the sections 90 through 93 adopted on November 16, 2000. These rules address the significant sources identified in the Plan, along with SIP commitments for unpaved roads and unpaved road shoulders contained in Chapter 4 of the Plan.

Clark County has also committed to increase its staffing levels to enhance compliance and enforcement of these rules to assure that the emission reductions necessary for expeditious attainment are achieved. This commitment is an important component of our proposed finding that the Clark County Plan provides for implementation of BACM and inclusion of MSM.

We also have evaluated the rules for enforceability and consistency with applicable CAA requirements for SIP revisions in section 110 and Part D and EPA rulemaking policy.

a. Disturbed Vacant Land

This category includes windblown fugitive dust emissions from disturbed surfaces of vacant land. On vacant land, fugitive dust emissions are caused by virtually any activity which disturbs an otherwise naturally stable parcel of land, including earth-moving activities, material dumping, weed abatement, and vehicle traffic. Wind erosion from disturbed vacant land accounts for 45 percent of total PM–10 emissions in the 1998 24-hour BLM Disposal Area inventory and 39 percent of total PM–10 emissions in the 1998 annual BLM Disposal Area valley-wide inventory,

[11] Because the RACM demonstration is subsumed in the BACM demonstration, a separate analysis to determine if the measures represent a RACM level of control is not necessary. Our proposed approval of the Clark County Plan's provisions relating to the implementation of BACM is also a finding that the plan provides for the implementation of RACM.

making it the largest source of PM–10 in the Las Vegas area.

The suggested measures for controlling emissions from disturbed vacant land fall into one of two categories: preventing motor vehicle disturbance of vacant land, and stabilizing vacant land.[12] We propose to find that the Clark County Plan evaluates a comprehensive set of potential controls for disturbed vacant land including the potential MSM from other States.

Clark County implemented both access prevention and surface stabilization with specific requirements in section 90 "Fugitive Dust From Open Areas and Vacant Lots". Section 90 requires prevention of motor vehicles (including off-road vehicles), where there is evidence of such use, on open areas and vacant lots greater than or equal to 5,000 square feet by installation of barriers or other effective traffic control measures and stabilization of motor-vehicle disturbed surfaces on such lots. Also, where 5,000 square feet or more of cumulative disturbed surface exists (from any activity) all disturbed areas must be stabilized using water, dust palliatives or gravel. When discing or blading areas of 5,000 square feet or more, water must be applied before and during operations and the disturbed surface stabilized afterwards.

The requirements apply to public and private vacant land alike. Clark County determined that less than one percent of vacant land within the BLM Disposal Boundary [13] consists of parcels smaller than 5,000 square feet, thus the requirements provide a stringent threshold of applicability. Section 90 contains appropriate performance standards and test methods for surface stability,[14] recordkeeping requirements, and otherwise meets EPA's enforceability criteria.

Clark County has also made a SIP commitment to adopt a requirement for dust management plans on large tracts (*i.e.*, 10,000 acres or more) of government owned land.[15]

Section 90 vacant lot requirements became effective on January 1, 2001. We propose to find that the Clark County Plan provides for the implementation of vacant lot measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 90 requirements are of equivalent or greater stringency than those adopted or in practice in other areas.

We, therefore, propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for disturbed vacant land. We also propose approval of section 90 into the SIP in accordance with CAA section 110 and the requirements of CAA Title I, part D.

b. Unpaved Parking Lots

This category includes emissions from re-entrained road dust from vehicle traffic on unpaved parking lots and windblown dust entrained from the disturbed surface of unpaved parking lots. Windblown emissions from unpaved parking lots are included in the disturbed vacant land category in the 1998 base year valley-wide and BLM Disposal Area emissions inventories. The extent of unpaved parking lots affected by the controls in adopted Rule 92 has not been determined (or credited) on a valley-wide inventory basis,[16] but instead only with respect to the microscale inventories.

There are two principal ways to control emissions from unpaved parking lots, both of which Clark County identified: prohibit unpaved parking lots or stabilize existing lots. We propose to find that the Clark County Plan evaluates a comprehensive set of potential controls for unpaved parking lots including the potential MSM from other States.

Clark County adopted requirements to stabilize existing unpaved parking lots in section 92 "Fugitive Dust From Unpaved Parking Lots." Clark County also adopted a SIP commitment to modify section 92 to prohibit new unpaved parking lots with limited exceptions.[17] Therefore, both potential BACM have or will shortly be adopted.[18]

Section 92 requires that all unpaved parking lots greater than or equal to 5,000 square feet be stabilized by application of paving, dust palliatives, or a combination of dust palliatives in the travel lanes and two inches of gravel. Lots used intermittently (thirty-five days per year or less), must be stabilized according to section 92 standards only on days of use. On days of inactivity, however, such lots are subject to section 90 standards.

The section 92 requirements apply to both public and private unpaved parking lots. The analysis Clark County used to assess the percentage of vacant land parcels smaller than 5,000 square feet in the BLM Disposal Area applies to unpaved parking lots as well. Section 92 contains appropriate performance standards and test methods for surface stability and opacity,[19] recordkeeping requirements, and otherwise meets EPA's enforceability criteria.

Section 92 unpaved parking lot requirements became effective on January 1, 2001. We propose to find that the Clark County Plan provides for the implementation of unpaved parking lot measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 92 requirements are more stringent than those adopted or in practice in other areas. We, therefore, propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for unpaved parking lots. We also propose SIP approval of section 92 per CAA section 110 and Part D.

c. Construction Sites

Sources of fugitive dust emissions at construction sites include land clearing, earthmoving, excavating, construction, demolition, material handling, bulk material storage and/or transporting operations, material track out or spillage onto paved roads (which we have addressed in the paved road section), and vehicle use and movement on site (*e.g.*, the operation of any equipment on unpaved surfaces, unpaved roads and

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[12] Constructing windbreaks was also identified but deemed less stringent than surface stabilization. Therefore, the benefits of applying this potential BACM are subsumed in the more stringent emission reductions associated with surface stabilization. In addition, Clark County identified weed abatement on vacant land as a separate category. Since this pertains to "surface stabilization" we include it under that category; however, weed abatement by discing and blading also generates emissions as the activity is being conducted, therefore, Clark County has adopted separate requirements for weed abatement in its vacant lot rule.

[13] We note that section 90 requirements apply throughout the entire PM–10 nonattainment area.

[14] Standards include a visible crust determination, 20% cover of nonerodible elements, or a threshold friction velocity (corrected for nonerodible elements) of 100 cm/sec or higher.

[15] Clark County submitted a SIP amendment that establishes a revised deadline of March 31, 2003 for the section 90 and other rule revisions.

[16] See Clark County Plan, Chapter 4, subsection 4.5.2.2.5.

[17] Clark County submitted a SIP amendment that establishes a revised deadline of March 31, 2003 for the section 92 and other rule revisions.

[18] Adoption of a requirement prohibiting new unpaved parking lots, in addition to the section 92 stabilization requirements, collectively fulfill BACM and MSM. However, since the section 92 surface stabilization requirements apply to both new and existing unpaved parking lots, the requirement that new lots be paved provides only incremental emission reductions beyond measures already adopted and, therefore, is not critical in our determination that measures for this source category have been adopted as expeditiously as practicable.

[19] Both a 20% opacity standard according to a modified EPA Reference Method 9 and a silt content standard of 8% or alternatively, a silt loading standard of 0.33 oz/sq. ft., apply.

unpaved parking areas). Windblown emissions from disturbed areas and inactive storage piles on construction sites are also a source of PM–10. Construction operations, which are mostly earthmoving, represent approximately 37 percent of the 24-hour BLM Disposal Area emissions (not including trackout emissions).

The suggested measures in the Clark County Plan for controlling emissions from constructions sites include a detailed list of controls encompassing a great variety of dust-generating activities, performance standards, enforcement-related measures,[20] and new measures not implemented in other areas. The measures considered include all sources of active dust generation and windblown dust on construction sites. We propose to find that the Clark County Plan evaluates a comprehensive set of potential controls for construction sites emissions including the potential MSM from other States.

Clark County adopted requirements pertaining to construction sites in Section 94 "Permitting and Dust Control for Construction Activities" on November 16, 2000. As part of this action, Clark County also adopted a "Section 94 Handbook," along with relevant tables of contents, definitions, articles, tables, indexes, examples and appendices.[21] Together these documents make up the required control measures applicable to construction sites. Section 94 establishes the basic requirements for construction site dust control permits and other standards while the Section 94 Handbook lays forth more specific requirements for each dust-generating source.

Dust control permits are required prior to soil disturbance for all sites greater than ¼ acre, mechanized trenching greater than 100 feet in length, and mechanical demolition of structures greater than 1,000 square feet. However, all sites with construction activities regardless of size are subject to the requirements of section 94 and the Section 94 Handbook. Dust control permits must contain a "Dust Mitigation Plan" that employs the Section 94 Handbook Best Management Practices (BMPs). The Section 94 Handbook requirements are not only activity-specific and designed to be placed into dust control permits in a phase-specific manner, but are also specific to the type of soil at a particular site or location and the soil's potential to emit fugitive dust. Therefore, each Dust Mitigation Plan must incorporate the appropriate BMPs per the Section 94 Handbook according to soil type parameters.[22] Sites 10 acres or greater must provide a more detailed project description and site plan according to a "Site Specific Dust Mitigation Plan".

The Section 94 Handbook establishes a specific performance standard (*i.e.*, Control Requirement) that must be met for each identified construction activity.[23] Multiple Control Requirements apply for each construction activity. A menu of control measure options is provided, one or more of which must be specifically identified in the Dust Mitigation Plan to meet each applicable Control Requirement for the activity. The control measures identified in the Dust Mitigation Plan are subject to review and approval by the DAQM as part of the dust control permit.

Specific requirements include a 20 percent opacity standard for active earthmoving operations and construction traffic. Also, all construction activities are prohibited from creating a visible plume that extends more than 100 yards from the point of origin. Construction site trackout is addressed by both a requirement to install and maintain trackout control devices at all traffic access/exit points and a requirement that trackout be cleaned up immediately (within one hour of discovery) if it extends a cumulative distance of 50 feet or more. In addition, all trackout must be cleaned up by the end of the work day or evening shift. To prevent emissions during bulk material transport and handling, truck loads must be covered on public roads and a 20 percent opacity limit applies during truck loading and unloading. Truck loads of bulk materials on site must either be covered, maintain three to six inches of freeboard, or maintain optimum moisture content of soils. All inactive disturbed soil areas must meet surface stabilization standards, including stockpiles and parking areas.[24] Unpaved haul roads must comply with both a 20% opacity standard[25] and a surface stabilization standard.[26] In high wind conditions, owners/operators must cease all construction activities if fugitive dust exceeds 20 percent opacity but must continue operation of water trucks and pulls except under specific circumstances. Sites with greater than 50 acres of actively disturbed soil are required to employ a responsible person to monitor dust control at the site.[27]

Section 94 and the Section 94 Handbook and other documents adopted by reference contain appropriate performance standards and test methods for opacity and surface stability, recordkeeping requirements, and otherwise meet EPA's enforceability criteria. Although the opacity standard per the test method included in section 94 is the best currently available to assess the opacity of emissions from the variety of construction activities generating fugitive dust, it may not be sufficient in all field circumstances to control intermittently-occurring dust plumes to BACM levels. Therefore, Clark County has adopted a SIP commitment to fund additional research to develop an acceptable alternative test method and revise section 94 accordingly. See Chapter 4 of the Plan, section 4.8.2.7. We consider this commitment as factoring into our determination that the Plan provides for BACM/MSM.

Section 94 construction site requirements became effective on January 1, 2001. We propose to find that the Clark County Plan provides for the implementation of construction site measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 94 and section 94 Handbook requirements are of equivalent or greater stringency than those adopted or in practice in other areas.

We, therefore, propose to find that the Clark County Plan provides for the

[20] We do not consider improved enforcement a BACM but rather a method of implementing BACM.

[21] The Section 94 Handbook and associated documents are explicitly adopted as part of section 94 per subsection 94.3.1 of the rule.

[22] Five soil type categories are included that take into account both silt content and optimum moisture content: high, moderately high, moderately low, low and slight. The high and moderately high soils generally require that a surfactant mixture with water or tackifyer mixture with water, respectively, be applied for effective dust control.

[23] Construction activities with specific BMPs include trenching, truck loading, screening, landscaping, paving/subgrade preparation, disturbed inactive surfaces, track out control, staging, equipment, and material storage areas, construction traffic, crushing, abrasive blasting, soil and rock blasting, stockpiles, importing bulk materials, backfilling, clearing and grubbing, clearing forms, cut and fill and demolition.

[24] Surfaces must comply with a visible crust standard per the test method in section 94 but may also comply with other surface stability standards in section 90.

[25] A modified EPA Reference Method 9 applies, found in section 91.

[26] A 6 percent silt content and/or 0.33 oz per square foot silt loading standard applies.

[27] This requirement was newly developed by Clark County and serves the dual purpose of improving compliance of larger sites by active monitoring of dust control-related efforts, but also encourages owners/operators to keep the total amount of disturbed surface under 50 acres as a preventative measure.

implementation BACM and for the inclusion of MSM for construction sites. We also propose SIP approval of section 94 and the section 94 Handbook and referenced documents per CAA section 110 and part D.

d. Paved Road Dust

Paved road dust is fugitive dust that is deposited on a paved roadway and then re-entrained into the air by the action of tires grinding on the roadway. Dust can be deposited on the roadway from being blown onto the road from disturbed areas, tracked onto the road from unpaved shoulders, unpaved roads, or other unpaved access points, stirred up from unpaved shoulders by wind currents created from traffic movement, spilled onto the road by haul trucks, and carried onto the road by water runoff or erosion. Paved road dust constitutes 26 percent of the 1998 valley-wide annual BLM Disposal Area emissions, thus is the second largest source of valley-wide PM–10 in the Las Vegas area. Paved road dust accounts for 13 percent of the overall 24-hour BLM Disposal Area 1998 inventory.

The suggested measures for controlling emissions from paved road dust fall into two categories: Preventing deposition of material onto a roadway, and cleaning material off the roadway.[28] The Clark County Plan includes ten potential BACM for paved road dust that fall under one of these two categories. We believe this list is complete and propose to find that the Clark County Plan evaluates a comprehensive set of potential controls for paved road dust including the potential MSM from other States.

Clark County adopted requirements for paved road shoulders and PM–10 efficient street sweeping requirements in section 93 "Fugitive Dust from Paved Roads and Street Sweeping Equipment". Clark County adopted SIP commitments to stabilize existing unpaved road shoulders and require use of vacuum crack seal equipment. See Clark County Plan, Chapter 4, sections 4.8.3.2 and 4.8.2.9.[29] Measures to prevent construction site trackout onto paved roads from truck tires and material transport are included in section 94 and the section 94 Handbook (construction activity regulations). For other measures[30], Clark County provided documentation of ongoing programs in place.[31]

The paved road measures relied upon for emissions reductions towards demonstrating attainment include stabilizing unpaved road shoulders, preventing trackout from construction sites, and reducing deposition from other fugitive dust sources subject to control per sections 90 through 94. The remaining measures are either already factored into the baseline or are not credited with emissions reductions towards the attainment demonstration.[32]

Section 93 requires owners/operators using street sweeping equipment or services on paved roads or parking lots to acquire or contract to acquire only certified PM–10 efficient street sweeping equipment[33] after January 1, 2001. We note this requirement applies to both private operators and government agencies.

For new or modified road shoulders, section 93 requires four feet of paved or stabilized shoulder on each side of the paved travel section or construction of curbing adjacent to the paved travel lane.[34] Medians must also be stabilized.

For existing unpaved road shoulders, section 93 requires stabilization within 365 days following initial discovery that the road fails to meet the stabilization standards and other requirements that apply to new/modified paved road shoulders. The stringency of this provision is necessarily enhanced by the SIP commitment in the Plan which lays forth the program and definitive dates by which all unstabilized shoulders will be identified and stabilized by public agencies in the Valley. Clark County indicates that shoulder improvements will be prioritized by each entity for their respective jurisdictions based upon emissions estimates. To implement the program, Plans will be completed by February 15, 2002, and at a minimum, funds will be obligated to improve 33 miles of paved road shoulders by the end of 2003, with all shoulders to be stabilized by the end of 2006. Annual updates on the progress of stabilizing shoulders will be submitted to Clark County and EPA. In a June 28, 2002 letter, the DAQM indicates that the respective public entities have submitted initial plans for stabilizing shoulders and initiated programs to begin stabilization.

Section 93, paved road requirements, became effective on January 1, 2001. The SIP commitment by governmental entities to stabilize 33 miles of unpaved shoulders by the end of 2003 and all shoulders by the end of 2006 allows time for public works agencies to complete an inventory of the unpaved shoulders in their respective jurisdictions and adopt schedules under capital improvement programs to stabilize shoulders each year using Congestion Management Air Quality (CMAQ) funds. Other measures have on-going implementation schedules because they are part of an on-going capital improvement program, *e.g.*, storm water drainage projects. Therefore, we propose to find that the Clark County Plan provides for the implementation of paved road measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 93 requirements and SIP commitments contained in the Plan are of equivalent or greater stringency than those adopted or in practice in other areas.

We, therefore, propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for paved road dust.

e. Unpaved Roads

This category includes re-entrained dust from vehicle travel on unpaved roads and windblown emissions from unpaved roads. There are three categories of unpaved roads in the Clark County nonattainment area: Publicly-owned/maintained roads, privately-owned roads, and unpaved haul/access roads associated with construction sites or industrial facilities. We have addressed the latter category in the discussion of construction site measures (section IV.D.3.c) of this document.

There are three ways to control fugitive dust emissions from unpaved roads: surface treatment to reduce dust from unpaved roads and alleys, traffic reduction/speed control plans for unpaved roads, and prohibition of

[28] Reductions in vehicle miles traveled and vehicle trips are also candidate transportation control measures (TCMs) that could have positive impacts on reducing paved road dust. However, these measures are more appropriate for areas addressing significant on-road mobile source emissions and would not impact paved road dust on the same magnitude as measures directed towards preventing or removing deposition. TCMs are separately addressed and included in Clark County's Carbon Monoxide Plan, adopted on August 1, 2000.

[29] Clark County submitted a SIP amendment that establishes a revised deadline of March 31, 2003 for the section 93 and other rule revisions.

[30] Prevention of storm water drainage deposits, cleanup of material spills and erosion-caused deposits, and routine sweeping of paved roads.

[31] See Clark County Plan, Appendix J and Chapter 4, pg. 4–69.

[32] For example, a large portion of the publicly-owned street sweeping fleet already consisted of PM–10 efficient street sweepers in 1998 and routine sweeping programs were already in place.

[33] This refers to a street sweeper which has been certified by the South Coast Air Quality Management District (SCAQMD) to comply with the performance standards in SCAQMD's Rule 1186 according to test methods specified in Rule 1186.

[34] Clark County has made a SIP commitment to strengthen this provision to provide for eight feet of stabilized shoulder adjacent to the paved travel section on roads with 3,000 vehicles per day or more. The new SIP commitment date of March 31, 2003 applies per Clark County's SIP amendment.

unpaved haul roads. All three are identified and evaluated in the Clark County Plan. We believe this list is complete and propose to find that the Clark County Plan evaluates a comprehensive set of potential BACM and MSM for unpaved roads.

Clark County did not implement traffic reduction/speed control on public and private roads in the Valley.[35] This is because the County determined that reducing traffic on public and private unpaved roads is not as stringent a measure as paving or other means of surface stabilization. Speed control is difficult to enforce compared to road paving, which can be readily verified and results in greater emissions reductions. Thus, the benefits of applying this potential BACM are subsumed in the more stringent emission reductions associated with surface stabilization.

Clark County adopted requirements to stabilize existing unpaved roads and alleys and to prohibit new unpaved roads in public thoroughfares in section 91 "Fugitive Dust From Unpaved Roads, Unpaved Alleys and Unpaved Easement Roads." Also, Clark County adopted a SIP commitment for County and City Public Works agencies to pave unpaved roads subject to section 91.[36]

Section 91 requires all existing unpaved roads that receive 150 vehicle trips per day or more to be paved or treated with dust palliatives on the following schedule: ⅓ of the total by June 2001, two-thirds of the total by June 2002, and any remaining roads by June 1, 2003. Section 91 prohibits construction of new unpaved roads or alleys in public thoroughfares after June 22, 2000 unless the unpaved road is an interim component of an active paving project.

Section 91 requirements apply to both public and private roads. Clark County estimates that approximately 64 miles of the 259-mile total base year inventory of publicly-owned and maintained unpaved roads have 150 or more average daily vehicle trips (ADT). The unpaved roads inventory was developed by the respective Public Works departments after extensive review of the existing road network. Given that higher ADT unpaved roads proportionately contribute greater emissions than lower ADT roads, the 64 miles constitute 66% of emissions from the total inventoried road network. The SIP commitment for unpaved roads made by County and City Public Works agencies not only goes beyond the section 93 requirements in that it ensures roads will receive the maximum emissions reductions possible through paving, but further enhances coverage in that the City of Las Vegas makes an additional commitment to pave all unpaved roads within its jurisdiction by the end of 2006. We also note that the SIP commitment concerning paved road shoulders [37] indicates that shoulder improvements and road paving for unpaved roads with less than 150 ADT will be prioritized by each entity for their respective jurisdictions based upon emissions estimates. Thus, road paving efforts by jurisdictions may very well go beyond the requirements in section 91 depending on the availability of CMAQ dollars. Section 91 contains specific reporting requirements for the responsible jurisdictions and the SIP commitment for unpaved roads provides for annual progress updates to be provided to the DAQM and EPA.

While the miles of privately owned unpaved roads have not been fully inventoried in detail, a total of 45 miles of private roads were identified by various municipalities and the County, none of which were determined to have traffic volumes greater than 50 ADT. Clark County included a SIP commitment in the Plan to develop an improved inventory of both public and private unpaved roads.[38]

Section 91 also contains requirements that address the prospect of vehicle traffic increases on unpaved roads that are currently below the 150 ADT threshold but in the future exceed it. Any existing unpaved roads which equal or exceed 150 ADT after June 1, 2003 are subject to control according to section 91 within 365 calendar days following initial discovery that vehicular traffic equals or exceeds 150.

Section 91 contains appropriate performance standards and test methods for surface stability and opacity,[39] recordkeeping requirements, and otherwise meets EPA's enforceability criteria.

Section 91 unpaved road requirements prohibit new unpaved roads as of June 22, 2000. Clark County indicates that the CMAQ funding obligated by the responsible government agencies (totaling over $25 million) will support completing approximately one-third of the total paving requirement in section 91 for each year from 2001 to 2003.[40] Moreover, we note in a June 28, 2002 letter from the DAQM that the responsible jurisdictions have exceeded the section 91 required one-third increment of road paving by June 2001 and have reported paving 86 percent, or a total of 55 of the 64-mile public road inventory receiving 150 ADT or more. This demonstrates the commitment of Clark County governmental entities to implement control measures expeditiously. We propose to find that the Clark County Plan provides for the implementation of unpaved road measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 91 requirements and SIP commitments for unpaved roads are equally or more stringent than those adopted or in practice in other areas.

We, therefore, propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for unpaved roads. We also propose SIP approval of section 91 per CAA section 110 and part D.

f. Race Tracks

Race track emissions are both actively generated from use by offroad vehicles, *e.g.*, dirt bikes and all-terrain vehicles (ATVs), and windblown from disturbed surfaces following use. Clark County determined that race track emissions are only significant with respect to the 24-hour standard. Race track emissions that were found to have significant impacts at two micro-inventory sites were associated with unauthorized ATV use on a vacant parcel.[41]

Clark County did not prepare a separate BACM analysis for race tracks. Rather, Clark County implements its strategy for race tracks through section 90 controls for disturbed vacant land and open areas. We note that there are three potential BACM for control of dirt race tracks: Prohibit race tracks, treat the surface of race tracks with dust suppressants or palliatives, and establish wind breaks around the circumference of tracks. Of these potential BACM, Section 90 controls address the first two. Establishing wind breaks has not been adopted, but this measure is not as stringent as prohibiting race tracks and surface treatment of disturbed areas.

Clark County determined that section 90 requirements effectively prohibit dirt race tracks because it is not possible to

[35] However, traffic reduction/speed control is included in the Section 94 Handbook as a BMP for unpaved haul/access construction site roads.

[36] See Chapter 4, section 4.8.3.1 of the Plan.

[37] See Chapter 4, section 4.8.3.2 of the Plan.

[38] See Chapter 4, section 4.8.2.3 of the Plan.

[39] Where paving is not conducted (this would only apply to roads that are not included in the SIP commitment by Public Works entities), both a 20% opacity standard according to a modified EPA Reference Method 9 and a silt content standard of 6% or alternatively, a silt loading standard of 0.33 oz/sq. ft., apply.

[40] See Chapter 7, pg. 7–4 of the Plan.

[41] *See* Chapter 4, pg. 4–81 of the Plan.

operate off-road vehicles, including dirt bikes and ATVs, on open areas/vacant lots and remain in compliance with the regulation. Where motor vehicle trespass is occurring on vacant lots greater than 5,000 square feet, owners must take steps to prevent trespass and stabilize the surface. Even if motor vehicle use is authorized, where over 5,000 cumulative square feet of surface has been disturbed, owners/operators must apply dust palliative (other than water) or gravel. These requirements would apply to any public or private lands where offroad racing occurs.

The one public entity in Clark County that can effectively authorize use of public land for offroad racing events is the Bureau of Land Management. Clark County indicates that BLM is currently working to establish offroad racing courses outside the nonattainment area. The DAQM's policy prohibiting issuance of permits for offroad race tracks within the nonattainment area is described in a letter dated September 5, 2002 from the DAQM to the BLM and in letters from the DAQM to other public agencies dated September 9, 2002.

Clark County did not conduct a MSM evaluation specific to race tracks. Rather, the MSM evaluation for section 90 applies. We propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for race tracks.

g. Section 0

Section 0 was revised by Clark County at the same time sections 90 through 94 were originally adopted (November 16, 2000). The section 0 definitions that concern fugitive dust sources are integrally linked to the requirements found in sections 90 through 94. However, section 0 also contains definitions that are not pertinent to sections 90 through 94. For the purposes of this action, we have only evaluated the definitions concerning fugitive dust sources per section 90 through 94 requirements and are proposing to approve only these sections into the SIP, rather than the entire section 0.

The individual sections of section 0, November 16, 2000, we are proposing to approve into the Nevada PM–10 SIP include the following:

Section 0.25 "Best Management Practices"
Section 0.33 "Commercial and Residential Construction"
Section 0.36 "Construction Activity"
Section 0.37 "Control Measure"
Section 0.43 "Disturbed Surface Area"
Section 0.45 "Dust Palliative"
Section 0.46 "Dust Suppressant"
Section 0.47 "Easement"
Section 0.48 "Easement Holder"
Section 0.51 "Emergency"
Section 0.58 "EPA or Administrator"
Section 0.65 "Flood Control Construction"
Section 0.70 "Fugitive Dust"
Section 0.81 "Hearing Officer"
Section 0.84 "Highway Construction"
Section 0.110 "Nonroad Easement"
Section 0.111 "Normal Farm Cultural Practice"
Section 0.114 "Offroad Vehicle"
Section 0.117 "Open Areas and Vacant Lots"
Section 0.120 "Owner and/or Operator"
Section 0.127 "Pave"
Section 0.132 "PM–10 Nonattainment Area"
Section 0.133 "PM–10"
Section 0.140 "Public Road"
Section 0.141 "Reclaimed Water"
Section 0.147 "Road Easement"
Section 0.162 "Trench"
Section 0.164 "Unpaved Parking Lot"
Section 0.166 "Vacant Lot"

The current Nevada SIP contains a definitions rule titled "Section 1—Definitions" submitted on November 17, 1981 and approved into the SIP by EPA on June 21, 1982. Our proposed incorporation of the specified section 0 definitions into the SIP would upgrade the SIP by adding several new definitions and by replacing two of the existing section 1 definitions. These two definitions include section 0.70 "Fugitive Dust" and section 0.114 "Offroad Vehicle", which would replace subsection 1.35 and subsection 1.64 of section 1, respectively.

G. Applicable SIP Rules

In addition to section 1, the applicable SIP-approved fugitive dust rules that apply in Clark County include section 41 "Fugitive Dust" (submitted on July 24, 1979 and approved by EPA on August 27, 1981) and section 17 "Permission to Disturb Topsoil" (submitted on July 24, 1979 and approved by EPA on August 27, 1981). Revisions to section 17 were submitted on November 17, 1981 and approved by EPA on June 18, 1982.

We are proposing to revise the Nevada PM–10 SIP to incorporate sections 90, 91, 92, 93 (as adopted on November 20, 2001) and section 94 (including the Section 94 Handbook and other referenced documents) (as adopted on November 16, 2000) of the Clark County Regulations. We are proposing to replace SIP-approved Clark County section 17. We are also proposing to add certain portions of Section 0 (as adopted on November 16, 2000) to the existing SIP-approved section 1, and replace two definitions in section 1, as previously identified in this notice.

CAA section 110(l) prohibits approval of SIP revisions that would interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act. As discussed in other sections of this document, we are proposing to approve the expeditious attainment and RFP demonstrations in the PM–10 State Implementation Plan for Clark County. These demonstrations are in large part dependent on approval of sections 90, 91, 92, 93, and 94 (including Handbook) and Clark County SIP commitments. Therefore, our proposed approval of these rules and SIP commitments will not adversely affect the Plan's provisions for expeditious attainment and RFP. These SIP revisions also satisfy all other applicable CAA requirements including implementation of BACM and the inclusion of MSM.

H. General SIP Requirements and Enforcement of Fugitive Dust Rules

Section 110(a)(2)(E)(i) of the Clean Air Act requires that the implementation plan provide necessary assurances that the State (or the general purpose local government) will have adequate personnel, funding and authority under State law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (51.230–51.232) and for resources in 40 CFR 51.280.

States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal.

Section 110(a)(2)(C) of the Act requires SIPs to include a program to provide for the enforcement of SIP measures. The implementing regulation for this section is found at 40 CFR 51.111(a) and requires control strategies to include a description of enforcement methods including (1) procedures for monitoring compliance with each of the selected control measures, (2) procedures for handling violations, and (3) the designation of the agency responsible for enforcement.

Section 110(a)(2)(E)(iii) of the Act requires SIPs to include necessary assurances that where a State has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring

adequate implementation of the such plan provision.

With respect to CAA section 110(a)(2)(E)(iii), the State of Nevada has ultimate responsibility for ensuring the adequate implementation of the Clark County air quality program according to NRS 445B.520. This statute allows the State Environmental Commission to supersede a County's program when the Commission determines that a local air quality program is inadequate.

The principal control measures in the Clark County Plan are the adopted requirements in sections 90 through 94 and the Plan's SIP commitments for unpaved shoulders and roads.

1. Staffing

Clark County has committed to increase its enforcement staffing and thus enhance enforcement efforts. See Chapter 4, section 4.8.1 and appendix H, Resolution 02–00, July 27, 2001, of the Clark County Plan. Specifically, Clark County committed to hire 15 additional staff by December 31, 2001 to implement and enforce sections 90 through 94, including several enforcement officers, clerical and other support positions. Prior to the fulfillment of this SIP commitment, compliance for fugitive dust sources (per sections 17 and 41 of the Clark County Regulations) was being handled by 11 people total, seven (7) of which were field enforcement officers conducting inspections.

The DAQM has provided us with the status of its SIP commitments.[42] First, the DAQM met its commitment by hiring 15 new staff into the compliance division, 12 of which were hired as field enforcement officers to conduct inspections and handle cases for construction sites and vacant lots. The DAQM then exceeded its SIP commitment by hiring an additional seven (7) field enforcement officers in 2002. The Compliance Division now consists of a total of 44 positions, with 22 field enforcement officers who spend approximately 90 percent of their time on fugitive dust issues. The increased level of effort specifically being targeted towards fugitive dust sources is evidenced by the significant number of inspections and corrective action orders concerning fugitive dust sources in 2001 and 2002, which we address in subsequent paragraphs.

We address below other program areas that are key to improving compliance and which we believe form a solid program for the effectiveness of the County's efforts to control fugitive dust.

2. Inspection Program

Clark County's enforcement staff utilizes the county Geographic Information System (GISMO) to obtain detailed aerial photographs to locate and identify large parcels of vacant land to inspect and characterize. The DAQM continues to expand the existing vacant land program by identifying and systematically inspecting the problem areas and the larger parcels.

In calendar years 2001 and 2002 (as of September) combined, Clark County has conducted over 4,000 vacant land inspections. The Compliance Division has a member on staff who coordinates all activities and concerns with two government agency large vacant landowners, the Bureau of Land Management and the Bureau of Reclamation—in order to ensure close cooperation with these agencies.

In calendar years 2001 and 2002 (as of September) combined, Clark County has conducted over 5,000 construction site inspections. Complaints are given priority for inspection; however, enforcement officers also inspect construction sites within their assigned area on a routine basis, including non-permitted construction activities as they are encountered in the field.

3. Enforcement Program

Clark County relies upon two options for handling noncompliant sources: issuing a Corrective Action Order (CAO) or a Notice of Violation (NOV). In 2001, the County issued 1,316 CAOs and as of September 2002 has issued 1,775 CAOs. In 2001, the County issued 57 NOVs and as of September 2002 has issued 133 NOVs. The penalties assessed for the two years combined amount to $719,372. CAOs are generally written for infractions that are not substantial enough to warrant a NOV, allowing source owners/operators a first-time chance to comply. NOVs are issued for more serious violations. Should owners/operators fail to comply with a CAO, it becomes a NOV with associated penalties.

Section 7 provides that the Hearing Board Officers be selected by the District Board of Health and have the authority to levy penalties for alleged violations in accordance with section 9 of Clark County regulations, which contains the minimum penalties for violations of fugitive dust requirements. The minimum penalty for limiting visible emissions is $2,000. The minimum penalty for not complying with other control measure provisions is $1,000. Minimum penalties for failing to comply with administrative requirements related to permit conditions is $500 and $250 for other administrative requirements. Clark County compared these minimum penalties for dust violations to those of other air regulatory agencies and found that they were among the highest in the nation.

4. Public Outreach/Education

Public outreach and education consists of staff training, educating the regulated parties, developing good working relationships with other involved parties such as the cities, and making the program more understandable. Increased education of both inspectors and the regulated industry increases compliance.

Public outreach efforts in which Clark County has engaged to improve compliance for construction sites include publishing and distributing a manual that summarizes the section 94 and section 94 Handbook requirements in an easy-to-comprehend format. Also, dust control classes and educational workshops are regularly offered by the DAQM's Compliance Division. The construction site superintendent or designated on-site representative and water truck and water pull drivers for each construction project are required per section 94 to have successfully completed a Dust Control Class and all individuals required to attend must successfully complete the Dust Control Class at least once every three years. In addition, as of 2002, the DAQM has conducted a special training effort per the section 94 requirement for a responsible person to monitor dust (*i.e.* "Dust Control Monitor") on sites with more than 50 acres of disturbed surface. To date, two Dust Control Monitor classes have been held with over 90 participants.

In order to increase awareness among vacant lot owners/operators of the disturbed vacant lot requirements, Clark County prepared and distributed a brochure summarizing the section 90 requirements to over 40,000 vacant landowners.

5. Program Evaluation and Tracking

Clark County tracks the number of inspections, CAOs, NOVs, penalties assessed and penalties collected for fugitive dust and other sources and provides quarterly reports containing this information to EPA.

Clark County tracks progress of government agencies on their unpaved road and paved road SIP commitments through a PM–10 SIP Implementation Working Group and an Unpaved Road Ad Hoc Committee. These groups are

[42] See June 28, 2002 letter and attached RFP Report and October 1, 2002 letter from the DAQM to EPA.

comprised of DAQM planning and compliance staff and staff from the County and City public works agencies. Unpaved road paving is documented using an extranet site and the unimproved shoulders program will be reviewed through submittal of annual reports to the DAQM.[43] Also, the Public Works Departments in Clark County routinely track paved road performance and maintenance by checking the condition of paved roads in their respective jurisdictions.

6. Conclusion

We propose to find that the Clark County PM–10 Plan adequately provides for the enforcement of the principal measures relied on for attainment and that Clark County has provided adequate descriptions of its enforcement methods as required by our regulations.

We also propose to find that the implementing agencies for the Clark County Plan have adequate resources for implementing their respective commitments that are included in the submitted Plan and that the Plan adequately describes the resources that are available or will be available to the State and local agencies to carry out the Plan, both now and over the next 5 years.

I. Demonstration of Attainment and Attainment Date Extension

The Clark County Plan contains an analysis that demonstrates attainment of the annual PM–10 standard by December 31, 2001. Clark County predicted that an annual reduction of 5.66 percent, equivalent to 9,657 tons valley-wide and 303 tons for the J.D. Smith micro-inventory area, is needed to attain the annual 50 $\mu g/m^3$ standard, given an estimated uncontrolled concentration of 53 $\mu g/m^3$. The valley-wide rollback modeling predicts annual PM–10 concentrations to be 46.2 $\mu g/m^3$ in 2001. The corresponding microinventory projection for J.D. Smith, the exceeding site, is 48.5 $\mu g/m^3$, also less than 50 $\mu g/m^3$. Together, these demonstrate attainment of the annual PM–10 standard by 2001. We propose to find this demonstration adequate. The adequacy of the demonstration is further supported by information provided by the DAQM to EPA [44] indicating that the three-year annual average (1999–2001) of the microscale sites is below the 50 $\mu g/m^3$ standard.

Clark County has requested an extension of the attainment date for the 24-hour 150 $\mu g/m^3$ PM–10 standard. Section 188(e) of the Act allows us to extend the attainment date for a serious area for up to five years beyond 2001 if attainment by 2001 is impracticable. However, before we may grant an extension of the attainment date, the State must first:

1. Apply to us for an extension of the PM–10 attainment date beyond 2001,
2. Demonstrate that attainment by 2001 is impracticable,
3. Have complied with all requirements and commitments applying to the area in its implementation plan,
4. Demonstrate to our satisfaction that its serious area plan includes the most stringent measures that are included in the implementation plan of any state and/or are achieved in practice in any state and are feasible for the area, and
5. Submit a demonstration of attainment by the most expeditious alternative date practicable.

We evaluate the Clark County serious area plan's compliance with each of these requirements below.

1. Apply for an Extension

The documentation supporting Clark County's extension request is found in Chapter 7 of the Plan. This extension request is an integral part of the Clark County Plan and was subject to public hearing along with the rest of the plan, including the demonstration that the area will attain the 24-hour standard by the earliest alternative date practicable.

2. Demonstrate the Impracticability of Attainment by December 31, 2001

Clark County's determination that demonstrating attainment of the 24-hour standard by 2001 is impracticable is primarily based upon the need for increased enforcement staffing, which could not be completed until the end of 2001. Clark County conservatively assumes that the rule effectiveness of its regulations in 2001 is half of what it will need to be in 2006 to demonstrate attainment of the 24-hour standard.

Also, with respect to the unpaved roads schedule, Clark County indicates that the maximum benefit that will be realized at the end of 2003 from the appropriated CMAQ funding cannot practicably be achieved earlier due to funding limitations each year. Notwithstanding, we note from the DAQM's June 2002 RFP Report that the responsible entities have exceeded the Section 91 required 33 percent paving of roads subject to the rule by 2001 and reported paving 86 percent, or a total of 55 of the 64 mile inventory of unpaved roads with 150 vehicle trips per day.

With respect to improvements to paved road shoulders, Clark County has committed to stabilize 33 miles of paved road shoulders by the end of 2003 using appropriated CMAQ funds and all shoulders by 2006. The remaining shoulders have a later implementation date given that new CMAQ funds will need to be appropriated and first committed towards the carbon monoxide transportation demand management program. Thus, earlier implementation would be impracticable.

The modeled valley-wide 24-hour value for 2001 is 209 $\mu g/m^3$. Although this is a significant reduction from the projected design day value of 281 $\mu g/m^3$, it still falls far short of the 150 $\mu g/m^3$ standard.

Thus, we propose to find that Clark County has demonstrated the impracticability of meeting the 24-hour standard by 2001.

3. Complied With Commitments and Requirements in the SIP

All measures upon which Clark County is relying to meet the applicable CAA requirements for a Serious Area PM–10 plan are included or referenced in the current June 2001 Plan, as amended by Clark County in November 2002.

4. Include the Most Stringent Measures

Clark County identified candidate MSM in the context of its analysis to identify potential BACM, generally finding that control measures being implemented in other PM–10 serious nonattainment areas in the western U.S. were the most stringent controls implemented by others for the types of fugitive PM–10 sources requiring control in the Las Vegas Valley.

In the Clark County Plan, after a comprehensive list of candidate MSM was developed, each measure was screened against the corresponding Clark County measure to identify those with more restrictive emission limitations, more extensive lists of affected sources, fewer exemptions, and/or one or more substantive regulatory provisions not found in the Clark County measure. Clark County includes a measure-by-measure MSM comparison in Chapter 6 of the Plan.

Based on our analysis of the Clark County Plan, we propose to find that it demonstrates to our satisfaction inclusion of the most stringent measures that are included in the implementation plan of any State, or are achieved in practice in any State, and can be feasibly implemented in the Clark County area.

[43] Appendix L, pg. L–12 of the Plan.

[44] June 28, 2002 letter from the DAQM to EPA with attached June 2002 Reasonable Further Progress Report.

5. Demonstrate Expeditious Attainment

For the reasons discussed below, we propose to find that the Clark County Plan demonstrates attainment by the earliest date practicable after December 31, 2001 as required by CAA section 189(b)(1)(A)(ii). We also propose to find that: The attainment demonstration relies on control measures that either are approved or have been proposed for approval and meet our SIP enforceability criteria; the emissions estimates credited to these measures in the attainment demonstration are reasonable; and the measures are being implemented on a schedule that is as expeditious as practicable and will result in attainment by the earliest practicable date.

a. Air Quality Modeling

The attainment demonstration for the 24-hour standard in the Clark County Plan is divided into two parts, a microscale analysis and a regional analysis. The microscale part evaluates 24-hour exceedences at five monitoring sites in the Las Vegas. The regional part evaluates 24-hour levels throughout the rest of the Clark County nonattainment area.

Clark County relies upon an emissions "rollback" model for the attainment demonstrations. EPA's guidelines [45] allow the need for case-by-case approaches in circumstances when recommended dispersion models are not available or applicable and where area sources are the predominant component of PM–10. To predict future concentration, the current concentration is reduced or "rolled back" by the same fractional amount that emissions are reduced. In recognition of the special characteristics of fugitive dust-dominated areas, we believe an attainment demonstration based on proportional rollback of one or more microinventories is a reasonable approach and is consistent with EPA guidance, as long as the microinventory areas are representative of worst case conditions, and the resulting emission controls are applied throughout the area.

We have evaluated the five microinventory areas mentioned previously in this document and find that they contain varying source category mixes and span a range of conditions that occur in the Las Vegas Valley. By showing that the chosen microinventory areas are representative of conditions leading to PM–10 NAAQS exceedences, and by then applying the controls shown to be needed in these microareas to the entire nonattainment area, Clark County has followed an acceptable procedure for demonstrating attainment.

[45] Guideline On Air Quality Models, 2001, sections 7.2.1 and 7.2.2.

b. Control Measures Relied on for Attainment

For demonstrating attainment of the annual and 24-hour PM–10 standards, the Clark County Plan relies on reductions in directly-emitted PM–10 from the following measures: Section 90 controls for disturbed vacant land, section 92 controls for unpaved parking lots,[46] section 94 (including Handbook) controls for construction sites, section 91 and government agency SIP commitment controls for unpaved roads, and section 93 and government agency SIP commitment controls for unpaved road shoulders (within the paved road dust category).

For the 24-hour attainment demonstration, Clark County models controlled valley-wide future concentrations for the years 2001 and 2006 as well as controlled 2006 concentrations at each of the five microscale sites. We have evaluated the emissions reductions credited to each measure in the attainment demonstrations to ensure they are reasonable. Three factors considered include:

1. Emissions reductions from controls applied (*e.g.* percent reduction achieved through paving or chemical stabilization);

2. Rule penetration (*i.e.* percentage of sources within the total source category that the rule or measure will impact); and

3. Rule effectiveness (*i.e.* the expected rate of compliance with a rule or measure).

We find that the emission reduction estimates for each source category are consistent with available research on the applicable control methods, rule penetration estimates are reasonable based on emissions inventory data, and rule effectiveness estimates are reasonable given the schedule for adoption of measures and other factors. Emissions reductions credited based on these estimates are appropriately applied in the attainment demonstrations. For more information on the quantification of emission reductions, we refer to the TSD associated with this rulemaking.

We are also proposing that the measures relied on for attainment are being expeditiously implemented. Section 90, 91, 92, 93 and 94 requirements all applied well before adoption of the Clark County Plan in June 2001. While Clark County has revised the original SIP commitment deadline for adopting certain revisions to its fugitive dust regulations to March 31, 2003, these revisions provide incremental reductions above an already-adopted baseline that should achieve substantial immediate reductions. Therefore, we believe the extension is reasonable and does not impact our finding that the Plan provides for expeditious implementation of measures. Finally, Clark County's SIP commitment for hiring additional staff to implement and enforce fugitive dust controls was established with an expeditious timeframe for all positions to be filled by the end of 2001. Clark County has not only met, but exceeded this commitment.

[46] Emission reductions for section 92 controls were only specifically calculated for the two microscale areas that included unpaved parking as opposed to a valley-wide basis. These microscale areas play a role in the 24-hour but not annual attainment demonstration. Clark County did not prepare a separate valley-wide inventory for unpaved parking lots apart from the disturbed vacant land inventory. Thus, reductions attributable to the section 92 controls are only implicitly assumed, for purposes of the annual attainment demonstration, within the larger valley-wide emission reductions anticipated from disturbed vacant land.

6. Other Factors That EPA May Consider

CAA section 188(e) lists five additional factors that we may consider in deciding whether to grant an extension and the length of that extension. These include: (1) The nature and extent of the nonattainment problem; (2) the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and international transport); (3) the population exposed to concentrations in excess of the standard; (4) the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area; and (5) the technological and economic feasibility of various control measures.

In evaluating these factors, we have focused on the nature and extent of the nonattainment area problem, the types of sources contributing to the problem, and the ability of the County to control these sources. Fugitive dust sources dominate the emissions inventory in the Clark County PM–10 nonattainment area. Controls for these sources are well known (paving, wetting surfaces, etc.) and have been adopted; however, the number of sources and nature of sources make education, outreach and enhanced enforcement necessary to assure full compliance with those controls. In addition, costs for paving roads and stabilizing shoulders necessary to

reduce PM–10 emissions are high and funds are only available over a number of years. These factors generally support a longer time frame for attainment.

7. Conclusion on Extension Request

Based on our review of the Clark County Plan and our proposed determination that it meets the requirements necessary for granting an extension of the attainment date under CAA section 188(e), we are proposing to grant a five-year extension of the attainment date for the 24-hour PM–10 standard in the Clark County PM–10 serious nonattainment area from December 31, 2001 to December 31, 2006.

J. Reasonable Further Progress and Quantitative Milestones

CAA section 172(c)(2) requires nonattainment plans to provide for reasonable further progress (RFP). Section 171(1) of the Act defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D of title I) or may reasonable be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date."

CAA section 189(c) also requires PM–10 plans demonstrating attainment to contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP. These quantitative milestones should consist of elements that allow progress to be quantified or measured. Addendum at 42016.

Clark County identified milestone achievement dates of 2003 and 2006 with respect tp the 24-hour standard. The milestones have been addressed by quantifying emission reductions which result from the implementation of the committed control measures after predicted growth has occurred. Emissions by 2003 are projected to be reduced substantially to 276.48 tons per day, with 77.23 additional tons per day reductions occurring between 2003 and 2006, resulting in 199.25 tons per day. Clark County indicates that total emissions under 210.70 tons per day should result in attainment of the 24-hour standard. RFP Reports are due at the end of 2003 and 2006, which correspond with Clark County's milestone achievement dates.

The milestones for the 24-hour standard are based on reasonable assumptions that are consistent with the implementation schedules for the measures in the plan and with the RFP demonstrations. For these reasons, we propose to find that the Plan meets the quantitative milestone requirement in CAA section 189(c)(1).

K. Contingency Measures

Section 172(c)(9) of the Clean Air Act requires that implementation plans provide for the implementation of specific measures to be undertaken if the area fails to make RFP or attain by its attainment deadline. These contingency measures are to take effect without further action by the State or the Administrator. The Act does not specify how many contingency measures are necessary nor does it specify the level of emission reductions they must produce.

The purpose of contingency measures is to ensure that additional emission reductions beyond those relied on in the attainment and RFP demonstrations are available if there is a failure to make RFP or attain by the applicable attainment date. These additional emission reductions will assure continued progress towards attainment while the SIP is being revised to fully correct the failure. To ensure this continued progress, we recommend that contingency measures provide emission reductions equivalent of one year's average increment of RFP. Addendum at 42016.

The following contingency measures were adopted by Clark County Health District Board of Health Resolution #03–00 on July 27, 2000.

1. Reduce the threshold for site-specific dust mitigation plan requirements for construction activities from ten acres to five acres;

2. Require paving/stabilization of all unpaved roads with ≥ 100 average daily vehicle trips;

3. Provide for at least two additional field enforcement officers above and beyond those staff increases committed to in the State Implementation Plan;

4. Increase minimum penalties for violations of Air Quality Regulations for fugitive dust; and

5. Reduce the size threshold for requiring a dust control monitor (coordinator) at construction sites.

Clark County describes that the entire set of contingency measures will be automatically implemented if Clark County fails to meet the projected 2003 emissions reduction milestone. We note that Clark County has already implemented Contingency Measure 3 for field enforcement officer staff increases above and beyond the staff increases committed to in the Plan. Clark County estimates the emissions reduction benefit from the contingency measures to be 1,373 tons per year in total. This annual reduction exceeds the annual average increment of RFP.

The contingency measures identified in the Plan have been adopted but are not credited in the attainment, RFP or milestone demonstrations for the 24-hour standard and are not necessary to demonstrate expeditious attainment of the standard.

Therefore, we propose to find that the Plan provides for the implementation of contingency measures for the 24-hour standard as required by CAA section 172(c)(9). This proposal is based on our analysis that these contingency measures comply with applicable CAA requirements and EPA policy.

L. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 9, 2003

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–1145 Filed 1–21–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH118–1b; FRL–7428–4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), the remaining portions of the Ohio Environmental Protection Agency's (OEPA) regulations for Prevention of Significant Deterioration (PSD) provisions for attainment areas. EPA had previously conditionally approved Ohio's prior SIP submission on October 10, 2001. Today's proposed final approval of changes in the plan correcting minor deficiencies cited in EPA's original conditional approval, is based on Ohio's July 18, 2002, submission of revisions to the Ohio Administrative Code (OAC). In its July 2002 submittal, Ohio also made additional revisions to the OAC that were not addressed in EPA's October 10, 2001 conditional approval.

Recently, EPA announced new regulations regarding changes to the preconstruction permit program under EPA's efforts regarding "New Source Review Reform." Today's approval of Ohio's SIP submission does not address EPA's new rules but is limited to portions of Ohio's preconstruction permit program under the existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any requirements that EPA may promulgate as part of New Source Review Reform.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by February 21, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Genevieve Damico at (312) 353–4761 before visiting the Region 5 office.

Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4761.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" are used we mean the EPA.

I. What action is EPA taking today?
II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve, as a revision to the SIP, the remaining portions of the Ohio Environmental Protection Agency's (OEPA) PSD provisions for attainment areas. EPA had previously conditionally approved Ohio's prior SIP submission on October 10, 2001 (66 FR 51570). Today's proposed final approval of EPA's original conditional approval is based on Ohio's July 18, 2002, submission of the revisions to the OAC. In its July 2002 submittal, Ohio also made additional revisions to OAC 3745–31–01, –02, –03, –05, and –07 that were not addressed in EPA's October 10, 2001 conditional approval.

Recently, EPA announced new regulations regarding changes to the preconstruction permit program under EPA's efforts regarding "New Source Review Reform". *See http://www.epa.gov/nsr/*. Today's approval of Ohio's SIP submission does not address EPA's new rules but is limited to portions of Ohio's preconstruction permit program under the existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any requirements that EPA may promulgate as part of New Source Review Reform.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules and regulations section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: December 13, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–1236 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2002–0043; FRL–7416–8]

RIN 2060–AH03

National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for primary magnesium refining facilities. The EPA has identified primary magnesium refining facilities as a major source of hazardous air pollutant (HAP) emissions. These proposed standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by facilities in the primary magnesium refining source category include chlorine, hydrochloric acid, dioxin/furan, and trace amounts of several HAP metals. Exposure to these substances has been demonstrated to cause adverse health effects, including chronic and acute disorders of the blood, heart, kidneys, reproductive system, and central nervous system. Some of these pollutants are considered to be carcinogens, and all can cause toxic effects in humans following sufficient exposure.

DATES: *Comments.* Submit comments on or before February 21, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by February 3, 2003, a public hearing will be held on February 6, 2003.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, NC, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Lula Melton, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2910, electronic mail address: *melton.lula@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS*	Examples of regulated entities
Primary Magnesium Refining	331419	Primary refiners of nonferrous metals by electrolytic methods.

*North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.9881 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0043. The official public docket is the collection of materials that is available for public viewing in the Primary Magnesium Refining NESHAP Docket at the EPA Docket Center (Air Docket), EPA West, Room B108, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or review public comments, access the index of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statue, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statue. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked "late." The EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select "search" and then key in Docket ID No. OAR–2002–0043. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *air-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2002–0043. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in Wordperfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: Primary Magnesium Refining NESHAP Docket, EPA Docket Center (Air Docket), U.S. EPA West, Mail Code 6102T, Room B108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0043.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center, U.S. EPA West, Mail Code 6102T, Room B108, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2002–0043. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document.

By Facsimile. Fax your comments to: (202) 566–1741, Attention Primary Magnesium Refining NESHAP Docket, Docket ID No. OAR–2002–0043.

Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Ms. Lula Melton, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2002–0043. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Cassie Posey, Metals Group, Emission Standards Division (C439–02), Research Triangle Park, NC 27711, telephone number (919) 541–0069, in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Cassie Posey to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What Is the Source of Authority for Development of NESHAP?
B. What Criteria Are Used in the Development Of NESHAP?
C. What Source Category Is Affected by the Proposed Rule?
D. What Are the Health Effects Associated With Emissions From Primary Magnesium Refineries?
II. Summary of the Proposed Rule
A. What Are the Affected Sources and Emission Points?
B. What Are the Compliance Deadlines?
C. What Are the Emission Limitations?
D. What Are the Operation and Maintenance Requirements?
E. What Are the Initial Compliance Requirements?
F. What Are the Continuous Compliance Requirements?
G. What Are the Notification, Recordkeeping, and Reporting Requirements?
III. Rationale for Selecting the Proposed Standards
A. How Did We Select the Affected Source?
B. How Did We Select the Pollutants?
C. How Did We Determine the Bases and Levels of the Proposed Standards?
D. How Did We Select the Initial Compliance Requirements?
E. How Did We Select the Continuous Compliance Requirements?
F. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?
IV. Summary of Environmental, Energy, and Economic Impacts
V. Solicitation of Comments and Public Participation
VI. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP

and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's proposed NESHAP, Primary Magnesium Refining, was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that emit or have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum level allowed for NESHAP and is defined under section 112 (d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emissions control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (for which we have emissions information) in the category or subcategory or by the best-performing five sources (for which we have or could reasonably obtain emissions information) for categories or subcategories with fewer than 30 sources.

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, nonair quality health and environmental impacts, and energy impacts.

C. What Source Category Is Affected by the Proposed Rule?

Section 112(c) of the CAA requires us to list all categories of major and area sources of HAP for which we will develop national emission standards. We published the initial list of source categories on July 16, 1992 (57 FR 31576). "Primary Magnesium Refining" is one of the source categories on the initial list. The listing was based on our determination that primary magnesium refining facilities may reasonably be anticipated to emit a variety of HAP listed in section 112(b) in quantities sufficient to be major sources.

The source category is comprised of one plant, US Magnesium Corporation located in Rowley, Utah. The plant produces magnesium from brine (salt water) taken from the Great Salt Lake. The production process concentrates the magnesium salts in the brine, then processes the brine to remove impurities that would affect metal quality. After the brine solution is converted to a powder mixture of magnesium chloride ($MgCl_2$) and magnesium oxide in the spray dryers, the powder is conveyed to the melt/reactors. The melt/reactors melt the powder mixture and convert the remaining magnesium oxide to magnesium chloride by injecting chlorine into the molten salt. The purified molten salt is then transferred to the electrolytic cells where the molten magnesium chloride salt is separated into magnesium metal and chlorine by electrolysis. The electrolysis process passes a direct electric current through the molten magnesium chloride, causing the dissociation of the salt and results in the generation of chlorine gas and magnesium metal. The magnesium metal is then transferred to the foundry for casting into ingots for sale. The chlorine produced is piped to a chlorine plant where it is liquefied for reuse or sale.

The HAP emitted from the primary magnesium refining process are chlorine, hydrochloric acid, dioxin/furan, and trace amounts of HAP metals. Emission controls include various combinations of wet scrubbers (venturi and packed-bed) for acid gas and particulate matter (PM) control.

Chlorine is emitted from the melting and purification of reactor cell product and is controlled by conversion to hydrochloric acid in the chlorine reduction burner and subsequent absorption of the hydrochloric acid in venturi and packed-bed scrubber. Using these control technologies, upwards of 99.9 percent control of chlorine is achieved. The electrowinning of the melted magnesium chloride to magnesium metal produces as a by-product chlorine gas which is recovered at the chlorine plant. When the chlorine plant is inoperable, the chlorine produced at the electrolytic cells is routed to a series of packed-bed scrubbers which use ferrous chloride as the adsorbing medium.

Hydrochloric acid is emitted from the spray drying and storage of magnesium chloride powder and the melting and purification of reactor cell product prior to the electrowinning process. Hydrochloric acid emissions are controlled by venturi and packed-bed scrubbers.

Dioxin/furan are generated in the melt reactor and are subject to incidental control by the chlorine reduction burner and wet scrubbers used to control chlorine, hydrochloric acid (HCl), and PM.

D. What Are the Health Effects Associated With Emissions From Primary Magnesium Refiners?

Acute (short-term) exposure to high levels of chlorine in humans can result in chest pain, vomiting, toxic pneumonitis, and pulmonary edema. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs. Chronic long-term exposure to chlorine gas in workers has resulted in respiratory effects including eye and throat irritation and airflow obstruction. Animal studies have reported decreased body weight gain, eye and nose irritation, non-neoplastic nasal lesions, and respiratory epithelial hyperplasia from chronic inhalation exposure to chlorine. No information is available on the carcinogenic effects of chlorine in humans from inhalation exposure. We have not classified chlorine for potential carcinogenicity.

Hydrochloric acid is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause eye, nose and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of hydrochloric acid to humans. In rats exposed to hydrochloric acid by inhalation, altered estrus cycles have been reported in females and increased fetal mortality and decreased fetal weight have been reported in offspring. We have not classified hydrochloric acid for carcinogenicity.

There are a variety of metal HAP contained in the PM emitted from the primary magnesium refining process. The principal HAP metals emitted include trace quantities of phosphorous and manganese. Health effects in humans have been associated with both deficiencies and excess intakes of manganese. Chronic exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a recommended daily allowance of 2 to 5 milligrams per day. Chronic exposure to high levels of manganese by inhalation in humans

results primarily in central nervous system effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Manganism, characterized by feelings of weakness and lethargy, tremors, a mask-like face, and psychological disturbances, may result from chronic exposure to higher levels. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. We have classified manganese in Group D, not classifiable as to carcinogenicity in humans.

Organic HAP such as chlorinated dibenzodioxins and furans (CDD/F) have been detected in the melt/reactor exhaust. One CDD/F compound, 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD), commonly called dioxin) is listed singly as a HAP. Other CDD/F compounds, many of which cause adverse health effects in the same way as dioxin, are HAP under the definition of polycyclic organic matter. Exposure to CDD/F mixtures causes chloracne, a severe acne-like condition and has been shown to be extremely toxic in animal studies. Dioxin is known to be a developmental toxicant in animals causing skeletal deformities, kidney defects, and weakened immune responses in the offspring of animals exposed during pregnancy. Human studies have shown an association between dioxin and soft-tissue sarcomas, lymphomas, and stomach carcinomas. We have classified dioxin as a probable human carcinogen (Group B2).

In addition to HAP, the proposed rule would also reduce particulate matter emissions which are controlled under national ambient air quality standards. Brief exposure to particulate matter has caused aggravation of existing respiratory and cardiovascular disease and increased risk of premature death.

We recognize that the degree of adverse effects to health experienced by exposed individuals can range from mild to severe. The extent and degree to which the health effects may be experienced depends on:

- Pollutant-specific characteristics (*e.g.*, toxicity, half-life in the environment, bioaccumulation, and persistence);
- The ambient concentrations observed in the area (*e.g.*, as influenced by emission rates, meteorological conditions, and terrain);
- The frequency and duration of exposures; and
- Characteristics of exposed individuals (*e.g.*, genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population.

II. Summary of Proposed Rule

A. What Are the Affected Sources and Emission Points?

The affected source is each new or existing primary magnesium refinery. A new affected source is one constructed or reconstructed after January 22, 2003. An existing affected source is one constructed or reconstructed on or before January 22, 2003. The proposed rule covers emissions from spray dryers, the melt reactor system, the launder off gas system, and magnesium chloride storage bins.

B. What Are the Compliance Deadlines?

The owner or operator of an existing affected source would have to comply by [DATE 12 MONTHS AFTER THE FINAL RULE IS PUBLISHED IN THE **Federal Register**]. New or reconstructed sources that startup on or before [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**] must comply by [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**]. New or reconstructed sources that startup after [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**] must comply upon initial startup.

C. What Are the Emission Limitations?

The proposed rule includes mass rate emission limits in pounds per hour (lbs/hr) for chlorine, hydrochloric acid, PM, and PM_{10}. The emission limits are shown in Table 1 of this preamble.

TABLE 1.—PROPOSED MASS RATE EMISSION LIMITS

Emission point	Chlorine (lbs/hr)	HCL (lbs/hr)	PM (lbs/hr)	PM–10 (lbs/hr)
Spray Dryers	.....	200	100	.....
Magnesium Chloride Storage Bins	.....	47.5	.....	2.7
Melt/Reactor System	100	7.2	.....	13.1
Launder Off-Gas System	26.0	46.0	37.5	.....

The proposed rule also includes emission limits for dioxin/furan expressed in nanograms of toxicity equivalents per dry standard cubic meter (ng TEQ/dscm) corrected to 7 percent oxygen. Dioxins/furans include a group of 17 chemicals or congeners that share certain similar chemical structures and biological characteristics. The 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin congener is the most well studied and the most toxic of these compounds. Scientists believe that dioxins cause effects in similar ways. Because of this and because exposure is typically to variable mixtures of dioxin-like compounds, we use toxicity equivalency factors (TEF) that compare the potential toxicity of each of the individual dioxin-like compounds to the relative toxicity of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin. With such factors, the toxicity for a mixture can be expressed in terms of its Toxicity Equivalents (TEQ), which is the amount of TCDD it would take to equal the combined toxic effect of all the dioxin-like compounds found in the mixture. To calculate the TEQ, the concentration of each dioxin-like compound is multiplied by its respective TEF.

D. What Are the Operation and Maintenance Requirements?

All plants subject to the proposed rule would be required to prepare and implement a written startup, shutdown, and malfunction plan according to the requirements in § 63.6(e) of the NESHAP General Provisions. All plants must establish and meet operating limits for pressure drop and scrubber water flow rate. A written operation and maintenance plan is also required for control devices subject to an operating limit. The plan must describe procedures for monthly inspections and preventative maintenance requirements for control devices.

E. What Are the Initial Compliance Requirements?

The proposed rule requires a performance test for each control device

to demonstrate initial compliance with the applicable emission limits of chlorine, hydrochloric acid, PM, PM_{10}, and dioxin/furan. The EPA Method 26 or 26A in 40 CFR part 60, appendix A is the reference method for chlorine and hydrochloric acid. The reference method for PM is EPA Method 5 or 5D in 40 CFR part 60, appendix A. The reference method for PM_{10} is EPA Method 201 in 40 CFR part 60, appendix A. The EPA Method 23 of 40 CFR part 60, appendix A is the reference method for dioxin/furan. The proposed rule would also require owners/operators to establish operating limits for scrubber pressure drop and scrubber water flow rate concurrent with the performance of the initial compliance tests.

F. What Are the Continuous Compliance Requirements?

The proposed rule would require primary magnesium refineries to conduct performance tests at least twice during each title V operating permit term (at midterm and renewal) to demonstrate continuous compliance with the emission limits. Plants would also be required to monitor operating parameters for control devices subject to operating limits and carry out the procedures in their operation and maintenance plan.

For wet scrubbers, plants would be required to use continuous parameter monitoring systems (CPMS) to measure and record the hourly average pressure drop and scrubber water flow rate. To demonstrate continuous compliance, plants would keep records documenting conformance with the monitoring requirements and the installation, operation, and maintenance requirements for CPMS.

G. What Are the Notification, Recordkeeping, and Reporting Requirements?

We selected the proposed notification, recordkeeping, and reporting requirements to be consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). One-time notifications are required by EPA to know what facilities are subject to the standards, if a facility has complied with the proposed rule requirements, and when certain events such as performance tests and performance evaluations are scheduled. Semiannual compliance reports containing information on any deviation from the proposed rule requirements are also required. These reports would include information on any deviation that occurred during the reporting period; if no deviation occurred, only summary information would be required. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), we also require an immediate report of any startup, shutdown, or malfunction where the actions taken in response were not consistent with the startup, shutdown, and malfunction plan. This information is needed to determine if changes need to be made to the plan. Records would be required of information needed to document compliance with the rule requirements. These notifications, reports, and records are the minimum needed to ensure initial and continuous compliance.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Affected Source?

Affected source means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a CAA section 112(c) source category or subcategory for which a CAA section 112(d) standard or other relevant standard is established pursuant to CAA section 112. The affected source may be the same collection of equipment and processes as the source category or it may be a subset of the source category. For each rule, we decide which individual pieces of equipment and processes warrant separate standards in the context of the CAA section 112 requirements and the industry operating practices.

We considered three different approaches for designating the affected source: the entire primary magnesium refinery, groups of emission points, and individual emission points. In selecting the affected sources for the proposed rule, we identified the HAP-emitting operations, the HAP emitted, and the quantity of HAP emissions from the individual or groups of emission points. We concluded that designating the entire primary magnesium refinery as the affected source is the most appropriate approach. This conclusion is consistent with the requirements for defining affected source provided in § 63.2 of the General Provisions. The major emission points include each spray dryer, magnesium chloride storage bin, melt/reactor, and launder off-gas system. Therefore, the proposed rule includes requirements for the control of emissions from each spray dryer, magnesium chloride storage bin, melt/reactor, and launder off-gas system.

B. How Did We Select the Pollutants?

The proposed standards would establish emission limits for chlorine, hydrochloric acid, PM, PM_{10}, and dioxin/furan. Particulate matter was selected as a surrogate for HAP metal emissions which account for less than one-tenth of one percent of total PM emissions. The principal HAP metals emitted include trace quantities of phosphorous, manganese, and chromium, with lesser quantities of arsenic, antimony, and mercury. With the exception of elemental mercury, metal HAP emissions, when released, are a constituent of total PM. As a result, control technologies applied for PM control will coincidentally achieve comparable levels of control of these pollutants. Standards requiring good control of PM emissions will also achieve good control of metal HAP emissions. Establishing separate standards for these individual HAP would result in no additional reductions beyond that achieved using PM as a surrogate pollutant.

Given that the US Magnesium refinery generates about three pounds of chlorine to each pound of magnesium produced, chlorine and hydrochloric acid are by far the most significant HAP pollutants potentially emitted from primary magnesium refining. As such, both chlorine and hydrochloric acid were selected for the proposed rule.

Lastly, the proposed rule would establish a separate emission limit for dioxin/furan discharged from the melt/reactor stack because of the high toxicity associated with very low exposures to these compounds and their persistence and bioaccumulative effects in the environment.

C. How Did We Determine the Bases and Levels of the Proposed Standards?

Since there is only one primary magnesium refinery in the source category, the MACT floor for both existing and new sources is established by the performance of each emissions control system operating at that source. We do not anticipate the construction of any new sources in this source category. The State of Utah, Department of Environmental Quality (UDEQ) issued a title V operating permit dated October 11, 2001 for US Magnesium Corporation. The permit contains emission limitations for chlorine, hydrochloric acid, PM, and PM_{10} established by the UDEQ. The permit does not contain limits for dioxin/furan.

We conducted our own independent assessment of the emissions test data and concluded that the emission limitations established in the source's title V operating permit are appropriate and achievable. Although the limited test results indicate the permit limits are achievable, the data also show that the

plant is not significantly overachieving the limits. Therefore, we believe that the permit limits reasonably approximate actual emissions and performance and present an accurate picture of the level of control achieved by the best performing source.

An underlying presumption when setting MACT standards is that all emission limitations must be complied with at all times. Consequently, when establishing MACT floors and ultimately a MACT standard, we must consider the long-term variability in performance expected to occur under reasonable worst-case conditions. We must assure that an ensuing standard reflects the level of emission control determined to be MACT. We must also assure that the standard is achievable under normal and recurring worst-case circumstances.

As part of our development of the proposed MACT standard, we assessed the viability of requiring additional or different control equipment to obtain beyond-the-floor emissions reductions. Each control system on the four emission points (*i.e.*, spray dryer stack, magnesium chloride storage bin stack, melt/reactor system stack, and launder off-gas system stack) was evaluated to see if it was the best control equipment to achieve the maximum amount of reduction of chlorine, hydrochloric acid, PM, PM_{10}, and dioxin/furan. For all four emission points, US Magnesium uses wet scrubbers (packed-bed and venturi scrubbers) to achieve the emission limits. We concluded that wet scrubbing systems are the most appropriate and practical control systems for chlorine, hydrochloric acid, PM, PM_{10}, and dioxin/furan and that there is no other control equipment or methods of control that would be more effective for reducing their emissions taking into consideration cost and feasibility. Therefore, we determined that the emission limitations at the MACT floors also represent MACT.

We also propose that the source prepare and operate according to a fugitive dust emission control plan that describes in detail the measures that will be put in place to control fugitive dust emissions from all unpaved roads and other unpaved operational areas. The existing fugitive dust emission control plan that has been approved as part of the source's title V permit would be acceptable.

Spray Dryers

There are three spray dryers in the source category. The exhaust gas from each is controlled by two venturi scrubbers followed by a packed-bed scrubber. All three dryers are subject to Utah's PM emission limit of 100 lbs/hr. Each test was conducted according to EPA Method 5, and, as far as we know, under normal and representative operating conditions.

We have seven PM emission tests for the three dryers. Dryers 01 and 03 were tested in May 1997; dryers 01 and 02 were tested in December 1997; and all three dryers were tested in June 2002. The May 1997 test includes seven runs, and the other two tests include three runs each. The test results of all seven tests range from 25 to 53 lbs/hr. The average and median values are 37 lbs/hr and 36 lbs/hr, respectively.

We evaluated the existing State PM emission limit as an option for establishing the MACT floor. The test results recorded range from about one-fourth to one-half of the standard and average a little more than one-third of the standard. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 100 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. We have, therefore, determined the MACT floor for spray dryers to be the level of control indicated by the existing State limit of 100 lbs/hr of PM.

All three dryers are subject to Utah's hydrochloric acid emission limit of 200 lbs/hr. We have seven hydrochloric acid emission tests conducted according to EPA Method 26A for the three dryers. Dryers 01 and 03 were tested in May 1997; dryers 01 and 02 were tested in December 1997; and all three dryers were tested in June 2002. The May 1997 test included seven runs, and the other two tests included three runs each. Again, as far as we can determine, each test was performed under normal and representative conditions. The test results of all seven tests range from 51 to 82 lbs/hr and average 68 lbs/hr. The median value is also 68 lbs/hr.

We evaluated the existing State hydrochloric acid emission limit as an option for establishing the MACT floor. The test results recorded range from about one-fourth to almost one-half of the standard and average about one-third of the standard. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 200 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. We have, therefore, determined the MACT floor for spray dryers to be the level of control indicated by the existing State limit of 200 lbs/hr of hydrochloric acid.

We next examined possibilities for beyond-the-floor options. We concluded that the current multi-stage wet scrubbing system is the best available control technology for the removal of hydrochloric acid and particulate matter contained in the spray dryer discharge. Therefore, we have selected the mass rate emission limits established in the source's title V operating permit as MACT for both new and existing spray dryers.

Magnesium Chloride Storage Bins

Magnesium chloride powder from the spray dryers is pneumatically conveyed to storage bins. The exhaust air from the conveyor contains particle matter and low levels of hydrochloric acid. The exhaust gases are directed to vertical packed-bed scrubbers where hydrochloric acid and particulate matter are removed.

The source's title V operating permit limits hydrochloric acid to 47.5 lbs/hr and PM_{10} to 2.7 lbs/hr. Packed bed scrubbers are used to achieve these emission limits. We do not have any emissions test data for this emission point. As such, we decided to adopt the source's title V operating permit limits for PM_{10} and hydrochloric acid. Emissions testing was recently conducted on the magnesium chloride storage bins, and we expect test results within a few weeks of publishing the proposed rule. This data will be added to the public docket as soon as we receive it, and we will consider the data and public comments prior to publication of the final rule.

We evaluated this wet scrubbing system for any potential beyond-the-floor control technology and concluded that the packed-bed scrubber system is the best available control technology for the removal of hydrochloric acid and particulate matter. Thus, we adopted the emission limits established in the source's title V operating permit as MACT.

Melt/Reactor

The melt/reactor system melts and chlorinates dehydrated brine powder to produce high purity molten magnesium chloride feed for electrolysis. The melt/reactor off-gases are cooled in a quench tower and then enter a venturi scrubber where PM is removed. The off-gases are then directed to the chlorine reduction burner where they are combined with tail gases from the chlorine plant and burned with natural gas to form hydrochloric acid.

The gases exit the chlorine reduction burner and enter a scrubber train where hydrochloric acid is recovered. The train consists of three packed bed

scrubbers in series followed by a venturi scrubber.

We have two PM_{10} emission tests for the melt/reactor which were conducted in May 1995 and May 2000. Both tests were conducted in accordance with EPA Method 201, and as far as we can determine, each test was performed under normal and representative operating conditions. The test results range from 2.1 to 5.7 lbs/hr and average 3.9 lbs/hr.

We evaluated the existing State limit as an option for establishing the MACT floor. The test results average about one-third of the standard. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 13.1 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. We have, therefore, determined the MACT floor for the melt/reactor to be the level of control indicated by the existing State limit of 13.1 lbs/hr of PM_{10}.

We have two hydrochloric acid emission tests for the melt/reactor. The tests were conducted in May 1995 and May 2000 in accordance with Method 26A. We believe that each test was performed under normal and representative operating conditions. The May 1995 test results average 3.2 lbs/hr, and the May 2000 test results average 2.8 lbs/hr. We evaluated the existing State limit as an option for establishing the MACT floor. A comparison of the State limit of 7.2 lbs/hr to the actual hydrochloric acid emissions data indicates that the State limit is a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. Consequently, we determined the MACT floor for the melt/reactor to be the level of control indicated by the existing State limit of 7.2 lbs/hr of hydrochloric acid.

We have two chlorine emission tests for the melt/reactor. The test were conducted in May 1995 and May 2000 in accordance with EPA Method 26. The May 1995 test results average 21 lbs/hr, and the May 2000 test results average 50 lbs/hr. Again, we believe that each test was performed under normal and representative operating conditions. We evaluated the existing State limit as an option for establishing the MACT floor. A comparison of the State limit of 100 lbs/hr to the actual chlorine emissions data indicates that the State limit is a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. Therefore, we determined the MACT floor for the melt/reactor to be the level of control indicated by the existing State limit of 100 lbs/hr of chlorine.

We have source test data on dioxin/furan emissions from the melt/reactor stack which indicates total dioxin/furan emissions on the order of 80 grams per year (g/year) and emissions expressed in terms of TEQ of less than 3 g/year. The current title V operating permit includes no limitations on the emissions of dioxin/furan or any surrogate pollutant.

As previously stated, emission controls applied to the melt/reactor discharge include three packed bed scrubbers in series followed by a venturi scrubber for the control of hydrochloric acid and PM. Although not installed specifically for dioxin/furan control, we believe that some incidental control of dioxin/furan is in fact achieved by these scrubbers and that the floor level of control is represented by the available information on actual emissions. Specifically, we have data on two tests conducted in March of 1998 and May of 2000. Each test is comprised of three test runs conducted in accordance with EPA Method 23.[1] The 1998 TEQ test results range from 12.0 to 25.2 ng/dscm corrected to 7 percent oxygen and average 19 ng/dscm corrected to 7 percent oxygen. The 2000 TEQ results range from 10.4 to 35.9 ng/dscm corrected to 7 percent oxygen and average 24 ng/dscm corrected to 7 percent oxygen. The precision evidenced in the two tests, suggests that the variability due to process variations and control device performance is narrow, with the average results of both tests within ±20 percent. We chose the highest of the individual runs, *i.e.*, 36 ng TEQ/dscm corrected to 7 percent oxygen as a representative value of the performance level that can be achieved. Thus, we have chosen 36 ng TEQ/dscm as the MACT floor. The source plans to conduct additional emissions testing in the near-term. We expect the testing to occur between proposal and promulgation. In determining the final standard for dioxin/furan, we will consider the results of the new test in addition to public comments that we receive.

We evaluated this multi-stage scrubbing system for any potential improvement to go beyond-the-floor. We concluded that the current scrubbing system is the best control option for removal of chlorine, hydrochloric acid, and PM_{10}. For dioxin/furan, we examined a beyond-the-floor alternative, and determined that the next increment of control beyond-the-floor is the installation of a baghouse equipped with a catalytic filter that destroys gaseous dioxins and furans. We estimate the additional capital cost of adding baghouses to be $650,000 and the total annualized cost to be $390,000 per year. We estimate the emissions reductions to be 2.4 grams per year resulting in a cost per gram of total dioxin/furan reduction of $163,865. We believe that the high cost, coupled with the small reduction in dioxin/furan emissions, does not justify the beyond-the-floor alternative at this time. Consequently, we chose the floor level of control of 36 ng TEQ/dscm as MACT.

[1] Method 23—Determination of Polychlorinated Dibenzo-P-Dioxins and Polychlorinated Dibenzofurans from Stationary Sources.

Launder Off-Gas System

The launder off-gas system (LOG) collects fugitive emissions from the melt reactor area (*i.e.* hoods and launders). The collected fugitive gases enter a horizontally aligned packed scrubber where chlorine, hydrochloric acid, and particulate matter are removed by scrubbing with water. The LOG scrubbed gases are exhausted to the atmosphere, and the scrubber water is returned to the waste water collection system.

We have three PM emission tests for the launder off-gas system. The launder off-gas system was tested in August 1993, July 1998, and January 1999 using EPA Method 5, and as far as we know, under normal and representative operating conditions. The test results of the three tests range from 2.6 to 19.1 lbs/hr and average 7.0 lbs/hr.

We evaluated the existing State PM emission limit as an option for establishing the MACT floor. We compared the State limit of 37.5 lbs/hr to the actual PM emissions data. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 37.5 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. Therefore, we determined the MACT floor for the launder off-gas system to be the level of control indicated by the existing State limit of 37.5 lbs/hr of PM.

We have three hydrochloric acid emission tests for the launder off-gas system. The launder off-gas system was tested in August 1993, July 1998, and January 1999 using EPA Method 26A. We believe that the tests were performed under normal and representative operating conditions. The test results of the three tests range from 6.84 to 32.6 lbs/hr and average 15.6 lbs/hr.

We evaluated the existing State hydrochloric acid emission limit as an option for establishing the MACT floor.

Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 46.0 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor.

Consequently, we determined the MACT floor for the launder off-gas system to be the level of control indicated by the existing State limit of 46.0 lbs/hr of hydrochloric acid.

We have three chlorine emission tests for the launder off-gas system. The launder off-gas system was tested in August 1993 and January 1999 using EPA Method 26. We believe the tests were performed under normal and representative operating conditions. The test results of the three tests range from 16.6 to 25.9 lbs/hr and average 19.9 lbs/hr.

We evaluated the existing State chlorine emission limit as an option for establishing the MACT floor. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 26.0 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. Consequently, we determined the MACT floor for the launder off-gas system to be the level of control indicated by the existing State limit of 26.0 lbs/hr of chlorine.

We evaluated potential beyond-the-floor options and concluded that the existing scrubber is the best available control technology for the removal of chlorine, hydrochloric acid, and PM contained in the launder off-gas system discharge. Therefore, we selected the emission limits established in the source's title V operating permit as MACT.

D. How Did We Select the Initial Compliance Requirements?

The proposed rule requires a performance test for each control device to demonstrate initial compliance with the applicable PM, PM_{10}, chlorine and hydrochloric acid limits using the specified testing methods in 40 CFR part 60, appendix A. We have also specified procedures to ensure that control equipment is operating properly for initial compliance. Venturi scrubbers and packed-bed scrubbers must be monitored for scrubber water flow rate and pressure drop. If a facility uses controls other than wet scrubbers or packed-bed scrubbers to control emissions from an affected source, the owner or operator would be required to send us a monitoring plan containing information on the type of device, performance test results, appropriate operating parameters to be monitored, operating limits, and operation and maintenance.

E. How Did We Select the Continuous Compliance Requirements?

For continuous compliance, we chose periodic performance testing for PM, PM_{10}, chlorine, hydrochloric acid, and dioxin/furan which is consistent with current permit requirements. In general, performance tests are repeated every 2.5 to 5 years, depending on the magnitude of the source. Consequently, we decided that performance tests should be repeated no less frequently than twice per permit term of a source's title V operating permit (at mid-term and renewal).

We also specified procedures to ensure that control equipment is operated properly on a continuous basis. Venturi scrubbers and packed-bed scrubbers must be monitored for pressure drop and scrubber water flow rate. If a facility uses controls other than wet scrubbers to control emissions from an affected source, the owner or operator would be required to send us a monitoring plan containing information on the type of device, performance test results, appropriate operating parameters to be monitored, operating limits, and operation and maintenance.

F. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

We selected the notification, recordkeeping, and reporting requirements to be consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). One-time notifications are required by EPA to know what facilities are subject to the standard, if a facility has complied with the rule requirements, and when certain events such as performance tests and performance evaluations are scheduled. Semiannual compliance reports containing information on any deviation from the proposed rule requirements are also required. These reports would include information on any deviation that occurred during the reporting period; if no deviation occurred, only summary information would be required. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), we also require an immediate report of any startup, shutdown, or malfunction where the actions taken in response were not consistent with the startup, shutdown, and malfunction plan. This information is needed to determine if changes to the plan need to be made. Records would be required of information needed to document compliance with the proposed rule requirements. These notifications, reports, and records are the minimum needed to ensure initial and continuous compliance.

IV. Summary of Environmental, Energy and Economic Impacts

Generally, we do not expect the impacts of the proposed rule to be very significant. Currently, the one operating refinery has all of the required air pollution control equipment in place and operating. The only impacts will be the estimated cost of $48,000 for the additional monitoring, recordkeeping and reporting requirements required by the proposed rule.

V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of the proposed rule from all interested parties. You need to submit full supporting data and detailed analysis with your comments to allow us to make the best use of them. Be sure to direct your comments to the Air and Radiation Docket and Information Center, Docket No. OAR–2002–0043 (*see* **ADDRESSES**).

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed rule is not a

"significant regulatory action" because none of the listed criteria apply to this action. Consequently, the proposed rule was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed rule does not have federalism implications. None of the affected facilities are owned or operated by State governments, and the proposed rule would not preempt any State laws that are more stringent. Therefore, it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. In addition, the proposed rule is required by statute and, if implemented, will not impose any substantial direct compliance costs. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus Executive order 13175 does not apply to the proposed rule.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on the proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is technology based and not based on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Further, the proposed rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory

proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. The maximum total annual cost of the proposed rule for any year has been estimated to be less than $48,000. Thus, today's proposed rule is not subject to sections 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards for NAICS code 331419 (*i.e.*, Primary Magnesium Refining) of 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on the above definition of small entities, the Agency has determined that there are no small businesses within this source category that would be subject to the proposed rule. Therefore, because the proposed rule will not impose any requirements on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in the proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 2098.01), and a copy may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy also may be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The proposed rule would require applicable one-time notifications required by the NESHAP General Provisions (40 CFR part 63, subpart A) for each affected source. As required by the NESHAP General Provisions (40 CFR part 63, subpart A), all plants would be required to prepare and operate by a startup, shutdown, and malfunction plan. Plants also would be required to prepare an operation and maintenance plan for capture systems and control devices subject to operating limits. Records would be required to demonstrate continuous compliance with the monitoring, operation, and maintenance requirements for capture systems, control devices, and monitoring systems. Semiannual compliance reports also are required. These reports would describe any deviation from the standards, any period a continuous monitoring system was out-of-control, or any startup, shutdown, or malfunction event where actions taken to respond were inconsistent with startup, shutdown, and malfunction plan. If no deviation or other event occurred, only a summary report would be required. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), if actions taken in response to a startup, shutdown, or malfunction event are not consistent with the plan, an immediate report must be submitted within 2 days of the event with a letter report 7 days later.

The annual public reporting and recordkeeping burden for this collection of information averaged over the first 3 years after [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**] is estimated to total 731 labor hours per year at a total annual cost of $43,289, including labor, capital, and operation and maintenance.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after January 22, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by February 21, 2003. The final rule will respond to any OMB or public comments on the information

collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rule involves technical standards. The EPA proposes to use EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 26, 26A, and 210 in 40 CFR part 60, appendix A. We conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 2F, 2G, 5D, 26, 26A and 201. The search and review results have been documented and placed in Docket OAR–2002–0043.

The EPA invites comment on the compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why the proposed rule should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data.

I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart TTTTT to read as follows:

Subpart TTTTT—National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining

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Subpart TTTTT—National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining

What This Subpart Covers

§ 63.9880 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) emitted from primary magnesium refineries. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations and operation and maintenance requirements.

§ 63.9881 Am I subject to this subpart?

You are subject to this subpart if you own or operate a primary magnesium refinery that is (or is part of) a major

source of hazardous air pollutant (HAP) emissions on the first compliance date that applies to you. Your primary magnesium refinery is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

§ 63.9882 What parts of my plant does this subpart cover?

(a) This subpart applies to each new and existing affected source at your primary magnesium refining facility.

(b) The affected sources are each new and existing primary magnesium refining facility.

(c) This subpart covers emissions from each spray dryer stack, magnesium chloride storage bins scrubber stack, melt/reactor system stack, and launder off-gas system stack at your primary magnesium refining facility.

(d) Each spray dryer, magnesium chloride storage bins scrubber, launder off-gas system, and melt/reactor system at your primary magnesium refining facility is existing if you commenced construction or reconstruction of the affected source before January 22, 2003.

(e) Each spray dryer, magnesium chloride storage bins scrubber, melt/reactor system, and launder off-gas system at your primary magnesium refining facility is new if you commence construction or reconstruction of the affected source on or after January 22, 2003. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

§ 63.9883 When do I have to comply with this subpart?

(a) If you have an existing source, you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you no later than [DATE 1 YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(b) If you have a new affected source and its initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emissions limitation and operation and maintenance requirement in this subpart that applies to you by [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) If you have a new affected source and its initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your primary magnesium refinery is an area source that becomes a major source of HAP, the following compliance dates apply to you:

(1) Any portion of the existing primary magnesium refinery that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the primary magnesium refinery must be in compliance with this subpart no later than 2 years after it becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.9930. Several of these notifications must be submitted before the compliance date for your affected source.

Emission Limitations

§ 63.9890 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) For each wet scrubber applied to meet any particulate matter, particulate matter 10 (PM_{10}), chlorine, hydrochloric acid, or dioxins/furans limit in Table 1 to this subpart, you must maintain the hourly average pressure drop and scrubber liquid flow rate at or above the minimum level established during the initial or subsequent performance test.

§ 63.9891 What work practice standards must I meet for my fugitive dust sources?

(a) You must prepare, and at all times operate according to, a fugitive dust emissions control plan that describes in detail the measures that will be put in place to control fugitive dust emissions from all unpaved roads and other unpaved operational areas.

(b) A copy of your fugitive dust emissions control plan must be submitted for approval to the Administrator or delegated authority on or before the applicable compliance date for the affected sources as specified in § 63.9881. The requirement to operate according to the fugitive dust emissions control plan must be incorporated by reference in the source's operating permit issued by the permitting authority under part 70 or 71 of this chapter.

(c) You can use an existing fugitive dust emissions control plan provided it meets the requirements in paragraphs (c)(1) through (3) of this section.

(1) The plan satisfies the requirements of paragraph (a) of this section.

(2) The plan describes the current measures to control fugitive dust emission sources.

(3) The plan has been approved as part of a State Implementation Plan or title V permit.

(d) You must maintain a current copy of the fugitive dust emissions control plan on-site and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

Operation and Maintenance Requirements

§ 63.9900 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for each control device subject to an operating limit in § 63.9890(b). Each plan must address preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

General Compliance Requirements

§ 63.9910 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction as defined in § 63.2.

(b) You must develop and implement a written startup, shutdown and malfunction plan according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.9911 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test within 180 calendar days of the compliance date that is specified in § 63.9883 for your affected source to demonstrate initial compliance with each emission limit in Table 1 to this subpart that applies to you.

(b) For each operation and maintenance requirement that applies to you where initial compliance is not

demonstrated using a performance test, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.9883.

(c) If you commenced construction or reconstruction between January 22, 2003 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must demonstrate initial compliance with either the proposed emission limitation or the promulgated emission limitation no later than [DATE 180 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or no later than 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between January 22, 2003 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by [DATE 1 YEAR AND 180 DAYS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.9912 When must I conduct subsequent performance tests?

You must conduct subsequent performance tests to demonstrate continuous compliance with all applicable emission limits in Table 1 to this subpart no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit.

§ 63.9913 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter and PM_{10}?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the specific conditions in paragraph (b) of this section.

(b) To determine compliance with the applicable emission limits for particulate matter in Table 1 to this subpart, you must follow the test methods and procedures in paragraph (b)(1) and (2) of this section.

(1) Determine the concentration of particulate matter according to the following test methods in appendix A to part 60 of this chapter:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5 or 5D, as applicable to determine the concentration of particulate matter.

(vi) Method 201 or 201A, as applicable to determine the concentration of PM_{10}.

(2) Collect a minimum sample volume of 60 dry standard cubic feet of gas during each particulate matter or PM_{10} test run. Three valid test runs are needed to comprise a performance test.

(c) Compute the mass emissions rate for each test run using Equation 1 of this section as follows:

$$E_{lb/hr} = \frac{C_s \times Q_{std} \times 60}{7000} \qquad \text{(Eq. 1)}$$

Where:

$E_{lb/hr}$ = Mass emissions rate of particulate matter or PM_{10} (lb/hr);
C_s = Concentration of particulate matter or PM_{10} in the gas stream (gr/dscf);
Q_{std} = Volumetric flow rate of stack gas(dscfm);
60 = Conversion factor (min/hr); and
7000 = Conversion factor (gr/lb).

§ 63.9914 What test methods and other procedures must I use to demonstrate initial compliance with chlorine and hydrochloric acid emission limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraph (b) of this section.

(b) To determine compliance with the applicable emission limits for chlorine and hydrochloric acid in Table 1 to this subpart, you must follow the test methods and procedures specified in paragraphs (b)(1) and (2)of this section.

(1) Determine the concentration of chlorine and hydrochloric acid according to the following test methods in appendix A to part 60 of this chapter:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F or 2G to determine the volumetric flow of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 26 or 26A, as applicable, to determine the concentration of hydrochloric acid and chlorine.

(2) Collect a minimum sample of 60 dry standard cubic feet during each test run for chlorine and hydrochloric acid. Three valid test runs are needed to comprise a performance test.

(c) Compute the mass emissions rate for each test run using Equation 1 of this section.

$$E_{lb/hr} = \frac{C_s \times Q_{std} \times 60}{35.31 \times 454{,}000} \qquad \text{(Eq. 1)}$$

Where:

$E_{lb/hr}$ = Mass emissions rate of chlorine or hydrochloric acid (lb/hr);
C_s = Concentration of chlorine or hydrochloric acid in the gas stream (mg/dscm);
Q_{std} = Volumetric flow rate of stack gas (dscfm);
60 = Conversion factor (min/hr);
35.31 = Conversion factor (dscf/dscm); and
454,000 = Conversion factor (mg/lb).

§ 63.9915 What test methods and other procedures must I use to demonstrate initial compliance with dioxin/furan limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraph (b) of this section.

(b) To determine compliance with the applicable emission limits for dioxins/furans in Table 1 to this subpart, you must follow the test methods and procedures specified in paragraphs (b)(1) and (2) of this section.

(1) Determine the concentration of dioxin and furan according to the following test methods in appendix A to part 60 of this chapter.

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F or 2G to determine the volumetric flow of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 23, as applicable to determine the concentration of dioxins/furans. For each dioxin/furan congener measured in accordance with this paragraph, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 2 to this subpart.

(2) Collect a minimum sample of 100 dry standard cubic feet during each test

run. Three valid test runs are needed to comprise a performance test.

§ 63.9916 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?

(a) For a wet scrubber subject to operating limits for pressure drop and scrubber water flow rate in § 63.9890(b, you must establish site-specific operating limits according to the procedures in paragraphs (a)(1) and (2) of this section.

(1) Using the continuous parameter monitoring system (CPMS) required in § 63.9920, measure and record the pressure drop and scrubber water flow rate at least every 15 minutes during each run of the particulate matter performance test.

(2) Compute and record the average pressure drop and scrubber water flow rate for each individual test run. Your operating limits are the lowest average individual pressure drop and scrubber water flow rate values in any of the three runs that meet the applicable emission limit.

(b) [Reserved]

§ 63.9917 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission limit in Table 1 to this subpart, you have demonstrated initial compliance if:

(1) You meet the conditions in Table 3 to this subpart; and

(2) For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.9890(b), you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.9915(a).

(b) [Reserved]

§ 63.9918 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

(a) You must demonstrate initial compliance by certifying in your notification of compliance status that you have met the requirements in paragraphs (a)(1) through (3) of this section.

(1) You have prepared the operation and maintenance plan according to the requirements in § 63.9910; and

(2) You will operate each control device according to the procedures in the plan; and

(3) You submit a notification of compliance status according to the requirements in § 63.9930.

(b) [Reserved]

Continuous Compliance Requirements

§ 63.9920 What are my continuous monitoring requirements?

For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rates in § 63.9890(b), you must at all times monitor the hourly average pressure drop and liquid flow rate using a CPMS according to the requirements in § 63.9921(a).

§ 63.9921 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each wet scrubber subject to the operating limits in § 63.9890(b) for pressure drop and scrubber water flow rate, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) For the pressure drop CPMS, you must:

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For the scrubber water flow rate CPMS, you must:

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(b) You must install, operate, and maintain each CPMS for a wet scrubber according to the requirements in paragraphs (b)(1) through (3) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 5-minute period.

(2) Each CPMS must have valid data for at least 95 percent of every averaging period.

(3) Each CPMS must determine and record the average of all recorded readings.

§ 63.9922 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times an affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.9923 How do I demonstrate continuous compliance with the emission limitations that apply to me?

For each affected source subject to an emission limit in Table 1 to this subpart, you must demonstrate continuous compliance according to the requirements in Table 4 to this subpart.

§ 63.9924 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each emission point subject to an emission limit in Table 1 to this subpart, you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.9900 by performing preventive maintenance for each control device according to § 63.9900(b) and recording all information needed to document conformance with these requirements.

(b) You must maintain a current copy of the operation and maintenance plan required in § 63.9900(b) on site and available for inspection upon request. You must keep the plans for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.9925 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in § 63.9890 that applies to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet each operation and maintenance requirement required in § 63.9900 that applies to you. These instances are deviations from the emission limitations and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.9931.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.9930 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(f)(4), and 63.9(b) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you startup your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than [DATE 120 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start your new affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**, you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.9931 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9883 and ending on June 30 or December 31, whichever date comes after the compliance date that is specified for your source in § 63.9883.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 20 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(iii)(A) or 40 CFR 71.6(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information in paragraphs (b)(1) through (3) of this section and, as applicable, paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in §§ 63.9923 and 63.9924 that apply to you, a statement that there were no deviations from the emission limitations or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a CPMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in § 63.9890 that occurs at an affected source where you are not using a CPMS to comply with an emission limitation in this subpart, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a CPMS to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the

information in paragraphs (b)(8)(i) through (xi) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6 (a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emission limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of compliance does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

§ 63.9932 What records must I keep?

(a) You must keep the following records:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in §§ 63.9932 and 63.9933 to show continuous compliance with each emission limitation and operating and maintenance requirement that applies to you.

§ 63.9933 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records off site for the remaining 3 years.

Other Requirements and Information

§ 63.9940 What parts of the General Provisions apply to me?

Table 4 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.9941 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA) or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (3) of this section.

(1) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(2) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(3) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9942 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows;

Chlorine plant bypass scrubber means the wet scrubber that captures chlorine gas during a chlorine plant shut down or failure.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including operating limits) or operation and maintenance requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, or operating limit.

Launder off-gas system means a system that collects chlorine and

hydrochloric acid fumes from collection points within the melt/reactor system building. The system then removes particulate matter and hydrochloric acid from the collected gases prior to discharge to the atmosphere.

Magnesium chloride storage bins means vessels that store dried magnesium chloride powder produced from the spray drying operation.

Melt/reactor system means a system that melts and chlorinates dehydrated brine to produce high purity molten magnesium chloride feed for electrolysis.

Primary magnesium refining means the production of magnesium metal and magnesium metal alloys from natural sources of magnesium chloride such as sea water or water from the Great Salt Lake and magnesium bearing ores.

Responsible official means responsible official as defined in § 63.2.

Spray dryer means dryers that evaporate brine to form magnesium powder by contact with high temperature gases exhausted from gas turbines.

Wet scrubber means a device that contacts an exhaust gas with a liquid to remove particulate matter and acid gases from the exhaust. Examples are packed-bed wet scrubbers and venturi scrubbers.

Tables to Subpart TTTTT of Part 63

As required in § 63.9890(a), you must comply with each applicable emission limit in the following table:

TABLE 1 TO SUBPART TTTTT OF PART 63.—EMISSION LIMITATIONS

For . . .	You must comply with each of the following . . .
1. Each spray dryer stack	a. You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 100 lbs/hr; and b. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 200 lbs/hr.
2. Each magnesium chloride storage bins scrubber stack.	a. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 47.5 lbs/hr or 0.35 gr/dscf; and b. You must not cause to be discharged to the atmosphere any gases that contain PM_{10} in excess of 2.7 lbs/hr or 0.016 gr/dscf.
3. Each melt/reactor system stack	a. You must not cause to be discharged to the atmosphere any gases that contain PM_{10} in excess of 13.1 lbs/hr; and b. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 7.2 lbs/hr; and c. You must not cause to be discharged to the atmosphere any gases that contain chlorine in excess of 100 lbs/hr; and d. You must not cause to be discharged to the atmosphere any gases that contain 36 ng TEQ/dscm to 7% oxygen.
4. Each launder off-gas system stack	a. You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 37.5 lbs/hr; and b. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 46.0 lbs/hr; and c. You must not cause to be discharged to the atmosphere any gases that contain chlorine in excess of 26.0 lbs/hr.

TABLE 2 TO SUBPART TTTTT OF PART 63.—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

TABLE 3 TO SUBPART TTTTT OF PART 63.—INITIAL COMPLIANCE WITH EMISSIONS LIMITS

As required in 63.9916, you must demonstrate initial compliance with the emission limits according to the following table:

For . . .	You have demonstrated initial compliance if . . .
1. Each spray dryer stack	a. The average mass flow of particulate matter from the control system applied to emissions from each spray dryer, measured according to the performance test procedures in § 63.9913(c), did not exceed 100 lbs/hr; and

TABLE 3 TO SUBPART TTTTT OF PART 63.—INITIAL COMPLIANCE WITH EMISSIONS LIMITS—Continued

As required in 63.9916, you must demonstrate initial compliance with the emission limits according to the following table:

For . . .	You have demonstrated initial compliance if . . .
	b. The average mass flow of hydrochloric acid from the control system applied to emissions from each spray dryer, determined according to the performance test procedures in § 63.9914(c), did not exceed 200 lbs/hr.
2. Each magnesium chloride storage bins scrubber stack.	a. The average mass flow of hydrochloric acid from the control system applied to the magnesium chloride storage bins scrubber exhaust, measured according to the performance test procedure in § 63.9914, did not exceed 47.5 lbs/hr; and b. The average mass flow of PM_{10} from the control system applied to the magnesium chloride storage bins scrubber exhaust, determined according to the performance test procedures in § 63.9913, did not exceed 2.7 lbs/hr.
3. Each melt/reactor system stack	a. The average mass flow of PM_{10} from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9913, did not exceed 13.1 lbs/hr; and b. The average mass flow of hydrochloric acid from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 7.2 lbs/hr; and c. The average mass flow of chlorine from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 100 lbs/hr. d. The average concentration of dioxins/furans from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9915, did not exceed 36 ng TEQ/dscm to 7% oxygen.
4. Each launder off-gas system stack.	a. The average mass flow of particulate matter from the control system applied to the launder off-gas system collection system exhaust, measured according to the performance test procedures in § 63.9913, did not exceed 37.5 lbs/hr; and b. The average mass flow of hydrochloric acid from the control system applied to the launder off-gas system collection system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 46.0 lbs/hr; and c. The average mass flow of chlorine from the control system applied to the launder off-gas system collection system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 26.0 lbs/hr.

TABLE 4 TO SUBPART TTTTT OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

As required in § 63.9923, you must demonstrate continuous compliance with the emission limits according to the following table:

For . . .	You must demonstrate continuous compliance by . . .
1. Each spray dryer stack	a. Maintaining emissions of PM_{10} at or below 100 lbs/hr; and b. Maintaining emissions of hydrochloric acid at or below 200 lbs/hr; and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at mid-term and renewal).
2. Magnesium chloride storage bins scrubber stack.	a. Maintaining emissions of hydrochloric acid at or below 47.5 lbs/hr or 0.35 gr/dscf; and b. Maintaining emissions of PM_{10} at or below 2.7 lbs/hr or 0.016 gr/dscf; and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at mid-term and renewal).
3. Each melt/reactor system stack	a. Maintaining emissions of PM_{10} at or below 13.1 lbs/hr; and b. Maintaining emissions of hydrochloric acid at or below 7.2 lbs/hr; and c. Maintaining emissions of chlorine at or below 100 lbs/hr; and d. Maintaining emissions of dioxins/furans at or below 36 ng TEQ/dscm to 7% oxygen. e. Conducting subsequent performance test at least twice during each term of your title V operating permit (at mid-term and renewal).
4. Each launder off-gas system stack.	a. Maintaining emissions of particulate matter at or below 37.5 lbs/hr; and b. Maintaining emissions of hydrochloric acid at or below 46.0 lbs/hr; and c. Maintaining emissions of chlorine at or below 26.0 lbs/hr; and d. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at mid-term and renewal).

TABLE 5 TO SUBPART TTTTT OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTT OF PART 63

As required in § 63.9950, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

Citation	Subject	Applies to Subpart TTTTT	Explanation
63.1	Applicability	Yes.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities	Yes.	

TABLE 5 TO SUBPART TTTTT OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTT OF PART 63—Continued

As required in § 63.9950, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

Citation	Subject	Applies to Subpart TTTTT	Explanation
63.5	Construction and Reconstruction	Yes.	
63.6(a)–(g)	Compliance with Standards and Maintenance Requirements.	Yes.	
63.6(h)	Determining Compliance with Opacity and Visible Emission standards.	No.	
63.6(i)–(j)	Extension of Compliance and Presidential Compliance Exemption.	Yes.	
63.7(a)(1)–(2)	Applicability and Performance Test Dates	No	Subpart TTTTT specifies performance test applicability and dates.
63.7(a)(3), (b)–(h)	Performance Testing Requirements	Yes.	
63.8 except for (a)(4),(c)(4), and (f)(6).	Monitoring Requirements	Yes.	
63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Subpart TTTTT does not require flares.
63.8(c)(4)	Continuous Monitoring System Requirements	No	Subpart TTTTT specifies requirements for operation of CMS.
63.8(f)(6)	Relative Accuracy Test Alternative (RATA)	No	Subpart TTTTT does not require continuous emission monitoring systems.
63.9	Notification Requirements	Yes	
63.9(g)(5)	Data Reduction	No	Subpart TTTTT specifies data reduction requirements.
63.10 except for(b)(2)(xiii) and (c)(7)–(8).	Recordkeeping and Reporting Requirements	Yes.	
63.10(b)(2)(xiii)	Continuous Monitoring System (CMS) Records for RATA Alternative.	No	Subpart TTTTT does not require continuous emission monitoring systems.
63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Accedences for CMS.	No	Subpart TTTTT specifies recordkeeping requirements.
63.11	Control Device Requirements	No	Subpart TTTTT does not require flares.
63.12	State Authority and Delegations	Yes.	
63.13–63.15	Addresses, Incorporation by Reference, Availability of Information.	Yes.	

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1511 and 1552

[FRL–7441–1]

Acquisition Regulation: Background Checks for Environmental Protection Agency Contractors Performing Services On-Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the EPA Acquisition Regulation (EPAAR) to add a clause requiring contractors (and subcontractors) to perform background checks and make suitability determinations for contractor (and subcontractor) employees performing services on or within Federally-owned or leased space and facilities, commercial space primarily occupied by Federal employees, and Superfund, Oil Pollution Act, and Stafford Act sites. The clause will require contractors (and subcontractors) to perform background checks and make suitability determinations on their employees before the employees can perform on-site contract services for the EPA. Contracting Officers will be allowed to waive the requirements of the clause on a case-by-case basis. The process contemplated by the clause will allow EPA to mitigate any actual or potential threat to the public health, welfare and the environment.

DATES: Comments should be submitted no later than March 24, 2003.

ADDRESSES: Comments may be submitted by mail, electronically, or through hand delivery/courier. For comments submitted by mail, send three copies of your comments to: OEI Docket, Title: Background Checks for EPA Contractors Performing Services On-Site, EPA Docket Center (28221T), 1200 Pennsylvania Ave., NW, Washington DC, 20460, Attention Docket ID No. OARM–2002–0001. For comments submitted electronically or through hand delivery/courier, please follow the detailed instructions as provided in Unit I of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Thomas Valentino, U.S. EPA, Office of Acquisition Management, Mail Code (3802R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4522.

SUPPLEMENTARY INFORMATION: Information on the proposed regulation for background checks for contractors (and subcontractors) performing on-site work is organized as follows:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

EPA has established an official public docket for this action under Docket ID No. OARM–2002–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available

for public viewing at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as Confidential Business Information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments, but may consider them if time permits.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties, or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OARM–2002–0001. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *oei.docket@epa.gov,* Attention Docket ID No. OARM–2002–0001. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Please avoid the use of special characters and any form of encryption.

2. By Mail. Send three copies of your comments to: OEI Docket, Title: Background Checks for EPA Contractors Performing Services On-Site, EPA Docket Center (28221T), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OARM–2002–0001.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC 20004, Attention Docket ID No. OARM–2002–0001. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays).

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

The events of September 11, 2001, have heightened both Government and private industry awareness relative to protecting facilities and the personnel who work therein. EPA has a large number of contracts that require contractor (and subcontractor) employees to access federally-owned or leased facilities and space, federally-occupied facilities, and Superfund, Oil Pollution Act, and Stafford Act sites. Although such access is often necessary for contract performance, it nevertheless creates significant potential risks for EPA. While background checks provide no guarantee as to a person's loyalty, trustworthiness, or suitability for contract performance, they provide valuable information that may prove useful in determining an individual's suitability to perform on-site services for the EPA.

III. Proposed Rule

This proposed rule would amend the EPAAR to create an EPA contract clause that will require contractors (and subcontractors) to perform background checks and make suitability determinations for contractor (and subcontractor) employees performing services on-site.

IV. Statutory and Executive Order Reviews

Executive Order 12866

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned ICR No. 2102.01.

The EPA uses contractors to perform services on or within federally-owned or leased facilities and space, federally-occupied facilities, and Superfund, Oil Pollution Act, and Stafford Act sites. Information collected by on-site contractors for performing background checks and making suitability determinations is required for all contractor employees before the individual employees can perform on-site contract services for the EPA. The Contractor is also responsible for maintaining records associated with all background checks and suitability determinations.

The annual public reporting and record keeping burden for this collection of information is a total of 7,000.5 hours annually. This figure was determined by multiplying the average number of background checks per annum (4,667) by the estimated time to complete one collection request (1.5 hours per response).

The total annual costs are estimated at $590,002.14. This figure was determined by multiplying the cost associated with one collection request ($126.42) by the average number of collections per annum (4,667). This figure does not include any capital or start-up costs because it will not be necessary for respondents to acquire any capital goods to provide the requested information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No.OARM–2002–0001, which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1745 and the telephone number for the QEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Please include the EPA Docket ID No. OARM–2002–0001 in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 22, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by February 21, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

Regulatory Flexibility Act (RFA), as Amended By the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed rule on small entities, "small entity" is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the

impact of concern is any significant *adverse* economic impact on small entities, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule will not have a significant economic impact on small entities because the contractor will be able to include any costs incurred in complying with clause requirements as part of the costs incurred under the contract, either directly or indirectly (depending on the contract type, and the contractor's treatment of costs). In addition, the types of background search services to be undertaken pursuant to the proposed clause are commercially available to all businesses.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

Executive Order 13132

Executive Order 13132, entitled, "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule would amend the EPAAR to create an EPA contract clause that will require contractors to perform background checks for employees performing services on-site. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communication between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 *note*), directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law, or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards.

Executive Order 13211 (Energy Effects)

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use" (66 FR 28335 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 48 CFR Parts 1511 and 1552

Environmental protection, Government procurement.

Dated: January 15, 2003.

John C. Gherardini, III,

Acting Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

PART 1511—[AMENDED]

1. The authority citations for Part 1511 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1511.011–81 is added to read as follows:

1511.011–81 Background Checks for EPA Contractors Performing Services On-Site.

(a) Contracting Officers shall insert the clause at 1552.211–81 in all solicitations and contracts, except for commercial item acquisitions, where it is expected that the contractor will be required to perform services on or within Federally-owned or leased space and facilities, commercial space primarily occupied by federal employees, or Superfund, Oil Pollution Act, or Stafford Act sites. The successful awardee must complete the background checks and suitability determinations for individuals before they may begin on-site performance under the contract. This clause is also required, when applicable, for work to be performed on-site that is ordered under non-EPA contracts.

(b) Contracting Officers may include the clause described in paragraph (a) of this clause in solicitations and contracts other than those identified in paragraph (a) of this clause, including commercial item acquisitions if deemed appropriate, if determined necessary in order to protect the Government's interests and national security.

(c) Contracting Officers, on a case-by-case basis, may, either temporarily or permanently, waive the requirement for background checks and suitability determinations if they determine, in writing, that they are not necessary at a specific location, or for a specific individual, in order to protect the Government's interest and national security.

(d) As used in the solicitation and contract clause, Superfund or CERCLA refers to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA, as amended by SARA in 1986), 42 U.S.C. 9601; the Oil Pollution Act refers to the Clean Water Act as amended by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701; and the Stafford Act is the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121.

PART 1552—[AMENDED]

3. The authority citation for Part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418(b).

4. Section 1552.211–81 is added to read as follows:

1552.211–81 Background Checks for EPA Contractors Performing Services On-Site.

As prescribed in 1511.011–81, insert the following clause:

BACKGROUND CHECKS FOR EPA CONTRACTORS PERFORMING SERVICES ON-SITE (XXX 2003)

(a) The requirements of this clause apply to the successful awardee(s) of the contract who will be performing on-site work for EPA under the contract.

(b) *Definitions.*

For purposes of this clause, the following definitions apply:

(1) *On-Site:* "On-site" refers to any federally-owned or leased space and facilities and any commercial space primarily occupied by federal workers. It also includes sites where the Environmental Protection Agency (EPA) is working under the authority of CERCLA, the Oil Pollution Act, or the Stafford Act.

(2) *Suitability:* "Suitability" refers to identifiable character traits and past conduct which are reasonably sufficient to indicate whether a given individual is likely or not likely to be able to perform the requirements of a contract or subcontract at EPA on-site locations without undue risk to the interests of the Government and the national security.

(3) *Suitability determination:* A "suitability determination" is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the contract requirements on-site without undue risk to the interests of the Government and the national security.

(c) *Applicability.*

(1) Contractors shall perform background checks and make suitability determinations on contractor employees before the individual employees can perform on-site contract services for the EPA.

(2) Contracting Officers, on a case-by-case basis, may, either temporarily or permanently, waive the requirements of this clause, if they determine in writing that background checks and suitability determinations are not necessary at a specific location, or for a specific individual, in order to protect the Government's interests and national security.

(d) *Background Check.*

(1) The Contractor is responsible for completing background checks and making suitability determinations on its employees prior to the employee beginning on-site work. Compliance with the requirement for performing a background check and making a suitability determination shall not be construed as providing a contractor employee clearance to have access to classified information or confidential business information. Contractors are required to maintain records of background checks and suitability determinations for four years after they are completed, and to make them available to the Government when requested.

(2) At a minimum, the background check and suitability determination must include an evaluation of:

(i) Law enforcement checks (Federal, State, and Local for the past 5 years);

(ii) Credit report;

(iii) Social Security Number trace;

(iv) Verification of U.S. citizenship or legal resident status;

(v) Employment history (past 5 years);

(vi) Education history (highest degree verified);

(vii) References (3 individuals);

(viii) Residence (past 3 years);

(ix) Military service discharge notice; and

(x) Professional license and certification.

(e) *Background Check Guidelines.*

(1) In making a suitability determination, the contractor shall consider the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to the Government:

(i) Any loyalty or terrorism issue;

(ii) Patterns of conduct (*e.g.*, alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, unemployability for negligence or misconduct, criminal conduct);

(iii) Dishonorable military discharge;

(iv) Felony and misdemeanor offenses;

(v) Drug manufacturing/trafficking/sale;

(vi) Major honesty issue (*e.g.*, extortion, armed robbery, embezzlement, perjury);

(vii) Criminal sexual misconduct;

(viii) Serious violent behavior (*e.g.*, rape, aggravated assault, arson, child abuse, manslaughter);

(ix) Illegal use of firearms/explosives; and

(x) Employment related misconduct involving dishonesty, criminal or violent behavior.

(2) The contractor shall evaluate any adverse information about an individual by considering the following factors before making a suitability determination:

(i) The nature, extent and seriousness of the conduct;

(ii) The circumstances surrounding the conduct;

(iii) The frequency and recency of the conduct;

(iv) The individual's age and maturity at the time of the conduct;

(v) The presence or absence of rehabilitation and other pertinent behavior changes;

(vi) The potential for pressure, coercion, exploitation, or duress; and

(vii) The likelihood of continuation of the conduct.

(f) *Employee Removal.*

Whenever a contractor becomes aware that any employee working at an on-site location

under an EPA contract becomes an unacceptable risk to the Government, the contractor shall immediately remove that employee from the site, notify the Contracting Officer that such a removal has taken place, and replace them with a qualified substitute. If the approval of the Contracting Officer was initially required for the removed employee, Contracting Officer approval is required for the replacement employee.

(g) *Contracting Officer Notification.*

Prior to commencement of on-site contract performance, the contractor shall notify the Contracting Officer that the background checks and suitability determinations required by this clause have been completed for affected individuals.

(h) *Flowdown Provision.*

The Contractor agrees to insert terms that conform substantially to the language of this clause in all subcontracts under this contract.

(End of clause)

[FR Doc. 03–1361 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 2002–12347; Notice 01]

New Rearview Technology and Federal Motor Vehicle Safety Standard No. 111; Rearview Mirrors

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: The agency has received two petitions asking us to amend the Federal Motor Vehicle Safety Standard for rearview mirrors. AM General Corporation (AM General) petitioned the agency to amend the standard to permit vehicles with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (kg) and with an overall length that is less than 508 centimeters (cm) to have the option of being equipped with a passenger-side convex mirror with an area of at least 323 square centimeters (cm^2). Currently, these vehicles are required to have a flat passenger-side mirror with a reflective area of at least 323 cm^2. The agency granted AM General's petition on May 23, 2001.

In addition, Ms. Barbara Sanford petitioned the agency to amend the rearview mirror standard to require that all commercial trucks traveling on interstate highways have convex mirrors affixed to their front right and left fenders to give drivers of these vehicles a better view of the area around them while making a lane change. The agency granted Ms. Sanford's petition on May 21, 2001.

This document discusses the recommendations submitted by AM General and Ms. Sanford and asks questions that we hope will help us to determine whether they would be beneficial to safety and at what cost. In addition to addressing the aforementioned petitions, the agency also wishes to take this opportunity to examine the rearview mirror standard as a whole to determine whether there are any amendments that can be made to allow consumers to utilize innovations in mirror and other rearview technology that have been developed since the standard was last amended in 1982. It should be pointed out that the changes to the standard that are being explored are to eliminate impediments to new technology. Any amendments would permit, but not require, the use of new technology.

DATES: Comments must be received on or before March 24, 2003.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to: Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Flanigan, Office of Rulemaking, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Flanigan's telephone number is (202) 366–4918 and his facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION:

Background

Standard No. 111

When standard No. 111 was promulgated in 1967, it applied only to passenger cars. The standard only permitted the use of mirrors of unit magnification (hereafter referred to as flat mirrors) at that time. On August 12, 1975, the agency published a final rule that extended the passenger car requirements to multipurpose passenger vehicles, trucks, and buses with a GVWR 4,536 kg or less (hereafter referred to as light trucks) [40 FR 33825]. The final rule established requirements for light trucks to have either outside flat mirrors that meet passenger car requirements or mirrors with an area of at least 126 cm^2.

The August 12, 1975 notice also established requirements that multipurpose passenger vehicles, trucks, and buses with a GVWR of between 4,536 kg and 11,340 kg have flat outside mirrors with a reflective surface of not less than 323 cm^2. On December 30, 1976, the agency published a final rule that established requirements for multipurpose passenger vehicles, trucks, and buses with a GVWR of 11,340 kg or more. The requirements specified that these vehicles have outside mirrors with a reflective surface of not less than 323 cm^2.

Until 1982, the agency allowed only flat mirrors on vehicles with a GVWR of 4,536 kg or less other than school buses (hereafter referred to as "light vehicles"). However, on September 2, 1982, the agency published a final rule amending Standard No. 111 to allow constant radius of curvature or spherical convex mirrors (hereafter referred to as "convex mirrors") to be used on light vehicles [47 FR 38698]. The surface of this type of mirror is curved to increase the field of view. This action was in response to a May 6, 1976, petition from General Motors Corporation (GM). GM petitioned the agency to amend the standard to allow convex mirrors on the passenger side of light vehicles where the interior mirror did not meet the field of view requirements. GM pointed out in its petition that convex mirrors would provide a wider field of view than the flat mirrors of the same size.

The amendment gave light vehicles that do not meet the field of view requirements for their interior mirror the option of having an outside mirror of unit magnification or a convex mirror installed on the passenger side. The agency, however, was concerned about the greater difficulties in correctly judging distance and speed that occur using convex mirrors as a result of the distortion of the objects being viewed. This concern has to be balanced by the fact that convex mirrors greatly increase the driver's field of view and, therefore, reduce the necessity for head movement to detect other vehicles.

Since convex mirrors have been permitted on the passenger side of light vehicles, many manufacturers have used them. Today, most light vehicles have a convex mirror on the passenger side. However, the agency still receives complaints from consumers about these mirrors. As described below, convex mirrors have characteristics that present problems for a portion of the driving public.

Currently Permitted Mirrors

The main difference between a flat mirror and convex mirror is that the image of an object viewed in a convex

mirror is both distorted and smaller than that of the same object viewed in a flat mirror. Therefore, such an object appears farther away and could be less recognizable when viewed in a convex mirror. Additionally, if the object were approaching or receding, its rate of change in position relative to other vehicles and its speed are more difficult to judge as well. For example, a driver who is not familiar with using a convex mirror on the passenger side may determine that it is safe to change lanes to the right, not realizing that a vehicle to the right rear is too close for the maneuver to be completed safely. This is why convex mirrors have been permitted only in conjunction with flat interior mirrors. The flat interior mirror provides the correct depth and speed perception, whereas the convex mirror achieves greater field of view, but cannot give precise depth and speed perception. Even if the interior mirror does not meet the field of view requirements in the standard, it is still available for speed and distance judgment of vehicles that are detected in the right convex mirror, if they are also visible in the interior mirror.

There have been other problems associated with the use of convex mirrors that include double vision, eyestrain, and nausea. Based on research, the agency determined that these problems could be minimized by placing certain restrictions on the mirror's design and by trading off correct speed and depth perception to achieve a greater field of view. If a vehicle has an interior mirror that does not meet the field of view requirements and the manufacturer opts to use a convex mirror on the passenger side, the convex mirror must meet the following three requirements: (1) When the radius of curvature is measured at ten different positions as specified in the standard, none of the radii of curvature readings may deviate from the average radius of curvature by more than plus or minus 12.5 percent; (2) the mirror must be indelibly marked at the lower edge of the mirror's reflective surface with the words "Objects In Mirror Are Closer Than They Appear"; and (3) the average radius of curvature cannot be less than 889 millimeters (mm) and not more than 1,651 mm.

The first requirement, that the convex mirror's radius of curvature may not deviate more than plus or minus 12.5 percent from the average radius of curvature, is to ensure that the mirrors have a reasonably constant radius of curvature. This minimizes changes in image distortion across the face of the mirror. This helps reduce many of the reported instances of double vision, nausea, and dizziness.

The second requirement specifies that a visible warning be marked on the mirror's reflective surface. Because the mirrors cause distance and speed distortion, *i.e.*, the objects appear further away in the mirror, the agency felt that a warning should be placed in plain view to the vehicle operator. This is the rationale for the second requirement, that the mirrors be labeled with "Objects in Mirror Are Closer Than They Appear." If the driver is aware of this label, the driver will be aware that this mirror is not a flat mirror, and hopefully not make a mistake in judgment.

The third requirement, which specifies a minimum and maximum radii of curvature of the mirrors, is to ensure that the mirrors on different vehicles possess some level of uniformity. For example, if a person became accustomed to driving a vehicle with a passenger-side mirror radius of curvature of 2,500 mm, the same person might experience disorientation if he or she drove a vehicle with a passenger-side mirror radius of curvature of 500 mm. In Standard No. 111, the allowable range of radii of curvature of between 889 mm and 1,651 mm is based on a study performed by Vector Enterprises, Inc. (Vector) ["Passenger Vehicle, Light Truck, and Van Convex Mirror Optimization and Evaluation Studies," August 1980, DOT HS 805–695] in which a number of convex mirrors were evaluated. In this study, Vector found that a radius range of 1,016 mm to 1,524 mm provided the best results. The agency proposed this range in a 1978 notice of proposed rulemaking (NPRM) [43 FR 51657]. However, based on comments by manufacturers to the NPRM, the agency increased the range by 127 mm on each end.

Recent Innovations in Rearview Technology

Non-Planar Mirrors

Since the last significant changes were made to Standard No. 111 in 1982, there have been a number of innovations to rearview technology. The main innovation in mirror technology is the development of a hybrid mirror called an aspheric convex mirror (hereafter referred to as an "aspheric mirror"). Aspheric mirrors differ from the currently allowed convex mirrors in that they do not have a constant radius of curvature. Generally, these mirrors have a convex area with a large radius of curvature that provides a relatively undistorted view. Typically, this area constitutes approximately 60 to 80 percent of the mirror surface. In this portion of the mirror, the radius can be so large that it will appear to be flat (the radius of curvature of a flat mirror is infinity). The relatively flat portion of the mirror allows the driver to make more accurate speed and distance judgments about the adjacent vehicles than would be possible with a convex mirror. On mirrors currently being manufactured for the aftermarket and for use in other countries, the radius of curvature of this flatter area can range from 2,032 mm to 12,700 mm.

Extending from the large radius of curvature portion of the mirror outward, away from the vehicle, is another area in which the radius of curvature gradually decreases. This portion increases the field of view by smoothly transitioning from the large radius of curvature in the relatively flat portion to a much smaller radius. Because of the variation in radii of curvature, the outside portion of the mirror is distorted much like that of a convex mirror. This is how the larger field of view is attained. With this larger field of view, there could be a reduction or even an elimination of the blind spots that currently exist when flat mirrors are used. The most convex (outer) area of the aspheric mirror can provide a field of view that is as much as 30 percent larger than that of a similarly sized convex mirror with a uniform radius of curvature that satisfies the current standard.

Because these mirrors essentially provide two different types of views to the rear of the vehicle, some aspheric mirrors have an etched line delineating where the portion of the mirror that is the effectively flatter section ends and the more curved section begins. This is done to reduce confusion about which images are distorted and which are less so.

Video Systems

Due to the decrease in the cost of video monitoring equipment in recent years, manufacturers have begun to explore ways to incorporate this technology into motor vehicle rear vision systems. In these prototype systems, video cameras can be placed in almost any position on the interior or exterior of the vehicle. The cameras are wired to monitors in the forward of the vehicle so that they can be viewed by the driver. Because of the many possible mounting locations of the cameras, these systems can provide views to the driver that mirrors are not able to achieve.

There are companies that have already begun to implement this technology. In addition to the mirror

system already required by the standard, some have provided video systems for an auxiliary rear view. The United Parcel Service (UPS) has installed video systems in approximately 65,000 of its delivery trucks. These systems provide the driver with a view of the area directly behind the vehicle and are generally used for backing purposes. The view is similar to that which is provided by an interior mirror in a passenger vehicle, but can afford a much larger field of view close to the vehicle.

One of the benefits of eliminating exterior mirrors on vehicles would be in the area of fuel economy. Removing these mirrors would decrease the wind resistance on a vehicle and thus decrease the amount of fuel consumed. These benefits have been estimated to be as much as two percent fuel savings for large trucks.

Another benefit of a video system is the ability to filter out or reduce visual obstructions or degradations caused by, snow, rain, lack of light, or glare from following vehicles' headlamps. By adjusting a monitor's contrast, brightness, or sharpness, the image provided to the driver can be controlled. It is likely that these systems will be controlled by a computer that can detect these visual hindrances and automatically correct for them.

AM General's Petition

In its September 2000 petition, AM General recommended that the agency amend Standard No. 111 to allow manufacturers the option of placing a convex passenger-side rearview mirror on light trucks with a GVWR of more than 4,536 kg, but with a length of less than 508 cm. Currently, these vehicles must have a flat passenger-side mirror with a reflective area of not less than 323 cm^2. As stated above, light trucks with a GVWR 4,536 kg or less may be equipped with either a convex mirror or a flat mirror that meets passenger car requirements or a flat mirror with a reflective area of not less than 126 cm^2. AM General proposed three conditions that these vehicles would have to meet to be equipped with a convex mirror: (1) The mirror should be at least 323 cm^2 in area; (2) it should comply with the convex mirror requirements in Paragraph S5.4 of the standard; and (3) the overall length of the vehicle should be less than 508 cm.

By petitioning the agency, AM General is attempting to solve a problem it has had with a specific vehicle it produces, the Hummer. The Hummer is a four-wheel-drive vehicle that, depending on the configuration, can have a GVWR of between 4,672 kg and 5,488 kg. Because the Hummer has a GVWR that is greater than 4,536 kg, it is required to have a flat passenger-side mirror with a reflective area of not less than 323 cm^2. AM General states that a large majority of Hummer owners are installing small, round convex mirrors on their flat passenger-side mirrors to provide a better rearward field of view, particularly for lane changes. It has received numerous requests from these owners to install a full-sized convex mirror like those offered on similarly sized light trucks. The only explanation AM General has been able to provide to them is that Standard No. 111 does not allow such mirrors on these vehicles. Since the Hummer is essentially the same size as some other full size light trucks, AM General does not think it reasonable that it would be precluded from utilizing the same type of rearview mirrors as them. AM General believes that, although the vehicle owner's application of the small convex mirrors to the flat mirrors may provide some additional benefit, it is not the ultimate solution. A full size convex mirror would provide a larger field of view. In addition, the full size convex mirror would have less distortion, as small add-on convex mirrors, or spot mirrors, tend to have small radii of curvature.

On July 26, 2000, AM General met with the agency to outline its concerns and to give agency staff the opportunity to drive the Hummer with two mirror configurations: a standard 323 cm^2 flat mirror and a 323 cm^2 convex mirror. Three agency engineers examined the two mirror systems on the Hummer and two drove it with these systems. One engineer sat in the Hummer and assessed the fields of view of both mirrors without driving it. All three agreed that, when attempting a lane change to the right, the passenger-side convex mirror provided a better view of the rearward area when compared to the flat one. Because the interior rearview mirror did not provide an adequate rearward view, the driver would have to rely heavily on the outside mirrors. This increased the importance of having a wider field of view in the outside mirrors, even if it could cause greater distortion.

AM General supports its petition by pointing out that in 1975, when Standard No. 111 was amended to require flat passenger-side mirrors on vehicles of over 4,536 kg GVWR, there were no vehicles in use that were comparable to the Hummer. In the rulemaking, the agency's rationale for requiring flat passenger-side mirrors was that a driver of a large vehicle needs an undistorted view when moving in reverse. Also, these larger vehicles did not typically have an interior flat mirror to aid in judging distance. In the final rule, the agency linked vehicle size to weight, stating that vehicles over 4,536 kg GVWR needed special mirror systems "suited to their large size." Also, in the notice of proposed rulemaking (NPRM) that preceded the 1975 final rule [39 FR 15143], the agency stated that "if the vehicle resembles a passenger car with regard to its rearward visibility potential, the manufacturer will be free to equip it with a passenger car-type mirror system."

AM General also cites the rationale that the agency used in the preamble to the 1982 final rule allowing convex mirrors on light vehicles, which indicated that the main safety benefit of these mirrors is that they provide "an expanded field of view of the right, rear quadrant area adjacent to the vehicle, thus reducing the need of the driver to turn around to view that area directly."

AM General points out that, while the Hummer's overall size is comparable to other full size sport utility vehicles (SUVs) and pickups, its GVWR is considerably greater. To support this, AM General submitted specifications of other light trucks for comparison. These are outlined in the table below.

COMPARATIVE SPECIFICATIONS FOR FULL SIZE SUVS AND PICKUPS (1999 MY)

Make and model	GVWR (kg)	Length (cm)	Height (cm)	Width (cm)
AM General Hummer	4,672–5,488	469	191	220
Full Size SUVs:				
Ford Excursion	3,901	576	202	203
Chevrolet Tahoe	3,084	507	179	195
Chevrolet Suburban	3,901	558	181	194
Jeep Grand Cherokee	2,812	461	176	184
Nissan Pathfinder	2,336	453	170	174

COMPARATIVE SPECIFICATIONS FOR FULL SIZE SUVS AND PICKUPS (1999 MY)—Continued

Make and model	GVWR (kg)	Length (cm)	Height (cm)	Width (cm)
Toyota Landcruiser	3,111	489	186	194
Mitsubishi Montero	2,268	453	168	178
Land Rover Range Rover	2,250	471	182	189
Average	2,958	496	181	189
Full Size Pickups:				
Ford F–250 4-door	3,992	577	194	203
Dodge Ram 2500 Club Cab	3,992	620	185	201
Chevy 3500 Crew Cab	4,536	637	188	239
Toyota Tacoma Xtracab	2,040	516	158	169
Average	3,640	588	181	203

The average GVWR of SUVs was 2,958 kg, with the Ford Excursion and Chevrolet Suburban being the highest. Both had a GVWR of 3,901 kg. The average GVWR of pickups was 3,640 kg, with the Chevrolet 3500 Crew Cab (with dual rear wheels) being the highest at 4,536 kg. The Hummer's greater GVWR is said to be attributable to heavy-duty features such as its drive train and its reinforced frame. While the GVWR of the Hummer is significantly greater than many full size SUVs and pickups, it is comparable in size.

AM General stated that it is not aware of any studies or data available in either this country or any other countries that suggest that its recommended amendment would adversely impact motor vehicle safety. It also states that several countries already have similar requirements. ECE Regulation No. 46, June 1997, permits a wide-angle exterior rearview mirror on vehicles with a GVWR that is less than 7,500 kg. Canadian Standard No. 111 allows vehicles with a GVWR of greater than 4,536 kg to have a passenger-side convex mirror as long as it is at least 323 cm^2 in area. Australian Design Rule 14/02 allows vehicles to have a passenger-side convex mirror if the reflective surface area is equal or greater than that of a flat mirror that meets its field of view requirements.

Mirror Research

On March 13, 1996, the agency convened a public meeting in Romulus, Michigan, to seek information from interested parties on the safety of mirror systems and suggestions for actions to enhance safety. A **Federal Register** notice announcing this meeting [61 FR 4624] also invited written comments. Of the 12 commenters, all stated that there should be a change in the requirements of Standard No. 111, or at least research should be conducted to determine if a change is needed. Attendees at the workshop also identified future human factors research needed for determining rearview mirror performance and design requirements that would insure that drivers could use rearview mirrors safely and effectively. These suggestions are outlined in a technical report titled "Workshop on Rearview Mirror Human Factors Research Needs: Summary of Recommendations," [DOT HS 808 486]. The main thrust of the comments was that the agency should consider amending the standard to allow non-planar mirrors on the driver side of the vehicle. These mirrors are currently used on the driver side of some vehicles in Europe, Japan, and South Africa.

Consistent with these suggestions from the industry, the agency initiated research on non-planar driver side mirrors. The agency contracted with the TNO Human Factors Research Institute (TNO) in the Netherlands to conduct this research. The resulting paper, titled "Non-planar Driver's Side Rearview Mirrors: A Survey of Mirror Types and European Driver Experience and a Driver Behavior Study on the Influence of Experience and Driver Age on Gap Acceptance and Vehicle Detection," [DOT HS 809 149] examined European drivers' use of non-planar driver side mirrors. The study was conducted on European drivers because only flat driver side mirrors are permitted in the U.S. The sample of vehicles in the study consisted of 43 percent with planar driver side mirrors, 34 percent with convex mirrors, and 23 percent with aspherical mirrors. The passenger-side mirrors were predominantly convex (92 percent). The study found that drivers' experience with aspheric mirrors on the driver's side did not generally compensate for the negative effect of accepting smaller gaps, with the exception of drivers who were accustomed to convex mirrors on the driver's side. In addition, there was no increase in the visual workload required to process information in non-planar mirrors. The conclusion was that the relative benefits of using aspheric mirrors on the driver's side could outweigh the possible negative effects.

The agency contracted with the Scientex Corporation (Scientex) to assess different driver side mirror designs and compare them to the standard flat mirror. The report, titled "Simulator-based Assessment of Driver side Mirrors for Passenger Cars," [DOT HS 808 807] examined four non-planar mirrors: (1) Spherically convex, (2) a side-by-side design where 40 percent of the inboard area was spherically convex and the remaining outboard area was aspherically convex, (3) an over-under design that was flat on top and spherically convex below; and, (4) a side-by-side design where 75 percent of the inboard area was spherically convex and the remained outboard area was aspherical. The primary study variables were the size of the field of view, image distortion, and driver age. The test subjects were placed in a laboratory driving simulator and asked to use each mirror type from the perspective of a stationary observer waiting to merge. The subjects were also to use the mirrors as moving observers in a dynamic simulation of a lane change scenario on a freeway. The study found significant effects of mirror type and driver age on lane change decisions and decision times. For slower moving targets, the test data revealed a sharp increase in the size of the gap older drivers found acceptable for making a safe lane change when using a flat mirror, relative to the non-planar mirrors. For the faster moving targets, there was only a small increase in the size of the gap older drivers found acceptable for a safe lane change when using a flat mirror, relative to the non-planar mirrors. Also, the older drivers generally relied on the mirrors more rather than glancing over their shoulders. Scientex believed that this was due to lack of head and neck mobility. Moreover, it showed that there

are benefits to alternative mirrors with expanded fields of view in situations involving immediately adjacent traffic that was nearby (less than one car length behind the driver) when the driver does turn to view the area. Scientex did, however, find some unanswered questions on the effects of speed and distance judgment. Also, it found a need to better understand of the ability of drivers to adjust to non-planar mirrors, and realize their potential benefits.

Discussion of AM General Petition and General Mirror Issues

While the agency agrees that it seems reasonable to allow the Hummer to be equipped with a convex mirror, we believe that it would be shortsighted only to amend Standard No. 111 in the manner requested by AM General. Amending the standard to allow the one known current vehicle model to utilize one widely-available type of technology would have little effect on the overall safety of motor vehicles five years from now. Rather than only allowing the Hummer to have passenger-side convex mirrors, the agency would like to take this opportunity to also explore amending the standard to allow appropriate new mirror and other rearview technology to be utilized by all vehicles. By amending the standard in this manner, not only will AM General be able to equip its Hummers with what it believes are safer mirrors, but new mirror technology will be able to be incorporated on all passenger vehicles.

Research conducted by the agency and other entities, which is outlined above, has led the agency to believe that allowing non-planar mirrors on the driver and passenger side would provide an increased field of view and, thus, eliminate blind spots. Other countries, mostly in Europe, have successfully utilized new technology such as aspheric mirrors to enhance rearward vision.

However, while allowing the use of new mirror technology may be helpful, we are concerned that some drivers may experience difficulties. As the aforementioned TNO and Scientex studies found, there are issues with non-planar mirrors that need to be addressed. Both studies found that some drivers had difficulty making safe lane change decisions using non-planar mirrors. Scientex has recommended that this area be further studied to determine why these problems occur.

One way to account for the drivers who experience problems with the new technology is to include some level of interchangeability. For example, if a driver purchases a vehicle with an aspheric mirror and then determines that it is unacceptable, a flat or convex mirror would be available to put in its place. If the driver could not easily replace the problematic mirror, there might be a tendency for him or her to simply live with the problem and perhaps not utilize the mirror. Drivers forced to use mirror systems with which they are not comfortable would obviously not benefit from the improved technology; on the contrary, there would be a disbenefit. Not using a mirror could increase the risk of a crash.

An issue that needs to be resolved is how large the radius of curvature of a mirror must be to be perceived as flat. The agency believes that drivers using convex mirrors with a radius of curvature in the 6,350 mm to 12,700 mm range would experience little to no difference when compared to using one that is flat. Future research in this area could lead to an equivalent flatness specification that would set the minimum radius of curvature at which a mirror provides the same safety benefits as a mirror with an infinite radius of curvature.

As the standard is presently written, an aspheric mirror with a flat area of infinite radius that produced the minimum field of view would be allowed. The outer convex area could be considered a supplemental mirror. However, due to technological limitations, this is not currently possible. As stated above, we understand that the largest attainable radius of curvature for an aspheric mirror is about 12,700 mm. If an equivalent flatness specification was determined, perhaps the advantages of aspheric mirrors could be fully utilized while maintaining a large portion of the mirror for speed and distance judgment.

Regarding the cost of such an amendment, allowing an option to replace a flat mirror with a convex mirror should pose no incremental burden since no regulatory requirement mandating a convex mirror is contemplated.

Another issue the agency has been exploring is that of glare produced in a vehicle's mirrors from a following vehicle's headlamps. In the past few years, consumers have registered many complaints with the agency about high-mounted headlamps on some larger light trucks. The headlamps on these vehicles are mounted high enough to place the more intense part of their low beam on a vehicle's mirrors. These high-mounted headlamps are viewed by many drivers as dangerous and intimidating, in addition to being annoying and disabling.

One approach to this problem is to require enhanced mirrors on vehicles. Automatic electro-mechanical dimming interior mirrors have been available for decades as standard equipment on luxury models and as an option in many vehicles. More recently, the industry has developed electronically dimming mirrors, typically called photochromic and liquid crystal automatic dimming mirrors. The advantage of these mirrors is that they reduce the intensities of incoming light at least as well as manual or electro-mechanical auto-dimming interior mirrors, but they also reduce glare reflected from the outside mirrors as well. The primary disadvantages are that these mirrors can add $100 or more to the cost of a new vehicle and they can lessen only the glare from following vehicles. There are questions below which attempt to determine whether there should be requirements for such systems.

Below are a number of questions that deal specifically with AM General's petition as well as with the overall philosophy of amending Standard No. 111 to allow new technology to be utilized. To be considered, you must provide a rationale for your answer.

1. Is it reasonable for the agency to permit vehicles like the Hummer to use passenger-side convex mirrors? What are the safety factors that lead to this conclusion?

2. For use of a passenger-side convex mirror on a vehicle that is heavier than 4,536 kg GVWR like the Hummer, should there be a limit of 508 cm on the length of a vehicle as AM General suggested? Is some other maximum vehicle length more appropriate? Should there be requirements based on vehicle height and/or width? What safety factors are involved in these issues?

3. Should Standard No. 111 be amended to permit aspheric mirrors on the passenger side and/or aspheric and convex mirrors on the driver side? What safety rationale is there for such conclusions? At what vehicle dimensions, if any, (length, width, height, and weight) should these mirrors be restricted?

4. If aspheric mirrors were permitted, should a definition of effective flatness be developed? As discussed above, the flatter area of an aspheric mirror that provides the speed and distance judgment is not perfectly flat, but the radius of curvature is usually large enough such that a driver would perceive the area as being flat.

5. At what radius of curvature does the human eye begin to perceive a mirror as flat? At what radius of curvature do depth and closure rate distortion begin to be a safety factor?

6. Should the effectively flat portion of the aspheric mirror be some minimum size, as is required of flat mirrors?

7. Should the agency require an etched line on aspheric mirrors to delineate where the intersection of the flat portion of the mirror and the markedly curved portion begins? Why?

8. Should the radius of curvature in the more convex portion of aspheric mirrors be limited? What is a reasonable range of allowable radii of curvature? Should the size of this section be limited? What is a reasonable minimum/maximum size for this portion of the mirror? To what extent would allowing multiple types of mirrors compromise safety? How could these effects be minimized? Please provide the basis for these answers.

9. Should the proportion of the size of the effectively flat area to the curved area be specified on aspheric mirrors? Should there be separate field of view requirements for each of the areas? Why?

10. We are aware of the use of aspheric mirrors on vehicles used in Europe and are interested in examining the criteria used for determining their specific characteristics. How much do these mirrors vary within the same or different body sizes and styles? Is there any data on the safety benefits and/or detriments of these mirrors as used in Europe? Please be specific.

11. Should all vehicles with mirror systems using aspheric mirrors on the passenger side and aspheric or convex on the driver side have as a replacement, a flat or convex reflective element that is readily available for consumers to purchase? Should consumers be required to pay for such a replacement, or should they be available at no charge? How would the answers to these questions affect the decision by manufacturers to offer optional mirror systems?

12. Convex and aspheric mirrors can achieve a larger field of view than a like-sized flat mirror. Therefore, with a system that provides interchangeability, the convex and aspheric mirrors will most likely need to be made larger than would be required to accommodate the possibility of replacing with a flat mirror. How would this affect the implementation of optional mirror systems? What would be the cost of supplying interchangeability?

13. Should aspheric or convex mirrors be made mandatory on the driver or passenger side? Please provide justification.

14. Does the agency need to require interior and/or exterior dimming mirrors? Why?

15. If dimming mirrors are required, should they be automatic or actuated by the driver?

16. What price is the public willing to pay for fully automatic inside and outside dimming mirrors on passenger cars? What are they willing to pay for these mirrors on light trucks?

17. What are the benefits and disbenefits of mirror configurations that include more than one mirror surface? An agency field evaluation of commercial van mirrors ['Field Evaluation of Rearview Mirror Systems for Commercial Vehicles," September 1985, DOT HS 806–948] found that vehicles equipped with a 40-inch radius of curvature convex mirror had an 18 percent reduction in crashes compared to a dual flat and convex mirror configuration.

18. Are there any other issues that should be addressed in the review of the standard? Please be specific and provide supporting data.

Discussion of Video System Issues

While video systems can be coupled with existing mirrors to create an enhanced view to the driver, it is possible that these systems could completely replace current mirror systems in vehicles. This could present some unique problems. First, unlike mirror systems, video systems consist of electronic equipment that rely on electrical current for activation. If the system fails due to a fault with the electronic components or a lack of power, the driver could be without a rear field of view. The agency is concerned that, if there is not a fail-safe mode for these systems, an unsafe situation could occur. The agency has already prohibited liquid crystal dimmable mirrors because of the insurmountable fail-safe issues.

Replacing mirrors on the outside of the vehicle with video screens on the inside of the vehicle would be a significant change in the manner by which drivers currently obtain the information. Drivers have become used to conventional mirrors, and some could have problems relying on a video screen for the same information. These possible difficulties could be exacerbated by the placement of the monitors. For example, if the monitors were placed outboard as close to the area where the outside rearview mirrors would be, drivers might not experience many problems with the transition. By placing them near the area where conventional mirrors are placed, the geometrical perspective to the object being viewed that is given by the mirrors would be preserved. However, if the monitors were more centrally located on the instrument panel, the lack of geometric perspective could leave drivers confused as to the relationship of what they are seeing in the monitor to the area around their vehicle. The agency believes that manufacturers are currently attempting to determine how to insure that video systems are easy to use and acceptable to drivers.

As with the optional mirror systems discussed above, allowing the use of video systems would provide an option to manufacturers, and, thus, there would be no cost burden imposed by such a permissive rule change.

Below are questions related to the use of video systems for rear vision. To be considered, you must provide a rationale for your answers.

1. Under what condition, if any, would any failure of a video system be considered acceptable? Why?

2. Given the prohibition of liquid crystal mirrors because of the potential for electrical failure, is there any reason to consider video systems? If so, explain why these would be at least as reliable as a conventional glass mirror.

3. Are there any safety studies available on video systems that would show that their overall safety would be great enough to offset any loss of safety from a failure?

4. What are the long-term safety consequences of failure to replace a failed video system component because of the high cost and/or lack of availability? What additional requirements should be imposed on these optional systems to assure that replacement of failed components is as likely as replacement of today's mirrors?

5. If a video system failure were deemed to be an acceptable risk, should the agency require these systems to provide a failure alert to warn the driver of a system problem? If so, what performance requirements should be established for the system failure alert? If not, please explain why.

6. Should there be a backup system in case of failure? If so, please provide a description of a possible system and why it would achieve an acceptable safety risk. If not, please explain why.

7. Should the location for the video monitors be specified? It is the agency's initial inclination that they should be placed as close as possible to where currently used mirrors are located. What studies have been done to show that any other location is acceptable?

8. If the monitors were placed in an area away from where typical mirrors are mounted, how well would drivers adapt to the new location?

9. Should the agency conduct human factors analysis to examine the interface

between the video screen and drivers? If so, what factors should be studied?

10. For example, what minimum image size should be specified for systems using a video monitor? Should that size be different for different monitor locations?

11. Should the monitor on these systems be color or black and white? Why?

12. What type of control over the image characteristics should the driver have with these monitors? Should they be able to control contrast, brightness, sharpness, image size, magnification, or some other characteristic?

13. What would be the cost of installing a video system in a passenger vehicle to be used specifically for backing operations, similar to the system used in recent Infiniti Q45 models?

14. The agency has been examining methods for reducing reversing crashes. Video systems are one of the methods some users and manufacturers, such as UPS and Infiniti, have used to accomplish this. Should manufacturers choose to use a video system for the side view area, what would be the cost of adding a system to be used specifically for backing?

Discussion of Ms. Sanford's Petition

In her September 1999 petition, Ms. Sanford asked us to amend Standard No. 111 to require that all "commercial trucks traveling on the interstate highway system" have convex mirrors mounted on their front right and left fenders. She claims that when convex mirrors are mounted on the front fenders, they eliminate a blind spot that is caused by the driver's elevated position with respect to most passenger cars. They are also helpful for lane changes. Ms. Sanford was involved in a crash with a heavy truck and she believes the incident could have been avoided had the truck been equipped with these fender-mounted convex mirrors.

The heavy trucking industry is currently using these types of mirrors extensively. Rulemaking staff conducted two informal counts of the number of trucks that use these mirrors. The two counts were done on Interstate 95 between Washington, DC to Philadelphia, PA. It was found that approximately two-thirds of the large trucks (excluding cab over designs) were equipped with the mirrors on just the right front fender. Approximately 50 percent had them on both front fenders. Although these counts cannot provide information about the value of these mirrors, it does show that a large portion of the trucking industry sees value in them.

Prior to the Sanford petition, the agency had decided to conduct research on heavy truck mirror systems, including fender-mounted mirrors. The objective of the study is to assess side and rearward visibility of heavy trucks, document current mirror design and aiming, develop a method to evaluate mirror fields of view, and recommend enhanced mirror design and aiming. The study should be completed by the Fall of 2003.

Below are questions related to Ms. Sanford's petition:

1. What percentage of new trucks is sold with these types of mirrors on their front fenders? What is the volume of these types of mirrors that are sold in the aftermarket?

2. What percentage of trucks have the mirrors mounted on just the right or left fender? What percentage has them on both fenders?

3. Do data exist to show the effectiveness of these mirrors in reducing lane change crashes?

4. Because a portion of the national truck fleet already uses these types of mirrors, what would be the cost burden to the industry if one or two mirrors were required?

5. If determined to be necessary for safety, the agency would need to determine whether to require these as just OEM or also as a requirement for vehicles in use. What would be the cost and lead-time necessary for these?

6. What performance specifications, *e.g.*, field of view, vehicle dimensions, mirror dimensions, mounting, labeling, should be established for these mirrors, if any?

7. What truck configuration(s) would be best suited for this type of mirror system?

References

de Vos, Alexander. September 2000. Non-planar Driver's Side Rearview Mirrors: A Survey of Mirror Types and European Driver Experience and a Driver Behavior Study on the Influence of Experience and Driver Age on Gap Acceptance and Vehicle Detection. Report No. DOT HS 809 149.

Flannagan, Michael, J.; Sivak, Michael. August 1996. Workshop on Rearview Mirror Human Factors Research Needs: Summary of Recommendations. Report No. DOT HS 808 486.

Staplin, Loren; Lococo, Kathy, Sim, James J., Gish, Kenneth. October 1998. Simulator-based Assessment of Driver side Mirrors for Passenger Cars. Report No. DOT HS 808 807.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This request for comment was not reviewed under Executive Order 12866 (Regulatory Planning and Review). The agency has analyzed the impact of this request for comment and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency anticipates if a proposal and ultimately a final rule should result from this request for comment, new requirements would not be imposed on manufacturers with respect to currently regulated systems. The request for comment seeks to determine the ramifications of allowing new optional rearview technology on motor vehicles.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information that you do not want to be made public, under a claim of confidentiality, you should submit three copies of your complete submission to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT.** This submission must include the information that you are claiming to be private, that is, confidential business information. In addition, you should

submit two copies from which you have deleted the private information, to Docket Management at the address given at the beginning of this document under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter that provides the information specified in our confidential business information regulation, 49 CFR Part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES.**

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were "NHTSA–2000–1234," you would type "1234."

(4) After typing the docket number, click on "search."

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the "pdf" versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: January 16, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–1353 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List the Mountain Quail as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the mountain quail *(Oreortyx pictus)* under the Endangered Species Act (Act) of 1973, as amended. We find the petition does not present substantial scientific or commercial information indicating that listing this species may be warranted.

DATES: The finding announced in this document was made on January 10, 2003.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours at the U. S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 South Vinnell Way, Suite 368, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: Bob Ruesink, Supervisor, Snake River Fish and Wildlife Office (*see* **ADDRESSES** section) (telephone: 208/378–5243; facsimile: 208/378–5243; electronic mail: *Bob_Ruesink@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time we make the finding. To the maximum extent practicable, this finding is to be made within 90 days of our receipt of the petition, and the notice of the finding is to be published promptly in the **Federal Register**. Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424J). If we find that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated under our internal candidate assessment process.

On March 28, 2000, we received a petition, dated March 15, 2000, from Rob Kavanaugh, Idaho Watersheds Project, Committee for Idaho's High Desert, and the Spokane Audubon Society requesting that the mountain quail *(Oreortyx pictus)*, occurring in the northern and western Great Basin, the Interior Columbia Basin, and lands west to the Cascade Crest within Washington and Oregon, be listed as a threatened or endangered distinct population segment (DPS) under the Act (Kavanaugh *et al.* 2000). The petition clearly identified itself as such and contained the names and addresses of the petitioners.

Accompanying the petition was information related to the taxonomy, life history, demographics, translocations, genetics, habitats, threats, and the past and present distribution of mountain quail. The petitioners contend that mountain quail populations occurring in the proposed DPS have sustained a dramatic range contraction caused by extensive loss of riparian habitats, loss of woody vegetation associated with riparian habitats, loss of interfacing upland shrub habitats, loss of plant species diversity, and simplification of habitats. The petitioners claim that 80 to 90 percent of riparian habitats essential to the mountain quail in arid interior lands have been lost, fragmented, or altered. This is in contrast to the more humid coastal forests of Oregon, Washington, and California, where mountain quail populations are more abundant and widespread due to broad areas of continuous habitat. In order to determine if substantial information is available to indicate that the petitioned action may be warranted, we have reviewed the following: the subject petition, literature cited in the petition, information provided by recognized experts or agencies cited in the petition, and information otherwise available in Service files.

This 90-day petition finding is made in accordance with a settlement agreement that requires us to complete a finding by January 15, 2003

(*Committee for Idaho's High Desert et al.* v. *Badgley et al.* (Civ. No. 01–1834–JO)).

The petitioner's request is to list mountain quail populations found throughout historically occupied portions east of the Cascade Crest in Washington and Oregon, historically occupied portions of western Idaho, and historically occupied portions east of the California/Nevada border south to the proximate vicinity of the Palmetto Mountains of southwestern Nevada.

Mountain quail are members of the family of New World quail, Odontophorinae, within the Order Galliformes (Gutierrez *et al.* 1983). They were first described as *Ortyx picta* by D. Douglas in 1829, but the type specimen was lost and the type locality is unknown (Gutierrez and Delehanty 1999).

Five subspecies of mountain quail recognized by the American Ornithological Union have been described using phenotypic appearances and geographical residency (Gutierrez and Delehanty 1999, Vogel and Reese 2002). The five subspecies by geographical areas are: *Oreortyx pictus pictus*, a resident in mountain regions of extreme western Nevada, the western side of the Cascade Range in southern Washington and south to the Sierra Nevada and inner Coast Ranges of California; *O. p. palmeri*, found in the western Coast Range from Washington south to San Luis Obispo County, California; *O. p. eremophilus*, a resident from the southern Sierra Nevada and central and southern Coast Ranges of California south through the Transverse Peninsular, Mexico; *O. p. russelli*, found in the Little San Bernardino Mountains, California; and *O. p. confinis*, a resident on northern Baja California, Mexico, primarily Sierra Juarez and Sierra San Pedro Mountains (Gutierrez and Delehanty 1999).

Although these five subspecies are recognized by the American Ornithological Union, these designations are considered ambiguous. No quantitative estimates of morphological variation have been published, and genetic validity of these subspecies distinctions has not been substantiated through any peer-reviewed published studies. Gutierrez and Delehanty (1999) stated that these designations are based on "poorly defined comparative and ill-marked plumage characters; therefore, both subspecies and subspecies range are considered dubious." Genetic analysis is needed to clearly establish whether there is subspecies designation across the geographic range of mountain quail (Vogel and Reese 2002).

The mountain quail is the largest North American quail north of Mexico (Gutierrez and Delehanty 1999). Males are slightly larger than females (264 to 308 millimeters (10.5 to 11.5 inches) in length and approximately 235 grams (7.6 ounces) in weight), but size is not a reliable indicator of sex. The sexes are monomorphic (similar in appearance). An adult's plumage consists of white side bars and a chestnut throat-patch with black, below a brilliant slate-blue head and neck. The mountain quail also has a long slender straight head plume composed of two feathers.

Mountain quail occur in shrub-dominated communities that vary across habitat types throughout the range of the species (Vogel and Reese 1995, Gutierrez and Delehanty 1999). These habitats include chaparral, mixed desert scrub of the Mojave Desert, and early successional-stage shrub vegetation following fire, logging, and other disturbances. In the drier eastern portions of its range, mountain quail are normally found in steeper slope areas along riparian corridors consisting of mountain and riparian shrub communities. Within all habitat types, mountain quail are notable for their seasonal migrations between breeding and wintering areas (Vogel and Reese 1995, Delehanty 1997). These migrations vary from significant altitudinal migrations of up to 80 kilometers (50 miles) among populations that summer at high elevation (*i.e.*, Sierra Nevada, Cascade Range), to short altitudinal movements in low-elevation coastal areas to escape winter snows.

On the basis of several food habit studies summarized by Vogel and Reese (1995) and Gutierrez and Delehanty (1999), we know that mountain quail eat primarily plant material throughout the year. Invertebrate animal matter makes up approximately 0 to 5 percent of the diet, although young mountain quail up to 8 weeks of age eat up to 20 percent animal matter (ants, beetles, and other invertebrates). Plant material consumed includes perennial seeds, fruits, flowers, and leaves, annual forbs and legumes, and mushrooms. Gutierrez (1980) describes the mountain quail as a "sequential specialist" that concentrates on food resources as they become seasonally available and abundant. The species uses diverse food-capturing methods, including digging for subterranean bulbs of some plants (*e.g., Lithophragma spp., Brodiaea* spp.), and climbing shrubs and trees for fruits and seeds.

Similar to other quail species, mountain quail are able to breed at 1 year of age, although reproduction is dependent upon the condition of breeding birds and is strongly influenced by winter/spring rainfall. Pair formation is thought to occur during late winter and early spring with nesting normally occurring from March to July, depending upon local climate, altitude, and latitude (Gutierrez and Delehanty 1999). Both male and female form incubation patches. Mountain quail are unique in that females often lay two clutches averaging 11 to 12 eggs, with male birds incubating the first clutch and females the second. This phenomenon is termed simultaneous multi-clutching (Delehanty 1997). The incubation period averages 24 days (range 23 to 25 days) and estimates of nest success from a limited number of studies averaged over 55 percent (Vogel and Reese 1995). Substantial evidence suggests that males incubate and then brood recently hatched young (Delehanty 1997, Pope 2002). Many mountain quail coveys are assumed to be family groups comprised of adults and juveniles that remain together until the next year's breeding season.

Mountain quail are presumed to be short-lived and subject to high levels of predation similar to other New World quail. On the basis of limited data, sex ratios are assumed to be nearly 1:1 for adults (Vogel and Reese 1995). Because mountain quail inhabit dense habitats and rugged terrain, populations can vary annually. Population surveys are difficult to conduct, and long-term population size and density studies are lacking. Data from the few studies conducted over the years have revealed mountain quail densities ranging from 9 to 54 birds/100 hectares (ha) (9 to 54 birds/247 acres (ac)) at four study sites in northern California, 21 birds/100 ha (21 birds/247 ac) in coastal California, and 30 birds/100 ha (30 birds/247 ac) and 28 birds/100 ha (28 birds/247 ac) on Klamath Mountains and Sierra Nevada sites, respectively (as summarized by Vogel and Reese 1995).

Accipiters, particularly Cooper's hawk (Accipiter cooperi), sharp-shinned hawk *(Accipiter striatus)*, and the northern goshawk *(Accipiter gentilis)*, are major predators of adult and young mountain quail (Gutierrez and Delehanty 1999, Vogel and Reese 2002). Other known predators include great horned owl *(Bubo virginianus)*, coyote *(Canis latrans)*, bobcat *(Lynx rufus)*, gray fox *(Urocyon cinereoargenteus)*, and rattlesnake (*Crotalus* spp.). Significant predation occurs on chicks during several days following hatching and when coveys are limited to habitats near water (Vogel and Reese 1995).

Rangewide, mountain quail are distributed in five western states,

including California, Washington, Oregon, Nevada, and Idaho, as well as Baja Norte, Mexico (Gutierrez and Delehanty 1999, Crawford 2000). They are also found in small disjunct populations as introduced birds on Vancouver Island, British Columbia, and on several islands within the San Juan Islands of Washington (Vogel and Reese 1995, Gutierrez and Delehanty 1999). Vogel and Reese (1998) quote R.D. Mallette (date unknown) that in the early 1970s, mountain quail were "widely distributed over approximately 45 percent of the state [California] in suitable habitat in the mountainous areas from Mexico to the Oregon borders." Within the United States, California contains the largest populations and the widest distribution of this species. Mountain quail are legally hunted in many counties of California (California Department of Fish and Game 2002).

In Nevada, the historic range of mountain quail in the Great Basin is poorly understood, with very little information available on their native distribution (Vogel and Reese 1995, Gutierrez and Delehanty 1999, Crawford 2000). Several authors, quoted by Vogel and Reese (1995), reported that mountain quail were common on both slopes of the Sierra Nevada mountains (including Nevada) in the 1920s and "a sparse resident in the mountainous areas of western Nevada." Guitierrez and Delehanty (1999) report that mountain quail occupy spur ranges of the eastern Sierra Nevada Range in western Nevada and are found in the higher foothill areas to the Sierra Crest where suitable habitat occurs. They also occur as small, scattered populations in the "Toiyobe, Desatoya, Jackson, and Santa Rosa Ranges of northern Nevada." In addition, Vogel and Reese (2002) present anecdotal evidence of mountain quail releases in the State, beginning in the 1870s and continuing into the 1930s or early 1940s.

Since the 1940s, hunter surveys and harvest reports indicate that populations have undergone local extinctions throughout their historic range in Nevada (Brennan 1994). From the 1950s to the 1980s, extensive range fires, invasive plants, reservoir construction, and livestock overgrazing have impacted or eliminated large areas of mountain quail habitat and as a consequence, mountain quail numbers and distribution have declined in many areas of Nevada. However, based on recent Nevada Division of Wildlife (NDOW) surveys, mountain quail have remained stable in the eastern Sierra Nevada mountains of Nevada (Vogel and Reese 2002). Since 1986, NDOW has released mountain quail into areas that they believe historically supported mountain quail, currently contain mountain quail, and/or sustain suitable habitat. From 1986 to 2002, a total of 1,293 birds have been translocated to Nye, Churchill, Pershing, Washoe, Elko, and Lander counties in Nevada (Vogel and Reese 2002). All of these mountain quail were captured from outside the petitioned DPS at the China Lakes Naval Air Weapons Station in the Mojave Desert of California (Vogel and Reese 2002).

In Idaho, general information regarding the native distribution of mountain quail is ambiguous, although some evidence suggests mountain quail were present prior to European settlement. Three studies cited in Vogel and Reese (2002) describe possible archeological evidence of mountain quail in Idaho prior to the 1800s. Gruhn (1961) documented one specimen of mountain quail from bones in Wilson Butte Cave, Jerome County, south-central Idaho; Murphey (1991) reported a possible mountain quail pictograph found at the Jarbidge rock site, Jerome County, southwestern Idaho; and Rudolph (1995) identified mountain quail bones from the Hetrick site in the Weiser River Valley, Washington County. The pictograph is an abstract rendition that portrays a gallinaceous-like bird with prominent barring on the side of the body, heavy bill and feet, and top-knot, which is short and curved over the top of the head as in California quail (*Callipepla californica*) (Crawford 2000). The mountain quail bone material was identified using comparative techniques of bones known to be mountain quail. The possible mountain quail bone material collected from these two archaeological sites may be positively verified by protein synthesis analysis and dated using radiometric techniques (Miller, Faunal Analysis and CRM Services, pers. comm. 2002). Crawford (2000) suggests that these birds may represent remnant populations from Pleistocene glaciation.

Today, mountain quail in Idaho occur at the extreme northeastern edge of their range-wide distribution. Mountain quail were translocated successfully in Idaho beginning in the late 1800s (Crawford 2000, Vogel and Reese 2002). For example, as summarized by Crawford (2000), mountain quail were translocated to Kootenai County using birds captured from western Washington in 1897. Other mountain quail were translocated to Ada, Owyhee, and Lincoln counties in the 1920s, although the origin of these birds is generally unknown. Mountain quail were present in the 1930s throughout the central and southwestern areas of Idaho (Vogel and Reese 1998). In the 1950s, they were still found along riparian areas in central and southwestern Idaho, but overall numbers had declined since the 1930s, particularly in Nez Perce and Latah counties. Various causes of decline have been identified. Vogel and Reese (1998) cited a paper by T.B. Murray (1938) that suggested that drought and habitat alterations reduced mountain quail numbers by more than 50 percent in western Idaho, and that suitable food and cover were also reduced by more than 50 percent from the turn of the century until the 1930s.

During the 1980s, numbers declined steadily, and the only remaining populations that exist now are in the lower Salmon and Snake River drainages and the foothill and mountain areas of the Boise River drainage (Robertson 1989). Although mountain quail have been infrequently sighted in these areas since the 1980s, recent mating call surveys in several areas of the Boise River drainage found no evidence of their presence (Kniesel 2002). The hunting season for mountain quail in Idaho was closed in 1984.

The first recorded information on mountain quail in Oregon was of a specimen collected in 1806 by Reubin Field, a member of the Lewis and Clark expedition (Jackle *et al.* 2002, Pope 2002). During the same expedition, two other mountain quail were collected near Rooster Rock State Park, Multnomah County, along the Columbia River. Mountain quail translocations began as early as 1860 in the Pacific Northwest, with one reference that all mountain quail in the Willamette Valley of Oregon resulted from introductions (Crawford 2000). These translocations, combined with natural and subsequent movement patterns, may have accounted for more recent (post-1900) distributions of mountain quail in many parts of eastern Oregon and into western Idaho (Jackle *et al.* 2002). Vogel and Reese (1995) reported that historically mountain quail occupied more extensive areas in Oregon than they did in the early 1900s, primarily because of the "open burns and logged-over areas that have replaced enormous areas of the original dense forest of the Pacific Northwest." Recently logged areas in the Cascades, Coast Range, and Klamath mountains provide excellent shrub habitat for mountain quail and may have allowed some populations on the west slope of the Cascades to expand their range (Vogel and Reese 1995). Gabrielson and Jewett (1940), as referenced by Vogel and Reese (1995), reported mountain quail in suitable

habitat throughout the Coast and Cascade Ranges and the Rogue, Umpqua, and Willamette valleys of western Oregon. In contrast, populations in eastern Oregon occupy riparian shrub habitats that have declined from historic levels. Current data indicate that mountain quail are found in low densities in Union, Wallowa, Wasco, and Wheeler counties, and are moderately abundant in Crook, Deschutes, Grant, Jefferson, and Klamath Counties (Vogel and Reese 2002).

Crawford (2000) concludes that the distribution and abundance of mountain quail remained relatively constant during the mid-twentieth century throughout Oregon. But within the past 25 years, populations outside of the early historic distribution have suffered substantial declines, whereas populations in the Coast and Cascade Ranges of Oregon continue to remain abundant. These downward trends in populations have prompted Pope (2002) and Jackle *et al.* (2002) to undertake comparative studies by of populations found west of the Cascade Crest (which are stable or abundant) with populations found in central and eastern Oregon. Both studies have demonstrated that an effective restoration effort for mountain quail is feasible using wild birds trapped in western Oregon and released in central and eastern Oregon. However, translocations programs will be more effective when evaluated through post-release monitoring. Oregon still maintains a hunting season in western and northeastern Oregon for mountain quail.

In Washington, following translocations of mountain quail from the 1860s to the early 1900s, historical accounts reported mountain quail west of the Cascade Mountains and in the Blue Mountains in southeastern Washington (Crawford 2000). Mountain quail are currently found throughout portions of western Washington with the strongest population found on the Olympic Peninsula (Washington Department of Wildlife (WDW) 1993; Ware, Washington Department of Fish and Wildlife, pers. comm. 2002). They have been recorded in the past in Mason, Kitsap, Pierce, King, Thurston, Clark, Skamania, Garfield, Columbia, Asotin, and Walla Walla Counties, although the precise delineation of the species's distribution is poorly understood (WDW 1993) and they may be extirpated from Asotin, Garfield, and Columbia Counties (Ware pers. comm. 2002). As noted in Crawford (2000), translocations also took place on Whidbey Island, San Juan Island, and elsewhere in Washington.

Little evidence suggests that mountain quail were native to Washington (WDW 1993, Vogel and Reese 1995). Vogel and Reese (1995), in their research on the topic of native status, found that many authors believed that the Columbia River was the northern limit of the species' range, and that mountain quail were introduced to Washington. Birds from multiple sources were translocated into Washington resulting in mixing of various subspecies. Current distributions in western Washington have remained stable, but populations in eastern Washington have been in a severe decline, as reported by Vogel and Reese (2002). Washington maintains a hunting season for mountain quail in the western part of the State only.

The petitioners requested that we list those populations of mountain quail east of the Cascade Crest and Sierra Mountain Ranges within Washington, Oregon, Idaho, and Nevada as a threatened or endangered DPS of the species under the Act. Under our DPS policy (61 FR 4722; February 7, 1996), we use three elements to assess whether a population under consideration for listing may be recognized as a DPS: (1) A population segment's discreteness from the remainder of the taxon; (2) the population segment's significance to the taxon to which it belongs; and (3) "[t]he population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment, when treated as if it were a species, endangered or threatened?)." If we determine that a population being considered for listing may represent a DPS, then the level of threat to the population is evaluated on the basis of the five listing factors established by the Act to determine if listing it as either threatened or endangered may be warranted.

A population segment of a vertebrate species may be considered discrete if it satisfies either of the following conditions. The first condition is whether the species' population is markedly separated, or isolated, from other populations of the same taxon "as a consequence of physical, physiological, ecological, or behavioral factors." When these four factors are evaluated, "[q]uantitative measures of genetic or morphological discontinuity may provide evidence of this separation." The second condition, which does not apply here, is whether the population segment be "delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act."

In determining the discreteness, or isolation, of mountain quail populations found within the proposed DPS, one of the factors we consider is physical separation from the rest of the taxon. The petitioners did not provide substantial information, either through text description, map attachments, or references in the petition, to demonstrate that the populations of mountain quail along the western border of the proposed DPS are physically isolated from nearby eastern populations in Oregon and Nevada.

Although mountain quail are associated with separate locations within the proposed DPS on a landscape consisting of various mountain ranges and intervening valleys, they are able to move between these areas (Gutierrez and Delehanty 1999; Pope, Oregon State University, pers. comm. 2002). No physical barrier appears to exist that would preclude the movement of birds across this landscape and hypothetical boundary separating the petitioned and non-petitioned areas and prevent mountain quail populations from intermixing. For example, the current distribution of mountain quail, as depicted in the petition, shows contiguous distribution between California and Nevada, and also between Oregon and California. Exceptions to this continuity exist: some populations in the extreme eastern range of mountain quail are presently disjunct from natural exchange with mountain quail outside the petitioned area. For example, current distributions of mountain quail are disjunct in some areas of Idaho and northern Nevada. However, when we consider the proposed DPS boundaries as delineated by the petitioners, there is a blend of both disjunct populations and continuous population areas that do not meet the discreteness standard under our DPS policy.

Further complicating the question of discreteness is the documented translocation of mountain quail from areas outside and within the proposed DPS geographical area during the past 130 years (Vogel and Reese 1995, 1998; Jobanek 1997; Crawford 2000; Jackle *et al.* 2002). Crawford (2000) in his review of the subject found documented releases of mountain quail in western Idaho and throughout Oregon and Washington. Vogel and Reese (2002) in their review of Nevada found anecdotal evidence that "sportsmen, ranchers, and miners released mountain quail across the state beginning in the 1870s and continuing to the 1930s or early 40s." In their review of the distribution of 18

species of gallinaceous birds of North America, Aldrich and Duvall (1955) noted that mountain quail were native to the Pacific coastal region of the extreme western United States. They state that mountain quail were established after introductions into the mountains of eastern Washington, western Idaho, eastern Oregon, and central Nevada.

During the past 20 years, information addressing translocations of mountain quail by State agencies has been better documented than it had been in prior years. For example, a total of 1,293 mountain quail have been released in Nevada counties, including Nye, Churchhill, Pershing, Washoe, Elko, and Lander, since 1986 (Vogel and Reese 2002). All birds were captured at the China Lakes Naval Weapons Station, Mojave Desert, California, an area that is outside and west of the proposed DPS geographical area. In Oregon, 75 mountain quail were captured in the western Cascade Mountain Range of southwestern Oregon and translocated into northeastern Oregon between 1997 and 1999, partly to assess breeding range movements of both resident and translocated mountain quail (Pope 2002). Additionally, a total of 209 mountain quail were translocated to three separate locations in central Oregon in 2001 using birds that were captured in western Oregon (Jackle *et al.* 2002) as part of a restoration plan.

The DPS policy states that genetic information may be used to provide evidence of separation. The numerous historic and recent translocation efforts as discussed above may have lead to genetic homogenization of mountain quail. Assessing evidence of genetic separation among either historic or current populations of mountain quail is likely to be complicated by past translocation efforts. No comprehensive genetic evaluation for discreteness of mountain quail rangewide or within in the proposed DPS is currently available. Also, the petitioners submit that the genetic differentiation of mountain quail subspecies or populations has not been adequately tested, and refer to unpublished preliminary data that indicate no genetic differences exist among mountain quail in western North America (Kavanaugh *et al.* 2000).

Additionally, in evaluating information regarding translocations, it is difficult to discern which are introductions, reintroductions, or supplementations of existing mountain quail populations. "Introduction" has been used to define the release of a species in a new range, "reintroduction" refers to release of a species into historical range that is no longer inhabited by that species, and "supplementation" is release of the species into currently inhabited range (Vogel and Reese 2002). Given the history of translocations of mountain quail, it is currently difficult to clearly identify the historical native range of the species. The petitioners make no attempt to distinguish between the species' potential native or introduced ranges.

Two other factors to consider with regard to discreteness or isolation of a population are the behavioral and morphological aspects. Delehanty (1997) initiated a study to determine behavioral differences and similarities in male and female mountain quail. He also examined and was successful at developing a method to determine genetic detectability of sex using microsatellite fragments from undegraded DNA. He concluded that many behavioral displays are universal among both sexes of mountain quail, while some are particular only to males. These behaviors were observed by Delehanty (1997) in captive-reared birds and in wild populations at sites in the eastern Sierra Nevada of east central California, western Nevada, and in the Mojave Desert of southern California. He further confirmed the monomorphic plumage and size characteristics of mountain quail from known geographical places. The study served to demonstrate that behavioral and morphological aspects are not limiting factors in reproduction when translocation is considered. These conclusions were further confirmed by Pope and Crawford (2001) in controlled studies of wild populations of mountain quail when 75 birds were translocated from the Cascades of southwestern Oregon to Hells Canyon National Recreation Area in northeastern Oregon. The petitioners did not provide evidence to document whether mountain quail within the proposed DPS exhibit any unique behavioral or morphological traits. No information is presented in the petition, nor is any available in Service files, to indicate that any physical, genetic, behavioral, morphological, physiological, or ecological differences between mountain quail that occur in the proposed DPS and those found outside of it.

In summary, to make a DPS determination, we examined the physical, physiological, ecological, and behavioral factors and considered the complicating nature of past translocation efforts. Since there are no international government boundaries of significance, this condition for a finding of discreteness was not considered in reaching this determination. Neither the information presented in the petition nor that available in Service files presents substantial scientific or commercial information to demonstrate that the DPS, as proposed for mountain quail by the petitioners, is discrete from the remainder of the taxon. Accordingly, we are unable to define a listable entity of mountain quail within those areas of Washington, Oregon, Idaho, and Nevada as described in the petition. Therefore, we did not address the second element for determining a DPS, which is the potential significance of discrete populations of mountain quail to the remainder of the taxon. Finally, since no DPS of mountain quail can be defined at this time, we did not evaluate its status as endangered or threatened on the basis of either the Act's definitions of those terms or the factors in section 4(a) of the Act.

Petition Finding

We have reviewed the petition, obtainable literature cited in the petition, other pertinent literature, and information available in Service files, and we have consulted with State and Federal agency biologists. After our review, we find the petition does not present substantial information to indicate that the petitioned action is warranted. This finding is based on the following: (a) Insufficient information exists to enable us to determine whether the mountain quail in the proposed DPS are separated from other mountain quail throughout the range of the taxon; (b) complicating information about past translocations of mountain quail currently precludes clearly determining the native historical distribution of the species; and (c) evidence is insufficient to demonstrate that genetic, morphological, ecological, or behavioral differences exist among extant mountain quail populations.

References Cited

A complete list of all references cited herein is available upon request from the Snake River Basin Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary author of this notice is Rich Howard, U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office (see **ADDRESSES**).

Authority:

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 10, 2003.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 03–1283 Filed 1–21–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 14

Wednesday, January 22, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Renewal of the Advisory Committee on Voluntary Foreign Aid

AGENCY: United States Agency for International Development.

ACTION: Notice of renewal of advisory committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Administrator has determined that renewal of the Advisory Committee on Voluntary Foreign Aid for a two-year period, beginning January 22, 2003, is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Noreen O'Meara, (202) 712–5979

Dated: January 16, 2003.

Noreen O'Meara,

Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 03–1358 Filed 1–21–03; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Motor Vehicles; Alternative Fuel Vehicle (AFV) Report

AGENCY: Departmental Administration, USDA.

ACTION: Notice of Availability—Fleet (AFV) Report.

SUMMARY: In accordance with the Energy Policy Act of 1992 (EPAct) (42 U.S.C. 13211–13219) as amended by the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388), and Executive Order (EO) 13149, "Greening the Government Through Federal Fleet and Transportation Efficiency," the Department of Agriculture's annual alternative fuel reports are available on the following Department of Agriculture Web site; *http://www.usda.gov/energyandenvironment/alternative.html*

FOR FURTHER INFORMATION CONTACT: James Michael, Jr., (202) 720–8616.

Dated: January 8, 2003.

Lou Gallegos,

Assistant Secretary, Departmental Administration.

[FR Doc. 03–1342 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–00–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–03–02]

Notice of Request for Emergency Approval of a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments; extension of comment period.

SUMMARY: On November 21, 2002, the Agricultural Marketing Service (AMS) published a "Notice of Request for Emergency Approval of a New Information Collection" in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This notice announced that AMS was requesting emergency approval from the Office of Management and Budget (OMB) for the new information collection, "Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Agricultural Marketing Act of 1946." AMS is extending the comment period to February 21, 2003, because several industry trade organizations requested additional time to file comments. A closing date is necessary for burden comments in order to receive OMB emergency approval.

DATES: Comments must be received by February 21, 2003.

ADDRESSES: Send written comments to: (1) Country of Origin Labeling Program, Agricultural Marketing Service, USDA, STOP 0249, Room 2092–S, 1400 Independence Avenue, SW., Washington, DC 20250–0249, or fax to (202) 720–3499, or send by e-mail to *cool@usda.gov;* (2) Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503, Attention: Desk Officer; and to (3) Clearance Officer, USDA–OCIO, Room 404–W, Jamie L. Whitten Building, STOP 7602, 1400 Independence Avenue, SW., Washington, DC 20250–7602.

All comments will become a matter of public record. Comments will be available for public inspection from the Agricultural Marketing Service (AMS) at the above address and over the Agency's Web site at: *http://www.ams.usda.gov/cool/.*

FOR FURTHER INFORMATION CONTACT: Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, by phone on: (202) 690–0262, or via e-mail at: *eric.forman@usda.gov;* or William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, by phone on: (202) 720–5705, or via e-mail at: *william.sessions@usda.gov.* Additional information may also be obtained over the Agency's Web site at: *http://www.ams.usda.gov/cool/.*

SUPPLEMENTARY INFORMATION: On November 21, 2002, the Agricultural Marketing Service published a notice and request for comments in the **Federal Register** (67 FR 70205), entitled, "Notice of Request for Emergency Approval of a New Information Collection," in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This notice outlined the Agency's estimates of the burden on respondents relating to the notice published in the **Federal Register** (67 FR 63367) on October 11, 2002, entitled, "Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts under the Agricultural Marketing Act of 1946" (7 U.S.C. 1621 *et seq.*). Submissions concerning any information related to the implementation of these "Voluntary Guidelines" may still be submitted through April 9, 2003.

The comment period for the "Notice of Request for Emergency Approval of a New Information Collection" was originally scheduled to end on January 21, 2003. However, several industry trade organizations requested additional time to study the notice to develop more meaningful comments. Although a closing date for burden comments is needed to receive emergency OMB approval of the new collection, AMS has determined that there is sufficient

justification for extending the comment period 30 days until February 21, 2003.

Dated: January 16, 2003.

A.J. Yates,

Administrator.

[FR Doc. 03–1432 Filed 1–17–03; 2:27 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–02–19]

Beef Promotion and Research: Certification and Nomination for the Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State cattle producer organizations or associations and general farm organizations, as well as cattle or beef importer organizations, who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for certification must be received by close of business February 21, 2003.

ADDRESSES: Certification form as well as copies of the certification and nomination procedures may be requested from Kenneth R. Payne, Chief; Marketing Programs Branch, LS, AMS, USDA; STOP 0251–Room 2638-S; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. The form may also be found on the Internet at *http://www.ams.usda.gov/lsg/mpb/beef/ls25.pdf.*

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch on 202/720–1115.

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*), enacted December 23, 1985, authorizes the implementation of a Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The current Board consists of 100 cattle producers and 8 importers appointed by USDA. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that USDA shall either certify or otherwise determine the eligibility of State cattle producer organizations or associations and general farm organizations, as well as any importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Persons who are individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of USDA that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order [7 CFR 1260.143(b)(2)]. Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process, including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557) and currently appear at 7 CFR § 1260.500 through § 1260.640. Organizations which have previously been certified to nominate members to the Board do not need to reapply for certification to nominate producers and importers for the upcoming vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of 3 years. The Order also requires USDA to announce when a Board vacancy does or will exist. The following States have one or more members whose terms will expire in early 2004:

State or unit	Number of Vacancies
Arizona	1
California	2
Colorado	1
Iowa	2
Kansas	2
Louisiana	1
Michigan	1
Minnesota	1
Mississippi	1
Missouri	1
Nebraska	2
Nevada	1
New Mexico	1
North Carolina	1
Oklahoma	1
South Dakota	2
Tennessee	1
Texas	4
Utah	1
Wisconsin	2
Wyoming	1
Importer Unit	2
Mid-Atlantic Unit	1
Northeast Unit	1
Southeast Unit	1

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northwest unit, nominations will not be solicited from certified organizations or associations in those States or units.

Uncertified eligible producer organizations and general farm organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official "Application for Certification of Organization or Association," which must be received by close of business February 21, 2003. Uncertified eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR § 1260.540(b). Applications from States or units without vacant positions on the Board and other applications not received within the 30-day period after publication of this Notice in the **Federal Register** will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR § 1260.530 are eligible for certification. Those criteria are:

(a) For State organizations or associations:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit,

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit,

(3) There must be a history of stability and permanency, and

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by USDA as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (*i.e.*, beef or cattle importers, etc.),

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle,

(3) The stability and permanency of the importer organization or association,

(4) The number of years in existence, and

(5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those that were previously certified in the States or units having vacant positions on the Board, will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and background information sheets.

The names of qualified nominees received by the established due date will be submitted to USDA for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., Chapter 35 and have been assigned OMB No. 0581–0093, except Board member nominee information sheets are assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: January 15, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–1341 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Public Hearing on New Entrant's 2003 Crop Cane Sugar Marketing Allotment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of public hearing.

SUMMARY: The Commodity Credit Corporation (CCC) will hold a public hearing to receive comments on providing an allocation to a new entrant processor and allotment to a new entrant State and possible impacts on existing cane processors and producers. CCC will also receive comments on the evidence CCC should require from a new entrant to demonstrate eligibility for a marketing allocation.

DATES: The public hearing will be held January 29, 2003, in the Jefferson Auditorium of the U.S. Department of Agriculture (USDA) South Building, 1400 Independence Ave, SW, Washington, DC. The hearing will start at 10:00 a.m. Eastern Standard Time (EST).

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW, STOP 0516, Washington, DC 20250B0516; telephone (202) 720B4146; FAX (202) 690B1480; e-mail: *barbara.fecso@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: USDA will hold a public hearing as requested by sugarcane producers and processors regarding the application of the Arizona Sugar Factory, L.L.C., for a cane sugar marketing allocation for the 2003 crop year. The Arizona Sugar Factory is requesting a 2003-crop year allocation of 10,000 short tons, raw value, and an increase to 50,000 short tons, raw value, for the 2005 crop. The new processor will be located in California, a State that currently has no allotment (*i.e.*, a new entrant State).

Section 359d(b)(1)(E) of the Agricultural Adjustment Act of 1938, as amended, authorizes CCC to provide a sugarcane processor, who begins processing after May 13, 2002, an allocation that provides a fair, efficient, and equitable distribution of the allocations from the allotment for the State in which the processor is located. To make an allocation to a processor in California, the Secretary will have to provide California with an allotment. CCC considers the adverse effects on existing cane processors and producers when determining whether a new entrant processor allocation and new entrant State allotment are warranted. Also, prior to the promulgation of the 2003-crop marketing allotments, the Arizona Sugar Factory must provide satisfactory evidence that it has a viable processing facility, an adequate sugarcane supply, and a market for the cane sugar product. If approved, the new California allotment will be subtracted, on a pro rata basis, from the allotments otherwise provided to each mainland State when the 2003 crop allotments are determined by USDA.

CCC will use this forum to collect comments on (1) any adverse effects that the provisions of an allocation to the Arizona Sugar Factory, L.L.C., and an allotment to California may have on existing cane processors and producers, and (2) the evidence CCC should require from a new entrant to demonstrate the ability to process, produce, and market raw cane sugar. Attendance is open to interested parties.

The hearing will be held on January 29, 2003, from 10:00 a.m. to 2:00 p.m. EST in the Jefferson Auditorium of USDA South Building, 1400 Independence Ave., Washington, DC.

Anyone wishing to make an oral statement may do so, time permitting. Comments will be limited to 5 minutes. A signup sheet for oral statements will be available at the entrance of the Jefferson Auditorium one hour before the hearing begins. Oral statements will be made in the order the request was received. Anyone wishing to make a written statement in lieu of an oral statement should send their statement to Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW, STOP 0516, Washington, DC 20250'0516; Telephone: (202) 720'4146; Fax: (202) 690'1480; e-mail: *barbara.fecso@usda.gov.* Statements must be received by close of business on January 29, 2003.

Persons with disabilities who require special accommodations to attend or participate in the meeting should contact Barbara Fecso.

Signed in Washington, DC on January 10, 2003.

James R. Little,

Executive Vice President, , Commodity Credit Corporation.

[FR Doc. 03–1340 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, January 27, 2003. The meeting will include routine

business and discussion and review of submitted project proposals.

DATES: The meeting will be held January 27, 2003, from 4 p.m. until 7 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 13, 2003.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 03–1275 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Status of Project Proposals, (5) Revised Tracking Form/ Possible Action, (6) Historic Library, (7) Project Status, (8) Update on Absent Members, (9) How to Solicit Projects, (10 General Discussion.

DATES: The meeting will be held on January 27, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisory's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; E-MAIL *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 24, 2003 will have opportunity to address the committee at those sessions.

Dated: January 15, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–1296 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a town hall meeting of the Vermont Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m. on Friday, February 14, 2003, at the six Vermont Interactive Television sites located in (1) Colchester (76 King Street, Colchester, Vermont 05446), (2) Brattleboro (185 Main Street, P.O. Box 6308, Brattleboro, Vermont 05302), (3) Newport (North Country Union High School, Veterans Avenue, Newport, Vermont, 05061), (4) Randolph Center, Vermont Technical College, Randolph Center, Vermont 05061), (5) Rutland (Stafford Technical Center College 8 Stratton Road, Rutland, Vermont), and (6) St. Albans (North Building, Bellows Free Academy, P.O. Box 1578, St. Albans, Vermont 05478). The Advisory Committee will hold a town meeting with public agency officials, educators, and community leaders to discuss efforts to address racism and harassment of minorities in Vermont public schools and communities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 13, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–1338 Filed 1–21–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with our regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: January 22, 2003.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Porcelain-on-Steel Cooking Ware from the People's Republic of China.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 2003.

	Period to be Reviewed
Antidumping Duty Proceedings	
Argentina: Honey A–357–812	5/11/01–11/30/02
Asociacion de Cooperativas Argentinas	
Centauro S.A.	
Cia. Europeo Americana SA	
Comexter Robinson S.A.	
Compa Inversora Platense S.A.	
Compania Apicola Argentina SA	
ConAgra Argentina S.A.	
Coope-Riel Ltda.	
Cooperativa DeAgua Potable y Otros	
Establecimiento Don Angel S.r.L.	
Food Way, S.A.	
Francisco Facundo Rodriguez	
Jay Bees	
Jose Luis Garcia	
HoneyMax S.A.	
Mielar S.A.	
Navicon S.A.	
Nexco S.A.	
Parodi Agropecuaria S.A.	
Radix S.r.L.	
Seylinco S.A.	
Times S.A.	
Transhoney S.A.	
Brazil: Silicomanganese, A–351–824	12/1/01–11/30/02
SIBRA-Electrosiderurgica Brazileira S.A.	
Compania Paulista De Ferro-Ligas-Ligas	
India: Certain Hot-Rolled Carbon Steel Flat Products, A–533–820	5/3/01–11/30/02
Essar Steel Ltd.	
Tata Iron ad Steel Company, Ltd.	
India: Stainless Steel Wire Rod, A–533–808	12/1/01–11/30/02
Isibars Steel	
Mukand, Limited	
Panchmahal Steel Limited	
The Viraj Group, Ltd.	
The People's Republic of China: Certain Cased Pencils,[1] A–570–827	12/1/01–11/30/02
Anhui Import/Export Group Corporation	
Beijing Light Industrial Products Import/Export Corporation	
China First Pencil Company, Ltd.	
China National Light Industrial Products Import & Export Corp. (all branches)	
Dalian Light Industrial Products Import/Export Corporation	
Guangdong Stationary & Sporting Goods Imports & Export Co., Ltd.	
Liaoning Light Industrial Products Import/Export Corporation	
Laizhou City Guangming Pencil-Making Co., Ltd.	
Orient International Holding Shanghai Foreign Trade Co., Ltd.	
Qingdao Light Industrial Products Import/Export Corporation	
Shandong Light Industrial Products Import/Export Corporation	
Shandong Rongxin Import & Export Company Ltd. (formerly called Kaiyuan Group Group Corporation)	
Sichuan Light Industrial Products Import/Export Corporation	
Tianjin Customs Wood Processing Co., Ltd.	
The People's Republic of China: Honey,[2] A–570–863	5/11/01–11/30/02
Anhui Native Produce Import & Export Corp.	
Henan Native Produce and Animal By-Products Import & Export Co.	
High Hope International Group Jiangsu Foodstuffs Import & Export Corp.	
Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import & Export Corp.	
Kunshan Foreign Trade Company	
Shanghai Eswell Enterprise Co., Ltd.	
Shanghai Xiuwei International Trading Co., Ltd.	
Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd.	
Wuhan Bee Healthy Company, Ltd.	
Zhejiang Native Produce and Animal By-Products Import & Export Corp.	
The People's Republic of China: Porcelain-on-Steel Cooking Ware,[3] A–570–506	12/1/01–11/30/02
Clover Enamelware Enterprise, Ltd.	
Lucky Enamelware Factory, Ltd.	
Countervailing Duty Proceedings	
Argentina: Honey,[4] C–357–813	1/1/01–12/31/01
India: Certain Hot-Rolled Carbon Steel Flat Products, C–533–821	1/1/01–12/31/01
Essar Steel Ltd.	
South Africa: Certain Hot-Rolled Carbon Steel Flat Products, C–791–810	1/1/01–12/31/01
Iscor Ltd.	
Saldanha Steel Ltd.	

	Period to be Reviewed
Suspension Agreements	
None.	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of certain cased pencils from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of honey from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of porcelain-on steel cooking ware from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] In the countervailing duty investigation of Honey from Argentina, the Department solicited information from the Government of Argentina (GOA) on an aggregate or industry-wide basis in accordance with section 777A(e)(2)(B) of the Act, rather than from individual producers and exporters, due to the large number of producers and exporters of Honey in Argentina. *See Final Affirmative Countervailing Duty Determination: Honey from Argentina*, 66 FR 50613–01 (October 4, 2001). In accordance with section 351.213(b) of the regulations, the GOA and the petitioners have requested an administrative review of this countervailing duty order. No individual exporters requested the review pursuant to section 351.213(b) of the regulations. Accordingly, the Department will be conducting the review of this order on an aggregate basis.

The GOA has requested that the period of review for this review be extended to include not only calendar year 2001 but also calendar year 2002. We are initiating this review for calendar year 2001, however, we are actively considering this request, and we will solicit comments from interested parties on this issue. After careful consideration of these comments, we will timely inform parties of our decision.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: January 15, 2003.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 03–1369 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by e-mail at *oetca@ita.doc.gov*. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 02–00005." A summary of the application follows.

Summary of the Application

Applicant: Virginia Apple Growers Association, ("VAGA"), P.O. Box 1163, Richmond, Virginia 23218.

Contact: Richard Gilmore, President/CEO.

Telephone: (703) 684–1366.

Application No.: 02–00005.

Date Deemed Submitted: January 6, 2003.

Members (in addition to applicant): Bowman Fruit Sales, L.L.C., Timberville, VA; Crown Orchard Company, LLP, Batesville, VA; Flippin-Seaman, Inc., Tyro, VA; and Glaize, L.C., Fred L., Winchester, VA.

The proposed Export Trade Certificate of Review would extend antitrust protection to VAGA, and /or one or more of its Members to conduct the following export trade activities:

I. Export Trade

A. Products

1.Fresh Apples: any variety of apples intended for human consumption including but not limited to: Red Delicious, Golden Delicious, Rome, Stayman, York, Winesap, Granny Smith, Jonathan, Red, Gala, Empire, McIntosh, Fuji, Ginger Gold, Braebur, and Cortland.

2. Processed Apples: Includes a variety of apple products used for human consumption; mainly, apple juice, apple cider, applesauce, and apple butter.

B. Export Trade Facilitation Services (As They Relate to the Export of Products)

All export-related services, including, but not limited to, international market research, marketing, advertising, sales promotion, brokering, handling, transportation, common marking and identification, communication and processing of foreign orders to and for Members, financing, export licensing and other trade documentation, warehousing, shipping, legal assistance, foreign exchange and taking title to goods.

II. Export Trade Activities and Methods of Operation

With respect to export trade activities, VAGA and/or one or more of its members may on behalf of and with the advice and assistance of its Members:

1. Participate in negotiations and enter into agreements with foreign buyers (including governments and private persons) regarding:

a. the quantities, time periods, prices, and terms and conditions in connection with actual or potential bona fide export opportunities

b. non-tariff trade barriers in the Export Markets;

2. Establish export prices and allocate export sales among its Members, in connection with actual or potential bona fide export opportunities;

3. Enter into agreements with non-Members, whether or not exclusive, to provide Export Trade Services and Trade Facilitation Services;

4. Negotiate and enter into agreements with providers of transportation services for the export of the Products;

5. Advise and cooperate with the United States and foreign governments in:

a. establishing procedures regulating the export of the Products

b. fulfilling the phytosanitary and/or funding requirements imposed by foreign governments for export of the Products;

6. Establish and operate fumigation facilities and administer phytosanitary protocols to qualify the Products for Export Markets;

7. Communicate and process export orders;

8. Conduct direct sales;

9. Broker or take title to Products acquired from non-Member producers whenever necessary to fulfill specific sales obligations;

10. Operate foreign sales and distribution offices and companies to facilitate the sales and distribution of the Products in the Export Markets;

11. Refuse to deal with or provide quotations to other Export Intermediaries for sales of the Members' Products into the Export Markets;

12. Retain the option for VAGA to be the exporter of record with regard to sales conducted by and through VAGA;

13. Develop internal operational procedures and disseminate information to Members to assist the membership in meeting the criteria necessary for exporting;

14. Receive and (each Member may) supply information as to each Member's actual or intended total export shipments of certified products in any previous or future growing season or seasons. VAGA, through employees or agents of VAGA who are not also employees of a Member, may receive and each Member may supply to such employees or agents of VAGA, information as to such Member's actual or intended total export shipments in any previous growing season or seasons, provided that such information is not disclosed by VAGA to any other Member;

15. Exchange information with and among the Members as necessary to carry out the Export Trade Facilitation Services, Export Trade Activities and Methods of Operation;

16. Provide Export Market entry and development assistance to its Members, including:

a. designing and executing foreign marketing strategies for VAGA's Export Markets

b. designing, developing, and marketing generic corporate labels

c. other related administrative and promotional services;

17. Solicit non-Members to become Members;

18. Recover administrative expenses and costs through fees and assessments allocated to each Member on a pro-rata share basis or any other non-discriminatory method (any Member objecting to the method of allocating expenses and costs will be charged based on actual expenses incurred);

19. Apply for and utilize export assistance and incentive programs, as well as arrange financing through bank holding companies, governmental programs, and other arrangements; and

20. Bill and collect from foreign buyers and provide accounting, tax, legal, and consulting assistance and services.

III. Export Markets

The Export Markets include all parts of the world except the United States, (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Definition

"Export Intermediary" means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

Dated: January 16, 2003.

Vanessa Bachman,

Acting Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–1357 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the North Carolina Coastal Management Program and the Connecticut Coastal Management Program.

These Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the

Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings will be held as part of the site visit.

Notice is hereby given of the dates of the site visits for these evaluations, and the dates, local times, and locations of the public meetings during the site visit.

The North Carolina Coastal Management Program evaluation site visit will be held March 10–14, 2003. Three public meetings will be held during the week. The public meetings will be: On Monday, March 10, 2003, at 6 p.m., at the North Carolina Department of Environment and Natural Resources/Wilmington Regional Office, Conference Room, 127 Cardinal Drive Ext., Wilmington, North Carolina; on Tuesday, March 11, 2003, at 6 p.m., at the Carteret County Courthouse, District Courtroom, Courthouse Square, Beaufort, North Carolina; and Wednesday, March 12, 2003, at 6 p.m., at Manteo Town Hall, Board of Commissioners Meeting Room, 407 Budleigh Street, Manteo, North Carolina.

The Connecticut Coastal Management Program evaluation site visit will be held March 31–April 4, 2003. One public meeting will be held during the week. The public meeting will be held on Wednesday, April 2, 2003, at 7 p.m., at the Department of Environmental Protection Marine Headquarters, Training Room, Building #3, 333 Ferry Road, Old Lyme, Connecticut.

Copies of North Carolina's and Connecticut's most recent performance reports, as well as OCRM's notification and supplemental request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th floor, Silver Spring, Maryland 20910. When each evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the final evaluation findings.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 118.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration

Dated: January 14, 2003.

Alan Neuschatz,

Chief Financial Officer/Chief, Administrative Officer for Ocean Services and Coastal Zone Management.

[FR Doc. 03–1292 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001214351–3009–04]

Dr. Nancy Foster Scholarship Program; Financial Assistance for Graduate Students

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is announcing funding availability for graduate students pursuing masters or doctoral level degrees in oceanography, marine biology, or maritime archaeology through the Dr. Nancy Foster Scholarship Program and is inviting applications for such scholarships. The intent of this program is to recognize outstanding scholarship and encourage independent graduate level research in the above mentioned fields.

DATES: Applications must be received by March 10, 2003 no later than 5 p.m. Eastern Standard Time. Scholarship awards will be announced in July 2003.

ADDRESSES: Applications should be sent to the Dr. Nancy Foster Scholarship Program, Attention: Office of the Assistant Administrator, 13th Floor, National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910. Information on the scholarship program may be obtained from the Web site: *http://fosterscholars.noaa.gov*

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster Scholarship Program, Office of the Assistant Administrator, 13th Floor, National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910 (301–713–3074).

SUPPLEMENTARY INFORMATION:

Authority: The Dr. Nancy Foster Scholarship Program is authorized at 16 U.S.C. 1445c–1 to recognize outstanding scholarship in oceanography, marine biology, or maritime archaeology, particularly by women and members of minority groups, and encourage independent graduate-level research through financial support of graduate studies in such fields.

Catalog of Federal Domestic Assistance: This program is listed under CFDA #11.460, titled Special Oceanic and Atmospheric Projects.

Program Description: The Dr. Nancy Foster Scholarship Program provides support for independent graduate-level studies in oceanography, marine biology, or maritime archaeology, particularly by women and members of minority groups. Gender and minority status is not considered when selecting award recipients. However, special outreach efforts are employed to solicit applications from women and minorities. Scholarship selections are based on financial need, academic excellence, recommendations, and research and career goals. The program is administered through NOAA's National Ocean Service and is funded annually with 1% of the amount appropriated each fiscal year to carry out the National Marine Sanctuaries Act.

Funding Availability: For the 2003–2004 academic year, Dr. Nancy Foster Scholarships may provide, subject to appropriations, support of up to $32,000 per student: a 12-month stipend of $20,000 in addition to a tuition allowance of up to $12,000. A maximum of $64,000 may be provided to masters students (up to two years of support) and up to $128,000 may be provided to doctoral students (up to four years of support). For the 2003–2004 academic year, NOAA expects to award up to five scholarships.

The annual stipend will be paid directly to the scholar. The stipend is intended to defray cost-of-living expenses, and not to support research costs. NOAA anticipates the student and their faculty advisor will secure research funds independent of the scholarship. Tuition and academic fees will be negotiated between the academic institution and the Dr. Nancy Foster Scholarship program manager at NOAA prior to the receipt of funds. This negotiation is intended to leverage scholarship funds and enhance opportunities for scholarship recipients. In those instances in which tuition and academic fees are not totally waived by the academic institution, the tuition allowance in an amount equal to the tuition and fees not waived (but not to exceed $12,000) will be paid directly to the scholar for remittance to the academic institution. If tuition and fees are reduced or waived by the academic institution, then that portion of the

tuition allowance not needed (*i.e.*, up to $12,000 in the case of a total waiver) will be retained by NOAA for future scholarships. No money will be paid directly to the student from the tuition allowance for purposes other than the payment of tuition and fees.

Specific instructions regarding the disbursement, management, and reporting requirements for all stipend and tuition allowance payments will be provided to the scholarship recipients upon selection for the award. The awarding of funds beyond the first year will be based on availability of funds, continued eligibility of the student, periodic certification by the academic institution that adequate academic progress is being made, and compliance with applicable reporting requirements. At its discretion, each academic institution may supplement a scholar's stipend from institutional funds in accordance with the supplementation policy of the institution.

Matching Requirements: There are no matching requirements for an award.

Type of Funding Instrument: Grant.

Eligibility Criteria: Only United States citizens currently pursuing or intending to pursue a masters or doctoral level degree in oceanography, marine biology, or maritime archaeology, including the curation, preservation, and display of maritime artifacts, are eligible for an award under this scholarship program. Prospective scholars do not need to be enrolled, but must be admitted to a graduate-level program in order to apply for this scholarship. Funds will not be released until the applicant provides certification (from the student's institution) supporting the student's acceptance to a graduate program. Studies must be conducted on a full-time basis. Recipients of scholarship awards may be employed at the time of the award if it is a requirement of their degree program or directly related to their research effort. Other forms of employment will not be allowed and scholars will be required to submit a letter certifying that they are in compliance with this requirement. Eligibility must be maintained for each succeeding year of support and annual reporting requirements, to be specified at a later date, will apply.

Award Period: This solicitation applies only to applicants whose studies begin in the fall 2003. Stipends will cover a 12 month period. Masters students may be supported for up to two years, and doctoral students for up to four years.

Indirect Costs: No indirect costs will be paid on this award.

Applications: This notice contains all necessary information and announces a closing date of March 10, 2003 for the submission of applications. Applications must be received March 10, 2003 no later than 5:00 Eastern Standard Time. Scholarship awards will be announced in July 2003.

Applications: Each application must include these following items. Failure to submit these items exactly as described in each section below will disqualify the application from consideration.

(I) General Information Sheet

(II) Statement of Intent

(III) Institute Certification or Letter of Acceptance (for those applicants who are currently enrolled in a graduate program for which support is requested, or who have received acceptance for fall 2003 enrollment in a graduate program for which support is requested)

(IV) Transcripts

(V) Three Letters of Recommendation

(VI) Declaration

I. General Information Sheet

Personal Data: Provide your full name, country of citizenship, current address, permanent address, and home and work telephone numbers. If you can be reached by fax or e-mail, include that information. Optional—for statistical collection purposes only: Indicate your gender, and race or ethnicity.

Degree Sought: State your proposed field of study (oceanography, marine biology or maritime archaeology) and degree type you are seeking (*e.g.*, M.S., M.A., Ph.D). Include the month and year you expect the degree to be awarded. State the name and location of your institution.

Education: List the academic degrees you have received, or expect to receive by the start of your proposed graduate studies for this program, including the date and institution.

Statement of Financial Need: State the estimated amount needed for tuition and fees. List all resources you have available to assist you in your graduate studies (*e.g.*, grants, student loans, scholarships, personal funds). You must be specific. List all resources by date and amount received. Indicate whether the funding source will continue throughout the 2003–2004 school year. Also indicate any work requirements associated with these resources.

II. Statement of Intent

The Statement of Intent is a self-description of your academic, research, and career goals, and how your proposed course of study or research will help you achieve these goals but more importantly, this is your opportunity to present yourself, your beliefs, and your aspirations. Include any background information you believe is pertinent, and provide insight into why you have chosen the goals you are pursuing. This statement should not be a research proposal or scientific abstract. This statement will be used to evaluate you as an individual, not necessarily as a scientist, and your motivation for applying for this scholarship. This statement should demonstrate your organizational, analytical, and written communication skills. The Statement of Intent should be typewritten , single-spaced on a blank sheet of paper, and should not exceed one page in length. Statements longer than one page will not be accepted and will result in the application being disqualified.

III. Institute Certification

A letter from the applicant's institution certifying that the student is enrolled or has been accepted to a graduate program must be submitted with the application. The letter should consist of the following information on school letterhead and be signed by a school official: Name and location of the academic institution, the school and department that you currently are attending or plan to attend, and the month and year your studies will begin if you are not currently enrolled. If you have a graduate advisor, list his/her name, address, telephone and fax numbers, and e-mail address, if available, in the Institute Certification portion of your application. Current transcripts will not be accepted in lieu of Institute Certification. Failure to include the Institute Certification specifically as indicated above will result in the application being disqualified.

IV. Transcripts

Provide transcripts for all previous university/college-level studies. Photocopied transcripts are acceptable. Transcripts must be included with all other application materials. Those mailed separately will not be accepted. Failure to include transcripts from all previous university/college-level studies will result in the application being disqualified.

V. Three Letters of Recommendation

Each application must include three, but only three, signed letters of recommendation from individuals who have knowledge of your academic record, research effort, work and/or life experience. Relevant unpaid work, such as internships and volunteer efforts, is applicable. If you have a sponsor or advisor in the program, one of these letters should be from that individual. Letters of recommendation sent apart

from the application will not be accepted. Applications without three, signed letters of recommendation or with more than three letters of recommendation will result in the application being disqualified.

VI. Declaration

Applicants must certify that all statements and information in their applications are true and correct by copying the following on a plain sheet of paper, signing it, and including it in their application:

I, the undersigned, declare, under penalty of perjury, that all statements and information in my application are true and correct.

Executed on [insert date].

Print or Type Name

Signature

Failure to include this statement, signed by the applicant, will result in the application being disqualified.

Funding Priorities: The priority of the program is to fund independent graduate-level studies in oceanography, marine biology, or maritime archaeology with scholarships distributed by disciplines, institutions and geography, and by the degree type and level being sought, with selections within distributions based on financial need, the potential for success in a graduate studies program, and the potential for achieving research and career goals.

Evaluation Criteria: The evaluation criteria and their weights are as follows: (a) Financial need (40%); (b) academic record (20%); (c) recommendations (18%); (d) organizational, analytical, and written communication skills based on statement of intent (15%); and (e) research and career goals and objectives as described in your statement of intent (7%).

Selection Procedures: An advisory panel of NOAA experts will review applications based on the evaluation criteria and provide a numerical score for each. The Program Manager will rank the applications based on these scores. Applications falling within the top 10 percent will be reviewed by a second panel of federal experts from which scholarship recipients will be chosen. The second panel will consider the following criteria: Availability of funds, distribution of awards across disciplines, institutions and geography, the degree type and level being sought, and the statement of intent. Therefore, scholarship awards will not necessarily be made to the applicants receiving the highest scores. The panel will arrive at a consensus decision for selection of scholarship recipients.

Announcement of Awards: The names, academic institutions, degrees being sought, research plans, and biographical information of the scholarship awardees will be posted on NOAA's National Ocean Service Web site and may be published in marketing materials developed to advertise the Dr. Nancy Foster Scholarship Program.

Unsuccessful Applicants: The applications of unsuccessful applicants will be destroyed following the selection of the recipients.

Other Requirements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917) as amended by the **Federal Register** Notice published on October 30, 2002 (67 FR 66109) is applicable to this solicitation.

Classification: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). This application has been approved by the Office of Management and Budget (OMB) under control number 0648–0432. Public reporting burden for this collection of information is 4.5 hours for an application and 45 minutes per letter of recommendation. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the PRA, unless that collection displays a currently valid OMB control number.

Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

This action has been determined to be not significant for purposes of Executive Order 12866.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et. seq.* is not required and has not been prepared for this notice.

Dated: January 16, 2003.

Alan Neuschatz,

Associate Assistant Administrator for Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

[FR Doc. 03–1339 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120302E]

Marine Mammals; File No. 848–1695

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Marine Mammal Research Program, Southwest Fisheries Science Center, Honolulu Laboratory, 2570 Dole Street, Honolulu, HI 96822 (Principal Investigator, Dr. Bud Antonelis), has applied in due form for a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research and enhancement.

DATES: Written or telefaxed comments must be received on or before February 21, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Assistant Administrator for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4020; fax (562)980–4027; and

Protected Species Program Coordinator, Pacific Islands Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant proposes to take Hawaiian monk seals over a five year period for purposes of 1) population assessment (monitoring, tagging and retagging, bleach marking, genetics analyses) to determine survivorship,

reproductive rates, pup production, incidence and causes of injury or mortality, and abundance; 2) disease and health assessment (health screening and treatment of ill animals, necropsies, analyses of parasites, dietary analyses) to gain information on pathogens and other factors that affect individual animals; and 3) recovery actions (relocations and translocations, adult male removals, and disentanglements) to enhance the survival of the population.

Annual takes are summarized as follows: Up to 1500 seals may be disturbed up to three times during ground monitoring on the Hawaiian Archipelago and Johnston Atoll. Up to 50 seals may be disturbed up to 10 times during aerial surveys in the Main Hawaiian Islands and adjacent islets, Kaula Rock, Necker Island, and Nihoa Island. Up to 416 seals (excluding lactating females and nursing pups) may be restrained, flipper and PIT tagged with flipper tissue plugs retained for genetics analyses, swab samples, and morphometrics taken; and up to 100 may be restrained, retagged, with flipper tissue plugs retained, swab samples and morphometrics taken. Up to 1500 seals may be bleach marked up to two times. Tagging and bleach marking may occur on the Hawaiian Archipelago and Johnston Atoll.

Up to 20 healthy seals (excluding lactating females and nursing pups) may be restrained, sedated, sampled (morphometrics, blood, blubber biopsy, and swabs), and instrumented with satellite and VHF transmitters (restraint and sampling may occur up to two times if animals subsequently show signs of illness) on the Main Hawaiian Islands. Up to 30 unhealthy seals (excluding lactating females and nursing pups) may be restrained, sedated, medically treated on site, and sampled as above (sedation, extent of sampling, and treatment will be at discretion of consulting veterinarian) up to two times in the Hawaiian Archipelago. Humane euthanasia may be performed on up to five severely debilitated or moribund seals at the discretion of the attending veterinarian.

Up to five nursing pups who have suckled less than half their nursing period and have lost contact with their mother may be restrained, swab samples taken, and relocated to a foster mother. Up to 25 weaned pups located in an area determined to be of high risk of mortality or areas of high human activity, may be restrained, swab samples taken, and relocated to a safer area. Up to 20 weaned pup and/or juvenile seals in an area of poor juvenile survival may be captured, restrained, sedated, sampled (morphometrics, blood, blubber biopsy, and swabs), temporarily held, medically treated, translocated to an island or atoll with higher juvenile survival, and released. All pup and juvenile relocations may occur on the Hawaiian Archipelago. Up to 10 adult male seals on the Hawaiian Archipelago that are known to have caused mortality to nursing pups, weaned pups, or immature seals may be captured, restrained, sedated, sampled (blood, biopsy, swabs), and relocated to the Main Hawaiian Islands or Johnston Atoll, placed in permanent captivity, or humanely euthanized. Up to 15 seals of any age or sex may be captured, disentangled, and released on the Hawaiian Archipelago or Johnston Atoll, in cooperation with the Marine Mammal Health and Stranding Response Program.

An unlimited number of seal carcasses may be necropsied and tissues analyzed in cooperation with the Marine Mammal Health and Stranding Response Program, an unlimited number of parts (molted fur/skin, placentae) salvaged, and an unlimited number of scat and spew samples may be collected at haul out sites along the Hawaiian Archipelago. An unlimited number of specimens (hard and soft parts including but not limited to blood serum, blubber biopsy, and placentae) may be exported to countries (including but not limited to Canada, the Netherlands, Scotland, and Australia) for scientific analyses related to health assessment of monk seals; samples not used in analyses may be re-imported. An unlimited number of specimens (hard and soft parts) from Mediterranean monk seals (*Monachus monachus*) may be imported to the U.S. and re-exported to the country of origin for opportunistic research related to the conservation of monk seals. Up to 200 monk seals may be incidentally disturbed up to two times during the research and enhancement activities. Up to 140 adult green sea turtles (*Chelonia mydas*) may be incidentally disturbed during research and enhancement activities. Up to five accidental mortalities of monk seals that are captured and sedated are requested over the five year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 15, 2003.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–1378 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

January 16, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that Thompson and Thompson, LLP (now operating as Progressive Services, Inc.) has violated the requirements for participation in the Special Access Program and has suspended Progressive Services, Inc. from participation in the Program for

the six-month period, September 1, 2002 through February 28, 2003.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Progressive Services, Inc. during the period from September 1, 2002 through February 28, 2003, and to prohibit entry by or on behalf of Progressive Services, Inc. under the Special Access Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in Federal Register notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 16, 2003.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended Progressive Services, Inc. from participation in the Special Access Program for the period from September 1, 2002 through February 28, 2003. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of Progressive Services, Inc. during the period September 1, 2002 through February 28, 2003. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Progressive Services, Inc. manufactured from fabric exported from the United States during the period September 1, 2002 through February 28, 2003.

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–1356 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, February 7, 2003.

PLACE: 1155 21 st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–1421 Filed 1–16–03; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, February 14, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–1422 Filed 1–16–03; 4:32 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, February 21, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–1423 Filed 1–16–03; 4:32 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, February 28, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–1424 Filed 1–16–03; 4:33 pm]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its new application for the Civil Society Nonprofit Scholars Program. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by March 24, 2003.

ADDRESSES: Send comments to: Corporation for National and Community Service, Attn. Robin Dean, Program Manager, Office of Research and Policy Development, Room 9112, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Robin Dean, (202) 606–5000, ext. 436, or at *Rdean@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and,
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

I. Background

On November 26, 2002, a new scholars program was launched by the Corporation and the Woodrow Wilson International Center for Scholars that will enhance our understanding of the connection between civil society, nonprofits, volunteerism and public policy.

The Corporation and the Center are developing the application for the 2004–2005 competition. The application for the 2003–2004 competition was not opened for public comment because fewer than ten applications are expected to be submitted. Under this program, up to three scholars or experienced practitioners will spend nine months conducting research on topics such as the relationship between democratic institutions and nonprofits, the role of service in society, and civic engagement and public policy. Participants in the program will reside in the Washington area during their research term, from September 2004 through May 2005, and will have access to research facilities at the Center, the Corporation, and through the Washington area. The application deadline will be on or around January 15, 2004.

II. Current Action

As part of the OMB-approval process, the Corporation seeks public comment on the proposed 2004–2005 application instructions and forms for this fellowship opportunity. The proposed application is the same as that found in the 2003–2004 competition, except for a change in the deadline date. The 2003–2004 application can be downloaded from the following two Internet addresses: *www.nationalservice.org/scholars* or *www.wilsoncenter.org/scholars.*

Type of Review: New information collection.

Agency: Corporation for National and Community Service.

Title: Civil Society Nonprofit Scholars Program.

OMB Number: None.

Agency Number: None.

Affected Public: Citizens of the United States and worldwide applicants.

Total Respondents: 100.

Frequency: Once a year.

Average Time Per Response: 10 hours.

Estimated Total Burden Hours: 1,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 15, 2003.

David Reingold,

Director, Department of Research and Policy Development.

[FR Doc. 03–1323 Filed 1–21–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 5,264,722 entitled "Nanochannel Glass Matrix Used in Making Mesoscopic Structures", Navy Case No. 74,224 and U.S. Patent 6,185,961 entitled "Nanopost Arrays and Process for Making Same", Navy Case No. 78,923.

ADDRESSES: Requests for copies of the patents cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Ave, SW, Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Ave, SW, Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: January 15, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–1370 Filed 1–21–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 6,086,821 entitled "Ultrasonic Force Differentiation Assay", Navy Case No. 79,227, U.S. Patent No. 6,368,553 entitled "Ultrasonic Force Differentiation Assay", Navy Case No. 82,359 and U.S. Patent Application Serial No. 09/614,727 filed July 12, 2000, entitled "Nanoporous Membrane Immunosensor", Navy Case No. 80,068.

ADDRESSES: Requests for copies of the patents and/or inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Ave, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Ave, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: January 15, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–1371 Filed 1–21–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 21, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren.Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: January 15, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision of a currently approved collection.

Title: The Smaller Learning Communities Program (SLC) (1890–0001) (SC).

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 700.

Burden Hours: 47000.

Abstract: The grant application package includes information for grant applicants, including priorities, selection criteria and requirements, along with relevant ED forms and non-regulatory guidance for the SLCP.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890–0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb/ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2211. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–1295 Filed 1–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Number DE–PS07–03ID14453]

Chemical Industry of the Future

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost shared research and development (R&D) of technologies which will reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts of the domestic chemical industry. The R&D will focus on technology development in the areas of catalysis and catalytic engineering, and separations technologies.

DATES: The issuance date of Solicitation Number DE–PS07–03ID14453 was January 14, 2003. The deadline for receipt of applications will be approximately on April 30, 2003.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://e-center.doe.gov*. The Industry Interactive Procurement System (IIPS) provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS "User Guide for Contractors" can be obtained on the IIPS Homepage and then clicking on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist, *kleinsm@id.doe gov*.

SUPPLEMENTARY INFORMATION: Approximately $6 million in federal funds are expected to be available to fund the first 12 months of selected research projects. Subject to the availability of funds, approximately $30 million is planned to fund the remaining years of the projects. DOE anticipates making 6 to 10 cooperative agreement awards, each with a duration of three to five years or less. A minimum of two industrial chemical companies must be involved. Awardees are required to develop collaborative project teams, which can include industry, university, and national laboratory participants. The statutory authority for this program is the U.S. Department of Energy Organization Act (Public Law 95–91). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on January 13, 2003.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 03–1332 Filed 1–21–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Number DE–PS07–02ID14442]

Sensors, Controls, and Automation Crosscutting Technologies

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of Availability of Solicitation for Awards of Financial Assistance.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research, development and demonstration of innovative sensor, control, automation and wireless technologies that will reduce energy consumption, minimize environmental impacts, and enhance economic competitiveness in U.S. industrial manufacturing. This solicitation addresses two separate topics:

1. Crosscutting sensors and controls, and

2. Industrial wireless telemetry

DATES: The issuance date of Solicitation Number DE–PS07–02ID14442 was January 15, 2003. The deadline for receipt of applications is March 31, 2003, at 3:00 p.m. MDT.

ADDRESSES: The solicitation will be available in its full text on the Internet by going to the DOE's Industry Interactive Procurement System (IIPS) at the following URL address: *http://e-center.doe.gov*. This will provide the medium for disseminating solicitations and amendments to solicitations, receiving financial assistance applications and evaluating applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS "User Guide for Contractors" can be obtained on the IIPS Homepage and then click on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Wade Hillebrant, Contract Specialist at *hillebtw@id.doe.gov*, or Dallas L. Hoffer, Contracting Officer at *hofferdl@id.doe.gov*.

SUPPLEMENTARY INFORMATION: Information about the Office of Industrial Technologies Sensors and Automation program, refer to URL: *http://www.oit.doe.gov/sens_cont/*. The IOF industry-specific vision documents and technology roadmaps are available at *http://www.oit.doe.gov/* under individual IOF program areas.

DOE anticipates making up to 4 cooperative agreement awards under this solicitation. Approximately $12 million in federal funds are expected to be available to fund selected research projects over a five-year period. A minimum 50% non-federal cost share is required for research and development projects over the life of the project. The cooperative agreements will be awarded in accordance with DOE Financial Assistance Regulations, Title 10 of the Code of Federal Regulations, Chapter II Subchapter H, Part 600 (10 CFR 600). The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on January 15, 2003.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 03–1334 Filed 1–21–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Grand Coulee-Bell 500-kV Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to construct the proposed Grand Coulee-Bell 500-kilovolt (kV) Transmission Line Project in Douglas, Grant, Lincoln, and Spokane Counties, Washington, based on the Final Environmental Impact Statement for this project (DOE/EIS–0344, December 2002). The proposed action consists of constructing a new 500-kV transmission line in Washington between the Bureau of Reclamation's Grand Coulee 500-kV switchyard near Grand Coulee and BPA's Bell Substation near Spokane, a distance of 84 miles.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA toll-free at 1–888–276–7790. The ROD and EIS Summary are also available on the Transmission Business Line Web site at *http://www.transmission.bpa.gov/projects*.

FOR FURTHER INFORMATION, CONTACT: Inez S. Graetzer, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *isgraetzer@bpa.gov*.

SUPPLEMENTARY INFORMATION: The proposed action involves removing an existing 115-kV transmission line and replacing it with a 500-kV line on existing right-of-way for most of its length. The line will be constructed using a single-circuit design, with the exception of two short distances of slightly less than one mile where double-circuit towers will be used because the right-of-way is constrained. As part of the proposed action, BPA has decided to expand the existing fenced yard at Bell Substation by about 11.7 acres; slightly expand the fenced area at Grand Coulee Switchyard to accommodate new line termination facilities and other equipment; install one group of series capacitors on an expanded site at BPA's Dworshak 500-kV Substation in Clearwater County, Idaho; and replace existing series capacitors within the current boundary of BPA's Garrison 500-kV Substation in Powell County, Montana. All mitigation measures have been updated, adopted, and included with the ROD. A Mitigation Action Plan will be prepared to be included in the construction specifications to ensure mitigation measures are implemented.

Issued in Portland, Oregon, on January 10, 2003.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 03–1333 Filed 1–21–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–27–000]

Panhandle Eastern Pipe Line Company; Notice of Application

December 23, 2002.

Take notice that on December 16, 2002, Panhandle Eastern Pipe Line Company (Panhandle), P. O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP03–27–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon in place certain obsolete compressor units and appurtenant facilities, located at thirteen (13) of Panhandle's existing compressor stations in Kansas, Missouri, Illinois and Indiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Panhandle states that the fifty-nine compressor units proposed to be abandoned, with a net book value as of December 31, 2002 of $93,148 and totaling 68,200 HP, are obsolete and uneconomical to operate and are no longer needed due to changes in the operating configuration of its system since the units were initially installed. Panhandle states that 10 are field area horizontal and vertical compressor units and 49 are market area horizontal and vertical compressor units. Panhandle states that all above-ground gas and service piping to the units will be

disconnected and sealed off and, as the opportunities arise, Panhandle states that it may either reuse the parts of the abandoned units for maintenance and repair of similar remaining units, or sell the equipment as salvage. Panhandle further states that the abandonment of these facilities will not result in the abandonment of service to any of Panhandle's existing shippers, nor will the proposed abandonment adversely affect Panhandle's ability to meet current service requirements.

Any questions concerning this application may be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, Panhandle Eastern Pipe Line Company, P. O. Box 4967, Houston, Texas 77210–4967, call (713) 989–7000 or fax (713) 989–1180.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: January 24, 2003.

Editorial Note: This document was received in the Office of the Federal Register on December 24, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–1446 Filed 1–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2584–000, et al.].

Northeast Utilities Service Company, et al.; Electric Rate and Corporate Filings

January 15, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Northeast Utilities Service Company

[Docket No. ER01–2584–000]

Take notice that on November 25, 2002, Northeast Utilities Service Company (NUSCO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Withdrawal of its application for the Connecticut-Long Island cable (CLC) project that was filed with the Commission on July 13, 2001 in the above-referenced proceeding.

Comment Date: February 5, 2003.

2. West Texas Utilities Company

[Docket No. ER03–281–000]

Take notice that on December 16, 2002, West Texas Utilities Company (WTU) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission):

1. A Notice of Cancellation of First Revised Service Agreement No. 7 under WTU's FERC Electric Tariff, Second Revised Volume No. 9;

2. A Notice of Cancellation of Service Agreement No. 19 under WTU's FERC Electric Tariff, Original Volume No. 1;

3. A Revised Sheet No. 1 to First Revised Service Agreement No. 7 under WRU's FERC Electric Tariff, Second Revised Volume No. 9 with the designation information required by Commission Order No. 614, FERC Stats. & Regs. § 31,096 (2000), indicating that the service agreement is to be canceled effective December 31, 2002; and

4. A Revised Sheet No. 1 to Service Agreement No. 19 under WTU's FERC Electric Tariff, Original Volume No. 1, with the designation information required by Commission Order No. 614, indicating that the service agreement is to be canceled effective December 31, 2002.

Comment Date: January 27, 2003.

3. New York State Electric & Gas Corporation

[Docket Nos. ER03–315–000 and ER03–315–001]

Take notice that on December 23, 2002, as corrected on January 9, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a supplement to Rate Schedule 227 filed with FERC corresponding to an Agreement with the Municipal Board of the Village of Bath (the Village).

This rate filing is made pursuant to Section 2(a) through ∧ of Article IV of the May 1, 2001 Facilities Agreement between NYSEG and the Village, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the FERC (FERC Form 1) for the twelve month period ending December 31, 2001. The revised facilities charge is levied on the cost of the tap facility constructed and owned by NYSEG to connect the Village's 34. kV transmission line to NYSEG's kV transmission system. NYSEG requests an effective date of January 1, 2003.

NYSEG states that copies of the filing were served upon the Municipal Board of the Village of Bath and Public Service Commission of the State of New York.

Comment Date: January 30, 2003.

4. Las Vegas Cogeneration II, L.L.C.

[Docket No. ER03–222–001]

Take notice that on January 10, 2003, Las Vegas Cogeneration II, L.L.C., filed substitute pages for the proposed market-based rate wholesale power sales rate schedule (Rate Schedule) that LV Cogen filed with the Federal Energy Regulatory Commission (Commission) in the referenced docket on November 25, 2002.

Comment Date: January 31, 2003.

5. TXU Pedricktown Cogeneration Company LP

[Docket No. ER03–256–001]

Take notice that on January 10, 2003, TXU Pedricktown Cogeneration Company LP (TXU Pedricktown), tendered for filing as an amendment to its Notice of Succession, filed in Docket No. ER03–256–000 on December 9, 2002, a revised market-based rate tariff (Tariff) reflecting its name change from Pedricktown Cogeneration Limited Partnership, and a revision to paragraph seven (7) "Affiliate Sales Prohibited" of its Tariff to comply with the Commission's Order in Aquila, Inc., 101 FERC § 61,331 (2002). TXU Pedricktown requests waiver of the 60-day prior notice requirement to allow its revised Tariff to become effective as of December 3, 2002.

Comment Date: January 31, 2003.

6. Ameren Services Company

[Docket No. ER03–336–001]

Take notice that on January 14, 2003, Ameren Services Company (ASC) tendered for filing a Firm Point-to-Point Transmission Service Agreement between ASC and Ameren Energy. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreement in Docket No. ER03–336–000 with the executed Agreement.

Comment Date: February 4, 2003.

7. PacifiCorp

[Docket No.ER03–399–000]

Take notice that on January 10, 2003, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a Mutual Netting/Settlement Agreement with Clatskanie Public Utility District.

PacifiCorp states that copies of this filing were supplied to the Clatskanie Public Utility District and the Public Utility Commission of Oregon.

Comment Date: January 31, 2003.

8. American Electric Power Service Corporation

[Docket No. ER03–400–000]

Take notice that on January 10, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement and Memorandum of Understanding between Ohio Power Company and DPC Northeast Power, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001.

AEP requests an effective date of March 11, 2003. AEP also states that a copy of the filing was served upon DPC Northeast Power, LLC and the Public Utilities Commission of Ohio.

Comment Date: January 31, 2003.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–401–000]

Take notice that on January 10, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to Attachment M of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, which reflect proposed language changes for clarification purposes. The Midwest ISO has requested an effective date of February 1, 2003.

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: January 31, 2003.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–402–000]

Take notice that on January 10, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions of Schedule 7, Schedule 8 and Schedule 9 of the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1. Applicant requests an effective date upon the closing of the Divestiture Transaction between DTE Energy and ITC Holdings.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. *Comment Date:* January 31, 2003.

11. Indiana Michigan Power Company

[Docket No. ER03–403–000]

Take notice that on January 13, 2003, Indiana Michigan Power Company (IMPCo) submitted for filing an unexecuted Interconnection and Operation Agreement between IMPCo and South Shore Power, L.L.C. (SSPCo). The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective July 31, 2001.

IMPCo requests an effective date of March 14, 2003. IMPCo also states that copies of this filing have been served upon SSPCo and the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment Date: January 31, 2003.

12. PJM Interconnection, L.L.C.

[Docket No. ER03–404–000]

Take notice that on January 10, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing two new attachments to the PJM Open Access Transmission Tariff (PJM Tariff) setting forth the standard terms and conditions for independent transmission companies to operate in the PJM region.

PJM states that copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region. PJM proposes an effective date of March 12, 2003 for the new PJM Tariff attachments.

Comment Date: January 31, 2003.

13. PJM Interconnection, L.L.C.

[Docket No. ER03–405–000]

Take notice that on January 10, 2003, PJM Interconnection, L.L.C. (PJM) tendered for filing proposed changes to the PJM Open Access Transmission Tariff. PJM states that the proposed changes create procedures and standardized terms and conditions for interconnection with the PJM transmission system of new and expanded merchant transmission facilities, as well as for the construction of transmission upgrades and other facilities necessary to accomplish such interconnections; add and modify related forms of service agreements; and reorganize and make conforming

changes to various provisions of the existing Part IV of the PJM Tariff.

PJM further states that copies of this filing have been served on all parties to Docket No. RT01–2–000, as well as on all PJM Members and the state electric regulatory commissions in the PJM region. PJM requests an effective date of January 13, 2003, for the proposed tariff changes.

Comment Date: January 31, 2003.

14. California Independent System Operator Corporation

[Docket No. ER03–407–000]

Take notice that on January 13, 2003, the California Independent System Operator Corporation (ISO) tendered for filing Amendment No. 48 to the ISO Tariff (Amendment No. 48). Amendment No. 48 would modify the ISO Tariff to provide Congestion revenues, Wheeling revenues, and FTR auction revenues to entities other than Participating Transmission Owners, if any such entities fund transmission facility upgrades on the ISO Controlled Grid. The ISO has requested waiver of the Commission's 60-day notice period so that Amendment No. 48 will become effective on January 13, 2003.

The ISO states that this filing has been served on the California Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, on all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff, and the Participating TOs. In addition, the ISO is posting this transmittal letter and all attachments on the ISO Home Page.

Comment Date: February 3, 2003.

15. Puget Sound Energy, Inc.

[Docket No. ER03–408–000]

Take notice that on January 13, 2003, Puget Sound Energy, Inc. tendered for filing an Interconnection and Parallel Operating Agreement with Puget Sound Hydro, LLC (Puget Sound Hydro). A copy of the filing was served upon Puget Sound Hydro and The Washington Utilities and Transportation Commissions.

Comment Date: February 3, 2003.

16. Pacific Gas and Electric Company

[Docket No. ER03–409–000]

Take notice that on January 13, 2003, Pacific Gas and Electric Company (PG&E), tendered for filing proposed changes in its Transmission Owner Tariff (TO Tariff) and Cost Support for PG&E specific rates associated with the TO Tariff. PG&E requests that its filing be made effective upon the end of the 60-day prior notice period specified in Section 18 CFR 35.3.

This filing proposes changes to PG&E's transmission access charges, which are calculated in accordance with the rate methodology set forth in PG&E's TO Tariff. PG&E provides cost support for PG&E's proposed transmission access charges.

PG&E states that copies of this filing have been served upon the CPUC and the California Independent System Operator Corporation.

Comment Date: February 3, 2003.

17. ITC Holdings Merger Sub, Inc.; International Transmission Company

[Docket No. ES03–19–000]

Take notice that on January 9, 2003, ITC Holdings Merger Sub, Inc. and International Transmission Company (ITC Holdings) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue and sell no more than $200 million of long-term debt securities.

ITC Holdings also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: February 5, 2003.

18. John R. Fielder

[Docket No. ID–3259–001]

Take notice that on January 10, 2003, John R. Fielder tendered for filing an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice president, Southern California Edison Company.

Director, California Power Exchange.

Comment Date: January 31, 2003.

19. James P. Avery

[Docket No. ID–3847–000]

Take notice that on January 10, 2003, James P. Avery submitted to Federal Energy Regulatory Commission (Commission) an Application for Authorization to Hold Interlocking Positions pursuant to Section 305(b) of the Federal Power Act and Part 45 of the Commission's Regulations.

Comment Date: January 31, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1387 Filed 1–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–45–000, *et al.*]

Public Service Company of New Mexico, *et al.*; Electric Rate and Corporate Filings

January 14, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Public Service Company of New Mexico

[Docket No. EC03–45–000]

Take notice that on January 10, 2003, Public Service Company of New Mexico (PNM) submitted for filing an application under section 203 of the Federal Power Act for approval of the reacquisition by PNM of legal title to a portion of the Eastern Interconnection Project, a 216 mile, 345 kV transmission line currently leased by PNM pursuant to a sale and lease-back transaction through a transaction involving PNM Resources, Inc., and the termination of a non-jurisdictional lease associated with that portion of the facilities.

Comment Date: January 31, 2003.

2. The United Illuminating Company

[Docket No. ER03–31–001]

Take notice that on January 9, 2003, The United Illuminating Company (UI) tendered for fling with the Federal Energy Regulatory Commission (Commission) a revised Interconnection Agreement between UI and Cross-Sound Cable Company, L.L.C., executed pursuant to UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended. This filing is in compliance with the Commission's December 9, 2002 Order Accepting and Suspending Interconnection Agreement, with Modification, and Establishing Hearing and Settlement Judge Procedures (101 FERC § 61,281).

Comment Date: January 30, 2003.

3. New York Independent System Operator, Inc.

[Docket No. ER03–297–001]

Take notice that on January 8, 2003, the New York Independent System Operator, Inc. (NYISO), filed corrections to its December 19, 2002, filing in which the NYISO proposed to amend its Transmission Congestion Contracts credit policy (the December 19 Filing). The filing corrected an error in the transmittal letter of the December 19 Filing.

The NYISO states that it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Services Tariff or Open Access Transmission Tariff, the New York State Public Services Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 29, 2003.

4. New York State Electric and Gas Corporation

[Docket No. ER03–314–000]

Take notice that on December 23, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) a supplement to Rate Schedule FERC No. 72 Facilities Agreement between NYSEG and the Municipal Board of the Village of Bath (the Village).

Comment Date: January 24, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1386 Filed 1–21dash;03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7441–8]

EPA Science Advisory Board, Notification of Public Advisory Committee Meeting; Contaminated Sediment Science Plan Review Panel

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Contaminated Sediment Science Plan Review Panel (CSSP Review Panel) of the U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) will meet via teleconference on February 14, 2003, from 3 p.m. to 5 p.m. eastern time. This teleconference meeting will be hosted out of Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, but, due to limited space, seating will be on a first-come basis. The public may also attend via telephone, however, lines may be limited. Information on how to participate is given below.

Background—The background for this review and the charge to the CSSP Review Panel were published in the **Federal Register** (67 FR 49336, July 30, 2000). The notice also included a draft charge to the CSSP Review Panel, a call for nominations for members of the CSSP Review Panel in certain technical expertise areas needed to address the charge and described the process to be used in forming the CSSP Review Panel. Subsequently, notice was published December 19, 2002 (67 FR 77783) of four meetings that have since been convened: a teleconference on October 17, 2002, a meeting in Washington, DC on October 30 and 31, 2002, and two subsequent teleconferences on November 22, 2002 and January 6, 2003. Details on the activities of the CSSP Review Panel can be found on our Web site at: *http://www.epa.gov/sab/panels/cssprpanel.html.*

Purpose of this Meeting—The purpose of this public teleconference meeting is for the CSSP Review Panel to: (a) Review and revise the panel's draft report as necessary; and (b) approve the report as revised for delivery to the SAB Executive Committee.

For Further Information—To inquire about public participation in the meeting identified above please contact Mr. Lawrence Martin, Designated Federal Officer, CSSP Review Panel, USEPA Science Advisory Board (1400A), Suite 6450DD, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–6497; fax at (202) 501–0323; or via e-mail at *martin.lawrence@epa.gov*. Members of the public desiring additional information about the meeting locations or the call-in number for the teleconference, must contact Mr. Martin at the addresses and numbers identified above.

Submitting Public Comments—The SAB will have a brief period (no more than 10 minutes) available during the Teleconference meeting for applicable public comment. For teleconferences, the oral public comment period will be divided among the speakers who register. Registration is on a first come basis. Speakers who have been granted time on the agenda may not yield their time to other speakers. Those wishing to speak but who are unable to register in time may provide their comments in writing. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Mr. Martin at the address above no later than noon eastern time on February 10, 2003.

Availability of Review Material—There is one primary document that is the subject of the review. This review document is available electronically at the following site *http://www.epa.gov/sab/panels/cssprpanel.html*. For

questions and information pertaining to the review document, please contact Dr. Lee Hofmann, USEPA, Office of Solid Waste and Emergency Response (OSWER), Mail Code 5103T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 at telephone number 202–566–1928, or by e-mail at: *hofmann.lee@epa.gov*. The Panel's draft report, which will be the topic for the February 14th teleconference, will be available on February 10, 2003 at the following site: *http://www.epa.gov/sab/panels/cssprpanel.html*.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than 15 minutes total (unless otherwise indicated above). Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Martin at least five business days prior to the meeting so that appropriate arrangements can be made.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in the Science Advisory Board FY2001 Annual Staff Report which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: January 13, 2003.

A. Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–1359 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0300; FRL–7282–7]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted SafeScience, Inc., now known as GlycoGenesys, Inc. to conditionally register the pesticide product BAITS MOTEL Stay Awhile - Rest Forever™ containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0300. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access.* You may access this **Federal Register** document

electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of *Beauveria bassiana* strain 447, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Beauveria bassiana* strain 447 during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register** of September 19, 2001 (66 FR 48256) (FRL–6791–1), which announced that SafeScience, Inc., now known as GlycoGenesys, 31 St. James Ave., 8th Floor, Boston, MA 02116, had submitted an application to conditionally register the pesticide product, Healthy Indoors Brand, Ant and Cockroach Bait Station, now known as BAITS MOTEL Stay Awhile - Rest Forever™, for use as an indoor, non-food use, microbiological bait for control of fire ants and cockroach (EPA File Symbol 70464–U), containing *Beauveria bassiana* strain 447 at 10%, an active ingredient not included in any previously registered product.

One comment was received in response to the original publication of the notice of receipt of this application. The comment referred to the isolation of the microorganism in Brazil and the recognition of the Brazilian contribution. The applicant, GlycoGenesys, confirmed the original isolation of the fungus in Brazil. Following approved importation and release of the fungus in Gainesville, Florida, the applicant recovered it from release sites in Florida. A biologically pure culture of a novel isolate, specific for imported fire ants, was deposited in the American Type Culture Collection and is recognized as ATCC 20872 (December 29, 1987). *Beauveria bassiana* strain 447 is the subject of invention in U.S. registered patents, which names the commenter as the co-inventor.

On the basis of data submitted to the Agency, the pesticide was considered acute toxicology Category III for primary eye irritation and IV for acute oral and pulmonary effects. Certain data requirements were waived by the Agency based on the low exposure levels associated with this method of application. Efficacy data support the use of the pesticide as a bait against ants and fire ants. While the active ingredient is efficacious against cockroaches as a spray, its efficacy in the form of a bait needs further study. Because the pesticide is proposed for control of fire ants, it qualifies for an automatic presumptive finding, and its use is presumed to be in the public interest. The conditional registration allows use against ants and fire ants until the applicant provides analysis of five batches to demonstrate adequate production Quality Control and Assurance procedures. Further data are required should the applicant wish to register the pesticide for control of cockroach and other extensive agricultural use patterns. The label prohibits use in/on or near food storage, handling areas, or utensils.

The application was conditionally approved on September 27, 2002 for the end-use product BAITS MOTEL Stay Awhile - Rest Forever™ (EPA Registration Number 70464–4) for indoor bait use on the basis of data submitted to the Agency. The pesticide contains 10% w/w (1×10^{10} cfu/gram) of the active ingredient *Beauveria bassiana* strain 447, a new active ingredient. This strain of *Beauveria bassiana* can be distinguished from the other strains of *Beauveria bassiana* by isozyme analysis. Like the other strains, it is also an entomopathogenic fungus, which germinates on the cuticles of insects, which it kills by secreting enzymes in their soft tissue .

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 23, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–970 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7441–2]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Vienna PCE Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Vienna PCE Site, Vienna, Wood County, West Virginia. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on December , 2002, and is subject to review by the public pursuant to this document.

The Environmental Protection Agency is proposing to enter into a settlement pursuant to sections 122(g)(7) and (h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(7) and (h). The proposed settlement resolves EPA's claims for past and future response costs under section 107 of CERCLA, 42 U.S.C. 9607 against Mr. Woodrow Moss for response

costs incurred at the Vienna PCE Site, Vienna, Wood County, West Virginia. The proposed settlement requires Mr. Woodrow Moss to pay $1000.00 to the EPA Hazardous Substance Fund.

Mr. Woodrow Moss, as the Settling Party, has executed binding certifications of its consent to participate in this settlement. Mr. Woodrow Moss has agreed to pay $1000.00 subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this document.

For 30 days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before February 21, 2003.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and should reference: Vienna PCE Site, Vienna, Wood County, West Virginia, U.S. EPA Docket No. CERC–2002–0245DC. The proposed settlement agreement is available for public inspection at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed settlement agreement can be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, telephone number (215) 814–2476.

FOR FURTHER INFORMATION CONTACT: Gail P. Wilson, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Office of Regional Counsel (3RC41), 1650 Arch Street, Philadelphia, Pennsylvania 19103, telephone number (215) 814–2493.

Dated: January 14, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–1360 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Fire Department Census.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0287.

Abstract: Many data products and reports exist that contain fragmented or estimated information about fire department demographics, and capabilities, but there is no single reference source today that aggregates this data to provide a complete and accurate profile of fire departments in the United States. The U.S. Fire Administration (USFA) receives many requests for information related to fire departments, including total number of departments, number of stations per department, population protected, apparatus and equipment status. The USFA is working to identify all fire departments in the United States to develop and populate a national database that will include information related to demographics, capabilities and activities. The database will be used by USFA to guide programmatic decisions, provide the Fire Service and the public with information about fire departments, to produce mailing lists for USFA publications and other materials. In the first year of this effort, information was collected from 16,000 fire departments leaving an estimated 17,000 fire departments still to respond.

Affected Public: Not-For-Profit Institutions, Federal Government, and State, Local or Tribal Government.

Number of Respondents: 17,000.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 7,083.

Frequency of Response: One-Time.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Facsimile number (202) 646–3347, or e-mail address: *InformationCollections@fema.gov.*

Dated: January 10, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–1328 Filed 1–21–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented

on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before March 24, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal to Approve Under OMB Delegated Authority The Extension For Three Years, With Revision, of the Following Report:

Report title: Interagency Notice of Change in Bank Control, Interagency Notice of Change in Director or Senior Officer, and Interagency Biographical and Financial Report

Agency form number: FR 2081a, FR 2081b, and FR 2018c

OMB control number: 7100–0134

Frequency: On occasion

Reporters: Financial institutions and certain of their officers and shareholders

Annual reporting hours: Interagency Notice of Change in Bank Control–3,900 hours; Interagency Notice of Change in Director or Senior Officer–130 hours; Interagency Biographical and Financial Report–4,420 hours

Estimated average hours per response: Interagency Notice of Change in Bank Control–30 hours; Interagency Notice of Change in Director or Senior Officer–2 hours; Interagency Biographical and Financial Report–4 hours

Number of respondents: Interagency Notice of Change in Bank Control–130; Interagency Notice of Change in Director or Senior Officer–65; Interagency Biographical and Financial Report–1,105

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1817(j) and 12 U.S.C. 1831(q)) and is not given confidential treatment.

Abstract: The information collected assists the Federal Reserve Board, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS) in fulfilling their statutory responsibilities. These regulatory agencies use the information to evaluate a depository institution's controlling ownership interests and its senior officers and directors. The information collected in the Interagency Notice of Change in Bank Control (FR 2081a) is supplied by persons proposing to make significant investments in bank holding companies or depository institutions. The information collected in the Interagency Notice of Change in Director or Senior Executive Officer (FR 2081b) is required under Section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The notice is completed, under certain circumstances, by a bank holding company or depository institution making changes in its board of directors or senior executive officers. The Interagency Biographical and Financial Report (FR 2081c) is not a stand–alone report; it is used as a companion report with other reports to gather required information about the individuals involved in certain types of applications and notifications.

Board of Governors of the Federal Reserve System, January 15, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–1310 Filed 1–21–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 2003.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Alan Wilber Rolley, Dallas, Texas, and Blake Alan Rolley, Flagstaff, Arizona, acting in concert; to acquire control of Arizona Bancshares, Inc.,

Flagstaff, Arizona, and thereby indirectly acquire additional voting shares of First State Bank, Flagstaff, Arizona.

Board of Governors of the Federal Reserve System, January 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–1312 Filed 1–21–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 14, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Coastal Commerce Bancshares, Inc., Houma, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Coastal Commerce Bank, Houma, Louisiana.

2. Eagle National, Inc., Stockbridge, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Eagle National Bank, Stockbridge, Georgia.

3. SouthTrust Corporation, Birmingham, Alabama; to merge with Founders Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire 100 percent of the voting shares of Founders National Bank, Dallas, Texas.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Ravalli County Bankshares, Inc., Hamilton, Montana; to acquire 32.86 percent of the voting shares of West One Bank, Kalispell, Montana, a *de novo* bank.

2. Bitterroot Holding Company, Lolo, Montana; to acquire 32.86 percent of the voting shares of West One Bank, Kalispell, Montana, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1.Campbell State Company, Campbell, Nebraska; to acquire 100 percent of the voting shares of Blue Hill Agency, Inc., Blue Hill, Nebraska, and thereby indirectly acquire voting shares of Commercial Bank, Blue Bill, Nebraska.

Board of Governors of the Federal Reserve System, January 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–1311 Filed 1–21–03; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

TIME AND DATE: 12 p.m., Monday, January 27, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 16, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–1426 Filed 1–16–03; 4:34 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Governmentwide Per Diem Advisory Board

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Governmentwide Per Diem Advisory Board ("the Board") will hold an open meeting from 9 a.m. to 11:30 a.m. on Friday, January 24, 2003. The meeting will be held at The American Institute of Architects Board Room, 1735 New York Ave., NW., Washington, DC 20006. This meeting is open to the public. Members of the public who wish to file a statement with the Board may do so in writing c/o Rob Miller, Designated Federal Officer (MTT), General Services Administration, 1800 F St., NW., Room 1221B, Washington, DC 20405, or via e-mail at *robl.miller@gsa.gov*.

Purpose: To review the current process and methodology that is used by GSA's Office of Governmentwide Policy to determine the *per diem* rates for destinations within the Continental United States (CONUS), and to provide advice on best practices for a Federal lodging program. The Board will present its recommendations for improving the *per diem* process, and best practices for a Governmentwide lodging program.

For building access: (1) ADA accessible facility; (2) public seating is limited.

FOR FURTHER INFORMATION CONTACT: Rob Miller (202) 501–4621, Designated Federal Officer, or Joddy Garner (202) 501–4857, Per Diem Program Manager, General Services Administration. Also, inquiries may be sent to *robl.miller@gsa.gov*.

Dated: December 31, 2002.

Becky Rhodes,

Deputy Associate Administrator, Office of Transportation and Personal Property.

[FR Doc. 03–1281 Filed 1–21–03; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–37]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Travelers' Health Survey (OMB No. 0920–0519)—Reinstatement—National Center for Infectious Diseases. Approximately 58 million Americans travel abroad each year, and over a third travel to developing countries where the risk is greater for contracting infectious diseases. Many of these diseases are preventable through vaccines, drugs, and other preventive measures. According to surveillance data from the CDC, over 99% of malaria, 72% of typhoid, and 7% of hepatitis A cases in the U.S. are acquired abroad. Information on preventing illness during travel is available free or at little cost through public health departments, a CDC toll-free fax system, and the Internet. However, many travelers may be unaware of the health risks they face when traveling because they either lack access to pretravel health services or do not understand the measures necessary to avoid health risks. Evidence shows first- and second-generation U.S. immigrants that travel to their countries of origin to visit friends and relatives may be at a greater risk for contracting infectious diseases.

The objectives of this project are to determine (i) whether travelers seek pretravel health information, (ii) where they access this information, (iii) travelers' baseline knowledge of prevention measures for diseases commonly associated with travel, and (iv) whether specific groups of travelers (*i.e.* first- and second-generation immigrants) lack information on or access to pretravel health recommendations and services. To accomplish these objectives, in partnership with Delta Airlines, CDC proposes to conduct voluntary, self-administered, anonymous, in-flight surveys of U.S. citizens and residents traveling abroad to areas where malaria, typhoid fever, and hepatitis A are endemic.

This preliminary project will focus on first- and second-generation U.S. immigrants from India visiting friends and relatives in India, where all three diseases are endemic. A study period of 2 to 3 months is estimated. Data from this project will fulfill Healthy People 2010 objectives for travelers. In addition, it will enable CDC to develop appropriate educational interventions for high-risk travelers and to gain a better understanding of the role of travel in emerging infectious diseases. The survey tool will take approximately 15 to 20 minutes to complete. Delta Airlines has agreed to cover all costs for printing the surveys. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Travelers (Delta Airline International Flight Passengers)	5600	1	15/60	1400
Total				1400

Dated: January 15, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–1372 Filed 1–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5 p.m., February 5, 2003. 8 a.m.–4:30 p.m., February 6, 2003.

Place: The DoubleTree Guest Suites, 181 Church Street, Charleston, South Carolina 29401, telephone 843/577–2644, fax 843/577–9099.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the

development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001 and in November, 2001, the President completed the appointment of an initial roster of 10 Board members. In April, and again in August 2002, the President appointed additional members to ensure more balanced representation on the Board.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to Be Discussed: Agenda for this meeting will focus on program status, the special exposure cohort notice of proposed rule-making, Savannah River Site Health Effects Subcommittee activities, scientific issues workgroup report, and Board discussion regarding the dose reconstruction review process. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 15, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–1301 Filed 1–21–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Behavioral Research in Cancer Control.

Date: March 5, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892. 301/594/1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1367 Filed 1–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: February 19–20, 2003.

Open: February 19, 2003, 8:30 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 20, 2003, 9:45 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: February 20, 2003, 10:15 a.m. to 12 p.m.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, (301) 594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: February 19–20 2003.

Open: February 19, 2003, 1:15 p.m. to 5:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 19, 2003, 5:30 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 20, 2003, 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy BLVD, room 715, MSC 5452, Bethesda, MD 20892–5452, (301) 594–8834, *hammondr@extra.niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: February 19–20, 2003.

Open: February 19, 2003, 1:15 p.m. to adjournment.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: February 20, 2003, 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy BLVD, room 715, MSC 5452, Bethesda, MD 20892–5452, (301) 594–8834, *hammondr@extra.niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: February 19–20, 2003.

Open: February 19, 2003, 1:15 p.m. to 3 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: February 20, 2003, 3:15 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Open: February 20, 2003, 8 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy BLVD, room 715, MSC 5452, Bethesda, MD 20892–5452, (301) 594–8834, *hammondr@extra.niddk.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's Center's Home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research,; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1364 Filed 1–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–36, Review of R01 grants.

Date: February 14, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–48, Review of K22 and F31/F32 applications.

Date: February 20, 2003.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lynn M. King, PhD, Scientific Administrator, Scientific Review Branch, 45 Center Dr., Rm. 4AN–38K, National Institutes of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402. (301) 594–5006.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–33, Review of R01 grants.

Date: February 24, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1365 Filed 1–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure.

Name of Committee: Training Grant and Career Development Review Committee.

Date: February 13–14, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications,

Place: Westin Grand, 2350 M Street, NW., Washington, DC 20037.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

Date: February 16–17, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Sunspree Resort, 7601 East Indian Bend Road, Scottsdale, AZ 85250.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

Date: February 16–17, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Sunspree Resort, 7601 East Indian Bend Road, Scottsdale, AZ 85250.

Contact Person: Katherine M. Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

Date: February 20–21, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street NW., Washington, DC 2037.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529 Bethesda, MD 20892–9529. 301–496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

Date: February 20–21, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–0660. *sawczuka@ninds.n.h.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1366 Filed 1–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Medical Device User Fee Rates for Fiscal Year 2003 and Interim Procedures; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a correction notice that appeared in the **Federal Register** of January 10, 2003 (68 FR 1469). The document corrected a notice that appeared in the **Federal Register** of November 21, 2002 (67 FR 70228), which announced the rates and interim procedures for medical device user fees for fiscal year (FY) 2003. The November 21, 2002, document was inadvertently published with confusing language regarding the fee that must be paid by a small business that submits a 510(k) premarket notification for FDA review during FY 2003. The document intended to state that all 510(k)s submitted for FDA review during FY 2003 are subject to a standard fee of $2,187, and that all submitters who are subject to a fee, including a small business, are required to pay this fee. This document corrects the error in the correction notice.

ADDRESSES: Persons with access to the Internet may obtain further information on the Medical Device User Fee and Modernization Act of 2002 at http://www.fda.gov/cdrh/mdufma or http://www.fda.gov/cber/mdufma/mdufma.htm.

FOR FURTHER INFORMATION CONTACT: Frank Claunts, Office of Management and Systems (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–494, appearing in the **Federal Register** of January 10, 2003, the following correction is made:

1. On page 1469, in the second column, at the bottom of the page, item 3 is revised to read "On page 70229, in table 1, in the fourth column, in the last row, correct 'None in FY 2003' to read '2.187[1]'."

Dated: January 16, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1381 Filed 1–16–03; 3:21 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments on 10 Nominations, Proposed for Listing in the Report on Carcinogens, Eleventh Edition

Background

The National Toxicology Program (NTP) solicits final public comments on the nominations reviewed in 2002 for listing in the Report on Carcinogens, Eleventh Edition ("the Report"). This Report (previously known as the Annual Report on Carcinogens) is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301 (b) (4) of the Public Health Service Act, as amended, provides that the Secretary, (DHHS), shall publish a biennial report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

In 2002, ten nominations were reviewed for listing in the Eleventh Report. This review included two Federal and one non-government, scientific peer reviews and public comment and review. The three scientific review committees evaluated all available data relevant to the criteria for inclusion of candidate nominations in the Report. The criteria used in the review process and a detailed description of the review procedures, including the steps in the current formal review process, can be obtained from

the NTP home page Web site at *http://ntp-server.niehs.nih.gov/* or by contacting: Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, e-mail: *jameson@niehs.nih.gov.*

Public Comment Requested

The nominations reviewed in 2002 are provided in the following table with their Chemical Abstracts Services (CAS) Registry numbers (where available) and the recommendations from the three scientific peer reviews. The NTP will be making a final recommendation for these ten nominations for listing in, or changing the current listing from *reasonably anticipated to be a human carcinogen* to the *known to be a human carcinogen* category in the Eleventh Report.

Background documents provided to the review committees and the public are available on the Internet in PDF-format at the address above. Hard copies of these documents are also available upon request from Dr. Jameson (contact information above). The NTP will review the recommendations from each of the review committees and consider the public comments received throughout the process in making decisions regarding the NTP recommendations to the Secretary, DHHS, for listing of the nominated substances in the Report on Carcinogens, Eleventh Edition. The NTP solicits final public comment to supplement any previously submitted comments or to provide comments for the first time on any substance in the following table. Comments will be accepted for 60 days from the publication date of this announcement and should be directed to Dr. C. W. Jameson at the address provided above. Individuals submitting public comments are asked to include relevant contact information [name, affiliation (if any), address, telephone, fax, e-mail, and sponsoring organization (if any)].

Dated: January 10, 2003.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY OF RG1,[1] RG2[2] AND NTP BOARD SUBCOMMITTEE[3] RECOMMENDATIONS FOR THE NOMINATIONS REVIEWED IN 2002 FOR LISTING IN THE REPORT ON CARCINOGENS,[4] 11TH EDITION

Nomination/CAS No.	Primary uses or exposures	RGI action	RG2 action	NTP board subcommittee action
1-Amino-2,4-dibromoanthraquinone/(81–49–2).	An anthraquinone-derived vat dye that is used in the textile industry.	Motion to list 1-amino-2,4-dibromoanthraquinone as reasonably anticipated to be a human carcinogen passed by unanimous vote (8/0).	Motion to list 1-amino-2,4-dibromoanthraquinone as reasonably anticipated to be a human carcinogen passed by unanimous vote (8/0).	Motion to list 1-amino-2,4-dibromoanthraquinone as reasonably anticipated to be a human carcinogen passed by unanimous vote (9/0)
Selected Heterocyclic Amines (three nominations): (1) MeIQ (2-Amino-3,4-dimethyl-imidazo- [4,5-f]quinoline)/* (77094–11–2) (2) MeIQx (2-Amino-.3,8-dimethyl-imidazo[4,5-f] quinoxaline)/(77500–04–0) (3) PhIP (2-Amino-1-methyl-6-phenyl-imidazo[4,5-b]pyridine)/(105650–23–5)	MeIQ, MeIQx, and PhIP are heterocyclic amines that are formed during heating or cooking and are found in cooked meat and fish.	Motion to list MeIQ as reasonably anticipated to be a human carcinogen passed by unanimous vote (6/0).	Motion to list MeIQ as reasonably anticipated to be a human carcinogen passed by unanimous vote (8/0).	Motion to list MeIQ as reasonably anticipated to be a human carcinogen passed by a vote of 8 yes, 0 no and 1 abstention. Abstention because member felt insufficient data for human exposure to list in the RoC.
		Motion to list MeIQx as reasonably anticipated to be a human carcinogen passed by a vote of 5 yes to 1 no. Negative vote cast because member felt data meet criteria to list as known human carcinogen.	Motion to list MeIQx as reasonably anticipated to be a human carcinogen passed by unanimous vote (8/0).	Motion to list MeIQx as reasonably anticipated to be a human carcinogen passed by a unanimous vote (9/0).
		Motion to list PhIP as reasonably anticipated to be a human carcinogen passed by a vote of 5 yes to 1 no. Negative vote cast because member felt data meet criteria to list as known human carcinogen.	Motion to list PhIP as reasonably anticipated to be a human carcinogen passed by unanimous vote (8/0).	Motion to list PhIP as reasonably anticipated to be a human carcinogen passed by unanimous vote (9/0).

SUMMARY OF RG1,[1] RG2[2] AND NTP BOARD SUBCOMMITTEE[3] RECOMMENDATIONS FOR THE NOMINATIONS REVIEWED IN 2002 FOR LISTING IN THE REPORT ON CARCINOGENS,[4] 11TH EDITION—Continued

Nomination/CAS No.	Primary uses or exposures	RGI action	RG2 action	NTP board subcommittee action
Cobalt Sulfate/(10026–2401).	Cobalt sulfate is used in electroplating and electrochemical industries. It is also used as a coloring agent for ceramics, a drying agent in inks, paints, varnishes and linoleum, and has been added to animal feed as a mineral supplement.	Motion to list cobalt sulfate as reasonably anticipated to be a human carcinogen passed by unanimous vote (9/0).	Motion to list cobalt sulfate as reasonably anticipated to be a human carcinogen passed by a vote of 8 yes and 1 no. Negative vote cast because member felt exposure data in background document needed to be more specific for cobalt sulfate.	Motion to list cobalt sulfate as reasonably anticipated to be a human carcinogen passed by a vote of 8 yes to 1 no. Negative vote cast because member felt human exposure data not specific for cobalt sulfate.
Diethanolamine (DEA)/(111–42–2).	DEA is used in the preparation of surfactants used in liquid laundry, dishwashing detergents, cosmetics, shampoos, and hair conditioners; as a surface-active agent and corrosion inhibitor in metalworking fluids and as a dispersant in agricultural chemical formulations.	Motion *not* to list DEA in the RoC passed by a vote of 7 yes to 2 no. Negative votes cast because members felt data sufficient to list as reasonably anticipated to be a human carcinogen.	Motion *not* to list DEA in the RoC passed by unanimous vote (9/0).	Motion *not* to list DEA in the RoC passed by a vote of 8 yes to 1 no. Negative vote cost because member felt data sufficient to list as reasonably anticipated to be a human carcinogen.
Naphthalene (91–20–3)	Naphthalene is used as a intermediate in the synthesis of many industrial chemicals, and has been used as an ingredient in some moth repellants and toilet bowl deodorants, and to control lice on livestock and poultry.	Motion to list naphthalene as reasonably anticipated to be a human carcinogen passed by a vote of 6 yes to 1 no. Negative vote cast because member felt data not sufficient to list in the RoC.	The RG2 could not make a majority recommendation for either listing or not listing naphthalene in the RoC.	Motion to list naphthalene as reasonably anticipated to be a human carcinogen passed by unanimous vote (9/0).
Nitrobenzne (98–95–3)	Nitrobenzene is used mainly in the production of aniline, itself a major chemical intermediate in the production of dyes.	Motion to list nitrobenzene as reasonably anticipated to be a human carcinogen passed by unanimous vote (7/0).	Motion to list nitrobenzene as reasonably anticipated to be a human carcinogen passed by unanimous vote (7/0).	Motion to list nitrobenzene as reasonably anticipated to be a human carcinogen passed by unanimous vote (9/0).
Nitromethane (75–52–5) ...	Nitromethane is used in specialized fuels, in explosives and in the synthesis of nitromethane derivatives, pharmaceuticals, agricultural soil fumigants and industrial antimicrobials.	Motion to list nitromethane as reasonably anticipated to be a human carcinogen passed by unanimous vote (8/0).	Motion to list nitromethane as reasonably anticipated to be a human carcinogen passed by unaimous vote (9/0).	Motion to list nitromethane as reasonably anticipated to be a human carcinogen passed by unanimous vote (9/0).
4,4′-Thiodianiline (139–65–1).	4,4′-Thiodianiline has been produced commercially since the early 1940's as an intermediate of several diazo dyes.	Motion to list 4,4′-thiodianiline as reasonably anticipated to be a human carcinogen passed by a vote of 6 yes to 2 no. Negative votes cast because members felt there was not sufficient exposure to list in the RoC.	Motion to list 4,4′-thiodianiline as reasonably anticipated to be a human carcinogen passed by a vote of 6 yes to 3 no. Negative votes cast because members felt there was not sufficient exposure to list in the RoC.	Motion to list 4,4′-thiodianiline as reasonably anticipated to be a human carcinogen passed by a vote of 5 yes to 2 no with 2 abstentions. Negative votes and abstentions cast because members felt there was not sufficient exposure to list in the RoC.

[1] The NIEHS Review Committee for the Report on Carcinogens (RG1).
[2] The NTP Executive Committee' Interagency Working Group for the Report on Carcinogens (RG2).

[2] Agencies from NTP Executive Committee represented on RG2 include: Agency for Toxic Substances and Disease Registry (ATSDR), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), National Center for Environmental Health of the Centers for Disease Control and Prevention (NCEH/CDC), National Center for Toxicological Research of the Food and Drug Administration (NCTR/FDA), National Institute for Occupational Safety and Health/CDC (NIOSH/CDC), Occupational Safety and Health Administration (OSHA), National Cancer Institute of the National Institutes of Health (NCI/NIH), and National Institute of Environmental Health Sciences/NIH (NIEHS/NIH).

[3] The NTP Board of Scientific Counselors Report on Carcinogens Subcommittee (the External Peer Review Group).

[4] RoC—Report on Carcinogens.

[FR Doc. 03–1368 Filed 1–21–03; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4815–N–01]

Notice of Submission of Proposed Information Collection to OMB: Public Housing Agency—Lease Requirements, Recordkeeping Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 21, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0006) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202)395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Public Housing Agency—Lease Requirements, Recordkeeping Requirements.

OMB Approval Number: 2577–0006.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies (PHA) are required to keep records for implementation of Federal regulations governing dwelling leases in public housing. The information is retained by the PHAs that manage public housing and is used for operating purposes.

Respondents: Individuals or households, State, local or tribal government.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,330	3,330		48		158,400

Total Estimated Burden Hours: 158,400.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 14, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–1274 Filed 1–21–03; 8:45 am]
BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: Between November 14, 2001, and November 22, 2002, Region 1 of the Fish and Wildlife Service (we, the Service) approved 11 Habitat Conservation Plans (HCPs) and associated permits for the incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). We also amended two HCPs and associated permits. In addition, we issued two permits for Safe Harbor Agreements and one permit for a Candidate Conservation Agreement with Assurances, pursuant to section 10(a)(1)(A) of the Act.

Copies of the permits and associated decision documents are available upon request. Charges for copying, shipping and handling may apply.

ADDRESSES: Documents are available from the Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: If you would like copies of any of the above documents, please contact Shelly

McKeever, Administrative Assistant, at telephone (503) 231–6241.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulation prohibit the take of wildlife species listed as endangered or threatened, respectively. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

Between November 14, 2001, and November 22, 2002, Region 1 of the Service issued or amended the following permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) and section 10(a)(1)(A) of the Act. We issued or amended each permit after making the following determinations: the application had been submitted in good faith; all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of listed species; and the permit was consistent with the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives pursuant to the National Environmental Policy Act of 1969.

Approved plan/permit	Permit No.	Issuance date
Habitat Conservation Plans:		
Redhawk Communities	TE051895–0	01/15/02
Dos Pueblos Golf Links (2 permits)	TE045997–0	01/16/02
	TE046002–0	01/16/02
Temecula Ridge Apartments and Temecula Village	TE052816–0	02/08/02
Natomas Basin, Metro Air Park	TE036473–0	02/21/02
Cyanotech Aquaculture Facility	TE051040–0	03/18/02
Mayer Property	TE054227–0	06/04/02
California Department of Corrections Statewide Electrified Fence Project	TE058060–0	06/12/02
Multiple Species Conservation Program, County of San Diego Subarea Plan, Permit Amendment for Cielo Ridge and Rancho de Lusardi.	PRT–840414	07/09/02
West Fork Timber, Permit Amendment for lynx and bulltrout	TE777837–2	07/24/02
University of California, Davis—2002 Campus Projects	TE060073–0	07/31/02
Mission View Estates	TE060752–0	08/08/02
Lathrop Wells	TE060997–0	08/16/02
AT&T—Point Arena Mountain Beaver	TE063833–0	10/28/02
Candidate Conservation Agreements With Assurances:		
Soulen Ranch	TE055219–0	09/29/02
Safe Harbor Agreements:		
Forster-Gill, Inc.	TE057898–0	06/18/02
Umikoa Ranch	TE044015–0	12/05/01

Copies of these permits, the accompanying HCP, Safe Harbor Agreement, or Candidate Conservation Agreement with Assurances, and associated documents are available upon request. Decision documents for each permit include a Findings and Recommendation; a Biological Opinion; and either a Finding of No Significant Impact, a Record of Decision, or an Environmental Action Statement. Associated documents may also include an Implementing Agreement, Environmental Assessment, or Environmental Impact Statement, as applicable.

Dated: January 15, 2003.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 03–1302 Filed 1–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation ("POSC")

Notice is hereby given that, on October 17, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Satyam Computer Services, Ltd., Houston, TX; and IMS Corporation, Moscow, Russia have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petrotechnical Open Software Corporation ("POSC") intends to file additional written notification disclosing all changes in membership.

On January 14, 1991, Petrotechnical Open Software Corporation ("POSC") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on July 19, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 12, 2002 (67 FR 57853).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–1257 Filed 1–21–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Meeting Notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and fourteen states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal State system to exchange such records.

The United States Attorney General appointed fifteen persons from federal and state agencies to serve on the Compact Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system.

Matters for discussion are expected to include: (1) Proposed Amendments to the Delayed Fingerprint Submission Requirement Rule, (2) State/FBI Qualification Requirements and Audit Criterion for Participation in the National Fingerprint File, (3) Status Report on the National Fingerprint Applicant Check Study, (4) Discussion on Privatization Initiatives and the Development of Security/Management Control Standards, (5) Proposed Sanctions Rule, (6) Proposed Improvements to National Fingerprint File Responses for Electronic Fingerprint Based Requests for Criminal History Records Checks.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Ms. Cathy L. Morrison at (304) 625–2736, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIMES: The Compact Council will meet in open session from 9 a.m. to 5 p.m. on February 25–26, 2003.

ADDRESSES: The meeting will take place at the Renaissance Scottsdale Resort, 6160 North Scottsdale Road, Scottsdale, Arizona, telephone (480) 991–1414.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Cathy L. Morrison, Interim FBI Compact Officer, Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0148, telephone (304) 625–2736, facsimile (304) 625–5388.

Dated: January 14, 2003.

Bobby P. Hamil, Jr.,

Acting Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 03–1303 Filed 1–21–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

OMB Approval of Information Collection; Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Notice of OMB approval under the Paperwork Reduction Act of 1995.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) is announcing that the Office of Management and Budget (OMB) has approved, under the Paperwork Reduction Act of 1995, a new collection of information under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended. This notice announces both the OMB approval number and expiration date.

COMPLIANCE DATE: As of January 22, 2003, affected parties must comply with the new information collection requirements described below which have been approved by OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–0036 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On November 6, 2002, OWCP requested OMB approval under the PRA of a new information collection for the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA), 42 U.S.C. 7384 *et seq.* The new information collection requirements that needed OMB approval are derived from sections 7384d and 7384v(c) of the EEOICPA, and consists of requests for supplemental employment evidence required when an alleged employment history cannot be verified by the Department of Energy.

On January 8, 2003, OMB approved this information collection request for three years. The OMB control number assigned to this information collection is 1215–0199. The approval for this information collection will expire on January 31, 2006.

Signed at Washington, DC, this 16th day of January, 2003.

Shelby Hallmark,

Director, Office of Workers' Compensation Programs, Employment Standards Administration.

[FR Doc. 03–1355 Filed 1–21–03; 8:45 am]

BILLING CODE 4510–CR–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0143(2003)]

Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)); Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment on its proposal to extend OMB approval of the information-collection requirements contained in its Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)). This standard regulates the use of presence-sensing devices ("PSDs") in mechanical power-press safety systems; a PSD (*e.g.*, a photoelectric field or curtain) automatically stops the stroke of a mechanical power press when the device detects an operator entering a danger zone near the press. Accordingly, the standard protects employees from serious crush injuries, amputations, and death.

DATES: Submit written comments on or before March 24, 2003.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0143(2003), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217 (h)) is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney or Todd Owen at (202) 693–2222. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov*, and select "*Information Collection Requests.*"

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

A number of paragraphs in OSHA's Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)) (the "Standard") contain paperwork requirements. These requirements include: Certifying brake-monitor adjustments, alternatives to photoelectric PSDs, safety-system design and installation, and employee training; annual recertification of safety systems; establishing and maintaining the original certification and validation records, as well as the most recent recertification and revalidation records; affixing labels to test rods and to certified and recertified presses; and notifying an OSHA-recognized third-party validation organization when a safety system component fails, the employer modifies the safety system, or a point-of-operation injury occurs. In addition, Appendix A of § 1910.217 provides detailed information and procedures required to meet the certification/validation provisions, as well as the design requirements, contained in the Standard. Accordingly, Appendix A supplements and explains the certification/validation provisions of the PSDI Standard, and does not specify new or additional paperwork requirements for employers. Appendix C § 1910.217 describes the requirements and procedures for obtaining OSHA recognition as a third-party validation organization; therefore, the paperwork requirements specified by this appendix do not impose burden hours or cost directly on employers who use PSDs.

By complying with these paperwork requirements, employers ensure that PSDI-equipped mechanical power presses are in safe working order, thereby preventing severe injury and death to press operators and other employees who work near this equipment. In addition, these records provide the most efficient means for an OSHA compliance officer to determine that an employer performed the requirements and that the equipment is safe.

To date no third-party organization is available to validate employer and manufacturer certifications that their PSDI equipment and practices meet the requirements of the Standard. Therefore, the Agency cannot attribute burden hours and cost to the paperwork requirements of the Standard.

The Agency is currently conducting a Lookback Review on PSDI pursuant to Section 610 of the Regulatory Flexibility Act and section 5 of Executive Order 12866 on Regulatory Planning and Review (67 FR 55181, Docket No. S225A). The purpose of this review is to determine, while protecting worker safety, whether there are ways to modify this standard to make implementation more practical, to reduce regulatory burden on small business and to improve its effectiveness. The public comment period for the PSDI Lookback Review closes on January 27, 2003.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is proposing to extend OMB approval of the information-collection requirements specified by the Standard even though the Agency can attribute no burden hours and cost to these requirements. To date no third-party organization is available to validate employer and manufacturer certifications that their PSDI equipment and practices meet the requirements of the Standard. This notice provides an opportunity for the public to comment on the proposed extension of OMB's approval of the Information Collection Request on the Standard on Presence Sensing Device Initiation (PSDI). The Agency will include a summary of these comments as part of its request to OMB to approve these paperwork requirements.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)).

OMB Number: 1218–0143.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 0.

Frequency of Recordkeeping: On occasion; annually; other (initially).

Average Time per Response: 0.

Estimated Total Burden Hours: 0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on January 14, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–1327 Filed 1–21–03; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11061, *et al.*]

Proposed Exemptions; John Hancock Life Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffittb@pwba.dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

John Hancock Life Insurance Company, Located in Boston, MA

[Application No. D–11061]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I: Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A) and 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) and 4975(c)(1)(D) of the Code shall not apply to: [1]

(a) The purchase of a timber asset (Timber Asset(s)), as defined in section III(f), below, from International Paper Company or any affiliate, as defined in section III(a), below, (collectively, International Paper) by a certain insurance company separate account (ForesTree IP), as defined in section III(d), below, maintained and managed by Hancock, as defined in section III(e), below, for the investment of the assets of one or more employee pension benefit plans sponsored by International Paper (the IP Plan or IP Plans); provided that the following conditions are satisfied:

(1) The price paid by ForesTree IP for the Timber Asset is determined by an independent, qualified appraiser, as defined in section III(h), below, as of the date of the transaction,

(2) The fair market value of the Timber Asset sold to ForesTree IP must be documented by an appraisal report in writing issued, as of the date of the transaction, by the independent, qualified appraiser;

(3) The price paid by ForesTree IP for the Timber Asset does not exceed the fair market value of such asset at the time of the purchase; and

(4) The general conditions set forth in section II, below, are satisfied.

(b) The sale of a timber product (Timber Product(s)), as defined in section III(g), below, to International Paper by ForesTree IP; provided that the following conditions are satisfied:

(1) Prior to soliciting bids for the sale of a Timber Product, Hancock establishes a minimum bid (the Minimum Bid) based on its assessment of the fair market value of the Timber Product offered for sale;

(2) Hancock (or its designee) solicits from each party on the buyers list (the Buyer's List), as defined in section III(c), below, for the relevant geographic area in which the Timber Product is located, a written bid for the purchase of the Timber Product offered for sale;

(3) The highest price bid for the Timber Product offered for sale must meet or exceed the Minimum Bid established by Hancock and must not be less than the fair market value of such Timber Product at the time the contract for sale is legally binding on the parties involved;

(4) Where International Paper is the highest price bidder for the Timber Product offered for sale, the transaction may not go forward, unless Hancock has received bids on such Timber Product from at least two (2) other bidders, in addition to International Paper, provided that each such bidder satisfies the definition of a *bona fide* bidder, as set forth in section III (i), below; and provided further that neither Hancock's general account nor any other account managed by Hancock is either of the two other bidders; and

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

(5) The general conditions set forth in section II, below, are satisfied.

Section II: General Conditions

(a) Any IP Plan that invests in ForesTree IP has total assets in excess of $100 million;

(b) Hancock acts as a discretionary investment manager for ForesTree IP;

(c) Hancock negotiates on behalf of ForesTree IP the terms and conditions of any purchase of a Timber Asset by ForesTree IP from International Paper and the terms and conditions of any sale of a Timber Product by ForesTree IP to International Paper;

(d) Prior to ForestTree IP entering into any purchase of a Timber Asset or any sale of a Timber Product, Hancock determines on behalf of such account that each such transaction is feasible, in the interest of the account based on the investment policy and objectives of the account, and protective of the participants in the account;

(e) The terms and conditions of each transaction involving the sale of a Timber Asset by International Paper to ForesTree IP or the purchase of a Timber Product by International from ForesTree IP are at least as favorable to ForesTree IP as the terms obtainable by ForesTree IP in a similar transaction negotiated at arm's length with an unrelated third party;

(f) The transactions subject to this exemption are not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(g) Each transaction subject to this exemption is exclusively a cash transaction;

(h) ForesTree IP does not purchase Timber Assets from or sell Timber Products to Hancock's general account or any other account managed by Hancock;

(i) The investment of plan assets by any IP Plan in ForesTree IP does not exceed 20 percent (20%) of the total assets of such plan;

(j) The total amount of contributions received by Hancock from International Paper on behalf of the IP Plans and allocated to ForesTree IP must not in the aggregate exceed $100 million; and

(k) Hancock maintains, or causes to be maintained, within the United States for a period of six (6) years from the date of each transaction which is subject to this exemption, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described, below in paragraph (1)(1), to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Hancock, the records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than Hancock shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (l)(1).

(l)(1) Except as provided in subparagraph (2) of this paragraph (l) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (k), above, are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, or the Internal Revenue Service;

(ii) Any fiduciary of an IP Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to an IP Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of an IP Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (l)(1)(ii)–(iv) are authorized to examine the trade secrets of Hancock or its affiliates or commercial or financial information which is privileged or confidential.

Section III: Definitions

(a) The term, "affiliate" or "affiliates," of a person means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term, "control," means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, "Buyer's List," means a comprehensive and current list of the names of the active forest products companies and prospective buyers of Timber Products in the geographic area in which such Timber Products are located, which is compiled and maintained by Hancock for each such geographic area for the purpose of selling Timber Products in such area on behalf of any of the timber accounts managed by Hancock, provided that, with respect to the Buyer's List utilized by ForesTree IP:

(1) International Paper's name may not be added to the Buyer's List for a geographic area solely for the purpose of a sale by ForesTree IP of Timber Products in such area; and

(2) The name of a prospective buyer of Timber Products in a geographic area may not be removed by Hancock from the Buyer's List for such geographic area, unless such buyer:

(A) Has failed to perform satisfactorily in a previous transaction;

(B) Is no longer in business;

(C) Requests, orally or in writing, to be removed from such list; or

(D) Has failed to respond for a period of two (2) years to previous solicitations by ForesTree IP to bid on Timber Products offered for sale in the geographic area;

(d) The term, "ForesTree IP," refers to the non-pooled insurance company separate account maintained and managed by Hancock for the investment of assets of one or more of the IP Plans, as well as to any partnership, limited liability company, or corporation in which ForesTree IP invests. The term, "ForesTree IP," does not include the other ForesTree Separate Accounts managed by Hancock.

(e) The term, "Hancock," means John Hancock Financial Services (Financial Services); John Hancock Life Insurance Company (JHLIC); John Hancock Variable Life Insurance Company (Variable Life); Hancock Natural Resources Group (Resources Group); John Hancock Timber Resource Corporation (Timber Resource); or other affiliates of JHLIC, as defined in section III(a), above.

(f) The term, "Timber Asset(s)," means a fee simple in timberland (and appurtenant rights) [2], or a timber lease, or a timber deed, provided that, with respect to any timber lease, or timber deed:

(1) The underlying fee simple is owned by a person other than International Paper, Hancock, or any other account managed by Hancock at the time of the sale; and

(2) The entire deed or lease held by International Paper is purchased by ForesTree IP.

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[2] It is represented that certain property rights, including mineral rights, easements, and recreational leases, are appurtenant to a fee simple and are bought and sold, and appraised along with the fee simple.

(g) The term, "Timber Product(s)," means standing timber or timber in the form of logs.

(h) The term, "independent, qualified appraiser," means an individual or firm which is qualified to serve in the capacity as an appraiser; is independent of the parties in interest engaging in the transaction and their affiliates; and satisfies the following conditions:

(1) Other than serving as the independent, qualified appraiser for a transaction which is subject to this exemption, the individual or firm has no current employment relationship with Hancock or with International Paper;

(2) No individual or firm may serve as an independent, qualified appraiser during any year in which the gross receipts such individual or firm received from business with Hancock and from business with International Paper for that year exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year;

(3) If an individual is selected to serve as the independent, qualified appraiser, then such individual must:

(A) Have a forestry degree; and

(B) Have a minimum of five (5) years of experience as a timberland appraiser; or

(C) Otherwise demonstrate proficiency in timberland appraisal work which is equivalent to the level of expertise demonstrated by the requirements, as set forth in section III(h)(3)(A) and (B), above;

(4) If a firm is selected to serve as the independent, qualified appraiser, then such firm must have:

(A) A minimum of five (5) years of experience as a timberland appraiser; or

(B) Otherwise demonstrate proficiency in timberland appraisal work; and

(5) The individual or the firm that serves as the independent, qualified appraiser for transactions covered by this exemption must have the ability to access appropriate timberland sales comparison data.

(i) The term, "*bona fide* bidder," means a bidder on a Timber Product offered for sale by ForesTree IP, only if

(1) The bidder has made an offer to purchase the Timber Product, in accordance with the terms of the bid solicitation;

(2) The bidder's name appears on the Buyer's List at the time of bid solicitation and at the time of the bid;

(3) Hancock neither knows or should know of any impediment to the bidder's consummation of the purchase of the Timber Product offered for sale upon which the bidder has bid; and

(4) Hancock has no reason to believe that the bid was not made in good faith by the bidder with the present intent of procuring the Timber Product offered for sale by ForesTree IP.

Summary of Facts and Representations

1. The Retirement Plan of the International Paper Company, (the IP Retirement Plan), located in Memphis, Tennessee is affected by this proposed exemption. The IP Retirement Plan is an employee pension benefit plan covered by the Act. As of January 10, 2002, the estimated number of participants and beneficiaries in the IP Retirement Plan was: (a) 61,100 actives; (b) 35,600 retired or separated individuals; and (c) 30,600 terminated vested individuals.

International Paper and certain of its affiliates sponsor and maintain the IP Retirement Plan for their employees. As employers any of whose employees are covered by the IP Retirement Plan, International Paper and certain of its affiliates are parties in interest with respect to such plan, pursuant to section 3(14)(C) of the Act.

The fair market value of the total assets of the IP Retirement Plan was approximately $6,884,329,000, as of June 30, 2001. The assets of the IP Retirement Plan are held in the International Paper Company Trust Agreement to Fund Pension Plans (the IP Trust). It is represented that the IP Trust may also, from time to time, hold the assets of other plans sponsored and maintained by International Paper and its affiliates for their employees. The trustee of the IP Trust is State Street Bank and Trust Company (State Street).

2. The application for this proposed exemption was submitted on behalf of JHLIC, Financial Services, Variable Life, Resources Group, and Timber Resource. JHLIC is a wholly-owned subsidiary of Financial Services. Variable Life is a wholly-owned subsidiary of JHLIC. Resources Group and Timber Resource are wholly-owned indirect subsidiaries of JHLIC.[3]

Through Resources Group, John Hancock manages timberland for its customers and for its own general account. In this regard, as of June 30, 2001, Resources Group managed over 2.4 million acres of timberland in the United States valued at approximately $2.2 billion, and managed nearly .5 million acres of Australian timberland valued at approximately $362 million.

3. John Hancock offers annuity contracts and funding agreements to customers (Contract Holders), including employee pension benefit plans subject to the Act. Such Contract Holders may invest directly or indirectly in timberland through pooled and non-pooled separate accounts available under John Hancock group annuity contracts and funding agreements. It is represented that these contracts and agreements provide that, in accordance with the Contract Holders' direction, the premium or contribution received from such Contract Holder will be allocated internally on the books of John Hancock to segregated asset accounts or "separate accounts." The separate account investments are held in John Hancock's name, but the value of the contract or agreement to the Contract Holder fluctuates with the value of the investments allocated to the separate account. The direct expenses of managing the investments and John Hancock's fees are charged against the value of the separate account.

4. John Hancock manages a number of separate accounts, both pooled and non-pooled, that invest in timber. These separate accounts are generally known as the ForesTree Separate Accounts. It is represented that these ForesTree Separate Accounts may invest in Timber Assets, including a fee simple (with appurtenant rights), as well as timber leases, and timber deeds. It is represented that a timber lease is a contract between a landowner (the lessor) and another party (the lessee) under which the lessee is granted the right to use the land for the production of lumber for a specified period of time. Timber leases typically specify how the land is to be managed and the condition to which the land is to be returned upon expiration of the lease. A timber deed is a contract under which the landowner grants to a third party the right (but not the obligation) to harvest existing timber.

It is represented that over one million acres of Timber Assets are allocated to the ForesTree Separate Accounts. As of June 30, 2001, these Timber Assets had a value of over $1 billion.

As part of its timberland management, John Hancock or an affiliate also periodically sells Timber Products in the form of standing timber or logs from its ForesTree Separate Accounts to companies in the forest products industry. John Hancock, through its affiliates, has the discretion to determine when and how much of the Timber Products in the ForesTree Separate Accounts to sell, based on the market conditions for each type of timber and the geographic location.

[3] Throughout the Summary of Facts and Representations for this proposed exemption, JHLIC and Variable Life are referred to collectively as "John Hancock," and the term, "Hancock," is defined, as set forth in section III(e) of this proposed exemption.

John Hancock is the sole legal owner of the assets in each of the ForesTree Separate Accounts. Under the applicable contract or agreement, John Hancock or an affiliate has the right to control, manage, and administer the ForesTree Separate Accounts, including the sole discretion to select and dispose of investments in such accounts in accordance with the investment policy for such accounts.

John Hancock's management responsibilities under the ForesTree Separate Accounts are performed by Resources Group, a wholly-owned indirect subsidiary of John Hancock which was established in 1995. Subject to review and approval by John Hancock's internal investment committees, Resources Group is responsible for all decisions regarding the acquisition and disposition of timberland properties held in the ForesTree Separate Accounts. In addition, Resources Group is responsible for the ongoing management of John Hancock's timberland properties, including site preparation and planting, road building and construction, leasing to tenants, maintenance, acquisition of insurance, and payment of taxes. It is represented that on-site work is performed either by independent forest managers under contract to Resources Group or by employees of Timber Resource. In this regard, Resources Group currently contracts with three regional forest management firms. Such firms include Olympic Resource Management (in the western United States and Canada), Resource Management Services (in the southern United States), and Wagner Forest Management (in the northern United States). In addition to these regional forest management firms, Cahaba Forest Management, Inc., a wholly-owned subsidiary of Resources Group established in February of 2000, provides property management services and manages International Paper's Redstone investment in Alabama.

5. ForesTree IP is a non-pooled separate account established on January 1, 2000. ForesTree IP is maintained pursuant to a Group Annuity Contract (No. 14756 GAC), entered into on January 31, 2000, between John Hancock and the IP Trust. ForesTree IP is one of the ForesTree Separate Accounts managed by John Hancock that are invested in Timber Assets. ForesTree IP is the only one of the ForesTree Separate Accounts to which the relief provided by this proposed exemption is applicable. It is represented that, as of December 31, 2001, the real, dollar-weighted internal rate of return since the inception of ForesTree IP was 6.5 percent (6.5%) (after John Hancock's fees).[4] ForesTree IP was established with an intended allocation of $25 million to be invested in Timber Assets. In February 2000, $10 million of the allocation was invested in Timber Assets in Alabama. John Hancock expects that the remaining $15 million will be allocated before the end of the year 2002. In addition, it is represented that there is the potential for additional funding in the range of $10 million to $30 million.

Following an expected allocation of $25 million to ForesTree IP, it is represented that the percentage of the fair market value of the total assets of the IP Retirement Plan (approximately $6.9 billion, as of June 30, 2001) involved in the proposed transactions will be .36 percent (.36%). It is represented that approximately .27 percent (.27%) of the fair market value of the assets of the IP Retirement Plan are invested in timber related assets outside of ForesTree IP.

As a result of the investment in ForesTree IP by the IP Retirement Plan, the assets of such account are deemed to be assets of the IP Retirement Plan, pursuant to the Department's regulations, as set forth in 29 CFR § 2510.3–101(h)(1)(iii).

Assets invested in ForesTree IP are managed by John Hancock and Resource Group in accordance with the investment policy established for the account. The investment objective of ForesTree IP is to establish and maintain a diversified portfolio of individual or shared equity interests in timberland investments. Timberland investments consist primarily of interests in timber producing real estate, and in contracts relating to real estate for the production and harvesting of Timber Products. Timberland investments may be located either inside the United States, or, with the consent of the Contract Holder, the IP Retirement Plan, outside the United States.[5]

Pursuant to the investment policy of ForesTree IP, Timber Assets are purchased or sold opportunistically to generate returns to meet performance objectives of the account. ForesTree IP may invest directly in a Timber Asset, or it may invest in entities that own Timber Assets, directly or indirectly. These entities include corporations, partnerships, 501(c)(25) organizations, and their international equivalents (Holding Entities). Although ForesTree IP does not currently invest through such Holding Entities, if it were to do so, it is represented that Resources Group would likely be appointed the investment manager of such entity, or that Resources Group (or an employee) would be appointed as an officer of the entity that holds the Timber Assets.

It is represented that the assets of any of the Holding Entities through which ForesTree IP may invest in Timber Assets could constitute plan assets, pursuant to the Department's regulations, as set forth at 29 CFR § 2510.3–101(a)(2). It is further represented that as investment managers for ForesTree IP, John Hancock, and Resources Group are fiduciaries of the IP Retirement Plan, pursuant to section 3(14)(A) of the Act. Resources Group is also a fiduciary with respect to the IP Retirement Plan, pursuant to section 3(14)(A) of the Act, as discretionary manager of the timberland held by any pass-through entity.

6. John Hancock desires to purchase Timber Assets from International Paper on behalf of ForesTree IP. In this regard, John Hancock anticipates that $1 million to $2 million worth of Timber Assets will be marketed by International Paper for sale over the next two (2) years, as a result of the May 2000 merger of International Paper and Champion International. As the sale of Timber Assets from International Paper to ForesTree IP would constitute a violation of section 406(a)(1)(A) and (D) of the Act, John Hancock and its affiliates request an administrative exemption; provided certain general and specific conditions are satisfied at the time each transaction is entered.

It is further represented that section 406(a)(1)(A) and (D) of the Act would be violated by any sale of Timber Products from ForesTree IP to International Paper. Accordingly, John Hancock also

[4] The applicants have not requested an exemption for the receipt of incentive management fees or other fees in connection with John Hancock or its affiliates serving as investment manager for ForesTree IP under the terms of the group annuity contract (No. 14756 GAC) between John Hancock and the IP Trust. The Department herein offers no opinion as to whether the fee structure, as set forth in such group annuity contract, raises issues under the prohibited transaction provisions of section 406 of the Act, nor is the Department providing relief, herein, for the receipt by John Hancock or any of its affiliates of incentive management fees or other fees in connection with the assets held by ForesTree IP.

[5] The applicants represent that John Hancock satisfies the indicia of ownership requirements, as set forth in section 404(b) of the Act. In this regard, it is represented that where John Hancock invests in foreign timber, it does so through an entity qualified as a "real estate operating company," pursuant to 29 CFR § 2510.3–101(e) of the Department's plan assets regulation. Further, it is represented that the indicia of ownership of such entity is held in the United States. The Department, herein, expresses no opinion as to whether the applicants have satisfied the indicia of ownership requirements, as set forth in section 404(b)of the Act.

requests an administrative exemption that would permit it or Resources Group periodically to sell Timber Products from ForesTree IP, to International Paper; provided certain general and specific conditions are satisfied at the time each transaction is entered.

7. In the opinion of John Hancock, the proposed transactions are in the interest of the IP Retirement Plan and any IP Plan subsequently sponsored by International Paper which participates through the IP Trust in ForesTree IP. In this regard, if permitted to purchase Timber Assets held by International Paper, ForesTree IP will have access to the broadest range of potential timber investments, in a market in which such investments are limited.

It is represented that an exemption permitting the sale of Timber Products from ForesTree IP to International Paper is in the interest of the IP Plan and its participants and beneficiaries, because it will enhance John Hancock's ability to maximize the return of such account. In this regard, the exemption will create a more competitive market in which to sell Timber Products harvested from the Timber Assets held on behalf of such account. John Hancock notes that the number of purchasers of Timber Products has declined in the last few years due to the consolidation of the forest products industry. In the opinion of John Hancock, in order to ensure that ForesTree IP is obtaining the highest value for its Timber Products, it should be able to market such products to all available purchasers, including International Paper. It is represented that, if International Paper is precluded from bidding on Timber Products sold by ForesTree IP, the account may not obtain the highest price for its timber to the detriment of the IP Retirement Plan.

8. It is represented that the proposed exemption contains sufficient safeguards to protect the participants and beneficiaries of the IP Retirement Plan. In this regard, before purchasing a Timber Asset from International Paper, John Hancock, as the investment manager of ForesTree IP, will independently determine that the purchase of such asset is in the interest of the account and consistent with the policies and objectives of such account. Moreover, John Hancock will obtain an appraisal from an independent, qualified appraiser of the value of the Timber Asset prior to purchase to ensure that ForesTree IP pays no more than the fair market value of such asset. The fair market value of the Timber Asset sold to ForesTree IP must be documented by an appraisal report in writing issued, as of the date of the transaction, by the independent, qualified appraiser, and such report must be retained for a period of six (6) years from the date of the transaction.

Because of the ongoing nature of the requested exemption, it is represented that the applicants cannot now identify the appraisers who will perform the required appraisals. However, the Department notes that any appraiser selected to value the Timber Asset to be purchased by ForesTree IP from International Paper, pursuant to the terms of this exemption, must satisfy the requirements for independence and qualification, as set forth in section III(h) of this exemption.

Before selling a Timber Product, John Hancock will independently determine that the sale is in the interest of ForesTree IP. Further, it is represented that the price received by ForesTree IP for Timber Products offered for sale will be established through a competitive bidding process among the prospective buyers in the relevant geographic area in which the Timber Products are located.

It is represented that John Hancock's regional forest managers compile and maintain Buyer's Lists of the names of active forest products companies and timber buyers in each geographic region in which Timber Products are located for the purpose of selling such Timber Products for any timber account. The relevant geographic area is generally a 100-mile radius from the harvest area, because the cost to truck logs beyond this distance is typically uneconomical. However, there is no fixed requirement for such radius. It is represented that John Hancock's regional forest managers take into account the distance of a potential buyer from the location of the properties under management and determine what is the appropriate target area.

It is further represented that Buyer's Lists typically contain between 50 and 100 potential buyers. However, the number may vary from list to list depending upon the depth of the timber markets and the number of wood processing facilities in the relevant geographic area. It is in the interest of John Hancock, and all of its client accounts, to maintain the most comprehensive Buyer's Lists for all transactions. In this regard, prospective buyers are identified via word of mouth through day to day dealing with logging contractors and timber buyers by John Hancock's regional forest managers. In addition, prospective buyers may be added to a particular Buyer's List upon the request, either oral or written, of such buyers. It is represented that John Hancock's regional forest managers will add a potential buyer to the Buyer's List, so long as a manager has no knowledge of unsatisfactory past performance by such buyer. The applicants have informed the Department that John Hancock's general account and the names of other accounts managed by John Hancock may appear on any of the Buyer's Lists. In this regard, the Department notes that section II(h) of this exemption precludes relief for the purchase by ForesTree IP of Timber Assets from or sale by ForesTree IP of Timber Products to Hancock's general account or any other account managed by Hancock.

With respect to the Buyer's List utilized by ForesTree IP, John Hancock's forest manager in the region where such Timber Products are located will solicit bids from all of the buyers in that geographic area whose names are on the Buyer's List then currently in effect. It is represented that John Hancock will not modify the Buyer's List for a geographical area to add International Paper's name to such list solely for the purpose of engaging in a sale by ForesTree IP of Timber Products in such area to International Paper. Further, with respect to the Buyer's List utilized by ForesTree IP, John Hancock's regional forest managers will not remove a buyer from the Buyer's List for a geographic area, unless the buyer has failed to perform satisfactorily in a previous transaction; is no longer in business; requests, orally or in writing, to be removed from such list; or has failed to respond for a period of two (2) years to previous solicitations by ForesTree IP to bid on Timber Products offered for sale in the geographic area.

Prior to sending out a solicitation for bids on Timber Products, John Hancock will establish a Minimum Bid based on its assessment of the fair market value of the Timber Products being sold. It is represented that John Hancock manages Timber Assets through individuals in its regional offices (the Hancock Forester(s)). The Hancock Foresters contract for management of Timber Assets in specific regions with affiliates or with third party forest managers (the Contract Forest Managers). Each of the Contract Forest Managers are represented by a timberland manager (the Timberland Managers). Individual field foresters (the Field Forester(s)) report to the Timberland Managers.

It is represented that Field Foresters are responsible for day-to-day management of ForesTree IP. Such Field Foresters determine when, consistent with annual budgets established by the Hancock Foresters, to sell specific Timber Products. Each time a Timber Product is sold using the bid solicitation process, a Field Forester determines the current fair market value of such

product. It is further represented that the Minimum Bid is equal to the current fair market value of such product.

It is represented that to determine the fair market value (and consequently, the Minimum Bid) for a solicitation, a Field Forester reviews: (1) Information about recent sales of Timber Products in the area, gleaned from conversations with mill owners and other timber buyers on a regular basis, (2) information on sales of standing timber and so-called "gatewood" (harvested timber delivered directly to the gate of a mill), and (3) routine disclosures of actual recent winning and low bids received for Timber Products.

Once a Field Forester determines the fair market value for the Timber Product to be sold, the price is compared to the "per unit annual budgeted price" for the applicable Timber Product. It is represented that every year a budget for each Timber Asset is adopted. Among other things, the budget includes a projection of the average sales price for specific types of Timber Products to be sold during the year. If the Minimum Bid proposed by a Field Forester for a Timber Product is more than 10 percent (10%) below the budgeted price, a Hancock Forester must review the solicitation. It is the responsibility such Hancock Forester to then determine whether the price difference is justified by changes in circumstances, and whether or not to approve the proposed Minimum Bid. Rather than approve the proposed Minimum Bid, a Hancock Forester may insist that the sale of the Timber Product be delayed.

The applicants indicate that is not customary at John Hancock or in the timber industry in which it operates to disclose the Minimum Bid in advance for a timber sale in a competitive bid situation. Minimum Bids are not disclosed because that disclosure could adversely affect the price received by the seller. The Minimum Bid is published with final bid results.

It is represented that the highest bid must meet or exceed the Minimum Bid and must be at least as favorable to ForesTree IP as the fair market value of the Timber Product being sold at the time that the contract for sale is legally binding on the parties involved. Where International Paper is the highest bidder for a Timber Product being sold by ForesTree IP, it is represented that the sale will not go forward, unless Hancock has received bids on such Timber Product from at least two (2) other bidders, in addition to International Paper, provided that each such bidder satisfies the definition of a bona fide bidder, as set forth in section III (i), below; and that neither Hancock's general account nor any other account managed by Hancock is either of the two other bidders.

9. It is represented that the proposed transactions are administratively feasible, because each transaction involving the IP Retirement Plan can be readily identified and audited. Furthermore, the exemption will not require continued monitoring or other involvement on behalf of the Department or the Internal Revenue Service. Furthermore, John Hancock or an affiliate is responsible for maintaining or causing to be maintained certain records for a period of six (6) years from the date of any transaction covered by this exemption which will enable certain persons to determine whether the conditions of the exemption have been met.

10. In summary, the applicants represent that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The price paid by ForesTree IP for the Timber Assets will be determined, as of the date of each transaction, by an independent, qualified appraiser; and will be documented in writing by an appraisal report;

(b) The price paid by ForesTree IP for the Timber Assets will not exceed the fair market value of such assets at the time of the purchase;

(c) Prior to soliciting bids for the sale of a Timber Product, John Hancock will establish a Minimum Bid based on its assessment of the fair market value of the Timber Product offered for sale;

(d) John Hancock (or its designee) will solicit from each party on the Buyer's List utilized by ForesTree IP for the relevant geographic area in which the Timber Product is located, a written bid for the purchase of the Timber Product offered for sale;

(e) The highest price bid for the Timber Product offered for sale must meet or exceed the Minimum Bid established by John Hancock and must not be less than the fair market value of such Timber Product at the time the contract for sale is legally binding on the parties involved;

(f) Where International Paper's is the highest price bidder for the Timber Product offered for sale, the transaction may not go forward, unless bids have been received on such Timber Product from at least two (2) other bidders, in addition to International Paper, provided that each such bidder satisfies the definition of a *bona fide* bidder, as set forth in section III (i), below; and provided further that neither Hancock's general account nor any other account managed by Hancock is either of the two other bidders;

(g) any plan that invests in ForesTree IP will have total assets in excess of $100 million;

(h) John Hancock or an affiliate will act as discretionary investment manager for ForesTree IP;

(i) John Hancock or an affiliate will negotiate on behalf of ForesTree IP the terms and conditions of the purchase of Timber Assets or the sale of Timber Products by ForesTree IP;

(j) prior to entering into the purchase of Timber Assets or the sale of Timber Products by ForesTree IP, John Hancock or an affiliate will determine on behalf of such account that each such transaction is feasible, in the interest of the account based on the investment policy and objectives of such account, and protective of the participants in such account;

(k) The terms and conditions of each transaction involving the purchase of Timber Assets or the sale of Timber Products by ForestTree IP are at least as favorable to such account as those obtainable in an arm's length transaction with an unrelated party;

(l) The transactions which are the subject of this exemption are not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(m) ForesTree IP will not purchase Timber Assets from or sell Timber Products to Hancock's general account or any other account managed by Hancock;

(n) The investment of plan assets by any IP Plan in ForesTree IP will not exceed 20 percent (20%) of the total assets of such plan;

(o) The total amount invested by International Paper on behalf of the IP Plans and allocated to ForesTree IP will not in the aggregate exceed $100 million; and

(p) John Hancock or its affiliates shall maintain or cause to be maintained certain records for a period of six (6) years from the date of any transaction covered by this exemption.

Notice to Interested Persons

It is represented that those persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include International Paper, State Street Bank, and the active participants in the IP Retirement Plan.

John Hancock proposes to provide notification of the publication of the Notice to these interested persons through different methods. In this regard, John Hancock will provide notification to International Paper and

State Street by first class mail or by overnight delivery within fifteen (15) calendar days of the date of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR § 2570.43(b)(2), which will advise such interested persons of their right, to comment on the proposed exemption.

With regard to notification to the active participants in the IP Retirement Plan, John Hancock proposes: (1) To ask International Paper to distribute the required notification pursuant to its usual and customary procedures for dissemination of information to employees; and (2) to direct that notification be posted within twenty-one (21) calendar days of the date of publication of the Notice in the **Federal Register**. Such postings will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR § 2570.43(b)(2), which will advise interested persons of their right to comment. International Paper has agreed to post the required notification on bulletin boards in prominent areas at those International Paper work sites at which more than ten (10) participants of the IP Retirement Plan work. Further, it is represented that International Paper will also provide written confirmation to the Department that it posted the required notification at the various work sites on a specified date.

The Department must receive all written comments and requests for a hearing no later than thirty (30) days from the *later of:* (1) The date when posting of a copy of the Notice and a copy the Supplemental Statement was completed at all those International Paper work sites at which more than ten (10) participants in the IP Retirement Plan work; or (2) the date a copy of the Notice and a copy of the Supplemental Statement was received in the mail or by overnight delivery by State Street.

FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

G.D. Castillo, M.D., Ltd, Profit Sharing Plan (the Plan), Located in Savoy, IL

[Application No. D–11107]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective August 23, 1999, to the sale of two parcels of unimproved real property (the Properties) by the Plan to Doctor G.D. Castillo (the Sales), a party in interest with respect to such Plan, provided that the following conditions are met: [6]

(a) The terms and conditions of the Sales were at least as favorable to the Plan as those obtainable in similar arm's-length transactions involving unrelated parties;

(b) Each Sale was a one-time transaction for cash;

(c) The amount of cash received by the Plan for each Property was not less than the fair market value of such Property as of the date of the Sales as determined by a qualified, independent appraiser; and

(d) The Plan did not pay any fees or commissions in connection with the Sales.

EFFECTIVE DATE: August 23, 1999.

Summary of Facts and Representations

1. Doctor G.D. Castillo (Dr. Castillo), a physician specializing in plastic surgery, is the sole owner of G.D. Castillo, M.D., Ltd., a medical office located in Savoy, Illinois. G.D. Castillo, M.D., Ltd. is the sponsor of the Plan, a profit sharing plan having three participants and approximately $2,667,475 in assets as of December 31, 1999. On the date of the Sales, the assets of the Plan were invested primarily in the Properties, stock, and other non-cash assets.

2. The assets of the Plan are invested according to the sole discretion of Dr. Castillo. In 1995 and 1996, Dr. Castillo directed the Plan to acquire the Properties from unrelated third parties (the Acquisitions). The first of the Properties is located at 1804A Woodfield Drive, Savoy, Illinois (the First Property) and is described as a commercial lot comprising approximately 17,178 square feet. Dr. Castillo directed the Plan to acquire this property for $72,000 in 1995. The second of the Properties is located at Lot 50, J.L. Smith Lane, Monee, Illinois (the Second Property) and is described as an air park subdivision lot comprising approximately 43,200 square feet. Dr. Castillo directed the Plan to acquire this property for $39,845 in 1996.

3. Subsequent to the Acquisitions, Dr. Castillo decided that the Properties were no longer appropriate investments for the Plan. In this regard, by 1999, Dr. Castillo determined that the Properties, while incurring certain costs to the Plan, were not appreciating as expected.[7] As a result, Dr. Castillo directed the Plan to sell the Properties on the open market.

4. Concurrent with the offering of the Properties on the open market, Dr. Castillo identified a new investment opportunity for the Plan. In this regard, Dr. Castillo sought to acquire a certain improved real property located in Golden, Colorado (the New Property) on behalf of the Plan. Given that the Plan lacked sufficient liquid assets to acquire the New Property, Dr. Castillo initiated the Sales. In this regard, on August 23, 1999, the Plan sold the First Property and the Second Property to Dr. Castillo for $70,000 and $42,000, respectively. Dr. Castillo represents that both transactions were for cash and that the Plan was not charged any costs or fees arising in connection with the Sales.[8] Thereafter, an accountant reviewed the Sales when preparing an Internal Revenue Service Form 5500 on behalf of the Plan with respect to the 1999 Plan year. Upon being notified that the Sales constituted a prohibited transaction, Dr. Castillo voluntarily filed this application for an exemption on January 15, 2001.

5. Dr. Castillo states that the amount of cash the Plan received for the Properties pursuant to the Sales equaled the fair market value of the Properties as of the date of the Sales. In this regard, Dr. Castillo states that the Properties were appraised by Mr. Carl Hill (Mr. Hill), a real estate appraiser with over 22 years of specialized experience in valuing commercial properties. In appraising these Properties, Mr. Hill used the sales comparison approach and determined that the fair market value of the First Property was $70,000 as of March 15, 1999 and the fair market value of the Second Property was $42,000 as of March 15, 1999.

[6] The application for this proposed exemption, which was filed on January 19, 2001, was initially assigned the number D–10967 before being reassigned the above-referenced application number on July 22, 2002.

[7] The applicant represents that at the time of the Sales, these costs (i.e., taxes, association dues, and maintenance) totaled $1,297.

[8] Using the cash received from the Sales, the applicant states that the Plan acquired the New Property on August 27, 1999 from an unrelated third party for approximately $690,000. Dr. Castillo states further that he has been unsuccessful in his attempts to resell the Properties on the open market.

6. Dr. Castillo states that the participation by the Plan in the Sales benefited the participants and beneficiaries of the Plan. In this regard, Dr. Castillo states that the cash received by the Plan from the Sales enabled the Plan to acquire the New Property. In so doing, the Plan acquired an asset that Dr. Castillo anticipates will provide a suitable rate of return to the Plan.

7. Dr. Castillo represents that the Sales were protective of the participants and beneficiaries of the Plan since the terms of the Sales were no less favorable to the Plan than the terms available between unrelated parties. In this regard, the Plan received the current fair market value of the Properties without incurring any of the costs or fees associated therein. In addition, Dr. Castillo states that the Sale was in the best interests of the Plan since it enabled the Plan to sell a non-appreciating asset that had limited marketability. Finally, Dr. Castillo states that the proposed exemption is administratively feasible in that the Sales involved one-time transactions for cash.

8. In summary, Dr. Castillo represents that the Sales satisfy the criteria of section 408(a) of the Act since:

(a) The terms and conditions of the Sales were at least as favorable to the Plan as those obtainable in similar arm's-length transactions involving unrelated parties;

(b) Each Sale was a one-time transaction for cash;

(c) The amount of cash received by the Plan for each Property equaled the fair market value of such Property as of the date of the Sales as determined by a qualified, independent appraiser; and

(d) The Plan did not pay any fees or commissions in connection with the Sales.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

DuPont Capital Management Corporation (DCMC), Located in Wilmington, DE

[Application Nos. D–11111, 11112, 11113]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past extension of credit from the DuPont Pension and Retirement Plan, the Pioneer Hi-Bred International, Inc. Retirement Plan and the Protein Technologies International Retirement Plan (collectively, the Plans)[9] to the Dow Chemical Company (Dow), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by Dow, for the period from October 25, 2000 until July 10, 2001 provided the following conditions were satisfied:

(a) The purchase of the Bonds by the Plans was a one-time transaction for cash;

(b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by a reputable, independent, third party market source;

(c) The Bonds were sold on July 10, 2001 for $1,975,320 at a profit of $126,580 for the Plans;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit Dow or any other party in interest with respect to the Plans; and

(e) The transaction represented less than .02% of each Plan's total assets.

Effective Date of Exemption

The proposed exemption, if granted, will be effective for the period from October 25, 2000 (the date of the acquisition of the Bonds by the Plans) until July 10, 2001 (the date the Bonds were sold).

Summary of Facts and Representations

1. The applicant is DuPont Capital Management Corporation (DCMC), a wholly owned subsidiary of E.I. dupont de Nemours and company (DuPont), and organized as a Delaware corporation with its principal office in Wilmington, Delaware. As of December 31, 2001, DCMC had total assets under its management with an aggregate market value of approximately $19.3 billion. DCMC is an investment advisor, registered under the Investment Advisers Act of 1940, for the assets of the DuPont Pension Trust Fund (the Trust), which holds the assets of the Plans. DCMC has managed the assets of the Trust since July 1997. The aggregate fair market value of the Trust's assets is in excess of $13 billion.

2. DuPont is the plan sponsor of the DuPont Pension and Retirement Plan. The applicant estimates that there are currently 156,677 participants and beneficiaries in the DuPont Pension and Retirement Plan. Pioneer Hi-Bred International Inc. and Protein Technologies International, each of which is a subsidiary of DuPont, are the plan sponsors of the Pioneer Hi-Bred International Inc. Retirement Plan and the Protein Technologies International Retirement Plan, respectively. The applicant represents that there are currently 5,000 participants and beneficiaries in the Pioneer Hi-Bred International, Inc. Retirement Plan, and 734 participants and beneficiaries in the Protein Technologies International Retirement Plan.

3. The applicant represents that DCMC provides investment management services to various employee benefit plans, including plans sponsored by DuPont and its subsidiaries (i.e., Pioneer Hi-Bred International, Inc. and Protein Technologies International) and affiliates (collectively, the DuPont Group), with respect to a spectrum of investments consisting primarily of domestic and international equities, fixed-income securities, and various alternative investments (including real estate, venture capital, and commodity futures). DCMC utilizes value-based investment strategies with the objective of achieving maximum return consistent with levels of risk suitable to each Plan.

4. DuPont and Dow participate in a 50/50 joint venture known as DuPont Dow Elastomers LLC (DDE), as a result of which Dow is a party in interest with respect to the Plans. In this regard, Dow is a party in interest with respect to the Plans under section 3(14)(I) of the Act because it is a 10% or more joint venturer of DDE. DDE is a party in interest with respect to the DuPont Pension and Retirement Plan under section 3(14)(G) of the Act, as an entity 50% owned by DuPont (which is a party in interest with respect to such Plan under section 3(14)(C) of the Act). DDE is a party in interest with respect to the Pioneer Hi-Bred International, Inc. Retirement Plan and the Protein Technologies International Retirement Plan under section 3(14)(G) of the Act, as an entity 50% owned by DuPont which is a party in interest with respect to such Plans under section 3(14)(E) of the Act. The annual sales of DDE represent less than 2% of DuPont's total annual sales.

5. According to the applicant, as a result of the inadvertent failure to

[9] Because the Plans are funded through the same trust and each has an undivided interest in the assets of such trust, this application will treat the purchase of the Bonds (as defined herein) by the Plans as a single transaction and information concerning such purchase will be discussed on an aggregate basis.

identify Dow as a party in interest with respect to the Plans,[10] DCMC purchased on October 25, 2000, on behalf of the Plans, certain corporate debt securities issued by Dow (*i.e.*, the Bonds). The decision to purchase the Bonds was made by employees of DCMC who specialize in purchases of corporate debt securities. The principal amount of the Bonds purchased by the Plans was $2,000,000. The Bonds were purchased in a principal transaction by the Plans from UBS Warburg, an entity unrelated to the Plans. The Bonds were sold in a subsequent principal transaction by the Plans to Lehman Brothers, an entity unrelated to the Plans. The Bonds were purchased on October 25, 2000 for $1,975,320 (including accrued but unpaid interest) and were sold on July 10, 2001 for $2,101,900 (including accrued but unpaid interest).

6. It is represented that Dow issued a total of $1 billion of the Bonds. Accordingly, the Plans purchased 0.2% of the total Bond issue. The coupon rate on the Bonds was 7⅜% per annum. The Bonds had a credit rating of A/A1 by Standard and Poor's Rating Services and Moody's Investor Service, Inc., respectively, at the time of the Plans' purchase. The applicant represents that the expected duration of the Bonds was approximately 11.9 years. The Bonds were debentures with interest payable semi-annually and principal payable at maturity. The Bonds represented a de minimus percentage of each Plan's total assets. In the aggregate the Bonds represented less than .02% of the Trust's total assets at the time of the acquisition.

7. The applicant states that the transaction was in the interests of the Plans' participants and beneficiaries since the acquisition and sale of the Bonds resulted in a profit totaling $126,580. Moreover, the applicant represents that the purchase of the Bonds was equitable to the Plans since the Plans paid no more than the current fair market value for the Bonds at the time of the acquisition. In this regard, it is represented that in providing the acquisition price of the Bonds to DCMC, the DCMC trader responsible for the purchase of the Bonds utilized pricing mechanisms commonly employed in the over-the-counter fixed income markets. Specifically, the purchase price was determined in consideration of competitive offers from multiple dealers.[11]

The applicant represents that upon identifying the extension of credit as a prohibited transaction, DCMC acted promptly to deal with the problem by filing for a retroactive exemption with the Department. In addition, the applicant has established new internal compliance procedures for considering any new purchases of debt instruments for client pension plans in order to avoid future prohibited transactions under the Act. According to the applicant, special lists must now be maintained for each Plan of all joint ventures of DuPont or a subsidiary where DuPont owns (directly or indirectly) at least 50% of the joint venture and another joint venturer owns at least 10% of the joint venture. Pursuant to compliance procedures, the applicant's bond trading personnel must check these lists prior to any new purchases of such bonds for the Plans. The lists must be updated monthly.

8. In summary, the applicant represents that the proposed exemption will satisfy the criteria of section 408(a) of the Act because:

(a) The purchase of the Bonds by the Plans was a one-time cash transaction;

(b) The Plans purchased the Bonds at their current fair market value from an unrelated party, based on prices determined by a reputable, independent third party market source;

(c) The purchase of the Bonds was not part of an arrangement, agreement, or understanding designed to benefit Dow or any other party in interest with respect to the Plans;

(d) The purchase and sale of the Bonds resulted in the Plan's receipt of a profit totaling $126,580; and

(e) The applicant has established new internal compliance procedures to avoid future prohibited transactions under the Act for acquisition of bonds by the Plans.

[10] In this proposed exemption, the Department is providing no opinion as to whether the Plans' acquisition and holding of the Bonds violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act other than section 406(a). In this regard, the applicant has not requested, nor is the Department providing, any relief from section 406(b) of the Act in connection with the subject transactions. The Department notes that section 406(b) of the Act provides, in pertinent part, that a fiduciary of a plan shall not deal with the assets of the plan in his own interest or for his own account, nor act on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. In addition, section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

[11] Pricing sources for the acquisition of the Bonds were electronic sources on trader desks. Information concerning dealer quotes is updated via computer monitors available to each of the primary security dealers. These sources include, but are not limited to, Bloomberg, Telerate, Reuters, Salomon Yield Book and Lehman Brothers PC Product in addition to daily flow and pricing indications received directly from 10–15 broker/dealers.

FOR FURTHER INFORMATION CONTACT: Brian Buyniski of the Department at (202) 693–8545. (This is not a toll-free number).

DuPont Capital Management Corporation (DCMC), Located in Wilmington, DE

[Application Nos. D–11114, 11115, 11116, 11117, 11118]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past extension of credit from the DuPont Pension and Retirement Plan, the Pioneer Hi-Bred International, Inc. Retirement Plan, the Protein Technologies International Retirement Plan and the DuPont Savings and Investment Plan (collectively, the Plans)[12] to ConAgra Foods, Inc. (ConAgra), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by ConAgra, for the period from September 5, 2001 until October 17, 2001, provided the following conditions were satisfied:

(a) The purchase of the Bonds by the Plans was a one-time transaction for cash;

(b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by reputable, independent, third party market sources;

(c) The Bonds were sold on October 17, 2001 for $4,234,531 at a profit of $185,638 for the Plans;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit ConAgra or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

Effective Date of Exemption

The proposed exemption, if granted, will be effective for the period from

[12] Because the Plans are funded through the same trust and each has an undivided interest in the assets of such trust, this application will treat the purchase of the Bonds (as defined herein) by the Plans as a single transaction and information concerning such purchase will be discussed on an aggregate basis.

September 5, 2001 (the date of the acquisition of the Bonds by the Plans) until October 17, 2001 (the date the Bonds were sold).

Summary of Facts and Representations

1. The applicant is DuPont Capital Management Corporation (DCMC), a wholly owned subsidiary of E.I. duPont de Nemours and Company (DuPont), and organized as a Delaware corporation with its principal office in Wilmington, Delaware. As of December 31, 2001, DCMC had total assets under its management with an aggregate market value of approximately $19.3 billion. DCMC is an investment advisor, registered under the Investment Advisers Act of 1940, for the assets of the DuPont Pension Trust Fund (the Trust), which holds the assets of the Plans. DCMC has managed the assets of the Trust since July 1997. The aggregate fair market value of the Trust's assets is in excess of $13 billion.

2. DuPont is the plan sponsor of the DuPont Pension and Retirement Plan and the DuPont Savings and Investment Plan. The applicant estimates that there are currently 156,677 participants and beneficiaries in the DuPont Pension and Retirement Plan and 84,562 in the DuPont Savings and Investment Plan. Pioneer Hi-Bred International Inc. and Protein Technologies International, each of which is a subsidiary of DuPont, are the plan sponsors of the Pioneer Hi-Bred International Inc. Retirement Plan and the Protein Technologies International Retirement Plan, respectively. The applicant represents that there are currently 5,000 participants and beneficiaries in the Pioneer Hi-Bred International, Inc. Retirement Plan, and 734 participants and beneficiaries in the Protein Technologies International Retirement Plan.

3. The applicant represents that DCMC provides investment management services to various employee benefit plans, including plans sponsored by DuPont and its subsidiaries (*i.e.*, Pioneer Hi-Bred International, Inc. and Protein Technologies International) and affiliates (collectively, the DuPont Group), with respect to a spectrum of investments consisting primarily of domestic and international equities, fixed-income securities, and various alternative investments (including real estate, venture capital, and commodity futures). DCMC utilizes value-based investment strategies with the objective of achieving maximum return consistent with levels of risk suitable to each Plan.

4. DuPont and ConAgra participate in a 50/50 joint venture known as Ecological Chemical Products (Ecochem), as a result of which ConAgra is a party in interest with respect to the Plans. In this regard, ConAgra is a party in interest with respect to the Plans under section 3(14)(I) of the Act because it is a 10% or more joint venturer of Ecochem. Ecochem is a party in interest with respect to the DuPont Pension and Retirement Plan and the DuPont Savings and Investment Plan under section 3(14)(G) of the Act, as an entity 50% owned by DuPont (which is a party in interest with respect to such Plan under section 3(14)(C) of the Act). Ecochem is a party in interest with respect to each of DuPont Dow Elastomers Pension and Retirement Plan, the Pioneer Hi-Bred International, Inc. Retirement Plan and the Protein Technologies International Retirement Plan under section 3(14)(G) of the Act, as an entity 50% owned by DuPont which is a party in interest with respect to such Plans under section 3(14)(E) of the Act. According to the applicant, the value of DuPont's interest in Ecochem represents less than 1% of DuPont's total net value.

5. According to the applicant, as a result of the inadvertent failure to identify ConAgra as a party in interest with respect to the Plans,[13] DCMC purchased on September 5, 2001, on behalf of the Plans, certain corporate debt securities issued by ConAgra (*i.e.*, the Bonds). The decision to purchase the Bonds was made by employees of DCMC who specialize in purchases of corporate debt securities. The principal amount of the Bonds purchased by the Plans was $4,051,000. The Bonds were purchased in a principal transaction by the Plans from Merrill Lynch, an entity unrelated to the Plans, as part of a new issuance of the Bonds by the issuer, ConAgra. The Bonds were sold in a subsequent principal transaction by the Plans to UBS Warburg, an entity unrelated to the Plans. The Bonds were purchased by the Plans on September 5, 2001 for $4,048,893 (including accrued but unpaid interest) and were sold on October 17, 2001 for $4,234,531 by the Plans (including accrued but unpaid interest).

6. It is represented that ConAgra issued a total of $1 billion of the Bonds. Accordingly, the Pension Plans and Savings Plan purchased 0.41% of the total Bond issue. The coupon rate on the Bonds was 6.75% per annum. The Bonds had a credit rating of BBB+/Baa1 by Standard and Poor's Rating Services and Moody's Investor Service, Inc., respectively, at the time of the Plans' purchase. No change in such rating occurred while the Bonds were held by the Plans. The applicant represents that the expected duration of the Bonds was approximately 6.7 years. The Bonds paid interest semi-annually, with the total principal amount payable at maturity. The Bonds also had certain special features that allowed them to be called (*i.e.*, redeemed) by the issuer, at certain times. The Bonds represented a de minimus percentage of each Plan's total assets. In the aggregate the Bonds represented less than 1% of the Trust's total assets at the time of the acquisition.

7. The applicant states that the transaction was in the interests of the Plans' participants and beneficiaries since the acquisition and sale of the Bonds resulted in a profit totaling $185,638. Moreover, the applicant represents that the purchase of the Bonds was equitable to the Plans since the Plans paid no more than the current fair market value for the Bonds at the time of the acquisition. In this regard, the Bonds were purchased by the Plans at the same price that was paid by all other investors at the time of issuance by ConAgra. Thus, the DCMC trader responsible for the purchase of the Bonds relied on the pricing mechanisms that were used by Merrill Lynch and the other underwriters in determining the price of the Bonds at the time of issuance. DCMC represents that the pricing mechanisms for the Bonds were those commonly employed in the over-the-counter fixed-income markets.

The applicant represents that upon identifying the extension of credit as a prohibited transaction, DCMC acted promptly to deal with the problem by filing for a retroactive exemption with the Department. In addition, the applicant has established new internal compliance procedures for considering any new purchases of debt instruments for client pension plans in order to avoid future prohibited transactions under the Act. According to the applicant, special lists must now be maintained for each Plan of all joint ventures of DuPont or a subsidiary

[13] In this proposed exemption, the Department is providing no opinion as to whether the Plans' acquisition and holding of the Bonds violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act other than section 406(a). In this regard, the applicant has not requested, nor is the Department providing, any relief from section 406(b) of the Act in connection with the subject transactions. The Department notes that section 406(b) of the Act provides, in pertinent part, that a fiduciary of a plan shall not deal with the assets of the plan in his own interest or for his own account, nor act on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. In addition, section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

where DuPont owns (directly or indirectly) at least 50% of the joint venture and another joint venturer owns at least 10% of the joint venture. Pursuant to compliance procedures, the applicants bond trading personnel must check these lists prior to any new purchases of such bonds for the Plans. The lists must be updated monthly.

8. In summary, the applicant represents that the proposed exemption will satisfy the criteria of section 408(a) of the Act because:

(a) The purchase of the Bonds by the Plans was a one-time cash transaction;

(b) The Plans' purchased the Bonds at their current fair market value from an unrelated party, based on prices determined by a reputable, independent third party market sources;

(c) The Bonds were sold by the Plans on October 17, 2001 for $4,234,531 at a profit of $185,638 for the Plans, and;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit ConAgra or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

FOR FURTHER INFORMATION CONTACT: Brian Buyniski of the Department at (202) 693–8545. (This is not a toll-free number).

DuPont Capital Management Corporation (DCMC), Located in Wilmington, DE

[Application Nos. D–11119, 11120]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past extension of credit from the CONSOL Inc. Employee Retirement Plan and the CONSOL Inc. Investment Plan for Salaried Plans (collectively, the Plans) to Conoco Inc. (Conoco), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by Conoco, for the period from December 29, 1999 through August 16, 2001, provided the following conditions were satisfied:

(a) The purchase of the Bonds by the Plans was a one-time transaction for cash;

(b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by reputable, independent, third party market sources;

(c) The Bonds were sold on August 16, 2001 for $816,641 at a profit of $61,858 for the Plans;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit Conoco or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

Effective Date of Exemption

The proposed exemption, if granted, will be effective for the period from December 29, 1999 (the date of the acquisition of the Bonds by the Plans) until August 16, 2001 (the date the Bonds were sold).

Summary of Facts and Representations

1. The applicant is DuPont Capital Management Corporation (DCMC), a wholly owned subsidiary of E.I. duPont de Nemours and Company (DuPont), and organized as a Delaware corporation with its principal office in Wilmington, Delaware. As of December 31, 2001, DCMC had total assets under its management with an aggregate market value of approximately $19.3 billion. DCMC is an investment advisor, registered under the Investment Advisers Act of 1940, for the assets of the DuPont Pension Trust Fund (the Trust), which holds the assets of the Plans. DCMC has managed the assets of the Trust since July 1997. The aggregate fair market value of the Trust's assets is in excess of $13 billion.

2. CONSOL Energy Inc., is the plan sponsor of the CONSOL Inc. Employee Retirement Plan and the CONSOL Inc. Investment Plan for Salaried Employees. The applicant represents that there are currently 7,049 participants and beneficiaries in the CONSOL Inc. Employee Retirement Plan, and 7,509 participants and beneficiaries in the CONSOL Inc. Investment Plan for Salaried Employees.

3. The applicant represents that DCMC provides investment management services to various employee benefit plans, including plans sponsored by DuPont and its subsidiaries [(*i.e.*, Pioneer Hi-Bred International, Inc. and Protein Technologies International) and affiliates (collectively, the DuPont Group)], with respect to a spectrum of investments consisting primarily of domestic and international equities, fixed-income securities, and various alternative investments (including real estate, venture capital, and commodity futures). DCMC utilizes value-based investment strategies with the objective of achieving maximum return consistent with levels of risk suitable to each Plan.

CONSOL, Inc. (CONSOL) was a member of the DuPont Group prior to November 5, 1998. At that time, the Trust held assets of the Plans. On November 5, 1998, DuPont divested substantially all of its holdings in CONSOL. Thus, DCMC is no longer an affiliate of the employer maintaining the Plans. However, DCMC continues to manage the assets of the Plans.[14]

4. CONSOL Energy Inc. and Conoco participate in two 50/50 joint ventures known as the Cardinal States Gathering Partnership and the Pocahontas Gas Partnership as a result of which Conoco is a party in interest with respect to the Plans. In this regard, each of the joint ventures is a party in interest with respect to the Plans under section 3(14)(G) of the Act, as an entity 50% owned by CONSOL (which is a party in interest with respect to such Plan under section 3(14)(C) of the Act). Conoco is a party in interest with respect to the Plans under section 3(14)(I) because it is a 10% or more joint venturer of each of the joint ventures. According to the applicant, Conoco is a Fortune 500 company and CONSOL had sales in excess of $2 billion for the year 2000. Additionally, the value of CONSOL's aggregate interest in the joint ventures represents less than 1% of CONSOL's total net value.

5. According to the applicant, as a result of the inadvertent failure to identify Conoco as a party in interest with respect to the Plans,[15] DCMC

[14] See Prohibited Transaction (PTE) 2001–05, 66 FR 7789 (January 25, 2001), which provides relief for transactions between parties in interest and certain former DuPont related employee benefit plans whose assets are managed by DCMC. In this regard, PTE 2001–05 was not effective at the time of the subject transactions to which this proposed exemption relates.

[15] In this proposed exemption, the Department is providing no opinion as to whether the Plans' acquisition and holding of the Bonds violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act other than section 406(a). In this regard, the applicant has not requested, nor is the Department providing, any relief from section 406(b) of the Act in connection with the subject transactions. The Department notes that section 406(b) of the Act provides, in pertinent part, that a fiduciary of a plan shall not deal with the assets of the plan in his own interest or for his own account, nor act on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. In addition, section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the

purchased on December 29, 1999, on behalf of the Plans, certain corporate debt securities issued by Conoco (*i.e.*, the Bonds). The decision to purchase the Bonds was made by employees of DCMC who specialize in purchases of corporate debt securities. The principal amount of the Bonds purchased by the Plans was $820,000. The Bonds were purchased in a principal transaction by the Plans from Prudential Bache, an entity unrelated to the Plans. The Bonds were sold in a subsequent principal transaction by the Plans to ABN AMRO, an entity unrelated to the Plans. The Bonds were purchased by the Plans on December 29, 1999 for $754,783 (including accrued but unpaid interest) and were sold on August 16, 2001 for $816,641 by the Plans (including accrued but unpaid interest).

6. It is represented that Conoco issued a total of $1.9 billion of the Bonds. Accordingly, the Plans purchased 0.043% of the total Bond issue. The coupon rate on the Bonds was 6.95% per annum. The Bonds had a credit rating of BBB+/Baa1 by Standard and Poor's Rating Services and Moody's Investor Service, Inc., respectively, at the time of the Plans' purchase. No change in such rating occurred while the Bonds were held by the Plans. The applicant represents that the expected duration of the Bonds was approximately 11.5 years. The Bonds paid interest semi-annually, with the total principal amount payable at maturity. The Bonds also had certain special features that allowed them to be called (*i.e.*, redeemed) by the issuer, at certain times. The Bonds represented a de minimus percentage of each Plan's total assets. In the aggregate, the Bonds represented less than 1% of the Trust's total assets at the time of the acquisition.

7. The applicant states that the transaction was in the interests of the Plans' participants and beneficiaries since the acquisition and sale of the Bonds resulted in a profit totaling $61,858. Moreover, the applicant represents that the purchase of the Bonds was equitable to the Plans since the Plans paid no more than the current fair market value for the Bonds at the time of the acquisition. In this regard, it is represented that in providing the acquisition price of the Bonds to DCMC, the DCMC trader responsible for the purchase of the Bonds utilized pricing mechanisms commonly employed in the over-the-counter fixed-income markets. Specifically, the purchase price was determined in consideration of competitive offers from multiple dealers.[16]

The applicant represents that upon identifying the extension of credit as a prohibited transaction, DCMC acted promptly to deal with the problem by filing for a retroactive exemption from the Department. In addition, the applicant has established new internal compliance procedures for considering any new purchases of debt instruments for client pension plans in order to avoid future prohibited transactions under the Act.[17] According to the applicant, special lists must now be maintained for each Plan of all joint ventures where CONSOL owns (directly or indirectly) at least 50% of the joint venture and another joint venturer owns at least 10% of the joint venture. Pursuant to compliance procedures, the applicant's bond trading personnel must check these lists prior to any new purchases of such bonds for the Plans. The lists must be updated monthly.

8. In summary, the applicant represents that the proposed exemption will satisfy the criteria of section 408(a) of the Act because:

(a) The purchase of the Bonds by the Plans was a one-time cash transaction;

(b) The Plans' purchased the Bonds at their current fair market value from an unrelated party, based on prices determined by reputable, independent third party market sources;

(c) The Bonds were sold by the Plans on August 16, 2001 for $816,641 at a profit of $61,858 for the Plans; and

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit Conoco or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

FOR FURTHER INFORMATION CONTACT: Brian Buyniski of the Department at (202) 693–8545. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of January, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 03–1354 Filed 1–21–03; 8:45 am]

BILLING CODE 4510–29–P

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exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

[16] Pricing sources for the acquisition of the Bonds were electronic sources on trader desks. Information concerning dealer quotes is updated via computer monitors available to each of the primary security dealers. These sources include, but are not limited to, Bloomberg, Telerate, Reuters, Salomon Yield Book and Lehman Brothers PC Product in addition to daily flow and pricing indications received directly from 10–15 broker/dealers.

[17] The Department is providing no opinion in this proposed exemption as to whether such prohibited transactions, if entered into by the Plans, would be covered by PTE 2001–05.

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted preliminarily annual fee rates of 0.00% for tier 1 and 0.059% (.00059) for tier 2 for calendar year 2003. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the preliminary fee rate on class II revenues for calendar year 2003 shall be one-half of the annual fee rate, which is 0.0295% (.000295).

FOR FURTHER INFORMATION CONTACT: Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the preliminary annual rate being adopted today are effective for calendar year 2003. Therefore, all gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission by March 31, 2003.

Richard B. Schiff,

Acting Chief of Staff, National Indian Gaming Commission.

[FR Doc. 03–1377 Filed 1–21–03; 8:45 am]

BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on February 4, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 4, 2003—1:00 p.m. Until the Conclusion of Business

The Subcommittee will review two proposed NRC documents for resolution of Generic Safety Issue–191, "Assessment of Debris Accumulation on PWR Sump Performance". These documents are: proposed NRC Generic Letter 2003–XX, "Potential Impact of Debris Blockage on Emergency Recirculation During Design-Basis Accidents at Pressurized Water Reactors", and associated draft Regulatory Guide DG–1107, "Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident". The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official or the Cognizant Staff Engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Nuclear Energy Institute, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301–415–7364) or Mr. Michael R. Snodderly, Cognizant Staff Engineer (telephone: 301–415–6927) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: January 15, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–1329 Filed 1–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on February 6–8, 2003, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 20, 2002 (67 FR 70094).

Thursday, February 6, 2003

8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:15 a.m.: Catawba and McGuire License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Duke Energy Corporation regarding the license renewal application for the Catawba and McGuire Nuclear Plants and the associated NRC staff's final Safety Evaluation Report.

10:30 a.m.–12 Noon: Draft Regulatory Guide DG–1107, "Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident" and Draft Generic Letter 2003–xx, related to the Resolution of GSI–191, "Assessment of Debris Accumulation on PWR Sump Performance" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Draft Regulatory Guide DG–1107 and Draft Generic Letter 2003–xx associated with the resolution of Generic Safety Issue (GSI)–191.

1 p.m.–3 p.m.: PTS Reevaluation Project: Technical Bases for Potential Revision to PTS Screening Criterion (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff

regarding the technical bases for potential revision to the pressurized thermal shock (PTS) screening criterion.

3:15 p.m.–4:45 p.m.: Draft Final Version of Regulatory Guide DG–1077, "Guidelines for Environmental Qualification of Microprocessor-Based Equipment Important to Safety in Nuclear Power Plants" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on the draft final version of DG–1077.

5 p.m.–7:15 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a proposed ACRS report on Safety Culture.

Friday, February 7, 2003

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–8:50 a.m.: Subcommittee Report (Open)—Report by the Chairman of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment regarding the coherence plan for risk-informed regulatory activities that was discussed at the January 22, 2003 Subcommittee meeting.

8:50 a.m.–9:15 a.m.: Subcommittee Report (Open)—Report by the Chairman of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment regarding the Westinghouse AP1000 passive plant design PRA that was discussed at the January 23–24, 2003 Subcommittee meeting.

9:15 a.m.–10:15 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

10:15 a.m.–10:30 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

10:45 a.m.–12:15 p.m.: Annual ACRS Report on the NRC Safety Research Program (Open)—The Committee will discuss the draft ACRS Report on the NRC Safety Research Program.

1:15 p.m.–7 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, February 8, 2003

8:30 a.m.–1 p.m.: Proposed ACRS Reports (Open)—The Committee will continue to discuss proposed ACRS reports. In addition, the Committee will discuss a draft report prepared by an ACRS consultant on the role and use of PRA in the regulatory decisionmaking process.

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63460). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301–415–0138), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html or http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EST, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: January 16, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–1330 Filed 1–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

DATES: Weeks of January 20, 27, February 3, 10, 17, 24, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 20, 2003

Tuesday, January 21, 2003

10 a.m.—Discussion of Security Issues (Closed—Ex. 1)

Thursday, January 23, 2003

1:55 p.m.—Affirmation Session (Public Meeting) (If needed)

2 p.m.—Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs, Performance, and Plans—Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This Meeting Will Be Webcast Live at the Web Address—*http://www.nrc.gov.*

Week of January 27, 2003—Tentative

There are no meetings scheduled for the Week of January 27, 2003.

Week of February 3, 2003—Tentative

Tuesday, February 4, 2003

10 a.m.—Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Jackie Silber, 301–415–7330)

This Meeting Will Be Webcast Live at the Web Address—*http://www.nrc.gov.*

Wednesday, February 5, 2003

1 p.m.—Discussion of Governmental Issues (Closed—Ex. 1 & 9)

Week of February 10, 2003—Tentative

Monday, February 10, 2003

10 a.m.—Briefing on Status of Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting) (Contact: Michael Case, 301–415–1275)

This Meeting Will Be Webcast Live at the Web Address—*http://www.nrc.gov.*

Tuesday, February 11, 2003

10 a.m.—Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Patrice Williams-Johnson, 301–415–5732)

This Meeting Will Be Webcast Live at the Web Address—*http://www.nrc.gov.*

Week of February 17, 2003—Tentative

There are no meetings scheduled for the Week of February 17, 2003.

Week of February 24, 2003—Tentative

Monday, February 24, 2003

2 p.m.—Meeting with National Association of Regulatory Utility Commissioners (NARUC) (Public Meeting)

This Meeting Will Be Webcast Live at the Web Address—*http://www.nrc.gov.*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

By a vote of 5–0 on January 15, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex. 1)" be held on January 21, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 16, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–1537 Filed 1–17–03; 2:55 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration

On January 7, 2003, the **Federal Register** published the "Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations." On page 808, for GPU Nuclear Corporation and Saxton Nuclear Experimental Corporation, Table 1, last column total "2.70e+05" should read "3.23e–04."

Dated at Rockville, Maryland, this 15th day of January, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1331 Filed 1–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting

Board Meeting: February 24 and 25, 2003—Las Vegas, Nevada: panels of the Nuclear Waste Technical Review Board will meet to review (1) seismic issues and (2) waste management system operations associated with a Yucca Mountain repository.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Monday, February 24, 2003, and Tuesday, February 25, 2003, panels of the Nuclear Waste Technical Review Board will meet in Las Vegas, Nevada, to review matters associated with a potential Yucca Mountain repository. The meetings are open to the public, and opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of U.S. Department of Energy (DOE) activities related to managing spent nuclear fuel and high-level radioactive waste.

The Board panel meetings will be held at the Best Western Tuscany Suites and Casino, 255 East Flamingo Road, Las Vegas, NV 89109. The telephone number is (702) 947–5918; the fax number is (702) 732–2564. The meeting will start at 8 a.m. each day.

On February 24, the Board's Panel on the Repository and Panel on Site Characterization will meet jointly to discuss seismic issues. Following he call to order and introductory statements, the panel will review how probabilistic earthquake ground motions were developed by the DOE. Project ground motions developed for the Yucca Mountain Project (YMP) will be discussed. The DOE will outline the YMP approach to both preclosure design and postclosure performance analyses for seismic events. The evaluation will include very low probability site-specific seismic ground motions, plans and/or conclusions, and the significance of geological observations on limiting ground motions. The presentations will include consideration of a general approach to postclosure seismic events on the response of waste package, drip shield, and the in-drift configuration as incorporated into performance and drift stability analyses. Following the technical presentations, a round-table will specifically address: Are ground motions realistic and/or appropriate in light of their intended use? If not, what might be an alternate approach? are the approaches to seismic preclosure and postclosure issues appropriate? If not, what might be some alternate approaches? Representatives of the State of Nevada will also participate in the meeting.

On February 25, the Board's Waste Management System Panel will meet to review the DOE's plans for operating the waste management system associated with a Yucca Mountain repository. Following the call to order and introductory statements, the panel will review the DOE's plans for waste acceptable at nuclear power plants and other points of origin. The DOE will then discuss its efforts to develop a transportation plan for transporting spent fuel and high-level radioactive waste to a Yucca Mountain repository. A presentation on industry experience in transporting highly radioactive materials will be followed by

presentation giving the view of state and local governments potentially affected by transportation to the repository. The meeting will conclude with DOE presentations of its plans for designing and operating the surface facilities and the underground emplacement areas of a Yucca Mountain repository.

At the conclusion of each meeting, a public comment period has been scheduled. Those wanting to speak during the public comment periods are encouraged to sign the "Public Comment Register" at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

A detailed agenda will be available approximately one week before each meeting. Copies of the agendas can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Beginning about March 31, 2003, transcripts of the meetings will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff.

A block of rooms has been reserved at the Best Western Tuscany Hotel. Reservations must be made by February 3, 2003, to obtain the meeting rate. When making a reservation, please state that you are attending the Nuclear Waste Technical Review meeting. For more information, contact the NWTRB; Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; telephone 703–235–4473; fax 703–235–4495; or by "contact form" at *http://www.nwtrb.gov*.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for permanently disposing of spent nuclear fuel and high-level radioactive waste.

Dated: January 15, 2003.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 03–1258 Filed 1–21–03; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 9b–1, SEC File No. 270–429, OMB Control No. 3235–0480;
Rule 15c2–7, SEC File No. 270–420, OMB Control No. 3235–0479.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 9b–1 Options Disclosure Document

Rule 9b–1 (17 CFR 240.9b–1) sets forth the categories of information required to be disclosed in an options disclosure document ("ODD") and requires the options markets to file an ODD with the Commission 60 days prior to the date it is distributed to investors. In addition, Rule 9b–1 provides that the ODD must be amended if the information in the document becomes materially inaccurate or incomplete and that amendments must be filed with the Commission 30 days prior to the distribution to customers. Finally, Rule 9b–1 requires a broker-dealer to furnish to each customer an ODD and any amendments, prior to accepting an order to purchase or sell an option on behalf of that customer.

There are 5 options markets that must comply with Rule 9b–1. These 5 respondents work together to prepare a single ODD covering options traded on each market, as well as amendments to the ODD. These respondents file no more than one amendment per year, which requires approximately 8 hours per year for each respondent. Thus, the total compliance burden for options markets per year is 40 hours. The approximate cost per hour is $100, resulting in a total cost of compliance for these respondents of $4,000 per year (40 hours @ $100).

In addition, approximately 2,000 broker-dealers must comply with Rule 9b–1. Each of these respondents will process an average of three new customers for options each week and, therefore, will have to furnish approximately 156 ODDs per year. The postal mailing or electronic delivery of the ODD takes respondents no more than 30 seconds to complete for an annual compliance burden for each of these respondents of 78 minutes, or 1.3 hours. Thus, the total compliance burden per year is 2,600 hours (2,000 broker-dealers X 1.3 hours). The approximate cost per hour to these respondents is $10 per hour, resulting in a total cost of compliance for these respondents of $26,000 per year (2,600 hours @ $10).

The total compliance burden for all respondents under this rule (both options markets and broker-dealers) is 2640 hours per year (40 + 2,600), and total compliance costs of $30,000 ($4,000 + $26,000).

Rule 15c2–7 Identification of Quotations

Rule 15c2–7 (17 CFR 240.15c2–7) enumerates the requirements with which all brokers and dealers must comply when submitting a quotation for a security (other than a municipal security) to an inter-dealer quotation system.

It is estimated that there are 8,500 brokers and dealers. Industry personnel estimate that approximately 900 notices are filed pursuant to Rule 15c2–7 annually. Based on industry estimates that respondents complying with Rule 15c2–7 spend 30 seconds to add notice of an arrangement and 1 minute to delete notice of an arrangement, the staff estimates that, on an annual basis, respondents spend a total of 11.25 hours to comply with Rule 15c2–7, based upon past submissions. The average cost per hour is approximately $35. Therefore, the total cost of compliance for brokers and dealers is approximately $393.75.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate

Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 14, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1343 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27639]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

January 15, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 7, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 7, 2003 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

SCANA Corporation, et al. (70–10087)

SCANA Corporation ("SCANA"), a registered holding company, SCANA's three public-utility subsidiary companies, South Carolina Electric & Gas Company ("SCE&G"), Public Service Company of North Carolina ("PSNC"), South Carolina Generating Company, Inc. ("GENCO"), and SCANA's nonutility subsidiary companies, SCANA Services, Inc. ("SCANA Services"), SCANA Energy Marketing, Inc., SCANA Resources, Inc., South Carolina Fuel Company, Inc. ("Fuel Company"), South Carolina Pipeline Corporation, SCG Pipeline, Inc., SCANA Energy Trading, LLC, SCANA Public Service Company, LLC, SCANA Communications, Inc. , ServiceCare, Inc., Primesouth, Inc., Palmark, Inc., SCANA Development Corporation, SCANA Services, Inc., PSNC Blue Ridge Corporation, PSNC Cardial Pipeline Company and Clean Energy Enterprises Inc. (collectively, the "Applicants"), each located at 1426 Main Street, Columbia, South Carolina 29201 filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b), and 12(c) of the Act and rules 43, 45, 46, 53, and 54, and under the Act.[1]

Applicants request authority to engage in a variety of financing transactions, credit support arrangements, and other related proposals, as more fully discussed below, commencing on the effective date of an order issued under this filing and ending April 15, 2006 ("Authorization Period").

I. General Terms and Conditions

Financing by each Applicant will be subject to the following limitations ("Financing Parameters"): (i) The effective cost of capital on debt and preferred or equity-linked financings will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality, provided that in no event will the effective cost of capital on (a) long-term debt borrowings exceed 500 basis points over the comparable term U.S. Treasury securities and (b) short-term debt borrowings exceed 500 basis points over the comparable term London Interbank Offered Rate ("LIBOR"); (ii) the maturity of indebtedness will not exceed 50 years, and, preferred stock or preferred or equity-linked securities (other than perpetual preferred stock) will be redeemed no later than 50 years after the issuance thereof, unless converted into common stock; and (iii) the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities under this Application will not exceed the greater of (a) 5% of the principal or total amount of the securities being issued or (b) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

Applicants represent that at all times during the Authorization Period, SCANA and each Utility Subsidiary will each maintain common equity (as reflected in the most recent 10–K or 10–Q filed with the Commission under the Securities and Exchange Act of 1934, as amended, ("1934 Act") adjusted to reflect changes in capitalization since the balance sheet date therein) of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term and short-term debt), provided that SCANA will, in any event, be authorized to issue common stock (including under the dividend reinvestment or employment plans described below), to the extent authorized in this filing.

Applicants further represent that, at the time of any security issuance under the authority sought below, the rating of any security issued (or the rating of the same class of security) shall be at least investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the 1934 Act. If such issuance is of a type of security that is unrated, the issuer shall have a corporate or senior unsecured debt rating of at least investment grade. Applicants propose that the ratings test will not apply to any issuance of common stock or to issuances of indebtedness by GENCO.[2]

II. Background and Current Proposal

By order dated February 14, 2000,[3] the Commission authorized (as supplemented and amended in subsequent Commission orders, collectively, the "Financing Orders"),[4] SCANA, the Utility Subsidiaries and the Nonutility Subsidiaries to, among other

[1] SCANA directly owns all of the issued and outstanding common stock of three public utility companies, PSNC, SCE&G, and GENCO, (collectively referred to as the "Utility Subsidiaries"). All of SCANA's direct and indirect subsidiaries, other than the Utility Subsidiaries, are referred to as the "Nonutility Subsidiaries." The Utility Subsidiaries and Nonutility Subsidiaries are collectively referred to as the "Subsidiaries."

[2] According to Applicants, GENCO does not currently have any rated securities outstanding and is not expected to have a security rating during the Authorization Period. Applicants state that, if GENCO receives a security rating during the Authorization Period, the previously outlined ratings test will also apply to any issuance by GENCO.

[3] Holding Co. Act Release Nos. 27135 and 27137.

[4] The Commission issued supplemental orders increasing various financing limitations until February 11, 2003. *See* Holding Co. Act Release No. 27341 (Jan. 31, 2001) and Holding Co. Act Release No. 27476 (Dec. 19, 2001).

things, engage in: (i) External issuances by SCANA of common stock, long-term debt, short-term debt, and other securities for cash; (ii) the entering into by SCANA of transactions to manage interest rate risk ("hedging transactions"); (iii) issuances of debt securities (including commercial paper) and the entering into of hedging transactions by the Utility Subsidiaries; (iv) issuances by Nonutility Subsidiaries of debt securities which are not exempt under rule 52 of the Act; (v) the establishment of a utility money pool (the "Utility Money Pool") and a nonutility money pool (the "Nonutility Money Pool"); (vi) the issuance of intrasystem guarantees by SCANA and the Nonutility Subsidiaries on behalf of Subsidiaries; (vii) the ability of wholly-owned Subsidiaries to alter their capital stock in order to engage in financing transactions with their parent company and to engage in a reverse stock split to reduce franchise taxes, subject, in the case of Utility Subsidiaries, to the approval of, if required, the applicable state commission; (viii) the ability of PSNC to pay dividends out of capital or unearned surplus; (ix) the formation of financing entities and the issuance by such entities of securities otherwise authorized to be issued and sold under the Financing Orders; and (x) the ability of SCANA to keep outstanding advances in favor of certain of its Subsidiaries in an amount of approximately $600 million following the acquisition of PSNC and, indirectly, of PSNC's subsidiaries ("Merger").[5]

Further, by order dated June 9, 2000 ("Plan Order"), [6] the Commission authorized SCANA to: (i) Grant awards of stock options, stock appreciation rights, restricted stock, performance shares and performance units under its long-term equity compensation plan, (ii) issue under such plan up to five million shares of its common stock through June 8, 2003, and (iii) solicit proxies with respect to such plan at SCANA's 2000 annual meeting of shareholders. Applicants state that the authority sought in the Application will replace and substitute for all the authority granted by the Financing Orders with respect to financing activities and will also replace and substitute for the authority granted by the Plan Order with respect to issuance of shares of common stock for benefit plans described in the Application.

Specifically, Applicants seek authority for the transactions discussed below and request authority to engage in the transactions in the Application during the period from the effective date of the order in this proceeding through the Authorization Period. Also, Applicants state that the proceeds from the sale of securities in external financing transactions will be used for general corporate purposes including: (i) The financing, in part, of the capital expenditures of the SCANA system; (ii) the financing of working capital requirements of the SCANA system; (iii) the acquisition, retirement or redemption under rule 42 of securities previously issued by SCANA or its Subsidiaries or as otherwise authorized by the Commission; (iv) direct or indirect investment in companies authorized under the Act or by Commission rule (including exempt wholesale generators ("EWGs") or foreign utility companies ("FUCOs") or in a separate proceeding; and (v) other lawful purposes. Applicants represent that no such financing proceeds will be used to acquire a new subsidiary unless such financing is consummated in accordance with an order of the Commission or an available exemption under the Act. The aggregate amount of proceeds of financings and guaranties used to fund investments in EWGs and FUCOs will not, when added to SCANA's "aggregate investment" in these entities at any point in time, exceed 50% of SCANA's "consolidated retained earnings" as defined in rule 53(a)(1).

III. SCANA External Financing

SCANA requests authority to obtain funds externally through sales of common stock, preferred stock, preferred and equity-linked securities, long-term debt and short-term debt securities. With respect to common stock, SCANA also requests authority to issue common stock to third parties in consideration for the acquisition by SCANA or a Nonutility Subsidiary of equity or debt securities of a company being acquired under an exemption under the Act or under Commission authority. In addition, SCANA seeks the flexibility to enter into certain hedging transactions to manage interest rate risk.

A. Common Stock

Applicants propose that the aggregate amount of financing obtained by SCANA during the Authorization Period from issuance and sale of common stock, no par value (other than for employee benefit plans or stock purchase and dividend reinvestment plans), when combined with issuances of preferred stock, preferred and equity-linked securities and long-term debt, as described in this section, and other than for refunding or replacement of securities where capitalization is not increased as a result thereof, shall not exceed $2.2 billion for the uses outlined in Part II, above.[7]

SCANA requests authority to sell common stock covered by the Application in any one of the following ways: (i) Through underwriters or dealers; (ii) through agents; (iii) directly to a limited number of purchasers or a single purchaser; or (iv) directly to employees (or to trusts established for their benefit), shareholders and others. Issuances of common stock under SCANA's employee benefit plans and stock purchase and dividend reinvestment plans will not count towards this limitation. If underwriters are used in the sale of the securities, such securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by SCANA) or directly by one or more underwriters acting alone. The securities may be sold directly by SCANA or through agents designated by SCANA from time to time. If dealers are utilized in the sale of any of the securities, SCANA will sell such securities to the dealers as principals. Any dealer may then resell such securities to the public at varying prices to be determined by such dealer at the time of resale. If common stock is being sold in an underwritten offering, SCANA may grant the underwriters a "green shoe" option permitting the purchase from SCANA at the same price of additional shares then being offered solely for the purpose of covering over-allotments.

Public distributions may be under private negotiation with underwriters, dealers or agents as discussed above or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All such common stock sales will be with terms and conditions, at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

[5] See Holding Co. Act Release No. 27133 (February 9, 2000) ("Merger Order").

[6] See Holding Co. Act Release No. 27183.

[7] Applicants state that this request represents a decrease of $250 million from the authority granted in the Financing Orders reflecting lower anticipated capital requirements for SCANA.

Under the terms of the Act and orders of the Commission, including the Merger Order, SCANA states that it is authorized to acquire securities of companies engaged in energy-related consumer services, "energy-related businesses" as described in rule 58, exempt telecommunications companies ("ETCs"), as defined in section 34 of the Act, EWGs and FUCOs. Historically, similar acquisitions have occasionally involved the exchange of parent company stock for securities of the company being acquired in order to provide the seller with certain tax advantages. These transactions are individually negotiated. According to Applicants, the SCANA common stock to be exchanged may be purchased on the open market under rule 42, or may be original issue. Original issue stock may be registered under the Securities Act of 1933, as amended (the "1933 Act"), but at present it is expected that the common stock would not be registered and the common stock acquired by the third parties would be subject to resale restrictions under rule 144 under the 1933 Act.

B. Preferred Stock and Preferred and Equity-linked Securities

SCANA requests Commission authority during the Authorization Period to issue preferred stock (subject to approval by shareholders of the necessary amendment to the Articles of Incorporation) and to issue directly or indirectly through one or more Financing Subsidiaries preferred securities (including, specifically, trust preferred securities) or equity-linked securities (including, specifically, debt or preferred securities that are convertible, either mandatory or at the option of the holder, into common stock or SCANA indebtedness and forward purchase contracts for common stock). The aggregate amount of financing obtained by SCANA during the Authorization Period from issuance and sale of preferred stock and preferred and equity-linked securities, when combined with issuances of common stock (other than for employee benefit plans or stock purchase and dividend reinvestment plans) and long-term debt, as described below, and other than for refunding or replacement of securities where capitalization is not increased from that in place at June 30, 2002, shall not exceed $2.2 billion.

According to Applicants, preferred stock and preferred equity-linked securities may be sold directly or indirectly through underwriters or dealers in connection with an acquisition similar to that described for common stock above.

C. Long-Term Debt

SCANA requests Commission authority during the Authorization Period to issue long-term debt securities in an aggregate principal amount outstanding at any time which, when combined with issuances of common stock (other than for benefit plans or stock purchase and dividend reinvestment plans), preferred stock, and preferred and equity-linked securities, as described above, and other than for refunding or replacement of securities where capitalization is not increased, shall not exceed $2.2 billion.

Long-term debt securities may be comprised of bonds, notes, medium-term notes or debentures under one or more indentures (the "SCANA Indenture") or long-term indebtedness under agreements with banks or other institutional lenders. Any long-term debt security would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms, terms for conversion into any other security of SCANA and other terms and conditions as SCANA may determine at the time of issuance.

Applicants state that the maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the long-term securities of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

Borrowings from banks and other financial institutions may be unsecured and pari passu with debt securities issued under the SCANA Indenture and the short-term credit facilities (as described below). Applicants state that specific terms of any borrowings will continue to be determined by SCANA at the time of issuance and will comply in all regards with the parameters on financing authority in the Application.

D. Short-Term Debt

SCANA requests authority to have outstanding at any one time during the Authorization Period, up to $500 million of short-term debt, which may include institutional borrowings, commercial paper or bid notes (all as described below) and short-term debt issued under the SCANA Indenture or otherwise. This request represents an increase of $50 million over the authority previously granted in the Financing Orders. The authority for short-term debt is in addition to the $2.2 billion requested for common stock, preferred stock and preferred and equity-linked securities and long-term debt as described above.

SCANA requests authority to sell commercial paper, from time to time, in established domestic commercial paper markets. Such commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. Applicants expect that the dealers acquiring commercial paper from SCANA will reoffer such paper at a discount to corporate and institutional investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

SCANA further requests authority to, without counting against the $500 million limit, maintain back-up lines of credit in connection with a commercial paper program in an aggregate amount not to exceed the amount of authorized commercial paper.

Credit lines may be set up for use by SCANA for general corporate purposes in addition to credit lines to support commercial paper as described in this subsection. SCANA will borrow and repay under such lines of credit, from time to time, as it is deemed appropriate or necessary.

E. Financing Risk Management Devices

SCANA requests authority to enter into, perform, purchase and sell financial instruments intended to reduce or manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements. Hedges may also include issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or U.S. governmental agency (*e.g.*, Federal National Mortgage Association) obligations or LIBOR based swap instruments (collectively referred to as "Hedge Instruments"). Applicants contend that the transactions would be for fixed periods and stated notional amounts. SCANA would employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued under this authority or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt

to variable rate debt and (iii) limiting the impact of changes in interest rates resulting from variable rate debt. In no case will the notional principal amount of any interest rate swap exceed the greater of the face value of the underlying debt instrument or the present market value of the underlying debt instrument and related interest rate exposure. Transactions will be entered into for a fixed or determinable period. Thus, SCANA will not engage in speculative transactions unassociated with its existing outstanding debt and financing needs and activities. SCANA will only enter into agreements with counterparties ("Approved Counterparties") whose senior debt ratings, as published by a national recognized rating agency, are greater than or equal to "BBB," or an equivalent rating.

In addition, SCANA requests authority to enter into interest rate hedging transactions with respect to anticipated debt offerings (the "Anticipatory Hedges"), subject to certain limitations and restrictions. Such Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded Hedge Instruments (a "Forward Sale"), (ii) the purchase of put options on Hedge Instruments (a "Put Options Purchase"), (iii) a Put Options Purchase in combination with the sale of call options Hedge Instruments (a "Zero Cost Collar"), (iv) transactions involving the purchase or sale, including short sales, of Hedge Instruments, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade ("CBOT"), the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. SCANA or the appropriate Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. SCANA or the appropriate Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases.

SCANA states that it will comply with Statement of Financial Accounting Standards ("SFAS") 133 ("Accounting for Derivative Instruments and Hedging Activities"), SFAS 138 ("Accounting for Certain Derivative Instruments and Certain Hedging Activities") or such other standards relating to accounting for derivative transactions as are adopted and implemented by the FASB. Applicants commit that the Hedge Instruments and Anticipatory Hedges will qualify for hedge accounting treatment under the current FASB standards in effect and as determined at the date such Hedge Instruments or Anticipatory Hedges are entered into.

IV. Utility Subsidiary Financing

Applicants state that the financings by the Utility Subsidiaries for which authority is requested in the Application are outside the rule 52 exemption. Each Utility Subsidiary requests authority to issue securities not exempt under rule 52 for refunding or replacement of securities where its capitalization is not increased from that in place.

A. SCE&G and PSNC Short-Term Debt

SCE&G requests authority to issue short-term debt, including commercial paper and credit lines, in the aggregate amount of $450 million to be outstanding at any one time during the Authorization Period. Authority is requested for PSNC to issue short-term debt, including commercial paper and credit lines, in the aggregate amount of $300 million to be outstanding at any one time during the Authorization Period. These requests represent an increase of $150 million and $100, respectively, over the authority granted in the Financing Orders with respect to SCE&G and PSNC.

SCE&G and PSNC request authority to sell commercial paper, from time to time, in established domestic commercial paper markets in a manner similar to SCANA as discussed above. SCE&G and PSNC may, without counting against the limit set forth above, further maintain back up lines of credit in an aggregate amount not to exceed the amount of authorized commercial paper. Credit lines may be set up for use by SCE&G and PSNC for general corporate purposes in addition to credit lines to support commercial paper as described in this subsection. SCE&G and PSNC will borrow and repay under such lines of credit, from time to time, as it is deemed appropriate or necessary. Subject to the limitations described above, SCE&G and PSNC may engage in other types of short-term financings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

B. PSNC Long-Term Debt

PSNC requests authority to issue up to $300 million in long-term debt securities during the Authorization Period. This request represents a decrease of $150 million from the authority granted in the Financing Orders.

C. GENCO Long-Term Debt

GENCO requests authority to issue up to $100 million in long-term debt securities during the Authorization Period. SCANA expects to make additional exempt capital contributions to GENCO under rule 45. In addition thereto, authority is requested for GENCO to issue debt obligations to effectuate the refunding (including reasonable costs and redemption premiums incurred in connection with such refunding) of its now or hereafter outstanding debt obligations including pollution control loan obligations to achieve lower costs of money, extend maturity or for other proper corporate purposes. At June 30, 2002, GENCO had $77.4 million of long-term debt obligations outstanding. The amounts issued under this authority will not count against the financing limit described above provided for in the Application to the extent they will exclusively constitute refunding transactions that will not increase total capitalization of GENCO.

D. Financing Risk Management Devices

To the extent not exempt under rule 52, the Utility Subsidiaries also request authority to enter into interest rate risk management transactions (hedge instruments) and Anticipatory Hedges of the same type and under the same conditions as are requested above by SCANA.

V. Guarantees, Intrasystem Advances and Intrasystem Money Pool

A. Guarantees and Intrasystem Advances

SCANA requests continued authority to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of its Subsidiaries ("Guarantees") as may be appropriate or necessary to enable such Subsidiaries to carry on in the ordinary course of their respective businesses, in an aggregate principal amount not to exceed $600 million outstanding at any one time (not taking into account obligations exempt under rule 45) ("Guarantee Limitation"). Included in this amount are guarantees and other credit support mechanisms by SCANA in favor of its Subsidiaries which were

previously issued. This request represents an increase of $295 million over the authority granted in the Financing Orders, reflecting increased business activity and additional requirements of SCANA's counterparties. SCANA may charge each Subsidiary a fee for each Guarantee provided on its behalf that is not more than that obtainable by the beneficiary of the Guarantee from third parties. Any Guarantees outstanding at the end of the Authorization Period will continue until expiration or termination in accordance with their terms.

Applicants also request authority for the Nonutility Subsidiaries to enter into guarantees, obtain letters of credit, enter into expense agreements and otherwise provide credit support with respect to other Nonutility Subsidiaries, in an aggregate principal amount not to exceed $250 million outstanding at any one time, in addition to guarantees that are exempt under rule 52. The Nonutility Subsidiary providing any such credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as specified above for SCANA's Guarantees.

Furthermore, Applicants request authority for the Utility Subsidiaries to enter into guarantees, obtain letters of credit, enter into expense agreements and otherwise provide credit support with respect to their direct and indirect subsidiaries, in an aggregate principal amount not to exceed $250 million outstanding at any one time in addition to guarantees that are exempt under rule 52. The Utility Subsidiary providing any such credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as specified above.

Applicants state that certain Guarantees may be in support of the obligations of Subsidiaries which are subject to varying quantification. In such cases, SCANA would determine the exposure under such Guarantee for purposes of measuring compliance with the Guarantee Limitation by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, such estimates will be made in accordance with Generally Accepted Accounting Principles ("GAAP"). Such estimation would be reevaluated periodically.

SCANA also requests authority to keep in place advances to its Subsidiaries in an aggregate amount outstanding at any one time of up to $1.25 million. The interest rate used is the weighted average rate on SCANA's long-term and short-term debt. Such outstanding advances by SCANA to its Subsidiaries are open advances with no maturities and are callable by SCANA at any time.

B. Authorization and Operation of the Money Pools

SCANA and the Utility Subsidiaries request authority, through the Authorization Period, to continue the Utility Money Pool established under the authority granted in the Financing Orders, and the Utility Subsidiaries, to the extent not exempted by rule 52, also request authority to continue to make, from time to time, unsecured short-term borrowings from the Utility Money Pool and to contribute surplus funds to the Utility Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool. In addition to the Utility Subsidiaries, SCANA requests that Fuel Company be allowed to continue participating in the Utility Money Pool as a result of its financing relationship with SCE&G. For purposes of discussing the Utility Money Pool, the term Utility Subsidiaries shall include Fuel Company.

In addition, SCANA and the Nonutility Subsidiaries (other than Fuel Company),[8] request authority to continue the Nonutility Money Pool. Funds made available by SCANA for loans through the money pools are made available first for loans through the Utility Money Pool (to the extent being operated) and thereafter for loans through the Nonutility Money Pool.

SCANA requests authority to contribute surplus funds and to lend and extend credit to (a) the Utility Subsidiaries through the Utility Money Pool and (b) the Nonutility Subsidiaries through the Nonutility Money Pool.

Applicants believe that the cost of the proposed borrowings through the two Money Pools will continue to generally be more favorable to the borrowing participants than the comparable cost of external short-term borrowings, and the yield to the participants contributing available funds to the two Money Pools will generally be higher than the typical yield on short-term investments.

According to Applicants, the Utility Money Pool is currently not operated. A separate Nonutility Money Pool is in existence amongst SCANA and certain Nonutility Subsidiaries. Each of the Nonutility Subsidiaries (other than Fuel Company) that is an Applicant requests authority to participate in the Nonutility Money Pool. The Nonutility Money Pool is operated on the same terms and conditions as set forth for the Utility Money Pool, except that SCANA funds made available to the Money Pools will be made available to the Utility Money Pool first (to the extent it is operated) and thereafter to the Nonutility Money Pool. No loans through the Nonutility Money Pool are made to, and no borrowings through the Nonutility Money Pool are made by, SCANA. Fuel Company does not participate in the Nonutility Money Pool as it is anticipated to participate in the Utility Money Pool.

SCANA and the Utility Subsidiaries may contribute funds from the issuance of short-term debt as authorized above to the Utility Money Pool. SCANA and the Nonutility Subsidiaries may contribute funds from the issuance of short-term debt to the Nonutility Money Pool.

SCANA Services under the authority of the appropriate officers of the participating companies will continue to handle the operation of the Utility and Nonutility Money Pools, including record keeping and coordination of loans. SCANA Services administers the Utility and Nonutility Money Pools on an "at cost" basis and maintains separate records for each money pool. Surplus funds of the Utility Money Pool and the Nonutility Money Pool may be combined in common short-term investments, but separate records of such funds are maintained by SCANA Services as administrator of the pools, and interest thereon is separately allocated, on a daily basis, to each money pool in accordance with the proportion that the amount of each money pool's surplus funds bears to the total amount of surplus funds available for investment from both money pools.

Proceeds of borrowings from the money pools may be used for the purposes set forth in the Financing Parameters. SCE&G, PSNC and GENCO may borrow up to $60 million, $30 million, and $50 million, respectively, at any one time outstanding from the Utility Money Pool. Each of these amounts is twice the amount of the authority granted in the Financing Orders. Applicants state that borrowings by Fuel Company under the Utility Money Pool are exempt under rule 52 under the Act and that borrowings under the Utility Money Pool are in addition to the authority for other

[8] *I.e.*, South Carolina Pipeline Corporation; SCG Pipeline, Inc.; SCANA Energy Marketing, Inc.; SCANA Energy Trading, LLC; SCANA Public Service Company, LLC; SCANA Communications, Inc.; ServiceCare, Inc.; Primesouth, Inc.; Palmark, Inc.; SCANA Resources, Inc.; SCANA Development Corporation; SCANA Petroleum Resources, Inc.; SCANA Services, Inc.; PSNC Blue Ridge Corporation; PSNC Cardinal Pipeline Company; and Clean Energy Enterprises Inc.

financings for which authority is sought in the Application.

VI. Direct Stock Purchase and Dividend Reinvestment Plan, Incentive Compensation Plans and Other Employee Benefit Plans

SCANA proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions, or by some other method which complies with applicable law and Commission interpretations then in effect, up to 10 million shares of SCANA common stock under SCANA's direct stock purchase and dividend reinvestment plan, certain incentive compensation plans and certain other employee benefit plans described in the Application. Under the Financing Orders and the Plan Order SCANA had authority to issue 15 million shares with respect to employment plans through February 11, 2003.

VII. Payment of Dividends Out of Capital or Unearned Surplus by Nonutility Subsidiaries

Applicants request authority for the Nonutility Subsidiaries to pay dividends, from time to time, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law. Without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenues from sales of goods, services, electricity or natural gas to any of the Utility Subsidiaries.

VIII. Development and Administrative Activities

In connection with future investments in EWGs, FUCOs and in subsidiaries permitted under rule 58 ("Rule 58 Subsidiaries"), SCANA requests authority to engage directly and through Subsidiaries in preliminary development activities ("Development Activities") and administrative and management activities ("Administrative Activities") associated with such investments.[9] Development Activities and Administrative Activities include preliminary activities designed to result in a permitted Nonutility investment such as an investment in an EWG or FUCO under the authority requested in the Application; however, such preliminary activities may not qualify for such status until the project is more fully developed.

Development Activities will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "hosts," fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition or construction of facilities or the securities of other companies. Applicants state that Development Activities will be designed to eventually result in a permitted nonutility investment.

SCANA proposes to expend directly or through Subsidiaries up to $200 million in the aggregate outstanding at any time during the Authorization Period on all such Development Activities.[10] To the extent a Subsidiary for which such amounts were expended for Development Activities becomes an EWG, FUCO, or Rule 58 Subsidiary, the amount so expended will cease to be Development Activities and then be considered as part of the "aggregate investment" in such entity. In the case of EWGs, FUCOs and Rule 58 Subsidiaries, such aggregate investment will then count against the limitation on such aggregate investment under rule 53 or rule 58.

IX. Intermediate Subsidiaries

SCANA proposes to create and acquire directly or indirectly the securities of one or more Intermediate Subsidiaries which may be corporations, trusts, partnerships, limited liability companies or other entities. Intermediate Subsidiaries will be organized exclusively for the purpose of acquiring and holding the securities of, or financing or facilitating SCANA's investments in, other direct or indirect nonutility investments.

An Intermediate Subsidiary may be organized, among other things: (1) In order to facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, ETC, or other nonutility company which, upon acquisition, would qualify as a Rule 58 Subsidiary; (2) after the award of such a bid proposal, in order to facilitate closing on the purchase or financing of such acquired company; (3) at any time subsequent to the consummation of an acquisition of an interest in any such company in order, among other things, to effect an adjustment in the respective ownership interests in such business held by the SCANA system and non-affiliated investors; (4) to facilitate the sale of ownership interests in one or more acquired Rule 58 Subsidiary, EWG or FUCO; (5) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (6) as a part of tax planning in order to limit SCANA's exposure to U.S. and foreign taxes; (7) to further insulate SCANA and the Utility Subsidiaries from operational or other business risks that may be associated with investments in Nonutility companies; or (8) for other lawful business purposes.

Investments in Intermediate Subsidiaries may take the form of any combination of the following: (1) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of voting or non-voting equity interests; (2) capital contributions; (3) open account advances without interest; (4) loans; and (5) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries.

Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from SCANA's available funds. To the extent that SCANA provides funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG or FUCO or a Rule 58 Subsidiary, the amount of such funds will be included in SCANA's "aggregate investment" in such entities, as calculated (in the case of EWGs, FUCOs and Rule 58 Subsidiaries) in accordance with rule 53 or rule 58, as applicable.[11]

Applicants state that the authority requested for Intermediate Subsidiaries is intended to allow for the corporate structuring alternatives outlined in the Application and will not allow any increase in aggregate investment in EWGs, FUCOs, Rule 58 Subsidiaries, or

[9] Intermediate Subsidiaries may also engage in Development Activities and Administrative Activities.

[10] Applicants state that expenditures in EWGs, FUCOs and in Rule 58 Subsidiaries which count against the "aggregate investment" limitation of rule 53 or rule 58, would not count against the $200 million limitation.

[11] If the Intermediate Subsidiary is merely a conduit, the aggregate investment will not "double count" both the conduit investment and the investment in the operating company authorized as an EWG, FUCO, Rule 58 subsidiary or other approved investment.

any other business subject to an investment limitation under the Act.

X. Internal Reorganization of Existing Investments

SCANA currently engages directly or through Subsidiaries in certain nonutility businesses. SCANA seeks authority to engage in internal corporate reorganizations to better organize such Subsidiaries and investments. No authority is sought to make new investments or to change the organization of the Utility Subsidiaries.

SCANA and Subsidiaries request authority, to the extent needed, to sell or to cause any Subsidiary to sell or otherwise transfer (i) such businesses, (ii) the securities of current Subsidiaries engaged in some or all of these businesses or (iii) investments which do not involve a Subsidiary (*i.e.* less than 10% voting interest) to a different Subsidiary, and, to the extent approval is required, the Subsidiaries request authority to acquire the assets of such businesses, Subsidiaries or other then existing investment interests. Alternatively, transfers of such securities or assets may be effected by share exchanges, share distributions or dividends followed by contribution of such securities or assets to the receiving entity. In the future, following its direct or indirect acquisition of the securities of new Nonutility Subsidiaries, SCANA may determine to transfer such securities or the assets of such Nonutility Subsidiaries to other Subsidiaries as described in the preceding sentence. SCANA may also liquidate or merge Nonutility Subsidiaries.

Applicants state that such internal transactions would be undertaken in order to eliminate corporate complexities, to combine related business segments for staffing and management purposes, to eliminate administrative costs, to achieve tax savings, or for other ordinary and necessary business purposes.

Applicants state that the transactions proposed will not involve the sale or other disposition of any utility assets of the Utility Subsidiaries and will not involve any change in the corporate ownership of the Utility Subsidiaries. In so far the approval sought does not extend to the acquisitions of any new businesses or activities.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1344 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF OPEN MEETING: Additional Meeting.

An additional Open Meeting will be held on Thursday, January 23, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room. The Closed Meeting previously announced to be held on Thursday, January 23, 2003 at 10 a.m. has been scheduled to immediately follow the Open Meeting on Thursday, January 23, 2003.

Commissioner Goldschmid, as duty officer, determined that not earlier notice thereof was possible.

The following items previously announced for the January 22, 2003 Open Meeting will be considered during the January 23, 2003 Open Meeting.

1. The Commission will consider adopting rules to establish standards of professional conduct for attorneys who appear and practice before the Commission in any way in the representation of issuers. As proposed, the rules would require an attorney to report evidence of a material violation of securities laws, a material breach of fiduciary duty, or similar material violation by the issuer or by any officer, director, employee, or agent of the issuer to the issuer's chief legal officer or the chief executive officer of the company (or the equivalents); if they do not respond appropriately to the evidence, the rule would require the attorney to report the evidence to the issuer's audit committee, another committee of independent directors, or the full board of directors; if the directors do not respond appropriately, the rule would require or permit the attorney to withdraw and notify the Commission of the withdrawal.

2. The Commission will consider whether to adopt amendments to its registration and reporting forms for registered management investment companies, as well as new rule 30b1–4 and new form N–PX under the Investment Company Act of 1940. These rules would require mutual funds and other registered management investment companies to disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. They would also require registered management investment companies to file with the Commission on an annual basis, and make available to shareholders, their proxy voting records.

3. The Commission will consider whether to adopt a new rule and amendments to its recordkeeping rules for registered investment advisers under the Investment Advisers Act. The new rule would require investment advisers to adopt proxy voting policies and procedures, describe the policies and procedures to clients and provide clients with copies on request, and disclose how clients can obtain information about how the adviser voted their proxies. The recordkeeping amendments would require advisers to keep certain records regarding client proxies.

At times, changes in Commission priorities alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 16, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–1492 Filed 1–17–03; 2:21 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47186; File No. SR–BSE–2002–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc., Establishing Trading Rules for the Boston Options Exchange Facility

January 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 18, 2002, the BSE filed Amendment No. 1 that entirely replaced the original rule filing.[3] On January 9, 2003, the BSE filed Amendment No. 2

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, to Annette Nazareth, Director, Division of Market Regulation ("Division"), Commission, dated December 18, 2002.

that entirely replaced the original rule filing and Amendment No. 1.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to create a new electronic options trading facility of the Exchange, called the Boston Options Exchange ("BOX"). The text of the proposed rule change is available for inspection at the Office of the Secretary, the BSE, the Commission's Public Reference Room, and on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The BSE proposes to establish rules for BOX,[5] a new exchange facility, as that term is defined in Section 3(a)(2) of the Act.[6] BOX would be operated by Boston Options Exchange Group, LLC ("BOX LLC").[7] BOX would administer a fully automated trading system for standardized equity options intended for the use of Options Participants.[8] It would conduct an auction market similar to the ones conducted by the options exchange markets currently in operation, although the BOX auction would occur electronically and not on a floor. BOX would provide automatic order execution capabilities in the options securities listed or traded on the BSE.

The BSE intends to establish BOX as an options market where orders from all types of market participants may interact directly with each other on a price/time priority basis. Through a specific process called the Price Improvement Period ("PIP"),[9] BOX would attract orders and subject them to price improvement and real price competition without which they would otherwise simply be executed at the NBBO. BOX would offer a price/time priority based limit order book where any Public Customer[10] or broker-dealer market participant could submit orders (post prices) or take liquidity. It would also provide a limited facility for Order Flow Providers[11] to interact with their own order flow but only at prices better than the best bid or offer on the market; and a true opportunity for Market Makers[12] to step in and compete for those orders quickly and anonymously.

a. Summary of BOX Trading Rules. (i) Low Barriers to Trading Access. BOX would have multiple and competing market makers rather than a specialist driven system. There would be no designated specialists, primary market makers, or lead market makers with authority to control trading in a particular options class. Market making in an options class on BOX would be open to all qualified Options Participants who are approved by the Exchange as Market Makers.[13] All appointed competing Market Makers would be responsible for ensuring basic liquidity. BOX has invested heavily to acquire the necessary processing capacity to rapidly and efficiently process the messaging traffic that multiple market making would generate as BOX believes this would significantly intensify competition. This competition would encourage tighter spreads and better pricing to the ultimate advantage of the investor. Further, in the spirit of maintaining a flat and open marketplace, BOX would limit Market Makers' privileges within their appointed classes to the ability to maintain orders on all series and to the opportunity to participate in PIP auctions. BOX Options Participants, whether Market Makers or Order Flow Providers, or both, would not be required to obtain membership in the BSE, nor to lease trading rights from any member ("seat holder") of the BSE. Market Maker Participants would be required to register as an Options Participant, obtain approval from the BSE and pay a modest annual access fee for trading rights and a low execution fee per contract.[14]

In addition, as BOX would be fully automated and without a central trading floor, Participants would have to access BOX from "remote" locations. The reduction in fixed costs and the barriers to entry would give rise to a wider variety of market participants than heretofore seen, resulting in fiercer competition to the ultimate advantage of the Customers who use BOX.

(ii) Anonymous Central Order Book with Price/Time Priority. All orders on BOX would be entered on the BOX Central Order Book ("BOX Book").[15] Only prices and quantities would be displayed to all trading Participants, maintaining full anonymity with regard to the ownership of each order. With only minor exceptions, all orders would be matched on a strict price and time priority algorithm. This will result in better pricing since the price and time priority algorithm gives a strong incentive to trading Participants to post their very best prices rapidly. There would be no opportunity to "step up

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[4] See Letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, to Annette Nazareth, Director, Division, Commission, dated January 8, 2003.

[5] The term "BOX" means the Boston Options Exchange or Boston Stock Exchange Options Exchange, an options trading facility of the Exchange under Section 3(a)(2) of the Act. *See* proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(6) (definition of "BOX").

[6] 15 U.S.C. 78c(a)(2).

[7] The founding members of BOX LLC are the BSE, the Bourse de Montreal, Inc., and Interactive Brokers Group, LLC.

[8] The term "Options Participant" or "Participant" means a firm or organization that is registered with the Exchange pursuant to Chapter II of the proposed BOX Rules for purposes of participating in options trading on BOX as an "Order Flow Provider" and/or "Market Maker." *See* proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(39) (definition of "Options Participant").

[9] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18, *Price Improvement Period*.

[10] The term "Customer" means either a Public Customer or a broker-dealer. The term "Public Customer" means a person that is not a broker or dealer in securities. All Customer orders must be submitted through an approved BOX Options Participant. *See* proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(19) (definition of "Customer") and Sec. 1(a)(49) (definition of "Public Customer").

[11] The terms "Order Flow Provider" or "OFP" mean those Options Participants representing as agent Customer Orders on BOX. *See* proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(45) (definition of "Order Flow Provider").

[12] The term "Market Maker" means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these proposed BOX Rules. All Market Makers are designated as specialists on the Exchange for all purposes under the Act. *See* proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(31) (definition of "Market Maker").

[13] *See* proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 4, *Appointment of Market Makers*.

[14] The BSE intends to file under separate cover a proposed rule change regarding BOX related fees, pursuant to Section 19(b) of the Act, 15 U.S.C. 78s(b).

[15] The term "Central Order Book" or "BOX Book" means the electronic book of orders maintained by the BOX Trading Host. *See* proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(12) (definition of "Central Order Book").

and match" in order to participate in a trade on BOX.

(iii) All Orders Firm for All Traders. All orders on the BOX Book would be firm at all times for all trading Participants. An order on the BOX Book is available in its entirety to all parties on a "first come, first serve" basis whether from a Market Maker, Public Customer or broker/dealer account.

(iv) Price Improvement Period. To address the issues of internalization of Customer Orders by Order Flow Providers and Market Makers, BOX has developed PIP. The BOX PIP would be a very rapid auction starting at a price better than the current NBBO where BOX Participants could compete to improve the Customer side of the trade.

b. BOX Regulated as a Facility of the Exchange. The BSE has entered into various agreements with BOX LLC under which BOX LLC would operate BOX as a facility of the BSE. Pursuant to these agreements, the BSE would maintain responsibility for all regulatory functions related to the facility, and BOX LLC would be responsible for the business of the facility to the extent those activities are not inconsistent with the regulatory and oversight functions of the BSE. The BSE intends to file with the Commission under separate cover a proposed rule change regarding the delegation of authority from the BSE to Boston Options Exchange Regulation, LLC ("BOXR"), a wholly-owned subsidiary of the BSE, for regulatory functions related to the facility such as surveillance and compliance ("Delegation Plan"). In addition, the BSE intends to file under the Delegation Plan a proposed rule change regarding the relationship between the BSE, BOXR, and the BOX entities. In addition, the BSE intends to file the necessary rule changes to allow the BSE to join the Options Intermarket Linkage Plan, the Options Price Reporting Authority ("OPRA") and the Options Self-Regulatory Council ("OSRC"), which have been authorized under the applicable National Market System ("NMS") plans.[16]

c. The BSE Would Conduct All Necessary Surveillance of BOX. As part of its obligations under the Act and pursuant to its own rules, the BSE would conduct all necessary surveillance of the operation of and trading on BOX.[17] The BSE intends to implement a state-of-the-art electronic system for producing detailed audit trails of all orders submitted to BOX. The BSE emphasizes that it has not only the technological capability to establish and maintain an audit trail, but also, the staff expertise and capital resources to satisfactorily oversee a new electronic options market.

The BSE, as a well-established exchange, has the requisite staff experience to support and to supplement the technological surveillance necessary for the all-electronic BOX. As one of the nation's oldest securities exchanges, the BSE has repeatedly demonstrated its success in attracting qualified management and regulatory staff, who have proven their knowledge of the federal securities laws and the self-regulatory role of a registered exchange. Furthermore, consistent with the requirements of the Act, the BSE will demonstrate to the Commission, as necessary, that it has adequate financial resources to fund a surveillance program for a fully electronic options trading facility. In accordance with its regulatory responsibilities, the BSE will also demonstrate to the Commission that the technological capabilities of BOXR and BOX would be more than adequate for the surveillance of trading on BOX.[18]

d. The Boston Options Exchange. BOX, the proposed electronic options trading facility of the BSE, would offer liquidity, price quality and low cost of execution for market participants. BOX would function as a limit order book under the principle of price/time priority for all market participants' orders and would provide execution enhancements. Market Makers would participate electronically in BOX to enhance liquidity in the book and would be able to interact with order flow subject to automatic price improvement requirements. In addition, orders would be permitted facilitation on BOX subject to price improvement where the price and time priority of the limit order book is protected.

BOX is described in more detail in the following subsections. Specifically, subsection (i) describes the BOX membership structure and the registration requirements as well as the trading obligations of Market Makers and Order Flow Providers. Subsection (ii) describes trading on the BOX Trading Host in detail, including a description of how orders are executed during BOX's trading session.

(i) BOX Membership Structure: Options Participants. With the introduction of BOX, the BSE intends to change its membership rules to reflect the new all-electronic options trading environment. BOX would have only one category of members, as that term is defined in the Section 3(a)(3)(A) of the Act:[19] Options Participants. Any registered broker-dealer who wishes to be a member once BOX begins operation would have to become a BSE-approved Options Participant.[20] By becoming an Options Participant, the registered broker-dealer would be permitted to effect options transactions on BOX. An Options Participant: (1) Must agree to be bound by the Constitution, By-Laws and Rules of the BSE and the BOX Rules, and by federal securities laws, and by all applicable rules and regulations of the Commission; (2) would not acquire ownership or distribution rights in the BSE or BOX; and (3) would have representation as will be proposed in the Delegation Plan to be filed with the Commission by the BSE under separate cover.

BOXR would authorize any Options Participant who met certain enumerated requirements to obtain access to BOX. The requirements for access are as follows: First, all Options Participants must make application to, and be approved by, the BSE as Options Participants. Second, all approved Participants must enter into an Options Participation Agreement with the Exchange. Options Participants would be approved to participate on BOX as Market Makers, Order Flow Providers, or both.

(A) Market Makers

Registered BOX Market Makers would be designated as dealer-specialists on the BSE for all purposes under the Act.[21]

(1) Registration. To become a market maker on BOX, an Options Participant would have to register as a BOX Market Maker by filing a written application with the BSE.[22] In determining whether to approve a Market Maker application, the BSE would consider, among other

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[16] The OSRC is currently operating under a draft agreement, as opposed to a formal plan declared effective by the Commission pursuant to Section 11A of the Act, 15 U.S.C. 78k–1.

[17] The BSE will delegate to BOXR the authority to provide the necessary surveillance of the operation of and trading on BOX pursuant to the proposed Delegation Plan to be filed by the BSE under separate cover.

[18] The BSE will comply with the Commission's Automation Review Policy with regard to BOX. *See* Securities Exchange Act Release No. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989) ("ARP I Release") and Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) ("ARP II Release"). The BSE will ensure that BOX has "the capacity to accommodate current and reasonably anticipated future trading volume levels adequately and to respond to localized emergency conditions."

[19] *See* 15 U.S.C. 78c(a)(3)(A).

[20] *See* proposed BOX Rules, Chapter II, *Participation*, Sec. 1, *Options Participation*.

[21] *See* proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 1, *Market Maker Registration*.

[22] *See* proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 1(a), *Market Maker Registration*.

things, the Options Participant's capital, operations, personnel, technical resources, and disciplinary history. Upon receipt by the Options Participant of notice of the BSE's approval, the Options Participant's Market Maker registration would become effective.[23] If the application is disapproved, the applicant Options Participant would have the opportunity to appeal the specific grounds of the denial under the provisions of Chapter II, *Participation*, Section 3, *Denial of and Conditions to Participation*. A Market Maker's registration could be suspended or terminated by the BOXR upon a determination that the Market Maker has failed to properly comply with the Market Maker's obligations under proposed Chapter VI Section 5 of the BOX Rules, as discussed below.

(2) Appointments. In addition to registering as a Market Maker generally, a Market Maker must obtain an appointment in each options class in which it wishes to make a market on BOX by filing an application with BOXR. In determining whether to approve or disapprove the Market Maker's appointment in a class, BOXR could consider, among other things: (1) The financial and technical resources available to the Market Maker; (2) the Market Maker's experience, expertise and past performances in making markets or options trading; and (3) the maintenance and enhancement of competition among Market Makers in each class of options to which it is appointed.[24]

Each Market Maker may be appointed to any options class listed on BOX for trading. Such an appointment would consist of at least one class and may include all classes traded on the Exchange. BOXR would not list an options class for trading unless at least two Market Makers are appointed to the options class.[25] In addition, before BOXR opens trading for any additional series of an options class, it would require at least two Market Makers to be appointed for trading that particular class. Upon appointment, BOXR would require Market Makers to maintain active markets in that class for a period of at least six months.[26] However, BOXR would not require a Market Maker in a class to continue trading in that class if BOXR makes an affirmative determination that continued trading in that class by a single Market Maker is to the detriment of that Market Maker, of no adverse consequence to an existing Customer of BOX or an Options Participant, and serves no greater purpose in the fair and orderly functioning of the marketplace.[27] Once a class is opened for trading and subsequently only one Market Maker remains appointed to that class, BOXR may continue trading in that class if BOXR makes an affirmative determination that halting of trading in such class would be detrimental to the remaining Market Maker, and that continued trading in such class by one Market Maker would be in the interest of maintaining a fair and orderly marketplace and would not create adverse consequence to an existing Customer of BOX or an Options Participant.[28]

Under the proposal, BOXR may suspend or terminate any appointment of a Market Maker and may make additional appointments or change the options classes included in a Market Maker's appointment whenever, in BOXR's judgment, the interests of a fair and orderly market are best served by such action.[29]

(3) Obligations. Market Makers on BOX would electronically engage in a course of dealing for their own account to enhance liquidity available on BOX and to assist in the maintenance of fair and orderly markets. In addition, Market Makers may interact with directed order flow, subject to price improvement requirements and certain obligations and duties. Specifically, Market Makers would have to satisfy the following responsibilities and duties during trading: (1) Maintain continuous firm, two-sided quotes, which are limit orders submitted to BOX by a Market Maker, in those options classes in which the Market Maker is appointed to trade; (2) maintain adequate minimum capital in accordance with Chapter VI Section 9; (3) remain in good standing with BOXR; (4) inform BOXR of any material change in financial or operational condition or in personnel; and (5) clear and settle transactions through the facilities of a registered clearing member.[30] If BOXR found any substantial or continued failure by a Market Maker to meet the above obligations and duties, BOXR would subject the Market Maker to disciplinary action, suspension or revocation of the Market Maker's appointment in one or more options classes.[31] Subject to certain limitations, a Market Maker may enter all order types permitted to be entered by Customer participants under the Rules to buy or sell options in classes of options listed on BOX to which the Market Maker is not appointed.[32]

(B) Order Flow Providers

Order Flow Providers ("OFPs") would be those Options Participants representing orders of Public Customers and other Broker Dealers on the BOX market. OFPs may also register as Market Makers. OFPs may trade as principal, both as contra party to Customer Orders submitted to BOX by such OFP and as contra party to unrelated orders submitted to BOX by other Options Participants. OFPs may only act as contra party to their own Customer Orders pursuant to the rules of the Price Improvement Period (see discussion below).[33]

(ii) The BOX Trading Host. BOX would operate an automated trading system for standardized equity options. This section describes the most significant rules and procedures governing trading on BOX.

(A) Generally

Each Market Maker on BOX would enter its own independent quotations into the BOX Trading Host ("Trading Host"). Market Makers would enter a quantity with their quotations, which must meet the minimum size requirements established by the Exchange.[34] OFPs would enter agency and principal orders into the Trading Host. Market Makers and OFPs may enter into BOX the following standard types of orders: market orders, limit orders, Day Orders, Good-Til-Canceled (GTC) Orders, Fill-or-Kill Orders, Fill-

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[23] *See* proposed BOX Rules, Chapter II, *Participation*, Sec. 2, *Qualification Requirements for Options Participants* and proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 1, *Market Maker Registration*.

[24] *See* proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 4(b), *Appointment of Market Makers*.

[25] *See* proposed BOX Rules, Chapter IV, *Securities Traded on the Boston Options Exchange Facility*, Sec. 5(a), *Minimum Participation Requirement for Opening Trading of Option Classes*.

[26] *See* proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 5(a)(viii), *Obligations of Market Makers*.

[27] *See* proposed BOX Rules, Chapter IV, *Securities Traded on the Boston Options Exchange Facility*, Sec. 5(b), *Minimum Participation Requirement for Opening Trading of Option Classes*.

[28] *See* proposed BOX Rules, Chapter IV, *Securities Traded on the Boston Options Exchange Facility*, Sec. 5(c), *Minimum Participation Requirement for Opening Trading of Option Classes*.

[29] *See* proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 4(c), *Appointment of Market Makers*.

[30] *See, generally*, proposed BOX Rules, Chapter VI, *Market Makers*.

[31] *See* proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 5(e), *Obligations of Market Makers*.

[32] *See* proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 6(e), *Market Maker Quotations*.

[33] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18, *The Price Improvement Period*.

[34] *See* proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 6(a), *Market Maker Quotations*.

and-Kill Orders, Market-on-Open Orders, and Minimum Volume Orders.[35] Market Makers and OFPs would receive from BOX information on all of the orders and quotations pending in the Trading Host, including a display of up to the five best bids and offers currently quoted on BOX in each options series, as well as the aggregate size at each of the five best prices.[36]

(B) Order Ranking and Display

The BOX Book contains all the Options Participants' orders. Limit orders of Options Participants submitted to BOX would be ranked and maintained in the BOX Book according to price/time priority, such that within each price level, all orders would be organized by the time of entry. [37] No distinction is made to this priority with regard to account designation (Public Customer, Broker/Dealer or Market Maker). The orders are ranked based on the specified limit price and the time of original order entry in the Trading Host. If an order is executed in its entirety, its price/time priority is also exhausted and so, the next order in price/time priority would move to the top of the BOX Book. An Options Participant must submit a new order if it wishes to refresh its order. This new order would be ranked at the specified limit price according to the time that the new order was entered.

(C) Order Execution and Priority Rules

Trades would occur when orders or quotations match in the Trading Host. If more than one order has been entered into the Trading Host at the same price, priority would be based on the time of order entry.[38] If an Options Participant enters a limit order into the Trading Host that matches an order already in the Trading Host, a trade would occur at the price of the order already in the Trading Host up to the available size. After executing against that order, the limit order would trade against other orders in the Trading Host until the limit order is filled in its entirety or the limit order depletes the available size at that price. If any amount of the limit order remains unexecuted, the balance of the order would become either the best bid or offer.[39]

(D) Price Improvement Period

The BOX PIP system would enhance the traditional firm facilitation mechanism and provide guaranteed price improvement opportunities for Customers. Chapter V Section 18 of the BOX Rules provides an OFP with the ability to use the PIP to enter a Customer Order and execute that order as principal.[40] An OFP is not otherwise permitted to execute an agency order as principal unless the order is first permitted to interact with other interest on BOX through the PIP system.[41]

In order to preclude unfair internalization, BOX Rules prevent an OFP from entering simultaneous Customer and proprietary orders before there is an opportunity for the Customer Order to interact with other trading interest on BOX.[42] BSE has proposed supplementary material in the BOX Rules to provide that it is a violation of Chapter V, Section 17 for an OFP to circumvent the Rules by providing an opportunity for a Customer to execute against agency orders handled by the OFP immediately upon their entry into the Trading Host. In addition, it would be a violation for an OFP to cause the execution of an order it represents as agent on BOX by orders it solicited from Options Participants and non-Option Participant broker-dealers to transact with such orders, whether such solicited orders are entered into the Trading Host directly by the OFP or by the solicited party (either directly or through another Participant), if the OFP fails to expose those orders on BOX as required by Chapter V, Section 17. The BSE believes that these interpretations would prevent an OFP from thwarting the restrictions on trading as principal.

(1) Key Features of the Price Improvement Period

(a) An OFP may submit any Customer Order for price improvement into the PIP at a price of at least one cent better than the prevailing NBBO.

(b) Market Makers and the introducing OFP may compete for the Customer execution in one-cent increments; however, all BOX Participants are informed of each PIP and may submit competing orders at standard price increments.

(c) A Market Maker would need to match or improve the price proposed by the Primary Improvement Order [43] for the opportunity to participate in the execution.

(d) The PIP would run for three seconds and cannot be cancelled by the OFP.

(e) Execution is in price and time priority at the end of the PIP with two exceptions: (1) The OFP is guaranteed no more than a minimum quantity,[44] provided he has matched the PIP execution price and (2) a Market Maker Prime [45] may in some cases have partial time priority over other Market Makers at the end of the PIP.

(f) As the execution of the Customer Order is guaranteed at the start of the PIP, the Customer Order has priority over all other orders on his side of the market during the PIP.

(2) OFP Submission of Order to PIP

OFPs executing agency orders may designate market and marketable limit Customer Orders for price improvement and submission to the PIP. Customer Orders designated for the PIP would be submitted to BOX with a matching contra order, the "Primary Improvement Order,"[46] equal to the full size of the Customer Order. The Primary Improvement Order would be on the opposite side of the market than that of the original Customer Order and represent a bid (offer) that is at least $.01 greater than the bid (less than the

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[35] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 14, *Order Entry*.

[36] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 16(a)(ii), *Execution and Price/Time Priority*.

[37] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 16(a)(i), *Execution and Price/Time Priority*.

[38] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 16(a)(iv)(2), *Execution and Price/Time Priority*.

[39] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 16(a)(iv)(3), *Execution and Price/Time Priority*.

[40] BOX Order Flow Providers and Market Makers may attempt to interact with their own orders by initiating a PIP. However, for purposes of simplicity in this discussion, initiators of PIPs generally are referred to as "Order Flow Providers."

[41] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 17(b), *Customer Orders and Order Flow Providers*.

[42] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Section 17, Supplementary Material .01 and .02, Customer Orders and Order Flow Providers.

[43] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e), *The Price Improvement Period*. *See also*, the discussion of OFP Submission of Order to PIP and PIP Participants and Improvement Orders in Sections (d)(ii)(D)(2) and (4) below.

[44] *See* the discussion of PIP Trade Allocation in Section (d)(ii)(D)(7).

[45] The Market Maker Prime is a BOX Market Maker who has partial time priority over all other Market Makers in the matching mechanism of the PIP. The Market Maker Prime is the first Market Maker who has a quote that is equal to the NBBO on the contra side of the market as the Customer Order at the instant the PIP is initiated. See the discussion of Market Maker Prime in Section (d)(ii)(E) below.

[46] An Improvement Order is any order entered into the PIP by the OFP at a price better than the specified NBBO or any order enter by a Market Maker at or better than the OFP's Primary Improvement Order. The subsequent price modifications to an OFP's Primary Improvement Order are treated as new Improvement Orders for the sake of establishing priority in the PIP process. *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(i)–(ii), *The Price Improvement Period*. *See also*, the discussion of PIP Participants and Improvement Orders in Section (d)(ii)(D)(4) below.

offer) of the National Best Bid Offer (NBBO) at the time of the commencement of the PIP.[47]

(3) Pilot Program—No Minimum Size Requirement for Price Improvement

BSE believes the customer protection benefits of the PIP process should be open to orders of all sizes since:

(a) The price to the Customer for PIP orders must better the prevailing NBBO;

(b) The price to the Customer is firm;

(c) The OFP and not the Customer bears the risk of market movements during the PIP; and

(d) The Customer is given an opportunity for further price improvement during the three second exposure period.

From the Customer's perspective, the only result of having the Customer's small order being ineligible for the PIP would be that the Customer's order would likely be filled at a price at least a penny worse than if it had been filled through the PIP.[48] Indeed, because of the relatively lower risk to the OFP and the Market Makers by virtue of the small size, there is a greater likelihood of price improvement to be provided by BOX Market Makers stepping in and participating in the PIP. On the other hand, creating a minimum size requirement would mandate that all small orders are automatically executed at the prevailing quotes with no opportunity for any price improvement. Consequently, BOX would have no minimum size requirement for orders entered into the PIP, for at least a Pilot Period to extend eighteen months from the day trading commences on BOX. During this Pilot Period, BOX would supply the Commission with data to support at least the following tenets:

(a) That there is meaningful competition for all size PIP orders;

(b) That there is significant price improvement for all orders executed through the PIP, and;

(c) That there is an active and liquid market functioning on BOX outside of the PIP mechanism.

Any data that is submitted to the Commission by the BSE during this Pilot Period and related directly to it, would be submitted on a confidential basis.[49]

(4) PIP Participants and Improvement Orders

Improvement Orders are specialized orders submitted in increments of $.01 that are valid only in the PIP process. Improvement Orders may not be submitted in increments smaller than $.01.[50] An Improvement Order is any order entered into the PIP by the OFP at a price better than the specified NBBO or any order entered by a Market Maker at or better than the OFP's Primary Improvement Order. PIP Participants would enter Improvement Orders seeking to gain priority to give the contra Customer Order an improved execution price over the NBBO. Only BOX Market Makers may submit competing Improvement Orders and only for those classes within their appointment. OFPs may submit Improvement Orders only in the PIP auction for which they have submitted the Primary Improvement Order.[51] The subsequent price modifications by the OFP to an OFP's Primary Improvement Order are treated as new Improvement Orders for the sake of establishing priority in the PIP process.[52] Market Makers and OFPs meeting the foregoing criteria would be deemed PIP Participants for that specific PIP only, and may continually submit competing Improvement Orders during that PIP.[53] Options Participants not deemed PIP Participants may nonetheless submit orders to the Trading Host during the PIP in order to compete; however, the normal price increments would apply to these orders.[54]

BOX Improvement Orders are firm and cannot be cancelled during the PIP. Thus, from the outset of the PIP, a Customer is guaranteed a locked-in trade at a price at least a penny better than the NBBO, and the OFP (and not the Customer) bears full market risk during the PIP. An OFP is not permitted to cancel its Primary Improvement Order or the Customer Order nor modify the size of its Primary Improvement Order at any time during the PIP, and may only modify the price of its Primary Improvement Order by improving it. A Market Maker, except for a Market Maker that has submitted a Primary Improvement Order, may: (1) Submit a competing Improvement Order for any size up to the size of the Customer Order, (2) submit competing Improvement Order(s) for any price equal to or better than the Primary Improvement Order, (3) improve the price of his Improvement Order at any point during the PIP, and (4) decrease the size of his Improvement Order, but only if he improves the price of that order.[55]

(5) Competition During the PIP

At the conclusion of the PIP, the Customer Order would be matched in accordance with price/time priority against the best prevailing orders on BOX, whether Improvement Orders or subsequent "unrelated orders" [56] to the PIP that were received by BOX during the PIP process from non-PIP Participants.[57] Any portion of an Improvement Order left unfilled would be cancelled. The only exceptions to time priority in the PIP matching process concern limited priority accorded the OFP and Market Maker Prime at the PIP conclusion; these are described below in detail.[58]

In cases where an unrelated order on the same side as the Customer Order is submitted to BOX during a PIP, which is immediately executable (all or partially) against either an Improvement Order or an order on the BOX Book, the PIP would be concluded and the Customer Order would be matched with the Improvement Order(s) to the fullest extent possible. Improvement Orders would not be matched with unrelated orders; however, the Customer Order may be executed against unrelated orders where the latter have a better price than the Improvement Order.[59]

The BOX Rules provide strong incentives for both OFPs and Market Makers to compete aggressively for Customer Orders entered into the PIP process. First, in contrast to some other systems, under the proposed BOX Rules no one would get a "last look" to step

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[47] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e), *The Price Improvement Period*.

[48] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18, Supplementary Material, *The Price Improvement Period*.

[49] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18, Supplementary Material, *The Price Improvement Period*.

[50] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(h), *The Price Improvement Period*.

[51] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(i), *The Price Improvement Period*.

[52] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(ii), *The Price Improvement Period*.

[53] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(i), *The Price Improvement Period*.

[54] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e),(f),(g), *The Price Improvement Period*.

[55] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(ii), *The Price Improvement Period*.

[56] An "unrelated order" would be defined as a non-Improvement Order entered into the BOX market during a PIP. *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(a), *The Price Improvement Period*.

[57] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(iii), *The Price Improvement Period*.

[58] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(f), *The Price Improvement Period* and Sec. 19, *Market Maker Prime*.

[59] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(g), *The Price Improvement Period*.

up and match the prices bid or offered during the PIP. Therefore, the OFP attempting to trade against its own order through the PIP process, as well as the Market Makers who are competing to participate on that order, all have a strong incentive to put their best prices forward first before the PIP ends. In the PIP, the Market Maker would need to match or improve the price proposed by the OFP's Primary Improvement Order (or its modification) if the Market Maker is to participate in the execution. The PIP process is not a face-to-face or screen-based negotiation, but a true auction—where market participants are anonymous, where all the prices are firm from the beginning, where the auction cannot be cancelled by the facilitation firm, and where no one gets a last look to change one's price before the auction ends. Since the PIP is an anonymous trading environment where there is no specialist or market maker who controls the process and there is no physical, technological or procedural impediment to posting a better price and breaking into a trade, BOX Market Makers would have the opportunity and incentive not to let trades happen at uncompetitive prices.

(6) PIP Duration Is Three Seconds

The PIP auction process would be 3 seconds in duration because the BSE believes it is enough time for a vigorous, multi-round, electronic price improvement auction among the BOX Market Makers and the OFP who initiates the PIP, and yet is not so long that it is economically infeasible for OFPs to be firm for the Customer Order for at least a penny better than the prevailing NBBO at the inception of the PIP. This gives the Customer price protection against market movements but also exposes the OFP to full market risk during the entire course of the PIP. This exposure cannot be hedged because the OFP has no way of knowing with certainty how much—if any—of the trade the OFP would receive because the OFP's price may be matched or bettered by any Market Maker during the PIP.[60]

Balanced against the fact that the OFP is held firm and bears full market risk during the PIP, the PIP must nonetheless be long enough to assure that the OFP's price to the Customer is a fair one—meaning among other things that a competitive, multi-round auction is possible between and among the OFP and the Market Makers in the relevant class. As a practical matter, the PIP process for all Options Participants would necessarily be governed by computerized systems, not by human traders. Market Makers and OFPs can easily either develop their own software to manage trading on BOX, or utilize one of the many front-end solutions that have been written to connect with electronic-based exchanges.

In addition to the fact that BOX OFP and Market Maker prices must be firm during the PIP, the three second duration of the PIP reflects the processing speed of the trading system upon which BOX would be operated and the speed of network transmissions.[61] The BOX system would implement full multi-round and multi-participant auctions during a PIP of three seconds. Therefore, the Exchange believes that a three second PIP is the best way to minimize the market risk borne by OFPs so that they can provide firm, aggressive pricing to Improvement Orders, and yet assure that those prices are tested by a reasonable electronic auction process.

(7) PIP Trade Allocation

As mentioned earlier, at the conclusion of the PIP, the Customer Order is executed against all orders on the opposite side of the BOX Book (both Improvement Orders, Market Maker quotes, unrelated orders and the Primary Improvement Order submitted by the OFP) following price priority. When two or more orders on the opposite side of the BOX Book are at an identical price limit, time priority is used with two exceptions.

As discussed below, if the OFP Primary Improvement Order as modified (if at all) is equal to the best limit price, the Primary Improvement Order has priority over all orders for 40 percent of the Customer Order. If there is a Market Maker Prime for this PIP, and the Market Maker Prime's Improvement Order is also at the best limit, the Market Maker Prime has priority over all other Market Maker Improvement Orders and unrelated orders up to one third of the unexecuted portion of the Customer Order remaining at that price level.[62]

(8) OFP Priority Over Other Orders at Identical Price

Upon conclusion of the PIP, the OFP who submitted the Primary Improvement Order retains certain priority privileges. If the OFP's Primary Improvement Order as modified (if at all) during the PIP is matched by or matches a competing Improvement Order or unrelated order at any price level, the OFP retains priority for only forty percent (40%) of any unexecuted portion of the Customer Order available at that price level, notwithstanding the time priority of the Primary Improvement Order, competing Improvement Order or unrelated order. The OFP will receive additional allocation only after all other orders have been filled at that price level.[63]

(E). Market Maker Prime

The Market Maker Prime is a BOX Market Maker who has partial time priority over all other Market Makers in the matching mechanism of the PIP. The Market Maker Prime is a Market Maker who has a quote[64] that is equal to or better than the NBBO on the same side of the market as the Primary Improvement Order at the instant the PIP is initiated. If more than one Market Maker meets the criteria, the Market Maker whose quote has time priority would be the Market Maker Prime for that PIP.[65]

At the conclusion of the PIP, the Marker Maker Prime (if he has entered an Improvement Order during the PIP at a limit price which is executable against the Customer Order at the end of the PIP) would have a trade allocation priority of up to one third of the unexecuted portion of the Customer Order remaining at that price level after any priorities accorded the OFP have been met. The Market Maker Prime would have priority over all other Market Maker Improvement Orders and unrelated orders up to one third of the unexecuted portion of the Customer Order remaining at that price level.

If the Market Maker Prime modifies his quote on BOX during the PIP to meet the best limit price instead of entering an Improvement Order into the PIP process, the Market Maker Prime rules do not apply to the modified quote. The trade matching follows the normal PIP priority rules where the Market Maker Prime's modified quote would be treated as an unrelated order. If the Market Maker Prime cancels his quote during the PIP, the Market Maker keeps his status of Market Maker Prime for any Improvement Order previously entered

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[60] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18, *The Price Improvement Period*.

[61] The communication of PIP orders from the BOX hub to BOX market participants is not reliant on OPRA and does not impact OPRA system capacity.

[62] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 19, *Market Maker Prime*.

[63] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(f), *The Price Improvement Period*.

[64] In this context a Market Maker's "quote" is derived from his order on the BOX Book and does not include any Improvement Orders in the PIP process.

[65] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 19, *Market Maker Prime*.

in that PIP.[66] The Market Maker Prime rules apply only if the Market Maker Prime enters an Improvement Order during the PIP, these rules do not apply to the quote of the Market Maker Prime on BOX outside of the PIP process. At the conclusion of the individual PIP, the Market Maker loses his status as Market Maker Prime. A Market Maker Prime would be determined each time a new PIP is triggered. There is not necessarily a Market Maker Prime for each PIP.[67]

(F) PIP Examples

BOX—PIP TRADE ALLOCATION EXAMPLES

Below are examples of trade allocation for orders executed through the BOX PIP. The examples cover only orders executed via the PIP—all other orders executed on BOX are allocated in strict price/time priority.

Principles regarding the PIP:

—PIP duration is 3 seconds and must begin with an OFP Primary Improvement Order at a price at least one penny better than NBBO.

—If the OFP Primary Improvement Order is at the same price level at the end of the PIP as one or more Market Makers, then the OFP's allocation is 40%.

—Allocation among Market Makers who are all at the same price level at the end of the PIP is based on time priority of their Improvement Orders during the PIP, except that a Market Maker Prime would be entitled to a minimum of one third of the total available Market Maker allocation compared to other Market Makers at the same price level.

FOR EACH EXAMPLE ..... NBBO is 2.00 bid 2.15 offer. BOX is 2.00 bid 2.15 offer at start of PIP.	Trade Allocation (# of contracts) If OFP and Market Maker Prime & 2 Other MMs Are on Parity at End of PIP (Market Maker A is Market Maker Prime).	Trade Allocation If Market Maker Prime & 2 Other MMs Are on Parity at End of PIP and There is No OFP on Parity (Market Maker A is Market Maker Prime)	Trade Allocation If 3 MMs Are on Parity and There Is No Market Maker Prime on Parity.
(NOTE: For simplicity, these examples all involve Customer sell orders, but the PIP process works the same for buys)			
1. OFP receives an order to sell 100 contracts and starts PIP with Primary Improvement Order bid of 2.01 or better. In time priority in the PIP, MMB bids 2.04 for 50 contracts, MMC bids 2.04 for 50 contracts, and MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 40 MMC 0	MMA 33 MMB 50 MMC 17	MMB 50. MMC 50. MMA 0.
2. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP, MMB bids 2.04 for 20 contracts, MMC bids 2.04 for 30 contracts, and MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 20 MMC 20	MMA 33 MMB 20 MMC 30 MMA 17 (MMA total = 50; 33 "Prime" allocation + 17 time priority)	MMB 20. MMC 30. MMA 50.
3. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMB bids 2.04 for 50 contracts, MMC bids 2.04 for 30 contracts, MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 40 MMC 0	MMA 33 MMB 50 MMC 17	MMB 50. MMC 30. MMA 20.
4. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMA bids 2.04 for 50 contracts, MMB bids 2.04 for 30 contracts, MMC bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMA 30 MMB 10 (MMA total = 50; 20 "Prime" allocation + 30 time priority)	MMA 33 MMA 17 MMB 30 MMC 20 (MMA total = 50; 33 "Prime" allocation + 17 time priority)	MMA 50. MMB 30. MMC 20.
5. OFP receives an order to sell 10 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMB bids 2.04 for 10 contracts, MMC bids 2.04 for 10 contracts, MMA bids 2.04 for 10 contracts.	OFP 4 MMA 2 MMB 4 MMC 0	MMA 3 MMB 7 MMC 0	MMB 10. MMC 0. MMA 0.
6. OFP receives an order to sell 10 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMA bids 2.04 for 10 contracts, MMB bids 2.04 for 10 contracts, MMC bids 2.04 for 10 contracts.	OFP 4 MMA 2 MMA 4 (MMA total = 6; 2 "Prime" allocation + 4 time priority)	MMA 3 MMA 7 (MMA total = 10; 3 "Prime" allocation + 7 time priority)	MMA 10. MMB 0. MMC 0.

[66] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 19, *Market Maker Prime.*

[67] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 19, *Market Maker Prime.*

BOX—PIP TRADE ALLOCATION EXAMPLES—Continued

7. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMB bids 2.04 for 10 contracts, MMC bids 2.04 for 50 contracts, MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 10 MMC 30	MMA 33 MMB 10 MMC 30 MMA 17 (10 to bidder(s) at next highest PIP bid) (MMA total = 50; 33 "Prime" allocation + 17 time priority)	MMB 10. MMC 30. MMA 50. (10 to bidder(s) at next highest PIP bid)
8. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP. MMB bids 2.05 for 10 contracts, MMC bids 2.04 for 30 contracts, and MMA bids 2.04 for 50 contracts.	MMB 10 at 2.05 OFP 36 at 2.04 MMA 18 at 2.04 MMC 30 at 2.04 MMA 6 at 2.04 (MMA total = 24; 18 "Prime" allocation + 6 time priority)	MMB 10 at 2.05 MMA 30 at 2.04 (1/3 of 90) MMC 30 at 2.04 MMA 20 at 2.04 (10 to bidder(s) at next highest PIP bid) (MMA total = 50; 30 "Prime" allocation + 20 time priority)	MMB 10 at 2.05. MMC 30. MMA 50. (10 to bidder(s) at next highest PIP bid).

e. Conclusion. In all, BOX has a market structure that would be "flat and open," built on the price/time priority representation of all market participants' orders. These key ingredients, coupled with the low cost of entry, would offer liquidity, price quality and low cost for all market participants. Additionally, the Exchange is confident that there would be active Market Maker participation in BOX for several reasons:

(a) In order to ensure vigorous price competition in all cases, BOX would not begin trading any class of options unless there is a minimum of two Market Makers appointed to the class. As a result, Customer Orders would be subject to auctions potentially including at least three participants—the two Market Makers and the OFP submitting the Primary Improvement Order—assuring the possibility of a real, competitive auction process.[68]

(b) A Market Maker would be given dual incentives to quote the best price first on BOX: (1) To gain price/time priority for the entire size of his quote, and (2) to gain the Market Maker Prime trade allocation privileges in a PIP.

(c) The ability of Market Makers trading in the PIP to competitively price orders in finer increments than those generally employed in BOX would provide incentives for them to participate as Market Makers in the auction process.

(d) A Market Maker would have a high incentive for aggressively pricing an option for which a PIP is underway since there is an indisputable and immediate Customer interest in the option that is certain to result in a trade execution.

[68] Telephone conversation between Wayne Pestone, Bingham McCutchen LLP (outside counsel for the Exchange), and Deborah L. Flynn, Assistant Director, Division, Commission, on January 9, 2003.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b) of the Act,[69] in general, and furthers the objective of Section 6(b)(5) of the Act,[70] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or

[69] 15 U.S.C. 78f(b).

[70] 15 U.S.C. 78f(b)(5).

(ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2002–15 and should be submitted by February 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[71]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1345 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

[71] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47188; File No. SR–CBOE–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Board Options Exchange, Incorporated To Amend CBOE Rule 9.3A To Allow In-Firm Delivery of the Regulatory Element of Continuing Education

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 2003, The Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 9.3A, *Continuing Education for Registered Persons*, to permit the in-firm delivery of the Regulatory Element of Continuing Education by member organizations. Currently, this computer-based training is administered to registered persons by an outside vendor at its locations. The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to permit member organization delivery of the Regulatory Element of the Continuing Education Program ("Program"). The Program is designed to keep industry participants up to date on products, services and rules, and is composed of a Regulatory Element and a Firm Element. The Regulatory Element is computer-based training that covers ethical, sales practice and regulatory matters, and requires that each registered person complete this training on the occurrence of their second registration anniversary date and every three years thereafter. A registered person who fails to complete the training will be deemed inactive, and may not conduct or be compensated for activities requiring registration. The Firm Element requires member and member organizations to provide to their registered employees having direct contact with customers ongoing training that is specifically tailored to their business.

At the recommendation of the Securities Industry/Regulatory Council on Continuing Education ("Council"),[5] the CBOE proposes to adopt amendments to CBOE Rule 9.3A to permit member organizations to administer the Regulatory Element of the Continuing Education Program to their registered persons by instituting firm programs acceptable to the Exchange. Currently, the Regulatory Element is administered only at vendor locations. The proposed rule requires that member organizations meet certain conditions for in-house delivery relating to the security of the training delivery environment. The proposed rule amendments set forth the delivery requirements as specified by the Council.

The proposed rule change is substantially similar to rules of The American Stock Exchange LLC, The New York Stock Exchange, Inc., and the National Association of Securities Dealers, Inc.[6]

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to prevent fraudulent and manipulative acts and practices, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange also believes that the proposed rule change is consistent with Section 6(c)(3)(B) of the Act.[9] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. The Exchange has proposed this rule change to establish an additional mechanism for the administration of the Regulatory Element of the Program, which will help to enable registered persons to satisfy their continuing education obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The CBOE provided the Commission written notice of its intent to file the proposal on December 26, 2002.

[5] The Council is comprised of representatives from broker-dealers and self-regulatory organizations whose duties include recommending and helping develop specific content and questions for the Regulatory Element, as well as minimum core curricula for the Firm Element. The Council has developed a model under which member organizations may deliver the computer-based training in-house.

[6] The proposed rule change is identifical in substance, and substantially similar in wording, to Amex Rule 341A(4), NYSE Rule 345A, Interpretation /03, and NASD Rule 1120(a)(6).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(c)(3)(B).

may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–2003–01 and should be submitted by February 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1346 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47190; File No. SR–CBOE–2002–62]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Proposing To Amend Interpretation .01(b)(2) and .05(d)(ii) to CBOE Rule 5.3 Which Establish the Pricing Criteria for Securities That Underlie Options Traded on the Exchange

January 15, 2003.

I. Introduction

On October 11, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Interpretation .01(b)(2) and .05(d)(ii) to CBOE Rule 5.3, which establish the pricing criteria for securities that underlie options traded on the Exchange. The proposed rule change was published for comment in the **Federal Register** on December 16, 2002.[3] No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Interpretation .01(b)(2) to CBOE Rule 5.3 to provide that, for securities that underlie options traded on the Exchange ("underlying security") that are deemed Covered Securities, as defined under section 18(b)(1)(A) of the Securities Act of 1933 ("1933 Act"),[4] the closing market price of the underlying security must be at least $3.00 per share for the five previous consecutive business days prior to the date on which CBOE submits an option class certification to the Options Clearing Corporation for listing and trading. For Underlying Securities that are not Covered Securities, the Exchange states that the current $7.50 price per share requirement would continue to apply. The market price of such underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. Finally, the Exchange proposes to amend Interpretation and Policy .05(d)(ii) to CBOE Rule 5.3 to reflect that the market price standard for Restructure Securities also shall be reduced from $7.50 to $3.00 as long as the Restructure Security is a Covered Security.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; facilitate transactions in securities, and protect investors and the public interest.

The Commission notes that although this proposal amends the closing market price for an underlying security which is deemed a Covered Security, as well as the time period for which it must trade at that price prior to it being listed on the Exchange, the CBOE has represented that it will continue to maintain its initial listing standards.[7] Therefore, an underlying security that is deemed a Covered Security must also meet CBOE's additional listing requirements prior to CBOE bringing up a new series of options to trade, including the requirements that: there must be a minimum of 7,000,000 shares of the underlying security owned by public investors; there must be a minimum of 2,000 holders of the underlying security; and, that there must be a trading volume of at least 2,400,000 shares in the preceding twelve months.[8] Accordingly, the Commission finds that the proposed rule change to require a closing market price of at least $3.00 per share for the five previous consecutive business days for underlying securities that are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46957 (December 6, 2002), 67 FR 77106.

[4] Section 18(b)(1)(A) of the 1933 Act provides that, "[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market. * * *" 15 U.S.C. 77r(b)(1)(A). The term Covered Security, for the operation of proposed amendments to Interpretation .01(b)(2) to CBOE Rule 5.3 herein, would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] Telephone conversation between James Flynn, Attorney, CBOE, and Christopher Solgan, Attorney, Division of Market Regulation ("Division"), Commission, on January 14, 2002. *See also* Securities Exchange Act Release No. 46957, *supra* note 3.

[8] *See* CBOE Rule 5.3.

deemed Covered Securities, coupled with its additional listing requirements, will enable CBOE to list options on companies that are financially sound. Nonetheless, the Commission expects the Exchange to continue to delist inactive options classes, regardless of the market price of the underlying security, through its existing quarterly delisting program.[9]

Lastly, the Commission notes that each options exchange may currently list additional series on an option class even though the market price of the underlying security is below $3, provided that at least one other options exchange trades the series to be added, and at the time the other options exchange added that series, it met the requirements to add new series, including the $3 price requirement.[10]

For these reasons, the Commission finds that the proposed rule change to provide that the closing market price of the underlying security must be at least $3.00 per share for the five previous consecutive business days for underlying securities that are deemed Covered Securities, is consistent with section 6(b)(5) of the Act.[11]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2002–62) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1347 Filed 1–21–03; 8:45 am]

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[9] CBOE states that it maintains an active delisting program which requires the quarterly review of multiply listed option classes that do not trade more than 20 contracts per day on the Exchange. Telephone conversation between James Flynn, Attorney, CBOE, and Florence Harmon, Senior Special Counsel, Division, Commission, on January 14, 2002. *See also* Securities Exchange Act Release No. 46957, n. 7, *supra* note 3.

[10] *See* Interpretation and Policy .02 to CBOE Rule 5.4; Commentary .02 to American Stock Exchange LLC Rule 916; Commentary .01 to Pacific Exchange, Inc. Rule 3.7(b); Commentary .02 to Philadelphia Stock Exchange, Inc. Rule 1010; and International Securities Exchange, Inc. Rule 503(c).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47189; File No. SR–MSRB–2002–15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G–28, on Transactions With Employees and Partners of Other Municipal Securities Professionals

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), and Rule 19b–4 thereunder,[1] notice is hereby given that on December 20, 2002 the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–15). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed amendment to Rule G–28, on transactions with employees and partners of other municipal securities professionals (hereafter referred to as "the proposed rule change"). Below is the text of the proposed rule change. New language is italicized; deletions are in brackets.

Rule G–28. Transactions With Employees and Partners of Other Municipal Securities Professionals

(a)–(b) No change.

(c) *Exemption for Municipal Fund Securities. The provisions of this rule shall not be applicable to transactions in municipal fund securities or to accounts that are limited to transactions in municipal fund securities.*

(a) Not applicable.

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Rule G–28, on transactions with employees and partners of other municipal securities professionals, requires a broker, dealer or municipal securities dealer ("dealer") that opens a municipal securities account for an employee of another dealer (or a spouse or child of such employee) to first provide written notice to such other dealer and to subsequently follow any instructions provided by the other dealer with respect to transactions for the employee. The transacting dealer is also required to provide copies of all confirmations to the other dealer. The rule was adopted to prevent an employee of a dealer from effecting transactions that are contrary to the interests of the dealer or from otherwise acting illegally or improperly with respect to transactions in municipal securities.

As part of its ongoing review of the application of MSRB rules to municipal fund securities, it has come to the MSRB's attention that the requirements of Rule G–28 may impose a burden on dealers and customers, particularly in the context of 529 college savings plan accounts, without any significant countervailing benefit. The MSRB is concerned that the requirements unnecessarily delay the opening of some accounts since dealers are required to provide written notice to a dealer that employs a new customer prior to opening an account. However, since it does not appear that transactions in municipal fund securities present the same potential for adverse impact on an employing dealer as might exist with respect to transactions in other types of municipal securities, the MSRB does not believe that any benefit is realized from imposing the requirements of Rule G–28 on transactions in municipal fund securities.

Thus, the MSRB has determined that it is appropriate to create an exemption from Rule G–28 for transactions and accounts involving municipal fund securities. The MSRB notes that transactions in registered mutual fund shares are currently exempted from similar requirements imposed under NASD Rule 3050. In addition, since there is no trading market in shares of 529 college savings plans or other types

of municipal fund securities, the safeguards provided by Rule G–28 are not needed in the context of this market.

(2) Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which authorizes the MSRB to adopt rules that shall: Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act in that it amends an existing MSRB rule to better accommodate the unique characteristics of municipal fund securities, thereby removing impediments to a free and open market in such securities and promoting the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers effecting transactions in municipal fund securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's offices. All submissions should refer to File No. SR–MSRB–2002–15 and should be submitted by February 12, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1348 Filed 1–21–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47181; File No. SR–NASD–2002–89]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Listing Standards Pertaining to American Depositary Receipts, Preferred and Secondary Classes of Stock, Bid Price Compliance and Monitoring Periods, Categories of Securities Eligible for Initial Inclusion on Nasdaq, and the Market Capitalization Compliance Period

January 14, 2003.

On January 7, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to modify Nasdaq's listing standards pertaining to American Depositary Receipts, preferred and secondary classes of stock, bid price compliance and monitoring periods, categories of securities eligible for initial inclusion on Nasdaq, and the market capitalization compliance period. On November 1, 2002, NASD filed Amendment No. 1 to the proposed rule change.[1] On December 2, 2002, NASD filed Amendment No. 2 to the proposed rule change.[2] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on December 9, 2002.[3] The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[4] The Commission finds that the proposal is consistent with the requirements of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposal should provide greater transparency and consistency to Nasdaq's listing standards.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2002–89) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1349 Filed 1–21–03; 8:45 am]

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[2] 17 CFR 200.30–3(a)(12).

[1] *See* letter from John Nachmann, Senior Attorney, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated November 1, 2002.

[2] *See* letter from John Nachmann, Senior Attorney, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2002.

[3] *See* Securities Exchange Act Release No. 46940 (December 3, 2002), 67 FR 72998.

[4] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o(b)(6).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47172; File No. SR–NSCC–2002–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Technical Correction to an NSCC Rule

January 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on November 13, 2002, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to correct a typographical error in NSCC rule 50.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to correct a typographical error in NSCC rule 50. On June 5, 1998, NSCC filed a proposed rule change regarding the redesign of its Automated Customer Account Transfer Service ("ACAT").[3] In Exhibit A to that rule filing, there was a typographical error in rule 50 section (i)(3) that inadvertently referenced sec. 15. Reference should have been made to section 14.

The proposed rule change is consistent with the requirements of section 17A of the Act because it clarifies the meaning of NSCC rule 50 by correcting the typographical error.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[4] and rule 19b–4(f)(1)[5] thereunder because the proposed rule change constitutes an interpretation with respect to the meaning of an existing rule. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2002–12. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–2002–12 and should be submitted by February 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1289 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47180; File No. SR–NSCC–2002–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying Addendum B of NSCC's Rules and Procedures

January 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 13, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change eliminates all references to Class I and Class II security surveillance in Addendum B of NSCC's Rules and Procedures.

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 40657 (November 10, 1998), 63 FR 63952 (November 17, 1998)(File No. SR–NSCC–98–06)(order approving changes made to the ACAT service).

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to modify Versions 1 and 2 of Addendum B, Standards of Financial Responsibility and Operational Capability, of NSCC's Rules and Procedures to eliminate all references to Class I and Class II security surveillance, as NSCC does not place securities on surveillance status.

The proposed rule change accurately reflects the functions performed by NSCC and constitutes a stated practice with respect to the administration and enforcement of an existing rule; therefore, NSCC believes it is consistent with the provisions of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1)[4] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, enforcement, or administration of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2002–11. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–2002–11 and should be submitted by February 12, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1350 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

[2] The Commission has modified parts of these statements.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 47178; File No. SR–PCX–2002–74]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Rule Change Proposed by the Pacific Stock Exchange, Inc. Relating to Two New Order Types on the Archipelago Exchange

January 13, 2003.

On December 9, 2002, the Pacific Stock Exchange, Inc. ("PCX") filed a proposed rule change with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder[2] to adopt two new order types, an Immediate-or-Cancel ("IOC") Cross Order and a Post No Preference ("PNP") Cross Order, on its equities trading facility, the Archipelago Exchange ("ArcaEx"). The PCX also proposed to allow the new order types to be subject to the recent *de minimis* exemption from the trade-through restrictions of the Intermarket Trading System Plan in certain exchange-traded funds.[3]

The Commission published notice of the proposed rule change for comment in the **Federal Register** on December 24, 2002.[4] The Commission received no public comments with respect to the proposal. This order grants accelerated approval to the PCX's proposed rule change.

The PCX requested that the Commission grant accelerated approval to the proposed rule change pursuant to section 19(b)(2) of the Act[5] so that the PCX may implement the new order types before the 30th day after publication of the notice in the **Federal Register**. The PCX represented that the proposed IOC Cross and PNP Cross order types would promote a more efficient and effective market operation and enhance the investment choices available to investors in the handling of their orders. Moreover, with respect to the proposal to amend PCXE rule 7.37, the PCX believes that the proposed rule change would allow market participants to take full advantage of the *de minimis*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) (Order of the Commission pursuant to section 11A of Act).

[4] *See* Securities Exchange Act Release No. 47010 (December 16, 2002), 67 FR 78554 (December 24, 2002). The 15-day comment period ran through January 8, 2003.

[5] 15 U.S.C. 78s(b)(2).

exception to the ITS Plan's trade-through rule.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[7] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with person engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Commission also finds good cause to approve the proposed rule change before the 30th day after the date of publication of notice in the **Federal Register**. The Commission believes that the proposed change to PCXE rule 7.37 is consistent with the terms and spirit of the *de minimis* exemption from the trade-through restrictions of the ITS Plan, and will allow market participants to further benefit from this exemption. The Commission believes that the proposed IOC Cross and PNP Cross order types will promote an efficient and effective market operation and will offer investors additional choices in the handling of their orders. Accelerated approval of the proposal will make the proposed order types available to investors more quickly and without undue delay. Accordingly, the Commission finds it appropriate to approve the proposed rule change before the 30th day after the date of publication in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PCX–2002–74) is hereby approved and shall become effective immediately.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1290 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

[6] In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47166; File No. SR–Phlx–2002–61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Amend Options Floor Procedure Advice A–13 To Include Violations for Failure To Obtain Approval To Disengage the NBBO Feature in the Exchange's Minor Rule Plan

January 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 4, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 7, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend Phlx Option Floor Procedure Advice ("OFPA") A–13, Auto Execution Engagement/Disengagement Responsibility, to include violations for failure to obtain the necessary approvals prior to disengagement of the Exchange's NBBO Step-Up Feature. The text of the proposed rule change is set forth below. Proposed new text is italicized; deleted language is in brackets.

A–13 Auto Execution Engagement/Disengagement Responsibility (EQUITY OPTION AND INDEX OPTION ONLY)

(*a*) It is the responsibility of the option Specialist to engage the Auto Execution (Auto-X) system for an assigned option within three (3) minutes of completing the opening or reopening rotation of that option.

Where extraordinary circumstances occur, a Specialist may be provided an exemption from receiving orders through Auto–X and may then disengage the system upon approval by two Floor Officials. Five minutes subsequent to the disengagement of AUTO–X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO–X is disengaged), the requesting Specialist [of] *or* his/her designee, two Floor Officials, and a designated surveillance staff person, shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO–X will be re-engaged with either: (i) Specialist [of] *or* his/her designee determines that the conditions supporting the extraordinary circumstances no longer exist, at which time the Specialist or his/her designee shall inform the Market Surveillance staff that the extraordinary circumstances no longer exist and that the Specialist is re-engaging AUTO–X; or (ii) when two Floor Officials and the designated surveillance staff person determine that the conditions supporting the extraordinary circumstances no longer exist. In the event extraordinary circumstances exist floor-wide, two Exchange Floor Officials and the Chairperson of the Options Committee or his/or her designee may determine to disengage the AUTO–X feature floor-wide. Five minutes subsequent to a floor-wide disengagement of AUTO–X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO–X is disengaged), two Floor Officials, the Chairperson of the Options Committee or his/her designee and a designated Market Surveillance staff person shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO-X will be re-engaged when either[;]: (1) the Specialist determines that the conditions supporting the extraordinary circumstances no longer exist for their particular class of options at which time the Specialist or his/her designee will inform Market Surveillance staff that the extraordinary circumstances no longer exist for their particular class of options and that the Specialist is re-engaging AUTO–X; or (2) when two Floor Officials, the Chairperson of the Options Committee or his/her designee and the designated Market Surveillance staff person determine that the extraordinary circumstances no longer exist. The NBBO feature is always disengaged when AUTO–X is disengaged.

Extraordinary circumstances include market occurrences and system malfunctions that impact a Specialist's ability to accurately price and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] See letter from Rick Rudolph, Director and Counsel, Phlx, to Jennifer Lewis, Commission, dated November 6, 2002 ("Amendment No. 1"). In Amendment No. 1, Phlx fixed nonsubstantive typographical errors in its rule text, and added a cross-reference to Phlx Rule 960.2 in the purpose section of its proposal.

disseminate option quotations in a timely manner. Such occurrences include fast market conditions such as volatility, order imbalances, volume surges or significant price variances in the underlying security; internal system malfunctions including the Exchange's Auto-Quote system; or malfunctions of external systems such as a specialized quote feed, or delays in the dissemination of quotes from the Option Price Reporting Authority; or other similar occurrences.

The Exchange shall document any action taken to disengage AUTO–X pursuant to this Rule 1080(e), and shall notify all AUTOM Users of each instance in which AUTO–X is disengaged due to extraordinary circumstances. Such documentation shall include: identification of the option(s) affected by such action (except in a case of floor-wide disengagement); the date and time such action was taken and concluded; identification of the Floor Officials who approved such action; the reasons for which such action was taken; identification of the Specialist and the Specialist Unit (or in the case of floor-wide disengagement, identification of the Options Committee Chairperson or his/her designee); and identification of the Market Surveillance staff person monitoring the situation. The Exchange will maintain these documents pursuant to the record retention requirement of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(b) AUTO–X on the NBBO. AUTO–X on the NBBO (the "NBBO Feature") is a feature of AUTOM that automatically executes at the National Best Bid or Offer ("NBBO"). The NBBO Feature will execute AUTO–X eligible orders at the NBBO for certain options designated by the Options Committee as eligible for the NBBO Feature ("automatic step-up options"), provided that the NBBO does not differ from the specialist's best bid or offer by more than the "step-up parameter."

(i) The "step-up parameter" for automatic step-up options shall be the minimum trading increment for options in that series established pursuant to Exchange Rule 1034, or any greater amount established by the Options Committee in respect of specified automatic step-up options or series of options.

(ii) The Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) may determine to disengage the NBBO Feature for orders in certain automatic step-up options after notice to AUTOM users in situations in which the Exchange is experiencing communications or systems problems; fast markets; or delays in the dissemination of quotes because of queues on the Options Price Reporting Authority ("OPRA"), which would likely render such quotes stale. Where the NBBO Feature is disengaged, such orders shall be executed manually in accordance with Exchange rules.

(iii) In respect of automatic step-up options (1) where the specialist's best bid or offer is inferior to the current best bid or offer in another market by more than the step-up parameter; or (2) where the NBBO for one of the series of automatic step-up options is crossed (i.e., 2.10 bid, 2 asked) or locked (i.e., 2 bid, 2 asked); or (3) in respect of equity options other than automatic step-up options where the specialist's best bid or offer is inferior to the current best bid or offer in another market by any amount, such orders shall be executed manually in accordance with Exchange rules. There may be circumstances in which the specialist's best bid or offer is inconsistent with the Exchange's best bid or offer. In such a circumstance, such an order shall be executed manually.

(iv) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) determines that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule, as defined in Exchange Rule 1082(a)(iii) (the "Quote Rule"), customer market orders will receive an automatic execution at the NBBO based on the best bid or offer in markets whose quotes are not subject to relief from the firm quote requirement set forth in the Quote Rule. Such determination may be made by way of notification from another market that its quotes are not firm or are unreliable; administrative message from the Option Price Reporting Authority ("OPRA"); quotes received from another market designated as "not firm" using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are excluded from the calculation of NBBO. The Exchange may determine to exclude quotes from its calculation of NBBO on a series-by-series basis or issue-by-issue basis, or may determine to exclude all options quotes from an exchange, where appropriate. The Exchange shall maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO, and shall notify such other exchange that its quotes have been so excluded. Such documentation shall include: identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quotes were excluded from the Exchange's calculation of NBBO; identification of the Chairman of the Options Committee, his designee, or two Floor Officials (as applicable) who approved such action; the reasons for which such action was taken; and identification of the specialist and the specialist unit. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rule and regulations thereunder.

(v) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or another market or markets previously subject to relief from the firm quote requirement set forth in the Quote Rule are no longer subject to such relief, such quotations will be included in the calculation of NBBO for such options. Such determination may be made by way of notification from another market that its quotes are firm; administrative message from the Option Price Reporting Authority ("OPRA"); and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are again included in the calculation of NBBO.

Fine Schedule (Implemented on a one-year running basis).

(a) Failure to engage Auto-X:
1st Occurrence $500.00
2nd Occurrence $1,000.00
3rd Occurrence $2,000.00
4th Occurrence and Thereafter Sanction is discretionary with Business Conduct Committee

(b) Failure to receive approval to disengage Auto-X:
1st Occurrence $250.00
2nd Occurrence $500.00
3rd Occurrence $1,000.00
4th Occurrence and Thereafter Sanction is discretionary with Business Conduct Committee

(c) Failure to receive approval to disengage NBBO Feature:
1st Occurrence $250.00
2nd Occurrence $500.00
3rd Occurrence $1,000.00
4th Occurrence and Thereafter

Sanction is discretionary with Business Conduct Committee

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend OFPA A–13 to include in the Exchange's minor rule violation enforcement and reporting plan ("Minor Rule Plan")[4] violations for failure to receive approval to disengage the National Best Bid/Best Offer ("NBBO") Feature of the Exchange's Automated Options Market System ("AUTOM").[5] The NBBO Feature automatically executes orders at the NBBO for certain options designated by the Phlx's Options Committee as eligible for the NBBO Feature ("automatic step-up options"), provided that the NBBO does not differ from the specialist's bid or offer by more than the "step up parameter."[6] Currently, engagement and disengagement of the NBBO Feature is governed solely by Phlx Rule 1080(c)(i), and violations are referred to the Business Conduct Committee ("BCC").

With regard to the manner in which a specialist must obtain approval to disengage the NBBO Feature, Phlx Rule 1080(c)(i) provides that the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) may determine to disengage the NBBO Feature for orders in certain automatic step-up options after notice to AUTOM users in certain situations set forth in the Rule. There is, however, no current corresponding OFPA providing a fine schedule for violations of the section of the Rule requiring approval to disengage the NBBO Feature. Thus, violations of Rule 1080(c)(i) currently are investigated by the Exchange's Market Surveillance Department ("Market Surveillance"), and referred by the Exchange's Enforcement Department ("Enforcement") to the BCC.

After receiving a referral from Enforcement, the BCC considers the matter and may determine to issue a statement of charges.[7] This action is reportable on a member's Form U–4 or member organization's Form BD because it is a disciplinary action. By adopting a fine schedule under the Minor Rule Plan, the Exchange can issue fines for relatively minor infractions without the need for formal disciplinary action.

Accordingly, the Exchange proposes to amend OFPA A–13 to restate from Phlx Rule 1080(c)(i) the conditions for using the NBBO Feature, including the requirement to obtain approval to disengage the NBBO Feature, and to include a fine schedule for failure to obtain such approval. Specifically, the proposed fine schedule is as follows: first occurrence, $250; second occurrence, $500; third occurrence, $1,000; fourth occurrence and thereafter, sanction discretionary with the BCC. The proposed fine schedule would be implemented on a one-year running basis. The BCC also would have discretion concerning sanctions for any violations should they be deemed egregious by Enforcement and referred directly to the BCC pursuant to Exchange Rule 960.2.

The Exchange believes it is appropriate to include in its Minor Rule Plan violations of the approval requirement for disengagement of the NBBO Feature. The Exchange's Minor Rule Plan is designed to provide a prompt response to a violation of Exchange rules when a meaningful sanction is needed, but initiation of a disciplinary proceeding pursuant to Phlx Rule 960.2 is not suitable because such a proceeding would be more costly and time consuming than would be warranted given the nature of the violation.[8] Therefore, inclusion in the Minor Rule Plan of violations of the NBBO Feature disengagement approval requirement should make the Exchange's disciplinary system more efficient. If the Exchange determines that a violation of Phlx Rule 1080(c)(i) or OFPA A–13, as amended, is not minor in nature, the Exchange may initiate full disciplinary proceedings in accordance with Phlx Rule 960.2.

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with section 6 of the Act,[9] in general, and with section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by including violations of the approval requirement for disengagement of the NBBO Feature in its Minor Rule Plan, thus providing for the more efficient operation of its disciplinary system. In addition, the Exchange believes the proposal is consistent with section 6(b)(6) of the Act,[11] which requires that the rules of an exchange provide that its members be appropriately disciplined for violation of exchange rules, the Act, and the rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

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[4] The Exchange's Minor Rule Plan, codified in Exchange Rule 970, includes Floor Procedure Advices with accompanying fine schedules. Rule 19d–1(c)(2) under the Act authorizes National Securities Exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting. 17 CFR 240.19d–1(c)(2). Rule 19d–1(c)(2) requires prompt filing with the Commission of any final disciplinary action. However, fines for minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[6] For a complete description of the NBBO Feature, *see* Securities Exchange Act Release No. 43684 (December 6, 2000), 65 FR 78237 (December 14, 2000) (order partially approving SR–Phlx–00–93).

[7] *See* Phlx Rule 960.3. The BCC could also determine that a less formal sanction, such as a letter of caution, is appropriate.

[8] Phlx Rule 960.2 governs the initiation of disciplinary proceedings by the Exchange for violations within the disciplinary jurisdiction of the Exchange.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–61 and should be submitted by February 12, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1288 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of promulgation of temporary, emergency amendments to the sentencing guidelines and commentary.

SUMMARY: The Commission has promulgated two temporary, emergency amendments to the sentencing guidelines as follows: (1) pursuant to sections 805, 905, and 1104 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, and its general authority under 28 U.S.C. 994, the Commission has promulgated amendments to §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), 2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act), 2J1.2 (Obstruction of Justice), and 2T4.1 (Tax Table), and Appendix A (Statutory Index); and (2) pursuant to section 314 of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, and its general authority under 28 U.S.C. 994, the Commission has promulgated a new guideline in chapter two, part C (Offenses Involving Public Officials), and amendments to §§ 3D1.2 (Groups of Closely Related Counts), and 5E1.2 (Fines for Individual Defendants), and Appendix A (Statutory Index). The Commission also has requested public comment, to be submitted to the Commission not later than March 17, 2003, regarding repromulgation of these two temporary, emergency amendments as permanent amendments (*see* the issue of the **Federal Register** published on January 17, 2003).

DATES: The Commission has specified an effective date of January 25, 2003, for the temporary, emergency amendments set forth in this notice.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. 994(p). The Commission also may promulgate emergency amendments prior to the first day of May if required to do so by specific congressional legislation.

The Commission has promulgated two temporary, emergency guidelines in response to specific congressional legislation. First, in response to the Sarbanes-Oxley Act, the Commission has promulgated an amendment that increases the penalties for corporate fraud and offenses involving the obstruction of justice. Second, in response to the Bipartisan Campaign Reform Act of 2002, the Commission has promulgated an amendment that provides a new guideline and increased penalties for offenses involving a violation of Federal election campaign laws. The Commission has specified an effective date of January 25, 2003, for both amendments.

Additional information pertaining to the amendments described in this notice may be accessed through the Commission's website at *www.ussc.gov*.

Authority: Sections 805, 905, and 1104 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204; section 314 of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155; 28 U.S.C. 994(a), (o), (p), (x); USSC rules of practice and procedure, rule 4.4.

Diana E. Murphy,

Chair.

1. Corporate Fraud

Amendment: Section 2B1.1(b)(1) is amended by striking the period; and by adding at the end the following:

"(O) More than $200,000,000 add 28
(P) More than $400,000,000 add 30.".

Section 2B1.1 is amended by striking subsection (b)(2) as follows:

"(2) (Apply the greater) If the offense—

(A) (i) involved more than 10, but less than 50, victims; or (ii) was committed through mass-marketing, increase by 2 levels; or

(B) involved 50 or more victims, increase by 4 levels.",

and inserting the following:

"(2) (Apply the greatest) If the offense—

(A) (i) involved 10 or more victims; or (ii) was committed through mass-marketing, increase by 2 levels;

(B) involved 50 or more victims, increase by 4 levels; or

(C) involved 250 or more victims, increase by 6 levels.".

Section 2B1.1 is amended by striking subsection (b)(12)(B) as follows:

"(B) the offense substantially jeopardized the safety and soundness of a financial institution, increase by 4 levels.",

and inserting the following:

"(B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; (ii) substantially endangered the solvency or financial security of an organization that, at any time during the offense, (I) was a publicly traded company; or (II) had 1,000 or more employees; or (iii) substantially endangered the solvency or financial security of 100 or more victims, increase by 4 levels.".

Section 2B1.1(b) is amended by adding at the end the following:

"(13) If the offense involved a violation of securities law and, at the time of the offense, the defendant was an officer or a director of a publicly traded company, increase by 4 levels.".

The Commentary to § 2B1.1 captioned "Statutory Provisions" is amended by inserting "1348, 1350," after "1341–1344,".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by adding after "Resources)." the following new paragraph:

"'Equity securities' has the meaning given that term in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(11)).";

by inserting after "Secretary of the Interior." the following new paragraph:

"'Publicly traded company' means an issuer (A) with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or (B) that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)). 'Issuer' has the meaning given that term in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).";

and by adding at the end the following:

"'Victim' means (A) any person who sustained any part of the actual loss determined under subsection (b)(1); or (B) any individual who sustained bodily injury as a result of the offense. 'Person' includes individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 2(C) by redesignating subdivision (iv) as (v); and by adding after subdivision (iii) the following new subdivision:

"(iv) The reduction that resulted from the offense in the value of equity securities or other corporate assets.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 3 by striking "Victim and Mass-Marketing Enhancement under" in the heading and inserting "Application of"; by striking subdivision (A) as follows:

"(A) Definitions.—For purposes of subsection (b)(2):

(i) 'Mass-marketing' means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (I) purchase goods or services; (II) participate in a contest or sweepstakes; or (III) invest for financial profit. 'Mass-marketing' includes, for example, a telemarketing campaign that solicits a large number of individuals to purchase fraudulent life insurance policies.

(ii) 'Victim' means (I) any person who sustained any part of the actual loss determined under subsection (b)(1); or (II) any individual who sustained bodily injury as a result of the offense. 'Person' includes individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies.",

and inserting the following:

"(A) Definition.—For purposes of subsection (b)(2), 'mass-marketing' means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (i) purchase goods or services; (ii) participate in a contest or sweepstakes; or (iii) invest for financial profit. 'Mass-marketing' includes, for example, a telemarketing campaign that solicits a large number of individuals to purchase fraudulent life insurance policies.";

in subdivision (B)(i)(I) by striking "described in subdivision (A)(ii) of this note;" and inserting "any victim as defined in Application Note 1;";

in subdivision (B)(ii)(IV) by inserting "at least" after "to have involved"; and in subdivision (C) by inserting "or (C)" after "(B)".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by redesignating Notes 11 through 15 as Notes 12 through 16, respectively.

The Commentary to § 2B1.1 captioned "Application Notes" is amended by striking Note 10 as follows:

"10. Enhancement for Substantially Jeopardizing the Safety and Soundness of a Financial Institution under Subsection (b)(12)(B).—For purposes of subsection (b)(12)(B), an offense shall be considered to have substantially jeopardized the safety and soundness of a financial institution if, as a consequence of the offense, the institution (A) became insolvent; (B) substantially reduced benefits to pensioners or insureds; (C) was unable on demand to refund fully any deposit, payment, or investment; (D) was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or (E) was placed in substantial jeopardy of any of subdivisions (A) through (D) of this note.",

and inserting the following:

"10. Application of Subsection (b)(12)(B).—

(A) Application of Subsection (b)(12)(B)(i).—The following is a non-exhaustive list of factors that the court shall consider in determining whether, as a result of the offense, the safety and soundness of a financial institution was substantially jeopardized:

(i) The financial institution became insolvent.

(ii) The financial institution substantially reduced benefits to pensioners or insureds.

(iii) The financial institution was unable on demand to refund fully any deposit, payment, or investment.

(iv) The financial institution was so depleted of its assets as to be forced to merge with another institution in order to continue active operations.

(B) Application of Subsection (b)(12)(B)(ii).—

(i) Definition.—For purposes of this subsection, 'organization' has the meaning given that term in Application Note 1 of § 8A1.1 (Applicability of chapter Eight).

(ii) In General.—The following is a non-exhaustive list of factors that the court shall consider in determining whether, as a result of the offense, the solvency or financial security of an organization that was a publicly traded company or that had more than 1,000 employees was substantially endangered:

(I) The organization became insolvent or suffered a substantial reduction in the value of its assets.

(II) The organization filed for bankruptcy under chapters 7, 11, or 13 of the Bankruptcy Code (title 11, United States Code).

(III) The organization suffered a substantial reduction in the value of its equity securities or the value of its employee retirement accounts.

(IV) The organization substantially reduced its workforce.

(V) The organization substantially reduced its employee pension benefits.

(VI) The liquidity of the equity securities of a publicly traded company was substantially endangered. For example, the company was delisted from its primary listing exchange, or trading of the company's securities was halted for more than one full trading day.

11. Application of Subsection (b)(13).—

(A) Definition.—For purposes of this subsection, 'securities law' (i) means 18 U.S.C. 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in such section.

(B) In General.—A conviction under a securities law is not required in order for subsection (b)(13) to apply. This subsection would apply in the case of a defendant convicted under a general fraud statute if the defendant's conduct violated a securities law. For example, this subsection would apply if an officer of a publicly traded company violated regulations issued by the Securities and Exchange Commission by fraudulently influencing an independent audit of the company's financial statements for the purposes of rendering such financial statements materially misleading, even if the officer is convicted only of wire fraud.

(C) Nonapplicability of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).—If subsection (b)(13) applies, do not apply § 3B1.3.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 16, as redesignated by this amendment, by striking subdivision (v) as follows:

"(v) The offense endangered the solvency or financial security of one or more victims.";

and by redesignating subdivisions (vi) and (vii) as subdivisions (v) and (vi), respectively.

The Commentary to § 2B1.1 captioned "Background" is amended in the last paragraph by inserting "(i)" after "(B)".

Section 2E5.3 is amended in the heading by adding at the end "; Destruction and Failure to Maintain Corporate Audit Records".

Section 2E5.3 is amended by striking subsection (a)(2) as follows:

"(2) If the offense was committed to facilitate or conceal a theft or embezzlement, or an offense involving a bribe or a gratuity, apply § 2B1.1 or § 2E5.1, as applicable.",

and inserting the following:

"(2) If the offense was committed to facilitate or conceal (A) an offense involving a theft, a fraud, or an embezzlement; (B) an offense involving a bribe or a gratuity; or (C) an obstruction of justice offense, apply § 2B1.1 (Theft, Property Destruction, and Fraud), § 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations), or § 2J1.2 (Obstruction of Justice), as applicable.".

The Commentary to § 2E5.3 captioned "Statutory Provisions" is amended by inserting "§" before "1027"; and by inserting ", 1520" after "1027".

Section 2J1.2(a) is amended by striking "12" and inserting "14".

Section 2J1.2(b) is amended by adding at the end the following:

"(3) If the offense (A) involved the destruction, alteration, or fabrication of a substantial number of records, documents, or tangible objects; (B) involved the selection of any essential or especially probative record, document, or tangible object, to destroy or alter; or (C) was otherwise extensive in scope, planning, or preparation, increase by 2 levels.".

The Commentary to § 2J1.2 captioned "Statutory Provisions" is amended by inserting ", 1519" after "1516".

Section 2T4.1 is amended in the table by striking the period and adding at the end the following:

"(O) More than $200,000,000 34
(P) More than $400,000,000 36.".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1347 the following new lines:

"18 U.S.C. 1348 2B1.1
18 U.S.C. 1349 2X1.1
18 U.S.C. 1350 2B1.1".

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 1512(c) by striking "(c)" and inserting "(d)".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1512(b) the following new line:

"18 U.S.C. 1512(c) 2J1.2".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1518 the following new lines:

"18 U.S.C. 1519 2J1.2
18 U.S.C. 1520 2E5.3".

Reason for Amendment: This amendment implements directives to the Commission contained in sections 805, 905, and 1104 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204 (the "Act"), by making several modifications to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) and § 2J1.2 (Obstruction of Justice). The directives pertain to serious fraud and related offenses and obstruction of justice offenses. The directives require the Commission under emergency amendment authority to promulgate amendments addressing, among other things, officers and directors of publicly traded companies who commit fraud and related offenses, fraud offenses that endanger the solvency or financial security of a substantial number of victims, fraud offenses that involve significantly greater than 50 victims, and obstruction of justice offenses that involve the destruction of evidence.

First, the amendment addresses the directive contained in section 1104(b)(5) of the Act to "ensure that the guideline offense levels and enhancements under United States Sentencing Guideline § 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50." The amendment implements this directive by expanding the existing enhancement at § 2B1.1(b)(2) based on the number of victims involved in the offense. Prior to the amendment, subsection (b)(2) provided a two level enhancement if the offense involved more than 10, but less than 50, victims (or was committed through mass-marketing), and a four level enhancement if the offense involved 50 or more victims. The amendment provides an additional two level increase, for a total of six levels, if the offense involved 250 or more victims. The Commission determined that an enhancement of this magnitude appropriately responds to the pertinent directive and reflects the extensive nature of, and the large scale victimization caused by, such offenses.

Second, the amendment addresses directives contained in sections 805 and 1104 of the Act pertaining to securities and accounting fraud offenses and fraud offenses that endanger the solvency or financial security of a substantial number of victims. Specifically, section 805(a)(4) directs the Commission to ensure that "a specific offense characteristic enhancing sentencing is provided under United States

Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims." In addition, section 1104(b)(1) directs the Commission to "ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses." The amendment implements these directives by expanding the scope of the existing enhancement at § 2B1.1(b)(12)(B).

Prior to the amendment, § 2B1.1(b)(12)(B) provided a four level enhancement and a minimum offense level of 24 if the offense substantially jeopardized the safety and soundness of a financial institution. The amendment expands the scope of this enhancement by providing two additional prongs. The first prong applies to offenses that substantially endanger the solvency or financial security of an organization that, at any time during the offense, was a publicly traded company or had 1,000 or more employees. The addition of this prong reflects the Commission's determination that such an offense undermines the public's confidence in the securities and investment market much in the same manner as an offense that jeopardizes the safety and soundness of a financial institution undermines the public's confidence in the banking system. This prong also reflects the likelihood that an offense that endangers the solvency or financial security of an employer of this size will similarly affect a substantial number of individual victims, without requiring the court to determine whether the solvency or financial security of each individual victim was substantially endangered.

A corresponding application note for § 2B1.1(b)(12)(B) sets forth a non-exhaustive list of factors that the court shall consider in determining whether the offense endangered the solvency or financial security of a publicly traded company or an organization with 1,000 or more employees. The list of factors includes references to insolvency, filing for bankruptcy, substantially reducing the value of the company's stock, and substantially reducing the company's workforce among the list of factors that the court shall consider when applying the new enhancement, and other factors not enumerated in the application note could be considered by the court as appropriate.

The amendment also modifies the application note of the previously existing prong of § 2B1.1(b)(12)(B), the financial institutions enhancement, to be consistent structurally with the new prongs of the enhancement. Prior to the amendment, the presence of any one of the factors enumerated in the application note would trigger the financial institutions enhancement under § 2B1.1(b)(12)(B). Under the amendment, the application note to the financial institutions enhancement sets forth a non-exhaustive list of factors that the court shall consider in determining whether the offense substantially jeopardized the safety and soundness of a financial institution. The list of factors that the court shall consider when applying this enhancement includes references to insolvency, substantially reducing benefits to pensioners and insureds, and an inability to refund fully any deposit, payment, or investment on demand.

The second prong added to § 2B1.1(b)(12)(B) by the amendment applies to offenses that substantially endangered the solvency or financial security of 100 or more victims, regardless of whether a publicly traded company or other organization was affected by the offense. The Commission concluded that the specificity of the directive in section 805(a)(4) required an enhancement focused specifically on conduct that endangers the financial security of individual victims. Thus, use of this prong of the enhancement will be appropriate in cases in which there is sufficient evidence for the court to determine that the amount of loss suffered by individual victims of the offense substantially endangered the solvency or financial security of those victims. The Commission also determined that the enhancement provided in § 2B1.1(b)(12)(B) shall apply cumulatively with the enhancement at § 2B1.1(b)(2), which is based solely on the number of victims involved in the offense, to reflect the particularly acute harm suffered by victims of offenses for which the new prongs of subsection (b)(12)(B) apply.

Third, the amendment addresses the directive contained at section 1104(a)(2) of the Act to "consider the promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses." The amendment implements this directive by providing a new, four level enhancement at § 2B1.1(b)(13) that applies if the offense involved a violation of securities law and, at the time of the offense, the defendant was an officer or director of a publicly traded company. The Commission concluded that a four level enhancement appropriately reflects that an officer or director of a publicly traded company who commits such an offense violates certain heightened fiduciary duties imposed by securities law upon such individuals. Accordingly, the court is not required to determine specifically whether the defendant abused a position of trust in order for the enhancement to apply, and a corresponding application note provides that, in cases in which the new, four level enhancement applies, the existing two level enhancement for abuse of position of trust at § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) shall not apply.

The corresponding application note also expressly provides that the enhancement would apply regardless of whether the defendant was convicted under a specific securities fraud statute (*e.g.*, 18 U.S.C. 1348, a new offense created by the Act specifically prohibiting securities fraud) or under a general fraud statute (*e.g.*, 18 U.S.C. 1341, prohibiting mail fraud), provided that the offense involved a violation of "securities law" as defined in the application note.

Fourth, the amendment expands the loss table at § 2B1.1(b)(1) to punish adequately offenses that cause catastrophic losses of magnitudes previously unforeseen, such as the serious corporate scandals that gave rise to several portions of the Act. Prior to the amendment, the loss table at § 2B1.1(b)(1) provided sentencing enhancements in two level increments up to a maximum of 26 levels for offenses in which the loss exceeded $100,000,000. The amendment adds two additional loss amount categories to the table; an increase of 28 levels for offenses in which the loss exceeded $200,000,000, and an increase of 30 levels for offenses in which the loss exceeded $400,000,000. These additions to the loss table address congressional concern regarding particularly extensive and serious fraud offenses, and more fully effectuate increases in statutory maximum penalties provided by the Act (*e.g.*, the increase in the statutory maximum penalties for wire fraud and mail fraud offenses from five to 20 years set forth in section 903 of the Act). The amendment also modifies the tax table in § 2T4.1 in a similar manner to maintain the longstanding proportional relationship between the loss table in § 2B1.1 and the tax table.

The amendment also adds a new factor to the general, enumerated factors that the court may consider in determining the amount of loss under § 2B1.1(b)(1). Specifically, the amendment adds the reduction in the

value of equity securities or other corporate assets that resulted from the offense to the list of general factors set forth in Application Note 2(C) of § 2B1.1. This factor was added to provide courts additional guidance in determining loss in certain cases, particularly in complex white collar cases.

Fifth, the amendment modifies § 2J1.2 to address the directives pertaining to obstruction of justice offenses contained in sections 805 and 1104 of the Act. Specifically, section 805(a) of the Act directs the Commission to ensure that the base offense level and existing enhancements in § 2J1.2 are sufficient to deter and punish obstruction of justice offenses generally, and specifically are adequate in cases involving the destruction, alteration, or fabrication of a large amount of evidence, a large number of participants, the selection of evidence that is particularly probative or essential to the investigation, more than minimal planning, or abuse of a special skill or a position of trust. Section 1104(b) of the Act further directs the Commission to ensure that the "guideline offense levels and enhancements for an obstruction of justice offense are adequate in cases where documents or other physical evidence are actually destroyed or fabricated."

The amendment implements these directives by making two modifications to § 2J1.2. First, the amendment increases the base offense level in § 2J1.2 from level 12 to level 14. Second, the amendment adds a new two level enhancement to § 2J1.2. This enhancement applies if the offense (i) involved the destruction, alteration, or fabrication of a substantial number of records, documents or tangible objects; (ii) involved the selection of any essential or especially probative record, document, or tangible object to destroy or alter; or (iii) was otherwise extensive in scope, planning, or preparation. The Commission determined that existing adjustments in chapter three for aggravating role, § 3B1.1, and abuse of position of trust or use of special skill, § 3B1.3, adequately account for those particular factors described in section 805(a) of the Act.

Sixth, the amendment addresses new offenses created by the Act. Section 1520 of title 18, United States Code, relating to destruction of corporate audit records, is referenced to § 2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act; Destruction and Failure to Maintain Corporate Audit Records). Section 1520 provides a statutory maximum penalty of ten years' imprisonment for knowing and willful violations of document maintenance requirements as set forth in that section or in rules or regulations to be promulgated by the Securities and Exchange Commission pursuant to that section. The amendment also expands the existing cross reference in § 2E5.3(a)(2) specifically to cover fraud and obstruction of justice offenses. Accordingly, if a defendant who is convicted under 18 U.S.C. 1520 committed the offense in order to obstruct justice, the amendment to the cross reference provision requires the court to apply § 2J1.2 instead of § 2E5.3. Other new offenses are listed in Appendix A (Statutory Index), as well as in the statutory provisions of the relevant guidelines.

648. Amendment: Chapter two, part C is amended in the heading by adding at the end "and violations of Federal election campaign laws".

Chapter two, part C is amended by striking the introductory commentary as follows:

Introductory Commentary

The Commission believes that pre-guidelines sentencing practice did not adequately reflect the seriousness of public corruption offenses. Therefore, these guidelines provide for sentences that are considerably higher than average pre-guidelines practice.".

Chapter two, part C is amended by adding at the end the following new guideline and accompanying commentary:

§ 2C1.8. Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property

(a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) If the value of the illegal transactions exceeded $5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) (Apply the greater) If the offense involved, directly or indirectly, an illegal transaction made by or received from—

(A) A foreign national, increase by two levels; or

(B) A government of a foreign country, increase by four levels.

(3) If (A) the offense involved the contribution, donation, solicitation, expenditure, disbursement, or receipt of governmental funds; or (B) the defendant committed the offense for the purpose of obtaining a specific, identifiable non-monetary Federal benefit, increase by two levels.

(4) If the defendant engaged in 30 or more illegal transactions, increase by two levels.

(5) If the offense involved a contribution, donation, solicitation, or expenditure made or obtained through intimidation, threat of pecuniary or other harm, or coercion, increase by four levels.

(c) Cross Reference

(1) If the offense involved a bribe or gratuity, apply § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) or § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate, if the resulting offense level is greater than the offense level determined above.

Commentary

Statutory Provisions: 2 U.S.C. 437g(d)(1), 439a, 441a, 441a–1, 441b, 441c, 441d, 441e, 441f, 441g, 441h(a), 441i, 441k; 18 U.S.C. 607. For additional provision(s), *see* Statutory Index (Appendix A).

Application Notes:

1. Definitions.—For purposes of this guideline:

'Foreign national' has the meaning given that term in section 319(b) of the Federal Election Campaign Act of 1971, 2 U.S.C. 441e(b).

'Government of a foreign country' has the meaning given that term in section 1(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(e)).

'Governmental funds' means money, assets, or property, of the United States government, of a State government, or of a local government, including any branch, subdivision, department, agency, or other component of any such government. 'State' means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa. 'Local government' means the government of a political subdivision of a State.

'Illegal transaction' means (A) any contribution, donation, solicitation, or expenditure of money or anything of value, or any other conduct, prohibited by the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*; (B) any contribution, donation, solicitation, or expenditure of money or anything of value made in excess of the amount of such contribution, donation,

solicitation, or expenditure that may be made under such Act; and (C) in the case of a violation of 18 U.S.C. 607, any solicitation or receipt of money or anything of value under that section. The terms 'contribution' and 'expenditure' have the meaning given those terms in section 301(8) and (9) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8) and (9)), respectively.

2. Application of Subsection (b)(3)(B).—Subsection (b)(3)(B) provides an enhancement for a defendant who commits the offense for the purpose of achieving a specific, identifiable non-monetary Federal benefit that does not rise to the level of a bribe or a gratuity. Subsection (b)(3)(B) is not intended to apply to offenses under this guideline in which the defendant's only motivation for commission of the offense is generally to achieve increased visibility with, or heightened access to, public officials. Rather, subsection (b)(3)(B) is intended to apply to defendants who commit the offense to obtain a specific, identifiable non-monetary Federal benefit, such as a Presidential pardon or information proprietary to the government.

3. Application of Subsection (b)(4).—Subsection (b)(4) shall apply if the defendant engaged in any combination of 30 or more illegal transactions during the course of the offense, whether or not the illegal transactions resulted in a conviction for such conduct.

4. Departure Provision.—In a case in which the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted.".

Section 3D1.2(d) is amended by inserting ", 2C1.8" after "2C1.7".

The Commentary to § 5E1.2 captioned "Application Notes" is amended in the second sentence of Note 5 by striking "and" after "Control Act;" and by inserting before the period at the end the following:

"; and 2 U.S.C. 437g(d)(1)(D), which authorizes, for violations of the Federal Election Campaign Act under 2 U.S.C. 441f, a fine up to the greater of $50,000 or 1,000 percent of the amount of the violation, and which requires, in the case of such a violation, a minimum fine of not less than 300 percent of the amount of the violation.

There may be cases in which the defendant has entered into a conciliation agreement with the Federal Election Commission under section 309 of the Federal Election Campaign Act of 1971 in order to correct or prevent a violation of such Act by the defendant. The existence of a conciliation agreement between the defendant and Federal Election Commission, and the extent of compliance with that conciliation agreement, may be appropriate factors in determining at what point within the applicable fine guideline range to sentence the defendant, unless the defendant began negotiations toward a conciliation agreement after becoming aware of a criminal investigation".

Appendix A (Statutory Index) is amended by inserting before the line referenced to 7 U.S.C. 6 the following new lines:

"2 U.S.C. 437g(d) 2C1.8
2 U.S.C. 439a 2C1.8
2 U.S.C. 441a 2C1.8
2 U.S.C. 441a–1 2C1.8
2 U.S.C. 441b 2C1.8
2 U.S.C. 441c 2C1.8
2 U.S.C. 441d 2C1.8
2 U.S.C. 441e 2C1.8
2 U.S.C. 441f 2C1.8
2 U.S.C. 441g 2C1.8
2 U.S.C. 441h(a) 2C1.8
2 U.S.C. 441i 2C1.8
2 U.S.C. 441k 2C1.8".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 597 the following new line:

"18 U.S.C. 607 2C1.8".

Reason for Amendment: This amendment implements the directive from Congress contained in the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, (the "BCRA") to the effect that the Commission "promulgate a guideline, or amend an existing guideline * * *, for penalties for violations of the Federal Election Campaign Act of 1971 (the "FECA") and related election laws * * *". The BCRA significantly increased statutory penalties for campaign finance crimes, formerly misdemeanors under the FECA. The new statutory maximum term of imprisonment for even the least serious of these offenses is now two years and for more serious offenses, the maximum term of imprisonment is five years.

To effectively punish these offenses, the Commission chose to create a new guideline at § 2C1.8 (Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property). The Commission opted against simply amending an existing guideline because it determined after review that the characteristics of election-violation cases did not bear sufficient similarity to cases sentenced under any existing guideline. The offenses which will be sentenced under § 2C1.8 include: violations of the statutory prohibitions against "soft money" (2 U.S.C. 441i); restrictions on "hard money" contributions (2 U.S.C. 441a); contributions by foreign nationals (2 U.S.C. 441e); restrictions on "electioneering communications" as defined at 2 U.S.C. 434(f)(3)(C); certain fraudulent misrepresentations (2 U.S.C. 441h); and "conduit contributions" (2 U.S.C. 441f).

The new guideline has a base offense level of level 8, which reflects the fact that these offenses, while they are somewhat similar to fraud offenses (sentenced under § 2B1.1 (Theft, Property Destruction, and Fraud) at a base offense level of level 6), generally are more serious due to the additional harm, or the potential harm, of corrupting the elective process.

The new guideline provides five specific offense characteristics to ensure appropriate penalty enhancements for aggravating conduct which may occur during the commission of certain campaign finance offenses. First, the new guideline provides a specific offense characteristic, at § 2C1.8(b)(1), that uses the fraud loss table in § 2B1.1 to incrementally increase the offense level in proportion to the monetary amounts involved in the illegal transactions. This both assures proportionality with penalties for fraud offenses and responds to Congress' directive to provide an enhancement for "a large aggregate amount of illegal contributions."

Second, the new guideline provides alternative enhancements, at § 2C1.8(b)(2), if the offense involved a foreign national (two levels) or a foreign government (four levels). These enhancements respond to another specific directive in the BCRA and reflect the seriousness of foreign entities attempting to tamper with the United States' election processes.

Third, the new guideline provides alternative two level enhancements, at § 2C1.8(b)(3), when the offense involves either "governmental funds," defined broadly to include Federal, State, or local funds, or an intent to derive "a specific, identifiable non-monetary Federal benefit" (*e.g.*, a presidential pardon). Each of these enhancements responds to specific directives of the BCRA.

Fourth, the new guideline provides a two level enhancement, at subsection (b)(4), when the offender engages in "30 or more illegal transactions." After a

review of all campaign finance cases in the Commission's datafile, the Commission chose 30 transactions as the number best illustrative of a "large number" in that context. This enhancement also responds to a specific directive in the BCRA to the effect that the Commission provide enhanced sentencing for cases involving "a large number of illegal transactions."

Fifth, the new guideline provides a four level enhancement, at § 2C1.8(b)(5), if the offense involves the use of "intimidation, threat of pecuniary or other harm, or coercion." This enhancement responds to information received from the Federal Election Commission and the Public Integrity Section of the Department of Justice which characterizes offenses of this type as some of the most aggravated offenses committed under the FECA.

The new guideline also provides a cross reference, at subsection (c), which directs the sentencing court to apply either § 2C1.1 or § 2C1.2, as appropriate, if the offense involved a bribe or a gratuity and the resulting offense level would be greater than that determined under § 2C1.8.

Section 3D1.2 (Groups of Closely Related Counts) has been amended, consistent with the principles underlying the rules for grouping multiple counts of conviction, to include § 2C1.8 offenses among those in which the offense level is determined largely on the basis of the total amount of harm or loss or some other measure of aggregate harm. (*See* § 3D1.2(d)).

Finally, § 5E1.2 (Fines for Individual Defendants) has been amended to specifically reflect fine provisions unique to the FECA. This part of the amendment also provides that the defendant's participation in a conciliation agreement with the Federal Election Commission may be an appropriate factor for use in determining the specific fine within the applicable fine guideline range unless the defendant began negotiations with the Federal Election Commission after the defendant became aware that he or it was the subject of a criminal investigation.

[FR Doc. 03–1297 Filed 1–21–03; 8:45 am]

BILLING CODE 2211–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before March 24, 2003.

ADDRESSES: Send all comments regarding whether this information collections is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Radwan Saade, Economist, Office of Advocacy, Small Business Administration, 409 3rd Street, SW., Suite 7800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Radwan Saade, Economist, (202) 205–6878 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Small Business Use of Telecommunication Services.

Form No: N/A.

Description of Respondents: Small Businesses.

Annual Responses: 5,000.

Annual Burden: 416.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–1299 Filed 1–21–03; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–264]

WTO Dispute Settlement Proceeding Regarding the U.S. Department of Commerce Final Antidumping Determination Concerning Certain Softwood Lumber From Canada

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of the request by the Government of Canada for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") to examine the U.S. Department of Commerce ("DOC") final determination of sales at less than fair value with respect to certain softwood lumber from Canada. The panel request alleges that the initiation of the investigation, the conduct of the investigation, and the final determination are inconsistent with various provisions of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the Agreement on Implementation of Article VI of GATT 1994. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before February 21, 2003 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0064@ustr.gov*, Attn: "DS264 Dispute" in the subject line, or (ii) by fax, to Sandy McKinzy at 202–395–3640, with a confirmation copy sent electronically to the email address above.

FOR FURTHER INFORMATION CONTACT: Theodore R. Posner, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508 (202) 395–3582.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)), the USTR is providing notice that on December 6, 2002, the Government of Canada submitted a request for establishment of a dispute settlement panel to examine the U.S. Department of Commerce ("DOC") final determination of sales at less than fair value with respect to certain softwood lumber from Canada.

Major Issues Raised and Legal Basis of the Complaint

The notice of the DOC final determination of sales at less than fair value with respect to certain softwood lumber from Canada was published in the **Federal Register** on April 2, 2002, and the notice of the DOC amended final determination was published on May 22, 2002. The notices explain the basis for the DOC's final determination that certain softwood lumber from Canada is being sold, or is likely to be sold, in the United States at less than fair value.

In its request for establishment of a dispute settlement panel, Canada describes its claims in the following manner:

> The measures at issue include the initiation of the investigation, the conduct of the investigation, the Final Determination and the resulting Anti-dumping Order on Softwood Lumber from Canada. The Government of Canada considers these measures and, in particular, the determinations made and methodologies

adopted therein by the United States Department of Commerce under authority of the United States Tariff Act of 1930, including section 732(c)(4)(E), to violate the Anti-Dumping Agreement and the GATT 1994 for, among others, the following reasons:

1. The application filed by the U.S. domestic industry and the subsequent initiation of the investigation by Commerce did not comply with Article 5 of the Anti-Dumping Agreement, including Articles 5.1, 5.2, 5.3, 5.4 and 5.8. Specifically:

(a) The application submitted by the U.S. domestic industry did not include evidence reasonably available to it, including pricing of Canadian exports to the United States, pricing of the like products sold in Canada by Canadian producers, and Canadian cost data in respect of the production in Canada of the like products. By Commerce's failure to determine whether the application contained all information reasonably available to the applicant, and by Commerce initiating the investigation where the application failed to contain evidence reasonably available to the applicant, and by Commerce's failure to terminate the investigation when Commerce became aware that the application failed to contain evidence reasonably available to the applicant, the United States violated Articles 5.2, 5.3 and 5.8 of the Anti-Dumping Agreement.

(b) The application submitted by the U.S. domestic industry did not include sufficient evidence of dumping to justify initiation of the investigation. Commerce failed to examine the accuracy and adequacy of the evidence provided in the application and failed to reject the application in view of the lack of sufficient evidence of dumping required to justify the initiation of an investigation, and failed to terminate the investigation when it became evident that the application did not contain sufficient evidence, thereby resulting in violations by the United States of Articles 5.1, 5.2, 5.3 and 5.8.

(c) The Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), by requiring that a member of the U.S. industry support the application as a condition of receiving payments under the CDSOA, made an objective and meaningful examination of industry support for the application impossible. The United States violated Articles 5.4 and 5.8 in that Commerce's initiation of the investigation was not based on an objective and meaningful examination and determination of the degree of support for the application by the domestic industry.

(d) The initiation by Commerce was made without a proper establishment of the facts, was based on an evaluation of the facts that was neither unbiased nor objective and does not rest on a permissible interpretation of the Anti-dumping Agreement. Accordingly, the initiation by Commerce cannot be upheld in light of the applicable standard of review under Article 17.6.

2. Commerce erroneously determined there to be a single like product (under U.S. law, termed "class or kind" of merchandise) rather than several distinct like products, thereby failing to assess domestic industry support in respect of each distinct like product and failing to assess the sufficiency of evidence of dumping in respect of each distinct like product, thereby resulting in violations by the United States of Articles 2.6, 4.1, 5.1, 5.2, 5.3, 5.4 and 5.8 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994. The like product and industry support determinations by Commerce were made without a proper establishment of the facts, were based on an evaluation of the facts that was neither unbiased nor objective and do not rest on a permissible interpretation of the Anti-dumping Agreement. Accordingly, the like product and industry support determinations by Commerce cannot be upheld in light of the applicable standard of review under Article 17.6.

3. In making the final determination, the United States acted inconsistently with Article VI of the GATT 1994 and Articles 1, 2.1, 2.2, 2.2.1, 2.2.1.1, 2.2.2, 2.3, 2.4, 2.4.1, 2.4.2, 2.6, and 9.3 of the Anti-Dumping Agreement. Specifically, Commerce improperly applied a number of methodologies based on improper and unfair comparisons between the export price and the normal value, resulting in artificial and/or inflated margins of dumping: (a) The United States violated Article 2 of the Anti-Dumping Agreement, including Articles 2.4 and 2.4.2, and Article VI:1 of the GATT 1994 by Commerce's application of the practice of "zeroing" negative dumping margins, the effect of which was to inflate margins of dumping and which, in the recommendations and rulings of the Dispute Settlement Body in an earlier dispute, was found to be inconsistent with the Anti-Dumping Agreement. A fair comparison was therefore not made by Commerce between the export price and the normal value and a distorted margin of dumping was calculated, thereby resulting in violations by the United States of Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement.

(b) The United States violated Article 2 of the Anti-dumping Agreement, including Article 2.4, and Article VI:1 of the GATT 1994 by Commerce's failure, when conducting comparisons between prices of products sold in the United States and prices of products with different physical characteristics sold in the Canadian market, to make due allowance for differences that affect price comparability, including differences in physical characteristics. A fair comparison was therefore not made by Commerce between the export price and the normal value and a distorted margin of dumping was calculated, thereby resulting in violations by the United States of Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement.

(c) The United States violated Article 2 of the Anti-Dumping Agreement including Articles 2.2, 2.2.1, 2.2.1.1 and 2.2.2, and Article VI:1 of the GATT 1994 by Commerce's failure to apply a reasonable method in calculating amounts for administrative, selling and general expenses for specific exporters, including an improper allocation of general and administrative expenses including financial expenses. A fair comparison was therefore not made by Commerce between the export price and the normal value and a distorted margin of dumping was calculated, thereby resulting in violations by the United States of Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement.

(d) The United States violated Article 2 of the Anti-Dumping Agreement, including Articles 2.2, 2.2.1, 2.2.1.1, 2.2.2 and paragraph 7 of Annex I, and Article VI:1 of the GATT 1994 by Commerce's failure to apply a reasonable method to account for revenues, including by-product and futures contract revenues, as offsets in calculating costs and export price for specific exporters. A fair comparison was therefore not made by Commerce between the export price and the normal value and a distorted margin of dumping was calculated, thereby resulting in violations by the United States of Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement.

(e) The methodologies, calculations, comparisons and determinations by Commerce were made without a proper establishment of the facts, was based on an evaluation of the facts that was neither unbiased nor objective and does not rest on a permissible interpretation of the Anti-dumping Agreement. Accordingly, the methodologies, calculations, comparisons and determinations by Commerce cannot be upheld in light of the applicable standard of review under Article 17.6.

(f) The methodologies, calculations, comparisons and determinations by Commerce violated Articles VI:1 and VI:2 of the GATT 1994 and Article 9.3 of the Anti-Dumping Agreement by levying an anti-dumping duty on softwood lumber from Canada in an amount greater than the margin of any dumping.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at 202–395–3640, or transmit a copy electronically to *FR0064@ustr.gov*, with "DS264" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business

information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–1308 Filed 1–21–03; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

WTO Dispute Settlement Proceeding Regarding the United States International Trade Commission Final Determination of Threat of Material Injury in the Investigation Concerning Certain Softwood Lumber From Canada

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of the request by the Government of Canada for consultations under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") to examine the United States International Trade Commission ("ITC") final determination of threat of material injury with respect to certain softwood lumber from Canada. The request for consultations alleges that the ITC's determination is inconsistent with various provisions of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), the Agreement on Implementation of Article VI of GATT 1994 ("Anti-dumping Agreement"), and the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 15, 2003 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *fr0062@ustr.gov*, Attn: "Lumber Injury Dispute" in the subject line, or (ii) by fax, to Sandy McKinzy at 202–395–3640, with a confirmation copy sent electronically to the email address above.

FOR FURTHER INFORMATION CONTACT: Theodore R. Posner, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington DC, 20508 (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that on December 20, 2002, the Government of Canada requested consultations pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised and Legal Basis of the Complaint

In its determination of May 16, 2002, published in the **Federal Register** on May 22, 2002, the ITC found that imports of softwood lumber from Canada, which the U.S. Department of Commerce found to be subsidized and sold at less than fair value, threatened an industry in the United States with material injury. The reasons for the ITC's determination are set forth in USITC Publication No. 3509 (May 2002).

By letter dated December 20, 2002, Canada requested consultations with the United States under the WTO Dispute Settlement Understanding regarding the ITC's determination.

In its request for consultations, Canada alleges that the United States has violated Article VI:6(a) of the GATT 1994; Articles 1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 3.8, 12 and 18.1 of the Anti-dumping Agreement; and Articles 10, 15.1, 15.2, 15.3, 15.4, 15.5, 15.7, 15.8, 22 and 32.1 of the SCM Agreement. Canada alleges that these violations stem from certain errors in the ITC's determination. In particular, Canada claims that the ITC:

(i) Based its determination on "allegation, conjecture and remote possibility";

(ii) Failed to establish that "a change in circumstances which would create a situation in which the subsidy and dumping would cause injury is clearly foreseen and imminent";

(iii) Failed "to properly consider all factors relevant to determining the existence of a threat of material injury"; and

(iv) Failed "to properly consider the effects of the dumped and subsidized imports, their impacts on the domestic industry, and whether the dumped and subsidized imports would cause injury or threat of injury."

Canada further alleges that the ITC failed to include in its report "sufficient detail, relevant information and considerations, and proper reasons" for its determination.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in Canada's request for consultations. Persons submitting comments may either send one copy by fax to Sandy McKinzy at 202–395–3640, or transmit a copy electronically to *fr0062@ustr.gov*, with "Lumber Injury Dispute" in the subject line. For documents sent by fax, USTR requests that the submitter provide a

confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–1309 Filed 1–21–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2003–14214]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on Hazardous Cargo Security will meet to discuss security issues as they relate to the marine transportation of chemicals. This meeting will be open to the public.

DATES: The Subcommittee will meet on Tuesday, February 11, 2003, from 1 p.m. to 4 p.m., Wednesday, February 12, 2003, from 8 a.m. to 4 p.m., and Thursday, February 13, 2003, from 8 a.m. to 4 p.m. This 3-day meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 3, 2003. Requests to have a copy of your material distributed to each member of the Subcommittee should reach the Coast Guard on or before February 3, 2003.

ADDRESSES: The Subcommittee will meet at American Commercial Barge Line (ACBL) Company, 1701 E. Market St., Jeffersonville, Indiana. Send written material and requests to make oral presentations to Lieutenant Richard Teubner, Coast Guard Technical Representative for the Subcommittee, Commandant (G-MPS–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Lieutenant Richard Teubner, the Coast Guard Technical Representative for the Subcommittee, telephone 202–267–4129, fax 202–267–4130.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda of the 3-day meeting of the CTAC Subcommittee on Hazardous Cargo Security includes the following:

(1) Introduce subcommittee members and attendees.

(2) Review subcommittee tasking and desired outcome.

(3) Discuss hazardous cargo list created for security regulations.

(4) Discuss security regulatory developments including time frames, content, and application.

(5) Discuss notification guidelines.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the discretion of the Subcommittee Chair, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Coast Guard Technical Representative for the Subcommittee and submit written material on or before February 3, 2003. If you would like a copy of your material distributed to each member of the Subcommittee in advance of the meeting, please submit 25 copies to the Coast Guard Technical Representative for the Subcommittee no later than February 3, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the Coast Guard Technical Representative for the Subcommittee as soon as possible.

Dated: January 8, 2003.

J.G. Lantz,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–1284 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environmental Impact Statement on the Potomac Consolidated Terminal Radar Approach Control (TRACON) Airspace Redesign

AGENCY: Federal Aviation, Administration, DOT.

ACTION: Notice of Availability of a Final Environmental Impact Statement.

SUMMARY: The Federal Aviation Administration (FAA) has released a

Final Environmental Impact Statement (FEIS) for redesign of the airspace in the Baltimore-Washington area. The proposed action is to redesign the airspace in the Baltimore-Washington metropolitan area excluding noise abatement procedures. This involves developing new routes, altitudes and procedures to take advantage of the new Potomac Consolidated TRACON, improved aircraft performance, and emerging air traffic control technologies. The proposed action is not dependent on development at any of the airports in the study area.

The airspace redesign study encompasses the area within a 75-nautical mile radius centered on a radio navigational aid in Georgetown, within the District of Columbia. The study area comprises portions of five states—Delaware, Maryland, Pennsylvania, Virginia and West Virginia—and the entire District.

This EIS is tiered from an earlier EIS that evaluated environmental impacts that could result from a decision to physically consolidate the four Baltimore-Washington metropolitan areas TRACONs into a new building somewhere in the area. The first tier or "building EIS" resulted in FAA issuing a Record of Decision (ROD) on June 3, 1999. The ROD documented the decision to consolidate four existing TRACONs into a new facility at Vint Hill in Fauquier County, Virginia. Subsequent to the ROD, the decision was made to consolidate the Richmond TRACON into the PCT. However, the incorporation of the Richmond TRACON has no effect on the scope of the airspace redesign.

The purpose of this airspace redesign is to take full advantage of the benefits afforded by the newly consolidated TRACON facility by increasing air traffic efficiency and enhancing safety in the Baltimore-Washington metropolitan area.

Copies of the FEIS are available for review at major libraries in the study area. A summary of the FEIS can be viewed on the Internet at *http://www.faa.gov/ats/potomac.*

DATES: Written comments on the FEIS will be accepted until February 18, 2003. Written comments may be sent to: FAA Potomac TRACON, Air Traffic 2400, Attention: Fred Bankert, 3699 Macintosh Drive, Warrenton, VA 20187.

FOR FURTHER INFORMATION CONTACT: Potomac Consolidated TRACON (800) 762–9531, E-mail: *9–AEA–PTC-Comments@faa.gov.*

SUPPLEMENTARY INFORMATION: A TRACON facility provides radar air traffic control services to aircraft operating on Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) procedures generally beyond 5 miles and within 50 miles of the host airport at altitudes from the surface to approximately 17,000 feet. These distances and altitudes may vary depending on local conditions and infrastructural constraints such as adequate radar and radio frequency coverage. The primary functions of the TRACON is to provide a variety of air traffic control services to arrival, departure, and transient aircraft within its assigned airspace. These services include aircraft separation, in flight traffic advisories and navigational assistance. When fully operational, the Potomac Consolidated TRACON will provide terminal radar air traffic control services to the four major airports and a number of small reliever airports located within the Baltimore-Washington area. It will also provide service to the Richmond, VA airport.

This EIS considers four airspace redesign alternatives consisting of a No Action Alternative and three other alternatives that address changes in routes and altitudes for aircraft away from the close-in airport environment. Changes to initial departure of final arrival procedures are not proposed. Generally, aircraft would be three to five miles from the departure/arrival airport before the changes that are proposed for each alternative would take effect, with the exception of the No Action Alternative, which considers no changes to the existing airspace. None of the alternatives would produce significant environmental impact. Additionally, current noise abatement procedures at the airports would not be changed under any of the alternatives. The FEIS identifies Alternative 2 at the Preferred Alternative.

Dated: January 14, 2003 in Washington, DC.

Alan Hendry,

Program Director, Potomac Consolidated TRACON.

[FR Doc. 03–1352 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–02]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 11, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW.,.Washington, DC 20590–0001. You must identify docket number FAA–2002–13885–1 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Carol Greb (816–329–4136), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 15, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13885–1.
Petitioner: Raytheon Aircraft Services.
Section of 14 CFR Affected: 14 CFR part 23, 23.807(d)(1)(ii).

Description of Relief Sought: Raytheon Aircraft Services (RAS) seeks exemption from 14 CFR 23.807(d)(1)(ii) for the Model 1900D. This rule requires commuter category aircraft, with a passenger seating capacity of 16 or greater, to be equipped with an accessible emergency exit on the same side of the aircraft as the entry door and two exits on the opposite side of the aircraft. RAS seeks a Supplemental Type Certificate for the 1900D to install a cargo configuration floor plan. The floor plan design would allow access to the forward entry door, but block access to the emergency exit on that side of the airplane. An emergency exit on the opposite side of the airplane would remain accessible.

The cargo configuration floor plan allows seating for three occupants: the pilot, co-pilot, and an observer. The baseline Model 1900D is certificated to a total passenger seating capacity of 19, and is equipped with a main cabin door and three emergency exits, per 14 CFR 23.807(d)(1)(ii). A simple comparison shows that egress for three persons through two exits, one on each side of the cabin, gives a level of safety equal to the original certification basis.

[FR Doc. 03–1318 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jackson International Airport, Jackson, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jackson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 21, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Jackson, Mississippi 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Dirk Vanderleest, Executive Director of the Jackson Municipal Airport Authority at the following address: Post Office Box 98109, Jackson, MS 39298–8109.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jackson Municipal Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross Street, Jackson, Mississippi (601) 664–9882. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jackson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 7, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson Municipal Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than Date 120 days after receipt of application supplement.

The following is a brief overview of the application.

PFC Application No.: 03–04–C–00–JAN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2007.

Proposed charge expiration date: June 1, 2010.

Total estimated net PFC revenue: $6,211,722.

Brief description of proposed project(s): Runway Sweeper; Tricherator; Local Share & Engineering West Parallel Lights; Local Share & Engineering West Taxiway Overlay; Local Share Air Cargo Road; Local Share Air Cargo Apron/Taxiway; H. F. Environmental Assessment; Metes & Bounds Survey; Surface Transportation System; Rehab International Drive.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air taxi/commercial operators (ATCO) are requested to be excluded from the collection of a PFC.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Municipal Airport Authority.

Issued in Jackson, Mississippi on January 10, 2003.

Wayne Atkinson,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 03–1316 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (#03–03–C–00–SGU) To Impose and To Use a Passenger Facility Charge (PFC) at the St. George Municipal Airport, Submitted by the City of St. George, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent To Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use a PFC at the St. George Municipal Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 21, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David R. Ulane, Airport Manager, at the following address: St. George Municipal Airport, 620 S. Airport Road, St. George, Utah 84770.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the St. George Municipal Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#03–03–C–00–SGU) to use a PFC at the St. George Municipal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 10, 2003, the FAA determined that the application to impose a PFC submitted by the City of St. George, Utah, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 10, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: July 1, 2003.

Proposed charge expiration date: June 30, 2008.

Total requested for use approval: $538,575.

Brief description of proposed projects: Acquire aircraft rescue and fire fighting vehicle, acquire self-contained regenerative air sweeper, aircraft rescue and fire fighting building improvements, replacement airport planning, replacement airport environmental impact statement, replacement airport phase II environmental impact statement, construct replacement airport.

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: Non-scheduled, on demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the St. George Municipal Airport.

Issued in Renton, Washington, on January 10, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–1317 Filed 1–21–03; 8:45 am]

BILLING CODE 4810–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Updates of Digital Mapping Data for Hazardous Liquid Pipeline High Consequence Areas (HCA)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: The Office of Pipeline Safety (OPS) is issuing this advisory bulletin to owners and operators of hazardous liquid pipeline systems. OPS has updated and revised the High Consequence Area (HCA) digital mapping datasets based on revised U.S. Government data. The datasets are now available for download for "High Population Areas," "Other Populated Areas," and "Commercially Navigable Waterways." Operators have one year from the date of this bulletin to incorporate these new high consequence areas into their baseline integrity management assessment plans. The digital mapping datasets for Ecological and Drinking Water Unusually Sensitive Areas (USA) are not being updated at this time.

FOR FURTHER INFORMATION CONTACT: Sam Hall, (202) 493–0591; or by e-mail, *samuel.hall@rspa.dot.gov.* Steve Fischer, (202) 366–6267; or by e-mail, *steven.fischer@rspa.dot.gov.* This document can be viewed at the OPS home page at *http://ops.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal hazardous liquid pipeline safety regulations at 49 CFR 195.452 require hazardous liquid pipeline operators to assess, evaluate, remediate and validate, through comprehensive analysis, the integrity of hazardous liquid pipeline segments that, in the event of a leak or failure, could affect populated areas, areas unusually sensitive to environmental damage and commercially navigable waterways. OPS has identified these High Consequence Areas in its National Pipeline Mapping System (NPMS).

Updated digital mapping data to delineate high consequence areas for use in geographic information systems is now available for high population areas, other populated areas, and commercially navigable waterways. Population information updates are based on data from the U.S. Census Bureau's TIGER 2000 datasets. Updates for commercially navigable waterways are based on the 2002 version of the National Waterways Network as provided by the Bureau of Transportation Statistics. All updated data is available for download from the NPMS Web site at *http://www.npms.rspa.dot.gov.*

Operators have one year from the date of this bulletin to incorporate these new High Consequence Areas into their baseline integrity management assessment plans as required by 49 CFR 195.412. The digital mapping datasets for Ecological and Drinking Water Unusually Sensitive Areas (USA) are not being updated at this time.

II. Advisory Bulletin (ADB–03–01)

To: Owners and Operators of Hazardous Liquid Pipeline Systems.

Subject: Updates of Digital Mapping Data for Hazardous Liquid Pipeline High Consequence Areas (HCA).

Purpose: To advise owners and operators of hazardous liquid pipeline systems of the availability of updated and revised High Consequence Area digital mapping data for high population areas, other populated areas, and commercially navigable waterways.

Advisory: Updated digital mapping data for high population areas, other populated areas, and commercially navigable waterways are now available to owners and operators of hazardous liquid pipeline systems. The updated data is available for download from the NPMS Web site at *http://www.npms.rspa.dot.gov.* Operators have one year from the date of this bulletin to incorporate these new High Consequence Areas into their baseline integrity management assessment plans as required by 49 CFR 195.412. The digital mapping datasets for Ecological and Drinking Water Unusually Sensitive Areas (USA) are not being updated at this time.

Issued in Washington, DC, on January 13, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–1322 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34306]

K. Earl Durden, Rail Management Corporation, and Rail Partners, L.P.—Corporate Family Transaction Exemption

K. Earl Durden (Durden), Rail Management Corporation (RMC),[1] and Rail Partners, L.P. (Rail Partners)[2] (collectively, applicants), have filed a verified notice of exemption under 49 CFR 1180.2(d)(3) to undertake a corporate reorganization to simplify their corporate structure by: (1) merging Galveston Railway, Inc. (GRI), into RMC, and (2) dissolving Emerald Coast Investments, L.L.C. (Emerald Coast) and distributing its assets among its various members.

The transaction was expected to be consummated on or after December 30, 2002, the effective date of the exemption (7 days after the notice was filed).

At the time this notice was filed, applicants controlled 14 Class III rail carriers located in Alabama, Arizona, Arkansas, Florida, Georgia, Kentucky, North Carolina, Tennessee, Texas, and Wisconsin. They are: AN Railway, L.L.C.; Atlantic & Western Railway, L.P.; The Bay Line Railroad, L.L.C. (Bay Line); Copper Basin Railway (Copper Basin); East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; KWT Railway, Inc. (KWT); Little Rock & Western Railway, L.P.; M&B Railroad, L.L.C.; Tomahawk Railway, L.P.; Valdosta Railway, L.P.; Western Kentucky Railway, L.L.C. (Western Kentucky); and Wilmington Terminal Railroad, L.P. These rail carriers are referred to as the RMC Rail Group. Applicants state that, in most cases, RMC is the general or managing partner of the railroad, holding a 1% interest, while Rail Partners is a limited partner holding the remaining 99% interest.[3]

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside applicants' corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324–25 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34306, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Donald G. Avery, 1224 17th Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1336 Filed 1–21–03; 8:45 am]

BILLING CODE 4915–00–P

[1] RMC is a noncarrier holding company which is controlled by Durden. RMC's former corporate name was Rail Management and Consulting Corporation.

[2] Rail Partners is a noncarrier limited partnership. Durden, through RMC and four other entities that he controls, also controls Rail Partners. Additionally, Durden controls two trusts that, with RMC, control Emerald Coast. Durden separately controls noncarrier GRI. GRI, Emerald, and RMC in turn control Rail Partners.

[3] Four exceptions apply: KWT, in which GRI controls 100% of the voting stock; Bay Line and Western Kentucky, in which Rail Partners holds 97% of the voting stock and 3% is held by RMC, Durden, and Durden-controlled entities; and Copper Basin, in which Rail Partners holds 55% of the voting stock and Asarco, Inc., an unaffiliated entity, holds the minority 45% interest.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34307]

State of New Hampshire Department of Transportation—Acquisition and Operation Exemption—Certain Assets of Maine Central Railroad Company

The State of New Hampshire, Department of Transportation (the State), has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the Maine Central Railroad Company a 8.36-mile portion of a line of railroad extending between milepost P–103.20 in Whitefield, in Coos County, NH, and milepost 111.56 in Gilman, in Essex County, VT (the Line).

According to the State, the Lamoille Valley Railroad Company (LVRC) and the Twin State Railroad Corporation (TSR) currently lease the Line, but have not provided service over it since October 1999. The State claims that LVRC and TRS have not maintained the Line in anticipation of providing service or in compliance with applicable laws. The State will acquire the Line subject to LVRC and TSR retaining their operating rights on it, but the State will likely seek to obtain a new operator to perform common carrier service on the Line.

Consummation of this transaction was scheduled to occur on or after December 30, 2002.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34307, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Craig S. Donais, Esquire, Transportation & Construction Bureau, New Hampshire Department of Justice, Office of the Attorney General, 33 Capitol Street, Concord, NH 03301–6397.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov*."

Decided: January 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1337 Filed 1–21–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34272]

North Carolina & Virginia Railroad, Inc.—Lease and Operation Exemption-Norfolk Southern Railway Company

North Carolina & Virginia Railroad, Inc., the Chesapeake & Albemarle Division (NCVA), a Class III rail carrier, has filed a verified notice of exemption under CFR 1150.41 to lease and operate a 4-mile rail line from Norfolk Southern Railway Company extending between milepost NS 4.0 at Chesapeake, VA, and milepost NS 8.0 at Butts, VA.

Because NCVA's projected annual revenues will exceed $5 million, NCVA certified to the Board on October 22, 2002, that it had, on that date, posted the required notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line and had served a copy of the notice of intent on the national offices of all labor unions with employees on the rail line. *See* 49 CFR 1150.42(e). NCVA stated in its verified notice that the transaction was scheduled to take place on January 4, 2002, or shortly thereafter.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34272, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gary A. Laakso, Vice President Regulatory Counsel, North Carolina & Virginia Railroad, Inc., 5300 Broken Sound Boulevard NW., Boca Raton, FL 33487, and Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on or Web site at *"http://www.stb.dot.gov."*

Decided: January 14, 2003.

By the Board, David M Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1228 Filed 1–21–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34296]

Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., and Fox Valley & Western Ltd."Intracorporate Family Transaction Exemption

Wisconsin Central Transportation Corporation (WCTC),Wisconsin Central Ltd. (WCL), and Fox Valley & Western Ltd. (FVW)[1] have jointly filed a verified notice of exemption under the Board's intracorporate family class exemption at 49 CFR 1180.2(d)(3) to merge FVW into WCL, with WCL as the surviving entity. With the consent of the Board of Directors of FVW, and pursuant to an exchange agreement between WCL and FVW, WCTC was to convey ownership of FVW to WCL, after which FVW would be dissolved into WCL pursuant to a liquidation agreement between WCL and FVW. All of FVW's assets, rights, obligations, and responsibilities will be in the name of WCL.

The transaction was scheduled to be consummated on December 31, 2002.

The purpose of the transaction is to simplify the corporate structure of WCTC and streamline accounting, finance and management functions. The proposed transaction will also simplify the integration of CNR's information technology systems into Wisconsin Central's system.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34296, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael J. Barron, Jr., Canadian National/Illinois Central, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317.

Board decisions and notices are available on our Web site at *"http://www.stb.dot.gov."*

Decided: January 14, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1335 Filed 1–21–03; 8:45 am]

BILLING CODE 4915–00–P

[1] WCTC is a noncarrier holding company that owns, besides WCL and FVW, the Sault Ste. Marie Bridge Company (located in Michigan and Wisconsin) and Wisconsin Chicago Link Ltd. (located in Illinois). WCTC's stock is wholly owned by Grand Trunk Corporation, a subsidiary of Canadian National Railway Company (CNR). *See Canadian National Railway Company, Grand Trunk Corporation, and WC Merger Sub, Inc.-Control-Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd.*, STB Finance Docket No. 34000 (Decision No. 10) (STB served Sept. 7, 2001).

WCL and FVW are Class II rail carriers. WCL operates approximately 1,800 route miles in Wisconsin, Michigan, Illinois, and Minnesota. FVW operates approximately 350 route miles entirely in Wisconsin primarily in the Fox River Valley, with one line extending from eastern Wisconsin to the Mississippi River at East Winona.

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice.

Name	License No.	Issuing port
Americana Brokers.	11126	Great Falls.

Dated: January 13, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–1277 Filed 1–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker licenses were erroneously included in a list of revoked Customs broker licenses.

Name	License	Port name
Jamie Davila	06093	New York.
GPS Custom House Brokerage, Inc.	07181	Washington, DC.

Customs broker license Nos. 06093 and 07181 remain valid.

Dated: January 13, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–1279 Filed 1–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following individual Customs broker license and any and all associated permits have been cancelled due to the death of the broker:

Name	License No.	Port Name
Horacio Espinoza	06699	Houston.

Dated: January 13, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–1280 Filed 1–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Revocation of Customs Broker Permit

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.45(b)), the following Customs Broker Permit is revoked by operation of law.

Name	Permit No.	Issuing Port
Port Brokers, Inc.	3974	San Francisco.

Dated: January 13, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–1278 Filed 1–21–03; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

DATE/TIME: Thursday, January 30, 2003, 9:15 a.m.–5 p.m.

LOCATION: 1200 17th Street, NW., Suite 200, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: January 2003 Board Meeting; Approval of Minutes of the One Hundred Seventh Meeting (November 21, 2002) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Program Reports; Review of Individual Grant Applications; Other Issues.

CONTACT: Mr. John Brinkley, Director, Office of Public Outreach, Telephone: (202) 457–1700.

Dated: January 16, 2003.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 03–1425 Filed 1–16–03; 4:33 pm]

BILLING CODE 6820–AR–M

Corrections

Federal Register

Vol. 68, No. 14

Wednesday, January 22, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47012; File No. SR–NASD–2002–169]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Modify Maximum Execution Fees and Credits for SuperMontage Transactions in Low-Priced Securities

December 16, 2002.

Correction

In notice document 02–32321 beginning on page 78551 in the issue of Tuesday, December 24, 2002 make the following correction:

On page 78551, in the third column, the docket number and date are corrected to read as set forth above.

[FR Doc. C2–32321 Filed 1–21–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 25, and 97

[Docket No. FAA–2002–13982; Amendment Nos. 1–49, 25–108, 97–1333]

RIN 2120–AD40

1–g Stall Speed as the Basis for Compliance With Part 25 of the Federal Aviation Regulations; Correction

Correction

In rule document 03–656 appearing on page 1955 in the issue of Wednesday, January 15, 2003, make the following correction:

On page 1955, in the first column, the docket number is corrected to read as set forth above.

[FR Doc. C3–656 Filed 1–21–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
January 22, 2003

Part II

Office of Government Ethics

Privacy Act of 1974; Systems of Records; Notice

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; Systems of Records

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of proposed new and revised systems of records.

SUMMARY: In this notice, OGE is proposing to revise and rename two existing Governmentwide systems of records under the Privacy Act covering Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records, and Executive Branch Confidential Financial Disclosure Reports. In addition, OGE is establishing five new internal systems of records for employees of the Office of Government Ethics only, covering Pay, Leave and Travel Records, Telephone Call Detail Records, Grievance Records, Computer Systems Activity and Access Records, and Employee Locator and Emergency Notification Records. This notice fulfills the requirement of the Privacy Act of 1974 that an agency publish a **Federal Register** notice of its systems of records.

DATES: Public comments are invited and must be received by March 24, 2003. These proposed new and revised systems of records will become effective without change May 22, 2003, unless comments are received which result in a contrary determination by OGE.

ADDRESSES: Comments on any aspect of these OGE systems of records should be sent to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Ms. Newton. Electronic comments may also be sent to OGE's Internet E-mail address at *usoge@oge.gov* (such comments should include the caption "OGE Privacy Act New and Revised Systems of Records").

FOR FURTHER INFORMATION CONTACT: Elaine Newton, Attorney-Advisor, Office of Government Ethics, telephone: 202–208–8000, extension 1137; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

A. *Background.* Under the Privacy Act, 5 U.S.C. 552a(e)(4), each agency is required to publish in the **Federal Register** notice of the establishment and revision of its systems notices. The Office of Government Ethics (OGE) used to be part of the Office of Personnel Management (OPM). Not long after OGE became a separate agency on October 1, 1989, OGE published in the **Federal Register** two Governmentwide systems of records (55 FR 6327–6331 (February 22, 1990)) that were previously among OPM's systems of records (old OPM/GOVT–4 & –8). This present notice revises those two existing Governmentwide systems of records and establishes five new internal OGE systems of records.

B. *Revised Systems of Records.* OGE is proposing to revise and rename its two existing Governmentwide systems of records: OGE/GOVT–1 (Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records) and OGE/GOVT–2 (Confidential Statements of Employment and Financial Interests). The proposed revisions to both systems include a change in the name of each system to: Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records (OGE/GOVT–1) and Executive Branch Confidential Financial Disclosure Reports (OGE/GOVT–2). Other proposed revisions include different systems managers, as well as additional routine uses including disclosures between agencies with respect to transferred or detailed employees, to Congress (on behalf of the subject individual), to an adjudicative body and the Department of Justice in connection with litigation, and to contractors and other non-Government employees working on ethics matters for agencies. In addition, a change in the pay threshold for the collection of the public financial disclosure reports would be reflected in OGE/GOVT–1.

C. *New Internal Systems of Records.* OGE is also proposing to establish five new internal systems of records to cover current and former OGE employees: OGE/INTERNAL–1 (Pay, Leave and Travel Records), OGE/INTERNAL–2 (Telephone Call Detail Records), OGE/INTERNAL–3 (Grievance Records), OGE/INTERNAL–4 (Computer Systems Activity and Access Records), and OGE/INTERNAL–5 (Employee Locator and Emergency Notification Records).

The records for maintenance in proposed OGE/INTERNAL–1 are those used to administer the pay, leave, and travel requirements of OGE. In this proposed system, the records could be disclosed for a number of routine uses compatible with the purposes for which the information in the records was collected, including to the Department of the Treasury, to the Internal Revenue Service, to authorized employees of another Federal agency that provides OGE with assistance in processing pay, leave and travel, to the Office of Management and Budget, to Congress, to a court or another adjudicative body, to an adjudicative body and the Department of Justice in connection with litigation, to labor organization officials for exclusive representation purposes or to the appropriate Department of Health and Human Services employees for matters related to paternity and child support. These documents are located in a secured environment and are maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedules 2 and 9.

The records for maintenance in OGE/INTERNAL–2 are those used to verify the telephone usage of current and former OGE employees, who receive telephone calls placed from or charged to telephones of the Office of Government Ethics. This proposed system is being established consistent with the Office of Management and Budget recommendation that agencies create a system of records to maintain telephone call detail records that are used to determine accountability for telephone usage. 52 FR 12990–12992 (04/20/87). In this proposed system, the records could be disclosed for a number of routine uses compatible with the purposes for which the information in the records was collected, including to telecommunications companies, to the General Services Administration, to Congress, to a court or other tribunal, to the Department of Justice in connection with litigation, to an appropriate Federal, State or local agency responsible for investigating possible violations of civil, criminal law or regulation, or to labor organization officials for exclusive representation purposes. These documents are located in a secured environment and are maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedule 12.

The records for maintenance in proposed OGE/INTERNAL–3 are those that contain information relating to grievances filed by OGE employees under administrative procedures authorized by 5 CFR part 771 as well as records of negotiated grievances and arbitration systems that OGE has or may establish through negotiations with recognized labor organizations in accordance with 5 U.S.C. 7121. In this proposed system, the records could be disclosed for a number of routine uses compatible with the purposes for which the information in the records was collected, including to Congress, a court or another adjudicative body, an adjudicative body and the Department of Justice in connection with litigation, to any source from which additional information is required in the course of processing a grievance, to the extent necessary to identify the individual,

inform the source of the purpose(s) of the request, and identify the type of information required, to labor organization officials for exclusive representation purposes, or to the Department of Labor for labor-management functions. These documents are located in a secured environment and are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules or other records disposition authority.

The records for maintenance in proposed OGE/INTERNAL–4 are those that contain data used by OGE systems and security personnel, or persons authorized to assist these individuals to plan and manage system services and to perform their official duties. In this proposed system, the records could be disclosed for a number of routine uses compatible with the purposes for which the information in the records was collected, including to investigate improper access or other improper activity related to computer system access; to initiate disciplinary or other such action; and/or where the record(s) may appear to indicate a violation or potential violation of the law, to refer such record(s) to the appropriate law enforcement agency for investigation. These documents are located in a secured environment and are maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedule 20.

The records for maintenance in proposed OGE/INTERNAL–5 are those used to identify an individual for OGE officials to contact should an emergency (medical or otherwise) occur while the employee is on the job. The information contained in this system as proposed could also be used by authorized OGE personnel to contact OGE employees working from home or, on infrequent occasions, to contact OGE employees absent from work about work-related issues. These documents are located in a secured environment and are maintained and disposed of in accordance with the appropriate OGE records disposition authority.

D. *Consultation with OMB and the Congress.* In accordance with 5 U.S.C. 552a(r) of the Privacy Act, the Office of Government Ethics (OGE) has provided a report on the new and proposed revised systems to the Office of Management and Budget (OMB) and the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate.

Approved: January 10, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, the Office of Government Ethics is publishing the following notice of proposed revised Privacy Act Governmentwide systems of records and proposed new OGE internal Privacy Act systems of records:

OGE/GOVT–1

SYSTEM NAME:

Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records.

SYSTEM LOCATION:

Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, and designated agency ethics offices.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on: The President, Vice President, and candidates for those offices; officers and employees including special Government employees, whose positions are classified above GS–15 of the General Schedule or at an equivalent rate of basic pay equal to or greater than 120% of the minimum rate of basic pay for GS–15; officers or employees in a position determined by the Director of the Office of Government Ethics to be of equal classification to GS–15 or above; Administrative Law Judges; excepted service employees in positions that are of a confidential or policymaking nature unless an employee or group of employees are exempted by the Director of the Office of Government Ethics; members of a uniformed service whose pay grade is at or in excess of O–7 under section 201 of title 37, United States Code; the Postmaster General, the Deputy Postmaster General, Governor of the Board of Governors of the U.S. Postal Service and each officer or employee of the U.S. Postal Service or Postal Rate Commission whose basic rate of pay is equal to or greater than 120% of the minimum rate of basic pay for GS–15; the Director of the Office of Government Ethics and each agency's primary designated agency ethics official; any civilian employee employed in the Executive Office of the President (other than a special Government employee) who holds a commission of appointment from the President; and nominees for positions requiring Senate confirmation. This system includes both former and current employees in these categories who have filed financial disclosure statements under the requirements of the Ethics in Government Act of 1978, as amended, or who otherwise come under the requirements of the Ethics Act. This system also contains information that is necessary for administering all provisions of the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989 (Pub. L. 101–194), as amended, and E.O. 12674 as modified on any current or former officer or employee of the executive branch.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains: Financial information such as salary, dividends, retirement benefits, interests in property, deposits in a bank and other financial institutions; information on gifts received; information on certain liabilities; information about positions as an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business, non-profit organization, labor organization, or educational institution; information about non-Government employment agreements, such as leaves of absence to accept Federal service, continuation of payments by a non-Federal employer; and information about assets placed in trust pending disposal. This system also includes other documents developed or information and material received by the Director of the Office of Government Ethics, or agency ethics officials in administering the Ethics of Government Act of 1978 or the Ethics Reform Act of 1989, as amended, which are retrieved by name or other personal identifier. Such other documents or information may include, but will not be limited to: ethics agreements, documentation of waivers issued to an officer or employee by an agency pursuant to section 208(b)(1) or section 208(b)(3) of title 18, U.S.C.; certificates of divestiture issued by the President or by the Director of OGE pursuant to section 502 of the Ethics Reform Act of 1989; information necessary for the rendering of ethics counseling, advice or formal advisory opinions, or the resolution of complaints; the actual opinions issued; and records of referrals and consultations regarding current and former employee's who are or have been the subject of conflicts of interest or standards of conduct inquiries or determinations, or employees who are alleged to have violated department, agency or Federal ethics statutes, rules, regulations or Executive orders. Such information may include

correspondence, documents or material concerning an individual's conduct, reports of investigations with related exhibits, statements, affidavits or other records obtained during an inquiry. These documents may include information related to personal and family financial and other business interests, positions held outside the Government and acceptance of gifts. The records may also contain reports of action taken by the agency, decisions and reports on legal or disciplinary action resulting from any referred administrative action or prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 31 U.S.C. 1353; E.O. 12674 (as modified by E.O. 12731).

PURPOSE(S):

All records are maintained in accordance with the requirements of the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989, as amended, and E.O. 12674 as modified. These requirements include the filing of financial status reports, reports concerning certain agreements between the covered individual and any prior private sector employer, ethics agreements, and the preservation of waivers issued to an officer or employee pursuant to section 208 of title 18 and certificates of divestiture issued pursuant to section 502 of the Ethics Reform Act. Such statements and related records are required to assure compliance with these acts and to preserve and promote the integrity of public officials and institutions. The requirements also include the possession or maintenance of information being researched or prepared for referral by ethics officials concerning employees or former employees of the Federal Government who are the subject of complaints of misconduct or alleged violations of ethics laws. These complaints may be referred to the Office of the Inspector General of the agency where the employee is or was employed or to the Department of Justice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose the information furnished by the reporting official, in accordance with provisions of section 105 of the Ethics in Government Act of 1978, as amended, to any requesting person.

b. To disclose, in accordance with section 105 of the Ethics in Government Act, as amended, and subject to the limitations contained in section 208(d)(1) of title 18, U.S.C., any determination granting an exemption pursuant to 208(b)(1) or 208(b)(3) of title 18, U.S.C., to any requesting person.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OGE becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.

e. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

f. By the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

h. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

i. To disclose the public financial disclosure report and any accompanying documents to reviewing officials in a new office, department or agency when an employee transfers or is detailed from a covered position in one office, department or agency to a covered position in another office, department or agency.

j. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.

k. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

Note: When an agency is requested to furnish such records to the Director or other authorized officials of the Office of Government Ethics (OGE), such a disclosure is to be considered as made to those officers and employees of the agency which co-maintains the records who have a need for the records in the performance of their official duties in accordance with the Ethics in Government Act of 1978, 5 U.S.C. app., and other ethics-related laws, Executive orders and regulations conferring pertinent authority on OGE, pursuant to the provision of the Privacy Act at 5 U.S.C. 552a(b)(1).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records are retrieved by the name or other programmatic identifier assigned to the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in file cabinets which may be locked or in specified areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls and other system-based protection methods.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration General Records Schedule for ethics program records, these records are generally retained for a period of six years after filing, or for such other period of time as is provided for in that schedule for certain specified types of ethics records. In cases where records are filed by, or with respect to, a nominee for an appointment requiring confirmation by the Senate when the nominee is not appointed and Presidential and Vice-Presidential

candidates who are not elected, the records are generally destroyed one year after the date the individual ceased being under Senate consideration for appointment or is no longer a candidate for office. However, if any records are needed in an ongoing investigation, they will be retained until no longer needed in the investigation. Destruction is by shredding or electronic deletion.

SYSTEM MANAGER(S) AND ADDRESS:

a. For records filed directly with the Office of Government Ethics by non-OGE employees: Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

b. For records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency: The DAEO at the department or agency concerned; and

c. For records filed with the Federal Election Commission (FEC) by candidates for President or Vice President: The General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact, as appropriate:

a. For records filed directly with OGE by non-OGE employees, contact the OGE Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

b. For records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency, contact the DAEO at the department or agency concerned; and

c. For records filed with the FEC by candidates for President or Vice President, contact the FEC General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

c. Dates of employment.

Individuals seeking to determine if a system contains information about them must also follow OGE's Privacy Act regulations regarding verification of identity (5 CFR part 2606).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the appropriate office as shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

c. Dates of employment.

d. Reasonably specify the record content being sought.

Individuals requesting access must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

Since the information in these records is updated on a periodic basis, most record corrections can be handled through established administrative procedures for updating the records. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the appropriate office shown in the Notification Procedure section.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person, such as a trustee, attorney, accountant, banker, or relative.

b. Federal officials who review the statements to make conflict of interest determinations.

c. Persons alleging conflict of interests or violations of other ethics laws and persons contacted during any investigation of the allegations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OGE/GOVT–2

SYSTEM NAME:

Executive Branch Confidential Financial Disclosure Reports.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Individual agency ethics offices or other designated agency offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and employees in the executive branch whose position is classified at GS–15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; officers or employees of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; members of a uniformed service whose pay grade is less than O–7 under 37 U.S.C. 201; and officers or employees in any other position determined by the Designated Agency Ethics Official to be of equal classification. In addition, all executive branch special Government employees as defined in 18 U.S.C. 202(a) and 5 CFR 2634.105(s) are required to file unless they are required to file public financial disclosure reports or their position has been excluded from filing. The system includes both current and former Federal employees in these categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain statements and amended statements of personal and family holdings and other interests in property; income; gifts and reimbursements; liabilities; agreements and arrangements; outside positions; and other information related to conflict of interest determinations. These statements may be certifications of no new interests for the reporting period, and may be agency supplemental or alternative confidential report forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674 (as modified by E.O. 12731).

PURPOSE(S):

These records are maintained to meet the requirements of or under Executive Orders 12674 as modified, 5 CFR part 2634, agency regulations thereunder, as well as section 107 of the Ethics in Government Act of 1978, as amended, concerning the filing of confidential financial disclosure reports. Such reports are required to assure compliance with ethics laws and regulations, and to determine if an actual or apparent conflict of interest exists between the employment of individuals by the Federal Government and their outside employment and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These confidential records and the information contained therein may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OGE becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.

c. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

d. To the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

e. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

f. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

g. To disclose the confidential financial disclosure report or certificate of no new interests and any accompanying documents to reviewing officials in a new office, department or agency when an employee transfers or is detailed from a covered position in one office, department or agency to a covered position in another office, department or agency.

h. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.

i. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

Note: When an agency is requested to furnish such records to the Director or other authorized officials of the Office of Government Ethics (OGE), such a disclosure is to be considered as made to those officers and employees of the agency which co-maintains the records who have a need for the records in the performance of their official duties in accordance with the Ethics in Government Act of 1978, 5 U.S.C. app., and other ethics-related laws Executive orders and regulations conferring pertinent authority on OGE, pursuant to the provision of the Privacy Act at 5 U.S.C. 552a(b)(1).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records are retrieved by the name or other programmatic identifier assigned to the individual on whom they are maintained.

SAFEGUARDS:

These records are located in locked file storage areas or in specified areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration General Records Schedule for such ethics program records, these records generally are retained for six years after filing, except when filed by or with respect to a nominee for an appointment requiring confirmation by the Senate when the nominee is not appointed. In such cases, the records are generally destroyed one year after the date the individual ceased being under Senate consideration for appointment. However, if any records are needed in an ongoing investigation, they will be retained until no longer needed in the investigation. Destruction is by shredding or electronic deletion.

SYSTEM MANAGER(S) AND ADDRESS:

a. For records filed directly with the Office of Government Ethics by non-OGE employees: Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; and

b. For records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency: The DAEO at the department or agency concerned.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact, as appropriate:

a. For records filed directly with OGE by non-OGE employees, contact the OGE Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; or

b. For records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency, contact the DAEO at the department or agency concerned.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

c. Dates of employment.

Individuals seeking to determine if a system contains information about them must also follow OGE's Privacy Act regulations regarding verification of identity (5 CFR part 2606).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the Designated Agency Ethics Official or designee at the agency where the reports were filed. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

c. Dates of employment.

d. Reasonably specify the record content being sought.

Individuals requesting access must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

Since the information in these records is updated on a periodic basis, most

record corrections can be handled through established administrative procedures for updating records. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the Designated Agency Ethics Official or designee at the agency where the reports were filed.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person such as a trustee, attorney, accountant, banker, or relative.

b. Federal officials who review the statements to make conflict of interest determinations.

c. Persons alleging conflicts of interests or other violations of ethics laws and persons contacted during any investigation of the allegations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OGE/INTERNAL–1

SYSTEM NAME:

Pay, Leave and Travel Records.

SYSTEM LOCATION:

Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Office of Government Ethics.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains various records relating to pay, leave, and travel. This includes information such as: Name; date of birth; social security number; home address; grade; employing organization; timekeeper number; salary; pay plan; number of hours worked; leave accrual rate, usage, and balances; Civil Service Retirement and Federal Retirement System contributions; FICA withholdings; Federal, state, and local tax withholdings; Federal Employee's Group Life Insurance withholdings; Federal Employee's Health Benefits withholdings; charitable deductions; allotments; garnishment documents; travel expenses; and information on the leave transfer program and fare subsidy program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5501, 5525; 5 U.S.C. App. (Ethics in Government Act of 1978); 44 U.S.C. 3101, 3102.

PURPOSE(S):

These records are used to administer the pay, leave, and travel requirements of the Office of Government Ethics and in the administration of the transit fare subsidy program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained therein may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OGE becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.

c. To disclose information to the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

e. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

f. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.

g. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-OGE employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

h. To disclose information to the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness.

i. To disclose information to the Social Security Administration (SSA) and the Department of the Treasury as required in accordance with their authorized functions, including Federal Insurance Collections Act withholding and benefits for the SSA and the issuance of paychecks and savings bonds for the Treasury.

j. To disclose information to State offices of unemployment compensation.

k. To disclose information to Federal Employees Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims or records reconciliations.

l. To disclose information to the Internal Revenue Service and State and local tax authorities.

m. To disclose information to any source from which additional information is requested relevant to an OGE determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

n. To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

o. To disclose information to the authorized employees of another Federal agency that provides the Office of Government Ethics with manual and automated assistance in processing pay, leave, and travel.

p. To disclose information to officials of the Office of Special Counsel, Office of Personnel Management, Federal Labor Relations Authority, Merit Systems Protection Board or the Equal Employment Opportunity Commission when requested in the performance of

their authorized duties, including respectively in connection with cases and appeals, special studies of the civil service and other merit systems, review of personnel matters and practices, investigations of alleged or possible prohibited personnel and discrimination practices, Hatch Act matters, whistleblower protections, compliance with employee selection procedures and investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

q. To disclose information in compliance with orders, interrogatories, and other information requests relevant to garnishment orders that OGE is required to comply with in accordance with 42 U.S.C. 659 (support garnishment) and 5 U.S.C. 5520a (commercial garnishment) to a court of competent jurisdiction, an authorized official, or to an authorized State agency as defined in 5 CFR parts 581 and 582.

r. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

s. To disclose the names, social security numbers, home addresses, date of birth, date of hire, quarterly earnings, employer identifying information, and State of hire of employees to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. 104–193, as amended.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records are retrieved by the name, social security number, or other identifier assigned to the individual on whom they are maintained.

SAFEGUARDS:

Paper records are maintained in locked file storage areas or in specified areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RETENTION AND DISPOSAL:

These records are retained for varying periods of time in accordance with the National Archives and Records Administration General Records Schedule 2 (Payrolling and Pay Administration Records) and 9 (Travel and Transportation Records). Disposal of paper records is by shredding, and of electronic records by deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.
b. Social Security Number.
c. Dates of employment.

Individuals seeking to determine if a system contains information about them must also follow OGE's Privacy Act regulations regarding verification of identity (5 CFR part 2606).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Social Security Number.
c. Dates of employment.

Individuals requesting access must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Social Security Number.
c. Dates of employment.

Individuals requesting amendment must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual to whom the record pertains.

b. Office of Government Ethics officials responsible for pay, leave, and travel requirements.

c. Other official personnel documents of the Office of Government Ethics.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OGE/INTERNAL–2

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OGE employees who are assigned OGE telephone extension numbers, persons performing services on behalf of OGE or are authorized to use OGE telephone services, and persons who make or receive telephone calls charged to the Office of Government Ethics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. (Ethics in Government Act of 1978); 44 U.S.C. 3101.

PURPOSE(S):

These records are used to verify telephone usage and to resolve billing discrepancies. The records may also be used to allocate the costs of telephone services to OGE's various offices, to identify unofficial telephone calls and as a basis for taking action when OGE employees or other persons misuse or abuse OGE telephone services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained therein may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OGE becomes aware of an

indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.

c. To disclose information to the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

e. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

f. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.

g. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-OGE employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

h. To disclose information to OGE employees or other persons to determine their individual responsibility for telephone calls.

i. To disclose information to a telecommunications company or another Federal agency providing telephone services or telecommunications services to permit servicing the account;

j. To disclose information in response to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

k. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system, pursuant to 5 U.S.C. 552a(b)(12), to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records are retrieved by name, telephone extension number or some other identifier assigned to the individual on whom they are maintained.

SAFEGUARDS:

Paper records are maintained in file cabinets that may be locked or in specified areas to which only authorized personnel have access. Automated records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RETENTION AND DISPOSAL:

These records are retained and disposed of in accordance with the National Archives and Records Administration General Records Schedule 12. Disposal of manual records is by shredding, and disposal of electronic records is by deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact, the Deputy Director, Office of Administration and Information Management, Office of Government Ethics.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.

b. Telephone extension number assigned to the individual by OGE.

c. Description of information being sought, including the time frame of information being sought.

Individuals seeking to determine if a system contains information about them must also follow OGE's Privacy Act regulations regarding verification of identity (5 CFR part 2606).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the Deputy Director, Administration and Information Management, Office of Government Ethics. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Telephone extension number assigned to the individual by OGE.

c. Description of information being sought, including the time frame of information being sought.

Individuals requesting access must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Telephone extension number assigned to the individual by OGE.

c. Description of information to be amended, including the time frame of information being sought.

Individuals requesting amendment of records must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual on whom the record is maintained.

b. OGE telephone assignment records.

c. Call Detail Reports or telephone bills provided by suppliers of telephone services.

d. Results of administrative inquiries relating to assignment of responsibility for placement of specific long-distance or local calls.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OGE/INTERNAL–3

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former OGE employees who have filed grievances under OGE's administrative grievance procedures or under a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by OGE employees under administrative procedures authorized by 5 CFR part 771, and records of negotiated grievance and arbitration systems that OGE has or may establish through negotiations with recognized labor organizations in accordance with 5 U.S.C. 7121. These files contain all documents related to the grievance which may include statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original decision, and related correspondence and exhibits, employment history, arbitrator's decision or report, record of appeal to the Federal Labor Relations Authority, and a variety of employment and personnel records associated with the grievance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. (Ethics in Government Act of 1978); 5 U.S.C. 7121; 5 CFR part 771.

PURPOSE(S):

These records are used to process grievances submitted by OGE employees for personal relief in a matter of concern or dissatisfaction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained therein may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OGE becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.

c. To disclose information by the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

e. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

f. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.

g. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-OGE employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

h. To disclose information to any source from which additional information is required in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

i. To disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

j. To disclose information to officials of the Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties, including respectively in connection with cases and appeals, special studies of the civil service and other merit systems, review of personnel matters and practices, investigations of alleged or possible prohibited personnel and discrimination practices, Hatch Act matters, whistleblower protections, compliance with employee selection procedures and investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

k. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

l. To provide information to the Department of Labor in carrying out its functions regarding labor-management relations in the Federal service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Paper records are maintained in locked file storage areas or in specified

areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RETENTION AND DISPOSAL:

These records are retained for four years after closing of the case (or as otherwise agreed upon through the collective bargaining process), then disposed of. Disposal of paper records is by shredding, and disposal of electronic records is by deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

NOTIFICATION PROCEDURE:

Individuals may contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics regarding the existence of grievance records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Approximate date of closing of the case and kind of action taken.

c. Organizational component involved.

RECORD ACCESS PROCEDURE:

An individual may request access to the official copy of the grievance file by contacting the Deputy Director, Office of Administration and Information Management, Office of Government Ethics. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Approximate date of closing of the case and kind of action taken.

c. Organizational component involved.

Individuals requesting access must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records which have been the subject of an administrative, judicial, or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request amendment of their records to correct factual errors should contact the OGE Office of Administration and Information Management. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Approximate date of closing of the case and kind of action taken.

c. Organizational component involved.

Individuals requesting amendment must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual on whom the record is maintained.

b. Testimony of witnesses.

c. OGE officials.

d. Related correspondence from organizations or persons.

e. Union officials (if information deals with a negotiated grievance matter).

f. Department of Labor, Federal Labor Relations Authority, or arbitrators involved in the grievance (if information deals with a negotiated grievance matter).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OGE/INTERNAL–4

SYSTEM NAME:

Computer Systems Activity and Access Records.

SYSTEM LOCATION:

Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who access OGE network computers or mainframe/enterprise servers, including individuals who send and receive electronic communications, access Internet sites, or access system databases, files, or applications from OGE computers or who send electronic communications to OGE computers; and individuals attempting to access OGE computers or systems without authorization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system of records may include: Records on the use of the interoffice and Internet e-mail systems, including the e-mail address of the sender and receiver of the e-mail message, subject, date, and time; records on user access to OGE's office automation networks; records relating to verification or authorization of an individual's access to systems, files, or applications, such as user IDs, user names, title, and agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. (Ethics in Government Act of 1978); 40 U.S.C. 1441 note.

PURPOSE(S):

The data in this system of records is used by OGE systems and security personnel, or persons authorized to assist these personnel, to plan and manage system services, to monitor for improper use, and to otherwise perform their official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained therein may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OGE becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply a subpoena issued by a judge of a court of competent jurisdiction.

c. To disclose information to the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

e. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed

to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

f. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-OGE employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

g. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.

h. To disclose information to a Federal, State, local, tribal or foreign agency, or a private contractor, in response to its request in connection with the hiring or retention of any employee, the issuance of a security clearance, the conduct of a security or suitability investigation, the reporting of an investigation on an employee, the letting of a contract, or the issuance of a grant, license, or other benefit to an employee by the agency, but only to the extent that the information disclosed is relevant and necessary to the agency's decision on the matter.

i. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records may be retrieved by user name, user ID, e-mail address, or other identifying search term employed, depending on the record category.

SAFEGUARDS:

These records are located in locked storage areas with controlled entry, or automated systems to which only authorized personnel have access. The use of password protection identification features and other automated data processing system protection methods also restrict access.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 20, records of verification, authorization, computer system access, and other activities generated by the system are retained for one year, unless required for management review, then deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.

b. Assigned computer location.

c. Description of information to be sought (including the time frame during which the record(s) may have been generated).

Individuals seeking to determine if a system contains information about them must also follow OGE's Privacy Act regulations regarding verification of identity (5 CFR part 2606).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Assigned computer location.

c. Description of information being sought (including the time frame during which the record(s) may have been generated).

Individuals requesting access must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Assigned computer location.

c. Description of information to be amended (including the time frame during which the record(s) may have been generated).

Individuals requesting amendment must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. Individuals covered by the system.

b. Office of Government Ethics management officials.

c. Computer activity logs and tracking systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OGE/INTERNAL–5

SYSTEM NAME:

Employee Locator and Emergency Notification Records.

SYSTEM LOCATION:

Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Office of Government Ethics.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding the organizational location and telephone extension of individual OGE employees. The system also contains the home address and telephone number of the employee and the name, relationship, and telephone number of an individual or individuals to contact in the event of a medical or other emergency involving the employee. The system contains an additional freeform "note" field for personal medical information for employees who choose to voluntarily complete it.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. (Ethics in Government Act of 1978).

PURPOSE(S):

Information is collected for this system in order to identify an individual for OGE officials to contact, should an emergency of a medical or other nature involving the employee occur while the employee is on the job. Also, these records may be used by authorized OGE

personnel to contact individuals working from home or at an authorized alternative worksite or, on infrequent occasions, to contact individuals absent from work about work-related issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained therein may be used:

a. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.

b. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Paper records are maintained in locked file storage areas or in specified areas to which only authorized personnel have access. Electronic records are maintained in a secured electronic system accessible only to on-site OGE employees. An individual OGE employee has access only to his or her own record. In addition, individual records in the system are available to authorized OGE personnel whose duties require access.

RETENTION AND DISPOSAL:

In accordance with the applicable OGE records disposal schedule, these records are retained as long as the individual is an employee of OGE. Disposal of paper records is by shredding, and disposal of electronic records is by deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

NOTIFICATION PROCEDURE:

OGE employees wishing to inquire whether this system of records contains information about them may access the system directly or contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.

RECORD ACCESS PROCEDURES:

All current OGE employees have full access to and complete control over their individual record and may access the information at any time, or they may contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

Individuals requesting access must also follow OGE Privacy Act regulations regarding verification of identify and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

OGE employees have full access to and complete control over their individual record and may amend information at any time, or they may contact the Systems Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

Individuals requesting amendment must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual on whom the record is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–1101 Filed 1–21–03; 8:45 am]
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Wednesday,
January 22, 2003

Part III

Department of Housing and Urban Development

Indian Housing Block Grant Allocation Formula: Notice of Proposed Negotiated Rulemaking Committee Membership; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4676–N–05]

Indian Housing Block Grant Allocation Formula: Notice of Proposed Negotiated Rulemaking Committee Membership

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed negotiated rulemaking committee membership.

SUMMARY: HUD announces its list of proposed members for its Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee, and requests public comments on the proposed membership. The committee will negotiate a proposed rule to revise the allocation formula used under the Indian Housing Block Grant (IHBG) Program. This document follows publication of July 16, 2001, and July 5, 2002, notices advising the public of HUD's intent to establish the negotiated rulemaking committee and soliciting nominations for membership on the committee.

DATES: *Comment Due Date:* February 21, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone, (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

With tribal participation, HUD developed the March 12, 1998 (63 FR 12349), final rule that implemented the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101 *et seq.*) (NAHASDA). Following the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570), the committee negotiated the March 12, 1998, final rule, which created a new 24 CFR part 1000 containing the Indian Housing Block Grant (IHBG) regulations. NAHASDA established the IHBG Program by reorganizing housing assistance to Native Americans and eliminating and consolidating a number of HUD assistance programs. In addition to creating a single housing assistance program, NAHASDA provides federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government.

On July 5, 2002 (67 FR 44787), HUD published a notice of intent to establish a committee to discuss and negotiate a proposed rule that would revise the allocation formula used under the IHBG Program. The amount of assistance made to Indian tribes is determined using this formula, developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of this formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301–1000.340). In general, the amount of funding for a tribe is the sum of the formula's need component and the Formula Current Assisted Stock (FCAS) component, subject to a minimum funding amount authorized by § 1000.328. Based on the amount of funding appropriated annually for the IHBG Program, HUD calculates the annual grant for each tribe and conveys this information to Indian tribes. An Indian Housing Plan (IHP) for the tribe is then submitted to HUD. If the IHP is found to be in compliance with the statutory and regulatory requirements, the grant is made. In federal fiscal year 2001, HUD allocated approximately $643.4 million to Indian tribes.

Section 1000.306 of the IHBG Program regulations provides that the allocation formula shall be reviewed within five years after issuance. This 5-year period does not close until March 2003, however, the Omnibus Indian Advancement Act (Pub. L. 105–568, approved December 27, 2000), makes several statutory changes to the IHBG allocation formula that HUD has decided to implement through rulemaking. Accordingly, HUD believes this would be an appropriate time to review the IHBG formula.

HUD first published a notice of intent to establish a negotiated rulemaking committee on July 16, 2001 (66 FR 37098), but due to the events of September 11, 2001, HUD was not able to act on the notice within the timeframes originally intended. Accordingly, HUD published the July 5, 2002, notice, which (1) again advised the public of HUD's intent to establish the negotiated rulemaking committee; (2) solicited public comments on the proposed membership of the committee; (3) explained how persons could be nominated for membership to the committee; and (4) announced the names of those who successfully completed applications under the original July 16, 2001, notice. In particular, HUD solicited committee members from among elected officers of tribal governments (or authorized designees of those tribal governments) with a definable stake in the outcome of a proposed rule.

II. Proposed Membership of Negotiated Rulemaking Committee

This notice announces HUD's list of proposed members to the negotiated rulemaking committee, and requests public comment on the proposed committee membership. In making its proposed selections for membership on the negotiated rulemaking committee, HUD's goal was to establish a committee whose membership reflects a balanced representation of Indian tribes. Selections were based on those nominees who met the eligibility criteria for membership contained in the two **Federal Register** notices. No distinction was made between persons nominated pursuant to the original July 16, 2001, notice and those nominated pursuant to the July 5, 2002, notice. In addition to the tribal members of the committee, there will be two HUD representatives on the negotiated rulemaking committee. After consideration of all the public comments received on this proposed list of committee members, HUD will announce the final composition of the negotiated rulemaking committee in a subsequent **Federal Register** notice.

HUD proposes to make the following selections for tribal membership on the negotiated rulemaking committee:

Eddie L. Tullis, Tribal Chairman, Poarch Band of Creek Indians, Atmore, Alabama.

Joel M. Frank, Housing Director, Seminole Tribe of Florida, Hollywood, Florida.

Beasley Denson, Vice Chief, Mississippi Band of Choctaw Indians, Choctaw, Mississippi.

Bruce K. LaPointe, Development Director, Sault St. Marie Housing Authority, Sault Ste. Marie, Michigan.

Bill Anoatubby, Governor, The Chickasaw Nation, Ada, Oklahoma.

Russell Sossamon, Executive Director, Housing Authority of the Choctaw Nation of Oklahoma, Hugo, Oklahoma.

Robert B. Carlile III, Executive Director, Citizen Potawatomi Nation Housing Authority, Shawnee, Oklahoma.

Marvin Jones, Executive Director, Community Services, Cherokee Nation, Tahlequah, Oklahoma.

Jack Sawyers, Executive Director, Utah Paiute Tribal Housing Authority, Cedar City, Utah.

Robert Gauthier, Executive Director, Salish and Kootenai Housing Authority, Pablo, Montana.

Wayne Ducheneaux, Executive Director, Cheyenne River Housing Authority, Eagle Butte, South Dakota.

Darlene Tooley, Executive Director, Northern Circle Indian Housing Authority, Ukiah, California.

Michael L. Reed, Chief Executive Officer, Cocopah Indian Housing and Development, Somerton, Arizona.

Terry Hudson, Executive Director, Northern Pueblos Housing Authority, Espanola, New Mexico.

Judith Marasco, Executive Director, Yurok Indian Housing Authority, Klamath, California.

Ervin Chavez, Vice Chairman, Board of Commissioners, Navajo Housing Authority, Window Rock, Navajo Nation, Arizona.

Brian Wallace, Chairman, Washoe Tribe of Nevada and California, South Gardnerville, Nevada.

Larry Coyle, Tribal Council Member, Cowlitz Tribe, Oakville, Washington.

Tim King, Tribal Council Member, Samish Indian Nation, Seattle, Washington.

Virginia Brings Yellow, Tribal Council Member, Quinault Indian Nation, Taholah, Washington.

Marty Shuravloff, Executive Director, Kodiak Island Housing Authority, Kodiak, Alaska.

Blake Y. Kazama, Executive Director, Tlingit-Haida Regional Housing Authority, Juneau, Alaska.

Ron Hoffman, Executive Director, Association of Village Council Presidents Regional Housing Authority, Bethel, Alaska.

Carol Gore, Executive Director, Cook Inlet Housing Authority, Anchorage, Alaska.

III. Committee Meetings

At this time, HUD has not yet finalized the schedule for the committee meetings. Advance notice of committee meetings will be published in the **Federal Register**. Meetings of the negotiated rulemaking committee will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public will be provided with an opportunity to make statements during the meeting to the extent that time permits, and file written statements with the committee for its consideration. In the event that the logistics of the committee meetings are changed, HUD will advise the public through **Federal Register** notice.

Dated: January 10, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–1272 Filed 1–21–03; 8:45 am]

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Part IV

Department of Housing and Urban Development

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2003; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4803–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2003

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors.

SUMMARY: This Notice announces revised Annual Adjustment Factors (AAFs) for adjustment of Section 8 contract rents on housing assistance payment contract anniversaries for calendar months commencing after the date of publication of this Notice. The AAFs are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) survey and from HUD's Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: January 22, 2003.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Housing Voucher Management Operations Division, Office of Housing Voucher Program, Office of Public and Indian Housing, (202) 708–0477 can respond to questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Allison Manning, Office of Special Needs Assistance Programs, Office of Community Planning and Development, (202) 708–1234 for questions regarding the Single Room Occupancy Moderate Rehabilitation program; Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, (202) 708–3000, for questions relating to all other Section 8 programs. Lynn A. Rodgers, Economic and Market Analysis Division, Office of Policy Development and Research (202) 708–0590, is the contact for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the "800" TTY number, the above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The sections of this Notice explain how AAFs are applied to various Section 8 programs:

- Section 1—How AAFs are used in particular Section 8 project-based assistance programs.
- Section 2—When and how to apply the statutory 1 percent reduction to AAFs.
- Section 3—Procedures for adjusting rent in three section 8 program categories.
- Section 4—How to find the applicable AAF.
- Section 5—Geographic Areas.
- Section 6—How HUD calculates AAFs.

I. Applying AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payments programs, during the original (*i.e.*, pre-renewal) term of the Housing Assistance Payments (HAP) contract. Three categories of Section 8 programs use the AAFs:

Category 1—The Section 8 new construction and substantial rehabilitation programs and the moderate rehabilitation program.

Category 2—The Section 8 loan management (LM) and property disposition (PD) programs.

Category 3—The Section 8 project-based certificate program.

Each Section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the voucher program, or to determine renewal rents or budget-based rents.

- *Renewal Rents.* AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are determined by applying a state-by-state operating cost adjustment factor (OCAF) published by HUD.
- *Voucher Program.* AAFs are not used for any purpose in the Section 8 voucher program.
- *Budget-based Rents.* AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the loan management (LM) program (24 CFR part 886, subpart A) or under the property disposition (PD) program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 207.19(e). Budget-based adjustments are used for most Section 8/202 projects.
- *Certificate Program.* In the past, AAFs were used to adjust the contract rent (including manufactured home space rentals) in the tenant-based certificate program. However, this program has now been terminated. All tenancies in the tenant-based certificate program have been converted to the Voucher Program. AAFs are still used for adjustment of contract rent for outstanding HAP contracts under the project-based certificate program.

How AAF Is Applied in the Moderate Rehabilitation Programs

Under the Section 8 moderate rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent. For the other covered programs, the AAF is applied to the whole amount of the pre-adjustment contract rent.

II. When To Use Reduced AAF (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

—For all tenancies assisted in the Section 8 project-based certificate program.

—In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

To implement the law, HUD publishes two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. Each AAF in Table 2 has been computed by subtracting 0.01

from the annual adjustment factor in Table 1.

III. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices. The notices are issued by the Office of Housing and the Office of Public and Indian Housing.

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for three program categories:

—The Section 8 new construction and substantial rehabilitation programs (including the Section 8 state agency program); and the moderate rehabilitation programs (including the moderate rehabilitation single room occupancy program).
—The Section 8 loan management (LM) Program (Part 886, Subpart A) and property disposition (PD) Program (Part 886 Subpart C).
—The Section 8 project-based certificate [PBC] program.

Category 1: Section 8 New Construction, Substantial Rehabilitation and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless the contract rent is reduced by comparability):

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (LM; Part 886, Subpart A) and Property Disposition Program (PD; Part 886 Subpart C)

At this time, rent adjustment by the AAF in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Project-based Certificate Program (PBC: Part 983)

The following procedures are used to adjust contract rent for outstanding HAP contracts in the Section 8 Project-based Certificate program:

—The Table 2 AAF is always used. The Table 1 AAF is not used.
—The Table 2 AAF is always applied before determining comparability (rent reasonableness).
—Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.

IV. How to Find the AAF

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent—*i.e.*, where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent—*i.e.*, where the tenant pays for the highest cost utility.

- The applicable AAF is selected as follows:
- Determine whether Table 1 or Table 2 is applicable.
- In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.
- Determine whether the highest cost utility is or is not included in contract rent for the contract unit.
- If highest cost utility is included, select the AAF from the column for "highest cost included". If highest cost utility is not included, select the AAF from the column for "utility excluded".

V. AAF Areas

Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

—For the metropolitan parts of the ten HUD regions exclusive of CPI areas;
—For the nonmetropolitan parts of these regions; and
—For separate metropolitan AAF areas for which local CPI survey data are available.

With the exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because of their close correspondence to housing market area definitions.

The exceptions are for certain large metropolitan areas, where HUD considers the area covered by the OMB definition to be larger than appropriate for use as a housing market area definition. In those areas, HUD has deleted some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

Metropolitan area	Deleted counties
Chicago, IL	DeKalb, Grundy and Kendall Counties.
Cincinnati-Hamilton, OH–KY–IN	Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX	Henderson County.
Flagstaff, AZ–UT	Kane County, UT.
New Orleans, LA	St. James Parish.
Washington, DC–VA–MD–WV	Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George, and Warren counties in Virginia.

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk (*) next to the area name. The asterisk indicates that there is a difference between the OMB metropolitan area and the HUD AAF area definition for these areas.

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the appropriate HUD regional metropolitan or nonmetropolitan AAFs are used.

The AAF area definitions shown in Schedule C are listed in alphabetical order by state. The associated HUD region is shown next to each state name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan CPI areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the metropolitan CPI areas (in those states that have such areas) are the non-CPI metropolitan and nonmetropolitan counties of each state. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the Table as "STATE: Hawaii," which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey; all other areas in Alaska use the Northwest/Alaska nonmetropolitan AAFs.

VI. How HUD Calculates AAFS

For Areas With CPI Surveys

(1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data.

(2) The "Highest Cost Utility Included" column in Schedule C was calculated by weighting the rent and utility components with the corresponding components from the 1990 Census.

(3) The "Highest Cost Utility Excluded" column in Schedule C was calculated by eliminating the effect of heating costs that are included in the rent of some of the units in the CPI surveys.

For Areas Without CPI Surveys

(1) HUD used random digit dialing (RDD) regional surveys to calculate AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls, and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

(2) The change in rent with the highest cost utility included in the rent was calculated using the average of the ratios of gross rent in the current year RDD survey divided by the previous year's for the respective metropolitan or nonmetropolitan parts of the HUD region.

(3) The change in rent with the highest cost utility excluded (*i.e.*, paid separately by the tenant) was calculated in the same manner, after subtracting the median values of utilities costs from the gross rents in the two years. The median cost of utilities was determined from the units in the RDD sample which reported that all utilities were paid by the tenant. Accordingly, the Department publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments Programs as set forth in the Tables.

Dated: January 9, 2003.

Mel Martinez,

Secretary.

BILLING CODE 4210-62-P

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 112102

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
NEW ENGLAND METROPOLITAN	1.034	1.029
NEW YORK/NEW JERSEY METROPOLITAN	1.024	1.014
MID-ATLANTIC METROPOLITAN	1.032	1.023
SOUTHEAST METROPOLITAN	1.029	1.018
MIDWEST METROPOLITAN	1.024	1.022
SOUTHWEST METROPOLITAN	1.034	1.020
GREAT PLAINS METROPOLITAN	1.026	1.025
ROCKY MOUNTAIN METROPOLITAN	1.038	1.024
PACIFIC/HAWAII METROPOLITAN	1.060	1.044
NORTHWEST/ALASKA METROPOLITAN	1.037	1.021
STATE HAWAII	1.006	1.007
MSA ANCHORAGE, AK	1.036	1.024
MSA ATLANTA, GA	1.063	1.053
PMSA BALTIMORE, MD	1.059	1.070
*COUNTY BERKELEY, WV	1.055	1.072
PMSA BOULDER-LONGMONT, CO	1.067	1.056
PMSA BREMERTON, WA	1.076	1.056
PMSA BROCKTON, MA	1.076	1.063
*CHICAGO, IL	1.050	1.053
*COUNTY CLARKE, VA	1.056	1.072
*COUNTY CULPEPER, VA	1.057	1.071

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
NEW ENGLAND NONMETROPOLITAN	1.036	1.034
NEW YORK/NEW JERSEY NONMETROPOLITAN	1.025	1.016
MID-ATLANTIC NONMETROPOLITAN	1.037	1.022
SOUTHEAST NONMETROPOLITAN	1.036	1.017
MIDWEST NONMETROPOLITAN	1.023	1.020
SOUTHWEST NONMETROPOLITAN	1.038	1.016
GREAT PLAINS NONMETROPOLITAN	1.025	1.017
ROCKY MOUNTAIN NONMETROPOLITAN	1.040	1.023
PACIFIC/HAWAII NONMETROPOLITAN	1.046	1.026
NORTHWEST/ALASKA NONMETROPOLITAN	1.033	1.014
PMSA AKRON, OH	1.047	1.029
PMSA ANN ARBOR, MI	1.027	1.025
PMSA ATLANTIC-CAPE MAY, NJ	1.040	1.028
PMSA BERGEN-PASSAIC, NJ	1.039	1.041
PMSA BOSTON, MA-NH	1.075	1.064
PMSA BRAZORIA, TX	1.063	1.036
PMSA BRIDGEPORT, CT	1.039	1.041
*COUNTY BROWN, OH	1.035	1.046
*CINCINNATI, OH-KY-IN	1.039	1.045
PMSA CLEVELAND-LORAIN-ELYRIA, OH	1.046	1.029
*DALLAS, TX	1.050	1.029

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS PREPARED ON 112102

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA DANBURY, CT	1.039	1.041
PMSA DENVER, CO	1.068	1.056
PMSA DUTCHESS COUNTY, NY	1.039	1.041
PMSA FLINT, MI	1.027	1.025
PMSA FORT WORTH-ARLINGTON, TX	1.053	1.029
PMSA GALVESTON-TEXAS CITY, TX	1.065	1.036
*COUNTY GRANT, KY	1.035	1.046
*COUNTY GRUNDY, IL	1.049	1.054
PMSA HAMILTON-MIDDLETOWN, OH	1.039	1.045
PMSA HOUSTON, TX	1.059	1.036
PMSA JERSEY CITY, NJ	1.039	1.041
MSA KANSAS CITY, MO-KS	1.059	1.045
PMSA KENOSHA, WI	1.049	1.054
PMSA LAWRENCE, MA-NH	1.076	1.063
PMSA LOWELL, MA-NH	1.075	1.064
PMSA MIAMI, FL	1.041	1.032
PMSA MILWAUKEE-WAUKESHA, WI	1.033	1.026
PMSA MONMOUTH-OCEAN, NJ	1.039	1.041
PMSA NASSAU-SUFFOLK, NY	1.039	1.041
PMSA NEW HAVEN-MERIDEN, CT	1.039	1.041
*COUNTY WESTCHESTER, NY	1.039	1.040
*COUNTY DE KALB, IL	1.049	1.054
PMSA DETROIT, MI	1.027	1.025
PMSA FITCHBURG-LEOMINSTER, MA	1.076	1.063
PMSA FORT LAUDERDALE, FL	1	1.032
*COUNTY GALLATIN, KY		1.047
PMSA GARY, IN		1.055
PMSA GREELEY, CO		1.056
PMSA HAGERSTOWN, MD	1.	1.071
*COUNTY HENDERSON, TX	1.0	1.028
*COUNTY JEFFERSON, WV	1.	1.072
PMSA KANKAKEE, IL	1.048	1.055
*COUNTY KENDALL, IL	1.049	1.054
*COUNTY KING GEORGE, VA	1.055	1.072
PMSA LOS ANGELES-LONG BEACH, CA	1.061	1.054
PMSA MANCHESTER, NH	1.076	1.063
PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ	1.039	1.041
MSA MINNEAPOLIS-ST. PAUL, MN-WI	1.058	1.058
PMSA NASHUA, NH	1.075	1.064
PMSA NEW BEDFORD, MA	1.076	1.063
PMSA NEW YORK, NY	1.039	1.040
PMSA NEWARK, NJ	1.039	1.041

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 112102

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA NEWBURGH, NY-PA	1.039	1.041
*COUNTY OHIO, IN	1.036	1.046
PMSA ORANGE COUNTY, CA	1.060	1.054
PMSA PHILADELPHIA, PA-NJ	1.040	1.027
PMSA PORTLAND-VANCOUVER, OR-WA	1.036	1.030
PMSA RACINE, WI	1.034	1.026
MSA ST. LOUIS, MO-IL	1.047	1.034
MSA SAN DIEGO, CA	1.082	1.081
PMSA SAN JOSE, CA	1.110	1.106
PMSA SANTA ROSA, CA	1.113	1.106
PMSA STAMFORD-NORWALK, CT	1.039	1.041
MSA TAMPA-ST. PETERSBURG-CLEARWATER, FL	1.045	1.042
PMSA VALLEJO-FAIRFIELD-NAPA, CA	1.113	1.106
PMSA VINELAND-MILLVILLE-BRIDGETON, NJ	1.042	1.027
*WASHINGTON, DC-MD-VA	1.061	1.069
PMSA WILMINGTON-NEWARK, DE-MD	1.039	1.028
PMSA OAKLAND, CA	1.111	1.106
PMSA OLYMPIA, WA	1.076	1.056
*COUNTY PENDLETON, KY	1.036	1.046
PMSA PITTSBURGH, PA	1.045	1.013
PMSA PORTSMOUTH-ROCHESTER, NH-ME	1.076	1.063
PMSA RIVERSIDE-SAN BERNARDINO, CA	1.064	1.054
PMSA SALEM, OR	1.037	1.030
PMSA SAN FRANCISCO, CA	1.111	1.106
PMSA SANTA CRUZ-WATSONVILLE, CA	1.112	1.106
PMSA SEATTLE-BELLEVUE-EVERETT, WA	1.069	1.056
PMSA TACOMA, WA	1.074	1.056
PMSA TRENTON, NJ	1.039	1.041
PMSA VENTURA, CA	1.060	1.054
*COUNTY WARREN, VA	1.057	1.071
PMSA WATERBURY, CT	1.039	1.041
PMSA WORCESTER, MA-CT	1.076	1.063

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 112102

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
NEW ENGLAND METROPOLITAN	1.024	1.019	NEW ENGLAND NONMETROPOLITAN	1.026	1.024
NEW YORK/NEW JERSEY METROPOLITAN	1.015	1.004	NEW YORK/NEW JERSEY NONMETROPOLITAN	1.016	1.006
MID-ATLANTIC METROPOLITAN	1.022	1.013	MID-ATLANTIC NONMETROPOLITAN	1.027	1.012
SOUTHEAST METROPOLITAN	1.019	1.008	SOUTHEAST NONMETROPOLITAN	1.026	1.007
MIDWEST METROPOLITAN	1.014	1.012	MIDWEST NONMETROPOLITAN	1.013	1.010
SOUTHWEST METROPOLITAN	1.024	1.010	SOUTHWEST NONMETROPOLITAN	1.028	1.006
GREAT PLAINS METROPOLITAN	1.016	1.015	GREAT PLAINS NONMETROPOLITAN	1.016	1.008
ROCKY MOUNTAIN METROPOLITAN	1.028	1.014	ROCKY MOUNTAIN NONMETROPOLITAN	1.030	1.013
PACIFIC/HAWAII METROPOLITAN	1.050	1.034	PACIFIC/HAWAII NONMETROPOLITAN	1.036	1.016
NORTHWEST/ALASKA METROPOLITAN	1.027	1.011	NORTHWEST/ALASKA NONMETROPOLITAN	1.023	1.004
STATE HAWAII	1.000	1.000	PMSA AKRON, OH	1.037	1.019
MSA ANCHORAGE, AK	1.026	1.015	PMSA ANN ARBOR, MI	1.017	1.015
MSA ATLANTA, GA	1.053	1.044	PMSA ATLANTIC-CAPE MAY, NJ	1.030	1.018
PMSA BALTIMORE, MD	1.049	1.060	PMSA BERGEN-PASSAIC, NJ	1.029	1.031
*COUNTY BERKELEY, WV	1.045	1.062	PMSA BOSTON, MA-NH	1.065	1.054
PMSA BOULDER-LONGMONT, CO	1.057	1.046	PMSA BRAZORIA, TX	1.053	1.026
PMSA BREMERTON, WA	1.066	1.046	PMSA BRIDGEPORT, CT	1.029	1.031
PMSA BROCKTON, MA	1.066	1.053	*COUNTY BROWN, OH	1.025	1.036
*CHICAGO, IL	1.040	1.043	*CINCINNATI, OH-KY-IN	1.029	1.035
*COUNTY CLARKE, VA	1.046	1.062	PMSA CLEVELAND-LORAIN-ELYRIA, OH	1.036	1.019
*COUNTY CULPEPER, VA	1.047	1.061	*DALLAS, TX	1.040	1.019

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 112102

	HIGHEST COST INCLUDED	UTILITY EXCLUDED
PMSA DANBURY, CT	1.029	1.031
PMSA DENVER, CO	1.058	1.046
PMSA DUTCHESS COUNTY, NY	1.029	1.031
PMSA FLINT, MI	1.017	1.015
PMSA FORT WORTH-ARLINGTON, TX	1.043	1.019
PMSA GALVESTON-TEXAS CITY, TX	1.055	1.026
*COUNTY GRANT, KY	1.025	1.036
*COUNTY GRUNDY, IL	1.039	1.044
PMSA HAMILTON-MIDDLETOWN, OH	1.029	1.035
PMSA HOUSTON, TX	1.049	1.026
PMSA JERSEY CITY, NJ	1.029	1.031
MSA KANSAS CITY, MO-KS	1.049	1.035
PMSA KENOSHA, WI	1.039	1.044
PMSA LAWRENCE, MA-NH	1.067	1.053
PMSA LOWELL, MA-NH	1.065	1.054
PMSA MIAMI, FL	1.031	1.022
PMSA MILWAUKEE-WAUKESHA, WI	1.023	1.016
PMSA MONMOUTH-OCEAN, NJ	1.029	1.031
PMSA NASSAU-SUFFOLK, NY	1.029	1.031
PMSA NEW HAVEN-MERIDEN, CT	1.029	1.031
*COUNTY WESTCHESTER, NY	1.030	1.030
*COUNTY DE KALB, IL	1.039	1.044
PMSA DETROIT, MI	1.017	1.015
PMSA FITCHBURG-LEOMINSTER, MA	1.066	1.053
PMSA FORT LAUDERDALE, FL	1.031	1.022
*COUNTY GALLATIN, KY	1.024	1.037
PMSA GARY, IN	1.038	1.045
PMSA GREELEY, CO	1.058	1.046
PMSA HAGERSTOWN, MD	1.047	1.061
*COUNTY HENDERSON, TX	1.060	1.018
*COUNTY JEFFERSON, WV	1.044	1.062
PMSA KANKAKEE, IL	1.038	1.045
*COUNTY KENDALL, IL	1.039	1.044
*COUNTY KING GEORGE, VA	1.045	1.062
PMSA LOS ANGELES-LONG BEACH, CA	1.051	1.044
PMSA MANCHESTER, NH	1.066	1.053
PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ	1.029	1.031
MSA MINNEAPOLIS-ST. PAUL, MN-WI	1.048	1.048
PMSA NASHUA, NH	1.066	1.054
PMSA NEW BEDFORD, MA	1.066	1.053
PMSA NEW YORK, NY	1.030	1.030
PMSA NEWARK, NJ	1.029	1.031

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 112102

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA NEWBURGH, NY-PA	1.029	1.031
*COUNTY OHIO, IN	1.026	1.036
PMSA ORANGE COUNTY, CA	1.050	1.044
PMSA PHILADELPHIA, PA-NJ	1.030	1.017
PMSA PORTLAND-VANCOUVER, OR-WA	1.026	1.020
PMSA RACINE, WI	1.024	1.016
MSA ST. LOUIS, MO-IL	1.037	1.024
MSA SAN DIEGO, CA	1.072	1.071
PMSA SAN JOSE, CA	1.100	1.096
PMSA SANTA ROSA, CA	1.103	1.096
PMSA STAMFORD-NORWALK, CT	1.029	1.031
MSA TAMPA-ST. PETERSBURG-CLEARWATER, FL	1.035	1.032
PMSA VALLEJO-FAIRFIELD-NAPA, CA	1.104	1.096
PMSA VINELAND-MILLVILLE-BRIDGETON, NJ	1.032	1.017
*WASHINGTON, DC-MD-VA	1.051	1.059
PMSA WILMINGTON-NEWARK, DE-MD	1.029	1.018
PMSA OAKLAND, CA	1.102	1.096
PMSA OLYMPIA, WA	1.066	1.046
*COUNTY PENDLETON, KY	1.026	1.036
PMSA PITTSBURGH, PA	1.035	1.003
PMSA PORTSMOUTH-ROCHESTER, NH-ME	1.066	1.053
PMSA RIVERSIDE-SAN BERNARDINO, CA	1.054	1.044
PMSA SALEM, OR	1.027	1.020
PMSA SAN FRANCISCO, CA	1.101	1.096
PMSA SANTA CRUZ-WATSONVILLE, CA	1.102	1.096
PMSA SEATTLE-BELLEVUE-EVERETT, WA	1.059	1.046
PMSA TACOMA, WA	1.064	1.046
PMSA TRENTON, NJ	1.029	1.031
PMSA VENTURA, CA	1.050	1.044
*COUNTY WARREN, VA	1.047	1.061
PMSA WATERBURY, CT	1.029	1.031
PMSA WORCESTER, MA-CT	1.066	1.053

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Lee, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS:	COUNTIES
MSA Anchorage, AK:	Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Bristol Bay, Dillingham, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Lake & Peninsula, Matanuska-Susitna, Nome, North Slope, Northwest Arctic, Pr. Wales-Outer Ketchikan, , Sitka, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk.

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Coconino, Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Craighead, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS:	COUNTIES
PMSA Los Angeles-Long Beach, CA:	Los Angeles
PMSA Oakland, CA:	Alameda, Contra Costa
PMSA Orange County, CA:	Orange
PMSA Riverside-San Bernardino, CA:	Riverside, San Bernardino
MSA San Diego, CA:	San Diego
PMSA San Francisco, CA:	Marin, San Francisco, San Mateo
PMSA San Jose, CA:	Santa Clara
PMSA Santa Cruz-Watsonville, CA:	Santa Cruz
PMSA Santa Rosa, CA:	Sonoma
PMSA Vallejo-Fairfield-Napa, CA:	Napa, Solano
PMSA Ventura, CA:	Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

COLORADO (ROCKY MOUNTAIN)

CPI AREAS:	COUNTIES
PMSA Boulder-Longmont, CO:	Boulder
PMSA Denver, CO:	Adams, Arapahoe, Denver, Douglas, Jefferson
PMSA Greeley, CO:	Weld

METROPOLITAN COUNTIES
El Paso, Larimer, Mesa, Pueblo

NONMETROPOLITAN COUNTIES
Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

CONNECTICUT (NEW ENGLAND)

CPI AREAS: COUNTIES		
PMSA Bridgeport, CT		
	Fairfield County part:	Bridgeport city, Easton town, Fairfield town, Monroe town, Shelton city, Stratford town, Trumbull town
	New Haven County part:	Ansonia city, Beacon Falls town, Derby city, Milford city, Oxford town, Seymour town
PMSA Danbury, CT		
	Fairfield County part:	Bethel town, Brookfield town, Danbury city, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
	Litchfield County part:	Bridgewater town, New Milford town, Roxbury town, Washington town
PMSA New Haven-Meriden, CT		
	Middlesex County part:	Clinton town, Killingworth town
	New Haven County part:	Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town
PMSA Stamford-Norwalk, CT		
	Fairfield County part:	Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
PMSA Waterbury, CT		
	Litchfield County part:	Bethlehem town, Thomaston town, Watertown town, Woodbury town
	New Haven County part:	Middlebury town, Naugatuck borough, Prospect town, Southbury town, Waterbury city, Wolcott town
PMSA Worcester, MA-CT		
	Windham County part:	Thompson town
METROPOLITAN COUNTIES		
Hartford County part:		Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford city, Manchester town, Marlborough town, New Britain city, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town
Litchfield County part:		Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part:		Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown city, Portland town, Old Saybrook town
New London County part:		Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London city, North Stonington town, Norwich city, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town, Colchester town, Lebanon town
Tolland County part:		Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part:		Ashford town, Canterbury town, Chaplin town, Plainfield town, Windham town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NONMETROPOLITAN COUNTIES	
Hartford County part:	Hartland town
Litchfield County part:	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part:	Chester town, Deep River town, Essex town, Westbrook town
New London County part:	Lyme town, Voluntown town
Tolland County part:	Union town
Windham County part:	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS:	COUNTIES
PMSA Wilmington-Newark, DE-MD:	New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
District of Columbia	

FLORIDA (SOUTHEAST)

CPI AREAS:	COUNTIES
PMSA Fort Lauderdale, FL:	Broward
PMSA Miami, FL:	Miami-Dade
MSA Tampa-St. Petersburg-Clearwater, FL	Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES
Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS:	COUNTIES
*Atlanta, GA:	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton

METROPOLITAN COUNTIES
Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

HAWAII (PACIFIC/HAWAII)

CPI AREAS:	COUNTIES
STATE Hawaii:	Hawaii, Honolulu, Kauai, Maui

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES
Ada, Bannock, Canyon

NONMETROPOLITAN COUNTIES
Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS:	COUNTIES
*Chicago, IL:	Cook, Dupage, Kane, Lake, McHenry, Will
*COUNTY De Kalb, IL:	Dekalb
*COUNTY Grundy, IL:	Grundy
PMSA Kankakee, IL:	Kankakee
*COUNTY Kendall, Il:	Kendall
MSA St. Louis, MO-IL:	Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES
Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS:	COUNTIES
*Cincinnati, OH-KY-IN:	Dearborn
PMSA Gary, IN:	Lake, Porter
*COUNTY Ohio, IN:	Ohio

METROPOLITAN COUNTIES
Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES
Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES
Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont,

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

IOWA (Cont.)
Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

KANSAS (GREAT PLAINS)

CPI AREAS:	COUNTIES
MSA Kansas City, MO-KS:	Johnson, Leavenworth, Miami, Wyandotte

METROPOLITAN COUNTIES
Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES
Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS:	COUNTIES
*Cincinnati, OH-KY-IN:	Boone, Campbell, Kenton
*COUNTY Gallatin, KY:	Gallatin
*COUNTY Grant, KY:	Grant
*COUNTY Pendleton, KY:	Pendleton

METROPOLITAN COUNTIES
Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES
Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

LOUISIANA (SOUTHWEST)

METROPOLITAN COUNTIES
Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Ouachita, Plaquemines, Rapides, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES
Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, West Carroll, West Feliciana, Winn

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Portsmouth-Rochester, NH-ME
York County part: Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES
Androscoggin County part: Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Cumberland County part: Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Penobscot County part: Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town
Waldo County part: Winterport town
York County part: Buxton town, Hollis town, Limington town, Old Orchard Beach

NONMETROPOLITAN COUNTIES
Aroostook, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Piscataquis, Sagadahoc, Somerset, Washington
Androscoggin County part: Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Cumberland County part: Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Penobscot County part: Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation, Whitney unorg., Winn town, Woodville town
Waldo County part: Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
York County part: Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Baltimore, MD: Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
PMSA Hagerstown, MD: Washington
*Washington, DC-MD-VA: Calvert, Charles, Frederick, Montgomery, Prince George's
PMSA Wilmington-Newark, DE-MD: Cecil

METROPOLITAN COUNTIES
Allegany

NONMETROPOLITAN COUNTIES
Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH

Bristol County part:	Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Essex County part:	Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
Middlesex County part:	Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
Norfolk County part:	Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
Plymouth County part:	Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
Suffolk county part:	Boston city, Chelsea city, Revere city, Winthrop town
Worcester County part:	Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town

PMSA Brockton, MA

Bristol County part:	Easton town, Raynham town
Norfolk County part:	Avon town
Plymouth County part:	Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town

PMSA Fitchburg-Leominster, MA

Middlesex County part:	Ashby town
Worcester County part:	Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town

PMSA Lawrence, MA-NH

Essex County part:	Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town

PMSA Lowell, MA-NH

Middlesex County part:	Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town

PMSA New Bedford, MA

Bristol County part:	Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Plymouth County part:	Marion town, Mattapoisett town, Rochester town

PMSA Worcester, MA-CT

Hampden County part:	Holland town
Worcester County part:	Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MASSACHUSETTS (NEW ENGLAND) cont.

METROPOLITAN COUNTIES

Barnstable County part:	Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Berkshire County part:	Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Bristol County part:	Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town,Somerset town, Swansea town, Westport town
Franklin County part:	Sunderland town
Hampden County part:	Agawam town, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
Hampshire County part:	Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES

Dukes	
Nantucket	
Barnstable County part:	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire County part:	Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Franklin County part:	Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden County part:	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire County part:	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Worcester County part:	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

CPI AREAS:	COUNTIES
PMSA Ann Arbor, MI:	Lenawee, Livingston, Washtenaw
PMSA Detroit, MI:	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI:	Genesee

METROPOLITAN COUNTIES

Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES

Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS:	COUNTIES
MSA Minneapolis-St. Paul, MN-WI:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES

Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES
Desoto, Forrest, Hancock, Harrison, Hinds, Jackson, Lamar, Madison, Rankin

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS:	COUNTIES
MSA Kansas City, MO-KS:	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL:	Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Cascade, Missoula, Yellowstone

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH
Rockingham County part: Seabrook town, South Hampton town

PMSA Lawrence, MA-NH
Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town

PMSA Lowell, MA-NH
Hillsborough county pt: Pelham town

PMSA Manchester, NH
Hillsborough county pt: Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part: Allenstown town, Hooksett town
Rockingham county part: Auburn town, Candia town, Londonderry town

PMSA Nashua, NH
Hillsborough county pt: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town

PMSA Portsmouth-Rochester, NH-ME
Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES
Belknap
Carroll
Cheshire
Coos
Grafton
Sullivan
Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part: Deerfield town, Northwood town, Nottingham town,
Strafford County part: Middleton town, New Durham town, Strafford town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS:	COUNTIES
PMSA Atlantic-Cape May, NJ:	Atlantic, Cape May
PMSA Bergen-Passaic, NJ:	Bergen, Passaic
PMSA Jersey City, NJ:	Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ:	Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ:	Monmouth, Ocean
PMSA Newark, NJ:	Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ:	Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ:	Mercer
PMSA Vineland-Millville-Bridgeton, NJ:	Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley. Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS:	COUNTIES
PMSA Dutchess County, NY :	Dutchess
PMSA Nassau-Suffolk, NY:	Nassau, Suffolk
PMSA New York, NY:	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY:	Westchester
PMSA Newburgh, NY-PA:	Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Erie, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

OHIO (MIDWEST)

CPI AREAS:	COUNTIES
PMSA Akron, OH:	Portage, Summit
*COUNTY Brown, OH:	Brown
*Cincinnati, OH-KY-IN:	Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH:	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH:	Butler

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne, Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS:	COUNTIES
PMSA Portland-Vancouver, OR-WA:	Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR:	Marion, Polk

METROPOLITAN COUNTIES
Benton, Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
PMSA Newburgh, NY-PA:	Pike
PMSA Philadelphia, PA-NJ:	Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA:	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES
Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES

Bristol County part:	Barrington town, Bristol town, Warren town
Kent County part:	Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Newport County part:	Jamestown town, Little Compton town, Tiverton town
Providence County part:	Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city
Washington County part:	Charlestown town, Exeter town, Hopkinton town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town, Westerly town

NONMETROPOLITAN COUNTIES

Newport County part:	Middletown town, Newport city, Portsmouth town
Washington County part:	New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES

Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES

Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES

Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette, Miner, Moody, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES

Anderson, Blount, Carter, Cheatham, Chester, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES

Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES

PMSA Brazoria, TX:	Brazoria
*Dallas, TX:	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX:	Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX:	Galveston
*COUNTY Henderson, TX:	Henderson
PMSA Houston, TX:	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES

Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

TEXAS (Cont.)

NONMETROPOLITAN COUNTIES
Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt, Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Davis, Kane, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES
Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES

Chittenden County part:	Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part:	Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part:	Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES
Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor

Chittenden County part:	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part:	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part:	Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
*COUNTY Clarke, VA:	Clarke
*COUNTY Culpeper, VA:	Culpeper
*COUNTY King George, VA:	King George
*COUNTY Warren, VA:	Warren

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

VIRGINIA (MID-ATLANTIC) cont.

CPI AREAS:	COUNTIES
*Washington, DC-MD-VA:	Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES
Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES
Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS:	COUNTIES
PMSA Bremerton, WA:	Kitsap
PMSA Olympia, WA:	Thurston
PMSA Portland-Vancouver, OR-WA:	Clark
PMSA Seattle-Bellevue-Everett, WA:	Island, King, Snohomish
PMSA Tacoma, WA:	Pierce

METROPOLITAN COUNTIES
Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES
Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
*COUNTY Berkeley, WV:	Berkeley
*COUNTY Jefferson, WV:	Jefferson

METROPOLITAN COUNTIES
Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES
Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS:	COUNTIES
PMSA Kenosha, WI:	Kenosha
PMSA Milwaukee-Waukesha, WI:	Milwaukee, Ozaukee, Washington, Waukesha
MSA Minneapolis-St. Paul, MN-WI:	Pierce, St. Croix
PMSA Racine, WI:	Racine

METROPOLITAN COUNTIES
Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

WISCONSIN (Cont.)

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
American Samoa, Guam, Northern Mariana Islands, Palau

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grande, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culerbra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

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Federal Register

Wednesday,
January 22, 2003

Part V

Securities and Exchange Commission

17 CFR Part 270

Transactions of Investment Companies With Portfolio and Subadviser Affiliates; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25888; File No. S7–13–02]

RIN 3235–AI28

Transactions of Investment Companies With Portfolio and Subadviser Affiliates

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to rules under the Investment Company Act of 1940 to expand the current exemptions for investment companies ("funds") to engage in transactions with "portfolio affiliates"—companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities. The Commission is also adopting one new rule and several rule amendments to permit funds to engage in transactions with subadvisers of affiliated funds. The rules are designed to permit transactions between funds and certain affiliated persons under circumstances where it is unlikely that the affiliate would be in a position to take advantage of the fund.

EFFECTIVE DATE: *Effective Date:* February 24, 2003. *Compliance Date:* April 23, 2003. Section II of this document contains more information on transition prior to the compliance date.

FOR FURTHER INFORMATION CONTACT: William C. Middlebrooks, Jr., Attorney, or Martha B. Peterson, Special Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is adopting new rule 17a–10 (17 CFR 270.17a–10) and amendments to rules 10f–3 (17 CFR 270.10f–3), 12d3–1 (17 CFR 270.12d3–1), 17a–6 (17 CFR 270.17a–6), 17d–1 (17 CFR 270.17d–1), and 17e–1 (17 CFR 270.17e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a) ("Investment Company Act" or "Act").[1]

[1] Unless otherwise noted, when we refer to rules 10f–3, 12d3–1, 17a–6, 17a–10, 17d–1, or 17e–1, or any paragraph of those rules, we are referring to the following sections of the Code of Federal Regulations in which each of these rules is published, as amended by this release: 17 CFR 270.10f–3, 17 CFR 270.12d3–1, 17 CFR 270.17a–6, 17 CFR 270.17a–10, 17 CFR 270.17d–1, or 17 CFR 270.17e–1 respectively.

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Executive Summary

The Commission is adopting one new rule and amending five current rules to permit investment companies ("funds") and certain of their affiliated persons to enter into a variety of transactions and joint arrangements without first obtaining an individual exemptive order from the Commission. Amendments to rules 17a–17d–1(d)(5) expand the circumstances in which a fund may enter into principal transactions and joint arrangements with its portfolio affiliates, and the portfolio affiliates of affiliated funds. New rule 17a–10 and the amendments to rules 10f–3, 12d3–1, and 17e–1 expand the circumstances in which a fund may engage in transactions and arrangements with persons who are affiliated persons of the fund because they provide investment advice with respect to (i) an affiliated fund, or (ii) a portion of the fund's assets that will be unaffected by the transaction.

I. Discussion

The Investment Company Act prohibits certain transactions between investment companies and their affiliated persons ("first-tier affiliates") and affiliated persons of their affiliated persons ("second-tier affiliates").[2] The Act's restrictions are designed to prevent these persons from managing the fund for their own benefit, rather than for the benefit of the fund's shareholders.[3] Affiliated persons of a fund include (i) its investment adviser and any subadvisers,[4] (ii) companies the fund controls or five percent (or more) of whose securities are held by the fund, (iii) persons who control the fund, and (iv) persons who are under common control with the fund.[5]

In April 2002, we proposed to exempt certain persons from the Act's restrictions on affiliated transactions.[6] Under the proposal, funds would be permitted to enter into transactions with two types of affiliated persons—

- Portfolio affiliates, which are companies that are affiliated persons of a fund because the fund controls the company, or holds five percent or more of the company's voting securities, and

[2] *See* section 17(a) [15 U.S.C. 80a–17(a)] (prohibiting first- and second-tier affiliates of a fund from borrowing money or other property from, or selling or buying securities or other property to or from the fund, or any company that the fund controls); section 17(d) [15 U.S.C. 80a–17(d)] (making it unlawful for first- and second-tier affiliates of a fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant in contravention of Commission rules); rule 17d–1(a) (prohibiting first- and second-tier affiliates of a fund, the fund's principal underwriter, and affiliated persons of the fund's principal underwriter, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which any such fund or company controlled by a fund is a participant unless an application regarding such enterprise, arrangement or plan has been filed with the Commission and has been granted); section 10(f) [15 U.S.C. 80a–10(f)] (prohibiting a fund from purchasing securities in a primary offering if certain affiliated persons of the fund are members of the underwriting or selling syndicate); section 17(e) [15 U.S.C. 80a–17(e)] (limiting the remuneration that first- and second-tier affiliates of a fund may receive in transactions involving the fund, and companies that the fund controls); and section 12(d)(3) [15 U.S.C. 80a–12(d)(3)] and rule 12d3–1 (together prohibiting a fund from acquiring securities issued by, among others, its own investment adviser).

[3] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency*, 76th Cong., 3d Sess. 37 (1940) (Statement of Commissioner Healy).

[4] Many funds use "subadvisers" to help manage fund assets. A subadviser is an investment adviser for purposes of the 1940 Act. The 1940 Act describes an "investment adviser" as a person who regularly furnishes advice to the fund with respect to the desirability of investing in, purchasing, or selling securities or other property, or is empowered to determine what securities or other property are to be purchased or sold by the fund. 15 U.S.C. 80a–2(a)(20). The investment adviser may act pursuant to a contract with a fund [15 U.S.C. 80a–2(a)(20)(A)] or pursuant to a contract with an investment adviser that has contracted with the fund. 15 U.S.C. 80a–2(a)(20)(B).

[5] *See* 15 U.S.C. 80a-2(a)(3) (defining "affiliated person"). Unless otherwise noted, in this release we will use the term "affiliated person" to include both first- and second-tier affiliates of a fund.

[6] *See* Transactions of Investment Companies With Portfolio and Subadvisory Affiliates, Investment Company Act Release No. 25557 (Apr. 30, 2002) [67 FR 31081 (May 8, 2002)] ("Proposing Release").

• Subadviser affiliates, which are persons that are affiliated persons of a fund because they are the fund's subadvisers (first-tier affiliates), affiliated persons of the fund's subadvisers (second-tier affiliates), or subadvisers of other affiliated funds (second-tier affiliates).

We published the proposals in response to the growth of funds and changes in their organization, which have resulted in a growing number of persons with whom a fund may *not* enter into transactions.[7] The amendments were designed to permit transactions between funds and these affiliated persons in circumstances in which it is unlikely that the affiliate would be in a position to take advantage of the fund. We received nine comments on the proposal.[8] The commenters supported the proposed rule and amendments, but suggested changes. Today we are adopting rule 17a–10 and amendments to rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 substantially as proposed, with changes that respond to issues raised by commenters.

A. Portfolio Affiliates

1. Second-Tier Affiliates

Rules 17a–6 and 17d–1(d)(5) permit a fund and its portfolio affiliates to engage in principal transactions and enter into joint arrangements that would otherwise be prohibited by section 17(a), or by section 17(d) and rule 17d–1(a). We proposed to amend rules 17a–6 and 17d–1(d)(5) to permit a fund to enter into principal transactions and joint arrangements not only with its own portfolio affiliates, but also with portfolio affiliates of funds that are under common control with the fund. Commenters supported the amendments, and we are adopting them substantially as proposed.[9] The amendments permit funds to enter into transactions with portfolio affiliates of other funds in the same fund complex, subject to the same conditions under which a fund may enter into transactions and arrangements with its own portfolio affiliates.[10]

[7] *Id.* at nn. 12–16 and accompanying text.

[8] The comment letters and a summary of comments prepared by our staff are available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC (File No. S7–21–01). The comment summary is also available on the Commission's Internet Web site.

[9] One technical change we have made is discussed in note 13 *infra*.

[10] *See* note 19, *infra*, discussing when funds in a fund complex are affiliated persons because they are under common control.

2. Financial Interests

A fund may not rely on the exemptions in rules 17a–6 and 17d–1(d)(5) to enter into principal transactions or joint arrangements with portfolio affiliates if certain persons (such as the fund's adviser, officers, and principal underwriter, which we will refer to as "Prohibited Participants"), have a financial interest in a party to the transaction or arrangement (other than the fund itself).[11] We proposed to amend the rules to permit a portfolio affiliate to enter into a transaction or arrangement with the fund if a Prohibited Participant has a financial interest that the fund's board determines is not "material."[12] Commenters supported the amendment, and we are adopting it substantially as proposed.[13] In determining whether a financial interest is "material," the board should consider whether the nature and extent of the interest in the transaction is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

3. Time Periods

Currently, rule 17a–6 prohibits transactions with portfolio affiliates when a Prohibited Participant "has, or within six months prior to the transaction had, or pursuant to an arrangement will acquire" a financial interest in a party to the transaction.[14] Rule 17d–1(d)(5) prohibits joint transactions with portfolio affiliates if the Prohibited Participant "is, was, or proposes to be a participant" in the joint arrangement.[15] The Commission proposed to reconcile these time periods, using the more limited approach of rule 17a–6.[16] Under the proposed amendments, the rule would be available unless a Prohibited Participant had a financial interest in a party to the transaction within the previous six months (as opposed to a financial interest at *any* time in the past).[17] We are adopting the amendment as proposed.[18]

B. Subadviser Affiliates

Most funds are today organized by an investment adviser that advises and provides administrative services to a number of other funds in the same fund complex. As a result, advisers and subadvisers to a fund are not only first-tier affiliates of any funds they advise; they may also be second-tier affiliates of the other funds in the complex.[19]

[11] *See* rules 17a–6(a) and 17d–1(d)(5)(i) (prohibiting the following persons from participating in, or having a financial interest in a participant in the transaction or arrangement: (1) an officer, director, employee, investment adviser, member of an advisory board, depositor, promoter of, or principal underwriter for the fund; (2) a person directly or indirectly controlling the fund; (3) a person directly or indirectly owning, controlling, or holding with power to vote five percent or more of the outstanding voting securities of the fund; (4) a person directly or indirectly under common control with the fund; and (5) affiliated persons of the foregoing).

[12] *See* Proposing Release, *supra* note 6, at n. 28 and accompanying text. We also proposed to eliminate a condition in rule 17d–1(d)(5) that limited a fund to committing no more than five percent of its assets to a joint enterprise with a portfolio affiliate. *Id.* at nn.32–34 and accompanying text. We received no comment on this proposal and are adopting the amendment as proposed.

[13] One commenter pointed out that a fund might be unable to rely on the proposed rules if an affiliated fund has a financial interest in, but is not affiliated with, the portfolio affiliate. For example, assume that Fund A and Fund B, which have the same principal adviser, own six percent and three percent, respectively, of the outstanding voting securities of Company X. Fund A wants to enter into a transaction to purchase commercial paper issued by Company X. Under the proposed amendments to rule 17a–6, Fund A might have been unable to do so. This is because Fund B, a Prohibited Participant, might be deemed to have a disqualifying "financial interest" in a party to the transaction (Company X). A second commenter made a similar observation. We have revised the rules to make clear that this type of transaction is permissible. *See* rule 17a–6(a)(4)(ii) (providing that a fund under common control with the participating fund is not a Prohibited Participant if the fund's "sole interest in the transaction or a party to the transaction is an interest in [the portfolio affiliate]").

[14] *See* prior rule 17a–6(a)(5)(ii).

[15] *See* prior rule 17d–1(d)(5)(i).

[16] *See* Proposing Release, *supra* note 6, at nn. 29–30 and accompanying text.

[17] As discussed above, the fund's board of directors could also determine that a financial interest held within the 6 months preceding the transaction is not material.

[18] *See* rules 17a–6(b)(1)(ii) and 17d–1(d)(5)(ii)(B). One commenter argued that the rules' exemptions should be available without regard to the past financial interests of the fund's affiliated persons. The commenter asserted that the past financial interest of an affiliated person would probably not raise the investor protection concerns that the rules are intended to address. We disagree. The rules protect funds in circumstances where the actions of an affiliated person may continue to be influenced by the person's prior financial interests. The rules are, in this respect, analogous to regulations that in other contexts prohibit an employee from working on matters that involve former employers or clients. *See, e.g.*, 17 CFR 210.2–01(c)(2)(iii) and (iv) (describing circumstances in which an accountant is not independent as a result of employment by the accountant of a former employee of the audit client, or employment by the audit client of a former employee of the accountant).

[19] Funds in a fund complex are under the common control of an investment adviser or other person when the adviser or other person exercises a controlling influence over the management or policies of the funds. 15 U.S.C. 80a–2(a)(9). Not all advisers control the funds they advise. The determination of whether a fund is under the

Continued

provisions of the Act may restrict the ability of subadviser affiliates to enter into transactions or arrangements with a fund even if the subadviser affiliate lacks the ability to influence the fund.[20] We proposed one rule and a number of rule amendments to exempt transactions and arrangements between funds and their subadviser affiliates where there is little risk that the affiliated person is in a position to take advantage of the fund.

1. Principal Transactions With Subadvisers: Section 17(a)

Section 17(a) of the Act prohibits a subadviser that is an affiliated person of a fund from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.[21] We proposed new rule 17a–10 to permit (i) a subadviser of a fund to enter into transactions with funds the subadviser does not advise but which are affiliated persons of a fund that it does advise (*e.g.*, other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.[22]

Our proposed exemption was subject to two conditions. First, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction; and second, the participating subadviser (*i.e.*, the one who, or whose affiliated person, enters into the transaction or arrangement) and any subadviser of the participating fund or portion of a fund's portfolio (*i.e.*, the one advising the fund to enter into the transaction) must be prohibited by their advisory contracts from consulting with each other concerning securities transactions of the participating fund or portion.[23]

While all commenters supported the new exemption, two asserted that we should not condition the exemption in rule 17a–10 on fund subadvisers being contractually prohibited from consulting with one another concerning securities transactions of the fund.[24] These commenters suggested that the condition was unnecessary because subadvisers rarely, if ever, consult with one another concerning fund transactions. The rule's exemption, however, is premised on the unlikelihood that a subadviser participating in the transaction will be able to influence investment decisions made on behalf of a fund (or portion of a fund) that it does not advise. To the extent that such discussions among subadvisers do occur, they increase the likelihood of reciprocal arrangements. We are, therefore, adopting the provision as proposed, with one revision that clarifies that the prohibitions extend to transaction of the fund in any type of assets, not just securities.[25]

2. Transactions With Subadvisers as Brokers: Section 17(e)

Section 17(e)(2) of the Act generally limits the remuneration that an affiliated person of a fund, acting as broker, may receive for effecting purchases and sales of securities on a securities exchange on behalf of the fund, or a company the fund controls, to the "usual and customary broker's commission."[26] Section 17(e)(2)'s limits apply to purchases and sales made on behalf of a fund by affiliated persons, which include the fund's subadviser (a first-tier affiliate), affiliated persons of the subadviser (second-tier affiliates), and may include subadvisers of funds under common control with the fund (second-tier affiliates).

Rule 17e–1 describes the circumstances in which remuneration received by an affiliated person of a fund qualifies as the "usual and customary broker's commission." The rule, among other things, requires that the fund's board of directors review transactions to determine that they comply with procedures adopted by the board to ensure that the remuneration received by the affiliated person does not exceed the usual and customary broker's commission ("review requirement").[27] In addition, the fund must maintain a record of the transactions ("recordkeeping requirement").[28] The review and recordkeeping requirements of rule 17e–1 were designed to permit fund directors and our examination staff to monitor the reasonableness and fairness of remuneration received by affiliated persons of the fund.[29]

We proposed to amend rule 17e–1 to permit a fund's subadviser (or other affiliated person) to receive remuneration for service as a broker without complying with the recordkeeping and review requirements, in circumstances in which the affiliated person has very limited ability to influence decisions regarding execution of fund securities transactions, *i.e.*, when the affiliated person would be eligible to enter into principal transactions with the fund under rule 17a–10.[30] Commenters supported the

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control of its adviser, officers or directors depends on all of the relevant facts and circumstances. *See* Proposing Release, *supra* note 6, at n.14. Throughout this release, we presume that the funds in a fund complex are under common control, as funds that are not affiliated persons will not require and thus will not rely on the proposed exemptions.

[20] For example, if Funds A and B are under the common control of a principal adviser, and Subadviser A provides investment advice only with respect to Fund A, then Subadviser A is a second-tier affiliate of Fund B, and subject to all of the Act's prohibitions against transactions involving second-tier affiliates, even though Subadviser A may not have the ability to influence Fund B.

[21] Section 17(a) also prohibits affiliated persons of the subadviser from entering into such transactions if the subadviser is a first-tier affiliate of the fund.

[22] *See* Proposing Release, *supra* note 6, at nn. 42–46 and accompanying text. This second category of relief would thus be available only when a fund has one or more subadvisers, which are responsible for managing discrete portions of the fund's assets. The rule permits the adviser of one portion of the fund to direct that portion to engage in a principal transaction with the subadviser of another portion of the fund's assets.

[23] *See* Proposing Release, *supra* note 6, at nn. 44–45 and accompanying text. We note that while the rule does not contain a condition prohibiting subadvisers and principal advisers from consulting with each other, the principal adviser (like the subadvisers) remains a fiduciary of the fund and may not collaborate with fund subadvisers for purposes of overreaching the fund. *See* Proposing Release, *supra* note 6, at n. 45.

[24] Two commenters requested that we affirmatively state that two funds, with different principal advisers but a common subadviser, are not under common control, and therefore not affiliated persons. One commenter argued that otherwise the rule would be unnecessary, as two funds that share a principal investment adviser, but different subadvisers could not then be under common control. As we stated in the Proposing Release, not all advisers control the funds they advise, and the determination of whether a fund is under the control of its adviser (or subadviser), officers, or directors depends on the relevant facts and circumstances. *See* Proposing Release, *supra* note 6, at n. 14.

[25] Rule 17a–10(a)(2)(i). As we stated in the Proposing Release, we would not view changes to subadvisory contracts that are made to comply with the conditions of this rule to be material for purposes of section 15 of the Investment Company Act [15 U.S.C. 80a–15], and funds would not have to obtain shareholder approval of such changes. *See* Proposing Release, *supra* note 6, at section III.B.2.

[26] Section 17(e)(2) limits the remuneration that an affiliated person of a fund, acting as broker, may receive in connection with a securities transaction to (A) the usual and customary broker's commission for transactions effected on an exchange, (B) two percent of the sales price for secondary distribution, and (C) one percent of the purchase or sale price for other purchases or sales.

[27] Rule 17e–1(a) and (b). The rule also requires that a majority of the directors of the fund not be "interested persons" of the fund, that those directors select and nominate any other disinterested directors, and any person who acts as legal counsel for the disinterested directors be an independent legal counsel. Rule 17e–1(c). Section 2(a)(19) identifies persons who are "interested persons" of a fund. 15 U.S.C. 80a–2(a)(19).

[28] Rule 17e–1(d).

[29] Agency Transactions by Affiliated Persons on a Securities Exchange, Investment Company Act Release No. 10605 (Feb. 27, 1979) [44 FR 12202 (Mar. 6, 1979)] at n.10 and accompanying text.

[30] *See* Proposing Release, *supra* note 6, at n. 51 and accompanying text.

amendment, which we are adopting as proposed.[31]

3. Purchases During Primary Offering Underwritten by Subadvisers: Section 10(f)

Section 10(f) of the Act prohibits a fund from purchasing any security during an underwriting or selling syndicate if the fund has certain affiliated relationships with a principal underwriter of the security.[32] The section protects fund shareholders by preventing an affiliated underwriter from placing or "dumping" unmarketable securities with the fund.[33] Rule 10f–3 provides an exemption from the prohibition in section 10(f) if certain conditions are satisfied.[34] One of rule 10f–3's key conditions is that a fund relying on the rule, together with any other fund advised by the fund's adviser, purchase no more than 25 percent of the offering ("percentage limit").[35] The purpose of the percentage limit is to provide an indication that a market for the issue exists independent of the adviser and that the securities are not being "dumped."[36]

As we discussed in the Proposing Release, when a fund has multiple advisers or subadvisers, section 10(f) can limit significantly the fund's ability to purchase securities in an offering.[37] Under section 10(f), a fund is subject to the prohibition if *any* of its advisers (in the case of a series fund) or subadvisers (in the case of a multi-managed fund) participated in the underwriting or selling syndicate (or are affiliated persons of participants), regardless of whether the adviser or subadviser that *recommended* the purchase was a participant in the syndicate.[38] We proposed to amend rule 10f–3 to deem each series of a series company ("series") and the "managed portions"[39] of a fund's portfolio ("portion") to be separate registered investment companies for purposes of section 10(f) and rule 10f–3.[40] As a result, a fund would be subject to the limitation only when an adviser recommending the transaction (or its affiliated person) is a participant in the transaction and thus in a position to take advantage of the fund. Commenters supported this amendment, and we are adopting it substantially as proposed.[41]

We also proposed parallel amendments to rule 10f–3 to revise the way that funds must aggregate purchases to determine compliance with the percentage limits of rule 10f–3 so that only purchases by funds that are advised, and accounts that are controlled, by an investment adviser that is a participant in the underwriting or selling syndicate need be aggregated.[42] If multiple investment advisers provide investment advice to a fund (*e.g.*, a principal adviser and one or more subadvisers) but only one of those advisers (or its affiliated persons) is a participant in the underwriting or selling syndicate, rule 10f–3's percentage limit would apply only to purchases by the funds and accounts of the participating investment adviser.[43]

Although commenters strongly supported limiting the aggregation requirement to purchases by funds and portions of a fund for which an investment adviser that participates in the underwriting syndicate provides investment advice, five commenters opposed requiring aggregation of purchases of other accounts controlled by the investment adviser. While these

[31] Rule 17e–1(b)(3) and (d)(2). Under rule 17e–1, as amended, a fund is exempted from the recordkeeping and review requirements to the same extent that the fund would be permitted to enter into principal transactions with a subadviser. Thus, a fund could use a subadviser that is a first-tier affiliate (because it advises a discrete portion of the fund for which it is not executing a transaction), an affiliated person of such subadviser (a second-tier affiliate of the fund), or a subadviser that is a second-tier affiliate of the fund (because it advises another fund in the fund complex) to execute brokerage transactions without complying with rule 17e–1's recordkeeping and review requirements. Other of our rules requiring funds to retain certain records of brokerage orders by or on behalf of the fund are unaffected by today's amendments. *See* rule 31a–1(b)(5) [17 CFR 270.31a–1(b)(5)].

[32] Section 10(f), in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or any person of which any of the foregoing are affiliated persons.

[33] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency*, 76th Cong., 3d Sess. 35 (1940) (statement of Commissioner Healy).

[34] Rule 10f–3 permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things: (i) The securities either are registered under the Securities Act of 1933 [15 U.S.C. 77a–aa], are part of an issue of government securities, are municipal securities with certain credit ratings, or are offered in certain foreign or private institutional offerings; (ii) the offering involves a "firm commitment" underwriting; (iii) the fund (together with other funds advised by the same investment adviser) purchases no more than 25 percent of the offering; (iv) the fund purchases the securities from a member of the syndicate other than its affiliated underwriter; (v) the fund's directors have approved procedures for purchases under the rule and regularly review the purchases to determine whether they have complied with the procedures. *See* prior rule 10f–3(b) (new rule 10f–3(c)).

[35] *See* rule 10f–3(c)(7).

[36] *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 24775 (Nov. 29, 2000) [65 FR 76189 (Dec. 6, 2000)] at n. 22 and accompanying text.

[37] *See* Proposing Release, *supra* note at n. 59 and accompanying text. A fund may have multiple subadvisers because more than one subadviser has been retained to provide investment advice with respect to various portions of the fund (a "multi-managed" fund). A fund may also have multiple advisers because the fund is one of several series of a series company, and different advisers provide investment advice with respect to the assets of the different series.

[38] Unless otherwise noted, we will refer to a subadviser that is a principal underwriter, or an affiliated person of a principal underwriter of a security, as a "participant" in the underwriting or selling syndicate.

[39] A portion of a fund's portfolio would be a "managed portion" if it is a discrete portion of the portfolio for which a subadviser is responsible for providing investment advice, and the subadviser (i) does not provide investment advice with respect to any other portion of the fund's portfolio, (ii) is prohibited by its advisory contract from consulting with any other investment adviser of the investment company that is a principal underwriter or affiliated person of a principal underwriter concerning securities transactions of the fund, and (iii) is not an affiliated person of any other investment adviser, or any promoter, underwriter, officer, director, member of an advisory board, or employee of the investment company. *See* Proposing Release, *supra* note 6, at n. 62 and accompanying text.

[40] *See* Proposing Release, supra note , at n. 63 and accompanying text.

[41] *See* rule 10f–3(a)(6) (defining "managed portion") and 10f–3(b) (deeming the series of a series company and Managed Portions of an investment company to be separate investment companies for purposes of section 10(f) and rule 10f–3). The effect of the amendments is to exempt a purchase of securities by an investment company from the prohibition in section 10(f), if the purchase would not be prohibited if each series or portion were a separately registered investment company.

[42] *See* Proposing Release, *supra* note 6, at nn. 67–68 and accompanying text. We proposed to apply the percentage limit to purchases by the *accounts* controlled by a fund's investment adviser, as well as the *funds* advised by the adviser because we were concerned that rule 10f–3's percentage limit may not provide reliable evidence of a market for the security if most or all of the offering is purchased by fund and non-fund clients of an adviser participating in the underwriting or selling syndicate. The amendment would not require an adviser to aggregate its purchases on behalf of funds and other discretionary accounts with those made by affiliated persons of the adviser. Section 48(a) would prohibit those purchases, however, if they were coordinated purchases made for purposes of circumventing the rule's percentage limits. Section 48(a) of the Act [15 U.S.C. 80a–47(a)].

[43] *See* Proposing Release, *supra* note 6, at nn.67–68 and accompanying text. For example, assume that Principal Adviser A advises three funds (Funds 1, 2, and 3), and Subadviser B subadvises Fund 1, and is the principal adviser to unaffiliated Fund 4. If Principal Adviser A participates in the underwriting syndicate, then the aggregate purchases of Funds 1, 2, and 3 must meet the percentage limit, and if Subadviser B participates in the syndicate then the aggregate purchases of Funds 1 and 4 must meet the percentage limit. If more than one investment adviser of a fund is a participant in the underwriting or selling syndicate then the percentage limit would apply independently with respect to each such investment adviser. *See* Proposing Release, *supra* note , at n. 68. The percentage limit would not apply at all if a fund is prohibited from purchasing a security because a person other than the fund's investment adviser or an affiliated person of the investment adviser (*e.g.*, an officer, director, or employee of the fund) is a participant in the underwriting or selling syndicate.

commenters complained that the amendment could limit the ability of funds to purchase securities in principal offerings, none suggested a way to reconcile the policy underlying rule 10f–3's percentage limit with continuing to permit non-fund accounts advised by the fund's adviser to purchase unlimited amounts of the offering.[44] One fund commenter supporting the proposed requirement cited recent allegations of abusive practices in the market for initial public offerings as illustrative of the conflicts of interest that are inherent when underwriting participants have other business relationships with persons who purchase securities during an offering. This commenter concluded that without a limit on aggregate purchases by non-fund accounts, "there can be no assurance that the fund was participating in a bona fide offering to the public. * * *" We agree, and are adopting the amendments substantially as proposed.[45]

At the suggestion of three commenters, we have narrowed the new aggregation requirement. Instead of requiring funds to aggregate purchases by accounts over which the fund adviser "has discretionary authority or otherwise exercises control," amended rule 10f–3 requires aggregation of purchases by other accounts with respect to which the adviser exercises "investment discretion."[46] The revised approach is more consistent with the current aggregation provision of rule 10f–3, which assumes that advisers to multiple funds have investment discretion with respect to fund assets.

4. Ownership of Securities Issued by Subadvisers: Section 12(d)(3)

Section 12(d)(3) of the Act generally prohibits funds, and companies controlled by funds, from purchasing securities issued by a registered investment adviser, broker, dealer, or underwriter ("securities-related businesses").[47] Rule 12d3–1 permits a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related businesses,[48] but a fund could not rely on rule 12d3–1 to acquire securities of its own investment adviser or any affiliated person of its own investment adviser.[49] As a result, a fund could not rely on rule 12d3–1 to acquire securities issued by any of its subadvisers.

Consistent with our other proposals, we proposed to amend rule 12d3–1 to permit a fund to purchase securities issued by its subadvisers (or affiliated persons of its subadvisers) in circumstances in which the subadviser would have little ability to take advantage of the fund, because it is not in a position to direct the fund's securities purchases.[50] The exemption in rule 12d3–1 would be available in circumstances identical to those in which the subadviser (or affiliated person) would be permitted by rule 17a–10 to enter into a principal transaction with the fund.[51] Commenters supported the amendments, which we are adopting as proposed.[52]

[44] Commenters also argued that other protections in rule 10f–3 make it unlikely that securities could be "dumped" in the fund. These commenters, in effect, argued that there should be no quantitative limitation on the amount of purchase under the rule, an approach the Commission rejected when we amended the rule in 1997. *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)].

[45] *See* rule 10f–3(c)(7).

[46] Rule 10f–3(c)(7)(i). Under the rule the purchase must be aggregated if (i) the adviser has investment discretion over the account, and (ii) the adviser has exercised such discretion in connection with the purchase.

[47] With minor exceptions, section 12(d)(3) prohibits a fund from purchasing or otherwise acquiring "any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is [an] investment adviser."

[48] Paragraph (a) of rule 12d3–1 permits a fund to acquire any security issued by any person that, in its most recent fiscal year, derived 15 percent or less of its gross revenues from securities-related activities unless the fund would control such person after the acquisition. Paragraph (b)(3) of rule 12d3–1 permits a fund to invest up to five percent of the value of its total assets in the securities of an issuer that derives more than 15 percent of its gross revenues from securities-related activities. Rule 12d3–1(d)(1) defines "securities related activities" as a person's activities as a broker, a dealer, an underwriter, an investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b], or an investment adviser to a registered investment company.

[49] Rule 12d3–1(d)(8) provides that any class or series of an investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series, shall be treated as if it is a registered investment company. Accordingly, a fund that is a series of a series company may rely on rule 12d3–1 to purchase securities issued by subadvisers (and persons affiliated with those subadvisers) of the other series of the investment company.

[50] *See* Proposing Release, *supra* note 6, at n. 77 and accompanying text.

[51] *Id.* The exemption in rule 12d3–1 is available if (i) the subadviser is not, and is not an affiliated person of, an investment adviser that provides advice with respect to the portion of the fund that is acquiring the securities, and (ii) the advisory contracts of the subadviser, and any subadviser that is advising the purchasing portion of the fund, prohibit them from consulting with each other concerning securities transactions of the fund, and limit their responsibility in providing advice to providing advice with respect to discrete portions of the fund's portfolio. *See* rule 12d3–1(c)(3)(i) and (ii).

[52] Rule 12d3–1(c)(3).

II. Effective Date

The Administrative Procedure Act generally provides that a substantive rule may become effective no less than 30 days after publication in the **Federal Register**.[53] Accordingly, new rule 17a–10 and amendments to rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 will become effective February 24, 2003.

We are, however, delaying the compliance date with respect to the amendments to rule 10f–3 until April 23, 2003. After April 23, 2003, a fund must comply with all of the conditions in rule 10f–3 as amended in order to rely on the exemption in that rule. A registered investment company that purchases securities between February 24, 2003 and April 23, 2003 may rely on either rule 10f–3 as amended, or rule 10f–3 as it existed prior to today's amendments.

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. As described above, the rule and amendments expand the circumstances under which portfolio companies and subadvisers that are affiliated persons of funds may engage in otherwise prohibited transactions with those funds without first obtaining an exemptive order from the Commission. We have identified certain costs and benefits that may result from today's rulemaking. Because the new rule and rule amendments are exemptive, rather than prescriptive, funds and their affiliated persons are not required to rely on them. Therefore, we assume that funds will rely on the rule and amendments only if the anticipated benefits from such actions would exceed the anticipated costs. In the Proposing Release, we requested comment and specific data regarding the costs and benefits of the proposed amendments. The comments we received are discussed below; we did not receive any data.

A. Benefits

1. In General

We anticipate that funds, their shareholders, advisers and other affiliated persons will benefit from the new rule and amendments. Absent the rule and amendments, we anticipate that affiliated persons, prohibited by the Act from entering into transactions with funds, would continue to seek Commission exemptive orders. The process for obtaining such an exemption

[53] 5 U.S.C. 553(d).

imposes direct costs on applicants.[54] The new rule and amendments will benefit funds, their shareholders, and their affiliated persons by eliminating these costs.

The application process also produces indirect costs, because funds and their affiliated persons forego beneficial transactions rather than undertake to obtain an exemptive order. Funds and their affiliated persons may forego transactions either because the anticipated benefit of the transaction does not exceed the cost of obtaining an exemptive order, or because the transaction is time-sensitive, and it is not feasible to obtain an exemptive order quickly enough to permit the transaction to occur.[55] Encouraging beneficial transactions by eliminating these potentially significant costs and delays will likely be a benefit resulting from these changes. As discussed in the Proposing Release, eliminating direct and indirect costs of filing applications may also reduce factors that discriminate against smaller funds and smaller transactions.[56]

2. Portfolio Affiliates

The amendments to rules 17a–6 and 17d–1(d)(5) regarding transactions and joint arrangements with portfolio affiliates may expand the range of possible partners with which funds may enter into transactions and joint arrangements. Funds, their second-tier portfolio affiliates, and their shareholders each may benefit from the transactions and arrangements made possible by the amendments.[57] Similarly, amending rules 17a–6 and 17d–1(d)(5), to provide that the term "financial interest" does not include interests that the fund's board of directors finds to be not material, may expand the range of possible partners for transactions and joint arrangements with funds by making the rules' exemptions more widely available.[58] A similar benefit may result from the removal of rule 17d–1(d)(5)'s condition limiting a fund to committing no more than five percent of its assets in any particular joint enterprise.

3. Subadviser Affiliates

Principal Transactions

Rule 17a–10 may benefit subadvisers and funds by allowing subadviser affiliates to enter into principal transactions with (i) affiliated funds of the subadvised fund and (ii) those portions of the subadvised fund for which the subadviser does not provide investment advice. By broadening the markets available to both buyers and sellers, rule 17a–10 may permit sellers to obtain more favorable pricing, and may make a wider range of investment options available to buyers.

Brokerage Transactions

Rule 17e–1 will, under certain circumstances, permit subadvisers and their affiliated persons to receive remuneration when acting as broker for an affiliated fund, without complying with all of the rule's recordkeeping and transaction review requirements. Our staff estimates that boards of directors of funds that employ affiliated brokers currently spend approximately 12.5 hours per year per fund conducting the required review. Our staff further estimates that a fund that uses in-house counsel to assist fund directors in reviewing these transactions incurs a cost of $775 per year for counsel, based on an hourly cost for in-house counsel of $62 per hour.[59] Funds incur the additional incremental cost of maintaining records of the transaction. The amendments to rule 17e–1 may benefit funds and their shareholders by allowing funds to avoid these burdens.

Purchases During Primary Offerings Underwritten by Affiliated Subadvisers

The amendments to rule 10f–3 may benefit funds by broadening their investment options. The Act prohibits a series of a series company from purchasing securities during an underwriting or selling syndicate of which an adviser to any of the series (or affiliated person of such adviser) is a member. By providing that, for purposes of section 10(f) and rule 10f–3, a series of a series company is a separate investment company, the proposed amendments to rule 10f–3 could broaden (i) the investment opportunities available to such funds and (ii) the range of possible purchasers when a subadviser participates in an underwriting syndicate. Funds, fund shareholders, and subadvisers all may benefit from this change.

The Act also does not distinguish between a fund with multiple subadvisers that manage discrete portions of its portfolio, and a fund whose subadvisers manage the portfolio in its entirety. The amendments to rule 10f–3 that deem separately managed portions of a fund's portfolio to be separate investment companies for purposes of section 10(f) and rule 10f–3 may increase the investment opportunities of that type of fund. Quantifying the potential magnitude of these benefits may not be possible.

The amendment to the percentage limit of rule 10f–3 also may broaden the investment options available to funds. The Act does not distinguish between purchases by funds or portions of funds that are recommended by a subadviser that is (or is an affiliated person of) a participant in the underwriting or selling syndicate, and purchases by funds or portions of funds for which *other* subadvisers provide investment advice. By providing that the percentage limit of rule 10f–3 applies only to purchases by funds, portions of funds, and accounts for which participants provide investment advice, the amendments to rule 10f–3 may increase the investment opportunities of a fund with multiple subadvisers that manage discrete portions of its portfolio.

The amendments to the percentage limit may reduce the cost of complying with rule 10f–3 because purchases made by funds that are *not* advised by participants in the underwriting or selling syndicate will no longer need to be aggregated with purchases made by funds that *are* advised by advisers that are participants in the underwriting. Because multiple advisers will no longer be required to coordinate their actions, the amendment may make it easier to ensure compliance with the rule, and less expensive to collect and compile the relevant information.

Ownership of Securities Issued by Subadvisers

Similarly, the amendments to rule 12d3–1 may also benefit funds by broadening their investment options. Amending rule 12d3–1 to permit a fund to acquire securities issued by one of its subadvisers, or an affiliated person of one of its subadvisers, when the subadviser is not in a position to influence the decision by the fund to purchase the securities, may increase the investment opportunities of these funds.

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[54] *See* Proposing Release, *supra* note 6, at section III.A.1. (estimating the cost of applying for an order exempting affiliated persons from the prohibitions of sections 17(a), 17(d), 17(e), 10(f), and 12(d)(3) to be between $20,000 and $80,000, depending on the complexity of the application).

[55] *See* Proposing Release, *supra* note 6, at nn. 79–80 (estimating the length of time between filing of applications and granting of exemptive orders to be between 4 to 17 months, depending on the complexity of the application).

[56] *See* Proposing Release, *supra* note 6, at section III.A.1.

[57] It has not been possible to quantify this benefit, which varies on a case-by-case basis depending on the characteristics of individual transactions and joint arrangements and on the extent to which funds involved in such transactions have second-tier portfolio affiliates.

[58] Expansion of the exemption in this manner may also impose costs by eliminating what has been a "bright line" prohibition and expanding the opportunities for harmful transactions.

[59] *See* notes 85–87 *infra*, and accompanying text.

B. Costs

The Commission anticipates that funds, their shareholders, and their advisers and other affiliated persons may incur certain costs, including certain direct costs from complying with the new rule and amendments. The exemptions resulting from today's rulemaking also may encourage shifts in market behavior that could create direct and indirect costs for certain entities. Furthermore, the exemptions may allow funds to proceed with disadvantageous transactions that existing restrictions would have prevented.

1. Portfolio Affiliates

We do not anticipate that there will be any costs associated with the amendments to rules 17a–6 and 17d–1(d)(5), other than a cost associated with the provision that a fund's board of directors may find that an interest is not material and hence not a "financial interest." Because a fund may avail itself of the amendment only if the fund's directors make certain findings and record the basis for those findings in the minutes of their meeting, the benefit of the change is minimally offset by the cost to the fund of the board fulfilling its obligations. Based on discussions with industry representatives, our staff estimates that reviewing the materiality of a Prohibited Participant's interest in a party to the transaction and recording the basis for those findings would require approximately 11.2 hours and $1,140 per meeting, in addition to the discussions that occur during the board meeting.[60] This cost may partially offset the benefits of the exemption, including the direct benefit of allowing a fund to forego the cost of applying for exemptive relief from the restrictions of section 17(a) and rule 17d–1. We assume that if the cost of holding such a meeting exceeds the benefit to the fund, the fund will either forego the opportunity to engage in the transaction or require the Prohibited Participant to divest itself of its interest.

2. Subadvisory Affiliates

A fund and its advisers and subadvisers may incur costs in complying with the requirements of rule 17a–10 and amended rules 10f–3, 12d3–1, and 17e–1 that partially offset the benefits of these rules. In order for a fund to rely on the exemptions in the rule and amendments, the fund's advisory contracts must include certain provisions that they may not currently include. Because such contracts generally are subject to renewal at regular intervals, adding such provisions may not entail additional administrative costs. As discussed above, we do not view the required changes to subadvisory contracts to be material for purposes of section 15 of the Investment Company Act and, as a result, funds will not have to obtain shareholder approval of the change.[61] Based on discussions with industry representatives, the staff estimates that drafting and executing revised subadvisory contracts would require approximately 6 hours. Assuming that all funds that are advised by subadvisers modify their advisory contracts in order that they and their affiliated funds may rely on the exemptions, the rule and rule amendments would create an estimated initial one-time cost of approximately $836,000.[62]

Rule 17e–1 may result in increased costs to funds as a result of higher brokerage commissions. By exempting the commissions paid to certain affiliated subadvisers from the requirement for scrutiny by the board of directors, rule 17e–1 may allow a rise in brokerage commissions that the fund pays. Whether this increased cost occurs will depend on the extent to which the scrutiny currently required of boards of directors has resulted in findings that commissions to be paid by funds are excessive. Although we requested comment on the frequency of boards of directors making such findings, we received no comments on this issue.

The amendments to rule 10f–3 may encourage division of funds into discrete parts managed by multiple subadvisers. A fund that is advised by subadvisers that participate, or are affiliated with persons that participate, in underwriting syndicates may have an incentive to reorganize in order to take advantage of the opportunity to have a part of the fund purchase securities during the syndicate. Likewise, a fund that is advised by a subadviser that participates in underwriting syndicates may have an incentive to reorganize in order to comply with the percentage limit of rule 10f–3 and take advantage of the opportunity to purchase securities in reliance on that rule's exemption. Such a development would benefit subadvisers, but the use of additional subadvisers could also result in increased costs to funds and their shareholders.[63]

Investment advisers may incur costs in connection with the new requirement of rule 10f–3 that fund purchases be aggregated with purchases of certain non-funds for purposes of compliance with the rule's percentage limits. Commenters suggested that fund complexes that automate such calculations could incur significant one-time costs in connection with reconfiguring existing information collection systems to accommodate the amendments.[64] We assume that if the cost of compiling the required information would outweigh the benefits of relying on the exemption in rule 10f–3, then these advisers will forego the exemption in rule 10f–3, and comply with the prohibition in section 10(f).

IV. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[65]

Portfolio Affiliates

The amendments to rules 17a–6 and 17d–1(d)(5) will expand the circumstances under which funds, and companies they control, may enter into principal transactions and joint arrangements with portfolio affiliates without first obtaining an exemptive order from the Commission. The amendments will permit funds and companies they control to engage in otherwise prohibited transactions with: (i) A broader array of first-tier portfolio affiliates than the rules currently permit; and (ii) certain second-tier portfolio affiliates.[66] We anticipate that the amendments will promote efficiency and competition. The Act's restrictions on transactions involving funds and their affiliated persons respond to market failures that can occur when an affiliated person, in a position to influence the management of a fund, causes the fund to behave in a manner

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[60] *See* notes 68–74 *infra*, and accompanying text.

[61] *See* note 25 *supra*.

[62] *See* notes 75–78 *infra*, and accompanying text.

[63] It has been estimated that expenses of subadvised funds are on average 15–20% higher than those of non-subadvised funds. *See* James Paton, *Outside Fund Managers Don't Bring Outsize Benefits*, Reuters, Sept. 11, 2002, *available in* Westlaw, Reuters Eng. News Serv. File and Bridget O'Brian, Fund Track, *Some Fund Managers Hand Reins to 'Subadvisers,'* WALL ST. J., Aug. 31, 2001, at C1.

[64] One commenter stated that for a large fund complex with many non-fund accounts the cost of such a system reconfiguration would be $300,000 at a minimum.

[65] 15 U.S.C. 80a–2(c).

[66] An additional change to rule 17d–1(d)(5) would remove existing limitations regarding the percentage of a fund's assets that the fund could commit to a joint enterprise.

that benefits the affiliated person, rather than the shareholders of the fund. The amendments to rules 17a–6 and 17d–1(d)(5) will permit market forces to operate to allocate resources in circumstances where market failure is unlikely because the affiliated person is not in a position to influence fund management. The amendments to rules 17a–6 and 17d–1(d)(5) are unrelated to, and we believe will have no effect on, capital formation.

Subadvisory Affiliates

New rule 17a–10 and the amendments to rules 17e–1, 10f–3, and 12d3–1 permit funds, and companies controlled by funds, to engage in transactions with subadvisers that are affiliated persons of the fund, but which are not in a position to influence the fund's decision to participate in the transaction. The amendments to rule 17e–1 permit, in limited circumstances, an affiliated subadviser acting as broker to receive remuneration without complying with certain conditions of the rule. As in the case of the amendments to rules 17a–6 and 17d–1(d)(5), we anticipate that these amendments will promote efficiency and competition by permitting market forces to operate in circumstances where there is limited chance of market failure. We also believe that the amendments to rule 10f–3 may enhance capital formation by enabling funds to purchase securities during primary offerings, when they would otherwise be prohibited from doing so without a Commission exemptive order.

The rule and amendments may, however, adversely affect competition by promoting increased concentration of the market for subadvisory services. Rule 17a–10 may reduce or eliminate any incentive to select subadvisers specifically because they are not affiliated with a large number of funds, which may encourage funds to shift subadvisory business toward certain particularly successful subadvisers. The amendments to rule 10f–3 may remove an incentive to select subadvisers that are not either major participants or affiliated with major participants in the underwriting business. By removing disincentives against market concentration, these rules may have the effect of encouraging concentration in the market for subadvisory services.

V. Paperwork Reduction Act

Certain provisions of rule 17a–10 and the amendments to rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520] ("PRA"). The Commission submitted the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (i) "Rule 10f–3 under the Investment Company Act of 1940, Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate"; (ii) "Rule 12d3–1 under the Investment Company Act of 1940, Exemption of acquisitions of securities issued by persons engaged in securities related businesses"; (iii) "Rule 17a–6 under the Investment Company Act of 1940, Exemption for transactions with portfolio affiliates"; (iv) "Rule 17a–10 under the Investment Company Act of 1940, Exemption for transactions with certain subadvisory affiliates"; (v) "Rule 17d–1 under the Investment Company Act of 1940, Applications regarding joint enterprises or arrangements and certain profit-sharing plans"; and (vi) "Rule 17e–1 under the Investment Company Act of 1940, Brokerage transactions on a securities exchange." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.[67] The OMB control number for rule 17a–10 is 3235–0563, and the control numbers for amended rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 are 3235–0226, 3235–0561, 3235–0564, 3235–0562, and 3235–0217, respectively.

A. Portfolio Affiliates

Rules 17a–6 and 17d–1

Under rules 17a–6 and 17d–1, a fund or company controlled by a fund may enter into principal and joint transactions with a portfolio affiliate, or an affiliated person of a portfolio affiliate, as long as certain other Prohibited Participants are not parties to the transaction and do not have a financial interest in a party to the transaction. Rules 17a–6 and 17d–1 include a list of interests that are not "financial interests" for purposes of the rule.[68] We have amended that list to provide that "financial interest" does not include an interest that the fund's board of directors finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.[69] This aspect of the amendments creates a paperwork burden.

Based on public filings with the Commission, the Commission's staff estimates that 200 registered investment companies are affiliated persons of 900 issuers as a result of the investment company's ownership or control of the issuer's voting securities, and that there are approximately 1,400 such affiliate relationships.[70] The staff estimates that annually there will be a total of 1,400 principal transactions under rule 17a–6[71] and 1,400 joint arrangements under rule 17d–1(d)(5),[72] and that for each rule approximately 420 transactions or arrangements will result in a paperwork burden.[73]

The Commission staff estimates that compliance with the amendments will impose a burden of .2 hours (12 minutes) for each transaction for which there is a paperwork burden.[74] Therefore we estimate 84 burden hours to be associated with the amendments to rule 17a–6 annually and 84 burden

[67] Rule 10f–3 was adopted pursuant to authority set forth in sections 10(f), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a), and 80a–37(a)]. Rule 12d3–1 was adopted pursuant to authority set forth in sections 6(c) and 38(a) of the Act. [15 U.S.C. 80a–6(c)]. Rule 17a–6 was adopted pursuant to authority set forth in sections 6(c), 17(b), 31(a), and 38(a) of the Act [15 U.S.C. 80a–17(b)]. Rule 17d–1 was adopted pursuant to authority set forth in sections 6(c), 17(d), and 38(a). Rule 17e–1 was adopted pursuant to authority set forth in sections 6(c), 31(a), and 38(a) of the Act.

[68] Rules 17a–6(b)(1) and 17d–1(d)(5)(iii).

[69] Rules 17a–6(b)(1)(H) and 17d–1(d)(8). Collection of this information is necessary to obtain the benefit of the exemption in the proposed rule amendments.

[70] For purposes of this analysis, the staff estimates that investment companies will enter into one principal transaction and one joint arrangement each year with each of their portfolio affiliates, and that in thirty percent of those transactions and arrangements a Prohibited Participant will have a financial interest in a party to the transaction that the board of directors of the affected investment company will consider for purposes of determining whether that financial interest is material.

[71] 1,400 affiliate relationships × 1 principal transaction per year = 1,400 transactions under rule 17a–6.

[72] 1,400 affiliate relationships × 1 joint arrangement per year = 1,400 joint arrangements under rule 17d–1(d)(5). As discussed above, in addition to expanding fund business opportunities by allowing funds to transact with a wider range of portfolio affiliates, we have also eliminated the limit imposed by rule 17d–1(d)(5) on the percentage of assets a fund can commit to any given joint enterprise. Rule 17d–1(d)(5)(ii). The staff does not anticipate that allowing funds to increase the size of their commitment to a joint transaction will result in an increase in the expected number of such transactions.

[73] 1,400 transactions or arrangements × .30 (percentage of transactions or arrangements in which a Prohibited Participant is assumed to have a financial interest) = 420.

[74] The staff estimates the hourly burden to comply with the board of director's obligation to make a finding as to the materiality of a prohibited person's financial interest in a transaction to be 11 hours. The staff estimates that funds will spend .2 hours complying with the requirement that the basis for the board's findings be recorded in the minutes of its meeting.

hours to be associated with the amendments to rule 17d–1 annually.

B. Subadviser Affiliates

The Commission staff estimates that 1,900 portfolios of approximately 800 investment companies use the services of one or more subadvisers.[75] Based on discussions with industry representatives, the Commission staff estimates that it will require approximately 6 hours to draft and execute revised subadvisory contracts (5 staff attorney hours, 1 supervisory attorney hour), in order for funds and subadvisers to be able to rely on the exemptions in rule 17a–10 and the proposed amendments to rule 10f–3, 17e–1, and 12d3–1.[76] Assuming that all funds that are advised by subadvisers modify their advisory contracts in this manner, the new rule and rule amendments will create an estimated initial one-time burden of approximately 11,400 burden hours. The total estimated first year cost of these burden hours is $836,000.[77]

ESTIMATED ONE TIME BURDEN HOURS AND COST OF SUBADVISORY RULE AND AMENDMENTS

Number of funds modifying contracts	Staff attorney hours	Supervisory attorney hours	Total burden hours	Cost per staff attorney hour	Cost per supervisory attorney hour	Total cost of se 75burden hours
1,900	5	1	11,400	$62	$130	$836,000

Rule 17a–10 and the amendments to rules 10f–3, 12d3–1, and 17e–1 would require virtually identical modifications to fund advisory contracts. The Commission staff assumes that funds will rely equally on the exemptions in all of these rules, and therefore the burden hours associated with the required contract modifications should be apportioned equally among the four rules. Therefore the estimated one-time burden hours associated with rules 17a–10, 10f–3, 12d3–1, and 17e–1 are 2,850 hours for each rule (11,400 total burden hours for all of the rules/four rules), and the estimated one-time cost of these burden hours is $209,000 for each rule ($836,000/four rules).[78]

The staff estimates that a total of 60 funds will enter into subadvisory agreements each year after the first year in which the rule and rule amendments are adopted.[79] Assuming that each of these funds enters into a contract that permits it and its affiliated funds to rely on the exemptions in rule 17a–10, and the amendments to rules 10f–3, 12d3–1, and 17e–1, an estimated 360 burden hours (90 hours per rule) will be associated with these rules annually, with an associated cost of $26,400 ($6,600 per rule).[80]

Proposed Amendments to Rule 10f–3

Rule 10f–3 currently has an estimated burden of 4,407.5 hours at a cost of $793,752. This burden estimate will change as a result of the amendments to rule 10f–3. As we discuss above,[81] we assume that all funds that are advised by subadvisers will modify their subadvisory contracts so as to allow the fund and their affiliated funds to rely on the proposed exemptions. The staff calculates that the estimated one-time burden hours associated with the proposed amendments to rule 10f–3 would be 2,850 hours, with an estimated one-time cost of $209,000,[82] and an ongoing estimated burden of 90 hours for subsequent years, with an estimated cost associated with this hour burden of $6,600 for subsequent years.[83] We estimate that these additional burdens will, for the first year following adoption, increase the burden hours of compliance with rule 10f–3 from the current 4,407.5 hours at a cost of $793,752, to 7,257.5 hours at a cost of $1,002,760. We anticipate that in the years following the adoption of amended rule 10f–3 the ongoing estimated burden hours for rule 10f–3 will be 4,497.5 hours at a cost of $800,360.[84]

Rule 17e–1

Based on an analysis of investment company filings, the staff estimates that approximately 293 investment companies use at least one affiliated broker and that each of these investment companies spends an estimated 12.5 hours per year (at a cost of $775 per year) complying with rule 17e–1's requirements that (i) the fund retain records of transactions entered into pursuant to the rule ("recordkeeping requirement"), and (ii) the fund's directors review those transactions quarterly ("review requirement").[85] Based on conversations with representatives of investment companies, the staff estimates that the amendments to rule 17e–1 would exempt approximately 40 percent of transactions that occur under rule 17e–1 from the rule's recordkeeping and review requirements.

The Commission staff estimates, therefore, that the amendments to rule 17e–1 will, in this respect, *decrease* the rule's information collection burden to 2,200 hours,[86] at a cost of $136,422 per year.[87]

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[75] *See* Proposing Release, *supra* note 6, at n. 13 and accompanying text.

[76] The fund's advisory contracts must include these conditions in order for the fund to obtain the benefit of the exemptions in the new rule and rule amendments.

[77] (5 in-house staff attorney hours × $62 = $310) + (1 deputy general counsel hour x $130 = $130) = $440. $440 × 1,900 funds = $ 836,000.

[78] The amendments to rule 17e–1 will also, as discussed below, decrease the burden hours associated with that rule.

[79] Based on an analysis of investment company filings, the staff estimates that approximately 250 funds are created annually. Assuming that the number of these funds that will use the services of subadvisers is proportionate to the number of funds that currently use the services of subadvisers, then approximately 50 new funds will enter into subadvisory agreements each year. The Commission staff estimates, based on an analysis of investment company filings, that an additional 10 funds, currently in existence, will employ the services of subadvisers for the first time each year.

[80] 6 hours × 60 funds = 360 total hours. $440 × 60 funds = $26,400.

[81] *See supra* note 78 and accompanying text.

[82] *Id.*

[83] *Id.*

[84] We are not seeking approval for any collection of information based on burden data for any but the first year following adoption of these proposals. The information regarding burden hours and costs incurred after the first year of adoption is provided to give a fuller understanding of our proposals' long-term impact on the fund industry.

[85] In calculating the total annual cost of complying with amended rule 17e–1, the Commission staff assumes that the entire burden would be attributable to professionals with an average hourly wage rate of $62 per hour.

[86] 293 transactions × 12.5 hours = 3,663 hours if adopted; 60% of the 293 transactions (or 176 transactions) would proceed under rule 17e–1. 176 transactions (60% of the 293 transactions anticipated to be impacted by rule) × 12.5 hours = 2,200 hours.

[87] 3,663 hours × $62 = $227,106; 2,200 hours × $62 = $136,400.

ESTIMATED REDUCTION IN BURDEN HOURS AND COST OF RULE 17E–1

[effect of exemption from review and recordkeeping requirements]

	Number funds relying on rule 17e–1	Number funds subject to record-keeping and review requirements	Burden hours of recordkeeping and review requirements	Total burden hours of recordkeeping and review requirements	Cost per hour of record-keeping and review requirements	Total cost of burden hours
Prior Rule	293	293	12.5	3,663	$62	$227,106
As Amended	293	176	12.5	2,200	62	136,400

This reduction will be offset to some extent by the increase in estimated burden hours described above with respect to the required modifications of the funds' investment advisory contracts. Therefore rule 17e–1, as amended, will impose an estimated burden of 5,050 hours ($345,400) in the first year after the amendments are adopted, and an estimated burden of 2,290 hours ($143,000) in subsequent years.

VI. Summary of Final Regulatory Flexibility Analysis

We have prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604 regarding the adoption of new rule 17a–10 and amendments to rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 under the Investment Company Act. A summary of the Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. The following summarizes the FRFA.

A. Need for New Rule and Amendments

The FRFA summarizes the background of the amendments. The FRFA also discusses the reasons for the new rule and amendments and the objectives of, and legal basis for, these rulemaking initiatives. Those items are discussed in the release. The FRFA discusses the effect of the new rule and amendments on small entities.

B. Significant Issues Raised by Public Comment

The Commission received no comments on the IRFA.

C. Small Entities Subject to the New Rule and Amendments

The FRFA discusses the effect of the amendments on small entities. For purposes of the Regulatory Flexibility Act,[88] a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[89] An investment adviser is a small entity if it (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year.[90] An issuer, other than an investment company, is a small entity if its total assets on the last day of its most recent fiscal year were $5 million or less and it is engaged or proposing to engage in an offering of securities which does not exceed the dollar limitation prescribed by section 3(b) of the Securities Act of 1933. The staff estimates, based upon Commission filings, that there are approximately 3,650 active registered management investment companies, of which approximately 200 are small entities. The staff further estimates that there are approximately 7,560 registered investment advisers, of which approximately 430 are small entities.[91]

Funds and portfolio companies that are small entities will be able to rely on the amendments to rules 17a–6 and 17d–1(d)(5) if they satisfy the rules' conditions. Funds and investment advisers that are small entities will be able to rely on the amendments to rule 10f–3, 12d3–1, 17e–1, and rule 17a–10, if they meet the conditions of those rules.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Portfolio Affiliates—Rules 17a–6 and 17d–1(d)(5)

The expanded exemptions in rules 17a–6 and 17d–1(d)(5) permitting second-tier portfolio affiliates and funds to enter into principal transactions and joint arrangements would not impose any new reporting, recordkeeping, or other compliance requirements on funds or portfolio affiliates that are small entities.

Subadviser Affiliates—Rules 17a–10, 10f–3, 12d3–1, and 17e–1

The rule and rule amendments permitting subadvisers to enter into otherwise prohibited transactions and arrangements with affiliated funds will impose compliance and recordkeeping requirements on funds and subadvisers that rely on the rules' exemptions, as the funds' advisory contracts will be required to prohibit the fund's subadvisers from consulting with one another concerning the fund's securities transactions.[92] Based on discussions with industry representatives, our staff estimates that modifying advisory contracts in this manner will require 6 hours, at a cost of approximately $440 per fund. While small funds and small advisers are unlikely to be disproportionately impacted by this one-time requirement, a fund complex that includes a large number of funds advised by subadvisers may experience economies of scale, as the amendments to its advisory contracts will be largely duplicative.

E. Agency Action To Minimize Effect on Small Entities

The FRFA explains that we have not identified any federal rules that duplicate or conflict with the rule and rule amendments. The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the

[88] 5 U.S.C. 601–612.

[89] 17 CFR 270.0–10.

[90] 17 CFR 275.0–7.

[91] The staff was unable to determine from Commission filings the number of fund portfolio affiliates that are also small entities. We estimate that 875 companies are portfolio affiliates of funds.

[92] *See, e.g.*, rule 12d3–1(c)(3)(ii)(A).

use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities.

We do not believe that special compliance, timetable, or reporting requirements or an exemption from coverage of the rule for small entities would be consistent with investor protection. Similarly, any further clarification, consolidation, or simplification of the reporting requirements for small entities could compromise the safeguards embodied in the new rule and amendments. The new rule and rule amendments use performance, rather than design standards, in the sense that they require the fund's board of directors to make certain findings,[93] and the fund's advisory contracts to include certain conditions,[94] rather than specifying the basis for the board's findings, or the specific language to be included in the advisory contracts.

VII. Statutory Authority

The Commission has adopted amendments to rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 and new rule 17a–10 under the Investment Company Act pursuant to authority set forth in sections 6(c), 10(f), 17(b), 17(d), 31(a), and 38(a) of the Investment Company Act.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rules

For reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.10f–3 is amended by:

a. Redesignating paragraph (b) as paragraph (c);

b. Adding paragraphs (a)(6), (a)(7), (a)(8), and new paragraph (b);

c. Revising the paragraph heading in newly redesignated paragraph (c); and

d. Revising newly redesignated paragraph (c)(7).

[93] In the case of the amendments to rules 17a–6 and 17d–1(d)(5).

[94] In the case of rule 17a–10 and the amendments to rules 17e–1, 10f–3, and 12d3–1.

The additions and revisions read as follows:

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

(a) * * *

(6) *Managed portion* of a portfolio of a registered investment company means a discrete portion of a portfolio of a registered investment company for which a subadviser is responsible for providing investment advice, provided that:

(i) The subadviser is not an affiliated person of any investment adviser, promoter, underwriter, officer, director, member of an advisory board, or employee of the registered investment company; and

(ii) The subadviser's advisory contract:

(A) Prohibits it from consulting with any subadviser of the investment company that is a principal underwriter or an affiliated person of a principal underwriter concerning transactions of the investment company in securities or other assets; and

(B) Limits its responsibility in providing advice to providing advice with respect to such portion.

(7) *Series of a series company* means any class or series of a registered investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series.

(8) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

(b) *Exemption for purchases by series companies and investment companies with managed portions.* For purposes of this section and section 10(f) of the Act (15 U.S.C. 80a–10(f)), each Series of a Series Company, and each Managed Portion of a registered investment company, is deemed to be a separate investment company. Therefore, a purchase or acquisition of a security by a registered investment company is exempt from the prohibitions of section 10(f) of the Act if section 10(f) of the Act would not prohibit such purchase if each Series and each Managed Portion of the company were a separately registered investment company.

(c) *Exemption for other purchases.*

* * *

(7) *Percentage limit.* (i) *Generally.* The amount of securities of any class of such issue to be purchased by the investment company, aggregated with purchases by any other investment company advised by the investment company's investment adviser, and any purchases by another account with respect to which the investment adviser has investment discretion if the investment adviser exercised such investment discretion with respect to the purchase, does not exceed the following limits:

(A) If purchased in an offering other than an Eligible Rule 144A Offering, 25 percent of the principal amount of the offering of such class; or

(B) If purchased in an Eligible Rule 144A Offering, 25 percent of the total of:

(*1*) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; plus

(*2*) The principal amount of the offering of such class in any concurrent public offering.

(ii) *Exemption from percentage limit.* The requirement in paragraph (c)(7)(i) of this section applies only if the investment adviser of the investment company is, or is an affiliated person of, a principal underwriter of the security; and

(iii) *Separate aggregation.* The requirement in paragraph (c)(7)(i) of this section applies independently with respect to each investment adviser of the investment company that is, or is an affiliated person of, a principal underwriter of the security.

* * * * *

3. Section 270.12d3–1 is amended by revising paragraph (c) and adding paragraph (d)(9) before the note:

§ 270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, this section does not exempt the acquisition of:

(1) A general partnership interest; or

(2) A security issued by the acquiring company's promoter, principal underwriter, or any affiliated person of such promoter, or principal underwriter; or

(3) A security issued by the acquiring company's investment adviser, or an affiliated person of the acquiring company's investment adviser, other than a security issued by a subadviser or an affiliated person of a subadviser of the acquiring company provided that:

(i) *Prohibited relationships.* The subadviser that is (or whose affiliated person is) the issuer is not, and is not an affiliated person of, an investment adviser responsible for providing advice with respect to the portion of the acquiring company that is acquiring the securities, or of any promoter, underwriter, officer, director, member of

an advisory board, or employee of the acquiring company;

(ii) *Advisory contract.* The advisory contracts of the Subadviser that is (or whose affiliated person is) the issuer, and any Subadviser that is advising the portion of the acquiring company that is purchasing the securities:

(A) Prohibit them from consulting with each other concerning transactions of the acquiring company in securities or other assets, other than for purposes of complying with the conditions of paragraphs (a) and (b) of this section; and

(B) Limit their responsibility in providing advice to providing advice with respect to a discrete portion of the acquiring company's portfolio.

(d) * * *

(9) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

* * * * *

4. Section 270.17a–6 is revised to read as follows:

§ 270.17a–6 Exemption for transactions with portfolio affiliates.

(a) *Exemption for transactions with portfolio affiliates.* A transaction to which a fund, or a company controlled by a fund, and a portfolio affiliate of the fund are parties is exempt from the provisions of section 17(a) of the Act (15 U.S.C. 80a–17(a)), provided that none of the following persons is a party to the transaction, or has a direct or indirect financial interest in a party to the transaction other than the fund:

(1) An officer, director, employee, investment adviser, member of an advisory board, depositor, promoter of or principal underwriter for the fund;

(2) A person directly or indirectly controlling the fund;

(3) A person directly or indirectly owning, controlling or holding with power to vote five percent or more of the outstanding voting securities of the fund;

(4) A person directly or indirectly under common control with the fund, other than:

(i) A portfolio affiliate of the fund; or

(ii) A fund whose sole interest in the transaction or a party to the transaction is an interest in the portfolio affiliate; or

(5) An affiliated person of any of the persons mentioned in paragraphs (a)(1)–(4) of this section, other than the fund or a portfolio affiliate of the fund.

(b) *Definitions.* (1) *Financial interest.* (i) The term *financial interest* as used in this section does not include:

(A) Any interest through ownership of securities issued by the fund;

(B) Any interest of a wholly-owned subsidiary of a fund;

(C) Usual and ordinary fees for services as a director;

(D) An interest of a non-executive employee;

(E) An interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person;

(F) An interest of a bank arising from a loan or account made or maintained by it in the ordinary course of business to or with a natural person, unless it arises from a loan to a person who is an officer, director or executive of a company which is a party to the transaction, or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting securities of a company which is a party to the transaction;

(G) An interest acquired in a transaction described in paragraph (d)(3) of § 270.17d–1; or

(H) Any other interest that the board of directors of the fund, including a majority of the directors who are not interested persons of the fund, finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.

(ii) A person has a financial interest in any party in which it has a financial interest, in which it had a financial interest within six months prior to the transaction, or in which it will acquire a financial interest pursuant to an arrangement in existence at the time of the transaction.

(2) *Fund* means a registered investment company or separate series of a registered investment company.

(3) *Portfolio affiliate of a fund* means a person that is an affiliated person (or an affiliated person of an affiliated person) of a fund solely because the fund, a fund under common control with the fund, or both:

(i) Controls such person (or an affiliated person of such person); or

(ii) Owns, controls, or holds with power to vote five percent or more of the outstanding voting securities of such person (or an affiliated person of such person).

5. Section 270.17a–10 is added to read as follows:

§ 270.17a–10 Exemption for transactions with certain subadvisory affiliates.

(a) *Exemption.* A person that is prohibited by section 17(a) of the Act (15 U.S.C. 80a–17(a)) from entering into a transaction with a fund solely because such person is, or is an affiliated person of, a subadviser of the fund, or a subadviser of a fund that is under common control with the fund, may nonetheless enter into such transaction, if:

(1) *Prohibited relationship.* The person is not, and is not an affiliated person of, an investment adviser responsible for providing advice with respect to the portion of the fund for which the transaction is entered into, or of any promoter, underwriter, officer, director, member of an advisory board, or employee of the fund.

(2) *Prohibited conduct.* The advisory contracts of the subadviser that is (or whose affiliated person is) entering into the transaction, and any subadviser that is advising the fund (or portion of the fund) entering into the transaction:

(i) Prohibit them from consulting with each other concerning transactions for the fund in securities or other assets; and

(ii) If both such subadvisers are responsible for providing investment advice to the fund, limit the subadvisers' responsibility in providing advice with respect to a discrete portion of the fund's portfolio.

(b) *Definitions.*

(1) *Fund* means a registered investment company and includes a separate series of a registered investment company.

(2) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

6. Section 270.17d–1 is amended by revising paragraphs (d)(5) and (d)(6) to read as follows:

§ 270.17d–1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

* * * * *

(d) * * *

(5) Any joint enterprise or other joint arrangement or profit-sharing plan ("joint enterprise") in which a registered investment company or a company controlled by such a company, is a participant, and in which a portfolio affiliate (as defined in § 270.17a–6(b)(3)) of such registered investment company is also a participant, provided that:

(i) None of the persons identified in § 270.17a–6(a) is a participant in the joint enterprise, or has a direct or indirect financial interest in a participant in the joint enterprise (other than the registered investment company);

(ii) *Financial interest.*

(A) The term *financial interest* as used in this section does not include:

(*1*) Any interest through ownership of securities issued by the registered investment company;

(*2*) Any interest of a wholly owned subsidiary of the registered investment company;

(3) Usual and ordinary fees for services as a director;

(4) An interest of a non-executive employee;

(5) An interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person;

(6) An interest of a bank arising from a loan to a person who is an officer, director, or executive of a company which is a participant in the joint transaction or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting securities of a company which is a participant in the joint transaction;

(7) An interest acquired in a transaction described in paragraph (d)(3) of this section; or

(8) Any other interest that the board of directors of the investment company, including a majority of the directors who are not interested persons of the investment company, finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.

(B) A person has a financial interest in any party in which it has a financial interest, in which it had a financial interest within six months prior to the investment company's participation in the enterprise, or in which it will acquire a financial interest pursuant to an arrangement in existence at the time of the investment company's participation in the enterprise.

(6) The receipt of securities and/or cash by an investment company or a controlled company thereof and an affiliated person of such investment company or an affiliated person of such person pursuant to a plan of reorganization: *Provided,* That no person identified in § 270.17a–6(a)(1) or any company in which such a person has a direct or indirect financial interest (as defined in paragraph (d)(5)(iii) of this section):

* * * * *

7. Section 270.17e–1 is amended by revising paragraphs (b)(3) and (d) to read as follows:

§ 270.17e–1 Brokerage transactions on a securities exchange.

* * * * *

(b) * * *

(3) Determines no less frequently than quarterly that all transactions effected pursuant to this section during the preceding quarter (other than transactions in which the person acting as broker is a person permitted to enter into a transaction with the investment company by § 270.17a–10) were effected in compliance with such procedures;

* * * * *

(d) The investment company:

(1) Shall maintain and preserve permanently in an easily accessible place a copy of the procedures (and any modification thereto) described in paragraph (b)(1) of this section; and

(2) Shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a record of each such transaction (other than any transaction in which the person acting as broker is a person permitted to enter into a transaction with the investment company by § 270.17a–10) setting forth the amount and source of the commission, fee or other remuneration received or to be received, the identity of the person acting as broker, the terms of the transaction, and the information or materials upon which the findings described in paragraph (b)(3) of this section were made.

By the Commission.

Dated: January 14, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–1229 Filed 1–21–03; 8:45 am]

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Federal Register

Wednesday,
January 22, 2003

Part VI

The President

Memorandum of January 17, 2003—Presidential Determination on Pedestal Actuator Imports From the People's Republic of China

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Presidential Documents

Title 3—

The President

Memorandum of January 17, 2003

Presidential Determination on Pedestal Actuator Imports from the People's Republic of China

Memorandum for the United States Trade Representative

Pursuant to section 421 of the Trade Act of 1974, as amended (19 U.S.C. 2451), I have determined the action I will take with respect to the affirmative determination of the United States International Trade Commission (USITC) regarding imports of pedestal actuators from China. The USITC, on the basis of its investigation (No. TA–421–1), determined that pedestal actuators from China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products.

After considering all relevant aspects of the investigation, I have determined that providing import relief for the U.S. pedestal actuator industry is not in the national economic interest of the United States. In particular, I find that the import relief would have an adverse impact on the United States economy clearly greater than the benefits of such action.

In determining not to provide import relief, I considered its overall costs to the U.S. economy. The facts of this case indicate that imposing the USITC's recommended quota would not likely benefit the domestic producing industry and instead would cause imports to shift from China to other offshore sources.

Even if the quota were to benefit the primary domestic producer, the cost of the quota to consumers, both the downstream purchasing industry and users of the downstream products, would substantially outweigh any benefit to producers' income. The USITC's analysis confirms this conclusion.

In addition, downstream industries are already under pressure to migrate production offshore to compete with lower-cost imports of finished products. Higher component costs resulting from import relief would add to this pressure. Given the significantly larger number of workers in the downstream purchasing industry when compared with the domestic pedestal actuator industry, I find that imposing import restrictions would do more economic harm than good.

Finally, a quota would negatively affect the many disabled and elderly purchasers of mobility scooters and electric wheelchairs, the primary ultimate consumers of pedestal actuators.

You are authorized and directed to publish this memorandum in the **Federal Register.**

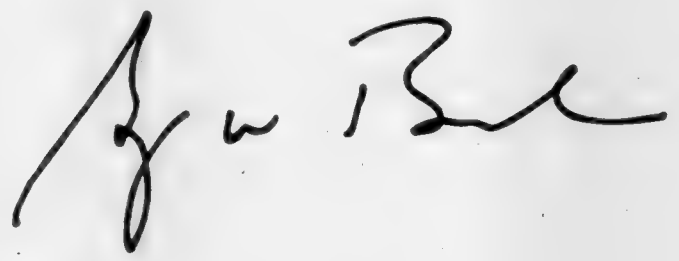

THE WHITE HOUSE,
Washington, January 17, 2003.

[FR Doc. 03–1591
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January 22, 2003

Part VII

The President

Notice of January 20, 2003—Continuation of the National Emergency With Respect to Terrorists Who Threaten To Disrupt the Middle East Peace Process

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Federal Register
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Presidential Documents

Title 3—

The President

Notice of January 20, 2003

Continuation of the National Emergency With Respect to Terrorists Who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by grave acts of violence committed by foreign terrorists who threaten to disrupt the Middle East peace process. On August 20, 1998, by Executive Order 13099, the President identified four additional persons, including Usama bin Ladin, who threaten to disrupt the Middle East peace process.

Because these terrorist activities continue to threaten the Middle East peace process and continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on January 23, 1995, as expanded on August 20, 1998, and the measures adopted on those dates to deal with that emergency must continue in effect beyond January 23, 2003. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process..

This notice shall be published in the **Federal Register** and transmitted to the Congress.

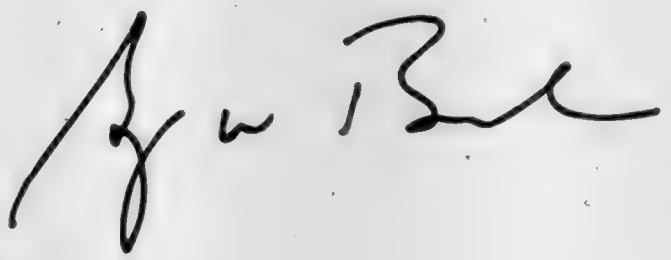

THE WHITE HOUSE,
January 20, 2003.

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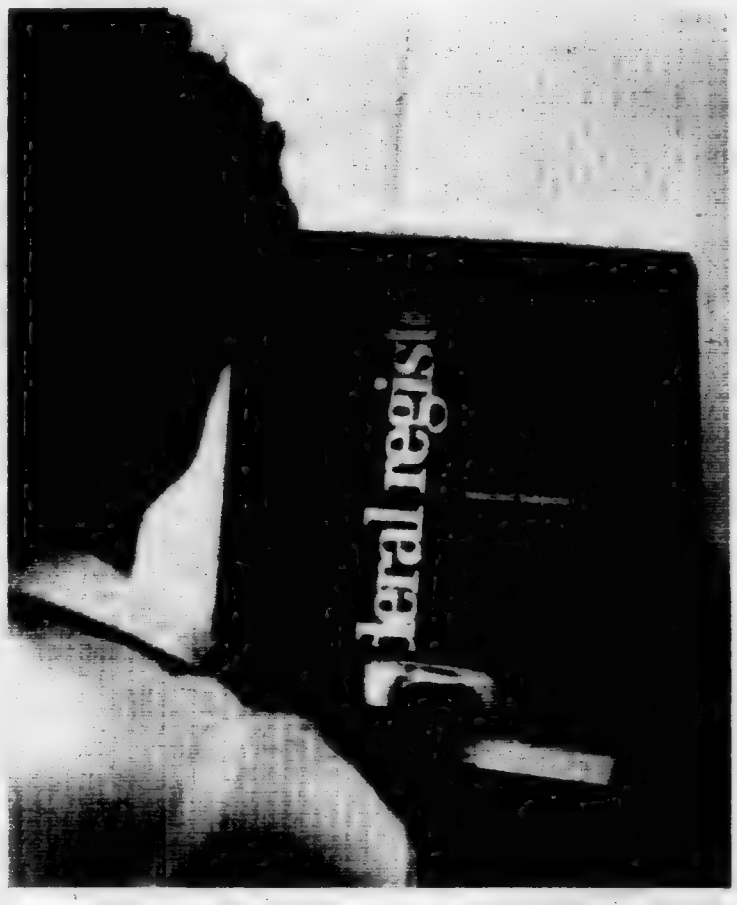

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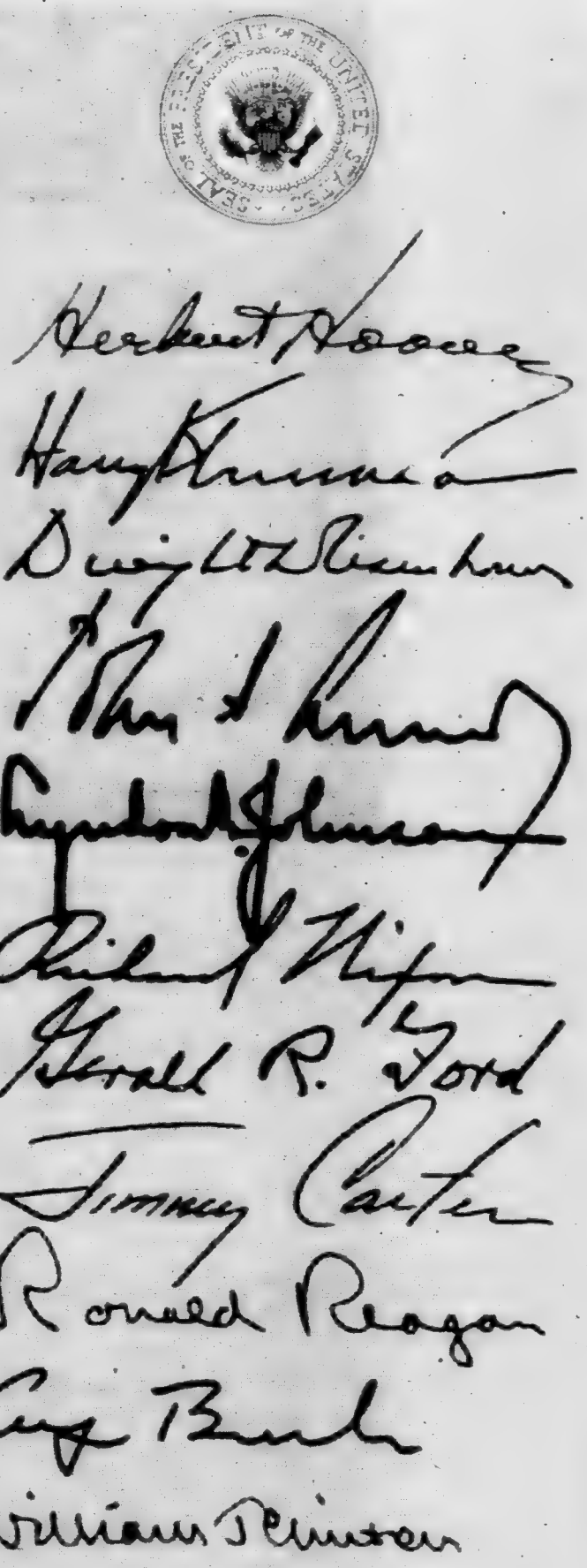

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Presidential Documents

Title 3—

The President

Proclamation 7641 of January 17, 2003

To Modify Rules of Origin Under the North American Free Trade Agreement

By the President of the United States of America

A Proclamation

1. Presidential Proclamation 6641 of December 15, 1993, implemented the North American Free Trade Agreement (the "NAFTA") with respect to the United States and, pursuant to the North American Free Trade Agreement Implementation Act (the "NAFTA Implementation Act"), incorporated in the Harmonized Tariff Schedule of the United States (the "HTS") the tariff modifications and rules of origin necessary or appropriate to carry out the NAFTA.

2. Section 202 of the NAFTA Implementation Act provides rules for determining whether goods imported into the United States originate in the territory of a NAFTA party and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim, as a part of the HTS, the rules of origin set out in the NAFTA and to proclaim modifications to such previously proclaimed rules of origin, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)).

3. I have determined that the modifications to the HTS proclaimed in this proclamation pursuant to sections 201 and 202 of the NAFTA Implementation Act are appropriate. For goods of Mexico, I have decided that the effective date of the modifications shall be determined by the United States Trade Representative (USTR).

4. Section 604 of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 604 of the 1974 Act, section 202 of the NAFTA Implementation Act, and section 301 of title 3, United States Code, do hereby proclaim:

(1) In order to modify the rules of origin under the NAFTA, general note 12 to the HTS is modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(3) The modifications made by the Annex to this proclamation shall be effective with respect to goods of Canada that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2003. The modifications made by such Annex shall be effective with respect to goods of Mexico that are entered, or withdrawn from warehouse for consumption, on or after a date to be announced in the **Federal Register** by the USTR.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.

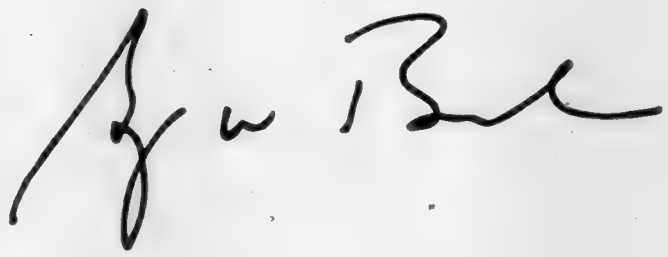

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ANNEX

MODIFICATIONS TO THE RULES OF ORIGIN FOR THE NAFTA

Effective with respect to goods of Canada entered, or withdrawn from warehouse for consumption, on or after January 1, 2003, and to goods of Mexico entered, or withdrawn from warehouse for consumption, on or after a date to be announced in the Federal Register by the USTR, general note 12(t) is modified as follows:

1. Tariff classification rule (TCR) 7 for chapter 22 is deleted and the following new TCRs are inserted in lieu thereof:

"7. A change to headings 2203 through 2207 from any heading outside that group, except from tariff items 2106.90.12, 2106.90.15 or 2106.90.18 or headings 2208 through 2209.

8. A change to subheading 2208.20 from any other heading, except from tariff items 2106.90.12, 2106.90.15 or 2106.90.18 or headings 2203 through 2207 or 2209.

9. No required change in tariff classification to subheadings 2208.30 through 2208.70, provided that the non-originating alcoholic ingredients constitute no more than 10 percent of the alcoholic content of the good by volume.

10. A change to subheading 2208.90 from any other heading, except from tariff items 2106.90.12, 2106.90.15 or 2106.90.18 or headings 2203 through 2207 or 2209.

11. A change to heading 2209 from any other heading, except from tariff items 2106.90.12, 2106.90.15 or 2106.90.18 or headings 2203 through 2208."

2. The following new chapter rule is inserted immediately below the side heading "Chapter 27":

"**Chapter rule:** For the purposes of heading 2710, the following processes confer origin:

(a) Atmospheric distillation–a separation process in which petroleum oils are converted, in a distillation tower, into fractions according to boiling point and the vapor then condensed into different liquefied fractions. Liquefied petroleum gas, naphtha, gasoline, kerosene, diesel/heating oil, light gas oils and lubricating oil are produced from petroleum distillation;

(b) Vacuum distillation–distillation at a pressure below atmospheric but not so low that it would be classed as molecular distillation. Vacuum distillation is useful for distilling high-boiling and heat-sensitive materials such as heavy distillates in petroleum oils to produce light to heavy vacuum gas oils and residuum. In some refineries gas oils may be further processed into lubricating oils;

(c) Catalytic hydroprocessing–the cracking and/or treating of petroleum oils with hydrogen at high temperature and under pressure, in the presence of special catalysts. Catalytic hydroprocessing includes hydrocracking and hydrotreating;

(d) Reforming (catalytic reforming)–the rearrangement of molecules in a naphtha boiling range material to form higher octane aromatics (i.e., improved antiknock quality at the expense of gasoline yield). A main product is catalytic reformate, a blend component for gasoline. Hydrogen is another by-product;

(e) Alkylation–a process whereby a high-octane blending component for gasolines is derived from catalytic combination of an isoparaffin and an olefin;

(f) Cracking–a refining process involving decomposition and molecular recombination of organic compounds, especially hydrocarbons obtained by means of heat, to form molecules suitable for motor fuels, monomers, petrochemicals, etc.:

(i) Thermal cracking–exposes the distillate to temperatures of approximately 540° C to 650° C for varying periods of time. Process produces modest yields of gasoline and higher yields of residual products for fuel oil blending;

(ii) Catalytic cracking–hydrocarbon vapors are passed at approximately 400° C over a metallic catalyst (e.g., silica-alumina or platinum); the complex recombinations (alkylation, polymerization, isomerization, etc.) occur within seconds to yield high-octane gasoline. Process yields less residual oils and light gases than thermal cracking;

(g) Coking–a thermal cracking process for the conversion of heavy low-grade products, such as reduced crude, straight run pitch, cracked tars and shale oil, into solid coke (carbon) and lower boiling hydrocarbon products which are suitable as feed for other refinery units for conversion into lighter products; or

(h) Isomerization–the refinery process of converting petroleum compounds into their isomers."

3. TCR 4 for chapter 27 is deleted and the following new TCRs are inserted in lieu thereof:

"4. (A) A change to heading 2710 from any other heading, except from headings 2711 through 2715; or

(B) Production of any good of heading 2710 as the result of atmospheric distillation, vacuum distillation, catalytic hydroprocessing, catalytic reforming, alkylation, catalytic cracking, thermal cracking, coking or isomerization.

4A. A change to headings 2711 through 2715 from any heading outside that group, except from heading 2710."

4. TCRs 8 through 10, inclusive, for chapter 29 are deleted and the following new TCRs are inserted in lieu thereof:

"8. A change to subheadings 2905.11 through 2905.49 from any other subheading, including another subheading within that group."

5. TCR 2 for chapter 71 is deleted and the following new TCR is inserted in lieu thereof:

"2. A change to headings 7113 through 7118 from any heading outside that group."

6. TCR 69 to chapter 85 is deleted and the following new TCR is inserted in lieu thereof:

"69. (A) A change to subheading 8518.30 from any other heading; or

(B) A change to subheading 8518.30 from subheadings 8518.10, 8518.29 or 8518.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

7. TCRs 14 and 15 to chapter 87 are deleted and the following new TCRs are inserted in lieu thereof:

"14. A change to tariff items 8706.00.03 or 8706.00.15 from any other heading, except from subheadings 8708.50 or 8708.60, provided there is a regional value content of not less than 50 percent under the net cost method.

15. A change to tariff items 8706.00.05, 8706.00.25, 8706.00.30 or 8706.00.50 from any other heading, except from subheadings 8708.50 or 8708.60, provided there is a regional value content of not less than 50 percent under the net cost method."

8. TCRs 24, 24A and 24B for chapter 90 are deleted and the following new TCRs are inserted in lieu thereof:

"24. A change to subheadings 9009.91 through 9009.93 from any subheading outside that group, except from tariff item 9009.99.80.

24A. A change to tariff item 9009.99.40 from subheadings 9009.91, 9009.92 or 9009.93, tariff item 9009.99.80 or any other heading, provided that at least one of the components of such assembly named in chapter rule 3 to chapter 90 is originating.

24B. A change to subheading 9009.99 from any other subheading."

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Filed 1–22–03; 8:45 am]
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Presidential Documents

Proclamation 7642 of January 17, 2003

Martin Luther King, Jr., Federal Holiday, 2003

By the President of the United States of America

A Proclamation

Dr. Martin Luther King, Jr., served as a voice of conscience for our Nation, and his words and actions continue to inspire courage, humility, and compassion. As a visionary leader of the civil rights movement, Dr. King helped to advance human dignity by working peacefully to resolve racial conflict through speeches, marches, and countless nonviolent activities that helped our Nation recognize the importance of upholding fully our founding ideals of equality, tolerance, and justice for all. Dr. King's enduring contributions to America remind us and countless others around the world that people should ". . . not be judged by the color of their skin but by content of their character." He also taught us that lasting achievement in life comes through sacrifice and service. His devotion to helping others reflected the true spirit of service and citizenship, and his example continues to motivate individuals to serve causes greater than themselves.

Dr. King wrote that "Injustice anywhere is a threat to justice everywhere." As Americans celebrate the 18th national commemoration of the life and legacy of this great leader, we recognize the lasting truth of his words and his legacy, and we renew our commitment to the principles of justice, equality, opportunity, and optimism that Dr. King espoused and exemplified.

As we honor Dr. King's accomplishments, we pledge to work for a Nation in which all people of every race realize the promise of America. No government policy can put hope in people's hearts or a sense of purpose in people's lives; but we can and will continue to support efforts that seek to secure a Nation of dignity, liberty, and compassion.

To achieve this goal, our Nation must work to ensure that all American children have an equal chance to succeed and reach their full potential. One year ago this month, our country set a bold new course in public education with the passage of the No Child Left Behind Act, ushering in an era of accountability, local control, and high standards. This Act affirmed our faith in the wisdom of parents and communities and our fundamental belief in the promise of every child. Across America, States and school districts are working diligently to implement reforms called for by this important legislation, which will produce better results for all of our students. My Administration is committed to these efforts, and I will continue working with the Congress to enact reforms and provide support to help build the mind and character of every child from every background in every part of America. By working together to advance Dr. King's ideals of equality and acceptance, we can achieve his dream of a Nation united in understanding, defined in promise, and guided by hope.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 20, 2003, as the Martin Luther King, Jr., Federal Holiday. I encourage all Americans to observe this day with appropriate civic, community, and service programs and activities in honor of Dr. King's life and legacy.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.

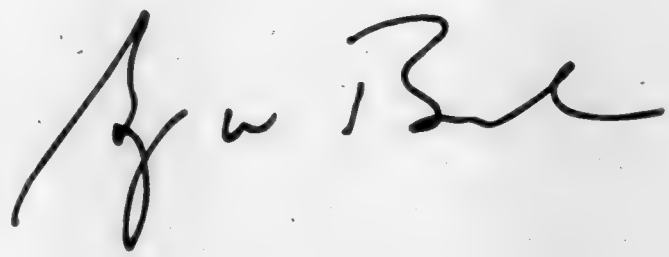

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Rules and Regulations

Federal Register
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Thursday, January 23, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–49–AD; Amendment 39–13020; AD 2003–02–04]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–5 and –5B Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to CFM International CFM56–5 and –5B series turbofan engines. This amendment requires the establishment of an exhaust gas temperature (EGT) baseline and trend monitoring using the System for Analysis of Gas Turbine Engines (SAGE), or equivalent, as an option to EGT harness replacement, and if necessary, replacement of certain EGT harnesses and EGT couplings as soon as a slow and continuous EGT drift downward is noticed after the effective date of this AD. This amendment is prompted by reports of erroneous EGT readings. The actions specified by this AD are intended to prevent unexpected deterioration of critical rotating engine parts due to higher than desired engine operating EGT's.

DATES: Effective February 27, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 27, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to CFM International CFM56–5, –5A, and –5B series turbofan engines was published in the **Federal Register** on June 13, 2002 (67 FR 40626). That action proposed to require establishment of an exhaust gas temperature (EGT) baseline and trend monitoring using the System for Analysis of Gas Turbine Engines (SAGE), or equivalent, as an option to EGT harness and coupling replacement, and if necessary, replacement of certain EGT harnesses and EGT couplings as soon as a slow and continuous EGT drift downward is noticed after the effective date of this AD. These actions must be done in accordance with CFM International service bulletins CFM56–5 S/B 77–0020, dated March 4, 2002, and CFM56–5B S/B 77–0008, dated March 4, 2002.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Add a Compliance Time

Four commenters request that 100 to 250 flight hours be allowed to replace the EGT harness after it has been determined that EGT harness hardware is defective. The commenters state that the NPRM implies that compliance is required immediately because it does not prescribe a set compliance time.

The FAA agrees. Immediate compliance is unnecessary. The FAA has determined that two to three weeks, or 100 flight hours are the maximum reasonable compliance times after it has been determined that the EGT harness components are faulty. The final rule is revised to reflect this change.

Change Determination of an Unsafe Condition and Proposed Actions Statement

One commenter requests a change to the FAA's Determination of an Unsafe Condition and Proposed Actions statement. The commenter requests that "* * * EGT harnesses manufactured between September 1998 and July 2000 * * *" be replaced with "* * * EGT harnesses manufactured between September 1998 and December 2001 * * *". The requested change is the result of updated information from the manufacturer.

The FAA agrees. The change includes manufacturing dates for the entire population of parts. However, the FAA's Determination of an Unsafe Condition and Proposed Actions section in the NRPM preamble does not appear in the final rule.

Remove –5A Model

One commenter requests the removal of the –5A model from the AD, the FAA's Determination of an Unsafe Condition and Proposed Actions, and the Compliance section. The –5A model should not be listed as an engine model type certificate configuration.

The FAA agrees. The –5A model is removed from the final rule.

Increase Replacement Time

The same commenter requests an increase in replacement time of parts not being trend monitored from 250 hours to 500 hours. The commenter states that this would follow the manufacturer's recommended replacement time and be consistent with current Airbus documentation (A check).

The FAA agrees.The final rule reflects this change.

Increase Amount of Allowable Temperature Change

Four commenters request an increase in the amount of allowable temperature change during trend monitoring from 10°C to 20°C or 30°C. Based on experience reported from several operators who use SAGE trend monitoring, a 10°C shift from baseline may not be enough to detect a fault by EGT readings.

The FAA agrees. The final rule reflects this change.

Economic Analysis Recommendations

One commenter requests that the Economic Analysis be changed to more accurately reflect the number of engines affected and associated cost. The commenter states that the NPRM did not accurately account for the number of affected engines per the service bulletins.

The FAA agrees that the service document and NPRM do not agree. The service bulletins did not account for the entire population of suspect parts. However, the spare parts listed in CFM International service bulletins CFM56–5 S/B 77–0020, dated March 4, 2002, and CFM56–5B S/B 77–0008, dated March 4, 2002, are more critical than the remaining population because they will be installed on engines with lower EGT margins. The number of affected engines worldwide remains the same as the NPRM. The number of U.S. operated engines requires a change in the final rule.

Another commenter requests that the economic analysis be changed to reflect work required to determine the serial numbers of the parts. The commenter states that an additional two hours per engine or a total of 520 person-hours of work, will be required for one operator to determine the serial numbers of EGT harnesses and couplings.

The FAA does not agree. Research of logbooks and paperwork are not used to determine the economic analysis figure.

Another commenter requests a change to the economic analysis to reflect an additional 3 person hours for replacement time. The commenter states that it will take more time to accomplish replacment than stated in the NPRM.

The FAA partially agrees. Most of the work could be done during scheduled maintenance (the FAA has attempted to facilitate this in the AD), which would provide an opportunity to remove and replace hardware, when it is already exposed. Some operators indicate that their current system will not allow this advantage consistently; however, per accepted FAA practice, the figure is based on replacement of accessible hardware. No change is required in the final rule.

Engines Which Have Accumulated More Than 3,000 Flight Hours

One commenter states that engines which have accumulated more than 3,000 flight hours since part installation are not defective. The commenter believes that this problem exhibits infant mortality. If false readings are not registered after 3,000 hours, parts are not defective. The commenter asks that the rule be changed accordingly.

The FAA agrees. The final rule reflects this change.

Allow Two Week Waiting Period for Failure Confirmation

One commenter requests that the AD provide for a two week waiting period after the temperature shift of 20°C in order to confirm that an EGT harness failure is the cause and not some other anomaly.

The FAA partially agrees. Sufficient evidence must be provided to assure that a shift in EGT reading is caused by defective EGT hardware/harnesses, and not some anomaly. However, a 30°C shift will be the criteria, not 10°C or 20°C. This should provide sufficient margin to assure that the reading does not indicate some other cause.

AD Not Needed

One commenter states that an AD is not needed for this problem. The commenter feels that current industry practice will suffice.

The FAA does not agree. Industry practice is not mandatory; therefore, there is no requirement for all operators to comply.

Specify Terminating Action

Two commenters state that the NPRM does not specify any terminating action and request that the FAA specify a terminating action.

The FAA agrees. Terminating action is included in the final rule.

Reidentify Reworked Harnesses

One commenter requests that the manufacturer reidentify reworked harnesses for traceability.

The FAA agrees. The manufacturer has added the letter "W" following the part serial number to reidentify reworked harnesses and couplings. The addition of the letter "W" following the part serial number is addressed in the final rule in (a)(3).

Monitoring Shifts From the Current EGT Trend

One commenter requests monitoring shifts from the current EGT trend rather than an arbitrary baseline. As engines degrade, there may not be an appreciable change in other parameters but normal (within 10°C) degradation in EGT, forcing unnecessary removal.

The FAA agrees. The final rule reflects this change.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 886 CFM International CFM56–5 and –5B series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 562 engines installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately one work hour per engine to do the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $15,645 per engine. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $8,826,210. CFMI has indicated that this figure may be reduced depending upon warranty agreements.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–02–04 CFM International: Amendment 39–13020. Docket No. 2001–NE–49–AD.

Applicability

This airworthiness directive (AD) is applicable to CFM International CFM56–5 and –5B series turbofan engines that have an EGT upper harness part number (P/N) CA170–00, with a serial number (SN) of YC021674 or lower, or an EGT lower harness P/N CA171–00, with a SN of YC026641 or lower, or an EGT coupling P/N CA172–02 with a SN of YC166736 or lower. These engines are installed on, but not limited to Airbus Industrie A318, A319, A320 and A321 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent unexpected deterioration of critical rotating engine parts due to higher than desired engine operating exhaust gas temperatures (EGT's), do the following:

(a) If you have an EGT upper harness, part number (P/N) CA170–00, with serial number (SN) YC021675 or higher, an EGT lower harness, P/N CA171–00, with SN YC026642 or higher, and an EGT coupling, P/N CA172–02, with S/N YC166737 or higher, no further action is required.

(b) For affected EGT harnesses and EGT couplings, with less than 3,000 engine flight hours since installation, do the following:

(1) Replace affected EGT harnesses and EGT couplings, not being trend monitored, with serviceable parts within 500 flight hours after the effective date of this AD, or,

(2) After the effective date of this AD, review the smooth data EGT trend via the System for Analysis of Gas Turbine Engines (SAGE), or equivalent, since the affected components were first installed on the current engine. This trend monitoring must continue for the affected EGT harnesses and couplings to ensure that the system does not show a minimum of 30°C downward (*i.e.* cooler) indication, or more, without a corresponding change in other associated engine parameters such as N1 (LPT rotor speed), N2 (HPT rotor speed), and fuel flow. Provided that there is sufficient, actual EGT margin to do so, replace the EGT harnesses and couplings within 100 flight hours after they have been determined to be defective. Continue to monitor the EGT indications for 3,000 engine flight hours since the first installation on the current engine.

(3) If a harness or coupling has a serial number that is followed by the letter "W", no further action is required.

Terminating Action

(c) Any of the following three conditions constitute terminating action for the trend monitoring requirements specified in paragraph (b)(2) of this AD:

(1) Replacing a harness and coupling with a serviceable part, or

(2) Replacing a harness and coupling with a harness and coupling that has a letter "W" following the SN, or

(3) Accumulating 3,000 engine flight hours on a harness and coupling.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(f) The actions must be done in accordance with the following CFM International service bulletins:

Document No.	Pages	Revision	Date
CFM56–5 S/B 77–0020 ..... Total pages: 9	All	Original	Mar. 4, 2002.
CFM56–5B S/B 77–0008 ..... Total pages: 9	All	Original	Mar. 4, 2002.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 27, 2003.

Issued in Burlington, Massachusetts, on January 13, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–1181 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2002–14110; Airspace Docket No. 02–AEA–23]

RIN 2120–AA66

Change of Controlling Agency for Restricted Areas R–6601 Fort A.P. Hill, VA; and R–6608A, R–6608B, and R–6608C, Quantico, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the controlling agency for Restricted Area R–6601, Fort A.P. Hill, VA, from "FAA, Richmond ATCT," to "FAA, Potomac Approach"; and the controlling agency for Restricted Areas R–6608A, R–6608B, and R–6608C, Quantico, VA, from "FAA, Dulles ATCT," to "FAA, Potomac Approach." This change is needed due to the airspace realignments associated with the establishment of the Potomac Consolidated Terminal Radar Approach Control (TRACON) facility. The new Potomac TRACON will assume air traffic control (ATC) responsibility for the airspace encompassing these restricted areas. This is only an administrative change to reflect the name of the proper controlling ATC facility. The change will not affect the current restricted area boundaries, altitudes, time of designation, or the activities conducted within the areas.

EFFECTIVE DATE: 0901 UTC, February 20, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The commissioning of the new Potomac TRACON will consolidate several air traffic facilities that currently provide ATC service in the greater Washington, DC, area. This consolidation includes two facilities (*i.e.*, Dulles Airport Traffic Control Tower (ATCT) and Richmond ATCT) that are currently designated as the controlling agencies for Restricted Areas R–6601, R–6608A, R–6608B, and R–6608C. With Potomac TRACON assuming responsibility for the airspace encompassing these restricted areas, the FAA is taking action to change the name of the controlling agency to "Potomac Approach."

The Rule

This action amends 14 CFR part 73 by changing the name of the controlling agency for Restricted Area R–6601, Fort A.P. Hill, VA, from "FAA, Richmond ATCT" to "FAA, Potomac Approach." In addition, this action changes the name of the controlling agency for Restricted Areas R–6608A, R–6608B, and R–6608C, Quantico, VA, from "FAA, Dulles ATCT" to "FAA, Potomac Approach." These administrative changes will not alter the boundaries, altitudes, time of designation, or activities conducted within the restricted areas; therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.66 of part 73 was republished in FAA Order 7400.8K, dated September 26, 2002.

This regulation is limited to an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. It has been determined that this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is a minor administrative change to amend the designated controlling agency of existing restricted areas. There are no changes to air traffic procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.66 [Amended]

2. § 73.66 is amended as follows:

* * * * *

R–6601 Fort A.P. Hill, VA [Amended]

By removing "Controlling agency. FAA, Richmond ATCT," and substituting "Controlling agency. FAA, Potomac Approach" in its place.

* * * * *

R–6608A Quantico, VA [Amended]

By removing "Controlling agency. FAA, Dulles ATCT" and substituting "Controlling agency. FAA, Potomac Approach" in its place.

R–6608B Quantico, VA [Amended]

By removing "Controlling agency. FAA, Dulles ATCT" and substituting "Controlling agency. FAA, Potomac Approach" in its place.

R–6608C Quantico, VA [Amended]

By removing "Controlling agency. FAA, Dulles ATCT" and substituting "Controlling agency. FAA, Potomac Approach" in its place.

* * * * *

Issued in Washington, DC, on January 15, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–1479 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2002–14163; Airspace Docket No. 02–AWP–11]

RIN 2120–AA66

Amendment to Using Agency for Restricted Area 2301E, Ajo East, AZ; Restricted Area 2304, Gila Bend, AZ; and Restricted Area 2305, Gila Bend, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency of restricted area 2301E (R–2301E), East Ajo AZ; R–2304, Gila Bend AZ; and R–2305, Gila Bend AZ, from "US Air Force, 58th Fighter Wing, Luke AFB, AZ," to "U.S.A.F., 56th Fighter Wing, Luke AFB, AZ." The FAA is taking this action in response to a request from the United States Air Force (USAF) to reflect an administrative change of responsibility for the restricted areas. There are no changes to the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted areas.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to 14 Code of Federal Regulations (CFR) part 73 changes the using agency of R–2301E, East Ajo, AZ; R–2304, Gila Bend, AZ; and R–2305, Gila Bend, AZ. On November 8, 2002, the United States Air Force requested that the FAA change the using agency for R–2301E, R–2304, and R–2305, from "US Air Force, 58th Fighter Wing, Luke AFB, AZ," to "US Air Force, 56th Fighter Wing, Luke AFB, AZ." This action addresses that request. This is an administrative change and does not affect the boundaries; designated altitudes; or activities conducted within the restricted areas. Therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Section 73.48 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8K dated September 26, 2002.

The FAA has determined that this action only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.23 [Amended]

2. § 73.23 is amended as follows:

* * * * *

R–2301E [Amended]

By removing the words "Using agency. U.S. Air Force, 58th Fighter Wing, Luke AFB, AZ," and inserting the words "Using agency. U.S. Air Force, 56th Fighter Wing, Luke AFB, AZ."

* * * * *

R–2304 [Amended]

By removing the words "Using agency. U.S. Air Force, 58th Fighter Wing, Luke AFB, AZ," and inserting the words "Using agency. U.S. Air Force, 56th Fighter Wing, Luke AFB, AZ."

R–2305 [Amended]

By removing the words by removing the words "Using agency. U.S. Air Force, 58th Fighter Wing, Luke AFB, AZ," and inserting the words "Using agency. U.S. Air Force, 56th Fighter Wing, Luke AFB, AZ."

* * * * *

Issued in Washington, DC, on January 16, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–1477 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–13–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Electronic Filing Procedures

AGENCY: International Trade Commission.

ACTION: Partial waiver of final rule, notice of public demonstrations, and effective date of handbook.

SUMMARY: The United States International Trade Commission (Commission) hereby gives notice that its Electronic Document Information System (EDIS–II) will be available for electronic filing, and other uses such as search and retrieval on January 23, 2003. The effective date of the Handbook on Electronic Filing Procedures (Handbook), published in the notices section at 67 FR 68168, Nov. 8, 2002, is January 23, 2003. To assist party representatives in learning how to use EDIS–II, the Commission will hold two public demonstrations of the system on January 30, 2003. The first session will be at 10 a.m, and the second session will be at 2 p.m. In addition, the Commission has determined to waive the requirement in the Commission's rules of practice and procedure (rules) that paper filers must complete and print out an on-line cover sheet for submission with their filings. Instead, paper filers have the option of completing and submitting a paper copy of the cover sheet to the Secretary with their filings.

DATES: The Handbook and the waiver of a requirement in 19 CFR 201.8(g) are effective January 23, 2003.

The public demonstrations will be held on January 30, 2003, at 10 a.m. and 2 p.m.

ADDRESSES: The public demonstration will be held in the Main Hearing Room (Room 101) at the Commission, located at 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Irene H. Chen, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202–205–3112. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

General information concerning the Commission may also be obtained by accessing its website (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: On November 8, 2002, the Commission published a notice of final rulemaking (NOFR), 67 FR 68036, Nov. 8, 2002, and a notice regarding the Handbook on Electronic Filing Procedures (Handbook notice). 67 FR 68168, Nov. 8, 2002. In its NOFR, the Commission amended section 201.8 of the rules to allow persons the option of electronic filing and to require filers to complete an on-line cover sheet at *http://edis.usitc.gov* (EDIS–II website) when filing documents either in electronic or paper form. In the Handbook notice, which sets forth procedures for electronic filing, the Commission stated that the effective date of the Handbook will be

announced in a **Federal Register** notice to be published at a later date.

The Commission has determined that the effective date of the Handbook is January 23, 2003, which is the date that EDIS–II will be available for electronic filing of documents. As appropriate, the Secretary will periodically revise the Handbook. Users should consult the Commission's EDIS–II website for the latest version of the Handbook.

The Commission also has determined to waive the requirement in § 201.8(g) of the rules that an on-line cover sheet at the EDIS–II website must be completed and printed out by paper filers for submission with their paper filings. Instead, paper filers have the option of (i) completing the on-line cover sheet at the EDIS–II website and printing out the cover sheet to be submitted with the filing; (ii) printing out the cover sheet at the EDIS website and completing the cover sheet by hand before submitting the cover sheet with the filing to the Secretary; or (iii) obtaining a paper copy of the cover sheet from the Office of the Secretary and completing the cover sheet by hand to be submitted with the paper filing. The Commission, however, strongly encourages paper filers to complete and print out the on-line cover sheet at the EDIS–II website for submission to the Secretary with their paper filings.

(Authority: 19 CFR 201.4(b)).

Issued: January 17, 2003.

By Order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–1467 Filed 1–22–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 450

[FHWA Docket No. FHWA–99–5933]

FHWA RIN 2125–AE95; FTA RIN 2132–AA75

Statewide Transportation Planning; Metropolitan Transportation Planning

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Final rule.

SUMMARY: The FHWA, after consultation with the Federal Transit Administration (FTA), amends the planning regulation regarding the development of statewide plans and programs. Specifically, this action amends the planning regulation as it relates to consultation with non-metropolitan local officials. This action implements the provisions of the Transportation Equity Act for the 21st Century (TEA–21) regarding the consultation with non-metropolitan local officials in the statewide and metropolitan planning processes.

EFFECTIVE DATE(S): February 24, 2003.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Ms. Jill Hochman, Office of Interstate and Border Planning (HEPI), (202) 366–0233, or Mr. Reid Alsop, Office of the Chief Counsel (HCC–30), (202) 366–1371. For the FTA: Mr. Paul Verchinski, Statewide Planning Division (TPL–11), (202) 366–1626, or Mr. Scott Biehl, Office of the Chief Counsel (TCC–30), (202) 366–0952. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Background

Section 1025 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, (December 18, 1991), amended title 23, United States Code (U.S.C.), section 135 and established a requirement for Statewide Transportation Planning and stated, "The transportation needs of non-metropolitan areas should be considered through a process that includes consultation with local elected officials with jurisdiction over transportation." Section 1204 of the TEA–21, Public Law 105–178, 112 Stat. 107 (June 9, 1998), further amended 23 U.S.C. 135, while preserving the statewide planning requirement for a continuing, comprehensive and cooperative planning process. The TEA–21 required States to consult with non-metropolitan local officials in transportation planning and programming. This consultation with non-metropolitan local officials in transportation planning and programming is the specific subject of this final rule.

The FHWA and the FTA published a joint notice of proposed rulemaking (NPRM) on May 25, 2000 (65 FR 33922), that proposed revisions to the existing planning regulations issued on October 28, 1993, at 58 FR 58040. The May 2000 Planning NPRM included provisions regarding consultation with non-metropolitan local officials, and proposed that States establish and document a process for consultation with defined non-metropolitan local officials. The NPRM also proposed to require that this process be established jointly with non-metropolitan local officials. Comments were solicited until August 23, 2000 (later extended to September 23, 2000, by a July 7, 2000, **Federal Register** notice at 65 FR 41891).

On June 19, 2002 the FHWA published a supplemental notice of proposed rulemaking (SNPRM) (67 FR 41648), which proposed another option on non-metropolitan local official consultation in addition to that proposed in the NPRM. Generally the SNPRM proposed to allow greater flexibility for States to determine who local officials are and how to consult with them, by not proposing a definition of "non-metropolitan local official," and not proposing to require that the process for consultation be cooperatively developed. Comments were solicited until August 19, 2002 (later extended to September 19, 2002, by an August 15, 2002, Federal Register notice at 67 FR 53326).

On September 20, 2002, the FHWA and the FTA withdrew the May 2000 NPRM at 67 FR 59219. However, this withdrawal did not impact the NPRM and SNPRM proposals for non-metropolitan local official consultation.

Input to Development of the Final Rule

During the comment period on the NPRM (May 25, 2000, through September 23, 2000), the FTA and the FHWA held seven public meetings to present information on the May 2000 Planning NPRM. A summary of questions raised at the meetings and the general responses of the FHWA and the FTA presenters is included in the docket. The FHWA and the FTA also prepared a summary of all written comments, by section, which is included in the docket. During the NPRM comment period, the Senate Environment and Public Works and House Transportation and Infrastructure Committees held hearings (September

12 and 13, 2000) regarding the May 2000 Planning NPRM. The FHWA and the FTA also reviewed and considered the comments and questions raised at these hearings.

The House report that accompanied the U.S. DOT Appropriations Act for fiscal year (FY) 2002, and the conference report for the Department of Defense FY 2002 Appropriations Act, which contained several transportation issues, directed the U.S. DOT to promulgate a final rule, no later than February 1, 2002, to ensure transportation officials from rural areas are consulted in long range transportation planning and programming.

Discussion of Comments on the SNPRM Related to Local Official Consultation

We have carefully reviewed all comments received to the docket. We received 172 documents to the docket on the SNPRM, representing 155 discrete comments. They were from: local governments, Metropolitan Planning Organizations (MPO); Councils of Governments (COG) and regional governments, State DOTs, associations representing these organizations, tribal governments, and private citizens. They generally expressed diverse views consistent with those expressed in the docket to the May 2000 NPRM.

The makeup of commenters is in the chart below, followed by a general discussion of their comments:

Type of commenter	# Comments received (% of total comments)
Local government	58 (38)
MPO, COG, Regional Planning.	33 (21)
State DOT	21 (14)
National and Regional Associations/Advocacy Groups.	19 (12)
State and Federal Officials.	3 (2)
Tribal Government	5 (3)
Private Citizens	16 (10)

Local governments, MPOs, COGs, regional governments and the associations representing these organizations generally expressed preference for the consultation option proposed by the May 2000 NPRM. Fifty-two of these comments from local governments, MPOs, COGs and regional governments requested that a definition of non-metropolitan officials be included in the final rule. Thirty expressed the need to include a requirement for an established consultation process. Twenty-eight suggested that there be a requirement in the final rule that the consultation process be developed jointly between States and local officials and that there be accountability in the consultation process. Forty-nine suggested that the FHWA and the FTA have the ability to consider local official participation when certifying the Statewide Transportation Improvement Program (STIP).

State DOTs generally supported the regulatory language proposed in the June 2002 SNPRM, which proposed to allow State flexibility to determine who local officials are and how to consult with them. State DOTs, however, did express concern with some provisions in the SNPRM. Sixteen focused on the definition of "consultation," with 14 suggestions for clarification and modification. Fifteen comments were on the statewide transportation planning process with a range of suggestions, from retaining the current language to modifying the language to limit consultation to transportation related activities. Sixteen expressed concern about the use of the term "effective" in the public involvement provisions. Thirteen expressed concerns about the phase-in period.

We also received comments from five tribal governments. Commenters expressed concern that the language did not go far enough in addressing tribal participation in the statewide transportation process, and suggested that each State must be compelled to develop a consultation process with tribal governments. The primary focus of this action is on consultation between State DOTs and non-metropolitan local elected officials. Therefore, specific provisions in existing regulatory language related to tribal governments are not being changed by this action, except for the change in the definition of consultation (discussed in the section-by-section analysis below).

Towards the end of the comment period, the National Association of Counties (NACO) representing local governments, the National Association of Development Organizations (NADO) representing local officials, and the American Association of State Highway and Transportation Officials (AASHTO) representing the State DOTs, jointly developed proposed regulatory language and submitted it to the docket. This language addresses many, if not most, of the comments received. The FHWA and the FTA reviewed the suggested language and find that it has merit because it comes from the organizations whose members are most impacted by the final rule. Therefore, we relied heavily on their suggested language to formulate this final rule.

Section-by-Section Analysis

The FHWA and the FTA carefully analyzed all the comments to the docket for both the May 2000 NPRM and the June 2002 SNPRM in formulating this final rule. We believe this rule strikes a balance among the various interests. This section-by-section analysis only addresses those sections of 23 CFR 450 that affect consultation with non-metropolitan local officials (§§ 450.104, 450.206, 450.212, 450.214, 450.216 and 450.224).

Section 450.104 Definitions

Consultation

The June 2002 SNPRM proposed a new definition of "consultation" in response to comments received to the docket that the definition proposed in the May 2000 NPRM was too formalized and burdensome.

Fifty-one discrete comments were received on the definition of "consultation" proposed in the June 2002 SNPRM. Seventeen of those comments came from State DOTs. Three supported the proposed definition.

Twelve States commented on the language "keeps that party informed." Five States were concerned that "keeps that party informed" meant individual updates to each party consulted with and requested clarification. Six States suggested modifying the language to "and informs that party about action(s) taken." The Pennsylvania DOT suggested revising the language to "and periodically informs that party about action(s) taken" to allow for greater State flexibility in meeting the requirement of the definition.

Thirty local governments, associations representing them, and advocacy groups expressed concern that a reference to an "established" consultation process was not included in the proposed definition of "consultation" in the SNPRM.

Caltrans, the California DOT, also commented on the lack of a reference to an "established" process in the definition. Caltrans pointed out that a reference to an "established" process is contained elsewhere in the SNPRM, and suggested that this inconsistency be clarified.

One private citizen supported the definition as proposed in the SNPRM.

The NACO–NADO–AASHTO proposed regulatory language included a reference to an "established" consultation process. It also modified language regarding keeping parties informed. In the NACO–NADO–AASHTO proposed definition, "Consultation means that one party confers with another identified party in accordance with an established process

and, prior to taking action(s), considers that party's views and periodically informs that party about action(s) taken."

Based on the comments received, the final rule uses the definition in the NACO–NADO–AASHTO proposed regulatory language. This definition is consistent with statutory language, resolves inconsistencies, includes a reference to an established consultation process, and focuses on keeping other parties informed.

Non-Metropolitan Area

In the June 2002 SNPRM, we proposed adding the definition of "non-metropolitan area." The proposed definition recognized that there are a variety of local officials who serve non-metropolitan areas. This definition specified the geographic area served by non-metropolitan officials to distinguish them from local officials in metropolitan planning areas who are involved through the MPO.

We received six comments on this proposed definition in the June 2002 SNPRM. All supported the definition. The definition proposed in the SNPRM is retained in the final rule.

Non-Metropolitan Local Official

In the May 2000 Planning NPRM we proposed adding the definition of a "non-metropolitan local official." This definition was not included in the June 2002 SNPRM.

Over 50 commenters requested that the FHWA and the FTA include a definition for this term in the final rule. Specifically, 23 local governments, 16 regional planning organizations, 9 associations, and 3 private citizens expressed concern that the definition for this term had been removed from the SNRPM. They commented that by allowing the States sole discretion to determine which non-metropolitan local officials to consult with, many rural officials will be excluded. They also commented that this did not fulfill the Congressional intent of "enhanced consultation between States and local officials."

The NACO–NADO–AASHTO proposed regulatory language included a proposed definition for "non-metropolitan local official" as "elected and appointed officials of general purpose local government in non-metropolitan areas with jurisdiction/responsibility for transportation as defined in the documented consultation process in Part 450, Section 212."

After considering the comments received, the FHWA and the FTA have included a definition of "non-metropolitan local official" in the final rule that is based on the NACO–NADO–AASHTO proposed regulatory language. The definition provides a clear statement that non-metropolitan local officials are "elected and appointed officials of general purpose local government in non-metropolitan areas with jurisdiction/responsibility for transportation."

Section 450.206 Statewide Transportation Planning Process: General Requirements

Section 1204 of the TEA–21 clearly emphasizes the importance of recognizing non-metropolitan transportation issues and consulting with non-metropolitan local officials. In the June 2002 SNPRM, the FHWA and the FTA proposed revising § 450.206(b) and adding a new § 450.206(c) to clarify that effective consideration of non-metropolitan transportation issues and concerns and involvement of non-metropolitan local officials can be enhanced by coordinating statewide transportation planning with related planning in non-metropolitan areas.

There were 19 comments on this provision. Four regional planning organizations supported the regulatory language proposed in the June 2002 SNPRM. Nine State DOTs suggested amending "planning activities" in § 450.206(b) to "transportation-related planning activities" because they believed that without this change, State DOTs would be required to consult on non-transportation planning activities.

This section is specific to the statewide transportation planning process, and it is self-evident that the "planning activities" referred to in this section are related to transportation. Therefore, the FHWA and the FTA are not modifying it to specify transportation-related planning activities.

Three States also suggested modifying the language such that states "consider" planning outside of the metropolitan areas to be clear that coordination with non-metropolitan local officials is not required, as it is with metropolitan local officials. These commenters stated that a coordination requirement for non-metropolitan areas would exceed statutory authority, which only requires a "consultation" relationship.

The NACO–NADO–AASHTO proposed regulatory language would require States to "consider coordination with planning activities being carried out outside of the metropolitan areas."

The FHWA and the FTA agree with comments that the requirements for metropolitan areas and non-metropolitan areas are distinctly delineated in the statute. We have taken the NACO–NADO–AASHTO proposed regulatory language and modified it to require States to "consider coordination with planning activities in non-metropolitan areas." The final rule includes a definition for the term "non-metropolitan area." The final rule also simplifies the suggested NACO–NADO–AASHTO proposed regulatory language.

The June 2002 SNPRM proposed a new subpart 450.206(c) that says that States shall "consider, with respect to non-metropolitan areas, the concerns of local elected officials representing units of general purpose local government." Three State DOTs requested editorial clarification on this proposed provision. The FHWA and the FTA believe that the provision is clear and have adopted as final the regulatory language proposed in the June 2002 SNPRM.

Section 450.212 Public Involvement

In developing the June 2002 SNPRM, the FHWA and the FTA considered comments received to the docket on this provision in the May 2000 NPRM. In addition, the FHWA and the FTA used information from other sources, including the FHWA–FTA study on participation of non-metropolitan local officials required by the TEA–21 and ten rural listening sessions held throughout the country.[1] The June 2002 SNPRM proposal focused on the intended result of "effective participation" of local officials in statewide transportation planning.

Thirteen states commented that the language "effective participation" in § 450.212(h) of the June 2002 SNPRM is a subjective term that exceeds statutory language in TEA–21. Section 1204 of TEA–21 states that USDOT will not "review or approve" a State's consultation process.

The Pennsylvania DOT suggested that the regulatory language state: "that provides an opportunity for their participation" rather than "that provides for their effective participation."

The NADO–NACO–AASHTO proposed regulatory language included language identical to that proposed by Pennsylvania DOT. It also included a

[1] The non-metropolitan local officials report has been transmitted to Congress and has been placed in the SNPRM docket. The report and its appendices (Rural Transportation Consultation Processes, May 2000, Rural Transportation Consultation Processes: State by State Summaries, April 2001, and Rural Transportation Consultation Processes: Report of a Workshop: May 2001) will soon be available at the following URL: *http://www.fhwa.dot.gov/planning.htm*. A summary of each of the ten rural workshops held in 1998–99 (Rural Transportation Planning Workshops, Summer 1999) is available at the following URL: *http://www.fhwa.dot.gov/hep10/state.rural.html*. These reports are in the May 2000 NPRM docket.

requirement that the State's documented process for consulting with non-metropolitan officials be "separate and discrete" from the public involvement process.

The FHWA and the FTA agree that the use of the term "effective" is subjective. We included the language suggested by Pennsylvania to be more consistent with the statutory provisions in TEA–21 in this final rule. We also included language requiring that the State's process for consulting with non-metropolitan officials be separate and discrete because TEA–21 makes a clear distinction between the metropolitan and non-metropolitan officials. The new requirement is included in the final rule as subpart 450.212 (h).

We received 28 comments recommending that the State and local officials jointly develop the consultation process. Most of these comments were from local governments, regional planning organizations, associations representing them, and interest groups.

The NACO–NADO–AASHTO proposed regulatory language suggested a new subpart 450.212(i). This new subpart requires that "The State shall review and solicit comments from non-metropolitan local officials and other interested parties for a period of not less than 60 days regarding the effectiveness of the consultation process and proposed modification within 2 years of process implementation, and thereafter at least once every 5 years. A specific request for comments shall be directed to the State association of counties, State municipal league, regional planning agencies, or directly to non-metropolitan local officials."

In addition, 49 commenters indicated that there should be accountability in the consultation process. Most of these comments came from local governments, regional planning organizations, associations representing them, and interest groups. One measure of accountability suggested by these commenters was that the FHWA and the FTA use their authority to consider local official participation when certifying the STIP.

The NACO–NADO–AASHTO proposed regulatory language includes a requirement regarding accountability. The suggestion is that "The State, in its discretion, shall be responsible for determining whether to adopt proposed modifications. If a proposed modification is not adopted, the State shall make publicly available its reasons for not accepting the proposed modifications, including notification to non-metropolitan local officials of their associations."

The FHWA and the FTA agree that the NACO–NADO–AASHTO proposed regulatory language reflects the concept of effective participation as well as accountability. The TEA–21 and the June 2002 SNPRM both focused on this type of result. Therefore, the agencies include the suggestion of the NACO–NADO–AASHTO proposed regulatory language in the final rule as a new subpart 450.212(i).

Section 450.214 Statewide Transportation Plan

Section 1204 of the TEA–21 specifically states "with respect to each non-metropolitan area, the long-range transportation plan shall be developed in consultation with affected local officials with responsibility for transportation." This language is now codified at 23 U.S.C. 135(e)(2)(B). Therefore, in the June 2002 SNPRM, the FHWA and the FTA proposed adding § 450.214(f). This was intended to reflect the intent of the statute by proposing language that required affected local officials with responsibility for transportation to be involved on a consultation basis in developing the statewide transportation plan as it relates to the non-metropolitan areas of the State.

Ten States commented on this proposal. The majority of the States supported the provision as written. Some States requested clarification that affected local officials are to be consulted only on portions of the plan that affect their areas.

The FHWA and FTA believe that it is evident that local officials are to be consulted only on those portions of the plan that affect their areas. We adopted as final the language proposed in the June 2002 SNPRM that requires the involvement of local officials with responsibility for transportation to be involved in the development of the statewide transportation plan in non-metropolitan areas of the State.

Section 450.216 Statewide Transportation Improvement Program (STIP)

Section 1204 of the TEA–21 specifically states "with respect to each non-metropolitan area in the State, the program shall be developed in consultation with affected local officials with responsibility for transportation." This language is now codified at 23 U.S.C. 135(f)(1)(B)(ii)(I). Therefore, in the June 2002 SNPRM, the FHWA and the FTA proposed adding § 450.216(e) to reflect the intent of the statute by proposing language that requires affected local officials with responsibility for transportation to be involved on a consultation basis in developing the STIP as it relates to the non-metropolitan areas of the State.

Eleven States commented on this provision in the SNPRM. The majority of the States supported the provision as written. Some States requested clarification that affected local officials are to be consulted only on portions of the program plan that affect their areas.

The FHWA and FTA believe that it is evident that local officials are to be consulted only on those portions of the program that affect their areas. We adopted as final the language proposed in the June 2002 SNPRM that requires the involvement of local officials with responsibility for transportation to be involved in the development of the statewide transportation improvement program in non-metropolitan areas of the State.

Section 450.224 Phase-in of New Requirements

The June 2002 SNPRM proposed a six-month phase-in period. We received 13 comments from State DOTs and 2 comments from regional planning organizations regarding this provision.

Four State DOTs and 2 regional planning organizations supported the phase-in provision as proposed in the June 2002 SNPRM. The other commenters supported a phase-in requirement but with different time frames. Three States commented that six months would not be adequate and four States commented that the phase-in requirement should accommodate the planning cycles of various States.

The NACO–NADO–AASHTO proposed regulatory language recommended a one-year phase-in period.

The FHWA and the FTA recognize the differences among the planning cycles of the States. In the final rule we have extended the phase-in period to one year (to end one year after the effective date of this rule), which will allow States additional time to implement the consultation requirements, and also accommodates the differences in the planning cycles of various States. After this period, the consultation aspects of the statewide transportation planning process will be emphasized as we assess the planning process and make the Federal planning finding required in 23 CFR 450.220(b) and 23 U.S.C. 135(f)(4).

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA and the FTA have determined that this action is a

significant regulatory action within the meaning of Executive Order 12866 and the U.S. Department of Transportation regulatory policies and procedures, because of a substantial public interest. The agencies anticipate that the economic impact of this rulemaking will be minimal. This action amends a portion of the current planning regulations for which substantial financial assistance is provided to the States by both the FHWA and the FTA to support compliance with the requirements of the regulation.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA and the FTA have evaluated the effects of this final rule on small entities and has determined it will not have a significant economic impact on a substantial number of small entities.

The modifications in this final rule are substantially dictated by the statutory provisions of the TEA–21 and the agencies believe that the flexibility available to the States in those provisions has been maintained. For these reasons, the FHWA and the FTA certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year.

The requirements of 23 U.S.C. 135 are supported by Federal funds administered by the FHWA and the FTA. There is a legislatively established local matching requirement for these funds of up to twenty percent of the total cost. The FHWA and the FTA believe that the cost of complying with these requirements is predominately covered by the funds they administer. The costs of compliance with the requirements of the planning program as a whole are eligible for funding; therefore, this action will not create an unfunded mandate.

Additionally, the definition of "Federal mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The Federal-aid highway program and the Transit program permit this type of flexibility to the States.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the agencies have determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA and the FTA have also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Throughout the course of this rulemaking, several States raised concern about burdens imposed by the requirement to consult with non-metropolitan local officials. The ISTEA and the TEA–21 require such consultation. In this final rule the FHWA and the FTA expect that existing consultation procedures often may be used to comply with these requirements.

The agencies further note that the transportation planning activities required by the planning regulations, as amended by this final rule, are conditions for the receipt of Federal transportation financial assistance and are reimbursable expenses. Under the provisions of title 23 and title 49, chapter 53, U.S.C., the Federal government reimburses at least 80 percent of the costs to complete required transportation plans and transportation improvement programs.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction; 20.500 Federal Transit Capital Improvement Grants; 20.505, Federal Transit Metropolitan Planning Grants; 20.507, Federal Transit Formula Grants; 20515, State Planning and Research. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA and the FTA have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and have determined that this action will not have any effect on the quality of environment.

Executive Order 13175 (Tribal Consultation)

The FHWA and the FTA have analyzed this action under Executive Order 13175, dated November 6, 2000. This action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. Although this proposal is a significant regulatory action under Executive Order 12866, we have determined that it is not a significant energy action under that order, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This action is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This action will not effect a taking of private property or otherwise have taking implications under Executive

Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 450

Grant programs—transportation, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

Issued on: January 15, 2003.

Mary E. Peters,

Federal Highway Administrator.

Jennifer L. Dorn,

Federal Transit Administrator.

In consideration of the foregoing, the Federal Highway Administration is amending title 23, Code of Federal Regulations, part 450, as set forth below:

PART 450—PLANNING ASSISTANCE AND STANDARDS

1. The authority citation for part 450 continues to read as follows:

Authority: 23 U.S.C. 134, 135, and 315; and 49 U.S.C. 5303–5306, 5323(l).

2. Amend § 450.104 to revise the definition of "consultation" and add, in alphabetical order, the definition for "non-metropolitan area" and "non-metropolitan local official" to read as follows:

§ 450.104 Definitions.

* * * * *

Consultation means that one party confers with another identified party in accordance with an established process and, prior to taking action(s), considers that party's views and periodically informs that party about action(s) taken.

* * * * *

Non-metropolitan area means the geographic area outside designated metropolitan planning areas, as designated under 23 U.S.C. 134 and 49 U.S.C. 5303.

Non-metropolitan local official means the elected or appointed officials of general purpose local government, in non-metropolitan areas, with jurisdiction/responsibility for transportation.

* * * * *

3. Amend § 450.206 to revise paragraph (b) and to add paragraph (c) as follows:

§ 450.206 Statewide transportation planning process: General requirements.

* * * * *

(b) The statewide transportation planning process shall be carried out in coordination with the metropolitan planning process required by subpart C of this part and shall consider coordination with planning activities in non-metropolitan areas.

(c) In carrying out statewide transportation planning, the State shall consider, with respect to non-metropolitan areas, the concerns of local elected officials representing units of general purpose local government.

4. Amend § 450.212 by adding new paragraphs (h) and (i) to read as follows:

§ 450.212 Public involvement.

* * * * *

(h) The State shall provide for non-metropolitan local official participation. The State shall have a documented process(es) that is separate and discrete from the public involvement process for consulting with non-metropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation that provides an opportunity for their participation in the statewide transportation planning process and development of the statewide transportation improvement program.

(i)The State shall review and solicit comments from non-metropolitan local officials and other interested parties for a period of not less than 60 days regarding the effectiveness of the consultation process and proposed modifications within 2 years of process implementation, and thereafter at least once every 5 years. A specific request for comments shall be directed to the State association of counties, State municipal league, regional planning agencies, or directly to non-metropolitan local officials. The State, at its discretion, shall be responsible for determining whether to adopt any proposed modifications. If a proposed modification is not adopted, the State shall make publicly available its reasons for not accepting the proposed modification, including notification to non-metropolitan local officials or their associations.

5. Amend § 450.214 by adding a paragraph (f) to read as follows:

§ 450.214 Statewide transportation plan.

* * * * *

(f) In developing the statewide transportation plan, affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the plan in non-metropolitan areas of the State.

6. Amend § 450.216 by adding a paragraph (e) to read as follows:

§ 450.216 Statewide transportation improvement program (STIP).

* * * * *

(e) In developing the statewide transportation improvement program, affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the program in non-metropolitan areas of the State.

7. Amend § 450.224 by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 450.224 Phase-in of new requirements.

* * * * *

(b) The State has a period of one year after February 24, 2003 to document and implement the consultation process discussed in § 450.212(h).

[FR Doc. 03–1319 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–022]

RIN 2115–AE47

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Houma, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the existing drawbridge operation regulation for the draw of the Bayou Dularge bridge across the Gulf Intracoastal Waterway, mile 59.9 at Houma, Terrebonne Parish, Louisiana. The rule allows for the morning closure period to be increased by 15 minutes to facilitate the movement of high volumes of vehicular traffic across the bridge during peak traffic hours.

DATES: This rule is effective February 24, 2003.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD8–02–022 and are available

for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. Commander, Eighth District (obc), maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 21, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation, Gulf Intracoastal Waterway, LA in the **Federal Register** (67 FR 64580). We received two responses commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

Presently, the draw of the Bayou Dularge bridge, mile 59.9, at Houma shall open on signal; except that, the draw need not be open for the passage of vessels Monday through Friday except holidays from 6:45 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

The Louisiana Department of Transportation and Development has requested a modification to the morning bridge operation schedule to allow the bridge to remain closed to navigation from 6:30 a.m. until 8:30 a.m. vice 6:45 a.m. to 8:30 a.m. The bridge serves as an important link between the largest residential neighborhoods in Terrebonne Parish and the Central Business District. Approximately 21,000 vehicles cross the bridge daily, 10% of which cross the bridge during the requested closure times. The adjustment to the morning closure times reflects a change to align the closure period with the times of the heaviest commuter traffic. The amount of commuter traffic continues to increase. The bridge averages 325 openings a month. The requested 15-minute closure increase will delay approximately 7 additional tows a month. The average length of a bridge opening is less than five minutes, delaying an average of 90 vehicles per opening.

Discussion of Comments and Changes

The Coast Guard received two letters in response to the Notice of Proposed Rulemaking. One letter was from a state senator representing the Terrebonne Parish area who strongly supported the proposed change. The second letter was received from the National Marine Fisheries Service stating that the drawbridge was not in their area of responsibility and declined comment. Only one minor administrative change was made to the final rule. The word "Federal" was added to the phrase "except holidays" to clarify when the rule will be in effect. No other changes to the final rule were made based upon the comments received.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This rule allows vessels ample opportunity to transit the Gulf Intracoastal Waterway with proper notification before and after the peak vehicular traffic periods. Commercial towboat operators can avoid being impacted by simply arriving 15 minutes earlier at the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Small entities, including towboat operators and their waterway user groups, were given an opportunity to comment regarding the effects of this proposed rule. We received no letters of objection to the proposed modification.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. § 117.451(c) is revised to read as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(c) The draw of the Bayou Dularge bridge, mile 59.9, at Houma, shall open on signal; except that, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 6:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

* * * * *

Dated: January 15, 2003.

J.R. Whitehead,

Captain, Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 03–1484 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–023]

RIN 2115–AE47

Drawbridge Operation Regulation; Houma Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the existing drawbridge operation regulation for the draw of the SR661 bridge across the Houma Navigation Canal, mile 36.0, at Houma, Terrebonne Parish, Louisiana. The modification will allow for the morning closure period to be increased by 30 minutes to facilitate the movement of high volumes of vehicular traffic across the bridge during peak traffic hours.

DATES: This rule is effective February 24, 2003.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD8–02–0023 and are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. Commander, Eighth District (obc), maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 21, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation, Houma Navigation Canal, LA in the **Federal Register** (67 FR 64578). We received two responses commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

Presently, the draw of the SR 661 bridge, mile 36.0, at Houma shall open on signal, except that the draw need not be opened for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m.

The Louisiana Department of Transportation and Development has requested a modification to the morning bridge operation schedule to allow the bridge to remain closed to navigation from 6:30 a.m. until 8:30 a.m. vice 7 a.m. to 8:30 a.m. The bridge serves as an important link between the largest residential neighborhoods in Terrebonne Parish and the Central Business District. Approximately 13,000 vehicles cross the bridge daily, 10% of which cross the bridge during the requested closure times. The adjustment to the morning closure time reflects a change to expand the closure period to align with the heaviest commuter traffic. The amount of commuter traffic continues to increase. The bridge averages 953 openings a month. It is estimated that 3 tows a month will be delayed by the additional 30-minute morning closure request. In a 17-day review period in July 2002, two tows requiring bridge openings were delayed during the requested additional time period. The average length of the bridge opening is less than ten minutes, delaying an average of 60 vehicles for each opening.

Discussion of Comments and Changes

The Coast Guard received two letters in response to the Notice of Proposed Rulemaking. One letter was from a state senator representing the Terrebonne Parish area who strongly supported the proposed change. The second letter was received from the National Marine Fisheries Service stating that the drawbridge was not in their area of responsibility and declined comment. Only one minor administrative change was made to the final rule. The word "Federal" was added to the phrase "except holidays" to clarify when the rule will be in effect. No other changes

to the final rule were made based upon the comments received.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This rule allows vessels ample opportunity to transit the Gulf Intracoastal Waterway with proper notification before and after the peak vehicular traffic periods. Commercial towboat operators can avoid being impacted by simply arriving 30 minutes earlier at the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Small entities, including towboat operators and their waterway user groups, were given an opportunity to comment regarding the effects of this proposed rule. We received no letters of objection to the proposed modification.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. § 117.455 is revised to read as follows:

§ 117.455 Houma Navigation Canal.

The draw of the SR661 bridge across the Houma Navigation Canal, mile 36.0, at Houma, shall open on signal; except

that, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 6:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

Dated: January 15, 2003.

J.R. Whitehead,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 03–1483 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Jacksonville 02–066]

RIN 2115–AA97

Security Zones; Ports of Jacksonville, Fernandina, and Canaveral, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent security zones around certain vessels within the ports of Jacksonville, Fernandina, and Canaveral. The security zones will prohibit entry into or movement within 100 yards of all tank vessels, cruise ships, and military pre-positioned ships when these vessels enter, depart or moor within the ports of Jacksonville and Canaveral. These security zones are needed to ensure public safety and prevent sabotage or terrorist acts against vessels in the COTP Jacksonville area of responsibility. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Jacksonville, Florida or his designated representative.

DATES: This rule is effective February 24, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Jacksonville 02–066] and are available for inspection or copying at Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, FL 32211, between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Drew Casey, Coast Guard Marine Safety Office Jacksonville, at (904) 232–3610.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 12, 2001, one day after the September 11 terrorist attacks, the Coast Guard Captain of the Port in Jacksonville established a temporary rule establishing security zones around tank vessels, passenger vessels, and military pre-positioned ships until October 3, 2001 (published on September 26, 2001, 66 FR 49104). Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. As a result, on October 17, 2001, the Coast Guard published a second temporary rule in the **Federal Register** continuing these zones through 11:59 p.m. June 15, 2002 (66 FR 52689). The third temporary rule continued the zones through noon on November 15, 2002 (67 FR 41339). A fourth temporary rule continued the zones until January 30, 2003 so the Coast Guard can give adequate consideration to the comments received from the notice of proposed rulemaking (67 FR 55184).

On August 28, 2002 we published a notice of proposed rulemaking in the **Federal Register** entitled "Security Zones; Ports of Jacksonville, Canaveral, and Fernandina, FL" (67 FR 55184). We received one comment on the proposed rule, which is discussed below.

Background and Purpose

This rule creates 100-yard security zones around all tank vessels, cruise ships, and military pre-positioned ships when these vessels enter, depart or moor within the Ports of Jacksonville, Fernandina, and Canaveral. No person or vessel may enter these zones without the permission of the Captain of the Port of Jacksonville. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30 deg. 23″ 35′ N, 81 deg. 19′ 08″ W, when entering the Port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28 deg. 22.7′ N, 80 deg. 31.8′, and 28 deg. 23.7′ N, 80 deg. 29.2′ W, when entering Port Canaveral or passes St. Mary's River Sea Buoy, at approximate position 30 deg. 40.8″ N, 81 deg 11.8″ W, when entering the Port of Fernandina. Fixed security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships docked in the Ports of Jacksonville, Fernandina, and Canaveral, Florida.

Discussion of Comments and Changes

We received one comment on the proposed rule from the Florida Department of Transportation (FDOT), Seaport Office. FDOT expressed concern that the regulation, if implemented, would not provide security for sensitive land-based resources, such as waterfront storage tanks and petroleum facilities. FDOT's concern for shore-based resources is shared by the Coast Guard and is being addressed at the national level through separate security measures. See *Maritime Security*, 67 FR 79742 (Dec. 30, 2002) (Notice of public meetings on Coast Guard national maritime security measures, including in Jacksonville, FL, on Feb. 7, 2003.)

A second concern from FDOT was that the NPRM did not prove that such a zone would prevent sabotage or terrorist acts. The Coast Guard has concluded that this rule is a necessary measure to protect certain high-risk vessels on the navigable waterways of the United States. The 100-yard security zones, although not guaranteed to eliminate all risk of sabotage or terrorist acts, will significantly reduce vulnerability and provide an enforcement mechanism if a violation occurs.

The third and final concern expressed by FDOT was that this rule would cause disruption to the movement of people and goods. First, this rule has been in place since September 2001 in the Jacksonville area and has not caused any noticeable disruption to maritime trade and transportation. Secondly, the Captain of the Port has discretion to allow a vessel to transit a security zone, if deemed necessary, to promote safe and efficient marine transportation. The environment in which the maritime industry operates has dramatically changed since September 2001. The Coast Guard believes these types of security zones, which only extend 100 yards around certain vessels, create the appropriate balance between efficient maritime transportation and necessary security in our new environment.

No changes were made to the proposed rule as a result of the comment received.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because the impact of this rule on commercial and recreational vessel navigation is minimal because most vessels will be able to transit around these zone and the Captain of the Port

may permit entry into the zone on a case by case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to enter on a case-by-case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Environment

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A section 165.759 is added to read as follows:

§ 165.759 Security Zones; Ports of Jacksonville, Fernandina, and Canaveral, Florida.

(a) *Regulated area.* Moving security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships during transits entering or departing the ports of Jacksonville, Fernandina, and Canaveral, Florida. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30 deg. 23′ 35″ N, 81 deg, 19′ 08″ West, when entering the port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28 deg. 22.7 N, 80 deg 31.8 W, and 28 deg. 23.7 N, 80 deg. 29.2 W, when entering Port Canaveral. Fixed security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships docked in the Ports of Jacksonville, Fernandina, and Canaveral, Florida.

(b) *Regulations.* In accordance with the general regulations § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public of any changes in the status of this zone by

Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Definition.* As used in this section: cruise ship means a passenger vessel, except for a ferry, greater than 100 feet in length that is authorized to carry more than 12 passengers for hire.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: January 3, 2003.

M.M. Rosecrans,

Captain, Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 03–1485 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami 02–115]

RIN 2115–AA97

Security Zones; Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent security zones throughout the Captain of the Port of Miami's area of responsibility. The security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative.

DATES: This rule is effective February 16, 2003.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Miami 02–115] and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Jennifer Sadowski, Waterways Management Division Officer, Coast Guard Marine Safety Office Miami, at (305) 535–8750.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 5, 2002, we published a notice of proposed rule making (NPRM) entitled "Security Zones; Port of Palm Beach, Palm Beach FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL" in the **Federal Register** (67 FR 67342). We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The terrorist attacks of September 2001 killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly around those vessels and facilities which are frequented by foreign nationals and maintain an interest to national security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sep. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sep. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations)). Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorist attacks are likely. The Captain of the Port (COTP) of Miami has determined that there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Ports of Palm Beach, Miami, Port Everglades, and Key West, Florida. These security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

The Coast Guard Captain of the Port of Miami established temporary security zones in these areas following the September 11, 2001 attacks. Those temporary rules are as follows:

On September 11, 2001, the COTP issued a temporary final rule (TFR) (67 FR 9194, 9195, February 28, 2002, Docket # COTP Miami 01–093) establishing 100-yard security zones around certain vessels in the Port of Palm Beach, Miami, Port Everglades, and Key West, FL, that expired September 25, 2001. On September 25, 2001, the COTP issued another TFR (67 FR 1101, January 9, 2002, COTP Miami 01–115) that maintained these 100-yard security zones around certain vessels in the Ports of Palm Beach, Miami, Port Everglades, and Key West, FL, and added a reference to specific points (buoys) where moving zones were activated and deactivated. This second TFR expired on June 15, 2002.

On October 7, 2001, the COTP issued a TFR (67 FR 6652, February 13, 2002, COTP Miami 01–116) establishing fixed security zones in Port Everglades and Miami, FL, that expired June 15, 2002.

On October 11, 2001, the COTP issued a TFR (67 FR 4177, January 29, 2002, COTP Miami 01–122) establishing a fixed-security zone for Port Everglades, FL, that expired June 15, 2002.

All of the above security zones were extended by a TFR issued on June 13, 2002 (67 FR 46389, COTP Miami–02–054) until December 15, 2002. That temporary final rule requested comments. As of December 12, 2002, the Coast Guard has not received any comments on that TFR.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after **Federal Register** publication. Delay in the effective date of this regulation would be contrary to public interest. The assets protected by these security zones present possible targets of terrorist attack due to their potential for large personnel casualties if struck by a terrorist attack. Making this rule effective less than 30 days after **Federal Register** publication is necessary to prevent a lapse between this rule and the temporary regulations currently in place, which would leave persons at these assets, and the public and surrounding communities, vulnerable to sabotage or other subversive acts, accidents, or other events of a similar nature.

Discussion of Comments and Changes

The Coast Guard received one comment on the proposed rule consisting of two points. The comment stated that the security zone will bankrupt his business as a mobile vendor on the Mallory Docks in Key West and the security zone interferes with his ability to recreationally dive in the harbor. Landside restricted areas are established by local police as opposed to the United States Coast Guard and therefore, this security zone does not affect any land based mobile vendor businesses. The security zones around

passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquid hazardous gas as defined in 33 CFR parts 120, 126, and 127 respectively, are established for the national security and safety and security of the public. Recreational diving in Key West Harbor may be conducted at any time as long as the 100-yard security zone around these particular vessels is not entered. Additionally, the commenter may ask the Captain of the Port of Miami for permission to enter the security zone on a case-by-case basis. The Coast Guard has evaluated these comments and has decided not to change the proposed rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because we anticipate these security zones may only impact vessel traffic for short periods of times. Alternate vessel traffic routes have also been accounted for to assist in minimizing delays. Also, the Captain of the Port of Miami may allow persons or vessels to enter a security zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic effect upon a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because we anticipate these security zones may only impact vessel traffic for short periods of times. Alternate vessel traffic routes have also been identified to assist in minimizing delays. Also, the Captain of the Port of Miami may allow persons or vessels to enter a security zone on a case-by case basis. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Jennifer Sadowski at (305) 535–8750.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because no environmental changes will be affected with the security zone implementation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add new § 165.761 to read as follows:

§ 165.761 Security Zones; Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, Florida.

(a) *Location.* The following areas are security zones:

(1) *Fixed and moving security zones around vessels in the Ports of Palm Beach, Port Everglades, Miami, and Key West, Florida.* Moving security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, during transits entering or departing the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida. These moving security zones are activated when the subject vessel passes: "LW" buoy, at approximate position 26°46.3′ N, 080°00.6′ W, when entering the Port of Palm Beach, passes "PE" buoy, at approximate position 26°05.5′ N, 080°04.8′ W, when entering Port Everglades; the "M" buoy, at approximate position 25°46.1′ N, 080°05.0′ W, when entering the Port of Miami; and "KW" buoy, at approximate position 24°27.7′ N, 081°48.1′ W, when entering the Port of Key West. Fixed security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard or liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, while they are docked in the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida.

(2) *Fixed security zone in the Port of Miami, Florida.* A fixed security zone encompasses all waters between Watson Park and Star Island on the MacArthur Causeway south to the Port of Miami. The western boundary is formed by an imaginary line from points 25°46.79′ N, 080°10.90′ W, to 25°46.77′ N, 080°10.92′ W to 25°46.88′ N, 080°10.84′ W, and ending on Watson Park at 25°47.00′ N, 080°10.67′ W. The eastern boundary is formed by an imaginary line from the traffic light located at Bridge road, in approximate position 25°46.33′ N, 080°09.12′ W, which leads to Star Island, and MacArthur Causeway directly extending across the Main Channel to the Port of Miami, at 25°46.26′ N, 080°09.18′ W. The fixed security zone is activated when two or more passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, enter or moor within this zone.

(i) Vessels may be allowed to transit the Main Channel when only one passenger vessel or vessel carrying cargoes of particular hazard are berthed, by staying on the north side of the law enforcement boats and cruise ship tenders which will mark a transit lane in channel.

(ii) When passenger vessels are not berthed on the Main Channel, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(3) *Fixed security zones in the Port Everglades.* A fixed security zone encompasses all waters west of an imaginary line starting at the northern most point 26°05.98′ N, 080°07.15′ W, near the west side of the 17th Street Causeway Bridge, to the southern most point 26°05.41′ N, 080°06.96′ W, on the northern tip of pier 22. An additional fixed security zone encompasses the Intracoastal Waterway between a line connecting point 26°05.41′ N, 080°06.97′ W, on the northern tip of berth 22 and a point directly east across the Intracoastal Waterway to 26°05.41′ N, 080°06.74′ W; and a line drawn from the corner of Port Everglades berth 29 at point 26°04.72′ N, 080°06.92′ W, easterly across the Intracoastal Waterway to John U. Lloyd Beach, State Recreational Area at point 26°04.72′ N, 080°06.81′ W.

(i) Vessels may be allowed to transit the Intracoastal Waterway when passenger vessels or vessels carrying cargoes of particular hazard are berthed, by staying east of the law enforcement vessels and cruise ship tenders, which will mark a transit lane in the Intracoastal Waterway.

(ii) Periodically, vessels may be required to temporarily hold their positions while large commercial traffic operates in this area. Vessels in this security zone must follow the orders of the COTP or his designated representative, who may be embarked in law enforcement or other vessels on scene. When passenger vessels are not berthed on the Intracoastal Waterway, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(b) *Regulations.* (1) Prior to commencing the movement, the person directing the movement of a passenger vessel, a vessel carrying cargoes of particular hazard or a vessel carrying liquefied hazardous gas (LHG) as defined in Title 33, Code of Federal Regulations parts 120, 126 and 127 respectively, is encouraged to make a security broadcast on VHF Marine Band Radio, Channel 13 (156.65 MHz) to advise mariners of the moving security zone activation and intended transit.

(2) In accordance with the general regulations § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port Miami or his designated representative. Other vessels such as pilot boats, cruise ship tenders, tug boats and contracted security vessels may assist the Coast Guard Captain of the Port under the direction of his designated representative by monitoring these zones strictly to advise mariners of the restrictions. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (156.8 MHz) when the security zones are being enforced.

(3) Persons desiring to enter or transit the area of the security zone may contact the Captain of the Port at (305) 535–8701 or on VHF Marine Band Radio, Channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(4) The Captain of the Port Miami may waive any of the requirements of this subpart for any vessel upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this subpart is unnecessary or impractical for the purpose of port security, safety or environmental safety.

(c) *Definition.* As used in this section, cruise ship means a passenger vessel greater than 100 feet in length and over 100 gross tons that is authorized to carry more than 12 passengers for hire making voyages lasting more than 24 hours, except for a ferry.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: December 23, 2002.

J.A. Watson, IV,

Captain, Coast Guard, Captain of the Port Miami.

[FR Doc. 03–1482 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 271–0374a; FRL–7427–8]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District and Yolo-Solano Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) and the Yolo-Solano Air Quality Management District (YSAQMD) portions of the California State Implementation Plan (SIP). The SBCAPCD revision concerns the emission of particulate matter (PM–10) from open fires and prescribed burning. The YSAQMD revision concerns the emission of volatile organic compounds (VOCs) from the transfer of gasoline at dispensing facilities. We are approving the local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on March 24, 2003 without further notice, unless EPA receives adverse comments by February 24, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rules and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rules and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.
Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.
Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

A copy of a rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. This is not an EPA website and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were revised by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Revised	Submitted
SBCAPCD	401	Agricultural and Prescribed Burning	05/16/02	08/06/02
YSAQMD	2.22	Gasoline Dispensing Facilities	06/12/02	08/06/02

On August 30, 2002, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved a version of SBCAPCD Rule 401 on May 18, 1981 (46 FR 27116). We approved a version of YSAQMD Rule 2.22 on February 28, 1984 (49 FR 7231).

C. What Is the Purpose of the Submitted Rule Revisions?

The purposes of the submitted SBCAPCD Rule 401 revisions are as follows:

- To implement the revised California Smoke Management Guidelines.
- To minimize smoke impacts.
- To establish a collaborative relationship between the SBCAPCD and burners.
- To provide reduced fuel loads with prescribed burning and remove crop waste without smoke impacts.

The purpose of the submitted rule revisions to YSAQMD Rule 2.22 are as follows:

- To improve compliance of Phase II vapor systems at gasoline dispensing facilities with more strict maintenance and inspection programs.
- To add new test procedures and perform more frequent reverification of performance tests of vapor recovery equipment.
- To increase the efficiency of vapor recovery equipment.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). SIP rules must require BACM/BACT or RACM/RACT for major sources in PM–10 nonattainment areas (see sections 189(a) and 189(b)). SIP rules must require Reasonably Available Control Technology (RACT) for major sources in ozone nonattainment areas (see section 182(a)(2)(A)) and must fulfill the special requirements for gasoline vapor recovery in ozone nonattainment areas (see section 182(b)(3)(A)).

The SBCAPCD regulates a PM–10 attainment area (see 40 CFR 81.305), so the rule need not require BACM/BACT or RACM/RACT.

The YSAQMD regulates serious ozone nonattainment areas in all of Yolo County and part of Solano County (see 40 CFR 81.305), so the rule must fulfill RACT requirements and fulfill the special requirements for gasoline vapor recovery.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *General Preamble Appendix C3—Prescribed Burning Control Measures* (57 FR 18072, April 28, 1992).
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 57 FR 13498, 13540 (April 16, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994).
- *PM–10 Guideline Document*, EPA–452/R–93–008.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 Federal Register Notice*, (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
- Draft *Model Rule, Gasoline Dispensing Facility—Stage II Vapor Recovery*, EPA (August 17, 1992).
- *Gasoline Vapor Recovery Guidelines*, EPA Region IX (April 24, 2000).

B. Do the Rules Meet the Evaluation Criteria?

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, RACT requirements, and the special requirements for gasoline vapor recovery. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by February 24, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on March 24, 2003. This will incorporate these rules into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM–10 rules.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
November 15, 1990	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

VOCs help produce ground-level ozone, smog, and particulate matter which harm human health and the environment. EPA has established National Ambient Air Quality Standards (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations in order to achieve and maintain the NAAQS. Table 3 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 3.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 4, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(303) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(303) New and amended regulations for the following APCDs were submitted on August 6, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Santa Barbara County Air Pollution Control District.

(*1*) Rule 401, adopted on October 18, 1971 and revised on May 16, 2002.

(B) Yolo Solano Air Quality Management District.

(*1*) Rule 2.22, revised on June 12, 2002.

* * * * *

[FR Doc. 03–1362 Filed 1–22–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1510

[Docket No. TSA–2001–11120]

RIN 2110–AA01

Imposition and Collection of Passenger Civil Aviation Security Service Fees

AGENCY: Transportation Security Administration, DOT.

ACTION: Partial waiver of independent audit requirement of final rule.

SUMMARY: Under specified conditions and until further notice, the Transportation Security Administration (TSA) will not enforce certain independent audit requirements related to the September 11th Security Fee collected by direct air carriers and foreign air carriers. This partial waiver is because the audit may not be necessary and may be overly burdensome.

DATES: Effective January 23, 2003.

FOR FURTHER INFORMATION CONTACT: For guidance on technical matters contact Randall Fiertz, Acting Director of Revenue, (202) 385–1209. For guidance on legal or other matters contact Steven Cohen, Office of Chief Counsel, (202) 493–1216.

SUPPLEMENTARY INFORMATION: In order to offset the costs of providing certain civil aviation security services, TSA imposed a uniform security service fee, the September 11th Security Fee (fee), on passenger enplanements for certain flights originating at airports in the United States. The interim final rule for the fee was published in the **Federal Register** on December 31, 2001, amended on March 28, 2002, and codified at 49 CFR part 1510. Section 1510.9 requires direct air carriers and

foreign air carriers to collect and remit the fee. Section 1510.15(b) requires carriers that collect the fee from more than 50,000 passengers annually to provide for an annual audit of their security service fee activities and accounts. Section 1510.15(c) requires that the audit be performed by an independent public certified accountant, that the auditor express an opinion on the fairness and reasonableness of the carrier's procedures for collecting, holding and remitting the fee, and that the audit address whether the quarterly reports required in § 1510.17 fairly represent the net transactions in the carrier's security service fee accounts.

Since issuing the interim final rule, TSA has reviewed several comments in the public docket, Docket No. TSA–2001–11120, concerning the relative burdens and benefits of independent audits for this fee. In light of the high cost of independent audits; the economic condition of the aviation industry; the fact that TSA, in conjunction with other Federal agencies, is initiating its own reviews of fee payments by selected carriers; and TSA's confidence that the aviation industry has demonstrated a high level of compliance with 49 CFR part 1510 thus far, TSA has determined that it may not be necessary for the carriers to expend the resources necessary to provide for independent audits regarding the fee.

By this document, TSA waives enforcement of the requirement in 49 CFR 1510.15(b) that carriers provide for annual independent audits of their September 11th Security Fees. Notwithstanding this suspension of the audit requirement, carriers must still comply with the record keeping requirements of § 1510.15(a) and fully cooperate with Federal oversight efforts conducted pursuant to § 1510.19, which authorizes representatives of the Secretary of Transportation, the Under Secretary of Transportation for Security, the Inspector General of the Department of Transportation, or the Comptroller General of the United States to audit or review the carriers' books or records. TSA is not waiving or deferring enforcement of any other requirement set forth in 49 U.S.C. 44940, 49 CFR part 1510, or the audit requirement pertaining to the Aviation Security Infrastructure Fee imposed on carriers in 49 CFR part 1511.

Upon conducting its own reviews of fee payments by carriers (including those conducted by or jointly with other Federal agencies), TSA will determine whether to eliminate the independent audit requirement or to rescind this waiver and reinstate the independent audit requirement. If TSA decides to eliminate the requirement, an amendment to 49 CFR part 1510 will be published in the **Federal Register**. If TSA decides to rescind the waiver a document will be published in the **Federal Register** at least 90 days in advance of its effectiveness.

Issued in Washington, DC, on January 14, 2003.

James M. Loy,

Under Secretary of Transportation for Security.

[FR Doc. 03–1487 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 68, No. 15
Thursday, January 23, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1730

RIN 2550–AA25

Public Disclosure of Financial and Other Information

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight is proposing a regulation to set forth public disclosure requirements with respect to financial and other information by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

DATES: Written comments on the proposed regulation must be received by March 24, 2003.

ADDRESSES: Send written comments concerning the proposed regulation to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. Written comments may also be sent to Mr. Pollard by electronic mail at *RegComments@OFHEO.gov*. OFHEO requests that written comments submitted in hard copy also be accompanied by the electronic version in MS Word or in portable document format (PDF) on 3.5″ disk.

FOR FURTHER INFORMATION CONTACT: David W. Roderer, Deputy General Counsel, or Tina Dion, Associate General Counsel, telephone (202) 414–6924 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

The Office of Federal Housing Enterprise Oversight (OFHEO) invites comments on all aspects of the proposed regulation, including legal and policy considerations, and will take all comments into consideration before issuing the final regulation. Copies of all comments received will be available for examination by the public at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552, or on the OFHEO Web site at *http://www.ofheo.gov*.

II. Background

A. Introduction

Title XIII of the Housing and Community Development Act of 1992, Pubic Law 102–550, entitled the "Federal Housing Enterprises Financial Safety and Soundness Act of 1992" (Act) (12 U.S.C. 4501 *et seq.*), established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are capitalized adequately and operate safely and in compliance with applicable laws, rules, and regulations.

The relationship of the government-sponsored enterprises to financial markets is critical to their viability. To accomplish their missions, the Enterprises must have access to capital markets. In supporting the primary mortgage markets, secondary market players, including the Enterprises, access domestic and global financing sources and offer a variety of issuances demanded by these markets. The Enterprises are significant as participants in mortgage-backed securities and agency debt markets, and in related hedging activities, and as issuers and guarantors of securities.

As users of and participants in the financial markets, the success of the Enterprises in meeting their public policy missions and in maintaining their safe and sound operations is inextricably tied to full and robust disclosure.[1] Disclosure may provide information about the corporate operations of a firm, the intricacies of a given securities offering, or specialized information concerning particular events or business practices. In addition, Enterprise securities have become increasingly significant to domestic and foreign market participants. The business practices of the Enterprises affect large and small investors, debt markets and international debt holders alike. Access to the markets and the price of that access are directly affected by investor perceptions of the transparency of the Enterprises and the safety and soundness of their operations. In such an environment, as the Enterprises themselves acknowledge, they have an interest in providing "best in class" disclosures.[2]

B. Disclosure and Safe and Sound Operations

Full and adequate disclosure of information by the Enterprises regarding their financial conditions and risks is an important part of OFHEO's supervisory program. Full disclosure enhances market discipline.[3] OFHEO possesses both explicit and implied authorities to address the Enterprises' disclosure practices.[4] The office has at its disposal a range of supervisory tools to require full and meaningful disclosures.[5]

While the offer and sale of their securities are exempt from the registration requirements of the Securities Act of 1933[6] and their securities are exempted securities under the Securities Exchange Act of 1934 (Exchange Act),[7] the Enterprises last July indicated that they would voluntarily register their common stock

[1] *See, Freddie Mac and Fannie Mae Enhancements to Capital Strength, Disclosure and Market Discipline*, 3–4 News, Archives (October 19, 20000), available at *http://www.freddiemac.com/*; and *Franklin Raines, FDIC Panel: "The Rise of Risk Management: Challenges for Policy Makers,"* 1, 6 Media, Speeches (July 31, 2002), available at *http://www.fanniemae.com/*.

[2] *Id. See*, for example, Fannie Mae, *Franklin Raines, FDIC Panel*.

[3] *See* Basel Committee on Banking Supervision's consultative paper entitled, "A New Capital Adequacy Framework." (Basel Committee Publications No. 50 (June 1999)).

[4] In general. *see* 12 U.S.C. 4513, 12 U.S.C. 4631, 4632, and 4636; 12 U.S.C. 4514; 12 U.S.C. 4501(6) as well as the chartering acts for the Enterprises at 12 U.S.C. 1723a(k)(2) and 12 U.S.C. 1456(c)(2) and (3).

[5] An unsafe or unsound practice may serve as a basis for enforcement action by OFHEO pursuant to 12 CFR parts 1777 and 1780.

[6] 15 U.S.C. 77a through 77aa.

[7] 15 U.S.C. 78a through 78jj.

with the Securities and Exchange Commission (SEC) under the provisions of section 12(g) of the Exchange Act, 15 U.S.C. 78*l*(g). That section permits companies not covered by the Exchange Act and its requirements for periodic disclosures to submit voluntarily to SEC rules. Voluntary registration triggers the attendant rules and regulations of the SEC, including SEC enforcement authorities. Once a company volunteers, it must remain under the strictures of the law, unless permitted to remove itself by the SEC. OFHEO is proposing this regulation, in part, to facilitate the process of voluntary registration by the Enterprises under the Exchange Act.

OFHEO has a broad statutory mandate to adopt regulations, rules, and guidances deemed to be appropriate to assuring the safety and soundness of the Enterprises including appropriate disclosures that aid in promoting market discipline. OFHEO is empowered fully to mandate financial and securities disclosure and to take related actions to implement such regulatory requirements through filings and submissions, examination and oversight of disclosures. OFHEO anticipates no duplication of regulation as it administers its broad safety and soundness obligations.

III. Section-by-Section Analysis

Section 1730.1 Purpose

This part would require the Enterprises to prepare and submit financial and other disclosures as specified by OFHEO. The required disclosures are intended to complement the supervisory efforts of OFHEO to ensure the capital strength of the Enterprises and to promote safe and sound operations within each Enterprise and the mortgage-finance system.

This section also would note that this regulation does not limit or restrict the authority of OFHEO to act under its safety and soundness mandate to regulate the Enterprises, including conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules and regulations.

Section 1730.2 Definitions

This section would set forth definitions relevant to the proposed regulation.

Section 1730.3 Periodic Disclosures

This section would require each Enterprise to prepare disclosures relating to its financial condition, results of operation, business developments and management expectations that include supporting financial information and certification thereof.

An Enterprise would satisfy the proposed requirement for periodic disclosures required in the section if:

1. In the case of an Enterprise having a class of securities registered pursuant to section 12 of the Exchange Act, the Enterprise prepares an annual report, quarterly report, and current reports, and such other materials that may be required under the rules and regulations of the Commission, including interpretations by the Commission and its staff and rules governing audited financial statements;

2. The Enterprise files with the Commission all reports, statements and forms required pursuant to section 14(a) and (c) of the Exchange Act and by rules and regulations adopted by the Commission under that section; and

3. The officers and members of the board of directors of the Enterprise file with the Commission all reports and forms relating to the common stock of the Enterprises required pursuant to section 16 of the Exchange Act and by rules and regulations adopted by the Commission under that section.

Section 1730.4 Submission of Disclosures

This section would require that, unless otherwise directed by OFHEO, the Enterprises must provide to OFHEO on a concurrent basis copies of all disclosures filed with the SEC under § 1730.3.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The proposed regulation would not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required. The proposed regulation, however, has been submitted to the Office of Management and Budget (OMB) for review under other provisions of Executive Order 12866 as a significant regulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal government and the States, or on the distribution of power and responsibilities among various levels of government. The Enterprises are federally chartered corporations supervised by OFHEO. The proposed regulation sets forth minimum disclosure standards with which the Enterprises must comply for Federal supervisory purposes and address the safety and soundness authorities of the agency. The proposed regulation does not affect in any manner the powers and authorities of any State with respect to the Enterprises or alter the distribution of power and responsibilities between State and Federal levels of government. Therefore, OFHEO has determined that the proposed regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

List of Subjects in 12 CFR Part 1730

Government-sponsored enterprises, Financial disclosure, Reporting and recordkeeping requirements, Records.

Accordingly, for the reasons stated in the preamble, OFHEO proposes to add part 1730 to subchapter C of 12 CFR chapter XVII to read as follows:

Subchapter C—Safety and Soundness

PART 1730—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION

Sec.
1730.1 Purpose.
1730.2 Definitions.
1730.3 Periodic disclosures.
1730.4 Submission of disclosures.

Authority: 12 U.S.C. 4513; 12 U.S.C. 4514; 12 U.S.C. 4631; and, 12 U.S.C. 4632.

§ 1730.1 Purpose.

(a) The purpose of this part is to require the Enterprises to prepare and submit financial and other disclosures as specified by OFHEO.

(b) This part does not limit or restrict the authority of OFHEO to act under its safety and soundness mandate to regulate the Enterprises, including conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules and regulations.

§ 1730.2 Definitions.

For purposes of this part, the term:

(a) *Commission* means the Securities and Exchange Commission (or SEC).

(b) *Disclosure or disclosures* means any report[s], form[s], or other information submitted by the Enterprises pursuant to this part and may be used interchangeably with the terms "reports[s]" or "form[s]."

(c) *Enterprise* means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term "Enterprises" means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(d) *Exchange Act* means the Securities Exchange Act of 1934.

(e) *OFHEO* means the Office of Federal Housing Enterprise Oversight (or the office).

§ 1730.3 Periodic disclosures.

(a) Each Enterprise shall prepare disclosures relating to its financial condition, results of operation, business developments, and management's expectations that include supporting financial information and certifications.

(b) The requirement of paragraph (a) for disclosures will be satisfied if:

(1) In the case of an Enterprise having a class of securities registered pursuant to section 12 of the Exchange Act, the Enterprise prepares and makes public an annual report, quarterly report and current reports and such other materials that may be required under the rules and regulations of the Commission, including interpretations of the Commission and its staff and rules governing audited financial statements;

(2) The Enterprise files with the Commission all reports, statements, and forms required pursuant to sections 14(a) and (c) of the Exchange Act and by rules and regulations adopted by the Commission under those sections that would be required to be filed by the Enterprises if the Enterprises has a class of equity securities registered under section 12(g) of the Exchange Act that were not exempted securities under the Exchange Act; and

(3) The officers and directors of the Enterprise file with the Commission all reports and forms relating to the common stock of the Enterprise that would be required to be filed by the officers and directors pursuant to section 16 of the Exchange Act and by rules and regulations adopted by the Commission under that section if the Enterprises had a class of equity securities registered under section 12(g) of the Exchange Act that were not exempted securities under the Exchange Act.

§ 1730.4 Submission of disclosures.

Unless otherwise required by OFHEO, the Enterprises shall provide to OFHEO on a concurrent basis copies of all disclosures filed with the SEC pursuant to § 1730.3.

Dated: January 15, 2003.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 03–1298 Filed 1–22–03; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13362; Airspace Docket No. 02–ASO–7]

RIN 2120–AA66

Proposed Revision of VOR Federal Airways and Jet Routes in the Vicinity of Savannah, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise four jet routes and seven Very High Frequency Omnidirectional Range (VOR) Federal airways in the vicinity of Savannah, GA, due to the relocation of the Savannah Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility. The Savannah VORTAC is being relocated at the Savannah International Airport as a result of environmental restrictions at the present VORTAC site. The relocation of the VORTAC requires that segments of the affected jet routes and VOR Federal airways be redescribed.

DATES: Comments must be received on or before March 10, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify both docket numbers, FAA–2002–13362/ Airspace Docket No. 02–ASO–7, at the beginning of your comments.

You may also submit comments through the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, ASO–500, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket No. FAA–2002–13362/Airspace Docket No. 02–ASO–7." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revise the descriptions of four jet routes and seven VOR Federal airways in the vicinity of Savannah, GA. Specifically, this notice is proposing to revise jet routes J–51, J–55, J–79, and J–103; and VOR Federal Airways V–3, V–37, V–154, V–185, V–437, V–441, and V–578. The proposed action would make minor amendments in the legal descriptions to align affected jet route and VOR Federal airway segments with the new VORTAC site.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes and Domestic VOR Federal airways are published in paragraphs 2004 and 6010(a), respectively, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The jet routes and VOR Federal airways listed in this document would be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–51 [Revised]

From Craig, FL; INT Craig 004° and Savannah, GA, 193° radials; Savannah; Columbia, SC; INT Columbia 042° and Flat Rock, VA, 212° radials; Flat Rock; Nottingham, MD; Dupont, DE; to Yardley, NJ.

* * * * *

J–55 [Revised]

From Dolphin, FL; INT Dolphin 331° and Gators, FL, 160° radials; INT Gators 160° and Craig, FL, 192° radials; Craig; INT Craig 004° and Savannah, GA, 193° radials; Savannah; Charleston, SC; Florence, SC; INT Florence 003° and Raleigh-Durham, NC, 224° radials; Raleigh-Durham; INT Raleigh-Durham 035° and Hopewell, VA, 234° radials; Hopewell; INT Hopewell 030° and Nottingham, MD, 174° radials. From Sea Isle, NJ; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Providence, RI; Boston, MA; Kennebunk, ME; Presque Isle, ME; to Mont Joli, PQ, Canada, excluding the portion within Canada.

* * * * *

J–79 [Revised]

From Key West, FL; INT Key West 038° and Dolphin, FL, 244° radials; Dolphin; Palm Beach, FL; Vero Beach, FL; Ormond Beach, FL; INT Savannah, GA, 178° and Charleston, SC, 212° radials; Charleston; Tar River, NC; Franklin, VA; Salisbury, MD; INT Salisbury 018° and Kennedy, NY, 218° radials; Kennedy; INT Kennedy 080° and Nantucket, MA, 254° radials; INT Nantucket 254° and Marconi. MA, 205° radials; Marconi; INT Marconi 006° and Bangor, ME, 206° radials; Bangor.

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J–103 [Revised]

From Ormond Beach, FL; to Savannah, GA.

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Paragraph 6010(a)—Domestic VOR Federal Airways

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V–3 [Revised]

From Key West, FL; INT Key West 083° and Dolphin, FL, 191° radials; Dolphin; Ft. Lauderdale, FL; Palm Beach, FL; Vero Beach, FL; Melbourne, FL; Ormond Beach, FL; Brunswick, GA; INT Brunswick 014° and Savannah, GA, 177° radials; Savannah; INT Savannah 028° and Vance, SC, 203° radials; Vance; Florence, SC; Sandhills, SC; Raleigh-Durham, NC; INT Raleigh-Durham 016° and Flat Rock, VA, 214° radials; Flat Rock; Gordonsville, VA; INT Gordonsville 331° and Martinsburg, WV, 216° radials; Martinsburg; Westminster, MD; INT Westminster 048° and Modena, PA, 258° radials; Modena; Solberg, NJ; INT Solberg 044° and Carmel, NY, 243° radials; Carmel; Hartford, CT; INT Hartford 084° and Boston, MA, 224° radials; Boston; INT Boston 014° and Pease, NH, 185° radials; Pease; INT Pease 004° and Augusta, ME, 233° radials; Augusta;

Bangor, ME; INT Bangor 039° and Houlton, ME, 203° radials; Houlton; Presque Isle, ME; to PQ, Canada. The airspace within R–2916, R–2934, R–2935, and within Canada is excluded.

* * * * *

V–37 [Revised]

From Craig, FL; Brunswick, GA; INT Brunswick 014° and Savannah, GA, 177° radials; Savannah; Allendale, SC; Columbia, SC; Charlotte, NC; Pulaski, VA; Elkins, WV; Clarksburg, WV; INT Clarksburg 359° and Ellwood City, PA, 185° radials; Ellwood City; Erie, PA; INT Erie 010° and Toronto, ON, Canada 210° radials; to Toronto. The airspace within Canada is excluded.

* * * * *

V–154 [Revised]

From Rome, GA; INT Rome 166° and Macon, GA, 301° radials; Macon; Dublin, GA; INT Dublin 105° and Savannah, GA, 289° radials; to Savannah.

* * * * *

V–185 [Revised]

From Savannah, GA; INT Savannah 335° and Colliers, SC, 150° radials; Colliers; Greenwood, SC; Sugarloaf Mountain, NC; Snowbird, TN; INT Snowbird 301° and Volunteer, TN, 069° radials; to Volunteer.

* * * * *

V–437 [Revised]

From Dolphin, FL; INT Dolphin 354° and Pahokee, FL, 157° radials; Pahokee; Melbourne, FL; INT Melbourne 322° and Ormond Beach, FL, 211° radials; Ormond Beach; INT Ormond Beach 360° and Savannah, GA, 177° radials; Savannah; INT Savannah 053° and Charleston, SC, 231° radials; Charleston; to Florence, SC. The airspace within R–2935 is excluded.

* * * * *

V–441 [Revised]

From Melbourne, FL; INT Melbourne 269° and Lakeland, FL, 081° radials; Lakeland; St. Petersburg, FL; INT St. Petersburg 010° and Ocala, FL, 213° radials; Ocala; Gators, FL; INT Gators 017° and Brunswick, GA, 223° radials; Brunswick; INT Brunswick 060° and Savannah, GA, 177° radials; to Savannah.

* * * * *

V–578 [Revised]

From Pecan, GA; Tift Meyers, GA; Alma, GA; INT Alma 072° and Savannah, GA, 196° radials; to Savannah.

* * * * *

Issued in Washington, DC, on January 15, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–1478 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. 2002–FAA–14184; Airspace Docket No. 02–AWP–12]

RIN 2120–AA66

Proposed Amendment of Restricted Area R–2303A and R–2303B, Fort Huachuca, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the designated time of use for restricted area R–2303A (R–2303A) and R–2303B, Fort Huachuca, AZ. Specifically, this action proposes to change the designated time of use for R–2303 A and B from "Monday–Friday 0700–1600 local time," to "Monday–Friday 0700 to 1700 local time." Increased training requirements at Fort Huachuca have resulted in a regular need for restricted airspace usage up to 1700 hours Monday through Friday. This proposed modification would not change the current boundaries or activities conducted in R–2303 A and B.

DATES: Comments must be received on or before March 10, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket numbers FAA–2002–14184/Airspace Docket No. 02–AWP–12 at the beginning of your comments.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the proposal; any comments received; and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also you may review public dockets on the Internet at *http://dms.dot.gov*. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–14184/Airspace Docket No. 02–AWP–12." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation

Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Restricted airspace at Fort Huachuca, AZ, dates back to the 1960's. The current designated time of use for the restricted area was based on past use. The U.S. Army requested this change since increased training requirements have resulted in a regular need for restricted airspace usage up to 1700 hours Monday through Friday. The restricted areas hours of use during the past several years has been routinely extended from 1600 hours to 1700 hours by the issuance of a Notice to Airmen (NOTAM).

The Proposal

The FAA is proposing an amendment to 14 Code of Federal Regulations (CFR) part 73 to amend the designated time of use for R–2303A and R–2303B Fort Huachuca, AZ. Specifically, this action proposes to change the designated time of use for R–2303 A and B from "Monday–Friday 0700–1600 local time," to "Monday–Friday 0700-to 1700 local time." The U.S. Army has proposed this modification to better accommodate increased training requirements at Fort Huachuca. This action would not change the current boundaries or activities conducted within R–2303A and B.

Section 73.48 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8K dated September 26, 2002.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to the appropriate environmental analysis in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.23 [Amended]

2. § 73.23 is amended as follows:

* * * * *

R–2303A, AZ [Amended]

By removing "Time of designation. Monday–Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance," and substituting "Time of designation. Monday–Friday, 0700–1700 local time; other times by NOTAM at least 24 hours in advance," in its place.

R–2303B, AZ [Amended]

By removing "Time of designation. Monday–Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance," and substituting "Time of designation. Monday–Friday, 0700–1700 local time; other times by NOTAM at least 24 hours in advance," in its place.

* * * * *

Issued in Washington, DC on January 16, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–1476 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 967]

RIN 1512–AC85

Proposed Alexandria Lakes Viticultural Area (2002R–152P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: ATF has received a petition to establish a viticultural area in Douglas County, Minnesota, to be named "Alexandria Lakes." We invite comments on this petition.

DATES: We must receive written comments by March 24, 2003.

ADDRESSES: You may send comments to any of the following addresses—

- Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 967);
- 202–927–8525 (facsimile);
- *nprm@atfhq.atf.treas.gov* (e-mail);
- *http://www.atf.treas.gov* (online). A comment form is available. At this site, select "Regulations," then "Notices of proposed rulemaking (Alcohol)." Finally, select "Send comments via e-mail" under this notice number.

See the Public Participation section of this notice for specific requirements.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–9347).

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

ATF's Authority

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes ATF to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural

Areas, contains the list of approved viticultural areas.

Definition of an American Viticultural Area

Title 27 CFR 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9.

Requirements

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition ATF to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence of local and/or national name recognition of the proposed viticultural area as the area specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence of geographical characteristics, such as climate, soils, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;
- A description of the specific boundaries of the proposed viticultural area, based on features reflected on maps that are approved by the United States Geological Survey (USGS) and of the largest applicable scale; and
- A copy or copies of the appropriate USGS-approved map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

If this NPRM is approved, bottlers who use brand names like the name of the viticultural area may be affected. Such bottlers must ensure that their existing products are eligible to use the name of the viticultural area as an appellation of origin. For a wine to be eligible, 85 percent of the grapes in the wine must have been grown within the viticultural area(s). See 27 CFR 4.25a(e)(3).

If the wine is ineligible, the bottler must change the brand name of that wine and obtain approval of the new label. Different rules apply if a permittee labels a wine in this category with a label approved as of July 7, 1986. See 27 CFR 4.39(i).

Alexandria Lakes Petition

ATF has received a petition from Robert G. Johnson on behalf of Carlos Creek Winery, proposing to establish "Alexandria Lakes" as an American viticultural area. The proposed American viticultural area is located in Douglas County, Minnesota and encompasses approximately 17 square miles. Six fresh water lakes surround the area.

Name Evidence

The petitioner submitted the following as evidence that the area is locally and nationally known as Alexandria Lakes:

- The *2002 Official Visitors Guide* for the Alexandria Lakes area published by the Alexandria Lakes Area Chamber of Commerce. This guide refers to the area as the "Alexandria Lakes Area."
- Several brochures that refer to the proposed area as the "Alexandria Lakes Area."
- A letter from the Alexandria Lake Area Sanitary District referring to the proposed area as the "Alexandria Lake Area."

Evidence of Boundaries

The petitioner has submitted the following as boundary evidence:

- U.S.G.S. Map (Alexandria West, Minn. 1966 (revised 1994));
- U.S.G.S. Map (Alexandria East, Minn. 1966 (revised 1994));
- U.S.G.S. Map (Lake Miltona West, Minn. 1969); and
- U.S.G.S. Map (Lake Miltona East, Minn. 1969).

The proposed Alexandria Lakes viticultural area is located in Douglas County, Minnesota. The proposed boundaries do not encompass the entire land mass known by that name. According to the petitioner, current viticulture and a unique microclimate limit the boundaries to those proposed. He also indicates that the area's geographic features help define the proposed viticultural area's borders. We will discuss these features further below.

Geologic Features

The petitioner states that glacial activity formed the proposed area at the end of the last ice age, 10,000 years ago. The soil is unique because the glacial activity gouged it from the surrounding areas. The steep glacial erosion produced a geographically isolated area that the region's deepest glacial lakes surround. These lakes are not only the deepest, but by volume, they are largest in the region.

The petitioner states that the most abundant soil found in the petitioned area is of the Nebish-Beltrami association. This association is very unique in that it makes up only 5% of the county. The U.S. Department of Agriculture Soil Conservation Service (USDASCS) defines this soil as deep, well and moderately well drained. The petitioner states that vegetation in the proposed area must survive on poorer soils and must have broader root systems than vegetation grown in the surrounding regions. According to the petitioner, the higher concentration of hardwood trees in the proposed area evidence this.

By contrast, the USDASCS defines the opposing lakeshores' soil, just west and north of the proposed area, as belonging to the Waukon-Flom association, which they describe as poorly drained. The petitioner indicates that these are alluvial wash plains containing heavy lomis soils and low wetlands.

The USDASCS defines the soil associations on the opposing shores just south and east of the proposed areas as belonging to the Arvilla-Sverdrup association. These soils formed in sand or sand and gravel outwash material and are described as excessively drained.

Geographic Features

According to the petitioner, the proposed area's geographic features further distinguish it from surrounding regions. Six fresh-water lakes almost completely surround the proposed area. To the north lies Lake Miltona, which is the largest lake in Douglas County. To the east is Lake Carlos, which is, according to the Alexandria Lakes Area Chamber of Commerce, the largest lake in the Alexandria Lakes chain. South of the border are two small lakes, Lake Louise and Lake Alvin, and a medium size lake, Lake Darling. West lies Lake Ida, which is one of the largest lakes in the area.

Climate

The petitioner provided climate data for the years 1992 through 2001 from the University of Minnesota Meteorological Department's Web site. The data indicates that the proposed area receives on average more precipitation than the surrounding regions. The petitioned area's average precipitation is approximately 23.65 inches per year. By contrast, Osakis, Wadena, and Ashby Counties, which are located east, north, and west, respectively, of the petitioned area, all received between 1 to 3 more inches of precipitation per year. The petitioner states the difference is due to the seasonal southern winds that blow through the petitioned area producing moisture updrafts that result in rain clouds generally north and east of the area.

The petitioner states that the proposed area receives less annual snowfall than the surrounding regions. The petitioned area's average snowfall is approximately 47.67 inches per year. By

contrast, Osakis, Wadena, and Ashby, all receive between 4 to 8 more inches of snowfall per year.

According to the petitioner, "the drier climate and lighter snow cover makes for lowered water tables, but watershed flowing from areas to the north and east replenish the water and maintain constant lake water levels." In addition, the petitioner states that the petitioned area has temperature averages that are generally warmer in the winter and cooler in the summer than those of adjacent areas.

Public Participation

Comments

We request comments from anyone interested. Please support your comments with specific information. Examples include name evidence and data about growing conditions or area boundaries.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if time permits. We regard all comments as originals.

You may submit comments in any of four ways.

- *By mail:* You may send written comments to ATF at the address listed in the Addresses section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be legible;

(2) Reference this Notice number;

(3) Be on 8½ by 11-inch paper;

(4) Contain a legible, written signature; and

(5) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *By e-maik* You may e-mail comments to *nprm@atfhq.atf.treas.gov*. Comments transmitted by electronic-mail must—

(1) Contain your name, mailing address, and e-mail address;

(2) Reference this Notice number on the subject line; and

(3) Be legible when printed on 8½ by 11-inch paper. We will not acknowledge receipt of e-mail.

- *Online:* We provide a comment form with the online copy of this proposed rule. See the ATF Internet Web site at *http://www.atf.treas.gov*.

You may also write to the Director to ask for a public hearing. The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Disclosure

You may inspect copies of the petition, the proposed regulations, the appropriate maps, and any written comments by appointment. The ATF Reading Room, Public and Governmental Affairs, is located in room 6480 at 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also obtain copies at 20 cents per page. If you want to view or request copies of comments, call the ATF librarian at telephone number 202–927–7890.

For your convenience, we will post comments received in response to this Notice on the ATF Web site. All comments posted on our Web site will show the names of commenters but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the ATF Reading Room. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/* and select "Regulations," then "Notices of proposed rulemaking (Alcohol)." Next, select "View Comments" under this Notice number. Finally, select "Notice of Proposed Rulemakings Comments" and this Notice number.

Confidentiality

We do not recognize any submitted material as confidential. We will disclose all information that relates to the comments, including the identity of the commenters. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

Regulatory Analyses and Notices

Paperwork Reduction Act

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small businesses. The establishment of viticultural areas represents neither ATF endorsement nor approval of the quality of wine produced in the areas. Rather, it allows identification of areas distinct from one another where a given quality, reputation, or other characteristic of the wine produced in the area is essentially attributable to its geographical origin. We believe that the establishment of viticultural areas allows wineries to describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's efforts and consumer acceptance of wines from that area.

Executive Order 12866

This proposed rule is not a "significant regulatory action" as defined by Executive Order 12866. Therefore, no regulatory assessment is required.

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

ATF proposes to amend 27 CFR part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Amend subpart C by adding § 9.177 to read as follows:

§ 9.177 Alexandria Lakes

(a) *Name.* The name of the viticultural area described in this section is "Alexandria Lakes".

(b) *Approved maps.* The appropriate maps for determining the boundary of the Alexandria Lakes viticultural area are the following four U.S.G.S. topographical maps (7.5 minute series 1:24000 scale):

(1) "Alexandria West, Minn.," 1966, revised 1994.

(2) "Alexandria East, Minn.," 1966, revised 1994.

(3) "Lake Miltona East, Minn.," 1969.

(4) "Lake Miltona West, Minn.," 1969.

(c) *Boundaries.* The proposed Alexandria Lakes viticultural area is located in Douglas County, Minnesota and is encompassed by 6 fresh water lakes in an area of approximately 17 square miles. The proposed boundaries are as follows:

(1) The beginning point is located on Alexandria West, Minn. map between

Lake Carlos and Lake Darling at bench mark (BM) 1366, which is an unmarked bridge on County Road 11, known as the Carlos-Darling Bridge.

(2) The boundary continues along the Carlos-Darling bridge and then northeasterly along the western shore of Lake Carlos on to the Alexandria East, Minn. map,

(3) The boundary continues along the shoreline until the point where the Lake Carlos shoreline parallels an unlabeled road known as County Road 38.

(4) The boundary continues north along County Road 38 until it intersects with an unlabeled road known as County Road 62.

(5) The boundary continues north along County Road 62 on to the Lake Miltona, East, Minn. map and then on to an unlabeled road known as Buckskin Road.

(6) The boundary continues north on Buckskin Road to the point at BM 1411.

(7) From BM 1411, the boundary continues north in a straight line to the south shoreline of Lake Miltona.

(8) The boundary continues generally west along the south shoreline of Lake Miltona on to the Lake Miltona West, Minn. map until the southern shoreline parallels an unlabeled road known as Krohnfeldt Drive.

(9) The boundary continues south and then west along Krohnfeldt Drive until it intersects with an unlabeled road known as County Road 34.

(10) The boundary continues south along County Road 34 until the point where County Road 34 runs parallel to Lake Ida's eastern shoreline.

(11) The boundary continues south along Lake Ida's eastern shoreline then on to the Alexandria West, Minn. map to the point where two unlabeled roads known as Burkey's Lane and Sunset Strip Road intersect.

(12) The boundary continues south along Sunset Strip Road to the point where it intersects with an unlabled road known as County Road 104.

(13) The boundary continues generally east along County Road 104 until it intersects with an unlabeled road known as County Road 34.

(14) The boundary continues east along County Road 34 until it intersects with an unlabeled road known as County Road 11.

(15) The boundary continues east along County Road 11 to the beginning point for the area at BM 1366, known as the Carlos-Darling Bridge.

Signed: January 14, 2003.

Bradley A. Buckles,

Director.

[FR Doc. 03–1527 Filed 1–22–03; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 271–0374b; FRL–7427–7]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District and Yolo-Solano Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) and the Yolo-Solano Air Quality Management District (YSAQMD) portions of the California State Implementation Plan (SIP). These revisions concern the emission of particulate matter (PM–10) from open fires and prescribed burning and the emission of volatile organic compounds (VOCs) from the transfer of gasoline at dispensing facilities. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by February 24, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

A copy of a rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. This is not an EPA Web site and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local SBCAPCD Rule 401 and YSAQMD Rule 2.22. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 4, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–1363 Filed 1–22–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[USCG–2002–11288]

RIN 2115–AG30

Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: The Coast Guard proposes to update the rates for pilotage on the Great Lakes. We must by law review these rates annually, and we have reviewed them. We propose to change the pilotage rates for the shipping season of 2003 on the Great Lakes, both to generate sufficient funds for allowable expenses and to ensure that the pilots receive target compensation.

DATES: Comments and related material must reach the Docket Management Facility on or before March 10, 2003. A public meeting will be held January 31, 2003.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket,

please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2002–11288), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call Tom Lawler, Chief Economist, Office of Great Lakes Pilotage, Commandant (G–MW–1), U.S. Coast Guard, at 202–267–1241, by fax 202–267–4700, or by email at *tlawler@comdt.uscg.mil*. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2002–11288), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

A public meeting will be held from 2 p.m. to 4 p.m. on January 31, 2003, in Room B–1, Anthony J. Celebrezze Federal Building, 1240 East Ninth Street, Cleveland, OH 44199–2060. This meeting may close early if all business is finished.

Written material and requests to make oral presentations can be sent to: Margie Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

Persons who are unable to attend the public meeting are encouraged to send written comments to the Docket Management Facility as directed under **ADDRESSES** during the comment period.

Background and Purpose

Regulatory History

On May 9, 1996, the Department of Transportation published a final rule in the **Federal Register** (61 FR 21081) establishing a new methodology for setting rates for pilotage on the Great Lakes.

On February 10, 1997, the Coast Guard published a final rule in the **Federal Register** (62 FR 5917) utilizing for the first time the newly established methodology that amended the rates for pilotage on the Great Lakes.

On December 14, 1998, the Coast Guard published a notice of findings on annual review in the **Federal Register** (63 FR 68697) announcing the results of the 1998 rate review and requesting comments. The rates were not amended as a result of this rate review.

On July 12, 2001, the Coast Guard published a final rule in the **Federal Register** (66 FR 36484) amending the rates for pilotage on the Great Lakes.

On July 19, 2002, as the result of a lawsuit filed by District Two, the Coast Guard published a temporary final rule in the **Federal Register** (67 FR 47464) entitled "Basic Rates and Charges on Lake Erie and the Navigable Waters From Southeast Shoal to Port Huron, MI". The rule returned the rate in District Two, Area 5, to the one that was in place prior to August 13, 2001.

On August 26, 2002, the Coast Guard published a notice of meetings in the **Federal Register** (67 FR 54836) for four public meetings to be held in regard to issues relevant to Great Lakes Pilotage Bridge Hour Standards. The Coast Guard also announced it is conducting a review to determine the appropriate bridge hour standards.

Purpose of This Notice of Proposed Rulemaking (NPRM)

The Coast Guard must, under 46 CFR 404.1(b), conduct an annual review of the rates for pilotage on the Great Lakes using the procedures found at Appendix C to 46 CFR part 404. In addition, every five years the Coast Guard must perform a review using the methodology contained in 46 CFR part 404, Appendix A. At Step 2.A of Appendix A, we explain the target pilot compensation for pilots providing service on designated waters of the Great Lakes is approximately the average annual compensation for masters on U.S. Great Lakes vessels. The target pilot compensation for pilots providing service on undesignated waters of the Great Lakes is approximately the average annual compensation for first mates of such vessels. We have reviewed the current pilotage rates and determined that they should be adjusted to meet target pilot compensation and allowable expenses. Therefore, in accordance with 46 U.S.C. 9303(f), and on the basis of the rate review for 2002, we propose to amend the rates for pilotage on the Great Lakes to meet these needs. We would like your comments on the updated rates.

Relationship of This Rulemaking to the Coast Guard's Ongoing Bridge Hour Study

On July 1, 2002, the Assistant Commandant for Marine Safety, Security and Environmental Protection, commissioned a study to review the methodology for developing bridge hour standards for Great Lakes pilotage (67 FR 54836 (August 26, 2002)). This Bridge Hour Study is scheduled to be completed by January 31, 2003. The Study will explore the historical development of the bridge hour standard currently used in the ratemaking methodology for U.S. Great Lakes pilots. The goal of this study is to determine what the appropriate bridge

hour standard for designated and undesignated waters should be in each of the three Districts. It will explore issues such as whether the bridge hour standard should include hours associated with delay, detention, cancellation, and travel time.

The findings of the Bridge Hour Study could cause the Coast Guard to modify the current bridge hour standard. Any significant modification in the bridge hour standard would, in turn, have a significant effect on the rate for 2003 under the existing methodology. The Coast Guard considered holding up the ratemaking process until the results of the Bridge Hour Study were available and the Coast Guard made any subsequent modifications to the bridge hour standard. Militating against this approach however, were the results of the Coast Guard's annual and five-year audits, that indicated that the 2003 season would see a substantial adjustment in the rates. Ultimately, the Coast Guard concluded that because it projected a substantial rate adjustment for 2003, it should not delay the process, but should have the new rate published before the beginning of the new season. Accordingly, the Coast Guard intends to issue an interim rule on or before February 14, 2003, to be effective March 15, 2003, in time for the new season.

Once it completes its evaluation of the Bridge Hour Study, the Coast Guard intends to issue a final rule that incorporates any appropriate modifications to the bridge hour standard along with any corresponding modification in pilotage rates. The Coast Guard will provide notice of any proposed changes and solicit and consider public comments, as well as input from the Great Lakes Pilotage Advisory Committee, before issuing its final rule.

What Is the Coast Guard Proposing in This Rulemaking?

We propose to change the pilotage rates for waters treated in 46 CFR 401.405, 401.407, and 401.410 as follows:

If you require pilotage in:	The rate would:
Area 1 (Designated)	Increase 23%.
Area 2	Increase 62%.
Area 4	Increase 31%.
Area 5 (Designated)	Increase 17%.
Area 6	Increase 20%.
Area 7 (Designated)	Increase 3%.
Area 8	Increase 28%.

We also propose to increase the pilotage rates for the "Cancellation, delay or interruption in rendering services" and "Basic rates and charges for carrying a U.S. pilot beyond normal change point or for boarding at other than the normal boarding point" in 46 CFR 401.420 and 401.428, respectively, by 25 percent—the average rate change for all districts.

Discussion of Methodology

This proposed rulemaking follows the methodology detailed in 46 CFR part 404, Appendix A, including the step-by-step five-year ratemaking calculations contained in Appendix A. We summarize these calculations in the following tables (and explain them in more detail afterwards):

TABLE A.—DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Step 1, Projection of operating expenses	$315,253	$284,253	$559,506
Step 2, Projection of target pilot compensation	$1,040,742	$734,562	$1,775,304
Step 3, Projection of revenue	$1,105,233	$629,149	$1,734,382
Step 4, Calculation of investment base	$50,000	$50,000	$100,000
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%
Step 6, Adjustment determination	$1,356,243	$1,019,063	$2,375,306
Step 7, Adjustment of pilotage rates	1.23 (+23%)	1.62 (+62%)	1.37 (+37%)

TABLE B.—DISTRICT TWO

	Area 4 Lake Erie	Area 5 South-east Shoal to Port Huron, MI	Total District Two
Step 1, Projection of operating expenses	$312,726	$497,445	$810,171
Step 2, Projection of target pilot compensation	$612,135	$1,214,199	$1,826,334
Step 3, Projection of revenue	$705,015	$1,461,069	$2,166,084
Step 4, Calculation of investment base	$89,734	$140,353	$230,087
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%
Step 6, Adjustment determination	$925,306	$1,712,340	$2,637,646
Step 7, Adjustment of pilotage rates	1.31 (+31%)	1.17 (+17%)	1.22 (+22%)

TABLE C.—DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Step 1, Projection of operating expenses	$616,292	$462,219	$462.219	$1,540,730
Step 2, Projection of target pilot compensation	$1,224,270	$693,828	$856,989	$2,775,087
Step 3, Projection of revenue	$1,540,306	$1,119,819	$1,030,693	$3,690,818
Step 4, Calculation of investment base	$111,668	$83,752	$83,752	$279,172
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%	7.04%
Step 6, Adjustment determination	$1,841,115	$1,156,463	$1,319,623	$4,317,201

TABLE C.—DISTRICT THREE—Continued

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Step 7, Adjustment of pilotage rate	$1.20 (+20%)	1.03 (+3%)	1.28 (+28%)	1.17 (+17%)

Here is a detailed explanation of our step-by-step calculations:

Step 1.A: Submission of Financial Information

The first step is gathering financial data from each of the three Great Lakes pilots' districts. Each district must obtain an audit by an independent Certified Public Accountant (CPA) and submit it to the Acting Director (the Director) of Great Lakes Pilotage, in accordance with 46 CFR 403.300.

Step 1.B: Determination of Recognizable Expenses

The Director determines which association expenses will be recognized for ratemaking purposes each year. The Director hires an independent CPA to review the expenses reported by the associations using the guidelines contained in 46 CFR 404.05. To determine which expenses were reasonable and necessary to include in our 2002 rate review, we used the Director's independent audit of the associations for 2001. In the following paragraphs, we discuss some of the audit's details. We have also provided a table containing the expenses recognized and approved by the Director.

We calculate target pilot compensation for both designated and undesignated waters each year based on the current union contract for first mates on U.S. Great Lakes vessels. We add that amount to the total expenses to determine the revenue needed for ratemaking purposes.

In 2001, to support safety and ongoing professional development, each association was asked to develop a continuing education program for registered pilots and to submit to the Director a proposed annual budget. The purpose of the program is to keep registered pilots aware of safety issues and to refresh their skills. The Director approved each district's program together with their estimate of yearly costs (District One, $30,000; District Two, $40,000; and District Three, $50,000) and included these amounts in their respective expense bases in the final rule published on July 12, 2001, in the **Federal Register** (63 FR 68697) with the new rates becoming effective August 13, 2001. The Director's 2001 audit disclosed that the pilots' associations during the remainder of the 2001 navigation season were only able to expend approximately 50 percent of the Director's training allocation that was included in the final rule (63 FR 68697). Therefore, the Director is adjusting the expense base of each pilots' association to reflect the full amount the Director previously approved (District One, $30,000; District Two, $40,000; and District Three, $50,000). This will ensure adequate funding for this program on a continuing yearly basis. The Director will continually monitor the plans to ensure they are effectively implemented, that the money is accounted for and applied properly to each district's continuing education account. The Director reserves the right to modify each plan as necessary.

Accordingly, the Director has added the following amounts to each district's expense base to support this program on a yearly basis:

	District One	District Two	District Three
2001 Expenditure	$8,128	$19,500	$25,000
Director's Adjustment	21,872	20,500	25,000
Total Yearly Training	30,000	40,000	50,000

Additionally, effective August 1, 2002, the current union contract for first mates on the Great Lakes stipulates: "that employers will make matching contributions for each participating 401(k) plan employee in an amount equal to 50 percent of the employee's contribution, to a maximum of 5 percent of a participating employee's compensation." District Two has a pension plan, while District Three has a 401(k) plan. District One does not provide either a 401(k) or pension plan for its members. Therefore, to conform to the current union contract for first mates in accounting for an employer's contribution of 50 percent, expense bases of Districts Two and Three are increased by $41,817 and $66,159 based on their total employee 401(k)/pension contributions in 2001 of $83,634 and $132,318, respectively.

The following table displays audit results, along with the CPA's and Director's adjustments:

RECOGNIZABLE EXPENSES

	District One	District Two	District Three
Reported expenses for 2001	$687,591	$1,386,376	$1,336,710
Proposed adjustments (independent CPA)	*Equalization Between Districts:*	*Equalization Between Districts:*	*Equalization Between Districts:*
	$10,120	None	$143,035
	$62,096		$152,535

RECOGNIZABLE EXPENSES—Continued

	District One	District Two	District Three
	Reimbursed Expenses: ($13,000)	*Reimbursed Expenses:* ($83,376) ($174,414) ($211,849)	*Reimbursed Expenses:* ($163,207)
	Not Recognized or Allowed: ($782) ($43,100)	*Not Recognized or Allowed:* ($74) ($720) ($28,124)	*Not Recognized or Allowed:* ($995) ($19,780)
	Misclassified Expenses: ($4,500) ($11,740) ($120,377)	*Misclassified Expenses:* ($8,600) ($20,470)	*Misclassified Expenses:* ($4,050) ($23,100)
	Undocumented Expenses: None	*Undocumented Expenses:* ($125,559)	*Undocumented Expenses:* None
Total expenses 2001 +	$566,308	$733,190	$1,421,148
Inflation adjustment (2%)	$11,326	$14,664	$28,423
Director's adjustments	$21,872	$20,500 $41,817	$25,000 $66,159
Total projected expenses for 2003 pilotage season	$599,506	$810,171	$1,540,730

The following is a summary of the independent CPA's major findings and proposed adjustments, along with the Director's corresponding adjustments:

Summary of Major Findings and Proposed Adjustments

We divided the adjustments we made to the reported expenses into five categories: (1) equalization among districts, (2) reimbursed expenses, (3) expenses not reasonable or necessary for pilotage services (46 CFR 404.5(a)), (4) misclassified expenses, and (5) undocumented expenses.

(1) Equalization Among Districts

The Coast Guard must ensure that each association's expenses are analyzed fairly and consistently with the other associations because of how they are organized. The associations of Districts One and Three are organized as partnerships, while the association of District Two is organized as a corporation. Because of this difference, the District Two association pays the employer's share of Social Security and Medicare taxes, insurance, and travel expenses out of corporate funds. In the associations of Districts One and Two, the individual pilots pay these expenses because each pilot is self-employed. Because these taxes, insurance, and travel expenses are legitimate business expenses that should be recognized for ratemaking purposes, funds for these expenses have been added to District One and Three's expense bases on the independent CPA's recommendation. In District One, $62,096 in Social Security and Medicare taxes, and $10,120 in travel expenses have been added to the expense base. In District Three, $143,035 in Social Security and Medicare taxes, along with $152,535 in travel expenses have been added to the expense base.

(2) Reimbursed Expenses

The independent CPA found that a number of expenses are reimbursed to the pilots' associations and recommended that these expenses should not be included in each district's expense base. Examples are reimbursement from one pilots' association to another for shared pilot boats and dispatch, reimbursement for dividends received on Workmen's Compensation premiums, and reimbursement from Canadian pilots for shared administrative expenses, dispatch, and pilot boat services.

The Director agrees with the independent CPA's recommendation to deduct these reimbursed expenses from the expense bases of the districts. Although these are legitimate business expenses, they are paid for by other districts or parties, not by the associations claiming them, and, as such, should not be included in the expense base of the district being reimbursed. In District Two, we deducted $174,414 and $83,376 in reimbursed expenses for pilotage and dispatch services and for the refund of Workmen's Compensation premiums of $211,849, from the expense base. Likewise, in District Three, we deducted $163,207 in reimbursed expenses for pilotage and in dispatch services from the expense base.

Settlement of a lawsuit in 2002 reimbursed the District One Pilots' Association $13,000 in legal fees. Accordingly, we have deducted this reimbursed amount from the expense base.

(3) Expenses Not Recognized or Not Allowed as Reasonable or Necessary for the Provision of Pilotage Services (46 CFR 404.5(a)

Excessive capital lease costs associated with the rental of two pilot boats, lobbying expenses, and certain miscellaneous expenses (advertising, business promotion, and donations) were identified as unnecessary for the provision of pilotage services.

During 2001, District Two paid Erie Leasing $62,950 in lease cost for the rental of two pilot boats. The Director considers this cost unreasonable. In 46 CFR 404.5(a)(3), it states:

> Lease costs for both operating and capital leases are recognized for ratemaking purposes to the extent that they conform to market rates. In the absence of a comparable market, lease costs are recognized for ratemaking purposes to the extent that they conform to depreciation plus an allowance for return on investment (computed as if the asset had been purchased with equity capital). The portion of lease costs that exceed these standards is not recognized for ratemaking purposes.

Using this methodology, with the cost of the pilot boats being $315,000, a market return of 7.04 percent, and a depreciation amount of $9,450, the

result is an allowable lease expense of $31,626 ($315,000 × 7.04% = $22,176 + $9,450 = $31,626). To bring pilot-boat expenses of District Two into line with those of Districts One and Three, the Director is reducing District Two's expense base by $28,124 ($59,750 rental fee − $31,626 allowable fee = $28,124 excessive lease fee).

The Director, in consultation with the District One Pilots' Association, identified $43,100 in lobbying expenses and has deducted this amount from its expense base because they are not recognized for ratemaking purposes.

In addition, the independent CPA has recommended a deduction from District One's expenses of $782 for advertising, two deductions from District Two's expenses in amounts of $74 for business promotion and $720 for donations, and $995 from District Three's expense base for donations. None of these expenses is necessary for the provision of pilotage services. The independent CPA further recommended a deduction of $19,780 from District Three's expenses for an uncollectable account or bad debt. While this treatment of bad debt is an acceptable practice for financial reporting, it is unnecessary for ratemaking in that it is a one-time, non-recurring expense. The Director agrees with the independent CPA and has deducted all these expenses from the expense bases.

(4) Misclassified Expenses

The independent CPA recommended deductions of $4,500, $11,740, and $120,377 from District One, $8,600 and $20,470 from District Two, and $4,050 and $23,100 from District Three because these payments were made directly to pilots as compensation. District One paid $4,500 to registered pilots to train temporarily registered pilots on Lake Ontario and $120,377 to an independent registered pilot for the provision of pilotage services. District Two made payments to pilots in the amount of $8,600 to attend yearly meetings. This was paid in addition to payments to pilots for travel and *per diem* expenses. Additionally, District One made payments of $11,740 in union dues, District Two made payments of $20,470 in association dues, and District Three made payments of $4,050 and $23,100 for subscriptions and union dues. The Director agrees with the independent CPA because the payments benefit pilots and will be treated as pilot compensation in accordance with 46 CFR 404.5(a)(6), and he deducted these payments from the districts' expense bases.

(5) Undocumented Expenses

A detailed inspection of District Two's expense accounts and annual audited financial statements disclosed payments of $38 daily per diem to each pilot based on days available. These payments in November 2001 and late December 2001 totaled $125,559 and were not documented. The Internal Revenue Service procedures (Rev. Proc. 2001–47) require substantiation as to time, place, and purpose of expenses paid. These payments were in addition to properly documented travel and per diem payments made throughout the year. The total combined per diem (food and incidental) expense claimed actually exceeded the maximum amount possible if every pilot would have been on travel for every day during the season. The travel regulations do not contemplate a payment based on "days available" for travel. The independent CPA recommended that $125,559 be deducted from District Two's expense base. The Director agrees and has deducted the amount from the expense base and treated it as pilot compensation in accordance with 46 CFR 404.5(a)(6). Properly substantiated and documented travel and per diem costs incurred while a pilot is engaged in legitimate travel in connection with the provision of pilotage service will be recognized for ratemaking purposes.

Step 1.C: Adjustment for Inflation or Deflation

To adjust expenses for inflation (there being no deflation, yet), we increased the total recognized expenses for each association by two percent. This figure is based on the approximate average change in the Consumer Price Index (CPI) from July 2001 to November 2002.

Step 1.D: Projection of Operating Expenses

Once all adjustments are made to the recognized operating expenses, the Director projects these expenses for each pilotage area. The Director considers foreseeable circumstances that could affect the accuracy of the expenses as projected and, as well as possible, determines the "projection of operating expenses."

District-wide general and administrative expenses are apportioned to each area according to the number of pilots in that area. Expenses that are attributable to a pilotage area are applied directly to it. For instance, in District One, approximately $31,000 in taxi expense is directly attributable to Area 1; but the remaining general and administrative expense in District One is then apportioned according to the number of pilots assigned to Areas 1 and 2. The results of Step 1.D for each district are displayed as follows:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Projection of operating expenses	$315,253	$284,253	$599,506

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Projection of operating expenses	$312,726	$497,445	$810,171

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Projection of operating expenses	$616,292	$462,219	$462,219	$1,540,730

Step 2.A: Determination of Target Rate of Compensation

For pilots providing service in undesignated waters, the target rate of compensation is approximately the average yearly compensation earned by first mates on U.S. Great Lakes vessels. Effective August 1, 2002, according to the American Maritime Officers Union (AMOU), the average yearly compensation is $122,427. This rate covers wages and benefits, which comprises work days, vacation pay, weekend pay, holiday pay, bonuses, clerical pay, medical and pension benefits.

For pilots providing services in designated waters, the target rate of compensation is calculated as 1.5 times the yearly salary of a first mate plus benefits, (1.5 × 100,944 = $151,416 (Yearly Salary) + $22,041 (Benefits) = $173,457 (Pilot Target Compensation effective August 1, 2002).

The Coast Guard adopted this method of calculating the rate because it most accurately achieves the stated goal of approximating the salary of a Great Lakes Master. This method is the same method we used in the final rule establishing rates in 1997 (62 FR 5917 (February 10, 1997)) and again in 2001 (66 FR 36484 (July 12, 2001)).

Effective August 1, 2002, the daily contractual rate of wages for first mates is $207.70. We multiply the daily rate by 54 days (30.5 work days, 15 vacation days, 4 weekend days, 1.5 holidays, and 3 bonus days) to determine the monthly rate for undesignated waters. This monthly rate is then multiplied by 1.5 to determine the monthly rate for designated waters (monthly rate for undesignated waters × 1.5 = monthly rate for designated waters). Only then is the cost of benefits (pensions, health care, and clerical support) added to the monthly rates for both undesignated and designated waters. These figures are then multiplied by 9 to yield total yearly target pilot compensation. The calculation goes as follows: the daily rate of wages specified in the first mates' union contract, effective August 1, 2002, is $207.70. The daily rate is then multiplied by 54 to determine the monthly rate, $11,216. Added to this figure are the monthly costs of first mates' clerical support, $126; health benefits, $1,748; and their pension, $513. The monthly total of wages and benefits comes to $13,603. This figure is then multiplied by 9 to yield a total target pilot compensation for undesignated waters of $122,427.

For designated waters, the monthly rate of wages, calculated above, is multiplied by 1.5, totaling $16,824. To this figure, we add the monthly cost of a masters' clerical support, $188; the monthly health benefits, $1,748; and the monthly cost of their pension benefits, $513. The monthly total of wages and benefits now comes to $19,273. This figure is then multiplied by 9, to yield a total target pilot compensation for designated waters of $173,457.

The table below summarizes how the total target pilot compensation is determined for undesignated and designated waters:

Monthly component [1]	Monthly (First Mate) pilots on undesignated waters	Monthly (Master) pilots on designated waters
$207.70 (Daily Rate) × 54 (Days)	$11,216	.....
$207.70 (Daily Rate) × 54 × 1.5	.....	$16,824
Clerical	126	188
Health [2]	1,748	1,748
Pension [3]	513	513
Monthly Total	13,603	19,273
Monthly Total × 9 Months	122,427	173,457

[1] For the purposes of the 2002 rate review, pilots are assumed to work 180 man days a year for a total of 270 days for both health and pension benefits (180 working days a year/60 = 3, 3 x 30 = 90 extra days of payments; 180 working days + 90 days of extra payments = 270 days of payments.

[2] Health benefits are $15,372 a year, or $1,748 a month for nine months (270 paid days a year x $58.26 a day worked =$15,372 of compensation/9 months = $1,748 a month.)

[3] Pension benefits are paid at the same proportion as the health benefits, though at a daily rate of $17.09. Using the same methodology as for the health benefits, yearly pension benefits are $4,608 a year, or $513 a month for nine months (270 paid days a year x $17.09 a day worked = $4,608 a year; $4,614 a year/9 months = $513 a month.)

Step 2.B: Determination of Number of Pilots Needed

The number of pilots needed in each area is determined by dividing the projected bridge hours, excluding delay and detention hours for each area, by the targets for each area *i.e.*, 1,000 hours in designated waters and 1,800 hours in undesignated waters. Projected bridge hours are based on the vessel traffic that pilots are expected to serve. The Director projects that bridge hours for the 2003 season will be the same as or comparable to the totals of 2001.

Dividing the projected annual number of bridge hours per area by the target number of bridge hours per pilot determines the number of pilots required in each area to service vessel traffic.

Pilotage area	Projected 2003 bridge hours	Divided by bridge-hour target	Pilots required
Area 1	5,407	1,000	5.4
Area 2	6,130	1,800	3.4
Area 4	8,298	1,800	4.6
Area 5	6,395	1,000	6.4
Area 6	19,016	1,800	10.5
Area 7	4,320	1,000	4.3
Area 8	12,354	1,800	6.9

The following bullets list the number of pilots, by area, the Director has authorized for the 2003 navigation season:

- Area 1: Six pilots.
- Area 2: Six pilots.
- Area 4: Five pilots.
- Area 5: Seven pilots.
- Area 6: 10 pilots.
- Area 7: Four pilots.
- Area 8: Seven pilots.

In authorizing the number of pilots for each pilotage area, the Director has rounded up the number of pilots required in Areas 1, 2, 4, and 5, from the above table, for Districts One and Two to insure adequate pilot availability. Furthermore, the Director has approved two additional pilots for Area 2 for a total of six pilots to equal the number of Canadian pilots assigned to Lake Ontario. This is necessary to ensure pilotage assignments are divided equally between the United States and Canada, as specified in the Memorandum of Arrangements between the Secretary of Transportation of the United States and the Minister of Transport of Canada.

In District Three, however, the Director has rounded down the number of pilots in Area 7 (designated waters) to four and rounded down the total number of pilots required in the undesignated waters of Areas 6 and 8 (10.5 + 6.9 = 17.4) to 17 because District Three employs additional contract pilots to cover surges in vessel traffic during the navigational season.

Step 2.C: Projection of Target Pilot Compensation

Target pilot compensation for each pilotage area is determined by multiplying the target compensation for each area by the number of pilots in each area (*i.e.*, six pilots are required in Area 1, target compensation for the designated waters of Area 1 is $173,457, 6 × $173,457 = $1,040,742). The results for each pilotage area are summarized below:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Projection of target pilot compensation	$1,040,742	$734,562	$1,775,304

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Projection of target pilot compensation	$612,135	$1,214,199	$1,826,334

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Projection of target pilot compensation	$1,224,270	$693,828	$856,989	$2,775,087

Step 3.A: Projection of Revenue

The economic slowdown that began in 1999 has steadily precipitated a significant decline in Seaway traffic during the 2001 navigation season. The most notable sign was a downturn in consumer demand for durable goods, which caused a reduction in the flow of imported steel. This combined with a poor grain harvest in the Midwest and Canada resulted in the lowest cargo volumes on the Great Lakes since 1993. Short-term prospects for trade are not very encouraging considering the imposition of steel tariffs of up to 30 percent in March of this year, and preliminary shipping data for the 2002 navigation season already suggests that traffic could decline further. Therefore, for the purposes of this NPRM, the Director is projecting that pilotage revenue and bridge hours for the 2003 navigation season will be comparable to those of 2001. This is being done with the understanding that this projection will be adjusted as necessary in a final rule to account for 2002 data (revenue and bridge hour study) when they become available in late January 2003.

The Coast Guard published a final rule on July 12, 2001, that amended rates for pilotage services on the Great Lakes. That rule increased the rate in District One, Area 1 by 4 percent; increased the rate in Area 2 by 17 percent; increased the rate in District

Two, Area 4 by 3 percent; increased the rate in District Three, Area 6 by 4 percent; and increased the rate in Area 7 by 9 percent. There was a 5 percent decrease in the rate for Area 5, while the rate in Area 8 went unchanged.

As a result of a lawsuit filed by District Two, the Coast Guard published a temporary final rule on July 19, 2002. The rule returned the rate in District Two, Area 5, to the one that was in place prior to August 13, 2001. The result of this rule was a rate increase of 5 percent, which became effective August 20, 2002.

To accurately project 2003 revenues, we must adjust or "align" 2001 revenues to reflect the changes in the rates referenced above. Accordingly, the aforementioned percentage changes in pilotage rates for each pilotage area were applied (multiplied by a factor to reflect an increase or decrease) to the total pilotage revenues in each area, collected prior to August 13, 2001 (the effective date of the rate adjustment), except for District Two, Area 5. The adjusted revenues for each area were then added to the revenues collected after August 13, 2001, in each area to obtain total adjusted revenue for each area. To account for the initial rate decrease and subsequent increase in District Two, Area 5, pilotage revenues collected after August 19, 2001, were adjusted to reflect the 5 percent increase effective August 19, 2002, (*i.e.*, $782,914 × 1.05 = $822,060) and then added actual area revenues collected prior to August 19, 2001, to obtain the total adjusted revenue for Area 5.

In previous rulemakings, actual revenue for each pilotage area was not available. Only total revenue for the districts was being provided in financial statements. As a result, total revenue for each district was apportioned among pilotage areas based on the number of pilots authorized. Often this apportionment did not accurately approximate or reflect the actual revenue collected in a given pilotage area, most notably in Area 7 of District Three, where in 2001 actual revenue exceeded the apportioned amount by approximately $450,000. In the past, this apportionment caused an inflated pilotage rate in one area and also caused deflated rates in other areas. This year, with the cooperation of the districts, we were able to account for revenue in each of their respective pilotage areas. Using actual revenues greatly enhances the equity of the rate structure. The results of Step 3.A for each district are summarized below:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Projection of revenue	$1,105,233	$629,149	$1,734,382

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron MI	Total District Two
Projection of revenue	$705,015	$1,461,069	$2,166,084

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Projection of revenue	$1,540,306	$1,119,819	$1,030,693	$3,690,818

Step 4: Calculation of Investment Base

In 46 CFR part 404, Appendix A, Step 5(3), it states that "Assets subject to return on investment * * * must be reasonable in purpose and amount. If an asset or other investment is not necessary for the provision of pilotage services, that portion of the return element is not allowed for ratemaking purposes." In calculating rate of return the Director considers property, equipment and cash necessary to cover pilots' associations expenses during the three-month period the St. Lawrence Seaway is closed. Some pilots' associations throughout the course of the navigation season choose to accumulate large cash balances from revenue received for pilotage service rather than distribute the money as pilot compensation. These large cash balances are reflected on their balance sheet as cash assets at the close of the calendar year (December 31). A significant portion of these cash assets are then immediately distributed the next calendar year as pilot compensation. The net effect inflates their investment base at the end of the calendar year. The Director's inclusion of cash assets in excess of what is required to operate during this period would encourage these associations to unnecessarily inflate their investment bases and provide a source of return available to few, if any, other private businesses. An analysis of pilots' associations' investment bases indicates that, ever since the concept of return on investment was introduced into the ratemaking methodology, Districts Two and Three have greatly increased their bases. In District Two, the base went from $265,488 in 1995 to $413,998 in 1996, of which only $116,041 represented property and equipment. In District Three, it went from $119,823 in 1995 to $994,896 in 1996, of which only $25,583 represented property and equipment.

In addition to property and equipment, the Director is recognizing $100,000, $150,000, and $200,000 for inclusion in the investment base for Districts One, Two, and Three, respectively, as cash necessary to cover operating expenses during the months the St. Lawrence Seaway is closed.

The investment base (Step 4) as calculated for each district is displayed below:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Calculation of investment base	$50,000	$50,000	$100,000

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Calculation of investment base	$89,734	$140,353	$230,087

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Calculation of investment base	$111,668	$83,752	$83,752	$279,172

Step 5: Determination of Target Rate of Return

The target rate of return on investment (ROI) for 2002 was set at 7.04 percent. This is based on the preceding year's (2001's) average annual rate of return of new issues of high-grade corporate securities (Moody's AAA rating, average return).

Step 6: Adjustment Determination (Revenue Needed)

We made the adjustment determination (revenue needed to cover operating expenses and pilot compensation) using the numbers listed above and following the formula found in Step 6 of 46 CFR part 404, Appendix A. The results for each district are displayed below:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Adjustment determination	$1,356,243	$1,019,063	$2,375,306

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Adjustment determination	$925,306	$1,712,340	$2,637,646

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Adjustment determination	$1,841,115	$1,156,463	$1,319,623	$4,317,201

Step 7: Adjustment of Pilotage Rate

To determine the adjustments to pilotage rates in each area, we multiplied the current pilotage rate in the area by the rate multiplier. The rate multiplier is calculated by dividing the revenue needed (from Step 6) by the revenue projection (from Step 3) for each area. The Director proposes to amend the pilotage rates for the waters treated in 46 CFR 401.405 through 46 CFR 401.410 with the rates obtained by multiplying the current pilotage rates times the rate multiplier for each pilotage area. The Adjustments of Pilotage Rates (Step 7) for each district are displayed below:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Adjustment of pilotage rates	1.23 (23%)	1.62 (+62%)	1.37 (+37%)

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Adjustment of pilotage rates	1.31 (+31%)	1.17 (+17%)	1.22 (+22%)

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Adjustment of pilotage rate	1.20 (+20%)	1.03 (+4)	1.28 (+28%)	1.17 (+17%)

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 (February 26, 1979)).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposed rule would make adjustments to the pilotage rates paid by foreign flagged ships for the 2003 Great Lakes navigational season. While these adjustments to pilotage rates may seem relatively large they actually represent a small change to the overall cost of moving these vessels through the St. Lawrence Seaway system. The Coast Guard used the ratemaking methodology found in 46 CFR part 404, Appendix A, to identify adjustments necessary to achieve target pilot compensation and association expenses by establishing these new pilotage rates. This ratemaking methodology is designed to annually review pilotage rates in order to avoid fluctuations in pilot compensation thus avoiding large changes in pilotage rates. This notice of proposed rulemaking (NPRM) provides a step-by-step economic guide to show how the pilotage rates would be changed. The results of this proposed rulemaking are in keeping with the Coast Guard's desire for a fair and efficient pilotage system.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the Great Lakes region, small entities potentially affected by this proposed rulemaking include shippers, ports, carriers, and shipping agents. The proposed increases in pilotage rates should not significantly affect small businesses.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Tom Lawler, Chief Economist, Great Lakes Pilotage (G–MW–1), U.S. Coast Guard, at 202–267–1241, by facsimile 202–267–4700, or by email at *tlawler@comdt.uscg.mil*

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria in Executive Order 12612 and has determined that this proposed rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361 (July 11, 2001)) requesting comments on how to best carry out the Order. We invite your comments on the impact this rule might have on tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34 (a), of the Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule is procedural in nature because it deals exclusively with adjusting pilotage rates for the Great Lakes. A

"Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46 (mmm). 46 CFR 401.105 also issued the authority of 44 U.S.C. 3507.

2. In § 401.405, revise paragraphs (a) and (b), including the footnote to Table (a), to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	$10 per Kilometer or $17 per mile.[1]
Each Lock Transited	$219.[1]
Harbor Movage	$718.[1]

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $478, and the maximum basic rate for a through trip is $2,102.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-Hour Period	$557
Docking or Undocking	531

3. In § 401.407, revise paragraphs (a) and (b), including the footnote to Table (b), to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six-Hour Period	$439	$439
Docking or Undocking	338	338
Any Point on the Niagara River below the Black Rock Lock	N/A	862

(b) Area 5 (Designated Waters):

Any point on or in	Southeast Shoal	Toledo or any Point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$1,156	$682	$1,500	$1,156	N/A
Port Huron Change Point	[1] 2,012	[1] 2,332	1,513	1,176	837
St. Clair River	[1] 2,012	N/A	1,513	1,513	682
Detroit or Windsor or the Detroit River	1,156	1,500	682	N/A	1,513
Detroit Pilot Boat	837	1,156	N/A	N/A	1,513

[1] When pilots are not changed at the Detroit Pilot Boat.

* * * * *

4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St. Mary's River.

* * * * *

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-Hour Period	$336
Docking or Undocking	319

(b) Area 7 (Designated Waters):

Area	Detour	Gros cap	Any harbor
Gros Cap	$1,479	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario	1,479	$557	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation	1,240	557	N/A
Wharf Sault Ste. Marie, MI	1,240	557	N/A
Harbor Movage	N/A	N/A	$557

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-Hour Period	$334
Docking or Undocking	319

§ 401.420 [Amended]

5. In § 401.420—

a. In paragraph (a), remove the number "$53" and add, in its place, the number "$66"; and remove the number "$831" and add, in its place, the number "$1,039".

b. In paragraph (b), remove the number "$53" and add, in its place, the number "$66"; and remove the number "$831" and add, in its place, the number "$1,039".

c. In paragraph (c)(1), remove the number "$314" and add, in its place, the number "$392"; in paragraph (c)(3), remove the number "$53" and add, in its place, the number "$66"; and, also in paragraph (c)(3), remove the number "$831" and add, in its place, the number "$1,039".

§ 401.428 [Amended]

6. In § 401.428, remove the number "$321" and add, in its place, the number "$401".

Dated: December 20, 2002.

Paul J. Pluta,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–1461 Filed 1–17–03; 2:01 pm]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; IB Docket No. 99–67; FCC 02–326]

Basic and Enhanced 911 Provision by Currently Exempt Wireless and Wireline Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document initiates a reevaluation of the scope of communications services that should provide access to basic and enhanced emergency services. The action is needed to establish a record on which to decide whether remains appropriate to continue to exempt certain wireless and wireline service providers from 911 and Enhanced 911 (E911) regulations and requirements.

DATES: Comments are due on or before February 3, 2003. Reply Comments are due on or before February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Gregory W. Guice, Attorney Advisor, Policy Division, (202) 418–0095; David Siehl, Attorney Advisor, Policy Division, (202) 418–1313; Arthur Lechtman, Attorney Advisor, Policy Branch, (202) 418–1465.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking, (FNPRM) released December 20, 2002 (FCC 02–326). The full text of the FNPRM available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text also may be purchased from the Commission's copy contractor. Copies may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. Additionally, the complete item is available on the Commission's Web site at *http://www.fcc.gov/wtb.*

Synopsis of the FNPRM

1. In this FNPRM, the Commission seeks comment on whether providers of various services and devices not currently within the scope of the Commission's 911 rules should, consistent with the public interest, be

required to provide access to emergency services. The Commission also asks what type of information, such as call-back and location should be delivered to Public Safety Answering Points (PSAPs) on a service-by-service basis.

2. Specifically, the Commission seeks comment on the general criteria that it wants commenters to use in analyzing whether the enumerated services and devices should be included within the scope of services that offer 911 service. The Commission proposes analyzing each service or product based on whether: (1) It offers real-time, two-way voice service that is interconnected to the public switched network on either a stand-alone basis or packaged with other telecommunications services; (2) the customers using the service or device have a reasonable expectation of access to 911 and E911 services; (3) the service competes with traditional CMRS or wireline local exchange services; and (4) it is technically and operationally feasible for the service or device to support E911.

3. The FNPRM then turns to the individual services on which the Commission seeks comment and raises additional questions where needed. The enumerated services are mobile satellite service, telematics service, multi-line telephone systems, resold cellular and PCS service, pre-paid calling, disposable mobile phones, automated maritime telecommunications systems, and other emerging services and devices, such as IP telephony.

Administrative Matters

Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the proposals suggested in this Further Notice of Proposed Rule Making. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in this FNPRM, and must have a separate and distinct heading designating them as responses to the IRFA. This is a summary of the full text of the IRFA. The full text of the IRFA may be found at Appendix B of the full text of the FNPRM.

5. As required by the Regulatory Flexibility Act, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice), CC Docket No. 94–102 and IB Docket No. 99–67. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

6. The Further Notice initiates a reevaluation of the scope of communications services that should provide access to emergency services. The Further Notice examines and seeks comment on the need to require compliance with the Commission's basic and enhanced 911 (E911) rules, or similar requirements, by various other mobile wireless and certain wireline voice and data services. The Further Notice considers whether existing services such as telematics or voice service provided by multi-line systems should be required to provide access to 911 service. The Further Notice also considers whether certain new services should be subject to any E911 requirements. The Further Notice additionally seeks comment on the impact that exclusion of these services and devices from the Commission's 911 rules may have on consumers, as well as the technological and cost issues involved in providing E911, taking into account the expectations of consumers for 911 service when they use these services and devices. The Further Notice of Proposed Rulemaking also seeks comment on a proposal to require mobile satellite service (MSS) providers (in particular, MSS providers offering real-time, interconnected two-way voice service) to establish emergency call centers to answer 911 emergency calls.

B. Legal Basis for Proposed Rules

7. The proposed action is authorized under Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 303, 308, 309(j), 310.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act. Under the Small business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.

9. The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,00. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

10. Individual voice services and devices that are examined as to appropriateness for 911 and E911 service provision include: mobile satellite service, telematics service, multi-line telephone systems, resold cellular and personnel communications service, pre-paid calling, disposable phone, automated maritime telecommunications systems, and emerging services and devices.

11. We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone

communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

12. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 1,329 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, we estimate that the majority of providers of local exchange service are small entitles that may be affected by the rules and policies adopted herein.

13. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of competitive local exchange service are small entities that may be affected by the rules.

14. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a specific size standard for competitive access providers (CAPS). The closest applicable standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 532 CAPs or competitive local exchange carriers and 55 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 competitive access providers and competitive local exchange carriers, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. Of the 55 other local exchange carriers, an estimated 53 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of small entity CAPS and the majority of other local exchange carriers may be affected by the rules.

15. *Local Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 134 companies reported that they were engaged in the provision of local resale services. Of these 134 companies, an estimated 131 have 1,500 or fewer employees and 3 have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

16. *Toll Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 576 companies reported that they were engaged in the provision of toll resale services. Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

17. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 229 carriers, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, we estimate that a majority of IXCs may be affected by the rules.

18. *Operator Service Providers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 22 companies reported that they were engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that a majority of local resellers may be affected by the rules.

19. *Prepaid Calling Card Providers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of prepaid calling providers may be affected by the rules.

20. *Mobile Satellite Service Carriers.* Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for mobile satellite service licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have $12.5 million or less in annual revenues. Currently, nearly a dozen entities are authorized to provide voice MSS in the United States. We have ascertained from published data that four of those companies are not small entities according to the SBA's definition, but we do not have sufficient information to determine which, if any, of the others are small entities. We anticipate issuing several licenses for 2 GHz mobile earth stations that would be subject to the requirements we are adopting here. We do not know how many of those licenses will be held by small entities, however, as we do not yet know exactly how many 2 GHz mobile-earth-station licenses will be issued or who will receive them. The Commission

notes that small businesses are not likely to have the financial ability to become MSS system operators because of high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services. Still, we request comment on the number and identity of small entities that would be significantly impacted by the proposed rule changes.

21. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 42 carriers reported that they were engaged in the provision of "Other Toll Services." Of these 42 carriers, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that a majority of "Other Toll Carriers" may be affected by the rules.

22. *Wireless Service Providers.* The SBA has developed a size standard for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. Consequently, we estimate that a majority of wireless service providers may be affected by the rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

23. The reporting, recordkeeping, or other compliance requirements ultimately adopted will depend on the rules adopted and the services subject to those rules. First, any and all of the affected entities who the Commission finds appropriate to provide 911 and E911 services (*See* General Criteria, for example, in paragraphs 12–15 of the Further Notice) would need to comply with the Commission's basic or enhanced 911 rules. This would involve a schedule for implementing 911 and E911 service, and possibly regulations mandating the provision of automatic number identification (ANI), possible software modification to assist in recognition of single or multiple emergency numbers, and provision of automatic location information (ALI) and interference precautions as well as regulations specific to individual services. Additionally, paragraphs 17–27 of the Further Notice propose that all Mobile Satellite Service (MSS) licensees provide real-time, two-way, switched voice service that is interconnected with the public switched network establish national call centers to which all subscriber emergency calls are routed. Call center personnel, and would then determine the nature of the emergency and forward the call to an appropriate Public Safety Answering Point (PSAP). As noted in paragraph 14 of the Further Notice, the Commission invites comment on how the various services at issue, *i.e.* individual voice services and devices, relate to the provision of access to emergency services for persons with disabilities. (Paragraph 14 of the Further Notice.)

24. The Further Notice, in paragraphs 57–80, considers possible 911 and E911 regulation for the telematics service. Telematics can be generally defined as the integrated use of location technology and wireless communication to enhance the functionality of motor vehicles. In that regard, paragraphs 65–73 of the Further Notice analyzes the plus and minuses and prospective regulations associated with telematics systems providing access to PSAPs through an intermediary or jointly packaged mobile voice service. Paragraph 70, suggests that telematics systems give notice to consumers regarding any current limitations of telematics service in directly transmitting emergency information to a PSAP. Paragraphs 74–75 suggest a requirement that telematics providers deliver automatic crash notification data to PSAPs This requirement raises possible issues of technical modifications and coordination between telematics providers and PSAPs.

25. The Further Notice, in paragraphs 81–91, examines whether to require multi-line telephone systems, including wireline, wireless, and Internet Protocol-based systems, to deliver call-back and location information. Possible requirements that the Further Notice suggests if the Commission decides that multi-line telephones systems should provide these services include technical standards as discussed in paragraphs 86–90 of the Further Notice. Paragraphs 92–97 of the Further Notice discuss issues that arise when consumers buy service from carriers and other service providers that resell minutes of use on facilities-based wireless carriers' networks. In that regard, the Further Notice raises the possibility of requiring the underlying facilities-based licensee to ensure that its resellers offer basic and E911 service compatible with its method of providing these services, or whether the resellers should be held accountable. Similarly, paragraphs 98–102 seek comment on whether the Commission should impose E911 requirements directly on pre-paid calling providers that are not also licensees or whether the underlying licensee should be required to ensure compliance with the E911 rules by the pre-paid calling provider.

26. Paragraphs 103–106 of the Further Notice discuss the possibility of access to emergency service by consumers who purchase disposable mobile handsets. In this case, the Further Notice notes that disposable handsets are a new product offering and as such, the Commission has little information on these devices. However, the Further Notice invites comment on whether, if disposable phone service is determined to be appropriate for offering 911 and E911 services, requiring mobile wireless service providers to ensure that the handsets used to access their networks comply with the 911 and E911 rules is sufficient or whether the Commission should place the burden for compliance on manufacturers of these handsets. If it is also determined that these handsets do not provide PSAPs with an opportunity to contact the handset user for further critical location information if necessary, some time of regulatory solution, such as a readily identifiable code to notify the PSAP that the incoming call is placed from a handset which does not offer call-back capability, could be adopted. The Further Notice also seeks comment on whether to extend 911 and E911 regulation to automated maritime telecommunications systems (paragraphs 107–110) and to emerging voice services and devices (paragraphs 111–115).

27. Other regulations and requirements are possible for those services discussed in the Further Notice found suitable for 911 and E911 service. Such rules and requirements could be found appropriate, based on comment filed in response to the Further Notice and would be designed to meet the consumer needs and licensee situations in each service and service area.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

28. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

29. The critical nature of the 911 and E911 proceedings limit the Commission's ability to provide small carriers with a less burdensome set of E911 regulations than that placed on large entities. A delayed or less than adequate response to an E911 call can be disastrous regardless of whether a small carrier or a large carrier is involved. The various licensees scrutinized in the Further Notice have been exempt to date from the Commission's 911 and E911 regulations as the Commission sought information from which to judge the appropriateness of requiring that those services provide 911 and E911 service. The Further Notice continues this examination and reflects the Commission's concern that only those entities that can reasonably be expected to provide emergency services, financially and otherwise, be asked to provide this service. The Further Notice affords small entities another opportunity to comment on the appropriateness of the affected services providing emergency services and on what the Commission can due to minimize the regulatory burden on those entities who meet the Commission's criteria for providing such service.

30. Throughout the Further Notice, the Commission tailors its request for comment to devise a prospective regulatory plan for the affected entities, emphasizing the individual needs of the service providers and manufacturers as well as the critical public safety needs at the core of this proceeding. The Commission will consider all of the alternatives contained not only in the Further Notice, but also in the resultant comments, particularly those relating to minimizing the effect on small businesses.

31. The most obvious alternatives raised in the Further Notice are whether the services under discussion should be required to comply with the Commission's basic and enhanced 911 rules or whether the Commission should continue to exempt these entities from providing this service. The Further Notice, to assist in this discussion, suggests, in paragraphs 12–15, criteria to determine the appropriateness of each service under consideration to provide emergency services. These criteria are open for comment and this provides an excellent opportunity for small entity commenters and others concerned with small entity issues. Again, we seek comment to determine the appropriate service groups to provide critical services.

32. Along these lines, discussion of criteria and alternatives could focus on implementation schedules. In discussing each of the prospective entities and soliciting further information, throughout the Further Notice the Commission invites comment on the schedule for implementing 911 and E911 services which best meets the abilities, technically and financially suitable to the individual entities. In the past, the Commission has best been able to offer affected small and rural entities some relief from E911 by providing small entities with longer implementation periods than larger, more financially flexible entities that are better able to buy the equipment necessary to successful 911 and E911 implementation and to first attract the attention of equipment manufacturers.

33. In its discussion of MSS, the Further Notice recognizes that satellite carriers face unique technical difficulties in implementing both basic and enhanced 911 features. Thus, in paragraphs 22–26, the Further Notice examines the use of call centers in response to this problem. Paragraph 25 of the Further Notice notes that several commenters, thus far, have indicated that MSS callers tend to be located in remote areas where no PSAP may be available. The Further Notice suggests alternative solutions to this problem noting that, in the context of the 911 Act proceeding, stating that in areas where no PSAP has been designated, carriers still have an obligation not to block 911 calls and clarifying where such calls can be directed when no designated PSAP exists. There are a number of alternatives raised in the Further Notice in discussing the specifics of the calling center alternative. For example, should the Commission require carriers to relay automatically available location information to emergency call centers, and what reasonably achievable accuracy standards could be established for this location information?

34. Paragraphs 30–32 of the Further Notice recognize that high costs are associated with modifying satellite network infrastructures to accommodate E911 emergency call information and route it to appropriate PSAPs. These paragraphs discuss alternate solutions suggested in the comments to date, and request further comment aimed at reducing such costs. For example, some carriers argue that network modifications are necessary to forward ANI and ALI data, such as retrofitting switches throughout the network and making costly private trunking arrangements between earth stations and PSAPs. One commenter suggested that the retrofit costs could be reduced if (1) a single, central emergency call service could receive calls for the nation, or (2) each of the 50 states has a single point of emergency contact. Additionally, in paragraphs 35–41, the Further Notice considers alternatives for providing ALI. The Further Notice discusses a Coast Guard recommendation that the Commission require strict ALI accuracy standards for GMPCS. There are a number of issues and alternatives relating to the need for GPS that could conceivably impact small entities.

35. The Further Notice, in paragraphs 49–54, discusses international issues connected to MSS. The Further Notice seeks comment on a number of related alternatives, including whether resolution of international standards should in any way further delay adoption of a call center requirement or E911 rules for MSS, and on liability issues in connection with recognition of multiple emergency access codes. Finally, in regards to possible MSS emergency service requirements, the Further Notice, in paragraph 55, considers integration of the Ancillary Terrestrial Component.

36. In considering possible 911 and E911 regulation for telematics systems, the Further Notice, in paragraphs 64–71, questions whether a telematics call-center approach to 911 calls might be more appropriate that an approach based solely on 911 calls placed through a jointly packaged mobile voice service. Paragraphs 74–75 of the Further Notice weigh the benefits and costs involved in requiring telematics providers to deliver automatic crash notification data to PSAPs. Further, paragraph 80 of the Further Notice considers whether the Commission's legal authority might lead it to impose requirements directly on telematics providers or equipment manufacturers.

37. The Further Notice, in paragraphs 81–91, examines potential 911 and E911 requirements for multi-line telephone

systems. In that regard, the Commission considers whether to impose such regulations on a national basis or whether it is sufficient to rely on actions by state and local governments, associations, and private entities to ensure reliable coverage. The National Emergency Number Association, for example, has proposed model legislation what would allow states, through state legislation, to adopt many of the standards and protocol associated with delivering E911 services through multi-line systems. Paragraph 89 of the Further Notice looks at an E911 consensus group proposal regarding multi-line systems and delivery of call-back and location information to an appropriate PSAP. The Further Notice again questions whether it would be more appropriate to regulate equipment manufacturers in the multi-line context.

38. In considering possible basic and enhanced 911 requirements for resold cellular and personal communications services, the Further Notice, in paragraphs 92–97, weighs whether to impose a more express obligation on either the reseller or the underlying licensee to ensure compliance with the E911 rules.

F. Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules

39. None.

Paperwork Reduction Analysis

40. The FNPRM contains proposed information collections. The Commission will open a period for public comment in the **Federal Register** at the time a final decision on which services will no longer be exempt from 911 and E911 requirements. These comments will be considered before the final rules become effective. The Commission will also seek OMB approval for whatever PRA burdens are adopted as final rules at the same time.

Ex Parte Presentations

41. This is a permit-but-disclose notice and comment rule making proceeding. Members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's Rules. *See* generally 47 CFR 1.1202, 1.1203, 1.1206(a).

Comment Dates

42. Pursuant to §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before February 3, 2003 and reply comments on or before February 28, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. 63 FR. 24121, 1998.

43. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rule making number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

44. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rule making number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rule making number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room TW-A306, 445 12th Street, SW., Washington, DC 20554.

45. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered diskette filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to: 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, the docket number of this proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

46. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or via e-mail to *mcontee@fcc.gov*. This Further Notice of Proposed Rulemaking can also be downloaded at *http://www.fcc.gov*.

Ordering Clauses

47. This Further Notice of Proposed Rulemaking is adopted, pursuant to Sections 4(i), 7(a), 303(b), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151,

154(i), 157(a), 303(b), 303(f), 303(g), and 303(r).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1458 Filed 1–22–03; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532, 538, and 552

[GSAR Case No. 2002–G505]

RIN 3090–AH76

General Services Administration Acquisition Regulation; Federal Supply Schedule Contracts—Acquisition of Information Technology by State and Local Governments Through Federal Supply Schedules

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule with request for comments; notice of public meeting.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to implement section 211 of the E-Government Act of 2002. Section 211 authorizes the Administrator of GSA to provide for the use by States or local governments of its federal supply schedule for "automated data processing equipment (including firmware), software, supplies, support equipment, and services (as contained in Federal supply classification code group 70)." To facilitate an open dialogue between the Government and interested parties on the implementation of section 211, GSA will hold a public meeting on the proposed GSAR rule on February 4, 2003.

DATES: *Comment Date:* Interested parties should submit comments to the Regulatory Secretariat at the address shown below on or before March 24, 2003, to be considered in the formulation of a final rule.

Public Meeting: A public meeting will be conducted at the address shown below starting at 10 a.m. to 12 p.m., local time, on February 4, 2003, to ensure an open dialogue between the government and interested parties on the proposed rule.

ADDRESSES: Submit written comments to—General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*GSARcase.2002-G505@gsa.gov.*

Please submit comments only and cite 2002–G505 in all correspondence related to this case.

Public Meeting: The location of the public meeting will be at the GSA Auditorium, 1800 F Street, NW., Washington, DC 20405.

If you wish to attend the meeting and/or make presentations on the proposed rule, please contact and submit a copy of your presentation by January 28, 2003, to—General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4033, Attn: Beverly Cromer, Washington, DC 20405. Telephone: (202) 208–6750.

Submit electronic materials via the Internet to—*meeting.2002-G505@gsa.gov.*

Please submit presentations only and cite Public Meeting 2002–G505 in all correspondence related to this public meeting. The submitted presentations will be the only record of the public meeting. If you intend to have your presentation considered as a public comment on the proposed rule, the presentation must be submitted separately as a public comment as instructed above.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4225, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Beverly Cromer, Procurement Analyst, at (202) 208–6750. Please cite GSAR case 2002–G505.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Supply Schedule Program, which is directed and managed by GSA, is designed to provide Federal agencies with a simplified process of acquiring commonly used commercial supplies and services at prices associated with volume buying. Ordering activities conduct streamlined competitions among a number of schedule contractors, issue orders directly with the selected contractor, and administer orders.

Section 211 of the E-Government Act of 2002 (Pub. L. 107–347) amends the Federal Property and Administrative Services Act to allow for "cooperative purchasing," where the Administrator of GSA provides States and localities access to certain items offered through GSA's supply schedules. Specifically, section 211 amends 40 U.S.C. 502 by adding a new subsection "(c)" that allows, to the extent authorized by the Administrator, a State or local government to use "Federal supply schedules of the General Services Administration for automated data processing equipment (ADPE)(including firmware), software, supplies, support equipment, and services (as contained in Federal supply classification code group 70)." "State or local government" includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education).

The proposed rule would establish a new GSAR subpart 538.70 and associated clauses to address cooperative purchasing from supply schedules by eligible non-federal organizations. Among other things, the rule would define the scope of cooperative purchasing, its usage, and applicable terms and conditions, including payment and the handling of disputes.

Limited scope. Because the law specifies that schedule access applies to offerings "contained in Federal supply classification code group 70," the proposed GSAR changes would limit state and local purchases to the GSA's Schedule 70 contracts. The rule would not authorize access to ADPE available through GSA schedules other than Schedule 70. In addition, the rule would not apply, nor otherwise affect, supply schedules operated by the Department of Veterans Affairs under a delegation provided by GSA.

Voluntary use. The authority provided in this rule would be available for use on a voluntary (*i.e.*, non-mandatory) basis. In other words, businesses with Schedule 70 contracts would have the option of deciding whether they will accept orders placed by State or local government buyers. Existing Schedule 70 contracts would be modified by mutual agreement of the parties. Even after an existing contract has been modified, a schedule contractor would retain the right to decline orders by State or local government buyers on a case-by-case basis. Future schedule contractors would also be able to decline orders on a case-by-case basis. (Schedule contractors would be able to decline to accept any order, for any reason, within a 5-day period of receipt of the order.) Similarly, the rule would place no obligation on State and local government buyers. They would have full discretion to decide if they wish to make a supply schedule purchase, subject, however, to any limitations that may be established under local law and procedures.

Defined terms and conditions. Under proposed GSAR clause 552.238–79, which would be incorporated into covered schedule contracts of participating contractors, a new contract would be formed when the schedule contractor accepted an order from a State or locality. However, with certain exceptions provided in this rule, terms and conditions of the underlying schedule contract would be incorporated by reference into the new contract between the State or locality and the contractor. Buyers would not be permitted to place additional requirements on schedule contractors.

With respect to payment, proposed GSAR clause 552.232–81 would provide that the terms and conditions of a State's prompt payment law apply to orders placed by eligible non-federal ordering activities. If the ordering activity is not otherwise subject to a State prompt payment law, the activity would be covered by the Federal Prompt Payment Act, 31 U.S.C. 3901, *et seq.*, as implemented in the FAR (*see* subpart 32.9), in the same manner as Federal ordering activities.

The Federal government would not be liable for the performance or nonperformance of contracts established under the authority of this rule between schedule contractors and eligible non-federal entities. Disputes that could not be resolved by the parties to the new contract could be litigated in any State or Federal court with jurisdiction over the parties, using principles of Federal procurement law and the Uniform Commercial Code, as applicable and appropriate.

The prices of supplies and services available on schedule contracts include an administrative fee. The fee covers the administrative costs incurred by GSA to operate the Schedules program. The fee is periodically adjusted as necessary to recover the cost of operating the program.

Interested parties are encouraged to attend a public meeting that will be held on February 4, 2003, to discuss the contents of the proposed GSAR rule and other ideas regarding the implementation of section 211. GSA is developing a training plan to help acclimate parties with cooperative purchasing. Additional non-regulatory guidance will also be developed as necessary.

Finally, GSA intends to track the level of cooperative purchasing, including participation by small business schedule contractors. It will also monitor the effect of cooperative purchasing on Federal purchasing, including any changes in access for Federal customers and the impact on GSA's ability to negotiate favorable pricing and terms and conditions.

As required by section 211(c) of the E-Government Act, a report will be submitted to Congress by December 31, 2004, on the implementation and effects of cooperative purchasing.

The following statutes and Executive orders do not apply to this rulemaking: Unfunded Mandates Reform Act of 1995; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; and Executive Order 13132, Federalism.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the IRFA are available from the Regulatory Secretariat. GSA will consider comments from small entities concerning the affected GSAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (GSAR 2002–G505), in correspondence. The IRFA indicates that the proposed rule will affect large and small entities including small businesses that are awarded Schedule 70 contracts under the GSA Federal supply schedule program; non-schedule contractors, including small businesses, contracting with State or local governments; and small governmental jurisdictions that will be eligible to place orders under Schedule 70 contracts. The analysis is as follows:

Initial Regulatory Flexibility Analysis GSAR Case 2002–G505

Federal Supply Schedule Contracts—Acquisition of Information Technology by State and Local Governments Through Federal Supply Schedules

Implementation of Section 211, Authorization for Acquisition of Information Technology by States and Local Governments through Federal Supply Schedules

This Initial Regulatory Flexibility Analysis has been prepared consistent with the criteria of 5 U.S.C. 604.

1. Description of the reasons why action by the agency is being considered.

To implement section 211, Authorization for Acquisition of Information Technology By States and Local Governments Through Federal Supply Schedules, of the E–Government Act of 2002 (Pub. L. 107–347). Section 211 amends section 502 of title 40, United States Code, to authorize the Administrator to provide for use by State or local governments of Federal Supply Schedules of the General Services Administration for automated data processing equipment (including firmware), software, supplies, support equipment, and services (as contained in Federal supply classification code group 70).

2. Succinct statement of the objectives of, and legal basis for, the proposed rule.

The proposed rule will implement section 211 of the E–Government Act of 2002 with the objective of opening the Federal supply schedule 70 for use by other governmental entities to enhance intergovernmental cooperation. The goal of the new rule is to make "government" (considering all levels) more efficient by reducing duplication of effort and utilizing volume purchasing techniques for the acquisition of IT products and services.

3. Description of, and where feasible, estimate of the number of small entities to which the proposed rule will apply.

The proposed rule will affect large and small entities including small businesses, that are awarded Schedule 70 contracts under the GSA Federal supply schedule program; non-schedule contractors, including small businesses, contracting with State or local governments; and small governmental jurisdictions that will be eligible to place orders under Schedule 70 contracts. Approximately sixty-eight percent (2,300) of GSA Schedule 70 contractors are small businesses. All of those small business Schedule 70 contractors will be allowed, at the schedule contractor's option, to accept orders from State and local governments. Obviously, the expanded authority to order from Schedule 70 contracts could increase the sales of small business schedule contractors. It is difficult to identify the number of non-schedule small businesses that currently sell directly to State and local governments. The ability of governmental entities to use Schedule 70 may affect the competitive marketplace in which those small businesses operate. State and local government agencies could realize lower prices on some products and services, less administrative burden and shortened procurement lead times. The rule does not affect or waive State or local government preference programs. Finally, small governmental jurisdictions will also be affected. The 50 states, 3139 counties, 19,365 incorporated municipalities, 30,386 minor subdivisions, 3,200 public housing authorities, 14,178 school districts, 1,625 public educational institutions of higher learning, and 550 Indian tribal governments would be among those affected if they chose to order from Schedule 70 contracts. Federal supply schedule contracts are negotiated as volume purchase agreements, with generally very favorable pricing. The ability of small governmental entities to order from Schedule 70 holds out the potential for significant cost savings for those organizations.

4. Description of projected reporting, recordkeeping, and other compliance

requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The proposed rule makes changes in certain provisions or clauses in order to recognize the fact that authorized non-federal ordering activities may place orders under the contract. The Office of Management and Budget under the Paperwork Reduction Act have previously approved these clauses and the changes do not impact the information collection or recordkeeping requirements.

5. Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlaps or conflict with the proposed rule.

The proposed rule when finalized does not duplicate, overlap, or conflict with any other Federal rules.

6. Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

There are no practical alternatives that will accomplish the objective of this rule.

D. Paperwork Reduction Act

The new provision at GSAR 552.232–82, Contractor's Remittance (Payment) Address, contains an information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The provision provides for the offeror to indicate the payment address to which checks should be mailed for payment of invoices and provides for the offeror to identify participating dealers and provide their addresses for receiving orders and payments on behalf of the contractor. This information is the same as is normally required in the commercial world and does not represent a Government-unique information collection. Therefore, the estimated burden for this clause under the Paperwork Reduction Act is zero. GSA has a blanket approval under control number 3090–0250 from OMB for information collections with a zero burden estimate.

The new clause at GSAR 552.232–83, Contractor's Billing Responsibilities, contains a recordkeeping requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The clause provides for the contractor to require all dealers participating in the performance of the contract to agree to maintain certain records on sales made under the contract on behalf of the contractor. The records required are the same as those normally maintained by dealers in the commercial world and do not represent a Government-unique record keeping requirement. Therefore, the estimated burden for this clause under the Paperwork Reduction Act is zero. GSA has a blanket approval under control number 3090–0250 from OMB for information collections with a zero burden estimate.

The revised clause at GSAR 552.238–75, Price Reductions, contains an information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) that has previously been approved by the OMB under the Paperwork Reduction Act and assigned control number 3090–0235. The changes made to the clause by this rule do not have an impact on the information collection requirement, which was previously approved. Therefore, it has not been submitted to OMB for approval under the Act.

List of Subjects in 48 CFR Parts 532, 538, and 552

Government procurement.

Dated: January 16, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

Therefore, GSA proposes to amend 48 CFR parts 532, 538, and 552 as set forth below:

1. The authority citation for 48 CFR parts 532, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 532—CONTRACT FINANCING

2. Amend section 532.206 by redesignating the existing paragraph as paragraph (a) and by adding paragraphs (b), (c), and (d) to read as follows:

532.206 Solicitation provisions and contract clauses.

(a) * * *

(b) The contracting officer shall insert the clause at 552.232–81, Payments by Non-Federal Ordering Activities, in solicitations and schedule contracts for Schedule 70.

(c) The contracting officer shall insert the provision at 552.232–82, Contractor's Remittance (Payment) Address, in solicitations and schedule contracts for Schedule 70.

(d) The contracting officer shall insert the clause at 552.232–83, Contractor's Billing Responsibilities, in solicitations and schedule contracts for Schedule 70.

532.7003 [Amended]

3. Amend section 532.7003 in paragraph (a) by removing "Payment by Governmentwide Commercial Purchase Card" and adding "Payment by Credit Card" in its place.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

538.272 [Amended]

4. Amend paragraph (a) of section 538.272 by removing "Government" each time it is used (twice) and adding "eligible ordering activities" in its place.

5. Add subpart 538.70 to read as follows:

Subpart 538.70—Cooperative Purchasing

Sec.

538.7000 Scope of subpart.
538.7001 Definitions.
538.7002 General.
538.7003 Policy.
538.7004 Solicitation provisions and contract clauses.

538.7000 Scope of subpart.

This subpart prescribes policies and procedures that implement statutory provisions authorizing non-federal organizations to use Schedule 70 contracts.

538.7001 Definitions.

Ordering activity (also called "ordering agency" and "ordering office") means an eligible ordering activity (see 552.238–78) authorized to place orders under Federal supply schedule contracts.

Schedule 70, as used in this subpart, means schedule 70 contracts, including products under Federal Supply Classification Code 70 of the Federal Supply Schedule program, services under Federal Supply Classification Code d3 (ADP & Telecommunication Services), and support items under both of these codes.

State and local government entities, as used in this subpart, means the States of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

(1) *Local educational agency* has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(2) *Institution of higher education* has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) *Tribal government* means—

(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

538.7002 General.

(a) 40 U.S.C. 501, (the Act) authorizes the Administrator of General Services to procure and supply personal property and nonpersonal services for the use of Executive agencies. Under 40 U.S.C. 502, the goods and services available to executive agencies are also available to mixed ownership Government corporations, establishments within the legislative or judicial branches of Government (excepting the Senate, House of Representatives, Architect of the Capitol, and any activities under the direction of the Architect of the Capitol), the District of Columbia, and Qualified Non-profit Agencies.

(b) Section 211 of the E-Government Act of 2002 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide for use of certain Federal supply schedules of the GSA by a State or local government, which includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education).

(c) State and local governments are authorized to procure only from the information technology Federal supply schedule (Schedule 70) as follows:

(1) Information technology products that fall under the Federal supply classification code group 70 (ADP equipment (including firmware), software, supplies and support equipment);

(2) Services that fall under Federal Supply Classification Code d3 (ADP and telecommunication services); and

(3) Support items for these classifications listed in paragraphs (c)(1) and (c)(2) of this section.

538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening Schedule 70 for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete "Government" or similar language referring to the U.S. Government and substitute "ordering activity" or similar language when preparing solicitations and contracts to be awarded under Schedule 70. When such changes are made, the word "(VARIATION)" shall be added at the end of the title of the provision or clause.

(a) 52.212–4, Contract Terms and Conditions—Commercial Items.

(b) 52.216–19, Order Limitations.

(c) 52.216–22, Indefinite Quantity.

(d) 52.229–1, State and Local Taxes.

(e) 52.232–7, Payments Under Time-and-Materials and Labor-Hour Contracts.

(f) 52.232–17, Interest.

(g) 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration.

(h) 52.232–36, Payment by Third Party.

(i) 52.246–2, Inspection of Supplies (Fixed Price).

(j) 52.246–4, Inspection of Services-Fixed Price.

(k) 52.246–6, Inspection-Time-and-Material and Labor-Hour.

(l) 52.246–16, Responsibility for Supplies.

(m) 52.247–1, Commercial Bill of Lading Notations.

(n) 52.247–34, F.O.B. Destination.

(o) 52.247–38, F.O.B. Inland Carrier Point of Exportation.

(p) 52.247–53, Freight Classification Description.

538.7004 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.238–77, Definition (Federal Supply Schedules), in solicitations and schedule contracts for Schedule 70.

(b) The contracting officer shall insert the clause at 552.238–78, Eligible Ordering Activities, in solicitations and contracts for Schedule 70.

(c) The contracting officer shall insert the clause at 552.238–79, Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing, in solicitations and Schedule 70 contracts.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.211–75 [Amended]

6. Amend section 552.211–75 by revising the date of the clause to read "(Date)" and removing from the last sentence of the clause "ordering agency" and adding "ordering activity" in its place.

552.211–77 [Amended]

7. Amend section 552.211–77 by—

a. Revising the date of the clause to read "(Date)";

b. Removing from paragraph (a)(3) the word "Government" and adding the words "Ordering activity" in its place; and

c. Removing from the introductory text of paragraph (b) the word "Government" and adding the words "ordering activity" in its place.

552.216–72 [Amended]

8. Amend section 552.216–72 by—

a. Revising the date of the clause to read "(Date)";

b. Removing from the last sentence of paragraph (c) of the clause "other agencies" and adding "other ordering activities" in its place; and

c. Removing from the first sentence of paragraph (d) "Federal agency" and adding "ordering activity" in its place, and removing from the last sentence "Federal agencies" and adding "Ordering activities" in its place.

552.232–8 [Amended]

9. Amend section 552.232–8 by revising the date of the clause to read "(Date)"; and removing paragraph (d) and redesignating paragraphs (e), (f), and (g) as (d), (e), and (f), respectively.

10. Amend section 552.232–77 by revising the section and clause headings and paragraphs (a) and (b); and in paragraphs (b) and (c) of Alternate I by removing "Governmentwide commercial purchase card" and adding "credit card" in its place. The revised text reads as follows:

552.232–77 Payment by Credit Card.

Payment by Credit Card (Date)

(a) *Definitions. Credit card* means any credit card used to pay for purchases, including the Governmentwide Commercial Purchase Card.

Governmentwide commercial purchase card means a uniquely numbered credit card issued by a Contractor under GSA's Governmentwide Contract for Fleet, Travel, and Purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

Oral order means an order placed orally either in person or by telephone.

(b) At the option of the ordering activity and if agreeable to the Contractor, payments of * * * or less for oral or written orders may be made using the credit card.

* * * * *

11. Add sections 552.232–81, 552.232–82, and 552.232–83 to read as follows:

552.232–81 Payments by Non-Federal Ordering Activities.

As prescribed in 532.206(b), insert the following clause:

Payments by Non-Federal Ordering Activities (Date)

If eligible non-federal ordering activities are subject to a State prompt payment law, the terms and conditions of the applicable State law apply to the orders placed under this contract by such activities. If eligible nonufederal ordering activities are not subject to a State prompt payment law, the terms and conditions of the Federal Prompt Payment Act as reflected in Federal Acquisition Regulation clause 52.232–25, Prompt Payment, or 52.212–4, Contract Terms and Conditions—Commercial Items, apply to such activities in the same manner as to Federal ordering activities. (End of clause)

552.232–82 Contractor's Remittance (Payment) Address.

As prescribed in 532.206(c), insert the following provision:

Contractor's Remittance (Payment) Address (Date)

(a) The offeror shall indicate below the payment address to which checks should be mailed for payment of proper invoices submitted under a resultant contract.

Payment Address: _____

(b) Offeror shall furnish by attachment to this solicitation, the remittance (payment) addresses of all authorized participating dealers receiving orders and accepting payment in the name of the Contractor in care of the dealer, if different from their ordering address(es) specified elsewhere in this solicitation. If a dealer's ordering and remittance address differ, both must be furnished and identified as such.

(c) All offerors are cautioned that if the remittance (payment) address shown on an actual invoice differs from that shown in paragraph (b) of this provision or on the attachment, the remittance address (es) in paragraph (b) of this provision or attached will govern. Payment to any other address will require an administrative change to the contract.

Note: All delivery orders placed against a Federal Supply Schedule contract are to be paid by the individual ordering activity placing the order. Each delivery order will cite the appropriate ordering activity payment address, and proper invoices should be sent to that address. Proper invoices should be sent to GSA only for orders placed by GSA. Any other ordering activity's invoices sent to GSA will only delay your payment.

(End of provision)

552.232–83 Contractor's billing responsibilities.

As prescribed in 532.206(d), insert the following clause:

Contractor's Billing Responsibilities (Date)

(a) The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor's name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to—

(1) Comply with the same terms and conditions regarding prices as the Contractor for sales made under the contract;

(2) Maintain a system of reporting sales under the contract to the manufacturer, which includes—

(i) The date of sale;

(ii) The ordering activity to which the sale was made;

(iii) The service or product/model sold;

(iv) The quantity of each service or product/model sold;

(v) The price at which it was sold, including discounts; and

(vi) All other significant sales data.

(3) Be subject to audit by the Government, with respect to sales made under the contract; and

(4) Place orders and accept payments in the name of the Contractor in care of the dealer.

(b) An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government. Price reductions made by a participating dealer on sales under this contract will result in an overall price reduction being assessed against the Contractor as provided for in the Price Reduction clause. (End of clause)

552.238–71 [Amended]

12. Amend section 552.238–71 by revising the date of the clause to read "(Date)" and by removing from paragraph (a) "Federal Government" and adding "ordering activity" in its place.

13. Amend section 552.238–75 by—

a. Revising the date of the clause;

b. Removing from paragraph (c)(2) "Government" and adding "eligible ordering activities" in its place;

c. Removing from the end of paragraph (d)(2) "or"; and

d. Redesignating paragraph (d)(3) as (d)(4), and adding a new paragraph (d)(3) to read as follows:

552.238–75 Price Reductions.

* * * * *

Price Reductions (Date)

* * * * *

(d) * * *

(3) To eligible ordering activities under this contract; or

* * * * *

(End of clause)

14. Add sections 552.238–77 through 552.238–79 to read as follows:

552.238–77 Definition (Federal Supply Schedules).

As prescribed in 538.7004(a), insert the following clause:

Definition (Federal Supply Schedules) (Date)

Ordering activity (also called "ordering agency" and "ordering office") means an eligible ordering activity (see 552.238–78) authorized to place orders under Federal supply schedule contracts. (End of clause)

552.238–78 Eligible Ordering Activities.

As prescribed in 538.7004(b), insert the following clause:

Eligible Ordering Activities (Date)

(a) The following activities are authorized to place orders under this contract on an optional basis:

(1) Executive agencies (as defined in 48 CFR 2.1), including nonappropriated fund activities as prescribed in 41 CFR 101–26.000.

(2) Government contractors authorized in writing by a Federal agency pursuant to FAR 51.1.

(3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act).

(4) Federal agencies, including establishments in the legislative or judicial branch of Government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

(5) The District of Columbia.

(6) Tribal governments when authorized under 25 U.S.C. 450j(k).

(7) Qualified Nonprofit Agencies as authorized under 40 U.S.C. 502(b).

(8) Organizations, other than those identified in paragraph (b) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) The following activities may place orders against Schedule 70 contracts to include Schedule 70 products (ADP equipment (including firmware), software, supplies and support equipment; Schedule 70 services and Schedule 70 support items), on an optional basis; *provided,* the Contractor accepts order(s) from such activities: State and local government which includes any state, local, regional or tribal government or any instrumentality thereof (including any local educational agency or institution of higher education). Tribal government means the governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the

United States to Indians because of their status as Indians, and any Alaska Native regional or village corporation established pursuant to the Alaskan Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*). (End of clause)

552.238–79 Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing.

As prescribed in 538.7004(c), insert the following clause:

Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing (Date)

(a) If an entity identified in paragraph (b) of the clause at 552.238–78, Eligible Ordering Activities, elects to place a delivery order under this contract, such order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies "Compliance with laws unique to Government contracts" (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, using principles of Federal procurement law and the Uniform Commercial Code, as applicable.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA that shall mean the individual responsible for placing the order for the ordering activity (*e.g.* FAR 52.212–4 at paragraph (f) and FSS clause I–FSS–249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may not modify, delete or add to the terms and conditions of the Schedule contract. To the extent that orders placed by such ordering activities may include additional terms and conditions not found in the Schedule contract, those terms and conditions are null, void, and of no effect. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (b) of the clause at 552.238–78, Eligible Ordering Activities, the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities which are not declined within the 5-day period. (End of clause)

15. Amend section 552.246–73 by revising the date of the clause to read "(Date)); removing from paragraph (b)(1) "Government" and adding "ordering activity" in its place; and removing from paragraph (b)(3) "The Government" and adding "the ordering activity" in its place.

[FR Doc. 03–1536 Filed 1–21–03; 10:37 am]
BILLING CODE 6820–BR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030114012–3012–01; I.D. 121902F]

RIN 0648–AQ46

Fisheries of the Exclusive Economic Zone Off Alaska; Seasonal Area Closure to Trawl, Pot, and Hook-and-Line Fishing in Waters off Cape Sarichef

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule to seasonally prohibit directed fishing for groundfish by vessels using trawl, pot, or hook-and-line gear in waters located near Cape Sarichef in the Bering Sea subarea. This action is necessary to support NMFS research on the effect of fishing on the localized abundance of Pacific cod and to further the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Comments on the proposed rule must be received on or before February 7, 2003.

ADDRESSES: Comments should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or delivered to room 413–1 in the Federal Building at 709 W 9th St., Juneau, AK. Comments also may be faxed to 907–586–7557, marked Attn: Lori Durall. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from the same address or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Melanie Brown at (907) 586–7228, or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Maguson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

In October 2002, the Council adopted a proposed regulatory amendment to seasonally prohibit directed fishing for groundfish by vessels using trawl, pot, or hook-and-line gear in a portion of the waters off Cape Sarichef in the Bering Sea subarea. The purpose of this action is to support a NMFS research project investigating the effect of commercial fishing on Pacific cod abundance in localized areas. This study is an integral part of a NMFS comprehensive research program designed to evaluate effects of fishing on the foraging behavior of Steller sea lions. The western distinct population segment (DPS) of Steller sea lions is listed as an endangered species under the Endangered Species Act and is likely to be adversely affected by the Atka mackerel, pollock, and Pacific cod fisheries. Steller sea lion protection

measures are currently implemented to ensure the pollock, Atka mackerel, and Pacific cod fisheries are not likely to jeopardize the continued existence of or adversely modify or destroy critical habitat for the western DPS of Steller sea lions (68 FR 204, January 2, 2003).

Currently, the information available to evaluate alternative methods for protecting Steller sea lions and their critical habitat is very limited. Improved information could enhance the effectiveness and efficiency of existing protection measures. NMFS and other management agencies and organizations have undertaken numerous research initiatives to learn more about Steller sea lions and interactions with their environment, including fishery related effects potentially associated with the ongoing decline of the western DPS of Steller sea lions. One such activity is a controlled experiment by NMFS off Cape Sarichef to improve the information that can be used to assess further management actions to protect Steller sea lions and their critical habitat.

The goal of the study is to evaluate the effects of commercial trawl fishing on Pacific cod and to test a localized depletion hypothesis. This hypothesis states that the commercial fisheries may adversely affect the critical habitat of Steller sea lions by localized depletion of Steller sea lion prey. This study is designed as a comparison between sites within the area subject to intensive seasonal trawling and control sites within a nearby zone where trawling is prohibited. A complete description of the study is available in the EA/RIR/IRFA for this action (see **ADDRESSES**).

This proposed rule would impose a seasonal ban on all directed fishing for groundfish by vessels using trawl, pot, or hook-and-line gear in all waters located outside of the existing 10 nm no trawl area around Cape Sarichef and inside the boundary of the following coordinates joined in order by straight lines:

54°30′ N lat., 165°14′ W long.;
54°35′ N lat., 165°26′ W long.;
54°48′ N lat., 165°04′ W long.;
54°44′ N lat., 164°56′ W long.; and
54°30′ N lat., 165°14′ W long.

Cape Sarichef is located at coordinates 164°56.8′ W long. and 54°34.30′ N lat. See Figure 21 in the proposed regulatory language below.

This proposed fishing restriction would be in effect annually during the period of March 15 through March 31 in the years 2003 through 2006. The Council would review the experimental results after March 2003 to decide if any changes to the rule are needed in 2004 through 2006.

The trawl, pot, or hook-and-line fishing restriction is necessary to support NMFS research designed to identify and quantify the effects of commercial trawl fishing on the availability of Pacific cod to foraging Steller sea lions within a finite area. This research is intended to assess the effectiveness and efficiency of alternative management methods for ensuring that Pacific cod fisheries off Alaska neither jeopardize the continued existence of the western DPS of endangered Steller sea lions nor adversely modify its critical habitat.

The design of this study requires that experimental pot gear be deployed before and after the period of intense trawl fishing for Pacific cod. NMFS would deploy pot fishing gear in the restriction area during March 15 through March 31, a time period that historically includes the intense trawl fishery for Pacific cod. The trawl closure is necessary to prevent gear conflicts, including the risk of trawl gear disturbing the experimental pot gear. Trawl gear contacting pot gear would result in the displacement or loss of the pots. Pot loss or displacement would lead to economic losses to NMFS and would reduce the quality of the information gathered in the study. The commercial pot and hook-and-line gear closures are necessary to ensure that observed fishing effects are due to trawl fishing and not to additional fishing effort by hook-and-line and pot gear vessels moving into the area due to the trawl closure. A concern also exists that pot and hook-and-line gear vessels would enter areas historically fished by trawl gear. The pot and hook-and-line gear closures will prevent a redistribution of these fisheries and potential future conflicts with trawl gear.

Classification

NMFS has determined that the seasonal adjustments of fishery closures this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed action does not result in any changes in reporting or recordkeeping requirements.

Species listed under the Endangered Species Act (ESA) are present in the action area. According to an informal consultation completed on November 25, 2002, no listed species are likely to be adversely affected by this proposed action.

The analysis for this proposed action did not reveal any existing Federal rules that duplicate, overlap, or conflict with this action.

An IRFA to examine impacts of the preferred alternative on regulated small entities was conducted for this action in accordance with 5 U.S.C. 603(b). The proposed closure area is a small portion of Alaska State statistical reporting area 655430 and very small portions of areas 655410 and 645434. Observer data indicated that insignificant amounts of groundfish fishing occurs in areas 655410 and 645434, compared to 655430 and, therefore, catch data from these areas are not included in the analysis for this action. The entities regulated by this proposed action would be the catcher vessels and catcher-processors that have fished in the closure area in the second half of March, but that would not be able to do so during that period from 2003 through 2006. The estimated number of small entities that have fished in this area at that time ranges from 21 to 56 per year from 1998 through 2001. Statistical area 655430 includes waters other than those in the closure area; therefore, these estimates of entity numbers likely are high based on the data available for analysis.

The estimated annual average gross revenues for these small operations (from all their Alaskan fisheries) range between approximately $1.02 million and $1.63 million from 1998 through 2001. The estimated average gross revenues for these small entities in statistical area 655430 during the last 2 weeks in March, were about $10,000 in 1998, $18,000 in 1999, $19,000 in 2000, and $17,000 in 2001. As noted earlier, statistical area 655430 includes waters outside of the closure area; therefore, these estimates of average revenue probably exceed average revenues earned in the closure area.

The preferred alternative would prevent trawling, hook-and-line, and pot gear fishing in the closure area from March 15 to March 31 in the years 2003 through 2006. Fishing vessels that would otherwise have fished in the closure area during that period, would likely alter their fishing patterns so as to fish elsewhere. Many vessels may fish in waters to the north or northeast of the closure area. These alternative waters are further from the delivery ports and support services available at Akutan, Unalaska, and King Cove. These operational changes may impose somewhat higher costs on the vessels, and may lead to some loss of revenues. Moreover, the shift in fishing area may increase the bycatch rate on non-targeted species.

The impacts of the proposed action on these operations will be minor. The average gross revenues from statistical area 655430 are minor compared to overall small entity average gross revenues over the course of the year. They are also relatively minor compared to their total revenues from fishing activity in the last 2 weeks of March. These vessels likely would be able to alter their operations to continue their fishing activity elsewhere in the second half of March and, therefore, actual revenue loss should be much less than the average revenue from the closure area. Thus, the average gross revenues overstate the total adverse impact of the proposed rule on small entities.

An IRFA should include a description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. Two alternatives that would have had less adverse impacts on small entities were considered. Alternative 1, the status quo alternative, would not have imposed restrictions on groundfish fishing in this area. This alternative was rejected because it created an unacceptably high risk of loss of experimental pot gear and consequent reduction in the statistical power of the experiment. This could have reduced the value of the experimental results for management purposes. Alternative 2 would have only restricted trawling in the closure area. This alternative was rejected because of concerns that, with no trawling in the closure area, hook-and-line and pot gear fishermen would enter in increasing numbers with consequent increased removals of Pacific cod that might be interpreted by the experiment as a trawl effect. Moreover, this alternative could have led to increased risk of gear conflicts between trawl and hook-and-line and pot gear following the end of the closure, as pot and hook-and-line gear vessels moved into the area closed to trawling but historically fished with trawl gear. Finally, the closure area under this alternative differed in its dimensions from the closure area in this proposed rule; these differences were introduced to reduce the adverse impact on small trawl entities under the proposed rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 16, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.22, paragraph (a)(11) is revised to read as follows:

§ 679.22 Closures.

* * * * *

(a)* * *

(11) *Cape Sarichef Research Restriction Area (effective through March 31, 2006)*—(i) *Description of Cape Sarichef Research Restriction Area.* The Cape Sarichef Research Restriction Area is all waters located outside of the 10 nm no trawl area around Cape Sarichef, as described in Tables 4 and 5 to this part, and inside the boundary of the following coordinates joined in order by straight lines (Figure 21 to part 679):

54°30′ N lat., 165°14′ W long.;

54°35′ N lat., 165°26′ W long.;

54°48′ N lat., 165°04′ W long.;

54°44′ N lat., 164°56′ W long.; and,

54°30′ N lat., 165°14′ W long.

(ii) *Closure.* The Cape Sarichef Research Restriction Area is closed from March 15 through March 31 to directed fishing for groundfish by vessels named on a Federal Fisheries Permit issued under § 679.4(b) and using trawl, pot, or hook-and-line gear.

* * * * *

3. Figure 21 to part 679 is added to read as follows:

BILLING CODE 3510–22–C

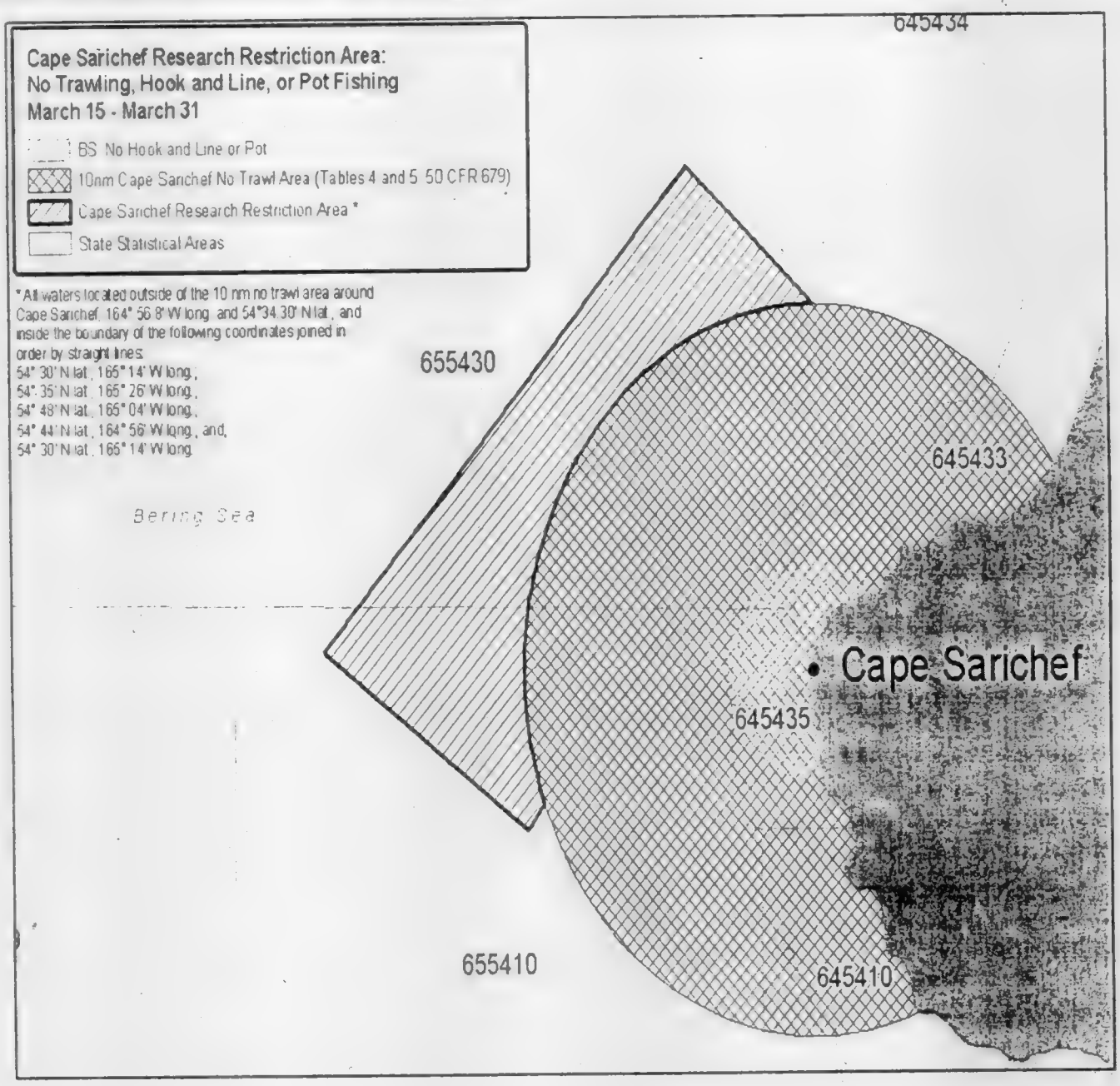

Figure 21 Cape Sarichef Research Restriction Area (Effective through March 31, 2006)

[FR Doc. 03–1466 Filed 1–22–03; 8:45 am]
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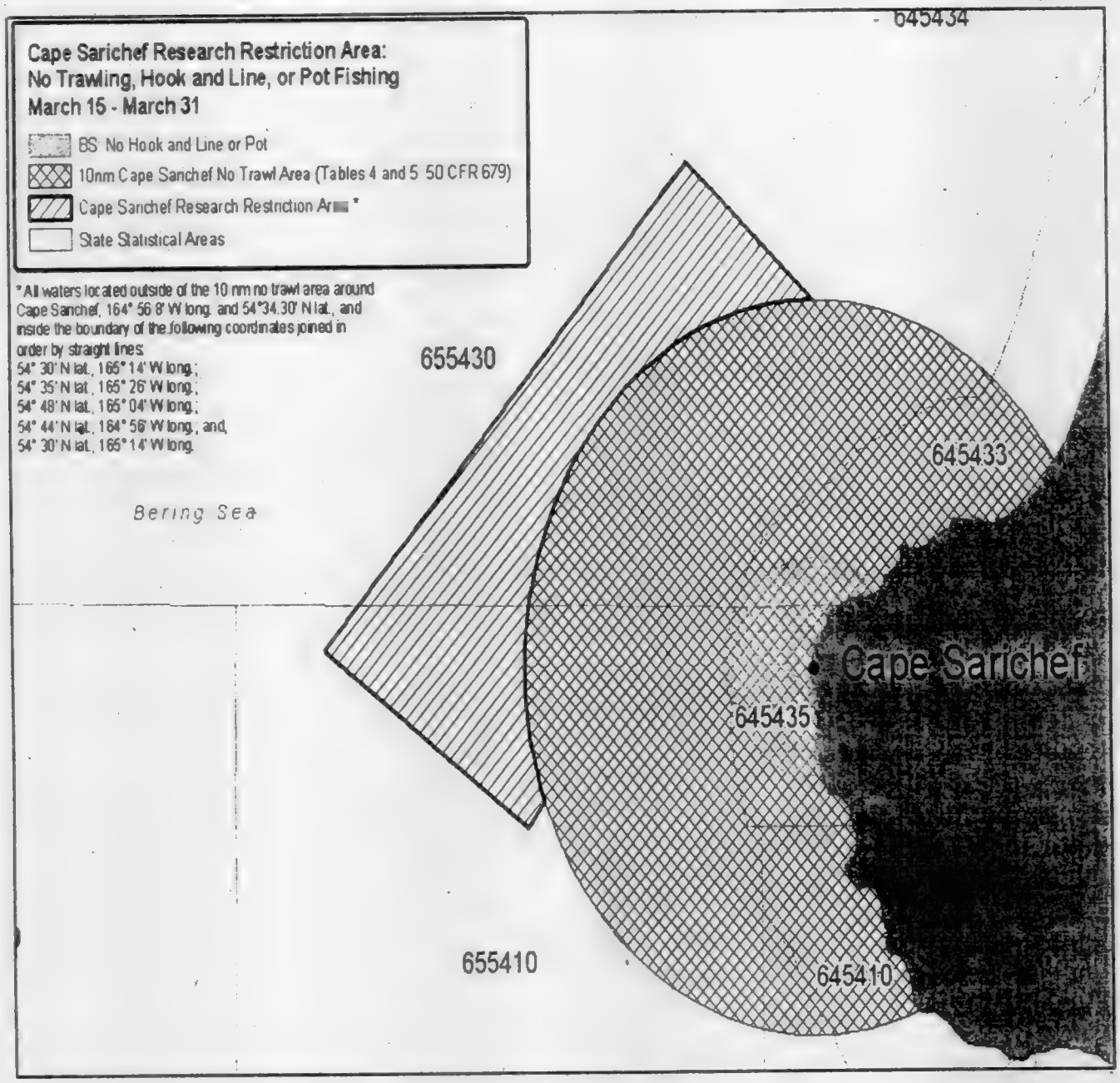

Figure 21 Cape Sarichef Research Restriction Area (Effective through March 31, 2006)

[FR Doc. 03–1466 Filed 1–22–03; 8:45 am]
BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 68, No. 15
Thursday, January 23, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Black Hills National Forest Advisory Board

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Intent; establishment of Advisory Board.

SUMMARY: The Department of Agriculture is proposing to establish the Black Hills National Forest Advisory Board to obtain advice and recommendations on a broad range of forest issues such as forest plan revisions or amendments, travel management, forest monitoring and evaluation, and site-specific projects having forestwide implications.

FOR FURTHER INFORMATION CONTACT: Geraldine Bower, Planning Specialist, Ecosystem Management Coordination, Forest Service, (202) 205–1022.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the U.S. Department of Agriculture, Black Hills National Forest, proposes to establish a Black Hills National Forest Advisory Board. The Board will provide advice and recommendations on a broad range of forest planning issues. The Board membership will consist of individuals representing commodity interests, amenity interests, and state and local government.

The establishment of this Board has been determined to be in the public interest in connection with the duties and responsibilities of the Black Hills National Forest. National forest management requires improved coordination among the interests and governmental entities responsible for land management decisions and the public that the agency serves. The Board will consist of 15 members that shall be representative of the following interests (this membership closely follows the membership outlined by the Secure Rural Schools and Community Self Determination Act for Resource Advisory Committees (16 U.S.C. 500, *et seq.*)):

1. Economic development interest
2. Developed outdoor recreation, off-highway vehicle users, or commercial recreation
3. Energy and mineral development interests
4. Commercial timber industry
5. Permittee (grazing or other land use within the Black Hills area)
6. Nationally recognized environmental organizations
7. Regionally or locally recognized environmental organizations
8. Dispersed recreational activities
9. Archeological or historical interests
10. Nationally or regionally recognized sportsmen's groups, such as anglers or hunters
11. South Dakota elected office
12. Wyoming elected office
13. County or local elected official in South Dakota or Wyoming
14. Tribal government elected or appointed official
15. State natural resource agency official from South Dakota or Wyoming

The chairing responsibility of the Board will be determined by the membership of the Board. The Forest Supervisor of the Black Hills National Forest will serve as the designated federal official under sections 10(e) and (f) of the Federal Advisory Committee Act (5 U.S.C. App.).

The Black Hills National Forest will provide further notices, as needed, of additional actions that will be taken to complete the formation of the Board.

Equal opportunity practices are followed in all appointments to advisory committees. To ensure that the recommendations of the Board have taken into account the needs of diverse groups served by the Black Hills National Forest, membership will include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: November 25, 2002.

Lou Gallegos,

Assistant Secretary, Administration.

[FR Doc. 03–1429 Filed 1–22–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the Rural Economic Development Loan and Grant Program (7 CFR 1703, subpart B).

DATES: Comments on this notice must be received by March 24, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Patricia Wing, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250–3225, Telephone (202) 720–9558.

SUPPLEMENTARY INFORMATION:

Title: Rural Economic Development Loan and Grant Program.

OMB Number: 0572–0012.

Expiration Date of Approval: June 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: RBS is part of the Rural Development mission area of the U.S. Department of Agriculture. RBS administers the Rural Economic Development Loan and Grant (REDLG) program, which provides zero-interest loans and grants to Rural Utilities Service (RUS) borrowers for the purpose of promoting rural economic development and job creation projects. The loans and grants under the REDLG program may be provided to approximately 1,700 electric and telephone utilities across the country that have borrowed funds from RUS. Under this program, the RUS borrowers may receive the loan funds and pass them on to businesses or other organizations. The RUS borrower is responsible for the loan even if it does not receive payments from the ultimate recipient. Grants may be provided to

RUS borrowers to establish revolving loan funds.

RBS needs to receive the information contained in this collection of information to select the projects it believes will provide the most long-term economic benefit to rural areas. The selection process is competitive, and RBS has generally received more applications than it could fund. RBS also needs to make sure the funds are used for the intended purpose and, in the case of the loan, that the funds will be repaid. RBS must determine that loans made from revolving loan funds established with grants are used for eligible purposes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.7 hours per response.

Respondents: RUS borrowers.

Estimated Number of Respondents: 120.

Estimated Number of Responses per Respondent: 13.3.

Estimated Number of Responses: 1,596.

Estimated Total Annual Burden on Respondents: 4,272.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of the RBS estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: January 13, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 03–1455 Filed 1–22–03; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Dollar Amount on Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year 2003

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service hereby announces the maximum dollar amount on loan and grant awards under the Rural Economic Development Loan and Grant (REDLG) program for fiscal year (FY) 2003. The maximum dollar award on zero-interest loans for FY 2003 is $450,000. The maximum dollar award on grants for FY 2003 is $200,000. The maximum loan and grant awards stated in this notice are effective for loans and grants made during the fiscal year beginning October 1, 2002, and ending September 30, 2003. REDLG loans and grants are available to Rural Utilities Service electric and telephone utilities to assist in developing rural areas from an economic standpoint.

FOR FURTHER INFORMATION CONTACT: Patricia Wing, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, Room 6866, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 720–9558. FAX: (202) 720–2213.

SUPPLEMENTARY INFORMATION: The maximum loan and grant awards are determined in accordance with 7 CFR 1703.28. The maximum loan and grant awards are calculated as 3.0 percent of the projected program levels, rounded to the nearest $10,000; however, as specified in 7 CFR 1703.28(b), regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000. The projected program level during FY 2003 for zero-interest loans is $14.966 million, and the projected program level for grants is $4 million. Applying the specified 3.0 percent to the program level for loans, rounded to the nearest $10,000, results in the maximum loan award of $450,000. Applying the specified 3.0 percent to the program level for grants results in an amount lower than $200,000. Therefore, the maximum grant award for FY 2003 will be $200,000. This notice will be amended should an appropriation in excess of projected levels be received.

Dated: January 13, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 03–1454 Filed 1–22–03; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011603B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling two public meetings of its (1) Monkfish Oversight Committee and (2) representatives of its Groundfish, Monkfish, Habitat, Sea Scallop, Skate, Whiting and Herring Advisory Panels in February, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between February 6–13, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Taunton, MA and South Portland, ME. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, February 6, 2003, at 9:30 a.m and Friday, February 7, 2003, at 8:30 a.m. Joint Advisory Panels Representatives Meeting.

Location: Holiday Inn Taunton, 700 Myles Standish Boulevard, Taunton, MA 02780; (508) 823–0430.

There will be a joint meeting of representatives from the Council's Groundfish, Monkfish, Habitat, Sea Scallop, Skate, Whiting and Herring Advisory Panels to comment on and develop alternatives to Essential Fish Habitat (EFH) area management currently proposed for the Scallop Amendment 10 Draft Supplemental Environmental Impact Statement.

Wednesday, February 12, 2003, at 10 a.m and Thursday, February 13, 2003 at 8:30 a.m. Monkfish Oversight Committee Meeting.

Location: Sheraton South Portland Hotel, 363 Maine Mall Road, South Portland, ME 04106; telephone: (207) 775–6161.

The Committee will discuss issues and options to be included in the Monkfish Amendment 2 Draft Environmental Impact Statement (DSEIS). Alternatives designed to achieve the approved goals and objectives include, but are not limited to: Permit qualification criteria for vessels fishing south of 38°N; management program for a deepwater directed fishery in the SFMA; separation of monkfish days-at-sea (DAS) from multispecies and sea scallop DAS programs, including counting of monkfish DAS as 24–hour days; measures to minimize impacts of the fishery on endangered sea turtles; measures to minimize bycatch in directed and non-directed fisheries; an exemption program for vessels fishing for monkfish outside of the EEZ (in the NAFO Regulated Area); alternative measures to minimize impacts of the fishery on EFH; measures to improve data collection and research on monkfish, including mechanisms for funding cooperative research programs; and, timing of the annual review and adjustment process. The Committee may develop and recommend other management alternatives not included in the list above.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 16, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1465 Filed 1–22–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011003A]

NOAA Strategic Plan

AGENCY: Office of Strategic Planning (OSP), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a new NOAA Strategic Plan; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration(NOAA) is the United State's premier agency for environmental assessment and prediction and management providing broad benefitsto the Nation in the areas of economy, public safety and the environment. NOAA has recently begun the process of creating a new Strategic Plan for the agency responding to growing needs of the Nation for environmental information and management. One of the objectives of the new NOAA Strategic Plan is to directlyaddress the President's Management Agenda including principles for a citizen-centered, results oriented, and market-based government. To that end, NOAA has conducted a series of stakeholder and employee workshops in Seattle, New Orleans, Boston, Washington, DC, Boulder, Cleveland and Puerto Rico over the past several months and has used this input to lay the foundation for drafting the new NOAA Strategic Plan. Important themes that emerged from these meetings were ecosystem approaches to coastal and ocean resource management, climate variability and change and weather and water information needs as well as agency-wide cross-cutting priorities that will enhance NOAA's mission and provide leadership in the environmental sciences to better serve America in the 21st century. When finalized in early 2003, after public and internal review, the new NOAA Strategic Plan will become the blueprint for the direction of NOAA's core and future missions and will become institutionalized in every aspect of NOAA's resource planning and priority setting.

DATES: Public comments on this document must be received at the appropriate email address (see **ADDRESSES**) on or before 5 p.m., local time, February 14, 2003.

ADDRESSES: The NOAA Draft Strategic Plan is available at the OSP web site: *http://www.osp.noaa.gov*. Comments may be sent directly to the OSP email address *strategic.planning@noaa.gov* or visit the OSP website to submit comments. Comments will not be accepted if submitted via phone or fax.

FOR FURTHER INFORMATION CONTACT: James Burgess, Office of Strategic Planning (OSP), National Oceanic and Atmospheric Administration (NOAA), Herbert C. Hoover Building (HCHB), Room 6121, 14th and Constitution Ave., NW, Washington, DC 20230, phone: 202–482–5181, fax: 202–501–3024.

SUPPLEMENTARY INFORMATION:

Status

NOAA encourages all stakeholders and users to review the draft Strategic Plan. All comments must be submitted by individual participants (persons, businesses, organizations, etc.). Group consensus comments will not be accepted. The discussion draft of the NOAA Strategic Plan and directions for submitting comments have been posted on the website. Comments, questions and suggestions are welcomed from both scientific and stakeholder communities. All comments received will be reviewed and considered in the final drafting of NOAA's new Strategic Plan.

Dated: January 16, 2003.

James P. Burgess, III

Acting Director, Office of Strategic Planning, National Oceanic and Atmospheric Administration.

[FR Doc. 03–1464 Filed 1–22–03; 8:45 am]

BILLING CODE 3510–12–S

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange (CME): Proposed Amendments to the Weight Specifications, Speculative Position Limits, Delivery Locations, and Delivery Procedures for the Live Cattle Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed amendments to the CME's weight specifications, speculative position limits, delivery locations, and delivery

procedures for the live cattle futures contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has requested that the Commission approve the subject proposed amendments for the live cattle futures contract. The proposals were submitted pursuant to the provisions of Section 5c(c)(2) of the Commodity Exchange Act (Act) and Commission Regulation 40.4(a). Under the proposals, the Exchange will:

1. Increase the maximum live cattle average deliverable live weight by 25 pounds to 1,350 pounds, and increase the maximum individual animal live weight by 25 pounds to 1,400 pounds for cattle graded on a live weight basis;

2. Establish a "scale down" spot month speculative position limit of 450 contracts which applies during the period beginning with the close of business on the first business day following the first Friday of the contract month until the close of business on the business day preceding the last five business days of the contract month, after which period existing 300 contract limit will apply through the last day of trading;

3. Add delivery locations at Guymon and Texhoma, Oklahoma;

4. Establish penalties to be imposed at the sole discretion of the United States Department of Agriculture (USDA) grader, on any seller who has not properly presorted cattle for grading, and on any buyer who disrupts the delivery process, at a rate of $0.15 per pound of live cattle delivered;

5. Grant the CME the authority to prohibit futures delivery on "auction days" at delivery stockyards;

6. Provide for the establishment of an annual uniform grading and documentation fee per delivery unit;

7. Eliminate the requirement that live-graded delivery cattle stand without water during the time interval between 9 a.m. and the time of grading; and

8. Provide for the application of price differentials to the delivery of steer carcasses weighing between 950 and 1,000 pounds.

The Exchange intends to implement the amendments with respect to all newly listed futures contract months beginning with the December 2003 contract month.

The Director of the Division of Market Oversight (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the Exchange's proposed amendments for comment is in the public interest, and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before February 7, 2003.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to "CME Live Cattle Amendments."

FOR FURTHER INFORMATION CONTACT: Please contact Martin G. Murray of the Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5276. Facsimile number: (202) 418–5527. Electronic mail: *mmurray@cftc.gov*

SUPPLEMENTARY INFORMATION:

Background

The CME's live cattle futures contract calls for delivery at par of 40,000 pounds of USDA estimated Yield Grade 3, 55% Choice, 45% Select quality grade live steers, averaging between 1,100 pounds and 1,300 pounds with an individual steer weighing more than 100 pounds above or below the average weight for the unit. No individual animal weighing less than 1,050 pounds or more than 1,350 pounds is deliverable.[1] The weighing and grading of cattle delivered on the futures contract is conducted by USDA graders. Delivery of live steers may be made at par at CME-approved livestock yards in Syracuse, Kansas; Tulia, Texas; Columbus, Nebraska; Dodge City, Kansas; Amarillo, Texas; Norfolk, Nebraska; North Platte, Nebraska; Ogallala, Nebraska; Pratt, Kansas; and Clovis, New Mexico.[2] The futures contract's rules currently specify an individual contract month speculative position limit of 3,300 contracts, and a spot month speculative position limit of 300 contracts that becomes effective at the close of business on the first business day following the first Friday of the contract month.[3]

[1] Beginning with deliveries on the June 2003 contract month, the average weight range will be between 1,100 pounds and 1,325 pounds, and no individual animal weighing greater than 1,375 pounds will be deliverable.

[2] At the buyer's option, cattle may be graded on a live basis at the delivery stockyard, or on a carcass basis at a CME-approved packing plant located within the originating stockyard's delivery region.

[3] The last trading day of an expiring contract month is the last business day of the contract month. Delivery notices may be issued beginning with the first business day following the first Friday of the contact month.

1. Deliverable Live Weight Range

The Exchange proposes to increase the maximum average deliverable live weight to 1,350 pounds, and increase the maximum individual animal live weight to 1,400 pounds, for cattle graded on a live weight basis. In support of the proposal, the Exchange states, "The increase is recommended due to an evident trend in increased weights for slaughter steers and will allow the contract to follow industry standards."

2. Spot Month Speculative Position Limit

The Exchange proposes a "scale-down" spot month speculative position limit of 450 contracts which would apply during the period that begins with the close of business on the first business day following the first Friday of the contact month and continues until the close of business on the business day preceding the last five business days of the contract month. The contract's existing 300-contract limit would be applicable from the close of trading on the business day preceding the last five trading days throughout the last day of trading. Currently, there is a signed 300-contract limit applicable throughout the spot month beginning with the close of business on the first business day following the first Friday of the contract month through the last day of trading.

In support of the proposal, the Exchange notes that a "scale down" limit of 600 contract during the first part of the spot month and a 300-contract limit thereafter had been eliminated in favor of a single 300-contract spot month limit for the December 2002 through October 2003 contract months as a result of deliverable supply concerns. The Exchange believes that its subject proposals to widen the range of deliverable live weights, add two new delivery locations, and make other changes in the delivery process as discussed below, "will create a more efficient delivery process, attract more people who are willing to deliver and increase the deliverable supply," thus justifying the establishment of the "scale down" limit of 450 contracts during the first part of the spot month.

3. Delivery Locations

The Exchange proposes to add Guymon and Texhoma, Oklahoma as delivery locations. In support of the proposal, the Exchange states that these locations would facilitate delivery from the Oklahoma panhandle. The Exchange further notes that Guymon had been a

delivery location until October 2002, when it was removed due to the closing of the facility at this location. Recently, a new operator has re-opened the Guymon facility and has expressed an interest in being reinstated as a Live Cattle delivery point. In addition, the Texhoma Livestock Auction in Texhoma, Oklahoma has expressed an interest to the Exchange in becoming a Live Cattle delivery point.

4. Penalties for Delivery Obstructions

The Exchange proposes to penalize any seller who has not properly pre-sorted cattle for grading, at a rate of $.015 per pound of live cattle delivered per business day until proper delivery is made. In addition, the Exchange proposes to penalize any buyer who disrupts the delivery process, at a rate of $.015 per pound of live cattle delivered. These penalties to the seller and buyer would be imposed at the discretion of the USDA grader.

In support of the proposal, the Exchange indicates that the potential imposition of penalties will increase the "throughput" of the delivery system, by reducing the likelihood of impediments to the efficient operation of the grading process resulting from the actions of sellers and buyers. In this regard, the Exchange notes that failure on the part of a deliverer to do a proper job of sorting the cattle prior to delivery reduces the number of deliveries that can be completed in a given time period, and takes unfair advantage of those delivering shorts who properly sort their cattle. In addition, disruptive behavior by receiving longs and/or their agents interferes with the delivery process and reduces the number of deliveries that can be completed in a given time period. The Exchange further believes that the USDA grader is the logical party to determine whether, and to what extent, a delivering short or receiving long has disrupted the delivery process because it is the only unbiased, independent participant in the process, and USDA personnel are present at every delivery. The Exchange notes that the USDA has agreed to accept the responsibility for making these determinations.

5. Prohibit Deliveries at Certain Locations on Auction Days

The Exchange proposes to give itself the discretion to prohibit delivery at particular stockyards on those dates when an auction or other activity that may interfere with futures delivery is taking place at such stockyards. In support of the proposal, the Exchange notes that all of the contract's existing delivery locations hold feeder cattle auctions as their primary business, and that live cattle futures deliveries compete for many of the same resources, such as scales, pens, sorting alleys, etc. Although the Exchange historically has relied on the operators of the delivery stockyards to discourage deliveries on auction dates, is has proven difficult in practice for operators to do so. As a result, deliveries made on auction days have resulted in greater failure rates caused by auction-related operational bottlenecks that prevent cattle from being presented in a timely manner to the USDA grader.

The Exchange notes that it will determine in advance and "black out" auction days in its electronic tender system, making it impossible for a delivering short to submit a tender for delivery on those dates. Further, the Exchange notes that this prohibition on auction-day deliveries would apply generally to all locations, with the exception of Amarillo and Dodge City, "where there are multiple scales and ample pens and sorting alleys."

6. Uniform Grading and Documentation Fees

The Exchange is proposing to establish and set annually a uniform grading and documentation fee per delivery unit, which will be charged to sellers for each contract unit of cattle delivered on the futures contract. The fee will be applicable at all delivery locations. Currently, the Exchange passes through to the seller the actual costs billed to it by the USDA for grading services. The Exchange notes that USDA grading fees vary widely by location, ranging from $42 to $484, depending on the travel costs incurred by USDA to service a particular location. The Exchange believes that this variability has "introduced a large degree of uncertainty into the delivery process for those planning to deliver at locations which require USDA travel." The Exchange further notes that the USDA is intending to propose a uniform flat fee of $100 per delivery unit for CME live graded deliveries.

7. Standing Without Water

The Exchange proposes to eliminate the requirement that live-graded delivery cattle stand without water during the time interval between 9 a.m. and the time of grading. Cattle will continue to be denied access to feed during this period.

8. Price Differentials for Heavy Carcasses

The Exchange proposes to provide for the application of price differentials to the delivery of steer carcasses weighing between 950 and 1,000 pounds based on price data from USDA's National Weekly Direct Slaughter Cattle—Premiums and Discounts report, which is used under existing rules for establishing a price differential for cattle weighing between 900 and 950 pounds. Currently, cattle weighing between 950 and 1,000 pounds are discounted at a rate equal to 20% of the final settlement price. In support of the proposal, the Exchange states that the proposal "would allow more precise discounting of carcasses in this weight bracket."

The Division is requesting comment on the proposals. Copies of the Exchange's proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission. Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Copies of the proposed amendments can also be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the request for approval may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations there under (17 CFR Part 145 (2002)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments pertaining to the proposed amendments or with respect to other materials submitted by the CME should send such comments to Jean A. Webb. Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 by the specified date.

Dated: Issued in Washington, DC on January 17, 2003.

Michael Gorham,

Director.

[FR Doc. 03–1534 Filed 1–22–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by February 24, 2003.

Title, Form, Number, and OMB Number: Defense Federal Acquisition Supplement (DFARS) Part 245, Government Property, related clauses in DFARS 252 and related forms in DFARS 253; DD Forms 1149, 1149C, 1342, 1419, 1637, 1639, 1640, and 1662; OMB Number 0704–0246.

Type of Request: Extension.

Number of Respondents: 14,862.

Responses Per Respondent: 3.

Annual Responses: 42,497.

Average Burden Per Response: 70 minutes (average).

Annual Burden Hours: 50,170.

Needs and Uses: This request concerns information collection requirements related to providing Government property to contractors; contractors' use and management of Government property; and reporting, redistribution, disposing of contractor inventory.

Affected Public: Business or other-for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–1438 Filed 1–22–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by February 24, 2003.

Title, Form Number, and OMB Number: Defense Federal Acquisition Supplement (DFARS) Part 242, Contact Administration, related clauses in DFARS 252 and related forms in DFARS 253; DD Form 1659; OMB Number 0704–0250.

Type of Request: Extension.

Number of Respondents: 33,000.

Responses Per Respondent: 2.

Annual Responses: 86,215.

Average Burden Per Response: 150 minutes (average).

Annual Burden Hours: 217,645.

Needs and Uses: This request concerns information collection requirements related to production progress reviews, Government bills of lading, contractor insurance/pension reviews, and the material management and accounting system reviews.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–1439 Filed 1–22–03; 8:45 am]

BILLING CODE 5001–008–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices, DoD.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting. The announcement of the meeting is being published in less than the 15 day requirement by law because of scheduling conflicts.

DATES: The meeting will be held at 0900, Tuesday, January 21, 2003.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500 Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Work Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. sec. 10(d) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: January 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–1440 Filed 1–22–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Change in Meeting Date of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices, DOD.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DOD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting. The announcement of the meeting is being published in less than the 15-day requirement by law because of scheduling conflict.

DATES: The meeting will be held at 0900, Thursday, January 23, 2003.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. Sec. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: January 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–1441 Filed 1–22–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices, DOD.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting. The announcement of the meeting is being published in less than the 15 day requirement by law because of scheduling conflicts.

DATES: The meeting will be held at 0900, Wednesday, January 22, 2003.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments proposed to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. Sec. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: January 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Officer, Department of Defense.

[FR Doc. 03–1442 Filed 1–22–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

DATE(S): March 12, 2003 from 9 a.m. to 5:45 p.m. and March 13, 2003 from 8:30 a.m. to 11:30 a.m.

ADDRESS: Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

SUPPLEMENTARY INFORMATION:

Matters To Be Considered

Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: January 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–1444 Filed 1–22–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics)

ACTION: Notice of advisory committee meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed session on Thursday, March 20, 2003, at the Institute for Defense Analyses (IDA), and on Friday, March 21, 2003 in the Pentagon, Washington, DC.

The mission of the Committee is to advice the Under Secretary of Defense (Acquisition, Technology and Logistics) on technology security, Counterproliferation, chemical and biological defense, sustainment of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix II), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly the meeting will be closed to the public.

DATES: Thursday, March 20, 2003, (8 a.m. to 4 p.m.) and Friday, March 21, 2003, (8 a.m. to 9:20 a.m.)

ADDRESSES: Institute for Defense Analyses, Board Room, 4850 Mark Center Drive, Alexandria, Virginia and the USD (AT&L) Conference Room (3D1019), the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Colonel Don Minner, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road MS 6201, Fort Belvoir, VA 22060–6201. Phone: (703) 767–5718.

Dated: Janaury 16, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–1443 Filed 1–22–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force HQ USAF Scientific Advisory Board Meeting

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2003 S&T Review and the leadership of the Air Force Research Laboratory. The purpose of the meeting is to allow the SAB leadership to advise the commander of the AFRL on the outcome of the 2003 Review. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: January 27, 2003.

ADDRESSES: Wright-Patterson AFB, Dayton, OH.

FOR FURTHER INFORMATION CONTACT: Maj. John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–1571 Filed 1–22–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Secretary of Education's Commission on Opportunity in Athletics; Meeting

AGENCY: Secretary of Education's Commission on Opportunity in Athletics, Department of Education.

ACTION: Notice of open meeting; correction.

SUMMARY: This notice corrects the notice of meeting of the Secretary of Education's Commission on Opportunity in Athletics (the Commission) published on January 8, 2003 (68 FR 1051). The location of the meeting has been changed. All other information in the January 8 notice remains the same.

Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: January 29–30, 2003.

Location: The new location of the meeting is the Hotel Washington, 515 15th Street, NW., Washington, DC 20004.

Times: January 29: 9 a.m.–12:30 p.m., 2 p.m.–5 p.m. January 30: 9 a.m.–1 p.m.

FOR FURTHER INFORMATION CONTACT:

1. *Internet.* We encourage you to send your questions through the Internet to the following address: *OpportunityinAthletics@ed.gov.*

2. *Mail.* You may submit your comments to The Secretary of Education's Commission on Opportunity in Athletics, 400 Maryland Avenue, SW., ROB–3 Room 3060, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

3. *Facsimile.* You may submit comments by facsimile at (202) 260–4560.

View the Commission's Web site at: *http://www.ed.gov/inits/commissionsboards/athletics.* The Commission office number is 202–708–7417.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: January 17, 2003.

Rod Paige,

Secretary of Education.

[FR Doc. 03–1533 Filed 1–22–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–136–001]

Alliance Pipeline L.P.; Notice of Compliance Filing

January 16, 2003.

Take notice that on January 10, 2003, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2003:

Substitute First Revised Sheet No. 10
Substitute First Revised Sheet No. 257
Substitute First Revised Sheet No. 258

Alliance states that the filing is being made in compliance with the Commission's order issued on December 31, 2002, in the above referenced proceeding.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1512 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–76–003 and CP01–77–003]

Cove Point LNG Limited Partnership; Notice of Compliance Filing

January 16, 2003.

Take notice that on January 13, 2003, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing.

Cove Point states that its filing moves into effect, with certain appropriate adjustments, the pro forma tariff sheets approved by the Commission when it granted certificate authorizations to Cove Point to construct and operate new facilities and to modify and reactivate existing facilities at its liquefied natural gas (LNG) terminal in Calvert County, Maryland. Cove Point states that it anticipates that it will place its LNG import facilities in-service, and be ready to provide LNG tanker discharging service, on May 1, 2003. Cove Point proposes that the following tariff sheets become effective February 1, 2003:

Original Sheet No. 18C.01
Original Sheet No. 18D
Original Sheet No. 18F

Cove Point explains that these tariff sheets include advance notice requirements that must be in place by February 1, 2003, to allow service to begin on May 1, 2003. Cove Point proposes that the remainder of the filed tariff sheets included in Appendix A to the filing become effective on May 1, 2003.

Cove Point states that copies of the filing as been served on its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before January 23, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1494 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–001]

Dauphin Island Gathering Partners; Notice of Compliance Filing

January 16, 2003.

Take notice that on January 13, 2003, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 9 and Ninth Revised Sheet No. 10, to become effective January 1, 2003.

Dauphin Island states that these tariff sheets reflect changes to Maximum Daily Quantities (MDQ's) and the termination of three contracts.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1513 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–415–006]

East Tennessee Natural Gas Company; Notice of Compliance Filing

January 16, 2003.

Take notice that on December 31, 2002, East Tennessee Natural gas Company (East Tennessee) tendered for filing its service agreements between East Tennessee and NUI Energy Brokers, Inc., Duke Energy Murray, LLC, and Carolina Power & Light company. On November 20, 2002, the Commission issued to East Tennessee an "Order Denying Rehearing, Authorizing Abandonment, and Issuing Certificate" in the captioned proceeding. In compliance with ordering paragraph (G) of the November 20 Order, East Tennessee filed said service agreements with the Commission.

East Tennessee states that pursuant to 18 CFR 385.2010, East Tennessee is contemporaneously serving copies of its submittal to persons whose names appear on the official list for this proceeding.

Any person desiring to intervene and/or to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site under the "e-Filings" link.

Protest and Intervention Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1493 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7115–033]

Homestead Energy Resources, LLC; Notice Dismissing Request for Rehearing as Moot

January 16, 2003.

On October 8, 2002, the Director, Division of Hydropower Administration and Compliance (Director), issued an order denying a requested extension of time and issuing notice of probable termination of license for the George W. Andrews Project No. 7115, located on the Chattahoochee River in Houston County, Alabama, and Early County, Georgia.[1]

[1] 101 FERC ¶ 62,022 (2002).

On November 6, 2002, Homestead Energy Resources, LLC, filed a timely request for rehearing of the Director's order. On December 6, 2002, the Director rescinded the October 8, 2002, order. Therefore, the request for rehearing is moot and dismissed.

This notice constitutes final agency action. Requests for rehearing by the Commission of this dismissal must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1500 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–047]

Northern Natural Gas Company; Notice of Compliance Filing

January 16, 2003.

Take notice that on January 14, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on February 14, 2003:

28 Revised Sheet No. 66
Sheet No. 66A

Northern states that the reason for this filing is to delete certain negotiated rate transactions that have terminated.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1514 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–36–000]

Questar Pipeline Company; Notice of Request Under Blanket Authorization

January 16, 2003.

Take notice that on December 31, 2002, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84145, filed in Docket No. CP03–36–000 a request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations (18 CFR 157.205 and 157.208) under the Natural Gas Act (NGA) for authorization to construct and operate a 15.81-mile, 24-inch diameter interconnect, known as Tie Line (TL) 112, between the interstate pipeline systems of Questar and Overthrust Pipeline Company (Overthrust), under Questar's blanket certificate issued in Docket No. CP82–491–000, pursuant to section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Questar states that the proposed TL 112 will extend from an interconnection with Overthrust's 36-inch diameter main line at Uinta County, Wyoming to Questar's Main Line (ML) 48 in Rich County, Utah. Questar states that at the eastern terminus of the interconnect, located in Whitney Canyon, Uinta County, Wyoming, Questar proposes to install a custody-transfer measurement station. Questar further states that at the

western terminus of the interconnect in Rich County, Utah, Questar proposes to install various valves, piping and pipeline cleaning facilities. In addition, Questar states that TL 112 will be tested to a maximum allowable operating pressure of 1,050 psig and will be constructed at a total estimated cost of $14,600,000.

Questar explains that the proposed project is in the public interest because it is required to support growing residential, commercial and industrial demand for natural gas along Questar's principal end-use market in northern Utah served by its local distribution company affiliate, Questar Gas Company (QGC). Questar states that since TL 112 will be constructed for the purpose of receiving additional gas supplies into Questar's existing system for ultimate delivery to the Salt Lake City metropolitan area and to interconnect the systems of two open-access transporters, the proposed interconnect will be installed as an eligible facility as defined in section 157.202 of the Commission's regulations. Questar further states that QGC has entered into a 10-year firm contract for the transportation of up to 52,000 dekatherms per day from three receipt points on Questar's northern system to the Wasatch Front via TL 112.

Any questions concerning this request may be directed to Lenard G. Wright, Director of Federal Regulation, Questar Pipeline Company, 180 East 100 South, Salt Lake City, Utah 84111 at (801) 324–2459 or lenardw@questar.com.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, pursuant to rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Protests and interventions may be filed electronically via the Internet in lieu of paper, *see* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: March 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1496 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–057–004]

SCG Pipeline, Inc.; Notice of Compliance Filing

January 16, 2003.

Take notice that on November 19, 2002, SCG Pipeline, Inc. (SCG) tendered for filing its *pro forma* FERC Gas Tariff, Volume No. 1. SCG states that the filing is being made in compliance with the Commission's order entitled "Preliminary Determination on Non-Environmental Issues" issued on June 26, 2002, that preliminarily approved the issuance of the certificate authority to SCG and addressed tariff and rate aspects of SCG's application. Furthermore, on September 20, 2002, the Commission issued an "Order Issuing Certificates, Approving Abandonment and Denying Rehearing". Ordering paragraph G of the June 26 order and ordering paragraph D of the September 20 order required SCG to file, within 60 days after the issuance of the September 20 order, rates and *pro forma* tariff sheets consistent with the modifications in the June 26 Order and the effective NAESB and Order No. 637 standards. This filing consists of the tariff sheets necessary to make the clarifications required by the Commission in its June 26 Order.

SCG states that a copy of the filing has been mailed to each person designated on the official service list compiled by the Secretary of the Commission in this proceeding, as well as to all customers and interested state commissions.

Any person desiring to intervene and/or to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site under the "e-Filings" link.

Comment Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1495 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–515–001]

Texas Gas Transmission Corporation; Notice of Compliance Filing

January 16, 2003.

Take notice that on November 20, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing detailed responses to matters discussed in Ordering Paragraph B of the Commission's October 31, 2002, order. The order accepted and suspended a tariff sheet filed by Texas Gas on August 30, 2002, which reflected its annual adjustment to be fuel retention percentages subject to refund and conditions and further review.

Texas Gas states that copies of its filing are being mailed to all parties on the service list in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in acordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the

Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1511 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–132–006]

Viking Gas Transmission Company; Notice of Refund Report

January 16, 2003.

Take notice that on December 13, 2002, Viking Gas Transmission Company (Viking) tendered for filing a report of refunds in accordance with the Offer of Settlement and Stipulation and Agreement filed by Viking on September 13, 2002, in the above-referenced docket and approved by the Commission by order issued November 8, 2002.

Viking states that copies of its filing have been served on all parties designated on the official service list in this proceeding, and on all Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1510 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–37–000]

Williston Basin Interstate Pipeline Company; Notice of Application

January 16, 2003.

Take notice that on January 6, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), P.O. Box 5601, Bismarck, North Dakota 58506–5601, filed in Docket No. CP03–37–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for permission and approval to abandon compression and appurtenant facilities in Hot Springs County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon approximately a 369 horsepower compressor unit and appurtenant facilities at the Thermopolis Compressor Station. It is stated that Williston Basin no longer needs the facilities at this location to fulfill its service obligations, because gas needed to serve the town of Thermopolis, Wyoming, does not move through the compressor unit. It is stated that the facilities would be abandoned in place, with the possibility that they could be removed at a later date if needed at another location. Williston Basin estimates that the cost of abandoning the facilities would be $1,503.

Any questions concerning this application may be directed to Keith A. Tigelaar, Director of Regulatory Affairs, at (701) 530–1560.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC OnlineSupport@ferc.gov or call toll-free at (866)206–3676, or, for TTY, contact (202)502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file on or before the comment date with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed

documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1497 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted For Filing and Soliciting Motions To Intervene and Protest

January 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 1413–032.

c. *Date Filed:* October 30, 2002.

d. *Applicant:* Fall River Rural Electric Cooperative, Inc.

e. *Name of Project:* Buffalo River (previously Pond's Lodge) Hydroelectric Project.

f. *Location:* On the Buffalo River near its confluence with the Henry's Fork River, in Fremont, Idaho. The project occupies 9.8 acres of land within the Targhee National Forest.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Fall River Rural Electric Cooperative, Inc., 1150 North 3400 East, Ashton, Idaho 83420, Tel. # (208) 652–7431, and/or Brent L. Smith, President, Northwest Power Services, Inc, P.O. Box 535, Rigby, Idaho 83442, Tel. # (208) 745–0834.

i. *FERC Contact:* Gaylord Hoisington, (202) 502–8163, *gaylord.hoisington@FERC.gov*.

j. *Cooperating agencies*: We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Deadline for filing motions to intervene and protests and requests for cooperating agency status: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. This application has been accepted, but is not ready for environmental analysis at this time.

m. The existing Buffalo River Project consists of: (1) A 142-foot-long by 12-foot-high timber-faced rock-filled diversion dam; (2) a 40-foot-long by 3-foot-high concrete slab spillway with stop logs; (3) a fish passage structure; (4) a concrete intake structure with a 5-foot steel slide gate; (5) a trash rack; (6) a 52-foot-long by 5-foot-diameter concrete encased steel penstock; (7) a 34-foot-long by 22-foot-high masonry block powerhouse containing a 250-kilowatt Bouvier Kaplan inclined shaft turbine; and (8) other appurtenant facilities. The applicant estimates that the total average annual generation would be 1,679 megawatthours.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005, Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1498 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 16, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Amendment of license to add transmission line as a project feature, and revise project boundary.

b. *Project No*: 2816–020.

c. *Date Filed:* December 20, 2002.

d. *Applicant:* Mr. Gleb Ginka trustee for Vermont Electric Generation & Transmission Cooperative, Inc. (Tranferor), and North Hartland, LLC (Transferee).

e. *Name of Project:* North Hartland Project.

f. *Location:* The project is located on the Ottaquechee River at the U.S. Army

Corps of Engineers' North Hartland Dam in Windsor County, Vermont.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Gleb Ginka, 81 Glinka Road, Cabot, VT 05647–007. Tel: (802) 562–2828, or Mr. Robert L. Carey, North Hartland, LLC, Great Falls, VA 22066. Tel: (703) 561–0611.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Y. Sarma at (202) 502–6190, or e-mail address: *vedula.sarma@ferc.gov*.

j. *Deadline for filing comments and or motions*: February 18, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2816–020) on any comments or motions filed.

k. *Description of Request*: The licensee requests an amendment of license to as-built project works; specifically to add a primary transmission line approximately seven miles long from the project's switch yard to the Quechee Substation in Quechee, VT, as opposed to a one-quarter mile long line, and revise the project boundary accordingly.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 with or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above..

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1499 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12316–000.

c. *Date filed*: July 30, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Falls Lake Dam Project.

f. *Location:* On the Neuse River, in Wake County, North Carolina, utilizing the U.S. Army Corps of Engineers Falls Lake Dam.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C.791(a)–825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12316–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would utilize the Corps existing Falls Lake Dam and would consist of: (1) a proposed 50-foot-long, 62-inch diameter steel penstock, (2) a proposed powerhouse containing one generating unit having an installed capacity of 1 MW, (3) a proposed 500-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 6 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing

application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1501 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12325–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* LaGrange L&D Project.

f. *Location:* On the Illinois River, in Cass County, Illinois, utilizing the U.S. Army Corps of Engineers' LaGrange Lock and Dam.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12325–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would utilize the existing Corps' LaGrange Lock and Dam and consist of: (1) five proposed 50-foot-long, 84-inch diameter steel penstocks, (2) a proposed powerhouse containing five generating units having an installed capacity of 9.1 MW, (3) a proposed 100-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 56 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–

3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1502 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12330–000.

c. *Date filed*: August 2, 2002.

d. *Applicant:* Universal Electric Power Corp..

e. *Name of Project:* John W. Flannagan Dam Project.

f. *Location:* On the Pound River, in Dickenson County, Virginia, utilizing the U.S. Army Corps of Engineers' John W. Flannagan Dam.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12330–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would utilize the Corps existing John W. Flannagan Dam and consist of: (1) a proposed 50-foot-

long, 72-inch diameter steel penstock, (2) a proposed powerhouse containing three generating units having an installed capacity of 3 MW, (3) a proposed 200-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 18 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1503 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12332–000.

c. *Date filed:* August 5, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Dashields L&D Project.

f. *Location:* On the Ohio River, in Allegheny County, Pennsylvania, utilizing the U.S. Army Corps of Engineers' Dashields Lock and Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12332–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an

issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would utilize the Corps' existing Dashields Lock and Dam and consist of: (1) 10 proposed 42-foot-long, 132-inch diameter steel penstocks, (2) a proposed powerhouse containing ten generating units having an installed capacity of 22.5 MW, (3) a proposed 1.5-mile-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 142 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1504 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12333–000.

c. *Date filed*: August 9, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Hugo Dam Project.

f. *Location:* On the Kiamichi River, in Choctaw County, Oklahoma, utilizing the U.S. Army Corps of Engineers' Hugo Dam.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12333–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners

filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would utilize the Corps' existing Hugo Dam and consist of: (1) two proposed 70-foot-long, 96-inch diameter steel penstocks, (2) a proposed powerhouse containing two generating units having an installed capacity of 2 MW, (3) a proposed 2-mile-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 13 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1505 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12343–000.

c. *Date filed*: August 21, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Kentucky L&D #13 Project.

f. *Location:* On the Kentucky River, in Lee County, Kentucky, utilizing the U.S. Army Corps of Engineers' Kentucky Lock and Dam #13.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the

"e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12343–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would utilize the Corps' existing Kentucky Lock and Dam #13 and consist of: (1) two proposed 50-foot-long, 72-inch diameter steel penstocks, (2) a proposed powerhouse containing two generating units having an installed capacity of 2 MW, (3) a proposed 300-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 12.3 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1506 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12348–000.

c. *Date filed*: August 21, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Arkansas L&D #3 Project.

f. *Location:* On the Arkansas River, in Jefferson and Lincoln Counties, Arkansas, utilizing the U.S. Army Corps of Engineers' Kentucky Lock and Dam #3.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12348–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would utilize the Corps' existing Kentucky Lock and Dam #3 and consist of: (1) a proposed powerhouse containing 11 generating units having an installed capacity of 22.75 MW, (2) a proposed 14.7 kV transmission line, and (3) appurtenant facilities.

Applicant estimates that the average annual generation would be 150 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated:

Magalie R. Salas,

Secretary.

[FR Doc. 03–1507 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12355–000.

c. *Date filed*: August 21, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Kentucky Lock and Dam #9 Project.

f. *Location:* On the Kentucky River, in Jessamine County, Kentucky, utilizing the U.S. Army Corps of Engineers' Kentucky Lock and Dam #9.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp.,

1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12355–000) on any comments or motions filed.

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k. *Description of Project*: The proposed project would utilize the Corps existing Kentucky Lock and Dam #9 and consist of: (1) two proposed 50-foot-long, 96-inch diameter steel penstocks, (2) a proposed powerhouse containing two generating units having an installed capacity of 2.55 MW, (3) a proposed 100-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 16 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the project number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated:

Magalie R. Salas,

Secretary.

[FR Doc. 03–1508 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

January 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12394–000.

c. *Date filed:* October 16, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The David Terry L&D #6 Hydroelectric Project would be located on the Arkansas River in Pulaski County, Arkansas. The proposed project would utilize the existing David D. Terry Lock and Dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant contact*: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 29426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12394–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the Corps' existing David D. Terry Lock and Dam and Reservoir, would consist of: (1) 15 proposed 40-foot-long, 9.5-foot-diameter steel penstocks, (2) a proposed powerhouse containing sixteen generating units with a combined installed capacity of 30.6 megawatts, (3) a proposed 500-foot-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 188 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3678 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the project number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, tate, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1509 Filed 1–22–03; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–135]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the nineteenth meeting of the Public Safety National Coordination Committee.

DATES: February 21, 2003 at 9:30 a.m.–12:30 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail *mwilhelm@fcc.gov*. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail *mmccarri@fcc.gov*.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the nineteenth meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: February 21, 2003.

Meeting Time: General Membership Meeting—9:30 a.m.–12:30 p.m.

Addresses: Federal Communications Commission; 445 12th Street, SW., Washington, DC 20554.

The NCC Subcommittees will meet from 9 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks
2. Administrative Matters
3. Report from the Interoperability Subcommittee
4. Report from the Technology Subcommittee
5. Report from the Implementation Subcommittee
6. Public Discussion
7. Action on Subcommittee Recommendations
8. Other Business
9. Upcoming Meeting Dates and Locations
10. Closing Remarks

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the nineteenth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at *jalford@fcc.gov*. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this nineteenth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at *jalford@fcc.gov*. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC Web site located at: *http://wireless.fcc.gov/publicsafety/ncc*.

Federal Communications Commission.

Jeanne Kowalski,

Deputy Division Chief for Public Safety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 03–1456 Filed 1–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 02–145, FCC 02–338]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document is in compliance with the Communications Act of 1934, as amended, which requires the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming.

On December 23, 2002, the Commission adopted its ninth annual report (*2002 Report*). The *2002 Report* contains data and information that summarize the status of competition in markets for the delivery of video programming and updates the Commission's prior reports.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman or Anne Levine, Media Bureau (202) 418–7200, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *2002 Report* in MB Docket No. 02–145, FCC 02–338, adopted December 23, 2002, and released December 31, 2002. The complete text of the *2002 Report* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2890, or e-mail at *qualex@aol.com*. In addition, the complete text of the *2002 Report* is

available on the Internet at *http://www.fcc.gov/mb.*

Synopsis of the 2002 Report

1. The *2002 Report* provides updated information on the status of competition in the market for the delivery of video programming, discusses changes that have occurred in the competitive environment over the last year, and describes barriers to competition that continue to exist. Overall, although competitive alternatives continue to develop, cable television still is the dominant technology for the delivery of video programming to consumers in the multichannel video program distributor (MVPD) services marketplace. As of June 2002, 76.5 percent of MVPD subscribers received their video programming from a franchised cable operator, compared to 78 percent a year earlier.

2. The number of cable subscribers reached nearly 68.8 million as of June 2002, up about 0.4 percent from the 68.55 million cable subscribers in June 2001. Although industry data collected for this report period reflect continued growth through June 2002, a number of major cable system operators have experienced significant subscriber losses and calendar year 2002 may be the first year in which the cable industry as a whole experiences a net loss of subscribers.

3. The total number of non-cable MVPD subscribers grew to 21.1 million as of June 2002 from 19.3 million as of June 2001, an increase of more than nine percent. Direct broadcast satellite (DBS) service has grown significantly and now represents 20.3 percent of all MVPD subscribers. Between June 2001 and June 2002, the number of DBS subscribers grew from almost 16 million households to about 18 million households, which is significantly higher than the cable subscriber growth rate.

4. Over the last year, the number of subscribers to multichannel multipoint distribution service (MMDS) and large dish satellite service (HSD) continue to decline. The participation of incumbent local exchange carriers in the distribution of video programming also continue to decline. The number of subscribers to open video systems (OVS) and private cable has remained relatively stable, although their market share remains small.

5. During the period under review, cable rates continued to rise. According to the Bureau of Labor Statistics, between June 2001 and June 2002, cable prices rose 6.3 percent compared to a 1.1 percent increase in the Consumer Price Index, which measures general price changes. Concurrently with these rate increases, the number of video and non-video services offered increased and programming costs increased.

6. As the Commission reported earlier, the four largest incumbent local exchange carriers or telephone companies, have largely exited the video business. This remains true today. A few smaller local exchange carriers continue to offer, or are preparing to offer, MVPD service over existing telephone lines. Alternatively, several cable multiple system operators continue to offer telephone services. Cable operators are beginning to deploy Internet protocol telephony solutions in addition to circuit-switched telephone offerings.

7. The most significant convergence of service offerings continues to be the pairing of Internet service with other service offerings. Cable operators continue to build-out the broadband infrastructure that permits them to offer high-speed Internet access. Like cable, the DBS industry is developing ways to bring advanced services to their customers. Many MMDS and private cable operators also offer Internet services. In addition, broadband service providers continue to build advanced systems specifically to offer a bundle of services, including video, voice, and high-speed Internet access.

8. Non-cable MVPDs continue to report that regulatory and other barriers to entry limit their ability to compete with incumbent cable operators. Non-cable MVPDs continue to experience some difficulties in obtaining programming from vertically-integrated cable programmers and from unaffiliated programmers which continue to make exclusive agreements with operators. In multiple dwelling units potential entry may be discouraged or limited because an incumbent video programming distributor has a long term and/or exclusive contract. In addition, non-cable MVPDs report problems obtaining franchises from local governments and difficulties in gaining access to utility poles needed to build out their systems.

9. In sum, the *2002 Report* details the status of competitors in the market for the delivery of video programming including: Cable systems, DBS and home satellite dishes, wireless cable systems, private cable operators, broadcast television, local exchange carrier entry, open video systems, broadband service providers, Internet video, home video sales and rentals, and electric and gas utilities. The report also examines market structure and competition by evaluating horizontal concentration in the MVPD marketplace; analyzing vertical integration between cable television systems and programming services; and discussing technical issues such as cable modems, navigation devices and emerging services.

Ordering Clauses

10. The *2002 Report* is issued pursuant to authority contained in sections 4(i), (4)(j) , 403, and 628(g) of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 154(j), 403, and 548(g).

11. The Commission's Office of Legislative Affairs shall send copies of the *2002 Report* to the appropriate committees and subcommittees of the United States House of Representatives and the United States Senate.

12. The proceeding in MB Docket No. 02–145 is terminated.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1459 Filed 1–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, January 28, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, January 30, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Correction and approval of minutes.

New and amended FEC reporting forms—BCRA implementation.

New and amended instructions for FEC reporting forms—BCRA implementation.

Administrative matters.

PERSON TO CONTACT FOR INFORMATION:
Mr. Ron Harris, Press Officer.
Telephone: (202) 694–1220.

Mary W. Dove,
Secretary of the Commission.
[FR Doc. 03–1669 Filed 1–21–03; 2:41 pm]
BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 17096NF.
Name: Aero Costa International, Inc.
Address: 460 E. Carson Plaza Drive, Suite 220, Carson, CA 90746.
Date Revoked: December 25, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17467NF.
Name: Baska Logistics & Trading, Inc.
Address: 7105 NW. 53rd Terrace, Miami, FL 33166.
Date Revoked: December 19, 2002.
Reason: Failed to maintain valid bonds.

License Number: 11289N.
Name: Cargo Marketing Services Limited dba Procon Express Lines.
Address: The Old Bakery, One Shaw Lane, Lichfield, Staffordshire, WS1 7AG, United Kingdom.
Date Revoked: December 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3508N.
Name: E & B International, Inc.
Address: 5353 E. Princess Anne Road, Suite A, Norfolk, VA 23502.
Date Revoked: December 19, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16982NF.
Name: GKN Freight Services, Inc.
Address: 209 S. Washington Street, Van Wert, OH 45891.
Date Revoked: December 27, 2002.
Reason: Failed to maintain valid bonds.

License Number: 3314F.
Name: Hol-Mar International, Inc.
Address: 11600 Jones Road, Suite 108–21, Houston, TX 77070.
Date Revoked: December 12, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17310N.
Name: J.M.C. Transport Corporation.
Address: 9133 South La Cienega Blvd., Suite 120, Inglewood, CA 90301.
Date Revoked: December 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 1517F.
Name: Lanier Shipping Company, Inc.
Address: 60 West Main Street, Bogota, NJ 07603.
Date Revoked: December 27, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15439N.
Name: Legend International Express Inc.
Address: 147–34 176th Street, Jamaica, NY 11434.
Date Revoked: November 29, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16126N.
Name: Motorvation Services Inc.
Address: P.O. Box 348, 100 Broad Street, Tonawanda, NY 14151.
Date Revoked: December 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15989N.
Name: Noram Agencies, Ltd.
Address: 2928 Terminal Avenue, Everett, WA 98201.
Date Revoked: February 11, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15295N.
Name: Overseas Container Services, Inc. dba OCS.
Address: 256 Commercial Blvd., Lauderdale by the Sea, FL 33308.
Date Revoked: December 20, 2002.
Reason: Failed to maintain a valid bond.

License Number: 1007F.
Name: R.J. McCracken & Son, Inc.
Address: 5345 44th Street, SE., Grand Rapids, MI 49512.
Date Revoked: December 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17322N.
Name: Trans State Logistics, Inc.
Address: 1011 South Fremont Avenue, Suite 203, Alhambra, CA 91803.
Date Revoked: December 8, 2002.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 03–1491 Filed 1–22–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011405–016.
Title: Ocean Carrier Working Group Agreement.
Parties: The Latin America Agreement, the Israel Trade Conference, the Trans-Atlantic Conference Agreement, the Transpacific Stabilization Agreement, the Untied States Australasia Agreement, the United States/South Europe Conference, the Westbound Transpacific Stabilization Agreement, the Middle East Indian Subcontinent Discussion Agreement, A.P. Moller Maersk Sealand, Contship Containerlines, Evergreen Marine Corporation, King Ocean Service de Venezuela, Star Shipping, Tropical Shipping & Construction Company, Wallenius Wilhelmsen Lines, Zim Israel Navigation, and Hapag-Lloyd.
Synopsis: The amendment deletes the Mediterranean-North Pacific Coast Freight Conference as a party and updates the memberships of the Westbound Transpacific Stabilization Agreement and the Middle East Indian Subcontinent Discussion Agreement.

Agreement No.: 011838.
Title: MOL/WLS Space Charter Agreement.
Parties: Mitsui O.S.K. Lines, Ltd., World Logistics Service (U.S.A.), Inc.
Synopsis: Under the proposed agreement, Mitsui will charter space to World Logistics in the trade from Veracruz, Mexico to ports on the U.S. Atlantic and Gulf Coasts.

Dated: January 17, 2003.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,
Secretary.
[FR Doc. 03–1489 Filed 1–22–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission

pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date Reissued
17370NF	Antilles Wholesale Company, 1759 Bay Road, Miami Beach, FL 33139	November 9, 2002.
16503NF	Lukini Shipping Inc., Cargo Building 80, Rm. 203, Jamaica, NY 11430	May 25, 2002.
3896F	Sino AM Cargo, Inc., 1335 Evans Avenue, San Francisco, CA 94124	April 4, 2001.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–1490 Filed 1–22–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $18,919,000 for Section 8(a)(1), and $1,891,900 for section 8(a)(2)(A).

EFFECTIVE DATE: January 23, 2003.

FOR FURTHER INFORMATION CONTACT: James F. Mongoven, Bureau of Competition, Office of Policy and Evaluation, (202) 326–2879.

(Authority: 15 U.S.C. 19(a)(5)).

By direction of the Commission

Donald S. Clark,

Secretary.

[FR Doc. 03–1488 Filed 1–22–03; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Secretary, Office of Public Health and Science.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. This meeting is open to the public. A description on the Council's functions is included also with this notice.

DATES AND TIMES: January 30, 2002, 8 a.m. to 6 p.m., and January 31, 2003, 8 a.m. to 4:45 p.m.

ADDRESSES: Hubert Humphrey Building, Room 800; 200 Independence Ave. SW.; Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Patricia F. Ware, Executive Director, Presidential Advisory Council on HIV/AIDS, 734 Jackson Place, NW.; Washington, DC 20503; (303) 456–7334 or visit the Council's website at *http://www.pacha.gov.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services. The Council is to be composed of not more than 35 members. Council membership is selected by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV/AIDS.

The agenda for this Council meeting includes the following topics: disparities in HIV/AIDS health care, HIV/AIDS prevention, and HIV/AIDS international issues. Time will be allotted during the meeting for public comment.

This notice is being published less than 15 days in advance of the meeting due to scheduling conflicts.

Dated: January 16, 2003.

Patricia F. Ware,

Executive Director, presidential Advisory Council on HIV/AIDS.

[FR Doc. 03–1535 Filed 1–17–03; 3:34 pm]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03007]

Childhood Lead Poisoning Prevention Programs (CLPPP); Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317A and 317B of the Public Health Service Act [42 U.S.C. 241(a), 247b–1, and 247b–3], as amended by the Children's Health Act of 2000. Program regulations are set forth in Title 42, Code of Federal Regulations, Part 51b to State and local health departments. The Catalog of Federal Domestic Assistance number is 93.197.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Childhood Lead Poisoning Prevention Programs (CLPPP). This program addresses the "Healthy People 2010" environmental health objective to eliminate elevated blood lead levels in children. (found at: *http://www.health.gov/healthypeople/*)

The purpose of the program is to assist state and local partners in building capacity to eliminate childhood lead poisoning as a major public health problem. The focus of the program is children under the age of six. Special emphasis will be placed on children under the age of 3 who have elevated blood lead levels. The program will also address families with children under the age of six who do not yet have elevated blood lead levels.

Measurable outcomes of the program will be in alignment with the following

performance goal of the National Center for Environmental Health (NCEH): reduce the burden of lead poisoning in children.

A glossary of scientific and technical terms can be found in Appendix I. A background statement about the CDC program can be found in Appendix II. All appendices and attachments are posted with this announcement on the CDC Web site.

C. Eligible Applicants

Applications may be submitted by state health departments, their bona fide agents, and the health departments of the following five local jurisdictions that have the highest estimated number of children with elevated blood lead levels: New York, NY; Chicago, IL; Detroit, MI; Los Angeles County, CA, and Philadelphia, PA, or their bona fide agents. (See Appendices III and IV for more information on city blood lead levels.) Applications may also be submitted by the health departments or other official organizational authorities of the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. Competition is limited to these entities by authorizing legislation.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $31,000,000 is available in FY 2003 to fund approximately 40 awards. It is expected that the average award will be $775,000, ranging from $75,000 to $1,700,000. It is expected that the awards will begin on or about July 1, 2003 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change, depending on availability of funds.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds must be used for the following program activities: (a) The writing, implementation and evaluation of a jurisdiction-wide childhood lead poisoning elimination plan; (b) the writing, implementation, and evaluation of screening plans to target resources to children at the highest risk for lead poisoning; (c) a jurisdiction-wide childhood lead surveillance program, with an analysis plan for collected data; (d) primary prevention activities for pregnant women and/or families with children at high risk for lead poisoning; (e) an assurance plan for timely and appropriate case management of children with elevated blood lead levels; (f) demonstration of strategic partnering with community organizations and with other state/local agencies involved in environmental and child health activities; (g) substantial coordination with organizations and agencies involved in lead-based paint hazard reduction activities and development of protective policy; and (h) evaluation of programmatic impact on childhood lead poisoning within the applicant's jurisdiction.

Funds may not be expended for medical care and treatment, or for environmental remediation of sources of lead exposure. However, the applicant must provide a plan to ensure that these program activities are carried out and demonstrate their program's appropriate involvement with medical care, treatment and remediation efforts.

Not more than 10 percent (exclusive of direct assistance) of any cooperative agreement or contract (sub-grantee or consultant) funded through the cooperative agreement may be obligated for administrative costs. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate.

Recipient Financial Participation

Matching funds are not required for this program. Applicant must assure that income earned by the CLPPP will be returned to the program to support lead poisoning prevention activities.

Funding Preference

CDC will give funding preference to state programs that have significant estimated numbers of children with elevated blood lead levels, and that direct federal funds to localities with high concentrations of children at risk for childhood lead poisoning. CDC will also give funding preference to the five local jurisdictions with the highest estimated number of children with elevated blood lead levels. Guidance is available in Appendices III and IV, CDC's estimate of children under age six with elevated blood lead levels by city and state, respectively.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Childhood Lead Poisoning Elimination Plan

• Programs must establish an advisory workgroup or committee (or expand the scope of its current advisory group) to publish and implement a statewide or jurisdiction-wide childhood lead poisoning elimination plan. The group should also serve to monitor the progress of the elimination plan, and to leverage resources and enhance cooperative efforts towards this goal.

—This committee/workgroup should, at a minimum, include representatives from the Health Department, Housing and Urban Development (HUD) and/or the housing department, Environmental Protection Agency (EPA) and/or the state or local environmental regulatory agency, and the state Medicaid agency.

—Member representatives should have sufficient authority to support an inter-agency committee/workgroup, and to commit staff and resources to the elimination work plan.

—By the end of year one, programs must write a statewide or jurisdiction-wide strategic plan to eliminate childhood lead poisoning as a major public health problem by 2010. At a minimum, the plan must include the following elements:

Mission Statement
Purpose and Background on Lead Poisoning Prevalence
Goals, Objectives and Activities
Evaluation Plan

Further guidance on developing the elimination plan and forming the advisory workgroup or committee is located in Appendix V, "Guidance for Developing a Jurisdiction-wide Strategic Plan for the Elimination of Childhood Lead Poisoning."

b. Targeted Screening Plan

• Programs will write, implement and evaluate a jurisdiction-wide screening plan to target resources to impact the largest numbers of children at high risk for lead poisoning. Particular emphasis should be placed on children under three years of age and at high risk. Applicants should refer to the CDC publication, "Screening Young Children for Lead Poisoning: Guidance for State

and Local Public Health Officials" (found at: *http://www.cdc.gov/nceh/lead/guide/guide97.htm*) and to Appendices III and IV, the CDC estimates of children under six with elevated blood lead levels by city and state.

• Programs with an approved jurisdiction-wide screening plan already in place should include a copy as an appendix to their application. Application work plans must include goals and objectives describing screening performance measures and plans for periodic evaluation and improvement of the screening plan.

• Programs without a screening plan will provide work plan objectives for publishing and implementing a screening plan within one year of award.

• The screening plan should address uses of health education and communication to the targeted screening population. Additionally, the screening plan should address the education and communication of screening recommendations and childhood lead poisoning prevention efforts to health care providers.

• The screening plan will be reviewed and updated at least annually, and resubmitted to the assigned CDC Project Officer for review and comment.

c. Surveillance

• Programs must maintain and/or enhance a statewide or jurisdiction-wide childhood lead surveillance system to meet the criteria in Appendix VI (Elements Of Developing And Maintaining A Surveillance System). If programs do not have an existing surveillance system that meets these criteria, the application work plan should include objectives demonstrating how the surveillance system will be designed and implemented to meet the criteria within the first year of the project period. The program should also describe the implementation, or planned implementation, of regulations within the state or jurisdiction requiring the reporting of all blood lead results for children less than 72 months of age.

d. Primary Prevention

• Programs must conduct childhood lead poisoning primary prevention activities for families at high risk for lead poisoning to include those who live in housing built prior to 1978. The program should focus activities on pregnant women and/or families with young children at high-risk for lead poisoning exposure. The program should consider, but is not limited to, the examples of primary prevention activities in Appendix VII.

• Educational material and media campaigns may be used to support primary prevention activities.

• Primary prevention activities must be regularly evaluated for effectiveness in reducing the childhood lead burden in higher risk communities and/or populations. Evaluation of primary prevention activities should not include human subjects research.

e. Case Management of Children With Elevated Blood Lead Levels

• Provide a written case management plan consistent with published state and local guidelines, or the recommendations from the National Advisory Committee on Childhood Lead Poisoning Prevention, "Managing Elevated Blood Lead Levels Among Young Children", (found at: *http://cdc.gov/nceh/lead/CaseManagement/caseManage_main.htm*), within the first six months of the project period.

• Establish specific application work plan goals and objectives for reducing over-all morbidity (in children identified with elevated blood lead levels) by tracking and assuring appropriate and timely coordination of case management activities in accordance with established protocols.

• Implement targeted health education and communication activities to support improvements in timely and appropriate care.

• Case management will be evaluated at least quarterly using surveillance and case management data. At a minimum, the program should review the time frames for (a) initiating and completing case management services, including the first home visit; (b) a written care plan for each case; (c) the reduction of blood lead level rates; and (d) the rates of case closure by category (e.g., medical or administrative closure.)

f. Strategic Partnerships

• The program should demonstrate the development of strategic partnerships with community organizations, health-care providers, and other governmental and non-governmental organizations conducting childhood lead poisoning prevention activities and/or developing protective policies, as well as other programs focused on children likely to be at high risk for lead poisoning (e.g., Women, Infant and Children Program (WIC), Immunizations, Asthma Control, Head Start and Healthy Start).

• Strategic partnerships should be demonstrated by the inclusion of letters of support, memoranda of understanding, and/or contracts in the application.

• Guidance for working with and within communities can be found in the CDC document, "Principles of Community Engagement" (found at: *http://www.cdc.gov/phppo/pce/index.htm).*

g. Activities With Organizations and Agencies Engaged in Lead Hazard Reduction and Development of Protective Policy

• The applicant should demonstrate coordination of, or plans to coordinate activities with those organizations engaged in lead remediation and abatement (*e.g.*, housing agencies, HUD funded lead hazard reduction grantees, and banking, real estate, and insurance interests).

• Planned or ongoing activities should include the education and communication of childhood lead poisoning prevention efforts and protective policies to target audiences (*e.g.*, landlords, homeowners, legislative officials).

• Planned or ongoing coordination activities should be demonstrated by the inclusion of letters of support, memoranda of understanding, and/or contracts in the application.

h. Evaluation Plan

The evaluation plan should address the effectiveness of the CLPPP by program area, as well as the overall impact of the program in reducing and preventing childhood lead poisoning within the jurisdiction. Evaluation should take place at least annually.

The evaluation plan should: (1) Address the program as a whole; (2) specifically address each program goal; (3) have measurable, achievable and time-phased objectives; (4) focus on programmatic outcome/impact on eliminating childhood lead poisoning as a public health problem; (5) include the name and qualifications of the person responsible for conducting the evaluation; (6) specify how often evaluation will be conducted; and (7) discuss how the results of the evaluation will be built into improving each of the program components.

The same terms and definitions used for the work plan should be used in the evaluation plan (see Appendix VIII).

Guidance related to the components of an effective evaluation plan can be found in the CDC document "Framework for Program Evaluation in Public Health" (found at: *http://www.cdc.gov/eval/framework.htm*). Additional guidance can be found at the "CDC Evaluation Working Group Web Site" (*http://www.cdc.gov/eval/*).

The program should specify whether or not identifiable information will be

included in evaluation-related analysis. Use of identifiable information may require Institutional Review Board (IRB) approval.

2. CDC Activities

a. Provide technical assistance and scientific consultation on program development, implementation, and operational issues.

b. Provide technical assistance and scientific consultation regarding the development and implementation of all surveillance activities, including data collection methods and analysis of data. Assist with improving data linkages with federally funded, means-tested public benefit programs (WIC, Head Start, etc.)

c. Assist in the development of elimination plans and targeted screening plans by providing technical assistance and training on tools such as Geographic Information Systems (GIS) software.

d. Assist with interpretation of individual state surveillance data.

e. Review draft work plans and provide guidance.

f. Review draft program evaluation criteria and presentation formats, and provide guidance.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 35 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a work plan, an evaluation plan, and budget. The work plan must include project goals and first year objectives for each of the program areas listed under Program Requirements, Recipient Activities in this announcement (paragraph E, 1., a.–h.), The applicant should also include a tentative work plan and timetable for the remaining years of the proposed project.

The applicant should provide a detailed work plan that describes how the overall CLPPP and each of the eight program areas described within the application will be conducted. See Appendix VIII (Work Plan) for guidance.

Pursuant to section 317A of the Public Health Service Act (42 U.S.C. 247b–1), as amended by Section 303 of the "Preventive Health Amendments of 1992" (Pub. L. 102–531), applicants must meet the following requirements: For CLPPP services that are Medicaid-reimbursable in the applicant's state:

- Applicants directly providing these services must be enrolled with their state Medicaid agency as a Medicaid provider.
- Providers entering into agreements with the applicant to provide such services must be enrolled with their State Medicaid agency as a Medicaid provider. An exception to this requirement will be made for providers whose services are provided free of charge, and who accept no reimbursement from any third-party payer. Providers accepting voluntary donations may still be exempted from this requirement.

To satisfy this program requirement, applicants must submit a copy of a Medicaid provider certificate or statement as proof that this requirement will be met. Failure to include this information will result in the application being returned. This information should be placed immediately behind the budget and budget justification pages.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at (770) 488–2700. Application forms can be mailed to you.

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Narrative with Work Plan and Evaluation Plan
Budget Information Form
Budget Justification
Medicaid Provider Certificate/Statement of Proof
Checklist
Assurances
Certifications
Disclosure Forms

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, March 24, 2003. Submit the application to: Technical Information Management—PA#03007, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed to you by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Need (25 points)

The announcement is focused on the elimination of childhood lead poisoning as a major public health problem. Therefore, the assessment of need within the applicant's jurisdiction should include focus on communities and populations where there is significant evidence of high numbers of children under six years old who are at

high risk for lead poisoning. The applicant should describe the extent of the problem in the highest risk areas as determined by evidence. The evidence could include surveillance data for calendar years 1995–2000, detailing the number of children 0–36 months and 37–72 months with confirmed blood lead levels greater than or equal to 10 micrograms per deciliter (ug/dl) (using the CSTE definition of confirmed cases; see Appendix II.) The applicant may also consider other sources such as Appendices III and IV of this announcement (Estimated Number of children with Elevated Blood Lead Levels (EBLL) by City and State, respectively), Medicaid data, and housing-related data to support their description of need.

2. Capacity To Eliminate Childhood Lead Poisoning as a Public Health Problem (20 points)

- Provide evidence that the applicant has published and implemented a jurisdiction-wide screening plan that targets screening resources to children at highest risk. A copy of the plan should be included with the application. Or, describe plans to implement a screening plan in the first year of the proposed project period.
- The implementation, or planned implementation, of regulations within the state or jurisdiction requiring the reporting of all blood lead results for children under 72 months of age.
- The extent to which the applicant describes their jurisdictional childhood blood lead surveillance system in the following areas:

—Case management and program monitoring capabilities.
—The ability to determine screening and EBLL rates among specific high-risk populations, particularly Medicaid eligible children.
—The percentage of laboratory blood lead test results reported electronically to the state and/or local health department; and plans to increase the percentage of lab tests electronically imported to the surveillance database.
—Current or planned use of electronic transfer of data from laboratories, WIC, immunizations, birth certificates, and between local and state health departments.
—The ability to identify and assure reporting from private labs and portable blood lead analyzers.
—Plans for data analysis and dissemination of findings, as well as an evaluation of the surveillance system using CDC guidelines.

- Extent to which the applicant demonstrates use of surveillance data to target lead poisoning prevention activities (*e.g.*, screening, environmental investigations, lead hazard reduction, primary prevention, and implementation of protective policies) to the populations at highest risk in their jurisdiction.
- Extent to which strategic partnerships, programs, and activities within the jurisdiction have been implemented to eliminate childhood lead poisoning from the community.
- Extent to which applicant has committed their resources (personnel and financial) to the elimination of childhood lead poisoning.

3. Goals and Objectives (20 points)

- Extent to which the goals relate to the project purpose of childhood lead poisoning elimination, screening, surveillance, primary prevention, case-management, strategic community partnerships, and activities coordinated with agencies involved in lead hazard reduction activities and policies.
- Objectives must be time-phased, achievable, measurable, and must be provided for the first budget year.
- The submission of a clearly written work plan that includes project goals; supporting first year objectives that are relevant, specific, measurable, achievable, and time-phased; activities leading to the completion of objectives; a timetable for completing the proposed activities; identification of the program staff responsible for accomplishing each objective; and process evaluation measures for each proposed objective.
- The inclusion of a tentative work plan and timetable for the remaining years of the proposed project.

4. Jurisdiction-Wide Planning and Collaboration (15 points)

- Applicant's ability to involve strategic partners in the publication and implementation of a targeted screening plan, the and implementation of strategies to eliminate childhood lead poisoning.
- Extent to which surveillance and program data are utilized to produce jurisdiction-wide screening recommendations, with specific attention given to the Medicaid population, as required in the Children's Health Act of 2000.
- Demonstrated strategic partnerships through letters of support, memoranda of understanding, contracts, or other documented evidence of relationships. Examples of key partners include Medicaid agencies, child health-care providers and provider groups, managed-care organizations, insurers, community-based organizations, housing agencies (especially HUD funded lead hazard reduction programs), and banking, real estate, and property-owner interests.

5. Program Evaluation (15 points)

- Description of a systematic assessment of the operations and outcomes of the program as a means of contributing to the elimination of childhood lead poisoning.
- Effective strategies and approaches to monitor and improve the quality, effectiveness, and efficiency of the program.
- Description of how evaluation findings will be used to assess changes in public policy and measure the program's effectiveness of strategic partnering activities.
- Description of how the program will document progress made in childhood lead poisoning prevention.

6. Project Management and Staff (5 points)

- Documentation of the ability to develop and carry out activities described as recipient activities in the program requirements section of this announcement. This should include a description of the proposed health department staff roles, their specific responsibilities, and their level of effort and time.
- Inclusion of assurances that vacant positions will be filled within a reasonable time after receiving funding.
- Inclusion of a plan to provide training and technical assistance to health department personnel and consultation to strategic partners.

7. Budget Justification (reviewed, not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. The applicant should include costs for up to two people to travel to Atlanta, GA (three-overnight stays), to attend a Program Partners' meeting in 2003, and for one person to travel to Atlanta, GA (three-overnight stays), to attend the 6th National Environmental Health Conference December 3–5, 2003.

8. Performance Goals (reviewed, not scored)

The extent to which the application is aligned with the NCEH focus of environmental health, specifically, helping states reduce the burden of lead poisoning in children.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Quarterly data progress reports. These quarterly reports are required by the Office of Management and Budget (OMB) authorizing legislation (OMB Form 0920–0282.) The reports are due 30 days after the end of each quarter.

2. An interim progress narrative report, due no less than 90 days before the end of the budget period. This progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Progress on Current Budget Period Objectives and Activities.

b. Current Budget Period Financial Progress.

c. New Budget Period Proposed Program Objectives and Activities.

d. Detailed Line-Item Budget and Justification.

3. Calendar-year surveillance data, submitted annually in the approved OMB format, no later than April 30. In addition, a written surveillance summary must be disseminated to state and local public health officials, policy makers, the CDC project officer, and others.

4. Financial Status Reports, due within 90 days of the end of the budget period.

5. Final financial reports and performance reports, due within 90 days after the end of the project period.

6. Projects that involve the collection of information from 10 or more individuals, and are funded by a cooperative agreement will be subject to review by OMB under the Paperwork Reduction Act. Data collection initiated under this cooperative agreement program has been approved by OMB under OMB number 0920–0337, "National Childhood Blood Lead Surveillance System", Expiration Date: 6/30/2004.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement as posted on the CDC Web site.

AR–9, Paperwork Reduction Act Requirements
AR–10, Smoke-Free Workplace Requirements
AR–11, Healthy People 2010
AR–12, Lobbying Restrictions
AR–21, Small, Minority & Women-Owned Businesses

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

Two telephone conference calls for application technical assistance will be held during the application period. For further information, please contact Rob Henry at (770) 488–4024. This, and other CDC announcements, necessary applications, and associated forms can be found on the CDC home page Internet address: *http://www.cdc.gov*. Click on "Funding", then "Grants and Cooperative Agreements."

For general questions regarding this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2700.

For business management and budget assistance, contact: Mildred Garner, Grants Management Officer, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2745, E-mail address: *mgarner@cdc.gov*.

For business management and budget assistance in the territories, contact: Charlotte Flitcraft, Grants Management Officer, CDC Procurement and Grants Office, 2020 Brandywine Rd., Room 3000, Atlanta, GA 30319, Telephone: 770–488–2632, E-mail address: *caf5@cdc.gov*.

For program technical assistance, contact: Rob Henry, Acting Team Leader, Program Services Section, Lead Poisoning Prevention Branch, Centers for Disease Control and Prevention, 1600 Clifton Rd, NE, MS E–25, Atlanta, GA 30333, Telephone: (770) 488–4024, E-mail address: *rhenry@cdc.gov*.

Dated: December 31, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–1434 Filed 1–22–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0009]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application for Exemption From Federal Preemption of State and Local Medical Device Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's requirements for State and local governments' applications for exemption from preemption for medical device requirements.

DATES: Submit written or electronic comments on the collection of information by March 24, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or

provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Application for Exemption From Federal Preemption of State and Local Medical Device Requirements—21 CFR Part 808 (OMB Control No. 0910–0129)—Extension

Section 521(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k(a)) provides that no State or local government may establish, or continue in effect, any requirement with respect to a medical device that is different from, or in addition to, any Federal requirement applicable to the device under the act. Under section 521(b) of the act, following receipt of a written application from the State or local government involved, FDA may exempt from preemption a requirement that is more stringent than the Federal requirement, or that is necessitated by compelling local conditions and compliance with the requirement would not cause the device to be in violation of any portion of any requirement under the act. Exemptions are granted by regulation issued after notice and opportunity for an oral hearing.

The regulations in 21 CFR 808.20 require a State or local government that is seeking an exemption from preemption to submit an application to FDA. The application must include a copy of the State or local requirement, as well as information about its interpretation and application, and a statement as to why the applicant believes that the requirement qualifies for exemption from preemption under the act. FDA will use the information in the application to determine whether the requirement meets the criteria for exemption in the act and whether granting an exemption would be in the interest of the public health.

In addition, 21 CFR 808.25 provides that an interested person may request a hearing on an application by submitting a letter to FDA following the publication by FDA of a proposed response to the application.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
808.20	3	1	3	100	300
808.25	3	1	3	10	30
TOTAL					330

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based its estimates of the number of submissions expected in the future contained in table 1 of this document on the number of submissions submitted in the last 3 years and on the number of inquiries received indicating that applications would be submitted in the next year. FDA based its estimates of the time required to prepare submissions on discussions with those who have prepared submissions in the last 3 years.

Dated: January 14, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1435 Filed 1–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0400]

Agency Information Collection Activities; Announcement of OMB Approval; Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 13, 2002 (67 FR 52726), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0392. The approval expires on October 31, 2005. A copy of the supporting statement for this information collection is available on

the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: January 14, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1401 Filed 1–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0393]

Agency Information Collection Activities; Announcement of OMB Approval; Prescription Drug Product Labeling; Medication Guide Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Prescription Drug Product Labeling; Medication Guide Requirements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 14, 2001 (66 FR 64840), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0393. The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: January 14, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1402 Filed 1–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1367]

Agency Information Collection Activities; Announcement of OMB Approval; Postmarket Surveillance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Postmarket Surveillance" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 29, 2000 (65 FR 52376 at 52386), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0449. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: January 14, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1403 Filed 1–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0268]

Agency Information Collection Activities; Announcement of OMB Approval; Cosmetic Product Voluntary Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Cosmetic Product Voluntary Reporting Program" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 9, 2002 (67 FR 62977), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0030. The approval expires on November 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: January 14, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1405 Filed 1–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0418]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Adverse Experience Reporting for Licensed Biological Products; and General Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by February 24, 2003.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Adverse Experience Reporting for Licensed Biological Products (OMB Control Number 0910–0308)—Extension

Under the Public Health Service Act (42 U.S.C. 262), FDA is required to ensure the marketing of only those biological products that are safe and effective. FDA must, therefore, be informed of all adverse experiences occasioned by the use of licensed biological products. FDA issued the adverse experience reporting (AER) requirements in part 600 (21 CFR part 600) to enable FDA to take actions necessary for the protection of the public health in response to reports of adverse experiences related to licensed biological products. The primary purpose of FDA's AER system is to flag potentially serious safety problems with licensed biological products, focusing especially on newly licensed products. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the licensed biological product provides the opportunity to collect information on rare, latent, and long-term effects. Reports are obtained from a variety of sources, including patients, physicians, foreign regulatory agencies, and clinical investigators. Information derived from the AER system contributes directly to increased public health protection because such information enables FDA to recommend important changes to the product's labeling (such as adding a new warning), to initiate removal of a biological product from the market when necessary, and to assure the manufacturer has taken adequate corrective action if necessary.

The regulation in § 600.80(c)(1) requires the licensed manufacturer to report each adverse experience that is both serious and unexpected, regardless of source, as soon as possible, but in any case, within 15 working days of initial receipt of the information. Section 600.80(e) requires licensed manufacturers to submit a 15-day alert report obtained from a postmarketing clinical study only if there is a reasonable possibility that the product caused the adverse experience. Section 600.80(c)(2) requires the licensed manufacturer to report each adverse experience not reported under paragraph (c)(1) at quarterly intervals, for 3 years from the date of issuance of the product license, and then at annual intervals. The majority of the periodic reports will be submitted annually since a large percentage of the current licensed biological products have been licensed longer than 3 years. Section 600.80(i) requires the licensed manufacturer to maintain for a period of 10 years records of all adverse experiences known to the licensed manufacturer, including raw data and any correspondence relating to the adverse experiences. Section 600.81 requires the licensed manufacturer to submit information about the quantity of the product distributed under the product license, including the quantity distributed to distributors at an interval of every 6 months. The semiannual distribution report informs FDA of the quantity, the lot number, and the dosage of different products.

Section 600.90 requires a licensed manufacturer to submit a waiver request with supporting documentation when asking for waiving the requirement that applies to them under §§ 600.80 and 600.81. Manufacturers of biological products for human use must keep records of each step in the manufacture and distribution of products including recalls of the product. The recordkeeping requirements serve preventative and remedial purposes. These requirements establish accountability and traceability in the manufacture and distribution of products, and enable FDA to perform meaningful inspections.

Section 600.12 requires that all records of each step in the manufacture and distribution of a product be made and retained for no less than 5 years after the records of manufacture have been completed or 6 months after the latest expiration date for the individual product, whichever represents a later date. In addition, records of sterilization of equipment and supplies, animal necropsy records, and records in cases of divided manufacturing of a product are required to be maintained. Section 600.12(b)(2) requires complete records to be maintained pertaining to the recall from distribution of any product. Respondents to this collection of information are manufacturers of biological products. Under table 1 of this document, the number of respondents is based on the estimated number of manufacturers that submitted the required information to FDA in the years 2000 and 2001. Based on information obtained from the Center for Biologics Evaluation and Research's (CBER's) database system, there were approximately 95 licensed manufacturers. This number excludes those manufacturers who produce blood and blood components and in vitro diagnostic licensed products because they are specifically exempt from the regulations. However, not all manufacturers may have any submissions in a given year and some may have multiple submissions. The total annual responses are based on the estimated number of submissions received annually by FDA. There were an estimated 13,938 15-day alert reports, 10,102 periodic reports, and 339 distribution reports submitted to FDA. The number of 15-day alert reports for postmarketing studies as stated in § 600.80(e) was minimal and is included in the total number of 15-day alert reports. FDA received an average of 12 waiver requests under § 600.90, of which 11 were approved for exemption of the AER requirements. The hours per response are based on FDA's experience. The burden hours required to complete the MedWatch Form for § 600.80(c)(1), (e), and (f) are reported under OMB control number 0910–0291.

In the **Federal Register** of October 4, 2002 (67 FR 62249), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
600.80(c)(1) and (e)	95	146.72	13,938	1	13,938
600.80(c)(2)	95	106.34	10,102	28	282,856
600.81	95	3.57	339	1	339
600.90	12	1	12	1	12
Total					297,145

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Under table 2 of this document, the number of respondents is based on the number of manufacturers subject to those regulations. Based on information obtained from CBER's database system, there were approximately 329 licensed manufacturers of biological products. However, the number of recordkeepers listed for § 600.12(a) through (e), excluding paragraph (b)(2), is estimated to be 111. This number excludes manufacturers of blood and blood components because their burden hours for recordkeeping have been reported under § 606.160 in OMB control number 0910–0116. The total annual records is based on the annual average of lots released (6,747), number of recalls made (1,646) and total number of AER reports received (24,040) in the years 2000 and 2001. The hours per record are based on FDA's experience. FDA estimates the burden of this recordkeeping as follows:

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
600.12	111	60.78	6,747	32	215,904
600.12(b)(2)	329	5.00	1,646	24	39,504
600.80(i)	95	253.05	24,040	1	24,040
Total					279,448

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 14, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1406 Filed 1–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1529]

Elaine Yee-Ling Lai; Debarment Order; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 13, 2002 (67 FR 68877). The document announced the issuance of an order under the Federal Food, Drug, and Cosmetic Act debarring Ms. Elaine Yee-Ling Lai for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–28715, appearing on page 68877 in the **Federal Register** of Wednesday, November 13, 2002, the following correction is made:

1. On page 68877, in the third column, under section II, in the fourth line "(21 CFR 5.99)" is corrected to read "(21 CFR 5.34)".

Dated: January 14, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1404 Filed 1–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4814–N–01]

Notice of Proposed Information Collection: Comment Request Annual Progress Report (APR) for Competitive Homeless Assistance Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 24, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: [John Garrity (202) 708–4300 (this is not a toll-free number) for copies of the proposed forms and other available documents:]

SUPPLEMENTARY INFORMATION: The Department is submitting the Proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy for the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Annual Progress Report for Competitive Homeless Assistance Programs (APR).

OMB Control Number, if applicable: 2506–0145.

Description of the need for the information and proposed use: The APR provides information to HUD necessary for program monitoring and evaluation.

Agency form numbers, if applicable: HUD–40118.

Members of affected public: Grantees that have received HUD funding from 1987 to the present.

Estimated of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Activity	Number of respondents	Frequency of response	Response hours	Burden hours
Record-keeping	4,000	1 annually	40	160,000
Report preparation	4,000	1 annually	8	32,000
				192,000

Status of the proposed information collection: Information is currently being collected.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 16, 2003.

Roy A. Bernardi,

Assistant Secretary for Community, Planning and Development.

[FR Doc. 03–1411 Filed 1–22–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–03]

Notice of Proposed Information Collection: Comment Request; Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 24, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Chiapella, Deputy Director, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 4000, Washington, DC 20410; e-mail *Barbara_Chiapella@hud.gov*, telephone (202) 708–0001 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market).

OMB Control Number, if applicable: 2502–0533.

Description of the need for the information and proposed use: The Mark-to-Market Program is authorized under the Multifamily Assisted Housing Reform and Affordability Act of 1997. The information collection is required and will be used to determine the eligibility of FHA-insured multifamily properties for participation in the Mark-to-Market program and the terms on which participation should occur. The program reduces Section 8 rents to market and restructures debt as necessary.

Agency form numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total

number of hours needed to prepare the information collection is 125,947; the number of respondents is 438 generating approximately 438 annual responses; the frequency of response is on occasion and annually; and the estimated time needed to prepare each response varies from 99 hours to 320 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: January 16, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–1412 Filed 1–22–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0061 and 1029–0110

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collections of information under 30 CFR Part 795, Permanent Regulatory Program—Small Operator Assistance Program (SOAP), and two technical training program course effectiveness evaluation forms. These information collection activities were previously approved by the Office of Management and Budget (OMB), and assigned clearance numbers 1029–0061 and –0110, respectively.

DATES: Comments on the proposed information collection activities must be received by March 24, 2003, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for renewed approval. These collections are contained in (1) 30 CFR Part 795, Permanent Regulatory Program—Small Operator Assistance Program (1029–0061); and (2) OSM's Technical Training Program Course Effectiveness Evaluations (1029–0110). OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR Part 795—Permanent Regulatory Program—Small Operator Assistance Program.

OMB Control Number: 1029–0061.

Summary: This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of Public Law 95–87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

Bureau Form Number: FS–6.

Frequency of Collection: Once per application.

Description of Respondents: Small operators, laboratories, and State regulatory authorities.

Total Annual Responses: 156.

Total Annual Burden Hours: 7,373 hours.

Title: Technical Training Program Course Effectiveness Evaluation.

OMB Control Number: 1029–0110.

Summary: Executive Order 12862 requires agencies to survey customers to determine the kind of quality of services they want and their level of satisfaction with existing services. The information supplied by this evaluation will determine customer satisfaction with OSM's training program and identify needs of respondents.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: State regulatory authority and Tribal employees and their supervisors.

Total Annual Responses: 315.

Total Annual Burden Hours: 53 hours.

Dated: January 15, 2003.

Sarah E. Donnelly,

Acting Chief, Division of Regulatory Support.

[FR Doc. 03–1398 Filed 1–22–03; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1022 (Preliminary)]

Refined Brown Aluminum Oxide From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of refined brown aluminum oxide, provided for in subheading 2818.10.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations.

The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On November 20, 2002, a petition was filed with the Commission and Commerce by Washington Mills Company, Inc., North Grafton, MA,[2] alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of refined brown aluminum oxide from China. Accordingly, effective November 20, 2002, the Commission instituted antidumping duty investigation No. 731–TA–1022 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 29, 2002 (67 FR 71195). The conference was held in Washington, DC, on December 11, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 6, 2003. The views of the Commission are contained in USITC Publication 3572 (January 2003), entitled Refined Brown Aluminum Oxide from China: Investigation No. 731–TA–1022 (Preliminary).

Issued: January 17, 2003.

[2] On November 27, 2002, the petition was amended to include two additional petitioners, C–E Minerals, King of Prussia, PA, and Treibacher Schleifmittel Corporation, Niagara Falls, NY.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–1447 Filed 1–22–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Response on Proposed Final Judgment in United States of America v. The MathWorks, Inc. and Wind River Systems, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments received on the proposed Final Judgments on *United States of America* v. *The MathWorks, Inc. and Wind River Systems, Inc.*, Civil Action No. 02–888–A, filed in the United States district court for the Eastern District of Virginia, together with the United States' response to the comments.

Copies of the comment and response are available for inspection at Room 200 of the Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530, telephone (202) 514–2481, and at the Office of the Clerk of the United States District Court for the Eastern District of Virginia, Albert V. Bryan United States Courthouse, 401 Courthouse Square, Alexandria, VA 22314. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

United States' Response to Public Comments

Pursuant to Section 5(d) of the Clayton Act, as amended by Section 2 of the Antitrust Procedures and Penalties Act (codified at 15 U.S.C. 16(b)–(h) (the "Tunney Act")), the United States responds to public comments received regarding the proposed Final Judgments submitted for entry in this civil antitrust proceeding.

I. Background

On June 21, 2002, the United States filed a civil antitrust Complaint alleging that The MathWorks, Inc., ("The MathWorks") and Wind River Systems, Inc. ("Wind River"), head-to-head competitors in the sale of dynamic control system design software products, restrained competition in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleged that, on February 16, 2001, The MathWorks and Wind River entered into a number of agreements (hereinafter, collectively, the "MATRIXx Agreement") pursuant to which, *inter alia*, The MathWorks obtained the executive worldwide right to price and sell Wind River's MATRIXx tools for a period of two and one half years. As a result of the MATRIXx Agreement, actual competition between Wind River's MATRIXx toolset and The MathWorks' Simulink toolset has been eliminated.

In April 2000, Wind River acquired Integrated Systems, Inc. ("ISI"). At the time, ISI was a well regarded vendor of software, tools, and engineering services for the embedded systems market.[1] Its embedded real-time operating system, deployed in more than 38 million devices worldwide as of 2000, was suppled to telecom/datacom, consumer electronics, automotive, aerospace, and emerging Internet appliance customers. As part of its software portfolio it produced the MATRIXx family of software products, which are standalone products designed to automate the analysis, modeling, generation of code for, and simulation of, complex control systems. Although ISI had spent considerable resources developing MATRIXx since the mid-1980s, its primary business continued to revolve around the embedded systems market.

Wind River, itself a significant vendor of software for embedded systems, pursued the acquisition of ISI, in large part, to obtain a skilled pool of embedded system software developers that it hoped would shorten the time it takes to reach the market of critical new embedded system products. Wind River soon came to view MATRIXx as a struggling product line within ISI with small revenue and no growth potential. More importantly, the MATRIXx market was neither within Wind River's core competency nor its central strategic focus for the future. Thus, Wind River decided not to devote any of its resources to the continued development and sale of MATRIXx.

Shortly after Wind River's acquisition of ISI, The MathWorks approached Wind River and began vigorously negotiating to acquire the MATRIXx assets. On February 16, 2001, The MathWorks and Wind River entered into the MATRIXx Agreement under which Wind River granted The MathWorks exclusive distribution and license rights to the MATRIXx toolset and the MATRIXx intellectual property (including the right to incorporate MATRIXx source code into The MathWorks products) during a thirty-month license period beginning on February 16, 2001. Following the expiration of the thirty-month license period, The MathWorks would have the option to acquire MATRIXx.

Under the MATRIXx Agreement, The MathWorks was required to provide two years of customer support (ending in February 2003) for existing MATRIXx users.[2] While Wind River agreed to

[1] Embedded systems are specialized computing systems used to control devices such as handheld computers, appliances or cars. These systems are typically invisible to the end-user, but enable operation of the devices.

[2] Wind River retained rights to the MATRIXx intellectual property during the license period in

Continued

continue fulfilling its existing customer support obligations, as well as to provide "critical" bug fixes during the license period, the MATRIXx Agreement provided that Wind River would not produce new versions of MATRIXx with feature enhancements. In fact, The MathWorks announced at the time it entered into the MATRIXx Agreement that there would be no further development of the MATRIXx products. The MathWorks and Wind River also agreed on the pricing of Simulink, The MathWorks' dynamic control system software product that competed head-to-head with MATRIXx, when purchased by MATRIXx customers. The companies specifically agreed that The MathWorks would give customers with current MATRIXx licenses, that switched to The MathWorks' suite of products, a discount amounting to 50% off the list price of The MathWorks' products for those that switched in the first year of the MATRIXx Agreement and 25% off for those that switched in the second year of the MATRIXx Agreement.

In return, The MathWorks agreed to make payments to Wind River totaling $11,500,000 over a three-year period on a set schedule, which were not contingent on the volume of MATRIXx products The MathWorks sold. Further, Wind River granted The MathWorks an option to purchase MATRIXx and certain MATRIXx intellectual property (*e.g.*, the source code, customer lists, trademarks and copyrights) twenty-eight months after closing for an additional sum of $2,000,000. Finally, the MATRIXx Agreement assigned certain patent rights to The MathWorks for $500,000.

On the same date that the United States filed its Complaint against The MathWorks and Wind River, the United States filed a Stipulation and proposed Final Judgment with Wind River that was designed to obtain the divestiture of the MATRIXx assets to a competitively viable third party. Although the nominal owner of the MATRIXx assets, Wind River's consent alone was insufficient to effectuate fully the relief sought by the United States in the Complaint because The MathWorks had previously acquired significant rights in the MATRIXx assets under the MATRIXx Agreement. The lawsuit therefore continued against The MathWorks. On August 15, 2002, the United States and The MathWorks filed a Stipulation and proposed Final Judgment that, in conjunction with the proposed Final Judgment agreed to by Wind River, would lead to either the prompt and certain divestiture of the MATRIXx assets to a competitively viable third party or the dismissal of the Complaint in this action.

The proposed Final Judgment agreed to by The MathWorks provides a framework detailing the manner and process pursuant to which a court-appointed Trustee would seek to sell the MATRIXx assets to a competitively viable third party. Among other things, this framework specifically outlines the rights and responsibilities of the United States and The MathWorks, addresses the period of time in which a definitive sales and licensing agreement must be consummated, and sets a minimum price at which the MATRIXx assets may be sold.

The Court may enter the proposed Final Judgments against Wind River and The MathWorks following compliance with the Tunney Act.[3] The Tunney Act, among other things, gives the public a 60-day period to submit comments about the proposed Final Judgments. The 60-day comment began on October 21, 2002, when the proposed Final Judgments and the Competitive Impact Statement ("CIS") were published in the **Federal Register** (67 FR 64657 (2002)), and expired on December 20, 2002. During that period, two comments were received.

II. Response to Public Comments

On November 18, 2002, the United States received a comment regarding The MathWorks' proposed Final Judgment in this matter from Sudarshan Bhat addressing a single provision of The MathWorks' proposed Final Judgment. A true and correct copy of Mr. Bhat's comment, with confidential information redacted, is attached as Exhibit A. On December 20, 2002, the United States received a comment regarding the proposed Final Judgments in this matter from The Center for the Advancement of Capitalism ("CAC") which purports to address the propriety of the proposed Final Judgments *en toto*. A true and correct copy of the CAC's comment is attached as Exhibit B. Each of these comments is addressed individually below.

A. Bhat Comment

Mr. Bhat complains that the minimum sale price of $2 million plus the costs and expenses of the Trustee for the MATRIXx assets, as required by Section IV(L) of The MathWork's proposed Final Judgment, "makes no financial sense without additional contingencies." *Bhat Comment* at 1. He explains that immediately prior to The MathWorks acquisition of the MATRIXx assets, MATRIXx enjoyed annual revenue of $15–$16 million. Since The MathWorks acquired the MATRIXx assets however, MATRIXx revenue has fallen and "is likely to reduce much further without the proper measures to restore competitiveness in the dynamics and control tools marketplace." *Id.* Given this, Mr. Bhat concludes that "[t]he 2 million dollar purchase price is too much to risk in the current market conditions." *Id.* In essence, Mr. Bhat concludes that a divestiture of the MATRIXx assets will fail because the minimum sale price is not justified given the current level of annual revenue generated by MATRIXx.

Mr. Bhat insists that "true competition can only be restored when marketing, customer support, development, sales and annual, revenues for MATRIXx assets are restores to the annual 15–16 million dollar levels immediately prior to Mathworks acquisition of MATRIXx assets." *Id.* Therefore, he suggests that the United States "impose an annual penalty on Mathworks equal to MATRIXx sales revenue shortfall from the 2001 15–16 million dollar levels until the MATRIXx revenues are restores to the 2001 levels or until September 1, 2007, whichever comes first." *Id.* at 2. Mr. Bhat believes this annual penalty should "be used to cover any operating budget shortfall for whoever is best qualified to acquire MATRIXx assets and restore competition to the marketplace." *Id.* Finally, Mr. Bhat indicates that his intention to bid for the MATRIXx assets is conditioned on the adoption of his suggested additions to the proposed Final Judgment.

The United States disagrees with the conclusions asserted by Mr. Bhat in his comment. In light of the fact that the MATRIXx assets have been successfully sold, it is unnecessary to amend the proposed Final Judgment in the manner suggested by Mr. Bhat.[4] On January 14, 2003, SoundView Technology

order to provide support service to two International Space Station customers.

[3] The Competitive Impact Statement ("CIS") sets out the standard to be applied by the Court in determining whether entry of the proposed Final Judgment is in the public interest. CIS at 20–23.

[4] Nor does the United States believe it is appropriate to impose a "penalty" on The MathWorks equal to MATRIXx revenue shortfalls from 2001 levels. *Bhat Comment* at 2. This is a Government civil action for injunctive relief, and thus monetary damages are not available in this case. *See* 15 U.S.C. 4 (authorizing the United States "to institute proceedings in equity to prevent and restrain such violations"). Moreover, the goals of the remedy in this case are to enjoin the unlawful conduct and restore competitive conditions in the market affected by The MathWorks' conduct. *See Nat'l Soc'y of Prof'l Eng'rs* v. *United States*, 435 U.S. 679, 697 (1978); *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961).

Corporation ("SoundView"), as the court-appointed Trustee in this matter pursuant to its obligations under Section IV(I) of the proposed Final Judgment, reported to the United States that National Instruments Corporation acquired the MATRIXx assets on January 10, 2003, pursuant to a definitive sales and licensing agreement reached within the framework outlined in the proposed Final Judgment. Pursuant to Section IV(M)(1) of the proposed Final Judgment, the United States has concluded that National Instruments Corporation intends to invest in and develop the MATRIXx product line and has the potential to be a viable competitor in the sale of dynamic control system design software.

B. CAC Comment

CAC is a non-profit organization with the mission or providing analysis based on Ayn Rand's philosophy of objectivism.[5] CAC insists that the United States should withdraw the proposed Final Judgments and dismiss the Complaint in this matter or that the Court should reject entry of the proposed Final Judgments under the Tunney Act. *CAC Comment* at 2. CAC concedes, however, that its philosophical opposition to the antitrust laws is "blatantly obvious." *Id.* at 3. This opposition animates every aspect of CAC's comment. CAC claims that "[t]his" case reveals both the fundamental defects of both the antitrust laws and the strategy employed by the Government in their enforcement." *Id.* CAC argues that "[f]ree competition cannot be enforced by government flat" and that the DOJ "relies on static rules that fail to account for the complexity of business and yet seek to enforce an unjust and unworkable egalitarianism." *Id.* Further, CAC claims that the "DOJ can not speak for the 'public interest,' because no such intest has ever existed." *Id.*

CAC, in essence, challenges the constitutionality of the Sherman Act and advocates for a form of laissez-faire capitalism unregulated by the Government. The United States disagrees with CAC's position. The Supreme Court has, on numerous occasions, upheld the constitutionality of the Sherman Act and the prohibition in Section 1 of the Act against any contract, combination or conspiracy that "unreasonably" deprives consumers of the benefits of competition or that would otherwise result in higher prices or inferior products and services. *See Standard Oil Co.* v. *United States*, 221 U.S. 1, 50, 58 & 68–70 (1911); *see also United States* v. *Joint Traffic Ass'n*, 171 U.S. 505, 570–73 (1898). In any event, challenging the constitutionality of the Sherman Act is far beyond the scope of this Tunney Act proceeding. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995) (Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint.).

CAC also argues that "[n]othing in the proposed judgment benefits producers, consumers, or the foundations of the free market, unless it is held that capitalism is advanced by turning producers into serfs." *CAC Comment* at 3. CAC believes that "while the customer's short-term costs might increase as a result of the MATRIXx acquisition, in the long term, competition would benefit from Wind River's decision to shed an unprofitable and stagnant product line." *Id.* For CAC argues, "[i]n a free market, the more efficient allocation of resources is often fostered through the natural elimination of unnecessary or redundant competition, as appears to be the case here." *Id.* Accordingly, CAC asserts that "[i]n the absence of this judgment, MATRIXx would be given the timely death the marketplace has condemned it to." *Id.* at 4. CAC's arguments suggest a superficial understanding of the proposed Final Judgments and the manner in which they are intended to address the Complaint in this matter.

During the United States' investigation in this matter, the Defendants argued that the MATRIXx assets had no economic value in the marketplace and that no competitively viable third party would be interested in purchasing the MATRIXx assets for any significant amount of money. Taking Defendants' arguments, along with customer concerns, into account, the United States agreed to a proposed settlement that would both test Defendants' assertions as to the MATRIXx assets' market value and maximize the possibility of restoring in a timely manner competition lost as a result of the illegal conduct. At the time, the United States firmly believed that one or more competitively viable purchasers existed and that an independent agent would succeed in finding a buyer. Pursuant to Section IV(O) of The MathWorks' proposed Final Judgment, however, the United States agreed that if no alternative viable purchaser emerged, the United States would dismiss the Complaint in this action. As noted above, SoundView, the court-appointed Trustee charged with attempting to sell the MATRIXx assets, has informed the United States that it has successfully sold the MATRIXx assets pursuant to a definitive sales and licensing agreement that meets the requirements of The MathWorks' proposed Final Judgment. The proposed Final Judgment in this matter strikes an appropriate balance between the public interest of prohibiting conduct the effect of which is to substantially lessen competition, and the desire for the marketplace to decide the economic and competitive value of goods and services based on their relative merits.

III. Conclusion

Mr. Bhat urges the United States to amend The MathWorks' proposed Final Judgment in order to make the MATRIXx assets more valuable to prospective purchasers thereby justifying the required minimum sales price. CAC, on the other hand, urges the Court to reject the proposed Final Judgments altogether and dismiss the Complaint with prejudice. The United States, however, has concluded that the proposed Final Judgments reasonably and appropriately addresses the harm alleged in the Complaint. Therefore, following publication of this Response to Comments in the **Federal Register** and submission of the United States' Certificate of Compliance with the Tunney Act, the United States intends to request entry of the proposed Final Judgments upon the Court's determination that entry is in the public interest.

Dated: January 15, 2003.

Respectfully submitted,

James J. Tierney,
Patricia A. Brink,
Kenneth W. Gaul,
Jeremy West,
J. Roberto Hizon,
David E. Blake-Thomas,
Patrick O'Shaughnessy,
Trial Attorneys.

U.S. Department of Justice, Antitrust Division, Networks & Technology Section, 600 E Street, NW., Suite 9500, Washington, DC 20530, Tel: 202/307/6200, Fax: 202/616–8544.

Paul J. McNulty,
United States Attorney.

By: Richard Parker,
Assistant United States Attorney, VSB No. 44751, 2100 Jamieson Avenue, Alexandria, VA 22314, Tel: 703/299–3700.

[5] Ayn Rand, a novelist-philosopher, first expressed her philosophy of objectivism in the best-selling novels, *The Fountainhead* (1943) and *Atlas Shrugged* (1957). On the issue of capitalism, she has stated: "When I say 'capitalis' I mean a pure, uncontrolled, unregulated laissez-faire capitalism with a separation of economics, in the same way and for the same reasons as a separation of state and church." "The Objectivist Ethics" in *The Virtue of Selfishness* (1964).

Certificate of Service

I certify that on January 15, 2003, a true and correct copy of the United States' Response to Public Comments, related to the proposed Final Judgments in this matter against Defendants and agreed to by Defendants pursuant to the Stipulations and Orders filed with the Court, was served on the following counsel:

Counsel for Wind River Systems, Inc.

Richard L. Rosen,
Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 2004–1206, Fax: 202/942–5999, by U.S. Mail.

Counsel for The Math Works, Inc.

Thane D. Scott,
Palmer & Dodge, LLP, 111 Huntington Avenue, Boston, Massachusetts 02199–7613, Fax: 617/227–4420, by: U.S. Mail.
J. Mark Gidley,
White & Case, LLP, 601 Thirteenth St., NW., Washington, DC 20005–3807, Fax: 202/639–9355, by: U.S. Mail.
James J. Tierney.
November 1, 2002.
To Attn: Reneta Hesse, Chief,
Networks and Technology Litigation Section, Antitrust Division, U.S. Department of Justice, Washington, DC 20530.
Re: MATRIXx Asset Sale contingencies,
Justice Department Settlement with Mathworks, Inc.

Dear Hesse, I believe the 2 million dollar sale price plus the US Department of Justice trustee costs is acceptable if the additional MATRIXx revenue shortfall contingencies mentioned later in this letter are imposed on Mathworks to quickly and effectively restore competitiveness to the dynamics and control tools marketplace.

The MATRIXx assets sale makes no financial sense without additional contingencies. The 2 million dollar purchase price is too much risk in the current market conditions. The risk is due to severely reduced [redacted as confidential] annual MATRIXx revenue under Mathworks that is likely to reduce much further without the proper measures to restore competitiveness in the dynamics and control tools marketplace.

It was Mathworks that blatantly committed anti-trust violation of Section 1 of the Sherman Act. It must be Mathworks that pays for restoring competition in the marketplace. It is just not fair for the MATRIXx customers to be held hostage and pay the price for restoration of credibility to the MATRIXx products.

From a marketing standpoint large legacy aerospace projects (examples are International Space Station and Boeing projects) have too much invested in MATRIXx tools over the last two decades that simply cannot switch to Simulink/RealTime Workshop tools because of prohibitive costs, lack of Ada support and lack of tool maturity. MATRIXx tools SystemBuild and AutoCode has evolved and has been successfully used on large aerospace projects for over 20 years while Simulink and RealTime Workshop have only been around for about 5 years. RealTime Workshop Ada has not even been released.

I believe true competition can only be restored when marketing, customer support, development, sales and annual revenues for MATRIXx assets are restored to the annual 15–16 million dollar levels immediately prior to Mathworks' acquisition of MATRIXx assets. The software development effort for MATRIXx under Wind River for financial year 2001 is estimated at about 2.5 million dollars. The marketing, customer support and sales were rolled into the overall WindRiver budget.

An ISI colleague of mine has already contacted a large number of people who were MATRIXx software developers just prior to Mathworks' acquisition of MATRIXx assets and confirmed that a substantial number of them were willing to join our group or for that matter any group willing to acquire MATRIXx assets and repair the market damage inflicted on the product by Mathworks. Formation of such a workforce would immediately place a demand for MATRIXx operating budgets which I would estimate about 4–5 million dollars annually. Compared to all the potential buyers, some key ex-ISI employees, including myself, are the most qualified to put together the original ISI/WindRiver team of MATRIXx developers and restore competition in the marketplace. And I urge the US Department of Justice to seriously evaluate this issue when choosing a suitable buyer for the MATRIXx assets.

I believe it is imperative that the US Department of Justice impose an annual penalty on Mathworks equal to MATRIXx sales revenue shortfall from the 2001 15–16 million dollar levels until the MATRIXx revenues are restored to the 2001 levels or until September 1, 2007, whichever comes first. These revenues are to be used to cover any operating budget shortfall for whoever is best qualified to acquire MATRIXx assets and restore competition to the marketplace. I also urge that the US Department of Justice require that Mathworks place such funds in escrow because there have been recent complaints by WindRiver about Mathworks not making the most recent installment payment.

In summary when I place a bid for MATRIXx assets, the bid will be contingent upon Mathworks making up for the revenue shortfall until MATRIXx products is restored to the pre-2001 annual revenue levels. I would appreciate the cooperation of the US Department of Justice, its trustee, SoundView Technology Group, and all the parties involved to make this happen and restore competitiveness to the dynamics and control tools marketplace.

Sincerely,
/S/
Sudarshan P. Bhat,
1410 Blackstone Rd, San Marino, CA 91108, 626–292–7479 (home), 626–379–9021 (cell).

Comments of The Center for the Advancement of Capitalism to the Proposed Final Judgment

Pursuant to the Tunney Act [1], The Center for the Advancement of Capitalism submits the following comments in response to the Proposed Final Judgments filed with the Court on June 21 and August 15, 2002.

Introductory Statement

The Center for the Advancement of Capitalism ("CAC") is a District of Columbia corporation organized in 1998, and exempt from income tax under Section 501(c)(4) of the Internal Revenue Code. CAC's mission is to present to policymakers, the judiciary and the public analyses to assist in the identification and protection of the individual rights of the American people. CAC applies Ayn Rand's philosophy of Objectivism to contemporary public policy issues, and provides empirical studies and theoretical commentaries on the impact of legal and regulatory institutions upon the rights of American citizens.

CAC has no financial interest in the outcome of this case, nor has CAC received any compensation from the defendants in connection with these comments.

Comments

The Proposed Final Judgment ("PFJ") currently before the Court seeks to undo the impact of the February 2001 agreement between MathWorks and Wind River. MathWorks obtained the exclusive right to distribute Wind River's MATRIXx software, and as a result MathWorks was able to combine

[1] Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h).

two stagnant products lines into a single offering. The United States claims this was illegal, because the loss of MATRIXx constituted a harm to consumers. Wind River customers complained to the United States that once MATRIXx was no longer serviced, they would "have to begin a costly migration to the MathWorks' Simulink products." The United States initiated this case to preclude this from happening. The question now before the Court is whether the PFJ serves the interest. CAC believes that it does not.

This case is part of a federal antitrust effort to micromanage various facets of the private technology sector. In the past year alone, the Department of Justice prosecuted Computer Associates International for their alleged conduct during the consummation of an otherwise lawful merger [2], and the Federal Trade Commission imposed a settlement upon an industry that vehemently denied the need for government intervention.[3]

This matter picks up where those cases left off. Now the United States claims the right to force the sale of a business they know to be unprofitable to a mystery competitor that may not exist. The government wants to "restore" competition beyond the level that actually existed prior to the challenged conduct. In doing so, the United States has ignored the economic realities of the marketplace and the technical knowledge of the specific market they seek to regulate. Thus, the PFJ here results not from the United States acting in the public interest, but from the DOJ submitting a specious claim before the Court. For this reason, the United States should withdraw from the PFJ and dismiss its complaint, or in the alternative, the Court should reject entry of the PFJ under the Tunney Act.

At the heart of this case is the independent viability of the MATRIXx product line. Wind River acquired control of MATRIXx when they acquired Integrated Systems, Inc., in April 2000. In its own competitive impact statement, the United States admits that MATRIXx was on the road to decline well before the consummation of the agreement challenged here:

"Wind River, itself a significant vendor of software for embedded systems, pursued the acquisition of ISI, in large part, to obtain a skilled pool of embedded system software developers that it hoped would shorten the time to market for critical new embedded system products. Wind River soon came to view MATRIXx as a struggling product line within ISI with small revenue and no growth potential. More importantly, the MATRIXx market was neither within Wind River's core competency nor central strategic focus or the future. Thus, Wind river decided not to devote any of its resources to the continued development and sale of MATRIXx." [4]

The Government never refutes or challenges Wind River's claims with respect to MATRIXx. Instead, the DOJ simply ignores these concerns, and merrily proceeds on the basis of alleged consumer harm. There is no effort to place the challenged conduct in an overall business context, nor does the DOJ consider any evidence that the defendants' agreement benefited competition. Instead, the DOJ relied upon its own prejudiced theories of antitrust, and imposed this proposed judgment to force the defendants' behavior to conform to the Government's expectations. The DOJ thus substituted its own *business judgment* for that of MathWorks and Wind River without any credible arguments or evidence.

By the DOJ's admission, this case was initiated in large part by consumer complaints. Apparently, some MATRIXx users were unhappy at the prospect of having to pay the transitional costs of eventually converting to Simulink. An impartial observer would conclude that while the customers' short-term costs might increase as a result of the MATRIXx acquisition, in the long term, competition would benefit from Wind River's decision to shed an unprofitable and stagnant product line. In the free market, the more efficient allocation of resources is often fostered through the natural elimination of unnecessary or redundant competition, as appears to be the case here. Short-term pricing policies are not the overriding concern of the marketplace, yet they are the *exclusive* concern of the DOJ, which acts myopically to prevent any potential increase in consumer costs.

Free competition cannot be enforced by government fiat. Competition is an inherently dynamic process that must account for multiple variables, including the freedom to either enter or exit the market as the facts demand. Businesses rely on the expertise of their officers, employees, and partners to ensure both the profitability of the firm and the fulfillment of consumer needs. Businesses that successfully answer the question of production gain customers and wealth, businesses that fail lose both.

The DOJ, by contrast, relies on static rules that fail to account for the complexity of business and yet seek to enforce an unjust and unworkable egalitarianism. While claiming that it is protecting the free market, the Government maintains total faith in its ability to identify and enforce what is in the best interest of every single businessman and consumer in the United States absent their own uncoerced choices. This faith is usually referred to as protecting the "public interest."

Reasonable people understand, however, that the DOJ can not speak for the "public interest," because no such interest has ever existed. The United States is a nation predicated on the defense of individual rights, not the collective interests of opposed pressure groups. Every individual has the right to assert their right to economic self-determination through the pursuit of voluntary trade. Objective laws are necessary to ensure the protection of individual rights in our system of voluntary trade, but that is far different than assigning the government arbitrary and capricious power to dictate economic outcomes, as is the situation here. In this case, the DOJ is suspending individual rights and replacing them with a definition of the "public interest" that doesn't hold water. Simply by asserting the metaphysical existence of the public interest in its enforcement of the antitrust laws, the DOJ denies almost every fact that drives the voluntary exchange between individuals in the free market.

This case reveals both the fundamental defects of both the antitrust laws and the strategy employed by the Government in their enforcement. Previously, in the DOJ's answer to CAC's objections to its proposed settlement agreement in United States v. Computer Associates International, Inc., *et al.* [5], the DOJ noted both CAC's philosophic opposition to the antitrust laws and the Supreme Court's history of upholding these laws. While CAC appreciates the DOJ's mastery of the blatantly obvious, we must respectfully point out that even within the context of the Supreme Court's odious approval of antitrust, the Government's position in this case and its subsequent settlement is logically defective.

Nothing in the proposed judgment benefits producers, consumers, or the

[2] *United States* v. *Computer Associates Int's, et al.*, Civil No. 01–020602 (D.D.C. April 23, 2002).

[3] *In re American Institute for Conservation of Historic and Artistic Works*, File No. 011–0244 (Sept. 10, 2002).

[4] 67 FR 64657, 64662 (October 21, 2002).

[5] 67 FR 66419 (Oct. 31, 2002).

foundations of the free market, unless it is held that capitalism is advanced by turning producers into serfs. Nothing in the proposed judgment benefits our proper understanding of the Constitution and the Executive Branch's role under that document. This settlement has everything to do with the Government asserting control over the economy, eroding the rights of businessmen, and introducing regulatory chaos into an already volatile technology market in the naked pursuit of a moral fiction. In the absence of this judgment, MATRIXx would be given the timely death the marketplace has condemned it to. With this judgment, that process will simply be prolonged, as two competitors are coerced to waste precious talent, time and money to compete far beyond the point that the marketplace has deemed such an endeavor to have practical value.

The Court must put a stop to the DOJ by rejecting entry of the proposed final judgment and dismissing the complaint with prejudice. The Court is well within its mandate under the Tunney Act to reject the proposed remedy in relationship to the violations that the United States alleges in its Complaint by holding the Government's definition of how the public interest is served by the remedy to be invalid. By protecting the public from gratuitous settlements that unjustly punish defendants, the Court would properly establish that the Tunney Act is a door that swings both ways. At a minimum, the Court should conduct a full hearing on the proposed remedy and demand the DOJ produce evidence placing the challenged conduct in its proper context.

Respectfully Submitted,

The Center for the Advancement of Capitalism

Dated: December 19, 2002.

/S/

S.M. Oliva,

Senior Fellow.

/S/

Nicholas P. Provenzo,

Chairman.

Post Office Box 16325, Alexandria, VA 22302–8325, Telephone: (703) 625–3296, Facsimile: (703) 997–6521, E-mail: info@capitalismcenter.org.

[FR Doc. 03–1419 Filed 1–22–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on December 19, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Apple, Cupertino, CA; Maximum Throughput, Montreal, Quebec, Canada; Omnibus Systems Ltd., Loughborough, England, United Kingdom; and SGI, Mountain View, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on September 17, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 6, 2002 (67 FR 67648).

Contance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–1416 Filed 1–22–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative and Production Act of 1993—Laser Forming of Complex Structures

Notice is hereby given that, on December 18, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), General Electric Company has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to and (2) the nature and objectives of a joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are GE Corporate Research and Development, Niskayuna, NY; Caterpillar Inc., Peoria, NY; Columbia University, New York, NY; A. Zahner Company, Kansas City, MO; and Native American Technologies Co., Golden, CO. The nature and objectives of the research project are to develop laser forming of complex structures. The activities of this project will be partially funded by an award from the Advanced Technology program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust.

[FR Doc. 03–1418 Filed 1–22–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Wireless Internet Forum

Notice is hereby given that, on October 28, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Mobile Wireless Internet Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Equant Telecommunications SA, Sophia Antipolis, France; and ETRI, Daejon, Republic of Korea have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Mobile Wireless Internet Forum intends to file additional written notification disclosing all changes in membership.

On May 25, 2000, Mobile Wireless Internet Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 11, 2000 (67 FR 49264).

The last notification was filed with the Department on July 18, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 4, 2002 (67 56588).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–1417 Filed 1–22–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Electronics Manufacturing Initiative, Inc. ("NEMI")

Notice is hereby given that, on December 30, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Electronics Manufacturing Initiative, Inc. ("NEMI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3SAE Technologies, Inc., Nashville, TN; Aerotech World Trade, Ltd., Westlake Village, CA; Aurora Industries, Inc., Ambler, PA; Centre for Microelectronics Assembly and Packaging (CMAP), Toronto, Ontario, Canada; E2open, Redwood City, CA; FCI Electronics, Inc., Etters, PA; Heraeus, Inc., W. Conshohocken, PA; Jabil Circuit, Inc., St. Petersburg, FL; kSARIA Corporation, Wilmington, MA; LACE Technologies, St. Charles, IL; Nextrom Photonics SA, Gals, Switzerland; Sun Microsystems, Inc., Newark, CA; and Sumitomo Electric Lightwave Corporation, Morganvile, NJ have been added as parties to this venture.

Also, CALNET, Vienna, VA; Cyberoptics Corporation, Minneapolis, MN; and Eastman Kodak Company, Rochester, NY have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NEMI intends to file additional written notification disclosing all changes in membership.

On June 6, 1996, NEMI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 28, 1996 (61 FR 33774).

The last notification was filed with the Department on November 7, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 15, 2002 (67 FR 7201).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–1415 Filed 1–22–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Existing Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Reinstatement of a currently approved collection, National Corrections Reporting Program.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until March 24, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lawrence A. Greenfeld, Director, Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *Title of the form/collection:* National Corrections Reporting Program. The collection includes the forms: Prisoner Admission Report (all States), Prisoner Release Report (all States), Parole Release Report (all States), and Prisoner in Custody at Year-end Report (only for States submitting data electronically).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form number(s): NCRP–1A, NCRP–1B, NCRP–1C, and NCRP–1D. Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: The National Corrections Reporting Program (NCRP) is the only national data collection furnishing annual individual-level information for State prisoners admitted or released during the year, those in custody at year-end, and persons discharged from parole supervision. The NCRP collects data on sentencing, time served in prison and on parole, offense, admission/release type, and demographic information. BJS, the Congress, researchers, and criminal justice practitioners use these data to describe annual movements of adult offenders through State correctional systems. Providers of the data are personnel in the State Departments of Corrections and Parole.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: BJS anticipates 44 respondents for report year 2003 with a total annual burden of 2.491 hours. Magnetic media or other electronic formats are expected from 41 respondents and 3 respondents

are expected to report manually. The respondents who have an automated data system will require an estimated 24 hours of time to supply the information for their annual caseload and an additional 2 hours documenting or explaining the data. The estimate of respondent burden for these States includes time required for modifying computer programs, preparing input data, and documenting the tape format and record layout.

The estimated average amount of time required to manually complete the NCRP–1A, NCRP–1B, and NCRP–1C questionnaires are 10 minutes, 5 minutes, and 3 minutes per inmate, respectively. The respondent burden is directly related to the number of cases reported. For 2000, the three manually reporting States submitted about 3,100 completed questionnaires for the NCRP–1A; about 2,700 for the NCRP–1B; and about 580 for the NCRP–1C. The estimated total burden for these respondents who submitted data manually was 771 hours. We expect no additional manual reporters in the future; and we expect an insignificant amount of increase in the number of prison admissions, prison releases and parole exists in the three States that currently report manually.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 2,491 burden hours annually associated with this information collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 16, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–1436 Filed 1–22–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection: Comments Requested

ACTION: 60-Day Emergency Notice of Information Collection Under Review: Reinstatement, without change, of a previously approved collection for which approval has expired. Certification of Compliance with Eligibility Requirements of Section 826 of the Higher Education Amendments of 1998.

The Department of Justice, Office of Justice Programs, Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by January 31, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Cathy Poston, Attorney/Advisor, Office on Violence Against Women, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington DC 20531, or call (202) 305–2589.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Certification of Compliance with Eligibility Requirements of Section 826 of the Higher Education Amendments of 1998.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: none. Office of Violence Against Women, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked to required to respond, as well as brief abstract:* Primary: Institutions of Higher Education. Other: None. The grants to Reduce Violent Crimes Against Women on Campus Program was authorized through Section 826 of the Higher Education Amendments of 1998 to make funds available to institutions of higher education to combat domestic violence, dating violence, sexual assault and stalking crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply;* It is estimated that 125 respondents will complete the application in approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimate total public burden associated with this application is 62 hours.

If additional information is required contact: Brenda E. Dyer, Department of Deputy Clearance Office, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: January 16, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–1437 Filed 1–22–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or

continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c) (2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed. Currently, Departmental Management is soliciting comments concerning the proposed extension of the *Customer Satisfaction Surveys and Conference Evaluations Generic Clearance.*

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 24, 2003.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Darrin A. King, Office of the Assistant Secretary for Administration and Management, 200 Constitution Avenue, NW., Washington, DC 20210. Mr. King can be reached on 202–693–4129 (this is not a toll free number) or by e-mail at *king-darrin@dol.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

The Department of Labor (DOL) conducts a variety of voluntary Customer Satisfaction Surveys of regulated/non-regulated entities, which are specifically designed to gather information from a customer's perspective as prescribed by E.O. 12862, Setting Customer Service Standards, September 11, 1993. These Customer Satisfaction Surveys provide information on customer attitudes about the delivery and quality of agency products/services and are used as part of an ongoing process to improve DOL programs. This generic clearance allows agencies to gather information from both Federal and non-Federal users.

In addition to conducting Customer Satisfaction Surveys, the Department also includes the use of evaluation forms for those DOL agencies conducting conferences. These evaluations are helpful in determining the success of the current conference, in developing future conferences, and in meeting the needs of the Department's product/service users.

II. Current Actions

Over the past three years the DOL has conducted more than two dozen Customer Satisfaction Surveys and conference evaluations, which have helped assess the Departments products and services and has led to improvements in areas deemed necessary. Office of Management and Budget approval for this collection of information expires June 30, 2003. DOL proposes to seek continued approval for this collection of information for an additional three years.

Type of Review: Extension of a currently approved collection.

Agency: Office of the Assistant Secretary for Administration and Management Departmental Management.

Title: Customer Satisfaction Surveys and Conference Evaluations Generic Clearance.

OMB Number: 1225–0059.

Affected Public: Individuals and households; business or other for-profit; not-for-profit institutions; farms; Federal Government; and State, Local, or Tribal Government.

Total Respondents: Varies by survey/evaluation; may range from as few as 10 to over 63,750.

Frequency: On occasion.

Total Responses: Varies by survey/evaluation; may range from as few as 10 to over 63,750.

Average Time Per Response: Varies by survey/evaluation with an average of 9.5 minutes per survey and 2.5 minutes per evaluation.

Total Burden Hours: 13,500.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC., this 17th day of January, 2003.

Darrin A. King,

Agency Clearance Officer, Office of the Assistant Secretary for Administration and Management.

[FR Doc. 03–1521 Filed 1–22–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 16, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Type of Review: Extension of a currently approved collection.

Title: Record of Mine Closures, Opening and Reopening of Mines.

OMB Number: 1219–0073.

Affected Public: Business or other for-profit.

Frequency: On occasion; semi-annually; and annually.

Type of Response: Recordkeeping and Reporting.

Number of Respondents: 2,407.*

Requirement	Number of respondents	Annual frequency	Annual responses	Average responses time (hour)	Annual burden hours
30 CFR 75.1200, 75.1200–1, 75.1201, 75.1202, 75.1202–1, and 75.1203	224	2	448	32	14,336
30 CFR 75.1204 and 75.1204–1	724	1	724	2	1,448
30 CFR 75.373 and 75.1721	94	1	94	6	564
30 CFR 77.1200, 77.1201, and 77.1202	379	1	379	20	7,580
Totals			1,645		23,928

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $23,803,160.

Description: 30 CFR 75.1200, 75.1200–1, 75.1201, 75.1202, 75.1202–1, 75.1203, 75.1204, 75.1204–1, 75.372, 75.373, 75.1721, 77.1200, 77.1201, 77.1202, contain requirements for the following: preparation and maintenance of accurate and up-to-date mine maps; submittal to MSHA of Final Mine Ventilation Maps and for a record of Mine Closure; and notification and information submittal to MSHA for the reopening of previously abandoned or the opening of new mines.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–1519 Filed 1–22–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 9, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze on (202) 693–4158 or e-mail *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Revision of currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Black Lung Provider enrollment Form.

OMB Number: 1215–0137.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 20,100.

Number of Annual Responses: 20,100.

Estimated Time Per Response: 8 minutes (new enrollees) and 3 minutes (existing respondents).

Total Burden Hours: 2,497.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $8,040.00.

Description: The Division of Coal Mine Workers' (DCMWC) is responsible for maintaining a list of authorized treating physicians and medical facilities in the area of the miner's residence and for payment of certain medical bills for services and supplies provided to the miner under the Black Lung Benefits Act [30 U.S.C. 901 *et seq.*, 20 CFR 725.704(a) and 725.705(b)].

The OWCP–1168 is used to obtain profile information on each provider such as tax identification number, specialty, and addresses. Failure to obtain this data will prolong the bill payment process and increase the burden on providers by requiring them to resubmit bills that were previously rejected by DCMWC due to inadequate provider information.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–1520 Filed 1–22–03; 8:45 am]

BILLING CODE 4510–CK–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 30, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To

* The total respondents are 893 underground mines or 1,514 surface mines; however, only 25% of the mine operators perform these tasks utilizing mine-staff, the remaining 75% utilize contracting services. The contracting services are included as an Operating and Maintenance cost (shown below).

obtain documentation, contact Darrin King on (202) 693–4129 or e-mail: *King_Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Veterans' Employment and Training Service (VETS).

Type of Review: Extension of a currently approved collection.

Title: Eligibility Data Form. Uniformed Services Employment and Reemployment Rights Act and Veteran's Preference.

OMB Number: 1293–0002.

Affected Public: Individuals or households.

Frequency: On occasion.

Number of Respondents: 1,500.

Number of Annual Responses: 1,500.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 375.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Form VETS/USERRA/VP–1010 is used to file complaints with the Department of Labor's Veterans' Employment and Training Service under either the Uniformed Services Employment and Reemployment Rights Act or laws and regulations related to veteran's preference in Federal employment.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–1522 Filed 1–22–03; 8:45 am]

BILLING CODE 4510–79–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 9, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4148 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication of the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Work Experience and Career Exploration Programs (29 CFR 570.35A).

OMB Number: 1215–0121.

Affected Public: Individuals or households and State, Local or Tribal Government.

Frequency: Biennially.

Number of Respondents; 14,014.

Number of Annual Responses: 14,014.

Average Time Per Response:

Reporting

• WECEP Application—2 hours.

• Written Training Agreement—1 hours.

Record-keeping

• WECEP Program Information—1 hour.

• Filing of WECEP Record and Training Agreement—One-half minute.

Total Burden Hours: 7,145.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section (3)(1) of the Fair Labor Standards Act (FLSA) establishes a minimum age of 16 for most nonagricultural employment, but allows the employment of 14 and 15 year olds in occupations other than manufacturing and mining if the Secretary of Labor determines such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being. State educational agencies are required to file applications for approval of Work Experience and Career Exploration Programs (WECEP) that provide exceptions to the child labor regulations issued under the FLSA. State educational agencies are also required to maintain certain records with respect to approved WECEP programs. Less frequent application would not ensure that these programs do not interfere with the schooling of the minors or with their health and well-being. Less frequent record-keeping would make a determination of compliance with the law and regulations extremely difficult.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 03–1523 Filed 1–22–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Roof Control Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. The program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections

75.215—Longwall mining systems;

75.220—Roof control plan;

75.221—Roof control plan information;

75.222—Roof control plan-approval criteria; and

75.223—Evaluation and revision of roof control plan.

DATES: Submit comments on or before March 24, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@msha.gov* (Internet-E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 302(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 846, requires that a roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine be first approved by the Secretary of Labor (Secretary) before implementation by the operator. The plan must show the type of support and spacing approved by the Secretary, and the plan must be reviewed at least every 6 months by the Secretary.

Under 30 CFR 75.221, the information required to be submitted and approved in the roof control plan includes the following: (1) The name and address of the company; (2) the name, address, mine identification number, and location of the mine; (3) the name and title of the company official responsible for the plan; (4) a description of the mine strata; (5) a description and drawings of the sequence of installation and spacing of supports for each method of mining used; (6) the maximum distance that an ATRS system is to be set beyond the last row of permanent support (if appropriate); (7) specifications and installation procedures for liners or arches (if appropriate); (8) drawings indicating the planned width of openings, size of pillars, method of pillar recovery, and the sequence of mining pillars; (9) a list of all support materials required to be used in the roof, face and rib control system; (10) the intervals at which test holes will be drilled (if appropriate); and (11) a description of the methods to be used for the protection of persons. Under 30 CFR 75.215, the roof control plan for each longwall mining section is required to specify the methods that will be used to maintain a safe travelway out of the section through the tailgate side of the longwall and the procedures that will be followed if a ground failure prevents travel out of the section through the tailgate side of the longwall.

II. Desired Focus of Comments

MSHA is particularly interest in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; the
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the "For Further Information Contact" section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

Falls of roof, face and rib continue to be a cause of injuries and death in underground coal mines. All underground coal mine operators are required to develop and submit roof control plans to MSHA for evaluation and approval. These plans provide the means to instruct miners, who install roof supports, and the minimum requirements and placement of roof supports. The plan also provides a reference for mine supervisors to assist them in compliance with the plan requirements. In that regard the plan is a working document for the miners.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Roof Control Plan.

OMB Number: 1219–0004.

Recordkeeping: Indefinite.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Section	Total respondents	Frequency	Total responses	Avg. time/ response (hours)	Burden hours
75.220	47	On occasion	47	24	1,128
75.223	893	On occasion	957	5	4,785
75.223(b)	893	On occasion	1,753	.08	140
Totals	1,833		2,757		6,053

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $5,020.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 16th day of January, 2003.

Thomas Charboneau,

Financial Manager, Office of Administration and Management.

[FR Doc. 03–1428 Filed 1–22–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Prohibited Transaction Class Exemption 2002–12, Cross-Trades of Securities by Index and Model Funds

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments on the proposed extension of the disclosure provisions of the Prohibited Transaction Class Exemption 2002–12, Cross-Trades of Securities by Index and Model Funds.

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the Addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before March 24, 2003.

ADDRESSES: Joseph S. Piacentini, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, FAX (202) 219–5333. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

PTE 2002–12 exempts certain transactions that would be prohibited under the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and the Federal Employees' Retirement System Act (FERSA), and provides relief from certain sanctions of the Internal Revenue Code of 1986 (the Code). The exemption permits cross-trades of securities among index and model-driven funds (Funds) managed by investment managers, and among such Funds and certain large accounts (Large Accounts) that engage such managers to carry out a specific portfolio restructuring program or to otherwise act as a "trading adviser" for such a program. By removing existing barriers to these types of transactions, the exemption increases the incidences of cross-trading, thereby lowering fees to plans from what they would otherwise be if based on multiple individual trades.

In order for the Department to grant an exemption for a transaction or class of transactions that would otherwise be impermissible under ERISA, the statute requires the Department to make a finding that the exemption is administratively feasible, in the interest of the plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries. To insure that investment managers have complied with the requirements of the exemption, the Department has included in the exemption certain recordkeeping and disclosure obligations that are designed to safeguard plan assets by periodically providing information to independent plan fiduciaries about changes in the cross-trading program. Initially, where plans are not invested in Funds, investment managers must have authorization from a plan fiduciary to invest plan assets in Funds. For plans that are currently invested in Funds, certain notices must be provided that describe the cross-trading program, update changes in Funds, and provide the plan with an opportunity to withdraw from the program. For Large Accounts, information must be provided by the investment manager about the results of transactions involved in a portfolio-restructuring program. Finally, the exemption requires that Funds and Large Accounts maintain for a period of 6 years the records necessary to enable certain persons authorized by the exemption (e.g., Department representatives or contributing employers, to determine whether the conditions of the exemption have been met.)

The exemption affects participants and beneficiaries of employee benefit plans whose assets are invested in Index or Model-Driven Funds, large pension plans and other large accounts involved in portfolio restructuring programs, as well as the Funds and their investment managers.

II. Desired Focus of Comments

- The Department of Labor (Department) is particularly interested in comments that:
- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Extension of the information collection provision of the exemption is important because, without the disclosures and recordkeeping provided for in the exemption, participants and beneficiaries' investments in a pension plan might not be protected. In addition, investment managers, that cross trade securities among Funds or engage in the restructuring of a portfolio of a Large Account would be subject to statutorily imposed sanctions under ERISA. Lastly, the exemption provides a benefit to plans and participants through savings that result from index/model cross-trading. No change to the existing ICR is proposed or made at this time.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 2002–12, Cross-Trades of

Securities by Index and Model-Driven Funds.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0115.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 66.

Responses: 924.

Estimated Total Burden Hours: 4,707.

Estimated Total Burden Cost (Operating and Maintenance): $109,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 16, 2003.

Joseph S. Piacentini,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 03–1427 Filed 1–22–03; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–005)]

NASA Advisory Council, Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness (IOR).

DATES: Friday, February 21, 2003, 12 Noon—1 p.m. Eastern Standard Time.

ADDRESSES: This meeting will be conducted via teleconference; hence participation will require contacting Mr. Lee Pagel (202/358–4621) before 12 Noon Eastern, February 14, 2003, and leaving your name, affiliation, and phone number.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Pagel, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4621.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the capability of the teleconferencing system. The agenda for the meeting is as follows:

—To assess the operational readiness of the International Space Station to support the new crew and the American and Russian flight team's preparedness to accomplish the Expedition Seven mission.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–1399 Filed 1–22–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–006)]

NASA Advisory Council, Biological and Physical Research Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee.

DATES: Thursday, February 13, 2003, from 10 a.m. until 6 p.m. and Friday, February 14, 2003 from 8 a.m. until 12 Noon.

ADDRESSES: NASA Headquarters, 300 E Street SW., Room 7H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capability of the meeting room. Due to the increased security at NASA facilities, any members of the public who wish to attend this meeting of the Biological and Physical Research Advisory Committee must provide their name, date and place of birth, citizenship, social security number, or passport and visa information (number, country of issuance and expiration), business address and phone number, if any. This information is to be provided at least 72 hours (10 a.m. EDT on February 10, 2003) prior to the date of the public meeting. Identification information is to be provided to Dr. Bradley Carpenter at 202/358–0826 or via e-mail at *bcarpent@hq.nasa.gov.* Failure to timely provide such information may result in denial of attendance. Photo identification may be required for entry into the building. Persons with disabilities who require assistance should indicate this in their message. Due to limited availability of seating, members of the public will be admitted on a first-come, first-serve basis. News media wishing to attend the meeting should follow standard accreditation procedures. Members of the press who have questions about these procedures should contact the NASA Headquarters newsroom (202/358–1600). The agenda for the meeting is as follows:

—Review Recommendations
—Program Overview
—Biomedical Research Issues
—Division Reports
—Education and Outreach Policy
—International Space Station Research Status
—Strategic Plan Development

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–1400 Filed 1–22–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIMES AND DATES: 1 p.m. to 5 p.m., March 5, 2003; 8:30 a.m. to 12 p.m., March 6, 2003.

PLACE: Embassy Suites Hotel Alexandria'Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Reports from the Chairperson and the Executive Director, Committee meetings and Committee reports, executive session, unfinished business, new business, announcements, adjournment.

PORTIONS OPEN TO THE PUBLIC: Reports from the Chairperson and the Executive Director, Committee meetings and Committee reports, unfinished business, new business, announcements, adjournment.

PORTIONS CLOSED TO THE PUBLIC: Executive session.

CONTACT PERSON FOR MORE INFORMATION: Mark S. Quigley, Director of Communications, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), *mquigley@ncd.gov* (E-mail).

AGENCY MISSION: The National Council on Disability (NCD) is an independent Federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week prior to this meeting.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week prior to this meeting.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: January 17, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–1585 Filed 1–17–03; 5:10 pm]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for the Mayor's Institute on City Design

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to one (1) award of a Cooperative Agreement to support the continuing activities of: "The Mayors' Institute on City Design." Eligibility for award of the Cooperative Agreement is limited to 501(c)(3) organizations with national programming, a mission that includes education and advocacy regarding policies and practices affecting the design of American cities, and a national constituency. The initial Cooperative Agreement will be for one year, anticipated to commence in May of 2003. Funding of $400,000 is available through the Endowment. A match of at least 30% will be required. The Mayors' Institute on City Design is a forum designed to foster an understanding of and appreciation for the role of design in creating vibrant, livable cities, and the importance of mayors and their role as design advocates in American cities. Activities of the Mayors' Institute include workshops, newsletters, and a website. Those interested in receiving the solicitation package should reference Program Solicitation PS 03–01 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. The Program Solicitation will also be posted on the Endowment's Web site at *http://www.arts.gov.*

DATES: Program Solicitation PS 03–01 is scheduled for release and posting on the Internet on approximately February 5, 2003. Proposals will be due on March 10, 2003.

ADDRESSES: Request for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682-5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 03–1462 Filed 1–22–03; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Science Foundation, National Science Board, Task Force on National Workforce Policies for Science & Engineering.

DATE AND TIME: January 30, 2003 2 p.m.–3 p.m. Open Session.

PLACE: The National Science Foundation, Stafford One Building, 4201 Wilson Boulevard, Room 120, Arlington, VA 22230.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Thursday, January 30, 2003.

Open Session (2 p.m. to 3 p.m.)

—Discussion of the draft report of the NSB/EHR Task Force on National Workforce Policies for S&E.

FOR INFORMATION CONTACT: Gerard Glaser, Executive Officer, NSB, (703) 292–7000, *www.nsf.gov/nsb.*

Gerard Glaser,

Executive Officer.

[FR Doc. 03–1668 Filed 1–21–03; 2:12 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989]

Issuance of Environmental Assessment and Finding of No Significant Impact for Exemption From Certain NRC Licensing Requirements for Special Nuclear Material for Envirocare of Utah, Inc.

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order pursuant to Section 274f of the Atomic Energy Act that would modify an Order transmitted to Envirocare of Utah, Inc. (Envirocare) on May 24, 1999. The Order was published in the **Federal Register** on May 21, 1999 (64 FR 27826). The 1999 Order exempted Envirocare from certain NRC regulations and permitted Envirocare, under specified conditions, to possess waste containing special nuclear material (SNM), in greater quantities than specified in 10 CFR part 150, at Envirocare's low-level waste (LLW) disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR part 70. The 1999 Order permits Envirocare to possess SNM without regard for mass. Rather than relying on mass to ensure criticality safety, concentration-based limits are being applied, such that accumulations of SNM at or below these concentration limits would not pose a criticality safety concern. The methodology used to establish these limits is discussed in the 1999 SER that supported the 1999 Order.

Envirocare is licensed by the State of Utah, an NRC Agreement State, under a 10 CFR part 61 equivalent license for

the disposal of LLW. Envirocare is also licensed by Utah to dispose of mixed-radioactive and hazardous wastes. In addition, Envirocare has an NRC license (SMC–1559) to dispose of waste containing 11(e)2 byproduct material.

In letters dated July 3, 2002, and July 29, 2002, Envirocare requested that the 1999 Order be amended as discussed below. Staff's safety analysis for the revisions to the 1999 Order are discussed in the companion Safety Evaluation Report (SER).

II. Environmental Assessment (EA)

Identification of Proposed Action

Envirocare proposes that NRC amend the 1999 Order as follows: (1) Include stabilization of liquid waste streams containing SNM; (2) include the thermal desorption process; (3) change the homogenous contiguous mass limit from 145 kg to 600 kg; (4) change the language and SNM limit associated with footnotes "c" and "d" of Condition 1 to reflect all materials in Conditions 2 and 3; and (5) omit the confirmatory testing requirements for debris waste.

Need for the Proposed Action

The 1999 Order limited certain mixed waste processing activities to those specifically approved in the Order. Envirocare is expanding its mixed waste processing capabilities to include stabilization of liquid waste streams and thermal desorption for economic reasons. Moreover, Envirocare's State of Utah licenses have been modified to include these processes, and revision of the 1999 Order is required to allow for treatment by these processes of waste streams containing SNM. Envirocare has been operating under the Order since 1999 and believes that some conditions need to be clarified.

Alternatives to the Proposed Action

The NRC staff considered two alternatives to the proposed action. One alternative to the proposed action would be to not revise the exemption (no-action alternative). Another alternative would be to revise the exemption as requested by Envirocare but with additional conditions.

Affected Environment

NRC has prepared an environmental impact statement (EIS) (NUREG–1476), SERs, and EAs for its licensing action. The affected environment is discussed in detail in NUREG–1476.

Environmental Impacts of the Alternatives

No Action Alternative: For the no-action alternative, the environmental impacts would be the same as evaluated in the Environmental Assessment (64 FR 26463, May 14, 1999) to support the 1999 Order. The regulations regarding SNM possession in 10 CFR part 150 set mass limits whereby a licensee is exempted from the licensing requirements of 10 CFR part 70 and can be regulated by an Agreement State. The licensing requirements in 10 CFR part 70 apply to persons possessing greater than critical mass quantities (as defined in 10 CFR 150.11). The principle emphasis of 10 CFR part 70 is criticality safety and safeguarding SNM against diversion or sabotage. The NRC staff considers that criticality safety can be maintained by relying on concentration limits, under the specified conditions. These concentration limits are considered an alternative definition of quantities not sufficient to form a critical mass to the weight limits in 10 CFR 150.11; thereby, assuring the same level of protection. The 1999 EA concluded that the 1999 Order would have no significant radiological or nonradiological environmental impacts.

Proposed Action: For the proposed actions, the environmental impacts of changing the homogenous contiguous mass limit from 145 kg to 600 kg and changing the language and SNM limit associated with footnotes "c" and "d" of Condition 1 to reflect all materials in Conditions 2 and 3 would have the same environmental impacts as the 1999 Order and the no action alternative. In the SER supporting the revision to the 1999 Order, staff concluded that including stabilization of liquid waste streams containing SNM and thermal desorption process, and omitting the confirmatory testing requirements for debris waste could increase the risk of an inadvertent criticality. The environmental impacts from a criticality accident at the Envirocare site would include human health impacts to worker and possible loss of life to a few workers. Given the proximity of the public, human health impacts to the public (such as motorist on adjacent roadways) would not be expected to be significant. Gaseous and particulate emissions during the criticality could contaminate land outside the restricted area. Cleanup of this contamination would have some short-term impact on the environment.

Proposed Action with Additional Conditions: In the SER supporting the revision to the 1999 Order, staff identified additional conditions that would be required to ensure sufficient protection of health, safety, and the environment. These include limiting the mass of SNM in liquid waste, requiring SNM concentration testing following thermal desorption treatment, reducing the concentration limit associated with footnote "c", and reducing the allowable concentration when confirmatory sampling and testing is not conducted by Envirocare. These conditions would result in the same environmental impact as the no action alternative.

Preferred Alternative

The staff has concluded in the SER, dated January 14, 2003, for this exemption request that the proposed action (*i.e.*, revise the exemption as request by Envirocare without additional conditions) would not provide sufficient protection of health, safety, and the environment. Therefore, staff's preferred alternative is to revise the 1999 Order with additional conditions. These include limiting the mass of SNM in liquid waste, requiring SNM concentration testing following thermal desorption treatment, reducing the concentration limit associated with footnote "c", and reducing the allowable concentration when confirmatory sampling and testing is not conducted by Envirocare. The staff has concluded that with these revised conditions, the conclusion in the 1999 EA associated with the 1999 Order remain valid.

Agencies and Persons Consulted

Officials from the State of Utah, Department of Environmental Quality, Division of Radiation Control were contacted about this EA for the proposed action and had no comments. Because the proposed action is not expected to have any impact on treated or endangered species or historic resources, the Fish and Wildlife Service and State of Utah Historic Preservation Officer were not consulted.

III. Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the NRC finds that the preferred alternative of revising the exemption with additional conditions will not significantly impact the quality of the human environment.

Accordingly, the NRC has decided not to prepare an EIS for the proposed exemption.

IV. Further Information

The requests for modifying the Order are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html* ML021900394 and ML022180270. The January 14, 2003, Safety Evaluation is available at

ML023470587. The 1999 EA is available in the **Federal Register** at 64 FR 26463 (May 14, 1999). Documents may also be obtained from NRC's Public Document Room at U.S. Nuclear Regulatory Commission, Public Document Room, Washington, DC 20555. Any questions with respect to this action should be referred to Timothy Harris, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6613, Fax: (301) 415–5398.

Dated at Rockville, Maryland this 14th day of January, 2003.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Acting Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–1460 Filed 1–22–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

January 30, 2003, Board of Directors Meeting

TIME AND DATE: Thursday, January 30, 2003, 1:30 p.m. (open portion); 1:45 p.m. (closed portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting open to the public from 1:30 p.m. to 1:45 p.m. Closed portion will commence at 1:45 p.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's report.
2. Testimonials:

1. Lottie L. Shackelford.
2. Melvin E. Clark, Jr.
3. John J. Pikarski, Jr.

FURTHER MATTERS TO BE CONSIDERED: (Closed to the public, 1:45 p.m.)

1. Finance project in Pakistan;
2. Finance project in South Africa;
3. Finance project in Bolivia;
4. Finance project in Sub-Saharan Africa;
5. Insurance project in Kazakhstan;
6. Pending major projects;
7. Reports.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: January 17, 2003.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 03–1565 Filed 1–17–03; 4:18 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (Aquila, Inc. (Formerly Known as UtiliCorp United, Inc.), Common Stock, $1.00 Par Value) File No. 1–16315

January 16, 2003.

Aquila, Inc. (formerly known as UtiliCorp United, Inc.), a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $1.00 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on December 2, 2002 to withdraw its Security from listing on the Exchange. The Issuer states that it decided to delist the Security from the PCX as part of the cost-saving measures currently employed by the Issuer in light of its challenging financial situation. In addition, the low volume of trading in the Security (less than 1%) on the PCX does not justify the PCX's listing cost. The Issuer states that 99.6% of the trading in the Security is traded on the New York Stock Exchange, Inc. ("NYSE").

The Issuer stated in its application that it has complied with the rules of the PCX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the PCX and from registration under section 12(b)[3] of the Act and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before February 7, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–1450 Filed 1–22–03; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Chicago Stock Exchange, Inc. (DST Systems, Inc., Common Stock, $.01 Par Value, and Preferred Stock Purchase Rights) File No. 1–14036

January 16, 2003.

DST Systems, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value, and Preferred Stock Purchase Rights ("Securities"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX" or "Exchange").

The Issuer states in its application that it has met the requirements of the rules of the Exchange (CHX Article XXVIII, Rule 4) by complying with Exchange's rules governing an issuer's voluntary withdrawal of a security from listing and registration and by complying with all laws in effect in the State of Delaware.

On May 14, 2002, the Board of Directors of the Issuer unanimously approved a resolution to withdraw the Issuer's Securities from listing on the CHX. In making the decision to withdraw the Securities from listing and registration on the CHX, the Issuer states that the expense and administrative time associated with remaining list on the CHX outweighs the limited

[5] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).

advantages, and the Issuer no longer sees the value of the additional market place. The Issuer states that the Securities have traded on the New York Stock Exchange, Inc. since November 1995.

The Issuer's application relates solely to the withdrawal of the Securities from listing and registration on the CHX and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before February 7, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the CHX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–1451 Filed 1–22–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25889; File No. 812–12845]

American United Life Insurance Company, *et al.*; Notice of Application

January 16, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to section 6(c) of the Investment Company Act of 1940, as amended ("1940 Act"), providing exemptions from sections 2(a)(32), and 27(i)(2)(A) of the 1940 Act and rule 22c–1 thereunder to the extent necessary to permit the recapture of certain bonus credits.

Applicants: American United Life Insurance Company ("AUL"), AUL American Individual Variable Annuity Unit Trust (the "Separate Account"), and OneAmerica Securities, Inc. (the "Distributor"), collectively the "Applicants."

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 6(c) of the 1940 Act exempting them, to the extent deemed necessary, from Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder, to permit AUL to recapture part or all of a credit applied to premium payments made within the first twelve months after a Contract is issued, in the following instances: (i) When a Contract owner exercises the Contract's free look provision; and (ii) when a Contract owner makes any withdrawal from a Contract within the first seven Contract years. Applicants request that the order extend to other variable annuity contracts that are substantially similar in all material respects to the Contracts that AUL, its affiliates and successors in interest may issue in the future.

FILING DATE: The application was filed on June 28, 2002, and amended and restated on November 8, 2002, December 26, 2002 and January 16, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 10, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o John C. Swhear, Esq., American United Life Insurance Company, One American Square, Indianapolis, Indiana 46282. Copies to: Ethan D. Corey, Esq., Dechert, 1775 Eye Street, NW., Washington, DC 20006–2401.

FOR FURTHER INFORMATION CONTACT: Patrick F. Scott, Attorney, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549 (202) 942–8090.

Applicants' Representations

1. AUL is an Indiana stock insurance company. AUL is the depositor and sponsor of the Separate Account, a separate account established under Indiana law.

2. The Separate Account is registered with the Commission under the 1940 Act as a unit investment trust. AUL owns the assets of the Separate Account that supports obligations under certain individual variable annuity contracts (the "Contracts"). The Separate Account is currently divided into sub-accounts referred to as Investment Accounts. Each Investment Account invests exclusively in shares of one of the underlying open-end management investment companies, or series thereof, available as investment options under the Contracts. Premiums may be allocated to one or more Investment Accounts available under a Contract. AUL may in the future establish additional Investment Accounts of the Separate Account, which may invest in other securities, mutual funds, or investment vehicles.

3. The individual variable annuity contracts, which are issued by AUL through the Distributor, are unbundled. That is, there is a base contract, with a standard death benefit, and annuity payout options, as well as transfer privileges and dollar cost averaging. Other features under the contract include several optional benefit riders that may be added at the time the Contract is issued for an additional asset-based fee. The Contract has the following charges: (i) A deferred sales charge as a percentage of contributions withdrawn as described above; (ii) an administrative expense fee equal to 0.15% of average Variable Account value on an annual basis; (iii) an annual Contract fee of $50 for contracts with Account Values less than $20,000; $30 for contracts with Account Values $20,000 or greater, but less than $50,000; and $0 for contracts with Account Values $50,000 or greater; (iv) a mortality and expense risk charge equal to 1.15% of average Variable Account value on an annual basis; and (v) any applicable charge for each of the selected riders, described in the Application. Contract owners in certain states may also be required to pay any applicable state premium tax. In addition, assets invested in the Investment Accounts are charged with the annual operating expenses of the underlying Funds.

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[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

4. Premiums under the Contracts may vary in amount and frequency, subject to certain limitations. The Contracts also provide for the accumulation of values either on a variable basis, a fixed basis, or both, as well as several options for fixed and variable annuity payments to begin on a future date. Premium payments under the Contracts may be made at any time during the Contract owner's life and before the Contract's annuity date. The Contract owner has the right to return the Contract for any reason within the "free look" period, which is a ten-day period beginning when the Contract owner receives the Contract. If a particular state requires a longer free look period, then eligible Contract owners in that state will be allowed the longer statutory period to return the Contract. The returned Contract will be deemed void and AUL will refund the Account Value, which is the total sum of a Contract owner's interest in the Variable Account and the Fixed Account(s). Initially, the Account Value is equal to the initial premium less any applicable premium tax and thereafter reflects the net result of premiums, investment experience, charges deducted, and any withdrawals taken.

5. The optional Extra Credit Premium Rider offers a credit of 3%, 5% or 6% of the total first year premium payments (the "Credit"). The Contract owner may select the 3% Credit rider only when the Six Year Contract Withdrawal Charge Rider is selected. If a Contract owner selects the Extra Credit Premium Rider at the time of application, AUL will credit an extra amount to the Contract each time the Contract owner makes a premium payment within the first twelve months after the Contract is issued. AUL will allocate Credit amounts pro rata among the Investment Accounts in the same ratio as the premium payment to which the Credit relates. AUL will fund the Credit amounts from its general account assets.

The annual charge for the Credit Rider will be initially set at 0.55%, 0.65% and 0.75%, of average Account Value, respectively, for the 3%, 5% and 6% Credit amounts. This rider charge will apply until the Credit is totally vested, according to the following vesting schedule:

Contract year	3% credit (percent)	5% credit (percent)	6% credit (percent)
1	0	0	0
2	0	0	4.167
3	25	16.67	16.67
4	50	33.33	33.33
5	75	50	50
6	100	66.67	66.67
7	100	83.33	83.33
8	100	100	100

AUL will discontinue the charge for the Extra Credit Premium Rider at the end of the fifth contract year for the 3% Extra Credit Premium Rider and at the end of the seventh contract year for the 5% and 6% Extra Credit Premium Riders.

6. If a Contract owner exercises the free look right, his or her Account Value will be adjusted to reflect the recapture of non-vested Credit amounts paid on the Contract, consistent with the vesting schedule above. However, any earnings or loss on the non-vested Credit will be fully vested and considered part of the Account Value. AUL will refund the premium paid in those states where required by law and for individual retirement annuities. In all other cases, the Contract owner bears the investment risk during the period prior to AUL's receipt of request for cancellation. In addition, all or part of the Credit may be recaptured by AUL if the Contract owner makes a withdrawal in the first seven contract years, depending upon the vesting schedule above. Regardless of whether or not the Credit is vested, all gains or losses attributable to the Credit are part of the Contract owner's Contract value and are immediately vested.

7. During the lifetime of the annuitant, at any time before the annuity date and subject to the limitations under any applicable qualified plan and applicable law, a Contract owner may surrender a Contract or take a withdrawal from a Contract. A withdrawal may be requested for a specified percentage or dollar amount of a Contract owner's Account Value. Upon payment, the Contract owner's Account Value will be reduced by an amount equal to the payment, any applicable withdrawal charge, calculated as a percentage of first year premium, and any recapture of non-vested Credit amounts consistent with the vesting schedule above. The withdrawal charge is based on the following schedule:

Contract year	Withdrawal charge percentage
1	7
2	6
3	5
4	4
5	3
6	2
7	1
8	0

An amount withdrawn during a Contract year, referred to as the "free withdrawal amount," will not be subject to an otherwise applicable withdrawal charge. The free withdrawal amount is 12% of Account Value, including any vested and non-vested Credit amounts, at the beginning of the Contract year in which the withdrawal is being made.

8. Applicants state that if a contract owner has not chosen an Extra Credit Premium Rider, AUL will first provide a 12% free withdrawal amount, which is calculated based on the Account Value at the most recent contract anniversary. Any amounts withdrawn in excess of the free withdrawal amount will be assessed a withdrawal charge based on the table above. The withdrawal charge is calculated as a percentage of first year premium not previously withdrawn. After the withdrawal, the first year premium amount upon which a withdrawal charge may be assessed in the future is reduced by the total amount of the withdrawal, which includes the free withdrawal amount.

9. Applicants further state that, if a contract owner has chosen an Extra Credit Premium Rider, AUL will first provide a 12% free withdrawal amount. Next, any amounts withdrawn in excess of the free withdrawal amount will be subject to a recapture of non-vested Credit amounts (see vesting schedule in paragraph 5 above, explaining the "Extra Credit Premium Rider") and assessed a withdrawal charge as described above. The credit will be

recaptured in proportion to the amount in excess of the free withdrawal amount.

After the withdrawal, the first year premium amount from which non-vested Credit amounts may be recaptured and upon which a withdrawal charge may be assessed in the future, is reduced by the total amount of the withdrawal, which includes the free withdrawal amount. In other words, while a withdrawal charge will be assessed and credit recaptured only on the amount in excess of the free withdrawal amount, the premium upon which future recaptures and withdrawals may be assessed is reduced by the total amount of the withdrawal. Once the remaining premium is reduced to zero, no further withdrawal charges may be assessed and no further credits may be recaptured, since withdrawal charges and recaptures are based on first year premium, and the first year premium has been exhausted.

10. The Six Year Contract Withdrawal Charge Rider will reduce the withdrawal charge period by two years. The final two years of the withdrawal charge will be dropped, and the withdrawal charges assessed during the previous years are consistent with the Withdrawal Charge schedule listed above. The annual charge for this rider will be initially set at 0.30% of average Value. The 3% optional Extra Credit Premium Rider must be selected with the Six Year Contract Withdrawal Charge Riger. No other Extra Credit Premium Rider is available with this rider.

11. The Long Term Care Facility and Terminal Illness Rider provides a waiver of both withdrawal charges and recapture of Credits if the Extra Premium Rider is selected, on withdrawals that qualify under the Rider. Therefore, under the rider, if a Contract owner is confined for a continuous 90-day period to a long-term care facility or for a 30-day period to a hospital, as defined by the rider provisions, Withdrawal charges will not apply and Credits will not be recaptured, if the Extra Credit Premium Rider is selected. In addition, if the Contract owner has been diagnosed by a physician to have a terminal illness, as defined by the rider, and AUL has received a physician's letter at its home office, no withdrawal charges will be deducted upon withdrawal, and no Credits will be recaptured, if the Extra Credit Premium Rider is chosen. The charge for this benefit is included in the base mortality and expense risk charge.

Applicants' Legal Analysis

1. Section 27(i) of the 1940 Act was added to the Act to implement the purpose of the National Securities Markets Improvement Act of 1996. Section 27(i)(2)(A) of the 1940 Act provides that it shall be unlawful for a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

2. Applicants assert that the recapture of the Credit in the circumstances set forth in this application would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the Credit allocated to his or her Contract value upon receipt of a contribution is not fully vested until the eighth contract year. Until the right to recapture has expired and any Credit amount is vested, AUL retains the right and interest in the Credit, although not in the earnings attributable to that amount. Thus, Applicants assert, when AUL recaptures any Credit, it is merely retrieving its own assets, and the Contract owner has not been deprived of a proportionate share of the applicable Separate Account's assets because his or her interest in the Credit has not vested.

3. Applicants additionally represent that permitting a Contract owner to retain a Credit under a Contract upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it and to return it for a quick profit. Furthermore, the recapture of the full amount of Credits applied to premium payments made within the first twelve months after issuance is designed to provide AUL with a measure of protection against anti-selection. The risk here is that, rather than spreading contributions over a number of years, a Contract owner might make very large contributions during the first Contract year, the Credits vest, the Contract owner then returns the Contract and is permitted to keep the Credit amounts, thereby leaving AUL little time to recover the cost of the Credits.

4. For the foregoing reasons, Applicants submit that the provisions for recapture of Credits under the Contracts and other variable annuity contracts that are substantially similar in all material respects to the contracts described in the application, that AUL, its affiliates and successors in interest may issue in the future ("Future Contracts"), do not violate Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act because the recapture would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets.

5. Applicants further assert that a Contract owner's interest in the Credit allocated to his or her Contract value upon receipt of a contribution is not fully vested until the eighth contract year, when the right to recapture has expired and any Credit amount has vested. Until that time, Applicants state, AUL retains the right and interest in the Credit, although not in the earnings attributable to that amount. Thus, when AUL recaptures any Credit, it is merely retrieving its own assets, and the Contract owner has not been deprived of a proportionate share of the applicable Separate Account's assets because his or her interest in the Credit has not vested.

6. In addition Applicants state, permitting a Contract owner to retain a Credit under a Contract upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it and to return it for a quick profit. On the other hand, Applicants assert, the recapture of the full amount of Credits applied to premium payments made within the first twelve months after issuance is designed to provide AUL with a measure of protection against such anti-selection.

7. Applicants submit that the application of a Credit to premium payments made under the Contracts should not raise any questions as to AUL's compliance with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from Section 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described in this application without the loss of relief from Section 27 provided by Section 27(i).

8. Rule 22c–1, promulgated under Section 22(c) of the 1940 Act, prohibits a registered investment company issuing any redeemable security from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 22c–1 is intended to avoid the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price

below net asset value or repurchase at a price above it, and other unfair results, including speculative trading practices.

9. The proposed recapture of the Credit, Applicants assert, does not pose such a threat of dilution, nor does it promote speculative trading practices, calculated to take advantage of backward pricing, the two evils that Rule 22c–1 was intended to eliminate or reduce. To effect a recapture of a Credit, AUL will redeem interests in a Contract at a price determined on the basis of the current accumulation unit value(s) of the Investment Account(s) to which the Contract owner's Contract value is allocated. The amount recaptured will equal the amount of the Credit paid out of AUL's general account assets. Although the Contract owner will be entitled to retain any investment gain attributable to the Credit, the amount of that gain will be determined on the basis of the current accumulation unit values of the applicable Investment Accounts. Thus, Applicants assert, no dilution will occur upon the recapture of the Credit.

10. Applicants argue that because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Credit, Rule 22c–1 should not apply to any Credit. However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provision of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contracts.

11. Applicants submit that their request for an order that applies to the Separate Account and any Future Accounts established by AUL, in connection with the issuance of the Contracts and Future Contracts, is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants further submit that Investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in this application. Additionally, Applicants state that requiring Applicants to file additional applications would impair Applicants' ability to take advantage of business opportunities as they arise. Further, if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby. Applicants undertake that Future Contracts funded by the Separate Accounts or by Future Accounts, which seek to rely on the order issued pursuant to this Application, will be substantially similar to the Contracts in all material aspects.

Conclusion

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, security or transaction, or any class or classes of persons, securities or transactions, from any provisions of the Act, or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit, for the reasons stated herein, that their exemptive requests meet the standards set out in Section 6(c) and that an order should, therefore, be granted.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1453 Filed 1–22–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47182; File No. SR–GSCC–2002–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Imposition of a Fee on Members That Fail To Submit Transaction Data in an Interactive and Timely Manner

January 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 12, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will adjust the trade comparison fees for GSCC members that use GSCC's real time trade matching ("RTTM") process but do not submit trade data on an interactive and timely basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since its inception in December 2000, GSCC's RTTM service has grown to encompass an increasing portion of trades that are submitted to GSCC. The expansion of the use of RTTM for government securities, its introduction for mortgage backed securities products (which is scheduled for September 2002), and ultimately its use for other fixed-income products remains GSCC's most significant initiative.

In order to encourage members to shift to interactive processing, GSCC imposed, effective July 1, 2001, a five-cent per side comparison surcharge for non-interactive members.[3] The imposition of this financial incentive and the growing use of interactive messaging in connection with the RTTM service have not, however, ensured that members are submitting transaction data promptly after trade execution.

In order to ensure that members not only participate in the RTTM process but also submit transaction data on a timely basis and in order to cover the cost of batch processing, GSCC is imposing the following new fees (which fees are *in addition* to the normal 50-cent per side comparison fee and *in lieu of* the current five cent per side surcharge):

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] A transaction is considered non-interactive if it is submitted more than one hour after its execution.

1. For members that participate in GSCC's RTTM process using a GSCC Interactive Submission method,[4] there is no charge.
2. For a member that participates in GSCC's RTTM process using multi-batch submissions or submits data to GSCC via terminal: (a) Ten cents per side imposed on all of its comparison activity if at least 80% of its overall activity is submitted to GSCC within one hour of trade execution and (b) 25 cents per side fee imposed on all of its comparison activity if more than 20% of its overall activity is not submitted to GSCC within one hour of trade execution.

The percentage calculations described above will only be applied to data on new activity (*i.e.*, not on cancellations or modifications).

The fees became effective on September 1, 2002, for netting members and on January 1, 2003, for comparison-only members.

GSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it involves a change to GSCC's fee structure that will encourage members to move to interactive processing and thereby allow GSCC and its members to achieve important risk management benefits.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder because the proposed rule change is changing a due, fee, or other charge. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–GSCC–2002–06. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at GSCC's principal office. All submissions should refer to File No. GSCC–2002–06 and should be submitted within February 13, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1452 Filed 1–22–03; 8:45 am]

BILLING CODE 8010–01–M

[4] An "Interactive Submission Method" ("ISM") is defined in GSCC's rules as "a trade submission method that is used to submit data on individual trades to [GSCC] immediately after trade execution pursuant to communication links, formats, timeframes, and deadlines established by [GSCC] for such purpose. The [ISM] includes two different types of submission methods: (i) Computer-to-computer, where the trade is fed to [GSCC's] computer directly from the submitter's computer, and (ii) terminal interface, where the trade is manually entered into [GSCC's] system.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Order Granting Application To Strike From Listing and Registration; The International Securities Exchange, Inc. (The Options Clearing Corporation, Call and Put Option Contracts Respecting Certain Underlying Securities) File No. 1–7167

January 16, 2003.

The International Securities Exchange, Inc. ("ISE" or "Exchange") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(c) thereunder,[2] to strike from listing and registration on the Exchange the call and put option contracts issued by The Options Clearing Corporation respecting the underlying securities described below.

ISE Rule 503(a) generally provides that, whenever the Exchange determines that an underlying security previously approved for options transactions on the Exchange should no longer be approved, whether because it does not meet the standards for continued approval or for any other reason, the Exchange shall not open any additional options series of that class for trading, and may take steps thereafter to prohibit opening purchase transactions in options series of that class previously opened to the extent it deems such actions appropriate. When an underlying security becomes no longer approved for options transactions, the Exchange may apply to strike the related option contracts from listing and trading once all such option contracts have expired. Under this provision, the ISE has determined to strike from listing and trading the call and put option classes relating to the underlying common stock of the following companies:

EntreMed, Inc. (ENMD)

Interwoven, Inc. (IWOV)

Kmart Corporation (KMRTQ)

The Commission, having considered the facts stated in the ISE's application and having due regard for the public interest and protection of investors, orders that the application be, and it hereby is, granted, effective at the opening of business on January 17, 2003.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(c).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–1449 Filed 1–22–03; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 4251]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: International Visitor Program Assistance Awards

SUMMARY: The Office of International Visitors of the Division of Professional and Cultural Exchanges, of the Bureau of Educational and Cultural Affairs (ECA/PE/V), United States Department of State (DoS) announces an open competition for assistance awards to develop and implement International Visitor Programs (IVP). The IVP seeks to increase mutual understanding between the U.S. and foreign publics through carefully designed professional programs for approximately 4,600 foreign visitors per year from all regions of the world. The awards will fund programming for a minimum of 100 and a maximum of 550 International Visitors (IVs). Funding will be for FY–2004 (October 1, 2003—September 30, 2004). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) and not already receiving Office of International Visitor assistance awards for FY–2004 may submit proposals. [See Project Objectives, Goals and Implementation (POGI) for definitions of program-related terminology.]

The intent of this announcement is to provide the opportunity for organizations to develop and implement a variety of programs for International Visitors from multiple regions of the world or from a single region. (Please refer to POGI for breakdown of regions). The award recipients will function as national program agencies (NPAs) and will work closely with Department of State Bureau staff, who will guide them through programmatic, procedural and budgetary issues for the full range of IV programs. (Hereafter, the terms "award recipient" and "national program agency" will be used interchangeably to refer to the grantee organization(s).)

Program Information

Overview: The International Visitor program seeks to increase mutual understanding between the U.S. and foreign publics through carefully designed professional programs. IV programs support U.S. foreign policy objectives. Participants are current or potential foreign leaders in government, politics, media, education, science, labor relations, NGOs, the arts, and other key fields. They are selected by officers of U.S. embassies overseas and approved by the DoS staff in Washington, DC. Since the program's inception in 1940, there have been more than 140,000 distinguished participants in the program. Almost 200 program alumni subsequently became heads of state or government in their home countries. All IV programs must maintain a non-partisan character.

The Bureau seeks proposals from non-profit organizations for development and implementation of professional programs for Bureau-sponsored International Visitors to the U.S. Once the awards are made, separate proposals will be required for each group project [Single Country (SCP)*, Sub-Regional (SRP)*, Regional (RP)*, and Multi-Regional (MRP)*] as well as less formal proposals for Individual and Individuals Traveling Together (ITT)* programs. At this time proposals are not required for Voluntary Visitor (VolVis)* programs. Each program will be focused on a substantive theme. Some typical IV program themes are: (1) U.S. foreign policy; (2) U.S. government and political system; (3) economic development; (4) education; (5) media; (6) information technology; (7) freedom of information; (8) NGO management; (9) women's issues; (10) tolerance and diversity; (11) counter-terrorism; (12) democracy and human rights; (13) rule of law; (14) international crime; and (15) environmental issues.* IV programs must conform to all Bureau requirements and guidelines. *Please refer to the Program Objectives, Goals, and Implementation (POGI) document for a more detailed description of each type of IV program.

Guidelines: Goals and objectives for each specific IV program will be shared with the award recipients at an appropriate time following the announcement of the assistance awards. DoS will provide close coordination and guidance throughout the duration of the awards. Award recipients will consult closely with the responsible ECA/PE/V Program Officer throughout the development, implementation, and evaluation of each IV program. They should demonstrate the potential to develop the following types of programs.

1. Programs must contain substantive meetings that focus on foreign policy goals and program objectives and are presented by experts. Meetings, site visits, and other program activities should promote dialogue between participants and their U.S. professional counterparts. Programs must be balanced to show different sides of an issue.

2. Most programs will be 21 to 30 days in length and will begin in Washington, D.C., with an orientation and overview of the issues and a central examination of federal policies regarding these issues. Well-paced program itineraries usually include visits to four or five communities. Program itineraries ideally include urban and rural small communities in diverse geographical and cultural regions of the U.S., as appropriate to the program theme.

3. Programs should provide opportunities for participants to experience the diversity of American society and culture. Participants in RPs or MRPs are divided into smaller sub-groups for simultaneous visits to different communities, with subsequent opportunities to share their experiences with the full group once it is reunited.

4. Programs may provide opportunities for the participants to share a meal or similar experience (home hospitality) in the homes of Americans of diverse occupational, age, gender, and ethnic groups. Some individual and group programs might include an opportunity for an overnight stay (home stay) in an American home.

5. Programs should provide opportunities for participants to address student, civic and professional groups in relaxed and informal settings.

6. Participants should have appropriate opportunities for site visits and hands-on experiences that are relevant to program themes. The award recipients may propose professional "shadowing" experiences with U.S. professional colleagues for some programs; (A typical shadowing experience means spending a half- or full-workday with a professional counterpart.)

7. Programs should also allow time for participants to reflect on their experiences and, in group programs, to share observations with program colleagues. Participants should have opportunities to visit cultural and tourist sites; and

8. The award recipients must make arrangements for community visits through affiliates of the NCIV. In cities where there is no such council, the award recipients will arrange for coordination of local programs.

[3] 17 CFR 200.30–3(a)(1).

Qualifications

1. Applicants' proposals must demonstrate four years of successful experience in coordinating international exchanges.

2. Applicants' proposals must demonstrate the ability to develop and administer IV programs.

3. Proposals should demonstrate an applicant's broad knowledge of international relations and U.S. foreign policy issues.

4. Proposals should demonstrate an applicant's broad knowledge of the United States and U.S. domestic issues.

5. The award recipients must have a Washington, D.C. presence. Applicants who do not currently have a Washington, DC presence must include a detailed plan in their proposal for establishing such a presence by October 1, 2003. The costs related to establishing such a presence must be borne by the award recipient. No such costs may be included in the budget submission in this proposal. The award recipient must have e-mail capability, access to Internet resources, and the ability to exchange data electronically with all partners involved in the International Visitor program.

6. Proposals should demonstrate that an applicant has an established resource base of programming contacts and the ability to keep the base continuously updated. This resource base should include speakers, thematic specialists, or practitioners in a wide range of professional fields in both the private and public sectors.

7. All proposals must demonstrate sound financial management.

8. All proposals must contain a sound management plan to carry out the volume of work outlined in the Solicitation. This plan should include an appropriate staffing pattern and a work plan/time frame.

9. Applicants must include in their proposal narrative a discussion of "lessons learned" from past exchanges coordination experience, and how these will be applied in implementing the International Visitor Program.

10. The award recipients must have the capability to utilize the world wide web for the electronic retrieval of program data from the Department of State's IV program website. The award recipient's office technology must be capable of exchanging information with all partners involved in the International Visitor program. The award recipient must have the capability to electronically communicate with the Department of State's standard data exchange mechanism, the Information Exchange and Management System (IEMS) by utilizing either the IEMS application, which can be provided to the award recipient, or an approved DoS interface with the IEMS where legacy system exists. IEMS is a combination of client/server applications which collect program data from DoS missions for the International Visitor office, stores the data electronically, and enables the national program agencies to download and prepare projects for a visitor's stay in the U.S.

11. Applicants must include as a separate attachment under TAB G of their proposals the following:

a. Samples of at least two schedules for international exchange or training programs that they have coordinated within the past four years that they are particularly proud of and that they feel demonstrate their organization's competence and abilities to conduct the activities outlined in the RFGP;

b. Samples of orientation and evaluation materials used in past international exchange or training programs.

Requirements for Past Performance References

Instead of Letters of Endorsement, DoS will use past performance as an indicator of an applicant's ability to successfully perform the work. TAB E of the proposal must contain between three and five references who may be called upon to discuss recently completed or ongoing work performed for professional exchange programs (may include the IV program). The reference must contain the information outlined below. Please note that the requirements for submission of past performance information also apply to all proposed sub recipients when the total estimated cost of the sub award is over $100,000.

At a minimum, the applicant must provide the following information for each reference:

- Name of the reference organization
- Project name
- Project description
- Performance period of the contract/grant
- Amount of the contract/grant
- Technical contact person and telephone number for referenced organization
- Administrative contact person and telephone number for referenced organization

DoS may contact representatives from the organizations cited in the examples to obtain information on the applicant's past performance. DoS also may obtain past performance information from sources other than those identified by the applicant.

Personnel: Applicants must include complete and current resumes of the key personnel who will be involved in the program management, design and implementation of IV programs. Each resume is limited to two pages per person.

Budget Guidelines

Applicants are required to submit a comprehensive line-item administrative budget in accordance with the instructions in the Solicitation Package (Proposal Submission Instructions.) The submission must include a summary budget and a detailed budget showing all administrative costs. Proposed staffing and costs associated with staffing must be appropriate to the requirements outlined in the RFGP and in the Solicitation Package. Cost sharing is encouraged and should be shown in the budget presentation.

The Department of State is seeking proposals from public and private non-profit organizations that are not already in communication with DoS regarding an FY–2004 assistance award from ECA/PE/V. All applicants must have four years' experience conducting international exchanges; an ability to closely consult with DoS staff throughout program administration; and proven fiscal management integrity. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/V–04–01.

FOR FURTHER INFORMATION, CONTACT: The Office of International Visitors, Janet B. Beard, Chief, Group Projects Division (ECA/PE/V/P) by e-mail (*jbeard@pd.state.gov*) to request a Solicitation Package or with specific questions. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/*

education/RFGPs. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on March 31, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due-date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and twelve copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/V–04–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Visa Requirements: Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees, program sponsors, and participants to all regulations governing the J visa program status. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z. If the applicant is a designated Exchange Visitor Program Sponsor the applicant should provide evidence of their compliance with 22 CFR 6Z *et. seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements:

ECA will be responsible for issuing DS–2019 forms to participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, Fax: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards or cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Evidence of Understanding/Program Planning:* The proposal should convey that the applicant has a good understanding of the overall goals and objectives of the IV Program. It should exhibit originality, substance, precision, and be responsive to requirements stated in the RFGP and the Solicitation Package. The proposal should contain a detailed and relevant work plan that demonstrates substantive intent and logistical capacity. The plan should adhere to the program overview and guidelines cited in the RFGP.

2. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

3. *Institutional Capacity:* The award recipient must have a Washington, DC presence. Applicants who do not currently have a Washington, DC presence must include a detailed plan in their proposal for establishing such a presence by October 1, 2003. The costs related to establishing such a presence must be borne by the award recipient. No such costs may be included in the budget submission in this proposal. The proposal should clearly demonstrate the applicant's capability for performing the type of work required by the IV Program and how the institution will execute its program activities to meet the goals of the IV program. It should reflect the applicant's ability to design and implement, in a timely and creative manner, professional exchange programs which encompass a variety of project themes. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. Finally, the proposal also must demonstrate that the applicant has or can recruit adequate and well-trained staff.

4. *Institution's Record/Ability:* The proposal should demonstrate an institutional record of a minimum of four years of successful experience in conducting IV or other professional exchange programs, which are similar in nature and magnitude to the scope of work outlined in this solicitation. Note that evidence of success includes responsible fiscal management and full

compliance with all reporting requirements such as those set out for DoS cooperative agreements. The applicant must demonstrate the potential for programming IV participants from multiple regions of the world or from a single region.

5. *Cost-effectiveness/Cost-sharing:* The administrative and indirect cost components of the proposal, including salaries, should be kept as low as possible. Consideration will be given to proposed cost-sharing through other private sector support and institutional direct funding contributions.

6. *Project Evaluation:* Proposals should demonstrate how national program agencies would coordinate with ECA/PE/V program officers on evaluation efforts for IV projects. Examples of methods that could be used are participation of national program agency program officers in the final evaluation sessions of IV projects, and submission of final written reports on those projects to ECA/PE/V.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to accept proposals in whole or in part and make an award or awards in accordance with what best serves the interests of the International Visitor Program. The Bureau also reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 16, 2003.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–1463 Filed 1–22–03; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–268]

WTO Dispute Settlement Proceeding Regarding the Sunset Review of the Antidumping Duty Order on Oil Country Tubular Goods From Argentina

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on October 7, 2002, the United States received from Argentina a request for consultations under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") regarding the sunset review of the antidumping duty order on oil country tubular goods ("OCTG") from Argentina. Argentina alleges that the sunset review determinations made by U.S. authorities concerning this product, and certain related matters, are inconsistent with Articles 1,2,3,5,6,11,12 and 18 of the Agreement on Implementation of Article VI of the General Agreements on Tariffs and Trade 1994 ("AD Agreement"), Articles VI and X of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article XVI:4 of the WTO Agreement. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before February 21, 2003, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0051@ustr.gov*, or (ii) by mail, to Sandy McKinzy, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Argentina Sunset Dispute, with an confirmation copy sent electronically to the address above, or by fax to (202) 395–3640, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Argentina

With respect to the measures at issue, Argentina's request for consultations refers to the following:

- The final results of the sunset review by the U.S. Department of Commerce ("DOC") of the antidumping duty order on OCTG from Argentina (65 FR 66701 (November 7, 2000));
- The final determination in the sunset review by the U.S. International Trade Commission ("ITC") of the antidumping duty order on OCTG from Argentina (USITC Pub. No. 3434 (June 2001));
- The DOC's determination to continue the antidumping duty order on OCTG from Argentina (66 FR 38630 (July 25, 2001));
- Sections 751(c) and 752 of the Tariff Act of 1930, as amended;
- The URAA Statement of Administrative Action, H.R. Doc. No. 103–316, vol. 1 (1994);
- The DOC's Sunset Policy Bulletin (63 FR 18871 (April 16, 1998));
- The DOC's sunset review regulations, 19 CFR § 351.218; and
- The ITC's sunset review regulations, 19 CFR §§ 207.60–69.

With respect to the claims of WTO-inconsistency, Argentina's request for consultations refers to the following:

- The DOC failed to base the initiation of its sunset review on sufficient evidence that the termination of the antidumping duty order would likely lead to a continuation or recurrence of dumping;
- The use by the United States of a de minimis standard of 0.5 percent in a sunset review;
- The DOC's misapplication of the "likelihood" standard;
- The U.S. standard for determining whether the termination of antidumping orders would be "likely" to lead to the continuation or recurrence of injury;
- The failure by the ITC to conduct an "objective examination" of the record and its failure to base its determination of "positive evidence"; and
- The U.S. statutory requirements that the ITC determine whether injury would be likely to continue or recur "within a reasonably foreseeable time" and that the ITC "shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time".

Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above, or transmit a copy electronically to *FR0051@ustr.gov*, with "Argentina Sunset Dispute" in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically, to the electronic mail address listed above, or by fax to (202) 395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide an non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–268, Argentina Sunset Dispute) may be made by calling the USTR Reading Room at (202) 395–6168. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–1529 Filed 1–22–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Termination of Review Under 49 U.S.C. 41720 of Delta/Northwest/Continental Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Termination of review of joint venture agreements.

SUMMARY: As required by 49 U.S.C. 41720, Delta Air Lines, Northwest Airlines, and Continental Airlines submitted code-sharing and frequent-flyer program reciprocity agreements to the Department for review. After analyzing the agreements and conducting an extensive informal investigation, the Department has determined that the agreements, if implemented as presented by the three airlines, could result in a significant adverse impact on airline competition, unless the airlines formally accept and abide by certain conditions that are intended to limit the likelihood of competitive harm. If the airlines choose to implement the agreements without accepting those conditions, the Department will direct its Aviation Enforcement office to institute a formal enforcement proceeding regarding the matter.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: On August 23, 2002, as required by 49 U.S.C. 47120, Delta, Northwest, and Continental ("the Alliance Carriers") submitted code-sharing and frequent-flyer program reciprocity agreements to us for review. That statute requires such agreements between major U.S. airlines to be submitted to us more than 30 days before they are implemented. We may extend that waiting period by up to 150 days for code-sharing agreements and 60 days for other types of agreements. The airline parties to a joint venture agreement may implement the agreement without obtaining our approval once the waiting period has expired.

Our authority to extend the waiting period enables us to conduct an informal investigation and make a preliminary determination as to whether the agreement may unreasonably reduce competition and therefore constitute an unfair method of competition that would violate 49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act.[1] If we determine that an agreement violates section 411, we may bar the airlines from implementing it. Unfair methods of competition include airline agreements and other practices that violate the antitrust laws or antitrust principles. *See United Air Lines* v. *CAB*, 766 F.2d 1101 (7th Cir. 1985). A complaint that an airline practice is an unfair method of competition would be resolved after a hearing before an administrative law judge.

Rather than institute a formal enforcement proceeding, we may also ask the airline parties to make changes to their agreement to address our concerns about the agreement's impact

[1] This notice will refer to the section as section 411, its traditional name.

on airline competition. In an earlier case, we obtained the airline parties' agreement to make such changes in their agreement. In this case, we have proposed conditions to the three airlines that would alleviate our immediate competitive concerns with their proposed alliance. If the Alliance Carriers formally accept these conditions, we would not now need to institute a formal enforcement proceeding to determine whether the airlines' agreements violate section 411.

The Department's Investigation. With particular attention to our statutory responsibilities under 49 U.S.C. 40101, we reviewed the agreements as presented to us under our governing statutes to analyze their likely impact on airline competition if fully implemented. We have given outside parties the opportunity to review unredacted copies of the agreements and to submit comments based on that review and other information available to such commenters. 67 FR 69804 (November 19, 2002). We received written comments from a number of parties, including other U.S. airlines, civic parties, and the American Antitrust Institute. We have reviewed the comments, along with material obtained by us from the three airlines, we have met with the three Alliance Carriers and with parties opposed to their alliance, and we have analyzed the proposed alliance's potential impact on the basis of that material and the data presently available to us.

The proposed agreements, and their potential effects, are unusually complex. To allow sufficient time to complete our analysis, we extended the waiting period as to the code-sharing agreement for a total of 120 days, and we extended the waiting period for the frequent flyer agreement for 60 days. 67 FR 59328 (September 20, 2002); 67 FR 64960 (October 22, 2002); 67 FR 69804 (November 19, 2002); 67 FR 78036 (December 20, 2002). The airlines have not implemented either of those agreements.

In our meetings with the Alliance Carriers, we advised them that the agreements as presented to us raised serious competitive issues. We explained that this proposed alliance presents more serious competitive concerns than did the United/US Airways alliance, which we allowed to take effect subject to conditions imposed independently by the Department of Justice, in carrying out its separate statutory authority responsibilities to enforce the antitrust laws. This proposed alliance is fundamentally different from that presented to us by United/US Airways, because of the much greater overlap between the route systems of these three airlines and their possession of a substantially larger share (approximately 35 percent) of the national airline market. We invited them to propose ways that they could alleviate our concerns. We reviewed their proposals and concluded that they were not adequate. We therefore presented specific comments to the three airlines that were intended to address our primary competitive concerns while preserving the alliance's principal benefits for the traveling public and the airlines. We have had lengthy further discussions with the airlines about the terms of proposed conditions and have considered their concerns. If the Alliance Carriers formally accept and agree to abide by the conditions set forth herein, we would not seek to block their implementation of their alliance agreements at this time.

The conditions we have developed are intended to lessen the likelihood of unlawful collusion, to prevent the three airlines from hoarding airport facilities at their hubs and to make underutilized facilities available to competitors, to address the three airlines' potentially dominant combined market share at many cities and the resulting detrimental effect on entry by competitors and therefore on consumers, and to prevent anti-competitive practices involving joint marketing. We have developed these conditions in furtherance of our statutory responsibilities under 49 U.S.C. 40101 and our authority under section 411 to prevent unfair methods of competition in the airline industry and on the basis of our analysis of the alliance's potential impact on airline competition. Our conditions, designed to address this Department's present concerns under our unique statutory scheme, are in addition to, and independent of, any conditions that may be required by the Department of Justice, pursuant to its separate and distinct statutory authority to enforce the antitrust laws, and its own independent review of the proposed alliance's competitive effects.

Public Policy Background. In carrying out our responsibilities in this matter, we are mindful that Congress has mandated that the Department "shall consider" the factors enumerated in section 40101. For purposes of this proceeding, a number of these factors are particularly relevant. We must analyze the potential effects of the Alliance Carriers' proposal in the context of the express statutory goals, among others, of

(9) preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation,

(10) avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier * * * unreasonably to increase prices, reduce services, or exclude competition in air transportation, and

(13) encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.[2]

Consistent with these provisions, Congress has charged us with a responsibility to review anti-competitive conduct in the airline industry. This Department's authority under section 411 to prohibit airlines from engaging in unfair methods of competition was intended to supplement, but in no way to supplant or interfere with, the Justice Department's authority to enforce the antitrust laws. As the Supreme Court has stated, "[S]ection 411 * * * was designed to bolster and strengthen antitrust enforcement." *Pan American World Airways* v. *United States*, 371 U.S. 296, 307 (1963).

When Congress deregulated the airline industry in 1978, Congress retained the pre-existing authority of our predecessor agency, the Civil Aeronautics Board, to prevent unfair competition in the airline industry. The Airline Deregulation Act did not reduce or modify the Board's authority to prohibit unfair methods of competition. Similarly, when Congress enacted the Civil Aeronautics Board Sunset Act of 1984, Public Law 98–443, 98 Stat. 1703, it reaffirmed its intent that deregulation must be coupled with the authority to prevent anticompetitive conduct. Section 3 of that statute transferred to this Department the Board's authority to prohibit unfair methods of competition in the airline industry. Congress explained that maintaining that authority was both necessary and consistent with airline deregulation, H.R. Rep. No. 98–793, 98th Cong., 2d Sess. (1984) at 4–5:

> There is also a strong need to preserve the Board's authority under Section 411 to ensure fair competition in air transportation * * *. Although the airline industry has been deregulated, this does not mean that there are no limits to competitive practices.

[2] 49 U.S.C. 40101(a). Congress added these goals to the statutory statement of public policy goals when it enacted the Airline Deregulation Act of 1978, P.L. 95–504, 92 Stat. 1705, 1707 (1978). The statute's public policy goals provide the context for our enforcement of the prohibition against unfair methods of competition in the airline industry. *Pan American World Airways* v. *United States*, 371 U.S. 296, 307–309 (1963).

As is the case with all industry, carriers must not engage in practices which would destroy the framework under which fair competition operates. Air carriers are prohibited, as are firms in other industries, from practices which are inconsistent with the antitrust laws or the somewhat broader prohibitions of Section 411 of the Federal Aviation Act (corresponding to Section 5 of the Federal Trade Commission Act) against unfair competitive practices.

Subsequently, Congress expressly determined that this Department should implement special procedures to ensure that the potential anti-competitive effects of code-share agreements and other joint venture agreements between major airlines are thoroughly analyzed before the agreements may go into effect. Congress implemented that determination by enacting 49 U.S.C. 47120. Congress enacted section 47120 after several announcements of proposed code-share arrangements between major U.S. airlines, including the existing arrangement between Northwest and Continental.[3]

The Airlines' Proposed Relationship. The proposed Delta/Continental/Northwest alliance is a comprehensive marketing arrangement that would involve code-sharing, frequent flyer reciprocity, and reciprocal access to airport lounges. The alliance agreements have a ten-year term. Each airline would put its code on each of its partners' flights to the extent possible given the limited number of available flight numbers. The airline operating the flight would obtain the revenue paid by the passenger. Members of each airline's frequent flyer program could earn award miles and use them on flights operated by the other two airlines. Members of each partner's airport lounge program will have access to the other two airlines' airport lounges. The three airlines would engage in joint marketing programs whereby they would make joint contract proposals to corporate customers to the extent allowed by the antitrust laws and create joint travel agency incentive commission programs.

The three airlines have vigorously asserted that their alliance will benefit consumers by providing on-line services to travellers in markets that now have no on-line service and improved access to frequent flyer programs and airport lounges. They contend that each of them will independently set its own fares and schedules. They assert that they will engage in some discussions on subjects such as flight arrival times, gate locations, and certain other service features in order to provide "more seamless service." Delta, Continental, and Northwest also contend that they have structured their alliance so that they will continue to compete independently. That contention is based primarily on the fact that the ticket price paid by a traveller would go to the operating airline, even if the passenger bought the ticket from a marketing airline. Since the marketing airline does not share in the ticket revenue, that airline assertedly should have an incentive to operate its own flights. In addition, their agreements would not authorize any discussions prohibited by the antitrust laws.

Our Authority under Section 411. Our review of this proposed alliance has been conducted under this Department's unique statutory scheme. Under our governing statutes, any determination that the agreements should be prohibited would be based on a finding that they constituted an unfair method of competition. Section 411 authorizes us to prohibit conduct that does not violate the Sherman Act. See, *e.g., Pan American World Airways* v. *United States*, 371 U.S. 296, 303–308 (1963). As discussed above, our statutory authority under section 411 must be exercised in the context of the mandates to protect the public interest enumerated in 49 U.S.C. 40101.

The leading case on the scope of our authority under section 411 is *United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985) (Posner, J.). This Department inherited from the CAB the same statutory provision that was at issue in that case. In United Air Lines, the Court affirmed the Board's computer reservations system rules notwithstanding the absence of any finding that the systems' practices violated the antitrust laws. The Court held that the Board could nonetheless regulate CRS practices, because the Board "can forbid anticompetitive practices before they become serious enough to violate the Sherman Act." *United Air Lines*, 766 F.2d at 1114.

Competition Analysis. In reviewing the agreements between Delta, Continental, and Northwest, we are mindful that their joint venture relationship will not be the equivalent of a merger, that they do not now intend to significantly integrate their operations, and that each airline has represented that it will independently establish its fare levels and capacity levels in its city-pair markets. We note as well that the fares paid by passengers on flights operated under the code-share arrangement will go to the airline operating the flight, even if the passenger bought the ticket under the other airline's code. This should give each airline some incentive to compete with its partner by operating its own flights.

Nonetheless, based on all the facts presented to us, our independent knowledge of and long experience with the airline industry, and our detailed analysis under our governing statute, the Delta/Continental/Northwest alliance presents serious competitive concerns. It is substantially different from previous alliances between U.S. airlines, both in terms of the combined size of the three partners and the extent of overlap between their route systems.

First, in contrast to earlier alliances, the Delta/Continental/Northwest alliance involves three airlines that together have a large share of the national market. Northwest and Continental together have a national market share of 18 percent as measured by domestic revenue passenger miles, and Delta has 17 percent of the national market. The proposed three-airline alliance would therefore have a national market share of 35 percent. In contrast, the largest of the previous alliances, United/US Airways, resulted in a combined market share of 23 percent, and that share may be expected to decline if the two airlines' financial difficulties ultimately lead to a shrinkage of their route systems.

More significantly, both the existing Continental/Northwest alliance and the recent United/US Airways alliance involved airlines whose route systems overlapped relatively little. In 2001, Continental and Northwest overlapped in 558 markets, accounting for 6.5 million annual passengers. The United/US Airways alliance involved 543 overlapping markets accounting for 15.1 million annual passengers. United has a largely east-west route system, while US Airways has a largely north-south route system along the East Coast. In dramatic contrast, the three alliance partners' services overlap in 3,214 markets accounting for approximately 58 million annual passengers.

Thus, the Delta/Continental/Northwest alliance is not an end-to-end alliance, unlike most of the other domestic and international alliances reviewed by us, which typically have expanded the network of each alliance partner. Contrary to the three airlines' representations regarding new on-line service, Delta's code-share with Continental would give Delta access to only eleven domestic airports not now

[3] Because Northwest and Continental implemented their code-share proposal before the enactment of 49 U.S.C. 47120, the Justice Department reviewed that agreement pursuant to its authority to enforce the antitrust laws. That Department determined that it would not challenge the code-share arrangement if the two airlines complied with certain conditions, but challenged Northwest's simultaneous acquisition of the major block of Continental voting stock.

served by Delta, all of which are small. While Delta's code-share with Northwest would give Delta access to significantly more domestic airports, it appears that the total number of new on-line markets created by the alliance would still account for only 89,530 annual passengers, far less than one-tenth of one percent of all domestic passengers. Thus, the value of the alliance for the partners would come from capturing passengers now traveling on other airlines, rather than the stimulation of traffic in new "online" markets. As a result, the proposed alliance would not provide substantial network extension benefits, unlike other domestic alliances.

It also appears that the Delta/Continental/Northwest alliance would create neither substantial operating efficiencies nor substantial cost reductions for the three airlines. The alliance instead would benefit the three partners by increasing their ability to attract passengers away from competing airlines. Their ability to take passengers away from competing airlines would in part result from their improved service, such as an increased ability for travellers to earn frequent flyer awards, and, in part, from the significant advantages created when an airline (or airline alliance) dominates a city.

We recognize that the alliance could benefit a number of travellers. Travellers in some markets will have a greater choice of flights, and the members of the three airlines' frequent flyer programs will gain a greater ability to earn and use frequent flyer awards. Some markets, albeit very small markets, that now have no on-line service could, if the Alliance Carriers choose to code-share in those markets, obtain such service. In analyzing the three carriers' proposal, we must weigh the potential benefits of the alliance against its potential anti-competitive effects. The conditions set forth herein, while not preventing the airlines from implementing their alliance, would attempt to ensure that the alliance provides the benefits that its partners promised to the public. The conditions would attempt to limit the anti-competitive harm that could result from the alliance without interfering with the partners' ability to code-share in most markets, to offer reciprocity to each airline's frequent flyer and airport lounge program members, and to engage in joint marketing efforts in most cities.

In analyzing the alliance's potential impact on airline competition, we have considered the data available to us regarding the Continental/Northwest alliance, which the three airlines contend has caused no discernible competitive harm. We presently believe that that experience does not provide a valid basis for comparison. It appears that the Delta/Continental/Northwest alliance would create far fewer new on-line service opportunities, involve much more overlapping service, and pose a greater danger of collusion than did the Continental/Northwest alliance.

Our decision to allow United and US Airways to proceed with their alliance is not inconsistent in any way with our present view that the Delta/Continental/Northwest alliance presents serious competitive issues. We expressed reservations about the United/US Airways alliance, even though United and US Airways have a significantly smaller share of the national market and their route systems overlap much less than do the route systems of Delta and the existing Northwest/Continental alliance. We allowed United and US Airways to go forward, without imposing conditions additional to those imposed by the Justice Department, based on the airlines' representations that they would continue to compete independently, our analysis of the likelihood that the alliance would reduce competition, and our analysis of the potential public benefits of the alliance. 67 FR 62846 (October 8, 2002). Importantly, we did not find that the United/US Airways alliance would not reduce competition. Instead, we stated: "At the present time, the material we have reviewed is not sufficient for us to conclude that an enforcement proceeding under 49 U.S.C. 41712 would be warranted." 67 FR 62847.

In sum, based on the information provided to us, we presently believe that the Delta/Continental/Northwest alliance proposal raises several serious competitive issues. Consumer access to low fares and adequate service cannot be assured without adequate competition. The goal of maintaining competition requires (i) that the partners continue competing with each other to the maximum extent possible and (ii) that unaffiliated airlines continue serving the three partners' markets or can enter those markets without artificial barriers.

Our concerns with this alliance proposal flow directly from our responsibilities under our unique statutory scheme. We do not seek to protect favored airlines. Competition works when individual competitors find ways to improve their lot relative to others, thus forcing others to respond. The end result is more efficient airlines; better service, lower fares, and economic growth. Here, however, multiple carriers would join forces in many different ways, making it extremely difficult, it appears, for other carriers to respond effectively, and thus forcing those competing carriers to exit some markets. Unaligned carriers could be particularly vulnerable to the unprecedented market power of the Delta/Continental/Northwest alliance, and many could be weakened or cease to exist. Accordingly, we have a number of specific concerns with the alliance, which we would attempt to address through the conditions described below. We would, of course, monitor the alliance's effects on competition, and would retain the power to take further action if necessary.

Potential Collusion. First, the alliance agreements authorize a wide range of discussions between the partners, since the three airlines intend to make their services as seamless as possible. Given the broad nature of the discussions that will be required to implement the alliance, we are concerned that the communications among the carriers may lead to collusion, either tacit or explicit, on such matters as fares and service levels, notwithstanding the partners' representation that they would remain independent competitors. The face-to-face oral discussions of scheduling, use of facilities, and joint pricing proposals to corporate travel departments and travel agencies would provide new opportunities to exchange information that could facilitate tacit collusion to restrain competition. In addition, the airlines' stated goal of harmonizing their service standards, which would strengthen the alliance's "brand," seems likely to dampen the partners' interests in competing with each other on service factors, such as terms of their frequent flyer programs. In order to develop a multi-carrier "on-line" seamless service alliance, the partners may reduce the differences in their respective service features; consumers typically use differences in service features, such as frequent flyer program terms, to choose between airlines. Collusion, whether explicit or tacit, harms consumers, because it reduces or eliminates competition and enables firms to charge higher prices or offer poorer service than they would in a competitive market.

Increased Market Presence. The three airlines plan to take advantage of their combined presence at the cities they serve by code-sharing, offering frequent flyer program reciprocity, and making joint offers to corporate customers and travel agencies. This would extend the same types of competitive advantages possessed by the dominant airline in a city to a number of spoke cities, and this may substantially undermine the ability of competing airlines to maintain

service in, or enter, markets served by the alliance partners. That potential harm would result primarily from the combination of the three airlines' increased market presence and the consequent marketing advantages created by their dominance of many markets, rather than because the alliance will enable the partners to offer substantially better service. Historical evidence and analysis support the conclusion that an airline that has a large market share at a city typically has substantial competitive advantages over other airlines that the latter often cannot offset, even by offering lower fares and attractive service features. An airline's possession of a dominant market share in a city, accordingly, will give it some ability to charge supracompetitive fares and to reduce service. *See, e.g.*, U.S. Department of Transportation, Findings and Conclusions on the Economic, Policy, and Legal Issues, *Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry* (January 17, 2001) at 22–26. This is particularly true at airline hubs, including the hubs operated by the three airlines. The three airlines' proposed alliance would enable them to extend these hub advantages to spoke cities, which could deter new entry and may cause existing competitors to end their services in some markets. The resulting reduction in competition may lead to higher fares and poorer service.

We recognize that the alliance proposed by Delta, Continental, and Northwest would not give any single airline a dominant market share and that the three airlines represent that they will continue to compete independently on fares, capacity, and scheduling. Nonetheless, we believe that at many cities the alliance's impact on the prospects of entry by competing airlines would be substantially equivalent to the impact that a single airline's dominance would have at that city. Indeed, the documents provided to us confirm that the three airlines seek through the alliance to increase their collective market share in ways that would undermine the competitive position of other airlines. They intend to offer joint corporate discount contracts, joint travel agency incentive programs, and, from the traveller's perspective, combine their frequent flyer programs. Their proposed code-sharing would also increase their dominance through the simple fact of multiplying the apparent number of flights offered by each of them. In these respects, the three airlines seek to secure the same competitive advantages of a dominant market share that would accrue to them through a merger.

Joint Marketing. As noted, the three airlines plan to offer corporate customers joint contracts and to offer travel agencies joint incentive programs. In general, the airline that offers the broadest range of services will be the most attractive bidder for a corporation's business, and the airline that operates the most service at a city will offer the most attractive incentive program to travel agencies in that city. An airline that dominates a city typically structures its corporate contracts and travel agency incentive programs in ways that leverage its existing dominant market share to gain an even larger share of the business of the corporate accounts and the bookings of the travel agencies. *See e.g.* General Accounting Office, "Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets" (October 1996) at 15–19; U.S. Department of Transportation, Findings and Conclusions on the Economic, Policy, and Legal Issues, *Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry* (January 17, 2001) at 23–24. If the proposed alliance is implemented, these three airlines could do the same. The partners' joint marketing plans threaten competition in two respects. First, if they make joint offers, they are less likely to compete individually for corporate customers and travel agency patronage. Second, they could leverage their combined market share in ways that preclude any effective competition from unaffiliated airlines. For example, the Alliance Carriers could offer a corporate customer discounts on Northwest's transpacific services only if the customer booked most of its domestic travel on a particular domestic route on Delta rather than on a competing airline. The tying of the partners' services in this way could make it extremely difficult for other airlines, especially those that do not have a worldwide network like that operated by the proposed alliance, to compete.

Airport Facilities. The alliance partners have represented that they plan to consolidate their operations at airports when doing so would be feasible, a step which could free a number of gates for use by others. Opposing parties have expressed a concern that the Alliance Carriers would not make underutilized gates available to competitors and would instead "hoard" gates at airports where other facilities for new service are not obtainable. Airlines cannot enter new markets or increase service in existing markets if they cannot obtain access to the necessary airport facilities. Facilities are presently unobtainable at a number of important airports, such as Boston. The alliance partners may have an incentive and the ability to "hoard" their existing facilities or terminate their competitors' use of subleased facilities at airports where gates are otherwise unobtainable to reduce competition. Such actions could worsen a situation that already exists, resulting ultimately in higher fares and less service for consumers.

CRS Displays. If the Alliance Carriers fully implemented their proposed code-sharing agreement, each of their flights could be listed three times in the displays offered to travel agents by most of the computer reservations systems ("CRSs"). Multiple listings of the same number of physical flights would move many of the services offered by other airlines to later CRS display screens, with the likely result that many travel agents would not find and book those services. The multiple listings of the same physical flights under the codes of all three partners could thus, by itself, have the effect of reducing the number of bookings obtained by competitors from travel agents using a CRS, without any actual improvement in capacity or reduction in price. In some markets, that phenomenon could undermine a competitor's ability to maintain any service at all. Similar concerns have caused us to consider, in a presently pending proceeding, amending our CRS rules to limit the number of times any flight can be displayed under different airline codes. 67 FR 69366, 69396–69397 (November 15, 2002). The European Union's CRS rules allow a single service to be displayed under no more than two codes, even if more than two airlines sell seats on the service under their codes. 67 FR 69397.

Proposed Conditions. Utilizing all of the information presently available to us, we have conducted an independent analysis of the proposed alliance under our unique statutory authority. As noted earlier, as a result of that analysis, we presently believe that unless the Alliance Carriers formally accept and agree to certain conditions, the proposed alliance poses a serious danger to competition. The conditions discussed herein would not affect the operation of the existing Northwest/Continental alliance. We have developed them, after careful and thorough consideration of all of the relevant issues, in an attempt to alleviate the competitive concerns raised by the Delta/Continental/Northwest alliance without the need for

formal enforcement action. We would not now take enforcement action against the three airlines' implementation of the alliance if they formally agreed to the conditions. If the three airlines do not promptly notify us of their agreement to accept the conditions set forth herein, we will direct our Aviation Enforcement office to institute a formal enforcement proceeding to determine whether the airlines' agreements constitute unfair methods of competition in violation of section 411 and, if so, what remedies would be required.

We have developed six conditions, after considering the three airlines' responses to our stated concerns. For convenience, our conditions are set forth below, along with a short summary of the basis for each of them:

1. The following condition is intended to reduce the possibility of collusion that would be inconsistent with 49 U.S.C. 40101 or unlawful under 49 U.S.C. 41712:

Steering Committee: The Alliance Carriers shall not establish the Steering Committee as defined in Section 10.1 of the Marketing Agreement.[4] The Alliance Carriers shall not coordinate or agree upon pricing, scheduling (except for minor schedule adjustments to existing schedules to improve connectivity), capacity, route entry or exit, revenue/inventory management, frequent flyer terms, or upon any other matter as to which an agreement among competitors would be inconsistent with 49 U.S.C. 40101 or unlawful under 49 U.S.C. 41712. To ensure compliance with those sections, counsel shall monitor any communications concerning the above-specified topics. Monitoring by counsel shall not confer attorney-client privilege upon such communications. The Alliance Carriers shall maintain written records of all such communications among themselves regarding the Marketing Agreement and shall retain them until one year after the Marketing Agreement's termination.

2. The following condition is intended to implement the Alliance Carriers' agreement to release "Surplus Gates" and reduce the possibility that the Marketing Agreement will impede competition due to "hoarding" underutilized facilities at certain congested airports:

Airport Facilities: The Alliance Carriers agree that due to co-location the following gates, along with related facilities (including overnight positions), shall be released to the airport sponsor upon its request for lease to domestic non-Alliance Carriers or for common use: (a) Four gates at IAH, (b) two gates at DTW, (c) five gates at CVG, and (d) two gates at DFW. Additionally, if the Alliance Carriers choose to implement any provision of the Marketing Agreement at any of the hub airports[5] of any Alliance Carrier or Boston (BOS), each Alliance Carrier agrees to maintain records of daily gate usage at those airports and to retain those records until one year after the termination of the Marketing Agreement. Notwithstanding any lease provision to the contrary, the Alliance Carriers further agree to release, within sixty (60) days of request by an airport sponsor at an airport that does not have a gate available for use on reasonable and competitive terms, any underutilized leased gate, along with related facilities (including overnight positions) but excluding gates used only for international flights, for use by a domestic non-Alliance Carrier or for common-use. A gate is underutilized if it is used less than an average of six turns per day during any two consecutive calendar months. Subleases to non-Alliance Carriers shall not be cancelled to release gates under this condition. No Alliance Carrier shall be required to release an underutilized leased gate pursuant to this condition if it will be required to continue to pay rentals or charges to the airport sponsor for the gate. This condition shall not apply if a gate is underutilized due to an event of force majeure.[6]

3. The following condition is intended to ensure that the Alliance Carriers implement their representations of consumer benefits due to on-line service expansion:

Codesharing: As referenced in the Marketing Agreement, Domestic, Canadian, and Caribbean codesharing shall be limited to six hundred fifty (650) flights per two-carrier combination for a total of twenty-six hundred (2,600) flights. Not less than twenty-five percent (25%) of each marketing carrier's new codeshare flights must be to or from airports the carrier and its regional affiliates either did not directly serve or served with no more than three daily roundtrip flights as of August 2002. An additional thirty-five percent (35%) of each marketing carrier's new codeshare flights must either meet the above requirement or be to or from small hub and non-hub airports.[7] Beginning one year after the commencement of codeshare operations, any Alliance Carrier may request review of this condition. The Department will exercise its best efforts to complete the review within sixty (60) days following receipt from the Alliance Carriers of the information necessary to complete its review. Any request for modification shall not constitute a new agreement for the purposes of 49 U.S.C. 41720.

4. The following condition is intended to encourage continued independent competition and reduce the possibility of joint marketing arrangements that reduce competition:

Joint Corporate and Travel Agency Contracts: If the Alliance Carriers wish to offer joint bids to corporations or travel agencies, the corporation or travel agency shall be given the option of dealing with each Alliance Carrier separately or of receiving a joint bid from two or more of the Alliance Carriers. Only after the corporation or travel agency has requested a joint bid in writing shall such a bid be developed and submitted. In addition, the Alliance Carriers shall not offer a joint bid to any corporation or travel agency that has a principal place of business or headquarters in a city[8] where all three carriers (themselves or through regional affiliates) operate scheduled service and their combined market share[9] exceeds fifty percent as of the August prior to the offering of the joint bid. In any joint bid, the Alliance Carriers shall not make the contractual discounted fares or commissions dependent on satisfaction of minimum purchase or booking requirements, whether based on threshold or percentage, for specific domestic markets or for domestic services offered by one of the Alliance Carriers. This condition shall not apply to joint bids involving only Northwest and Continental.

5. The following condition is designed to limit the potential anti-competitive effects of multiple listings of one service under different codes, *i.e.* CRS "screen clutter," while that issue is under active review in the Department's CRS rulemaking proceeding. At the conclusion of the proceeding, the same CRS rules applicable to all other codeshare arrangements would be applicable to this codeshare agreement as well:

CRS Displays: In the current CRS rulemaking the Department is soliciting comments on whether it should limit the number of times that codeshare services are displayed (67 FR 69396–97). The European Union CRS rules limit the number of codes displayed on a flight and CRSs operating in EU member states must comply with that limit. The Alliance Carriers shall make a good faith request in writing to each CRS that the CRS, during the pendency of the CRS rulemaking, not display an Alliance Carrier's service under more than two codes in any integrated display offered by the CRS. The requests and any responses thereto shall be submitted to the Department by the Alliance Carriers.

6. The following condition is intended to limit the duration of the potential anti-competitive effects of the exclusivity clauses of the Marketing Agreement to its proposed term:

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[4] For the purposes of these conditions, the term "Marketing Agreement" includes all of the exhibits to the Marketing Agreement.

[5] For the purposes of this condition, "hub airports" are defined as Atlanta (ATL), Cincinnati (CVG), Cleveland (CLE), Dallas/Ft. Worth (DFW), Detroit (DTW), Houston (IAH), Memphis (MEM), Minneapolis/St. Paul (MSP), Newark (EWR), and Salt Lake City (SLC).

[6] For the purposes of this agreement, an "event of force majeure" is defined as follows: Acts of God; fire; damage to or destruction of aircraft or other flight equipment; riots or civil commotion; strikes, lockouts or labor disputes (whether resulting from disputes between the carrier and its employees or between other parties); U.S. military or airlift emergency or substantially expanded U.S. military airlift requirements as determined by the U.S. government; activation of the U.S. Civil Reserve Air Fleet; war or hazards or dangers incident to a state of war; acts of terrorism; or any other acts, matters or things, whether or not of a similar nature, which are beyond the control of the carrier and which shall directly or indirectly, prevent, delay, interrupt, or otherwise adversely affect the furnishing, operation or performance of a carrier; provided, however, that the carrier so effected shall take all commercially reasonable steps to cure such nonperformance or delay.

[7] For the purposes of this notice, "small hub" and "non-hub" airports are defined by the Airport Activity Statistics published by the Department of Transportation, Bureau of Transportation Statistics.

[8] For the purposes of this agreement, "city" is defined as a primary metropolitan statistical area.

[9] For the purposes of this agreement, "market share" is determined by scheduled departing seats on domestic flights.

Exclusivity Provisions: After the termination of the Marketing Agreement, no Alliance Carrier shall attempt to enforce any provision of the Marketing Agreement that would restrict any other Alliance Carrier from entering into an international or domestic marketing relationship with any other carrier.

Conclusion. If we are notified promptly that the three carriers agree to implement the alliance subject to the conditions set forth above, we would not now institute an enforcement case under our governing statute. Given our strong concern that the agreements could have anti-competitive results, however, we would continue to monitor closely the implementation of the agreements. We, of course, reserve the right, if we obtain evidence that leads us to believe that the joint venture is adversely affecting competition, to refer the matter for enforcement action. Further, if the three airlines at any time decide that they will no longer comply with a formal agreement accepting our conditions, they will have created a new agreement that must be submitted to us under 49 U.S.C. 41720, subject to all of the provisions of the statute, including the prescribed waiting period. Under our established interpretation of 49 U.S.C. 47120, the same will be true if they materially modify the terms of the agreements submitted by them on August 23.

Issued in Washington, DC on January 17, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–1528 Filed 1–17–03; 2:20 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 10, 2003

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–14203.

Date Filed: January 6, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP Fares 0273 dated December 17, 2002, TC12/TC123 North Atlantic—Resolution 015n—USA Add-on Amounts. Report—PTC COMP 990 dated December 20, 2002. Intended effective date: February 1, 2003.

Docket Number: OST–2003–14208.

Date: Filed January 6, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 257, PTC23 ME–TC3 0163 dated December 23, 2002, Resolution 010m, TC23/TC123 Middle East–TC3, Special Passenger Amending Resolution between China (excluding Hong Kong SAR and Macao SAR) and points in the Middle East. Intended effective date: January 15, 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–1480 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Motor Vehicles; Alternative Fuel Vehicle (AFV) Report

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Availability—Fleet (AFV) Report.

SUMMARY: In accordance with the Energy Policy Act of 1992 (EPAct) (42 U.S.C. 13211–13219) as amended by the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388), and E.O. 13149, "Greening the Government Through Federal Fleet and Transportation Efficiency," the Department of Transportation's annual alternative fuel vehicle reports are available on the following Department of Transportation Web site: *http://osam.ost.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kurt T. Ettenger, Departmental Fleet Manager, Office of Security and Administrative Management, 400 7th Street SW., Washington, DC 20590; telephone (202) 366–2093.

Dated: January 15, 2003.

Richard Pemberton,

Associate Director, Office of Security and Administrative Management.

[FR Doc. 03–1481 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

Maritime Administration

[USCG–2003–14294]

El Paso Energy Bridge Gulf of Mexico, LLC Deepwater Port License Application

AGENCY: Coast Guard, DOT. Maritime Administration, DOT.

ACTION: Notice of application.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) give notice, as required by the Deepwater Port Act of 1974, as amended, that they have received an application for the licensing of a deepwater port, and that the application appears to contain the required information. The notice summarizes the applicant's plans and the procedures we will follow in considering the application.

DATES: Any public hearing held in connection with this application must be held not later than September 22, 2003. The application will be approved or denied within 90 days after the last public hearing held on the application.

ADDRESSES: The mailing address for the clerk in this proceeding is: Commandant (G–M), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. Public docket USCG–2003–14294 is maintained by the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. The Docket Management Facility office maintains a Web site, *http://dms.dot.gov,* and can be reached by telephone at 202–366–9329 or fax at 202–493–2251.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice call Robert Nelson, U.S. Coast Guard, (202) 267–0496, *rnelson@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: *Receipt of application; determination.* On December 20, 2002, the Coast Guard and MARAD received an application from El Paso Energy Bridge Gulf of Mexico LLC,

1001 Louisiana Street, Houston, Texas 77002 for all Federal authorizations required for a license to own, construct and operate a deepwater port off the coast of Louisiana. On January 14, 2003, we determined that the application appears to contain all required information. The application and related documentation supplied by the applicant (except for certain protected information specified in 33 U.S.C. 1513) may be viewed in the public docket (see **ADDRESSES**).

Background. According to the Deepwater Port Act of 1974, as amended (the Act, 33 U.S.C. 1501 *et seq.*), a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, located beyond the territorial sea and off the coast of the U.S., used or intended for use as a port or terminal for the transportation, storage, and further handling of oil for transportation to any State. The Act was most recently amended by the Maritime Transportation Security Act of 2002 (MTSA, Pub. L. 107–295), which extends the deepwater port definition to include natural gas facilities.

A deepwater port must be licensed, and the Act provides that a license applicant submit detailed plans for its facility to the Secretary of Transportation, along with its application. The Secretary has delegated the processing of deepwater port applications to the Coast Guard and MARAD. The Act allows 21 days following receipt of the application to determine if it contains all required information. If it does, we must publish a notice of application in the **Federal Register** and summarize the plans. This notice is intended to meet those requirements of the Act and to provide general information about the procedure that will be followed in considering the application.

Application procedure. We consider the application on its merits. Under the Act, we have 240 days from the date this notice is published to hold at least one public hearing, which is your opportunity to submit written or oral comment on the application. We will publish a separate **Federal Register** notice to notify you of any hearing we decide to hold. At least one hearing must be held in each adjacent coastal state. Pursuant to 33 U.S.C. 1508, we designate Louisiana as an adjacent coastal state. Other states may apply for adjacent coastal state status in accordance with 33 U.S.C. 1508(a)(2). After the last public hearing, Federal agencies have 45 days in which to comment to us on the application, and approval or denial of the application must follow within 90 days after the last public hearing. Details of the application process are described in 33 U.S.C. 1504 and in 33 CFR part 148.

The present application involves a proposed liquefied natural gas (LNG) facility. As such, MTSA excepts the application from the restrictions of 33 U.S.C. 1504(d)(1)–(3) and 33 U.S.C. 1504(i)(1)–(3). While this permits submission and consideration of competing applications for the same "application area", there may still be practical restrictions from a navigation safety standpoint with regard to the proximity of multiple deepwater ports.

We will review the application under the current deepwater port regulations published in 33 CFR part 148. On May 30, 2002 (67 FR 37920) the Coast Guard published a Notice of Proposed Rulemaking (NPRM) indicating its intent to revise those regulations. Public comments have been received in response to the NPRM and we will consider those comments prior to adopting revised regulations. In addition, MTSA mandates that we revise existing deepwater port regulations as soon as practicable to implement extension of deepwater port regulations to natural gas. It also allows for the issuance of an interim final rule without public notice and comment. Thus, the current regulations may be amended before we have fully processed the application. In that event, the amended regulations will govern further processing of the application as soon as they take effect.

Summary of the application. El Paso Energy Bridge Gulf of Mexico, LLC (Energy Bridge GOM) proposes to locate, construct and operate the Deepwater Port on Block 603, West Cameron Area, South Addition, which has been leased from the Minerals Management Service (MMS) for this project.

The Deepwater Port will consist of a Submerged Turret Loading (STL) system that is comprised of a submerged turret buoy; chains, lines and anchors; a flexible riser; and a subsea manifold. Other components of the Deepwater Port will include approximately 1.93 miles of 20-inch pipeline; a small meter platform and risers; a 20-inch diameter pipeline approximately 3.96 miles in length that will extend from the meter platform to Sea Robin Pipeline Company (Sea Robin), an offshore natural gas pipeline subject to the Federal Energy Regulatory Commission's (FERC) Natural Gas Act (NGA) jurisdiction; and a separate 20-inch diameter pipeline approximately 1.38 miles in length that will extend from the meter platform to a section of pipe that will interconnect to an offshore natural gas pipeline system commonly referred to as the Blue Water system. This system is owned in part by Tennessee Gas Pipeline Company and in part by Columbia Gulf Transmission Company, another interstate pipeline subject to the FERC's NGA jurisdiction. The natural gas transported by Sea Robin and Blue Water will come ashore at the Louisiana coast.

The Deepwater Port will be used to deliver to onshore markets natural gas derived from the regasified LNG that will be received from sources worldwide. The gas to be transported through the Deepwater Port will be owned by Deepwater Energy L.P., (Deepwater Energy) an affiliate of Energy Bridge GOM. Deepwater Energy will utilize the entire capacity of the Deepwater Port.

Gas will be delivered to the Deepwater Port by conventional LNG vessels, which incorporate shipboard regasification capabilities. The vessels will operate in foreign commerce and be leased to affiliates of Energy Bridge GOM. The vessels that will be used to deliver natural gas to the Deepwater Port will have a capacity to hold 138,000 cubic meters of LNG and will regasify the LNG onboard at the point of delivery to the Deepwater Port so that imports will consist of gas in its vaporous state, rather than in a liquefied state. Each 138,000 cubic meter LNG vessel will deliver approximately 2.9 billion cubic feet (BCF) of natural gas through the Deepwater Port. The first El Paso Energy Bridge vessel (EPEBV) will be available to commence service by November of 2004. Each vessel will have fully-integrated regasification facilities on-board, using the same type of proven regasification technology that is used in land-based regasification terminals. Each EPEBV will also have the alternate capability to deliver LNG to conventional onshore regasification terminals in the same manner as existing LNG vessels.

When an EPEBV reaches the location of the Deepwater Port, it will retrieve and connect to the STL system. For that purpose, a winch located on the vessel will raise the submerged buoy from its subsurface location, where it is located when not connected to an EPEBV. The buoy will be drawn into an opening in the hull of the vessel. After it is secured to the EPEBV, the buoy will serve both as the mooring system for the vessel and as the offloading mechanism for transferring the natural gas. After the buoy is attached to the vessel and all start-up prerequisites are satisfied, the on-board LNG regasification process will commence. The gas is then discharged through the buoy into the subsea flexible riser. The gas will move

from the riser to a pipeline and manifold (PLEM) after which the gas will be delivered into a twenty-inch diameter pipeline to be constructed by Energy Bridge GOM. The gas will travel for approximately 1.93 miles through the pipeline. At the end of that pipeline, the gas will be delivered to a small metering platform, constructed by Energy Bridge GOM, where the gas will flow through one of two gas measurement meters, one measuring gas destined for the Sea Robin system and a second measuring gas to be delivered to the Blue Water system. After metering, the gas pressure will be reduced by regulators on the platform so that the gas can enter either the Sea Robin or Blue Water system at the pressure prescribed by the operators for each of those systems. Natural gas delivered to the Sea Robin system will be transported through a 3.96 mile pipeline, while natural gas delivered to the Blue Water system will be transported through a 1.38 mile pipeline. The pipeline extending to the Sea Robin system will cross portions of West Cameron Blocks 602 and 601 and will interconnect with Sea Robin on East Cameron Block 335. The second pipeline from the platform will cross a portion of West Cameron Block 600 and will interconnect with the Blue Water system on West Cameron Block 601.

Dated: January 15, 2003.

L.L. Hereth,

Rear Admiral, Coast Guard, Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

Raymond R. Barberesi,

Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration.

[FR Doc. 03–1486 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Establish an Air Tour Management Plan and Notice of Public Meeting for Haleakala National Park

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice.

SUMMARY: The FAA, in cooperation with the NPS, is initiating development of an Air Tour Management Plan (ATMP) for the Haleakala National Park pursuant to the National Parks Air Tour Management Act of 2000 (Public Law 106–181) and its implementing regulations contained in title 14, Code of Federal Regulations, part 136, *National Parks Air Tour Management*, published October 25, 2002 (67 FR 65662). The objective of the ATMP is to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and abutting tribal lands, of the Haleakala National Park. Following a Federal rulemaking action, the ATMP will be incorporated into part 136. This notice provides information on the Public Information Workshop for all persons having an interest in Haleakala National Park.

DATES: The Public Information Workshop will be held February 26, 2003, at 6 p.m.

ADDRESSES: The Public Information Workshop will be held at the Pukalani Community Center, 91 Pukalani Street, Pukalani, Hawaii.

FOR FURTHER INFORMATION CONTACT: Brian Armstrong, Air Tour Management Plan Program Manager, Executive Resource Staff, AWP–4, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Los Angeles, California 90009–2007. Telephone: (310) 725–3818. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Email: *Brian.Armstrong@faa.gov.*

SUPLEMENTARY INFORMATION The FAA, in cooperation with the NPS, is initiating development of an Air Tour Management Plan (ATMP) for the Haleakala National Park pursuant to the National Parks Air Tour Management Act of 2000 (Public Law 106–181) and its implementing regulations contained in title 14, Code of Federal Regulations, part 136, *National Parks Air Tour Management*, published October 25, 2002 (67 FR 65662). The objective of the ATMP is to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and abutting tribal lands, of the Haleakala National Park. Following a Federal rulemaking action, the ATMP will be incorporated into part 136.

In developing the ATMP and associated rulemaking actions, the Federal Aviation Administration (FAA) and National Park Service (NPS) are required to comply with the National Environmental Policy Act of 1970 (NEPA), which calls on Federal agencies to consider environmental issues as part of their decision making process. For the purposes of compliance with NEPA, the FAA is the Lead Agency and the NPS is a Cooperating Agency. An Environmental Assessment will be prepared for the ATMP in accordance with NEPA and its implementing regulations (40 CFR parts 1500–1508).

Interested individuals, groups, and other members of the public are invited to attend a Public Information Workshop to be held on February 26, 2003, at 6 p.m. The workshop will consist of brief presentations by the FAA, the NPS, and the Acoustical Department of the VOLPE National Transportation Center beginning at 6 p.m. These presentations will conclude by approximately 7 p.m. Following the presentations, attendees may browse displays, collect information, talk with FAA and NPS officials, discuss concerns, and register to receive further information regarding development of the Haleakala National Park ATMP.

This is a public information workshop only. Public testimony or comments will not be formally recorded at this time. A public scoping period, during which public comments will be formally received, will be held at a later time in compliance with the procedures established under NEPA. The scoping period will be announced through the **Federal Register**, local media, the Internet, and direct mailings to interested parties known to the FAA and the NPS.

Additional information on the ATMP Program is available on the FAA's ATMP Website located at *www.atmp.faa.gov.* Interested parties may register to receive information regarding the development of this and other ATMPs through this website.

Issued in Hawthorne, California on January 16, 2003.

Brian Q. Armstrong,

Air Tour Management Plan, Program Manager, AWP–4, Western-Pacific Region.

[FR Doc. 03–1531 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Establish an Air Tour Management Plan and Notice of Public Meeting for Hawaii Volcanoes National Park

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice.

SUMMARY: The FAA, in cooperation with the NPS, is initiating development of an Air Tour Management Plan (ATMP) for the Hawaii Volcanoes National Park pursuant to the National Parks Air Tour Management Act of 2000 (Public Law 106–181) and its implementing regulations contained in title 14, Code

of Federal Regulations, part 136, National Parks Air Tour Management, published October 25, 2002 (67 FR 65662). The objective of the ATMP is to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and abutting tribal lands, of the Hawaii Volcanoes National Park. Following a Federal rulemaking action, the ATMP will be incorporated into part 136. This notice provides information on the Public Information Workshop for all persons having an interest in Hawaii Volcanoes National Park.

DATES: The Public Information Workshop will be held February 24, 2003, at 5:30 p.m.

ADDRESSES: The Public Information Workshop will be held at the Cooper Center, 19–4030 Wright Road, Volcano, Hawaii.

FOR FURTHER INFORMATION CONTACT: Brian Armstrong, Air Tour Management Plan Program Manager, Executive Resource Staff, AWP–4, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Los Angeles, California 90009–2007. Telephone: (310) 725–3818. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Email: *Brian.Armstrong@faa.gov.*

SUPLEMENTARY INFORMATION: The FAA, in cooperation with the NPS, is initiating development of an Air Tour Management Plan (ATMP) for the Hawaii Volcanoes National Park pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106–181) and its implementing regulations contained in title 14, Code of Federal Regulations, part 136, National Parks Air Tour Management, published October 25, 2002 (67 FR 65662). The objective of the ATMP is to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and abutting tribal lands, of the Hawaii Volcanoes National Park. Following a Federal rulemaking action, the ATMP will be incorporated into part 136.

In developing the ATMP and associated rulemaking actions, the Federal Aviation Administration (FAA) and National Park Service (NPS) are required to comply with the National Environmental Policy Act of 1970 (NEPA), which calls on Federal agencies to consider environmental issues as part of their decision making process. For the purposes of compliance with NEPA, the FAA is the Lead Agency and the NPS is a Cooperating Agency. An Environmental Assessment will be prepared for the ATMP in accordance with NEPA and its implementing regulations (40 CFR parts 1500–1508).

Interested individuals, groups, and other members of the public are invited to attend a Public Information Workshop to be held on February 24, 2003, at 5:30 p.m. The workshop will consist of brief presentations by the FAA, the NPS, and the Acoustical Department of the VOLPE National Transportation Center beginning at 5:30 p.m. These presentations will conclude by approximately 6:30 p.m. Following the presentations, attendees may browse displays, collect information, talk with FAA and NPS officials, disouss concerns, and register to receive further information regarding development of the Hawaii Volcanoes National Park ATMP.

This is a public information workshop only. Public testimony or comments will not be formally recorded at this time. A public scoping period, during which public comments will be formally received, will be held at a later time in compliance with the procedures established under NEPA. The scoping period will be announced through the **Federal Register**, local media, the Internet, and direct mailings to interested parties known to the FAA and the NPS.

Additional information on the ATMP Program is available on the FAA's ATMP Website located at *www.atmp.faa.gov*. Interested parties may register to receive information regarding the development of this and other ATMPs through this website.

Issued in Hawthorne, California on January 16, 2003.

Brian Q. Armstrong,

Air Tour Management Plan, Program Manager, AWP–4, Western-Pacific Region.

[FR Doc. 03–1530 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Object Oriented Technology in Aviation Workshop #2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA issues this notice to advise the public of the second joint FAA/NASA workshop to discuss Object Oriented Technology (OOT) in Aviation. This notice announces the dates, times, location, and registration information for the workshop.

DATES: The workshop is scheduled for March 25th through March 27th, 2003, starting at 8:30 a.m., and ending at 5 p.m. daily, except for the last day when the workshop will end at 12:30 p.m.

ADDRESSES: The workshop will be held at the Sheraton Norfolk Waterside Hotel, 777 Waterside Drive, Norfolk, VA, 23510 USA, Telephone (757) 622–6664.

FOR FURTHER INFORMATION CONTACT: Kelly Hayhurst, NASA Langley Research Center; e-mail *k.j.hayhurst@larc.nasa.gov;* telephone (757) 864–6215; Website *http://shemesh.larc.nasa.gov/foot/.*

SUPPLEMENTARY INFORMATION: The agenda for the workshop includes:

- Opening session (welcome and workshop overview, workshop vision).
- Overview of OOT Handbook and general issues.
- Breakout sessions covering:

—Single inheritance and dynamic dispatch;
—Tools;
—Reuse and dead/deactivated code;
—Overloading;
—Type Conversion;
—Templates;
—Inlining;
—Traceability;
—Multiple inheritance;
—General OOT Issues and other considerations.

- Discussion of breakout session results.
- Closing session (future activities, adjournment).

This workshop is open to anyone interested in OOT issues related to developing or approving aviation software products that comply with RTCA Document No. RTCA/DO–178B, *Software Considerations in Airborne Systems and Equipment Certification.* Attendees wishing to submit comments concerning OOT issues should forward them to the named person listed under **FOR FURTHER INFORMATION CONTACT.**

Workshop Registration fee is $100 (USD) if paid by February 28, 2003 and $300 (USD) if paid after that date. Use the following web-site to make your reservations and to obtain additional details pertaining to the workshop: *http://shemesh.larc.nasa.gov/foot/.* Note that the registration fee includes an evening reception on March 25, as well as a continental breakfast, and refreshments during the morning and afternoon breaks each day of the workshop.

A block of rooms are reserved at the Sheraton Norfolk Waterside Hotel, 777 Waterside Drive, Norfolk, VA, 23510 USA, Telephone (757) 622–6664 or central reservations number (800) 325–

3535, at a special rate of $55 (USD) plus taxes per night. To receive the special rate, you must make your reservations by March 7, 2003, and state that you are attending the "Object Oriented Technology Workshop."

Issued in Washington, DC on January 16, 2003.

Susan J. M. Cabler,

Deputy Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–1475 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–15–C–00–CHO To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Charlottesville-Albemarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to, impose and use the revenue from a PFC at Charlottesville-Albemarle Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 24, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 22016.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Bryan O. Elliott, Director of Aviation, of the Charlottesville-Albemarle Airport Authority at the following address: Charlottesville-Albemarle Airport Authority, 201 Bowen Loop, Charlottesville, Virginia 22901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Charlottesville-Albemarle Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Program Manager, Washington Airports District Office, 23723 Air Freight Land, Suite 210, Dulles, VA. 22016, (703) 661–1363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Charlottesville-Albemarle Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 24, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by capital Region Airport Commission was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 29, 2003.

The following is a brief overview of the application.

Proposed charge effective date: February 1, 2005.

Proposed charge expiration date: August 1, 2006.

Level of the proposed PFC: $3.00.

Total estimated PFC Revenue:

Impose $850,000.

Use $850,000.

Brief description of proposed project(s): Terminal Building Modifications (Impose & Use). Upgrade multi-user Flight Information Display System (Impose & Use). Extend Runway 3 Safety Area, Phase IV (Impose & Use). PFC Project Administration Fees (Impose & Use).

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, NY 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Charlottesville-Albemarle Airport.

Issued in Dulles, Va. 22016, January 14, 2003.

Arthur Winder,

Program Manager, Washington Airports District Office.

[FR Doc. 03–1474 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Mills County, IA; Cass County, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed roadway and bridge improvement project in Cass County, Nebraska, and Mills County, Iowa.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Kosola, Realty/Environmental Officer, FHWA, Federal Building, Room 220, 100 Centennial Mall North, Lincoln, NE 68508–3851, (402) 437–5765. Mr. Arthur Yonkey, Planning and Project Development Engineer, Nebraska Department of Roads. PO Box 94759, 1500 Highway 2, Lincoln, NE, 68509, (402) 479–4795. Mr. James Rost, Office of Location and Environment, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, Telephone: (515) 239–1798.

SUPPLEMENTARY INFORMATION: The Transportation Appropriations Bill for fiscal year 2002 included funding for a study of a possible replacement bridge over the Missouri River on Highway U.S. 34 at Plattsmouth, Nebraska. The FHWA, in cooperation with the Nebraska Department of Roads (NDOR) and the Iowa Department of Transportation (Iowa DOT), will prepare an Environmental Impact Statement (EIS) for the Rehabilitation/Replacement and Roadway Study project for the U.S. 34 Plattsmouth Bridge.

The existing two-lane U.S. 34 toll bridge over the Missouri River at the east edge of Plattsmouth has been listed in the National Register of Historic Places. The existing bridge is a multi-span through-truss structure approximately 1,400 feet long with a 20-foot wide driving surface. This bridge is both functionally and structurally obsolete. The existing alignment of U.S. 34 is through the Central Business District of Plattsmouth. The roadway portion of the study will include a connection to Highway U.S. 75 at the west edge of Plattsmouth.

Alternatives under consideration include: (1) Taking no action; (2) rehabilitating/replacing the existing two-lane bridge; (3) constructing a new two-lane bridge on new location with a connection to the existing roadway system; and (4) constructing a new two-

lane bridge on new location with a new roadway system.

An agency scoping meeting and a public scoping/information meeting are planned. Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who are known to be interested in this proposed project. Public input will be sought throughout the project via a series of public meetings to be held in 2003 and 2004. A Draft EIS will be prepared and a public hearing will be held. Public notice will be given of the time and place of the public meetings and public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the Nebraska Department of Roads, Iowa DOT or FHWA at the address provided in the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Dated: January 16, 2003.

Edward W. Kosola,

Realty/Environmental Officer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 03–1433 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory 2003–01.

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Safety Advisory 2003–01.

SUMMARY: FRA is issuing Safety Advisory 2003–01 addressing the importance of the hazardous materials offeror's requirement to verify the compatibility of all packaging components, such as valves and gaskets, in the event a change is made to the chemical constituents of a hazardous material in a railroad tank car. This action is being taken to improve the safety and reliability of hazardous material shipments in transportation.

FOR FURTHER INFORMATION CONTACT: William S. Schoonover, Specialist, Hazardous Materials Division, Office of Safety Assurance and Compliance, Federal Railroad Administration, U.S. Department of Transportation, 1120 Vermont Avenue, NW., Washington, DC 20590–0001. Telephone: 202–493–6229, e-mail: *William.Schoonover@fra.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1999, railroad tank car number UTLX 643593, spotted on an unloading rack at the Essroc Cement Corporation's Logansport cement plant near Clymers, Indiana, sustained a sudden and catastrophic rupture that propelled the tank an estimated 750 feet over a multistory storage tank. The 20,000-gallon tank car initially contained about 161,700 pounds (14,185 gallons) of a toxic and flammable hazardous waste being used as fuel for the plant's kilns. Fortunately, there were no injuries or fatalities. However, total damages, including property damage and costs from lost production, were estimated at nearly $8.2 million. During the investigation of this incident, the safety relief device from this car and four other cars built to the same design were tested at a tank car repair facility to determine compliance with Federal regulations. Investigators determined that the gasket material in the safety relief devices exhibited varying degrees of brittleness, swelling, hardness, and cracking that contributed to the failure of the pressure relief devices to comply with Federal and industry requirements.

Incidents such as the one near Clymers, Indiana, result from noncompliance with the requirements in the Hazardous Materials Regulations (HMR). Specifically, these incidents derive from improper material selection and consideration of all components. The safety and reliability of hazardous materials shipments in transportation depend on a disciplined approach to material selection and maintenance.

FRA is issuing Safety Advisory 2003–01 to further discuss the requirements concerning gasket material selection in the event a change is made in the chemical constituents of the hazardous material shipped. This document provides general guidance only. Shippers should not rely on this document as a substitute for sound engineering, material selection, and maintenance management.

Tank car UTLX 643593, a DOT specification 111J100W1 tank car built in early 1993, was one of 52 tank cars designed for toluene diisocyanate (TDI) transportation. The certificate of construction for UTLX 643593, and the other cars listed on the built certificate, indicates that these cars were approved for carriage of "Non-regulated commodities and commodities authorized in DOT Part 173 for which there are no other requirements and which are *compatible* with this design and class of car." [Emphasis Added] The service equipment from UTLX 643593 was on a 10-year maintenance and qualification cycle and was not due for requalification until 2003. The O-rings and gaskets for the pressure relief device were made of ethylene propylene rubber and Teflon®, respectively.

The hazardous material within the tank car, TDI waste matter, was loaded in October 1993 and stored until March 1998. It was transported to the Logansport facility for further storage until being moved for unloading in February 1999. On February 18, 1999, while spotted on an unloading rack, tank car UTLX 643593 sustained a sudden and catastrophic rupture that propelled the tank an estimated 750 feet over a multistory storage tank. Immediately after the incident, an investigation was conducted by the National Transportation Safety Board and FRA. Laboratory analysis obtained during the investigation revealed that two other constituents had been added to the material before shipping to the Logansport facility. A blending agent was added to the TDI to reduce its viscosity. The blending agents were HAN 906® (a mixture of flammable petroleum hydrocarbons such as naphthalene and trimethylbenzene) and monochlorobenzene (MCB). Both blending agents are classified as hazardous materials when shipped individually.

The transportation of the solvent blend wastes and TDI matter wastes in UTLX 643593 and the other tank cars approved for the transport of pure TDI constituted a change in the "compatibility status" of the tank and service equipment. This change in compatibility status, which resulted in deterioration of the components, was a key contributor to the pressure relief devices failure to meet Federal requirements (See 49 CFR 173.24(e)).

After the Clymers accident, FRA mandated, in a letter to the tank car owner, that the pressure relief devices from four of the 24 tank cars containing the TDI matter wastes in storage at the Logansport rail yard be pressure-tested in accordance with the HMRs before any of the tank cars could be transported for unloading. The tear down and inspection of the pressure relief devices from these five tank cars (the four cars that FRA required to be tested and UTLX 643593) demonstrated that the

devices were in a deteriorated condition. The ethylene propylene rubber "O"-rings showed evidence of swelling, hardness, and brittleness, and the metallic components exhibited varying degrees of rust, scale, pitting, and grit. While the deteriorated "O"-rings in the pressure relief devices did not cause the failure alone, the "O"-rings clearly demonstrated improper material selection.

"A Chemical Resistance Guide to Elastomers" provided to the investigators by the tank car manufacturer contained guidance about the resistance of available gasket, "O"-ring, and sealing materials to degradation upon exposure to various chemicals. According to this guide, ethylene propylene rubber, the material that constituted the "O"-rings in the pressure relief devices from the tank cars, offers good to excellent resistance to chemical attack from pure TDI at temperatures up to 70 °F and should not exhibit more than minor swelling, softening, or surface deterioration. The guide also recommends against using ethylene propylene rubber with either MCB or naphthalene, one of the primary components of the HAN 906® solvent. Investigators concluded that the swelling, hardness, and brittleness of the ethylene propylene rubber "O"-rings in the pressure relief devices from the tank cars that were examined likely resulted from exposure to the MCB in the TDI matter waste.

The offeror of tank car UTLX 643593 apparently did not consider that the presence of MCB and HAN 906® solvent in the TDI waste mixtures might adversely affect the "O"-rings in the pressure relief devices and other gaskets on the tank cars used to store and transport these wastes. Consequently, the offeror did not find that the presence of these chemicals changed the compatibility status from the transport of pure TDI. The investigation, however, showed that the presence of MCB and HAN 906® solvent in the TDI waste mixtures was sufficient to chemically attack the "O"-rings in the pressure relief devices on tank cars carrying TDI waste mixtures. Therefore, the transportation of the solvent-blend wastes and TDI-matter wastes in the tank cars approved for the transport of pure TDI constituted a change in product compatibility.

Federal Requirements

The HMR, 49 CFR parts 171–180, set forth requirements for the safe transportation of hazardous materials in commerce by railcar, aircraft, vessel, and motor vehicle. In general, the HMR apply to each person who performs, or causes to be performed, functions related to the transportation of hazardous materials in commerce. The HMR prescribe requirements for classification, packaging, hazard communication, shipping papers, incident reporting, handling, loading, unloading, segregation, and movement of hazardous materials.

Material selection and use of an appropriate packaging for a hazardous material are essential to ensuring the safety and reliability of the shipment while in transportation. Only packagings compatible with the hazardous material may be used to ship hazardous materials in transportation. Persons must ensure that a packaging will retain its contents during temperature variances, changes in atmospheric pressure, vibration, or other conditions that may be encountered during normal conditions of transport. These requirements also apply to tank cars containing only a residue of a hazardous material.

The HMR place the responsibility for ensuring that a package is appropriate for transportation on the offeror (typically the shipper) of the material. The selection should be made with input from the tank car owner and the component/gasket manufacturer to ensure that the configuration is appropriate for the device and that other entities having similar responsibilities in relation to the tank car's maintenance are aware of the requirements and can modify inspection and maintenance cycles as necessary. In addition, the tank car manufacturer and tank car repair facilities each have a responsibility to ensure that the approved materials are used during the assembly of the tank car and for repairs or replacement. The HMR require the offeror to ensure that the components on the tank car are correct before offering the tank car for transportation.

Even when appropriate test intervals are established and followed, carriage of cargos that chemically attack gaskets and "O"-rings in valves and fittings can undermine the integrity of the valves and fittings. The addition of a new chemical constituent to a commodity approved for transportation in a tank car changes the chemical composition of that commodity and results in the exposure of gaskets and seals on the tank car to a new mixture. The concentration of a newly added chemical constituent may be sufficiently diluted so as to present little or no risk of chemical attack to gaskets and seals, but the risk level can best be ascertained by tests or verification through technical literature that the new chemical constituent is compatible with the gaskets and seals on the tank car.

While no information or guidance regarding gasket and fitting compatibility in conjunction with changes in product service has yet been issued by FRA, the topic continues to be addressed through various programs. For example, on September 21, 1995, the Research and Special Programs Administration amended the performance standards for the gaskets used on tank cars. The regulations require that each tank car used in anhydrous ammonia, division 2.1 or division 2.3, service have gaskets designed according to temperature, application, media, pressure, and size, so that a positive seal is created and the safety and reliability of the shipment will be maintained.

Recommended Action

In recognition of the need to assure safety, FRA strongly urges all persons involved in the packaging and offering of hazardous materials to carefully examine all of their internal procedures and processes to ensure proper compliance. In addition, FRA reminds offerors of hazardous materials of their responsibility to verify the compatibility of all tank car components, such as valves and gaskets, to resist corrosion, permeability, premature aging, pitting, or embrittlement. In making these determinations, offerors should combine their knowledge of the materials to be shipped with component compatibility information available from the component and gasket manufacturers and communicate their requirements to the tank car owner. Technical organizations such as the National Association of Corrosion Engineers (*http://www.nace.org*), the American Society of Mechanical Engineers (*http://www.asme.org*), the American Chemistry Council (*http://americanchemistry.com*), the Fluid Sealing Association (*http://www.fluidsealing.com*), and the Gasket Fabricators Association (*http://gasketfab.org*) provide additional sources of information. Tank car owners are required to use the information received from offerors to develop appropriate maintenance and inspection cycles based on the information.

Additional Information

Interested parties can obtain additional information through several methods. You may request an informal written interpretation, a regulatory clarification, or a response to a question, or offer an opinion concerning hazardous materials transportation by sending a written submission to the

Office of Safety Assurance and Compliance (RRS–12), Federal Railroad Administration, U.S. Department of Transportation, 1120 Vermont Avenue, NW., Washington, DC 20590–0001 or to our e-Mail address at *hmassist@fra.dot.gov*. Additional information, including accident/incident information, guidance, and telephone contact numbers, is also available on our Web site at *http://www.fra.dot.gov*.

Issued in Washington, DC, on January 17, 2003.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 03–1468 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2002–13950

Applicant: Burlington Northern and Santa Fe Railway, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106.

The Burlington Northern and Santa Fe Railway (BNSF) seeks relief from the requirements of the Rules, Standard and Instructions, Title 49 CFR, part 236, Section 236.312, on the Crescent Bridge at Rock Island, Illinois, on the Illinois Division, Barstow Subdivision, LS 7, milepost 253.89 to the extent that BNSF is neither required to detect proper rail surface and alignment to within three-eighths (3/8) of an inch, nor be required to detect that the wedges are within one inch of being fully driven before a signal governing movements over the bridge can display an aspect to proceed.

Applicant's justification for relief: The expense associated with modifying this unique and antiquated bridge design to fully comply with these requirements, and FRA's indication that it would be receptive to a waiver request as conveyed in the denial decision of Docket FRA–2002–11370, which requested discontinuance and removal of the interlocking.

Any interested party desiring to protest the granting of an application shall set forth, specifically, the grounds upon which the protest is made and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on January 15, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–1473 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2002–13952

Applicant: Canadian National Railroad, Mr. John P. Rath, Manager of Signal Installations, 3000 Minnesota Avenue, Stevens Point, Wisconsin 54481.

The Canadian National Railroad seeks approval of the proposed discontinuance and removal of the interlocked signal system on the single main track, Fox River Swing Bridge, at milepost 2.4, on the Wisconsin Central Division, Luxemburg Subdivision near Green Bay, Wisconsin.

The reason given for the proposed changes is that the track now has minimal usage.

Any interested party desiring to protest the granting of an application shall set forth, specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on January 15, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–1469 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2002–13951

Applicant: Canadian National Railroad, Mr. John P. Rath, Manager of Signal Installations, 3000 Minnesota Avenue, Stevens Point, Wisconsin 54481.

The Canadian National Railroad seeks approval of the proposed discontinuance and removal of the interlocked signal system on the single main track, H–43–E Manitowoc River Drawbridge, at milepost 43.83, on the Wisconsin Central Division, Manitowoc Subdivision near Manitowoc, Wisconsin.

The reason given for the proposed changes is that the track now has minimal usage.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on January 15, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–1471 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2002–13953

Applicant: Canadian National Railroad, Mr. John P. Rath, Manager of Signal Installations, 3000 Minnesota Avenue, Stevens Point, Wisconsin 54481.

The Canadian National Railroad seeks approval of the proposed discontinuance and removal of the interlocked signal system on the single main track, H–43–D Manitowoc River Drawbridge, at milepost 43.61, on the Wisconsin Central Division, Manitowoc Subdivision near Manitowoc, Wisconsin.

The reason given for the proposed changes is that the track now has minimal usage.

Any interested party desiring to protest the granting of an application shall set forth, specifically, the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on January 14, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–1472 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2002–13881

Applicant: Safe Handling Rail, Incorporated, Mr. Jonathan F. Shute, General Manager, P.O. Box 1567, Auburn, Maine 04211–1567.

Safe Handling Rail, Incorporated seeks approval of the proposed temporary discontinuance and removal from service, the Carlton Drawbridge Interlocking, milepost 30.0 on the Rockland Branch near Bath, Maine for a period of approximately six months associated with on going construction and upgrades.

The reasons given for the proposed changes are due to the activities of an outside contractor, the delivery schedule of cable, and the necessity of

burying new signal and track circuit cables. Thus, it is not possible to perform the work safely and efficiently during winter conditions.

Any interested party desiring to protest the granting of an application shall set forth, specifically, the grounds upon which the protest is made and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on January 15, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–1470 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning January 1, 2003, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2002–70 (*see*, 2002–50 IRB 1, dated December 16, 2002), the IRS determined the rates of interest for the calendar quarter beginning January 1, 2003, and ending March 31, 2003. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus one percentage point (1%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). These interest rates are subject to change for the calendar quarter beginning April 1, 2003, and ending June 30, 2003.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
Prior to 070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	8	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	033103	5	5	4

Dated: January 17, 2003.

Robert C. Bonner,

Commissioner of Customs.

[FR Doc. 03–1445 Filed 1–22–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–15, section 103—Remedial Payment Closing Agreement Program.

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Section 103—Remedial Payment Closing Agreement Program.

OMB Number: 1545–1528.

Revenue Procedure Number: Revenue Procedure 97–15.

Abstract: This information is required by the Internal Revenue Service to verify compliance with sections 57, 103, 141, 142, 144, 145, and 147 of the Internal Revenue Code of 1986, as applicable (including any corresponding provision, if any, of the Internal Revenue Code of 1954). This information will be used by the Service to enter into a closing agreement with the issuer of certain state or local bonds to establish the closing agreement amount.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal government, and not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 75.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1382 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209709–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209709–94 (TD 8865), Amortization of Intangible Property (§ 1.197–2).

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Amortization of Intangible Property.

OMB Number: 1545–1671.

Regulation Project Number: REG–209709–94.

Abstract: Section 1.197–2(h)(9) requires the party making the election statement to timely filed Federal income tax return for the taxable year that the election under section 197(f)(9)(B) is effective, and to provide written notification of the election to the party acquiring the section 197 intangible.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 13, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1383 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8508

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8508, Request for Waiver From Filing Information Returns Magnetically (Forms W–2, W–2G, 1042–S, 1098, 1099 Series, 5498–MSA, and 8027.

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Waiver From Filing Information Returns Magnetically (Forms W–2, W–2G, 1042–S, 1098, 1099 Series, 5498–MSA, and 8027.

OMB Number: 1545–0957.

Form Number: 8508.

Abstract: Certain filers of information returns are required by law to be filed magnetically. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which the Internal Revenue Service will base its waiver determination.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, non-profit institutions, farms, the Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 13, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1384 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 96–60

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96–60, Procedure for filing Forms W–2 in certain acquisitions.

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Procedure for filing Forms W–2 in certain acquistions.

OMB Number: 1545–1510.

Revenue Procedure Number: Revenue Procedure 96–60.

Abstract: The information is required by the Internal Revenue Service to assist predecessor and successor employers in complying with the reporting requirements under Internal Revenue Code sections 6051 and 6011 for forms W–2 and 941.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 553,500.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 110,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 13, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1385 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4419

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning form 4419, Application for Filing Information Returns Magnetically/ Electronically.

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Filing Information Returns Magnetically/ Electronically.

OMB Number: 1545–0387.

Form Number: 4419.

Abstract: Under section 6011(e)(2)(a) of the Internal Revenue Code, any person, including corporations,

partnerships, individuals, estates and trusts, who is required to file 250 or more information returns must file such returns magnetically or electronically. Payers required to file on magnetic media or electronically must complete form 4419 to receive authorization to file.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, non-profit institutions, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 15,000.

Estimated Time Per Respondent: 26 minutes.

Estimated Total Annual Burden Hours: 6,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 13, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1388 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–7–94; FI–36–92]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, FI–7–94 (TD 8718; TD 8538) and FI–36–92 (TD 8476), Arbitrage Restrictions on Tax-Exempt Bonds (§§ 1.148–2, 1.148–3, 1.148–4, 1.148–7, and 1.148–11).

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P, Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on Tax-Exempt Bonds.

OMB Number: 1545–1347.

Regulation Project Numbers: FI–36–92; FI–7–94.

Abstract: Section 148 of the Internal Revenue Code requires issuers of tax-exempt bonds to rebate certain arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Under FI–36–92, issuers are required to file a Form 8038-T and remit the rebate. Issuers are also required to keep records of certain interest rate hedges so that the hedges are taken into account in determining arbitrage profits. Under FI–7–94, the scope of interest rate hedging transactions covered by the arbitrage regulations was broadened by requiring that hedges entered into prior to the sale date of the bonds are covered as well.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 3,100.

Estimated Time Per Respondent: 14 hr., 34 min.

Estimated Total Annual Burden Hours: 42,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 13, 2003.

Glenn P, Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1389 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–50

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–50, Combined Information Reporting.

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the Internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Combined Information Reporting.

OMB Number: 1545–1667.

Revenue Procedure Number: Revenue Procedure 99–50.

Abstract: Revenue Procedure 99–50 permits combined information reporting by a successor business entity (*i.e.*, a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition. Combined information reporting may be elected by a successor with respect to certain Forms 1042–S, all forms in the series 1098, 1099, and 5498, and Forms W–2G. The successor must file a statement with the IRS indicating what forms are being filed on a combined basis.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Respondents: 6,000.

Estimated Average Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 13, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1390 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 5310 and 6088

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5310, Application for Determination for Terminating Plan, and Form 6088, Distributable Benefits from Employee Pension Benefit Plans.

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 5310, Application for Determination for Terminating Plan, and Form 6088, Distributable Benefits from Employee Pension Benefit Plans.

OMB Number: 1545–0202.

Form Number: Forms 5310 and 6088.

Abstract: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. Form 5310 is used to request an IRS determination letter about the plan's qualification status (qualified or non-qualified) under Internal Revenue Code section 401(a). Form 6088 is used to show the amounts of distributable benefits to participants in the plan.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 30,000.

Estimated Time Per Response: 60 hours, 20 minutes.

Estimated Total Annual Burden Hours: 1,810,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1391 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5310–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business.

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business.

OMB Number: 1545–1225.

Form Number: 5310–A.

Abstract: Internal Revenue Code section 6058(b) requires plan administrators to notify IRS of any plan mergers, consolidations, spinoffs, or transfers of plan assets or liabilities to another plan. Code section 414(r) requires employers to notify IRS of separate lines of business for their deferred compensation plans. Form 5310–A is used to make these notifications.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 15,000.

Estimated Time Per Respondent: 9hr., 31 min.

Estimated Total Annual Burden Hours: 142,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1392 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2000–3

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2000–3, Guidance on Cash or Deferred Arrangements.

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of noticeshould be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Guidance on Cash or Deferred Arrangements.

OMB Number: 1545–1669.

Notice Number: Notice 2000–3.

Abstract: Notice 2000–3 provides guidance to employers maintaining, or who are contemplating establishing, cash or deferred arrangements (CODAs) for their employees. It permits some degree of flexibility in using the safe harbor methods, described in sections 401(k)(12) and 401(m)(11) of the Internal Revenue Code, to satisfy the nondiscrimination tests normally applicable to CODAs. To take advantage of this flexibility, employers must amend their CODAs accordingly and provide employees written notices of

the benefits available to them under the CODA.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 6,000.

Estimated Time Per Respondent: 1 hour, 20 minutes.

Estimated Total Annual Burden Hours: 8,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1393 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–CE

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–CE, Certificate of Payment of Foreign Death Tax.

DATES: Written comments should be received on or before March 24, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Payment of Foreign Death Tax.

OMB Number: 1545–0260.

Form Number: 706–CE.

Abstract: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit allowed by Internal Revenue Code section 2014. The information is used by IRS to verify that the proper credit has been claimed.

Current Actions: There are no changes being made to Form 706–CE at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households.

Estimated Number of Responses: 2,250.

Estimated Time Per Response: 1 hr., 44 min.

Estimated Total Annual Burden Hours: 3,893.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: Januray 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1394 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8832

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8832, Entity Classification Election.

DATES: Written comments should be received on or before March 24 ,2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Entity Classification Election.

OMB Number: 1545–1516.

Form Number: 8832.

Abstract: An eligible entity that chooses not to be classified under the default rules of Treas. Reg. 301.7701 or that wishes to change its current classification must file Form 8832 to elect a classification. The IRS will use the information entered on this form to establish the entity's filing and reporting requirements for Federal tax purposes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 5,0000.

Estimated Time Per Respondent: 4 hrs., 20 min.

Estimated Total Annual Burden Hours: 21,650.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1395 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4029

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4029, Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, at (202) 622–3179, or *Larnice.Mack@irs.gov,* or Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.

OMB Number: 1545–0064.

Form Number: 4029.

Abstract: Form 4029 is used by members of recognized religious groups to apply for exemption from social security and Medicare taxes under Internal Revenue Code sections 1402(g) and 3127. The information is used to approve or deny exemption from social security and Medicare taxes.

Current Actions: There are no changes being made to the Form 4029 at this time.

Type of Review: Extension of a current OMB approval. Affected Public: Individuals or households.

Estimated Number of Respondents: 3,754.

Estimated Time Per Respondent: 1 hr. 4 min.

Estimated Total Annual Burden Hours: 4,017.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15,2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1396 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120X

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning form 1120X, Amended U.S. Corporation Income Tax Return.

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Amended U.S. Corporation Income Tax Return.

OMB Number: 1545–0132.

Form Number: 1120X.

Abstract: Domestic corporations use form 1120X to correct a previously filed form 1120 or form 1120–A. The data is used to determine if the correct tax liability has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 16,699.

Estimated Time Per Respondent: 18 hr., 17 min.

Estimated Total Annual Burden Hours: 305,425.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1397 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be held Monday, February 3, 2003, from 1 p.m. p.s.t. to 3 p.m. p.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 14, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–1524 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, February 7, 2003, from 3 p.m. e.s.t. to 7 p.m. e.s.t. at the Omni Jacksonville Hotel, 245 Water St., Jacksonville, Florida. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or

write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited space, notification of intent to participate in the meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 7, 2003.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 03–1525 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference).

DATES: The meeting will be held Friday, February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, February 14, 2003, from 1 p.m. e.s.t. to 2 p.m. e.s.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 13, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–1526 Filed 1–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Thrift Financial Report

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. Today, the Office of Thrift Supervision (OTS) within the Department of the Treasury solicits comments on proposed changes to the Thrift Financial Report (TFR), effective with the March 31, 2004 report. A proposal to amend Schedule CMR, Consolidated Maturity and Rate, a schedule that addresses interest rate risk, will be published separately at a later date.

The following subjects are discussed in more detail below:

(1) Definition of Mortgage Loans;
(2) Mortgage Backed Securities;
(3) Asset-backed Securities;
(4) Junior liens;
(5) Multifamily mortgages;
(6) General Valuation Allowances;
(7) Credit Cards;
(8) Servicing Assets in Schedule SC;
(9) Bank-Owned Life Insurance;
(10) Minority Interest on the Balance Sheet;
(11) Accumulated Other Comprehensive Income;
(12) Optional Narrative Statement;
(13) FHLB Dividend Income;
(14) Goodwill Expense;
(15) Schedule VA, Valuation Allowance Reconciliation;
(16) Troubled Debt Restructured;
(17) Guaranteed Loans Past Due;
(18) Unused Balances of Credit Cards and Home Equity Lines of Credit;
(19) Deletion of Lines in Schedule CF (Cash Flow);
(20) Refinancing Loans
(21) Nonmortgage Loan Activity;
(22) Mortgage Derivative Securities Activity Detail;
(23) Deposit Information and Deposit Insurance Premium Assessment Information;
(24) Summary of Changes in Equity Capital;
(25) Thrift Investment in Service Corporations;
(26) Savings Association and Subsidiary Web Site Addresses;
(27) IRS Domestic Building and Loan Association (DBLA) Test;
(28) Mutual Fund and Annuity Sales;
(29) Transactions with affiliates;
(30) Average Balance Sheet Data;
(31) Schedule SB, Small Business Loans;
(32) Holding Company Information;
(33) Reporting Frequency of Schedule CSS (Subordinate Organization Schedule);
(34) Consolidation of Subordinate Organizations;
(35) Schedule CCR (Capital Requirement);
(36) Shorter Deadlines for TFR, Including Schedules HC and CMR.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which OTS should modify the proposed revisions prior to giving its final approval. OTS will then submit the revisions to the Office of Management and Budget (OMB) for review and approval.

DATES: Submit written comments on or before March 24, 2003.

ADDRESSES: Send comments to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0023. Hand deliver comments to the Guard's Desk, east lobby entrance, 1700 G Street, NW., between 9 A.M. and 4 P.M. on business days. Send facsimile transmissions to FAX Number (202) 906–6518. Send e-mails to *infocollection.comments@ots.treas.gov*. All comments should refer to "TFR Revisions, OMB No, 1550–0023," and include your name, company, and telephone number. OTS will post comments and the related index on the OTS Internet site at: *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 by appointment. To make an appointment, call (202)906–5922, send an e-mail to *public.info@ots.treas.gov*, or

send a facsimile transmission to (202)906–7755. Appointments will be scheduled on business days between 10 AM and 4 PM.

FOR FURTHER INFORMATION: You can access sample copies of the proposed March 2004 TFR form on OTS's web site, *www.ots.treas.gov*, or you may request them by electronic mail from *tfr.instructions@ots.treas.gov;* from Trudy Reeves, Senior Financial Reporting Analyst, National Systems, (202) 906–7317, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; or from Marilyn K. Burton, OTS Paperwork Clearance Officer, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by electronic mail at *marilyn.burton@ots.treas.gov*.

SUPPLEMENTARY INFORMATION:

Title: Thrift Financial Report.

OMB Number: 1550–0023.

Form Number: OTS 1313.

Abstract: All OTS-regulated savings associations must comply with the information collections described in this notice. OTS collects this information each calendar quarter, or less frequently if so stated. OTS needs this information to monitor the condition, performance, and risk profile of the savings association industry.

Current Actions: After reviewing its current supervisory and examination needs, OTS proposes a number of revisions to the Thrift Financial Report (TFR), effective with the March 31, 2004 report. The proposed revisions will enhance the usefulness of the TFR from a supervisory prospective and will complement the federal banking agencies' emphasis on risk-focused supervision.

OTS had proposed in August 2000 to collect most of the data being proposed today beginning with the first quarter of 2001. However, OTS decided to postpone certain changes to the TFR until March 2004. The original proposal can be accessed on the OTS web site at *http://www.ots.treas.gov/docs/86233.pdf*.

This proposal also addresses certain aspects of sections 307(b) and (c) of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Riegle Act). These sections direct the federal banking agencies to work jointly toward more uniform reporting, review the information that institutions currently report, and eliminate existing reporting requirements that are not warranted for safety and soundness or other public policy purposes.

Several reporting changes being proposed would introduce more uniformity for savings associations, banks, and bank holding companies to certain aspects of regulatory reporting. In this regard, over the past several years, the federal banking regulators have sought greater consistency among the reporting requirements imposed on savings associations, banks, and bank holding companies.

Increasing the uniformity of reporting requirements, among the different types of institutions supervised by the federal financial institution regulators, is a necessary step toward achieving the goal of a single set of reporting requirements for the filing of core information that is set forth in section 307(b) of the Riegle Act.

1. Definition of Mortgage Loans

We propose redefining mortgages for TFR reporting to encompass all real estate loans subject to 12 CFR 560.100–101 (real estate lending standards) and OTS Thrift Bulletin 72a. This revised definition would include all loans predicated upon a security interest in real property. All revolving home equity loans and second mortgages would be reported as mortgages, not as consumer loans. The only loans that would be reported as nonmortgage loans are unsecured loans and those that are otherwise substantially secured by collateral other than real estate, where a mortgage was taken as an abundance of caution (for example, an auto loan with an incidental lien on a residence), and where the terms as a consequence have not been made more favorable than they would have been in the absence of the lien. If a loan can be placed under more than one classification (for example, when a loan to finance a small business is primarily secured by a single-family residence), the institution may classify the loan as either single-family or commercial for purposes of HOLA percent-of-assets limitations and for purposes of the TFR. However, even if the institution places such a loan in a non-real-estate category, it is subject to § 560.100–101.

The current criteria for classification as a mortgage—that a loan is fully secured by the property and that an appraisal or other evaluation has been performed—would no longer apply. If this change in mortgage loan definition is adopted, mortgage loan classification in the TFR would be more consistent with the mortgage loan classification by commercial banks on the Call Report. Increasing uniformity between the TFR and the Call Report is a step toward achieving the goal of a single set of reporting requirements for the filing of core information that is set forth in section 307(b) of the Riegle Act.

2. Mortgage Backed Securities

We propose combining mortgage-backed pass-through securities and mortgage derivatives into one section in the balance sheet (Schedule SC); breaking out insured or guaranteed pass-through securities into two lines:

(1) Guaranteed by GNMA; and

(2) Issued by FNMA and FHLMC.

We propose breaking out mortgage derivative securities into three lines:

(1) Those issued or guaranteed by FNMA, FHLMC, or GNMA;

(2) Those collateralized by securities issued or guaranteed by FNMA, FHLMC, or GNMA; and

(3) All others.

This would provide consistent information with the commercial bank Call Report, would be more consistent with the presentation of mortgage-backed securities in financial statements included with filings under the Securities and Exchange Act of 1934, and would provide information on the degree of risk of the derivative investment. Consistent with the commercial bank Call Report, mortgage-backed bonds would be reported with other investment securities on SC185.

3. Asset-backed Securities

OTS proposes to add a line under "Investment Securities" on the balance sheet (Schedule SC) to collect securities collateralized by nonmortgage loans (asset-backed securities), including securities backed by credit cards, other consumer loans, and commercial loans. Asset-backed securities are currently reported with other types of investment securities on SC185. The addition of this line item would provide important information concerning the holdings of these securities.

4. Junior Liens

OTS proposes to separately collect first liens and junior liens under "Permanent Mortgages" on 1–4 dwelling units in the balance sheet (Schedule SC) to better monitor the riskier junior lien market. Currently, the TFR does not collect data on single-family residential junior liens. This change would make the TFR mortgage loan breakdown consistent with the commercial bank Call Report. This change would also be made to the breakdown of residential mortgages in the charge-off and recovery data on Schedule VA and past-due data in Schedule PD.

5. Multifamily Mortgages

OTS proposes to rename "5 or More Dwelling Units" to "Multifamily (5 or more) Residential Properties" throughout the TFR. The use of

"multifamily residential properties" conforms to the wording in the OTS capital regulations, other OTS regulations, and in the commercial bank Call Report, clarifying that these are the same type of loans. Schedules CCR and CMR currently use the term "multifamily residential mortgages."

6. General Valuation Allowances

OTS proposes removing from Schedule SC general valuation allowances on investment securities (SC199), real estate held for investment (SC481), and equity investments (SC529). This would require savings associations to report these items net of general valuation allowances, if there are any. It is OTS's opinion that a general valuation allowance on these items should be rare.

7. Credit Cards

OTS proposes to collect credit cards separately under the heading "Consumer Loans." Currently, credit cards are combined with other similar plans such as overdraft lines on checking accounts. These other similar plans would be reported with "Other Consumer Loans." Because the change in the definition of mortgage loans mentioned above results in restructuring the consumer loan categories in Schedule SC, we would eliminate the distinction between closed-end and open-end consumer loans. Consequently, the line for "Other, Including Leases" would contain both closed-end loans and open-end loans such as those currently reported with credit cards. Credit cards would be broken out separately on the balance sheet (Schedule SC), in charge-offs and recoveries (Schedule VA), and in past due and nonaccrual (Schedule PD). This presentation would be consistent with the Call Report.

8. Servicing Assets in Schedule SC

OTS proposes adding a section in Schedule SC to characterize servicing assets as intangibles, as required by Financial Accounting Standards Board (FASB) Statement No. 142. No new lines would be added; this change would simply regroup intangible assets. Under this proposal a new subheading "Intangible Assets" would be added. Grouped under this heading would be Servicing Assets on Mortgage Loans (line SC642), Servicing Assets on Nonmortgage Loans (line SC644), and Goodwill and Other Intangibles (line SC660).

9. Bank-Owned Life Insurance

OTS proposes adding two lines in Schedule SC (Statement of Condition) to collect balances of key person life insurance and other bank-owned life insurance. These lines would facilitate monitoring of the level of bank-owned life insurance held by thrifts, an amount that has risen considerably over the past several years. Key person life insurance is defined as: life insurance where the intended purpose is to provide the institution protection against the potential for losses arising from the untimely death of a key employee or borrower. These policies are generally surrendered when the key employee leaves the institution or when the borrower pays off his loan. OTS currently collects this information in Other Assets (SC690).

10. Minority Interest on the Balance Sheet

OTS proposes changing the caption of SC799 from "Redeemable Preferred Stock and Minority Interest" to "Minority Interest." The FASB has on their agenda consideration of a change in the financial reporting of redeemable preferred stock. It is anticipated that a statement will be released in 2003, to be effective in 2004. This change likely will clarify that redeemable preferred stock and similar instruments should be reported as borrowings and will no longer be reported in the balance sheet mezzanine area. We may be required to make additional changes to the TFR based on FASB's final pronouncement at a later date.

11. Accumulated Other Comprehensive Income

OTS proposes to add a subsection in the equity section of the balance sheet (Schedule SC) for accumulated other comprehensive income to conform to generally accepted accounting principles (GAAP). This section would include the existing line for unrealized gains (losses) on available-for-sale securities and two additional lines for:

(1) Gains (losses) on cash flow hedges; and

(2) Other, including foreign currency translation adjustments and minimum pension liability adjustments.

This change would put Schedule SC in conformity with GAAP, as described in FASB Statement No. 130.

12. Optional Narrative Statement

OTS proposes adding a space for thrift management to submit a brief narrative statement concerning data reported in their TFR. This would permit institutions to provide narrative information on significant transactions, mergers, organizational adjustments, reclassifications, prior period adjustments, etc., of which they want OTS and the public to be aware. The narrative statement is optional and, therefore, poses no additional burden. The contents of the narrative would be the responsibility of management, would not be edited or screened by OTS, and would be released to the public.

13. Federal Home Loan Bank (FHLB) Dividend Income

OTS proposes adding a separate line in Schedule SO (Statement of Operations) for FHLB dividend income. FHLB dividends comprise a relatively large portion of net income for many institutions. Because of the magnitude of FHLB dividend income, we currently require the reporting of FHLB dividends in the detail of other noninterest income, leaving only two detail lines for other noninterest income. Creating a separate line for FHLB dividends would provide us with three detail lines describing other noninterest income as originally intended.

14. Goodwill Expense

OTS proposes revising the title of SO560 from "Amortization of Goodwill" to "Goodwill and Other Intangibles Expense" to provide for periodic write-down of goodwill along with amortization of other intangibles, pursuant to FASB Statement No. 142.

15. Schedule VA, Valuation Allowance Reconciliation

OTS proposes to change the caption in the last column of the charge-off and recovery schedule from "Total" to "Adjusted Net Charge-offs" to better reflect its purpose.

16. Troubled Debt Restructured

OTS proposes to break out Troubled Debt Restructured (TDR) reported on VA941 into TDR in compliance with modified terms and past-due TDR. We would delete VA941 (TDR) and replace it with a line for TDR in compliance. We would add new lines in Schedule PD for each of the past due categories (30–89 days, 90 days or more, and nonaccrual) for past-due TDR included in Schedule PD. This would give OTS important monitoring information concerning the relative risk of the TDR on the books of an institution. It would also permit industry analysts to better identify assets with possible problems, since TDR in compliance may not present as much of a risk. This corresponds to the Call Report break out of TDR—troubled debt restructured and in compliance with modified terms, RC–C, Part I, Memoranda item 1 and troubled debt restructured past due, which is reported on RC–N, Memoranda item 1.

17. Guaranteed Loans Past Due

OTS proposes adding a line in each of the past due categories (30–89 Days, 90 Days or More, and Nonaccrual) in Schedule PD for the guaranteed portion of loans and leases that are wholly or partially guaranteed by the U.S. Government or Agency thereof. All loans, regardless of any guarantee, are included in Schedule PD, and all of Schedule PD is released to the public. The addition of this data would benefit institutions. Because investment and loan ratings are based on amounts reported in Schedule PD, without this new line, delinquent guaranteed loans could bring a rating down when in fact these loans may present no credit risk to the institution if they are properly underwritten and administered. This line is included in the Call Report on RC–N item 10.a.

18. Unused Balances of Credit Cards and Home Equity Lines of Credit

OTS proposes to add two lines in Schedule CC (Commitment and Contingencies) to collect data on the unused balance of credit cards, and outstanding home equity lines of credit that have not yet been drawn down; currently these amounts are included with Open-end Consumer Lines on CC410.

19. Deletion of Lines in Schedule CF (Cash Flow)

OTS proposes to delete the following lines that are no longer used:

- *Mortgage Pool Securities Activity*—OTS proposes combining the activity of mortgage pool securities secured by fixed-rate mortgages and those secured by variable-rate mortgages in Schedule CF (Cash Flow) (lines CF140 through CF170) into one line for purchases and one line for sales. We feel the breakdown of activity between fixed and variable rate is no longer necessary.
- *Mortgage Loan Activity*—OTS proposes combining the activity of newly built and previously occupied permanent mortgages on residential property in Schedule CF into one line collecting these data. The breakdown between newly built and previously occupied is no longer considered necessary for supervisory purposes.

20. Refinancing Loans

In order to track total refinancing loans, OTS proposes to change the definition of CF360, Refinancing Loans, to include not only refinanced loans where the reporting institution held the original mortgage, but also refinanced loans where another institution held the original mortgage. Line CF360 would be deleted and replaced with a new line using the revised definition. This would provide OTS with more complete information when assessing the amount of refinancing activity in an institution or in a geographical area.

21. Nonmortgage Loan Activity

Because nonmortgage loans have become a larger, and, in most cases, riskier part of the thrift industry's loan portfolio, OTS proposes adding two lines capturing sales of commercial and consumer nonmortgage loans. Schedule CF currently reconciles the activity in mortgage loans, deposits, and mortgage pool securities; however, nonmortgage commercial and consumer loans have only one line each for originations and purchases. These lines along with the proposed lines would improve reconciliation of nonmortgage loans and would indicate the volume of nonmortgage loans that are acquired and sold within the same quarter.

22. Mortgage Derivative Securities Activity Detail

OTS proposes adding activity detail on mortgage derivative securities, i.e., purchases, sales, and other balance changes. For some institutions, period-to-period swings in these assets can be more significant than in their loan portfolio balances. This section would be placed in Schedule CF immediately following purchases and sales of mortgage pool securities.

23. Deposit Information and Deposit Insurance Premium Assessment Information

OTS proposes to move the deposit data and deposit insurance premium assessment information from Schedule SI (Supplemental Information) to a new schedule, Schedule DI (Deposit Information). Schedule SI was designed to contain supplementary data not collected elsewhere in the TFR. Because the number of items collected for deposit insurance premium assessment purposes has increased substantially over the past ten years, we believe it is preferable to move these data items to a separate schedule. This schedule would correspond to Call Report Schedules RC–E and RC–O.

The Federal Deposit Insurance Corporation (FDIC) Assessments Branch has requested that we re-establish a line that was deleted in 1996 that collected reciprocal balance accounts deducted from insured deposits in calculating the deposit insurance premium. We propose adding this line, which would be collected in the new Schedule DI and would be captioned: "Adjustments to Demand Deposits for Reciprocal Demand Balances with Commercial Banks and Other Savings Associations." These reciprocal demand balances are currently collected along with other items in SI247. This line corresponds to Call Report RC–O Line 11.a.

OTS also proposes adding balance information on:

- Transaction accounts,
- Money market deposit accounts,
- Passbook accounts, and
- Time deposits.

Similar data are currently collected for those institutions that file Schedule CMR, but is not publicly released. Placing these balances on the new Schedule DI would provide publicly available data for all institutions, consistent with the breakdown of deposits in the Call Report, RC–E.

24. Summary of Changes in Equity Capital

Currently SI670, Other Adjustments to Equity Capital, is made up of various items and, for most savings associations, this miscellaneous data item is the largest reconciling amount to capital. To provide a better understanding of this adjustment, OTS proposes adding the following three lines in the reconciliation of equity capital in Schedule SI:

- Other Comprehensive Income (an amount that can be generated in the electronic filing software and would require no input by the reporting savings association);
- Other Capital Contributions (where no stock is issued); and
- Prior Period Adjustments (for periods that can no longer be amended).

We would change the title of this section to "Summary of Changes in Equity Capital." The inclusion of current comprehensive income in the summary of changes in equity capital would put this reconciliation in conformity with GAAP, as described in FASB Statement No. 130.

25. Thrift Investment in Service Corporations

OTS proposes adding a line in Schedule SI to collect the thrift's aggregate investment in service corporations. The definition of service corporation investment would include the thrift's total exposure, that is, all equity investments, unsecured loans, and third party guarantees. Under OTS rules, a thrift can make investments in service corporations and lower-tier entities. For determining compliance with lending and investment limits, a federal thrift has the flexibility to place loans to service corporations or lower-tier entities in either the service corporation investment category or another applicable investment category

(such as its commercial lending authority), consistent with the lending and investment powers set forth in § 560.30 (Lending and Investment Powers of Federal Savings Associations). Collecting this data will enable OTS to monitor a thrift's total investment in service corporations and lower-tier entities.

26. Savings Association and Subsidiary Web Site Addresses

OTS proposes the addition of an Internet home page address and transactional web site addresses as defined in § 555.300(b) to assist in monitoring the activities of savings associations on their web sites. These data items would be collected in Schedule SQ (Supplementary Questions). OTS also proposes adding a similar data item to collect transactional web site addresses of subsidiaries in Schedule CSS (Subordinate Organization Schedule).

27. IRS Domestic Building and Loan Association (DBLA) Test

OTS proposes to add a line for those savings associations that do not use the Home Owners' Loan Act (HOLA) Qualified Thrift Lender (QTL) test, but instead use the IRS Domestic Building and Loan Association (DBLA) test. The addition of this line would more exactly identify savings associations that are using the IRS DBLA test and would enable the regions to better monitor the QTL status of those associations. This line would be added in Schedule SI following the lines for QTL. It would be required only of those associations using the DBLA test, who are currently required to calculate their DBLA test monthly. Thus, the addition of this line would pose no additional burden.

28. Mutual Fund and Annuity Sales

OTS proposes eliminating the collection of data on quarterly sales of annuities, mutual funds, and proprietary products, SI800 through SI850. In place of these items, each savings association would respond to a "yes" or "no" question asking whether it sells private label or third party mutual funds and annuities. In addition, savings associations would report the total assets under their management in proprietary mutual funds and annuities. The data item collecting fee income from the sale and servicing of mutual funds and annuities would be retained. For savings associations with proprietary mutual funds and annuities, reporting the amount of assets under management should be significantly less burdensome than reporting the quarterly sales volume for these proprietary products. These changes were made to the Call Report in March 2001.

29. Transactions with Affiliates

OTS proposes adding memoranda information in Schedule SI on certain transactions the savings association has with its affiliates. The term "affiliate" is defined in 12 CFR 563.41(b)(1). For purposes of the collection of this information, "affiliate" is defined as the holding company(s), any holding company subsidiary(s), a bank or thrift subsidiary of the savings association, and any company controlled by or for the benefit of shareholders or which shares a majority of the same directors with the savings association or holding company. These data generally would not include transactions with subsidiaries of the savings association. Additionally, any transaction by a savings association or its subsidiaries with any person or entity is a transaction with an affiliate if the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate.

The items to be collected are:

- Fees/expenses paid by the thrift to affiliates during the quarter including interest, management and service fees, tax sharing payments, and other general and administrative expenses;
- The amount of assets sold to affiliates during the quarter;
- The outstanding balance at the end of the quarter of:

—Assets purchased from affiliates,
—Commitments to purchase assets from affiliates, and
—extensions of credit to affiliates;

- The percentage of the thrift's directors who are also directors of affiliates; and
- The percentage of the thrift's officers who are also officers of the affiliates.

More complex business plans and increased merger and acquisition activity have changed the nature of the relationship of the thrift with its affiliates. OTS proposes to collect this information for the purpose of off-site monitoring and to more precisely scope its on-site examinations.

30. Average Balance Sheet Data

OTS proposes to add the collection of average balances for the following selected balance sheet items:

- Total assets (SC60);
- Deposits and Investments, excluding cash and non-interest-earning items (SC10 less SC110);
- Mortgage Loans and Mortgage-Backed Securities;
- Nonmortgage Loans;
- Deposits and Escrows; and
- Total Borrowings.

Associations may calculate the average balances based upon close-of-business balances using either all the business days in the quarter or weekly balances, using one day of the week consistently, other than Friday. Associations with less than $100 million in total assets may calculate average balance based upon month-end averages. Average balances for securities would be calculated based upon the following: for debt securities use amortized cost and for equity securities use historical cost, except for those securities held in a trading account for which use determinable fair values. This information would produce more accurate data for use in ratio analysis; would avoid skewed data when restructurings, sales, and acquisitions occur; and would enable calculation of better yield and cost data. The Call Report collects average data in Schedule RC–K.

31. Schedule SB, Small Business Loans

OTS proposes adding a question at the beginning of Schedule SB asking: "Do you have any small business loans to report in this schedule?" This question would permit those institutions not required to file this schedule to respond "no" and omit the rest of the schedule. Currently institutions must answer the first three questions on Schedule SB even if they have no loans to report.

32. Holding Company Information

More complex business plans, advances in technology, increased merger and acquisition activity, and earnings pressures have changed the nature of the relationship of the thrift with its affiliates. OTS seeks to more fully leverage its collection of holding company information for the purpose of improving off-site monitoring and to more precisely scope its on-site examinations. Therefore, OTS proposes to expand Schedule HC (Thrift Holding Company) to collect additional data on thrift holding companies and intends to substantially reduce the data collection in the H-b(11), the details of which will be announced at a later date. Bank holding companies are excluded from reporting. Schedule HC is not released to the public. The changes to Schedule HC would include:

- Replace the question HC120 (is any company in this holding company's corporate structure required to file periodic securities disclosure documents with the SEC, pursuant to the Securities Exchange Act of 1934?) with a new data item collecting the stock exchange ticker symbol.

- Add SEC number.
- Add web site address.
- For the consolidated entity:

—Add a line for minority interest.
—Replace HC510 (Intangible Assets and Deferred Policy Acquisition Costs) and HC515 (Servicing Assets included in HC510) with three lines: (1) Intangible assets—servicing assets; (2) intangible assets—other; and (3) deferred policy acquisition costs.
—Replace HC520 (Debt Maturing Within the Next 12 Months) and HC530 (All Other Debt) with the three lines: (1) Trust preferred securities; (2) other debt maturing within 12 months; and (3) other debt maturing beyond 12 months.
—Replace HC560 (Interest Expense for the Quarter) with two items: (1) Interest expense on trust preferred securities and (2) interest expense on all other debt.

- Add the following parent-only financial information:

—Total assets
—Total liabilities
—Minority interest
—Total equity
—Net income for the quarter
—Receivable from subsidiaries—Thrift
—Receivable from subsidiaries—Other
—Investment in subsidiaries—Thrift
—Investment in subsidiaries—Other
—Intangible assets—Servicing assets
—Intangible assets—Other
—Deferred policy acquisition costs
—Payable to subsidiaries—Thrift: Transactional
—Payable to subsidiaries—Thrift: Debt
—Payable to subsidiaries—Other: Transactional
—Payable to subsidiaries—Other: Debt
—Other debt maturing within 12 months
—Other debt maturing beyond 12 months
—Dividends received from thrift subsidiaries
—Dividends received from other subsidiaries
—Interest expense—on all other debt
—Other cash and cash equivalents received from thrift during the quarter
—Net cash flow from operations for the quarter.

- Add the following supplemental questions:

—Have any holding company subsidiaries been formed, sold, or dissolved during the quarter?
—Are you or any of your subsidiaries functionally regulated:
  —Registered broker-dealers regulated by the SEC and NASD?
  —Registered investment advisers regulated by the SEC?
  —Registered investment companies regulated by the SEC?
  —Insurance companies and agencies regulated by the states?
  —Entities regulated by the Commodity Futures Trading Commission?
—Has the holding company appointed any new senior executive officers or directors during the quarter?
—Has the holding company entered into a new pledge, or changed the terms and conditions of any existing pledge, of capital stock of any subsidiary savings association that secures short-term or long-term debt or other borrowings of the holding company?
—Have the rights of the holders of any class of securities of the holding company or its subsidiaries changed during the quarter?
—Has there been any default in the payment of principal, interest, a sinking or purchase fund installment, or any other default of the holding company or any of its subsidiaries during the quarter?
—Has there been a change in independent auditors during the quarter?
—Has there been a change during the quarter in the fiscal year-end month?
—Do you or any of your GAAP consolidated subsidiaries (other than the reporting thrift) control other U.S. depository institutions?
  ■ If so, provide the FDIC certificate number.
—Do you or any of your GAAP consolidated subsidiaries control a foreign depository institution?

The holding company would provide this information to the savings association, and the holding company schedule would continue to be filed as part of the TFR.

34. Reporting Frequency of Schedule CSS (Subordinate Organization Schedule)

In 1996, OTS reduced the reporting frequency of Schedule CSS from quarterly to annually in order to reduce reporting burden of the industry. While annual reporting of subordinate organizations was adequate at that time, we now have a need for more frequent reporting and propose to again collect Schedule CSS quarterly. The basic data for all subordinate organizations are contained in the OTS electronic filing software database; therefore, institutions would only be required to make necessary changes to the subordinate organization database and update financial data.

34. Consolidation of Subordinate Organizations

OTS proposes revising Schedule CSS to include the following question: "Is this entity a GAAP-consolidated subsidiary of the parent savings association?" The addition of this question would provide information as to whether the assets and liabilities of the subordinate organization are consolidated with the parent savings association in Schedule SC. An institution would respond "No" if the subordinate organization was not consolidated and was accounted for using the equity or cost method of accounting.

35. Schedule CCR (Capital Requirement)

OTS proposes to update Schedule CCR by making the following changes:

- Renumber the lines in Tier 1 Capital to be sequential;
- Eliminate the lines that are either obsolete or seldom used;
- Add lines for "Other" in each category under Tier 1 Capital and Supplementary Capital;
- Change the caption of CCR125 to "Minority Interest and REIT Preferred Stock of Includable Consolidated Subsidiaries;" the instructions for CCR125 were expanded in June 2002 to include REIT preferred stock;
- Change the caption of CCR115 and CCR155 to "Goodwill and Certain Other Intangible Assets;" adding the word "Certain" to these lines, since servicing rights are included as intangible assets under FASB Statement No. 142 but are not deducted on CCR115 and CCR155.
- Combine CCR408, "Notes and Obligations of FDIC," and CCR410, "FDIC Covered Assets," into one line;
- Expand CCR430, "20% Risk Weight: High-quality MBS," to include asset-backed securities eligible for 20% risk weighting;
- Expand CCR470, "50% Risk Weight: Other MBS Backed by Qualifying Mortgage Loans," to include Asset-Backed Securities eligible for 50% risk weighting; and
- Add a line in the 100% Risk Weight for "Securities Risk Weighted at 100% Under the Ratings Based Approach."

The following lines would be eliminated:

- CCR120, "Nonqualifying Equity Instruments";
- CCR130, "Mutual Institutions' Nonwithdrawable Deposit Accounts Reported on SC710";
- CCR320, "Capital Certificates;" and
- CCR330, "Nonwithdrawable Deposit Accounts Not Reported on CCR130."

Items that would have been reported on these lines would be included in the new "Other" categories. These changes are largely required by regulatory and accounting changes.

36. Shorter Deadlines for TFR, Including Schedules HC and CMR

Savings associations are required to submit their TFR electronically so that OTS receives it no later than thirty days after the quarter-end reporting date. Savings associations have been provided additional time (a total of forty-five days) to complete Schedule CMR (Consolidated Maturity and Rate) a schedule that addresses interest rate risk, and Schedule HC (Thrift Holding Company). This later due date was granted to allow more time in which to receive information from data service providers and holding companies that was needed to complete these schedules. OTS's monitoring and analysis of interest rate risk exposure in individual savings associations and for the thrift industry as a whole and of its holding company and affiliates' activity and exposure is impeded by the delayed submission of these schedules. Furthermore, with the technological advances over the past several years, savings associations have the ability to receive data from their data service providers and from their holding companies on a timelier basis and transmit it conveniently through the Electronic Filing System software provided by OTS. Therefore, OTS proposes to shorten the filing due date for the TFR from thirty (30) to twenty (20) calendar days after the end of the quarter, and for Schedules HC and CMR from forty-five (45) to thirty (30) calendar days after the end of the quarter. This would allow OTS to provide data publicly on an earlier schedule, provide for the compilation and timelier analysis of individual and aggregate statistics on the condition and performance of savings associations, and provide the Uniform Thrift Performance Report (UTPR) to associations on a timelier basis. An earlier deadline for Schedule CMR would also enable OTS to transmit the Interest Rate Risk Exposure Report to reporting associations on a timelier basis. With the advances in technology coupled with the improvements in OTS's electronic filing system software, earlier due dates should not create a significant burden to the industry.

Type of Review: Revision.

Affected Public: Business or for profit.

Estimated Number of Respondents and Recordkeepers: 950.

Estimated Time Per Respondent: 36.4 hours average for quarterly schedules and 1.9 hours average for schedules required only annually plus recordkeeping of an average of one hour per quarter.

Estimated Total Annual Burden Hours: 143,703 hours.

Because some of these proposed changes will not affect all savings associations that file the TFR, the burden hours reflected above may vary from institution to institution. OTS invites comment on how savings associations think the burden would change given these form changes.

Request for Comments: In addition to the issues presented above, comments are invited on:

(a) Whether the proposed revisions to the TFR collections of information are necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques, the Internet, or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

OTS will summarize or include comments submitted in response to this notice with the request for OMB approval. All comments will become a matter of public record.

Dated: January 16, 2003.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

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Part II

Department of Health and Human Services

Centers for Disease Control and Prevention

Chronic Disease Prevention and Health Promotion Programs; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03022]

Chronic Disease Prevention and Health Promotion Programs

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Chronic Disease Prevention and Health Promotion Programs.

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A. Authority and Catalog of Federal Domestic Assistance Number

Components 1 (Tobacco), 2 (Nutrition, Physical Activity, Obesity), 4 (Oral Disease), 6 (BRFSS), and 7 (Genomics)

This program is authorized under section 301 (a) and 317 (k) (2) of the Public Health Service Act, [42 U.S.C. section 241 (a) and 247b(k) (2), as amended]. The Catalog of Federal Domestic Assistance number is 93.283.

Component 3—WISEWOMAN

This program is authorized under sections 1501–1509 [42 U.S.C. 300k–300n–4a] of the Public Health Service Act, as amended. The consolidated Appropriations Act, 2000, Public Law 106–113, also authorizes this program. The Catalog of Federal Domestic Assistance (CFDA) number is 93.283. See *http://www.cdc.gov/wisewoman/legislationhighlight.htm* for WISEWOMAN authorization and link to BCCEDP legislation.

Component 5—Arthritis

This program is authorized under section 301(a) and 317(k) (2) of the Public Health Service Act, [42 U.S.C. section 241 (a) and 247b(k) (2), as amended]. The Catalog of Federal Domestic Assistance number is 93.945.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Chronic Disease Prevention and Health Promotion Programs. This program addresses the "Healthy People 2010" focus areas of Tobacco Use, Physical Activity and Fitness, Nutrition and Overweight, Public Health Infrastructure, Oral Health, Arthritis, Osteoporosis, Back Conditions, Educational and Community-Based Programs, Cancer, Diabetes, Genomics, and Surveillance and Data Systems.

The purpose of the program is to support capacity building, support program planning, development, implementation, evaluation, and surveillance for current and emerging chronic diseases conditions.

The Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) is issuing this program announcement in an effort to simplify and streamline the grant pre-award and post-award administrative process, provide increased flexibility in the use of funds, measure performance related to each grantee's stated objectives and identify and establish the long-term goals of Health Promotion programs through stated performance measures. These efforts include incorporation of improved performance measures, enhancement of short and long term objectives, combining multiple reports, establishment of consistent reporting requirements, and advancing from one public health program funding level to a higher level based on performance.

This program announcement incorporates funding guidance for the following seven program components: Tobacco; Nutrition, Physical Activity, and Obesity; Well Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN); State-based Oral Disease Prevention; Arthritis; Behavior Risk Factor Surveillance Systems (BRFSS); and Genomics and Chronic Disease Prevention programs.

CDC encourages recipients to identify opportunities to link chronic disease and health promotion efforts across this and related program announcements, where appropriate (*i.e.* cardiovascular health, diabetes, genomics, tobacco, nutrition and physical activity, obesity, etc.). These efforts could include co-funding of recipient activities and cost sharing of staff time, in support of shared, overlapping objectives across program components and cooperative agreements. Such complementary activities must meet the program objectives of the funded component/program.

Your application should be submitted as one application but should consist of each separate Specific Categorical Component. Applications will be due on March 28, 2003. The categorical components and specific purposes for each are:

Component 1: Comprehensive State-Based Tobacco Prevention and Control Programs—The purpose of this program is to achieve four Program Goals through community interventions and mobilization; counter-marketing; policy development and implementation; and surveillance and evaluation. The goals are: prevent initiation to tobacco use among young people; eliminate exposure to second hand smoke; promote cessation among adults and young people who use tobacco; and identify and eliminate tobacco-related disparities among specific population groups.

Component 2: State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases—The purpose of the program is to prevent and control obesity and other chronic diseases by supporting States in the development and implementation of science-based nutrition and physical activity interventions. Major program areas are: balancing caloric intake and expenditure; improved nutrition through increased breastfeeding and increased consumption of fruits and vegetables; increased physical activity; and reduced television time. See Goals at *http://www.cdc.gov/nccdphp/dnpa/rfainformation.htm.*

Component 3: Well integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN)—The purpose of this program is to support health promotion efforts through the WISEWOMAN program, focusing on early detection of chronic diseases and their associated risk factors and prevention of chronic diseases through lifestyle interventions. The WISEWOMAN program promotes a healthy lifestyle through increased physical activity, improved nutrition, weight control, and smoking cessation. The target population is women aged 40–64 years old who are participants in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) comprehensive screening programs funded by the Centers for Disease Control and Prevention (CDC). Because eligibility for the NBCCEDP is based on inadequate health insurance coverage and lack of financial resources, the WISEWOMAN program aims to increase access to quality care through screening

for conditions such as high cholesterol and high blood pressure using methods detailed in national clinical guidelines. Along with lifestyle interventions, medical referral and follow-up are also important components of the program.

Component 4: State-Based Oral Disease Prevention Programs—The purpose of this program is to establish, strengthen and expand the capacity of States, Territories, and tribes to plan, implement, and evaluate population-based oral disease prevention and health promotion programs, targeting populations and oral disease burden, as outlined in "Oral Health in America: A Report of the Surgeon General," and can be found using the following link *http://www.surgeongeneral.gov/library/oralhealth*.

Component 5: Arthritis—The purpose of this program is to assist States in developing, implementing, and evaluating State level programs to control of arthritis and other rheumatic conditions. This program emphasizes State-based leadership in coordinating State Health Department capacity to reduce the burden of arthritis within the State. Programmatic efforts should focus on persons affected by arthritis, *i.e.*, persons already experiencing the systems of arthritis, their families, and others treating or providing services for persons with arthritis. By targeting persons affected by arthritis, prevention strategies are secondary and tertiary, focusing on prevention of disability and improving quality of life. There will be two levels of activities for this component: Capacity Building Program Level A and Capacity Building Level B. See "Recipient Activities" for specific activities for each level.

Component 6: Behavior Risk Factor Surveillance Systems (BRFSS)—The purpose of this program is to provide financial and programmatic assistance to State Health Departments to maintain and expand (1) specific surveillance using telephone survey methodology of the behaviors of the general population that contribute to the occurrence of prevention of chronic diseases and injuries, and (2) the collection, analysis, and dissemination of BRFSS data to State categorical programs for their use in assessing trends, directing program planning, evaluating programs, establishing program priorities, developing policy, and targeting relevant population groups.

Component 7: Genomics and Chronic Disease Prevention—The purpose of the program is to assist States in developing agency-level genomics leadership and coordination capacity that ensures effective planning, implementation and evaluation of knowledge and tools for using genetic risk factors and family history in improving chronic disease prevention and health outcomes. The study of genes and their function has led to recent advances in genomics and our understanding of the molecular mechanisms of disease, including the complex interplay of genetic and environmental factors. This program requires the integration of genomics and family history assessments into ongoing and new population-based strategies for identifying and reducing the burden of specific chronic, infectious and other diseases. Of particular importance is enhanced planning and coordination to integrate genomics into core State public health specialties of genomics within State core public health specialties (such as epidemiology, laboratory activities, and environmental health) and to facilitate the effective application of new knowledge, enable effective application of new knowledge about gene-environment interactions, and crosscutting family history information to chronic disease prevention opportunities.

Note: The following statements are applicable for all Components: Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Disease Prevention and Health Promotion (NCCDPHP): Reduce cigarette smoking among youth; support prevention research to develop sustainable and transferable community-based behavioral interventions; increase the capacity of State arthritis programs to address the prevention of arthritis and its complications at the community level; help States monitor the prevalence of major behavioral risks associated with premature morbidity and mortality in adults to improve the planning; implementation, and evaluation of disease prevention and health promotion programs; support high-priority State and local disease prevention and health promotion programs, and to help State use genetic information in their public health programs.

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of effectiveness must relate to the performance goal (or goals) as stated in section "B. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

C. Eligible Applicants

Limited Competition

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and Federally recognized Indian tribal governments. A bona fide agent is an agency/organization identified by the State as eligible to submit an application under the State eligibility in lieu of a state application.

All applications received from current grant recipients under Program Announcements 99038, Component 1, (Comprehensive State-Based Tobacco Use Prevention and Control Programs); 00115 and 99135, Component 3 (Well Integrated Screening and Evaluation for Women Across the Nation WISEWOMAN) and 01098 (WISEWOMAN Enhanced); 01046, Component 4 (Support for State Oral Disease Prevention Programs); 01097, Component 5 (Reducing the Impact of Arthritis and Other Rheumatic Conditions); 99044, Component 6, (Behavior Risk Factor Surveillance Systems) will be funded upon receipt and approval of a technically acceptable application. In addition to the eligible applicants above, potential applicants that are eligible for specific components 2, 3, 4, 5, 6, and 7 are:

Component 2—State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases: Eligibility for this component is limited to States, Territories, and the District of Columbia. Applicants can apply for either or both programs, "Capacity Building or Basic Implementation funding." Applicants awarded Basic Implementation funds will not be considered for Capacity funding. Applicants applying for both programs must submit two separate applications for this component.

Component 3—WISEWOMAN: Assistance will be provided only to the health departments of certain States/Territories/Tribes or their bona fide agents who are currently receiving grants under Section 1501 of the Public Health Service Act. Applicants are eligible for one of two levels of funding for one of two types of projects, Standard or Enhanced (see Appendix A: Eligibility and Appendix B: Type of Program and Performance Requirements for more details).

Component 4—State-Based Oral Disease Prevention Programs: The 13 States currently receiving CDC funds for CORE Programs under Program Announcement 01046 are eligible to apply for Part 1 Capacity Building Program: Alaska, Arkansas, Colorado, Illinois, Michigan, New York, Nevada,

North Dakota, Oregon, the Republic of Palau, Rhode Island, South Carolina, and Texas.

Current CORE Program grantees that apply for Basic Implementation Program funding in year two and are not funded will continue to receive funding for the CORE (Capacity Building) Program. To make this possible, currently funded CORE (Capacity Building) Program grantees must provide a separate CORE (Capacity Building) Program Logic Model, Work Plan, budget, and budget justifications that addresses CORE (Capacity Building) Program activities to expedite the award process.

Component 5—Arthritis: The only eligible applicants for Capacity Building Level B Funding during year one of this program announcement are the following 27 States which are currently funded under Program Announcement 01097, Reducing the Impact of Arthritis and Other Rheumatic Conditions: Alaska, Arizona, Arkansas, Colorado, Connecticut, Idaho, Indiana, Iowa, Kentucky, Maryland, Michigan, Nebraska, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and Wisconsin. These States may not apply for Capacity Building Program Level A funding during year one of this announcement.

Eligible applicants for Capacity Building Program Level A are those currently funded under Program Announcement 99074 and health departments other than those listed above who meet the requirements outlined in the "Recipient Activities" section of this Component for Capacity Building Program Level B and Capacity Program Level A.

Component 6—Behavior Risk Factor Surveillance Systems (BRFSS): Assistance will be provided only to the existing 54 health departments funded under the Behavioral Risk Factor Surveillance, Program Announcement Number 99044.

Component 7—Genomics: Assistance will be provided only to the health departments of States or their bona fide agents. A *bona fide* agent is an agency/organization identified by the state as eligible to submit an application under the State eligibility in lieu of a State application.

D. Availability of Funds

Approximately $91,700,000 is available in FY 2003 to fund approximately 194 awards.

It is expected that the awards will begin on or about June 30, 2003 and will be made for a 12-month budget period within a project period of up to five years.

Pending availability of funds, beginning in year two and each of the remaining years for this program announcement (June 30, 2004 through June 30, 2008), there will be an open season for competitive applications. Specific guidance will be provided with exact due dates and funding levels each year.

Applications from all new applicants as well as all currently funded programs, whose project period have ended or will end in FY 2003, will be competitively reviewed by an independent Objective Review Panel.

Continuation awards for year two and beyond will be made on the basis of satisfactory progress made toward the attainment of the goals, objectives, and corresponding performance measures as evidenced by required reports, and based on the availability of funds. Additional information is listed on a component-by-component basis.

Component 1: Comprehensive State-Based Basic Tobacco Prevention and Control Programs

D.1. Availability of Funds

Approximately $57 million is available in FY 2003 to fund 59 awards.

In year one, States and Territories currently funded under program announcement 99038 should apply for the same base amount that is currently received on a non-competitive basis. Applicants should refer to "Recipient Financial Participation" for information on required matching funds. The remaining unfunded Territory is Marshall Island that is eligible to apply for funds in the amount of $100,000 to $125,000. If Marshall Island submits an application, it will be reviewed under a competitive review process.

Continuation award amounts may be adjusted should a State receive lawsuit settlement funds, general funds, or excise tax funds for the State's comprehensive program.

Use of Funds

CDC funds cannot be used to supplant existing State funding. Applicants may not use these funds to supplant funds from Federal or State sources, the Preventive Health and Health Service Block Grant or Center for Substance Abuse Prevention funding for youth access enforcement. Applicants must maintain current levels of support dedicated to tobacco use prevention and control from Federal, State sources, or the Preventive Health and Health Services Block Grant.

Funds may not be used to conduct research. Surveillance and evaluation activities are for the purposes of monitoring program performance, and are not considered research.

Cooperative agreement funds must be used for focused strategies to change systems, develop and implement policies, change the environment in which tobacco use occurs, and impact population groups rather than individuals. To this end, cooperative agreement funds may not be used to provide direct services such as individual and group cessation services, patient care, personal health services medications, patient rehabilitation, or other costs associated with the treatment of diseases caused by tobacco use. Funds may be used to support activities in line with CDC "Guidelines for School Health Program to Prevent Tobacco Use and Addiction" including curricula but may not be used for staff time to provide direct classroom instruction of students. Cooperative agreement funds may not be used to directly enforce tobacco control policies unless there are extenuating circumstances within the State. A justification must be provided and reviewed.

Recipient Financial Participation

Federal sources as follows. During the first year of the award, States receiving funding from another source(s) that is equal to or greater than the CDC award will match one dollar of direct cash match from non-Federal sources for every dollar of Federal funds. All other States and Territories that do not receive funds from non-Federal sources that are equal to or greater than the CDC award will provide one dollar of cash or in-kind match from non-Federal sources for every ten dollars of Federal funds.

Beginning in the second year and in each subsequent year of the award, all States and Territories will provide one dollar from non-Federal sources for every four dollars of Federal funding. The match may be cash, in-kind, or a combination from State and/or public and private sources.

Technical assistance will be available for potential applicants through the following means: a minimum of two conference calls to be held on or around December 12, 2002 and January 10, 2003.

E.1. Program Requirements

In conducting activities to achieve the purpose of this program component, the recipient will be responsible for the activities under "1. Recipient Activities," and CDC will be responsible for the activities listed under "2. CDC Activities."

1. Recipient Activities. a. Program Management. Identify and hire staff with the appropriate competencies to manage a tobacco prevention and control program and provide information to demonstrate that management staff are at a level within the agency to affect the decision making process related to the tobacco program.

A suggested minimum number of staff would be seven FTEs including one FTE Program Manager and one FTE for administrative support. Staff should have knowledge and skills in: Program development, coordination and management; fiscal management including management of funding to State and local partners; leadership development; tobacco control and prevention content; cultural competence; public health policy including analysis, development and implementation; community outreach and mobilization; training and technical assistance, health communications including counter-marketing; strategic use of media including media advocacy, earned and paid media; strategic planning; gathering and analyzing data (surveillance); and evaluation methods.

Funding from other sources increases the scope of the program, requiring additional staff to administer and monitor the program. A suggested number of staff based on increased funding levels would be an additional one to eight FTEs for a total of eight to sixteen FTEs with program justification including description of activities funded through other sources. The Program Manager and the administrative support position should be FTEs within the State Health Department (SHD). Other positions may be SHD FTEs or may be contractual.

Performance will be measured by evidence that the SHD has dedicated human resources to administer and manage the program effectively that is consistent with the competencies and staffing levels identified above in item (a) "Program Management."

Evidence of the provision of ongoing training for staff can be demonstrated through staff participation in CDC sponsored training, meetings and conferences and other continuing education opportunities as identified by SHD program staff.

Evidence of organizational impact could be demonstrated by providing evidence that management staff have organizational access to the State Health Officer and by providing information to support senior level management involvement in the tobacco program.

b. Fiscal Management. 1. Describe how funding to support State and local programs that focus on population-based strategies, are science-based and policy-focused, and reach diverse groups will be accomplished.

2. Track and monitor the health and economic burden of tobacco use in the State through surveillance and evaluation activities, program activities supporting goals and objectives, tracking policy development and implementation.

Performance will be measured by evidence that the SHD activities resulted in accomplishment of items (a) through (d) above.

c. Strategic Planning. Develop a five-year strategic plan with active participation of State and local partners. The strategic plan should reflect all tobacco prevention and control activities in the State. It should be linked to and complement the SHD comprehensive cancer control plan, the cardiovascular health plan and other SHD plans to reduce tobacco-related chronic diseases. The five-year strategic plan should include: Description of evidence-based program and policy strategies tailored to data determined State needs; a logic model linking activities to outputs and short-term and intermediate outcomes using specific, measurable, achievable, relevant, and time bound program objectives; program evaluation activities including a summary and time-line for data collection activities; program components that address counter-marketing and strategic use of media advocacy and paid media when appropriate); strategies to address the four program goal areas.

Performance will be measured by evidence that a five-year basic implementation, strategic State tobacco control plan has been developed and will be updated based on environmental changes. Evidence can be shown by a description of how the plan was developed and the submission of a plan that is consistent with the activities described above in item (a) "Strategic Planning."

d. Surveillance and Evaluation. Develop and implement a basic implementation evaluation plan with stakeholder's involvement. The evaluation plan should include clear goal-based logic models, with outputs, short, intermediate, and long-term objectives; data collection on key tobacco-related indicators using valid methods that are comparable across States; data collection timetables, the production and dissemination of evaluation reports and establishment of a method to track the number and type of policy and systems changes that promote cessation. References U.S. HHS CDC "Introduction to Program Evaluation for Comprehensive Tobacco Control Programs, November 2001" and the upcoming report on key indicators that can be used to monitor and evaluate State level tobacco control programs (expected publication date: Spring 2003) for additional information.

Performance will be measured by accomplishment of the activities described above in item (a) "Surveillance and Evaluation" and by providing the following evidence: A description of a comprehensive evaluation plan, including the involvement of stakeholders in the evaluation planning process; recommendations made and/or actions taken by an advisory group or task force composed of diverse State and local representation; a description of the data collection activities, including methodologies and data analysis; a description of process and outcome objectives and indicators to be used in program evaluation; a description of the SHD's role in coordinating surveillance and evaluation efforts and providing technical assistance and training on program monitoring, data collection, and evaluation; the production of useful evaluation reports, and the utilization of evaluation findings to improve, expand, or maintain the tobacco control program.

e. Collaboration and Communication with Partners. Develop and maintain Statewide and local active partnerships that support the goal of reducing or eliminating the health and economic burden of tobacco use and an effective communication system with partners at the State and local level. Partnerships may include Statewide and local organizations, voluntary health organizations, universities, local health departments, organizations that represent diverse communities, community based organizations, Statewide and local coalition, and boards commissions, and advisory groups with responsibility for the State Tobacco Control Program. Working with partners includes capacity building with those organizations through technical assistance, training and educational activities.

Performance will be measured by accomplishment of the activities described above in item (a) "Collaboration and Communication with Partners" and by providing the following evidence: Submission of letters of support that clearly define the level of commitment from the organization; description of grants, contacts, and memoranda of understanding; membership lists; active participation in meetings; clear role definitions for partners; active

participation in Statewide and local planning including media campaigns, tobacco control plans, and conference. Evidence can be shown by: Description of stakeholder communication plan which employs multiple channels including Statewide list serve; Statewide conference, trainings, and information exchanges; electronic newsletters and updates; Statewide teleconferences; Web site postings; site visits; and videos.

f. Local Grant Programs. Support local programs to establish grassroots networks at the community level. Support should be sufficient for designated staff at the local level to establish and participate in local coalitions, partnerships, and task forces for local policy development and implementation; local environmental scan; development and implementation of a written plan to work toward policy goals and participation in State participation in State evaluation and data collection efforts; access to tobacco control information through a variety of sources such as journals, Internet Web sites and list serves. Refer to U.S. HHS, CDC "Best Practices for Comprehensive Tobacco Control Programs-August 1999," and American Journal of Preventive Medicine "Community Prevention Services Guidelines for Tobacco Use, February 2001" for information about local programs.

Performance will be measured by accomplishment of the activities described above in item (a) "Local grant program."

g. Training and Technical Assistance. Develop and implement a technical assistance and training process to address the needs of local health department staff, coalitions, and partners involved in tobacco prevention and control activities.

Performance will be measured by evidence that training and technical assistance needs have been assessed and provided by the State Tobacco Control Program to local health department staff, coalitions, and partners. Evidence can be shown by: The number and description of trainings planned and/or provided that include the strategic purpose of the trainings and anticipated impacts as related to short-term and long-term outcomes, description of the process and strategy to provide technical assistance.

h. Prevent Initiation of Tobacco Use Among Young People. Develop and implement science-based policy-focused strategies identified in the State strategic plan to prevent youth initiation of tobacco use.

Performance will be measured by accomplishment of the activities described above in item "(a) Prevent Initiation to Tobacco Use Among Young People." Evidence can be shown by describing: Multi-component community interventions to reduce youth initiation that are science-based and policy focused such as price increase for tobacco products; educational activities that address the efficacy of policy initiatives such as restrictions on tobacco advertising, promotion and sponsorships and retailer licensing regulations; tobacco-free school policies school policies; identification of disparities related to youth initiation to tobacco use; partnerships with State and local education organizations to promote CDC "Guidelines for School Health Programs to Prevent Tobacco Use and Addiction;" Counter-marketing strategies that include media advocacy and paid advertising to disseminate messages regarding youth access; pro-health messages; State evaluation and data collection efforts to demonstrate local programs toward policies to reduce youth initiation.

i. Eliminate Exposure to Second Hand Smoke. Develop and implement science-based policy-focused strategies to reduce exposure to second hand smoke.

Performance will be measured by accomplishment of the activities described above in item (a) "Eliminate Exposure to Secondhand Smoke." Evidence can be shown by describing: Local coalition objectives and evidence-based activities that are linked to a policy change leading to short-term and long-term outcomes as identified within the State plan; counter-marketing strategies that are supportive of local policy efforts, including both earned and paid media and the numbers of people reached through earned and paid media strategies; recommendations made and/or actions taken by an advisory group or task force composed of diverse State and local representation; a description of disparities related to exposure to secondhand smoke and strategies to reduce those disparities; actions taken to expand policy coverage to new communities and/or to strengthen policies in communities where they are already in place. Evidence can also be shown by a State-specific database that tracks local clean indoor air ordinances work, where pre-emption exists, voluntary policies and reporting of the number of policies implemented; State evaluation and data collection efforts to demonstrate local progress toward policies to eliminate exposure to secondhand smoke.

j. Promote Cessation Among Adults and Youth. Implement science-based policy-focused strategies as defined in the State strategic plan to promote cessation among adults and youth.

Performance will be measured by accomplishment of the activities described above in item "(a) Promote Cessation Among Adults and Youth." Evidence can be shown by describing: Strategies to promote guidelines published in "U.S. DHHS Public Health Services Treating Tobacco Use and Dependence" and "Community Prevention Services Guidelines for Tobacco Use;" strategies to reduce identified disparities; counter-marketing strategies that incorporate earned and paid media to provide information about and motivation for quitting and reach diverse populations and the number of people reached with paid media; Statewide activities, as detailed in the State strategic plan, to promote effective methods for quitting including support for and promotion of policy development and initiatives related to cessation services; links between the State program and other organizations to support and promote cessation.

k. Identify and Eliminate Tobacco-related Disparities among Specific Population Groups. Identify and eliminate disparities in specific population groups related to (1) preventing initiation among young people; (2) eliminating exposure to secondhand smoke; and (3) promoting cessation among adults and youth.

Performance will be measured by accomplishment of activities in item (a) "Identify and eliminate tobacco-related disparities among specific population groups." Evidence can be shown by: Assessing national data sources and research related to at-risk populations; outlining demographics reflecting Statewide diversity; coordinating available State and national data with at-risk populations in the State; augmenting State data with qualitative data (*i.e.* population assessments of specific population groups); examining the potential limitations of data used; identifying and developing new quantitative and qualitative-based methodologies for data collection among specific population groups, developing strategies and initiatives to build capacity and infrastructure among disparately-affected population groups. If States have participated in the Office on Smoking and Health's Disparities Pilot Training, additional evidence can be shown by demonstrating the implementation of interventions based on strategic plan to identify and eliminate tobacco-related disparities

developed by a diverse and inclusive workgroup.

1. Information Exchange. Develop and implement mechanisms to facilitate information exchange between the State Tobacco Control Program, the CDC, tobacco control program personnel in other States, and national partners.

Performance will be measured by accomplishment of the activities described above in item (a) "Information Exchange."

Evidence can be shown by: Establishing a communication loop with CDC for the exchange and dissemination of information about program effectiveness, progress toward short and long-term objectives as defined in the strategic plan; participation on CDC sponsored workgroups/task forces and the frequency of that participation, number of presentations at national meetings and conferences, number of publications of data and evaluation outcomes via "Morbidity and Mortality Weekly Report" (MMWR), peer-reviewed journals or as reports, number of reports on collaboration with programs and partners in neighboring States; posting information and resources on the CDC State forum; participation with Association of State Territorial Health Officers (ASTHO) regional networks and Tobacco Control Resource council and/or other tobacco-related projects sponsored by ASTHO.

2. CDC Activities. a. Provide ongoing guidance, consultation, technical assistance, and training in tobacco use prevention and control as described under "Recipient Activities."

b. Provide up-to-date information that includes diffusion of best practices for tobacco use prevention and control.

c. Provide resources and technical assistance to develop and improve monitoring and surveillance systems. Provide guidance to States to identify indicators that can be used to monitor and evaluate State level tobacco control programs.

d. Facilitate adoption of effective practices among grantees and other partners through workshops, conferences, training sessions, electronic and verbal communications.

e. Identify, develop, and disseminate media campaign materials for use by programs; facilitate coordination of counter advertising materials between programs; provide technical assistance on design, development, and evaluation of media.

f. Maintain an electronic center for State information sharing, State Forum, and the Chronicle, for progress reporting.

g. Develop and maintain partnerships with Federal and non-Federal organizations to assist in tobacco control and create a national infrastructure to complement State infrastructure.

h. Serve as a resource to States with regard to identifying and eliminating tobacco-related disparities among population groups.

i. Maintain a Web site with access to a data warehouse that contains comparable measures of tobacco use prevention and control from different data sources.

F.1. Content

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative for this component, including the Executive Summary, should be no more than 45 double-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. The annual action plan may be 20 pages, which will allow a total of 65 pages for the application (excluding budget and appendices). Appendices should total no more than 20 pages, excluding letters of support and the budget.

Focus the application content ONLY on the planned "Recipient Activities" for which you seek CDC funding. However, the Background and Need content should describe accomplishments regardless of funding source. Include a description of why CDC funding is needed and how these funds will be used strategically to complement other funding sources.

Provide supporting documentation such as resumes, job descriptions, and descriptions of coalitions and committees as appropriate. All materials must be suitable for photocopying.

1. Executive Summary. Provide a narrative, not to exceed two pages and summarize: The environment in which tobacco control has been conducted, including barriers and supportive factors; accomplishments; anticipated needs; plans to address the Program Goals. Indicate major areas of future program focus.

2. Program Narrative. Provide a narrative, not to exceed 43 pages, describing the burden of tobacco use, accomplishments to date, and areas of unmet needs. Provide specific reference to the following elements of State health department tobacco control program.

a. Background and Need. Describe the burden of tobacco use including prevalence rates and the economic costs of tobacco use. Describe existing policies at the State and local level. Describe progress toward reducing the burden of tobacco use. Describe major tobacco control activities conducted in the State and how CDC funds will enhance these programs as well as other chronic disease and health promotion areas. Describe, if applicable, the impact of State budget cuts on program priorities and activities that will not be accomplished.

b. State Health Department Infrastructure and Program Management. Describe current staff. Describe plans to develop a staffing pattern consisting of qualified technical, program, and administrative staff that are diverse and representative of the State population. Describe how program staff will have access to opportunities for professional training. Describe how the staffing pattern will enable sharing of information, resources, and materials with CDC and the national program. Describe how involvement of senior management and communication with the State Health Officer will be assured.

3. Organization. Provide an organizational chart showing placement of the tobacco control program within the organization, indicating accountability and lines of communication.

4. Fiscal Management. Describe plans to fill vacancies to minimize start-up delays, assure out-of-State travel, and administer funds to governmental and non-governmental entities at the State and local level. Describe accomplishments and barriers in providing funding to support State efforts. Describe accomplishments and barriers in providing funding to support State efforts. Describe accomplishments and barriers in filling staff vacancies, supporting out-of-State travel, and reducing start-up delays. Describe a plan for maintaining adequate staffing to administer the program should budget cuts, hiring freezes, etc. occur.

5. Strategic Plan. Provide a copy of the five-year comprehensive strategy that meets the criteria in Recipient Activities (2) Strategic Planning and describe how the plan was developed based on the process in Recipient Activities (2). Demonstrate how the plan links to and complements the SHD's comprehensive cancer control plan, the cardiovascular health plan, and other SHD plans to reduce tobacco-related chronic diseases. If a comprehensive strategic plan does not currently exist, describe how a plan will be developed and the expected completion date. Describe the process by which the strategic plan will be updated. Indicate

who will be responsible for maintaining the plan.

6. Surveillance and Evaluation. Describe accomplishments. List the tracking systems used and/or needed at the State and local levels. Describe surveillance and evaluation activities currently being undertaken. Refer to U.S. HHS CDC "Introduction to Program Evaluation for Comprehensive Tobacco Control Programs, November 2001." Describe involvement of stakeholders or advisory group in development of surveillance and evaluation approach. Describe barriers and identify methods to overcome them. Describe unmet needs and plans to address them.

7. Collaboration and Partnerships. Describe plans to develop, strengthen and maintain partnerships and coalitions through linkages with other national, regional, State, and local level governmental, and non-governmental entities. Specify partner organizations and the purpose of those partnerships. Describe current State coalition members and plans to recruit new members. Describe plans to identify new partners including proposed partners and purpose of partnerships. Describe plans to maintain and strengthen participation by groups identified as experiencing tobacco related health disparities.

Describe plans to collaborate with CDC and other Federal agencies, including participation in national or regional meetings and workgroups, and using the Internet to communicate and disseminate information.

Describe how the State's and partners' roles will complement each other as part of the overall effort. Provide letters of support demonstrating collaborative activities, roles, responsibilities, and/or commitment of funds or other resources.

Describe communication methods and channels used to inform and solicit information from stakeholders. Describe how the stakeholder communication plan was developed. Describe barriers in communicating with stakeholders. Describe plans to improve communication.

8. Local Grant Programs. Describe existing local grants programs including funded organizations and level of funding, policy-focused activities, and collaboration with partners, and participation in coalitions. Describe the rationale for funding local organizations. Describe local environmental scans and how the scans inform a planning process. Describe progress toward policy goals and objectives. Describe how personnel access tobacco control information. Describe barriers and methods to address them. Describe unmet needs and plans to address them. If a local grants program does not currently exist, describe how such a program will be developed and implemented, including a timeline for implementation, a description of the grant process and eligible organizations.

9. Training and Technical Assistance. Describe the audiences for whom training and technical assistance is provided. Describe how training and technical assistance needs will be determined. Describe activities and how they contribute to advancing the program goals and objectives. Describe barriers and methods used to overcome them. Identify unmet needs and plans to address them.

10. Prevention Initiation of Tobacco Use Among Youth. Describe activities at the State and local level, including activities that are science-based and promote policy interventions. Describe activities to promote tobacco-free policy in schools. Describe surveillance and evaluation activities. Describe barriers and identify methods to overcome them. Describe unmet needs and plans to address them.

11. Eliminate Exposure to Secondhand Smoke. Describe activities to move toward policy development at the local level, identify and eliminate disparities, collect and analyze data, conduct counter-marketing. Describe activities undertaken by State and local coalitions/task forces and partnerships. Describe barriers and identify methods to overcome them. Describe unmet needs and plans to address them.

12. Promote Cessation for Adults and Youth. Describe activities and strategies to promote science-based cessation services and policies. Applicants should refer to the "Community Prevention Services Guidelines for Tobacco Use" and "U.S. DHHS Public Health Services Treating Tobacco Use and Dependence." Describe disparities and strategies to reduce them. Describe methods used to promote and encourage cessation, including counter-marketing, policy development, and implementation, and population-based and systems change strategies. Describe barriers and methods to overcome them. Describe unmet needs and plans to address them.

13. Identify and Eliminate Tobacco-Related Disparities in Specific Populations. Describe the process for identifying and eliminating tobacco-related disparities. Include a description of: the national and/or State data sources used; the State population demographics; rationale for addressing tobacco-related disparities in specific population groups; specific strategies and initiatives to build capacity and infrastructure among disparately-affected population group. Describe the process for developing a strategic plan, if one exists, including who was involved and progress in implementation. Attach a copy of the plan.

14. Information Exchange. Describe how State personnel communicate and exchange information with Federal, regional, State, and local tobacco control personnel in government and partner organizations. Describe participation in and collaboration with State and national organizations. Describe participation in local, State, regional, and national conferences and meetings and the benefits accrued. Describe barriers and identify methods to overcome them. Describe unmet needs and plans to address them.

15. Annual Action Plan (no more than 20 pages). Submit an annual action plan detailing how the above requirements will be addressed. Include objectives with indicators and data sources. When writing long-term, intermediate, short-term, and annual objectives, use specific, measurable, achievable, relevant, and time-bound (SMART) objectives. For each of the four program components in the Annual Action Plan, indicate key activities. For each activity, include the target group, lead role, timeline, and anticipated output. The Annual Action Plan: Program Goals form can be used to complete this requirement and will be provided at the pre-application workshop.

16. Budget and Accompanying Justification (no page limit). Provide a line-item budget and justification consistent with the stated objectives, planned activities, and time frame of the project. Identify matching funds. Matching funds may be cash, in-kind or donated services or a combination of these made directly or through donations from public or private entities. All costs used to satisfy the matching requirements must be documented by the applicant. Commit a minimum of 10 percent of award to surveillance and evaluation efforts. Program resources may be used for consultants; staff, survey design and implementation, data analysis, or other expenses associated with surveillance and evaluation efforts. These activities may fulfill the match requirement.

A maximum of five percent of the award may be used to directly support a statewide telephone cessation counseling service with program justification.

Include travel for a minimum of three staff members or selected representatives to attend each of two CDC-sponsored training meetings per

year, one staff person to attend a media training, a minimum of two staff people to attend one CDC-sponsored Program Management meeting, a minimum of two staff people to attend a training on the NTCP Chronicle, and a minimum of two staff people to attend the CDC-sponsored national tobacco control conference. For purposes of planning, these meetings/conferences should be budgeted for travel to Atlanta, Boston, and Phoenix.

Meeting	Number of staff	Location
CDC sponsored training meeting (surveillance and evaluation)	3	Atlanta, GA.
CDC sponsored media training	1	Atlanta, GA.
OSH Program managers meeting	2	Atlanta, GA.
OSH NCTP Chronicle training	2	Atlanta GA.
CDC sponsored national training program	3	Phoenix, AZ.
CDC sponsored national tobacco control conference	2	Boston, MA.

States and Territories can request that CDC cover the travel costs of out-of-State trainings and meetings for one staff person per required meeting or conference. If a State program elects to have CDC cover travel costs, clearly state that the program is electing this option and provide an estimated expense for travel. Under this arrangement, the State award will be reduced by the amount estimated for travel plus an additional administrative cost.

G.1. Evaluation Criteria

Application. Applications received from current grantees that are funded under Program Announcement 99038 will be reviewed utilizing the Technical Review process. Total possible points equal one hundred. Total points = 100.

a. Background and Need (12 points). The extent to which the applicant describes Background and Need in Application Content, 2a.

b. Annual Action Plan (11 points). The extent to which the annual action plan is based on the strategic plan and include activities in line with Recipient Activities and Application Content for tobacco control program.

c. Program Management (7 points). The extent to which the applicant describes specific Recipient Activities in section 1a–d above and activities in Application Content, 2b.

d. Strategic Plan (7 points). The extent to which the applicant has addressed specific Recipient Activities in Section (2); and Application Content, b 5.

e. Surveillance and Evaluation (7 points). The extent to which the applicant clearly describes specific Recipient Activities in Section (3); and Application Content, b 6.

f. Collaboration and Communication with Partners (7 points). The extent to which the applicant describes specific Recipient Activities in Section (4a); and Application Content, b 7.

g. Local Grant Programs (7 points). The extent to which the applicant describes specific Recipient Activities, Section (5); and Application Content, b 8.

h. Training and Technical Assistance (7 points). The extent to which the applicant demonstrates specific Recipient Activities in Section (6); and Application Content, b 9.

i. Prevent Initiation to Tobacco Use Among Young People (7 points). The extent to which the applicant describes specific Recipient Activities in Section (7a); and Application Content, b 10.

j. Eliminate Exposure to Secondhand Smoke (7 points). The extent to which the applicant describes specific Recipient Activities in Section (8a); and Application Content, b 11.

k. Promote Cessation Among Adults and Young People (7 points). The extent to which the applicant describes specific Recipient Activities in Section (9a); and Application Content, b 12.

l. Identify and Eliminate Tobacco-Related Disparities Among Specific Population Groups (7 points). The extent to which the applicant describes specific Recipient Activities in Section (10a); and Application Content, b 13.

m. Information Exchange (7 points). The extent to which the applicant describes specific Recipient Activities in Section (11) and Application Content, b 14.

n. Executive Summary (not scored). The extent to which an overview of the program is provided in a clear and concise manner.

Component 2: State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases

D.2. Availability of Funds

Approximately $7,000,000 is available in FY 2003 to fund approximately 16 State program awards for this component. Approximately $2,000,000 is available to fund one to two Basic Implementation Programs; approximately $5,000,000 is available to fund twelve to fourteen Capacity Building Programs. The average Capacity Building Program award will be $400,000 ranging from $350,000 to $450,000. The average Basic Implementation Program award will be $700,000 in year one ranging from $600,000 to $800,000.

Use of Funds

Funds awarded under this component of this program announcement may not be used to supplant existing State or local funds. Cooperative agreement funds may be used to support personnel and to purchase equipment, supplies, and services directly related to program activities and consistent with the scope of the cooperative agreement. Cooperative agreement funds cannot be used to provide patient care, health screening, personal health services, medications, patient rehabilitation, or other costs associated with the treatment of obesity and chronic diseases. Population-based behavioral interventions are acceptable.

Recipient Financial Participation

Recipient financial participation (matching funds) is required for only Basic Implementation programs in accordance with this Program Announcement. If applying for Basic Implementation programs, matching funds are required from non-Federal sources in an amount not less than one dollar for each four dollars. The matching funds may be cash or its equivalent in-kind or donated services, fairly evaluated. The contribution may be made directly or through donations from public or private entities.

Matching funds may not be met through: (1) The payment of treatment services or the donation of treatment, or direct patient education services; (2) services assisted or subsidized by the Federal Government; or (3) the indirect or overhead of an organization. Matching funds must be consistent with the work plan activities that are submitted and approved.

E.2. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities

under 1.a. (Recipient Activities for Capacity Building Program) or 1.b. (Recipient Activities for Basic Implementation Programs) and CDC will be responsible for the activities listed under 2. (CDC Activities).

The focus of this program component is implementation of nutrition and physical activity strategies for health promotion for the entire population and for the prevention and control of obesity. Major program areas are: obesity prevention and control including balancing caloric intake and expenditure; improved nutrition including increased breastfeeding and increased consumption of fruits and vegetables, increased physical activity; and reduced television time. For all capacity building and basic implementation program recipient activities, efforts to address poor nutrition and physical inactivity should be coordinated with State Health Agency programs in cardiovascular health, cancer, diabetes, oral health, maternal and child health (including breastfeeding), arthritis, and WISEWOMAN, as well as with the State Agriculture Agency, and coordinated school health programs in the State Education Agency (*see http://www.cdc.gov/nccdphp/dash/cshpdef.htm* for a description of a coordinated school health program), and other relevant State Agencies.

1.a. Recipient Activities for Capacity Building Programs

Note: As part of this program component, detailed descriptions of the program and additional information related to Capacity Building and Basic Implementation programs are located in "Technical Assistance Manual for State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases" at *http://www.cdc.gov/nccdphp/dnpa/rfainformation.htm*. The referenced Web site information will assist you in addressing the details of the recipient activities when completing your application.

(1) Develop a Coordinated Nutrition and Physical Activity Program Infrastructure. Provide indicators of sound program infrastructure including program staff placed high in the organization to coordinate the program with other related programs, high level administrative commitment to sustain the program, access to resources such as physical space, funding, and training, access to scientific resources such as subject matter specialists and surveillance resources, and broad partnerships to institutionalize nutrition and physical activity. Examples of coordination include shared positions; joint planning, and combined strategy development and implementation. Organizational location of the program is recommended to be in the agency's chronic disease or health promotion section so that this program is aligned with chronic disease programs, such as cardiovascular health and diabetes, to allow for maximum collaboration. (*See* referenced Web site above).

(a) Staffing. Identify, hire, or reassign, and supervise at least three dedicated full-time staff with appropriate competencies to plan and implement the program (major program areas: Obesity prevention and control including caloric intake and expenditure, improved nutrition including increased breastfeeding and increased consumption of fruits and vegetables, increased physical activity, and reduced television time). Staff includes a full-time high-level program coordinator to coordinate the crosscutting nutrition and physical activity functions for health department programs and other partners, a full-time physical activity coordinator, and a full-time nutrition coordinator. Staffing patterns are encouraged to include program skills and expertise necessary to carry out the program. Part of staff capacity building must be in 5 A Day fruit and vegetable promotion efforts.

(b) Training. Participation in training, conferences, and frequent communication with national and State collaborators including other funded States.

(2) Collaborate and coordinate with State and local government and private partners, including members of the population throughout the planning process. (*See* referenced Web site above).

(a) Develop new linkages and maintain collaborations with State and local partners to coordinate nutrition and physical activity efforts, especially State Health Agency programs in cardiovascular health, cancer, diabetes, oral health, maternal and child health (including breastfeeding), arthritis, and WISEWOMAN, as well as the State Agriculture Agency, coordinated school health in the State Education Agency, and other relevant State Agencies. State programs should serve as a training and technical assistance resource for local health departments and others to conduct nutrition, physical activity, and obesity prevention interventions.

(b) Collaborate with Prevention Research Centers, academic partners, and other relevant organizations in the State.

(3) Conduct a planning process that leads to a comprehensive nutrition and physical activity plan to prevent and control obesity and other chronic diseases, and start to implement the plan. (*See* referenced Web site above.)

(a) Describe the obesity epidemic and other chronic diseases in the State related to poor nutrition and physical inactivity.

(b) Describe the nutrition and physical activity risk factors associated with obesity and other chronic diseases.

(c) Describe the population subgroups affected by obesity that will be targeted for interventions.

(d) Conduct inventories of strategies and programs currently used in the State to prevent or control obesity and other chronic diseases in one or more settings, such as worksite, faith-based organizations, health care services, or communities.

(e) Establish priorities with and for the subgroups; identify the behaviors and influences of the population subgroups which are priorities for intervention.

(f) Use the social-ecological theoretical model to guide State planning to address obesity and other chronic diseases in these populations; select and implement interventions from the list of proven strategies at *http://www.cdc.gov/nccdphp/dnpa/rfainformation.htm* so that multiple levels of influence in the social-ecological model are addressed. Consider using a social marketing approach in the intervention.

(g) With key stakeholders, write the comprehensive State plan for nutrition and physical activity for the State, not just for the State Department of Public Health. One reference document to consider when developing the plan is the "Guidelines for Comprehensive Programs to Promote Healthy Eating and Physical Activity" at *http://www.astphnd.org*. Documents guiding coordinated school health programs are at *http://www.cdc.gov/nccdphp/dash/*.

Design the plan to address nutrition and physical activity needs of the population including the pediatric population. The State plan should address at a minimum the following major program areas: Obesity prevention and control including caloric intake and expenditure, improved nutrition including increased breastfeeding and increased consumption of fruits and vegetables, increased physical activity, and reduced television time.

Include descriptions of how the State Health Department will work with the State Education Agency to address nutrition and physical activity needs of the population through school programs.

(h) Begin to implement components of the comprehensive State plan for

nutrition and physical activity by year two.

(4) Identify and assess data sources to define and monitor the burden of obesity. Strengthen capacity to assess the burden of obesity and the impact of the program to change overweight and obesity related behaviors, particularly nutrition and physical activity. Data systems should monitor trends, disseminate data/information, and support evaluation efforts. Monitor at minimum, body mass index (BMI), BMI-for-age, and dietary and physical activity behaviors. Data sources may include established surveillance systems (*e.g.*, the Behavioral Risk Factor Surveillance System [BRFSS], Pediatric Nutrition Surveillance System, Pregnancy Nutrition Surveillance System, and Youth Risk Behavior Surveillance System) or alternative sources. Include a review process of considering potential changes needed in current surveillance systems and designate who is responsible for implementing and maintaining the surveillance system. (*See* referenced Web site above.)

CDC will work with States to develop standard measures/indicators, and States will need to adopt these standardized measures. States are encouraged to retain flexible systems that can be modified as needed.

(5) Implement and evaluate an intervention to prevent obesity and other chronic diseases. (Complete between years two to five.)

Address one or more of the major program areas from the State plan in the intervention: Obesity prevention and control including caloric intake and expenditure, improved nutrition including increased breastfeeding and increased fruit and vegetable consumption, increased physical activity, and reduced television time. Provide a balance between nutrition and physical activity related interventions. Consider using a social marketing approach in the intervention. Specify clear, measurable process and impact objectives, and outcome objectives where feasible. Programs are encouraged to approach change at the State, community (towns, cities, counties, or regions), organizational (*e.g.*, worksites), and group level (*e.g.*, families). (*See* referenced Web site above.)

(6) Evaluate progress and impact of the State plan and intervention projects.

Develop an evaluation plan that includes baseline data and intermediate outcomes for the State plan's objectives. CDC has developed a plan for evaluating the State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases based on a logic model framework. State evaluation plans should include issues addressed in the national evaluation plan as well as specific State program components.

1.b. Recipient Activities for Basic Implementation Programs. Basic Implementation programs will expand their efforts to fully implement the State plan by enhancing surveillance activities, implementing Statewide interventions, funding communities to implement interventions, rigorously evaluating a new or existing intervention, and enhancing partnership efforts particularly with coordinated school health programs in the State Education Agency and with secondary prevention partners. In addition to providing evidence of and enhancing the Recipient Activities for Capacity Building Programs, Activities 1–6, Basic Implementation programs will address the following activities.

(1) Expand the existing coordinated nutrition and physical activity program infrastructure. (Year One) Expand staffing beyond the capacity building program to fully implement the State plan. Support and expand the program infrastructure at the local/regional level throughout the State.

(2) Implement the State comprehensive plan for nutrition and physical activity and review and update the plan periodically. Develop and provide mini-grants and other assistance to support communities to adopt effective interventions. (Years One-Five) Assure that there is a continuing focus on strategic planning to reach objectives agreed upon within the State and to respond to new challenges and events. Review the written State plan annually. Adopt and diffuse effective interventions statewide or in communities and populations based on the State plan. Select and implement interventions from proven strategies so that multiple levels of influence in the social-ecological model are addressed, as guided by the State plan. Interventions can target the full State or local populations. Implement the "Community Guide to Preventive Services" physical activity recommended interventions in more depth or in more communities. Build community capacity to carry out and sustain an effective nutrition program. Provide intervention mini-grants to communities. Basic implementation programs located in States with CDC-funded coordinated school health programs must include a school-based intervention, working closely with the State Education Agency.

(3) Expand partnerships with State Health Department units, the State Education Agency, other State agencies, local communities, and private partners to maximize impacts of the basic implementation program. (Years One-Five)

Leverage resources for nutrition and physical activity working with the health department director, other health department units, the State Education Agency, other State agencies that share mutual goals, and other partners including local health partners and community groups. Identify environmental and policy issues; promote optimal standards and practices for nutrition and physical activity programs; and increase capacity through shared resources and expertise.

(4) Develop a new or apply an existing intervention and evaluate its effectiveness to prevent or control obesity and other chronic diseases every five years. Provide a balance between nutrition and physical activity interventions. Basic implementation programs should design the intervention project to detect realistic changes in post-intervention outcome measures when compared with pre-intervention measures. Sample sizes should provide adequate power to detect these changes. Specify clear, measurable evaluation objectives using process, impact, and outcome objectives. Intervention protocol development, project evaluation, and the preparation of publications and presentation of findings should be done in collaboration with community partners, Prevention Research Centers, university affiliates, relevant experts, and CDC, as appropriate.

(5) Collaborate with partners on secondary prevention strategies. (Years One-Five).

Describe activities supporting secondary prevention related to obesity. Integrate secondary prevention strategies and activities into the State plan, partnerships, policy and environmental changes, and training for health professionals to ensure that recognized national guidelines are followed. (*See http://www.cdc.gov/nccdphp/dnpa/rfainformation.htm* for additional information regarding this activity.)

(6) Develop resources and training materials to help other State and local projects adopt successful programs. (Years Four-Five).

Develop one or more training reports on at least one component of a program that works and train staff from other State or local programs. Assist in the dissemination and training of other State and local partners regarding the report findings. (*See http://www.cdc.gov/nccdphp/dnpa/*

rfainformation.htm for additional information regarding this activity.)

(7) Identify, assess, or develop data sources to further define and monitor the burden of obesity. See previous description of this activity under Capacity Building Recipient Activity 4.

(8) Evaluate progress and impact of the State plan and intervention projects. See previous description of this activity under Capacity Building Recipient Activity 6.

2. CDC Activities. a. Convene workshop and/or teleconferences of recipient programs for information sharing and problem-solving.

b. Provide ongoing guidance, consultation, and technical assistance to plan, implement, and evaluate all aspects of nutrition and physical activity program activities. Activities include coordinating national surveillance activities, monitoring data quality of national surveillance systems, assisting with analyses and interpretation of findings from qualitative and quantitative research; assisting in the social marketing process, guiding program evaluation, and sharing community, environmental and policy strategies to promote physical activity and healthy eating. Disseminate to recipients relevant state-of-the-art research findings and public health recommendations related to obesity and other chronic disease prevention and control through nutrition and physical activity interventions.

c. On a consultant basis, assist in the development and review of the intervention protocols and program evaluation methods.

d. Coordinate national level partnerships with relevant organizations and agencies involved in the promotion of physical activity and nutrition for the prevention and control of obesity and other chronic diseases.

Note: *Special Guidelines for Technical Assistance Telephone Conference Call.* Technical assistance will be available for potential applicants on one conference call. Potential applicants are requested to call in using only one telephone line. The call will be on February 3, 2003 from 2 p.m. to 3:30 p.m. EST. This conference can be accessed by calling 1–800–713–1971 [Federal call (404) 639–4100] and entering access code 996903.

The purpose of the telephone conference call is to help potential applicants:

—Understand the scope and intent of the Program Announcement for State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases;
—Understand the role of nutrition and physical activity population-based approaches, such as policy-level change and environmental support, in preventing and reducing obesity and other chronic diseases;
—Be familiar with the CDC funding policies and application and review procedures.

F.2. Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated based on the evaluation criteria listed, so it is important to follow them when writing the program plan. The narrative for this component, not including budget justification, should be no more than 30 double-spaced pages for Capacity Building program applications or 40 double-spaced pages for Basic Implementation program applications, printed on one side, with one-inch margins and 12-point font. Applicants may also submit appendices that include State nutrition and physical activity plan, resumes, job descriptions, organizational chart, facilities, and other supporting documentation not to exceed 100 total pages. Letters of support should include the specific roles and responsibilities of the collaborator/partner to the State plan or intervention. All materials must be suitable for photocopying (*i.e.*, no audiovisual materials, posters, tapes, *etc.*).

1. Background and Recent History. Provide information on the background and recent history of your State health agency's capacity for the prevention and control of obesity and other chronic diseases through nutrition and physical activity. Describe how the State has built nutrition and physical activity capacity with CDC funds or other funding and complete the following table describing the current nutrition and physical staff, including their education. Describe the kinds of staffing contract services/options if used to augment agency staffing.

Program	Dollar level and source	FTE for nutrition dedicated to the program, include credentials	FTE for physical activity dedicated to the program, include credentials	Type of staffing contract services/ options used for nutrition or physical activity	Number of nutrition and physical activity graduate students
Nutrition/Physical Activity/Obesity (CDC funded)					
Nutrition/Physical Activity/Obesity (non-CDC funded, not including WIC), please specify					
Other:					
Other:					

Describe how the State has fulfilled the capacity building recipient activities to date, including developing a comprehensive State nutrition and physical activity plan to prevent obesity and other chronic diseases, descriptions of the development, implementation, and evaluation of nutrition and physical activity interventions relevant to obesity and other chronic diseases, prevention activities, and what programs and partners were involved. If applying as a basic implementation program, include an appendix responding to the evaluation questions in Attachment 10 located at *http://www.cdc.gov/nccdphp/dnpa/rfainformation.htm.*

2. Management Plan. a. Describe the management structure for the nutrition and physical activity program to prevent obesity and other chronic diseases. Describe plans with dates for hiring key staff. Include brief resumes of designated staff, the percentage of time they allocate to other health department programs, and job descriptions of existing and proposed staff.

b. Identify organizational placement of the program. Submit an organizational chart identifying

relationships between programs such as cardiovascular disease, diabetes, cancer, health education and promotion. Identify clear and direct lines of authority, supervisory and fiscal controls, and the extent which the existing and proposed staff and organizational structure and systems demonstrate sufficient capacity and capability to efficiently and effectively conduct the proposed activities.

c. Identify staffing and contracting barriers for the State health agency in the last year. Describe how work plans addressing nutrition, physical activity or obesity changed or were delayed because of the barriers. Also, identify strategies to carry out the proposed work plan considering current barriers. In particular, describe how the program will change if vacancies or hiring freezes occur.

3. Program Past Performance. Provide documentation to support your previous accomplishments that addressed the prevention and control of obesity and other chronic diseases through nutrition and physical activity. Include the following:

a. Evidence of State or community nutrition and physical activity policies, environmental supports, and/or legislative actions that are planned, initiated or modified for the prevention or control of obesity and other chronic diseases.

b. Evidence that communities have implemented a nutrition and physical activity plan for the prevention and control of obesity and other chronic diseases.

c. Evidence that an intervention for nutrition and physical activity was implemented and evaluated. If applying for Basic Implementation funds, submit the State nutrition and physical activity plan for the prevention and control of obesity and other chronic diseases as well as any intervention protocols and outcomes in the appendix. Capacity Building applicants submit if available.

4. Burden (please limit to no more than three pages). Provide information such as estimated prevalence of obesity and overweight and other chronic disease, its geographic and demographic distribution within the State using existing epidemiological data. Cite the source for and time period covered by these data. Describe high-risk populations, at a minimum by racial/ethnic, gender, age, and socioeconomic factors. If available, describe profiles of potential or already selected populations regarding their knowledge, attitudes, beliefs, health practices, and consumer patterns and habits relative to nutrition and physical activity aspects of obesity and other chronic diseases.

5. Program Work Plan—Provide a work plan that includes the following information:

a. Key Goal(s) and Objectives. Five-year project period impact objectives and one-year budget period process objectives that are specific, measurable, achievable, relevant, and time-framed to help achieve the goal(s) of the program as outlined in the "Recipient Activities" of this program component. If applying as a Basic Implementation program, attach the State's program logic model and evaluation plan. Capacity Building applicants submit if available.

b. Program Work Plan Methods. Provide a detailed description of the State's plan for conducting all program activities as outlined in the "Recipient Activities" of this program announcement, including methods for achieving each of the proposed objectives, time-lines for all activities, responsible parties, and methods for monitoring progress. Describe the mechanism to regularly review, evaluate, and update the State plan to meet evolving needs.

Chronic disease prevention programs, by their nature, must be integrated and well coordinated due to common risk factors. Resources are scarce; it is essential that efforts not be duplicated. Explain how the State will avoid duplication (but enhance coordination and integration) with other CDC-funded programs that address nutrition and physical activity. Basic Implementation funded nutrition, physical activity, and obesity programs will be the primary location for the leadership and delivery of population-based health promotion rather than those responsibilities falling to CVD, Diabetes or other chronic disease specific programs. If a comprehensive State nutrition and physical activity plan already exists, describe how the process used to develop the plan included and integrated the activities of other chronic disease programs. Include the plan in the appendix.

6. Budget and Justification. Provide a detailed budget and line-item justification that is consistent with the stated objectives, purpose, and planned activities of the project. Distinguish budget lines that are related to planning activities versus those that are related to data collection and intervention activities. Applicants are asked to include budget items for travel for two trips, one trip to Atlanta, Georgia for three staff to attend a three-day training and technical assistance workshop and another trip for three staff to the annual national conference on chronic disease prevention and control. If in-kind contributions are being provided by the applicant, these should be documented.

G.2. Evaluation Criteria (100 Points)

Each set of the evaluation criteria is scored using a 100-point system. Evaluation criteria 1 through 5 are applicable for both programs. Specific Program Work Plan criteria are provided for each funding level. Applications will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Program Work Plan (Total 50 points). The extent to which the applicant addresses the items in Recipient Activities in E.2. and the Application Content in F.2. item 5.

Point distribution for Capacity Building programs goals, objectives, and work plan methods by recipient activities:

a. Develop a coordinated nutrition and physical activity program infrastructure. (10 points).

b. Conduct a planning process that leads to a comprehensive nutrition and physical activity plan to prevent and control obesity and other chronic diseases and start to implement the plan. (10 points).

c. Evaluate progress and impact of the State plan and intervention projects. (10 points).

d. Implement and evaluate an intervention to prevent obesity and other chronic diseases. (10 points).

e. Collaborate and coordinate with State and local government and private partners, including members of the population throughout the planning process. (5 points).

f. Identify and assess data sources to define and monitor the burden of obesity. (5 points).

2. Background and Recent History (15 points). The extent to which the applicant addresses the items in Recipient Activities in E.2. and Application Content in F.2. item 1.

3. Management Plan (15 points). The extent to which the applicant addresses the items in Recipient Activities in E.2. and the Application Content in F.2. item 2.

4. Program Past Performance (15 points). The extent to which the applicant addresses the items in Recipient Activities in E.2. and the Application Content in F.2. item 3.

5. Burden (5 points). The extent to which the applicant addresses the items in Recipient Activities in E.2. and the Application Content in F.2. item 4.

6. Point distribution for Basic Implementation programs goals, objectives, and work plan methods by recipient activities:

a. Develop a new or apply an existing intervention and evaluate it to prevent

obesity and other chronic diseases. (10 points).

b. Implement the State comprehensive plan for nutrition and physical activity and review and update the plan periodically. Develop mini-grants and other mechanisms to support communities to adopt effective interventions. (10 points).

c. Evaluate progress and impact of the State plan and intervention projects. (10 points).

d. Identify, assess, or develop data sources to further define and monitor the burden of obesity. (6 points).

e. Expand the existing coordinated nutrition and physical activity program infrastructure. (5 points).

f. Expand partnerships with State Health Department units, the State Education Agency, other State agencies, local communities, and private partners to maximize impacts of the comprehensive program (3 points).

g. Collaborate with partners on secondary prevention strategies. (3 points).

h. Develop resources and training materials to help other State and local projects to adopt successful programs. (3 points).

6. Budget and Justification (Not weighted). The extent to which the line item budget justification is reasonable and consistent with the purpose and program goal(s) and objectives of the cooperative agreement. (Both programs).

7. Human Subjects (Not weighted). Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? (Both programs).

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in any proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Program Performance Measures

See Appendix C for the framework that will be used for measuring performance of the State Programs. Capacity Building Performance Measures for transitioning to basic implementation programs should include evidence that the applicant has significant capacity as specified in the Capacity Building Program Recipient Activities 1–6 and the program evaluation plan (*See* Attachment 10 located at *http://www.cdc.gov/nccdphp/dnpa/rfainformation.htm*) covering the following measurement areas:

1. Evidence of States conducting strategic planning activities to develop a comprehensive State nutrition and physical activity plan to prevent and control obesity and other chronic diseases.

2. Evidence that a quality comprehensive State nutrition and physical activity plan to prevent and control obesity and other chronic diseases promotes coordination of activities across all relevant State and community programs in which relevant partners are identified in substantive roles.

3. Evidence of at least one community that implemented a nutrition and physical activity plan for the prevention and control of obesity and other chronic diseases.

4. Evidence of outcomes/impacts of at least one intervention evaluating nutrition and physical activity strategies to prevent or control obesity and other chronic diseases.

5. Evidence of State or community nutrition and physical activity policies, environmental supports, and/or legislative actions that were initiated, modified, or planned for the prevention or control of obesity and other chronic diseases.

Five-Year Performance Measures for State Nutrition and Physical Activity Programs include:

1. Evidence that communities have implemented a nutrition and physical activity plan for the prevention and control of obesity and other chronic diseases.

2. Evidence of outcomes/impacts of interventions evaluating nutrition and physical activity strategies to prevent or control obesity and other chronic diseases.

3. Evidence of State or community nutrition and physical activity policies, environmental supports, and/or legislative actions that were initiated, modified, or planned for the prevention or control of obesity and other chronic diseases.

4. Evidence of increased physical activity and better dietary behaviors in communities reached through interventions.

5. Evidence that the levels of obesity decrease or the rate of growth of obesity is reduced in communities reached through interventions.

Component 3—Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN)

D.3. Availability of Funds

Approximately $9,200,000 is available to fund approximately 12 awards for grantees currently funded under program announcements 99135, 00115, and 01098. These grantees are only eligible for the second funding level (See Appendix A). To determine eligibility for first or second funding level see Appendices A and B which is found at the bottom of this document and at the CDC Web site address at *http://www.cdc.gov/od/pgo/funding/grantmain.htm*. Scroll down the Web page to "Chronic Disease Prevention/Health Promotion Heading." Click on Program Announcement Number 03022. The attachments will be located at the bottom of the program announcement. The project period is five years. The average award for Standard Demonstration Projects will be approximately $500,000. Projects that screen substantially more women than 2,500 per year and exceed the performance expectations may qualify for higher awards. Information on performance expectations are found in Appendix B which is found at the bottom of this document and at the CDC Web site address *http://www.cdc.gov/od/pgo/funding/grantmain.htm*. Scroll down the Web page to "Chronic Disease Prevention/Health Promotion Heading." Click on Program Announcement Number 03022. The attachments will be located at the bottom of the program announcement. The average award for Enhanced Projects will be approximately $1,000,000.

In addition, approximately $750,000 is available in FY 2003 to fund up to three WISEWOMAN Projects at the first funding level. Requests for these funds will be competitive. The project period is five years. In the first year, Standard Demonstration Project funding will range from $50,000 to $250,000. If all performance measures (*see* Appendix B) are completed at the first funding level, applicants may apply for the second funding level through their continuation applications.

Use of Funds

60/40 Requirements: Not less than 60 percent of cooperative agreement funds must be spent for screening, tracking, follow-up, lifestyle intervention, health education, and the provision of appropriate individually provided support services. Cooperative agreement funds supporting public education and outreach, professional education, quality assurance and improvement,

surveillance and program evaluation, partnerships, and management may not exceed 40 percent of the approved budget [WISEWOMAN follows the same legislative requirements as the NBCCEDP, Section 1503(a) (1) and (4) of the PHS Act, as amended; *see http://www.cdc.gov/wisewoman/legislationhighlight.htm* for more information on legislation]. Further information about the 60/40 distribution is provided in the WISEWOMAN Guidance Document: Interpretation of Legislative Language and Existing Documents. This can be accessed through the Internet at *http://www.cdc.gov/wisewoman* or by contacting the program technical assistant contact listed in Section "J. Where to Obtain Additional Information."

a. Inpatient Hospital Services: Cooperative agreement funds must not be spent to provide inpatient hospital or treatment services [Section 1504g of the PHS Act, as amended].

b. Administrative Expense: Not more than 10 percent of the total funds awarded may be spent annually for administrative expenses. These administrative expenses are in lieu of and replace indirect costs [Section 1504(f) of the PHS Act, as amended]. Administrative expenses comprise a portion of the 40 percent component of the budget.

c. Limit of Use of Funds for Case Management: Use of Federal funds for case management of women without alert values is strongly discouraged. This policy and the definition of alert values are found on the WISEWOMAN Web site Guidance Document at *http://www.cdc.gov/wisewoman.*

Recipient Financial Participation—Matching Requirement

a. Recipient financial participation is required for this program in accordance with the authorizing legislation. Section 1502(a) and (b) (1), (2), and (3) or the PHS Act, as amended, requires matching funds from non sources in an amount not less than one dollar for every three dollars of Federal funds awarded under this program. However, Title 48 of the U.S. Code 1469a (d) requires DHHS to waive matching fund requirements for Guam, U.S. Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands up to $200,000.

b. Matching funds may be cash, in-kind, or donated services, or equipment. Contributions may be made directly or through donations from public or private entities. Public Law 93–638 authorizes tribal organizations contracting under the authority of Title 1 to use funds received under the Indian Self-Determination Act as matching funds.

c. All costs used to satisfy the matching requirements must be documented by the applicant and will be subject to audit. Specific rules and regulations governing the matching fund requirement are included in the PHS Grants Policy Statement, Section 6. Matching funds are not subject to the 60/40 requirements described above under "Use of Funds." For further information about the matching fund requirement, see the WISEWOMAN Guidance Document.

Direct Assistance

No direct assistance funds will be awarded in lieu of financial assistance to successful WISEWOMAN component recipients.

E.3. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under "1. Recipient Activities," and CDC will be responsible for the activities listed under "2. CDC Activities."

Standard Project

Standard Demonstration Project (available for new applicants in FY 2003 and FY 2004, not available for new applicants in FY 2005 or later).

The major goal of a Standard Demonstration Project is to demonstrate the effectiveness of operational approaches to conducting the following activities for women aged 40–64 who participated in the NBCCEDP: Outreach, screenings for blood pressure, cholesterol, smoking, and other conditions (when appropriate); referral; lifestyle intervention (to include promotion of heart-healthy diet, increased physical activity, and tobacco cessation); tracking and follow-up; evaluation; professional and public education; and community engagement.

Enhanced Project

One major goal of an Enhanced Project is to use scientifically rigorous methods to test the effectiveness and cost-effectiveness of a behavioral or lifestyle intervention that is grounded in the social and cultural context of the target population and aimed at preventing cardiovascular disease. The other major goal is to translate and transfer successful interventions and program strategies to other programs that serve financially disadvantaged women. Some important resources for understanding the scope of these translation and transfer activities can be found at *http://www.replication.org/infores.html* and *http://www.replication.org/pdf/tool.pdf.*

1. Recipient Activities for Standard Demonstration Projects and Enhanced Projects: a. Develop a preventive health services program or a preventive health services research study/studies to include cardiovascular disease risk factor screening with mandatory cholesterol and blood pressure measurements built upon an extremely strong State, Territorial, or Tribal Breast and Cervical Cancer Early Detection Program with evidence provided of the strength of the BCCEDP Program.

b. Staff with at least two professional staff members to work full-time on WISEWOMAN (one of whom should be a full-time program coordinator and the other should have experience in nutrition, physical activity, or health education), or a plan for hiring such staff members. If staff must be hired, describe the staff that will manage the program until the hiring is completed. Describe the WISEWOMAN evaluation team and provide information on their experience and academic degrees.

c. Work with health care systems that can effectively deliver WISEWOMAN services and that target the population in need of these services. This can best be accomplished by working with a health care system in which the State, Territory, or Tribal BCCEDP has previously been effective and that has successfully engaged the community to provide additional services/support to the population in need.

d. Establish a cardiovascular disease prevention program as the primary focus, with culturally appropriate interventions addressing multiple risk factors that must include physical inactivity, poor nutrition (high intake of saturated fat and low intake of fruit and vegetables), and tobacco use. Other cardiovascular risk factors may be addressed such as overweight or obesity, and pre-diabetes or undiagnosed diabetes.

Recipients may develop other preventive services to be delivered, such as intervention services aimed at prevention or relief of the following: Osteoporosis, arthritis, influenza or other diseases for which vaccines are readily available, or other significant conditions/diseases which affect large numbers of older women.

e. States, Territories, and Tribal Agencies should implement screening, referral, and follow-up according to the recommendations of the National Cholesterol Education Program (NCEP) of the National Heart, Lung, and Blood Institute for cholesterol screening using the Adult Treatment Panel III (ATP–III)

and the recommendations set forth for hypertension according to the 6th Joint National Report on the Detection, Evaluation and Treatment of High Blood Pressure published by the National Institutes of Health, National Heart, Lung, and Blood Institute. The guidelines can be obtained electronically at *http://www.nhlbi.nih.gov/guidelines/index.htm*. National guidelines for addressing other risk factors can be found at *http://www.cdc.gov/wisewoman*. Laboratories must be accredited under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and meet all applicable Federal and State quality assurance standards in the provision of any test performed. However, if a new, improved, or superior screening procedure becomes widely available and is recommended for use, this superior procedures will be utilized in the program. [Section 1503(b) of the PHS Act, as amended.]

f. Recipients should design culturally appropriate lifestyle interventions aimed at lowering blood pressure or cholesterol, improving physical activity or nutrition, or achieving smoking cessation in a similar target population. A New Leaf Choices for Healthy Living is an example of an intervention that has been effective in improving nutrition (*see http://www.hpdp.unc.edu/wisewoman/newleaf.htm*).

Alternatively, the intervention can be newly designed if it incorporates sound theoretical principles of behavioral change such as use of the socio-ecologic model to intervene at multiple levels, individual tailoring, self-efficacy, self-monitoring and reinforcement, readiness for change, small achievable steps, social support, collaborative goal setting, and strategies to overcome barriers (see monograph entitled *Integrating Cardiovascular Disease Prevention into Existing Health Services: The Experience of the North Carolina WISEWOMAN Program* at *http://www.hpdp.unc.edu/wisewoman/manual.htm*. If applying as a Standard Best Practices project (available in FY 2005 and later), interventions should be designed following WISEWOMAN recommended best practices (available in FY 2005).

g. Recipients should propose methods aimed at sustaining behavioral change. Maintaining behavioral change should involve strategies to provide the participant with ongoing contact such as with health facility staff or community health workers (either in person or by mail) and to educate regarding relapse prevention. The use of computer-tailored education can be especially useful (to view recommendations detailed in the monograph entitled *Integrating Cardiovascular Disease Prevention into Existing Health Services: The Experience on the North Carolina WISEWOMAN Program* see *http://www.hpdp.unc.edu/wisewoman/manual.htm*.

Environmental supports aimed at sustaining behavioral change such as increased walking, healthier food choices, and smoking cessation should also be considered. These might include activities such as improving the safety of neighborhoods, advocating for walking groups at shopping malls, improving the quality of foods in local grocery stores and changing community norms around tobacco. Although WISEWOMAN applicants may not be able to completely fund these environmental strategies due to restrictions on the use of funds (*see* 60/40 Requirement in under "Use of Funds"), they may be able to establish strong partnerships with other CDC programs in their health department or agency that use community environmental and/or policy approaches (*e.g.*, Nutrition/Physical Activity/Obesity, Tobacco Control, Diabetes, and Cardiovascular Health).

h. Recipients should propose methods aimed at sustaining the program in future years. Methods include using the principles of community engagement (for more information, see CDC's monograph entitled "Principles of Community Engagement" at *http://www.cdc.gov/phppo/pce/index.htm*. Emphasis should be placed on developing traditional and non-traditional partnerships in the community through partnering with other CDC funded programs.

i. Plan or conduct evaluation strategies to include reporting of suggested minimum data elements and cost information (see WISEWOMAN Guidance Document at *http://www.cdc.gov/wisewoman* for a list of the suggested minimum data elements). Other evaluations are strongly encouraged and might include measures of program feasibility and acceptability, mapping neighborhood assets to determine resources before and after program implementation, increases in partnerships as a result of the program, improvements in medical care, the usefulness of community health workers in the program, increases in knowledge of providers, improvements in participant's self-efficacy, and so forth;

j. Formalize plans for Recipient Activities (a) to (i) through development of program protocols or conduct program operations according to previously developed and approved program protocols. Newly funded projects should conduct all program startup activities as detailed on page 18 of the monograph *Integrating Cardiovascular Disease Prevention into Existing Health Services: The Experience of the North Carolina WISEWOMAN Program* at *http://www.cdc.gov/phppo/pce/index.htm* and should be prepared to pilot test their methods.

k. Work collaboratively with other State, Territorial, or Tribal WISEWOMAN program staff and partners (such as CDC contractors) to develop methods that have the potential to be implemented in other WISEWOMAN programs.

2. CDC Activities: a. Convene workshops, trainings, and/or teleconferences of the funded projects for sharing of information and solving problems of mutual concern.

b. Provide ongoing consultation and technical assistance to plan, implement, and evaluate program activities.

c. Conduct site visits to assess program progress and mutually resolve problems, as needed, and/or coordinate reverse site visits to CDC in Atlanta, GA.

d. Assist in the development of a research study protocol for IRB review by all cooperating institutions participating in the research project. If CDC IRB review is necessary, the CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed. For more detailed information on the CDC IRB *see http://www.cdc.gov/od/ads/hsr2.htm*.

e. Collaborate with WISEWOMAN projects in the analysis of data and development of abstracts and publications that informs the program, public, scientific community, and Congress as to program progress and results.

f. Copy and distribute materials developed by State, Territorial, or Tribal WISEWOMAN projects for the purpose of aiding other WISEWOMAN projects and public health partners.

F.3. Content

Applications. The program announcement title and number must appear in the application. Use the information in the "Program Requirements, Other Requirements, and Evaluation Criteria" sections to develop the content. Your narrative should be no more than 30 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

WISEWOMAN Application Outline: Please provide the following information and, as appropriate, a preliminary but realistic time-phased

work plan that addresses all of the points below. Only existing WISEWOMAN projects are required to provide WISEWOMAN-specific information requested below. Applicants may apply for either the Standard Demonstration Project or the Enhanced Project, but not both.

1. Background and Need. Provide a brief description of the extent of the disease burden and the need among the priority populations and the background of the health care system to include:

a. The number of uninsured women living in the State/Territory/Tribal area by race/ethnicity by two age categories if possible, *i.e.* 40–49 years and 50–64 years.

b. The current health care system in which State, Territorial, or Tribal BCCEDP and WISEWOMAN sites operate (*e.g.* are the sites county health department clinics, community health centers, private providers, managed care organizations, etc.) and the appropriateness of the health care system for implementing effective interventions, adhering to program protocols, tracking difficult to reach women, and providing timely information on women who have high values of cholesterol and blood pressure.

c. Community involvement or engagement in the BCCEDP and/or WISEWOMAN project to include use of community health workers, use of community members, engagement in partnership activities with community agencies that serve financially disadvantaged women, use of referral systems to other community services, and so forth.

2. Infrastructure. Document the current State, Territorial, or Tribal BCCEDP and WISEWOMAN (if applicable) infrastructure including:

a. An organizational chart that shows the location of The WISEWOMAN Program in relationship to the agency's health promotion section, chronic disease section, minority, or women's health section, Breast and Cervical Cancer Early Detection Program, and to other programs that address chronic disease (*e.g.* cardiovascular health, tobacco, physical activity, nutrition, 5 A Day, diabetes, and obesity). Describe lines of communication between WISEWOMAN and the above-mentioned sections and programs.

b. The number of BCCEDP and WISEWOMAN sites in operation as of the January preceding the date of this application.

c. The total number of political subdivisions (*e.g.*, counties) and the number of these subdivisions that had a BCCEDP site and the number that had a WISEWOMAN site as of January preceding the date of this application.

d. During the most recent program year include:

(1) The number of women served by BCCEDP and The WISEWOMAN Programs in the State, Territory, or Tribal area (provide data for each of the past 5 years, if available).

(2) The racial/ethnic characteristics of the population served (include educational Characteristics, if available).

(3) The percentage of women with a positive mammogram or pap test who did not go on for further diagnostics and reasons why women did not go on;

(4) The percentage of women with a WISEWOMAN alert value who did not go on for further diagnostics and reasons why women did not go on.

(5) The average length of time between a positive mammogram or Pap test and the receipt of a diagnostic test.

(6) The average length of time between detection of a WISEWOMAN alert value and the receipt of diagnostic test (*see* WISEWOMAN Guidance Document at *http://www.cdc.gov/od/ads/hsr2.htm* for the definition for alert values).

3. Program Planning for Upcoming Year. Describe how the program will decide or is currently conducting the following:

a. Site selection, the approximate number of sites to receive WISEWOMAN services, the characteristics of the sites, the proportion of State or Territorial BCCEDP sites that will receive WISEWOMAN services, and estimated number of women who are expected to receive such services during the upcoming year.

b. Screening and intervention services and start-up activities (if applying for Standard Demonstration Project funding level; see checklist of start-up activities in the WISEWOMAN Guidance Document at *http://www.cdc.gov/wisewoman* to be provided along with a time line for determining and implementing start-up activities, screening and intervention services [allowable screening and diagnostic procedures for the demonstration programs include resting pulse, blood pressure, serum total cholesterol, HDL-cholesterol, LDL-cholesterol, height and weight measurements, automated blood chemistry (to assess fasting blood glucose, potassium, calcium, creatinine, uric acid, triglyceride, or micronutrient levels), urine analysis (including urine cotinine), and paper and pencil tests, interviews, or computerized methods that measure level of physical activity, dietary intake, smoking, osteoporosis risk status, immunization status, or other chronic disease risk factors or preventable health problems. The use of program funds for other tests will require substantial justification by the program. The schedule of fees/charges should not exceed the maximum allowable charges established by the Medicare Program for the same or similar laboratory tests. (Fees/charges for services covered by Medicare may vary by location, thus, States or Territories should determine the appropriate reimbursement rates for their areas.)

c. A pilot study to test proposed methods.

d. Inclusion of letters of support for WISEWOMAN from a substantial number of State/Territorial BCCEDP site directors and medical staff.

e. Methods for tracking women through the system and after they leave the system [(for the purpose of bringing them back for further screening and intervention)(Standard Projects should ensure that at least 60 percent of new women receive the complete intervention)], for flagging, tracking, and managing women who need immediate referral because of extremely high blood pressure (≥180 systolic blood pressure or 110 diastolic blood pressure), cholesterol (>400 mg/dL), or glucose levels (>375 mg/dL).

f. Program tracking to determine which women receive which interventions; routine reporting on the progress of the program (see suggested quarterly report format in WISEWOMAN Guidance Document at *http://www.cdc.gov/wisewoman* and reporting of minimum data elements. These minimum data elements will yield the performance measures that will determine whether a project qualifies for additional funding. The complete set of performance measures are detailed in Appendix B.

4. Screening and Intervention. Document the ability of the program to screen and intervene upon women enrolled in the WISEWOMAN program including implementation of WISEWOMAN screening activities, the rationale and guidelines for implementing WISEWOMAN intervention activities, methods for reaching women from the State or Territorial BCCEDP for the purpose of WISEWOMAN screening and intervention and the use of outreach and community health workers to address barriers to program involvement, barriers to behavioral change, and barriers to maintaining contact for future health screenings and interventions.

5. Evaluation—(Standard Program):

a. Describe the current evaluation team or propose a plan to establish the evaluation team using criteria such as prior work experience, professional training, and academic degrees.

b. Describe the current evaluation plan or propose an evaluation plan that includes clearly stated evaluation objectives with a time line for the collection of data throughout the project.

c. Describe the current database or propose a database that details data elements, methods for data management, the creation of unique identifiers, methods for identifying women who need immediate treatment, and other important data procedures.

6. *Evaluation—(Enhanced Program):* Submit an evaluation design to: (1) Examine the impact of chronic disease risk factor intervention(s) on lowering blood pressure, improving cholesterol levels (lowering total cholesterol levels and raising HDL cholesterol levels), and improving other risk factors such as poor nutrition and inadequate physical activity at six and twelve months after intervention and program strategies. The plan for effectiveness should include:

a. The extent to which a university or Prevention Research Center will be involved in the evaluation design.

b. The preliminary evaluation questions to be answered.

c. The type of evaluation design (*e.g.* randomized controlled design) and rationale for using this type of design.

d. Length of follow-up and measurement intervals.

e. Protocol used to ensure that the maximum number of women will return for each evaluation.

f. Statistical techniques that will be used to analyze the data with preliminary estimates of the sample size needed to achieve adequate statistical power. To obtain the statistical power to evaluate the intervention, the program should add cholesterol and blood pressure screenings (and other optional screenings, if desired) to a sufficiently large number of State or Territorial BCCEDP sites to provide adequate statistical power for evaluating program effectiveness. States or Territories may want to consider including a total of at least 20 sites. The study design for this type of evaluation might include women from a number of sites assigned to intervention (*i.e.*, the special intervention group) compared to women from a number of sites assigned to usual standard practice (*i.e.*, the usual care group or comparison group). Other study designs may be proposed including randomizing women to each of arm of the study. A method of collecting information for the purpose of program evaluation should be developed and implemented. Voluntary reporting of Minimum Data Elements is recommended as part of the program evaluation. The plan for translation and transferring successful strategies should include:

(1) The extent to which the evaluation team includes staff with expertise in translation and transfer activities;

(2) Clear objectives regarding translating strategies into products using lay language, compiling information in clear, user-friendly format, testing of the translation package for usability;

(3) Methods for providing technical assistance, orientation and training on implementing and ensuring fidelity with regard to implementing the translation package;

(4) Methods for evaluating and refining the translation package and plans for dissemination of the final package;

(5) A timeline with regard to translation and transfer activities. Some important resources for understanding the scope of these translation and transfer activities are found at *http://www.replication.org/infores.html* and *http://www.replication.org/pdf/tool.pdf.*

7. Collaborative Efforts. Provide a concise collaboration plan that addresses program methods and analyzing and publishing data with CDC and others. The following areas should be addressed:

a. Meeting and teleconferences attendance for the purpose of developing forms, tracking systems, measurements, policy, etc.

b. Analyzing data and co-authoring abstracts and publications; sharing information with CDC and its contractors (stripped of identifying information) on a twice-yearly basis.

c. Plans to collaborate with other health promotion experts in the health agency including nutritionists, physical activity experts, tobacco control experts, and others who promote a healthy lifestyle through better eating, weight management, physical activity, and smoking cessation.

d. For Enhanced projects, plans for developing a monograph and/or training on methods to help other projects adopt successful program practices (See example "Integrating Cardiovascular Disease Prevention into Existing Health Services: The Experience of the North Carolina WISEWOMAN Program" at *http://www.hpdp.unc.edu/wisewoman/manual.htm.*

8. Budget and Justification: Provide a detailed budget and line-item justification that is consistent with the stated objectives, purpose, and planned activities of the project. Applicants should note the following budget-related issues:

a. Budget for the following travel:

(1) Up to two persons to attend the Nutrition and Public Health Course that is sponsored by the University of North Carolina Prevention Research Center and the Centers for Disease Control and Prevention. This is a five-day course. For more information see *http://www.hpdp.unc.edu/nph.* Future topics and place to be determined. This is a mandatory training course that provides training with regard to WISEWOMAN Best Practices.

(2) Up to two persons to participate in the annual WISEWOMAN Project Directors Meeting that is held in conjunction with NCCDPHP Annual Chronic Disease Conference (four days) or other CDC Conferences. Details are provided at *http://www.cdc.gov/nccdphp/conference/index.htm.* This is a mandatory meeting for the purpose of sharing projects successes and challenges.

(3) One person to attend the Physical Activity and Public Health Course that is sponsored by the University of South Carolina Prevention Research Center and the Centers for Disease Control and Prevention. This is an eight-day Postgraduate Course on Research Directions and Strategies and a six-day Practitioner's Course on Community Interventions. *See http://prevention.sph.sc.edu/seapines/index.htm.* Or one person to participate in a non-CDC sponsored professional meeting directly relevant to the program. (A tobacco cessation training course is highly recommended.)

(4) Cost Data and Minimum Data Elements: Budget for collecting and reporting cost data and minimum data elements. (See WISEWOMAN Guidance Document at *http://www.cdc.gov/wisewoman* for list of minimum data elements.) Section 1505 [42 U.S.C. 300n–1] requires that applicants provide assurance that the grant funds be used in the most cost-effective manner.

G.3. Evaluation Criteria

Applications received from current grantees that are funded under program announcements 00115, 99135, and 01098 will be reviewed utilizing the Technical Review process. For applicants that apply competitively as Standard Demonstration Projects or Enhanced Projects, an independent objective review group appointed by CDC will evaluate each application individually using the following criteria:

1. Program Plan (35 points). The extent to which the applicant has addressed Recipient Activities 1.a

through 1.j and items 3.a through 3.g in the Application Content sections.

2. Screening and Intervention (Standard Projects: 25 points and Enhanced program: 15 points). The extent to which the applicant has addressed Recipient Activities 1.b through 1.f and items 4 in the Application Content sections.

3. Evaluation Plan—(Standard Program: 15 points). The extent to which the applicant has addressed Recipient Activities 1.h and items 5 in the Application Content sections.

Evaluation Plan—(Enhanced Program—25 points). The extent to which the applicant has addressed Recipient Activities 1.h and items 6 in the Application Content sections.

4. Background, Need, and Potential for Community Involvement (10 points). The extent to which the applicant has addressed Recipient Activities 1.a and items 1.a through 1.c in the Application Content sections.

5. Infrastructure (10 points). The extent to which the applicant has addressed Recipient Activities 1.b and 1.d and items 2.a through 2.c in the Application Content sections.

6. Collaborative Efforts (5 points). The extent to which the applicant has addressed Recipient Activities 1.a and items 7 in the Application Content sections.

7. Human Subjects (not scored). Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable. Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

1.1 The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

1.2 The proposed justification when representation is limited or absent.

1.3 A statement as to whether the design of the study is adequate to measure differences when warranted.

1.4 A statement as to whether the plans for recruitment and outreach for study participants includes the process recognition of mutual benefits.

Component 4:—State-Based Oral Disease Prevention Program D.4. Availability of Funds

Approximately $2,600,000 is available in FY 2003 to fund approximately 13 Part 1 Capacity Building Program awards. It is expected that the Capacity Building Program average award will be $200,000, ranging from $65,000 to $400,000. Funding estimates may vary and are subject to change.

No funding is available in FY 2003 for Part 2 Basic Implementation Program awards. Pending available funding resources, applications will be accepted in years two through five.

Use of Funds

Applicants may not use these funds to supplant oral health program funds from local, State, or Federal sources. Applicants must maintain current levels of support dedicated to oral health from other funding sources. Funding received under this program announcement cannot be used for the purchase of dental services, dental sealant equipment, or materials.

Recipient Financial Participation

Applicants requesting funding for community water fluoridation equipment will be required to provide matching funds. Matching funds are required from State and/or local sources in an amount of not less than one dollar for each four dollars of Federal funds awarded for community water fluoridation equipment under this program announcement.

Matching funds are required from State and/or local sources in an amount of not less than one dollar for each four dollars of Federal funds awarded for a Basic Implementation Program.

Matching funds may be in cash or its equivalent, including donated or in-kind appropriate equipment, supplies, and or services. Do not include funds from other Federal sources including the Preventive Health and Health Services Block Grant.

CDC funding covers some of the costs of oral health core capacity, infrastructure, and community-based prevention interventions, but it is not intended to fully support all aspects of the oral health program.

Direct Assistance

You may request Federal personnel as direct assistance in years two through five, in lieu of a portion of financial assistance.

To request new direct-assistance assignees, include:

a. Number of assignees requested.

b. Description of the position and proposed duties.

c. Ability or inability to hire locally with financial Assistance.

d. Justification for request.

e. Organizational chart and name of intended supervisor opportunities for training, education, and work.

f. Opportunities for training, education, and work experience for assignees.

g. Description of assignee's access to computer equipment for communication with CDC (*e.g.*, personal computer at home, personal computer at workstation, shared computer at workstation on site, shared computer at a central office).

E.4. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1.a and 1.b (Recipient Activities), and CDC will be responsible for the activities listed under 2. CDC Activities.

1.a. Part 1 Capacity Building Program Recipient Activities and Performance Measures:

(1) Develop oral health program leadership capacity. Develop a State oral health team. Leadership capacity should include: (a) full-time dental director (oral health professional with public health training); (b) .25 time epidemiologic support at a minimum; (c) demonstrated access to at least .50 time of a water fluoridation engineer/specialist or coordinator, and (d) demonstrated access to appropriate program support, .50 to one time dental sealant coordinator, .25 time capacity for health education, health communication, and .25 time support staff, through leveraging of dollars, shared dedicated resources and letters of support.

Performance will be measured by evidence of established leadership capacity. Evidence of leadership capacity can be shown by: The composition of an oral health program team consistent with (1) above.

(2) Describe the oral disease burden, health disparities, and unmet needs in the State. Describe the oral disease burden within the State and document unmet oral health needs of target populations and existing oral health assets (*e.g.*, professional dental/dental hygiene schools, prevention interventions undertaken within the State).

Performance will be measured by evidence that State oral disease burden has been accurately described. Evidence can be shown by: (a) a publicly available disease burden document describing oral disease burden and oral health disparities, issued in the past five years using the most recent data, preferably data no more than five years old; and (b) document includes oral health status with indicators consistent with the National Oral Health System (NOHSS), the Water Fluoridation Reporting

System (WFRS), and the ASTDD State Synopsis.

(3) Develop or update a comprehensive State Oral Health Plan. Develop or update a comprehensive State Oral Health Plan for oral health promotion, disease prevention, and control that includes specific objectives for future reductions in oral disease and related risk factors and objectives for the promotion of oral health. The plan should provide specific, measurable, and time-phased objectives to accomplish each goal related to the logic model (*see http://www.cdc.gov/OralHealth/index.htm* for additional information). In addition, develop a comprehensive State Oral Health Plan (suggest five-year plan) that is available to the public, periodically updated, and developed in collaboration with the assistance of stakeholders. The Plan should address the following oral health areas: (a) Oral health infrastructure including current resources, gaps in resources and recommendations for their elimination; (b) Healthy People 2010 objectives; (c) caries; (d) water fluoridation and school-based or school-linked sealant programs; (e) description of priority populations and burden of disease; (f) strategies to address oral health promotion across the lifespan; (g) strategies to identify best practices that can be replicated; (h) evaluation strategies and recommendations for monitoring the outcomes and impacts of plan implementation; (i) implementation strategies, leveraging of resources, partnerships, and plan maintenance including roles and responsibilities of State and local agencies; and (j) oral cancer, periodontal diseases, and infection control.

Performance will be measured by evidence that a comprehensive State Oral Health Plan has been completed. Evidence can be shown by development of a plan consistent with the process described and with elements (a) through (j) above.

(4) Establish and sustain a diverse Statewide oral health coalition. Establish a coalition to assist in the formulation of plans, guide project activities, and identify additional financial resources for this project. Coalition membership should be representative of stakeholder organizations within the State health department, within the State government and groups external to State government, for examples *see http://www.cdc.gov/OralHealth/index.htm*.

Performance will be measured by evidence of a sustained, diverse statewide oral health coalition. Evidence can be shown by: (a) Extent of progress towards coalition sustainability, such as written by-laws, goals and objectives, plans and procedures for operation, past accomplishments, clerical staff support, and evidence of leveraging of resources; (b) membership entities representing each, but not limited to, categories in the coalition framework at Web site; (c) clear responsibility; (d) coalition activity in infrastructure, community water fluoridation, and sealants. Coalition activities must address all of the following activities: Infrastructure development, community water fluoridation, school-based/school-linked dental sealant programs, unless the grantee can document how current activities in the State have already met or exceeded Health People 2010 objectives for these activities.

(5) Develop or enhance oral disease surveillance system. Develop key resources, data sources, and capabilities to promote the State's surveillance needs. *See http://www.cdc.gov/OralHealth/index.htm* for detailed outline of data sources to consider. Activities should include: (a) Establish plan for how data collection, analysis, and dissemination will support program activity, including a surveillance plan logic model consistent with the CDC Surveillance Logic model (*see http://www.cdc.gov/OralHealth/index.htm*); (b) conduct surveillance so that key oral health indicators have been collected in a valid and timely manner using standard approaches with attention to comparability across States and consistent with annual data submission to the ASTDD's State Synopsis and data submissions to NOHSS, and updated at least every five years; and (c) monitor water fluoridation on a monthly basis comparable and consistent with WFRS.

Performance will be measured by evidence of a developed or enhanced oral disease surveillance system. Evidence can be shown by: Documentation that key resources, data sources, capabilities and surveillance plan are in place to provide an adequate surveillance system via activities consistent with (a) through (c) above.

(6) Identify prevention opportunities for systemic, socio-political and/or policy change to improve oral health. Conduct a periodic assessment of policy- and systems level strategies with potential to reduce oral diseases. The assessment should include identification of opportunities to make changes in policy and health systems to overcome barriers, capitalize on assets, increase capacity, and coordinate prevention interventions.

Performance will be measured by evidence of identification of socio-political and policy changes. Evidence can be shown by periodic assessments consistent with the activities above.

(7) Develop and coordinate partnerships to increase State-level and community capacity to address specific oral disease prevention interventions. Identify, consult with and involve appropriate partners to assess areas critical to the development of State-level and community-based oral health promotion and disease prevention programs, avoid duplication of efforts, ensure synergy of resources, and enhance the overall leadership within the State. Partnerships should augment the oral health coalition.

Performance will be measured by evidence of the development and coordination of partnerships. Evidence can be shown by: (a) Collaborative partnerships with Statewide and local entities (*e.g.*, Memorandum of Understanding (MOU) with other State agencies, joint dedication of resources); (b) broad range of partnerships inside and outside of the State Health Department, encouraging the focus on prevention interventions.

(8) Coordinate and implement limited community water fluoridation program management. Provide coordination and management of a fluoridation program, provide/develop fluoridation training materials for engineers and water plant operators, and evaluate community water fluoridation accomplishments and new and/or replacement water fluoridation equipment.

Performance will be measured by the development, implementation, and coordination of a water fluoridation program. Evidence can be shown by: (a) Extent the water fluoridation program incorporates and makes progress towards the 1995 Engineering and Administrative Recommendations for Water Fluoridation (EARWF), including: (1) Daily testing; (2) access to .50 fluoridation engineer; (3) targeted inspection activity; (4) basic fluoridation training; (b) monthly monitoring consistent with the Water Fluoridation Reporting System (WFRS); (c) percent of fluoridated water systems consistently maintaining optimal levels of fluoride as defined by State and consistent with EARWF; (d) document communities and populations receiving new or replacement fluoridation equipment.

(9) Evaluate, document, and share State program accomplishments, best practices, lessons learned, and use of evaluation results. Evaluation activities should: (a) Be consistent with the CDC oral health global logic model, work plan: (*see http://www.cdc.gov/OralHealth/index.htm*) the CDC Evaluation Framework for Evaluating

Public Health Programs (*http://www.cdc.gov/mmwr*), the CDC Guide to Evaluating Surveillance Systems (*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5013a1.htm*), and consider assessments of changes in oral health outcomes, as well as process evaluations consistent with the Association of State and Territorial Dental Directors' Best Practices evaluation criteria (*see http://www.cdc.gov/OralHealth/index.htm*); (b) document outcome evaluation measures including but not limited to percentage of population receiving fluoridated water and dental sealants; (c) include evaluation efforts consistent with indicators developed for "supported States evaluation plan" (*see http://www.cdc.gov/OralHealth/index.htm*); (d) be used to improve recipient activities above; and (e) be institutionalized as an on-going activity. Sharing of State program accomplishments, best practices, and lessons learned may include participation in forums for exchanging ideas and identification of methods and avenue for dissemination such as the CDC Chronic Disease Conference, and the National Oral Health Conference as well as local and State supported forums (*e.g.*, State Summits, State dental and dental hygiene association meetings).

Performance will be measured by evidence that evaluation has been completed, State evaluation capacity and activities have become institutionalized; State program accomplishments have been collected, evaluated, and shared with stakeholders; and evaluation results are used to improve program performance. Evidence can be shown by: (1) Documentation of evaluation activities consistent with (a) through (e) above; and (2) documentation of participation in scientific forums consistent with the activities above.

(10) Capacity Building Prevention Intervention (To be undertaken after Part 1 Capacity Building Program 1–9 from above have been met).

a. Develop and Implement a water fluoridation program. Provide or develop fluoridation educational materials, as appropriate, to promote water fluoridation. Implement a program to support new replacement water fluoridation equipment. Evaluate the accomplishments of the water fluoridation program.

Performance will be measured by the development, implementation, and coordination of a water fluoridation program. Evidence can be shown by: (1) Documentation of appropriate education and promotion efforts; (2) documentation of communities and populations receiving replacement fluoridation equipment by funding source; (3) extent of progress towards reaching or exceeding Health People 2010 objective of 75 percent of population on public water supplies receiving fluoridated water.

b. Develop, coordinate and implement limited school-based or school-linked dental sealant programs. Describe and document the number of eligible public elementary or secondary schools, and existing related oral health assets. Document infrastructure is in place for the coordination and management of school-based or school-linked dental sealant program and show collaborative working relationships and formal agreements (*e.g.*, MOA, MOU, or other written agreement between the State Health Department and the State educational agency).

Develop school-based or school-linked dental sealant programs targeting public elementary or secondary schools located in: (a) Urban areas, and in which more than 50 percent of the student population of that school or school entity is participating in Federal or State free and reduced meal programs; or (b) rural school districts having a median income that is at or below 235 percent of the poverty line, as defined in section 673(2) of the Community Services Block Grant Act [42 U.S.C. 9902(2)].

Performance will be measured by the development, implementation, and coordination of school-based/school-linked dental sealant programs. Evidence can be shown by: (1) Extent that priority populations have been identified; (2) extent that implementation strategies appropriate to State setting have been developed; percent and number of children in funded programs receiving at least one permanent molar sealant; proportion of eligible schools participating in program; and proportion of children participating in free and reduced cost lunch program receiving at least one sealant.

Optional Cost Analysis Recipient Activities and Performance Measures: Measures include the collection, tracking, and completion of cost analysis for school-based/school-linked dental sealant program. Evaluate the accomplishments, efficiency, and effectiveness of the implemented school-based/school-linked dental sealant programs. Proposals may include requests for technical assistance for the following optional performance measures:

Performance will be measured by the collection, tracking, and accomplishment of a cost-analysis for school-based or school-linked dental sealant programs. Evidence can be shown by: (a) Documentation of baseline mean pit and fissure caries severity (*i.e.*, pit and fissure DMFS) in targeted permanent molars among children three years older than target population; (b) cost-analysis report published and submission made to the ASTDD Best Practices Project.

1.b. Part 2 BASIC IMPLEMENTATION Program Recipient Activities and Performance Measures: Basic Implementation Recipient Activities and Performance Measures include evidence that applicant continues to meet CAPACITY BUILDING program and CAPACITY BUILDING-PREVENTION INTERVENTION program activities and performance measures in section 1.a. above.

(1) Develop a Statewide community water fluoridation program or maintain Statewide fluoridation program that has reached the Healthy People 2010 objective. Enhance or expand existing community water fluoridation demonstration or pilot project into a statewide program showing annual progress.

Performance will be measured by evidence that water fluoridation efforts result in significant progress towards meeting, maintaining or exceeding Healthy People 2010 goals. Evidence can be shown by: (a) Extent that Statewide water fluoridation program incorporates and makes progress in meeting the Engineering and Administrative Recommendations for Water Fluoridation (EARWF, 1995), including: (1) Monthly monitoring and participation; (2) additional fluoridation engineers and/or specialist if appropriate; (3) all fluoridation engineers and/or specialists attend CDC fluoridation engineers and/or specialists attend CDC fluoridation training or equivalent; (4) all water plant operators receive basic fluoridation training; (5) all adjusted fluoridated water systems have annual inspections to insure that all the technical recommendations, including the (a) safety requirements of EARWF are followed; (b) all split sampling reference labs should participate in the CDC Lab Proficiency Testing Program; (c) document progress in increasing percent of fluoridated water systems consistently maintaining optimal levels of fluoride as defined by State and consistent with recommendations outlined in EARWF; (d) document progress toward reaching or exceeding Healthy People 2010 objective; (e) document communities and populations receiving new or replacement fluoridation equipment.

(2) Develop Statewide school-based or school-linked dental sealant program or

maintain school-based or school-linked dental sealant program if the Healthy People 2010 objective has been met. Enhance or expand existing school-based or school-linked dental sealant demonstration or pilot project into a Statewide program showing annual progress. School eligibility criteria as stated in (10)(b) above will be used.

Performance will be measured by evidence that grantee is implementing and expanding school-based or school-linked dental sealant programs Statewide. Evidence can be shown by: (a) Documentation of progress towards reaching or exceeding goal of school-based or school-linked sealant programs in at least 50 percent of eligible schools; (b) significant progress towards increasing: The percent and number of children in Statewide funded programs receiving at least one permanent molar sealant; proportion of eligible schools participating in program; and proportion of eligible schools participating in program; and proportion of children in funded programs participating in free and reduced cost lunch program receiving at least one sealant; (c) demonstrated participation in ASTDD Best Practices project; (d) demonstrated leadership capacity in dissemination and technical assistance to other State sealant programs; (e) progress towards sustainability and institutionalization of sealant program through leveraging of dollars, partnership participation, billing Medicaid and/or SCHIP or other sources of support.

(3) Develop other evidence-based, population-based, intervention strategies consistent with the State Oral Health Plan. Strategies should include policy and systems level approaches. Interventions should be population based, with objectives that specify the population wide changes sought and may address use of dental sealants, water fluoridation efforts, tobacco use, diabetes, poor nutrition, oral health education and, secondary prevention.

Performance will be measured by demonstration of implementation of evidence-based, population-based strategies. Evidence will be shown by: (a) Documentation of evidence-based for intervention initiative; (b) extent that population-based interventions meet the established objectives specifying the population-wide changes sought; and (c) submission to the ASTDD Best Practices Project.

(4) Evaluate intervention components. Design and implement a public health practice evaluation system that collects and analyzes information to be used to measure program progress, community capacity changes, short-term and distal outcomes. Evaluation results and related findings should be used to add to and/or enhance program implementation.

Performance will be measured by evidence that State evaluation capacity and activities have become an on-going normative activity and that State program accomplishments have been collected, evaluated and shared with stakeholders. Evidence can be shown by: (a) Demonstration that the recipient is taking a leadership role in providing technical assistance and transfer of practice knowledge to other States; and b) quantification (in terms of dollars) of resources used and returns on those resources.

(5) Expand oral health program leadership capacity. Expand State oral health team beyond CAPACITY BUILDING level. Provide National leadership by sharing results, with one another, best practices, and other lessons learned to help shape the national agenda and improving the oral health of the public. Capacity should include: (a) Epidemiologic support .50 time at a minimum; (b) demonstrated access to 1.0 time fluoridation engineer/specialist or coordinator (may be less for States with small number of water systems or more for States with a large number of water systems); and (c) demonstrated access to appropriate program support at a minimum: 1.0 time program coordinator, 1.0 time dental sealant coordinator, .50 time capacity for health education, .50 time health communication, .50 time data manager, .25 time grant writer, 1.0 time support staff, and regional consultants, through leveraging of dollars, shared dedicated resources, and letters of support.

Performance will be measured by evidence of expanded leadership and access to needed functions through personnel, leveraging of dollars, shared dedicated resources and/or letters of support, sharing through publications and presentations at national and regional meetings. Evidence can be shown by: (a) The minimum composition of the oral health program is consistent with the activities outlined above; (b) demonstrated with the activities outlined above; and (c) demonstrated evidence of sharing best practices and other lessons learned inside and outside of the State borders through publications and meeting presentations.

(6) Develop and maintain expanded surveillance capacity. The surveillance system is maintained and sustainable, and able to compare State or smaller area data to those from national data sources. Surveillance system should be able to conduct original analyses or forge good working relationships with in-State agencies that will conduct the original analyses. Refer to surveillance logic model at Web site for more information.

Activities should include: (a) Development of regional or county level indicators; (b) development of surveillance system quality checks, establishment of data cleaning protocol, and document data linkages and security procedures; (c) utilization of original analytic analyses and comparisons to national data in dissemination activities and reports; (d) documentation of regional or county level indicators; and (e) collaboration with other programs in the health department to answer key epidemiological questions of mutual interest, *e.g.*, diabetes, tobacco, cancer, MCH.

Performance will be measured by evidence that surveillance is on-going, sustainable activity within the State, is expanded beyond the basic requirements of a core system, and uses data to direct program planning and oral health promotion. Evidence can be shown by: Documentation of activities (a) through (e) above.

(7) Expand the diverse statewide oral health coalition. Expand statewide oral health coalition and address institutionalization and sustainability.

Performance will be measured by evidence of a sustained, diverse statewide oral health coalition with established plans for membership and recruitment of diverse stakeholders. Evidence can be shown by: (a) Extent that coalition has been significantly expanded in both numbers and types of members and documentation of expanded coalition activities; (b) documentation of dedicated support staff; (c) documentation of established communication measures and outreach to community, policy makers and stakeholders; (d) extent of progress towards coalition sustainability such as meeting minutes, schedule of meeting dates and locations; and (e) documentation of active support from stakeholders including funding sources and in-kind contributions.

(8) Address program sustainability by broadening resources. Address the institutionalization of the oral health unit, oral health surveillance system, statewide coalition, and the State's best practice programs.

Performance will be measured by demonstration of condition supportive of the sustainability of State oral health infrastructure and programs. Evidence can be shown by measures including: (a) Non-award funding and measures that activities are institutionalized; (b) demonstration of environment

conducive to the growth of promotion of oral health in three major support areas: Infrastructure and processes, resources and culture/context in the State, and local health department(s); (c) demonstration of shared dedicated resources, leveraging of dollars, and supportive partnerships; (d) demonstrated legislative and other State government support.

(9) Collect, track and complete cost analysis for school-based or school-linked dental sealant program. Evaluate the accomplishments, efficiency, and effectiveness of the implemented school-based or school-linked dental sealant programs. Performance will be measured by the completion of a cost-analysis for school-based or school-linked dental sealant programs. Evidence can be shown by: (a) Documentation of baseline mean pit and fissure caries severity (*i.e.*, pit and fissure DMFS) in targeted permanent molars among children three years older than target population; and (b) cost-analysis report published and submission made to the ASTDD Best Practices Project.

2. CDC Activities. a. Update and provide information related to the purposes and/or objectives of the program announcement related to recipient activities. b. Provide programmatic and technical assistance for recipients and their stakeholders and partners through programmatic and technical consultation, workshops, information exchanges and other forms of guidance, assistance and information sharing to assist the recipient in: (a) The assessment of oral health status and behaviors of target sub-populations; (b) the design and implementation of strategies for prevention interventions based on best available scientific evidence; (c) the design, evaluation and monitoring of interventions effectiveness; (d) the distribution of information documenting lessons learned, best practices and program costs; and (e) the evaluation of State oral health programs.

c. Communicate and share information, evaluations, data, and programmatic activities with other recipients and partners, as appropriate.

d. Coordinate conference calls, workshops, and other information sharing opportunities, as appropriate.

F.4. Content

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

This section will outline the requirements for each program and will note additional requirements for each specific Part.

The narrative for Part 1 CAPACITY BUILDING Program should be no more than 36 pages, double-spaced, printed on one side, with one-inch margins, and 12-point Universal unreduced font.

(Part 1) CAPACITY BUILDING Program

1. Executive Summary (not to exceed two pages). Provide a clear, concise two-page written summary to include: (a) Synthesis of need for oral health programs; (b) changes in infrastructure required to support proposed programs; (c) major proposed objectives for implementation of Work Plan (*see* section (4) below and *http://www.cdc.gov/OralHealth/index.htm);* (d) amount of Federal funding requested under Part 1 of this cooperative agreement.

2. Statement of Need (not to exceed seven pages) (a) Describe oral disease burden within the State, indicate specific sub-populations and source(s) of data provided; (b) describe current assets and capacity of the State to reduce identified burdens. Current grantees under Program Announcement 01046, should not include CDC funding from Program Announcement 01046 under existing resources; (c) identify barriers and facilitators likely to affect the reduction of oral disease burden; and (d) describe gaps in Statewide infrastructure affecting the capability of the applicant to perform recipient activities and operate prevention programs.

3. Five-year Plan (Goals) (not to exceed five pages). (a) Design a logic model for State oral health program. *See* Web site for the CDC Logic Model Template. Incorporate planned Capacity Building Prevention Interventions if appropriate, into State oral health logic model; (b) Goals: List feasible, realistic goals related to logic model to achieved in five years.

4. One-year Plan, Activities and Timeline (not to exceed nine pages) Objectives: Provide specific, measurable, and time-phased objectives to accomplish each goal related to the logic model and the performance measures outlined in Section E above. (a) State how achievement of objectives will contribute to meeting the goal; (b) describe the one-year work plan for achieving each objective in Section (3) above. *See* Web site for the CDC Work Plan Template; (c) the one-year work plan should describe activities planned to complete each objective. Applicants must link each time-phased objective and performance measure from Section E above, with the activities intended to support that objective; (d) one-year work plan should establish a time line for completion of each component or major activity; (e) identify specific individual (person) responsible for each objective or activity in the one-year work plan.

5. Evaluation Plan (not to exceed seven pages). a. Describe plan for monitoring progress toward achieving objectives stated in Section (4) above;

b. For each objective, specify how achievement will be documented including measures, data collection protocols, and data quality required to obtain needed information;

c. Using the logic model as a framework, specify: (1) Indicators for process and outcome objectives; (2) expected increase in capacity of the State oral health program, delivery systems, and communities; (3) changes in oral health outcomes;

d. Plans for analysis, interpretation and reporting of findings;

e. Plans for use of findings; and

f. Provide a time-line for the completion of the evaluation.

6. Program Management (not to exceed six pages). (a) Describe employing agencies or institutions, as well as professional backgrounds of existing or proposed staff who will be responsible for each functional project aspect, including in-kind staff resources and percent of time commitment (including in-kind staff resources and percent of time commitment (Include Curriculum Vitae as appropriate); (b) provide evidence of State support for proposed project; (c) describe coalitions involvement in planning, implementation, and evaluation; (d) describe management, coordination team and responsibility for different program aspects; and (e) identify staff that will direct evaluation efforts including additional team members assigned to evaluation tasks. Provide a detailed description of expertise, experience, and delineation of staff, and responsibilities for program evaluation.

7. Budget and Accompanying Justification (no page limitation). Submit a detailed budget and line item justification that is consistent with the purpose of the program and the proposed project objectives and activities, using the format of the sample budget provided at *http://www.cdc.gov/OralHealth/index.htm.*

To the extent necessary, applicants are encouraged to include travel for: (a) Up to four persons associated with this project to each annually attend up to two technical assistance workshops. For

the purpose of the initial funding period, budget for the workshops, training courses, and technical assistance meetings to be held in Atlanta, Georgia; and (b) two staff to annually participate in the National Oral Health Conference. For the purpose of the initial funding period, applicant should budget for the 2004 National Oral Health Conference.

The narrative for Part 2 BASIC IMPLEMENTATION Program should be no more than 45 pages, double-spaced, printed on one side, with one-inch margins, and 12 point Universal unreduced font.

(Part 2) BASIC IMPLEMENTATION Program

Use the application guidance from Part 1 Capacity Building Program with the exception of the page limits and the additional section as outlined below.

1. Executive Summary (not to exceed four pages)
2. Statement of Need (not to exceed seven pages)
3. Eligibility (not to exceed seven pages)

(a) Outline how State oral health program has accomplished activities and performance measures under the Capacity Building Program; (b) outline how your demonstration/pilot CAPACITY BUILDING PREVENTION INTERVENTIONS have been successful. Include a description of activities and performance measures under Section E.1.a as appropriate.

4. Five-year plan (Goals) (not to exceed five pages)
5. One-year Plan, Activities and Timeline (not to exceed nine pages)
6. Evaluation Plan (not to exceed seven pages)
7. Program management (not to exceed six pages)
8. Budget and Accompanying Justification (no page limit)

G.4. Evaluation Criteria

Applicants received from current grantees that are funded under Program Announcement 01046, will be reviewed utilizing the Technical Review process. Applications received from unfunded applicants (new), will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Applications received from grantees funded under Program Announcement 01046 will be reviewed by independent reviewers utilizing the Technical Acceptability Review (TAR) process.

CAPACITY BUILDING Program Criteria

a. One Year Plan (30 points). The extent to which the applicant has addressed Recipient Activities 3 and item 4.a in the Application Content section of Component 4.

b. Five Year Plan (20 points). The extent to which the applicant has addressed Recipient Activities 3 and item 3 in the Application Content section of Component 4.

c. Program Management (20 points). The extent to which the applicant has addressed Recipient Activities 1, 7, 8, and 10 and item 6 in the Application Content section of Component 4.

d. Statement of Need (15 points). The extent to which the applicant has addressed Recipient Activities 1 and 2 and item 2 in the Application Content section of Component 4.

e. Evaluation Plan (15 points). The extent to which the applicant has addressed Recipient Activities 5, 6, and 9 and item 5 in the Application Content section of Component 4.

f. Budget (not scored). The extent to which the applicant has addressed item 7 in the Application Content section of Component 4.

BASIC IMPLEMENTATION Program Criteria

a. One Year Plan (30 points). The extent to which the applicant has addressed Recipient Activities 3 and item 4.a in the Application Content section of Component 4.

b. Five Year Plan (20 points). The extent to which the applicant has addressed Recipient Activities 3 and item 3 in the Application Content section of Component 4.

c. Evaluation Plan (20 points). The extent to which the applicant has addressed Recipient Activities 5, 6, and 9 and item 5 in the Application Content section of Component 4.

d. Program Management (20 points). The extent to which the applicant has addressed Recipient Activities 1, 7, 8, and 10 and item 6 in the Application Content section of Component 4.

e. Statement of Need (10 points). The extent to which the applicant has addressed Recipient Activities 1 and 2 and item 2 in the Application Content section of Component 4.

f. Budget (not scored). The extent to which the applicant has addressed item 7 in the Application Content section of Component 4.

Component 5—Arthritis

D.5. Availability of Funds

Approximately $6,000,000 is available in FY 2003 to fund up to 36 awards. Approximately $3,640,000 is available to fund 28 existing Capacity Building Program Level A grantees under Program Announcement 01097. Capacity Building Program Level A grantees will undergo a technical review of their application and will be funded pending receipt and approval of a technically acceptable application. It is expected that the average award will be $135,000 ranging from $120,000 to $150,000.

Approximately $2,360,000 is available to fund six to eight Capacity Building Program Level B programs. Requests for these funds will be competitive and will be reviewed by an independent objective review panel. It is expected that the average award will be $275,000 ranging from $250,000 to $300,000.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds. The interim progress report will be used as evidence of Capacity Building Program Level A attainment of their respective goals and objectives and readiness to compete for the next level of funding should funds be available. Capacity Building Program Level A grantees wishing to compete for the next level of funding should submit an application that is responsive to the Capacity Level B Program Performance Measures, Application Content and Recipient Activities section of this program announcement including a line-item budget and budget justification. Applications for advancement from a Level A to Level B program will be reviewed by CDC staff utilizing the Technical Acceptability Review (TAR) process. Applications can be submitted in fiscal year 2004, 2005, or 2006. Funding decisions will be made on the basis of satisfactory progress on the appropriate Performance Measures as evidenced by required reports and the availability of funds. Capacity Building Program Level A programs that unsuccessfully compete for Capacity Building Program Level B funding will be funded for a Capacity Building Program Level A.

Use of Funds

Cooperative Agreement Funds may not be used to supplant State or Local funds. In addition, funds may not be used to support primary prevention activities.

Recipient Financial Participation

Matching funds are not required for this program.

E.5. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1a. (Recipient Activities for Capacity Building Program Level A) and

1b. (Recipient Activities for Capacity Building Program Level B Programs) and CDC will be responsible for the activities listed under 2. CDC Activities.

1a. Recipient Activities for Capacity Building Program Level A

1. Staffing: Establish a full-time arthritis program manager to oversee arthritis program activities and to promote an arthritis program within the State. All arthritis program managers are strongly encouraged to take the training "The Arthritis Challenge" and "Arthritis: The Public Health Approach" located at *http://www.astdhpphe.org.* Performance will be measured by the extent to which the program is appropriately staffed in a timely manner as evidenced by the submission of the name of the program manager, the date of hire, and their completion of the training, "Arthritis: The Public Health Approach" as documented by a course completion certificate.

2. Partnerships: Establish an advisory group or coalition to guide, review, and provide direction for the State in all activities directed at reducing the burden of arthritis. The advisory group, at a minimum, should include the local chapter(s) of the Arthritis Foundation. In addition, the State should consider the following as members of the advisory board or coalition:

a. Individuals with expertise in arthritis;

b. Agencies/organizations with activities relevant to arthritis, resources for arthritis activities, and access to target populations (*e.g.*, Area Agencies on Aging, Medicaid/Medicare, managed care organizations, American Association of Retired Persons, senior centers, and faith communities); and

c. Persons with arthritis or family members of persons with arthritis.

As appropriate, States should establish internal workgroups with other components of State government that are directly or indirectly involved in some aspect of arthritis control and prevention.

Performance will be measured by the extent to which there is evidence of diverse, active, and viable partnerships. Documentation should include minutes of meetings, lists of members, copies of by-laws or written operating procedures.

3. Surveillance:

a. Define and monitor the prevalence and impact of arthritis using the Behavioral Risk Factor Surveillance System (BRFSS). It is recommended that funded States collect data using the Arthritis Optional Module of the BRFSS in odd years (*i.e.*, 2003, 2005, 2007)

b. Issue a State of Arthritis Report using, at a minimum, 2001 BRFSS arthritis data. (Arthritis data was collected by all States in calendar year 2001 through the BRFSS). This activity should be completed within the first two years of the cooperative agreement.

c. For years two and beyond surveillance activities should be expanded to include the measuring of intervention reach and effects. Measuring reach includes, but is not limited to, establishing mechanisms to determine annual availability and delivery of evidenced-based self-management programs such as ASHC, PACE, and Arthritis Foundation Aquatics programs. Availability measures the number of programs offered and their geographic dispersion; delivery measures both the number of programs given and the number of persons with arthritis attending. Measuring effects includes, but is not limited to, measuring changes in health impacts, improvement in quality of life, or functioning among those attending the above programs.

Performance will be measured by:

a. The extent to which there is evidence that the burden of arthritis has been defined using BRFSS data that identifies demographics, prevalence, and related risk behaviors (*i.e.*, physical activity and obesity). A State of Arthritis Report has been published and disseminated.

b. The extent to which the grantee is able to demonstrate the ability to define and monitor the number of evidenced-based self management courses available within the State and the number of individuals impacted by these programs.

4. State Plan: Develop or update a State Plan for Arthritis that outlines a proposed framework for activities to reduce the burden of arthritis. This document should be planned with partners and include activities to be implemented by the partners. The plan should not address health department activities only and should be completed within the first eighteen months of the cooperative agreement.

Performance will be measured by the extent to which documentation is provided that a written State plan for arthritis is completed. The plan should contain a description of the State burden of arthritis, and assessment of resources and resource gaps, strategies to decrease the burden of arthritis, priorities, and time-line for implementation of interventions. The plan should be endorsed and supported by partner organizations.

5. Interventions: Implement one or more strategies from the State Arthritis Plan that is consistent with the Public Health Framework for Arthritis (*see http://www.cdc.gov/nccdphp/arthritis*) with a focus on the immediate effects and/or short term goals as outlined in this framework. Activities should be data driven. Applicant should develop implementation plans and evaluation strategies for the proposed intervention(s). Activities should be implemented with a focus on one or more of the following areas:

a. Evidence-based Self Management Education and Physical Activity Interventions: Broaden the reach of evidence-based self management programs, *e.g.*, the Arthritis Self Help Course (ASHC), the promotion of physical activity in individuals with arthritis using land-based exercise programs such as People with Arthritis Can Exercise (PACE) or water-based such as the Arthritis Foundation Aquatics Program.

b. Health Communications Campaigns: Develop or utilizing health communications interventions that will increase/enhance knowledge and beliefs necessary for appropriate management of arthritis. Communications strategies should be designed to increase self-management beliefs and behaviors and to increase the belief that self-management is an important part of arthritis management. The communications activity can be targeted to people with arthritis, and their families, the general public, or non-physician health professionals. CDC developed health communication campaign Physical Activity. "The Arthritis Pain Reliever," may be used. A summary of this material will be posted at *http://www.cdc.gov/nccdphp/arthritis.* Physician education efforts, while worthy, will not be considered as part of this activity.

Performance will be measured by the extent that the grantee can provide documentation that one or more evidenced-base intervention was implemented including: the process used for selecting the intervention, the target audience, the location of the intervention, and data used to support the decision to implement.

1b. Recipient Activities for Capacity Level B Programs

In addition to continuing and enhancing the Recipient Activities for Capacity Building Program Level A, Capacity Building Program Level B Program will include:

1. Surveillance: Examine the availability and applicability of other State-based data sources including but not limited to data from outpatient/ambulatory care settings, managed care

organizations, and follow back surveys of BRFSS respondents. Pharmacy data may also prove useful to better define the burden of arthritis within the State. All surveillance activities outside of BRFSS should be directly linked to programmatic activities.

Performance will be measured by the extent to which non-BRFSS data have been examined and have informed program decisions or enhanced existing activities.

2. Interventions: Implement two or more strategies from the State Arthritis Plan that is consistent with the Public Health Framework for Arthritis with a focus on Evidenced-Based Arthritis Education Programs and/or Health Communications. Capacity Building Level B programs may choose to implement and evaluate physical activity or self-management interventions other than ASHC, aquatics and PACE, that may be beneficial and effective in reducing arthritis related pain and disability and improving the quality of life among persons with arthritis. For these interventions, States must propose an implementation and evaluation plan. This plan should include a description of the program, expected program outcomes, implementation strategies, the role of partners and consultants in implementing and evaluating the program, and the evaluation plan. The evaluation should describe how impact will be measured, domains of interest, proposed data collection tools, and how data will be collected and analyzed. A time-line should be included.

Performance will be measured by:

a. The extent to which grantee can provide documentation that two or more evidenced-base interventions were implemented including: the process used for selecting the intervention, the target audience, the location of the intervention, the role of partners, and data used to support the decision to implement.

b. The extent to which non-evidence based programs have been implemented and evaluated.

Notes: All funded States are expected to adhere to the most current surveillance, intervention, and health communication recommendations that will be posted at *http://www.cdc.gov/nccdphp/arthritis/index.htm.*

2. CDC Activities

a. Provide consultation and technical assistance to plan, implement, and evaluate each component of the program.

b. Provide current information on the status of

c. National efforts as they relate to the implementation of recipient activities.

d. As needed, provide technical assistance in the coordination of surveillance efforts and the use of other data systems to measure and characterize the burden of arthritis, provide standard analyses of BRFSS data for States, and provide data for national level comparisons.

e. Facilitate communication among arthritis programs, other government agencies, and others involved in arthritis control and prevention efforts.

F.5. Content

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Applications for Capacity Building Program Level A should be no more than 30 pages and Capacity Building Program Level B Programs no more than 40 pages excluding Federal forms, budget, justification, abstract, and appendixes. All applications should be double-spaced, printed on one side, with one-inch margins, and 12-point font. All applicants should also submit as appendices, resumes, job descriptions, organizational charts, and any other supporting documentation as appropriate. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria. All submitted materials must be suitable for photocopying. Your application must be submitted unstapled and unbound.

1. Abstract (All Applicants). A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the program, organization, name and address of the project director, telephone number, facsimile number, and e-mail address. The abstract should clearly state which level of activities the applicant is applying for: Capacity Building Program Level A, or Capacity Building Level B Program. The abstract should briefly list major program elements and activities. A table of contents that provides page numbers for each section should follow the abstract.

2. Background/Current Status. Capacity Building Program Level A Programs: Describe the burden of arthritis in the State. Identify what data sources are being used, the barriers the State currently faces in developing and implementing a program for arthritis, and identify the specific needs and resources available for arthritis activities.

Capacity Building Level B Programs:

a. Applicants for Capacity Building Programs Level B should provide evidence that they have significantly met the requirements specified in the Recipient Activities for Capacity Building Programs Level A (see Program Recipient Activities Section).

b. In addition, the applicant should adequately describe the burden of arthritis within the State including how the program defines arthritis using BRFSS and other data.

c. Include a description of the barriers the State currently faces in further developing and implementing programs for the control of arthritis.

3. Work-Plan. Provide a work plan that includes objective, methods, evaluation plans, and a time-line for each for the required elements cited in Recipient Activities above. Objectives should describe what is to happen, by when, by whom, and to what degree. Methods should describe the plan for achieving each of the objectives including a description of how partners will be involved. Also included should be a description of how progress toward attainment of the objectives will be monitored.

a. Staffing (All Applicants). Describe how proposed or existing staff has the relevant background, qualifications, and experience to manage a public health program. Include a description of their role in promoting an arthritis program within the State, their specific responsibilities, their role in coordinating activities between relevant programs within the State, how the organizational structure will support the staff's ability to conduct proposed activities, and the level of effort and time to be devoted to the arthritis program. Job descriptions, resumes if available, and an organizational chart should be included.

b. Partnerships (All Applicants). Include plans for developing partnerships with the local chapter(s) of the Arthritis Foundation, State and local agencies, Federal agencies, and others with an interest in arthritis. If partnerships have already been developed, the applicant should describe the process used, and the role of advisory groups, partnerships, or coalitions in the development and implementation of activities in the State Plan for Arthritis. Partnerships are expected to have been ongoing and viable. Applicants should include copies of agendas for all partnership meetings within the past two calendar years. Letters of support should be submitted and should describe the nature and extent of involvement by outside partners.

c. Surveillance

Capacity Building Program Level B

1. Describe plans to monitor the burden of arthritis within the State using BRFSS data and include plans for the development and dissemination of a State of Arthritis Report.

2. Applicant should also describe the method to be used to develop mechanisms to measure programmatic reach and effects of evidenced-based arthritis self-management programs as defined in the "Recipient Activities" section of this announcement.

Capacity Building Level B

3. In addition to criteria under Capacity Building Program Level A, applicants for Capacity Building Level B Programs should present plans to examine the availability and applicability of other State-based data sources as described in the "Recipient Activities" section.

d. State Plan

Capacity Building Program Level A

Applicants should describe the process to be used for engaging relevant partners and developing a State arthritis plan. If a State plan has been developed, describe the process used for its development, provide agendas for planning meetings, and provide the executive summary of the State plan.

e. Interventions

1. Applicants should describe the process to be used to select the intervention to be implemented.

2. If an already existing State plan or partnership has provided guidance for the selection of the intervention, describe the relationship between the intervention and strategies identified within the State plan and the Public Health Framework for Arthritis. Provide a description of implementation plans, the proposed intervention(s) activity(ies), the target population, geographic location, the actual methods of implementation, a time-line, evaluation strategy, and the role of partners in this process.

Capacity Building Program Level B

a. Address the elements 1 and 2 under Capacity Building Program Level A.

b. If proposing the implementation of non evidenced-based intervention(s), provide an implementation plan that includes a description of the program and expected outcomes. In addition, the evaluation plan should describe how impact will be measured, domains of interest, proposed data collection tools, and how data will be analyzed.

f. Evaluation (All Applicants). Applicant should provide a plan that is capable of monitoring progress toward meeting specified project objectives.

g. Budget (All Applicants). Provide a detailed line-item budget and justifications consistent with the purpose and proposed objectives. Budgets should include travel for one to two program staff to attend a two-day meeting in Atlanta. Proposed sub-contracts should identify the name of the contractor, if known; describe the services to be performed; provide an itemized budget and justification for the estimated costs of the contract; specify the period of performance; and describe the method of selection. If indirect costs are requested, a copy of the Indirect Cost Rate Agreement should be included.

G.5. Evaluation Criteria (100 Points)

Applications received from current grantees that are funded under Program announcement 01097, will be reviewed utilizing the Technical Review process. Applications received from States funded under program announcement 99074 and all other applicants will be evaluated individually against the following criteria by an independent review group appointed by CDC.

A. Capacity Building Program Level A (100 points)

1. Need/Current Status. Capacity Building Program Level A (15 points) Capacity Level B (25 points). The extent to which the applicant addresses the requirements identified in Section F.5. (Application Content) item 3. Point distribution is listed below.

2. Staffing. Capacity Building Program Level A (20 points) Capacity Building Program Level B (10 points). The extent to which the applicant addresses the requirements identified in section E5 (Recipient Activities) section 1a. item 1 and section F.5 (Application Content) item 3a.

3. Partnerships. Capacity Building Program Level A (15 points) Capacity Building Program Level B (15 points). The extent to which the applicant addresses the requirements identified in Section E.5 (Recipient Activities) section 1a. item 2 and section F.5 (Application Content) item 3b.

4. Surveillance. Capacity Building Program Level A (15 points) Capacity Building Program Level B (20 points). The extent to which the applicant addresses the requirements identified in Section E.5 (Recipient Activities) section 1a. item 3; section 1b item 1 and section F.5 (Application content) item 3c.

5. State Plan. Capacity Building Program Level A (15 points) Capacity Building Program Level B (0 points). The extent to which the applicant addresses the requirements identified in Section E.5 (Recipient Activities) section 1a. item 4 and section F.5 (Application Content) item 3d.

6. Interventions. Capacity Building Program Level A (15 points) Capacity Building Program Level B (25 points). The extent to which the applicant addresses the requirements identified in Section E.5 "Recipient Activities" section 1a. item 5; section 1b item 2 and section F.5 "Application Content" item 3e.

7. Evaluation. Capacity Building Program Level A (5 points) Capacity Building Program Level B (5 points). The extent to which the applicant addresses the requirements identified in Section F.5 (Application content) item 3f.

8. Budget (not scored). The extent to which the applicant addresses the requirements identified in Section F.5 (Application content) item 3g.

9. Human Subjects (not scored). Does the application adequately address the requirements of title 45 CFR Part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Component 6—Behavior Risk Factor Surveillance Systems (BRFSS)

D.6. Availability of Funds

Approximately $5,000,000 is available in FY 2003 to fund approximately 54 existing grants under program announcement 99044. It is expected that the average award will be $75,000, ranging from $50,000 to $100,000. It is expected that the awards will begin on or about June 30, 2003 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Use of Funds

Funds provided under this program announcement cannot be used to conduct community-based pilot or demonstration projects. Cooperative agreement funds may not be used to supplant State or local funds. Cooperative agreement funds may not be used to provide patient care, personal health services, medications, patient rehabilitation, or other cost associated with treatment. Funds awarded under this program announcement may be obligated and expended only for those BRFSS surveillance, data collection, and

related activities identified in the Notice of Grant Award.

E.6. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities. a. At a minimum, identify a program director and BRFSS data coordinator dedicated to overall coordination and operations of BRFSS.

b. Adopt the standard BRFSS written protocol that has been developed and formulate a plan for developing and conducting BRFSS data collection activities in conformance with protocols used by other participating States and delineated in the "BRFSS User's Guide" and numbered memorandums (The "BRFSS User's Guide" is available at *http://www.cdc.gov/brfss*).

c. Develop and implement plans and written procedures for ongoing analysis of behavioral risk factor data Statewide and for selected local areas.

d. Develop and implement plans and written procedures to ensure the routine use of BRFSS data for directing program planning, evaluating programs, establishing program priorities, developing specific interventions and policies, assessing trends, and targeting relevant population groups.

e. Develop and implement plans for the use of BRFSS data to address emerging Public Health chronic disease and injury issues within the State.

f. Develop and implement procedures to increase collaboration with and among State, local, and, as appropriate, national, public, private, voluntary, for-profit and nonprofit agencies, organizations, and universities that analyze data or seek to reduce chronic disease and injury morbidity and mortality.

g. Assure active cooperation and collaboration with recipients of funding from other CDC supported programs (cancer, tobacco use, diabetes, alcohol use, women's health, etc.) and identify opportunities to link program and BRFSS efforts where appropriate and reinforcing, including co-funding of BRFSS activities.

h. Ensure adequate and, as required, periodic training of State BRFSS interviewers. Interviewers must follow the standard BRFSS questionnaire script developed in collaboration with BRFSS member States and should be trained with appropriate standards for telephone interviewing. (The BRFSS Interviewer Training is located in the training section of the BRFSS Web site referenced above in 1.b.)

i. Develop, maintain, and make available to CDC monthly, electronic BRFSS data sets for data management (*i.e.*, editing, cleaning, and weighting).

j. Conduct monthly, monitoring data quality and data management (*i.e.*, through verification and validation efforts).

k. Develop and implement an analysis plan.

l. Participate with others in individual and multi-State analyses comparing data across BRFSS States.

m. Disseminate BRFSS findings through presentations and publications to health departments, professional societies, voluntary agencies, universities, other BRFSS States, and other interested individuals and organizations.

n. Make data and BRFSS findings available for training workshops and meetings at least once a year (*i.e.*, BRFSS Conference).

o. Assure that CDC receives final end-of-year BRFSS data sets on or before February 15 of the following year.

2. CDC Activities. a. Assist BRFSS member States to develop an annual survey instrument to be used by States with States and CDC programs.

b. Assist BRFSS member States to establish standard survey protocols to be followed by States and disseminate them in the "BRFSS User's Guide" and in numbered memorandums; and, as appropriate, assist in the development of State-specific protocols.

c. Assist BRFSS member States with designing and obtaining appropriate telephone samples.

d. Assist BRFSS member States in the development of data processing procedures to be used by States and CDC to produce edited data files with standard, uniform formats. Provide program software, training, and on-going technical assistance for operations management, questionnaire data entry, and development of the BRFSS analysis database.

e. Develop and provide to States semi-annual and annual summary reports on selected risk factors related to the leading causes of State morbidity and mortality in a standardized and uniform manner.

f. Assist in training State staff related to data collection, data analysis, interpretation, and use.

g. Conduct or assist with the specification of cleaning, weighting, data editing, variable and format layouts of all data files.

h. Provide technical assistance to resolve problems regarding data collection procedures, response rates, sampling procedures (unbiased sampling and estimate omissions), and database file completeness.

i. Collaborate with State, Federal, and other programs on joint analysis of BRFSS data.

j. Coordinate and facilitate the interchange of technical information among cooperative agreement recipients.

k. Provide BRFSS States with programmatic, epidemiological, and statistical technical assistance.

l. In collaboration with State(s) conduct multi-State and single-State analyses and facilitate dissemination and translation of findings.

m. Participate with States in workshops, training, and meeting to exchange information.

n. Conduct site visits to monitor program operations and to provide technical assistance as needed.

Performance will be measured based on accomplishment of the activities listed above. Evidence can be demonstrated through the quality of data, adherence to survey recommendations, utilization of BRFSS data for program planning and evaluation.

F.6. Content

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications will be evaluated on the criteria listed, so it is important to follow them in laying out program plans. The narrative should be no more than 30 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

Available funds will be allocated first for the costs of an estimated base of 2,000 completed 100-question surveys in each State.

1. Program Management

a. Identify the percentage of the project coordinator's time and related costs for project activities and describe procedures or process (*i.e.*, contractors or in-house) for the management of data collection. Provide job descriptions, resumes, and organizational charts.

b. Include written procedures or describe plans to develop and implement the following:

c. BRFSS data analysis Statewide and for local areas.

d. Use of BRFSS data for directing program planning, program evaluation, setting program priorities, developing interventions, assessing trends, and targeting relevant population groups.

e. To address emerging public health issues.

f. To increase collaboration among State, local, and other agencies, organizations, and universities that analyze data or seek to reduce chronic disease and injury morbidity and mortality.

g. Provide a list of training taken by key BRFSS staff, to include data collection/interviewer staff, within the previous 12 months. Training list should include course title, a brief description of course content, dates of training, and names and titles of staff attending the training.

h. Provide a copy of projected staff training with the course title, course description, dates of training, and names and titles of staff who will be attending training.

2. Operational Plan

a. Provide an estimate of the number of interviews to be completed in addition to the base number of 2000 completed interviews per State per year.

b. Provide a list of the survey questions to be asked in addition to the base-length questionnaire.

c. Identify the percentage of an analyst's time and related costs for analyzing data collected.

d. Provide the title and author(s) of publications produced and/or distributed using BRFSS data.

e. Upgrading computer-assisted telephone interviewing systems and computer systems for analysis and Internet activities.

f. Describe the nature and extent of collaboration and coordination with and support (*i.e.*, financial, shared resources, etc.) from other State programs.

3. Evaluation

Describe the procedures currently used or planned to monitor the performance of the data collection system, adherence to prescribed data collection protocols, and the extent of the use and dissemination of the data.

4. Budget

Provide a detailed budget and line-item justification for all operating expenses. The budget should be consistent with the State's objectives and planned activities of the project. Budget requests should include the cost of two two-day trips to Atlanta for two individuals and the cost of one five-day trip (including travel days) for up to two individuals to attend the annual BRFSS conference. The budget should address funds requested, as well as the applicant's in-kind or direct support.

G.6. Evaluation Criteria (100 points)

Applications received from current grantee that are funded under program announcement 99044, will be reviewed utilizing the Technical Review process.

1. Operational Plan (50 points). The extent to which the applicant has addressed Recipient Activities 1.b, 1.c, 1.d, 1.e, 1.k, 1.m, and items 1 through 6 in the Application Content section.

2. Program Management (25 points). The extent to which the applicant has addressed Recipient Activities 1.a, 1.g, 1.h, 1.i, and items 1 through 5 in the Application Content section.

3. Evaluation (25 points). The extent to which the applicant has addressed Recipient Activities 1.i, 1.j, and 1.o, and item 3 in the Application Content section.

4. Budget (Not Weighted). The extent to which the applicant has addressed item 4 in the Application Content section.

Component 7—Genomics and Chronic Disease Prevention

D.7. Availability of Funds

Approximately $1,000,000 is available in FY 2003 to fund approximately three to five States' program awards. It is expected that the average award will be $200,000 ranging from $150,000 to $250,000.

Use of Funds

Funds awarded under this component may not be used to conduct genomic research or pay for patient services such as genetic testing or counseling. Cooperative agreement funds may be used to develop or enhance the State Health Department's capacity for planning with other agency programs and outside partners, and implementing the use of genomic information (*e.g.* genetic testing and family history data) in public health policy and programs. Funds may also be used to enhance data collection through disease registries and other surveillance systems and to develop public health work-force competency in the use of genomics for disease prevention. Developing genomic leadership capacity will enhance comprehensive chronic disease prevention and health promotion by establishing cross-cutting activities with one or more disease-specific programs and increasing collaboration across the agency in epidemiology, environmental health, infectious disease, maternal and child health, and related programs that increase the effectiveness of chronic disease prevention.

E.7. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

Note: In this announcement, integrating genomic and the use of family history into chronic disease program planning, policy development, and intervention design includes, but is not limited to, (a) Establishing or expanding leadership capacity in the field of genomics, (b) developing and implementing population-based assessments and incorporating genomic information into disease-specific data collection through surveillance and registries, (c) developing expanded uses of genomics in programmatic activities including BRFSS and the analysis of vital records and other sources important in population-based analysis, (d) educating the health workforce, policy makers, and the public about the importance of understanding the role of family history and genetic risk factors in disease etiology and prevention, and (e) specifically preparing the chronic disease workforce for using genomic tools to reduce the burden of specific diseases and understanding the benefits and limitations of available genetic tests.

a. Develop or strengthen the health agency organizational capacities for assessing and utilizing existing genomics and public health program experience and expertise in planning the integration of genomics into existing chronic disease prevention and health promotion programs.

b. Acquire or enhance the leadership capacity required to integrate genomics into existing or planned chronic disease prevention and health promotion programs. In this effort, coordination of the core public specialties (such as epidemiology, laboratory services, policy development, and infectious disease prevention) to integrate genomics and family history, as appropriate, is required. The use of genomics within public health requires collaboration with academic and health care organizations that can provide technical assistance and expertise in expanding program and policy development. Leadership capacity may include: (a) Designating a State agency-wide, or chronic disease genomics coordinator or team, expanding existing leadership roles to include chronic disease and other disease-specific responsibilities, and/or coordinating a team representing all or selected public health disease programs; (b) the availability of adequate epidemiologic, genomics, laboratory, health education, communications expertise and program support; and (c) a mechanism for assessing and increasing the genomic and public health competency of the chronic disease work-force through technical assistance and specific

training activities. Information of work force competency is available at: *http://www.cdc.gov/genomics/training/competencies/comps.htm*.

c. Utilizes national, regional and State training and technical assistance resources for program development, and expands collaborative relationships with key academic institutions such as the Centers for Genomics and Public Health (Link to: *http://www.cdc.gov/genomics/training/competencies/comps.htm)*.

Ensures that State professional organizations, industry, community representatives or key partners and community are key partners throughout the planning process.

d. Develop and implement a plan for integrating genomics and related risk assessment tools such as family history into core public health activities and priorities for one or more chronic infectious, environmental, Maternal and Child Health or other public health programs during the first year.

e. Plan and coordinate the assessment and use of various types of targeted risk assessment strategies related to enhanced disease prevention based on genomics and family history tools. Collaborate with professional, industrial, and academic resources and partners in the testing, assessment, and usage of risk assessment tools that help organize knowledge about inheritable factors into a process for early recognition of increased disease susceptibility and strategies for disease prevention.

f. Plan and coordinate the assessment and use of various types of targeted risk assessment strategies related to enhanced disease prevention based on genomics and family history tools. Collaborate with CDC and the Centers for Genomics and Public Health in the testing, assessment, and usage of family history tools that help organize knowledge about heritable factors into a process for early recognition of increased disease susceptibility and strategies for disease prevention.

2. CDC Activities

a. Convene workshop and/or teleconference of recipient Programs for information-sharing and problem solving.

b. Provide ongoing guidance, consultation, and technical assistance to plan, implement, and evaluate all aspects of program activities. Activities include assisting with analyses and interpretation of the rapidly expanding knowledge base on public health genomics and findings from qualitative and quantitative research; guiding program evaluation, and sharing community, environmental and policy strategies to promote the integration of genomics across health agency programs associated with chronic disease program activities. Disseminate relevant state-of-the-art research findings and public health recommendations related to genomics and disease-specific prevention and control.

c. On a consultative basis, assist in the development and review of intervention protocols and program evaluation methods.

d. Coordinate national level partnerships with relevant organizations and agencies involved in the translation of genomics and family history into relevant guidelines and recommendations for public health policy development and program action.

F.7. Content

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Applications should be no more than 20 pages excluding Federal forms, budget, justifications, abstract, and appendices. All applications should be double spaced, printed on one side, with one-inch margins, and 12-point font. All applicants should also submit as appendices, resumes, job descriptions, organizational charts, and any other supporting documentation as appropriate. All graphics maps, overlays, etc., should be in black and white and meet the above criteria. All submitted materials must be suitable for photocopying. Your application must be submitted UNSTAPLED and UNBOUND.

1. Abstract. A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the program, organization, name and address of the project director, telephone number, facsimile number, and e-mail address. The abstract should briefly list major program elements and activities. A table of contents that provides page numbers for each section should follow the abstract.

2. Background, Need, and Understanding. Describe the status of health agency activities and capacity for establishing coordinated leadership in genomics to guide crosscutting health policy and program development. Provide status and level of involvement of chronic disease, infectious disease, environmental health, epidemiology, maternal and child health, and laboratory within this agency leadership capacity. Describe the extent to which genomics is integrated into chronic disease programs function and the proposed or actual placement of a focus for genomic activities within that structure. Discuss any agency actions implemented or planned that facilitate the integration of genomics and/or the use of family history in developing risk factor assessments and targeting disease prevention efforts. Provide evidence of the readiness of the agency and its program to integrate genomics and family history into chronic disease prevention and health promotion planning, policy development, and intervention activities. Identify the specific components of this, or other chronic disease program announcements, or the crosscutting issues, to be addressed.

3. Work-plan. Provide a work plan that addresses each of the required elements cited in the Recipient Activities above. The work plan should include:

a. Program Objectives for each of the Recipient Activities. Objectives should describe what is to happen, by when, by whom, and to what degree.

b. The proposed method of achieving each of the objectives.

c. The proposed plan for evaluating progress toward attainment of the objectives.

d. A milestone, time line, and completion chart for all objectives for the project period.

4. Budget. Provide a detailed line-item budget with justifications consistent with the purpose and proposed objectives. Clearly differentiate budget amounts and activities requested through this component from the resources or activities of other components or programs. Budgets should include travel for one to two persons to attend a two-day meeting in Atlanta. Proposed sub-contracts should identify the name of the contractor, if known; describe the services to be performed; provide an itemized budget and justification for the estimated costs of the contract; specify the period of performance; and describe the method of selection. If indirect costs are requested, a copy of the Indirect Cost Rate Agreement should be included.

G.7. Evaluation Criteria

Applications for this component will be objectively reviewed against the following criteria by an independent review group appointed by CDC.

1. Background, Need, and Understanding (25 points). The extent to which the applicant describes

Background, Need as presented in the application content section (F.8.4), and demonstrates an Understanding of the intent and focus of the program as presented in the Recipient Requirements (E.8.1).

2. Work Plan

a. Program Objectives (25 points). The extent to which the applicant presents specific, measurable, and time phased objectives for each Recipient Requirement (E.8.1.a–e).

b. Methods of Achieving the Objectives (25 points). The extent to which the applicant's plan for each Recipient Requirement (E.8.1 a–e) will accurately monitor, and permit re-direction of activities.

c. Plan for Evaluating Progress (15 points). The extent to which the evaluation plan for each Recipient Requirement (E.8.1 a–e) will accurately monitor, and permit re-direction of activities.

d. Milestone, Timeline, and Completion Chart (10 points). The extent to which the chart(s) provided represents an effective tool for monitoring program progress.

3. Abstract (Not scored). The extent to which an overview of the program is provided in a clear and concise manner.

4. Budget and Justification (Not scored). The extent to which the line item budget justification is reasonable and consistent with purpose of this component and program goal(s) and objectives of the cooperative agreement.

Program Performance Measures

Performance measures for the first year: 1. Evidence that States have performed a review of organizational and operational capacities for integrating genomics into public health practices and policies.

2. Evidence that States have identified and defined the nature and scope of population-based data, genomics information, and leadership capacity necessary to integrate genomics into chronic disease and other public health program activities.

3. Evidence that States have developed and initiated a plan for integrating genomics and risk assessment tools such as family history into one or more chronic, infectious, environmental, maternal and child health, or other public health programs.

4. Evidence that the States have formed partnerships with academic institutions, professional organizations, community and industry groups and involved them in the planning of genomic integration activities.

Five Year Performance Measures

1. Evidence that the States have integrated genomics and related risk assessment tools, such as family history, as a routine component of disease investigations and analysis.

2. Evidence that the States have used population-based data and the expanding genomics knowledge base to develop or revise chronic, environmental, and infectious disease programmatic activities, interventions, and policies.

3. Evidence that the States have conducted preliminary evaluations of the impact of genomics in case identification, disease prevention, economic, and disease specific health outcome.

Note: This section applies to all components.

H. Submission and Deadline

Submit the original and two copies of CDC form 0.1246. Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Note: Your application should be submitted as one application but should consist of specific Categorical Components to allow each categorical program to remove their section of the application to assist with the preparation of the application.

The application must be received by 4:00 p.m. Eastern Time March 28, 2003. Submit the application to: Technical Information Management Section—Program Announcement 03022, Procurement and Grants Office, Center For Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

Deadline Applications will be considered as meeting the deadline if they are received before 4:00 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or if significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, the interim progress report will be due February 15, 2004, and subsequent interim progress reports will be due on the 15th of February each year through February 15, 2008, except for Component 6. The second report (annual progress report) is due 90 days after the end of the budget period (30th of September). The progress report, due in February, will serve as your non-competing continuation application and must include the following elements:

a. A succinct description the program accomplishments/narrative and progress made in meeting each Current Budget Period Activities Objectives during the first six months of the budget period (June 30th through December 31st).

b. A succinct description of the program accomplishments/narrative and progress made in meeting each Current Budget Period Activities Objectives during the first six months of the budget period (June 30th through December 31st).

c. The reason(s) for not meeting established program objectives and strategies to be implemented to achieve unmet objectives.

d. Current Budget Period Financial Progress.

e. New Budget Period Proposed Activities and Objectives.

f. Detailed Line-Item Budget and Justification.

g. For all proposed contracts, provide the name of contractor, method of selection, period of performance, scope of work, and itemized budget and budget justification. If the information is not available, please indicate "To Be Determined" until the information becomes available; it should be submitted to CDC Procurement and Grants Management Office contact identified in this program announcement.

Applicable for Program Components 2 (Nutrition, Physical Activity and Obesity), 3 (WISEWOMAN), 4 (State-Based Oral Disease Prevention), and 5 (Arthritis), only:

The interim progress report that is due on the 15th of February will also be used as evidence of a program's readiness to move from level to the next higher level based on attainment of goals and objectives when funding is available. Applicants wishing to

compete for the next funding level should submit items a, b, d, e, f, and g above and the information requested in the next funding level Recipient Activities and Application Content identified in this program announcement including a line item budget and budget justification.

Applicants can be submitted in fiscal years 2004, 2005, 2006, and 2007 but be received by February 15th of the specific submission year. Funding decisions will be made on the basis of attainment of current goals and objectives as evidenced by the require reports, application score, and the availability of funds.

2. Financial status report, no more than 90 days after the end of the budget period. The financial status report should include an attachment that identifies unspent balances for each program component.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program.

AR–1 Human Subjects Requirements (Component 2 & 3)
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research (Component 2 & 3)
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke Free Workplace Requirements
AR–11 Health People 2010
AR–12 Lobbying Restrictions

J. Where To Obtain Additional Information

For this and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

Business management and technical assistance may be obtained from: Lucy Picciolo, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2683, E-mail address: *lip6@cdc.gov*.

Business management technical assistance for the U.S. Territories may be obtained from: Charlotte Flitcraft, Contract Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2632, E-mail address: *caf5@cdc.gov*.

Business Management technical assistance for Territories may be obtained from: Charlotte Flitcraft, Contract Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2632, E-mail address: *caf5@cdc.gov*.

For program technical assistance, contact: Component 1—Comprehensive State-Based Tobacco Use Prevention and Control Programs: Dianne May, Program Services Branch, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy, NE, MS K50, Atlanta, GA 30341, Telephone number: (770) 488–1104, E-mail address: *dmay@cdc.gov*.

Component 2—State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases: Robin Hamre, Obesity Prevention Programs Team Leader, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, MS K24, Atlanta, GA 30341, Telephone number: (770) 488–6050, E-mail address: *rwh9@cdc.gov*.

Component 3—WISEWOMAN: Julie C. Will, PhD, MPH, WISEWOMAN Team Leader, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, MS K26, Atlanta, GA 30341, Telephone number: (770) 488–6024, E-mail address: *jxw6@cdc.gov*.

For WISEWOMAN Definitions see WISEWOMAN Guidance Document: Interpretation of Legislative Language and Existing Documents at *http://www.cdc.gov/wisewoman*.

Component 4—State Based Oral Disease Prevention Programs: Kathleen Heiden, RDH, MSPH, Division of Oral Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, MS F10, Atlanta, GA. 30341, Telephone number: (770) 488–6056, E-mail address: *orhealthgrants@cdc.gov*.

Component 5—Arthritis: Sakeena Smith, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, MS K66, Atlanta, GA 30341–3717, Telephone (770) 488–5440, E-mail address: *szs4@cdc.gov*.

Component 6—BRFSS: Ruth Jiles, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, MS K66, Atlanta, GA 30341–3717, Telephone (770) 488–2542, E-mail address: *Rjiles@cdc.gov*.

Component 7—Chronic Disease Genomics: Ann Malarcher, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, MS K47, Atlanta, GA 30341, Telephone: (770) 488–8006, E-mail address: *aym8@cdc.gov*.

Dated: January 13, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

K. Appendices

Relevant to WISEWOMAN Component:

APPENDIX A.—ELIGIBILITY

Applicant	Competitive		Funding level		Type of program	
	Yes	No	1st	2nd	Standard	Enhanced
States:						
Alabama	X		X		X	X

APPENDIX A.—ELIGIBILITY—Continued

Applicant	Competitive		Funding level		Type of program	
	Yes	No	1st	2nd	Standard	Enhanced
Alaska	X		X		X	X
Arizona	X		X		X	X
Arkansas	X		X		X	X
California		X		X		X
Colorado	X		X		X	X
Connecticut		X		X	X	
Delaware	X		X		X	X
Florida	X		X		X	X
Georgia	X		X		X	X
Hawaii	X		X		X	X
Idaho	X		X		X	X
Illinois		X		X		X
Indiana	X		X		X	X
Iowa		X		X		X
Kansas	X		X		X	X
Kentucky	X		X		X	X
Louisiana	X		X		X	X
Maine	X		X		X	X
Maryland	X		X		X	X
Massachusetts		X		X	X	
Michigan		X		X	X	
Minnesota	X		X		X	X
Mississippi	X		X		X	X
Missouri	X		X		X	X
Montana	X		X		X	X
Nebraska		X		X	X	
Nevada	X		X		X	X
New Hampshire	X		X		X	X
New Jersey	X		X		X	X
New Mexico	X		X		X	X
New York	X		X		X	X
North Carolina		X		X		X
North Dakota	X		X		X	X
Ohio	X		X		X	X
Oklahoma	X		X		X	X
Oregon	X		X		X	X
Pennsylvania	X		X		X	X
Rhode Island	X		X		X	X
South Carolina	X		X		X	X
South Dakota		X		X	X	
Tennessee	X		X		X	X
Texas	X		X		X	X
Utah	X		X		X	X
Vermont		X		X	X	
Virginia	X		X		X	X
Washington	X		X		X	X
Washington, D.C.	X		X		X	X
West Virginia	X		X		X	X
Wisconsin	X		X		X	X
Wyoming	X		X		X	X
Territories:						
American Samoa	X		X		X	X
Guam	X		X		X	X
N. Mariana Islands	X		X		X	X
Puerto Rico	X		X		X	X
Republic of Palau	X		X		X	X
Virgin Islands	X		X		X	X
Tribes:						
Arctic Slope	X		X		X	X
Cherokee Nation	X		X		X	X
Cheyenne River	X		X		X	X
Consolidated Tribal Health	X		X		X	X
Hopi	X		X		X	X
Indian Community Health	X		X		X	X
KAW Nation	X		X		X	X
NARA	X		X		X	X
Navajo	X		X		X	X
Poach Band	X		X		X	X
South Puget	X		X		X	X
South-central		X		X		X

APPENDIX A.—ELIGIBILITY—Continued

Applicant	Competitive		Funding level		Type of program	
	Yes	No	1st	2nd	Standard	Enhanced
Southeast Alaska		X		X	X	
Yukon-Kuskokwim	X		X		X	X
All other programs funded by NBCCEDP	X		X		X	X
All other programs not funded by NBCCEDP	Not eligible					

APPENDIX B.—TYPE OF PROGRAM AND PERFORMANCE REQUIREMENTS

[Depending on type of program and level of funding, a project is expected to complete the performance activities detailed in the appropriate cell]

Funding level	Type of program and performance requirements	
	Standard Demonstration Project (Available for applicants applying in FY 2003 and FY 2004) *Standard Best Practices Project* (Available in FY 2005 and later)	*Enhanced* (Available for applicants applying in FY 2003 and later)
First Annual Funding: $50,000 to $250,000 (Standard); $250,000 to $500,000 (Enhanced)	(1) Complete Program Startup Activities found in checklist*. (2) Test activities using pilot study methods (3) Screen 500 women annually for blood pressure and cholesterol and provide all with health education. (4) Ensure at least 60 percent of newly screened women receive complete lifestyle intervention program. (5) If applying in FY 2005 or later, programs must implement WISEWOMAN-recommended best practices (recommendations available in FY 2005).	(1) Complete Program Startup Activities found in checklist including IRB protocols*. (2) Receive IRB approval. (3) Test methods in pilot study that includes screening and intervention activities. (4) Demonstrate adequate power to test effectiveness of lifestyle interventions in a full-scale study. (5) Prepare publishable manuscript
Second Annual Funding: $250,000 to $750,000 (Standard); $750,000 to $1,250,000 (Enhanced); Funding level for Standard and Enhanced Programs depends on success in meeting or exceeding performance requirements	(1) Screen at least 2500 women each year for blood pressure and cholesterol and provide all with health education**. (2) Ensure at least 60 percent of new women receive complete lifestyle intervention. (3) Demonstrate that newly enrolled participants adopt a healthier lifestyle during the year following enrollment**. (4) Demonstrate that at least one quarter of women screened are newly detected with high blood pressure or high cholesterol**. (5) Demonstrate a reduction in expected coronary heart disease deaths per 1000 women expected in 10 years***.	(1) Screen and intervene with enough women to achieve statistical power as determined during 1st level (2) Ensure 75 percent of eligible women in intervention group receive complete intervention (3) Demonstrate that intervention group adopts a healthier lifestyle during the year following enrollment** (4) Demonstrate statistically significant difference on one key outcome. (5) Develop monograph and/or training on methods to help other projects adopt successful program (6) Submit at least one manuscript on methods and results to a peer-reviewed journal

*Program Start-Up Checklist developed by the North Carolina WISEWOMAN program is found on page 18 of the monograph "Integrating Cardiovascular Disease Prevention into Existing Health Services: The Experience of the North Carolina WISEWOMAN Program" at *http://www.hpdp.unc.edu/wisewoman/manual.htm.*

**See GPRA measures developed May 17, 2002 found in WISEWOMAN Guidance Document: Interpretation of Legislative Language and Existing Documents at *http://ww.cdc.gov/wisewoman.*

***Use Framingham risk formulation that includes smoking, systolic blood pressure, total cholesterol, and age. This is calculated from minimum data elements.

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Appendix C

Framework for Performance Measures of Nutrition & Physical Activity Programs to Prevent Obesity & Chronic Diseases

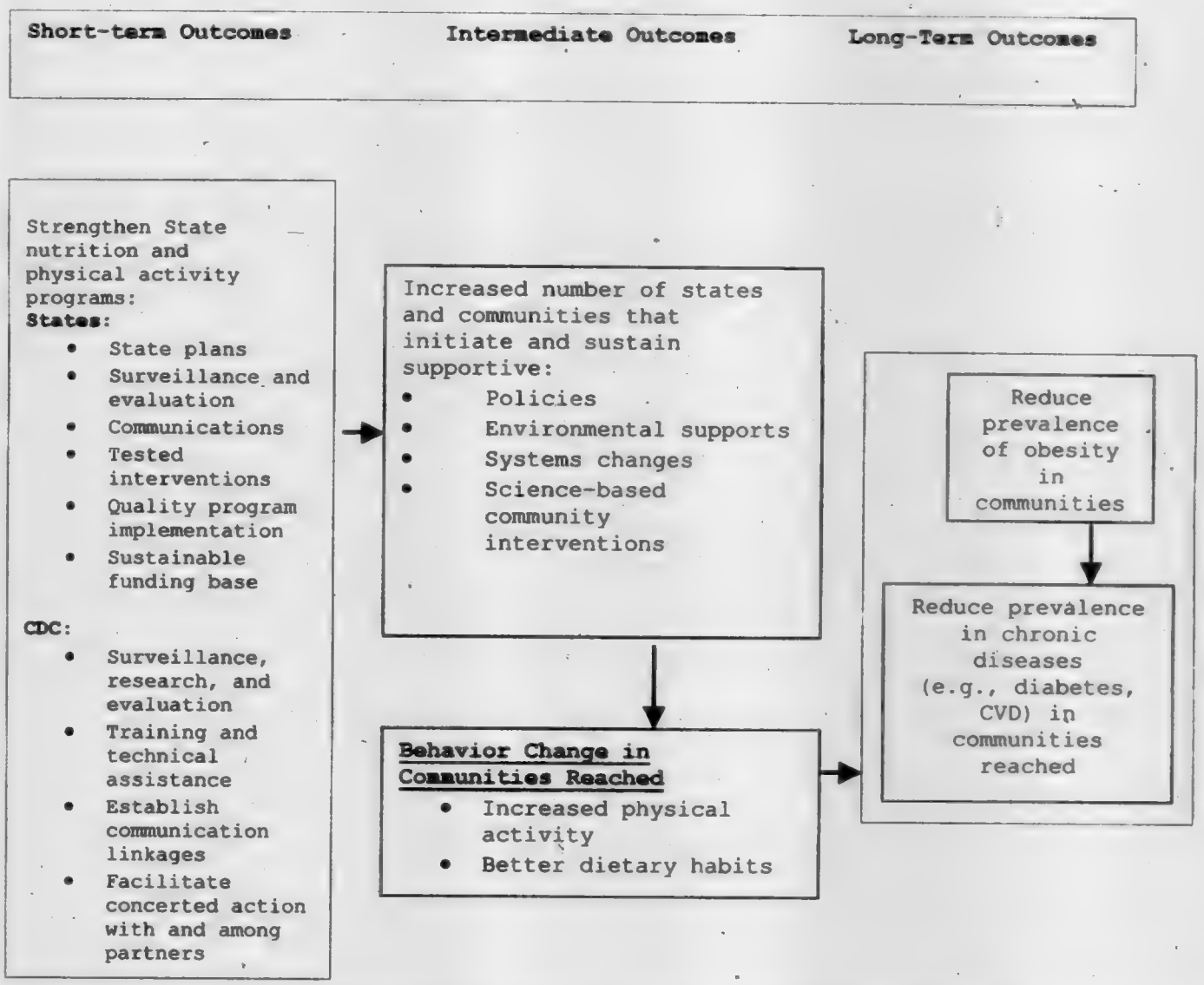

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Appendix D —Eligibility for Program Announcement 03022 Chronic Disease Prevention and Health Promotion Programs

Component 1: State-Based Basic Implementation Tobacco Prevention and Control Programs

Applications received from current grant recipients under: Program Announcement 99038, Comprehensive State-Based Tobacco Use Prevention, and Control Programs, will be funded upon receipt and approval of a technically acceptable application.

Component 3: Well-Integrated Screening and Evaluation for Women Across the Nation

Applications received from current grant recipients under Well Integrated Screening and Evaluation for Woman Across the nation (WISEWOMAN):

Program announcement 00115
WISEWOMAN
Program Announcement 99135
WISEWOMAN
Program Announcement 01098
WISEWOMAN Enhanced, will be funded upon receipt and approval of a technically acceptable application.

Component 4: State-Based Oral Disease Prevention Program

Applications received from current grant recipients under: Program Announcement 01046 Support State Oral Disease Prevention Programs, will be funded upon receipt and approval of a technically acceptable application.

Component 5: Arthritis

Applications received from current grant recipients under: Program Announcement 01097 Reducing the Impact of Arthritis and Other Rheumatic Conditions, will be funded upon receipt and approval of a technically acceptable application.

Component 6: Behavioral Risk Factor Surveillance Systems (BRFSS)

Applications received from current grant recipients under: Program Announcement 99044 Behavioral Risk Factor Surveillance System (BRFSS), will be funded upon receipt and approval of a technically acceptable application.

[FR Doc. 03–1065 Filed 1–22–03; 8:45 am]
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Part III

Department of Housing and Urban Development

24 CFR Part 401

Authority To Waive the Market-to-Market Regulations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 401

[Docket No. FR–4791–F–01]

Authority To Waive the Market-to-Market Regulations

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations for the Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market). The final rule provides that the Assistant Secretary for Housing-Federal Housing Commissioner, and not the Director of the Office of Multifamily Housing Assistance Restructuring (OMHAR), has the authority to waive the Mark-to-Market regulation.

DATES: Effective Date: February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Eliot C. Horowitz, Senior Advisor to the Assistant Secretary for Housing-Federal Housing Commissioner, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9110, Washington, DC 20410–0500. Telephone (202) 708–1490 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–9339 (Federal Information relay Service) (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Housing and Urban Development Reform Act (Pub. L. 101–235; 103 Stat.1987; December 15, 1989) (Reform Act), included provisions governing the manner in which HUD can waive regulations. Specifically, section 106 of the Reform Act amended section 7 of the Department of Housing and Development Act (HUD Act) by adding a new subsection 7(q) (42 U.S.C. 3535 (7)(q)). Section 7(q)(2) of the HUD Act provides that a regulation can only be waived "by an individual of Assistant Secretary rank or equivalent rank, who is authorized to issue the regulation to be waived."

Section 622 of the Mark-to-Market Extension Act of 2001 (Title VI of the 2002 Appropriations Act for the Departments of Labor, Health and Human Services, and related agencies, Public Law 107–116, 115 Stat. 2177, approved January 10, 2002) amended section 572 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, 42 U.S.C. 1437f note, (MAHRA), altering the manner in which the Director of OMHAR is appointed. Previously, the President made the appointment, subject to confirmation by the United States Senate. Under the new law, the President makes the appointment, but Senate confirmation is not required. Consequently, the individual appointed as the Director of OMHAR is not of the equivalent rank of an Assistant Secretary (as the latter appointment requires Senate confirmation).

The Mark-to-Market Extension Act of 2001 also amended section 578 of MAHRA to provide that "all authority and responsibilities assigned under this subtitle to the Secretary shall be carried out through the Assistant Secretary of the Department of Housing and Urban Development who is the Federal Housing Commissioner."

In tandem, the three legislative provisions cited above require that the Assistant Secretary for Housing-Federal Housing Commissioner is authorized to waive regulations under part 401, whereas the Director of OMHAR cannot. The Assistant Secretary for Housing-Federal Housing Commissioner has undertaken this responsibility since the enactment of the Mark-to-Market Extension Act of 2001. Today's amendment to 24 CFR 401.3 updates the regulation to comport with current law and practice.

Findings and Certification

Justification for Final Rule

In general, the Department publishes a rule for public comment before issuing the rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10 includes exceptions to the general rule, including where the regulatory amendment governs the Department's organization, internal practices or procedures. This rule amendment reflects statutory requirements that pertain to the Department's organization, practices and procedures and merely conforms part 401 to section 572 of MAHRA, as amended. The Department has determined, therefore, that prior notice and comment are not required.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction, or construction materials, manufactured housing or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (12 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule will not impose a federal mandate that will result in expenditures by state, local, or tribal governments and the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The reason for HUD's determination is that the rule only addresses the Department's internal practices and procedures.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 401

Grant programs-housing and community development, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Mortgages, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD is amending 24 CFR part 401 to read as follows:

PART 401—MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING PROGRAM (MARK-TO-MARKET)

1. The authority for 24 CFR part 401 continues to read as follows:

Authority: 12 U.S.C. 1715z–1 and 1735f–19(b); 42 U.S.C. 1437f note and 3535(d).

2. Revise § 401.3 to read as follows:

§ 401.3 Who may waive provisions in this part?

The Assistant Secretary for Housing-Federal Housing Commissioner may waive any provision of this part, subject to § 5.110 of this title.

Dated: January 9, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–1410 Filed 1–22–03; 8:45 am]

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Part IV

Department of Housing and Urban Development

24 CFR Part 2004
Office of Inspector General Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 2004

[Docket No. FR–4742–F–02]

RIN 2508–AA13

Office of Inspector General Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Office of Inspector General, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Office of Inspector General (OIG) to implement the statutory requirements concerning the issuance of OIG subpoenas, and responses to subpoenas issued to OIG employees in proceedings where OIG is not a party. This final rule follows publication of a proposed rule on September 20, 2002. No public comments were received in response to the proposed rule. Accordingly, the Department is adopting the proposed rule without change.

DATES: Effective Date: February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8260, Washington, DC 20410. Telephone (202) 708–1613 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services) (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—The September 20, 2002 Proposed Rule

On September 20, 2002 (67 FR 59428), HUD published a proposed rule to amend the regulations of the HUD/OIG by updating the regulations in 24 CFR part 2004. The proposed rule provided that the Inspector General would delegate to the Counsel to the Inspector General the authority and responsibility for responding to requests and demands for production of OIG records and testimony of OIG employees (§ 2004.20). The proposed rule also identified the factors that OIG would consider in making determinations in response to such requests and what information requesters must provide (§§ 2004.21 and 2004.22). The proposed rule further specified when the request should be submitted (§ 2004.22), the time period for review (§ 2004.24), potential fees (§ 2004.29), and, if a request is granted, any restrictions that may be placed on the disclosure of records or the appearance of an OIG employee as a witness (§§ 2004.26 and 2004.27). The proposed rule also indicated that the charges for witnesses are the same as those provided by the federal courts. Additionally, the rule explained that the fees related to production of records are the same as those charged under OIG's Freedom of Information Act regulation at 24 CFR part 2002. The rule further advised that the proposed charges for time spent by an employee to prepare for testimony and for production of records by OIG are authorized under 31 U.S.C. 9701. Under 31 U.S.C. 9701, an agency may charge for services or things of value that are provided by the agency.

II. This Final Rule

This final rule follows publication of the September 20, 2002, proposed rule, which invited public comment on the rule. The public comment period closed on November 19, 2002, with the Department's receiving no comments on the proposed rule. Accordingly, the Department is adopting the proposed rule without change.

III. Findings and Certifications

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U. S. C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule would not impose a federal mandate that will result in expenditures by state, local, or tribal governments and the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. Although HUD has determined that this final rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 2004

Administrative practice and procedure, courts.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 2004 to read as follows:

PART 2004—SUBPOENAS AND PRODUCTION IN RESPONSE TO SUBPOENAS OR DEMANDS OF COURTS OR OTHER AUTHORITIES

1. Part 2004 is revised to read as follows:

Subpart A—General Requirements

Sec.
2004.1 Scope and purpose.
2004.2 Applicability.
2004.3 Definitions.

Subpart B—Office of Inspector General Subpoenas

2004.10 Service of an Office of Inspector General subpoena.

Subpart C—Requests for Testimony and Production of Documents

2004.20 General prohibition.
2004.21 Factors OIG will consider.
2004.22 Filing requirements for demands or requests for documents or testimony.
2004.23 Service of subpoenas or requests.
2004.24 Processing demands or requests.
2004.25 Final determination.

2004.26 Restrictions that apply to testimony.
2004.27 Restrictions that apply to released records.
2004.28 Procedure in the event of an adverse ruling.
2004.29 Fees.

Authority: Inspector General Act of 1978, as amended (5 U.S.C. app.) and 42 U.S.C. 3535(d).

Subpart A—General Requirements

§ 2004.1 Scope and purpose.

(a) This part sets forth the policy for service of a subpoena issued by the Office of Inspector General (OIG), and policies and procedures that you must follow when you submit a demand or request to an employee of the OIG to produce official records and information, or provide testimony relating to official information, in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of official records and information.

(b) The OIG intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize the possibility of involving OIG in controversial issues not related to OIG's functions;

(3) Maintain OIG's impartiality among private litigants where OIG is not a named party; and

(4) Protect sensitive, confidential information and the deliberative processes of OIG.

(c) In providing for these requirements, OIG does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of OIG. This part does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 2004.2 Applicability.

This subpart applies to demands and requests to employees for factual or expert testimony relating to official information, or for production of official records or information, in legal proceedings in which HUD or OIG is not a named party. However, this subpart does not apply to:

(a) Demands upon or requests for an OIG employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of OIG;

(b) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; and

(c) Congressional demands and Congressional requests for testimony or records.

§ 2004.3 Definitions.

Counsel means the Counsel to the Inspector General.

Demand means a subpoena, or an order or other command of a court or other competent authority, for the production, disclosure, or release of records or for the appearance and testimony of an OIG employee that is issued in a legal proceeding.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

OIG means the Office of Inspector General, U.S. Department of Housing and Urban Development.

OIG employee or *employee means:*

(1) Any current or former officer or employee of OIG;

(2) Any other individual hired through contractual agreement by or on behalf of OIG or who has performed or is performing services under such an agreement for OIG; and

(3) Any individual who served or is serving in any consulting or advisory capacity to OIG, whether formal or informal.

Records or official records or information means:

(1) All documents and materials that are OIG agency records under the Freedom of Information Act, 5 U.S.C. 552;

(2) All other documents and materials contained in OIG files; and

(3) All other information or materials acquired by an OIG employee in the performance of his or her official duties or because of his or her official status.

Request means any informal request, by whatever method, for the production of records and information or for testimony that has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, recorded interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Office of Inspector General Subpoenas

§ 2004.10 Service of an Office of Inspector General subpoena.

Service of a subpoena issued by OIG may be accomplished as follows:

(a) *Personal service.* Service may be made by delivering the subpoena to the person to whom it is addressed. If the subpoena is addressed to a corporation or other business entity, it may be served upon an employee of the corporation or entity. Service made to an employee, agent, or legal representative of the addressee shall constitute service upon the addressee.

(b) *Service by mail.* Service may also be made by mailing the subpoena, certified mail—return receipt requested, to the addressee at his or her last known business or personal address.

Subpart C—Requests for Testimony and Production of Documents

§ 2004.20 General prohibition.

No employee may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the Inspector General or the Counsel.

§ 2004.21 Factors OIG will consider.

The Counsel or Inspector General, in their discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the Inspector General or the Counsel may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) OIG has an interest in the decision that may be rendered in the legal proceeding;

(c) Allowing such testimony or production of records would assist or hinder OIG in performing its statutory duties or use OIG resources where responding to the request will interfere with the ability of OIG employees to do their work;

(d) The records or testimony can be obtained from other sources;

(e) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(f) Disclosure would violate or be inconsistent with a statute, Executive Order, or regulation;

(g) Disclosure would reveal confidential or privileged information, trade secrets, or similar, confidential commercial, or financial information;

(h) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceedings, or compromise constitutional rights;

(i) Disclosure would result in OIG appearing to favor one litigant over another;

(j) Disclosure relates to documents that were produced by another agency;

(k) The demand or request is in conformance with all other applicable rules;

(l) The demand or request is sufficiently specific to be answered; and

(m) For any other good cause.

§ 2004.22 Filing requirements for demands or requests for documents or testimony.

You must comply with the following requirements whenever you issue demands or requests to an OIG employee for official records and information or testimony.

(a) Your request must be in writing and must be submitted to the Counsel. If you serve a subpoena on OIG or on an OIG employee before submitting a written request and receiving a final determination from the Counsel, OIG will oppose the subpoena on grounds that your request was not submitted in accordance with this subpart.

(b) Your written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document sufficient to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on OIG to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an OIG employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require with each OIG employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The OIG reserves the right to require additional information to complete your request where appropriate.

(d) Your request should be submitted at least 30 days before the date that records or testimony are required. Requests submitted less than 30 days before records or testimony are required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the Counsel to make an informed decision may serve as the basis for a determination not to comply with your request.

§ 2004.23 Service of subpoenas or requests.

Subpoenas or requests for official records or information or testimony must be served on the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8260, Washington, DC 20410–4500.

§ 2004.24 Processing demands or requests.

(a) After service of a demand or request to testify, the Counsel will review the demand or request and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or to produce official records and information.

(b) The OIG will process requests in the order in which they are received. Absent exigent or unusual circumstances, OIG will respond within 30 days from the date that we receive all information necessary to the evaluation of the demand or request. The time for response will depend upon the scope of the request.

(c) The Counsel may grant a waiver of any procedure described in this subpart where a waiver is considered necessary to promote a significant interest of OIG, HUD, and the United States, or for other good cause.

§ 2004.25 Final determination.

The Counsel makes the final determination on demands and requests to employees for production of official records and information or testimony. All final determinations are within the sole discretion of the Counsel. The Counsel will notify the requester of the final determination, the reasons for the grant or denial of the demand or request, and any conditions that the Counsel may impose on the release of records or information, or on the testimony of an OIG employee.

§ 2004.26 Restrictions that apply to testimony.

(a) The Counsel may impose conditions or restrictions on the testimony of OIG employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The OIG may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the Counsel, the employee shall not:

(1) Disclose confidential or privileged information;

(2) Testify as to facts when the Counsel determines such testimony would not be in the best interest of OIG, HUD and the United States; or

(3) Testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of OIG. This provision does not apply to requests from the United States for expert or opinion testimony.

§ 2004.27 Restrictions that apply to released records.

(a) The Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the Counsel. In cases where protective orders or confidentiality agreements have already been executed, OIG may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the Counsel so determines, original OIG records may be presented for examination in response to a demand or request, but they are not to

be presented as evidence or otherwise used in a manner by which they could lose their identity as official OIG records, nor are they to be marked or altered. In lieu of the original records, certified copies will be presented for evidentiary purposes.

§ 2004.28 Procedure in the event of an adverse ruling.

If the Counsel declines to approve a demand for records or testimony and the court or other authority rules that the demand must be complied with irrespective of the instructions from the OIG not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462.

§ 2004.29 Fees.

(a) *Generally.* The Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to OIG.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication will be the same as those charged by OIG in its Freedom of Information Act Regulations at 24 CFR part 2002.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the federal district court closest to the location where the witness will appear. Such fees will include cost of time spent by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding.

(d) *Payment of fees.* You must pay any applicable witness fees for current OIG employees and any records certification fees by submitting to the Counsel a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony by former OIG employees, you must pay applicable fees directly to the former employee in accordance with applicable statutes.

(e) *Waiver or reduction of fees.* The Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony or production of records. Additionally, fees will not be assessed if the total charge would be $10.00 or less.

Dated: January 9, 2003.

Kenneth M. Donohue, Sr.,

Inspector General.

[FR Doc. 03–1409 Filed 1–22–03; 8:45 am]

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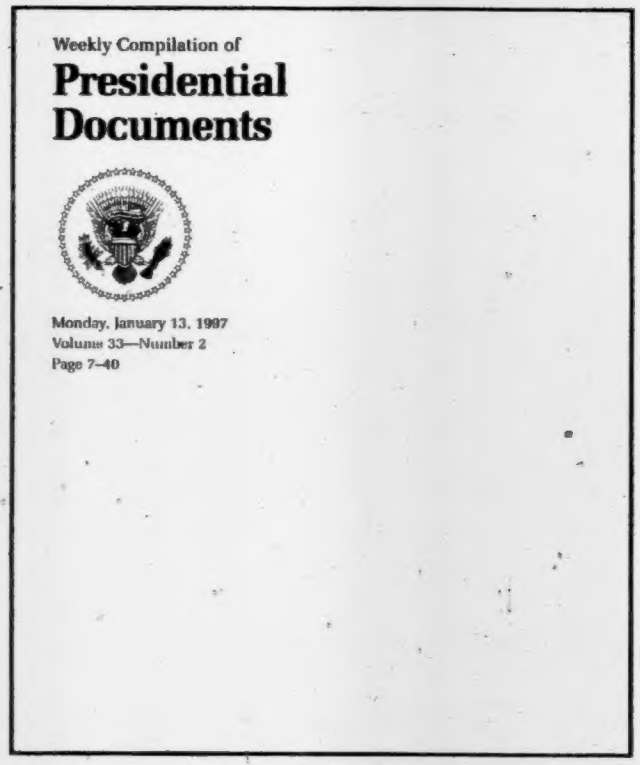

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